



BOARD OF COMMISSIONERS

BOARD OF COUNTY COMMISSIONERS MEETING

9:00 AM, WEDNESDAY, APRIL 15, 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 Board of Commissioners provides time during its public meetings for Citizen Input. Alternatively, comments may be submitted on any topic at any time by emailing 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: <https://bit.ly/4bXfL6g>.
- To join by phone, call 253-215-8782 and enter webinar ID # 160 497 4576.
- 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. Citizen Input is not available for matters that have closed records, are presently scheduled for a quasi-judicial public hearing, or are anticipated or likely to come before the Commissioners as a future quasi-judicial public hearing. Time is limited to 3 minutes.

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

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

COMMISSIONER ANNOUNCEMENTS

CONSENT AGENDA

1. Approval of Resolution No. 2026-014 authorization the application for an Assessment and Taxation grant from the Oregon Department of Revenue
2. Approval of a Notice of Intent to Award Contract to Kirby Nagelhout Construction Company for the Gray Courthouse Improvements Project
3. Consideration of Board Signature on letter extending Jessica Kieras' appointment to the Planning Commission for a period of two years
4. Approval of the BOCC meeting minutes of March 30 and April 1, 2026

ACTION ITEMS

5. **9:10 AM** Second Reading of Ordinance No. 2026-009 rezoning property at 19975 Destiny Court, Bend from Exclusive Farm Use to Multiple Use Agricultural
6. **9:15 AM** Deschutes County District Attorneys' Association (DCDAA) — Ratified Successor Collective Bargaining Agreement
7. **9:25 AM** Consideration of using CHRO budget funds or other identified County revenue to pay an additional \$2,104 for the Gales' Land Use Application Fee
8. **9:45 AM** Oregon State Fire Marshal & Model Defensible Space Code Discussion

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.

9. Executive Session under ORS 192.660 (2) (h) Litigation

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: April 15, 2026

SUBJECT: Approval of Resolution No. 2026-014 authorization the application for an Assessment and Taxation grant from the Oregon Department of Revenue

RECOMMENDED MOTION:

Move approval of Resolution No. 2026-014 authorizing the Assessor's Office to apply for an Assessment and Taxation grant from the Oregon Department of Revenue.

BACKGROUND AND POLICY IMPLICATIONS:

The grant amount will be based on Deschutes County's percentage of the total amount of all Oregon county's individual statewide assessment and taxation amounts.

BUDGET IMPACTS:

Estimated \$950,000 in revenue for FY 26-27.

ATTENDANCE:

Scot Langton, Deschutes County Assessor

REVIEWED

LEGAL COUNSEL

04/15/2026 Item #1.

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON
A Resolution Approving a Grant Application with *
the Oregon Department of Revenue * RESOLUTION NO. 2026-014
*

WHEREAS, Deschutes County is applying to the Department of Revenue in order to participate in the Assessment and Taxation Grant; and

WHEREAS, this state grant provide funding for counties to help them come into compliance or remain in compliance with ORS 308.232, 308.234, ORS Chapters 309, 310, 311, 312, and other laws requiring equity and uniformity in the system of property taxation; and

WHEREAS, Deschutes County has undertaken a self-assessment of its compliance with the laws and rules that govern the Oregon property tax system. County is generally in compliance with ORS 308.232, 308.234, ORS Chapters 308, 310, 311, 312, and other laws requiring equity and uniformity in the system of property taxation , now, therefore,

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

Section 1. County agrees to appropriate the budgeted dollars based on 100 percent of the expenditures certified in the grant application in the amount of \$10,077,389 the total expenditure amount for consideration in the grant. If 100 percent of the expenditures is not appropriated or the county is out of compliance with the laws referred to in the recitals, no grant shall be made to the county for the quarter in which the county is out of compliance.

Section 2. County designates Scot Langton, County Assessor, phone number (541)388-6513, email address scotl@co.deschutes.or.us , as the county contact person for this grant application

DATED this ____ day of _____, 2026.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

Phil Chang, Chair

Anthony DeBone, Vice Chair

ATTEST:

Recording Secretary

Patti Adair, Commissioner



Form 1 Grant Application Staffing 2026-2027

	Column 1	Column 2	Column 3
County <u>DESCHUTES</u>	Approved FTE	Budgeted FTE	Change
	(2025-26)	(2026-27)	(Column 2 less Column 1)
A. Assessment administration			
Assessor, deputy, etc.	2.00	2.00	0.00
Assmt. support staff, deed clerks and data entry staff	10.26	10.26	0.00
Total assessment administration staff	12.26	12.26	0.00
B. Valuation and appraisal staff			
Chief appraisers/appraiser supervisor	1.00	1.00	0.00
Lead appraisers	2.00	2.00	0.00
Residential appraisers	8.50	8.50	0.00
Commercial/industrial appraisers	2.00	2.00	0.00
Farm/forest/rural appraisers.....	0.50	0.50	0.00
Manufactured structure/floating structure appraisers	0.50	0.50	0.00
Personal property appraisers.....	2.00	2.00	0.00
Personal property clerks.....	0.00	0.00	0.00
Sales data analyst.....	0.00	0.00	0.00
Data gatherers and appraisal techs.....	2.50	2.50	0.00
Total valuation and appraisal staff	19.00	19.00	0.00
C. Property Value Appeals Board (PVAB)	0.52	0.52	0.00
D. Tax collection and distribution administration			
Administration, deputy, etc.....	0.70	0.70	0.00
Support and collection	2.75	2.75	0.00
Tax distribution	0.20	0.20	0.00
Foreclosure and garnishment.....	0.30	0.30	0.00
Total tax collection and distribution staff	3.95	3.95	0.00
E. Cartography and GIS administration			
Cartographic/GIS supervisor.....	1.00	1.00	0.00
Lead cartographers	0.00	0.00	0.00
Cartographers.....	2.00	2.00	0.00
GIS specialists	1.00	1.00	0.00
Total cartographic and GIS staff	4.00	4.00	0.00
F. Dedicated IT services for A&T	0.93	0.96	0.03
G. Total assessment and taxation staffing	40.66	40.69	0.03



Form 2 Explanation of Staffing Issues

2026-2027

County DESCHUTES

In this section, explain any difference between approved staffing for the current year and staffing for the budgeted year. Explain why any funded positions were unfilled for the current year. Use this form to describe the intended use of nonpermanent workers (temporary help, project temporaries, and contractors) by A&T function, along with their cost. Note any special or unique aspects regarding who accomplishes the work and how they accomplish it related to Forms 4, 5, and 6. For example, if you use staff to perform personal property functions, other than those reported on Form 1, Section B, note that here and include the FTE.

Tax Office is part of the Finance Office; which also includes transient room tax and dog licensing

Temporary help and part time help is used in both the Assessor and Tax Offices during peak seasons and specific projects



Form 3 General Comments

2026-2027

County DESCHUTES

Use this form to describe any issue in your budget that needs further clarification. Examples include significant changes on Form 7, purchase of a new data processing system, salary increases, new car purchases, personnel services, costs for mapping, etc. You can also use this form to document any miscellaneous comments about this grant application.

The FY 2026–2027 budget is subject to a constraint limiting the total budget increase for both the Assessor’s Office and the Tax Office to a maximum of 4.0%. However, rising personnel costs and other County charges exceed this 4.0% threshold, creating additional financial pressure. Personnel cost increased significantly for FY26/27 as an outcome of the implementation of a recent County wage and equity study.

Assessor’s Office

The Assessor’s Office budget falls below the level required to sustain a “hold-the-line” status quo budget, which assumes no additional FTEs or capital investment in new technologies. Under current projections, the budget reflects an approximate shortfall of \$150,000. This is accounted for through a negative personnel adjustment (line item 0010250 410999, “Personnel Clearing”)

Maintaining a balanced budget under these conditions will significantly impact the Office’s ability to fill existing and future vacancies in a timely manner. As a result, there is increased risk to the Office’s capacity to produce a timely, equitable, and accurate tax roll.

Additionally, these constraints limit the Office’s ability to adopt and leverage emerging technologies, including AI-driven solutions. Workforce sustainability is also a concern, as approximately 20% of current staff are expected to become eligible for retirement within the next several years, making transition management more challenging.

Tax Office

The Tax Office has implemented reductions across multiple budgeted line items in order to comply with the 4.0% total budget increase limitation.

IT/GIS

The IT/GIS budget reflects an increase driven primarily by two key projects:

- Rewrite and modernization of the A&T Webpage Property Search (DIAL)
- Upgrade to a new version of ArcGIS Pro

The significant increase in tax code changes reported on Form 6 is primarily attributable to House Bill 3940, passed during the 2025 Legislative Session. This legislation modified the interaction between property tax assessments in areas where Oregon Department of Forestry protection overlaps with Rural Fire Protection Districts. The resulting adjustments led to a notable, but anticipated, increase in tax code changes for FY26/27. This is expected to be a one-time adjustment associated with the implementation of the new law



Form 4 Valuation and Appraisal Resources

2026-2027

County DESCHUTES

Activities	Number of accounts by activity		Number of FTE by activity	
	Actual (2025-26)	Estimated (2026-27)	Actual (2025-26)	Estimated (2026-27)
1. Real property exceptions, special assessments and exemptions				
New construction.....	6,552	7,500	10.00	10.00
Zone changes.....	32	28	0.01	0.01
Subdivisions, segregations, and consolidations....	1,200	1,500	1.50	1.50
Omitted properties	71	75	0.01	0.01
Special assessment qualification and disqualification	57	50	0.40	0.40
Exemptions.....	887	940	0.20	0.20
Subtotal.....	8,799	10,093	12.12	12.12
2. Appeals and assessor review				
Assessor review and stipulations	96	100	0.10	0.10
PVAB	82	100	0.20	0.25
Department of Revenue.....	0	0	0.00	0.00
Magistrate Division of the Oregon Tax Court.....	9	10	0.10	0.50
Regular Division of the Oregon Tax Court.....	1	1	0.01	0.01
Subtotal.....	188	211	0.41	0.86
3. Real property valuation				
Physical reappraisal.....	620	1,000	1.52	1.07
Recalculation only—no appraisal review	54,149	55,000	1.25	1.25
Subtotal.....	54,769	56,000	2.77	2.32
4. Business personal property (returns mailed)	6,383	6,370	2.00	2.00
5. Ratio			1.50	1.50
6. Continuing education			0.20	0.20
7. Other valuation—appraisal activity			0.00	0.00
8. Total valuation and appraisal staff (FTE)			19.00	19.00



Form 5 Tax Collection and Distribution Work Activity

2026-2027

County DESCHUTES

**Number of accounts
by activity**

Actual (2025-26) Estimated (2026-27)

1. Number of accounts requiring roll corrections		
Business personal property	62	60
Personal property manufactured structures	20	15
Real property	544	400
2. Number of accounts requiring a refund		
Business personal property	21	12
Personal property manufactured structures	13	5
Real property	153	130
3. Number of delinquent tax notices sent		
Business personal property	253	280
Personal property manufactured structures	372	385
Real property	3,231	3,275
4. Number of foreclosure accounts processed		
Real property only	7	15
5. Number of accounts issued redemption notices		
Real property only	7	5
6. Number of warrants	510	525
7. Number of garnishments.....	19	25
8. Number of seizures	0	0
9. Number of bankruptcies.....	21	26
10. Number of accounts with an address change processed	6,506	6,610
11. How many second trimester statements do you mail?	11,427	
12. How many third trimester statements do you mail?	9,824	
13. Does the county contract for lock box service?.....	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
14. Does the county use in-house remittance processing?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
15. Is tax collecting combined with another county function?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
If yes, describe that function on Form 2.		



Form 6 Assessment and Administrative Support and Cartography Work Activity

2026-2027

County DESCHUTES

Assessment and administrative support work activity		
	Numbers by activity	
	Actual (2025-26)	Estimated (2026-27)
1. Number of deeds worked	<u>14,236</u>	<u>16,500</u>

Cartography work activity		
	Numbers by activity	
	Actual (2025-26)	Estimated (2026-27)
1. Number of new tax lots	<u>1,221</u>	<u>1,350</u>
2. Number of lot line adjustments	<u>126</u>	<u>135</u>
3. Number of consolidations	<u>45</u>	<u>50</u>
4. Number of new maps	<u>19</u>	<u>15</u>
5. Number of tax code boundary changes	<u>19</u>	<u>2,650</u>



Form 7 Summary of Expenses

2026-2027

County DESCHUTES

	A. Assessment Administration	B. Valuation	C. PVAB	D. Tax Collection & Distribution	E. Cartography*	F. Dedicated IT services for A&T	Totals
1. Personnel services	1,985,183	3,188,903	82,448	766,558	909,946	149,708	7,082,746
2. Materials and services	160,407	358,520	9,977	269,270	73,526	762,210	1,633,910
3. Transportation	0	46,291	0	0	0	0	46,291
4. Total current operating expenses (Total direct expenses)	2,145,590	3,593,714	92,425	1,035,828	983,472	911,918	8,762,947

* Include approved grant funding for ORMAP

Indirect expenses

5. Total direct expenses (line 4)	8,762,947
6. If you use the 5 percent method to calculate your indirect expenses, enter 0.05 in this box.	0
Total indirect expenses (line 5 multiplied by line 6).....	0
6A. If you use a percent amount approved by a federal granting agency to calculate your indirect expenses, enter that percentage in this box.....	0.15000
Total indirect expenses (line 6A multiplied by the direct expense amount for the category/categories that your certificate allows)	1,314,442
7. Total indirect expenses	1,314,442

Capital outlay

8. Enter the actual capital outlay without regard to limitation.	Assessment Administration	Valuation	PVAB	Tax Collection & Distribution	Cartography	Dedicated IT Services for A&T	Total capital outlay without regard to limitation
	0	0	0	0	0	0	0
9. Total direct and indirect expenses (add line 4 and line 7)							10,077,389
10. Direct and indirect expenses multiplied by 0.06.....							604,643
11. The greater of line 10 or \$50,000.....							604,643
12. Capital outlay (the lesser of line 8 or line 11)							0
13. Total expenditures for CAFFA consideration (sum of lines 4,7, and 12)							10,077,389



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: April 15, 2026

SUBJECT: Approval of a Notice of Intent to Award Contract to Kirby Nagelhout Construction Company for the Gray Courthouse Improvements Project

RECOMMENDED MOTION:

Move approval of Document No. 2026-0280, a Notice of Intent to Award a contract to Kirby Nagelhout Construction Company for the Gray Courthouse Improvements project.

BACKGROUND AND POLICY IMPLICATIONS:

The Gray Courthouse Improvements project includes a tenant improvement for the District Attorney's Office. The tenant improvement will renovate floors 1, 2, and 3 to provide additional office spaces, meeting spaces, updates to common spaces, and improve security at public spaces. Other building-wide improvements include flooring replacement, LED lighting upgrade, limited rooftop mechanical unit replacement, seismic upgrades, roofing replacement, building envelope repairs, site drainage, and site security improvements.

Deschutes County Facilities Department prepared bid solicitation documents and an Invitation to Bid was posted on the Deschutes County website on March 2, 2026, advertised in the Bend Bulletin on March 3-6, 2026, and advertised in the Daily Journal of Commerce on March 2, 4, 6, 2026.

The Department reviewed the bids on April 7, 2026 and the low bid is below the construction cost estimate of \$5,175,000.

Approximately thirty-six (36) general contractors and sub-contractors attended the mandatory pre-bid meeting, and six (6) bids were submitted:

<u>BIDDER</u>	<u>TOTAL BID AMOUNT</u>
Kirby Nagelhout Construction Company	\$4,539,475
Griffin Construction LLC	\$4,648,500
2KG Contractors, Inc.	\$4,763,000
T.J. Nisbet Construction, Inc.	\$5,128,196
Sunwest One, Inc. dba Sunwest Builders	\$5,171,489
Truebeck Construction, Inc.	\$5,904,000

This action issues a Notice of Intent to Award the contract to the apparent low bidder, Kirby Nagelhout Construction Company, and allows seven days for concerned parties to protest the award. If there is no protest within the seven-day period, the contract will be awarded to the apparent low bidder.

BUDGET IMPACTS:

Project costs for construction services are budgeted for Fiscal Year 2027 in Campus Improvement Fund 463, General County Projects Fund 070, and Park Acquisition and Development Fund 130.

ATTENDANCE:

Lee Randall, Facilities Director
Eric Nielsen, Facilities Capital Improvement Manager



BOARD OF COUNTY COMMISSIONERS

April 15, 2026

Sent via electronic mail & first class mail

Kirby Nagelhout Construction Co.
Attn: Mike Taylor
20635 Brinson Blvd
Bend, OR 97701
MikeT@KirbyNaghout.com

RE: Contract for Deschutes County Gray Courthouse Improvements Project

NOTICE OF INTENT TO AWARD CONTRACT

On April 15, 2026, the Board of County Commissioners of Deschutes County, Oregon, considered bids for the above-referenced project. The Board of County Commissioners determined that the successful proposer for the project was Kirby Nagelhout Construction Co.

This Notice of Intent to Award Contract is issued pursuant to Oregon Revised Statute (ORS) 279C.375. Any entity which believes that they are adversely affected or aggrieved by the intended award of contract set forth in this Notice may submit a written protest within seven (7) calendar days after the issuance of this Notice of Intent to Award Contract to the Board of County Commissioners of Deschutes County, Oregon at Deschutes Services Building, 1300 NW Wall Street, Bend Oregon, 97703. **The seven (7) calendar day protest period will expire at 5:00 PM on Wednesday, April 22, 2026.**

Any protest must be in writing and specify any grounds upon which the protest is based. Please refer to Oregon Administrative Rules (OAR) 137-049-0450. If a protest is filed within the protest period, a hearing will be held at a regularly scheduled business meeting of the Board of County Commissioners of Deschutes County, Oregon, acting as the Contract Review Board, in the Deschutes Services Building, 1300 NW Wall Street, Bend, Oregon 97703 within two (2) weeks of the end of the protest period.

If no protest is filed within the protest period, this Notice of Intent to Award Contract becomes an Award of Contract without further action by the County unless the Board of County Commissioners, for good cause, rescinds this Notice before the expiration of the protest period.

If you have any questions regarding this Notice of Intent to Award Contract or the procedures under which the County is proceeding, please contact Deschutes County Legal Counsel: telephone (541) 388-6625, Fax (541) 383-0496; or email to david.doyle@deschutes.org.

Be advised that if no protest is received within the stated time period, the County is authorized to process the contract administratively.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
DESCHUTES COUNTY, OREGON

Commissioner Phil Chang, Chair

Enclosure:
OAR 137-047-0610

Cc w/ enclosure

Griffin Construction LLC

Samuel Griffin
1411 NW Murphy Court
Prinneville, OR 97754
samuel@griffinconstructionllc.com

Sunwest Builders

Steve Buettner
P.O. Box 489
Redmond, OR 97756
steveb@sunwestbuilders.com

2KG Contractors, Inc.

Mario Lipari
4917 NE 185th Drive
Portland, OR 97230
mario@2kgcontractors.com

Truebeck Construction, Inc.

Betsy Bice
3720 N Vancouver Ave, Ste. 300
Portland, OR 97205
Betsy.bice@truebeck.com

TJ Nisbet Construction, Inc.

Daniel Shcherbakov
15896 SE 82nd Dr.
Clackamas, OR 97015
Daniel.s@tjnisbet.com

OAR 137-049-0450

Protest of Contractor Selection, Contract Award

(3) Notice of Intent to Award. The Contracting Agency shall provide Written notice to all Offerors of the Contracting Agency's intent to Award the Contract, as provided by OAR 137-049-0395 (Notice of Intent to Award).

(4) Right to Protest Award.

(a) An adversely affected or aggrieved Offeror may submit to the Contracting Agency a Written protest of the Contracting Agency's intent to Award within seven Days after issuance of the notice of intent to Award the Contract, unless a different protest period is provided under the Solicitation Document.

(b) The Offeror's protest must be in Writing and must specify the grounds upon which the protest is based.

(c) An Offeror is adversely affected or aggrieved only if the Offeror is eligible for Award of the Contract as the Responsible Bidder submitting the lowest Responsive Bid or the Responsible Proposer submitting the best Responsive Proposal and is next in line for Award, i.e., the protesting Offeror must claim that all lower Bidders or higher-scored Proposers are ineligible for Award:

(A) Because their Offers were nonresponsive; or

(B) The Contracting Agency committed a substantial violation of a provision in the Solicitation Document or of an applicable Procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been the Responsible Bidder offering the lowest Bid or the Responsible Proposer offering the highest-ranked Proposal.

(d) The Contracting Agency shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest a Contracting Agency's decision not to increase the size of the Competitive Range above the size of the Competitive Range set forth in the RFP.

Statutory/Other Authority: ORS 279A.065 & 279B.135

Statutes/Other Implemented: ORS 279B.135



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: April 15, 2026

SUBJECT: Second Reading of Ordinance No. 2026-009 rezoning property at 19975 Destiny Court, Bend from Exclusive Farm Use to Multiple Use Agricultural

RECOMMENDED MOTIONS:

- 1. Move approval of second reading of Ordinance No. 2026-009 by title only.
2. Move adoption of Ordinance No. 2026-009.

BACKGROUND AND POLICY IMPLICATIONS:

In January 2025, the Board of County Commissioners approved a Comprehensive Plan Amendment from Agricultural to Rural Residential Exception Area and a zone change from Exclusive Farm Use to Multiple Use Agricultural for a property located at 19975 Destiny Court, Bend. This decision was appealed to the Oregon Land Use Board of Appeals and ultimately remanded back to the County for further review.

On January 28, 2026, the Board held a remand hearing and on March 4, 2026, voted 2 - 1 to approve the applicant's request. The Board conducted first reading of Ordinance No. 2026-009 on April 1st will consider second reading on April 15th. If approved, the ordinance will take effect 90 days from the date of adoption.

BUDGET IMPACTS:

None

ATTENDANCE:

- Caroline House, Senior Planner
Stephanie Marshall, Senior Assistant Legal Counsel
Anthony Raguine, Principal Planner
Will Groves, Planning Manager



MEMORANDUM

DATE: April 6, 2026

TO: Board of County Commissioners (“Board”)

FROM: Caroline House, Senior Planner

RE: Second Reading of Ordinance No. 2026-009 - Destiny Court PA/ZC Remand

On April 15, 2026, the Board will consider a second reading of Ordinance No. 2026-009 approving a Comprehensive Plan Amendment and Zone Change request.

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, Destiny Court Properties, LLC (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 a Zone Change to rezone this property from Exclusive Farm Use (“EFU”) to Multiple Use Agricultural (“MUA-10”)¹. 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. The County’s decision was appealed to the Oregon Land Use Board of Appeals (“LUBA”) by Central Oregon LandWatch (“COLW”) and LUBA remanded² the County’s decision back for further review (ref. LUBA No. 2025-015).

On December 23, 2025, the Applicant initiated a remand application (ref. File No. 247-25-000759-A), and the Board held a remand hearing on January 28, 2026. The Board conducted deliberations on March 4, 2026, and voted 2-1 to approve the Applicant’s request. First reading of Ordinance No. 2026-009 was completed by the Board on April 1, 2026.

¹ Ref. File Nos. 247-22-000436-ZC & 247-22-000443-PA.

² LUBA’s Final Opinion and Order was not appealed to the Court of Appeals.

II. NEXT STEPS

Following completion of the second reading, the ordinance will go into effect 90 days later, on July 14, 2026, unless the County’s decision is appealed.

III. 120-DAY REVIEW CLOCK

Remand applications have a 120-day review clock³, and this review clock cannot be extended in most circumstances⁴. Therefore, the 120th day on which the County must take final action on this application is April 22, 2026.

VI. RECORD

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) Ordinance 2026-009 and Exhibits
 - Exhibit A: Legal Description
 - Exhibit B: Proposed Comprehensive Plan Amendment Map
 - Exhibit C: Proposed Zone Change Map
 - Exhibit D: Comprehensive Plan Section 23.01.010, Introduction
 - Exhibit E: Comprehensive Plan Section 5.12, Legislative History
 - Exhibit F: Decision of the Board of County Commissioners on Remand
 - Exhibit G: Decision of the Board of County Commissioners on Original Application
 - Exhibit H: Hearing’s Officer Recommendation
 - Exhibit I: Conditions of Approval Agreement

³ 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.

⁴ Ref. ORS 215.435(2)(b).

REVIEWED _____
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

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

ORDINANCE NO. 2026-009

WHEREAS, Destiny Court Properties, LLC (“Applicant”), applied for changes to both the Deschutes County Comprehensive Plan Map (247-22-000443-PA) and the Deschutes County Zoning Map (247-22-000436-ZC), to change the Comprehensive Plan designation of the subject property from Agricultural (AG) to Rural Residential Exception Area (RREA), and a corresponding Zone Change from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA-10); and

WHEREAS, the Board of County Commissioners (“Board”) issued a decision approving the subject application on January 15, 2025, and the decision was thereafter appealed to the Oregon Land Use Board of Appeals (“Land Use Board of Appeals”), which issued a Final Opinion and Order on June 26, 2025, remanding the decision to the County for further review of two issues (“Remand”); and

WHEREAS, the Applicant initiated remand proceedings on December 23, 2025 (247-25-000759-A) pursuant to Deschutes County Code (“DCC”) Chapter 22.34; and

WHEREAS, as limited by the scope of the Remand, the Board reopened the record pursuant to Order No. 2026-002 for submission of new testimony and evidence concerning the subject property’s suitability for farm uses identified in the record before the Board at the time of its January 15, 2025 decision; and

WHEREAS, after notice was given in accordance with DCC 22.34.030 and other applicable law, a public hearing on remand was held before the Deschutes County Board of County Commissioners on January 28, 2026, and the record closed on February 18, 2026; now, therefore,

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

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

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

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

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

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

Section 6. AGREEMENT. The Board adopts the Conditions of Approval Agreement as set forth in Exhibit "I" that must be executed once this Ordinance becomes effective.

Section 7. EFFECTIVE DATE. This Ordinance takes effect on the 90th day after the date of adoption.

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: ____ day of _____, 2026.

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

Record of Adoption Vote:

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

Effective date: ____ day of _____, 2026.

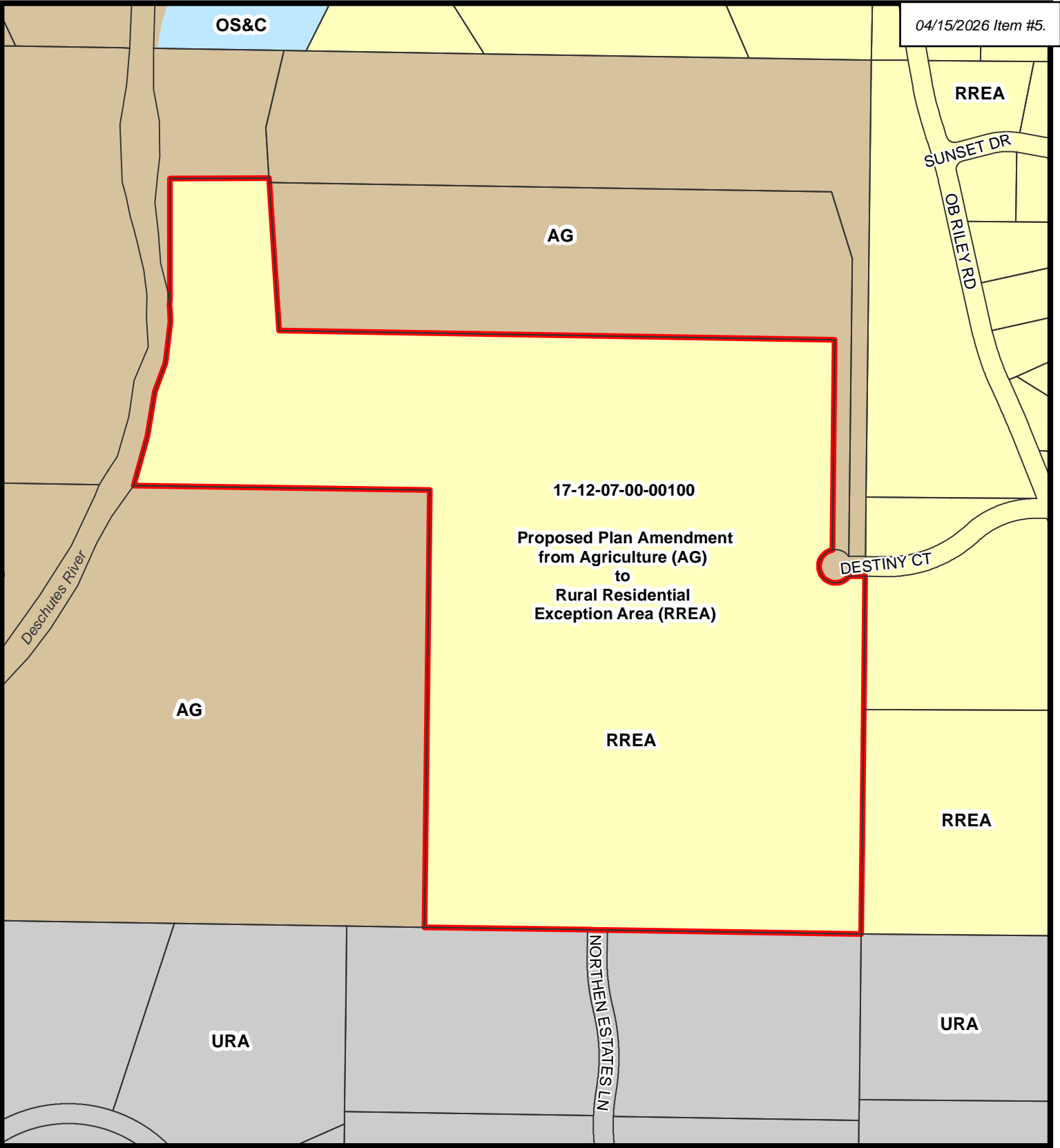
Exhibit "A" to Ordinance 2026-009

LEGAL DESCRIPTION
(TAX LOT 100, MAP 17-12-07)

A TRACT OF LAND IN THE NORTHEAST QUARTER OF SECTION 7, TOWNSHIP 17 SOUTH, RANGE 12 EAST OF THE WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON, A PART OF THAT CERTAIN TRACT OF LAND CONVEYED TO DESTINY COURT PROPERTIES, LLC, AN OREGON LIMITED LIABILITY COMPANY, IN DOCUMENT NO. 2021-61291, DESCHUTES COUNTY OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID DESTINY COURT PROPERTIES, SAID NORTHWEST CORNER BEING ON THE CENTERLINE OF THE DESCHUTES RIVER AND BEARING, ALONG THE NORTH LINE OF SAID SECTION 7, S89°35'43"E 432.83 FEET FROM THE NORTH QUARTER CORNER OF SAID SECTION 7; THENCE CONTINUING ALONG SAID NORTH LINE, S89°35'43"E 425.47 FEET TO A POINT; THENCE DEPARTING SAID NORTH LINE, S13°11'48"W 239.62 FEET TO A POINT; THENCE S3°48'59"E 152.39 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE S89°52'26"W 298.75 FEET TO A POINT; THENCE S0°00'00"E 366.21 FEET TO A POINT; THENCE S5°57'50"W 178.47 FEET TO A POINT; THENCE S11°00'43"W 127.94 FEET TO A POINT; THENCE S15°48'44"W 92.60 FEET TO A POINT ON SAID DESCHUTES RIVER CENTERLINE; THENCE ALONG SAID CENTERLINE, S16°08'19"W 179.19 FEET TO A POINT ON THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 7; THENCE ALONG SAID SOUTH LINE, S89°38'02"E 914.03 FEET TO THE NORTHEAST SIXTEENTH (NE1/16) CORNER OF SAID SECTION 7; THENCE ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER (SE1/4 NE1/4) OF SAID SECTION 7, S0°12'11"W 1320.01 FEET TO THE CENTER EAST SIXTEENTH CORNER (CE1/16) OF SAID SECTION 7; THENCE ALONG THE EAST-WEST CENTERLINE OF SAID SECTION 7, S89°37'30"E 1318.35 FEET TO THE EAST QUARTER CORNER OF SAID SECTION 7, BEING THE SOUTHEAST CORNER OF PARCEL C OF PARTITION PLAT 1996-55; THENCE ALONG THE EASTERLY LINE OF SAID PARCEL C THE FOLLOWING COURSES: N0°08'26"E 1080.22 FEET; THENCE N89°37'33"W 50.00 FEET; THENCE 193.64 FEET ALONG THE ARC OF A 50-FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 221°53'48" (THE CHORD OF WHICH BEARS N32°08'04"W, 93.39 FEET); THENCE N0°07'29"E 634.22 FEET TO A POINT ON THE EASTERLY LINE OF SAID DESTINY COURT PROPERTIES, LLC TRACT; THENCE ALONG SAID EASTERLY LINE, N89°36'12"W 1684.60 FEET; THENCE N3d48'59"W 461.08 FEET THE **TRUE POINT OF BEGINNING**.

CONTAINING A TOTAL AREA OF 65.11 ACRES, MORE OR LESS.

