



BOARD OF COMMISSIONERS

BOARD OF COUNTY COMMISSIONERS MEETING

9:00 AM, WEDNESDAY, MAY 07, 2025

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 attend the meeting virtually 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 *9 to indicate you would like to speak and *6 to unmute yourself when you are called on.
- When it is your turn to provide testimony, you will be promoted from an attendee to a panelist. You may experience a brief pause as your meeting status changes. Once you have joined as a panelist, you will be able to turn on your camera, if you would like to.



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

The Board of Commissioners provides time during its public meetings for citizen input. This is an opportunity for citizens to communicate to the Commissioners on matters that are not otherwise on the agenda. Time is limited to 3 minutes.

The Citizen Input platform is not available for and may not be utilized to communicate obscene or defamatory material.

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. Approval of amendment to the contract with Amergis Healthcare Staffing for DCSO Adult Jail medical staffing
2. Authorize the donation of 0.21 acre of real property located in Newberry Neighborhood 3 in La Pine to the City of Pine, and further authorize granting a temporary construction easement to the City of La Pine
3. Acceptance of Oregon Health Authority substance misuse prevention grant and approval of Resolution No. 2025-012 appropriating the grant funds
4. Consideration of Board Signature on letter thanking Denise Gardiner for service on the Newberry Estates Special Road District
5. Approval of the minutes of the March 31 and April 16, 2025 BOCC meetings

ACTION ITEMS

6. **9:05 AM** Proclamation: Mental Health Awareness Month
7. **9:15 AM** Work Session: Deschutes County FY 2026 Proposed Fee Schedule Changes
8. **9:40 AM** Board Order 2025-016; Decision whether to hear an appeal of a Hearings Officer's remand decision associated with the zoning designation for the ODOT Lava Butte Trail

- [9.](#) **9:50 AM** Consideration of first reading of an ordinance amending Deschutes County Code regarding Temporary Hardship Dwellings
- [10.](#) **9:55 AM** Consideration of First and Second Readings and emergency adoption of Ordinance No. 2025-004 to allow RVs as Rental Dwellings
- [11.](#) **10:10 AM** Public Hearing: Remand of a modification to the Final Master Plan of the Thornburgh Destination Resort

LUNCH RECESS

Continued ACTION ITEMS

- [12.](#) **1:00 PM** Public Hearing on the Community Development Department Draft FY 2025-26 Work Plan

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



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: May 7, 2025

SUBJECT: Approval of amendment to the contract with Amergis Healthcare Staffing for DCSO Adult Jail medical staffing

RECOMMENDED MOTION:

Move approval of Document No.2025-370, an amendment to the contract with Amergis Healthcare Staffing, Inc. to provide temporary relief for the Deschutes County Adult Jail's medical staffing needs.

BACKGROUND AND POLICY IMPLICATIONS:

The medical unit in DCSO's Adult Jail has two vacant LPN positions, and temporary nurses are needed to provide necessary healthcare services and ensure the continued proper operation of the jail's Medication Assisted Treatment (MAT) program.

BUDGET IMPACTS:

Maximum compensation is \$500,000 for the term of the amendment. Total maximum compensation for the underlying contract and the amendment together shall not exceed \$1,000,000.

In addition to MAT grant funding, vacancy savings from the two unfilled LPN positions will help to cover the cost of these services.

ATTENDANCE:

Captain Michael Shults



Deschutes County No. 2025-370
AMENDMENT 1
Contract No. 2023-890
MASTER SERVICES AGREEMENT

This **Amendment** ("Amendment") 2025-370 is **Effective upon signing by both parties**, between **DESCHUTES COUNTY**, a political subdivision of the State of Oregon, acting by and through the **Deschutes County Sheriff's Office** ("Customer") and **Amergis Healthcare Staffing, Inc.** ("Amergis") fka Maxim Healthcare Staffing Services, Inc., pursuant to that certain Work Order Contract No. 2023-890 (the "Agreement") entered into between Customer and Amergis on October 6th, 2023 (the **Agreement Effective Date**).

WHEREAS, Customer requested Amergis to provide temporary healthcare staffing services at the facility as set forth in the Agreement;

WHEREAS, the Parties now seek to amend certain terms of the underlying Agreement as expressly set forth herein; and

NOW, THEREFORE, for good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, and as contemplated by this Amendment:

1. Section 1 Amended.
 - a. Update Agreement expiration date to December 31, 2028
 - b. The maximum amount of the Agreement is increased by \$500,000 for the period of this Amendment. The entire amount of the Agreement (original 2023-890 with this Amendment 2025-370) shall NOT TO EXCEED \$1,000,000.00 in compensation.
2. All other terms and conditions will remain unchanged as stated in the Agreement.



AMERGIS HEALTHCARE STAFFING INC.:

Signature of Authorized Representative

Printed Name

Title

Date

Dated this _____ of _____, 2025

FOR SHERIFF'S OFFICE:



Kent van der Kamp, Sheriff

Dated this _____ of _____, 2025

FOR DESCHUTES COUNTY:

ANTHONY DeBONE, Chair, County Commissioner

PATTI ADAIR, Vice Chair, County Commissioner

PHIL CHANG, County Commissioner



CERTIFICATE OF LIABILITY INSURANCE

05/07/2025 Item #1.

DATE (MM/DD/YYYY)

4/25/2025

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Altus Partners, Inc. 201 King of Prussia Road STE100 Radnor PA 19087	CONTACT NAME: PHONE (A/C, No, Ext): 610-526-9130 FAX (A/C, No): 610-526-2021 E-MAIL ADDRESS: coi@altuspartners.com												
INSURED Amergis Healthcare Staffing, Inc. 7223 Lee DeForest Drive Columbia MD 21046	INSURER(S) AFFORDING COVERAGE <table><tr><td>INSURER A: Lloyd's Synd/beazley Furlong Ltd</td><td>NAIC # 2623</td></tr><tr><td>INSURER B: ACE American Insurance Company</td><td>22667</td></tr><tr><td>INSURER C: Indemnity Ins Co of N Am</td><td>43575</td></tr><tr><td>INSURER D:</td><td></td></tr><tr><td>INSURER E:</td><td></td></tr><tr><td>INSURER F:</td><td></td></tr></table>	INSURER A: Lloyd's Synd/beazley Furlong Ltd	NAIC # 2623	INSURER B: ACE American Insurance Company	22667	INSURER C: Indemnity Ins Co of N Am	43575	INSURER D:		INSURER E:		INSURER F:	
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INSURER D:													
INSURER E:													
INSURER F:													

COVERAGES**CERTIFICATE NUMBER:** 1022664615**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> \$3,000,000 SIR <input checked="" type="checkbox"/> \$5M SIR-Products GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	B0600HC2400108	11/30/2024	11/30/2025	EACH OCCURRENCE \$ 3,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 1,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 5,000,000
B	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			H11353861	11/30/2024	11/30/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB DED RETENTION \$			B0600HC2400108	11/30/2024	11/30/2025	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000
C B B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	Y	C72614768 (AOS) C72614720 (CA, AZ & MA) C72614847 (WI) C7261480A (OH & WA)	11/30/2024 11/30/2024 11/30/2024 11/30/2024	11/30/2025 11/30/2025 11/30/2025 11/30/2025	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Professional Liability			B0600HC2400108	11/30/2024	11/30/2025	Per Claim/Agg \$5,000,000 SIR \$5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Reference: STATE OF OREGON PRICE AGREEMENT NO. PO-10700-00015789

Retroactive Dates: Professional Liability policy is 9/2/1988; General Liability policy is 11/30/2004. Certificate is issued as evidence of insurance per the policy terms, conditions, and exclusions. The State of Oregon, its officers, employees and agents and Deschutes County Sheriff's Office as Additional Insureds on the general liability insurance policy where required by written agreement prior to loss. Coverage applies to ongoing operations and completed operations under the above referenced agreement. The general liability insurance policy referenced above and/or herein shall be primary and non-contributory with any coverage held by State of Oregon, its officers, employees and agents and Deschutes County Sheriff's Office for any losses occurring within the \$3,000,000 self-insured retention. Sexual abuse and molestation claims are covered under the general liability policy with no sub-limit, subject to the policy terms and conditions. A waiver of subrogation in favor of State of Oregon, its officers, employees and agents and Deschutes County Sheriff's Office applies to the workers

See Attached...

CERTIFICATE HOLDER**CANCELLATION**

Deschutes County Sheriff's Office
63333 W Highway 20
Bend OR 97701

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

AGENCY CUSTOMER ID: _____
LOC #: _____



ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

AGENCY Altus Partners, Inc.		NAMED INSURED Amergis Healthcare Staffing, Inc. 7223 Lee DeForest Drive Columbia MD 21046
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

compensation and general liability insurance policies where required by written agreement prior to loss. Agent/Broker will endeavor to mail 30 days written notice to the Deschutes County Sheriff's Office should any of the above described policies be cancelled, non-renewed, or materially changed before the expiration date.

**ENDORSEMENT NUMBER: TWO****ADDITIONAL INSURED SCHEDULE**

- Amergis Healthcare Staffing, Inc
- Amergis Locum Tenens, LLC
- Maxim Healthcare Services, Inc. d/b/a TravelMax Medical Professionals
- Maxim Healthcare Services, Inc. d/b/a Maxim Staffing Solutions
- Maxim Healthcare Systems, LLC
- Maxim Health Systems, LLC
- Maxim Health Systems, LLC d/b/a Maxim Physician Resources
- Maxim Government Services, LLC
- Maxim Pediatric Services
- Maxim Coding Solutions
- PHA, LLC doing business as Professional Healthcare Associates
- Carolina Habilitation Services, Inc.
- Maxim Respite Services
- SNI Healthcare Technologies, LLC
- Maxim Healthcare Services, Inc. doing business as Preston House
- Max's House
- Terra-Maxim joint Venture No.1, LLC
- Maxim Habilitation Services, LLC
- Logix Healthcare Search Partners, LLC
- Reflectxion Resources, Inc.
- Reflectxion Resources, Inc. doing business as Reflectx Staffing Services
- Reflectxion Resources, Inc. doing business as Reflectx Oncology Resources
- Orbis Clinical, LLC, and / or Orbis Data Solutions
- SNI Healthcare Technologies doing business as SNI High Technologies, LLC
- Maxim Healthcare Services, Inc. doing business as TravelMax
- HealthAlign, LLC
- StaffAssist Workforce Management, LLC
- Maxim Healthcare Staffing Services, Inc.
- Sunburst Workforce Advisors, LLC (wef 01/24/2022)
- TimeLine Recruiting, LLC Subject to the provisions of Endorsement Number Forty Four
- Maxim Physician Resources, LLC Subject to the provisions of Endorsement Number Forty Four
- Maxim Physician Resources, LLC dba Maxim Locum Tenens and Advanced Practitioners
- Chicago Department of Family and Support Services (City of Chicago)
- Contra Costa SELPA
- Maxim Healthcare Financial Management Services, LLC formerly known as Maxim Healthcare Financial Management Services Kansas, LL
- Any entity to whom the **INSURED** is contractually obligated to provide such coverage as is afforded by this Policy but, solely, with respect to **PERSONAL INJURY, PROPERTY DAMAGE OR ADVERTISING INJURY**, to which this Insurance applies, caused by a **LOSS**; and **DAMAGES** or **DEFENSE EXPENSES** arising out of any act, error or omission of the **INSURED** in rendering or failing to render **PROFESSIONAL HEALTH CARE SERVICES**.

THE TERMS, DECLARATIONS, INSURING AGREEMENTS, DEFINITIONS, EXCLUSIONS AND CONDITIONS OF THIS POLICY OTHERWISE REMAIN UNCHANGED.

Workers' Compensation and Employers' Liability Policy

Named Insured AMERGIS HEALTHCARE STAFFING, INC. 7227 LEE DEFOREST DRIVE COLUMBIA MD 21046	Endorsement Number
Policy Period 11-30-2024 TO 11-30-2025	Policy Number Symbol: WLR Number: C72614768
Issued By (Name of Insurance Company) INDEMNITY INS. CO. OF NORTH AMERICA	Effective Date of Endorsement 11-30-2024
Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy. This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.	

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.

This agreement shall not operate directly or indirectly to benefit any one not named in the Schedule.

Schedule

ANY PERSON OR ORGANIZATION AGAINST WHOM YOU HAVE AGREED TO WAIVE YOUR RIGHT OF RECOVERY IN A WRITTEN CONTRACT, PROVIDED SUCH CONTRACT WAS EXECUTED PRIOR TO THE DATE OF LOSS.

For the states of CA, UT, TX, refer to state specific endorsements.

This endorsement is not applicable in KY, NH, and NJ.

The endorsement does not apply to policies in Missouri where the employer is in the construction group of code classifications. According to Section 287.150(6) of the Missouri statutes, a contractual provision purporting to waive subrogation rights against public policy and void where one party to the contract is an employer in the construction group of code classifications.

For Kansas, use of this endorsement is limited by the Kansas Fairness in Private Construction Contract Act(K.S.A.. 16-1801 through 16-1807 and any amendments thereto) and the Kansas Fairness in Public Construction Contract Act(K.S.A 16-1901 through 16-1908 and any amendments thereto). According to the Acts a provision in a contract for private or public construction purporting to waive subrogation rights for losses or claims covered or paid by liability or workers compensation insurance shall be against public policy and shall be void and unenforceable except that, subject to the Acts, a contract may require waiver of subrogation for losses or claims paid by a consolidated or wrap-up insurance program.



Authorized Agent



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: May 7, 2025

SUBJECT: Authorize the donation of 0.21 acre of real property located in Newberry Neighborhood 3 in La Pine to the City of Pine, and further authorize granting a temporary construction easement to the City of La Pine

RECOMMENDED MOTION:

Move approval of Board signature of Order No. 2025-017 authorizing the donation of real property consisting of 0.21 acre located in the southeast corner of Newberry Neighborhood 3 in La Pine to the City of La Pine, and further authorize the Deschutes County Property Manager to execute the documents associated with the donation and to grant a Temporary Construction Easement consisting of 0.27 acre to the City of La Pine.

BACKGROUND AND POLICY IMPLICATIONS:

Deschutes County owns 321.38 acres located at 16725 Burgess Road in La Pine known as Newberry Neighborhoods 3 & 4 and Map and Tax Lot 2210000000109. The property was part of a larger acquisition in 2001 from the Federal government, which was authorized through Public Law 105-321. The intent of the acquisition was to provide funding through property sales to support ground water protection, and to further public interest.

The City of La Pine submitted a request to acquire 0.21 acre of County-owned property located in the southeast corner of Newberry Neighborhood 3. The City has confirmed that the current sanitary sewer lift station located just south of the subject property has reached its capacity and may no longer support future development in the area. Therefore, the City is requesting a zero-cost land donation to construct a new sanitary sewer lift station just north of the existing one. The City has also requested a Temporary Construction Easement consisting of 0.27 acre for access and laydown/construction staging located adjacent to the property proposed to be donated.

BUDGET IMPACTS:

An appraisal for the 0.21-acre was not acquired, so the market value of property is not known.

ATTENDANCE:

Kristie Bollinger, Property Management

REVIEWED

LEGAL COUNSEL

05/07/2025 Item #2.

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Designating the Deschutes County
Property Manager, Kristie Bollinger as the
Deschutes County representative for the
purpose of signing documents associated with
a 0.21-acre donation to the City of La Pine
and to grant a Temporary Construction
Easement consisting of 0.27-acres to the City
of La Pine

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ORDER NO. 2025-017

WHEREAS, the Board of County Commissioners of Deschutes County has authorized a zero-cost donation of 0.21-acres located at the southeast corner of Newberry Neighborhood 3 in La Pine to the City of La Pine, and to grant a Temporary Construction Easement consisting of 0.27-acres to the City of La Pine; and

WHEREAS, the City of La Pine has identified the need to develop a new sanitary sewer lift station in the Newberry Neighborhood to increase capacity; and

WHEREAS, the City submitted a request to Deschutes County for a zero-cost donation of 0.21-acres; and

WHEREAS, the City intends to utilize said land donation to construct the new sanitary sewer lift station; and

WHEREAS, further, the City has requested a Temporary Construction Easement consisting of 0.27-acres for laydown/construction materials located adjacent to the 0.21-acres; now, THEREFORE,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, HEREBY ORDERS as follows:

Section 1. The Deschutes County Property Manager, Kristie Bollinger is designated as the Deschutes County representative to sign the necessary documents to complete the zero-cost donation of 0.21-acres to the City of La Pine, and to grant a Temporary Construction Easement consisting of 0.27-acres to the City of La Pine.

SIGNATURES ON FOLLOWING PAGE

Dated this _____ of _____, 2025

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

PATTI ADAIR, Vice Chair

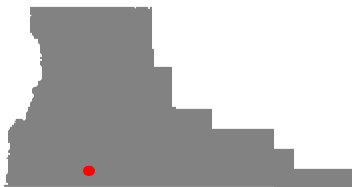
ATTEST:

Recording Secretary

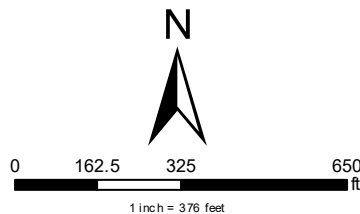
PHIL CHANG, Commissioner

County-owned Property

0.16-acres - SE Corner of Neighborhood 3



Date: 10/15/2024





BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: May 7, 2025

SUBJECT: Acceptance of Oregon Health Authority substance misuse prevention grant and approval of Resolution No. 2025-012 appropriating the grant funds

RECOMMENDED MOTIONS:

- 1) Move approval of Document No. 2025-386 accepting an Oregon Health Authority Alcohol/Overdose Strategic Prevention Framework-Partnerships for Success grant.
- 2) Move approval of Resolution No. 2025-012 increasing appropriations within the Health Services Fund and the 2024-25 Deschutes County Budget.

BACKGROUND AND POLICY IMPLICATIONS:

On September 11, 2024, the Board of County Commissioners authorized Deschutes County Health Services (DCHS) to apply for the Oregon Health (OHA) Alcohol/Overdose Strategic Prevention Framework-Partnerships for Success (SPF-PFS) grant. DCHS applied for \$200,000 in funding, and OHA awarded DCHS \$246,669. Funding is for the term October 1, 2024 through September 30, 2025. OHA anticipates renewing this funding award annually for an additional three years, pending any unexpected changes from the Substance Use Mental Health Services Administration (SAMHSA) over the course of the full four-year grant cycle.

Project Objectives

The purpose of the project is to promote substance use prevention for individuals and families by building and expanding the capacity of local communities to implement proven prevention programs. Each grantee shall use local, state, and national data to: identify underserved communities and sub-populations of focus; identify prevention priorities in their communities; and develop and implement strategies to prevent substance use and related harms.

Key Tasks

The project is comprised of the following tasks:

- Conduct a SPF-PFS Local Substance Misuse Community Health Needs Assessment.
- Develop a SPF-PFS Community Health Improvement Plan (CHIP), informed by the needs assessment, that includes selected prevention interventions.
- Implement the prevention interventions identified in approved CHIP.
- Evaluate the effectiveness of selected prevention interventions by completing required reporting and evaluation activities required by OHA and SAMHSA.

In Deschutes County, the Needs Assessment and Community Health Improvement Plan are conducted by the Central Oregon Health Council (COHC) in the form of the Regional Health Assessment (RHA) and Regional Health Improvement Plan (RHIP). DCHS has been an active participant in the development of each of these required grant components, and the COHC has agreed to work with DCHS toward meeting grant tasks.

Use of Grant Funding

DCHS intends to use the funding to support the following current full-time equivalent (FTE) positions in fiscal year (FY) 2025 and the first quarter of FY 2026:

- Community Health Specialist II: up to 0.4 FTE during the timeframe
- Community Health Specialist II: up to 0.8 FTE during the timeframe
- Supervisor: up to 0.5 during the timeframe
- Public Health Manager: up to 0.05 during the timeframe

Only existing FTE will be supported through this funding, with 15% allocated for indirect costs.

BUDGET IMPACTS:

Revenue of \$246,669 for the period October 1, 2024, through September 30, 2025.

ATTENDANCE:

Jessica Jacks, Public Health Program Manager
Cam Sparks, Budget & Financial Planning Manager

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY,
OREGON

A Resolution Increasing Appropriations *
within the 2024-25 Deschutes County * RESOLUTION NO. 2025-012
Budget *

WHEREAS, the Health Services Department is requesting approval of the Oregon Health Authority Health Alcohol/Overdose Strategic Prevention Framework-Partnerships for Success (SPF-PFS) grant, and

WHEREAS, ORS 294.471 allows a supplemental budget adjustment when authorized by resolution of the governing body, and

WHEREAS, it is necessary to recognize Grant revenue of \$246,669, increase Program Expense appropriations by \$90,842, and increase Contingency by \$155,827 within the Health Services Fund; now therefore,

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, as follows:

Section 1. That the following revenue be recognized in the 2024-25 County Budget:

Health Services Fund

State Grant

\$ 246,669

Health Services Fund Total

\$ 246,669

Section 2. That the following amounts be appropriated in the 2024-25 County Budget:

Health Services Fund

Program Expense

\$ 90,842

Contingency

\$ 155,827

Health Services Fund Total

\$ 246,669

Section 3. That the Chief Financial Officer make the appropriate entries in the Deschutes County Financial System to show the above appropriations.

DATED this_____ day of May, 2025.

BOARD OF COUNTY COMMISSIONERS OF
DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

ATTEST: _____
PATTI ADAIR, Vice-Chair

Recording Secretary

PHIL CHANG, Commissioner

Deschutes County
Appropriation of New Grant

REVENUE

Line Number									
Item	Project Code	Segment 2	Org	Object		Description	Current Budgeted Amount	To (From)	Revised Budget
1	HSPREVENT	HS3SPFPFS	2743153	334012		State Grant	-	246,669	246,669
							-	-	-
TOTAL							-	246,669	246,669

APPROPRIATION

Line Number					Category	Description			
Item	Project Code	Segment 2	Org	Object	(Pers, M&S, Cap Out, Contingency)	(Element-Object, e.g. Time Mgmt, Temp Help, Computer Hardware)	Current Budgeted Amount	To (From)	Revised Budget
1	HSPREVENT	HS3SPFPFS	2743153	410101	Personnel	Regular Employees	-	48,658	48,658
2	HSPREVENT	HS3SPFPFS	2743153	420101	Personnel	Health-Dental Ins (ISF)	-	13,938	13,938
3	HSPREVENT	HS3SPFPFS	2743153	420201	Personnel	PERS Employee-Employer	-	11,829	11,829
4	HSPREVENT	HS3SPFPFS	2743153	420202	Personnel	PERS - Fund 575 for D-S	-	438	438
5	HSPREVENT	HS3SPFPFS	2743153	420301	Personnel	FICA	-	3,692	3,692
6	HSPREVENT	HS3SPFPFS	2743153	420401	Personnel	Workers' Comp Insurance	-	22	22
7	HSPREVENT	HS3SPFPFS	2743153	420501	Personnel	Unemployment Insurance	-	65	65
8	HSPREVENT	HS3SPFPFS	2743153	420601	Personnel	Life-Long Term Disability	-	159	159
9	HSPREVENT	HS3SPFPFS	2743153	420801	Personnel	Paid Leave Oregon	-	192	192
10	HSPREVENT	HS3SPFPFS	2743153	490501	Overhead	Allocation Admininstration	-	11,849	11,849
11	HSPREVENT	HS3SPFPFS	2743153	501971	Contingency	Contingency	-	155,827	155,827
12	HSALL	HS1OTHER	2743151	490501	Overhead	Allocation Adminstration (Indirect)	-	(11,849)	(11,849)
13	HSALL	HS1OTHER	2743151	450094	M&S	Program Expense	-	11,849	11,849
							-	-	-
TOTAL							-	246,669	246,669

Budget adjustment for resources and requirements of the Oregon Health (OHA) Alcohol/Overdose Strategic Prevention Framework-Partnerships for Success (SPF-PFS) grant.

Fund:
Dept:
Requested by:
Date:

274
Health Services
Jessica Jacks
5/7/2025



Agreement Number 185345

**STATE OF OREGON
INTERGOVERNMENTAL AGREEMENT**

You can get this document in other languages, large print, braille, or a format you prefer free of charge. Contact the Agreement Administrator at the contact information found below. We accept all relay calls.

This Agreement is between the State of Oregon, acting by and through its Oregon Health Authority, hereinafter referred to as “OHA,” and

**Deschutes County Health Services
2577 NE Courtney Drive
Bend, OR 97701
Attention: Jessica Jacks
Telephone: 541-330-4632
E-mail address: jessica.jacks@deschutes.org**

hereinafter referred to as “County.”

Work to be performed under this Agreement relates principally to OHA’s

**Public Health Division, Health Promotion and
Chronic Disease Prevention
800 NE Oregon St.
Agreement Administrator: Whitney Schumacher or delegate
Telephone: 503-509-4205
E-mail address: whitney.schumacher@oha.oregon.gov**

- 1. Effective Date and Duration.** This Agreement, when fully executed by every party, shall become effective on **October 1, 2024**. Unless extended or terminated earlier in accordance with its terms, this Agreement shall expire on **September 30, 2025**. Agreement termination shall not extinguish or prejudice ODHS’ right to enforce this Agreement with respect to any default by the other party that has not been cured.

2. Agreement Documents.

- a.** This Agreement consists of this document and includes the following listed exhibits which are incorporated into this Agreement:

- (1) Exhibit A, Part 1: Statement of Work
- (2) Exhibit A, Part 2: Payment and Financial Reporting
- (3) Exhibit A, Part 3: Special Provisions
- (4) Exhibit B: Standard Terms and Conditions
- (5) Exhibit C: Subcontractor Insurance Requirements
- (6) Exhibit D: Federal Terms and Conditions

This Agreement constitutes the entire agreement between the parties on the subject matter in it; there are no understandings, agreements, or representations, oral or written, regarding this Agreement that are not specified herein.

- b.** In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: this Agreement without Exhibits, Exhibits D, B, A, and C.

3. Consideration.

- a.** The maximum not-to-exceed amount payable to County under this Agreement, which includes any allowable expenses, is **\$246,669**. OHA will not pay County any amount in excess of the not-to-exceed amount for completing the Work, and will not pay for Work until this Agreement has been signed by all parties.
- b.** OHA will pay only for completed Work under this Agreement, and may make interim payments as provided for in Exhibit A. For purposes of this Agreement, "Work" means specific work to be performed or services to be delivered by County as set forth in Exhibit A.

4. Contractor Determination. In accordance with the State Controller's Oregon Accounting Manual, policy 30.40.00.104, OHA's determination is that:

☒ County is a contractor ☐ Not applicable

Assistance Listings number(s) of federal funds to be paid through this Agreement: 93.243

5. County Information and Certification.

a. County Information. This information is requested pursuant to ORS 305.385.

PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION:

County Name (exactly as filed with the IRS): Deschutes County, Oregon

Street address: 1300 NW Wall Street

City, state, zip code: Bend, OR, 97703

Email address: jessia.jacks@deschutes.org; cc grace.evans@deschutes.org

Telephone: 541-322-7400 Fax: 541-322-7565

Proof of Insurance. County shall provide the following information upon submission of the signed Agreement. All insurance listed herein must be in effect prior to Agreement execution.

Workers' Compensation Insurance Self-insured

Company: Policy #: N/A Expiration Date: N/A

b. Certification. Without limiting the generality of the foregoing, by signature on this Agreement, County hereby certifies under penalty of perjury that:

- (1) County acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any “claim” (as defined by ORS 180.750) that is made by (or caused by) County and that pertains to this Agreement or to the project for which the Agreement work is being performed. County certifies that no claim described in the previous sentence is or will be a “false claim” (as defined by ORS 180.750) or an act prohibited by ORS 180.755. The Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against County, in addition to any remedies that may be available to OHA under this Agreement;
- (2) The information shown in Section 5.a. “County Information”, is County’s true, accurate and correct information;
- (3) To the best of the undersigned’s knowledge, County has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts;
- (4) County and County’s employees and agents are not included on the list titled “Specially Designated Nationals” maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at: <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>;
- (5) County is not listed on the non-procurement portion of the General Service Administration’s “List of Parties Excluded from Federal procurement or Non-procurement Programs” found at: <https://www.sam.gov/SAM>;
- (6) County is not subject to backup withholding because:
 - (a) County is exempt from backup withholding;
 - (b) County has not been notified by the IRS that County is subject to backup withholding as a result of a failure to report all interest or dividends; or
 - (c) The IRS has notified County that County is no longer subject to backup withholding; and
- (7) County’s Federal Employer Identification Number (FEIN) provided to OHA is true and accurate. If this information changes, County shall provide OHA with the new FEIN within 10 days.

**EACH PARTY, BY EXECUTION OF THIS AGREEMENT, HEREBY
ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT,
AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.**

**COUNTY: YOU WILL NOT BE PAID FOR WORK PERFORMED PRIOR TO
NECESSARY STATE APPROVALS.**

6. Signatures. This Agreement and any subsequent amendments may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement and any amendments so executed shall constitute an original.

Deschutes County Health Services

By:

<hr/>	<hr/>
Authorized Signature	Anthony DeBone
<hr/>	<hr/>
Title	Printed Name
<hr/>	<hr/>
	Date

State of Oregon, acting by and through its Oregon Health Authority

By:

<hr/>	<hr/>
Authorized Signature	Printed Name
<hr/>	<hr/>
Title	Date
<hr/>	<hr/>

Approved for Legal Sufficiency:

Not Required per OAR 137-045-0030(1)(b)

Oregon Department of Justice

EXHIBIT A**Part 1****Statement of Work****Oregon Alcohol/Overdose STRATEGIC PREVENTION FRAMEWORK
PARTNERSHIPS FOR SUCCESS Initiative****1. Background, Purpose and Definitions**

Oregon's Alcohol/Overdose Strategic Prevention Framework - Partnerships for Success (SFP-PFS) initiative supports local, community led coalition building efforts to prevent and reduce substance use among Priority Populations disproportionately impacted by the social and economic harms of alcohol and overdose in Oregon.

The SPF-PFS program is guided by the Strategic Prevention Framework (SPF), a community engagement model grounded in public and behavioral health principles, including being data-driven, and focused on providing evidence-based and community informed services to high-risk Underserved Communities. The SPF outlines five steps (assessment, capacity, planning, implementation, and evaluation) informed by two guiding principles (cultural competence and sustainability). More information about the SPF model can be found at

<https://www.samhsa.gov/sites/default/files/20190620-samhsa-strategic-prevention-framework-guide.pdf>.

For purposes of this Agreement, the terms below shall have the following meanings:

- **CSAP Strategies** refers to the U.S. Substance Use Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention's (CSAP) six prevention categories which include information dissemination, education, problem identification and referral, alternative social settings, environmental and policy strategies, and community-based processes. More information about CSAP strategies can be found at https://theathenaforum.org/sites/default/files/public/documents/csap_strategies.pdf
- **Community Health Needs Assessment (CHNA)** refers to a state, tribal, local, or territorial health assessment that identifies key substance use prevention needs and issues through systematic, comprehensive data collection and analysis.
- **Community Health Improvement Plan (CHIP)** means the utilization of the results of Community Health Needs Assessment activities to develop a plan to improve a community's health.
- **Designated service area** means the geographic service area for which County will perform the Work. For this Agreement, the Designated service area is all of Deschutes County with an emphasis on areas highly impacted by substance use as determined by Deschutes County.
- **Equity** means the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native

American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. (Source: [Exec. Order No. 13985](#), 86 FR 7009 (2021))

- **Office of Contracts and Procurement (“OC&P”)** means the entity that is responsible for the procurement process for OHA.
- **Polysubstance use** means the use of two or more drugs together, either intentionally or unintentionally.
- **Priority populations** means Underserved Communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.
- **SAMSHA Strategic Prevention Framework** means a substance use prevention model with five steps (assessment, capacity, planning, implementation, and evaluation) informed by two guiding principles (cultural competence and sustainability). This process offers prevention planners a comprehensive approach to understanding and addressing substance misuse and related public and behavioral health problems facing their communities. More information can be found at <https://www.samhsa.gov/sites/default/files/20190620-samhsa-strategic-prevention-framework-guide.pdf>.
- **Substance use prevention** means “Practices, programs and policies designed to prevent and reduce the incidence and prevalence of alcohol and other drug use and consequent health, behavioral and social problems” (National Academy of Medicine (NAM) formerly Institute of Medicine).
- **TTA** means training and technical assistance that OHA or other local, state, or national organizations can provide to help the Proposer succeed in implementing the project.
- **Underserved Communities** means populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the preceding definition of “Equity.” (Source: [Exec. Order No. 13985](#), 86 FR 7009 (2021)).

2. Required County Services

2.1 Task #1: Complete SPF-PFS Local Alcohol, Opioid Overdose, and Polysubstance Use Community Health Needs Assessment (CHNA)

County shall perform the following:

- a. Complete a SPF-PFS local community health needs assessment for prevention of substance use and promotion of protective factors related to alcohol and/or overdose health inequities and harms.
- b. Use local, state, and national data to identify Priority populations in the Designated service area who are experiencing the highest inequitable impacts of alcohol, opioid overdose, polysubstance use, and related harms to be served by the project.
- c. Conduct community health needs assessment (CHNA) and readiness activities to better understand community needs, gaps, assets, readiness, and opportunities for improvement related to substance use prevention.
- d. Summarize and report findings from the CHNA to inform interventions and share with community members and partners.
- e. Review other CHNAs conducted in the Designated service area to inform the SPF-PFS needs assessment, including CHNAs conducted by local public health authorities (LPHA), local community mental health programs (CMHP), Coordinated Care Organizations (CCO), United Way, or other relevant organizations in the Designated service area.

(Task #1 Completion Due: on an ongoing basis throughout the term of this Agreement as requested by OHA.)

2.2 Task #2: Develop SPF -PFS Community Health Improvement Plan (CHIP)

- a. Develop and submit to OHA Project Lead for review and approval a SPF -PFS Community Health Improvement Plan (CHIP) that includes selected prevention interventions to address the problem (informed by the Contractor's Community Health Needs Assessment, Task #1) prior to implementing any interventions.
- b. Identify priority goals, strategies, and interventions for implementation of the CHIP for the entire term of this Agreement, which may be extended to four years. .
- c. Develop an initial work plan describing Year 1 activities and how they will advance the overall SPF-PFS CHIP the entire term of this Agreement, including possible extensions to a maximum term of four years.
- d. Define how proposed interventions align with the six U.S. Substance Use Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention (CSAP) categories covering:
 - Information Dissemination
 - Education
 - Problem identification and referral
 - Alternative social settings
 - Environmental and policy strategies
 - Community based processes

(Task #2 Completion Due: on an ongoing basis throughout the term of this Agreement as requested by OHA.)

2.4 Task #3: Implement alcohol, opioid overdose, and polysubstance use prevention interventions identified in approved Community Health Improvement Plan (CHIP).

- a. Implement the alcohol, opioid overdose, and polysubstance use prevention interventions identified in the Contractor's community health improvement plan approved by OHA.
- b. Demonstrate reach and engagement of priority populations to inform ongoing implementation of SPF-PFS interventions and ensure they effectively meet community needs.
- c. Describe engagement of other community partners in the project work plan and related strategies as needed.
- d. Implement priority strategies and interventions to address substance use prevention related needs identified in the CHIP.
- e. Participate in culturally and linguistically specific training, technical assistance, and capacity building services hosted by OHA, SAMHSA, or other local, state, or federal agencies.
- f. Support local, state, or national environmental change and policy strategies that prevent or reduce excessive alcohol use/overdose, and related harms at the community or population level.

(Task #3 Completion Due: on an ongoing basis throughout the term of this Agreement as requested by OHA.)

2.4 Task #4: Evaluate selected alcohol, opioid overdose, and polysubstance use prevention interventions.

- a. Evaluate selected alcohol, opioid overdose, and polysubstance use prevention interventions, by completing required reporting and evaluation activities required by OHA and SAMHSA.
- b. Complete required monthly and quarterly monitoring and reporting of project activities and outcomes using project reporting forms and evaluation tools (provided by OHA and SAMSHA)
- c. Describe potential barriers or challenges in completing reporting and evaluation activities.
- d. Determine needs for training and technical assistance (TTA) to successfully meet reporting and evaluation requirements.
- e. Participate in culturally and linguistically specific TTA and capacity building services hosted by OHA, SAMHSA, or other local, state, or federal agencies.

(Task #4 Completion Due: on an ongoing basis throughout the term of this Agreement as requested by OHA.)

- 7. Terms and Conditions of SAMHSA Notice of Award:** County agrees to comply with all of the Terms and Conditions included in the Notice of Award (NOA) for SAMHSA Award# 6H79SP083665-01 M001 (attached hereto as Appendix #1, and incorporated herein by reference), as are applicable to Contractors under that NOA.

Appendix #1 - Notice of Award (NOA) for Award #6H79SP083665-01 M001



Department of Health and Human Services
Substance Abuse and Mental Health Services Administration
Center for Substance Abuse Prevention

Notice of Award
FAIN# H79SP083665
Federal Award Date
03/08/2024

Recipient Information	Federal Award Information																								
1. Recipient Name OREGON HEALTH AUTHORITY 500 SUMMER ST NE # E-82 SALEM, OR 97301	11. Award Number 6H79SP083665-01M001 (Change in Terms and Conditions)																								
2. Congressional District of Recipient 06	12. Unique Federal Award Identification Number (FAIN) H79SP083665																								
3. Payment System Identifier (ID) 1936001752A1	13. Statutory Authority 516 of the PHS Act, as amended 42 U.S.C. 290bb-22																								
4. Employer Identification Number (EIN) 936001752	14. Federal Award Project Title Oregon's Alcohol/Overdose Strategic Prevention Framework - Partnerships for Success (SPF-PFS)																								
5. Data Universal Numbering System (DUNS) 878144021	15. Assistance Listing Number 93.243																								
6. Recipient's Unique Entity Identifier HFJRBHKBPR5	16. Assistance Listing Program Title Substance Abuse and Mental Health Services_Projects of Regional and National Significance																								
7. Project Director or Principal Investigator Tatiana Dierwechter Tatiana.Dierwechter@oha.oregon.gov (971) 673-0280	17. Award Action Type Amendment																								
8. Authorized Official Nadia Davidson nadia.a.davidson@dhsosha.state.or.us (503) 798-6020	18. Is the Award R&D? No																								
Federal Agency Information 9. Awarding Agency Contact Information Dianne Lee Grants Specialist Dianne.Lee@samhsa.hhs.gov 240.276.2249	<table border="1"> <thead> <tr> <th colspan="2">Summary Federal Award Financial Information</th> </tr> </thead> <tbody> <tr> <td>19. Budget Period Start Date 09/30/2023 – End Date 09/29/2024</td> <td></td> </tr> <tr> <td>20. Total Amount of Federal Funds Obligated by this Action</td> <td>\$0</td> </tr> <tr> <td> 20a. Direct Cost Amount</td> <td>\$0</td> </tr> <tr> <td> 20b. Indirect Cost Amount</td> <td>\$0</td> </tr> <tr> <td>21. Authorized Carryover</td> <td>\$0</td> </tr> <tr> <td>22. Offset</td> <td>\$0</td> </tr> <tr> <td>23. Total Amount of Federal Funds Obligated this budget period</td> <td>\$1,250,000</td> </tr> <tr> <td>24. Total Approved Cost Sharing or Matching, where applicable</td> <td>\$0</td> </tr> <tr> <td>25. Total Federal and Non-Federal Approved this Budget Period</td> <td>\$1,250,000</td> </tr> <tr> <td>26. Project Period Start Date 09/30/2023 – End Date 09/29/2028</td> <td></td> </tr> <tr> <td>27. Total Amount of the Federal Award including Approved Cost Sharing or Matching this Project Period</td> <td>\$1,250,000</td> </tr> </tbody> </table>	Summary Federal Award Financial Information		19. Budget Period Start Date 09/30/2023 – End Date 09/29/2024		20. Total Amount of Federal Funds Obligated by this Action	\$0	20a. Direct Cost Amount	\$0	20b. Indirect Cost Amount	\$0	21. Authorized Carryover	\$0	22. Offset	\$0	23. Total Amount of Federal Funds Obligated this budget period	\$1,250,000	24. Total Approved Cost Sharing or Matching, where applicable	\$0	25. Total Federal and Non-Federal Approved this Budget Period	\$1,250,000	26. Project Period Start Date 09/30/2023 – End Date 09/29/2028		27. Total Amount of the Federal Award including Approved Cost Sharing or Matching this Project Period	\$1,250,000
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23. Total Amount of Federal Funds Obligated this budget period	\$1,250,000																								
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26. Project Period Start Date 09/30/2023 – End Date 09/29/2028																									
27. Total Amount of the Federal Award including Approved Cost Sharing or Matching this Project Period	\$1,250,000																								
10. Program Official Contact Information Lauren Thompson Program Official lauren.thompson@samhsa.hhs.gov 240-276-1901	28. Authorized Treatment of Program Income Additional Costs																								
	29. Grants Management Officer - Signature Dianne Lee																								
30. Remarks Acceptance of this award, including the "Terms and Conditions," is acknowledged by the recipient when funds are drawn down or otherwise requested from the grant payment system.																									



SPF-PFS-States
Department of Health and Human Services
Substance Abuse and Mental Health Services Administration

Notice of Award

Issue Date: 03/08/2024

Center for Substance Abuse Prevention

Award Number: 6H79SP083665-01M001**FAIN:** H79SP083665**Program Director:** Tatiana Dierwechter**Project Title:** Oregon's Alcohol/Overdose Strategic Prevention Framework - Partnerships for Success (SPF-PFS)**Organization Name:** OREGON HEALTH AUTHORITY**Authorized Official:** Nadia Davidson**Authorized Official e-mail address:** nadia.a.davidson@dhsosha.state.or.us**Budget Period:** 09/30/2023 – 09/29/2024**Project Period:** 09/30/2023 – 09/29/2028

Dear Grantee:

The Substance Abuse and Mental Health Services Administration hereby awards a grant in the amount of \$0 (see "Award Calculation" in Section I and "Terms and Conditions" in Section III) to OREGON HEALTH AUTHORITY in support of the above referenced project. This award is pursuant to the authority of 516 of the PHS Act, as amended 42 U.S.C. 290bb-22 and is subject to the requirements of this statute and regulation and of other referenced, incorporated or attached terms and conditions.

Award recipients may access the SAMHSA website at www.samhsa.gov (click on "Grants" then SAMHSA Grants Management), which provides information relating to the Division of Payment Management System, HHS Division of Cost Allocation and Postaward Administration Requirements. Please use your grant number for reference.

Acceptance of this award including the "Terms and Conditions" is acknowledged by the grantee when funds are drawn down or otherwise obtained from the grant payment system.

If you have any questions about this award, please contact your Grants Management Specialist and your Government Project Officer listed in your terms and conditions.

Sincerely yours,
Dianne Lee
Grants Management Officer
Division of Grants Management

See additional information below

SECTION I – AWARD DATA – 6H79SP083665-01M001	
Award Calculation (U.S. Dollars)	
Personnel(non-research)	\$91,320
Fringe Benefits	\$49,952
Supplies	\$1,020
Contractual	\$907,479
Other	\$200,229
Direct Cost	\$1,250,000
Approved Budget	\$1,250,000
Federal Share	\$1,250,000
Cumulative Prior Awards for this Budget Period	\$1,250,000
AMOUNT OF THIS ACTION (FEDERAL SHARE)	\$0

SUMMARY TOTALS FOR ALL YEARS	
YR	AMOUNT
1	\$1,250,000

Note: Recommended future year total cost support, subject to the availability of funds and satisfactory progress of the project.

Fiscal Information:
CFDA Number: 93.243
EIN: 1936001752A1
Document Number: 23SP83665A
Fiscal Year: 2023

IC	CAN	Amount
SP	C96V003	\$0

IC	CAN	2023
SP	C96V003	\$0

SP Administrative Data:
PCC: PFS-S23 / OC: 4145

SECTION II – PAYMENT/HOTLINE INFORMATION – 6H79SP083665-01M001

Payments under this award will be made available through the HHS Payment Management System (PMS). PMS is a centralized grants payment and cash management system, operated by the HHS Program Support Center (PSC), Division of Payment Management (DPM). Inquiries regarding payment should be directed to: The Division of Payment Management System, PO Box 6021, Rockville, MD 20852, Help Desk Support – Telephone Number: 1-877-614-5533.

The HHS Inspector General maintains a toll-free hotline for receiving information concerning fraud, waste, or abuse under grants and cooperative agreements. The telephone number is: 1-800-HHS-TIPS (1-800-447-8477). The mailing address is: Office of Inspector General, Department of Health and Human Services, Attn: HOTLINE, 330 Independence Ave., SW, Washington, DC 20201.

SECTION III – TERMS AND CONDITIONS – 6H79SP083665-01M001

This award is based on the application submitted to, and as approved by, SAMHSA on the above-title project and is subject to the terms and conditions incorporated either directly or by reference in the following:

a. The grant program legislation and program regulation cited in this Notice of Award.

- b. The restrictions on the expenditure of federal funds in appropriations acts to the extent those restrictions are pertinent to the award.
- c. 45 CFR Part 75 as applicable.
- d. The HHS Grants Policy Statement.
- e. This award notice, INCLUDING THE TERMS AND CONDITIONS CITED BELOW.

Treatment of Program Income:

Use of program income – Additive: Recipients will add program income to funds committed to the project to further eligible project objectives. Sub-recipients that are for-profit commercial organizations under the same award must use the deductive alternative and reduce their subaward by the amount of program income earned.

In accordance with the regulatory requirements provided at 45 CFR 75.113 and Appendix XII to 45 CFR Part 75, recipients that have currently active Federal grants, cooperative agreements, and procurement contracts with cumulative total value greater than \$10,000,000 must report and maintain information in the System for Award Management (SAM) about civil, criminal, and administrative proceedings in connection with the award or performance of a Federal award that reached final disposition within the most recent five-year period. The recipient must also make semiannual disclosures regarding such proceedings. Proceedings information will be made publicly available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)). Full reporting requirements and procedures are found in Appendix XII to 45 CFR Part 75.

SECTION IV – SP SPECIAL TERMS AND CONDITIONS – 6H79SP083665-01M001**REMARKS****Removal of Special Condition of Award**

This award removes the following ***Special Condition of Award*** based on the documentation submitted on **February 20, 2024**.

Revised Budget due on **October 30, 2023** based on the documentation received on **February 20, 2024**.

This is a post-award amendment, therefore, this NoA reflects the current budget year only.

STANDARD TERMS OF AWARD:**Compliance with Terms and Conditions**

FAILURE TO COMPLY WITH THE ABOVE STATED TERMS AND CONDITIONS MAY RESULT IN ACTIONS IN ACCORDANCE WITH [45 CFR 75.371](#), REMEDIES FOR NON-COMPLIANCE AND [45 CFR 75.372](#) TERMINATION. THIS MAY INCLUDE WITHHOLDING PAYMENT, DISALLOWANCE OF COSTS, SUSPENSION AND DEBARMENT, TERMINATION OF THIS AWARD, OR DENIAL OF FUTURE FUNDING.

All previous terms and conditions remain in effect until specifically approved and removed by the Grants Management Officer.

Staff Contacts:

Lauren Thompson, Program Official
Phone: 240-276-1901 **Email:** lauren.thompson@samhsa.hhs.gov

Dianne Lee, Grants Specialist
Phone: 240.276.2249 **Email:** Dianne.Lee@samhsa.hhs.gov

EXHIBIT A**Part 2****Payment and Financial Reporting****1. Payment Provisions.****a. County Invoice.**

County shall send monthly invoices to OHA's Agreement Administrator via email to whitney.schumacher@oha.oregon.gov, or to any other address as OHA may indicate in writing to County. County's claims to OHA for overdue payments on invoices are subject to ORS 293.462.

Each invoice shall contain the following information:

- Agreement number 185345;
- County Name and Address;
- County's Tax ID# / EIN;
- Date of invoice;
- Period of time covered by the invoice (invoice period);
- A detailed description of services performed by County during the invoice period, including an explanation of all expenses for which County claims reimbursement, consistent with the approved Budget attached hereto as Attachment #1.

b. Payments

As consideration for the services provided by County during the period specified in Section **1., Effective Date and Duration**, of this Agreement, OHA will pay County for Completed work in accordance with the approved Budget attached hereto as Attachment #1 and incorporated herein by this reference.

2. Travel and Other Expenses. OHA will not reimburse County for any travel or additional expenses under this Agreement.

EXHIBIT A

Part 3 Special Provisions

1. Confidentiality of Client Information.

- a. All information as to personal facts and circumstances obtained by County on the client shall be treated as privileged communications, shall be held confidential, and shall not be divulged without the written consent of the client, the client's guardian, or the responsible parent when the client is a minor child, or except as required by other terms of this Agreement. Nothing prohibits the disclosure of information in summaries, statistical, or other form, which does not identify particular individuals.
- b. The use or disclosure of information concerning clients shall be limited to persons directly connected with the administration of this Agreement. Confidentiality policies shall be applied to all requests from outside sources.
- c. OHA, County, and any subcontractor will share information as necessary to effectively serve OHA clients.

2. Amendments.

- a. OHA reserves the right to amend or extend the Agreement under the following general circumstances:
 - (1) OHA may extend the Agreement for additional periods of time up to a total Agreement period of 4years, and for additional money associated with the extended period(s) of time. The determination for any extension for time may be based on OHA's satisfaction with performance of the work or services provided by County under this Agreement.
 - (2) OHA may periodically amend any payment rates throughout the life of the Agreement proportionate to increases in Portland Metropolitan Consumer Price Index; and to provide Cost Of Living Adjustments (COLA) if OHA so chooses. Any negotiation of increases in rates to implement a COLA will be as directed by the Oregon State Legislature.
- b. OHA further reserves the right to amend the Statement of Work based on the original scope of work of RFP #5969 for the following:
 - (1) Programmatic changes/additions or modifications deemed necessary to accurately reflect the original scope of work that may not have been expressed in the original Agreement or previous amendments to the Agreement;
 - (2) Implement additional phases of the Work; or
 - (3) As necessitated by changes in Code of Federal Regulations, Oregon Revised Statutes, or Oregon Administrative Rules which, in part or in combination, govern the provision of services provided under this Agreement.

c. Upon identification, by any party to this Agreement, of any circumstance which may require an amendment to this Agreement, the parties may enter into negotiations regarding the proposed modifications. Any resulting amendment must be in writing and be signed by all parties to the Agreement before the modified or additional provisions are binding on either party. All amendments must comply with Exhibit B, Section 22., “Amendments” of this Agreement.

3. **Nondiscrimination.** County must provide services to OHA clients without regard to race, religion, national origin, sex, age, marital status, sexual orientation or disability (as defined under the Americans with Disabilities Act). Contracted services must reasonably accommodate the cultural, language and other special needs of clients.

EXHIBIT B**Standard Terms and Conditions**

1. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between the parties that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within a circuit court for the State of Oregon of proper jurisdiction. THE PARTIES, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Except as provided in this section, neither party waives any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. The parties acknowledge that this is a binding and enforceable agreement and, to the extent permitted by law, expressly waive any defense alleging that either party does not have the right to seek judicial enforcement of this Agreement.
2. **Compliance with Law.** Both parties shall comply with laws, regulations and executive orders to which they are subject and which are applicable to the Agreement or to the Work. Without limiting the generality of the foregoing, both parties expressly agree to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations; (b) all state laws requiring reporting of client abuse; (c) ORS 659A.400 to 659A.409, ORS 659A.145 and all regulations and administrative rules established pursuant to those laws in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the Work. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. All employers, including County and OHA, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Nothing in this Agreement shall require County or OHA to act in violation of state or federal law or the Constitution of the State of Oregon.
3. **Independent Contractors.** The parties agree and acknowledge that their relationship is that of independent contracting parties and that County is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.
4. **Representations and Warranties.**
 - a. County represents and warrants as follows:
 - (1) **Organization and Authority.** County is a political subdivision of the State of Oregon duly organized and validly existing under the laws of the State of Oregon. County has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder.

- (2) Due Authorization. The making and performance by County of this Agreement (a) have been duly authorized by all necessary action by County and (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of County's charter or other organizational document and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which County is a party or by which County may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by County of this Agreement.
- (3) Binding Obligation. This Agreement has been duly executed and delivered by County and constitutes a legal, valid and binding obligation of County, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- (4) County has the skill and knowledge possessed by well-informed members of its industry, trade or profession and County will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in County's industry, trade or profession;
- (5) County shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the Work; and
- (6) County prepared its proposal related to this Agreement, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.

b. OHA represents and warrants as follows:

- (1) Organization and Authority. OHA has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder.
- (2) Due Authorization. The making and performance by OHA of this Agreement (a) have been duly authorized by all necessary action by OHA and (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which OHA is a party or by which OHA may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by OHA of this Agreement, other than approval by the Oregon Department of Justice if required by law.

- (3) **Binding Obligation.** This Agreement has been duly executed and delivered by OHA and constitutes a legal, valid and binding obligation of OHA, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

- c. **Warranties Cumulative.** The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

5. Funds Available and Authorized Clause.

- a. The State of Oregon's payment obligations under this Agreement are conditioned upon OHA receiving funding, appropriations, limitations, allotment, or other expenditure authority sufficient to allow OHA, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Agreement. County is not entitled to receive payment under this Agreement from any part of Oregon state government other than OHA. Nothing in this Agreement is to be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. OHA represents that as of the date it executes this Agreement, it has sufficient appropriations and limitation for the current biennium to make payments under this Agreement.
- b. **Payment Method.** Payments under this Agreement will be made by Electronic Funds Transfer (EFT). Upon request, County shall provide its taxpayer identification number (TIN) and other necessary banking information to receive EFT payment. County shall maintain at its own expense a single financial institution or authorized payment agent capable of receiving and processing EFT using the Automated Clearing House (ACH) transfer method. The most current designation and EFT information will be used for all payments under this Agreement. County shall provide this designation and information on a form provided by OHA. In the event that EFT information changes or the County elects to designate a different financial institution for the receipt of any payment made using EFT procedures, the County shall provide the changed information or designation to OHA on an OHA-approved form. OHA is not required to make any payment under this Agreement until receipt of the correct EFT designation and payment information from the County.

- 6. Recovery of Overpayments.** If billings under this Agreement, or under any other Agreement between County and OHA, result in payments to County to which County is not entitled, OHA, after giving to County written notification and an opportunity to object, may withhold from payments due to County such amounts, over such periods of time, as are necessary to recover the amount of the overpayment. Prior to withholding, if County objects to the withholding or the amount proposed to be withheld, County shall notify OHA that it wishes to engage in dispute resolution in accordance with Section 18 of this Agreement.

7. Ownership of Intellectual Property.

- a. Definitions.** As used in this Section and elsewhere in this Agreement, the following terms have the meanings set forth below:
- (1) “County Intellectual Property” means any intellectual property owned by County and developed independently from the Work.
 - (2) “Third Party Intellectual Property” means any intellectual property owned by parties other than OHA or County.
- b.** Except as otherwise expressly provided herein, or as otherwise required by state or federal law, OHA will not own the right, title and interest in any intellectual property created or delivered by County or a subcontractor in connection with the Work. With respect to that portion of the intellectual property that County owns, County grants to OHA a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to (1) use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the intellectual property, (2) authorize third parties to exercise the rights set forth in Section 7.b.(1) on OHA’s behalf, and (3) sublicense to third parties the rights set forth in Section 7.b.(1).
- c.** If state or federal law requires that OHA or County grant to the United States a license to any intellectual property, or if state or federal law requires that OHA or the United States own the intellectual property, then County shall execute such further documents and instruments as OHA may reasonably request in order to make any such grant or to assign ownership in the intellectual property to the United States or OHA. To the extent that OHA becomes the owner of any intellectual property created or delivered by County in connection with the Work, OHA will grant a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to County to use, copy, distribute, display, build upon and improve the intellectual property.
- d.** County shall include in its subcontracts terms and conditions necessary to require that subcontractors execute such further documents and instruments as OHA may reasonably request in order to make any grant of license or assignment of ownership that may be required by federal or state law.

8. County Default. County shall be in default under this Agreement upon the occurrence of any of the following events:

- a.** County fails to perform, observe or discharge any of its covenants, agreements or obligations set forth herein;
- b.** Any representation, warranty or statement made by County herein or in any documents or reports relied upon by OHA to measure the delivery of Work, the expenditure of payments or the performance by County is untrue in any material respect when made;

- c. County (1) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (2) admits in writing its inability, or is generally unable, to pay its debts as they become due, (3) makes a general assignment for the benefit of its creditors, (4) is adjudicated a bankrupt or insolvent, (5) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (6) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (7) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (8) takes any action for the purpose of effecting any of the foregoing; or
 - d. A proceeding or case is commenced, without the application or consent of County, in any court of competent jurisdiction, seeking (1) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of County, (2) the appointment of a trustee, receiver, custodian, liquidator, or the like of County or of all or any substantial part of its assets, or (3) similar relief in respect to County under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive days, or an order for relief against County is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).
9. **OHA Default.** OHA shall be in default under this Agreement upon the occurrence of any of the following events:
- a. OHA fails to perform, observe or discharge any of its covenants, agreements, or obligations set forth herein; or
 - b. Any representation, warranty or statement made by OHA herein or in any documents or reports relied upon by County to measure performance by OHA is untrue in any material respect when made.

10. **Termination.**

- a. **County Termination.** County may terminate this Agreement:
 - (1) For its convenience, upon at least 30 days advance written notice to OHA;
 - (2) Upon 45 days advance written notice to OHA, if County does not obtain funding, appropriations and other expenditure authorizations from County's governing body, federal, state or other sources sufficient to permit County to satisfy its performance obligations under this Agreement, as determined by County in the reasonable exercise of its administrative discretion;
 - (3) Upon 30 days advance written notice to OHA, if OHA is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as County may specify in the notice; or

- (4) Immediately upon written notice to OHA, if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that County no longer has the authority to meet its obligations under this Agreement.

b. OHA Termination. OHA may terminate this Agreement:

- (1) For its convenience, upon at least 30 days advance written notice to County;
- (2) Upon 45 days advance written notice to County, if OHA does not obtain funding, appropriations and other expenditure authorizations from federal, state or other sources sufficient to meet the payment obligations of OHA under this Agreement, as determined by OHA in the reasonable exercise of its administrative discretion. Notwithstanding the preceding sentence, OHA may terminate this Agreement, immediately upon written notice to County or at such other time as it may determine if action by the Oregon Legislative Assembly or Emergency Board reduces OHA's legislative authorization for expenditure of funds to such a degree that OHA will no longer have sufficient expenditure authority to meet its payment obligations under this Agreement, as determined by OHA in the reasonable exercise of its administrative discretion, and the effective date for such reduction in expenditure authorization is less than 45 days from the date the action is taken;
- (3) Immediately upon written notice to County if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that OHA no longer has the authority to meet its obligations under this Agreement or no longer has the authority to provide payment from the funding source it had planned to use;
- (4) Upon 30 days advance written notice to County, if County is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as OHA may specify in the notice;
- (5) Immediately upon written notice to County, if any license or certificate required by law or regulation to be held by County or a subcontractor to perform the Work is for any reason denied, revoked, suspended, not renewed or changed in such a way that County or a subcontractor no longer meets requirements to perform the Work. This termination right may only be exercised with respect to the particular part of the Work impacted by loss of necessary licensure or certification; or
- (6) Immediately upon written notice to County, if OHA determines that County or any of its subcontractors have endangered or are endangering the health or safety of a client or others in performing work covered by this Agreement.

- c. **Mutual Termination.** The Agreement may be terminated immediately upon mutual written consent of the parties or at such time as the parties may agree in the written consent.
11. **Effect of Termination.**
- a. **Entire Agreement.**
- (1) Upon termination of this Agreement, OHA shall have no further obligation to pay County under this Agreement.
- (2) Upon termination of this Agreement, County shall have no further obligation to perform Work under this Agreement.
- b. **Obligations and Liabilities.** Notwithstanding Section 11.a., any termination of this Agreement shall not prejudice any obligations or liabilities of either party accrued prior to such termination.
12. **Limitation of Liabilities.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT. NEITHER PARTY SHALL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT OR ANY PART HEREOF IN ACCORDANCE WITH ITS TERMS.
13. **Insurance.** County shall require subcontractors to maintain insurance as set forth in Exhibit C, which is attached hereto.
14. **Records Maintenance; Access.** County shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, County shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of County, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document County's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of County whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." County acknowledges and agrees that OHA and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to all Records to perform examinations and audits and make excerpts and transcripts. County shall retain and keep accessible all Records for a minimum of six years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. County shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.
15. **Information Privacy/Security/Access.** If the Work performed under this Agreement requires County or its subcontractor(s) to access or otherwise use any OHA Information Asset or Network and Information System in which security or privacy requirements apply, and OHA grants County, its subcontractor(s), or both access to such OHA Information Assets or Network and Information Systems, County shall comply and require its subcontractor(s) to which such access has been granted to comply with the terms and conditions applicable to such access or use, including OAR 943-014-0300

through OAR 943-014-0320, as such rules may be revised from time to time. For purposes of this section, “Information Asset” and “Network and Information System” have the meaning set forth in OAR 943-014-0305, as such rule may be revised from time to time.

16. **Force Majeure.** Neither OHA nor County shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, natural causes, or war which is beyond the reasonable control of OHA or County, respectively. Each party shall, however, make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. OHA may terminate this Agreement upon written notice to the other party after reasonably determining that the delay or breach will likely prevent successful performance of this Agreement.
17. **Assignment of Agreement, Successors in Interest.**
 - a. County shall not assign or transfer its interest in this Agreement without prior written approval of OHA. Any such assignment or transfer, if approved, is subject to such conditions and provisions as OHA may deem necessary. No approval by OHA of any assignment or transfer of interest shall be deemed to create any obligation of OHA in addition to those set forth in the Agreement.
 - b. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns.
18. **Alternative Dispute Resolution.** The parties should attempt in good faith to resolve any dispute arising out of this agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
19. **Subcontracts.** County shall not enter into any subcontracts for any of the Work required by this Agreement without OHA’s prior written consent. In addition to any other provisions OHA may require, County shall include in any permitted subcontract under this Agreement provisions to require that OHA will receive the benefit of subcontractor performance as if the subcontractor were County with respect to Sections 1, 2, 3, 4, 7, 15, 16, 18, 19, 20, and 22 of this Exhibit B. OHA’s consent to any subcontract shall not relieve County of any of its duties or obligations under this Agreement.
20. **No Third Party Beneficiaries.** OHA and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. The parties agree that County’s performance under this Agreement is solely for the benefit of OHA to assist and enable OHA to accomplish its statutory mission. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
21. **Amendments.** No amendment, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and, when required, approved by the Oregon Department of Justice. Such amendment, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given.

- 22. Severability.** The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
- 23. Survival.** Sections 1, 4, 5, 6, 7, 10, 12, 13, 14, 15, 18, 20, 21, 22, 23, 24, 25, 26, 27 and 28 of this Exhibit B shall survive Agreement expiration or termination as well as those the provisions of this Agreement that by their context are meant to survive. Agreement expiration or termination shall not extinguish or prejudice either party's right to enforce this Agreement with respect to any default by the other party that has not been cured.
- 24. Notice.** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid to County or OHA at the address or number set forth in this Agreement, or to such other addresses or numbers as either party may indicate pursuant to this section. Any communication or notice so addressed and mailed by regular mail shall be deemed received and effective five days after the date of mailing. Any communication or notice delivered by facsimile shall be deemed received and effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the recipient, or on the next business day if transmission was outside normal business hours of the recipient. Notwithstanding the forgoing, to be effective against the other party, any notice transmitted by facsimile must be confirmed by telephone notice to the other party. Any communication or notice given by personal delivery shall be deemed effective when actually delivered to the addressee.
- OHA:** Office of Contracts & Procurement
500 Summer Street NE, E-03
Salem, OR 97301
Telephone: 503-945-5818
Fax: 503-378-4324
- 25. Headings.** The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret this Agreement.
- 26. Waiver.** The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision. No waiver or consent shall be effective unless in writing and signed by the party against whom it is asserted.
- 27. Contribution.**
- a.** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim,

and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

- b.** With respect to a Third Party Claim for which the State is jointly liable with County (or would be if joined in the Third Party Claim), the State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by County in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of County on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the State on the one hand and of the County on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.
 - c.** With respect to a Third Party Claim for which County is jointly liable with the State (or would be if joined in the Third Party Claim), County shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the State in such proportion as is appropriate to reflect the relative fault of County on the one hand and of the State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of County on the one hand and of the State on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. County's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.
- 28. Indemnification by Subcontractors.** County shall take all reasonable steps to cause its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of County's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by the contractor from and against any and all Claims.

- 29. Stop-Work Order.** OHA may, at any time, by written notice to County, require the County to stop all, or any part of the work required by this Agreement for a period of up to 90 days after the date of the notice, or for any further period to which the parties may agree through a duly executed amendment. Upon receipt of the notice, County shall immediately comply with the Stop-Work Order terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the stop work order notice. Within a period of 90 days after issuance of the written notice, or within any extension of that period to which the parties have agreed, OHA shall either:
- a.** Cancel or modify the stop work order by a supplementary written notice; or
 - b.** Terminate the work as permitted by either the Default or the Convenience provisions of Section 10. Termination.

If the Stop Work Order is canceled, OHA may, after receiving and evaluating a request by County, make an adjustment in the time required to complete this Agreement and the Agreement price by a duly executed amendment.

EXHIBIT C

Subcontractor Insurance Requirements

County shall require its first-tier Contractor(s) (Contractor) that are not units of local government as defined in ORS 190.003, if any, to:

- i) obtain the insurance specified under TYPES AND AMOUNTS and meet the requirements under ADDITIONAL INSURED, CONTINUOUS CLAIMS MADE COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before the Contractor(s) perform under contracts between County and the Contractors (the "Subcontracts"), and
- ii) maintain the insurance in full force throughout the duration of the Subcontracts. The insurance must be provided by insurance companies or entities authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Agency.

County shall not authorize Contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, County shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. County shall incorporate appropriate provisions in the Subcontracts permitting it to enforce Contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force, terminating the Subcontracts as permitted by the Subcontracts, or pursuing legal action to enforce the insurance requirements. In no event, shall County permit a Contractor to work under a Subcontract when the County is aware that the Contractor is not in compliance with the insurance requirements. As used in this section, a "first-tier" Contractor is a Contractor with which the County directly enters into a contract. It does not include a subcontractor with which the Contractor enters into a contract.

If Contractor maintains broader coverage and/or higher limits than the minimums shown in this insurance requirement exhibit, Agency requires and shall be entitled to the broader coverage and/or higher limits maintained by Contractor.

INSURANCE TYPES AND AMOUNTS

WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY:

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide Workers' Compensation Insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements. If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain Employers' Liability Insurance coverage with limits not less than \$500,000 each accident.

If Contractor is an employer subject to any other state's workers' compensation law, Contractor shall provide Workers' compensation Insurance coverage for its employees as required by applicable workers' compensation laws including Employers' Liability Insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

As applicable, Contractor shall obtain coverage to discharge all responsibilities and liabilities that arise out of or relate to the Jones Act with limits of no less than \$5,000,000 and/or the Longshoremen's and Harbor Workers' Compensation Act.

AUTOMOBILE LIABILITY INSURANCE:

☒ **Not Required**

PROFESSIONAL LIABILITY:

☒ **Not Required**

NETWORK SECURITY AND PRIVACY LIABILITY:

☒ **Not required**

EXCESS/UMBRELLA INSURANCE:

A combination of primary and Excess/Umbrella insurance may be used to meet the required limits of insurance. When used, all of the primary and Excess or Umbrella policies must provide all of the insurance coverages required herein, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Excess or Umbrella policies must be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying insurance. No insurance policies maintained by the Additional Insureds, whether primary or Excess, and which also apply to a loss covered hereunder, are to be called upon to contribute to a loss until the Contractor's primary and Excess liability policies are exhausted.

If Excess/Umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the Excess/Umbrella insurance.

ADDITIONAL COVERAGE REQUIREMENTS:

Contractor's insurance shall be primary and non-contributory with any other insurance. Contractor shall pay for all deductibles, self-insured retention (SIR), and self-insurance, if any.

ADDITIONAL INSURED:

All liability insurance, except for Workers' Compensation, Professional Liability, Directors and Officers Liability and Network Security and Privacy Liability (if applicable), required under the Subcontract must include an Additional Insured Endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor's services to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.

Regarding Additional Insured status under the General Liability policy, the State of Oregon requires Additional Insured status with respect to liability arising out of ongoing operations and completed operations. The Additional Insured Endorsement with respect to liability arising out of Contractor's ongoing operations must be on or at least as broad as ISO Form CG 20 10 and the Additional Insured endorsement with respect to completed operations must be on or at least as broad as ISO form CG 20 37.

WAIVER OF SUBROGATION:

Contractor shall waive rights of subrogation which Contractor or any insurer of Contractor may acquire against the Agency or State of Oregon by virtue of the payment of any loss. Contractor must obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Agency or State of Oregon has received a waiver of subrogation endorsement from the Contractor or the Contractor's insurer(s).

CONTINUOUS CLAIMS MADE COVERAGE:

If any of the required liability insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, then Contractor shall maintain Continuous Claims Made coverage, provided the effective date of the Continuous Claims Made coverage is on or before the effective date of the Contract, for a minimum of 24 months following the later of:

- (i) Contractor's completion and County's acceptance of all Services required under the Contract, or
- (ii) Agency or Contractor's termination of this Contract, or
- (iii) The expiration of all warranty periods provided under this Contract.

CERTIFICATE(S) AND PROOF OF INSURANCE:

County shall obtain from the Contractor a Certificate(s) of Insurance for all required insurance before Contractor delivers any goods and performs any Services required under this Contract. The Certificate(s) must list the State of Oregon, its officers, employees, and agents as a certificate holder and as an endorsed Additional Insured. The Certificate(s) of Insurance must also include all required endorsements or copies of the applicable policy language effecting coverage required by this Contract. If Excess/Umbrella Insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the Excess/Umbrella Insurance. As proof of insurance, County has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Contract.

NOTICE OF CHANGE OR CANCELLATION:

The Contractor or its insurer must provide at least 30 days' written notice to County before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

INSURANCE REQUIREMENT REVIEW:

Contractor agrees to periodic review of insurance requirements by County under this agreement and to provide updated requirements as mutually agreed upon by Contractor and County.

STATE ACCEPTANCE:

All insurance providers are subject to County acceptance. If requested by County, Contractor shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to County's representatives responsible for verification of the insurance coverages required under this Exhibit.

EXHIBIT D

Federal Terms and Conditions

General Applicability and Compliance. Unless exempt under 45 CFR Part 87 for Faith-Based Organizations (Federal Register, July 16, 2004, Volume 69, #136), or other federal provisions, County shall comply and, as indicated, require all subcontractors to comply with the following federal requirements to the extent that they are applicable to this Agreement, to County, or to the Work, or to any combination of the foregoing. For purposes of this Agreement, all references to federal and state laws are references to federal and state laws as they may be amended from time to time.

1. **Miscellaneous Federal Provisions.** County shall comply and require all subcontractors to comply with all federal laws, regulations, and executive orders applicable to the Agreement or to the delivery of Work. Without limiting the generality of the foregoing, County expressly agrees to comply and require all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) Title 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, (d) Executive Order 11246, as amended, (e) the Health Insurance Portability and Accountability Act of 1996, as amended, (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) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (j) all federal laws requiring reporting of client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. No federal funds may be used to provide Work in violation of 42 U.S.C. 14402.
2. **Equal Employment Opportunity.** If this Agreement, including amendments, is for more than \$10,000, then County shall comply and require all subcontractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Oregon Department of Labor regulations (41 CFR Part 60).
3. **Clean Air, Clean Water, EPA Regulations.** If this Agreement, including amendments, exceeds \$100,000 then County shall comply and require all subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to OHA, United States Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. County shall include and require all subcontractors to include in all

contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this Section.

4. **Energy Efficiency.** County shall comply and require all subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42 U.S.C. 6201 et.seq. (Pub. L. 94-163).
5. **Truth in Lobbying.** By signing this Agreement, County certifies, to the best of the County's knowledge and belief that:
 - a. No federal appropriated funds have been paid or will be paid, by or on behalf of County, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
 - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, County shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
 - c. County shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.
 - d. This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31 of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
 - e. No part of any federal funds paid to County under this Agreement shall be used, other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the United States Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government itself.

- f. No part of any federal funds paid to County under this Agreement shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the United States Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.
 - g. The prohibitions in subsections (e) and (f) of this Section shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.
 - h. No part of any federal funds paid to County under this Agreement may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under Section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance of that federally sponsored clinical trials are being conducted to determine therapeutic advantage.
- 6. **Resource Conservation and Recovery.** County shall comply and require all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 U.S.C. 6901 et. seq.). Section 6002 of that Act (codified at 42 U.S.C. 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.
- 7. **Audits.**
 - a. County shall comply, and require all subcontractors to comply, with applicable audit requirements and responsibilities set forth in this Agreement and applicable state or federal law.
 - b. If County expends \$750,000 or more in federal funds (from all sources) in a federal fiscal year, County shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR Subtitle B with guidance at 2 CFR Part 200. Copies of all audits must be submitted to OHA within 30 days of completion. If County expends less than \$750,000 in a fiscal year, County is exempt from Federal audit requirements for that year. Records must be available as provided in Exhibit B, "Records Maintenance, Access".
- 8. **Debarment and Suspension.** County shall not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or

Non-procurement Programs” in accordance with Executive Orders No. 12549 and No. 12689, “Debarment and Suspension”. (See 2 CFR Part 180.) This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Subcontractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

9. **Pro-Children Act.** County shall comply and require all subcontractors to comply with the Pro-Children Act of 1994 (codified at 20 U.S.C. Section 6081 et. seq.).
10. **Medicaid Services. [Reserved]**
11. **Agency-based Voter Registration.** If applicable, County shall comply with the Agency-based Voter Registration sections of the National Voter Registration Act of 1993 that require voter registration opportunities be offered where an individual may apply for or receive an application for public assistance.
12. **Disclosures. [Reserved]**
13. **Federal Intellectual Property Rights Notice.** The federal funding agency, as the awarding agency of the funds used, at least in part, for the Work under this Agreement, may have certain rights as set forth in the federal requirements pertinent to these funds. For purposes of this subsection, the terms “grant” and “award” refer to funding issued by the federal funding agency to the State of Oregon. County agrees that it has been provided the following notice:
 - a. The federal funding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the Work, and to authorize others to do so, for Federal Government purposes with respect to:
 - (1) The copyright in any Work developed under a grant, subgrant or contract under a grant or subgrant; and
 - (2) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.
 - b. The parties are subject to applicable federal regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.”
 - c. The parties are subject to applicable requirements and regulations of the federal funding agency regarding rights in data first produced under a grant, subgrant or contract under a grant or subgrant.
14. **Super Circular Requirements.** 2 CFR Part 200, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, including but not limited to the following:
 - a. **Property Standards.** 2 CFR 200.313, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, which generally

describes the required maintenance, documentation, and allowed disposition of equipment purchased with federal funds.

- b. Procurement Standards.** When procuring goods or services (including professional consulting services), applicable state procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C or 2 CFR § 200.318 through 200.326, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, as applicable.
 - c. Contract Provisions.** The contract provisions listed in 2 CFR Part 200, Appendix II, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, that are hereby incorporated into this Exhibit, are, to the extent applicable, obligations of County, and County shall also include these contract provisions in its contracts with non-Federal entities.
- 15. Federal Whistleblower Protection.** County shall comply, and ensure the compliance by subcontractors or subgrantees, with 41 U.S.C. 4712, Enhancement of contractor protection from reprisal for disclosure of certain information.

Confidential

CONTRACTOR TAX IDENTIFICATION INFORMATION

For Accounting Purposes Only

The State of Oregon requires contractors to provide their Federal Employer Identification Number (FEIN) or Social Security Number (SSN). This information is requested pursuant to ORS 305.385 and OAR 125-246-0330(2). Social Security numbers provided pursuant to this section will be used for the administration of state, federal and local tax laws. The State of Oregon may report this information to the Internal Revenue Service (IRS). Contractors must keep this information current at all times. Contractors are required to notify the State of Oregon contract administrator within 10 business days if this information changes. The State of Oregon reserves the right to ask contractors to update this information at any time during the document term.

Document number:

185345

Legal name (tax filing):

Deschutes County, Oregon

DBA name (if applicable):

Deschutes County Health Services

Billing address:

2577 NE Courtney Drive

City:

Bend

OR

97701

Phone:

FEIN:

936002292

- OR -

SSN:

Certificate Of Completion

Envelope Id: 793D7C6D-9EB3-4D74-ACD5-270016272FE4

Status: Sent

Subject: An OHA Public Health contract has been sent for your signature

Source Envelope:

Document Pages: 39

Signatures: 0

Envelope Originator:

Certificate Pages: 4

Initials: 0

John Gardner

AutoNav: Enabled

800 NE Oregon Street, Suite 730

Envelopeld Stamping: Enabled

Portland, OR 97232

Time Zone: (UTC-08:00) Pacific Time (US & Canada)

JOHN.F.GARDNER@odhsoha.oregon.gov

IP Address: 162.248.187.1

Record Tracking

Status: Original

Holder: John Gardner

Location: DocuSign

4/28/2025 4:37:38 PM

JOHN.F.GARDNER@odhsoha.oregon.gov

Security Appliance Status: Connected

Pool: StateLocal

Storage Appliance Status: Connected

Pool: Oregon Health Authority - CLM - Public Health Location: DocuSign

Signer Events

Signature

Timestamp

Grace Evans

grace.evans@deschutes.org

Security Level: Email, Account Authentication
(None)

Sent: 4/28/2025 4:47:22 PM

Viewed: 4/28/2025 4:50:37 PM

Electronic Record and Signature Disclosure:

Accepted: 4/28/2025 4:50:37 PM

ID: 5b0b155b-c7d7-41f5-9557-ef6954ba391f

Tim Noe

TIMOTHY.D.NOE@oha.oregon.gov

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

In Person Signer Events

Signature

Timestamp

Editor Delivery Events

Status

Timestamp

Erin Fajardo

erin.b.fajardo@oha.oregon.gov

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Agent Delivery Events

Status

Timestamp

Intermediary Delivery Events

Status

Timestamp

Certified Delivery Events

Status

Timestamp

Carbon Copy Events

Status

Timestamp

Whitney Schumacher

whitney.schumacher@oha.oregon.gov

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Carbon Copy Events	Status	Timestamp
Sari Hargand sari.hargand@oha.oregon.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Sari Hargand sari.hargand@oha.oregon.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	4/28/2025 4:47:23 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, Oregon Health Authority - CLM - Public Health (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Oregon Health Authority - CLM - Public Health:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: Tammy.L.Kelly@oha.oregon.gov

To advise Oregon Health Authority - CLM - Public Health of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at Tammy.L.Kelly@oha.oregon.gov and in the body of such request you must state:

your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from Oregon Health Authority - CLM - Public Health

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to Tammy.L.Kelly@oha.oregon.gov and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with Oregon Health Authority - CLM - Public Health

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to Tammy.L.Kelly@oha.oregon.gov and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

By selecting the check-box next to 'I agree to use electronic records and signatures', you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Oregon Health Authority - CLM - Public Health as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Oregon Health Authority - CLM - Public Health during the course of your relationship with Oregon Health Authority - CLM - Public Health.

For Recording Stamp Only

BEFORE THE BOARD OF COMMISSIONERS OF DESCHUTES COUNTY, OREGON

PROCLAMATION

Whereas, nearly one in five adults and one in five adolescents in the United States live with a mental illness; and

Whereas, mental health impacts a person's emotional, social, financial, and overall well-being; and

Whereas, suicide is the second-leading cause of death for 15- to 24-year-olds; and

Whereas, teenagers have experienced a 17.3% increase in the use of anxiety medications since 2010 ; and

Whereas, only one out of two people with a serious form of mental illness seeks treatment; and

Whereas, greater public awareness can help change negative attitudes towards people who suffer from mental illness, which in turn can make it easier for them to seek treatment;

Now, therefore be it resolved that the Deschutes County Board of Commissioners proclaims the month of May, 2025 to be

"Mental Health Awareness Month"

in Deschutes County, and encourages talking about mental health to further awareness of the devastating consequences of unaddressed mental illness and to shine a welcoming light on all available paths to recovery.

Dated this ____ day of _____ 2025 by the Deschutes County Board of Commissioners.

Anthony DeBone, Chair

Patti Adair, Vice Chair

ATTEST:

Recording Secretary

Phil Chang, Commissioner



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: May 7, 2025

SUBJECT: Work Session: Deschutes County FY 2026 Proposed Fee Schedule Changes

RECOMMENDED MOTION:

Review and discuss Deschutes County and County Service Districts FY 2026 Proposed Fee Schedule changes in preparation for a public hearing in June.

BACKGROUND AND POLICY IMPLICATIONS:

Per chapter 4.12 of the Deschutes County Code, "Fees and charges for services shall be reviewed for compatibility with the actual cost of providing service each year, and shall be adjusted and set as of each July 1st."

This discussion focuses on the proposed fee changes for FY 2026 in preparation for the upcoming proposed budget public hearing in June. Some changes are based on inflationary factors. Others are driven by external factors such as local, state, and federal mandates. Still, others reflect changes made to capture the actual cost of service provided. The more significant changes are accompanied by a memo from the related department explaining the type of change reflected.

BUDGET IMPACTS:

Fee schedule proposed changes are reflected in the FY 2026 proposed budget.

ATTENDANCE:

Laura Skundrick, Finance Management Analyst
 Cam Sparks, Budget and Financial Planning Manager
 Shad Campbell, IT Applications Manager
 Steve Dennison, County Clerk
 Peter Gutowsky, Community Development Director
 Sherri Pinner, Community Development Senior Management Analyst
 Geoff Hinds, Fair & Expo Director
 Arielle Samuel, Health Services Operations Manager
 Kristie Bollinger, Property Management Director
 Captain William Bailey, Sheriff's Office
 Jessica Vanderpool, Sheriff's Office Senior Management Analyst

Tim Brownell, Solid Waste Director
Sue Monette, Solid Waste Management Analyst
Robert Tintle, Chief Financial Officer
Mindy Holliday, Sunriver Service District

FY 2026 Fee Schedule Proposed Changes

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**Deschutes County Fee Schedule
FY 2026**

05/07/2025 Item #7.

