



BOARD OF COMMISSIONERS

BOARD OF COUNTY COMMISSIONERS MEETING

9:00 AM, WEDNESDAY, AUGUST 30, 2023

Barnes Sawyer Rooms - Deschutes Services Building - 1300 NW Wall Street – Bend
(541) 388-6570 | www.deschutes.org

AGENDA

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

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

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

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

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

- To join the meeting via Zoom from a computer, use this link: <http://bit.ly/3h3oqD>.
- To join by phone, call 253-215-8782 and enter webinar ID # 899 4635 9970 followed by the passcode 013510.
- If joining by a browser, use the raise hand icon to indicate you would like to provide public comment, if and when allowed. If using a phone, press *6 to indicate you would like to speak and *9 to unmute yourself when you are called on.



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

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

CALL TO ORDER

PLEDGE OF ALLEGIANCE

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

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

CONSENT AGENDA

- [1.](#) Approval of Resolution 2023-048, which reduces General Fund Contingency and increases appropriations for Medical Examiner services by \$87,000 in Fiscal Year 2024 per Document No. 2023-395
- [2.](#) Approval of Resolution No. 2023-050 recognizing carryover funds and increasing appropriations within the General Fund – Veterans’ Services
- [3.](#) Approval of Chair signature of an amendment to the agreement with PacificSource for choice model services
4. Consideration of Board Signature on letters reappointing Steve Strang, Summer Sears, Craig Apregan and Tom Schnell for service on the Deschutes County Hospital Facility Authority Board.

ACTION ITEMS

- [5.](#) **9:10 AM** Public Hearing to consider proposed amendments to DCC 10.05 relative to signs placed within County road right-of-way
- [6.](#) **9:40 AM** Use of Opioid Settlement Funds
- [7.](#) **10:10 AM** Second reading of Ordinance No. 2023-012 revising the County contracting Code
- [8.](#) **10:15 AM** First Reading of Ordinance No. 2023-015 – LBNW, LLC, Plan Amendment and Zone Change

9. **10:25 AM** Second Reading of Ordinance No. 2023-018 – Griffin Plan Amendment / Zone Change
10. **10:30 AM** Historic Landmarks Commission Update
11. **11:00 AM** County Policy update for HR-12 Family and Medical Leave to incorporate the Paid Leave Oregon program

OTHER ITEMS

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

EXECUTIVE SESSION

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

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

ADJOURN



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 30, 2023

SUBJECT: Approval of Resolution 2023-048, which reduces General Fund Contingency and increases appropriations for Medical Examiner services by \$87,000 in Fiscal Year 2024 per Document No. 2023-395

RECOMMENDED MOTION:

Move approval of Resolution 2023-048 increasing appropriations and transferring Contingency within the General Fund and the 2023-24 Deschutes County Budget.

BACKGROUND AND POLICY IMPLICATIONS:

On July, 24 2023 the Medical Examiner staff presented to the Board of County Commissioners with regards to amending Contract 2022-781 for Fiscal Year 2024. This amendment was approved and signed on 08/07/23; therefore, this is budget adjustment to increase Medical Examiner Program Expenses and reduce General Fund Contingency by \$87,000 per the amendment.

BUDGET IMPACTS:

Adjustment will increase Medical Examiner appropriations by \$87,000 and reduce General Fund Contingency by \$87,000.

ATTENDANCE:

Cam Sparks, Senior Budget Analyst
Jessica Chandler, Executive Assistant to District Attorney Steve Gunnels

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY,
OREGON

A Resolution to Increase Appropriations *
Within the 2023-24 Deschutes County Budget * RESOLUTION NO. 2023-048
*

WHEREAS, the Medical Examiner staff presented to the Board of County Commissioners on 07/24/23 with regards to amending contract 2022-781 for Fiscal Year 2024, and

WHEREAS, Amendment No. 2023-395 to contract 2022-781 was signed and executed on 08/07/23, and

WHEREAS, ORS 294.463 allows the transfer of Contingency within a fund when authorized by resolution of the governing body, and

WHEREAS, it is necessary to increase appropriations by \$87,000 within General Fund - Medical Examiner Program Expense and decrease contingency by \$87,000 within the General Fund - Non- Departmental, now, therefore;

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

Section 1. That the following expenditures be budgeted in the 2023-24 County Budget:

<u>General Fund – Non Departmental</u>	
Contingency	\$ (87,000)
<u>General Fund – Medical Examiner</u>	
Program Expense	\$ 87,000

Section 2. That the Chief Financial Officer make the appropriate entries in the Deschutes County Financial System to show the above appropriations:

DATED this _____ day of August, 2023.

BOARD OF COUNTY COMMISSIONERS OF
DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

ATTEST:

PATTI ADAIR, Vice-Chair

Recording Secretary

PHIL CHANG, Commissioner

Deschutes County
Budget Adjustment

REVENUE

Item	Line Number	Project Code	Segment 2	Org	Object	Description	Current Budgeted Amount	To (From)	Revised Budget
TOTAL							-	-	-

APPROPRIATION

Item	Line Number	Project Code	Segment 2	Org	Object	Category (Pers, M&S, Cap Out, Contingency)	Description (Element-Object, e.g. Time Mgmt, Temp Help, Computer Hardware)	Current Budgeted Amount	To (From)	Revised Budget
1				0011250	430310	M&S	Contract Staff	192,000	18,000	210,000
2				0011250	430336	M&S	Investigations	109,000	51,000	160,000
3				0011250	450040	M&S	Education & Training	2,500	2,500	5,000
4				0011250	450870	M&S	Travel-Mileage Reimb	2,000	3,500	5,500
5				0011250	450310	M&S	Communications-Phone/Pager	-	12,000	12,000
6				0019999	501971	Contingency	Contingency	12,242,000	(87,000)	12,155,000
TOTAL							12,547,500	-	12,547,500	

Deschutes County Medical Examiner's Office (Dr. Anne Onishi, MD, and Maureen McCaffrey, PA-C) requested a budget amendment under their current contract (2022-781). They presented this budget adjustment to BOCC on, July 24, 2023, during Executive Session. This was approved and signed under document # 2023-395. Medical Examiner services are funded by the County General Fund.

Fund:
Dept:
Requested by:
Date:

11250
Medical Examiner
Jessica Chandler
8/9/2023



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 30, 2023

SUBJECT: Approval of Resolution No. 2023-050 recognizing carryover funds and increasing appropriations within the General Fund – Veterans’ Services

RECOMMENDED MOTION:

Move approval of Resolution 2023-050 recognizing carryover funds and increasing appropriations within the Veterans’ Services Department.

BACKGROUND AND POLICY IMPLICATIONS:

The Deschutes County Veterans’ Services Department receives funding from the Oregon Department of Veterans’ Affairs (ODVA). This resolution would recognize \$66,733 in FY23 carryover ODVA funds and additional FY24 funds of \$12,446 and increase Veterans’ Services Program budget by \$79,179.

BUDGET IMPACTS:

This resolution increases appropriations by \$79,179 in the Veterans’ Services Department.

ATTENDANCE:

Cam Sparks, Senior Budget Analyst

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY,
OREGON

A Resolution to Increase Appropriations *
Within the 2023-24 Deschutes County Budget * RESOLUTION NO. 2023-050
*

WHEREAS, the Deschutes County Veterans’ Services Department is recognizing an additional \$79,179 in Oregon Department of Veterans’ Affairs (ODVA) carryover and additional fiscal year 2024 funds, and

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

WHEREAS, it is necessary to increase appropriations by \$79,179 within General Fund – Veterans’ Services to accommodate this request, now, therefore;

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

Section 1. That the following revenue be budgeted in the 2023-24 County Budget:

<u>General Fund - Veterans’ Services</u>	
State Grant	\$ 79,179
Total General Fund - Veterans’ Services	\$ 79,179

Section 2. That the following amounts be appropriated in the 2023-24 County Budget:

<u>General Fund - Veterans’ Services</u>	
Program Expense	\$ 79,179
Total General Fund - Veterans’ Services	\$ 79,179

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

DATED this _____ day of August, 2023.

BOARD OF COUNTY COMMISSIONERS OF
DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

ATTEST:

PATTI ADAIR, Vice-Chair

Recording Secretary

PHIL CHANG, Commissioner

REVENUE

Line Number									
Item	Project Code	Segment 2	Org	Object	Category	Description	Current Budgeted Amount	To (From)	Revised Budget
			0012350	334032	State Grant	ODVA Grant	\$ 182,000	\$ 79,179	\$ 261,179
TOTAL							\$ 182,000	\$ 79,179	\$ 261,179

APPROPRIATION

Line Number					Category	Description			
Item	Project Code	Segment 2	Org	Object	(Pers, M&S, Cap Out, Contingency)	(Element-Object, e.g. Time Mgmt, Temp Help, Computer Hardware)	Current Budgeted Amount	To (From)	Revised Budget
			0012350	450410	Materials and Services	Advertising - Promo	\$ 35,000	\$ 79,179	\$ 114,179
TOTAL							\$ 35,000	\$ 79,179	\$ 114,179

Increasing ODVA Grant and Program expense for Veterans' Services

Fund:
 Dept:
 Requested by:
 Date:

001
Veterans' Services
Cam Sparks
8/16/2023



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 30, 2023

SUBJECT: Approval of an amendment to the agreement with PacificSource for choice model services

RECOMMENDED MOTION:

Move approval of Chair signature of Document No. 2023-802, an amendment to the PacificSource Choice Model Services Agreement.

BACKGROUND AND POLICY IMPLICATIONS:

This is the second six-month amendment to the PacificSource Community Solutions (PSCS) Choice Model Services Agreement. This amendment extends the term of the original agreement to December 31, 2023 and provides funding up to \$203,944.91 for the period July 1, 2023 through December 31, 2023, with a potential performance payment of \$11,181.17.

PacificSource Community Solutions (PSCS) contracted with Deschutes County Health Services (DCHS) to provide oversight and care coordination for adults with serious and persistent mental illness (SPMI). PSCS provided funding up to \$407,889.02, for the period January 1, 2022 through December 31, 2022, with two potential performance payments of \$11,181.17, available if all regional PSCS Choice Model contractors met the performance measures. The first amendment extended the original contract term to June 30, 2023 and provided funding up to \$203,944.91, with a potential performance payment of \$11,181.17, for the period January 1, 2023 to June 30, 2023. This second amendment extends the term an additional six months and provides an additional six months of funding.

PacificSource Community Solutions (PSCS) delivers healthcare solutions to businesses and individuals throughout the Northwest and is an independent, wholly-owned subsidiary of PacificSource Health Plans a non-profit community health plan. PSCS has been providing Medicaid plans to Oregonians since 1995 and currently offers Oregon Health Plans (OHP) coverage to individuals who need help through the PacificSource Coordinated Care Organization (CCO).

Deschutes County Health Services provides Choice Model Services which are designed to promote more effective utilization of current capacity in facility based treatment settings and community based settings, increase care coordination and increase accountability at a local and state level. Services are designed to promote the availability and quality of individualized community-based services and supports so that adults with mental illness are served in the least restrictive environment possible and use of long-term institutional care is minimized.

Monthly invoices and Choice Model Client Status Reports are required.

BUDGET IMPACTS:

Annual payment, from PSCS, for Choice Model Services is capped at \$203,944.91 for the amendment period July 1, 2023 through December 31, 2023. Additionally, a performance payments in the amount of \$11,181.17 may be available, if all regional PSCS Choice Model contractors meet performance measures, for the period.

ATTENDANCE:

Kara Cronin, Behavioral Health Program Manager



AMENDMENT TO
PacificSource Community Solutions / Deschutes County Health Services
CHOICE MODEL SERVICES AGREEMENT

Effective July 01, 2023 the PacificSource Choice Model Services Agreement with Deschutes County Health Services is amended as follows:

- I. The expiration date of June 30th, 2023 shall be extended to December 31, 2023, per OHA guidance.
II. Table 1 shall be revised to include the following:

Table 1

Table with 2 columns and 3 rows. Header: Deschutes County Health Services. Row 1: Payment Period July 1, 2023 through December 31, 2023 | Not to exceed: \$203,944.91. Row 2: Eligible Performance Payment July 1, 2023 through December 31, 2023 | \$11,181.17. Row 3: Performance payment is received only if all regions meet the required performance measure in Section 8.3 of the Choice Model Services Agreement.

Except for the changes described herein, the Choice Model Services Agreement remains unchanged.

PACIFICSOURCE COMMUNITY SOLUTIONS

DESCHUTES COUNTY HEALTH SERVICES

By: _____
(Signature)

By: _____
(Signature)

Peter McGarry

(Print or type name)

Title: Vice President – Provider Network

Title: _____

Date: _____

Date: _____



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 30, 2023

SUBJECT: Public Hearing to consider proposed amendments to DCC 10.05 relative to signs placed within County road right-of-way

RECOMMENDED ACTIONS:

- Open public hearing; receive testimony
• Close public hearing and deliberate
• Move first reading (by title only) of Ordinance No. 2023-020

BACKGROUND AND POLICY IMPLICATIONS:

Staff at the Road Department have been forced to manage/police the placement of signs within county road right-of-way. This becomes an especially time-consuming activity around election events. The proposed amendments will bring Deschutes County into alignment with ORS 368.942 which prohibits the placement of signs within public right-of-way.

BUDGET IMPACTS:

Anticipate savings of staff time and vehicle use.

ATTENDANCE:

Road
Legal



ROAD DEPARTMENT

MEMORANDUM

To: Board of County Commissioners

From: Cody Smith, PE, County Engineer/Assistant Road Department Director

Date: August 24, 2023

Subject: Proposed Amendments to DCC 10.05 – Right of Way Signs

Oregon Revised Statutes (ORS) provide the following regarding the placement of signs other than traffic control devices within county road rights of way:

ORS 368.942 Posting notices, signs or pictures on structures within county road right of way prohibited. Except as provided in ORS 368.950, no person may paste, paint, brand or in any manner whatever place or attach to any building, fence, gate, bridge, tree, rock, board, structure or anything whatever within the limits of the right of way of any county road any written, printed or painted advertisement, bill, notice, sign, picture, card or poster, except within the limits of any incorporated city through which the county road runs.

ORS 368.945 Authority of county road official to remove unlawfully posted matter. A county road official may lawfully remove or destroy, without resort to legal proceedings, any advertisement, bill, notice, sign, picture, card or poster placed in violation of ORS 368.942.

ORS 368.950 Applicability of ORS 368.942 and 368.945. ORS 368.942 and 368.945 do not apply to:

- (1) The posting or maintaining of any notice required by law to be posted or maintained; or
 - (2) The placing and maintaining, within the limits of the right of way of any county road, of:
 - (a) Signs approved by the county governing body and giving information about scenic, historical, resort or recreational areas;
 - (b) Signs approved by the county governing body and giving information about community or civic enterprises of a noncommercial nature, or the proximity of tourist facilities, directions or distances for the information of the traveling public;
 - (c) Facility location signs of a public utility or telecommunications utility, when such signs are approved by the county governing body;
 - (d) Benches utilized as outdoor advertising signs, if approved by the county governing body;
- or

(e) Outdoor advertising signs on bus shelters erected or maintained for use by and convenience of customers of a mass transit district, a transportation district or any other public transportation agency, when such signs are approved by the county governing body.

368.955 Posting notices, signs or pictures within view of county road on property of another without consent prohibited. *No person may paste, paint, brand or in any manner whatever place or attach to any building, fence, gate, bridge, tree, rock, board, structure or anything whatever on the property of another within view of a county road, without the written consent of the owner or person entitled to possession of such property, any written, printed or painted advertisement, bill, notice, sign, picture, card or poster.*

Deschutes County Code (DCC) 10.05 provides requirements and procedure for the permitting and placement of temporary activity signs and tourist and motorist-oriented directional signs within public road rights of way under Deschutes County’s jurisdiction. Inexplicably, DCC 10.05.040 allows for the permitting of political signs as temporary activity signs within a public road right of way.

Road Department staff find that the permissibility of political signs within public road rights of way under Deschutes County Code and the burden for the Department to administer this program are extremely problematic for several reasons:

- **Road User Safety Concerns** - The improper placement of temporary activity signs along a road can compromise the safety of road users by interfering with traffic control devices, restricting sight lines, or causing distraction. Political campaign signs comprise virtually all of the temporary activity sign permits issued by the Road Department and have created numerous road safety concerns in recent years.
- **Lack of Statutory Authority** – Road Department staff do not believe that ORS 368.950 gives a county governing body the authority to permit the posting of political signs in public rights of way under their jurisdiction. Temporary activity signs authorized under the statute include signs “ .. giving information about community or civic enterprises of a noncommercial nature.”
- **Residual Property Rights** – Road rights of way under Deschutes County jurisdiction generally consist of easements for public ingress and egress over land, leaving certain residual property rights with owners of underlying or abutting property (see ORS 93.310(4), ORS 271.140, and ORS 368.366. Temporary activity signs within these rights of way can be problematic when the underlying or abutting property owner does not consent to the placement of a sign that is not an official traffic control device or that is not otherwise necessary to meet the needs of road users (i.e., political signs). Further, ORS 368.955 prohibits the placement of such signs within view of a county road without the consent of the property owner. Road Department staff assert that this would include consent by an abutting property owner whose fee ownership generally extends to the centerline of a public road right of way.
- **State and Countywide Inconsistency** - Deschutes County appears to be the only public road agency in Oregon that permits political signs in their rights of way. The County’s current permitting of political signs within public rights of way is inconsistent with rules and messaging from all other public road agencies in Deschutes County and Oregon who actively prohibit political signs on their rights of way.

- **Administration and Enforcement** – The administration, monitoring and, regulation of political campaign signs in the public rights of way takes up significant capacity of Road Department staff in the weeks prior to elections. Issues include;
 - Mediating matters related to visually-conflicting political signs among opposing campaigns;
 - Opposing campaigns checking the status of each other’s permits;
 - Property owners upset about signs located along their frontage;
 - Other road agencies requesting intervention for signs placed at the intersections of their roads and county roads.

With these reasons in mind, Road Department staff are proposing a text amendment to DCC 10.05 to remove the permissibility of political signs within the public right of way.

Additionally, the proposed text amendment for DCC 10.05 includes modernization of other portions of the code chapter to clarify procedures for permitting of temporary activity signs and tourist/motorist – oriented directional signs.

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Title 10.05, Right of Way Signs, of the Deschutes County Code. *
*
* ORDINANCE NO. 2023-020

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

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

WHEREAS, staff from the Road Department have identified a need to amend DCC 10.05 to further identify the types of signs that may be authorized for placement within county road right-of-ways; and

WHEREAS, the Board of County Commissioners of Deschutes County considered this matter at a duly noticed public hearing August 30, 2023, and determined that DCC 10.05 should be amended; now therefore,

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

Section 1. AMENDMENT. DCC 10.05 is amended to read as described in Exhibit “A,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 2. ADOPTION. This Ordinance takes effect 90 days after its adoption.

///

Dated this _____ of _____, 2023

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DeBONE, Chair

PATTI ADAIR, Vice Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner

Date of 1st Reading: 30th day of August, 2023.

Date of 2nd Reading: 13th day of September, 2023.

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

Effective date: 13th day of December, 2023.

EXHIBIT A

(To Ordinance No. 2023-020)

CHAPTER 10.05 RIGHT OF WAY SIGNS

10.05.010 Introduction

DCC Chapter 10.05 is enacted to establish standards and procedures for signs to be installed and maintained within public rights of way which fall under the jurisdiction of the Board of County Commissioners, and which are necessary to meet the needs of the motorist in locating public recreational facilities and services open to the general public. DCC Chapter 10.05 shall be known as the Deschutes County Road Right of Way Sign Ordinance.

HISTORY

Adopted by Ord. 90-011 §1 on 1/2/1991

Amended by Ord. 95-034 §1 on 5/17/1995

Amended by Ord. 2020-005 §1 on 1/1/2021

10.05.020 Definitions

The following definitions apply as set forth in DCC 10.05.020.

"Administrator" means the Road Department Director or the designee for Deschutes County, Oregon.

"Applicant" means a person or entity applying for a permit to place signs, logos or sign panels or supplemental sign panels within the right of way.

"Business sign (Logo)" means a separately attached sign mounted on the sign panel to show the brand, symbol, trademark or name, or combination thereof, of services available.

"Directional information" means the name of the business, service or activity, qualified historical feature or qualified cultural feature and other necessary information to direct the motoring public to the business, service or activity, placed on a tourist-oriented directional sign.

"Directional sign" means a sign identifying and containing directional information to one or more public services, to natural phenomena or historic, cultural, scientific, educational or religious sites or facilities, or to recreational facilities open to the general public, including marinas, boat ramps, camping facilities and day recreation facilities.

"Erect or construct" means to construct, build, assemble, place, affix, attach, create, paint, draw or in any way bring into being or establish.

"Maintain" includes painting or routine repairs necessary to maintain the sign in a neat, clean, attractive and safe condition, and the term includes allowing to exist.

"MUTCD" means the Manual on Uniform Traffic Control Devices.

"Qualified motorist business" means a business furnishing gas, food, lodging or camping which has met the requirements of these regulations for the placement of a logo on a sign panel or supplemental sign panel.

"Reconstruction" means replacing a sign totally or partially to increase its size or performing any work, except maintenance work, that alters or changes a sign.

"Responsible operator or owner" means the owner in fee simple or a person or entity who operates a motorist business and who has authority to enter into an agreement relative to matters covered by DCC 10.05.

"Right of way" means the area between the boundary lines of a street, road or other public easement under the jurisdiction of the Board of County Commissioners.

"Sign panel" includes "motorist informational signs," "specific informational panel" and "logo signs."

"Tourist-oriented directional sign" means a sign panel with the name of a qualified tourist-oriented business, service or activity, or qualified historical feature or qualified cultural feature together with directional information erected in advance of or at an intersection.

"Traffic Control Device" means all signs, signals, markings, and other devices used to regulate, warn, or guide traffic, placed on, over, or adjacent to a street, highway, pedestrian facility, bikeway, or private road open to public travel by authority of a public agency.

"Trailblazer" means a small sign panel with the type of motorist service offered and the name, direction and distance to the qualified motorist business.

"Type I signs"- means Qualified Motorist Business. signs consisting of tour route signs; tourist information signs; public facility and service signs; commercial businesses offering food, gas, lodging or camping services; historic location signs; federal, state and local recreational and facility signs; and nonprofit institutions, including churches and civic organizations.

"Type II signs" means Qualified Tourist-oriented Business signs identifying any legal, cultural, historical, recreational, educational or entertaining activity or a unique or unusual commercial or nonprofit activity the major portion of whose income or visitors are derived during its normal business season from motorists not residing in the immediate area of the activity.

HISTORY

Adopted by Ord. 90-011 §1 on 1/2/1991
Amended by Ord. 95-034 §1 on 5/17/1995

Amended by Ord. 2023-020 §1 on 9/13/2023

10.05.030 General Requirements

Except for those signs which are approved by the Administrator pursuant to DCC 10.05.060 and except for signs that are exempted under DCC 10.05.040, a person may not erect or maintain a sign or sign panel on County right of way.

HISTORY

Adopted by Ord. 2023-020 §1 on 9/13/2023

10.05.040 Exemptions.

The following signs are exempted from the requirements of DCC 10.05.030:

- A. Those traffic control devices that are required for traffic control and safety included in the MUTCD as determined by the Administrator.
- B. Directional signs for temporary activities that are granted a permit by the Administrator lasting less than 14 days which otherwise are in compliance with the terms of this ordinance, including parades, fun runs, bicycle or pedestrian contests, or special public functions.
- C. Type I and Type II signs that are granted a permit by the Administrator.

HISTORY

Adopted by Ord. 90-011 §1 on 1/2/1991

Amended by Ord. 95-034 §1 on 5/17/1995

Amended by Ord. 2023-020 §1 on 9/13/2023

10.05.030-050 Prohibited Uses

A sign or sign panel exempted under DCC 10.05.040 may not be erected or maintained if it:

- A. Interferes with, imitates or resembles any official traffic control sign, signal or device, or attempts or appears to attempt to direct the movement of traffic.
- B. Prevents the driver of a motor vehicle from having a clear and unobstructed view of official traffic control signs and approaching or merging traffic.
- C. Contains, includes or is illuminated by any flashing, intermittent, revolving, rotating or moving lights, or moves or has any animated or moving parts. This subsection does not apply to traffic control devices.
- D. Has any lighting, unless such lighting is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main traveled way of a road, or is of such low intensity as not to cause glare or to impair the vision of the driver or otherwise to interfere with the operation thereof.
- E. Is located upon a tree or painted or drawn upon a rock or other natural feature.
- F. Advertises or calls attention to an activity or attraction no longer carried on.
- G. Advertises activities that are illegal under any state, federal or local law applicable at the location of the sign or of the activities.

- H. Is not maintained in a neat, clean and attractive condition and in good repair as determined by the Road Department Director or his designee.
- I. Is not able to withstand a wind pressure of 20 pounds per square foot of exposed surface.
- ~~J.~~ Is on a vehicle or trailer. This subsection does not apply to a vehicle or trailer used for transportation by the owner or person in control of the property.
- ~~K.~~ Does not meet the requirements of DCC 10.05 or the MUTCD.

HISTORY

Adopted by Ord. 90-011 §1 on 1/2/1991

Amended by Ord. 95-034 §1 on 5/17/1995

Amended and Renumbered by Ord. 2023-020 §1 on 9/13/2023

10.05.040 Exemptions

~~The following signs are exempted under DCC 10.05:~~

- ~~1. Those traffic signs that are required for traffic control and safety included in the MUTCD.~~
- ~~2. Those portions of sign that intrude into the public right of way that were granted a permit under the Deschutes County Sign Ordinance.~~
- ~~3. Temporary activity signs that are granted a permit lasting less than 90 days which otherwise are in compliance with the terms of this ordinance, including parades, fun runs, bicycle or pedestrian contests, political signs or special public functions.~~

HISTORY

Adopted by Ord. 90-011 §1 on 1/2/1991

Amended by Ord. 95-034 §1 on 5/17/1995

10.05.050 Sign Types

~~The following types of signs are allowed under the terms of DCC Title 10:~~

- ~~A. Type I—Qualified Motorist Business. Tour route signs; tourist information signs; public facility and service signs; commercial businesses offering food, gas, lodging or camping services; historic~~

~~location signs; federal, state and local recreational and facility signs; and nonprofit institutions, including churches and civic organizations.~~

~~B. Type II — Qualified Tourist-oriented Business. Any legal, cultural, historical, recreational, educational or entertaining activity or a unique or unusual commercial or nonprofit activity the major portion of whose income or visitors are derived during its normal business season from motorists not residing in the immediate area of the activity.~~

HISTORY

Adopted by Ord. 90-011 §1 on 1/2/1991

Amended by Ord. 95-034 §1 on 5/17/1995

10.05.060 Application Process – Type I and Type II Signs

- A. Application for a Type I or Type II sign shall be made in writing addressed to the ~~Road Department Director for Deschutes County, Oregon~~Administrator. It may be in letter form or on a form prepared for such purpose by the department. Information contained shall include the following: the name, address and telephone number of the owner or operator of the business or service for which the sign is intended; the reason for the sign; a description of the location(s) for the sign; a description of the information requested on the sign; and be accompanied by the appropriate application fee. Each business applicant shall also submit a copy of the business' land use permit. The Administrator shall notify the appropriate Planning Director of the application and request review and comment on the application.
- B. Within 30 working days from the date of receipt of the request for a sign, the Administrator shall respond in writing to the applicant as to the adequacy of the information received. Requests for signs that do not comply with the provisions of DCC 10.05 shall be denied by the Administrator. If the application is denied, the Administrator shall cite the appropriate section of the ordinance or MUTCD pertinent to the application.
- C. Each application shall be accompanied with the appropriate fee for processing. If the application is approved, the applicant shall make arrangements to have the department install the sign and pay the required costs for materials, labor and travel. Payment of such costs and execution of a maintenance agreement, along with not less than two year's maintenance fees, shall be made in advance.
- D. If the application is denied, the applicant may appeal the decision as provided in DCC 22.

HISTORY

Adopted by Ord. 90-011 §1 on 1/2/1991

Amended by Ord. 95-034 §1 on 5/17/1995

Amended by Ord. 2023-020 §1 on 9/13/2023

10.05.070 Composition– Type I and Type II Signs

All signs installed under the terms of DCC Title 10 shall be in compliance with the MUTCD;

- A. Sign panels shall have a blue background with a white reflectorized border for all signs, except historical, cultural and recreational which shall have a brown background.
- B. Logos shall have a blue background with a white legend and border. The principal legend should be at least equal in height to the directional legend on the sign panel. Where business identification symbols or trademarks are used alone for a logo, the border may be omitted, the symbol or trademark shall be reproduced in the colors and general shape consistent with customary use and any integral legend shall be in proportionate size. Messages, symbols and trademarks which resemble any official traffic control device are prohibited. The vertical and horizontal spacing between logos on sign panels shall not exceed eight inches and 12 inches respectively.

- C. All directional arrows and all letters and numbers used in the name of the type of service and directional legend shall be white and reflectorized.
- D. Each logo shall be contained within a 24-inch wide and 18-inch high rectangular background area, including border.
- E. All letters used in the name of the type of service on the sign panel shall be four-inch capital letters.
- F. Tourist-oriented directional signs shall have a blue reflectorized background with a white reflectorized border and message. The intersection sign shall not exceed 18 inches in height and 72 inches in length, and shall have not more than two lines of legend, including a separate direction arrow and the distance to the facility to the nearest one-quarter mile. The content of the legend shall be limited to the identification of the business and shall not include promotional advertising as determined by the Administrator.

F.G.

A six-inch letter height shall be used. Advance tourist-oriented directional signs shall be the same as intersection tourist-oriented directional signs, except that in lieu of the directional arrow and mileage, the sign shall include the directional word information "ahead" or "next left" etc. as may be required.

G.H. All directional arrows, letters and numbers used in the name of the type of service and the directional legend shall be white and reflectorized.

H.I. Tourist-oriented directional signs are to be located at intersections.

I.J. Notwithstanding the fact that a tourist-oriented business meets all of the eligibility requirements of this ordinance and applicable provisions of the Deschutes County Code, an application may be denied if it is determined, after investigation by the Administrator, that adequate direction to the business cannot be given by a reasonable number of allowable tourist information directional signs.

HISTORY

Adopted by Ord. 90-011 §1 on 1/2/1991

Amended by Ord. 95-034 §1 on 5/17/1995

Amended by Ord. 2023-020 §1 on 9/13/2023

10.05.080 Fees; Installation And Maintenance – Type I and Type II Signs

- A. All Type I and Type II signs, except city, county, state and federal directional and information signs, shall be required to reimburse the County for the actual costs of processing the application and the material and labor required to construct, purchase, locate, install and maintain a sign for an applicant. A fee schedule shall be adopted each budget year which sets forth the department's fees which shall apply until replaced by a new fee schedule.
- B. All Type I and Type II signs shall be installed, maintained and removed by the County in accordance with the MUTCD and DCC 10.05.

HISTORY

Adopted by Ord. 90-011 §1 on 1/2/1991

Amended by Ord. 95-034 §1 on 5/17/1995

Amended by Ord. 2023-020 §1 on 9/13/2023

10.05.090 Criteria For Specific Information Panels– Type I and Type II Signs

- A. Each qualified motorist business identified on a sign panel shall have given written assurance to the Administrator of its conformity with all applicable laws concerning the provisions of public accommodations without regard to race, religion, color, sex or national origin, and shall not be in breach of the assurance.

- B. The types of service permitted shall be limited to: "Gas," which shall include fuel, oil, tire repair, air and water, restroom facilities, drinking water and telephone, with continuous operations for a minimum of 12 hours a day, six days a week. "Food" shall include, continuous operations for a minimum of 12 hours a day, six days a week, restroom facilities and telephone, with the primary business of providing meals. "Lodging" shall include, adequate sleeping accommodations, modern sanitary facilities and drinking water. "Camping" shall include, adequate parking accommodations, modern sanitary facilities and drinking water.
- C. Panels shall be in the direction of traffic. Successive sign panels shall be those for "camping," "lodging," "food," and "gas," in that order.
- D. Riders with the words "diesel" or "LP gas" or a rider containing both may be placed on a sign panel underneath any gas logo if the qualified motorist service business has diesel or LP gas available during its hours of operation. Such rider shall be 35 inches long and seven inches high with six-inch letters. The color shall be blue with white letters. The combination rider shall be 52 inches long and seven inches high with five-inch high letters.
- E. Each qualified tourist-oriented business identified on a tourist-oriented directional sign shall have given written assurance to the Administrator of its conformity with all applicable laws concerning the provisions of public accommodations without regard to race, religion, color, sex or national origin, and shall not be in breach of that assurance.
- F. Except for undeveloped cultural and historic features, a qualified tourist-oriented business shall have restroom facilities and drinking water available; continuous operation at least six hours per day, six days a week during its normal business season; a license where required; and adequate parking accommodations.

HISTORY

Adopted by Ord. 90-011 §1 on 1/2/1991

Amended by Ord. 95-034 §1 on 5/17/1995

Amended by Ord. 2023-020 §1 on 9/13/2023

10.05.100 Spacing Of Signs And Panels– Type I and Type II Signs

Spacing of sign panels and the placement of directional signs shall be in accordance with the MUTCD and in the judgment of the Administrator. In any case, the number of signs, including directional signs, shall be the minimum necessary to enable a motorist to locate the tourist-oriented business or to locate the public service.

HISTORY

Adopted by Ord. 90-011 §1 on 1/2/1991

Amended by Ord. 95-034 §1 on 5/17/1995

Amended by Ord. 2023-020 §1 on 9/1/2023

10.05.10510 Application Process – Temporary Directional Signs

- A. Application for a temporary directional sign shall be made in writing addressed to the Administrator. It may be in letter form or on a form prepared for such purpose by the Department. Information contained shall include the following: the name, address and telephone number of the coordinator of the activity for which the sign is intended; the reason for the sign; a description of the location(s) for the sign; a description of the information requested on the sign; and be accompanied by the appropriate application fee. Each applicant shall also submit a copy of the land use permit or special event permit, if applicable. The Administrator shall notify the appropriate Planning Director of the application and request review and comment on the application if applicable.
- B. Within 30 working days from the date of receipt of the request for a sign, the Administrator shall respond in writing to the applicant as to the adequacy of the information received. Requests for signs that do not comply with the provisions of DCC 10.05 shall be denied by the Administrator. If the

application is denied, the Administrator shall cite the appropriate section of the ordinance or MUTCD pertinent to the application.

C. Each application shall be accompanied with the appropriate fee for processing.

D. If the application is denied, the applicant may appeal the decision as provided in DCC 22.

HISTORY

Adopted by Ord. 2023-020 §1 on 9/13/2023

10.05.110 Violation; Penalty

- A. Any person, firm or corporation erecting, constructing, reconstructing or maintaining ~~a-business sign, directional sign, tourist-oriented directional sign, trailblazer or temporary activity~~ sign in violation of the provisions of DCC 10.05 constitutes a Class A violation and shall be punishable upon conviction by a fine of not more than \$500.00.
- B. Each day of a violation described in DCC 10.05.110(A) constitutes a separate offense and is punishable as a continuing violation under DCC 1.16.

HISTORY

Adopted by Ord. 90-011 §1 on 1/2/1991

Amended by Ord. 95-034 §1 on 5/17/1995

Amended by Ord. 2003-021 §22 on 4/9/2003

Amended by Ord. 2023-020 §1 on 9/13/2023

10.05.120 Nuisance Declared; Removal

- A. Any sign maintained in violation of DCC 10.05 constitutes a nuisance.
- B. Nothing in DCC 10.05 shall be construed to limit the authority of the County Road Official pursuant to ORS 368.945.

HISTORY

Adopted by Ord. 90-011 §1 on 1/2/1991

Amended by Ord. 95-034 §1 on 5/17/1995



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 30, 2023

SUBJECT: Use of Opioid Settlement Funds

RECOMMENDED MOTION:

Move approval of the recommended use of opioid settlement funds over the next five years.

BACKGROUND AND POLICY IMPLICATIONS:

The state of Oregon joined in a national opioid lawsuit against manufacturers. In 2021, a nationwide settlement resolved all opioid claims brought by states and local political subdivisions, awarding \$26 billion for distribution over 18 years. The settlement amount Deschutes County is expected to receive is estimated at \$7.1 million over that time.

Settlement dollars must be used for specific abatement strategies, such as:

- Naloxone training and distribution
- Medication-assisted treatment distribution and other opioid-related treatment
- Pregnant & postpartum women and expanding treatment for neonatal abstinence syndrome
- Expansion of hand-off programs and recovery programs
- Treatment for the incarcerated population
- Prevention programs

On July 17, 2023, the Board asked Health Services and Community Justice to collaborate on a proposed plan of the funds. Together, the departments propose a multi-strategy five-year plan that adds capacity and expands existing efforts by:

- 1) Adding targeted expert OUD prevention
- 2) Increasing coordination of surveillance and overdose prevention activities
- 3) Sustaining existing crisis interventions
- 4) Adding direct coordination of services to forensic population
- 5) Adding recovery peer services

BUDGET IMPACTS:

\$3.4 million over five years. If approved, a budget adjustment and resolution will be forthcoming from Finance.

ATTENDANCE:

Janice Garceau, Health Services Director
Deevy Holcomb, Community Justice Director
Jessica Jacks, Public Health Manager

Health Services & Community Justice

Opioid Settlement Funds

Proposed Collaborative
Strategies for Opioid
Settlement Activities



Acronyms & Abbreviations

- **OD** = Overdose
- **OUD** = Opioid Use Disorder
- **MH** = Mental Health
- **SUD** = Substance Use Disorder
- **BHRN** = Behavioral Health Resource Network – grant to fund services to those targeted by M110
- **DCSC** = Deschutes County Stabilization Center
- **PH** = Public Health Program
- **BH** = Behavioral Health Program
- **CCBHC** = Certified Community Behavioral Health Clinic (primary care integration)
- **MAT** = Medically Assisted Treatment (Buprenorphine) for OUD
- **COOPR** = Central Oregon Opioid Prevention & Response



Background

The Opioid Crisis

Over 500,000 USA opioid related deaths since 2000

Deaths **highest for those age 24 - 35**

Opioid OD deaths **contributed to USA life expectancy decline** since 2014

Opioid crisis resulted in **lost wages and other health impacts and costs** for individuals, families & communities

Litigation

States & Counties bore the brunt of the cost

Litigants claimed the industry “grossly misrepresented the risks of long-term use...for persons with chronic pain,” and “failed to properly monitor suspicious orders of those prescription drugs - all of which contributed to the current opioid epidemic.”

Settlement

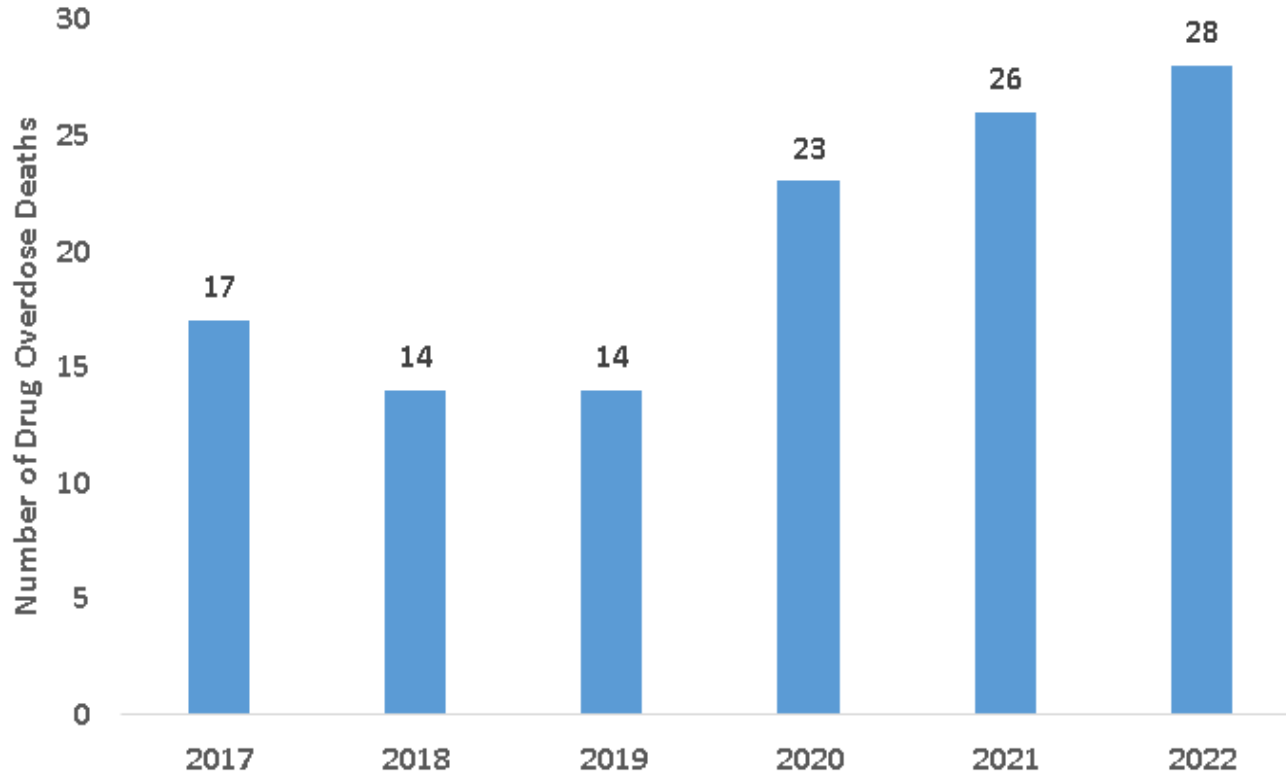
In 2021, nationwide settlements resolved all opioids litigation brought by states and local political subdivisions

\$26 Billion awarded to be **distributed over 18 years**

Deschutes County slated to receive **~\$7.1 Million over 17 yrs.**



Central Oregon Picture: OD Deaths

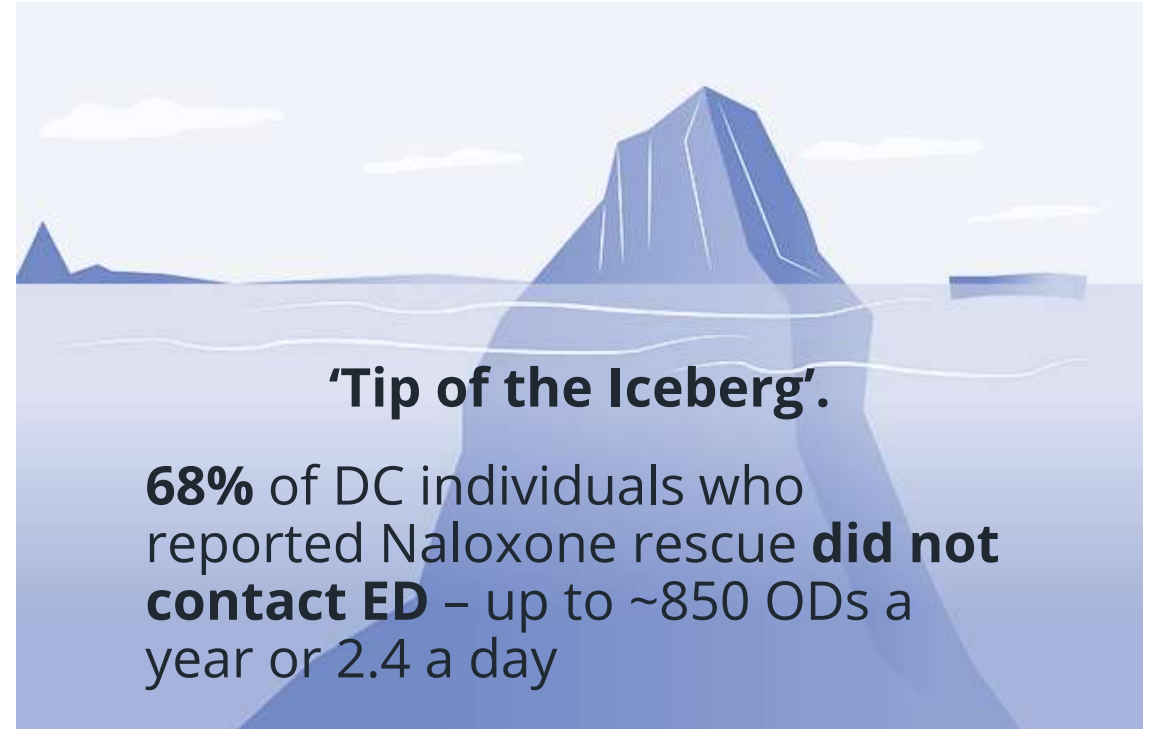


Between 2018 & 2021 the rate of overdose deaths in CO increased by 85%. Preliminary 2022 data puts CO on track for a 100% increase.



Central Oregon Picture: ED Visits

- There were **273 ED visits** for opioid OD in 2022.*
- **161 ED visits** for opioid OD Jan-June 2023
- **185** were Deschutes County residents in 2022. Of those **44** involved **Fentanyl**.
- **36 Fentanyl ED visits** in first six months of 2023 for Deschutes County residents
- Statewide, **64%** of OD related deaths involved Fentanyl.
- Naloxone required for rescue increased from **1.7 to 3.2 doses**.



* Preliminary COOPR data may change



Conclusions: Drug Overdose Deaths and Fentanyl are Increasing in Oregon and Central Oregon

1. Early Identification of a drug overdose mortality spike is critical to timely prevention outreach and reducing death risk
2. Several communities in Oregon have seen a drug overdose mortality spike in recent years
3. Fentanyl overdose deaths are increasing substantially every year in Oregon 2019, 2020, 2021, 2022
4. Central Oregon drug overdose deaths are also increasing along with fentanyl
5. Timely access to drug overdose death data and timely prevention outreach are needed to respond to a spike



Current Effective Strategies

Pain Standards Task Force:

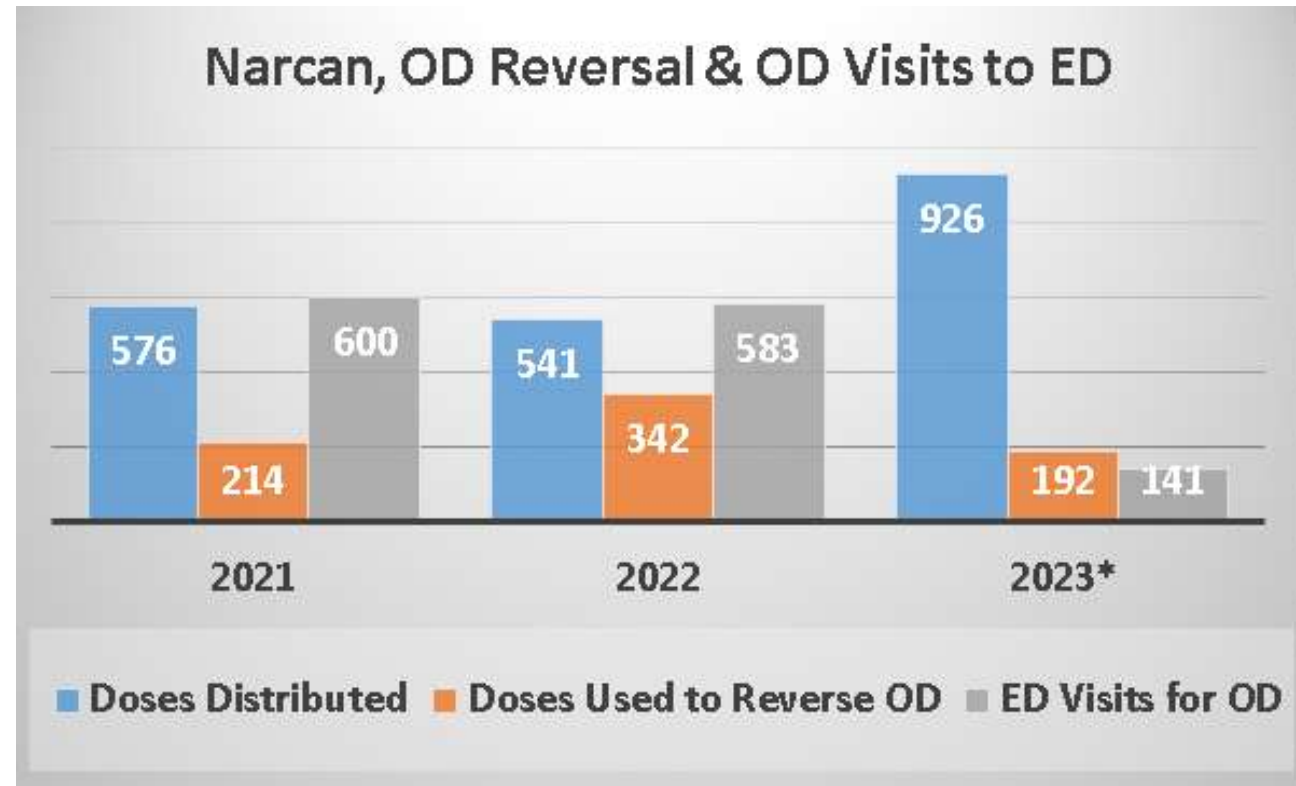
- **Problem prescribing down 41%** since 2013

Harm Reduction:

- Overdose reversal **trending up**
- ED visits for OD **trending down**

DCSC:

- **40.2%** of visits include those with a co-occurring MH & SUDs; **21.9%** of encounters had active intoxication upon arrival
- **80%** of those scheduled with follow up show for intake appointment
- **60% reduced recidivism** for those served by DCSC Forensic Diversion program



* 2023 = January through July data (7 months)



Current Effective Strategies

Community Justice: Three Poles of Recovery Support

**Culture: Culturally rich activities;
communication and trust;
cultural resources**

**Community: Partnerships and
collaboration; family
engagement; crisis prevention**

**Connection: Relationship building,
person-centered; conflict
resolution; teaching accountability**

- Recovery mentors with lived experience improve engagement, treatment and post treatment completion and quality of life
- Recovery mentors who represent client's social identities and experiences create strong professional and meaningful community relationships
- Studies demonstrate reduced relapse, increased treatment retention, improved relationship with providers and supports*

* Reif et al, 2014: Peer Recovery Support for Individuals With Substance Use Disorders: Assessing the Evidence



Multi-Strategy 5-Year Collaboration

Proposed investments add capacity and expand reach of existing efforts:

- Add targeted expert OUD prevention
- Expand coordination of surveillance & overdose prevention activities
- Sustain existing crisis interventions
- Add direct case management and coordination for forensic population
- Add Recovery Peer Intervention Services



Targeted Prevention, Surveillance, & Coordination Strategy

Goals:

- **Improve awareness** and utilization of resources and effective strategies
- **Prevent and reduce** adolescent & young adult drug use
- **Improve coordination** with internal & external entities working to reduce overdose death and harms
- **Ensure real time surveillance** system to quickly respond to overdose emergencies

Cost:

- \$751,542 1.0 FTE Community Health Specialist III (*New FTE*) over 5 Years
- \$156,798 .20 FTE Health Services Supervisor (*Existing FTE with new duties assigned*)
- \$446,334 Prevention Strategies, Supplies & Equipment, and Indirect

Allowable Use

Prevent Misuse of Opioids; Prevent Overdose Deaths & Other Harms (PART TWO, Section G & H)

- Support efforts to discourage or prevent misuse of opioids through evidence-based or evidence-informed programs or strategies
- Support efforts to prevent or reduce overdose deaths or other opioid-related harms through evidence-based or evidence-informed programs or strategies



Targeted Prevention & Surveillance Activities

- Education & training to organizations who serve high-risk individuals, parents and families as well as general community awareness on drug disposal messaging, resources, etc.
- Assess and ensure access to naloxone in the community and naloxone training.
- Collaborate across-systems to prevent drug overdose and encourage pathways to treatment
- Develop real-time surveillance & risk communication to quickly respond to overdose deaths (similar to post-vention suicide system)
- Epidemiological surveillance of OUD-related behaviors in critical populations
- Local and regional planning to identify root causes of addiction and overdose, goals for reducing harms related to the opioid epidemic, and areas and populations with the greatest needs for treatment



Targeted Prevention & Surveillance Measured Outcomes

(all by June 30, 2024 unless specified)

- On-going communication and awareness through multiple media strategies and audiences ensuring widespread Deschutes County reach.
- Overdose education to a minimum of 10 organizations who engage with high risk populations to promote resources and access to Narcan.
- Develop a website on how to receive naloxone training and where to access naloxone and other important information and resources by October 2023.
- Develop a network of agencies who provide naloxone and ensure access to naloxone in the community.
- Develop surveillance tool to communicate overdose deaths in timely manner November 2023.
- Develop an internal coordination plan for real-time surveillance and response to overdose alerts in Deschutes County by November 2023.