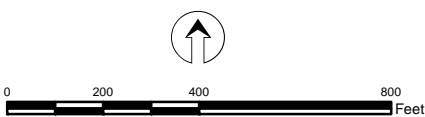


Plan Amendment Boundary

- Comprehensive Plan**
- AG - Agriculture
 - RREA - Rural Residential Exception Area
 - OS&C - Open Space & Conservation
 - URA - Urban Reserve Area

PROPOSED COMPREHENSIVE PLAN

Exhibit "B"
to Ordinance 2026-009



March 16, 2026

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

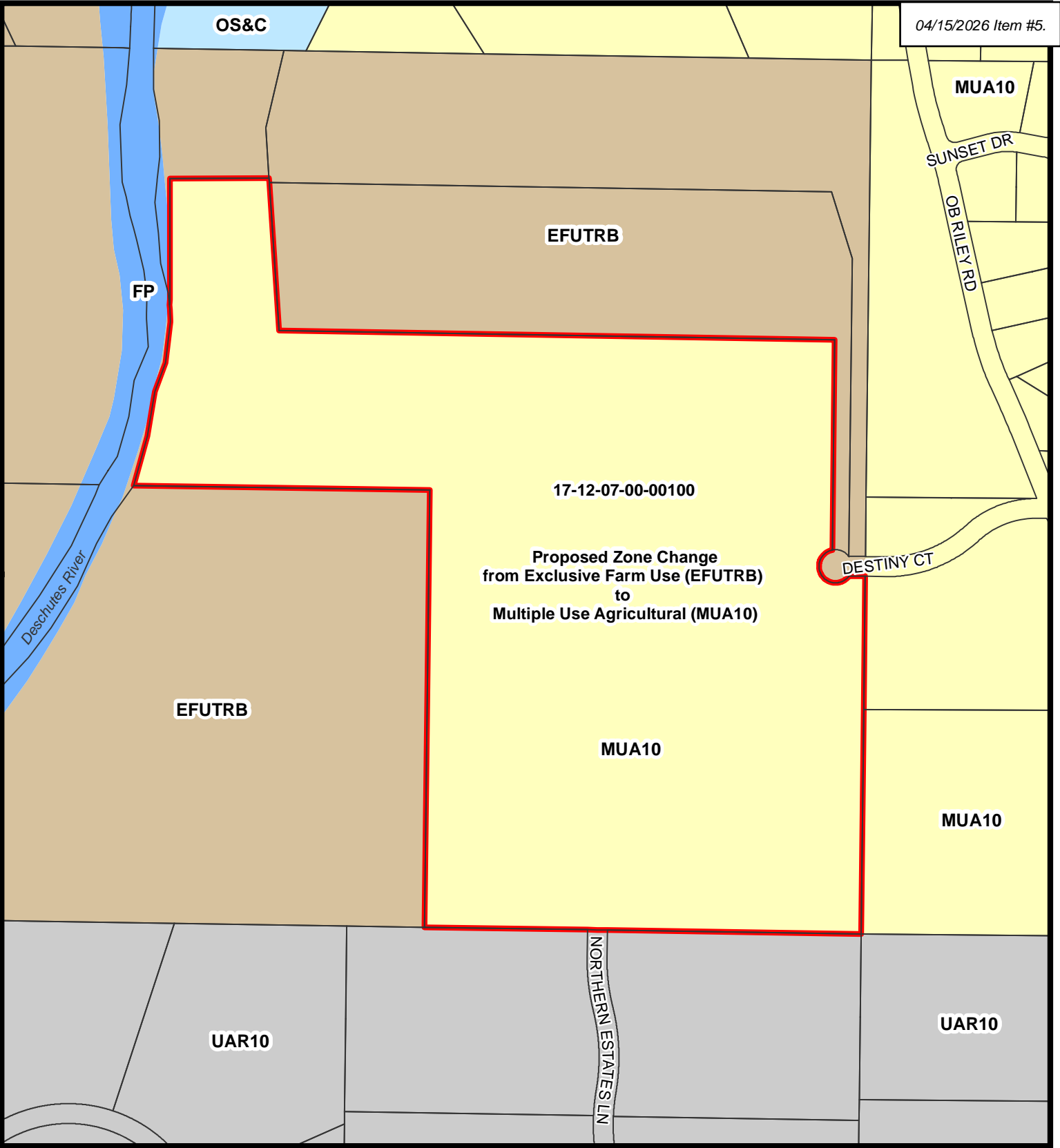
Phil Chang, Chair

Anthony DeBone, Vice Chair

Patti Adair, Commissioner

ATTEST: Recording Secretary

Dated this _____ day of _____, 2026
Effective Date: _____, 2026



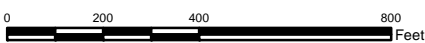
17-12-07-00-00100
 Proposed Zone Change
 from Exclusive Farm Use (EFUTRB)
 to
 Multiple Use Agricultural (MUA10)

Zone Change Boundary

- Zoning**
- EFUTRB - EFU Tumalo/Redmond/Bend
 - MUA10 - Multiple Use Agricultural
 - OS&C - Open Space and Conservation
 - FP - Flood Plain
 - UAR10 - Urban Area Reserve

PROPOSED ZONING MAP

Exhibit "C"
 to Ordinance 2026-009



March 16, 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 ____, 2026
 Effective Date: ____, 2026

Exhibit "D" to Ordinance 2026-009

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.

Exhibit "D" to Ordinance 2026-009

- 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.

BX. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-005, are incorporated by reference herein.

[BY. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-009, 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	1-2-19/4-2-19	23.01.010, 5.8	Comprehensive Plan Map Amendment changing designation of certain property from Surface Mining to Rural Residential Exception Area; Modifying Goal 5 Mineral and Aggregate Inventory; Modifying Non-Significant Mining Mineral and Aggregate Inventory
2019-001	1-16-19/4-16-19	1.3, 3.3, 4.2, 5.10, 23.01	Comprehensive Plan and Text Amendment to add a new zone to Title 19: Westside Transect Zone.
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 DLCDD'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 Vandever 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	8-27-25/11-25-25	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)
2026-004	1-28-26/4-28-26	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2026-005	3-11-26/6-9-26	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) and Surface Mine (SM) to Rural Residential Exception Area (RREA)
<u>2026-009</u>	<u>TBD/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>

EXHIBIT "F" of Ordinance 2026-009

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

FILE NUMBERS: 247-25-000759-A, 247-22-000443-PA, 247-22-000436-ZC, 247-23-000651-MA

APPLICANT/OWNER: Destiny Court Properties, LLC

APPLICATION: Remand of Board of Commissioners’ Decision Approving a Comprehensive Plan Amendment to re-designate the subject property from Agriculture (“AG”) to Rural Residential Exception Area (“RREA”) and a corresponding Zone Change to change the zoning of the subject property from Exclusive Farm Use – Tumalo/Redmond/Bend Subzone (“EFU-TRB”) to Multiple Use Agriculture (“MUA-10”).

SUBJECT PROPERTY: Address: 19975 Destiny Ct., Bend, OR 97703
Map and Taxlot: 1712070000100

STAFF PLANNER: Caroline House, Senior Planner
Caroline.House@deschutes.org, 541-388-6667

I. PROCEDURAL HISTORY:

This matter is on remand to Deschutes County from the Oregon Land Use Board of Appeals (“LUBA”). This decision (“Decision”) addresses only those issues on remand to the County. The Board of County Commissioners (“Board”) does not revisit other findings that are outside of the scope of remand; such issues are settled. The findings in this document supplement the findings in the 2025 decision of the Board that approved the plan amendment and zone change (“Application”) requested by Destiny Court Properties, LLC (“Applicant”). The findings herein control over any inconsistent findings in the Board’s 2025 decision, including the Hearings Officer’s April 26, 2024, recommendation which was made a part of the Board’s 2025 decision. Additionally, as stated in our 2025 decision, findings in this decision control over inconsistent findings in the Hearings Officer’s recommendation.

The County’s land use Hearings Officer conducted the initial hearing regarding the Application on February 27, 2024, and recommended approval of the Application to the Board. The Board approved the Application (2-1) on January 8, 2025. Central Oregon LandWatch (“COLW”) filed an appeal to LUBA, which remanded the Board’s decision on June 26, 2025. *See Central Oregon LandWatch v. Deschutes County*, __ Or LUBA __ (LUBA No. 2025-015)(“*Destiny Court*”). Although LUBA affirmed the Board on multiple assignments of error, it remanded to address two discreet issues: (1) an alleged inconsistency with Deschutes

County Comprehensive Plan (“DCCP”) Policy 3.3.1 regarding lot sizes and density, and (2) to complete the analysis and findings regarding the Subject Property’s suitability for farm use factors under OAR 660-033-0020(1)(a)(B) as it relates only to those farm uses that COLW had identified in the record. *Destiny Court*, slip op 23.

On December 23, 2025, the Applicant initiated remand proceedings. On January 5, 2026, the Board issued Order No. 2026-002 reopening the local record to address issue #2. On January 6, 2026, the County mailed its Notice of Public Hearing to all parties to the original proceedings, and listed the issues remanded, and all relevant criteria, rules, and procedures relating to the remand proceedings.

The Board held a hearing on January 28, 2026 (“Hearing”). At the Hearing, COLW raised an objection, arguing that the County could not proceed with consideration of the remand application at that time under ORS 197.797(3)(h) and Deschutes County Code (“DCC”) 22.24.040(A)(9). DCC 22.24.040(A)(9) contains the same requirements as ORS 197.797(3)(h), so we address both provisions together.

COLW claims error because of the “County’s failure to ensure that the documents and evidence submitted by the developer for the remand hearing were made available for public inspection at no cost at least twenty days before the hearing[.]” COLW clarified at the Hearing that its argument was that the County was required to make the Applicant submit evidentiary documents in advance of the Hearing so that such evidence could be provided to the parties prior to hearing. Staff submitted a memorandum addressing this objection on February 3, 2026, and we agree with Staff’s analysis. While ORS 197.797(3)(h) requires any information *submitted by an applicant* to be made available, it does not require an applicant to submit its evidence *in advance of a remand hearing*. Staff confirmed that all documents submitted by the Applicant were available to all parties. COLW’s argument is without legal merit and is properly denied.

The Board agreed to hold open the record to cure any potential procedural error alleged by COLW. The Board permitted an additional 7 days for new evidence, followed by 7 days for rebuttal evidence, and then 7 days for the Applicant to provide final legal argument. COLW did not object to this procedure.

On March 4, 2026, the Board deliberated and considered all issues remanded to it by LUBA. Thereafter, it voted 2-1 to again approve the Application. This Decision supports the Board’s action.

II. FINDINGS AND CONCLUSIONS OF LAW:

The Board approves the requested Application for the subject property (“Property”) and provides the following supplemental findings and conclusions of law.

A. Remand Issue 1: DCCP Policy 3.3.1 and Lot Size or Density Requirements

LUBA remanded the Board’s 2025 decision to address a perceived conflict between DCCP Policy 3.3.1 and the MUA-10 zone. *See Destiny Court*, slip op 6-10. Because the arguments presented to LUBA and the discussion around this issue was varied,¹ our findings are varied as well, so as to consider all sub-issues addressed by LUBA.

Before turning to our findings, we note that the Applicant has withdrawn its initial and tandem request for a planned unit development (“PUD”). This Decision, therefore, only addresses the current and relevant Application. And, the Applicant has offered—and the Board so imposes—a Conditions of Approval Agreement (“COAA”) in a form substantially similar to that attached as Exhibit A, that further resolves this issue. That COAA requires that any future subdivision of the Property be limited to either 10-acre minimum lot sizes or to 1:10 (one unit per ten acre) equivalent density through a cluster development or PUD, as permitted by the County’s applicable codes, Comprehensive Plan and state law. This equivalent density results in a limitation to a 2-acre minimum lot size with an associated 8 acres of preserved open space. Consistent with the findings below, the Board finds that imposition of this COAA ensures the Application meets all applicable criteria and policies contained in the DCCP.

As noted by COLW and LUBA, where there is a conflict between a comprehensive plan and a zoning code, the comprehensive plan controls. *Baker v. Milwaukie*,²⁷¹ Or 500, 533 P2d 772 (1975). Therefore, even if the MUA-10 zone did in fact conflict with the DCCP, the DCCP controls and it is irrelevant as to whether or not the MUA-10 zone conflicts with the DCCP. No party has raised any criteria or other legal reason for why the Application could not be approved—just that the minimum lot size would be restricted. As such, even if LUBA determines that the below interpretation is not plausible, this Board finds that the Application should still be approved.

To address the alleged or perceived inconsistency between the DCCP and the MUA-10 zone, the Board makes the following interpretations.

¹ For example, LUBA addressed COLW’s arguments that Goal 14 may be implicated, however LUBA later found Goal 14 to be satisfied.

Interpretation of DCCP 3.3.1 and the MUA-10 Zoning District

The basis for LUBA’s remand was focused on DCCP 3.3.1 which states that: “Except for parcels in the Westside Transect Zone, the minimum parcel size for new rural residential parcels shall be 10 acres.” LUBA agreed with COLW that DCCP 3.3.1 could facially conflict with then-existing DCC 18.32.040(A). DCCP 3.3.1 states:

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

DCCP Policy 3.3.1 was amended as part of Ordinance No. 2019-001, which adopted the Westside Transect Zone (“WTZ”). However, the policy was substantially the same before that amendment. It previously stated, “The minimum parcel size for new rural residential parcels shall be 10 acres.” This policy had always been interpreted and applied by the County as nonetheless allowing for potential PUDs and cluster developments, so long as an equivalent density of 1:10 acres is met. The Board interprets DCCP 3.3.1 in this manner. DCCP Policy 3.3.1 was not intended to prevent cluster developments or PUDs with lot sizes smaller than 10 acres, provided such proposed developments are consistent with the Deschutes County Code (“Code”) and state law. The Board interprets DCCP Policy 3.3.1 to generally require 10-acre minimum lot sizes, but nothing therein prohibits a PUD or cluster development that complies with the Code and state law. The Board further finds that DCCP Policy 3.3.1 was not intended to prevent the use of the Code’s density bonus, which as discussed below, was re-adopted and acknowledged after LUBA issued its *Destiny Court* decision.

As noted above, DCCP Policy 3.3.1 was changed as part of the adoption of the WTZ. The objective of the WTZ was to create an orderly development from rural to urban uses. The WTZ reduced the *equivalent density* of one unit per 10 acres, as otherwise permissible under the RR-10, MUA-10, and UAR-10 zones, to one unit per 2.5 acres. As noted in Ordinance No. 2019-001, the concern is not related to minimum parcel size but is instead a concern related to *equivalent density*. See e.g. *Applicant’s Exhibit UU*, p. 4, 8, 9, etc., (ODFW recognizing the *density standards* changing from 1:10 to just 1:2.5). This equivalent density intent is also reflected in the WTZ itself, the purpose of which “provides a transitional residential development pattern with densities ranging from one unit per 2.5 to 10 acres to guide development[.]” DCC 19.22.010. Obviously, a revision to equivalent density from 1:10 down to 1:2.5 is a significant change and one for which the County took an exception to Goal 14. This circumstance is different than that under the existing RR-10 and MUA-10 zones, which are acknowledged and have always required 1:10 equivalent densities and, under certain circumstances, allow for a density bonus.

As is clear throughout Ordinance No. 2019-001, the County has always considered an *equivalent density* as the standard, and not just minimum lot size. Confusion arises from using the two terms interchangeably. The Board interprets DCCP Policy 3.3.1 to address minimum equivalent densities.

The MUA-10 and RR-10 zones do require a minimum *lot* size of 10 acres. However, the County also permits the use of PUDs and cluster developments which, upon imposition of other restrictions, including the preservation of open space, reduce the subdivided lot size to below 10 acres. PUDs are specifically permitted under state law. *See e.g.* OAR 660-004-0040. It is through the use of PUDs and cluster developments that rural lot sizes may be below 10 acres, however a specific minimum equivalent density is still required, which is accomplished through the preservation of open space. *See e.g.* DCC 18.128.200 and -.210. A contrary interpretation would effectively strike those provisions from Code, which is not the intent of DCCP Policy 3.3.1 as further evidenced by Ordinance No. 2019-001. The same is true regarding the County's density bonus provisions that were re-codified in July 2025 and are acknowledged—although the density bonus provisions are no longer codified in DCC Chapter 18.32 (the MUA-10 zoning district).

The Board interprets DCCP Policy 3.3.1 to require minimum lot sizes of 10 acres, except when PUD or cluster developments are used, in which case equivalent densities of 1:10 are permitted with the preservation of open space. This interpretation is plausible and should be affirmed. *Crowley v. City of Hood River*, 294 Or App 240, 244, 430 P3d 1113 (2018).

The Board also notes that the standards related to the use of cluster and PUDs, including the use of the “density bonus” (no longer included within the MUA-10 zoning district) was recently re-acknowledged as being compliant with the Statewide Planning Goals and the comprehensive plan. Ordinance No. 2025-009 was adopted on July 1, 2025, which re-codified these standards. This ordinance was adopted *after* LUBA issued its decision in this case. Ordinance No. 2025-009 amended the MUA-10 zone and readopted the standards related to PUDs and cluster developments. That ordinance was not appealed, is final, and deemed to be acknowledged. ORS 197.625. The Applicant and the County are entitled to rely upon acknowledged zoning regulations and comprehensive plan provisions. *Friends of Neabeack Hill v. City of Philomath*, 139 Or App 39, 1996, *rev denied*.

Even if LUBA determines that the above interpretation is incorrect or not plausible, the issue is also not ripe before this Board. As noted, the Applicant has withdrawn its request for a PUD. The issue of minimum lot sizes may be raised when and if the Applicant applies for a subdivision of the Property. Until such time the DCCP governs and there is no conflict because the Property is larger than 10 acres.

B. Issue 2: Property Suitability for Farm Use

LUBA remanded to 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)”. *Destiny Court*, slip op 23. This Decision confines review to the scope of the remand, which requires consideration only of those farm uses previously raised in COLW’s arguments; COLW waived its right to request consideration of other uses by not raising those issues in the original proceedings. ORS 197.797(1), ORS 197.835(3), *Currie v. Douglas County*, 308 Or App 235, 482 P3d 427 (2020) (“*Currie*”); *Devin Oil*, 252 Or App at 111-13; *Beck v. City of Tillamook*, 313 Or 148, 831 P2d 678 (1992).

Notwithstanding the limited scope on remand, COLW did not confine its arguments to uses it had previously raised for the Board’s consideration. Instead, it presented a veritable laundry-list of additional crops or uses it now claims, for the first time, could be supported on the Property. We agree with Applicant and the Applicant’s experts that COLW is both incorrect that the Property is suitable for these uses and that COLW has waived its ability to raise new potential farm uses on remand. To that end, we adopt Exhibit XX of Applicant’s Final Legal Argument herein and note that uses not previously raised in the original proceedings cannot be raised on remand.² We also agree that the Property is not suitable for these new uses given the factors under OAR 660-033-0020(1)(a)(B). Findings related to these factors, individually, are provided below.

Factor Analysis

Some of the findings and evidence overlap and can be used to show why more than a single factor points to the unsuitability of the Property for farm use. For example, findings related to the soil fertility factor are also relevant to technological and energy inputs because of the inputs required to increase or elevate the soil fertility that would be required for a viable farm use. None of the factors or findings related thereto are intended to be read in a vacuum; they may relate to additional factors.

No credible evidence by any party was submitted to refute Applicant’s evidence and the testimony of Brian Rabe, Greg Mohnen, Matt Cyrus, or Rand Campbell. The only contrary testimony is conclusory statements from COLW and the opinions of its attorney—which is not substantial evidence. Moreover, COLW’s list of “farms” that it asserts are similar to the Property was refuted on a farm-by-farm basis by the Applicant and we agree with the Applicant’s analysis.

² To the extent the list of crops may be considered as part of a broader category of “irrigated agriculture” it is addressed below.

1. Soil fertility

The Property has poor soils comprised of approximately 65.8% Class VII and VIII soils, with substantial rocky outcroppings that make use of traditional farm equipment difficult or impossible. This was opined on by Applicant’s experts Greg Mohnen and Rand Campbell and was not refuted by any other party. COLW argued that the historic use of the Property should control, and claims that there is “unrefuted photographic evidence” of past farm uses. COLW’s claims are misleading. Applicant supplied substantial evidence that the Property has never had any history of agricultural activity except for two short-lived attempts in recent history.

In response to COLW’s claimed “unrefuted photographic evidence” the Applicant provided a number of aerial photographs that detail the actual historical use of the Property. The aerial photographs³ that are instructive and show the following:

1994 – Property shown in natural state, including massive rock outcroppings and scrub cover.

2000 – Property has some road improvements to prepare for potential development.

2005 – Road improvements are continued and a pond is established. Some earthwork is started to try to clear to attempt a pasture.

2006 – More earthwork is completed and large rock outcroppings remain, including in the intended pasture areas.

2011 – There is a gap from 2006 to 2011 in the aerial photograph materials. However, by 2011 two irregular pasture areas have been partially established.

2012 – The rock outcroppings are beginning to show again in the pasture area.

2014 – Irrigation has fully ceased, although a small pond still exists. The larger of the pasture areas shows clear signs of rock and almost no topsoil or other growth.

2017/2018/2024 – Rocks continue to peak out of the very shallow soil, with the most illustrative shown in the 2024 aerial.

These aerials correlate to the testimony of Mark and Cathy Ferguson, who attempted to graze cattle in 2012 but were unable to even recoup costs, and the Ferguson’s grazing agreement that was terminated after just a single month.

COLW’s arguments are based on a photograph taken out of context; its statement that such photo proves suitability is not persuasive. LUBA has previously found that even if there is a

³ Reference Applicant’s Rebuttal submittal dated February 11, 2026, and identified as Exhibit OO.

history of attempted agricultural use—even going back decades—that is insufficient to determine *per se* that a property is suitable for farm use under the factor analysis. See *Central Oregon LandWatch v. Deschutes County*, __ Or LUBA __ (LUBA No. 2023-049)(“*Marken*”). The Board determines that the photograph offered by COLW does not constitute substantial evidence of suitability for the farm uses identified in the record. We find other evidence in the record more compelling. As determined in *Marken*, mere photographs, without more, are not substantial evidence. *Marken*, slip op 11-12.

As is clear in the aerials and the testimony by Greg Mohnen, Matt Cyrus, Rand Campbell, and soils expert Brian Rabe, even the “cleared” area on the Property remains extremely rocky. Mr. Mohnen estimated that it would take at least \$100,000 to attempt to remove rock such that you *may* be able to use standard farm equipment. The Board finds the Applicant’s evidence and expert testimony to be persuasive and more reliable than evidence provided by COLW.

At the remand hearing, a question was posed regarding whether soil fertility could be improved through soil enrichment. Although consideration of this factor is focused on the *land itself and its capability*, we address the question of soil enrichment here.⁴ Applicant provided pricing and bid information for soil enrichment from two sources - the County’s own facility and from High Desert Mulching. This information was reviewed by Applicant’s expert Mr. Rabe, who confirmed that importing enough soil/material to enrich the roughly 20-acre area on the Property that had previously been attempted for irrigation would cost more than \$1 million. And, as evidenced by Mr. Campbell’s testimony, local fertilizer availability has been diminished by the closing of such operations. This increases the cost of additional enrichment. The Board finds there is substantial evidence to support our finding that no reasonable farmer would make such an investment, rather than just purchasing land that is not comprised of rock and includes Class VI or better soils.

As it relates to horse or equine uses, the Board finds substantial evidence in the record to support our finding that no reasonable farmer would attempt to create a horse boarding facility on the Property. As was shown by all of the examples of such operations submitted by COLW, horse facilities commonly have additional facilities and infrastructure such as barns, arenas, and irrigated and separated irrigated pasture lands for each boarded horse. The Property has no such improvements. In fact, absent some limited fencing and a lean-to structure, there are no other improvements on the Property. Two examples provided by COLW, Emboldened Equine Ranch and Silver Horse Ranch, both have facilities that are assessed by the County’s Assessor’s Office as substantial improvements. These operations are located on properties that have significant better soils that permit pasture use by boarded horses, something that this Property lacks. The Board is persuaded by the operational analysis provided by the Applicant which showed the costs associated with establishing an equine operation on the Property. Applicant’s Exhibit B. These costs include

⁴ This may also be relevant to the technological and energy input factor.

boarding up to 20 horses per month, the cost of importation of feed, and typical operational costs, but does *not* include the initial costs to build such facilities in the first place. Even still, such an operation on the Property would result in more than a \$50,000 annual loss. No contrary evidence was provided. The Board finds the Applicant’s evidence persuasive to show that the Property is not suitable for equine facilities.

Lastly, COLW argued that the Property should have better soils through the removal of rock and because the Property had “21.53 or more acres of irrigated, predominantly Class III farmland.” This ignores the expert testimony on the type and reality of the soils on the Property. Expert Mr. Rabe refuted COLW’s argument in a letter dated February 10, 2026, calling it a “very inaccurate representation.” Rocks in the types of soil on the Property are common and the water holding capacity, along with the depth of the soil, is what partially dictates *just how bad* the soils are. Moreover, as in COLW’s own submittal of NRCS publications, “the soils mapped across the property are not listed as having any potential for other crops grown in Deschutes County.” Mr. Rabe Letter, pg. 2. The Board finds Mr. Rabe’s expert testimony is more persuasive than the comments from COLW’s attorney.

2. Suitability for grazing

No credible testimony was offered by any party that shows the Property is suitable for grazing. COLW included in its laundry list of farm use claims that grazing or rearing of various animals could occur, from cows to horses to goats to, remarkably, ostriches. Uses that were not previously identified in the prior proceeding are waived—such as COLW’s new claim regarding ostriches. However, they are also simply unpractical and no reasonable farmer would seek a grazing farm use on the Property.

In contrast to COLW’s unsupported claims, the Applicant submitted evidence regarding the significantly limited potential to use the Property for grazing. Taken individually or as a whole, the weight of the evidence shows why the Property is not suitable for farm use or grazing. Without fully re-stating all record evidence, the Board provides the following highlights:

- Exhibit 25 – 2022 Application: Ferguson ceased attempting grazing on the Property after merely a month, due to lack of productivity and forage on the site even when irrigated.
- Exhibit C – Mohnen, renting the Property is unlikely due to lack of forage and need for significant upgrades to fencing, ponds, and new irrigation system that would be costly.
- Exhibit D – Cyrus, no significant forage ability or shelter and it would be a “waste of resource” to farm the Property. Raising cattle or other farm animals would be unprofitable.

- Exhibit E – Campbell, provided a detailed analysis regarding total amount of AUMs that could be produced on the Property, which is relevant to multiple types of grazing animals. That figure is approximately 12 AUMs, which results in no reasonable operator attempting to graze the Property.
- Exhibit RR – Rabe, revenue produced on the Property based upon AUMs is extremely low and would “not begin to cover the cost of inputs[.]”

We find substantial, persuasive evidence in the record that the Property is unsuitable for grazing.

3. Climatic conditions

COLW did not previously argue that the climate conditions of the Property make it suitable; therefore, this new challenge has been waived. Even still, the Board finds that the growing season in Central Oregon is one of the shortest in the entire state. Mr. Campbell provided testimony that Central Oregon spans a wide area and there are significant climactic variations that impact precipitation, temperature, wind and frost-free days. Examples offered by COLW included farms like Smith Rock Ranch, which are *significantly lower* in elevation, and which make them more suitable for crops due to a longer growing season with more frost-free days.

The Board’s previous findings on this factor are reaffirmed.

4. Existing and future availability of water for farm irrigation purposes

LUBA’s remand required the County to consider the Property as if it already had irrigation. Testimony from both Greg Mohnen and Rand Campbell discussed the difficulty of installing an irrigation system due to the extreme rockiness of the soils. Mr. Campbell estimated that such a system would cost over \$100,000 and specifically commented that the physical characteristics of the Property make it unlikely to be successful. Therefore, no reasonable farmer would expend the resources to establish a system on the Property. As was shown in the aerials, any previous attempts to irrigate were short lived. The Board finds this is persuasive evidence to support findings that the Property is not suited for irrigated agriculture—especially when coupled with the soil fertility challenges on the Property.

This Board has previously found that irrigating Class VII and VIII soils is not an accepted farming practice in Deschutes County. That finding was not upset in LUBA’s review in *Central Oregon Landwatch v. Deschutes County*, ___ Or LUBA ___ (LUBA No. 2022-075 December 6, 2022) (*Aceti*) and it remains true here. While the Property may have limited Class VI soils, we find persuasive the testimony of Mr. Campbell and Mr. Mohnen that operators would not seek to establish an irrigation system on the Property. Mr. Rabe’s testimony is also persuasive—the areas of better soils are irregular in shape and occur in 15 separate

delineations as small as 0.12 acres in size. The rocky outcroppings and irregular shape of the limited good soils make the Property unsuitable for irrigation.

5. Existing land use patterns

The Property is surrounded on all sides with rural residential uses. Multiple comments in the record, including from Matt Cyrus and Rand Campbell, highlight that the adjacent properties are developed for small residential lots and would interfere with agricultural practices initiated on the Property. Applicant also provided an extensive analysis in the prior proceeding regarding surrounding uses and that there were no other farm use parcels in the area. Given that all of the surrounding areas or adjacent areas are in residential use, this is a strong indicator that the Property is similarly not suitable for farm use. Additionally, the Property in portions abuts the Deschutes River and is very close to significant recreation including that at Tumalo State Park. This could provide additional conflict that, consistent with Mr. Cyrus and Mr. Campbell's testimony, may provide additional reason why the Property is unsuitable for farm uses due to potential conflicts.

6. Technological and energy inputs required

The Property has few improvements and would require substantial work, including new fencing, in order to put to any sort of farm use. COLW argues that the property cannot be considered in its "neglected" state; however, COLW ignores that there has never been an actual farm use established or operated on the Property. Outlined above are the substantial inputs that would be needed, including new fencing, irrigation equipment, and others.

Although relevant to other factors as well, one use that has been alleged for possibility on the Property has been horse and equine uses, including boarding. However, the evidence shows that such a use is impracticable at best and that no reasonable operator would seek to start a horse facility on the Property. Horse facilities require substantial infrastructure, including separate pastures for boarding, barns, storage, and arenas. These improvements can require a significant investment in money. A specific operation and proforma was generated for the Property, which shows the impracticality. In short, even assuming a boarding operation—which would be large—at 20 horses consistently per month, there would be operating losses of about \$50,000. No reasonable farmer would seek to build an equine operation on the Property—they would seek a property that already had the required improvements. The same is true for soil enrichment because of its extreme cost.

7. Accepted farming practices

COLW uses the term "accepted farming practice" throughout its submittals claiming that growing certain crops are accepted farming practices. COLW misunderstands that term. An "accepted farming practice" is a mode of operation used by similarly situated or common farms; it is not the growth of a particular crop.

Given the poor soil quality on the site, none of the accepted farming practices in Deschutes County would be appropriate on the Property. This includes irrigated agriculture. Deschutes County has previously determined, in *Aceti*, that it is not an accepted farm practice to irrigate Class VII and VIII soils, which is by far the predominant soil types here.

The Board is persuaded by the evidence provided by the Applicant, including the expert testimony of Greg Mohnen, Matt Cyrus, and Rand Campbell that no reasonable farmer would seek to establish a farm on the Property and that no accepted farming practice is appropriate on the Property.

Additional response to COLW Claims

In its Hearing submittal and in its rebuttal submittal dated February 11, 2026, COLW argues that several “farms” are producing certain crops and that they are essentially indistinguishable from the Property. The Board does not find COLW’s arguments persuasive. As an initial matter, COLW did not provide any reliable evidence that proves or substantiates its claims. Mere statements by COLW’s attorney are not evidence. Such statements, including “Smiley Lavender Farm is operated in Central Oregon for the primary purpose of obtaining a profit in money”⁵ simply are not grounded on any factual basis. LUBA has long held that the lay opinion of an attorney cannot form the basis for substantial evidence in a decision, and we adhere to that precedent. Absent testimony from an owner or operator of Smiley Lavender Farm itself there is nothing to corroborate the arguments of COLW’s attorney. COLW’s submittal of web pages and statements, made without support of the farm owner, do not establish that “Smiley Lavender Farm” (or any other example provided by COLW) is in fact engaged in an ORS 215.203(2)(a) farm use, or whether such properties are merely being used as a hobby farm. To properly consider COLW’s arguments, the Board would need evidence from the farmers or other experts or operators. COLW’s supposition that such uses are “farm uses” or are being operated to obtain a profit in money, as opposed to merely for the purpose of engaging in a rural lifestyle, is unsupported by evidence.

The Board finds that the “farm” examples provided by COLW as similar in nature to the Property are not persuasive. The Applicant provided contrary evidence regarding each example and evidenced how each property and/or operation was substantially different than the Property. We broadly agree with Applicant’s analysis. We also disagree with COLW’s base premise. We find that an applicant need not prove that its property is different from each and every other farm use in the County. An applicant must address the factors in OAR 660-033-0020(1)(a)(B) and other relevant applicable criteria—none of which require a comparative analysis between properties.⁶ To the extent COLW wishes to provide evidence of farm uses and argue how a particular property is suitable for such, it may do so. However, the lay opinion of its lawyer cannot form an adequate factual basis to satisfy the substantial

⁵ COLW L dated Feb 11, 2026, p. 2.

⁶ To the extent this could require an analysis of potential combined or conjoined use in a typical review, that review was previously completed and is not within the scope of the remand here.

evidence requirements in Oregon land use law. *See Oregon Coast Alliance v. City of Brookings*, 72 Or LUBA 222 (2015). We find the Applicant’s expert testimony and evidence, including that from Brian Rabe, Greg Mohnen, Matt Cyrus, and Rand Campbell more persuasive as to the factors and a determination of whether the Property is suitable for farm use. Based on this evidence, we find that the Property is not.

COLW’s Record Objection to Applicant’s Final Legal Argument

COLW submitted a record objection to the inclusion of several exhibits to Applicant’s Final Legal Argument. As stated at our deliberations, we overrule that objection and accept the Applicant’s exhibits. The Board agrees with staff that the Applicant’s exhibits are not new evidence and COLW is incorrect. The Applicant provided a tabular form that summarized evidence already in the record, a proposed condition of approval, and provided us copies of ordinances that are already the law of the land in this County and subject to official notice under ORS 40.090. None of this is new evidence. Our procedural ordinance does not require an applicant to make a separate motion for official notice, and we do not impose such a requirement here. The Board therefore rejects COLW’s objection made on February 19, 2026, and its renewed objection on March 5, 2026.

C. Decision

THE BOARD HEREBY APPROVES THE APPLICATION SUBJECT TO THE FOLLOWING CONDITION OF APPROVAL(S):

Conditions of Approval:

- 1) The attached Conditions of Approval Agreement, with restrictive covenants enforceable by Deschutes County, must be recorded within 180 days of the date this decision is final. If the decision is appealed, the 180-day period will run from the date a final decision and, if applicable, judgment on appeal has been entered.

After recording return to:

Deschutes County Community Development
117 NW Lafayette Avenue
Bend, OR 97703

**CONDITIONS OF APPROVAL AGREEMENT
AND RESTRICTIVE COVENANT**

This conditions of approval agreement is made this _____ day of _____, 2026 by Destiny Court Properties LLC, an Oregon limited liability company (hereinafter “Destiny Court”) and Deschutes County, a political subdivision of the State of Oregon (hereinafter “County”).

RECITALS

WHEREAS, Destiny Court sought approval of a plan amendment from Agricultural (AG) to Rural Residential Exception Area (RREA) and zone change from Exclusive Farm Use – Tumalo/Redmond/Bend subzone (EFU-TRB) to Multiple Use Agricultural (MUA-10) in File Nos. 247-22-000436-ZC and 247-22-000443-PA for the property described on **Exhibit A** (the “Property”), a copy of which is attached and incorporated by reference herein; and

WHEREAS, the applicant in the land use review process asked the County to impose a condition of approval on future development of the Property that will apply while the Property is zoned MUA-10: and

WHEREAS, the Board of Commissioners approved the land use applications and imposed the condition of approval requested; and

WHEREAS, the condition of approval requires that an agreement be recorded that memorializes the condition of approval and applies it to the rezoned property:

NOW THEREFORE, the parties agree as follows:

1. Any future subdivision shall be limited to equivalent density of 1 lot per 10-acres, which can be accomplished through use of a cluster or planned unit development for a minimum lot size of 2-acres with associated 8-acre reservation of open space. This condition shall be required so long as the property remains outside of an urban growth boundary.

DATED this _____ day of _____, 20__.

COUNTY

BOARD OF COMMISSIONERS OF DESCHUTES
COUNTY

PHIL CHANG, Chair

ANTHONY DeBONE, Vice-Chair

PATTI ADAIR, Commissioner

ATTEST:

Recording Secretary

STATE OF OREGON)
) SS.
COUNTY OF DESCHUTES)

This instrument was acknowledged before me on _____, 20__ by Phil Chang, Anthony DeBone, and Patti Adair, the above-named Board of County Commissioners of Deschutes County, Oregon and acknowledged the foregoing instrument on behalf of Deschutes County.

Notary Public
Print Name _____
My commission expires _____

DATED this ____ day of _____, 20__.