ITEM NO.		DESCRIPTION	FY 2025 FEE			UNIT	ENACTMENT AUTHORITY	PROPOSED FY26 FEE
		Assessor						
ASR	1	Research Fee / Professional Services (1/2 hour minimum)	\$ 76.00			hour		
ASR	2	B/W copies of any documents	\$ 0.50					
ASR	3	Color copies of any documents	\$ 1.00			per page		
ASR	4	8½" x 11" map	\$ 0.50			per page		
ASR	5	8½" x 11" map (full set)	\$ 0.50			per page		
ASR	6	18" x 20" tax lot maps	\$ 5.00			per page		
ASR	7	18" x 20" tax lot maps (full set)	\$ 5.00			per page		
ASR	8	Tax lot maps - mailed	\$ 5.00			plus postage		
						per hour after base fee		
ASR	9	Report Base fee (76.00 per hour; 1/2 hour minimum)	\$38.00-\$76.00			plus base fee		
ASR	10	E-mailed	\$ 5.00					
ASR	11	County data set	\$ 175.00					
ASR	12	Low income housing application fee	\$ 200.00			per account		
ASR	13	Fee to estimate PATL (Potential Additional Tax Liability) on specially assessed property	\$ 75.00					
		Manufactured Structure Transactions:						
ASR	14	All transactions, except movement (trip) permits	\$ 120.00				ORS 446.646	
ASR	15	Movement (trip) permit	\$ 5.00			per side	ORS 446.646	
ASR	16	Movement (trip) permit fee	\$ 30.00					
ASR	17	Applications for MS transactions not located in Deschutes County	\$ 76.00					
		Applicable Discounts:						
		All taxing districts within Deschutes County (for requests regarding their respective districts) are provided at no charge. All other government agencies receive a 50% discount. Taxpayer's own account (except large maps) are provided at no charge.						
		County Clerk						
		Recording Fees					ORS 205.320	
		Overpayments of \$10.00 or less shall be deemed part of the original fee and no automatic refund shall be provided. The person originally paying the fee may request a refund of the overpayment within 90 days of payment, otherwise any claim for refund shall be deemed waived. Overpayments of greater than \$10.00 shall automatically be refunded by the county, provided the county has the address of the payer.						
CLK	1	One page instruments - minimum fee	\$ 5.00			per instrument		
CLK	2	Additional pages	\$ 5.00			per page		
		Land Corner Preservation fund (LCP)					ORS 203.148 & 205.130(2)	
CLK	3	Applies to all instruments <u>except</u> for liens, Military Discharge (DD 214), Satisfaction of Judgments, Federal documents, County internal documents not usually charged a recording fee.	\$ 10.00			per instrument (note exceptions)		
		Assessment and Taxation (A&T) Fee					ORS 205.323	
CLK	4	Applies to all instruments <u>except</u> for Military Discharge (DD 214), Satisfaction of Judgments, Federal documents, County internal documents not usually charged a recording fee.	\$ 10.00			per instrument (note exceptions)		
		Oregon Land Information System (OLIF) Fee					ORS 205.323	
CLK	5	Applies to all instruments <u>except</u> for Military Discharge (DD 214), Satisfaction of Judgments, Federal documents, County internal documents not usually charged a recording fee.	\$ 1.00			per instrument (note exceptions)		
		Affordable Housing (AH) Fee						
CLK	6	Applies to all instruments <u>except</u> for Military Discharges (DD 214), Federal documents, County internal document not usually charged a recording fee, documents required under ORS 517.210 to maintain mining claims, warrants issued by Employment Department pursuant to ORS 657.396, 657.642 and 657.646, a certified copy of a judgment, a lien record abstract as described in ORS 18.170, a satisfaction of a judgment, including a judgment noticed by recordation of a lien record abstract, Department of Revenue documents and tax collectors.	\$ 60.00			per instrument (note exceptions)	ORS 205.320 - HB2417 & HB4007, effective 6-2-2018	
CLK	7	Affordable Housing Collection Fee	\$ 1.00			per instrument assessed AH fee	ORS 205.320 (9)	
		GIS Fee						
CLK	8	Applies to all instruments <u>except</u> for liens, Military Discharge (DD 214), Satisfaction of Judgments, Federal documents, County internal documents not usually charged a recording fee.	\$ 6.00			per instrument (note exceptions)		\$ 10.00
		Multiple Transaction Fee					ORS 205.236	
CLK	9	When recording instruments that describe two or more transactions, each additional transaction will be charged when involving the same property.	\$ 5.00			each additional transaction		
		Additional References					ORS 205.320 (12)	

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**Deschutes County Fee Schedule
FY 2026**

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ITEM NO.		DESCRIPTION	FY 2025 FEE			UNIT	ENACTMENT AUTHORITY	PROPOSED FY26 FEE
		Antique Dealers License						
CLK	43	Initial Fee	\$ 50.00					
CLK	44	Renewal Fee	\$ 25.00					
		Marriage License						
CLK	45	Base Fee	\$ 25.00				ORS 205.320(1)(e)	
CLK	46	Conciliation Fee	\$ 5.00				ORS 107.615	
CLK	47	Domestic Violence Fund	\$ 25.00				ORS 106.045	
CLK	48	Replacement of lost marriage license	\$ 10.00					
CLK	49	Replacement of memento marriage certificate	\$ 3.50					
CLK	50	Amend marriage record	\$ 45.00			each marriage record		
		Solemnizing a Marriage					ORS 106.120 & 205.320	
CLK	51	During business hours	\$ 117.00					
CLK	52	After business hours	\$ 117.00			+ mileage		
CLK	53	Declaration of Domestic Partnership registration fee	\$ 55.00				HB 2007 & HB 2032	
CLK	54	Request for waiver of three day waiting period for marriage license.	\$ 10.00			per waiver	ORS 205.320(1)(i)	
CLK	55	Digital Research Room Subscription						
CLK	56	Digital Research Room Subscription - Monthly Access Fee	\$ 50.00					
CLK	57	Digital Research Room Subscription - Six Month Access Fee	\$ 150.00					
CLK	58	Digital Research Room Subscription - Yearly Access Fee	\$ 300.00					
		Community Development						
CDD	1	Refund request processing	\$ 40.00					\$ 46.00
		No refunds if refund amount is less than \$40.00. Other amounts may be deducted from refund for work already performed.						
CDD	2	Address Issuance	\$ 43.00			per dwelling		\$ 49.00
		New use with separate address (charged at time of building permit or site plan review, except revised site plan review)	\$ 43.00					\$ 49.00
CDD	3	Site plan review	\$ 130.00					\$ 150.00
CDD	4	Advanced planning fee (supports long-range planning and regular code updates and review)	\$ 0.0044			of bldg valuation		\$ 0.0046
CDD	5	Public information fee (supports public information and assistance in Bend, Redmond and LaPine and allows for consolidated permit processing at one location)	\$ 0.0045			of bldg valuation		\$ 0.0047
CDD	6	Code enforcement fee (supports code enforcement program)	\$ 0.0035			of bldg valuation		\$ 0.0037
CDD	7	Code enforcement court fine or fee	ACS				Circuit court or hearings officer determination	
CDD	8	Research/file review supervision	\$ 406.00			per hour		\$ 447.00
CDD	9	Road Access Permit	\$ 93.00					\$ 107.00
CDD	10	Second Road Access Permit	\$ 46.00					\$ 53.00
CDD	11	Three or more Road Access Permits	\$ 23.00			each		\$ 26.00
CDD	12	Consultation by CDD professional staff	ACS					
CDD	13	Consultation by CDD building safety staff	ACS					
CDD	14	Consultation by CDD electrical staff	ACS					
CDD	15	Consultation by CDD code enforcement staff	ACS					
CDD	16	Consultation by CDD onsite wastewater staff	ACS					
CDD	17	Consultation by CDD current planning staff	ACS					
CDD	18	Consultation by CDD long range planning staff	ACS					
		Policy Regarding Refunds:						
		A 75% refund may be made after an application has been received. The 25% withheld covers work associated with the application, including zoning, septic and site plan review, file creation and staff assignment. An additional percentage will be withheld as each additional phase of the permitting process is completed (i.e. plan review, inspections, staff report preparation). Refunds must be requested within 180 days of application. In every case, the \$40 refund request processing fee will be charged to cover the cost of refund check processing and issuance.						
CDD	20	Bend Park and Recreations SDC for Accessory Dwelling Unit (ADU)	\$ 4,867.00					Public Hearing 5/20/25
CDD	21	Bend Park and Recreations SDC for Multi Family Average	\$ 7,661.00					Public Hearing 5/20/26
CDD	22	Bend Park and Recreations SDC for Hotel/Motel, each unit	\$ 7,776.00			per room		Public Hearing 5/20/27
CDD	23	Bend Park and Recreations SDC for Single Family Home (< 600 sq ft)	\$ 8,066.00					Public Hearing 5/20/28

**Deschutes County Fee Schedule
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ITEM NO.		DESCRIPTION	FY 2025 FEE				UNIT	ENACTMENT AUTHORITY	PROPOSED FY26 FEE
CDD	24	Bend Park and Recreations SDC for Single Family Home (600-1,200 sq ft)	\$ 9,058.00						Public Hearing 5/20/29
CDD	25	Bend Park and Recreations SDC for Single Family Home (1,201- 1,600 sq ft)	\$ 10,004.00						Public Hearing 5/20/30
CDD	26	Bend Park and Recreations SDC for Single Family Home (1,601 - 2,200 sq ft)	\$ 10,680.00						Public Hearing 5/20/31
CDD	27	Bend Park and Recreations SDC for Single Family Home (2,201 - 3,000 sq ft)	\$ 11,311.00						Public Hearing 5/20/32
CDD	28	Bend Park and Recreations SDC for Single Family Home (> 3,001 sq ft)	\$ 12,348.00						Public Hearing 5/20/33
CDD	29	Bend Park and Recreation SDC for Manufactured/Mobile Home Placement Permit (in a Park)	\$ 10,184.00						Public Hearing 5/20/34
CDD	30	Transportation SDCs - base rate	\$ 5,691.00				Per peak hour trip		\$ 5,856.00
CDD	31	Transportation SDCs - Single Family Home	\$ 4,610.00				Per single family home		\$ 4,743.00
CDD	32	System development charge payment plan administrative fee	\$ 300.00						
		CDD - Building Safety Division							
CDBS	1	Phased Project Plan Review Fee - in addition to project plan review fees	\$ 604.75				plus 10% of the total project building permit fee not to exceed \$1,500.00 for each phase or portion of the project		
CDBS	2	Deferred Submittal Plan Review Fee - in addition to project plan review fees	65%				calculated using the value of the deferred portion with a \$250 minimum		
	3	Expedited Review (optional program):							
CDBS	4	Structures require engineer/architect stamped plans	\$ 461.50				in addition to bldg permit fee		
CDBS	5	All others	\$ 196.30				in addition to bldg permit fee		
CDBS	6	Special Inspection - applies to all disciplines	\$ 125.00				or ACS		\$ 137.50
CDBS	7	Agricultural building exemption fee	\$ 67.75						
CDBS	8	Building inspections outside of normal business hours (min charge - two hours) - applies to all disciplines	\$ 187.50				per hour		\$ 206.25
CDBS	9	Re-inspection fee - applies to all disciplines	\$ 125.00				per hour		\$ 137.50
CDBS	10	Additional inspection above allowable - applies to all disciplines	\$ 125.00				per hour		\$ 137.50
CDBS	11	Reinstatement Fee - applies to all disciplines	\$ 150.50						
CDBS	12	Structural Permit Extension Fee	\$ 100.00						
CDBS	13	Investigation Fee - applies to all disciplines	\$ 125.00				per hour		\$ 137.50
CDBS	14	Inspections for which no fee is specifically indicated (min charge - ½ hour) - applies to all disciplines	\$ 125.00				per hour		\$ 137.50
CDBS	15	Additional plan review required by changes, addition or revisions to approved plans (min charge - ½ hour)	\$ 125.00				per hour		\$ 137.50
CDBS	16	Demolition permits	\$ 194.00						
CDBS	17	Consultation fee (min 1 hour)	\$ 125.00				per hour		\$ 137.50
CDBS	18	Temporary certificate of occupancy - valid 180 days (commercial)	\$ 572.75						
CDBS	19	Temporary certificate of occupancy - valid 180 days (residential)	\$ 161.25						
CDBS	20	Solar Building Permit - Prescriptive (includes plan review)	\$ 109.75					ORS 455.020 & OAR 918-050-0180	
CDBS	21	Solar Building Permit - Non-Prescriptive Path System - valuation to include the solar panels, racking, mounting elements, rails and the cost of labor to install. Solar electrical equipment including collector panels and inverters shall be excluded from the Structural Permit valuation.					Fee as per Structural Permit Fee table by valuation		
		New construction and additions shall be calculated using the ICC Building Valuation Data Table current as of April 1st of each year.							
		CDD may charge the average or actual additional cost for an investigation fee ensuring a building, structure or system is in conformance with state building code for work commenced prior to permit issuance.							
		Residential Fire Suppression							

**Deschutes County Fee Schedule
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ITEM NO.		DESCRIPTION	FY 2025 FEE			UNIT	ENACTMENT AUTHORITY	PROPOSED FY26 FEE
CDBS	22	Residential Sprinklers 0-2000 sq ft, includes plan review, applies to standalone and multipurpose/continuous loop (plumbing)	\$ 200.00				OAR 918-050-0140	
CDBS	23	Residential Sprinklers 2001-3600 sq ft, includes plan review, applies to standalone and multipurpose/continuous loop (plumbing)	\$ 250.00				OAR 918-050-0140	
CDBS	24	Residential Sprinklers 3601-7200 sq ft, includes plan review, applies to standalone and multipurpose/continuous loop (plumbing)	\$ 325.00				OAR 918-050-0140	
CDBS	25	Residential Sprinklers 7201 sq ft and greater, includes plan review, applies to standalone and multipurpose/continuous loop (plumbing)	\$ 410.00				OAR 918-050-0140	
		Commercial Fire Suppression						
CDBS	26	Commercial Fire Suppression				See Structural Permit Fee table by valuation	OAR 918-050-0100	
CDBS	27	Re-inspection fee: A \$425 \$137.50 re-inspection fee shall be charged for inspections of violations found by the division on or after the second inspection and for inspections requested but which cannot be performed due to inability to get access to work to be inspected.	\$ 125.00			per hour		\$ 137.50
		PLAN REVIEW:						
CDBS	28	Plan check fee	65%			bldg permit fee		
CDBS	29	Plan check fee for electrical and mechanical systems of commercial/residential buildings	25%			bldg permit fee		
CDBS	30	Plan check fee for plumbing of commercial/residential bldgs	30%			bldg permit fee		
CDBS	31	Plan check fee for fire/life safety/over 4,000 sq ft	40%			bldg permit fee		
CDBS	32	Plan check for manufactured dwelling/rec park plan review	65%			permit fee		
NEW		Master plan set up fee						\$ 500.00
NEW		Master plan review greater than >1				initial master plan review		50%
		The current State of Oregon surcharge is added to all fees, including reinstatement fees and excluding extension fees, in the Building Safety Division. Additional State fees may apply.						
		Total valuation:						
CDBS	33	\$1.00 to \$500.00	\$ 10.25					
CDBS	34	\$501.00 to \$2,000.00	\$ 10.25			first \$500 + \$1.75 for each additional \$100 or fraction thereof, to and including \$2,000		
CDBS	35	\$2,001.00 to \$25,000.00	\$ 36.50			first \$2,000 +\$6.50 for each additional \$1,000 or fraction thereof, to and including \$25,000		
CDBS	36	\$25,001.00 to \$50,000.00	\$ 186.00			first \$25,000 +\$5.00 for each additional \$1,000 or fraction thereof, to and including \$50,000		
CDBS	37	\$50,001.00 to \$100,000.00	\$ 311.00			first \$50,000 +\$4.50 for each additional \$1,000 or fraction thereof, to and including \$100,000		
CDBS	38	\$100,001.00 and up	\$ 536.00			first \$100,000 +\$5.50 for each additional \$1,000 or fraction thereof		
CDBS	39	Minimum Fee - Structural	\$ 150.00					
		Plumbing: includes one kitchen, first 100 feet each of site utilities, hose bibbs, icemakers, underfloor low-point drains, and rain drain packages that include the piping, gutters, downspouts, and perimeter system. Half bath counted as whole.						
CDBSPL	1	One and Two Family / 1 bath	\$ 371.25					
CDBSPL	2	One and Two Family / 2 bath	\$ 477.25					
CDBSPL	3	One and Two Family / 3 bath	\$ 530.50					

**Deschutes County Fee Schedule
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ITEM NO.		DESCRIPTION	FY 2025 FEE			UNIT	ENACTMENT AUTHORITY	PROPOSED FY26 FEE
CDBSPL	4	Baths greater than 4- 3 OR kitchen greater than 1	\$ 53.00			each		
CDBSPL	5	One and two family/solar (when connected with potable water)	\$ 143.75					
		Residential and U1 plumbing: Fixtures:						
CDBSPL	6	Sink/basin/lavatory	\$ 29.50					
CDBSPL	7	Water heater	\$ 29.50					
CDBSPL	8	Garbage disposal	\$ 29.50					
CDBSPL	9	Water closet	\$ 29.50					
CDBSPL	10	Catch basin or area drain	\$ 29.50					
CDBSPL	11	Tub/shower/shower pan	\$ 29.50					
CDBSPL	12	Absorption valve	\$ 29.50					
CDBSPL	13	Clothes washer	\$ 29.50					
CDBSPL	14	Backwater valve	\$ 29.50					
CDBSPL	15	Other Plumbing	\$ 29.50					
CDBSPL	16	Floor drain/floor sink/hub drain	\$ 29.50					
CDBSPL	17	Backflow Preventer	\$ 29.50					
CDBSPL	18	Urinal	\$ 29.50					
CDBSPL	19	Hose bibs	\$ 29.50					
CDBSPL	20	Dishwasher	\$ 29.50					
CDBSPL	21	Drinking fountain	\$ 29.50					
CDBSPL	22	Trench drain	\$ 29.50					
CDBSPL	23	Ejectors/sump pump	\$ 29.50					
CDBSPL	24	Expansion tank	\$ 29.50					
CDBSPL	25	Fixture cap	\$ 29.50					
CDBSPL	26	Ice maker	\$ 29.50					
CDBSPL	27	Primer	\$ 29.50					
		Water service/sanitary/storm sewer:						
CDBSPL	28	Water service (first 100 feet or fraction thereof)	\$ 101.50					
CDBSPL	29	Water service (second 100 ft. or fraction thereof)	\$ 57.75					
CDBSPL	30	Building sewer (first 100 feet or fraction thereof)	\$ 101.50					
CDBSPL	31	Building sewer (each additional 100 ft. or fraction thereof)	\$ 57.75					
CDBSPL	32	Building storm sewer or rain drain (each 100 feet or fraction thereof)	\$ 101.50					
CDBSPL	33	Storm or rain drain (each additional 100 feet or fraction thereof)	\$ 57.75					
CDBSPL	34	Alternate potable water heating system (coil, heat pumps, extractor, water treatment equipment, etc.)	\$ 101.50					
		Manufactured Homes:						
CDBSPL	35	M/H park sewer connection & water distribution system	\$ 101.50			per space		
CDBSPL	36	Prefabricated structures site inspections (includes site development & connection of the prefabricated structure)	\$ 101.50					
		Commercial Plumbing (all buildings other than R-3 & U-1):						
CDBSPL	37	Minimum Fee	\$ 149.25					
CDBSPL	38	Fixture cap- commercial	\$ 29.50					
CDBSPL	39	Backflow preventer	\$ 29.50					
CDBSPL	40	Sink/basin/lavatory	\$ 29.50					
CDBSPL	41	Absorption valve	\$ 29.50					
CDBSPL	42	Tub/shower/shower pan	\$ 29.50					
CDBSPL	43	Backwater valve	\$ 29.50					
CDBSPL	44	Water closets	\$ 29.50					
CDBSPL	45	Dishwashers	\$ 29.50					
CDBSPL	46	Garbage disposal	\$ 29.50					
CDBSPL	47	Clothes washer	\$ 29.50					
CDBSPL	48	Water heater	\$ 29.50					
CDBSPL	49	Urinal	\$ 29.50					
CDBSPL	50	Hose bibs	\$ 29.50					
CDBSPL	51	Trench drain	\$ 29.50					
CDBSPL	52	Catch Basins or area drain	\$ 29.50					
CDBSPL	53	Drinking fountain	\$ 29.50					
CDBSPL	54	Expansion tank	\$ 29.50					
CDBSPL	55	Interceptor/grease trap	\$ 29.50					
CDBSPL	56	Floor drains/floor sink/hub drain	\$ 29.50					

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ITEM NO.		DESCRIPTION	FY 2025 FEE				UNIT	ENACTMENT AUTHORITY	PROPOSED FY26 FEE
CDBSPL	57	Ejectors/sump pump	\$ 29.50						
CDBSPL	58	Ice maker	\$ 29.50						
CDBSPL	59	Primer	\$ 29.50						
CDBSPL	60	Roof drain (commercial)	\$ 29.50						
CDBSPL	61	Storm drain - first 100 feet	\$ 63.25						
CDBSPL	62	Storm drain - each additional 100 feet	\$ 29.50						
CDBSPL	63	Swimming pool piping	\$ 96.75						
CDBSPL	64	Solar	\$ 29.50						
CDBSPL	65	Other - plumbing	\$ 29.50						
CDBSPL	66	Water service - first 100 feet	\$ 101.50						
CDBSPL	67	Water service (each additional 100 ft)	\$ 57.75						
CDBSPL	68	Sewer - first 100 feet	\$ 101.50						
CDBSPL	69	Sewer - each additional 100 feet	\$ 57.75						
		Medical Gas – fee based on installation costs and system equipment, including but not limited to inlets, outlets, fixtures and appliances							
CDBSPL	70	Storm sewer - first 100 feet	\$ 101.50						
CDBSPL	71	Storm sewer - each additional 100 feet	\$ 57.75						
		Valuation:							
CDBSPL	72	\$0 - \$25,000	\$ 142.50						
CDBSPL	73	\$25,001 - \$50,000	\$ 142.50				\$142.50 for the first \$25,000 plus \$3.25 for each additional \$1,000 or fraction thereof, to and including \$50,000		
CDBSPL	74	\$50,001 - \$100,000	\$ 223.75				\$223.75 for the first \$50,000 plus \$2.25 for each additional \$1,000 or fraction thereof, to and including \$100,000		
CDBSPL	75	\$100,001 and above	\$ 336.25				\$336.00 for the first \$100,000 plus \$1.25 for each additional \$1,000 or fraction thereof		
CDBSPL	76	M/H park sewer collection/water distribution system	\$ 96.75				per space		
CDBSPL	77	Alternative potable water heating systems (coils, extractors, heat pumps, etc.)	\$ 61.75						
CDBSPL	78	M/H Park Installation Connection	\$ 78.00						
		Recreational Vehicle and Manufactured Dwelling Parks							
CDBSPL	79	Five or fewer spaces	\$ 308.75						
CDBSPL	80	Six to 19 spaces	\$ 308.75				plus \$53.00 per space		
CDBSPL	81	Twenty or more spaces	\$ 742.00				plus \$40.50 per space		
		MECHANICAL:							
CDBSM	1	Minimum Fee	\$ 87.75				each		
CDBSM	2	Furnace - up to 100,000 BTU	\$ 21.75				each		
CDBSM	3	Furnace - greater than 100,000 BTU	\$ 25.25				each		
CDBSM	4	Furnace/burner including duct work/vent/liner	\$ 21.75						
CDBSM	5	Floor furnace, including vent	\$ 16.25				each		
CDBSM	6	Chimney/liner/flue/vent	\$ 16.25						
CDBSM	7	Flue vent for water heater or gas fireplace	\$ 16.25						
CDBSM	8	Installation or relocation of suspended heater, recessed wall heater or floor-mounted heater	\$ 16.25				each		
CDBSM	9	Water heater	\$ 16.25						
CDBSM	10	Wood/pellet stove	\$ 32.00						
CDBSM	11	Pool or spa heater, kiln	\$ 16.25						
CDBSM	12	Appliance vent installation, relocation or replacement not included in an appliance permit	\$ 9.75				each		
CDBSM	13	Heat pump	\$ 21.75				each		
CDBSM	14	Air-handling unit up to 10,000 cubic feet per minute (cfm)	\$ 12.00				each		
CDBSM	15	Air-handling unit of 10,000 cfm and over	\$ 21.75				each		

**Deschutes County Fee Schedule
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ITEM NO.		DESCRIPTION	FY 2025 FEE			UNIT	ENACTMENT AUTHORITY	PROPOSED FY26 FEE
CDBSM	16	Evaporative cooler other than portable	\$ 12.00			each		
CDBSM	17	Air conditioner	\$ 12.00					
CDBSM	18	Attic/crawl space fans	\$ 12.00					
CDBSM	19	Ventilation fan connected to single duct	\$ 10.00			each		
CDBSM	20	Ductwork - no appliance/fixture	\$ 10.00					
CDBSM	21	Ventilation system that is not a portion of any heating or air-conditioning system authorized by a permit	\$ 12.50			each		
CDBSM	22	Hood served by mechanical exhaust, including ducts for hood	\$ 12.50			each		
CDBSM	23	Range hood/other kitchen equipment	\$ 12.50					
CDBSM	24	Clothes dryer exhaust	\$ 12.50					
CDBSM	25	Other environment exhaust/ventilation	\$ 12.50					
CDBSM	26	Gas or wood fireplace/insert	\$ 32.00			each		
CDBSM	27	Decorative gas fireplace	\$ 32.00					
CDBSM	28	Other heating/cooling	\$ 32.00			each		
CDBSM	29	Other fuel appliance	\$ 12.50			each		
CDBSM	30	Gas fuel piping outlets	\$ 8.25					
CDBSM	31	Additional plan review required by changes, additions or revisions to approved plans (min charge ½ hour)	\$ 125.00			per hour / 1/2 hour minimum charge		\$ 137.50
CDBSM	32	Hydronic hot water system	\$ 80.00					
CDBSM	33	Fuel fired or electrical heat exchanger (to be used in a hydronic heating system)	\$ 30.75					
CDBSM	34	Mini split system	\$ 41.50					
		Commercial Mechanical Permit Fee Table					OAR 918-050-100	
		Commercial and Multifamily New, Alterations, Additions, Repairs & Accessory Structures						
		Total Valuation						
CDBSM	35	\$1 to \$2,000	\$ 76.50					
CDBSM	36	\$2001 to \$25,000	\$ 76.50			first \$2,000 plus 11.50 for each additional \$1,000 or fraction thereof, to and including \$25,000		
CDBSM	37	\$25,001 to \$50,000	\$ 341.00			first \$25,000 plus 9.50 for each additional \$1,000 or fraction thereof, to and including \$50,000		
CDBSM	38	\$50,001 to \$100,000	\$ 578.50			first \$50,000 plus 6.25 for each additional \$1,000 or fraction thereof up to and including \$100,000		
CDBSM	39	\$100,001 and up	\$ 891.00			first \$100,000 plus 4.25 for each additional \$1,000 or fraction thereof		
		ELECTRICAL:						
		Residential - New 1 & 2 family dwellings or new multi-family per dwelling unit. Service included.				# of inspections per permit allowed		
CDBSE	1	1,000 square feet or less	\$ 366.50			4		\$ 439.75
CDBSE	2	Each additional 500 square feet, or portion thereof	\$ 62.25					\$ 74.75
		Multi-family building containing three or more apartments; Determine fee for the largest unit using the sq. ftg. rates above, additional units are charged at 50%.				4		
CDBSE	3	Each manufactured home or modular dwelling service or feeder	\$ 170.75			2		\$ 205.00
		Service/feeders: installation, alteration or relocation:						
CDBSE	4	200 amps or less	\$ 208.25			2		\$ 250.00
CDBSE	5	201 amps to 400 amps	\$ 253.75			2		\$ 304.50
CDBSE	6	401 amps to 600 amps	\$ 414.50			2		\$ 497.25
CDBSE	7	601 amps to 1000 amps	\$ 517.25			2		\$ 620.75
CDBSE	8	Over 1000 amps or volts	\$ 1,255.25			2		\$ 1,506.25

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ITEM NO.	DESCRIPTION	FY 2025 FEE	UNIT	ENACTMENT AUTHORITY	PROPOSED FY26 FEE
CDBSE 9	Reconnect only	\$ 170.25	2		\$ 204.25
	Temporary service or feeders - installation, alterations or relocation				
CDBSE 10	200 amps or less	\$ 170.25	2		\$ 204.25
CDBSE 11	201 amps to 400 amps	\$ 233.00	2		\$ 279.50
CDBSE 12	Over 401 amps to 600 amps	\$ 309.50	2		\$ 371.50
CDBSE 13	Over 601 amps to 1000 volts - see "service/feeders" (10 branch circuits included) above	\$ 401.50			\$ 481.75
CDBSE 14	Over 1,000 amps or volts	\$ 564.75			\$ 677.75
	Branch circuits - new, alteration or extension per panel				
	Fee for branch circuits with purchase of service or feeder fee				
CDBSE 15	Each branch circuit	\$ 16.25	2		\$ 19.50
	Fee for branch circuits without purchase of service or feeder fee				
CDBSE 16	First branch circuit	\$ 159.75	2		\$ 191.75
CDBSE 17	Each additional branch circuit	\$ 16.25	2		\$ 19.50
	Miscellaneous (service or feeder not included)		# of inspections per permit allowed		
CDBSE 18	Each water or sewage pump or irrigation circle	\$ 170.75	2		\$ 205.00
CDBSE 19	Each sign or outline lighting	\$ 170.75	2		\$ 205.00
CDBSE 20	Signal circuit(s) or a limited energy panel, alteration or extension - commercial use	\$ 170.75	2		\$ 205.00
	Renewable Energy Systems				
CDBSE 21	5 KVA or less	\$ 79.00	maximum	OAR 918-309-0070	
CDBSE 22	5.01 KVA to 15KVA	\$ 94.00	maximum	OAR 918-309-0070	
CDBSE 23	15.01 KVA to 25 KVA	\$ 156.00	maximum	OAR 918-309-0070	
CDBSE 24	For solar generation systems in excess of 25 KVA and up to 100 KVA	\$ 7.50	maximum	2 per KVA / \$7.50 per kva over 25 kva, \$156.00 for first 25 kva - maximum fee at 100 kva OAR 918-309-0070	
	Wind Generation Systems				
CDBSE 25	25.01KVA to 50 KVA	\$ 204.00	maximum	OAR 918-309-0070	
CDBSE 26	50.01KVA to 100 KVA	\$ 469.00	maximum	OAR 918-309-0070	
	Solar Farms				
CDBSE 27	The first 25 KVA	\$ 156.00	maximum	OAR 918-309-0070	
CDBSE 28	For solar generation systems in excess of 25 KVA and up to 100 KVA	\$ 7.50	maximum	2 per KVA / \$7.50 per kva over 25 kva, \$156.00 for first 25 kva - maximum fee at 100 kva OAR 918-309-0070	
	Limited energy - residential use				
CDBSE 29	One and two family	\$ 83.75			\$ 100.50
CDBSE 30	Multi-family limited energy and/or protective signaling	\$ 155.75	per floor; 2 inspections allowed per floor		\$ 187.00
CDBSE 31	Master permit - renewed annually at no additional fee other than required annual inspections.	\$ 100.00	maximum	OAR 918-309-0100	
NEW	Master electrical permit inspection		per hour		\$ 137.50
CDBSE 32	Additional plan review required by changes, additions or revisions to approved plans	\$ 125.00	per hour		\$ 137.50
	MANUFACTURED DWELLINGS:				
CDBSMF 1	Manufactured dwelling and cabana installation permit	\$ 798.75	per installation + applicable state fee(s)		
CDBSMF 2	Manufactured dwelling and cabana re-inspection fee	\$ 184.00	per re-inspection		
CDBSMF 3	State Cabana Fee	\$ 30.00	maximum	OAR 918-500-0105	
	New Manufactured Home Park Fee Schedule:				
	The Area Development Permit fee to be calculated based on the valuations shown in Table 2 of OAR 918-600-0030 for Manufactured Dwelling/Mobile Home Parks and Table 2 of OAR 918-650-0030 for Recreational Park & Organizational Camp - and applying the valuation amount to Table 1 as referenced for each.		maximum	OAR 918-600-0030 & OAR 918-650-0030	
CDBSMP 1	Additional plan review required by changes, additions or revisions to approved plans (min charge - ½ hour)	\$ 125.00	per hour		\$ 137.50
	State surcharge on manufactured home park permit fee is 12% of total				
	Plan check fee for manufactured home park is 65% of building permit fee				

**Deschutes County Fee Schedule
FY 2026**

05/07/2025 Item #7.

ITEM NO.		DESCRIPTION	FY 2025 FEE				UNIT	ENACTMENT AUTHORITY	PROPOSED FY26 FEE
		Prefabricated Structural Inspections (includes site development and connection of the prefabricated structure)							
CDBSMP	2	MH Park Installation connection	\$ 70.00						
		CDD - Onsite Wastewater Division						OAR 340-071-0140	
		Site evaluations, construction installation permits, renewal permits, alteration permits, authorization notices and existing system evaluation reports incur an additional \$117 surcharge per OAR 340-071-0140							
		On-site sewage disposal systems:							
CDES	1	New site evaluation - single family dwelling	\$ 1,053.00						\$ 1,264.00
CDES	2	Site evaluation - springtime observation *	\$ 571.25						\$ 685.00
		Commercial Facility Systems:							
CDES	3	First 1,000 gallons projected daily sewage flow	\$ 1,053.00						\$ 1,264.00
CDES	4	For each additional 500 gallons or part thereof above 1,000 gallons projected daily sewage flow up to 5,000 gallons	\$ 300.00						\$ 360.00
		Each fee paid for a site evaluation report entitles the applicant to as many site inspections on a single parcel or lot as are necessary to determine site suitability for a single system. The applicant may request additional site inspections within ninety (90) days of the initial site evaluation at no extra cost. Separate fees shall be required if site inspections are to determine site suitability for more than one (1) system on a single parcel or lot.							
		* Not subject to surcharge							
		Consultation Fee:							
CDES	5	Onsite Wastewater staff in office	ACS				based on loaded salary rate of staff performing the service		
CDES	6	Onsite Wastewater staff in the field (one hour minimum)	ACS				based on loaded salary rate of staff performing the service		
		Construction installation permit:							
CDES	7	First 1,000 gallons projected daily sewage flow - standard on-site system	\$ 1,495.00						\$ 1,794.00
CDES	8	For each additional 500 gallons or part thereof above 1,000 gallons	\$ 218.00						\$ 262.00
		Alternative systems:							
CDES	9	Alternative Treatment Technology (ATT) System to Drain Field	\$ 2,104.00						\$ 2,525.00
CDES	10	Alternative Treatment Technology (ATT) System to Sand Filter	\$ 2,405.00						\$ 2,886.00
CDES	11	Capping fill	\$ 2,104.00						\$ 2,525.00
CDES	12	Gray water waste disposal sump	\$ 648.00						\$ 778.00
CDES	13	Pressure distribution	\$ 1,917.00						\$ 2,300.00
CDES	14	Recirculating gravel filters	\$ 2,560.00						\$ 3,072.00
CDES	15	Sand filter	\$ 2,405.00						\$ 2,886.00
CDES	16	Seepage trench	\$ 1,494.00						\$ 1,793.00
CDES	17	Steep slope	\$ 1,494.00						\$ 1,793.00
CDES	18	Tile dewatering	\$ 4,057.00						\$ 4,868.00
CDES	19	At the discretion of the Department, the permittee may be assessed a reinspection fee, not to exceed \$230.00, when a precover inspection correction notice requires correction of improper construction and at a subsequent inspection, the Department finds system construction deficiencies have not been corrected. The Department may elect not to make further precover inspections until the reinspection fee is paid.	\$ 230.00				maximum	OAR 340-071-0170 (4)	
		Commercial Facility Systems (includes ADU when combined with residential), Plan Review:							
CDES	20	For system with projected daily sewage flow of 600 gallons, but not more than 1,000 gallons projected daily sewage flow	\$ 510.00						\$ 612.00
CDES	21	For each additional 500 gallons or part thereof above 1,000 gallons to a maximum sewage flow limit of 5,000 gallons per day	\$ 98.00						\$ 118.00
		Residential Systems Variance, Plan Review							
CDES	22	For system with projected daily sewage flow of less than 600 gallons and is designed by certified professional.	\$ 510.00						\$ 612.00
		Permit Transfer, Re-instatement or Renewal:							
CDES	23	Field visit required	\$ 510.00						\$ 612.00
CDES	24	No field visit required	\$ 338.00						\$ 406.00

**Deschutes County Fee Schedule
FY 2026**

05/07/2025 Item #7.

ITEM NO.	DESCRIPTION	FY 2025 FEE	UNIT	ENACTMENT AUTHORITY	PROPOSED FY26 FEE
	Alteration Permit				
CDES 25	Major	\$ 1,353.00			\$ 1,624.00
CDES 26	Minor	\$ 675.00			\$ 810.00
	Repair Permit - single family dwelling				
CDES 27	Major	\$ 675.00			\$ 810.00
CDES 28	Minor	\$ 421.00			\$ 505.00
	Authorization notice:				
CDES 29	Field visit required	\$ 812.00			\$ 974.00
CDES 30	No field visit required	\$ 391.00			\$ 469.00
	Septic location approval:				
CDES 31	Site/system verification - Field visit required	\$ 421.00			\$ 505.00
CDES 32	No field visit required	\$ 111.00			\$ 133.00
CDES 33	Pumper truck inspection*	\$ 256.00			\$ 307.00
CDES 34	Existing system evaluation report	\$ 677.00			\$ 812.00
CDES 35	Holding Tanks	\$ 1,285.00			\$ 1,542.00
	Report Fees				
CDES 36	Holding Tanks	\$ 47.00			\$ 56.00
CDES 37	Other Alternative systems - Individual Customer and Service Providers through 12/31/25	\$ 96.00		OAR 340-071-0130 (17)	
NEW	Other Alternative systems - Individual Customer and Service Providers beginning 1/1/26			OAR 340-071-0130 (17)	\$ 100.00
CDES 38	Other Alternative Systems - Compliance Recovery Fee, per each violation	\$ 125.00		OAR 340-071-0140 (7)	
CDES 39	Septic tank abandonment inspection	\$ 256.00	per site		\$ 281.00
	CDD may charge twice the established fee for a septic permit or approval as a compliance recovery fee.			OAR 340-071-0140 (7)	
	Surcharges: 340-071-0140 Onsite System Fees (10) DEQ surcharge. (a) To offset a portion of the administrative and program oversight costs of the statewide onsite wastewater management program, DEQ and contract counties must levy a surcharge for each site evaluation, report permit and other activity for which an application is required in this division. The surcharge fee is listed in Table 9F as determined by DEQ. This surcharge does not apply to pumper truck inspections, annual report evaluation fees, or certification of installers or maintenance providers. Proceeds from surcharges collected by DEQ and contract counties must be accounted for separately. Each contract county must forward the proceeds to DEQ in accordance with its agreement with the DEQ.				
	Activity	Surcharge			
	Site evaluation, for each site examined, based on a projected flow of: (Effective beginning August 2024)				
CDES 50	A. 1,000 gallons or less	\$ 117.00			
CDES 51	B. to 2,000 gallons	\$ 117.00			
CDES 52	C. 2,001 to 3,000 gallons	\$ 117.00			
CDES 53	D. 3,001 to 4,000 gallons	\$ 117.00			
CDES 54	E. 4,001 gallons or more	\$ 117.00			
CDES 55	Construction - installation permit	\$ 117.00			
CDES 56	Renewal permit	\$ 117.00			
CDES 57	Alteration permit	\$ 117.00			
CDES 58	Authorization notice	\$ 117.00			
CDES 59	Existing system evaluation report	\$ 117.00			
	CDD - Planning Division				
CDPN 1	Accessory Dwelling Unit Review	\$ 878.00			\$ 1,010.00
CDPN 2	Administrative determination with notice - Major	\$ 2,394.00			\$ 2,753.00
CDPN 3	Administrative determination with notice - Minor	\$ 1,533.00			\$ 1,763.00
CDPN 4	Administrative determination - EFU alteration of a dwelling; Historic ADU	\$ 800.00			\$ 1,010.00
CDPN 5	Appeals - Administrative	\$ 250.00		maximum +20% of original fee/Deposit/ ACS	
CDPN 6	Appeals to Board of Commissioners - Deposit	\$ 4,150.00			\$ 4,772.00
CDPN 7	Appeals to Board of Commissioners - not accepted	ACS			
CDPN 8	Appeals - LUBA Remand Hearing	\$ 5,000.00	Deposit/ACS		
CDPN 9	Conditional Use (template dwelling)	\$ 4,357.00			\$ 5,010.00
CDPN 10	Conditional Use (template dwelling proposed in Haner Park, Section 36, Skyline Subdivision, 1st edition and a portion of Squaw Creek Canyon Recreational Estates, 1st edition)	\$ 3,051.00			\$ 3,509.00
CDPN 11	Conditional Use (Home Occupation - Type 1 for EFU or F Zone)	\$ 1,564.00			\$ 1,799.00
CDPN 12	Conditional Use (Home Occupation - Type 2)	\$ 2,093.00			\$ 2,407.00

**Deschutes County Fee Schedule
FY 2026**

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ITEM NO.	DESCRIPTION	FY 2025 FEE	UNIT	ENACTMENT AUTHORITY	PROPOSED FY26 FEE
CDPN 13	Conditional Use (Home Occupation - Type 3)	\$ 4,261.00			\$ 4,900.00
CDPN 14	Conditional Use (new destination resort)	\$ 24,531.00	or ACS		\$ 28,211.00
CDPN 15	Conditional Use (non-farm dwelling)	\$ 5,418.00			\$ 6,231.00
CDPN 16	Conditional Use (non-farm dwelling proposed in Squaw Creek Canyon Recreational Estates, 1st edition and Meadow Crest Acres)	\$ 3,793.00			\$ 4,362.00
CDPN 17	Conditional Use (power transmission line and communication tower or pole)	\$ 7,437.00	or ACS		\$ 8,553.00
CDPN 18	Conditional Use (P.U.D. or cluster development)	\$ 9,019.00			\$ 10,372.00
CDPN 19	Conditional Use (schools with 100 students or more)	\$ 6,223.00	or ACS		\$ 7,156.00
CDPN 20	Consultant Fee (for consultant or expert retained by County and paid for by applicant)	ACS			
CDPN 21	Declaratory Ruling (status determined under Chap. 22.40)	\$ 2,354.00			\$ 2,707.00
CDPN 22	Declaratory Ruling for Destination Resorts	ACS			
CDPN 23	Destination Resort Overnight Lodging Tracking (Eagle Crest)	\$ 5,000.00	Deposit/ACS		
NEW	Development Agreement			ORS 94.504	\$ 7,000.00
CDPN 24	Expedited Land Divisions	\$ 7,001.00	or ACS		\$ 8,051.00
CDPN 25	Extension Request	\$ 574.00			\$ 660.00
CDPN 26	Filming Activities	\$ 5,076.00			\$ 5,837.00
CDPN 27	Final Plat Review (all plats)	\$ 207.00	plus \$127 \$146 per lot		\$ 238.00
	Historic Landmarks Commission Public Hearing and Review:				
CDPN 28	Add historic structure/site to Goal 5 Inventory	\$ 2,871.00			\$ 3,302.00
CDPN 29	Appeal of Landmarks Commission Decision to Board	\$ 1,348.00			\$ 1,550.00
CDPN 30	Exterior alteration - major	\$ 637.00			\$ 733.00
CDPN 31	Delete Historic Site/Building from Goal 5 Inventory	\$ 2,871.00			\$ 3,302.00
CDPN 32	Demolish a Historic Landmark Structure	\$ 2,871.00			\$ 3,302.00
CDPN 33	Moving a Historic Landmark Structure	\$ 637.00			\$ 733.00
	Historic Administrative Review (Staff)				
CDPN 34	Appeal of Administrative Decision	\$ 250.00	maximum	ORS 215.416(11)	
CDPN 35	Exterior Alteration - Pilot Butte Canal Historic District	\$ 142.00			\$ 163.00
CDPN 36	Exterior alteration - minor	\$ 447.00			\$ 514.00
CDPN 37	Improvement Agreement - Modified	\$ 2,336.00			\$ 2,686.00
CDPN 38	Improvement Agreement - New	\$ 3,893.00			\$ 4,477.00
NEW	Improvement Agreement - Termination				\$ 990.00
CDPN 39	Land Use Verification Letter and/or Information Sheet	\$ 346.00			\$ 398.00
CDPN 40	Landscape Management Review (not visible from road or stream)	\$ 878.00			\$ 1,010.00
CDPN 41	Landscape Management Review (river)	\$ 2,074.00			\$ 2,385.00
CDPN 42	Landscape Management Review (road)	\$ 1,477.00			\$ 1,699.00
CDPN 43	Landscape Management Review (property includes river frontage, applies to non-conforming river setbacks)	\$ 3,112.00			\$ 3,579.00
CDPN 44	Landscape Management Review (river setback exception)	\$ 4,024.00			\$ 4,628.00
CDPN 45	Landscape Management Review (and less than 50 feet from rimrock)	\$ 2,864.00			\$ 3,294.00
CDPN 46	Limited Land Use Decision	\$ 7,001.00	plus \$39 \$45 per lot		\$ 8,051.00
	Limited Use Permit (Agri-tourism & other events in EFU zone)				
CDPN 47	Type 1 or Renewal of Type 1, 2 or 3	\$ 800.00			\$ 920.00
CDPN 48	Type 2	\$ 1,563.00			\$ 1,797.00
CDPN 49	Type 3	\$ 1,563.00			\$ 1,797.00
CDPN 50	Lot of Record Verification (each proposed lot)	\$ 1,439.00			\$ 1,655.00
CDPN 51	Major Code Change (applicant will be billed for M56 Notice)	\$ 18,354.00	plus ACS (Notice)		\$ 21,107.00
CDPN 52	Master Plan (including final master plan for destination resort)	\$ 9,145.00			\$ 10,517.00
CDPN 53	Master Plan (ORS 197 - Skyline Forest)	\$ 31,922.00			\$ 36,710.00
CDPN 54	Minor code changes	\$ 9,219.00			\$ 10,602.00
CDPN 55	Modification of Conditions	\$ 2,395.00			\$ 2,754.00
CDPN 56	Modification of Submitted Application	\$ 1,533.00			\$ 1,763.00
CDPN 57	No Shooting Zone	\$ 4,558.00			\$ 5,242.00
CDPN 58	Noise Ordinance Variance/Permit	\$ 2,394.00			\$ 2,753.00
CDPN 59	Noise Ordinance Variance Appeal	\$ 1,384.00			\$ 1,592.00
CDPN 60	Non-Conforming Use Alteration (without prior verification)	\$ 3,160.00			\$ 3,634.00
CDPN 61	Non-Conforming Use Verification	\$ 2,516.00			\$ 2,893.00
CDPN 62	Non-Conforming Use Alteration (with prior verification)	\$ 2,516.00			\$ 2,893.00
CDPN 63	Non-Conforming Use Verification (River/Wetland/Flood Plain)	\$ 4,656.00			\$ 5,354.00
CDPN 64	Outdoor Mass Gathering	\$ 4,558.00			\$ 5,242.00
CDPN 65	Outdoor Mass Gathering Renewal	\$ 566.00			\$ 2,621.00

**Deschutes County Fee Schedule
FY 2026**

05/07/2025 Item #7.

ITEM NO.	DESCRIPTION	FY 2025 FEE	UNIT	ENACTMENT AUTHORITY	PROPOSED FY26 FEE
CDPN 66	Extended Outdoor Mass Gathering	\$ 4,558.00			\$ 5,242.00
CDPN 67	Extended Outdoor Mass Gathering Renewal	\$ 822.00			\$ 945.00
CDPN 68	Partition	\$ 5,076.00	plus \$55 \$63 per lot		\$ 5,837.00
CDPN 69	Petition for Incorporation	\$ 16,612.00		ORS 197.175	\$ 19,104.00
	Permit sign-off for other agency (Role change, Land Use Compatibility Statement, DMV, Water Resources, etc.)				
CDPN 70	Land Use	\$ 2,394.00			\$ 2,753.00
CDPN 71	LUCS sign off	\$ 142.00			\$ 163.00
CDPN 72	Renewal	\$ 56.00			\$ 64.00
CDPN 73	Plan Amendment (without goal exception)	\$ 11,903.00			\$ 13,688.00
CDPN 74	Plan Amendment (including goal exception/UGB expansion)	\$ 16,612.00	or ACS		\$ 19,104.00
CDPN 75	Planning Inspection Fee	\$ 1,197.00			\$ 1,377.00
CDPN 76	Pre-application meeting	ACS			
CDPN 77	Property Line Adjustment	\$ 878.00			\$ 1,010.00
CDPN 78	Property Line Adjustment with notice	\$ 1,533.00			\$ 1,763.00
CDPN 79	Property Line Adjustment (consolidation)	\$ 670.00			\$ 770.00
CDPN 80	Reconsideration by Hearing Officer	\$ 1,900.00			\$ 2,185.00
CDPN 81	Recreational Vehicle Used for Residential Purposes	\$ 878.00			\$ 1,010.00
CDPN 82	Rimrock Setback Site Plan (within 50 feet of rim outside LM zone)	\$ 1,437.00			\$ 1,653.00
CDPN 83	Road Dedication	\$ 1,533.00			\$ 1,763.00
CDPN 84	Road Name Change	\$ 1,437.00			\$ 1,653.00
CDPN 85	Road Vacation without public hearing	\$ 1,805.00		ORS 368.341(4)	\$ 2,076.00
CDPN 86	Road Vacation with public hearing	\$ 3,611.00		ORS 368.341(4)	\$ 4,153.00
NEW	RV's as Rental Dwellings				\$ 1,010.00
CDPN 87	Sign Permit	\$ 822.00			\$ 945.00
CDPN 88	Sign Permit (change of approved sign)	\$ 247.00			\$ 284.00
CDPN 89	Sign Permit with Variance	\$ 2,027.00			\$ 2,331.00
CDPN 90	Similar Use Ruling	\$ 2,235.00			\$ 2,570.00
	Site Plan:				
CDPN 91	Alteration or Enlargement of 25% or less (in structural area or required parking)** if site conforms with all existing standards	\$ 1,533.00			\$ 1,763.00
CDPN 92	Alteration or Enlargement, 26% to 100% (in structural area or required parking)**	\$ 3,664.00			\$ 4,213.00
CDPN 93	Alteration or Enlargement of over 100% (in structural area or required parking)**	\$ 5,076.00			\$ 5,837.00
CDPN 94	Change of Use (no change in structural area or required parking) site conforms with all existing standards	\$ 1,533.00			\$ 1,763.00
CDPN 95	Site Plan with New Development** (no previous site plan approval)	\$ 5,889.00			\$ 6,772.00
	**All new site plans and major and minor alterations are subject to the following additional fees:				
CDPN 96	Per 1,000 sq. feet of structure	\$ 81.00			\$ 93.00
CDPN 97	Per developed acre (over 1 acre)	\$ 192.00	over 1 acre		\$ 221.00
CDPN 98	Site Plan/Surface Mining	\$ 6,903.00			\$ 7,938.00
	Site Plan/Surface Mining Combining Zone (SMIA):				
CDPN 99	1/4 mile from mining site and two dwellings closer	\$ 822.00			\$ 945.00
CDPN 100	250 feet to 1/4 mile from mining site	\$ 1,437.00			\$ 1,653.00
CDPN 101	Within 250 feet of mining site or special ESEE standards apply	\$ 2,505.00			\$ 2,881.00
CDPN 102	Site Plan/Wildlife Review	\$ 1,533.00			\$ 1,763.00
CDPN 103	Partition/subdivision SMIA review	\$ 1,597.00			\$ 1,837.00
CDPN 104	Solar Access Permit	\$ 1,285.00			\$ 1,478.00
CDPN 105	Solar Shade Exemption	\$ 2,507.00			\$ 2,883.00
CDPN 106	Solar Variance	\$ 1,533.00			\$ 1,763.00
CDPN 107	Special operating permit	\$ 3,600.00			\$ 4,140.00
CDPN 108	Subdivision Name Change	\$ 1,533.00			\$ 1,763.00
CDPN 109	Subdivision (cemetery)	\$ 3,903.00			\$ 4,488.00
CDPN 110	Subdivision Replat	\$ 4,039.00	plus \$55 \$63 per lot		\$ 4,645.00
CDPN 111	Subdivision (Tentative Plat)	\$ 9,019.00	plus \$65 \$75 per lot		\$ 10,372.00
	Temporary Use:				
CDPN 112	All other	\$ 1,533.00			\$ 1,763.00
CDPN 113	Land Use Permit	\$ 1,533.00			\$ 1,763.00
CDPN 114	Manufactured Home Storage	\$ 557.00			\$ 641.00
CDPN 115	Temporary Residence For Medical Condition	\$ 878.00			\$ 1,010.00
CDPN 116	Temporary Residence for Medical Condition/Hardship Dwelling EFU or Forest Zone	\$ 1,390.00			\$ 1,598.00

**Deschutes County Fee Schedule
FY 2026**

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ITEM NO.		DESCRIPTION	FY 2025 FEE			UNIT	ENACTMENT AUTHORITY	PROPOSED FY26 FEE
CDPN	117	RV as Temporary Residence	\$ 557.00				DCC 18.116.095	\$ 641.00
CDPN	118	RV as Temporary Residence Renewal	\$ 176.00				DCC 18.116.095	\$ 202.00
CDPN	119	Variance	\$ 4,308.00					\$ 4,954.00
CDPN	120	Variance Type II (variance from less than 25% of the standards in urban area/less than 10% of standards in the county)	\$ 2,505.00					\$ 2,881.00
CDPN	121	Zone Change	\$ 11,666.00			plus ACS (notice)		\$ 13,416.00
		Note: Where ACS is noted, applicant may be required to pay an advance deposit reflecting the estimated cost of service.						
CDPN	122	Oregon Liquor and Cannabis Commission License - Original Application	\$ 100.00			maximum	ORS 471.166 (8)	
CDPN	123	Oregon Liquor and Cannabis Commission License - Change in Ownership, Location or Privilege	\$ 75.00			maximum	ORS 471.166 (8)	
CDPN	124	Oregon Liquor and Cannabis Commission License - Renewal or Temporary Application	\$ 35.00			maximum	ORS 471.166 (8)	
Deschutes County Fair								
FAIR	1	Indoor Commercial Space (10' wide x 8' deep)	\$ 600.00			per booth		\$ 650.00
FAIR	2	Indoor Commercial Space/Corner (10' wide x 8' deep)	\$ 675.00			per booth		\$ 725.00
FAIR	3	Outdoor Commercial Space (10'x10')	\$ 600.00			per booth		\$ 650.00
FAIR	4	Outdoor Commercial Space/End or Corner (10'x10')	\$ 700.00			per booth		\$ 750.00
FAIR	5	Outdoor Commercial Space/Carnival Area (10'x10')	\$ 750.00			per booth		\$ 800.00
FAIR	6	Main Row/Carnival Corner (10'x10')	\$ 850.00			per booth		\$ 900.00
		Fair Admission Rates						
		Adult						
FAIR	7	Day	\$ 15.00 - \$17.00					\$15.00-\$18.00
FAIR	8	Season	\$ 40.00					\$ 45.00
		Seniors (62+) & Children (6-12)						
FAIR	9	Day	\$ 10.00					\$ 12.00
FAIR	10	Season	\$ 40.00					\$ 45.00
		Children (5 and younger)	Free					
Deschutes County - Fair & Expo								
		Room / Space Rental (Space only, no equipment)						
F&E	1	Entire Fairgrounds Exclusive	\$ 30,000.00			per day		\$ 32,500.00
F&E	2	South Sister Building	\$ 2,000.00			per day		\$ 2,100.00
F&E	3	Lava	\$ 250.00			per day		
F&E	4	Tumalo & Sparks	\$ 400.00			per day		
F&E	5	Tumalo	\$ 250.00			per day		
F&E	6	Sparks	\$ 250.00			per day		
F&E	7	Middle Sister Building	\$ 2,500.00			per day		\$ 2,600.00
F&E	8	East Lake	\$ 250.00			per day		
F&E	9	Elk, Eileen & Doris	\$ 400.00			per day		
F&E	10	Eileen	\$ 250.00			per day		
F&E	11	Doris	\$ 250.00			per day		
F&E	12	North Sister Building	\$ 1,800.00			per day		\$ 1,900.00
F&E	13	Ochoco	\$ 250.00			per day		
F&E	14	Haystack & Odell	\$ 400.00			per day		
F&E	15	Haystack	\$ 250.00			per day		
F&E	16	Odell	\$ 250.00			per day		
F&E	17	First Interstate Bank Center	Day 1: \$5,000, Day 2: \$4,500, Day 3: \$4,000			per day		Day 1: \$10,000, Day 2: \$5,000, Day 3: \$4,500
F&E	18	Wilco Arena	\$ 700.00			per day / dirt storage & animal use only		Removing duplicate
F&E	19	Juniper - Outdoor Arena-Wilco Arena	\$ 1,500.00			per day		
F&E	20	Sagebrush Arena	\$ 1,100.00			per day		
NEW		Off Road Race Track				per day		\$ 750.00
F&E	21	Coastal Pavilion	\$ 1,800.00			per day		
F&E	22	Food/Beverage 3rd party catering - no use of kitchen	10% of total catering bill					12% of total catering bill

**Deschutes County Fee Schedule
FY 2026**

05/07/2025 Item #7.

ITEM NO.		DESCRIPTION	FY 2025 FEE			UNIT	ENACTMENT AUTHORITY	PROPOSED FY26 FEE
F&E	23	Food/Beverage 3rd party catering - use of kitchen	\$ 75.00			hour		\$ 100.00
		Barns						
F&E	24	Beef Barn	\$ 700.00			per day		\$ 800.00
F&E	25	Dairy Barn	\$ 600.00			per day		\$ 800.00
F&E	26	Horse Barn	\$ 1,200.00			per day		
F&E	27	Sheep Barn	\$ 700.00			per day		
F&E	28	Stall Rental	\$ 15.00			night		\$ 20.00
NEW		Stall Cleaning				per stall		\$ 25.00
F&E	29	Dry Camping	\$25 + tax			night		\$35 + tax
F&E	30	Refundable Contingency/Damage Deposit	\$ 1,000.00					
		Charges for use of Fair facilities and equipment may be negotiated at the time of booking based on revenue generating factors, which may include Food & Beverage revenue, sponsorship, increase in regional visitation, and/or other ancillary benefits or objectives.						
		Multi day facility use may utilize tier-pricing discounting measures.						
		Parking Lots						
F&E	31	Lot A Blacktop	\$ 500.00			per day		
F&E	32	Grass behind lot A	\$ 700.00			per day		
F&E	33	Lot B Blacktop	\$ 650.00			per day		
F&E	34	Grass Behind Lot B	\$ 900.00			per day		
F&E	35	Lot C Blacktop	\$ 650.00			per day		
F&E	36	Grass Behind Lot C	\$ 900.00			per day		
F&E	37	Lot D Blacktop	\$ 500.00			per day		
F&E	38	Grass Behind Lot D	\$ 700.00			per day		
F&E	39	Barn Grass Parking	\$ 700.00			per day		
F&E	40	Sagebrush Grass Parking	\$ 350.00			per day		
		Grass Areas						
F&E	41	Beef Barn Lawn	\$ 550.00			per day		
F&E	42	Buckaroo Lawn	\$ 750.00			per day		
F&E	43	Carnival Lawn	\$ 1,750.00			per day		
F&E	44	Dairy Barn Lawn	\$ 450.00			per day		
F&E	45	Event Center Lawn	\$ 750.00			per day		
		Equipment Rental						
		Tables						
F&E	46	5' Round Folding Banquet	\$ 13.00			per event		\$ 15.00
F&E	47	8'x30" Folding (new)	\$ 13.00			per event		\$ 15.00
F&E	48	8'x30" Plastic Folding (new)	\$ 13.00			per event		\$ 15.00
F&E	49	6'x18" Folding (new) Classroom	\$ 8.00			per event		\$ 10.00
F&E	50	8'x32" Rock Hound Folding Wood	\$ 5.00			per event		\$ 7.00
F&E	51	8'x32" White Tall Folding Wood	\$ 5.00			per event		\$ 7.00
F&E	52	8' Picnic Tables w/ attached benches	\$ 7.00			per event		\$ 10.00
F&E	53	Bistro Table	\$ 10.00			per item		\$ 12.00
		Chairs						
F&E	54	Chair Pad Interlock Green (Conference Center)	\$ 3.50			per event		
F&E	55	Chair Pad Brown (Conference Center)	\$ 3.00			per event		
F&E	56	Chair Folding Pad Interlock Brown (Event Center)	\$ 2.00			per event		
		Risers						
F&E	57	4'x8'x8" Folding	\$ 25.00			per event		\$ 40.00
F&E	58	4'x8'x16" Folding	\$ 25.00			per event		
F&E	59	4'x8'x24" Folding	\$ 25.00			per event		
F&E	60	4'x4'x8' Folding Triangle Sections	\$ 50.00			per event		
NEW		4'x4' Indoor Stage				per event		\$ 40.00
NEW		Trailer Stage				per event		\$ 1,000.00
		Miscellaneous Equipment						
F&E	61	Basketball Floor	\$ 4,000.00			per event		
F&E	62	4'x8' Lattice	\$ 5.00			per event		
F&E	63	4'x4' Lattice	\$ 5.00			per event		
F&E	64	4'x5' Lattice	\$ 5.00			per event		
F&E	65	4'x6' Lattice	\$ 5.00			per event		
F&E	66	2'x8' Lattice	\$ 5.00			per event		
F&E	67	Peg Boards 4'x8' w/ Legs	\$ 8.00			per event		
F&E	68	Emergency Warning Cones	\$ 3.00			per event		\$ 5.00

**Deschutes County Fee Schedule
FY 2026**

05/07/2025 Item #7.

ITEM NO.		DESCRIPTION	FY 2025 FEE			UNIT	ENACTMENT AUTHORITY	PROPOSED FY26 FEE
F&E	69	8' Coat Racks	\$ 20.00			per event		
F&E	70	Small Round Coat Racks	\$ 10.00			per event		
F&E	71	Podium (2)	\$ 40.00			per event		
F&E	72	Lectern (1)	\$ 25.00			per event		
F&E	73	4-H Auction Stand	\$ 20.00			per event		
F&E	74	Multi-Spigot Hose Connection	\$ 25.00			per event		
F&E	75	Porta Pottie Rental (2)	\$ 100.00			per event		
F&E		House Sound System						
F&E	76	Cordless Handheld Mic	included			per event		
F&E	77	Second Cordless Handheld Mic	\$ 30.00			per event		
F&E	78	Hardwired Mic	\$ 30.00			per event		
F&E	79	Arena Dirt In/Out	\$ 6,000.00					
F&E	80	A-Frame	\$ 125.00					\$ 150.00
F&E	81	Water Truck w/Operator	\$ 100.00			hour		\$ 150.00
F&E	82	Tractor w/Operator	\$ 100.00			hour		\$ 150.00
F&E	83	Pallet Disposal	\$ 5.00			each		
F&E		Charges for use of Fair facilities and equipment may be negotiated at the time of booking -based on revenue generating factors, which may include Food & Beverage revenue, sponsorship, increase in regional visitation, and/or other ancillary benefits or objectives.						
F&E		Multi day facility use may utilize tier-pricing discounting measures.						
Deschutes Expo Center RV Park								
RV	1	30 Amp RV Site	\$ 42.00			per night plus applicable Transient Room Tax		\$ 48.00
RV	2	50 Amp RV Site	\$ 48.00			per night plus applicable Transient Room Tax		\$ 55.00
RV	3	Tent Site	\$ 30.00			per night + applicable Transient Room Tax		\$ 35.00
RV	4	Extra Tent	\$ 15.00			each per night + applicable Transient Room Tax		
RV	5	RV Site Lock Fee	\$ 15.00			(optional, non refundable)		
RV	6	Laundry Machine Fees	\$0.25-\$4.00			per charge		
RV	7	RV Park buyout fee	\$ 5,250.00					\$ 5,500.00
Behavioral Health								
BH	1	Individual and Family Counseling (maximum)*	\$ 305.00			per hour	DHS-DMAP** (132% of DMAP)	\$ 342.00
BH	2	Assessments (maximum, excluding Physician services)*	\$ 479.00			per hour	DHS-DMAP** (170% of DMAP)	\$ 537.00
BH	3	Screenings (maximum, excluding Physician services)	\$ 335.00			per hour	DHS-DMAP** (170% of DMAP)	\$ 376.00
BH	4	Physician services (maximum)	\$ 587.00			per hour	DHS-DMAP**	\$ 594.00
BH	5	Psychiatric nurse practitioner (maximum)	\$ 391.00			per hour	DHS-DMAP**	\$ 448.00
BH	6	Psychiatric nurse (maximum)	\$ 337.00			per hour	DHS-DMAP** (132% of DMAP)	\$ 379.00
BH	7	Assertive Community Treatment Program (community based service)	\$ 413.00					\$ 465.00
BH	8	Service Plan Development - Children's WRAP Program (team based service)	\$ 699.00					
BH	9	Service Plan Development - Children's WRAP Program (per member per month)	\$ 1,319.00			per month	DHS-DMAP**	
BH	10	Group counseling <45 min (maximum, excluding physician services)*	\$ 107.00			per hour	DHS-DMAP**	\$ 120.00
BH	11	Group Counseling, >45 min (maximum, excluding physician services)*	\$ 186.00					\$ 209.00
BH	12	Crisis Services (maximum, including Physician services)*	\$ 749.00			per hour		\$ 757.00
BH	13	Non-cancelled appointment (maximum)	\$ 50.00					
BH		Copy fees for requested materials from other agencies						
BH	14	20+ pages of chart notes and summary	\$ 0.25			per page		
BH	15	20+ pages of chart notes and summary	\$ 20.00			per check		
BH	16	Clinical Report	\$ 35.00			per report		
BH	17	Record searches	\$ 15.00					
BH	18	Medical record searches	\$ 30.00					
BH	19	Copy of medical records (10 or fewer pages)	\$ 30.00				State of Oregon	
BH	20	Copy of medical records (additional pages over 10 and through page 50)	\$ 0.50			per page	State of Oregon	
BH	21	Copy of medical records (additional pages over 50)	\$ 0.25			per page	State of Oregon	
BH	22	Medical records processed and mailed first class within seven business days of request	\$ 5.00				State of Oregon	

**Deschutes County Fee Schedule
FY 2026**

05/07/2025 Item #7.

ITEM NO.		DESCRIPTION	FY 2025 FEE				UNIT	ENACTMENT AUTHORITY	PROPOSED FY26 FEE
		**The Division of Medical Assistance Programs (DMAP), a branch of the Oregon Department of Human Services, permits cost driven fee adjustments that are based upon a DMAP approved actuarial model completed in accordance with that model. The model used for this adjustment has been approved by DMAP. The department will charge DMAP or the approved fee model, whichever may be higher.							
		Public Health							
HLTH	1	Certified Copy of Vital Record Certificate - first copy of order	\$ 25.00				each	State of Oregon	
HLTH	2	Certified Copy of Vital Record Certificate - additional copies	\$ 25.00				each	State of Oregon	
HLTH	3	Certificate Replacement	\$ 5.00				each	State of Oregon	
HLTH	4	Convenience/Handling Fee (on-line purchase of certificates)	3%				of transaction amount (Minimum Fee 1.50)		\$ 5.75
HLTH	5	Applicant Verification Fee	\$ 1.25				One time fee per applicant		
HLTH	6	Expedite (handling charges)	\$ 7.00					State of Oregon	
		Fees are charged at actual cost of services based on annual cost analysis. Annual cost analysis is on file for review.							
		Clients may be eligible for FPEP coverage at no charge for contraception services.							
		New Patient Office Visits and Well Service Visits							
		Fees are charged at actual cost of services based on annual cost analysis. Annual cost analysis is on file for review.							
		New Patient - Office Visit							
HLTH	7	Problem focus straightforward	\$ 157.04				per visit		\$ 160.97
HLTH	8	Expanded straightforward	\$ 272.48				per visit		\$ 279.29
HLTH	9	Detailed Low	\$ 390.00				per visit		\$ 399.75
HLTH	10	Comp Moderate	\$ 595.92				per visit		\$ 610.82
HLTH	11	Comp High	\$ 750.88				per visit		\$ 769.65
		Established Patient - Office Visit							
HLTH	12	Incident to Minimal	\$ 70.72				per visit		\$ 72.49
HLTH	13	Problem focus straightforward	\$ 156.00				per visit		\$ 159.90
HLTH	14	Expanded problem focused	\$ 265.20				per visit		\$ 271.83
HLTH	15	Detailed Low	\$ 391.04				per visit		\$ 400.82
HLTH	16	Comp Moderate	\$ 528.32				per visit		\$ 541.53
		Well Services - New Patient							
HLTH	17	12 - 17 year	\$ 495.04				per visit		\$ 507.42
HLTH	18	18 - 19 year	\$ 479.44				per visit		\$ 491.43
HLTH	19	40 - 64 year	\$ 558.48				per visit		\$ 572.44
HLTH	20	65+ years	\$ 558.48				per visit		\$ 572.44
		Well Services - Established Patient							
HLTH	21	12 - 17 year	\$ 422.24				per visit		\$ 432.80
HLTH	22	18 - 39 year	\$ 433.68				per visit		\$ 444.52
HLTH	23	40 - 64 year	\$ 462.80				per visit		\$ 474.37
HLTH	24	65+ years	\$ 462.80				per visit		\$ 474.37
		STD and HIV Office Visits							
		Fees are charged at actual cost of services based on annual cost analysis. Annual cost analysis is on file for review.							
HLTH		New Patient - Office Visit							
HLTH	25	Problem focus straightforward	\$ 157.04				per visit Sliding Fee Minimum, 30.00		\$ 160.97
HLTH	26	Expanded straightforward	\$ 272.48				per visit Sliding Fee Min, 30.00		\$ 279.29
HLTH	27	Detailed Low	\$ 390.00				per visit Sliding Fee Min, 30.00		\$ 399.75
HLTH	28	Comp Moderate	\$ 595.92				per visit Sliding Fee Min, 30.00		\$ 610.82
HLTH	29	Comp High	\$ 750.88				per visit Sliding Fee Min, 30.00		\$ 769.65
HLTH		Established Patient - Office Visit							
HLTH	30	Incident to Minimal	\$ 70.72				per visit Sliding Fee Min, 30.00		\$ 72.49

**Deschutes County Fee Schedule
FY 2026**

05/07/2025 Item #7.

ITEM NO.		DESCRIPTION	FY 2025 FEE			UNIT	ENACTMENT AUTHORITY	PROPOSED FY26 FEE
HLTH	31	Problem focus straightforward	\$ 156.00			per visit Sliding Fee Min, 30.00		\$ 159.90
HLTH	32	Expanded problem focused	\$ 265.20			per visit Sliding Fee Min, 30.00		\$ 271.83
HLTH	33	Detailed Low	\$ 391.04			per visit Sliding Fee Min, 30.00		\$ 400.82
HLTH	34	Comp Moderate	\$ 528.32			per visit Sliding Fee Min, 30.00		\$ 541.53
		Procedures						
		Misc Medical Procedures - medical procedures are charged at actual cost of services based on annual cost analysis.						
		*Annual cost analysis is on file for review.						
		**New procedures not included in cost analysis will be billed at minimum Medicaid reimbursement rate plus any additional cost for staff or supplies.						
HLTH	35	Lesion destruction penis cryo	\$ 473.20					\$ 485.03
HLTH	36	Lesion destruction vulva any	\$ 468.00					\$ 479.70
HLTH	37	SBIRT Screening: 15 to 30 minutes	\$ 113.36					\$ 116.19
HLTH	38	SBIRT Screening: > 30 minutes	\$ 203.84					\$ 208.94
		STD and HIV Laboratory Processing Specimen						
HLTH	39	Handling fee - varies depending on fee charged from laboratory	ACS			per lab each		
		Laboratory Processing Specimen						
HLTH	40	Handling fee - varies depending on fee charged from laboratory	\$15.00 - 30.00					
		In-House Testing						
		In-House testing is charged at Actual Cost of Service including supply costs.						
HLTH	41	Glucose blood test	\$ 13.00					
HLTH	42	Preg test - urine	\$ 13.00					
HLTH	43	UA w/o micro test	\$ 13.00					
HLTH	44	Wet Mount Test	\$ 16.00					
HLTH	45	Hemoccult feces screen	\$ 13.00					
HLTH	46	HGB test	\$ 13.00					
HLTH	47	HbA1C	\$ 10.00					
HLTH	48	HIV	\$ 14.00					
HLTH	49	Syphilis	\$ 13.00					
HLTH	50	Trichomonas	\$ 10.00					
HLTH	51	CTGC/Trich combo	\$ 70.00					
		External Labs						
HLTH	52	Lab fees - actual flow-through price from outside lab	ACS					
		Medication and Lab Charges - Non Title X						
		Charge at cost, no slide, client must pre-pay						
HLTH	53	Other labs and medications	ACS					
		Injections						
HLTH	54	Therapeutic/Antibiotic Injection Administration	\$ 29.00					
		Dispensed Medications ***						
		***Medications and drugs are priced at Health Department costs and may be adjusted during the year. A current fee schedule will be on file for review. Cost varies according to specials and amounts purchased.						
		Targeted Case Management*						
HLTH	55	Babies First/CaCoon Targeted Case Management	\$ 460.36			per encounter	State of Oregon	
		Family Connects						
HLTH	56	Family Connects Targeted Case Management	\$ 460.36				State of Oregon	
HLTH	57	Family Connects Medical Services - pre-in-home visit	\$ 242.31				State of Oregon	
HLTH	58	Family Connects Medical Services - in-home visit	\$ 592.81				State of Oregon	
HLTH	59	Family Connects Medical Services - in-home visit addtl child	\$ 170.65				State of Oregon	
		Family Connects (Commercial)						
HLTH	60	Family Connects Medical Services - pre-in-home visit	\$ 293.69				State of Oregon	\$ 427.00
HLTH	61	Family Connects Medical Services - in home visit	\$ 1,276.93				State of Oregon	\$ 1,856.00
HLTH	62	Family Connects Medical Services - in home visit addtl child	\$ 204.31				State of Oregon	\$ 297.00
		Certified Community Health Worker Program						
HLTH	63	Preventive medicine counseling and/or risk factor reduction intervention: 15 minutes	\$ 31.14				State of Oregon	

**Deschutes County Fee Schedule
FY 2026**

05/07/2025 Item #7.

ITEM NO.		DESCRIPTION	FY 2025 FEE			UNIT	ENACTMENT AUTHORITY	PROPOSED FY26 FEE
HLTH	64	Preventive medicine counseling and/or risk factor reduction intervention: 30 minutes	\$ 50.57				State of Oregon	
HLTH	65	Preventive medicine counseling and/or risk factor reduction intervention: 45 minutes	\$ 69.49				State of Oregon	
HLTH	66	Preventive medicine counseling and/or risk factor reduction intervention: 60 minutes	\$ 88.64				State of Oregon	
		Immunizations**						
		Clients eligible for Vaccines for Children Program (VFC) pay only an administrative fee. This admin fee is set by the State and is subject to change.						
		Fees set by State DHS Program are adjusted as DHS adjusts fees. List of current prices is on file for review						
		Fees for clients not eligible for one of the programs listed below are based on the actual cost of the vaccine plus the admin fee.						
HLTH	67	Administration fee on first immunization - other than State	\$ 51.00					
HLTH	68	Administration fee on addtl immunization - other than State	\$ 27.00					
HLTH	69	Admin Fee for State and/or each additional immunization	\$ 21.96				DHS	
HLTH		State Supplied Vaccines**						
HLTH	70	Oregon Immunization Program vaccine list	ACS				DHS	
HLTH		Locally Owned Vaccines**						
HLTH	71	Private-purchase vaccines not reimbursed through the state	ACS					
		Special Programs**						
HLTH	72	Vaccines for Children (VFC) - Age 0-19 - Price per vaccine administered	\$ 21.96				DHS	
HLTH	73	Section 317 Vaccines (317) - Age 19+ - Price per vaccine administered	\$ 21.96				DHS	
		** If the cost of the immunization increases during the fiscal year, the Health Department will adjust the price to reflect the actual increase in cost.						
		Public Health - Environmental Health Division						
		LICENSES: Food Service						
		Note: A supplementary inspection charge equal to 50% of the annual license fee shall be assessed for each complete inspection required because of failure to meet applicable standards when such complete inspection is performed during the license period in addition to the two semi-annual inspections normally performed. Charges accrued and not paid during the current license period will be added to the license fee for the next license period and will be subject to the late penalties specified. New licensees will not be assessed any surcharges accrued by the previous license holder. Any licensed facility opened in Oct/Nov/Dec will be charged 1/2 fee.						
		Full service restaurant seating:						
EH	1	0 - 15	\$ 1,020.00					\$ 1,071.00
EH	2	16 - 50	\$ 1,116.00					\$ 1,172.00
EH	3	51 - 150	\$ 1,337.00					\$ 1,404.00
EH	4	151 and over	\$ 1,512.00					\$ 1,588.00
EH	5	Commissary	\$ 412.00					\$ 433.00
EH	6	Warehouse	\$ 330.00					\$ 347.00
EH	7	Limited service	\$ 837.00					\$ 879.00
		Government Entities - fee is 100% of full service restaurant fees, based on restaurant seating.					Senate Bill 631	
		Mobile Unit Annual Operating License per OAR 333-162-0020						
EH	8	Class I	\$ 369.00					\$ 388.00
EH	9	Class II	\$ 433.00					\$ 455.00
EH	10	Class III	\$ 617.00					\$ 648.00
EH	11	Class IV	\$ 802.00					\$ 843.00
		Temporary Restaurant License						
EH	12	Temporary Benevolent: Must show a valid I.R.S. tax exempt I.D. number to qualify	\$ 66.00			per event		\$ 70.00
EH	13	Temporary for Profit	\$ 207.00			per event		\$ 218.00
		Temporary Prior to Event: Temporary Restaurant Applications must be received at least 7 calendar days before the day the event starts.	\$ 133.00			per event		\$ 140.00
EH	14	Temporary at Event (operating without a license)	\$ 330.00			per event		\$ 347.00
EH	16	Temporary Event - Events with five or more applicants (received 7 calendar days before the event)	\$ 115.00			per event		\$ 121.00
EH		Exempt Foods Agreement Form Fee - foods exempt from licensure but still requiring review	\$ 49.00					\$ 52.00
		Seasonal or Intermittent Temporary Restaurant License						
EH	18	Seasonal/Intermittent Temporary Benevolent: Must show a valid I.R.S. tax exempt I.D. number to qualify	\$ 103.00					\$ 109.00
EH	19	Seven days or more before event start date (for profit)	\$ 207.00					\$ 218.00

**Deschutes County Fee Schedule
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ITEM NO.		DESCRIPTION	FY 2025 FEE			UNIT	ENACTMENT AUTHORITY	PROPOSED FY26 FEE
EH	20	Less than seven days before event start date (for profit)	\$ 246.00					\$ 259.00
EH	21	Operational Review (for profit)	\$ 139.00					\$ 146.00
		Operational Review Benevolent: Must show a valid I.R.S. tax exempt I.D. number to qualify						
EH	22	Re-check fee for Temporary Restaurant	\$ 139.00					\$ 146.00
		School Cafeteria & Kitchens:						
EH	23	School Inspection (production kitchen)	\$ 330.00					\$ 347.00
EH	24	School Inspection (satellite branch)	\$ 246.00					\$ 259.00
EH	25	Bed and breakfast (food facility)	\$ 617.00					\$ 648.00
		Vending machines (of potentially hazardous foods):						
EH	26	1 - 10	\$ 198.00					\$ 208.00
EH	27	11 - 20	\$ 262.00					\$ 276.00
EH	28	21 - 30	\$ 330.00					\$ 347.00
EH	29	31 - 40	\$ 396.00					\$ 416.00
EH	30	41 - 50	\$ 459.00					\$ 482.00
EH	31	Food handlers certification	\$ 11.00					\$ 10.00
EH	32	Certification card replacement	\$ 6.00					\$ 5.00
		Plan Review prior to construction						
EH	33	New (restaurant)	\$ 823.00					\$ 865.00
EH	34	Remodel (restaurant)	\$ 494.00					\$ 519.00
EH	35	School cafeteria plan review	\$ 823.00					\$ 865.00
EH	36	Childcare Plan Review	\$ 328.00					\$ 345.00
EH	37	Childcare Remodel Plan	\$ 124.00					\$ 131.00
EH	38	Commissary/Base of Operation	\$ 412.00					\$ 433.00
EH	39	Tourist Facility Plan review	\$ 330.00					\$ 347.00
EH	40	Non-profit organization plan review	\$ 412.00					\$ 433.00
		Mobile Food Unit (review of mobile unit plan prior to construction)						
EH	41	Class I	\$ 354.00					\$ 372.00
EH	42	Class II	\$ 443.00					\$ 466.00
EH	43	Class III	\$ 617.00					\$ 648.00
EH	44	Class IV	\$ 655.00					\$ 688.00
		Note: A penalty of \$150.00 shall be added if payment is 30 days after the license expiration date. An additional penalty of \$150.00 shall be added on the first day of each succeeding month of delinquency.						
		Tourist facilities:						
EH	45	Organizational camp or picnic park	\$ 223.00			plus fee for each space		\$ 235.00
		Traveler's accommodation						
EH	46	1-25 units	\$ 394.00					\$ 414.00
EH	47	26-50 units	\$ 482.00					\$ 507.00
EH	48	51-75 units	\$ 582.00					\$ 612.00
EH	49	76-100 units	\$ 709.00					\$ 745.00
EH	50	101+ units	\$ 709.00			plus \$3.00/unit over 100		\$ 745.00
		Recreation park						
EH	51	1-25 units	\$ 425.00					\$ 447.00
EH	52	26-50 units	\$ 560.00					\$ 588.00
EH	53	51-75 units	\$ 665.00					\$ 699.00
EH	54	76-100 units	\$ 810.00					\$ 851.00
EH	55	101+ units	\$ 810.00			plus \$2.00/unit over 100		\$ 851.00
		Note: Any person initially licensed under ORA 446.310 to 446.350 for engaging in the recreation park or travelers accommodation business who has failed to renew a license on or before the expiration date is delinquent. If delinquency extends 15 days past the expiration date, a penalty fee of 50% of the annual license fee shall be added. The penalty fee shall be increased by 50% of the license fee on the first day of each succeeding month of delinquency.						
		Swimming Pools:						
EH	56	License (first public pool, spa, bathhouse)	\$ 946.00					\$ 994.00
EH	57	Second pool or spa (same location)	\$ 632.00					\$ 664.00
EH	58	Additional pools or spas (same location)	\$ 564.00					\$ 593.00
EH	59	Pool plan review fee	\$ 755.00					\$ 793.00

**Deschutes County Fee Schedule
FY 2026**

05/07/2025 Item #7.

ITEM NO.		DESCRIPTION	FY 2025 FEE			UNIT	ENACTMENT AUTHORITY	PROPOSED FY26 FEE
EH	60	Pool construction inspections	\$ 755.00					\$ 793.00
EH	61	Surcharges for pools, spas & tourist facilities will be based on the amount set forth by the Oregon Health Division for local govts..	Varies					
		Miscellaneous:						
EH	62	Children's Service: Foster/Child Care Center Inspection	\$ 330.00					\$ 347.00
EH	63	Fee for licensed facility that requires + two re-check inspections / year	\$ 246.00					\$ 259.00
EH	64	Miscellaneous Inspection or Plan Review	\$ 330.00					\$ 347.00
EH	65	Limited Inspection or Plan Review						
EH	66	Outdoor Mass Gathering	\$ 330.00					\$ 347.00
EH	67	Convenience/Handling Fee (On-line renewal of license)	Varies			3.4% of transaction amount		
EH	68	Food Manager Training & Certification	\$ 125.00					
EH	69	Food Manager Training (no book, no exam or missed class)	\$ 50.00					
EH	70	Food Manager Training (paper or online exam only)	\$ 50.00					
EH	71	Food Manager Training (class, exam, no book)	\$ 100.00					
EH	72	Food Manager Training (book & exam):minimum 10 attendees	\$ 1,250.00			Plus \$110.00 per student / over 10		
		Note: A penalty of \$150.00 shall be added if payment is 30 days after the license expiration date. An additional penalty of \$150.00 shall be added on the first day of each succeeding month of delinquency.						
		Justice Court						
JC	1	Taking of affidavit of a private party	\$ 1.00			each affidavit	ORS 51.310(1)(h)	
JC	2	Official certificate	\$ 10.00			each certificate	ORS 51.310(1)(k)	
JC	3	Civil Filing Defendant - first appearance	\$ 90.00			each answer	ORS 51.310(1)(b)	
JC	4	Civil Filing Plaintiff - first appearance (not to exceed \$10,000)	\$ 90.00			each complaint or petition	ORS 51.310(1)(a)	
JC	5	Civil Case Transfer to circuit court	ACS			circuit court filing fee + cost to copy file	ORS 52.530	
JC	6	Confession of judgment	\$ 40.00			each confession	ORS 51.310(1)(a)	
JC	7	Copies of records and files	\$ 0.25			each request	ORS 51.310(1)(j); 205.320	\$3.00 PLUS .25 per page
JC	8	Copy of Supplemental Court Rules (by mail)	\$ 5.00			per document, plus postage		
JC	9	Copy of Supplemental Court Rules (in person)	\$ 4.00			per document		
JC	10	Taking/certifying acknowledgment of proof of any instrument	\$ 3.00			each certification	ORS 51.310(1)(l)	
JC	11	Costs upon criminal conviction or forfeiture of security	\$ 5.00			each case	ORS 51.310(1)(m)	
JC	12	Depositions - For each folio	\$ 0.70			each folio	ORS 51.310(1)(i)	
JC	13	Issue Writ of Execution or Writ of Garnishment	\$ 20.00			each writ	ORS 51.310(1)(g)	
JC	14	Certified copy of judgment	\$ 9.00			each certification	ORS 51.310(1)(f)	
JC	15	Transcript of judgment	\$ 9.00			each judgment	ORS 51.310(1)(d)	
JC	16	Transcript of judgment from the small claims department	\$ 9.00			each judgment	ORS 51.310(1)(e)	
JC	17	For each payment by credit or debit card	\$ 3.00			each debit transaction	ORS 1.005	
JC	18	Justice Court Processing Fee	\$ 65.00			each distracted driving diversion or failure to appear	Desch.Co.Resolution 2000-035	
JC	19	Jury trial	\$ 125.00			each trial	ORS 52.410(2)	
JC	20	Court-ordered assessment - Minor in Possession	\$ 130.00			each case	ORS 813.030	
JC	21	Returned Check Processing fee	\$ 30.00			each check		
JC	22	Small Claim Defendant's request for hearing	\$ 37.00			each answer	ORS 51.310(1)(c)	
JC	23	Small Claim Defendant's demand for jury trial (includes trial fee)	\$ 215.00			each answer	ORS 55.065(2)(c)	
JC	24	Small Claim Plaintiff filing claim	\$ 37.00			each claim	ORS 51.310(1)(c)	
JC	25	Small Claim Plaintiff filing formal complaint after demand for jury trial	\$ 55.00			each complaint	ORS 55.075	
JC	26	Small Claim transfer to circuit court	ACS			circuit court filing fee + cost to copy file	ORS 55.095	
		Property Management						
PRP	1	Land Exchange	\$ 1,000.00					
PRP	2	Lot Line Adjustment	\$ 1,000.00					
PRP	3	Sale of Foreclosed Property for non-buildable and propert valued under \$15,000	20% of sales price			non-refundable fee		

**Deschutes County Fee Schedule
FY 2026**

05/07/2025 Item #7.