Intervention Strategy

Goals:

- **Divert individuals** from the ED and/or criminal justice system
- **Prevent death** by overdose or suicide
- **Connect individuals with treatment** and help them stabilize in their community to improve quality of life
- **Coordinate services to Community Justice** population, provide focused case management to warm hand-off referrals

5 Year Cost (FY24 – FY28):

- \$1,847,047
- Includes add of 1.0 FTE BHS I beginning FY25 to coordinate forensic service population and indirect

Allowable Use

CONNECT PEOPLE WHO NEED HELP TO THE HELP THEY NEED

(Part One, Section C.8)

Support crisis stabilization centers that serve as an alternative to hospital emergency departments for persons with OUD and any co-occurring SUD/MH conditions or persons that have experienced an opioid overdose.



Intervention Strategy

Goals:

- **Increase pre-and post-release access** to peer-based reentry support for those returning from prison
- **Ensure cultural responsiveness of services** through training and professional support of community-based peer support specialists
- **Reduce visits** to DCSC, Emergency Services and Jail

5 Year Cost (FY24 – FY28):

- \$160,000 Contracted Peer Services – Administered by Community Justice

Allowable Use

CONNECT PEOPLE WHO NEED HELP TO THE HELP THEY NEED

(Part One, Section C.10)

Provide funding for peer support specialists or recovery coaches in emergency departments, detox facilities, recovery centers, recovery housing, or similar settings; offer services, supports, or connections to care to persons with OUD and any co-occurring SUDA{H conditions or to persons who have experienced an opioid overdose.



Intervention Activities

- Stabilization Center provides crisis services to community including: crisis walk-in, adult respite services, Forensic Diversion, peer support, substance use assessments, and case management.
- Specific to substance use disorders this includes:
 - walk-in SUD assessment and case management
 - naloxone and fentanyl test strip distribution
 - referrals for SUD and mental health treatment
 - after hours and weekend Behavioral Health Resource Network (BHRN) drop-in services

Measured Outcomes:

- DCSC will develop an Epic workflow to document Crisis Substance Abuse treatment related referrals
- DCSC will establish a Crisis SUD referral baseline in 2025 and develop an improvement target in 2026



Intervention Activities

- DCSC Case Manager will support shared clients between DCSC and P&P by assisting individuals to access entitlements, basic needs supports and referrals to treatment.
- Position will also act as liaison and point of contact for P&P in order to enhance collaboration and coordination for shared clients.
- Community Justice Peer Services Contract will increase capacity for culturally responsive peer reentry support for individuals with SUD's who are releasing from jail and prison, including:
 - pick up at prison;
 - pre-release medication, services and housing coordination;
 - post-release transport to meetings, appointments and community / cultural activities;
 - accompany to health and SUD related appointments and needs;
 - connect with employers open to working with returning community members

Measured Outcomes:

- DCSC case manager will engage with 30 shared clients in FY25 and increase by 5% each year thereafter
- Reduce visits to DCSC, Emergency Services and Jail



Leveraging Existing Efforts

Pain Standards Taskforce: Provider education; alternative methods for pain management

COOPR: Naloxone distribution & education; regional surveillance & epidemiology data

PH Prevention: [Take Meds Seriously Oregon](#) [UpShift Program](#) [Shared Future Coalition](#)
Healthy Schools

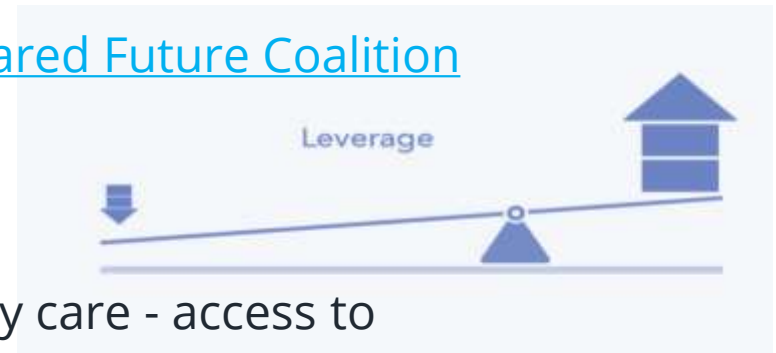
Emergency Preparedness: Managing Health Alerts

CCBHC: Comprehensive MH & SUD services, integrated with primary care - access to MAT - referrals to SUD detox and treatment

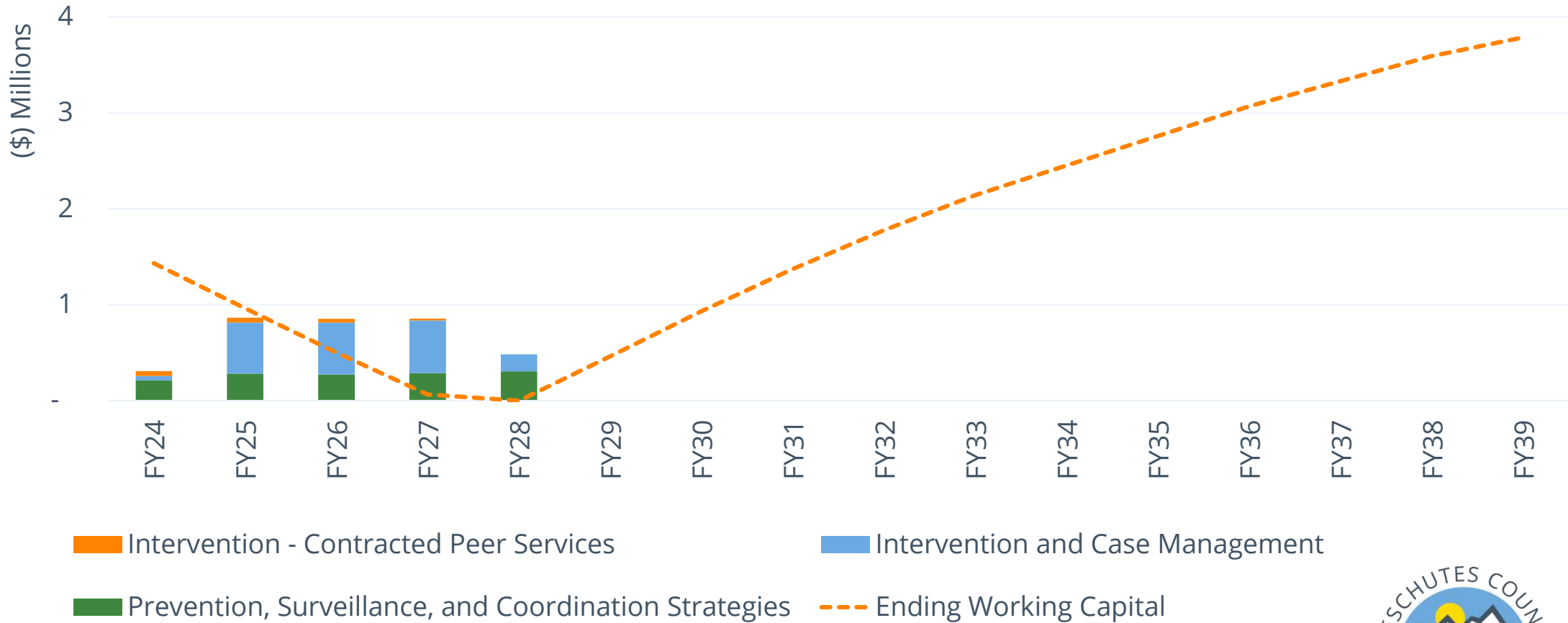
Harm Reduction Program: Naloxone distribution - syringe exchange - hepatitis C outreach

HOST: Intensive community based engagement, assessment and referrals

Community Justice: Probation and parole supervision - culturally responsive services



Proposed Budget - FY24 to FY39



Questions



References

- The Opioid Crisis and Recent Federal Policy Responses, September 2022
<https://www.cbo.gov/system/files/2022-09/58221-opioid-crisis.pdf>
- National Opioids Settlement Webpage
<https://nationalopioidsettlement.com/>
- Overdose Detection Mapping Application Program
<https://www.odmap.org:4443/>
- Oregon ESSENCE - Electronic Surveillance System for the Early Notification of Community-Based Epidemics
<https://www.oregon.gov/oha/ph/diseasesconditions/communicablediseases/preparednesssurveillanceepidemiology/essence/pages/index.aspx>





BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 30, 2023

SUBJECT: Second reading of Ordinance No. 2023-012 regarding proposed revisions to the County contracting code

RECOMMENDED ACTIONS:

- 1. Move second reading, by title only, of Ordinance 2023-012.
2. Move adoption of Ordinance No. 2023-012.

BACKGROUND AND POLICY IMPLICATIONS:

The BOCC conducted a public hearing on August 16th to review proposed revisions to the County contracting code (DCC 2.36 and DCC 2.37) in order to implement provisions of SB 1047, and provide for increased signature authority for County departments and Administrator.

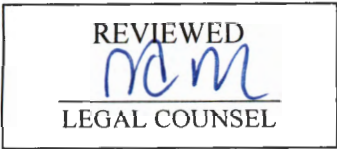
Following the public hearing, the Board approved first reading of Ordinance No. 2023-012.

BUDGET IMPACTS:

None

ATTENDANCE:

Admin
Legal



For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Title 2.36 and Title 2.37, *
Contracting, of the Deschutes County Code. * ORDINANCE NO. 2023-012
*

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

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

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

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

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

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

Section 2. ADOPTION. This Ordinance takes effect on January 1, 2024.

///

Dated this _____ of _____, 2023

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DeBONE, Chair

PATTI ADAIR, Vice Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner

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

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

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

Effective date: 1st day of January, 2024.

EXHIBIT A

(To Ordinance No. 2023-012)

CHAPTER 2.36 LOCAL CONTRACT REVIEW BOARD

- [2.36.010 Purpose; Statutory Authority](#)
- [2.36.020 Creation And Functions Of Board](#)
- [2.36.030 Model Public Contract Rules](#)
- [2.36.040 Exemptions From Competitive Bidding](#)
- [2.36.050 Delegation](#)

2.36.010 Purpose; Statutory Authority

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

HISTORY

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

2.36.020 Creation And Functions Of Board

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

HISTORY

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

2.36.030 Model Public Contract Rules

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

HISTORY

- Adopted by Ord. [97-030](#) §1 on 4/2/1997*
- Amended by Ord. [98-092](#) §1 on 12/16/1998*
- Amended by Ord. [2003-018](#) §1 on 6/9/2003*
- Amended by Ord. [2020-005](#) §1 on 1/1/2021*

2.36.040 Exemptions From Competitive Bidding

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

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

- ~~1. ——— Emergency contracts.~~

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

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

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

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

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

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

HISTORY

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

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

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

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

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

2.36.050 Delegation

A. ~~Excepting the department head of the Health Department who shall have contract authority to \$50,000,~~ Each County employee and elected official designated as a department head of the County is authorized to contract in an amount not to exceed \$5025,000 for each contract, amendment, and/or change order provided sufficient sums are appropriated and unencumbered in the County budget and there are sufficient cash resources available to pay the maximum consideration set forth in each contract.

B. The County Administrator may award competitive bids and enter into contracts, amendments, and/or change orders in an amount not to exceed \$2150,000 for each contract, amendment, and/or change order~~any single contract.~~

HISTORY

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

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

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

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

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

CHAPTER 2.37 PUBLIC CONTRACTING CODE

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2.37.010 Purpose; Statutory Authority

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

HISTORY

Adopted by Ord. 2005-010 §1 on 2/28/2005

2.37.020 Model Public Contract Rules

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

HISTORY

Adopted by Ord. 2005-010 §1 on 2/28/2005

Amended by Ord. 2008-023 §1 on 11/23/2008

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

2.37.030 Public Contract Review Board

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

HISTORY

Adopted by Ord. 2005-010 §1 on 2/28/2005

Amended by Ord. 2008-023 §1 on 11/23/2008

2.37.040 Purchasing Agent

- A. The County Administrator is designated as the Purchasing Agent of the County and is hereby authorized to issue or cause to be issued all solicitations and to award all County contracts for which the contract price does not exceed \$2150,000. Subject to the provisions of this chapter, the Purchasing Agent may adopt and amend all solicitation materials, contracts and forms required or permitted to be adopted by contracting agencies under the Public Contracting Code or otherwise convenient for the County's contracting needs.
- B. In the context of requests for County proposals the department director and in the case of county service districts, each administrator, director or managing board, is authorized to determine the method of contractor selection and selection criteria.
- C. Notwithstanding ORS 279B.075, the Purchasing Agent and in the case of county service districts, each administrator, director or managing board, is authorized to determine that goods or services, or classes of goods or services, are available from only one source, based upon one or more of the following findings: (1) that the efficient utilization of existing goods requires the acquisition of compatible goods or services; (2) that the goods or services required for the exchange of software or data with other public or private agencies are available from only one source; (3) that the goods or services are for use in a pilot or experimental project; or (4) other findings that support the conclusion that the goods or services are available from only one source. In making the determination under this subsection C the Purchasing Agent or other authorized representative shall publish notice at least seven (7) days in advance and consider any written comments or objections. At the conclusion of the seven-day notice period written findings to justify the sole source determination shall be prepared and placed in the contract file. A copy of such findings shall promptly be furnished to all persons who submitted written comments or objections.
- D. In the case of county service districts the director, administrator or managing board is designated as the purchasing agent of the district and is hereby authorized to issue all solicitations and to award all district contracts for which the contract price does not exceed \$5025,000 unless otherwise specifically set forth in the operating agreement between the County and the district. Subject to the provisions of this chapter, the purchasing agent of the district may adopt and amend all solicitation materials, contracts and forms required or

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

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

HISTORY

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

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

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

2.37.050 Definitions

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

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

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

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

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

HISTORY

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

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

2.37.060 Signature Authority

- A. ~~Excepting the department head of the Health Department who shall have contract authority to \$50,000,~~ Each County Department Head and each elected County official designated as a department head (unless expressly provided otherwise by the Board of County Commissioners) is authorized to award competitive bids and proposals and enter into contracts, [amendments, and/or change orders](#) in an amount not to exceed ~~\$5025,000~~ [\\$5025,000](#) for each ~~contract, amendment, and/or change order~~ [contract](#), provided sufficient sums are appropriated and unencumbered in the County or, as applicable, district budget and there are sufficient cash resources available to pay the maximum consideration set forth in each and every contract.
- B. The County Administrator is authorized to award competitive bids and proposals and enter into contracts, [amendments, and/or change orders](#) in an amount not to exceed ~~\$2450,000~~ [\\$2450,000](#) for ~~each any single~~ [each](#) contract, ~~amendment, and/or change order~~ [amendment, and/or change order](#) provided sufficient sums are appropriated and unencumbered in the County budget and there are sufficient cash resources available to pay the maximum consideration set forth in each and every contract. For purposes of this subsection contracts shall include agreements between the county and any public entity, including federal, state and local governments.
- C. In determining the monetary limits of authority to enter into contracts, [amendments, and/or change orders](#) on behalf of the County, the cost or price for the ~~specific contract, amendment, and/or change order entire term, including optional renewals~~ [specific contract, amendment, and/or change order](#) shall be considered.

HISTORY

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

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

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

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

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

2.37.065 Competitive Sealed Proposals (Repealed)

HISTORY

Repealed by Ord. 2014-024 on 8/27/2014

2.37.070 Class Special Procurements

A. The County may award a public contract under a Class Special Procurement pursuant to the requirements of ORS 279B.085. Such procurements allow the County to enter into one or more contracts over time without following the requirements of competitive sealed bidding, competitive sealed proposals or intermediate procurements.

B. The Board of County Commissioners declares the following as classes of special procurements. Such contracts may be awarded in any manner, which the Solicitation Agent deems appropriate to the County’s needs, including by direct appointment or purchase. Except where otherwise provided the Solicitation Agent shall make a record of the method of award.

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

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

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

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

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

HISTORY

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

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

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

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

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

[2.37.080 Exemption For Certain Personal Services](#)

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

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

- B. Direct Appointment. In any of the following circumstances a qualified provider of personal services may be appointed under any method deemed in the County’s best interest by the Solicitation Agent, including by direct appointment.
 - 1. Under circumstances which could not reasonably have been foreseen which create a substantial risk of loss, damage, interruption of services or threat to the public health and safety and require the prompt performance of the services to remedy the situation; or
 - 2. Where the estimated fee does not exceed \$725,000 in any fiscal year or \$2450,000 over the full term, including optional renewals; or
 - 3. Contracts of not more than \$2450,000 for the continuation of work by a contractor who performed preliminary studies, analysis or planning for the work under a prior contract may be awarded without competition if the prior contract was awarded under a competitive process and the Solicitation Agent determines that use of the original contractor will significantly reduce the costs of or risks associated with the work.
 - 4. Contracts for maintenance, repair and technical support for computer hardware, software and networking systems.
 - 5. Services provided by a psychologist, psychiatrist or psychiatric nurse practitioner.
- C. Direct appointment pursuant to this section shall be competitive to the extent practicable and may be based upon criteria which include without limitation the provider’s experience, available resources, the project’s location and the provider’s pricing.
- D. The County may select a provider of personal services under this section from a qualified pool, or from:
 - 1. The County’s current list of qualified providers;
 - 2. From another public contracting agency’s current list of qualified providers pursuant to an intergovernmental agreement; or
 - 3. From among all qualified providers offering the necessary services that the County can reasonably locate under the circumstances.
- E. Design-Build or Construction Manager/General Contractor. Contracts for the construction of public improvements using a design/build or construction manager/general contractor construction method shall be awarded under a request for proposals. The determination to construct a project using a design/build or construction manager/general contractor construction method must be approved by the Board or its designee, upon application of the Purchasing Agent and in compliance with competitive bidding requirements as specified in ORS 279A.065(3).

HISTORY

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

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

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

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

2.37.090 Exemption From Sealed Bids Or Proposals

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

- A. Contracts, other than contracts for personal services, may be awarded without competitive sealed bids under ORS 279B.055 and without competitive sealed proposals under ORS 279B.060, pursuant to ORS 279B.065, 279B.070, 279B.075, 279B.080, or 279B.085 and the Model Rules for the following classes of cases:
 - 1. The Purchasing Agent determines that an emergency condition exists which requires prompt execution of a contract. The determination shall be made prior to execution of a contract and part of the acquisition record. Exemption under this paragraph shall include exemption from bid security and payment and performance bond requirements. An amendment to any contract entered into pursuant to this paragraph shall be approved in accordance with required procurement procedures.
 - 2. Contracts under ~~\$2510~~,000 need not be awarded competitively.
 - 3. Contracts exceeding ~~\$2510~~,000 but not exceeding ~~\$2150~~,000, where competitive quotes or proposals are obtained.
- B. Where a contract is awarded under paragraphs 3 of subsection A of this section, the department awarding the contract shall obtain at least three (3) informally solicited quotes or proposals, if possible; shall document in its records the quotes and proposals received, and if fewer than three, the effort that was made to obtain quotes or proposals. A quote or proposal received by telephone shall be considered a written quote when it is recorded in records of the County. A quote or proposal received by email shall be considered a written quote or proposal when it is received by the County.
- C. If a contract is awarded under this section, the County shall award the contract to the offeror whose quote or proposal will best serve the County’s interests, taking into account price, as well as, considerations including, but not limited to experience, expertise, product functionality, suitability for a particular purpose and contractor responsibility under ORS 279B.110.
- D. The Board may approve a contract specific special procurement if it finds after giving notice pursuant to ORS 279B.055(4) that a written request submitted by the Purchasing Agent demonstrates that the use of a special procurement as described in the request, or in alternative procedures described by the Purchasing Agent will:

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

HISTORY

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

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

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

2.37.100 Purchases Through Federal Programs

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

- A. The procurement must be made in accordance with procedures established by GSA for procurements by local governments, and under purchase orders or contracts submitted to and approved by the Purchasing Agent or the Board. The Solicitation Agent shall provide the Purchasing Agent with a copy of the letter, memorandum or other documentation from GSA establishing permission to the County to purchase under the federal program.
- B. The price of the goods or services must be established under price agreements between the federally approved vendor and GSA.
- C. The price of the goods or services must be less than the price at which such goods or services are available under state or local cooperative purchasing programs that are available to the County.
- D. If a single purchase of goods or services exceeds \$~~2150,000~~, the Solicitation Agent must obtain informal written quotes or proposals from at least two additional vendors (if reasonably available) and find, in writing, that the goods or services offered by GSA represent the best value for the County. This subsection does not apply to the purchase of equipment manufactured or sold solely for military or law enforcement purposes.

HISTORY

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

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

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

2.37.110 Contracts For Disposal Of Personal Property

- A. General Methods. Except as otherwise provided in subsection E of this section, surplus property may be disposed of by any of the following methods upon a determination by the Solicitation Agent that the method of disposal is in the best interest of the County. Factors that may be considered by the Solicitation Agent include costs of sale, administrative costs, and public benefits to the County. The Solicitation Agent shall maintain a record of the reason for the disposal method selected, and the manner of disposal, including the name of the person to whom the surplus property was transferred.
 - 1. Governments. Without competition, by transfer or sale to another County department or public agency.
 - 2. Auction. By publicly advertised auction to the highest bidder.
 - 3. Bids. By publicly advertised invitation to bid.
 - 4. Liquidation Sale. By liquidation sale using a commercially recognized third-party liquidator selected in accordance with rules for the award of personal services contracts.
 - 5. Fixed Price Sale. The Solicitation Agent may establish a selling price based upon an independent appraisal or published schedule of values generally accepted by the insurance industry, schedule and advertise a sale date, and sell to the first buyer meeting the sales terms.
 - 6. Trade-In. By trade-in, in conjunction with acquisition of other price-based items under a competitive solicitation. The solicitation shall require the offer to state the total value assigned to the surplus property to be traded.
 - 7. Donation. By donation to any organization operating within or providing a service to residents of the County which is recognized by the Internal Revenue Service as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended.
- B. Disposal of Property with Minimal Value. Surplus property which has a value of less than \$1500, or for which the costs of sale are likely to exceed sale proceeds may be disposed of by any means determined to be cost-effective, including by disposal as waste. The official making the disposal shall make a record of the value of the item and the manner of disposal.
- C. Personal-Use Items. An item (or indivisible set) of specialized and personal use with a current value of less than \$2400, other than police officer's handguns which may exceed \$2400 in value, may be sold to the employee or retired or terminated employee for whose use it was purchased. These items may be sold for fair market value without bid and by a process deemed most efficient by the Purchasing Agent or the Board.
- D. Restriction on Sale to County Employees. County employees shall not be restricted from competing, as members of the public, for the purchase of publicly sold surplus property, but shall not be permitted to offer to purchase property to be sold to the first qualifying bidder until at least three days after the first date on which notice of the sale is first publicly advertised.

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

HISTORY

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

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

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

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

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

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

HISTORY

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

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

2.37.130 Qualified Pool

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

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

HISTORY

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

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

2.37.140 Contested Case Procedures

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

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

H. Evidence in contested cases. In contested cases:

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

HISTORY

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

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

2.37.150 Standard Contract Provisions

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

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

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

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

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

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

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

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

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

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

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

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

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

- 28. The Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein, which would conflict with law, are deemed inoperative to that extent.

- 29. Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Contract. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders:
 - a. Titles VI and VII of the Civil Rights Act of 1964, as amended;
 - b. Sections 503 and 504 of the Rehabilitation Act of 1973, as amended;
 - c. the Americans with Disabilities Act of 1990, as amended and ORS 659A.112 through 659A.139;
 - d. Executive Order 11246, as amended;
 - e. the Health Insurance Portability and Accountability Act of 1996;
 - f. the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended;
 - g. the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended;
 - h. ORS Chapter 659A, as amended;
 - i. all regulations and administrative rules established pursuant to the foregoing laws; and
 - j. all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

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

- 30. Contractor and subcontractors shall comply with the Oregon Consumer Identity Theft Protection Act (ORS 646A.600 et seq.).

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

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

HISTORY

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

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

2.37.160 Competitive Electronic Auction Bidding

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

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

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

HISTORY

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



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 30, 2023

SUBJECT: First Reading of Ordinance No. 2023-015 – LBNW, LLC, Plan Amendment and Zone Change

RECOMMENDED MOTION:

Move approval of first reading of Ordinance No. 2023-015 by title only.

BACKGROUND AND POLICY IMPLICATIONS:

LBNW, LLC, requests approval to change the Comprehensive Plan designation (land use file no. 247-21-000881-PA) of the subject properties from Agriculture to Rural Industrial, and further requests approval to change the zone (land use file no. 247-21-000882-ZC) of the subject properties from Exclusive Farm Use to Rural Industrial.

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

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

BUDGET IMPACTS:

None.

ATTENDANCE:

Anthony Raguine, Principal Planner

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 *
Industrial, 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 *
Rural Industrial.

ORDINANCE NO. 2023-015

WHEREAS, LBNW LLC, applied for changes to both the Deschutes County Comprehensive Plan Map (247-21-000881-PA) and the Deschutes County Zoning Map (247-21-000882-ZC), to change the comprehensive plan designation of the subject property from Agricultural (AG) to Rural Industrial (RI), and a corresponding zone change from Exclusive Farm Use (EFU) to Rural Industrial (RI); and

WHEREAS, pursuant to a Land Use Board of Appeals (“Land Use Board of Appeals”) remand and after notice was given in accordance with applicable law, a public hearing was held on June 28, 2023, before the Deschutes County Board of County Commissioners (“Board”);

WHEREAS, pursuant to DCC 22.28.030(C) and the LUBA remand, the Board heard *limited de novo* the applications to change the comprehensive plan designation of the subject property from Agricultural (AG) to Rural Industrial (RI) and a corresponding zone change from Exclusive Farm Use (EFU) to Rural Industrial (RI); 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 RI, 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 RI 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 "G" 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 "F", the Decision of the Hearings Officer, attached as Exhibit "H", and the Updated Economic, Social, Environmental, and Energy analysis, attached as Exhibit "I", each incorporated by reference herein.

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

Dated this _____ of _____, 2023

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

PATTI ADAIR, Vice Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner

Date of 1st Reading: 30th day of August, 2023.

Date of 2nd Reading: 13th day of September, 2023.

Record of Adoption Vote:

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

Effective date: 12th day of December, 2023.

ATTEST

Recording Secretary

**Exhibit "A" to Ordinance 2023-015
Legal Descriptions of Affected Properties**

For Informational Purposes Only: Parcel No. 1612230000305 (commonly known as 65301 N. HWY 97, Bend, OR 97701)

(Legal Description Begins Below)

File No. 414664AM

A parcel of land located in the NW 1/4 SE 1/4 of Section 23, Township 16 South, Range 12, East of the Willamette Meridian, Deschutes County, Oregon, lying Westerly of the Central Oregon Irrigation's Pilot Butte Canal, and more particularly described as follows:

Commencing at the North One-Quarter corner of said Section 23; thence South 00°04'40" East, 3,651.07 feet along the North-South centerline of said Section 23 to the true point of beginning; thence South 89°44'29" East 444.09 feet to a point on the centerline of the Pilot Butte Canal (as constructed); thence South 04°43'33" West, 194.02 feet along said canal centerline; thence South 21°51'49" West, 123.14 feet along said canal centerline to a point on the South line of said NW 1/4 SE 1/4; thence North 89°44'29" West, 381.83 feet along said South line to the Southwest corner of said NW 1/4 SE 1/4; thence North 00°04'40" West, 307.93 feet along the West line of said NW 1/4 SE 1/4 to the true point of beginning.

EXCEPTING THEREFROM the right-of-way of the Pilot Butte Canal.

For Informational Purposes Only: Parcel No. 1612230000301 (commonly known as 65305 N. HWY 97, Bend, OR 97701)

(Legal Description Begins Below)

File No. 414726AM

Description of a parcel of land situate in a portion of the Southwest Quarter of the Northeast Quarter (SW 1/4 NE 1/4) and the Northwest Quarter of the Southeast Quarter (NW 1/4 SE 1/4) of Section Twenty-Three (23), Township Sixteen (16) South, Range Twelve (12), East of the Willamette Meridian, Deschutes County, Oregon, Westerly of Central Oregon Irrigation District's (C.O.I.D.'s) Pilot Butte Canal (P.B.C) and now to be more particularly described as follows:

Commencing at a 3/4" pin at the North 1/4 corner of said Section 23, the initial point; thence South 00°04'40" East along the Westerly line of said NE 1/4, 1,319.37 feet to a 3/4" pipe and the true point of beginning; thence South 89°44'27" East along the Northerly line of said SW 1/4 NE 1/4, 55.72 feet; thence along the centerline of C.O.I.D.'s P.B.C. Canal as constructed as follows: South 11° 11'43" East, 286.69 feet; thence South 12°29'54" East, 422.34 feet; thence South 28°43'42" East, 285.24 feet; thence South 10°16'16" West, 175.47 feet; thence South 03°55'21" East, 458.45 feet; thence South 21°05'56" East, 91.18 feet; thence South 00°46'50" West, 307.68 feet; thence South 18°31'30" East, 204.98 feet, thus ending boundary along said center line; thence South 18°18'10" East, 70.74 feet to a 1/2" pipe on Easterly bank of said canal; thence South 04°43'33" West along said canal bank, 299.37 feet to a 1/2" pipe; thence South 21°51'49" West along said canal bank 123.14 feet to a 1/2" pipe; thence North 89°44'29" West along the Southerly line of said NW 1/4 SE 1/4, 381.83 feet to a 3/4" pipe; thence North 00°04'40" West along the Westerly line of said NW 1/4 SE 1/4, 1,319.27 feet to a 5/8" pin at the center of said section; thence North 00°04'40" West along Westerly line of said SW 1/4 NE 1/4, 1,319.87 feet to the point of beginning.

EXCEPTING THEREFROM that portion thereof conveyed to Robert C. Fair, etal, by Deed recorded June 22, 1981, in Book 343, Page 15, Deschutes County Deed Records, more particularly Described as follows:

A parcel of land located in the NW 1/4 SE 1/4 of Section 23, Township 16 South, Range 12, East of the Willamette Meridian, Deschutes County, Oregon, lying Westerly of the Central Oregon Irrigation's Pilot Butte Canal, and more particularly described as follows:

Commencing at the North One-Quarter corner of said Section 23; thence South 00°04'40" East, 3,651.07 feet along the North-South centerline of said Section 23 to the true point of beginning; thence South 89°44'29" East 444.09 feet to a point on the centerline of the Pilot Butte Canal (as constructed); thence South 04°43'33" West, 194.02 feet along said canal centerline; thence South 21°51'49" West, 123.14 feet along said canal centerline to a point on the South line of said NW 1/4 SE 1/4; thence North 89°44'29" West, 381.83 feet along said South line to the Southwest corner of said NW 1/4 SE 1/4; thence North 00°04'40" West, 307.93 feet along the West line of said NW 1/4 SE 1/4 to the true point of beginning.

ALSO EXCEPTING THEREFROM the right-of-way of the Pilot Butte Canal.

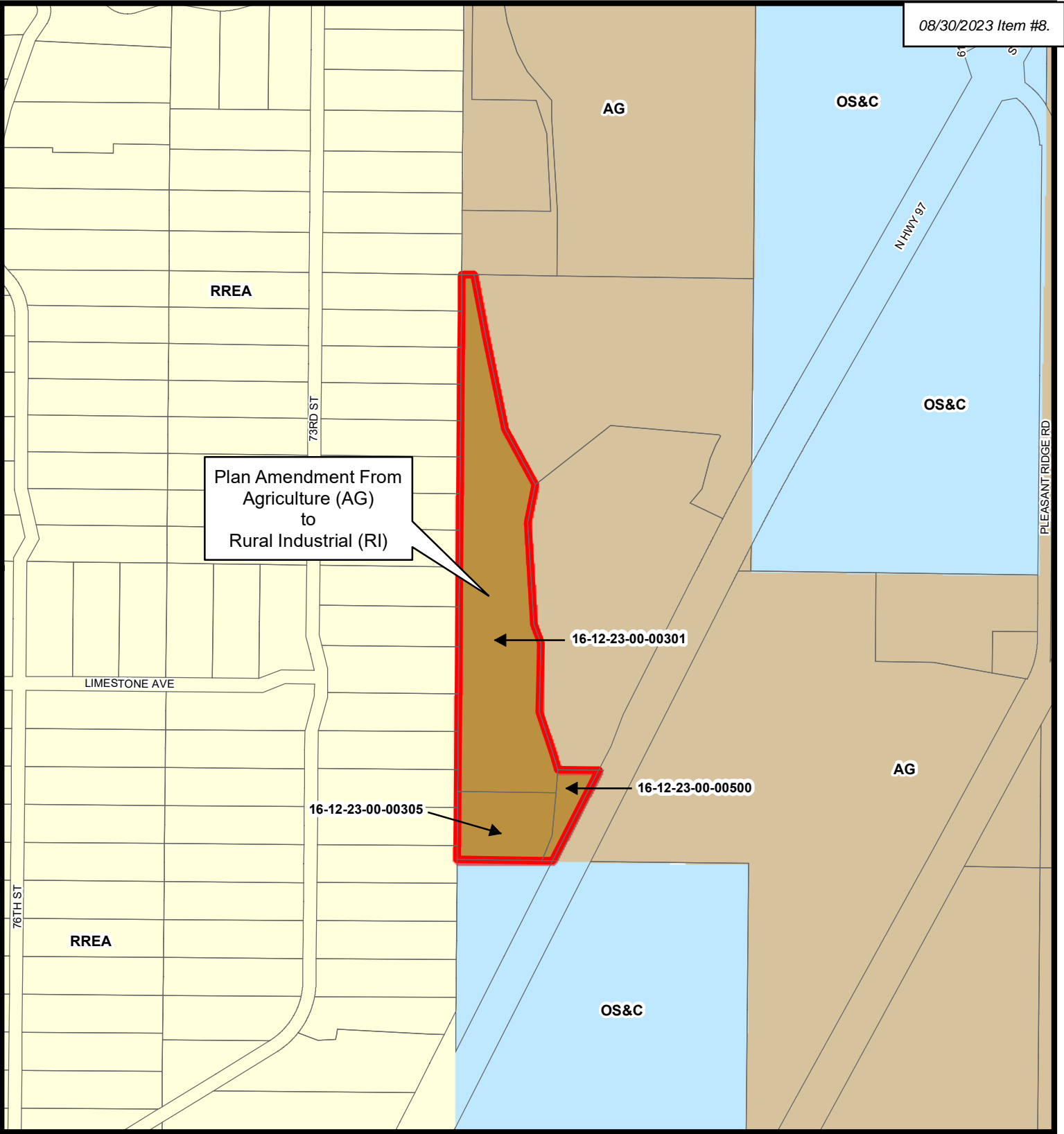
For Informational Purposes Only: Parcel No. 1612230000500 (commonly known as 65315 HWY 97, Bend, OR 97701)

(Legal Description Begins Below)

That portion of the Northwest Quarter of the Southeast Quarter (NW1/4 SE1/4) of Section 23, Township 16 South, Range 12, East of the Willamette Meridian, Deschutes County, Oregon, described as follows:

Commencing at the Southwest corner of the NW1/4 SE1/4 of said Section; thence East along the South line of the NW1/4 SE1/4 of said section a distance of 381 feet to the East line of the Pilot Butte Canal and the True Point of Beginning; thence continuing along said South line, a distance of 71 feet to the Westerly line of The Dalles-California Highway; thence Northeasterly along the Westerly line of said highway, a distance of 460 feet; thence West and parallel to the South line of the NW1/4 SE1/4 of said section, a distance of 205 feet to the East line of the Pilot Butte Canal; thence Southerly along the East line of said canal to the True Point of Beginning.

EXCEPTING THEREFROM that portion granted to the State of Oregon, by and through its Department of Transportation in stipulated final judgment recorded September 21, 1992 in Book 276, Page 2146, Deschutes County, Oregon



PROPOSED COMPREHENSIVE PLAN MAP

Plan Amendment From Agriculture (AG) to Rural Industrial (RI)

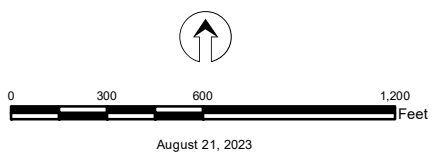
Exhibit "B"
to Ordinance 2023-015

Legend

Proposed Plan Amendment Boundary

Comprehensive Plan Designation

- AG - Agriculture
- OS&C - Open Space & Conservation
- RREA - Rural Residential Exception Area
- RI - Rural Industrial



BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

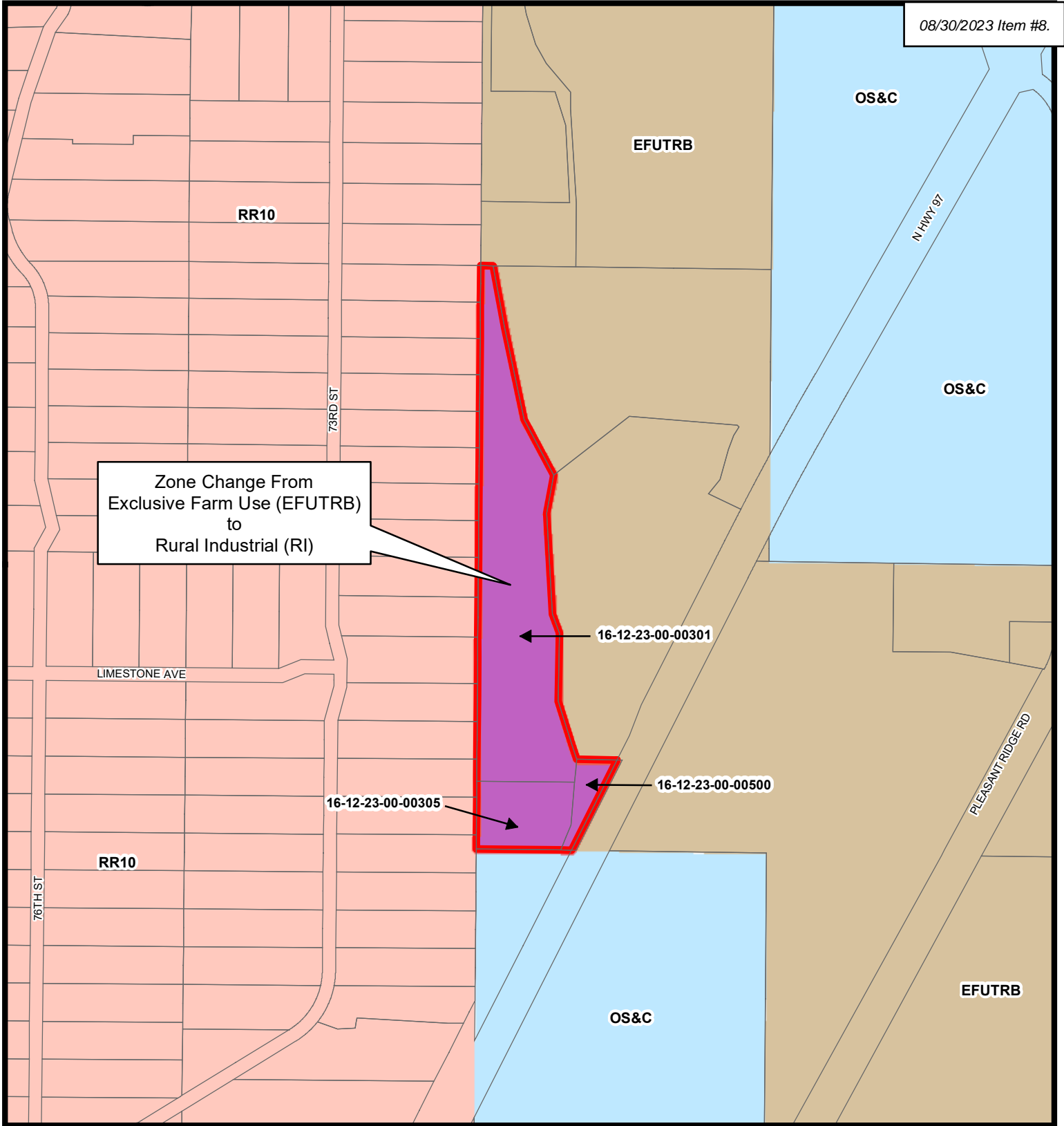
Tony DeBone, Chair

Patti Adair, Vice Chair

Phil Chang, Commissioner

ATTEST: Recording Secretary

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



Zone Change From
Exclusive Farm Use (EFUTRB)
to
Rural Industrial (RI)

PROPOSED ZONING MAP

Zone Change From Exclusive Farm Use (EFUTRB) to Rural Industrial (RI)

Legend

Proposed Plan Amendment Boundary

Zoning

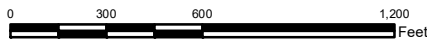
EFUTRB - Tumalo/Redmond/Bend Subzone

OS&C - Open Space & Conservation

RR10 - Rural Residential

RI - Rural Industrial

Exhibit "C"
to Ordinance 2023-015



August 21, 2023

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

Tony DeBone, Chair

Patti Adair, Vice Chair

Phil Chang, Commissioner

ATTEST: Recording Secretary

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

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. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-005, are incorporated by reference herein.
- E. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-012, are incorporated by reference herein.
- F. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-016, are incorporated by reference herein.
- G. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-002, are incorporated by reference herein.
- H. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-009, are incorporated by reference herein.
- I. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-012, are incorporated by reference herein.
- J. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-007, are incorporated by reference herein.
- K. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-005, are incorporated by reference herein.
- L. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-006, are incorporated by reference herein.
- M. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-012, are incorporated by reference herein.
- N. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-021, are incorporated by reference herein.
- O. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-027, are incorporated by reference herein.
- P. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-021, are incorporated by reference herein.

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

AI. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-011, are incorporated by reference herein.

AJ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-006, are incorporated by reference herein.

AK. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-019, are incorporated by reference herein.

AL. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-016, are incorporated by reference herein.

AM. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-001, are incorporated by reference herein.

AN. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-002, are incorporated by reference herein.

AO. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-003, are incorporated by reference herein.

AP. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-008, are incorporated by reference herein.

AQ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-007, are incorporated by reference herein.

AR. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-006, are incorporated by reference herein.

AS. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-009, are incorporated by reference herein.

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

AU. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2021-002, are incorporated by reference herein.

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

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

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

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

- AZ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-006, are incorporated by reference herein.
- BA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-010, are incorporated by reference herein.
- BB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-011, are incorporated by reference herein. (superseded by Ord. 2023-015)
- BC. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-013, are incorporated by reference herein.
- 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.