DESTINY COURT PROPERTIES LLC

By: Robert Cochran
Its: _____

STATE OF OREGON)
) SS.
COUNTY OF DESCHUTES)

This instrument was acknowledged before me on _____, 20__ by Ronald Cochran as _____ of Destiny Court Properties LLC, an Oregon limited liability corporation.

Notary Public
Print Name _____
My commission expires _____

EXHIBIT A

PROPERTY DESCRIPTION
(TAX LOT 100, MAP 17-12-07)

A TRACT OF LAND IN THE NORTHEAST QUARTER OF SECTION 7, TOWNSHIP 17 SOUTH, RANGE 12 EAST OF THE WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON, A PART OF THAT CERTAIN TRACT OF LAND CONVEYED TO DESTINY COURT PROPERTIES, LLC, AN OREGON LIMITED LIABILITY COMPANY, IN DOCUMENT NO. 2021-61291, DESCHUTES COUNTY OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID DESTINY COURT PROPERTIES, SAID NORTHWEST CORNER BEING ON THE CENTERLINE OF THE DESCHUTES RIVER AND BEARING, ALONG THE NORTH LINE OF SAID SECTION 7, S89°35'43"E 432.83 FEET FROM THE NORTH QUARTER CORNER OF SAID SECTION 7; THENCE CONTINUING ALONG SAID NORTH LINE, S89°35'43"E 425.47 FEET TO A POINT; THENCE DEPARTING SAID NORTH LINE, S13°11'48"W 239.62 FEET TO A POINT; THENCE S3°48'59"E 152.39 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE S89°52'26"W 298.75 FEET TO A POINT; THENCE S0°00'00"E 366.21 FEET TO A POINT; THENCE S5°57'50"W 178.47 FEET TO A POINT; THENCE S11°00'43"W 127.94 FEET TO A POINT; THENCE S15°48'44"W 92.60 FEET TO A POINT ON SAID DESCHUTES RIVER CENTERLINE; THENCE ALONG SAID CENTERLINE, S16°08'19"W 179.19 FEET TO A POINT ON THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 7; THENCE ALONG SAID SOUTH LINE, S89°38'02"E 914.03 FEET TO THE NORTHEAST SIXTEENTH (NE1/16) CORNER OF SAID SECTION 7; THENCE ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER (SE1/4 NE1/4) OF SAID SECTION 7, S0°12'11"W 1320.01 FEET TO THE CENTER EAST SIXTEENTH CORNER (CE1/16) OF SAID SECTION 7; THENCE ALONG THE EAST-WEST CENTERLINE OF SAID SECTION 7, S89°37'30"E 1318.35 FEET TO THE EAST QUARTER CORNER OF SAID SECTION 7, BEING THE SOUTHEAST CORNER OF PARCEL C OF PARTITION PLAT 1996-55; THENCE ALONG THE EASTERLY LINE OF SAID PARCEL C THE FOLLOWING COURSES: N0°08'26"E 1080.22 FEET; THENCE N89°37'33"W 50.00 FEET; THENCE 193.64 FEET ALONG THE ARC OF A 50-FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 221°53'48" (THE CHORD OF WHICH BEARS N32°08'04"W, 93.39 FEET); THENCE N0°07'29"E 634.22 FEET TO A POINT ON THE EASTERLY LINE OF SAID DESTINY COURT PROPERTIES, LLC TRACT; THENCE ALONG SAID EASTERLY LINE, N89°36'12"W 1684.60 FEET; THENCE N3d48'59"W 461.08 FEET THE **TRUE POINT OF BEGINNING**.

CONTAINING A TOTAL AREA OF 65.11 ACRES, MORE OR LESS.

Conditions of Approval Agreement – Exhibit A

EXHIBIT "G" to Ordinance 2026-009

04/15/2026 Item #5.

Exhibit "F" to Ordinance 2024-012

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

FILE NUMBERS: 247-22-000436-ZC, 247-22-000443-PA, 247-23-000651-MA

SUBJECT PROPERTY/

OWNER/ DESTINY COURT PROPERTIES, LLC

APPLICANT: Map and Taxlot: 171207A000100

Account: 113037

Situs Address: 19975 DESTINY CT, BEND, OR 97703

APPLICANT'S

ATTORNEY: Elizabeth Dickson, Dickson Hatfield LLP

STAFF PLANNER: Caroline House, Senior Planner

Anthony Raguine, Principal Planner

REQUEST: Comprehensive Plan Amendment from Agricultural to Rural Residential Exception Area and Zone Change from Exclusive Farm Use to Multiple Use Agricultural Zone.

I. SUMMARY OF DECISION

In this decision, the Board of County Commissioners ("Board") considers whether to approve the proposed Comprehensive Plan Amendment and Zone Change. Hearings Officer Frank recommended approval in his April 26, 2024, recommendation, after a Public Hearing held on February 27, 2024. No appeals were filed. Land Use File Numbers 247-22-000436-ZC, 247-22-000443-PA and 247-23-000051-MA contain the Hearings Officer's Recommendation ("Recommendation") and related documents as referenced herein. The Board considered the applications *de novo*, incorporating the Record below, and a public hearing before the Board was held on July 24, 2024.

On October 9, 2024, following deliberation, the Board voted 2-1 finding the applicant had met their burden of proof, and moved to uphold the Recommendation and approving the Comprehensive Plan Amendment and Zone Change applications on the subject property.

The Recommendation dated April 26, 2024, is hereby incorporated as part of this decision, including any and all interpretations of the County’s code, and modified as follows. In the event of conflict, the findings in this decision control.

II. BASIC FINDINGS OF FACT:

The Board adopts and incorporates by reference the code interpretations, findings of fact, and conclusions of law in the Recommendation as set forth in Section I, Applicable Criteria, and Section II, Basic Findings. The Recommendation is attached as Exhibit G to the Board’s Decision. The following additions are made to the basic findings in the Recommendation.

A. PROCEDURAL HISTORY: A public hearing was held before a Hearings Officer on February 27, 2024, and the Recommendation was issued on April 26, 2024. The Board conducted a *de novo* hearing on July 24, 2024. The Board left the record open until August 7, 2024, for all parties to submit written legal argument; until August 14, 2024, for all parties to submit rebuttal; and until August 21, 2024, for applicant’s final argument. The Board rendered its oral decision after deliberations on October 9, 2024, affirming the Recommendation and modifying the findings as described herein. This written Decision memorializes that decision.

B. REVIEW PERIOD: The applications were submitted on May 27, 2022. Planning Division deemed the applications incomplete on June 24, 2022. Applicant submitted First Supplement on November 23, 2022, a Second Supplement and Modification of Application on September 1, 2023. The 150-day clock does not apply to the applications for the Comprehensive Plan Amendment and Zone Change.

The Board takes note that the subject property achieved its current configuration via property line adjustment approval 247-23-000653-LL.

C. PUBLIC COMMENTS: Planning Division received three comments from the public between the issuance of the Recommendation and the close of the Public Record for public comment after the Board Public Hearing on August 14, 2024. The Planning Division also received one comment from a public agency, Department of Land Conservation and Development (“DLCDC”), on August 7, 2024, in response to the Planning Division’s inquiry about applicability of a recent statute adopted to allow Accessory Dwelling Units (“ADUs”). The Cherrie Brooks comment dated July 16, 2024, did not address relevant criteria to the application. Consequently, the Board did not consider these comments. Carol Macbeth filed two comments on behalf of Central Oregon Land Watch, one on July 24, 2024, and a second comment on August 8, 2024. Both contained arguments regarding subjects raised before the Hearings Officer below, and introduced additional facts. Applicant addressed all relevant arguments

raised within the allowed time periods for rebuttal, submitting supplemental evidence where needed. The Board considered all arguments raised in deliberations, finding the Macbeth arguments unpersuasive.

Planning Division’s inquiry to DLCD addressed whether ADUs could be allowed on the Subject Property if it were rezoned. DLCD entered a comment into the Record on the afternoon of the last day of the Open Comment Period, noting that the unusual circumstances of the proposed rezone make the approval of ADUs “entirely up to the county...” [underline original]. Applicant, in rebuttal period, addressed the possibility of the rezone impact with additional evidence and argument. The Board considered the argument in deliberations, finding Applicant addressed the issue to the Board’s satisfaction.

III. FINDINGS

This Board adopts the Recommendation for Approval, as supplemented by noted Findings related to matters which arose after the Recommendation was issued.

1. Subject Property as “Agricultural Land” with respect to Soils

Statewide Planning Goal 3, OAR 660-033-0020(1)(a)(A)

FINDING: The Board adopts the Recommendation unanimously, finding that the Subject Property is predominantly NRCS Class VII and VIII soils, and consequently is not Agricultural Land.

2. Subject Property as “Agricultural Land” with respect to Factors

Statewide Planning Goal 3, OAR 660-033-0020(1)(a)(B)

This rule analyzes what constitutes “Agricultural Land” as referenced in Statewide Planning Goal 3. One of those factors is “existing and future availability of water for farm irrigation purposes.” At the time of the Public Hearing before Hearings Officer Frank and in the Open Record period leading up to draft of the Recommendation by Hearings Officer Frank, confirmation from Swalley Irrigation District was not available to verify the status of irrigation water appurtenant to the Subject Property. The Hearings Officer’s Findings noted on Page 46, paragraph 2, that irrigation rights did exist at the Subject Property. He went on to note that existence may be suggestive of agricultural land, but standing alone, did not determine that the land was agricultural land.

On August 7, 2024, Applicant submitted Exhibit 42 into the Record before the Board. That Exhibit conclusively determined by letter from Swalley Irrigation District dated August 1, 2024, that there are no longer any Swalley water rights on the Subject Property.

FINDING: The Board adopts the Recommendation regarding “Agricultural Land” where it is determined that the Subject Property is not properly characterized as Agricultural Land. By correction, the Board finds that no irrigation water rights exist at the Subject Property, as evidenced by Exhibit 42 in the Record, Swalley Letter of No Appurtenant Water Rights. This does not change the Hearings Officer’s conclusion that the Subject Property is not Agricultural Land.

The Board adopts the Recommendation by a vote of 2 to 1, finding that the Subject Property is not Agricultural Land when considering factors established by the Goal, the Administrative Rules, Oregon Revised Statutes, and relevant common law.

3. Subject Property as “Agricultural Land” when considering Adjacent or Nearby Agricultural Lands

Statewide Planning Goal 3, OAR 660-033-0020(1)(a)(C)

FINDING: The Board unanimously adopts the Recommendation, finding no adjacent or nearby agricultural lands and no evidence to suggest that a nearby farm would benefit from agricultural use of the Subject Property including use as a storage or maintenance facility.

4. Goal 14 Exception Requirement

Statewide Planning Goal 14

FINDING: The Board adopts the Recommendation by a vote of 2 to 1, finding that the Plan Amendment / Zone Change proposed will not result in urbanization such that an exception to Goal 14 is required.

5. Allowance of Accessory Dwelling Units under ORS 215.495, ORS 215.501 on Rural Lands, such as Subject Property

Transportation Planning Rule, OAR 660-012-0060, DCC 18.116.310(E)(4)

A question posed by a member of the public at a public hearing preceding the subject application on July 24, 2024, raised the issue of whether ADUs would be allowed on rural lands rezoned without necessity of exception to Statewide Planning Goals under ORS 215.495 and ORS 215.501, recently effective. Such additional use could pose concerns related to increased density on rural lands and rural roadways. Planning Division staff addressed the question to the DLCD. DLCD’s response was received and submitted into the Record on August 7, 2024. The Department’s response was inconclusive, noting that “[t]he department concludes approved rezones of resource land could result in the development of ADUs if the county permits rural ADUs on non-resource lands.”

Applicant subsequently submitted Transight Consulting Transportation’s Errata, providing an analysis of possible ADU impacts resulting from approval of the subject rezone. It is entered into the Record as Exhibit 43. It concludes that the additional ADU-related trips would not violate applicable standards.

FINDING: The Board finds unanimously that ADUs, if allowed on the Subject Property, are not foreseen to reduce operation levels on OB Riley Road and Destiny Court to an unacceptable level of service, based on the expected trip generation for 14 ADUs. The Board further finds ADUs would not change the functional classification of existing roads, change standards implementing a functional classification system, or result in types of travel that are inconsistent with the functional classification of existing roads. For purposes of the Transportation Planning Rule (OAR 660-012-0060) a significant impact does not occur with or without the inclusion of ADUs on the Subject Property.

IV. DECISION:

Based upon the foregoing Findings of Fact and Conclusions of Law, the Board of County Commissioners hereby **APPROVES** the Applicant’s application for a Deschutes Comprehensive Plan Amendment and Zone Change for the Subject Property.

HEARINGS OFFICER RECOMMENDATION

FILE NUMBERS: 247-22-000436-ZC / 247-22-000443-PA / 247-23-000651-MA

HEARING: February 27, 2023, 6:00 p.m.
Zoom & Barnes & Sawyer Rooms

SUBJECT PROPERTY APPLICANT/OWNER: Mailing Name: DESTINY COURT PROPERTIES LLC (“Applicant”)
Maps and Tax Lots: 1712070000100¹
Accounts: 113037
Situs Address: 19975 DESTINY CT, BEND, OR 97703
 (“Subject Property”)

***Note:** The Subject Property has been recently reconfigured as part of a property line adjustment.*

APPLICANT’S ATTORNEY: Elizabeth Dickson (“Dickson”), Dickson & Hatfield LLP

REQUEST: The Applicant requested a Deschutes County Comprehensive Plan Amendment to change the designation of the Subject Property from Agricultural (“AG”) to Rural Residential Exception Area (“RREA”); and a Zone Change to rezone the Subject Property from Exclusive Farm Use – Tumalo/Redmond/Bend Subzone (“EFU”) to Multiple Use Agricultural (“MUA”).

Note:** The Applicant also applied for conditional use and tentative plan approval for a 14-lot residential Planned Unit Development (“PUD”). The development proposal request is **not a part of this review.

STAFF PLANNER: Caroline House, Senior Planner
Caroline.House@deschutes.org

RECORD: Record items can be viewed and downloaded from:
<https://www.deschutes.org/cd/page/247-22-000436-zc-247-22-000443-pa-destiny-court-properties-llc-comprehensive-plan-amendment>

I. APPLICABLE CRITERIA

Deschutes County Code (“DCC”)

Title 18, Deschutes 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 18.56, Surface Mining Impact Area Combining Zone (“SMIA”)

Chapter 18.84, Landscape Management Combining Zone (“LM”)

Chapter 18.136, Amendments

¹ The Deschutes County Assessor’s Office updated the tax map between the mailing of the Notice of Public Hearing and the release of The County Planning Staff Report. The Subject Property is now identified as a singular tax lot and account (ref. TL 100 / 113037).

Title 22, Deschutes County Development Procedures Ordinance
Chapter 22.20.055, Modification of Application

Deschutes County Comprehensive Plan (“DCCP”)
Chapter 2, Resource Management
Chapter 3, Rural Growth Management
Appendix C, Transportation System Plan

Oregon Administrative Rules (“OAR”) Chapter 660
Division 6, Forest Lands
Division 12, Transportation Planning
Division 15, Statewide Planning Goals
Division 33, Agricultural Land

II. BASIC FINDINGS

LOT OF RECORD: The Subject Property is one (1) legal lot of record (County file no. 247-22-000433-LR) and its current configuration reflects a recently perfected property line adjustment (County file no. 247-23-000653-LL). The Hearings Officer incorporates as additional findings for this section the Applicant’s comments (Supplemental Rebuttal, 11/23/2022, pages 3 – 4) and the decisions rendered in 247-22-000433-LR/247-23-000653-LL.

ZONING: The Subject Property is zoned EFU-TRB subzone and is partially located in the LM and SMIA Combining Zones. The recently perfected property line adjustment removed all Flood Plain (“FP”) zoned areas on the Subject Property (County file no. 247-23-000653-LL) and the Applicant filed a Modification of application to incorporate the changes associated with the reconfigured property (County file no. 247-23-000651-MA).

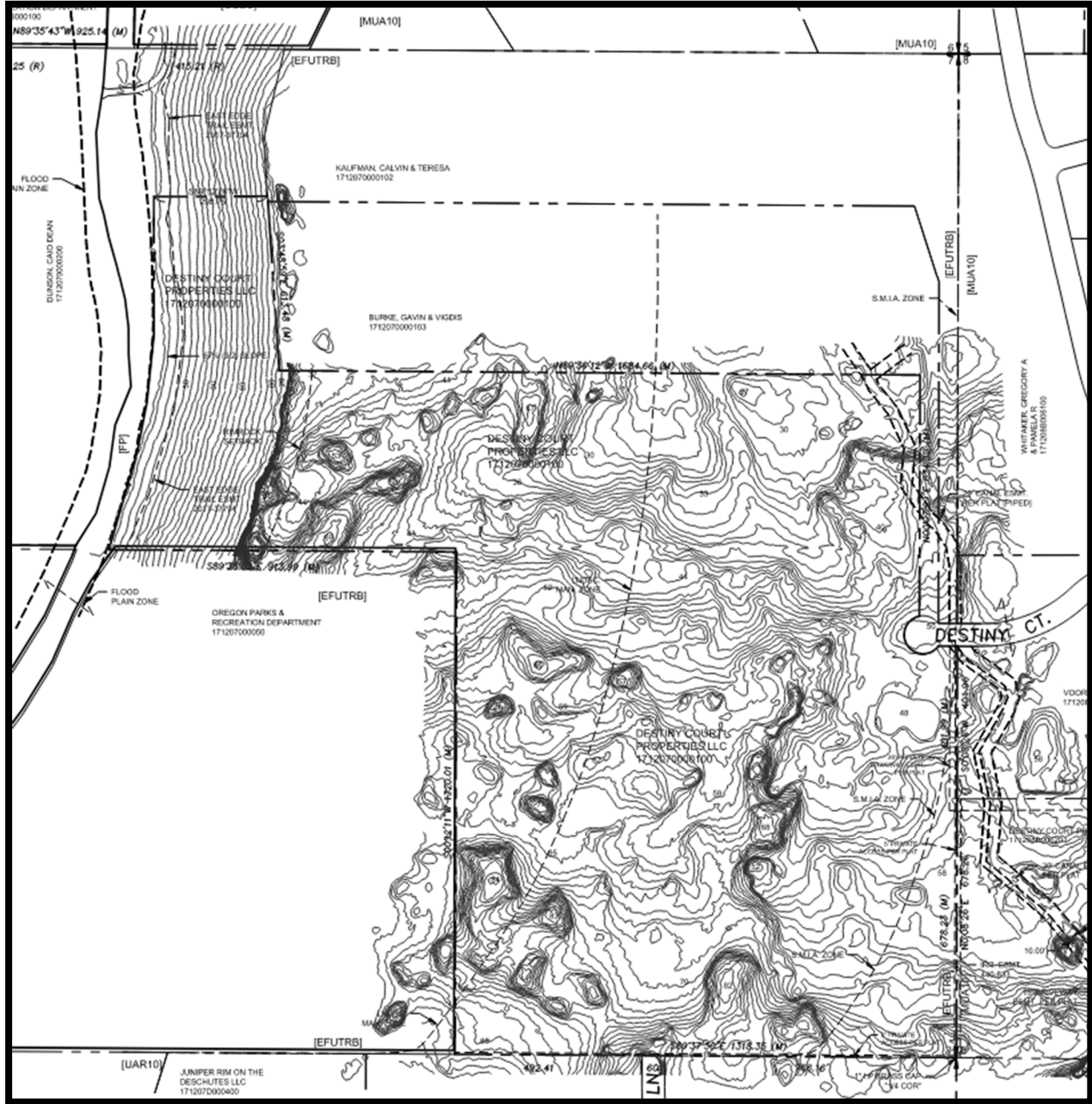
SITE DESCRIPTION: According to the Applicant’s materials, the Subject Property is +/-65.1 acres in size, irregularly shaped, and there are no structures or improvements on the Subject Property except for a small pond adjacent to the eastern property line and near the terminus of Destiny Court. Some areas of the Subject Property have been previously used for raising livestock and/or horses. Irrigation water rights (Swalley Irrigation District), once existing at the Subject Property but may have been transferred. The Subject Property is not currently being used for farming purposes. The remaining undisturbed areas of the Subject Property consist of native vegetation and rock outcroppings.

Destiny Court, a paved County Road², terminates at the northeastern Subject Property line and Northern Estates Lane, a paved Local Access Road³, terminates at the southern Subject Property line. As shown in *Figure 1* below, grade varies across the property with the most dramatic changes along the northwestern corner of the Subject Property, which consists of rimrock along the Deschutes River canyon. The nearest boundary for the City of Bend’s Urban Growth Boundary (“UGB”) is located approximately 2,000 feet to the southeast of the Subject Property.

² Per DCC 12.04.060, "County Road" means a public road under the jurisdiction of a county that has been designated as a county road under ORS 368.016 and maintained by Deschutes County.

³ Per DCC 12.04.060, "Local Access Road" means any public street or road which is not maintained by the County but over which the County has jurisdictional authority.

Figure 1 – Topographical Map of the Subject Property



SOILS: The Natural Resources Conservation Service (“NRCS”) map shown on the County’s DIAL GIS mapping program identifies three (3) soil complex units on the Subject Property: 38B, Deskamp-Gosney complex, 0 to 8 percent slopes, 58C, Gosney-Rock outcrop-Deskamp complex, 0-15 percent slopes, and 106E, Redslide Licksillet complex, 30-50 percent slopes.

An Agricultural Soils Capability Assessment (Order 1 Soil Survey – referred to by the Hearings Officer as the “Site-Specific Study”) was conducted by Brian T. Rabe, CPSS, WWS, for the majority of the Subject Property and found the following⁴:

“Cascade Earth Sciences (CES) was retained to conduct a site-specific soil survey on a substantial portion

⁴ Ref. Applicant’s Exhibit 3 and Exhibit 24.

of the above referenced parcels (Site) consisting of approximately 63 acres. The subject acreage is zoned Exclusive Farm Use Tumalo Redmond Bend (EFUTRB). Those areas not specifically evaluated generally consisted of steeper slopes with rocky soils leading into the adjacent Deschutes River canyon. We understand that an application to Deschutes County is being prepared to request a zone change to a non-resource designation (rural residential). The soil-related criteria for this process is contained in Oregon Administrative Rules (OAR) 660-033. Parcels need to consist predominately of soils in land capability classes VII and VIII to be considered for a non-resource designation.

...

SUMMARY AND CONCLUSIONS

The purpose of this report is to present the results of an assessment to verify and, where necessary, refine the soils, map units, and boundaries mapped on the Site and to determine whether the soils on the Site meet the land capability classification criteria for a non-resource zoning designation. The published soil survey information was reviewed and direct observations of soil conditions were made at representative locations across the Site. CES has determined that the information from the published soil survey was generally consistent with observations on the ground with boundary refinements limited to delineating components of the complexes mapped by the NRCS. CES has determined that 41.35 acres, or 65.8 percent, of the Site consists of Class VII and Class VIII soils. Since the Site is predominantly Class VII and Class VIII soils and does not otherwise meet the criteria for further consideration as agricultural land, the Site meets the soils criteria for consideration of a non-resource zoning designation.”

Further discussion regarding soils is found in the findings related to DCC 18.04.030 and Statewide Planning Goal 3 below.

LAND USE HISTORY:

- **LR-94-42:** The County approved a Lot of Record Verification.
- **MP-94-29:** The County approved a three-parcel partition. The Subject property was originally platted as a part of Parcel 1 (ref. PP1995-05).
- **CU-95-68:** The County conditionally approved a non-farm dwelling on Parcel 1 of MP-94-29.
- **MP-96-07/FPA-96-39:** The County approved a three-parcel partition. The Subject Property was platted as a part of Parcel C (ref. PP1995-05).
- **V-97-3/LL-97-10:** The County approved a minor variance and a lot line adjustment between the Subject Property and properties identified on Assessor’s Map 17-12-07, as tax lots 102 and 103.
- **E-97-16:** The County approved a 1-year extension of CU-95-68.
- **E-98-28:** The County approved a 2-year extension of CU-95-68.
- **E-99-26:** The County approved a second 2-year extension of CU-95-68.
- **LM-00-195/SMA-00-33:** Site plan approval for the previously approved non-farm dwelling in the Landscape Management and Surface Mining Impact Area Combining Zones. However, the non-farm dwelling use was never initiated and the approvals expired.
- **247-22-000433-LR:** The County found the Subject Property is recognized as one legal lot of record.
- **247-23-000653-LL:** The County approved a property line adjustment between the Subject Property and a property identified on Assessor’s Map 17-12-07, as tax lot 200.

SURROUNDING LAND USES: Staff (Staff Report, pages 5 - 6) provided the following descriptive summary of surrounding uses and zoning:

North: The two closest properties to the north are zoned EFU-TRB and are developed with non-farm dwellings. Beyond these two properties is Tumalo State Park and other residentially developed MUA10 zoned properties. Tumalo State Park is zoned Open Space & Conservation Zone “(OS&C)”, FP, MUA10, and EFU-TRB.

East: The properties to the east are zoned MUA10 and are predominantly developed with residential uses. The lot sizes vary from less than one (1) acre to 16 acres. State Highway 20 is approximately 1,700 feet to the east.

South: The properties to the south-southwest are platted 10-acre residential lots in the Pacific Cascade Heights and Juniper Rim subdivisions. These properties are zoned Urban Area Reserve Zone (“UAR10”). The properties to the south-southeast are also residentially developed and zoned UAR10. However, these lots are not part of a recorded subdivision or partition and range in size from +/- .96 acres to +/- 17.84 acres. Further to the south is a large UAR10-zoned tract of land owned by the Elkins Revocable Trust and Bend Metro Parks & Recreation District’s Riley Ranch Reserve. As noted above, the City of Bend’s UGB is approximately 2,000 feet to the southeast and properties within the UGB are in the City of Bend’s zoning jurisdiction.

West: The Oregon Parks & Recreation Department owns the abutting land to the west-southwest. The Deschutes River crosses this property and continues generally in a north-south direction. This Oregon Parks & Recreation Department property is zoned EFU-TRB and FP and appears to be undeveloped. However, there is a public trail along the banks of the Deschutes River connecting Tumalo State Park, to the north, and Riley Ranch Reserve, to the south. Abutting the northwest corner of the property is a privately owned EFU and FP zoned property that is developed residentially and also includes a segment of the publicly accessible trail connecting Tumalo State Park and Riley Ranch Reserve. Further to the west is Surface Mining Site No. 303, which Oregon Department of Geology and Mineral Industries (“DOGAMI”) identifies as a “permitted”⁵ surface mine, and privately owned EFU-TRB zoned properties.

Applicant provided additional comments related to the site description in its March 19, 2024 record submission. The Hearings Officer incorporates the Applicant March 19, 2024 (pages 6 – 10) surrounding property descriptions as additional findings for this section. See also the Hearings Officer’s findings for Section 2.7, Open Spaces, Scenic Views and Sites Open Space and Scenic View Designations and Protections.

PUBLIC AGENCY COMMENTS: The Planning Division mailed notice on June 3, 2022, and September 9, 2023, to several public agencies and received the following comments:

Bend Fire & Rescue, Jason Bolen

A three-page letter was submitted by Bend Fire & Rescue and is incorporated herein by reference.

STAFF REPORT COMMENT: The Bend Fire & Rescue comments appear to be related to the Fire Department standards that apply to the 14-lot PUD. This request is not a part of this review.

Deschutes County Addressing Coordinator, Tracy Griffin

Addresses and street names for this proposed subdivision will be determined and approved during the tentative plat phase of this development.

⁵ DOGAMI’s *Mining Permit & Status Code Reference* defines “permitted” as Certificate, Exemption, or Permit has been approved and issued - does not necessarily indicate site is active.

Deschutes County Building Division, Randy Scheid

NOTICE: The Deschutes County Building Safety Divisions code mandates that Access, Egress, Setbacks, Fire & Life Safety, Fire Fighting Water Supplies, etc. must be specifically addressed during the appropriate plan review process with regard to any proposed structures and occupancies.

Accordingly, all Building Code required items will be addressed, when a specific structure, occupancy, and type of construction is proposed and submitted for plan review.

Deschutes County Onsite Wastewater Division, Todd Cleveland

Prior to final plat approval, each proposed residential lot must have a complete approved site evaluation.

Deschutes County Road Department, Cody Smith

I have reviewed the application materials for the above-referenced file numbers, proposing 14-lot PUD subdivision of Tax Lots 100 and 101 on County Assessor’s Tax Map 17-12-07 and Tax Lot 6201 on County Assessor’s Tax Map 17-12-08B. The subject property is accessed by Destiny Court, which presently terminates at the eastern boundary of the subject property, and Northern Estates Lane, which presently terminates at the southern boundary of the subject property. Road Department records indicate that both roads have the following attributes where they abut or provide access to the subject property:

Destiny Court

- Road Status: County Road
- Surface Type: Asphalt Concrete
- Surface Width: 28 feet
- Functional Classification: Rural Local
- Right of Way Width: 60 feet
- Right of Way Instrument: Partition Plat No. 1995-5

Northern Estates Drive

- Road Status: Local Access Road
- Surface Type: Asphalt Concrete
- Surface Width: 28 feet
- Functional Classification: Rural Local
- Right of Way Width: 60 feet
- Right of Way Instrument: Partition Plat No. 1995-5

Where they provide access to or abut the subject property, Destiny Court and Northern Estates Drive meet or exceed the minimum rural local road standards given in Deschutes County Code (DCC) 17.48A

The applicant has proposed an interior private road system that would be an extension of both Destiny Court and Northern Estates Drive. Staff note that the site traffic report submitted with the application materials recommends that “All internal streets should be constructed within a dedicated public access easement.” State law and DCC do not differentiate between “public access easements” and “public rights of way”; they are one and the same. Road Department staff assume that the applicant’s intent is to build public internal roads to the private road standard.

Deschutes County Road Department requests that approval of the proposed land uses be subject to the following conditions:

Prior to construction of road improvements:

- Applicant shall submit road improvement plans and stormwater drainage report to Road Department for approval prior to commencement of construction pursuant to DCC 17.40.020 and 17.48.060. The roads shall be designed to the minimum road standard given in 17.48.160, 17.48.180, and 17.48A. Stormwater drainage shall be designed in accordance with DCC 17.48.190 and the latest edition of the Central Oregon Stormwater Manual. Road improvement plans shall be prepared in accordance with all applicable sections of DCC 17.48.

Prior to final plat approval by Road Department:

- Applicant shall complete road improvements according to the approved plans and all applicable sections of DCC 17.48. Improvements shall be constructed under the inspection of a registered professional engineer consistent with ORS 92.097 and DCC 17.40.040. Upon completion of road improvements, applicant shall provide a letter from the engineer certifying that the improvements were constructed in accordance with the approved plans and all applicable sections of DCC 17.48.
- Applicant shall complete road improvements according to the approved plans and all applicable sections of DCC 17.48. Improvements shall be constructed under the inspection of a registered professional engineer consistent with ORS 92.097 and DCC 17.40.040. Upon completion of road improvements, applicant shall provide a letter from the engineer certifying that the improvements were constructed in accordance with the approved plans and all applicable sections of DCC 17.48.
- If roads are dedicated to the public, applicant shall dedicate internal road rights of way to provide for the minimum standard rural local road right of way width of 60 ft. pursuant to DCC 17.16.105, 17.36.040, 17.36.060, and 17.48A. Dedication shall be by plat declaration.
- All easements of record or existing rights of way shall be noted on the final plat pursuant to DCC 17.24.060(E),(F), and (H).
- The surveyor preparing the plat shall, on behalf of Applicant, submit information showing the location of the existing roads in relationship to the rights of way to Deschutes County Road Department. This information can be submitted on a worksheet and does not necessarily have to be on the final plat. All existing road facilities and new road improvements are to be located within legally established or dedicated rights of way. In no case shall a road improvement be located outside of a dedicated road right of way. If research reveals that inadequate right of way exists or that the existing roadway is outside of the legally established or dedicated right of way, additional right of way will be dedicated as directed by Deschutes County Road Department to meet the applicable requirements of DCC Title 17 or other County road standards. This condition is pursuant to DCC 17.24.060(E),(F), and (G) and 17.24.070(E)(8).
- Applicant shall submit as-constructed improvement plans to Road Department pursuant to DCC 17.24.070(E)(1).
- Applicant shall submit plat to Road Department for approval pursuant to DCC 17.24.060(R)(2), 100, 110, and 140.

STAFF REPORT COMMENT (page 8): Most of the comments above appear to be related to DCC standards that apply to the 14-lot residential PUD. This request is not a part of this review.

Deschutes County Senior Transportation Planner, Peter Russell (June 23, 2022)

I have reviewed the transmittal materials for 247-22-000346-ZC/438-TP/439-CU/443-PA/433-LR/434-LR/435-LR for properties totaling approximately 83 acres to change the Comprehensive Plan designation from Agriculture to Rural Residential Exception Area (RREA) and the zoning from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA-10). The properties lie in the Exclusive Farm Use (EFU), Surface Mining

Impact Area (SMIA), Landscape Management (LM) and Flood Plain (FP) zones and add a 14-lot Planned Unit Development (PUD) at 19975 and 19995 Destiny Ct., aka County Assessor’s Maps 17-12-07, Tax Lots 100 and 101 and 17-12-08B, Tax Lot 6201. For reasons discussed below, staff finds more information is needed to address the Transportation Planning Rule (TPR).

Deschutes County Code (DCC) 18.116.310(4) requires a 20-year analysis for zone changes. The application has submitted what in essence is a trip generation memo from Transight, the applicant’s traffic engineer, that is dated Sept. 15, 2021. The memo does not have any operational analysis regarding performance of affected intersections. Staff therefore cannot determine compliance with the TPR at Oregon Administrative Rule (OAR) 660-012-0060 for significant effect. The applicant needs to provide operational analysis of the affected intersections pre-zone change and post-zone change. Staff does agree with the consultant that the difference in trip generation between EFU and MUA-10 is negligible. Historically, staff has used single-family home as its base case for reasonable worst-case scenario for uses in the EFU zone. The outright permitted uses are listed at DCC 18.16.020. The most recent edition of the Institute of Traffic Engineers (ITE) Trip Generation Manual lists Single Family Detached Home (Land Use 210) has having 9.43 weekday trips. Staff has also reviewed the outright permitted uses in the MUA-10 at DCC 18.32.020 as well as the outright permitted uses listed in Oregon Revised Statute (ORS) 215.213(1) and 215.283(1).

The property accesses Destiny Court, a public road maintained by Deschutes County, and functionally classified as a local. The property has an access permit approved by Deschutes County (#247-SW1403) and thus complies with the access permit requirements of DCC 17.48.210(A).

Board Resolution 2013-020 sets a transportation system development charge (SDC) rate of \$4,757 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, 2022. 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, 2022, THE SDC RATE WILL INCREASE TO \$5,080 PER PEAK HOUR TRIP AND LAST UNTIL JUNE 30, 2023. AGAIN, THIS IS INFORMATIONAL ONLY AS SDCS ARE NOT ASSESSED UNTIL DEVELOPMENT OCCURS.

STAFF REPORT COMMENT (page 9): In response to Mr. Russell’s comments above, the Applicant submitted a supplemental transportation memorandum dated August 8, 2022⁶.

