



BOARD OF COMMISSIONERS

BOARD OF COUNTY COMMISSIONERS MEETING

9:00 AM, WEDNESDAY, JANUARY 28, 2026

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.

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. Time is limited to 3 minutes.

Citizen Input is not available for matters that are presently scheduled for a public hearing, or for matters that are anticipated or likely to come before the Commission at a future public hearing.

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.

COMMISSIONER ANNOUNCEMENTS

CONSENT AGENDA

1. Approval of Document No. 2026-0030, an amendment to an interlocal agreement with the Oregon Health Authority providing funding for Community and Residential Assistance
2. Approval of updates to HR-6, Deschutes County Remote Work Policy; HR-12, Family Medical Leave Policy; and HR-13, Employee Leave Donation Policy
3. Approval of Resolution No. 2026-001 adopting a supplemental budget and increasing appropriations in the Sheriff's Office Fund
4. Consideration of Board Signature on letter appointing Mariann Deering for service on the Sun Mountain Ranches Special Road District Board

ACTION ITEMS

5. **9:10 AM** Public Hearing: Proposed amendment to Chapter 4.20 of County Code regarding real property conveyance recording fees
6. **9:15 AM** Second reading of Ordinance No. 2026-001 amending Chapter 2.08 of County Code
7. **9:20 AM** Healthy Schools Program Four-Year Outcome Evaluation Results

Convening as the Governing Body of the Black Butte Ranch Service District

8. 9:55 AM Consideration of Board approval for the Black Butte Ranch Police Service District 2025-2027 collective bargaining agreement

Reconvening as the Governing Body for Deschutes County

9. 10:05 AM Redmond Fire & Rescue Proposed Contract with Alfalfa Fire District

10. 10:20 AM Public Hearing: Destiny Court PA/ZC remand hearing

11. 11:20 AM Consideration of second reading and adoption by emergency of Ordinance No. 2026-002: Text Amendments for Wildfire Mitigation Building Codes

12. 11:25 AM Second reading of Ordinance 2026-004 – BCL LLC Plan Amendment / Zone Change

13. 11:30 AM Request to Apply for 2026 Grant Funds for the Deschutes County Wolf Depredation and Financial Compensation Committee

14. 11:50 AM 2025 Annual Report for the Prescribed Fire, Smoke and Public Health Community Response Plan

LUNCH RECESS

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.

15. **1:00 PM** Executive Session under ORS 192.660 (2) (d) Labor Negotiations

ADJOURN



Deschutes County encourages persons with disabilities to participate in all programs and activities. This meeting/event is accessible. Accommodations including sign and other language interpreter services, assistive listening devices, materials in alternate formats such as Braille, large print, electronic formats, or language translations are available upon advance request at no cost. Please make a request at least 24 hours in advance of the meeting/event by calling Brenda Fritsvold at (541) 388-6572 or send an email to brenda.fritsvold@deschutes.org.



El condado de Deschutes anima a las personas con discapacidad a participar en todos los programas y actividades. Esta reunión/evento es accesible. Hay disponibles servicios de intérprete de lengua de señas y de otros idiomas, dispositivos de escucha asistida, materiales en formatos alternativos como braille, letra grande, formatos electrónicos, traducciones o cualquier otra adaptación, con solicitud previa y sin ningún costo. Haga su solicitud al menos 24 horas antes de la reunión/el evento llamando a Brenda Fritsvold al (541) 388-6572 o envíe un correo electrónico a brenda.fritsvold@deschutes.org.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 28, 2026

SUBJECT: Approval of Document No. 2026-0030, an amendment to an interlocal agreement with the Oregon Health Authority providing funding for Community and Residential Assistance

RECOMMENDED MOTION:

Move approval of Document No. 2026-0030, an amendment to an interlocal agreement with the Oregon Health Authority providing funding for Community and Residential Assistance.

BACKGROUND AND POLICY IMPLICATIONS:

Oregon Health Authority (OHA) Intergovernmental Agreement (IGA) 44300-00026008, approved by the Board of County Commissioners (BOCC) in February 2024, outlined the services, reporting requirements and funding for Community Mental Health, Addiction Treatment, Recovery and Prevention, and Problem Gambling Services for Deschutes County. The agreement originally covered the period from January 1, 2024, to June 30, 2025. Amendment 44300-00026008-17, approved by the Board of County Commissioners September 24, 2025, extended the term and funding for most service elements (SEs) to December 31, 2025.

Deschutes County Health Services is requesting approval of another amendment to accept an additional \$87,254 of funding for service element (SE) 17, Non-OHP Community and Residential Assistance, to cover the increase in invoiceable services for the period July 1, 2025, through December 31, 2025. SE 17 funds are used to pay for services such as transportation, interpreter services, medical services, and rental assistance within certain service elements.

BUDGET IMPACTS:

\$87,254 revenue for the period July 1, 2025 through December 31, 2025. If approved by the Board, a resolution will follow to formalize the changes to the FY 2026 budget.

ATTENDANCE:

Evan Namkung, Behavioral Health Program Manager

In compliance with the Americans with Disabilities Act, this document is available in alternate formats such as Braille, large print, audio recordings, Web-based communications, and other electronic formats. To request an alternate format, please send an e-mail to dhs-oha.publicationrequest@odhsoha.oregon.gov or call 503-378-3486 (voice) or 503-378-3523 (TTY) to arrange for the alternative format.

AGREEMENT # PO-44300-00026008

**NINETEENTH AMENDMENT TO
OREGON HEALTH AUTHORITY
2024-2025 INTERGOVERNMENTAL AGREEMENT
FOR THE FINANCING OF COMMUNITY MENTAL HEALTH, ADDICTION TREATMENT,
RECOVERY, & PREVENTION, AND PROBLEM GAMBLING SERVICES**

This **Nineteenth** Amendment to Oregon Health Authority 2024-2025 Intergovernmental Agreement for the Financing of Community Mental Health, Addiction Treatment, Recovery, & Prevention, and Problem Gambling Services effective as of January 1, 2024 (as amended, the “Agreement”), is entered into, as of the date of the last signature hereto, by and between the State of Oregon acting by and through its Oregon Health Authority (“OHA”) and **Deschutes County** (“County”).

RECITALS

WHEREAS, OHA and County wish to modify the Financial Assistance Award set forth in Exhibit C of the Agreement.

NOW, THEREFORE, in consideration of the premises, covenants and agreements contained herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. The financial and service information in the Financial Assistance Award is hereby amended as described in Attachment 1 attached hereto and incorporated herein by this reference. Attachment 1 must be read in conjunction with the portion of Exhibit C of the Agreement that describes the effect of an amendment of the financial and service information.
2. Capitalized words and phrases used but not defined herein shall have the meanings ascribed thereto in the Agreement.
3. County represents and warrants to OHA that the representations and warranties of County set forth in section 4 of Exhibit F of the Agreement are true and correct on the date hereof with the same effect as if made on the date hereof.
4. Except as amended hereby, all terms and conditions of the Agreement remain in full force and effect.
5. This Amendment may be executed in any number of 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 this Amendment so executed shall constitute an original.

IN WITNESS WHEREOF, the parties hereto have executed this amendment as of the dates set forth below their respective signatures.

6. Signatures.

Deschutes County

By:

_____ Authorized Signature	Phil Chang _____ Printed Name	Chair, Board of County Commissioners _____ Title	_____ Date
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State of Oregon, acting by and through its Oregon Health Authority

By:

_____ Authorized Signature	_____ Printed Name	_____ Title	_____ Date
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Approved by: Director, OHA Health Systems Division

By:

_____ Authorized Signature	_____ Printed Name	_____ Title	_____ Date
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Approved for Legal Sufficiency:

Exempt per OAR 137-045-0050(2)

Oregon Department of Justice

Date

ATTACHMENT 1

EXHIBIT C
Financial Pages

MODIFICATION INPUT REVIEW REPORT

MOD#: M1315

CONTRACT#: 026008

CONTRACTOR: DESCHUTES COUNTY

INPUT CHECKED BY: _____

DATE CHECKED: _____

PROJ SE#	EFFECTIVE FUND	SLOT CODE	CHANGE/TYPE CPMS	RATE	OPERATING DOLLARS	STARTUP PART DOLLARS ABC	PART IV	PAAF CD	CLIENT CODE	SP#
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FISCAL YEAR: 2025-2026

BASE		INVOICE SERVICES									
17	804	INVOIC	7/1/2025 - 12/31/2025	0	/NA	\$0.00	\$87,254.29	\$0.00	C	1	Y
TOTAL FOR SE# 17											
TOTAL FOR 2025-2026											
TOTAL FOR M1315 026008 \$87,254.29 \$0.00											

OREGON HEALTH AUTHORITY
Financial Assistance Award Amendment (FAAA)CONTRACTOR: DESCHUTES COUNTY
DATE: 12/19/2025Contract#: 026008
REF#: 022

REASON FOR FAAA (for information only):

Non-OHP Community and Residential Assistance (MHS 17) funds have been awarded.

The following special condition(s) apply to funds as indicated by the special condition number in column 9. Each special condition set forth below may be qualified by a full description in the Financial Assistance Award.

M1315 1A) These funds are for MHS 17, which encompasses Invoice Services found in service elements 26, 27, 28, 30, 34 and 36 from 07/01/2025 to 12/31/2025 with Part C. B) For Services delivered to individuals, financial assistance awarded to County shall be disbursed to County and expended by County in accordance with and subject to the residential rate on the date of service delivery based upon the rate schedule found at www.oregon.gov/OHA/HSD/OHP/Pages/Fee-Schedule.aspx and incorporated into this Agreement by reference that is effective as of the effective date of this Agreement unless a new rate schedule is subsequently incorporated by amendment. Any expenditure by County in excess of the authorized rates as set forth www.oregon.gov/OHA/HSD/OHP/Pages/Fee-Schedule.aspx may be deemed unallowable and subject to recovery by OHA in accordance with the terms of this Agreement.

Certificate Of Completion

Envelope Id: 74492433-D1CC-4AB4-8C8E-62938A1907DC

Status: Sent

Subject: PO-44300-00026008-19 Deschutes County

Source Envelope:

Document Pages: 4

Signatures: 0

Envelope Originator:

Certificate Pages: 4

Initials: 0

Larry Briggs

AutoNav: Enabled

Larry.O.Briggs@odhsoha.oregon.gov

EnvelopeD Stamping: Enabled

IP Address: 209.112.107.133

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

Record Tracking

Status: Original

Holder: Larry Briggs

Location: DocuSign

1/8/2026 8:22:25 AM

Larry.O.Briggs@odhsoha.oregon.gov

Security Appliance Status: Connected

Pool: StateLocal

Storage Appliance Status: Connected

Pool: Carahsoft OBO Oregon Health Authority - CLM

Location: Docusign

Signer Events

Signature

Timestamp

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:

Not Offered via Docusign

Jon Collins

jon.c.collins@oha.oregon.gov

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:

Not Offered via Docusign

Ebony Clarke

ebony.s.clarke@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

Agent Delivery Events

Status

Timestamp

Grace Evans

grace.evans@deschutes.org

Contract Specialist

Deschutes County Health Services

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:

Accepted: 11/21/2024 11:44:53 AM

ID: 47b09fb-4364-48ad-8181-06540ee27d46

Sent: 1/8/2026 8:23:46 AM

Viewed: 1/9/2026 9:45:08 AM

Intermediary Delivery Events

Status

Timestamp

Certified Delivery Events

Status

Timestamp

Carbon Copy Events

Status

Timestamp

Carbon Copy Events	Status	Timestamp
marisha.elkins@oha.oregon.gov		
marisha.elkins@oha.oregon.gov		
Security Level: Email, Account Authentication (None)		
Electronic Record and Signature Disclosure:		
Not Offered via DocuSign		
Shawn Kintner		
shawn.Kintner@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	1/8/2026 8:23:46 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, Carahsoft OBO Oregon Health Authority - CLM (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 Carahsoft OBO Oregon Health Authority - CLM:

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: mick.j.kincaid@oha.oregon.gov

To advise Carahsoft OBO Oregon Health Authority - CLM 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 mick.j.kincaid@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 Carahsoft OBO Oregon Health Authority - CLM

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 mick.j.kincaid@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 Carahsoft OBO Oregon Health Authority - CLM

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 mick.j.kincaid@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 Carahsoft OBO Oregon Health Authority - CLM 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 Carahsoft OBO Oregon Health Authority - CLM during the course of your relationship with Carahsoft OBO Oregon Health Authority - CLM.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 28, 2026

SUBJECT: Approval of updates to HR-6, Deschutes County Remote Work Policy; HR-12, Family Medical Leave Policy; and HR-13, Employee Leave Donation Policy

RECOMMENDED MOTION:

Move approval of proposed changes to HR-6, Deschutes County Remote Work Policy; HR-12, Family Medical Leave Policy; and HR-13, Employee Leave Donation Policy.

BACKGROUND AND POLICY IMPLICATIONS:

On January 14th, staff presented proposed updates to three of the County's Human Resources (HR) policies, as follows:

- **HR-6, Deschutes County Remote Work Policy** – The Remote Work Policy provides guidelines for employees to work from approved sites other than their designated County locations, promoting flexible work options. Eligibility depends on job suitability and performance, with the policy detailing expectations for productivity, security, and the setup of a safe remote work environment. Staff is proposing updates to the policy that clarify expectations around remote work occurring outside of Central Oregon.
- **HR-12, Family Medical Leave Policy** - The Family and Medical Leave Policy allows Deschutes County employees to take leave for specific family and medical reasons, such as serious health conditions or to care for a new child, under FMLA, OFLA, and PLO, ensuring job protection and continuation of benefits. Staff is proposing administrative changes that align with updates in state and federal law and also improve clarity around existing processes.
- **HR-13, Employee Leave Donation Policy** – Deschutes County's Employee Leave Donation policy allows employees to donate vacation or compensatory time to colleagues who are out of leave due to OFLA/FMLA events, ensuring support during extended medical needs. Employees must have a minimum leave balance and donations are administered confidentially, with restrictions on solicitation and

maximum receipt limits. Staff is proposing the addition of new language that requires employees to exhaust all paid leave options before requesting leave donations.

BUDGET IMPACTS:

None.

ATTENDANCE:

Whitney Hale, Deputy County Administrator
Susan DeJode, Human Resources Director



Deschutes County Administrative Policy No. HR-6
Effective Date: November 1, 2025
Original Adoption: January 26, 2022
Updated: January X, 2026

REMOTE WORK POLICY

I. STATEMENT OF POLICY

Deschutes County is dedicated to its mission: Enhancing the lives of citizens by delivering quality services in a cost-effective manner. Deschutes County may implement its mission by allowing flexible work opportunities where appropriate.

Flexible work opportunities may include a variety of options, including remote work. This policy provides departments with a framework to implement remote work as a personnel management, recruitment and retention tool while ensuring employees performing remote work maintain or increase performance standards and service levels. Individual departments (upon the recommendation of the department head and the approval of the County Administrator) or offices of elected officials may opt out of this policy.

II. APPLICABILITY

This policy applies to all Deschutes County employees, who work remotely.

III. DEFINITIONS

1. Remote Work —is defined as a work flexibility arrangement under which an employee performs the duties and responsibilities of their position, and other authorized activities, from an approved worksite other than the location from which the employee would otherwise work.
 - a. Hybrid Work is— when an employee is performing work from both on-site and remotely from an approved worksite other than the regular assigned work location for the position.
 - b. Fully Remote Work is—when an employee is performing more than 75% of their work from an approved (non-County) worksite other than the regularly assigned work location for the position. If working under this category, the employee's primary work location becomes a non-County location.
2. Central Oregon is defined as Deschutes, Crook, Jefferson or Klamath County.

IV. ROLES AND RESPONSIBILITIES

Employees who work remotely are responsible for adhering to all expectations outlined below.

Supervisors are responsible for determining whether an employee is eligible to participate based on criteria outlined in this policy. Further, supervisors are responsible for implementing this policy consistently and with robust oversight and accountability, including monitoring remote work effectiveness and measuring performance.

V. LOCATION OF REMOTE WORK AND IMPACT ON COMMUTE/TRAVEL

For a fully remote employee, the employee's primary work location changes (and will likely be their residence). As a result, any regularly scheduled **remote work is only allowed if the employee's remote work location is in Central Oregon. (unless approved in advance by the County Administrator – see section 2 below).**

Unless otherwise approved in writing (e.g., due to departmental operational needs or a reasonable accommodation), the remote work location must allow the employee to report onsite within the time it ordinarily takes them to commute to their assigned worksite.

1. Remote work options from within Central Oregon:
 - a. Hybrid remote work - does not change the employee's assigned County work location. Travel time from the employee's remote work location to their assigned County location will be considered commute time and not compensated by the County.
 - b. Fully remote work – changes the employee's assigned work location. When business needs require the employee to work from or report to another location, the employee must be compensated for travel time in accordance with the Fair Labor Standards Act (FLSA). Generally, this means that travel time to and from their assigned work location as a part of their regular work duties is considered work time unless the travel is outside the employee's regular work schedule. Deschutes County will follow the State of Oregon [Travel Time & Mileage](#) guidelines. Travel time during regularly scheduled work hours is considered work time and may also include mileage reimbursement (or the use of a County vehicle). Therefore, when required to come into the County workplace to perform work, the employee shall make every effort to travel to the County workplace during non-scheduled work time.
2. Remote work from outside Central Oregon is eligible under the following conditions:
 - a. It is not regularly scheduled.
 - b. While temporarily traveling for work purposes, such as attending a conference or training. [Such occurrences cannot exceed 14 days per calendar year and must be approved in advance by the Department](#)

Director. Any exception beyond the 14 day limit must be approved by the County Administrator or a Deputy County Administrator.

c. It is temporary (a maximum of 14 days per year) and approved by the Department Director.

d. Special circumstances requiring a duration longer than 14 days must be approved in advance by the County Administrator.

e.c. Remote work from outside Central Oregon shall never result in the employee's work location becoming a location outside Central Oregon, unless explicitly approved in advance by the County Administrator. Establishing a work location outside Central Oregon would result in complications with paying the employee for travel time when coming to a County office/facility.

d. Remote work location does not cause cross-jurisdictional employment relationships, or local and city tax liabilities which could affect employee withholding. Departments can coordinate with Payroll on any potential impacts. The requirements in this section are intended to prevent an employee working outside of Central Oregon becoming an employee of or incurring tax liabilities from another jurisdiction (for tax purposes). Deschutes County is not set up to be a multi-jurisdictional employer.

While performing work duties outside of the Deschutes County tax jurisdiction, if the remote work location causes the County to be subject to additional state and local income tax withholding and payment obligations, the additional fees and costs incurred for implementing and administering such taxes is the responsibility of the employee.

f. The decision and approval will be based on the employees' work duties, whether they can be satisfactorily fulfilled at that distance, and any impact on clients/customers.

g.e. In general, additional costs incurred for the employee to work remote is the responsibility of the employee.

VI. ELIGIBILITY

Not all positions are suited for participation in the program, such as customer facing positions. If the employee is sick and unable to function at full productivity, remote work is not permissible and is not a substitute for using Time Management Leave or Sick Leave.

Employees may be eligible to participate in the program based on criteria outlined below. Participation in this program is at the County's sole discretion and may be modified or revoked at any time. Employees must meet all the following to be eligible for participation in the program, unless granted an exception by the Department Director after consultation with HR:

1. Duties must be completed as efficiently, or more efficiently, than at the primary onsite location.
2. Participation must not lower the level of service delivery for the participant's work unit, including taking into account the impact on teamwork and morale.
3. The employee must have adequate job knowledge to work independently or remotely.
4. An overall rating of "Meets Expectations" or higher on most recent evaluation, if applicable.
5. No formal discipline within the last 12 months (written reprimand or higher).

Potential remote work situations that require careful review:

1. If an employee has a mild illness (for example, a mild cold or mild cough) or is recovering from a short-term medical condition, and is still able to work at full capacity, remote work is an option.
2. Remote work is not a substitute for childcare or other dependent/family care. Employees shall make or maintain childcare arrangements to permit concentration on work assignments. However, in limited situations, remote work may be approved to allow the employee to be at home with a sick child or to allow for dependent/family care, such as:
 - a. The child or dependent/family member under care needs little or no direct care. The purpose of the employee working remotely is for the employee to be able to respond to an unlikely emergency event (examples: a dependent care arrangement where the employee works remotely to attend to an emergency situation should it arise, a child is recovering from a surgery and is sleeping most of the time, an older child is sick but does not require much direct care).
 - b. The employee will only record and report time worked.
 - c. There is another care giver at home.

While performing remote work, the employee is expected to devote the same degree of time and attention to work as when the employee is at their County worksite. Meeting the above criteria does not guarantee approval for participation; final approval is subject to supervisor/manager discretion.

Depending on the criteria in this policy, an employee may be determined to be:

1. Eligible for remote work on a part-time basis or intermittently.
2. Eligible for remote work on a regular schedule.
3. Not eligible for remote work.

VII. REMOTE WORK EXPECTATIONS AND ENVIRONMENT

While performing remote work, the employee must adhere to the following expectations:

1. Continue working their regular set schedule unless the employee receives supervisory approval to change their schedule.

2. Seamlessly and completely be accessible via standard County phone and email systems during working hours.
3. The employee takes full responsibility for the technology required to complete their job remotely. If the technology does not work, the employee will be required to fix the problem without any loss of work time or take TML or other available leave for any time loss associated with the remote technology barrier.
4. The employee will be required to use TML or other approved leave if the employee is otherwise unable to perform their job from a remote location.

Participants must have an adequate work environment that:

1. It is free from distractions.
2. It has adequate office furniture and office equipment provided by the employee.
3. It contains a secure, reliable internet connection with sufficient bandwidth to perform duties at the employee's cost.
4. Provides adequate auditory confidentiality if work requires it.
5. It is maintained in a safe condition, free from hazards to employees and equipment.
6. If needed, it is modified to meet work safety requirements, (i.e., if modified workstation is required at the primary worksite, remote working environment should be similarly modified).
7. Meets the ergonomic needs of the employee.

In general, the participant will be responsible for most/all costs associated with meeting the above requirements, including setting up of designated workspace, as well as ongoing costs related to connectivity, printing, scanning, and/or other necessary equipment. There may be special situations where a department allows the employee to use County furniture/property for remote work. If significant county-funded supplies are required to perform work duties, such as a specialized scanner, this would constitute a need for the employee to perform those duties on-site.

Employees understand that all equipment, records, and materials provided by the County shall remain the property of the County. County-owned equipment and software shall be used exclusively by the employee and for the purpose of conducting County business.

Software shall not be duplicated. Employees agree to report to employee's supervisor any incidents of loss, damage, or unauthorized access as soon as possible.

VIII. INFORMATION SECURITY

Employee agrees to protect County-owned equipment, records, and materials from unauthorized

or accidental access, use, modification, destruction, or disclosure. This includes protecting equipment when traveling to/from County facilities. The precautions described in this agreement apply regardless of the storage media on which information is maintained, the locations where the information is stored, the systems used to process the information, or the process by which the information is stored.

Participants will be held accountable for securing information by taking measures to safeguard information in accordance with confidentiality, HIPAA and privacy rules. At all times, employees shall adhere to all provisions of [Administrative Policy No. IT-1, "Computer, E-mail and Mobile Computing Device Use."](#)

IX. PROCESS AND EVALUATION

Supervisors are responsible for ensuring that an employee performing remote work has clear and documented productivity expectations and that the employee is meeting these expectations. Supervisors may require additional actions by employees to verify work time.

Here are factors a supervisor may consider helping determine appropriate amount/frequency of remote time:

1. Quantify tasks that are appropriate for remote work and consider frequency and distribution (e.g. half a day once a week compared to a full day every other week).
2. Impact on clients, customers, and co-workers, including the importance of in-person interactions and communications.
3. Availability to attend meetings in-person (e.g. if most meetings are Tuesday/Wednesdays, schedule Thursdays as a remote day). Clearly communicate to staff that regularly scheduled remote time may be "bumped" if a need for an in-person meeting arises.
4. Impact on internal/external partners: feedback from others will inform whether the amount of time is working well (e.g., if feedback is received that the person is less available for consult or lacking timely follow up, remote time may be decreased, redistributed, or eliminated).
5. Adjustments depending on workload (e.g. a decrease in independent tasks may result in decreasing remote time; a special project with a hard deadline that necessitates independent concentration may result in approval of additional remote time).

X. PROGRAM AGREEMENT

Upon approval based on the criteria contained in this policy, staff will enter into a Remote Work Program Agreement (attached). The agreement will be signed by the employee, supervisor, and department director. Remote work may be on an as needed basis or regularly scheduled. The agreement will include:

1. Time period approved for remote work (frequency and duration, including an end date of no

more than one year, noting that it may be reviewed throughout the period and may be terminated at the County's sole discretion).

2. Type of remote work.
3. The specific site(s) approved for remote work. The standard approval process is for remote work sites within Central Oregon.
4. A statement that the duties, obligations, and responsibilities of the participant's employment with the County remain unchanged.
5. An explanation of how the remote work arrangement will affect the operations and impact on the employee's productivity.
6. An explanation on how productivity will be measured/reported and how the employee will be available to supervisors, co-workers and customers.
7. A statement that the participant's salary, benefits, retirement, and County- sponsored insurance remain unchanged.
8. A statement that participants remain obligated to comply with all County, State, and Federal laws and rules, and policies, including the County's Code of Ethics and the Fair Labor Standards Act.
9. A statement that the violation of any of the above or the misuse of County time, data, or equipment may result in disciplinary action.
10. A list of County owned items (such as laptop, mouse, etc.) that will be at the remote location.
11. Signature of employee, supervisor, manager, and department head (if required per this policy).
12. A designation whether the request is for hybrid remote work or fully remote work. If fully remote work, a listing of the employee's primary work location which will not be a County location.

Approved by the Deschutes County Board of Commissioners on (INSERT DATE HERE)

Nick Lelack
County Administrator

Revision History:

INCLUDE ADOBE FILLABLE REMOTE WORK PROGRAM AGREEMENT



Deschutes County Administrative Policy No. HR-6
Effective Date: November 1, 2025
Original Adoption: January 26, 2022
Updated:

REMOTE WORK POLICY

I. STATEMENT OF POLICY

Deschutes County is dedicated to its mission: Enhancing the lives of citizens by delivering quality services in a cost-effective manner. Deschutes County may implement its mission by allowing flexible work opportunities where appropriate.

Flexible work opportunities may include a variety of options, including remote work. This policy provides departments with a framework to implement remote work as a personnel management, recruitment and retention tool while ensuring employees performing remote work maintain or increase performance standards and service levels. Individual departments (upon the recommendation of the department head and the approval of the County Administrator) or offices of elected officials may opt out of this policy.

II. APPLICABILITY

This policy applies to all Deschutes County employees, who work remotely.

III. DEFINITIONS

1. Remote Work is defined as a work flexibility arrangement under which an employee performs the duties and responsibilities of their position, and other authorized activities, from an approved worksite other than the location from which the employee would otherwise work.
 - a. Hybrid Work is when an employee is performing work from both on-site and remotely from an approved worksite other than the regular assigned work location for the position.
 - b. Fully Remote Work is when an employee is performing more than 75% of their work from an approved (non-County) worksite other than the regularly assigned work location for the position. If working under this category, the employee's primary work location becomes a non-County location.
2. Central Oregon is defined as Deschutes, Crook, Jefferson or Klamath County.

IV. ROLES AND RESPONSIBILITIES

Employees who work remotely are responsible for adhering to all expectations outlined below.

Supervisors are responsible for determining whether an employee is eligible to participate based on criteria outlined in this policy. Further, supervisors are responsible for implementing this policy consistently and with robust oversight and accountability, including monitoring remote work effectiveness and measuring performance.

V. LOCATION OF REMOTE WORK AND IMPACT ON COMMUTE/TRAVEL

For a fully remote employee, the employee's primary work location changes (and will likely be their residence). As a result, any regularly scheduled **remote work is only allowed if the employee's remote work location is in Central Oregon. (unless approved in advance by the County Administrator – see section 2 below).**

Unless otherwise approved in writing (e.g., due to departmental operational needs or a reasonable accommodation), the remote work location must allow the employee to report onsite within the time it ordinarily takes them to commute to their assigned worksite.

1. Remote work options from within Central Oregon:
 - a. Hybrid remote work - does not change the employee's assigned County work location. Travel time from the employee's remote work location to their assigned County location will be considered commute time and not compensated by the County.
 - b. Fully remote work – changes the employee's assigned work location. When business needs require the employee to work from or report to another location, the employee must be compensated for travel time in accordance with the Fair Labor Standards Act (FLSA). Generally, this means that travel time to and from their assigned work location as a part of their regular work duties is considered work time unless the travel is outside the employee's regular work schedule. Deschutes County will follow the State of Oregon [Travel Time & Mileage](#) guidelines. Travel time during regularly scheduled work hours is considered work time and may also include mileage reimbursement (or the use of a County vehicle). Therefore, when required to come into the County workplace to perform work, the employee shall make every effort to travel to the County workplace during non-scheduled work time.
2. Remote work from outside Central Oregon is eligible under the following conditions:
 - a. It is not regularly scheduled.
 - b. While temporarily traveling for work purposes, such as attending a conference or training. Such occurrences cannot exceed 14 days per calendar year and must be approved in advance by the Department

Director. Any exception beyond the 14 day limit must be approved by the County Administrator or a Deputy County Administrator.

- c. Remote work from outside Central Oregon shall never result in the employee's work location becoming a location outside Central Oregon.. Establishing a work location outside Central Oregon would result in complications with paying the employee for travel time when coming to a County office/facility.
- d. Remote work location does not cause cross-jurisdictional employment relationships, or local and city tax liabilities which could affect employee withholding. Departments can coordinate with Payroll on any potential impacts. The requirements in this section are intended to prevent an employee working outside of Central Oregon becoming an employee of or incurring tax liabilities from another jurisdiction (for tax purposes). Deschutes County is not set up to be a multi-jurisdictional employer.

While performing work duties outside of the Deschutes County tax jurisdiction, if the remote work location causes the County to be subject to additional state and local income tax withholding and payment obligations, the additional fees and costs incurred for implementing and administering such taxes is the responsibility of the employee.

- e. In general, additional costs incurred for the employee to work remote is the responsibility of the employee.

VI. **ELIGIBILITY**

Not all positions are suited for participation in the program, such as customer facing positions. If the employee is sick and unable to function at full productivity, remote work is not permissible and is not a substitute for using Time Management Leave or Sick Leave.

Employees may be eligible to participate in the program based on criteria outlined below. Participation in this program is at the County's sole discretion and may be modified or revoked at any time. Employees must meet all the following to be eligible for participation in the program, unless granted an exception by the Department Director after consultation with HR:

1. Duties must be completed as efficiently, or more efficiently, than at the primary onsite location.
2. Participation must not lower the level of service delivery for the participant's work unit, including taking into account the impact on teamwork and morale.
3. The employee must have adequate job knowledge to work independently or remotely.
4. An overall rating of "Meets Expectations" or higher on most recent evaluation, if applicable.
5. No formal discipline within the last 12 months (written reprimand or higher).

Potential remote work situations that require careful review:

1. If an employee has a mild illness (for example, a mild cold or mild cough) or is recovering from a short-term medical condition, and is still able to work at full capacity, remote work is an option.
2. Remote work is not a substitute for childcare or other dependent/family care. Employees shall make or maintain childcare arrangements to permit concentration on work assignments. However, in limited situations, remote work may be approved to allow the employee to be at home with a sick child or to allow for dependent/family care, such as:
 - a. The child or dependent/family member under care needs little or no direct care. The purpose of the employee working remotely is for the employee to be able to respond to an unlikely emergency event (examples: a dependent care arrangement where the employee works remotely to attend to an emergency situation should it arise, a child is recovering from a surgery and is sleeping most of the time, an older child is sick but does not require much direct care).
 - b. The employee will only record and report time worked.
 - c. There is another care giver at home.

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Employees understand that all equipment, records, and materials provided by the County shall remain the property of the County. County-owned equipment and software shall be used exclusively by the employee and for the purpose of conducting County business.

Software shall not be duplicated. Employees agree to report to employee's supervisor any incidents of loss, damage, or unauthorized access as soon as possible.

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shall adhere to all provisions of [Administrative Policy No. IT-1, "Computer, E-mail and Mobile Computing Device Use."](#)

IX. PROCESS AND EVALUATION

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2. Type of remote work.
3. The specific site(s) approved for remote work. The standard approval process is for remote work sites within Central Oregon.
4. A statement that the duties, obligations, and responsibilities of the participant's employment with the County remain unchanged.
5. An explanation of how the remote work arrangement will affect the operations and impact on

the employee's productivity.

6. An explanation on how productivity will be measured/reported and how the employee will be available to supervisors, co-workers and customers.
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9. A statement that the violation of any of the above or the misuse of County time, data, or equipment may result in disciplinary action.
10. A list of County owned items (such as laptop, mouse, etc.) that will be at the remote location.
11. Signature of employee, supervisor, manager, and department head (if required per this policy).
12. A designation whether the request is for hybrid remote work or fully remote work. If fully remote work, a listing of the employee's primary work location which will not be a County location.

Revised version approved by the Deschutes County Board of Commissioners on _____(date)

Nick Lelack
County Administrator



DESCHUTES COUNTY ADMINISTRATIVE POLICY No. HR-12

EFFECTIVE DATE: JULY 21, 2008

UPDATED: SEPTEMBER 3, 2023

FAMILY AND MEDICAL LEAVE POLICY

STATEMENT OF POLICY

It is the policy of Deschutes County to comply with the provisions of the ~~federal~~Federal Family and Medical Leave Act (FMLA), the Oregon Family Leave Act (OFLA), and Paid Leave Oregon (PLO).

APPLICABILITY

This policy applies to all eligible Deschutes County employees.

POLICY AND PROCEDURES

General

This policy informs county employees about protected leave outlined in FMLA, OFLA, and PLO. Whichever act provides the greater benefit to the employee will be applied. Protections that qualify under more than one type of protected leave will run concurrently. Although not every detail of these laws can be included in this policy, the county will administer protected leave in accordance with all applicable ~~state~~State and ~~federal~~Federal laws.

Employee Eligibility

FMLA

To qualify for FMLA, an employee must have been employed by the county for at least 12 months and have worked at least 1,250 hours in the previous 12 months.

OFLA

To qualify for OFLA, an employee must have been employed by the county for an

¹This requirement may be different for employees who qualify under the Oregon Military Family Leave Act (OMFLA). Human Resources will provide direct consultation regarding eligibility for those who qualify under OMFLA.

average of 25 hours or more per ~~week~~¹¹ week for 180 calendar days before leave begins. ~~However, employees taking leave due to the birth of a child or newly adopted or placed foster child become eligible after being employed for 180 calendar days, without regard to the number of hours worked per week.~~ Additionally, ~~During~~ During a public health emergency, employees become eligible for OFLA leave if they have worked for a covered employer for at least 30 days and have worked an average of at least 25 hours per week in the 30 days before taking leave.

PLO

PLO is a paid leave benefit administered by the Paid Leave Oregon division of the Oregon Employment Department. Eligible employees that have earned at least \$1,000 in the prior year and who have contributed to PLO through payroll deductions may qualify for up to 12 weeks of paid family, medical, or safe leave in a benefit year.

Employees applying for PLO benefits will apply directly through the Paid Leave Oregon website and will be required to request a leave of absence from the county as well.

When an employee applies for this PLO, the state will determine an employee's qualifications for the benefit and will approve or deny claims for PLO benefits.

Qualifying Events for Leave

- a. Under FMLA, employees are entitled to take family medical leave in the following situations:
 - 1) When the employee has a "serious health condition" (defined further below), which renders the employee unable to perform the functions of their position.
 - 2) To care for a family member with a "serious health condition."¹¹ Under FMLA, family ~~member is members are~~ defined as a spouse, parent, or child, or someone with whom the employee has an "in loco parentis" relationship. "In loco parentis" is defined as a person with whom an employee has developed a parent/child relationship in the absence of a biological or adoptive parent.

¹¹ This requirement may be different for employees who qualify under the Oregon Military Family Leave Act (OMFLA). Human Resources will provide direct consultation requiring eligibility for those who qualify under OMFLA.

3) For the birth or adoption of a child, or for the placement of a child in foster care with the employee. This is often referred to as "parental leave."

4) Immediate family members (spouses, parents, and children) as well as next of kin (nearest blood relative) of an Armed Forces service member who suffers a serious injury or illness while in military service are entitled to take up to 26 weeks of FMLA leave to care for that service member during a 12-month period. The expanded leave to care for injured service members is only available during a single 12-month period.

5) "Any qualifying exigency" arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty, or has been notified of an impending call to active-duty status, in support of a contingency of operation. "Qualifying exigency" may include child or elder care (even without a serious health condition) or helping the family member prepare for departure for duty.

b. In addition, employees Employees are entitled to take family medical leave in the following situations under Oregon law (OFLA):

1) To provide home care for a child under the age of 18 with a non-serious health who is suffering from an illness, injury, or condition, provided another family member is not willing and able to that requires home care.

1) To care for the child; or

2) To provide childcare if your child's who requires home care due to the closure of the child's school or childcare provider is closed due to as a statewide result of a public health emergency, such as COVID-19 pandemic school closures; or,

3) Up to an additional two (2) weeks for bereavement leave related to the death of a family member, taken within 60 days of the date on which the employee receives notice of the death of the family member, not to exceed a total of four weeks within a one-year period.

4) Up to twelve (12) weeks for pregnancy disability leave before or after the birth of a child; or. This is in addition to any other OFLA

leave used for the purposes stated above.

3)5) Up to fourteen (14) days for military family leave, if your spouse or domestic partner is a service member who has been called to active duty or is on leave from active duty; or

4)6) Up to two (2) weeks for bereavement leave. Under OFLA, "family member" means an individual who is related by affinity to the death of a family member; employee or an individual who is the employee:

To care for a family member with a "serious health condition." Under OFLA, eligible family members include those covered under FMLA as well as a child's spouse

- (a) Spouse or domestic partner, a parent's
- (b) Child or the child's spouse or domestic partner, a sibling
- (c) Parent or the parent's spouse or domestic partner

"Parent" means:

- A. An employee's biological parent, adoptive parent, stepparent, current or former foster parent, or a person who was or is the employee's legal guardian or with whom the employee was or is in a relationship of in loco parentis; or
- B. The parent of the employee's spouse or domestic partner who meets a description in (A) above.

5) (d) Sibling or stepsibling or the sibling's or stepsibling's spouse or domestic partner, a grandparent or the grandparent's spouse or domestic partner, a grandchild or the grandchild's spouse or domestic partner, a domestic partner, or any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship. A statement of Affinity may be required to show that such a bond exists.

• (e) As outlined in OAR 471-070-1000, "affinity," as the term is used in ORS 657B.010, 839-009-210, "Affinity" means a relationship that meets the following requirements:

- Therefor which there is a significant personal bond that, when examined under the totality of the circumstances, is like a family relationship, and;
- The bond under section (a) of this rulesubsection may be demonstrated by, but is not limited to the following factors, with no single factor being determinative:

- i.A. Shared personal financial responsibility, including shared leases, common ownership of real or personal property, joint liability for bills, or beneficiary designations;
- ii.B. Emergency contact designation of the claimant by the other individual in the relationship, or vice versa the emergency contact designation of the other individual in the relationship by the employee;
- iii.C. The expectation to provide care because of the relationship or the prior provision of care;
- iv.D. Cohabitation and its duration and purpose;
- v.E. Geographical proximity; and
- vi.F. Any other factor that demonstrates the existence of a family-like relationship.

e. c. Employees are entitled to take paid leave, in full day increments only, in the following situations under PLO:

- 1) To care for family members (as defined under OFLA) with a serious health condition.
- 2) To care for and bond with a child in the first year after birth, adoption, or when they're placed in your home through foster care.
- 3) To effectuate the legal process required for placement of a foster child or the adoption of a child.
- 4) Medical leave to care for yourself when you have a serious health condition.
- 5) Safe leave to care for yourself or your child if you or your child are survivors of sexual assault, domestic violence, harassment, or stalking.
- 6) Pre-placement leave for eligible employees who are planning to adopt of foster a child.

Serious Health Condition

A serious health condition means an illness, injury, impairment or physical or mental condition that involves:

- 1) Inpatient care (overnight hospital stay).
- 2) A critical illness or injury diagnosed as terminal, or which possesses an imminent danger of death.
- 3) A period of incapacity for more than three consecutive calendar days, and any subsequent treatment period of incapacity relating to the same condition, which also involves:

- a. Two or more treatments by a health care provider, or
- b. Treatment by a health care provider on at least one occasion, with a regimen of continuing treatment (e.g., prescription drugs.)

1)4) Permanent or long-term incapacity due to a condition for which treatment may not be effective, such as Alzheimer's disease, severe stroke, clinical depression, or terminal stages of a disease.

4)5) Absences for pre-natal care or pregnancy-related disability.

5)6) Absences for "chronic" serious health conditions, including, but not limited to diagnosed migraines, asthma, diabetes or epilepsy.

6)7) Absences to receive multiple treatments for restorative surgery after an accident or injury, or conditions that, if not treated, would likely result in an incapacity of more than three consecutive calendar days without medical intervention or treatment.

Duration of the Leave

Qualifying employees are entitled to 12 weeks of family medical leave in a one-year period, which means a period of 52 consecutive weeks beginning on the Sunday immediately preceding the date on which family leave commences.

~~For parental leave under OFLA, intermittent leave is subject to department approval and the leave must be taken and concluded within one (1) year from the date of birth or placement of the child.~~

Under OFLA and PLO, additional leave may be available for employees who suffer from a disability resulting from pregnancy or childbirth. Additionally, OFLA allows time off to care for a child with a non-serious health condition that requires home care. PLO allows for additional leave for employees who give birth to a child. Employees should contact the Human Resources Department to determine if they are eligible for extended leave under these circumstances.

When family members who are each employed by the county wish to take leave under this policy at the same time, their ability to do so may be limited in certain circumstances, such as when they wish to take parental leave together or when they wish to take leave at the same time to care for a parent suffering from a serious health condition. When family members who are each employed by the county wish to take leave at the same time, they should contact the Human Resources Department to determine if they are eligible to do so.

Policy No. HR-12, Family and Medical Leave

10

Concurrent Leaves

To the extent permissible under the law, OFLA, FMLA, and PLO leave will run concurrently. Whenever these laws differ, the county will apply the standard which is most beneficial to the employee.

~~OFLA and~~ PLO leave cannot run concurrently when the employee is eligible to receive worker's compensation under ORS chapter 656. ~~OFLA leave can run concurrently only if the worker's compensation claim is denied, or if the employee has refused a suitable offer of light duty or modified employment.~~

FMLA leave will run concurrently with a worker's compensation leave if the leave meets the criteria for a serious health condition under FMLA.

Notice Required by Employee

When the leave is foreseeable, the employee must apply for family medical leave **at least thirty (30) calendar days** in advance of the leave by completing and providing to the county a "~~Family and Medical Leave Request Form.~~Protected Leave Request Form," ~~which is available on the Human Resources internet page here:~~ <https://www.deschutes.org/hr/page/family-and-medical-leave> under Supporting Documents. Furthermore, if the leave is foreseeable, the employee must make reasonable efforts to schedule leave in a way that does not unduly disrupt the operation of the employee's department. If an employee fails to give at least thirty ~~(30) days~~ notice of foreseeable leave, and has no reasonable excuse, the county may delay the start of leave until at least 30 days after the notice was actually given by the employee. If leave is required because of a medical emergency or other unforeseeable event, the employee must inform their supervisor within three working days ~~so the form can be provided to the employee.~~ Employees applying for PLO benefits must also notify the state within its established timeframes to avoid a possible reduction in the PLO benefit.

Completed forms are to be returned to the employee's supervisor and then forwarded to the Human Resources Department to determine if the employee and leave request meets the qualification criteria. It is the responsibility of the employee, and the employee's supervisor to ensure ~~Family and Medical~~Protected Leave Request Forms are completed and submitted to the Human Resources Department as quickly as possible.

Human Resources staff will review the ~~Family and Medical~~Protected Leave Request Form and provide the employee with a Family and Medical Leave Designation Notice or request additional ~~certification forms~~information if needed. If the employee or family member has ~~Policy No. HR-12, Family and Medical Leave~~

10

a serious health condition, the county may require the completion of a Health Care Provider Certification Form, which will be sent to the employee by the Human Resources Department. (HCPC) form, which is also available on the Human Resources internet page here: <https://www.deschutes.org/hr/page/family-and-medical-leave-under-Supporting-Documents>.

~~The Health Care Provider Certification Form~~ The HCPC form must be completed by the employee's health care provider and returned to the Human Resources Department within fifteen (15) calendar days from the date of the leave request. Failure to provide the ~~Health Care Provider Certification Form~~ HCPC form may result in denial of the rights and protections of FMLA and OFLA.

If the serious illness is related to a family member, the attending health care provider must indicate on the ~~Health Care Provider Certification Form~~ HCPC form that the employee is needed to provide care.

When the medical certification is unclear, or its validity is in question, the county may require the employee or family member to obtain a second or third opinion at the county's expense.

If the need for leave extends beyond a period of one (1) year, such as with intermittent serious health condition leave, the county may require periodic re-certifications by a health care provider that there is a continuing need for leave.

If the family medical leave is for the employee's own serious health condition, the employee will be required to furnish a "Release to Return to Work" from their health care provider upon requesting to return to work.

Employees applying for PLO benefits will be required to provide documentation directly to PLO in accordance with PLO's claim request process. The county will not supply medical documentation to PLO on behalf of an employee or their family member.

Obligation to Designate Leave

Deschutes County is obligated under the law to designate family medical leave when it becomes aware of a situation that clearly meets the leave criteria. It is the policy of Deschutes County that employees are to follow the above procedures for notifying the county of their potential leave. However, if the leave clearly meets the leave criteria, the county reserves the right to designate protected leave beginning with the first day of absence for the qualifying leave. The employee cannot delay the start date of family medical leave by declaring the first part of leave as "vacation" leave.

Confidentiality

Supervisors and Human Resources staff are required to keep medical information confidential, and Family and Medical Leave documents and forms in a file separate from the employee's personnel file.

Intermittent or Reduced Schedule Leaves

For serious health conditions, family medical leave may be taken on an intermittent basis or a reduced schedule if medically necessary. Details of the proposed schedule will be verified by the certifying medical professional on the Health Care Provider Certification FormHCPC form.

Status Reports

While on family medical leave, the employee's supervisor is entitled to periodic reports of status, and intent ofto return to work from the employee, at intervals determined by the supervisor. The supervisor must take into account all of the relevant facts and circumstances related to the individual employee's leave situation when considering such reports, how often such reports are required, and how such reports will affect the length of the employee's leave.

Use of Accrued Leave

Employees who take leave under FMLA and/or OFLA, and who apply for, and are approved for PLO by the state, may elect to use their accrued paid leave to replace their wages up to approximately 100% of their average weekly wage, consistent with applicable law. The average weekly wage is the employee's total gross wages divided by the number of weeks the employee has worked for Deschutes County over the prior 12 months, consistent with applicable law. An employee choosing to supplement their PLO benefits with accrued leave must make their election for each leave bank during the payroll period in which they wish to use the hours. The county will report all supplemental benefits paid to employees to the state in accordance with applicable rules. It should be understood that the county is not responsible for an employee's PLO repayment obligations, penalties, or reduction in benefits assessed by the state due to the employee's decision to use their accrued leave. If an employee chooses not to use available accrued leave, the employee will be considered on an unpaid leave of absence.

If an employee is approved for PLO benefits and has requested to use leave accruals, any period of absence when they are not using any leave accruals will be considered an unpaid leave of absence. The county may request documentation

Policy No. HR-12, Family and Medical Leave

~~of PLO benefits received when an employee elects to supplement with their accrued leave while on PLO so the appropriate amount of accrued leave to be used can be determined. An employee's regular salary will not be paid when on leave under PLO, even if their PLO benefit has not yet been received.~~

If an employee's leave does not qualify or apply for PLO, but qualifies for other protected leaves, employees are required to use all available accrued paid leave before going into leave without pay. ~~If in accordance with current policies, practices and/or collective bargaining agreements, if the day before and after a county paid holiday are coded as leave without pay on the employee's timesheet, the holiday will also be unpaid. An employee will not earn paid leave accruals on any time coded as unpaid leave for any reason.~~

Tracking of Leave

Employees are responsible for informing their supervisors of absences that are related to a FMLA, OFLA, or PLO event. Both employees and supervisors are responsible for ensuring such absences are clearly noted on timesheets so the amount of FMLA/OFLA/PLO leave may be accurately tracked.

Benefit Continuation

Employees on leave who are eligible for leave under FMLA and/or OFLA will have their benefits ~~continued under the same terms and conditions as when they were an active~~ ~~continued under the same terms and conditions as when they were an active~~ employee during the period of qualified leave. Employees who are eligible for protected leave under PLO will have their benefits continued after (90) consecutive days of employment.

Employee contributions towards benefits will be made either through payroll deduction (when using paid leave) or by direct payment to the county (while on unpaid leave). ~~or by catching up through payroll deduction upon their return from leave.~~ The employee will be advised in writing as to the method of payment and due date of premiums. Employee contribution amounts are subject to any change in rates that occur while the employee is on leave.

Reinstatement

Employees returning from leave will be reinstated to the same or an equivalent position with equivalent benefits, pay and other terms and conditions of employment, and employment status (for example, if the employee was on a work plan or had progressive discipline before the leave, these corrective steps will resume), unless their former

positions have been eliminated in circumstances under which the law does not require reinstatement. The employee's restoration rights are the same as they would have been had the employee not been on leave. Therefore, if an employee's position would have been eliminated, or the employee would have been terminated but for the family and/or medical leave, the employee would not have the right to be reinstated upon return from leave.

If an employee is on probationary status while on approved family and/or medical leave, and the leave exceeds more than two weeks, the employee's probationary period will be extended by the length of the leave.

Failure to Return from Leave

When an employee fails to return to work after exhausting family medical leave, their employment may be terminated in accordance with applicable laws, county policies, and union contracts. When an employee is unable to return to work due to their own serious health condition, the county will work with the employee to determine any protections that they may be afforded under the Americans with Disabilities Act (ADA).