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

HISTORY

Amended by Ord. [2011-027](#) §10 on 11/9/2011

Adopted by Ord. [2011-003](#) §2 on 11/9/2011

Amended by Ord. [2011-017](#) §5 on 11/30/2011

Amended by Ord. [2012-012](#) §1, 2, 3, 4 on 8/20/2012

Amended by Ord. [2012-005](#) §1 on 11/19/2012

Amended by Ord. [2013-002](#) §1 on 1/7/2013

Repealed by Ord. [2013-001](#) §1 on 1/7/2013

Amended by Ord. [2013-005](#) §1 on 1/23/2013

Amended by Ord. [2012-016](#) §1 on 3/4/2013

Amended by Ord. [2013-009](#) §1 on 5/8/2013

Amended by Ord. [2013-012](#) §1 on 8/8/2013

Amended by Ord. [2013-007](#) §1 on 8/28/2013

Amended by Ord. [2014-005](#) §2 on 2/26/2014

Amended by Ord. [2014-006](#) §2 on 3/15/2014

Amended by Ord. [2014-012](#) §1 on 8/6/2014

Amended by Ord. [2014-021](#) §1 on 11/26/2014
Amended by Ord. [2015-029](#) §1 on 11/30/2015
Amended by Ord. [2015-010](#) §1 on 12/21/2015
Amended by Ord. [2015-021](#) §1 on 2/22/2016
Amended by Ord. [2015-018](#) §1 on 3/28/2016
Amended by Ord. [2016-001](#) §1 on 4/5/2016
Amended by Ord. [2016-022](#) §1 on 9/28/2016
Repealed & Reenacted by Ord. [2016-027](#) §1, 2 on 12/28/2016
Amended by Ord. [2016-005](#) §1 on 2/27/2017
Amended by Ord. [2016-029](#) §1 on 3/28/2017
Amended by Ord. [2017-007](#) §1 on 11/1/2017
Amended by Ord. [2018-002](#) §1 on 1/25/2018
Amended by Ord. [2018-005](#) §2 on 10/10/2018
Amended by Ord. [2018-008](#) §1 on 10/26/2018
Amended by Ord. [2018-008](#) §1 on 10/26/2018
Amended by Ord. [2018-008](#) §1 on 10/26/2018
Amended by Ord. [2018-006](#) §1 on 11/20/2018
Amended by Ord. [2018-011](#) §1 on 12/11/2018
Amended by Ord. [2019-004](#) §1 on 3/14/2019
Amended by Ord. [2019-003](#) §1 on 3/14/2019
Amended by Ord. [2019-002](#) §1 on 4/2/2019
Amended by Ord. [2019-001](#) §1 on 4/16/2019
Amended by Ord. [2019-010](#) §1 on 5/8/2019
Amended by Ord. [2019-011](#) §1 on 5/17/2019
Amended by Ord. [2019-006](#) §1 on 6/11/2019
Amended by Ord. [2019-019](#) §2 on 12/11/2019
Amended by Ord. [2020-001](#) §26 on 4/21/2020
Amended by Ord. [2020-003](#) §1 on 5/26/2020
Amended by Ord. [2020-002](#) §1 on 5/26/2020
Amended by Ord. [2020-008](#) §5 on 9/22/2020
Amended by Ord. [2020-007](#) §1 on 10/27/2020
Amended by Ord. [2020-006](#) §1 on 11/10/2020
Amended by Ord. [2020-009](#) §4 on 11/17/2020
Amended by Ord. [2020-013](#) §1 on 11/24/2020
Amended by Ord. [2021-002](#) §3 on 4/27/2021
Amended by Ord. [2021-005](#) §1 on 6/16/2021
Amended by Ord. [2021-008](#) §1 on 6/30/2021
Amended by Ord. [2022-001](#) §2 on 7/12/2022
Amended by Ord. [2022-003](#) §2 on 7/19/2022
Amended by Ord. [2022-006](#) §2 on 7/22/2022
Amended by Ord. [2022-010](#) §1 on 10/25/2022
Amended by Ord. [2023-001](#) §1 on 3/1/2023
Amended by Ord. [2022-013](#) §2 on 3/14/2023
Amended by Ord. [2023-007](#) §19 on 4/26/2023

Amended by Ord. 2023-010 §1 on 6/21/2023

Amended by Ord. 2023-018 §1 on 8/30/2023

Amended by Ord. 2023-015 §3 on 9/13/2023

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 II to allow sewers in unincorporated lands in Southern Deschutes County
2016-005	11-28-16/2-16-17	23.01.010, 2.2, 3.3	Comprehensive Plan Amendment recognizing non-resource lands process allowed under State law to change EFU zoning
2016-022	9-28-16/11-14-16	23.01.010, 1.3, 4.2	Comprehensive plan Amendment, including certain property within City of Bend Urban Growth Boundary
2016-029	12-14-16/12/28/16	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from, Agriculture to Rural Industrial
2017-007	10-30-17/10-30-17	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2018-002	1-3-18/1-25-18	23.01, 2.6	Comprehensive Plan Amendment permitting churches in the Wildlife Area Combining Zone

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

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

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

2020-008	06-24-20/09-22-20	23.01.010, Appendix C	Comprehensive Plan Transportation System Plan Amendment to add roundabouts at US 20/Cook-O.B. Riley and US 20/Old Bend-Redmond Hwy intersections; amend Tables 5.3.T1 and 5.3.T2 and amend TSP text.
2020-007	07-29-20/10-27-20	23.01.010, 2.6	Housekeeping Amendments correcting references to two Sage Grouse ordinances.
2020-006	08-12-20/11-10-20	23.01.01, 2.11, 5.9	Comprehensive Plan and Text amendments to update the County's Resource List and Historic Preservation Ordinance to comply with the State Historic Preservation Rule.
2020-009	08-19-20/11-17-20	23.01.010, Appendix C	Comprehensive Plan Transportation System Plan Amendment to add reference to J turns on US 97 raised median between Bend and Redmond; delete language about disconnecting Vandevort 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 <u>(superseded by Ord. 2023-015)</u>	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) To Rural Industrial (RI)
2022-013	12-14-22/03-14-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)

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	08-30-23/11-29-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
<u>2023-015</u>	<u>9-13-23/12-12-23</u>	<u>23.01.010</u>	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Industrial (RI)

Exhibit "F" - Ordinance 2022-011

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

FILE NUMBERS: 247-21-0000881-PA/882-ZC

APPLICANT: LBNW LLC
c/o Jake Hermeling
65315 Hwy 97
Bend, OR 97701

OWNERS: Taxlots 1612230000305 ("Taxlot 305") & 1612230000500 ("Taxlot 500")
LBNW LLC
65314 Hwy 97
Bend, OR 97701

Taxlot 1612230000301 ("Taxlot 301")
Dwight E. & Marilee R. Johnson
18550 Walton Road
Bend, OR 97701

APPLICANT'S ATTORNEY: Ken Kataroff
D. Adam Smith
Schwabe, Williamson & Wyatt, P.C.
360 SW Bond Street, Suite 500
Bend, OR 97702

STAFF PLANNER: Tarik Rawlings, Associate Planner
tarik.rawlings@deschutes.org, 541-317-3148

REQUEST: Applicant requests approval of a Comprehensive Plan amendment to change the designation of the properties from Agricultural (AG) to Rural Industrial (RI) and a corresponding zoning map amendment to change the zoning of the properties from Exclusive Farm Use - Tumalo/Redmond/Bend subzone (EFU-TRB) to Rural Industrial (RI)

LOCATION: Taxlot 305 (3.00 acres) - 65301 Hwy 97, Bend, OR 97701
Taxlot 301 (15.06 acres) - 65305 Hwy 97, Bend, OR 97701
Taxlot 500 (1.06 acres) - 65315 Hwy 97, Bend, OR 97701

I. FINDINGS OF FACT:

A. Incorporated Findings of Fact: The Findings of Fact from the Hearings Officer’s decision and recommendation dated July 12, 2022 and adopted as Exhibit G of this ordinance (cited herein as “Hearings Officer Decision”), is hereby incorporated as part of this decision, except to the extent said findings are inconsistent with the supplemental findings and conclusions of law herein, and except as modified below. The Board further adopts as its own all Hearings Officer interpretations of the Deschutes County Code (“DCC”) and Deschutes County Comprehensive Plan (“DCCP”), except to the extent said interpretations are inconsistent with the Board’s interpretations set forth herein, and except as modified below. The Board corrects and modifies the Hearings Officer Decision as follows:

1. Amend the enumerated “Request” on page 1 as follows (deletions ~~struck through~~; additions underlined):

“The applicant requests approval of a Comprehensive Plan Amendment to change the designation of the property from Agricultural (AG) to ~~Rural Residential Exception Area (RREA)~~ Rural Industrial Area (RIA). The applicant also requests approval of a corresponding Zone Change to rezone the property from Exclusive Farm Use (EFU) to ~~Multiple Use Agricultural (MUA-10)~~ Rural Industrial (RI). The applicant requests approval of the applications without the necessity for a Statewide Planning Goal 3 and/or a Goal 14 Exception, but includes an application for a Goal 14 Exception in the alternative, if determined to be necessary for approval of the requested PAPA and Zone Change”

B. Procedural History: Deschutes County’s land use Hearings Officer conducted the initial public hearing regarding the LBNW LLC comprehensive plan amendment / zone change application on April 26, 2022. At the conclusion of the hearing, the Hearings Officer closed the hearing for oral testimony but left the written record open until June 7, 2022. On May 19, 2022, the Hearings Officer issued an order extending the written record period until June 14, 2022. On July 12, 2022, the Hearings Officer issued a written decision recommending approval of the applications by the Deschutes County Board of County Commissioners (“County Commissioners” or “Board”).

The Board conducted a *de novo* land use hearing on September 7, 2022, at the conclusion of which the Board closed the hearing for both oral and written testimony. The Board deliberated and a majority of the commissioners voted to approve the applications on September 28, 2022.

C. Deschutes County Land Use Regulations: The DCCP and Title 18 of the DCC were acknowledged by the Land Conservation and Development Commission (“LCDC”) as

being in compliance with every statewide planning goal, including Goal 14. The County amended the DCC and its DCCP in 2002 (Ordinances 2002-126 and 2002-127) in response to LCDC’s Unincorporated Communities Rule. Those 2002 ordinances ensured that areas zoned Rural Industrial (“RI”) and Rural Commercial (“RC”) “remain rural” by “allow[ing] fewer uses and smaller industrial structures * * *.” *Central Oregon LandWatch v. Deschutes County*, 75 Or LUBA 253, 257, *aff’d*, 298 Or App 375, 449 P3d 534 (2019). LCDC acknowledged those 2002 ordinances as compliant with every statewide planning goal, including Goal 14.

In 2018, the County amended the DCCP (Ordinance 2018-008) to allow the RI designation and zoning to be applied to land outside of existing exception areas. On appeal, the Land Use Board of Appeals (“LUBA”) upheld that 2018 ordinance, finding – in part – that the appellant’s argument that the County’s RI zone regulations violated Goal 14 by allowing urban uses on rural lands was an impermissible collateral attack on acknowledged land use regulations. *Id.* at 260-61. LCDC acknowledged that 2018 ordinance as compliant with every statewide planning goal, including Goal 14.

II. ADDITIONAL FINDINGS AND CONCLUSIONS OF LAW:

The Board of County Commissioners approves the requested plan designations and zone change applications and provides the following supplemental findings and conclusions of law, organized in the same manner as the “Board Deliberation Matrix” presented by County staff during the September 28, 2022 deliberations.

A. Goal 14 and the Shaffer Factors; Board Deliberation Matrix Issues 1 and 2.

Opponents Central Oregon LandWatch (“COLW”) and 1000 Friends of Oregon (“1000 Friends”) argued that the subject applications could not be approved without an exception to Goal 14. The Hearings Officer disagreed, concluding that the applications complied with Goal 14 without an exception. The Board agrees with the Hearings Officer, and adopts the Hearings Officer’s findings on this issue as our own. The Board further adopts the following supplemental findings to clarify two persistent issues that arose in these proceedings.

The RI Zone Does Not Allow Urban Uses On Rural Lands

First, this Board already conclusively determined in the findings supporting the adoption of Ordinance No 2021-002 that the County’s RI zone does not allow urban uses on rural land. That determination was predicated on six findings which were first recommended by the Hearings Officer and then adopted by this Board as part of the aforementioned ordinance. Although remanded to allow the Board to adopt additional findings on a separate (albeit related) matter discussed below, the six aforementioned findings demonstrating that the RI

zone does not allow urban uses on rural land were reviewed by both LUBA and the Court of Appeals. *Central Oregon LandWatch v. Deschutes County*, __Or LUBA__ (LUBA No 2021-028) (“Aceti”), *aff’d*, 315 Or App 673, 501 P3d 1121 (2021). For its part, LUBA summarized and described those six findings by noting that “the county determined that even the most intensive industrial use that could be approved on the subject property under the RI regulations and use limitation would not constitute an urban use.” *Id.* (slip op at *11). The Hearings Officer in this matter again repeated those six findings, concluding that they were “not constrained to the facts and circumstances at issue in the *Aceti* application” meaning that those “findings apply universally to any application submitted relying on the County’s DCC and DCCP RI provisions.” See Hearing Officer Decision, pg 42. For ease of reference, those six findings are repeated herein:

"First, LUBA has rejected the argument that DCC 18.100.010 allows urban uses as constituting an impermissible collateral attack on an acknowledged land use regulation. [Central Oregon LandWatch v. Deschutes County, 79 Or LUBA 253, aff'd, 298 Or App 37s,449 P3d 534 (2019)].

"Second, DCC Chapter 18.100 implements DCCP Policies 3.4.9 and 3.4.23, which together direct land use regulations for the Rural Commercial and Rural Industrial zones to 'allow uses less intense than those allowed in unincorporated communities as defined by Oregon Administrative Rule 660-022 or its successor,' to 'assure that urban uses are not permitted on rural industrial lands.' The BOCC adopted this finding in support of Ordinance 2018-126, which was appealed and sustained by LUBA and the Court of Appeals.

"Third, as the BOCC found in adopting Ordinance 2018-126, which was appealed and sustained by LUBA and the Court of Appeals, the application of DCC Title 18 to any development proposed on Rural Commercial or Rural Industrial designated land will ensure that the development approved is consistent with the requirements set forth in DCCP Policies 3.4.12 and 3.4.27 do not adversely affect surrounding area agricultural or forest land, or the development policies limiting building size (DCCP Policies 3.4.14 and 3.4.28), sewers (DCCP Policies 3.4.18 and 3.4.31) and water (DCCP Policies 3.4.19 and 3.4.32) intended to limit the scope and intensity of development on rural land.

"Fourth, DCCP Policy 3.4.28 includes a direction that, for lands designated and zoned RI, new industrial uses shall be limited to a maximum floor area of 7,500 square feet per use within a building, except for the primary processing of raw materials produced in rural area, for which there is no floor area per use limitation.

"Fifth, DCCP Policy 3.4.31 includes a direction that, for lands designated and zoned RI, residential and industrial uses shall be served by DEQ approved on-site sewage disposal systems.

"Sixth, DCCP Policy 3.4.32 includes a direction that, for lands designated and zoned RI, residential and industrial uses shall be served by on-site wells or public water systems."

Neither COLW nor 1000 Friends provided argument in these proceedings that directly responded to the six aforementioned findings or otherwise presented any argument that gives this Board pause when it comes to re-adopting those same findings. Accordingly, this Board follows suit with the Hearings Officer and again adopts the six aforementioned findings as our own, conclusively demonstrating that the RI zone does not allow urban uses on rural lands.

In the interest of consistency, we also take note that this Board reached a similar conclusion when considering the aforementioned *Aceti* application on remand. Those findings, adopted as Exhibit F to Ordinance No 2022-010 state the following:

" * * the Board of County Commissioners now expressly finds that the policies and provisions of the DCCP and DCC are independently sufficient to both demonstrate that post-acknowledgment plan amendments that apply the Rural Industrial (RI) plan designation and zoning to rural land are consistent with Goal 14 and that uses and development permitted pursuant to those acknowledged provisions constitute rural uses, do not constitute urban uses, and maintain the land as rural land. Given that finding, any further analysis under *Shaffer* is redundant and precautionary only."*

Pursuant to ORS 40.090(7), the Board takes judicial notice of Ordinance No 2022-010, and incorporates by reference herein the findings adopted as Exhibit F in that matter.

The *Shaffer* Factors Are Inapplicable

Second, the Board finds that the "*Shaffer* factors" are not relevant to these proceedings. See *Shaffer v. Jackson County*, 17 Or LUBA 922 (1989). LUBA explained the "*Shaffer* factors" as follows: "whether a residential, commercial, industrial or other type of use is 'urban' or 'rural' requires a case by case determination, based on relevant factors identified in various opinions by [[LUBA]] and the courts" *Aceti* (slip op at *14) (quoting *Shaffer*, 17 Or LUBA at 946). Notably, COLW and 1000 Friends disagreed in these proceedings on the necessity of utilizing the *Shaffer* factors to determine if Goal 14 was implicated. Specifically, COLW's April 26, 2022 submittal argued that the County was required to use the *Shaffer* factors to determine that "all of the allowed uses in the County's RI zone are rural." But 1000 Friends' April 26, 2022 submittal argued that the "*Shaffer* factors are not appropriate * * * because the eventual use of the property is uncertain, making it impossible to determine whether the *Shaffer* factors are satisfied."¹

¹ On the narrow issue of the *Shaffer* factors' applicability, the Hearings Officer generally agreed with 1000 Friends argument. See Hearings Officer Recommendation, pg 39.

Both COLW and 1000 Friends’ arguments in these proceedings neglect LUBA’s recent *Aceti* decision. Responding to 1000 Friends’ view of the *Shaffer* factors, LUBA held that “[w]hile it may be more difficult for [the *Aceti* applicant] to demonstrate that all of the uses that RI zoning authorized on the subject property are not urban uses, petitioner * * * cited no authority that require[d] [the *Aceti* applicant] to propose specific industrial uses before the county can determine whether the plan designation or zone change would violate Goal 14.” *Aceti* (slip op at *12). Responding to COLW’s view of the *Shaffer* factors, LUBA held that the *Aceti* applicant did not need to analyze all of the RI uses because “the county determined that even the most intensive industrial use that could be approved on [that] subject property under the RI regulations and use limitation would not constitute an urban use.” *Id.* (slip op at *11).

As understood by this Board, LUBA’s two aforementioned holdings suggest that the *Shaffer* factors were not necessarily dispositive in the recent *Aceti* matter. Further bolstering that point of view is LUBA repeatedly describing in the *Aceti* matter that applying the *Shaffer* factors was a “belt-and-suspenders approach in response to petitioner’s Goal 14 challenge.” *Id.* (slip op at *13). LUBA remanded the *Aceti* matter back to the County to allow this Board to further bolster that *Shaffer* analysis.

Consistent with Board findings in the *Aceti* remand decision (i.e. Ordinance No 2022-010 discussed above), this Board finds that Applicant herein was not required to apply the *Shaffer* factors in this case or otherwise conduct a *Shaffer* analysis because the County already conclusively determined in past proceedings that the RI zone does not allow urban uses on rural land. This Board further finds that any argument that suggests that RI zone does allow urban uses on rural lands is inconsistent with Board findings supporting the remanded Ordinance No 2021-002 (original *Aceti* decision), the recent Ordinance No 2022-010 (remanded *Aceti* decision), and the findings herein, and is also an inappropriate collateral attack on the acknowledged 2002 and 2018 amendments originally implementing the RI zone. Last, this Board finds that the analysis of the *Shaffer* factors in the *Aceti* remand proceedings, and any findings issued in Ordinance No 2022-010 regarding *Shaffer*, were in direct response to the facts and circumstances at issue in that matter and were thereby not intended to set precedent for future applications of the RI zone.

B. Goal 5 Compliance; Board Deliberation Matrix Issue 3

COLW initially argued in its May 31, 2022 submittal that the subject application violates Goal 5 because the map amendment / zone change will introduce new “conflicting uses” – i.e. those uses allowed in the RI zone – on properties governed by the County’s Landscape Management Combining Zone. The Landscape Management Combining Zone was adopted as part of the County’s Goal 5 program to protect scenic resources in Deschutes County. COLW’s May 31 submittal included as an attachment a copy of Ordinance No 92-05 initially codifying the County’s Landscape Management Combining Zone as part of DCC Chapter

18.84. COLW renewed its Goal 5 argument in a September 7, 2022 letter provided to this Board (cited herein as "COLW Sep 7 Letter").

Applicant responded to COLW's argument with a record submittal dated June 7, 2022, and in its final legal argument before the Hearings Officer, dated June 14, 2022. Therein, Applicant argued that the uses allowed by the RI zone are not new "conflicting uses" because the County's original "economic, social, environmental, and energy" ("ESEE") analysis adopted as part of Ordinance No 92-05 specifically considered all "Development within the one-quarter mile overlay zone which would excessively interfere with the scenic or natural appearance of the landscape as seen from the road or alteration of the existing landscape by removal of vegetative cover." Stated simply, Applicant argued that uses allowed by the RI zone were not new conflicting uses because they were implicitly already considered by Ordinance No 92-05 as uses that could "excessively interfere with the scenic or natural appearance of the landscape as seen from the road."

The Hearings Officer agreed with Applicant's argument and added findings noting that "the proposed plan amendment and zone change does not remove the subject property from the [Landscape Management Combining Zone] and thus does not change or diminish the protection afforded to Goal 5 resources on the property, specifically the [Landscape Management] designations of lands within ¼ mile from the centerline of Highway 97."² The Landscape Management Combining Zone will still overlay portions of the subject properties despite changes to the applicable base zoning. Accordingly, the RI base zone would not alter the requirement pursuant to DCC 18.84.050(A) that "any new structure or substantial exterior alteration of a structure requiring a building permit or an agricultural structure within [the Landscape Management Combining Zone] shall obtain site plan approval in accordance with DCC 18.84 prior to construction."

The Board agrees with the arguments and analysis set forth by both Applicant and the Hearings Officer, and thereby adopts and incorporates those arguments as our findings.

C. Transportation Impacts; Board Deliberation Matrix Issue 4.

COLW objects that a "trip cap," first proposed by Applicant and then imposed by the Hearings Officer, will not adequately limit the traffic entering and exiting the subject property. See COLW Sep 7 Letter, pg 10. Citing both Goal 12 (as implemented by OAR 660-012-0060) and DCC 18.136.020(C) (requiring the map amendment / zone change to be in the "public interest"), the main thrust of this traffic argument stems from COLW's assertion that "[t]he record shows that a 'trip cap' will be inadequate to prevent significant effects to an existing transportation facility." See COLW Sep 7 Letter, pg 10. The Board agrees with

² 247-21-000881-PA, 882-ZC Hearings Officer Recommendation pg. 83

COLW that this issue requires an evaluation of the substantial evidence in the record. But the Board disagrees that the record in this case supports COLW's conclusion.

The record shows that three separate traffic experts were all involved with the formulation of the trip cap and ultimately concurred with its utilization in this case. As noted by the Hearings Officer, those experts included the applicant's own traffic engineer, Ferguson & Associates, the County's own Senior Transportation Planner, and traffic engineers with the Oregon Department of Transportation. See Hearings Officer Decision, pgs 74-77. The Hearings Officer further explained that COLW's argument suggesting that neither County staff nor ODOT supported the trip cap, or that the trip cap will be "unenforceable," were predicated on earlier comments in the record and failed to account for updated comments from the aforementioned experts. *Id.* at 77. Last, the Hearings Officer summarized COLW's traffic arguments, concluding that "[n]ot only did COLW misread comments provided by ODOT and County staff, it presented no evidence or expert testimony to contradict the evidence included in the record by the Applicant regarding the [Transportation Planning Rule.]" *Id.* at 78.

Following the Hearings Officer proceedings, COLW renewed its traffic arguments relating to Goal 12 and DCC 18.136.020(C) but failed to provide any evidence or expert testimony to support its assertions, instead relying entirely on statements submitted by its "Staff Attorney and Rural Lands Program Manager." Following suit with the Hearings Officer, the Board accordingly defers to the expert testimony provided by Applicant's engineer, County staff, and ODOT and finds that the substantial evidence in the record clearly supports that imposing a trip cap will address any lingering concerns stemming from Goal 12, OAR 660-012-0060 implementing Goal 12, and/or DCC 18.136.020(C).

D. Goal 3 Compliance and Order 1 Soil Survey Validity; Board Deliberation Matrix Issue 5.

COLW raised numerous arguments directly or indirectly invoking Goal 3, each of which are addressed below.

Legal Challenge:

COLW's Goal 3 legal challenge can be easily dismissed. This Board has repeatedly found that an applicant can rely on a site-specific soil survey when applying for a map amendment / zone change. That practice is supported by state statutes (See, e.g. ORS 215.211 (1) and (5)), state rules (See OAR 660-033-0030(5) and 660-033-0045), and case law (See, e.g., *Central Oregon LandWatch v. Deschutes County*, 74 Or LUBA 156 (2016)). COLW's September 7 letter conceded that the aforementioned *Central Oregon LandWatch v. Deschutes County* decision stands in direct opposition to its legal position asserted before this Board, arguing that the aforementioned case "was incorrectly decided and should be

overturned.” See COLW Sep 7 Letter, pg 3. The County is not in a position to “overturn” LUBA. The Board’s findings and conclusions herein follow applicable law.

Substantial Evidence Challenge:

COLW’s substantial evidence argument with regard to Goal 3 raised in its September 7 letter is an entirely new argument not addressed by the Hearings Officer and thereby requiring more substantive findings from this Board. However, COLW’s new Goal 3 argument is similar to its Goal 12 argument discussed above in that COLW failed to provide any expert testimony to support either argument. Enabling “a county to make a better determination of whether land qualifies as agricultural land,” ORS 215.211(1) specifically allowed evidence to be provided into the record for these proceedings consisting of “more detailed soils information than that contained in the Web Soil Survey operated by the United States Natural Resources Conservation Service.” However, ORS 215.211(1)(a) further provides that such evidence must be prepared by a “professional soil classifier” “certified by and in good standing with the Soil Science Society of America.” See, also OAR 660-033-0045(1) and (2). The record demonstrates that Applicant’s soil expert, Gary A. Kitzrow, possess the qualifications required by ORS 215.211 and OAR 660-033-0045(1) and (2). The record does not include similar evidence demonstrating that COLW’s staff member who provided contrary soil testimony before this Board likewise possesses the requisite qualifications as required by ORS 215.211(1)(a) and OAR 660-033-0045(1) and (2).

As COLW’s staff member was not qualified to provide such testimony, the Board can likely entirely disregard COLW’s September 7 letter attempting to discredit Applicant’s Order 1 Soil Surveys. The Board nevertheless still examined that testimony and finds it unpersuasive. Applicant’s expert’s Order 1 Soil Studies show that 53.1% of the 15.06 acre Taxlot 301, 87.7% of the 3.00 acre Taxlot 305, and 87.7% of the 1.06 acre Taxlot 500 consist of generally unsuitable soils. COLW challenges the methodology utilized to calculate those percentages, arguing that the acreage under a canal crossing two of the three subject properties should be excluded because including the canal acreage “artificially increased the denominator in [the Order 1 Soils studies’] calculation of Class I-VI soils.” See COLW Sep 7 Letter, pg 3. Similarly, COLW further argues that Applicant’s “hired soil scientist also improperly exclude[d] land underneath certain developed portions of the subject property.” *Id.* page 4. Last, COLW argues that the entirety of the acreage under the canal and some of the developed acreage should instead be counted as “agricultural land” because those uses fall within the “farm uses” definition pursuant to ORS 215.203(2)(b)(F).

The Board finds COLW’s arguments unpersuasive for two primary reasons. First, COLW’s arguments are internally inconsistent. If understanding the “denominator” to represent the total acreage of a property and the numerator to represent the acreage of generally unsuitable soil on that property, then deducting the acreage under the canal and the developed portions of the properties from the “denominator” as initially asserted by COLW suggests that said acreage should be ignored in its entirety and not play any role in determining the percentage of generally unsuitable soil on each property. For the

calculation to align with COLW's argument, the canal and developed acreage would need to be deducted from both the denominator and the numerator because deducting said acreage from only the denominator actually increases the resulting percentage of "generally unsuitable soil."

Second, the Board presumes that perhaps COLW intended to advocate that the canal and developed acreage should be deducted instead from the "numerator" if calculating the percent of generally unsuitable soil. That suggestion would be consistent with the rest of COLW's September 7 testimony wherein COLW argued that both the canal and developed acreage should be treated as "agricultural land" based on their current usage of that acreage. The Board finds that COLW's argument is not supported by state rules requiring Applicant's Order 1 Soil Surveys to analyze the "land," not the current uses of the subject properties. OAR 660-033-0030(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.")

Stated simply, COLW's argument that the canal and developed acreage should be ignored in its entirety and deducted from the "denominator" violates OAR 660-033-0030(2) because said acreage is clearly still "land within the lot or parcel being inventoried." Similarly, COLW's argument that the canal and developed acreage should be considered "agricultural land" focuses on the current usage of that acreage rather than the "land" itself, again violating OAR 660-033-0030(2). The current usage of the canal and developed acreage are certainly relevant to the broader determination if the subject properties are "suitable for farm use." On that point, the Board specifically agrees with and incorporates by reference the Hearings Officer's analysis of those "factors beyond the mere identification of scientific soil classifications" referenced by OAR 660-033-0030(2). See Hearings Officer Decision, pgs 26-38. Returning to the actual "scientific soil classification," COLW's reliance on those other factors to try and undermine Applicant's Order 1 Soils Surveys is not persuasive to the Board.

As the only party to offer testimony from a qualified expert, the substantial evidence in the record favors the Applicant. But the Board is nevertheless further persuaded by the fact that the Department of Land Conservation and Development ("DLCD") performed a "completeness check" on all three Order 1 Soil Surveys in this case pursuant to OAR 660-033-0045(6)(a). Each Order 1 Soil Survey contains the same DLCD certification confirming that the "soils assessment is complete and consistent with reporting requirements for agricultural soils capability." OAR 660-033-0045(4)(b) further requires "[a] soils assessment that is soundly and scientifically based and that meets reporting requirements as established by [DLCD]." If the Order 1 Soil Surveys in this case were not "soundly and scientifically based" - which is the main thrust of COLW's arguments - the Board trusts that DLCD's certification process would have called that issue to our attention. DLCD did not do

so, and it is reasonable to rely upon Applicant’s Order 1 Soil Survey and DLCDC’s acceptance of that survey.

Finally, the Board is persuaded by testimony offered by Kitzrow, Applicant’s expert, during the September 7, 2022 public hearing. Responding directly to COLW’s September 7 written and oral testimony, Kitzrow explained why the acreage labelled as “impact areas” or “infrastructure” in his Order 1 Surveys were so labelled. Specifically, Kitzrow testified that he classified that acreage as something other than Class I-VI soils because the rehabilitation of those previously developed (or still developed) areas was not practical or economical. For example, the Order 1 Soils Surveys for Taxlot 305 more fully explains that past development of the subject property in essence destroyed the minimal amounts of original, native soil. When it comes to the canal acreage on two of the three subject properties, the development of the canal decades ago impacted any potential Class I-VI soils within that acreage in the same manner. The Board notes that pursuant to the “Agricultural Land” definition in OAR 660-033-0020(1)(a)(A), Kitzrow’s charge was specifically to identify if the properties contained “predominantly Class I-VI soils.” Rather than fixating on the obviously impacted areas, Kitzrow’s focus was accordingly on determining the maximum extent of the Class I-VI soils remaining on the properties. That is precisely what Kitzrow did as evidenced by that fact that the majority of the 22 test pits spread across the 19.12 total acres were in areas of the properties that Kitzrow’s initial assessment suggested the desired soils would be contained. The Board finds Mr. Kitzrow is a competent expert and has no reason to doubt the conclusions contained in each of the Order 1 Soils Surveys.

Consistent with those Order 1 Soil Surveys, the Board finds that only 46.9% of Taxlot 301, 18.7% of Taxlot 305, and 12.3% of Taxlot 500 are comprised of Class I-VI soils. The Board further finds that the soil on these three properties are uniquely poor such that even with supplemental irrigation water, the soils on all three properties are predominantly Class VII and VIII.

Miscellaneous Arguments:

In addition to its Goal 3 legal challenge and substantial evidence argument, COLW raised several other arguments, each of which were not persuasive and thereby can be addressed summarily.

The Hearing Officer Decision, (pg 38), set forth detailed findings rejecting COLW’s argument that the County’s definition of “agricultural use” in DCC 18.04.030 is intended to be more stringent than case law and the state’s definition of agricultural land in OAR 660-033-0020(1)(a) because the County’s “agricultural use” definition includes the term “whether for profit or not.” COLW renewed this argument in its September 7 letter. The Board rejects this argument for the same reasons as set forth in the Hearings Officer Decision and notes that DCC 18.04.030 includes a definition of “agricultural land” which is entirely consistent with the state definition of the same term. The Board further notes that the term “agricultural use” is purposely and specifically used throughout the DCC, for example (but

not limited to) DCC 18.16.050(G)(1)(a)(4) with regard to buffering non-farm dwellings, DCC 18.32.020 establishing uses permitted outright in the multiple use agricultural zone, and DCC 18.52.110(J)(2) imposing limitations on drilling and blasting for surface mining activity. The Board concurs with the Hearings Officer's interpretations and findings on this issue, and specifically adopts those interpretations and findings as our own.

COLW also argues that the subject properties are currently in farm use because the canal on two of the three properties is a "water impoundment." See COLW Sep 7 Letter, pgs 8-9. COLW's water impoundment argument was presented for the first time to the Board. However, COLW's new water impoundment theory does not change the Hearings Officer's findings regarding OAR 660-033-0020(1)(a) (See Hearings Officer Decision, pgs 26-38), because Central Oregon Irrigation District's Pilot Butte Canal running through Applicant's properties is not an agricultural activity with the primary purpose of obtaining a profit in money for Applicant. As previously noted, the Board agrees with and adopts the Hearings Officer's findings regarding OAR 660-033-0020(1)(a) as the Board's own findings, except to the extent inconsistency with the findings set forth herein.

Although only indirectly related to Goal 3, the Board notes COLW's new argument in its September 7 letter regarding DCCP Policy 2.5.24 and water use on the subject properties. The Board agrees with and incorporates the Hearing Officer's findings on that issue (See Hearings Officer Decision, pgs 58-59), noting that the proposed map amendment / zone change application does not yet propose a specific development at this time and that this policy will be reviewed under any necessary land use process for the site (e.g. conditional use permit, tentative plat).

Also only indirectly related to Goal 3, the Board notes that COLW renewed in its September 7 letter a persistent argument suggesting that Order 1 Soil Surveys do not constitute a "change in circumstances" as required for a map amendment / zone change application pursuant to DCC 18.136.020(D). The Board again agrees with the Hearings Officer's findings and interpretation on this issue, which specifically note that the Order 1 Soil Surveys were just one of several enumerated "changes in circumstances." See Hearings Officer Decisions, pgs 50-54. The Board includes this supplemental finding to address COLW's assertion that only "changes" to properties subject to a map amendment / zone change application qualify for consideration under DCC 18.136.020(D). COLW noted that such changes that would qualify include, for example, "soil and agricultural suitability of the subject property." COLW Sep 7 Letter, pg 12. The Board first notes that the record does support that the soil and agricultural suitability of Applicant's properties have likely changed, as discussed by the Order 1 Soil Surveys. More importantly, the Board disagrees with COLW's narrow interpretation. Rather than just a change to the subject property, DCC 18.136.020(D) more broadly allows a "change in circumstances." Interpreting that provision, the Board finds that one such relevant "circumstances" is the accuracy of information available to the County, a property owner, and the public with regard to quality of a property's soils. Accordingly, the Board finds that the availability of more accurate

Order 1 Soils Surveys constitutes a “change in circumstances” pursuant to DCC 18.136.020(D).

E. DCC 22.20.015 Code Enforcement and Land Use; Board Deliberation Matrix Issue 6.

Although not raised by COLW’s September 7 letter submitted to this Board, County staff asked during the Board’s September 28, 2022 deliberations that the Board address COLW’s previous argument regarding DCC 22.20.015. The Board affirms that the Hearings Officer’s findings on this issue (See Hearing Officer Decision, pg 43) are consistent with the Board’s past interpretations of DCC 22.20.015.

IV. DECISION:

Based upon the foregoing Findings of Fact and Conclusions of Law, the Board of County Commissioners hereby **APPROVES** Applicant’s applications for a DCCP amendment to re-designate the subject properties from Agriculture (AG) to Rural Industrial Area (RI) and a corresponding zone map amendment to change the zoning of the properties from Exclusive Farm Use – Tumalo/Redmond/Bend Subzone (EFU-TRB) to Rural Industrial (RI) subject to the following conditions of approval:

- 1. The maximum development on the three subject parcels shall be limited to produce no more than 32 trips in the PM peak hour and/or 279 daily trips as determined by the Institute of Engineers Trip Generation Manual, 11th Edition. The County may allow development intensity beyond these maximum number of vehicle trips only if the applicant submits to the County a traffic impact analysis that demonstrates that the proposed intensification of use would be consistent with the Transportation Planning Rule and the Deschutes County Code.

Dated this ___ day of ____, 2022

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

FILE NUMBERS: 247-21-000881-PA, 882-ZC (247-23-000398-A)

**APPLICANT/
OWNER:** LBNW LLC
65315 Hwy 97
Bend, OR 97701

**APPLICANT'S
ATTORNEY:** D. Adam Smith
J. Kenneth Katzaroff
Schwabe, Williamson & Wyatt, P.C.
360 SW Bond St, Suite #500
Bend, OR 97702

STAFF PLANNER: Tarik Rawlings, Senior Transportation Planner
Anthony Raguine, Principal Planner

REQUEST: The Applicant requests proceedings on remand from *Central Oregon Landwatch v. Deschutes County*, __ Or LUBA __ (LUBA No 2023-008, April 24, 2023) following the Board of County Commissioner’s approval of original application file numbers 247-21-0000881-PA/882-ZC, and original Ordinance No 2022-011.

PROPOSAL: Comprehensive Plan Amendment to change the designation of the properties from Agriculture (AG) to Rural Industrial (RI) and a corresponding zoning map amendment to change the zoning from Exclusive Farm Use – Tumalo/Redmond/Bend Subzone (EFU-TRB) to Rural Industrial Zone (RI).

LOCATION: Taxlot 305 (3.00 acres) – 65301 Hwy 97, Bend, OR 97701
Taxlot 301 (15.06 acres) – 65305 Hwy 97, Bend, OR 97701
Taxlot 500 (1.06 acres) – 65315 Hwy 97, Bend, OR 97701

I. FINDINGS OF FACT:

A. Procedural History: The Deschutes County Board of County Commissioners (“Board”) adopted Ordinance No 2022-011, approving the requested Comprehensive Plan Amendment and Zone Change of Taxlots 305, 301, and 500 (the “Properties”) to Rural Industrial, with the second and final ordinance reading occurring on December 14, 2022. Central Oregon Landwatch (“COLW”) appealed Ordinance No 2022-011 to the Land Use Board of Appeals (“LUBA”). LUBA remanded the decision on April 24,

2023, denying all of COLW's arguments except for one. *See Central Oregon Landwatch v. Deschutes County*, __ Or LUBA __ (LUBA No 2023-008, April 24, 2023) (the "LUBA Decision"). The Applicant (LBNW LLC) requested in writing on May 17, 2023, that the Board proceed with remand proceedings pursuant to Oregon Revised Statutes ("ORS") 215.435 and Deschutes County Code ("DCC") Chapter 22.34.

The Board limited the remand proceedings to the issue remanded by LUBA and permitted new evidence and testimony to address only the remanded issue. Following public notice, the Board conducted a remand public hearing on June 28, 2023. Prior to the hearing, the Applicant submitted written argument and evidence, including an initial draft economic, social, environmental, and energy analysis ("Initial ESEE Analysis") as required by the LUBA Decision. During the hearing, both the Applicant and COLW provided oral testimony. At the conclusion of all oral testimony on June 28, 2023, the Board closed the hearing but left the record open until July 5, 2023, for additional written evidence, a rebuttal period ending July 19, 2023, and Applicant's final argument required to be submitted prior to July 26, 2023.

Both parties submitted materials for the July 5, 2023, written evidence period. Among other arguments, COLW's July 5 submittal criticized that the Initial ESEE Analysis did not comply with applicable state rules. Although disagreeing with the necessity of revising the Initial ESEE Analysis, the Applicant nevertheless requested a one-week extension to facilitate the preparation of an updated analysis (the "Updated ESEE Analysis"). The Board granted the Applicant's request for more time and issued an order (Order No. 2023-031) extending the rebuttal period until July 19, 2023, and correspondingly extending Applicant's final argument deadline to July 26, 2023. COLW did not submit rebuttal testimony and instead elected to end its participation in these proceedings following the July 5 open record deadline. The Applicant, however, submitted additional argument and evidence in addition to the Updated ESEE Analysis at the conclusion of the rebuttal period. The Applicant then submitted its final legal argument on July 26, 2023.

The Board deliberated on August 16, 2023, and voted 2-1 to again approve the Applicant's land use application. Consistent with the Board's August 16th motion, County staff prepared the required Ordinance packet, which was approved by the Board with first reading occurring on August 30, 2023, and second reading occurring on September 13, 2023.

B. LUBA Decision and Guidance: The LUBA Decision provides the basis for the remand. The relevant passage from that decision appears on pages 36-37, reproduced in part as follows:

"We agree with [COLW] that the [Board] misconstrued the applicable law. * *
* The questions presented here are whether the new RI zoning allows uses on

the subject propert[ies] that were not allowed under the previous EFU zoning and whether those uses could conflict with protected Goal 5 resources. That the county may have conducted an ESEE analysis in 1992 for other RI-zoned properties in other locations, even nearby locations, and concluded that the [Landscape Management Combining Zone] provided the impacted scenic resources sufficient protection does not change the requirements to apply Goal 5 to the PAPA for the subject property. * * *

“* * * the challenged decision allows new uses that could conflict with inventoried Goal 5 resources, and, for that reason, the county is required to comply with OAR 660-023-0250(3).”

As understood by this Board, the purpose of LUBA’s remand was to provide this Board the opportunity – as required by applicable state rules - to consider both the consequences, if any, stemming from the subject land use application as it relates to the Goal 5 protected scenic views and perform an ESEE analysis to weigh those consequences before again deciding to approve or deny that application.

C. Incorporated findings. To the extent not in conflict with these findings or the LUBA Decision, the Board again adopts and incorporates herein the original findings supporting the County’s previous Ordinance 2022-011. Those incorporated findings specifically include the Board’s original findings, “Exhibit ‘F’ - Ordinance 2022-011,” included herein as Exhibit “F,” and the Hearings Officer’s original decision and recommendation, “Exhibit ‘G’ to Ord. 2022-011,” included herein as Exhibit “H.”

II. CONCLUSIONS OF LAW:

OAR 660-023-0250, Applicability

(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;

FINDING: The Board notes that the initial issue in almost every remand proceeding is the scope of the remand. This case is no different, requiring the Board to first resolve several different arguments debated by the parties relating to the scope of the remand.

The Board begins its analysis by acknowledging that the LUBA Decision specifically cited Oregon Administrative Rule (“OAR”) 660-023-0250(3) and further determined that the at-issue post-acknowledgment plan amendment (“PAPA”) application will allow new uses which could conflict with Deschutes County’s Goal 5 scenic view resources. The LUBA Decision therefore requires the Board to “apply Goal 5,” meaning that the Board must follow the *Procedures and Requirements for Complying with Goal 5* as set forth in OAR Chapter 660, Division 23, as part of again deciding to approve or deny the subject PAPA (“the Application”).

COLW’s July 5 record submittal argued that both County staff and the Applicant “inaccurately described LUBA’s remand order as ‘narrow.’” COLW further asserted “OAR 660-023-0250(3) requires a broad inquiry into the impacts on inventoried Goal 5 resources of a decision to allow, limit, or prohibit various conflicting uses.” To the extent COLW’s “broad inquiry” argument was meant to suggest that the County needs to do something beyond an ESEE Analysis or that the ESEE Analysis should consider issues beyond the enumerated economic, social, environmental, and energy consequences, the Board disagrees. Rather than an ill-defined “broad inquiry,” the Board unanimously finds that applicable rules specifically set forth in OAR Chapter 660, Division 23, shall guide these remand proceedings.

Next, the Board must resolve a related debate between the parties concerning which provisions within OAR Chapter 660, Division 23, are applicable to these remand proceedings. The Applicant’s initial June 23 record submittal proposed findings responding only to OAR 660-023-0040 governing the *ESEE Decision Process*. In response, COLW’s July 5 record submittal cited OAR 660-023-0230(2) and argued that “[f]or scenic view resources, the requirements of OAR 660- 023-0030 through 660-023-0050 shall apply.” COLW further asserted that “LUBA’s remand order requires the County to apply all three of these administrative rules to the subject PAPA.”

The Board notes that COLW quoted only a portion of OAR 660-023-0230(2), which appears in full as follows (emphasis added):

“Local governments are not required to amend acknowledged comprehensive plans in order to identify scenic views and sites. If local governments decide to amend acknowledged plans in order to provide or amend inventories of scenic resources, the requirements of OAR 660-023-0030 through 660-023-0050 shall apply.”

Given the underlined qualifier in the above-quoted rule, the Board questions COLW’s insistence that any PAPA involving a local government’s scenic view resources must address all three cited provisions: OAR 660-023-0030, OAR 660-023-0040, and OAR 660-023-0050. Instead, the Board suggests that complying with all three aforementioned rules is required only when a PAPA specifically seeks to “amend

inventories of scenic resources.” When it comes to OAR 660-023-0030 governing the Goal 5 *Inventory Process*, for example, the rule clearly does not apply in those circumstances when a local government does not undertake updating or otherwise redoing a previously completed Goal 5 inventory.

Despite disagreeing with COLW’s argument, the Applicant’s July 26 final legal argument nevertheless addressed COLW’s concern and recommended that the Board adopt findings responding to all three state rule provisions. If nothing else, the Applicant’s suggested findings respond to all three provisions to further explain how and why those provisions (or subparts therein) do not apply to the Board’s decision on remand. The Board agrees with the Applicant’s recommendation, and includes findings below addressing OAR 660-023-0030, OAR 660-023-0040, and OAR 660-023-0050.

OAR 660-023-0030, Inventory Process

(1) Inventories provide the information necessary to locate and evaluate resources and develop programs to protect such resources. The purpose of the inventory process is to compile or update a list of significant Goal 5 resources in a jurisdiction. This rule divides the inventory process into four steps. However, all four steps are not necessarily applicable, depending on the type of Goal 5 resource and the scope of a particular PAPA or periodic review work task. For example, when proceeding under a quasi-judicial PAPA for a particular site, the initial inventory step in section (2) of this rule is not applicable in that a local government may rely on information submitted by applicants and other participants in the local process. The inventory process may be followed for a single site, for sites in a particular geographical area, or for the entire jurisdiction or urban growth boundary (UGB), and a single inventory process may be followed for multiple resource categories that are being considered simultaneously. The standard Goal 5 inventory process consists of the following steps, which are set out in detail in sections (2) through (5) of this rule and further explained in sections (6) and (7) of this rule:

- (a) Collect information about Goal 5 resource sites;**
- (b) Determine the adequacy of the information;**
- (c) Determine the significance of resource sites; and**
- (d) Adopt a list of significant resource sites.**

FINDING: 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.

As shown on Exhibit B attached to the Applicant’s Initial ESEE Analysis, the entirety of Tax Lots 1612230000500 and 1612230000305 fall within that ¼ mile corridor and thereby are currently subject to the County’s Landscape Management Combining Zone (“LM Zone”). The majority of Tax Lot 161223000301 also falls within that ¼ mile corridor and thereby is currently also subject to the County’s LM Zone. Notably, the Applicant does not seek to remove the subject Properties from the County’s LM Zone, nor does the Applicant seek to otherwise amend or modify DCCP Section 5.5 or the LM Zone’s governing provisions contained in DCC Chapter 18.84. The subject PAPA only seeks to change the base zone from EFU to RI on the Properties. In such a case, the Board finds that OAR 660-023-0030 specifically provides as follows: “when proceeding under a quasi-judicial PAPA for a particular site, the initial inventory step in section (2) of this rule is not applicable in that a local government may rely on information submitted by applicants and other participants in the local process.”

The Board further finds that nothing in the LUBA Decision suggests or requires the County to amend or modify its long-standing Goal 5 scenic view inventories during these remand proceedings. The Board reiterates the Applicant’s comments in its July 26, 2023, record submittal explaining that the LUBA Decision “relied on the County’s existing Goal 5 program to conclude that uses allowed under the RI Zone could be conflicting uses.” If LUBA’s remand were to be interpreted as an invitation to the County to re-do its scenic view inventory, then the County could conceivably conclude that there are no longer any scenic view resources on the subject Properties that warrant protection under Goal 5. And, if there are no such scenic view resources, then clearly the new uses that would be allowed under the County’s RI zone would never “conflict with inventoried Goal 5 resources” because there would be no such identified Goal 5 resources in the first place. Accordingly, the Board’s only option if electing to update its scenic view inventory for the subject Properties would be to again conclude that there are significant resources deserving Goal 5 protection as any other decision would be in direct conflict with the LUBA Decision. The Board does not believe that LUBA intended the County to waste resources going through such a perfunctory inventory process.

Rather than inviting the County to begin anew by conducting an inventory pursuant to OAR 660-023-0050, the Board finds that the LUBA Decision relies on the County’s existing Goal 5 scenic view inventory codified in the DCCP, thereby directing the County to do the same in these remand proceedings. Specifically, the LUBA Decision states that the subject PAPA “allows new uses that could conflict with inventoried Goal 5 resources” (emphasis added). The LUBA Decision does not direct the County to conduct a new inventory of Goal 5 scenic view resources and then decide if the uses allowed under the RI zone could conflict with those newly identified resources. Stated

simply, the Board understands the LUBA Decision as requiring the County to complete the ESEE Decision Process set forth in OAR 660-023-0040 (and then potentially address OAR 660-023-0050) while relying on the County's existing Goal 5 scenic view inventory.¹

Accordingly, the majority of the Board finds that the inventory process required by OAR 660-023-0030 has already been completed; the results of which are set forth in DCCP Section 5.5. That inventory includes the entirety of two of the subject Properties and the majority of the third. The Board's subsequent findings issued in this decision rely on that existing inventory such that OAR 660-023-0030(2) specifically is not applicable.

(2) Collect information about Goal 5 resource sites: The inventory process begins with the collection of existing and available information, including inventories, surveys, and other applicable data about potential Goal 5 resource sites. If a PAPA or periodic review work task pertains to certain specified sites, the local government is not required to collect information regarding other resource sites in the jurisdiction. When collecting information about potential Goal 5 sites, local governments shall, at a minimum:

- (a) Notify state and federal resource management agencies and request current resource information; and**
- (b) Consider other information submitted in the local process.**

FINDING: As discussed in the preceding finding, the Board finds that OAR 660-023-0030(2) does not apply.

(3) Determine the adequacy of the information: In order to conduct the Goal 5 process, information about each potential site must be adequate. A local government may determine that the information about a site is inadequate to complete the Goal 5 process based on the criteria in this section. This determination shall be clearly indicated in the record of proceedings. The issue of adequacy may be raised by the department or objectors, but final determination is made by the commission or the Land Use Board of Appeals, as provided by law. When local governments determine that information about a site is inadequate, they shall not proceed with the Goal 5 process for such sites unless adequate information is obtained, and they shall not regulate land uses in order to protect such sites. The information about a particular Goal 5 resource

¹ The Board notes that the County's program to achieve the Goal related to its Goal 5 scenic view inventory is the adopted LM Zone.

site shall be deemed adequate if it provides the location, quality and quantity of the resource, as follows:

- (a) Information about location shall include a description or map of the resource area for each site. The information must be sufficient to determine whether a resource exists on a particular site. However, a precise location of the resource for a particular site, such as would be required for building permits, is not necessary at this stage in the process.
- (b) Information on quality shall indicate a resource site's value relative to other known examples of the same resource. While a regional comparison is recommended, a comparison with resource sites within the jurisdiction itself is sufficient unless there are no other local examples of the resource. Local governments shall consider any determinations about resource quality provided in available state or federal inventories.
- (c) Information on quantity shall include an estimate of the relative abundance or scarcity of the resource.

FINDING: As discussed above, the Board relies on the existing inventory of Goal 5 scenic view resources contained in DCCP Section 5.5. The previous Boards of County Commissioners that initially adopted the County's Goal 5 program and then subsequently re-adopted that same program several times throughout the past decades (most recently as part of the County's current 2030 DCCP update), deemed the information for the inventoried properties adequate. As the current Board is not seeking to amend that inventory, the Board does not question those previous determinations and thereby finds that information about the Goal 5 scenic view resources contained in the DCCP and elsewhere in the record for these proceedings is adequate.

(4) Determine the significance of resource sites: For sites where information is adequate, local governments shall determine whether the site is significant. This determination shall be adequate if based on the criteria in subsections (a) through (c) of this section, unless challenged by the department, objectors, or the commission based upon contradictory information. The determination of significance shall be based on:

- (a) The quality, quantity, and location information;
- (b) Supplemental or superseding significance criteria set out in OAR 660-023- 0090 through 660-023-0230; and
- (c) Any additional criteria adopted by the local government, provided these criteria do not conflict with the requirements of OAR 660-023-0090 through 660-023-0230.

FINDING: The Board relies on the existing inventory of Goal 5 scenic view resources contained in DCCP Section 5.5. Accordingly, the Board does not seek to amend or alter previous County Commissioners' determinations that the Goal 5 scenic view resources on the subject Properties are significant.

As discussed above, if the County were to interpret the LUBA Decision as an invitation to redo the inventory process as part of these proceedings, the resulting decision under this subpart conceivably could be that there are no longer any significant Goal 5 scenic view resources on the subject Properties. The Board does discuss in later findings responding to OAR 660-023-0040 that that Goal 5 scenic view resources on the subject Properties are diminished when compared to other similarly situated properties within the LM Zone. However, the Board's finding recognizing those diminished scenic view resources in the vicinity of the subject Properties should not be interpreted to mean that the Board finds that there are no longer any Goal 5 scenic view resources, nor does it mean that the Board is challenging the veracity of the County's past Goal 5 scenic view decisions.