⁶ Ref. 2023-09-15 E. Dickson - Destiny Transportation Analysis Response.

Deschutes County Senior Transportation Planner, Tarik Rawlings, October 17, 2023

I have reviewed the transmittal materials for 247-23-000651-MA, 652-MA, 653-LL which modifies original files 247-22-000436-ZC/438-TP/439-CU/443-PA/433-LR/434-LR/435-LR for properties totaling approximately 83 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 (MUA-10). The properties lie in the Exclusive Farm Use (EFU), Surface Mining Impact Area (SMIA), Landscape Management (LM) and Flood Plain (FP) zones and add a 14-lot Planned Unit Development (PUD) at 19975 and 19995 Destiny Ct. recognized on County Assessor’s Maps 17-12-07 as Tax Lots 100 and 101 and 17-12-08B as Tax Lot 6201. For reasons discussed below, originally stated in response to the initial Plan Amendment/Zone Change/Tentative Plat application, staff finds that the additional information provided by the applicant and their traffic engineer addresses the requests made in the County Transportation Planner’s original June 23, 2022 comment.

I have reviewed Mr. Bessman’s August 8, 2023, Site Traffic Report/TPR Analysis related to the subject application and I agree with the assumptions, methodology, and conclusions contained therein. As Mr. Bessman utilizes the 2040 planning horizon year (reflective of the most recent data included in the County’s forthcoming Transportation System Plan update) this analysis appears to comply with relevant criteria. Mr. Bessman utilizes the acceptable road segment standard of 13,900 Average Daily Trips (ADT) which is incorporated into the County’s most recent 2020-2040 Transportation System Plan. The analysis and references therein related to peak hour trips (16 to 22 total weekday p.m. peak hour trips) are adequate. Staff agrees with Mr. Bessman’s summary of Transportation Planning Rule (TPR) Compliance and finds that relevant TPR provisions appear to be satisfied through the submittal of this additional information.

The property accesses Destiny Court, a public road maintained by Deschutes County, and functionally classified as a local. The property has an access permit approved by Deschutes County (#247-SW1403) and thus complies with the access permit requirements of DCC 17.48.210(A).

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 Land Conservation & Development, Hilary Foote

DLCD has reviewed a soil assessment as requested by Ron Cochran for QRR Properties LLC. Attached are the soil assessment, DLCD completeness review, and DLCD application form.

In accordance with OAR 660-033-0045(6)(a), the Department of Land Conservation and Development (DLCD) finds that this soils assessment is complete. DLCD has reviewed the soils assessment for

completeness only and has not assessed whether the parcels qualify as agricultural land as defined in OAR 660-033-0020(1) and 660-033-0030.

The county may make its own determination as to the accuracy and acceptability of the soils assessment.

Oregon Parks and Recreation Department, Fiona Noonan

Based on the information in this Notice of Application, tax lots 1712070000100, 1712070000101, and 1712070000200 are all within the Middle Deschutes State Scenic Waterway. To my understanding, no structural development has been proposed here yet, but please correct me if I’m wrong. If/when the relevant property owners wish to build or remodel any structures, remove/alter vegetation, or conduct other similar activities, they will need to submit a Notification of Intent Application to the State Scenic Waterway Program. If possible, please have them reach out to me directly beforehand.

The following agencies did not respond to the notice: 911, Bend Metro Parks & Recreation, Deschutes County Assessor, Deschutes County Sheriff, Deschutes County Surveyor, Oregon Department of Agriculture – Land Use Planning Coordinator, Oregon Department of Environmental Quality, Oregon Department of Fish & Wildlife, Oregon Water Resources Department (Watermaster – District 11), and Swalley Irrigation District.

PUBLIC COMMENTS: The Planning Division mailed notice of the application to all property owners within 750 feet of the Subject Property on June 3, 2022, and September 9, 2023. 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 15, 2022. Eleven (11) public comments were received. Staff, in the Staff Report, provided the following summary of the public comments:

1. *Road and traffic impacts*
2. *Design consistency of roads between developments*
3. *Damage to Northern Estates Lane during construction or development*
4. *Small Lot sizes*
5. *Lots should be at least 10 acres*
6. *Loss of natural habitat*
7. *Impacts on rural character of the area*
8. *Concerns the applications are incomplete*
9. *Need for the County to require a Road Maintenance Agreement*
10. *Comments in support of the PA/ZC request, but opposed to the 14-lot Planned Development*
11. *Need for equitable sharing of road maintenance costs*
12. *Concerns the applicable criteria are generally not met*
13. *Increased traffic impacts on O.B. Riley Road*
14. *Desire for a “peaceful wilderness environment” near Tumalo State Park*
15. *Spatial restrictions/5-acre minimum lot sizes associated with the LM Combining Zone*
16. *Open space acreage requirements*
17. *Cluster Development standards not being met*
18. *Lot of Record issues*
19. *Need for Goal 14 Exception*
20. *Establishment of “neighborhood-style subdivision housing” outside of the UGB*
21. *Need for fire gates between the proposed subdivision and Pacific Cascade Heights to reduce road maintenance, trespassing, vagrants, houseless, camping, speed contests, etc.*

STAFF REPORT COMMENT (page 12): *Most of the comments above appear to apply standards that will be evaluated during the review of the 14-lot residential PUD. As part of the County’s review of those applications,*

staff or the hearings body will address these comments and their relevancy to the applicable standards. Compliance with the applicable rural growth and transportation standards for a comprehensive Plan Amendment and Zone Change are addressed below. Staff notes the Lot of Record issue has been resolved as part of files nos. 247-22-000433-LR / 247-22-000435-LR / 247-23-000653-LL. The subject property is recognized as one (1) lot of record.”

The Hearings Officer concurs with the Staff characterizations and conclusions set forth in the above “Staff Comment.” The Hearings Officer addresses, in the context of findings for relevant approval criteria, concerns related to less than 10 acres (#5 above), rural character (#7 above), application incomplete (#8 above), lot of record (#18 above) and Goal 14 (#19 above) above in the findings for relevant approval criteria.

HEARING NOTICE: On January 19, 2024, the Planning Division mailed a Notice of Public Hearing to all property owners within 750 feet of the Subject Property, public agencies, and parties. A Notice of Public Hearing was also published in the Bend Bulletin on Sunday, January 21, 2024. Notice of the first evidentiary hearing was submitted to the Department of Land Conservation and Development (“DLCD”) on January 19, 2024.

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. Purpose of the Preliminary Findings

The Hearings Officer, in these Preliminary Findings, responds to issues raised by Central Oregon LandWatch (“COLW”) and the Staff. General public comments also raised one issue, also raised by COLW (Goal 14), addressed below. These Preliminary Findings are intended to provide an overview of the COLW issues, discussion of the relevant laws/rules related to those issues and the Hearings Officer’s legal interpretation of various sections of the DCC and State statutes/regulations relevant to the COLW issues. The Hearings Officer incorporates these Preliminary Findings as additional findings for relevant approval criteria.

2. Scope of this Recommendation

This recommendation focuses solely upon the Applicant requests to change the comprehensive plan designation and zone change designation for the Subject Property. For context, the Applicant initially requested approval for a Comprehensive Plan Amendment, Zone Change, Conditional Use/Tentative Plan (14-lot residential Planned Unit Development – PUD). Applicant removed the Conditional Use/Tentative Plan request. Approval criteria related to the Conditional Use/Tentative Plan request are **not** relevant approval criteria in this case.

Applicant also modified its proposal. In summary, the modification removed from the original application areas of the property zoned FP which reconfigured/reduced the area included in the Comprehensive Plan and Zone Change requests. The Hearings Officer will address criteria related to Applicant’s modification in the findings below.

3. Overview of Issues Raised by COLW

COLW (9/14/2024 email to Staff) raised “concerns” about Staff’s processing of the applications in this case. COLW expressed multiple concerns related to Applicant’s proposed site plan. These concerns related to Applicant’s initial request for conditional use/tentative plan approval. As noted in the Scope of Review section above, the Applicant removed the Conditional Use/Tentative Plan request from consideration in this case. COLW’s site plan concerns, as expressed in its 9/14/2024 email, are not relevant to the Hearings Officer’s decision in this case.

COLW, in the 9/14/2024 email, also expressed concerns related to tax lot 101; whether tax lot 101 is a lot of record (“Lot of Record Issue”) and raised concerns related to the applications in this case meeting Goal 14 (“Goal 14 Issue”). The Hearings Officer addressed above, in the findings set forth in Section II. Basic Findings, Lot of Record, COLW’s Lot of Record issue.

McBeth testified at the February 27, 2024 public hearing on behalf of COLW. McBeth, during her hearing testimony, suggested that the Planning Staff processing of the applications in this case “violated county process and procedures.” McBeth, during her hearing testimony, also argued that Statewide Planning Goals 3, 5 and 14 were applicable and that the applications did not adequately address those Goals. COLW, in an open-record submission (March 26, 2024), expanded upon its Goal 3 and 14 arguments.

4. Oregon Statewide Planning Goal 14

COLW argued that Applicant, in this case, failed to properly address Statewide Planning Goal 14. COLW, in a February 27, 2024 (page 4) record submission, stated the following:

“Goal 14 obligates local governments to establish urban growth boundaries that ‘identify and separate urbanizable land from rural land.’ The policy of Goal 14 is to contain urbanization within acknowledged UGBs. 1000 Friends of Oregon v. LCDC, 301 Or 447, 451-452 n3, 724 P2d 268 (1986) (Curry County). Goal 14 prohibits development that will undermine the effectiveness of an established UGB. Id. at 474.

This land is outside the Bend UGB. Deschutes County may not adopt a development pattern that conflicts with Goal 14 and its implementing rules. Sandy v. Clackamas County, 3 LCDC 139, 149-50 (1979) (‘If this development is allowed, then there may as well not be urban growth boundaries. [This] ...is a perfect example of how Goal 14 may, little by little, case by case, be rendered ineffective and useless in controlling urban sprawl.’).

The applicant's Burden of Proof explained:

‘Applicant proposes a planned development of fourteen approximately 1.75 acre lots on the newly zoned MUA-10 lands, grouped together and appropriately set back beyond the rimrock above the Deschutes River on the current Tax Lot 100.’

One dwelling per 1.75 acres is an urban density. This land outside the Bend UGB cannot be developed to an urban density without an exception to Goal 14.

In order to allow land use which any goal would prohibit, a local government must take an “exception” to that goal. Conversion of rural land to urban uses must be supported either by compliance with the requirements of Goal 14, or by an exception to that goal. Curry County, 301 Or at 477.

The Supreme Court has held that local governments must support any exceptions to Goal 14 by demonstrating that it is impracticable to allow any rural uses in the exception area. Id. at 489. It is not impracticable to allow

any rural uses on the subject property. As explained above, the property could be used for a riding school or other farm uses.

The integrity of the planning system depends on local governments starting from the assumption that lands will be used in compliance with the goals, unless specific circumstances justify departure from the state policy embodied in a particular goal.

The application does not demonstrate that it is impracticable to allow any rural uses on the subject property. No exception to Goal 14 has been proposed, and if it were, the application would not qualify. Therefore the application must be denied.”

COLW, in a March 26, 2024 submission (pages 1 – 2) stated the following:

“The policy embodied in Goal 14 is that land cannot be converted to urban uses prior to inclusion within an acknowledged urban growth boundary. The purpose of the goal is to provide for an orderly and efficient transition from rural to urban land use. Perkins v. City of Rajneeshpuram, 300 Or 1, 12 n. 15, 706 P2d 949 (1985).

The developer is mistaken that the density planned for the property is irrelevant. March 19, 2024 letter, p. 13. The record shows the applicant's objective is to develop a subdivision with 1.75- acre lots. The 2022 Burden of Proof refers to the 1.75-acre lot subdivision at pages 13, 24, 26, 32, 40, 44, 46, 47, 48, and 64. This objective is not denied by the developer.

In the unlikely event that the applicant prevails in this proceeding while denying it plans a subdivision with 1.75-acre lots on the property, the applicant will be estopped from requesting a subdivision with 1.75-acre or similar lots on the property in the future. Moreover such denial would raise the issue of candor toward the tribunal.

The decision in this case must be based on evidence in the record. The record shows the applicant's intent is a subdivision with small lot sizes at an urban density. Urban land uses in Oregon are restricted to lands inside an urban growth boundary. The applicant has not met its burden of showing compliance with Goal 14.”

The Hearings Officer finds that COLW raised a number of Goal 14 issues that must be addressed in this section of the Preliminary Findings. The Hearings Officer concurs with COLW that consideration of Goal 14, in this case, is relevant. 1000 Friends of Oregon v. Josephine County, LUBA No. 2023-022 (2023) citing Hess v. City of Portland, 23 OR LUBA 343, 345 (1992). The Hearings Officer also notes that LUBA, in the 1000 Friends of Oregon v. Josephine County opinion, stated that

“a petitioner who alleges that a decision violates Goal 14 by allowing conversion of rural land to urban uses must explain what urban use the decision allows.” citing Wood v. Crook County, 55 Or LUBA 165, 176-77 (2007)

The Hearings Officer interprets COLW’s above-quoted statements as asserting that the application in this case violates Goal 14 by (1) proposing a lot size of 1.75 acres (or, per Applicant’s final argument 1.7 acres), (2) failing to request a Goal 14 exception, (3), if an exception to Goal 14 was requested by Applicant it must demonstrate that it is impracticable to allow any rural uses in the exception area and (4) undermining the effectiveness of an established UGB. The Hearings Officer addresses these concerns in the findings below.

The first COLW Goal 14 issue relates to the possibility of Applicant utilizing a planned development type approach to develop the Subject Property. This possibility resulted in an application by the Applicant for conditional use and tentative plan approval for a 14-lot residential planned development. The conditional use/tentative plan

applications are not part of this case; this recommendation is limited to addressing approval criteria relevant to the comprehensive Plan Amendment and Zone Change applications. As such the Hearings Officer cannot consider specific lot sizes proposed in separate applications.

The Applicant seeks to change the comprehensive plan map designation from Agricultural (“AG”) to Rural Residential Exception Area (“RREA”) and the zoning map from Exclusive Farm Use (“EFU”) to Multiple Use Agricultural (MUA”). The Hearings Officer takes official notice that the current Deschutes County Comprehensive Plan (“DCCP”) has been acknowledged by the Oregon Department of Land Conservation and Development (“DLCD”). The Hearings Officer finds that DLCD’s acknowledgment is properly interpreted to mean that the current Deschutes County Comprehensive Plan met/satisfied all relevant Statewide Planning Goals including Goal 14.⁷

The Hearings Officer finds COLW did not argue that the comprehensive plan RREA designation or the zoning MUA zoning designation, per se, conflict with Goal 14. If COLW believes it did make such argument then the Hearings Officer finds that COLW argument was not sufficiently developed to allow the Hearings Officer to authoritatively respond.

The Hearings Officer finds that the MUA zoning (DCC 18.32.040 A) provides for various development alternatives. The Hearings Officer finds that each of the MUA alternative development alternative complies with Goal 14. Therefore, the Hearings Officer finds all allowed densities provided for in DCC 18.32.040 A comply with Goal 14. The Hearings Officer finds no Goal 14 exception is required for an application seeking a development alternative allowed by DCC 18.32.040 A.

The Hearings Officer finds Applicant did not seek an exception to Goal 14. The Hearings Officer finds it would be speculative and impermissible to, as part of this recommendation, to assess the likelihood of approval of a Goal 14 exception.

COLW argued (February 27, 2024, page 5) that the Oregon Supreme Court, in *1000 Friends of Oregon v. Land Conservation and Development Commission (Curry County)* 310 Or 447 @ 489 (1986) must demonstrate “that it is impracticable to allow any rural uses in the *exception area*.” [emphasis added by Hearings Officer]

The Hearings Officer finds that the COLW “impracticable” argument is not sufficiently described to allow the Hearings Officer, or a participant in this case, to authoritatively respond. Also, the Hearings Officer finds that there is no evidence in the record that the Subject Property is in an “exception area” and therefore COLW’s *Curry* reference to “exception area” is either inappropriate or misleading. In the alternative, the Hearings Officer responds to COLW’s “impracticable” argument by finding that the proposed RREA and MUA designations are rural uses (not urban uses); therefore, the Applicant’s proposal in fact involves rural uses.

The last COLW argument (as summarized by the Hearings Officer above) suggests that approval of the proposals in this case should be denied because they “undermine the UGB.” The Hearings Officer finds that this COLW argument is not sufficiently developed to allow the Hearings Officer, or any participant in this case, to authoritatively respond.

Additionally, the Hearings Officer finds that the purpose of the requested MUA zone is

⁷ *Central Oregon LandWatch v. Deschutes County*, LUBA 2023-006 (2023) (hereafter referred to as the “710 Properties Decision”): “The DCCP provides that the RREA comprehensive plan designation is implemented by the RR-10 and Multiple Use Agriculture (MUA) zones. We have no reason to believe that DLCD’s acknowledgment of the 2015 amendments as consistent with Goal 14 was premised on anything other than the conclusion that the RREA plan designation facially does not allow urban uses of rural land...We similarly conclude that the board of commissioners did not err in relying on DLCD’s acknowledgment of the 2016 amendments to conclude that the RR-10 zone facially complies with Goal 14.”

“to preserve the rural character of various areas of the County while permitting development consistent with that character.”

The MUA zone also is intended to “provide for an orderly and efficient transition from rural to urban land use.” (See DCC 18.32.010). The Hearings Officer finds, based upon this quoted language, is properly interpreted to mean that the MUA zone allows (current) rural uses in anticipation of (future) urban uses; a transitional zone.

The Hearings Officer takes note that the Subject Property is relatively close to the City of Bend UGB. However, that fact does not imply that a MUA level development of the Subject Property is somehow an urban use. Developing the Subject Property, consistent with the MUA zoning requirements, will result in a rural use and not an urban use.

Applicant, in its May 27, 2022 Burden of Proof, March 19, 2024 open-record submission and April 2, 2024 final argument set forth evidence and argument related to the so-called *Curry/Shaffer* urban versus rural determination factors. The Hearings Officer adopts those Goal 14 related Applicant comments as additional findings for this Preliminary Finding. The Hearings Officer finds the *Curry/Shaffer* factors are satisfied in this case and that the RREA plan designation and MUA zone allow rural and not urban uses. Further, the Hearings Officer reiterates that LUBA, in the *710 Properties Case (Central Oregon LandWatch v. 1000 Friends of Oregon, LUBA 2023-006)* clearly stated that the Deschutes County RREA plan designation and MUA zone designation, as acknowledged by DLCD, are rural designations and a site-specific *Curry/Shaffer* analysis is not necessary.

In conclusion, the Hearings Officer finds COLW’s Goal 14 legal arguments are not persuasive.

5. Oregon Statewide Planning Goal 3

Staff (Staff Report, pages 39 to 49) addressed various aspects of Goal 3 in the context of the evidence in the record for this case. Staff requested the Hearings Officer to address a number of Goal 3 issues. COLW raised Goal 3 issues in record submissions (February 27, 2024 and March 26, 2024) and in testimony offered at the public hearing.

a. Past Use of Subject Property

COLW (February 27, 2024, page 2) stated the following:

“The applicant’s materials indicate the property has been used for the raising of irrigated crops, a farm use. Thus the property meets the definition of ‘agricultural land.’ It is impossible to find that land that has already been in farm use cannot be put to farm use.”

COLW proffered the “past farming” argument in the past. *Central Oregon LandWatch v. Deschutes County, LUBA No. 2023-049* (hereafter the “*Marken Decision*”). COLW, in the *Marken Decision*, argued that there was evidence in the record that the property in that case was used (2005 to 2023) for growing hay and other crops which the owner received income. LUBA, in the *Marken Decision*, concluded:

“We agree with intervenor that petitioner has not established that photographic evidence of crops growing on a property is conclusive evidence that a property is ‘suitable for farm use,’ given that the definition of farm use includes farm activities undertaken ‘for the primary purpose of obtaining a profit,’ where other evidence demonstrates that growing crops did not generate a profit. OAR 660-033-0020(1)(a)(B); ORS 215.203(2)(a).”

The Hearings Officer rejects COLW’s argument that evidence of past farming practices on a property conclusively determines that a property is “agricultural land” under relevant Oregon law. The Hearings Officer, consistent with the *Marken Decision* finds that the Hearings Officer should consider past farming of the Subject Property in the context of all evidence contained in the record.

b. Irrigation Rights

COLW (March 26, 2024, page 3) asserted that the Subject Property has irrigation rights and those rights have been used in the past for crop production. COLW concluded that the existence and use of irrigation water rights constitutes “*irrefutable evidence that the land can be put to farm use for the production of irrigated crops.*” The Hearings Officer, for the reasons stated above in the “past farming” findings, disagrees with this COLW argument. The Hearings Officer finds that the existence of irrigation rights and the past use of those irrigation rights for crop production must be considered in the context of all evidence contained in the record.

c. Profitability

COLW (March 26, 2024, page 3) provided the following statement related to “profitability”:

“The applicant misinterprets the applicable law in arguing that profitability in its March 19, 2024 letter. Profit is not a consideration in the definition of agricultural land use in Deschutes County. DCC 18.04.030 (land put to the listed farm uses meets the definition of agricultural use ‘whether for profit or not.’)”

DCC 18.04.030 defines “agricultural land” as follows:

“... lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominately Class I-VI soils, and other lands in different soil classes which are suitable for farm use, taking into consideration soil fertility, suitability for grazing and cropping, 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. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands shall be included as agricultural lands in any event.”

The Hearings Officer agrees with COLW that the word “profit” is not included in the above-quoted definition. However, this section of the DCC is essentially the same as OAR 660-033-0020(1); COLW references OAR 660-033-0020(1) in its February 27, 2024 record submission in the context of Goal 3.

The standard analysis of Goal 3 starts with the text of Goal 3 and OAR 660-033-0030 and then references OAR 660-033-0020(1)(A). DCC 18.04.030 (definition of “agricultural land”) and OAR 660-033-0020 (1)(A) both reference “accepted farming practices” which has consistently been interpreted to incorporate the definition of “farm use” found in ORS 215.203(2)(a). See *Marken Decision and 710 Properties Decision*.⁸

LUBA has consistently considered profitability in the context of ORS 215.203 and OAR 660-033-0020. What weight to be given to profitability, on the other hand, has been the subject of significant debate. The Hearings Officer disagrees with COLW’s statement that profitability is not a factor to be considered in determining whether the Subject Property is, or is not, agricultural land.⁹

⁸ *Central Oregon LandWatch v. 1000 Friends of Oregon*, LUBA Nos. 2023-006, & 2023-009 (2023) (the *710 Properties LUBA Decision* stated “...OAR 660-033-0020(1)(a)(B) defines “agricultural land” to include land that is ‘suitable for farm use’ based on a number of factors, and ORS 215.203(2)(a) defines ‘farm use’ to include farm activities that are undertaken ‘for the primary purpose of obtaining a profit in money.’”

⁹ See DCC 18.04.030 definition of “Farm Use” does include the word “profit.”

d. Multiple (Alternative) Farm Uses

COLW suggests that multiple farm uses should, and perhaps must, be considered when determining whether the Subject Property is “agricultural land.” COLW referenced uses such as poultry, grapes, goats, honeybees, training of equines and riding lessons as examples of alternative farm uses. The Hearings Officer conceptually agrees that considering multiple farm related uses, such as suggested by COLW, may be appropriate on one or more properties in Deschutes County. The Hearings Officer notes that any alternative use must be considered in the context of the DCC 18.04.030 and OAR 660-033-0020(1)(a)(B) factors. The Hearings Officer finds that mere speculation of possible alternative uses is not sufficient to, standing alone, demonstrate that the Subject Property is “agricultural land.”

The Hearings Officer discusses the “multiple (alternative) farm uses” issue, in greater detail, in the findings for OAR 660-033-030.

e. Open Space

COLW provided the following comments (March 3, 2024, page 3) related to “open space” and “agricultural land:”

“The definition of agricultural land in Oregon is purposefully broad to meet the objectives of the states agricultural land use policy. ORS 215.243. While the legislature protects farmland primarily to protect Oregon’s agricultural sector, it has also declared that open space protected for agricultural use is ‘an important physical, social aesthetic and economic asset to all of the people of the state.’ ORS 215.243(1)”

The Hearings Officer finds that COLW failed to describe its “open space” argument with sufficient specificity as to allow the Hearings Officer, or any participant, the ability to meaningfully respond.

6. Modification of Application

COLW, through hearing testimony of McBeth, suggested that Applicant’s Modification application and the County’s handling of that application was somehow improper. The Hearings Officer reviewed McBeth’s testimony and concludes that COLW failed to identify any specific legal problem with the modification process. The Hearings Officer finds COLW’s modification argument was not presented with sufficient legal or factual specificity to allow the Hearings Officer, or any participant, the ability to authoritatively respond. COLW did not provide relevant law, code or relevant approval criteria potentially offended by Applicant’s Modification proposal or the County’s response to such application.

In the alternative, the Hearings Officer adopts as findings for this recommendation, Applicant’s comments contained in its March 19, 2024 record submission (pages 1 – 3, section titled “Application Compliance with Modification Law”).

7. 710 Properties Decision

Staff (Staff Report, pages 41 – 44) expressed concern about issues raised and decided in the *710 Properties Decision*. Staff provided the following comments:

“...since the subject request was received, LUBA remanded a locally approved Plan Amendment and Zone Change request back to Deschutes County for failing to fully address the requirements under OAR 660-033-0020(1)(a)(B) and OAR 660-033-0020(1)(a)(C).

LUBA reached the following conclusions in their Final Opinion and Order for Central Oregon Landwatch et al v. Deschutes County (LUBA Nos. 2023-006/2023-07, July 28, 2023)¹⁰:

[T]he Board of commissioners erroneously concluded (1) that it need not consider whether forage grown on-site can be supplemented by feed imported from off-site, (2) that land is suitable for the construction and maintenance of equipment and facilities used for farm activities only if those farm activities occur on the same land, and (3) that it need not consider nearby or adjacent land at all.

...

On Remand, the board of commissioners must consider the ability to use the subject property for farm use in conjunction with other property, including the Keystone property, and may not limit its review to the profitability of farm use of the subject property as an isolated unit. The board of commissioners must consider the ability to import feed for animals and may not limit its consideration to the raising of animals where adequate food may be grown on the subject property. The board of commissioners must also consider whether the subject property is suitable for farm use as a site for construction and maintenance of farm equipment. Furthermore, the board of commissioners must consider the evidence and adopt findings addressing the impacts of redesignation of the property related to water, wastewater, and traffic and whether retaining the property's agricultural designation is necessary to permit farm practices on adjacent or nearby lands.'

Staff asks the Hearings Officer to determine if the Applicant has sufficiently addressed the requirements of OAR 660-033-0020(1)(a)(B) and make detailed findings on this issue."

The Hearings Officer finds LUBA was clear, in the *710 Properties Decision*, that it is necessary and integral, when assessing whether a property is "agricultural land," to consider nearby and adjacent lands. Restated, LUBA clearly held that limiting analysis solely to the property subject to a plan amendment/zone change application is not appropriate. Less clear to this Hearings Officer is "how" such consideration of the various LUBA identified factors are to be analyzed.

LUBA, in the *710 Properties Decision*, addressed "source of feed," "on-site construction and maintenance of equipment and facilities," and "necessity of retaining the current Subject Property planning/zoning designations to permit farm practices on adjacent or nearby lands" as factors to be considered in the context of "nearby and/or adjacent" properties. The Hearings Officer finds the "source of feed" and "on-site construction and maintenance of equipment and facilities" are best analyzed in the context of the OAR 660-033-0020 evaluation factors (discussed above and later in relevant Goal 3 findings) and what use(s) is/are made of nearby and adjacent land parcels. The Hearings Officer finds the necessity of retaining the current planning/zoning designation analysis should also focus on the use characteristics of the nearby/adjacent properties and the transportation connections between the Subject Property and the nearby/adjacent properties. Finally, the Hearings Officer finds that all of the *710 Properties Decision* issues discussed above should be considered in the context of whether a reasonable farmer would have an expectation of obtaining a profit in money from growing crops or engaging in some other farm use on the Subject Property.

¹⁰ The Oregon Court of Appeals has affirmed LUBA's Final Order and Opinion and at this time it is unknown if a Petition for Judicial Review has been filed to the Oregon Supreme Court. [this footnote is part of the above-quoted Staff Report comments]

Title 18, Deschutes County Zoning Ordinance

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 requested a quasi-judicial Plan Amendment and filed the applications for a Plan Amendment and Zone Change. The Applicant filed the required Planning Division’s land use application forms for the proposal. The application will be reviewed utilizing the applicable procedures contained in Title 22 of the DCC.

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 DCCP’s introductory statement explains land use must comply with the statewide planning system and sets out the legal framework set by State law. It also summarizes the Statewide Planning Goals and explains the process the County used to adopt the current DCCP. Prior Deschutes County quasi-judicial zoning approvals, some of which have been affirmed by LUBA and other appellate courts¹¹, have found that the introductory statement of the Comprehensive Plan is aspirational in nature and not necessarily approval criteria and it is appropriate to only respond to the DCCP goals that apply to a particular request.

The Applicant identified applicable DCCP provisions on pages 10-15 of their Burden of Proof. Staff (Staff Report, page 13) requested that the Hearings Officer consider, in greater depth, DCCP provisions related to protected Goal 5. The Hearings Officer addresses conformance with the DCCP and consistency with the applicable DCCP provisions in the Preliminary Findings and in subsequent findings for this recommendation.

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

FINDING: The Applicant provided the following response to this provision (Burden of Proof, pages 15 – 16):

“The proposed zone change from EFU to MUA-10 is consistent with the purpose and intent of the MUA zone classification. Per DCC 18.60, the stated purposes of the MUA-10 zone are:

‘The purposes of the Multiple Use Agricultural Zone is to preserve the rural character of various areas of the County while permitting development consistent with that character and with the capacity of the natural resources of the area to preserve and maintain agricultural lands not sited to full-time commercial farming for diversified or part-time agricultural uses; to conserve forest

¹¹ *Central Oregon Landwatch v. Deschutes County*, 75 Or LUBA 441 (Aceti II), aff’d, 288 Or App 378, 405 P3d 197 (2017), *Central Oregon Landwatch v. Deschutes County*, 79 Or LUBA 253 (Aceti III), aff’d, 298 Or App 375, 449 P3d 534 (2019), *Central Oregon Landwatch v. Deschutes County*, ___ Or LUBA _ (LUBA No 2021-028, June 18, 2021) (Aceti IV), aff’d, 315 Or App 673, 501 P3d 1121 (2021), and *Central Oregon Landwatch v. Deschutes County*, (LUBA No 2022-075, December 6, 2022) (Aceti V).

lands for forest uses; to conserve open spaces and protect natural and scenic resources; to maintain and improve the quality of the air, water and land resources of the County; to establish standards and procedures for the use of those lands designated unsuitable for intense development by the Comprehensive Plan, and to provide for an orderly and efficient transition from rural to urban land use.'

The MUA-10 zone is the optimal county zone to transition the Subject Property to a rural residential use. As detailed above and incorporated herein by reference, the subject property is not suited for agricultural use. This property is more appropriately zoned MUA-10. The Subject Property is currently zoned Exclusive Farm Use (EFU) likely due to general classification as undeveloped, rather than consideration of the agricultural capability of the land. The Property has never been successfully used for farming or pasture, despite repeated attempts over many years. Agricultural uses are also not practical or compatible with the existing residential uses surrounding the similar property, already zoned MUA-10.

This Comprehensive Plan Map and Zoning Map Amendment request will resolve the incorrect classification of the subject properties. Because most surrounding properties are used as MUA-10 properties, there is an incompatibility between the presently zoned EFU permitted uses and the adjacent, surrounding lands developed or committed for urban and residential uses. The requested Comprehensive Plan Map and Zoning Map amendments will result in a zoning assignment that is compatible with neighboring properties and the realities of the site, rather than the current EFU zoning, which poses potential conflict with established residential uses.

Rezoning of the Subject Property from EFU to MUA-10 will resolve the latent conflict between EFU permitted uses and the immediately adjacent rural residential uses. Furthermore, the Comprehensive Plan Map and Zone Map change will serve the interests of the northwest Bend residents, surrounding neighborhoods, and public investments in public facilities and services. This development will allow infrastructure to go "to and through" the subject property, connecting the development to the south with Destiny Court, giving better connectivity to the neighborhood, rather than a series of dead-ends and inaccessible lots.

The requested Rural Residential Comprehensive Plan Map designation is also sought at this time promote a logical transition for inclusion in a future expansion of the Bend UGB and/or in the designation of urban reserves. This request to re-designate and re-assign the Comprehensive Plan and Zoning Maps from Agriculture to Rural Residential and MUA-10, respectively, will allow this site to be developed in a transitional use.

The requested MUA-10 zone emphasizes the conservation of open spaces and the protection of natural and scenic resources. While the subject property is not suitable for agriculture, it does represent a significant planned open space area. The MUA-10 zone will encourage that preservation and protection while also maintaining consistency with the MUA-10 lands in the vicinity.

By allowing for single family dwellings as an outright permitted use (DCC 18.32.020(8)), the MUA-10 zone recognizes that rural lands may sometimes be better suited for residential use than agricultural uses, depending on their resource value. Other non-resource land uses are conditionally permitted; any nonresource land development proposal on the property other than a single family dwelling would not be allowed unless it was found to be consistent with the surrounding properties and the applicable conditional use evaluation standards. Therefore, the proposed change in zoning is consistent with the intent and purpose of the MUA-10 zone, and will be compatible with surrounding properties."

The Hearings Officer finds the Applicant’s above-quoted statements are credible and adequately address this provision. The Hearings Officer finds the Applicant demonstrated the change in classification is consistent with the purpose and intent of the MUA Zone.

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 Applicant provided the following response related to this provision (Burden of Proof, page 16):

“The proposed change from EFU will not require the extension of new public services to the subject property, other than expansion of the existing road system in the area. The site is already adjacent to urban infrastructure (Destiny Court and Northern Estates Lane). The site will be served by Avion Water Co. and on-site septic systems, accommodated by planned patterns of development. Thus, public facilities are available and can be efficiently provided to the site.

There are no known deficiencies in public services or facilities that would negatively impact public health, safety, or welfare. Development of the property under MUA-10 zoning would need to comply with applicable requirements of the DCC, including land use permits, building permits, and sewage disposal permit processes. Through these development review processes, assurance of adequate public services and facilities will be verified.”

The Applicant also provided the following response as part of their modification application (Applicant’s Second Supplemental Submittal, page 10):

“Public Facilities and Services demand will still be able to accommodate the proposal’s impacts, including Bend’s high school systems which added Caldera High School in the fall of 2021.”

The Subject Property is located in the Bend Rural Fire Protection District, Bend La Pine School District, and police services are provided by the Deschutes County Sheriff’s Office. Adjacent and nearby properties to the north, east, and south contain dwellings. These properties are served by Avion Water Company or onsite wells, onsite sewage disposal systems, electrical service, telephone service, and the regional public service providers noted above. No issues have been identified in the record regarding service provision to the surrounding area. The southeast corner of the Subject Property is located +/-2,000 feet from the City of Bend’s UGB.