ITEM NO.		DESCRIPTION	FY 2025 FEE			UNIT	ENACTMENT AUTHORITY	PROPOSED FY26 FEE
PRP	4	Repurchase Tax Foreclosed property	\$ 1,000.00					
PRP	5	Easements	\$ 500.00			non-refundable fee		
PRP	6	New Lease or License	\$ 500.00			non-refundable fee		
PRP	7	Permit of Entry	\$ 250.00			non-refundable fee		
PRP	8	Annual Property Management Fee for the Management and Supervision of Tax Foreclosed Properties	\$ 396.00			non-refundable fee		
PRP	9	Sale of Foreclosed Property upon Auction or Post-Auction	-12% of sales price.			non-refundable fee		\$4,500 from sales proceeds
Sheriff's Office								
Civil								
SH	1	Service of Civil papers including notice of restitution, directed to not more than two parties at the same address	\$ 50.00				ORS 21.300(1)(a)	
SH	2	Service of Civil papers for more than two parties at the same address	\$ 28.00			for each party	ORS 21.300(1)(a)	
SH	3	Service of Writ of Garnishment	\$ 25.00			\$15.00 bank search fee	ORS 18.652(5)	
SH	4	Enforcement of any Writ	\$ 89.00			Some writs may include a service fee. Deposit may be required for specific enforcements. Additional expenses may be charged ACS	ORS 21.300(1)(a)	
SH	5	Rental of MAC - for each four hour period	\$ 50.00					
SH	6	Rental of MAC - per day	\$ 100.00					
SH	7	Computer Forensic Services	\$ 100.00			per hour		
SH	8	Sheriff property sale	\$ 4.00			per 100 words		
		Concealed Weapons Permit (includes 15.00 to the State)				Folio Fee Structure	ORS 18.930(4) and ORS 21.300	
SH	9	Concealed Weapons Permit - New	\$ 65.00				ORS 166.291(5)	\$ 100.00
SH	10	Concealed Weapons Permit - Renewal	\$ 50.00				ORS 166.291(5)	\$ 75.00
SH	11	Concealed Weapons Permit - Duplicate	\$ 15.00				ORS 166.291(5)	
SH	12	Sheriff's Deed	\$ 56.00				ORS 21.300(1)(c)	
SH	13	Certificate of Sale	\$ 56.00				ORS 21.300(1)(c)	
SH	14	Copies to Complete Civil Service	\$ 4.00			per folio (100 words)	ORS 21.300(1)	
SH	15	Voice verification long distance fee	\$ 20.00				ORS 21.410(1)(c)	
SH	16	Civil service mileage fee (travel over 75 miles round trip from court to serve civil)	\$ 50.00				ORS 21.300(4)	
SH	17	Applicant Post Test	\$ 15.00					
SH	18	D recopying fee	\$ 15.00			+ cost		
SH	19	Look-up fee	\$ 10.00					
SH	20	Photographs	\$ 25.00			+ cost		
SH	21	Copies	\$ 0.25					
SH	22	Notary Fee (For Conveyance of Real Property)	\$ 10.00					
		(Fee on vehicles released from Sheriff's impound lot - forfeitures/evidence cases.)						
SH	23	Administrative release fee for forfeited vehicles	\$ 150.00					
SH	24	2nd Forfeiture	\$ 300.00					
SH	25	3rd and each subsequent forfeiture	\$ 500.00					
SH	26	Vehicle impound fee	\$ 100.00					
SH	27	Impound vehicle hearing fee (Hearing Officer can waive the fee)	\$ 67.00			per hearing - only if requestor loses appeal		
SH	28	Fingerprinting: First Card	\$ 15.00					
SH	29	Additional cards	\$ 5.00					
		Criminal Records						
		Copies of police officer's reports						
SH	30	First eight pages of each report	\$ 20.00				ORS 192324(3)	
SH	31	Each additional page of same case report	\$ 1.00				ORS 192324(3)	
SH	34	Local Records Background Check	\$ 20.00					
SH	35	Copy of photo CD or thumb drive	\$ 30.00					
SH	36	Additional CD	\$ 5.00					

**Deschutes County Fee Schedule
FY 2026**

05/07/2025 Item #7.

ITEM NO.		DESCRIPTION	FY 2025 FEE			UNIT	ENACTMENT AUTHORITY	PROPOSED FY26 FEE
SH	37	Computer Forensic Services	\$ 100.00			per hour		
SH	38	Voice verification long distance fee	\$ 20.00					
SH	39	Look up fee (record check taking more than 10 minutes)	\$ 10.00					
		Criminal - Evidence Unit						
SH	40	Copies of VHS tapes	\$ 25.00			each		
SH	41	Copies of audio cassettes	\$ 25.00			each		
SH	42	Copies of photographs	\$ 25.00			plus cost of prints		
		Other						
SH	43	Concealed Weapons Class	\$ 25.00					
SH	44	Seat Belt Class	\$ 35.00					
SH	45	County Employee ID Cards	\$ 15.00					
SH	46	False Alarm Response (3) in 12 month period	\$ 100.00					
SH	47	False Alarm Response (4) in 12 month period	\$ 200.00					
SH	48	False Alarm Response (5) in 12 month period	\$ 300.00					
SH	49	Applicant Post Test	\$ 15.00					
		Public Information Requests						
SH	50	File search - general	ACS			look-up fee		
SH	51	File search - professional	ACS			per 1/2 hour		
SH	52	Estimated cost for legal counsel to review request	\$ 150.00			per hour (1/4 hour min)		
SH	53	Copies	\$ 0.25			per copy		
SH	54	Postage to mail records	ACS					
SH	55	Processing distraint warrants for state agencies	\$ 6.25				ORS 21.300(1)(e)	
SH	56	Copies of Video Recording (per incident) - first copy	ACS					
SH	57	Copies of Video Recording (per incident) - each additional copy	ACS					
SH	58	Redaction of Records/Video	ACS					\$81.32/hr
		Corrections						
		Lodging Rate/Other:						
SH	59	All other prisoners	\$ 175.01			per day		
SH	60	Transporting of inmates per court order	ACS					
		(Federal rate per mile plus hourly rate of officer and meals - straight time or time and a half)						
SH	61	Inmate mugshots	\$ 25.00			per photograph		
		Health Care Charges						
SH	62	Medical cost for out-of-county or municipal prisoners	ACS					
SH	63	Hygiene welcome pack	\$ 2.35					
SH	64	Facility Physician visit	\$ 13.00			per visit		
SH	65	Nurse Practitioner Visit	\$ 11.00			per visit		
SH	66	Facility Nurse Visit (sick call)	\$ 8.00			per visit		
SH	67	Lab work	\$ 11.00					
SH	68	Special supplies	ACS					
SH	69	Medical Imaging	\$ 21.00					
SH	70	Private physician visit	\$ 21.00					
SH	71	Dentist visit	\$ 21.00					
SH	72	Emergency room/hospital visit	\$ 21.00					
SH	73	Prescription handling fee	\$ 11.00					
SH	74	Inmate Medical Kit Fee	\$ 1.00					
SH	75	Chronic Wound Care	\$ 21.00					
		Over-the-counter medications						
SH	76	Acetaminophen (generic for Tylenol)	\$ 1.00			dose		
SH	77	Antacid	\$ 1.00			dose		
SH	78	Bismuth (generic for Pepto Bismol)	\$ 1.00			dose		
SH	79	Dulcolax laxative	\$ 1.00			dose		
SH	80	Fixodent	\$ 4.00			dose		
SH	81	Hydrocortisone Packet (1%)	\$ 1.00			each		
SH	82	Ibuprofen Packet (generic for Advil)	\$ 1.00			each		
SH	83	Metamucil Packet	\$ 1.00			each		
SH	84	Preparation H	\$ 4.00					
SH	85	Milk of Magnesia	\$ 1.00			dose		
SH	86	Triple antibiotic cream/ointment	\$ 1.00			dose		
SH	87	Vitamin A & D ointment	\$ 2.00			dose		

**Deschutes County Fee Schedule
FY 2026**

05/07/2025 Item #7.

ITEM NO.		DESCRIPTION	FY 2025 FEE			UNIT	ENACTMENT AUTHORITY	PROPOSED FY26 FEE
		Solid Waste						
		Public Fees						
		Knott Landfill						
SW	1	0-400 pounds	\$ 26.00					\$ 28.00
SW	2	Each additional 200 pounds	\$ 8.00					\$ 9.00
		Transfer Stations						
SW	3	Minimum load (0-1 c.y.)	\$ 26.00					\$ 28.00
SW	4	Each additional cubic yard	\$ 11.00					\$ 12.00
SW	5	0-400 pounds	\$ 26.00					\$ 28.00
SW	6	Each additional 200 pounds	\$ 8.00					\$ 9.00
SW	7	Yard debris per cubic yard	\$ 6.00					
		Commercial Fees						
		Knott Landfill						
SW	8	0-400 pounds	\$ 26.00					\$ 28.00
SW	9	Each additional 200 pounds	\$ 8.00					\$ 9.00
		Transfer Stations						
SW	10	Minimum load (0-1 c.y.)	\$ 26.00					\$ 28.00
SW	11	Each additional cubic yard	\$ 11.00					\$ 12.00
SW	12	0-400 pounds	\$ 26.00					\$ 28.00
SW	13	Each additional 200 pounds	\$ 8.00					\$ 9.00
SW	14	Loose yard debris	\$ 6.00			per cubic yard		
SW	15	Compacted yard debris	\$ 10.00			per cubic yard		
		Franchise Fees						
		Knott Landfill						
SW	16	Loose load per pound	\$ 0.04					\$ 0.045
SW	17	Compacted load per pound	\$ 0.04					\$ 0.045
SW	18	Industrial waste per pound	\$ 0.04					\$ 0.045
		Transfer Stations						
SW	19	Truck compactor per cubic yard	\$ 28.00					\$ 30.00
SW	20	Loose load per cubic yard	\$ 16.00					\$ 18.00
SW	21	Loose load per pound	\$ 0.04					\$ 0.045
SW	22	Compacted load per pound	\$ 0.04					\$ 0.045
SW	23	Loose yard debris	\$ 6.00			per cubic yard		
SW	24	Compacted yard debris	\$ 10.00			per cubic yard		
		Miscellaneous Fees						
		Knott Landfill Only						
		Asbestos (pounds)						
SW	25	0-2,000 pounds	\$ 125.00			for 0-2000 pounds		
SW	26	Each additional pound	\$ 0.06			per pound		
SW	27	Alternative daily cover (ADC)	\$ 0.02			per pound		\$ 0.0225
SW	28	Non-ADC contaminated soils	\$ 0.02			per pound		\$ 0.0225
SW	29	Special Waste Material Processing Fee	\$ 50.00			per transaction		
NEW		Commercial Hazardous Waste Disposal				per unit		At cost
		Transfer Stations						
SW	30	Appliances	\$ 8.00			each		
SW	31	Freon Appliances	\$ 20.00			each		
SW	32	Clean wood waste (Negus Transfer only)	\$ 6.00			per cubic yard		
SW	33	Car Tires < 25"	\$ 2.00			each		\$ 4.00
SW	34	Tires <25" on Rim	\$ 4.00			each		\$ 6.00
SW	35	Rebate for properly secured loads	\$ 10.00			per load		
SW	36	Clean fill (Negus Transfer only)	\$ 6.00			per cubic yard		
NEW		Commercial Hazardous Waste Disposal				per unit		At cost
		NOTES:						
		1. Appliances and tires accepted at Knott Landfill through Deschutes Recycling, LLC.						
		2. Tires over 24.5 inches not accepted at any site, including Deschutes Recycling facilities.						
		Dog Licensing						
DG	2	Intact animal (annual)	\$ 36.00				DCC 6.04	
DG	3	Spayed or neutered (2-Yr license)	\$ 39.00				DCC 6.04	
DG	4	Intact animal (2-Yr license)	\$ 67.00				DCC 6.04	
DG	5	Spayed or neutered (3-Yr license)	\$ 58.00				DCC 6.04	
DG	6	Intact animal (3-Yr License)	\$ 98.00				DCC 6.04	

**Deschutes County Fee Schedule
FY 2026**

05/07/2025 Item #7.

ITEM NO.		DESCRIPTION	FY 2025 FEE			UNIT	ENACTMENT AUTHORITY	PROPOSED FY26 FEE
DG	7	Senior (62+) Discounted spayed or neutered (annual license)	\$ 16.00				DCC 6.04	
DG	8	Senior (62+) Discounted spayed or neutered (2-Yr license)	\$ 32.00				DCC 6.04	
DG	9	Senior (62+) Discounted spayed or neutered (3-Yr license)	\$ 48.00				DCC 6.04	
DG	10	Pet ID tag	\$ 5.00					
DG	11	Replacement tag	\$ 5.00					
		Pro-rated licenses to coincide with rabies expiration less than one year:						
DG	12	Spayed or neutered	\$ 1.84			month		
DG	13	Intact animal	\$ 3.00			month		
DG	14	Assistance Animals	\$ -					
		Kennel Licensing Fees:						
DG	15	First 10 dogs	\$ 10.00			per dog	DCC 6.04	
DG	16	Each additional dog	\$ 3.00			per dog	DCC 6.04	
DG	17	Public records request for Dog Licensing information	ACS			per request		
		Room Tax						
TRT	1	Penalty on the amount of the Tax due upon delinquency	10%				4.08.160	
TRT	2	Additional penalty on the amount of the Tax due upon 30 days delinquency	15%				4.08.170	
TRT	3	Interest per month on the amount of the Tax due upon delinquency	1/2 of 1%				4.08.190	
TRT	4	Penalty on the amount of the Tax due if Tax Administrator determines that non payment is due to fraud or intent to evade	25%				4.08.180	
TRT	5	Public records request for Active Rental Listing	ACS			per request		
		Property Tax						
TX	1	Foreclosure	5%			of the total amount of taxes and interest accrued after the 1st publication of foreclosure	ORS 312.110	
TX	2	Redemption / Foreclosed Property	\$ 50.00			at time of judgement	ORS 312.120 (5)	
TX	3	Title Search / Foreclosed Property	ACS			Est @ \$200.00+ per search	ORS 312.120 (5)	
TX	4	Personal Property Warrants Service	\$ 20.00			plus recording fees	ORS 311.633	
TX	5	Personal Property Warrant Electronic Submission Fee	\$ 1.00			per document		
TX	6	Tax research	ACS			per hour (1/2 hr minimum)		
TX	7	Check stop payment	\$ 30.00					
TX	8	Delinquent Tax Roll	ACS			Est. @ \$x per search/request		
TX	9	Tax roll data request for online platforms	\$ 75.00			per request		\$ 100.00
		Treasurer						
TRE	1	Investment Service Fee	\$ 144,000.00			per year	Budget	\$ 150,000.00

**Deschutes County Service Districts Fee Schedule
FY 2026**

05/07/2025 Item #7.

ITEM NO.		DESCRIPTION	FY 2025 FEE	UNIT	ENACTMENT AUTHORITY	PROPOSED FY26 FEE
		Black Butte Ranch County Service District				
BBR	1	General fees, unless otherwise noted		per hour (1/4 hour minimum)		\$ 60.00
BBR	1	Cassette tape / CD copies	\$ 25.00	per tape		
BBR	2	Copy fee (B/W) for public & county employees	\$ 0.25	per page		
BBR	3	Copy fee (color) for public & county employees	\$ 0.35	per page		
BBR	4	Copy fee for documents on disk (first document)	\$ 5.00	per document		
BBR	5	Copy fee for documents on disk (after first document)	\$ 2.00	per additional document		
BBR	6	Fee for e-mail of documents	\$ 2.00	per document		
BBR	7	Facsimile transmittal (local number)	\$ 1.00	1st page		
BBR	8	Facsimile transmittal (local number)	\$ 0.50	per additional page		
BBR	9	Facsimile transmittal (long distance number)	\$ 1.50	1st page		
BBR	10	Facsimile transmittal (long distance number)	\$ 0.50	per additional page		
BBR	11	Returned check processing fee	\$ 30.00	Current bank charge		\$ 35.00
BBR	12	Research & Prep fee for public records request	\$ 40.00	per hour (1/4 hour minimum)		\$ 60.00
BBR	13	Vehicle impound fee (storage)	\$ 15.00	per day		
BBR	14	Vehicle impound yard release fee	\$ 100.00			
BBR	15	Administrative release fee for forfeited vehicles	\$ 150.00			
BBR	16	2nd Forfeiture	\$ 300.00			
BBR	17	3rd or greater forfeiture	\$ 500.00			
BBR	18	Vehicle impound fee	\$ 100.00			
BBR	19	Impound vehicle hearing fee (Hearing Officer can waive the fee)	\$ 100.00	per hearing - only if requestor loses appeal		
BBR	20	Fingerprinting- First Card	\$ 15.00			
BBR	21	Fingerprinting- Additional Cards	\$ 5.00			
		Copies of police officer's reports (Accident & Criminal)				
BBR	22	Case Report	\$ 30.00	First eight pages		
		Each additional page of same case report		per page		\$ 1.00
BBR	23	Service of Writ of Garnishment	\$ 25.00	\$15.00 bank search fee	ORS 18.652(5)	\$ 50.00
BBR	24	Enforcement of any Writ	\$ 70.00	may incl \$28.00 service fee- Some writs may include a service fee- Deposit may be required for specific enforcements. Additional expenses may be charged ACS	ORS 21.300(1)(a)	\$ 94.00
		Public Information Requests				
BBR	25	File search - general	\$ 10.00	look-up fee		\$ 25.00
BBR	26	File search - professional	\$ 29.00	per hour (1/2 hour minimum)		\$ 60.00
BBR	27	Estimated cost for legal counsel to review request	\$ 150.00	per hour (1/4 hour minimum, 1/4 hour increments)		\$ 320.00
BBR	28	Postage to mail records	ACS			
		Sunriver Service District				
		General fees unless otherwise noted by department:				
SSD	1	Maps & Other Nonstandard Documents	\$ 25.00	per hour (minimum charge of 15 minutes)		
SSD	2	Research fee for Service District public records (after first 15 minutes)	\$ 60.00	per hour		
SSD	3	Copies of Public Record	\$ 0.10	per page		
SSD	4	Certified copies of Public Record	\$ 5.00	additional per copy		
SSD	5	Copies of Assorted Media (tapes, CDs, digital recordings)	\$ 5.00	each		ACS
SSD	6	Returned check processing fee	\$ 35.00	current bank charge		ACS
SSD	7	Legal Counsel to review request	\$ 315.00	per hour (minimum charge of 15 minutes)		

**Deschutes County Service Districts Fee Schedule
FY 2026**

05/07/2025 Item #7.

ITEM NO.		DESCRIPTION	FY 2025 FEE	UNIT	ENACTMENT AUTHORITY	PROPOSED FY26 FEE
SSD	8	Public Education Class Requests	\$ 40.00	per hour		
SSD	9	Public education materials	ACS			
SSD	10	Blood Pressure Checks	\$ -			
POLICE DEPARTMENT						
		General:				
NEW		Research fee (after first 15 minutes)				ACS
		Copies of police and reports:				
PD	11	First 8 pages of each case report	\$ 20.00			
PD	12	Each additional page of same case report	\$ 1.00			
PD	13	Copy of dispatch incident report	\$ 5.00	each		
NEW		Digital Media Requests:				
NEW		Digital media research, response, redaction and materials				ACS
FIRE DEPARTMENT						
NEW	NEW	General:				
NEW	NEW	Research fee (after first 15 minutes)				ACS
NEW	NEW	Copies of fire incidents:				
NEW	NEW	Each incident report				\$ 20.00
		Ambulance Billings				
		Rate Schedules				
FD	14	EMS Transport	\$ 1,750.00			\$ 2,000.00
FD	15	EMS Non-transport	\$ 250.00			
FD	16	Heavy Extrication/Rescue Outside the Service District Boundaries	\$ 550.00	per hour		
FD	17	Mileage	\$ 22.00	per mile		
FD	18	EMT/Paramedic - Special Event	\$ 75.00	per hour		\$ 150.00
FD	19	EMT/Basic - Special Event	\$ 50.00	per hour		\$ 100.00
FD	20	Engine	Current OSFM Reimbursement Rate	per hour		
FD	21	Truck	Current OSFM Reimbursement Rate	per hour		
FD	22	Support Rig	Current OSFM Reimbursement Rate	per hour		
FD	23	Ambulance	Current OSFM Reimbursement Rate	per hour		
FD	24	Water Tender	Current OSFM Reimbursement Rate	per hour		
FD	25	Command Vehicle - Type III	Current OSFM Reimbursement Rate	per hour		
		Fire and Life Safety Inspection Fees				
FD	26	Existing Building Inspection	\$ -			
FD	27	Initial Inspection conducted by Oregon State Fire Marshal	\$ -			
FD	28	First re-inspection	\$ 50.00			
FD	29	Second re-inspection	\$ 50.00	Plus \$25 per violation		
FD	30	Third re-inspection	\$ 50.00	Plus \$50 per violation		
		Non-Payment Penalty				
FD	31	Unpaid balance more than 84 days from invoice date	\$ 0.10	of outstanding balance		
FD	32	Unpaid balance more than 6 months from invoice date	\$ 0.25	of outstanding balance		



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: May 7, 2025

SUBJECT: Board Order 2025-016; Decision whether to hear an appeal of a Hearings Officer's remand decision associated with the zoning designation for the ODOT Lava Butte Trail

RECOMMENDED MOTIONS:

Move approval of Order 2025-016, an Order accepting review of the Hearings Officer's Decision in File No. 247-25-00093-A and establishing the review will be heard *de novo*.

OR

Move approval of Order 2025-016, an Order denying review of the Hearings Officer's Decision in File No. 247-25-000093-A.

BACKGROUND AND POLICY IMPLICATIONS:

In 2023, the Oregon Department of Transportation ("ODOT") initiated a Declaratory Ruling application requesting interpretations of the Deschutes County Code ("DCC") to determine the zoning requirements for a path starting at the Baker-Knott Road/Highway 97 intersection and terminating at the Lava Butte Visitor Center (see attached map).

As part of the original review, the Hearings Officer concluded the following:

1. The subject Highway 97 right-of-way is zoned RR10.
2. The proposal as described by the applicant is a "road and street project" and, more specifically, a Class III project.
3. As a Class III project, the proposal described by the applicant is a use permitted outright in the RR10 Zone and OS&C Zone.

This decision was appealed to the Land Use Board of Appeals ("LUBA") and the Oregon Court of Appeals and was remanded back to the County on one issue: The County is required "to adopt adequate findings addressing [the Windlinx Ranch Trust] argument that the application is a collateral attack on the final and unappealed Weigh Station Decision". The referenced Weigh Station Decision was a 1999 Board decision denying a conditional use request for an ODOT weigh station and, as part of this decision, the Board found the same segment of Highway 97 was zoned Forest Use ("F2").

On February 12, 2025, ODOT initiated a remand application, and on April 10, 2025, the Hearings Officer issued a decision with additional findings and concluded the Declaratory Ruling decision does not amount to a collateral attack on the Weigh Station Decision. The Windlinx Ranch Trust has filed an appeal of this decision and asks the Board of County Commissioners to review the appeal.

BUDGET IMPACTS:

None

ATTENDANCE:

Anthony Raguine, Principal Planner

William Groves, Planning Manager

Legal Counsel



COMMUNITY DEVELOPMENT

MEMORANDUM

TO: Board of County Commissioners

FROM: Anthony Raguine, Principal Planner

DATE: April 28, 2025

RE: An appeal of the Hearings Officer's Remand Decision associated with the zoning designation for the ODOT Lava Butte Trail; Remand File No. 247-25-000093-A and Appeal No. 247-25-000264-A

On May 7, 2025, the Board of County Commissioners ("Board") will consider hearing an appeal of the Hearings Officer's remand decision that included additional findings and concluded again a segment of the Oregon Department of Transportation ("ODOT") Lava Butte Trail is zoned Rural Residential ("RR10").

I. DECLARATORY RULING APPLICATION

ODOT ("Applicant") filed a Declaratory Ruling application requesting interpretations on multiple issues in which it asserts there is doubt or dispute over the meaning or application of the County's Comprehensive Plan or Deschutes County Code ("DCC").

The requested interpretations are associated with the zoning requirements for a future ODOT path starting at the Baker-Knott Road/Highway 97 intersection and terminating at the Lava Butte Visitor Center. The proposed path parallels Highway 97 and accesses the High Desert Museum before continuing south onto federal lands (see attached *Location Map*). The proposed path will be designed to serve bicycle and pedestrian users and will be called the Lava Butte Trail.

As part of the original review, the Hearings Officer concluded the following:

1. The subject Highway 97 right-of-way is zoned RR10.
2. The proposal as described by the Applicant is a "road and street project" and, more specifically, a Class III project.
3. As a Class III project, the proposal described by the Applicant is a use permitted outright in the RR10 Zone and OS&C Zone.

II. PROCEDURAL HISTORY

In 2023-2024, the County completed the initial review, and the Windlinx Ranch Trust (“Appellant”) appealed the County’s decision to the Land Use Board of Appeals (“LUBA”) and the Oregon Court of Appeals. Ultimately, the Hearings Officer’s decision was remanded back to the County on one issue – “to adopt adequate findings addressing [Appellant’s] argument that the application is a collateral attack on the final and unappealed Weigh Station Decision”. The referenced Weigh Station Decision was a 1999 Board decision denying a conditional use request for an ODOT weigh station and, as part of this decision, the Board found the same segment of Highway 97 was zoned Forest Use (“F2”).

On February 12, 2025, the Applicant initiated the subject remand application. Since the Hearings Officer was the final decision maker in the previous review, the Hearings Officer was the initial reviewer for this remand application. After reviewing the submitted information, the Hearings Officer issued a decision with additional findings and concluded the Declaratory Ruling decision does not amount to a collateral attack on the Weigh Station Decision.

III. WINDLINX RANCH TRUST APPEAL

The Appellant requests the Board review the Hearings Officer’s decision, as part of a *de novo* review, to address the following key issues related to the template dwelling test requirements:

1. The hearings officer erred in not reopening the record on remand to allow new relevant evidence on the remand issue that should have been but was not placed in the record. To the extent that the Hearings Officer had discretion on whether or not to reopen the record he abused that discretion.
2. The Hearings Officer erred in concluding that ODOT’s request for a declaratory ruling that the zoning of the subject property was RR-10 and not F-2 as previously determined by the Board was not a collateral attack on the Board’s prior 1999 final decision.
3. The Hearings Officer committed a procedural error in not disclosing facts related to his spouse’s work with ODOT and his prior position on a bicycle advocacy group when the application before him was from ODOT and was to facilitate the construction of a facility for bicycling.

IV. STAFF RECOMMENDATION

Staff recommends the Board not hear the appeal for the following reasons:

1. The Hearings Officer’s decision is well written and reasoned, and could be supported, as the record exists today on appeal to LUBA.
2. The County’s review of a remand application must be completed within 120 days and the County’s final decision must be made by June 12, 2025. Therefore, it is unlikely there will be

sufficient time for the Board to hear the subject appeal, accommodate an open record period, complete deliberations and finalize a decision within the 120-day deadline.

3. Both parties were well represented.

V. BOARD OPTIONS

First, the Board must decide if it wishes to hear the appeal. In determining whether to hear the appeals, the Board may only consider:

1. The record developed before the Hearings Officer;
2. The Notice of Appeal; and
3. Recommendation of staff¹

Option 1: Hear the Appeal

If the Board decides to hear the appeal, the Board must make a decision on the scope of the review. As noted above, the Appellant has requested a *de novo* review. Per the Deschutes County Code ("DCC"), the Board has two choices for the scope of the review:

1. On the Record. This means parties can only present their arguments and the Board must rely on the record developed before the Hearings Officer. No new evidence can be submitted.
2. De Novo. This means parties can submit new evidence and present their arguments.

Next, the Board may wish, but is not required, to limit the issues it will consider as part of the Board's review.

Lastly, the Board should give staff direction on when to schedule the appeal hearing and the Board may want to establish time limits for testimony at the hearing.

Option 2: Not Hear the Appeal

Should the Board decline to hear the appeal, the Hearings Officer's decision will become the final decision of the County. Upon the mailing of the Board's decision to decline review, the party appealing may continue their appeal as provided under the law.

VI. 120-DAY LAND USE CLOCK

The 120th day on which the County must take final action on this application is June 12, 2025.

¹ Deschutes County Code 22.32.035(D)

VII. RECORD

The record for File no. 247-25-000093-A and the Notice of Appeal are presented at the following Deschutes County Community Development Department website:

<https://www.deschutes.org/cd/page/247-25-000093-odot-lava-butte-trail-remand>

Attachments:

1. Location Map
2. Hearings Officer's Decision – 247-25-000093-A
3. Notice of Appeal – 247-25-000264-A
4. DRAFT Board Order 2025-016 Accepting Review of the Hearings Officer's Decision
5. DRAFT Board Order 2025-016 Declining Review of the Hearings Officer's Decision



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: May 7, 2025

SUBJECT: Consideration of first reading of an ordinance amending Deschutes County Code regarding Temporary Hardship Dwellings

RECOMMENDED MOTION:

Move approval of first reading of Ordinance No. 2025-005 by title only.

BACKGROUND AND POLICY IMPLICATIONS:

On May 7, 2025, staff will present Ordinance No. 2025-005 to the Board of County Commissioners (Board) for consideration of first reading. On April 23, 2025, the Board conducted a public hearing and deliberations to consider legislative text amendments to Title 18 of the Deschutes County Code relating to temporary hardship dwellings. The Board voted 2-0 to adopt the proposed package as drafted by staff.

BUDGET IMPACTS:

None

ATTENDANCE:

Nicole Mardell, AICP, Senior Planner
Will Groves, Planning Manager



COMMUNITY DEVELOPMENT

MEMORANDUM

TO: Deschutes County Board of Commissioners

FROM: Nicole Mardell, AICP, Senior Planner

DATE: April 30, 2025

SUBJECT: Consideration of First Reading: Temporary Hardship Dwelling Text Amendments

On May 7, 2025, staff will present Ordinance No. 2025-005 to the Board of County Commissioners (Board) for consideration of first reading. On April 23, 2025, the Board conducted a public hearing and deliberations to consider legislative text amendments to Title 18 of the Deschutes County Code relating to temporary hardship dwellings (file no. 247-25-000078-TA). The Board voted 2-0 to adopt the proposed package as drafted by staff. The ordinance attached hereto will formally adopt the amendment package.

Staff submitted a Post-Acknowledgement Plan Amendment (PAPA) notice to the Department of Land Conservation and Development (DLCD) on February 6, 2025. The Planning Commission held a public hearing on March 13, 2025¹. The Commission held deliberations on March 27, 2025² and voted 6-0 to recommend approval of the proposed amendments drafted by staff, with a revision to exclude the use of existing buildings as a hardship dwelling type in the RR-10 and MUA-10 zones³.

I. RECORD

The record, which contains all memoranda, notices, and written testimony received, is available at the following website: <https://bit.ly/25-78-TA>.

II. OVERVIEW OF ORDINANCE

This is a legislative text amendment to Deschutes County Code (DCC), Title 18, County Zoning. The primary purpose of the amendment is to conform local requirements to state law and

¹ <https://www.deschutes.org/bc-pc/page/planning-commission-63>

² <https://www.deschutes.org/bc-pc/page/planning-commission-64>

³ As noted below, the package reviewed by the Board included this revision.

provide consistency for the review of hardship dwellings across multiple county zones. Notable changes include:

- Reorganized content for readability;
- Amended outdated references;
- Clarified hardship dwelling can be used for the “aged” as well as the “infirm”;
- Clarified “existing building” use and definition for the purpose of the section;
- Clarified hardship dwelling can be the only second dwelling on the property;
- Amended renewal requirement from every one year to two years;
- Listed the use in all permissible zones for readability.

The original version of the amendments, reviewed by the Planning Commission, proposed to expand use of an existing building as a hardship dwelling type to several zones, including the RR-10 and MUA-10 zones. OAR 660-004-0040(8)(f) provides specific guidance for hardship dwellings in these zones, noting the dwelling type must be either a Recreational Vehicles (RVs) or manufactured home. Upon discovering this provision, the Planning Commission (in consultation with staff) recommended the Board exclude this proposed allowance. Staff updated the proposed text amendment package to reflect the recommendation prior to the Board’s public hearing.

III. NEXT STEPS

Staff will return on Wednesday, May 21, 2025, for Second Reading of Ordinance 2025-005

Attachments:

- Ordinance No. 2025-005 and Corresponding Exhibits

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending the Deschutes County Code *
Title 18, Zoning Ordinance Relating to Temporary * ORDINANCE NO. 2025-005
Hardship Dwellings. *
*

WHEREAS, the Deschutes County Community Development Department (“CDD”) initiated amendments (Planning Division File No. 247-25-000078-TA) to the Deschutes County Code (“DCC”) Chapter 18.16 – Exclusive Farm Use Zone, Chapter 18.32 – Multiple Use Agricultural Zone, Chapter 18.36 – Forest Use Zone; F-1, Chapter 18.40 – Forest Use Zone; F-2, Chapter 18.60 – Rural Residential Zone, RR-10, Chapter 18.65 – Rural Service Center, Chapter 18.66 – Terrebonne Rural Community Zoning Districts, Chapter 18.67 – Tumalo Rural Community Zoning Districts, Chapter 18.74 – Rural Commercial Zone, Chapter 18.108 – Unincorporated Community Zone; Sunriver, Chapter 18.110 – Resort Community Zone, Chapter 18.116 – Supplementary Provisions; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed changes on March 13, 2025, and forwarded to the Deschutes County Board of County Commissioners (“Board”) a 6-0 recommendation of approval; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on April 23, 2025, and concluded that the public will benefit from the proposed changes to the Deschutes County Code Title 18; now, therefore,

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

Section 1. AMENDING. Chapter 18.16, Exclusive Farm Use Zone, is 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 ~~striketrough~~.

Section 2. AMENDING. Deschutes County Code Chapter 18.32 Multiple Use Agricultural Zone, is amended to read as described in Exhibit “B”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 3. AMENDING. Deschutes County Code Chapter 18.36, Forest Use Zone; F-1, is amended to read as described in Exhibit “C”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 4. AMENDING. Deschutes County Code Chapter 18.40, Forest Use Zone; F-2, is amended to read as described in Exhibit “D”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 5. AMENDING. Deschutes County Code Chapter 18.60, Rural Residential Zone, RR-10, is amended to read as described in Exhibit “E”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 6. AMENDING. Deschutes County Code Chapter 18.65, Rural Service Center, Unincorporated Community Zone, is amended to read as described in Exhibit “F”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 7. AMENDING. Deschutes County Code Chapter 18.66, Terrebonne Rural Community Zoning Districts, is amended to read as described in Exhibit “G”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 8. AMENDING. Deschutes County Code Chapter 18.67, Tumalo Rural Community Zoning Districts, is amended to read as described in Exhibit “H”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 9. AMENDING. Deschutes County Code Chapter 18.74, Rural Commercial Zone, is amended to read as described in Exhibit “I”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 10. AMENDING. Deschutes County Code Chapter 18.108, Unincorporated Community Zone; Sunriver, is amended to read as described in Exhibit “J”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 11. AMENDING. Deschutes County Code Chapter 18.110, Resort Community Zone, is amended to read as described in Exhibit “K”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 12. AMENDING. Deschutes County Code Chapter 18.116, Supplementary Provisions, is amended to read as described in Exhibit “L”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 13. FINDINGS. The Board adopts as its findings Exhibit “M,” attached and incorporated by reference herein.

Dated this _____ of _____, 2025

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DeBONE, Chair

PATTI ADAIR, Vice Chair

ATTEST:

Recording Secretary

PHILIP CHANG, Commissioner

Date of 1st Reading: _____ day of _____, 2025.

Date of 2nd Reading: _____ day of _____, 2025.

Record of Adoption Vote:

Commissioner	Yes	No	Abstained	Excused
Anthony DeBone	_____	_____	_____	_____
Patti Adair	_____	_____	_____	_____
Philip Chang	_____	_____	_____	_____

Effective date: _____ day of _____, 2025.

Exhibit A to Ordinance 2025-005

18.16.050 Standards For Dwellings In The EFU Zones

Dwellings listed in DCC 18.16.025 and 18.16.030 may be allowed under the conditions set forth below for each kind of dwelling, and all dwellings are subject to the landowner for the property upon which the dwelling is placed, signing and recording in the deed records for the County, a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

...

H. Temporary hardship dwelling.

1. A temporary hardship dwelling listed in DCC 18.16.030 is allowed ~~under the following conditions:~~ subject to DCC 18.116.090, and the requirements of this chapter.
 - a. ~~The dwelling is an existing building, or is a manufactured dwelling or recreational vehicle that is used in conjunction with an existing dwelling on the lot or parcel. For the purposes of this section, "existing" means the building was in existence on or before March 29, 2017;~~
 - b. ~~The manufactured dwelling or recreational vehicle would be temporarily sited on the lot or parcel only for the term of a hardship suffered by the existing resident or relative of the resident. The manufactured dwelling shall be removed or demolished within three months of the date the hardship no longer exists. The recreational vehicle shall not be occupied once the term of the medical hardship is completed, except as allowed under DCC 18.116.095. A temporary residence approved under this section is not eligible for replacement under DCC 18.16.020(J);~~
 - c. ~~The existence of a medical hardship is verified by a written doctor's statement, which shall accompany the permit application; and~~
 - d. ~~The temporary manufactured dwelling uses the same subsurface sewage disposal system used by the existing dwelling, provided that the existing disposal system is adequate to accommodate the additional dwelling. If the manufactured home will use a public sanitary sewer system, such condition will not be required.~~
 - e. ~~If a recreational vehicle is used as a medical hardship dwelling, it shall be required to have a bathroom, and shall meet the minimum setbacks established under DCC 18.16.070.~~
2. ~~Permits granted under DCC 18.16.050(H) shall be subject to the provisions of DCC 18.116.090 and shall be required to meet any applicable DEQ review and removal requirements as a condition of approval.~~

- ~~3.—As used in DCC 18.16.050(H), the term "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons.~~
- ~~4.—As used in DCC 18.16.050(H), the term "relative" means grandparent, step-grandparent, grandchild, parent, step-parent, child, step-child, brother, sister, sibling, step-sibling, niece, nephew, uncle, aunt, or first cousin of the existing resident.~~
- ~~5.—The proposed hardship dwelling or recreational vehicle shall meet the criteria under DCC 18.16.040(A)(1-2) and DCC 18.16.020(J)(1).~~
2. A temporary hardship dwelling approved under this section is not eligible for replacement under DCC 18.16.020(J);

HISTORY

Adopted by Ord. [PL-15](#) on 11/1/1979
 Repealed & Reenacted by Ord. [91-020](#) §1 on 5/29/1991
 Amended by Ord. [91-038](#) §§1 and 2 on 9/30/1991
 Amended by Ord. [92-065](#) §3 on 11/25/1992
 Amended by Ord. [94-026](#) §1 on 5/11/1994
 Amended by Ord. [95-007](#) §15 on 3/1/1995
 Amended by Ord. [98-030](#) §1 on 5/13/1998
 Amended by Ord. [98-033](#) §1 on 12/2/1998
 Amended by Ord. [2004-001](#) §2 on 7/14/2004
 Amended by Ord. [2004-013](#) §2 on 9/21/2004
 Amended by Ord. [2004-020](#) §1 on 10/13/2004
 Amended by Ord. [2008-001](#) §2 on 5/6/2008
 Amended by Ord. [2009-014](#) §1 on 6/22/2009
 Amended by Ord. [2012-007](#) §2 on 5/2/2012
 Amended by Ord. [2014-010](#) §1 on 4/28/2014
 Amended by Ord. [2018-006](#) §5 on 11/20/2018
 Amended by Ord. [2021-013](#) §4 on 4/5/2022
 Amended by Ord 2025-002 §4 on 3/28/2025
Amended by Ord. 2025-005 §1 on 5/21/2025

Exhibit B to Ordinance 2025-005

CHAPTER 18.32 MULTIPLE USE AGRICULTURAL ZONE; MUA[18.32.010 Purpose](#)[18.32.020 Uses Permitted Outright](#)[18.32.030 Conditional Uses Permitted](#)[18.32.035 Destination Resorts](#)[18.32.040 Dimensional Standards](#)[18.32.050 Setbacks](#)[18.32.060 Ordinary High Water Mark Setbacks](#)[18.32.070 Rimrock Setback](#)

...

18.32.020 Uses Permitted Outright

The following uses and their accessory uses are permitted outright:

- A. Agricultural uses as defined in DCC Title 18.
- B. A single-unit dwelling, or a manufactured dwelling subject to DCC 18.116.070.
- C. Propagation or harvesting of a forest product.
- D. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by DCC 18.116.230.
- E. Class III road or street project.
- F. Noncommercial horse stables, excluding horse events.
- G. Horse events, including associated structures, involving:
 - 1. Fewer than 10 riders;
 - 2. Ten to 25 riders, no more than two times per month on nonconsecutive days; or
 - 3. More than 25 riders, no more than two times per year on nonconsecutive days.
Incidental musical programs are not included in this definition. Overnight stays by participants, trainers or spectators in RVs on the premises is not an incident of such horse events.
- H. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.
- I. Type 1 Home Occupation, subject to DCC 18.116.280.
- J. A historic accessory dwelling unit, subject to DCC 18.116.350.
- K. A residential accessory dwelling unit, subject to DCC 18.116.355.
- L. Residential Home.

M. A recreational vehicle as a rental dwelling, subject to 18.116.095(D).

N. Temporary Hardship Dwelling, subject to DCC 18.116.090.

HISTORY

Adopted by Ord. PL-15 on 11/1/1979
 Amended by Ord. 91-002 §6 on 2/6/1991
 Amended by Ord. 91-005 §18 on 3/4/1991
 Amended by Ord. 91-020 §1 on 5/29/1991
 Amended by Ord. 91-038 §1 on 9/30/1991
 Amended by Ord. 93-001 §1 on 1/27/1993
 Amended by Ord. 93-043 §4 on 8/25/1993
 Amended by Ord. 94-008 §10 on 6/8/1994
 Amended by Ord. 2001-016 §2 on 3/28/2001
 Amended by Ord. 2001-039 §2 on 12/12/2001
 Amended by Ord. 2004-002 §3 on 4/28/2004
 Amended by Ord. 2019-009 §1 on 9/3/2019
 Recorded by Ord. 2019-009 §1 on 9/3/2019
 Adopted by Ord. 2023-014 §1 on 12/1/2023
 Amended by Ord. 2024-008 §4 on 1/7/2025
 Amended by Ord. 2025-002 §6 on 3/28/2025
 Amended by Ord. 2025-004 §2 on 5/7/2025
Amended by Ord. 2025-005 §2 on 5/21/2025

Exhibit C to Ordinance 2025-005

CHAPTER 18.36 FOREST USE ZONE; F-1[18.36.010 Purpose](#)[18.36.020 Uses Permitted Outright](#)[18.36.030 Conditional Uses Permitted](#)[18.36.040 Limitations On Conditional Uses](#)[18.36.050 Standards For Single-Unit Dwellings](#)[18.36.060 Siting Of Dwellings And Structures](#)[18.36.070 Fire Siting Standards For Dwellings And Structures](#)[18.36.080 Fire Safety Design Standards For Roads](#)[18.36.085 Stocking Requirement](#)[18.36.090 Dimensional Standards](#)[18.36.100 Setbacks](#)[18.36.110 Ordinary High Water Mark Setbacks](#)[18.36.120 State Law Controls](#)[18.36.130 Rimrock Setbacks](#)[18.36.140 Restrictive Covenants](#)

...

18.36.030 Conditional Uses Permitted

The following uses and their accessory uses may be allowed in the Forest Use Zone, subject to applicable provisions of the Comprehensive Plan, DCC 18.36.040 and other applicable sections of DCC Title 18.

...

- X. ~~An existing building, or a manufactured dwelling in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative as defined in ORS 215.283. For the purposes of this section, "existing" means the building was in existence on or before March 29, 2017. Temporary hardship dwelling in conjunction with an existing dwelling:~~
1. ~~A temporary dwelling for medical hardship is conditionally allowed subject to the provisions in DCC 18.116.090, as well as DCC 18.36.040 and 18.36.060 of this chapter. As used in this section, "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons.~~
 2. ~~The use shall be subject to the review criteria in DCC 18.116.090, as well as DCC 18.36.040 and 18.36.060 of this chapter.~~
 3. ~~The manufactured home shall use the same subsurface sewage disposal system used by the existing dwellings if that disposal system is adequate to accommodate the additional dwelling.~~
 4. ~~If the manufactured dwelling will use a public sanitary sewer system, such condition will not be required.~~

A temporary ~~hardship dwelling residence~~ approved under this subsection is not eligible for replacement under OAR 660-006-025.

...

HISTORY

Adopted by Ord. [PL-15](#) on 11/1/1979

Amended by Ord. [86-018](#) §8 on 6/30/1986

Amended by Ord. [90-014](#) §28 on 7/12/1990

Amended by Ord. [92-025](#) §2 on 4/15/1991

Amended by Ord. [91-038](#) §1 on 9/30/1991

Amended by Ord. [92-068](#) §1 on 12/7/1992

Amended by Ord. [94-038](#) §1 on 10/5/1994

Amended by Ord. [2000-033](#) §1 on 12/6/2000

Amended by Ord. [2004-020](#) §6 on 10/13/2004

Amended by Ord. [2007-020](#) §4 on 2/6/2008

Amended by Ord. [2012-007](#) §4 on 5/2/2012

Amended by Ord. [2018-006](#) §7 on 11/20/2018

Amended by Ord. [2020-007](#) §11 on 10/27/2020

Amended by Ord 2025-002 §7 on 3/28/2025

[Amended by Ord. 2025-005 §3 on 5/21/2025](#)

Exhibit D to Ordinance 2025-005

CHAPTER 18.40 FOREST USE ZONE; F-2[18.40.010 Purpose](#)[18.40.020 Uses Permitted Outright](#)[18.40.030 Conditional Uses Permitted](#)[18.40.040 Limitations On Conditional Uses](#)[18.40.050 Standards For Single-Unit Dwellings](#)[18.40.060 Siting Of Dwellings And Structures](#)[18.40.070 Fire Siting Standards For Dwellings And Structures](#)[18.40.080 Fire Safety Design Standards For Roads](#)[18.40.085 Stocking Requirement](#)[18.40.090 Dimensional Standards](#)[18.40.100 Setbacks](#)[18.40.110 Ordinary High Water Mark Setbacks](#)[18.40.120 State Law Controls](#)[18.40.130 Rimrock Setback](#)

...

18.40.030 Conditional Uses Permitted

The following uses and their accessory uses may be allowed in the Forest Use Zone, subject to applicable provisions of the Comprehensive Plan, DCC 18.40.040 and other applicable sections of DCC Title 18:

...

- Z. ~~An existing building, or a manufactured dwelling in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative as defined in ORS 215.283. For the purposes of this section, "existing" means the building was in existence on or before March 29, 2017. Temporary Hardship Dwelling~~
 1. ~~A temporary hardship dwelling is conditionally allowed subject to the provisions in 18.116.090, as well as DCC 18.40.040, and 18.40.060 of this chapter. As used in this section, "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons.~~
 2. ~~The use shall be subject to the review criteria in DCC 18.116.090, as well as DCC 18.40.040 and 18.40.60.~~
 3. ~~The manufactured home shall use the same subsurface sewage disposal system used by the existing dwellings if that disposal system is adequate to accommodate the additional dwelling.~~
 4. ~~If the manufactured dwelling will use a public sanitary sewer system, such condition will not be required.~~

5. A temporary residence approved under this subsection is not eligible for replacement under OAR 660-006-025.

...

HISTORY

Adopted by Ord. [PL-15](#) on 11/1/1979

Amended by Ord. [86-018](#) §8 on 6/30/1986

Amended by Ord. [90-014](#) §28 on 7/12/1990

Amended by Ord. [92-025](#) §2 on 4/15/1991

Amended by Ord. [91-038](#) §1 on 9/30/1991

Amended by Ord. [92-068](#) §1 on 12/7/1992

Amended by Ord. [94-038](#) §1 on 10/5/1994

Amended by Ord. [2000-033](#) §1 on 12/6/2000

Amended by Ord. [2004-020](#) §6 on 10/13/2004

Amended by Ord. [2007-020](#) §4 on 2/6/2008

Amended by Ord. [2012-007](#) §4 on 5/2/2012

Amended by Ord. [2018-006](#) §7 on 11/20/2018

Amended by Ord. [2020-007](#) §11 on 10/27/2020

Amended by Ord. [2025-002](#) §8 on 3/28/2025

[Amended by Ord. 2025-005 §4 on 5/21/2025](#)

Exhibit E to Ordinance 2025-005

CHAPTER 18.60 RURAL RESIDENTIAL ZONE; RR-10[18.60.010 Purposes](#)[18.60.020 Uses Permitted Outright](#)[18.60.030 Conditional Uses Permitted](#)[18.60.035 Destination Resorts](#)[18.60.040 Setback Requirements](#)[18.60.050 Ordinary High Water Mark Setback](#)[18.60.060 Dimensional Standards](#)[18.60.070 Limitations On Conditional Uses](#)[18.60.080 Rimrock Setback](#)[18.60.090 Oregon Water Wonderland Unit 2 Sewer District Limited Use Combining Zone](#)

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18.60.020 Uses Permitted Outright

The following uses and their accessory uses are permitted outright.

- A. A single-unit dwelling, or a manufactured dwelling subject to DCC 18.116.070.
- B. Utility facilities necessary to serve the area including energy facilities, water supply and treatment and sewage disposal and treatment.
- C. Community center, if shown and approved on the original plan or plat of the development.
- D. Agricultural use as defined in DCC Title 18.
- E. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by DCC 18.116.230.
- F. Class III road or street project.
- G. Noncommercial horse stables as defined in DCC Title 18, excluding horse events.
- H. Horse events, including associated structures, involving:
 - 1. Fewer than 10 riders;
 - 2. Ten to 25 riders, no more than two times per month on nonconsecutive days; or
 - 3. More than 25 riders, no more than two times per year on nonconsecutive days.
Incidental musical programs are not included in this definition. Overnight stays by participants, trainers or spectators in RVs on the premises is not an incident of such horse events.
- I. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.
- J. Type 1 Home Occupation, subject to DCC 18.116.280.

- K. A historic home accessory dwelling unit, subject to DCC 18.116.350.
- L. A residential accessory dwelling unit, subject to DCC 18.116.355.
- M. Residential Home.
- N. A recreational vehicle as rental dwelling, subject to 18.116.095(D).
- O. Temporary Hardship Dwelling, subject to DCC 18.116.090.**

HISTORY

Adopted by Ord. [PL-15](#) on 11/1/1979
Amended by Ord. [91-005](#) §§30 & 31 on 3/4/1991
Amended by Ord. [91-020](#) §1 on 5/29/1991
Amended by Ord. [93-043](#) §8 on 8/25/1993
Amended by Ord. [94-008](#) §12 on 6/8/1994
Amended by Ord. [2001-016](#) §2 on 3/28/2001
Amended by Ord. [2001-039](#) §5 on 12/12/2001
Amended by Ord. [2004-002](#) §7 on 4/28/2004
Amended by Ord. [2019-009](#) §2 on 9/3/2019
Recorded by Ord. [2019-009](#) §2 on 9/3/2019
Adopted by Ord. [2023-014](#) §2 on 12/1/2023
Amended by Ord. [2024-008](#) §7 on 1/7/2025
Amended by Ord. [2025-002](#) §12 on 3/28/2025
Amended by Ord. 2025-004 §3 on 5/7/2025
Amended by Ord. 2025-005 §5 on 5/21/2025

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Exhibit F to Ordinance 2025-005

CHAPTER 18.65 RURAL SERVICE CENTER; UNINCORPORATED COMMUNITY ZONE18.65.010 Purpose18.65.020 RSC; Commercial/Mixed Use District (Brothers, Hampton, Millican, Whistlestop And Wildhunt)18.65.021 Alfalfa RSC; Commercial/Mixed Use District18.65.022 Alfalfa RSC; Residential District18.65.023 RSC; Open Space District18.65.030 Standards For All Districts

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18.65.020 RSC; Commercial/Mixed Use District (Brothers, Hampton, Millican, Whistlestop And Wildhunt)

- A. Uses Permitted Outright. The following uses and their accessory uses are permitted outright, subject to applicable provisions of this chapter:
1. A single-unit dwelling or a manufactured dwelling, subject to DCC 18.116.070.
 2. Type 1 Home Occupation, subject to DCC 18.116.280.
 3. Residential home.
 4. A duplex.
 5. Agricultural uses, as defined in DCC Title 18, and excluding livestock feed lot or sales yard, and hog or mink farms.
 6. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by DCC 18.116.230.
 7. Class III road and street project.
 8. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.
 9. Temporary Hardship Dwelling, subject to DCC 18.116.090.

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HISTORY*Adopted by Ord. 2002-002 §2 on 6/5/2002**Amended by Ord. 2002-028 §1 on 7/24/2002**Amended by Ord. 2004-002 §11 on 4/28/2004**Amended by Ord. 2015-004 §2 on 4/22/2015**Amended by Ord. 2016-015 §4 on 7/1/2016**Amended by Ord. 2018-006 §8 on 11/20/2018**Amended by Ord. 2020-001 §6 on 4/21/2020*

Amended by Ord. [2022-014](#) §2 on 4/4/2023
 Amended by Ord. [2024-008](#) §8 on 1/7/2025
 Amended by Ord. [2025-002](#) §14 on 3/28/2025
 Amended by Ord. [2025-005](#) §6 on 5/21/2025

18.65.021 Alfalfa RSC; Commercial/Mixed Use District

In Alfalfa, the following uses and their accessory uses are permitted:

A. Uses Permitted Outright.

1. A single-unit dwelling or a manufactured dwelling, subject to DCC 18.116.070.
2. Type 1 Home Occupation, subject to DCC 18.116.280.
3. Residential home.
4. Residential facility.
5. A duplex.
6. Agricultural uses, as defined in DCC Title 18, and excluding livestock feed lot or sales yard, and hog or mink farms.
7. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by DCC 18.116.230.
8. Class III road and street project.
9. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.
10. [Temporary Hardship Dwelling, subject to DCC 18.116.090.](#)

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HISTORY

Adopted by Ord. [2002-002](#) §2 on 6/5/2002
 Amended by Ord. [2018-006](#) §8 on 11/20/2018
 Amended by Ord. [2020-001](#) §6 on 4/21/2020
 Amended by Ord. [2022-014](#) §2 on 4/4/2023
 Amended by Ord. [2024-008](#) §8 on 1/7/2025
 Amended by Ord. [2025-002](#) §14 on 3/28/2025
 Amended by Ord. [2025-005](#) §6 on 5/21/2025

18.65.022 Alfalfa RSC; Residential District

- ##### **A. Uses Permitted Outright.**
- The following uses and their accessory uses are permitted outright, subject to the applicable provisions of this chapter:

1. Agricultural uses, as defined in DCC Title 18, subject to the restrictions in DCC 18.65.021(D), and excluding livestock feed lot or sales yard, and hog or mink farms.
2. A single-unit dwelling, or a manufactured dwelling subject to DCC 18.116.070.
3. A duplex.
4. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.
5. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by DCC 18.116.230.
6. Class III road or street project.
7. Type 1 Home Occupation, subject to DCC 18.116.280.
8. Residential home.
9. Temporary Hardship Dwelling, subject to DCC 18.116.090.

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HISTORY

Adopted by Ord. [2002-002](#) §2 on 6/5/2002

Amended by Ord. [2002-028](#) §1 on 7/24/2002

Amended by Ord. [2004-002](#) §12 on 4/28/2004

Amended by Ord. [2020-001](#) §6 on 4/21/2020

Amended by Ord. [2020-010](#) §2 on 7/3/2020

Amended by Ord. [2024-008](#) §8 on 1/7/2025

Amended by Ord. [2025-002](#) §14 on 3/28/2025

[Amended by Ord. 2025-005 §6 on 5/21/2025](#)

Exhibit G to Ordinance 2025-005

CHAPTER 18.66 TERREBONNE RURAL COMMUNITY ZONING DISTRICTS[18.66.010 Purpose](#)[18.66.020 Residential \(TeR\) District](#)[18.66.030 Residential-5 Acre Minimum \(TeR5\) District](#)[18.66.040 Commercial \(TeC\) District](#)[18.66.050 Commercial-Rural \(TeCR\) District](#)[18.66.060 Standards For All Districts](#)[18.66.070 Right-Of-Way Development Standards](#)

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18.66.020 Residential (TeR) District

The Terrebonne Residential District allows a mixture of dwelling types and densities suited to the level of available water and sewer facilities. The purpose of this district is to allow new residential development that is compatible with the rural character of the area.

A. Permitted uses. The following uses and their accessory uses are permitted outright and do not require site plan review under DCC 18.124:

1. A single-family dwelling or a manufactured dwelling subject to DCC 18.116.070.
2. A duplex.
3. Type 1 Home Occupation, subject to DCC 18.116.280.
4. Agricultural uses as defined in DCC 18.04, involving:
 - a. Keeping of cows, horses, goats, sheep or similar farm animals, provided that the total number of such animals over the age of six months is limited to the lot area divided by 20,000 square feet.
 - b. Keeping of chickens, fowl, rabbits or similar farm animals, provided that the total number of such animals over the age of six months does not exceed one for each 500 square feet of lot area.
5. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards of DCC 18.66.070 and 18.116.230.
6. Class III road or street project.
7. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.
8. Residential home.
9. Temporary Hardship Dwelling, subject to 18.116.090.

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HISTORY*Adopted by Ord. [97-003](#) §2 on 6/4/1997**Amended by Ord. [97-063](#) §3 on 11/12/1997**Amended by Ord. [2004-002](#) §13 on 4/28/2004**Amended by Ord. [2020-001](#) §7 on 4/21/2020**Amended by Ord. [2020-010](#) §3 on 7/3/2020**Amended by Ord. [2024-008](#) §9 on 1/7/2025**Amended by Ord. [2025-002](#) §15 on 3/28/2025**[Amended by Ord. 2025-005 §7 on 5/21/2025](#)***18.66.030 Residential-5 Acre Minimum (TeR5) District**

The purpose of the Terrebonne Residential-5 Acre Minimum District is to retain large rural residential lots or parcels where community sewer and water are not available.

A. Permitted Uses. The following uses and their accessory uses are permitted outright and do not require site plan review under DCC 18.124:

1. A single-unit dwelling or a manufactured dwelling subject to DCC 18.116.070.
2. A duplex.
3. Type 1 Home Occupation, subject to DCC 18.116.280.
4. Agricultural uses as defined in DCC 18.04, involving:
 - a. Keeping of cows, horses, goats, sheep or similar farm animals, provided that the total number of such animals over the age of six months is limited to the lot area divided by 20,000 square feet.
 - b. Keeping of chickens, fowl, rabbits or similar farm animals over the age of six months, provided that the total numbers of such animals does not exceed one for each 500 square feet of lot area
5. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards of DCC 18.66.070 and 18.116.230.
6. Class III road or street project.
7. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.
8. Residential home.
9. [Temporary Hardship Dwelling, subject to DCC 18.116.090.](#)

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HISTORY

Adopted by Ord. [97-003](#) §2 on 6/4/1997

Amended by Ord. [97-063](#) §3 on 11/12/1997

Amended by Ord. [2004-002](#) §14 on 4/28/2004

Amended by Ord. [2020-001](#) §7 on 4/21/2020

Amended by Ord. [2020-010](#) §3 on 7/3/2020

Amended by Ord. [2024-008](#) §9 on 1/7/2025

Amended by Ord. [2025-002](#) §15 on 3/28/2025

[Amended by Ord. 2025-005 §7 on 5/21/2025](#)

18.66.040 Commercial (TeC) District

The Terrebonne Commercial District is intended to allow a range of commercial and limited industrial uses to serve the community and surrounding rural area.

A. Permitted Uses. The following uses and their accessory uses are permitted outright and do not require site plan review under DCC 18.124:

1. A single-unit dwelling or a duplex on a lot or parcel existing on June 4, 1997.
2. A manufactured dwelling on a lot or parcel existing on June 4, 1997, subject to DCC 18.116.070.
3. Type 1 Home Occupation, subject to DCC 18.116.280.
4. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards of DCC 18.66.070 and 18.116.230.
5. Class III road or street project.
6. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.
7. Residential home on a lot or parcel existing on June 4, 1997.
8. [Temporary Hardship Dwelling, subject to DCC 18.116.090.](#)

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HISTORY

Adopted by Ord. [97-003](#) §2 on 6/4/1997

Amended by Ord. [97-063](#) §3 on 11/12/1997

Amended by Ord. [2004-002](#) §15 on 4/28/2004

Amended by Ord. [2015-004](#) §3 on 4/22/2015

Amended by Ord. [2016-015](#) §5 on 7/1/2016

Amended by Ord. [2020-001](#) §7 on 4/21/2020

Amended by Ord. [2020-010](#) §3 on 7/3/2020

Amended by Ord. [2021-004](#) §3 on 5/27/2021

Amended by Ord. [2022-014](#) §3 on 4/4/2023

Amended by Ord. [2024-008](#) §9 on 1/7/2025

Amended by Ord. [2025-002](#) §15 on 3/28/2025

[Amended by Ord. 2025-005 §7 on 5/21/2025](#)

18.66.050 Commercial-Rural (TeCR) District

The Terrebonne Commercial-Rural District allows a mix of commercial and industrial uses common to a farming community.

A. Permitted Uses. The following uses and their accessory uses are permitted outright and do not require site plan review under DCC 18.124:

1. A single-unit dwelling on a lot or parcel existing on June 4, 1997.
2. A manufactured dwelling on a lot or parcel existing on June 4, 1997, subject to DCC 18.116.070.
3. Type 1 Home Occupation, subject to DCC 18.116.280.
4. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards of DCC 18.66.070 and 18.116.230.
5. Class III road or street project.
6. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.
7. Residential home on a lot or parcel existing on June 4, 1997.
8. [Temporary Hardship Dwelling, subject to DCC 18.116.090.](#)

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HISTORY

Adopted by Ord. [97-003](#) §2 on 6/4/1997

Amended by Ord. [2001-016](#) §2 on 3/28/2001

Amended by Ord. [2001-039](#) §7 on 12/12/2001

Amended by Ord. [2004-002](#) §16 on 4/28/2004

Amended by Ord. [2015-004](#) §4 on 4/22/2015

Amended by Ord. [2016-015](#) §5 on 7/1/2016

Amended by Ord. [2020-001](#) §7 on 4/21/2020

Amended by Ord. [2021-004](#) §3 on 5/27/2021

Amended by Ord. [2024-008](#) §9 on 1/7/2025

Amended by Ord. [2025-002](#) §15 on 3/28/2025

[Amended by Ord. 2025-005 §7 on 5/21/2025](#)

Exhibit H to Ordinance 2025-005

CHAPTER 18.67 TUMALO RURAL COMMUNITY ZONING DISTRICTS[18.67.010 Purpose](#)[18.67.020 Residential \(TuR\) District](#)[18.67.030 Residential-5 Acre Minimum \(TuR5\) District](#)[18.67.040 Commercial \(TuC\) District](#)[18.67.050 Research And Development \(TuRE\) District](#)[18.67.060 Industrial \(Tul\) District](#)[18.67.070 Flood Plain \(TuFP\) District](#)[18.67.080 Standards For All Districts](#)[18.67.090 Right-Of-Way Development Standards](#)

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18.67.020 Residential (TuR) District

The Tumalo Residential (TuR) District allows a mixture of housing types and densities suited to the level of available water and sewer facilities. The purpose of this district is to allow new residential development that is compatible with the rural character of the area.

A. Permitted Uses. The following uses and their accessory uses are permitted outright and do not require site plan review under DCC 18.124.

1. A single-unit dwelling, or a manufactured dwelling subject to DCC 18.116.070.
2. A duplex.
3. Type 1 Home Occupation, subject to DCC 18.116.280.
4. Agricultural uses as defined in DCC Title 18, involving:
 - a. Keeping of cows, horses, goats, sheep or similar farm animals, provided that the total number of such animals over the age of six months is limited to the lot area divided by 20,000 square feet.
 - b. Keeping of chickens, fowl, rabbits or similar farm animals, provided that the total number of such animals over the age of six months does not exceed one for each 500 square feet of lot area
5. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards of DCC 18.67.080 and 18.116.230.
6. Class III road or street project.
7. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.
8. Residential home.
9. Temporary Hardship Dwelling, subject to DCC 18.116.090.

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HISTORY*Adopted by Ord. [97-033](#) §2 on 6/25/1997**Amended by Ord. [97-063](#) §3 on 11/12/1997**Amended by Ord. [2001-016](#) §2 on 3/28/2001**Amended by Ord. [2001-039](#) §8 on 12/12/2001**Amended by Ord. [2004-002](#) §17 on 4/28/2004**Amended by Ord. [2020-001](#) §8 on 4/21/2020**Amended by Ord. [2020-010](#) §4 on 7/3/2020**Amended by Ord. [2021-013](#) §8 on 4/5/2022**Amended by Ord. [2024-008](#) §10 on 1/7/2025**Amended by Ord. [2025-002](#) §16 on 3/28/2025**[Amended by Ord. 2025-005 §8 on 5/21/2025](#)***18.67.030 Residential-5 Acre Minimum (TuR5) District**

The purpose of the Tumalo Residential-5 Acre Minimum District is to retain large rural residential lots or parcels.

A. Permitted Uses. The following uses and their accessory uses are permitted outright and do not require site plan review under DCC 18.124.

1. A single-unit dwelling or a manufactured dwelling subject to DCC 18.116.070.
2. Type 1 Home Occupation, subject to DCC 18.116.280.
3. Agricultural uses as defined in DCC 18.04, involving:
 - a. Keeping of cows, horses, goats, sheep or similar farm animals, provided that the total numbers of such animals over the age of six months is limited to lot area divided by 20,000 square feet.
 - b. Keeping of chickens, fowl, rabbits or similar farm animals over the age of six months, provided that the total numbers of such animals does not exceed one for each 500 square feet of lot area.
4. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards of DCC 18.67.080 and 18.116.230.
5. Class III road or street project.
6. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.
7. Residential home.
8. [Temporary Hardship Dwelling, subject to DCC 18.116.090.](#)

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HISTORY

Adopted by Ord. [97-033](#) §2 on 6/25/1997

Amended by Ord. [97-063](#) §3 on 11/12/1997

Amended by Ord. [2000-033](#) §11 on 12/6/2000

Amended by Ord. [2001-016](#) §2 on 3/28/2001

Amended by Ord. [2001-039](#) §8 on 12/12/2001

Amended by Ord. [2004-002](#) §18 on 4/28/2004

Amended by Ord. [2020-001](#) §8 on 4/21/2020

Amended by Ord. [2020-010](#) §4 on 7/3/2020

Amended by Ord. [2024-008](#) §10 on 1/7/2025

Amended by Ord. [2025-002](#) §16 on 3/28/2025

[Amended by Ord. 2025-005 §8 on 5/21/2025](#)

18.67.040 Commercial (TuC) District

The Tumalo Commercial District is intended to allow a range of limited commercial and industrial uses to serve the community and surrounding area.

A. Permitted Uses. The following uses and their accessory uses are permitted outright and do not require site plan review under DCC 18.124.

1. A single-unit dwelling or duplex.
2. A manufactured dwelling subject to DCC 18.116.070.
3. Type 1 Home Occupation, subject to DCC 18.116.280.
4. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards of DCC 18.67.060 and 18.116.230.
5. Class III road or street project.
6. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.
7. Residential home.
8. [Temporary Hardship Dwelling, subject to DCC 18.116.090.](#)

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HISTORY

Adopted by Ord. [97-033](#) §2 on 6/25/1997

Amended by Ord. [97-063](#) §3 on 11/12/1997

Amended by Ord. [2000-033](#) §11 on 12/6/2000

Amended by Ord. [2001-016](#) §2 on 3/28/2001

Amended by Ord. [2001-039](#) §8 on 12/12/2001

Amended by Ord. [2004-002](#) §19 on 4/28/2004

Amended by Ord. [2004-013](#) §7 on 9/21/2004

Amended by Ord. [2015-004](#) §5 on 4/22/2015

Exhibit H to Ordinance 2025-005

Amended by Ord. [2016-015](#) §6 on 7/1/2016
Amended by Ord. [2020-001](#) §8 on 4/21/2020
Amended by Ord. [2020-010](#) §4 on 7/3/2020
Amended by Ord. [2021-004](#) §4 on 5/27/2021
Amended by Ord. [2021-013](#) §8 on 4/5/2022
Amended by Ord. [2022-014](#) §4 on 4/4/2023
Amended by Ord. [2024-008](#) §10 on 1/7/2025
Amended by Ord. [2025-002](#) §16 on 3/28/2025
[Amended by Ord. 2025-005 §8 on 5/21/2025](#)

Exhibit I to Ordinance 2025-005

CHAPTER 18.74 RURAL COMMERCIAL ZONE[18.74.010 Purpose](#)[18.74.020 Uses Permitted; Deschutes Junction And Deschutes River Woods Store](#)[18.74.025 Uses Permitted; Spring River](#)[18.74.027 Uses Permitted; Pine Forest And Rosland](#)[18.74.030 Development Standards](#)[18.74.050 Maps](#)

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18.74.020 Uses Permitted; Deschutes Junction And Deschutes River Woods Store

A. Uses Permitted Outright. The following uses and their accessory uses are permitted outright and do not require site plan review under DCC 18.124:

1. A single-unit dwelling.
2. A manufactured home subject to DCC 18.116.070.
3. A duplex
4. Type 1 Home Occupation, subject to DCC 18.116.280.
5. Agricultural uses.
6. Class I and II road or street project subject to approval as part of a land partition or subdivision, or subject to the standards and criteria established in DCC 18.116.230.
7. Class III road or street project.
8. A lawfully established use existing as of 11/05/02, the date this chapter was adopted, not otherwise permitted by this chapter.
9. Residential home.
10. **Temporary Hardship Dwelling, subject to DCC 18.116.090.**

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HISTORY*Adopted by Ord. [2002-019](#) §2 on 8/7/2002**Amended by Ord. [2004-002](#) §20 on 4/28/2004**Amended by Ord. [2008-008](#) §1 on 3/18/2008**Amended by Ord. [2015-004](#) §7 on 4/22/2015**Amended by Ord. [2016-015](#) §7 on 7/1/2016**Amended by Ord. [2020-001](#) §9 on 4/21/2020**Amended by Ord. [2020-010](#) §5 on 7/3/2020**Amended by Ord. [2021-013](#) §9 on 4/5/2022*

Amended by Ord. [2022-014](#) §5 on 4/4/2023

Amended by Ord. [2024-008](#) §11 on 1/7/2025

Amended by Ord. [2025-002](#) §17 on 3/28/2025

[Amended by Ord. 2025-005 § 9 on 5/21/2025](#)

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Exhibit J to Ordinance 2025-005

CHAPTER 18.108 URBAN UNINCORPORATED COMMUNITY ZONE; SUNRIVER[18.108.010 Purpose](#)[18.108.020 Standards For All Districts](#)[18.108.030 Single Unit Residential; RS District](#)[18.108.040 Multiple Unit Residential; RM District](#)[18.108.050 Commercial; C District](#)[18.108.055 Town Center; TC District](#)[18.108.060 Resort; R District](#)[18.108.070 Resort Marina; RA District](#)[18.108.080 Resort Golf Course; RG District](#)[18.108.090 Resort Equestrian; RE District](#)[18.108.100 Resort Nature Center; RN District](#)[18.108.110 Business Park; BP District](#)[18.108.120 Community General; CG District](#)[18.108.130 Community Recreation; CR District](#)[18.108.140 Community Limited; CL District](#)[18.108.150 Community Neighborhood; CN District](#)[18.108.160 Airport; A District](#)[18.108.170 Utility; U District](#)[18.108.175 Utility; U District/Limited Use Combining District](#)[18.108.180 Forest; F District](#)[18.108.190 Flood Plain; FP Combining District](#)

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18.108.030 Single Unit Residential; RS District

A. Uses Permitted Outright. The following uses and their accessory uses are permitted outright:

1. Single-unit dwelling.
2. Recreational path.
3. Residential home.
4. Temporary Hardship Dwelling, subject to DCC 18.116.090.

...

HISTORY*Repealed & Reenacted by Ord. [97-078](#) §2 on 12/31/1997**Amended by Ord. [98-035](#) §2 on 6/10/1998**Amended by Ord. [2004-013](#) §11 on 9/21/2004**Amended by Ord. [2020-001](#) §12 on 4/21/2020**Amended by Ord. [2024-008](#) §13 on 1/7/2025*

Amended by Ord. [2025-002](#) §26 on 3/28/2025

Amended by Ord. [2025-005](#) §10 on 5/21/2025

18.108.110 Business Park; BP District

- A. Uses Permitted Outright. The following uses and their accessory uses are permitted outright, subject to the applicable provisions of DCC 18.116 and DCC 18.124:
1. Residential uses existing as of March 31, 1997.
 2. Administrative, educational and other related facilities in conjunction with a use permitted outright.
 3. Library.
 4. Recreational path.
 5. Post office.
 6. Religious institutions or assemblies.
 7. Child care facilities, nurseries, and/or preschools.
 8. A building or buildings each not exceeding 8,000 square feet of floor area including any combination of:
Retail/rental store, office and service establishment, including but not limited to the following:
 - a. Automobile, motorcycle, boat, recreational vehicle, trailer or truck sales, rental, repair or maintenance business, including tire stores and parts stores.
 - b. Agricultural equipment and supplies.
 - c. Car wash.
 - d. Contractor's office, including but not limited to, building, electrical, plumbing, heating and air conditioning, painter, etc.
 - e. Construction equipment sales, rental, and/or service.
 - f. Exterminator services.
 - g. Golf cart sales and service.
 - h. Lumber yard, home improvement or building materials store.
 - i. Housekeeping and janitorial service.
 - j. Dry cleaner and/or self-service laundry facility.
 - k. Marine/boat sales and service.
 - l. Restaurant, bar and cocktail lounge including entertainment.

- m. Marijuana wholesaling, office only. There shall be no storage of marijuana items or products at the same location.
- 9. A building or buildings each not exceeding 20,000 square feet of floor area including any combination of:
 - a. Scientific research or experimental development of materials, methods or products, including engineering and laboratory research.
 - b. Light manufacturing, assembly, fabricating or packaging of products from previously prepared materials, including but not limited to cloth, paper, leather, precious or semi-precious metals or stones, etc.
 - c. Manufacture of food products, pharmaceuticals and the like, but not including the production of fish or meat products, or the rendering of fats and oils.
 - d. Warehouse and distribution uses in a building or buildings each less than 10,000 square feet of floor area.
- 10. Employee housing structures.

11. Temporary Hardship Dwelling, subject to DCC 18.116.090.

...

HISTORY

Repealed & Reenacted by Ord. [97-078](#) §2 on 12/31/1997

Amended by Ord. [2012-002](#) §1 on 2/27/2012

Amended by Ord. [2015-004](#) §9 on 4/22/2015

Amended by Ord. [2016-015](#) §9 on 7/1/2016

Amended by Ord. [2019-008](#) §1 on 3/6/2019

Amended by Ord. [2020-004](#) §1 on 2/19/2020

Amended by Ord. [2020-001](#) §12 on 4/21/2020

Amended by Ord. [2021-004](#) §6 on 5/27/2021

Amended by Ord. [2021-013](#) §12 on 4/5/2022

Amended by Ord. 2025-002 §26 on 3/28/2025

[Amended by Ord. 2025-005 §10 on 5/21/2025](#)

Exhibit K to Ordinance 2025-005

CHAPTER 18.110 RESORT COMMUNITY ZONE18.110.010 Purpose18.110.020 Seventh Mountain/Widgi Creek And Black Butte Ranch Resort Districts18.110.030 Widgi Creek Residential District18.110.040 Black Butte Ranch Surface Mining/Limited Use Combining District18.110.050 Black Butte Ranch-Utility/Limited Use Combining District18.110.060 Development Standards

...

18.110.020 Seventh Mountain/Widgi Creek And Black Butte Ranch Resort Districts

A. Uses permitted outright. The following uses and their accessory uses are permitted subject to the applicable provisions of DCC 18.110.050:

1. A single-unit dwelling.
2. Residential home.
3. Timeshare units existing as of January 1, 1984 at Black Butte Ranch.
4. Timeshare units at the Inn of the Seventh Mountain.
5. The following resort recreational facilities: Recreational path, picnic and barbecue area, park, playground, and sport courts for basketball, volleyball, and similar small-scale recreation activities.
6. Livestock and horse grazing on common area in Black Butte Ranch.
7. Police or security facility.
8. Temporary Hardship Dwelling, subject to DCC 18.116.090.

HISTORY*Adopted by Ord. 2001-048 §2 on 12/10/2001**Amended by Ord. 2014-009 §1 on 8/6/2014**Amended by Ord. 2014-025 §1 on 9/15/2014**Amended by Ord. 2020-001 §13 on 4/21/2020**Amended by Ord. 2024-008 §14 on 1/7/2025**Amended by Ord. 2025-002 §27 on 3/28/2025**Amended by Ord. 2025-005 §11 on 5/21/2025***18.110.030 Widgi Creek Residential District**

The following uses and their accessory uses are permitted subject to the applicable provisions of DCC 18.110.060:

- A. A single-unit dwelling.

- B. Residential home.
- C. Residential facility.
- D. Timeshare units.
- E. Temporary Hardship Dwelling, subject to DCC 18.116.090.

HISTORY

Adopted by Ord. [2001-048](#) §2 on 12/10/2001

Amended by Ord. 2025-002 §27 on 3/28/2025

Amended by Ord. 2025-005 §11 on 5/21/2025

Exhibit L to Ordinance 2025-005

18.116.090 ~~A Manufactured Dwelling Or Recreational Vehicle As A~~ Temporary Hardship Dwelling

- A. As used in this section, “hardship” means a medical hardship or hardship for the care of an aged or infirmed person or persons experienced by the existing resident or relative.
- B. As used in this section, “relative” means a grandparent, step-grandparent, grandchild, step-grandchild, parent, step-parent, child, step-child, brother, sister, sibling, step-sibling, either blood or legal relationship, niece, nephew, uncle, aunt, or first cousin.
- C. ~~Unless otherwise allowed pursuant to DCC 18.116.095(C), a~~ A temporary use permit ~~for the term of the hardship for one of the following hardship dwelling types- may be granted on a lot or parcel in addition to~~ conjunction with an existing primary dwelling unit:
1. ~~One~~ manufactured dwelling of any class;
 2. ~~or e~~One recreational vehicle ~~subject to the criteria under subsection (F); or~~
 3. ~~on a lot or parcel in addition to a~~ The temporary residential use of an existing building subject to the following:
 - a. ~~:-~~ An existing ~~dwelling building is one that was constructed at least two years prior to the date of application for the subject temporary residential use permit. For the purposes of this section, “constructed” means the Building Division approved the final inspection at least two years prior to the date of application for the subject temporary use permit. Any modifications to the existing building for the hardship dwelling must be contained within the existing building-floor area.~~
 - a-b. This type of hardship dwelling is not permitted on properties within the Multiple Use Agricultural (MUA-10) or Rural Residential (RR-10) zones. ~~may be granted when a medical condition exists. In the Exclusive Farm Use and Forest zones only, an existing building may be used as a temporary dwelling. For the purposes of this section, “existing” means the building was in existence on or before March 29, 2017.~~
- A-D. The hardship dwelling must use the same onsite septic disposal system used by the existing primary dwelling unit, provided that the existing onsite septic system is adequate to accommodate the hardship dwelling. If the hardship dwelling will be connected to a community sewer system this requirement does not apply. ~~The person with a medical condition must be either one of the property owners or a relative of one of the property owners.~~
- B-E. Prior to initiating the use, the property owner must obtain all necessary permits from the Deschutes County Building and Onsite Wastewater Divisions. ~~For the purposes of this section, a relative is defined as a grandparent, step-grandparent, grandchild, parent, step-~~

~~parent, child, step-child, brother, sister, sibling, step-sibling, either blood or legal relationship, niece, nephew, uncle, aunt or first cousin.~~

F. ~~A recreation vehicle hardship dwelling must comply with all of the following requirements:~~

- ~~1. The recreational vehicle must have a sink and toilet;~~
- ~~2. The recreational vehicle must comply with all setbacks of the underlying zone(s);~~
- ~~3. The recreational vehicle must be fully licensed;~~
- ~~4. The recreational vehicle must be ready for highway use, on its wheels or jacking system, and must be attached to the site only by quick disconnect type utilities and security devices;~~
- ~~5. A recreational vehicle hardship dwelling located in a special flood hazard area must comply with DCC 18.96; and~~
- ~~6. Permanent attached additions are prohibited.~~

G. ~~One temporary use permit for a hardship dwelling is permitted provided there is no guest house, recreational vehicle as a rental dwelling, or accessory dwelling unit on the subject lot or parcel. A recreational vehicle permitted under DCC 18.116.095(C) is allowed in addition to a hardship dwelling. Such medical condition must be verified by a doctor's written statement, which shall accompany the permit application.~~

~~E.H. The hardship shall be verified by a state-licensed medical practitioner's written statement.~~

~~D.I. The temporary use permit shall be reviewed annually every two years to ensure ongoing for compliance with the terms of DCC 18.116.090.~~

J. ~~Within three months of the end of the hardship, one of the following must occur:~~

- ~~1. The manufactured dwelling shall be removed, demolished, or converted to an allowed use in the underlying zone(s);~~
- ~~2. or the recreational vehicle shall be vacated, and disconnected from any electric, water or septic/sewer facility connection; or~~
- ~~1.3. for which a permit has been issued not later than 90 days following the date the medical condition requiring the temporary use permit ceases to exist. In the Exclusive Farm Use and Forest zones the For an existing building used as a hardship dwellings, the building must will be converted to a permitted non-residential use in the underlying zone(s). within 90 days following the date the medical condition requiring the temporary use permit ceases to exist.~~

~~E. If a recreational vehicle is used as a medical hardship dwelling, it shall have a bathroom, and shall meet the minimum setbacks for the zone in which it is located.~~

~~F.—The applicant shall obtain all necessary permits from the County Building and Environmental Health Divisions prior to initiating the use.~~

~~G.—A recreational vehicle shall be fully licensed and ready for highway use, on its wheels or jacking system, shall be attached to the site only by quick disconnect type utilities and security devices, and shall have no permanently attached additions.~~

~~H.—As identified in this section, a single recreational vehicle located within a special flood hazard area is subject to the standards and criteria established by DCC 18.96.~~

HISTORY

Adopted by Ord. [PL-15](#) on 11/1/1979

Amended by Ord. [89-004](#) §5 on 3/24/1989

Amended by Ord. [91-005](#) §45 on 3/4/1991

Amended by Ord. [2008-022](#) §2 on 11/10/2008

Amended by Ord. [2012-007](#) §5 on 5/2/2012

Amended by Ord. [2017-001](#) §1 on 2/27/2017

Amended by Ord. [2023-001](#) §16 on 5/30/2023

Amended by Ord 2025-002 §30 on 3/28/2025

Amended by Ord. 2025-004 §2 on 5/7/2025

[Amended by Ord. 2025-005 §12 on 5/21/2025](#)



Exhibit M to Ordinance 2025-005

FINDINGS

HARDSHIP DWELLING TEXT AMENDMENTS

I. APPLICABLE CRITERIA:

Title 22, Deschutes County Development Procedures Ordinance

II. BACKGROUND:

This is a legislative text amendment to Deschutes County Code (DCC), Title 18, County Zoning. The primary purpose of the amendment is to conform local requirements to state law and provide consistency for the review of hardship dwellings across multiple county zones. Notable changes include:

- Reorganized content for readability;
- Amended outdated references;
- Clarified hardship dwelling can be used for the “aged” as well as the “infirm”;
- Clarified “existing building” use and definition for the purpose of the section;
- Clarified hardship dwelling can be the only second dwelling on the property;
- Amended renewal requirement from every one year to two years;
- Listed the use in all permissible Title 18 zones for readability.

Since 1979, Deschutes County has allowed property owners to obtain a temporary use permit for a secondary dwelling on a property, with the intent the dwelling would be used for the care of a property owner or relative of the property owner with a medical condition. This would allow for the person with the medical condition to maintain independence and continue to live on a rural property while also receiving necessary medical attention.

The current requirements for hardship dwellings were drafted in 2008. Since that time, the state has undergone rulemaking in farm and forest (resource) zones, providing more detailed guidance on the eligibility and requirements for establishing the use.

OAR 660-004-0040(8)(f) provides limited guidance on hardship dwellings in rural residential exception areas, only noting that the dwelling type for such use is limited to Recreational Vehicle (RV)s and manufactured dwellings. To staff's understanding there is no other state guidance for regulation of temporary hardship dwellings in zones that allow for a single-unit dwelling as a permitted use and are outside of farm, forest, and rural residential exception areas.

The purpose of this proposal is to amend the code for greater consistency with state rules and statutes and to establish a consistent review process for hardship dwelling applications across all County zones in which the use is permitted.

III. STATE REQUIREMENTS AND LOCAL INTERPRETATIONS

As noted above, the state of Oregon regulates hardship dwellings in both Oregon Administrative Rule (OAR) and in Oregon Revised Statute (ORS). These regulations only apply to hardship dwellings in resource zones – the Exclusive Farm Use Zone (DCC 18.16) and Forest Zones (18.32 and 18.40).