(5) Adopt a list of significant resource sites: When a local government determines that a particular resource site is significant, the local government shall include the site on a list of significant Goal 5 resources adopted as a part of the comprehensive plan or as a land use regulation. Local governments shall complete the Goal 5 process for all sites included on the resource list except as provided in OAR 660-023-0200(2)(c) for historic resources, and OAR 660-023-0220(3) for open space acquisition areas.

FINDING: The Board relies on the existing inventory of Goal 5 scenic view resources contained in DCCP Section 5.5, which specifically contains the list of significant resource sites.

(6) Local governments may determine that a particular resource site is not significant, provided they maintain a record of that determination. Local governments shall not proceed with the Goal 5 process for such sites and shall not regulate land uses in order to protect such sites under Goal 5.

FINDING: The Board relies on the existing inventory of Goal 5 scenic view resources contained in DCCP Section 5.5. Accordingly, this decision does not determine that any particular resource site is not significant. As discussed in response to OAR 660-023-0030(4) above, the Board specifically disavows any suggestion that the findings below discussing the diminished quality of the Goal 5 scenic view resources on the subject Properties suggest that there are no significant Goal 5 scenic view resources on the subject Properties.

(7) Local governments may adopt limited interim protection measures for those sites that are determined to be significant, provided:

(a) The measures are determined to be necessary because existing development regulations are inadequate to prevent irrevocable harm to the resources on the site during the time necessary to complete the ESEE process and adopt a permanent program to achieve Goal 5; and

(b) The measures shall remain effective only for 120 days from the date they are adopted, or until adoption of a program to achieve Goal 5, whichever occurs first.

FINDING: The Board relies on the existing inventory of Goal 5 scenic view resources contained in DCCP Section 5.5. Accordingly, the Board does not seek to adopt interim protection measures. This subsection (7) is inapplicable.

OAR 660-023-0040, ESEE Decision Process

(1) Local governments shall develop a program to achieve Goal 5 for all significant resource sites based on an analysis of the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use. This rule describes four steps to be followed in conducting an ESEE analysis, as set out in detail in sections (2) through (5) of this rule. Local governments are not required to follow these steps sequentially, and some steps anticipate a return to a previous step. However, findings shall demonstrate that requirements under each of the steps have been met, regardless of the sequence followed by the local government. The ESEE analysis need not be lengthy or complex, but should enable reviewers to gain a clear understanding of the conflicts and the consequences to be expected. The steps in the standard ESEE process are as follows:

- (a) Identify conflicting uses;**
- (b) Determine the impact area;**
- (c) Analyze the ESEE consequences; and**
- (d) Develop a program to achieve Goal 5.**

FINDING: Consistent with the above findings, the 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 Decision Process as further detailed by OAR 660-023-0040(3) through (5).

(2) Identify conflicting uses. Local governments shall identify conflicting uses that exist, or could occur, with regard to significant Goal 5 resource sites. * * *

FINDING: As noted above, the LUBA Decision already identified the conflicting uses in this case. 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.

(3) Determine the impact area. Local governments shall determine an impact area for each significant resource site. The impact area shall be drawn to include only the area in which allowed uses could adversely affect the identified resource. The impact area defines the geographic limits within which to conduct an ESEE analysis for the identified significant resource site.

FINDING: As noted above, the subject PAPA concerns three Properties identified as Tax Lots 1612230000301, 1612230000305, and 1612230000500. The entirety of Tax Lots 1612230000500 and 1612230000305 fall within the existing LM Zone (i.e., the ¼-mile corridor extending from the centerline of Highway 97), and the majority of Tax Lot 161223000301 also falls within the LM Zone.

Initially, the Applicant argued that the impact area in this case should be constrained to the three subject Properties. 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.” This case concerns only the new uses allowed on the three subject Properties under the RI zone, thereby suggesting that the impact area is only those three subject Properties.

COLW’s July 5 record submittal argued that the Applicant’s identified impact area was too small of a geographical area, with COLW further noting that that the Applicant’s proposed ESEE analysis described “uses outside of this [identified] impact area.” More specifically, COLW argued that the Applicant’s ESEE Analysis repeatedly discussed “development further on the hillside west of the subject Properties [which] already significantly diminishes the scenic resources viewed from Highway 97 adjacent to the subject properties.” Last, COLW argued that “minimizing the impacts of the conflicting uses on the subject property’s Goal 5 scenic view resources based on conditions outside of the identified impact area is also contrary to OAR 660-023-0040(3), which requires that ‘[t]he impact area defines the geographic limits within which to conduct an ESEE analysis for the identified significant resource site.’”

As understood by the Board, this “impact area” disagreement between the Applicant and COLW 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. First, the expanded impact area corresponds directly to evidence in the record submitted in support of the Expanded ESEE Analysis. For example, the Applicant’s Exhibits 3 and 4 are a video and pictures documenting the scenic views looking west from an automobile traveling both north and south on Highway 97 between the 61st Street intersection and the Tumalo Road off ramp.

Second, the expanded impact area is supported by case law, specifically *LandWatch Lane County v. Lane County*, __Or LUBA__ (LUBA No 2019-048, August 9, 2019). *LandWatch Lane County* similarly considered a quasi-judicial PAPA for a single property, and LUBA therein suggested that the impact area should include at least adjacent land with the same or similar Goal 5 protections.

Third, the expanded impact area addresses COLW’s critique that the Initial ESEE Analysis documents impacts caused by “development further on the hillside west of the subject Properties * * *.” Examining Applicant’s Exhibits 2, 3, 4, and 5, it is clear that most of those developments built on the hillside and in plain view of Highway 97 are within the expanded impacted area – i.e., within the LM Zone west of Highway 97 between the 61st Street intersection and Tumalo Road.

Last, the Applicant’s July 26 final legal argument raises two final issues related to the impact area that deserve further comment from this Board. First, the Applicant argued that the ESEE process is intended to be iterative, and it was thereby appropriate to expand the impact area mid-way through the remand proceedings. To support that argument, the Applicant quoted language in OAR 660-023-004(1) suggesting that “[l]ocal governments are not required to follow [the ESEE Decision Process] steps sequentially, and some steps anticipate a return to a previous step.” The majority of the Board agrees with the Applicant’s argument and finds that it was appropriate for the Applicant to “return to the previous [impact area] step” after submitting the Initial ESEE Analysis because the Applicant was responding to COLW’s comments concerning that Initial ESEE Analysis. The Board further notes that the expanded impact area was submitted concurrently with the Updated ESEE Analysis.

More directly related to COLW's criticisms of the Initial ESEE Analysis, the Applicant also acknowledged in its July 26 final legal argument that the Updated ESEE Analysis includes "ESEE consequences to properties outside of the formal impact area." The Applicant argued that including ESEE consequences outside of the impact area was appropriate because of the differing definitions of the terms "ESEE Consequence" and "Impact Area" contained in OAR 660-023-0010(2) and (3), respectively. As understood by the Board, the Applicant distinguished the two aforementioned terms specifically because the ESEE Consequence definition does not reference the Impact Area definition, nor does the ESEE Consequence definition include any language suggesting a geographical limit.

The Board agrees with the Applicant's argument, and unanimously finds that it is appropriate for the Updated ESEE Analysis to document ESEE Consequences that extend beyond the impact area to the extent necessary to "enable reviewers to gain a clear understanding of the conflicts and the consequences to be expected." See OAR 660-023-0040(1). To the extent the Board's understanding of OAR 660-023-0010(2) and (3) is incorrect, the Board further finds that those ESEE Consequences described in the Updated ESEE Analysis extending beyond the impact area were not dispositive to the Board's subsequent OAR 660-023-0040(4) and (5) findings. Accordingly, the Board notes that it would have reached similar conclusions and issued similar findings responding to OAR 660-023-0040(4) and (5) even if all ESEE Consequences addressing properties outside of the impact area were struck from the Update ESEE Analysis.

(4) Analyze the ESEE consequences. Local governments shall analyze the ESEE consequences that could result from decisions to allow, limit, or prohibit a conflicting use. The analysis may address each of the identified conflicting uses, or it may address a group of similar conflicting uses. A local government may conduct a single analysis for two or more resource sites that are within the same area or that are similarly situated and subject to the same zoning. The local government may establish a matrix of commonly occurring conflicting uses and apply the matrix to particular resource sites in order to facilitate the analysis. A local government may conduct a single analysis for a site containing more than one significant Goal 5 resource. The ESEE analysis must consider any applicable statewide goal or acknowledged plan requirements, including the requirements of Goal 5. The analyses of the ESEE consequences shall be adopted either as part of the plan or as a land use regulation.

FINDING: The Applicant's Initial ESEE Analysis for the Board's consideration was prepared by Skidmore Consulting, LLC: Land Use Planning & Development Services. (See Applicant Exhibit 1). COLW's July 5 record submittal criticized that the Initial ESEE Analysis went too far in grouping "similar conflicting uses," thereby violating OAR 660-023-0040(4). In response, the Applicant submitted the Updated ESEE Analysis, again prepared by Skidmore Consulting,

LLC: Land Use Planning & Development Services. That Updated ESEE Analysis analyzes all of the different uses allowed by the RI Zone in a more comprehensive manner. (See Applicant's Exhibit 6). Accordingly, the Board need not address COLW's arguments regarding the Initial ESEE Analysis. Instead, the majority of the Board finds that the Updated ESEE Analysis does not inappropriately group "similar conflicting uses" contrary to OAR 660-023-0040(4) because the numerous conflicting uses are all analyzed in the Updated ESEE Analysis.

The Board further notes that although separately analyzed in the Updated ESEE Analysis, many of the described consequences for each of the conflicting uses are still similar. But those similarly described consequences do not suggest that the Updated ESEE Analysis is incorrect or otherwise faulty. Instead, those similarly described consequences reflect the specific Goal 5 resource at issue. On that point, the Board notes that the County's original ESEE analysis contained in Ordinance 92-052 summarily described the Goal 5 resource at issue as the "scenic or natural appearance of the landscape as seen from the road or alteration of existing landscape by removal of vegetative cover." Viewed through that lens, the similarly described consequences are understandable for even differing conflicting uses because many of those differing uses allowed under the RI zone may require, for example, the removal of the same vegetative cover or otherwise will similarly detract from the natural appearance of the landscape as seen from an automobile traveling on Highway 97.

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.

The majority of the Board further finds that the Updated ESEE Analysis is supported by substantial evidence in the record, as it was prepared by a land use consultant with specific expertise and knowledge of Central Oregon. (See Attachment D to the Applicant's Exhibit 1.) Additionally, both the Applicant and the Applicant's consultant added select evidence to the record further confirming that consultant's expert opinions and observations. (See Attachment A to the Applicant's Exhibit 1, Attachment B to the Applicant's Exhibit 1, Exhibits 3, 4, and 5.) In fact, the Board notes that the record contains absolutely no evidence that contradicts those opinions and observations contained in the Updated ESEE Analysis. The only evidence in the record not submitted by County staff or the Applicant is COLW's singular July 5 record submittal which asserts only legal challenges and includes as attachments only Ordinance 92-052 and select portions of Ordinance PL-20.

Accordingly, the majority of the Board specifically adopts and incorporates as its own the Updated ESEE Analysis. That updated ESEE Analysis is further included as part of these findings, attached as Exhibit I. Last, the Board notes that these findings, including the Updated ESEE Analysis, will be included by reference in DCC Chapter 23.01 and Section 5.12 of the DCCP.

(5) Develop a program to achieve Goal 5. Local governments shall determine whether to allow, limit, or prohibit identified conflicting uses for significant resource sites. This decision shall be based upon and supported by the ESEE analysis. A decision to prohibit or limit conflicting uses protects a resource site. A decision to allow some or all conflicting uses for a particular site may also be consistent with Goal 5, provided it is supported by the ESEE analysis. One of the following determinations shall be reached with regard to conflicting uses for a significant resource site:

(a) A local government may decide that a significant resource site is of such importance compared to the conflicting uses, and the ESEE consequences of allowing the conflicting uses are so detrimental to the resource, that the conflicting uses should be prohibited.

(b) A local government may decide that both the resource site and the conflicting uses are important compared to each other, and, based on the ESEE analysis, the conflicting uses should be allowed in a limited way that protects the resource site to a desired extent.

(c) A local government may decide that the conflicting use should be allowed fully, notwithstanding the possible impacts on the resource site. The ESEE analysis must demonstrate that the conflicting use is of sufficient importance relative to the resource site, and must indicate why measures to protect the resource to some extent should not be provided, as per subsection (b) of this section.

FINDING: In addition to being “afforded fairly broad discretion” in conducting the ESEE Analysis pursuant to OAR 660-023-0040(4), state law further provides the Board the same “broad discretion” when it comes to determining “whether, how, and to what extent a Goal 5 resource will be protected” pursuant to OAR 660-023-0040(5). *See Central Oregon LandWatch v. Deschutes County, _Or LUBA _ (LUBA No 202-019, March 22, 2021) (internal citations omitted).*

The Board notes that the Applicant’s recommendation pursuant to OAR 660-023-0040(5) to allow, limit, or prohibit the conflicting uses has evolved throughout the course of these proceedings. Initially, the Applicant’s June 23 record submittal advocated for what was described as the “middle ground” option pursuant to OAR 660-023-0040(5)(b) whereby the

conflicting uses would be allowed in a “limited way,” with those limitations being imposed by the County’s existing LM Zone. The Applicant further noted that it never sought as part of these proceedings to remove the subject Properties from the LM Zone and the Applicant did not otherwise propose amending DCC Chapter 18.84 implementing that LM Zone.

COLW’s July 5 record submittal alternatively asserted that the Board should prohibit the conflicting use entirely pursuant to OAR 660-023-0040(5)(a). COLW further argued that “bootstrapping the existing LM Zone as a program to achieve Goal 5 to protect scenic view resources from the conflicting uses of the [RI] zone is not sufficient to comply with LUBA’s remand order, because the LM [Z]one was not designed with those industrial conflicting uses in mind.”

The Applicant responded to COLW’s July 5 argument in two ways. First, the Applicant’s July 19 rebuttal submittal included numerous documents (Exhibits 8 through 14) challenging COLW’s foundational assumption that the LM Zone was not designed to mitigate RI uses. The Applicant’s aforementioned exhibits demonstrate that from the LM Zone’s initial creation in the early 1990s, it has always overlaid other RI zoned properties adjacent to Highway 97. Second, and more importantly, the Applicant’s July 26 final legal argument pivoted away from recommending that the conflicting uses be allowed in a limited way pursuant to OAR 660-023-0040(5)(b). In response to COLW’s arguments regarding the LM Zone, the Applicant instead recommended that the Board allow the conflicting uses fully pursuant to OAR 660-023-0040(5)(c).

As explained further below, the majority of the Board agrees with the Applicant and finds that the conflicting uses in this case should be allowed fully pursuant to OAR 660-023-0040(5)(c). During deliberations, Commissioner Chang explained that he preferred the “middle ground” option allowing the conflicting use in a limited way pursuant to OAR 660-023-0040(5)(b). Accordingly, no commissioner agreed with COLW’s argument to prohibit the conflicting uses entirely pursuant to OAR 660-023-0040(5)(a).

The Board finds that the Updated ESEE Analysis (included as Exhibit I herein) comprehensively documents numerous positive consequences of allowing uses allowed under the RI zone on the subject Properties. Those positive consequences include, for example, economic opportunities for the subject Properties’ owners, employment opportunities for future employees, and additional services for rural landowners between the cities of Bend and Redmond. Although the provision governing the RI zone (i.e., DCC Chapter 18.100) limited the size, scope, and intensity of any industrial use that could be permitted on the subject Properties, the Updated ESEE Analysis further documents that all industrial developments are in short supply in Deschutes County. The Board specifically notes that both industrial developments in the Cities of Bend and Redmond currently have a 0.80% and 2.45% vacancy rate, respectively. Industrial land as a whole in Deschutes County

is limited.² The Updated ESEE Analysis further documents positive environmental consequences stemming from reduced travel distances lowering carbon emissions for the numerous rural property owners and existing businesses already located along the Highway 97 corridor between the Cities of Bend and Redmond.

The Board also finds that the Updated ESEE Analysis appropriately documents negative consequences that will stem from allowing RI uses on the subject Properties. The County's Goal 5 scenic view program primarily benefits what are best described as "social" and "environmental" values, and the Updated ESEE Analysis thereby primarily documents negative consequences under those categories.

However, the Board finds that the Updated ESEE Analysis demonstrates that the negative social and environmental consequences of allowing RI uses on the subject Properties are minimized by the numerous existing developments on surrounding properties. Many of those existing developments are in direct view of Highway 97, thereby diminishing the existing scenic view resources. These numerous existing developments, the majority of which are on properties that are also within the LM Zone, are documented further by the Applicant's Exhibits 2, 3, 4, and 5 submitted in conjunction with the Updated ESEE Analysis. Those exhibits demonstrate that a hill rises directly to the west of the subject Properties blocking the more expansive views enjoyed by other properties also adjacent to Highway 97. And, numerous structures were permitted to be developed on that hillside, even further diminishing the scenic view resources near the three subject Properties. Rather than new RI development in an otherwise unobstructed view shed, the Updated ESEE Analysis appropriately documents the minimal negative consequences of allowing RI development on the Properties already surrounded by existing and visible development. To be clear, the Board does not mean to suggest that the scenic view resources in the vicinity of the subject Properties are now entirely absent. Instead, the majority of the Board finds that these existing developments in plain view of Highway 97 already diminished the scenic view resources near the subject Properties such that the positive consequences of allowing RI uses outweigh the minimal negative consequences.

Consistent with the aforementioned analysis and as specifically required by OAR 660-023-0040(5)(c), the Board makes two additional findings. The majority of the Board finds that the Updated ESEE Analysis demonstrates that allowing RI uses on the subject Properties is "of sufficient importance" because the Goal 5 scenic view resources are already diminished in the vicinity of the subject Properties. Stated simply, the majority of the Board finds that the negative social and environmental consequences caused by visible development in the view shed has already occurred such that the positive social and environmental consequences of now allowing RI uses clearly outweigh any increased negatives.

² The RI Zone only permits rural industrial development and not urban development.

OAR 660-023-0050, Programs to Achieve Goal 5

(1) For each resource site, local governments shall adopt comprehensive plan provisions and land use regulations to implement the decisions made pursuant to OAR 660-023-0040(5). The plan shall describe the degree of protection intended for each significant resource site. The plan and implementing ordinances shall clearly identify those conflicting uses that are allowed and the specific standards or limitations that apply to the allowed uses. A program to achieve Goal 5 may include zoning measures that partially or fully allow conflicting uses (see OAR 660-023-0040(5)(b) and (c)).

FINDING: As previously stated, the Board notes that these findings, including the Updated ESEE Analysis, will be included by reference in DCC Chapter 23.01 and Section 5.12 of the DCCP. The majority of the Board finds that no other amendments to the DCC or DCCP are required to implement the Board’s decision pursuant to OAR 660-023-0040(5).

An argument could be made that following the Board’s decision to allow the conflicting use fully, the County may now proceed with removing the subject Properties from the LM Zone. However, the application before us does not propose to rezone the Properties to remove the LM zoning designation. The Applicant explained that its initial land use application did not seek the removal of the subject Properties from the LM Zone, and the County’s public notices and notices to DLCD, for example, did not contemplate such an amendment. The Board finds that the subject Properties remain in the LM Zone, and that any subsequent development on the subject Properties must comply with DCC Chapter 18.84.

(2) When a local government has decided to protect a resource site under OAR 660-023-0040(5)(b) * * * >

FINDING: The Board elected to allow the conflicting use fully pursuant to OAR 660-023-0040(5)(c). This provision is therefore inapplicable.

(3) In addition to the clear and objective regulations required by section (2) of this rule, except for aggregate resources, local governments may adopt an alternative approval process * * * .

FINDING: The Board elected to allow the conflicting use fully pursuant to OAR 660-023-0040(5)(c). This provision is therefore inapplicable.

IV. DECISION:

Based upon the foregoing Findings of Fact and Conclusions of Law, the Board of County Commissioners hereby **APPROVES** on remand the Applicant’s applications for a Comprehensive Plan Map amendment to re-designate the subject Properties from

Agriculture (AG) to Rural Industrial (RI) and a corresponding zoning map amendment to change the zoning from Exclusive Farm Use – Tumalo/Redmond/Bend Subzone (EFU-TRB) to Rural Industrial Zone (RI) subject to the following conditions of approval:

1. The maximum development on the Properties shall be limited to produce no more than 32 trips in the PM peak hour and/or 279 daily trips as determined by the Institute of Engineers Trip Generation Manual, 11th Edition. The County may allow development intensity beyond these maximum number of vehicle trips only if the Applicant submits to the County a traffic impact analysis that demonstrates that the proposed intensification of use would be consistent with the Transportation Planning Rule and the Deschutes County Code.

Dated this 30th day of August 2023

Exhibit "G" to Ord. 2022-011

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

FILE NUMBERS: 247-21-0000881-PA/882-ZC

OWNER: Mailing Name: LBNW LLC
Map and Taxlot: 1612230000305
Account: 164853
Situs Address: 65301 N HWY 97, BEND,
OR 97701

Mailing Name: LBNW LLC
Map and Taxlot: 1612230000500
Account: 132821
Situs Address: 65315 HWY 97, BEND, OR 97701

Mailing Name: JOHNSON, DWIGHT E
& MARILEE R
Map and Taxlot: 1612230000301
Account: 132822
Situs Address: 65305 HWY 97, BEND,
OR 97701

APPLICANT: LBNW, LLC
c/o Jake Hermeling
65315 Hwy 97
Bend, OR 97701

**APPLICANT'S
ATTORNEY:** Ken Kataroff
Schwabe, Williamson & Wyatt P.C.
360 SW Bond Street, Suite 500
Bend, OR 97702

REQUEST: The applicant requests approval of a Comprehensive Plan Amendment to change the designation of the property from Agricultural (AG) to Rural Residential Exception Area (RREA). The applicant also requests approval of a corresponding Zone Change to rezone the property from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA-10). The applicant requests approval of the applications without the necessity for a Statewide Planning Goal 3 and/or a Goal 14 Exception, but includes an application for a Goal 14 Exception in the alternative, if determined to be necessary for approval of the requested PAPA and Zone Change

STAFF CONTACT: Tarik Rawlings, Associate Planner
Phone: 541-317-3148
Email: Tarik.Rawlings@deschutes.org

PUBLIC HEARING DATE: April 26, 2022
RECORD CLOSED: June 14, 2022
HEARINGS BODY: Stephanie Marshall, Deschutes County Hearings Officer
DECISION DATE: July 12, 2022

I. APPLICABLE CRITERIA

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

- Chapter 18.04, Title, Purpose, and Definitions
- Chapter 18.16, Exclusive Farm Use Zones (EFU)
- Chapter 18.80, Airport Safety Combining Zone (AS)
- Chapter 18.100, Rural Industrial Zone (RI)
- Chapter 18.120, Exceptions
- Chapter 18.136, Amendments

Title 22, Deschutes County Development Procedures Ordinance

Deschutes County Comprehensive Plan

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

Oregon Administrative Rules (OAR), Chapter 660

- Division 4, Interpretation of Goal 2 Exception
- Process Division 6, Forest Lands
- Division 12, Transportation Planning
- Division 14, Application of the Statewide Planning Goals to Newly Incorporated Cities, Annexation, and Urban Development on Rural Lands
- Division 15, Statewide Planning Goals and Guidelines
- Division 33, Agricultural Land

Oregon Revised Statutes (ORS)

- Chapter 197.732, Goal Exceptions
- Chapter 197.734, Exceptions to Certain Statewide Planning Goal Criteria
- Chapter 215.010, Definitions
- Chapter 215.211, Agricultural Land, Detailed Soils Assessment

II. BASIC FINDINGS

LOT OF RECORD: Tax Lot 500 is 1.06 acres in size, Tax Lot 305 is 3.00 acres in size, and Tax Lot 301 is 15.06 acres in size. These three lots have not previously been verified as legal lots of record. Per DCC 22.04.040 Verifying Lots of Record, lot of record verification is required for certain permits:

B. *Permits requiring verification*

1. *Unless an exception applies pursuant to subsection (B)(2) below, verifying a lot parcel pursuant to subsection (C) shall be required to the issuance of the following permits:*

- a. ***Any land use permit for a unit of land in the Exclusive Farm Use Zones (DCC Chapter 18.16), Forest Use Zone – F1 (DCC Chapter 18.36), or Forest Use Zone – F2 (DCC Chapter 18.40);***
- b. ***Any permit for a lot or parcel that includes wetlands as show on the Statewide Wetlands Inventory;***
- c. ***Any permit for a lot or parcel subject to wildlife habitat special assessment;***
- d. ***In all zones, a land use permit relocating property lines that reduces in size a lot or parcel'***
- e. ***In all zones, a land use, structural, or non-emergency on-site sewage disposal system permit if the lot or parcel is smaller than the minimum area required in the applicable zone;***

In the Powell/Ramsey (PA-14-2, ZC-14-2) decision, the Hearings Officer held to a prior Zone Change Decision (Belveron ZC-08-04) that a property’s lot of record status was not required to be verified as part of a plan amendment and zone change application. Rather, the Applicant would be required to receive lot of record verification prior to any development on the subject property. The Hearings Officer adheres to these prior decisions and finds this criterion does not apply.

SITE DESCRIPTION: The subject properties are located approximately 4.8 miles south of the City of Redmond and approximately 4.25 miles north of the City of Bend. The three subject Tax Lots (301, 305, and 500) constitute a total of approximately 19.12 contiguous acres and are located on the west side of Highway 97, immediately adjacent to the highway.

Tax Lot 301 (15.06 acres) is landlocked between Tax Lots 305 (3.00 acres) and 500 (1.06 acres) to the south. Highway 97 corridor, a Central Oregon Irrigation District (COID) canal, and two (2) Exclusive Farm Use (EFU) properties currently receiving farm tax deferral are located to the east. A rural residential subdivision is located to the west.

Tax Lots 305 and 500 are developed with structures associated with a historic “diesel implement and repair shop” use on those properties, which has taken place for the majority of the last 40 years. Tax Lot 301 is developed with a residential manufactured dwelling that is currently unoccupied; this Tax Lot is not currently in use. The properties are relatively level with mild undulating topography and a slight upward slope along the western boundary adjoining the residential subdivision to the west. Vegetation consists of juniper, sage brush, and grasses. The subject properties are not currently receiving farm tax deferral nor are they currently engaged in farm use.

Access to the site is provided from Highway 97, which connects to a private driveway that traverses the COID irrigation canal that runs through the properties.

Tax Lots 305 and 301 contain 0.20 acres and 2.70 acres of water rights, respectively. The Natural Resources Conservation Service (NRCS) map shown on the County’s GIS

mapping program identifies three soil complex units on the property: 31A, Deschutes sandy loam, 0 to 3 percent slopes; 38B, Deskamp-Gosney complex, 0 to 8 percent slopes; and 58C, Gosney-Rock outcrop-Deskamp complex, 0 to 15 percent slopes.

As discussed in detail below in the Soils section, an Agricultural Soils Capability Assessment (Order 1 soil survey) was conducted on each of the three properties and determined that the subject properties do not constitute agricultural land as defined in Statewide Planning Goal 3 and are generally comprised of unsuited Class 7 and 8 soils as detailed in Deschutes County Code (DCC) and DLCD definitions.

PROPOSAL: The Applicant requests approval of a Comprehensive Plan Map Amendment to change the designation of the subject property from Agricultural (AG) designation to a Rural Industrial (RI) designation. The Applicant also requests approval of a corresponding Zoning Map Amendment to change the zoning of the subject property from Exclusive Farm Use (EFU) to Rural Industrial (RI). The Applicant asks that Deschutes County change the zoning and the plan designation because the RI zoning district is the more appropriate zone for the subject property as the subject property is not agriculturally viable and is better suited for uses consistent with the RI Zone and historical uses utilized on the subject properties may be allowed under the RI Zone. The Applicant’s submitted burden of proof states that the Applicant intends to utilize the subject properties to develop a mini-storage facility on Tax Lot 301 (a conditional use within the RI Zone) and maintain the existing equipment repair/storage/rental facilities located on Tax Lots 305 and 500 (an outright use within the RI Zone).

The Applicant requests approval of the applications without the necessity for a Statewide Planning Goal 3 and/or a Goal 14 Exception, but includes an application for a Goal 14 Exception in the alternative, if determined to be necessary for approval of the requested PAPA.

Submitted with the application are three (3) Order 1 Soil Surveys for each of the three (3) subject properties, titled “Johnson – Order 1 Soil Survey Report” (Tax Lot 301), “LBNW LLC – Order 1 Soil Survey Report” (Tax Lot 305), and “LBNW LLC – Order 1 Soil Survey Report” (Tax Lot 500) (hereafter referred to collectively as the “soil study”) prepared by soil scientist Gary Kitzrow, CPSC/CPSS #1741 of Growing Soils Environmental Associates. The Applicant also submitted a traffic analysis prepared by Scott Ferguson of Ferguson & Associate, Inc titled “Site Traffic Report and TPR Assessment for Proposed Zone Change-Deschutes County, OR” hereby referred to as “traffic study.” Additionally, the Applicant submitted an application form, a burden of proof statement, and other supplemental materials, all of which are included in the record for the subject applications.

SOILS: Tax Lots 305 and 301 contain 0.20 acres and 2.70 acres of water rights, respectively. The Natural Resources Conservation Service (NRCS) map shown on the County’s GIS mapping program identifies three soil complex units on the property: 31A, Deschutes sandy loam, 0 to 3 percent slopes; 38B, Deskamp-Gosney complex, 0 to 8 percent slopes; and 58C, Gosney-Rock outcrop/Deskamp complex, 0 to 15 percent slopes.

The Order 1 soil study was prepared by a certified soils scientist and soil classifier that determined the subject property is predominantly comprised of soils that do not qualify as File Nos. 247-21-000881-PA, 882-ZC

Agricultural Land.¹ The purpose of this soil study was to inventory and assess the soils on the subject property and to provide more detailed data on soil classifications and ratings than is contained in the NRCS soils maps. The NRCS soil map units identified on the property are described below.

31A, Deschutes Sandy Loam, 0 to 3 percent slopes: This soil is composed of 85% Deschutes soil and similar inclusions and 15% contrasting inclusions. The Deschutes soil is well drained with a moderately rapid permeability and an available water capacity of about four (4) inches. The major use of this soil is irrigated cropland and livestock grazing. The soil capability rating for the Deschutes sandy loam soil is 6S when not irrigated and 3S when irrigated. This soil is considered a high value soil when irrigated. Approximately 16.5 percent (Tax Lot 301), 22 percent (Tax Lot 305), and 97.2 percent (Tax Lot 500) of the subject properties are composed of 31A soil, respectively.

38B, Deskamp-Gosney complex, 0 to 8 percent slopes: This soil is composed of 50 percent Deskamp soil and similar inclusions, 35 percent Gosney soil and similar inclusions, and 15 percent contrasting inclusions. The Deskamp soils are somewhat excessively drained with rapid permeability, and an available water capacity of about 3 inches. The Gosney soils are somewhat excessively drained with rapid permeability, and an available water capacity of about 1 inch. The contrasting inclusions contain Clovkamp soils in swales, soils that are very shallow to bedrock, and are on ridges with occasional rock outcrops. The major use of this soil is for livestock grazing. The Deskamp soils have ratings of 6e when unirrigated, and 3e when irrigated. The Gosney soils have ratings of 7e when unirrigated, and 7e when irrigated. This soil type is not considered high-value soil. Approximately 61.4 percent (Tax Lot 301), 47.7 percent (Tax Lot 305), and 2.8 percent (Tax Lot 500) of the subject properties are made up of this soil type, respectively.

58C, Gosney-Rock Outcrop-Deskamp complex, 0 to 15 percent slopes: This soil type is comprised of 50 percent Gosney soil and similar inclusions, 25 percent rock outcrop, 20 percent Deskamp soil and similar inclusions, and 5 percent contrasting inclusions. Gosney soils are somewhat excessively drained with rapid permeability. The available water capacity is about 1 inch. Deskamp soils are somewhat excessively drained with rapid permeability. Available water capacity is about 3 inches. The major use for this soil type is livestock grazing. The Gosney soils have ratings of 7e when unirrigated, and 7e when irrigated. The rock outcrop has a rating of 8, with or without irrigation. The Deskamp soils have ratings of 6e when unirrigated, and 4e when irrigated. Approximately 22.1 percent (Tax Lot 301), and 30.3 percent (Tax Lot 305) of two (2) of the subject properties are made up of this soil type.

The Order 1 soil study includes findings for each of the three tax lots of which the subject property is comprised, set forth below:

- **Tax Lot 301:** A large (preponderance) of this lot is made up of along infrastructure/Impact Areas along with the shallow, generally unsuited Class 7, Gosney (irrigated and nonirrigated). Conversely, Deschutes soils are somewhat deeper, have defined topsoils and a little less sand than the competing Gosney

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

soil units and less rock. This study area and legal lot of record is comprised of 8.00 acres or 53.1% of generally unsuited soils Capability Class 7 and 8 by Deschutes County and DLCDC definitions.

- **Tax Lot 305:** A large (preponderance) of this lot is made up of along infrastructure/Impact Areas along with the shallow, generally unsuited Class 7, Gosney (irrigated and nonirrigated). These lithic, entic Gosney soil mapping units are shallow, have extremely restrictive rooting capabilities and low water holding capacities. Conversely, Deskamp and Deschutes soils are somewhat deeper, have defined topsoils and a little less sand than the competing Gosney soil units and less rock. Noteworthy is the fact that along the western boundary and southern boundary of this lot are large inclusions of rubble and rock outcrops. This is found regardless of the associated three soils delineated in this analysis. This study area and legal lot of record is comprised of 2.45 acres or 81.7% of the landbase as generally unsuited soils Capability Class 7 and 8 by Deschutes County and DLCDC definitions.
- **Tax Lot 500:** A large (preponderance) of this lot is made up of along infrastructure/Impact Areas along with the shallow, generally unsuited Class 7, Gosney (irrigated and nonirrigated). Conversely, Deschutes soils are somewhat deeper, have defined topsoils and a little less sand than the competing Gosney soil units and less rock. This study area and legal lot of record is comprised of 0.93 Acres or 87.7% of generally unsuited soils Capability Class 7 and 8 by Deschutes County and DLCDC definitions.

The Hearings Officer notes that, although the Order 1 soil study refers to “legal lot of record,” Lot of Record determination for the subject properties has not been made, nor is such a determination relevant to the subject applications, as discussed above. This Decision and Recommendation shall not constitute verification of or findings on a Lot of Record determination for the subject properties. Further discussion regarding soils is set forth in Section III below.

SURROUNDING LAND USES: The subject properties are surrounded by residential subdivisions to the west, open space state park property to the south, the Highway 97 corridor and two (2) EFU-zoned properties currently receiving farm tax deferral and containing irrigation rights to the east, and one EFU-Zoned property not receiving farm tax deferral or containing irrigation rights to the north. The adjacent properties are outlined below in further detail:

North: North of the subject properties is an area of EFU-zoned property. The adjacent property to the north, Tax Lot 202 (Assessor’s Map 16-12-23) is a 5.63-acre vacant EFU-zoned property without irrigation rights, not currently receiving farm tax deferral, and appears to be currently engaged in residential use.

East: East of the subject properties are two parcels zoned EFU. Tax Lot 300 (Assessor’s Map 16-12-23) is a 21.56-acre parcel developed with a single-family manufactured dwelling, an accessory structure, is partially irrigated, and currently receiving farm tax deferral. Tax Lot 306 (Assessor’s Map 16-12-23) is a 20.54-acre parcel developed with a

single-family dwelling, an accessory structure previously utilized as a medical hardship dwelling, is partially irrigated, and currently receiving farm tax deferral. Additionally, to the east and southeast, is the Highway 97 transportation corridor.

West: West of the subject properties are residential subdivisions zoned Rural Residential (RR10). These include the Whispering Pines Estates Fourth Addition subdivision and the First Addition to Whispering Pines Estates subdivision. Rosengarth Estates and Gardenside PUD in the RS Zone. Northwest is a 2.63-acre parcel zoned RR10 located within the Third Addition to Whispering Pines Estates subdivision.

South: South of the subject properties is a 35.89-acre vacant parcel zoned Open Space & Conservation (OS&C), owned and operated by the Oregon Parks & Recreation Department (OPRD). This property is recognized as Tax Lot 700 (Assessor's Map 16-12-23).

Additionally, along the eastern boundary of Tax Lots 301 and 305, and along the western boundary of Tax Lot 500 is an irrigation canal operated by COID.

LAND USE HISTORY:

- **NCU-73-33:** Non-conforming use approval for a “farm equipment business” on Tax Lot 305. In file NUV-91-1 the Hearings Officer provided the following description of this approval:

On February 27, 1973, Terry Mills applied for, and the Deschutes County Planning Commission approved, an application to expand a nonconforming use (File No. NCU-73-33). The application and attached map indicated the proposed expansion was only for property lying west of the Pilot Butte Canal on what is now Tax Lots 305 and 301. However, the Planning Commission approved Mr. Mills' plan to expand his truck and equipment repair and sales business by adding to the existing structure on the east side of the canal (Tax Lot 500) and/or adding a new building west of the canal (Tax Lot 305), constructing a bridge spanning the canal, and keeping uses on the remainder of the parcels limited to "equipment storage and display and agricultural use." The decision allowed Mr. Mills until January 1, 1985, to complete the approved expansion.

- **Z-78-23:** Zone Change approval from A-1 (Exclusive Agricultural) to A-S (Rural Service Center) • **SP-79-21:** Site plan review for a “diesel implement and repair business” on Tax Lot 500.
- **PL-15:** Deschutes County revised Zoning Ordinance changing the zoning of the subject properties to “EFU-20”.
- **NUV-96-1:** Nonconforming use verification review for a commercial use in the EFU Zone on Tax Lot 500, 301 and 305, specifically a “truck, machinery and equipment repair, storage and sales business”. This request was denied by the Hearings Officer, who concluded:

PUBLIC AGENCY COMMENTS: The Planning Division mailed notice on October 6, 2021, to several public agencies and received the following comments:

Deschutes County Senior Transportation Planner, Peter Russell

I have reviewed the transmittal materials for 247-21-000881-PA/882-ZC for three properties totaling approximately 19 acres to change the Comprehensive Plan designation from Agriculture to Rural Industrial and the zoning from Exclusive Farm Use (EFU) to Rural Industrial (RI). The properties lie in the Exclusive Farm Use (EFU), Airport Safety (AS), and Landscape Management (LM) zones at 65301, 65305, and 65315 Hwy 97, aka County Assessor’s Map 16-12-23, Tax Lot 305, 16-12-23, Tax Lot 301, and 16-1223, Tax Lot 500, respectively.

The submitted traffic analysis by Ferguson & Associates dated Aug. 11, 2021, is deficient in several areas and does not comply with Deschutes County Code (DCC) 18.116.310 or the Transportation Planning Rule (TPR) and is thus unacceptable. Examples of the traffic analysis’ deficiencies include the following major areas. DCC 18116.310(E)(4) requires a 20-year timeframe for analysis; the study has no such analysis. The traffic analysis lack any operational analysis, thus making it impossible to determine the before/after volume-capacity ratio of the access, which means it is impossible to determine if the plan amendment/zone change has any significant effect. Without determining if there is a significant effect or not, the traffic analysis does not comply with the TPR at Oregon Administrative Rule (OAR) 660-00120060. The traffic analysis assumes a right-in, right-out access point; yet there is no physical obstruction (pork chop barrier or raised median) restricting moves to RIRO. The property is slightly closer to Bend than Redmond, yet the trip distribution is almost exclusively skewed toward trips being to/from Redmond. Staff finds that a dubious assumption given Redmond’s population of roughly 25,000 vs. Bend’s roughly 91,000. Staff disagrees with the baseline trip assumptions under the current zoning. In several recent plan amendment/zone changes involving EFU, the current highest trip generator was a single-family home. The traffic analysis should use one of the specific outright permitted uses found in DCC 18.16.020. The current study significantly understates the p.m. peak hour trips of the EFU zoning. The traffic analysis does not include a reasonable worst case scenario of the outright permitted uses under the Rural Industrial zone. If the Applicant believes the traffic analysis is a reasonable-worst case scenario, then the Applicant needs to provide further justification or rationale. The study simply states “...the assumed uses generated more traffic than the site could handle with existing access configurations, no further examination of potential uses was examined.” There is no supporting evidence for this claim; nor is there any explanation why the existing access could not be modified to accommodate more traffic. Finally, the traffic study references a potential mini-storage, but there is not a simultaneous site plan submittal for any specific use.

The property accesses US 97, a public highway under the jurisdiction of the Oregon Department of Transportation (ODOT). Therefore the access permit requirements of DCC 17.48.210(A) do not apply.

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.

REVISED TRAFFIC STUDY AND RESPONSE FROM SENIOR TRANSPORTATION PLANNER: Upon receipt of the County Senior Transportation Planner's initial comment, above, the Applicant submitted a revised traffic study, dated March 18, 2022, sent to staff via email on April 6, 2022. In response, the following comment was offered by the County's Senior Transportation Planner:

I have reviewed the March 18, 2022, revised traffic study for 247-21-000881-PA/882-ZC for three properties totaling approximately 19 acres to change the Comprehensive Plan designation from Agriculture to Rural Industrial and the zoning from Exclusive Farm Use (EFU) to Rural Industrial (RI). The properties lie in the Exclusive Farm Use (EFU), Airport Safety (AS), and Landscape Management (LM) zones at 65301, 65305, and 65315 Hwy 97, aka County Assessor's Map 16-12-23, Tax Lot 305, 16-12-23, Tax Lot 301, and 16-12-23, Tax Lot 500, respectively. For reasons state below, staff finds the revised traffic study insufficient.

The revised TIA again does not make an apples-to-apples comparison of the potential trip generation from the site based on existing zoning vs. requested zoning. In staff's Oct. 22, 2021, comment staff specifically required traffic analysis that compares reasonable worst-scenario using outright permitted uses in the existing Exclusive Farm Use (EFU) zone to the requested Rural Industrial (RI) use. Those uses are listed under Deschutes County Code (DCC) 18.100.010. Instead, the traffic analysis falters on two points. First, the traffic study uses Warehouse, which is a conditional use in the RI zone at DCC 18.100.020(M). Second, there are several higher traffic generators listed under conditional uses at DCC 18.100.020.

As an aside, on the one hand the Applicant argues this is not productive agricultural land and on the other the traffic engineer argues there are agricultural uses that would generate more trips than a single-family zone. (The County historically uses a single-family as the highest trip generator in EFU). Staff looks to the hearing officer to reconcile this paradox of not being agriculturally viable land, yet potentially producing more trips based on agricultural activities.

Again, the TIA uses Mini-Warehouse as a use for the Rural Industrial (RI) use, yet there is not a simultaneous site plan application for that land use. While the TIA refers to "intention" that is not the same as an actual land use application. The current land use application is only for a plan amendment/zone change. The TIA needs to analyze a reasonable worst-case use based on the current edition of the Institute of Traffic Engineers Trip Generation Handbook, which is the 11th.

As a matter of practice, Deschutes County when reviewing the potential traffic impacts of plan amendment/zone changes, has required Applicants to use a reasonable worst-case scenario of outright permitted uses in the current zone vs. outright permitted uses in the requested zone. If the traffic engineer insists on analyzing counter to accepted County practice, then the traffic analysis should be apples-to-apples and use reasonable worst-case scenario for both the conditional uses of DCC 18.100.020 and DCC 18.100.020. Instead, the revised traffic study uses outright permitted in the base case and a conditional use in the requested zone for an apples-to-oranges comparison. (Staff is opposed to using conditional uses and only presents this argument to demonstrate another area where the revised traffic analysis is deficient).

The traffic study argues transit will decrease the 20-year volumes on US 97, but does not provide any factual evidence, Cascade East Transit (CET) plans for increased service between Bend and Redmond, the number of buses (both capacity and headway, i.e. time between buses) to significantly affect the forecast volumes on US 97. The traffic study also speculates on the effect of rising fuel costs on the 20-year forecast traffic volumes. Equally valid speculation could ruminate on the rising fuel-efficiency of gas-powered vehicles and the State’s goal to increase the number of electric vehicles in Oregon as offsetting factors and that future traffic volumes will continue to climb.

The traffic study’s views on ODOT methodology for measuring intersection performance is irrelevant. Those are the agency’s adopted measures and are cited in DCC 18.116.310(H).

SENIOR TRANSPORTATION PLANNER COMMENTS TO APPLICANT’S SECOND RESPONSE: Upon receipt of the County Senior Transportation Planner’s second comment, above, the Applicant submitted additional comments, dated April 8, 2022 and sent to staff via email on April 8, 2022. In response, the following comment was offered by the County’s Senior Transportation Planner (dated April 11, 2022):

I have reviewed the Applicant’s traffic engineer’s April 8, 2022, memo which was written in response to my April 7 assessment of the revised traffic study dated March 18, 2022. Below are my responses.

- *The Applicant is correct, I mistakenly said the revised TIA uses Warehouse (Land Use 150) and Mini-Warehouse (LU 151), rather than land use actually used, which was Manufacturing (LU 140). I apologize for the error.*
- *The Applicant’s TIA uses the wrong version of ITE Trip Generation Manual. The TIA use the 10th Edition (see page 7 of March 18 TIA. Deschutes County Code (DCC) 18.116.310(F)(2) and 18.116.310(G)(2). The 11th Edition is the most recent version of the ITE Trip Generation Manual.*
- *Staff notes that trip caps are notoriously difficult to monitor and enforce. The only regulatory ability the County has is to enforce the type of use allowed on the site and the size of the buildings. The County does not control nor monitor the number of employees used at a business, the number of labor shifts, the*

start/stop times of those shifts, the number of deliveries to a site, etc. Staff would appreciate the Applicant's ideas on how to create a functioning trip cap and what would be the penalty for violation. Staff has used building size as the best proxy for a trip cap, but there may be other measures.

SENIOR TRANSPORTATION PLANNER COMMENTS TO ODOT MAY 23, 2022

SUBMITTAL: On May 24, 2022, Peter Russell emailed Planning staff to respond to ODOT May 23, 2022 submittal and the Applicant's May 24, 2022 agreement to ODOT's proposed language regarding a trip cap:

*Tarik,
I have reviewed both the ODOT May 23 submittal regarding the proposed trip cap for 247-21-000881-PA/882-ZC and the applicant's May 24 agreement to the agency's language limiting the trip cap to 32 p.m. peak hour trips and 279 daily trips. I also concur with this limitation. The ODOT language calling for a text amendment is best addressed during the current update of the Deschutes County Transportation System Plan (TSP) as a potential change in policy language. Another option is ODOT can apply to a text amendment to the development code regarding trip caps and land use development.*

If you have any questions, please let me know. Thanks.

Central Oregon Irrigation District, Kelley O'Rourke

Re: 247-21-000881-PA, 882-ZC
1612230000305/65301 N HWY 97, BEND, OR 97701
1612230000500/65315 HWY 97, BEND, OR 97701
1612230000301/ 65305 HWY 97, BEND, OR 97701

Please be advised that Central Oregon Irrigation District (COID) has reviewed the provided preliminary application for the above referenced project. The Applicant requests approval of a Comprehensive Plan Amendment to change the designation of the property from Agricultural (AG) to Rural Industrial (RI). The Applicant also requests approval of a corresponding Zone Change to rezone the property from Exclusive Farm Use (EFU) to Rural Industrial (RI). The subject properties are located at 65301 N HWY 97, 65315 HWY 97 and 65305 HWY 97 in Bend, Oregon (Map and Tax lots: 1612230000305, 1612230000500, 1612230000301).

Listed below are COIDs initial comments to the provided preliminary plans. All development affecting irrigation facilities shall be in accordance with COID's Development Handbook and/or as otherwise approved by the District.

Water Rights

- *1612230000305: Has 0.20 acres of appurtenant COID irrigation water rights •*
1612230000500: There are no COID water rights
- *1612230000301: Has 2.70 acres of appurtenant COID irrigation water rights*

- *All water rights must be removed from these properties prior to approval of the zone change. COID requests property owners contact COID to request removal of the water rights.*

Canal and Laterals

- *COID’s main canal is located within tax lots 1612230000305 and 1612230000301 and has a ROW of 75-feet with a road easement of the west side of 20-feet. The easement appears to extend onto tax lot 1612230000500. COID will need the marginal limit plus 20-feet in areas where the canal and road exceed the easement. Any irrigation conveyance, District or private, which passes through the subject property shall not be encroached upon or crossed without written permission from COID. No structures of any kind, including fence, are permitted within COID property/easement/right of way. Comply with Requirements of COID Developer Handbook including restriction on drilling / blasting and excavation within and adjacent to the existing canal embankment.*
- *COID’s POD is located at the southern property line on tax lot 305 for *A-17. There are private delivery ditches that run through each property to access the water rights. *A-18 has a POD at the northern property line of tax lot 301, the easement is 20’ each side of center. Please note: a portion of *A-18 is piped. Please contact COID to discuss these facilities.*
- *All crossing shall be in accordance with COID’s Development Handbook and must be approved by COID. A crossing license shall be required for the existing bridge. Please provided COID with the existing recorded crossing license for the bridge that spans across the Pilot Butter Canal. If the recorded document does not exist, contact COID for information on the process, timing, fees to obtain a crossing license.*
- *Policies, standards and requirements set forth in the COID Developer Handbook must be complied with.*
- *Please note that COID facilities are located within the vicinity of the subject property; contact COID if any work and/or crossings will be done near the COID facilities.*

Our comments are based on the information provided, which we understand to be preliminary nature at this time. Our comments are subject to change and additional requirements may be made as site planning progresses and additional information becomes available. Please provide updated documents to COID for review as they become available.