The Hearings Officer finds that the close proximity to urban development will likely result in efficiency of providing necessary public services. The application materials include will-serve letters indicating electrical service and water service are available to the subject property. There are no known deficiencies in public services or facilities that would negatively impact public health, safety, or welfare. Prior to development of the Subject Property, the Applicant will be required to comply with the applicable requirements of the DCC, including approval of required land use, building, and onsite wastewater disposal permits. Through the review of these development permits, assurance of adequate public services and facilities will be verified. The Hearings Officer finds this provision is met.

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

FINDING: The Applicant provided the following response related to this provision (Burden of Proof, pages 16-17):

“The relevant goals of the Comprehensive Plan are implemented through the MUA-10 purpose statement in the zoning ordinance, as set forth above. The zone is unique in that it serves as a transition between EFU

lands with productive soils and other rural lands that are "not suited to full time commercial farming" and are more appropriately suited for "diversified or part time agricultural uses." The MUA-10 zone retains consistency with EFU lands by allowing a limited array of rural uses and mandating a 10-acre minimum lot size (except in planned developments, in which the smaller lot sizes are offset by the 65% open space requirement). There are only a limited number of uses allowed in the MUA-10 zone that are not also allowed in the EFU zone. Further, the majority of the different non-resource land uses in the MUA-10 zone are conditional, thereby ensuring that potential impacts on surrounding land uses will be further reviewed by the County during each site specific land use application.

In summary, the MUA-10 zone remains a rural zone devoted to a mix of part-time agricultural and residential uses. This minimizes potential impacts on surrounding lands. The MUA-10 zoning would emphasize the continued protection of the open space and wildlife values of the property with the planned development design proposed, which distances homesites from the river's rim as well as surrounding uses."

In addition to the above-quoted comments, the Applicant provided specific findings for specific goals and policies contained within the DCCP, which are addressed below. DCCP goals and policies related to protected Goal 5 resources are addressed in the Preliminary Findings and relevant approval criteria later in this recommendation. Based upon the Preliminary Findings and subsequent findings related to Goal 5 the Hearings Officer finds that the Applicant demonstrated the impacts on surrounding land use will be consistent with all the relevant goals and policies contained within the DCCP.

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 Applicant proposed to rezone the Subject Property from EFU to MUA. The Applicant provided the following response to this provision (Burden of Proof, page 17):

"Circumstances have changed since the zoning of the property. When the property was first given an EFU zoning assignment, it was in the early days of Oregon zoning, approximately half a century ago. Much of our undeveloped and unirrigated lands were zoned EFU, for lack of a better zone or label, even though these parcels were dry and not farmable. If they weren't forest or already developed in a denser pattern, they were zoned farm by default. This property was zoned without detailed or site specific consideration given to its soil, geologic, and topographic characteristics. Now that a certified soils scientist has conducted a detailed Soils Investigation (See Exhibit 3), it is documented that the parcels do not qualify as farmland. The change in circumstance is the soil study. It also evidences a mistake of sorts in classifying poor soil as farmland.

In summary, the County's zoning of agricultural lands has been a process of refinement since the 1970s. The Subject Property has never been suitable for agriculture and has never been actively farmed successfully due to its poor soil. Although it was assigned EFU zoning, this property likely should not have been originally zoned EFU due to its location, soils, and geology. Therefore, the parcels should be rezoned to MUA-10, consistent with the zoning of adjacent rural-residential uses. The MUA-10 zoning assignment supports logical, compatible, and efficient use of the land."

The Hearings Officer finds that the Applicant demonstrated there has been a change in circumstances since the property was zoned to warrant rezoning the Subject Property from EFU to MUA.

Title 22, Deschutes County Development 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 filed a Modification on September 1, 2023, which was 462 days following the submittal of the original applications and prior to the close of the record. Compliance with the remaining requirements of DCC 22.20.052 is addressed below.

The Hearings Officer incorporates, as additional findings for DCC 22.20.055 A, B, C and D, the Applicant’s comments contained in its March 19, 2024 record submission (pages 1-3). The Hearings Officer also incorporates the Preliminary Findings (III.A.3 - **Overview of Issues**) as additional findings for DCC 22.20.055 B, C and D.

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 applied for a Modification, paid all required modification fees, and agreed in writing to restart the 150-day time clock as of the date the Modification was submitted. The Plan Amendment and Zone Change are not subject to the 150-day clock. The Hearings Officer finds this criterion is met.

C. The Planning Director or Hearings Body may require that the application be re-noticed and additional hearings be held.

FINDING: Notice of the Modification was mailed to all parties on September 8, 2023. The initial hearing was held on February 27, 2024. The Hearings Officer finds that no additional hearings are necessary beyond what is required for a Plan Amendment and Zone Change request pursuant to DCC Title 22.

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: The initial hearing occurred on February 27, 2024. The Planning Director determined the Applicant’s submittal constitutes a modification. DCC 22.04.020 establishes the following definition:

"Modification of application" means the applicant's submittal of new information after an application has been deemed complete and prior to the close of the record on a pending application that would modify a development proposal by changing one or more of the following previously described components: proposed uses, operating characteristics, intensity, scale, site lay out (including but not limited to changes in setbacks, access points, building design, size or orientation, parking, traffic or

pedestrian circulation plans), or landscaping in a manner that requires the application of new criteria to the proposal or that would require the findings of fact to be changed. It does not mean an applicant's submission of new evidence that merely clarifies or supports the pending application.

The Hearings Officer incorporates the Preliminary Findings (III.A.3 - **Overview of Issues**) related to COLW’s concern related to Applicant’s Modification as additional findings for this section. The Hearings Officer takes note of Applicant’s open-record submission (Dickson, March 19, 2024, pages 1-3). The Hearings Officer finds Applicant’s open-record submission is credible and correctly characterizes Applicant’s Modification actions in the context of relevant County law (DCC 20.20).

The Modification changes the site lay out in a manner that would require the findings of fact to be changed. The Modification removed the FP Zoned areas of the property and reconfigured/reduced the area included in the subject Plan Amendment and Zone Change request, which requires the findings of fact to be changed. To the extent a party wishes to challenge the County’s decision to require a modification of application, it is appealable only to LUBA and shall be appealable only after a final decision is entered by the County on an application.

The Hearings Officer finds Applicant’s Modification proposal met/satisfied relevant County law.

Deschutes County Comprehensive Plan (“DCCP”)

Chapter 2, Resource Management

Section 2.2, Agricultural Lands

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

FINDING: The Applicant provided the following response to this provision (Burden of Proof, page 11):

“As discussed below, the Applicant's soil study, NRCS soil data, and the submitted burden of proof effectively demonstrate that the subject property is not suitable for designation as Agriculture in the Comprehensive Plan. It does not contain the soils required for agricultural use. See Soil Study attached as Exhibit 3. These properties are not "agricultural" as defined by state statute and administrative rules. They are properly rezoned to exception land in accordance with their character.”

The Applicant submitted into the record (Exhibit 24) a copy of the DLCD Soil Assessment Completeness Review, deeming said analysis complete. Applicant also provided supplementary evidence (March 19, 2024) and argument (April 2, 2024) addressing this section. The Hearings Officer finds the Applicant’s Burden of Proof, March 19, 2024 evidentiary submission, and April 2, 2024 final argument are credible and persuasive with respect to this Goal. The Hearings Officer also incorporates, as additional findings for this section, Preliminary Findings for Goal 3 (III.A.5. – Oregon Statewide Planning Goal 3) and the Goal 3 findings set forth later in this recommendation. The Hearings Officer finds nothing in the record to dispute the Applicant’s evidence and legal conclusions that soils are predominantly Class VII and VIII.

The Hearings Officer finds, based upon the evidence in the record and the incorporated findings that the Subject Property is not “agricultural land.” The Hearings Officer also finds, based upon the record and incorporated findings, that approval of the requested Plan Amendment and Zone Change will not negatively impact the agricultural industry.

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 is not seeking to amend the subzone that applies to the Subject Property; rather, the Applicant requests a change under Policy 2.2.3 and has provided evidence to support rezoning the Subject Property to MUA.

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 Preliminary Findings related to Goal 3 (III.A.5 – **Oregon Statewide Planning Goal 3**) and the findings set forth later in this recommendation related to Goal 3 (including, Goal 2, Land Use Planning, PART I – PLANNING, EXCEPTIONS, PART III -- USE OF GUIDELINES, Goal 3, Agricultural Lands and Division 33 - Goal 3 - Agricultural Lands and OAR 660-015-0000) as additional findings for this policy.

Applicant requested approval of a Plan Amendment and Zone Change to re-designate the property from AG to RREA and rezone the property from EFU to MUA. The Applicant does 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 related to this Policy (Burden of Proof, page 11):

“The Applicant has applied for a Zone Change to rezone Tax Lots 100 and 101 from EFU(TRB) to MUA-10. The Applicant has also applied for a Plan Amendment to support this Zone Change, which would designate the approximately 69 acres as Rural Residential rather than Agricultural. Rather than pursuing an exception to Goal 3, which would ordinarily be the method of effectuating such a change, the Applicant has attempted 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). Neither of the tax lots are in farm production of any type and are unirrigated. It should be noted that farm production has been repeatedly attempted and has consistently failed. Now that the soil study has been performed, this result is understandable.

The Land Use Board of Appeals (LUBA) allowed this approach in Wetherell v. Douglas County, 52 Or LUBA 677 (2006). The County Hearings Officer also accepted this method in file PA-10-5 (Rose & Associates) and in Wetherell v. Douglas County, LUBA states 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).’

The facts pertinent to the subject application are sufficiently similar to those in PA-10-5 to allow the Applicant to attempt to show that the subject property is not agricultural land, rather than seeking an exception to Goal 3 under state law. This criterion is satisfied.”

Additionally, the Applicant submitted the following as part of their Incomplete Letter Response titled Supplemental Submittal dated November 23, 2022:

“The Applicant has applied for a Zone Change to rezone Tax Lots 100 and 101 from EFU(TRB) to MUA-10. The Applicant has also applied for a Plan Amendment to support this Zone Change, which would designate the approximately 69 acres as Rural Residential rather than Agricultural.

Applicant submits to the record with this submittal a copy of the DLCD Soil Assessment Completeness Review, deeming said analysis complete, as Exhibit 24. Applicant submits to the record with this submittal an Affidavit by Mr. and Mrs. Ferguson attesting to their attempts to farm the subject property of the PA/ZC, and their failure to succeed. This is submitted as Exhibit 25.”

Staff agreed (Staff Report, page 21) that the evidence and argument presented by the Applicant in their Burden of Proof are similar to those in the *Wetherell* decisions and in the aforementioned Deschutes County Plan Amendment and Zone Change decision. Based upon the Applicant’s Burden of Proof (quoted above), supplemental discussion (quoted above), the Preliminary Findings for Goal 3 and the findings later in this recommendation related to Goal 3, the Hearings Officer finds that the Applicant has adequately demonstrated that the Subject Property is not “agricultural land” and does not require an exception to Goal 3 under state law.

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

FINDING: The Applicant provided the following response to this Policy (Burden of Proof, page 12):

“This provides direction to Deschutes County to develop new policies to provide clarity when EFU parcels can be converted to other designations. In the findings for the previous Plan Amendment and Zone Change for the subject property, the County found that this policy does not impose a moratorium on requests for applications of this type, and that nothing in this policy prohibits the conversion of EFU parcels to other designations (see PA-1 1-7, also 247 -16-000318-PA, PA-10-5, PA-07-1). Previous determinations and the proposal are consistent with this policy.”

The Hearings Officer concurs with the Applicant’s analysis of prior decisions by the County and finds the requested Plan Amendment and Zone Change proposal 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 Preliminary Findings related to Goal 3 (III.A.5 – **Oregon Statewide Planning Goal 3**) and the findings set forth later in this recommendation related to Goal 3 (including, Goal 2, Land Use Planning, PART I – PLANNING, EXCEPTIONS, PART III -- USE OF GUIDELINES, Goal 3, Agricultural Lands and Division 33 - Goal 3 - Agricultural Lands and OAR 660-015-0000) as additional findings for this policy.

This DCCP policy requires the County to identify and retain agricultural lands that are accurately designated. The Applicant argued the Subject Property was not accurately designated as demonstrated by the soil study and record submissions (Burden of Proof, March 19, 2024 and April 2, 2024). Further discussion on the soil analysis is detailed under the OAR Division 33 criteria below.

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: In *Aceti IV* (247-20-000438-PA, 439-ZC), the Hearings Officer and the Board of County Commissioners (“BOCC”) adopted the following finding:

“The Hearings Officer found in Aceti 1 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 re-designated 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 Applicant is not proposing a specific development application as part of the application requests to be decided in this case. The Hearings Officer finds, consistent with the analysis in *Aceti IV* (247-20-000438-PA, 439-ZC), the Applicant is not required to demonstrate the water impacts associated with development. Rather, the Applicant will be required to address this criterion during a development application for the Subject Property. A subsequent development application would be reviewed under any necessary land use review process for the Subject Property (i.e., conditional use and tentative plan approval).

A County Hearings Officer made, and the BOCC adopted, similar findings in the *LBNW, LLC* decisions (County planning files 247-23-000398-A, 247-21-000881-PA, 882-ZC). The Hearings Officer in this case finds that the above-referenced findings are relevant and applicable to this recommendation.

Section 2.7, Open Spaces, Scenic Views and Sites

Open Space and Scenic View Designations and Protections

...

Scenic view protection is implemented through the Landscape Management Combining Zone regulations, with the list of landscape management roads and rivers in the Goal 5 resource list in Chapter 5 of this Plan.

Goal and Policies

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 Applicant provided the following response to these policies (Burden of Proof, page 12):

“The subject property is not within the Open Space and Conservation (OS&C) Zone. The properties are located within a Landscape Management (LM) Combining Zone associated with designated scenic highways, roads, rivers, and streams.

It should be noted that no actual development of the property is proposed at this time.”

The western portion of the Subject Property is located within the LM Combining Zone associated with the Deschutes River scenic corridor. The standards associated with the LM Combining Zone are generally reviewed for compliance when a new structure or substantial alternation of an existing structure is proposed.

LUBA recently held in *Central Oregon Landwatch v. Deschutes County* (LUBA No. 2023-008, April, 24 2023)(the “*LBNW Decision*”) the following:

“Goal 5 is ‘[t]o protect natural resources and conserve scenic and historic areas and open spaces.’ OAR 660-023-0250(3) provides:

‘Local governments are not required to apply Goal 5 in consideration of a PAPA [Post-Acknowledgement Plan Amendment] 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[.]’ Footnote 11

Footnote 11 – If Goal 5 applies, then the local government is required to comply with OAR 660-023-0040 and OAR 660-023-0050.”

The BOCC addressed this issue in their remand decision for *LBNC Decision* (ref. files nos. 247-23-000398-A, 247-21-000881-PA, 882-ZC). The Applicant for the *LBNC Decision* case also requested a Plan Amendment and Zone Change for a property located in a LM Combining Zone and the BOCC in that case found:

“As stated within OAR 660-023-0030(1), this rule’s purpose is ‘to compile or update a list of significant Goal 5 resources in a jurisdiction.’ Importantly here, the inventory process has already been completed. Accordingly, the Board finds that Section 5.5 of the Deschutes County Comprehensive Plan (‘DCCP’) entitled Goal 5 Inventory: Open Spaces, Scenic Views and Sites identifies an area extending ¼-mile on either side of the centerline of certain roadways, including Highway 97 between the Bend and Redmond Urban Growth Boundaries (‘UGBs’), as a Goal 5 scenic view resource.

...
[T]he Board finds that the LUBA Decision already ‘identified conflicting uses’ in this case, i.e., the first step as set forth in OAR 660-023-0040(1)(a) and further identified in OAR 660-023-0040(2). The Board unanimously finds that those ‘identified conflicting uses’ are those uses allowed outright or conditionally under the RI zone on the subject Properties that would not have otherwise been allowed under the current EFU zoning. Accordingly, these findings focus on the second, third, and fourth steps in the ESEE [Economic, Soil, Environmental & Energy] Decision Process as further detailed by OAR 660-023-0040(3) through (5).

...
The Board accepts and agrees with the identification of the conflicting uses as identified in the LUBA Decision, as those uses allowed outright or conditionally under the RI zone on the Subject properties that would not have otherwise been allowed under the current EFU zoning.

...
The Board presumes that the Applicant initially suggested such a limited impact area because of the second sentence in OAR 660-023-0040(3) stating that that the impact area should ‘include only the area in which allowed uses could adversely affect the identified resources.’

...
As understood by the Board, this ‘impact area’ disagreement between the Applicant and COLW [Central Oregon LandWatch] stems from the Applicant focusing on the second sentence set forth in OAR 660-023-0040(3) and COLW focusing on the third sentence. The Board further notes that it is hard to reconcile what appears to be contradictory direction provided by those two sentences. Nevertheless, the Board does not need to resolve that issue presently because the Applicant’s July 19 rebuttal submittal and July 26 final legal argument both proposed an expanded impact area to address COLW’s concerns. Consistent with the Applicant’s aforementioned submittals, the Board unanimously finds that the appropriate impact area in this case includes ‘those properties to the west of Highway 97 and within the existing LM Zone (i.e., within ¼-mile of the centerline of Highway 97) between the 61st Street intersection to the north and the Tumalo Road off ramp to the south.’ The Board favors this expanded impact area for three reasons.

...
*As understood by the Board, every ESEE analysis is intended to be context specific, and the Board is “afforded fairly broad discretion in considering potential impacts from allowing or prohibiting a particular use * **.” See Central Oregon LandWatch v. Deschutes County, __ Or LUBA __ (LUBA No 202-019, March 22, 2021) (internal citations omitted). Pursuant to OAR 660-023-0040(1), the Board again notes that an “ESEE analysis need not be lengthy or complex but should enable the reviewers to gain a clear understanding of the conflicts and the consequences to be expected.” In this case, the majority of the Board () finds that the Updated ESEE Analysis provides a “clear understanding of the conflicts and consequences to be expected” if the RI uses are allowed on the subject Properties.”*

DCCP Section 5.5 also identifies Goal 5 scenic view resources as the land within the boundaries of a state scenic waterway or a federal wild and scenic river corridor; and all land within 660 feet of the ordinary high water mark of portions the following designated rivers and streams which are not designated as state scenic waterways or

federal wild and scenic rivers. This would include the area of the Subject Property located within the LM Combining Zone is an inventoried Goal 5 scenic view resource associated with the Deschutes River.

Applicant provided an open-record evidentiary submission (March 19, 2024, pages 10-12) comparing uses allowed in the EFU zone to those uses allowed under the proposed MUA zoning. The Hearings Officer finds that the Applicant’s March 19, 2024 record submission addressed the primary LUBA concern raised in the *LBNC Decision*; would approval of a plan designation change and zone change allow “new uses” (compared the existing plan/zone) that “could conflict with Goal 5 resources.”

Applicant, in its Final Argument (April, 2, 2024, pages 7-9), provided a legal analysis of the Goal 5 evidence already in the record. The Hearings Officer sets forth the Applicant’s Goal 5 legal analysis, in full, below:

“The Deschutes River scenic corridor runs along the western side of the subject property (though not bordering most of it as a result of the 2024 4-acre sale to the adjoining property owner, Dunson, Exhibit 36). Approximately ½ of the subject property is located within the LM Combining Zone as protection for the corridor. New structures within the view area of the river are commonly regulated by this standard. It is a designated Goal 5 resource. LUBA recently broadened previous interpretations of how a PA/ZC or PAPA should be analyzed when Goal 5 lands are involved.

The Site 303 “Pink Pit” is also an inventoried Goal 5 resource. Approximately 2/3 of the subject property is overlaid with the Combining Zone for this protected use. Because the same analysis and caselaw applies to both resources, the compliance analysis is combined here in summary.

Aceti V, discussed above, is an illustration of this broadened analysis. A more recent application of the Aceti V analysis of Goal compliance was made by LUBA in Central Oregon Landwatch v. Deschutes County and LBNW LLC, (LUBA No 2023-008, April 24, 2023)(“LBNW”). LUBA remanded Deschutes County’s first approval in Ordinance No. 2022-011 on March 14, 2022. Goal 5 Compliance was central to LUBA’s remand, finding that Deschutes County misconstrued the applicable law because it did not evaluate “whether the new RI zoning allows uses on the subject property that were not allowed under the previous EFU zoning and whether those uses could conflict with protected Goal 5 resources.” (LBNW, Page 35). LUBA went on to find that because the approval “allows new uses that could conflict with inventoried Goal 5 resources. . .the county is required to comply with OAR 660-023-0250(3).” (LBNW, Page 36).

OAR 660-023-0250 is part of LCDC’s rules governing “Procedures and Requirements for Complying with Goal 5” as addressed in prior submittals. See Applicant’s March 19, 2024 Open Record Submittal, Pages 10-12.

*(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. . .”

Applicant’s March 19, 2024 Open Record Submittal provided the allowed, conditional, and special uses for both EFU and MUA-10 zones. See Exhibit 41. These allow for the analysis of the change of uses proposed, comparing the two zones. Impactful uses include:

EFU Uses (Non-HV Farmland)
Outright: 18, including 2 dwelling types
Special: 11, including 2 dwelling types
Cndnl: 37, including 5 dwelling types,

MUA-10 Uses
Outright: 11, including 2 dwelling types
Special: None
Cndnl: 34, including 5 dwelling types,

res. facilities, agri-tourism, equine,
guest dog, aquatic species farms

lodge, bed & breakfast

EFU zoning allows significantly more uses than MUA-10 as summarized above and detailed in previously submitted Exhibit 41. The specific resource zones on the subject property, mineral and river, have been analyzed for potential conflicts in the change to MUA-10 zoning and Rural Residential Exception Area plan designation as required by recent caselaw interpretation of the OAR.

The Site 303 “Pink Pit” and the Deschutes River are the Protected Goal 5 Resources impacting the TL 100 Subject Property. Exhibit 23 was submitted with Supplemental Submittal dated November 23, 2022, and is described in the narrative on page 5. The 1989 ESEE Findings and Decision identifies on Page 0457 that site characteristics include “residential acreages” including 40-acre residential acreages to the south, residential property between the mine and the river, and Tumalo Rim subdivision within a half mile to the north on ½ acre lots. The Land Use Conflicts analysis that follows starting on page 0459-0461 notes that the existing residential uses in the area, “[s]pecifically, the residential uses in the nearby 40-lot Tumalo Rim Drive subdivision to the North and the adjacent residence to the East would be subject to noise near the subdivision and possible dust impacts.” The first paragraph on Page 0461 closes with this comment on the subject property, “The site would be most visible from the undeveloped land to the East.” That finding was likely based on viewing the Pink Pit from the high rim of the subject property overlooking the Deschutes River ravine. Current setback rules and Scenic River visual setbacks would preclude any construction along the viewable (or viewing) rim, but instead would be set back, similar to the layout proposed in Applicant’s Tentative Plan.

Despite these conflicts identified with 1989 and future uses, the Deschutes County Board of Commissioners decided in 1989 to classify the area as “SM” or Surface Mining, concluding that the different uses between the nearby residential uses and the Goal 5 resource were not sufficiently significant to preclude that the two uses could co-exist though different, and determining that the mineral resource was properly protected by a Goal 5 designation. It is reasonable to conclude that now that the site is largely inactive and possibly depleted to preclude further profitable extraction and processing, the potential conflict between the mineral resource and MUA-10 uses would be significantly less than it was in 1989, when such uses were allowed in conjunction with an active and resource-rich mining site. Even if fully active as it was at that time, the area MUA-10 and other rural residential uses did not obstruct use of the mining resource. The allowed uses under MUA-10 zoning do not pose a potential conflict different from the existing EFU use conflicts, except that perhaps there will be fewer of them.

The Deschutes River scenic corridor is a designated scenic view resource. Its views are protected from structural changes by setback review which is not relevant to a PA/ZC analysis where no structural changes are proposed. The changes in uses identified in Exhibit 41, analyzed in Applicant’s Open Record submittal on March 19, 2024, and the impactful uses compared above, show no potentially conflicting uses to the scenic corridor, where all proposed uses under the MUA-10 zone would be subject to setback review and could be located back from the rim without being seen from the Deschutes River below.”

The Hearings Officer finds that the above-quoted Applicant final argument statement references credible and substantial evidence previously submitted into the record of this case and the evidence and argument fairly reflects the intent of Goal 5 and related administrative rules. The Hearings Officer finds that Applicant did undertake a thorough review of the EFU and MUA zoning code provisions related to allowed, special and conditional uses.

The Hearings Officer finds the two identified Goal 5 resources, in this case, are the Deschutes River (with associated public ownership) and the surface mining property referred to as the “Pink Pit.” The Hearings Officer takes note that building setback requirements limit the visibility of any EFU or MUA allowed use from the

Deschutes River. The Hearings Officer finds uses allowed in the EFU zone are more varied and potentially more impactful than MUA allowed residential uses. As a practical matter lawful development of the Subject Property under the current EFU zone or proposed MUA zone will not negatively impact the Deschutes River Goal 5 resource.

The Hearings Officer finds that residential use is allowed in the EFU zone and MUA zone and that there will be no new use, if this application is approved, that will impact the Goal 5 identified “Pink Pit” resource.

The Hearings Officer adopts, as additional findings for this section, the Applicant’s above-quoted final argument statements. The Hearings Officer finds, based upon the November 23, 2022 Supplemental Submittal, March 19, 2024 open-record submission and April 2, 2024 final argument that this policy is satisfied.

Section 2.10, Surface Mining

Goal 1, Protect and utilize mineral and aggregate resources while minimizing adverse impacts of extraction, processing and transporting the resource.

Policy 2.10.3 Balance protection of mineral and aggregate resources with conflicting resources and uses.

FINDING: The Hearings Officer incorporates the findings for Section 2.7, 2.73 and 2.75, as set forth immediately above as additional findings for this policy. The Subject Property, except for the southeast corner, is located within the SMIA Combining Zone associated with Surface Mining Site No. 303 (the “Pink Pit”). This mining site is approximately 400 feet to the west and County records indicate pumice and aggregate can be extracted from approximately 30 acres of the 80-acre Surface Mine (“SM”) zoned property.

The Hearings Officer finds that Applicant did conduct a review of EFU and MUA uses to determine if any new uses would be introduced that would conflict with the Pink Pit surface mining Goal 5 resource. The Hearings Officer concurs with Applicant’s conclusion reached in its November 23, 2022 Supplemental Submittal, March 19, 2024 open-record submission and April 2, 2024 final argument documents that approval of the MUA zone would not add any new use that would conflict with the Pink Pit surface mining Goal 5 resource.

Chapter 3, Rural Growth Management

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 DCCP does not contain goals or policies but does provide the guidance above. The Applicant provided the following response to this provision (Burden of Proof, page 13):

"The County Comprehensive Plan notes that "Some farm lands with poor soils that are adjacent to rural residential uses can be rezoned as rural residential." The requested Plan amendment is based on the results of the submitted Soils Investigation which has demonstrated that the subject property is made up of "poor soils" so does not constitute "agricultural lands" as defined in the Goal, based upon a site-specific soils study conducted by a certified, professional soil scientist (Brian Raby). Therefore, the proposal is consistent with this section of the Comprehensive Plan, given that the subject property has been determined to be non-resource land, so appropriate for rural residential development.

It should also be noted that the MUA-10 Zone is a rural residential zone and as discussed above, there are many adjacent and surrounding properties that are zoned MUA-10. This proposal fits well with this criterion."

The MUA Zone is a rural residential zone and as discussed in the Basic Findings above. Adjacent and nearby properties to the east, northeast, and north are zoned MUA. This guidance text also references poor soil quality as a consideration, which is discussed in more detail under the OAR Division 33 criteria below.

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 (Burden of Proof, page 14):

"To the extent that the quoted language above represents a policy, it appears to be directed at a fundamentally different situation than the one presented in this application. The quoted language addresses conversions of "farm" or "forest" land to rural residential use. In those cases, the language indicates that some type of exception under state statute and DLCD rules will be required in order to support a change in Comprehensive Plan designation. See ORS 197.732 and OAR 660, Division 004.

That is not what this application seeks to do. The analysis below explains that the Applicant has been successful in demonstrating that the subject property is composed predominantly of nonagricultural soil types and is unirrigated. It is not "agricultural." Therefore, it is permissible to conclude that the property is not "farmland" as defined under state statute, DLCD rules, and that it is not correctly zoned for exclusive farm use.

It is important to distinguish that this application does not seek to convert "agricultural land" to rural residential use. If the land is demonstrated to not be composed of agricultural soils, then there is no

"exception" to be taken. There is no reason that the Applicant should be made to demonstrate a reason, developed or committed exception under state law because the subject property is not composed of the type of preferred land which the exceptions process was designed to protect. For all these reasons, Applicant should not be required to obtain an exception to Goal 3. It is reasonable to conclude that the requirement of an Exception is not applicable here."

Staff (Staff Report, page 29) noted that prior Deschutes County Hearings Officer and BOCC interpretations have found the above language is not a policy and does not require an exception to the applicable Statewide Planning Goal 3. The Hearings Officer, in this case, concurs.

The Applicant has provided evidence in the record addressing whether the Subject Property qualifies or does not qualify as agricultural or forest land. The Hearings Officer incorporates the Preliminary Findings related to Goal 3 (III.A.5 – **Oregon Statewide Planning Goal 3**) and the findings set forth later in this recommendation related to Goal 3 (including, Goal 2, Land Use Planning, PART I – PLANNING, EXCEPTIONS, PART III -- USE OF GUIDELINES, Goal 3, Agricultural Lands and Division 33 - Goal 3 - Agricultural Lands and OAR 660-015-0000) as additional findings for this section.

The Hearings Officer finds, based upon Applicant’s above-quoted statements and Staff comments and the incorporated findings that the proposed RREA plan designation is the appropriate plan designation to apply to the Subject Property assuming the applicable standards identified in this recommendation are met.

Section 3.7, Transportation

The Transportation System was adopted in Ordinance 2012-005 and is hereby incorporated into this Plan as Appendix C. The Deschutes County Transportation System Plan Map will be retained in official replica form as an electronic map layer within the County Geographic Information System and is adopted as part of this Comprehensive Plan.

***DCCP Appendix C – Transportation System Plan
Executive Summary***

...

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: Staff noted (Staff Report, page 29) the heading for this section of the Transportation System Plan (“TSP”) is titled “Arterial and Collector Road Plan.” Staff (Staff Report, page 29) suggested that it is unclear whether the goals and policies included in this section of the TSP apply to properties without frontage or clear impacts on a roadway classified as an arterial or collector. Staff noted that prior Hearings Officer recommendations and Board decisions have included the following finding for similarly situated properties without frontage on an arterial or collector:

“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 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.”

The Subject Property does not have frontage on an arterial or collector. The Subject Property abuts Destiny Court (County Road) and Northern Estates Drive (Local Access Road). Additionally, the Traffic Reports and TPR Analysis submitted by the Applicant do not identify any impacts on any arterial or collector roadway.

The Hearings Officer concurs generally with the above-quoted statement. The Hearings Officer finds that while the section is titled “Arterial and Collector Road Plan” Policy 4.4 describes the transportation system more holistically; not limited to just arterial and collector roads. The Hearings Officer policy 4.4 is a relevant consideration in this case.

The Hearings Officer incorporates the findings for Division 12 -Transportation Planning as additional findings for this section. Further, the Hearings Officer finds, for the purposes of a plan amendment/zone change application, the Applicant’s Site Traffic Report/TPR analysis addresses affected roadway function, classification, and capacity. The Hearings Officer finds County transportation planning staff reviewed Applicant’s transportation submittals and concurred with Applicant that proposed plan and zoning designations do not exceed the planned capacity of the transportation system. The Hearings Officer finds this policy is met.

OAR Chapter 660, Land Conservation and Development Department

Division 6, 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 Applicant provided the following response to this provision (Burden of Proof, page 18):

“The subject property is not zoned for forest lands, nor are any of the surrounding properties. The property does not contain merchantable timber and there is no evidence in the record that the property has been employed for forestry uses historically. None of the soil units comprising the parcel are rated for forest uses according to NRCS data. The property does not appear to qualify as forest land and there is no evidence of it ever having been zoned as such. This standard is not applicable.”

The Hearings Officer finds that the Subject Property is not zoned for forest lands, nor are any of the properties zone for forest lands within a 1.5-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. Additionally, none of the soil units comprising the parcel are rated for forest uses according to NRCS data. The Hearings Officer finds the Subject Property does not qualify as forest land.

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 comprehensive plan designation of the Subject Property from AG to RREA and change the zone from EFU to MUA. The Applicant is not proposing any land use development of the Subject Property as a part of this review request.

The Applicant submitted a Site Traffic Report/TPR analysis dated September 15, 2021, and prepared by Joe Bessman of Transight Consulting LLC. As noted in the Agency Comments section above, the County’s Senior Transportation Planner identified deficiencies with the submitted STR and TPR analysis and requested additional information. The Applicant then submitted a memorandum, dated August 8, 2022, and prepared by Joe Bessman, to supplement the information provided in the original STR/TPR analysis.

The memorandum was reviewed by the County’s Senior Transportation Planner who agreed with the Applicant’s updated traffic report conclusions. The County Senior Transportation Planner found that the proposed Plan Amendment and Zone Change would be consistent with the identified function, capacity, and performance standards of the County’s transportation facilities in the area. The County Senior Transportation Planner found that the proposed Zone Change would not change the functional classification of any existing or planned transportation facility or change the standards implementing a functional classification system. Regarding the memorandum dated August 8, 2022, the County’s Transportation Planner provided the following comments in an email dated October 17, 2023:

"I have reviewed Mr. Bessman's August 8, 2023, Site Traffic Report/TPR Analysis related to the subject application and I agree with the assumptions, methodology, and conclusions contained therein. As Mr. Bessman utilizes the 2040 planning horizon year (reflective of the most recent data included in the County's forthcoming Transportation System Plan update) this analysis appears to comply with relevant criteria. Mr. Bessman utilizes the acceptable road segment standard of 13,900 Average Daily Trips (ADT) which is incorporated into the County's most recent 2020-2040 Transportation System Plan. The analysis and references therein related to peak hour trips (16 to 22 total weekday p.m. peak hour trips) are adequate. Staff agrees with Mr. Bessman's summary of Transportation Planning Rule (TPR) Compliance and finds that relevant TPR provisions appear to be satisfied through the submittal of this additional information."

Based on the County Senior Transportation Planner's comments and the traffic study from Transight Consulting LLC, 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 findings are quoted below:

Goal 1, Citizen Involvement. To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

RESPONSE: Deschutes County has adopted and publicized a program for citizen involvement in policy formulation and implementation. This program complies with this goal as part of an acknowledged Comprehensive Plan. In this case, the public in the area will be mailed notices, a notice will be published in the local newspaper, and a sign was posted on the Subject Property. In addition, at least two public hearings will be held on the proposed plan amendment before it can be approved - one before the Hearings Officer and one before the Deschutes County Board of Commissioners. The citizenry will have notice and opportunity to be involved in the process that is the subject of this application. This program, as practiced, complies with this goal.

Goal 2, Land Use Planning.