ORS 215.283(2)(L) - Uses Permitted in Exclusive Farm Use Zones and ORS 215.755(2) – Other Forestland Dwellings require:

- The use is subject to ORS 215.296 (Farms Impacts Test) for the EFU zone.
- *One manufactured dwelling, recreational vehicle, or temporary residential use of an existing building, in conjunction with the existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident.*
- *Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or in the case of the existing building, the building shall be removed or returned to an allowed nonresidential use.*
- *The governing body or designee shall provide for periodic review of the hardship claimed under this paragraph.*
- *A temporary residence is not eligible for replacement under subsection (1)(p) of this section.*

OAR 660-006-0025(4)(t) – Forest Lands – Uses Authorized in Forest Zones and OAR 660-033-0130(10) -Agricultural Lands – Minimum Standards for Permitted and Conditional Uses require:

- *As used in this section, "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons experienced by the existing resident or relative as defined in ORS chapter 215.*
 - *ORS 215 definition for relative: a relative is defined as a grandparent, step-grandparent, grandchild, parent, step-parent, child, step-child, brother, sister, sibling, step-sibling, either blood or legal relationship, niece, nephew, uncle, aunt or first cousin.*
- *The temporary residence may include a manufactured dwelling, or recreational vehicle, or the temporary residential use of an existing building.*
- *A manufactured dwelling shall use the same subsurface sewage disposal system used by the existing dwelling, if that disposal system is adequate to accommodate the additional dwelling. If the manufactured home will use a public sanitary sewer system, such condition will not be required.*
- *Governing bodies shall review the permit authorizing such manufactured homes every two years.*
- *Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use.*
- *Department of Environmental Quality review and removal requirements also apply.*

The state provides limited guidance on regulations pertaining to hardship dwellings on non-resource lands. The requirement below, which was presented to the Planning Commission during the deliberation process, applies to rural residential exception areas (MUA-10 and RR-10 zones) but does not provide guidance for the use in other nonresource zones, such as in unincorporated communities.

OAR 660-004-0040(8)(f) – Application of Goal 14 to Rural Residential Areas requires:

Except as provided in subsection (e) of this section or section (10) of this rule, a local government shall not allow more than one permanent single-family dwelling to be placed on a lot or parcel in a rural residential area. Where a medical hardship creates a need for a second household to reside temporarily on a lot or parcel where one dwelling already exists, a local government may authorize the temporary placement of a manufactured dwelling or recreational vehicle.

In approaching the amendments, staff has integrated state requirements where possible, for all zones in Title 18 in which a hardship dwelling is permitted, to ensure a consistent and clear process for property owners and county staff.

Deschutes County can provide local interpretation of requirements that are not expressly addressed in OAR or ORS. In coordination with the County's Building, Code Enforcement, Coordinated Services, and Onsite Wastewater Divisions, staff identified several policy choices for consideration.

Use of Existing Building as a Temporary Hardship Dwelling

Property owners can currently utilize an RV or manufactured dwelling for a temporary hardship dwelling in all zones. In farm and forest zones, existing buildings (sheds, accessory structures, barns) are also permitted to be converted for use as a temporary hardship dwelling, per the OAR and ORS.

The proposed text amendment package proposes to allow the use of existing buildings in the following zones, which currently allow for single-unit dwellings:

- 18.65.020, 021, 022: Rural Service Center Unincorporated Community Zones
- 18.66.020, 030, 040, 050: Terrebonne Rural Community Zones
- 18.67.020, 030, 040: Tumalo Rural Community Zones
- 18.74.020: Rural Commercial Zone
- 18.108.030, 110: Sunriver Unincorporated Community Zones
- 18.110.020, 030: Resort Community Zones

During Planning Commission deliberations, staff discovered the restriction in OAR 660-004-040 noted above and amended the original proposal to exclude the use of existing buildings as hardship dwellings in the RR-10 and MUA-10 zones. To staff's understanding, there are no state restrictions on the zones listed above.

Existing Building Definition

State regulations do not define "existing buildings" for temporary hardship dwellings. Currently, the code definition is a building "in existence on or before March 29, 2017". To provide additional flexibility, while still seeking to avoid a scenario in which a new building is constructed for temporary

use, the proposed text amendments alter the definition to be a rolling eligibility date of two years from the date of final inspection of a building to the submittal date of the temporary use permit for a hardship dwelling. If the application is submitted prior to the two-year date, it does not constitute an "existing building."

Modification of Existing Buildings

The proposed text amendments would add a restriction on the modification of existing buildings to be used as temporary hardship dwellings. The intent of the requirement is to limit modifications to minor improvements in the existing building floor area (such as the installation of kitchen facilities) to ensure the use can be converted back to a nonresidential use if the temporary hardship dwelling is no longer needed. The limitation is drafted as follows: *"Any modifications to the existing building for the hardship dwelling must be contained within the existing building-floor area."*

RV Component Requirements

Code Enforcement has processed several cases involving non-operational RVs that are unfit for habitation. The text amendments preserve existing requirements related to the necessary components and siting of an RV and also clarify that an RV must have a sink and a toilet. Although more restrictive than state law, CDD staff are supportive of carrying forward these requirements to ensure RVs are safe for occupants when used as a temporary hardship dwelling. The proposed text amendments include the following component language:

A recreational vehicle hardship dwelling must comply with all of the following requirements:

- 1. The recreational vehicle must have a sink and toilet;*
- 2. The recreational vehicle must comply with all setbacks of the underlying zone(s);*
- 3. The recreational vehicle must be fully licensed;*
- 4. The recreational vehicle must be ready for highway use, on its wheels or jacking system, and must be attached to the site only by quick disconnect type utilities and security devices;*
- 5. A recreational vehicle hardship dwelling located in a special flood hazard area must comply with DCC 18.96.*
- 6. Permanently attached additions are prohibited.*

The Planning Commission supported the proposed text amendment package in its entirety, with the minor amendment to exclude the use of existing buildings as a hardship dwelling type in the MUA-10 and RR-10 zones. Staff requests the Board evaluate these policy options during the hearing process.

IV. BASIC FINDINGS:

The Planning Division determined minor changes were necessary to clarify existing standards and in various sections of the Deschutes County Code (DCC). Staff initiated the proposed changes and notified the Oregon Department of Land Conservation and Development on February 6, 2025 (File no. 247-24-000078-TA). As demonstrated in the findings below, the amendments remain consistent with the Deschutes County Code, the Deschutes County Comprehensive Plan, and the Statewide Planning Goals.

V. FINDINGS:

CHAPTER 22.12, LEGISLATIVE PROCEDURES

Section 22.12.010.

Hearing Required

No legislative change shall be adopted without review by the Planning Commission and a public hearing before the Board of County Commissioners. Public hearings before the Planning Commission shall be set at the discretion of the Planning Director, unless otherwise required by state law.

FINDING: This criterion will be met because a public hearing was held before the Deschutes County Planning Commission (Commission) on March 13, 2025, and a public hearing was held before the Board of County Commissioners (Board) on April 23, 2025.

Section 22.12.020, Notice

Notice

A. Published Notice

- 1. Notice of a legislative change shall be published in a newspaper of general circulation in the county at least 10 days prior to each public hearing.***
- 2. The notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.***

FINDING: This criterion will be met as notice will be published in *The Bulletin* newspaper at least 10 days prior to each public hearing.

B. Posted Notice. Notice shall be posted at the discretion of the Planning Director and where necessary to comply with ORS 203.045.

FINDING: Posted notice was determined by the Planning Director not to be necessary.

C. Individual notice. Individual notice to property owners, as defined in DCC 22.08.010(A), shall be provided at the discretion of the Planning Director, except as required by ORS 215.503.

FINDING: The proposed amendments are legislative and do not apply to any specific property. Therefore, individual notice is not required.

D. Media notice. Copies of the notice of hearing shall be transmitted to other newspapers published in Deschutes County.

FINDING: Notice was provided to the County public information official for wider media distribution. This criterion has been met.

Section 22.12.030 Initiation of Legislative Changes.

A legislative change may be initiated by application of individuals upon payment of required fees as well as by the Board of County Commissioners.

FINDING: The application was initiated by the Deschutes County Planning Division at the direction of the Board and has received a fee waiver. This criterion has been met.

Section 22.12.040. Hearings Body

- A. *The following shall serve as hearings or review body for legislative changes in this order:***
 - 1. *The Planning Commission.***
 - 2. *The Board of County Commissioners.***
- B. *Any legislative change initiated by the Board of County Commissioners shall be reviewed by the Planning Commission prior to action being taken by the Board of Commissioners.***

FINDING: This criterion is met as the Commission held a public hearing on March 13, 2025. The Board held a public hearing on April 23, 2025.

Section 22.12.050 Final Decision

All legislative changes shall be adopted by ordinance

FINDING: The proposed legislative changes included in file no. 247-25-000078-TA will be implemented by ordinances upon approval and adoption by the Board.

OAR 660-015, STATEWIDE PLANNING GOALS AND GUIDELINES

Goal 1: Citizen Involvement:

FINDING: The amendments do not propose to change the structure of the County's citizen involvement program. Notice of the proposed amendments was provided to the *Bulletin* for the Board public hearing.

Goal 2: Land Use Planning:

FINDING: The purpose of the amendment is to integrate requirements from Oregon Administrative Rule and Oregon Revised Statutes. The proposal has a factual base and is consistent with the intent of the Comprehensive Plan and zoning districts. This goal is met.

Goal 3: Agricultural Lands:

FINDING: The proposed amendments integrate requirements from Oregon Administrative Rule and Oregon Revised Statute for hardship dwellings on agricultural lands. Additionally, the rules provide more express guidance for hardship dwellings on non-agricultural lands to avoid conflicts to farm operations on neighboring properties. This goal is met.

Goal 4: Forest Lands:

FINDING: The proposed amendments integrate requirements from Oregon Administrative Rule and Oregon Revised Statute for hardship dwellings on forest lands. Additionally, the rules provide more express guidance for hardship dwellings on non-forest lands to avoid conflicts to forest operations on neighboring properties. This goal is met.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources:

FINDING: The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 5. This goal does not apply.

Goal 6: Air, Water and Land Resources Quality:

FINDING: The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 6. This goal does not apply.

Goal 7: Areas Subject to Natural Disasters and Hazards:

FINDING: The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 7. This goal does not apply.

Goal 8: Recreational Needs:

FINDING: The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 8. This goal does not apply.

Goal 9: Economic Development:

FINDING The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 9. This goal does not apply.

Goal 10: Housing:

FINDING: The proposed amendments provide more flexibility for hardship dwellings, as allowed by state law. The amendments will provide clarity on a housing type for vulnerable populations in the rural county. This goal is met.

Goal 11: Public Facilities and Services:

FINDING: The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 11. This goal does not apply.

Goal 12: Transportation:

FINDING: The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 12. This goal does not apply.

Goal 13: Energy Conservation:

FINDING: The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 13. This goal does not apply.

Goal 14: Urbanization:

FINDING: The proposed amendments integrate requirements from Oregon Administrative Rule and Oregon Revised Statute for hardship dwellings. The use is already permitted in the underlying zoning districts, there is no alteration to allowance of development density on rural lands. This goal does not apply.

Goals 15 through 19

FINDING: These goals are not applicable to the proposed plan and text amendments because the County does not contain these types of lands.

2011 DESCHUTES COUNTY COMPREHENSIVE PLAN

Chapter 3 Rural Growth Management, Section 3.3. Rural Housing Policies

Policy 3.3.5 Maintain the rural character of the County while ensuring a diversity of housing opportunities, including initiating discussions to amend State Statute and/or Oregon Administrative Rules to permit accessory dwelling units in Exclusive Farm Use, Forest and Rural Residential Zones.

FINDING: The intent of the text amendment is to amend regulations for temporary hardship dwellings to be consistent with state law and administrative rule for resource zones. The amendments will also provide a consistent process for regulation of hardship dwellings in both nonresource and resource zones. These requirements will ensure development continues to comply with all state rules and will maintain the rural character of the County through intentional placement of temporary housing associated with a hardship.

VI. CONCLUSION:

Based on the information provided herein, the staff recommends the Board of County Commissioners approve the proposed text amendments as drafted.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: May 7, 2025

SUBJECT: Consideration of First and Second Readings and emergency adoption of Ordinance No. 2025-004 to allow RVs as Rental Dwellings

RECOMMENDED MOTIONS:

1. Move approval of first and second readings of Ordinance No. 2025-004 by title only.
2. Move to adopt Ordinance No. 2025-004 by emergency, effective immediately.

BACKGROUND AND POLICY IMPLICATIONS:

On May 7, 2025, staff will present Ordinance No. 2025-004 to the Board of County Commissioners (Board) for consideration of first and second reading and adoption by emergency. On December 18, 2024, the Board conducted deliberations to consider legislative text amendments to consider allowing recreational vehicles (RV) as rental dwellings (File No. 247-23-000700-TA) under Senate Bill 1013. The draft ordinance reflects the decisions made during and since those deliberations, which are outlined in the submitted staff memorandum.

BUDGET IMPACTS:

None

ATTENDANCE:

Tanya Saltzman, Senior Planner



COMMUNITY DEVELOPMENT

MEMORANDUM

TO: Deschutes County Board of Commissioners

FROM: Tanya Saltzman, AICP, Senior Planner
Will Groves, Planning Manager

DATE: April 30, 2025

SUBJECT: Consideration of First and Second Reading – RVs as Rental Dwellings

On May 7, 2025, staff will present Ordinance No. 2025-004 to the Board of County Commissioners (Board) for consideration of first and second reading and adoption by emergency. On December 18, 2024, the Board conducted deliberations to consider legislative text amendments to consider allowing recreational vehicles (RV) as rental dwellings (File No. 247-23-000700-TA) under Senate Bill 1013. The ordinance provided here reflects the decisions made during those deliberations, which are outlined below. The entirety of the record can be found at www.deschutes.org/rvamendments.

I. PROCEDURAL BACKGROUND

Staff submitted a Post-Acknowledgement Plan Amendment notice to the Department of Land Conservation and Development on October 4, 2023. Staff presented information on the proposed amendments at a Planning Commission work session on October 12, 2023.¹ The Planning Commission held an initial public hearing on November 9, 2023,² which was continued to December 14, 2023.³ At that time, the hearing was closed, and the written record was held open until December 28 at 4:00 p.m. The Planning Commission began deliberating on January 11, 2024⁴ and elected to continue the discussion to January 23 to form a complete recommendation to forward to the Board. After deliberating, the Planning Commission voted 4-3 to **not** recommend adoption by the Board. In addition, the Planning Commission chose to provide recommendations concerning the draft amendments if the Board chooses to move forward with adoption.

¹ <https://www.deschutes.org/bc-pc/page/planning-commission-41>

² <https://www.deschutes.org/bc-pc/page/planning-commission-40>

³ <https://www.deschutes.org/bc-pc/page/planning-commission-43>

⁴ <https://www.deschutes.org/bc-pc/page/planning-commission-44>

Staff provided a summary of the amendments and the process thus far at a February 28 work session⁵ to the Board and followed up with additional information on several topics on March 27,⁶ at which time the Board directed staff to proceed with a public hearing. A public hearing was held before the Board on May 8, 2024. At that time, the public hearing was closed, and the written record was held open until 4 p.m. on May 29.⁷

Staff met with the Board on June 10⁸ to begin the deliberative process, orient the Board to issues raised in the record, and receive feedback on areas of Board interest or concern. During that meeting, the Board directed staff to further research issues relating to fire protection and associated resources, and to gather information about the status of other counties regarding SB 1013 before proceeding with further deliberations.

On August 14, staff returned to the Board to request that the record be reopened in order to receive additional information, most notably from the fire districts, which were occupied at the time during the height of fire season. The Board signed Order No. 2024-029, directing staff to reopen the record until November 1, 2024. Staff returned to the Board on November 13⁹ to summarize the additional testimony received and request Board direction concerning matters raised in the record, including concerns from the Building Safety Official and testimony from the fire districts. The Board directed staff to return for continued deliberations on December 18,¹⁰ at which time the Board provided direction on several issues before voting to approve the amendments with those changes incorporated.

After receiving Board direction for changes to the amendments based on deliberations, staff updated the code and findings to reflect those changes and worked internally within CDD divisions to coordinate implementation, including staff training, website and handout material, and process refinement.

II. OVERVIEW OF ORDINANCE

During deliberations, staff presented several decision points for Board consideration. A brief summary of the Board decisions and subsequent modifications to the amendments is provided below.

1. Minimum lot size

While SB 1013 provides no required minimum lot size, the initial draft code in this proposal utilized a 1-acre minimum. Lot size can serve as a regulating factor for many of the issues brought up in testimony, by effectively controlling the total number of and density of properties eligible for RV rental dwellings.

During deliberations, the Board chose to require a 2-acre minimum lot size, except for certain areas of South County, which would require a minimum size of 5 acres. This would follow the same criteria utilized

⁵ <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-157>

⁶ <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-161>

⁷ The record, which contains all memoranda, notices, and written testimony received, is available at the following website: www.deschutes.org/rvamendments

⁸ <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-175>

⁹ <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-203>

¹⁰ <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-209>

for accessory dwelling units, which aims to protect areas of South County with groundwater issues by requiring larger lots. Approximately 7,590 properties would be eligible using baseline criteria of zone, lot size, and existence of a single-family dwelling.

2. Placement/setbacks

In addition to the criteria in the original draft requiring that the RV must be 10 feet from any structure and the setbacks for dwellings in the underlying zone apply, the Board directed staff to require that the RV must be located within 100 feet of the primary dwelling.

The 100-foot siting envelope is the same as the criteria utilized for ADUs. Keeping the RV close to the primary dwelling aims to cluster the potential impacts together rather than spreading them out across the property. This can also provide efficiencies for septic and driveways.

3. Defensible space

There were no standards in the original draft for defensible space, nor are there requirements in SB 1013. Aiming to provide clear requirements as well as an option for more customized strategies, the Board directed staff to require a 20-foot radius around the RV of non-combustible ground cover of gravel, concrete, asphalt, grass mowed to 4 inches, or some combination of these **or** the property owner may consult with the applicable fire district to develop appropriate firebreaks and defensible space.

4. Emergency access

There were no standards in the original draft to address emergency access, nor are there requirements in SB 1013. Similar to the approach to regulations for defensible space, the Board aimed to provide clear requirements but also provide a more open-ended option to allow emergency access to the RV. The Board directed staff to require the same access standards as for ADUs: Driveway standards: 12 feet wide, horizontal clearance of 20 feet, vertical clearance of 13.5 feet, all-weather surface **or** the property owner may receive written confirmation from a fire protection service provider that emergency access is adequate.

III. OTHER ISSUES

Secondary Modifications

Secondary modifications were made to the amendments in order to facilitate implementation of the RV rental dwelling program and provide clear direction for staff and applicants. These minor modifications do not change the legislative intent of the amendments.

- Select language was modified to reflect recently adopted clear and objective standards. For example, “single-family dwelling” was changed to “single unit dwelling” throughout.
- Language was added to reflect the process for applying for an address and for any onsite wastewater permits.
- Requirements were reorganized and clarified to reflect a single stage permitting process; this process was deemed the preferred approach after consultation amongst CDD divisions.

IV. NEXT STEPS AND STAFF RECOMMENDATION

Owing to the need to synchronize this effort with other active text amendments (primarily the first module of clear and objective text amendments, which contained changes to most chapters of Title 18 and 19), staff coordinated implementation prior to adoption rather than adoption first with an effective date 90 days later. This allowed for any pending text amendments to be captured in the final ordinance.

As a result, staff recommends adoption by emergency with an immediate effective date, as the implementation work for the amendments has already been completed. This proposed action requires a unanimous vote. Alternatively, if the vote is not unanimous, the Board will hold first and second readings at least 14 days apart, and then the ordinance will be effective 90 days after second reading.

Attachments

1. Ordinance No. 2025-004 and Corresponding Exhibits – Emergency
 - Exhibit A – DCC 16.12
 - Exhibit B – DCC 18.32
 - Exhibit C – DCC 18.60
 - Exhibit D – DCC 18.116
 - Exhibit E – DCC 18.120
 - Exhibit F – DCC 19.04
 - Exhibit G – DCC 19.12
 - Exhibit H – DCC 19.20
 - Exhibit I – DCC 19.22
 - Exhibit J – DCC 19.76
 - Exhibit K – DCC 19.92
 - Exhibit L - Findings

REVIEWED
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code	*	
Title 16, Addresses and Road Names, Title 18,	*	
Zoning Ordinance, and Title 19, Bend Urban Area	*	ORDINANCE NO. 2025-004
Zoning Ordinance, to Allow Recreational Vehicles as	*	
Rental Dwellings and Declaring an Emergency.	*	

WHEREAS, the Deschutes County Community Development Department (CDD) initiated amendments (Planning Division File No. 247-23-000700-TA) to the Deschutes County Code (“DCC”), Chapter 16.12 – Address Numbering, Chapter 18.32 – Multiple Use Agricultural Zone, Chapter 18.60 – Rural Residential Zone, Chapter 18.116 – Supplementary Provisions, Chapter 18.120 – Exceptions, Chapter 19.04 – Title, Compliance, Applicability and Definitions, Chapter 19.12 – Urban Area Reserve Zone, Chapter 19.20 – Suburban Low Density Residential Zone, Chapter 19.22 – Westside Transect Zone, Chapter 19.76 – Site Plan Review, Chapter 19.92 – Interpretations and Exceptions; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed changes on November 9, 2023 and issued a recommendation to the Deschutes County Board of County Commissioners (“Board”); and

WHEREAS, the Board considered this matter after a duly noticed public hearing on May 8, 2024 and concluded that the public will benefit from the proposed changes to the Deschutes County Code Titles 16, 18, and 19; now, therefore,

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

Section 1. AMENDING. Deschutes County Code Chapter 16.12, Address Numbering, is 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 ~~striketrough~~.

Section 2. AMENDING. Deschutes County Code Chapter 18.32, Multiple Use Agricultural Zone, is amended to read as described in Exhibit “B”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 3. AMENDING. Deschutes County Code Chapter 18.60, Rural Residential Zone, is amended to read as described in Exhibit “C”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 4. AMENDING. Deschutes County Code Chapter 18.116, Supplementary Provisions, is amended to read as described in Exhibit “D”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 5. AMENDING. Deschutes County Code Chapter 18.120, Exceptions, is amended to read as described in Exhibit “E”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 6. AMENDING. Deschutes County Code Chapter 19.04, Title, Compliance, Applicability and Definitions, is amended to read as described in Exhibit “F”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 7. AMENDING. Deschutes County Code Chapter 19.12, Urban Area Reserve Zone, is amended to read as described in Exhibit “G”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 8. AMENDING. Deschutes County Code Chapter 19.20, Suburban Low Density Residential Zone, is amended to read as described in Exhibit “H”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 9. AMENDING. Deschutes County Code Chapter 19.22, Westside Transect Zone, is amended to read as described in Exhibit “I”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 10. AMENDING. Deschutes County Code Chapter 19.76, Site Plan Review, is amended to read as described in Exhibit “J”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 11. AMENDING. Deschutes County Code Chapter 19.92, Interpretations and Exceptions, is amended to read as described in Exhibit “K”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 12. FINDINGS. The Board adopts as its findings Exhibit “L”, attached and incorporated by reference herein.

///

Section 13. EMERGENCY. This Ordinance being necessary for the public peace, health, and safety, an emergency is declared to exist, and this Ordinance becomes effective on its passage.

Dated this _____ of _____, 2025

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

PATTI ADAIR, Vice Chair

ATTEST:

Recording Secretary

PHILIP CHANG, Commissioner

Date of 1st Reading: _____ day of _____, 2025.

Date of 2nd Reading: _____ day of _____, 2025.

Record of Adoption Vote:

Commissioner	Yes	No	Abstained	Excused
Anthony DeBone	_____	_____	_____	_____
Patti Adair	_____	_____	_____	_____
Philip Chang	_____	_____	_____	_____

Effective date: _____ day of _____, 2025.

EXHIBIT A**CHAPTER 16.12 ADDRESS NUMBERING****16.12.020 Procedures And Standards For Assigning New Address Numbers**

The procedures for assigning new address numbers are as follows:

- A. When a building permit is issued for a new dwelling unit or other structure on a lot or parcel that does not have an address, the Community Development Department shall assign an address number based on the street location of the structure's access and its location in the Deschutes County Grid System.
- B. A new dwelling unit or structure with its access point on a North/South road will be assigned an address number based on its relationship to the grid system and where the access meets the road.
- C. A new dwelling unit or structure with its access point on an East/West road will be assigned an address number based on its relationship to the grid system and where the access meets the road.
- D. A new dwelling unit or structure with access on a North/South road will have an even address number assigned to it if it is on the East side of the road, and an odd address number assigned to it if it is on the West side of the road.
- E. A new dwelling unit or structure with access on an East/West road will have an even address number assigned to it if it is on the North side of the road, and an odd address number assigned to it if it is on the South side of the road.
- F. The numbers assigned to new dwelling units or structures shall increase sequentially going North on a North/South road, and shall increase sequentially going East on an East/West road.
- G. New dwelling units or structures on cul-de-sacs shall be numbered in a consecutive alternating sequence with even and odd numbers, as illustrated in [Appendix "B,"](#) attached hereto.
- H. New dwelling units or structures on circles or loops shall be numbered as illustrated in [Appendix "C,"](#) attached hereto.
- I. Each new ~~single-family~~ dwelling unit or recreational vehicle as rental dwelling shall have one address number.
- J. New duplexes, ~~or multi-unit dwellings triplexes and four-plexes~~ shall be given an address number for each living unit.
- K. New ~~apartment-multi-unit~~ complexes, mobile home parks and other multi-unit complexes shall be given an address number as one dwelling. The owner of each such multi-unit establishment shall assign unit address numbers in a manner that is acceptable to the Community Development Department.
- L. After the effective date of Ordinance 2011-009, for the areas served by Redmond Fire and Rescue:

1. A new dwelling unit or structure with access on an East/West road will have an odd number assigned to it on the North side of the road, and an even number assigned to it on the South side of the road, to the extent possible, consistent with existing addresses in the immediate area; and
2. The addresses shall increase going north of Antler Avenue and shall increase going south of Antler Avenue.
3. Numbers shall increase going east of 1st Street, and shall increase going west of 1st Street.

HISTORY

Adopted by Ord. [89-010](#) §1 on 12/20/1989

Amended by Ord. [2012-009](#) §2 on 5/2/2012

[Amended by Ord. 2025-004 §1 on 5/7/2025](#)

EXHIBIT B**CHAPTER 18.32 MULTIPLE USE AGRICULTURAL ZONE; MUA****18.32.020 Uses Permitted Outright**

The following uses and their accessory uses are permitted outright:

- A. Agricultural uses as defined in DCC Title 18.
- B. A single-unit dwelling, or a manufactured dwelling subject to DCC 18.116.070.
- C. Propagation or harvesting of a forest product.
- D. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by DCC 18.116.230.
- E. Class III road or street project.
- F. Noncommercial horse stables, excluding horse events.
- G. Horse events, including associated structures, involving:
 - 1. Fewer than 10 riders;
 - 2. Ten to 25 riders, no more than two times per month on nonconsecutive days; or
 - 3. More than 25 riders, no more than two times per year on nonconsecutive days.
Incidental musical programs are not included in this definition. Overnight stays by participants, trainers or spectators in RVs on the premises is not an incident of such horse events.
- H. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.
- I. Type 1 Home Occupation, subject to DCC 18.116.280.
- J. A historic accessory dwelling unit, subject to DCC 18.116.350.
- K. A residential accessory dwelling unit, subject to DCC 18.116.355.
- L. Residential home.
- M. A recreational vehicle as a rental dwelling, subject to DCC 18.116.095(D).

HISTORY

Adopted by Ord. PL-15 on 11/1/1979

Amended by Ord. 91-002 §6 on 2/6/1991

Amended by Ord. 91-005 §18 on 3/4/1991

Amended by Ord. 91-020 §1 on 5/29/1991

Amended by Ord. 91-038 §1 on 9/30/1991

Amended by Ord. [93-001](#) §1 on 1/27/1993
Amended by Ord. [93-043](#) §4 on 8/25/1993
Amended by Ord. [94-008](#) §10 on 6/8/1994
Amended by Ord. [2001-016](#) §2 on 3/28/2001
Amended by Ord. [2001-039](#) §2 on 12/12/2001
Amended by Ord. [2004-002](#) §3 on 4/28/2004
Amended by Ord. [2019-009](#) §1 on 9/3/2019
Recorded by Ord. [2019-009](#) §1 on 9/3/2019
Adopted by Ord. [2023-014](#) §1 on 12/1/2023
Amended by Ord. [2024-008](#) §4 on 10/9/2024
Amended by Ord. [2025-002](#) §6 on 2/26/2025
[Amended by Ord. 2025-004 §2 on 5/7/2025](#)

EXHIBIT C**CHAPTER 18.60 RURAL RESIDENTIAL ZONE; RR-10****18.60.020 Uses Permitted Outright**

The following uses and their accessory uses are permitted outright.

- A. A single-unit dwelling, or a manufactured dwelling subject to DCC 18.116.070.
- B. Utility facilities necessary to serve the area including energy facilities, water supply and treatment and sewage disposal and treatment.
- C. Community center, if shown and approved on the original plan or plat of the development.
- D. Agricultural use as defined in DCC Title 18.
- E. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by DCC 18.116.230.
- F. Class III road or street project.
- G. Noncommercial horse stables as defined in DCC Title 18, excluding horse events.
- H. Horse events, including associated structures, involving:
 - 1. Fewer than 10 riders;
 - 2. Ten to 25 riders, no more than two times per month on nonconsecutive days; or
 - 3. More than 25 riders, no more than two times per year on nonconsecutive days.
Incidental musical programs are not included in this definition. Overnight stays by participants, trainers or spectators in RVs on the premises is not an incident of such horse events.
- I. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.
- J. Type 1 Home Occupation, subject to DCC 18.116.280.
- K. A historic home accessory dwelling unit, subject to DCC 18.116.350.
- L. A residential accessory dwelling unit, subject to DCC 18.116.355.
- M. Residential home.
- N. A recreational vehicle as rental dwelling, subject to 18.116.095(D).

HISTORY

Adopted by Ord. PL-15 on 11/1/1979

Amended by Ord. 91-005 §§30 & 31 on 3/4/1991

Amended by Ord. 91-020 §1 on 5/29/1991

Amended by Ord. [93-043](#) §8 on 8/25/1993

Amended by Ord. [94-008](#) §12 on 6/8/1994

Amended by Ord. [2001-016](#) §2 on 3/28/2001

Amended by Ord. [2001-039](#) §5 on 12/12/2001

Amended by Ord. [2004-002](#) §7 on 4/28/2004

Amended by Ord. [2019-009](#) §2 on 9/3/2019

Recorded by Ord. [2019-009](#) §2 on 9/3/2019

Adopted by Ord. [2023-014](#) §2 on 12/1/2023

Adopted by Ord. [2024-008](#) §7 on 10/9/2024

Amended by Ord. 2025-002 §12 on 2/26/2025

[Amended by Ord. 2025-004 §3 on 5/7/2025](#)

EXHIBIT D**CHAPTER 18.116 SUPPLEMENTARY PROVISIONS****18.116.095 Recreational Vehicle As A Temporary Dwelling On An Individual Lot Or Parcel**

- A. A single recreational vehicle, as defined in DCC Title 18, may be located on a lot or parcel in a manufactured dwelling park, manufactures dwelling subdivision, mobile home park or recreational vehicle park, consistent with ORS 197.493(1), provided that:
 - 1. The recreational vehicle is occupied as a dwelling unit; and
 - 2. The recreational vehicle is lawfully connected to water and electrical supply systems and a sewage disposal system.
- B. A single recreational vehicle, as defined in DCC Title 18, may be located on a lot or parcel not containing a dwelling unit and not within in a manufactured dwelling park, mobile home park or recreational vehicle park and used as a temporary dwelling unit:
 - 1. For a period totaling not more than 30 days in any consecutive 60-day period without obtaining a land use permit from the Deschutes County Planning Division; or
 - 2. For a total period not to exceed six months in a calendar year by obtaining a temporary use permit under the terms of DCC 18.116.095 from the Deschutes County Planning Division. A temporary use permit may be renewed annually for use of a recreational vehicle under the terms of DCC 18.116.095 on the same lot or parcel.
- C. A single recreational vehicle, as defined in DCC Title 18, may be located on a lot or parcel containing a manufactured dwelling or single-unit dwelling, where such dwelling is uninhabitable due to damages from natural disasters, including wildfires, earthquakes, flooding or storms, until no later than the date:
 - 1. The single-unit dwelling or manufactured dwelling has been repaired or replaced and an occupancy permit has been issued;
 - 2. The local government makes a determination that the owner of the single-unit dwelling or manufactured dwelling is unreasonably delaying in completing repairs or replacing the dwelling; or
 - 3. Twenty-four months after the date the single-unit dwelling or manufactured dwelling first became uninhabitable.
- D. In the RR-10 and MUA-10 Zones, a single recreational vehicle, as defined in DCC Title 18, may be established as a rental dwelling provided the following requirements are met:
 - 1. Prior to locating any recreational vehicle as a rental dwelling on a lot or parcel, the property owner must obtain County siting approval for the area of the lot or parcel upon which the recreational vehicle will be located and demonstrate compliance with the following standards:

- a. The subject lot or parcel contains a single-unit dwelling or manufactured dwelling that is occupied as the primary residence of the property owner;
 - i. As used in this section, “siting approval” includes County approval and/or property owner application for review of the proposed area for a recreational vehicle as a rental dwelling; and
 - ii. As used in this section, “primary residence” means a dwelling unit occupied by the property owner on a long-term or permanent basis.
- b. The lot area is at least two acres, with the exception of those unsewered areas between Sunriver and the Klamath County border, defined as those unincorporated portions of Deschutes County contained in Townships 19S, 20S, 21S, and 22S and Ranges 9E, 10E and 11E. Within these exception areas, the lot area is at least five acres;
- c. There are no other dwelling units, guest houses, or occupied recreational vehicles on the lot or parcel and no portion of the single-unit dwelling or manufactured dwelling is rented for residential tenancy. This prohibition does not apply to a recreational vehicle under 18.116.095(C).
- d. The lot or parcel is not within an area designated as an urban reserve in the Deschutes County Comprehensive Plan;
- e. The recreational vehicle shall maintain a setback of at least 10 feet from any structure and must be located no farther than 100 feet from the single-unit dwelling. This distance shall be measured from the closest wall of the single-unit dwelling existing on May 7, 2025 to the closest wall of the recreational vehicle;
- f. The property owner will provide essential services to the recreational vehicle space including:
 - i. Sewage disposal, listed frost protected water supply, electrical supply and, if required by applicable law, any drainage system, all installed with permits and to applicable codes; and
 - ii. Any other service or habitability obligation imposed by the rental agreement or ORS 90.730 (Landlord duty to maintain rented space, vacant spaces and common areas in habitable condition), the lack or violation of which creates a serious threat to the tenant’s health, safety or property or makes the rented space unfit for occupancy;
- g. At the time of application, the property owner must demonstrate an application has been made to the Onsite Wastewater Division for any necessary onsite wastewater disposal permits.
- h. At the time of application, a letter confirming that the supplier of water is “Willing and Able to Serve” the recreational vehicle shall be provided if the

recreational vehicle is to be served by any water source other than an onsite domestic well.

- i. At the time of application, the property owner must demonstrate an application has been made to the Deschutes County Address Coordinator for an address for the recreational vehicle.
- a-j. The property owner shall provide a parking pad for the recreational vehicle with a surface material of compacted gravel with a minimum thickness of 4", concrete with a minimum thickness of 3.5", or asphalt with a minimum thickness of 3";
- k. If the recreational vehicle will be located within a structure, the structure shall be entirely open on two or more sides;
- l. The property owner shall demonstrate compliance with one of the following defensible space requirements:
 - i. The property owner shall maintain a 20-foot radius of non-combustible ground cover consisting of gravel, concrete, asphalt, grass mowed to less than four inches, or a combination of these; or
 - ii. Prior to the siting of a recreational vehicle on the property, the property owner shall construct and maintain defensible space and fuel breaks as developed in consultation with local fire protection service providers who have received training or certification described in ORS 181A.410. Applicable defensible space and fuel breaks shall be on land surrounding the recreational vehicle on land that is owned or controlled by the owner.
- m. The property owner shall demonstrate compliance with one of the following emergency access requirements:
 - i. Access to the recreational vehicle must be provided by a continuous, minimum 12-foot width onsite driveway with an unobstructed horizontal clearance of not less than 20 feet and an unobstructed vertical clearance of not less than 13.5 feet, designed and maintained as follows:
 - 1. Composed of an all-weather surface including asphalt or concrete; or
 - 2. Designed and maintained to support a minimum gross vehicle weight (GVW) of 75,000 lbs as certified by a Professional Engineer, registered in Oregon;
 - ii. The property owner shall provide written confirmation from a fire protection service provider with professionals who have received training or certification described in ORS 181A.410, on a form prepared by Deschutes County, that access to the recreational vehicle meets

minimum fire district requirements to provide emergency services to the property.

n. Prior to siting any recreational vehicle as a rental dwelling, the property owner shall sign and record with the County Clerk a restrictive covenant stating a recreational vehicle allowed under DCC 18.118.095(D) cannot be used for vacation occupancy, as defined in DCC 18.116.095(D)(1)(n)(i) and consistent with ORS 90.100, or other short-term uses.

i. "Vacation occupancy" means occupancy in a dwelling unit, not including transient occupancy in a hotel or motel, that has all of the following characteristics:

1. The occupant rents the unit for vacation purposes only, not as a principal residence; and
2. The occupant has a principal residence other than at the unit; and
3. The period of authorized occupancy does not exceed 45 days.

o. For properties located in the Wildlife Area Combining Zone, a recreational vehicle approved under this section is subject to the dwelling siting standards of DCC 18.88.060(B); and

p. For properties located in the Surface Mining Impact Area Combining Zone, a recreational vehicle approved under this section is subject to site plan approval pursuant to DCC 18.56.

2. Each recreational vehicle used as a rental dwelling must comply with the following standards:

- a. The recreational vehicle is subject to a written residential rental agreement as defined in ORS 90.100(39);
- b. The recreational vehicle shall be owned or leased by the tenant;
- c. The recreational vehicle shall include an operable toilet and sink;
- d. The recreational vehicle has not been rendered structurally immobile; and
- e. The recreational vehicle shall be titled with a Department of Transportation.

~~D.E.~~ All necessary permits shall be obtained from the Deschutes County Building Safety Division before connecting a recreational vehicle to sewer, water and/or electric utility services.

~~E.F.~~ All required permits shall be obtained from the Deschutes County Onsite Wastewater Environmental Health Division before disposing any wastewater or sewage on-site.

~~F.G.~~ A recreational vehicle allowed under this section ~~used as a dwelling unit or temporary dwelling unit~~ shall meet the same setbacks required of a manufactured dwelling or single-family dwelling on the subject lot or parcel.

~~G.H.~~ A recreational vehicle shall be fully licensed and ready for highway use, on its wheels or jacking system, shall be attached to the site only by quick disconnect type utilities and security devices, and shall have no permanently attached additions.

~~H.I.~~ As identified in this section, a ~~single~~ recreational vehicle located within a special flood hazard area is subject to the standards and criteria established by DCC 18.96.

HISTORY

Amended by Ord. [91-038](#) §3 on 9/30/1991

Amended by Ord. [95-075](#) §1 on 11/29/1995

Amended by Ord. [98-062](#) §1 on 12/9/1998

Amended by Ord. [2007-019](#) §4 on 9/28/2007

Amended by Ord. [2023-001](#) §16 on 5/30/2023

Amended by Ord. [2025-002](#) §30 on 2/26/2025

Amended by Ord. 2025-004 §4 on 5/7/2025

EXHIBIT E**CHAPTER 18.120 EXCEPTIONS****18.120.020 Nonconforming Lot Areas**

- A. Any lot or parcel or portion thereof, which is to be dedicated to a public or other entity for a road, canal, railroad, utility or other public use shall be exempt from the minimum lot area requirements set forth by DCC Title 18.
- B. Whereas land sections in the County are affected by survey adjustments, minimum requirements relative to lot areas, where applicable, shall be considered as standard metes and bounds land section division, (i.e., 160 acres, 80 acres, 40 acres, 20 acres, etc.); lot areas, therefore, may be reasonably smaller than set forth by DCC Title 18 if a total section acreage reduction is due to a survey adjustment or other man made barriers over which the applicant has had no control.
- C. Any lot or parcel that is smaller than the minimum lot area required in any zone may be occupied by an allowed use in that zone provided that:
 - 1. The lot or parcel is a lot of record, as defined in DCC 18.04.030, Lot of record.
 - 2. The use conforms to all other requirements of that zone.
 - 3. If there is a lot area deficiency, duplexes and multi-unit dwellings are prohibited.
~~residential use shall be limited to a single-unit dwelling.~~
 - 4. All necessary permits are obtained.
- D. Lots or parcels within the Rural Residential Zone (RR-10) that are separated by an arterial right of way created after June 30, 1993, shall be exempt from the minimum lot area of 10 acres. Such lots or parcels may be partitioned only as separated by the right of way and shall not have a lot area less than one acre.

HISTORY

Adopted by Ord. [PL-15](#) §6.020 on 11/1/1979

Amended by Ord. [87-015](#) §§1 and 2 on 6/10/1987

Amended by Ord. [93-034](#) §2 on 6/30/1993

Amended by Ord. [2017-015](#) §2 on 11/1/2017

Amended by Ord. 2025-002 §31 on 2/26/2025

Amended by Ord. 2025-004 §5 on 5/7/2025

EXHIBIT F

CHAPTER 19.04 TITLE, COMPLIANCE, APPLICABILITY AND DEFINITIONS19.04.040 Definitions

* * *

“Recreational vehicle” means a vehicle with or without motive power that is designed for human occupancy and as further defined, by rule, by the Director of Transportation, at OAR 735-022-0140.

HISTORY

Adopted by Ord. [80-217](#) §1 Exhibit A on 12/18/1980
 Amended by Ord. [82-011](#) on 8/9/1982
 Amended by Ord. [83-041](#) §2 on 6/1/1983
 Amended by Ord. [86-032](#) §1 on 4/2/1986
 Amended by Ord. [86-033](#) §1 on 4/2/1986
 Amended by Ord. [86-017](#) §1 Exhibit a on 6/30/1986
 Amended by Ord. [86-055](#) §1 on 6/30/1986
 Amended by Ord. [86-058](#) §1 on 6/30/1986
 Amended by Ord. [88-042](#) §3 on 12/19/1988
 Amended by Ord. [90-038](#) §1 on 10/3/1990
 Repealed & Reenacted by Ord. [90-007](#) §1 on 12/7/1990
 Amended by Ord. [91-001](#) §1 on 1/28/1991
 Amended by Ord. [91-029](#) §§1, 8, 9 and 10 on 8/7/1991
 Amended by Ord. [92-043](#) §1 on 5/20/1992
 Amended by Ord. [93-018](#) §1 on 5/19/1993
 Amended by Ord. [94-005](#) §§1 & 2 on 6/15/1994
 Amended by Ord. [95-045](#) §15 on 6/28/1995
 Amended by Ord. [96-071](#) §1D on 12/30/1996
 Amended by Ord. [97-017](#) §1 on 3/12/1997
 Amended by Ord. [97-038](#) §1 on 8/27/1997
 Amended by Ord. [99-001](#) §§2-4 on 1/13/1999
 Repealed & Reenacted by Ord. [2009-002](#) §1,2 on 2/11/2009
 Amended by Ord. [2013-013](#) §1 on 7/25/2013
 Amended by Ord. [2014-016](#) §1 on 12/29/2014
 Amended by Ord. [2016-016](#) §1 on 6/1/2016
 Amended by Ord. [2017-009](#) §7 on 7/21/2017
 Amended by Ord. [2020-001](#) §17 on 4/21/2020
 Amended by Ord. [2020-010](#) §8 on 7/3/2020
 Amended by Ord. [2021-009](#) §2 on 6/18/2021
 Amended by Ord. [2024-008](#) §17 on 10/9/2024
 Amended by Ord. [2025-002](#) §37 on 2/26/2025
Amended by Ord. 2025-004 §6 on 5/7/2025

EXHIBIT G**CHAPTER 19.12 URBAN AREA RESERVE ZONE UAR-10****19.12.020 Permitted Uses**

The following uses are permitted:

- A. Farm uses as defined in DCC Title 19.
- B. A single-unit dwelling.
- C. Home occupation subject to DCC 19.88.140.
- D. Other accessory uses and accessory buildings and structures customarily appurtenant to a permitted use subject to DCC 19.92.020.
- E. Day care center facilities subject to site review, DCC 19.76 and DCC 19.88.160.
- F. Farm stands subject to DCC 19.76 and DCC 19.88.290.
- G. A historic home accessory dwelling unit, subject to DCC 19.92.150.
- H. A residential accessory dwelling unit, subject to DCC 19.92.160.
- I. Residential home.
- J. A recreational vehicle as a rental dwelling, subject to DCC 19.92.170.

HISTORY

Adopted by Ord. [PL-11](#) on 7/11/1979

Amended by Ord. [88-042](#) §4 on 12/19/1988

Repealed & Reenacted by Ord. [90-038](#) §1,2 on 10/3/1990

Amended by Ord. [91-001](#) §2 on 1/28/1991

Amended by Ord. [2008-014](#) §3 on 3/31/2008

Repealed & Reenacted by Ord. [2009-002](#) §1,2 on 2/11/2009

Amended by Ord. [2019-009](#) §4 on 9/3/2019

Recorded by Ord. [2019-009](#) §4 on 9/3/2019

Amended by Ord. [2023-014](#) §5 on 12/1/2023

Amended by Ord. [2024-008](#) §18 on 1/7/2025

Amended by Ord. [2025-002](#) §39 on 2/26/2025

Amended by Ord. [2025-004](#) §7 on 5/7/2025

EXHIBIT H**CHAPTER 19.20 SUBURBAN LOW DENSITY RESIDENTIAL ZONE; SR 2 1/2****19.20.020 Permitted Uses**

The following uses are permitted:

- A. A single-unit dwelling.
- B. Agriculture, excluding the keeping of livestock.
- C. Home occupations subject to DCC 19.88.140.
- D. Other accessory uses and accessory buildings and structures customarily appurtenant to a permitted use subject to DCC 19.92.020.
- E. A historic home accessory dwelling unit, subject to DCC 19.92.150.
- F. Child care facility and/or preschool
- G. A residential accessory dwelling unit, subject to DCC 19.92.160.
- H. Residential home.

I. A recreational vehicle as a rental dwelling, subject to DCC 19.92.170.

HISTORY

Adopted by Ord. [PL-11](#) on 7/11/1979

Amended by Ord. [88-042](#) §6 on 12/19/1988

Repealed & Reenacted by Ord. [90-038](#) §1,2 on 10/3/1990

Amended by Ord. [91-001](#) §4 on 1/28/1991

Amended by Ord. [93-018](#) §3 on 5/19/1993

Repealed & Reenacted by Ord. [2009-002](#) §1,2 on 2/11/2009

Amended by Ord. [2019-009](#) §5 on 9/3/2019

Recorded by Ord. [2019-009](#) §5 on 9/3/2019

Amended by Ord. [2020-001](#) §20 on 4/21/2020

Amended by Ord. [2020-010](#) §9 on 7/3/2020

Amended by Ord. [2023-014](#) §6 on 12/1/2023

Amended by Ord. [2024-008](#) §19 on 1/7/2025

Amended by Ord. [2025-002](#) §41 on 2/26/2025

[Amended by Ord. 2025-004 §8 on 5/7/2025](#)

EXHIBIT I**CHAPTER 19.22 WESTSIDE TRANSECT ZONE; WTZ****19.22.020 Permitted Uses**

The following uses and their accessory uses are permitted outright:

- A. A single-unit dwelling.
- B. Home occupation subject to DCC 19.88.140.
- C. Other accessory uses and accessory buildings and structures customarily appurtenant to a permitted use subject to DCC 19.92.020.
- D. A residential accessory dwelling unit, subject to DCC 19.92.160.
- E. Residential home.
- F. A recreational vehicle as rental dwelling, subject to DCC 19.92.170.

HISTORY

Adopted by Ord. [2019-001](#) §8 on 4/16/2019

Amended by Ord. [2023-014](#) §7 on 12/1/2023

Amended by Ord. [2024-008](#) §20 on 1/7/2025

Amended by Ord. [2025-002](#) §42 on 2/26/2025

[Amended by Ord. 2025-004 §9 on 5/7/2025](#)

EXHIBIT J

CHAPTER 19.76 SITE PLAN REVIEW

19.76.020 Site Plan Requirements

In all zones, ~~;~~:

~~A. except for a single-unit dwelling, duplex, or triplex, or an accessory dwelling unit, on one lot or parcel, all~~ All new uses, buildings, outdoor storage or sales areas and parking lots or alterations thereof shall be subject to the provisions of DCC 19.76.020. Site plan approval shall not be required where a proposed alteration of an existing building does not exceed 25 percent of the size of the original structure unless the Planning Director finds the original structure or proposed alteration does not meet the requirements of DCC Title 19 or other ordinances of the County.

~~A-B. Single-unit dwellings, duplexes, multi-family dwellings, an accessory dwelling unit, or a recreational vehicle as rental dwelling on one lot or parcel are not subject to the provisions of DCC 19.76.~~

HISTORY

Adopted by Ord. [PL-11](#) on 7/11/1979

Repealed & Reenacted by Ord. [90-038](#) §1 on 10/3/1990

Amended by Ord. [2023-014](#) §8 on 12/1/2023

Amended by Ord. [2025-002](#) §46 on 2/26/2025

~~Amended by Ord. 2025-004 §10 on 5/7/2025~~

EXHIBIT K**CHAPTER 19.92 INTERPRETATIONS AND EXCEPTIONS****19.92.170 Recreational Vehicles as Rental Dwellings In UAR-10, SR-2 ½, And WTZ Zones**

* * *

19.92.170 Recreational Vehicles as Rental Dwellings In UAR-10, SR-2 ½, And WTZ Zones

A. In the UAR-10, SR 2 ½, and WTZ Zones, a single recreational vehicle, as defined in DCC 19.04, may be established as a rental dwelling provided the following requirements are met:

1. Prior to locating any recreational vehicle as a rental dwelling on a lot or parcel, the property owner must obtain County siting approval for the area of the lot or parcel upon which the recreational vehicle will be located and demonstrate compliance with the following standards:
 - a. The subject lot or parcel contains a single-unit dwelling or manufactured dwelling that is occupied as the primary residence of the property owner:
 - i. As used in this section, “siting approval” includes County approval and/or property owner application for review of the proposed area for a recreational vehicle as a rental dwelling; and
 - ii. As used in this section, “primary residence” means a dwelling occupied by the property owner on a long-term or permanent basis.
 - b. The lot area is at least two acres, with the exception of those unsewered areas between Sunriver and the Klamath County border, defined as those unincorporated portions of Deschutes County contained in Townships 19S, 20S, 21S, and 22S and Ranges 9E, 10E and 11E. Within these exception areas, the lot area is at least five acres;
 - c. There are no other dwelling units, guest houses, or occupied recreational vehicles on the lot or parcel and no portion of the single-unit dwelling or manufactured dwelling is rented for residential tenancy;
 - d. The lot or parcel is not within an area designated as an urban reserve in the Deschutes County Comprehensive Plan;
 - e. The recreational vehicle shall maintain a setback of at least 10 feet from any structure and must be located no farther than 100 feet from the single-unit dwelling. This distance shall be measured from the closest wall of the single-unit dwelling existing on May 7, 2025 to the closest wall of the recreational vehicle;
 - f. The property owner will provide essential services to the recreational vehicle space including:

- i. Sewage disposal, listed frost protected water supply, electrical supply and, if required by applicable law, any drainage system, all installed with permits and to applicable codes; and
 - ii. Any other service or habitability obligation imposed by the rental agreement or ORS 90.730 (Landlord duty to maintain rented space, vacant spaces and common areas in habitable condition), the lack or violation of which creates a serious threat to the tenant's health, safety or property or makes the rented space unfit for occupancy;
- g. At the time of application, the property owner must demonstrate an application has been made to the Onsite Wastewater Division for any necessary onsite wastewater disposal permits.
- h. At the time of application, a letter confirming that the supplier of water is "Willing and Able to Serve" the recreational vehicle shall be provided if the recreational vehicle is to be served by any water source other than an onsite domestic well.
- i. At the time of application, the property owner must demonstrate an application has been made to the Deschutes County Address Coordinator for an address for the recreational vehicle.
- j. The property owner shall provide a parking pad for the recreational vehicle with a surface material of compacted gravel with a minimum thickness of 4", concrete with a minimum thickness of 3.5", or asphalt with a minimum thickness of 3";
- k. If the recreational vehicle will be located within a structure, the structure shall be entirely open on two or more sides;
- l. The property owner shall demonstrate compliance with one of the following defensible space requirements:
 - i. The property owner shall maintain a 20-foot radius of non-combustible ground cover consisting of gravel, concrete, asphalt, grass mowed to less than four inches, or a combination of these; or
 - ii. Prior to the siting of a recreational vehicle on the property, the property owner shall construct and maintain defensible space and fuel breaks as developed in consultation with local fire protection service providers who have received training or certification described in ORS 181A.410. Applicable defensible space and fuel breaks shall be on land surrounding the recreational vehicle on land that is owned or controlled by the owner.
- m. The property owner shall demonstrate compliance with one of the following emergency access requirements:

- i. Access to the recreational vehicle must be provided by a continuous, minimum 12-foot width onsite driveway with an unobstructed horizontal clearance of not less than 20 feet and an unobstructed vertical clearance of not less than 13.5 feet, designed and maintained as follows:
 - 1. Composed of an all-weather surface including asphalt or concrete; or
 - 2. Designed and maintained to support a minimum gross vehicle weight (GVW) of 75,000 lbs as certified by a Professional Engineer, registered in Oregon;
 - ii. The property owner shall provide written confirmation from a fire protection service provider with professionals who have received training or certification described in ORS 181A.410, on a form prepared by Deschutes County, that access to the recreational vehicle meets minimum fire district requirements to provide emergency services to the property.
 - n. Prior to County approval of a recreational vehicle as a rental dwelling, the property owner shall sign and record with the County Clerk a restrictive covenant stating a recreational vehicle unit allowed under DCC 19.92.170 cannot be used for vacation occupancy, as defined in DCC 19.92.170(A)(3)(a) and consistent with ORS 90.100, or other short-term uses.
 - i. “Vacation occupancy” means occupancy in a dwelling unit, not including transient occupancy in a hotel or motel, that has all of the following characteristics:
 - 1. The occupant rents the unit for vacation purposes only, not as a principal residence; and
 - 2. The occupant has a principal residence other than at the unit; and
 - 3. The period of authorized occupancy does not exceed 45 days.
2. Each recreational vehicle used as a rental dwelling must comply with the following standards:
- a. The recreational vehicle is subject to a written residential rental agreement as defined in ORS 90.100(39);
 - b. The recreational vehicle shall be owned or leased by the tenant;
 - c. The recreational vehicle shall include an operable toilet and sink;
 - d. The recreational vehicle has not been rendered structurally immobile; and
 - e. The recreational vehicle shall be titled with a Department of Transportation.

3. All necessary permits shall be obtained from the Deschutes County Building Safety Division before connecting a recreational vehicle to sewer, water and/or electric utility services.
4. All required permits shall be obtained from the Deschutes County Onsite Wastewater Division before disposing any wastewater or sewage on-site.
5. A recreational vehicle shall meet the same setbacks required of a manufactured dwelling or single-family dwelling on the subject lot or parcel.
6. A recreational vehicle shall be fully licensed and ready for highway use, on its wheels or jacking system, shall be attached to the site only by quick disconnect type utilities and security devices, and shall have no permanently attached additions.
7. As identified in this section, a recreational vehicle located within a special flood hazard area is subject to the standards and criteria established by DCC 19.72.

HISTORY

Adopted by Ord. 2025-004 §11 on 5/7/2025



FINDINGS

I. PROPOSAL

This is a legislative text amendment to Deschutes County Code (DCC), Title 16, Address Numbering, Title 18, County Zoning, and Title 19, Bend Urban Growth Boundary Zoning Ordinance. The primary purpose of the amendments is to allow RVs as rental dwellings subject to certain criteria per the adoption of SB 1013. The proposal creates two new subsections (effectively the same but pertaining to different zones in Titles 18 and 19) that govern the criteria for RVs as rental dwellings.

II. BACKGROUND

A. Senate Bill 1013

The Oregon Legislature adopted SB 1013 into law on July 23, 2023; the law becomes effective January 1, 2024. SB 1013 authorizes a county to allow an owner of a lot or parcel in a rural area to site on the property one recreational vehicle that is used for residential purposes and is subject to a residential rental agreement and additional criteria outlined below. SB 1013 does not obligate a county to allow RVs as rental dwellings. SB 1013 shares some criteria with recent rural ADU legislation in SB 391, such as the requirement to provide sewage disposal, and differs in other ways—for instance, no fire hardening requirements are written into SB 1013.

Rural residential exception areas and their corresponding zones exist throughout Oregon. By definition, rural residential zones exist outside of urban growth boundaries (UGBs) but are excluded from the state's resource land (farm and forest zone) protections. With certain exceptions, those protections allow residential uses only in conjunction with a farm or forest use. However, in rural residential zones, a dwelling can be a primary use of the land. State law allows counties to permit an additional dwelling on a property containing a house built prior to 1945 and SB 391 more generally allows accessory dwelling units in rural residential areas. However, unlike in urban zones, rural residential zones do not have any other by-right accessory dwelling options, making inter-generational and alternative housing options difficult to achieve.

SB 1013 only authorizes RVs as rental dwellings in "rural areas." For the purposes of SB 1013, a rural area has two definitions: either an area zoned for rural residential use as defined in ORS 215.501, or land that is within the urban growth boundary of a metropolitan service district, but not within the jurisdiction of any city, and zoned for residential use. Deschutes County's jurisdiction only includes lands outside of UGBs, so only the first component of the definition applies. Areas zoned for rural residential use are defined by ORS 215.501 to mean "land that is not located inside a UGB as defined in ORS 195.060 (Definitions) and that is subject to an acknowledged exception to a statewide land use planning goal relating to farmland or forestland and planned and zoned by the county to allow residential use as a primary use." The applicable zoning designations in Deschutes

County for these lands are Multiple Use Agricultural (MUA-10), Rural Residential (RR-10), Suburban Low Density Residential (SR 2.5), Urban Area Reserve (UAR-10), and Westside Transect Zone (WTZ).

B. Deschutes County Residential RV Amendments

In addition to only applying to lands recognized as rural residential exception areas, SB 1013 also contains minimum criteria that must be met for a lot or parcel to qualify for an RV residential dwelling. As noted above, SB 1013 shares some similarities with SB 391, which allows for rural accessory dwelling units. In certain cases, the proposed amendments echo components of the zoning code developed in Deschutes County for rural ADUs. Lastly, the proposed amendments also contain additional criteria not included in SB 1013, for reasons of safety as well as compatibility.

Table 1 provides a summary of each provision of the amendments that are required by SB 1013.

Table 1 – SB 1013 Requirements

Topic	SB 1013 Requirements	Comment
Single Family Dwelling	SB 1013 Section 2(2)(b) requires one single-unit dwelling that is occupied as the primary residence to be located on the lot or parcel.	DCC 18.116.095(D)(1)(a) and DCC 19.92.170(A)(1)(a) are consistent with SB 1013.
Urban Reserve Area	SB 1013 Section 2(2)(a) requires that the lot or parcel is not located within an area designated as an urban reserve as defined in ORS 195.137.	DCC 18.116.095(D)(1)(d) and DCC 19.92.170(A)(1)(d) are consistent with SB 1013.
Vacation Occupancy	SB 1013 Section 2(2)(d) prevents an RV allowed in this law from being used for vacation occupancy as defined in ORS 90.100 or other short-term uses.	DCC 18.116.095(D)(1)(n) and DCC 19.92.170(A)(1)(n) are consistent with SB 1013. Both require a restrictive covenant be recorded to ensure compliance.
Other Dwelling Units	SB 1013 Section 2(2)(c) requires that there are no other dwelling units on the property and no portion of the single-family dwelling is rented as a residential tenancy.	DCC 18.116.095(D)(1)(c) and DCC 19.92.170(A)(1)(c) are consistent with SB 1013.
RV Ownership	SB 1013 Section 2(2)(e) requires the RV to be owned or leased by the tenant.	DCC 18.116.095(D)(2)(b) and DCC 19.92.170(A)(2)(b) are consistent with SB 1013. The RV may either be owned by the tenant or leased by the tenant from the property owner.
Essential Services	SB 1013 Section 2(2)(f) requires that the property owner provides essential services to the RV space, as defined in ORS 90.100(13)(b). ORS 90.100(13)(b) defines “essential services” as: “For a tenancy consisting of rental space for a manufactured dwelling, floating home or recreational vehicle owned by the tenant or	DCC 18.116.095(D)(1)(f) and DCC 19.92.170(A)(1)(f) are consistent with SB 1013. In addition, these sections require the water supply to be frost protected and for a “Will Serve” letter to be provided if the recreational vehicle is to be

Topic	SB 1013 Requirements	Comment
	<p>that is otherwise subject to ORS 90.505 (Definitions for ORS 90.505 to 90.850) to 90.850 (Owner affidavit certifying compliance with requirements for sale of facility):</p> <p>(A) Sewage disposal, water supply, electrical supply and, if required by applicable law, any drainage system; and</p> <p>(B) Any other service or habitability obligation imposed by the rental agreement or ORS 90.730 (Landlord duty to maintain rented space, vacant spaces and common areas in habitable condition), the lack or violation of which creates a serious threat to the tenant's health, safety or property or makes the rented space unfit for occupancy."</p>	served by any water source other than an onsite domestic well.
Reasonable appearance, repair, inspection, or siting standards	SB 1013 Section 2(3)(d) allows counties to require that the RV complies with any reasonable appearance, repair, inspection, or siting standards adopted by the county.	<p>DCC 18.116.095(D) and DCC 19.92.170(A) contain the following appearance, repair, inspection, or siting standards developed at the local level:</p> <p>DCC 18.116.095(D)(1)(b) and DCC 19.92.170(A)(1)(b) require the lot area to be at least two acres in size in most areas, and 5 acres or more in specified areas of South County due to groundwater/septic concerns.</p> <p>DCC 18.116.095(D)(2)(c) and DCC 19.92.170(A)(2)(c) require that the recreational vehicle include an operable toilet and sink.</p> <p>DCC 18.116.095(D)(1)(k) and DCC 19.92.170(A)(1)(k) require that if the recreational vehicle is located within a structure, the structure must be entirely open on two or more sides.</p> <p>DCC 18.116.095(D)(1)(e) and DCC 19.92.170(A)(1)(e) require that the recreational vehicle maintains a setback of at least 10 feet from any structure and must be located no farther than 100 feet from the single-unit dwelling.</p> <p>DCC 18.116.095(D)(1)(j) and DCC 19.92.170(A)(1)(j) require that the</p>

Topic	SB 1013 Requirements	Comment
		<p>property owner provide a parking pad for the recreational vehicle.</p> <p>DCC 18.116.095(D)(1)(o) requires that for properties located within the Wildlife Area Combining Zone, recreational vehicles are considered a structure and therefore must comply with the siting standards in 18.88.060(B).</p> <p>DCC 18.116.095(D)(1)(l) and DCC 19.92.170(A)(1)(l) require that the property owner meet defensible space requirements, either establishing a 20-foot radius of non-combustible ground cover, or consult with the local fire protection service provider.</p> <p>DCC 18.116.095(D)(1)(m) and DCC 19.92.170(A)(1)(m) require that the property owner demonstrate compliance with emergency access requirements, either by meeting specific driveway dimensional and material standards, or by confirmation from the local fire protection service provider.</p>

Using the baseline eligibility criteria of SB 1013 plus the lot size criteria determined during deliberations (2 acres in most areas of the County, and 5 acres in certain areas of South County—this is same as the lot size requirements for Rural Accessory Dwelling Units) approximately 7,590 properties would be eligible. This number does not account for individual site conditions, including dimensions, septic availability, and other variables that occur on a property-by-property basis.

III. REVIEW CRITERIA

Deschutes County lacks specific criteria in DCC Titles 18, 19, 22, or 23 for reviewing a legislative text amendment. Nonetheless, since Deschutes County is initiating one, the County bears the responsibility for justifying that the amendments are consistent with Statewide Planning Goals and its existing Comprehensive Plan.

IV. FINDINGS

CHAPTER 22.12, LEGISLATIVE PROCEDURES

Section 22.12.010.

Hearing Required

FINDING: This criterion will be met because a public hearing was held before the Deschutes County Planning Commission and Board of County Commissioners.

Section 22.12.020, Notice

Notice

A. Published Notice

- 1. Notice of a legislative change shall be published in a newspaper of general circulation in the county at least 10 days prior to each public hearing.***
- 2. The notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.***

FINDING: This criterion will be met as notice was published in the Bend Bulletin newspaper for the Planning Commission public hearing, and the Board of County Commissioners' public hearing.

- B. Posted Notice. Notice shall be posted at the discretion of the Planning Director and where necessary to comply with ORS 203.045.***

FINDING: Posted notice was determined by the Planning Director not to be necessary.

- C. Individual notice. Individual notice to property owners, as defined in DCC 22.08.010(A), shall be provided at the discretion of the Planning Director, except as required by ORS 215.503.***

FINDING: Given the proposed legislative amendments do not apply to any specific property, no individual notices were sent.

- D. Media notice. Copies of the notice of hearing shall be transmitted to other newspapers published in Deschutes County.***

FINDING: Notice was provided to the County public information official for wider media distribution. This criterion is met.

Section 22.12.030 Initiation of Legislative Changes.

A legislative change may be initiated by application of individuals upon payment of required fees as well as by the Board of County Commissioners.

FINDING: The application was initiated by the Deschutes County Planning Division at the direction of the Board of County Commissioners and has received a fee waiver. This criterion is met.

Section 22.12.040. Hearings Body

- A. *The following shall serve as hearings or review body for legislative changes in this order:***
 - 1. *The Planning Commission.***
 - 2. *The Board of County Commissioners.***
- B. *Any legislative change initiated by the Board of County Commissioners shall be reviewed by the Planning Commission prior to action being taken by the Board of Commissioners.***

FINDING: The Deschutes County Planning Commission held the initial public hearing on November 9, 2023. The Board then held a public hearing on May 8, 2024. These criteria are met.

Section 22.12.050 Final Decision

All legislative changes shall be adopted by ordinance

FINDING: The proposed legislative changes will be implemented by Ordinance No. 2025-004 upon approval and adoption by the Board of County Commissioners. This criterion will be met.

B. Statewide Planning Goals and Guidelines

Goal 1: Citizen Involvement: The amendments do not propose to change the structure of the County's citizen involvement program. Notice of the proposed amendments was provided to the *Bulletin* for the Board public hearing.

Goal 2: Land Use Planning: This goal is met because ORS 197.610 allows local governments to initiate post acknowledgments plan amendments (PAPA). An Oregon Land Conservation and Development Department 35-day notice was initiated on October 4, 2023. The Planning Commission held a public hearing on November 9, 2023 and the Board of County Commissioners held a public hearing on May 8, 2024. The Findings document provides the adequate factual basis for the amendments.

Goal 3: Agricultural Lands: No changes related to agricultural lands are proposed as part of the text amendments. This goal does not apply.

Goal 4: Forest Lands: No changes related to forest lands are proposed as part of the text amendments. This goal does not apply.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources: By adopting SB 1013 in 2023, the Oregon Legislature added a new use, recreational vehicle as residential tenancy (or rental dwelling), to rural residential exception areas. Local governments can choose to allow this use by amending their zoning codes and complying with SB 1013's development standards. Goal 5 does not apply.

However, to the extent it is determined that Goal 5 does apply, local governments apply Goal 5 to a PAPA when the amendment allows a new use and the new use could be a conflicting use with a particular Goal 5 resource site on an acknowledged resource list. Certain areas in rural Deschutes County zoned MUA-10 and RR-10 contain Goal 5 resources because they are overlaid with a Wildlife Area Combining Zone. These two zones are being amended to allow RVs as rental dwellings and are therefore subject to an ESEE Analysis. No other changes to the code warrant specific ESEE Analysis as they are not adding new uses that conflict with Goal 5 resources. The ESEE analysis is included in *Appendix A* which is attached to this document.

Goal 6: Air, Water and Land Resources Quality: The proposed text amendments do not propose changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 6, and therefore are in compliance. However, it is worth noting that the amendments require a minimum lot size of 2 acres in most areas, and 5 acres in sensitive groundwater areas, in an effort to protect sensitive groundwater resources that can be further stressed by the wastewater disposal of denser development patterns. To further protect these resources, SB 1013 requires that the property owner provide sewage disposal, and applicants must receive a permit from Deschutes County Onsite Wastewater Division before disposing any wastewater or sewage on-site.

Goal 7: Areas Subject to Natural Disasters and Hazards: The proposed text amendments do not propose to change the County's Comprehensive Plan or implementing regulations regarding natural disasters and hazards; therefore, they are in compliance.

Goal 8: Recreational Needs: Recreational vehicles as rental dwellings are not a recreational use or need, but rather are intended to provide housing. This goal does not apply.

Goal 9: Economic Development: Recreational vehicles as rental dwellings are not primarily economic in nature. This goal does not apply.

Goal 10: Housing: This goal is not applicable because unlike municipalities, unincorporated areas are not obligated to fulfill certain housing requirements.

Goal 11: Public Facilities and Services: Recreational vehicles as rental dwellings in the rural county typically rely on domestic wells and onsite wastewater treatment systems. A Goal 11 exception would be required for a centralized sewer system and would need to be applied on a property specific, needs related basis. This goal does not apply.

Goal 12: Transportation: By adopting SB 1013 in 2023, the Oregon Legislature added a new use, recreational vehicles as rental dwellings, to rural residential exception areas. Local governments can choose to allow this use by amending their zoning codes and complying with SB 1013's development standards. Staff does not anticipate that the addition of recreational vehicles as rental dwellings on approximately 7,590 currently eligible lots will create a significant or adverse effect to the County transportation system and thus complies with the TPR.

Goal 13: Energy Conservation: The proposed text amendments do not propose to change the County's implementing regulations regarding energy conservation. This goal does not apply.

Goal 14: Urbanization: The purpose of Goal 14 is to direct urban uses to areas inside UGBs. As the proposed amendments do not seek to allow urban uses on rural land, nor do they seek to expand an existing urban growth boundary, this goal does not apply.

Goals 15 through 19: Deschutes County does not contain any of the relevant land types included in Goals 15-19. Therefore, these goals do not apply.

C. Deschutes County Comprehensive Plan

Section 3.3, Rural Housing

Goal 1 Maintain the rural character and safety of housing in unincorporated Deschutes County.

Policy 3.3.5 Maintain the rural character of the County while ensuring a diversity of housing opportunities, including initiating discussions to amend State Statute and/or Oregon Administrative Rules to permit accessory dwelling units in Exclusive Farm Use, Forest and Rural Residential zones.

FINDING: Implementing SB 1013, which allows recreational vehicles as rental dwellings to be sited in rural residential exception areas, is consistent with Policy 3.3.5, providing a needed housing option in the rural county.

V. CONCLUSION:

Based on the information provided herein, the staff recommends the Board of County Commissioners approve the proposed text amendments to allow an owner of a lot or parcel within a rural residential exception area to site a recreational vehicle as rental dwelling subject to certain restrictions and limitations.

Recreational Vehicles as Rental Dwellings Text Amendment

Appendix A: ESEE Analysis Document to File No. 247-23-000700-TA

Deschutes County Community Development

May 7, 2025

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Chapter 1: Overview of Goal 5 and ESEE Analyses

Introduction

This appendix report was prepared to supplement the findings document associated with File No. 247-22-000700-TA. Deschutes County is amending Deschutes County Code (DCC), Titles 18 and 19 to allow recreational vehicles (RV) as rental dwellings consistent with Senate Bill (SB) 1013 (2023) in Multiple Use Agricultural (MUA-10), Rural Residential (RR-10), Suburban Low Density Residential (SR 2.5), Urban Area Reserve (UAR-10), and Westside Transect Zones (WTZ). DCC Chapter 18.88 is the Wildlife Area (WA) Combining Zone, which recognizes four Goal 5 inventories: Antelope Range, Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat. Certain areas in rural Deschutes County, zoned MUA-10 and RR-10, are overlaid with a Deer Migration Corridor, Deer Winter Range, and/or Significant Elk Habitat.

In addition, there are some areas zoned MUA-10 and RR-10 that contain Goal 5 riparian resources and their associated fish, furbearer, waterfowl, and upland game bird habitat. Recognizing that an RV as rental dwelling is a new conflicting use in the WA Combining Zone, Deschutes County is applying Goal 5 in consideration of this Post Acknowledgment Plan Amendment (PAPA). The full findings document provides additional detail and background information regarding the intent of the amendments and compliance with other applicable local and state regulations outside of Statewide Land Use Planning Goal 5 – *Natural Resources, Scenic and Historic Areas, and Open Spaces*.

Deschutes County Goal 5 Program

The purpose of Goal 5 is “to protect natural resources and conserve scenic and historic areas and open spaces.” Local governments, as part of the Comprehensive Planning process, are required to inventory the extent, location, quality, and quantity of significant natural resources within their jurisdictional boundaries. Following this inventory, local governments then conduct an economic, social, environmental, and energy (ESEE) analysis to determine the extent to which land uses should be limited in order to adequately protect significant resources. Following an ESEE analysis, governments then establish a program to protect significant natural resources. Deschutes County established its initial Goal 5 natural resource inventory, ESEE analyses, and protection programs between the years of 1988-1994, as part of periodic review.

In reviewing this document, it is important to acknowledge there are six policies and development standards within the Deschutes County Comprehensive Plan and DCC that were established through ESEEs over time that could still limit the development of RVs as rental dwellings near inventoried Goal 5 resources. Deschutes County finds the proposed amendments do not alter the following existing protections.

1. Setback Protections: 100-foot structural setback from the ordinary high water mark (OHWM) of rivers and streams.

- 2. Scenic Protections: Development near rivers in the Landscape Management Combining Zone must be reviewed for aesthetic compatibility.
- 3. Wetland Protections: Prohibition of fill or removal of any material or wetland vegetation, regardless of the amount, within the bed and banks of any stream or river or in any wetland unless approved as a conditional use.
- 4. Mitigation Protections: Impacts to any wetland or riverbank impacts to be fully mitigated, as evaluated by Oregon Department of Fish and Wildlife (ODFW).
- 5. Flood Plain Protections: All new construction, expansion or substantial improvement of an existing dwelling, an agricultural related structure, a commercial, industrial or other non-residential structure, or an accessory building in a designated Flood Plain must obtain a conditional use permit.
- 6. Combining Zone Requirements: Deer Migration Corridor, Deer Winter Range, Elk Habitat, and Sensitive Bird and Mammal Habitat have site specific requirements including development setbacks and/or seasonal construction requirements to prevent impacts to sensitive species and habitat.

Required Steps and Discretionary Review

Local governments are required to comply with Goal 5 when a PAPA allows a new use and the new use “could be” a conflicting use with a particular Goal 5 resource site on an acknowledged resource list.¹ Deschutes County is amending the MUA-10, RR-10, SR 2.5, UAR-10 and WTZ zoning chapters to allow recreational vehicles as rental dwellings consistent with SB 1013 (2023).

Residential RVs have the potential to generate a certain level of noise and habitat alteration. As this new use could potentially impact Goal 5 resources, Deschutes County is conducting an ESEE Analysis to identify potential consequences and protections related to the amendments. RVs as rental dwellings will be added as a new permitted use in the MUA-10, RR-10, SR 2.5, UAR-10 and WTZ zones. As shown below, only two of those zones, MUA-10 and RR-10, contain Goal 5 resources and are being reviewed as part of this ESEE analysis.

Table 2: Zones Containing Goal 5 Resources

Contain Goal 5 Resources	Do Not Contain Goal 5 Resources
<ul style="list-style-type: none">• DCC Chapter 18.32, Multiple Use Agricultural Zone• DCC Chapter 18.60, Rural Residential Zone	<ul style="list-style-type: none">• DCC Chapter 19.12, Urban Area Reserve Zone• DCC Chapter 19.20, Suburban Low Density Residential Zone• DCC Chapter 19.22, Westside Transect Zone

¹ OAR 660-023-0250(3)(b)

ESEEs are meant to be analytical tools. The content of the ESEE is discretionary and is intended to be conducted by planning staff using existing information. An ESEE is not meant to focus exclusively on environmental impacts such as an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA). Additionally, Goal 5 explains “the 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.”² In utilizing this analytical tool, there are a few steps jurisdictions must include and address in accordance with OAR 660-023 – *Procedures and Requirements for Complying with Goal 5*:

1. Identify Conflicting Uses – Does the land use or activity negatively impact natural resources?
2. Determine Impact Area – What is the geographic extent to which land uses or activities adjacent to natural resources could negatively impact those resources?
3. Analyze ESEE Consequences – What are the positive and negative consequences (both for development and natural resources) of a decision to fully protect natural resources, fully allow conflicting uses, or limit conflicting uses?
4. Develop a program – How and to what extent will the natural resources be protected based on the ESEE analysis?

A response to each of these steps is included throughout this report. The relevant page and chapter can be found in the table of contents.

² OAR 660-023-0040(1)

Chapter 2: Deschutes County Goal 5 Inventory and Methodology

660-23-0030 – Inventory Goal 5 Resources

Stemming from periodic review, Deschutes County adopted inventories for a variety of Goal 5 natural resources (Attachment 1). Some of these resources have mapped geographic boundaries such as Deer Winter Range, whereas others are described as being located in general areas – such as furbearer habitat in riparian corridors. The inventories were produced at a countywide scale, with additional detail for the Deschutes River and its tributaries through the Deschutes County/City of Bend River Study. County staff digitized these habitat boundaries into Geographic Information Systems (GIS) shape files in the 2000s for public awareness. The shape files were created from hard copy maps and descriptions found in the ordinances establishing the County's Goal 5 program, in consultation with the Oregon Department of Fish and Wildlife (ODFW).

Maps provided in this document include inventoried habitat that spatially overlaps with the MUA-10 and RR-10 zones impacted by the proposed text amendments (Attachment 2). The habitat areas include: deer migration corridor, deer winter range, elk habitat, flood plain, and wetlands. Staff utilized the County's WA Combining Zone layers to determine the general extent of habitat for big game species as the Combining Zone was designed to cover a larger area than the habitat itself (Ordinance 92-046). Inventoried streams and rivers are shown on the map, as well as wetlands and flood plains. Goal 5 Riparian areas (flood plain, wetlands and 100 feet measured from ordinary high water mark) associated with these water bodies is also the habitat area for fish, furbearers, waterfowl, and upland game birds (Ordinance 92-041, 94-007). As the proposed text amendments are legislative and do not impact any specific properties, staff did not review Goal 5 impacts on an individual parcel level basis. Instead, staff identified the following potential resource sites in which the allowance of RVs as rental dwellings could potentially intersect with Goal 5 resources:

Riverine Resources: Some properties in the MUA-10 and RR-10 zones are located in relative proximity to the Deschutes River, Little Deschutes River, Paulina Creek, and Whychus Creek and its associated Goal 5 Riparian Area.³ Ordinance 92-041 stated the following additional Goal 5 resources depend on riparian corridors for habitat: furbearer, waterfowl, and upland game bird habitat. As the extent of the habitat locations for these species are not detailed in a boundary description or on a map, staff assumes the species habitat is found entirely inside the Riparian Area boundary shown in Attachment 2.

Wildlife Area Combining Zone: The WA Combining Zone was adopted as a protection measure for antelope, deer, and elk in Deschutes County. As an overlay zone, the mapped area conservatively identified typical habitat and migration areas and provided additional development requirements to ensure impacts to wildlife are properly mitigated alongside the underlying base zone regulations. The zone encompasses the previously inventoried area for Antelope Range, Deer Migration

³ There are 386 RR-10 tax lots that are two acres or larger that abut the Little Deschutes River or Deschutes River. There are 505 tax lots that are split-zoned RR-10 or MUA-10 with the Flood Plain Zone. The Flood Plain Zone is not recognized as a rural residential exception area. RR-10 and MUA-10 split zoned properties will be required to contain the minimum lot or parcel area to qualify for an RV as rental dwelling.

Corridor, Deer Winter Range, and Significant Elk Habitat. The proposed amendments add a conflicting use, RVs as rental dwellings, which affect three habitat ranges in MUA-10 and RR-10: Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat. These habitat ranges are shown in Attachment 2. The maps include federal land; however, these properties are not subject to Deschutes County land use regulations.

The Deschutes County Goal 5 inventory also includes scenic and open space sites such as Landscape Management Rivers and Streams, State Scenic Waterways and Federal Wild and Scenic Rivers, and Ecologically and Scientifically Significant Natural Areas – Little Deschutes River / Deschutes Confluence (Attachment 1). Protection of these resources is focused on mitigating visual impacts of individual development proposals. Staff finds these resources are not impacted by the proposed amendments and therefore are not reviewed in this document.

Chapter 3: Conflicting Use Analysis

660-023-0040(2): Identify conflicting uses. 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 in 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.

Deschutes County is proposing to add RVs as rental dwellings in the MUA-10 and RR-10 zones in the WA Combining Zone. RVs could be a conflicting use to significant Goal 5 resources as they generate vehicle trips and noise. Other uses that are allowed in the two zones are shown below.

Table 3: Allowed Uses

Zoning	Outright Uses	Conditional Uses
MUA-10	Agricultural uses Single family dwelling or manufactured home Harvesting a forest product Class I and II road or street projects subject to land division standards Class III road or street project Noncommercial horse stables Horse events Operation, maintenance and piping of canals Type I Home occupation Historic accessory dwelling units	Public use Semipublic use Dude ranch Kennel and/or veterinary clinic Guest house Manufactured home as a secondary accessory farm dwelling Exploration for minerals Private parks Personal use airstrip Golf course Type 2 or 3 Home occupation Destination resorts Planned developments Cluster developments Landfills Timeshare Hydroelectric facility Storage, crushing and processing of minerals Bed and breakfast inn Excavation, grading and fill Religious institutions Private or public schools Utility facility Cemetery Commercial horse stables Horse events Manufactured home park or RV park Wireless telecommunication facilities Guest lodge Surface mining in conjunction with operation and maintenance of irrigation system

Zoning	Outright Uses	Conditional Uses
RR-10	Single family dwelling or manufactured home Utility facility Community center Agricultural use Class I and II road or street projects subject to land division standards Class III road or street project Noncommercial horse stables Horse events Operation, maintenance and piping of canals Type I Home occupation Historic accessory dwelling units	Public park Dude ranch Personal use airstrip Planned developments Cluster developments Recreation-oriented facility Landfills Cemetery Timeshare Hydroelectric facility Bed and breakfast inn Golf course Excavation, grading and fill Religious institutions Public use Semipublic use Commercial horse stables Private or public schools Manufactured home park or RV park Wireless telecommunication facilities Surface mining in conjunction with operation and maintenance of irrigation system

General Impacts of Conflicting Uses

The proposed amendments would allow RVs as rental dwellings in inventoried Goal 5 resources. As part of the ESEE review “a local government may conduct a single analysis for two or more resource sites that are within the same area or that are similarly situated and subject to the same zoning”.⁴ In reviewing the proposed amendments, Deschutes County finds that the impacts from RVs in the MUA-10 and RR-10 zones as they relate to Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat are of such a similar nature that the impacts for these areas may be reviewed together via the general impacts described below.

- *Noise and Light*

RVs as a secondary dwelling may distress inventoried wildlife, as they seek to avoid noise and light.

- *Habitat Removal*

Preparing an appropriate site on a lot for an RV could require removal of upland vegetation, grading, and soil compaction that could alter drainage and runoff patterns. This could increase peak runoff, cause bank erosion, flooding, or increase the flow of sediment into water bodies. The removal of upland vegetation could also reduce tree canopy and understory vegetation which could be utilized by wildlife, outside of their primary habitat.

⁴ OAR 660-023-0040(4)

- *Introduction of Invasive, Nonnative Plants*

RVs may contribute to the spread of invasive, nonnative plants which could replace and degrade native vegetation of which many species depend.

- *Habitat Fragmentation*

Additional human development may result in fences, roads, traffic and other barriers to the movement of terrestrial wildlife that is critical to their survival.

Greater detail on these potential conflicts and their consequences is provided below.

Chapter 4: Impact Areas

660-023-0040(3): 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.

This step is discretionary and allows for the local jurisdiction to define which areas are the most vulnerable and/or most likely to be affected by the proposed amendments. The impact area for this ESEE analysis are properties that are within the Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat in the MUA-10 and RR-10 zones. As this ESEE is not for any specific property, but instead reflects changes to the code generally, there is no individual property specific data.

Properties in this impact area can be found in Attachment 2 – *Impact Area Maps*

Impact Area Methodology

To understand the impact of the proposed amendments within the areas of significance noted above, an estimate of the number of parcels in those areas that meet the baseline RV as rental dwelling criteria in terms of zone and acreage, and are non-federal (i.e. subject to Deschutes County zoning) is shown in Table 4 below.

Table 4: Number of Affected Non-Federal Properties in Impact Area

Zone	Deer Migration	Deer Winter	Elk
Multiple Use Agricultural Zone	0	9	0
Rural Residential Zone	1,293	446	39
Total	1,293	455	39

Chapter 5: ESEE Analysis

660-023-0040(4): Analyze the ESEE consequences. Local governments shall analyze the ESEE consequences that could result from decisions to allow, limit, or prohibit a conflicting use. The analysis may address each of the identified conflicting uses, or it may address a group of similar conflicting uses. A local government may conduct a single analysis for two or more resource sites that are within the same area or that are similarly situated and subject to the same zoning. The local government may establish a matrix of commonly occurring conflicting uses and apply the matrix to particular resource sites in order to facilitate the analysis. A local government may conduct a single analysis for a site containing more than one significant Goal 5 resource. The ESEE analysis must consider any applicable statewide goal or acknowledged plan requirements, including the requirements of Goal 5. The analyses of the ESEE consequences shall be adopted either as part of the plan or as a land use regulation.

Background

Deschutes County is choosing to conduct a single analysis for all resource sites as the impacts from RVs as rental dwellings could have very similar impacts to both riparian areas and fish and wildlife that depend on the riparian area for their habitat, and for big game including deer and elk.