ODOT Region 4, Don Morehouse, Senior Transportation Planner

On April 20, 2022, Don Morehouse emailed Mr. Rawlings regarding the application as follows:

Hi Tarik,

Although we are holding off on the review of the traffic impact study and land use application associated with 21-881-PA/882-ZC because it is incomplete, it does appear that this proposal will constitute a change of use requiring that the applicant submit a new

road approach permit application through our District 10 office. Quinn Shubert is the point of contact:

Quinn Shubert
Permits Specialist
ODOT District 10
63055 North Hwy 97
Bend, OR 97703
C: 541-410-0706

On May 23, 2022, Mr. Morehouse emailed Planning Staff as follows:

Hi Tarik,

I'd like to replace the comment I sent back on April 20, 22 with the following two comments pertaining to this Plan Amendment/Zone Change (21-881-PA/882-ZC) application:

- The Deschutes County Development Code should be amended to address the concept of a Trip Cap. Ideally, this suggested code provision would require the applicant to submit a Development Code Amendment application with a traffic impact analysis to show whether or not the Transportation Planning Rule is satisfied with the increase of a Trip Cap.
- ODOT agrees with a Trip Cap of **32 PM peak hour** trips and **279 daily trips**.

Please let me know if you have any further questions. Thanks

Proposed Condition of Approval

On May 24, 2022, legal counsel advised County Planning Staff, ODOT and the Senior Transportation Planner of a proposed condition of approval regarding trip caps as follows:

Don, Peter and Tarik:

To be consistent with ODOT's comments, we are revising our proposed COA to read as follows:

"The maximum development on the three subject parcels shall be limited to produce no more than 32 trips in the PM peak hour and/or 279 daily trips as determined by the Institute of Engineers Trip Generation Manual, 11th Edition. The County may allow development intensity beyond these maximum number of vehicle trips only if the applicant submits to the County a traffic impact analysis that demonstrates that the proposed intensification of use would be consistent with the Transportation Planning Rule and the Deschutes County Code."

If this works for everyone, we will submit a letter into the record as soon as possible.

Thereafter, on May 24, 2022, legal counsel requested County Planning Staff to include the entire email chain into the record for the applications, stating:

A separate correspondence is likely superfluous as this email chain already includes the proposed condition of approval and written concurrence thereof from

both ODOT and County staff. If you disagree and prefer a separate correspondence, please let me know. The applicant, of course, still contemplates providing a comprehensive open record submittal by the new May 31, 2022 deadline.

The following agencies did not respond to the notice: Deschutes County Assessor, Bend Fire Department, City of Bend Planning Department, City of Bend Public Works Department, City of Bend Growth Management Department, Redmond Airport, Oregon Department of Aviation, and Deschutes County Road Department.

PUBLIC COMMENTS: The Planning Division mailed notice of the conditional use application to all property owners within 750 feet of the subject property on October 6, 2021. 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 October 6, 2021.

Supportive public comments were received from 44 individuals, one of which appears to be associated with the existing business uses on Tax Lots 305 and 500. The names of the supporting commenters are listed below.

Oppositional public comments were received from one neighboring property owner, from Central Oregon LandWatch, and from 1000 Friends of Oregon. The oppositional comments are detailed below. The supportive public comments do not specify approval criteria and are summarized herein as generally supportive of the subject applications for reasons including economic opportunities, improvement of the subject properties since the current owners took over, the character of the Applicant, and the need for industrial uses due to regional growth.

Supporting commenters:

- | | | |
|------------------------|-----------------------|-----------------------|
| 1. Dirk van der Velde | 22. Michael Van Skaik | 43. Joseph Seevers |
| 2. Shoshana Buckendorf | 23. Derek Ridgley | 44. Rebecca Hermeling |
| 3. Micah Frazier | 24. Whitney Nordham | |
| 4. Anthony Jimenez | 25. Sam DeLay | |
| 5. Brandon Olson | 26. Jeremy Stafford | |
| 6. Cody King | 27. Tom Price | |
| 7. Craig Shurtleff | 28. Ali Luengo | |
| 8. Donnie Eggers | 29. Kenna Aubrey | |
| 9. Dee Shields | 30. Laurie Luoma | |
| 10. Julie Porfirio | 31. Sarah Chmiel | |
| 11. Jill Shaffer | 32. Jillian Gish | |
| 12. Nick Alker | 33. Haley Offerman | |
| 13. Nick Greenlee | 34. Joshua Wurth | |
| 14. Stephen Wagner | 35. Erik Retzman | |
| 15. Truett Nealy | 36. Grace Stafford | |

- 16. Bob Trapnell
- 17. Gerardo Arreola
- 18. Joseph Seevers
- 19. Mike Musco
- 20. Mark Rylant
- 21. Paula Johnson
- 37. Marilee Johnson
- 38. Adam Fuller-Ellifit
- 39. Theresa Vachon
- 40. Mike Vachon
- 41. Marty Petersen
- 42. Mark Rylant

An oppositional comment was received from Jay Musson, a resident and owner of property located at 65468 73rd Street, Bend, OR 97703 on October 9, 2021:

“I own the property at address 65468 73rd which backs up to the subject property in this file number. Our property is part of a development called Whispering Pines #4. We have a community well as well as covenants such as no large farm animals (cows and pigs etc). Just like developments in the cities of Bend and Redmond. The only difference is our lots are all about 2.5 acres. All of the properties along 73rd backing up to this subject property are single family houses. The last thing we need in is an industry moving in behind us with large buildings, equipment and possible pollution. In fact the east side of this subject property (the jagged side) is the Central Oregon Irrigation Canal. I’m sure they don’t want pollution entering their canal. I therefore strongly object to this proposed zone change. Keep industry in town, not in a pristine residential and agriculture area.”

Mr. Musson offered a second public comment on April 15, 2022:

“I own property 65468 73rd ST that backs up to the subject property. I want to announce my opposition to this proposed zone change. This is farm country, not asphalt and tin can storage building country. This kind of development belongs in a city. Also rain runoff from the asphalt into the COCC irrigation canal which borders this property cannot be good. If the owner of this property wants to make money on this piece of property grow some hemp.”

Another oppositional comment was received from Kristy Sabo, the Wild Lands and Water Program Manager with Central Oregon LandWatch (“COLW”) on October 19, 2021:

“I’m writing today to express concern from Central Oregon LandWatch about whether application file nos. 247-21-000881-PA and 247-21-000882-ZC meet the necessary criteria for a zone change and a plan amendment with goal exceptions. These two applications across three tax lots request that land zoned EFU-TRB, exclusive farm use, be rezoned to Rural Industrial. While we are still reviewing the applications and all of the issues, we are initially concerned that the applications include no adequate showing that rezoning and a plan change is appropriate. The proposed use cannot be approved without exceptions to Statewide Planning Goals 3, 11, 12 and 14. Because no exceptions have been justified, the application must be denied. The proposed designation is expressly prohibited by the County’s acknowledged comprehensive plan. We are concerned that the proposal would unnecessarily take agricultural land out of production. The comprehensive plan provides multiple opportunities for the proposed use that do not require rezoning. The proposed use will have a negative impact on surrounding rural land uses.

Please add LandWatch to your list of interested parties and let us know of any decisions or hearings.”

On April 26, 2022, COLW, through Rory Isbell, Staff Attorney and Rural Lands Program Manager, submitted a formal letter in opposition to the applications, primarily alleging that the proposed plan amendment and zone change do not comply with Goals 3 and 14 and alleging that the subject property is rural agricultural land, outside of an urban growth boundary, where new urban industrial uses are prohibited. The letter states, in relevant part:

Goal 3

The subject property is agricultural land as defined by Goal 3, OAR 660-033-0020(1)(a) and DCC 18.040.030 [definitions omitted].

The subject property was correctly designated as agricultural land and is correctly zoned for exclusive farm use (the lack of mistakes in the designation and zoning of agricultural lands in Deschutes County is discussed further below). The subject property is predominantly land capability Class III irrigated and Class IV unirrigated and thus is agricultural land as a matter of law. Statewide Planning Goal 3, OAR 660-015-0000(3); OAR 660-033-0020(1)(a); DCC 18.04.030. The property’s 38B and 31A soils are both Class III when irrigated, and because this property is within the boundaries of COID and has water rights, the property is irrigated and contains predominantly NRCS Class III soils.

LandWatch requests the Hearings Officer to take official notice of a true and correct copy of the U.S. Department of Agriculture, NRCS Soil Survey of the Upper Deschutes River Area, Oregon, including parts of Deschutes, Jefferson, and Klamath Counties, 284 pp. The Upper Deschutes River Area, Oregon Soil Survey is attached as Exhibit 1.

LandWatch also requests the Hearings Officer to take official notice of the soils map with legend and the land capability classifications, both irrigated and unirrigated, of the subject property attached as Exhibit 2. These exhibits are true and correct copies of the portions of the official USDA NRCS Upper Deschutes River Area Soil Survey depicting the subject property.²

These materials are produced and maintained as public records and are published as official publications of the U.S. Department of Agriculture. They contain information the accuracy of which cannot reasonably be questioned, and so are appropriate subjects for judicial notice. These materials from the U.S. Department of Agriculture, NRCS Upper Deschutes River Area Soil Survey are designed to assist the Hearings Officer in determining the law regarding the definition of agricultural land in DCC 18.04.030, OAR 660-033-0020(1)(a), OAR 660-015- 0000(3), and Statewide Planning Goal 3.

The official NRCS Upper Deschutes River Area Soil Survey relates to the content of law and policy on the definition of "agricultural land" in Oregon and does not concern only the parties in the case at bar. The Hearings Officer is requested to

²<https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>. Accessed April 26, 2022.

take official notice of the NRCS Upper Deschutes River Area Soil Survey and the attached excerpts thereof as legislative facts. *State v. O'Key*, 321 Or. 285, 309 n.35, 899 P.2d 663 (1995) ("When a court, in determining what the law - statutory, decisional, or constitutional - is or should be, takes judicial notice of certain facts, it is taking judicial notice of legislative facts").

The application's inclusion of additional soils information - an Order 1 soil survey - obtained by a person pursuant to ORS 215.211 and OAR 660-033-0030(5), in no way nullifies the official NRCS soil capability classifications for the subject property. The additional soils information "does not otherwise affect the process by which a county determines whether land qualifies as agricultural land." ORS 215.211. The NRCS National Soil Survey Handbook states that ..Order 1 soil surveys and site-specific data collected are supplements to the official soil survey, but they do not replace or change the official soil survey." Exhibit 3.

The applicant's additional soil information could be used to identify "land in other soil classes that is suitable for farm use," OAR 660-033-0020(1)(a)(B), but cannot nullify or otherwise make void the official NRCS soil capability classifications for the subject property which are used to define agricultural land, OAR 660-033-0020(1)(a)(A). The subject property is suitable for a variety of farm uses, including grazing. It is a common practice in Central Oregon to rotate livestock between pastures, and nothing prevents this 19-acre property that has water rights from serving as seasonal rangeland. The Oregon Department of Land Conservation and Development, Oregon Department of Agriculture, and Oregon Department of Fish and Wildlife recently submitted a comment letter on a similar application in Deschutes County where an applicant sought to rezone and redesignate Goal 3- protected agricultural land. The state agencies describe the many ways in which land of NRCS Class VI-VIII soils in Deschutes County can be put to farm use, and how Goal 3's protections of agricultural land are not limited to lands classified by the NRCS as Class I-VI. Exhibit 4.

In any event, the subject property both has been and is currently engaged in farm use, proving its suitability for farm use. The applicant's own aerial photos of the property clearly indicate irrigated crops being grown on tax lots 301 and 305. Application Exhibit 1 at 1-2. These tax lots contain certificated water rights from Central Oregon Irrigation District for agricultural irrigation use. Application Exhibit 4 at 1-2. Even though these water rights have been temporarily leased to instream use, they can be returned to agricultural irrigation use on the subject property at any time, further facilitating the agricultural suitability of the subject property.

Even if not currently producing farm crops, the application describes the subject property as "used for farm and other equipment service and storage facilities and related outbuildings." Application at 4. Farm use of land includes the on-site maintenance of equipment and facilities used for other farm activities, ORS 215.203(2), and thus the property is also currently engaged in farm use.

Goal 14

The application proposes allowing urban uses on rural land outside of an urban growth boundary, which violates Goal 14. LUBA has articulated a test, using the

Shaffer factors, to determine whether a specific use is urban or rural. The applicant here has not met its burden to show the application meets the relevant *Shaffer* factors. *Shaffer v. Jackson County*, 17 Or LUBA 922 (1989); *Columbia Riverkeeper v. Columbia County*, 70 Or LUBA 171 (2014). Instead, the applicant seeks a zone change to Rural Industrial which would allow a wide variety of industrial uses at any point in the future, but fails to analyze whether those industrial uses would be urban or rural under the *Shaffer* factors.

The County's RI zone, including its allowed uses, was acknowledged when the comprehensive plan limited the zone to exception areas that were committed to urban uses. Thus the RI Zone and its allowed uses are not per se rural. Without a showing that all of the allowed uses in the County's R[zone are rural using the *Shaffer* factors, and application fails to comply with Goal 14.

The application also seeks an "irrevocably committed" exception to Goal 14. However, a local government may only adopt an exception to a goal when the land is irrevocably committed to uses not allowed by the applicable goal because those uses are impracticable. OAR 660-004- 0028(1). As described above, the subject property is agricultural land by definition, and it has been and currently is employed for rural farm uses. Agricultural uses allowed by Goal 3 are not impracticable, and thus the applicant's burden for a goal exception to Goal 14 is not met- OAR 660-004-0028(3)(a). The surrounding area also includes several properties in agricultural use, making the relationship between the property and "exception area" and "adjacent lands" no [sic] irrevocably committed. OAR 660 - 004 -0028(2)(b) -(c).

Relatedly, the subject property is not irrevocably committed to urban uses, making the exceptions process outlined at OAR 660-014-0030 unavailable.

DCC 18.120.010 Nonconforming uses

The DCC, at DCC 18.120.010, states that "[n]o nonconforming use or structure may be resumed after a one-year period of interruption or abandonment unless the resumed use conforms with the provisions of DCC Title 18 in effect at the time of the proposed resumption." This application repeatedly asserts that its nonconforming uses have been operated continuously since the 1970s to justify several of the relevant approval criteria. However, the application includes no evidence of continuous operation without any one-year gaps. LandWatch concurs with the staff report that such evidence is also required to support the application's request for an "irrevocably committed" goal exception, and that a non-conforming use verification is required to establish that the present and historic uses of the property were lawfully established and continued without alteration, abandonment, or interruption.

DCC 18.136.020 Rezoning Standards

This application may seek to serve the landowner's private interest by increasing the development potential of the subject property. It will not, however, serve the public interest, which would be harmed by the removal of the County's agricultural land base; increased noise, traffic, and pollution in a rural area; and

marked public safety risks imposed by allowing industrial uses and their concomitant traffic and pollution along an open water way and state highway. Such harms to the public interest mean noncompliance with the County's rezoning standards at DCC 18.136.020: [quotation of code omitted]

As for DCC 18.136.020(D), there has been no change in circumstances since the property was last zoned. The applicant states that the current uses on the property have been in operation for the majority of the past 40 years. Application at 14, 37. The soils and agricultural suitability of the subject property have also not changed since it was planned and zoned for agricultural use by the County. There has further been no mistake in the current EFU zoning of the subject property. The County embarked on legislative efforts in both 2014 and 2019 to establish that errors exist in its EFU zoning designations, but concluded both times that no such errors exist. In 2015, the County consulted with Jon Andersen, who was a Senior Planner, and later became the Community Development Department Director, when the County developed its first comprehensive plan. Mr. Andersen confirmed that none of the County's agricultural land designations were made in error. Exhibit 5 (January 15, 2015 Deschutes County Community Development Department notes from phone conversation with John Andersen). DLCDC also commented to the County at the time that it was "unable to determine the nature and scope of the mapping error" of agricultural land designations. Exhibit 6 (January 8, 2015 DLCDC letter).

Conclusion

This application requests to convert 19 acres of agricultural land to allow urban, industrial uses, and fails to comply with Goals 3 and 14 as well as provisions of the Deschutes County Code. The property is rural, agricultural land and has not been proven to be irrevocably committed to urban uses. LandWatch respectfully requests this application be denied' We also request the record be left open for 14 days to accommodate additional written comment on this very complex land use application.

1000 Friends of Oregon, through Dan Lawler, Rural Lands Senior Attorney, also submitted public comment in opposition to the applications on April 26, 2022:

Dear Hearings Officer,

Thank you for the opportunity to provide testimony on the comprehensive plan and zoning map amendment application identified as App 247-21-000881-PZ, 882-Z (the "Rezone"). The following testimony is submitted by 1000 Friends of Oregon. 1000 Friends of Oregon is a nonprofit membership organization that works with Oregonians to support livable urban and rural communities, protect family farms, forests and natural areas; and provide transportation and housing choices. We have members in all parts of Oregon, including Deschutes County.

1000 Friends of Oregon requests that the Hearings Officer include this letter in the record for the April 26, 2022 hearing and that the county send any notices related to the Rezone to dan@friends.org and andrew@friends.org. 1000 Friends of Oregon also requests a 14-day open records period following this hearing to

provide the public with more time to review the lengthy application materials and staff report.

1000 Friends recommends that the Hearings Officer deny the Rezone because the application fails to demonstrate compliance with approval criteria for amendments to comprehensive plan and zoning designations. More specifically, the staff report and application do not demonstrate that the subject property is not agricultural land under Goal 3 or that the proposal complies with Goal 14. The following paragraphs provide more detail on 1000 Friends' concerns.

The Subject Property is Agricultural Land Under Goal 3

1000 Friends recommends that the Hearings Officer deny the Rezone because the subject property qualifies as agricultural land under Goal 3 and, thus, an exception to Goal 3 is required to change the property's comprehensive plan and zoning designations. First, the application and staff report fail to adequately consider potential use of the 31A soils on the subject property.

When irrigated, 31A soils are categorized within Class III, which is productive and valuable for farm use. While the applicant claims that irrigation is not available to the subject property, the property is within Central Oregon Irrigation District boundaries and neither the application nor the staff report explain why the property owner can't work with the District to obtain water. Further, while the applicant may plan to continue to lease the property's water rights, neither the application nor the staff report explain why the property owner is unable to use the water rights for agriculture. The application and staff report also fail to explain why the property owner is unable to utilize a water distribution system to irrigate the property using the Pilot Butte Canal. Therefore, the Hearings Officer should deny the Rezone because the application and staff report fail to adequately consider use of irrigated 31A soils and do not demonstrate that the property is not agricultural land.

The application and staff report also fail to adequately consider whether the subject property can be used for grazing. While the applicant argues that the property is not suitable for grazing due to poor soils, both 38B and 58C soils can support viable grazing operations. The applicant's calculations regarding profitability of cattle grazing on the property fail to analyze its potential use with rotational grazing, which is a common practice in Central Oregon. Rotational grazing slows consumption of forage on pastureland by allowing animals to graze on a number of properties throughout the year. If the subject property was used for rotational grazing, rather than as the only location for grazing, it could likely support a greater number of cattle and make a potential grazing operation more profitable. However, the applicant's analysis fails to consider this possibility. Thus, the Hearings Officer should deny the Rezone because the application and staff report fail to demonstrate that the property is unsuitable for grazing and that the land is not protected under Goal 3.

The Application Does Not Satisfy Goal 14

As an initial matter, the Shaffer factors are not appropriate for determining whether the Rezone makes the property urban or rural in the context of Goal 14. As Page 14 of the Staff Report acknowledges, Shaffer v. Jackson County, 16 Or LUBA 871 (1988), involved a map amendment for an asphalt batch plant – a specific use – subject to that application. Because the specific use of the property was known in those proceedings, the county could evaluate the map amendment to determine the number of workers, dependence on site-specific resources, suitability of the use to a rural area, and reliance on public facilities and services. In this case, however, the applicant is not applying for development of a specific use on the property. While the applicant states that it intends to build a mini-storage facility and to continue equipment repairs on-site, nothing requires the applicant to follow through on that plan. Instead, the applicant could use the property for any land uses permitted in the Rural Industrial zone after the property’s comprehensive plan and zoning designations change. Thus, 1000 Friends urges the Hearings Officer not to use the Shaffer framework for analysis of Goal 14 because the eventual use of the property is uncertain, making it impossible to determine whether the Shaffer factors are satisfied.

Next, the applicant’s argument that the application does not require an exception to Goal 14 is not supported by substantial evidence. The applicant states that the Rezone “should not require a Goal exception because the County’s RI zoning complies with Goal 14 by ensuring areas with this zoning remain rural by limiting the uses allowed.” Staff Report Page 57. This statement is a mere assertion that lacks evidentiary support. To show with substantial evidence that the Rezone does not facilitate urban use of the property, the applicant and county must evaluate whether the uses permitted outright and conditionally in the Rural Industrial zone are urban or rural in nature. The use-by-use analysis is especially important here because the Rural Industrial zone was adopted when the comprehensive plan limited the zone to exception areas, meaning that the uses in that zone did not have to be rural in nature to be allowed in such areas. However, the subject property is not in an exception area and thus, analysis of the uses in the Rural Industrial zone is necessary to determine whether the Rezone facilitates urban or rural use of the property.

The applicant’s alternative argument that the area is irrevocably committed to uses not allowed under the applicable goal is not supported by substantial evidence and does not demonstrate compliance with OAR 660-004-0028(2)(a). As discussed earlier in this letter, the applicant has not demonstrated that the property is not protected agricultural land and thus, the characteristics of the land (suitability for grazing, presence of Class III soils when irrigated, and possibility of irrigation) indicate that the property could be used for agriculture. Further, the applicant fails to explain why the presence of a couple small structures that cover a small percentage of the property make agriculture impossible or impracticable. Nothing prevents the property owner from removing the structures and using the soil underneath to supporting grazing operations. The applicant’s statement that the existing improvements on and past use of the property irrevocably commit the property to non-farm use are mere assertions that lack the support of substantial evidence.

In addition, the applicant’s description of the characteristics of adjacent lands under OAR 660-004-0028(2)(b) conflicts with staff’s findings regarding such lands. On Page 66 of the Staff Report, the applicant states that neither Tax lot 300 or 306 are used for active farming, while staff notes that both of these properties appear to be in farm use and receive farm tax assessments. The applicant cites nothing to support its assertion that farming does not occur on these properties, while the county cites aerial photography and farm tax assessments for its position. Thus, substantial evidence in the record suggests that the characteristics of some adjacent lands are rural and agricultural in nature and that the subject property is not irrevocably committed to non-rural uses. The Hearings Officer should deny the Rezone because the applicant does not support its findings for OAR 660-004-0028(2)(b) with substantial evidence and, in fact, evidence in the record undermines the applicant’s position.

As an additional point, the assertion that the property is irrevocably committed to use as “an equipment service/repair and rental/sales facility” undermines the applicant’s argument that uses on the property will be rural after the Rezone. The argument regarding irrevocably committed exceptions relies on the notion that the property has not been and will not be used for rural purposes. Further the commercial nature of service, repair, rental, and sales facilities indicates that the use is more urban than rural. The applicant’s arguments on these points conflict and thus, the Hearings Officer should reject the applicant’s Goal 14 arguments for lack of substantial evidence.

NOTICE REQUIREMENT: On April 1, 2022, the Planning Division mailed a Notice of Public Hearing to all property owners within 750 feet of the subject property and agencies. A Notice of Public Hearing was published in the Bend Bulletin on Friday, April 1, 2022. Notice of the first evidentiary hearing was submitted to the Department of Land Conservation and Development on March 15, 2022.

REVIEW PERIOD: The subject application(s) were submitted on September 30, 2021, and deemed incomplete by the Planning Division on October 28, 2021. Upon the Applicant’s confirmation that no further information or materials would be provided in response to the County’s incomplete letter, the subject applications were deemed complete on March 7, 2022. 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

In order to approve the comprehensive plan amendment and zone change request, the proposal must comply with the criteria found in statutes, statewide planning goals and guidelines and their implementing administrative rules, County comprehensive plan, and land use procedures ordinance. Each of these approval criteria is addressed in the findings below.

The Hearings Officer sets forth the following Preliminary Findings and Conclusions on the key issues in these applications below. These Preliminary Findings and Conclusions are incorporated by reference, as if fully set forth therein, in the analysis of individual criteria.

A. PRELIMINARY FINDINGS AND CONCLUSIONS

1. HEARINGS OFFICER’S FINDINGS AND CONCLUSIONS REGARDING USE OF ORDER 1 SOILS SURVEY

In 1979, Deschutes County adopted its first comprehensive plan and zoning ordinance that implemented the Statewide Land Use Planning Goals. The County’s comprehensive plan map was developed without the benefit of detailed soils mapping information. The map was prepared and EFU zoning was applied to the subject property prior to the USDA/NRCS’s publication of the “Soil Survey of Upper Deschutes River Area, Oregon.” That soil survey provides general soils information, but not an assessment of soils on each parcel in the study area.

The NRCS soil survey maps are Order II soil surveys, which extrapolate data from the Upper Deschutes River Survey to determine LCC soil classifications at a landscape level. The Applicant’s soil scientist conducted a more detailed Order I survey, which analyzed actual on-the-ground soil compositions on the subject property. The Hearings Officer finds that Order I soils surveys may contradict NRCS soil classifications performed at a higher, landscape level.

The argument advanced by COLW that an Order I survey cannot contradict NRCS soil survey classifications for a particular property has been rejected by the Oregon Legislature in ORS 215.211(1) and DLCD in OAR 660-033-0030. It has also been rejected by Deschutes County Hearings Officers and the Board of County Commissioners.

ORS 215.211(1) and (5) and the implementing regulations in OAR 660-033-0030, specifically and intentionally permit a more detailed soil analysis (an Order I Soil Survey) to be used when determining whether a specific property should qualify as agricultural land. The Applicant opted to provide more detailed Order I Soil Surveys prepared by Kitzrow, who is a Certified Professional Soil Classifier. Exs. 7-9 to Burden of Proof.

In recent years, Deschutes County has recognized the value in rezoning non-productive agricultural lands and has issued decisions approving plan amendments and zone changes where the applicant has demonstrated the property is not agricultural land. Deschutes County has approved the reclassification and rezoning of EFU parcels based on data and conclusions set forth in Order I soils surveys and other evidence that demonstrated a particular property was not “agricultural land,” due to the lack of viability of farm use to make a profit in money and considering accepted farming practices for soils other than Class I-VI. *See, e.g., Kelly Porter Burns Landholdings LLC Decision/File Nos. 247-16-000317-ZC/318-PA; Division of State Lands Decision/File Nos. PA-11-7 and ZC-11-2; Paget Decision/File Nos. PA-07-1, ZC-07-1; The Daniels Group/File Nos. PA-08-1, ZC-08-1; Swisher Decision/File Nos. 247-21-000616-PA/617-ZC.* The Board of County Commissioners recently affirmed the Hearings Officer’s decision in the *Swisher* files and adopted Ordinance No. 2022-003.

On the DLCD website, it explains:

NRCS does not have the ability to map each parcel of land, so it looks at larger areas. This means that the map may miss a pocket of different soils. DLCD has a process landowners can use to challenge NRCS soils information on a specific property. Owners who believe soil on their property has been incorrectly mapped

may retain a “professional soil classifier ... certified and in good standing with the Soil Science Society of America (ORS 215.211) through a process administered by DLCD. This soils professional can conduct an assessment that may result in a change of the allowable uses for a property.

The Hearings Officer agrees with the Applicant’s final legal argument, submitted on June 14, 2022, which states, in relevant part at page 2:

This statutory and regulatory scheme makes sense, as it would have been impracticable for a county to have conducted an individualized soils analysis on a farm-by-farm basis when it adopted its original zoning ordinances. Precluding the availability of a property owner to achieve a new zoning designation based upon a superior, more detailed and site-specific soils analysis would, to put it mildly, be absurd and cannot be what the legislature intended.³

Kitzrow explained and discussed the original intended uses of both Order I and Order III soil studies in his May 22, 2022 testimony:

*“Order I Soil Surveys are site-specific and have a high confidence interval and specificity. In other words, while Order III USDA soil surveys (published at 1:24,000) are a foundation for soil series/map unit concepts in the general area under review our current maps for this Order I Soil Survey are inventoried at a scale of 1:831 and 1:738 for this site-specific report In fact, in the original USDA map cited in our original report and henceforth sanctioned by the DLCD, it says right in the notation for the actual enclosed soil map, “Soil Map may not be valid at this scale” which it is not in this particular case. * * * Soil series concepts for the subject area in the USDA report are certainly valid and based upon solid Soil Survey principles, however, the actual soil map units, distribution and quantification of each unit is not always valid at this very detailed site-specific finite land base. This is a major distinct between Order I and Order III Soil Surveys. Order I Soil Surveys are represented by a scale reflective of the very small land base under consideration. Order III Soil Surveys are general in nature since their intended use is for agriculture, ranching and forest management and not for land use decisions and rezoning considerations. **Given these facts above, our current Order I Soil Survey is, in fact, a REPLACEMENT and NOT a supplement for the subject properties regarding soil map and Capability Class/Soil Efficacy considerations.”***

Exhibit A (emphasis in original).

The Soil Survey of the Deschutes Area, Oregon⁴ describes Class VII soils as “not suitable for cultivation and of severely limited use for pasture or as woodland.” It describes Class VIII soils as “not suitable for growing vegetation for commercial uses.” The Soil Survey of Upper Deschutes River Area, Oregon describes the broad, general level of soil surveying completed by NRCS on page 16, “At the less detailed level, map units are mainly associations and complexes. The average size of the delineations for most management purposes was 160 acres. Most of the land mapped at this level is used as woodland and rangeland. At the more detailed level, map units are mainly consociations and

³ The stated public purpose of the EFU zone is to preserve “Agricultural Lands” (ORS 215.243) but “Agricultural Lands” are not present on the subject property.

⁴ https://www.nrcs.usda.gov/Internet/FSE_MANUSCRIPTS/oregon/OR620/0/or620_text.pdf

complexes.... Most of the land mapped at the more detailed level is used as irrigated and nonirrigated cropland.”

As quoted in the Hearings Officer’s Decision and Recommendation to the Deschutes County Board of Commissioners in the *Swisher* decision, File Nos. 247-21-000616-PA/617-ZC:

The real issue is “map accuracy” which is based upon set standards for maps. National Map Accuracy Standard (NMAS) provides insurance that maps conform to established accuracy specifications, thereby providing consistency and confidence in their use in geospatial applications. An example of such a standard: “maps on publication scales larger than 1:20,000, not more than 10 percent of the points tested shall be in error by more than 1/30 inch, measured on the publication scale; for maps on publication scales of 1:20,000 or smaller, 1/50 inch.” The error stated is specific for a percentage of points, and to suggest that accuracy in maps is the unattainable freedom from error as the COL letter does, is not a relevant or a serious argument.

When one map shows point data like an Order-1 soil survey the accuracy can be measured, and when another map does not (like the NRCS soil map) there is a shortage of information, so the accuracy of the NRCS map cannot be determined for point data. The accuracy of the NRCS estimate of the percentage of components in the 38B soil complex can be shown to be very inaccurate in this case, and it clearly underestimates the Class 7 and Class 8.

The Hearings Officer finds that NRCS soil survey maps are not definitive or “binding” with respect to a determination of whether the subject property is, or is not, agricultural land. This is consistent with the ruling of the Land Use Board of Appeals (LUBA) in *Central Oregon Landwatch v. Deschutes County (Aceti)*, ___ Or LUBA ___ (LUBA NO. 2016-012, August 10, 2016 (Aceti I)). There, LUBA confirmed that OAR 660-033-0030(5)(a) and (5)(b) allow the County to rely on more detailed data on soil capability than provided by NRCS soil maps to define agricultural land, provided the soils survey has been certified by DLCD, which has occurred here. It found that the County’s reliance on the applicant’s more-detailed soils analysis prepared by a soil scientist supported a finding that the property was “nonagricultural land” even though the NRCS soil study mapped it as high-value farmland.

The *Aceti* ruling is summarized as follows:

LUBA found that it was appropriate for Deschutes County to rely on a site-specific soils survey prepared by soils scientist Roger Borine to find that a majority of the property is comprised of Class VII and VIII soils rather than on information provided by the NRCS Soil Survey. LUBA noted that the NRCS’s maps are intended for use at a higher landscape level rather than on a property-by-property basis.

First, LUBA affirmed the County’s determination that the subject property, which had been irrigated and used to grow hay in 1996 and earlier years, was not agricultural land based on the Order 1 soils survey which showed that the poor soils on the property are Class VII and VIII soils when irrigated, as well as when not irrigated.

Second, LUBA determined the applicant had established that the subject property was not

“agricultural lands,” as “other than Class I-VI Lands taking into consideration farming practices.” LUBA ruled:

“It is not an accepted farm practice in Central Oregon to irrigate and cultivate poor quality Class VII and VIII soils – particularly where, as here those soils are adjacent to rural industrial uses, urban density residential neighborhoods that complain about dust and chemicals and to high traffic counts on the surrounding roads and highways. Irrigating rock is not productive.”

The Hearings Officer also rejects the argument that NRCS land classifications based on its soil maps cannot be varied, unless a landowner requests an Order 1 soils study to qualify **additional** land as agricultural land. This is directly contrary to LUBA’s holding in *Central Oregon Landwatch v. Deschutes County and Aceti*, LUBA No. 2016-012:

“The Borine Study is evidence a reasonable person would rely on and the county was entitled to rely on it. As intervenor notes, the NRCS maps are intended for use at a higher landscape level and include the express statement ‘Warning: Soil Ratings may not be valid at this scale.’ Conversely, the Borine Study extensively studied the site with multiple on-site observations and the study’s conclusions are uncontradicted, other than by petitioner’s conclusions based on historical farm use of the property. This study supports the county’s conclusion that the site is not predominantly Class VI soils.”

ORS 215.211(1) specifically allows for the submittal by a certified soil scientist of an assessment of the capability of the land based on more detailed soils information than that contained in the Web Soil Survey operated by the NRCS to “assist a county to make a better determination of whether land qualifies as agricultural land.” The Applicant followed this procedure by selecting a professional soil classifier who is certified by and in good standing with the Soil Science Society of America to prepare the Order 1 soils report. DLCDC reviewed the soils report pursuant to ORS 215.211(2) and determined it could be utilized in this land use proceeding. The Hearings Officer finds that the law is settled when it comes to an applicant’s ability to rely on an Order I Soil Survey such as the surveys prepared by Kitzrow in this matter.

The Hearings Officer agrees that soils classifications are not the only determining factor with respect to whether a parcel is “agricultural land.” The Hearings Officer’s findings on all relevant factors to be considered in determining whether the subject property is “agricultural land,” are set forth in detail below.

For all the foregoing reasons, the Hearings Officer finds that the County is not bound by the landscape level NRCS Order II study on which classification of soils on the subject property is based. The Hearings Officer finds it is appropriate for the County to consider the Applicant’s Order I soils survey, certified for the County’s consideration by DLCDC.

2. HEARINGS OFFICER’S FINDINGS AND CONCLUSIONS REGARDING WHETHER THE SUBJECT PROPERTY IS “AGRICULTURAL LAND”

For purposes of this Decision and Recommendation, the Hearings Officer considers the definition of “Agricultural Land,” in OAR 660-033-020(1)(a), as defined in Goal 3, which includes:

(A) lands classified by the 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.

a. OAR 660-033-0020(1)(a)(A) Findings and Conclusions

The first prong defines “agricultural land” to include soils classified predominantly as Class I-VI in Eastern Oregon.⁵ The subject property meets this definition, but it is not controlling. As the Hearings Officer found above, the County may rely on the DLCD-certified Order I soil survey submitted by the Applicant. That study shows that the soils on the subject property are not predominantly Class I-VI soils. The Kitzrow Soil Surveys show that Lot 301 is comprised of 53.1% of Class VII and VIII soils, and that both Lot 500 and Lot 305 are comprised of 87.7% of Class VII and VIII soils. The County is entitled under applicable law to rely on the Order I soils survey in these applications in making a determination that the soils on the Subject Property are not predominantly Class I-VI soils. Kitzrow also explained in his Soil Surveys that the addition of irrigation waters will not improve the growing of farm crops on most of the site. No evidence was presented to rebut this evidence.

The Hearings Officer finds that the more detailed, onsite soil study submitted by the Applicant provides property-specific information not available from the NRCS mapping. There is no evidence in the record to rebut the Applicant’s soils study. Therefore, the Hearings Officer finds that the subject property does not constitute “agricultural land” under OAR 660-033-0020(1)(a)(A).

b. OAR 660-033-0020(1)(a)(C) Findings and Conclusions

No party has argued that the subject property is necessary to permit farm practices on nearby lands under this subsection, and no evidence has been submitted that any “farm use” on surrounding properties has depended upon use of the subject property to undertake farm practices. There is no showing that the subject property is necessary for farming practices on any surrounding agricultural lands. There is no evidence that the subject property contributes to any such practices, nor that other lands depend on use of the subject property to undertake any farm practices.

The Hearings Officer finds there is no evidence in the record that the subject property is “land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands. Questions concerning the “impact on adjacent or nearby agricultural lands,” do not answer the inquiry of whether the subject property is “necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.” OAR 660-033-0020(1)(a)(C).

⁵ Eastern Oregon is defined at OAR 660-033-0020(5) to include Deschutes County. File Nos. 247-21-000881-PA, 882-ZC
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For these reasons, the Hearings Officer finds that the subject property does not constitute “agricultural land” under OAR 660-033-0020(1)(a)(C).

c. OAR 660-033-0020(1)(b) Findings and Conclusions

The Hearings Officer finds there is no evidence in the record that the subject property is adjacent to or intermingled with lands in capability classes I-VI within a farm unit. Therefore, the Hearings Officer finds that the subject property does not constitute “agricultural land” under OAR 660-033-0020(1)(b). Specific findings on each applicable criterion are set forth in Section III(B) of this Decision and Recommendation.

d. OAR 660-033-0020(1)(a)(B) Findings and Conclusions

The Hearings Officer reviews evidence in the record to determine whether the subject property constitutes “agricultural land” under OAR 660-033-0020(1)(a)(B) as “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.**” (emphasis added). Competing evidence was presented by the Applicant, COLW and 1000 Friends of Oregon.

This provision acknowledges that, even if a property is comprised of poor soils (aka “Land in other soil classes” that are not classified I-VI in Eastern Oregon), it may nonetheless be “suitable for farm use” under one or more of the seven considerations set forth in OAR 660-033-0020(1)(a)(B). In other words, if any of the seven considerations are such that they **compensate for the poor soils on a property** and render such property “**suitable for farm use,**” - employment for the primary purpose of obtaining a profit in money - that property is determined to constitute agricultural land.

OAR 660-033-0020(1)(a)(B) begins with the statutory definition of “farm use” in ORS 215.203(2)(a) which informs the determination of whether a property is “suitable for farm use.” The Hearings Officer finds that the critical question, in analyzing the seven considerations, is whether any of those considerations essentially improve the conditions on the subject property – poor soils notwithstanding - to a point that it can be employed for the “**primary purpose of obtaining a profit in money** by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairying products or any other agricultural or horticultural use or animal husbandry or any combination thereof.” ORS 215.203(2)(a) (emphasis added). Aerial photograph evidence of past irrigation of the subject property is not dispositive without evidence that the property was irrigated and engaged in “farm use,” for the primary purpose of obtaining a profit in money.” There is no such evidence; rather, the aerial photographs evidence shows site condition

“Farm use” is not whether a person can engage in any type of agricultural or horticultural use or animal husbandry on a particular parcel of property. It is informed by whether such use can be made for the primary purpose of obtaining a profit in money. Therefore, the Hearings Officer rejects the argument that the subject property is “capable of any number of activities included in the definition of farm use,” because “farm use” as defined by the Oregon Legislature “**means the current employment of land for the primary purpose**

of obtaining a profit in money.” ORS 215.203(2)(a); see also Goal 3. This is a critical omission by commentators in opposition to the applications in their submissions. Speculation about whether the property could employ greenhouses, goat grazing, plant nurseries and the like is not enough. There are many properties in Central Oregon that are not engaged in “farm use,” but on which agricultural activities take place. However, the idea that a person who owns EFU-zoned property with poor soils is essentially limited to use their property for hobby farm type activities is not supported by the law.

The Hearings Officer finds that the definition of “farm use” in ORS 215.203(2)(a) refers to “**land**,” - not “lands,” - and does not include any reference to “combination” or requirement to “combine” with other agricultural operations for grazing rotation, or the like. Therefore, if the subject property, in and of itself cannot be engaged in farm use for the primary purpose of obtaining a profit in money, it does not constitute agricultural land. There is no requirement in ORS 215.203(2)(a) or OAR Chapter 660-033 that a certain property must “combine” its operations with other properties in order to be employed for the primary purpose of obtaining a profit in money and thus, engaged in farm use.

What the statutory definition of “farm use” means is that, merely because a parcel of property is zoned EFU and **some** type of agricultural activity could take place on it, or whether the property owner could join forces with another agricultural operations, does not mean that a property owner is forced to engage in agricultural activity if the property owner cannot use its own property for farming to obtain a profit in money. This is so, whether the barrier to obtaining a profit in money is due to soil fertility, suitability for grazing, climactic conditions, existing and future irrigation rights, existing land use patterns, technology and energy inputs required and accepted farming practices, any or all of these factors. In short, “farm use” under the statutory definition means more than just having a cow or horses, growing a patch of grapes, or having a passion for rural living. An owner must be able to obtain a profit in money for any use to be considered “farm use.”

The Hearings Officer finds that the list of considerations in OAR 660-033-0020(1)(a)(B) in determining whether land in other soil classes are “suitable for farm use,” are considered in relation to one another. No one consideration is determinative of whether a property with poor soils is nonetheless “suitable for farm use.”

COLW argues that the subject property may be used for some agricultural purpose and lists dozens of potential “agricultural commodities produced in Deschutes County,” pursuant to the 2012 USDA Census. Without any information as to whether the agricultural practices on properties in the vicinity of the subject property constitutes “farm use,” in that they make a profit in money from such uses, COLW relies on Humfleet’s Nubian Dairy Goats and Whistle Stop Farm and Flowers as examples. The Hearings Officer finds that it is not enough to introduce evidence of agricultural use of other properties without evidence of the profitability of such use. Speculation is not evidence, so an inference that uses on other properties “must be profitable” is not enough. Such an inference does not transfer to the subject property, either. Nor does it refute the substantial evidence in the record that establishes it is impractical to engage in allegedly potential agricultural uses of the subject property because one cannot make a profit in money from those uses. Therefore, the record shows the property is not suitable for farm use.

The question is not whether an owner could engage in agricultural uses on a property; it is whether it is impractical to attempt to make a “farm use” of the property, as the term is

defined in state law. The Hearings Officer finds that it is not an applicant’s burden to prove that no agricultural use could ever be made of a property. An applicant must prove that the land is not suitable for farm use because one cannot employ the subject property with the primary purpose of making a **profit** from any potential “agricultural use” of such property.

Soil Fertility

Unrebutted evidence in the record establishes that the predominant soil type on all three tax lots that comprise the subject property are Capability Class VII and VIII. Kitzrow explained the Soil Surveys in **Exhibit A**, noting that the Class VII and VIII “Order I delineations on Lot 301 will not benefit substantially from the addition of irrigation waters hence the poor Capability Class rating.” With regard to Lot 301, Kitzrow stated that the property “does not have any farming opportunities” because “[o]nly two very small areas are ‘undisturbed’ on this lot dating back to before 1985. * * * The remainder of this property has been highly altered, degraded and permanently debilitated. * * * A preponderance (87.7%) of the 1.06 acs is comprised of Capability Class 7 and 8 soils. Irrigation will not improve the growing of farm crops on most of the site.” With regard to Lot 305, Kitzrow concluded that the property “will not produce crops on a large majority of this lot” because of “the proportion and degree of ancient site alteration and degradation dating back to before 1985. * * * A preponderance (87.7%) of the 3.0 acs is comprised of Class 7 and 8 soils. Irrigation will not improve the growing of farm crops.”

While COLW argued that soil fertility is not always necessary for commercial agricultural operations because farm equipment could be and/or has been stored on the property, the Hearings Officer finds that the subject property’s resource capability is the proper determination. The Applicant is not required to engage in joint management or use with other lands that do constitute productive farm land. Moreover, storage and maintenance of equipment is not, in and of itself, a farm use unless such equipment is for the production of crops or a farm use on the subject property. Therefore, the Hearings Officer rejects the arguments of COLW that certain uses of the subject property could be made that are not dependent on soil type because none of the suggested uses constitute “farm use,” without any associated cultivation of crops or livestock.

Suitability for Grazing

The Applicant’s burden of proof sets forth the following:

The primary agricultural use conducted on properties with poor soils is grazing cattle. Given the high cost of irrigating and maintaining the property as pasture or cropland (high labor costs, labor-intensive, high cost of irrigation equipment and electricity, high cost of fertilizer, etc.), dry land grazing is the accepted farm use of poor soils in Deschutes County.

However, the extremely poor soils found on the Subject Property prevent it from providing sufficient feed for livestock for dryland grazing. That, the dry climate, the proximity to Highway 97, and area development prevent grazing from being a viable or potentially profitable use of the Subject Property. The soils are so poor that they would not support the production of crops for a profit.

When assessing the potential income from dryland grazing, Deschutes County uses a formula and assumptions developed by the OSU Extension Service. This formula is used by the County to decide whether EFU-zoned land is generally unsuitable for farm use.

- *One AUM is the equivalent to the forage required for a 1000 lb. cow and calf to graze for 30 days (900 pounds of forage)*
- *On good quality forage, an animal unit will gain 2 pounds per day*
- *Two animal units will eat as much in one month as one animal unit will eat in two months.*
- *Forage production on dry land is not continuous. Once the forage is eaten, it generally will not grow back until the following spring.*
- *An average market price for beef is \$1.20 per pound.*

Based on these assumptions, the value of beef production on the entire subject property can be calculated using the following formula:

$$\frac{30 \text{ days} \times 2\#/\text{day}/\text{acre}}{(1 \text{ acre per AUM})} = 60.0 \text{ lbs. Beef/acre}$$

$$60.0 \text{ lbs. Beef/acre} \times 19.12 \text{ acres} \times \$1.20/\text{lb.} = \$1,382.40 \text{ per year gross income}$$

Thus, the total gross beef production potential for the Subject Property would be approximately \$1,382.40 annually. This figure represents gross income and does not take into account real property taxes, fencing costs, land preparation, purchase costs of livestock, veterinary costs, or any other costs of production, which would exceed income. In addition, as the Subject Property abuts a busy state highway, the cost for liability insurance due to the risk of livestock escape and the potential for a vehicle/livestock accident, would likely be expensive

While COLW argued that neighboring Humfleet’s Nubian Dairy Goats (the “Humfleet Property”) is evidence that the Applicant could undertake a similar agricultural use on the subject property, there is no evidence that the Humfleet Property is a for-profit goat farm, or that the primary purpose of the Humfleet Property is “obtaining a profit in money” from such operation, under the “farm use” definition in ORS 215.203(2)(a).

COLW also assumed, without evidence, that the Humfleet Property has “lower quality [soils] compared to the subject properties.” This assumption is based only on NRCS soil data and ignores the Order I Soil Surveys of the subject property in the record. There is no Order I soil survey of the Humfleet Property from which to make a valid comparison of the quality of soils.

COLW ignored the location and characteristics of the subject properties in its comparison, as well. Unrebutted evidence in the record shows that Tax Lot 500 is adjacent to Highway 97, which is the busiest stretch of highway in Central Oregon, is covered in gravel and has an old building in the middle of the parcel. There is no evidence that growing crops or raising livestock on this parcel is, or could be, viable – only speculation. Tax Lot 305 is developed with a large building and gravel covers most of the remaining land. Tax Lot 301

is only 400 feet at its widest point, and includes an irrigation ditch and easement, which takes up a substantial portion of the narrow lot.

The current owner of Tax Lot 301, Dwight Johnson, explained that the subject properties do not have comparable attributes to the Humfleet Property, including barns suitable for livestock, a working irrigation system (including an irrigation pond and irrigation hand lines) and mature grass pastures. The Humfleet Property is not compromised by an irrigation district easement that renders a significant portion of the property useless, unlike the subject property, which has an easement that borders its east side. Finally, the Humfleet Property borders BLM land, which is undeveloped and does not present conflicting neighboring uses, unlike the neighboring residential properties to the subject property.

Johnson not only owns Tax Lot 301, but also Bend Soap Company, a successful goat operation in Central Oregon. He submitted a letter to the record (Exhibit QQ) that lists numerous reasons including the poor soils, small parcel sizes, parcel configuration, high costs of fencing and irrigation improvements and proximity to neighboring residential developments as evidence of why the subject property is not suitable for grazing. The letter concludes by stating, "For the reasons provided above, the subject property is not suitable for any agricultural uses and is specifically not suitable for raising goats." Because the subject properties do not have the attributes of the Humfleet Property, he determined that it will be far too expensive to construct similar improvements just to raise a few goats.

The lack of suitability of the subject property for dryland grazing as a viable or profitable use of the subject property is established by substantial evidence in the record. The Hearings Officer finds the Applicant has established that this factor has been established by the Applicant for purposes of determining the subject property is not "agricultural land" under OAR 660-033-020(1)(a)(B).

Climatic Conditions

There is little debate that climatic conditions contribute to the inability to engage in "farm use" for the purpose of making a profit in money. Evidence in the record (Exhibit G, J and K) show that climatic conditions on the subject property are challenging, and are likely to get worse. The climate is extremely arid and receives very little rain or snow throughout the year. The evidence shows that these conditions will continue to worsen as the "22-year megadrought" conditions continue to impact the region. The poor soil conditions on the subject property render the climatic conditions particularly impactful.