If the employee has given unequivocal notice of the intent not to return from leave, the employer's obligation to reinstate the employee ceases. Under FMLA only, the employment relationship generally ends after the employee clearly abandons future employment. The employee may be required to repay the county for the employer-paid portion of the health insurance premium during any unpaid FMLA period. Health insurance premium repayment under this provision will not apply if the need for leave still exists, the employee cannot return for a reason that is beyond their control, or the employee elects retirement.

Regardless of the employee's notification of their decision to not return to work, under OFLA protected leave only, the county will continue the employee's previously approved OFLA leave until it is exhausted. The employee remains entitled to all rights and protections under OFLA for the balance of the leave, including the right to the continuation of group health coverage. ~~If failure to return is due to continuation, recurrence or onset of a serious health condition, medical certification may be required within thirty (30) days from the date the county requests the information.~~

Retaliation or Discrimination

Employees are protected against retaliation or discrimination in any manner as a result of ~~the exercise~~exercising of the right to FMLA, OFLA, or PLO leave. Any employee violating this provision is subject to discipline.

Approved, as updated, by the Deschutes County Board of Commissioners effective
September 3, 2023XXXX.

Erik Kropp
Erik Kropp

Acting

County Administrator



Deschutes County Administrative Policy No. HR-12
Effective Date: July 21, 2008
Updated: September 3, 2023
Updated:

FAMILY AND MEDICAL LEAVE POLICY

STATEMENT OF POLICY

It is the policy of Deschutes County to comply with the provisions of the Federal Family and Medical Leave Act (FMLA), the Oregon Family Leave Act (OFLA), and Paid Leave Oregon (PLO).

APPLICABILITY

This policy applies to all eligible Deschutes County employees.

POLICY AND PROCEDURES

General

This policy informs county employees about protected leave outlined in FMLA, OFLA, and PLO. Whichever act provides the greater benefit to the employee will be applied. Protections that qualify under more than one type of protected leave will run concurrently. Although not every detail of these laws can be included in this policy, the county will administer protected leave in accordance with all applicable State and Federal laws.

Employee Eligibility

FMLA

To qualify for FMLA, an employee must have been employed by the county for at least 12 months and have worked at least 1,250 hours in the previous 12 months.

OFLA

To qualify for OFLA, an employee must have been employed by the county for an average of 25 hours or more per ¹week for 180 calendar days before leave begins. During a public health emergency, employees become eligible for OFLA leave if they have worked for a covered employer for at least 30 days and have worked an average of at least 25 hours per week in the 30 days before taking leave.

¹ This requirement may be different for employees who qualify under the Oregon Military Family Leave Act (OMFLA). Human Resources will provide direct consultation regarding eligibility for those who qualify under OMFLA.

PLO

PLO is a paid leave benefit administered by the Paid Leave Oregon division of the Oregon Employment Department. Eligible employees that have earned at least \$1,000 in the prior year and who have contributed to PLO through payroll deductions may qualify for up to 12 weeks of paid family, medical, or safe leave in a benefit year.

Employees applying for PLO benefits will apply directly through the Paid Leave Oregon website and will be required to request a leave of absence from the county as well.

When an employee applies for this PLO, the state will determine an employee's qualifications for the benefit and will approve or deny claims for PLO benefits.

Qualifying Events for Leave

- a. Under FMLA, employees are entitled to take family medical leave in the following situations:
 - 1) When the employee has a "serious health condition" (defined further below), which renders the employee unable to perform the functions of their position.
 - 2) To care for a family member with a "serious health condition." Under FMLA, family members are defined as a spouse, parent, or child, or someone with whom the employee has an "in loco parentis" relationship. "In loco parentis" is defined as a person with whom an employee has developed a parent/child relationship in the absence of a biological or adoptive parent.
 - 3) For the birth or adoption of a child, or for the placement of a child in foster care with the employee. This is often referred to as "parental leave."
 - 4) Immediate family members (spouses, parents, and children) as well as next of kin (nearest blood relative) of an Armed Forces service member who suffers a serious injury or illness while in military service are entitled to take up to 26 weeks of FMLA leave to care for that service member during a 12-month period. The expanded leave to care for injured service members is only available during a single 12-month period.
 - 5) "Any qualifying exigency" arising out of the fact that the spouse, son,

daughter, or parent of the employee is on active duty, or has been notified of an impending call to active-duty status, in support of a contingency of operation. "Qualifying exigency" may include child or elder care (even without a serious health condition) or helping the family member prepare for departure for duty.

b. Employees are entitled to take family medical leave in the following situations under Oregon law (OFLA):

- 1) To provide home care for a child who is suffering from an illness, injury, or condition that requires home care.
- 2) To care for a child who requires home care due to the closure of the child's school or childcare provider as a result of a public health emergency.
- 3) Up to two (2) weeks for bereavement leave related to the death of a family member, taken within 60 days of the date on which the employee receives notice of the death of the family member, not to exceed a total of four weeks within a one-year period.
- 4) Up to twelve (12) weeks for pregnancy disability leave before or after the birth of a child. This is in addition to any other OFLA leave used for the purposes stated above.
- 5) Up to fourteen (14) days for military family leave, if your spouse or domestic partner is a service member who has been called to active duty or is on leave from active duty; or
- 6) Under OFLA, "family member" means an individual who is related by affinity to the employee or an individual who is the employee's:
 - (a) Spouse or domestic partner
 - (b) Child or the child's spouse or domestic partner
 - (c) Parent or the parent's spouse or domestic partner

"Parent" means:

 - A. An employee's biological parent, adoptive parent, stepparent, current or former foster parent, or a person who was or is the employee's legal guardian or with whom the employee was or is in a relationship of in loco parentis; or

B. The parent of the employee's spouse or domestic partner who meets a description in (A) above.

(d) Sibling or stepsibling or the sibling's or stepsibling's spouse or domestic partner, grandparent or the grandparent's spouse or domestic partner.

- (e) As outlined in OAR 839-009-210, "Affinity" means a relationship for which there is a significant personal bond that when examined under the totality of the circumstances, is like a family relationship. The bond under section (a) of this subsection may be demonstrated by, but is not limited to the following factors, with no single factor being determinative:
 - A. Shared personal financial responsibility, including shared leases, common ownership of real or personal property, joint liability for bills, or beneficiary designations;
 - B. Emergency contact designation of the claimant by the other individual in the relationship, or the emergency contact designation of the other individual in the relationship by the employee;
 - C. The expectation to provide care because of the relationship or the prior provision of care;
 - D. Cohabitation and its duration and purpose;
 - E. Geographical proximity; and
 - F. Any other factor that demonstrates the existence of a family-like relationship.

c. Employees are entitled to take paid leave, in full day increments only, in the following situations under PLO:

- 1) To care for family members (as defined under OFLA) with a serious health condition.
- 2) To care for and bond with a child in the first year after birth, adoption, or when they're placed in your home through foster care.
- 3) To effectuate the legal process required for placement of a foster child or the adoption of a child.
- 4) Medical leave to care for yourself when you have a serious health condition.
- 5) Safe leave to care for yourself or your child if you or your child are survivors of sexual assault, domestic violence, harassment, or stalking.
- 6) Pre-placement leave for eligible employees who are planning to adopt

of foster a child.

Serious Health Condition

A serious health condition means an illness, injury, impairment or physical or mental condition that involves:

- 1) Inpatient care (overnight hospital stay).
- 2) A critical illness or injury diagnosed as terminal, or which possesses an imminent danger of death.
- 3) A period of incapacity for more than three consecutive calendar days, and any subsequent treatment period of incapacity relating to the same condition, which also involves:
 - a. Two or more treatments by a health care provider, or
 - b. Treatment by a health care provider on at least one occasion, with a regimen of continuing treatment (e.g., prescription drugs.)
- 4) Permanent or long-term incapacity due to a condition for which treatment may not be effective, such as Alzheimer's disease, severe stroke, clinical depression, or terminal stages of a disease.
- 5) Absences for pre-natal care or pregnancy-related disability.
- 6) Absences for "chronic" serious health conditions, including, but not limited to diagnosed migraines, asthma, diabetes or epilepsy.
- 7) Absences to receive multiple treatments for restorative surgery after an accident or injury, or conditions that, if not treated, would likely result in an incapacity of more than three consecutive calendar days without medical intervention or treatment.

Duration of the Leave

Qualifying employees are entitled to 12 weeks of family medical leave in a one-year period, which means a period of 52 consecutive weeks beginning on the Sunday immediately preceding the date on which family leave commences.

Under OFLA, additional leave may be available for employees who suffer from a disability resulting from pregnancy or childbirth. Additionally, OFLA allows time off to care for a child that requires home care. PLO allows for additional leave for employees who give

birth to a child. Employees should contact the Human Resources Department to determine if they are eligible for extended leave under these circumstances.

When family members who are employed by the county wish to take leave under this policy at the same time, their ability to do so may be limited in certain circumstances, such as when they wish to take parental leave together or when they wish to take leave at the same time to care for a parent suffering from a serious health condition. When family members who are each employed by the county wish to take leave at the same time, they should contact the Human Resources Department to determine if they are eligible to do so.

Concurrent Leaves

To the extent permissible under the law, OFLA, FMLA, and PLO leave will run concurrently. Whenever these laws differ, the county will apply the standard which is most beneficial to the employee.

PLO leave cannot run concurrently when the employee is eligible to receive worker's compensation under ORS chapter 656.

FMLA leave will run concurrently with a worker's compensation leave if the leave meets the criteria for a serious health condition under FMLA.

Notice Required by Employee

When the leave is foreseeable, the employee must apply for family medical leave **at least thirty (30) calendar days** in advance of the leave by completing and providing to the county a "Protected Leave Request Form," which is available on the Human Resources internet page here: <https://www.deschutes.org/hr/page/family-and-medical-leave> under Supporting Documents. Furthermore, if the leave is foreseeable, the employee must make reasonable efforts to schedule leave in a way that does not unduly disrupt the operation of the employee's department. If an employee fails to give at least thirty (30) days of notice of foreseeable leave, and has no reasonable excuse, the county may delay the start of leave until at least 30 days after the notice was actually given by the employee. If leave is required because of a medical emergency or other unforeseeable event, the employee must inform their supervisor within three working days. Employees applying for PLO benefits must also notify the state within its established timeframes to avoid a possible reduction in the PLO benefit.

Completed forms are to be returned to the employee's supervisor and then forwarded to the Human Resources Department to determine if the employee and leave request meets the qualification criteria. It is the responsibility of the employee and the employee's supervisor to ensure Protected Leave Request Forms are completed and submitted to the Human Resources Department as quickly as possible.

Human Resources staff will review the Protected Leave Request Form and provide the employee with a Family and Medical Leave Designation Notice or request additional information if needed. If the employee or family member has a serious health condition, the county may require the completion of a Health Care Provider Certification (HCPC) form, which is also available on the Human Resources internet page here: <https://www.deschutes.org/hr/page/family-and-medical-leave> under Supporting Documents.

The HCPC form must be completed by the employee's health care provider and returned to the Human Resources Department within fifteen (15) calendar days from the date of the leave request. Failure to provide the HCPC form may result in denial of the rights and protections of FMLA and OFLA.

If the serious illness is related to a family member, the attending health care provider must indicate on the HCPC form that the employee is needed to provide care.

When the medical certification is unclear, or its validity is in question, the county may require the employee or family member to obtain a second or third opinion at the county's expense.

If the need for leave extends beyond a period of one (1) year, such as with intermittent serious health condition leave, the county may require periodic re-certifications by a health care provider that there is a continuing need for leave.

If the family medical leave is for the employee's own serious health condition, the employee will be required to furnish a "Release to Return to Work" from their health care provider upon requesting to return to work.

Employees applying for PLO benefits will be required to provide documentation directly to PLO in accordance with PLO's claim request process. The county will not supply medical documentation to PLO on behalf of an employee or their family member.

Obligation to Designate Leave

Deschutes County is obligated under the law to designate family medical leave when it becomes aware of a situation that clearly meets the leave criteria. It is the policy of Deschutes County that employees are to follow the above procedures for notifying the county of their potential leave. However, if the leave clearly meets the leave criteria, the county reserves the right to designate protected leave beginning with the first day of absence for the qualifying leave. The employee cannot delay the start date of family medical leave by declaring the first part of leave as "vacation" leave.

Confidentiality

Supervisors and Human Resources staff are required to keep medical information confidential, and Family and Medical Leave documents and forms in a file separate from the employee's personnel file.

Intermittent or Reduced Schedule Leaves

For serious health conditions, family medical leave may be taken on an intermittent basis or a reduced schedule if medically necessary. Details of the proposed schedule will be verified by the certifying medical professional on the HCPC form.

Status Reports

While on family medical leave, the employee's supervisor is entitled to periodic reports of status, and intent to return to work from the employee, at intervals determined by the supervisor. The supervisor must take into account all of the relevant facts and circumstances related to the individual employee's leave situation when considering such reports, how often such reports are required, and how such reports will affect the length of the employee's leave.

Use of Accrued Leave

Employees who take leave under FMLA and/or OFLA, and who apply for, and are approved for PLO by the state, may elect to use their accrued paid leave consistent with applicable law. An employee choosing to supplement their PLO benefits with accrued leave must make their election for each leave bank during the payroll period in which they wish to use the hours. If an employee chooses not to use available accrued leave, the employee will be considered on an unpaid leave of absence.

If an employee's leave does not qualify or apply for PLO, but qualifies for other protected leaves, employees are required to use all available accrued paid leave before going into leave without pay. In accordance with current policies, practices and/or collective bargaining agreements, if the day before and after a county paid holiday are coded as leave without pay on the employee's timesheet, the holiday will also be unpaid. An employee will not earn paid leave accruals on any time coded as unpaid leave for any reason.

Tracking of Leave

Employees are responsible for informing their supervisors of absences that are related to a FMLA, OFLA, or PLO event. Both employees and supervisors are responsible for

ensuring such absences are clearly noted on timesheets so the amount of FMLA/OFLA/PLO leave may be accurately tracked.

Benefit Continuation

Employees on leave who are eligible for leave under FMLA and/or OFLA will have their benefits

continued under the same terms and conditions as when they were an active employee during the period of qualified leave. Employees who are eligible for protected leave under PLO will have their benefits continued after (90) consecutive days of employment.

Employee contributions towards benefits will be made either through payroll deduction (when using paid leave) or by direct payment to the county (while on unpaid leave), or by catching up through payroll deduction upon their return from leave. The employee will be advised in writing as to the method of payment and due date of premiums. Employee contribution amounts are subject to any change in rates that occur while the employee is on leave.

Reinstatement

Employees returning from leave will be reinstated to the same or an equivalent position with equivalent benefits, pay and other terms and conditions of employment, and employment status (for example, if the employee was on a work plan or had progressive discipline before the leave, these corrective steps will resume), unless their former positions have been eliminated in circumstances under which the law does not require reinstatement. The employee's restoration rights are the same as they would have been had the employee not been on leave. Therefore, if an employee's position would have been eliminated, or the employee would have been terminated but for the family and/or medical leave, the employee would not have the right to be reinstated upon return from leave.

If an employee is on probationary status while on approved family and/or medical leave, and the leave exceeds more than two weeks, the employee's probationary period will be extended by the length of the leave.

Failure to Return from Leave

When an employee fails to return to work after exhausting family medical leave, their employment may be terminated in accordance with applicable laws, county policies, and union contracts. When an employee is unable to return to work due to their own serious health condition, the county will work with the employee to determine any protections that they may be afforded under the Americans with Disabilities Act (ADA).

If the employee has given unequivocal notice of the intent not to return from leave, the employer's obligation to reinstate the employee ceases. Under FMLA only, the employment relationship generally ends after the employee clearly abandons future employment. The employee may be required to repay the county for the employer-paid portion of the health insurance premium during any unpaid FMLA period. Health insurance premium repayment under this provision will not apply if the need for leave still exists, the employee cannot return for a reason that is beyond their control, or the employee elects retirement.

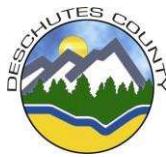
Regardless of the employee's notification of their decision to not return to work, under OFLA protected leave only, the county will continue the employee's previously approved OFLA leave until it is exhausted. The employee remains entitled to all rights and protections under OFLA for the balance of the leave, including the right to the continuation of group health coverage.

Retaliation or Discrimination

Employees are protected against retaliation or discrimination in any manner as a result of exercising of the right to FMLA, OFLA, or PLO leave. Any employee violating this provision is subject to discipline.

Approved, as updated, by the Deschutes County Board of Commissioners effective
_____ (date)

Nick Lelack, County Administrator



Deschutes County Administrative Policy No. HR-13
Effective Date: September 24, 2008

EMPLOYEE LEAVE DONATION

STATEMENT OF POLICY

It is the policy of Deschutes County to allow employees to voluntarily donate time management leave, vacation leave, or compensatory time to other employees who are out of leave due to an Oregon Family Leave Act (OFLA) / Family Medical Leave Act (FMLA) qualifying event. Employees are eligible for Employee Leave Donation, only after all other paid leave options have been exhausted.

APPLICABILITY

This policy applies to all regular County employees who accrue leave and have completed their initial probationary period.

POLICY AND PROCEDURE

General

To be eligible to receive donated leave, an employee must have been approved for OFLA/FMLA leave. OFLA/FMLA requires that the employee or employee's immediate family member have a serious and extended illness or injury (immediate family member and serious/extended illness are defined in the County's OFLA/FMLA policy).

Procedure

Eligibility for Employee to Receive Donated Leave

An employee interested in leave donation shall contact the Human Resources Department. The Human Resources Department will determine whether an employee is eligible for donated leave. A physician's statement may be requested of the employee requesting donated leave. The employee requesting the donated leave must first use (or plan to use and have available) 40 hours of paid leave and then exhaust all available paid leave including time management, sick leave (if applicable), floating holidays, and compensatory time.

If an employee does not have a minimum of 40 hours of paid leave accrued (when the leave is requested), they are not eligible for the donated leave program. The County Administrator may waive the 40 hour requirement in unusual circumstances where an employee falls below 40 hours of leave due to one occurrence of OFLA/FMLA leave and does not have sufficient time to build up his/her leave bank before another occurrence of OFLA/FMLA leave.

Employees with a serious and extended illness are encouraged to apply for long-term disability if the illness is expected to last for several months. An employee using donated leave will continue to accrue benefits and leave time, but must exhaust all leave as accrued.

Eligibility for an Employee to Donate Leave

Employees who would like to donate leave must have a leave balance of at least 80 hours remaining (this includes all types of leave (with the exception of sick bank hours), with the exception of or the floating holiday)) after the donation. Part-time employees must have a minimum prorated balance (for example, an employee working as a 0.5 FTE would need 40 hours).

Donating Leave

The Human Resources Department will administer the leave donations. Solicitations by department heads, supervisors, or co-workers are not permitted. Once an employee receives approval to use donated leave, the Human Resources Department will send out a notice to County employees of the request for donated leave. The notice will include the name and department of the employee requesting the leave.

Donated leave shall only include time management leave, vacation leave, and compensatory time. It shall not include sick leave or the floating holiday. To donate leave, an employee must sign a release document (Leave Donation Form – available on the intranet). Donors shall remain anonymous and all contribution records shall be retained in confidential files. Donations of leave will be on an hour-for-hour basis. The minimum contribution is eight hours for full-time employees and four hours for part-time employees. Donations cannot be retroactive.

Once approved, the contributions will be placed in the recipient's leave bank in the order they were received, but only as the recipient needs leave each pay period. In the event a request is processed but the recipient does not use the leave, the leave will be restored to the donor's leave bank.

The maximum amount of donated leave that can be received by an employee in a rolling 12-month period is 480 hours (prorated for part-time employees). If the employee using donated leave is eligible for long-term disability, the employee is limited to the amount of donated leave that is required to begin long-term disability. Once on long-term disability, an employee is not eligible for any type of donated leave.

Approved by the Deschutes County Board of Commissioners DATE

Nick Lelack
County Administrator



Deschutes County Administrative Policy No. HR-13
Effective Date: September 24, 2008
Revision Date:

EMPLOYEE LEAVE DONATION

STATEMENT OF POLICY

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APPLICABILITY

This policy applies to all regular County employees who accrue leave and have completed their initial probationary period.

POLICY AND PROCEDURE

General

To be eligible to receive donated leave, an employee must have been approved for OFLA/FMLA leave. OFLA/FMLA requires that the employee or employee's immediate family member have a serious and extended illness or injury (immediate family member and serious/extended illness are defined in the County's OFLA/FMLA policy).

Procedure

Eligibility for Employee to Receive Donated Leave

An employee interested in leave donation shall contact the Human Resources Department. The Human Resources Department will determine whether an employee is eligible for donated leave. A physician's statement may be requested of the employee requesting donated leave. The employee requesting the donated leave must first use (or plan to use and have available) 40 hours of paid leave and then exhaust all available paid leave including time management, sick leave (if applicable), floating holidays, and compensatory time.

If an employee does not have a minimum of 40 hours of paid leave accrued (when the leave is requested), they are not eligible for the donated leave program. The County Administrator may waive the 40 hour requirement in unusual circumstances where an employee falls below 40 hours of leave due to one occurrence of OFLA/FMLA leave and does not have sufficient time to build up his/her leave bank before another occurrence of OFLA/FMLA leave.

Employees with a serious and extended illness are encouraged to apply for long-term disability if the illness is expected to last for several months. An employee using donated leave will continue to accrue benefits and leave time, but must exhaust all leave as accrued.

Eligibility for an Employee to Donate Leave

Employees who would like to donate leave must have a leave balance of at least 80 hours remaining (this includes all types of leave (with the exception of sick bank hours or the floating holiday)) after the donation. Part-time employees must have a minimum prorated balance (for example, an employee working as a 0.5 FTE would need 40 hours).

Donating Leave

The Human Resources Department will administer the leave donations. Solicitations by department heads, supervisors, or co-workers are not permitted. Once an employee receives approval to use donated leave, the Human Resources Department will send out a notice to County employees of the request for donated leave. The notice will include the name and department of the employee requesting the leave.

Donated leave shall only include time management leave, vacation leave, and compensatory time. It shall not include sick leave or the floating holiday. To donate leave, an employee must sign a release document (Leave Donation Form – available on the intranet). Donors shall remain anonymous and all contribution records shall be retained in confidential files. Donations of leave will be on an hour-for-hour basis. The minimum contribution is eight hours for full-time employees and four hours for part-time employees. Donations cannot be retroactive.

Once approved, the contributions will be placed in the recipient's leave bank in the order they were received, but only as the recipient needs leave each pay period. In the event a request is processed but the recipient does not use the leave, the leave will be restored to the donor's leave bank.

The maximum amount of donated leave that can be received by an employee in a rolling 12-month period is 480 hours (prorated for part-time employees). If the employee using donated leave is eligible for long-term disability, the employee is limited to the amount of donated leave that is required to begin long-term disability. Once on long-term disability, an employee is not eligible for any type of donated leave.

Revisions approved by the Deschutes County Board of Commissioners on _____ (date)

Nick Lelack
County Administrator



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 28, 2026

SUBJECT: Approval of Resolution No. 2026-001 adopting a supplemental budget and increasing appropriations in the Sheriff's Office Fund

RECOMMENDED MOTION:

Move approval of Resolution No. 2026-001 increasing appropriations within the fiscal year 2026 Deschutes County Budget.

BACKGROUND AND POLICY IMPLICATIONS:

On January 21, 2026, the Board approved acceptance of the State's Jail-based Medications for Opioid Use Disorder Grant Program (JMOUD). Out of the total \$238,060 grant award, \$100,000 is projected to be spent in FY 2026.

BUDGET IMPACTS:

Recognize grant revenue of \$100,000 and increase Program Expense appropriations by the same amount within the Sheriff's Office Fund.

ATTENDANCE:

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 Fiscal Year 2026 Deschutes *
 County Budget * RESOLUTION NO. 2026-001

WHEREAS, Deschutes County Board of County Commissioners approved the acceptance of a Jail Based Medications for Opioid Use Disorder on 1/21/26, 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 and increase Program Expense appropriations within the Sheriff's Office 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 fiscal year 2026 County Budget:

<u>Sheriff's Office Fund</u>	
State Grant	\$ 100,000
Sheriff's Office Fund Total	<u>\$ 100,000</u>

Section 2. That the following amounts be appropriated in the fiscal year 2026 County Budget:

<u>Sheriff's Office Fund</u>	
Program Expense	\$ 100,000
Sheriff's Office Fund Total	<u>\$ 100,000</u>

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 January, 2026.

BOARD OF COUNTY COMMISSIONERS OF
DESCHUTES COUNTY, OREGON

PHIL CHANG, Chair

ATTEST:

ANTHONY DEBONE, Vice-Chair

Recording Secretary

PATTI ADAIR, Commissioner

Deschutes County
Supplemental Budget

REVENUE

Item	Project Code	Segment 2	Org	Object	Description	Current Budgeted Amount	To (From)	Revised Budget
1			2553750	334012	State Grant	\$ 1,150,000	\$ 100,000	\$ 1,250,000
2								
3								
TOTAL							\$ 1,150,000	\$ 100,000
\$ 1,150,000							\$ 100,000	\$ 1,250,000

APPROPRIATION

Item	Project Code	Segment 2	Org	Object	Category (Personnel, M&S, CapEx, Transfers, Contingency)	Description (Object, e.g. Time Mgmt, Temp Help, Computer Hardware)	Current Budgeted Amount	To (From)	Revised Budget
1			2553750	460160	M&S	Prescriptions and Medicines	\$ 350,000	\$ 100,000	\$ 450,000
2									
3									
TOTAL							\$ 350,000	\$ 100,000	\$ 450,000

Budget adjustment to increase revenue and expenditures for the Jail-Based Medications for Opioid Use Disorder Grant Program (JMOUD).

Fund:
Dept:
Requested by:
Date:

255
Sheriff's Office
Jeff Price
1.28.2026



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 28, 2026

SUBJECT: Public Hearing: Proposed amendment to Chapter 4.20 of County Code regarding real property conveyance recording fees

RECOMMENDED ACTION:

Following the public hearing, move approval of first reading of Ordinance No. 2026-003 by title only.

BACKGROUND AND POLICY IMPLICATIONS:

Deschutes County Code Chapter 4.20, Public Land Corner Preservation Fund, includes a provision regarding recording fees that is not in accord with new legislation. HB3175, which took effect on January 1, 2026, removed the statutory limit of \$10 in ORS 203.148 (2).

This statutory change effectively delegates the determination of the fee amount to the BOCC, which will be done in conjunction with the County's annual fee resolution. The County Surveyor intends to request an additional \$4 per recording for FY 2027.

BUDGET IMPACTS:

Slight increase in Public Land Corner Preservation Fund

ATTENDANCE:

Surveyor

Legal

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Chapter 4.20, Public Land *
 Corner Preservation Fund, of the Deschutes County * ORDINANCE NO. 2026-003
 Code. *

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

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

WHEREAS, staff from the Road Department/Surveyor have identified a need to amend DCC 4.20 to clarify criteria for setting recording fees; and

WHEREAS, the Board of County Commissioners of Deschutes County considered this matter at a duly noticed Board meeting on January 28, 2026, and determined that DCC 4.20 should be amended; now therefore,

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

Section 1. AMENDMENT. DCC 4.20 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 ~~strike~~through.

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

///

Dated this _____ of _____, 2026

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PHIL CHANG, Chair

ANTHONY DeBONE, Vice Chair

ATTEST:

Recording Secretary

PATTI ADAIR, Commissioner

Date of 1st Reading: _____.

Date of 2nd Reading: _____.

Commissioner

Patti Adair
Phil Chang
Anthony DeBone

Record of Adoption Vote
Yes No Abstained Excused

Effective date: _____.

EXHIBIT A

(To Ordinance No. 2026-003)

CHAPTER 4.20 PUBLIC LAND CORNER PRESERVATION FUND

- 4.20.010 Purpose
- 4.20.020 Definitions
- 4.20.025 Definition; Corner
- 4.20.030 Definition; County Surveyor
- 4.20.035 Definition; Existing Corner
- 4.20.040 Definition; Government Corners
- 4.20.045 Definition; Instrument
- 4.20.050 Fee Established; Disposition
- 4.20.060 Fund Created
- 4.20.070 Restriction On Expenditures

4.20.010 Purpose

The purpose of DCC 4.20 is to establish a fee for the recording of documents that convey an interest in real property pursuant to ORS 205.130 by deed, to be used by the County Surveyor for the establishment, reestablishment and maintenance of corners of government surveys under ORS 209.070(5) and (6).

HISTORY

Adopted by Ord. 86-014 §1 on 2/19/1986

4.20.020 Definitions

For the purposes of DCC 4.20, unless otherwise apparent from the context, certain words and phrases used in DCC 4.20 are defined as set forth in DCC 4.20.025-045.

HISTORY

Adopted by Ord. 86-014 §2 on 2/19/1986

Amended by Ord. 95-029 §1 on 5/17/1995

4.20.025 Definition; Corner

"Corner" means a point determined by the surveying process.

HISTORY

Adopted by Ord. 86-014 §2 on 2/19/1986

4.20.030 Definition; County Surveyor

"County Surveyor" means the County Surveyor or his designee.

HISTORY*Adopted by Ord. 86-014 §2 on 2/19/1986***4.20.035 Definition; Existing Corner**

"Existing corner" means one whose position can be identified by verifying the evidence of the monument or its accessories, by reference to the description and field notes, or located by an acceptable supplemental survey record, some physical evidence or testimony.

HISTORY*Adopted by Ord. 86-014 §2 on 2/19/1986***4.20.040 Definition; Government Corners**

"Government corners" means and includes all corners and boundary lines as is accepted in the United States Department of Interior, Bureau of Land Management, Manual of Surveying Instruction and its supplements, such as section, quarter section, donation land claim, meander, closing, witness, state boundary and line trees. Such corners include:

- A. "Lost corner" means a point of a survey whose position cannot be determined, beyond reasonable doubt, either from traces of the original marks or from acceptable evidence or testimony that bears upon the original position, and whose location can be restored only by reference to one or more interdependent corners.
- B. "'Monument" means an object or physical structure which marks the corner point.
- C. "Obliterated corner" means one at which point there are no remaining traces of the monument or its accessories, but whose location has been perpetuated, or the point for which may be recovered beyond reasonable doubt by the acts and testimony of the interested landowners, competent surveyors, or other qualified local authorities, or witness, or by some acceptable record evidence.
- D. "Restoration" means the establishment, reestablishment or maintenance for the purpose of preservation of the corner.

HISTORY*Adopted by Ord. 86-014 §2 on 2/19/1986***4.20.045 Definition; Instrument**

"Instrument" means any document described in ORS 205.130(2).

HISTORY*Adopted by Ord. 87-027 \$2 on 8/19/1987**Amended by Ord. 99-037 \$1 on 12/15/1999***4.20.050 Fee Established; Disposition**

The County Clerk shall collect a fee for the recording of an instrument as defined in DCC 4.20 in the amount **prescribed by the Deschutes County Fee Schedule** ~~of ten dollars per instrument~~. This fee shall be in addition to any other fee charged by the County Clerk. At least once a month the County Clerk shall deposit with the County Treasurer all fees received pursuant to DCC 4.20 in the public land corner preservation account.

HISTORY*Adopted by Ord. 86-014 \$3 on 2/19/1986**Amended by Ord. 87-027 \$3 on 8/19/1987**Amended by Ord. 99-037 \$2 on 12/15/1999**Amended by Ord 2026-003 \$1 on 5/18/2026***4.20.060 Fund Created**

A public land corner preservation fund shall be created and used for the purposes stated in DCC 4.20. All moneys collected for this fund and any interest accrued to this fund, shall be deposited and credited to the public land corner preservation fund. The treasurer is authorized to invest fund balances.

HISTORY*Adopted by Ord. 86-014 \$4 on 2/19/1986**Amended by Ord. 86-036 \$1 on 3/26/1986***4.20.070 Restriction On Expenditures**

Funds received pursuant to DCC 4.20 shall be used for establishment, reestablishment and maintenance of corners of government surveys under ORS 209.070(5) and (6) and for no other purpose.

HISTORY*Adopted by Ord. 86-014 \$5 on 2/19/1986*



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 28, 2026

SUBJECT: Second reading of Ordinance No. 2026-001 amending Chapter 2.08 of County Code

RECOMMENDED MOTIONS:

1. Move approval of second reading of Ordinance No. 2026-001 by title only.
2. Move adoption of Ordinance No. 2026-001.

BACKGROUND AND POLICY IMPLICATIONS:

The proposed amendment to Chapter 2.08 of Deschutes County Code ensures compliance with mandates in ORS relative to the hours of operation for the County Clerk's Office.

The BOCC held a public hearing on January 14, 2026 and thereafter approved first reading of Ordinance No. 2026-001.

BUDGET IMPACTS:

None

ATTENDANCE:

Legal

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Title 2.08, County Clerk, of
the Deschutes County Code. *

ORDINANCE NO. 2026-001

*

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

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

WHEREAS, staff from the Clerk's Office have identified a need to amend DCC 2.08 to clarify criteria and process associated with hours of operations; and

WHEREAS, the Board of County Commissioners of Deschutes County considered this matter at a duly noticed Board meeting on January 14, 2026, and determined that DCC 2.08 should be amended; now therefore,

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

Section 1. AMENDMENT. DCC 2.08 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 ~~strikethrough~~.

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

///

Dated this _____ of _____, 2026

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PHIL CHANG, Chair

ANTHONY DeBONE, Vice Chair

ATTEST:

Recording Secretary

PATTI ADAIR, Commissioner

Date of 1st Reading: _____.

Date of 2nd Reading: _____.

Commissioner

Patti Adair
Phil Chang
Anthony DeBone

Record of Adoption Vote
Yes No Abstained Excused

Effective date: _____.

EXHIBIT A

(To Ordinance No. 2026-001)

CHAPTER 2.08 COUNTY CLERK

2.08.010 Hours For Receiving, ~~Recording and Certifying~~ And Recording Documents

2.08.020 Refund Of Over-Payments Of Recording Fees

2.08.010 Hours For Receiving, ~~Recording and Certifying~~ And Recording Documents

The office hours for receiving, ~~and recording and certifying instruments documents in the~~ by the County Clerk shall conform to ORS 205.242. The provisions of ORS 205.242, including minimum hours, recognized exceptions, and any authorized temporary modifications, are adopted by this reference and made a part of this Chapter 2.08.'s office shall be from 8:00 a.m. until 4:00 p.m. on each judicial day, except for the day after Thanksgiving, Christmas and New Year's Day.

HISTORY

Adopted by Ord. 81-034 §1 on 12/8/1981

Amended by Ord. 96-029 §1 on 5/15/1996

Amended by Ord. 97-061 §1 on 8/13/1997

Amended by Ord. 2026-001 §1 on 5/6/2026

2.08.020 Refund Of Over-Payments Of Recording Fees

Unless requested by the person submitting the documents to be recorded, no refund shall be issued for any over-payment of fees of \$10.00 or less received by the County Clerk's office for payment of recording fees.

HISTORY

Adopted by Ord. 2004-014 §1 on 6/9/2004

Amended by Ord. 2013-011 §1 on 3/6/2013



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 28, 2026

SUBJECT: Healthy Schools Program Four-Year Outcome Evaluation Results

RECOMMENDED MOTION:

N/A

BACKGROUND AND POLICY IMPLICATIONS:

Results from the evaluation of the Healthy Schools program provide substantial evidence that the program prevented 21% of behavioral health-related Emergency Department (ED) visits for ages 11-17 living in Bend-La Pine Schools zip codes, and further saved between \$812,000 and \$1.5 million in associated health care costs. The results also support the conclusion that Healthy Schools facilitated district-wide improvements to school services and positive changes toward targeted adolescent health outcomes such as suicide, mental health, substance use, bullying and violence, and sexual reproductive health.

Deschutes County Healthy Schools is an efficient and effective approach to improving adolescent health outcomes. The program works by embedding local public health agency staff into the district office and middle and high schools to serve as their designated coordinator for a data-drive process to improve the health of students. Public Health staff serve as coordinators to ensure that schools promote health and prevent student health issues from worsening or ever starting. These staff do not take over the roles of school staff, but guide staff to use more effective practices.

Schools are logical and efficient locations for public health interventions for youth. They are settings where learning is expected and new behaviors are learned and practiced daily. Children and adolescents spend nearly half of their waking hours at school for 13 years of their critical developmental years. More than 95% of youth ages 5-17 can be reached through schools.

The Deschutes County Healthy Schools program is a cost-sharing partnership between the County and Bend-La Pine Schools. More information is available at www.deschutes.org/healthyschools.

BUDGET IMPACTS:

None

ATTENDANCE:

Aimee Snyder, Adolescent and School Health Supervisor

Jessica Jacks, Prevention and Health Promotion Program Manager

Healthy Schools

Connecting education, health, & community



Deschutes Co Board of County Commissioners | January 2026

1

What is Healthy Schools?

WHAT

Bend-La Pine Schools and Deschutes County Health Services **partnering together** to **embed** Public Health Specialists in middle and high schools

WHY

Ensuring **students thrive** by preventing: student suicide, substance use, bullying/violence, sexually transmitted infections and teen pregnancies

HOW

Engaging the whole school community to **have a say in** improving **health curriculum, school climate**, and linking students to **care and preventative resources**



2

Evaluation

3

Evaluation Questions



1. Did middle and high schools actually adopt and integrate Healthy Schools and practices?



2. Did middle and high schools increase their use of evidence-based practices and reach to students because of the Healthy Schools program?



3. Did Healthy Schools have impact on student mental health, suicide, and substance use?



4

As a result of Healthy Schools



Successfully integrated Public Health Services into district and schools and improved alignment and effective school-based prevention and health promotion services



Improved school-based services reaching students with evidence-based programs already proven to work for our targeted adolescent health outcomes



Prevented 21% of Behavioral Health related Emergency Department visits in one year – that's 84 visits equating to \$812,000 to \$1.5 million in avoided health care charges



5

Results

6

Question 1: Did middle and high schools actually adopt and integrate Healthy Schools?

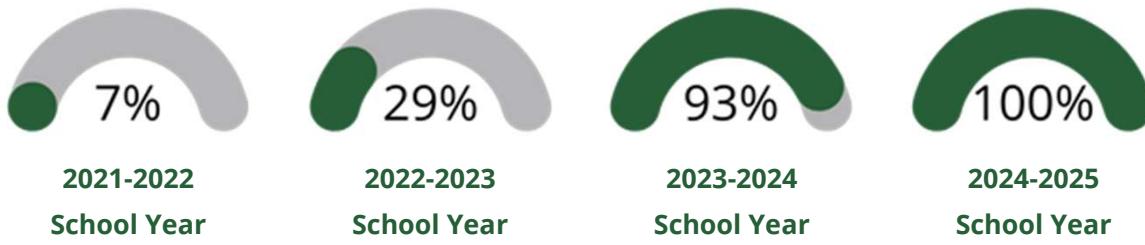


7

Result: Successful Adoption and Integration

Proportion of BLS Schools Adopting the Healthy Schools Program

Out of 14 BLS Sites with Assigned Public Health Specialists



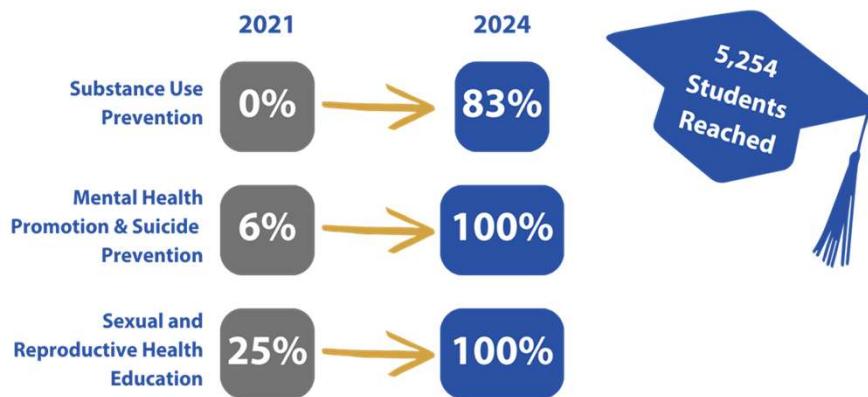
8

Question 2: Did middle and high schools increase their use of evidence-based practices and reach to students because of the Healthy Schools program?



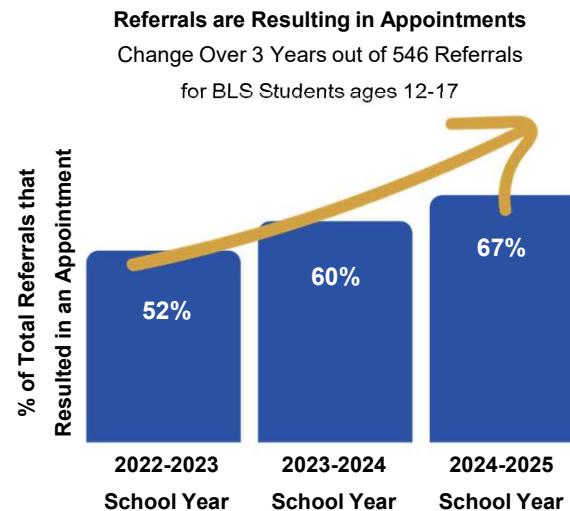
9

Result: Improved School-Based Services



10

Result: Improved School-Based Services



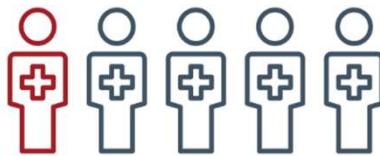
11

Question 3: Did Healthy Schools have impact on student mental health, suicide, and substance use?



12

Result: Improved Adolescent Health Outcomes



1 in 5

Behavioral Health **Emergency Department visits***

were **prevented** for youth ages 11-17
from zip codes **with Healthy Schools**

...that means we prevented
84 visits in one year.

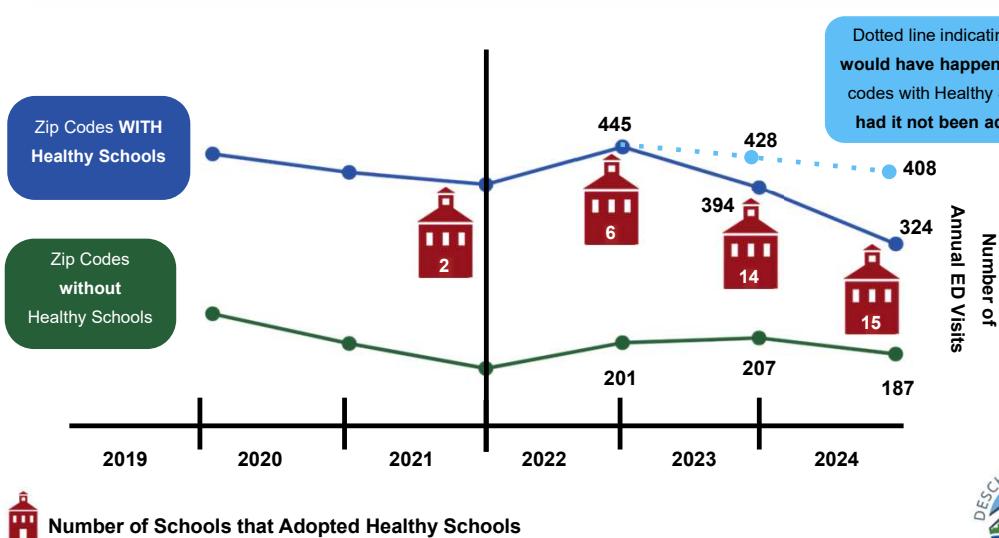


* Emergency Department visits for suicide,
substance use, depression, and mental health



13

Result: Improved Adolescent Health Outcomes



14

Result: Improved Adolescent Health Outcomes

Sources of Strength Peer Leader Post-Survey Results



15

Student Impact Quotes

“ I've seen a lot of kids figure out like that they are having mental health problems and they need to get help, and how they can get help. It [Sources of Strength] shows resources that they can go to. They made it more like eye-opening, like they can talk to someone, the teen-to-teen line [YouthLine] and all that.” ”

“ Some people tried to cope or to help with home problems...they do substances to help them out. Now we have a lot more resources out there available for them, and we try to make them feel comfortable talking to our counselors or other staff members they trust. ” ”



16

Result: Improved Adolescent Health Outcomes

Estimated Cost-Savings

- \$812,000 to \$1.5 million in avoided health care charges

Other Prevented Costs:

- Missed school days for students (reimbursements)
- Missed workdays for caregivers
- Lost productivity for employers
- Medical transports, travel, accommodations, and meals



17

Findings Validated



Key Informant Interviews

Interviews with experts in Deschutes County's behavioral health care and student services systems to look for other explanations.



Student Focus Groups

Focus Group discussions with Peer Leaders to assess whether Sources of Strength could have resulted in prevented emergencies.



Criteria for Causality

Reviewed all data for essential criteria for causality: Cause-and-effect timing, Coherence with EBPs, Specific targeted results.



Find Technical Evaluation Report: Deschutes.org/healthyschools



18

Conclusions

19

As a result of Healthy Schools



Successfully integrated Public Health Services into district and schools and improved alignment and effective school-based prevention and health promotion services



Improved school-based services reaching students with evidence-based programs already proven to work for our targeted adolescent health outcomes



Prevented 21% of Behavioral Health related Emergency Department visits in one year – that's 84 visits equating to \$812,000 to \$1.5 million in avoided health care charges



20

83

0

Student Impact Quotes

“ Because at [my former school], I did not go to class, like, I'm just putting it out there, I did not go to class. And then I joined Sources, and I started, like, going most days. And so it like, first of all, it helped me find a community. And second of all, it helped me, like, more, like, engage in school and like hearing about that through other things. Like, it kind of like brought it together. ”

“ My freshman year, I had a lot of mental health problems, and [my dad] just didn't know what to do with it, so I had to go talk to people that weren't my dad. And it was, like, really hard, not to talk to my dad about it. And now I feel like I can talk to my dad about it, and I feel like I can be like 'Dad, I need help.' Yeah, so it changed, like, how my dad's dynamic is when it comes to talking about mental health. ”



21

School Administrator Impact Quote

“ Many of our students have stated that they understand what resources are available to them and if they are unsure, they feel comfortable asking a trusted adult. One of our students demonstrated a lot of concerning behaviors as a Freshman (head down, no friends, no connection to school through clubs or athletics) as a Senior this student has come out of their shell and now has a friend circle and participates in school clubs. This student is often seen with a smile. This all started when they participated in a class that was using Sources of Strength and gave this student an opportunity to see themselves as a leader and found connection to others and school. ”



22



Connecting education, health, & community

Thank you

Aimee Snyder, DrPH, Adolescent and School Health Supervisor, Aimee.Snyder@Deschutes.org

Jessica Jacks, MPH, Prevention and Health Promotion Program Manager, Jessica.Jacks@Deschutes.org

Website: www.deschutes.org/healthyschools





Agenda Request and Staff Report

MEETING DATE: January 28, 2026

SUBJECT: Consideration of Board approval for the Black Butte Ranch Police Service District 2025-2027 collective bargaining agreement

RECOMMENDED MOTION: Approval of County Document No. 2026-049 Black Butte Ranch Police Service District 2025-2027 collective bargaining agreement

BACKGROUND AND POLICY IMPLICATIONS:

The Black Butte Ranch Police Service District (“District”) has been actively negotiating with the Black Butte Police Officers Association (“Association”) for a successor collective bargaining agreement (CBA) to the expired 2020-2025 CBA. Negotiations began in October of 2024 and concluded on November 7, 2025 with an impasse. At that time the Association filed for mediation. The first and only mediation occurred on December 23rd, 2025. That meeting also resulted in an impasse. Prior to either side requesting arbitration, the Chief of Police and Association leadership continued to have informal conversations which ultimately led to an agreement on the final issue of the CBA. Both the District and the Association tentatively agreed to this new two-year agreement on 1/15/2026. If approved, the new agreement will have an effective date of July 1, 2025 through June 30, 2027.

BUDGET IMPACTS:

In addition to significant language changes, the District has agreed to the following financial allowances:

- Salary increase of 10% in year 1 (FY26) and 5% in year two (FY27) of the CBA
- Increase in the contribution of each officer’s HRA account from \$1,693 to \$1,750 effective Feb 1, 2026 and \$1,900 in year two plus additional one-time contributions of \$500 (2/1/26) and \$1,500 (7/1/26)

Black Butte Ranch



Police Department

- Increases in the intermediate and advanced certificate incentive program with the maximum annual benefit of \$3,300 per officer occurring in year two of the CBA. Changed from percentage to a fixed dollar amount.
- Increase in the Field Training Officer incentive rate
- Creation of a Public Information Officer position with annual benefit of \$3,960
- Increase in the longevity step bonus by \$1,768/year at top pay step
- Addition of a paid holiday program whereby officers working one of nine specified holidays will be paid at the rate of time and one half (1.5) and if working the holiday as overtime will be paid at a rate of double time and a quarter (2.25).
- Addition of a Long-Term Disability Insurance plan paid for by the District.
- Additional allowances for the purchase of duty boots and uniform clothing.

All increased costs of the proposed agreement were built into the FY 2026 budget except for the increases to the HRA contributions. A review of the current FY 2026 budget shows that the District's budget has the capacity to absorb the increased costs of the HRA contributions.

Preliminary planning of the District's FY 2027 budget shows that the increases in the District's revenue as a result of the recent increase to the optional levy rate, and annual increase in property values, will provide sufficient funding to afford these additional costs and meet the other needs of the District.

ATTENDANCE:

Todd Rich, Chief of Police



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 28, 2026

SUBJECT: Redmond Fire & Rescue Proposed Contract with Alfalfa Fire District

RECOMMENDED MOTION:

Move to authorize Redmond Fire & Rescue to enter into a formal contract with Alfalfa Fire District for the provision of Basic Life Support non-emergency transport services within the boundaries of Redmond Fire & Rescue's Ambulance Service Area, as outlined in the Intergovernmental Agreement between the two agencies.