As described above, the potential impacts fall into four general areas:

- *Noise and Light*

RVs as a rental dwelling may distress inventoried wildlife, as they seek to avoid noise and light.

- *Habitat Removal*

Preparing an appropriate site on a lot for an RV could require removal of upland vegetation, grading, and soil compaction that could alter drainage and runoff patterns. This could increase peak runoff, cause bank erosion, flooding, or increase the flow of sediment into water bodies. The removal of upland vegetation could also reduce tree canopy and understory vegetation which could be utilized by wildlife, outside of their primary habitat.

- *Introduction of Invasive, Nonnative Plants*

RVs may contribute to the spread of invasive, nonnative plants which could replace and degrade native vegetation of which many species depend.

- *Habitat Fragmentation*

Additional human development may result in fences, roads, traffic and other barriers to the movement of terrestrial wildlife that is critical to their survival.

This step is discretionary. The purpose of an ESEE analysis is to provide a qualitative exercise for local governments to weigh the positive and negative consequences of three scenarios in order to determine a preferred outcome. Governments may choose to use quantitative data as necessary but are not required to gather new information or hire wildlife biologists, economists, sociologists, or energy consultants.

ESEE Scenario Descriptions

Scenario (A) – Allow the Conflicting Use

In this scenario, the local government may decide that a conflicting use should be allowed fully, without any restrictions, no matter the potential impacts on the inventory site(s). In this instance, the Goal 5 rule would require the government to determine the conflicting use is of such importance compared to the site that the use should be allowed without any protections or limitations. In choosing this scenario, the local government could still use other tools to protect the inventories that are currently in place.

Scenario (B) – Prohibit the Conflicting Use

In this scenario, the local government may decide that the inventory site is of such importance or the conflicting use has the potential to be so detrimental to the inventory site(s), that the conflicting use should be entirely prohibited.

Scenario (C) – Limit the Conflicting Use

In this scenario, the local government may decide that the inventory site and the conflicting use are both important when compared to each other, and the use should be allowed with limitations to balance the impacts to the inventory site(s).

RVs as Rental Dwellings ESEE Analysis

Scenario (A) Allow the Conflicting Use

In this scenario, Deschutes County would allow RVs as rental dwellings in MUA-10 and RR-10 zones without any additional requirements to protect the inventoried resources.

Economic Consequences:

Permitting RVs as rental dwellings would have positive consequences by allowing a second dwelling on a property. Deschutes County is experiencing a housing shortage. Allowing RVs, which are generally small in size and cannot be used as vacation rentals, could help address work force housing shortages in the region and provide a housing type that has not historically been readily available in the rural county. It could reduce commuting costs for those workers that live in adjoining Crook, Jefferson and Klamath counties, and coupled with other workforce housing strategies, attract businesses and employment opportunities in Central Oregon.

Allowing RVs could also have negative consequences. The development of RVs as rental dwellings in MUA-10 and RR-10 zones could increase land value, which could price out low and middle-income residents from the opportunity to own a home. Previous testimony from ODFW estimates that hunting and wildlife viewing contributed more than \$50 million to the Deschutes County economy

annually. Deschutes County is proposing to allow RVs in some areas that contain riparian areas and species that rely on the riparian area for habitat including fish, furbearers, upland game birds, and waterfowl. Allowing RVs near these areas could reduce income associated with wildlife viewing and hunting of these species.

In some parts of the county, mule deer populations have declined up to 70% since 2000 as a result of human caused habitat reduction, fragmentation, and disturbance on winter range. By allowing RVs in Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat, there is the potential for greater disturbance of deer and elk populations that could reduce hunting and viewing opportunities.

Social Consequences:

Permitting RVs as rental dwellings could have positive consequences by allowing property owners with an existing single family dwelling to rent out an RV that accommodates aging parents or family members, farm help for those that are working on MUA-10 zoned agricultural properties or nearby Exclusive Farm Use zoned properties. By providing affordable housing, it could help lift people out of poverty and increase economic mobility. It could bring a positive impact on the surrounding community, encouraging social connections and lowering crime rates.

It could also have negative consequences by allowing RVs as rental dwellings in rural areas with inadequate access to employment, schools, food markets, medical facilities and parks. This could lead to more residents with higher automobile dependence and vehicle emissions caused by more people driving to and from rural areas. Based on previous testimony from ODFW, there could also be negative impacts due to the potential loss of wildlife habitat. Many residents, advocacy organizations, and wildlife agencies continue to express concerns regarding the loss of fish and wildlife habitat due to the region's rapid growth and development. There is a recognition that increases in human activity, especially in rural areas, displace habitat and diminish, however incrementally, Deschutes County's rural character and quality of life. The proposed amendments could have negative consequences due to increased human presence and infrastructure near the inventoried Goal 5 resources, which could lead to a reduced level of access and enjoyment for recreationalists.

Environmental Consequences:

In this scenario, RVs as rental dwellings would be permitted with no additional restrictions. As stated previously, RVs could present negative impacts as they have the potential to increase noise and light near fish and wildlife habitats, and in turn cause distress to inventoried Goal 5 species.

Developing an appropriate site for an RV may require removal of upland vegetation, grading, and soil compaction that could alter drainage and runoff patterns. This could increase peak runoff, cause bank erosion, flooding, or increase the flow of sediment into water bodies. The removal of upland vegetation could also reduce tree canopy and understory vegetation which could be utilized by wildlife, outside of their primary habitat. Given the relatively small footprint of RVs, however, these impacts may be minor compared to other development types. Permitting RVs could create negative impacts to designated habitat for Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat. Based on previous testimony from ODFW, mule deer populations have

declined up to 70% since 2000. Their testimony identified other elements contributing to reductions in mule deer populations tied to human caused habitat reduction, fragmentation, and disturbance on winter range.

As previously stated, the following Goal 5 protections established during the creation of the initial inventory would remain in place:

1. Setback Protections: 100-foot structural setback from the ordinary high water mark of rivers or streams.
2. Scenic Protections: Development near rivers in the Landscape Management Combining Zone must be reviewed for aesthetic compatibility.
3. Wetland Protections: Prohibition of fill or removal of any material or wetland vegetation, regardless of the amount, within the bed and banks of any stream or river or in any wetland unless approved as a conditional use.
4. Mitigation Protections: Impacts to any wetland or riverbank impacts to be fully mitigated, as evaluated by ODFW.
5. Flood Plain Protections: All new construction, expansion or substantial improvement of an existing dwelling, an agricultural related structure, a commercial, industrial or other non-residential structure, or an accessory building in a designated Flood Plain shall obtain a conditional use permit.
6. Combining Zone Requirements: Deer Migration Corridor, Deer Winter Range, Significant Elk Habitat and Sensitive Bird and Mammal Habitat have site specific requirements including development setbacks and seasonal construction requirements to prevent impact to sensitive species and habitat.

Existing protections would prevent riparian areas from being developed with RV rental dwellings established near them. As the existing Goal 5 measures in place today protect riparian areas and the fish and wildlife within that habitat area, the addition of RVs near these areas will be neutral.

Energy Consequences:

RVs as rental dwellings are unlikely to cause any major energy consequences. Per SB 1013, the property owner must provide essential services, which includes electricity and wastewater disposal, to the RV site. It can also rely on an existing domestic well.

A potential negative consequence of the proposed amendments could be additional development in rural Deschutes County. Depending on the location of the RV, it could lead to additional Vehicle Miles Traveled and greater congestion on county-owned roads for employment, education, and basic services.

Scenario (B) Prohibit the Conflicting Use

In this scenario, Deschutes County would not allow RVs as rental dwellings in the MUA-10 and RR-10 zones associated with the WA Combining Zone and Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat.

Economic Consequences:

Prohibiting RVs could have negative economic consequences, as it prevents certain property owners from using their land and having a secondary dwelling unit. This could contribute to workforce housing deficiencies in the region that is already experiencing high housing pressure, and compel residents to commute from adjoining areas in Crook, Jefferson, and Klamath Counties.

It could also have neutral consequences based on previous testimony from ODFW. Prohibiting RVs could contribute to stabilizing mule deer populations, thereby maintaining economic benefits from wildlife viewing or hunting. Wildlife viewing, hunting, and fishing experiences in Deschutes County are major economic assets to the region. Prohibiting RVs could minimize further habitat fragmentation and help maintain wildlife viewing, hunting, and fishing revenues in Deschutes County.

Social Consequences:

Prohibiting RVs could have negative social consequences. Many residents and multi-generational families in Deschutes County need affordable housing and are rent-burdened. Limiting the potential supply of a unique housing type could exacerbate Central Oregon's housing crisis by forcing some residents to pay higher rents, commute longer distances for basic services, or relocate. Those circumstances could lead to further mental and physical stress.

It could also have positive consequences. Many residents express their appreciation for undisturbed landscapes because they contribute to Deschutes County's rural character and quality of life. Prohibiting RVs, which generate noise and light would continue to limit disturbance to existing fish and wildlife habitats.

Environmental Consequences:

There are 386 RR-10 tax lots two acres or larger that abut the Little Deschutes River or Deschutes River and 505 tax lots that are split-zoned RR-10 or MUA-10 with the Flood Plain Zone. These properties contain a Goal 5 Riparian Area which is also the habitat for Goal 5 inventoried waterfowl, upland game bird, furbearers, and fish. The WA Combining Zone contains Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat. By prohibiting RVs and maintaining the status quo, these species will continue to be protected against habitat fragmentation and distress from second dwellings. The environmental consequences are therefore neutral.

Energy Consequences:

Energy consumption would have neutral consequences as this scenario maintains the status quo. Development associated with RVs may be displaced to other areas of rural Deschutes County, which could still have demands on utilities.

Scenario (C) Limit the Conflicting Use

In this scenario, Deschutes County would allow RVs as rental dwellings in the MUA-10 and RR-10 zones, with additional limitations to protect the inventoried resources beyond existing protections. The amendments already require the RV rental dwelling to be sited within 100 feet of the primary dwelling in all eligible areas. However, in this scenario, the limitation in impact areas could require the RV to be within a smaller distance of the existing dwelling, or establish other siting restrictions.

Economic Consequences:

Permitting RVs as rental dwellings would have positive consequences by allowing a second dwelling on a property. Deschutes County is experiencing a housing shortage. Allowing RVs, which are generally small in size and cannot be used as vacation rentals, could help address work force housing shortages in the region. It could reduce commuting costs for those workers that live in adjoining Crook, Jefferson and Klamath counties and coupled with other work force housing strategies, attract businesses and employment opportunities in Central Oregon.

Compared to scenario (a) where the RV must be sited within 100 feet of the primary dwelling, the addition of other siting limitations could lessen the impact by minimizing the buildable footprint and ultimately, the number of eligible properties, recognizing that some may not have enough area to accommodate an RV depending on site constraints. This could reduce the number of housing opportunities, but could positively impact the hunting and wildlife viewing economy in Central Oregon, valued at \$50 million annually. While such measures could lessen impacts, the overall burden caused by allowing RVs nevertheless may still overall impact wildlife and thereby impact revenue generated from the recreation economy.

In comparison to scenario (a), Deschutes County finds that this scenario would provide a limitation to reduce the amount of impacts, even if those impacts still exist, and also reduce the economic benefits of providing additional housing by limiting potential eligibility.

Social Consequences:

The positive social consequences in this scenario are very similar to scenario (a). Permitting RVs could have positive consequences by allowing property owners with an existing single-family dwelling to have a dwelling that accommodates aging parents or family members, farm help for those that are working on MUA-10 zoned agricultural properties or nearby Exclusive Farm Use zoned properties. By providing affordable housing, it could help lift people out of poverty and increase economic mobility. It could bring a positive impact on the surrounding community, encouraging social connections and lowering crime rates.

Allowing RVs as rental dwellings, even with limitations, could create a negative consequence for RVs in rural areas, increasing the number of dwellings with inadequate access to employment, schools, food markets, medical facilities and parks. This could lead to higher automobile dependence and vehicle emissions caused by more people driving to and from rural areas. Based on previous testimony from ODFW, there could also be negative impacts due to the potential loss of wildlife habitat stemming from the possible removal of habitat areas and construction of structures and their associated human presence. Many residents, advocacy organizations, and wildlife agencies

continue to express concerns regarding the loss of fish and wildlife habitat due to the region's rapid growth and development. There is a recognition that increases in human activity, especially in rural areas, displace habitat and diminish, incrementally, Deschutes County's rural character and quality of life. The proposed amendments could have negative consequences due to increased human presence and infrastructure near or within the inventoried Goal 5 resources, which could lead to a reduced level of access and enjoyment for recreationalists.

Environmental Consequences:

RVs as rental dwellings could present negative consequences as they have the potential to increase activity, noise, and light near fish and wildlife habitats, and in turn cause distress to inventoried Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat.

Siting of an RV may require removal of upland vegetation, grading, and soil compaction that could alter drainage and runoff patterns. This could increase peak runoff, cause bank erosion, flooding, or increase the flow of sediment into water bodies. The removal of upland vegetation could also reduce tree canopy and understory vegetation which could be utilized by fish and wildlife species, outside of their primary habitat. Given the relatively small footprint of RVs, however, these impacts may be minor compared to other development types. Permitting RVs could result in further negative impacts to the Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat. Based on recent testimony from ODFW, mule deer populations have declined up to 70% since 2000. Their testimony identified other elements contributing to reductions in mule deer populations tied to human caused habitat reduction, fragmentation, and disturbance on winter range.

Existing protections in place today (discussed above) would prevent Goal 5 riparian areas from being developed when RVs are nearby. The establishment of RVs in these areas would likely be neutral.

By further limiting siting options for the RV, the negative environmental consequences associated with RVs could be mitigated to a certain extent.

Energy Consequences:

The energy consequences in this scenario are similar to scenario (a). Further restricting siting options for the RV could decrease the amount of energy used to operate the RV, considering the essential services that are required to be provided.

Chapter 6: ESEE Decision

660-023-0040(5): *Develop a program to achieve Goal 5. Local governments shall determine whether to allow, limit, or prohibit identified conflicting uses for significant resource sites. This decision shall be based upon and supported by the ESEE analysis. A decision to prohibit or limit conflicting uses protects a resource site. A decision to allow some or all conflicting uses for a particular site may also be consistent with Goal 5, provided it is supported by the ESEE analysis. One of the following determinations shall be reached with regard to conflicting uses for a significant resource site:*

(c) *A local government may decide that the conflicting use should be allowed fully, notwithstanding the possible impacts on the resource site. The ESEE analysis must demonstrate that the conflicting use is of sufficient importance relative to the resource site, and must indicate why measures to protect the resource to some extent should not be provided, as per subsection (b) of this section.*

The graphic below is meant to be a simplified representation to balance each of the ESEE factors. As stated in the ESEE analysis, there are a variety of positive, negative, and neutral consequences associated with each scenario. Deschutes County finds that the issue of allowing an RV as rental dwellings in MUA-10 and RR-10 zones are both a social and economic issue—providing needed housing—that outweighs the other ESEE consequences and no additional restrictions in the impact areas are required. Therefore, the County is choosing scenario (a), which will allow the use without additional restrictions, notwithstanding the possible impacts on the resource sites.

Table 5: ESEE Factors

ESEE Factors	Support habitat functions (Environmental, economic, social)	Support Affordable Housing (Social, economic)	Support Recreational Economy (Economic, Social)	Preserves Rural Character (Social, economic)	Transportation (Energy)
Prohibit conflicting use (No code change)	0	-	0	0	0
Allow conflicting use Allow RVs with no additional requirements	-	+	-	-	-
Limit conflicting use Allow RVs with additional limitation	-	+	-	-	-

Chapter 7: Program to Achieve Goal 5

660-023-0050(1): For each resource site, local governments shall adopt comprehensive plan provisions and land use regulations to implement the decisions made pursuant to OAR 660-023-0040(5). The plan shall describe the degree of protection intended for each significant resource site. The plan and implementing ordinances shall clearly identify those conflicting uses that are allowed and the specific standards or limitations that apply to the allowed uses. A program to achieve Goal 5 may include zoning measures that partially or fully allow conflicting uses (see OAR 660-023-0040(5)(b) and (c)).

660-023-0050(2): When a local government has decided to protect a resource site under OAR 660-023-0040(5)(b), implementing measures applied to conflicting uses on the resource site and within its impact area shall contain clear and objective standards. For purposes of this division, a standard shall be considered clear and objective if it meets any one of the following criteria:
(a) It is a fixed numerical standard, such as a height limitation of 35 feet or a setback of 50 feet;
(b) It is a nondiscretionary requirement, such as a requirement that grading not occur beneath the dripline of a protected tree; or ...

Deschutes County has determined that allowing RVs as rental dwellings within the MUA-10 and RR-10 zones and within the Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat should be allowed fully with the same requirements and restrictions in all eligible areas, notwithstanding the possible impacts on the inventoried resources. The implementing measures do not include alternative, discretionary procedures for compliance.

Attachment 1 - Deschutes County Significant Goal 5 Resources

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
Fish Habitat (Inventory – Ord. No. 92-041, page 18; creeks, rivers and lakes)	Yes	Major conflicts are removal of riparian vegetation, fill and removal activities within the bed and banks of streams or wetlands, hydroelectric, rural residential development and water regulation	Floodplain zone recognized as program to achieve the goal to conserve fish habitat (Ordinance Nos. 88-030, 88-031, 89-009). Others include: fill and removal permits, wetland removal regulations, hydro prohibitions, rimrock setbacks, 100' setback from OHW, conservation easements and restrictions on boats and docks.	Ordinance Nos. 86-018, 86-053, 86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041
Deer Winter Range (Inventory – Ord. No. 92-041, page 22; Metolius, Tumalo, North Paulina, and Grizzly ranges identified by ODFW)	Yes	Major conflicts are dwellings, roads, and dogs. Activities which cause deterioration of forage quality and quantity or cover are conflicting uses. Fences which impede safe passage are also a conflicting use.	Floodplain zone recognized as a program to achieve the goal to protect deer winter range (Ordinance Nos. 88-030, 88-031, 89-009). Others include Wildlife Area Combining Zone. Requires 40-acre minimum lot size for all new residential land divisions. Underlying zoning in most of the deer winter range is: EFU, Forest, and Floodplain. These zones provide for large lot sizes and limit uses that are not compatible with farm or forest zones.	Ordinance Nos. 88-030, 88-031, 89-009, 92-040, 92-041, 92-042, 92-046
Deer Migration Corridor (Inventory – Ord. No. 92-041, page 26; Bend-La Pine migration corridor identified by ODFW)	Yes	Major conflicts are dwellings, roads, and dogs. Fences which impede safe passage are also a conflicting use.	Wildlife Area Combining Zone was recognized as the only program to achieve the goal to protect the deer migration corridor. Underlying zoning is RR-10. It was amended to require cluster development for all land divisions in the RR-10 zone in the Bend/La Pine migration corridor (92-042). A 20-acre parcel is the minimum size required for a cluster development. Siting and fencing standards also apply in the deer migration corridor. Migration corridor includes some EFU, Forest, and Floodplain zoned land. These resource zones provide for large lot sizes and limit uses that are not compatible with farm or forest zones.	Ordinance Nos. 92-040, 92-041, 92-042, 92-046

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
Elk Habitat (Inventory – Ord. No. 92-041 – page 32; identified by USFS and ODFW)	Yes	Major conflict is the loss of habitat due to increased residential densities in the habitat areas. Increased human disturbance can cause conflict with elk. The use of land which necessitates the removal of large amounts of vegetative cover can also alter the quality of elk habitat.	Wildlife Area Combining Zone was recognized as the only program to achieve the goal to protect the elk habitat. It was amended to require a 160-acre minimum lot size for areas identified as significant elk habitat. Siting standards are required to minimize conflicts of residences with habitat protection. Underlying zoning in the elk habitat areas is either Floodplain, Forest, or Open Space and Conservation. These resource zones restrict high density residential development and prohibit industrial and commercial uses. * Some lands are zoned RR10, including lots that are split zoned with flood plain. They are already parcelized, preventing future land divisions.	Ordinance Nos. 88-030, 88-031, 89-009, 92-040, 92-041, 92-042, 92-046
Antelope Habitat (Inventory – Ord. No. 92-041 – page 38; identified by ODFW)	No	Land use or development activities which would result in the loss of habitat, and animal harassment and disturbance associated with human activity.	To achieve the goal to conserve antelope habitat, uses conflicting with antelope habitat are limited to the Wildlife Area Combining Zone. In antelope range, the minimum lot size is 320 acres. Except for rural service centers, the antelope habitat is zoned EFU or F1.	Ordinance Nos. 92-040, 92-041, 92-042, 92-046
Habitat for Sensitive Birds (Inventory – Ord. No. 92-041 – page 41 and Table 5; identified by ODFW, ODF, OSU, Oregon Natural Heritage Data Bases). The area required for each nest site varies between species.	No	Nest sites are found in Forest, EFU and Open Space and Conservation zones. Uses that could conflict with the habitat site are surface mining, residential use, recreation facilities, roads, logging, and air strips. Any activity which would disturb the nesting birds, including intensive recreational use or removal of trees or	The Sensitive Bird and Mammal Combining Zone achieves the goal to protect sensitive bird sites.	Ordinance Nos. 92-040, 92-041, 92-042, 92-046

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
		vegetation could conflict with the habitat site.		
(UPDATE - Inventory – Ord. No. 94-004 –pages 3 to 140 Site specific ESEE analysis and decisions follow each site.	No	See above.	Habitat areas for sensitive birds of the Fish and Wildlife Element, adopted in No. 92-041 is repealed and replaced by inventories in Exhibit 1. Area required around each nest site needed to protect the nest from conflict varies between species. It's called "sensitive habitat area." Note: Northern bald eagle, osprey, golden eagle, prairie falcon, and great blue heron rookeries are located on federal land. Classified as "2A" Goal 5 Resources. Great Grey owl site no longer exists. Some bald eagle, golden eagle sites are controlled by the Sensitive Bird and Mammal Combining Zone.	Ordinance Nos. 94-004, 94-005 and 94-021
Waterfowl Habitat (Inventory – Ord. No. 92-041 – page 56; includes all rivers, streams, lakes and perennial wetlands and ponds identified on the 1990 US Fish and Wildlife Wetland Inventory Maps; ODFW provided lists of all bird species; Co/City of Bend River Study provides additional information)	Yes	Future resort and vacation home development, human activity associated with recreation along rivers and lakes, timber-cutting around sensitive habitats, fill and removal of material in wetlands and within the bed and banks of rivers and streams, and removal of riparian vegetation are conflicting uses.	Floodplain zone recognized as program to achieve the goal to conserve waterfowl habitat (Ordinance Nos. 88-030, 88-031, 89-009). Others include: fill and removal permits, wetland removal regulations, rimrock setbacks, 100' setback from OHW, conservation easements, restrictions on boats and docks, landscape management, state and federal scenic water regulations. In addition, the Forest and EFU zones require large minimum lot size which limits the potential density of development in the areas adjacent to many of the rivers, streams, wetlands, and ponds used for waterfowl habitat.	Ordinance Nos. 86-018, 86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041, 92-042- 92-045, 92-046

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
Upland Game Bird Habitat (Inventory – Ord. No. 92-041 – page 60; ODFW did not identify critical habitat for any of the upland game species except for the sage grouse; habitat for upland game birds is dispersed throughout the county in riparian, forest, agricultural, and rangeland areas)	Yes	<p>Pheasant and quail are affected whenever agricultural land is taken out of production through urban sprawl, road construction, industrial development and other land clearing activities.</p> <p>Farming practices on existing agricultural lands also have an impact. Fence row, woodlots, and riparian vegetation are constantly being removed at the expense of upland bird use.</p> <p>Chapter 6 of County/City of Bend River Study identifies conflicting uses with upland bird habitat.</p>	<p>For all of the upland game birds except sage grouse, the habitat is adequately protected by the existing EFU and Forest zoning and the provisions to protect wetlands and riparian areas to achieve the goal of protecting upland game birds.</p> <p>County provisions to protect riparian areas and wetlands protect one of the most significant components of upland game habitat.</p> <p>Note: conflicts with sage grouse are limited by EFU zoning with a 320 acre minimum parcel size. Sensitive Bird and Mammal Combining Zone pertaining to sage grouse and leks have been repealed due to LCDC enacted rules in OAR 660, Division 23.</p>	Ordinance Nos. 86-018, 86-053, 86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041, 92-042, 92-046
UPDATE - Inventory – Ord. No. 94-004 – pages 156-201.	Yes	See above.	<p>Habitat areas for Upland Game Bird Habitat, adopted in No. 92-041 is repealed and replaced and further amended in Exhibit 4 with the ESEE Analysis and inventory for upland game bird habitat.</p> <p>Conflicts with sage grouse are reduced by the limitations on uses in the EFU and Floodplain zone, by the 320 acre minimum lot size and predominance of BLM lands.</p> <p>Note: conflicts with sage grouse are limited by EFU zoning with a 320 acre minimum parcel size. Sensitive Bird and Mammal Combining Zone pertaining to sage grouse and leks have been repealed due to LCDC enacted rules in OAR 660, Division 23.</p>	Ordinance Nos. 94-004 and 94-021

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
Furbearer Habitat (Inventory – Ord. No. 92-041 – page 65; ODFW has not identified any specific habitat sites other than riparian and wetland areas that are critical for the listed species.	Yes	<p>The conflicting uses are those activities or development which would degrade or destroy habitat, or disturb the animals causing them to relocate.</p> <p>Conflicts between furbearers and other land uses are minimal in the county.</p>	<p>Furbearer habitat is adequately protected by the existing EFU and Forest zoning and the provisions to protect farm use and forest zoning, and the provisions to protect wetlands and riparian areas to achieve the goal to protect furbearers.</p> <p>The farm and forest zones require large minimum lot sizes and many uses are permitted only as conditional uses. The measures to protect riparian and wetland habitat are detailed in this plan in the Riparian and Wetland Habitat section.</p>	Ordinance Nos. 86-018, 86-053, 86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041
Habitat Areas for Townsend's Big-Eared Bats (Inventory – Ord. No. 92-041 – page 69; identified by ODFW, ODF, OSU, Oregon Natural Heritage Data Bases)	No	Caves located in EFU zones. Uses permitted in those zones that could conflict with the habitat site are surface mining, recreation facilities including golf courses and destination resorts, roads, logging, and air strips.	Program to achieve the goal is Sensitive Bird and Mammal Combining Zone	Ordinance No. 92-041 and 042
UPDATE - Inventory – Ord. No. 94-004 – pages 140 to 155 Site specific ESEE analysis and decisions follow each site.	No	See above.	Habitat areas for Townsend Bats, adopted in No. 92-041 is repealed and replaced and further amended in Exhibit 2. The ESEE for Townsend's big-eared bats is amended for additional bat sites in Exhibit 3.	Ordinance Nos. 94-004 and 94-021

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
Wetlands and Riparian Areas (Inventory – Ord. No. 92-041 – page 73; identified on USFWS NWI)	Yes	<p>Conflicting uses include fill and removal of material, including vegetation which could cause a reduction in the size or quality or function of a wetland, or cause destruction or degradation of the riparian habitat and vegetation.</p> <p>Structural development in wetlands or riparian areas would reduce the habitat and the use of the structure could cause conflicts such as harassment or disturbance or wildlife dependent on the habitat. Cutting of riparian vegetation can remove important shade for streams, eliminate habitat for various waterfowl, furbearers, and nongame bird species, and can increase the potential for erosion or bank instability in riparian areas.</p>	<p>Floodplain zone recognized as program to achieve the goal to conserve wetland and riparian habitat (Ordinance Nos. 88-030, 88-031, 89-009).</p> <p>Others include: fill and removal permits, wetland removal regulations, hydro prohibitions, 100' setback from OHW, conservation easements, restrictions on boats and docks, and landscape management.</p>	Ordinance Nos. 86-018, 86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041, 92-045

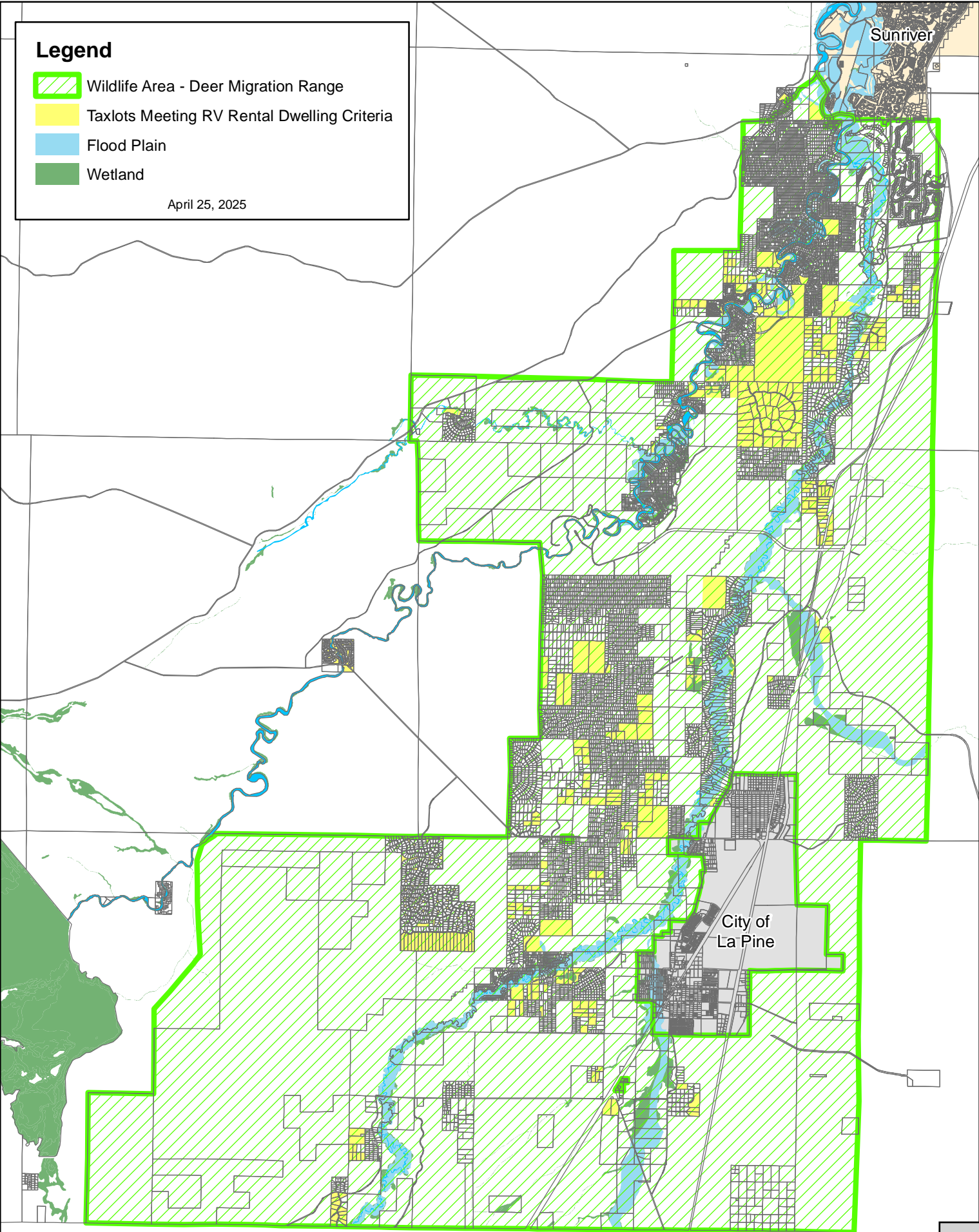
Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
<p>UPDATE – Riparian inventory – Ord. No. 94-007; Significant riparian habitat is located in three areas:</p> <p>Area within 100' of OHW of an inventoried stream or river;</p> <p>Area adjacent to an inventoried river or stream and located within a flood plain mapped by FEMA and zoned Floodplain by the county (Deschutes River, Little Deschutes River, Paulina Creek, Fall River, Indian Ford Creek, Tumalo Creek, Squaw (Whychus) Creek, and Crooked River</p> <p>Area adjacent to a river or stream and inventoried as a wetland on the NWI</p>	Yes	<p>Conflicting uses:</p> <p>Locating septic systems in riparian area could cause pollution of ground and surface water systems. The potential for this conflict depends on the characteristics of the soil.</p> <p>Locating structural development in riparian areas can reduce the habitat and the use of structures could cause conflicts such as harassment or disturbance of wildlife dependent on habitat.</p> <p>Recreational use of the riparian area including boat landing areas, formal and informal trails, and camping areas can alter soil composition and cause destruction of vegetation.</p> <p>Increase in density of residential lots in or adjacent to riparian areas could result in a decrease of habitat effectiveness because of disturbance to wildlife.</p>	<p>Riparian Areas inventory and ESEE analysis adopted by Ordinance No. 92-041 is deleted and replaced by an inventory and ESEE contained in Exhibit A.</p> <p>New parcels meeting the minimum lot size in the resource zones (EFU, Forest, non-exception flood plain) will not cause an increase in residential density that would conflict with riparian habitat values.</p> <p>In RR10, MUA-10, and Floodplain zones found adjacent to inventoried riparian areas, the creation of new 10 acre parcels would not significantly increase the overall density of residential use adjacent to riparian areas because the areas where new parcels could be created, with the exception of Tumalo Creek, are already divided into lots considerably smaller than 10 acres.</p> <p>Program to achieve Goal 5 for Riparian Habitat: fill and removal regulations to protect wetlands, 100' setback from OHW, Floodplain zone (regulates docks too), Landscape Management zone, Conservation easements, State Scenic Waterway</p>	Ordinance Nos. 94-007

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
<p>UPDATE – Wetland Inventory – Ord. No. 94-007, Exhibit B – inventory is NWI (Ord. No. 92-045)</p>	Yes	<p>Conflicting uses include fill and removal of material, including vegetation, which could cause reduction in the size, quality or function of a wetland.</p> <p>Locating structural development in wetlands could reduce the habitat and the use of the structure could cause conflicts such as harassment or disturbance of wildlife dependent on the habitat.</p> <p>Draining wetlands for agriculture or other development purposes destroys the hydrological function of the wetland and alters the habitat qualities that certain wildlife depend on.</p> <p>Cutting wetland vegetation adjacent to streams can remove important shade for streams, eliminate habitat for various waterfowl, furbearers, and nongame bird species, and can also increase the potential for erosion or bank instability in riparian areas.</p>	<p>Wetlands Inventory and ESEE analysis adopted by Ordinance No. 92-041 is deleted and replaced by an inventory and ESEE contained in Exhibit B, Wetlands.</p> <p>Program to achieve Goal 5 for Wetland Habitat:</p> <ul style="list-style-type: none"> • Fill and removal regulations to protect wetlands • 100' setback from OHW • Flood plain zone (regulates docks too) • DSL Removal / Fill law 	Ordinance Nos. 94-007

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
Ecologically and Scientifically Significant Natural Areas * Little Deschutes River / Deschutes River Confluence (Inventory – Ord. No. 92-052, Exhibit B, Page 1; identified by Oregon Natural Heritage Program); Analysis of Pringle Falls and Horse Ridge Research Areas, West Hampton Butte and Davis Lakes excluded b/c they're on federal land and/or not related to flood plains.	Yes	Resort and vacation home development, recreational uses, livestock grazing, and fill and removal in wetlands are conflicting uses.	Programs for resource protection include the zoning of the property, the provisions of the flood plain, wetlands and the river corridor. The implementing measures which protect and regulate development in the confluence area are: EFU zoning, Floodplain zoning, conservation easements, and fill and removal permits. The confluence area is located in the undeveloped open space area of the Sunriver development (Crosswater). 80% of the property is retained as open space. Today, zoning is Floodplain and Forest Use.	Ordinance Nos. 86-018, 86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041, 92-045
Landscape Management Rivers and Streams (Inventory – Ord. No. 92-052, Exhibit C, Page 3; identified by state and federal wild and scenic corridors; and within 660' of OHW of portions of Deschutes River, Little Deschutes River, Paulina Creek, Fall River, Spring river, Tumalo Creek, Squaw (Whychus) Creek, and Crooked River not on the state or federal scenic designations)	Yes	Uses conflicting with open space and scenic resources along the designated Landscape Management rivers and streams include land management activities that result in habitat loss or development within river or stream corridors which would excessively interfere with the scenic or natural appearance of the landscape as seen from the river or stream or alteration of existing natural landscape by removal of vegetative cover.	Program for resource protection includes: Floodplain zone and restrictions, fill and removal permits, wetland removal regulations, hydro prohibitions, rimrock setbacks, conservation easements, restrictions on boats and docks, and landscape management.	Ordinance Nos. 86-018, 86-053, 86-054, 86-056, 88-030, 88-031, 89-009, 92-033, 93-034

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
Lakes and Reservoirs (Inventory – Ord. No. 92-052, Exhibit C, Page 10; includes Upper Tumalo Reservoir; remaining are on federal land)	No	Conflicting uses with the open space and scenic values of the land adjacent to the inventoried lakes include development which would cause a loss of open space or a decrease in the aesthetic and scenic resources, and land management activities resulting in the removal of natural vegetation which provides wildlife habitat and scenic value.	Conflicting uses around Tumalo Reservoir are specifically limited by Title 18.48, Open Space Conservation Zone and a 100' setback for any structure from OHW.	Ordinance No. 91-020
State Scenic Waterways and Federal Wild and Scenic Rivers (Inventory – Ord. No. 92-052, Exhibit E, Page 1;	Yes	See County / City of Bend River Study and 1986 River Study Staff Report. Both referenced in Ord. 92-005, Exhibit E.	Program for resource protection includes: Floodplain zone and restrictions, fill and removal permits, wetland removal regulations, hydro prohibitions, rimrock setbacks, conservation easements, restrictions on boats and docks, and landscape management.	Ordinance Nos. 86-018, 86-053, 86-054, 86-056, 88-030, 88-031, 89-009, 92-033, 93-034
Wilderness Areas, Areas of Special Concern, Energy Sources (Ord. No 92-052), and Groundwater Resources (Ord. No. 94-003) not analyzed because they're on federal land or don't relate to flood plains.	No	N/A	N/A	N/A

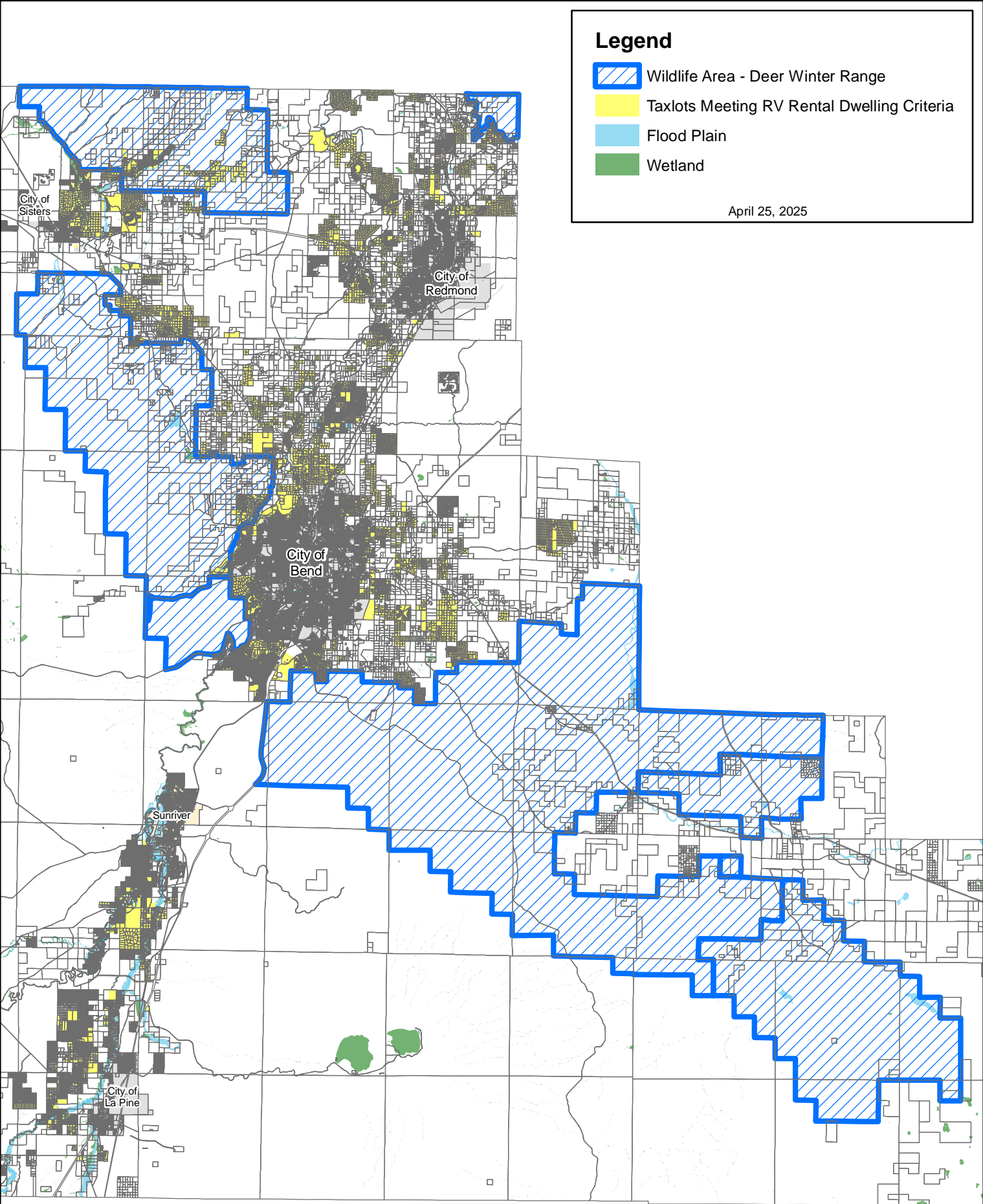
Attachment 2 - Inventory Site Maps





Taxlots Meeting RV Rental Dwelling Criteria - Deer Winter Ran

05/07/2025 Item #10.



Legend

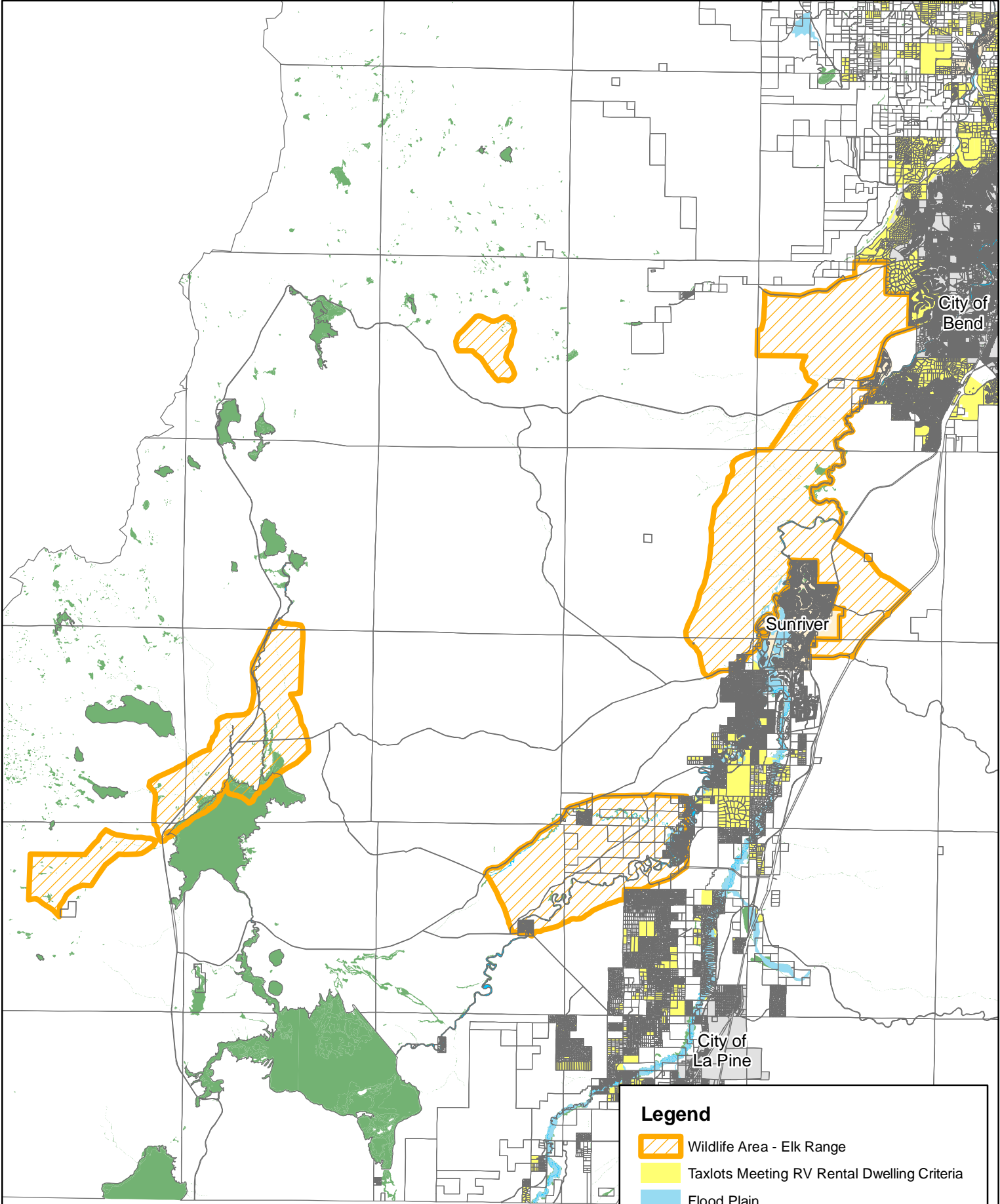
- Wildlife Area - Deer Winter Range
- Taxlots Meeting RV Rental Dwelling Criteria
- Flood Plain
- Wetland

April 25, 2025



Taxlots Meeting RV Rental Dwelling Criteria - Elk Range

05/07/2025 Item #10.



Legend

- Wildlife Area - Elk Range
- Taxlots Meeting RV Rental Dwelling Criteria
- Flood Plain
- Wetland



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: May 7, 2025

SUBJECT: Public Hearing: Remand of a modification to the Final Master Plan of the Thornburgh Destination Resort

RECOMMENDED MOTION:

Following the hearing, the Board may choose to:

- Continue the hearing to a date certain;
- Close the oral portion of the hearing and leave the written record open to a date and time certain;
- Close the hearing and commence deliberations; or
- Close the hearing and schedule deliberations for a date and time to be determined.

BACKGROUND AND POLICY IMPLICATIONS:

The Board of Commissioners (Board) will hold a work session in preparation for a May 7, 2025, public hearing to consider a remand proceeding from the Land Use Board of Appeals (LUBA) for a land use action review to amend the Final Master Plan (FMP) for the Thornburgh Destination Resort by amending the Fish and Wildlife Management Plan (2022 FWMP) and imposing limitations on the scope of development and water use allowed by the Thornburgh Destination Resort.

Record items can be viewed and downloaded from the following link:

bit.ly/0425ThornburghRemand

BUDGET IMPACTS:

None

ATTENDANCE:

Jacob Ripper, AICP, Principal Planner



COMMUNITY DEVELOPMENT

MEMORANDUM

TO: Deschutes County Board of Commissioners

FROM: Jacob Ripper, AICP, Principal Planner

DATE: May 7, 2025

SUBJECT: Public Hearing: Remand of a Thornburgh Destination Resort Modification, application 247-22-000678-MC (remand ref. 247-25-000229-A).

On May 7, 2025, the Board of Commissioners (Board) will hold a public hearing to consider the remanded decision of the Oregon Land Use Board of Appeals (LUBA) regarding an amendment to the Final Master Plan (FMP) for the Thornburgh Destination Resort by amending the Fish and Wildlife Management Plan (2022 FWMP) and imposing limitations on the scope of development and water use allowed by the Thornburgh Destination Resort. The record associated with this remanded review is located on the project webpage¹. This hearing is a continuation of an existing application (247-22-000678-MC), with the full record located on the project webpage².

I. BACKGROUND

The original application was received by the Planning Division on August 17, 2022. A public hearing was conducted by a Deschutes County Hearings Officer on October 24, 2022. On December 19, 2022, the Hearings Officer denied the Applicant's request.

Two appeals of the Hearings Officer's decision were received. The Applicant filed an appeal on Friday, December 30, 2022 (ref. 247-22-000984-A) and an appeal was filed by A. Gould on Tuesday, January 3, 2023 (ref. 247-23-000003-A). The Board of County Commissioners conducted a public hearing on February 1, 2023.

The Board held deliberations on Wednesday, March 29, 2023, and voted 2-1 to approve the Applicant's request. The Board's final decision was approved and mailed on April 17, 2023. All decisions and recordings of those meetings are available on the project websites.

¹ bit.ly/0425ThornburghRemand

² <https://www.deschutes.org/cd/page/247-22-000678-mc-thornburgh-destination-resort-modification-cmpfmpfwmp>

On January 12, 2024, the Land Use Board of Appeals (LUBA) issued their Final Opinion and Order remanding the County's decision back to the County for further review (ref. LUBA Nos. 2023-038, 2023-039, 2023-041). On May 1, 2024, the Oregon Court of Appeals reversed and remanded to LUBA for further review on petition of The Confederated Tribes of the Warm Springs Reservation of Oregon (Tribe). On February 25, 2025, LUBA remanded to the County again, adding an additional remand topic for the County to address at the local level. On April 7, 2025, the Applicant requested that the County initiate remand proceedings.

II. REMAND TIMELINE

Pursuant to Deschutes County Code (DCC) 22.34.030(C) and state law, the County must issue a final decision within 120 days from the date the applicant requests to initiate remand proceedings, and this time period cannot be extended unless the parties enter into mediation. The Applicant initiated the remand proceedings on April 7, 2025, making the final County decision due by August 5, 2025.

III. LUBA REMAND

LUBA, in its first Final Opinion and Order, remanded the County decision to address the follow issues summarized below:

1. *Additional findings to explain why the submittal of the 2022 Fish and Wildlife Management Plan (FWMP) to the Oregon Water Resources Department is sufficient to satisfy the "no net loss" standard with respect to groundwater sources for fish habitat mitigation.*

On pages 64-65 of the first LUBA remand, LUBA discusses that Appellant Bishop argued that the 2022 FWMP groundwater rights compliance provisions are inadequate to support a conclusion that the 2022 FWMP will result in no net loss to fish habitat. On this sub-assignment of error, LUBA sustained Bishop's assignment of error in part:

We agree with Bishop that the county's findings are inadequate to explain why *submittal* to OWRD is sufficient to satisfy the no net loss standard with respect to groundwater sources for fish habitat mitigation. Indeed, Thornburgh and the county rely upon OWRD processes to ensure that voluntary cancellation of water rights consistent with OWRD rules and review processes will result in improved fish habitat. ... The county has failed to explain how simple submittal of an application to OWRD permits the county to rely on those OWRD processes.

Thornburgh has not pointed to any evidence supporting a conclusion that ground water right certificate ownership, cessation of pumping, and OWRD submittal is sufficient to ensure fish mitigation water will be provided as assumed in the 2022 FWMP.

2. *That the FWMP was a substantial change with respect to the required economic analysis and LUBA required further findings addressing DCC 18.113.070(C)(3) and*

(4) and that the County will either need to consider those changes or explain why that consideration is not required.

LUBA analyzed the question of whether the 2022 FWMP would materially affect the findings of fact on which the original approval was based and whether the changes resulting from the 2022 FWMP are not “substantial changes that require a new application addressing those criteria,” in four subsections: (A) Economic Analysis; (B) Open Space; (C) Water Supply, Consumption, and Conservation; (D) Water System and Wastewater Disposal Plans.

Under economic analysis, considering the proposed change to the number of golf courses, LUBA agreed with Appellant Lipscomb that the reduction in the number of golf courses is a substantial change to the resort development that materially affects the facts underlying the resort’s economic analysis that the county relied upon to find that DCC 18.113.070(C) is satisfied. LUBA found there is an impact to the underlying findings of fact for the CMP approval – namely that the developed golf courses will provide 125 newly created jobs and 3.9 million dollars in employee compensation (p. 71). LUBA disagreed with the argument that a general change in rental cost and availability is a “substantial change” (p. 75):

On remand, the county will need to consider whether, with the changes proposed in the 2022 FWMP, those criteria [DCC 18.113.070(C)(3) and (4)] are satisfied. On remand, the county will need either to consider changes to employee housing demands based on the changes in the 2022 FWMP or explain why that consideration is not required.

LUBA disagreed with the arguments that a “new application” means an entirely new CMP/FMP application and deferred to the county’s interpretation of DCC 22.36.040. LUBA ruled (pp. 79-80):

Here, the identified error may be corrected by the county accepting a new economic analysis that demonstrates that “[t]he destination resort will provide a substantial financial contribution which positively benefits the local economy throughout the life of the entire project, considering changes in employment, demands for new or increased levels of public service, housing for employees and the effects of loss of resource land” and that “[t]he natural amenities of the site considered together with the identified developed recreation facilities to be provided with the resort, will constitute a primary attraction to visitors, based on the economic feasibility analysis.” DCC 18.113.070(C)(3), (4). Accordingly, we conclude that the established error should result in remand in this case.

3. Whether the 2022 Fish and Wildlife Management Plan violates the Treaty with the Tribes of Middle Oregon, dated June 25, 1855.

In its 2024 decision, LUBA ruled that the Tribe’s argument that the challenged decision improperly construes applicable law by failing to address whether the 2022 Fish and Wildlife Management Plan violates the Treaty with the Tribes of Middle Oregon, dated June 25, 1855 (Treaty), was not raised during the local proceeding and was therefore waived. LUBA also ruled that several other arguments were not adequately raised and were thus waived.

Petitioners further appealed to the Oregon Court of Appeals. The Court of Appeals remanded to LUBA in its decision, *Confederated Tribes of Warm Springs v. Deschutes County*, 332 Or App 361, 550 P3d 443 (2024). On judicial review, the Court of Appeals agreed with the Tribe that the question of whether the 2022 FWMP violates the Treaty was sufficiently raised and that the County was obligated to make findings addressing it.

Therefore, following remand from the Court of Appeals, LUBA remanded the decision to the County to address this issue (number 3 above), as well as the other issues it remanded in its January 12, 2024, decision (numbers 1 and 2 above). The Appellants' other assignments of error were denied.

Staff notes that the Applicant, in their initiation of remand materials and as of the date of drafting this report, has not yet provided additional testimony to address the remanded issue areas summarized above. Staff anticipates additional information may be submitted prior to or at the public hearing for Board consideration, or potentially during an open record period, should the Board choose to leave the written record open. Any materials received by the applicant ahead of the public hearing will be timely incorporated into the official record.

IV. HEARING PROCEDURE

Participation

Per DCC 22.34.030(A), only those persons who were parties to the proceedings before the County as part of the File Number(s) listed above are entitled to notice and participation in the remand hearing. Per County hearing procedures, the entirety of the record must be before the Board and can be found at the project websites listed above.

Pursuant to DCC 22.24.070 the Board may set reasonable time limits on oral testimony. In the Notice of Public Hearing mailed to all parties with standing, typical testimony time limits were listed, being:

- Applicant Testimony: 30 Minutes
- Agency Testimony: 10 Minutes
- Public Testimony: 3 Minutes
- Applicant Rebuttal Testimony: 10 Minutes

The Confederated Tribes of Warm Springs requested 30 minutes to speak at the hearing. The Board has the discretion to modify or eliminate the above suggested standard time limits if it wishes to do so.

Reopened Record

Per DCC 22.32.040 notes that the scope of the proceeding for an application on remand must be limited to review of the issues that LUBA requires to be addressed, although the Board may use its discretion to reopen the record where it seems necessary.

The applicant requested the record be reopened to address a single remand issue, being the economic analysis (number 2 above). The Confederated Tribes of Warm Springs requested that the record be reopened to address all remand issues. In either case the hearings body must limit its review to the remanded issues.

Pursuant to Board Order No. 2025-014, signed April 16, 2025, the Board reopened the record and limited new evidence to be only directed to the economic analysis required pursuant to DCC 18.113.070 (C)(3) and (4).

V. PUBLIC COMMENT

Staff has received several public comments since the Notice of Public Hearing was mailed. All comments received as of the date of drafting this memo are uploaded to the record. To the extent additional comments are received prior to the hearing, staff will enter them into the record in a timely manner.

VI. NEXT STEPS AND TIMELINE

Following the hearing the Board may choose to:

- Continue the hearing to a date certain;
- Close the oral portion of the hearing and leave the written record open to a date and time certain;
- Close the hearing and commence deliberations; or
- Close the hearing and schedule deliberations for a date and time to be determined.

Staff notes that a final County decision on the remand is required within 120 days of the date the applicant initiates the remand. The applicant initiated the remand on April 7, 2025; therefore, a final County decision is due no later than August 5, 2025.

Due to the short time period for remand proceedings, if an open record period is requested and granted, staff recommends a standard open record period of seven days for new written testimony, seven days for rebuttal, and seven days for final legal argument by the Applicant only. In addition, the Confederated Tribes requested that the hearing be continued to the first week of June. If the Board were to grant the continuance, and with the open record period outlined above, this would put a likely and realistic decision date beyond the 120-day due date.

Attachment(s):

Attachment A: Final Opinions and Orders

Attachment B: Oregon Court of Appeals Opinion

JAN 12 2024 PM 12:45

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

THE CONFEDERATED TRIBES OF THE WARM
SPRINGS RESERVATION OF OREGON,
Petitioner,

and

CENTRAL OREGON LANDWATCH,
ANNUNZIATA GOULD, and THOMAS BISHOP,
Intervenors-Petitioners,

vs.

DESCHUTES COUNTY,
Respondent,

and

CENTRAL LAND AND CATTLE COMPANY, LLC,
PINNACLE UTILITIES, LLC, and KAMERON DELASHMUTT,
Intervenors-Respondents.

LUBA No. 2023-038

ANNUNZIATA GOULD,
Petitioner,

and

THE CONFEDERATED TRIBES OF THE WARM
SPRINGS RESERVATION OF OREGON,
CENTRAL OREGON LANDWATCH,
PAUL J. LIPSCOMB, and THOMAS BISHOP,
Intervenors-Petitioners,

vs.

1
2 DESCHUTES COUNTY,
3 *Respondent,*

4
5 and

6
7 CENTRAL LAND AND CATTLE COMPANY, LLC,
8 PINNACLE UTILITIES, LLC, and KAMERON DELASHMUTT,
9 *Intervenors-Respondents.*

10
11 LUBA No. 2023-039

12
13 CENTRAL OREGON LANDWATCH
14 *Petitioner,*

15
16 and

17
18 THE CONFEDERATED TRIBES OF THE WARM
19 SPRINGS RESERVATION OF OREGON,
20 ANNUNZIATA GOULD, and THOMAS BISHOP,
21 *Intervenors-Petitioners,*

22
23 vs.

24
25 DESCHUTES COUNTY,
26 *Respondent,*

27
28 and

29
30 CENTRAL LAND AND CATTLE COMPANY, LLC,
31 PINNACLE UTILITIES, LLC, and KAMERON DELASHMUTT,
32 *Intervenors-Respondents.*

33
34 LUBA No. 2023-041

35
36 FINAL OPINION
37 AND ORDER
38

1 Appeal from Deschutes County.
2

3 Josh Newton filed a petition for review and reply brief and argued on
4 behalf of petitioner Confederated Tribes of the Warm Springs Reservation of
5 Oregon. Also on the briefs were Ellen Grover and Best Best & Krieger LLP.
6

7 Jennifer Bragar filed a petition for review, intervenors-petitioners' briefs,
8 and reply briefs, and argued on behalf of petitioner Annunziata Gould and
9 intervenors-petitioners Paul J. Lipscomb, and Thomas Bishop. Also on the briefs
10 were Jay M. Harris and Tomasi Bragar Dubay.
11

12 Carol Macbeth filed a petition for review and reply brief and argued on
13 behalf of petitioner Central Oregon Landwatch.
14

15 No appearance by Deschutes County.
16

17 J. Kenneth Katzaroff filed the intervenors-respondents' briefs and argued
18 on behalf of intervenors-respondents. Also on the briefs were Bailey M. Oswald,
19 Megan J. Breen, and Schwabe, Williamson & Wyatt, P.C.
20

21 ZAMUDIO, Board Member; RYAN, Board Chair; RUDD, Board
22 Member, participated in the decision.
23

24 REMANDED 01/12/2024
25

26 You are entitled to judicial review of this Order. Judicial review is
27 governed by the provisions of ORS 197.850.

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Opinion by Zamudio.

I. NATURE OF THE DECISION

Petitioners appeal a board of county commissioners decision approving modification of a destination resort final master plan.

II. BACKGROUND

This appeal involves the Thornburgh Destination Resort in Deschutes County, which the county initially approved in 2006.¹ The subject property is comprised of approximately 1,970 acres of mostly undeveloped land that is located approximately three miles west-southwest of the City of Redmond.

We start by setting out the legal framework that applies to destination resorts. ORS 197.435 to 197.467 govern approval of destination resorts. “A destination resort is a self-contained development that provides for visitor-oriented accommodations and developed recreational facilities in a setting with high natural amenities.” ORS 197.445. To qualify as a destination resort in Deschutes County, the resort must be located on a site of 160 acres or more. At least 50 percent of the site must be dedicated to permanent open space. At least seven million dollars must be spent on improvements for on-site developed recreational facilities and visitor-oriented accommodations. Not less than one-third of this amount must be spent on developed recreational facilities. The resort

¹ Appeals of land use approvals related to the Thornburgh Destination Resort date back to 2006. Later in this decision, we refer to prior appeals that are relevant to the issues in this appeal.

1 must provide visitor-oriented accommodations including meeting rooms,
2 restaurants with seating for 100 persons, and 150 rentable overnight lodging units
3 (OLUs). *Id.*

4 The destination resort statutes are implemented in Deschutes County Code
5 (DCC) chapter 18.113, under which destination resorts are subject to a three-step
6 approval process. The first step is approval of a conceptual master plan (CMP).
7 DCC 18.113.040(A). The CMP stage includes a right to a public hearing and the
8 county CMP decision must be based on evidence that is submitted during that
9 public process. The CMP is “reviewed for compliance with the standards and
10 criteria set forth in DCC 18.113.” DCC 18.113.040(A). DCC 18.113.050 sets out
11 a list of information that must be included in an application for CMP approval.
12 DCC 18.113.060 and DCC 18.113.070 set out standards and approval criteria for
13 destination resorts.² The standards that apply under DCC 18.113 “may be met by
14 the imposition of conditions calculated to ensure that the standard will be met.”
15 DCC 18.113.075.

16 Once a CMP has been approved, the planning director may
17 administratively approve “insubstantial change[s]” to the CMP without notice or
18 hearing. DCC 18.113.080. Any “substantial change” must be reviewed and
19 approved under the same public process that applies to CMP review. *Id.*

² DCC 18.113.070 requires, in part, that the decision maker find from substantial evidence in the record that “All standards established by DCC 18.113.060 are or will be met.” DCC 18.113.070(B).

1 “Substantial change to an approved CMP, as used in DCC 18.113.080, means an
2 alteration in the type, scale, location, phasing or other characteristic of the
3 proposed development such that findings of fact on which the original approval
4 was based would be materially affected.” *Id.*

5 The second step in approving a destination resort is approval of a final
6 master plan (FMP), “which incorporates all requirements of the County approval
7 for the CMP.” DCC 18.113.040(B). The CMP application is processed “as if it
8 were a conditional use permit.” DCC 18.113.040(A). The planning director
9 reviews “the FMP to determine if it complies with the approved CMP and all
10 conditions of approval of the conditional use permit.” DCC 18.113.040(B). If the
11 FMP involves a substantial change from the CMP, then the applicant must apply
12 for modification of the CMP. DCC 18.113.100(B).

13 The third step is approval of individual components of the destination
14 resort through site plan or subdivision approval. DCC 18.113.040(C). “In
15 addition to findings satisfying the site plan or subdivision criteria, findings shall
16 be made that the specific development proposal complies with the standards and
17 criteria of DCC 18.113 and the FMP.” *Id.* With that legal context, we describe
18 the county’s approval of the Thornburgh Resort CMP and FMP.

19 The county approved the Thornburgh Resort CMP in 2006 and approved
20 the FMP in 2008. As we explain further below, the FMP approval has effectively
21 incorporated and displaced the CMP approval. All requirements of the CMP
22 approval are requirements of the FMP approval. CMP and FMP Condition 1

1 provides: “Approval is based upon the plan as submitted. Any substantial change
 2 to the approved plan will require a new application.” Record 11426, 11725.³ The
 3 county has interpreted “substantial change” in Condition 1 to have the same
 4 meaning as the term is used in DCC 18.113.080, which is “an alteration in the
 5 type, scale, location, phasing or other characteristic of the proposed development
 6 such that findings of fact on which the original approval was based would be
 7 materially affected.” Thus, Thornburgh must submit a new application for any
 8 proposed modification that will alter a characteristic of the approved resort
 9 development such that any finding of fact supporting the CMP or FMP approval
 10 would be materially affected.⁴ In those instances, before approving the
 11 modification, the county must find that the proposed resort, as modified, will
 12 satisfy the approval criteria for which the supporting findings of fact are
 13 materially affected by the modification.

14 The FMP provides for phased development and compliance with a fish and
 15 wildlife habitat mitigation plan (2008 FWMP) designed and found to meet the
 16 “no net loss standard,” which is a county criterion for destination resort
 17 development that requires that “[a]ny negative impact on fish and wildlife

³ All record citations are to the Amended Consolidated Record.

⁴ The owners/applicants are intervenors-respondents Central Land and Cattle Company, LLC, Pinnacle Utilities, LLC, and Kameron DeLashmutt. For ease of reading, we refer to them individually and collectively as Thornburgh throughout this decision.

resources will be completely mitigated so that there is no net loss or net degradation of the resource.” DCC 18.113.070(D). FMP Condition 38 required Thornburgh to “abide by” the 2008 FWMP, which required mitigation in advance of water use and annual reporting of mitigation actions. Record 10976. The 2008 FWMP relied on mitigation water from certain sources to ensure a quantity and quality of water that would result in predicted benefits to fish habitat, particularly cold water thermal refugia. The 2008 FWMP was supported by hydrogeologist, hydrologist, and fish biologist reports and opinions. The technical information supporting the mitigation plan was greatly disputed before the county and challenged on appeal. Ultimately, the 2008 FWMP was decided to satisfy the no net loss standard. *See Gould v. Deschutes County*, 233 Or App 623, 636-43, 227 P3d 758 (2010) (describing 2008 FWMP litigation).

The CMP approval explained that the resort will include two “villages,” The Tribute and The Pinnacle, to be constructed in phases. The Tribute village will be developed first, located on the southern half of the property, and was “planned to include two golf courses, a golf practice area, golf clubhouse, community center, golf cottages and luxury, view-oriented houses on lots of various sizes on the hillside.” Record 13087. “The Pinnacle will be located primarily in the northern half of the property and is planned to include one golf course, a resort hotel, resort retail area, recreational lake, a lake/boating clubhouse, and individually owned, resort-style residences.” Record 13088. The

- 1 CMP approval approved three golf courses and required at least one golf course
- 2 to be constructed in the first phase. Record 13091-92.⁵

⁵ The CMP approval provides:

“At least one golf course, the restaurant and the meeting rooms and facilities are required to be constructed in Phase A, which is slated to be in the Tribute Village. These are required by DCC 18.113.060(E) in order to qualify Phase A as a destination resort because each phase, together with all previous phases must meet the criteria for a destination resort. Condition of Approval #33 is included to assure this requirement is met.” Record 13092.

CMP Condition 33 provides:

“The Resort shall, in the first phase, provide for the following:

- “A. At least 150 separate rentable units for visitor-oriented lodging.
- “B. Visitor-oriented eating establishments for at least 100 persons and meeting rooms which provide eating for at least 100 persons.
- “C. The aggregate cost of developing the overnight lodging facilities and the eating establishments and meeting rooms required in DCC 18.113.060(A)(1) and (2) shall be at least \$2,000,000 (in 1984 dollars).
- “D. At least \$2,000,000 (in 1984 dollars) shall be spent on developed recreational facilities.
- “E. The facilities and accommodations required by DCC 118.113.060 must be physically provided or financially assured pursuant to DCC 18.113.110 prior to closure of sales, rental or lease of any residential dwellings or lots.” Record 13115.

1 The economic benefits analysis supporting the CMP (Benefit Study)
 2 concluded that that the golf course facilities would be an important source of new
 3 jobs with a total of 125 newly created jobs and 3.9 million dollars in employee
 4 compensation. Record 10588. Based on the Benefit Study, the county found that
 5 the resort “will generate a large number of full-time positions that will have a
 6 positive effect on the Deschutes County economy.” Record 11691.

7 To date, Thornburgh has obtained three third-stage county approvals for
 8 (1) a golf course site plan, (2) a tentative plan for Phase A-1 of development, and
 9 (3) a site plan for 80 overnight lodging units (OLUs).⁶ Those third-stage
 10 approvals were challenged and ultimately affirmed on appeal. *See Gould v.*
 11 *Deschutes County*, 314 Or App 636, 314 P3d 357 (2021), *rev den*, 369 Or 211
 12 (2022) (affirming the approval of a golf course site plan); *Gould v. Deschutes*
 13 *County*, 322 Or App 11, 518 P3d 978, *rev den*, 370 Or 694 (2022) (affirming the
 14 approval of the site-plan review for 80 OLUs); *Gould v. Deschutes County*, 322
 15 Or App 571 (2022) (affirming the approval of the tentative plan for Phase A-1).

16 In 2022, Thornburgh sought county approval to modify the FMP by
 17 amending the 2008 FWMP. Record 13315-18. Thornburgh proposed to reduce
 18 the resort’s annual groundwater pumping from 2,129 to 1,460 acre feet, an
 19 approximately 30 percent reduction, and an approximately 35 percent reduction

⁶ Phase A-1 includes a tentative subdivision plat for single-family residential dwelling lots and OLU lots, together with roads, utility facilities, lots, and tracts for future resort facilities and open space.

1 in water consumption, from 1,356 to 882 acre feet, in part, by not developing one
 2 of the approved golf courses.⁷ Record 13315, 13585. Thornburgh proposed to
 3 obtain mitigation water rights to provide fish habitat benefits. We refer to
 4 Thornburgh's plan as the 2022 FWMP. It is attached as Exhibit B to the
 5 challenged decision. Record 68. Thornburgh supported the 2022 FWMP with
 6 hydrogeologist, hydrologist, and fish biologist technical reports and opinions.

7 Planning staff reviewed the application and prepared a staff report. Record
 8 13309-62. The hearings officer held a public hearing and issued a decision
 9 denying the application. Record 6139-45. Thornburgh and petitioner Gould
 10 (Gould) each appealed and the board of commissioners accepted *de novo* review.
 11 After a hearing on February 1, 2023, before the board, the open record period
 12 was left open for 14 days. Following a joint request of Thornburgh and petitioner

⁷ We have previously explained that water pumping and water consumption are distinct. "Consumptive use" means the amount of ground water appropriation that will not return to surface water flows. *Gould v. Deschutes County*, ___ Or LUBA ___, ___ (LUBA No 2020-095, June 11, 2021) (*Gould Golf*), *aff'd*, 314 Or App 636, 494 P3d 357 (2021), *rev den*, 369 Or 211 (2022) (quoting OAR 690-505-0605(2) "'Consumptive use' means [OWRD's] determination of the amount of a ground water appropriation that does not return to surface water flows in the Deschutes Basin due to transpiration, evaporation or movement to another basin.") (slip op at 10 n 3); *see also Gould v. Deschutes County*, 79 Or LUBA 561, 575 n 11 (2019) (*Gould VIII*), *aff'd*, 310 Or App 868, 484 P3d 1073 (2021).

1 The Confederated Tribes of the Warm Springs Reservation (the Tribe), the open
2 record period was extended to March 1, 2023.⁸

3 Opponents, including the Tribe and the Oregon Department of Fish and
4 Wildlife (ODFW) criticized Thornburgh's experts' technical report conclusions.
5 ODFW particularly criticized the baseline assumptions for the hydrological
6 modeling as not reflective of actual observed stream conditions. Opponents also
7 criticized Thornburgh's experts' failure to model changes to stream flow timing
8 and quantity that could result from the implementation of the Deschutes Basin
9 Habitat Conservation Plan (DB HCP), which is a basin-wide plan that requires
10 eight irrigation districts and the City of Prineville (the DB HCP parties) to
11 manage irrigation activities in the Deschutes River Basin to provide habitat
12 protections for endangered fish and wildlife. Record 4237-60. The Tribe explains
13 in its brief that the DB HCP parties prepared the DB HCP to obtain incidental
14 take permits from the U.S. Fish and Wildlife Service (USFWS) and National
15 Marine Fisheries Service (NMFS) because the irrigation districts and City of
16 Prineville's water use in the Deschutes River Basin has the potential to
17 incidentally harm species that are currently listed as threatened under the
18 Endangered Species Act (ESA), namely, the Oregon spotted frog, Middle
19 Columbia River (MCR) steelhead, and bull trout. Tribe's Petition for Review 10.

⁸ Our reference to the Tribe mirrors the Tribe's self-reference in their petition for review.

1 Incidental take permits will allow the DB HCP parties to manage their water use
2 without the threat of prosecution under the ESA for the incidental taking of those
3 species. The Tribe explains that, in December 2022, NMFS released a biological
4 opinion addressing its proposed issuance of an incidental take permit for
5 implementation of the DB HCP. Record 3849, 4048-49. The Tribe explained to
6 the county that USFWS and the Bureau of Reclamation are subject to a notice of
7 federal litigation in which the plaintiff contends that those federal agencies have
8 failed to ensure that the DB HCP conservation measures will not jeopardize the
9 continued existence of the Oregon spotted frog.⁹ Record 654-56. The Tribe
10 argued to the county that it should consider the DB HCP and the threatened
11 litigation as related to Thornburgh's proposal.¹⁰ Record 656.

12 The board found that the no net loss standard did not require ODFW and
13 the Tribe's concurrence and concluded that Thornburgh's expert reports provided
14 credible, substantial evidence that the 2022 FWMP satisfies the no net loss
15 standard. The board approved the 2022 FWMP as a modification of the FMP.
16 These appeals followed.

⁹ The Tribe argued to the county that the plaintiff in that litigation, the Center for Biological Diversity, is improperly focused on the spotted frog in isolation. Record 656.

¹⁰ As explained further below, Bishop argues that the county erred by failing to consider the DB HCP impact on baseline flows.

III. MOTIONS TO TAKE OFFICIAL NOTICE

Our review is generally limited to the record. ORS 197.835(2)(a). However, we may take official notice of relevant law as defined in ORS 40.090. A motion for official notice must explain the relevance of the document to an issue in the appeal and the authority for taking notice under ORS 40.090. OAR 661-010-046; *Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians v. City of Coos Bay*, ___ Or LUBA ___ (LUBA No 2020-012, May 4, 2021). We have no authority to take official notice of facts for an “adjudicative purpose,” that is, “to provide evidentiary support or countervailing evidence with respect to an applicable approval criterion that is at issue in the challenged decision.” *Tualatin Riverkeepers v. ODEQ*, 55 Or LUBA 688, 692 (2007) (citing *Friends of Deschutes County v. Deschutes County*, 49 Or LUBA 100, 103-04 (2005)); see also *Home Builders Assoc. v. City of Wilsonville*, 29 Or LUBA 604, 606 (1995).

Petitioners Gould, the Tribe, and Central Oregon Landwatch (COLW), and Intervenors-Petitioners Bishop and Lipscomb (collectively, petitioners) argue that we may take official notice of three Oregon Water Resources Department (OWRD) orders as decisional law and official acts of a state agency. ORS 40.090(1), (2). Petitioners argue that we may take official notice of a Marion County Circuit Court order as decisional law. Petitioners explain that the purpose of the requested consideration of those OWRD orders and circuit court order is to establish Thornburgh’s lack of access to and inability to distribute certain water rights.

1 Thornburgh objects to the motion and argues that petitioners rely on the
2 OWRD and circuit court order for an adjudicative purpose—namely, to provide
3 evidentiary support for petitioners’ argument that water is unavailable. We agree
4 with Thornburgh that petitioners request that we take official notice of the orders
5 for an impermissible adjudicative purpose. The motion is denied with respect to
6 the orders.

7 Petitioners argue that we may take official notice of two county ordinances
8 as official acts of the county. ORS 40.090(7). Petitioners explain that the
9 ordinances describe the state of the law that applied to Thornburgh’s CMP in
10 2015 and support Gould’s argument that the CMP is void as uninitiated.
11 Thornburgh moves that we take official notice of Deschutes County
12 Comprehensive Plan section 2.5 and DCCP Policies 2.5.12 and 2.5.22 as relevant
13 to Thornburgh’s response to the Tribe’s arguments regarding those provisions.
14 These motions are unopposed and are granted.

15 **IV. MOTIONS TO STRIKE**

16 Thornburgh moves to strike portions of briefs submitted by Gould,
17 Lipscomb, Bishop, and COLW because Thornburgh argues that those arguments
18 rely on facts not supported by evidence in the record and that petitioners
19 attempted to introduce the facts through their motion to take official notice.

20 Petitioners respond that we should deny the motion to strike because the
21 facts about the unavailability of the referenced water rights are already
22 established in the record and petitioners’ briefing included citations to the record.

1 Petitioners argue that petitioners' briefing relies on the orders in petitioners'
2 motion to take official notice only to establish the status of the law as to the water
3 rights. Joint Response to Motion to Strike 3-4.

4 We need not resolve the parties' detailed dispute about the characterization
5 of petitioners' arguments because we agree with petitioners that many of the facts
6 that they reference in their arguments are based on citations to evidence that is
7 already in the record. Accordingly, we will not strike specific portions of
8 petitioners' briefs. Thornburgh's motion to strike is denied. However, consistent
9 with our scope of review and our ruling denying petitioners' motion to take
10 official notice of the orders, we will not consider any arguments that rely solely
11 on documents not in the record to establish any fact. Similarly, we will not
12 consider citations to the orders as support for any argument.

13 Petitioners move to strike portions of two of the intervenor-respondents'
14 briefs that incorporate by reference portions of the other intervenor-respondents'
15 briefs because the incorporation by reference results in the briefs exceeding the
16 allowed length. We issued an order permitting Thornburgh to file three
17 overlength briefs not to exceed 15,000 words each. Thornburgh filed three briefs
18 with the following word counts: 10,594, 12,197, and 13,982. None of the three
19 briefs exceed the word limits that LUBA permitted. LUBA will consider all the
20 arguments in the intervenor-respondents' briefs. Accordingly, it would be
21 meaningless to our review for us to strike any portion of any one of those briefs
22 that exceed the 15,000-word limit due to incorporation by reference. *Central*

Oregon Landwatch v. Deschutes County, ___ Or LUBA ___, ___ (LUBA Nos 2023-006/009, July 28, 2023) (slip op at 9). Petitioners’ motions to strike are denied.

V. 1855 TREATY RIGHTS

(Tribe First Assignment of Error)

The Tribe argues that the decision improperly construes applicable law by failing to address whether the 2022 FWMP violates the Treaty with the Tribes of Middle Oregon, dated June 25, 1855 (1855 Treaty). Record 4308-18 (copy of the 1855 Treaty). Under the provisions of the 1855 Treaty, the Tribe ceded their traditional lands to the United States, and reserved what became the Warm Springs Reservation. The Tribe also reserved the exclusive right to take fish “in the streams running through and bordering [the Warm Springs Reservation]” and the right to take fish at “all other usual and accustomed stations.” 1855 Treaty, Art 1; Record 4309.

“[T]he Tribe asserts that its treaty-reserved rights would be impaired because groundwater pumping proposed in the 2022 FWMP would negatively impact habitat for MCR steelhead and hamper habitat conditions that support a traditional fishery and the reintroduction of the threatened species in the upper Deschutes Basin, including the Whychus Creek and the Crooked River.” Tribe’s Petition for Review 28.

The Tribe argues that the county improperly failed to consider whether approval of the proposed 2022 FWMP violates the fishing clause in the 1855 Treaty. Tribe’s Petition for Review 27 (“The Decision misconstrues the 1855 Treaty by

1 failing to acknowledge it whatsoever, and thereby failing to assess whether the
2 2022 FWMP violates the Treaty by impairing the Tribe's right to have fish to
3 take."). The Tribe argues that the county erred by not evaluating whether the
4 approved change in the 2022 FWMP will impair the Tribe's treaty fishing rights.
5 We understand the Tribe to argue in their petition for review that the 1855 Treaty
6 fishing right is an applicable criterion to the county's land use decision.

7 In their reply brief, the Tribe argues that "the proper application of DCC
8 18.113.070(D) required the [board of commissioners] to consider whether the
9 2022 FWMP violates the fishing clause of the 1855 Treaty." Tribe's Reply Brief

10 1. At oral argument, the Tribe's counsel stated that the Tribe is not asserting that
11 the 1855 Treaty is an applicable criterion. Rather, the Tribe's counsel argued, the
12 county was required to construe the no net loss standard of DCC 18.113.070(D)
13 in a manner that would not impair the Tribe's treaty rights. That argument is not
14 in the Tribe's petition for review and we do not address issues raised for the first
15 time in the reply brief or at oral argument. *Crowley v. City of Hood River*, 81 Or
16 LUBA 490, 498, *rev'd and rem'd on other grounds*, 308 Or App 44, 480 P3d
17 1007 (2020) (issues that are raised for the first time in a reply brief or at oral
18 argument do not provide an opposing party an adequate opportunity to respond).
19 However, even if we accepted that characterization of the issue as a refinement
20 of the argument in the Tribe's petition for review, we agree with Thornburgh that
21 issue was not raised during the local proceeding and was therefore waived, as
22 explained below.

1 Thornburgh does not dispute that the county did not make any findings
2 regarding whether and how the resort development, including water consumption
3 and mitigation under the 2022 FWMP, would impact the Tribe's treaty fishing
4 rights. Thornburgh responds, initially, that the Tribe did not present that issue to
5 the county and, thus, the Tribe has not preserved the issue for our review. We
6 agree.

7 LUBA is an administrative agency, part of the executive branch, and
8 entirely a creature of statute. Our review authority is prescribed, and limited, by
9 those statutes, particularly the scope of review set out in ORS 197.835. ORS
10 197.835(3) requires that issues before LUBA on review "shall be limited to those
11 raised by any participant before the local hearings body as provided by ORS
12 197.195 or 197.797, whichever is applicable." ORS 197.797(1), in turn, requires
13 that:

14 "An issue which may be the basis for an appeal to [LUBA] shall be
15 raised not later than the close of the record at or following the final
16 evidentiary hearing on the proposal before the local government.
17 Such issues shall be raised and accompanied by statements or
18 evidence sufficient to afford the governing body, planning
19 commission, hearings body or hearings officer, and the parties an
20 adequate opportunity to respond to each issue."

21 The "raise it or waive it" principle does not limit the parties on appeal to
22 the exact same arguments made below, but it does require that the issue be raised
23 below with sufficient specificity so as to prevent "unfair surprise" on appeal.
24 *Boldt v. Clackamas County*, 21 Or LUBA 40, 46, *aff'd*, 107 Or App 619, 813 P2d

1 1078 (1991); *Friends of Yamhill County v. Yamhill County*, ____ Or LUBA ____
 2 (LUBA No 2021-074, Apr 8, 2022), *aff'd*, 321 Or App 505 (2022), *rev den*, 370
 3 Or 740 (2023) (slip op 6). A particular issue must be identified in a manner
 4 detailed enough to give the governing body and the parties fair notice and an
 5 adequate opportunity to respond. *Boldt*, 21 Or LUBA at 46. When attempting to
 6 differentiate between “issues” and “arguments,” there is no “easy or universally
 7 applicable formula.” *Reagan v. City of Oregon City*, 39 Or LUBA 672, 690
 8 (2001).

9 In their preservation statement in the petition for review, the Tribe states:

10 “The Tribe has preserved this error by raising its 1855 Treaty-
 11 reserved rights to take fish throughout the Deschutes Basin and its
 12 accompanying right to fish habitat protection in multiple comments
 13 submitted by Austin Smith, Jr., the General Manager of the Tribe’s
 14 Branch of Natural Resources [(Smith)]. *See, e.g.*, Rec[ord] 4297,
 15 654 n 3.” Tribe’s Petition for Review 20-21.

16 Both Record 4297 and Record 654 n 3 discuss treaty rights to harvestable
 17 fish, but neither document asserts that the county is required to find that its
 18 decision will not harm the Tribe’s treaty rights or that the county must apply the
 19 no net loss standard in concert with the treaty rights. *See* Record 4297
 20 (“Importantly, the Tribe’s legally protected treaty-reserved rights to take fish
 21 throughout includes a right to have fish to take.”); Record 654 n 3 (“The Tribe is
 22 a governmental co-manager of the Deschutes Basin and possesses significant
 23 sovereign, cultural and treaty-reserved interests in the Basin. The Tribe has

1 legally protected treaty-reserved rights to take fish throughout, which include a
2 right to have fish to take.”).

3 In their reply brief, the Tribe states that the county and the “parties had fair
4 notice that Tribe asserted that the fish resources affected by the 2022 FWMP are
5 protected by the 1855 Treaty.” Tribe’s Reply Brief 1 (citing Record 4300-02).
6 The Tribe also cited those record pages in its petition for review. Tribe’s Petition
7 for Review 16. Those pages include statements from Smith, (1) asserting that the
8 Tribe is a co-manager that the county must consult and obtain approval from for
9 the 2022 FWMP, and (2) arguing that the county failed to adequately consult with
10 the Tribe. For example, Smith stated:

11 “The fishery resource needs stream temperature restoration within a
12 specified time period, the achievement of which is uncertain and
13 based on assumptions that pertain to decisions like the one facing
14 the County with the Resort’s proposal. It is therefore imperative that
15 the County ensure that there is no disagreement about the Resort’s
16 no net loss or degradation impact over this specified time period
17 with the fishery co-managers.” Record 4300.