Whether or not other properties are engaged in *agricultural use* does not show that climatic conditions do not preclude "farm use" on the subject property. This is so, combined with the poor soils on the property and proximity to Highway 97. The relevant issue is whether or not agricultural activities can be engaged in on the subject property for the purpose of making a profit in money, considering climatic conditions. Substantial evidence shows that they cannot.

The Hearings Officer finds the Applicant has established that climatic conditions on the subject property are a factor in determining it is not "agricultural land" under OAR 660-033-020(1)(a)(B).

Existing and Future Availability of Water for Farm Irrigation Purposes

Regarding existing and future availability for water for farm irrigation purposes, commentators do not take into consideration whether any agricultural activities could be utilized for the primary purpose of making a profit in money on the property, such that the suggested agricultural activities constitute “farm use” under the statutory definition. There is no evidence that the subject property could be used for any of the listed activities in ORS 215.203(2)(a) for the primary purpose of obtaining a profit in money, whether or not the property is irrigated.

The Applicant’s burden of proof sets forth the following:

As explained above, two of the three Tax Lots comprising the Subject Property have existing COID water rights, but they are leased to the Deschutes River and no changes to that are planned for the future. The Pilot Butte Canal running along the eastern portion of two of the Tax Lots comprising the Subject Property is not sufficient to provide irrigation to the Subject Property. A Federal right of way exists on the canal that goes to 50 feet at the toe of the canal. At its widest, the Subject Property is 400 feet wide; even taking the 50 feet from the toe of the canal, at its widest, it is 300 feet. This is insufficient for farming purposes, which is supported by the fact that no historic farming use has been made. Finally, while a water distribution system exists on the Subject Property, it has been effectively extinguished by common ownership of Tax Lots 301 and 305.

The Applicant argues that the property’s exiting irrigation rights, currently leased back and not in use on the property, should not be considered in evaluating the property’s potential for agricultural uses. In its May 31, 2022 open record letter at page 4, the Applicant states:

As understood by the Applicant, staff’s primary concern regarding Goal 3 stems from irrigation water previously utilized on the Properties. Specifically, the Staff Report clarifies that “Staff recognizes that the property may not be found to be suitable for farm use regardless of the irrigation status, however, staff requests the Hearings Officer make specific findings on question (sic) if the leased water rights are unavailable to the property for the purposes of this analysis.” (Page 38). Staff’s concerns are understandable in light of a 2014 land use decision issued by the then Board of County Commissioners concerning property owned by NNP IV-NCR, :L:C (File No PA-13-1,. ZC-13-1; “Newland”). The Board in Newland opined that “having irrigation water rights is the most important factor in farm use throughout the country. Farm use in Central Oregon is primarily dependent upon having water to irrigate land for crops, hay, fields, pasture, and any other water dependent farm use.”

*This case is easily distinguishable from the Newland matter. As clarified by the preceding hearings officer’s detailed analysis, the Newland property included soil units which where [sic] Class VII when nonirrigated but Class III when irrigated. Like the Newland property, the Applicant’s irrigation water has consistently been leased back for Deschutes River in-stream flows since 2016 as part of COID’s Instream Lease Program. See **Exhibit B**. But differing from the Newland property, the irrigation water in this case is irrelevant to the soil classification. **Exhibit A** clarifies that the predominate soil units on all three Properties are Class VII and VII*

“even with supplemental irrigation water” and that “Irrigation does not improve most of each property and therefore the lack of usable land is the governing factor when considering the value and utility of each parcel.”

*With regard to Lot 301, Kitzrow concluded that the lot’s “Class [VII] and [VIII] Order I delineations **will not** benefit substantially from the addition of irrigation waters hence the poor Capability Class rating.” With regard to Lot 500, Kitzrow concluded that “Irrigation will not improve the growing farm crops on most of the site.” And with regard to Lot 305, Kitzrow concluded that “Irrigation will not improve the growing of farm crops. This site is permanently degraded and will not produce crops on a large majority of this lot of record.”*

*Regarding the Applicant’s irrigation water specifically and Central Oregon’s limited water resources generally, the Applicant additionally submits **Exhibits C to K** to the record.*

The irrigation water on the subject property has been leased back each year since 2016 to improve Deschutes River in-stream flows. Exhibit B. This consideration alone is not dispositive and further must be considered in light of unrebutted testimony of Kitzrow that concludes the predominate soil type on the property is Class VII/Class VIII, even with irrigation water, Exhibit A; Exhibits 7-9 to the Burden of Proof. The Hearings Officer finds it is irrelevant whether if the leased water rights are available to the property for the purposes of this analysis. The leased irrigation rights do not compensate for the poor soils in a manner such that the subject property could be engaged in “farm use,” for the primary purpose of obtaining a profit in money. The Hearings Officer finds there is no evidence that a reasonable farmer would expect to apply irrigation water to the poor soils on the subject property (considering its size and location, as well) and still obtain a profit in money from agricultural uses on the property, with or without existing irrigation rights.

Without any evidence to the contrary to refute the evidence submitted by the Applicant, the Hearings Officer finds that the Applicant has established that existing and future availability of water for farm irrigation purposes is a factor in determining the subject property is not “agricultural land” under OAR 660-033-020(1)(a)(B).

Existing Land Use Patterns

The Applicant stated in its burden of proof that, “surrounding land use patterns also do not support an agricultural use of the Subject Property. Much of the surrounding lands are zoned residential and consist of a residential subdivision. Other surrounding land is zoned open space / parks, and is not used for agricultural purposes. The land nearby zoned EFU-TRB is not currently used for farming or other agricultural uses.”

The Hearings Officer disagrees with the Applicant with respect to the last sentence quoted from the burden of proof above. Some nearby properties are engaged in agricultural uses, as evidenced by irrigation rights and farm tax deferral. However, there is no evidence as to whether the agricultural use of such properties constitutes “farm use,” for the primary purpose of obtaining a profit in money. The property immediately to the north, while zoned EFU, is vacant, without irrigation rights and is not currently receiving farm tax deferral. To the south of the subject property is a parcel zoned Open Space and Conservation (OS&C), owned and operated by the Oregon Parks & Recreation Department. Only properties to

the east of the subject property that are zoned EFU, are partially irrigated and receiving farm tax deferral, while also having been developed with manufactured homes.

Nonetheless, the Hearings Officer finds that existing land use patterns are a factor in determining the subject property is not “agricultural land” under OAR 660-033-020(1)(a)(B). This is particularly so with the Highway 97 transportation corridor immediately adjacent to the subject property to the east and southeast, and rural residential uses to the west.. The record shows that, as traffic on Highway 97 has increased and a flood of new residents have located to Central Oregon over the past 30-40 years, farm land adjacent to the busy thoroughfare has been impacted by these changes. Drought conditions persist in the region, as well. Surrounding areas have been re-dedicated to rural residential use, as opposed to farming, and large farm tracts over 80 acres in size around the subject property do not exist.

The area is characterized by the heavily trafficked Highway 97 and a mix of rural residential uses, vacant EFU property that lacks irrigation rights, a tract that is not currently in use but is zoned OS&C, and resident-occupied, partially irrigated EFU parcels. There are various non-farm uses in the area, including a number of non-farm dwellings. The Hearings Officer finds that this determination does not ask whether the proposal is “consistent with existing land use pattern,” but instead asks whether, considering the existing land use pattern, the property is agricultural land. I find that it does not.

The Hearings Officer finds the Applicant has established that existing land use patterns is a factor in determining the subject property is not “agricultural land” under OAR 660-033-020(1)(a)(B).

Technological and Energy Inputs Required

The Applicant’s burden of proof states, “[g]iven the Subject Property has been not been [sic] farmed in recent (or distant) history, and the land has been used for equipment service and repair for at least 4 decades, farming the Subject Property at this time would require immense investment in technological and energy inputs, including irrigation systems, fertilization, and building proper infrastructure.” Technological and energy inputs required for agricultural use of the subject property also factor into the fact the property is not suitable for “farm use,” because it cannot be so employed for “**primary purpose of obtaining a profit in money.**”

Suggested uses by commentators do not address the profitability component of the definition of “farm use,” and do not rebut substantial evidence in the record that shows the required investments that preclude the establishment of a legitimate “farm use” on the property.

Exhibit QQ sets forth the difficulty associated with grazing goats on the property – particularly for obtaining a profit in money – and concludes that the same difficulties would frustrate any other farm operation. The record also includes a letter from Paul Schutt, the owner of a 40-acre farm in Tumalo. Exhibit O. His testimony speaks specifically to hemp production and concludes that “even the most experienced farmer would be well advised not to plant hemp for the foreseeable future,” because a “glut in the market is causing hemp farmers to suffer huge losses.” The Applicant observes that this testimony is notable because hemp was a crop in Central Oregon that, for several years, could justify expending substantial capital on specialized equipment and structures necessary to

establish a legitimate farm use. Other substantial evidence in the record on this consideration is found in Exhibits Q through HH.

The Hearings Officer notes that certain uses, such as storing farm equipment are not, in and of themselves “farm use,” as confirmed by LUBA in *Oregon Natural Desert Association v. Harney County*, 42 Or LUBA 149 (2002).

The Hearings Officer finds that agricultural uses of the subject property cannot be undertaken for the primary purpose of obtaining a profit in money due to the costs associated with technological and energy inputs required for any such use. No one presented any evidence to rebut the Applicant’s evidence that such costs preclude the owner from making a profit in money from farming the subject property. Therefore, the Hearings Officer finds that the Applicant has established that technological and energy inputs and associated costs thereof is a factor in determining the subject property is not “agricultural land” under OAR 660-033-020(1)(a)(B).

Accepted Farm Practices

The Applicant’s burden of proof states, in part, “[f]arming lands comprised of soils that are predominately Class 7 and 8 is not an accepted farm practice in Central Oregon. Dryland grazing, the farm use that can be conducted on the poorest soils in the County, typically occurs on Class 6 non-irrigated soils that have a higher soils class if irrigated. The Applicant would have to go above and beyond accepted farming practices to even attempt to farm the property for dryland grazing. Crops are typically grown on soils in soil class 3 and 4 that have irrigation, which this property has neither.”

The definition of “accepted farm practice,” like that of “farm use,” turns on whether or not it is occurring for the primary purpose of obtaining a profit. The *Wetherell* court relied on the taxation code in ORS 308A.056 to define “accepted farm practice” as “a mode of operation that is common to farms of a similar nature, necessary for the operation of these similar farms to obtain a profit in money and customarily utilized in conjunction with farm use.” *Wetherell, supra*, 52 Or LUBA at 681. LUBA determined in the *Aceti I* case that it is not an accepted farming practice in Central Oregon to irrigate and cultivate Class VII and VIII soils.

The Applicant is not required to show that no agricultural use could ever be made on the property; only that no reasonable farmer would attempt to engage in “farm use,” which is for the primary purpose of obtaining a profit. The Hearings Officer finds that substantial evidence in the record submitted by the Applicant, and not rebutted, establishes that operations required to turn a profit from agricultural uses on the subject property are unrealistic and not consistent with accepted farm practices. Financial investments that would be required to attempt to operate the subject property in a similar manner to the Humfleet Property or the Whistle Stop Farm & Flowers (see Exs. JJ, KK, LL and MM)⁶ are infeasible due to the poor soils and other considerations, including location adjacent to Highway 97, graveled surfaces and other site constraints.

Oregon courts have consistently addressed profitability as an element of the definition of “agricultural land.” In *Wetherell v. Douglas County*, 342 Or 666 (2007), the Oregon

⁶ The Applicant notes that Whistle Stop Farm & Flowers is engaging in unpermitted commercial activities which, in and of itself, is not an accepted farm practice.

Supreme Court held that profitability is a “profit in money” rather than gross income. In *Wetherell*, the Court invalidated a rule that precluded a local government from analyzing profitability in money as part of this consideration. *Id.* at 683. The Court stated:

“We further conclude that the meaning of profitability,” as used in OAR 660-033-0030(5), essentially mirrors that of “profit.” For the reasons described above, that rule’s prohibition of any consideration of “profitability” in agricultural land use determination conflicts with the definition of “farm use” in ORS 215.203(2)(a) and Goal 3, which permit such consideration. OAR 660-033-0030(5) is therefore invalid, because it prohibits consideration of “profitability.” The factfinder may consider “profitability” which includes consideration of the monetary benefits or advantages that are or may be associated from the farm use of the property and the costs or expenses associated with those benefits, to the extent such consideration is consistent with the remainder of the definition of “agricultural land” in Goal 3.

*Finally, the prohibition in OAR 660-033-0030(5) of the consideration of “gross farm income” in determining whether a particular parcel of land is suitable for farm use also is invalid. As discussed above, “profit” is the excess or the net of the returns or receipts over the costs or expenses associated with the activity that produced the returns. To determine whether there is or can be a “profit in money” from the “current employment of [the] land *** by raising, harvesting and selling crops[.]” a factfinder can consider the gross income that is, or could be generated from the land in question, in addition to other considerations that relate to “profit” or are relevant under ORS 215.203(a) and Goal 3.*

We therefore hold that, because Goal 3 provides that “farm use” is defined by ORS 215.203, which includes a definition of “farm use” as “the current employment of land for the primary purpose of obtaining a profit in money[.]” LCDC may not preclude a local government making a land use decision from considering “profitability” or “gross farm income” in determining whether land is “agricultural land” because it is “suitable for farm use” under Goal 3. Because OAR 660-033-0030(5) precludes such consideration, it is invalid.

Id. at 681-683.

The Hearings Officer finds that the Applicant has met its burden of showing the subject property cannot be used for agricultural purposes for the primary purpose of obtaining a profit in money and such is not “agricultural land” under all of the considerations of OAR 660-033-020(1)(a)(B)..

The Hearings Officer finds that substantial evidence in the record supports a determination that the subject property is not suited to commercial farming because no reasonable farmer would believe he or she could make a profit in money therefrom, considering all of the factors listed in OAR 660-033-020(1)(a)(B). No one presented any evidence to rebut the Applicant’s evidence that “accepted farming practices” would or could change the poor soils on the property to render it suitable for “farm use.” There are various barriers to the Applicant, or any other person, that preclude using the subject property to engage in agricultural activities for a profit.

In conclusion, the Hearings Officer finds that substantial evidence in the record supports a determination that each of the listed considerations in OAR 660-033-020(1)(a)(B)

preclude “farm use” on the subject property because no reasonable farmer would expect to make a profit in money by engaging in agricultural activities on the land.

3. HEARINGS OFFICER’S FINDINGS AND CONCLUSIONS REGARDING DCC 18.04.030 DEFINITION OF “AGRICULTURAL LAND”

COLW argues that the definition of “agricultural land,” in DCC 18.04.030 excludes the definition of “farm use” in ORS 215.203(2)(a) and up-ends the Oregon Supreme Court’s decision in *Wetherell* because the County Code definition includes the phrase, “whether for profit, or not.” COLW cites *Brentmar v. Jackson County*, 321 Or 481, 497, 900 P.2d 1030 (1995) for the proposition that, even in EFU zones, Deschutes County can enact “more stringent local criteria” than state statutes.

COLW is wrong. The definition of “**agricultural land**” in DCC 18.04.030 is wholly consistent with ORS 215.203(2)(a) and case law in this state and does not exclude the “profit in money” component which defines “farm use” and guides analysis of whether or not property is in fact “agricultural land”:

“Agricultural Land” means 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.

COLW instead relies on the definition of “**agricultural use**,” which is not relevant. Many properties can be engaged in “agricultural use,” even if such properties do not constitute “**agricultural land**.” (hobby farms, for example). Merely because a property can be put to some, more broadly defined “agricultural use,” does not make it “agricultural land,” for the reasons set forth in detail in this Decision and Recommendation.

“Agricultural use” means any use of land, whether for profit or not, related to raising, harvesting and selling crops or by the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof not specifically covered elsewhere in the applicable zone. Agricultural use includes the preparation and storage of the products raised on such land for human and animal use and disposal by marketing or otherwise. Agricultural use also includes the propagation, cultivation, maintenance and harvesting of aquatic species. Agricultural use does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees.

The Hearings Officer finds that application of the County Code definition of “agricultural land” does not change the analysis in this Decision and Recommendation.

4. HEARINGS OFFICER’S FINDINGS AND CONCLUSIONS REGARDING RURAL INDUSTRIAL USES AND GOAL 14

The Hearings Officer finds that the arguments of COLW and 1000 Friends concerning Goal 14 are improper attempts to re-litigate a matter that has been before the Deschutes County Hearings Officer, the Board of County Commissioners, LUBA and the Court of Appeals. *Central Oregon LandWatch v. Deschutes County*, ___ Or LUBA ___ (LUBA No 2021-028 (“*Aceti*”), *aff’d* 315 Or App 673, 501 P3d 1121 (2021)). Moreover, COLW and 1000 Friends disagree on whether the factors set forth in *Shaffer v. Jackson County*, 17 Or LUBA 922 (1989) are applicable. *See also Columbia Riverkeeper v. Columbia County*, 70 Or LUBA 171 (2014). For the reasons set forth in detail below, the Hearings Officer finds that the *Shaffer* factors are not applicable because the eventual use of the subject property is uncertain, making it impossible to determine whether the *Shaffer* factors are satisfied.

As the Hearings Officer finds below, a use-by-use analysis of the uses permitted outright and conditionally in the RI zone to determine whether such uses are urban or rural in nature has been made by the Deschutes County Board of County Commissioners. Those findings are binding on the County in consideration of the subject applications.

a. Analysis of LUBA and Court of Appeals Decisions in Aceti

The recent *Aceti* LUBA opinion states, in relevant part:

In 2018, the county amended the DCCP to allow RI designations and zoning of land outside the three existing exception areas. Petitioner appealed those amendments [in Central Oregon LandWatch v. Deschutes County, 79 Or LUBA 253, aff’d 298 Or App 375, 449 P3d 534 (2019)], arguing, among other things, that the county’s decision failed to comply with Goal 14 because the amendments would allow urban uses of rural lands. Petitioner further argued that the DCC RI zone regulations – which were not amended concurrently in 2018 with the DCCP amendments – allow urban uses of rural land. We rejected those arguments, concluding that the 2018 DCCP amendments are consistent with Goal 14 because (1) any future application for the RI plan designation would have to demonstrate that it is consistent with Goal 14 and (2) petitioner’s argument that the RI zone regulations allow urban uses was an impermissible, collateral attack on acknowledged land use regulations.

Aceti (slip op at *3) (internal citations omitted). DLCD has acknowledged the County’s RI code provisions. LUBA’s *Aceti* decision questions whether an analysis of the *Shaffer* factors [*Shaffer v. Jackson County*, 16 Or LUBA 871 (1988)] was necessary because the applicable DCC RI provisions have been repeatedly acknowledged by DLCD as consistent with Goal 14. Among other things, it stated:

*** * * the county amended the DCC RI zone regulations in 2002 and DLCD acknowledged those regulations are consistent with Goal 14. In 2002, the RI plan designation was limited to certain geographic areas and specific properties. However, the 2002 Ordinances did not limit uses allowed in the RI zone to preexisting industrial uses. Instead, the 2002 Ordinances provided that the purpose of the RI plan designation 'is to recognize existing industrial uses in rural*

areas of the county and to allow the appropriate development of additional industrial uses that are consistent with the rural character, facilities and services.'

*** in 2018, the county amended the DCCP to make the RI plan designation available for properties other than those already zoned RI. We have no reason to believe that DLCD's acknowledgment of the 2002 Ordinances as consistent with Goal 14 was premised on the fact that the RI plan designation was at that time limited to specific geographic areas. However, we note that certain factors that indicate the urban nature of a use--such as proximity to a UGB or extension of public facilities--might be different on a new parcel as compared to those properties originally zoned RI prior to the 2018 DCCP amendments.

"In adopting the 2018 DCCP amendments, the county took a belt-and-suspenders approach by requiring an applicant for a new RI plan designation to demonstrate compliance with Goal 14, even though the county had already concluded (and DLCD acknowledged) that the RI zone itself complies with Goal 14 by limiting uses to those that are rural in character. In [Central Oregon LandWatch v. Deschutes County, 79 Or LUBA 253, aff'd 298 Or App 375, 449 P3d 534 (2019)], we affirmed that belt-and suspenders approach in response to petitioner's Goal 14 challenge.

"In this case, the county agreed with intervenor that 'the policies of the DCCP, implemented by DCC Chapter 18.100, which is an acknowledged land use regulation, do not allow urban uses on RI designated and zoned land.' Petitioner does not assign error to that finding on appeal. That might have been the end of the Goal 14 inquiry. Nevertheless, perhaps because the county took a belt-and-suspenders approach to support the 2018 DCCP amendments by requiring an applicant to demonstrate compliance with Goal 14, the county further concluded that '[s]pecific findings with 'reasonable clarity' must be made to support a determination that the [DCC] and [DCCP] limit industrial uses to those that are rural in nature.' In what appears to us to be yet another belt-and-suspenders approach, the county applied the Shaffer test to explain why applying RI zoning to the subject property will not result in urban uses.

"Intervenor appears to have accepted and invited that second-step inquiry and neither assigns error to it on appeal nor argues that the county's Shaffer analysis is dicta or unnecessary, alternative findings in light of the county's collateral attack conclusion regarding the acknowledged DCC chapter 18.100. Accordingly, we assume for purposes of this decision, as the county did and the parties do, that the fact that the RI zone regulations have been acknowledged by DLCD to comply with Goal 14 is not independently sufficient to demonstrate the challenged post-acknowledgment plan amendment applying the RI plan designation and zone to the subject property also complies with Goal 14."

(slip op at *12-13). Applicant asserts that the final paragraph above, read in conjunction with the preceding paragraphs, conclusively demonstrates that LUBA's formal Aceti holding is constrained to what was likely a superfluous "belt and suspenders" Shaffer analysis at issue in those proceedings. On appeal of this LUBA decision to the Oregon Court of Appeals, the Court ruled:

“Aceti first argues that LUBA should not have applied the Shaffer test at all because the state agency overseeing land use planning, the Land Conservation and Development Commission, must have already determined that all the uses permitted in the County's RI zones are rural, not urban, when it acknowledged the County Plan. However, that argument was not raised before LUBA, and Aceti does not contend that LUBA committed plain error. Aceti also argues that LUBA misapplied the Shaffer test. However, Aceti has provided no basis under our standard of review that would permit us to displace LUBA's application of its own precedent.”

Central Oregon LandWatch v. Deschutes County, 315 Or App 673, 680, 501 P3d 1121 (2021).

Based on the foregoing analysis and citations, the Applicant argues at page 14 of its June 14, 2022 final argument that LUBA and the Court of Appeals were persuaded by the notion that DLCD’s acknowledgement of the County’s DCC and DCCP provisions governing the RI zone should have set the Goal 14 issue to rest, but for the *Aceti* applicant undertaking a “belt and suspenders” *Shaffer* analysis.

The Applicant posits that what is dispositive for the subject application are the BOCC’s findings regarding the RI zone. The Applicant’s primary argument on this issue is that the DCC and DCCP provisions governing the RI zone ensure that no urban uses are allowed on rural lands. Based on that assertion, the subject application specifically does not include the same superfluous “belt and suspenders” *Shaffer* analysis. Therefore, LUBA’s formal *Aceti* ruling which is constrained to that “belt and suspenders” analysis is inapplicable to the present application.

b. BOCC’s Formal Aceti Findings

The record includes a copy of the Hearings Officer's October 8, 2020 decision in the *Aceti* matter. The BOCC, in turn, adopted that decision as its own, with the Hearings Officer's decision incorporated as the BOCC's findings attached and incorporated into Ordinance No 2021 -002 adopted on January 27, 2021. Pages 48 and 49 of the Hearings Officer's decision includes six findings conclusively demonstrating that the law is settled when it comes to the County's RI zone not allowing urban uses on rural lands.

"First, LUBA has rejected the argument that DCC 18.100.010 allows urban uses as constituting an impermissible collateral attack on an acknowledged land use regulation. [Central Oregon LandWatch v. Deschutes County, 79 Or LUBA 253, aff'd.298 Or App 37s,449 P3d 534 (2019)].

"Second, DCC Chapter 18.100 implements DCCP Policies 3.4.9 and 3.4.23, which together direct land use regulations for the Rural Commercial and Rural Industrial zones to 'allow uses less intense than those allowed in unincorporated communities as defined by Oregon Administrative Rule 660-022 or its successor,' to 'assure that urban uses are not permitted on rural industrial lands.' The BOCC adopted this finding in support of Ordinance 2018-126, which was appealed and sustained by LUBA and the Court of Appeals.

"Third, as the BOCC found in adopting Ordinance 2018-126, which was appealed and sustained by LUBA and the Court of Appeals, the application of DCC Title 18 to any development proposed on Rural Commercial or Rural Industrial designated land will ensure that the development approved is consistent with the requirements set forth in DCCP Policies 3.4.12 and 3.4.27 do not adversely affect surrounding area agricultural or forest land, or the development policies limiting building size (DCCP Policies 3.4.14 and 3.4.28), sewers (DCCP Policies 3.4.18 and 3.4.31) and water (DCCP Policies 3.4.19 and 3.4.32) intended to limit the scope and intensity of development on rural land.

"Fourth, DCCP Policy 3.4.28 includes a direction that, for lands designated and zoned RI, new industrial uses shall be limited to a maximum floor area of 7,500 square feet per use within a building, except for the primary processing of raw materials produced in rural area, for which there is no floor area per use limitation.

"Fifth, DCCP Policy 3.4.31 includes a direction that, for lands designated and zoned RI, residential and industrial uses shall be served by DEQ approved on-site sewage disposal systems.

"Sixth, DCCP Policy 3.4.32 includes a direction that, for lands designated and zoned RI, residential and industrial uses shall be served by on-site wells or public water systems."

The Hearings Officer finds that the above findings are not constrained to the facts and circumstances at issue in the Aceti application. These findings apply universally to any application submitted relying on the County's DCC and DCCP RI provisions. LUBA succinctly described the above six findings as follows:

" * * the county determined that even the most intensive industrial use that could be approved on the subject property under the RI regulations and use limitations would not constitute an urban use. The county found that the DCCP RI policies and implementing RI zone regulations in DCC 18.100.010 to 18.100.090 limit the scope and intensity of industrial development in the RI zone so that no urban industrial use can be allowed on the subject property. For example, as explained above, new industrial uses are limited to a maximum floor area of 7,500 square feet within a building and industrial uses must be served by on-site sewage disposal. DCCP Policy 3.4.28; DCCP Policy 3.4.31; DCC 18.100.040(H)(1); DCC 18.100.030(K)."*

Aceti (slip op at *11) (internal citations to the record omitted).

The Hearings Officer finds that the law is settled on the question of whether the RI zone permits urban uses on rural lands. It does not. A belt-and-suspenders Shaffer analysis is not required. The Hearings Officer adopts the findings of the BOCC set forth in Ordinance No. 2021-002 (January 27, 2021) by this reference as the Hearings Officer's findings concerning the "urban" or "rural" nature of uses in the RI zone.

As determined in Aceti, "even the most intensive industrial use that could be approved on the property under the RI regulations and use limitations would not constitute an urban use. ... [T]he [Deschutes County Comprehensive Plan] RI

policies and implementing RI zone regulations in DCC 18.100.010 to 18.100.090 limit the scope and intensity of industrial development in the RI one so that no urban industrial use can be allowed on the subject property.”

The Hearings Officer finds that the findings in the *Aceti* application, adopted by the BOCC, are binding interpretations of DCC and DCCP provisions governing the County’s RI zone. The Hearings Officer declines to revisit these findings here, particularly given the well-established rule that local governments "may err in changing previously adopted interpretations" if doing so is a product of a design to act arbitrarily or inconsistently from case to case." *Foland v. Jackson County*, ___ Or LUBA ___, ___ (LUBA No 201 3-082, Jan 30, 2014) (slip op at *4) (citing *Alexanderson v. Clackamas County*, 126 Or App 549, 552, 869 P2d 873 (1994)).

The Hearings Officer enters the same findings set forth above with respect to this application and finds that the application complies with Goal 14; no Goal 14 exception is required.⁷ The County’s RI zone does not permit urban uses; this question has been asked and answered.

The Hearings Officer notes that the Applicant included a “Goal 14 exception” application in the alternative if the Board of County Commissioners determines that a Goal 14 exception is required. The Applicant’s Goal 14 exception application is addressed in detail in the findings below.

5. HEARINGS OFFICER’S FINDINGS AND CONCLUSIONS REGARDING DCC 22.20.015

COLW argued in its May 31, 2022 open record submittal that the Hearings Officer should determine pursuant to DCC 22.20.015 “if the subject property is in violation of applicable land use regulations” due to “a current farm use or farm equipment maintenance and storage occurring on the subject property.” Presumably, COLW is arguing that the County cannot approve the subject applications due to an alleged code violation, per DCC 22.20.015(A). COLW did not provide any additional information or argument as to the relevance of the use of the subject property for such a use, which is allowed outright pursuant to DCC 18.16.020(A).

The Hearings Officer finds that DCC 22.20.015 is irrelevant because no violation has been established under DCC 22.20.015(C), and the record does not support a finding that the subject property is not in compliance with applicable land use regulations and/or conditions of approval of prior land use decisions or building permits.

The Hearings Officer finds that DCC 22.20.015 does not preclude the County’s consideration of the applications or its approval thereof.

⁷ The Applicant included an alternative request for a Goal 14 exception to address the possibility that the Board of County Commissioners will deviate from the aforementioned proclamation when addressing the *Aceti* matter on remand. But until and unless that occurs, the Applicant and the County are entitled to rely on the Board of County Commissioner’s precedent.

B. HEARINGS OFFICER’S FINDINGS AND CONCLUSIONS REGARDING APPLICABLE CRITERIA

Title 18 of the Deschutes County Code, County Zoning

Chapter 18.120. Exceptions

Section 18.120.010. Nonconforming Uses.

Except as otherwise provided in DCC Title 18, the lawful use of a building, structure or land existing on the effective date of DCC Title 18, any amendment thereto or any ordinance codified therein may be continued although such use or structure does not conform with the standards for new development specified in DCC Title 18. A nonconforming use or structure may be altered, restored or replaced subject to DCC 18.120.010. No nonconforming use or structure may be resumed after a one-year period of interruption or abandonment unless the resumed use conforms with the provisions of DCC Title 18 in effect at the time of the proposed resumption.

FINDING: In the burden of proof submitted, there are several descriptions of the activities and uses that have taken place on the subject property related to the previously-verified nonconforming uses under files NCU-73-33 and SP-79-21. In the Staff Report, staff questioned whether nonconforming use verification should be made for purposes of the applications. The Applicant, at the hearing, conceded that the nonconforming uses on the subject property were potentially abandoned as a matter of law. The Applicant further agreed that the subject applications are not a replacement for a nonconforming use verification contemplated by DCC 18.120.010(C).

The Hearings Officer finds that, whether or not current uses of the property are lawful non-conforming uses, is not relevant to the determination of compliance with the applicable criteria for the proposal before the County. No applicable DCC provision, statute or rule requires a non-conforming use verification for purposes of review of the subject applications.

The Hearings Officer finds that the Applicant need not prove that the current uses of the property are lawful non-conforming uses to meet its burden of proof.

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, also the property owner, requested a quasi-judicial plan amendment and filed the applications for a plan amendment and zone change. The

Applicant filed the required Planning Division’s land use application forms for the proposal. The application is reviewed utilizing the applicable procedures contained in Title 22 of the Deschutes County Code.

Section 18.136.020, Rezoning Standards

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

FINDING: The Applicant submits that “the proposed rezone best serves the interest of the community by allowing Applicant to put the Subject Property to its most viable use.” The Hearings Officer finds that the four factors listed in DCC 18.136.020 are considered in order to determine whether the public interest is best served by rezoning the property. The Hearings Officer finds that a demonstration of these four factors by the Applicant constitutes proof that the public interest will be best served by rezoning the property.

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

FINDING: The Applicant provided the following response in its burden of proof statement:

Per prior Hearings Officers decisions for Plan amendments and zone changes on EFU-zoned property, this paragraph establishes two requirements: (1) that the zone change conforms to the Plan and (2) that the change is consistent with the plan’s introduction statement and goals. Rezoning the Subject Property from EFU-TRB to RI will conform with the Comprehensive Plan and is consistent with the plan’s introductory statement, as set out below.

- 1) *Conformance with the Comprehensive Plan.* Applicant is currently requesting a Plan amendment to re-designate the Subject Property from Agriculture to Rural Industrial. The rezone from EFU-TRB to RI will be consistent with the proposed Plan amendment requesting that that the property be designated Rural Industrial.
- 2) *Consistency with the Plan’s Introductory Statement and Goals.* In previous decisions, the Hearings Officer found the introductory statements and goals are not approval criteria for proposed plan amendments and zone changes⁸. However, the Hearings Officer in the Landholdings decision found that depending on the language, some plan provisions may apply and found the following amended comprehensive plan goals and policies require consideration and that other provisions of the plan do not apply as stated below in the Landholdings decision:

"Comprehensive plan statements, goals and policies typically are not intended to, and do not, constitute mandatory approval criteria for quasi-

⁸ Powell/Ramsey (file no. PA-14-2 / ZC-14-2) and Landholdings (file no. 247-16-000317-ZC, 318-PA)

judicial/and use permit applications. *Save Our Skyline v. City of Bend*, 48 Or LUBA 192 (2004). There, LUBA held:

'As intervenor correctly points out, local and statutory requirements that land use decisions be consistent with the comprehensive plan do not mean that all parts of the comprehensive plan necessarily are approval standards. [Citations omitted.] Local governments and this Board have frequently considered the text and context of cited parts of the comprehensive plan and concluded that the alleged comprehensive plan standard was not an applicable approval standard. [Citations omitted.] Even if the comprehensive plan includes provisions that can operate as approval standards, those standards are not necessarily relevant to all quasi-judicial land use permit applications. [Citation omitted.] Moreover, even if a plan provision is a relevant standard that must be considered, the plan provision might not constitute a separate mandatory approval criterion, in the sense that it must be separately satisfied, along with any other mandatory approval criteria, before the application can be approved. Instead, that plan provision, even if it constitutes a relevant standard, may represent a required consideration that must be balanced with other relevant considerations. [Citations omitted.]'

LUBA went on to hold in *Save Our Skyline* that it is appropriate to 'consider first whether the comprehensive plan itself expressly assigns particular role to some or all of the plan's goals and policies.' Section 23.08.020 of the county's comprehensive plan provides as follows:

The purpose of the Comprehensive Plan for Deschutes County is not to provide a site-specific identification of the appropriate land uses which may take place on a particular piece of land but rather it is to consider the significant factors which affect or are affected by development in the County and provide a general guide to the various decision which must be made to promote the greatest efficiency and equity possible, which [sic] managing the continuing growth and change of the area. Part of that process is identification of an appropriate land use plan, which is then interpreted to make decision about specific sites (most often in zoning and subdivision administration) but the plan must also consider the sociological, economic and environmental consequences of various actions and provide guidelines and policies for activities which may have effects beyond physical changes of the land (Emphases added.)

The Hearings Officer previously found that the above-underscored language strongly suggests the county's plan statements, goals and policies are not intended to establish approval standards for quasi-judicial land use permit applications.

In *Bothman v. City of Eugene*, 51 Or LUBA 426 (2006), LUBA found it appropriate also to review the language of specific plan policies to

*determine whether and to what extent they may in fact establish decisional standards. The policies at issue in that case included those ranging from aspirational statements to planning directives to the city to policies with language providing 'guidance for decision-making' with respect to specific rezoning proposals. In Bothman LUBA concluded the planning commission erred in not considering in a zone change proceeding a plan policy requiring the city to '[r]ecognize the existing general office and commercial uses located * * * [in the geographic area including the subject property] and discourage future rezonings of these properties.' LUBA held that:*

*“*** even where a plan provision might not constitute an independently applicable mandatory approval criterion, it may nonetheless represent a relevant and necessary consideration that must be reviewed and balanced with other relevant considerations, pursuant to ordinance provisions that require *** consistency with applicable plan provision.’ (Emphasis added.)*

The county's comprehensive plan includes a large number of goals and policies. The Applicant's burden of proof addresses goals for rural development, economy, transportation, public facilities, recreation, energy, natural hazards, destination resorts, open spaces, fish and wildlife, and forest lands. The Hearings Officer finds these goals are aspirational in nature and therefore are not intended to create decision standards for the proposed zone change."

Hearings Officer Karen Green adhered to these findings in the Powell/Ramsey decision (file nos. PA-14-2/ZC-14-2), and found the above-referenced introductory statements and goals are not approval criteria for the proposed plan amendment and zone change.

This Hearings Officer also adheres to the above findings herein. Nevertheless, depending upon their language, some plan provisions may require "consideration" even if they are not applicable approval criteria. Save Our Skyline v. City of Bend, 48 Or LUBA 192, 209 (2004). I find that the following amended comprehensive plan goals and policies require such consideration, and that other provisions of the plan do not apply...."

The Hearings Officer relies on the analysis set forth in prior Hearings Officers' decisions. This Decision and Recommendation reviews only the Comprehensive Plan Goals and policies that apply, addressed in detail in the Comprehensive Plan section below.

Based on the Applicant's demonstration of Comprehensive Plan conformance detailed in subsequent findings, the Hearings Officer finds that the zone change conforms to the Plan; and (2) that the change is consistent with the Plan's introductory statement and goals. Rezoning the Subject Property from EFU-TRB to RI will conform with the Comprehensive Plan and is consistent with the plan's introductory statement, as set out below.

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

FINDING: Section 3.4 of the Comprehensive Plan includes the following language for the rural industrial designation:

Rural Industrial

The county may apply the Rural Industrial plan designation to specific property within existing Rural Industrial exception areas, or to any other specific property that satisfies the requirements for a comprehensive plan designation change set forth by State Statute, Oregon Administrative Rules, this Comprehensive Plan and the Deschutes County Development Code, and that is located outside unincorporated communities and urban growth boundaries. The Rural Industrial plan designation and zoning brings these areas and specific properties into compliance with state rules by adopting zoning to ensure that they remain rural and that the uses allowed are less intensive than those allowed in unincorporated communities as defined in OAR 660-022.

The subject property is not within any existing Rural Industrial exception areas and is located outside unincorporated communities and urban growth boundaries. The County may apply the RI plan designation to any other specific property (outside of an RI exception area, and outside unincorporated communities and urban growth boundaries) that satisfies the requirements for a comprehensive plan designation change set forth by State Statute, Oregon Administrative Rules, the Deschutes County Comprehensive Plan (“DCCP”) and the Deschutes County Development Code. The Hearings Officer finds that the fact the subject property is outside of an RI exception area does not preclude consideration of the application.

There is no longer a “purpose” statement in DCC Chapter 18.100 regarding the intent of the RI zone.⁹ Chapter 18.100 merely sets forth uses permitted outright, conditional uses, use limitations, dimensional standards, off-street parking and loading requirements, site design, “additional requirements” and solar setback requirements and includes a separate section concerning a limited use combining zone, Deschutes Junction. Without a “purpose and intent” statement for the RI zone, the Hearings Officer cannot make findings as to whether the application is consistent with the proposed zone classification’s purpose and intent.

As stated in Section 3.4 of the Comprehensive Plan, RI plan designation and zoning brings specific properties into compliance with state rules “by adopting zoning to ensure that they remain rural and that the uses allowed are less intensive than those allowed in unincorporated communities as defined in OAR 660-022.” The Hearings Officer finds the applications are consistent with the general statement in the DCCP regarding RI plan

⁹ Former DCC 18.100.010 stated that the purpose of the RI zone is “to encourage employment opportunities in rural areas and to promote the appropriate economic development of rural service centers which are rapidly becoming urbanized and soon to be full-service incorporated cities, while protecting the existing rural character of the area as well as preserving or enhancing the air, water and land resources of the area.” As amended in 2021, there is no longer a purpose statement in this chapter concerning the RI zone.

designation and zoning, given that the RI zone does not allow urban uses. The Hearings Officer finds that the proposed change in designation and zone classification to RI will ensure that the property remains rural and that the uses allowed are less intensive than those allowed in unincorporated communities.

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: There are no plans to develop the property in its current state. The above criterion asks if the proposed zone change will *presently* serve public health, safety, and welfare. The Applicant provided the following response in the burden of proof statement:

Necessary public facilities and services are available to serve the Subject Property. The Subject Property is served by Deschutes County Services, the Deschutes Public Library District, the Central Oregon Irrigation District, and Bend Garbage & Recycling. The Subject Property is already equipped with adequate water and sewage systems, as explained above [sic], to support industrial uses.

Deschutes Rural Fire Protection District #2 provides fire and ambulance services to the Subject Property, and the Deschutes County Sheriff provides policing services.

It is efficient to provide necessary services to the property because the property is already served by these providers and the Subject Property is close to the City limits of both Bend and Redmond. It is also adjacent to a rural residential subdivision. This criterion is met.

Neighboring properties contain residential and open space & conservation uses, which have water service from a quasi-municipal source or wells, on-site sewage disposal systems, electrical service, telephone services, etc. The Applicant presented evidence that the property itself is already served by public service providers.

In the Staff Report, staff questioned whether the Applicant met its burden of proof on this criterion given potential transportation safety issues concerning a privately constructed/maintained bridge over the canal which serves as access to the majority of the subject property. The Hearings Officer notes that the fire department did not comment on the applications nor otherwise express any concerns regarding adequacy of access to the property for emergency services.

Deschutes County has not requested or required that the bridge be dedicated to public use as a condition of approval of the applications, and the County has generally imposed a moratorium on adding any roads or bridges to the County’s transportation system. At the hearing, the Applicant acknowledged that replacement of the existing bridge may be initiated by it directly, or that the County could require such replacement as a condition of approval for the future development of the property and will require further coordination with COID, as noted in COID’s comments on these applications.

The Hearings Officer finds that the bridge is not a “public facility” to be evaluated under this criterion. Findings on compliance with TSP requirements are set forth in detail below, incorporated herein by this reference.

Many DCC 18.100.010 uses are outright uses, the future development of which will be subject to review of public services and facilities availability. Prior to development of the properties, the Applicant will be required to comply with the applicable requirements of the Deschutes County Code, including possible land use permitting, building permitting, and sewage disposal permitting processes. Through these development review processes, assurance of adequate public services and facilities will be verified.

The Hearings Officer finds this criterion 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’s burden of proof statement addresses potential impacts on surrounding land uses as related to each individual policy and goal item within the County’s Comprehensive Plan, addressed in detail in subsequent findings.

Impacts to surrounding land uses resulting from the requested rezone and re-designation must be determined to be consistent with the specific goals and policies in the DCCP. Specific comprehensive goals and policies pertaining to these surrounding land uses are discussed in the section of this decision addressing the DCCP, in the findings below.

The Hearings Officer’s review includes consideration of the range of uses allowed outright and conditionally in the RI zone which inform a decision on whether expected or anticipated impacts of such potential uses on surrounding land use will be consistent with the specific goals and policies in the DCCP. Although no specific development is proposed at this time, the Hearings Officer notes that potential impacts to surrounding land use from industrial uses generally include traffic, visual impacts, odor, dust, fumes, glare, flashing lights, noise, and similar disturbances. Again, such impacts are considered in light of existing impacts of development and roads in the surrounding area.

Based on the Applicant’s demonstration of Comprehensive Plan conformance set forth in detail in subsequent findings and incorporated herein by this reference, the Hearings Officer finds the application complies with the above criterion.

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 is proposing to rezone the property from EFU to RI and re-designate the property from Agriculture to Rural Industrial. The Applicant provided the following response in the burden of proof statement:

Both mistake and change in circumstances are applicable to the Subject Property. As to mistake, in 1978, the County Board of Commissioners, upon reviewing a

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*request by the then owner of the Subject Property to rezone the Subject Property from A-1 (exclusive agricultural) to C-2, decided to rezone only Tax Lot 500, but changed the zoning to "AS," which "allows just about any kind of commercial" activity. See **Exhibit 11**. That decision mistakenly did not rezone Tax Lot 301, despite the Applicant at the time explaining to the Board of Commissioners that "without this zone change his land is virtually worthless" due to it being landlocked and due to the uses. As to change in circumstances, the Subject Property has been irrevocably committed to non-agricultural uses through decades of using the property for equipment service and rentals/sales. The land, which may have previously been considered suitable for farming, no longer is. Rather it is made up predominantly of Class 7 or 8 soils, which are unsuitable for agricultural use. See **Exhibits 7-9**. For these reasons, this Application meets the requirements of Criterion D.*

Mistake

For the reasons set forth below, the Hearings Officer finds that a "mistake" was not made. The 1978 File No. Z-78-23 proceeding materials are included in the record and establish that the County made a considered, deliberate decision to rezone only Tax Lot 500 and to deny the application to rezone Tax Lot 301. The then-applicant did not appeal the County Board of Commissioner's decision to deny the application to rezone Tax Lot 301. The Hearings Officer finds that the unchallenged decision cannot now be considered to be the product of "mistake" under Oregon law. The Applicant cannot now collaterally attack this prior decision and claim it to be the product of "mistake."

In *Aceti* (247-20-000438-PA, 439-ZC), the Hearings Officer found:

As the Hearings Officer found in Aceti 1, I find that the original EFU zoning of the subject property was not a mistake at the time of its original designation. The property's EFU designation and zoning were appropriate in light of the soil data available to the county in the late 1970s when the comprehensive plan and map were adopted.

The Hearings Officer makes a similar finding with respect to the subject applications. The EFU zoning of the subject properties was not a mistake at the time of its original designation. The properties' EFU designation and zoning were appropriate in light of the soil data available to the County in the late 1970s when the comprehensive plan and map were adopted. For the foregoing reasons, the Hearings Officer finds that "mistake" does not support the Applicant's requested zone change for the subject properties.

Change in Circumstances

In *Aceti* (247-20-000438-PA, 439-ZC), as well as in File Nos. 247-21-00616-PA/617-ZC and *Eden Properties*, File Nos. 247-21-001043-PA/1044-ZC, the Hearings Officer found that new soil data could be considered evidence of a change in circumstances between the time of the original zoning (when the County did not conduct an individualized soils analysis on a farm-by-farm basis), or – as here – the time of the last zoning of the subject property, which was December 7, 1992 when the property was assigned to the EFU-TRB subzone under Ord. 92-065 - and the time when an Order I Soil Survey was conducted by the property owner or applicant to support an application for rezone. The County has an

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established practice when it comes to interpreting and applying DCC 18.136.020(D) such that the additional information provided by a site specific Order I Soil Study may constitute a “change in circumstances.” The Hearings Officer rejects COLW’s argument that Order I Soils Surveys are irrelevant for purposes of this criterion.

While original/most recent EFU zoning of a property may not be a “mistake,” given that the County relied on available soils data for such zoning and designation decision-making, new, more in-depth information not available to the County regarding soils is – in and of itself – a change of circumstances pursuant to which the County may consider a requested rezone. What has changed is the information available to the County. The County cannot now ignore the Order I Soil Surveys introduced into the record and supporting testimony which show that the subject property is predominantly characterized by soil capability classes VII and VIII.

In its May 31, 2022 open record submittal, the Applicant stated at pages 2-3:

As understood by the Applicant, this issue stems directly from the April 26, 2022 comment letter submitted by Central Oregon LandWatch (“COLW”). There are several “changes in circumstances” that have occurred since the Properties were most recently rezoned on December 7, 1992, that justify the subject application. Those changes range from shifting development patterns in the area to substantial changes in the region’s water resources. The most obvious change, however, is that the parties and the County have more accurate soil data at their disposal [sic] because the Applicant commissioned Class I Soil Surveys for the Properties. On that particular issue, it appears that COLW is perhaps trying to re-litigate a settled issue.

The County last considered a Class I Soil Survey as a “change in circumstance” in a recent land use proceeding before the same Hearings Officer concerning property owned by Anthony Aceti (File Numbers 247-20-000438-PA / 429-ZC, “Aceti”). That decision succinctly concluded that “new soil data could be considered a change in circumstances,” (Pg 22). The Board of County Commissioners, in turn, agreed with that conclusion, and adopted the Aceti Hearings Officer’s decision as its own by including said decision as Exhibit F to Ordinance No. 2021-002. Under the circumstances, it would be inappropriate for the Hearings Officer to now either interpret or apply DCC 18.136.020(D) in a manner inconsistent with Ordinance No. 2021-002.

*In addition to the Order 1 Soil Surveys already prepared by Gary A. Kitzrow and already included in the record as Exhibits 7, 8 and 9 attached to the Applicant’s Burden of Proof, attached hereto is an additional correspondence provided by Kitzrow. See **Exhibit A**. Kitzrow’s supplemental testimony includes the following explanation:*

“Order I Soil Surveys are site-specific and have a high confidence interval and specificity. In other words, while Order III USDA soil surveys (published at 1:24,000) are a foundation for soil series/map unit concepts in the general area under review our current maps for this Order I Soil Survey are inventoried at a scale of 1:831 and 1:738 for this site-specific report In fact, in the original USDA map cited in our original report and

*henceforth sanctioned by the DLCD, it says right in the notation for the actual enclosed soil map, “Soil Map may not be valid at this scale” which it is not in this particular case. * * * Soil series concepts for the subject area in the USDA report are certainly valid and based upon solid Soil Survey principles, however, the actual soil map units, distribution and quantification of each unit is not always valid at this very detailed site-specific finite land base. This is a major distinct between Order I and Order III Soil Surveys. Order I Soil Surveys are represented by a scale reflective of the very small land base under consideration. Order III Soil Surveys are general in nature since their intended use is for agriculture, ranching and forest management and not for land use decisions and rezoning considerations. **Given these facts above, our current Order I Soil Survey is, in fact, a REPLACEMENT and NOT a supplement for the subject properties regarding soil map and Capability Class/Soil Efficacy considerations.”***

Id. (emphasis in original).

As set forth in the Preliminary Findings and Conclusions above, the Hearings Officer does not find it “suspect” that an Order I Soil Survey contradicts NRCS soil classifications performed at a higher, landscape level. Rather, the use of Order I soil surveys to provide more detailed information is specifically contemplated and allowed by ORS 215.211(1) and OAR 660-033-0030. COLW did not introduce any competing evidence of a different Order I soil survey that reached conclusions that diverge from those of the Applicant’s soil scientist.