BACKGROUND AND POLICY IMPLICATIONS:

Redmond Municipal Airport frequently serves as a hub for fixed-wing and rotor-wing air ambulance transports to local hospitals. During inclement weather, the volume of these transports often increases, creating logistical challenges in providing ground transport from the airport to designated hospitals. Redmond Fire & Rescue will retain the first right of refusal for these ground transports; however, when Redmond units are unavailable, Alfalfa Fire District will be offered the opportunity to provide transport services.

Under the proposed agreement, Alfalfa Fire District will provide Basic Life Support (BLS) services and transport exclusively within Redmond Fire & Rescue's ASA to any one of the four St. Charles Hospitals. All operational details and service boundaries are clearly outlined in the Intergovernmental Agreement (IGA) between the two agencies.

Per Deschutes County Code 8.30.070, franchised providers may subcontract emergency ambulance services with Board approval. The Code requires:

8.30.070. Sub-contracting of Services by Franchisees.

- C. Franchisees may contract for emergency ambulance services or non-emergency or inter-facility ambulance transports with a private, non-governmental entity or person as otherwise provided herein. Franchisees may contract with a private, non-governmental entity or person for a term of up to two years. Franchisees must request authorization from the Board to renew such contracts at least forty-five (45) days prior to the expiration of the term of any such contract. Renewal requests may be authorized by the Board so long as the requirements placed on subcontracted ambulance service providers in

paragraphs (A) and (B) above, as applicable, are maintained, and so long as an acceptable record of service is demonstrated to the Board.

Key benefits of the contract are:

- **Preservation of central resources:** Redmond Fire units can remain locally available in higher-volume areas by reducing long-distance responses.
- **Improved patient outcomes:** Adding ground transport capacity to local hospitals allows more critical patients to be transported into the region for specialized care.
- **Efficient use of local resources:** Alfalfa Fire District is already equipped and trained to provide BLS transport services within their jurisdiction.
- **Strengthened interagency collaboration:** Formalizing this partnership supports regional EMS coordination and resource sharing.
- **No budget impact:** The contract does not require additional funding or budget adjustments.

Redmond Fire & Rescue will present the proposed contract and highlight its benefits, including improved response times and enhanced service coverage for residents in eastern Deschutes County.

BUDGET IMPACTS:

None

ATTENDANCE:

Tom Kuhn, Project Manager, Health Services

Dustin Miller, Deputy Chief, Redmond Fire & Rescue

Chad Lavallee, Fire Chief, Alfalfa Fire District

**INTERGOVERNMENTAL AGREEMENT
FOR BASIC LIFE SUPPORT AMBULANCE SERVICES BETWEEN REDMOND FIRE & RESCUE
AND ALFALFA FIRE DISTRICT**

This Intergovernmental Agreement ("Agreement") is entered into between Redmond Fire & Rescue, and Alfalfa Fire District both who are Oregon governmental special districts organized under ORS 478, both referred to herein individually as "Party" or collectively as "Parties." The Agreement is effective as of the date it is fully executed by the Parties ("Effective Date").

RECITALS

WHEREAS, both Redmond Fire & Rescue, which serves as the Fire & Rescue Department on behalf of the District, and Alfalfa Fire District, as public safety organizations, can leverage the unique benefits of both organizations to provide effective and efficient services to the citizens of the community; and

WHEREAS, as per ORS 682 Redmond Fire & Rescue is responsible for the Ambulance Service Area ("ASA") franchise for the City of Redmond Municipal Airport and the surrounding area; and

WHEREAS, that ASA franchise for the Fire District continues through the next renewal period on July 1, 2028; and

WHEREAS, as per Deschutes County ASA Ordinance sections 8.30.070 and 8.30.090, by and through Redmond Fire & Rescue, may subcontract emergency and/or non-emergency transports with another ambulance service provider and subcontract for emergency or non-emergency interfacility transports with another agency upon authorization by the County Board of Commissioners; and

WHEREAS, Alfalfa Fire District is a state-licensed ambulance provider at the basic life support ("BLS") level, has multiple units, staffing flexibility, and can provide mutual aid; and

WHEREAS, Alfalfa Fire District has the ability to provide non-emergency BLS transport service meeting all the requirements of the County's ASA plan, however, needs to have reasonable assurances private resources allocated for this purpose will be utilized in a consistent and sufficient manner to be commercially viable.

THEREFORE:

Alfalfa Fire District is authorized, and agrees, to provide non-emergency, BLS ambulance service to facilitate aeromedical crew and patient transports originating at the Redmond Municipal Airport and ending at a hospital within Central Oregon, following the turndown from Redmond Fire & Rescue's chief officer.

Alfalfa Fire District retains cost recovery rights for services performed within its Fire District boundaries, including billing insurance providers, Medicaid/Medicare, Veterans Affairs, and individual patients, as per its business practices, as well as for any mutual or automatic aid.

AGREEMENT

- 1. Effective Date/Duration.** This Agreement is effective when signed by all Parties and shall remain in effect through December 31, 2027 unless renewed. This Agreement shall be renewable every two years per County ASA Ordinance 8.30.90(c) which requires 45 days' notice to the County Board of Commissioners.
- 2. Obligations of Alfalfa Fire & Rescue.**
 - a. Alfalfa Fire District shall comply with the terms of this Agreement and meet all standards within the current ASA plan, and the applicable terms of ORS Chapter 682, any rules and regulations issued pursuant to ORS Chapter 682, including but not limited to OAR 333-260- 0000 to 333-260-0070, and any other applicable state, federal or local laws, rules or regulations. Redmond Fire & Rescue, reserves the right to enact additional rules and regulations from time to time as it deems necessary to protect the health, interest, safety and welfare of the public in relation to nonemergency ambulance services, provided that any rules shall not be inconsistent with the provisions of applicable County or State regulations mentioned in this subsection.
 - b. Alfalfa Fire District agrees to be staffed and available-in-service with at least one BLS ambulance.
 - c. Alfalfa Fire District shall have at least one radio in their units with the ability to receive and communicate with the District's 911 center. Alfalfa Fire District shall continuously monitor that channel during the times required to be in service, as well as appropriate text device linked to the 911 Computer Aided Dispatch System (CADS) for dispatches. Alfalfa Fire District and its employees shall follow all District radio protocols.
 - d. Alfalfa Fire District must have and maintain a state license for the provision of Emergency Medical Service ("EMS") BLS Ambulance and shall provide Redmond Fire & Rescue with a current copy of required license. Alfalfa Fire District shall maintain all required licenses or certifications required for personnel, ambulances, and other equipment in accordance with state, federal, and local laws rules and regulations.
 - e. Alfalfa Fire District shall maintain patient records, whether transported or not, in accordance with Federal, State and local laws including The Health Insurance Portability and Accountability Act of 1996 (HIPAA) including the 2013 Final Omnibus Rule Updates. Both Parties shall have access to generalized response information and data generated at 911.

3. Parties' Additional Obligations.

- a. Redmond Fire & Rescue and Alfalfa Fire District both agree to comply with the Civil Rights Act of 1964, and 1991 the Americans with Disability Act (ADA) of 1990 as amended, 42 USC §§ 12101-17, 12201-13 (Supp. V 1994), Section 504 of the Rehabilitation Act of 1973, and Title VI as implemented by 45 CFR 80 and 84 which states in part no qualified person shall on the basis of disability , race, color, or national origin be excluded from participation in , be denied the benefit of, or otherwise be subject to discrimination under any program or activity which receives Federal financial assistance.
- b. Redmond Fire & Rescue retains the first right of refusal for all emergency, non-emergency ambulance transports, inter-facility transports, and EMS Event Coverage within its ASA.
- c. The Parties shall meet at least annually to discuss performance and operational issues.

4. Insurance.

- a. During the term of this Agreement, Alfalfa Fire District shall obtain and maintain insurance coverage satisfactory to the Fire District.
- b. During the term of this Agreement, Alfalfa Fire District shall obtain and maintain workers' compensation insurance within statutory limits and employers' liability insurance in full compliance with the requirements of ORS 656 and with Oregon unemployment insurance requirements.
- c. If Alfalfa Fire District, for any reason, fails to maintain insurance as required by this Agreement, the City may terminate this Agreement. The 90-day notice requirement set forth in Section 6 does not apply to termination by Redmond Fire & Rescue pursuant to this Section.

5. Indemnification.

The Parties shall defend, indemnify, and hold harmless each other, their officers, agents, employees, and volunteers against any and all liability, claims, losses, demands, suits, fees, and judgments relating to the performance of this Agreement. This indemnification shall not apply to claims caused by the sole negligence or willful misconduct of either Party, its officers, agents, employees, and volunteers. Alfalfa Fire District agrees that it is not an agent of Redmond Fire & Rescue and is not entitled to indemnification and defense under ORS 30.285 and ORS 30.287.

- 6. Termination.** Either Party may terminate this Agreement upon 90 days' written notice to the other Party.
- 7. Entire Agreement.** This Agreement, including referenced exhibit, shall constitute the entire Agreement between Redmond Fire & Rescue and Alfalfa Fire District. Any prior understandings or representations of any kind preceding this agreement shall not be binding upon either Party except to the extent incorporated in this Agreement.
- 8. Modifications.** No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties. A waiver, consent, modification or change, if made shall be effective only in the specific instance and for the specific purpose given.
- 9. Waiver.** The Parties' failure to enforce a provision of this Agreement shall not constitute a continuing waiver, shall not constitute a relinquishment of that Parties' right to performance in the future and shall not operate as a waiver of the Parties' right to enforce any other provision of this Agreement.
- 10. Severability.** In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications of this Agreement that can be given effect without the invalid term, condition, or application. To this end, the terms and conditions of this Agreement are declared severable.
- 11. Applicable Law.** This Agreement shall be governed by the laws of the State of Oregon. Any action commenced in connection with this Agreement shall be in the Circuit Court of Deschutes County.
- 12. No Third-Party Beneficiaries.** Redmond Fire & Rescue and Alfalfa Fire District are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. 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 unless such third persons are identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- 13. Counterparts.** This Agreement 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 so executed shall constitute an original.

IN WITNESS WHEREOF, the Parties hereto have executed this Intergovernmental Agreement effective the date first set out above and signed below.

REDMOND FIRE & RESCUE, by and
through its:

By _____
Fire Chief

Date 1/10/2026

ALFALFA FIRE DISTRICT, by and through its:

By _____
Fire Chief

Date 1/10/2026

DRAFT



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 28, 2026

SUBJECT: Public Hearing: Destiny Court PA/ZC remand hearing

RECOMMENDED MOTION:

None.

BACKGROUND AND POLICY IMPLICATIONS:

In January 2025, the Board of County Commissioners ("Board") approved a Comprehensive Plan Amendment from Agricultural ("AG") to Rural Residential Exception Area ("RREA") and a zone change from Exclusive Farm Use ("EFU") to Multiple Use Agricultural ("MUA10") for a property located at 19975 Destiny Court, Bend, OR. This decision was appealed to the Land Use Board of Appeals ("LUBA") and ultimately remanded back to the County for further review. On January 28, 2026, the Board will hold a remand hearing.

Please see the attached memorandum for more background.

BUDGET IMPACTS:

None.

ATTENDANCE:

Caroline House, Senior Planner

Anthony Raguine, Principal Planner

Will Groves, Planning Manager



COMMUNITY DEVELOPMENT

MEMORANDUM

DATE: January 20, 2026

TO: Board of County Commissioners

FROM: Caroline House, Senior Planner

RE: BOCC Hearing on Destiny Court PA/ZC Remand

On December 23, 2025, Destiny Court Properties, LLC (the "Applicant") initiated a Land Use Board of Appeals ("LUBA") remand application (ref. File No. 247-25-000759-A), and the Board of County Commissioners ("Board") will hold a remand hearing on January 28, 2026.

I. BACKGROUND

The subject property is assigned address 19975 Destiny Court, Bend, OR 97703, and is located in Deschutes County's jurisdiction between the City of Bend and the Unincorporated Community of Tumalo. In 2022, the Applicant initiated several land use applications. These included the subject Comprehensive Plan Amendment to change the designation of this property from Agricultural ("AG") to Rural Residential Exception Area ("RREA") and Zone Change to rezone this property from Exclusive Farm Use ("EFU") to Multiple Use Agricultural ("MUA-10"). In January 2025, the Board voted 2-1 to approve the Comprehensive Plan Amendment and Zone Change request, which aligned with the Hearings Officer's Recommendation.

II. REMAND

The County's decision was appealed to LUBA and LUBA remanded¹ the County's decision back for further review on June 26, 2025 (ref. LUBA No. 2025-015). The Applicant submitted the subject remand application within 180 days of LUBA's Final Order and Opinion pursuant to ORS 215.435(2)(a). As described by the Applicant, LUBA affirmed the County's approval on multiple grounds but remanded on two discrete issues:

1. Alleged Inconsistency with Comprehensive Plan Policy. Specifically, LUBA found remand was necessary to address an apparent inconsistency regarding the County's Comprehensive Plan and the MUA-10 zone, in particular the minimum new lot size for rural residential lots in that zone. LUBA stated:

¹ LUBA's Final Opinion and Order was not appealed to the Court of Appeals.

"...the response does not explain why the equivalent densities of one dwelling per 7.5 acres or 5 acres allowed in the MUA-10 zone, which apparently would allow creation of parcels as small as 1.7 acres in size, are consistent with the 10-acre minimum parcel size specified in DCCP [Deschutes County Comprehensive Plan] Policy 3.3.1.

...

Accordingly, we deem it appropriate under this first assignment of error to remand so that the county may address the alleged conflict between DCCP Policy 3.3.1. and DCC 18.32.040(A) in the first instance."²

2. Complete Analysis Regarding Proposed Farm Uses on the Property. While LUBA rejected the Petitioner's claims that an applicant must disprove that any and all farm uses could occur on the property, LUBA did find that "we agree with petitioner that remand is necessary for the county to evaluate whether the subject property is suitable for the farm uses petitioner identified in the record, including various types of animal husbandry and equine facilities listed in ORS 215.203(2)(a)."³

Notably, LUBA found that the issue of conjoined use was settled (id., slip op 32-33), and therefore the inquiry before the BOCC relates only to use on the subject property, alone.

III. NEXT STEPS

At the conclusion of the hearing, the Board can choose one of the following options:

1. Continue the hearing to a date and time certain;
2. Close the oral portion of the hearing and leave the written record open to a date and time certain;
3. Close the hearing and commence deliberations; or
4. Close the hearing and schedule deliberations for a date and time to be determined.

IV. 120-DAY REVIEW CLOCK

Remand applications have a 120-day review clock⁴, and this review clock cannot be extended in most circumstances⁵. Therefore, the 120th day on which the County must take final action on this application is April 22, 2026.

² Central Oregon LandWatch v. Deschutes County, ___ Or LUBA ___ (LUBA Nos. 2025-015) (slip op at 9-10, Jun 26, 2025) (hereinafter "Destiny Court").

³ *Destiny Court*, slip op 23.

⁴ Most land use applications have a 150-day review clock, and the Applicant can extend the clock for up to 215 days or waive the review clock entirely.

⁵ Ref. ORS 215.435(2)(b).

V. RECORD

Pursuant to Board Order No. 2026-002, parties to this proceeding can only present new evidence related to Issue 2. There is no limitation on parties presenting arguments and suggested findings for the Board's consideration on Issue 1 and Issue 2.

The record for this remand application is as presented at the following Deschutes County Community Development Department website:

<https://www.deschutes.org/cd/page/247-25-000759-remand-destiny-court-properties-llc-comprehensive-plan-amendment-zone-change>

Attachment:

- 1) LUBA Final Opinion and Order 2025-015

JUN 26 2025 AM09:41
LUBA1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON
34 CENTRAL OREGON LANDWATCH,
5 *Petitioner,*
67 vs.
89 DESCHUTES COUNTY,
10 *Respondent,*
1112 and
1314 DESTINY COURT PROPERTIES LLC,
15 *Intervenor-Respondent.*
1617 LUBA No. 2025-015
1819 FINAL OPINION
20 AND ORDER
2122 Appeal from Deschutes County.
2324 Carol E. Macbeth filed the petition for review and reply brief and argued
25 on behalf of petitioner.
2627 Stephanie Marshall filed the respondent's brief and argued on behalf of
28 respondent.
2930 Elizabeth A. Dickson filed the intervenor-respondent's brief and argued on
31 behalf of intervenor-respondent.
3233 BASSHAM, Board Member; ZAMUDIO, Board Chair; WILSON, Board
34 Member, participated in the decision.
3536 REMANDED 06/26/2025
37

38 You are entitled to judicial review of this Order. Judicial review is

1 governed by the provisions of ORS 197.850.

Opinion by Bassham.

NATURE OF THE DECISION

3 Petitioner appeals a board of commissioners decision concluding that a 65-
4 acre parcel is not agricultural land, approving an application to amend the
5 comprehensive plan designation from Agriculture to Rural Residential, and to
6 rezone the property from exclusive farm use to residential use.

FACTS

8 The subject property is an approximately 65-acre parcel zoned Exclusive
9 Farm Use/Redmond Bend (EFU-TRB). The urban growth boundary for the City
10 of Bend is located approximately 2,000 feet to the southeast. The southern border
11 of the subject property adjoins the Bend Urban Reserve Area. The subject
12 property is undeveloped except for a small pond and fencing. The property has,
13 or had until recently, rights to irrigate approximately 29 acres of land.¹

Under Statewide Planning Goal 3 (Agricultural Land), "agricultural land" in Eastern Oregon is defined in part based on soil classifications established by the National Resources Conservation Service (NRCS), with soils predominantly in Classes I to VI presumed to constitute agricultural land. Based on NRCS soil maps, the county's initial comprehensive plan and zoning ordinances designated

¹ The county found that intervenor had recently transferred the irrigation rights for the parcel. However, as discussed below, for purposes of identifying “Agricultural Land,” a parcel within a water district that was once irrigated “shall continue to be considered ‘irrigated’ even if the irrigation water was removed or transferred to another tract.” OAR 660-033-0020(9).

1 and zoned the property for agricultural use. The NRCS soil maps indicated that
2 the subject property has three soil complexes: 38B Deskamp-Gosney complex, 0
3 to 8 percent slopes, 58C Gosney-Rock-outcrop-Deskamp complex, 0 to 15
4 percent slopes, and 106E, Redslide Lickskillet complex, 30-50 percent slopes.
5 The 38B soil complex is classified as Class III soils if irrigated, Class VI if not.
6 The 58C soil complex is classified as Class VII soils. The 106E Redslide
7 Lickskillet soil complex is classified as Class VIII soils and found on a few acres
8 on the western portion of the property, where steep rimrock descends to the
9 Deschutes River. Past irrigation on the subject property was concentrated in two
10 cleared areas with mostly 38B Class III/VI soils, which had been used for forage
11 and pasture for cattle and horses.

12 North of the property are two irrigated 21-acre parcels zoned exclusive
13 farm use (EFU), developed with non-farm dwellings, which had once been part
14 of the subject parcel. West of the property is the Deschutes River, with Tumulo
15 State Park lying to the northwest, and EFU-zoned land to the southwest. East of
16 the property is an area zoned for rural residential use, subject to an exception to
17 Goal 3. Access to the subject property is via Destiny Court Drive from the east
18 through the residential subdivision.

19 Intervenor-respondent (intervenor), the applicant below, applied to the
20 county to redesignate the parcel from Agriculture to Rural Residential Exception
21 Area (RREA), and to rezone the property from EFU-TRB to Multiple-Use
22 Agricultural, 10 acre minimum (MUA-10). The MUA-10 zone allows residential

1 development on 10-acre lots, but if the applicant opts for planned or cluster
2 development, then the MUA-10 zone allows residential development at a higher
3 density, especially if the property is located within one mile of an urban growth
4 boundary. The application initially included a proposal to subdivide the parcel
5 into 14 residential lots, but that proposal was later withdrawn.

6 To demonstrate that the parcel is not “agricultural land” as defined under
7 Goal 3, intervenor hired a soil scientist to conduct an “Order 1” soil survey of the
8 subject property. An Order 1 survey examines soil characteristics at a more
9 refined scale than the NRCS survey. The soil survey confirmed the three soil
10 complexes indicated in the NRCS survey. However, due to inclusions of 58C
11 soils within areas the NRCS mapped as 38B, the soil survey found that the 38B
12 Class III/VI soils on the property represented only about 21.5 acres, or 34 percent
13 of the parcel, with the remainder consisting of Class VII or higher, non-
14 agricultural soils.

15 The county hearings officer conducted a hearing on the application, at
16 which petitioner appeared in opposition. Based on the soil survey and other
17 applicant submittals, the county hearings officer recommended that the county
18 find that the parcel does not qualify as “agricultural land” under Goal 3. The
19 board of commissioners held a *de novo* hearing on the application and, on January
20 8, 2025, adopted the county’s final decision approving the application, supported
21 by findings as well as the hearings officer’s recommendation, which the county
22 adopted as additional findings.

1 This appeal followed.

2 **FIRST ASSIGNMENT OF ERROR**

3 Petitioner argues that the higher density allowed for planned and cluster
4 development under the MUA-10 zone conflicts with Deschutes County
5 Comprehensive Plan (DCCP) Policy 3.3.1, which mandates: "Except for parcels
6 in the Westside Transect Zone, the minimum parcel size for new rural residential
7 parcels shall be 10 acres." Relatedly, DCCP 3.3 states: "Deschutes County
8 requires a 10-acre minimum lot size for new rural residential lots in order to
9 protect the rural quality of life and its resources."

10 Deschutes County Code (DCC) 18.32.040(A) provides that in the MUA-
11 10 zone

12 "[t]he minimum lot area shall be 10 acres, except planned and
13 cluster developments shall be allowed an equivalent density of one
14 unit per seven and one-half acres and planned and cluster
15 developments within one mile of an acknowledged urban growth
16 boundary shall be allowed a five-acre minimum lot area or
17 equivalent density."

18 Intervenor initially submitted an application for tentative approval for a 14-lot
19 planned unit development, each lot approximately 1.7 acres in size, with the
20 remainder of the subject property used for open space or roadways. Intervenor
21 later withdrew that application from consideration, but the site plan remains in
22 the record of this appeal. Record 43, 1033, 1134. We understand petitioner to
23 argue that the site plan illustrates the potential density that is possible under the
24 MUA-10, with lot sizes as small as 1.7 acres in size.

1 Petitioner contends that the MUA-10 facially conflicts with DCCP Policy
2 3.3.1, which unambiguously mandates a 10-acre minimum parcel size for rural
3 residential development (except for parcels in the Westside Transect Zone, which
4 no party argues this property is within). Petitioner argues that where there is a
5 conflict between a zoning code provision and a comprehensive plan provision,
6 the plan is hierarchically superior and controls over the conflicting zoning code
7 provision. *Baker v. City of Milwaukie*, 271 Or 500, 533 P2d 772 (1975).

8 In *Baker*, the Oregon Supreme Court held that zoning code provisions that
9 allow a more intensive use than permitted under the city's comprehensive plan
10 may be invalid:

11 “In summary, we conclude that a comprehensive plan is the
12 controlling land use planning instrument for a city. Upon passage of
13 a comprehensive plan a city assumes a responsibility to effectuate
14 that plan and conform prior conflicting zoning ordinances to it. We
15 further hold that the zoning decisions of a city must be in accord
16 with that plan and a zoning ordinance which allows a more intensive
17 use than that prescribed in the plan must fail.” 271 Or at 514
18 (footnote omitted).

19 Petitioner raised the alleged plan/zone conflict during the proceedings
20 below. Record 291-92. However, the county's decision does not address the
21 alleged conflict between those plan policies and the MUA-10 zone, or address
22 DCCP 3.3 or Policy 3.3.1 at all. In the response briefing, the county and
23 intervenor (together, respondents) likewise do not address petitioner's argument
24 under *Baker*, that the code provision allowing for rural residential development
25 on parcels less than 10 acres in size conflicts with the 10-acre minimum mandated

1 by the plan policies. Instead, respondents re-cast the first assignment of error as
2 an argument that the MUA-10 zone allows *urban*-uses of rural land and is
3 therefore inconsistent with Statewide Planning Goal 14 (Urbanization). As
4 discussed below under the second and sixth assignments of error, petitioner
5 presents arguments that the residential development allowed under the planned
6 and cluster provisions of the MUA-10 zone do conflict with the county's
7 obligation under Goal 14 to prohibit urban development on rural land. However,
8 under the first assignment of error, petitioner presents a somewhat different
9 argument: that the MUA-10 zone provisions for planned and cluster development
10 facially conflict with DCCP Policy 3.3.1, which mandates a 10-acre minimum
11 parcel size for rural residential development. Neither the decision nor the
12 response briefing respond to that argument.

13 Respondents appear to presume that if the MUA-10 zone is consistent with
14 Goal 14, or is deemed to be consistent as a matter of law, consistency between
15 the MUA-10 zone and Goal 14 necessarily means that the reduced parcel sizes
16 allowed in the MUA-10 zone does not conflict with DCCP 3.3. and Policy 3.3.1.
17 However, that does not follow. The 10-acre minimum parcel size dictated by
18 DCCP Policy 3.3.1 possibly reflects a legislative concern to ensure compliance
19 with Goal 14. As discussed under the second and sixth assignments of error,
20 below, under the controlling case law a 10-acre minimum parcel size represents
21 something like a judicially recognized safe harbor for avoiding any conflicts
22 between residential development of rural lands and a county's obligations under

1 Goal 14. But DCCP Policy 3.3.1 may also, or instead, embody other legislative
2 concerns or values independent of Goal 14. DCCP 3.3 appears to state the
3 legislative purpose of the 10-acre minimum specified in DCCP Policy 3.3.1 – to
4 protect the rural quality of life and its resources. That legislative purpose may be
5 partially or wholly independent of Goal 14. In other words, it is possible to
6 conclude that the reduced parcel sizes allowed in the MUA-10 zone are consistent
7 with Goal 14, yet conflict with the terms of DCCP Policy 3.3.1 and the purpose
8 identified in DCCP 3.3.

9 The county's brief includes one argument directed at petitioner's claim that
10 the code and plan policies conflict. The county points out, accurately, that the
11 MUA-10 zone does in fact provide for a default 10-acre minimum parcel size, in
12 circumstances where the applicant does *not* opt for planned or cluster
13 development using a more intense equivalent density. However, that response
14 does not explain why the equivalent densities of one dwelling per 7.5 acres or 5
15 acres allowed in the MUA-10 zone, which apparently would allow creation of
16 parcels as small as 1.7 acres in size, are consistent with the 10-acre minimum
17 parcel size specified in DCCP Policy 3.3.1.

18 As noted, the county's decision does not address this issue at all, or provide
19 any express or implicit interpretations of the relevant DCCP and DCC text and
20 context. Where the local government fails to interpret its comprehensive plan or
21 land use regulations, or any interpretation is inadequate for review, ORS
22 197.829(2) authorizes LUBA to make its own determination whether the local

1 government decision is correct. However, that authorization is permissive, and if
2 the decision must be remanded in any event, the better course may be to also
3 remand so that the governing body may provide an interpretation in the first
4 instance, as the local government is presumably in a better position than LUBA
5 to understand the intent of its legislation.² *Green v. Douglas County*, 245 Or App
6 430, 441, 263 P3d 355 (2011). As discussed below under the third assignment of
7 error, remand is necessary for additional findings under OAR 660-033-
8 0020(1)(a)(B). Accordingly, we deem it appropriate under this first assignment
9 of error to remand so that the county may address the alleged conflict between
10 DCCP Policy 3.3.1 and DCC 18.32.040(A) in the first instance.

11 The first assignment of error is sustained.

12 **SECOND ASSIGNMENT OF ERROR**
13 **SIXTH ASSIGNMENT OF ERROR**

14 Under the second assignment of error, petitioner argues that the county
15 misconstrued the applicable law in concluding that the acknowledged status of
16 the MUA-10 zone means that the decision to apply that zone to the subject
17 property does not require any analysis under Goal 14. Relatedly, under the sixth
18 assignment of error, petitioner argues that residential development of the subject

² The parties do not cite to or provide any legislative history of the MUA-10 zone that might illuminate the intent of the provisions allowing equivalent densities below 10-acres in size, or the relationship between those provisions and any applicable DCCP policies. On remand, the county may wish to consider any relevant legislative history.

1 property under the higher equivalent densities allowed in MUA-10 zone would
2 not be consistent with Goal 14, and therefore the rezone can be accomplished
3 only by taking an exception to Goal 14.

4 Goal 14 is “[t]o provide for an orderly and efficient transition from rural
5 to urban land use, to accommodate urban population and urban employment
6 inside urban growth boundaries, to ensure efficient use of land, and to provide
7 for livable communities.” Generally, converting rural land to urban uses is not
8 consistent with Goal 14, and requires taking an exception to the Goal. *1000*
9 *Friends of Oregon v. LCDC (Curry County)*, 301 Or 447, 477, 724 P2d 268
10 (1986). In *Curry County*, the Oregon Supreme Court noted that there is no
11 controlling definition of what constitutes “urban uses.” The court agreed with the
12 parties that residential development at a density of one dwelling per 10 acres is
13 generally not an urban use, while half-acre residential lots served by community
14 water and sewer clearly are urban uses. However, the court found it unnecessary
15 to locate a bright line between these two extremes. *Id.* at 504-05. The court
16 concluded that, absence guidance from the Land Conservation and Development
17 Commission (LCDC) on this point, any determination whether uses allowed
18 under land use legislation are “urban” or “rural” will depend greatly on the
19 context, including the locale and the factual situation at a specific site. *Id.* at 504
20 n 33.

21 In *Shaffer v. Jackson County*, 17 Or LUBA 922 (1989), LUBA held that,
22 in the absence of LCDC guidance, determining whether use of rural land is

1 impermissibly “urban” will depend on a multi-factor analysis of the specific
2 circumstances, including parcel size, intensity of use, necessity of urban facilities,
3 and proximity to an urban growth boundary. 17 Or LUBA at 928.

4 In the present case, the hearings officer adopted two sets of findings
5 addressing whether residential development allowed under the MUA-10 zone on
6 the subject property is consistent with Goal 14. In the first set of findings, at
7 Record 54-57, the hearings officer took official notice of the fact that, when the
8 county adopted the RREA plan designation and the MUA-10 zone, the
9 ordinances adopting the designation and zone were acknowledged by the Oregon
10 Department of Land Conservation and Development (DLCD) to comply with all
11 statewide planning goals, including Goal 14. We understand the hearings officer
12 to have interpreted that acknowledgment to mean that, as a matter of law, the
13 MUA-10 zone does not facially conflict with Goal 14. Record 56. The second set
14 of findings consists of a site-specific analysis of the factors identified in *Shaffer*,
15 prepared by intervenor’s attorney, that the hearings officer adopted by reference.
16 Record 57.

17 In the second assignment of error, petitioner challenges the first set of
18 findings, specifically the hearings officer’s finding that the acknowledged status
19 of the MUA-10 zone means that development of the subject property under the
20 MUA-10 is necessarily consistent with Goal 14. Petitioner understands that
21 finding to constitute an argument that Goal 14 is inapplicable to the challenged
22 comprehensive plan amendment and zone change. Petitioner cites several cases

1 for the proposition that all comprehensive plan amendments are reviewable for
2 compliance with the statewide planning goals. Petition for Review 13-14 (citing
3 *Ludwick v. Yamhill County*, 72 Or App 224, 696 P2d 536, *rev den*, 299 Or 443
4 (1985); *1000 Friends of Oregon v. Jackson County*, 79 Or App 93, 718 P2d 753,
5 *rev den*, 301 Or 445 (1986); *DLCD v. Clackamas County*, 335 Or App 205, 222,
6 558 P3d 64 (2024), *rev den*, 373 Or 305 (2025)); *see also* ORS 197.835(6)
7 (LUBA shall reverse or remand a comprehensive plan amendment that is not in
8 compliance the statewide planning goals). Based on those cases, petitioner argues
9 that the county cannot simply rely on the acknowledged status of the RREA
10 designation and the MUA-10 zone to avoid the site-specific contextual analysis
11 indicated in *Curry County* and *Shaffer*. Petitioner faults the county for failing to
12 adopt such a site-specific contextual analysis.

13 We agree with petitioner that all comprehensive plan amendments are
14 potentially subject to review for compliance with applicable statewide planning
15 goals, even if the amendment only applies an acknowledged plan designation and
16 zoning district to a specific property. The acknowledged status of the plan
17 provisions and zoning code applied may simplify any required goal analysis, and
18 in limited cases render it redundant. However, the county had not established any
19 basis in the present case to completely eliminate the contextual analysis required
20 by *Curry County* and *Shaffer*.

21 The county cites to *Central Oregon Landwatch v. Deschutes County*,
22 LUBA No 2022-075 (Dec 6, 2022) (*Aceti V*), for the proposition that a *Curry*

1 County/Shaffer analysis is not necessary in all cases to demonstrate that
2 application of an acknowledged rural zone is consistent with Goal 14. *Aceti V*
3 involved application of a rural industrial designation and zone, where the county
4 previously engaged in a lengthy and deliberate legislative effort to adopt plan
5 policies and land use regulations limiting the size and intensity of industrial uses
6 allowed in the zone. Under those limits, the allowed industrial uses were
7 significantly less intensive than industrial uses allowed under an LCDC rule
8 governing rural unincorporated communities. We agreed with the county that,
9 given that specific legislative history, prompted by the application at issue in the
10 *Aceti* line of cases, the county could independently rely on the acknowledged
11 plan and land use regulations to conclude that industrial uses allowed on the
12 subject property after redesignation and rezoning would be consistent with Goal
13 14. *Aceti V*, LUBA No 2022-075 (slip op at 24). Accordingly, we did not need to
14 address challenges to the county's alternative *Curry County/Shaffer* findings,
15 which the county had adopted as a precaution.

16 However, the present case does not feature the same history of legislative
17 efforts to restrict allowed uses, designed to bring them within the threshold of a
18 Goal 14 safe harbor, as was the case in *Aceti V*. Indeed, as discussed under the
19 first assignment of error, the MUA-10 zone arguably conflicts with
20 comprehensive plan policies mandating a 10-acre minimum parcel size for rural
21 residential development. That mandate possibly reflects another Goal 14 safe
22 harbor, the 10-acre minimum parcel size discussed in *Curry County*.

1 Accordingly, *Aceti V* does not assist the county's argument that the
2 acknowledged status of the RREA designation and MUA-10 zone is sufficient,
3 without more, to demonstrate consistency with Goal 14. Some site-specific
4 analysis as indicated in *Curry County* and *Shaffer* is still necessary.

5 All that said, petitioner does not acknowledge that the county did, in fact,
6 adopt by incorporation alternative findings that include a *Curry County/Shaffer*
7 analysis. Record 57. The hearings officer incorporated intervenor's Goal 14
8 analysis in its May 27, 2022, Burden of Proof, its March 19, 2024, open-record
9 submission, and its April 2, 2024, final argument. Record 57. Petitioner does not
10 address or challenge those incorporated analyses. Absent some challenge to those
11 alternative findings, petitioner's arguments under the second and sixth
12 assignments of error do not provide a basis for reversal or remand.

13 Petitioner's second and sixth assignments of error are denied.

14 **THIRD ASSIGNMENT OF ERROR**

15 Goal 3 is “[t]o preserve and maintain agricultural lands.” As noted, OAR
16 660-033-0020(1)(a)(A) defines “Agricultural Land” in part to include land in
17 Eastern Oregon with predominate Class I-VI soils. OAR 660-033-0020(1)(a)(B)
18 provides a broader definition, to include:

19 “Land in other soil classes that is suitable for farm use as defined in
20 ORS 215.203(2)(a), taking into consideration soil fertility;
21 suitability for grazing; climatic conditions; existing and future
22 availability of water for farm irrigation purposes; existing land use
23 patterns; technological and energy inputs required; and accepted
24 farming practices[.]”

1 OAR 660-033-0020(1)(a)(B) is commonly referred to as the “Suitable for Farm
2 Use” test. “Farm use” for purposes of OAR 660-033-0020(1) means the same as
3 the definition of “farm use” at ORS 215.203(2)(a). OAR 660-033-0020(7)(a).
4 ORS 215.203(2)(a) defines “farm use” to include a broad range of activities:

5 “[T]he current employment of land for the primary purpose of
6 obtaining a profit in money by raising, harvesting and selling crops
7 or the feeding, breeding, management and sale of, or the produce of,
8 livestock, poultry, fur-bearing animals or honeybees or for dairying
9 and the sale of dairy products or any other agricultural or
10 horticultural use or animal husbandry or any combination thereof.
11 ‘Farm use’ includes the preparation, storage and disposal by
12 marketing or otherwise of the products or by-products raised on such
13 land for human or animal use. ‘Farm use’ also includes the current
14 employment of land for the primary purpose of obtaining a profit in
15 money by stabling or training equines including but not limited to
16 providing riding lessons, training clinics and schooling shows.
17 ‘Farm use’ also includes the propagation, cultivation, maintenance
18 and harvesting of aquatic, bird and animal species that are under the
19 jurisdiction of the State Fish and Wildlife Commission, to the extent
20 allowed by the rules adopted by the commission.”

21 Petitioner argued below that the subject property is “suitable for farm use”
22 for purposes of OAR 660-033-0020(1)(a)(B), specifically that the property could
23 be employed for the primary purpose of obtaining a profit in money by engaging
24 in many of the farm uses listed in ORS 215.203(2)(a). Petitioner argued that the
25 property has cleared, fenced, irrigated pastures that would be suitable for many
26 types of animal husbandry that is commonly practiced in Deschutes County, such
27 as raising lambs, goats, pigs, horses, ponies, mules, burros, donkeys, honeybees,
28 poultry, and egg production. Petitioner also submitted information on three

1 equine boarding, training, and riding facilities located in the area, and argued that
2 the property is also suitable for developing the subject property with an equine
3 facility. Record 274-79.

4 However, in findings adopted by the county, the hearings officer declined
5 to evaluate any of the farm uses cited by petitioner. The hearings officer
6 explained:

7 "This Hearings Officer does not believe every listed 'farm use' in
8 ORS 215.203(2)(a) needs to be individually/independently analyzed
9 as part of every Goal 3 'agricultural land' determination process.
10 The Hearings Officer finds it is unnecessary for [intervenor] to
11 demonstrate (provide documentation and analysis) that the Subject
12 Property is not 'agricultural land' because it is not feasible to use the
13 property, for example, to use that property as a dairy or for the
14 propagation and harvest of aquatic species. The Hearings Officer
15 finds that requiring every listed [ORS] 215.203(2)(a) potential farm
16 use to be analyzed in every case does not represent the spirit and
17 intention of ORS 215.203 or associated OARs. The Hearings
18 Officer finds that the goal of ORS 215.2[0]3 and associated OARs
19 is to thoughtfully consider what a reasonable farmer would consider
20 when assessing a particular property's ability to be profitably
21 farmed.

22 "The Hearings Officer finds that there are common agricultural uses
23 in every geographical area of Oregon and that the viability of a
24 specific farm use of any property is dependent upon the factors set
25 forth in OAR 660-033-0020. The Hearings Officer believes that a
26 reasonable farmer is going to consider such factors as soils,
27 topography, orientation to the sun, transportation access and water
28 access when assessing potential farm uses of a particular property.
29 The Hearings Officer does not, however, believe a reasonable
30 farmer would take the list of potential farm uses set forth in ORS
31 215.203(2)(a) and pragmatically consider the pros and cons of every

1 one of those activities on a particular Deschutes County property. *

2 * *

3 “* * * * *

4 “The Hearings Officer finds that [intervenor] in this case was not
5 required to consider all uses listed in ORS 215.203(2)(a) or by
6 [petitioner]. Rather, the Hearings Officer finds that [intervenor] is
7 required to consider only uses that a ‘reasonable farmer’ for the
8 Subject Property would consider in light of the OAR 660-033-
9 0020(1)(a)(B) factors. The Hearings Officer does not believe that
10 [intervenor] in this case is obligated to independently/individually
11 analyze and assess each and every one of the ORS 215.203(2)(a) or
12 [petitioner-]listed possible uses.” Record 89-90.

13 We generally agree with the hearings officer that an applicant is not
14 required to go through a rote initial exercise of evaluating every possible type of
15 activity that potentially falls within the broad definition of “farm use,” and
16 produce evidence regarding whether the subject property is suitable for all
17 conceivable farm uses.

18 However, an applicant has the burden of demonstrating that the subject
19 property is not suitable for “farm use,” which as defined includes a wide range of
20 activities. In our view, an applicant has the initial burden of identifying, from that
21 wide range of activities, potentially feasible farm uses that are commonly
22 employed on EFU-zoned lands in the area or county, and providing some
23 evidence or explanation, based on the factors listed in OAR 660-033-
24 0020(1)(a)(B), as to whether the land is suitable for such initially identified uses.
25 Such an initial analysis could address potential farm uses together in broad
26 categories as appropriate.

1 More detailed analysis may be needed if, as happened here, other parties
2 identify specific farm uses that are common in the area or county on EFU-zoned
3 lands, and provide some evidence or argument that the property is suitable for
4 such uses, considering the listed factors. If so, an applicant, such as intervenor in
5 this appeal, is obliged to evaluate those uses as well, and demonstrate that the
6 subject property is not suitable for such uses. Based on such evidence, the
7 hearings officer will then be in a position to determine whether an applicant has
8 demonstrated that the subject property is not suitable for farm use, under the listed
9 factors.

10 In the present case, intervenor initially submitted evidence that the subject
11 property was not suitable for growing crops or a cattle grazing operation, but did
12 not evaluate or present evidence regarding any other specific farm uses or general
13 categories of farm uses within the broad definition at ORS 215.203(2)(a).

14 Petitioner presented evidence and argument that a subset of farm uses, various
15 types of animal husbandry and equine facilities, are commonly practiced in the
16 area or county, and that at least the cleared and irrigated portion of the subject
17 property was suitable for those uses. Intervenor chose not to produce any
18 countervailing evidence or evaluation of those identified farm uses.

19 As we understand the findings, the hearings officer found that intervenor
20 did not need to submit any evidence or evaluation regarding the identified farm
21 use, based on a conclusion that a “reasonable farmer” would not consider the
22 subject property for any of the identified farm uses. We discuss petitioner’s other

1 challenges to the findings that articulate a “reasonable farmer” framework, under
2 the fifth assignment of error, below. Under the third assignment of error, we
3 address only petitioner’s arguments with respect to the farm uses petitioner
4 identified during the proceedings below, and that the hearings officer declined to
5 consider.

6 LUBA has used the phrase “reasonable farmer” or similar phrases as a
7 shorthand for the “suitable for farm use” test, and as a useful reminder that the
8 “suitable for farm use” test is an objective test, not one based on the personal
9 motivations of property owners or any individual farmer. *See, e.g., Central*
10 *Oregon Landwatch v. Deschutes County*, LUBA Nos 2023-006/009 (July 28,
11 *aff’d*, 330 Or App 321, 543 P3d 736 (2024) (the question under OAR 660-
12 033-0020(1)(a)(B) is “whether a reasonable farmer would be motivated to put the
13 land to agricultural use, for the primary purpose of obtaining a profit in money.”
14 (quoting *Landwatch Lane County v. Lane County*, 77 Or LUBA 368, 371 (2018)
15 (emphasis from *Central Oregon Landwatch* omitted))).

16 It is not entirely clear to us what the hearings officer meant by the phrase
17 “reasonable farmer,” or why he concluded that that semi-legendary figure would
18 evaluate only a few, if any, of the farm uses described in ORS 215.203(2)(a), in
19 determining whether the subject property is suitable for farm use. The only farm
20 use the hearings officer actually evaluated was livestock grazing, which is the
21 only use historically attempted on the subject property in recent years, and which
22 corresponds to one of the listed factors in OAR 660-033-0020(1)(b)(A)

1 (suitability for grazing). If the hearings officer is saying that the only uses that
2 must be evaluated are those historically attempted on the property, or uses that
3 correspond to factors listed in the rule, we disagree. In our view, if there is
4 evidence in the record that the subject property may be suitable for any of the
5 farm uses listed in ORS 215.203(2)(a), the county must evaluate that evidence,
6 based on the whole record, which may include any rebuttal information or
7 evaluation supplied by an applicant.

8 In the present case, as a relatively clear example of the foregoing, petitioner
9 submitted information on three equine boarding, training or riding facilities in the
10 area, and argued that the subject property, with its cleared, irrigated, fenced
11 pastures consisting mostly of agricultural soils, would also be suitable for
12 development of an equine facility. In a recent case, *Redside Restoration Project*
13 *One, LLC v. Deschutes County*, LUBA Nos 2024-082/083/085 (May 16, 2025),
14 *appeal pending* (A187727/A187728/A187729/A187760), we discussed some of
15 the considerations that might go into an evaluation of an equine facility under
16 OAR 660-033-0020(1)(a)(B), including access to water, fencing, pasture, and
17 locational considerations. LUBA Nos 2024-082/083/085 (slip op at 61-64). The
18 record in that case included detailed evidence and argument regarding the
19 feasibility and economic prospects of establishing an equine facility on the parcel
20 at issue. To evaluate that evidence the county adopted extensive findings. LUBA
21 ultimately affirmed the county's findings that the property was not suitable for

1 an equine facility, given the lack of water, fencing, pasture, access, and the
2 property's remote location.

3 In the present case, intervenor submitted no evidence or argument with
4 respect to equine facilities, other than a submittal from its attorney arguing that
5 developing an equine facility would be "cost-prohibitive." Record 264. Neither
6 the commissioners nor the hearings officer evaluated the suitability of the subject
7 property for that potential farm use, or adopted findings (at least any findings we
8 understand) explaining why that use need not be evaluated.

9 On appeal, intervenor emphasizes that any farm use as defined at ORS
10 215.203(2)(a) must be one that is conducted with "the primary purpose of
11 obtaining a profit in money[.]" As a shorthand for that statutory phrase, we follow
12 the parties in using the term "profitability." According to intervenor, profitability
13 is a threshold issue, and only if there is evidence that the subject property can be
14 employed for an identified farm use with the primary purpose of obtaining a
15 profit in money need the county actually evaluate that use under the factors listed
16 in OAR 660-033-0020(1)(a)(B). Because petitioner submitted no economic
17 analysis demonstrating that animal husbandry or an equine facility on the subject
18 property might be profitable, we understand intervenor to argue that they were
19 not required to submit any evidentiary response to petitioner's evidence and
20 argument regarding those uses, and the county did not err in failing to evaluate
21 those uses.

1 We disagree with intervenor that “profitability” is a threshold evidentiary
2 issue that opponents must surmount before intervenor and the county are
3 obligated to evaluate potential farm uses identified in the record. We have stated
4 previously that, while the potential or possibility of obtaining a profit of money
5 is a consideration under the ORS 215.203(2)(a) definition of “farm use,” it is a
6 relatively minor consideration and one with a significant potential to distract the
7 decision-maker from the factors listed in OAR 660-033-0020(1)(a)(B). *Wetherall*
8 *v. Douglas County*, 58 Or LUBA 638, 657 (2009). Elevating “profitability” to a
9 threshold or initially controlling consideration is not consistent with its role in the
10 OAR 660-033-0020(1)(a)(B) analysis. Moreover, intervenor’s apparent view
11 inverts the burden of proof. As explained, it is the applicant that bears the initial
12 and ultimate burden of proof and persuasion that the subject property is not
13 suitable for farm uses described in ORS 215.203(2)(a), considering the listed
14 factors.

15 In sum, we agree with petitioner that remand is necessary for the county to
16 evaluate whether the subject property is suitable for the farm uses petitioner
17 identified in the record, including various types of animal husbandry and equine
18 facilities listed in ORS 215.203(2)(a). We note that, because the subject property
19 is within an irrigation district, and once had irrigation rights, the county’s
20 evaluation must assume that the property retains the irrigation rights that
21 intervenor transferred. OAR 660-033-0020(9). Under ORS 215.203(2)(a),
22 considerations of “profitability,” or more precisely whether the subject property

1 can be employed for identified farm uses with the primary motivation of
2 obtaining a profit in money, may well play a role, depending on what evidence is
3 submitted on remand. We address, below, petitioner's additional arguments
4 regarding the role of "profitability," and that discussion may assist the parties on
5 remand.

6 The third assignment of error is sustained.

7 **FOURTH ASSIGNMENT OF ERROR**

8 DCC 18.136.020(D) is a standard for a quasi-judicial rezoning, requiring
9 that the applicant must establish that "the public interest is best served by
10 rezoning the property[,"] and that the applicant must demonstrate, among other
11 things, that "there has been a change in circumstances since the property was last
12 zoned, or a mistake was made in the zoning of the property at question."

13 The hearings officer adopted the following statement from intervenor as
14 findings demonstrating that the proposed rezoning complies with DCC
15 18.136.020(D):

16 "Circumstances have changed since the zoning of the property.
17 When the property was first given an EFU zoning assignment, it was
18 in the early days of Oregon zoning, approximately half a century
19 ago. Much of our undeveloped and unirrigated lands were zoned
20 EFU, for lack of a better zone or label, even though these parcels
21 were dry and not farmable. If they weren't forest or already
22 developed in a denser pattern, they were zoned farm by default. This
23 property was zoned without detailed or site specific consideration
24 given to its soil, geologic, and topographic characteristics. Now that
25 a certified soils scientist has conducted a detailed Soils
26 Investigation, it is documented that the parcels do not qualify as

1 farmland. The change in circumstance is the soil study. It also
2 evidences a mistake of sorts in classifying poor soil as farmland.

3 “In summary, the [c]ounty’s zoning of agricultural lands has been a
4 process of refinement since the 1970s. The Subject Property has
5 never been suitable for agriculture and has never been actively
6 farmed successfully due to its poor soil. Although it was assigned
7 EFU zoning, this property likely should not have been originally
8 zoned EFU due to its location, soils, and geology. Therefore, the
9 parcels should be rezoned to MUA-10, consistent with the zoning of
10 adjacent rural-residential uses. The MUA-10 zoning assignment
11 supports logical, compatible, and efficient use of the land.” Record
12 64 (parenthetical omitted).

13 Thus, the county found, based on the Order 1 soil study obtained by intervenor,
14 both that circumstances have changed since zoning was applied, and that a
15 mistake was made in applying the original zoning.