18 “It is widely acknowledged that the Tribe is a co-manager of the
19 fishery resources in the basin. The resource therefore includes
20 Tribally-managed resources including the Tribe’s treaty-reserved
21 rights to fish which includes the necessary habitat to support the
22 fisheries. The Tribe is the sole manager that can evaluate impacts to
23 its treaty-reserved fisheries resource. Neither the County, [ODFW],
24 USFWS, NMFS or any other entity has the expertise or knowledge
25 to evaluate how habitat degradation affects or causes loss to this
26 resource and its cultural and subsistence significance to the Tribe.”
27 Record 4301.

1 The Tribe does not point to any passage in the record where any party
 2 raised the issue that the Tribe has raised in their petition for review, that the
 3 county is independently required to evaluate whether the approved change to the
 4 FWMP will impair the Tribe's treaty fishing rights and to affirmatively find that
 5 the Tribe's treaty rights will not be impaired by the decision. We agree with
 6 Thornburg that the issue is waived.

7 The Tribe's first assignment of error is denied.

8 **VI. DUE PROCESS AND COORDINATION OBLIGATION**

9 **(Tribe Third Assignment of Error)**

10 The Tribe argues that the county violated the Tribe's due process rights
 11 under the Fifth Amendment of the United States Constitution by failing to
 12 provide the Tribe with a mailed copy of the notice of application or the notice of
 13 hearing before the hearings officer.¹¹ Thornburgh responds, initially, that the
 14 Tribe did not raise that issue to the county and, thus, the Tribe has not preserved
 15 it for our review. We agree.

16 Under ORS 197.835(9)(a)(B) a procedural error may be a basis for remand
 17 where it "prejudiced the substantial rights of the petitioner." The substantial
 18 rights of petitioners include "an adequate opportunity to prepare and submit their
 19 case and a full and fair hearing." *Muller v. Polk County*, 16 Or LUBA 771, 775

¹¹ In their reply brief, the Tribe asserts that the county violated the Tribe's rights under the Fourteenth Amendment of the United States Constitution. We do not consider or resolve issues raised for the first time in a reply brief.

1 (1988). The Tribe argues that the county's failure to provide the Tribe mailed
2 notice of the notice of application or the notice of hearing before the hearings
3 officer prejudiced their ability to create a record before the hearings officer and
4 allowed inadequate time for the Tribe to present evidence in response to the
5 highly technical and complex scientific reports submitted by Thornburgh's
6 experts. The Tribe argues that any prejudice was not cured by the fact that the
7 board of commissioners reviewed the matter in a *de novo* proceeding.

8 LUBA has long held that a party asserting a procedural error must
9 demonstrate that the procedural error was objected to during the proceedings
10 below if there was opportunity to lodge an objection. *Torgeson v. City of Canby*,
11 19 Or LUBA 511, 519 (1990); *Dobaj v. Beaverton*, 1 Or LUBA 237, 241 (1980).
12 This obligation to object to procedural errors overlaps with, but exists
13 independently of, ORS 197.797(1) and 197.835(3). *Confederated Tribes v. City*
14 *of Coos Bay*, 42 Or LUBA 385, 392-93 (2002); *Simmons v. Marion County*, 22
15 Or LUBA 759, 774 n 8 (1992). While the "raise it or waive it" requirement at
16 ORS 197.797(1) has a similar purpose to the requirement that a party with an
17 opportunity to object to a procedural error must do so to seek remand based on
18 that error, the two requirements share no antecedents and otherwise have no
19 relationship with each other. *McCaffree v. Coos County*, 79 Or LUBA 512, 517,
20 *aff'd*, 299 Or App 521, 449 P3d 594 (2019), *rev den*, 366 Or 205 (2020). We have
21 explained that preservation of a claim of a constitutional violation "would at a
22 minimum entail citing the constitutional provision or at least making an argument

1 based on the substance of the constitutional provision that would give fair notice
2 that the petitioner[’s] claim was based on the constitutional provision.” *Bundy v.*
3 *City of West Linn*, 63 Or LUBA 113, 121 (2011).

4 The Tribe does not point to any part of the record where the Tribe asserted
5 a due process violation or objected to the county not providing the Tribe mailed
6 notice of the application or notice of the hearing before the hearings officer. In
7 their preservation statement in the petition for review, the Tribe cites Record
8 pages 3847 to 4413 and 4302. Record pages 3847 to 4413 is 566 pages. We will
9 not search large ranges of pages to determine whether an issue is preserved for
10 review. *Rosewood Neighborhood Association v. City of Lake Oswego*, ___ Or
11 LUBA ___ (LUBA No 2023-035, Nov 1, 2023) (slip op at 7-8); *Central Oregon*
12 *Landwatch*, ___ Or LUBA at ___ (slip op at 55); *H2D2 Properties, LLC v.*
13 *Deschutes County*, 80 Or LUBA 528, 532-33 (2019).

14 Record 4302 is a page of a January 31, 2023, letter from Smith, stating that
15 Thornburgh and the county failed to consult the Tribe and that the Tribe did not
16 have adequate time to evaluate the “extensive technical record.” Smith does not
17 assert any right to mailed notice or any constitutional due process violations.

18 In support of their due process argument, the Tribe also argues that it is an
19 “affected agency” and “stakeholder” with whom the county failed to coordinate
20 in violation of Comprehensive Plan Policies 2.5.12 and 2.5.22. Tribe’s Petition
21 for Review 45. Policy 2.5.12 is “Coordinate with stakeholders to protect and
22 enhance fish and wildlife habitat in river and riparian habitats and wetlands.”

1 Policy 2.5.22 is “Coordinate with other affected agencies when a land use or
2 development application may impact river or riparian ecosystems or wetlands.”

3 Thornburgh responds that this issue is also waived. The Tribe replies that
4 it stated below that the county had not “adequately consulted” the Tribe, citing
5 Record 4302. As explained above, the letter at Record 4302 states that
6 Thornburgh and the county failed to consult the Tribe. To the extent that the Tribe
7 cites the Comprehensive Plan policies to support its constitutional due process
8 argument, we conclude that issue is derivative of the due process issue and it is
9 waived for the reasons explained above.

10 If, instead, the Tribe means to allege an independent violation of
11 Comprehensive Plan Policies 2.5.12 and 2.5.22, we conclude that those issues are
12 also waived. The Tribe did not object to the county’s procedure as violating those
13 policies. The general assertion that the county failed to adequately consult with
14 the Tribe is not sufficient to put the county on fair notice that Comprehensive
15 Plan Policies 2.5.12 and 2.5.22 were implicated or that the county’s procedure
16 violated those policies.

17 The issues raised in the Tribe’s third assignment of error are waived. The
18 Tribe’s third assignment of error is denied.

VII. NO NET LOSS STANDARD DCC 18.113.070(D)

(Tribe Second Assignment of Error; Bishop Assignments of Error)

The Tribe and Bishop argue that the county misconstrued the no net loss standard and that the county's findings that the 2022 FWMP satisfies that standard are inadequate and unsupported by substantial evidence.

We must defer to a governing body's plausible interpretation of its own land use regulation. ORS 197.829(1); *Siporen v. City of Medford*, 349 Or 247, 243 P3d 776 (2010). A plausible interpretation is not "inconsistent with the express language of the comprehensive plan or land use regulation" or inconsistent with the underlying purposes and policies of the plan or regulation.

Id.

"[T]he plausibility determination under ORS 197.829(1) is not whether a local government's code interpretation best comports with principles of statutory construction. Rather, the issue is whether the local government's interpretation is plausible because it is not expressly *inconsistent* with the text of the code provision or with related policies that 'provide the basis for' or that are 'implemented' by the code provision, including any ordained statement of the specific purpose of the code provision at issue." *Kaplowitz v. Lane County*, 285 Or App 764, 775, 398 P3d 478 (2017) (emphasis in original).

Generally, findings must (1) address the applicable standards, (2) set out the facts relied upon, and (3) explain how those facts lead to the conclusion that the standards are met. *Heiller v. Josephine County*, 23 Or LUBA 551, 556 (1992). Findings must address and respond to specific issues relevant to compliance with applicable approval standards that were raised in the proceedings below. *Norvell*

1 *v. Portland Area LGBC*, 43 Or App 849, 853, 604 P2d 896 (1979). “While a local
 2 government is required to identify in its findings the facts it relies upon in
 3 reaching its decision, it is not required to explain why it chose to balance
 4 conflicting evidence in a particular way, or to identify evidence it chose not to
 5 rely on.” *Moore v. Clackamas County*, 29 Or LUBA 372, 380 (1995).

6 Substantial evidence is evidence that a reasonable person would rely on in
 7 making a decision. *Dodd v. Hood River County*, 317 Or 172, 179, 855 P2d 608
 8 (1993). A finding of fact is supported by substantial evidence if the record,
 9 viewed as a whole, would permit a reasonable person to make that finding.
 10 *Younger v. City of Portland*, 305 Or 346, 360, 752 P2d 262 (1988). In reviewing
 11 the evidence LUBA may not substitute its judgment for that of the local decision
 12 maker. Rather, LUBA must consider all the evidence to which it is directed, and
 13 determine whether based on that evidence, a reasonable local decision maker
 14 could reach the decision that it did. *Id.*

15 **A. Preservation – The 1855 Treaty and ORS 197.460**

16 The Tribe argues that the board of commissioners misconstrued the no net
 17 loss standard in DCC 18.113.070(D) by concluding that the 2022 FWMP satisfies
 18 that standard without expressly finding that the 2022 FWMP does not violate
 19 either the 1855 Treaty or ORS 197.460, the latter of which requires that counties
 20 “ensure that a destination resort is compatible with the site and adjacent land
 21 uses” by retaining “[i]mportant natural features, including habitat of threatened

1 or endangered species, streams, rivers and significant wetlands.” ORS
2 197.460(1).

3 Thornburgh responds, initially, that those issues are waived because no
4 party argued below that DCC 18.113.070(D) must be construed in concert with
5 the 1855 Treaty and ORS 197.460, or that those laws provide applicable criteria
6 for the challenged decision.

7 The Tribe’s preservation statement for the second assignment of error
8 states that the issues therein were raised in written comments submitted by Smith
9 in the letters dated January 31, 2023, March 1, 2023, and March 8, 2023, citing
10 Record pages 3847 to 4413, 1817 to 1822, and 653 to 656. Tribe’s Petition for
11 Review 30. In particular, the Tribe relies on Smith’s statement concluding that
12 the proposed 2022 FWMP was not likely and reasonably certain to comply with
13 DCC 18.113.070(D). *Id.* (citing Record 1818).

14 We explained above that the issue of the applicability of the 1855 Treaty
15 as approval criteria and as context for the county’s construction of DCC
16 18.113.070(D) were not raised below and were waived. We conclude the same
17 under the second assignment of error for the same reasons explained above.

18 With respect to ORS 197.460, in the petition for review, the Tribe argues
19 that the issue was raised below sufficiently to provide the county and Thornburgh
20 fair notice because the Tribe explained that the 2022 FWMP implicated the
21 habitat of several endangered fish species, citing Record pages 3847 to 4413, 566
22 pages, and Record 1817 to 1822, and Record 653 to 656. Tribe’s Petition for

1 Review 30. As explained above, we will not search large ranges of pages to
2 determine whether an issue is preserved for review.

3 In its reply brief, the Tribe provides a more focused citation directing us to
4 two pages within the 566-page range identified in its petition for review and
5 points to its initial comment letter at Record 4298 to 4300, in which the Tribe
6 explained that the resort's consumptive use of water and the 2022 FWMP impact
7 the habitat of multiple species listed as threatened and endangered. In *Rosewood*
8 *Neighborhood Association*, we explained that OAR 661-010-0030(4)(d) requires
9 that "[e]ach assignment of error must demonstrate that the issue raised in the
10 assignment of error was preserved during the proceedings below," or explain why
11 preservation is not required. ____ Or LUBA at ____ (slip op at 5). OAR 661-010-
12 0030(4)(d) requires the petitioner to demonstrate preservation in the petition for
13 review. Our rules do not allow a petitioner to demonstrate preservation for the
14 first time in a reply brief. That is so because such an approach is, in effect, an
15 unauthorized amendment of the petition for review. More importantly, such an
16 approach also prejudices the responding party's substantial rights where
17 preservation is disputed, because at the point in the adversarial proceeding that a
18 reply brief is filed, the responding party has already filed their responsive brief
19 and has no further opportunity to dispute a demonstration of preservation
20 contained in a reply brief. *Rosewood Neighborhood Association*, ____ Or LUBA
21 at ____ (slip op at 9-10).

1 Even if the Tribe were permitted to supplement its preservation statement
2 in the reply brief, the Tribe's explanation, at Record 4298 to 4300, that the
3 resort's consumptive use of water and the 2022 FWMP impact the habitat of
4 multiple species listed as threatened and endangered is insufficient to provide fair
5 notice to the county and Thornburgh of what the Tribe now alleges, which is that
6 ORS 197.460 provides criteria for the challenged decision or context for the
7 county's application of DCC 18.113.070(D).

8 Record 653 to 656 discusses the DB HCP and describes related threatened
9 litigation and an incidental take permit for the DB HCP for bull trout and the
10 spotted frog. The Tribe argued that both the DB HCP and related litigation are
11 related to the 2022 FWMP and should be considered by the county. Nothing in
12 those pages cites ORS 197.460 or makes any argument based on the substance of
13 that statute sufficient to alert the county and Thornburgh that the Tribe is alleging
14 that statute provides criteria for the challenged decision or context for the
15 county's application of DCC 18.113.070(D).

16 Similarly, Smith's statement at Record 1818 concluding that the proposed
17 2022 FWMP was not likely and reasonably certain to comply with DCC
18 18.113.070(D) is insufficient to raise the issue that the decision violates ORS
19 197.460. That statement does not cite ORS 197.460 or make any argument based
20 on the substance of that statute sufficient to provide fair notice to the county and
21 Thornburgh that the Tribe is alleging that ORS 197.460 provides criteria for the

1 challenged decision or context for the county's application of DCC
2 18.113.070(D).

3 The issues the Tribe raises in their second assignment of error arguing that
4 the decision violates the 1855 Treaty and ORS 197.460 are waived.

5 **B. The Tribe's Co-manager Status, Indigenous Knowledge, and**
6 **Evidence**

7 The Tribe argues that the county's decision that the no net loss standard is
8 met is not supported by substantial evidence in the whole record because the
9 county failed to consider the Tribe's governmental co-manager status and its
10 indigenous knowledge and supporting evidence, and that such evidence calls into
11 question the evidence that the county relied on to conclude that the no net loss
12 standard was met.

13 The county found "[t]he technical expertise provided by Thornburgh's
14 team is vast," and that

15 "Thornburgh's technical evidence was prepared by credentialed
16 experts who provided an extreme level of analysis and detail.
17 Additionally, Thornburgh's team of experts includes a
18 hydrogeologist with significant experience working in analyzing
19 waterways in the Deschutes Basin and hydrologists who have
20 completed water quality studies of the Deschutes River for private
21 and governmental clients, including the Tribe." Record 22.

22 In contrast, the county specifically found that the opponents generally did not
23 provide any technical evidence that refuted Thornburgh's technical evidence.
24 Record 21-22. The county also found that the Tribe provided no expert testimony

1 on water quality and modeling, water rights and mitigation, and fish and fish
2 habitat. Record 22-23.

3 The Tribe argues that the decision is not supported by substantial evidence
4 because the board of commissioners “categorically exclude[d] the Tribe[’]s
5 indigenous knowledge regarding the management of Deschutes Basin fisheries.”
6 Tribe’s Petition for Review 38-39. The Tribe argues that “[t]he Decision appears
7 to contain implicit cultural bias predicated on the antiquated notion that graduate
8 school-credentialed expertise is the only type of expertise that can or should be
9 considered in connection with natural resource planning and management.” *Id.* at
10 39. The Tribe argues that implicit bias led the county to fail to meaningfully
11 address the issues that the Tribe raised in its testimony to the county, including
12 the Tribe’s concerns that the resort water consumption under the 2022 FWMP
13 may conflict with other fish habitat protection plans and, thus, impair fish habitat,
14 and the Tribe’s concern about Thornburgh’s experts’ water modeling
15 assumptions, specifically the models being based on a 2016 hydrological year.

16 The Tribe explains that “The Tribe and its members are a ‘salmon people’
17 for whom fishing is ‘not much less necessary to [their] existence * * * than the
18 atmosphere they breathe[.]’” Tribe’s Petition for Review 1 (quoting *United States*
19 *v. Winans*, 198 US 371, 381, 25 S Ct 662, 49 L Ed 1089 (1905) (brackets and
20 ellipses in original)). LUBA respects the Tribe’s sovereignty and role as a
21 governmental co-manager of Deschutes Basin natural resources, including fish
22 resources. LUBA also acknowledges the fact that fish and fish habitat are central

1 to the Tribe's historical, present, and future subsistence and cultural identity and
2 that the Tribe's fishing rights are protected under the 1855 Treaty. However, the
3 Tribe does not identify any evidence in the record concerning fish or fish habitat
4 that is based on the Tribe's indigenous knowledge and that contradicts the
5 evidence on which the county relied.

6 The testimony in the record that the Tribe points to is primarily related to
7 the DB HCP. The Tribe does not identify any evidence in the DB HCP that is
8 based on indigenous knowledge. The county's decision demonstrates that the
9 county considered the Tribe's testimony and weighed the Tribe's testimony
10 against Thornburgh's evidence. We understand the Tribe to argue that the county
11 should have weighed the Tribe's testimony, concerns, and critique more heavily
12 given the Tribe's co-manager status and indigenous knowledge. It is not our role
13 to reweigh the evidence. *1000 Friends of Oregon v. Marion County*, 116 Or App
14 584, 587-88, 842 P2d 441 (1992). The Tribe has not established that, even if the
15 Tribe's testimony below were given additional weight based on the Tribe's co-
16 manager status and indigenous knowledge, a reasonable person would not rely
17 upon the evidence that the county relied upon when looking at the record as a
18 whole. *Younger*, 305 Or at 360.

19 C. ODFW Critique of the 2022 FWMP

20 The Tribe also argues that the county's decision that the no net loss
21 standard is met is not supported by substantial evidence in the whole record
22 because the county failed to give appropriate weight to ODFW's expertise and

1 concerns regarding the 2022 FWMP. The Tribe argues that, given the history of
2 this case and ODFW's involvement in and agreement with the 2008 FWMP, the
3 no net loss standard cannot be satisfied without ODFW approval of the 2022
4 FWMP.

5 ODFW staff were significantly involved in the review of the 2022 FWMP,
6 both in communication with Thornburgh's experts and in providing comments to
7 the county. ODFW did not agree with Thornburgh that the 2022 FWMP satisfies
8 the no net loss standard. Record 1823-32. ODFW generally recognized
9 Thornburgh's experts' modeling methods as acceptable and based on best
10 methods and practices, particularly the use of the modeling tools 2017 USGS
11 GSFLOW and QUAL2Kw. Record 1828. However, ODFW criticized the
12 modeling process and results because the model inputs rely on "unsubstantiated
13 assumptions of past water use," and ODFW questioned whether the
14 environmental baseline for basin conditions was accurate given that the baseline
15 conditions were "determined solely and independently by [Thornburgh's]
16 consultant team," as opposed to in concert with other fish and habitat resource
17 managers and regulators such as ODFW and the Tribe. Record 1824.

18 ODFW pointed out that some of the model inputs for baseline water
19 quantity and quality, which rely on the 2016 hydrological year, are inconsistent
20 with actual observed stream conditions in 2016. Record 1829-30. ODFW also
21 criticized Thornburgh's modeling as backwards because Thornburgh's experts
22 ran the model based on water rights available for transfer instead of first modeling

1 the impacts of resort groundwater pumping and then identifying available
2 mitigation. Further, ODFW criticized Thornburgh's modeling for failing to
3 include reasonably foreseeable future impacts and conditions, including
4 reductions in aquifer levels and stream impacts from implementation of the DB
5 HCP. ODFW opined that the water rights that Thornburgh relied upon to provide
6 mitigation water under the 2022 FWMP were not sufficiently certain to result in
7 actual cold, wet water in stream to provide fish habitat. Further, in ODFW's view,
8 the 2022 FWMP does not contain sufficient monitoring and reporting
9 requirements to ensure that the mitigation plan will result in no net loss. Thus,
10 ODFW urged that the county to not approve the 2022 FWMP. Record 1831.

11 The Tribe argues that, given ODFW's expertise, and the fact that the
12 county relied upon ODFW's agreement in approving the 2008 FWMP, ODFW's
13 concurrence was required for the county to approve the 2022 FWMP and that, in
14 light of ODFW's criticisms, the county's finding that the 2022 FWMP satisfies
15 the no net loss standard is not supported by substantial evidence.

16 Thornburgh responds that Thornburgh's experts responded to ODFW's
17 criticisms and ODFW did not provide any biological evidence or habitat impact
18 assessment that contradicted Thornburgh's experts' opinions about impacts to
19 fish resources. Thornburgh acknowledges ODFW's criticism of the modeling
20 assumptions. However, Thornburgh emphasizes, ODFW did not submit any
21 independent analysis or evidence that the 2022 FWMP would result in a net loss
22 of fish habitat. Thornburgh argues that the closest ODFW comes is ODFW's

1 opinion that, in the absence of evidence that the water rights relied upon have
2 historically been used in full, the 2022 FWMP model overestimated the benefit
3 of mitigation from water rights transfers and, thus, once the resort starts using
4 water, “more water will be leaving the system * * * than is leaving the system
5 now, yielding a potential net loss to the system and potential impacts to resources
6 that are currently utilizing that habitat.” Record 1828.

7 The Tribe does not point to any applicable standard that requires
8 Thornburgh to demonstrate that ODFW concurs with the 2022 FWMP. While
9 ODFW’s concurrence with the 2008 FWMP influenced the county’s decision that
10 the 2008 FWMP satisfied the no net loss standard, nothing cited to us compels
11 the county to find ODFW concurrence as a prerequisite for approving the 2022
12 FWMP. The county considered ODFW’s comments and criticisms and
13 nevertheless concluded that the 2022 FWMP will satisfy the no net loss standard.
14 ODFW’s testimony may contain legitimate criticisms of the 2022 FWMP but
15 ODFW’s criticisms do not so undermine Thornburgh’s experts’ analyses and
16 conclusions so that a reasonable person could not rely upon them in the absence
17 of biological evidence or habitat impact assessments contradicting Thornburgh’s
18 experts’ opinions about specific predicted impacts to fish resources and efficacy
19 of the proposed mitigation.

20 **D. Baseline Habitat Conditions**

21 As noted above, DCC 18.113.070(D) requires substantial evidence that
22 “[a]ny negative impact on fish and wildlife resources will be completely

1 mitigated so that there is no net loss or net degradation of the resource.” On

2 appeal of the 2008 FWMP approval, the Court of Appeals concluded that

3 “‘fish and wildlife resources’ refers not to species of fish and
4 wildlife, but to the habitat that supports fish and wildlife. * * * That
5 standard may be satisfied by a plan that will completely mitigate any
6 negative impact on the habitat that supports fish and wildlife,
7 without showing that each individual species will be maintained or
8 replaced on a one-to-one basis.” *Gould*, 233 Or App at 633-34.

9 The court observed that “[t]he parties seem to agree that DCC 18.113.070(D)

10 requires, first, an assessment of fish and wildlife resources before development

11 and, second, mitigation to make up for negative impacts caused by development.”

12 *Id.* at 631.

13 Bishop argues that the board of commissioners misconstrued the no net

14 loss standard by refusing to consider existing habitat conditions and foreseeable

15 impacts from other uses. The county found:

16 “Many of the arguments and issues related to Thornburgh’s 2022
17 FWMP are related to drought and regional well decline. Opponents
18 assert that these are relevant issues and should lead to denial. We
19 disagree. The No Net Loss Standard requires a resort to mitigate its
20 own impacts, not the cumulative impacts of drought or other basin-
21 wide water policy and management issues. The No Net
22 Loss/degradation test is limited to addressing potential negative
23 impacts of resort development. Impacts to habitat caused by other
24 persons or environmental conditions are not attributable to
25 Thornburgh’s use of water or the impacts of Thornburgh’s use.

26 “Thornburgh has quantified its impacts on water quality and
27 quantity and the locations where these impacts will occur. It has
28 studied waterway conditions in a typical year, and it has also
29 provided expert evidence that shows the benefits of mitigation are

1 enhanced during periods of drought. This approach properly
2 accounts for issues of drought and the low flow conditions
3 opponents argue make the results of Thornburgh's expert analysis
4 of aquatic habitat unreliable.

5 "Opponents, ODFW, and the Tribe have also raised issues that
6 pending litigation regarding flow requirements and the [DB HCP]
7 related to the Spotted Frog may lead to additional constraints on live
8 flows. These issues are outside of the scope of the Thornburgh's
9 impacts and Thornburgh is not required to mitigate for them.
10 Thornburgh must mitigate for its impacts, alone. Further,
11 Thornburgh's plan relies primarily upon groundwater water sources,
12 and its technical analysis shows that the 2022 FWMP will result in
13 increased surface flows which are beneficial to fish and wildlife.
14 Thornburgh has also provided expert testimony that its plan will not
15 result in negative impacts to the spotted frog, which we find
16 persuasive." Record 26-27.

17 Bishop argues that the county erred in approving the 2022 FWMP because
18 that plan improperly accounts only for Thornburgh's water use and no other
19 factors such as groundwater decline, drought, and changed flows resulting from
20 implementation of the DB HCP. We understand Bishop to argue that the 2016
21 hydrological year that Thornburgh's modeling relies on does not account for
22 those impacts to baseline water quantity, quality, and stream flow timing. Bishop
23 argues that the county's interpretation that omits outside habitat impacts fails to
24 accurately assess of baseline fish habitat conditions prior to assessing impacts
25 from resort development.

26 Thornburgh responds that Bishop has not established that the county's
27 interpretation is inconsistent with the text or policies of DCC 18.113.070(D).
28 Thornburgh contends that Thornburgh's experts completed an accurate baseline

1 habitat assessment. The Resource Specialists, Inc. (RSI) fish habitat assessment
2 is based on thermal data from 2016. Record 12739. No party argues that 2016 is
3 an atypical water year and Thornburgh points out that modeling includes models
4 for low-flow years, which show increased net benefit. Record 58. Thornburgh
5 argues that its modeling accounts for other existing water uses because the model
6 is based on actual stream flows and modeled groundwater pumping impacts to
7 those flows. Thornburgh acknowledges that analysis is limited to impacts based
8 on actual flows and does not analyze potential impacts from climate change,
9 drought, groundwater decline, or changed stream flows resulting from
10 implementation of the DB HCP. DeLashmutt Intervenor-Respondent's Brief 25.
11 However, Thornburgh points out that its modeling included an assumption of
12 decreased mitigation flows, which still resulted in satisfying the no net loss
13 standard. *Id.*

14 With respect to the text of DCC 18.113.070(D), we understand Bishop to
15 argue that "any negative impact" cannot be accurately identified or "completely
16 mitigated" if the baseline for modeling impacts does not accurately reflect all the
17 factors influencing the habitat. Bishop argues that habitat modeling should
18 account for impacts to the stream system habitat that are identifiable, predictable,
19 measurable, and reasonably likely to occur, such as drought and changed flows
20 in response to DB HCP implementation. That is one plausible reading of DCC
21 18.113.070(D).

1 However, the county's interpretation is also plausible. In the county's
 2 construction, "any negative impact" may be analyzed based on a baseline flow
 3 that represents a typical water year. "Any negative impact" is measured only by
 4 the resort's impact on the system. That interpretation is not expressly inconsistent
 5 with the language of DCC 18.113.070(D) or the underlying policy—which is to
 6 hold a proposed resort accountable to completely mitigate the resort's impacts so
 7 that there is no net loss of fish resources.

8 We do not understand any party to argue that no reasonable person could
 9 conclude that the 2016 hydrological year is a typical water year. Instead, we
 10 understand Bishop to argue that the baseline flows based on the 2016
 11 hydrological year are reasonably likely to change in the future due to groundwater
 12 decline, changing climate conditions, and implementation of the DB HCP. We
 13 do not understand that those purported changes are quantified or modeled
 14 anywhere in the record in relationship to Thornburgh's water use.¹² We

¹² As quoted above, the county did not make any findings on whether, how, or when the DB HCP might impact fish habitat because the county found that Thornburgh was not required to address or mitigate for any changes in stream flow due to the DB HCP. Bishop does not explain whether, how, or when the DB HCP might impact fish habitat. The Tribe explained to the county that the DB HCP "legally mandates a new water management regime over time which has not been modeled." Record 1821. Bishop states that the DB HCP was

"finalized in 2020, [and] is a habitat-focused plan to support and enhance seasonally and life-stage dependent species throughout the Deschutes Basin, for example, through mandated instream flow regimes at times and locations that affect instream flow availability

1 understand Bishop to argue that Thornburgh's experts were required to model
 2 those factors in assessing impacts and mitigation. However, potential and even
 3 probable future changes and additional impacts do not make the county's
 4 interpretation implausible.

5 **E. System-wide Benefits**

6 Bishop next argues that the county misconstrued the no net loss standard
 7 by disregarding negative impacts on fish habitat in certain river stretches and then
 8 balancing those negative impacts against predicted benefits in other stretches of
 9 different rivers. Bishop points to the county's findings that "while some minor
 10 stretches of certain waterways may experience slightly decreased flows or
 11 extremely minor increases in temperature, the evidence shows that overall the no
 12 net loss standard is met because of the extensive system-wide benefits." Record

and temperature among other water quality and habitat factors. The DB HCP has materially altered the required seasonal streamflow in Whychus Creek, the Deschutes River, and the Crooked River." Bishop's Intervenor-Petitioner's Brief 6-7 (citing Record 4294-4300, 4237-4260, 4271); *see also* Bishop Brief 47 ("Recent federal approval of the DB HCP creates a legally binding management regime under the federal ESA that currently is and will continue to affect streamflow and habitat in streams affected by the resort.").

Bishop states that the DB HCP requires instream flow but does not explain whether that requirement is currently effective and affecting streamflow or, if not, when it will be implemented in the future. Moreover, Bishop does not point to evidence in the record explaining how the current or future implementation of the DB HCP undermines Thornburgh's experts' opinions.

1 58. Bishop argues that this finding misconstrues the no net loss standard because
2 river and stream segments contain distinct habitat that are not interchangeable.

3 Thornburgh responds, and we agree, that Bishop's argument relies on a
4 single finding emphasized out of context. Thornburgh's modeling and analyses
5 separately assessed fish habitat in different river and stream segments. The only
6 purported negative impacts that remain after mitigation measures are in the
7 Crooked River, and those impacts were found to be "effectively zero." Record

8 59. The county found:

9 "In all cases, the changes in streamflow were minimal and the
10 change to temperature was positive at times and negative at other
11 times, but in all cases was effectively zero. ODFW stated that the
12 modeling outputs are within range of model 'noise,' particularly for
13 the Crooked River results. [Thornburgh's expert] Dr. Caldwell
14 assessed the impacts to the fisheries in the Crooked River and
15 concluded [that] the 2022 FWMP would provide net benefits to fish
16 habitat quality and quantity at all sites evaluated." *Id.*

17 Bishop acknowledges that the county found that impacts to the Crooked
18 River are "imperceptibly small and scientifically irrelevant," yet argues that
19 finding does not solve the flawed "system-wide" interpretation. Bishop's
20 Intervenor-Petitioner's Brief 24-25 (quoting Record 59). We agree with
21 Thornburgh that the county did not interpret the no net loss standard to allow
22 negative impacts in one stream segment so long as those impacts are balanced by
23 benefits elsewhere in the system. Accordingly, Bishop's interpretive argument is
24 based on an incorrect premise and provides no basis for remand.

F. Cancellation in Lieu of Mitigation (Voluntary Cancellation)

Bishop argues that the county misconstrued the no net loss standard by concluding that Thornburgh can provide water right transfers or “cancellation in lieu,” rather than by legally protected instream water rights.

Thornburgh proposed to obtain and use the following water rights: LeBeau, Certificate 95746, 200 AF (50 acres); Tree Farm, Certificate 94948, 327.5 AF (.453 cfs); Big Falls Ranch, Certificates 96190 and 96192, 614.4 AF (153.6 acres); Big Falls Ranch, Certificate 87558, 25.6 AF (6.4 acres); and Dutch Pacific, Certificate 89259, 49.5 AF (16.5 acres). Record 13565. Thornburgh proposed using those quantities of water for (1) pumping and consumptive use at the resort, (2) mitigation water to satisfy OWRD mitigation rules, and (3) mitigation water for fish habitat to satisfy the no net loss standard.¹³ To those

¹³ As explained in greater detail in decisions involving the 2008 FWMP, state water law requires Thornburgh to mitigate the impacts from its groundwater withdrawal to hydraulically connected surface waters in the Deschutes River Basin. See *Gould v. Deschutes County*, 54 Or LUBA 205, 264-65, *rev'd and rem'd on other grounds*, 216 Or App 150, 171 P3d 1017 (2007); *Gould v. Deschutes County*, 59 Or LUBA 435, 554-55 (2009), *aff'd*, 233 Or App 520, 301 P3d 978 (2010). We refer to that mitigation as “OWRD mitigation,” which is governed by the OWRD Deschutes Basin mitigation rules at OAR 690-505-0610. OWRD mitigation is related to but distinct from the fish mitigation plan that is required to satisfy the county’s no net loss standard. The same water that is used to satisfy OWRD mitigation requirements may also supply fish habitat benefits. However, a demonstration of compliance with the OWRD mitigation rules is not sufficient to satisfy the no net loss standard because those requirements relate only to the quantity of water in the system and not the quality of water, which is critical for fish habitat. *Gould v. Deschutes County*, ___ Or LUBA ___ (LUBA

ends, the 2022 FWMP proposes three different water rights legal processes: (1) transferring the water rights to the resort property so that the resort can withdraw those quantities of water as groundwater from the resort wells; (2) transferring the water rights to instream water rights; and (3) cancelling the water right in-lieu of mitigation. The 2022 FWMP explains that “[c]ancelling a right is done as mitigation and results in placing water back in the system by cancelling the legal right to use the water at the original point of appropriation.” Record 70.

The 2022 FWMP provides compliance measures that are different for water appropriated from surface water versus groundwater or for mitigation credit. *For groundwater water rights*

“compliance occurs upon the cessation of pumping, along with any of the following: deed evidencing the transfer of ownership, a submittal to OWRD of any of the following: (i) an assignment of the water right to Thornburgh, (ii) an application that seeks OWRD approval of a transfer to pump at the Resort property, or (iii) a cancellation in-lieu of mitigation.” Record 77.¹⁴

For surface water rights, compliance occurs upon the cessation of pumping at the point of diversion

“and OWRD issues a final order (or its equivalent) approving any

No 2021-112, June 9, 2022), *aff’d*, 322 Or App 571 (2022), *rev den*, 370 Or 827 (2023).

¹⁴ Thornburgh states that evidence in the record demonstrates that it has already complied with the 2022 FWMP for the Big Falls Ranch, Tree Farm, and Dutch Pacific groundwater rights because Thornburgh owns those rights, has ceased pumping all of them, and submitted applications to OWRD.

1 of the following: (i) an application that transfers to pump at the
 2 Resort property, (ii) an application that transfers the water to an in-
 3 stream lease, (iii) the cancellation in-lieu of mitigation, or (iv) an
 4 application to transfer to obtain mitigation credits, permanent or
 5 temporary.” *Id.*¹⁵

6 *For mitigation credits*, compliance occurs when Thornburgh provides proof of
 7 ownership or proof of submittal to OWRD to use the credits as mitigation.

8 Petitioners argued to the county that the only acceptable method to ensure
 9 fish habitat mitigation water to meet the no net loss standard is transferring the
 10 water rights to instream water rights and that cancelling the water right in-lieu of
 11 mitigation could not satisfy the no net loss standard because the quantity of water
 12 subject to cancellation could be “picked up” by junior water rights holders so that
 13 quantity of water would not reliably be instream providing fish habitat, as
 14 assumed by the 2022 FWMP. Bishop’s Intervenor-Petitioner’s Brief 28 (quoting
 15 Record 54-55).

16 The county rejected that argument and concluded that Thornburgh may
 17 rely on cancellation of a water right to mitigate for impacts to fish habitat. Record
 18 29. The county found:

19 “OAR 690-505-0610 lists a number of methods to provide ‘legally
 20 protected’ water and does not provide that the only method of
 21 protecting flows is through an instream water right; this includes

¹⁵ Thornburgh states that evidence in the record demonstrates that the Three Sisters Irrigation District mitigation project that was required by the 2008 FWMP was completed in 2009. Thornburgh states that Thornburgh owns the LeBeau water right and pumping has ceased at the original point of diversion.

1 'cancellation in lieu' as a potential method for protecting flows. The
2 flows restored by water right transfers may not be claimed by other
3 water users in the basin because new surface water rights are not
4 being issued in the Deschutes Basin, and the evidence shows no
5 party has been regulated off of a surface or groundwater right in the
6 basin.

7 "Further, the [board] finds that the evidence in the record related to
8 cancellation in lieu does not result in the ability of a junior holder to
9 'pick up' the water. The evidence shows the watermaster has not
10 regulated any groundwater or surface water rights off. This means
11 enough water exists for all water rights (not storage), even the junior
12 holders. OWRD accepts this method for mitigating groundwater
13 permit applications and the [board] finds that OWRD is the authority
14 and controlling agency over water law. The 2022 FWMP and its
15 extensive technical evidence shows that stream flows will increase
16 and temperatures decrease as a result of implementation of the 2022
17 FWMP. As such, we find that methods provided by the groundwater
18 mitigation program, including the methods relied upon by the 2022
19 FWMP, are sufficient to meet the no net loss standard." Record 54-
20 55.

21 OAR 690-505-0610(8) provides, in part:

22 "[I]f the impact of use under a ground water permit application is
23 completely offset by a proposed voluntary cancellation of an
24 existing ground water use subject to transfer, such that impact on
25 surface waters from the new ground water use is the same as, or less
26 than, impact on surface waters from the existing ground water use
27 subject to transfer, the ground water permit application may be
28 approved without additional mitigation once the proposed voluntary
29 cancellation is complete."

30 Bishop argues that the county erred in allowing Thornburgh to rely on
31 cancellation of water rights to provide fish habitat. In essence, Bishop argues that
32 a reasonable person could not conclude that cancellation of a water right will
33 provide water for fish habitat. Bishop argues that cancellation does not

1 permanently protect the water proposed for cancellation from use by others
2 because that water can be used by other water rights holders pumping from the
3 same aquifer.

4 Thornburgh responds that the no net loss standard does not prescribe any
5 method of fish habitat mitigation or require that only instream water rights may
6 be relied upon. Thornburgh points out that Thornburgh's water rights expert,
7 Newton, opined that both transfer to an instream water rights and cancellation
8 will leave water in the system at the original pumping location because the
9 OWRD processes for transfer or cancellation ensure that the mitigation measure
10 is effective. Newton explained:

11 "All water rights that are proposed for transfer or voluntary
12 cancellation for use as mitigation for a new groundwater use are
13 required to be processed by the OWRD through the transfer or
14 voluntary cancellation process and dedicated to the new permit for
15 mitigation. During this administrative process with the OWRD, a
16 review is conducted by the OWRD as to the reliability, more
17 specifically[: H]ave the water rights offered for mitigation been used
18 in their entirety, without being regulated off because of water
19 availability, and meet a reasonable review that similar water rights
20 are offered to offset the future impacts of the new groundwater
21 permit to be issued[?] During such a review by the OWRD, the water
22 right in question must be a certificated water right, suitable evidence
23 to prove use and availability will be questioned and investigated,
24 and a decision made regarding suitability for mitigation." Record
25 749.

26 As we understand it, the 2022 FWMP modeling assumes equal efficacy
27 and reliability as between instream water right transfers and voluntary
28 cancellation of water rights so that those legal processes have the same instream

1 impacts on water quality and quantity. We agree with Thornburgh that a
2 reasonable person could conclude that voluntary cancellation of water rights
3 consistent with the OWRD rules and the 2022 FWMP will result in improved fish
4 habitat to offset the negative impacts to fish habitat caused by Thornburgh's
5 groundwater pumping.¹⁶

6 **G. OWRD Mitigation Rules**

7 Bishop argues that the county "wholly and unreasonably" relies on
8 OWRD's mitigation rules to meet DCC 18.113.070(D). Bishop's Intervenor-
9 Petitioner's Brief 30. That argument mischaracterizes the county's decision. The
10 county concluded that voluntary cancellation is a reliable way to provide
11 mitigation water for fish habitat. The county based that conclusion on the fact
12 that OWRD is the state water regulator and OWRD accepts voluntary
13 cancellation as a means of offsetting withdrawal impacts. The county does not
14 solely rely on the OWRD mitigation rules to satisfy the no net loss standard.
15 Instead, the county relies on the OWRD mitigation rules as evidence that
16 voluntary cancellation will result in the water quantity and quality modeled in the
17 2022 FWMP.

¹⁶ Later in this decision we agree with Bishop that the 2022 FWMP compliance measures that require only submittal to OWRD of applications for transfers or cancellation of groundwater water rights are inadequate to ensure no net loss of fish resources. *See* ____ Or LUBA at ____ (slip op at 64-65).

1 **H. ORS 537.270**

2 Bishop argues that the county improperly relied on ORS 537.270 to
3 support its conclusion that the water rights transfers and cancellations will result
4 in water in the stream for fish habitat. ORS 537.270 provides:

5 “A water right certificate issued in accordance with the provisions
6 of ORS 537.250 which, after the expiration of three months from the
7 date it is issued, has not been contested and canceled in the manner
8 provided in ORS 537.260, and a water right certificate, when issued
9 under ORS 539.140, shall be conclusive evidence of the priority and
10 extent of the appropriation therein described in any proceeding in
11 any court or tribunal of the state, except in those cases where the
12 rights of appropriation thereby described have been abandoned
13 subsequent to issuance of the certificate.”

14 ODFW argued to the county that the water rights Thornburgh listed and
15 relied upon in the 2022 FWMP were not sufficiently reliable to meet the no net
16 loss standard because the record did not demonstrate that the full amount of water
17 under the water rights listed in the 2022 FWMP and relied upon for Thornburgh’s
18 modeling “have been consistently used in full in the recent past.” Record 1827.

19 The county rejected that argument and found that “Thornburgh has
20 provided substantial evidence of pumping records, aerial photos, [and] affidavits
21 of use for individual water rights that indicate substantial use and that rights will
22 provide actual benefits to impacted waterways.” Record 30.

23 In addition, and in the alternative, the county found that none of the
24 identified water rights are subject to cancellation proceedings and Thornburgh is
25 entitled to rely upon water rights unless they are subject to cancellation

1 proceedings. Record 62. The county found that ORS 537.270 is a “relevant
2 consideration.” *Id.*

3 “ORS 537.270 directly relates to whether certificated water rights
4 are evidence of water priority *and* appropriation or use. We find that
5 where Thornburgh has (or is planning to use) certificated or
6 permitted water that the amount of appropriation, duty and priority
7 govern here. We find that Thornburgh’s water rights are ‘reliable’
8 for the purpose of complying with the No Net Loss Standard.”
9 Record 30 (emphasis in original).

10 For purposes of this decision, we assume without deciding that the county
11 misconstrued ORS 537.270 and erred in concluding that statute creates a legal
12 presumption that Thornburgh’s water rights certificates are conclusive evidence
13 of the availability of water for the purpose of complying with the county’s no net
14 loss standard. However, Bishop has not established that error requires remand.
15 Where an error in a finding is not critical to the local government’s ultimate
16 conclusions, the error does not provide a basis for reversal or remand. *Hunt v.*
17 *City of the Dalles*, 78 Or LUBA 509, 515 (2018), *aff’d*, 296 Or App 761, 438 P3d
18 489 (2019). The county’s finding relying on ORS 537.270 was in addition, and
19 in the alternative, to the county’s finding that Thornburgh provided substantial
20 evidence of pumping records, aerial photos, and affidavits of use for individual
21 water rights that indicate substantial use, and that rights will provide actual
22 benefits to impacted waterways. Thus, the county’s error in applying an improper
23 presumption based on ORS 537.270 was harmless in that it was not necessary to
24 the approval.

I. Water Rights Certificates as Evidence of Water Quantity

Bishop also argues that the county improperly relied on the listed water rights as establishing the *quantity* of water available for mitigation. In other words, Bishop argues, certificated water rights are not substantial evidence that the 2022 FWMP will result in no net loss to fish resources. The 2022 FWMP and modeling rely on the quantity of water listed in the certificate. Bishop argues that the no net loss standard requires a certainty greater than listing what is shown on a paper certificate. Bishop argues “[i]f less water is in the aquifer or stream than the amount listed in the [c]ertificate, water does not magically come into existence to meet the amount listed in the [c]ertificate.” Bishop’s Intervenor-Petitioner’s Brief 31. Bishop also points out that prior certificate holders might not have used the full quantity of certificated water. In that case, if Thornburgh transfers that water right for resort use and the resort uses the full quantity of the certificate, then the transfer will result in greater negative impacts than predicted in the 2022 FWMP.

Bishop argues that the transfer of the LeBeau water right for resort use is unreliable because OWRD has proposed to deny the transfer due to predicted harm to the Crooked and Deschutes Rivers’ flows. Record 3623. Bishop argues that cancellation of the Dutch Pacific right is unreliable because OWRD has denied Thornburgh’s application for transfer to the resort for resort use. Record 3624.

1 Thornburgh responds that OWRD's denial of transfer of the Dutch Pacific
2 water right for resort use does not undermine the 2022 FWMP conclusions
3 because that water right will be cancelled, which allows water to remain in the
4 aquifer to provide benefits to streamflow. While Thornburgh does not
5 specifically respond to Bishop's argument regarding OWRD's proposed denial
6 of the transfer of the LeBeau certificate, Bishop does not explain how the denial
7 of a transfer application for resort water *supply* undermines the county's finding
8 that the listed water certificates will provide adequate water for *mitigation*.

9 Given the record as a whole, a reasonable person could conclude that the
10 water rights transactions proposed in the 2022 FWMP will result in no net loss to
11 fish habitat based on quantities and quality of water modeled based on the listed
12 water rights certificates.

13 **J. Crooked River Habitat Impacts**

14 The Tribe argues that the county's conclusion that the 2022 FWMP
15 satisfies the no net loss standard is not supported by substantial evidence in the
16 whole record because Thornburgh's fisheries expert concluded that, under the
17 2022 FWMP, the resort's water consumption will result in seasonal degradation
18 of the fish habitat quantity and quality in the Crooked River. The Tribe points to
19 a report dated October 21, 2022, in which Thornburgh's environmental science
20 expert, Mugunthan, estimated that the resort groundwater pumping in quantities
21 listed in the 2022 FWMP would reduce surface flows in the Crooked River by
22 "approximately 0.25 cfs and 0.4 cfs, at Osborne Canyon and Opal Springs,

1 respectively.” Record 12708. Mugunthan explained that change is “statistically
2 significant” and would result in depletion of groundwater recharge to surface
3 water. *Id.* Mugunthan explains that

4 “‘Statistically significant’ is a statistical term meaning the
5 probability of not having a negative flow difference is very small.
6 However, the statistical test does not provide any context on the
7 magnitude of the impact, which at 0.4 cfs at Opal Springs is
8 negligibly small (less than 0.04%) compared to the surface water
9 baseflow that ranges from 1100 to 1300 cfs.” *Id.* at n 4.

10 Thornburgh engaged RSI to model surface water temperature. RSI
11 produced a report, dated February 21, 2023, which analyzed potential
12 temperature impacts in the Crooked River resulting from reduced ground water
13 discharge caused by resort ground water pumping. Record 1028-34. RSI
14 concluded that the simulated changes in temperature were “not significantly
15 different from zero.” Record 1032.

16 With respect to impacts to the Crooked River, Thornburgh’s fish expert,
17 Caldwell, concluded as follows:

18 “When averaged across all sites evaluated within the Crooked River,
19 flow is predicted to increase or decrease by less than 0.12 cfs, with
20 decreases occurring in April through early June, again in mid-June,
21 and in late August through October, and increases occurring in early
22 June and late June through mid-August. This would constitute a net
23 decrease in habitat quantity during spring and fall, and a net increase
24 in habitat quantity during most of the summer. Temperature is
25 predicted to generally increase by less than 0.004°C from late May
26 through early October and predicted to decrease by less than
27 0.004°C from April through mid-May and in October. This would
28 constitute a net improvement in habitat quality during spring and
29 fall, and a quality degradation in summer. The maximum effect of

1 this project on predicted change in flow is a decrease of 0.11 cfs
 2 (habitat quantity decrease) and occurs in early September, and the
 3 maximum effect on change in temperature is an increase of 0.004°C
 4 (habitat quality degradation) and occurs in early July.

5 “Overall, the combined effects of planned groundwater pumping
 6 and mitigation appear to vary seasonally within the Crooked River.
 7 During the spring and fall, a net impact is expected for fish habitat
 8 quantity and a net benefit for fish habitat quality. During the
 9 summer, a net benefit is expected for fish habitat quantity and a net
 10 impact for fish habitat quality.” Record 918 (internal citations
 11 omitted).

12 The county found:

13 “According to the science and technical reports, there is generally
 14 no scientific or biological significance in the impacts⁸ under the
 15 2022 FWMP and, as a whole, the plan provides benefits to habitat
 16 for fish and aquatic species. Given this context, we find that the 2022
 17 FWMP plan meets the No Net Loss Standard.

18 _____
 19 “⁸ Substantial evidence shows that virtually all flow and temperature
 20 changes, while mostly beneficial, are too small to measure with
 21 equipment currently available. Even ODFW notes that impacts to
 22 the Crooked River, for example, are ‘noise.’” Record 26.

23 The county also found:

24 “In all reaches impacted by Thornburgh’s water use, except certain
 25 times and locations in the Crooked River, Thornburgh’s transfers
 26 (restoration) and other measures may result in a net benefit by either
 27 decreasing waterway temperatures overall or by offsetting impacts
 28 of the Resort on streams to the point that increase in stream
 29 temperatures are so minimal as to be not measurable. The modeling
 30 also provides extensive analysis related to spring and seep impacts
 31 and concluded that the 2022 FWMP meets the no net loss standard.
 32 The 2022 FWMP provides substantial groundwater inputs that
 33 globally offset impacts of pumping on habitat.” Record 55.

1 “In the Crooked River, there are slight decreases in flow in amounts
2 so small they cannot be measured using current technology.
3 Similarly, the change to temperature is so small as to not be
4 measurable as well.” Record 63.

5 The Tribe argues that there is no evidence in the record explaining how the
6 2022 FWMP will mitigate the impact of fish habitat quality and quantity
7 degradation in the Crooked River that Caldwell predicted. The Tribe further
8 argues that the county’s decision is not supported by substantial evidence because
9 Caldwell’s and RSI’s reports conflict with respect to the impacts of increased
10 temperatures in the Crooked River and the county erred in not addressing that
11 conflict in the findings approving the 2022 FWMP. Tribe’s Petition for Review
12 34-35.

13 Thornburgh responds that substantial evidence in the record demonstrates
14 that, under the 2022 FWMP, the resort’s water consumption will result in
15 negligible seasonal degradation of the fish habitat quantity and quality in the
16 Crooked River and that implementation of the 2022 FWMP will provide a net
17 benefit to fish habitat. Thornburgh argues that the Tribe’s citations to Caldwell’s
18 report are incomplete and inaccurate. Thornburgh characterizes Caldwell’s report
19 as identifying impacts and ultimately concluding that the 2022 FWMP will result
20 in “a net benefit for both fish habitat quantity and quality at all sites evaluated
21 and would result in no net loss of fish habitat quantity or quality.” Record 923.
22 Caldwell found that, while the model predicted reductions in fish habitat quantity
23 and quality, “these model-predicted changes are so small as to be immeasurable

1 and are not likely to cause a measurable change in habitat quantity or quality of
2 fish habitat within the Crooked River.” Record 12424-25.

3 Thornburgh argues, and we agree, that a reasonable person could rely on
4 that expert opinion to conclude that the 2022 FWMP will result in no net loss of
5 fish resources in the Crooked River. That is so even though Mugunthan estimated
6 that resort water pumping in quantities listed in the 2022 FWMP would reduce
7 surface water flows in the Crooked River by .25 cfs (at Osborne Canyon) and .40
8 cfs (at Opal Springs).¹⁷

9 **K. Whychus Creek Mitigation**

10 The county found:

11 “Wychus Creek was the subject of intense litigation that was
12 resolved with the approval of the FMP. The FMP required
13 mitigation into Wychus Creek by restoring 1.51 cfs (a minimum of
14 106 acre-feet) of conserved water from the Three Sister Irrigation
15 District [(TSID)]. The Wychus Creek mitigation is final and past
16 all appeals. As there is no change to this segment of the FWMP, any
17 attack against the plan is an impermissible collateral attack on the
18 FMP. Further, the evidence shows that Thornburgh has completed
19 the requirements pertaining to the Wychus Creek Mitigation and
20 that the water has been permanently transferred instream. Lastly,
21 Thornburgh is canceling the Dutch Pacific water right that will
22 provide additional groundwater discharge to Wychus Creek.”
23 Record 31.

¹⁷ Thornburgh emphasizes that Mugunthan and ODFW characterized those estimated impacts as “negligibly small” and “noise.” Rec 12708 n 4, 26 n 8.

1 Petitioners argued below that impacts to Whychus Creek should be
2 addressed anew in current context as part of the 2022 FWMP. Petitioners also
3 argued that leaving water instream in Whychus Creek increases temperatures
4 downstream (and negatively impacts fish habitat) because water warms as it
5 moves downstream. Record 66.

6 The county found that “the TSID project provides benefits to Whychus
7 Creek and fully offsets the impact of the Resort’s use of groundwater at a higher
8 level than proposed by the 2022 FWMP.” Record 56. The county found that the
9 efficacy of the TSID mitigation for Whychus Creek was litigated and settled by
10 *Gould v. Deschutes County*, 78 Or LUBA 118 (2018). The county also quoted
11 the expert opinion in the 2022 FWMP record stating that the TSID mitigation
12 will be effective. Record 66-67 (quoting Record 571-72).

13 Bishop argues that Thornburgh’s modification application opens the issue
14 of the current conditions of all affected habitats, including Whychus Creek, and
15 that there is no evidence in the record that rebuts the Tribe’s evidence that the
16 prior mitigation on Whychus Creek is now no longer reasonably certain or likely
17 to result in no net loss of fish and wildlife habitat. Bishop cites Record 4300,
18 4303, and 4305, wherein the Tribe explained that the DB HCP incidental take
19 permit coverage for steelhead in Whychus Creek relies on water temperature
20 decreases from TSID mitigation and the DB HCP applicants acknowledge that if
21 their assumption regarding temperature reduction is incorrect, then the DB HCP
22 applicants might need to revisit the conservation measures for Whychus Creek.

1 Nothing in those record citations contradicts Thornburgh's experts' opinion that
2 increased stream flow in Whychus Creek as a result of the TSID mitigation will
3 result in benefits to fish habitat.

4 The county's observation that the efficacy of the TSID mitigation with
5 respect to fish habitat in Whychus Creek was previously litigated and resolved
6 was not the county's sole basis for concluding that the 2022 FWMP satisfies the
7 no net loss standard with respect to Whychus Creek. The county also concluded
8 that the TSID mitigation and 2022 FWMP mitigation measures will result in no
9 net loss of fish habitat in Whychus Creek. Contrary to Bishop's assertion, this
10 conclusion is supported by evidence in the record. Specifically, Caldwell
11 analyzed various sensitive sites in Whychus Creek identified by ODFW and
12 concluded that the mitigation under the 2022 FWMP provides "a net benefit for
13 both fish habitat quantity and quality within Whychus Creek, throughout the vast
14 majority of the irrigation season." Record 917. That conclusion was based on
15 further thermal modeling at various sensitive sites in Whychus Creek as
16 requested by ODFW. Record 571, 1897-1898. Thornburgh also points out that
17 the required 106 acre feet of mitigation water for Whychus Creek in the 2008
18 FWMP was based on 2,129 acre feet of resort pumping. The 2022 FWMP
19 significantly decreased the amount of water the resort will pump, while the
20 completed TSID mitigation remains unchanged and cancellation of the Dutch
21 Pacific water right will increase mitigation water in Whychus Creek. The

county's conclusion that Whychus Creek mitigation is sufficient to satisfy the no net loss standard is supported by substantial evidence.

L. 2022 FWMP Compliance Provisions

Bishop argues that the 2022 FWMP groundwater rights compliance provisions are inadequate to support a conclusion that the 2022 FWMP will result in no net loss to fish habitat. As explained above, for groundwater water rights, the 2022 FWMP provides that "compliance occurs upon the cessation of pumping of the rights and along with any of the following: deed evidencing the transfer of ownership, *a submittal to OWRD* of any of the following: (i) an assignment of the water right to Thornburgh, (ii) *an application that seeks OWRD approval* of a transfer to pump at the resort property, or (iii) a cancellation in-lieu of mitigation." Record 77 (emphases added). This provision provides the means of demonstrating compliance with the 2022 FWMP during the county's review of future resort land use applications, for Thornburgh's required annual mitigation monitoring report, "or for any other purpose." *Id.* Thornburgh proposed, and the county approved, the following reporting requirements for the 2022 FWMP:

"In addition to any reporting required by OWRD pertaining to water use or mitigation, Thornburgh will provide annual reporting (no later than December 31st of each year) to Deschutes County, with a copy to ODFW's local field office, of the following information:

"1. The status of each of the certificated water rights discussed in Section II-B2, including the status of any transfer or cancellation applications affecting any of those rights.

"2. Copies of any annual reporting filed with OWRD.

1 “3. An accounting of the total amount of water pumped under any
2 of the water rights discussed in Section II-B (2) between
3 November 1 - October 31 of the prior year.

4 “4. An accounting of the total amount of a) groundwater left in
5 ground, b) surface water left instream (permanent or
6 temporary), or c) water held as mitigation credits (permanent
7 or temporary) in accordance with this Section D, paragraphs
8 a, b & c.

9 “5. The accounting referred to in [numbers] 3 and 4 of this section
10 will be maintained both annually, and on a cumulative basis.

11 “6. An accounting of the amount and certificate [number] of any
12 water provided to farmers for drought relief.

13 “7. The amount and source of any OWRD mitigation used to
14 mitigate for the pumping in [number] 3 of this section.

15 “8. Any change in the status of any of the three exempt wells
16 including whether they have been abandoned to date.

17 “9. Consistent with the 2008 FWMP, no additional reporting is
18 required during the review of any land use application related
19 to the Resort.” Record 78.

20 The county revised prior FMP Condition 38 so that it now applies only to
21 a distinct terrestrial wildlife mitigation plan and imposed new FMP Condition 40
22 as follows: “Thornburgh shall comply with the 2022 [FWMP], including its
23 compliance and reporting mechanisms found in Section II of that plan.” Record
24 51. *See Gould v. Deschutes County*, 233 Or App 623, 625-26, 227 P3d 758, 760
25 (2010) (describing distinct mitigation plans addressing terrestrial wildlife and
26 fish habitat). The county found that “that the 2022 FWMP ensures ongoing

1 compliance with the No Net Loss Standard and sufficient monitoring is required
2 by the 2022 FWMP and FMP Condition 40.” Record 31.

3 Bishop argues that the 2022 FWMP assumes *completion* of the listed water
4 rights transfers and cancellations. Bishop argues that, thus, the county must
5 require proof of *completion* of each alternative OWRD process, rather than mere
6 ownership of a certificate and *submittal* of an application to OWRD, before the
7 county may conclude that the no net loss standard has been satisfied. Bishop
8 argues that, under the 2022 FWMP, the county has no way to determine if fish
9 habitat mitigation water will be available before approving actual buildings on
10 site under a third-stage approval.¹⁸

11 Thornburgh responds that the county may rely upon evidence of
12 Thornburgh’s ownership of water rights, cessation of pumping, and submittal to
13 OWRD, and need not wait until OWRD has made a final adjudication.
14 Thornburgh points out that it may not pump water for resort use until it has
15 obtained and documented OWRD mitigation necessary to withdraw groundwater
16 for resort use. *See* ____ Or LUBA at ____ (slip op at 44 n 13) (describing OWRD
17 mitigation). Thornburgh cites *Gould v. Deschutes County*, ____ Or LUBA ____
18 (LUBA No. 2022-013, June 1, 2022), *aff’d*, 322 Or App 11, 518 P3d 978, *rev*
19 *den*, 370 Or 694 (2022) (slip op at 13), for support of its argument that it is entitled

¹⁸ Bishop points out the county has already issued a building permit for a pump house and well house on the property. Record 3489-99.

1 to rely on valid and existing water rights certificates to satisfy fish habitat benefit
2 requirements.

3 Our conclusion in that case does not support Thornburgh's position here.

4 In that case, we reiterated prior decisions in *Gould v. Deschutes County*, ___ Or

5 LUBA ___ (LUBA No 2020-095, June 11, 2021) (*Gould Golf*), *aff'd*, 314 Or

6 App 636, 494, P3d 357 (2021), *rev den*, 369 Or 211 (2022) and *Gould v.*

7 *Deschutes County*, 79 Or LUBA 561 (2019), *aff'd*, 310 Or App 868, 484 P3d

8 1073 (2021). In those lines of cases, we concluded that, because OWRD

9 mitigation is based on the resort's consumptive water use, FMP Condition 10

10 "requires proof of adequate water rights and mitigation commensurate with the

11 estimated consumptive use of water for the development approved at each phase

12 of development, and in advance of actual water consumption." 79 Or LUBA at

13 574.¹⁹ The county adopted FMP Condition 10 to satisfy DCC 18.113.070(K). We

14 agreed with the county that that showing could be satisfied by documentation of

15 a noncancelled water rights permit. Those cases do not aid Thornburgh in this

16 case, which involves satisfaction of the no net loss standard in DCC

17 18.113.070(D).

¹⁹ FMP Condition 10 provides:

"Applicant shall provide, at the time of tentative plat/site plan review for each individual phase of the resort development, updated documentation for the state water right permit and an accounting of the full amount of mitigation, as required under the water right, for that individual phase." Record 33 n 13.

1 Similarly, the fact that Thornburgh may not legally pump water for resort
2 use until it has obtained and documented *OWRD mitigation* necessary to
3 withdraw groundwater for resort use does not ensure that all the required *fish*
4 *mitigation* water will be provided in advance of pumping. OWRD mitigation
5 water and fish mitigation water may sometimes be the same water, but it is
6 provided to satisfy different requirements. OWRD's mitigation rules do not
7 ensure the no net loss of fish resources.

8 Thornburgh does not argue that the reporting requirements in the 2022
9 FWMP are sufficient to demonstrate no net loss, and we do not see that they are.
10 The required report might show that the quantities and quality of water assumed
11 in the 2022 FWMP have been provided, or it might not. No additional reporting
12 is required during the review of any land use application related to the resort. As
13 we understand it, the 2022 FWMP modeling assumes equal efficacy and
14 reliability as between instream water right transfers and voluntary cancellation of
15 water rights so that those legal processes have the same instream impacts on
16 water quality and quantity.

17 We agree with Bishop that the county's findings are inadequate to explain
18 why *submittal* to OWRD is sufficient to satisfy the no net loss standard with
19 respect to groundwater sources for fish habitat mitigation. Indeed, Thornburgh
20 and the county rely upon OWRD processes to ensure that voluntary cancellation
21 of water rights consistent with OWRD rules and review processes will result in
22 improved fish habitat. *See* Record 749 (Thornburgh's expert, Newton's,

1 testimony (also quoted above ____ Or LUBA at ____ (slip op at 48))). The county
 2 has failed to explain how simple submittal of an application to OWRD permits
 3 the county to rely on those OWRD processes.

4 Thornburgh points to no evidence to support the county's conclusion that
 5 the "2022 FWMP ensures ongoing compliance with the No Net Loss Standard
 6 and sufficient monitoring is required by the 2022 FWMP and FMP Condition
 7 40." Record 31. Thornburgh has not pointed to any evidence supporting a
 8 conclusion that ground water right certificate ownership, cessation of pumping,
 9 and OWRD submittal is sufficient to ensure fish mitigation water will be
 10 provided as assumed in the 2022 FWMP.

11 Bishop's second assignment of error is sustained, in part.

12 **VIII. SUBSTANTIAL CHANGE**

13 **(Gould Second Assignment of Error; COLW First and Third Assignments** 14 **of Error; Lipscomb First Assignment of Error)**

15 As explained early in this decision, CMP and FMP Condition 1 provide:
 16 "Approval is based upon the plan as submitted. Any substantial change to the
 17 approved plan will require a new application." Record 11426, 11725. The county
 18 has interpreted "substantial change" in Condition 1 to have the same meaning as
 19 the term is used in DCC 18.113.080, which is "an alteration in the type, scale,
 20 location, phasing or other characteristic of the proposed development such that
 21 findings of fact on which the original approval was based would be materially
 22 affected." The county process for destination resort review and approval allows

1 for the resort development to change and evolve over time. However, the county
2 is required to revisit and find satisfaction of the resort approval criteria that the
3 county found satisfied by the CMP or FMP if a proposed modification materially
4 affects the original findings for any given criterion.

5 As explained above, the CMP approved the development of three golf
6 courses. The CMP approval required one of the golf courses to be developed in
7 the first phase of the resort development. *See* ____ Or LUBA at ____ n 5 (slip op
8 10 n 5). As far as we are aware, the FMP did not alter those approvals, so they
9 are part of the FMP. Thornburgh has obtained third-stage approval for the
10 development of one golf course. *Gould Golf*, ____ Or LUBA _____. The county
11 found that the prior approvals only require Thornburgh to develop one golf course
12 and the other two golf courses are “optional.” Record 38. No party challenges
13 that finding or that characterization of the prior approvals. 2022 FWMP proposes
14 to decrease water pumping and water consumption by abandoning one of the
15 “optional” golf courses.

16 Gould argues that the 2022 FWMP proposes a different, lesser amount of
17 water consumption than contemplated in the FMP and that is a substantial change
18 requiring a new CMP application. COLW argues that Thornburgh’s decision to
19 forego developing a golf course to decrease water consumption materially
20 changes the county’s findings regarding open space. Lipscomb argues that the
21 proposed modifications alter the facts supporting the findings for the resort

1 approval criteria related to the economic study, water supply, water system
2 master plan, and wastewater disposal plan.

3 The county found that none of those alleged changes amount to a
4 substantial change to the proposed resort development. Further, the county
5 reasoned that, even if the 2022 FWMP does represent or result in any substantial
6 change, such a change does not require a new CMP or FMP application. Instead,
7 a substantial change would require a new modification application that the county
8 reviews as a land use application—which is how the FMP modification
9 application was processed here. The county reasoned that changing mitigation
10 from the 2008 FWMP to the 2022 FWMP changes no characteristic of the
11 proposed development. Instead,

12 “the changes in the source of mitigation water from the 2008 FWMP
13 to the 2022 FWMP is merely a change to a plan that *mitigates for*
14 *the impacts* of the proposed development. It does not change the
15 proposed development or the characteristics of it beyond placing a
16 greater restriction on the maximum amount of water used and the
17 number of optional golf courses that may be developed.” Record 38
18 (emphasis in original).

19 The county further reasoned

20 “DCC 18.113.080 asks whether a proposed change to an ‘approved
21 CMP’ is a substantial change. * * * No finding of the approved CMP
22 addresses the particulars of the 2008 FWMP. Instead, Condition 37
23 of the approved CMP requires the filing and public review of an
24 FWMP with the FMP application. The requested modification of the
25 FWMP has been reviewed in the manner required by Condition 37
26 of the approved CMP, which is through a land use application
27 review.

1 “Opponents have also argued that DCC 18.113.080’s requirement
2 that any substantial change ‘be reviewed in the same manner as the
3 original CMP’ requires an entirely new CMP. That is not the case.
4 The Code merely requires that a substantial change be reviewed ‘in
5 the same manner’ as the original CMP, which is to say that it
6 proceed through land use review in the same way as the original
7 CMP in that case. Even though the [b]oard finds that no substantial
8 change is proposed here, the land use review has afforded the same
9 process provided during the original CMP, which was review before
10 a hearings officer and then the [b]oard of [c]ommissioners.

11 “The [b]oard finds that the Application does not need to meet all
12 criteria related to CMP approval. The [b]oard further finds that the
13 Application does not represent a substantial change as that term is
14 used in DCC 18.113.080.” Record 39.

15 The board found that that DCC 18.113.080 defines the meaning of
16 “substantial change” in FMP Condition 1 and that Thornburgh’s request for
17 approval of the 2022 FWMP is not a substantial change. The board found that the
18 purpose of the FWMP is to mitigate the impacts of resort development. The
19 mitigation plan is not a development plan. Thus, modification of the FWMP is
20 not a substantial change to the resort plan. The board reasoned that the 2022
21 FWMP will not impose significant additional impacts on surrounding properties
22 because the 2022 FWMP does not allow any significant change to or
23 intensification of the resort development beyond what is allowed under the FMP.

24 The county’s conclusion that a substantial change would require
25 Thornburgh to apply for a modification application, as it did here, does not
26 resolve the issues raised in these arguments because the county applied only DCC
27 18.113.070(D), the no net loss criterion, and did not apply the other approval

1 criteria that petitioners argue are implicated—namely, criteria regarding
 2 economic benefits, open space, and water supply, system, and disposal. DCC
 3 18.113.080 and DCC 22.36.040 provide procedures for permit modification
 4 applications for discrete portions of an approved FMP. In such cases, only the
 5 criteria applicable to the modified aspect of the proposal provide applicable
 6 criteria. DCC 22.36.040(C).²⁰

7 Even though the 2022 FWMP is directed at satisfying only the no net loss
 8 standard, if the measures proposed and approved in the FWMP alter “the type,
 9 scale, location, phasing or other characteristic of the proposed development such
 10 that findings of fact on which the original approval was based would be

²⁰ DCC 22.36.040 provides, in part:

“B. Unless otherwise specified in a particular zoning ordinance provision, the grounds for filing a modification shall be that a change of circumstances since the issuance of the approval makes it desirable to make changes to the proposal, as approved. A modification shall not be filed as a substitute for an appeal or to apply for a substantially new proposal or one that would have significant additional impacts on surrounding properties.

“C. An application to modify an approval shall be directed to one or more discrete aspects of the approval, the modification of which would not amount to approval of a substantially new proposal or one that would have significant additional impacts on surrounding properties. Any proposed modification, as defined in DCC 22.36.040, shall be reviewed only under the criteria applicable to that particular aspect of the proposal. Proposals that would modify an approval in a scope greater than allowable as a modification shall be treated as an application for a new proposal.”

1 materially affected,” then the changes are “substantial changes” that must “be
 2 reviewed in the same manner as the original CMP.” DCC 18.113.080. Changes
 3 that may be aimed at satisfying one criterion may also materially affect the
 4 findings that supported satisfaction of another criterion so that the later criterion
 5 is implicated by the modification. The fact that the modification application is
 6 not aimed at the affected criterion or related findings does not mean that the
 7 county is not required to address it. If the 2022 FWMP would materially affect
 8 the findings of fact on which the original approval was based, then the county is
 9 required to address anew those resort development criteria. Accordingly, we
 10 proceed to analyze the county’s conclusion that changes resulting from the 2022
 11 FWMP are not substantial changes that require a new application addressing
 12 those criteria.

13 **A. Economic Analysis**

14 DCC 18.113.070(C) is a resort approval criterion that requires the county
 15 to find, as relevant here:

16 “3. The destination resort will provide a substantial financial
 17 contribution which positively benefits the local economy
 18 throughout the life of the entire project, considering changes
 19 in employment, demands for new or increased levels of public
 20 service, housing for employees and the effects of loss of
 21 resource land.

22 “4. The natural amenities of the site considered together with the
 23 identified developed recreation facilities to be provided with
 24 the resort, will constitute a primary attraction to visitors,
 25 based on the economic feasibility analysis.”

1 Lipscomb argues that the proposed change to reduce the number of golf
2 courses is a substantial change to the resort development that materially affects
3 the facts underlying the resort's economic analysis that the county relied upon to
4 find that DCC 18.113.070(C) is satisfied in the CMP approval. We agree for
5 reasons explained immediately below.

6 The county relied upon an economic analysis that was based on a total of
7 four golf courses. Record 11690-92, 10520, 10524, 10583, 10588.²¹ The
8 economic analysis concluded that the golf courses would be an important source
9 of new jobs with a total of 125 newly created jobs and 3.9 million dollars in
10 employee compensation. Record 10588. The county found that the resort "will
11 generate a large number of full-time positions that will have a positive effect on
12 the Deschutes County economy." Record 11691.

13 Lipscomb argues that the economic benefit of developing and operating
14 the resort with fewer golf courses is not explained in the record. Thornburgh
15 provided no updated economic analysis. Based on the prior economic analysis,

²¹ The economic analysis describes two golf courses to be developed at The Pinnacle Village and two golf courses to be developed at The Tribute village. Record 10520, 10524, 10588. Lipscomb mentions the Benefit Study submitted as part of the CMP application in 2005, which analyzes economic viability off of four golf courses, as part of their argument regarding DCC 18.113.070(C). Lipscomb's Intervenor-Petitioner's Brief 27-28. However, no party explains how or when the resort plans for four golf courses were reduced to three golf courses and no party argues that change has any bearing on our analysis in this appeal. Thus, we assume that it does not.

1 Lipscomb estimates the resort will lose 39 golf course related jobs and points out
2 that reduced golf facilities may also impact other resort employment and
3 economic stimulation from the resort.

4 The county found

5 “Thornburgh’s request does not implicate other elements of the
6 resort such that a substantial change is requested. Elimination of a
7 golf course and curtailment of water rights are both measures
8 allowed by the CMP and FMP as they presently exist. While the
9 CMP and FMP addressed the impacts of full development of the
10 Resort, neither plan requires that the Resort be fully developed. This
11 fact was understood by the [b]oard when it reviewed the CMP and
12 its various supporting plans. The [board] further finds a ‘substantial
13 change’ can be approved through a land use application, which is
14 the process that has occurred.” Record 61.

15 Lipscomb argues that the change of abandoning a golf course that the
16 county relied on for assessing economic benefits is a substantial change requiring
17 a new CMP application.

18 Thornburgh responds that the CMP is not implicated by the 2022 FWMP
19 and, even if it were, the CMP *only required that one* golf course be developed.
20 For the proposition, Thornburgh cites Thornburgh’s burden of proof for the 2022
21 FWMP, partially quoting the CMP approval requirement that “at least one golf
22 course, the restaurant and meeting rooms and facilities are required to be
23 constructed in Phase A[.]” Record 13565 n 2.

24 We initially observe that the fact that the CMP approval required only one
25 golf course be developed in the first phase of development does not necessarily
26 demonstrate that, at the CMP stage, the county considered the other golf facilities

1 to be “optional” with respect to the whole resort plan. However, because no party
 2 challenges the county’s finding that the prior approvals require only one golf
 3 course, we assume that is a correct statement, as far as it goes.

4 The destination resort statutes do not prescribe a number of golf courses.
 5 To qualify as a destination resort, “[a]t least \$7 million must be spent on
 6 improvements for on-site developed recreational facilities and visitor-oriented
 7 accommodations exclusive of costs for land, sewer and water facilities and roads.
 8 Not less than one-third of this amount must be spent on developed recreational
 9 facilities.” ORS 197.445(3). “‘Developed recreational facilities’ means
 10 improvements constructed for the purpose of recreation and may include but are
 11 not limited to golf courses, tennis courts, swimming pools, marinas, ski runs and
 12 bicycle paths.” ORS 197.435(1). DCC 18.113.060 requires a destination resort to
 13 provide, in the first phase of development, overnight lodging facilities, developed
 14 recreational facilities, eating establishments, and meeting rooms. DCC
 15 18.113.060(A)(4) requires a minimum investment of \$2,333,333 (in 1993
 16 dollars) be spent on developed recreational facilities.²²

17 The fact that the CMP and FMP do not condition approval on development
 18 of specific golf courses does not answer the issue that Lipscomb raises. The CMP
 19 and FMP approvals are expressly “based upon the submitted plan.” Record

²² No party argues that abandoning one golf course will cause Thornburgh to violate the developed recreational facility investment requirements.

1 11426, 11725. The county was not required to condition those approvals on
2 development of the recreation facilities in the submitted and approved plan. More
3 importantly, any change to the developed recreational facilities approved in the
4 CMP/FMP may constitute a substantial change.

5 We agree with Lipscomb that the county relied on the proposed and
6 approved golf courses for its economic analysis and conclusion that the proposed
7 resort satisfied DCC 18.113.070(C) in the CMP approval. We agree with
8 Lipscomb that the 2022 FWMP abandonment of golf course facilities is a
9 substantial change that impacts the underlying findings of fact for the CMP
10 approval—namely that the developed golf courses will provide 125 newly
11 created jobs and 3.9 million dollars in employee compensation. Record 10588.
12 Contrary to Thornburgh’s response, DCC 18.113.070(C) is implicated by the
13 2022 FWMP because the 2022 FWMP relies on the abandonment of one of the
14 same golf courses that the county relied upon in the CMP approval. We agree
15 with Lipscomb that, based on the CMP approval and supporting economic
16 analysis, the abandonment of the golf course is “an alteration in the type, scale,
17 location, phasing or other characteristic of the proposed development such that
18 findings of fact on which the original approval was based [are] materially
19 affected.” DCC 18.113.080.

20 Lipscomb also argues that the cost of employee housing has changed and
21 that change is a substantial change that requires a new economic analysis related
22 to “housing for employees” in DCC 18.113.070(C)(3). Thornburgh responds that

1 the 2022 FWMP does not increase the number of employees that will need to be
2 housed, and so that aspect of the findings supporting the CMP are not materially
3 affected by the potential decrease of employment resulting from not developing
4 one golf course. Pinnacle's Intervenor-Respondent's Brief 31.

5 We disagree with Lipscomb that a general change in rental cost and
6 availability is a "substantial change" that Thornburgh would be required to
7 address. However, we conclude that the 2022 FWMP requires changes that
8 materially affect the county's findings that DCC 18.113.070(C)(3) and (4) are
9 satisfied. Accordingly, on remand, the county will need to consider whether, with
10 the changes proposed in the 2022 FWMP, those criteria are satisfied. On remand,
11 the county will need either to consider changes to employee housing demands
12 based on the changes in the 2022 FWMP or explain why that consideration is not
13 required.

14 The issue then becomes what is the proper remedy for this error? Lipscomb
15 argues that the phrase "new application" in Condition 1 can only mean a new
16 CMP application and a new FMP application because the findings supporting
17 those approvals must change.

18 The county found

19 "The CMP originally imposed Condition 1, which states that
20 'Approval is based upon the submitted plan. Any substantial change
21 to the approved plan will require a new application.' Upon FMP
22 approval the hearings officer carried through the condition to ensure
23 compliance with the original CMP. The condition means the same
24 in both contexts, and neither require that an application for a new

1 CMP or new FMP be sought, only that a modification application
2 be filed and then reviewed in the same manner as the original
3 approval.

4 “This interpretation is consistent with the [b]oard’s previous
5 findings in Thornburgh’s CMP decision in 2006. In our 2006
6 Decision, the [b]oard determined that the substantial change of
7 converting Phase A Overnight lodging Units to single-family homes
8 would require ‘a modification of this conceptual master plan’ – not
9 approval of a new CMP. DC Document 2006-151, p. 46. This
10 finding is contained in the same decision that created Condition 1.
11 If a new CMP were required to make a substantial change such as
12 this to the CMP, Condition 1 would surely have said so.
13 Additionally, Condition 1 does not say that a substantial change
14 renders the approved CMP or FMP void. It only requires a ‘new
15 application’ which the [board’s] CMP findings indicate is an
16 application for modification of the conceptual plan.” Record 39-40.

17 Lipscomb argues that interpretation of Condition 1 is inconsistent with the
18 text of that condition, which requires a “new application.” Lipscomb argues that
19 the county’s interpretation fails to give any meaning to the term “new.” Lipscomb
20 points out that DCC 22.36.040, which applies generally to all modifications to a
21 county land use approval, requires a new application for requests that
22 substantially modify an approval. *See* ____ Or LUBA at ____ (slip op at 69 n 20).
23 Lipscomb argues DCC 22.36.040 provides context for FMP Condition 1 and that
24 the phrase “new application” must be read as providing a distinction between
25 modification applications and applications for new proposals. Lipscomb argues
26 that the county’s interpretation in this case that “new application” means a
27 modification application instead of a new CMP application fails to give meaning
28 to the term “new application.”

1 With respect to DCC 22.36.040, petitioners argued below that the 2022
2 FWMP is a “substantially new proposal” under DCC 22.36.040(B) that could not
3 be approved as a modification and, instead, required a new CMP/FMP
4 application. The county rejected that argument and found:

5 “DCC 22.36.040.B relates to whether the modification modifies the
6 actual approved use, in this case, the Resort as a whole. It relates
7 primarily to the approved FMP and, because the Application only
8 proposes an updated FWMP without substantially changing the
9 actual required development contemplated by the FMP, we cannot
10 find the proposal to be a ‘substantially new proposal.’” Record 43.

11 Thornburgh responds that Thornburgh’s application is for modification of
12 the FWMP, which is a discrete portion of the FMP. Thus, a modification
13 application is appropriate and consistent with Condition 1, DCC 18.113.080, and
14 DCC 22.36.040, which provide for modification applications for discrete
15 portions of an approval. With that context, Thornburgh argues that the board’s
16 interpretation of Condition 1 that “new application” requires only a new
17 modification application and not a new CMP/FMP application is plausible and
18 therefore entitled to deference under ORS 197.829(d) and *Siporen*, 349 Or 247.
19 Pinnacle’s Intervenor-Respondent’s Brief 34.

20 Lipscomb argues that deference applies only to the board’s interpretation
21 of provisions of the county code and not interpretation of conditions of approval.
22 As we have previously explained:

23 “ORS 197.829(1) requires LUBA to affirm a governing body’s
24 interpretation of its own comprehensive plan provision or land use
25 regulation unless the interpretation is inconsistent with the provision

1 or regulation's express language, purpose, or underlying policy.
 2 ORS 197.829(1) generally does not require LUBA to affirm a local
 3 government's interpretation of a prior land use decision or
 4 conditions of approval attached to a prior land use decision. *M & T*
 5 *Partners, Inc. v. City of Salem*, [80 Or LUBA 221, 229-30 (2019)],
 6 *aff'd sub nom, M & T Partners, Inc. v. Miller*, 302 Or App 159, 170,
 7 460 P3d 117 (2020). To a 'limited extent,' LUBA will defer to
 8 plausible interpretations of county land use regulations that the
 9 governing body made in the course of interpreting a condition of
 10 approval. *Kuhn v. Deschutes County*, 74 Or LUBA 190, 194 (2016).
 11 The deference question 'reduces to whether the city was interpreting
 12 a land use regulation,' and a condition of approval is not a land use
 13 regulation. *M & T Partners*, 302 Or App at 170." *Gould Golf*, ____
 14 Or LUBA at ____ (slip op at 16-17).

15 Here, the county adopted CMP/FMP Condition 1 to embed in the approval
 16 the same requirement found in DCC 18.113.080. Similarly, here, the board's
 17 interpretation and application of FMP Condition 1 is couched in the board's
 18 interpretation of DCC 18.113.080 and DCC 22.36.040. Accordingly, we defer to
 19 the board's interpretation because it is plausible. While "new application" could
 20 mean new CMP/FMP application, it could also plausibly mean new modification
 21 application, as the county concluded.

22 The question then becomes whether the county's error in failing to address
 23 the findings regarding the economic analysis can be remedied by a remand in this
 24 proceeding. LUBA's decision to reverse or remand is not limited to the
 25 disposition requested by the parties but is based on "what the nature of the
 26 assigned and established error demands." *McKay Creek Valley Assn. v.*
 27 *Washington County*, 114 Or App 95, 99, 834 P2d 482, *adh'd to as modified on*
 28 *recons*, 116 Or App 299, 841 P2d 651 (1992), *rev den*, 317 Or 396 (1993); OAR

1 661-010-0071 (setting forth circumstances under which LUBA “shall reverse” or
2 “shall remand”).

3 Thornburgh applied to modify the FMP. When compliance with an
4 applicable approval criterion would require more than insignificant changes to
5 the application, if not a new application, reversal is the appropriate remedy.
6 *Rogue Advocates v. City of Ashland*, ___ Or LUBA ___, ___ (LUBA No 2021-
7 009, May 12, 2021) (citing *Richmond Neighbors v. City of Portland*, 67 Or
8 LUBA 115, 129 (2013)) (slip op at 20). As we explained in *Richmond Neighbors*:

9 “OAR 661-010-0071 provides that LUBA shall reverse a decision
10 when ‘[t]he decision violates a provision of applicable law and is
11 prohibited as a matter of law,’ while LUBA shall remand a decision
12 when ‘[t]he decision improperly construes the applicable law, but is
13 not prohibited as a matter of law.’ * * * [W]hether reversal or
14 remand is appropriate depends on whether it is the decision or the
15 proposed development that must be corrected. If the identified errors
16 can be corrected by adopting new findings or accepting new
17 evidence, * * * then remand is appropriate. If the identified errors
18 require a new or amended development application, then reversal is
19 appropriate.” 67 Or LUBA at 129 (citing *Angius v. Washington*
20 *County*, 35 Or LUBA 462, 465-66 (1999); *Seitz v. City of Ashland*,
21 24 Or LUBA 311, 314 (1992)).