PART I -- PLANNING To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

PART II -- EXCEPTIONS

PART III -- USE OF GUIDELINES

RESPONSE: Deschutes County's land use planning process and policy framework are acknowledged. The processes rely on factual offerings of proof from knowledgeable and verified sources on which to base quasi-judicial and legislative decisions.

An exception to one of the Goals is not requested by this application.

Deschutes County's guidelines comply with state law as required.

This application complies with Deschutes County's Code regarding land use planning. Deschutes County's land use planning system and implementation comply with this Goal. Therefore, this application complies with the Goal.

Goal 3, Agricultural Lands. 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.

RESPONSE: The Hearings Officer incorporates the Preliminary Findings related to Goal 3 (III.A.5 – **Oregon Statewide Planning Goal 3**) and *710 Properties Decision* (III.A.7. – **710 Properties Decision**) as additional findings for this Goal 3 section. The Hearings Officer also incorporates the findings for **Deschutes County Comprehensive Plan (“DCCP”), Chapter 2, Resource Management, Section 2.2, Agricultural Lands** as additional findings for this section.

Applicant asserts that the Subject Property is not Goal 3 “agricultural land” and therefore no exception from Goal 3 is required. Applicant provided, in its Burden of Proof and subsequent record submissions, evidence and argument in support of its conclusion that the Subject Property is not “agricultural land” as defined in relevant sections of the DCC, ORS, OAR as interpreted by LUBA and the courts.

The Hearings Officer finds the Applicant included in the record a site -specific soil analysis of the Subject Property and the site-specific study concluded that soils on the Subject Property are predominately Class VII and VIII (65.8%). The Hearings Officer finds no persuasive evidence in the record to dispute credibility of the site-specific soil study conclusion that the Subject Property is predominately Class VII and VIII soils. The Hearings Officer finds the soil characteristics standard set forth in OAR 660-033-0020(1)(a)(A) defines “agricultural land” to be (Eastern Oregon) predominately Class I through and including VI. The Hearings Officer finds, based on the site-specific soil study, that the Subject Property is not “agricultural land” under the OAR 660-033-0020(1)(a)(A) test.

OAR 660-033-0020 (1)(a)(B) & (C) necessitate additional analysis. OAR 660-033-0020(1)(a)(B) is often referred to as the “suitable for farm use” test or standard.

OAR 660-033-0020(1)(a)(B) requires consideration of the following:

- * Soil suitability for grazing; and
- * Climatic conditions; and
- * Existing and future availability of water for farm irrigation purposes; and
- * Existing land use patterns; and
- * Technological and energy inputs required; and
- * Accepted farming practices.

OAR 660-033-0020(1)(a)(C) requires consideration of adjacent or nearby agricultural lands to determine if the Subject Property is necessary to permit farm practices on those adjacent or nearby lands.

The Hearings Officer finds that it is important that the Hearings Officer accurately reflect the evidence in the record related to the “agricultural land” issue. The Hearings Officer, therefore, includes below the entire Applicant March 19, 2024 Goal 3 open-record submission. The Hearings Officer will address relevance and credibility issues related to Applicant submission in later findings.

Applicant’s Goal 3 (March 19, 2024, pages 3 - 10) submission follows:

“Two separate issues have been raised regarding Goal 3. These are:

- A. Compliance with Goal 3
- B. Need for an Exception to Goal 3

These shall be addressed separately below.

A. Compliance with Goal 3

ORS 197.175 (2)(a) requires local governments to comply with LCDC goals as part of Plan Amendments. Goal 3 is one of LCDC's goals.

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 policy expressed in ORS 215.243 and 215.700.

Recent caselaw has focused on the definition of "Agricultural Land" and has seemingly broadened long standing and established legal interpretations, at least in the cases decided at LUBA and the Court of Appeals. What is meant by "Agricultural Land" is pivotal to understanding the Goal's proper implementation.

The Statewide Planning Goal defines Agricultural Land in eastern Oregon as follows:

[I]n eastern Oregon is land of predominantly Class I, II, III, IV, V and VI soils... and other lands which are suitable for farm use 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, or accepted farming practices. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands, shall be included as agricultural land in any event.

Here's the administrative rule definition, which notes the above definition also applies:

**Division 33 Agricultural Land
660-033-0020**

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-VI soils in Eastern Oregon;

(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

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

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

RESPONSE: Since the OAR definition is different from the Goal definition, and the OAR definition expressly notes that the Goal definition is also valid, we address elements of both.

Soil Classification Method: Exhibit 3 is the Site-Specific Soil Survey of the Subject Property. Figure 4 is the site-specific soils map. 62.87 acres were evaluated (excluding most of rock ravine, which was too steep to be sampled). See pages 4-5. In summary, 34.2% tested as Class VI or less, leaving 65.8% soils testing as Class VII-VIII. It is reasonable to conclude that under either definition, the "predominantly Class VI (or less) soils" of the Goal, or the (1)(a)(A) definition of the OAR, the Subject Property does not qualify as "Agricultural Land" by soil classification.

Other Lands Analysis

The Goal identifies "other lands which are suitable" based on other factors. These are:

Soil Fertility

The Subject Property was studied for soil fertility in the Site-Specific Soil Survey Report, Exhibit 3. The Page 5 summary notes 'These soils are predominantly shallow with sandy textures (low clay content) and low organic matter content. These conditions result in a low Cation Exchange Capacity (CEC) that limits the ability of these soils to retain nutrients. Fertilizer must be applied to achieve optimum yields. Proper management requires that fertilizers be applied in small doses on a frequent basis. The revenue from most locally adapted crops are not expected to cover the cost of inputs and management.'

These scientists concluded that the soils do not contain sufficient nutrients and do not have the capacity to retain artificially applied nutrients in the form of fertilizers. Attempts to irrigate and grow pasture have also failed, as described in the Ferguson affidavit, Exhibit 25, described in more detail in the next section. It is reasonable to conclude that this tract does not have sufficient soil fertility to qualify as "agricultural land."

Suitability for Grazing

The CEC Site-Specific Soil Survey Report (Exhibit 3) also evaluated this factor on Pages 5-6. In summary, the scientists found that forage production potential, at 912.5 pounds of dry matter needed to feed a cow and calf pair for one month (animal unit month -AUM), the Subject Property 'does not represent a sufficient number of AUM for a commercially viable livestock operation.'

The scientific conclusion is verified by actual site experience. In 2012, Applicant Member Manager Ron Cochran leased the Subject Property to Mark and Cathy Ferguson to graze 12 head of cattle over the summer season. Two small pivots were positioned to water about 28 of the 62 acres. This was 'the only real area with enough soil to support pasture' according to the Ferguson affidavit, Exhibit 25. Even the best area proved to be too uneven and rocky. The Fergusons gave up after a month, and Mr. Cochran, convinced they'd made best efforts, released them from the agreement.

By both scientific analysis and actual site experience, it is reasonable to conclude that the Subject Property is not suitable for grazing as a means to qualify as 'agricultural land'

Climatic Conditions

The nearest urban area tracking climate data is the city of Bend, less than a mile to the south. Bend averages 3,623' elevation. Average snowfall is 33 inches per year. The last spring frost averages on June 14 and first fall frost averages on September 12, leaving approximately 89 days on average for a traditional growing season. This is considered to be a 'short' growing season and precludes successful farming of most commercial crops.

The CEC Site-Specific Soils Analysis, Exhibit 3, summarizes Climatic Conditions on Page 6. The report also notes an approximately three-month growing period and goes on to note that the region receives less than 12 inches of annual rainfall, 'with very little falling during the growing season.' Native rangeland grasses "are the only realistic crop" without irrigation. As noted above in the Ferguson affidavit, irrigation isn't productive due to the uneven and rocky nature of the site. The CEC report concludes 'the Site would not support a commercial livestock operation.'

It is reasonable to conclude that climatic conditions on the site are such that it would not qualify as 'agricultural land' under this definitional category.

Existing and future availability of Water for farm irrigation purposes

Irrigation water is available to the site. Irrigation has been tried on the site by both the current owner and at least one previous owner. See Ferguson Exhibit 25. Current irrigation water supplies provided to the Subject Property are delivered by Swalley Irrigation District, a district that stores its reserves in the Crane Prairie Reservoir and delivers to the north Bend area through the Deschutes River main diversion. The Riley sublateral stubs out in the area of the Subject Property. Swalley is part of a basin-wide push to pipe all canals, laterals, and sub laterals and eliminate wasteful deliveries to meet conservation goals by returning water to the Deschutes River for habitat conservation as part of a Federal agreement, and in keeping with Oregon Water Resources Department administrative rules.

Irrigation water delivery facilities do exist to the site. However, irrigating the site has proven to waste a precious resource, while yielding little to no productive growth to justify the expense and resource waste. Going forward, surface water in the entire Deschutes Basin is expected to be scrutinized for efficiency and productivity, since surface and groundwater are deemed by the USGS to be commingled in the Basin, and demand for potable water is projected to increase exponentially in the coming years with population growth.

In summary, water is available for now, but both science and experience have proven that irrigating the Subject Property won't improve it sufficiently to qualify it as 'agricultural land.'

Existing Land-use Patterns

Deschutes County tracks land-use patterns and provides reports over 1 mile radius around the Subject Property. A packet prepared for the Subject Property and surrounds is submitted as Exhibit 37. It contains the following information relevant to surrounding land-use patterns:

- *EFU-zoned parcels (list and map) -Pages 1, 2*

There are 3 other parcels zoned EFU on the same side of the Deschutes River ravine as the subject property. The two to the north, TLs 102 and 103 belonging to Kaufman and Burke respectively, are not in farm-deferral,

are both less than 20 acres (23 acres is the minimum EFU TRB zoned tract allowed to allow for profitable agricultural use) and are not farmed. The tract to the south, TL 502, was traded by Deschutes County to the Oregon State Parks and Recreation Department. It is part of a contiguous tract bordering the Deschutes River ravine. It is not farmed or cultivated in any way. None of the parcels west of the ravine are in farm deferral for 1600 feet, or approximately 1/3 mile.

It is reasonable to conclude that no tracts within 1 mile of the Subject Property on the east side of the Deschutes River ravine are zoned EFU and actually being farmed.

■ Soils (NRCS Classification) Map- Page 3

As noted above, the site-specific analysis provided as Exhibit 3 provides data that is superior for the Subject Property. The 1-Mile Packet Map shows a total of 5 general soil classifications on the east side of the ravine in the 1-mile radius. Based on the Map Unit Description Table, these are mostly Class VII soils, but 38B can be Class VI in some circumstances. Across the ravine to the west, 13 soil classifications are mapped, indicating a different soil set. This is also the area where there is some farm deferral land in the 1-mile study area. These are 1/3 mile from the Subject Property or more and separated by the deep ravine and the Deschutes River. See Exhibit 38, previously submitted into the Record.

■ Properties in Tax Deferral Map - Page 4

While tax deferral is not a clear indicator of lands being used for commercial agriculture, it is generally accepted that owners looking to make an agricultural profit will seek out property tax deductions to improve the profit margin, and are more likely to qualify for it. As the map shows, there is no property in tax deferral on the east side of the ravine, indicating there are no owners using lands for commercial agriculture on the Subject Property side of the river.

■ EFU-zoned parcels by acreage Map - Page 5

Parcel size is another indicator of land use. Larger parcels are needed to make farming profitable, in keeping with Deschutes County's 23 acre minimum for EFU-TRB tracts. The Map indicates that the larger parcels, apart from the Subject Property, are those owned by Oregon State Parks and Recreation Department. (Ownership by tract is listed in the table on Page 1 of the packet). Even the nearest tax deferred tract is approximately 17 acres. This is not an area of commercially productive agricultural tracts based on acreages.

■ Year Built (1900-1978, 1979-1992, 1993-Present) Map-Page 6

The 'Year Built' map can provide data that's useful to understand development trends in the 1- mile area. This specific data is questionable, since the subdivision to the south of the subject property has undergone extensive development in recent decades but is not shown. We have included it as part of the packet provided, but do not cite to it for guidance as it appears unreliable in understanding development patterns in all but the EFU zoned tracts, and lands to the south and west are not zoned EFU.

■ Last Conditional Use Permit (non-traditional EFU) Map - Page 7

Similar to the map on Page 6, a map of 'Last Conditional Use Permit' indicates where uses have been applied that do not fit squarely within the outright uses allowed in the respective zone. As shown, most of the surrounding tracts have received conditional use permits, indicating non-traditional uses within that zone. The legend confirms all are EFU-zoned properties.

■ Last Administrative Determination Map - Page 8

This map is included as part of the packet, but is not a likely indicator of agricultural uses in the area.

■ *1985 Aerial Photo showing cleared land (farm, desert, or mining) - Page 9*

This aerial photo, taken almost 40 years ago, when compared to current tax lot maps included in the packet, shows extensive development has taken place to the south as the City of Bend's UGB expanded considerably in a northerly direction. What was undeveloped is now developed to the north, west, and south of the Subject Property. The Urban Area Reserve is now right on the southern boundary of the Subject Property. Development is moving in the direction of the instant tract, and surrounds it already on 3 sides.

■ *NRCS estimated soil classifications (not site-specific) - Pages 10-17*

This general data is a starting point in determining farmability of area soils. As the aerial shows, there are no crop circles or irrigated fields in the color photo on or near the Subject Property. It appears there is one possibly irrigated field to the north near Highcroft Road, but it is not well defined or well irrigated.

The remainder of the packet sheets through page 17 are intended to provide soil classification data used by NRCS. These are general, and not as reliable as the site-specific analysis provided by the CES scientists in Exhibit 3.

The County 1-Mile Packet (Exhibit 37), read together, provides detailed and site-specific data to yield the following conclusions about existing land use patterns:

- ▶ *No commercial farming is conducted on the east side of the ravine within the 1 mile radius of the Subject Property.*
- ▶ *Soils on the east side of the ravine are not predominantly Class VI or better, so agricultural use is not likely to be viable in the future.*
- ▶ *Tax deferral maps show the nearest commercial agricultural land use is approximately 1/3 mile away, and that is across the ravine.*
- ▶ *Tract sizes have already been divided below EFU minimums to make farming impracticable, with the exception of Oregon State Parks Recreation Department tracts which are reserved for recreational use.*
- ▶ *Most EFU parcels near the Subject Property have developed with conditional uses (not traditional agricultural uses)*
- ▶ *Development since 1985 around the Subject Property on three sides has been residential development, not agricultural development, indicating a trend going forward.*

Technological and Energy Inputs Required

The CES Survey Report (Exhibit 3) analyzes this factor on Page 6-7. The scientific analysis concludes "[t]here is nothing that has been revealed during the course of this investigation that would suggest there is any technological or energy-related reason to retain the subject property in an agricultural classification." It is reasonable to conclude that this factor does not indicate the Subject Property is properly agricultural land.

Accepted Farming Practices

The Deschutes County 1-Mile Packet includes a table of "Common Farm Practices" used within the entire County (Exhibit 37, Pages 18-21). The practices listed are mostly not feasible on the Subject Property, due to soils, rocks, topography, and short growing season, according to the CES Analysis (Exhibit 3). The remainder

would not be profitable, per CES. Potential for conflicts is also analyzed by CES, and the report concludes on Page 7 that "[s]ince the Site is surrounded by parcels that are not managed for farm use and there does not appear to be any recent history of farm use, the re-zoning of this parcel is not likely to represent any significant increase in the potential for conflicts with accepted agricultural practices.

This detailed analysis of the factors identified in both the Goal and the related OAR indicate that this tract does not qualify as Agricultural Land.

The OAR goes on to identify additional factors that may contribute to a tract qualifying as 'Agricultural Land.'

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

Analysis of this factor requires identifying 'adjacent or nearby agricultural lands.' In summary, based on the Exhibit 37 1-Mile Packet Data discussed above, there are none on the eastern side of the ravine within one mile of the Subject Property. On the western side of the ravine, there appears to be one 17 acre parcel in tax deferral and zoned EFU, but it's 1/3 mile away in aerial distance (Exhibit 38) and the ravine is not crossable by a motor vehicle in the area, since the ravine is very deep and there are no public bridges in the area between the Subject Property and the EFU lot. The nearest route would require travelling north on O.B. Riley Road to a bridge which intersects with Johnson Road, travelling southwest to the 17 acre parcel. This is a distance of approximately 2.5 miles. See Exhibit 40, incorporated by this reference.

Applied to the language of the rule above, "adjacent or nearby" does not identify any qualified farm parcels that meet this definition. If there are no 'adjacent or nearby' agricultural lands, it is logical to conclude this land is not "necessary to permit farm practices" on such lands.

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

This factor similarly requires identification of qualifying categories to perform the analysis required. The Subject Property contains Class VI, VII, and VIII soils, though the VII and VIII soils are predominant (Exhibit 3). 'Adjacent or intermingled Class I-VI soils' do exist on the Subject Property, but are so erratically interspersed and difficult to irrigate as to be unfarmable. As noted in the Ferguson Affidavit and discussed below, it has been tried. See Figure 4, Site Specific Soils Map, within Exhibit 3. See Page 4, last paragraph, Discussion of Observations and Results. 'Of the 62.87 acres evaluated, 21.52 acres or 34.2 percent are represented by Deskamp (Class VI) soils, in 14 irregularly shaped delineations ranging in size from 0.12 to 4.14 acres.'

The Deskamp soil is included in the area that Ferguson tried to irrigate for pasture production. See Exhibit 25. He was unsuccessful, despite use of two pivots covering 28 acres of the 'only real area with enough soil to support pasture.' He notes in his affidavit that the "uneven nature of the land and rock outcroppings [sic] caused the pivot to frequently get out of line and would automatically shut down. Even where irrigation covered the ground not enough grass grew to support the herd. The soil was just too thin and would support only one or two animals. We ended the agreement after a month or so because it was obvious to both of us that the 62 acres wouldn't grow enough to support grazing.' The Ferguson affidavit packet includes the Lease Agreement, evidence of lease payment, and liability insurance on the Subject Property (last address listed on Policy Declaration sheet).

The "adjacent or intermingled" factor has been carefully analyzed by the CES scientists and found to be so interspersed as to be unfarmable. The reality of the Subject Property has been tested by Ferguson, and his

conclusions align with the CES Site-Specific Soil Survey Report. It is reasonable to conclude that even with approximately 35% of the soil qualifying as Class VI, it is so far apart and in such small sections and mixed with such uneven topography and rock as to make it not suitable as Agricultural Land.

All factors identified as possible qualifiers for Agricultural Land have been analyzed carefully and evidence - has been introduced into the Record to prove that the Subject Property does not qualify as Agricultural Land as defined in the Goal and the applicable administrative rule.

B. Need for an Exception to Goal 3

Applicant's original Burden of Proof Statement, submitted on May 27, 2022, analyzes the need for a Goal 3 Exception on Pages 18-20. That reasoning still applies. Recent caselaw has broadened the definition of 'Agricultural Land.' Applicant has addressed the new interpretation in the analysis above, proving that even under the new standards, the Subject Property does not meet the legal definition of 'Agricultural Land.'

Because the Subject Property is not legally 'Agricultural Land,' the regulatory nature of Goal 3 does not apply the Subject Property. As a result, no exception to it is required."

[End of Applicant's March 19, 2024 Goal 3 quoted material]

As noted earlier in the findings for Goal 3 the Hearings Officer found the Applicant's site-specific soil study (Applicant Exhibit 3) to be credible and persuasive. The Hearings Officer found that the Subject Property soils were predominately Class VII and VIII.

The Hearings Officer next addresses the OAR 660-033-0020(1)(a)(B) factors:

- * 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).

The Hearings Officer, relying upon Applicant's site-specific soil study and the quoted comments above, finds that the Subject Property does not have sufficient soil fertility to qualify as "agricultural land."

The Hearings Officer notes that the Applicant's site-specific soil study evaluated the "suitability for grazing" factor. Further, Applicant included a statement by individuals who attempted to graze 12 head of cattle on the Subject Property during a summer season. These individuals utilized irrigation water. These individuals abandoned the grazing use of the Subject Property after only one month concluding that the Subject Property was not economically feasible to use for grazing. (See Applicant's Exhibit 25, pages 1 – 2). There is no evidence in the record indicating that the Subject Property is "agricultural land" for "grazing of livestock." The Hearings Officer finds, based upon Applicant's site-specific soil study grazing analysis and the statement by individuals who attempted to use the Subject Property for grazing, that the Subject Property is not "suitable for grazing."

The Hearings Officer finds consideration of "climatic conditions," as an independent "agricultural land" review factor, to be challenging. Generally, the climate for Deschutes County, is relatively dry and allows for a short growing season. No evidence is in the record to suggest that the Subject Property is located in a micro-climate area which distinguishes the Subject Property location from the Deschutes County climate as a whole. The Hearings Officer finds that "climatic conditions" (relatively little rainfall and short growing season) suggest the

Subject Property could possibly be “agricultural land” depending upon other OAR 660-033-0020(1)(a)(B) factors. However, the Hearings Officer finds that “climatic conditions,” standing alone, is not a determinative independent factor leading to a conclusion that the Subject Property is “agricultural land.”

The Hearings Officer finds irrigation rights do exist at the Subject Property (Applicant admission, March 19, 2024, page 6). The Hearings Officer finds that the existence of water for farm irrigation purposes at the Subject Property is suggestive that the Subject Property is “agricultural land.” However, similar to the Hearings Officer’s findings related to “climatic conditions,” the Hearings Officer finds that the availability of water for farm purposes at the Subject Property, standing alone, is not determinative that the Subject Property is “agricultural land.”

The individuals who attempted to farm the Subject Property utilizing irrigation water concluded, after one month, “grazing livestock,” even with irrigation water, was not feasible. Those individuals commented (Applicant Exhibit 25, letter dated June 25, 2022) that irrigation water failed to enhance the soils at the Subject Property sufficiently to profitably farm because of the “uneven nature of the land” and the “existence of rock outcroppings.” Those individuals stated that the “soil was just too thin and would only support one or two animals.” The Hearings Officer finds that the site-specific soil study (Applicant Exhibit 3) and letter (Applicant Exhibit 25, letter dated June 25, 2022) from the above-referenced individuals constitute substantial evidence that the Subject Property is not suitable for grazing even with the existence of water for farm irrigation purposes.

Applicant (quoted comments above) provided a thorough inventory and analysis of existing land use patterns in the vicinity of the Subject Property. The Hearings Officer finds the Applicant’s inventory and analysis of existing land use patterns to be credible and constitutes substantial and persuasive evidence relating to the OAR 660-033-0020(1)(a)(B) “existing land use patterns” factor. The Hearings Officer concurs with Applicant’s summary of land use patterns in the vicinity of the Subject Property (March 19, 2024, page 8). The Hearings Officer finds existing land use patterns in the vicinity of the Subject Property suggest that the Subject Property is not “agricultural land.”

The Hearings Officer agrees with Applicant’s above-quoted discussion and conclusion that there is nothing in the record to suggest that additional, alternative or supplementary technology or energy related inputs would improve the prospects for the Subject Property to be considered “agricultural land.” The Hearings Officer finds, based upon the record of this case, that additional technology or energy inputs would not make up for the poor quality of soil and the topographical limitations existing at the Subject Property.

Applicant’s site-specific soil study discussed “accepted farming practices” at the Subject Property. Applicant’s site-specific soil study concluded that utilizing “accepted farming practices” would not offset the poor soil quality, rocks, topography and short growing season at the Subject Property. The Hearings Officer also takes note of the letter from the only individuals who did attempt to farm (Applicant Exhibit 25, letter dated June 25, 2022). These individuals concluded that grazing livestock, even utilizing the irrigation water rights, was not economically viable. The Hearings Officer finds, based upon the evidence in the record, that the Subject Property is not “agricultural land” based upon a review of the OAR 660-033-0020(1)(a)(B) factors.

OAR 660-033-0020(1)(a)(C) requires analysis of the Subject Property in the context of adjacent and nearby properties. Applicant, in the above-quoted comments, addressed this factor/standard. The Hearings Officer finds no adjacent properties being farmed (used as “agricultural land”). Applicant did note (April 2, 2024, page 6) the following:

“There are 3 other parcels zoned EFU on the same side of the Deschutes River ravine as the subject property. The two to the north, Tls 102 and 103 belonging to Kaufman and Burke respectively, are not in farm-deferral, are both less than 20 acres (23 acres is the minimum EFU-TRB zoned tract to allow profitable agricultural use) and are not farmed. The tract to the south, TL 502, was traded by Deschutes County to the Oregon State Parks and Recreation Department. It is part of a contiguous tract bordering the Deschutes River ravine. It is not

farmed or cultivated in any way. None of the parcels west of the ravine are in farm deferral for 1600 feet, or approximately 1/3 mile. It is reasonable to conclude that no tracts within 1 mile of the Subject Property on the east side of the Deschutes River ravine are zone EFU and actually being farmed."

Based upon the record in this case the Hearings Officer finds that the Subject Property is not necessary to permit farm practices to be undertaken or maintained on adjacent or nearby agricultural lands; there simply are no adjacent farm uses or adjacent "agricultural lands." The Hearings Officer also finds that there is no evidence in the record suggesting that a nearby farm use would benefit from the "agricultural use" of the Subject Property; including, but not limited to, providing additional feed resources to the Subject Property or the use of the Subject Property to locate storage or maintenance facilities for the nearby properties.

Finally, the Hearings Officer addresses COLW's "alternative farm uses" argument (February 27, 2024, pages 2 – 3 and March 26, 2024, page 3). The Hearings Officer believes, as suggested by COLW, that consideration of ORS 215.203(2)(a) is a good analysis starting point. ORS 215.203(2)(a) lists/defines "farm use" to include significant number of farm related activities including (COLW listed many of these potential farm uses as alternative uses at the Subject Property):

- * poultry,
- * lambs,
- * mules,
- * donkeys,
- * fur-bearing animals,
- * honeybees,
- * eggs,
- * hogs,
- * pigs,
- * dairying,
- * other horticultural uses,
- * animal husbandry,
- * preparation, storage and disposal products raised on such land,
- * stabling or training equines,
- * propagation, cultivation, harvesting of aquatic, bird and animal species under the jurisdiction of the State Fish and Wildlife Commission,
- * the on-site construction and maintenance of equipment and facilities used for farm use activities.

This Hearings Officer does not believe every listed "farm use" in ORS 215.203(2)(a) needs to be individually/independently analyzed as part of every Goal 3 "agricultural land" determination process. The Hearings Officer finds it is unnecessary for the Applicant to demonstrate (provide documentation and analysis) that the Subject Property is not "agricultural land" because it is not feasible to use the property, for example, to use that property as a dairy or for the propagation and harvest of aquatic species. The Hearings Officer finds that requiring every listed OAR 215.203(2)(a) potential farm use to be analyzed in every case does not represent the spirit and intention of ORS 215.203 or associated OAR's. The Hearings Officer finds that the goal of ORS 215.213 and associated OAR's is to thoughtfully consider what a reasonable farmer would consider when assessing a particular property's ability to be profitably farmed.

The Hearings Officer finds that there are common agricultural uses in every geographical area of Oregon and that the viability of a specific farm use of any property is dependent upon the factors set forth in OAR 660-033-0020. The Hearings Officer believes that a reasonable farmer is going to consider such factors as soils, topography, orientation to the sun, transportation access and water access when assessing potential farm uses of a particular

property. The Hearings Officer does not, however, believe a reasonable farmer would take the list of potential farm uses set forth in ORS 215.203(2)(a) and pragmatically consider the pros and cons of every one of those activities on a particular Deschutes County property. The reasonable farmer may consider one or more use not listed in ORS 215.203(2)(a) or fewer uses depending on the site characteristics of a particular property.

LUBA, in *Friends of the Creek v. Jackson County*, 36 Or LUBA 562 (1999) stated “we do not believe the legislature intended, by requiring that the land be currently employed ‘for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops,’ to require an inquiry into the primary actual motivation of particular land owners.” (See also *Cox v. Polk County*, 39 Or LUBA 1 (2000)). LUBA concluded, in the *710 Properties Decision*, that the appropriate test is “whether a reasonable farm would be motivated to put the land to agricultural use, for the primary purpose of obtaining a profit in money.”

The Hearings Officer finds the “objective” reasonable farmer approach is relevant in the context of answering the question: How does a reasonable farmer analyze what potential farm uses are to be considered for a particular property? The Hearings Officer finds that what use a reasonable farmer would make of the Subject Property is best demonstrated by historical use of that particular property, the historical uses of nearby and adjacent properties and general farming trends in the area.

COLW (February 27, 2024, page 2) argues that many of the ORS 215.203(2)(a) listed farm uses “are not dependent on any particular soil type” and therefore those uses need to be considered. Again, the Hearings Officer believes the LUBA findings related to the “reasonable farmer” standard would infuse some level of common sense into the ORS 215.203(2)(a) and OAR 660-033-0020 “agricultural land” analysis. It is conceivable and possible, for example, that a honeybee farmer or grape grower might find a particular property located in central Oregon to be appropriate for honeybee/grape farming. However, as a practical matter how long does a property owner have to wait for a honeybee or grape farmer to “discover” a particular property? Evidence in the record shows that only one farmer attempted to use the Subject Property as “agricultural land;” that was in 2012 for one month. There is no evidence that a honeybee farmer, wine grower, or any other person/entity desiring to make use of the Subject Property for any ORS 215.203(2)(a) use ever expressed interest in farming the Subject Property beyond the 2012 livestock grazing user.

The Hearings Officer finds that the Applicant in this case was not required to consider all uses listed in ORS 215.203 (2)(a) or by COLW. Rather, the Hearings Officer finds that the Applicant is required to consider only uses that a “reasonable farmer” for the Subject Property would consider in light of the OAR 660-033-0020(1)(a)(B) factors. The Hearings Officer does not believe that the Applicant in this case is obligated to independently/individually analyze and assess each and every one of the ORS 215.203 (2)(a) or COLW listed possible uses.

The Hearings Officer finds it is important to note that OAR 660-033-0021(1)(a)(B) does list one “farm use” that is required to be considered; “livestock grazing.” The Hearings Officer finds that “livestock grazing” is a farm use that must be considered during each and every “agricultural land” analysis. Further, the Hearings Officer finds that “livestock grazing” is a farm use that is common in Deschutes County. The Hearings Officer finds “livestock grazing” to be a use that a reasonable farmer might consider at the Subject Property. The Hearings Officer finds, in this case, the Applicant provided persuasive evidence that a reasonable farmer would not consider “livestock grazing” to be a “farm use” that would be entered into for the primary purpose of obtaining a profit in money.

The Hearings Officer, based upon the Preliminary Findings, the evidence and argument in the record, concludes that the Subject Property is not “agricultural land” and no Goal 3 exception is required.

Goal 5, Open Spaces, Scenic and Historic Areas and Natural Resources. To protect natural resources and conserve scenic and historic areas and open spaces.

RESPONSE: The Hearings Officer incorporates the findings for DCCP Policies 2.2.3 and 2.7 as additional findings for this section. The Hearings Officer reiterates that this recommendation relates only to Applicant’s request for a comprehensive plan designation change and a zone change; not to any specific development proposal.

The Hearings Officer notes a parcel of land to the west of the Subject Property has been removed from the proposal in this case. The removed parcel fronts the Deschutes River with a trail running along the river in this location. The removal of the parcel reduces potential Goal 5 related impacts (i.e., scenic views and trail interference) that could potentially be created by approval of the application in this case.

The Hearings Officer finds that the proposed comprehensive plan designation and zone are consistent with preservation of open space, as well as protection of both uses and views of the Deschutes River, while recognizing that the true "highest and best use" of the Class VII and VIII land is not farmland.

Goal 6, Air, Water and Land Resources Quality. To maintain and improve the quality of the air, water and land resources of the state.

RESPONSE: As specified in Goal 6, the Plan buffers potential residential uses allowed in the MUA zone from residential uses. The proposal is consistent with Goal 6 because it will not result in any adverse impact on air or water quality and land resources.

Goal 7, Areas Subject to Natural Disasters and Hazards. To protect people and property from natural hazards.

RESPONSE: Statewide Planning Goal 7 focuses on natural hazard areas and accommodations needed for them. In Central Oregon, these are most likely wildfires and steep slopes. Deschutes County has devoted planning to both. On the Subject Property, the rimrock issue is relevant. Construction along rimrock is protected with setbacks and no construction is allowed in this area. This Goal has been considered, and future development must be planned accordingly.

Goal 8, Recreational Needs. To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

RESPONSE: The Deschutes River is located to the west of the Subject Property. The river has carved a deep canyon into this portion of the County, creating steep rimrock ledges. Future development must be located back and away from the rim, allowing the river and riverbanks to be preserved in their natural state, without visual infringement by private homes.

A dedication to the Oregon State Game Commission for foot travel "adjacent to the east side of the Deschutes River and between said trail and the center of the Deschutes River" has been defined and perpetually protected through a dedication by Ronald Cochran, member manager of Applicant. See Exhibit 6, including both the 2017-37794 surveyed dedication of trail easement, and the 1957 prior dedication. Dedications to OPRD, provides more recreational benefit to Oregon's citizens, and allows more recreational access to the river without reducing the visual enjoyment of this resource as a recreational center of the County. The application is consistent with this Goal.

Goal 9, Economy of the State. To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

RESPONSE: The proposal is consistent with Goal 9 because it will not adversely impact economic activities in the state. Deschutes County development does not generally involve economic development and the commercial and industrial development at its core, but it can, with a little vision. Applicant, in its Burden of Proof, addressed these concerns in the following comments:

“Economic stability is central to this Goal. Trend analysis shows the City of Bend is growing quickly and the current urban area reserve is immediately south and east of the subject property. This is a factor somewhat unique to this County site. It is foreseeable that future Bend UGB expansion will include the subject property. It is currently approximately 1500 feet from the SE corner of the subject property, and the Urban Reserve Area is on the southern property line of the subject property. The property is not comprised of "agricultural land", so rezoning to MUA-10 is a logical transition of classification of use. Further, by arranging the homesites in a "T" formation, future development may fill around the homesites as urban needs for density dictate. This form of transition lends predictability, and so stability to land use patterns in keeping with concerns of Goal 9.

Goal 9 implementation requires that plans should take such regional conditions into account. Coordinating regional and local economic plans and programs is an essential part of good governance, as applied to land use decisions on a case-by-case basis. In this instance, where the EFU zoning designation is error now that soil classifications are known, a transition to non-resource designation is good economic planning as envisioned by Statewide Planning Goal 9.”

The Hearings Officer concurs with the above-quoted Applicant comments.

Goal 10, Housing. To provide for the housing needs of citizens of the state.

RESPONSE: Like Goal 9, Deschutes County does not traditionally focus on Goal 10 Housing. However, there are facets of the goal that merit consideration while considering this Application. Applicant, in its Burden of Proof, provided the following comments:

“Buildable lands for residential use are a particular concern in these times of housing shortages. This proposal will provide 14 new homesites on land that is currently underutilized because it is improperly zoned. Deschutes County's Board of County Commissioners and Planning Commission have devoted time and resources to the search for more buildable lands. This application is an example of using critical thinking to identify mis-zoned properties that can be opened up for residential use.”

The Hearings Officer concurs with the above-quoted Applicant comments.

Goal 11, Public Facilities and Services. To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

RESPONSE: The proposal is consistent with Goal 11 because the proposed plan amendment and zone change will have little impact upon the provision of public facilities and services to the subject property. As a rural development pattern, Avion Water Co. and septic systems will serve the parcels proposed under the MUA zone; consistent with rural lands.