16 Petitioner argues the foregoing findings misconstrue the applicable law,
17 are inadequate, and not supported by substantial evidence. Petitioner disputes that
18 the Order 1 soil study is evidence of a “change in circumstances” or a “mistake”
19 in zoning the property EFU.

20 As noted, the county applied the EFU zone to the subject property and
21 surrounding properties based on a NRCS survey, which was conducted at a larger
22 scale than the Order 1 soil study conducted by intervenor’s soil scientist. The
23 Order 1 soil study confirmed the presence of the three soil types found in the
24 NRCS survey, and differed only by identifying small inclusions of Class VII 58C
25 soils within the Class III/VI 38B soils mapped by the NRCS, which altered the
26 former understanding of which soils “predominated” on the subject parcel.

1 However, petitioner argues that there is no evidence in the record that the
2 NRCS data is inaccurate, given its scale, or that the soil conditions have changed
3 since the county first applied the EFU zone. Further, petitioner argues that the
4 “predominate” soil type is relevant only to the definition of Agricultural Land at
5 OAR 660-033-0020(1)(A), and says nothing about whether the land is defined as
6 Agricultural Land under OAR 660-033-0020(1)(B) or (C). Similarly, petitioner
7 disputes the finding that, when initially zoning the property and much of the
8 county EFU, “undeveloped and unirrigated lands were zoned EFU, for lack of a
9 better zone or label, even though these parcels were dry and not farmable.”
10 Record 64. Petitioner argues that dry rangeland in the county is correctly zoned
11 EFU because it is suitable for grazing livestock, and that it is not the case that
12 unirrigated lands are incorrectly zoned EFU simply because they are not irrigated
13 or capable of growing crops, as the above-quoted finding suggests.

14 For these reasons, petitioner contends that the record and findings do not
15 demonstrate either that “conditions have changed” since EFU zoning was
16 applied, or that a “mistake” was made in zoning the property EFU.

17 Respondents argue that conducting a site-specific Order 1 soil survey is a
18 common and permissible means of refining the NRCS data on which most county
19 zoning is based. Respondents note that site-specific surveys are authorized by
20 ORS 215.211(1) and OAR 660-033-0030, and their methodology must be
21 reviewed and approved by DLCD, which intervenor obtained in this case.
22 According to respondents, the county reasonably relied on the DLCD-approved

1 Order 1 survey to conclude that the NRCS data did not accurately reflect the
2 actual soil conditions and agricultural capability of the subject property.

3 We tend to agree with petitioner that the findings and record do not
4 demonstrate that the original application of EFU zoning was a “mistake,” given
5 the data available and methodology employed when the NRCS surveyed the area,
6 and the fact that identifying agricultural land, then and now, is not a simple matter
7 of soil capability classes. As petitioner notes, much of Deschutes County as well
8 as Eastern Oregon consists of dry, uncultivable rangeland that is nonetheless
9 productive agricultural land. This property, in some respects, seems better quality
10 than dry rangeland, because it has some Class III/VI agricultural soils, and even
11 (as a matter of law) irrigation available to water those Class III/VI soils. Further,
12 when the county zoned the property EFU, it was part of a larger irrigated tract,
13 which presumably had more agricultural potential than the present parcel. The
14 record cited to us does not support a finding that the county made a “mistake”
15 when it first applied EFU zoning, either to the subject property or, as the
16 incorporated findings suggest, to large swathes of the county.

17 However, we agree with respondents that the Order 1 soil study can be
18 viewed as a “change in circumstances” for purposes of DCC 18.136.020(D).
19 Petitioner argues that only a physical change to the soils or conditions on the
20 subject property, such as a flood or earthquake, could possibly constitute a
21 “change in circumstance.” But petitioner cites nothing in the text or context of

1 DCC 18.136.020(D) suggesting that “change of circumstances” is limited to such
2 physical changes.

3 The board of commissioners adopted the hearings officer’s findings
4 concluding that the new and more detailed information provided by the soils
5 study is sufficient to constitute a “change in circumstance” for purposes of DCC
6 18.136.020(D). We understand those incorporated findings to embody an implicit
7 interpretation of the phrase “change in circumstances.” The board of
8 commissioners clearly understood the phrase “change in circumstances” to
9 encompass more than physical changes to the soil or site conditions, and to
10 broadly include development of new information that fundamentally challenges
11 the agricultural status of the property. That implicit understanding is adequate for
12 our review and therefore subject to the deferential standard of review we apply
13 to a governing body’s interpretations of its land use regulations, under ORS
14 197.829(1).³ We cannot say that the county’s understanding of DCC

³ ORS 197.829(1) provides, as relevant:

“[LUBA] shall affirm a local government’s interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government’s interpretation:

- “(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;
- “(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation; [or]

1 18.136.020(D) is inconsistent with the text, context, purpose or underlying policy
2 of that provision. Accordingly, petitioner has not demonstrated that the county
3 misconstrued the applicable law, or that the findings and record are insufficient
4 to demonstrate compliance with DCC 18.136.020(D).

5 The fourth assignment of error is denied.

6 **FIFTH ASSIGNMENT OF ERROR**

7 Under the fifth assignment of error, petitioner argues in part that the county
8 misconstrued ORS 215.203(2)(a) with respect to the role of “profitability” in
9 applying the definition of farm use, for purposes of identifying agricultural land
10 under OAR 660-033-0020(1)(a)(B). We have already addressed, under the third
11 assignment of error, some of petitioner’s arguments regarding the role of
12 “profitability,” with respect to the county’s obligation to evaluate the farm uses
13 petitioner identified. Under the fifth assignment of error, petitioner advances
14 other arguments regarding the meaning and proper role of “profitability,” as well
15 as challenges to the county’s findings regarding the factors listed in OAR 660-
16 033-0020(1)(a)(B). We now address those arguments.

17 **A. Profitability**

18 Petitioner notes, accurately, that the definition of “farm use” at ORS
19 215.203(2)(a) originated as part of a definition that was used to guide tax

“(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation[.]”

1 assessors in determining whether property qualified for special property tax
2 assessments applicable to land in farm use. The tax code cognate to ORS
3 215.203(2)(a) is now codified at ORS 308A.056. *See Doherty v. Wheeler County*,
4 56 Or LUBA 465, 470 (2008) (discussing relationship between ORS
5 215.203(2)(a) and ORS 308A.056). Both statutes use the phrase “current
6 employment of land for the primary purpose of obtaining a profit in money” by
7 engaging in a very similar list of activities. Petitioner argues that the historic role
8 of ORS 215.203(2)(a) as part of the statutory scheme for identifying land
9 qualified for farm use special assessments informs the meaning of the phrase
10 “current employment of land for the primary purpose of obtaining a profit in
11 money” or, in our shorthand, “profitability.”

12 Petitioner argues that under both statutes the question is not whether the
13 farm use of the land would actually yield a profit in money, but whether the
14 “primary purpose” or motivation in farming the land is to seek a profit in money.
15 Petitioner cites to an Oregon Tax Court case, *Everhart v. Dept. of Rev.*, 15 Or
16 Tax 76, 80 (1999), for the proposition that farm use is not required to actually
17 result in money profit in order to qualify for the farm use special assessment, as
18 the legislature recognized the risks of farming, and drafted the statutes
19 accordingly to focus on purpose, the goal or motivation, not the results. We
20 understand petitioner to argue that in the present case the county applied too
21 narrow an understanding of “profitability,” as part of its musings about a

1 “reasonable farmer,” to focus on whether farm use of the property would actually
2 yield a profit in money.

3 As noted, the hearings officer addressed evidence about the historic use of
4 the property for livestock grazing, focusing on evidence that in 2012 tenants
5 leased the subject property as part of a cattle grazing operation. The tenants found
6 after one month that the irrigated pastures on the property did not produce
7 sufficient forage to sustain their herd without supplemental feed, and withdrew
8 from the lease. The hearings officer cited this example as “persuasive evidence
9 that a reasonable farmer would not consider ‘livestock grazing’ to be a ‘farm use’
10 that would be entered into for the primary purpose of obtaining a profit in
11 money.” Record 90. We understand petitioner to argue, however, that the
12 hearings officer improperly focused on whether the tenants actually profited from
13 grazing the subject property, instead of on their motivation, which was clearly to
14 engage in farm use with the primary purpose of obtaining a profit in money.

15 As explained, the “suitable for farm use” test is objective in nature, not
16 dependent on the personal motivations or subjective expectations of individual
17 farmers. Thus, that the tenants in 2012 were presumably motivated by profit to
18 attempt a cattle grazing operation on the subject property is not conclusive
19 evidence that the property is suitable for farm use, as we understand petitioner to
20 suggest. By the same token, that the one attempted cattle grazing operation was
21 not profitable or not sufficiently profitable in the experience of one farmer does
22 not, as the hearings officer seemed to find, conclusively demonstrate that the

1 subject property is unsuitable for the broad category of “livestock grazing,” much
2 less other potential farm uses described in ORS 215.203(2)(a). That historic
3 experience is relevant to the question of whether the property is suitable for farm
4 use, and whether an objective farmer would be motivated to attempt to engage in
5 some farm use of the property for the purpose of obtaining a profit in money (as
6 opposed to a non-pecuniary purpose, such as a hobby). But the experience of one
7 farmer or one attempt at farming is not compelling or conclusive on that question.

8 With those general observations, we turn to petitioner’s specific challenges
9 to the county’s findings under OAR 660-033-0020(1)(a)(B).

10 **B. Conjoined Use**

11 Petitioner argues that the county erred in failing to consider whether the
12 subject property is suitable for farm use in conjunction with grazing operations
13 on other lands elsewhere. Petitioner cites to evidence suggesting that the 2012
14 grazing operation was conducted by ranchers who grazed cattle in a different
15 county, and argues that it is common practice for grazing operations to be
16 conducted on multiple, discontiguous tracts, with cattle trucked between grazing
17 sites.

18 Under OAR 660-033-0030(3), the county must consider conjoined use
19 with nearby or adjacent land, regardless of ownership, in determining whether
20 land is agricultural land as defined in OAR 660-033-0020(1). However,
21 petitioner cites no authority requiring the county to consider conjoined use with
22 lands that are not nearby or adjacent. Intervenors notes that the record includes

1 an analysis of EFU-zoned lands within one mile of the subject property, that
2 identified no lands capable of a conjoined farm use with the subject property.
3 Petitioner does not challenge that analysis or the associated findings.

4 **C. OAR 660-033-0020(1)(a)(B) Suitability Factors**

5 As noted, under OAR 660-033-0020(1)(a)(B), the county must determine
6 whether the subject property is “suitable for farm use,” considering a list of
7 factors, including soil fertility, suitability for grazing, climatic conditions,
8 availability of water for irrigation, existing land use patterns, technological and
9 energy inputs required, and accepted farming practices. The county adopted
10 findings addressing each of these factors, at Record 87-89. The findings conclude
11 that each factor is either nondeterminative or points toward the conclusion that
12 the subject property is not suitable for farm use, usually citing as evidence the
13 Order 1 soil survey, intervenor’s March 19, 2023, submittals, or the testimony of
14 the tenants who grazed cattle on the land in 2012.

15 Under the remainder of the fifth assignment of error, petitioner challenges
16 the findings and supporting evidence for each OAR 660-033-0020(1)(a)(B)
17 factor. Under each factor, petitioner generally argues that the factor, properly
18 understood in light of the relevant evidence, points toward the conclusion that the
19 property is suitable for crop production and livestock grazing, which are the only
20 farm uses the hearings officer actually evaluated. Petitioner contends that, taken
21 together, consideration of the OAR 660-033-0020(1)(a)(B) factors
22 overwhelmingly supports the conclusion that the property is suitable for farm use.

1 Intervenor does not respond in detail to petitioner's arguments regarding
2 each factor, but responds generally that the findings are supported by substantial
3 evidence, namely the soil survey and other evidence cited by the hearings officer.

4 Substantial evidence is evidence that a reasonable person would rely on in
5 making a decision. *Dodd v. Hood River County*, 317 Or 172, 179, 855 P2d 608
6 (1993). In reviewing the evidence, LUBA may not substitute its judgement for
7 that of the local decision maker. Rather, LUBA must consider all the evidence to
8 which it is directed, and determine whether based on that evidence, a reasonable
9 local decision maker could reach the decision that it did. *Younger v. City of*
10 *Portland*, 305 Or 346, 358-60, 725 P2d 262 (1988).

11 Under this portion of the fifth assignment of error, petitioner appears to be
12 asking LUBA to reweigh the evidence regarding each suitability factor, and draw
13 our own conclusions regarding whether the property is suitable for farm use. That
14 of course is not LUBA's role. Petitioner has not demonstrated that the evidence
15 the county relied upon, the soil survey and other evidence cited by the hearings
16 officer, is evidence that a reasonable person would not rely upon, based on review
17 of evidence in the whole record, at least with respect to the farm uses the county
18 actually evaluated.

19 As explained under the third assignment of error, remand is necessary for
20 the county to evaluate whether the property is suitable for the farm uses identified
21 by petitioner. That remand may require additional findings regarding the OAR
22 660-033-0020(1)(a)(B) factors. However, as far as the limited set of farm uses

1 that the county evaluated in this decision, petitioner has not demonstrated that the
2 OAR 660-033-0020(1)(a)(B) findings are inadequate or not supported by
3 substantial evidence.

4 The fifth assignment of error is denied.

5 The county's decision is remanded.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 28, 2026

SUBJECT: Consideration of second reading and adoption by emergency of Ordinance No. 2026-002: Text Amendments for Wildfire Mitigation Building Codes

RECOMMENDED MOTIONS:

1. Move approval of second reading of Ordinance No. 2026-002 by title only.
2. Move adoption of Ordinance No. 2026-002 by emergency, with an effective date of April 1, 2026.

BACKGROUND AND POLICY IMPLICATIONS:

On January 28, 2026, staff will present Ordinance No. 2026-002 to the Board of County Commissioners (Board) for consideration of second reading and adoption by emergency to take effect sooner than 90 days.

The Board conducted a public hearing on January 14, 2026, to consider adopting discretionary wildfire mitigation residential building code standards that have recently been made available to local jurisdictions (File no. 247-25-000703-TA). Following the public hearing, the Board conducted first reading of the ordinance.

BUDGET IMPACTS:

None

ATTENDANCE:

Kyle Collins, Senior Planner
Will Groves, Planning Manager
Nicole Mardell, Principal Planner



COMMUNITY DEVELOPMENT

MEMORANDUM

TO: Deschutes County Board of Commissioners

FROM: Kyle Collins, Senior Planner
Will Groves, Planning Manager
Nicole Mardell, AICP, Principal Planner

DATE: January 20, 2026

SUBJECT: Consideration of Second Reading: Text Amendments for Wildfire Mitigation Building Codes

On January 28, 2026, staff will present Ordinance No. 2026-002 to the Board of County Commissioners (Board) for consideration of second reading. The Board conducted a public hearing on January 14, 2026¹, to consider adopting discretionary wildfire mitigation residential building code standards that have recently been made available to local jurisdictions (File no. 247-25-000703-TA). On January 14, 2026, the Board voted to adopt the proposed package presented by staff and conducted first reading of the ordinance.

An initial public hearing was held before the Planning Commission on December 11, 2025². No testimony was received, and the Commission voted unanimously to recommend approval of the amendments.

All record materials can be found on the project website: <https://bit.ly/0703TA>

I. AMENDMENT SUMMARY

The proposed text amendments would institute Section R327 of the ORSC in Deschutes County for all new residential development, including certain residential accessory structures. Multi-unit dwellings, such as apartment complexes, are unaffected by the proposed amendments, and these developments are not subject to the ORSC. The Section R327 standards do not allow for piecemeal adoption, and all standards must be adopted in whole if building officials wish to mandate any portion within their jurisdictions.

¹ <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-276>

² <https://www.deschutes.org/bc-pc/page/planning-commission-73>

As currently proposed, the amendments are limited to Deschutes County Code Title 15³, which captures general building safety and construction standards. As such, the proposed amendments are not subject to the more standard Post-Acknowledgement Plan Amendment (PAPA) process for land use amendments, which requires noticing to the Department of Land Conservation and Development (DLCD) and addressing the applicable Oregon Statewide Planning Goals.

Section R327 broadly covers the following structural components of these developments to minimize the risk of wildfire ignition:

- **Roofing:** In accordance with specific building code standards, roofing shall be asphalt shingles, slate shingles, metal roofing, tile, clay or concrete shingles, or other approved roofing that is deemed to be equivalent to a minimum Class B-rated roof assembly. Wood shingle and shake roofs are not permitted on structures.
- **Exterior walls:** Exterior wall covering or wall assembly shall comply with one of the following requirements:
 - Noncombustible material.
 - Ignition-resistant material.
 - Heavy timber assembly.
 - Log wall construction assembly.
 - Wall assemblies that have been tested in accordance with the test procedures for a 10-minute direct flame contact exposure test.
- **Glazing:** Exterior windows, windows within exterior doors, and skylights shall be tempered glass, multilayered glazed panels, glass block, or have a fire-resistance rating of not less than 20 minutes.
- **Ventilation:** All ventilation openings shall be covered with noncombustible corrosion-resistant metal wire mesh, vents designed to resist the intrusion of burning embers and flame, or other approved materials or devices. Ventilation mesh and screening shall be a minimum of 1/16-inch and a maximum of 1/8-inch in any dimension.
- **Gutters and Downspouts:** Where provided, gutters and downspouts shall be constructed of noncombustible materials and be provided with an approved means to prevent accumulation of leaves and debris in the gutter.
- **Eaves, Soffits, and Cornices:** Ventilation openings shall not be installed on the underside of eaves, soffits, or cornices.

The list above is not exhaustive, but covers the major components of home construction that would be affected by the proposed amendments.

³

https://deschutescounty.municipalcodeonline.com/book?type=ordinances#name=TITLE_15_BUILDINGS_AND_CONSTRUCTION

Major exceptions to the Section R327 standards include the following:

- Nonhabitable detached accessory structures with a floor area of not greater than 400 square feet located not less than 50 feet from all structures on the lot that contain habitable space.
- Structures exempted by ORS 455.315 (i.e. – agriculturally exempt structures).
- Detached accessory membrane-covered frame structures.

Section R327 also previously contained several provisions which were modified by SB 83 in the following ways:

- Repairs or replacements of existing components (i.e. – roofs, siding, etc.) and additions to existing dwellings are not mandatorily subject to R327.
- Removes requirements for local government to identify specific geographic regions for implementing any adopted wildfire mitigation standards. Previously, Section R327 and associated mitigation requirements were required to be implemented through the establishment of a locally adopted “Wildfire Hazard Map.” This requirement has been removed, and jurisdictions have been granted broad latitude to determine where to implement any locally adopted standards.

II. NEXT STEPS

To align with annual updates to the Oregon State Building Code, staff proposes that the Board adopt the ordinance by emergency with an effective date of April 1, 2026.

Attachments:

- Ordinance No. 2026-002 and Corresponding Exhibits

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code
 Title 15, Buildings and Construction, to Adopt
 Discretionary Wildfire Mitigation Residential
 Building Code Standards Pursuant to Senate Bill 83.

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ORDINANCE NO. 2026-002

WHEREAS, the Deschutes County Community Development Department (CDD) initiated amendments (Planning Division File No. 247-25-000703-TA) to the Deschutes County Code (“DCC”), Chapter 15.04 – Building and Construction Codes and Regulations; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed changes on December 11, 2025 and forwarded to the Deschutes County Board of County Commissioners (“Board”) a 5-0 recommendation of approval; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on January 14, 2026 and concluded that the public will benefit from the proposed changes to the Deschutes County Code Title 15; now, therefore,

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

Section 1. AMENDING. Deschutes County Code Chapter 15.04, Building and Construction Codes and Regulations, 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 ~~strike~~through.

Section 2. FINDINGS. The Board adopts as its findings Exhibit “B”, attached and incorporated by reference herein.

Section 3. EMERGENCY. This Ordinance being necessary for the public peace, health, and safety, an emergency is declared to exist, and this Ordinance becomes effective April 1, 2026.

Dated this _____ of _____, 2026

BOARD OF COUNTY COMMISSIONERS
 OF DESCHUTES COUNTY, OREGON

PHILIP CHANG, Chair

ANTHONY DEBONE, Vice Chair

ATTEST:

Recording Secretary

PATTI ADAIR, Commissioner

Date of 1st Reading: _____ day of _____, 2026.

Date of 2nd Reading: _____ day of _____, 2026.

Record of Adoption Vote:

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

Effective date: _____ day of _____, 2026.

CHAPTER 15.04 BUILDING AND CONSTRUCTION CODES AND REGULATIONS

15.04.010 Specialty Codes And Building Requirements Adopted; Enforcement

15.04.010 Specialty Codes And Building Requirements Adopted; Enforcement

In the areas under the jurisdiction of the County, the County shall administer and enforce pursuant to ORS 455.153, the following specialty codes and building requirements as though the specific specialty codes and building requirements were ordinances of the County:

- A.** The specialty codes under ORS 447 (Plumbing; Access by Disabled Persons), 455 (Building Code) and ORS 479.510 to 479.945 (Electrical Safety Law).
 - 1.** Oregon Residential Specialty Code Section R327- Wildfire Hazard Mitigation shall apply to all of unincorporated Deschutes County and in the municipalities where their Councils have adopted Section R327 into their municipal code.
- B.** Mobile or manufactured dwelling parks requirements adopted under ORS 446.062.
- C.** Temporary parks requirements adopted under ORS 446.105.
- D.** Manufactured dwelling installation, support and tiedown requirements adopted under ORS 446.230.
- E.** Park and camp requirements adopted under ORS 455.680.

HISTORY

Adopted by Ord. [96-055](#) §2 on 7/10/1996

Amended by Ord. [2011-022](#) §2 on 7/27/2011

Amended by Ord. [2026-002](#) §1 on 04/01/2026



FINDINGS

WILDFIRE HAZARD BUILDING CODES - TEXT AMENDMENTS

I. APPLICABLE CRITERIA:

Title 22, Deschutes County Development Procedures Ordinance

II. BACKGROUND:

Pursuant to Senate Bill (SB) 83, Text Amendments to adopt section R327 of the Oregon Residential Specialty Code (ORSC) in unincorporated Deschutes County. Section R327 establishes fire hardening building requirements for new residential construction.

III. BASIC FINDINGS:

On June 26, 2025, the Oregon Legislature adopted SB 83¹. This Bill repeals the State Wildfire Hazard Map which was previously adopted and administered pursuant to SBs 762² and 80³. Additionally, SB 83 allows local jurisdictions to adopt fire hardening standards for new residential development as outlined in section R327 of the Oregon Residential Specialty Code (ORSC). The proposed text amendments would establish R327 building code standards for newly constructed dwelling units and their accessory structures, with exceptions and exemptions delineated within the ORSC.

As the proposed amendments are not located within the land use sections of the Deschutes County Code (CDD), notice to the Oregon Department of Land Conservation and Development is not required. As demonstrated in the findings below, the amendments remain consistent with Deschutes County Code and the Deschutes County Comprehensive Plan.

IV. FINDINGS:

CHAPTER 22.12, LEGISLATIVE PROCEDURES

Section 22.12.010.

Hearing Required

¹ <https://olis.oregonlegislature.gov/liz/2025R1/Measures/Overview/SB83>

² <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB762/Enrolled>

³ <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB80/Enrolled>

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 December 11, 2025 and a public hearing was held before the Board of County Commissioners (Board) on January 14, 2026.

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 is met as notice was published in *The Bulletin* newspaper on December 1, 2025 for the Commission public hearing and December 26, 2025 for the Board 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 and reviewed the proposed amendments on December 11, 2025. The Board held a public hearing on January 14, 2026.

Section 22.12.050 Final Decision

All legislative changes shall be adopted by ordinance

FINDING: The proposed legislative changes included in file no. 247-25-000703-TA will be implemented by ordinances upon approval and adoption by the Board.

V. PROPOSED TEXT AMENDMENTS:

The proposed text amendments are detailed in the referenced ordinance with additional text identified by underline and deleted text by ~~strikethrough~~. Below are summary explanations of the proposed changes.

Title 15, Buildings and Construction:

Chapter 15.04. BUILDING AND CONSTRUCTION CODES AND REGULATIONS - (See Exhibit A)

Section 15.04.010. Specialty Codes and Building Requirements Adopted; Enforcement

The proposed changes add a new section of the Oregon Residential Specialty Code (ORSC) to implement wildfire mitigation building standards for new residential development.

Upon implementation, newly constructed dwellings and their accessory structures shall be protected against wildfire in accordance with the provisions of section R327 of the ORSC.

Notable exceptions to these standards are as follows:

1. Nonhabitable detached accessory structures with a floor area of not greater than 400 square feet located not less than 50 feet from all structures on the lot that contain habitable space.
2. Structures exempted by ORS 455.315 (Agricultural exempt buildings).
3. Detached accessory membrane-covered frame structures.

VI. **CONCLUSION:**

Based on the information provided herein, the staff recommends the Board of County Commissioners approve the proposed text amendments and implement the R327 wildfire mitigation building code standards in unincorporated Deschutes County for new residential development.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 28, 2026

SUBJECT: Ordinance 2026-004 – BCL LLC Plan Amendment / Zone Change

RECOMMENDED MOTIONS:

1. Move approval of second reading of Ordinance No. 2026-004 by title only.
2. Move adoption of Ordinance No. 2026-004.

BACKGROUND AND POLICY IMPLICATIONS:

The applicant, BCL LLC, requests approval to change the Comprehensive Plan designation (land use file no. 247-24-000097-PA) of the subject property from Agriculture to Rural Residential Exception Area, and approval to change the zone (land use file no. 247-24-000098-ZC) of the subject properties from Exclusive Farm Use to Multiple Use Agricultural. The subject property is approximately 240 acres in size and is located to the east of Bend, to the north and south of Highway 20 and to the east of Ward Road. The Board held a public hearing on August 20, 2025, and deliberated on this application on October 15, 2025, and voted to approve the application. The first reading of this ordinance was held on January 14, 2026, and no changes have been made since then.

The entirety of the record can be viewed from the project website at:

<https://www.deschutes.org/cd/page/247-24-000097-pa-247-24-000098-zc-bcl-llc-comprehensive-plan-amendment-and-zone-change>

BUDGET IMPACTS:

None.

ATTENDANCE:

Audrey Stuart, Associate Planner
 Anthony Raguine, Principal Planner
 Will Groves, Planning Manager

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

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

*
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*

ORDINANCE NO. 2026-004

WHEREAS, BCL LLC applied for changes to both the Deschutes County Comprehensive Plan Map (247-24-000097-PA) and the Deschutes County Zoning Map (247-24-000098-ZC), to change the comprehensive plan designation of the subject property from Agriculture (AG) to Rural Residential Exception Area (RREA), and a corresponding zone change from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA10); and

WHEREAS, after notice was given in accordance with applicable law, a public hearing was held on May 9, 2025, before the Deschutes County Hearings Officer and, on July 9, 2025, the Hearings Officer recommended approval of the Comprehensive Plan Map Amendment and Zone Change;

WHEREAS, pursuant to DCC 22.28.030(C), the Board heard *de novo* the applications to change the comprehensive plan designation of the subject property from Agriculture (AG) to Rural Residential Exception Area and a corresponding zone change from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA10); now, therefore,

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

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

Section 2. AMENDMENT. DCC Title 18, Zoning Map, is amended to change the zone designation from EFU to MUA10 for certain property described in Exhibit "A" and depicted on the map as set forth as Exhibit "C", with both exhibits attached and incorporated by reference herein.

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

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

Section 5. FINDINGS. The Board adopts as its findings in support of this Ordinance the Decision of the Board of County Commissioners as set forth in Exhibit "F" and incorporated by reference herein. The Board also incorporates in its findings in support of this decision, the Recommendation of the Hearings Officer, attached as Exhibit "G" and incorporated by reference herein.

Section 6. EFFECTIVE DATE. This Ordinance takes effect on the 90th day after the date of adoption.

Dated this _____ of _____, 20_____, BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PHIL CHANG, Chair

ANTHONY DeBONE, Vice Chair

ATTEST:

Recording Secretary

PATTI ADAIR, Commissioner

Date of 1st Reading: _____ day of _____, 20 .

Date of 2nd Reading: _____ day of _____, 20 .

Commissioner	Record of Adoption Vote			
	Yes	No	Abstained	Excused
Patti Adair	_____			
Anthony DeBone	_____			
Phil Chang	_____			

Effective date: _____ day of _____, 20 .

ATTEST

Recording Secretary

Exhibit A to Ordinance 2026-004
Legal Description of Subject Property

TRACT I:

A parcel of land in the East half of Section 36, Township 17 South, Range 12 East of the Willamette Meridian, in Deschutes County, Oregon, being more particularly described as follows:

Commencing at a 5/8" Iron Rod marking the Northeast corner of said Section 36, said point also being the Point of Beginning; thence along the East line of said Section 36, South 00°14'15" West 1323.19 feet to a 5/8" Iron Rod with yellow plastic cap marked "Tye Engineering"; thence continuing along the East line of said Section 36, South 00°13'59" West 970.85 feet to a 5/8" Iron Rod with an orange plastic cap marked "Becon"; thence, leaving said East line of Section 36, North 89°45'40" West 942.14 feet to a 5/8" Iron Rod with an orange plastic cap marked "Becon"; thence South 00°02'28" West 665.76 feet to a point on the Northerly right of way line of the Central Oregon Highway, U.S. Highway 20, said point being a 5/8" Iron Rod with an orange plastic cap marked "Becon"; thence along said Northerly right of way line of the Central Oregon Highway the following three courses:

South 78°24'59" West 369.40 feet to a 5/8" Iron Rod with an aluminum cap marked "Oregon State Highway Div";

South 09°45'07" East 20.00 feet to a 5/8" Iron Rod with an orange plastic cap marked "Becon";

South 80°14'53" West 1016.99 feet to a point at the intersection of the Northerly right of way line of the Central Oregon Highway and the Westerly line of the Bonneville Power Easement recorded in Book 98, Page 288, Deschutes County Official Records, said point being a 5/8" Iron Rod with an orange plastic cap marked "Becon";

thence along the Westerly line of said Bonneville Power Easement, North 08°23'48" East 598.45 feet to a point on the South line of the North half of said Section 36, said point being a 5/8" Iron Rod with an orange plastic cap marked "Becon"; thence continuing along the Westerly line of said Bonneville Power Easement, North 08°23'48" East 740.26 feet to a 5/8" Iron Rod with an orange plastic cap marked "Becon"; thence leaving the Westerly line of said Bonneville Power Easement, North 36°57'50" East 2379.75 feet to a point on the North line of said Section 36; thence along the North line of said Section 36, South 89°40'51" East 686.38 feet to the Point of Beginning.

Exhibit A to Ordinance 2026-004
Legal Description of Subject Property

TRACT III:

A parcel in the Northeast quarter of Section 36, Township 17 South, Range 12 East of the Willamette Meridian, in Deschutes County, Oregon, being more particularly described as follows:

Commencing at a 5/8" Iron Rod marking the Northeast corner of said Section 36; thence along the North line of said Section 36, North 89°40'51" West 686.38 feet to the True Point of Beginning; thence leaving said North line of Section 36, South 36°57'50" West 2379.75 feet to a point on the Westerly line of the Bonneville Power Easement recorded in Book 98, Page 288, Deschutes County, Oregon, said point being a 5/8" Iron Rod with an orange plastic cap marked "Becon"; thence along the Westerly line of said Bonneville Power Easement, South 08°23'48" West 740.26 feet to a point on the South line of the North half of said Section 36, said point being a 5/8" Iron Rod with an orange plastic cap marked "Becon"; thence along the South line of the North half of said Section 36 North 89°34'55" West 227.20 feet to a point at the intersection of the South line of the North half of said Section 36 and the Westerly line of the Pacific Power and Light Easement recorded in Book 145, Page 354, Deschutes County Official Records; said point being a 5/8" Iron Rod with a yellow plastic cap marked "Armstrong S&E";

Thence along the Westerly line of said Pacific Power and Light Easement North 08°23'48" East 2668.46 feet to a point on the North line of said Section 36;

Thence along the North line of said Section 36, South 89°40'33" East 732.93 feet to the East one-sixteenth corner of said Section 36, said corner being a 5/8" Iron Rod;

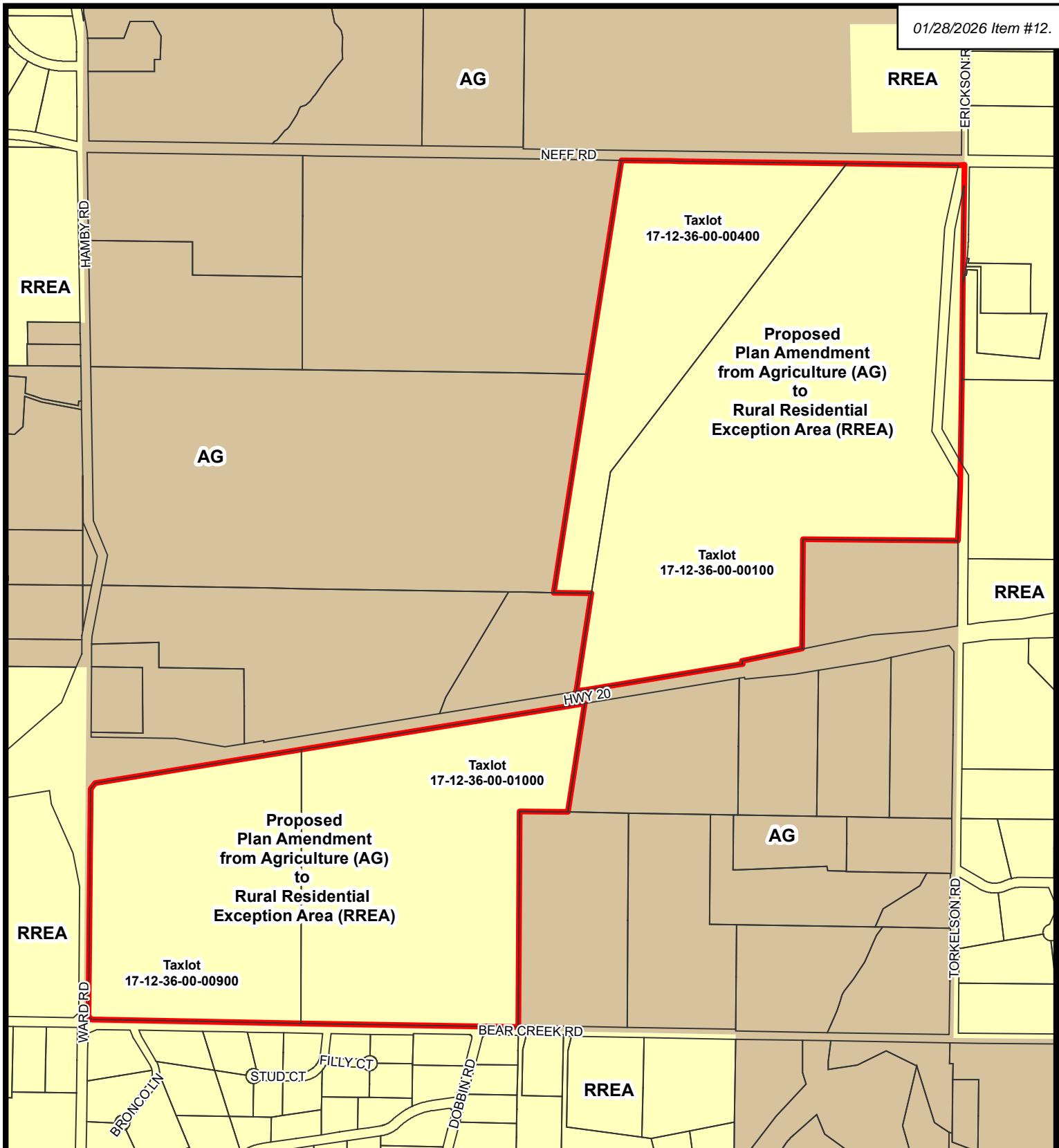
Thence continuing along the North line of said Section 36, South 89°40'51" East 643.70 feet to the True Point of Beginning.

TRACT IV:

The Southwest quarter of the Southwest quarter and that portion of the Northwest quarter of the Southwest quarter lying South of Highway 20, all in Section 36, Township 17 South, Range 12 East of the Willamette Meridian, Deschutes County, Oregon.

SECTION 36, TOWNSHIP 17 SOUTH, RANGE 12 EAST OF THE WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON:

THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER AND THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER LYING SOUTH OF HIGHWAY 20, TOGETHER WITH THAT PORTION OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER LYING WEST OF THE BONNEVILLE POWER EASEMENT AND SOUTH OF HIGHWAY 20.



PROPOSED COMPREHENSIVE PLAN

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

 Plan Amendment Boundary

Comprehensive Plan

 RREA - Rural Residential
Exception Area

 AG - Agriculture

Exhibit "B"
to Ordinance 2026-004

Phil Chang, Chair

Anthony DeBone, Vice Chair

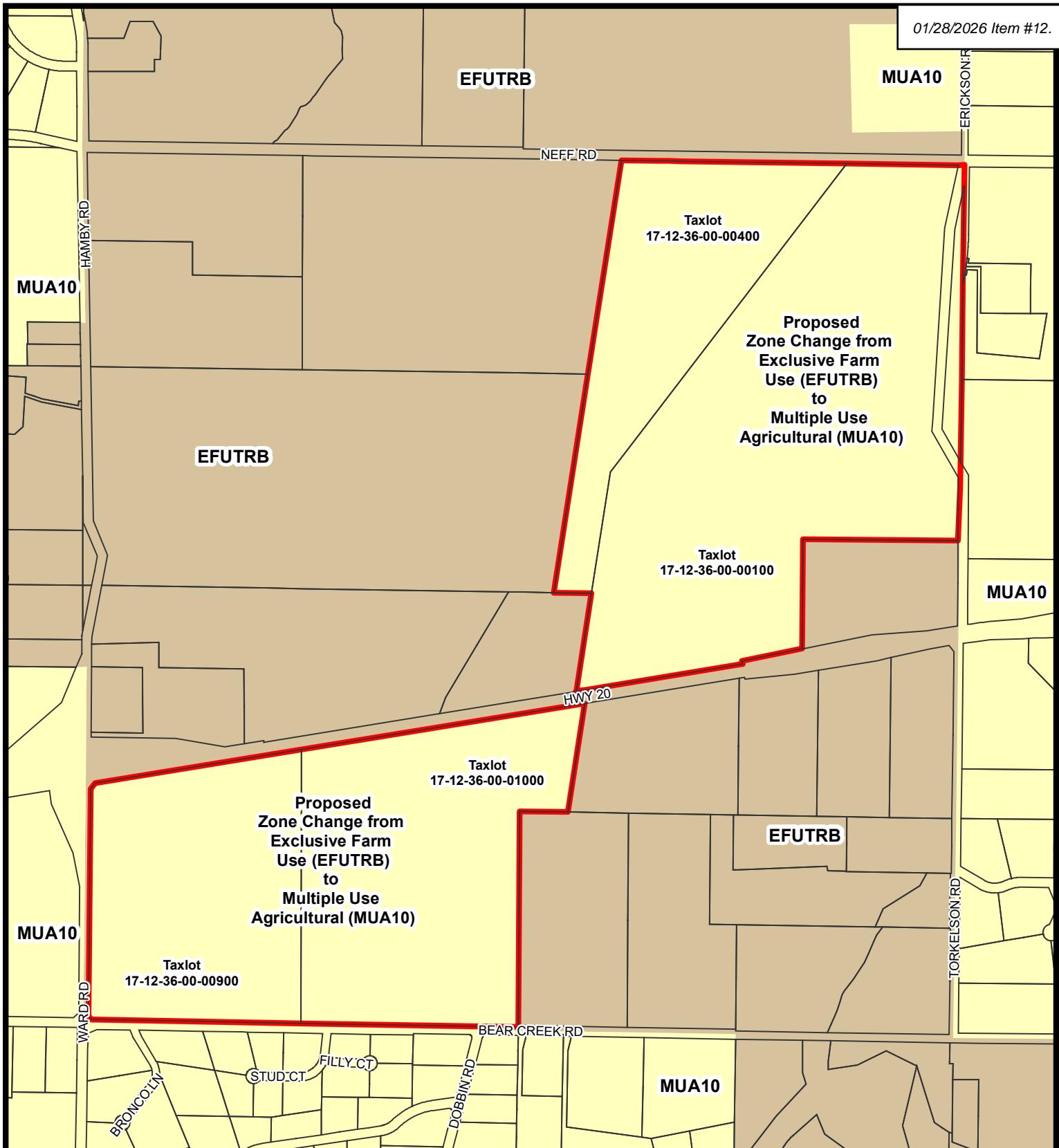
Patti Adair, Commissioner

ATTEST: Recording Secretary

Dated this _____ day of _____, 202_____
Effective Date: _____, 202_____

0 375 750 1,500 Feet

January 7, 2026



PROPOSED ZONING

 Zone Change Boundary

Zoning

- MUA10 - Multiple Use Agricultural
- EFUTRB - Exclusive Farm Use

Exhibit "C"
to Ordinance 2026-004



0 375 750 1,500 Feet

January 7, 2026

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

Phil Chang, Chair

Anthony DeBone, Vice Chair

Patti Adair, Commissioner

ATTEST: Recording Secretary

Dated this _____ day of _____, 202_____
Effective Date: _____, 202_____

Exhibit "D" to Ordinance 2026-004

TITLE 23 COMPREHENSIVE PLAN

CHAPTER 23.01 COMPREHENSIVE PLAN

- A. The Deschutes County Comprehensive Plan, adopted by the Board in Ordinance 2011-003 and found on the Deschutes County Community Development Department website, is incorporated by reference herein.
- B. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2011-027, are incorporated by reference herein.
- C. [Repealed by Ordinance 2013-001, §1]
- D. [Repealed by Ordinance 2023-017]
- E. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-012, are incorporated by reference herein.
- F. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-016, are incorporated by reference herein.
- G. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-002, are incorporated by reference herein.
- H. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-009, are incorporated by reference herein.
- I. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-012, are incorporated by reference herein.
- J. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-007, are incorporated by reference herein.
- K. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-005, are incorporated by reference herein.
- L. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-006, are incorporated by reference herein.
- M. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-012, are incorporated by reference herein.
- N. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-021, are incorporated by reference herein.
- O. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-027, are incorporated by reference herein.
- P. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-021, are incorporated by reference herein.

- Q. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-029, are incorporated by reference herein.
- R. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-018, are incorporated by reference herein.
- S. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-010, are incorporated by reference herein.
- T. [Repealed by Ordinance 2016-027 §1]
- U. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-022, are incorporated by reference herein.
- V. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-005, are incorporated by reference herein.
- W. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-027, are incorporated by reference herein.
- X. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-029, are incorporated by reference herein.
- Y. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2017-007, are incorporated by reference herein.
- Z. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-002, are incorporated by reference herein.
- AA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-006, are incorporated by reference herein.
- AB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-011, are incorporated by reference herein.
- AC. [repealed by Ord. 2019-010 §1, 2019]
- AD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-008, are incorporated by reference herein.
- AE. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-002, are incorporated by reference herein.
- AF. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-001, are incorporated by reference herein.
- AG. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-003, are incorporated by reference herein.
- AH. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-004, are incorporated by reference herein.

- AI. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-011, are incorporated by reference herein.
- AJ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-006, are incorporated by reference herein.
- AK. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-019, are incorporated by reference herein.
- AL. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-016, are incorporated by reference herein.
- AM. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-001, are incorporated by reference herein.
- AN. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-002, are incorporated by reference herein.
- AO. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-003, are incorporated by reference herein.
- AP. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-008, are incorporated by reference herein.
- AQ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-007, are incorporated by reference herein.
- AR. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-006, are incorporated by reference herein.
- AS. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-009, are incorporated by reference herein.
- AT. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-013, are incorporated by reference herein.
- AU. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2021-002, are incorporated by reference herein.
- AV. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2021-005, are incorporated by reference herein.
- AW. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2021-008, are incorporated by reference herein.
- AX. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-001, are incorporated by reference herein.
- AY. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-003, are incorporated by reference herein.

- AZ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-006, are incorporated by reference herein.
- BA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-010, are incorporated by reference herein.
- BB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-011, are incorporated by reference herein. (superseded by Ord. 2023-015)
- BC. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-013, are incorporated by reference herein. (supplemented and controlled by Ord. 2024-010)
- BD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-001, are incorporated by reference herein.
- BE. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-007, are incorporated by reference herein.
- BF. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-010 are incorporated by reference herein.
- BG. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-018, are incorporated by reference herein.
- BH. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-015, are incorporated by reference herein.
- BI. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-025, are incorporated by reference herein.
- BJ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-001, are incorporated by reference herein.
- BK. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-003, are incorporated by reference herein.
- BL. The Deschutes County Comprehensive Plan, adopted by the Board in Ordinance 2024-007 and found on the Deschutes County Community Development Department website, is incorporated by reference herein (superseded by Ord. 2025-007).
- BM. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-010, are incorporated by reference herein.
- BN. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-017, are incorporated by reference herein.
- BO. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-016, are incorporated by reference herein.

BP. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-011, are incorporated by reference herein.

BQ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-012, are incorporated by reference herein.

BR. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-001, are incorporated by reference herein.

BS. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-003, are incorporated by reference herein.

BT. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-010, are incorporated by reference herein.

BU. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-007, are incorporated by reference herein.

BV. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-014, are incorporated by reference herein.

BW. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-004, are incorporated by reference herein.

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

Section 5.12 Legislative History

Background

This section contains the legislative history of this Comprehensive Plan.

Table 5.12.1 Comprehensive Plan Ordinance History

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

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

2015-029	11-23-15/11-30-15	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Tumalo Residential 5-Acre Minimum to Tumalo Industrial
2015-018	12-9-15/3-27-16	23.01.010, 2.2, 4.3	Housekeeping Amendments to Title 23.
2015-010	12-2-15/12-2-15	2.6	Comprehensive Plan Text and Map Amendment recognizing Greater Sage-Grouse Habitat Inventories
2016-001	12-21-15/04-5-16	23.01.010; 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from, Agriculture to Rural Industrial (exception area)
2016-007	2-10-16/5-10-16	23.01.010; 5.10	Comprehensive Plan Amendment to add an exception to Statewide Planning Goal 11 to allow sewers in unincorporated lands in Southern Deschutes County
2016-005	11-28-16/2-16-17	23.01.010, 2.2, 3.3	Comprehensive Plan Amendment recognizing non-resource lands process allowed under State law to change EFU zoning
2016-022	9-28-16/11-14-16	23.01.010, 1.3, 4.2	Comprehensive plan Amendment, including certain property within City of Bend Urban Growth Boundary
2016-029	12-14-16/12/28/16	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from, Agriculture to Rural Industrial

2017-007	10-30-17/10-30-17	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2018-002	1-3-18/1-25-18	23.01, 2.6	Comprehensive Plan Amendment permitting churches in the Wildlife Area Combining Zone
2018-006	8-22-18/11-20-18	23.01.010, 5.8, 5.9	Housekeeping Amendments correcting tax lot numbers in Non-Significant Mining Mineral and Aggregate Inventory; modifying Goal 5 Inventory of Cultural and Historic Resources
2018-011	9-12-18/12-11-18	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2018-005	9-19-18/10-10-18	23.01.010, 2.5, Tumalo Community Plan, Newberry Country Plan	Comprehensive Plan Map Amendment, removing Flood Plain Comprehensive Plan Designation; Comprehensive Plan Amendment adding Flood Plain Combining Zone purpose statement.
2018-008	9-26-18/10-26-18	23.01.010, 3.4	Comprehensive Plan Amendment allowing for the potential of new properties to be designated as Rural Commercial or Rural Industrial

2019-002	I-2-19/4-2-19	23.01.010, 5.8	Comprehensive Plan Map Amendment changing designation of certain property from Surface Mining to Rural Residential Exception Area; Modifying Goal 5 Mineral and Aggregate Inventory; Modifying Non-Significant Mining Mineral and Aggregate Inventory
2019-001	I-16-19/4-16-19	I.3, 3.3, 4.2, 5.10, 23.01	Comprehensive Plan and Text Amendment to add a new zone to Title 19: Westside Transect Zone.
2019-003	02-12-19/03-12-19	23.01.010, 4.2	Comprehensive Plan Map Amendment changing designation of certain property from Agriculture to Redmond Urban Growth Area for the Large Lot Industrial Program
2019-004	02-12-19/03-12-19	23.01.010, 4.2	Comprehensive Plan Map Amendment changing designation of certain property from Agriculture to Redmond Urban Growth Area for the expansion of the Deschutes County Fairgrounds and relocation of Oregon Military Department National Guard Armory.
2019-011	05-01-19/05-16/19	23.01.010, 4.2	Comprehensive Plan Map Amendment to adjust the Bend Urban Growth Boundary to accommodate the refinement of the Skyline Ranch Road alignment and the refinement of the West Area Master Plan Area I boundary. The ordinance also amends the Comprehensive Plan designation of Urban Area Reserve for those lands leaving the UGB.

2019-006	03-13-19/06-11-19	23.01.010,	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2019-016	11-25-19/02-24-20	23.01.01, 2.5	Comprehensive Plan and Text amendments incorporating language from DLCD's 2014 Model Flood Ordinance and Establishing a purpose statement for the Flood Plain Zone.
2019-019	12-11-19/12-11-19	23.01.01, 2.5	Comprehensive Plan and Text amendments to provide procedures related to the division of certain split zoned properties containing Flood Plain zoning and involving a former or piped irrigation canal.
2020-001	12-11-19/12-11-19	23.01.01, 2.5	Comprehensive Plan and Text amendments to provide procedures related to the division of certain split zoned properties containing Flood Plain zoning and involving a former or piped irrigation canal.