22 Here, the identified error may be corrected by the county accepting a new
23 economic analysis that demonstrates that “[t]he destination resort will provide a
24 substantial financial contribution which positively benefits the local economy
25 throughout the life of the entire project, considering changes in employment,
26 demands for new or increased levels of public service, housing for employees
27 and the effects of loss of resource land” and that “[t]he natural amenities of the

1 site considered together with the identified developed recreation facilities to be
 2 provided with the resort, will constitute a primary attraction to visitors, based on
 3 the economic feasibility analysis.” DCC 18.113.070(C)(3), (4). Accordingly, we
 4 conclude that the established error should result in remand in this case.

5 **B. Open Space**

6 DCC 18.113.060(D)(1) is a resort approval criterion that provides, in part:

7 “D. A destination resort shall, cumulatively and for each phase,
 8 meet the following minimum requirements:

9 “1. The resort shall have a minimum of 50 percent of the
 10 total acreage of the development dedicated to
 11 permanent open space, excluding yards, streets and
 12 parking areas.”

13 The county is required to find that “[a]dequate open space, facility
 14 maintenance and police and fire protection shall be ensured in perpetuity in a
 15 manner acceptable to the County,” and “[t]he open space management plan is
 16 sufficient to protect in perpetuity identified open space values.” DCC
 17 18.113.070(R), (T).

18 In the CMP approval, the County found approximately 1,358 acres or 69
 19 percent of the total resort would be designated as permanent open space,
 20 including common open space and three golf courses. Record 13091-92, 11651-
 21 52. Thornburgh submitted, and the county approved, an open space phasing plan
 22 depicting “phase-by-phase protection and development of open space areas
 23 including natural common areas, trails, and golf courses.” Record 11651.

24 CMP Condition 14 provides in relevant part:

1 “Applicant and its successors shall do the following to ensure that
2 all open space used to assure the 50% open space requirement of
3 Section 18.113.060(D)(1) is maintained in perpetuity:

4 “* * * * *

5 “C. All deeds conveying all or any part of the subject property
6 shall include the following restriction: This property is part of
7 the Thornburgh Resort and is subject to the provisions of the
8 Final Master Plan for Thornburgh Resort and the Declaration
9 of Covenants, Conditions and Restrictions of Thornburgh
10 Resort. The Final Master Plan and the Declaration contain a
11 delineation of open space areas that shall be maintained as
12 open space areas in perpetuity.

13 “D. All open space areas shall be clearly delineated and labeled
14 on the Final Plat.

15 “E. Any substantial change to the open space approved under this
16 decision will require a new land use permit.” Record 11726-
17 27.

18 In the FMP approval, the county found that CMP Condition 14 was
19 satisfied because the FMP site plan delineated 1,293 acres, 66 percent of the
20 resort site, as open space comprised of “golf open space, common open space
21 and buffer open space.” Record 10958.

22 Opponents argued to the county that Thornburgh’s plan to remove a golf
23 course is a substantial change that requires review as a modification to the CMP
24 and FMP. The county disagreed and found that the CMP and FMP approvals
25 contemplated changes to the golf courses and that the county has already
26 approved various site plans, including a golf course site plan that varied from the
27 precise layout of the resort open space map approved in the FMP approval.

1 DCC 18.113.040(C), governs site plan review and provides:

2 “Each element or development phase of the destination resort must
3 receive additional approval through the required site plan review
4 (DCC 18.124) or subdivision process (DCC Title 17). In addition to
5 findings satisfying the site plan or subdivision criteria, findings shall
6 be made that the specific development proposal complies with the
7 standards and criteria of DCC 18.113 and the FMP.”

8 The board found that DCC 18.113.040(C) allows reasonable revisions to
9 the FMP layouts during third-stage review and that the FMP provides general,
10 preliminary descriptions that are subject to revision in third-stage review. Only
11 changes that result in substantial changes to the CMP or FMP require a separate
12 modification application. Record 47.

13 COLW argues that the loss of a golf course materially affects the original
14 findings of fact regarding open space. COLW argues that the 2022 FWMP
15 approves removing a golf course approved in the FMP, which COLW argues
16 thereby removes that area from being counted as open space because the
17 application and challenged decision does not explain if the removed golf course
18 will become common open space, buffer open space, or something else.

19 Thornburgh responds that while some of the area delineated as golf course
20 open space will not be developed as a golf course, the FMP approval still requires
21 that area be maintained as open space and the 2022 FWMP approval does not
22 approve any other use of the golf course area. Thornburgh points out that CMP
23 Condition 14 does not require a specific location of use of open space. Instead,

1 that condition requires that open space be included and delineated on final plats,
2 which require third-stage review and approval.

3 COLW does not challenge the county's finding regarding DCC
4 18.113.040(C) or respond to Thornburgh's argument that the open space
5 requirement is ensured through third-stage review. COLW has not demonstrated
6 that the county erred in approving the 2022 FWMP, which relies on the
7 abandonment of development of a golf course, without requiring an application
8 to modify the CMP/FMP with respect to open space.

9 **C. Water Supply, Consumption, and Conservation**

10 DCC 18.113.070(K) is a resort approval criterion that requires the county
11 to find:

12 "Adequate water will be available for all proposed uses at the
13 destination resort, based upon the water study and a proposed water
14 conservation plan. Water use will not reduce the availability of
15 water in the water impact areas identified in the water study
16 considering existing uses and potential development previously
17 approved in the affected area. Water sources shall not include any
18 perched water table. Water shall only be taken from the regional
19 aquifer. Where a perched water table is pierced to access the
20 regional aquifer, the well must be sealed off from the perched water
21 table."

22 In approving the 2022 FWMP, the county found that the CMP and FMP
23 approvals did not depend on or require the resort to be developed to utilize all of
24 the water predicted as consumptive use in the FMP. Thus, the county found that
25 Thornburgh's commitment in the 2022 FWMP to use less water than
26 contemplated in the FMP and to forego developing a golf course that was

1 approved in the FMP, does not change the approved resort in a manner that the
2 CMP/FMP findings of satisfaction of DCC 18.113.070(K) would be materially
3 affected. Record 38. The county further found that “compliance with DCC
4 18.113.070(K) is addressed by FMP Condition 10, which is not implicated in a
5 review of the FWMP, as [Thornburgh] continues to rely on G-17036 for the
6 Resort’s water source.” Record 33 (footnote omitted).

7 Gould argues that the county failed to make adequate findings that water
8 is available to satisfy DCC 18.113.070(K). COLW argues that Thornburgh has
9 lost its right to withdraw groundwater for resort use and that the loss of water
10 supply is a substantial change necessitating new CMP and FMP applications.
11 Gould and Lipscomb argue that Thornburgh’s proposed water consumption and
12 changes in water availability alter the fundamental facts supporting the county’s
13 finding that the CMP and FMP satisfied DCC 18.113.070(K). Petitioners argue
14 that the 2022 FWMP substantially changes the consumptive use of water and that
15 FMP Condition 1 and DCC 18.113.080 apply to all substantial changes—not only
16 changes that result in greater impacts.

17 The county found that DCC 18.113.070(K) is not implicated in its review
18 of the 2022 FWMP, because the 2022 FWMP is required to satisfy the no net loss
19 criteria in DCC 18.113.070(D). Record 33. Thornburgh responds that its
20 application sought to modify only the FWMP. It is undisputed that the 2022
21 FWMP requires Thornburgh to decrease the amount of water that the resort will
22 pump and consume. The issue is whether the decrease in water demand for the

1 overall resort described and approved in the 2022 FWMP is an alteration that
2 materially affects the findings of fact that DCC 18.113.070(K) is satisfied.

3 With respect to water availability, the county found during the CMP
4 approval that the source of water for the project is groundwater from the
5 Deschutes Basin regional aquifer and that Thornburgh's water study and water
6 conservation plan demonstrated that adequate water is available from the aquifer
7 for the project. Record 11702. At that time, Thornburgh had submitted to OWRD
8 an application for a water right and OWRD provided a letter indicating that
9 groundwater was available for the resort and the application was likely to be
10 approved, subject to OWRD mitigation requirements. Record 11703. The county
11 found that Thornburgh was not precluded from obtaining a state water right
12 permit to use groundwater for the resort. In addition, and in the alternative, the
13 county found that it was feasible for Thornburgh to obtain the water right based
14 on evidence of available water sources to satisfy the OWRD mitigation
15 requirements. Record 11704.

16 At the FMP stage, Thornburgh had obtained Water Right Permit G-17036
17 for a quasi-municipal use of groundwater, which authorized Thornburgh to
18 withdraw groundwater from six wells for resort use, including a golf course and
19 irrigation lakes. *Gould*, 322 Or App at 14-15 (describing OWRD right and
20 required mitigation). The county imposed FMP Condition 10 "to ensure
21 compliance with DCC 18.113.070(K), which is concerned with the availability
22 of water for resort use and mitigation for the resort's consumptive use of water,

1 which is related to but distinct from the fish and wildlife mitigation plan that is
 2 required in order to satisfy DCC 18.113.070(D).²³ *Gould Golf*, ___ Or LUBA at
 3 ___ (slip op at 12). FMP Condition 10 must be satisfied at each third-stage review
 4 phase. FMP Condition 10 imposes a requirement for documentation of water
 5 rights and an accounting of the amount of required mitigation for each phase of
 6 development. *Gould*, 322 Or App at 17.

7 Petitioners argue that the material facts are substantially different than the
 8 facts the county found to support the CMP approval because, petitioners contend,
 9 Water Right Permit G-17036 is expired and Thornburgh has not established, in
 10 this proceeding, an alternative water right. Lipscomb argues that the proposed
 11 modifications in the 2022 FWMP “alter the findings for the CMP and FMP
 12 approvals relying on multiple reports.” Lipscomb’s Intervenor-Petitioner’s Brief
 13 31. Lipscomb does not identify specific “findings of fact on which the original
 14 approval was based [that are] materially affected” by the change of water source
 15 for resort use. DCC 18.113.080.

16 It is undisputed that the 2022 FWMP relies on the transfer of a variety of
 17 water rights that were not considered during the CMP and FMP approvals or
 18 included as part of the 2008 FWMP. DCC 18.113.070(K) requires the resort to
 19 use groundwater from the regional aquifer. No party has argued that Thornburgh

²³ FMP Condition 38 was adopted to satisfy DCC 18.113.070(D). The county amended FMP Condition 38 and imposed new FMP Condition 40 in the challenged decision.

1 proposes in the 2022 FWMP to use water from any other source. As we
2 understand it, Thornburgh proposes to seek OWRD approval to transfer existing
3 water rights to the resort for groundwater withdrawal from resort wells that draw
4 from the regional aquifer. Thornburgh responds and we agree that the CMP
5 findings do not rely on or require any particular water permit for consumptive
6 use but require that the resort use water from the regional aquifer. Thornburgh
7 also argues that the evidence before the county in this case is that G-17036
8 remained non-cancelled and the county reasonably concluded that source of
9 water remained available. Record 968. Thornburgh also responds that it has
10 “provided proof of ownership of numerous other certificated water rights that
11 may be used for consumption or mitigation following appropriate OWRD
12 processes and consistent with the 2022 FWMP.” Delashmutt’s Intervenor-
13 Respondent’s Brief 14-15.

14 Petitioners have not established that the 2022 FWMP proposes any change
15 of water supply that materially affects the findings of fact on the which the CMP
16 or FMP approvals rely. In *Gould v. Deschutes County*, ___ Or LUBA ___, ___
17 (LUBA No 2022-011, June 16, 2022) (slip op at 13), we affirmed the hearings
18 officer’s interpretation of “substantial change” in FWP Condition 1 and DCC
19 18.113.080 “as a change that will result in significant additional impacts on
20 surrounding properties.” We agree with the county’s conclusion that the 2022
21 FWMP does not propose a substantial change to the resort water supply both
22 because it proposes a decrease in water use and because it does not propose a

change in water source outside the required regional aquifer. For those same reasons, we agree that the county did not err in concluding that DCC 18.113.070(K) is not applicable to its review of the 2022 FWMP. Thus, the county was not required to make findings in the challenged decision that demonstrate satisfaction of DCC 18.113.070(K). Assignments of error and arguments that rely on DCC 18.113.070(K) provide no basis for remand and we reject them.²⁴

D. Water System and Wastewater Disposal Plans

DCC 18.113.050(B)(11)(c) is a CMP criterion that requires

“[a] water conservation plan including an analysis of available measures which are commonly used to reduce water consumption. This shall include a justification of the chosen water conservation plan. The water conservation plan shall include a wastewater disposal plan utilizing beneficial use of reclaimed water to the maximum extent practicable.

“For the purposes of DCC 18.113.050, beneficial uses shall include, but are not limited to:

“(1) Irrigation of golf courses and greenways;

“(2) Establishment of artificial wetlands for wildlife habitation.”

Similarly, DCC 18.113.070(L) requires the county to find:

“The wastewater disposal plan includes beneficial use to the

²⁴ Consistently with that conclusion, we do not address petitioners’ arguments that Thornburgh’s groundwater permit G-17036 has expired.

1 maximum extent practicable. Approval of the CMP shall be
2 conditioned on applicant's making application to [Department of
3 Environmental Quality (DEQ)] for a Water Pollution Control
4 Facility (WPCF) permit consistent with such an approved
5 wastewater disposal plan. Approval shall also be conditioned upon
6 applicant's compliance with applicable Oregon Administrative
7 Rules regarding beneficial use of waste water, as determined by
8 DEQ. Applicant shall receive approval of a WPCF permit consistent
9 with this provision prior to applying for approval for its [FMP]
10 under DCC 18.113."

11 The CMP approval is based on a Water System Master Plan and Sewer
12 System Master Plan submitted with the CMP. Those plans describe a water
13 supply system consisting of six wells and four storage reservoirs. Record 11655
14 (CMP approval findings and decision). A separate wastewater system would
15 store treated wastewater in lakes and ponds and use that water to irrigate golf
16 courses. *Id.* The design of the wastewater treatment system was not described
17 because it would depend on the golf course design. *Id.* A separate hydrology
18 report "identifie[d] water needs and sources, including detailed plans for
19 obtaining state water rights for new ground water development and providing
20 required mitigation for potential impacts to the Deschutes River." *Id.* The Sewer
21 System Master Plan described "self-contained, on-site community sewage
22 treatment facilities, developed in concert with phased construction of the overall
23 project" and requiring DEQ approval. *Id.* The Water System Master Plan and
24 Sewer System Master Plan did not change between the CMP and FMP.

25 The water conservation and wastewater disposal plans propose to reuse
26 wastewater to irrigate the planned golf courses. Record 11664-65. Lipscomb

1 argues that the 2022 FWMP plan to not develop one of the golf courses approved
 2 in the FMP leaves Thornburgh without sufficient wastewater disposal capacity
 3 because the removal of one golf course will decrease the amount of land where
 4 wastewater may be applied and, therefore, reduce the amount of wastewater that
 5 can be reused as irrigation water. Thornburgh responded below that they can
 6 increase wastewater application on the remaining golf courses. Record 1650,
 7 6293.²⁵

8 The county found that nothing in the 2022 FWMP implicates the Sewer
 9 Master Plan. Record 49. Nevertheless, the county observed that

10 “the Sewer System Master Plan found that only 34.5 acres of land
 11 are needed in the south basin to apply treated effluent to. The south
 12 basin is the southern half of the Resort that received approval for
 13 two golf courses but where only one will be built. Based upon the
 14 size of the approved golf course and other open space and
 15 landscaped areas already approved by previous decisions, there is
 16 more than enough land to apply the effluent contemplated by the
 17 Sewer Master Plan. Thornburgh has also provided a technical

²⁵ Thornburgh reasoned:

“We reduced golf course water use by 30% by not building a golf course. We did not further reduce the water use by 30% per course. The 250.5 AF per course only includes golf, not other incidental irrigation which adds another 111 AF. [Cascade Geoengineering Memo August 12, 2022, Page] 11. The extra 111 AF is another 44%, or roughly 99,000 gpd, that portions of which Thornburgh could use treated effluent on which would eliminate the excess of 58,126 cited by E-Pur. Also, the 250.5 AF per golf course is not the maximum amount of water that we can put on the golf course. It is the volume that we will pump from the aquifer.” Record 6293.

1 response to this issue, which is persuasive.” *Id.*

2 Finally, the county reasoned that Thornburgh’s sewer system, including
3 wastewater reuse for irrigation, is subject to DEQ approval, and DEQ “is the
4 correct body to approve construction drawings and requirements.” *Id.*

5 Lipscomb argues that Thornburgh’s solution—to apply additional
6 wastewater to the one golf course—“stands in contrast to the findings relied upon
7 in the water conservation program requiring [Thornburgh] to explicitly *not* over-
8 treat the golf courses with effluent.” Lipscomb’s Intervenor-Petitioner’s Brief 31
9 (emphasis in original). Lipscomb points to the water conservation objectives in
10 Thornburgh’s Water Management and Conservation Program report submitted in
11 support of the CMP, which includes the following objective: “Avoid over-
12 application of water on irrigated areas.” Record 1675-81. We understand
13 Lipscomb to argue that Thornburgh proposes overirrigation of the developed golf
14 course.

15 Lipscomb has not established that Thornburgh’s proposal to apply
16 wastewater that would otherwise have been applied to irrigate the abandoned golf
17 course to the developed golf course and other landscaping and open space is a
18 “substantial change” that materially affects the county’s conclusion for the
19 original CMP approval that the resort will conserve water and that its wastewater
20 disposal plan will result in beneficial use of reclaimed water as required by DCC
21 18.113.050(B)(11)(c) and DCC 18.113.070(L). As the county concluded, and no
22 party disputes, Thornburgh’s application of wastewater for irrigation will require

1 DEQ approval, which will require DEQ review for compliance with
 2 administrative rules regarding beneficial use of wastewater. DCC 18.113.070(L)
 3 contemplates that process will ensure beneficial use of resort wastewater.²⁶
 4 Lipscomb's argument regarding changed application of wastewater provides no
 5 basis for remand.

6 Lipscomb's first assignment of error is sustained, in part. Gould's second
 7 assignment of error and COLW's first and third assignments of error are denied.

8 **IX. VOID CMP**

9 **(Gould First Assignment of Error)**

10 Gould argues that the county erred in approving amendments to the CMP
 11 and FMP because, according to Gould, the CMP is void, has not been initiated,
 12 and there is no CMP to amend. Gould's Petition for Review 5-6. We start by
 13 summarizing prior appeals to provide context for this argument. The county's
 14 decision approving the CMP with conditions became final on April 15, 2008.²⁷
 15 Petitioner appealed and the CMP approval was affirmed on appeal. *Gould v.*
 16 *Deschutes County*, 57 Or LUBA 403 (2008), *aff'd*, 227 Or App 601, 206 P3d

²⁶ DCC 18.113.070(L) requires an applicant to receive DEQ approval for a WPCF permit prior to applying for FMP approval. Lipscomb does not argue that Thornburgh was required to obtain a WPCF permit as a precondition to the 2022 FWMP approval.

²⁷ The CMP approval deferred determination of compliance with the DCC 18.113.070(D) no net loss standard to the FMP. We and the courts rejected challenges to that deferral determination in the CMP.

1 1106, *rev den*, 347 Or 258 (2009). While those appeals of the CMP were pending,
 2 Thornburgh applied for and obtained FMP approval on October 8, 2008.
 3 Petitioners appealed and we remanded. *Gould v. Deschutes County*, 59 Or LUBA
 4 435 (2009), *aff'd*, 233 Or App 623, 227 P3d 758 (2010).

5 Under DCC 22.36.010(B)(1) “a land use permit is void two years after the
 6 discretionary decision becomes final if the use approved in the permit is not
 7 initiated within that time period.” Under DCC 22.36.020(A), there are three ways
 8 a development action can be “initiated,” and one of those ways is “[w]here
 9 construction is not required by the approval, the conditions of a permit or
 10 approval have been substantially exercised and any failure to fully comply with
 11 the conditions is not the fault of the applicant.” DCC 22.36.020(A)(3). In 2011,
 12 the then resort owner obtained a declaratory ruling from the county that the CMP
 13 had been timely initiated. Gould appealed that decision, which led to multiple
 14 appeals and remands. Ultimately, in 2015, we remanded the county’s decision
 15 that the CMP had been timely initiated. *Gould v. Deschutes County*, 72 Or LUBA
 16 258 (2015). Thornburgh and the county have taken no further action on that 2015
 17 remand. Gould relies on that unresolved remand to argue in this appeal that the
 18 CMP is void both for failure to initiate and for failure to resolve the 2015 remand.

19 Gould argued to the county that the CMP is void and, thus, the county
 20 lacked jurisdiction to approve the 2022 FWMP amendment. The county rejected
 21 that argument and found:

22 “Opponents claim that LUBA held in *Central Land and Cattle*[],

1 *LLC*] v. *Deschutes County*, 74 Or LUBA 326[, *aff'd*, 283 Or App
 2 286, 388 P3d 739 (2016), *rev den*, 361 Or 311 (2017)] land use
 3 decision ([2016 FMP]) that the Thornburgh conceptual master plan
 4 or ‘CMP’ is void. LUBA held that ‘[a]ll requirements of the CMP
 5 approval are now requirements of the County’s FMP approval’ and
 6 the FMP ‘has effectively incorporated and displaced the CMP
 7 approval’ [2016 FMP, 74 Or LUBA] at 346. LUBA did not find that
 8 the CMP is void. Furthermore, as is detailed in that case, the
 9 County’s hearings officer *rejected* * * * Gould’s argument in that
 10 case that the CMP was void and LUBA affirmed that decision.
 11 Therefore, this argument is an impermissible collateral attack on the
 12 resolution of this issue by the [2016 FMP]. It is also settled and
 13 binding under *Gould v. Deschutes County*, _ Or LUBA _ (LUBA
 14 No 2022-013, June 1, 2022), *aff'd*, 322 Or App 11, 23 (2022)
 15 (explaining a party may not relitigate issues resolved in previous
 16 phases of development), *rev den*, [370] Or [694].

17 “Opponents go on to claim that the CMP is void because
 18 Thornburgh failed to seek and the County failed to hold a hearing
 19 on remand in *Gould v. Deschutes County*, 72 Or LUBA 258 (2015)
 20 within the statutory timeline under ORS 215.435. This issue is an
 21 impermissible collateral attack on LUBA’s finding that the CMP has
 22 been incorporated into the FMP. Furthermore, the provision of ORS
 23 215.435 that terminates an application if a review on remand is not
 24 requested within 180 days of the final resolution of judicial review
 25 was not effective until after LUBA issued its remand decision. This
 26 law may not be applied retroactively because to do so would
 27 prejudice the Applicant in that case by voiding that application.
 28 Furthermore, the case in question did not find that the CMP is void
 29 and that was not its legal effect. LUBA approved the FMP thereafter
 30 finding that it incorporated the CMP and that decision is final.

31 “The Board finds that Thornburgh’s CMP is not void.

32 “Moreover, the Board notes that the CMP required creation of a
 33 FWMP to meet the No Net Loss Standard at FMP approval stage,
 34 not during CMP review. Therefore, the CMP is not implicated or
 35 altered by this Application; there is no change to the CMP and
 36 findings from the CMP are not altered.” Record 35-36 (emphasis in

1 original).

2 We agree with the county's conclusion that the void CMP issue was raised
3 and resolved in our decision in *2016 FMP*, where we explained:

4 "For purposes of this appeal we will assume without deciding that
5 the CMP approval has become 'void' under DCC 22.36.010(B)(1).
6 However, even if we assume the County's CMP approval became
7 void on November 18, 2011, we conclude below in addressing the
8 third cross-assignment of error that the FMP remand proceedings
9 were initiated by Thornburgh Resort on August 15, 2011, which was
10 before the CMP became void. The county's first FMP approval
11 decision found, with only two exceptions, that the FMP fully
12 complies with the CMP. Those two exceptions have to do with the
13 no net loss/degradation standard that normally applies at the time of
14 CMP approval. The county's decision to defer its finding on the
15 DCC 18.113.070(D) no net loss/degradation standard until FMP
16 approval was affirmed in *Gould v. Deschutes County*, 57 Or LUBA
17 403 (2008), *aff'd*, 227 Or App 601, 206 P3d 1106 (2009).

18 "As Gould correctly notes, the CMP potentially remains a relevant
19 source of FMP approval considerations because at least some of the
20 CMP conditions of approval effectively cannot be performed until
21 after FMP approval. But those conditions of approval were carried
22 forward in the county's first FMP approval decision and remain part
23 of the current FMP approval decision. All requirements of the CMP
24 approval are now requirements of the county's FMP approval. The
25 FMP approval has effectively incorporated and displaced the CMP
26 approval. In these unusual circumstances, where the only remaining
27 questions on appeal concern two issues that were expressly deferred
28 to the FMP decision, we conclude it was not error for the county to
29 proceed to determine on remand whether the errors identified by
30 LUBA in the FMP could be corrected and the FMP approved for a
31 second time, even though the CMP approval has become void."
32 *2016 FMP*, 74 Or LUBA at 346 (footnote omitted).

33 The FMP approval has effectively incorporated and displaced the CMP
34 approval. Thus, as we have previously concluded, even if we assume that the

CMP is void, the FMP is the operative decision. CMP provisions remain as enforceable criteria in subsequent decisions only to the extent that they are carried forward in the FMP. Gould seeks to relitigate an issue that has been decided in prior proceedings in this same dispute. *See Beck v. Tillamook*, 313 Or 148, 153, 831 P2d 678 (1992) (a party may not relitigate issues that have been resolved on review of previous phases of the same land use litigation); *see also Gould*, 322 Or App at 23 (*Beck* law of the case doctrine includes later phases of the same land use litigation). Even if Gould’s argument was not precluded by the law of the case, we would reach the same conclusion for the same reasons quoted directly above. That is, even if we assume that the CMP is void, the FMP is the operative decision. The 2022 FWMP amends the FMP. The county correctly concluded that it could approve the 2022 FWMP amendment, which the county correctly observed is an amendment to the FMP.

Gould’s first assignment of error is denied.

X. CMP CONDITION 28

(COLW Second Assignment of Error; Lipscomb Second Assignment of Error)

COLW and Lipscomb argue that the county misconstrued CMP Condition 28 and DCC 22.20.015(A) and contend that CMP Condition 28 requires ODFW and Bureau of Land Management (BLM) agreement with the 2022 FWMP.

CMP Condition 28 provides:

“[Thornburgh] shall abide at all times with the [Memorandum of

1 Understanding (MOU)] with BLM, dated September 28, 2005,
2 regarding mitigation of impacts on surrounding federal lands, to
3 include wildlife mitigation and long-range trail planning and
4 construction of a public trail system. The mitigation plan adopted by
5 [Thornburgh] in consultation with Tetra Tech, ODFW and the BLM
6 shall be adopted and implemented throughout the life of the resort.”
7 Record 11728.

8 DCC 22.20.015(A) provides that, if any property is in violation of the
9 conditions of approval of any previous land use decisions, then the county must
10 not make any other land use decision. We understand petitioners to argue that the
11 2022 FWMP violates CMP Condition 28 and so the county erred in approving
12 the 2022 FWMP.

13 The county found that, after a successful challenge on LUBA appeal and
14 judicial review, CMP Condition 28 was invalidated because it improperly
15 removed the right to public participation in the county’s decision on whether
16 Thornburgh’s mitigation plan satisfied the no net loss standard. The county
17 replaced CMP Condition 28 with CMP Condition 37, which provides:

18 “[Thornburgh] shall demonstrate compliance with DCC
19 18.113.070(D) by submitting a wildlife mitigation plan to the
20 County as part of its application for [FMP] approval. The County
21 shall consider the wildlife mitigation plan at a public hearing with
22 the same participatory rights as those allowed in the CMP approval
23 hearing.” Record 42.

24 Thornburgh responds, and we agree, that CMP Condition 28 is no longer
25 operative because it was invalidated and replaced by CMP Condition 37. Thus,
26 these assignments of error that rely upon CMP Condition 28 provide no basis for
27 remand and are denied.

COLW's second assignment of error and Lipscomb's second assignment of error are denied.

XI. INTERNAL INCONSISTENCIES

(Gould Third Assignment of Error)

Gould argues that the decision is internally inconsistent and must be reversed or remanded because the findings are inadequate. Gould's arguments under this assignment of error are presented as a table with three columns for "Findings," "Inconsistency," and "Additional Argument." This table ranges over nine pages. To a large extent, the same findings are challenged in other arguments presented by petitioners and intervenors-petitioners.

Thornburgh responds, and we agree, that Gould's third assignment of error is scattershot and undeveloped, and we reject it for that reason. *Deschutes Development v. Deschutes Cty.*, 5 Or LUBA 218, 220 (1982) ("It is not our function to supply petitioner with legal theories or to make petitioner's case for petitioner."); *see also Sommer v. Josephine County*, 54 Or LUBA 507, *aff'd*, 215 Or App 501, 170 P3d 8 (2007) (explaining that a responding party is not obliged to respond to severely disjointed arguments presented in the assignment of error).

Gould's third assignment of error is denied.

XII. CONCLUSION AND DISPOSITION

We conclude that the 2022 FWMP is a substantial change with respect to the required economic analysis and remand for further findings addressing DCC 18.113.070(C)(3) and (4). ____ Or LUBA at ____ (slip op at 79-80). We also

- 1 conclude that the county's findings that the no net loss standard may be satisfied
- 2 by submittal to OWRD of an application for assignment, transfer, or cancellation
- 3 of a water right is not supported by adequate findings or substantial evidence.
- 4 ____ Or LUBA at ____ (slip op at 64-65).
- 5 The county's decision is remanded.

LUBA
FEB 26 2025 AM 11:59

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

THE CONFEDERATED TRIBES OF THE WARM
SPRINGS RESERVATION OF OREGON,
Petitioner,

and

CENTRAL OREGON LANDWATCH,
ANNUNZIATA GOULD, and THOMAS BISHOP,
Intervenors-Petitioners,

vs.

DESCHUTES COUNTY,
Respondent,

and

CENTRAL LAND AND CATTLE COMPANY, LLC,
PINNACLE UTILITIES, LLC, and KAMERON DELASHMUTT,
Intervenors-Respondents.

LUBA No. 2023-038

ANNUNZIATA GOULD,
Petitioner,

and

THE CONFEDERATED TRIBES OF THE WARM
SPRINGS RESERVATION OF OREGON,
CENTRAL OREGON LANDWATCH,
PAUL J. LIPSCOMB, and THOMAS BISHOP,
Intervenors-Petitioners,

vs.

1
2 DESCHUTES COUNTY,
3 *Respondent,*

4
5 and

6
7 CENTRAL LAND AND CATTLE COMPANY, LLC,
8 PINNACLE UTILITIES, LLC, and KAMERON DELASHMUTT,
9 *Intervenors-Respondents.*

10
11 LUBA No. 2023-039

12
13 CENTRAL OREGON LANDWATCH
14 *Petitioner,*

15
16 and

17
18 THE CONFEDERATED TRIBES OF THE WARM
19 SPRINGS RESERVATION OF OREGON,
20 ANNUNZIATA GOULD, and THOMAS BISHOP,
21 *Intervenors-Petitioners,*

22
23 vs.

24
25 DESCHUTES COUNTY,
26 *Respondent,*

27
28 and

29
30 CENTRAL LAND AND CATTLE COMPANY, LLC,
31 PINNACLE UTILITIES, LLC, and KAMERON DELASHMUTT,
32 *Intervenors-Respondents.*

33
34 LUBA No. 2023-041

35
36 FINAL OPINION
37 AND ORDER
38

1 Appeal on remand from the Court of Appeals.

2
3 Josh Newton represented petitioner The Confederated Tribes of the Warm
4 Springs Reservation of Oregon.

5
6 Jennifer Bragar represented petitioner Annunziata Gould and intervenors-
7 petitioners Paul J. Lipscomb and Thomas Bishop.

8
9 Carol Macbeth represented petitioner Central Oregon Landwatch.

10
11 David Doyle represented respondent.

12
13 J. Kenneth Katzaroff represented intervenors-respondents.

14
15 ZAMUDIO, Board Chair; RUDD, Board Member; participated in the
16 decision.

17
18 RYAN, Board Member, did not participate in the decision.

19
20 REMANDED 02/26/2025

21
22 You are entitled to judicial review of this Order. Judicial review is
23 governed by the provisions of ORS 197.850.

Opinion by Zamudio.

NATURE OF THE DECISION

Petitioners appeal a board of county commissioners decision approving modification of a destination resort final master plan.

FACTS

This matter is on remand from the Court of Appeals. *Confederated Tribes of Warm Springs v. Deschutes Cty.*, 332 Or App 361, 550 P3d 443 (2024). We set out the facts in our prior decision and do not restate them here. *Confederated Tribes of Warm Springs v. Deschutes County*, LUBA Nos 2023-038/039/041 (Jan 12, 2024).

TRIBE FIRST ASSIGNMENT OF ERROR

The Confederated Tribes of the Warm Springs Reservation (the Tribe), argued that the challenged decision improperly construes applicable law by failing to address whether the 2022 Fish and Wildlife Management Plan violates the Treaty with the Tribes of Middle Oregon, dated June 25, 1855.¹ We agreed with intervenors-respondents that that issue was not raised during the local proceeding and was therefore waived. LUBA Nos 2023-038/039/041 (slip op 19-23). On judicial review, the Court of Appeals agreed with the Tribe that that issue was raised below with sufficient specificity so that the county was obligated to

¹ Our reference to the Tribe mirrors the Tribe's self-reference in their petition for review.

1 make findings addressing it. The Tribe's first assignment of error is sustained for
2 the reasons set out the court's opinion.

3 The court's opinion does not require us to revisit the disposition of any
4 other assignment of error.

5 The county's decision is remanded.

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

THE CONFEDERATED TRIBES OF THE
WARM SPRINGS RESERVATION OF OREGON,
Central Oregon Landwatch,
Annunziata Gould, and Thomas Bishop,
Petitioners
Cross-Respondents,

v.

DESCHUTES COUNTY,
Respondent,
and

CENTRAL LAND AND CATTLE COMPANY, LLC;
Pinnacle Utilities, LLC; and Kameron Delashmutt,
Respondents
Cross-Petitioners.

Land Use Board of Appeals No. 2023038

Annunziata GOULD,
The Confederated Tribes of the Warm Springs Reservation
of Oregon, Paul J. Lipscomb, Thomas Bishop,
and Central Oregon Landwatch,
Petitioners
Cross-Respondents,

v.

DESCHUTES COUNTY,
Respondent,
and

CENTRAL LAND AND CATTLE COMPANY, LLC;
Pinnacle Utilities, LLC; and Kameron Delashmutt,
Respondents
Cross-Petitioners.

Land Use Board of Appeals No. 2023039

CENTRAL OREGON LAND WATCH,
The Confederated Tribes of the Warm Springs Reservation
of Oregon, Annunziata Gould, and Thomas Bishop,
Petitioners
Cross-Respondents,

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v.

DESCHUTES COUNTY,

Respondent,

and

CENTRAL LAND AND CATTLE COMPANY, LLC;

Pinnacle Utilities, LLC; and Kameron Delashmutt,

Respondents

Cross-Petitioners.

Land Use Board of Appeals No. 2023041;

A183421(Control), A183430, A183431, A183432, A183436,

A183461, A183462

Argued and submitted March 28, 2024.

Josh Newton argued the cause for petitioner-cross-respondent The Confederated Tribes of the Warm Springs Reservation of Oregon. Also on the briefs were Ellen Grover and Best Best & Krieger LLP.

Carol Macbeth argued the cause and filed the brief for petitioner-cross-respondent Central Oregon Landwatch.

Jennifer M. Bragar argued the cause for petitioner-cross-respondents Annunziata Gould, Thomas Bishop, and Paul J. Lipscomb. Also on the opening briefs were Jay M. Harris and Tomasi Bragar Dubay. Also on the joint cross-answering brief were Jay M. Harris, Tomasi Bragar Dubay, and Carol Macbeth.

Ken Katzaroff argued the cause for respondent-cross-petitioners Central Land and Cattle Company, LLC, Pinnacle Utilities, LLC, and Kameron DeLashmutt. Also on the brief were Keenan Ordon-Bakalian, Megan Breen, and Schwabe, Williamson & Wyatt, P.C.

No appearance for respondent Deschutes County.

Jeffrey B. Litwak filed the brief *amicus curiae* for Columbia River Gorge Commission.

Marcus M. Shirzad, Garrett Brown, and David J. Cummings filed the brief *amicus curiae* for The Confederated Tribes and Bands of the Yakama Nation, The Confederated

Tribes of the Umatilla Indian Reservation, and the Nez Perce Tribe.

Before Tookey, Presiding Judge, Egan, Judge, and DeVore, Senior Judge.

TOOKEY, P. J.

Reversed and remanded to LUBA on petition of The Confederated Tribes of the Warm Springs Reservation of Oregon, for consideration of Tribe's first assignment of error to LUBA; affirmed on cross-petition; otherwise affirmed.

TOOKEY, P. J.

This is a judicial review of an order of the Land Use Board of Appeals, dated January 12, 2024, upholding in part and remanding in part an order of the Deschutes County Board of Commissioners (the board) approving an application by Central Land and Cattle Company, LLC, Pinnacle Utilities, LLC, and Kameron DeLashmutt (collectively, Thornburgh) for an amendment to the Final Master Plan (FMP) for the Thornburgh Destination Resort relating to mitigation measures for the development's impacts on fish, which Thornburgh submitted to meet Deschutes County's "no net loss" standard set forth in Deschutes County Code (DCC) 18.113.070(D). Thornburgh seeks to change the FMP by replacing the Fish and Wildlife Management Plan (FWMP) approved in 2008 (the 2008 FWMP) with a new plan (the 2022 FWMP), so as to reduce the resort's proposed annual water consumption by eliminating one of the resort's proposed golf courses.

The five petitioners, The Confederated Tribes of the Warm Springs Reservation of Oregon (the Tribe), Central Oregon LandWatch (LandWatch), Annunziata Gould, Thomas Bishop, and Paul J. Lipscomb (collectively, petitioners) contend that LUBA erred in rejecting their challenges to the approval and raise different and sometimes overlapping assignments of error. The Tribe also contends, among other arguments, that LUBA erred in concluding that its challenges to the BOCC's failure to give sufficient weight to the Treaty of 1855 were unpreserved.¹

Thornburgh has filed a cross-petition, challenging LUBA's remand, contending that LUBA substituted its judgment for that of the BOCC and weighed the evidence in the record as the factfinder in the first instance, rather than reviewing for substantial evidence, to find that the 2022 FWMP's compliance provisions fail to meet the "no net loss" standard.

We review LUBA's order to determine whether it is "unlawful in substance or procedure." ORS 197.850(9)(a). "A

¹ *Amici curiae*—the Confederated Tribes and Bands of the Yakama Nation, the Confederated Tribes of the Umatilla Indian Reservation, and the Nez Perce Tribe, and, separately, the Columbia River Gorge Commission—filed briefs in support of the Tribe's petition.

LUBA order is unlawful in substance if it represents a mistaken interpretation of the applicable law.” *Kine v. Deschutes County*, 313 Or App 370, 372, 496 P3d 1136, *rev den*, 369 Or 69, 499 P3d 1279 (2021).

On the Tribe’s petition, we conclude that LUBA erred in determining that the Tribe did not preserve its arguments relating to the applicability of the Treaty of 1855 in determining whether the “no net loss” standard has been met, and we therefore remand the order to LUBA for consideration of that argument. We affirm LUBA’s order in all other respects on the petitions and cross-petition.

I. BACKGROUND

This case is the latest in a long string of challenges to the development of the resort. We described the background facts of the resort in our recent opinion in *Gould v. Deschutes County*, 322 Or App 11, 518 P3d 978 (2022), and we set them out here again only as necessary to resolve the issues raised on judicial review.

Deschutes County provides for the development of destination resorts by a three-step approval process described in Deschutes County Code (DCC) 18.113.040. At step one, a Conceptual Master Plan (CMP) for the resort is processed for approval as though it were a conditional use permit. DCC 18.113.040(A). At the second step, application is made for a Final Master Plan (FMP). DCC 18.113.040(B). The final step is a land division or site-plan review. DCC 18.113.040(C).²

In 2008, the county approved an FMP for the resort, and we upheld that approval on judicial review. *Gould v. Deschutes County*, 59 Or LUBA 435 (2009), *aff’d*, 233 Or App 623, 227 P3d 758 (2010) (affirming the FMP). The FMP

² Thornburgh has completed the three-step approval process for: (1) a golf course site plan; (2) a tentative plan for Phase A-1 of development; and (3) a site plan for 80 overnight lodging units (OLUs). Those approvals were challenged and ultimately affirmed on judicial review. *See Gould v. Deschutes County*, 314 Or App 636, 314 P3d 357 (2021), *rev den*, 369 Or 211 (2022) (affirming the approval of a golf course site plan); *Gould v. Deschutes County*, 322 Or App 11, 518 P3d 978, *rev den*, 370 Or 694 (2022) (affirming the approval of the site-plan review for 80 OLU); *Gould v. Deschutes County*, 322 Or App 571 (2022) (nonprecedential memorandum opinion affirming the approval of the tentative plan for Phase A-1).

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provides for phased development. Both the CMP and the FMP included Condition 1, which provides:

“Approval is based upon the plan as submitted. Any substantial change to the approved plan will require a new application.”

The board has determined that “substantial changes” has the meaning as the term is defined in DCC 18.113.080, “an alteration in the type, scale, location, phasing or other characteristic of the proposed development such that findings of fact on which the original approval was based would be materially affected.”³

The CMP for the resort approved three golf courses and required at least one golf course to be constructed in the first phase. The approval was supported by an economic benefits analysis (Benefit Study) explaining that golf course facilities would be an important source of new jobs with a total of 125 newly created jobs and 3.9 million dollars in employee compensation. Based on the Benefit Study, the county found that the resort “will generate a large number of full-time positions that will have a positive effect on the Deschutes County economy.”

The sole source of water for the resort is groundwater to be pumped from the Deschutes River Basin aquifer.⁴ There has been significant litigation around the adequacy of the resort’s ability to provide the necessary groundwater as well as to satisfy the “no net loss” standard of DCC 18.113.070(D), which is a county criterion for destination resort development that requires that “[a]ny negative impact on fish and wildlife resources will be completely mitigated so that there is no net loss or net degradation of the resource,” but those disputes have thus far been resolved favorably to Thornburgh.

³ DCC 18.113.080 relates to modifications of a CMP and provides:

“Procedure for Modification of a Conceptual Master Plan. Any substantial change, as determined by the Planning Director, proposed to an 322An insubstantial change may be approved by the Planning Director. Substantial change to an approved CMP, as used in DCC 18.113.080, means an alteration in the type, scale, location, phasing or other characteristic of the proposed development such that findings of fact on which the original approval was based would be materially affected.”

⁴ No surface water runs through the resort property.

The FMP for the resort includes a fish and wildlife habitat mitigation plan (FWMP) to satisfy the “no net loss” standard. In 2008, Deschutes County approved the 2008 FWMP for the resort, and we ultimately upheld that determination. *See Gould v. Deschutes County*, 233 Or App 623, 636-43, 227 P3d 758 (2010) (describing 2008 FWMP litigation).

The litigation involved in these petitions and the cross-petition concerns Thornburgh’s request to modify the originally approved FMP and 2008 FWMP so as to *reduce* its groundwater consumption through reduced pumping of groundwater from the aquifer, for the stated purpose of complying with the “no net loss” standard. Thornburgh proposed to reduce the resort’s annual groundwater pumping from 2,129 to 1,460 acre feet, an approximate 30 percent reduction, and an approximately 35 percent reduction in water consumption, from 1,356 to 882 acre feet, in part, by not developing one of the approved golf courses.⁵ The application proposed that, as a modification of the 2008 FWMP and in order to satisfy the “no net loss” standard, Thornburgh would acquire water rights to provide fish habitat benefits or would cancel other water rights.

After a public hearing, a Deschutes County hearings officer rejected the application, based primarily on Thornburgh’s failure to provide a sufficient plan for compliance with the “no net loss” standard. On Thornburgh’s and Gould’s appeal, the board held a *de novo* public hearing. The Tribe, which had not previously been given notice of or participated in the proceedings, requested to be added as a party and participated. The board’s order summarized the evidence that had been submitted and found:

“According to the science and technical reports, there is generally no scientific or biological significance in the impacts under the 2022 FWMP and, as a whole, the plan provides benefits to habitat for fish and aquatic species. Given this context, we find that the 2022 FWMP plan meets the No Net Loss Standard.”

Over objections by petitioners and the Oregon Department of Fish and Wildlife (ODFW), the board approved Thornburgh’s

⁵ LUBA’s order explains that “consumptive use” means the amount of ground water appropriation that will not return to surface water flows.

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request for modification, rejecting contentions that the “no net loss” standard required ODFW and the Tribe’s concurrence and concluding that Thornburgh’s experts had provided credible, substantial evidence that the 2022 FWMP satisfies the “no net loss” standard:

“The 2022 FWMP and its extensive technical evidence shows that stream flows will increase and temperatures decrease as a result of implementation of the 2022 FWMP. As such, we find that methods provided by the groundwater mitigation program, including the methods relied upon by the 2022 FWMP, are sufficient to meet the no net loss standard.”

The board approved the 2022 FWMP as a modification of the 2008 FMP.

LUBA upheld the board’s approval as against all of the petitioners’ challenges in most respects but remanded the board’s order for reconsideration of those issues that LUBA concluded required further analysis, one of which we address on the cross-petition. We consider the various petitions in the order that we conclude makes logical sense.

II. LIPSCOMB’S PETITION, CHALLENGING LUBA’S DEFERENCE TO THE BOARD’S CONSTRUCTION OF “SUBSTANTIAL CHANGE” AS USED IN CONDITION 1

Lipscomb raises two assignments of error on judicial review relating to the BOCC’s construction of the text of Condition 1 of the CMP and FMP, which provides that “[a]ny substantial change to the approved plan will require a new application.” Lipscomb asserts in his first assignment that the board’s construction of “substantial change,” as used in Condition 1 is not entitled to deference, because Condition 1 is not an ordinance for which the board’s construction is entitled to deference. *Siporen v. City of Medford*, 349 Or 247, 259, 243 P3d 776 (2010) (setting forth standard of deference to local government’s plausible construction of its own zoning ordinances). However, as we understand LUBA’s order, LUBA concluded that the board’s construction was of the ordinance itself and not Condition 1. As LUBA concluded, the board’s conclusion that the definition of “substantial change” in DCC 18.113.080 applies to Condition 1 is a

plausible construction to which deference is owed. LUBA did not err.

Lipscomb's second assignment focuses on Condition 1's requirement that "[a]ny substantial change to the approved plan *will require a new application*." (Emphasis added.) Lipscomb argues in his second assignment that the requirement for a "new application" means that, upon a substantial change, the application process must begin anew, with a new CMP. Thus, Lipscomb contends that LUBA erred in affirming the board's determination that it was sufficient for Thornburgh to file an application to modify only the aspect of the approval that is proposed to be changed. LUBA concluded that that construction of the DCC was a plausible one entitled to deference. We have reviewed the relevant provision of the DCC and agree with LUBA that the board's construction of the DCC is a plausible one to which deference is owed. And assuming that the proposed changes are "substantial," within the meaning of DCC 18.113.080,⁶ LUBA correctly held that the board could plausibly construe the DCC to not require that the proposed changes start the application process from scratch but, rather, be addressed through an application for modification of the FMP. That concludes our discussion of Lipscomb's petition, with the exception of Lipscomb's concurrence with an argument made by Gould, which we discuss later.

III. LANDWATCH'S PETITION, CHALLENGING LUBA'S DEFERENCE TO THE BOARD'S CONSTRUCTION OF "SUBSTANTIAL CHANGE" AS LIMITED TO CONSIDERATION OF PROPOSED MODIFICATION

In approving the 2022 FWMP, the board found that the CMP and FMP approvals did not depend on or require the planned resort to use all of the water predicted as

⁶ DCC 18.113.080 provides:

"Procedure for Modification of a Conceptual Master Plan. Any substantial change, as determined by the Planning Director, proposed to an approved CMP shall be reviewed in the same manner as the original CMP. An insubstantial change may be approved by the Planning Director. Substantial change to an approved CMP, as used in DCC 18.113.080, means an alteration in the type, scale, location, phasing or other characteristic of the proposed development such that findings of fact on which the original approval was based would be materially affected."

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consumptive use in the FMP. Thus, the board found that Thornburgh's commitment in the 2022 FWMP to use less water than contemplated in the FMP and to forego developing a golf course that had been approved in the FMP did not change the approved resort in a manner that would materially affect the CMP/FMP findings as to the satisfaction of a county code requirement that adequate water be available for all proposed uses.⁷ LUBA agreed.

LandWatch raises three assignments of error. LandWatch's first assignment, like Lipscomb's, relates to "substantial change." LandWatch asserts that LUBA erred in deferring to the board's conclusion that the determination whether there has been a "substantial change" is limited to consideration whether the *proposed modification* gives rise to a "substantial change." In LandWatch's view, a "substantial change" is any change that materially affects the findings of fact on which the CMP or FMP approvals rely. LandWatch asserts that the evidence shows that Thornburgh has no water available to supply the resort, primarily through the expiration of Water Right Permit G-17036, and that that is a substantial change that should have been addressed by the board. LandWatch contends that LUBA's order is unlawful in substance in not deciding whether Thornburgh's loss of the available water to supply to the resort constitutes a Condition 1 substantial change, and, like Lipscomb, asserts that LUBA erred in failing to reverse the board's order and require that Thornburgh begin the application process anew.

LUBA reasoned that the question of the availability of water to the resort was not a required aspect of the board's consideration in determining whether the changes proposed by Thornburgh to the FMP and the FWMP met

⁷ DCC 18.113.070(K) is a resort approval criterion that requires the county to find:

"Adequate water will be available for all proposed uses at the destination resort, based upon the water study and a proposed water conservation plan. Water use will not reduce the availability of water in the water impact areas identified in the water study considering existing uses and potential development previously approved in the affected area. Water sources shall not include any perched water table. Water shall only be taken from the regional 19 aquifer. Where a perched water table is pierced to access the regional aquifer, the well must be sealed off from the perched water table."

the “no net loss” standard. Under the board’s interpretation of the “substantial change” inquiry, to which LUBA properly deferred, that conclusion was correct.⁸ The board identified its task as determining whether *the changes proposed by Thornburgh* were substantial, not whether circumstances outside of the application had substantially changed. And as Thornburgh correctly responds, the record does not establish that Thornburgh has no water rights available to it. *See Gould v. Deschutes County*, 322 Or App at 18 (affirming LUBA’s determination that Thornburgh had met the documentation requirement of FMP Condition 10 pertaining to water rights and mitigation).

LandWatch further argues that LUBA erred in failing to decide that issue, in violation of ORS 197.835(11)(a):

“Whenever the findings, order and record are sufficient to allow review, and to the extent possible consistent with the time requirements of ORS 197.830(14), the board shall decide all issues presented to it when reversing or remanding a land use decision described in subsections (2) to (9) of this section or limited land use decision described in ORS 197.828 and 197.195.”

In fact, LUBA did consider LandWatch’s argument and explicitly rejected it, based on its deference to the county’s decision to interpret “substantial change” to have the meaning that it does in DCC 18.113.080.

LandWatch, like Lipscomb, contends that LUBA erred in deferring to the county’s interpretation of Condition 1 as to the meaning of “substantial change,” because no deference is owed to the interpretation of a condition, as opposed to a code provision. LandWatch further argues that, textually, “substantial change” should not mean the same thing in Condition 1 as it does in DCC 18.113.080:

⁸ LUBA said: “The county has interpreted ‘substantial change’ in Condition 1 to have the same meaning as the term is used in DCC 18.113.080, which is ‘an alteration in the type, scale, location, phasing or other characteristic of the proposed development such that findings of fact on which the original approval was based would be materially affected.’ Thus, Thornburgh must submit a new application for any proposed modification that will alter a characteristic of the approved resort development such that any finding of fact supporting the CMP or FMP approval would be materially affected.”

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“The definition of ‘substantial change’ in DCC 18.113.080 is limited to that section. It is not a global definition of the term ‘substantial change.’ DCC 18.113.080 does not define a ‘substantial change’ as a ‘modification.’ Rather, DCC 18.113.080 defines a ‘substantial change’ as an ‘alteration.’ In DCC 18.113.080, some CMP modifications are substantial changes, and some substantial changes are CMP modifications, but it does not follow that all substantial changes must be CMP modifications.”

In LandWatch’s view, DCC 18.113.080 does not mandate that all “substantial changes” be defined as in that section of the DCC. LandWatch therefore contends that LUBA should have interpreted “substantial change” as a matter of law. The county’s construction is plausible. LUBA therefore did not err in deferring to the county’s conclusion that the meaning of “substantial change” as defined in DCC 18.113.080 should apply to Condition 1.

In its second assignment, LandWatch makes the same argument as Lipscomb relating to the board’s conclusion that Thornburgh was not required to begin the application process anew but could seek approval for the proposed changes through a modification application. We reject LandWatch’s assignment for the same reason we reject Lipscomb’s.

In its third assignment of error, LandWatch contends that LUBA erred in affirming the board’s determination that CMP Condition 28 has been superseded by Condition 37. Condition 28 provided:

“Applicant shall abide at all times with the [Memorandum of Understanding] with BLM, dated September 28, 2005, regarding mitigation of impacts on surrounding federal lands, to include wildlife mitigation and long range trail planning and construction of a public trail system. *The mitigation plan adopted by Applicant in consultation with Tetra Tech, ODFW and the BLM* shall be adopted and implemented throughout the life of the resort.”

(Emphasis added.) After litigation determining that Condition 28 was legally insufficient because it failed to provide an opportunity for public participation in the board’s decision on whether Thornburgh’s mitigation plan satisfied

the “no net loss” standard, *Gould v. Deschutes County* (*Gould II*), 216 Or App 150, 159, 171 P3d 1017 (2007), the BOCC adopted Condition 37:

“Applicant shall demonstrate compliance with DCC 18.113.070(D) by submitting a wildlife mitigation plan to the County as part of its application for Final master plan approval. The County shall consider the wildlife mitigation plan at a public hearing with the same participatory rights as those allowed in the CMP approval hearing.”

LandWatch asserts that under Condition 28, the ODFW must approve Thornburgh’s mitigation plan. LandWatch further asserts that, contrary to LUBA’s holding, Condition 37 does not supersede Condition 28. Thus, LandWatch asserts, LUBA erred in affirming the board’s approval of the 2022 FWMP, which was not approved by the ODFW.

LandWatch’s contention is answered by the fact that, as a textual matter, Condition 28 does not require ODFW’s approval of a mitigation plan; it requires that the plan be developed *in consultation* with ODFW. There is no dispute that the 2022 FWMP was developed in consultation with the ODFW. LUBA did not err in concluding that the board’s approval of the 2022 FWMP did not require the approval of ODFW.

IV. GOUD’S PETITION, CHALLENGING LUBA’S REJECTION OF CONTENTION THAT UNDERLYING CMP IS VOID

In her first assignment of error, in which Lipscomb joins, Gould contends that the board lacked authority to consider Thornburgh’s request for a modification of the FMP, because the underlying CMP had become void and no new CMP has been initiated. In rejecting that argument, LUBA deferred to the board’s conclusion that the CMP had been incorporated into and superseded by the FMP. We agree with LUBA that the board’s conclusion represents a plausible construction of the DCC and that deference was therefore appropriate.

Additionally, as LUBA held, Gould’s contention has been rejected by LUBA in *Central Land and Cattle, LLC v. Deschutes County*, 74 Or LUBA 326, *aff’d without opinion*,

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283 Or App 286, 388 P3d 739 (2016), *rev den*, 361 Or 311 (2017). Gould challenges LUBA's determination that Gould is attempting to litigate an issue that has previously been determined in *Central Land and Cattle, LLC*, contending that LUBA incorrectly relied on the law of the case, which it argues applies only to appellate decisions. We need not resolve whether LUBA properly referred to law of the case, because, as we said in *Gould v. Deschutes County*, 322 Or App at 23, a party is not entitled to relitigate issues that have been resolved on review of previous phases of the same land use litigation. *Beck v. Tillamook*, 313 Or 148, 153, 831 P2d 678 (1992). LUBA's prior holding is conclusive of the issue.⁹

In her second assignment of error, Gould argues, similarly to LandWatch, that water availability conditions have changed significantly since the original CMP was approved and that a new CMP therefore must be initiated pursuant to DCC 18.113.070(K). For the same reason that we reject LandWatch's first assignment of error, we reject this assignment.

⁹ LUBA held:

"For purposes of this appeal we will assume without deciding that the CMP approval has become 'void' under DCC 22.36.010(B)(1). However, even if we assume the County's CMP approval became void on November 18, 2011, we conclude below in addressing the third cross-assignment of error that the FMP remand proceedings were initiated by Thornburgh Resort on August 15, 2011, which was before the CMP became void. The county's first FMP approval decision found, with only two exceptions, that the FMP fully complies with the CMP. Those two exceptions have to do with the no net loss/degradation standard that normally applies at the time of CMP approval. The county's decision to defer its finding on the DCC 18.113.070(D) no net loss/degradation standard until FMP approval was affirmed in *Gould v. Deschutes County*, 57 Or LUBA 403 (2008), *aff'd*, 227 Or App 601, 206 P3d 1106 (2009). As Gould correctly notes, the CMP potentially remains a relevant source of FMP approval considerations because at least some of the CMP conditions of approval effectively cannot be performed until after FMP approval. But those conditions of approval were carried forward in the county's first FMP approval decision and remain part of the current FMP approval decision. All requirements of the CMP approval are now requirements of the county's FMP approval. The FMP approval has effectively incorporated and displaced the CMP approval. In these unusual circumstances, where the only remaining questions on appeal concern two issues that were expressly deferred to the FMP decision, we conclude it was not error for the county to proceed to determine on remand whether the errors identified by LUBA in the FMP could be corrected and the FMP approved for a second time, even though the CMP approval has become void."

74 Or LUBA at 346 (footnote omitted).

V. BISHOP'S PETITION, CHALLENGING SUFFICIENCY OF EVIDENCE OF THE BOARD'S BASELINE DETERMINATION AND LUBA'S DEFERENCE TO THE BOARD'S CONSTRUCTION OF DCC 18.113.070(D)

DCC 18.113.070(D) requires that a destination resort mitigate all negative impacts such that there is no net loss or degradation of fish and wildlife resources, and provides:

"In order to approve a destination resort, the Planning Director or Hearings Body shall find from substantial evidence in the record that:

"*****

"D. Any negative impact on fish and wildlife resources will be completely mitigated so that there is no net loss or net degradation of the resource."

On judicial review of the 2008 FMP approval, we interpreted the meaning of "fish and wildlife resources" in DCC 18.113.070(D) to "refer[] not to species of fish and wildlife, but to the habitat that supports fish and wildlife." *Gould v. Deschutes County*, 233 Or App 623, 631-633, 227 P3d 758 (2010). In that opinion, we accepted the parties' understanding that DCC 18.113.070(D) requires, first, an assessment of fish and wildlife resources before development and, second, mitigation to make up for negative impacts caused by development. *Id.* at 631. We determined that "fish and wildlife resources" could be measured by the habitat that supports fish and wildlife, and a plan could satisfy the standard if it "will completely mitigate any impact on the habitat that supports fish and wildlife, without showing that each individual species will be maintained or replaced on a one-to-one basis." *Id.* at 631-634. Thus, the first part of the "no net loss" analysis requires an "assessment of fish and wildlife resources before development." *Id.* at 631. The parties and LUBA refer to the status of fish and wildlife resources before development as the "baseline." Once a baseline condition is established, and once the negative impacts are quantified, the applicant is tasked with presenting a plan that will ensure that the impacts are completely mitigated for the life of the resort. The negative impacts are measured from the

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baseline conditions, for example the baseline temperatures and flow rates.

Thornburgh presented, and the board relied on, evidence of streamflow data from the 2016 hydrological year, as a typical hydrological year, for determining baseline flows for purposes of measuring fish habitat impacts. The board further determined the “no net loss” standard only requires a resort to mitigate its own impacts, not the cumulative impacts of drought or other basin-wide water policy and management issues.¹⁰ Bishop argued to LUBA that habitat modeling should account for impacts to the stream system habitat that are “identifiable, predictable, measurable, and reasonably likely to occur,” such as drought and changed stream flows in response to implementation of the Deschutes Basin Habitat Conservation Plan (DB HCP), a basin-wide plan that requires eight irrigation districts and the City of Prineville to manage irrigation activities in the Deschutes River Basin to provide habitat protections for endangered fish and wildlife. LUBA reasoned that Bishop’s construction is one plausible reading of DCC 18.113.070(D).

¹⁰ The board found:

“Many of the arguments and issues related to Thornburgh’s 2022 FWMP are related to drought and regional well decline. Opponents assert that these are relevant issues and should lead to denial. We disagree. The No Net Loss Standard requires a resort to mitigate its own impacts, not the cumulative impacts of drought or other basin wide water policy and management issues. The No Net Loss/degradation test is limited to addressing potential negative impacts of resort development. Impacts to habitat caused by other persons or environmental conditions are not attributable to [the resort’s] use of water or the impacts of [resort’s] use.

“Thornburgh has quantified its impacts on water quality and quantity and the locations where these impacts will occur. It has studied waterway conditions in a typical year, and it has also provided expert evidence that shows the benefits of mitigation are enhanced during periods of drought. This approach properly accounts for issues of drought and the low flow conditions opponents argue make the results of Thornburgh’s expert analysis of aquatic habitat unreliable.

“Opponents, ODFW, and the Tribe have also raised issues that pending litigation regarding flow requirements and the [DB HCP] related to the Spotted Frog may lead to additional constraints on live flows. These issues are outside of the scope of the [resort’s] impacts and [the resort] is not required to mitigate for them.

“Thornburgh must mitigate for its impacts, alone. Further, Thornburgh’s plan relies primarily upon groundwater water sources, and its technical analysis shows that the 2022 FWMP will result in increased surface flows which are beneficial to fish and wildlife.”

But LUBA concluded that the board's construction is also plausible, reasoning that the board's construction that "any negative impact" may be analyzed based on a baseline flow that represents a typical water year, measured only by the resort's impact on the system,

"is not expressly inconsistent with the language of DCC 18.113.070(D) or the underlying policy—which is to hold a proposed resort accountable to completely mitigate the resort's impacts so that there is no net loss of fish resources."

LUBA thus deferred to and upheld the board's interpretation.

Bishop's assignments of error focus on the "no net loss" standard and relate primarily to the sufficiency of Thornburgh's evidence with respect to the "baseline" from which to determine a mitigation plan's impact on existing habitat and whether the 2022 FWMP satisfies the "no net loss" standard. In his first assignment, although Bishop characterizes LUBA's error as "shift[ing] the burden to Petitioners to properly define the baseline for study of whether the resort can meet the no net loss or degradation of fish and wildlife resources standard," underlying the assignment is Bishop's view that the evidence on which the board relied to establish a baseline was simply legally insufficient, because it failed to take into account basin-wide circumstances such as drought, groundwater decline, well deepening, and changed flows resulting from implementation of the DB HCP, affecting fish habitat beyond the resort's uses and impacts.

We are not persuaded that LUBA erred in determining that the board's narrow construction of DCC 18.113.070(D) is plausible and entitled to deference. As LUBA concluded, it is not contradicted by the text of the code provision. Nor are we persuaded that the county's construction is inconsistent with our holding in *Gould*, 233 Or App at 633, that "DCC 18.113.070(D) allows a focus on fish and wildlife habitat [as opposed to each individual species of fish] to establish that '[a]ny negative impact on fish and wildlife resources will be completely mitigated so that there is no net loss or net degradation of the resource.'"

LUBA further determined that the board's determination of a baseline flow using the 2016 hydrological year

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was supported by substantial evidence. Bishop contends that LUBA erred, because the analysis of the board ignores pertinent changes in flows that have occurred since 2016 and that impact habitats, including drought, groundwater decline, well deepening, and changed flows resulting from implementation of the DB HCP. In reviewing LUBA's substantial evidence determination, our role is not to reweigh the record but to determine whether LUBA properly stated and applied the substantial evidence standard of review. *Citizens for Responsibility v. Lane County*, 218 Or App 339, 345, 180 P3d 35 (2008). LUBA did not err.

Also under his first assignment of error, Bishop contends that LUBA erred by shifting the burden of proof in assigning to petitioners responsibility to present the all the factors that must be considered in determining the proper baseline, rather than requiring the board to require Thornburgh to provide a complete assessment. We do not view LUBA's analysis to have shifted the burden; rather, LUBA determined that substantial evidence supported the board's findings.

The 2022 FWMP includes a provision relating to "compliance"—conditions that Thornburgh must adhere to in order to ensure that the 2022 FWMP meets the "no net loss" standard.¹¹ The board determined that "the 2022 FWMP ensures ongoing compliance with the No Net Loss

¹¹ Section D of the 2022 FWMP compliance provision describes the methods by which Thornburgh can establish compliance:

"Compliance: The purpose of this section is to clarify what constitutes compliance with this updated 2022 FWMP, whether during the review of Resort land use applications, as reported as part of annual monitoring, or for any other purpose. As noted above Thornburgh owns 1,211 AF of water rights to be used for pumping or mitigation and pumping at the point of diversion or appropriation of the certificate has been discontinued. For the reasons discussed herein compliance with this FWMP has been met for rights b-f, and will be met for the TSID water (g) in the manner discussed in this Section, 1b below. For any additional water rights that are acquired compliance will be met as described herein.

"1. Compliance with this FWMP will occur differently for water appropriated from a surface water Point of Diversion (POD) versus a groundwater Point of Appropriation (POA) or for a mitigation credit as follows:

"a. POA - Groundwater: For any future rights that may be acquired, compliance occurs upon the cessation of pumping of the rights and along with any of the following: deed evidencing the transfer of ownership, a submittal to OWRD of any of the following: (i) an assignment of the water right to

Standard and sufficient monitoring is required by the 2022 FWMP and FMP Condition 40.”¹²

LUBA disagreed with the board with respect to the compliance provision’s sufficiency and remanded the 2022 FWMP compliance provision to the board, concluding that the compliance provision’s reliance on OWRD *applications* for groundwater permits was not sufficient. LUBA agreed with Bishop’s contention that the county must require proof of completion of each alternative OWRD process, rather than mere ownership of a certificate and submittal of an application to OWRD, before the county may conclude that the “no net loss” standard has been satisfied. LUBA agreed with Bishop’s contention that, under the 2022 FWMP, the county has no way to determine if fish habitat mitigation water will be available before approving actual buildings on site under a third-stage approval. LUBA also concluded that the 2022 FWMP reporting requirements are not sufficient to make up the shortcoming of the compliance provisions to demonstrate “no net loss.” Thus, LUBA issued a narrow remand, relating to the sufficiency of the compliance conditions of the 2022 FWMP with respect to groundwater permits.¹³

In his second assignment of error, Bishop contends that the entire compliance section—not just that related to

Thornburgh, (ii) an application that seeks OWRD approval of a transfer to pump at the Resort property, or (iii) a cancellation in-lieu of mitigation.

“b. POD - Surface Water: Once acquired, Compliance occurs upon the cessation of pumping at the source and submittal to OWRD, and OWRD issues a final order (or its equivalent) approving any of the following: (i) an application that transfers to pump at the Resort property, (ii) an application that transfers the water to an in-stream lease, (iii) the cancellation in-lieu of mitigation, or (iv) an application to transfer to obtain mitigation credits, permanent or temporary.

“c. Mitigation Credit: In the event that Thornburgh acquires mitigation credits, compliance occurs when Thornburgh provides proof of ownership or proof of submittal to OWRD to use the credits as mitigation.

“Thornburgh also agrees to the following measures to provide mitigation benefits over and above the benefits achieved by the mandatory measures described above.”

¹² Condition 40 provides: “Thornburgh shall comply with the 2022 [FWMP], including its compliance and reporting mechanisms found in Section II of that plan.”

¹³ We note that Thornburgh’s cross-petition, which we address later in this opinion, challenges LUBA’s determination as to the sufficiency of the compliance provisions.

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groundwater—was legally insufficient, because it allows Thornburgh to use all current listed water rights for consumption, leaving compliance with the “no net loss” standard to unidentified and not-yet purchased (or proven available) water rights. Bishop asserts that the board’s finding that such prospective purchase of water rights would result in no net loss or degradation of fish and aquatic wildlife habitat has no support in the record, or basis in law or fact. Thus, Bishop contends, the 2022 FWMP “undeniably creates a loophole for compliance that does not assure no net loss/degradation of fish and aquatic wildlife habitat.” Bishop also argues that an “instream water right” (ISWR) lease is insufficient as a form of compliance for surface water rights used for mitigation.

Thornburgh responds that Bishop’s arguments under his second assignment as relating to ISWR leases and surface water compliance provisions are not preserved—that Bishop did not make those arguments to LUBA and that LUBA’s remand relates only to the inadequacy of compliance measures as to groundwater, and we agree. It is apparent from LUBA’s order that Bishop did not present the lease argument to LUBA and that the remand is limited to compliance provisions relating to groundwater only.¹⁴ We reject Bishop’s second assignment of error as unpreserved.

¹⁴ LUBA explained:

“Thornburgh does not argue that the reporting requirements in the 2022 FWMP are sufficient to demonstrate no net loss, and we do not see that they are. The required report might show that the quantities and quality of water assumed in the 2022 FWMP have been provided, or it might not. No additional reporting is required during the review of any land use application related to the resort. As we understand it, the 2022 FWMP modeling assumes equal efficacy and reliability as between instream water right transfers and voluntary cancellation of water rights so that those legal processes have the same instream impacts on water quality and quantity. We agree with Bishop that the county’s findings are inadequate to explain why submittal to OWRD is sufficient to satisfy the no net loss standard with respect to groundwater sources for fish habitat mitigation. Indeed, Thornburgh and the county rely upon OWRD processes to ensure that voluntary cancellation of water rights consistent with OWRD rules and review processes will result in improved fish habitat. *** The county has failed to explain how simple submittal of an application to OWRD permits the county to rely on those OWRD processes.

“Thornburgh points to no evidence to support the county’s conclusion that the ‘2022 FWMP ensures ongoing compliance with the No Net Loss Standard and sufficient monitoring is required by the 2022 FWMP and FMP Condition 40.’ *** Thornburgh has not pointed to any evidence supporting a conclusion that ground water right certificate ownership, cessation of pumping, and

VI. THE TRIBE'S PETITION, CHALLENGING LUBA'S CONCLUSION THAT ERROR RELATING TO IMPLICATIONS OF TREATY RIGHTS IS UNPRESERVED

Under the provisions of the treaty with the Tribes of Middle Oregon, dated June 25, 1855 (1855 Treaty), the Tribe's predecessors ceded their traditional lands to the United States. In exchange, they reserved the lands that became the Warm Springs Reservation for their exclusive occupation and use, and a non-occupancy interest in ceded lands. Specifically with regard to fishery resources, the 1855 Treaty reserved to the Tribe the exclusive right to take fish "in the streams running through and bordering [the Warm Springs Reservation]" and at "all other usual and accustomed stations." 1855 Treaty; *Anthony v. Veatch*, 189 Or 462, 483, 220 P2d 493 (1950). The substantial majority of the Deschutes Basin, including Thornburgh Resort, lies within the lands used and occupied by the Tribe since time immemorial, and the Tribe is a sovereign co-manager of the fish resources of the Deschutes Basin.

The 1855 Treaty was enacted as federal law at 12 Stat 963 and is the "supreme law of the land." US Const, Art VI, § 2; *Skokomish Indian Tribe v. United States*, 410 F3d 506, 512 (9th Cir 2005), *cert den*, 546 US 1090 (2006) (citing *Breard v. Greene*, 523 US 371, 376, 118 S Ct 1352, 140 L Ed 2d 529 (1998)). Thus, the State of Oregon, as well as its local governments, must observe the 1855 Treaty.¹⁵ The interpretation of the 1855 Treaty is a matter of federal law. *State v. Begay*, 312 Or App 647, 652, 495 P3d 732 (2021); *see Felix Cohen, Cohen's Handbook of Federal Indian Law* § 2.01(1), 109 (Nell Jessup Newton ed 2012) (explaining that federal law governs the United States' recognition of tribal status and rights).

OWRD submittal is sufficient to ensure fish mitigation water will be provided as assumed in the 2022 FWMP."

¹⁵ We reject Thornburgh's contention that the Ninth Circuit in *Skokomish Indian Tribe* held that local governments are not bound by tribal treaties. That court held only that a tribe is not a "private person" under section 1983 and therefore cannot maintain a private action for damages under section 1983 against a governmental entity that is not a party to the treaty for violation of fishing rights reserved by the treaty. 410 F3d at 514. The court did not address whether local governments are otherwise bound to comply with treaty provisions and the issue was not before the court.

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The United States Court of Appeals for the Ninth Circuit has held that the 1855 Treaty secures to the Tribe and its members a right to a harvestable population of fish in the Deschutes Basin and to protect the habitat necessary to sustain those fish. *See generally United States v. Washington*, 853 F3d 946 (9th Cir 2017), *aff'd by an equally divided court*, 584 US 837 (2018). The court has held that the amount of instream water necessary to sustain that habitat is “at least equal to” what is needed to satisfy any applicable Endangered Species Act (ESA) obligations for listed-fish species, including the Middle Columbia River steelhead and bull trout. *Baley v. United States*, 942 F3d 1312, 1337 (9th Cir 2019).

The Tribe argued in its first assignment of error before LUBA that the board improperly failed to consider whether approval of the 2022 FWMP violates the fishing clause of the 1855 Treaty and improperly failed to consider the Treaty in determining whether the 2022 FWMP satisfies the “no let loss” standard under DCC 18.113.070(D) that the board was required to apply in considering Thornburgh’s application. LUBA determined that the Tribe had failed to adequately raise that issue before the board and therefore had failed to preserve it for LUBA’s consideration; thus, LUBA did not address the merits of the issue.

In its petition for judicial review, the Tribe contends that LUBA erred in determining that the Tribe failed adequately to preserve before the board and to present to LUBA whether the 1855 Treaty must be considered in determining whether the 2022 FWMP satisfied the “no net loss” standard. The Tribe points out that the right to fish on its reserved lands, as well as in all “usual and accustomed places,” including those places now located on ceded lands, *see United States v. Winans*, 198 US 371, 381, 25 S Ct 662, 49 L Ed 1089 (1905) (“The right to resort to the fishing places in controversy was a part of larger rights possessed by the Indians, upon the exercise of which there was not a shadow of impediment, and which were not much less necessary to the existence of the Indians than the atmosphere they breathed.”), includes the right to have fish to harvest in the usual and accustomed places of harvest. *United States v. Washington*, 853 F3d 946, 964 (9th Cir 2017), *aff'd by an equally divided court*, 584 US 837 (2018) (“The Indians

reasonably understood Governor Stevens to promise not only that they would have access to their usual and accustomed fishing places, but also that there would be fish sufficient to sustain them.”). The Tribe asserts that its treaty-protected right to fish is a resource as to which there must be “no net loss” under DCC 18.113.070(D).¹⁶

The issue before us on judicial review is not the correctness of the Tribe’s assertion relating to the extent to which the fishery resource guaranteed in the 1855 Treaty must be considered by the board in evaluating Thornburgh’s application, but whether the Tribe preserved the issue before the board for review by LUBA. As counsel for the Tribe stated at oral argument,

“If we weren’t stuck on the preservation issue, we might be before the Court deciding whether or not the Treaty imposes this positive obligation on the County or not. But that’s not the issue before the Court today. The issue before the Court today is has the Tribe made the requisite showing to even have its day in court.”

For the reasons below, we agree with the Tribe that it has made the requisite showing.

As the parties agree, “[a]n issue which may be the basis for an appeal to the Land Use Board of Appeals shall

¹⁶ The Tribe asserted before LUBA that its treaty-protected fishery right is a resource that is at risk of potential loss or degradation as a result of Thornburgh’s project, which relies primarily on groundwater withdrawals. Those withdrawals, the Tribe asserts, will drain aquifers underlying the project that have connectivity to surface water flows vital to the continued survival of at-risk fish species in the Deschutes Basin. The Tribe doubts that Thornburgh’s proposal to mitigate those negative impacts by buying and/or canceling existing water rights elsewhere in the basin will sufficiently ensure that there will be enough water for fish to survive in nearby streams, and to ensure that the water flow and temperature will be sufficient to allow harvestable numbers of at-risk species of fish to survive at the Tribe’s usual and accustomed fishing places during the proper time of year. The Tribe asserts that the latter is necessary to sustain the fishery resource in fulfillment of the Tribe’s treaty-protected right to that resource. The Tribe argued before LUBA that despite multiple comments (including exhibits) and testimony by the Tribe’s representative, Austin Smith Jr., providing indigenous knowledge about the fish and wildlife resources of the Deschutes Basin, the board decision concluded that the Tribe provided no “expert testimony” whatsoever, including with respect to its treaty-protected fisheries and their associated habitats. The Tribe asserted before LUBA that the board erred when it failed to consider the Tribe’s treaty-protected right to the fishery resource in determining that there would be no net loss or degradation as a result of Thornburgh’s proposed project.

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be raised not later than the close of the record *** before the local government[.]” ORS 197.797(1). The Tribe preserved its arguments relating to the impact of the 1855 Treaty on the “no net loss” determination before the board. The record, including the Tribe’s three comment letters addressed to the board and the Tribe’s representative’s testimony at the February 1, 2023, public hearing, reflects that the Tribe brought to the board’s attention the importance of considering the Tribe’s fishery resource as an aspect of the “no net loss” standard. In a letter of January 31, 2023, the Tribe’s representative, Austin Smith Jr., General Manager of the Tribe’s Branch of Natural Resources, raised concerns about the potential impact of the proposed 2022 FWMP on ESA-listed fish species and about Thornburgh’s lack of consultation with the Tribe, despite the Tribe’s status as a sovereign co-manager of the fisheries resources throughout the Deschutes Basin. Smith also observed that technical expertise was required to properly evaluate the complex issues implicated by the proposed 2022 FWMP and that, while the Tribe possessed technical expertise, it needed time assess the issues and to consult its co-managers, ODFW and the OWRD. In his letters to the board, Smith specifically raised the issue of the Tribe’s treaty-protected rights as implicating resources under the “no net loss” standard.¹⁷ We note, further, Smith’s March 1, 2023, letter to the board:

“[T]he Tribe does not currently have enough information to evaluate whether [Thornburgh] can *** demonstrate that its water use and mitigation plan completely mitigates negative impacts on the fishery resource so that there is no net loss or net degradation of the resource. *** Because the fishery resources at issue are both treaty-protected and vital to the Tribe’s cultural identity and existence, the Tribe urges the Commission to resolve these questions in favor of a more deliberate process.”

¹⁷ On January 3, 2022, Smith requested an extension of the record to allow additional time for the Tribe, which had not previously received notification of the application, to develop a response and provide additional information. With Thornburgh’s agreement, the BOCC allowed an extension of the record for 30 days. The Tribe submitted materials to the BOCC, including a letter from Smith on January 31, 2022, explaining the connection between the Tribe’s treaty-protected fishery resource and the “no net loss” standard. The hearing before the BOCC occurred on the following day, February 1, 2023.

The standard for preservation of an issue for review before LUBA “requires no more than fair notice to adjudicators and opponents, rather than the particularity that inheres in judicial preservation concepts.” *Boldt v. Clackamas County*, 107 Or App 619, 623, 813 P2d 1078 (1991). Contrary to LUBA’s conclusion, the letters of January 31, 2023, and March 1, 2023, were legally sufficient to assert before the board that the county must apply the “no net loss” standard so as to encompass recognition of the 1855 Treaty and the Tribe’s fishery resource, as historically recognized by the Tribe, to “include the right to have fish to harvest in the usual and accustomed places of harvest.” *Washington*, 853 F3d at 964. We conclude that the board had fair notice of the Tribe’s assertion that an evaluation of the “no net loss” standard implicated consideration of the Tribe’s treaty-protected fishery resource and, therefore, that the Tribe sufficiently preserved the issue before the board.

We further conclude that the Tribe sufficiently raised the issue before LUBA. In its opening brief before LUBA, the Tribe summarized its argument concerning the Treaty: “[T]he County improperly construed the 1855 Treaty by failing to consider whether its approval of the 2022 FWMP violates the fishing clause in the 1855 Treaty, which includes a right to fish habitat protection.” LUBA viewed that argument as different from and insufficient to raise the more precise argument that the Tribe stated in its reply brief and at oral argument before LUBA, and which it now raises on judicial review, that “proper application of DCC 18.113.070(D) required the County to consider whether the 2022 FWMP violates the fishing clause of the 1855 Treaty.” The Tribe’s argument in its opening brief before LUBA was not so narrow. Implicit in the Tribe’s argument that the board had approved the 2022 FWMP in violation of the fishing clause of the 1855 Treaty was the contention that the “no net loss” requirement of DCC 18.113.070(D) must be construed to include consideration of the Tribe’s treaty fishing rights. The Tribe made the latter point explicitly in its argument under the second assignment:

“The [board] cannot conclude, as a matter of law, that ‘system wide benefits’ (whatever that phrase may mean) satisfy the no net loss standard in DCC 18.113.070(D) without

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expressly finding that the 2022 FWMP does not violate either the 1855 Treaty or [other state law].”

Thus, we conclude that the Tribe adequately articulated in its opening brief before LUBA that the treaty-protected fishery resource is a resource to which there can be “no net loss” or degradation under DCC 18.113.070(D), and that any net loss to the Tribal fishery resource is a violation of DCC 18.113.070(D) and the 1855 Treaty. Further, in its reply brief before LUBA, the Tribe clarified that position when it argued:

“The [board] and parties had fair notice that Tribe asserted that the fish resources affected by the 2022 FWMP are protected by the 1855 Treaty. The Tribe also demonstrated that it understood that DCC 18.113.070(D) contains the applicable approval criterion, which requires no net loss or degradation of fish resources, including those protected by the 1855 Treaty. The Tribe asserted treaty rights in the fish resources of the Deschutes Basin, including an enforceable right to take fish through the basin and the right to fish habitat protection so that it would have fish to take.”

We conclude that the Tribe adequately preserved before the board and presented to LUBA its arguments concerning the relationship between the Tribe’s treaty rights and the “no net loss” standard. LUBA erred in concluding otherwise.

In its second assignment of error, the Tribe contends that LUBA’s order misapplied the substantial evidence standard of review and is unlawful in substance in failing to consider evidence supplied by the Tribe based on its indigenous knowledge. We have held that LUBA properly deferred to the board’s narrow construction of DCC 18.113.070(D) that negative impacts are to be measured only by the *resort’s* impact on the system, not the cumulative impacts of drought or other basin-wide water policy and management issues. As for indigenous knowledge related specifically to impacts of the resort, in its briefing, the Tribe argued that “indigenous knowledge,” to which the Tribe asserts the county paid short shrift, consisted of the entirety of the comments and materials submitted by the Tribe, including exhibits, and testimony from Smith, regarding the fish resources of the Deschutes Basin. At oral argument before us, the Tribe argued that if the Tribe had

had sufficient time for preparation for the hearing before the board, it could also have presented as indigenous knowledge evidence concerning the impact of the resort's pumping on very specific seasonal fishing grounds.

On this assignment, we are guided by our standard of review, under which we consider only whether LUBA correctly applied the substantial evidence standard in its determination that the county's decision demonstrates that the county considered the Tribe's evidence concerning indigenous knowledge and weighed the Tribe's evidence against Thornburgh's evidence. Given the limited record before the county, we conclude that LUBA did not err.

But, assuming that LUBA remands the case to the board for consideration of the Tribe's arguments relating to the treaty-protected fishery resource on the first assignment of error, we highlight that remand will allow an opportunity for the Tribe to present evidence of indigenous expertise and knowledge for the board's consideration that the Tribe asserts it did not have adequate time to present due to its late involvement in the proceedings.

VII. THORNBURGH'S CROSS-PETITION RELATING TO LUBA'S REMAND OF GROUNDWATER COMPLIANCE PROVISIONS

In its cross-petition, Thornburgh challenges LUBA's order determining that groundwater compliance measures and reporting requirements set forth in the 2022 FWMP are insufficient. Thornburgh contends that LUBA's order is unlawful "in procedure," because the board and weighed the evidence in the record as the factfinder in the first instance, rather than reviewing for substantial evidence.

As to groundwater compliance, Section D of the 2022 FWMP provides:

"For any future rights that may be acquired, compliance occurs upon the cessation of pumping of the rights and along with any of the following: deed evidencing the transfer of ownership, a submittal to OWRD of any of the following: (i) an assignment of the water right to Thornburgh, (ii) an application that seeks OWRD approval of a transfer to

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pump at the Resort property, or (iii) a cancellation in-lieu of mitigation.”

(Emphasis added.) LUBA agreed with Bishop’s contention that the compliance provision was inadequate to meet the “no net loss” standard to the extent that it permitted only a “submittal” to OWRD of an application for an assignment of a water right to Thornburgh, rather than an actual approval of an assignment of the water right.

LUBA said in its order, “We agree with Bishop that the county’s findings are inadequate to explain why submittal to OWRD is sufficient to satisfy the no net loss standard with respect to groundwater sources for fish habitat mitigation.” LUBA further concluded, “Thornburgh has not pointed to any evidence supporting a conclusion that groundwater right certificate ownership, cessation of pumping, and OWRD submittal is sufficient to ensure fish mitigation water will be provided as assumed in the 2022 FWMP.”