When City of Bend urban density demands reach the Subject Property, transition will be customary to provide public facilities and services at that time.

Goal 12, Transportation. To provide and encourage a safe, convenient and economic transportation system.

RESPONSE: Deschutes County's Transportation System Plan, incorporated into the Comprehensive Plan and adopted as Exhibit C to it, is part of the acknowledged County Plan. The proposal is consistent with that plan, complying with County Level of Service standard D. The proposal is compliant with the TPR as well, and therefore is also consistent with Goal 12 as demonstrated by the attached, professionally prepared Transportation Analysis. See Exhibit 4.

Goal 13, Energy Conservation. To conserve energy.

RESPONSE: No known sources of non-renewable energy exist on the Subject Property. Any proposed development, under the MUA zone will be required to address energy conservation strategies. The proposal is consistent with this goal because it will have no negative impact on energy use or conservation.

Goal 14, Urbanization. To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

RESPONSE: The Hearings Officer incorporates the Preliminary Findings related to Goal 14 (III.A.4 – **Oregon Statewide Planning Goal 14**) and the Division 15, Statewide Planning Goals and Guidelines findings related to Goal 14. Further, the Hearings Officer also finds the following Staff (Staff Report, page 37) comments to be credible and persuasive and adopts these Applicant statements as additional findings for this section.

“Like Goals 9 and 10, this Goal doesn't traditionally utilize significant portions of County Planning resources. And like Goals 9 and 10, population growth in the County and the cities within it, is changing that focus. Portland State University's (PSU) Oregon Population Forecast Program provided its latest datum in March, 2022. That forecast predicted a continued annual growth rate of 1-2%, in contrast to the national Average Annual Growth Rate ("AAGR") which has been generally declining since 1980. Deschutes County's population in 2022 is 207,921, at a growth rate of 2.2%. Using conservative growth rates, Deschutes County's 2050 forecast population is 308,894, over 100,000 its current population, and almost double what it is now.

Bend's population is also forecast to grow, despite shrinking nationwide trends. Bend's 2022 population is calculated to be 106,062. In 2047, it is conservatively forecast to have 164,835 people, over half again as many as it has today. Bend is now 51% of Deschutes County's population. In 2047, it will be 55.1%.

Forecasting housing needs, both Bend and Deschutes County will need more housing. Because this property is approximately 1500 feet from the northeast edge of Bend's UGB and right on the boundary of Bend's URA, it's likely to be part of Deschutes County's growth in the immediate future, then part of Bend's growth after the next legislative UGB expansion. Either way, it's much needed based on the PSU forecasts.

Statewide Planning Goal 14 focuses not only on housing supply, but also "an orderly and efficient transition from rural to urban. . . ." This site's optimal location, just outside of Bend's current urban boundary, makes it an excellent candidate for rezoning, particularly where we now know the soil is not suitable for farming. It's not really "agricultural land." It is properly exception land, ideally developed in a less sprawled configuration in preparation for a more dense housing pattern in the future. These factors make it an excellent candidate for planned development in MUA-10 zoning.

This proposal meets the needs set out in Statewide Planning Goal 14. In summary, the proposal is consistent with Goal 14 for the following reasons:

1. *The proposal does support a likely, though not certain, eventual transition from rural to urban land use that responds to identified needed lands;*
2. *The proposal represents an orderly growth pattern that eventually will efficiently enhance and utilize public facilities and services;*
3. *The proposal will ultimately result in the maximum efficiency of land uses on the fringe of the existing urban area;*
4. *The subject property has been found to be not predominantly agricultural land as defined in OAR 660-033-0020; and*
5. *The proposal will promote compatibility with surrounding urban uses and will not adversely impact any nearby commercial agricultural uses because there are none.*

The Applicant's responses demonstrate compliance with the applicable Goals."

The Hearings Officer finds Goal 14 has been satisfactorily addressed by Applicant and that the Applicant's proposal is consistent with Goal 14 and no exception is required/necessary.

Division 33 - Goal 3 - Agricultural Lands

OAR 660-015-0000, Purpose Statewide Planning Goals and Guidelines #1 through #14

(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.

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 Oregon¹²;***
- (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***
- (C) Land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.***

FINDING: The Hearings Officer incorporates the Preliminary Findings related to Goal 3 (III.A.5 – **Oregon Statewide Planning Goal 3**) and *710 Properties Decision* (III.A.7. – **710 Properties Decision**) as additional findings for this Goal 3 section. The Hearings Officer also incorporates the findings for **Deschutes County Comprehensive Plan ("DCCP"), Chapter 2, Resource Management, Section 2.2, Agricultural Lands** as additional findings for this section.

¹² 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.

The Applicant’s basis for not requesting an exception to Goal 3 is that the Subject Property is not “agricultural land.” The Hearings Officer concurred with Applicant that the Subject Property is not “agricultural land.”

- (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 Hearings Officer incorporates the Preliminary Findings related to Goal 3 (III.A.5 – **Oregon Statewide Planning Goal 3**) and *710 Properties Decision* (III.A.7. – **710 Properties Decision**) as additional findings for this Goal 3 section. The Hearings Officer also incorporates the findings for **Deschutes County Comprehensive Plan (“DCCP”), Chapter 2, Resource Management, Section 2.2, Agricultural Lands** as additional findings for this section. While the Applicant did not provide a specific response to this subsection of OAR 660-033-0020 the Applicant did provide a listing of nearby and adjacent lands in the context of uses made of those lands. There is no evidence in the record of this case indicating that the Subject Property was used along with or intermingled as a farm unit with any adjacent or nearby land. The Hearings Officer finds that the Subject Property is **not** intermingled with lands in capability classes I – VI as a “farm unit.”

- (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).**
- (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 Preliminary Findings related to Goal 3 (III.A.5 – **Oregon Statewide Planning Goal 3**) and *710 Properties Decision* (III.A.7. – **710 Properties Decision**) as additional findings for this Goal 3 section. The Hearings Officer also incorporates the findings for **Deschutes County Comprehensive Plan (“DCCP”), Chapter 2, Resource Management, Section 2.2, Agricultural Lands** as additional findings for this section.

- (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.

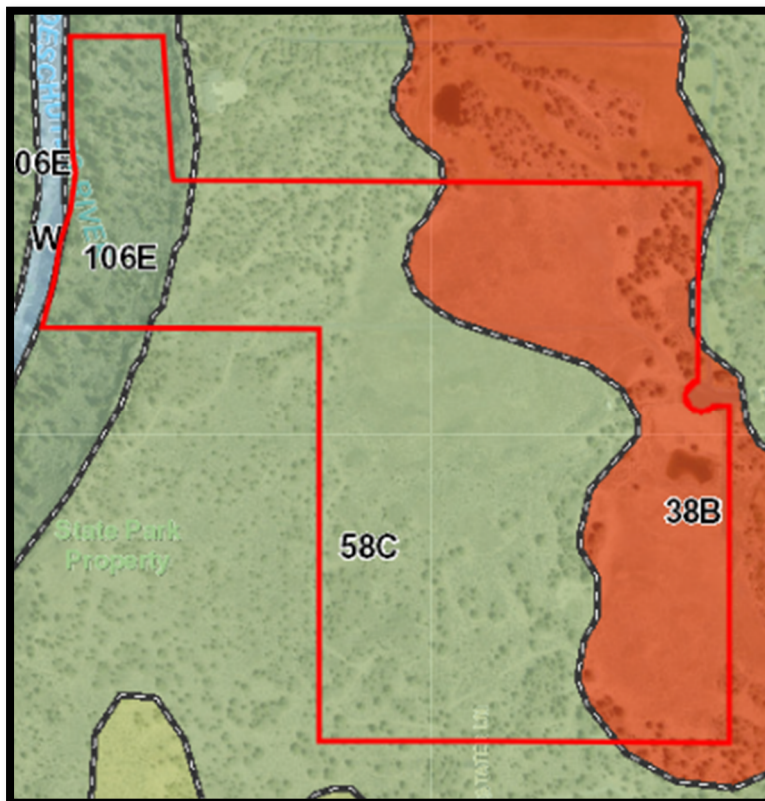
- (b) If a person concludes that more detailed soils information than that contained in the Web Soil Survey operated by the NRCS as of January 2, 2012, would assist a county to make a better determination of whether land qualifies as agricultural land, the person must request that the department arrange 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 the Preliminary Findings related to Goal 3 (III.A.5 – Oregon Statewide Planning Goal 3) and 710 Properties Decision (III.A.7. – 710 Properties Decision) as additional findings for this Goal 3 section. The Hearings Officer also incorporates the findings for Deschutes County Comprehensive Plan (“DCCP”), Chapter 2, Resource Management, Section 2.2, Agricultural Lands as additional findings for this section. The Hearings Officer also finds the Staff Report statements/comments/maps below are credible and relevant to this section. The Hearings Officer incorporates the following Staff (Staff Report, page 44) statements/comments/maps as additional findings for this section:

“The soil study prepared by Brian T. Rabe, CPSS, WWS of Cascade Earth Sciences, provides more detailed soils information than contained in the NRCS Web Soil Survey. NRCS sources provide general soils data for large units of land. The soil study provides detailed and accurate information about individual parcels based on numerous soil samples taken from the subject property. The soil study is related to the NCRS Land Capability Classification (“LLC”) system that classifies soils class I through VIII. An LCC rating is assigned to each soil type based on rules provided by the NRCS.

The NRCS mapping for the subject property is shown below in Figure 2. According to the NRCS Web Soil Survey tool, the subject property contains +/- 31 percent 38B soils, +/-58 percent 58C soils, and +/- 11 percent 106E soils.

Figure 2 – NRCS Soil Mapping for Subject Property



The soil study finds the soil types on the subject property vary from the NRCS identified soil types. Staff notes the soil study was prepared before the most recent property line adjustment. For this reason, the study area doesn't include the northwestern corner of the property (+/-3 acres). Nevertheless, the topography of this area appears to match the area directly south¹³, which Mr. Rabe classified as "rock outcrop – major" with a Class VIII rating in the soil study. Given the similarities of the terrain shown in the Applicant's topographical map, staff believes it is reasonable to presume this area does not need further review as part of an amended soil study.

The soil types described in the soil study are shown below as Figure 3. Additionally, the Summary and Conclusions sections of the soil study states:

'The purpose of this report is to present the results of an assessment to verify and, where necessary, refine the soils, map units, and boundaries mapped on the Site and to determine whether the soils on the Site meet the land capability classification criteria for a non-resource zoning designation. The published soil survey information was reviewed and direct observations of soil conditions were made at representative locations across the Site. CES has determined that the information from the published soil survey was generally consistent with observations on the ground with boundary refinements limited to delineating components of the complexes mapped by the NRCS. CES has determined that 41.35 acres or 65.8 percent, of the Site consists of Class VII and Class VIII soils. Since the Site is predominantly Class VII and Class VIII soils and does not otherwise meet the criteria for further consideration as agricultural land, the Site meets the soils criteria for consideration of a non-resource zoning designation.'

The soil study concludes that 65.8% of +/-63 acres of the subject property consists of Class VII and Class VIII soils. As noted above, staff believes it is reasonable to assume the northwestern corner of the property is also comprised of Class VII and Class VIII soils, which potentially increases the percentage of Class VII and Class VIII soils to 66.6%. The submitted soil study is accompanied in the submitted application materials by correspondence from DLCD. The DLCD correspondence confirms that the soil study is complete and consistent with the reporting requirements for agricultural soils capability as dictated by DLCD. Based on Mr. Rabe's qualifications as a certified Soil Scientist and Soil Classifier, staff finds the submitted soil study to be definitive and accurate in terms of site-specific soil information for the subject property.

¹³ Ref. Figure 1 above.

Figure 3 – Site Specific Soils Map for the Subject Property

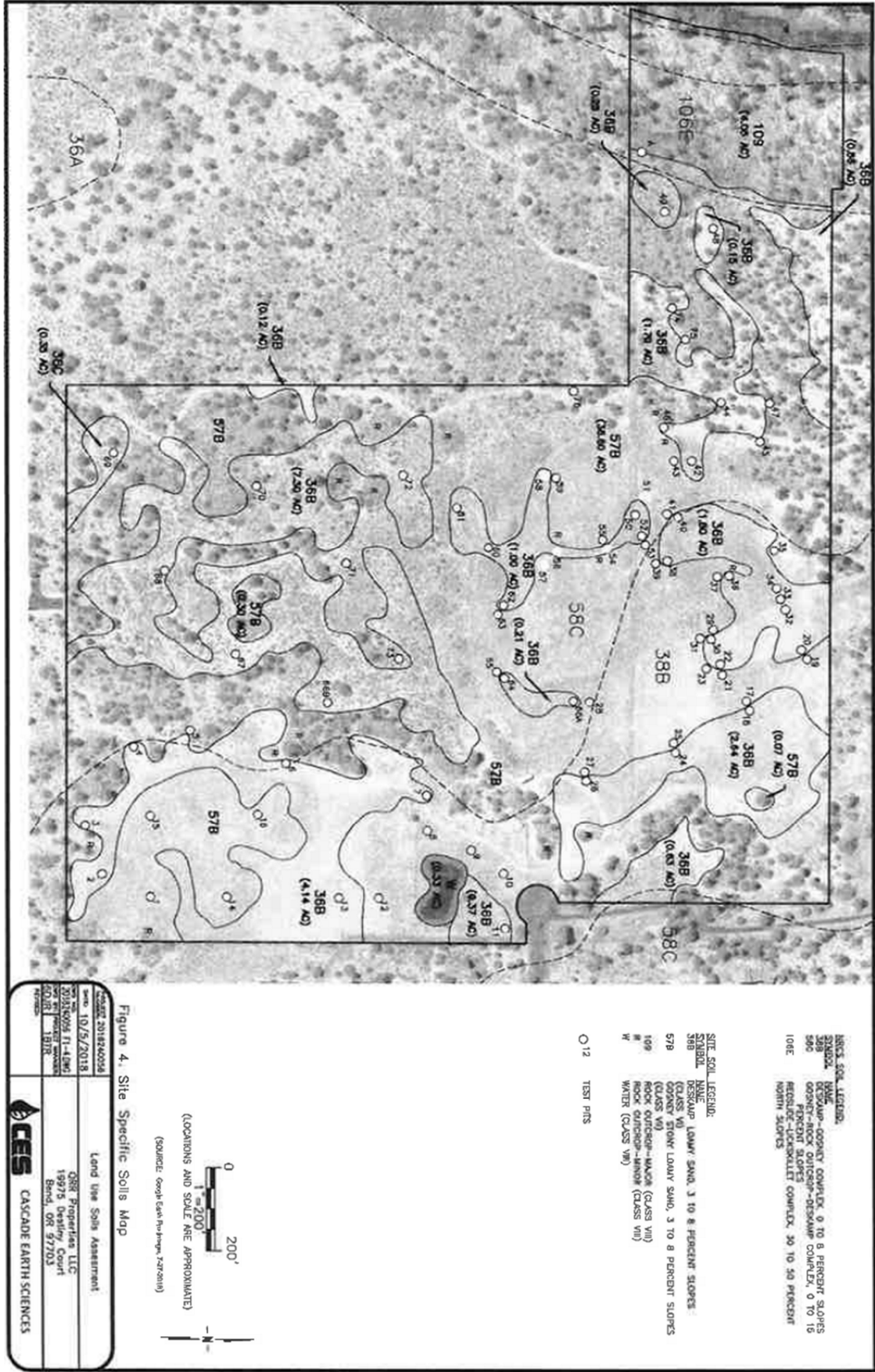


Figure 4. Site Specific Soils Map

- (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 Preliminary Findings related to Goal 3 (III.A.5 – **Oregon Statewide Planning Goal 3**) and *710 Properties Decision* (III.A.7. – **710 Properties Decision**) as additional findings for this Goal 3 section. The Hearings Officer also incorporates the findings for **Deschutes County Comprehensive Plan (“DCCP”), Chapter 2, Resource Management**, Section 2.2, Agricultural Lands as additional findings for this section. The Applicant requested approval of a non-resource plan designation on the basis that the Subject Property is not defined as agricultural land. In prior findings the Hearings Officer concluded, based upon the evidence in the record, that the Subject Property is not “agricultural land.”

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

FINDING: The Applicant submitted a soil study dated December 19, 2018. The soils study was submitted following the ORS 215.211 effective date. The Applicant also submitted acknowledgement from Hilary Foote, Farm/Forest Specialist with the DLCD, dated November 14, 2022, that the soil study is complete and consistent with DLCD’s reporting requirements. The Hearings Officer finds this criterion to be met based on the submitted soil study and confirmation of completeness and consistency from DLCD.

- (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 Applicant has provided a DLCD certified soil study as well as NRCS soil data. The Hearings Officer finds the Applicant has demonstrated compliance with this provision.

IV. CONCLUSION & RECOMMENDATION

The Hearings Officer finds that the application to change the Comprehensive Plan designation from AG to RREA and Zoning for the Subject Property from EFU to MUA complies with all relevant approval criteria. The Hearings Officer recommends approval of the Applicant’s requested Comprehensive Plan and Zone change requests.

DESCHUTES COUNTY HEARINGS OFFICER



Gregory J. Frank
Deschutes County Hearings Officer

EXHIBIT "I" to Ordinance 2026-009

After recording return to:

Deschutes County Community Development
117 NW Lafayette Avenue
Bend, OR 97703

**CONDITIONS OF APPROVAL AGREEMENT
AND RESTRICTIVE COVENANT**

This conditions of approval agreement is made this ____ day of _____, 2026 by Destiny Court Properties LLC, an Oregon limited liability company (hereinafter “Destiny Court”) and Deschutes County, a political subdivision of the State of Oregon (hereinafter “County”).

RECITALS

WHEREAS, Destiny Court sought approval of a plan amendment from Agricultural (AG) to Rural Residential Exception Area (RREA) and zone change from Exclusive Farm Use – Tumalo/Redmond/Bend subzone (EFU-TRB) to Multiple Use Agricultural (MUA-10) in File Nos. 247-22-000436-ZC and 247-22-000443-PA for the property described on **Exhibit A** (the “Property”), a copy of which is attached and incorporated by reference herein; and

WHEREAS, the applicant in the land use review process asked the County to impose a condition of approval on future development of the Property that will apply while the Property is zoned MUA-10: and

WHEREAS, the Board of Commissioners approved the land use applications and imposed the condition of approval requested; and

WHEREAS, the condition of approval requires that an agreement be recorded that memorializes the condition of approval and applies it to the rezoned property:

NOW THEREFORE, the parties agree as follows:

1. Any future subdivision shall be limited to equivalent density of 1 lot per 10-acres, which can be accomplished through use of a cluster or planned unit development for a minimum lot size of 2-acres with associated 8-acre reservation of open space. This condition shall be required so long as the property remains outside of an urban growth boundary.

DATED this _____ day of _____, 20__.

COUNTY

BOARD OF COMMISSIONERS OF DESCHUTES
COUNTY

PHIL CHANG, Chair

ANTHONY DeBONE, Vice-Chair

PATTI ADAIR, Commissioner

ATTEST:

Recording Secretary

STATE OF OREGON)
) SS.
COUNTY OF DESCHUTES)

This instrument was acknowledged before me on _____, 20__ by Phil Chang, Anthony DeBone, and Patti Adair, the above-named Board of County Commissioners of Deschutes County, Oregon and acknowledged the foregoing instrument on behalf of Deschutes County.

Notary Public
Print Name _____
My commission expires _____

DATED this ____ day of _____, 20__.

DESTINY COURT PROPERTIES LLC

By: Robert Cochran
Its: _____

STATE OF OREGON)
) SS.
COUNTY OF DESCHUTES)

This instrument was acknowledged before me on _____, 20__ by Ronald Cochran as _____ of Destiny Court Properties LLC, an Oregon limited liability corporation.

Notary Public
Print Name _____
My commission expires _____

EXHIBIT A

PROPERTY DESCRIPTION
(TAX LOT 100, MAP 17-12-07)

A TRACT OF LAND IN THE NORTHEAST QUARTER OF SECTION 7, TOWNSHIP 17 SOUTH, RANGE 12 EAST OF THE WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON, A PART OF THAT CERTAIN TRACT OF LAND CONVEYED TO DESTINY COURT PROPERTIES, LLC, AN OREGON LIMITED LIABILITY COMPANY, IN DOCUMENT NO. 2021-61291, DESCHUTES COUNTY OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID DESTINY COURT PROPERTIES, SAID NORTHWEST CORNER BEING ON THE CENTERLINE OF THE DESCHUTES RIVER AND BEARING, ALONG THE NORTH LINE OF SAID SECTION 7, S89°35'43"E 432.83 FEET FROM THE NORTH QUARTER CORNER OF SAID SECTION 7; THENCE CONTINUING ALONG SAID NORTH LINE, S89°35'43"E 425.47 FEET TO A POINT; THENCE DEPARTING SAID NORTH LINE, S13°11'48"W 239.62 FEET TO A POINT; THENCE S3°48'59"E 152.39 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE S89°52'26"W 298.75 FEET TO A POINT; THENCE S0°00'00"E 366.21 FEET TO A POINT; THENCE S5°57'50"W 178.47 FEET TO A POINT; THENCE S11°00'43"W 127.94 FEET TO A POINT; THENCE S15°48'44"W 92.60 FEET TO A POINT ON SAID DESCHUTES RIVER CENTERLINE; THENCE ALONG SAID CENTERLINE, S16°08'19"W 179.19 FEET TO A POINT ON THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 7; THENCE ALONG SAID SOUTH LINE, S89°38'02"E 914.03 FEET TO THE NORTHEAST SIXTEENTH (NE1/16) CORNER OF SAID SECTION 7; THENCE ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER (SE1/4 NE1/4) OF SAID SECTION 7, S0°12'11"W 1320.01 FEET TO THE CENTER EAST SIXTEENTH CORNER (CE1/16) OF SAID SECTION 7; THENCE ALONG THE EAST-WEST CENTERLINE OF SAID SECTION 7, S89°37'30"E 1318.35 FEET TO THE EAST QUARTER CORNER OF SAID SECTION 7, BEING THE SOUTHEAST CORNER OF PARCEL C OF PARTITION PLAT 1996-55; THENCE ALONG THE EASTERLY LINE OF SAID PARCEL C THE FOLLOWING COURSES: N0°08'26"E 1080.22 FEET; THENCE N89°37'33"W 50.00 FEET; THENCE 193.64 FEET ALONG THE ARC OF A 50-FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 221°53'48" (THE CHORD OF WHICH BEARS N32°08'04"W, 93.39 FEET); THENCE N0°07'29"E 634.22 FEET TO A POINT ON THE EASTERLY LINE OF SAID DESTINY COURT PROPERTIES, LLC TRACT; THENCE ALONG SAID EASTERLY LINE, N89°36'12"W 1684.60 FEET; THENCE N3d48'59"W 461.08 FEET THE **TRUE POINT OF BEGINNING**.

CONTAINING A TOTAL AREA OF 65.11 ACRES, MORE OR LESS.

Conditions of Approval Agreement – Exhibit A



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: April 15, 2026

SUBJECT: Deschutes County District Attorneys' Association (DCDAA) — Ratified Successor Collective Bargaining Agreement

RECOMMENDED MOTION:

Move approval of Document 2026-0278, a Collective Bargaining Agreement between Deschutes County and the Deschutes County District Attorneys' Association (DCDAA) for the term July 1, 2026 through June 30, 2029, as ratified by the Association.

BACKGROUND AND POLICY IMPLICATIONS:

County staff completed successor bargaining with DCDAA and the parties reached agreement on all contract articles. DCDAA has ratified the successor agreement for a three-year term (07/01/2026–06/30/2029).

The agreement includes wage schedule adjustments effective June 22, 2026 for the three Deputy District Attorney classifications: DDA I (+7.29%), DDA II (+6.80%), and DDA III (+6.76%).

In addition to wages, the agreement adopts a COLA range that is consistent with other County collective bargaining agreements (1-4% dependent on CPI). The parties also agreed to changes related to the time management leave conversion process and eligibility for the County's tuition reimbursement program.

The agreement sunsets retiree health insurance premium contributions for new hires as of 8/1/2026, while maintaining existing commitments for current employees.

Leave provisions were also updated to add bereavement leave consistent with non-represented employees (not previously included for DCDAA), and added language to memorialize existing PERS contribution that aligns with other County CBAs. Finally, the parties completed additional administrative cleanup throughout the document to improve clarity, cross-references, and internal consistency.

BUDGET IMPACTS:

No FY 2026 budget impacts are anticipated. Impacts for FY 2027 will be included in the proposed budget.

ATTENDANCE:

- Steve Gunnels, District Attorney
- Jessica Chandler, Executive Assistant to the District Attorney
- Kim Riley, Sr. Asst. Legal Counsel
- Whitney Hale, Deputy County Administrator

COLLECTIVE BARGAINING AGREEMENT
BETWEEN
DESCHUTES COUNTY
AND
DESCHUTES COUNTY
DISTRICT ATTORNEYS' ASSOCIATION

July 1, 2026 through June 30, 2029





**Collective Bargaining Agreement Between Deschutes County
and Deschutes County District Attorneys' Association**

July 1, 2026 through June 30, 2029

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1. PREAMBLE AND SCOPE

- A. This Agreement is entered into by and between DESCHUTES COUNTY, a political subdivision of the State of Oregon, hereinafter referred to as “County” and the DESCHUTES COUNTY DISTRICT ATTORNEYS’ ASSOCIATION, hereinafter referred to as “Association,” and shall be in effect through June 30, 2029.

- B. This Agreement shall apply only to regular full-time and part-time deputy district attorneys employed in the Deputy District Attorney I, Deputy District Attorney II, and Deputy District Attorney III classifications in the Deschutes County District Attorney’s Office, and excluding volunteers and temporary employees, hereinafter referred to as “Members.”

2. RECOGNITION

Members of the Association include three deputy district attorney classifications: Deputy District Attorney I, Deputy District Attorney II, and Deputy District Attorney III. The County recognizes the Association as the sole and exclusive representative with respect to wages, hours, and specified conditions of employment for Members.

3. ASSOCIATION DUES

- A. Every employee within the bargaining unit may become a Member of the Association by signing and delivering to the County an authorization allowing the deduction of the Association’s monthly dues from their pay.

- B. The amounts to be deducted pursuant to this Section shall be certified to the County by the Treasurer of the Association, and the aggregate deductions of all Members shall be remitted to the Treasurer of the Association by the County not later than the 10th day of the following pay period after such deductions are made. The amounts to be deducted by the County shall be determined in accordance with the provisions of the Association’s bylaws.

- C. The County agrees to furnish the Association a listing of all bargaining unit employees covered by this Agreement upon request of the Association.

- D. The Association agrees that it will indemnify, defend, and hold the County harmless from all suits, actions, proceedings or claims against the County or persons acting on behalf of the County, whether for damages, compensation, reinstatement, or any combination thereof, involving the application of this Section.

4. REPRESENTED EMPLOYEE RIGHTS

- A. Members shall have the right to form and join the Association, as well as the right to participate in Association activities which relate to matters of “employment relations” as defined in ORS 243.650(7). Members shall also have the right to refuse to join or participate in the activities of the Association. No Member shall be interfered with, intimidated, restrained, coerced, or discriminated against by either the County or the Association because of the exercise of these rights.
- B. The provisions of this Agreement shall be applied equally to all employees without discrimination as to age, marital status, race, color, sex, creed, religion, national origin, disability, sexual orientation, Association affiliation, or any other classification protected by Oregon or Federal law, except for bona fide job requirements.

5. MANAGEMENT RIGHTS

- A. The District Attorney and the County each retain all the customary, usual and exclusive rights, decision-making prerogatives, functions, and authority connected with, or in any way incident to their responsibility to manage the affairs of the District Attorney’s Office. The County and the District Attorney shall have no obligation to bargain with the Association with respect to any such subjects or the exercise of its or the District Attorney’s discretion and decision-making with regard thereto. The express provisions of this Agreement constitute the only limitations on the rights of the County and District Attorney to manage the business and affairs of the District Attorney’s Office. The rights of Members are limited to those specifically limited by the terms of this Agreement. Any subjects covered by the terms of this Agreement are closed to further bargaining for the term hereof, and any subject which was or might have been raised in the course of collective bargaining, except as provided in ORS 243.698, with section (4) of the statute modified by changing the 90-day period to 30 days.

B. Without limitation, but by way of illustration, the exclusive prerogatives, functions, and rights of the District Attorney shall include the following:

1. To determine the services to be rendered by the District Attorney's Office and its employees to the citizens of the County and State of Oregon.
2. To direct and supervise all operations, functions, and policies of the District Attorney's Office in which Members are employed.
3. To close or liquidate an office, branch, operation or facility, or combination of facilities, or to relocate, reorganize or combine the work of divisions, branches, operations. or facilities for budgetary or other reasons.
4. To determine the need for a reduction or an increase in the workforce.
5. To determine the method and manner under which a reduction in work force will be performed.
6. To implement new, and to revise or discard, wholly or in part, old methods, and procedures.
7. To assign and distribute work.
8. To assign shifts, workdays, hours of work and work locations.
9. To designate and to assign all work duties.
10. To introduce new duties and to revise job descriptions and duties.
11. To determine the need for new employees, transfers, and promotions.
12. To determine the qualifications for employees, as well as for transfers and promotions.
13. To discipline, suspend, demote, or discharge an employee with just cause as defined in Section 13 of this Agreement.

14. To determine the need for additional educational courses, training programs, on-the-job training, and cross-training, and to assign employees to such courses or training for periods to be determined by the District Attorney.
- C. Without limitation, but by way of illustration, the exclusive prerogatives, functions, and rights of the County shall include the following:
1. To fix the budget of the District Attorney’s Office and the number of positions and full-time equivalent employees budgeted in the District Attorney’s Office.
 2. To implement the District Attorney’s decisions with regard to a reduction in force.
 3. To establish, revise and implement standards for hiring, classification and promotion.
 4. To establish, revise and implement levels, grades and standards for monetary and non-monetary compensation and employee benefits.
 5. To establish, revise and implement programs concerning paid and unpaid leave, holidays, and other types of employee leave.
 6. To provide as the County determines necessary, and in its sole discretion, any furnishings, fixtures, and equipment to be used and any matters concerning limitations or conditions for their use.
 7. To maintain order and efficiency in its work sites, facilities, and operations.
 8. To make such reasonable rules and regulations, not in conflict with this Agreement, as the County may from time to time deem best for the purposes of maintaining order, safety, and/or effective operation of County facilities, and after advance notice thereof to the Association and Members, and to require compliance therewith by Members.
- D. Any of the rights, powers, authority and function the County and the District Attorney had prior to the negotiation of this Agreement

are retained by the County and the District Attorney and the expressed provisions of this Agreement constitute the only limitations on the rights of the County and the District Attorney to manage the business of the District Attorney’s Office. Should the County or the District Attorney not exercise the rights, powers, authority and functions reserved to them, or should they exercise them in a particular way, such conduct shall not be deemed a waiver of said rights, powers, authority and functions by the County or the District Attorney, nor shall such conduct be deemed or considered a waiver of their right to exercise them in some other way not in conflict with a specific provision of this Agreement.

6. NO STRIKES AND NO LOCKOUTS

- A. The Association and Members are prohibited from striking or recognizing the picket line of a labor organization pursuant to applicable State law. The Association and Members, as individuals or a group, will not initiate, cause, promote, permit, participate in or join in any strike, work stoppage, or slow-down, picketing, or any other restrictions or work at any location. Members, while acting in the course of their employment, shall not honor any picket line, except that such picket line may be honored if crossing the picket line would be unreasonably dangerous or hazardous.
- B. The County and the District Attorney each agree there will be no lockouts of Members during the term of this Agreement.
- C. In the event of strike, work stoppage, slow-down, picketing, observance of a picket line, or other restriction of work in any form, either on the basis of individual choice or collective employee conduct, the Association will immediately use every good faith effort to secure an orderly return to work. This obligation and the obligation set forth above shall not be affected or limited by the subject matter involved in the dispute giving rise to the stoppage, or by whether such subject matter is or is not subject to the provisions of the Agreement.

7. ASSOCIATION BUSINESS

- A. Members elected to serve as authorized representatives of the Association shall perform their duties as representatives of the Association on their own time, except as provided in subsection B of this Section. The Association negotiation team shall be

comprised of no more than three (3) Members, who shall be deemed to be negotiating on their own time.

- B. The County shall allow not more than a combined total of fifty (50) hours per fiscal year to the authorized representatives of the Association for the purpose of conducting Association business. Scheduling of time for the Association business shall be by mutual agreement with the Association representative’s supervisor and shall be documented on payroll records the same as any other time-off request.
- C. The County shall allow the use of the phones, copier, tape recorders and fax machine located in the District Attorney’s Office for Association business. The Association shall reimburse the County for all expenses. The Association will keep track of all expenses incurred on the County’s equipment and will submit an accounting, along with full reimbursement for such expenses, within thirty days of incurring the expense.
- D. The Association shall notify the County in writing of its staff representative and its officers. The Association representative may be granted reasonable access to the County’s physical work premises during working hours to conduct Association business, but shall observe any and all security regulations of the County and shall not interfere with the normal flow of work.

8. BULLETIN BOARD

The County agrees to maintain a bulletin board to be used by the Association.

9. WAGES, COMPENSATION AND BENEFITS

- A. Wages for employees in the bargaining unit shall be in accordance with the salary schedule found in Appendix A, which is attached hereto and by this reference incorporated herein.
- B. Effective June 22 of each year, for each fiscal year of the contract, the wage schedule shall be amended to reflect a cost-of-living adjustment (COLA) equal to the “average 12-month CPI percentage” from the twelve months of the Consumer Price Index

for All Urban Consumers (CPI-U), West Region, Size Class B/C cities using each month's CPI 12-month percentage change from January to December of the prior year. The CPI % used for each month is the "12-month percent change," meaning the month is compared (for the CPI index) to the same month from the previous year. The COLA for each fiscal year for the duration of this Agreement shall have a minimum increase of not less than one percent (1.0%) and a maximum increase of not more than four percent (4.0%).

- C. For the duration of the contract, the County agrees to provide Members for longevity, time management and bereavement leave in equal measure to that provided to County non-represented employees.
- D. As permitted by Oregon law, Members may use accrued leave to supplement any payments issued through the Oregon Paid Leave Program to achieve 100% of their average weekly wage while using Oregon Paid Leave benefits.
- E. Deschutes County defines its pay period as the twenty-second day of the month through the twenty-first day of the following month, with payment of wages for each pay period to be made to Members on the last business day of each month.

The County shall have the option to make additional changes to the pay period for Members at its discretion, subject to the notification and transition plan as outlined herein. To change the pay period and to pay for actual hours worked, the County may need to implement changes to its policies and/or personnel rules. If a change to policy or personnel rules is reasonably necessary in order for the County to change the pay period, the Association agrees not to demand to bargain these changes. The County will provide employees with at least 90 days' notice before changing the pay period or changing pay to actual hours worked. The County will

also develop a transition plan to assist employees with transitioning to a new pay period. The transition plan will include, at a minimum: providing budgeting classes to employees and allowing employees to sell back additional TML as necessary to make up for a shortened pay period during the transition.