2020-002	2-26-20/5-26-20	23.01.01, 4.2, 5.2	Comprehensive Plan Map Amendment to adjust the Redmond Urban Growth Boundary through an equal exchange of land to/from the Redmond UGB. The exchange property is being offered to better achieve land needs that were detailed in the 2012 SB 1544 by providing more development ready land within the Redmond UGB. The ordinance also amends the Comprehensive Plan designation of Urban Area Reserve for those lands leaving the UGB.
2020-003	02-26-20/05-26-20	23.01.01, 5.10	Comprehensive Plan Amendment with exception to Statewide Planning Goal 11 (Public Facilities and Services) to allow sewer on rural lands to serve the City of Bend Outback Water Facility.
2020-008	06-24-20/09-22-20	23.01.010, Appendix C	Comprehensive Plan Transportation System Plan Amendment to add roundabouts at US 20/Cook-O.B. Riley and US 20/Old Bend-Redmond Hwy intersections; amend Tables 5.3.T1 and 5.3.T2 and amend TSP text.
2020-007	07-29-20/10-27-20	23.01.010, 2.6	Housekeeping Amendments correcting references to two Sage Grouse ordinances.

2020-006	08-12-20/11-10-20	23.01.01, 2.11, 5.9	Comprehensive Plan and Text amendments to update the County's Resource List and Historic Preservation Ordinance to comply with the State Historic Preservation Rule.
2020-009	08-19-20/11-17-20	23.01.010, Appendix C	Comprehensive Plan Transportation System Plan Amendment to add reference to J turns on US 97 raised median between Bend and Redmond; delete language about disconnecting Vandevent Road from US 97.
2020-013	08-26-20/11/24/20	23.01.01, 5.8	Comprehensive Plan Text And Map Designation for Certain Properties from Surface Mine (SM) and Agriculture (AG) To Rural Residential Exception Area (RREA) and Remove Surface Mining Site 461 from the County's Goal 5 Inventory of Significant Mineral and Aggregate Resource Sites.
2021-002	01-27-21/04-27-21	23.01.01	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) To Rural Industrial (RI)
2021-005	06-16-21/06-16-21	23.01.01, 4.2	Comprehensive Plan Map Amendment Designation for Certain Property from Agriculture (AG) To Redmond Urban Growth Area (RUGA) and text amendment
2021-008	06-30-21/09-28-21	23.01.01	Comprehensive Plan Map Amendment Designation for Certain Property Adding Redmond Urban Growth Area (RUGA) and Fixing Scrivener's Error in Ord. 2020-022

2022-001	04-13-22/07-12-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2022-003	04-20-22/07-19-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2022-006	06-22-22/08-19-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Rural Residential Exception Area (RREA) to Bend Urban Growth Area
2022-011	07-27-22/10-25-22 (superseded by Ord. 2023-015)	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) To Rural Industrial (RI)
2022-013	12-14-22/03-14-23 (supplemented and controlled by Ord. 2024-010)	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2023-001	03-01-23/05-30-23	23.01.010, 5.9	Housekeeping Amendments correcting the location for the Lynch and Roberts Store Advertisement, a designated Cultural and Historic Resource
2023-007	04-26-23/6-25-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)

2023-010	06-21-23/9-17-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2023-018	08-30-23/11-28-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2023-015	9-13-23/12-12-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Industrial (RI)
2023-025	11-29-23/2-27-24	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Rural Residential Exception Area (RREA) to Bend Urban Growth Area
2024-001	1-31-24/4-30-24	23.01.010	Comprehensive Plan Map Amendment for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2023-016	5-8-24/8-6-24	23.01(BM) (added), 4.7 (amended), Appendix B (replaced)	Updated Tumalo Community Plan
2023-017	3-20-24/6-20-24	23.01(D) (repealed), 23.01(BJ) (added), 3.7 (amended), Appendix C (replaced)	Updated Transportation System Plan

2024-003	2-21-24/5-21-24	23.01.010, 5.8	Comprehensive Plan Map Amendment, changing designation of certain property from Surface Mining (SM) to Rural Residential Exception Area (RREA); Modifying Goal 5 Mineral and Aggregate Inventory
2024-007	10-02-24/12-31-24 (superseded by Ord. 2025-007)	23.01(A)(repealed) 23.01(BK) (added)	Repeal and Replacement of 2030 Comprehensive Plan with 2040 Comprehensive Plan
2024-010	10-16-24/01-14-25	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2024-011	11-18-24/02-17-25	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Redmond Urban Growth Area (RUGA)
2024-012	1-8-25/4-8-25	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2025-001	2-5-25/2-5-25	23.01.010	Comprehensive Plan and Zoning Map Amendment updating the Greater Sage-Grouse Area Combining Zone boundary.
2025-003	4-2-25/7-1-25	23.01.010	Comprehensive Plan Designation for Certain Property from Agriculture (AG) to Rural Industrial (RI)

2025-010	6-25-25/9-23-25	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2025-007	08-27-25/11-25-25	23.01(BU)	Amendments to Comprehensive Plan resulting from Deschutes County 2040 Update process.
2025-014	10-6-25/10-6-25	23.01.010	Comprehensive Plan Map Designation for Certain Property from Forest (F) to Rural Residential Exception Area (RREA)
<u>2026-004</u>	<u>TBD</u>	<u>23.01.010</u>	<u>Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)</u>

BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON
FINDINGS OF FACT AND CONCLUSIONS OF LAW

File Numbers: 247-24-000097-PA, 098-ZC and 247-25-000021-MA

Applicant: BCL, LLC
 250 NW Franklin Street
 Bend, Or 97703

Owner: Erickson-Ward Land Trust, LLC
 21875 Neff Road/21850 Highway 20/21700 Bear Creek Road/62098
 Ward Road
 Bend Or 97701

**Attorney(s) for
Applicant:** Christopher P. Koback
 Buchanan Schmid LLC
 937 NW Newport Avenue, Suite 220
 Bend, OR 97703
 (541) 388-1107
chris@buchananschmid.com

Staff Planner: Audrey Stuart, Associate Planner
Audrey.Stuart@deschutes.org, 541-388-6679

Application: Approval to change the plan designation for the subject property from Agriculture to Rural Residential Exception Area ("RREA) and to change the zoning of the property from Exclusive Farm Use ("EFU") to Multiple Use Agricultural-10 ("MUA").

Subject Property:	Map/Tax Lot:	Situs Address:
	171236000100	21875 Neff Road, Bend, OR 97701
	171236000400	21850 Highway 20, Bend, OR 97701
	1712360001000	21700 Bear Creek Rd, Bend, OR 97701
	171236000900	62098 Ward Road, Bend, Or 97701

I. FINDINGS OF FACT

A. Hearings Officer's Recommendation: The Hearings Officer's recommendation dated May 9, 2025, adopted as Exhibit G of Ordinance No. 2026-004, is hereby incorporated as part of this decision, including any and all interpretations of the County's code and comprehensive Plan and modified as follows:

B. Procedural History: The County's land use Hearings Officer conducted the initial evidentiary hearing regarding BCL, LLC's Comprehensive Plan Amendment and Zone Change applications on May 9, 2025. After an open record period that ended May 30, 2025, the Hearings Officer recommended that the Board approve the applications in a July 9, 2025 decision. The Board conducted a de novo land use hearing on August 20, 2025. At the close of the hearing on August 20, 2025, the Board ordered an open record period that ended September 10, 2025. On October 15, 2025, the Board deliberated and voted unanimously to approve the application.

C. Deschutes County Land Use regulations: The Deschutes County Comprehensive Plan and Title 18 of the Deschutes County Code have been acknowledged by the Department of Land Conservation and Development (DLCD) as complying with statewide planning goals, including Goal 14. The County specifically amended its comprehensive plan in 2016 to provide that Rural Residential Exception Area Plan and its related MUA-10 and RR-10 zones should be applied to non-resource lands. This amendment is acknowledged, which means that the RREA plan designation and its related zoning districts, when applied to non-resource land such as the subject property, do not result in a violation of Goal 14. The Board interprets all MUA-10 uses as rural uses; no Goal 14 exception is required.

II. ADDITIONAL FINDINGS AND CONCLUSIONS OF LAW

At the Board's October 15, 2025, meeting where it deliberated the application, County staff presented an issue matrix for the Board to consider. Having considered the questions as presented in that matrix, the Board makes the following additional findings:

1. Soils Report

The applicant relied upon the NCFS soil maps and data for its assertion that the subject property was comprised predominately of non-agricultural soil. It presented a report from Red Hill Soils that explained the NCFS mapping and data. Central Oregon LandWatch (COLW) argued during the proceedings that the Red Hill Soils (Andy Gallagher) report was a "more detailed soil assessment" as defined in OAR 660-033-0030 that had to have been reviewed and approved by DLCD. The Hearings Officer rejected that argument and accepted the applicant's position that the Red Hills report did not have to be reviewed and approved by DLCD.

The Board notes that COLW did not reassert its argument on this issue in either its August 20, 2025, or August 27, 2025, submissions to the Board. Nevertheless, because the issue was presented by staff in the matrix, the Board evaluated COLW's prior arguments and rejects them. A party seeking a rezoning on the basis that property is

not agricultural land is allowed to rely on the NRCS mapping and data. If the existing maps or data are not accurate or complete, an applicant may elect to have a more detailed study done on the site where soils samples are evaluated and additional data is developed. Red Hills Soil did not do that. Rather, it used the existing maps and data to explain how that data relates to the subject property, specifically how the data is interpreted when the property has complex soil types.

The Board finds that the Red Hill Soils report did not include more data on soils but rather explained the application of existing NCRS data. Board interprets OAR 660-033-0030(5) to find Red Hills report is not a soil assessment requiring DLCD certification.

2. Whether the Property meets the definition of agricultural land in OAR 660-033-0020(1)(a).

Staff presented a second issue related to the soils information that the applicant submitted; staff presented that, to continue deliberations on the application, the Board must decide whether the applicant's information demonstrated that the property was predominantly non-agricultural land. OAR 660-033-0020(1)(a) defines agricultural land in Eastern Oregon as predominantly Class 1 through 6 soil. The Board discussed the information presented, particularly the report from Red Hill Soils and finds that the information establishes that the subject property is made up predominantly of Class 7 and 8 soils that is therefore not agricultural land.

3. Whether the property is agricultural land considering the factors in OAR 660-033-0020(1)(a)(B).

OAR 660-033-0020(1)(a)(B) requires a decision-maker to consider several factors to determine whether land, even if predominantly Class 7 and 8, qualifies as agricultural land. The factors include soil fertility, suitability for grazing, climate, availability of water, land use patterns and accepted farming practices. After the Hearings Officer issued his recommendation, wherein he found that the property was not agricultural land suitable for farming, COLW and the applicant submitted additional evidence and argument.

COLW asserted two primary points in its August 2025 submissions. First, it noted that there is some evidence of past farming and possible irrigation. Second, it asserted that the Board is required to make findings that the property cannot be put to any farm use for horse breeding, boarding, training; or for goats or sheep or llamas or other farm use in order to approve the applications.

The Board reads LUBA's decision in *Central Oregon LandWatch v. Deschutes County (Destiny Court)*, LUBA No. 2025-015 to say that only if participants present evidence

regarding certain farm activities other than grazing and hay growing, which are the most commonly accepted activities, does a decision-maker have to make specific findings related to other possible farm activities. In this matter, COLW did not present any such evidence with enough specificity to respond to; it merely listed possible farm activities that are set forth in the definition of farming. COLW presented some information on one horse training facility in Deschutes County and one goat farm, but failed to demonstrate how the subject property was suitable for these farm uses.

As an initial matter, the Board finds that the subject property is not irrigated and has no ability to be irrigated presently. The images that COLW submitted as evidence of past farming are not clear and do not prove that there was any farm activity engaged in on the property for the purpose of making a profit. Furthermore, the latest photograph was 50 years ago and there is no evidence of any farming activity on the property since that time. The Board finds persuasive the testimony of Eric Hagerty, a local farmer/rancher who stated that the cost to acquire water rights, if that is even possible, would be prohibitive. Further, his testimony on the ability to conduct dry grazing for any profit is credible.

As to a horse facility, the applicant presented evidence from Mr. Hagerty, who also operates an equestrian facility, who explained that the subject property is not suitable for such use noting the prohibitive cost with constructing the required facilities, the need for irrigation for pasturing and the cost to obtain irrigation right and then, install the necessary equipment. The evidence illustrated that the land could not produce pollinating plants for bees. Further, the applicant presented evidence that the equestrian facility used by COLW in its arguments has better soil and ample irrigation, and yet still operates as a non-profit. The Board finds that farm use is defined as the current employment of land primarily for the purpose of making a profit from activities listed in ORS 215.203.

The example of the goat farm was from a city in North Carolina. The Board finds that that information is not relevant to this matter in Deschutes County. The Board is not required to make any specific finding on whether a goat farm could be operated primarily for the purpose of a profit on the subject property.

After carefully evaluating all of the evidence in the record, including the detailed testimony from a local ranch and horse facility operator, the Board finds that in applying the factors in OAR 660-033-0020, the subject property is not agricultural land and that a reasonable farmer would not attempt to engage in the activities listed in ORS 215.203 for the primary purpose of making a profit. Board applies *Wetherell* economic feasibility test and finds the land is unsuitable for profitable farm use.

4. Landscape Management

The property is within the Highway 20 scenic corridor and thus subject to the Landscape Management Combining Zone (LM) overlay. The Hearings Officer found that the Economic, Social, Environmental, and Energy (ESEE) analysis presented by the applicant adequately addressed the requirement for a conflicting use analysis. COLW argued to the Board that the analysis presented was deficient because it did not cover the entire Highway 20 scenic corridor. The Board rejects COLW's position and finds that the applicant's ESEE analysis satisfied the applicable administrative rules and County code. The focus of the LM review is to assess how development on the subject property may conflict with the resource. The applicant's analysis did that. The Board interprets its code to not require that extent of an ESEE analysis. Furthermore, the Board finds that it is not reasonable to expect an applicant to prepare a conflicting use analysis for the entire scenic corridor, including property on which no development is contemplated by the specific zone change.

5. Compliance with Rezoning Standards

DCC 18.136.020 provides that an applicant for rezoning must establish that the public interest is best served by rezoning the property and identifies factors to be demonstrated by the applicant: (A) that the change confirms to the Comprehensive Plan, and changes are consistent with the plan's introductory statement and goals; (B) That the change in classification for the subject property is consistent with the purpose and intent of the proposed zone classification; (C) That changing the zoning will presently serve the public health, safety and welfare considering the availability and efficiency of providing necessary public services and facilities and the impacts on surrounding land use will be consistent with the specific goals and policies contained within the Comprehensive Plan and (D) That there has been a change in circumstances since the property was last zoned or a mistake was made in the zoning of the property. Board interprets 'public interest is best served' to mean compliance with subsections (A)-(D).

The Hearings Officer conducted a detailed analysis on how the above standard is interpreted, concluding that the public interest is best served if the proposal meets the factors set forth in DCC 18.136.020 (A) through (D). He then found that those factors were met in the current application. COLW continued to argue to the Board that DCC 18.136.020 requires that an applicant show both that the factors in (A) through (D) are met and independently demonstrate that the rezoning best serves the public interest. The Board considered the countervailing arguments carefully and finds the Hearings Officer's analysis to be sound and correct. The Board adopts the Hearings Officer's interpretation of DCC 18.136.020. Board interprets 'public interest is best served' to mean compliance with subsections (A)-(D).

6. Existing Solar Facility

COLW argued that the existence of a solar array facility on a 63-acre portion of the property was not consistent with the MUA-10 zone proposed to be applied to the property because solar arrays are not a permitted use in the MUA-10 zone and thus, are not consistent with the proposed zone. The Hearings Officer found that state statute and Deschutes County Code allow for the continued use of a lawful non-conforming use, and while the subject application is not a status determination on the existing solar array, the continued use of a lawful non-conforming use is consistent with the purpose and intent of the MUA-10 zone. The Board finds that lawfully established non-conforming uses are allowed to remain after rezoning under *Holmes v. Clackamas County* and the existence of lawful nonconforming uses do not bar rezoning.

The Board agrees with the applicant's point that COLW's argument is not directed at the applicable standard. The question under DCC 18.136.020(B) is not whether a solar facility is consistent or inconsistent with any particular zoning. The question presented is whether the rezoning of property is consistent with the purpose of the proposed zone.

Before the Board, the applicant presented testimony that the solar facilities are on only one portion of the property and that the majority of the property will accommodate uses allowed in the MUA-10 zone. Thus, when examining the entire property, rezoning to MUA-10 is consistent with the purpose of allowing uses under the MUA-10 zone while preserving resources and open space. The applicant also provided evidence that solar facilities have a limited functional lifespan and that the current facility was constructed around 2016. The record includes evidence from a traffic engineer that the expected useful life of such a facility is about 20 years. The applicant also presented testimony that one of the purposes of the MUA-10 zone is to facilitate an orderly transition from rural to urban uses and that if the subject property, which is close to the existing Bend UGB, comes into the UGB, it will not all be developed immediately, meaning that it is reasonably likely that by the time the portion of the property with the solar facility ever transitions to urban uses, it will be after the functional life of the facility, even if that useful life exceeds 20 years.

The Board agrees with the applicant's testimony and evidence. The Board finds that rezoning a 240-acre parcel that has 63 acres devoted to what will then be a lawful nonconforming use is consistent with the purpose of the MUA-10 zone. Most of the property can immediately be used in a way that is consistent with the MUA-10 zone's purpose. The existing solar facility can remain as a lawful non-conforming use and that property can be transitioned to either MUA-10 uses or, if the property were added to Bend's UGB, urban uses in an orderly time after the solar facility passes its

useful life. Moreover, the Board finds that in any rezoning, there will be existing uses that become non-confirming uses. Those uses and associated development are allowed to remain under the new zoning. If the existence of a use or development that is not allowed under proposed new zoning in a rezone/reclassification application is automatically a disqualifying factor, local governments' efforts to add property to a UGB in the future and rezone such property would be frustrated. The Board finds that the existence of the solar facility on the subject property does not render the application inconsistent with the purpose of the MUA-10 zone.

7. Will the change in designation and zoning result in urban uses such that an exception to Goal 14 is required.

On the issue of whether designating land RREA and rezoning it to MUA-10 is consistent with Goal 14 or requires an exception, the Board adheres to the conclusion it has reached in prior similar rezoning applications. The Board finds that its acknowledged Comprehensive Plan, amended in 2016 to create the RREA designation and its MUA-10 and RR-10 zones, confirms that uses allowed within those zones are all rural uses and not urban uses. The Comprehensive Plan (DCCP) states that “[e]ach Comprehensive Plan map designation provides the land use framework for establishing zoning districts. Zoning defines in detail what uses allowed for each area.” DCCP Section 1.3. Rural Residential Exception Areas, according to the DCCP, “provide opportunities for rural residential living outside urban growth boundaries and unincorporated communities ...” DCCP Section 1.3. DCCP Table 1.3.3 provides that Title 18’s RR-10 and MUA-10 zones are the associated zoning codes for the RREA plan designation.

The determination that the RREA plan designation and RR-10 and MUA-10 zoning districts should apply to exception lands was made when the County amended the DCCP in 2016. (Ordinance 2016-005). The ordinance was acknowledged by DLCD as complying with the Statewide Goals. Thus, the lot sizes and uses allowed by the RREA plan designation and the RR-10 and MUA-10 zones comply with Goal 14. The proposed amendment to the Comprehensive Plan map conforms to the DCCP provisions.

Further, the purpose statement for the MUA-10 zone expressly states that it is to preserve the rural character of various areas of the County while permitting development consistent with that character and the capacity of the natural resources of the area. When DCC Chapter 18.32 is read in context with that purpose statement, the only plausible interpretation is that all uses allowed in the MUA-10 zone are rural uses. Thus, the application does not provide any basis for the County to revisit whether the RREA designation, or the RR-10/MUA-10 zones violate Goal 14 by allowing urban development and requires no individual analysis of specific uses or of whether the MUA-10 uses violate Goal 14 is required.

The Board also considered and evaluated the factors presented by the applicant referred to often as the *Curry County* factors to assess whether rezoning the property MUA-10 will result in urban uses on rural land.

Curry County Analysis

As stated above, the Board does not agree with COLW that an analysis of Goal 14 applying the factors set forth in *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447 (1986) is required. The MUA-10 zone allows development consistent with the rural character of the area and does not authorize urban uses. However, the Board makes the following alternative findings for a complete record on the urbanization issue. These alternative findings are based on evidence and argument submitted by the applicant on the Goal 14 issue.

Density

Allowing MUA-10 uses on the subject property will not lead to urban density. The minimum parcel size in the MUA-10 zone is 10 acres. The current zoning code allows smaller parcels for cluster developments and planned developments. In *Central Oregon LandWatch v. Deschutes County* (Destiny Court), LUBA No. 2025-015, LUBA remanded a plan amendment and rezone approval for the Board to address a perceived inconsistency between the DCCP that limits parcels size in the MUA-10 zone to 10 acres and the zoning code that allows smaller parcels under the cluster and planned development provisions. The Board is currently in the process of updating the DCCP to address the remand; however, in the event that cluster and planned development remain in the code and allow parcels less than 10 acres with corresponding open space, such development does not result in urban density.

The smallest parcel in the MUA-10 zone, even using a cluster development application and for property within a mile of a UGB, is five acres or the equivalent density. The Board notes that in *Curry County*, 1000 Friends asserted that densities greater than one dwelling per three acres are urban. That argument did not account for provisions requiring large undeveloped open space either. The Board finds that five-acre parcels along with 65% undeveloped open space are not urban density. By way of contrast, the lowest density allowed in the City of Bend is 1.1 units per acre in the RL zone. There is a significant difference between one dwelling per acre and one dwelling per five acres. Moreover, the allowance of 65% of otherwise unrestricted and unconstrained property to be left open and undeveloped is inconsistent with development at urban densities. Even under the cluster development and planned development provisions, while smaller parcels may be approved, the overall density remains consistent with the rural character of the area.

Extension of Urban Services

The Board rejects the notion that rezoning the subject parcel to MUA-10 will lead to the extension of urban facilities to the area. The City of Bend has no obligation to extend public services and in some cases is prohibited from providing extraterritorial service to rural lands. Development will be served primarily by private water and onsite septic systems. Electricity already extends onto the property as evidenced by the approved plat from 1990. For fire and public safety, the area is served by the Bend Rural Fire District and Deschutes County Sheriff's office, both of which serve rural areas. Further, that coverage will remain unchanged under any county zoning.

Proximity to Urban Growth Boundaries

While the court in *Curry County* addressed arguments that rezoning resource land near urban areas could attract people from the urban areas to rural areas, that discussion did not involve the Deschutes County MUA-10 zone which has as one of its purposes to promote an orderly transition from rural uses to urban uses. The purpose statement thus confirms that the MUA-10 zone allows rural uses. It also illustrates that having MUA-10 zoning somewhat near a UGB is appropriate.

The Board does not agree that rezoning the subject property to MUA-10 will be a magnet pulling rural residents into the urban area and urban residents to the rural area. That position does not reflect reality. Currently, there are few, if any, resources available to rural residents that are located in rural areas. The schools that rural residents around Bend attend are in the City. The medical services and major grocery stores are in urban areas. Rural residents living close to Bend already come in large numbers to urban areas for goods and services.

Similarly, the rural area has most of the recreational opportunities that are enjoyed by urban residents. There are other uses such as horse stables and farm stands that already attract urban residents to the rural area. Board finds that zoning property near the City of Bend UGB to MUA-10 will not result in urban uses on rural lands and thus, no Goal 14 exception required.

III. DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Board of County Commissioners hereby approves applicant's applications for a Comprehensive Plan Amendment to redesignate the subject property from Agriculture to RREA and a corresponding zone map amendment to change the zoning of the property from EFU to MUA-10.

Dated this ____ day of _____ 2026.

**RECOMMENDATION AND FINDINGS OF
THE DESCHUTES COUNTY HEARINGS OFFICER**

FILE NUMBER: 247-24-000097-PA, 247-24-000098-ZC, 247-25-000021-MA

HEARING DATE: May 9, 2025

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

**SUBJECT PROPERTY/
OWNER:** Mailing Name: ERICKSON-WARD LAND TRUST LLC
Map and Tax lot: 1712360000100
Account: 109118
Situs Address: 21875 NEFF RD, BEND, OR 97701

Mailing Name: ERICKSON-WARD LAND TRUST LLC
Map and Tax lot: 1712360000400
Account: 109115
Situs Address: 21850 HWY 20, BEND, OR 97701

Mailing Name: ERICKSON-WARD LAND TRUST LLC
Map and Tax lot: 1712360001000
Account: 111676
Situs Address: 21700 BEAR CREEK RD, BEND, OR 97701

Mailing Name: ERICKSON-WARD LAND TRUST LLC
Map and Tax lot: 1712360000900
Account: 111677
Situs Address: 62098 WARD RD, BEND, OR 97701

APPLICANT: BCL LLC

APPLICANT ATTORNEY: Christopher Kobak

REQUEST: The Applicant requested approval of a Comprehensive Plan Amendment to change the designation of the Subject property from Agricultural (AG) to Rural Residential Exception Area (RREA). The Applicant also requested a corresponding Zone Change to rezone the Subject Property from Exclusive Farm Use – Tumalo-Redmond-Bend subzone (EFU-TRB) to Multiple Use Agricultural (MUA10).

STAFF CONTACT: Audrey Stuart, Associate Planner
Phone: 541-388-6679

Email: Audrey.Stuart@deschutes.org

RECORD:

Record items can be viewed and downloaded from:

<https://www.deschutes.org/cd/page/247-24-000097-pa-247-24-000098-zc-bcl-llc-comprehensive-plan-amendment-and-zone-change>

I. APPLICABLE CRITERIA

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

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

Title 22, Deschutes County Development Procedures Ordinance

Deschutes County Comprehensive Plan

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

Oregon Administrative Rules (OAR), Chapter 660

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

Oregon Revised Statutes (ORS)

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

II. BASIC FINDINGS

LOT OF RECORD: The submitted Burden of Proof includes the following response regarding lot of record status:

“Deschutes County determined that Tax Lots 100, 300, and 400 (combined with Tax Lot 1100) were a lot of record in LR-91-54 and LR-91-55, as corrected by Planning Staff Letter dated December 17, 1998. Exhibit 1. Deschutes County determined that Tax Lot 1000 was a lot of record in 247-20-000077-LR. Exhibit 2.”

The application materials also include a request for Lot of Record Verification for Tax Lot 900 and provide an analysis on the deed history of this tax lot. However, Staff noted (Staff Report, pages 2 & 3) that a Lot of Record Verification is a separate application type that requires its own form and fee, which were not submitted. Staff (Staff Report, pages 2 & 3) concluded that a lot of record analysis for Tax Lot 900 was not required in order to process Applicant’s current Comprehensive Plan Amendment and Zone Change requests.

DCC 22.04.040(B)(1) specifies the types of land use applications that require lot of record verification, and a Comprehensive Plan Amendment and Zone Change is not listed. In the Powell/Ramsey (PA-14-2, ZC-14-2) decision, a County Hearings Officer held to a prior zone change decision (*Belveron ZC-08-04*; page 3) that a property’s lot of record status was not required to be verified as part of a plan amendment and zone change application. Rather, an applicant would be required to receive lot of record verification prior to any *development* on the property. The Hearings Officer concurs with Staff’s analysis and finds that this criterion does not apply.

SITE DESCRIPTION: The properties included in Applicant's proposal in this case (the "Subject Property") consists of four tax lots, which are summarized in the table below.

Tax Lot	Size (Acres)
100	100.89
400	38.06
900	43.89
1000	57.33

Applicant's Burden of Proof for file 247-25-000021-MA provides the following description of the Subject Property:

"The subject tract is designated agricultural and zoned EFU. However, there is no history of any agricultural use. As the Applicant will explain more below, the tract is comprised predominantly of 58C soils which are not considered suitable for agricultural uses. Tax Lots 900, 1000, and 400 are, with the exception of one dwelling recently constructed on Tax Lot 1000, vacant unirrigated parcels with no use. Each tax lot has only a few trees and is primarily comprised of sagebrush, rabbit brush, and bunch grasses. No part of Tax Lot 900 is irrigated, and it has no water rights. Tax Lot 100, like similar parcels north and west, is developed with a solar farm that consumes all but the southeast corner of the lot, which portion is vacant. No part of Tax Lot 100 is irrigated, nor does it have any water rights."

"The subject tract extends east from Ward Road west to Erickson Road. The tract extends north to Neff Road and south to Bear Creek Road. The following aerial photograph shows the approximate locations of the subject property and the general character of the property and surrounding area."

The parcels making up the Subject Property are located east of Bend, to the north and south of Highway 20. At its closest point, the Subject Property is approximately 0.26 miles from the City of Bend's Urban Growth Boundary (UGB). The Subject Property consists primarily of undeveloped land, with two exceptions. Tax Lot 1000 is developed with a Lot of Record Dwelling which was approved through Deschutes County file 247-21-000119-CU. Tax Lot 100 is developed with a solar voltaic array ("Solar Array") that was originally approved through Deschutes County files 247-15-000170-CU, 171-SP and have subsequently been modified. The fenced area developed as the Solar Array encompasses an area of approximately 62.6 acres.

PROPOSAL: The Applicant requested approval of a Comprehensive Plan Map Amendment to change the designation of the Subject Property from an Agricultural ("AG") designation to a Rural Residential Exception Area ("RREA") designation. The Applicant also requested approval of a corresponding Zoning Map Amendment to change the zoning of the subject properties from Exclusive Farm Use ("EFU") to Multiple Use Agricultural ("MUA10"). The Applicant asked that Deschutes County change the zoning and the plan designation because the Subject Property does not qualify as "Agricultural Land" under Oregon Revised Statutes ("ORS") or Oregon Administrative Rules ("OAR") definitions.¹ The Applicant proposed that no exception to Statewide Planning Goal 3, Agricultural Land was required because the Subject Property is not "agricultural land."

The original proposal included five tax lots, with a total area of 259 acres. On January 8, 2025, the Applicant submitted a Modification of Application (Deschutes County file 247-25-000021-MA). This modified the proposal to reduce the size of the area to be rezoned, by removing Tax Lot 300 on Assessor's Map 17-12-36. The materials for 247-25-000021-MA also supplemented the analysis provided in the original application materials regarding agricultural lands and provided a professional soil report.

¹ As defined in OAR 660-033-0020, 660-033-0030

Submitted with the application is a review of the Subject Property soil characteristics, titled *Bear Creek Analysis of Agricultural Land* (hereafter referred to as the “Red Hills Soils Report”) prepared by soil scientist Andy Gallagher, CPSSc/SC of Red Hill Soils. The Applicant also submitted a traffic analysis prepared by Ferguson and Associates, Inc. dated February 28, 2025, hereafter referred to as the “Traffic Study.” Additionally, the Applicant submitted an application form, a Burden of Proof statement (the “Burden of Proof”), and other supplemental materials, all of which are included in the record for the subject applications.

SOILS: According to Natural Resources Conservation Service (“NRCS”) maps of the area, the Subject Property contains three different soil types as described below. The Subject Property contains 58C – Gosney-Rock Outcrop-Deskamp complex, 36B – Deskamp loamy sand (3 to 8 percent slopes) and 36A – Deskamp loamy sand (0 to 3 percent slopes). The 36A and 36B soil units are defined as high-value soil by DCC 18.04 when it is irrigated. The 58C soils complex is not defined as high-value farmland, regardless of irrigation.

The applicant submitted the Red Hills Soils Report (exhibit to 247-25-000021-MA application materials), which was prepared by a certified soils scientist and soil classifier. The purpose of the Red Hills Soils Report was to inventory and assess the soils on the Subject property and to provide additional insight related to the NCFS soil classifications and ratings. Additional discussion of the Red Hills Soils Report can be found in the Preliminary Findings section titled Certification of Soils Report (III.A.2).

The NRCS soil map units identified on the properties are described, for background information, below.

36A, Deskamp loamy sand, 0 to 3 percent slopes: This soil complex is composed of 85 percent Deskamp soil and similar inclusions, and 15 percent contrasting inclusions. The Deskamp soils are somewhat excessively drained with a rapid over moderate permeability, and about 5 inches of available water capacity. Major uses of this soil type are irrigated cropland and livestock grazing. The agricultural capability rating for 36A soils are 3S when irrigated, and 6S when not irrigated. This soil is high-value when irrigated. Approximately 33 percent of the subject parcel is made up of this soil type.

36B, Deskamp loamy sand, 3 to 8 percent slopes: This soil is composed of 85 percent Deskamp soil and similar inclusions, and 15 percent contrasting inclusions. This soil is somewhat excessively drained, with rapid permeability and an available water capacity of approximately 3 inches. The major uses of this soil are irrigated cropland and livestock grazing. This Deskamp soils have a capability rating of 6E when unirrigated, and 3E when irrigated. This soil type is considered high-value when irrigated. The 36B soils are limited to the northern, irrigated portion of the site and comprise approximately 0.2 percent of the property.

58C, Gosney-Rock Outcrop-Deskamp complex, 0 to 15 percent slopes: This soil type is comprised of 50 percent Gosney soil and similar inclusions, 25 percent rock outcrop, 20 percent Deskamp soil and similar inclusions, and 5 percent contrasting inclusions. Gosney soils are somewhat excessively drained with rapid permeability. The available water capacity is about 1 inch. Deskamp soils are somewhat excessively drained with rapid permeability. Available water capacity is about 3 inches. The major use for this soil type is livestock grazing. The Gosney soils have ratings of 7e when unirrigated, and 7e when irrigated. The rock outcrop has a rating of 8, with or without irrigation. The Deskamp soils have ratings of 6e when unirrigated, and 4e when irrigated. Approximately 66 percent of the subject properties is made up of this soil type, all located within the northern parcel.

SURROUNDING LAND USES: The general surrounding area of the Subject Property is defined by the City of Bend’s Urban Growth Boundary (“UGB”) to the west and then a mix of residential and agricultural uses spreading out to the north, east, and south. Adjoining properties are zoned MUA10 and EFU, and range in size and type of development. The general surrounding area includes small-scale farms that predominantly consist of irrigated fields and pasture, and are located to the east of the Subject Property. The area to the west of the Subject

Property provides a transition from the UGB to rural land use, and is developed with a number of uses such as solar farms, a church, a fire station, and a public park.

Applicant provided (Burden of Proof) the following description of adjacent properties:

"West: Tax Lot 900 fronts Ward Road. West of Ward Road, the majority of properties are zoned MUA10 and not used for agricultural purposes. The property that abuts Ward Road on the west is an approximate 53-acre tract consisting of three tax lots, 17-12-36, Tax Lots 1400, 1600, and 1601. In 2018, in Files 24 7-18-000485 and 24 7-18-000486, the County approved a change in the designation to Rural Residential Exception area and a change in the zoning to MUA10. In 2021, in Files 247-22-000353 and 354, the County approved the same redesignation and zone change on a parcel identified as 18-12-02, Tax Lot 201. Northeast of Tax Lot 900, the parcel immediately east of Tax Lot 900 (17-12-36 Tax Lot 800), is a vacant EFU-TBR. The other properties east of the Subject Property are either MUA10 with dwellings or EFU parcels and most include dwellings and hobby farms uses.

The properties northwest of the Subject Property are a mixture of MUA10 land recently rezoned, EFU land developed with commercial solar farms and institutional uses such as a church, a Christian Center, and a Pacific Power facility. Just north of Highway 20 and west of Hamby Road, in 2022, the County approved a similar request involving a 94-acre tract that consisted of two parcels identified as 17-12-35, Tax Lots 1200 and 1201. There are a few large acre dwellings as well. There does not appear to be any active farming operations within close proximity to the Subject Property to the northwest.

North: The properties north of Tax Lot 900 are the same as that east of Tax Lot 100. They are EFU and MUA-10 zoned parcels with the above-described commercial, institutional, and residential uses. The property immediately north of Tax Lot 100 is a 118-acre parcel zoned EFU and MUA-10. It has a dwelling on part and a large solar farm on the remainder. Northeast of Tax Lot 100 the properties are predominantly all MUA-10 zoned parcels developed with residential uses.

South: The land south and southeast of Tax Lot 900 is zoned MUA-10 and is developed with single-family homes. Most of the parcels are within Dobbins Estate, a large acre subdivision. South of Tax Lot 100 the properties are primarily EFU zoned parcels developed with large acre residential dwellings. One parcel appears to have a small hobby horse farm on it. There are no active farming operations.

East: The properties east of Tax Lot 900 are predominantly EFU zoned with most being less than 20 acres and many less than 10 acres. The primary development pattern is large acre residential uses with one horse farm noted above. One property directly east of Tax Lot 1000 appears to be developed with a personal moto-cross course. East of Tax Lot 100 the properties lying east of Erickson Road are predominantly all MUA-10 zoned parcels developed with large acre residential estate-type dwellings. There is an irrigation canal that runs diagonally through some of those properties."

PUBLIC AGENCY COMMENTS: The Planning Division mailed notice on March 12, 2024, to several public agencies and received the following comments:

Deschutes County Senior Transportation Planner, Tarik Rawlings, March 5, 2025, Comments

I've reviewed the revised TPR analysis prepared by Ferguson & Associates, Inc dated February 28, 2025. Reflective of the applicant's pending Modification of Application file (no. 247-25-000021-MA) to remove Tax Lot 300 from the scope of the project (resulting in a 12.41-acre reduction in acreage from the original application), the revised analysis provides updated information related to the total ~240.17 acres of subject property. The full build-out scenario included in the revision (considering redevelopment of the

existing solar farm portions of the subject property) aligns with staff's comments from 6/11/24. The report's inclusion of modified acreage and assumed development credit for one existing single-family dwelling complies with additional comments from staff's 6/11/24 email correspondence regarding the MUA10 Zone's worst case scenario analysis. I agree with the assumptions, methodologies, and conclusions outlined in the revised analysis.

Deschutes County Senior Transportation Planner, Tarik Rawlings, June 11, 2024, Comments

Thank you for forwarding the revised TPR analysis produced by Ferguson & Associates, Inc., dated April 22, 2024.

While the revised TPR analysis has addressed some of the transportation-related comments issued on behalf of the County Road Department on March 29, 2024, there are some outstanding issues with the revised analysis that should be addressed by the applicant in order to comply with TPR:

1. *The translation of the "farm manufacturing" analysis into the category of "farm stand" is not a reasonable conclusion and the revised analysis does not clearly demonstrate how a "farm stand" derived from the 18.16.025(I)(1-2) "facility for the processing of farm crops" (and termed "farm manufacturing" at multiple points in the report) constitutes a reasonable worst case scenario for outright EFU use categories even when compared to other uses within DCC 18.16.025. The applicant should provide demonstrable analysis (derived from real local or regional examples of farm crop processing facilities) showing how this use category constitutes a reasonable worst case scenario for outright EFU use categories.*
2. *At the conclusion of the "Trip Generation Forecast – Outright Permitted Uses – Land Use Scenario for Existing EFU Zoning" section of the revised analysis (beginning on page 3 of the revised report), the applicant concludes with an assumption that three of the five parcels making up the subject properties would each respectively support a dog training class use, a farm stand use, and a Winery/Farm Brewery/Cider business use. The remaining two parcels within the subject properties are not included within this analysis and the applicant must account for these additional 2 parcels in their reasonable worst case scenario analysis. If the applicant continues their revisions under the analytical framework that each of the 5 individual lots within the subject properties would support different reasonable worst case scenario uses, then the applicant must clearly state which use is assigned to which tax lot. Further, that analysis should be tailored to the unique aspects of each individual lot such as acreage and location. Alternatively, if the applicant decides to revise their report to analyze all 5 lots as one contiguous property for the purpose of reasonable worst case scenario analysis, that analysis should focus on one reasonable worst case scenario use category across the contiguous 5 lots. Staff notes that, of the identified EFU reasonable worst case scenario uses included on pages 3-6 of the revised report, winery or dog training classes are likely the highest trip-generative uses. For the purposes of quantifying the anticipated impacts from the EFU reasonable worst case scenario uses, staff encourages the applicant to base any methods and assumptions of these uses on real local or regional examples.*
3. *Staff disagrees with the applicant's assertion that the existing solar farm would not be redeveloped as part of the reasonable worst case scenario analysis for the requested MUA10 Zone. As the requested MUA10 Zone is outright permissive of single-family dwellings, staff finds that it would be reasonable to assume that the existing solar farm would be redeveloped with single-family dwellings as an economically-advantageous land use and the applicant should produce revised analysis reflecting the full build-out of residential single-family dwellings as the reasonable worst case scenario for the requested MUA10 Zone.*
4. *Pursuant to bullet #3, above, staff also requests that the applicant revise the single-family dwelling analysis for the requested MUA10 Zone included in Table 5 (page 8 of the revised*

report) to reflect a total “Number of Single-Family Residentials” of 25 (revised from 13). Based on the acreage of the subject properties (252.58 acres), the ability to redevelop the existing solar farm, and the purpose of this exercise as a scenario forecast for trip generation, staff finds that the subject properties would be able to support a maximum of 25 single-family dwellings as the reasonable worst case scenario for the requested MUA10 Zone.

5. Pursuant to bullets #3 and #4, above, the applicant must revise Table 7 (page 9 of the revised report) to reflect a total of 25 single-family dwelling units for the purpose of P.M. Peak hour and daily weekday trip generation forecasting.

Deschutes County Senior Transportation Planner, Tarik Rawlings, March 29, 2024, Comments

I have reviewed the transmittal materials for 247-24-000097-PA, 98-ZC for properties totaling approximately 259 acres to change the Comprehensive Plan designation from Agriculture (AG) to Rural Residential Exception Area (RREA) and the zoning from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA10). The properties are within the Exclusive Farm Use (EFU) Zone, and the Airport Safety (AS) and Landscape Management (LM) Combining Zones associated with the following identifying property information:

Mailing Name: ERICKSON-WARD LAND TRUST LLC	Mailing Name: ERICKSON-WARD LAND TRUST LLC
Map and Taxlot: 1712360000100	Map and Taxlot: 1712360001000
Account: 109118	Account: 111676
Situs Address: 21875 NEFF RD, BEND, OR 97701	Situs Address: 21700 BEAR CREEK RD, BEND, OR 97701
Mailing Name: ERICKSON-WARD LAND TRUST LLC	Mailing Name: ERICKSON-WARD LAND TRUST LLC
Map and Taxlot: 1712360000300	Map and Taxlot: 1712360000900
Account: 109116	Account: 111677
Situs Address: **NO SITUS ADDRESS**	Situs Address: 62098 WARD RD, BEND, OR 97701
Mailing Name: ERICKSON-WARD LAND TRUST LLC	
Map and Taxlot: 1712360000400	
Account: 109115	
Situs Address: 21850 HWY 20, BEND, OR 97701	

I have reviewed traffic analysis provided by Ferguson & Associates, Inc., dated February 2, 2024, included as Exhibit 12 of the submitted application materials. The analysis included within the submitted Ferguson & Associates, Inc. report does not comply with the relevant provisions of OAR 660-012-0060, known as the Transportation Planning Rule (TPR). In order to determine whether the proposal will produce a significant effect on transportation facilities, the applicant must revise their traffic analysis to comply with TPR including OAR 660-012-0060(1)(a-c). Due to the scope of the proposal, staff notes that the applicant’s revised analysis must comply with the requirements for a Traffic Impact Analysis (TIA) (DCC 18.116.310(C)(3)(c)) outlined in DCC 18.116.310 including the minimum TIA requirements at DCC 18.116.310(G)(1-16), the study time frame requirements at DCC 18.116.310(E), the operation and safety standards at DCC 18.116.310(H) (20-year study time frame) and the mitigation standards at DCC 18.116.310(I), should any mitigations be required as the result of the revised analysis. The TIA should include a review of existing and future levels of service (LOS), average vehicle delay, and volume/capacity (V/C) ratios associated with the subject properties and surrounding project area. The V/C ratios would be applicable to any ODOT facilities included in the TIA.

Regarding the reasonable worst case scenario(s) put forward in the submitted traffic analysis, staff disagrees with the scenario proposed for the existing EFU Zone. For the existing EFU Zoning, staff does not agree that “farm use” or farm crop processing is the reasonable worst case scenario associated with the EFU Zone and notes that “winery” has been used in past applications for PA/ZC proposals from

EFU to MUA10. The assertion that “farm use” constitutes the reasonable worst case scenario for the EFU Zone is antithetical to the analysis provided in the submitted Burden of Proof statement, demonstrating that the subject properties are not currently suited for farm use.

The properties have frontage on Highway 20, Bear Creek Road, Erickson Road, and Neff Road. Highway 20 is a public road maintained by the Oregon Department of Transportation (ODOT), functionally classified as a Primary Arterial Highway. Staff recommends the applicant work closely with representatives from ODOT for any access permitting or other requirements related to Highway 20.

Based on ODOT’s jurisdiction over Highway 20, the access permit requirements of DCC 17.48.210(A) do not apply. Bear Creek Road and Erickson Road are public roads maintained by Deschutes County and functionally classified as Rural Collectors. Neff Road is a public road maintained by Deschutes County and functionally classified as a Rural Arterial. If the applicant intends to utilize access from Bear Creek Road, Erickson Road, or Neff Road, the applicant must address the provisions of DCC 17.48.210(B) related to access on Rural Collectors and Arterials.

Board Resolution 2013-020 sets a transportation system development charge (SDC) rate of \$5,603 per p.m. peak hour trip. As the plan amendment/zone change by itself does not generate any traffic, no SDCs apply at this time. SDCs will be assessed based on development of the property. When development occurs, the SDC is due prior to issuance of certificate of occupancy; if a certificate of occupancy is not applicable, then the SDC is due within 60 days of the land use decision becoming final.

THE PROVIDED SDC RATE IS ONLY VALID UNTIL JUNE 30, 2024. DESCHUTES COUNTY’S SDC RATE IS INDEXED AND RESETS EVERY JULY 1. WHEN PAYING AN SDC, THE ACTUAL AMOUNT DUE IS DETERMINED BY USING THE CURRENT SDC RATE AT THE DATE THE BUILDING PERMIT IS PULLED.

BEGINNING JULY 1, 2024, THE SDC RATE WILL INCREASE AND LAST UNTIL JUNE 30, 2025. AGAIN, THIS IS INFORMATIONAL ONLY AS SDCS ARE NOT ASSESSED UNTIL DEVELOPMENT OCCURS.

Oregon Department of Transportation, Principal Planner Ken Shonkwiler

Thank you for the opportunity to review 247-24-000097-PA, 247-24-000098-ZC: Erickson Ward Zone Change. Our comments are attached in a comment log and I also provided a letter on the applicant’s TPR assessment memo with regards to OAR 660-012-0060.

Oregon Department of Agriculture, John Harrang

No involvement needed by ODA Food Safety Program.

Department of Land Conservation and Development, Natural Resource Specialist Amanda Punton

Good to know, thanks. Do you anticipate including finding on how new uses allowed by the proposed rezoning will affect the Goal 5 scenic resource? There is mention of the combining zone in the applicant’s material but nothing about the Goal 5 origins of the combining zone. This is the piece of OAR chapter 660, division 23 that speaks to new uses that could impact a significant Goal 5 resource.

OAR 660-023-0250(3)(b)

(3) Local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if: . . .

(b) The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list; or . . .

There is a good chance the county will find that no additional Goal 5 work is needed. I'm happy to discuss further if you like.

The following agencies did not respond to the notice: Avion Water Company, Bend-La Pine School District, Bend Fire Department, City of Bend Growth Management, Bend Municipal Airport, City of Bend Planning Department, Central Oregon Irrigation District, Deschutes County Assessor, and Deschutes County Road Department.

PUBLIC COMMENTS: The Planning Division mailed notice of the application to all property owners within 750 feet of the subject property on March 12, 2024. The Applicant also complied with the posted notice requirements of Section 22.24.030(B) of Title 22. The Applicant submitted a Land Use Action Sign Affidavit indicating the Applicant posted notice of the land use action on June 11, 2024.

Christopher Koback appeared at the Hearing and testified on behalf of Applicant. Robin Hayakawa appeared at the Hearing and testified on behalf of COLW. Submissions were made into the public record, prior to the Hearing, and are set forth below. Issues raised in the public comments below related to relevant approval criteria are addressed in the findings of this recommendation.

Rory Isbell, Central Oregon LandWatch, March 12, 2024

“Central Oregon LandWatch is concerned whether file no. 247-24-000097-PA/98-ZC, an application that proposes to redesignate and rezone 259 acres of agricultural land for residential use, meets the applicable criteria. Please notify us of any decisions or hearings on the application. Our address is 2843 NW Lolo Drive Ste 200, Bend, OR 97703.”

Jordi Stiffler, March 19, 2024

“I’m writing on the proposed land use action regarding the applicant, which I believe is Mr. Steele and his wife Shelby, petitioning to change their property, 21700 Bear Creek Rd, from Agricultural to Rural Residential Exception Area (RREA).

I am contesting the right for the applicant to change the zoning. Two years ago the county sent out letters to everyone in the vicinity of the applicants property when he wanted to split the land into separate tax lots. When I talked to the county planner at that time he assured me that the land was zoned only for one residential house and that other residential homes could not be built on it. The neighbors, including myself, had to put up with 18 months of construction with dirt, heavy equipment, litter, excessive traffic, noise. The land that they built on was home to coyotes, deer, and other wildlife which has pretty much disappeared.

The narrow Ward Rd can’t sustain more traffic to include a new residential area. The road is dangerous as Ward Rd is used by the car dealers for test drives at high rates of speed, and young drivers who fly down Ward Rd to “catch air” in the rise of the road heading east. I have seen numerous dogs and deer get killed on that road in front of my house. The neighbor hood bought our houses outside the urban boundary area for one main purposes ... acreage without multiple housing infringing on us.”

Audrey Henry, March 20, 2024

"I am writing in response to the proposed land use application paperwork I received recently. I am an adjacent property owner and I oppose this proposal for a number of reasons.

This land has been a wildlife habitat for many years and most recently has been home to red fox who have finally come back to this area. There are deer who live there and many other wildlife as well. I moved here over 15 years ago for the peacefulness and serenity and I would hate to see that taken away.

Recently, I was approached by a representative of the gas company that has an easement and line going through that property. He stated one house needed to be removed due to the close proximity of the gas line. It appears due to the new house construction on 21700 Bear Creek Road, they are over the amount of housing allowed for that gas line so I am concerned that after recently being asked to sell my home to them so it could be vacated that we would now have to deal with additional homes, businesses here by the gas line.