Contrary to COLW’s arguments, an applicant does not need to establish that the soils themselves have changed on the subject property. DCC 18.136.020(D) does not require “a change in the physical characteristics since the property was last zoned.” The Hearings Officer declines to add new language to the provisions of the Code under the guise of “interpreting” it. Nonetheless, the Hearings Officer finds that the Applicant’s certified soil scientist noted significant portions of “disturbed” soils, cut and fill operations, topsoil removal and compaction, which could evidence a change in the physical characteristics of the soils on the property.

The Applicant also addressed the fact that the region has been experiencing a years-long drought, affecting the amount of available water resources. The Applicant noted at the public hearing that it does not make sense to use limited water resources to irrigate poor soils. It has been leasing back irrigation waters associated with the subject property each year since 2016. COLW’s evidence acknowledges the region’s changing water resources (Exs. E, F, G and I). The record further evidences that continued depletion of regional water resources is not only a “change in circumstances” but is impacting, and will continue to impact public interests (Exs. C through K). The Applicant suggests that “eliminating irrigation inefficiencies,” as called for by COLW, should also include allowing property owners to rezone their property if it is shown not to be agricultural land. The Hearings Officer agrees and finds that diminishing water resources in the region independently evidences a “change in circumstances” under this criterion.

Finally, the Applicant’s burden of proof statement at page 8 noted several of the reasons a requested rezone of the subject property was denied in 1978 including the County’s desire to preserve “openness,” and prevent commercialization along Highway 97. The

Applicant discussed the fact, not disputed by any commentator, that the Highway 97 corridor between Bend and Redmond has been significantly developed since 1978, along with a large influx of population to the area since that time.

The Hearings Officer finds that the Order I Soil Survey prepared for the subject property, the current drought in the area and strain on available water resources, and the increasing commercialization along Highway 97 and population influx into the area all evidence a “change in circumstances” since the County’s last zoning of the property in 1992. Therefore, this criterion is met.

Deschutes County Comprehensive Plan

Chapter 2, Resource Management

Section 2.2 Agricultural Lands

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

FINDING: The Applicant provided the following response in the burden of proof statement:

In the Landholdings decision (and Powell/Ramsey decision) the Hearings Officer found that this goal is an aspirational goal and not an approval criterion. The Subject Property does not constitute agricultural land that must be preserved. The Soil Assessments show that each tax lot comprising the Subject Property is predominantly comprised of generally unsuited soils Capability Class 7 and 8 by Deschutes County and DLCD definitions.

In *Aceti* (247-20-000438-PA, 439-ZC), the Hearings Officer found:

“The Hearings Officer found in Aceti 1 this is an aspirational goal and not an approval criterion. LUBA determined that the subject property does not constitute Agricultural Lands under OAR 660033-0020(1); this finding is binding under the law of the case doctrine as discussed above.

Substantial evidence in the record supports a finding that the subject property does not constitute agricultural land that must be preserved as set forth in the Applicant’s site-specific soil study and as previously found by the Hearings Officer, the BOCC and LUBA. There is no evidence in the record that the proposal will adversely impact surrounding agricultural lands or the agricultural industry, particularly considering the surrounding road network, impacts of nearby heavy traffic and transportation, impacts due to the expansion of US 97 and surrounding commercial and industrial uses already in existence.”

As set forth in the Preliminary Findings and Conclusions, incorporated herein by this reference, the Hearings Officer finds substantial evidence in the record supports a finding that the subject property is not “agricultural land,” and is not land that could be used in conjunction with adjacent property for agricultural uses.

There is no evidence that the requested plan amendment and rezone will contribute to loss of agricultural land in the surrounding vicinity. I find that the agricultural industry will not be negatively impacted by re-designation and rezoning of the subject property. Therefore, the Hearings Officer finds the applications are consistent with Section 2.2, Goal 1, “preserve and maintain agricultural lands and 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 asking to amend the subzone that applies to the subject property; rather, the Applicant is seeking a change under Policy 2.2.3 and has provided evidence to support rezoning the subject property to RI. The Hearings Officer finds this policy is not applicable.

Policy 2.2.3 Allow comprehensive plan and zoning map amendments for individual EFU parcels as allowed by State Statute, Oregon Administrative Rules and this Comprehensive Plan.

FINDING: The Applicant is seeking approval of a plan amendment and zone change to re-designate and rezone the property from Agricultural to Rural Industrial. The Applicant is not seeking an exception to Goal 3 – Agricultural Lands, but rather seeks to demonstrate that the subject property does not meet the state definition of “Agricultural Land” as defined in Statewide Planning Goal 3 (OAR 660-033-0020).

The Applicant provided the following response in the submitted burden of proof statement:

In the Landholdings decision (and Powell/Ramsey decision), the Hearings Officer found that this policy is directed at the County rather than an individual Applicant. Applicant is requesting that the subject property be rezoned from EFU-TRB to RI and that the Plan designation be changed from Agriculture to Rural Industrial because the Subject Property is not Agricultural Land subject to Goal 3. The proposed rezone and Plan amendment is allowed by, and in compliance with, State Statute, Oregon Administrative Rules, and the Plan. The requested change is similar to that approved by Deschutes County in the Landholdings case and in PA-11-1/ZC-11-2, which related to land owned by the State of Oregon (DSL). In the DSL decision, Deschutes County determined that State law as interpreted in Wetherell v. Douglas County, 52 Or LUBA 677 (2006), allows this type of amendment. In Wetherell, LUBA explained:

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.

Wetherell, 52 OR LUBA at 678-679 (citing *Caine v. Tillamook County*, 25 Or LUBA 209, 218 (1993); *DLCD v. Josephine County*, 18 Or LUBA 798, 802 (1990)). On appeal to both the Oregon Court of Appeals and the Oregon Supreme Court, neither court disturbed LUBA’s ruling on this point, and the Oregon Supreme Court even changed the test for determining whether land is agricultural land to make it less stringent. *Wetherell v. Douglas County*, 342 Or 666, 160 P3d 614 (2007). Specifically, the Supreme Court held:

Under Goal 3, land must be preserved as agricultural land if it is suitable for “farm use” as defined in ORS 215.203(2)(a), which means, in part, “the current employment of land for the primary purpose of obtaining a profit in money” through specific farming-related endeavors.

Wetherell, 342 Or at 677. The *Wetherell* court further held that when deciding whether land is agricultural land “a local government may not be precluded from considering the costs or expenses of engaging in those activities.” *Id.* at 680.

The Subject Property is primarily composed of Class 7 and 8 nonagricultural soils, and as such, farm-related endeavors would not be profitable. This Application complies with Policy 2.2.3.

In *Aceti* (247-20-000438-PA, 439-ZC), the Hearings Officer found:

“The Hearings Officer found in Aceti 1 that this policy is directed at the County rather than an individual Applicant. In any case, the Applicant has requested a quasi-judicial plan amendment and zone change to remove the EFU designation and zoning from the subject property. LUBA has determined that the subject property is not “Agricultural Land” subject to Goal 3. The Hearings Officer finds the Applicant’s proposal is authorized by policies in the DCCP and is permitted under state law.”

The facts presented by the Applicant for the subject application are similar to those in the *Wetherell* decision and in the aforementioned Deschutes County plan amendment and zone change applications. For the reasons set forth above in the Preliminary Findings and Conclusions, incorporated herein by this reference, the Hearings Officer finds the subject property is not agricultural land and does not require an exception to Statewide Planning Goal 3 under state law. The applications are consistent with this Policy.

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 in the burden of proof statement:

In the Landholdings decision (and Powell/Ramsey decision), the Hearings Officer found this policy is directed at the County rather than at an individual Applicant. Applicant’s proposal complies with the DCC and any lack of clarity by the County in regard to the conversion of EFU designations does not prevent Applicant from

requesting a zone change. Further, the County’s interpretation of Policy 2.2.3, discussed above, spells out when and how EFU parcels can be converted to other designations.

In *Aceti* (247-20-000438-PA, 439-ZC), the Hearings Officer found:

“The Hearings Officer found in Aceti 1 that this policy is directed at the County rather than at an individual Applicant. In said decision, the Hearings Officer cited a previous decision for file nos. PA-14-2 and ZC-14-2 that stated, ‘In any event, in my decision in NNP (PA-13-1, ZC-13-1) I held any failure on the county’s part to adopt comprehensive plan policies and code provisions describing the circumstances under which EFU-zoned land may be converted to a non-resource designation and zoning does not preclude the county from considering quasi-judicial plan amendment and zone change applications to remove EFU zoning.’

Hearings Officer Green determined in file nos. 247-14-000456-ZC, 457-PA that ‘any failure on the county’s part to adopt comprehensive plan policies and code provisions describing the circumstances under which EFU-zoned land may be converted to a non-resource designation and zoning does not preclude the county from considering quasi-judicial plan amendment and zone change applications to remove EFU zoning.’ Consistent with this ruling, I find that, until such time as the County establishes policy criteria and code on how EFU parcels can be converted to other designations, the current legal framework can be used and must be addressed.”

This plan policy provides direction to Deschutes County to develop new policies to provide clarity when EFU parcels can be converted to other designations. The Hearings Officer finds that, without County-established policy criteria and code provisions that provide guidance on how EFU parcels can be converted to other designations, the current legal framework will be used and addressed. The Hearings Officer adheres to the County’s previous determinations in plan amendment and zone change applications and finds the 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: In *Aceti* (247-20-000438-PA, 439-ZC), the Hearings Officer found:

The Hearings Officer found in Aceti 1 that this policy is directed at the County rather than an individual Applicant. Nonetheless, as determined by LUBA and binding on the parties, I find that the subject property does not constitute "Agricultural Land."

The Hearings Officer finds this plan policy requires the County to identify and retain agricultural lands that are accurately designated. Substantial evidence in the record supports a finding that the subject property is not agricultural land as detailed above in the Preliminary Findings and Conclusions, incorporated herein by this reference. Further

discussion on the soil analysis provided by the Applicant is detailed under the OAR Division 33 criteria below. The Hearings Officer finds the applications are consistent with this policy. The Applicant's compliance with Deschutes County Code provisions applicable to the subject applications is addressed in separate findings herein.

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 (247-20-000438-PA, 439-ZC), the Hearings Officer found:

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 ZC14-2 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 at this time. The Applicant will be required to address this criterion during development of the subject property, which will be reviewed under any necessary land use process for the site (e.g. conditional use permit, tentative plat). The Hearings Officer finds this policy does not apply to the subject applications.

Section 2.7, Open Spaces, Scenic Views and Sites

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

FINDING: These policies are fulfilled by the County’s Goal 5 program. The County protects scenic views and sites along major rivers and roadways by imposing Landscape Management (LM) Combining Zones to adjacent properties. The subject properties adjoin a property to the south (Tax Lot 700, Assessor’s Map 16-1223) which is currently zoned Open Space & Conservation (OS&C) and owned by Oregon Parks & Recreation Department. The subject properties are also located within the Landscape Management (LM) Combining Zone associated with the scenic corridor of Highway 97. The subject properties themselves are zoned EFU and are not included within the OS&C zoning district and the regulations applicable to the LM Combining Zone are applicable only when a specific development proposal is applied for within the Combining Zone.

The Hearings Officer finds that the subject properties do not constitute significant open spaces subject to the Goals and Policies of Deschutes County Comprehensive Plan Chapter 2, Section 2.7 and have not been inventoried in Chapter 5, Section 5.5 of the DCCP as land that is an “area of special concern,” nor “land needed and desirable for open space and scenic resources. The Hearings Officer further finds that review of compliance with the LM Combining Zone is not required within the scope of the subject Plan Amendment/Zone Change applications.

For these reasons, the Hearings Officer finds that these provisions of the DCCP are inapplicable to consideration of the proposed zone change and plan amendment.

Chapter 3, Rural Growth

Section 3.4, Rural Economy

Rural Commercial and Rural Industrial

In Deschutes County some properties are zoned Rural Commercial and Rural Industrial. The initial applications for the zoning designations recognize uses that predated State land use laws. However, it may be in the best interest of the County to provide opportunities for the establishment of new Rural Industrial and Rural Commercial properties when they are appropriate and regulations are met. Requests to re-designate property as Rural Commercial

or Rural Industrial will be reviewed on a property-specific basis in accordance with state and local regulations.

...

Rural Industrial

The county may apply the Rural Industrial plan designation to specific property within existing Rural Industrial exception areas, or to any other specific property that satisfies the requirements for a comprehensive plan designation change set forth by State Statute, Oregon Administrative Rules, this Comprehensive Plan and the Deschutes County Development Code, and that is located outside unincorporated communities and urban growth boundaries. The Rural Industrial plan designation and zoning brings these areas and specific properties into compliance with state rules by adopting zoning to ensure that they remain rural and that the uses allowed are less intensive than those allowed in unincorporated communities as defined in OAR 660-022.

The county originally applied the Rural Industrial designation to the following acknowledged exception areas.

- **Redmond Military**
- **Deschutes Junction**
- **Bend Auto Recyclers**

Existing Rural Industrial Designated Exception Areas

The Redmond Military site consists of tax lot 1513000000116 and is 35.42 acres, bounded by the Redmond Urban Growth Boundary to the west and agricultural lands (EFU) surrounding the remainder of the property.

The Deschutes Junction site consists of the following tax lots: 161226C000107 (9.05 acres), 16126C000106 (4.33 acres), 161226C000102 (1.41 acres), 161226C000114 (2.50 acres), portions 161226C000300 (12.9 acres), 161226C000301 (8.93 acres), 161226A000203 (1.5 acres) and those portions of 161226C000111 located west of the Burlington Northern-Santa Fe railroad tracks (16.45 acres). Generally, the Deschutes Junction site is bordered on the west by Highway 97, on the east by the Burlington Northern Railroad, on the north by Nichols Market Road (except for a portion of 1612226A000111), and on the south by EFU-zoned property owned by the City of Bend.

Bend Auto Recyclers consists of tax lot 1712030000111 and is 13.41 acres, bounded by Highway 97 to the west, and Rural Residential (MUA-10) lands to east, north and south.

FINDING: The Applicant provided the following response in the burden of proof statement:

This Application proposes a zoning change to RI. The Subject Property is located near, but is not part of, the Deschutes Junction site, and as such rezoning to RI would be consistent with nearby land uses. Applicant’s current plan for the Subject Property, should this Application be approved, is to develop a mini-storage facility, which is an allowed conditional use in the RI zone. See DCC 18.100.020.M. However, those plans are not final. Applicant ultimately wishes to develop the

Subject Property consistent with the uses allowed (outright or conditionally) in the RI zone. The Application thus complies with this Policy.

The Hearings Officer reviews specific goals and policies in DCCP Section 3.4, Rural Economy, in specific findings below.

Section 3.4, Rural Economy

Goal 1, Maintain a stable and sustainable rural economy, compatible with rural lifestyles and a healthy environment.

FINDING: The Applicant’s burden of proof does not provide a response to the above Goal, however, the Hearings Officer notes that Goals are long-term outcomes the County hopes to achieve by implementing the DCCP, whereas Policies set preferred direction and describe what must be done to achieve stated Goals. The Hearings Officer addresses with specific DCCP policies, consistency with which establishes consistency with this Goal.

Policy 3.4.1 Promote rural economic initiatives, including home-based businesses, that maintain the integrity of the rural character and natural environment.

a. Review land use regulations to identify legal and appropriate rural economic development opportunities.

FINDING: The Hearings Officer finds that Policy 3.4.1 in general, and subsection (a) specifically, provides direction to the County, rather than an applicant to “promote rural economic initiatives... that maintain the integrity of the rural character and natural environment” by, among other things, “review[ing] land use regulations to identify legal and appropriate rural economic development opportunities.” The Hearings Officer finds this Policy 3.4.1 is not applicable to the Applicant.

Policy 3.4.23 To assure that urban uses are not permitted on rural industrial lands, land use regulations in the Rural Industrial zones shall ensure that the uses allowed are less intensive than those allowed for unincorporated communities in OAR 66022 or any successor.

FINDING: The Applicant provided the following response in the burden of proof statement:

The uses allowed by the RI zone are suitable allowable uses for the Subject Property, and are compatible with the current state of the Subject Property, which, as discussed throughout this Application, is not suitable for farming or agriculture due to its soils and past land uses on the Subject Property. The Application thus complies with this Policy.

The Hearings Officer finds this policy is directed at the County with respect to its adoption of land use regulations and uses authorized in the RI zone, and not to an individual applicant. The RI code is acknowledged, valid, and does not permit urban uses, as the Hearings Officer determined in the Preliminary Findings and Conclusions set forth in detail above, incorporated herein by this reference.

In LUBA 2021-028, a remand of *Aceti* (247-20-000438-PA, 439-ZC), the following findings related to the above Policy were included:

Ordinance 2002-126 adopted what is now DCCP Policy 3.4.23, which applies to lands designated and zoned RI and provides: 'To assure that urban uses are not permitted on rural industrial lands, land use regulations in the [RI] zones shall ensure that the uses allowed are less intensive than those allowed for unincorporated communities in OAR 660-22 or any successor.' Ordinance 2002127 amended DCC chapter 18.100, the RI zone regulations. On January 23, 2003, DLCD issued Order No. 001456, acknowledging the 2002 Ordinances as consistent with Goal 14.

Regardless of the inapplicability of this policy to the subject applications, the Hearings Officer notes that the Applicant is requesting a zone change, and has not submitted an application for any particular use at this time. Subsequently, the County will consider application(s) to approve permitted RI uses on the property, which future land use decision(s) must be consistent with RI land use regulations which ensure that any use allowed is less intensive than those allowed for unincorporated communities in OAR 660-22 or any successors.

To the extent this Policy is applicable to the Applicant, the Hearings Officer finds the applications are consistent therewith.

Policy 3.4.27 Land use regulations shall ensure that new uses authorized within the Rural Industrial sites do not adversely affect agricultural and forest uses in the surrounding area.

FINDING: The Applicant provided the following response in the burden of proof statement:

If this request for Plan Map amendment and rezone is approved, the land use regulations relating to RI sites ensure that any use allowed by the RI zone will not adversely affect any agricultural uses in the area surrounding the Subject Property. Indeed, none of the immediately adjacent properties are in agricultural use at this time. The Application thus complies with this Policy.

There are no identified forest uses in the vicinity and, juniper, the predominant tree species in the vicinity is not merchantable. Adjacent Tax Lots 300 and 306 appears to be in farm use, based on aerial photography, and are receiving farm tax assessment.

The Hearings Officer finds this policy is directed at the County with respect to its adoption of land use regulations for uses allowed in the RI zone. The policy is not applicable to an individual applicant. The Applicant's proposal does not change the land use regulations in the RI Zone. Substantial evidence in the record supports a finding that the zone change and plan amendment will not have an adverse effect on agricultural and forest uses in the surrounding area.

To the extent this policy is applicable to the Applicant, the Hearings Officer finds the applications are consistent therewith.

Policy 3.4.28 New industrial uses shall be limited in size to a maximum floor area of 7,500 square feet per use within a building, except for the primary processing of raw materials produced in rural areas, for which there is no floor area per use limitation.

FINDING: The Applicant provided the following response in the burden of proof statement:

Applicant does not at this time propose any new use or development on the Subject Property, but wishes to develop the Subject Property in the future consistent with the allowable uses in the RI zone. If this Application is approved, approval of any new industrial use can be conditioned to require the size limitations set forth in this Policy.

The Hearings Officer found in *Aceti 1* that this policy applies to quasi-judicial applications and is inapplicable to an applicant for a proposed rezone and plan amendment. This policy is codified in DCC Chapter 18.100 and is implemented through those provisions. The Applicant is not applying for any specific building permit, site plan or conditional use approval at this time, and the proposal does not change the land use regulations in the RI Zone.

This policy is implemented through the County’s adoption and enforcement of DCC Chapter 18.100, which will apply at the time the Applicant submits any specific building permit, site plan or conditional use approval application. The proposal does not change the land use regulations in the RI Zone. Therefore, the policy is not applicable to the Applicant’s proposal. To the extent this policy is applicable to the Applicant, the Hearings Officer finds the applications are consistent therewith.

Policy 3.4.31 Residential and industrial uses shall be served by DEQ approved onsite sewage disposal systems.

FINDING: The Applicant provided the following response in the burden of proof statement:

*The Subject Property is served by an approved on-site sewage disposal system as shown on **Exhibit 12**. The Application thus complies with this Policy.*

The Hearings Officer finds that no specific use is proposed by the Applicant at this time. This policy is codified in DCC Chapter 18.100 and is implemented through those provisions. The Applicant is not applying for any specific building permit, site plan or conditional use approval at this time. At the time a future use is proposed, the County shall, consistent with this policy and DCC Chapter 18.100, ensure that such use is served by DEQ approved onsite sewage disposal systems.

The record shows that a 1982 finalized septic permit (permit no. 247-S5813) exists for Tax Lot 301 and a separate 1982 finalized septic permit (permit no. 247-FS222) exists for Tax Lot 500. Property records show Tax Lot 305 was previously a portion of Tax Lot 301 (based on a Warranty Deed dated August 19, 1981) and served by the same 1982 septic permit under permit no. 247-S5813.

The Hearings Officer finds the subject applications are consistent with this policy, to the extent applicable to the Applicant at this time.

Policy 3.4.32 Residential and industrial uses shall be served by on-site wells or public water systems.

FINDING: The Applicant provided the following response in the burden of proof statement:

*The Subject Property is served by an on-site well as shown on **Exhibit 5**. The Application thus complies with this Policy.*

The Hearings Officer finds that no specific use is proposed by the Applicant at this time. This policy is codified in DCC Chapter 18.100 and is implemented through those provisions. The Applicant is not applying for any specific building permit, site plan or conditional use approval at this time. At the time a future use is proposed, the County shall, consistent with this policy and DCC Chapter 18.100, ensure such use is served by on-site well(s) or public water systems.

The record includes a well agreement (Exhibit 5) for the subject property. While it is unclear whether potential future industrial uses of the property may rely on water from the well, future review of any land use and/or building permit will require proof that any proposed use or development will be served by on-site wells or public water systems.

The Hearings Officer finds the subject applications are consistent with this policy, to the extent applicable to the Applicant at this time.

Policy 3.4.36 Properties for which a property owner has demonstrated that Goals 3 and 4 do not apply may be considered for Rural industrial designation as allowed by State Statute, Oregon Administrative Rules, and this Comprehensive Plan. Rural Industrial zoning shall be applied to a new property that is approved for the Rural Industrial plan designation.

FINDING: As set forth in the Preliminary Findings and Conclusions above, incorporated herein by this reference, the Hearings Officer finds that Goal 3 does not apply to the subject property because it is not “agricultural land.” The record shows that Goal 4 does not apply to the subject property, as well. There are no identified forest uses in the vicinity and, juniper, the predominant tree species in the vicinity is not merchantable.

The Hearings Officer finds that the Applicant has demonstrated that Goals 3 and 4 do not apply to the subject property. Therefore, the subject property can be considered for the proposed Rural Industrial designation and Rural Industrial zoning as proposed. Compliance with applicable ORS, OAR, and Comprehensive Plan provisions are addressed herein.

The Hearings Officer finds the applications are consistent with this Policy.

Section 3.5. Natural Hazards

Goal 1 Protect people, property, infrastructure, the economy and the environment from natural hazards.

FINDING: The Hearings Officer finds this Goal is directed at the County rather than at an individual applicant. Nonetheless, I find there are 'no mapped flood or volcano hazards on the subject property or in the surrounding area. Additional hazards include wildfire, earthquake, and winter storm risks, which are identified in the County's DCCP. There is no evidence the proposal would result in any increased risk to persons, property, infrastructure, the economy and the environment from unusual natural hazards. The Hearings Officer finds the applications are consistent with this Goal.

Section 3.7, Transportation

**Appendix C – Transportation System Plan
ARTERIAL AND COLLECTOR ROAD PLAN**

...

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

Policy 4.1 Deschutes County shall:

- a. **Consider the road network to be the most important and valuable component of the transportation system; and**
- b. **Consider the preservation and maintenance and repair of the County road network to be vital to the continued and future utility of the County’s transportation system.**

...

Policy 4.3 Deschutes County shall make transportation decisions with consideration of land use impacts, including but not limited to, adjacent land use patterns, both existing and planned, and their designated uses and densities.

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

FINDING: The Applicant provided the following response in the burden of proof statement:

The Hearings Officer in the Landholdings decision found that Policy 4.4 applies to the County and not to individual Applicants. Policies 4.1 and 4.3 similarly should apply to the County and not to individual Applicants. Regardless, the Subject Property borders Highway 97 on the east and has legal access onto the highway. As explained more fully in the Transportation Planning Rule section below, while the proposed Plan Map amendment and rezone would likely impact transportation facilities, Applicant would agree to a use limitation and traffic cap for the Subject Property.

The Hearings Officer finds these policies apply to the County, which advise it to consider the roadway function, classification and capacity as criteria for plan amendments and zone changes. These policies also advise the County to consider the existing road network and potential land use impacts when reviewing for compliance with plan amendments and zone changes. The County complies with this direction by determining compliance with the Transportation Planning Rule (TPR), also known as OAR 660-012, as set forth below in subsequent findings.

The Hearings Officer finds the subject applications are consistent with these policies, to the extent applicable to the Applicant.

OREGON ADMINISTRATIVE RULES CHAPTER 660, LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

DIVISION 6, GOAL 4 – FOREST LANDS

OAR 660-006-0005, Definitions

(7) “Forest lands” as defined in Goal 4 are those lands acknowledged as forest lands, or, in the case of a plan amendment, forest lands shall include:

- (a) Lands that are suitable for commercial forest uses, including adjacent or nearby lands which are necessary to permit forest operations or practices; and**
- (b) Other forested lands that maintain soil, air, water and fish and wildlife resources.**

FINDING: The subject property is not zoned for forest lands, nor are any of the properties within a 6.5-mile radius. The property does not contain merchantable tree species 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 Hearings Officer finds the subject property does not qualify as forest land. These regulations do not apply to the applications.

DIVISION 33 – AGRICULTURAL LAND

OAR 660-033-0010, Purpose

The purpose of this division is to preserve and maintain agricultural lands as defined by Goal 3 for farm use, and to implement ORS 215.203 through 215.327 and 215.438 through 215.459 and 215.700 through 215.799.

FINDING: The Applicant provided the following response in its burden of proof:

The Subject Property does not constitute agricultural land for the reasons set forth below. Therefore, a Goal 3 exception is not required, nor will the proposed rezone detract from the statutory purpose of preserving and maintaining agricultural lands.

Division 33 includes a definition of "Agricultural Land," which is repeated in OAR 660-033-0020(1). The Hearings Officer's Preliminary Findings and Conclusions set forth above, and incorporated herein by this reference, which determine that the subject property does not constitute "agricultural land."

OAR 660-033-0020, Definitions

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

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

- (A) Lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon¹⁰;**

FINDING: The Applicant does not request an exception to Goal 3 on the premise that the subject property is not defined as "Agricultural Land." In support, the Applicant offered the following response in the burden of proof statement:

The Subject Property is not property classified as Agricultural Land and does not merit protection under Goal 3. As shown by the Soils Assessments submitted herewith and described above, the soils on the Subject Property are predominantly unsuitable soils of Class 7 and 8 as defined by Deschutes County and DLCD. See Exhibits 7-9. State Law, ORS 660-033-0030, allows the County to rely on those Soils Assessments for more accurate soils information.

As set forth in detail in the Preliminary Findings and Conclusions above, incorporated herein by this reference, the Hearings Officer finds, based on the submitted soil study and the above OAR definition, that the subject property is comprised predominantly of Class VII and VIII soils and, therefore, does not constitute "Agricultural Lands" as defined in OAR 660-033-0020(1)(a)(A).

- (B) Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices; and**

FINDING: The Applicant does not request an exception to Goal 3 on the premise that the subject property is not defined as "Agricultural Land." In support, the Applicant offered the following response, in relevant part, in the burden of proof statement:

¹⁰ 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.

This part of the definition of "Agricultural Land" requires the County to consider whether the Class 7 and 8 soils found on the subject property are suitable for farm use despite their Class 7 and 8 classification. The Oregon Supreme Court has determined that the term "farm use" as used in this rule and Goal 3 means the current employment of land for the primary purpose of obtaining a profit in money through specific farming-related endeavors. The costs of engaging in farm use are relevant to determining whether farm activities are profitable and this is a factor in determining whether land is agricultural land. Wetherell v. Douglas County, 342 Or 666, 160 P3d 614 (2007).

The Subject Property has not been in farm use in decades. The land has not been irrigated for years, and the COID water rights are leased back to the Deschutes River.

The Hearings Officer reviewed each of the seven considerations listed in OAR 660-033-0020(1)(a)(B) in the Preliminary Findings and Conclusions above, incorporated herein by this reference. Not only are there poor soils on the subject property, but none of the considerations in this provision would "improve" the situation such that the property with "land in other soil classes," which do not qualify as agricultural land under OAR 660-033-0020(1)(a)(A) could nonetheless be suitable for "farm use." None of the seven considerations show that the property could be employed for the primary purpose of making a profit in money. The poor soils found on the subject property, combined with these additional considerations, render the property not suitable for farm use that can be expected to be profitable.

The Hearings Officer incorporates herein by this reference the Preliminary Findings and Conclusions above and finds that the subject property does not constitute "Agricultural Lands" as defined in OAR 660-033-0020(1)(a)(B).

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

FINDING: The Applicant offered the following response in the burden of proof statement:

A large portion of neighboring lands are residential, and the neighboring lands that are zoned EFU-TRB are not engaged in farm practices that are supported or aided by the Subject Property. Regardless, the Subject Property, given its poor soils and proximity to Highway 97, could not be considered "necessary" to permit farm practices to be undertaken on adjacent or nearby agricultural lands.

The Hearings Officer incorporates herein by this reference the Preliminary Findings and Conclusions above and finds that the subject property does not constitute "Agricultural Lands" as defined in OAR 660-033-0020(1)(a)(C).

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

FINDING: The Applicant provided the following response in the burden of proof statement:

The Subject Property is not and has not been a part of a farm unit that includes other lands not currently owned by the Applicant.

The farm unit rule is written to preserve large farming operations in a block. It does this by preventing property owners from dividing farmland into smaller properties that, alone, do not meet the definition of "agricultural land." The Subject Property is not formerly part of a larger area of land that is or was used for farming operations and was then divided to isolate poor soils so that land could be removed from EFU zoning.

The Subject Property is not in farm use and has not been in farm use of any kind for decades. It contains soils that make the land generally unsuitable for farm use as the term is defined by State law. It is not a part of a farm unit with other land. The Subject Property is predominantly Class 7 and 8 soils and would not be considered a farm unit itself nor part of a larger farm unit based on the poor soils and the fact that none of the adjacent property is farmed.

The Hearings Officer incorporates by this reference the Preliminary Findings and Conclusions set forth above and finds that the subject property does not constitute "Agricultural Lands," as defined in OAR 660-033-0020(1)(b).

(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. The Hearings Officer finds this criterion is inapplicable.

OAR 660-033-0030, Identifying Agricultural Land

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

FINDING: The Applicant provided responses to the factors in OAR 660-033-0020(1) above. The soil studies produced by Mr. Kitzrow focused solely on the land within the subject parcels and the Applicant provided responses indicating the subject parcels are not necessary to permit farm practices undertaken on adjacent and nearby lands.

The Applicant established that the subject property is not necessary to permit farm practices undertaken on adjacent and nearby lands. For the reasons set forth in the Preliminary Findings and Conclusions above, incorporated herein by this reference. the Hearings Officer finds the subject property is not "Agricultural Lands," as defined in OAR 660-033-0030(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 Applicant argues that the subject property is not suitable for farm use and is not necessary to permit farm practices to be undertaken on adjacent or nearby lands, regardless of ownership of the subject property and ownership of nearby or adjacent land. For the reasons set forth in the Preliminary Findings and Conclusions above, incorporated herein by this reference, the Hearings Officer finds the subject property is not "Agricultural lands," and thus that no exception to Goal 3 is required.

(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 Applicant provided the following response in the burden of proof statement:

Attached as Exhibits 7-9 are a [sic] more detailed Agricultural Soils Capability Assessments conducted by Gary Kitzrow, a professional soil classifier, certified professional soil scientist, and one of only five professionals certified by the state to make such assessment. The soils capability assessment he conducted on the Subject Property is related to the NRCS land capability classification system. It provides and documents more detailed data on soil classification and soil ratings than is contained in the NRCS soil maps and soil survey at the published level of detail. The Order 1 survey performed on the Subject Property included 22 descriptions for the approximately 19-acre site (6 for Tax Lot 305; 12 for Tax Lot

301; and 4 for Tax Lot 500). The soil samples taken were assessed for structure, consistency, pores, drainage class, root distribution, effective/absolute rooting depths and related morphology testing. Mr. Kitzrow concluded that the Subject Property is made up of predominantly Class 7 and 8 soils that are generally unsuitable for farming.

The soil studies prepared by Mr. Kitzrow provide 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 studies provide detailed information about the individual subject properties based on numerous soil samples taken from the subject properties. The soil studies are related to the NRCS Land Capability Classification (LCC) system that classifies soils Class 1 through 8. An LCC rating is assigned to each soil type based on rules provided by the NRCS.

According to the NRCS Web Soil Survey tool, the subject properties contain the following portions of 31A, 38B, and 58C soils:

31A Soils: Approximately 16.5 percent (Tax Lot 301), 22 percent (Tax Lot 305), and 97.2 percent (Tax Lot 500) of the subject properties are composed of 31A soil, respectively.

38B Soils: Approximately 61.4 percent (Tax Lot 301), 47.7 percent (Tax Lot 305), and 2.8 percent (Tax Lot 500) of the subject properties are made up of this soil type, respectively.

58C Soils: Approximately 22.1 percent (Tax Lot 301), and 30.3 percent (Tax Lot 305) of two (2) of the subject properties are made up of this soil type.

The soil studies conducted by Mr. Kitzrow of Growing Soils Environmental Associates find the soil types on the subject property vary from the NRCS identified soil types. The soil types described in the Growing Soils Environmental Associates soil studies are described below (quoted from Exhibits 7-9 of the application materials).

- **Tax Lot 301:** A large (preponderance) of this lot is made up of along infrastructure/Impact Areas along with the shallow, generally unsuited Class 7, Gosney (irrigated and nonirrigated). Conversely, Deschutes soils are somewhat deeper, have defined topsoils and a little less sand than the competing Gosney soil units and less rock. This study area and legal lot of record is comprised of 8.00 acres or 53.1% of generally unsuited soils Capability Class 7 and 8 by Deschutes County and DLCDC definitions.
- **Tax Lot 305:** A large (preponderance) of this lot is made up of along infrastructure/Impact Areas along with the shallow, generally unsuited Class 7, Gosney (irrigated and nonirrigated). These lithic, entic Gosney soil mapping units are shallow, have extremely restrictive rooting capabilities and low water holding capacities. Conversely, Deskamp and Deschutes soils are somewhat deeper, have defined topsoils and a little less sand than the competing Gosney soil units and less rock. Noteworthy is the fact that along the western boundary and southern boundary of this lot are large inclusions of rubble and rock outcrops. This is found regardless of the associated three soils delineated in this analysis. This study area and legal lot of record is comprised of 2.45 acres or 81.7% of the landbase as

generally unsuited soils Capability Class 7 and 8 by Deschutes County and DLCD definitions.

- **Tax Lot 500:** A large (preponderance) of this lot is made up of along infrastructure/Impact Areas along with the shallow, generally unsuited Class 7, Gosney (irrigated and nonirrigated). Conversely, Deschutes soils are somewhat deeper, have defined topsoils and a little less sand than the competing Gosney soil units and less rock. This study area and legal lot of record is comprised of 0.93 Acres or 87.7% of generally unsuited soils Capability Class 7 and 8 by Deschutes County and DLCD definitions.

As set forth in the Preliminary Findings and Conclusions above, incorporated herein by this reference, the submitted soil studies prepared by Mr. Kitzrow of Growing Soils Environmental Associates provide more detailed soils information than contained in the NRCS Web Soil Survey, which provides general soils data for large units of land. The Hearings Officer finds the soil studies provide detailed and accurate information about individual parcels based on numerous soil samples taken from the subject property. The soil study is related to the NRCS Land Capability Classification (LCC) system that classifies soils class I through VIII. An LCC rating is assigned to each soil type based on rules provided by the NRCS.

Correspondence from the Department of Land Conservation and Development (DLCD) confirms that Mr. Kitzrow's prepared soil studies are complete and consistent with the reporting requirements for agricultural soils capability as dictated by DLCD. Mr. Kitzrow's qualifications as a certified Soil Scientist and Soil Classifier are detailed in the submitted application materials. Based on Mr. Kitzrow's qualifications as a certified Soil Scientist and Soil Classifier, and as set forth in detail in the Preliminary Findings and Conclusions above, incorporated herein by this reference, the Hearings Officer finds the submitted soil study is definitive and accurate in terms of site-specific soil information for the subject property. These criteria are met.

- (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 Applicant is seeking approval of a non-resource plan designation on the basis that the subject properties are not defined as agricultural land. Therefore, the Hearings Officer finds that this section and OAR 660-033-0045 applies to these applications.

- (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 soil studies by Mr. Kitzrow of Growing Soils Environmental Associates dated January 12, 2021. The soils studies were submitted following the ORS 215.211 effective date. The application materials include acknowledgements from Hilary Foote, Farm/Forest Specialist with the DLCD (dated April 16, 2021) that the soil studies are complete and consistent with DLCD’s reporting requirements. The Hearings Officer finds this criterion is met based on the submitted soil studies 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 provided DLCD certified soil studies as well as NRCS soil data. The Hearings Officer finds this criterion is met.

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: As referenced in the agency comments section in the Basic Findings above, the Senior Transportation Planner for Deschutes County requested revised details in addition to the initial traffic study materials provided. The Applicant submitted an updated report from Ferguson & Associates, Inc. on April 6, 2022, dated March 18, 2022, to address identified concerns and the County's Senior Transportation Planner issued a second comment in response.

The Applicant's burden of proof provided the following statement:

*The Transportation Planning Rule is applicable because Applicant is requesting a change to an acknowledged comprehensive plan and land use regulation (the zoning map). Attached as **Exhibit 14** is a Site Traffic Report and TPR Assessment prepared by traffic engineer Scott Ferguson, P.E. of Ferguson & Associates. Mr. Ferguson made the following findings with respect to the proposed Plan map amendment and zone change and concluded that a significant impact to the transportation facility would occur:*

- *The only available access to the Subject Property is via Highway 97 through a shared easement driveway. Highway 97 is a four-lane facility in the vicinity of the driveway, with 20-foot shoulders on both sides. Left turns are legally prohibited, as there are two sets of double striped painted lanes marking a striped median. As such, access is limited to right-in, right-out movements from the driveway. There are no proposed changes to access.*
- *Visibility exiting the site is good and there are no apparent sight-distance issues.*
- *Rezoning the Subject Property from EFU-TRB to RI would allow outright e.g.:*
 - *Primary processing, packaging, treatment, bulk storage and distribution of the following products:*
 - *Agricultural products, including foodstuffs, animal and fish products, and animal feeds,*
 - *Ornamental horticultural products and nurseries,*
 - *Softwood and hardwood products excluding pulp and paper manufacturing;* ○ *Freight Depot, including the loading, unloading, storage and distribution of goods and materials by railcar or truck;*
 - *Contractor's or building materials business and other construction-related business including plumbing, electrical, roof, siding, etc., provided such use is wholly enclosed within a building or no outside storage is permitted unless enclosed by sight-obscuring fencing;*

- Wholesale distribution outlet including warehousing, but excluding open outside storage;
- Kennel or a veterinary clinic.
- The RI zone requires that new industrial uses be limited in size to a maximum floor area of 7,500 square feet per use within a building, except for the primary processing of raw materials produced in rural areas, for which there is no floor area per use limitation.
- For purposes of the traffic analysis, it was assumed that a large (100,000 square foot) manufacturing building such as a food processing plant or some type of lumber-related manufacturing plant could be built on the Subject Property. Such a distribution center would occupy about 12 percent of available land. In addition, there could be a mix of other uses, not exceeding 7,500 square feet per use, which could include, e.g., a small building supply outlet, a veterinary clinic, a small distribution center, and a plant nursery. For purposes of the analysis, one of each of those uses was assumed.
- While it may be possible to pack more onto the site, the assumed uses would generate more traffic than the site could handle with existing access configurations.
- Net change in trip generation would be an increase of 166 p.m. peak hour trips and 1,299 daily trips.
- The addition of several hundred vehicles per hour at the driveway on to Highway 97 would result in performance characteristics that would not meet the goals of the Oregon Highway Plan.
- This level of traffic would not be appropriate with the existing limited access and the proposed zone change would significantly impact the transportation if no further action were taken. But there are further actions which can be taken to meet the requirements of the TSP under these conditions.

Mr. Ferguson proposed, and Applicant will agree to, establishing a trip cap on the three lots comprising the Subject Property to limit the amount of development that would be allowed to reflect the maximum trip generation that would be allowed before a Traffic Impact Analysis would be required under ODOT or County guidelines. Specifically, Mr. Ferguson stated in his Report, based on DCC 18.116.310.C, that "the ODOT guideline for conducting a TIA is 400 daily trips. Since Deschutes County requirements establish a lower (more conservative) threshold, these values were used: less than 20 p.m. peak hour trips (which is more than 19 trips) and more than 200 daily trips. As shown below in Table 7, establishing a trip cap at a threshold where the incremental change would not exceed the Deschutes County threshold." Table 7 is shown below:

TABLE 7 – TRIP CAP CALCULATIONS

Trip Generation Scenarios	TRIP GENERATION	
	PM	DAILY
A Existing EFU Zone	13	79
B Proposed RI Zone	180	1,378
C Net Change in Trip Generation	166	1,299
D ODOT Trigger for TIA	na	400
E Deschutes Count Trigger for TIA	19	200
F Limit on Net Change (Deschutes Criteria governs)	19	200
G Total Trip Generation to Obtain Net Limit (A + F)	32	279

Mr. Ferguson concluded, "Accordingly, if a trip cap were set at 32 p.m. peak hour trips and 279 daily trips, the incremental increase in traffic would be 19 p.m. peak hour trips and 200 daily trips and a Site Traffic Report (STR) would be required by Deschutes County Code as per section 18.110(CX3Xb) for the purposes of evaluating the TPR."

Applicant's current plan for the Subject Property, if this Application is approved, is to develop a mini-storage facility on Tax Lot 301. Mr. Ferguson further concluded that "[s]ince mini-storage units are relatively low generators, the trip cap would be met with any reasonably sized mini-storage facility." With the establishment of this proposed trip cap, the proposed Plan map amendment and zone change could meet the requirements of the TPR. Trip generation under this cap would be limited to no more than 32 p.m. peak hour trips and no more than 279 daily trips. Mr. Ferguson concluded that with the planned development of mini-storage units, the level of trip generation would be relatively low and would fall below this threshold¹¹.

This TPR assessment was prepared for 3 parcels located on Highway 97 between Bend and Redmond, Oregon. These parcels are generally located in Figure 1. Table 1 provides addresses, Tax Lot numbers, and existing building types and sizes.

The proposed change is from EFU (exclusive farm use) to RI (Rural Industrial).

It was found that the proposed zone change would significantly affect the transportation system without a trip cap.

¹¹Further, imposing a trip cap and use limitations is consistent with the purpose of the RI zone and Plan designation. See Plan, Policy 3.4.23 ("To assure that urban uses are not permitted on rural industrial lands, land use regulations in the Rural Industrial zones shall ensure that the uses allowed are less intensive than those allowed for unincorporated communities in OAR 660-22 or any successor."); see also id., Policy 3.4.24 - Policy 3.4.36 (placing use limitations on certain parcels given RI zoning to "ensure that the uses in the Rural Industrial Zone on [those tax lots] . . . are limited in nature and scope"); see also DCC 18.100.030 (setting forth use limitations for the RI zone).

The proposed trip cap is 32 new p.m. peak hour trips, above existing trip generation. A trip cap of 32 new p.m. peak hour trips would readily allow for the construction of mini-storage units, which is intended as the next step. That development would need to be addressed in a separate site-application. This is a very reasonable level for a trip cap considering that it was shown herein that a trip cap as high as 123 p.m. peak hour trips might be allowed using the ODOT mobility standards as the measure of impact.

It is trusted that the above updated analysis adequately addresses the Counties comments and otherwise meets the requirements for the proposed zone change including a sufficient assessment of the Transportation Planning Rule (TPR). Please feel free to call at your convenience if you would like to discuss any elements of this letter-report.

County Senior Transportation Planner, Peter Russell responded to the revised traffic study and expressed additional concerns. The Applicant then responded with additional traffic comments on April 8, 2022, to which the County Senior Transportation Planner responded. The Applicant responded with additional traffic comments on April 13, 2022.

Thereafter, the Applicant worked with the County Senior Transportation Planner, County planning staff and the Oregon Department of Transportation (“ODOT”) to develop a “trip cap” condition of approval on which the parties all agreed. The record indicates that both the County and ODOT concur with the proposed condition of approval which states:

The maximum development on the three subject parcels shall be limited to produce no more than 32 trips in the PM peak hour and/or 279 daily trips as determined by the Institute of Engineers Trip Generation Manual, 11th Edition. The County may allow development intensity beyond these maximum number of vehicle trips only if the applicant submits to the County a traffic impact analysis that demonstrates that the proposed intensification of use would be consistent with the Transportation Planning Rule and the Deschutes County Code.

The record also shows that the Applicant discussed with County staff the fact that LUBA has upheld trip caps as an effective tool utilized by other Oregon local governments. The form of the trip cap proposed by the Applicant in the email chain was specifically modeled on a similar trip cap COA utilized by the City of Eugene and upheld by LUBA. *Willamette Oaks v. City of Eugene*, ___ Or LUBA ___ (LUBA NO 2010-062; March 8, 2011) (slip op at *4-5; n.5). Peter Russell responded the same date that the proposed COA “works on my end.”

COLW claims that the proposal will “drastically increase transportation trips” and argues that ODOT found a trip cap is not contemplated in the DCC for TPR compliance and that the County found it does not have the ability to monitor and enforce a trip cap. Therefore COLW argues that the application has not satisfied Goal 12 and the TPR The Hearings Officer finds that COLW’s argument is based on prior communications from ODOT and the County Senior Transportation Planner and is refuted by the more recent record additions, which include, among other things, an email chain between ODOT, County staff and the Applicant. ODOT did not find that the DCC does not allow a trip cap. Rather, ODOT concurred with the proposed condition of approval stating, “looks good to me.” As interpreted by the County’s Senior Transportation Planner, Peter Russell, ODOT’s

comment regarding the possibility of a DCC text amendment to better address the idea of a trip cap was meant to apply prospectively to future applicants; a retroactive text amendment would violate the “goal post rule” at ORS 215.427(3)(a).

Not only did COLW misread comments provided by ODOT and County staff, it presented no evidence or expert testimony to contradict the evidence included in the record by the Applicant regarding the TPR.

The Hearings Officer finds that the Applicant has studied all facilities identified by the County as potentially impacted by the proposed zone change through the traffic study and revised traffic study, and in its comments from Ferguson & Associates Inc. to the County Senior Transportation Planner. The Hearings Officer finds that the record supports a determination that, **as conditioned with the proposed condition of approval set forth above**, the proposed zone change, will have no significant adverse effect on the identified function, capacity, and performance standards of the transportation facilities in the impact area, such that it is in compliance with OAR 660-012-0060.

(2) If a local government determines that there would be a significant effect, then the local government must ensure that allowed land uses are consistent with the identified function, capacity, and performance standards of the facility measured at the end of the planning period identified in the adopted TSP through one or a combination of the remedies listed in (a) through (e) below, unless the amendment meets the balancing test in subsection (2)(e) of this section or qualifies for partial mitigation in section (11) of this rule. A local government using subsection (2)(e), section (3), section (10) or section (11) to approve an amendment recognizes that additional motor vehicle traffic congestion may result and that other facility providers would not be expected to provide additional capacity for motor vehicles in response to this congestion.

- (a) Adopting measures that demonstrate allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.***
- (b) Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of this division; such amendments shall include a funding plan or mechanism consistent with section (4) or include an amendment to the transportation finance plan so that the facility, improvement, or service will be provided by the end of the planning period.***
- (c) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.***
- (d) Providing other measures as a condition of development or through a development agreement or similar funding method, including, but not limited to, transportation system management measures or minor transportation improvements. Local governments shall, as part of the amendment, specify when measures or improvements provided pursuant to this subsection will be provided.***

- (e) **Providing improvements that would benefit modes other than the significantly affected mode, improvements to facilities other than the significantly affected facility, or improvements at other locations, if:**
 - (A) **The provider of the significantly affected facility provides a written statement that the system-wide benefits are sufficient to balance the significant effect, even though the improvements would not result in consistency for all performance standards;**
 - (B) **The providers of facilities being improved at other locations provide written statements of approval; and**
 - (C) **The local jurisdictions where facilities are being improved provide written statements of approval.**

FINDING: The Applicant provided the following response in the burden of proof statement:

As discussed above, Mr. Ferguson concluded that the proposed Plan map amendment and zone change could have a significant effect on the transportation facility. As such, Mr. Ferguson proposes, and Applicant would agree to, the imposition of a transportation cap and use limitation on the Subject Property.

The Hearings Officer finds that, with imposition of a condition of approval requiring assessment of transportation system development charges (SDCs) and other non-infrastructure mitigations as development occurs on the site on future proposed development, and with imposition of the agreed-upon condition of approval imposing a transportation cap and use limitation on the Subject Property, significant adverse effects on the identified function, capacity and performance standards of the transportation facilities in the impact area of allowed land uses will be mitigated. These criteria are met.