- F. Promotions, reassignments, involuntary demotions, and involuntary reductions in pay for members shall be achieved consistent with Section 9 of the Deschutes County Personnel Rules, except that decisions to promote, reassign, involuntarily demote, or involuntarily reduce the pay of members shall be made by the District Attorney, in their sole discretion, subject to budget approval from the County. Involuntary demotions or reduction in pay are disciplinary actions as defined in Article 13 and, as such, may be grieved pursuant to Article 12.

- G. The County shall be a participant in the Public Employees Retirement System (PERS) or its equivalent. After the employee has completed their six full months' employment period and holds a position requiring that the employee work in excess of 600 hours per year, the County shall make contributions to PERS in accordance with levels established for the employee's position. The employees will contribute to PERS in accordance with the state law. In the event that state law provides for other alternatives, members of DCDAA will be afforded the same options available to non-represented employees. The County will take appropriate action to have the employee contribution defined as pre-tax in accordance with tax code regulations. The County will continue to provide a Deferred Compensation plan in compliance with IRC 45. The plan will be available to all DCDAA bargaining unit employees.

10. INSURANCE

- A. Members shall be entitled to County health, life, and LTD insurance. The health insurance, which includes medical, dental, orthodontia, vision, and prescription coverage, is currently provided through the self-funded Deschutes County Employee Health Plan.

- B. The Member health insurance premium contribution will be no greater than nine-point five percent (9.5%) of the per FTE cost as calculated by the composite rate for the duration of the contract. If the Board of County Commissioners establishes a monthly

premium contribution for non-represented management employees that is less than the above stated maximums, Members will pay the lower rate. In any event, during the term of the Agreement, the Member health insurance premium contribution will not exceed \$190 per month.

- C. Throughout the duration of the contract, the Association will have one (1) Member on the County Employee Benefit Advisory Committee.
- D. Insurance benefits will be provided to Members under the same conditions and/or restrictions as provided to all non-represented County employees. If coverage is adjusted and/or modified for non-represented County management employees, the same will apply to Members.
- E. The County will provide health insurance coverage to retirees, consistent with the requirements outlined in state law. The County will provide health insurance premium subsidies to retirees collecting PERS who were hired on or before 7/31/26 until those retirees are eligible for Medicare, in accordance with a schedule approved by the County.
- F. In addition to health insurance and other insurance, the County will make available to Members a qualified IRS 125 Plan.

- G. The County or Union may reopen Article 10 of the contract by sending a written demand to the other party in the month of January before the health plan year impacted.

11. REDUCTION IN WORKFORCE

- A. In the event a reduction in workforce becomes necessary, the manner and method of the reduction shall be determined by the District Attorney, in his or her sole discretion.
- B. In the event of a reduction in workforce pursuant to this Section 11, the District Attorney and the County agree to make a good faith effort, and when it is feasible to do so, to provide thirty (30) days’ advance notice to Members, and the Association of their intent to permanently or temporarily reduce the attorney workforce of the District Attorney’s Office as a result of inadequate funding or for operational reasons. The County and the District Attorney will attempt to provide sixty (60) days’ advance notice of any such layoff; but the Association, the County, and the District Attorney each recognize that such sixty (60) day advance notice may not be possible.

12. GRIEVANCE PROCEDURE

- A. A grievance is defined as an allegation that a specific provision of this Agreement has been violated.
- B. A day is defined as a calendar day.
- C. In an effort to provide for resolution of disputes, the parties agree to the following procedures:

Step I: Any Member claiming a breach of any specific provision of this Agreement (“grievant”) may refer the matter, in writing, to their immediate supervisor outside the bargaining unit within fourteen (14) days from the occurrence of the alleged breach. A grievant shall also provide a copy of the written grievance to the Association. The grievance shall, at minimum, specify the article and section of the Agreement alleged to have been violated, provide a recitation of facts the grievant believes demonstrate such violation, and specify the requested remedy. References such as “any other provision of the

Agreement” shall not be considered specific and shall be deemed inadequate to invoke the provisions of this Section. A Member may submit a grievance only on behalf of him/herself and not on behalf of any other Member or group of Members. The Association may file a grievance on behalf of any Member or group of Members. The supervisor shall respond to the grievance in writing as quickly as possible, but no later than fourteen (14) days after the grievance is received by the supervisor.

Step II: If, after fourteen (14) days from the date of the delivering of the grievance to the supervisor, the grievance remains unadjusted, the grievance may be submitted within fourteen (14) days to the District Attorney, along with a written statement as to why the supervisor’s Step I response does not adequately resolve the grievance. The District Attorney shall meet with the grievant, who may request an Association representative at the meeting. The meeting between the District Attorney and the grievant shall be within fourteen (14) days of the District Attorney’s receipt of the written grievance. The District Attorney shall respond to the grievance in writing within fourteen (14) days of such meeting. The Step II grievance shall be limited to facts and evidence provided at Step I, except that evidence that was not discoverable at Step I may be introduced if discovered after the Step I response. If the grievant or the Association intends to introduce such evidence after Step I, the grievant or the Association shall have the burden to establish such evidence was not discoverable at Step I. Any allegation of a breach of this Agreement introduced at Step II that was not presented at Step I shall be considered untimely filed and shall be dismissed without any further recourse for the grievant. Any evidence submitted at Step II in support of an allegation deemed untimely under the preceding sentence shall not be admissible and will not be considered by the District Attorney at Step II.

Step III: If the grievance is not resolved within twenty (20) days from the submission of the grievance to the District Attorney, the Association alone will have fourteen (14) days to serve written notice to the District Attorney and the County of its intent to submit the grievance to final and binding arbitration. The arbitrator’s decision shall be in writing and shall set forth findings of fact, reasoning, and

conclusions of the issues submitted. The arbitrator's review shall be limited to determining if the specific provision(s) of the Agreement which was the basis for the grievance has been violated. The arbitrator shall have no authority to alter, modify, vacate, or amend any of the terms of the Agreement. Arbitrations shall be conducted in the following manner:

- a. The arbitrator shall be selected by mutual agreement of the parties. If the parties cannot agree on an arbitrator within fourteen (14) days of submitting the grievance to arbitration, the parties will request a list of seven (7) arbitrators from the Employment Relations Board. Within five (5) days of the receipt of this list by each party, the parties shall alternately strike names from the list until one name remains. The party striking the first name shall be determined by a coin flip.
 - b. The Step III grievance shall be limited to facts and evidence provided at Step I, except that the evidence that was not discoverable at Step I may be introduced if discovered after the Step I response. If the grievant or the Association intends to introduce such evidence after Step I, the grievant or the Association shall have the burden to establish such evidence was not discoverable at Step I. Any allegation of a breach of an article or section of this agreement introduced at Step III that was not presented at Step I shall be deemed untimely filed and shall be dismissed without any further recourse for the grievant. Any evidence offered at Step III in support of an allegation deemed untimely under the preceding sentence shall not be admissible and will not be considered by the arbitrators at Step III.
 - c. The costs of the arbitrator shall be shared equally by the parties. Each party shall be responsible for the costs of presenting its own case to arbitration.
- D. Each party shall be responsible for compensating its own representatives and witnesses at any step of this procedure.
- E. Any time limits specified in the grievance procedure may be waived by express, mutual consent of the parties. Failure to submit the grievance in accordance with these time limits without such a

waiver shall constitute abandonment of the grievance. Failure by the County to submit a reply after knowledge of the grievance within the specified time will move the grievance to the next step in the grievance procedure. A grievance may be terminated at any time upon receipt of a signed statement from the Association.

- F. A grievant exercising their rights to pursue a grievance through this procedure may do so without discrimination and without loss of pay if meetings or conferences as called for herein occur during the employee's regularly assigned duty time.
- G. To the extent allowable by law, all information relative to a grievance and resolution accomplished via the grievance procedure shall be considered exempt from public disclosure in an effort to assure confidentiality to the employee.
- H. If the parties agree in writing, Steps I, and II, may be waived.
- I. Oral reprimands are not subject to the grievance procedure.
- J. Written reprimands and performance evaluations which do not result in the denial of a step increase may not be grieved past Step II.
- K. The extension of a probationary period shall not be grievable.

13. DISCIPLINE AND DISCHARGE

- A. Formal Disciplinary actions include the following:
 - 1. Oral reprimand;
 - 2. Written reprimand;
 - 3. Suspension;
 - 4. Involuntary demotion or involuntary reduction in pay, and;
 - 5. Discharge.
- B. The County or the District Attorney may formally discipline, discharge, suspend, involuntarily demote, or reduce the pay of a Member for just cause. For purposes of this Agreement, "just cause" includes, but is not limited to:

1. Violation of state or federal law, or the Deschutes County Code;
2. Commission of acts of misfeasance or malfeasance, or of acts that are tantamount to unlawful conduct;
3. Violation of Deschutes County Administrative Policy or District Attorney’s Office Departmental Policy;
4. Violation of the Oregon Rules of Professional Conduct, or willful disregard of the ethical, moral, or professional standards of the District Attorney’s Office;
5. Failure to meet the job performance standards set by the District Attorney;
6. Willful disregard of the District Attorney’s philosophies and objectives with respect to prosecution of criminal offenses;
7. Violation of confidentiality agreements or release of confidential materials contrary to County or Office policy;
8. Insubordination;
9. The willful giving of false information, or the withholding of information when such information is reasonably requested by the County or the District Attorney in any investigation;
10. Conduct reflecting poor judgment, meaning indifference to, or a failure to recognize the consequences of an act or series of actions, or a failure to act or a series of failures to act, where the employee is conscious of his or her conduct and knew or should have known such conduct would likely result in a violation of the law or County or Office policy, standards, or procedures;
11. Conduct reflecting a discredit upon the County or the District Attorney’s Office, which is a hindrance to the effective performance of the functions of the Office, or which causes an irreparable breach in trust in the employment relationship or otherwise makes a continued employment relationship impossible; or

12. Willful failure to comply with the lawful and ethical directives of the District Attorney or the Chief Deputy District Attorney within thirty (30) days of receiving such a directive.
- C. Formal Discipline need not be progressive but shall be appropriate for the nature and severity of the conduct at issue and given the totality of circumstances involved.
- D. Disciplinary suspension of a Member shall not exceed two weeks.
- E. The District Attorney shall regularly assess Members based upon their job performance, compliance with the District Attorney's policies, and willingness to follow the professional and philosophical directives of the District Attorney as they relate to Members' job performance. Members shall be given written notice of policies, mission statements, objectives, and philosophies, as well as any changes made thereto.
- F. Forms of performance management that are not disciplinary include, but are not limited to counseling, verbal coaching, letters of instruction, work improvement plans and regular performance evaluations that do not result in denial of a step increase. These forms of performance management may serve as evidence for future formal discipline. Except for performance evaluations and work plans that will be placed in the Member's personnel file, information regarding performance management shall be kept in the working file of the District Attorney or Chief Deputy District Attorney. Performance management is not subject to the grievance process.
- G. Except for oral reprimands, Members of the bargaining unit have the right to Association representation or Association counsel in any meeting with management regarding formal disciplinary action.
- H. If the District Attorney determines there is just cause for suspension, demotion, reduction in salary or discharge of a Member of the bargaining unit, the District Attorney shall deliver to the Member a written notice of such discipline. Such notice shall specify the principal reason for the action. Upon receipt of such written notice, the Member shall be given an opportunity to meet with the District Attorney and respond to the allegations at a pre-disciplinary hearing. Disciplinary action shall not be effective until an opportunity for such a meeting has been given to the Member.

- I. If an investigative report is produced as part of an investigation into the conduct of a Member which the County or the District Attorney believe warrants discipline, the Member will be furnished upon request a complete copy of the investigative report prior to any pre-disciplinary hearing, unless prohibited by law.
- J. Reasonable efforts should be made to impose discipline in a manner that will not embarrass or humiliate the employee before other employees or the public.
- K. Probationary Members serve at the discretion of the District Attorney and, as such, are strictly “at-will.” For this reason, disciplinary action for probationary Members, including discharge from employment, is not subject to the grievance procedure. A probationary Member is a newly hired or newly promoted deputy district attorney hired to a period-of-trial service during which the Member’s work performance and standing to become a regular employee is evaluated by the District Attorney and the County. Probationary Members shall remain on probationary status until they complete at least twelve (12) full months of continuous employment with the Deschutes County District Attorney’s Office, measured from the date of hire or promotion, and they have received from the District Attorney a written one-year performance evaluation for which the probationary Member is given an overall rating of meets or exceeds standards.

14. BAR DUES AND CONTINUING LEGAL EDUCATION EXPENSES

- A. Annual Oregon State Bar dues for Members shall be paid by the County.
- B. The County will pay the reasonable costs of continuing legal education classes, programs, or seminars. Such payment is subject to the prior approval of the District Attorney, which approval may be denied at the District Attorney’s sole discretion, based on funding availability, relevance to essential job functions, and the business need of the District Attorney’s Office.
- C. The County will provide professional liability insurance to cover the cost and defense of bar complaints for all bargaining unit members.

15. SAVINGS CLAUSE

In the event any provision of this Agreement is at any time declared invalid by a court of competent jurisdiction or becomes invalid through the operation of government legislation, regulation, or decree, such declaration or effect shall apply only to the specific provision impacted by the declaration, legislation, regulation, or decree, and will not invalidate the entire Agreement or other provisions within the Agreement; it being the express intention of the parties hereto that all other provisions not declared invalid or that become invalid through government legislation, regulation or decree shall remain in full force or effect. To the extent an Article 15 occurrence impacts a mandatory subject of bargaining, and a good faith dispute arises regarding how such impact or impacts should be resolved, the parties agree to engage in expedited bargaining pursuant to State law in order to resolve the dispute.

16. COMPLETE AGREEMENT

The Agreement expressed in this written document is the complete agreement between the parties and, except as provided in Sections 5(D) and 17 of this Agreement, the relations between the parties shall be governed solely by its terms. Any issue not covered by this written Agreement is not a subject of the Agreement, regardless of whether such a subject was a proposal or demand of either party. This Agreement supersedes all previous oral and written agreements either between the County and the Members or the District Attorney and the Members. Except as provided in Sections 5(D) and 17 of this Agreement, no prior agreements, understandings, past practices, existing conditions, or prior benefits shall be controlling or in any way affect the relations between the parties, or the wages, hours, and working conditions of the Members, unless and until such agreements, past practices, existing conditions, or prior benefits shall be reduced to writing and duly executed by all parties to this Agreement.

17. MATTERS OUTSIDE OF THE AGREEMENT

For all matters not covered by this Agreement, the parties will follow County Policies, County Personnel Rules, and the Policies and Rules of the District Attorney’s Office, as the County and District Attorney in their sole discretion may amend from time to time and to the extent they are not inconsistent with the terms and conditions of this Agreement. Should the County choose to amend its Policies or Personnel Rules, or should the District Attorney choose to amend the Policies and Rules of the District Attorney’s Office, the County and District Attorney agree they will bargain any such changes concerning mandatory subjects of bargaining.

18. DURATION

- A. This Agreement shall remain in full force and effect through June 30, 2029, when it expires at Midnight on that date. After June 30, 2029, this Agreement shall be automatically renewed from year to year, unless either the County or the Association gives written notice to the other not later than May 1 prior to the aforesaid expiration date of the Agreement of its desire to modify the Agreement. If the Agreement is automatically renewed pursuant to this paragraph, the status quo will remain until a successor Agreement is executed by the parties.

- B. This Agreement will remain in full force and effect during all periods of negotiations and any impasse.

[SIGNATURE PAGE FOLLOWS]

APPENDIX A

Wage Scale for Deputy District Attorney I, II, and III Job Classifications

<i>Effective June 22, 2026</i>	1	2	3	4	5	6	7
Deputy District Attorney I	\$46.1285	\$48.4350	\$50.8567	\$53.3995	\$56.0695	\$58.8730	\$61.8167
Deputy District Attorney II	\$61.8167	\$64.9075	\$68.1529	\$71.5605	\$75.1385	\$78.8955	\$82.8402
Deputy District Attorney III	\$64.9075	\$68.1529	\$71.5605	\$75.1385	\$78.8955	\$82.8402	\$86.9822

The wage scale shown above and effective June 22,2026, will be updated for each fiscal year (26/27, 27/28, and 28/29) during the duration of this Agreement to include the agreed upon cost of living adjustments shown in Article 9, Section B of this Agreement.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: April 15, 2026

SUBJECT: Consideration of using CHRO budget funds or other identified County revenue to pay an additional \$2,104 for the Gales' Land Use Application Fee

RECOMMENDED MOTION:

Authorize the County Administrator to sign an amendment to the Grant Agreement with Craig and Lori Living Trust to provide an additional \$2,104 in identified County funds for the land use fees associated with a rezone application of the Gales property.

OR

Direct staff as determined by the BOCC.

BACKGROUND AND POLICY IMPLICATIONS:

In December 2025, the Board approved a Grant Agreement between Deschutes County and Craig and Lori Gales Living Trust, Document 2025-1096. The Grant Agreement provides for up to \$25,000 from the CHRO budget to be applied to the land use fees associated with a rezone of the Gales property located at 62150 Hamby Road.

The Gales have submitted their land use application and the fees are \$ 27,104. This amount is \$2,104 more than provided in the grant agreement.

BUDGET IMPACTS:

The Coordinated Houseless Response Office budget (Fund 205) has funds available, including \$20,000 budgeted in "Interest - Pooled Investments" for the current fiscal year. The year-to-date interest actuals are \$16,935.

The Board may also identify other funds such as the County General Fund or another source.

ATTENDANCE:

Erik Kropp, Deputy County Administrator



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: April 15, 2026

SUBJECT: Oregon State Fire Marshal & Model Defensible Space Code Discussion

RECOMMENDED MOTION:

This item is intended to be informational. The Board may provide direction to Community Development Department staff regarding next steps, including any request for more formal policy discussions at a future work session.

BACKGROUND AND POLICY IMPLICATIONS:

The Deschutes County Board of Commissioners will host Assistant Chief Deputy Chad Hawkins from the Oregon State Fire Marshal's (OSFM) office. Assistant Chief Deputy Hawkins will provide an overview of OSFM's model defensible space code that will be available for adoption by local jurisdictions following a rulemaking public hearing on April 27, 2026.

BUDGET IMPACTS:

None

ATTENDANCE:

- Kyle Collins, Senior Planner
- Will Groves, Planning Manager
- Nicole Mardell, Principal Planner
- Chad Hawkins, Assistant Chief Deputy, Oregon State Fire Marshal's office



MEMORANDUM

TO: Deschutes County Board of Commissioners

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

DATE: April 8, 2026

SUBJECT: Oregon State Fire Marshal & Model Defensible Space Code Discussion

The Deschutes County Board of Commissioners (Board) will host Assistant Chief Deputy Chad Hawkins from the Oregon State Fire Marshal's (OSFM) office. Assistant Chief Deputy Hawkins will provide an overview of OSFM's model defensible space code that will be available for adoption by local jurisdictions following a rulemaking public hearing on April 27, 2026¹. Staff notes that the specific language of the model code is subject to minor revisions until final adoption on April 29, 2026. A copy of the draft code is attached here for reference.

I. BACKGROUND

During the 2021 state legislative session, Senate Bill (SB) 762² was passed to help modernize and improve wildfire preparedness across Oregon. SB 762 was subsequently modified by the passage of SB 80³ in 2023. These pieces of legislation were developed to address wildfire issues through three key strategies: creating fire-adapted communities, developing safe and effective responses, and increasing the resiliency of Oregon's landscapes.

One of the primary components of SBs 762 and 80 was the creation of a comprehensive Statewide Wildfire Hazard Map (Hazard Map) to guide new wildfire regulations for residential development. Under SBs 762 and 80, once the Hazard Map was finalized, properties included in **both** a designated Wildland Urban Interface (WUI) boundary and classified as high hazard would be subject to additional development regulations. SB 80 required that, at a minimum, local governments ensure that properties meeting both of these classifications would be subject to:

¹ <https://www.oregon.gov/osfm/about-us/Pages/Administrative-Rulemaking.aspx>

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

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

- 1) Home hardening building codes as described in Section R327 of the Oregon Residential Specialty Code (ORSC).
- 2) Defensible space standards as determined by the Oregon State Fire Marshal.

Due to public concern, the state legislature repealed the Hazard Map and all associated requirements in June 2025 with the passage of SB 83⁴. However, SB 83 allows the adoption of these same wildfire mitigation provisions by local jurisdictions as a permissive option for communities statewide, pursuant to parameters established by the relevant administering state agencies such as the Oregon State Fire Marshal and the Oregon Building Codes Division.

Following the passage of SB 83, Deschutes County undertook a process to locally adopt section R327 of the ORSC, culminating with the adoption of Ordinance 2026-002 on January 28th, 2026⁵. The new home hardening building code standards became formally effective for all new residential development on April 1, 2026.

Regarding defensible space standards, SB 83 requires the following of OSFM:

- In consultation with the Oregon Fire Code Advisory Board, the State Fire Marshal shall create and make available to local governments a model code for defensible space that:
 - Includes standards that are consistent with, and do not exceed, the standards in the 2024 International Wildland-Urban Interface Code (October 2024), published by the International Code Council, that pertain to defensible space, including the standards in sections 603 and 604 of the code; and
 - Results from a consideration of best practices specific to this state.

As noted above, OSFM is approaching the final adoption of the model code for defensible space, at which point it may be adopted by local governments.

II. OVERVIEW OF MODEL DEFENSIBLE SPACE CODE

Importantly, the OSFM model code establishes minimum defensible space requirements, but does not prohibit jurisdictions from increasing local standards beyond the minimums outlined in the model code. Adoption of the model code by local governments is voluntary and must occur through each jurisdiction’s applicable local or municipal legislative process. Education, enforcement, conflict resolution, and appeals related to an adopted defensible space code must be administered by the local jurisdiction.

⁴ <https://olis.oregonlegislature.gov/liz/2025R1/Downloads/MeasureDocument/SB83/Enrolled>

⁵ https://s3-us-west-2.amazonaws.com/municipalcodeonline.com-new/deschutescounty/ordinances/documents/1775166943_2026-20-Ordinance%20No.%202026-002%20Recorded%20222026.pdf

The model code applies to buildings, structures, and other human development located within areas designated by the local authority as wildland-urban interface. Broadly, the model code covers the following characteristics and standards for defensible space:

- Separation distances between buildings, decks, and other human development from combustible materials.
- Modification and maintenance of various fuel types, including trees, shrubs, and other vegetation.
- General standards for maintenance of the code if adopted by a local jurisdiction

Chief Deputy Hawkins will provide a presentation to the Board on key elements of the OFSM model code and will be available for questions.

III. NEXT STEPS

This item is intended to be informational. If requested, staff will return at a future date for additional direction from the Board concerning the model code, including a broader discussion of possible policy choices.

Additionally, staff notes that if the Board wishes to explore adoption of the model code, there are likely to be significant staffing, code enforcement, or administrative implications for the County. If directed by the Board, staff will later evaluate these administrative, fiscal, and enforcement implications of local adoption prior to any formal legislative process.

Attachments:

- 1) Draft Model Defensible Space Code from OSFM

[Jurisdiction Name] Defensible Space Code

About this model code:

This code, and the provisions contained herein, must be adopted by local governments as required under ORS 476.392.

Section 101 General

101.1 Background. In 2021, the Oregon Legislature enacted Senate Bill 762, establishing comprehensive wildfire initiatives intended to enhance wildfire response and to promote fire-adapted communities by establishing and educating about *defensible space* around homes. In 2023, Senate Bill 80 made legislative changes.

101.2 Authority: In 2025, the Oregon Legislature amended provisions of Senate Bill 762 and 80 through Senate Bill 83 to reflect local flexibility rather than statewide enforcement and directed the State Fire Marshal, pursuant to ORS 476.392, to develop a model *defensible space* code. Adoption of the model code by local governments is voluntary and must occur through each jurisdiction’s applicable local or municipal legislative process. Education, enforcement, conflict resolution, and appeals related to an adopted *defensible space* code must be administered by the local jurisdiction.

101.3 Best Practices. Consistent with statute, *this code* incorporates Oregon-specific best practices for *defensible space*, including the non-combustible zone around structures.

101.4 Scope. *This code* applies to buildings, structures, and *other human development* located within areas designated by the local authority as *wildland-urban interface*. The local authority may amend *this code* to address local conditions, where consistent with ORS 476.392.

Section 201 Definitions

201.1 Scope. Unless otherwise expressly stated, italicized words and terms shall, for the purposes of *this code*, have the meanings shown in this section.

201.2 Terms not defined. Terms not defined here shall have the meanings ascribed in the Oregon Fire Code, or the International Wildland Urban Interface Code, as applicable. All other terms shall have their ordinarily accepted meanings, as the context implies, according to Merriam Webster’s Collegiate Dictionary, 11th edition.

202 Definitions.

CODE OFFICIAL. The local government entity, such as the planning department, or city, county, or rural fire protection district, whose function includes regulating building use and occupancy or administering fire safety laws, ordinances, and regulations, including the provisions of *this code*.

DEFENSIBLE SPACE. As defined in ORS 476.392, a natural or human-made area in which material capable of supporting the spread of fire has been treated, cleared or modified to slow the rate and intensity of advancing wildfire and allow space for fire suppression operations to occur.

FIRE-RESISTIVE VEGETATION. Plants contained in the “Fire-resistant Plants for Home Landscapes” (publication PNW 590), or plants with the characteristics compiled in Appendix F of *this code*.

FIRE-RESISTIVE VEGETATION, NON. Plants that do not meet the definition for *fire-resistive vegetation* that ignite readily, add to the intensity of a wildfire, and may increase its spread.

FUEL MODIFICATION. A method of modifying fuel load by reducing the amount of vegetation or altering the vegetation type to reduce the fuel load.

LADDER FUEL. Branches, leaves, needles, and other combustible vegetation that may spread wildfire from lower-growing to higher-growing vegetation.

OTHER HUMAN DEVELOPMENT. Buildings and structures classified as Risk Category IV in accordance with the Oregon Structural Specialty Code, Table 1604.5.

User note: OSSC Table 1604.5 is not part of *this code* but paraphrased for the reader's convenience.

OSSC Table 1604.5 Risk Category IV includes buildings and structures designated as “essential facilities” where the loss of function represents a substantial hazard to occupants or users. It includes hospitals, correctional facilities, fire and police stations, emergency shelters, public utilities, toxic material storage, aircraft control facilities, national defense structures, and water storage and fire suppression facilities.

RESPONSIBLE PARTY. Persons owning, leasing, controlling, operating, or maintaining buildings or structures requiring defensible spaces are responsible for modifying or removing vegetation on the property owned, leased, or controlled by said person.

THIS CODE. The [jurisdiction name] Defensible Space Code, legally adopted through a local process, shall be known hereafter as “*this code*”.

WILDFIRE HAZARD. A numerical value or local determination considering relevant conditions, describing the likelihood and intensity of a wildfire, based on specific factors or conditions of weather, climate, topography, and vegetation.

WILDLAND. Forestland, as defined in ORS 477.001, or an unimproved area that contains enough unmanaged vegetation, at any time of the year, to constitute a fire hazard, in the judgment of the forester, regardless of how the area is zoned or taxed.

WILDLAND-URBAN INTERFACE. A geographic area, as defined in ORS 477.015, in which there is a concentration of dwellings in an urban or suburban setting near *wildland*.

Section 301
Defensible Space Requirements

301.1 General Requirements. The *responsible party* shall establish and maintain a *defensible space* to reduce wildfire fuel loads and create a buffer zone for potential fire suppression operations around all

buildings, decks, and *other human development* in areas defined by the code official as a wildfire hazard in the *wildland-urban interface* in accordance with this section.

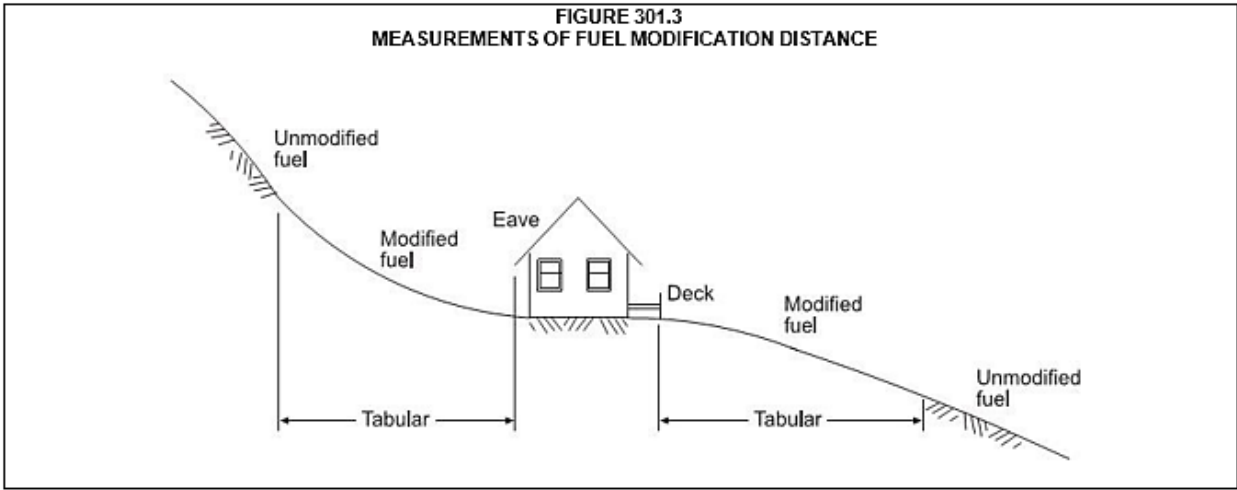
301.2 5-foot noncombustible defensible space. A noncombustible space not less than 5 feet in width shall be provided around buildings, decks, and *other human development*. The space shall be maintained to reduce the likelihood of fire spread and shall be free of combustible vegetation and accumulations of combustible materials, such as evergreen needles, leaves, firewood, lumber, bark mulch, or other combustible human-created fuels. Noncombustible materials (e.g. gravel, concrete, bare dirt) shall be permitted.

User note: The non-combustible zone shall be measured from the external wall or the farthest point on a deck or attachment.

301.3 Defensible space distances. Combustible fuels around buildings, decks, and *other human development* shall be modified to create a *defensible space* perimeter based on *wildfire hazard* levels determined by the local government. The levels are:

Wildland Urban Interface Area	Fuel Modification Distance (feet) ^a
Moderate Hazard	30
High Hazard	50
Extreme Hazard	100

- a. Distances are allowed to be increased due to site-specific analysis based on local conditions and the Maintenance Plan in Section 401.1. Required distances for fuel modification shall only extend to the applicable property or lot line.



301.4 Fuel Modification. The following *fuel modifications* shall be established and maintained within the perimeters established in Section 301.3.

301.4.1 Trees. Well maintained existing trees are encouraged within the *defensible space*, provided that the horizontal distance between the crowns of adjacent trees and the crowns of trees and structures, overhead electrical facilities, or unmodified fuel is not less than 10 feet (3048 mm). Deadwood shall regularly be removed from trees.

301.4.1.1 Trees greater than 18 feet tall. Tree crowns extending to within 10 feet (3048 mm) of any structure shall be pruned to maintain a minimum horizontal and vertical clearance of 10 feet (3048 mm). Tree crowns within the *defensible space* shall be pruned to remove limbs located less than 6 feet (1829 mm) above the ground surface adjacent to the trees.

301.4.1.2 Trees 18 feet tall or less. To preserve the health of established trees, no more than 18 (5486 mm) feet tall, lower limbs shall be removed to a height of 1/3 of the tree's total height.

Exception: Newly planted trees or immature trees.

301.4.1.3 Chimney clearance. Portions of tree crowns that extend to within 10 feet (3048 mm) of a chimney outlet shall be pruned to maintain a minimum horizontal and vertical clearance of 10 feet (3048 mm).

301.4.2 Groundcover. Deadwood and litter shall be regularly removed. Where ornamental vegetation or cultivated ground cover, such as green grass, succulents, or similar *fire-resistive vegetation*, are used as ground cover, they are allowed to be within the designated *defensible space* outside of the noncombustible zone in 301.2, provided they do not form a means of transmitting fire from the native growth to any structure.

**Section 401
Maintenance of Defensible Space**

401.1 General Maintenance. The requirements of this section shall be maintained by the *responsible party* to provide a clear area for fire suppression operations.

401.1.1 Trees. Trees and tree crowns in the *defensible space* are to be maintained to the requirements in Sections 301.4.1 through 301.4.1.3.

401.1.2 Deadwood removal. Deadwood and *ladder fuel* shall be regularly removed from trees and vegetation and in accordance with 301.4.1.

402.1 Inspection and Compliance. The *code official* or designee may conduct periodic inspections to verify compliance with Sections 301 and 401.

403.1 Maintenance Plan. Property responsible parties meeting the local criteria for *wildland-urban interface*, as identified by the authority having jurisdiction, should have an articulable plan to maintain the zone in accordance with *this code*.

Referenced Standards

About this section:

There are many sources of information about wildland-urban interface fires. Included in this section are those codes and standards referenced in this code.

ICC International Code Council

IWUIC – 24: International Wildland Urban Interface Code®

603.1, 603.2, 603.2.1, 603.2.2, 603.2.3, 604.1, 604.2, 604.3, 604.4, 604.4.1, 604.4.2, Appendix F-1

OSSC Oregon Structural Specialty Code

OSSC – 25: Oregon Structural Specialty Code

Table 1604.5 – Risk Category IV

Appendix F: Characteristics and Planting Principles of Fire-Resistive Vegetation

About this appendix:

This appendix provides general guidelines when evaluating the fire-resistant characteristics of various vegetative species.

All plants will burn under extreme fire weather conditions, such as drought. However, plants burn at different intensities and rates of consumption. Fire-resistive plants burn at relatively low intensity, with slow rates of spread and short flame lengths, due to their characteristics. The following are characteristics and planting principles of fire-resistive vegetation:

1. Characteristics:
 - a. Plants with growth with little or no accumulation of dead vegetation (either on the ground or standing upright).
 - b. Plants with low levels of resins, oils, and waxes (Nonresinous) plants, such as willow, poplar, or tulip trees.
 - c. Plants with high live fuel moisture (plants that contain a large amount of water in comparison to their dry weight).
 - d. Plants with woody stems and branches that can withstand prolonged heating before ignition.
 - e. Plants that are deeply rooted with an open growing pattern.
2. Planting or maintenance principles:
 - a. Tree stands without *ladder fuels* (plants without small, fine branches and limbs between ground and the canopy of overtopping shrubs and trees).
 - b. Plants requiring little maintenance (slow-growing plants that, when maintained, require little care).
 - c. Irrigation is properly and consistently maintained.
 - d. Low volume of total vegetation by creating separation between *fire-resistive plants*.
 - e. Trees are regularly trimmed, limbed, irrigated, or maintained for disease. Any trees should appear healthy with no signs of disease or dead tops.

Bibliography

The following resource material was used as a background reference for Oregon landscapes:

Fire-Resistant Plants for Home Landscapes (PNW 590) - <https://extension.oregonstate.edu/catalog/pnw-590-fire-resistant-plants-home-landscapes>
Pacific Northwest Extension, October 2023.