I will reach out to you via phone and in person soon to further discuss."

Courtney Eastwood, March 20, 2024

"I am writing this email to inform you that as a property owner on Bear Creek Road - I am completely opposed to this change in zoning. There is already a housing development going in on Bear Creek that is going to bring more traffic and cars. Also the property across the street from the current development was just approved to also rezone to Multiple Use. This open land should be protected. We have lots of wildlife including deer, hawks, an eagle, and other critters that currently utilize these fields for their survival. Also I, and my neighbors, purchased land because we wanted land - not to stare at homes and increased traffic. Please re-evaluate how much land is going to be developed in this area and how much more you are proposing."

Amy and Matt Ruff, March 27, 2024

"We are responding to the mail correspondence in regards to File #247-24-000097-PA and File #247-24-000098-ZC. As residents of Filly Court, we are opposed to the change of designation from Agricultural (AG) to Rural Residential Exception Area (RREA) and the rezoning of Exclusive Farm Use (EFU-TRB) to Multiple Use Agricultural (MUA10). We feel the current designations are appropriate as is and there should be no further opportunity for building on those pieces of land.

With many people in the city and in the county wanting to expand the urban growth boundary, we feel we need to hold the line firm. Part of the reason we chose to move to this area was because of the open space. These changes in designation and rezoning are concerning due to the unknown type of housing that may go in. We are DEFINITELY not in favor of managed campsites for the homeless or for low income properties that could lower the value of the nearby homes and be a safety concern. Furthermore, additional residences could increase traffic.

It is difficult not knowing the full intentions of the land owner. We would appreciate transparency on this matter and would like to be made aware of any hearings that relate to these file numbers."

Rob DuValle, March 21, 2024

“Why would they want to rezone the land where they just put the solar panel farm in? That is concerning from an impact on my quality of life/ property value as a neighbor.

The whole land use process is very confusing from a community member perspective. I may be totally supportive or not depending on what actually goes in the ground, but without that information it leaves me without the ability to proved an informed response.

The list of potential ‘conditional uses’ has many that I would be opposed to. Shouldn’t the property owner be required to declare their intentions upfront and be legally held to them upon approval? That would seem to be the honorable way to do business. Please put me on the notification lists you mentioned.

NOTICE REQUIREMENT: On April 17, 2025, the Planning Division mailed a Notice of Public Hearing to all property owners within 750 feet of the Subject Property and public agencies. A Notice of Public Hearing was published in the Bend Bulletin on Sunday, April 13, 2025. Notice of the first evidentiary hearing was submitted to the Department of Land Conservation and Development on April 3, 2025.

REVIEW PERIOD: According to Deschutes County Code 22.20.040(D), the review of the proposed quasi-judicial plan amendment and zone change application is not subject to the 150-day review period.

III. FINDINGS & CONCLUSIONS

A. PRELIMINARY FINDINGS

1. Procedural Issues

Two record related procedural issues were raised in this case. Both issues relate to Central Oregon Land Watch (“COLW”) submissions. The first dispute relates to a COLW May 23, 2025 submission and the second relates to a COLW June 2, 2025 submission.

A brief background discussion should assist in understanding the Hearings Officer’s findings related to both record related issues. At the conclusion of the May 9, 2025 public hearing (the “Hearing”) the Applicant requested the record remain open for what is often referred to, in Deschutes County, as the “standard 7/7/7 open-record period.” The Hearings Officer, at the Hearing described the “standard 7/7/7 open-record period” as allowing new evidence to be submitted by any interested person during the first 7 day open-record period (“1st 7-day open-record period”), evidence in rebuttal to evidence submitted during the initial 7 day open-record period (“2nd 7-day open-record period”) and an applicant has a right to submit final argument during the third open-record period (“3rd 7-day open record period”).

The Hearings Officer announced, at the conclusion of the Hearing, the following open-record periods:

- * Submission of new evidence to be received by the County until 4:00 pm on May 16, 2025 (1st 7-day Open-Record Period); and
- * Submission of evidence in response to evidence submitted during the 1st Open-Record Period to be received by the County until 4:00 pm on May 23, 2025 (2nd 7-day Open-Record Period); and
- * Submission by Applicant of its final legal argument until 4:00 pm on May 30, 2025 (3rd 7-day Open-Record Period).

Deschutes County Planning Staff (“Staff”) contacted the Hearings Officer (email sent at 4:14 pm on May 23, 2025) and informed the Hearings Officer, in part, the following:

“The applicant submitted timely testimony during the new evidence & testimony period which ended Friday, May 16th. Unfortunately, that submittal was not uploaded to the record until today [May 23, 2025]. For this

reason, the county is requesting that the rebuttal period to be extended for a period of 7 days from the date that a Hearings Officer Order can be sent to all parties or to some other date certain - assuming you consent to the extended rebuttal period..."

The Hearings Officer issued a *Hearings Officer Order Extending Written Record* modifying the Open-Record Periods that were announced at the Hearing. The Hearings Officer, in the *Hearings Officer Order Extending Written Record*, allowed the submission of rebuttal evidence (original deadline May 23, 2025) to be submitted until 4:00 pm on May 30, 2025 and the submission of Applicant's final argument (original deadline May 30, 2025) to be submitted until 4:00 pm on June 6, 2025.

On May 23, 2025 COLW submitted an open-record document which included the following statement:

"Central Oregon LandWatch ('LandWatch') offers the following comments in response to Applicant's submittal during the Hearings Officer Hearing's Open Record Period on May 9, 2025 ('2025-05-09 Applicant Submittal')."

Applicant objected to COLW's May 23, 2025 submission and provided the following comments:

"In its May 30, 2025 letter, the applicant asserted an objection to the written testimony that Central Oregon LandWatch ('COLW') submitted on May 23, 2025. The applicant renews that objection. In its May 23, 2025 letter, COLW acknowledged that its written testimony was directed at the applicant's May 9, 2025 submission. In an apparent effort to avoid the consequences of missing the submittal window for new evidence in response to evidence submitted at the public hearing, COLW stated: 'LandWatch offers the following comments in response to Applicants submittal during the open record period on May 9, 2025 (2025-05-09 Applicant Submittal.)'

The May 9, 2025 Applicant submittal was not submitted during the open record period. It was submitted prior to the public hearing on May 9, 2025. The submittal included a letter addressing the hearing issues and the applicant's ESEE analysis chart. COLW requested that the record be kept open for new evidence to address the evidence submitted at the public hearing. Under the order that the Hearings Officer entered, all parties had until May 16, 2025, to submit any new evidence based on what was submitted at the public hearing. The order allowed parties until May 23, 2025, to submit testimony and evidence strictly in rebuttal to the new testimony and evidence submitted on May 16, 2025.

The applicant submits that under ORS 197.797, COLW was required to submit new evidence in response to the applicant's May 9, 2025 material within the initial seven-day period, or by May 16, 2025. COLW did not do that. It waited until May 23, 2025 to submit what it admits is testimony directed that the material submitted before the public hearing on May 9, 2025. None of COLW's May 23, 2025 testimony is directed at the applicant's May 16, 2025 submittal. COLW's May 23, 2025 submission should be stricken and disregarded."

It is clear to the Hearings Officer that COLW's May 23, 2025 submission was made during the originally announced "rebuttal evidence" time-period (per discussion above during the 2nd Open-Record Period). It is also clear to the Hearings Officer, based upon COLW's own statement (May 23, 2025 submission), that COLW's evidence and arguments contained in the COLW May 23, 2025 submission was directed towards Applicant's May 9, 2025 Hearing submission. Restated, the Hearings Officer finds Applicant's primary concern about COLW's May 23, 2025 submission was that the COLW May 23, 2025 evidence was directed towards Applicant evidence submitted **during the evidentiary Hearing** (which preceded the Open-Record Period) and not directed towards Applicant's evidence submitted **during** the "original" Open-Record Period (per discussion above the "original" 1st Open-Record Period).

The Hearings Officer finds that he explained the Open-Record process to all present at the Hearing and included a statement that evidence submitted during the 2nd Open-Record Period should be related to and in response to evidence submitted during the 1st Open-Record Period. The Hearings Officer asked those present at the Hearing

if they had any questions related to the Hearings Officer's explanation of what was appropriate to be submitted during each stage of the Open-Record. The Hearings Officer finds that the Applicant and COLW representatives are experienced land use hearing participants and believes that they both understood the Hearings Officer's expectations for Open-Record submissions.

The Hearings Officer finds that his decision related to the admission (or not) of the COLW May 23, 2025 submission is procedural in nature. The Hearings Officer finds that the appropriate legal procedural decision-making standard is for the Hearings Officer to assess whether or not the admission would substantially prejudice Applicant's and/or COLW's rights.

The Hearings Officer takes note that the Hearings Officer, in this case, issues a *recommendation* (not decision). Pursuant to Deschutes County code the Hearings Officer's recommendation will undergo a de novo review before the Deschutes County Commission (DCC 28.030). In this instance COLW will have the right to submit the evidence and argument contained in its May 23, 2025 Open-Record submission to the Commission for its consideration.

The Hearings Officer is disappointed in the approach taken by COLW and feels that technically the Hearings Officer could reject the admission/consideration of the COLW May 23, 2025 submission. The Hearings Officer does take note that Applicant provided, in its Final Argument Open-Record submission, a "precautionary" response to evidence/argument raised by COLW in its May 23, 2025 submission.

The Hearings Officer finds it appropriate, in this case only, to admit and consider the COLW's untimely May 23, 2025 submission. The Hearings Officer finds such admission and consideration will not substantially prejudice the Applicant's rights.

The Hearings Officer finds that COLW's June 2, 2025 email to Planner Stuart was filed/submitted during the Applicant's final argument time and cannot be considered in this case.

2. Certification of Soils Report

COLW argued that the Red Hills Soils Report (soils report submitted by Applicant) was required to be *certified* by the Oregon Department of Land Conservation and Development ("DLCD"). COLW (May 9, 2025, page 10) provided the following comments:

"... OAR 660-033-0030(5)(d) provides that after October 1, 2011, 'only those soil assessments certified by the department under section (9) of this rule may be considered by local governments in land use proceedings described in subsection (c) of this section. However, a local government may consider soils assessments that have been completed and submitted prior to October 1, 2011.'

Here, the Applicant has submitted a soil assessment dated January 2, 2025, well after the effective date provided in OAR 660-033-0030(5)(d). Furthermore, the Applicant did not submit that the soil assessment was certified by the DLCD as complete and consistent with the Department's requirements. This application relies heavily on the soils assessment from Mr. Gallagher in asserting that the subject property does not contain a predominance of NRCS Class I-VI soils. Because the soils assessment was not certified by DLCD as required under OAR" 660-033-0030(5)(d), the local government may not consider its contents as substantial evidence of whether the subject property is agricultural land."

COLW supplemented its above-quoted comments in an Open-Record submission, (May 30, 2025, pages 1 – 5). The Hearings Officer includes a portion of the COLW May 30, 2025 comments below:

"In response to LandWatch's 5/9/2025 submittal where we noted that the Applicant's Soil Assessment has not been certified by DLCD, Mr. Gallagher of Red Hill Soils submitted a brief letter which concluded:

Because this is not a “Soil Assessment” this work does not need to be ‘certified by DLCD’ or anyone else. It is just an interpretive summary of the NRCS WEBSOILSURVEY Data. No new information or original or onsite information is provided or claimed in my report. The COLW has mistaken my report for something it is not and has attached certain rules to it that do not apply.

2025-05-016 Applicant Submittal at p. 3-4

At issue here is whether the applicant has submitted ‘more detailed soils information than that contained in the Web Soil Survey operated by the NRCS’ in order to assist the county in making a determination of whether the subject property qualifies as agricultural land. ORS 215.211(1); OAR 660-033-0030(5)(b). These sections and OAR 660-033-0045 specifically apply to ‘change[s] to the designation of a lot or parcel planned and zoned for exclusive farm use, forest use or mixed farm-forest use to a non-resource plan designation and zone on the basis that such land is not agricultural land’. OAR 660-033-0030(5)(c)(A). The purpose of requiring DLCD review of the soil assessments that may be used to remove lands from the protections of Goal 3 is to ensure that ‘the soils assessment is soundly and scientifically based’. OAR 660-033-0045(6)(b)(B). If more detailed information than what is contained in the NRCS Web Soil Survey was provided, then the Applicant was required to request that DLCD arrange the soil assessment. ORS 215.211(1).

In this case, the Applicant has submitted ‘more detailed soils information’ than what is contained in the NRCS Web Soil Survey, necessitating DLCD’s review and quality control. Specifically, Mr. Gallagher provided more detailed information about the total amount of acreage contained in each NRCS soil mapping unit within the subject property.”

Applicant, in its Final Argument (June 6, 2025, pages 5 & 6) responded to COLW’s comments set forth above, as follows:

“COLW incorrectly asserts that the applicant was required to submit for DLCD approval the January 2, 2025 report prepared by Red Soils that explained the NRCS mapping for the property. COLW relied on and quoted one subsection from OAR 660-033-0030. Specifically, COLW argues that under OAR 660-033-0030(5)(b), if an applicant believes that a more detailed soil information, other than that contained in the Websoils Survey operated by NRCS, would assist the county to make a better determination of whether the land qualifies as agricultural land, the person must request that the department arrange for an assessment of the capacity of the land by a professional soil classifier.

COLW is misconstruing the requirements in OAR 660-033-0030(5). The text, examine in context, informs that a more detailed assessment of soil capacity is an assessment that relies on data other than that in the NRCS maps and soil surveys. COLW did not mention OAR 660-033-0030(5)(a), which provides:

More detailed data on soil capability than is contained in the USDA Natural Resources Conservation Service soil maps and soil surveys may be used to define agricultural land. However, the more detailed soils data shall be related to the NRCS land capability classification system.

Clearly, the assessment referred to in OAR 660-033-0030(5)(b) is an assessment of detailed data on soil capability not contained in the existing NRCS maps and soil surveys. Mr. Gallagher’s report does not contain data on soils from the site or data other than what is contained in the existing NRCS maps and soils surveys. Mr. Gallagher expressly stated in his report:

Baseline information for this report is the NRCS WEBSOILS SURVEY and does not include an onsite evaluation or a Soil Assessment as defined by the State of Oregon.

Mr. Gallagher is one of the certified professionals who DLCD lists on its website as a resource for people who require an assessment of their soils. His professional statement that his report is not a soils assessment

as defined by the State is wholly credible and persuasive. Moreover, as the applicant testified, DLCD received formal notice of the application and did not voice a position contrary to Mr. Gallagher. Furthermore, Mr. Gallagher knows what a soil assessment under the State regulations looks like. The applicant submitted a copy of the study that Mr. Gallegher prepared in File No. 247-000404-PA/000405-ZC. One can readily see a soils assessment under the regulations is based on soil data gathered from samples taken from many locations on the property, which is then evaluated.

Mr. Gallagher's report further confirms that his work was based on the NRCS Websoils Survey and not on more detailed soil data that one would obtain from an on-site evaluation. In section 3 of his report, Mr. Gallagher explains only what the NRCS maps illustrate about the soil composition. In discussing soil fertility and suitability for grazing, Mr. Gallagher relied on the existing information in the NRCS soil surveys. See Table 5 of the NRCS Websoils Survey on page 4 of his report. He did not rely on soil data from the site. In discussing existing and future availability of water for irrigation, Mr. Gallagher relied on the NRCS information to conclude that the soil will remain Class 7 and Class 8 whether irrigated or not. None of the issues that Mr. Gallagher addressed relied on more detailed soil data.

In response to COLW's May 9, 2025 testimony, Mr. Gallagher, an expert in the field, explained that his report is not a soil assessment under OAR 660-003-0045 and did not have to be submitted to DLCD. The applicant submitted an example of a soil assessment that Mr. Gallagher prepared pursuant to OAR 660-033-0045 that was submitted to DLCD. It is easy to discern the remarkable difference between a report that relies on soils studies that supplement the NRCS maps and a report that merely explains how the NRCS soils assessment works."

The Hearings Officer finds the following are relevant subsections of OAR 660-033-0030:

- (5)(a) **More detailed data on soil capability than is contained in the USDA Natural Resources Conservation Service (NRCS) soil maps and soil surveys may be used to define agricultural land. However, the more detailed soils data shall be related to the NRCS land capability classification system.**
- (b) **If a person concludes that more detailed soils information than that contained in the Web Soil Survey operated by the NRCS, would assist a county to make a better determination of whether land qualifies as agricultural land, the person must request that the department arrange for an assessment of the capability of the land by a professional soil classifier who is chosen by the person, using the process described in OAR 660-033-0045.**
- ...
- (d) **This section and OAR 660-033-0045 implement ORS 215.211, effective on October 1, 2011. After this date, only those soils assessments certified by the department under section (9) of this rule may be considered by local governments in land use proceedings described in subsection (c) of this section. However, a local government may consider soils assessments that have been completed and submitted prior to October 1, 2011.**
- (e) **This section and OAR 660-033-0045 authorize a person to obtain additional information for use in the determination of whether a lot or parcel qualifies as agricultural land, but do not otherwise affect the process by which a county determines whether land qualifies as agricultural land as defined by Goal 3 and OAR 660-033-0020.**

The Hearings Officer notes that OAR 660-033-0030 is titled "Identifying Agricultural Land." This section of the Oregon Administrative Rules defines Agricultural Lands and provides guidance in how to determine if land is in fact Agricultural Land. Subsection (5) deals, in part, with the possibility of using more detailed "soil assessments" to demonstrate that certain land is, or is not, Agricultural Land. COLW argues that the Red Hills Soil Report is a "soil assessment" that required Applicant to secure DLCD approval/certification. Applicant counters that its soil expert simply interpreted existing NCRS information and therefore Applicant was not required to secure DLCD approval/certification.

OAR 660-033-0030 (5)(a) states, in part, that "**more detailed data on soil capability than is contained in the USDA Natural Resources Conservation Service (NRCS) soil maps and soil surveys may be used to define**

agricultural land" [bolding and italics added by the Hearings Officer]. The Hearings Officer reviewed the Red Hills Soils Report to determine if the report in fact provided **more detailed data** than what is contained in the NCFS soils maps and soil surveys.

Gallagher, in the Red Hills Soils Analysis, concluded:

"The NRCS WEBSOILSURVEY shows the subject property is predominantly non-high value farmland, Class 7 and 8 and does not meet the definition of agricultural land within the meaning of OAR 660-033-0020(1)(b), as it is not adjacent to or intermingled with land in capability classes 1-6 within a farm unit."

Gallagher, in a May 15, 2025 letter (Applicant May 16, 2025 submission, attachment), stated

"I want to clarify for the record that my report only contained information taken from the NRCS database, and it did not include nor pretend to include any results from onsite investigations, and it is not an Order-1 Soil Survey. It is not a 'Soil Assessment' by the definition cited in OAR. It was not presented as such and was not called such in the title or body of the report. The specific reason I did not do a 'Soil Assessment' of this property is that the NRCS maps already showed a predominance of Class 7 and 8, non-high value farmland soils on these properties. There was no 'Soil Assessment' done or submitted so there is no failure to comply with OAR, as COLW stated in their letter."

The Hearings Officer finds, based upon a review of the Red Hills Soils Report and Gallagher's May 15, 2025 letter, that Gallagher did not generate, produce or otherwise utilize **more detailed data** on soil capability than what is contained in the NCFS soil maps and surveys. The Hearings Officer finds, consistent with OAR 660-033-0030 (5)(a), that the Red Hills Soils Report is not a "soil assessment" requiring DLCD certification.

The Hearings Officer also finds that Gallagher, in the Red Hills Soils Report, was "interpreting" existing NCFS maps and data. The Hearings Officer finds that if "interpreting" NCFS maps and data necessitated DLCD certification then COLW's "interpretation" (See, for example, COLW comments in its May 9, 2025 and May 30, 2025 submissions) of the NCFS maps and data would require DLCD certification. It is not unusual in cases involving disputes as to whether a particular property is Agricultural Land to have multiple "interpretations" of NCFS maps and data. The Hearings Officer finds mere interpretation of existing NCFS maps and data does not trigger the need for OAR 660-033-0030 DLCD certification.

Title 22 of the Deschutes County Code, Procedures Ordinance

Chapter 22.20, Review of Land Use Action Applications

Section 22.20.055, Modification Of Application

A. An applicant may modify an application at any time during the approval process up until the close of the record, subject to the provisions of DCC 22.20.052 and DCC 22.20.055.

FINDING: The Applicant submitted a Modification of Application (Deschutes County file 247-25-000021-MA) on January 8, 2025. The Applicant provided the following description of the Modification in the submitted Burden of Proof:

"The Applicant has reevaluated the application and is proposing to modify the application to reduce the number of acres subject to the request to 240.17 acres... The modification application also supplements certain evidence included in the original application demonstrating further that the subject property is not agricultural land as defined in the applicable laws and regulations. The Applicant is submitting a supplemental report from a certified soils scientist who applied an accepted weighted distribution analysis to the NRCS mapping and determined that the subject property is comprised predominantly of

Class 7 and Class 8 soils which are not agricultural soils.”

The Hearings Officer concurs with Applicant's above-quoted statement.

B. *The Planning Director or Hearings Body shall not consider any evidence submitted by or on behalf of an applicant that would constitute modification of an application (as that term is defined in DCC 22.04) unless the applicant submits an application for a modification, pays all required modification fees and agrees in writing to restart the 150-day time clock as of the date the modification is submitted. The 150-day time clock for an application, as modified, may be restarted as many times as there are modifications.*

FINDING: The Applicant provided the following response to this criterion:

“The Applicant is providing additional evidence within an application for a modification of application and with the required fee. Thus, the hearing body may consider the new evidence.”

The Hearings Officer concurs with Applicant's above-quoted statement.

C. *The Planning Director or Hearings Body may require that the application be re-noticed and additional hearings be held.*

FINDING: The Modification of Application was submitted prior to the date the Notice of Public Hearing was mailed, and the Modification materials were available as part of the public record. Furthermore, Staff (Staff Report page 14) noted that the Modification reduced the size of the Subject Property and therefore would have reduced the size of the mailing radius. For these reasons, Staff concluded that an additional mailed notice of application or notice of hearing date are not required. The Hearings Officer concurs with Staff's statement and conclusion.

D. *Up until the day a hearing is opened for receipt of oral testimony, the Planning Director shall have sole authority to determine whether an applicant's submittal constitutes a modification. After such time, the Hearings Body shall make such determinations. The Planning Director or Hearings Body's determination on whether a submittal constitutes a modification shall be appealable only to LUBA and shall be appealable only after a final decision is entered by the County on an application.*

FINDING: Staff (Staff Report, page 14) stated that it agreed with the Applicant's conclusion that the materials submitted with 247-25-000021-MA constituted a Modification of Application. The Hearings Officer concurs with this Staff conclusion.

Title 18 of the Deschutes County Code, County Zoning

Chapter 18.136, Amendments

Section 18.136.010, Amendments

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

FINDING: The Applicant, with written consent from the property owner, requested a quasi-judicial plan amendment and filed the applications for a plan amendment and zone change. The Applicant filed the required Planning Division land use application forms for the proposal. The application will be reviewed utilizing the applicable procedures contained in Title 22 of the Deschutes County Code.

Section 18.136.020, Rezoning Standards

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

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

FINDING: The Applicant provided the following comments in its Burden of Proof statement:

"The Comprehensive Plan's introductory statement explains that land use must comply with the Statewide Planning System and sets out the legal framework set by State law. It summarizes the Statewide Planning Goals. It also explains the process the County used to adopt the current Comprehensive Plan. This application is consistent with this introductory statement because the requested change has been shown to be consistent with State law and County plan provisions and zoning code that implement the Statewide Planning Goals.

The following provisions of Deschutes County's Amended Comprehensive Plan set out goals or text that may be relevant to the County's review of this application. Other provisions of the plan do not apply."

The Applicant utilized the above-referenced analysis, as well as analyses provided in prior Hearings Officers' decisions to determine and respond to only the Comprehensive Plan Goals and policies that apply, which are listed in the Comprehensive Plan section of this recommendation in further detail. Staff (Staff Report, page 15) generally agreed with the Applicant's analysis and finds the above provision to be met based on Comprehensive Plan conformance as demonstrated in subsequent findings.

Staff requested that the Hearings Officer make specific findings regarding whether the Subject Property qualifies as agricultural land, which may impact the findings for compliance with certain Comprehensive Plan policies. The Hearings Officer provides such requested findings below and concludes that this criterion/standard is met.

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

FINDING: Staff, Applicant and COLW raised a number of issues related to this criterion. Staff expressed concern related to the Solar Array located on the Subject Property. Staff (Staff Report, page 17) asked the Hearings Officer to determine *"if the applicant has sufficiently addressed DCC 18.36.020 (B) demonstrating that the change will be consistent with the purpose and intent of the proposed zoning classification, specifically with respect to creation of a nonconforming use."* COLW expanded upon Staff's above-quoted concerns and argued that the Solar Array would not be consistent with the purpose statement for the MUA10 zone. (COLW submissions: May 9 2025, page 2). Staff, Applicant and COLW also addressed this criterion during hearing testimony.

The Hearings Officer finds Applicant (Final Argument, 6/2/2025, pages 2 – 5) best outlines the issues raised by Staff and COLW. The Hearings Officer includes Applicant's final argument comments below:

“A. DCC 18.136.010 – Consistency with purpose and intent of MUA-10 zone.

COLW asserts that rezoning the subject 240 acres to MUA-10 is not consistent with the purpose and intent of the MUA-10 zone because 63 acres of the site has a previously approved solar farm on it. COLW does not specifically argue that rezoning the remaining 177 acres is inconsistent with the purpose and intent of the MUA-10 zone.

The purpose statement for the MUA-10 zone has several statements about the purpose of the zone, including:

- *To preserve the rural character of various areas of the County while permitting development consistent with the character;*
- *Preserve and maintain agricultural lands not suited to full-time commercial farming for diversified or part time agricultural uses;*
- *Conserve open spaces and protect natural and scenic resources; to maintain and improve quality of air, water and land resources;*
- *Establish standards and procedures for the use of those lands designated for intense development by the Comprehensive Plan;*
- *Provide for orderly and efficient transition from rural to urban land use.*

COLW’s argument has two fundamental flaws. First, COLW does not even attempt to apply DCC 18.136.010 to most of the site; it limits its argument to one 63-acre portion of the larger 240-acre tract.^{Applicant’s footnote 1} *Second, COLW’s arguments are backed by nothing other than bare conclusions and unsupported supposition.*

Applicant’s footnote 1: The applicant notes that ironically, later in its May 9, 2025 opposition when asserting that the subject site qualifies as agricultural land, COLW advocates that one must take into account the entire site.

COLW’s argument is that rezoning just one part of the site that includes 63 acres is not consistent with the purpose statement. As noted, COLW never tried to address the remaining 177 acres. DCC 18.136.020(B) is specifically directed at the entire subject property. It cannot be applied to isolated portions of an application site. When applied to the entire subject tract, the standard in DCC 18.136.020(B) is satisfied. First, hearings officers in Deschutes County have consistently found that the uses permitted in the MUA-10 zone are rural in nature. LUBA has upheld those findings. See, Applicant’s May 9, 2025 Letter citing File Nos. 247-24-000392-PA, 247-24-000404-PA and Central Oregon LandWatch v. Deschutes County, ___ Or LUBA ___ (LUBA No. 2023-049, Feb. 15, 2024). Consequently, it is appropriate for the Hearings Officer to find that, as applied to the entire site, redesignating the subject site to MUA-10 is consistent with the purpose of preserving the rural character.

Second, rezoning the property to MUA-10 is consistent with preserving land for diversified, part-time agricultural use. Because the minimum parcel size in the MUA-10 zone is 10 acres, it is conducive to creating parcels where owners can more economically maintain small hobby farm operations that require less water, fertilizer, and labor. The application material establishes that the subject site with poor soil and no water is not suitable for any large-scale farming. As the data included in the Amended Burden of Proof Statement (page 23) and Mr. Gallagher’s report illustrate, the cost of conducting such operations outweighs the economic benefits. Permitting smaller parcels where hobby farming can occur is consistent with this element of the purpose statement. Further, the application material demonstrates that there are other MUA-10 parcels that have diversified, small-scale agricultural uses.

Rezoning the property to MUA-10 is consistent with preserving open space and natural resources. For example, the MUA-10 does permit clustering of residential dwellings on parcels smaller than 10 acres. However, that permitted use is also consistent with the purpose statement. A cluster

development requires that 65% of the sites be preserved as open space. Creating such an open space preserves natural features and scenic resources. In turn, the low-intensity development permitted maintains and improves the quality of air, water, and land resources.

Rezoning the land to MUA-10 is consistent with the purpose of establishing standards and procedures for the use of land unsuitable for intense development. DCC 18.32.020 lists the uses permitted outright and they are all low-intensity uses that the county has already deemed consistent with the rural MUA-10 zoning. DCC 18.32.030 lists the conditional uses which can be viewed as being slightly more intense than the permitted uses. The county's conditional use standards ensure that uses conditionally permitted are developed to be compatible with the properties in the area.

Finally, rezoning the subject site to MUA-10 will promote orderly transition to urban use. The subject site is close to the current city limit and in an area of growth. A public street network and other public facilities are close to the property and can be extended to serve it when the city expands east. The subject site is large enough to accommodate annexation and any master planning that is appropriate.

COLW supposes that an existing transmission corridor presents challenges to an attempt to rezone. However, COLW does not link that argument to any specific approval criterion. Many land use proposals come with challenges. The amount of bare land in Deschutes County close to city limits is not increasing. There will be challenges and competing interests. The reality is that there are utilities all over Deschutes County, and in all zones. It is difficult to imagine a site that does not have some utility lines that impact the site. However, a general concern over the existence of utilities is not a basis in the code to deny an application to change a zoning designation. In fact, when one examines COLW's diagrams in its May 9, 2025 letter, particularly Figure 9, the existing transmission lines run north/south through property east of the subject site. Compared to the application material, one can see that the existing transmission lines continue south through a residential development in an MUA-10 zone. That demonstrates that transmission lines are commonplace in our world and not inconsistent with the purpose of the MUA-10 zone; the existence of utilities is not a basis to reject a rezoning request.

In more rank speculation, COLW asserts that there are 'almost certainly additional potential non-conforming structures as DCC 18.32.040(C) prohibits structures from exceeding 30 feet in height within the MUA-10 zone.' Not only is that assertion void of all substance, COLW does not even try to link it to any criterion relevant to the application. How is the current rezoning request going to "potentially" create more non-conforming structures? If the height limit in MUA-10 is 30 feet, there will be no structure approved that is over 30 feet.

COLW further asserts that one can imagine more conflicts because PacifiCorp shows one possible route for a transmission line near the subject tract. Based on the mere possibility of a new transmission line in the area, COLW projects that conflicts are destined to occur. Where is the evidence to support such obvious speculation? As of the time that the Hearings Officer must make a decision, any PacifiCorp transmission line is theoretical.

B. The existence of a non-conforming use does not create an inconsistency with the purpose or intent of a new zone.

On a related point, COLW makes a very confusing non-conforming use argument. In response to a question from county planning staff, the applicant explained that although solar farms are not permitted in the MUA-10 zone, rezoning to MUA-10 is not inconsistent with the MUA-10 zoning standards because the solar farm is a lawfully established use that will continue with non-conforming use rights until redevelopment presents itself. That is not an uncommon situation in any jurisdiction. Indeed, if the existence of non-conforming

use/development was a bar to rezoning, it is hard to imagine cities ever being able to annex property. When property is annexed, it gets a city urban zone. Invariably, there will be older uses/developments that are not in conformance with the new zoning. The fundamental notion embodied in non-conforming use law is that such uses may continue but the long-range goal is to bring such sites into conformity over time. Thus, the existence of a non-conforming use is not an inconsistency that precludes rezoning. It is something that local codes and state law accommodate in the process of rezoning.

*COLW tries to twist the applicant's response to have said that the county must approve the rezoning because the solar farm has non-conforming rights. That is entirely not true. That was the situation in *Jackson v. Clackamas County*, where the petitioner argued that it was entitled to a conditional use permit for a use because that use had lawful non-conforming use rights. The applicant here never asserted that the existence of a non-conforming use entitles it to a rezone. The applicant merely pointed out to staff that approving the rezoning request with a non-conforming use is not inconsistent with any county regulation and is commonplace in most rezoning and annexation actions."*

The Hearings Officer finds no argument in the record that disputes the concept that if a zone change is granted that the Solar Array, if confirmed as a legal nonconforming use, would have a legal right to continue. *Holmes v. Clackamas County*, 265 Or 193 (1973) The Hearings Officer finds, however, that Staff is *uncertain* whether the Solar Array can be considered consistent with the purpose and intent of the purpose statement of the MUA10 zone. COLW argued that the Solar Array (if in fact a legal nonconforming use) *cannot* be considered consistent with the purpose and intent of the MUA-10 zone.

Applicant addressed Staff's and COLW's concerns in two ways. First, Applicant addressed the overarching issue of nonconforming uses in the context of zone change applications. Second, Applicant addressed each of the factors set forth in the MUA10 purpose statement.

The Hearings Officer first addresses the overarching issue involving zone change applications where a nonconforming use may exist if the zone change application is approved. Applicant and COLW both cited, in support of their position, *Holmes v. Clackamas County*, 265 Or 193 (1973) and *Jackson v. Bd. Of Cnty. Comm'r's for Clackamas Cnty*, 26 Or App 265 (1976).

COLW included the following excerpt from the *Holmes* Oregon Supreme Court opinion:

"In light of ORS 215.130, DCC 18.120.010, and Oregon Supreme Court precedent, it is not possible to find that rezoning the subject property resulting in an existing use having lawful nonconforming status is inconsistent with the MUA zone. Indeed, there are lawfully established nonconforming uses throughout the county and the state. Each time the city or county rezones property in an area, it is common for there to be uses that become nonconforming. The fact that those uses become lawfully established nonconforming uses does not mean that having such use is inconsistent with the purposes of the new zone. The well-established laws on nonconforming uses that allow them to continue in a new zone are designed to assure consistency with the new zone. If the standard is that a rezoning can only be found consistent with the purpose of the new zone if after the rezoning there are no lawfully established nonconforming uses, it would frustrate the city's ability to rezone property as well. It makes no legal difference whether the County initiates a rezoning, or a property owner exercises their right to request a rezoning. The law on nonconforming rights makes no legal distinction. 2024-5-28 Applicant Response to Issues Letter at p. 4-5."

COLW argued (following the above quote) that "Applicant mistakenly relies upon ORS 215.130(5) that the proposed zone change complies with the requirements of DCC 18.136.020(B)" (footnote omitted). The Hearings Officer finds that COLW mischaracterizes Applicant's argument and the clear and plain language set forth in the

above-quoted section of the *Holmes* Supreme Court decision. The Hearings Officer finds two sentences included in the above-quoted Holmes Supreme Court decision are worthy of repeating:

“The fact that those uses become lawfully established nonconforming uses does not mean that having such use is inconsistent with the purposes of the new zone. The well-established laws on nonconforming uses that allow them to continue in a new zone are designed to assure consistency with the new zone.”

The Hearings Officer finds this language is clear and directly on point in this case. The Hearings Officer finds, based upon the *Holmes* Supreme Court case, that the Solar Array if in fact a legal nonconforming use, can be considered consistent with the purpose of the MUA10 zone.

Applicant and COLW also referenced *Jackson v. Bd. Of Cnty. Comm’rs for Clackamas Cnty* in support of their nonconforming use positions. The Hearings Officer, having reviewed the cited *Jackson* opinion and finds that such opinion is not relevant to the nonconforming issue presented in this case.

Both Applicant and COLW addressed the introductory language of DCC 18.136.020 (B) and the purpose statement for the MUA10 zone (See COLW 5/9/2025 submission pages 2-8 and Applicant 5/9/2025 submission pages 2-4, and Applicant 6/2/2025 Final Argument, pages 2-5). Staff also addressed this MUA10 purpose statement in the Staff Report (pages 15-20).

COLW provided the following statement related to DCC 18.136.020 (COLW 5/9/2025 submission, page 2):

“DCC 18.136.020 provides that the applicant for a quasi-judicial rezoning must establish the public interest is ‘best served’ by rezoning the subject property. Use of the word ‘best’ in DCC 18.136.020 means that rezoning of the property should be superior to the existing zoning classification based on the series of factors provided in subsections (A) – (D).”

The Hearings Officer has not addressed COLW’s “best” argument in prior zone change application cases. The Hearings Officer notes that the DCC use of the word “best” in the DCC 18.136.020 introductory language is difficult to harmonize with the language used in each of the “factors” listed in DCC 18.136.020 A., B., C and D. For example, the language in DCC 18.136.020 A and B does not use comparative language (e.g., best or better, etc.). Rather DCC 18.136.020 A and B utilize “consistent with” terminology. Being “consistent” does not imply that the proposed zone classification is somehow “best” or even “better” than the existing zone. The factors listed in DCC 18.136.020 C address adequacy of public services and facilities and impacts on surrounding land uses will be consistent with the Comprehensive Plan. DCC 18.136.020 C, once again, does not imply a comparative standard (e.g. “best” or “better”) but rather requires “adequate” services and a determination that impacts on surrounding uses will be “consistent” with the Comprehensive Plan.

The Hearings Officer, in this case, is asked to interpret the intent of the Deschutes County Commission when drafting DCC 18.136.020; specifically, the import and meaning of the word “best.” The Hearings Officer, takes note of the following two Deschutes County Code sections:

1.04.030 Interpretation Of Language

All words and phrases not specifically defined in this title or elsewhere in this code shall be construed according to the common and approved usage of the words or phrases. However, technical words and phrases and such others as may have acquired a particular meaning in the law shall be construed and understood according to such particular meaning.

1.04.060 General Construction

The ordinances of the County, and all proceedings under them, are to be construed in order to carry out their objectives and to promote justice.

The Hearings Officer finds, strictly from a definitional perspective (common and approved usage), that COLW's interpretation of the word "best" in DCC 18.136.020 is reasonable. However, when considering the Hearings Officer's context comments related to DCC 18.136.020 A., B., C and D the Hearings Officer finds that the word "best" in the introductory language **conflicts** with the language used in each of the relevant factors.

The Hearings Officer finds applying the word "best" (as argued by COLW) would frustrate the clear intention of the Board of County Commissioners adoption of the factors listed in DCC 18.136.020 A, B, C and D. The Hearings Officer finds that following COLW's "best" argument would necessitate replacing the word "consistent" in DCC 18.136.020 A, B and D with the word "best." The Hearings Officer finds following COLW's "best" argument would require a finding that the word "presently" would be replaced with the word "best." The Hearings Officer finds that DCC 136.020 C.1. simply requires a showing that public services and facilities are adequate and presently available. DCC 18.136.020 C.1 does not require a demonstration that changing the zone will result in "better" or "best" public services as compared to the existing zoning. DCC 18.136.020 C.2, once again uses the word "consistent" and not the word "best." The COLW "best" argument is simply irrelevant to DCC 18.136.020 D.

The Hearings Officer finds that for the purposes of this recommendation the term "best" used in the introductory statement to DCC 18.136.020 can be reasonably interpreted to mean that the public interest is "best served" if the proposal meets the factors set forth in DCC 18.136.020 A, B, C and D.

The Hearings Officer finds the evidence set forth in Applicant's final argument (quoted above) is credible and constitutes substantial evidence that the factors set forth in DCC 18.136.020 A., B., C and D are met. The Hearings Officer concurs with Applicant's analysis of the evidence in the context of the factors set forth in DCC 18.136.020.

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

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

FINDING: The Hearings Officer incorporates the findings for DCC 18.136.020 B set forth above as additional findings for this criterion.

Staff included (Staff Report, pages 17 & 18) the following comments:

"Although there are no plans to develop the properties in their current state, the above criterion specifically asks if the proposed zone exchange will presently serve public health, safety, and welfare. The applicant provided the following response in the submitted burden of proof statement:

Necessary public facilities and services are available to serve the subject property. Central Oregon Electric Cooperative, Pacific Power, and Avion Water Company, Inc. currently serve properties in the area and can continue to serve the subject property if rezoned. There is no perceived capacity issue and that can be addressed in future development application if the property is rezoned.

The subject property is located along Highway 20 east of the roundabout in Ward Road/Hamby Road and west of Erickson Road. Neff Road is to the north and Bear Creek Road is to the south, all of which can accommodate added traffic that may result from rezoning. The impact of rezoning the subject property will be extremely minor. With its current zoning, it is theoretically possible to divide the property into 10-

acre parcels. However, with the solar farm on a large part of Tax Lot 100, the amount of property that could be developed with houses in the foreseeable future is much less. The existing road network is available to serve the use. This is confirmed by a transportation system impact review conducted by Scott Ferguson.

The property receives police services from the Deschutes County Sheriff. The southern half of the property is in a rural fire protection district and the nearest fire station is less than one mile away. All of the property is located in the Rural Fire District #2. Access to the subject property by fire trucks is provided by aerial streets. It is efficient to provide necessary services to the property because the property is already served by these service providers and adjacent to large tracts of land zoned MUA-10 that have been extensively developed with rural residences on small lots and parcels.

Adjacent properties include a mix of vacant land, residential development, and utility facilities, and the general surrounding area includes several other public and commercial uses. Neighboring properties are served by wells, on-site sewage disposal systems, electrical service, and telephone service. No issues have been identified in the record regarding service provision to the surrounding area. The southwest corner of the subject property is located 0.26 miles from the City of Bend UGB. This close proximity to urban development will allow for efficient service provision.

There are no known deficiencies in public services or facilities that would negatively impact public health, safety, or welfare. Prior to development of the properties, the applicant would be required to comply with the applicable requirements of the Deschutes County Code, including possible land use permit, building permit, and sewage disposal permit processes. Through these development review processes, assurance of adequate public services and facilities will be verified. Staff finds this provision is met."

The Hearings Officer concurs with Staff's above-quoted comments.

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

FINDING: The Hearings Officer incorporates the findings for DCC 18.136.020 B set forth above as additional findings for this criterion.

Staff included (Staff Report, pages 18 & 19) the following comments:

"The applicant provided the following response in the submitted burden of proof statement:

The MUA-10 zoning is consistent with the specific goals and policies in the Comprehensive Plan discussed above. The MUA-10 zoning is the same as the zoning of many other properties in the area of the subject property and is consistent with that zoning.

The only adjoining or nearby lands in farm use is a single property east of Tax Lot 1000. The proposed zone change and plan amendment will impose no impacts on this EFU zoned farmland because these lands are separated from the subject property by a large rock rim and that property is isolated with its own water supply and access. There is smaller scaled farming on discrete parcels in the greater area ancillary to the primary residential use but said farming is so far removed from the subject property, it has no bearing on this application.

In addition to these comments, the applicant provided specific findings for each relevant Comprehensive Plan goal and policy, which are addressed below. Staff finds the applicant has demonstrated the impacts on

surrounding land use will be consistent with the specific goals and policies contained within the Comprehensive Plan, but asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit.”

The Hearings Officer concurs with Staff's above-quoted comments and conclusions. The Hearings Officer finds no need to amend or add to Staff's comments/findings.

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

FINDING: The Hearings Officer incorporates the findings for DCC 18.136.020 B set forth above as additional findings for this criterion. The Applicant proposed to rezone the properties from EFU to MUA10 and re-designate the properties from Agriculture to Rural Residential Exception Area. The Applicant provided the following response in the submitted burden of proof statement:

“There has been a change in circumstances since the subject property was last zoned and a mistake in designating the subject property EFU/ Agriculture when soils did not merit a designation and protection as ‘Agricultural Land.’ This zone was applied to the property in 1979 and 1980 when Deschutes County adopted zones, a zoning ordinance, and comprehensive plan that complied with the Statewide Goals.

In 1979 and 1980, undeveloped and undeveloped rural lands that contained poor soils, but were zoned EFU without regard to the specific soil characteristics of the property. Landowners were required to apply for a zone change to move their unproductive EFU properties out of the EFU zone. The County's zoning code allowed these owners a one-year window to complete the task. This approach recognized that some rural properties were mistakenly classified as EFU because their soils and other conditions did not merit inclusion of the property in the EFU zone.

Some of the other property owners of lands east of Bend received approval to rezone their properties from EFU to MUA-10 because their properties contained poor soils and were improperly included in the EFU zone. The soils on the subject property are similarly poor and also merits MUA-10 zoning. The NRCS maps and how the County Board has determined they should be used confirm that the subject property is not agricultural land. Since 1979 and 1980, there has been a change of circumstance related to this issue. The County's Comprehensive Plan has been amended to specifically allow individual property owners to have improperly classified land reclassified.

Additionally, circumstances have changed since the property was zoned EFU. The City of Bend has been developed to the east toward the subject property. The Bend Airport has grown significantly in this time period and now provides many aviation-related jobs. The property is located within easy commuting distance of Saint Charles Medical. It has grown significantly and its need for workers has increased. The area now includes large solar farms, churches, a Christian Center, and utility facilities.

Specific to the subject property, Tax Lot 100, which is about 100 acres, has been committed to use as a commercial solar farm. It has been irrevocably removed from farming due to the poor soil and other factors making farming infeasible. The proposed zone change to MUA-10 will not impact that use. Because it was lawfully established on the applicable zoning, pursuant to DCC 18.120.010, that use has the right to continue operating on the subject property. Thus, Tax Lot 100 will never be available for farming alone or in combination with any other parcel. The County should include a finding to this effect.

Since the property was zoned, it has become evident that farm uses are not viable on the property or on other area properties. The economics of farming have worsened over the decades making it difficult for most

Deschutes County property owners to make money farming good ground and impossible to earn a profit from attempting to farm Class 7 and 8 farm soils. In 2022, according to Table 4 of the 2022 US Census of Agriculture, Exhibit 8, only 18.6% of farm operators achieved a net profit from farming (293 of 1572 farm operations). In 2017, according to Table 4 of the 2017 US Census of Agriculture, Exhibit 9, only 16.03% of farm operators achieved a net profit from farming (238 of 1484 farm operations). In 2012, the percentage was 16.45% (211 of 1283 farm operations). In 2007, according to the 2012 US Census of Agriculture, that figure was 17% (239 of 1405 farm operations). Exhibit 10. The number of farms with net losses increase from 1,246 in 2017 to 1,279 in 2022. The vast majority of farms in Deschutes County have soils that is superior to those found on the subject property. As farming on those soils is typically not profitable, it is reasonable to conclude that no reasonable farmer would purchase the subject property for the purpose of attempting to earn a profit in money from agricultural use of the land.

The Hearings Officer incorporates findings for Deschutes County Comprehensive Plan, Goal 2 and the findings for OAR 660-033-0020 as additional findings for this goal.

The Hearings Officer finds, based upon the Applicant's above-quoted Burden of Proof Statement and the record as a whole, that there has been a change in circumstances since the Subject Property was last zoned. The Hearings Officer finds changes in circumstances include the clarification of the correct soil classification of the Subject Property as evidenced by the Red Hills Soils Report and the evolution of development progressing eastward from the City of Bend. Further, based upon Applicant's above-quoted statement the Hearings Officer finds the current Comprehensive Plan and zoning designation were based upon a mistake. The Hearings Officer finds the specific mistake was that the current zoning was selected based upon an incorrect designation of the Subject Property as Agricultural Land. Based upon the Red Hills Soils Report the Subject Property is not Agricultural Land as that phrase is defined in law.

Deschutes County Comprehensive Plan

Chapter 2, Resource Management

Section 2.2 Agricultural Lands

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

FINDING: The Hearings Officer notes that there are numerous relevant goals and approval criteria relating to the preservation and maintenance of Agricultural Lands. The Hearings Officer has attempted to include findings for many of the Agricultural Land criteria issues within the findings for Goal 1. Where appropriate the Hearings Officer incorporates the findings for Goal 1 into the findings for other relevant goals and/or approval criteria.

Applicant provided the following overview of the Agricultural Land issue (Burden of Proof):

“The Applicant presented in the original application that the County’s historic reliance on the NRCS mapping for determining whether parcels are comprised predominantly of agricultural land or not. If the NRCS maps are not adequate to make that determination, the County can consider a site-specific soil study prepared by a certified soil scientist. In this matter, the NRCS maps require a finding that the subject property is predominantly not agricultural land.

To supplement the application in this modification request, the Applicant is submitting a detailed report from Red Hill Soils. The report is primary to provide more detail on the composition of the two soil types mapped on the property because each soils type is a complex soil type. The majority of the property is comprised of 58C-Gosney Rock Outcrop-Deskamp complex. The following table from the Red Hills Soils

Report breaks out each soil type found on the subject property. The Red Hill Soils report presents a detailed evaluation of the soil on the subject property accounting for each component in the 58C complex soil type...

The Red Hills Soils Report confirms that the subject property is comprised predominantly of Class 7 and Class 8 soils which are not agricultural land.

The Red Hill Soils Report also evaluated soil fertility concluding that that the soil fertility and productivity are very limiting to crop production. The soil has low fertility, lacking nutrients, and has a limited capacity for retaining water.

The vast majority of the subject property is comprised of Class 7 and Class 8 non-agricultural soils, and the property has no known history of agricultural use. As noted in the Eastside Bend decision, Class 7 and Class 8 soils have severe limitations for farm use as well as poor soil fertility, shallow and very shallow soils, surface stoniness, low available water capacity, and limited availability of livestock forage. According to Agricultural Handbook No. 210 published by the Soil Conservation Service of the USDA, soils in Class 7 'have very severe limitations that make them unsuited to cultivation and that restrict their use largely to grazing, woodland, or wildlife.' Class 8 soils 'have limitations that preclude their use for commercial plant production and restrict their use to recreation, wildlife, or water supply or to esthetic purposes.'"

Applicant, in its Final Argument, provided the following comments relating the evidence in the record to the relevant Agricultural Land law:

"D. The subject site is not agricultural land under OAR 660-033-0020.

COLW asserts that notwithstanding the NRCS maps and soil data that demonstrates that the property is predominantly not agricultural land, it is suitable for farm use considering the factors in OAR 660-033-0020(1)(a)(B): Soil fertility, Suitability for grazing, Climate Conditions, Existing and future availability of water for farm irrigation, existing land use patterns, technology and energy inputs, and accepted farming practices.