Thornburgh contends in its cross-petition that LUBA misunderstood the compliance provision. Thornburgh asserts that there is much evidence in the record that it is the cessation of pumping of any newly acquired groundwater interest that results in mitigation, by allowing the water to remain in the aquifer in support of fish habitat, and that the additional documentation required by an application to the OWRD merely reinforces the cessation of use of the water. We have reviewed the record and conclude that LUBA correctly applied the substantial evidence standard in its evaluation of the compliance and reporting requirements. We therefore reject Thornburgh’s contention on its cross-petition.

Reversed and remanded to LUBA on petition of The Confederated Tribes of the Warm Springs Reservation of Oregon, for consideration of Tribe’s first assignment of error to LUBA; affirmed on cross-petition; otherwise affirmed.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: May 7, 2025

SUBJECT: Public Hearing on the Community Development Department Draft FY 2025-26
Work Plan

RECOMMENDED MOTION:

Information only.

BACKGROUND AND POLICY IMPLICATIONS:

The purpose of this public hearing is to accept public comments for the Community Development Department's FY 2025-26 Work Plan

BUDGET IMPACTS:

None

ATTENDANCE:

Peter Gutowsky, CDD Director



COMMUNITY DEVELOPMENT

MEMORANDUM

TO: Deschutes County Board of Commissioners

FROM: Peter Gutowsky, AICP, Director
CDD Management Team

DATE: May 7, 2025

SUBJECT: Community Development Department Draft Fiscal Year (FY) 2025-65 Work Plan and 2024 Annual Report / Public Hearing

I. SUMMARY

The purpose of this public hearing is to accept public comments for the Community Development Department's (CDD) FY 2025-26 Work Plan (Attachment).

II. BACKGROUND

Each spring, CDD prepares an annual work plan describing proposed projects for the coming fiscal year. A review of the draft work plan provides the Planning Commission, Historic Landmarks Commission, County Administration, customers, partner agencies, and the Board of County Commissioners (Board) an opportunity to provide input, including additions, modifications and possible re-prioritization. The work plan describes the most important projects in each division based on:

- | | |
|-----------------------------------------------------|--------------------------------|
| 1. Board annual goals and policies; | 3. Changes in state law; |
| 2. Carry-over projects from current or prior years; | 4. Grants/funding sources; and |
| | 5. Public comments. |

It also provides context for prioritizing and initiating new projects that arise during the year. The work plan includes the following highlights:

- Continue improving CDD's customer-centric website
- Upgrade the Onsite Wastewater Division's Operation & Maintenance software system to enhance tracking capabilities and streamline processes
- Explore options and approaches to address rural housing and homelessness as allowed under state law
- Coordinate with the Road Department to enhance the driveway access permit processes
- Conduct pre-application meetings and respond to customer inquiries (counter, phones, and emails)
- Initiate an update to the Newberry Country Plan
- Coordinate growth management issues, including technical analyses related to housing and employment needs

- Participate in legislative or rulemaking processes to shape state laws that benefit Deschutes County
- Continue to participate in a County-led effort to create a Pre-disaster Preparedness Plan

III. PLANNING COMMISSION RECOMMENDATION

The Planning Commission conducted a public hearing on the Planning Division Work Plan on March 27 and received two comments, one requesting a Deschutes River Woods Community Plan, the other emphasizing more code enforcement resources. Deliberations occurred on April 10. Staff utilized three tables, described below, to facilitate a recommendation. Considering the priority projects listed in Table 1, the Planning Commission ranked in order of importance, dark skies #1, natural hazard planning #2, and Newberry Country Plan Update #3.¹ They endorsed all the projects listed in Tables 2 and 3, considering them noteworthy for the community. To the extent that resources become available, they also support convening panel discussions, prioritizing water resources and regional housing discussions, ahead of other suggestions such as destination resorts, a high desert zone concept, and wildlife.

IV. PRIORITY PROJECTS

Table 1 captures priority discretionary and nondiscretionary projects that are supported by the Board and Planning Commission, grant funded, or in process. These projects in their totality are “significant,” requiring staffing resources that span 6 to 12 months or longer.

Table 1 – Priority Discretionary and Non-discretionary Projects

Priority Projects	
1. Current Planning ²	4. Newberry Country Plan Update
2. Comprehensive Plan 2040 Reconsideration	5. Natural Resource and Hazard Planning
3. Clear and Objective Standards for Housing	6. Dark Skies

Table 2 identifies ongoing Planning Division operational responsibilities, regional coordination duties, and code maintenance tasks. These projects in their totality range from “minor” to “moderate,” requiring staffing resources that span 4 to 8 months to complete.

Table 2 – Operational Responsibilities, Coordination Duties, and Code Maintenance

Category	Projects
Operational Responsibilities	<ol style="list-style-type: none"> 1. Destination resort and overnight lodging reporting. 2. Marijuana inspections. 3. Population estimates and forecasting. 4. Staffing HLC, Bicycle and Pedestrian Advisory Committee, and Deschutes River Mitigation and Enhancement Committee. 5. 2026 Legislative Short Session. 6. Interdepartmental coordination (new landfill siting, etc.).

¹ The Planning Commission recognized that Current Planning, the Comp Plan Update, and Clear and Objective Standards are mandatory and currently consume significant staff resources.

² Current Planning responsibilities are non-discretionary. Local land use decisions are subject to specific deadlines per state law. ORS 215.427.

Category	Projects
Coordination Duties	<ol style="list-style-type: none"> 7. City of Bend Coordination <ul style="list-style-type: none"> • Coordinate growth management issues, including technical analyses related to housing and employment needs, and SB 1537, an expedited UGB amendment for affordable and work force housing. • Coordinate with the Bend Park and Recreation District for the development of park space in SE Bend. 8. City of La Pine Coordination <ul style="list-style-type: none"> • Participate in La Pine 2045 Comprehensive Plan Update process. • Participate with Deschutes County Property Management and the City of La Pine to update Newberry Neighborhood comprehensive plan designations, master plan, and implementing regulations. • Coordinate transportation impacts and long-range planning for County-owned right-of-way facilities located within city limits. 9. City of Redmond Coordination <ul style="list-style-type: none"> • Coordinate growth management issues, including technical analyses related to housing, employment needs, and planning efforts for the McVey Interchange on South Highway 97. • Update the Joint Management Agreement and Urban Holding zone per HB 3197. 10. City of Sisters Coordination <ul style="list-style-type: none"> • Participate in the implementation of Sisters Country Vision Plan, City of Sisters Comprehensive Plan Update, and UGB Expansion process. • Coordinate on urbanization related code amendment projects. 11. Transportation Planning <ul style="list-style-type: none"> • Process road naming requests associated with certain types of development on a semi-annual basis. • Administer the County's Transportation System Development Credit program. • Coordinate with Bend Metropolitan Planning Organization on regional projects and planning. • Coordinate with the Oregon Department of Transportation on roadway projects and interchange area management plans. • Coordinate internal review of Deschutes County Code (DCC) Title 17 code amendments related to land divisions, road improvements, and transportation impacts to ensure compliance with HB 3197. • Provide updated traffic data for the ongoing Newberry Country Plan update. 12. Housing Strategies. <ul style="list-style-type: none"> • Amend DCC to define family for unrelated persons HB 2538, non-familial Individuals. • Explore options and approaches to address rural housing and homelessness as allowed under state law. 13. Department of Land Conservation and Development Rulemaking <ul style="list-style-type: none"> • Monitor rulemaking as it pertains to Goal 5 – Cultural Areas, Farm and Forest Conservation Program Improvements, and Eastern Oregon Solar Siting. 14. Initiate legislative amendments to the Comprehensive Plan and Zoning Code as needed.
Code Maintenance	<ol style="list-style-type: none"> 15. Housekeeping Amendments <ul style="list-style-type: none"> • Initiate Comprehensive Plan and/or Zoning Text amendments to comply with and implement new or revised state laws.

Table 3 lists discretionary zoning text amendments. These are “lower” priority projects, requiring staffing resources that span 4 to 12 months or longer to complete. All of the text amendments carryover from 2024.

Table 3 – Low Priority Zoning Text Amendments

Category	Projects
Zoning Text Amendments	<ol style="list-style-type: none"> 1. Allow “self-serve” farm stands in Rural residential Exception Areas Comply with House Bill 3109 (2021) pertaining to establishment of childcare facilities in industrial zones. 2. Childcare facilities in Industrial Zones 3. Define family for unrelated persons per HB 2538 (Non-familial Individuals). 4. Forest Zone Code—Review for compliance with Oregon Administrative Rule. 5. Lot Line Adjustments and Re-platting. 6. Medical Hardship Dwellings—review for consistency with state law. 7. Minor variance 10% lot area rule for farm and forest zoned properties. 8. Outdoor Mass Gatherings update. 9. Section 6409(a) of the Spectrum Act (Wireless Telecommunication Amendments). 10. Sign code to become consistent with federal law. 11. Title 19, 20, 21—Language related to Class I, II, and III road projects as allowed uses. 12. Title 22—Procedures Ordinance for consistency with state law and planning department interpretations. 13. Wetland Regulation Clarification for Irrigation or Artificially Created Wetlands.

V. BOARD DELIBERATION & ADOPTION OF CDD FY 2025-2026 WORK PLAN

The Board will ultimately prioritize projects based on their annual goals and objectives as planning resources become available. Following the public hearing, the Board may decide to:

1. Close the oral record, keep the written record open for approximately one week to May 14 and deliberate in June.
2. Close the oral and written records and deliberate at this meeting or at a subsequent meeting.
3. Continue the public hearing to a date certain.

Attachment:

Draft FY CDD 2025-26 Work Plan & 2024 Annual Report



COMMUNITY DEVELOPMENT

FY 2025-26 Work Plan & 2024 Annual Report



117 NW Lafayette Avenue
P.O. Box 6005
Bend, OR 97703
www.deschutes.org/cd
(541) 388-6575

Building Safety
Code Enforcement
Coordinated Services
Onsite Wastewater
Planning

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Introduction

Community Development Mission Statement

The Community Development Department (CDD) facilitates orderly growth and development in Deschutes County through coordinated programs of Building Safety, Code Enforcement, Coordinated Services, Onsite Wastewater, Planning, and education and service to the public.

Purpose

The Fiscal Year (FY) 2025-26 Work Plan and 2024 Annual Report highlight the department's goals, objectives, and accomplishments and are developed to:

- Report on achievements and performance.
- Implement the Board of County Commissioners (BOCC) goals and objectives.
- Implement the Deschutes County Customer Service "Every Time" Standards.
- Effectively and efficiently manage organizational assets, capabilities and finances.
- Fulfill the department's regulatory compliance requirements.
- Address changes in state law.
- Enhance the county as a safe, sustainable and highly desirable place to live, work, learn, recreate, visit and more.

Adoption

The BOCC adopted this report on June XX, 2025, after considering public, stakeholder and partner organization input and Planning Commission and Historic Landmarks Commission recommendations. The Work Plan often includes more projects than there are resources available. CDD coordinates with the BOCC throughout the year to prioritize and initiate projects. Those not initiated are often carried over to future years.



Elected & Appointed Officials

BOARD OF COUNTY COMMISSIONERS

Anthony DeBone, Chair, January 2027
 Patti Adair, Vice Chair, January 2027
 Phil Chang, Commissioner, January 2029

COUNTY ADMINISTRATION

Nick Lelack, County Administrator
 Whitney Hale, Deputy County Administrator
 Erik Kropp, Deputy County Administrator

PLANNING COMMISSION

Matt Cyrus — Chair, Sisters Area, 6/30/26
 Susan Altman — Vice Chair, Bend Area, 6/30/28
 Nathan Hovekamp — Bend Area, 6/30/27
 Kelsey Kelley — Tumalo Area, 6/30/27
 Jessica Kieras — Redmond Area, 6/30/26
 Mark Stockamp — At Large, 6/30/27
 Toni Williams — South County, 6/30/29

HISTORIC LANDMARKS COMMISSION

Rachel Stemach — Chair, Bend Area, 3/31/28
 Dennis Schmidling — Vice Chair, City of Sisters, 3/31/28
 Eli Ashley — At Large, 3/31/26
 Lore Christopher — At Large, 3/31/26
 Christine Horting-Jones — Ex-Officio, 3/31/28
 Marc Hudson — At Large, 3/31/28
 Lilian Syphers — Ex-Officio, 3/31/28

HEARINGS OFFICERS

Tommy Brooks
 Gregory J. Frank
 Alan Rappleyea
 Laura Westmeyer

BICYCLE AND PEDESTRIAN ADVISORY COMMITTEE

Jennifer Letz — Chair, Sisters, 6/30/26
 David Green — Vice Chair, At Large, 6/30/26
 Wendy Holzman — At Large, 6/30/26
 Mason Lacy — At Large, 6/30/26
 David Roth — Bend, 6/30/26
 Rachel Zakem — At Large, 6/30/26
 Anthony Accinelli — La Pine, 6/30/27
 Neil Baunsgard — Bend, 6/30/27
 Diane Flowers, At Large, 6/30/27
 Matt Muchna — At Large, 6/30/27
 Bob Nash — Redmond, 6/30/2027
 Mark Smith — At Large, 6/30/27

Board of County Commissioners

FY 2025-26 Goals & Objectives

Mission Statement: Enhancing the lives of citizens by delivering quality services in a cost-effective manner.

Safe Communities (SC): Protect the community through planning, preparedness, and delivery of coordinated services.

- Provide safe and secure communities through coordinated public safety and crisis management services.
- Reduce crime and recidivism and support victim restoration and well-being through equitable engagement, prevention, reparation of harm, intervention, supervision and enforcement.
- Collaborate with partners to prepare for and respond to emergencies, natural hazards and disasters.

Healthy People (HP): Enhance and protect the health and well-being of communities and their residents.

- Support and advance the health and safety of all Deschutes County's residents.
- Promote well-being through behavioral health and community support programs.
- Ensure children, youth and families have equitable access to mental health services, housing, nutrition, child care, and education/prevention services.
- Help to sustain natural resources and air and water quality in balance with other community needs.
- Apply lessons learned from pandemic response, community recovery, and other emergency response events to ensure we are prepared for future events.

A Resilient County (RC): Promote policies and actions that sustain and stimulate economic resilience and a strong regional workforce.

- Update County land use plans and policies to promote livability, economic opportunity, disaster preparedness, and a healthy environment.
- Maintain a safe, efficient and economically sustainable transportation system.
- Manage County assets and enhance partnerships that grow and sustain businesses, tourism, and recreation.

Housing Stability and Supply (HS): Support actions to increase housing production and achieve stability.

- Expand opportunities for residential development on appropriate County-owned properties.
- Support actions to increase housing supply.
- Collaborate with partner organizations to provide an adequate supply of short-term and permanent housing and services to address housing insecurity.

Board of County Commissioners

FY 2025-26 Goals & Objectives

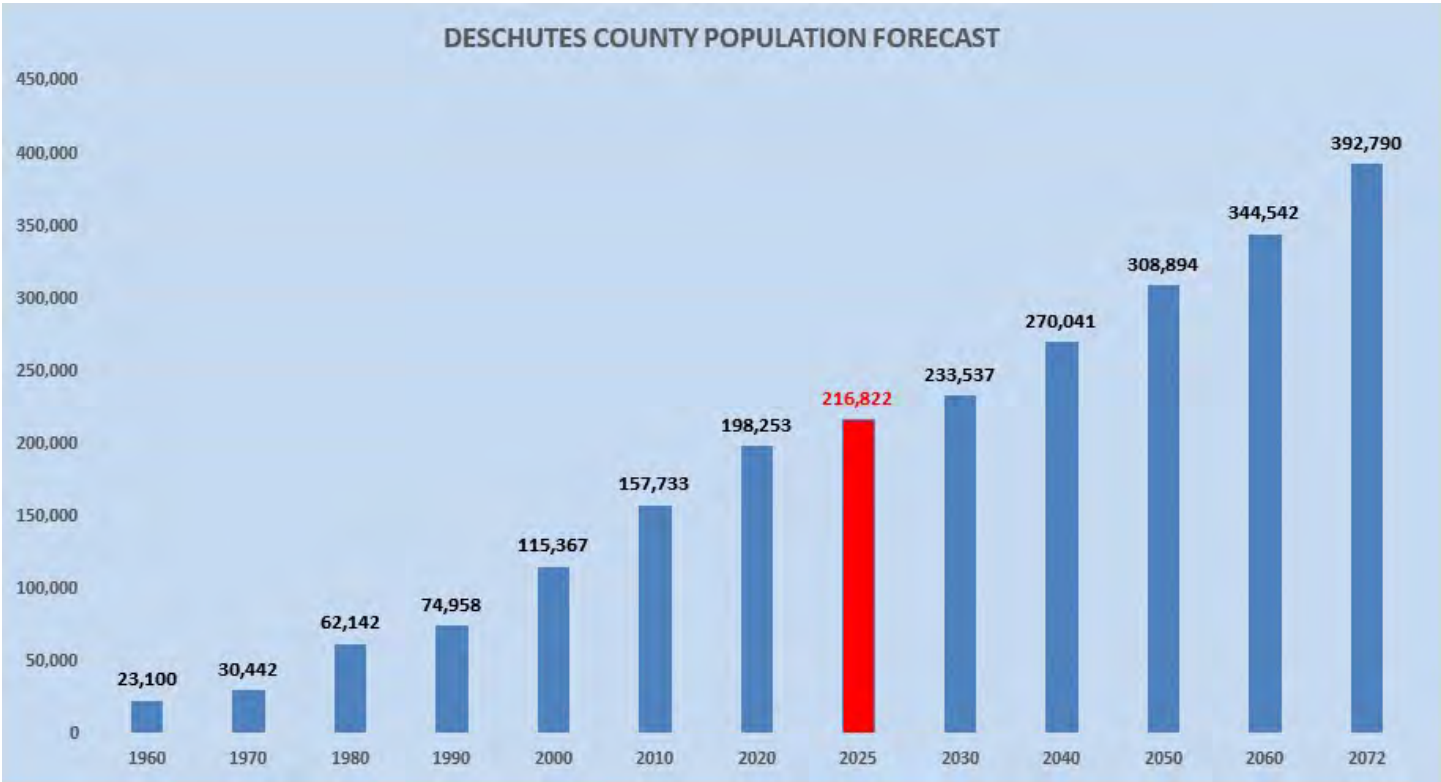
Service Delivery (SD): Provide solution-oriented service that is cost-effective and efficient.

- Ensure quality service delivery through the use of innovative technology and systems.
- Support and promote Deschutes County Customer Service “Every Time” standards.
- Continue to enhance community participation and proactively welcome residents to engage with County programs, services and policy deliberations.
- Preserve, expand and enhance capital assets, to ensure sufficient space for operational needs.
- Maintain strong fiscal practices to support short and long-term County needs.
- Prioritize recruitment and retention initiatives to support, sustain, and enhance County operations.



Deschutes County Fair

Population Growth



This graph provides a snapshot of the County's growth since 1960 and the 50-year Portland State University (PSU) Population Forecast for Deschutes County from 2022 through 2072.

PORTLAND STATE UNIVERSITY 2022-2072 DESCHUTES COUNTY FORECAST

Geographic Area	2022	2025	2047	*AAGR 2025-2047	2072
Deschutes County	207,921	216,822	291,344	1.3%	382,813
Bend	103,296	109,525	155,066	1.6%	218,270
Redmond	37,342	39,533	57,516	1.7%	79,152
Sisters	3,437	3,799	8,049	3.1%	15,190
La Pine	2,736	2,950	5,544	2.3%	9,061
Unincorporated	60,430	61,014	65,164	0.3%	61,140

*AAGR: Average Annual Growth Rate

Budget & Organization

Fiscal Issues

- CDD experienced a modest improvement in permitting volumes in 2024, mainly due to legislation allowing accessory dwelling units (ADUs) in rural residential areas. While single-family dwelling (SFD) permits and site evaluations increased, land use applications declined. ADU application types accounted for 4% of SFD permits, 21.2% of site evaluations, and 5% of land use applications. This initial surge in application submissions is not anticipated to continue.
- Personnel cost increases are anticipated due to several key factors. These include adjustments to salaries resulting from a Pay Equity & Market Evaluation Project, which is intended to increase competitiveness in the job market, rising benefit costs, and investments in staff training to ensure exceptional service delivery. It is essential to plan for these increases to maintain our commitment to attracting and retaining top talent, which is critical to long-term success and organizational stability.
- CDD responds to development inquiries, implements legislative and BOCC priorities, and supports County initiatives. Many of these require research and detailed responses without generating permits or revenue. This “non-fee generating” work, while a public good, consumes resources needed for processing applications and permits.
- Issues may also arise from adapting to changes in the economy and complying with evolving legislation.

Operational Challenges

- Maintaining productivity amid staff resignations while completing training for new staff. In 2024, CDD welcomed 6 new staff members, saw 5 resignations, and added 2 new positions, resulting in a total of 52 FTE. Approximately 45% of staff have 5 years or less experience with the department.
- Coordinating with the Human Resources Department to evaluate, propose and implement strategies to attract and retain staff in a highly competitive market.
- Continue succession planning for anticipated staff retirements, with 15% of staff eligible for retirement within the next 3 to 8 years based on length of service.
- Implementing new laws from the 2023, 2024, and possibly the 2025 Legislative Session.
- Processing complex cases, applications, and evaluations require thorough analysis and interpretation of local and state regulations.
- Addressing affordable housing by collaborating with cities, the County's Property Manager, and other partners.
- Improving the department's website and other electronic services to enhance efficiencies and service delivery.

Budget & Organization

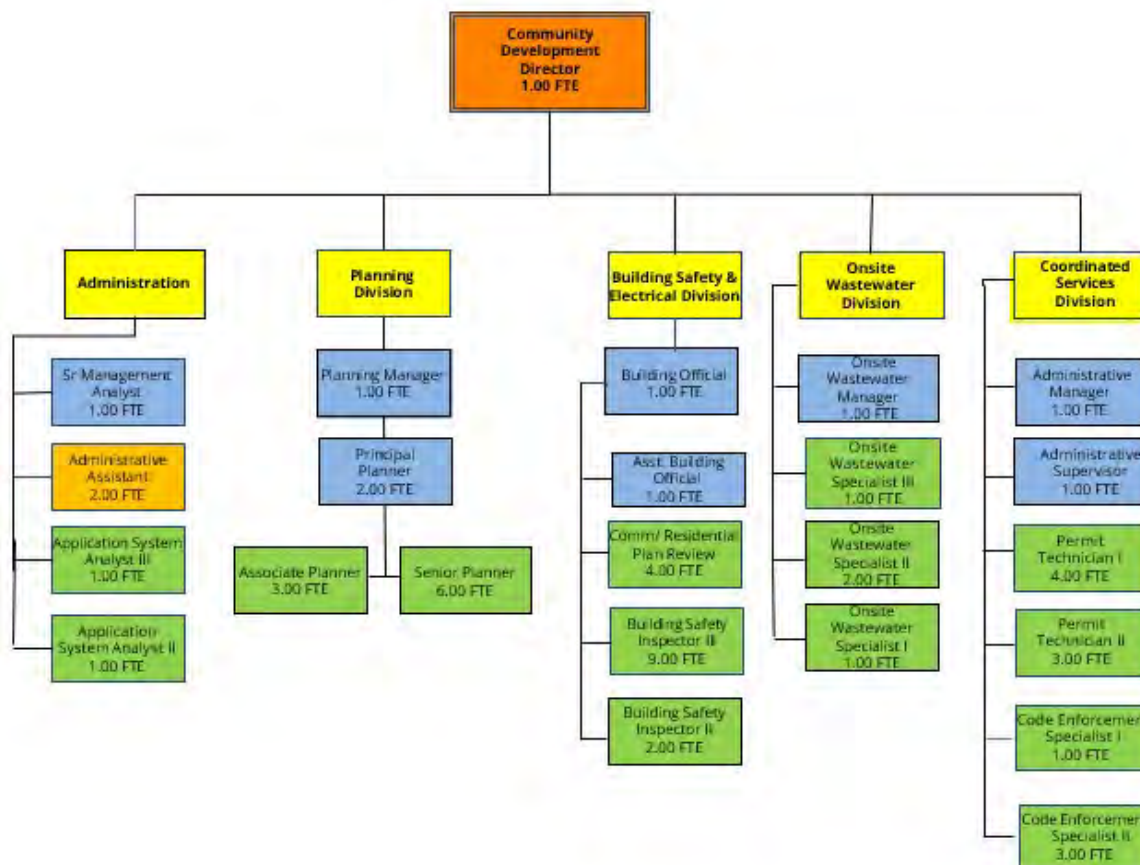
Budget Summary

	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Resources	\$11,302,683	\$13,932,023	\$12,475,587	\$11,329,936	\$11,760,201
Requirements	\$11,302,683	\$13,392,023	\$12,475,587	\$11,329,936	\$11,760,201

Staff Summary

	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Total FTE's	70.00	65.00	58.00	53.00	53.00

Organizational Chart



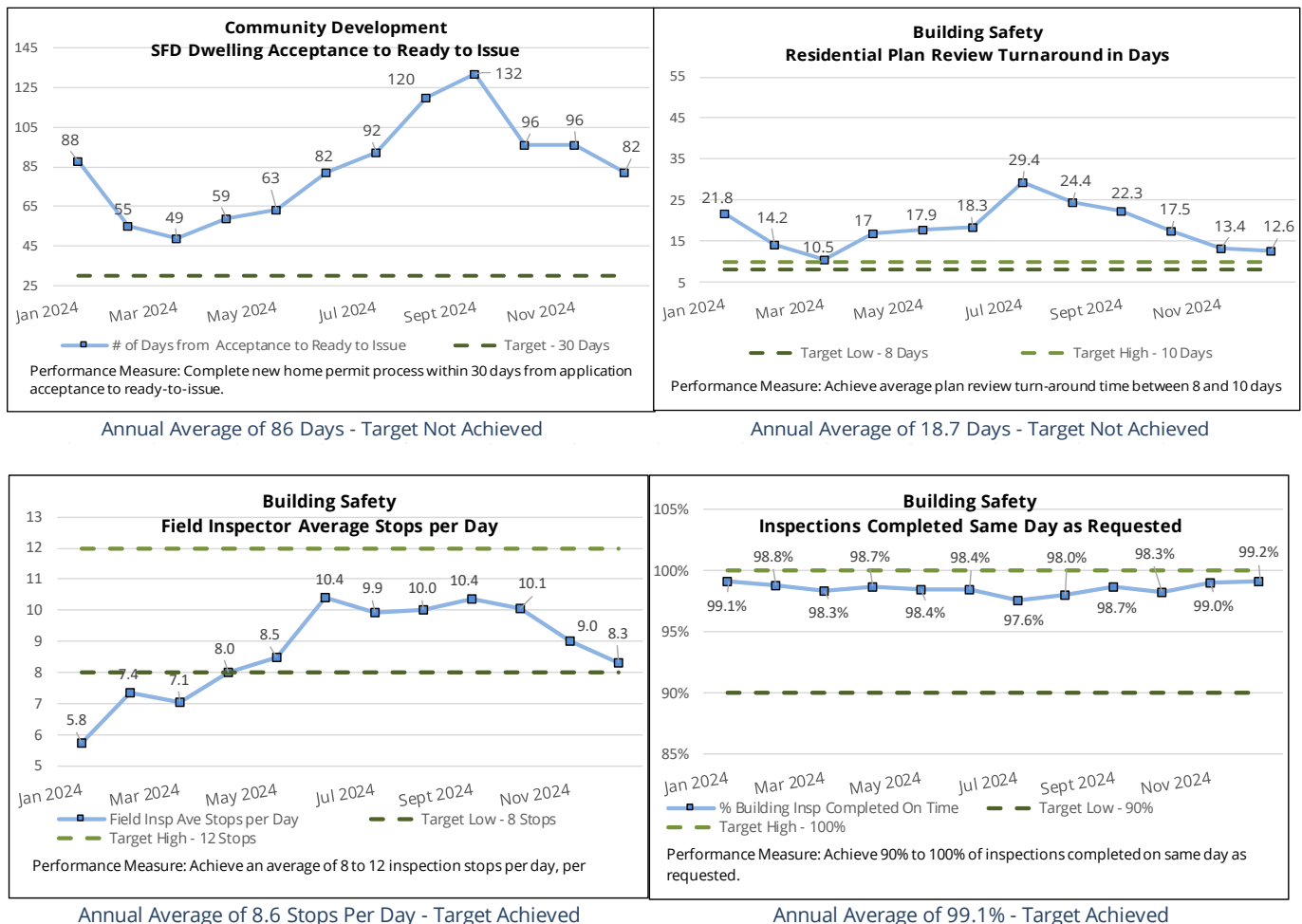
Performance Management

CDD is committed to a comprehensive approach to managing performance. The department achieves its goals and objectives by strategically establishing and monitoring performance measures and then adjusting operations based on those results. The performance measures allow staff to:

- Address service delivery expectations from the perspectives of CDD's customers.
- Ensure the department fulfills its regulatory responsibilities.
- Efficiently and effectively manage the organization's assets, capacities and finances.
- Preserve and enhance the County as a safe, sustainable and desirable place to live, work, visit, and recreate.

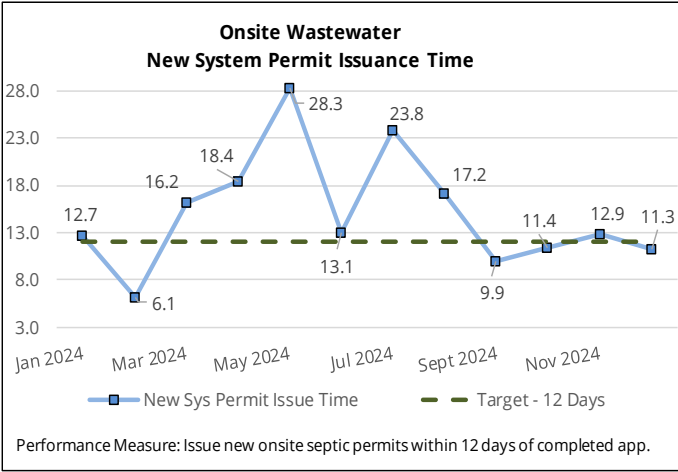
The following graphs represent a sample of CDD's performance measures for 2024. For a complete review of performance measures, please follow this link: <https://deschutes.org/cd/>.

2024 Performance Management Results

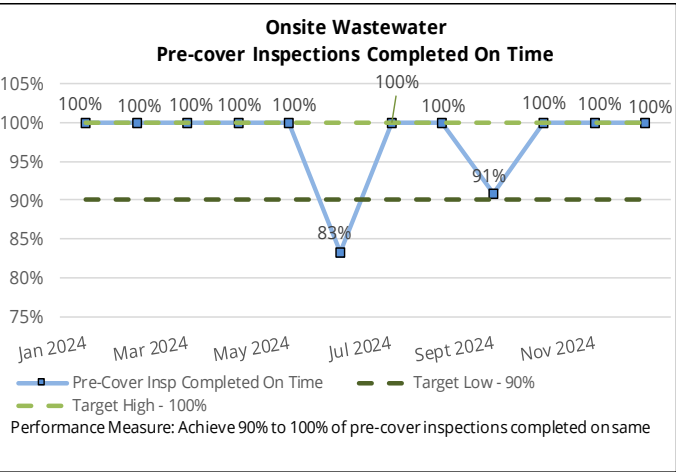


Performance Management

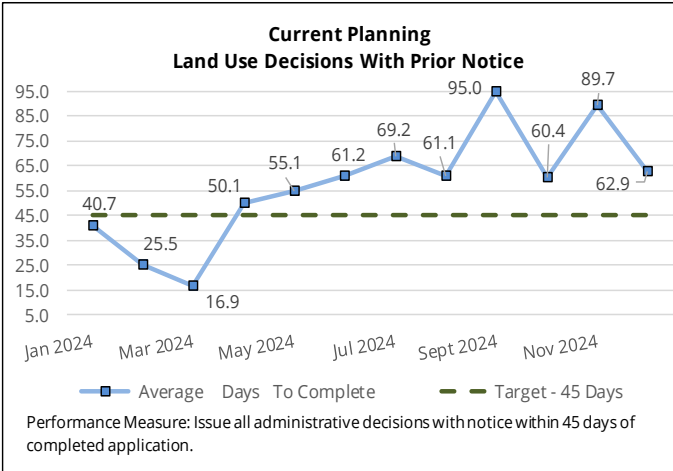
2024 Performance Management Results, continued



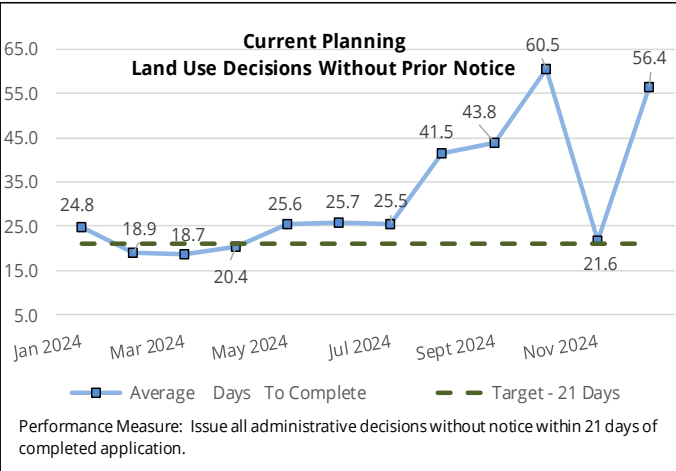
Annual Average of 16.1 Days - Target Not Achieved



Annual Average of 96.5% Completed - Target Achieved



Annual Average of 55.4 Days - Target Not Achieved



Annual Average of 32.2 Days - Target Not Achieved



Performance Management

2024 Year in Review

- ✓ Continued to invest significant resources in comprehensive training and development plans for new staff.
- ✓ Code Enforcement transitioned to a system of reporting the number of violations rather than the total number of cases.
- ✓ Revised reporting to eliminate periods of time waiting for applicant responses.



FY 2025-26 Performance Measures By Division

CDD's FY 2025-26 performance measures align the department's operations and work plan with BOCC annual goals and objectives and the County's Customer Service "Every Time" Standards.

Building Safety

- Achieve an average 8-12 inspection stops per business day to provide quality service. (BOCC Goal & Objective SD-1)
- Achieve an average turnaround time of 8-10 business days for building plan reviews, ensuring compliance with or exceeding state requirements. (BOCC Goal & Objective SD-1)
- Achieve 90-100% of inspections completed the same day as requested. (BOCC Goal & Objective SD-1)

Code Enforcement

- Achieve an average adjudication time of 150 business days from date of case assignment to date of adjudication. (BOCC Goal & Objective SC-1)

Coordinated Services

- Achieve an average turnaround time of 4 business days or fewer for permit ready-to-issue status. (BOCC Goal & Objective SD-1)

Onsite Wastewater

- Achieve a 95% compliance rate for Alternative Treatment Technology (ATT) Septic System Operation and Maintenance (O&M) reporting requirements to protect groundwater. (BOCC Goal & Objective HP-4)
- Achieve the issuance of new onsite septic system permits within 12 business days following the submission of a complete application. (BOCC Goal & Objective SD-1)
- Achieve 90-100% of pre-cover inspections completed the same day as requested. (BOCC Goal & Objective SD-1)

Planning

- Issue all administrative decisions requiring notice within 45 business days and without notice within 21 business days following the submission of a complete application. (BOCC Goal & Objective SD-1)
- Update Deschutes County Code (DCC) to comply with HB 3197, Clear and Objective Code Update Project, which requires clear and objective standards for housing development in rural residential exception areas, unincorporated communities, and for accessory farm worker accommodations. (BOCC Goal & Objectives SC-3, HP-4, and RC-1)
- Natural Resources / Natural Hazards—Develop a work plan to amend the Comprehensive Plan and County Code requiring defensible space and fire-resistant building materials per SB 762 and SB 644 — Wildfire Mitigation. (BOCC Goal & Objectives SC-3, HP-4, and RC-1)



Administrative Services

Overview

Administrative Services includes the Community Development Director, Senior Management Analyst, two Systems Analysts and an Administrative Assistant. This division oversees a variety of functions that ensure smooth and efficient operations, including departmental operations, facilities, personnel, budget, customer services, compliance, technology services, administrative support, and performance measures.

2024 Year in Review

- ✓ Improved business process automation through the use of Laserfiche, allowing for storage, organization and access to information digitally.
- ✓ Submitted a U.S. Environmental Protection Agency Community Change Grant application.
- ✓ Coordinated with the Human Resources Department to participate in the Oregon Pay Equity and Market Evaluation Study.
- ✓ Provided addressing services to the City of Redmond on contract.
- ✓ Facilitated division webpage updates, including an improved Code Enforcement complaint submittal process with the ability to upload photos and published application guides.



FY 2025-26 Work Plan Projects

- Continue to participate in a County-led effort to create a Pre-disaster Preparedness Plan.
- Continue to update CDD's Continuity Of Operation Plan as necessary, based on lessons learned, and ensure staff awareness of their roles and responsibilities during an emergency.
- Coordinate with the Human Resources Department to evaluate, propose and implement strategies to attract and retain staff to meet service demands in a highly competitive market.
- Explore opportunities to enhance CDD's practices while maximizing operational efficiency in a cost-effective manner.
- Continue improving CDD's customer-centric website. Enhanced content will help customers understand policies and procedures, guide them through the development process in Deschutes County, and expand online instructions.
- Initiate a computer equipment replacement initiative over a three-year period ensuring operational efficiency and improved technological advancement.
- Upgrade the Onsite Wastewater Division's Operation & Maintenance O&M software system to enhance tracking capabilities and streamline processes.

Building Safety

Overview

Building Safety includes a Building Official, Assistant Building Official and thirteen Building Safety Inspectors. The division ensures structures are constructed, maintained, and used in compliance with applicable safety standards through consistent application of state and federal building codes and public education. It offers construction plan reviews, consultations, and inspections in the rural county and cities of Sisters and La Pine. Additionally, it provides services to Lake, Jefferson, Klamath, and Crook counties, the cities of Bend, Redmond, and the State of Oregon Building Codes Division, as needed.

2024 Year in Review

- ✓ Issued 423 new single-family dwelling permits. The distribution of these new homes for Deschutes County's building jurisdiction included:
 - Rural/unincorporated areas: 270
 - City of La Pine: 90
 - City of Sisters: 63
- ✓ Completed inspections on major projects such as:
 - Zero lot line single-family dwellings in Sisters Sunset Meadows Subdivision
 - Single-family dwellings in La Pine's Reserve in the Pines Subdivision
 - Licensed in-home family care facilities change of use
- ✓ Completed major building plan reviews for:
 - Air Traffic Control Tower at Bend Airport
 - Sunset Meadows Apartment Complex in Sisters
 - Walgreens in La Pine
 - Multiple Medical Clinic Tenant Improvements in La Pine
 - Sisters Parks and Recreation Facility change of use



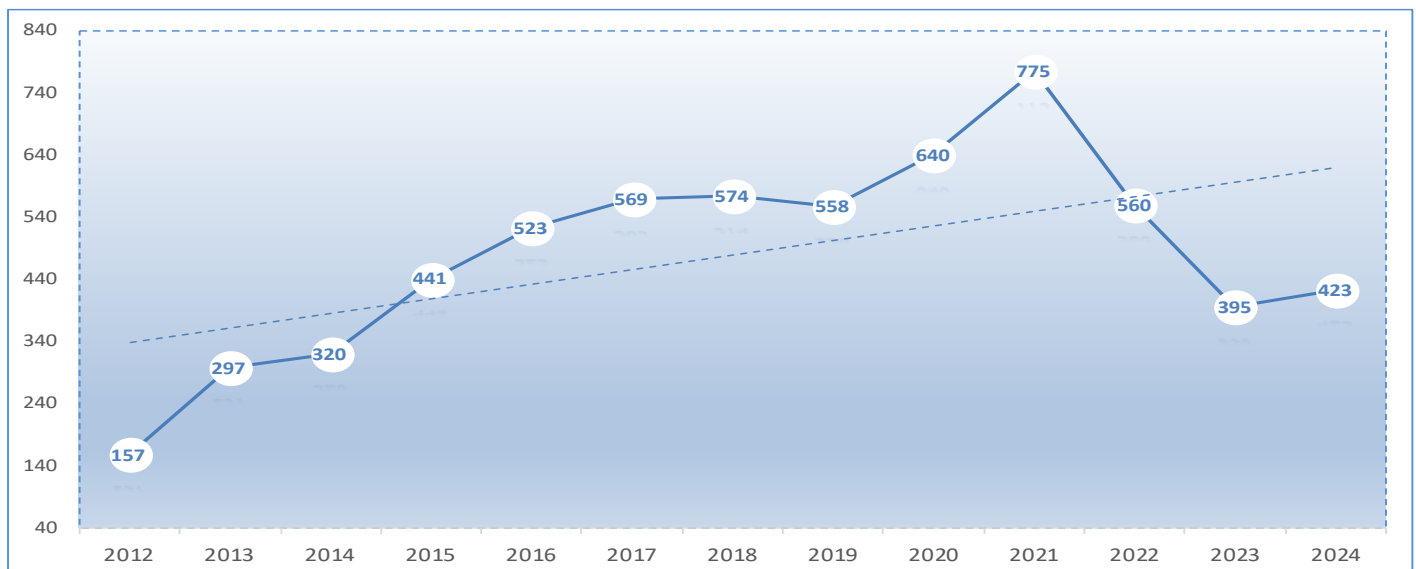
Building Safety

2024 Year in Review, continued

- ✓ Participated in SB 1013, RV's as residential dwelling discussions.
- ✓ Provided A-level commercial electrical and plumbing inspections for the City of Redmond.
- ✓ Participated in Central Oregon's International Code Council Chapter meetings.
- ✓ Created a Master Permit Program Policy for the cities of Sisters and La Pine for single-contractor subdivisions.
- ✓ Developed Commercial Permit Application Guides for webpage update.
- ✓ Participated on the Oregon Building Officials Association Board of Directors.
- ✓ Utilized iPad's for field inspectors to access electronically, codes and development plans.
- ✓ Ensured staff are fully certified residential inspectors.



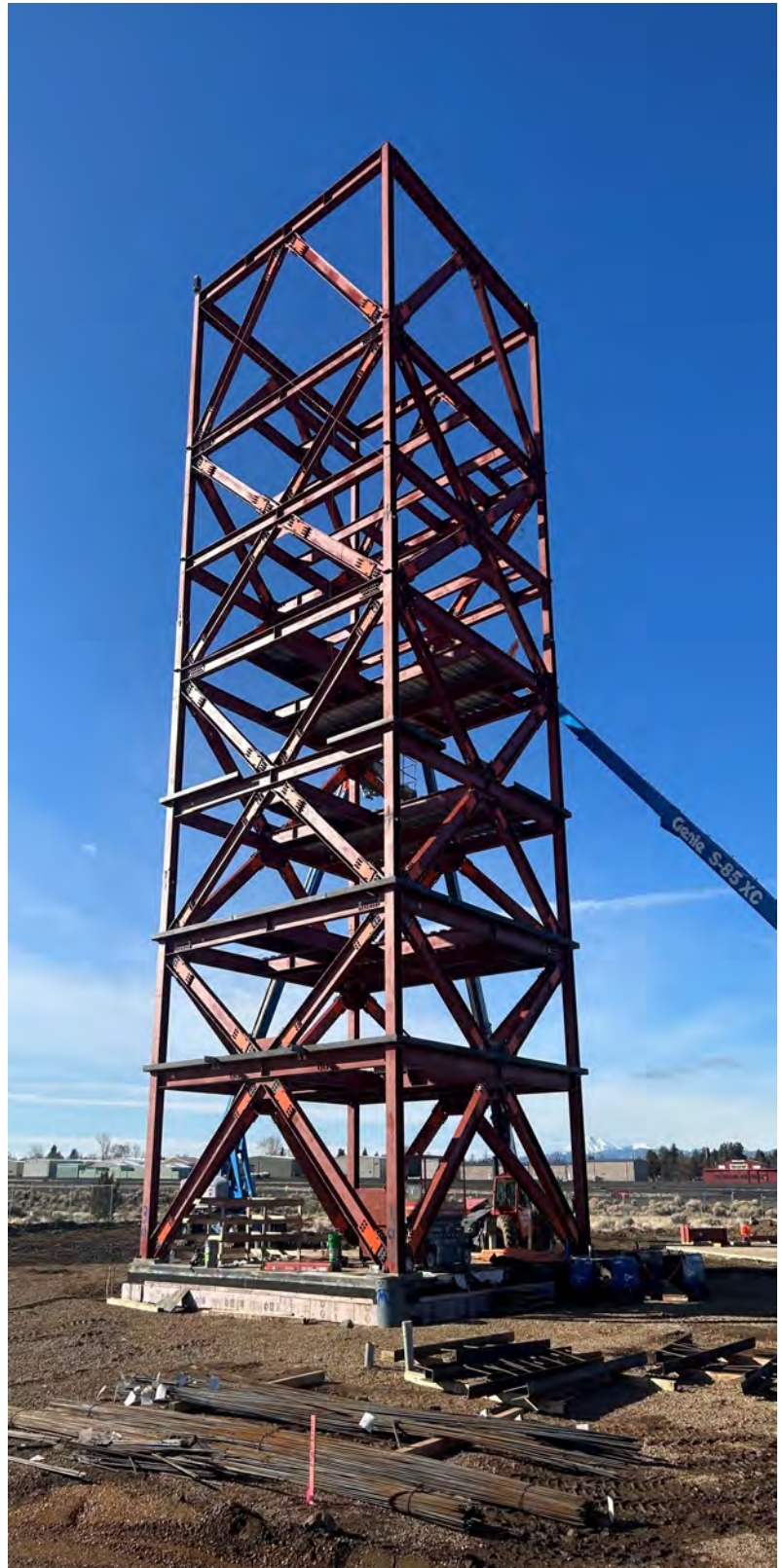
New Single Family Dwelling Permits Issued



Building Safety

FY 2025-26 Work Plan Projects

- Continue succession planning in anticipation of future retirements and explore staffing needs, such as obtaining additional certifications to enhance department efficiencies.
- Update informational brochures, handouts, and forms (e.g., accessory structures, special inspection agreement form, residential additional energy measure).
- Coordinate with the Human Resources Department to evaluate, propose and implement strategies to attract and retain staff to meet increasing service demands in a highly competitive market. Explore options for monthly A-level certification stipends.
- Promote video inspections for difficult-to-access areas, such as underfloor areas that are covered.



Air Traffic Control Tower under construction, 2024, Bend Municipal Airport

Code Enforcement

Overview

Code Enforcement includes an Administrative Manager, four Code Enforcement Specialists, which includes one as Lead. They are supported by a Deschutes County Sheriff's Office (DCSO) deputy and CDD divisions. The division plays a critical role in maintaining public health and safety through code violation investigations related to land use, onsite wastewater systems, building, and solid waste codes. The division also collaborates with the cities of La Pine and Sisters for building code violations under the Building Safety program. The primary goal is to achieve voluntary compliance, with unresolved cases taken to Circuit Court, Justice Court or an Administrative Hearing. The program continues to refine its procedures, improving cost recovery through citations, and coordinating county abatement plans for chronic nuisances and public health issues.

2024 Year in Review

- ✓ Received 651 new cases and resolved 563 during the year.
- ✓ Created a Code Enforcement Specialist II classification to promote career advancement and staff retention.
- ✓ Analyzed the Code Enforcement program and revised procedures to improve case assignment, management, and proceedings.
- ✓ Partnered with county departments to resolve difficult cases, ensuring efficient operations and avoiding overlapping efforts.
- ✓ Utilized the designated DCSO deputy for site visits for enforcement and safety measures.
- ✓ Presented code enforcement statistics at the annual Cannabis Advisory Committee meeting to demonstrate its partnership with the DCSO.
- ✓ Updated its webpage to include frequently asked questions.
- ✓ Updated the Code Enforcement Policy and Procedures Manual.
- ✓ Revised the new hire training program.
- ✓ Processed one Noxious Weed complaint compared to seven in 2023.
- ✓ Completed two property abatements to ensure public health and safety of the community.
- ✓ Revised online compliant submittal process to include ability to attach photos, geographic information system (GIS) data, and communication to improve efficiency and record keeping.
- ✓ Eliminated onsite wastewater O&M reporting delinquencies as an enforceable code violation.
- ✓ Created performance measure for case adjudication.
- ✓ Improved workflows to track medical hardship temporary use permits and property abatements.
- ✓ Enhanced internal dashboard reporting.

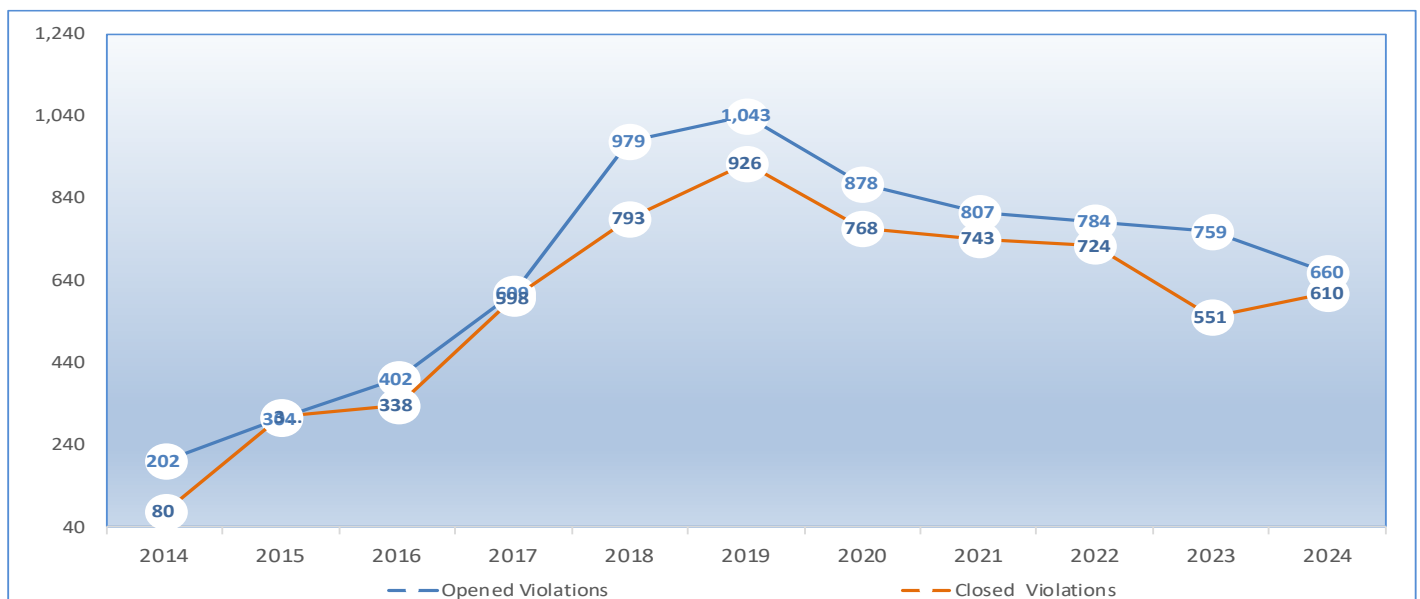
Code Enforcement

FY 2025-26 Work Plan Projects

- Improve methods of communication with complainants regarding case status and case closure.
- Improve public education through webpage updates and public education opportunities.
- Update the Policy and Procedures Manual to include the property abatement process.
- Amend DCC 15.04 Dangerous Building Abatement, if needed.
- Coordinate with the Human Resources Department to evaluate, propose and implement strategies to attract and retain staff to meet service demands in a highly competitive market.
- Amend DCC 1.16 Abatement language to include appeal processes.
- Issue a Request for Proposal (RFP) for property abatement professional services.



Annual Cases Opened and Closed



Code Enforcement

Before compliance:

Abandoned Marijuana Grow



After compliance:



Coordinated Services

Overview

Coordinated Services includes an Administrative Manager, Administrative Supervisor, three Permit Technician II's, one as Lead, and four Permit Technician I's. This division provides permitting and front-line direct services to customers. It ensures accurate information, minimal wait times, and efficient operation of the front counter and online services while coordinating with all divisions.

2024 Year in Review

- ✓ Managed 30,600 permit notifications, responded to 11,000 emails and 5,800 telephone calls, and facilitated 4,600 in-person interactions.
- ✓ Staff provided exceptional customer service to in-person customers as well as virtually through the Accela online portal.
- ✓ Reinstated a Lead Permit Technician to facilitate staff trainings and manage complex workload demands.
- ✓ Participated in webpage updates.
- ✓ Improved processes to create efficiencies and address staffing shortages.
- ✓ Developed a review process for transient room tax applications, ensuring compliance with zoning and building requirements.



FY 2025-26 Work Plan Projects

- Revise the decommissioning plan process and procedure, and create a new record type to track completion.
- Revise internal process and procedure for legitimizing unpermitted structures.
- Develop a list of commonly required inspections by project type to assist customers with scheduling inspections.
- Coordinate with the Road Department to enhance driveway access permit processes.

Onsite Wastewater

Overview

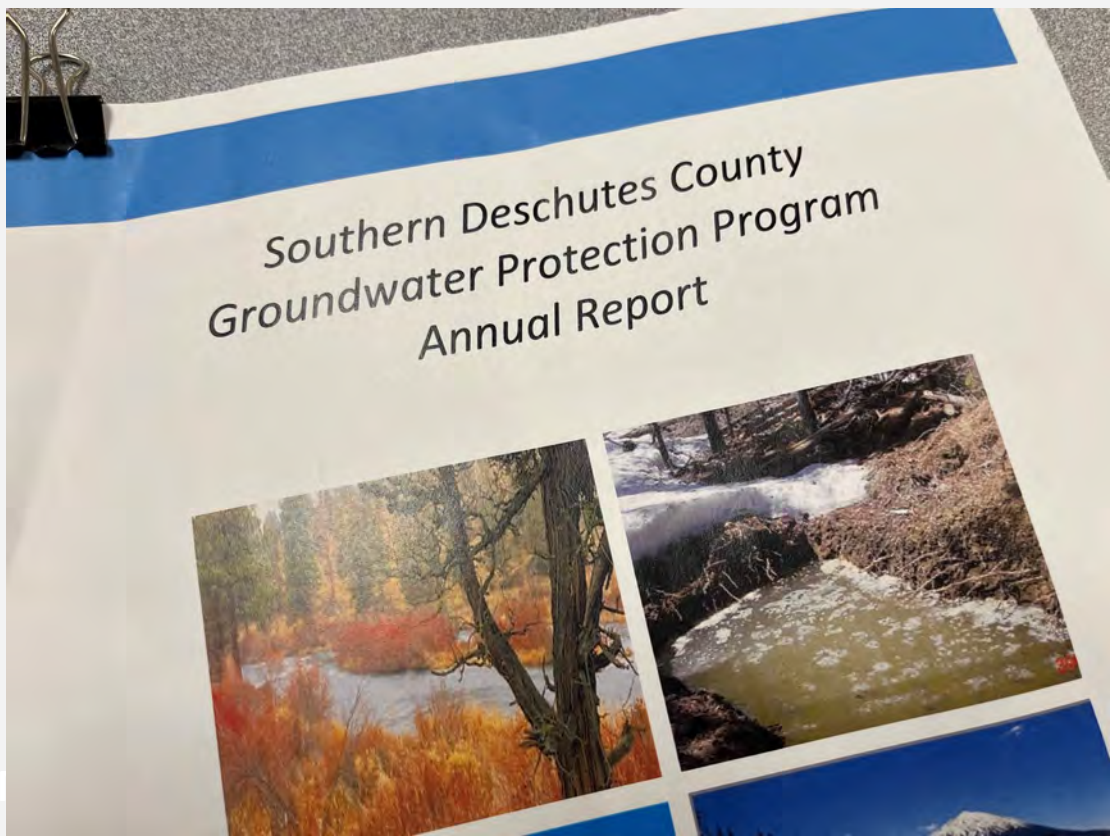
Onsite Wastewater includes an Onsite Wastewater Manager, Onsite Wastewater Specialist III, and two Onsite Wastewater Specialists II's. The division regulates septic systems to ensure state compliance and environmental factors for public health and resource protection. They provide site evaluations, design reviews, permitting, inspections, technical assistance, and coordination with the Oregon Department of Environmental Quality (DEQ). Staff inspect sewage pumper trucks, report on existing wastewater systems, maintain an operation and maintenance (O&M) tracking system, provide public information on wastewater regulations, and investigate sewage hazards. They also work proactively to protect groundwater, collaborating with DEQ on permitting systems in southern Deschutes County.



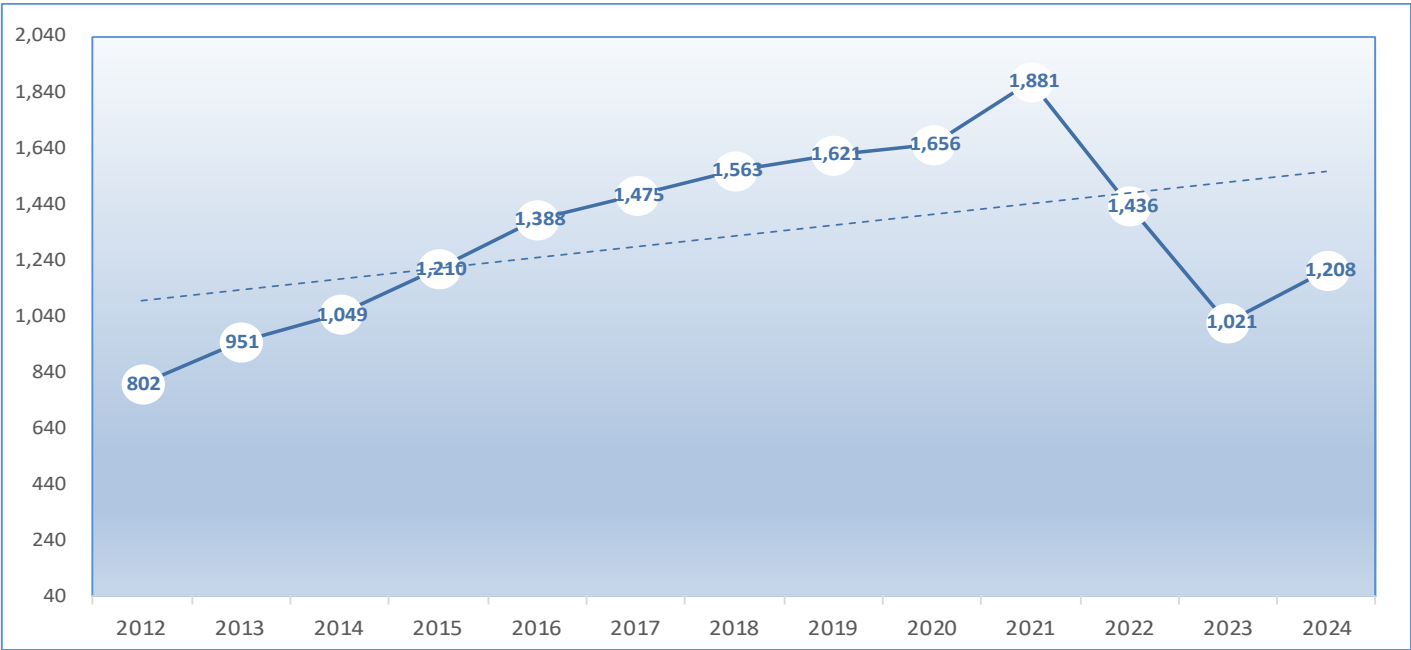
2024 Year in Review

- ✓ Assessed 184 sites for onsite wastewater treatment and dispersal systems, and issued 723 permits and authorizations for new and existing onsite treatment and dispersal systems. Applications continued to increase in their complexity and technical requirements.
- ✓ Repaired 240 failing or substandard systems, correcting sewage health hazards and protecting public health and the environment.
- ✓ Provided 21 property owners in South County with rebates of \$3,750 per property for upgrading conventional onsite wastewater treatment systems to nitrogen-reducing pollution reduction systems.
- ✓ Provided technical assistance to Terrebonne Sanitary District.
- ✓ Monitored over 1,800 septic system maintenance contracts and annual reports for O&M requirements.
- ✓ Worked with DEQ on permitting protective onsite wastewater systems in South County. Participated in several variance hearings for modified advanced treatment systems on severely limited sites.
- ✓ Supported and provided technical assistance for Central Oregon Intergovernmental Council (COIC) in reviewing applications for DEQ Onsite Financial Aid Program. The COIC program has assisted dozens of property owners needing septic system repairs.
- ✓ Updated webpage to enhance community information and guidance.
- ✓ Improved O&M processes to enhance efficiencies, simplify annual billing, and increase accuracy.

Onsite Wastewater



Onsite Permits Issued



Onsite Wastewater

FY 2025-26 Work Plan Projects

- Collaborate with DEQ on planning and funding regular well sampling events to monitor changes in water quality in South County.
- Participate in the Upper Deschutes Agricultural Water Quality Management Area Local Advisory Committee.
- Participate in the Oregon DEQ Rule Advisory Committee (RAC) for proposed rule revisions.
- Support and train for newly approved ATT systems that demonstrate nitrogen reducing ability.
- Continue offering financial assistance opportunities to South County property owners to upgrade conventional systems to nitrogen-reducing pollution reduction systems through Nitrogen-Reducing System Rebates and the NeighborImpact Non-conforming Loan Program.
- Review groundwater protection policies for South County and continue reviewing variance applications in high risk areas with DEQ onsite staff to ensure water resources are protected.
- Prepare for the sale of County properties within the Newberry Neighborhood in La Pine and manage funds in the Groundwater Protection Fund. Review ongoing financial assistance, explore new opportunities and potential creation of a financial advisory committee.
- Provide technical assistance support for the Terrebonne Sanitary District and Tumalo Basin Sewer District.
- Coordinate with the Planning Division regarding land use applications and code amendments that impact onsite wastewater processes.
- Coordinate with CDD Divisions to implement SB 1013, RV's as rental dwellings.
- Update webpage for groundwater protection information.
- Improve the O&M program by for service providers to upload annual reports. Coordinate with DEQ on statewide O&M improvements.
- Participate in the O&M software system upgrade to enhance tracking capabilities and streamline processes.
- Develop plans with DEQ and BOCC to address nitrate pollution in South County.
- Provide guidance to the public and during pre-application meetings for Accessory Dwelling Unit projects.
- Support staff in obtaining Professional Soils Scientist Certification to strengthen technical skills and the division.
- Coordinate with the Human Resources Department to evaluate, propose and implement strategies to attract and retain staff to meet service demands.

Planning

Overview

Planning includes a Planning Director, Planning Manager, two Principal Planners, two Senior Planners, three Senior Long Range Planners, one Senior Transportation Planner, two Associate Planners, and one Assistant Planner. The division consists of two areas: Current Planning, which processes land use applications and provides public information, and Long Range Planning, which updates the comprehensive plan, county code, and handles special projects.

Current Planning

Reviews land use applications for compliance with Deschutes County Code (DCC) and state law, including zoning, subdivision, and development regulations, and facilitating public hearings. Staff verify compliance for building permit and septic applications; coordinate with Code Enforcement on complaints and permit conditions; perform road naming duties; provide assistance at the counter, by phone, and via email.

Long Range Planning

Conducts long-range planning including land use policy with the BOCC, Planning Commission, community, and partner organizations. Updates the Comprehensive Plan and zoning regulations, coordinates regional planning projects, including population forecasts with Portland State University and cities, monitors legislative sessions, and serves on local, regional, and statewide committees focused on transportation, natural resources, growth management, and economic development.

Transportation Planning

Provides comments and expertise on land use applications and calculates System Development Charges (SDC); advises on traffic issues for permitted events; participates in the County Capital Improvement process; applies for grants for bicycle and pedestrian facilities; coordinates with the Bicycle and Pedestrian Advisory Committee (BPAC); participates in Oregon Department of Transportation (ODOT) refinement planning; coordinates road issues with Bureau of Land Management (BLM) and the United States Forest Service (USFS); and serves on local and regional transportation committees, including BPAC, the Bend Metropolitan Planning Organization Technical Advisory Committee (TAC), and Central Oregon Area Commission on Transportation TAC.

Floodplain & Wetlands Planning

Provides expertise on land use applications, code enforcement, and property inquiries in floodplain and wetland areas. Staff, certified as Floodplain Managers, offers up-to-date information on Federal Emergency Management Agency (FEMA) regulations, surveying, and construction requirements. Coordination is often needed with FEMA, US Army Corps of Engineers, Oregon Department of State Lands (DSL), Oregon Department of Fish and Wildlife (ODFW), and USFS.

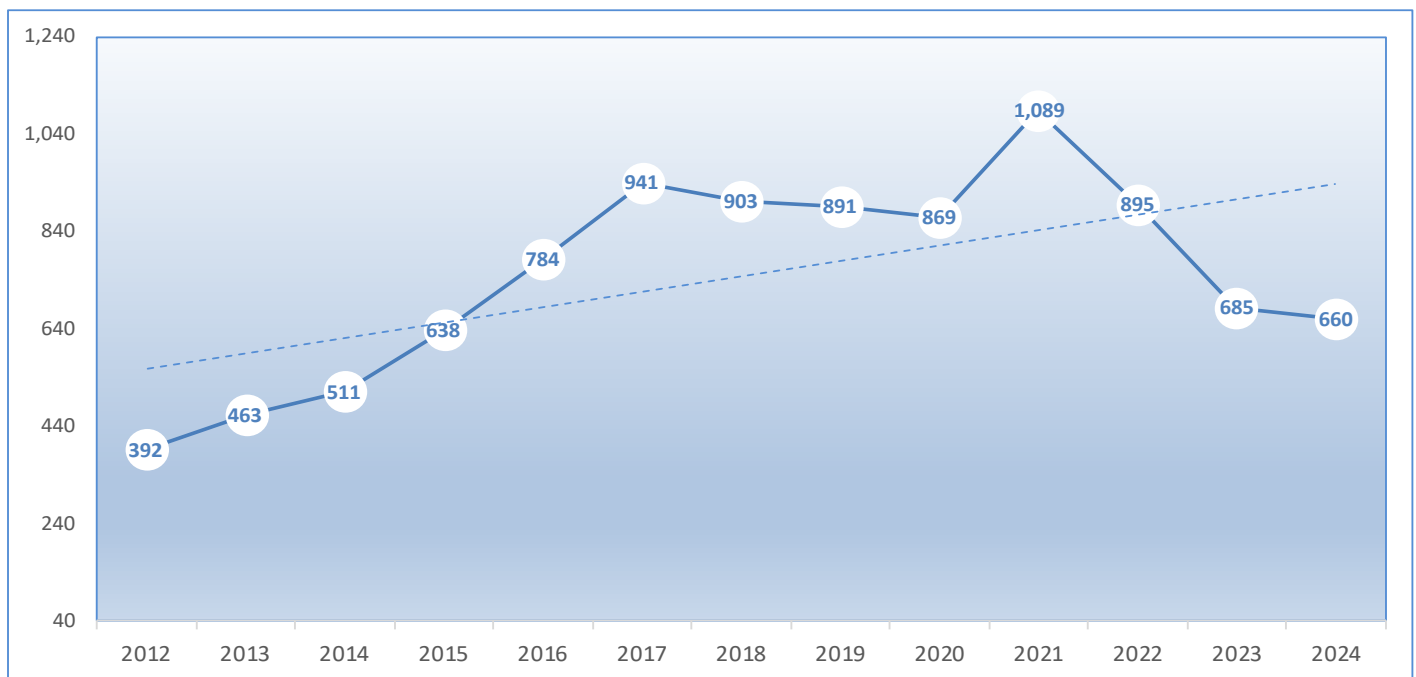


Planning

2024 Year in Review

- ✓ Counter coverage averaged 205 customer visits a month compared to 188 in 2023.
- ✓ Received 660 land use applications compared to 685 in 2023, a decrease of 3.6% from prior year.
- ✓ The Planning Division received one non-farm dwelling application compared with seven in 2023.
- ✓ Seven final plats were recorded in 2024 or are in the process of being recorded, creating a total of 13 residential lots or parcels.

Land Use Applications Received



Planning

2024 Year in Review, continued

Thirteen land use projects, encompassing 26 land use applications, were reviewed by Hearings Officers compared to 23 in 2023. They include:

- ✓ Plan Amendment/Zone Change from Exclusive Farm Use to Non-Resource Zoning (5)
- ✓ Plan Amendment/Zone Change from Exclusive Farm Use to Rural Industrial Zoning (1)
- ✓ Farm Dwelling (1)
- ✓ Non-Farm Dwelling (4)
- ✓ Psilocybin Manufacturing and/or Service Center (2)

The BOCC conducted 8 quasi-judicial land use hearings or proceedings compared to 23 during 2023.

- ✓ Appeals declined for review by the BOCC (4)
- ✓ Improvement Agreements (1)
- ✓ Psilocybin Service Center (1)
- ✓ Commercial Activity in Conjunction with Farm Use for a Winery (1)
- ✓ Plan Amendment Zone Changes from Exclusive Farm Use to Non-Resource Zones (3)
- ✓ Plan Amendment Zone Changes from Surface Mining to Non-Resource Zones (1)
- ✓ Plan Amendment Zone Changes from Exclusive Farm Use to Rural Industrial (1)

Seven appeals were filed with the Land Use Board of Appeals compared to 6 in 2023:

- ✓ ODOT Lava Butte Trail Declaratory Ruling
- ✓ Grossman Non-Farm Dwellings (3 files/appeals)
- ✓ Psilocybin Service Center
- ✓ Comprehensive Plan Update
- ✓ 710 Properties / Plan Amendment Zone Change (Remand)



Planning

2024 Year in Review, continued

Legislative Amendments

The BOCC adopted:

- ✓ 2024 Housekeeping Amendments—Incorporated updates from rulemaking at the state level through amendments to Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR), and minor revisions to Deschutes County Code.
- ✓ Wildfire Hazard Building Code Amendment—Corrected terminology that would have required wildfire hardening building codes for all properties located in the Deschutes County Wildfire Hazard Zone. This amendment was required based on adoption of new state standards to the Oregon Residential Specialty Code.
- ✓ Bend Airport Air Traffic Control Tower Amendments—Updates allowed for the establishment of an air traffic control tower as an outright permitted use with a maximum height of 115 feet.
- ✓ Two applicant-initiated text amendments related to mini-storage in the Multiple Use Agricultural zone were processed but ultimately not adopted by the BOCC following the public hearing process.



Deschutes 2020-2040 Transportation System Plan (TSP) Update

The TSP, adopted in February 2024, produced a list of prioritized transportation projects, updated goals and policies, changes to functional classifications of selected county roads, improved bicycle and pedestrian facilities, increased transit stops in unincorporated communities, and overall improvement to the county's transportation system.

Deschutes 2040 Comprehensive Plan Update

Planning staff began updating the Comprehensive Plan in 2022. Following an extensive community outreach process, the project was completed in October 2024. Notable accomplishments include:

- ✓ Met with the Planning Commission three (3) times to deliberate and compile recommended edits to the draft document.
- ✓ Held four (4) public hearings before the BOCC in Bend, Sunriver, and Sisters.
- ✓ Held five (5) deliberation meetings with the BOCC to review public input and potential changes to the final document.
- ✓ The document was officially adopted on October 2, 2024 but was subsequently appealed to the Land Use Board of Appeals.
- ✓ An action plan to implement the Comprehensive Plan is under development. This document will provide short and long-term actions to inform the department's annual work plan.

Planning

2024 Year in Review, continued

Grants

Certified Local Government (CLG) Grant

Planning staff administered an 18-month \$5,500 CLG Grant from the State Historic Preservation Office (SHPO) to assist Deschutes County with its historic preservation programs. This grant cycle concluded in August 2024.

Housing Planning Assistance Grant

In 2023, the Oregon Department of Land, Conservation and Development (DLCD) awarded the department a consultant contract through its Planning Assistance Grant program. The consultant, hired by DLCD, is aiding staff in its clear and objective code update project.



Coordination with Other Jurisdictions, Agencies and Committees

Bicycle and Pedestrian Advisory Committee (BPAC)

BPAC met 12 times, commenting on regional Transportation System Plan updates, trail connections between cities and recreation areas, bicycle and pedestrian safety issues and ODOT projects, among others. The committee underwent several personnel changes, including resignation of its longtime chair and election of a new chair and vice chair.

Oregon Department of Transportation (ODOT)

Participated in Baker Road-Lava Butte Multi-use Path and Lava Butte-La Pine Multi-use Path TAC; Baker Road Interchange Area Management Plan TAC; quarterly meetings with ODOT, Road Department, and cities of Bend and Redmond to review traffic modeling needs; stakeholder committee for ODOT study on wildlife passages for US Hwy 20 between Bend and Santiam Pass; Transportation Planning and Analysis traffic modeling discussion; US Hwy 97 Safety Study coordination; and US Hwy 20 (Greenwood Ave.) 3rd Street / Powell Butte Hwy Refinement Plan.

Deschutes River Mitigation and Enhancement Committee

Convened two Deschutes River Mitigation and Enhancement Committee meetings to adopt a work plan, budget for mitigation funds, and receive updates from ODFW and COIC and other key agency and nonprofit partners. In June, the group held a "monitoring-palooza" event to share information on monitoring efforts in the basin.

Newberry Regional Partnership

Coordinated with public and private citizens in developing a community vision for southern Deschutes County.

2024 Year in Review, continued

Coordination with Other Jurisdictions, Agencies and Committees

City of Bend—Coordinated with City staff regarding:

- ✓ Bend Airport Master Plan Update
- ✓ Bend Airport Control Tower Text Amendment
- ✓ Bend Urban Growth Boundary (UGB) Amendment / House Bill (HB) 4079 / Affordable Housing Project
- ✓ Long-term Planning for the Outback Water Filtration Facility
- ✓ Bend Metropolitan Planning Organization TAC
- ✓ Bend UGB Amendment / HB 3318 / Stevens Road Tract
- ✓ Applicant-initiated text amendments related to mini-storage in the MUA-10 zone (2) within 2,500 feet of Bend's UGB.

City of La Pine—Coordinated with City staff regarding:

- ✓ Land use applications for effects on county road system.
- ✓ La Pine 2045 Comprehensive Plan Update
- ✓ Newberry Neighborhood comprehensive plan designations, master plan and implementing regulation.

City of Redmond—Coordinated with City staff regarding:

- ✓ CORE3—Plan amendment Zone Change and UGB Amendment for a dedicated, multi-agency coordination center for emergency operations and training led by COIC.
- ✓ Redmond Wetlands Complex—Relocation and expansion of wastewater treatment plant.
- ✓ Update Airport Safety Zone associated with the Redmond Airport Master Plan Update.

City of Sisters—Coordinated with City staff regarding:

- ✓ Participation in the implementation of Sisters Country Vision Plan and Sisters Comprehensive Plan.
- ✓ Participation in the City's UGB expansion process.

Deschutes County

- ✓ Provided updates to BOCC regarding Senate Bill (SB) 391 Rural ADUs, SB 762 Wildfire Mitigation, wildlife inventories produced by ODFW, Portland State University population updates, short-term rentals, Tumalo Community Plan (TCP) update and dark skies project.

Oregon Department of Forestry (ODF)

- ✓ Coordinated with ODF and the Office of the State Fire Marshall on the release of the State Wildfire Hazard Map as outlined in SB 762 and SB 80.

Bend Parks and Recreation District (BPRD)

- ✓ Coordinated with BPRD on mid-term update to district's Comprehensive Plan and Park Search Map.

Planning

FY 2025-26 Work Plan Projects

Development Review

- Respond to phone and email customer inquiries within 48 to 72 hours.
- Conduct pre-application meetings and respond to customer inquiries (counter, phones, and emails).
- Issue all administrative (staff) decisions for land use actions that do not require prior notice within 21 days of determination of a complete application.
- Issue all administrative (staff) decisions for land use actions requiring prior notice within 45 days of determination of a complete application.
- Process Hearings Officer decisions for land use actions and potential appeals to the BOCC within 150 days per State law.
- Improve webpage accessibility to the public to view records associated with complex land use applications.
- Coordinate with the Human Resources Department to evaluate, propose and implement strategies to attract and retain staff to meet service demands in a highly competitive market.



Natural Resources

- Groundwater Protection —Support efforts by DEQ and Onsite Wastewater Division to protect South County groundwater.
- Natural Hazards—Pending state legislative changes and updates to Fire Risk Mapping in 2025, develop a work plan to amend the Comprehensive Plan and County Code requiring defensible space and fire-resistant building materials per SB 762 and SB 80 (2021 and 2023, Wildfire Mitigation).
- Natural Hazards Mitigation Plan—Initiate recommended development code amendments.
- Sage-Grouse—Continue to participate as a cooperating agency with the Bureau of Land Management.
- Dark Skies Update—Revisit the county's existing outdoor lighting ordinance (DCC 15.10) and update regulations to reflect current best practices and technology. This process will guide future educational outreach materials designed to inform residents about dark skies best practices.

Planning

FY 2025-26 Work Plan Projects, continued

Comprehensive Plan Update

- Initiate update to Newberry Country Plan including outreach, technical coordination, collaboration with La Pine 2045 and Newberry Regional Partnership, and updates to plan goals, policies, and narrative.

Transportation Planning

- Process road naming requests associated with certain types of development on a semi-annual basis.
- Administer the County's Transportation SDC program.
- Coordinate with Bend MPO on regional projects and planning.
- Coordinate with ODOT on roadway projects and interchange area management plans.
- Coordinate internal review of Title 17 code amendments related to land divisions, road improvements, and transportation impacts to ensure compliance with HB 3197.
- Provide updated traffic data for the ongoing Newberry Country Plan update.

City of Bend Coordination

- Coordinate on growth management issues, including technical analyses related to housing and employment needs and SB 1537, Expedited UGB Amendment for affordable and workforce housing.
- Coordinate with BPRD for the development of park space in SE Bend.
- Coordinate on urbanization related code amendment projects.

City of La Pine Coordination

- Participate in La Pine 2045 Comprehensive Plan Update process.
- Coordinate campground feasibility analysis on County-owned properties within city limits.
- Coordinate transportation impacts and long-range planning for County-owned right-of-way facilities located within city limits.
- Participate with Deschutes County Property Management and City of La Pine to update and amend the county-owned Newberry Neighborhood comprehensive plan designations, master plan, and implementing regulations.

City of Redmond Coordination

- Coordinate implementation of their Comprehensive Plan Update.
- Update the Joint Management Agreement and Urban Holding zone lands per HB 3197.
- Coordinate planning efforts for McVey interchange on South Highway 97 to access Large Lot Industrial Lands through either a Goal Exception process or legislative equivalent.

City of Sisters Coordination

- Participate in the implementation of Sisters Country Vision Plan and their Comprehensive Plan and City of Sisters Comprehensive Plan Update.
- Participate in the UGB Expansion process.
- Coordinate on urbanization related code amendment projects.

Planning

FY 2025-26 Work Plan Projects, continued

DLCD Rulemaking

- Monitor rulemaking and update Deschutes County Code as it pertains to Goal 5—Cultural Areas, Farm, and Forest Conservation Program Improvements, and Eastern Oregon Solar Siting.
- If required, initiate legislative amendments to the Comprehensive Plan and zoning code.

Growth Management Committees

- Coordinate and/or participate on Deschutes County BPAC, Project Wildfire, and Deschutes River Mitigation and Enhancement Committee.

Historic Preservation—CLG Grant

- Administer 2025-26 CLG Grant from SHPO.

Housekeeping Amendments

- Initiate housekeeping amendments to ensure county code complies with state law.

Housing Strategies

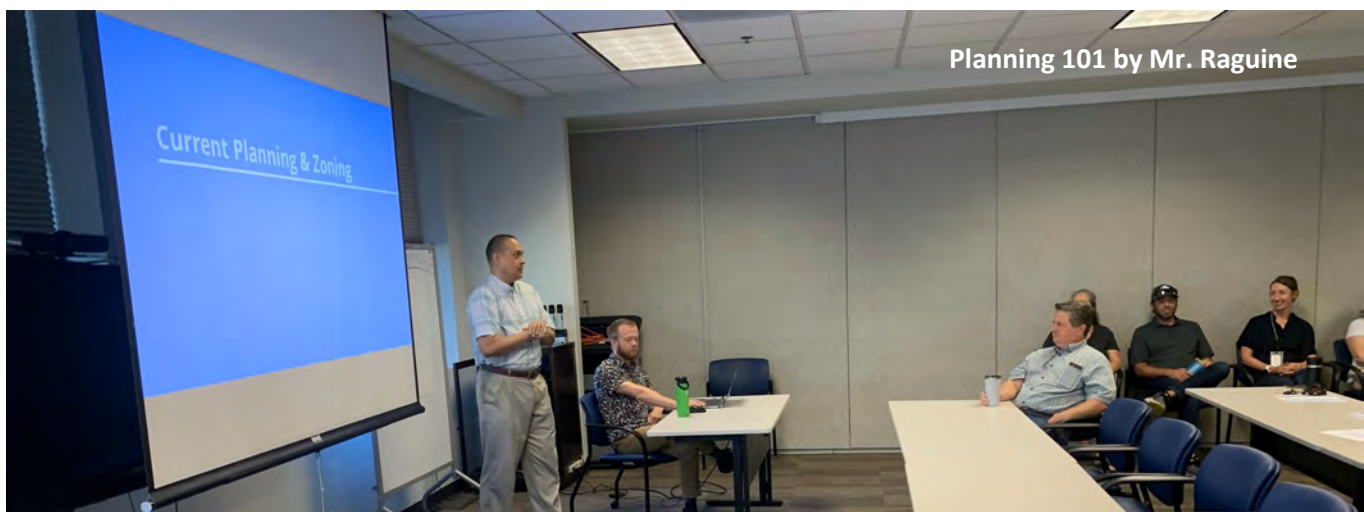
- Amend county code to define family for unrelated persons per HB 2538 (Non-familial Individuals).
- Explore options and approaches to address rural housing and homelessness as allowed under state law.

Legislative Session (2025-26)

- Participate in legislative or rulemaking to shape state laws that benefit Deschutes County.

Planning Commission Coordination

- Coordinate with the BOCC to establish strategic directions for the Planning Commission.



Planning 101 by Mr. Ragune

FY 2025-26 Work Plan Projects, continued

Zoning Text Amendments

- Allow “self-serve” farm stands in Rural Residential Exception Areas.
- Comply with House Bill 3109 (2021) pertaining to establishment of childcare facilities in Industrial Zones.
- Define family for unrelated persons per HB 2538 (Non-familial Individuals).
- Forest Zone Code—Review for compliance with Oregon Administrative Rules.
- Lot Line Adjustments and Re-platting.
- Medical Hardship Dwellings—review for consistency with state law (in progress).
- Minor variance 10% lot area rule for Farm and Forest zoned properties.
- Outdoor Mass Gatherings update.
- Section 6409(a) of the Spectrum Act (Wireless Telecommunication Amendments).
- Sign code for consistency with federal law.
- Title 19, 20, 21—Language related to Class I, II, and III road projects as allowed uses.
- Title 22—Procedures Ordinance for consistency with state law and planning department interpretations.
- Wetland regulation clarification for Irrigation or Artificially Created Wetlands.



Community Involvement Report

2024

Statewide Planning Goal 1, Citizen Involvement, requires cities and counties to create a citizen involvement program that provides opportunities for community participation in land use planning processes and decisions.

Land use legislation, policies, and implementation measures made by Oregonians nearly 50 years ago helped shape Oregon's urban and rural environments. Likewise, choices made today will ultimately shape these areas in the future. Successful land use planning occurs through an open and public process that provides room for information gathering, analysis, and vigorous debate. Deschutes County's Community Involvement program is defined in Section 1.2 of the Comprehensive Plan.

This chapter identifies the County Planning Commission as the committee for citizen involvement. It also contains the County's Community Involvement goal and corresponding five policies that comply with Goal 1. This report briefly discusses the noteworthy community involvement actions undertaken by the Planning Division in 2024. The report is intended to provide county residents and stakeholders with a tool to assess its effectiveness and offer additional suggestions the County can utilize to ensure that its diverse communities remain actively involved in land use planning discussions.



Community Involvement Report

2024 Year in Review Planning Commission

Convened 16 times to consider:

- ✓ CDD FY 2024-25 Annual Report & Work Plan
- ✓ Clear and Objective Housing Code Updates
- ✓ Dark Skies
- ✓ Deschutes County 2040 Comprehensive Plan Update
- ✓ EPA Community Change Grant Application
- ✓ FEMA Biological Opinion and Pre-Implementation Compliance Measures
- ✓ Housekeeping Amendments
- ✓ Mini-storage Amendment in the MUA-10 zone (2)
- ✓ Rural Housing Profile
- ✓ RV's as Rental Dwellings
- ✓ Sage Grouse Amendment Update
- ✓ Statewide Wildfire Hazard Mapping and Rules

Historic Landmarks Commission (HLC)

Convened 3 times to consider:

- ✓ CDD FY 2024-25 Annual Report & Work Plan
- ✓ City of Sisters Wildfire Resilience Historic Building Hardening Report
- ✓ CLG Grant Projects
- ✓ DLCD Goal 5 Cultural Areas Rulemaking
- ✓ Formation of Commission Subcommittees Regional Coordination
- ✓ Joint HLC and BOCC Meeting
- ✓ New Commissioner Orientation
- ✓ SHPO Introduction
- ✓ Updates from Bend and Redmond Historic Landmarks Commission