COLW completely ignores a fundamental issue that has been decided against it in prior cases. In applying the factors identified above, it is appropriate for counties to also consider economic factors, particularly the profitability or lack thereof of farming specific property. Wetherall v. Douglas County, 342 Or 666 (2007); Central Oregon LandWatch, et al v. Deschutes County, ___ Or LUBA ___ (LUBA No. 2023-006, July 28, 2023). As LUBA noted in Central Oregon LandWatch v. Deschutes County, ORS 215.203(2)(a) defines farm use as the current employment of land for the primary purpose of obtaining profit in money. The applicant provided data from reliable sources that demonstrates the economic infeasibility of conducting profitable farming on the subject site. The cost to fertilize poor soil, deal with lack of water, and the limited amount of crops that will grow even with those costly measures makes it unreasonable for any owner to expect to make any profit.

COLW also does not effectively address the applicant's evidence on how the above factors illustrate that the subject site is not agricultural land.

Soil fertility: COLW's discussion on this topic is more speculation that someone could, in theory, add enough amendments to the soil to improve fertility or make some use of the property that does not require fertile soils. The application demonstrates that one could expect, at best, about \$4,181.40 in annual gross profit from dry grazing. Adding in the cost of amending soil, fertilizer, and other expenses, no reasonable farmer will

attempt to farm the subject property. Further, Mr. Gallagher's professional report explains that the lack of soil fertility makes it impracticable to engage in farm use on the property. As to other farming use activities that may not rely on fertile soil, the applicant used dry grazing because it is anticipated to be the most profitable of all activities. Amended Burden of Proof Statement, p. 22. The suggestion that someone could board horses for a profit is unreasonable. One can imagine the enormous cost of constructing facilities that do not now exist to even begin such an operation. It does not square with the definition of current employment of land for obtaining a profit in money.

Suitability for grazing: Again, the application material and Mr. Gallagher explained in detail why the economics of dry grazing in this area on bad soil is not practicable and economically infeasible. Economic infeasibility is a valid consideration that COLW just ignores. Interesting though, when discussing this element, COLW agrees that the entire subject tract must be evaluated, as the applicant and Mr. Gallagher did. However, when discussing whether a change in the zoning to MUA-10 is consistent with the purpose and intent of that zone, COLW does not address the entire tract.

Climactic conditions: Mr. Gallagher addressed this element in detail, including data from reliable sources. COLW does nothing to refute his conclusions.

Existing and future availability of water for irrigation: COLW did not even address the issue. Mr. Gallagher confirmed what the applicant provided that the property does not have irrigation rights. COLW focuses on whether it is possible to get irrigation equipment on the property. Mr. Gallagher addressed this issue, but the main point is the equipment on the property does nothing without water flowing through it. COLW ignored that aspect altogether.

COLW relies on old photographs that illustrate that up to about 1968, there may have been pocket farming on portions of the subject property. The photographs alone do not establish what activity was being conducted at that time. Moreover, the definition of farm use is the current employment of land for farming activities. ORS 215.203. There is no evidence in the record that there has been any farming conducted in the past 56 years. The material in the application supported by Mr. Gallagher supports a finding that the poor soil, lack of irrigation, and rising cost of farming on dry land made it infeasible to currently conduct any farming on the property.

Existing land use patterns: COLW confirms that to the extent there is any agricultural use in the area, it is isolated to small hobby farms. The application included a detailed chart of the surrounding properties, and which ones had any such activity. The chart confirms that much of the hobby farming is being done on smaller MUA-10 parcels. That fact supports the finding that rezoning to MUA-10 is consistent with the existing land use pattern and consistent with the purpose and intent of the MUA-10 zone.

Technology and energy inputs required: COLW does not address this topic in substance. It does not refute the evidence in the application and the information from Mr. Gallagher that technology will not overcome the fact that the property has shallow soils with abundant rocks and no possibility of irrigation water.

Accepted farming practices: COLW provided nothing beyond its unsupported opinion that "nothing about the subject property indicates that it could not operate with accepted farming practices common in the area." COLW's May 9, 2025 Letter, p. 18. The detailed material in the application and supported by Mr. Gallagher demonstrates that the only large-scale farming practice in the area is irrigated hay production. The application material explains in detail why that cannot be done on the subject property. Mr. Gallagher further explains that the only agricultural use in the area is small-scale farming that can be managed with the limitations posed and is consistent with rezoning. The existing small agricultural uses are largely on MUA-10 property. Rezoning the subject property to MUA-10 will have no negative impact on the continuation of

that activity. In fact, by allowing the creation of 10-acre parcels, rezoning to MUA-10 will afford more opportunities for small-scale farming on parcels that are manageable from a cost/labor standpoint.

E. The subject property is not necessary to permit farming on adjacent land.

The applicant provided detailed information on why the subject property is not necessary to conduct farming on adjacent or nearby properties. Amended Burden of Proof Statement, pp. 25-27. COLW does not dispute that the subject property is not necessary to conduct farming on any of the parcels included in the applicant's charts. Rather, COLW argues that the subject property is necessary to permit farming on a 12-acre parcel adjacent to it at the intersection of Highway 20 and Erickson Road (TL 300). COLW offers no evidence to support that argument but rather provides more subjective opinions. It recites that TL 300 is likely not large enough to support a dryland grazing operation or other farm practices on its own, but it "almost certainly would" be with the subject property. COLW does not offer any explanation for how TL 300 could support a farming operation even if it were used with the subject property. The evidence is to the contrary.

The overwhelming evidence in the application material and supported by Mr. Gallagher proves that dry grazing and other farm operations are not feasible on the subject property. The question that COLW avoids is if the subject property itself is not suitable to support farm operations, how would it be necessary to support farm operations on adjacent property that is also unsuitable for farm practices? Stated otherwise, how would the subject property that is not suitable for farming facilitate farming on the adjacent parcel that COLW agrees is, by itself, not suitable for farming? It is intuitive that if one has 12 acres that is not suitable for farming and one combines it with adjacent property that is also unsuitable for farming, the combined properties are not magically suitable for farming. The subject property is not even a source for access to TL 300. One can easily see from the photographs in the record that it is not even possible to access TL 300 from the subject property due to the location of the solar farm and associated fencing.

COLW, as noted in the above-quoted Applicant comments, argued the Subject Property was properly classified by the NCGR maps as Agricultural Land (COLW, 5/9/2025, pages 10 – 20 and 5/30/2025, pages 6 – 8). COLW asserted that the Red Hills Soil Report omitted the area under the Solar Array during its consideration of the suitability for grazing factor. The Hearings Officer review of the Red Hills Soils Report confirms the area under the Solar Array was not considered in the suitability for grazing analysis. The Hearings Officer responds threefold. First, the Hearings Officer would have preferred the area under the Solar Array to have been included in the suitability for grazing analysis. Second, the Hearings Officer finds that a rational and reasonable inference, based upon evidence contained in the NCGR mapping and the Red Hills Soil Report, may be drawn that suitability for grazing under the Solar Array is functionally the same as the remainder of Subject Property. Third, the Hearings Officer finds no evidence in the record submitted by COLW supporting the proposition that adding the area under the Solar Array to the balance of the Subject Property analyzed in the Red Hills Soils Report would change the Red Hills Soils Report conclusion that the Subject Property is not suitable for grazing.

While the Hearings Officer would have preferred the Red Hills Soils Report consider the entire Subject Property in its suitability for grazing analysis the Hearings Officer finds that omission alone is not sufficient to alter the Hearings Officer's conclusion that the Subject Property is not Agricultural Land.

The Hearings Officer finds that the most persuasive Agricultural Land evidence in the record is the Red Hills Soils Report. The Hearings Officer finds that the Red Hills Soils Report, in addition to other evidence supplied by Applicant into the record, is substantial evidence and justifies the conclusion that the Subject Property is not Agricultural Land.

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

FINDING: The Applicant did not ask to amend the subzone that applies to the subject property; rather, the Applicant requested a change under Policy 2.2.3 and has provided evidence to support rezoning the Subject Property to MUA-10.

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

FINDING: The Hearings Officer incorporates the findings for the Deschutes County Comprehensive Plan, Chapter 2, Resource Management, Section 2.2 Agricultural Lands, Goal 1 as set forth above as additional findings for this policy.

The Applicant requested approval of a plan amendment and zone change to re-designate the Subject Property from Agricultural to Rural Residential Exception Area and rezone the property from EFU to MUA10. The Applicant did not seek an exception to Goal 3 – Agricultural Lands, but rather to demonstrate that the Subject Property does not meet the state definition of Agricultural Land as defined in Statewide Planning Goal 3 (OAR 660-033-0020).

The Applicant provided the following response in the submitted Burden of Proof statement:

“The Applicant is seeking a comprehensive plan amendment from Agriculture to RREA, and a zone change from EFU-TRB to MUA-10 for non-resource land. This is the same change approved by Deschutes County in the Division of State Lands file PA-11-7/ZC-11-2. In findings attached, Deschutes County determined that State law, as interpreted in Wetherell v. Douglas County, 52 Or LUBA 677 (2006), allows this type of amendment. LUBA said, in Wetherell at pp. 678-679:

‘As we explained in DLCD v. Klamath County, 16 Or LUBA 817, 820 (1988), there are two ways a county can justify a decision to allow nonresource use of land previously designated and zoned for farm use or forest uses. One is to take an exception to Goal 3 (Agricultural Lands) and Goal 4 (Forest Lands). The other is to adopt findings which demonstrate the land does not qualify either as forest lands or agricultural lands under the statewide planning goals. When a county pursues the latter option, it must demonstrate that despite the prior resource plan and zoning designation, neither Goal 3 or Goal 4 applies to the property. Caine v. Tillamook County, 25 Or LUBA 209, 218 (1993); DLCD v. Josephine County, 18 Or LUBA 798, 802 (1990).’

LUBA’s decision in Wetherell was appealed to the Oregon Court of Appeals and the Oregon Supreme Court but neither court disturbed LUBA’s ruling on this point. In fact, the Oregon Supreme Court used this case as an opportunity to change the test for determining whether land is agricultural land to make it less stringent. Wetherell v. Douglas County, 342 Or 666, 160 P3d 614 (2007). In that case, the Supreme Court stated that:

‘Under Goal 3, land must be preserved as agricultural land if it is suitable for ‘farm use’ as defined in ORS 215.203(2)(a), which means, in part, ‘the current employment of land for the primary purpose of obtaining a profit in money’ through specific farming-related endeavors.’ Wetherell, 343 Or at 677.

The Wetherell court held that when deciding whether land is agricultural land, ‘a local government may not be precluded from considering the costs or expenses of engaging in those activities.’ Wetherell, 342 Or at 680. In this case, the Applicant has shown that the subject property is primarily composed of Class VII and VIII non-agricultural soils when irrigated and when not irrigated making farm-related endeavors unprofitable. The property is not currently employed for any type of farm use and has no known history of that use. Accordingly, this application complies with Policy 2.2.3.”

Staff (Staff Report, page 23) generally agreed with Applicant’s above-quoted Burden of Proof statements. Staff (Staff Report, page 23) found that Applicant provided sufficient evidence in the record addressing whether the Subject Property qualifies as non-resource land. Staff concluded that the Applicant “*has the potential to prove the properties are not agricultural land and do not require an exception to Goal 3 under state law.*”

Based upon the incorporated findings, Applicant’s Burden of Proof statements quoted above and Staff’s analysis the Hearings Officer finds this policy can be satisfied.

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

FINDING: This plan policy provides direction to Deschutes County to develop new policies to provide clarity when EFU parcels can be converted to other designations. Staff stated (Staff Report, page 23) that it concurred with the County’s previous determinations in plan amendment and zone change applications and concluded that Applicant’s proposal in this case is consistent with this policy. The Hearings Officer agrees with Staff’s analysis and conclusion and finds Applicant’s proposal in this case is consistent with this policy.

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

Policy 2.2.13 Identify and retain accurately designated agricultural lands.

FINDING: The Hearings Officer incorporates the findings for the Deschutes County Comprehensive Plan, Chapter 2, Resource Management, Section 2.2 Agricultural Lands, Goal 1 as set forth above as additional findings for this policy.

This plan policy requires the County to identify and retain Agricultural Lands that are accurately designated. The Applicant argued that the Subject Property was not accurately designated as demonstrated. Based upon the incorporated findings found later in this recommendation the Hearings Officer finds this policy can be satisfied.

Section 2.5, Water Resources Policies

Goal 6, Coordinate land use and water policies.

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

FINDING: The Applicant has not proposed a specific development in this application. The Hearings Officer finds that the Applicant is not required to address water impacts associated with development. The Hearings Officer finds that the Applicant will be required to address this criterion during development of the Subject Property, which would be reviewed under any necessary land use process for the site (e.g. conditional use permit, tentative plat). The Applicant provided the following response in the submitted Burden of Proof:

"Irrigation is essential for commercial farm use in Central Oregon. Irrigating poor farm ground consumes a large amount of the area's precious water resources without the resulting economic benefits of profitable agricultural production. Homes consume less water than would be needed for farm field irrigation on the subject property."

"In its findings in Division of State Land, Deschutes County found that impacts of any proposed future development of the state property on water resources would be reviewed by Deschutes County in future development applications. That finding was sufficient to demonstrate compliance with this plan policy. Together with the findings above and then later review by Deschutes County, this policy is satisfied."

Staff (Staff Report, page 24) agreed with the Applicant's above-quoted analysis. Staff (Staff Report, page 24) also provided a portion of the findings from *Aceti IV* (247-20-000438-PA, 439-ZC). Staff stated that in the *Aceti IV* decision the Hearings Officer and the Board of County Commissioners (Board) made the following findings which appear to support the Applicant's analysis:

*"The Hearings Officer found in *Aceti I* that this policy is directed at the County. In said decision, the Hearings Officer cited a previous decision of Hearings Officer Green for file nos. PA-14-2 and ZC-14-2 that stated, "Nevertheless, in my decision in *NNP I* held it is not clear from this plan language what 'water impacts' require review -- impacts to water supplies from use or consumption on the subject property, or Impacts to off-site water resources from development on the subject property.' The Applicant has not proposed any particular land use or development, and any subsequent applications for development of the subject property would be reviewed under the County's land use regulations that include consideration of a variety of on- and off-site impacts."*

The Hearings Officer finds it is premature to review "water impacts" because the Applicant has not proposed any particular land use or development. Thus, there are no 'significant land uses or developments' that must be reviewed or addressed in this decision. Any subsequent applications for development of the subject property will be reviewed under the County's land use regulations, which include consideration of a variety of on- and off-site impacts. Notwithstanding this statement, the Hearings Officer includes the following findings.

The Applicant's requested zone change to RI would allow a variety of land uses on the subject property. The land east of the subject property (57 acres) is zoned RI and developed with a variety of rural industrial uses. Consequently, it is likely that similar development may occur on the property if it were redesignated and rezoned to RI. In light of existing uses in the surrounding area, and the fact that Avion Water Company provides water service in the Deschutes Junction area, and a 12-inch diameter Avion water line and two fire hydrants are already installed on site, future development of the subject property with uses permitted in the RI Zone will have water service.

The subject property has 16 acres of irrigation water rights and, therefore, the proposed plan amendment and zone change will result in the loss or transfer of water rights unless it is possible to bring some irrigated water to the land for other allowed beneficial uses, such as irrigated landscaping. As stated in the Applicant's Burden of Proof, the 16 acres of irrigation water rights are undeliverable and are not mentioned in the property deed. The Applicant has not grown a crop on the subject property or effectively used his water right since the overpass was constructed in 1998.

The Hearings Officer finds that the proposal will not, in and of itself, result in any adverse water impacts. The proposal does not request approval of any significant land uses or development.

The Hearings Officer finds Staff's reference to *Aceti IV* (quoted above) to be relevant and persuasive. Based upon the Staff's analysis and conclusions and the findings for *Aceti IV* the Hearings Officer finds Applicant demonstrated compliance with this Comprehensive Plan policy.

Section 2.7, Open Spaces, Scenic Views and Sites

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

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

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

FINDING: The Hearings Officer adopts as additional findings for this policy the findings for Goal 5 (including analysis of Applicant's submitted ESEE). Staff (Staff Report, pages 25 & 26) stated that these policies are fulfilled by the County's Goal 5 program. Staff stated that the County protects scenic views and sites along major rivers and roadways by imposing Landscape Management (LM) Combining Zones to adjacent properties. A portion of the Subject Property is located within the LM associated with Highway 20.

Staff (Staff Report, page 25) noted in *Te Amo Despacio*, File 24 7-22-000313/314 that the standards and requirements of that overlay can be implemented at the time of any future development. The Hearings Officer finds that these provisions of the plan are not impacted by approval of the proposed zone change and plan amendment.

Chapter 3, Rural Growth

Section 3.2, Rural Development

Growth Potential

As of 2010, the strong population growth of the last decade in Deschutes County was thought to have leveled off due to the economic recession. Besides flatter growth patterns, changes to State regulations opened up additional opportunities for new rural development. The following list identifies general categories for creating new residential lots, all of which are subject to specific State regulations.

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

FINDING: This section of the Comprehensive Plan does not contain Goals or Policies, but does provide the guidance above. The Applicant provided the following response to this section in its Burden of Proof:

"This part of the Comprehensive Plan is not a relevant approval criterion for a plan amendment and zone change application. Instead, it is the County's assessment of the amount of population growth that might occur on rural residential lands in the future based on its understanding of the types of changes allowed by law. Comprehensive Plan Policy 2.2.3 specifically authorizes rezoning and comprehensive plan map amendments for any property zoned EFU and is the code section that defines the scope of allowed zone changes.

This section makes it clear, however, that EFU zoned land with poor soils adjacent to rural residential development is expected to be rezoned for rural residential development during the planning period. The subject property has extremely poor soils that does not qualify as agricultural land that must be protected by Goal 3. The subject property is sandwiched between large areas recently rezoned to MUA-10 to the west and MUA zoned property to the east. Most of the intervening EFU land interspersed is committed to rural residential uses. There is a single active farming operation in the immediate vicinity. The property east of Erickson Road is developed with single-family homes.

The MUA-10 zone is a rural residential zone. It will provide for an orderly and efficient transition from rural to urban land use as intended by the purpose of the MUA-10 zone. As a result, rezoning the subject property MUA-10 is consistent with Section 3.2.”

Staff provided (Staff Report, pages 26 & 27) the following comments related to this section:

“Staff notes that the MUA10 Zone is a rural residential zone and as discussed in the Findings of Fact above, adjacent properties to the north, northwest, and southwest are zoned MUA10. One of these surrounding MUA10 properties has received approval for a Comprehensive Plan Amendment and Zone Change to change the zoning of the property from EFU to MUA10. This property is identified on Assessor’s Map 17-12-35 as Tax Lot 1600, and is located adjacent to the subject property, to the west of Tax Lot 900. Staff notes this policy also references the soil quality, which staff discusses in more detail below. Staff is uncertain if this policy is met by the available information in the record and requests the Hearings Officer make specific findings on this topic.”

The Hearings Officer agrees with Applicant that this part of the Comprehensive Plan is not a relevant approval criteria. The Hearings Officer finds the language in this section is purely aspirational and provides no clear and objective standards which must be met by an applicant for a plan and zone change. The Hearings Officer finds the aspirational issues raised by this section are addressed throughout this recommendation.

Section 3.3, Rural Housing

Rural Residential Exception Areas

In Deschutes County most rural lands are designated for farms, forests or other resources and protected as described in the Resource Management chapter of this Plan. The majority of the land not recognized as resource lands or Unincorporated Community is designated Rural Residential Exception Area. The County had to follow a process under Statewide Goal 2 to explain why these lands did not warrant farm or forest zoning. The major determinant was that many of these lands were platted for residential use before Statewide Planning was adopted.

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

FINDING: The Applicant provided the following response to this provision in the burden of proof:

“Staff and the County Board have conformed in prior decisions that the quoted language is part of the background text of the County’s Comprehensive Plan. It is not a plan policy or directive, and it is not an approval standard for this application. Staff made this point in (Porter Kelly Burns). County zone change and plan amendment use decisions adopted by the Board of Commissioners have so found.”

The Applicant also provided an alternate argument that applying the RREA Comprehensive Plan designation to the subject property does not require an exception to a Statewide Planning Goal, even if this policy were interpreted as an approval criterion.

Staff (Staff Report, page 27) stated that it agreed with prior Deschutes County Hearings Officer interpretations and concluded that the above language in this section is not a policy and does not require an exception to the applicable Statewide Planning Goal 3. The Applicant provided evidence in the record addressing whether the property qualifies or does not qualify as agricultural or forest land. Staff asks the Hearings Officer to make specific findings related to this language.

The Hearings Officer concurs with Applicant and Staff that the language in this section is not an independent relevant approval criterion. In the alternative, the Hearings Officer incorporates the findings for the Deschutes County Comprehensive Plan, Chapter 2, Resource Management, Section 2.2 Agricultural Lands, Goal 1 as set forth above as additional findings for this policy. The Hearings Officer finds, based upon the incorporated findings and findings found throughout this recommendation, that the Subject Property does not meet the definition of Agricultural Land.

Section 3.7, Transportation

Appendix C – Transportation System Plan ARTERIAL AND COLLECTOR ROAD PLAN

...

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

...

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

FINDING: This policy applies to the County and advises it to consider the roadway function, classification and capacity as criteria for plan amendments and zone changes. The Hearings Officer finds that the County will comply with this direction by determining compliance with the Transportation Planning Rule (TPR), also known as OAR 660-012, as described below in subsequent findings.

OREGON ADMINISTRATIVE RULES CHAPTER 660, LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

Division 6, Goal 4 – Forest Lands

OAR 660-006-0005, Definitions

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

(b) Other forested lands that maintain soil, air, water and fish and wildlife resources.

FINDING: The Subject Property is not zoned for forest lands, nor are any of the properties within a 4.5-mile radius. The Subject Property does not contain merchantable tree species and there is no evidence in the record that the Subject Property has been employed for forestry uses historically. The Hearings Officer finds this section is not relevant/applicable because the Subject Property is not “forest land.”

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

OAR 660-015-0000(3)

To preserve and maintain agricultural lands.

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

FINDING: Goal 3 defines Agricultural Land, which is repeated in OAR 660-033-0020(1). The Hearings Officer incorporates the findings for the Deschutes County Comprehensive Plan, Chapter 2, Resource Management, Section 2.2 Agricultural Lands, Goal 1 as set forth above as additional findings for Goal 3, OAR 660-015-0000(3).

OAR 660-033-0020, Definitions

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

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

(A) Lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon²;

FINDING: The Hearings Officer incorporates the findings for the Deschutes County Comprehensive Plan, Chapter 2, Resource Management, Section 2.2 Agricultural Lands, Goal 1 as set forth above as additional findings for this section. The Hearings Officer also incorporates as additional findings for this section the Preliminary Findings for Certification of Soils Report (III.A.2).

The Red Hills Soils Report included the following conclusion language:

“The NRCS WEBSOILSURVEY shows the subject property is predominantly non-high value farmland, Class 7 and 8 and does not meet the definition of agricultural land within the meaning of OAR 660-033-0020(1)(b), as it is not adjacent to or intermingled with land in capability classes 1-6 within a farm unit. There is no clear evidence that the Capability Class 6 non-irrigated soils on the subject property were farmed or utilized in conjunction with any farming.”

As noted in prior findings the Hearings Officer finds the Red Hills Soils Report to be prepared by a qualified professional soil scientist. The Hearings Officer finds the Red Hills Soils Report is credible and persuasive evidence. Based upon the incorporated findings and the Red Hills Soils Report the Hearings Officer finds the

² OAR 660-033-0020(5): "Eastern Oregon" means that portion of the state lying east of a line beginning at the intersection of the northern boundary of the State of Oregon and the western boundary of Wasco County, then south along the western boundaries of the Counties of Wasco, Jefferson, Deschutes and Klamath to the southern boundary of the State of Oregon.

Subject Property is made up of predominately NCRS Class 7 and 8 soils. Considering all relevant factors, including the soil characteristics, the Hearings Officer finds the Subject Property is not Agricultural Land as defined by relevant laws/regulations.

(B) *Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices; and*

FINDING: The Hearings Officer incorporates the findings for the Deschutes County Comprehensive Plan, Chapter 2, Resource Management, Section 2.2 Agricultural Lands, Goal 1 as set forth above as additional findings for this section. The Hearings Officer also incorporates as additional findings for this section the Preliminary Findings for Certification of Soils Analysis (III.A.2).

Staff concluded its findings for this criterion by stating:

“Staff agrees with the applicant that many of the factors surrounding the subject property – such as level of development in the surrounding area, soil fertility, and amount of irrigation required result in a relatively low possibility of farming on the subject property. Staff requests the Hearings Officer make specific findings on this issue.”

The Hearings Officer responds to Staff's quoted request for “specific findings on this issue” by stating that the Hearings Officer, based upon the incorporated findings and the Red Hills Soil Report, finds that Applicant considered and addressed each of the factors set forth in the criterion with substantial credible evidence. The Hearings Officer finds that based upon the incorporated findings and the Red Hills Soil Report that each of the relevant factors set forth in this criterion was adequately considered and addressed.

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

FINDING: The Applicant offered the following response in its submitted Burden of Proof statement:

“The subject property is not land necessary to permit farm practices to be undertaken on adjacent or nearby lands. The following facts are shown by the Applicant's discussion of surrounding development in Section E of this application above, and by the additional information provided below.”

The submitted Burden of Proof also included the following summary of all EFU-zoned properties within an area of approximately one mile of the subject property.

“West: Properties to the west of the subject property, with one exception, are separated from the subject property by Ward/Hamby Roads. The road makes it infeasible to use the subject property for farm use in conjunction with these properties and much of that property was recently rezoned to MUA-10 (Marken Trust, East Bend LLC, and Te Amo Despacio). Additionally, the subject property is not necessary to permit farm practices to be undertaken on adjacent or nearby lands to the west. There is no recent history of farming on properties to the west.”

ADJOINING PROPERTIES SOUTH OF PROPERTY

Tax Lots 900 and 1000 abut Bear Creek Road. The property south of Bear Creek Road is within Dobbin Estates, an approved residential subdivision. There is no farming or potential for farming on that property.

FARM PROPERTIES NEARBY TO WEST, SOUTH AND SOUTHWEST, AND NORTHWEST OF ADJOINING PROPERTIES

***North:** Most of the land north of the subject property is privately owned and currently used for institutional purposes and commercial enterprises. There are several large solar farms, a church, a Christian center, and an electric power facility. Further to the northeast is Big Sky Park. Any farming is far to the north, a significant distance from the subject property. Moreover, it is separated physically from the subject property by Highway 20, other major roads, and intervening non-farm uses making it infeasible to farm with the subject property.*

***East:** The non-adjacent property to the east of Tax Lots 900 and 1000 is primarily devoted to large acre residential uses and hobby farms. In light of the many surrounding non-farm uses that have been in existence for years and the amount of MUA-10 zoned property in the area already, rezoning the subject property will not impact farming on that parcel. The properties east of Tax Lots 100, 300, and 400 are primarily MUA zoned large estate properties that are not used in farming operations and are separated by Erickson Road.*

***South:** The property south of Tax Lots 300, 400, and 100 is either part of the subject property or the property described above. As discussed earlier, the property south of Tax Lots 900 and 1000 are part of a platted residential subdivision. Rezoning the subject property to MUA-10 will not impact farming on any of that property.”*

Pages 26 to 27 of the Burden of Proof include tables that list surrounding properties and include information on potential farm uses. These tables provide detailed information on the existing surrounding uses, potential farm practices, and reasons why they do not require the subject property to operate. Applicant also addressed this criterion/standard in its Final Argument (June 6, 2025, page 9).

Staff (Staff Report, pages 33 & 34) addressed this criterion/standard as follows:

“Staff agrees with the applicant’s analysis and finds no feasible way that the subject property is necessary for the purposes of permitting farm practices on any nearby parcels discussed in the Findings of Fact section above, or the larger area more generally. This finding is based in part on poor quality, small size, and existing development on surrounding EFU and MUA10 properties. If the Hearings Officer disagrees with Staff’s assessment, Staff requests the Hearings Officer make specific findings on this issue.”

The Hearings Officer does not disagree with Staff’s above-quoted assessment. The Hearings Officer, based upon the incorporated findings, the Red Hills Soil Report and Applicant’s final argument statements finds that the Applicant adequately address and consider the factors listed in this criterion/standard and that the conclusion reached that the Subject Property is not Agricultural Land is reasonable and appropriate.

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

FINDING: The Applicant provided the following response in its Burden of Proof:

"The subject property is not and has not been a part of a farm unit. It has not been farmed. As a result, this rule does not apply to the County's review of this application.

Even if the subject property is considered to be a 'farm unit', despite the fact it has never been farmed, Goal 3 applies a predominant soil test to determine if a property is 'agricultural land.' The predominant soils classification of the subject property is Class VII and VIII which provides no basis to inventory the property as agricultural land, unless the land is shown to be, in fact, productive farmland.

As confirmed by the accepted soils maps, the predominant soil types found on the property are Class VII and VIII, non-agricultural land. Some Class VI soils are intermingled with the non-agricultural soil, not vice versa. As a result, this rule does not require the Class VII and VIII soils to be classified agricultural land."

Applicant also included comments related to this criterion/standard in its Final Argument (page 9). The Hearings Officer finds the Applicant's above-quoted comments, its Final Argument statements and the Red Hills Soils Report to be credible and persuasive evidence and argument. The Hearings Officer finds, based upon evidence contained in the Applicant's Burden of Proof, its Final Argument comments and the Red Hills Soil Report, that Applicant considered and provided substantial evidence that it considered (inventoried) adjacent properties in the context of this criterion/standard.

- (c) ***"Agricultural Land" does not include land within acknowledged urban growth boundaries or land within acknowledged exception areas for Goal 3 or 4.***

FINDING: The Subject Property is not within an acknowledged urban growth boundary or land within acknowledged exception areas for Goals 3 or 4.

OAR 660-033-0030, Identifying Agricultural Land

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

FINDING: The Hearings Officer incorporates the findings for the Deschutes County Comprehensive Plan, Chapter 2, Resource Management, Section 2.2 Agricultural Lands, Goal 1 as set forth above as additional findings for this section. The Hearings Officer also incorporates as additional findings for this section the Preliminary Findings for Certification of Soils Analysis (III.A.2).

The Applicant argued that the Subject Property is not Agricultural Land, as referenced in OAR 660-033-0030(1) above, because of the existence of barriers for farm use including poor quality soils and the development pattern of the surrounding area. The Hearings Officer finds that Applicant adequately addressed OAR 660-033-0030(2) by submitting substantial evidence addressing the factors set forth in the findings of OAR 660-033-00020(1), including OAR 660-033-0020(1)(a)(b) in findings above. The Hearings Officer incorporates the findings for OAR 660-033-00020(1), including OAR 660-033-0020(1)(a)(b) as findings for this criterion/standard.

The Hearings Officer, based upon the incorporated findings, the Red Hills Soil Report and Applicant's Final Argument statements, finds that this criterion was adequately considered and addressed and that the Subject Property is not Agricultural Land and is also "not suitable for farm use."

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

FINDING: The Hearings Officer incorporates the findings for the Deschutes County Comprehensive Plan, Chapter 2, Resource Management, Section 2.2 Agricultural Lands, Goal 1 as set forth above as additional findings for this section. The Hearings Officer also incorporates as additional findings for this section the Preliminary Findings for Certification of Soils Analysis and the findings for OAR 660-033-00020(1), including OAR 660-033-0020(1)(a)(b).

The Hearings Officer finds that Applicant provided in the record substantial evidence showing the Subject Property is not Agricultural Land, is not "suitable for farm use" and is not necessary to permit farm practices to be undertaken on adjacent or nearby lands. The Hearings Officer finds that the ownership of the Subject Property was not used to determine whether the parcel is Agricultural Land.

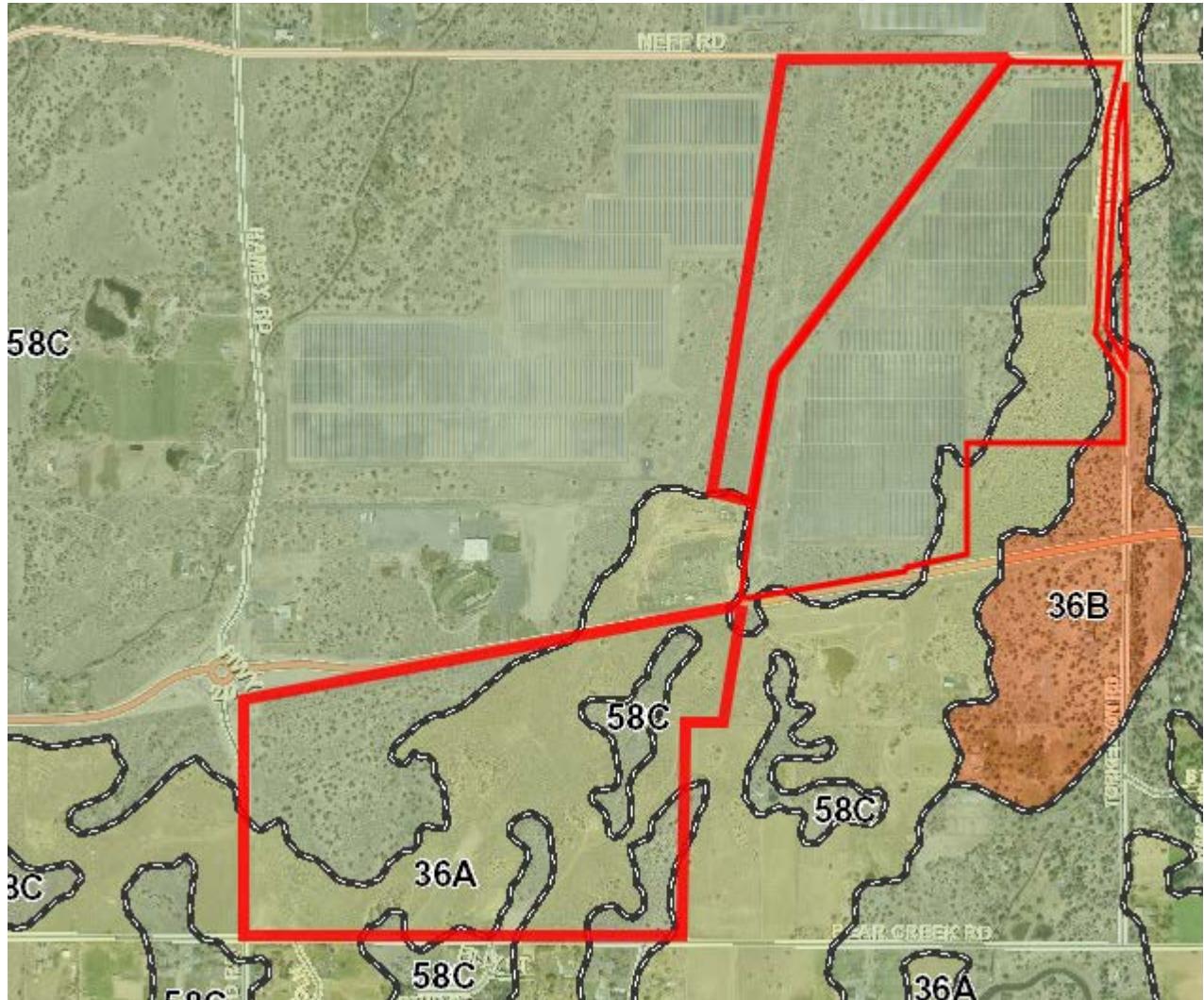
- (5)(a) *More detailed data on soil capability than is contained in the USDA Natural Resources Conservation Service (NRCS) soil maps and soil surveys may be used to define agricultural land. However, the more detailed soils data shall be related to the NRCS land capability classification system.*
-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

FINDING: The Hearings Officer incorporates as additional findings for this section the Preliminary Findings for Certification of Soils Analysis (III.A.2). The Hearings Officer finds that based on the incorporated Preliminary Findings COLW's issue with this section is adequately addressed. However, as additional findings for this criterion the Hearings Officer adopts the following Staff comments (Staff Report, pages 36 - 29).

"The soil study prepared by Mr. Gallagher provides more detailed soils information than contained in the NRCS Web Soil Survey. NRCS sources provide general soils data for large units of land and provide a Land Capability Classification (LLC) system that classifies soils class 1 through 8. An LCC rating is assigned to each soil type based on rules provided by the NRCS, and the soil units that are mapped on the subject property are complexes made up of soils with various LCC ratings.

The NRCS mapping for the subject properties is shown below in **Figure 1**. According to the NRCS Web Soil Survey tool, the subject property contains approximately 80 acres of soil unit 36A, 0.6 acres of soil unit 36B, and 160 acres of soil unit 58C.

Figure 1: NRCS Soil Mapping on the Subject Property



The submitted soil study does not dispute the NRCS soils map for the subject property, or provide updated mapping. Instead, the soil study provides a methodology for calculating the LCC rating for the complex soil units identified within the subject property.

Table 1: Composition of Soil Types within Subject Property

Table 3. Coverage of soils after distributing weighted amounts of 58C by Capability classification.

Map Symbol	Map Unit Component	High-value Farmland Status	Agricultural lands	Nonirrigated Capability Class	Acres NRCS soil map by unit	Coverage
						-%-
36A, 36B	Deskamp	N (not irrigated)	Yes	6	115	48
58C	Gosney	N	No	7	83	35
58C	Rock outcrop	N	No	8	42	17
	Total				240	100

The soil study included the following conclusion regarding the productivity of soils within the subject property:

The NRCS WEBSOILSURVEY shows the subject property is predominantly non-high value farmland, Class 7 and 8 and does not meet the definition of agricultural land within the meaning of OAR 660-033-0020(1)(b), as it is not adjacent to or intermingled with land in capability classes 1-6 within a farm unit. There is no clear evidence that the Capability Class 6 non-irrigated soils on the subject property were farmed or utilized in conjunction with any farming operation in the past.

The soil study applies a weighted average methodology to calculate the LCC rating of the 58C soil unit, Gosney-Rock outcrop- Deskamp Complex, which comprises the majority of the subject property. As described above, this soil unit is a complex and may contain both high value soils and non-high value soils. Mr. Gallagher applied information from the NRCS, which estimates the following amount of Class 6, Class 7, and Class 8 soils within this complex:

The NRCS gives percentages of three of the main components of this map unit as 50 percent Gosney (Class 7) 25 percent rock outcrop (Class 8) and 20 percent Deskamp (Class 6 and high value). NRCS includes five percent unspecified contrasting soils in the map unit composition. In my acreage calculations the unspecified five acres were equally divided between class 6, 7 and 8 soils.

In his report, Mr. Gallagher utilizes the information provided by NRCS on the typical composition of the 58C soil unit. He multiplies the 160 acres of 58C soils by the percentage of Class 6, 7, and 8 soils within the 58C soil unit. This information appears to be based on general information provided by NRCS on the composition of the 58C soil unit and is not specific to the subject property.

The applicant cites the Board of County Commissioners decision for file PA-11-7, ZC-11-2 (Department of State Lands) in support of this methodology³. In this prior Zone Change decision, testimony was provided by staff from NRCS and a weighted average was presented as one of three potential methodologies for calculating the LCC ratings within a complex soil unit. In the Department of State Lands decision, the Board found that they had discretion to choose any of the three methodologies to determine whether the soils on the property qualified as 'agricultural land.' Staff requests the Hearings

³ Staff references a letter from the Applicant dated May 28, 2024.

Officer make specific findings on this issue and determine whether the proposed methodology is consistent with OAR 660-033-0030.”

The Hearings Officer finds that the Red Hills Soil Report was prepared by a certified soil scientist. As such, the Hearings Officer finds that the author of the Red Hills Soil Report is a duly recognized expert in the soil science field. The Hearings Officer also finds that COLW offered no evidence from a soil scientist. Rather, COLW soils arguments were presented by a staff attorney who did not provide the Hearings Officer any evidence he was trained or experienced as a soil scientist. The Hearings Officer, comparing the testimony of the Applicant's recognized soil scientist and the testimony presented by COLW, finds that the testimony of the Applicant's soil scientist is significantly more credible and persuasive than the statements and opinions offered by COLW. The Hearings Officer also represents that he is not a professionally trained soil scientist and therefore finds that he must rely upon the professional opinions to determine appropriate methodologies to assess the factors required in OAR 660-033-0030. The Hearings Officer finds that there is simply no substantial and credible evidence in the record to dispute the methodologies used in the Red Hills Soil Report.

(c) *This section and OAR 660-033-0045 apply to:*

(A) *A change to the designation of land planned and zoned for exclusive farm use, forest use or mixed farm-forest use to a non-resource plan designation and zone on the basis that such land is not agricultural land; and*

FINDING: The Hearings Officer incorporates the findings for the Deschutes County Comprehensive Plan, Chapter 2, Resource Management, Section 2.2 Agricultural Lands, Goal 1 as set forth above as additional findings for this section. The Hearings Officer also incorporates as additional findings for this section the Preliminary Findings for Certification of Soils Analysis (III.A.2) and the findings for OAR 660-033-00020(1), including OAR 660-033-0020(1)(a)(b).

The Applicant requested approval of a non-resource plan designation on the basis that the Subject Property is not Agricultural Land as that phrase is defined by relevant laws/rules. The Hearings Officer finds, based upon the incorporated findings, that this criterion/standard is satisfied.

(d) *This section and OAR 660-033-0045 implement ORS 215.211, effective on October 1, 2011.*

After this date, only those soils assessments certified by the department under section (9) of this rule may be considered by local governments in land use proceedings described in subsection (c) of this section. However, a local government may consider soils assessments that have been completed and submitted prior to October 1, 2011.

FINDING: The Hearings Officer incorporates as additional findings for this section the Preliminary Findings for Certification of Soils Analysis (III.A.2).

(Staff Report, page 39) provided the following comments related to this criterion/standard:

“The applicant did not submit acknowledgement from Department of Land Conservation and Development (DLCD) that the soil study is complete and consistent with DLCD's reporting requirements. However, it is not apparent to staff whether a DLCD completeness review is required for this soil study, since it expands on the NRCS soil map but does not include a full on-site assessment. The applicant relies on the soils report from Mr. Gallagher to determine whether the subject property consists predominantly of Class 1-6 soils. As described below, staff requests the Hearings Officer make specific findings regarding the submitted soil study and whether it has been correctly applied in the context of this section.”

The Hearings Officer, based upon the incorporated findings, finds that the Red Hills Soil Report is not a “soil assessment” as referenced in this criterion.

(e) *This section and OAR 660-033-0045 authorize a person to obtain additional information for use in the determination of whether land qualifies as agricultural land, but do not otherwise affect the process by which a county determines whether land qualifies as agricultural land as defined by Goal 3 and OAR 660-033-0020.*

FINDING: The Hearings Officer incorporates the findings for the Deschutes County Comprehensive Plan, Chapter 2, Resource Management, Section 2.2 Agricultural Lands, Goal 1 as set forth above as additional findings for this section. The Hearings Officer also incorporates as additional findings for this section the Preliminary Findings for Certification of Soils Analysis (III.A.2) and the findings for OAR 660-033-00020(1), including OAR 660-033-0020(1)(a)(b).

Staff (Staff Report, pages 39 & 40) provided the following comments related to this criterion/standard:

“Based on the information above, it is not clear to staff if the submitted soil study was prepared according to the procedures set forth in OAR 660-033-0045. Staff requests the Hearings Officer make findings regarding the submitted soil study, and whether it provides sufficient information to determine the percentage of the subject property that is comprised of Class 7 and Class 8 soils.”

The Hearings Officer finds that the Red Hills Soil Report was prepared by a certified soil scientist and utilized methodologies consistent with professional standards. The Hearings Officer finds the Red Hills Soil Report is not a “soil assessment” as described in OAR 660-033-0030 and was prepared consistent with OAR 660-033-0045.

DIVISION 12, TRANSPORTATION PLANNING

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

(1) *If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:*

- (a) *Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);*
- (b) *Change standards implementing a functional classification system; or*
- (c) *Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.*

(A) *Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;*

- (B) *Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or*
- (C) *Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.*

FINDING: This above language is applicable to the proposal because it involves an amendment to an acknowledged comprehensive plan. The proposed plan amendment would change the designation of the Subject Property from AG to RREA and change the zone from EFU to MUA10. The Applicant is not, as part of this current application, proposing any land use development of the Subject Property.

The Applicant submitted a Transportation Planning Rule (“TPR”) assessment (Exhibit 12, dated February 2, 2024) prepared by Scott Ferguson of Ferguson and Associates, Inc. As noted in the agency comments section above, the County Transportation Planner identified deficiencies with the submitted TPR analysis and requested additional information. Specifically, the County Transportation Planner requested additional information to allow a determination as to whether the proposal would have a significant effect on transportation facilities. The Applicant then submitted a revised TPR analysis dated February 28, 2025, prepared by Scott Ferguson, PE, of Ferguson and Associates, Inc.

The revised TPR assessment was reviewed by the County Transportation Planner, who agreed with the report’s methodologies and conclusions. The Hearings Officer finds that the proposed plan amendment and zone change will be consistent with the identified function, capacity, and performance standards of the County’s transportation facilities in the area. The Hearings Officer finds that the proposed zone change will not change the functional classification of any existing or planned transportation facility or change the standards implementing a functional classification system. Regarding the TPR analysis dated February 28, 2025, the County Transportation Planner provided the following comments in an email dated March 5, 2025:

“...The revised analysis provides updated information related to the total ~240.17 acres of subject property. The full build-out scenario included in the revision (considering redevelopment of the existing solar farm portions of the subject property) aligns with staff’s comments from 6/11/24. The report’s inclusion of modified acreage and assumed development credit for one existing single-family dwelling complies with additional comments from staff’s 6/11/24 email correspondence regarding the MUA10 Zone’s worst case scenario analysis. I agree with the assumptions, methodologies, and conclusions outlined in the revised analysis.”

Based on the County Senior Transportation Planner’s comments and the revised traffic study from Ferguson and Associates, Inc., the Hearings Officer finds compliance with the Transportation Planning Rule has been effectively demonstrated.

DIVISION 15, STATEWIDE PLANNING GOALS AND GUIDELINES

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

FINDING: The Statewide Planning Goals and the Applicant’s proposed findings are set forth below:

“Goal 1, Citizen Involvement. Deschutes County will provide notice of the application to the public through mailed notice to affected property owners and by requiring the Applicant to post a ‘proposed land use action sign’ on the subject property. Notice of the public hearings held regarding this

application will be placed in the Bend Bulletin. A minimum of two public hearings will be held to consider the application.

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

Goal 3, Agricultural Lands. The Applicant has shown that the subject property is not agricultural land, so Goal 3 does not apply.

Goal 4, Forest Lands. The existing site and surrounding areas do not include any lands that are suited for forestry operations. Goal 4 says that forest lands ‘are those lands acknowledged as forest lands as of the date of adoption of this goal amendment.’ The subject property does not include lands acknowledged as forest lands as of the date of adoption of Goal 4. Goal 4 also says that ‘[w]here **a plan amendment involving forest lands is proposed, forest land shall include lands which are suitable for commercial forest uses, including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water, and fish and wildlife resources.’ This plan amendment does not involve any forest land. The subject property does not contain any merchantable timber and is not located in a forested part of Deschutes County.

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

Goal 6, Air, Water, and Land Resources Quality. The approval of this application will not cause a measurable impact on Goal 6 resources. Approval will make it more likely that the irrigation and pond water rights associated with the property will ultimately be returned to the Deschutes River or used to irrigate productive farm ground found elsewhere in Deschutes County.

Goal 7, Areas Subject to Natural Disasters and Hazards. This goal is not applicable because the subject property is not located in an area that is recognized by the Comprehensive Plan as a known natural disaster or hazard area.

Goal 8, Recreational Needs. This goal is not applicable because the property is not planned to meet the recreational needs of Deschutes County residents and does not directly impact areas that meet Goal 8 needs.

Goal 9, Economy of the State. This goal does not apply to this application because the subject property is not designated as Goal 9 economic development land. In addition, the approval of this application will not adversely impact economic activities of the state or area.

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

Goal 11, Public Facilities and Services. The approval of this application will have no adverse impact on the provision of public facilities and services to the subject site. Utility service providers have confirmed that they have the capacity to serve the maximum level of residential development allowed by the MUA-10 zoning district.

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

Goal 13, Energy Conservation. The approval of this application does not impede energy conservation. The subject property is located in a part of the community that contains a large amount of rural residential development. Providing homes in this location, as opposed to more remote rural locations, will conserve energy needed for residents to travel to work, shopping, and other essential services.

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

Goal 15, Willamette Greenway. This goal does not apply because the subject property is not located in the Willamette Greenway.

Goals 16 through 19. These goals do not apply to land in Central Oregon.”

Staff (Staff Report, page 43) provided the following comments:

“Staff generally accepts the applicant’s responses and finds compliance with the applicable Statewide Planning Goals has been effectively demonstrated. However, staff notes additional analysis may be required regarding Goal 5, Natural Resources, Scenic and Historic Areas and Open Spaces. A portion of the subject property is located within the Landscape Management Combining Zone associated with Highway 20, and this scenic corridor is identified in the County’s Goal 5 inventory.

The Board decision for Deschutes County files 247-22-000573-ZC, 574-PA included the following findings:

Pursuant to 660-023-0250(3), the county does not have to apply Goal 5 as part of a Post Acknowledgement Plan Amendment (‘PAPA’) unless the PAPA affects a Goal 5 resource.

Pursuant to OAR 660-023-250(3)(b), a PAPA affects a Goal 5 resource if the PAPA would allow new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list. In this case, the Goal 5 resource is the Highway 97 scenic corridor.

In the decision for files 247-22-000573-ZC, 574-PA, the Board ultimately determined that the proposed Zone Change would not require a new Economic, Social, Environmental, and Energy (ESEE) analysis. The Board found that the ESEE analysis that established the Highway 97 scenic corridor considered a wide range of potential uses, and the change in zoning from EFU to Rural Industrial would not introduce new conflicting uses. The applicant has not submitted specific arguments regarding whether the proposed MUA10 zoning would allow new, conflicting uses within the Landscape Management Combining Zone associated with Highway 20. Staff requests the Hearings Officer make findings on whether the applicant has sufficiently demonstrated compliance with Statewide Planning Goal 5.”

The Applicant provided (May 9, 2025 submission, pages 7 – 11 [plus an attached ESEE analysis]) a general response to Staff’s above-stated Statewide Goals and a specific response to Staff’s ESEE concerns. The Hearings

Officer finds it is important to include, within this recommendation, the entirety of Applicant's May 9, 2025 statement related to Statewide Goals. Applicant, in the May 9, 2025 submission, stated:

"OAR 660-015-0010, Statewide Planning Goals and Guidelines

A. Statewide Planning Goals

On pages 32 and 33 in the Burden of Proof, the applicant discussed each of the applicable Statewide Planning Goals. Neither County staff nor any public participant provided any contrary position. Thus, the applicant will not address each of the Goals again in this letter but will discuss the two that appear most prominent in prior similar applications.

Goal 14-Urbanization: *Goal 14 addresses how counties must evaluate urban uses on rural land. Goal 14 does not apply to this application and an exception to it is not required because the County has consistently determined that the uses allowed in the MUA-10 zone are not urban uses. See File 247-24-000392-PA/393-ZC. As the hearings officer in that case noted, LUBA had accepted the County's determination. Central Oregon LandWatch v. Deschutes County, ___ Or LUBA ___ (LUBA No. 2023-049, Feb. 15, 2024). This Hearings Officer made the same finding in File 247-24-000404-PA/000405-ZC.*

The recent decision in Department of Land Conservation and Development v. Clackamas County, 335 Or App 207 (2024), does not impact the County and LUBA's conclusion. That case involved the regulation that applies to amendments to properties already within a residential exception area reducing parcel size from 10 acres to two acres. The applicant understands that this issue was addressed in File 247-24-000404-PA/000405-ZC.

Goal 5-Natural Resources, Scenic and Historic Areas, and Open Spaces: *As County staff noted, there is one Goal 5 resource on the subject property—a scenic corridor subject to the LM Overlay. The County conducted its Goal 5 assessment in 1992. The LM Combining Overlay was implemented to achieve consistency with Goal 5. However, in a recent hearings officer decision involving Cascade Academy, a hearings officer applied a recent LUBA decision to conclude that because a change to MUA-10 zoning allows uses on the property that would not necessarily been considered then, a new ESEE and analysis is required.*

OAR 660-023-0250:

(3) Local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if:

- (a) The PAPA creates or amends a resource list or a portion of an acknowledged plan or land use regulation adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5;*
- (b) The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list; or*
- (c) The PAPA amends an acknowledged UGB and factual information is submitted demonstrating that a resource site, or the impact areas of such a site, is included in the amended UGB area.*

The applicant believes that the County is not required to apply Goal 5 to this application because uses allowed in the requested MUA-10 zone will not conflict with the Goal 5 resources identified. First, the uses allowed in the MUA-10 zone are rural, low-intensity uses that leave ample opportunity to preserve any scenic view from Highway 20 that may exist. Second, development allowed under the MUA-10 zone reviewed for consistency with the LM standards will not have any negative impact on the view from Highway 20. Indeed, even the formal agency comment from DLCD questioned the need for any new ESEE evaluation in this application.

However, to the extent the applicant must address Goal 5, the applicant will demonstrate how the Goal 5 considerations in the OARs support a decision by the County to allow conflicting uses to compel a conclusion that to the extent the MUA-10 zone allows for conflicting uses, those uses should be allowed in a limited manner after the application of all applicable development standards in Chapter DCC 18.032 and the LM Overlay.

Impact of the Board's decision on File 247-21-00081-PA/247-21-000882-ZC (LBNW LLC)

The Board's recent decision in the above file is instructive and should guide the Hearings Officer here. In that decision, the County Board explained in detail how the County applies the Goal 5 conflicting use analysis.

OAR 660-23-0030-Inventory Process

In LBNW, LLC, the Board determined that the inventory process required under this rule does not have to be completed for a PAPA zoning amendment. The County may rely on the existing inventory. As noted, the existing inventory identifies a single resource—the scenic corridor.

OAR 660-023-0040-ESEE Decision Process

OAR 660-023-0040 describes the process for evaluating potentially conflicting uses.

OAR 660-023-0040(1):

(1) Local governments shall develop a program to achieve Goal 5 for all significant resource sites based on an analysis of the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use. This rule describes four steps to be followed in conducting an ESEE analysis, as set out in detail in sections (2) through (5) of this rule. Local governments are not required to follow these steps sequentially, and some steps anticipate a return to a previous step. However, findings shall demonstrate that requirements under each of the steps have been met, regardless of the sequence followed by the local government. 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. The steps in the standard ESEE process are as follows:

- (a) Identify conflicting uses;*
- (b) Determine the impact area;*
- (c) Analyze the ESEE consequences; and*
- (d) Develop a program to achieve Goal 5.*

(a) Identify conflicting uses;

Consistent with the decision in File 247-21-000881-PA/247-000882-ZC, the potentially conflicting uses

are those uses permitted outright or conditionally in the proposed MUA-10 zone. DCC 18.32.020 lists the outright permitted uses. Some uses present no conflict such as agriculture uses and propagation of forest products. Some of the more common uses are large acre residential developments, accessory dwellings, equestrian/horse facilities, home occupations, irrigation systems, and road projects.

DCC 18.32.030 identifies the conditional uses permitted in the MUA-10 zone. They include commercial activities in conjunction with farm use, dude ranches, guest houses, private parks/playgrounds, personal use landing strips, golf courses planned development, and cluster developments.

(b) Determine impact area;

For the Scenic LM resource, the impact area is portions of Tax Lots 900, 1000, 100, and 400 within .25 miles of the centerline of Highway 20.

(c) Analyze the ESEE consequences;

The applicant included a chart that presents the required ESEE analysis in a simple, short manner as allowed under OAR 660-023-0040(1). There is no requirement that an applicant has the analysis prepared outside. Further, OAR 660-004-0040(4) directs that the County adopt the ESEE analysis. The rules permit an applicant to present its information on the consequences and the County Board is allowed to accept, reject, or supplement those during the review process. The applicant's chart allows the County to make any required findings to support the application for Goal 5 considerations.

The applicant submits that another factor to consider, as was the case in File 247-21-000881-PA/882-ZC, is that as to the property north of Highway 20, the impact area has already been developed with uses at least as intense and impactful as the conflicting uses allowed under the MUA-10 zoning that the applicant requests. There is a church, a Christian Life Center, a PGE service building, and a large solar farm. Any additionally approved uses will not have any further appreciable impact on that side of Highway 20.

(d) Develop a program to achieve Goal 5.

The County, after completing its ESEE consideration process, has three options for treating conflicting uses.

(a) A local government may decide that a significant resource site is of such importance compared to the conflicting uses, and the ESEE consequences of allowing the conflicting uses are so detrimental to the resource, that the conflicting uses should be prohibited.

(b) A local government may decide that both the resource site and the conflicting uses are important compared to each other, and, based on the ESEE analysis, the conflicting uses should be allowed in a limited way that protects the resource site to a desired extent.

(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 applicant submits that based on the ESEE considerations, the County should find that both the scenic resource and the conflicting uses allowed in the MUA-10 zone are important to each other and that conflicting uses should be allowed in a limited manner that protects the resource site to the extent desired. In other words, the applicant advocates for the middle ground in the above regulation.

Conflicting uses should be allowed only after the application of the development standards in DCC Chapter 18.32 and the LM Overlay to ensure protection of any scenic resource.”

The Hearings Officer finds Applicant's above-quoted statement, along with the ESEE Analysis attached to the May 9 2025 submission, is a comprehensive evidentiary presentation and accurately reflects relevant laws and rules. The Hearings Officer finds the ESEE Analysis adequately addresses issues relevant to Goal 5. The Hearings Officer finds Applicant's May 9, 2025 submission sufficiently addressed Goal 5 requirements.

The Hearings Officer agrees with Applicant's Goal 14 comments.

The Hearings Officer addressed the Applicant's May 9, 2025 nonconforming use issue in earlier findings. As noted in those findings the Hearings Officer concluded that it would be inappropriate to opine as to the current or future legality of the Solar Array as Applicant did not formally apply for a verification of the validity of the Solar Array. If Applicant desires to “validate” the Solar Array the Applicant must follow relevant application steps (including a formal application and payment of fees) to accomplish that goal.

IV. CONCLUSION & RECOMMENDATION

The application in this case is to change the comprehensive plan and zoning designations for the Subject Property. Staff questioned, in the Staff Report, whether the Applicant provided adequate evidence to support findings that various approval criteria/policies were met/satisfied. COLW argued that the application should be denied for a number of reasons. COLW's primary issues related to whether or not the application met the standards set forth in DCC 18.136.020 and whether the Subject Property is Agricultural Land. COLW also argued that the Applicant's soil report (Red Hills Soils Report) could not be considered by the Hearings Officer as evidence in this case because the Red Hills Soils Report had not been certified by the Oregon Division of Land Conservation and Development.

The Hearings Officer addressed Staff's concerns and COLW's arguments in the findings for this recommendation. The Hearings Officer, based upon the evidence in the record and the arguments made by Staff, Applicant, COLW and other participants, concluded that all relevant approval criteria and goals were, or could be, met/satisfied.

The Hearings Officer recommends approval of Applicant's proposal.

DESCHUTES COUNTY HEARINGS OFFICER



Gregory J. Frank
Deschutes County Hearings Officer



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 28, 2026

SUBJECT: Request to Apply for 2026 Grant Funds for the Deschutes County Wolf Depredation and Financial Compensation Committee

RECOMMENDED MOTIONS:

Move to apply for the grant funds.

BACKGROUND:

The Deschutes Board of County Commissioners established a Wolf Depredation and Financial Compensation Committee in May of 2023. The committee has been meeting regularly since June 2023. As part of the committee's work the committee has an established process to apply for depredation compensation grant funding, including the recently enacted multiplier, and non-lethal preventative measures grant funding. The committee works closely with State and Federal agency partners and regularly receives updates and information from wolf biologists and other experts in the field on wolf activity in and near Deschutes County. Additionally, the committee has frequently engaged with ranchers and producers who have known wolf activity on or near their lands.

The Oregon Department of Agriculture opens a grant opportunity once a year. Counties who have established Wolf Depredation and Financial Compensation Committees are eligible to apply for grant funding. There are three categories of grant funds:

Depredation Funds - Funds requested to compensate for livestock or working dog deaths or injuries caused by wolves between February 1 of the previous year and January 31 of the current year (e.g., February 1, 2024–January 31, 2025).

Prevention Funds - Funds requested for livestock management or nonlethal wolf deterrence techniques to be used during the current grant year to reduce wolf depredation of livestock or working dogs by the county or individual producers.

Necessary Expenses - The county may request funds to cover up to 90% of the necessary expenses to operate the grant program. By requesting these funds, the county agrees to contribute the remaining 10%. Examples of necessary expenses are described in OAR 603-019-0010(2).

GRANT FUNDS REQUEST:

Depredation Funds:

In March 2025 there was a confirmed depredation of a livestock caused by a wolf in Deschutes County. A depredation grant application has been submitted to the committee and the committee recommends submitting the funding request on behalf of the affected ranch.

Preventative Funds:

The committee is also recommending applying for grant funds on behalf of two producers who are seeking non-lethal preventative measures grant funding. Both applicants have confirmed wolf activity on their property and own and/or manage livestock in the area of the wolf activity.

Additionally, the committee is recommending applying for funds to support county-wide preventative measure tools which will include continued funding of an established carcass removal program and purchasing and maintaining deterrent devices like Foxlights. Agency partners, including, ODFW, USDA - Wildlife Services, and U.S. Fish & Wildlife, are able to implement these preventative measure tools working with local producers and ranchers who have experienced, or reside in areas, with known wolf activity.

Requestor	Amount Requested
McCormack Ranch (Depredation Funds)	\$1,500
McCormack Ranch (Preventative Measures Funds)	\$34,000
Kanoe Godby (Preventative Measures Funds)	\$5,000
Deschutes County Wolf Committee	\$6,000
TOTAL	\$46,500

Budget Impact:

If awarded, this grant would result in increased revenues of \$46,500 for FY 26, which would be passed through to grant recipients. Grant funds are expected to be expended in the 2026 calendar year.

ATTENDANCE:

Jen Patterson, Strategic Initiatives Manager



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 28, 2026

SUBJECT: 2025 Annual Report for the Prescribed Fire, Smoke and Public Health Community Response Plan

RECOMMENDED MOTION:

Move approval of the 2025 Annual Report for the Prescribed Fire, Smoke and Public Health Community Response Plan.

BACKGROUND AND POLICY IMPLICATIONS:

The 2025 Annual Report for the Prescribed Fire, Smoke and Public Health Community Response Plan is provided to meet the requirements of OAR 629-048-0180 (3)(f) in order to maintain the exemption from the one-hour air quality threshold in the Oregon Smoke Management Plan granted on December 7, 2019 for the Bend Smoke Sensitive Receptor Area. The report describes actions taken from the period of January 1, 2025 through December 31, 2025 regarding the implementation of the Bend Smoke Sensitive Receptor Area Community Response Plan.

BUDGET IMPACTS:

None

ATTENDANCE:

Sarah Worthington, Regional Climate and Health Coordinator
Will Groves, Planning Manager
Lauren Street, Natural Resources Specialist

2025 ANNUAL REPORT FOR:



PRESCRIBED FIRE, SMOKE, AND PUBLIC HEALTH:

A Community Response Plan for the Bend Smoke Sensitive Receptor Area

Introduction

This report is provided to meet the requirements of OAR 629-048-0180 (3)(f) in order to maintain the exemption from the one-hour air quality threshold in the Oregon Smoke Management Plan granted on December 7, 2019 for the Bend Smoke Sensitive Receptor Area. This report describes actions taken from the period of January 1, 2025 through December 31, 2025 regarding the implementation of the Bend Smoke Sensitive Receptor Area (SSRA) Community Response Plan (CRP).

In a fire-dependent ecosystem like Central Oregon, annual air quality impacts occur on a continuum; we experience smoke from prescribed fire activity during Spring and late Fall/Winter months and throughout the months during wildfire season. Our communications efforts are holistic in the sense that we emphasize wildfire readiness and community awareness of how to respond in the event of an emergency, in addition to smoke and health information.

Public health efforts to increase community resilience to smoke can be thought of in two categories: risk communication/education, and mitigation. In addition to communications, this report describes two examples of mitigation efforts: coordination with daytime and overnight shelter providers and distribution of air purifiers or N95 masks.

Overview of the 2025 Prescribed Fire Year

Firefighters on the Deschutes National Forest started spring understory prescribed burning in mid-April on the Sisters Ranger District with 60 acres of ignitions three miles southeast of Sisters. Favorable weather windows allowed operations to consistently continue throughout April, May and into early June.

Operations continued in 2025 within the 2024 West Bend Pilot Project area. Firefighters accomplished 694 acres of prescribed burning over three operations in critical locations within

the wildland-urban interface west of Bend. This included the remaining 113-acre unit within the Big Eddy Prescribed Burn completed in 2024.

Participants from the annual *Central Oregon Prescribed Fire Training Exchange* provided additional capacity to local resources and prescribed burning operations during the first two weeks in May.

Moving into June, conditions quickly started to dry out and were no longer favorable for ignitions. Over the course of the spring prescribed burn season, the Deschutes National Forest completed a total of 3,543 acres during 27 prescribed burn operations with some days operations occurring simultaneously on the same day. Several prescribed burns were completed in critical locations, including adjacent to communities and private lands, to increase strategic hazardous fuels reduction work.

Following the conclusion of the 2025 fire season, firefighters began pile burning operations in the middle of October and continued this work through the end of December as conditions were favorable.

The graphs below illustrate air quality index (specific to PM 2.5) as recorded at two monitor locations in Bend throughout 2025. Understory burn dates/acreage is denoted by triangles. In 2025, as in previous years, air quality impacts were more frequent and severe from wildfire smoke than prescribed fire smoke – although there were fewer smoky days overall.

Note higher PM 2.5 readings at the 8th Street monitor than at the Pump Station. The Pump Station monitor is closer to the river at lower elevation and typically captures higher PM readings during prescribed burns in the Bend airshed. Additionally, the highest PM reading (related to prescribed burning in West Bend on 6/3) was related to the smallest burn unit (113 acres on 6/2). These observations underscore the complexity of conditions influencing smoke behavior in the Bend area.

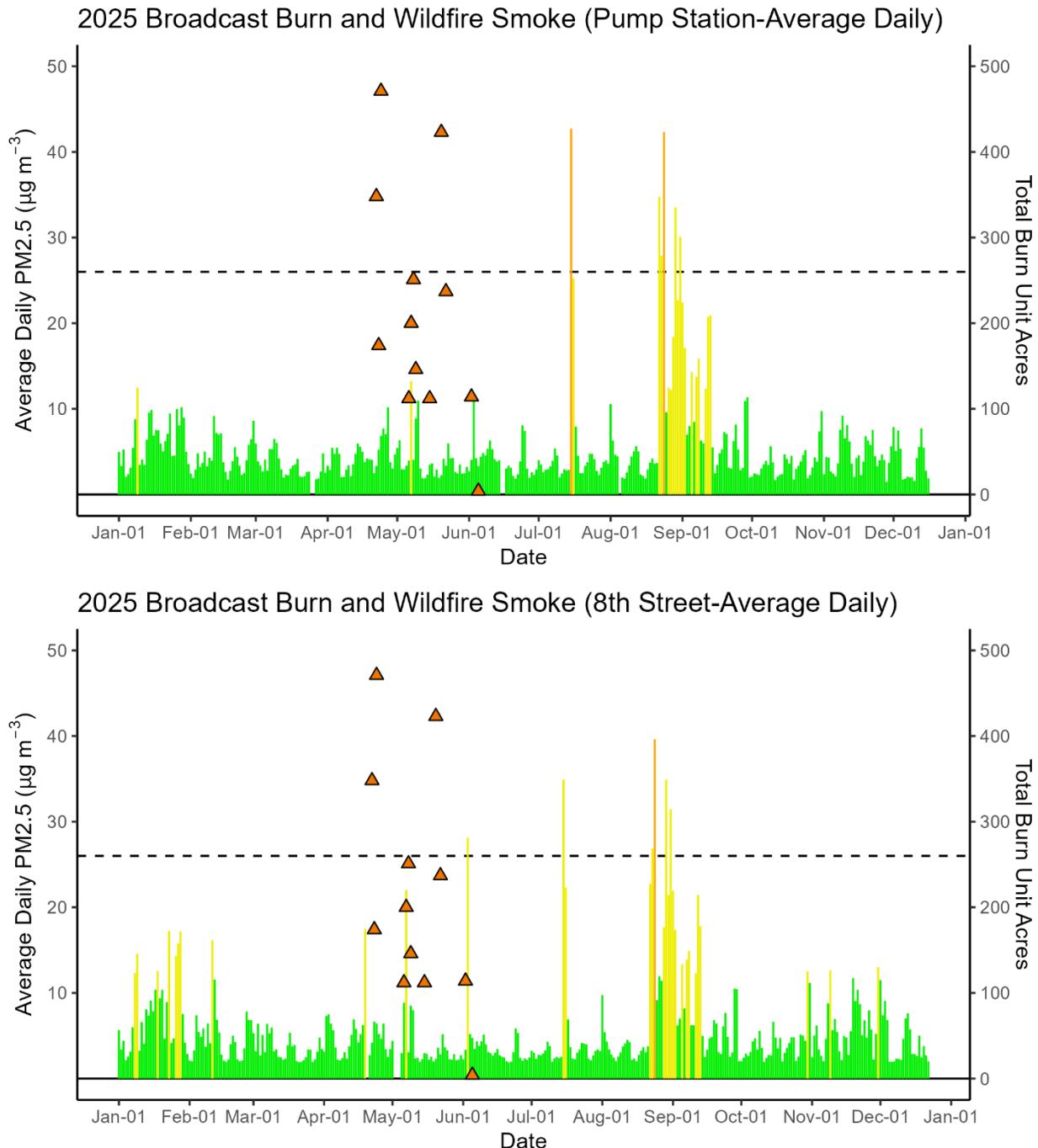


Figure 1: Average daily PM2.5 ($\mu\text{g/m}^3$, left Y axis) with the right Y axis denoting prescribed burn unit size (acres) corresponding to individual prescribed burns conducted within the airshed around Bend (orange triangles). Two air monitor locations are shown: Bend Pump Station and 8th Street. Air quality impacts during Spring prescribed burns were observed, but as demonstrated in later figures, these impacts were highly variable throughout the day and across the area. Air quality impacts were more frequent and severe from wildfire smoke than prescribed fire smoke. Bend experienced fewer smoky days in 2025 than preceding years.

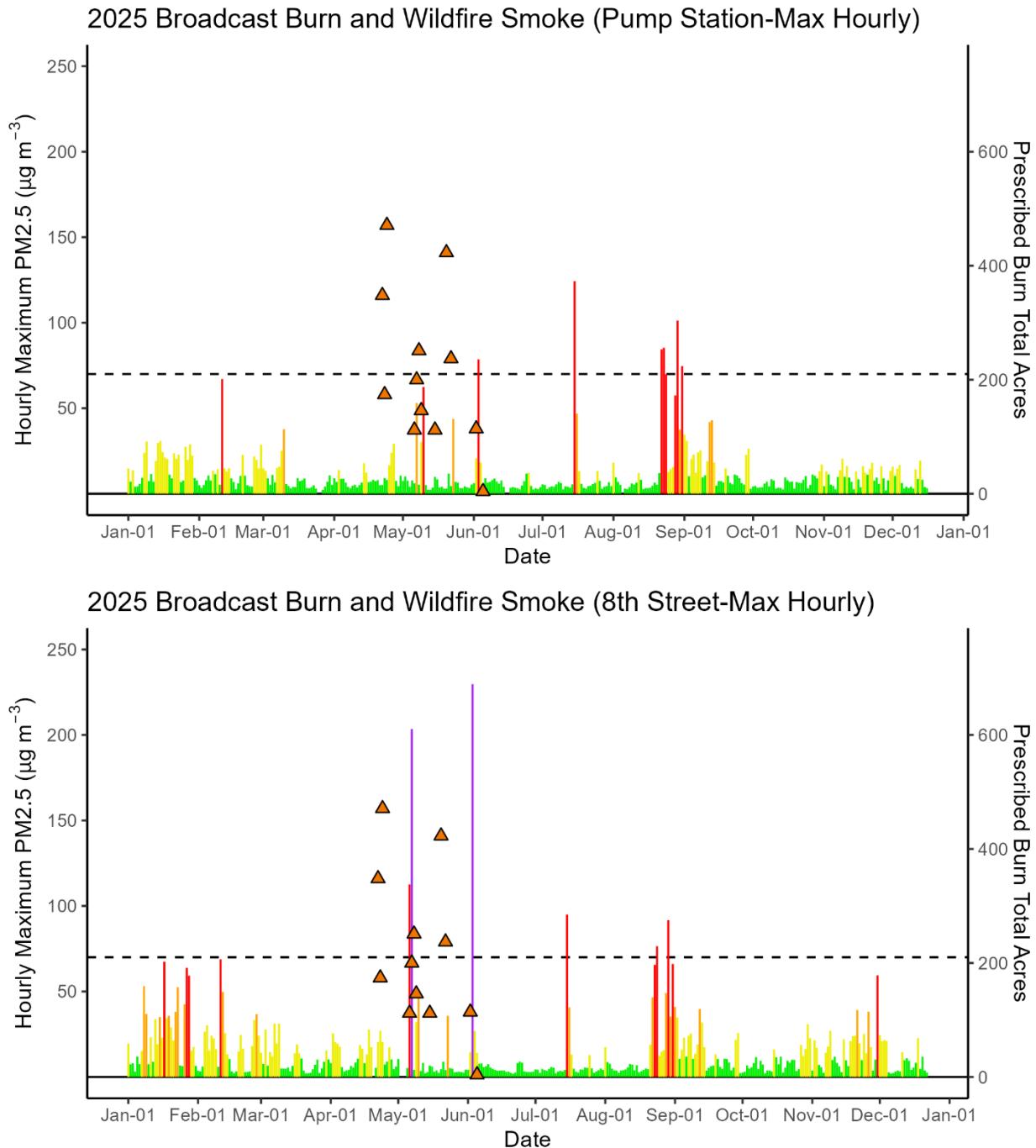


Figure 2: Maximum hourly PM2.5 ($\mu\text{g/m}^3$, left Y axis) with the right Y axis denoting prescribed burn unit size (acres) corresponding to individual prescribed burns conducted within the airshed around Bend (orange triangles). Air quality impacts are highly variable and localized as shown by the data from these two monitors. A 470-acre burn on 4/24 resulted in virtually no smoke impacts. A 113-acre burn on 6/2 resulted in a smoke intrusion on 6/3. Smoke impacts vary greatly from hour to hour, and are highest overnight and into the early morning hours. As described and reported previously, temperature inversions and topography play a dominant role in prescribed fire smoke impacts during Spring.

The following sections (A-D) are intended to address OAR 629-048-0180 (3)(f) (A) - (D) which states:

... SSRAs that have received an exemption must demonstrate they are implementing their community response plan through an annual report provided by the local health authority detailing:

- (A) Compliance with requirements in [629-048-0180](2);*
- (B) A summary of methods used to communicate to the public and vulnerable populations;*
- (C) A log of dates and times the community initiated their response plan;*
- (D) A record of local meetings to discuss or update the community response plan.*

(A) Compliance with Requirements The approved Bend SSRA CRP continues to be relevant and reflective of the smoke and public health issues in Central Oregon.

(B) Summary of Communication Methods

Communications Overview

During the months leading up to implementation of prescribed burning across the Deschutes National Forest, the Deschutes National Forest and Deschutes County Public Health attended several targeted events to increase community awareness about prescribed burning. The Deschutes National Forest provided information about planned operations, the need for prescribed burning, and how it supports the larger restoration framework. Deschutes County Public Health provided education about how to reduce the health impacts of smoke exposure and what resources are available to help people be smoke prepared.

Ahead of the prescribed burn season, the Deschutes National Forest met with key recreation stakeholders, including those who have special use permits to operate in areas impacted by prescribed burn closures west of Bend. This gave them early notification of likely impacts to their business operations, as well as providing them with contacts and touch points for any questions.

The Deschutes National Forest closely coordinated with recreation stakeholders, homeowners' organizations, tourism bureaus and the local amphitheater as prescribed burning commenced.

The Deschutes National Forest and Deschutes, Jefferson and Klamath County Public Health Departments issued concurrent press releases ahead of the prescribed burning season to inform Central Oregon communities about planned prescribed burn operations slated for the spring on the Deschutes National Forest and to provide resources to help the public prepare for smoke.

Public information officers played a crucial role during operations providing on the ground updates to the public at key locations adjacent to prescribed burns and where smoke was visible to the public.

Coordinated communications between the Deschutes National Forest and Deschutes County Public Health continued throughout the year around prescribed burning, pile burning, smoke impacts and resources.

Central Oregon Fire Website

The CentralOregonFire.org website is the centerpiece of the communication strategy for information related to wildfires, prescribed fire activity, and air quality impacts from smoke. Each agency can post relevant information they wish to make available to the public (Deschutes National Forest, Bureau of Land Management, Oregon Department of Forestry). The website is used throughout the year to keep the public and vulnerable populations up to date on when and where to expect prescribed fire and associated smoke. The website landing page shows a news feed with the most recent updates on prescribed burning and wildfires. Additional pages have interactive maps that are updated as burns are planned and implemented. Detailed information about smoke and health is posted on the site. Relevant information such as DEQ-issued Wildfire Smoke Advisories are also shared on the home page.

Summary of Notifications & Media

Please see attached spreadsheet (Appendix 3) for additional details.

Press Releases	27
Central Oregon Fire Website Posts	72
Text Alerts	23
Events Attended	9

Summary of Digital Media Reach

Current Text Alert Subscribers	26,475 Unique Opt-Ins (+2,502 from 2024)
Central Oregon Fire Info Twitter	22,643 Followers (+254 from 2024)
CentralOregonFire.org Email Subscribers	1,692 Subscribers

COFIRE Text Alerts

Opt-in text alerts are sent to subscribers for all understory prescribed burns and high-profile pile burning with details including location, planned acres and scheduled ignition time.

Central Oregon Fire Info X (formerly known as Twitter) (CentralORFire)

The Central Oregon Fire Info X (formerly known as Twitter) account is used to supplement information provided on the Central Oregon Fire Info website. Links to press releases are posted to the X (formerly known as Twitter) account.

In addition, supplemental posts outlining various phases of prescribed burn operations, including test fire, ignition progression and completion of ignitions are added to the account for high-visibility understory burns. The public is notified of daily pile burning updates not captured by a press release via X (formerly known as Twitter) posts.

Information is also amplified on the Deschutes National Forest's X (formerly known as Twitter) (16,726 Followers) and Facebook (37,000 Followers) accounts.

CentralOregonFire.org Email Subscribers

Blog posts added to the *CentralOregonFire.org* website are emailed out to those who have opted-in to the email subscription.

Print Products

The Deschutes National Forest and Deschutes County Public Health staff developed products to compliment community outreach efforts around prescribed burning:

- **Smoke and Health – Prescribed Burning 2 pager (appendix 1)** – The Deschutes National Forest and Deschutes County Public Health shared an updated handout to share at events, distribute to targeted community groups and provide via email to residents potentially impacted by smoke from prescribed burning. One side provided information about planned prescribed burns, why they're needed and how people can stay informed. The other side provided information regarding how to be smoke ready and where to find resources.
- **Map Overview Handouts** – The Deschutes National Forest developed handouts for each ranger district that included the information shared on the two-pager above as well as general maps showing potential prescribed burn locations for the season.
- **Central Oregon Fire Info Cards** – Business card-sized handouts including a QR code to the *CentralOregonFire.org* website and additional information about prescribed burning and air quality resources were distributed during public contacts at prescribed burns, during outreach events and by Forest Service staff when engaging with visitors in the field.

Community Outreach

- **Concurrent Press Releases** – The Deschutes National Forest and Deschutes, Jefferson and Klamath County Public Health Departments issued concurrent press releases ahead of the prescribed burning season to inform Central Oregon communities about planned prescribed burn operations slated for the spring on the Deschutes National Forest and to provide resources to help the public prepare for smoke.
- **Deschutes County Public Health Communications** – Tailored information about prescribed burns and protecting health from smoke were sent to Deschutes County residents as well as target audiences in partnership with agencies that serve priority populations.
 - **General Public:** [Central Oregon Public Health Newsletter](#) (40,000 subscribers); [Inside DC Newsletter](#) (47,000 subscribers).
 - **Intellectual/Developmental Disabilities:** DC I/DD staff provided announcements to all Foster Providers and also with case managers.
 - **Older Adults:** [Council on Aging of Central Oregon newsletter](#); 2-page handout provided to all Meals on Wheels clients in tri-county; handout included in DC Public Library packets mailed to assisted living facilities.

- **Spanish Speakers:** Two-Pagers along with a brief write-up were translated into Spanish and disseminated to community partners serving Spanish speakers.
- **Unhoused:** communications with service providers, offered N95's and coordination of cleaner air spaces
- **Youth/Parents/Families:** Information included in Family Spotlight Newsletter and shared on social media by Bend La Pine School District.
- **Outdoor Workers:** Shared two pager and reminder about spring burning with OSHA Compliance Office to pass along to employers in the area.
- **People with underlying health conditions:** information was shared in multiple meetings with clinical health care provider partners and a Health Alert Network (HAN) announcement was issued, reaching health care providers throughout the region.
- **Social Media**
 - **Deschutes National Forest (DNF) Pre-Season Social Media Campaign** – DNF ran pre-prescribed burn season social media campaign sharing about upcoming plans, how people can stay informed and the role of prescribed burning in restoring our fire-dependent ecosystem and reducing wildfire risk.
 - **Deschutes County Social Media** Deschutes County (DC) released a suite of social media posts about being smoke ready throughout prescribed fire and wildfire seasons. Posts were provided in Spanish when possible.
- **Media Interviews** – Deschutes National Forest public affairs staff conducted media interviews spanning television, radio and print media to provide information on stories related to prescribed burning.
- **Burn Day Notification Process** – For each individual prescribed burn, outreach and communication efforts included a press release (sent to local media and several tailored email distribution lists depending on location), text alert, website posting and social media.
- **Public Information Officer Presence** – Provided onsite public information officers (PIOs) for all high-profile prescribed burns that were visible from communities. For prescribed burning west of Bend, PIOs spent time talking to the public at locations including, Cascade Lakes Welcome Station, Phil's Trailhead, and various road / trail closure locations.

Community Events and Presentations – During the months leading up to implementation of prescribed burning, the Deschutes National Forest and Deschutes County Public Health participated in targeted events, presentations and outreach opportunities to increase community awareness about prescribed burning.

Additional outreach opportunities took place later in the summer in Sisters, as agencies and community groups came together to respond and reflect on impacts related to the Flat Fire.

Community Resource Huddle	Central Oregon
Deschutes Collaborative Forest Project – Outreach Subcommittee Meeting	Central Oregon
Deschutes Collaborative Forest Project – Prescribed Burn Subcommittee Meeting	Central Oregon
Deschutes County Library Newsletter	Central Oregon
Deschutes County Public Health – Key Stakeholders Meeting	Central Oregon
La Pine Senior Center Lunch Discussion	La Pine
Meals on Wheels – Two-Pager Dissemination to Clients	Central Oregon
Outfitter & Guide / Recreation Special Use Permittees - Key Stakeholder Meeting	Bend
Quarterly Call – Visit Bend / Visit Central Oregon	Central Oregon
Target Email – Bend neighborhood associations & HOA groups	Bend
Wildfire Preparedness Fair	Bend
Wildfire Preparedness Fair	La Pine
Wildfire Preparedness Fair	Sisters
Flat Fire Community Meeting	Sisters
Essential Wildland Fire Knowledge Workshop	Sisters

Cleaner Air Spaces and Additional Mitigation Strategies

DCPH works with community partners and houseless service providers to ensure access to cleaner air spaces and cooling centers throughout summer hazards season. Cleaner air spaces and cooling shelters are not widely promoted during prescribed burning season because of the conditions; the smoke tends to occur briefly and overnight when the temperatures are cool. However, DCPH staff communicate with partners to make sure that they are aware of the prescribed burns in advance, asking that they share this information with the clients they serve.

During wildfire season, DCPH notifies partners when air quality index levels are expected to be unhealthy or worse for 24 hours, recommending shelters consider adding capacity when possible. Knowing that there are barriers to people accessing shelter, DCPH also provides health education materials and resources to partners, who then distribute those information and resources to clients during outreach efforts.

We are actively looking for ways to measure impacts of this work through available data. In 2025, there were 6 air quality advisories for wildfire smoke issued in Deschutes County. DCPH staff sent communications to partners for 5 of these advisories.

In previous years we have asked for daytime and overnight shelter operators to share visitor numbers, in hopes to identify any trends between shelter utilization and smoke impacts. This reporting was paused as there are numerous limitations to the data and no trends were observed; the process of collecting this data also placed additional burden on shelter partners. After wildfire season is over, we convene a meeting with partners to share an overview of the summer hazards season and discuss lessons, challenges and opportunities that arose.

Additional efforts to provide supports for protecting vulnerable community members from smoke are described below.

- N95 Masks: These were allocated to multiple partners and offered at outreach events, including Sisters Fire, Discover your Forest, La Pine Senior Center and other partners. N95 masks are also available by request and distributed to service providers who give masks to houseless clients during outreach efforts.
- Box Fan Filters: Bet-Air, a nonprofit founded by students in Portland, contacted us to donate 10 of these kits in Spring 2025. These were distributed across the tri-county during spring wildfire related outreach events. We have 25 additional filter kits to distribute in Spring 2026 thanks to their generosity.

Additional Surveillance

DCPH staff monitor local ER and urgent care visits throughout the year. During summer wildfire season, an epidemiologist provides an ongoing report that overlays PM 2.5 from area monitors with respiratory or asthma-related visits that may be attributed to smoke. The numbers are too low to be statistically significant, or to warrant public health action. Staff also track this how this information is reported at the state level during wildfire smoke advisory briefings.

(C) Initiation of Community Response Plan

It is recognized and acknowledged that 629-048-0180 (3)(f)(C) requires an actual log of dates the community initiated their response plan. So, even though the CRP is truly a year-round effort without a start or stop time that can be logged, the attached spreadsheet summarizes when information was shared with the community related to prescribed fire. In addition, note that prescribed fire activity happening throughout the region is included, as the strategy in the CRP is regional in nature even though the SSRA is specific to the City of Bend. Smoke from other areas not directly adjacent to Bend have the potential impact the Bend SSRA, so burning throughout the region is summarized below.

One intrusion was recorded in the Bend SSRA on 6/3, related to burning of 113 acres on 6/2 (WB Big Eddy 1).

(D) Record of Local Meetings Regarding Community Response Plan

Many partners that were engaged with the West Bend Pilot project in 2024 remained engaged as planning took place for prescribed fire in 2025. Bi-weekly planning and collaboration meetings were held from April through June. In 2025 there was nevertheless effort to avoid the term “pilot project” and move towards “business as usual” operations; a key objective of the ongoing work in West Bend is to operationalize the strategies and learnings from 2024.

Bi-weekly planning meetings were held on the dates listed below. Agencies represented at these meetings: Deschutes National Forest, Deschutes County Public Health, Oregon

Department of Environmental Quality, Oregon Health Authority, Environmental Protection Agency, and Oregon Health Authority.

April 14; April 28; May 12; June 2; June 9

Local partners met to review the year's activities on December 1st.

In addition to meetings focused on Bend SSRA activities, key partners attended a virtual meeting on November 13th, hosted by the EPA, to discuss key elements/lessons for replicating the West Bend Project more broadly.

The Environmental Quality Commission also toured the West Bend project area on May 5th. Several local and state partners attended to present information about prescribed fire, communications and public health partnership efforts.

Appendix 1: Prescribed Burn one-pager

Appendix 2: Photos from 2025 Prescribed Burning Activity

Appendix 3: Detailed Prescribed Burn Communications Tracking

Appendix 1



What to know about **smoke** during prescribed fire season

Prescribed burning can bring smoky air to Central Oregon. The good news is, we know when these burns are happening so we can be prepared. This is the best time to prepare for wildfire season, when the smoke can show up without warning, and stick around for longer.



WHY DO WE CARE ABOUT SMOKE?

Wildfire smoke affects everyone's health. It is important for all of us to limit our exposure to smoke! Some people may have worse symptoms, including people with health conditions or over age 65.

How to protect your health from smoke during prescribed burns

- Close your windows! Smoke may be worse overnight
- Locate cleaner air spaces by calling 211
- Talk to your health care team and make a plan if you have health conditions
- The Air Quality Index (AQI) tells us when it is safe to be outdoors. Find the AQI for your area at www.fire.airnow.gov
- Be willing to change your plans to avoid smoke
- Keep indoor air as clean as possible
- Wear an N95 mask for extreme smoke or long periods of time outside

Have questions? Need more info? Learn more at
<https://centraloregonfire.org/protect-your-health/> or scan here:



To request this information
 in an alternate format, please call (458) 292-8347 or email healthservices@deschutes.org.

Appendix 2





Date	Prescribed Fire Activity	Jurisdiction	Unit(s)	Location	Central Oregon Fire Posts	Deschutes National Forest Press Releases	Distribution Lists	Text Alerts	Media	PIO Presence
January										
February										
March										
April										
9-Apr	Deschutes National Forest Plans Spring Prescribed Burning Season	Deschutes National Forest		Forest-wide	1	1	Prescribed Burning Notifications, Media (may have been additional lists)			
14-Apr	Sisters Ranger District Firefighters Plan 60 acre Prescribed Burn Southeast of Sisters Tomorrow	Deschutes National Forest	SAFR 12	Sisters Ranger District, SE of Sisters	1	1	Prescribed Burning Notifications, Media, Recreation Stakeholders, Sisters Interests	1		Yes
17-Apr	Sisters Ranger District Firefighters Plan 20 acre Prescribed Burn Southeast of Sisters Tomorrow	Deschutes National Forest	SAFR 3	Sisters Ranger District, SE of Sisters	1	1	Prescribed Burning Notifications, Media, Recreation Stakeholders, Sisters Interests	1		Yes
21-Apr	Bend-Fort Rock Ranger District Firefighters Plan 169 acre Prescribed Burn Northeast of La Pine Tomorrow	Deschutes National Forest	Thor 4 (Thor 2 added at Bend-Fort Rock)	Bend-Fort Rock District, NE of La Pine	1	1	Prescribed Burning Notifications, Media, Recreation Stakeholders, Bend Neighborhood Districts, Bend Resident Orgs, La Pine Interests, Sisters Interests	1		No
21-Apr	Sisters Ranger District Firefighters Plan 34 acre Prescribed Burn East of Camp Sherman Tomorrow	Deschutes National Forest	Metolius 28	Sisters Ranger District, E of Camp Sherman	1	1	Prescribed Burning Notifications, Media, Recreation Stakeholders, Sisters Interests	1		Yes
22-Apr	Bend-Fort Rock Ranger District Firefighters Plan 173 acre Prescribed Burn Northeast of La Pine Tomorrow	Deschutes National Forest	Thor 3	Bend-Fort Rock District, NE of La Pine	1	1	Prescribed Burning Notifications, Media, Recreation Stakeholders, Bend Neighborhood Districts, Bend Resident Orgs, La Pine Interests, Sisters Interests	1		No
23-Apr	Bend-Fort Rock Ranger District Firefighters Plan 450 acre Prescribed Burn West of Bend Tomorrow	Deschutes National Forest	Voodoo 6/Grandslam 1	Bend-Fort Rock District, W of Bend	1	1	Prescribed Burning Notifications, Media, Recreation Stakeholders, Bend Neighborhood Districts, Bend Resident Orgs, La Pine Interests, Sisters Interests	1		Yes
23-Apr	Sisters Ranger District Firefighters Plan 8d acre Prescribed Burn South of Sisters Tomorrow	Deschutes National Forest	SAFR 7	Sisters Ranger District, S of Sisters	1	1	Prescribed Burning Notifications, Media, Recreation Stakeholders, Sisters Interests	1		Yes
29-Apr	Sisters Ranger District Plans Prescribed Burn Wednesday Four Miles South of Sisters	Deschutes National Forest	SAFR 4	Sisters Ranger District, Sisters	1	1	Prescribed Burning Notifications, Media, Recreation Stakeholders, Sisters Interests	1		Yes
May										
5-May	Prescribed Burning Planned West of Bend on Tuesday up to 111 Acres	Deschutes National Forest	Tiddly Winks Unit 9	Bend-Fort Rock Ranger District	1	1	Prescribed Burning Notifications, Media, Recreation Stakeholders, Bend Neighborhood Districts, Bend Resident Orgs, La Pine Interests, Sisters Interests	1		Yes
6-May	Prescribed Burning Planned South of Sisters and Northeast of La Pine on Wednesday	Deschutes National Forest	Odin North 3 & 7 / SAFR 34	Bend-Fort Rock District, 4 miles NE of La Pine / Sisters Ranger District 3 miles south of Sisters	1	1	Prescribed Burning Notifications, Media, Recreation Stakeholders, Bend Neighborhood Districts, Bend Resident Orgs, La Pine Interests, Sisters Interests, Sunriver Interests	1		Yes
7-May	Bend-Fort Rock Ranger District Firefighters Plan 395 acre Prescribed Burn Northeast of La Pine	Deschutes National Forest	Thor 6 & 7	Bend-Fort Rock District, NE of La Pine	1	1	Prescribed Burning Notifications, Media, Recreation Stakeholders, Bend Neighborhood Districts, Bend Resident Orgs, La Pine Interests, Sunriver Interests	1		No
7-May	Cross-boundary Prescribed Burn Planned for 55 Acres within the Metolius Basin	Deschutes Land Trust's Metolius	Metolius Preserve	Sisters Ranger District, Metolius Basin	1	1	Prescribed Burning Notifications, Media, Recreation Stakeholders, Sisters Interests	2		Yes
14-May	Prescribed Burning Planned Across the Deschutes National Forest on Thursday	Deschutes National Forest	Odin North 7 / DMR11 / SAFR 34	Bend-Fort Rock District, 4 miles NE of La Pine / Crescent Ranger District 5 miles SE of Crescent / Sisters Ranger District 3 miles S of Sisters & E of FSR 16	1	1	Prescribed Burning Notifications, Media, Recreation Stakeholders, La Pine Interests, Sisters Interests, Sunriver Interests	1		Yes
14-May	Cross-Boundary Prescribed Burn Planned Again for 55 Acres in the Metolius Basin	Deschutes Land Trust's Metolius Preserve and Deschutes National Forest	Metolius Preserve	Sisters Ranger District, Metolius Basin	1	1	Prescribed Burning Notifications, Media, Recreation Stakeholders, Sisters Interests	1		No
15-May	Prescribed Burning Continues Northeast of La Pine and North of Sisters on Friday	Deschutes National Forest	Thor 11 & 12 / Hwy 20 Unit 63	Bend-Fort Rock Ranger District 4 miles NE of La Pine / Sisters Ranger District 1/2 mile east of Hwy 20	1	1	Prescribed Burning Notifications, Media, Recreation Stakeholders, La Pine Interests, Sisters Interests, Sunriver Interests	1		Yes
16-May	Cancelled Prescribed Burn Northeast of La Pine Due to Unfavorable Conditions Today	Deschutes National Forest	Thor 11 & 12	Bend-Fort Rock Ranger District 4 miles NE of La Pine	1	1	Prescribed Burning Notifications, Media, Recreation Stakeholders, La Pine Interests, Sunriver Interests	0		

19-May	Prescribed Burning Planned 15 Miles Southeast of Bend on Tuesday	Deschutes National Forest	Opine 5D	Bend-Fort Rock Ranger District 15 miles SE of Bend	1	1	Prescribed Burning Notifications, Media, Recreation Stakeholders, La Pine Interests, Sunriver Interests	1		No	
20-May	Prescribed Burns Planned Across the Deschutes National Forest on Wednesday Including West of Bend	Deschutes National Forest	Big Eddy 1 / Tiddlywinks 2 / 5-Mile Unit 12 / SAFR 46	Bend-Fort Rock Ranger District 1 mile SW of Bend / Crescent Ranger District 7 miles SW of Sisters / Sisters Ranger District 3/4 mile south of Sisters	1	1	Prescribed Burning Notifications, Media, Recreation Stakeholders, La Pine Interests, Sisters Interests, Sunriver Interests, Bend Neighborhood Districts, Bend Resident Orgs	1		Yes	
21-May	Prescribed Burning West of Bend Cancelled for Wednesday	Deschutes National Forest	Big Eddy 1 / Tiddlywinks 2	Bend-Fort Rock Ranger District 1 mile SW of Bend	1	1	Prescribed Burning Notifications, Media, Recreation Stakeholders, La Pine Interests, Sunriver Interests, Bend Neighborhood Districts, Bend Resident Orgs	1			
21-May	Prescribed Burning Planned Thursday Northeast of La Pine and North of Sisters	Deschutes National Forest	Thor 11 &12 / Hwy 20 Units 81 & 93	Bend-Fort Rock Ranger District 4 miles NE of La Pine / Sisters Ranger District 3.5 miles west of Sisters	1	1	Prescribed Burning Notifications, Media, Recreation Stakeholders, La Pine Interests, Sisters Interests, Sunriver Interests	1		Yes	
22-May	Prescribed Burn West of Sisters Cancelled for Thursday	Deschutes National Forest	Hwy 20 Units 81 & 93	Sisters Ranger District 3.5 miles west of Sisters	1	1	Prescribed Burning Notifications, Media, Recreation Stakeholders, Sisters Interests,	0			
June											
1-Jun	Prescribed Burning Planned West of Bend and North of Sisters on Monday	Deschutes National Forest	Big Eddy 1 / Highway 20 Units 81 & 93	Bend-Fort Rock Ranger District 1 mile SW of Bend / Sisters Ranger District 3.5 miles west of Sisters	1	1	Prescribed Burning Notifications, Media, Recreation Stakeholders, La Pine Interests, Sisters Interests, Sunriver Interests, Bend Neighborhood Districts, Bend Resident Orgs	1		Yes	
2-Jun	Prescribed Burning Planned Tuesday Southwest of Sisters and Southwest of Crescent	Deschutes National Forest	Sting 16 / SAFR 240	Crescent Ranger District 12 miles SW of Crescent / Sisters Ranger District 2 miles SW of Sisters	1	1	Prescribed Burning Notifications, Media, Recreation Stakeholders, La Pine Interests, Sisters Interests, Sunriver Interests	1	Yes	Yes	
4-Jun	Deschutes National Forest Plans Three acre Burn West of Sunriver Thursday for Field Training	Deschutes National Forest	FI-210 Plots	Bend-Fort Rock Ranger District 1 mile west of Sunriver	1	1	Prescribed Burning Notifications, Media, La Pine Interests, Sunriver Interests	1		No	
July											
August											
September											
October											
14-Oct	Deschutes National Forest Plans Fall Pile Burning Season	Deschutes National Forest	General Pile Burning Season	General for Bend-Fort Rock, Crescent & Sisters Ranger Districts	1	1	Prescribed Burning Notifications, Media, Recreation Stakeholders, La Pine Interests, Sisters Interests, Sunriver Interests	0	Yes		
Oct. Daily Pile Burning Posts											
4-Nov	Deschutes National Forest Continues Pile Burning Season	Deschutes National Forest	General Pile Burning Season	General for Bend-Fort Rock, Crescent & Sisters Ranger Districts	1	1	Prescribed Burning Notifications, Media, Recreation Stakeholders, La Pine Interests, Sisters Interests, Sunriver Interests	0	Yes		
Nov. Daily Pile Burning Posts											
December	Dec	Daily Pile Burning Posts	Deschutes National Forest	BFR, CRE, SIS Piles	Across districts	19					
	Year End Total					72	27		23		