DIVISION 15, STATEWIDE PLANNING GOALS AND GUIDELINES

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

FINDING: The Applicant’s burden of proof addresses each Goal as follows:

Goal 1, Citizen Involvement. *Deschutes County will provide notice of the application to the public through mailed notice to affected property owners and by requiring the Applicant to post a “proposed land use action sign” on the Subject Property. Notice of the public hearings held regarding this application follow the code requirements. A minimum of two public hearings will be held to consider the Application.*

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

Goal 3, Agricultural Lands. *The Applicant has shown that the subject property is not agricultural land because it is comprised predominantly of Class 7 and 8 soils that are not suitable for farm use. Therefore, the proposal is consistent with Goal 3, and no exception is needed.*

Goal 4, Forest Lands. *This goal is inapplicable because the Subject Property does not contain land zoned forest land, nor does it support forest uses.*

Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces. *The majority of the subject property is located in the Landscape Management Combining Zone (LM zone). The LM zone is a Goal 5 resource acknowledged by DLCD that is set out to protect scenic views as seen, in this case, from Highway 97 through a Landscape Management Combining Zone that extends 1/4 mile on either side of the centerline of the designated roadway. The County typically requires LM site plan review when a building permit is required for a new or substantial alteration to an existing structure. The proposal is consistent with Goal 5 because the LM zoning requirements apply when development is proposed; the proposed rezone and Plan amendment is not development and therefore will not impact any Goal 5 resource.*

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

Goal 7, Areas Subject to Natural Disasters and Hazards. *This goal is not applicable because the Subject Property is not located in an area that is recognized by the Plan as a known natural disaster or hazard area.*

Goal 8, Recreational Needs. *This goal is not applicable because there is not development proposed and the property is not planned to meet the recreational needs of Deschutes County.*

Goal 9, Economy of the State. *This goal does not apply to this Application because the Subject Property is not designated as Goal 9 economic development land. In addition, the approval of this Application will not adversely affect economic activities of the state or area. Further, the proposed RI zoning will have more positive impact than EFU zoning on land that cannot viably be farmed.*

Goal 10, Housing. *Applicant’s proposed zone change and plan amendment has no impact on housing, as the Subject Property is currently zoned EFU and is not currently in residential use.*

Goal 11, Public Facilities and Services. *The Approval of this application will have no adverse impact on the provision of public facilities and services to the Subject Property. Needed services – including fire, police, water, utilities, schools, and county services – are already available in the area.*

Goal 12, Transportation. As explained in detail above, the Application complies with the Transportation System Planning Rule, OAR 660-012-0060, the Rule that implements Goal 12. Compliance with that Rule also demonstrates compliance with Goal 12.

Goal 13, Energy Conservation. The approval of this Application does not impede energy conservation. The Subject Property is located approximately halfway between the Cities of Bend and Redmond. Allowing the Subject Property to be zoned RI, especially with the proposed use limitations in place, will not negatively impact conservation of energy, and may in fact encourage it because it could provide a conveniently located service (mini-storage) for individuals and businesses located along Highway 97.

Goal 14, Urbanization. This Application involves the potential urbanization of rural land. While the RI zone is an acknowledged rural industrial zoning district that limits the intensity of the uses allowed in the zone, Applicant is requesting a change from EFU to RI on land that is relatively undeveloped. The compliance of the proposed zoning with Goal 14 is acknowledged by the Plan, which recognizes that the "county may apply the Rural Industrial plan designation to specific property within existing Rural Industrial exception areas, or to any other specific property that satisfies the requirements for a comprehensive plan designation change set forth by State Statute, Oregon Administrative Rules, this Comprehensive Plan and the Deschutes County Development Code, and that is located outside unincorporated communities and urban growth boundaries. The Rural Industrial plan designation and zoning brings these areas and specific properties into compliance with state rules by adopting zoning to ensure that they remain rural and that the uses allowed are less intensive than those allowed in unincorporated communities as defined in OAR 660-022." Further, LUBA has held that Goal 14, ORS 197.713, ORS 197.714, and OAR 660-0140040(4) do not prohibit or limit rural industrial use of rural land." *Central Oregon Landwatch v. Deschutes County*, LUBA No. 2021-028, slip op.at p.21 (OR LUBA 2021). Regardless, Applicant has provided analysis for a Goal 14 exception below showing that it meets the requirements for an "irrevocably committed" exception.

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

The Hearings Officer's findings on each Statewide Planning Goal follow.

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.

FINDING: The Planning Division provided notice of the proposed plan amendment and zone change to the public through individual mailed notices to nearby property owners, publication of notice in the Bend "Bulletin" newspaper, and posting of the subject property with a notice of proposed land use action sign. A public hearing was held before the Hearings Officer on the proposal on April 26, 2022, and a public hearing on the proposal will be held by the Deschutes County Board of Commissioners, per DCC 22.28.030(C). The Hearings Officer finds the proposal is consistent with Goal 1.

Goal 2: Land Use 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.

FINDING: Goals, policies and processes related to plan amendment and zone change applications are included in the County's comprehensive plan and land use regulations in Titles 18 and 22 of the Deschutes County Code and have been applied to the review of these applications. The Hearings Officer finds the proposal is consistent with Goal 2.

Goal 3: Agricultural Lands

To preserve and maintain agricultural lands.

FINDING: For the reasons set forth in the Preliminary Findings and Conclusions above, incorporated herein by this reference, the Hearings Officer finds the subject property does not constitute "agricultural land" under any of the standards for determining "agricultural land" set forth in OAR 660-033-0020(1). The Hearings Officer further finds that substantial evidence supports a finding the proposal will not adversely impact agricultural land. Therefore, I find the Applicant's proposal is consistent with Goal 3; no exception to Goal 3 is required.

Goal 4: Forest Lands

To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

FINDING: The Hearings Officer finds the subject property does not include any lands that are zoned for, or that support, forest uses. Therefore, the Hearings Officer finds the proposal does not implicate Goal 4. Goal 4 is inapplicable.

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

To protect natural resources and conserve scenic and historic areas and open spaces.

FINDING: The record indicates there are no identified Goal 5 resources on the subject property (cultural, historic, wildlife or plant). There are no scenic or historic areas and no open spaces on the property. There is no wetland, river, stream, creek or pond on the property, and no riparian zone. The subject properties do not constitute significant open spaces subject to the Goals and Policies of Deschutes County Comprehensive Plan Chapter 2, Section 2.7 and have not been inventoried in Chapter 5, Section 5.5 of the DCCP as land that is an "area of special concern," nor "land needed and desirable for open space and scenic resources. The Hearings Officer further finds that review of

compliance with the LM Combining Zone is not required within the scope of the subject Plan Amendment/Zone Change applications.

COLW argues that the County must apply Goal 5 in consideration of the proposed PAPA because it would affect a Goal 5 resource. However, OAR 660-023-0250(3) states that, “[l]ocal governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if”:

- (a) The PAPA creates or amends a resource list or a portion of an acknowledged plan or land use regulation adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5;*
- (b) The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list; or*
- (c) The PAPA amends an acknowledged UGB and factual information is submitted demonstrating that a resource site, or the impact areas of such a site, is included in the amended UGB area.*

The Hearings Officer finds that amending the plan designation and zoning of the subject property from EFU to RI does not allow uses that could be conflicting uses with any “significant Goal 5 resource site.” This is so given consideration of OAR 660-023-0040(1)(d), which directs the County to “develop a program to achieve Goal 5.” The County has done so by adoption of the LM overlay zone. The proposed plan amendment and zone change does not remove the subject property from the LM overlay zone and thus does not change or diminish the protection afforded to Goal 5 resources on the property, specifically the LM designation of lands within ¼ mile from the centerline of Highway 97.

Therefore, the Hearings Officer finds the proposal is consistent with Goal 5.

Goal 6: Air, Water and Land Resources Quality

To maintain and improve the quality of the air, water and land resources of the state.

FINDING: The Hearings Officer finds the Applicant's proposal to rezone the property from EFU-TRB to RI, in and of itself, will not impact the quality of the air, water, and land resources of the County. Any future RI Zone development of the property will be subject to local, state, and federal regulations protecting these resources.

COLW observes that the RI zone allows lumber manufacturing, wood processing, all uses that could result in ‘waste and process discharges.’ It argues that, without specifying which industrial uses may be developed on the property, the county could not find compliance with Goal 6.

The Hearings Officer finds that DCC 18.100.030(J) prohibits the county from approving any use in the RI zone “requiring contaminant discharge permits ...prior to review by the applicable state or federal permit-reviewing authority, nor shall such uses be permitted

adjacent to or across a street from a residential use or lot.” This provision also generally prohibits the county from approving any use in the RI zone, “which has been declared a nuisance by state statute, County ordinance or a court of competent jurisdiction.”

DCC 18.100.030(J) supports a reasonable expectation that uses allowed on the subject property under RI zoning will either comply with state and federal environmental quality standards or be denied county approval. Such a determination does not require a specific development proposal. The Hearings Officer finds that such a determination does not impermissibly defer a finding of Goal 6 compliance.

The Hearings Officer finds the proposal is consistent with Goal 6.

Goal 7: Areas Subject to Natural Hazards

To protect people and property from natural hazards.

FINDING: There are no mapped flood or volcano hazards on the subject property. Additional hazards include wildfire, earthquake, and winter storm risks, which are identified in the County’s Comprehensive Plan. The subject property is not subject to unusual natural hazards nor is there any evidence in the record that the proposal would exacerbate the risk to people, property, infrastructure, the economy, and/or the environment from these hazards on-site or on surrounding lands. Therefore, the Hearings Officer finds the proposal does not implicate Goal 7.

Goal 8: Recreational Needs

To satisfy the recreational needs of the citizens of the state and visitors and, here appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

FINDING: The proposed plan amendment and zone change do not affect recreational needs, and no specific development of the property is proposed. Therefore, the Hearings Officer finds the proposal does not implicate Goal 8.

Goal 9: Economic Development

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

FINDING: This goal is to provide adequate opportunities throughout the state for a variety of economic activities. The Subject Property is not designated as Goal 9 economic development land. The Hearings Officer finds the proposed RI zoning will have a more positive economic impact than EFU zoning on land that cannot viably be farmed, given that the currently undeveloped property will be put to a more productive use. The Hearings Officer finds the proposal is consistent with Goal 9.

Goal 10: Housing

To provide for the housing needs of citizens of the state.

FINDING: The proposed plan amendment and zone change will not affect existing or needed housing. Therefore, the Hearings Officer finds the proposal does not implicate Goal 10.

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.

FINDING: This goal requires planning for public services, including public services in rural areas, and generally has been held to prohibit extension of urban services such as sewer and water to rural lands outside urban growth boundaries. The Applicant's proposal will not result in the extension of urban services to rural areas. As discussed in the findings above, public facilities and services necessary for development of the subject property in accordance with the RI Zone are available and will be adequate.

With respect to water, COLW argues that the Applicant has not addressed groundwater supply and water rights for the subject property and alleges that industrial use of the subject property will threaten groundwater supplies in the area. COLW argues that the Application cannot comply with Goals 6 and 11 because there is no water service to the subject property.

The Hearings Officer finds that COLW's argument is based on an unsubstantiated premise that contaminated industrial waste may only be processed in a public wastewater facility. COLW does not cite anything in the record or applicable law that compels a conclusion that potential industrial wastewater discharges may only be treated in a public wastewater facility. Accordingly, the Hearings Officer finds this argument regarding wastewater provides no basis for denial of the applications.

The Hearings Officer finds that substantial evidence in the record the subject property has access to water and that that finding is supported by substantial evidence in the record. The Hearings Officer finds the proposal is consistent with Goal 11.

Goal 12: Transportation

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

FINDING: As discussed in the findings above concerning compliance with the TPR, incorporated by reference herein, the Applicant asserts that this proposal will not significantly affect a transportation facility, as conditioned pursuant to the proposed condition of approval approved by the County Transportation Planner and ODOT. As set forth in the findings above, the proposal complies with the TPR. Accordingly, the Hearings Officer finds the proposal is consistent with Goal 12.

Goal 13: Energy Conservation

To conserve energy.

FINDING: The Applicant's proposed plan amendment and zone change, in and of themselves, will have no effect on energy use or conservation since no specific development has been proposed in conjunction with the subject applications. The Hearings Officer finds that the location of the subject property and rezoning it to RI with proposed use limitations in place may encourage conservation of energy by providing for a conveniently located service (mini-storage) for individuals and businesses located or traveling along Highway 97. The Hearings Officer finds the proposal is consistent with Goal 13.

Goal 14: Urbanization

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

FINDING: Goal 14 is “[t]o provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside [UGBs], to ensure efficient use of land, and to provide for livable communities.” Goal 14 requires cities and counties to cooperatively establish as part of their comprehensive plan UGBs “to provide land for urban development needs and to identify and separate urban and urbanizable land from rural land.” Goal 14 generally prohibits urban uses of rural land.¹²

The Hearings Officer’s detailed Preliminary Findings and Conclusions concerning Goal 14 above are incorporated herein by this reference. The Hearings Officer reiterates her findings and conclusions that uses in the RI zone are not “urban uses of rural land,” by definition, as restricted by DCC 18.100. Due to the appropriate county rural industrial development standards, (18.100.040. Dimensional Standards) any rural industrial development must meet no more than a 70% lot coverage, a 30-foot maximum height limit, generous setbacks and distances between structures, consist of 7,500 square foot buildings or smaller, and meet the Landscape Management Zone setbacks. All of those regulations will result in appropriate and compatible low density and not an “urban level” density.

No Goal 14 exception is required. The Applicant’s alternative Goal 14 Exception request is analyzed in the findings below.

¹² LCDC has adopted general definitions that apply to the Statewide Planning Goals, including the following: "RURAL LAND. Land outside [UGBs] that is: "(a) Non-urban agricultural, forest or open space, "(b) Suitable for sparse settlement, small farms or acreage homesites with no or minimal public services, and not suitable, necessary or intended for urban use, or "(c) In an unincorporated community. "* * * * * "URBAN LAND. Land inside an urban growth boundary. "URBANIZABLE LAND. Urban land that, due to the present unavailability of urban facilities and services, or for other reasons, either: "(a) Retains the zone designations assigned prior to inclusion in the boundary, or (b) Is subject to interim zone designations intended to maintain the land's potential for planned urban development until appropriate public facilities and services are available or planned." (Boldface omitted.)

Goals 15 through 19

FINDING: The Hearings Officer finds that these goals, which address river, ocean, and estuarine resources, are not applicable because the subject property is not located in or adjacent to any such areas or resources.

The Hearings Officer finds compliance with the applicable Statewide Planning Goals has been effectively demonstrated for all listed Goals.

DIVISION 4, INTERPRETATION OF GOAL 2 EXCEPTION PROCESS

FINDING: The Applicant provided the following response in the burden of proof statement:

As explained above, the requested zone change and Plan map amendment from EFU / Agricultural to RI should not require a Goal exception because the County's RI zoning complies with Goal 14 by ensuring areas with this zoning remain rural by limiting the uses allowed. Further, Goal 14, ORS 197.713, ORS 197.714, and OAR 660-014-0040(4) do not prohibit or limit rural industrial use of rural land." Central Oregon Landwatch v. Deschutes County, LUBA No. 2021-028, slip op. at p.21 (OR LUBA 2021). To the extent the County disagrees that a Goal exception is not required, the Subject Property is irrevocably committed to urban uses, and Applicant provides a Goal exception analysis below.

The Deschutes County Board of County Commissioners entered the following findings associated with File No. 247-16-000593-A, on remand from LUBA of File Nos. 247-14-000456-ZC, 457-PA:

Given the above findings that the Applicant did not intend to request and the County Board did not intend to authorize urban uses on the subject property, LUBA's remand warrants that we examine why an exception to Goal 14 was filed in this proceeding at all.

It is plainly evident from the evidence in the record and the above findings that staff's request that the Applicant submit an application requesting an exception to Goal 14, the Hearings Officer's consideration and approval of that exception, and the County Board's consideration of the exception application flowed directly from the precedent set by the Hearings Official's decision in ZC-14-2. The County had concluded that the decision was binding precedent and had consistently applied the approach used in that decision to assign R-I zoning to properties in subsequent applications. That decision, as interpreted and applied by the County, concluded that an exception to Goal 14 urbanization was required whenever a property owner sought rural industrial zoning on rural property, and that the Goal 14 exception process was to ensure that the subject site was not developed with "urban" uses. The Hearings Officer's decision in ZC-14-2 was not appealed and, therefore, its reasoning was never reviewed by LUBA.

As the excerpts from LUBA's opinion in this matter quoted above make clear, the Hearings Officer's analysis and conclusions in ZC-14-2 regarding the use of the

Goal 14 exceptions process to limit Rural Industrial uses to those that are not “urban” is both rationally inconsistent and legally incorrect. As LUBA’s decision also explains that to get a committed exception to Goal 14, one must demonstrate that it is impossible to locate any rural use on the subject property. It is thus illogical to approve a Goal 14 exception only to then limit it to Rural Industrial uses, which are “rural” by definition and acknowledgment. To do so is also inconsistent with the state’s land use legal framework.

The County Board hereby concludes that the County should no longer follow the precedent set forth in ZC-14-2 that requires approving an exception to Goal 14 before approving the change in plan designation and zoning of a rural property to the Rural Industrial plan designation and R-I zoning if only rural uses are to be permitted on the property. As LUBA explained in its decision, the requirement for an Applicant to apply for an exception to Goal 14 is to be limited to proposals that request urban uses on rural land, or as otherwise required by the DCC, state statute or state land use regulations.

Based upon the above conclusion, because the Applicant did not request urban uses to be allowed on the subject property and because the County Board did not intend to allow urban uses on rural land, the County Board concludes that the Applicant should not have been required to submit an application for an exception to Goal 14 for the purposes set forth by the decision in ZC-14-2 as followed by the Hearings Official in this proceeding.

The Hearings Officer finds that, here too, the Applicant is not requesting that urban uses be allowed on the subject property. It does not make sense for the Applicant to request a re-designation and rezone of the property to Rural Industrial and also request a “committed” exception to Goal 14 which requires a showing that it is impossible to locate any rural use on the subject property.

The Applicant’s Goal 14 exception request should be denied as inconsistent with underlying applications, unnecessary, and contrary to the state’s land use legal framework, as determined by the Deschutes County Board of Commissioner in the decisions quoted above.

OAR 660-004-0010, Application of the Goal 2 Exception Process to Certain Goals

- (1) The exceptions process is not applicable to Statewide Goal 1 “Citizen Involvement” and Goal 2 “land Use Planning.” The exceptions process is generally applicable to all or part of those statewide goals that prescribe or restrict certain uses of resource land, restrict urban uses on rural land, or limit the provision of certain public facilities and services. These statewide goals include but are not limited to: (a) Goal 3 "Agricultural Lands"; however, an exception to Goal 3 "Agricultural Lands" is not required for any of the farm or nonfarm uses allowed in an exclusive farm use (EFU) zone under ORS chapter 215 and OAR chapter 660, division 33, "Agricultural Lands", except as provided under OAR 660-004-0022 regarding a use authorized by a statewide**

planning goal that cannot comply with the approval standards for that type of use;

FINDING: For the reasons set forth in the Preliminary Findings and Conclusions on Agricultural Land, incorporated herein by this reference, the Hearings Officer finds that an exception to Goal 3 “Agricultural Lands” is not required for the subject applications.

(c) Goal 11 "Public Facilities and Services" as provided in OAR 660-011-0060(9);

FINDING: No public facilities or services are proposed to be extended to support uses outside of urban growth boundaries pursuant to the subject application. The Hearings Officer finds that an exception to Goal 11 “Public Facilities and Services” is not required for the subject applications. As set forth above, the application is consistent with Goal 11.

(d) Goal 14 "Urbanization" as provided for in the applicable paragraph (I)(c)(A), (B), (C) or (D) of this rule:

(A) An exception is not required for the establishment of an urban growth boundary around or including portions of an incorporated city;

(B) When a local government changes an established urban growth boundary applying Goal 14 as it existed prior to the amendments adopted April 28, 2005, it shall follow the procedures and requirements set forth in Goal 2 "Land Use Planning," Part II, Exceptions. An established urban growth boundary is one that has been acknowledged under ORS 197.251, 197.625 or 197.626. Findings and reasons in support of an amendment to an established urban growth boundary shall demonstrate compliance with the seven factors of Goal 14 and demonstrate that the following standards are met:

(i) Reasons justify why the state policy embodied in the applicable goals should not apply (This factor can be satisfied by compliance with the seven factors of Goal 14);

(ii) Areas that do not require a new exception cannot reasonably accommodate the use;

(iii) The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and

- (iv) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.*
- (C) When a local government changes an established urban growth boundary applying Goal 14 as amended April 28, 2005, a goal exception is not required unless the local government seeks an exception to any of the requirements of Goal 14 or other applicable goals;**

FINDING: The Applicant is not requesting a change to any urban growth boundaries. The Hearings Officer finds that the above criteria (A-C) do not apply to the subject applications.

- (D) For an exception to Goal 14 to allow urban development on rural lands, a local government must follow the applicable requirements of OAR 660-014-0030 or 660-014-0040, in conjunction with applicable requirements of this division;**

FINDING: The Applicant provided the following response in the burden of proof statement:

Applicant provides analysis of a Goal 14 exception to allow urban development on rural lands below. Part D of this Rule (as well as the requirements of OAR 660-014-0030 and – 0040) applies to the County, and not to Applicant.

The Hearings Officer finds that the Applicant’s request in its Goal 14 exception “to allow urban development on rural lands” is inconsistent with its request to re-designate and rezone the property to Rural Industrial. Urban development is not permitted on properties zoned RI. Further analysis is provided in subsequent findings.

- (2) The exceptions process is generally not applicable to those statewide goals that provide general planning guidance or that include their own procedures for resolving conflicts between competing uses. However, exceptions to these goals, although not required, are possible and exceptions taken to these goals will be reviewed when submitted by a local jurisdiction. These statewide goals are:**
 - ...
 - (g) Goal 12 "Transportation" except as provided for by OAR 660-012-0070, "Exceptions for Transportation Improvements on Rural Land";**

FINDING: The Hearings Officer finds that a Goal 12 “Transportation” exception is not required for the subject applications.

OAR 660-004-0018, Planning and Zoning for Exception Areas

- (1) Purpose. This rule explains the requirements for adoption of plan and zone designations for exceptions. Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements**

and do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception. Physically developed or irrevocably committed exceptions under OAR 660-004-0025 and 660-004-0028 and 660-014-0030 are intended to recognize and allow continuation of existing types of development in the exception area. Adoption of plan and zoning provisions that would allow changes in existing types of uses, densities, or services requires the application of the standards outlined in this rule.

FINDING: The Applicant provided the following response in the burden of proof statement:

Applicant is proposing a zone change and Plan map amendment for land currently zoned EFUTRB and designated "agricultural." As explained in detail above, the Soils Assessments show that the Subject Property consists of predominantly Class 7 and 8 soils, and as such cannot be considered "agricultural" such that an exception to Goal 3 is required. However, the proposed RI zoning may require a Goal 14 exception. The Subject Property has been in use as a large equipment service and repair / rental and sales facility for the majority of the past 40 years, at least. As such, the Subject Property is irrevocably committed to those uses and an exception is required on that basis to allow Applicant to continue those uses on the Subject Property.

The Hearings Officer finds that OAR 660-004-0018 (Planning and Zoning for Exception Areas) is only applicable if an exception to Goal 14 is required. For the reasons set forth in the Preliminary Findings and Conclusions above, incorporated by this reference, the Hearings Officer finds that a Goal 14 exception is not required.

To prepare a full record with findings and conclusions on all proposal components of the subject applications, the Hearings Officer makes findings on each criterion below.

- (1) A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable:**
 - (a) A "committed exception" is an exception taken in accordance with ORS 197.732(2)(b), Goal 2, Part II(b), and with the provisions of this rule, except where other rules apply as described in OAR 660-004-0000(1).**
 - (b) For the purposes of this rule, an "exception area" is that area of land for which a "committed exception" is taken.**
 - (c) An "applicable goal," as used in this rule, is a statewide planning goal or goal requirement that would apply to the exception area if an exception were not taken.**
- (2) For "physically developed" and "irrevocably committed" exceptions to goals, residential plan and zone designations shall authorize a single numeric minimum lot size and all plan and zone designations**

shall limit uses, density, and public facilities and services to those that satisfy (a) or (b) or (c) and, if applicable, (d): ...

- (b) That meet the following requirements:**
 - (A) The rural uses, density, and public facilities and services will maintain the land as "Rural Land" as defined by the goals, and are consistent with all other applicable goal requirements;**

FINDING: The Applicant provided the following response in the burden of proof statement:

"Rural Land" is defined by the goals as "[I]and outside urban growth boundaries that is: a) Nonurban agricultural, forest or open space; b) Suitable for sparse settlement, small farms or acreage homesites with minimal public services, and not suitable, necessary or intended for urban use, or c) In an unincorporated community." Applying the RI Plan designation and zoning to the Subject Property will maintain the land as "rural" because rural uses, density, and public facilities allowed by the RI zoning are limited to those that, according to the Plan, "ensure that they remain rural and that the uses allowed are less intensive than those allowed in unincorporated communities." Applicant addressed consistency with other applicable goal requirements above, and incorporates that discussion here.

The Hearings Officer finds that this provision has not been considered in its full context. The Applicant has requested an "irrevocably committed" exception to Goal 14. This regulation requires that the zone designation "**shall authorize a single numeric minimum lot size and all plan and zone designations shall limit uses, density and public facilities and services to those that satisfy...**" (b)(A), (b)(B), and (b)(C).

The Applicant did not propose, and staff did not analyze any "single numeric minimum lot size" to limit uses, density and public facilities in the exception area. Without such analysis, the Hearings Officer cannot find that the Applicant has met its burden of proof on the criterion set forth in OAR 660-004-018(2)(b)(A).

- (B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to uses not allowed by the applicable goal as described in OAR 660-004-0028; and**

FINDING: The Applicant provided the following response in the burden of proof statement:

The rural uses, density, and public facilities allowed by the RI zone will not commit adjacent or nearby resource land to uses not allowed by the applicable goal. The nearby and adjacent resource lands (which are zoned EFU) are either in residential use or used as open space / park land; they are not in any agricultural use. Allowing a Goal 14 exception to rezone the Subject Property from EFU to RI, therefore, will not impact the nearby and adjacent EFU-zoned resource lands to uses not allowed by Goal 3.

As discussed above, the Hearings Officer finds that the Applicant did not propose, and staff did not analyze any "single numeric minimum lot size" to limit uses, density and public facilities in the exception area. Without such analysis, the Hearings Officer cannot find that File Nos. 247-21-000881-PA, 882-ZC
Hearings Officer Decision and Recommendation

the Applicant has met its burden of proof on the criterion set forth in OAR 660-004-018(2)(b)(B).

(C) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses;

FINDING: The Applicant provided the following response in the burden of proof statement:

The rural uses, density, and public facilities and services allowed by the RI zone and Plan designation are compatible with adjacent or nearby resource uses (i.e. residential, open space / parks).

As discussed above, the Hearings Officer finds that the Applicant did not propose, and staff did not analyze any "single numeric minimum lot size" to limit uses, density and public facilities in the exception area. Without such analysis, the Hearings Officer cannot find that the Applicant has met its burden of proof on the criterion set forth in OAR 660-004-018(2)(b)(C).

OAR 660-004-0028, Exception Requirements for Land Irrevocably Committed to Other Uses

- (1) A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable:**
 - (a) A "committed exception" is an exception taken in accordance with ORS 197.732(2)(b), Goal 2, Part II(b), and with the provisions of this rule, except where other rules apply as described in OAR 660-004-0000(1).**
 - (b) For the purposes of this rule, an "exception area" is that area of land for which a "committed exception" is taken.**
 - (c) An "applicable goal," as used in this rule, is a statewide planning goal or goal requirement that would apply to the exception area if an exception were not taken.**

FINDING: The Applicant provided the following response in the burden of proof statement:

ORS 197.732(2)(b) is addressed below. Goal 2, Part II(b) allows an exception to a Goal where "[t]he land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable." The Subject Property, which is the relevant "exception area," is currently zoned EFU-TRB but cannot be used for agricultural purposes, including farming and grazing, because of the poor soil conditions, as discussed above. Further, the Subject Property has been in use as an equipment service / repair and rental/ sales facility for the majority of the past 40 years or more, and has had improvements (buildings, parking areas, etc.) for that long, as well. It is adjacent to a residential large-lot

subdivision to the west, and bordered by Highway 97 on the east. The EFU-zoned lands adjacent to it are in residential use and not in agricultural use. Applicant is entitled to an "irrevocably committed" exception to Goal 14 because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable. Compliance with the requirements for the exception is addressed below.

As set forth above in the Preliminary Findings and Conclusions, the Hearings Officer finds that no Goal 14 exception is required. To prepare a full record with findings and conclusions on all proposal components of the subject applications, the Hearings Officer finds that the proposal would not be entitled to a Goal 14 exception based on "irrevocable commitment," for the reasons discussed in more detail below.

- (2) Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:**
 - (a) The characteristics of the exception area;**

FINDING: The Applicant provided the following response in the burden of proof statement:

The "exception area" is the area for which the exception is being requested - i.e., the Subject Property. As discussed above, the Subject Property is composed of mostly Class 7 and 8 soils, which are not suitable for farming or other agricultural use. For most of the past 40 or more years, two of the three tax lots making up the Subject Property have been used for repair, service, and rental / sales of large equipment. This use for such an extended period of time contributed to the degradation of the soils on the Subject Property. The third tax lot, Tax Lot 301, is landlocked and only accessible via a bridge easement from Highway 97 located on Tax Lots 305 and 500. The Subject Property is connected to urban services including fire, police, utilities, schools, library, garbage and recycling, and county services.

The determination of "irrevocably committed" pursuant to a requested Goal 14 exception is separate and distinct from analysis concerning "agricultural lands" and Goal 3. The Hearings Officer finds that the record shows only one-third of the total acreage of the subject property has been allocated to non-conforming use. Whether or not that non-conforming use has continued in an unaltered, uninterrupted, unabandoned manner is not relevant to the determination of the characteristics of the exception area. The Hearings Officer has previously found in this Decision and Recommendation that a non-conforming use verification is not required.

Despite the more intensive prior uses of the subject property and graveled, disturbed areas on site, the Hearings Officer finds that the record does not support a finding that non-urban uses are *impracticable* on the subject property. For example, the Applicant has indicated that, if the proposed plan amendment and rezone is approved to RI, the Applicant is considering applying for a use conditionally permitted in the zone, a mini-storage facility. See DCC 18.100.020(M).

The Hearings Officer finds the Applicant has not met its burden of proof on this criterion.

(b) The characteristics of the adjacent lands;

FINDING: The Applicant provided the following response in the burden of proof statement:

The Subject Property is surrounded by multiple zones and uses. Directly west, and comprising the western boundary of the Subject property, is a large Rural Residential 10 zone ("RR-10"). All neighboring properties to the west are part of the Whispering Pines Estates subdivision and are put to residential uses. The Subject Property shares a southern border with Tax Lot 700, which is owned by the Oregon Parks and Recreation Department land and zoned Open Space and Conservation ("OS&C"). The Subject Property is bordered on the east by Highway 97 and two other parcels, Tax Lots 300 and 306. Tax Lots 300 and 306 are also zoned EFU-TRB, however, neither is actively used for agricultural operations, and both are used for residential purposes. The Subject Property is bordered on the north by Tax Lot 202 which is also zoned EFU-TRB and is not engaged in an agricultural operation, but rather, is used for residential purposes.

As noted above, the determination of "irrevocably committed" pursuant to a requested Goal 14 exception is separate and distinct from analysis concerning "agricultural lands" and Goal 3. The Hearings Officer finds that the record does not support a finding of "irrevocably committed" to urban uses based on the surrounding zoning and use of properties adjacent to the subject property. Adjacent Tax Lots 300 and 306 are in some type of farm use as they have irrigation rights and are receiving farm tax assessment. Aerial photography further supports this determination.

The Hearings Officer finds the Applicant has not met its burden of proof on this criterion.

(c) The relationship between the exception area and the lands adjacent to it; and

FINDING: The Applicant provided the following response in the burden of proof statement:

The Subject Property is adjacent to a residential subdivision consisting of multiple large residential lots, several tax lots zoned EFU used for residential purposes and not currently in agricultural use, Highway 97, and a state park. The Subject Property - which has been used for decades as an equipment repair / service facility - and the properties adjacent to it are compatible with one another and have been for decades. Applicant's proposed zone change and Plan map amendment would not change that relationship because the Subject Property has been used in ways consistent with the allowed uses in the RI zone for decades.

The Hearings Officer finds that this provision is intended to determine to what extent the relationship between the exception area and the lands adjacent to it renders non-urban uses impracticable. The mere existence of residential uses near a property proposed for an irrevocably committed exception does not demonstrate that such property is necessarily committed to nonresource use. *Prentice v. LCDC*, 71 Or App 394,403-04, 692 P2d 642 (1984).

The Hearings Officer finds that the Applicant has not met its burden of proof on this criterion.

(d) The other relevant factors set forth in OAR 660-004-0028(6).

FINDING: The relevant factors of OAR 660-004-0028(6) are discussed in subsequent findings.

(3) Whether uses or activities allowed by an applicable goal are impracticable as that term is used in ORS 197.732(2)(b), in Goal 2, Part II(b), and in this rule shall be determined through consideration of factors set forth in this rule, except where other rules apply as described in OAR 660-004-0000(1). Compliance with this rule shall constitute compliance with the requirements of Goal 2, Part II. It is the purpose of this rule to permit irrevocably committed exceptions where justified so as to provide flexibility in the application of broad resource protection goals. It shall not be required that local governments demonstrate that every use allowed by the applicable goal is "impossible." ...

FINDING: The Applicant provided the following response in the burden of proof statement:

Applicant is not requesting an exception to Goal 3 because the land is not suitable for agricultural use, as explained above. Applicant requests an exception to Goal 14. The Subject Property is irrevocably committed to non-resource use due to its extensive historic use as a large equipment service / repair and rental / sales facility, which depleted the soils. The soils on the Subject Property are predominantly Class 7 and 8 and as a result cannot reasonably be farmed. The Subject Property's current EFU-TRB zoning allows outright or conditionally a variety of uses. The farm and forest uses allowed in the EFU zone - as well as uses related to farm and forest uses - would be impracticable on the Subject Property due to constraints caused by the historic use of the Subject Property, its proximity to Highway 97, its proximity to a residential subdivision and other residentially-used properties, the landlocked nature of Tax Lot 301, the less than 20-acre size of the Subject Property, the poor quality of the soils, and the difficulty of irrigating. Other resource related uses allowed in the EFU zone such as mining, wetland creation, and wildlife habitat conservation would be impracticable considering the Subject Property's size, location, configuration, and dry rocky soil.

While residential uses may not be impossible, the only site that could currently be developed with a residence is landlocked and inaccessible from Highway 97. Tax Lots 305 and 500 are presently developed with facilities historically used for service / repair and rental / sales of large equipment. Developing a dwelling on those lots is impracticable based on the current use of the land. Further, the proximity to Highway 97 creates noise issues that would make dwelling development impracticable. With respect to irrigation-related uses, the Subject Property, while adjacent to the Pilot Butte Canal, cannot be sufficiently irrigated because (a) the water rights are being leased to the Deschutes River and (b) even if they were not, the Canal is insufficient to irrigate the entire Subject Property. Finally, the utility and similar uses allowed in the EFU zone, such as utility facilities,

transmission towers, personal use airports, solar power generating facilities, etc.) are impracticable on the Subject Property due to its small size (approx. 19 acres) and the fact that it is already partially developed.

The Hearings Officer finds that the above subsection does not set forth a criterion, but rather explains how to interpret and implement the various requirements set forth in OAR 660-004-0028(6).

For exceptions to Goals 3 or 4, local governments are required to demonstrate that only the following uses or activities are impracticable:

- (a) Farm use as defined in ORS 215.203;***
- (b) Propagation or harvesting of a forest product as specified in OAR 660-0330120; and***
- (c) Forest operations or forest practices as specified in OAR 660-006-0025(2)(a).***

FINDING: The Applicant provided the following response in the burden of proof statement:

Applicant is not requesting an exception to Goal 3 because the land is not suitable for agricultural use, as explained above. Applicant requests an exception to Goal 14.

The Hearings Officer finds this provision is inapplicable.

- (4) A conclusion that an exception area is irrevocably committed shall be supported by findings of fact that address all applicable factors of section (6) of this rule and by a statement of reasons explaining why the facts support the conclusion that uses allowed by the applicable goal are impracticable in the exception area.***

FINDING: The Hearings Officer’s findings of fact that address all applicable factors of section (6) of this rule are set forth below.

- (5) Findings of fact and a statement of reasons that land subject to an exception is irrevocably committed need not be prepared for each individual parcel in the exception area. Lands that are found to be irrevocably committed under this rule may include physically developed lands.***

FINDING: The Applicant’s proposed exception area consists of three (3) Tax Lots (301, 305, and 500), all of which are the subject of this application. The Hearings Officer’s findings of fact regarding the exception area are addressed to all three tax lots collectively.

- (6) Findings of fact for a committed exception shall address the following factors:***
 - (a) Existing adjacent uses;***

FINDING: The Applicant provided the following response in the burden of proof statement:

See above discussion of “characteristics of adjacent lands,” which discusses the existing adjacent uses.

The Hearings Officer finds that the Applicant has not met its burden of proof for an “irrevocably committed” exception based on existing adjacent uses, as set forth in the findings above.

(b) Existing public facilities and services (water and sewer lines, etc.);

FINDING: The Applicant provided the following response in the burden of proof statement:

There are no public water or sewer facilities on the Subject Property; it is served by an on-site, DEQ-approved sewage disposal system and has an on-site well that provides potable water to the Subject Property. Further, Applicant’s proposal to develop the Subject Property with RI zone allowed uses will not require public water or sewer facilities. The Subject Property will continue to be serviced by the Deschutes Rural Fire District #2 and the Deschutes County Sheriff.

There are no existing public water and sewer lines on the subject property. The Hearings Officer finds that the Applicant has not met its burden of proof for an “irrevocably committed” exception based on existing public facilities and services (water and sewer lines, etc.).

(c) Parcel size and ownership patterns of the exception area and adjacent lands:

(A) Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the goals were made at the time of partitioning or subdivision. Past land divisions made without application of the goals do not in themselves demonstrate irrevocable commitment of the exception area.

...

FINDING: The Applicant provided the following response in the burden of proof statement:

The Subject Property consists of three tax lots that total approximately 19.12 acres; Tax Lot 301 is 15.06 acres, Tax Lot 305 is 3.00 acres, and Tax Lot 500 is 1.06 acres. Tax Lot 301 was formerly part of Tax Lot 300 (discussed below). It was created in 1977 and at that time consisted of 18.06 acres. In 1981, it was divided to create the 3.0 acre Tax Lot 305. Tax Lot 500 was created in 1972 and was originally 7.27 acres. In 1991, 0.21 acres were removed to create Tax Lot 501 (right of way for the highway).

Land use records for the Subject Property do not appear to exist prior to 1978. In April 1978, the owner of the Subject Property - which at that time existed as only Tax Lots 301 and 500 - applied for a rezone from A-1 to C-2 to support the existing tractor sales and service operation. At that time, the Subject Property had been designated by the Deschutes County Comprehensive Plan and the Redmond Comprehensive plan as being for urban development. Exhibit 11 at p. 16. The Subject Property at that time was within the sewer and water service boundaries, and electrical service, telephone service, and other public facilities were being supplied to the area. The County chose to rezone a portion of the Subject Property (Tax Lot 500) to A-S rather than C-2 and to leave Tax Lot 301 zoned A-1.

The adjacent properties to the north and east (Map/Tax Lots 1612230000202, - 300 & -306) are all zoned EFU and are under separate ownership. Tax Lot 202 is 5.63 acres and is owned by Robert E. Fate and Stacey L. Andrews. It appears to have been created by partition plat in or around 2017. Tax Lot 300 is 21.56 acres and is owned by James L. Werth. It was formerly part of TL 1612 (from which Tax Lot 301, part of the Subject Property, was also created). TL 1612 was divided numerous times over the years, culminating in the creation of Tax Lot 300 in around 1988. Tax Lot 306 is owned by William Edward Kirzy and is 20.54 acres. It appears to have been created in 1987 as Minor Land Partition No. MP-87-20.

The adjacent property to the south (Map/Tax Lot 1612230000700) is open space and park land owned by the State of Oregon Parks & Recreation Department. Tax Lot 700 is 35.89 acres. It appears to have been created from TL 1612 in or around 1961.

The adjacent properties to the west consist of lots making up the Whispering Pines subdivision (Map/Tax Lots 161223C000100, 200, 300, 400, 500, 600, 700, &.800 - platted in 1968; Map/Tax Lots 161223B00106 - platted in 1969; Map/Tax Lots 161223B00200, 201, 202, 203, 204, 205, 206, & 207 - platted in 1977). These are all zoned RR-10, are under 3 acres in size, and are under separate ownership. The majority of the soils on these properties are classified as 58C, which is not considered "high-value" farmland and as such would likely not be put to any agricultural use.

The Hearings Officer finds that the Applicant has addressed consideration of parcel size and ownership patterns pursuant to this rule, and analysis of how the existing development pattern came about.

...
Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors makes unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed.
...

FINDING: The Applicant provided the following response in the burden of proof statement:

The Subject Property is also completely constrained for additional development and use due to the Pilot Butte Canal on the east (and bisecting the property). This canal sits within a federal right of way and, therefore, precludes development or use. Given this fact, and the subdivision to the west, the Subject Property contains severe constraints that preclude operating the property as a single farming operation or for significant agricultural use.

The Hearings Officer finds that the Applicant has established that the Pilot Butte Canal and associated easement make the exception area unsuitable for resource use. There is not a showing that this factor makes resource use of nearby lands unsuitable. The Hearings Officer observes that, whether the property is suitable for resource use does not constitute a finding that the subject property is not suitable for rural use.

...
Resource and nonresource parcels created and uses approved pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for the subject parcels or land adjoining those parcels.

FINDING: The Applicant does not rely on any parcels created or uses approved pursuant to the applicable goals to justify its request for an irrevocably committed exception.

(B) Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations;

FINDING: The Applicant provided the following response in the burden of proof statement:

The parcel sizes for the Subject Property and the properties adjacent to it range from 1.06 acres to 35.89 acres. The majority of the parcels surrounding the Subject Property are part of the Whispering Pines residential subdivision - they are each under 3 acres. The only contiguous ownerships are Tax Lots 305 and 500, which are owned by Applicant and part of the Subject Property. Tax Lot 301, also part of

the Subject Property, is owned by a principal of Applicant. The Subject Property does not stand alone amidst larger farm or forest operations and are not buffered from such operations-there are no such operations in the vicinity of the Subject Property.

The Hearings Officer finds that the three parcels that constitute the subject property total approximately 19 acres in size. The mere fact that smaller parcels exist in the surrounding area and are in separate ownerships does not establish "irrevocable commitment." The parcels are not clustered in a large group or clustered around a road designed to serve those parcels. There are two adjacent, smaller EFU-zoned properties that are receiving tax deferral and appear to be in agricultural use as evidenced by aerial photographs. No finding is made on whether such properties are engaged in "farm use," however, as that is not relevant to this determination. The Hearings Officer finds that the Applicant has not met its burden of proof on this criterion. This criterion is not met.

(d) Neighborhood and regional characteristics;

FINDING: The Applicant provided the following response in the burden of proof statement:

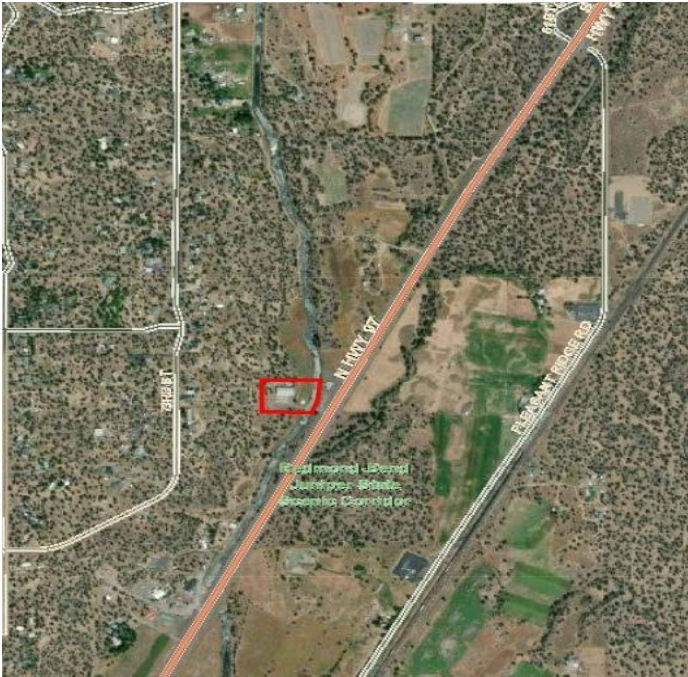
The area, or "neighborhood," in which the Subject Property lies can be characterized generally as developed residential properties. While some are zoned EFU, they are not being used for agricultural purposes. The general area around the Subject Property appears to consist of native vegetation - grasses and juniper trees - and is largely infertile soil (58C). Deschutes Junction is nearby and is also zoned RI, and consists of a mixture of commercial and industrial uses, with some hobby farms and rural residences. Approval of the proposed exception would be consistent with the actual character and land use pattern in the neighborhood.

Using an approximately ¼-mile radius around the subject property, the vicinity is comprised of a mix of RR-10, EFU, and OS&C zoning.

Zoning within approximately ¼ mile of the subject property (Tax Lot 305 highlighted for reference)



Aerial Photography (2020) within approximately ¼ mile of the subject property (Tax Lot 305 highlighted for reference)



The Hearings Officer finds that the Applicant addressed neighborhood characteristics, but did not address regional characteristics. The Hearings Officer finds the Applicant did not meet its burden of proof on this criterion. This criterion is not met.

- (e) **Natural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area;**

FINDING: The Applicant provided the following response in the burden of proof statement:

The Subject Property is separated from resource area (zoned EFU) by the Pilot Butte Canal and Highway 97. It is also currently developed with commercial / industrial buildings that have been historically used as equipment service / repair and rental facilities. Tax Lot 301 is landlocked and only accessible via a bridge easement located on or near Tax Lots 500 and 305. These features impede practicable resource use of the exception area.

The Hearings Officer finds that, while some man-made features separate the exception area from some adjacent resource land, there are other resource lands immediately adjacent to the subject property. Nonetheless, as determined in the findings above, the Hearings Officer finds that both the Pilot Butte Canal and Highway 97 effectively impede practicable resource use (farm use) of all or part of the subject property. Again, the Hearings Officer observes that this finding does not constitute a determination that the subject property is unsuitable for any rural use. This criterion is met.

- (f) **Physical development according to OAR 660-004-0025; and**

FINDING: OAR 660-004-0025 states:

660-004-0025 Exception Requirements for Land Physically Developed to Other Uses

- (1) **A local government may adopt an exception to a goal when the land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal. Other rules may also apply, as described in OAR 660004-0000(1).**
- (2) **Whether land has been physically developed with uses not allowed by an applicable goal will depend on the situation at the site of the exception. The exact nature and extent of the areas found to be physically developed shall be clearly set forth in the justification for the exception. The specific area(s) must be shown on a map or otherwise described and keyed to the appropriate findings of fact. The findings of fact shall identify the extent and location of the existing physical development on the land and can include information on structures, roads, sewer and water facilities, and utility facilities. Uses allowed by the applicable goal(s) to which an exception is being taken shall not be used to justify a physically developed exception.**

The Applicant provided the following response in the submitted burden of proof statement:

The Subject Property is developed with a bridge over the Pilot Butte Canal, two commercial buildings and their accessory buildings, and a double-wide mobile home. The two commercial buildings, used for equipment service / repair and rental / sales, total 2,864 square feet combined. The Subject Property has been developed with an approximately 7,500 square foot warehouse since the early 1990s. While this development does not preclude resource uses per se, the historic use of the two commercial buildings and their accessory structures and Applicant's plan to continue that historic use, along with the fact that the only access to the landlocked Tax Lot 301 is via these developed lots, weighs in favor of a determination that the Subject Property is irrevocably committed to urban uses.

The Hearings Officer found above that the Applicant need not obtain a non-conforming use verification to establish "physical development." However, the Hearings Officer finds that the Applicant has not met its burden of proving that the subject property has been physically developed with uses not allowed by Goal 14 to the extent that it is no longer available for uses allowed by Goal 14. These criteria are not met.

(g) Other relevant factors.

FINDING: The Applicant provided the following response in the burden of proof statement:

Highway 97 runs along the east side of the Subject Property. This detracts from the suitability of the Subject Property for resource or other uses permitted in the EFU zone. The Pilot Butte Canal also bisects a portion of the Subject Property or forms a border to similar effect.

As determined in the findings above, the Hearings Officer finds that both the Pilot Butte Canal and Highway 97 effectively impede practicable resource use of all or part of the subject property. Again, the Hearings Officer observes that this finding does not constitute a determination that the subject property is unsuitable for any rural use. This criterion is met.

(7) The evidence submitted to support any committed exception shall, at a minimum, include a current map or aerial photograph that shows the exception area and adjoining lands, and any other means needed to convey information about the factors set forth in this rule. For example, a local government may use tables, charts, summaries, or narratives to supplement the maps or photos. The applicable factors set forth in section (6) of this rule shall be shown on the map or aerial photograph.

FINDING: The Applicant provided a current area map and aerial photograph showing the subject property and adjoining lands, included as **Exhibit 1** of the application materials. This criterion is met.

DIVISION 14, APPLICATION OF THE STATEWIDE PLANNING GOALS TO NEWLY INCORPORATED CITIES, ANNEXATION, AND URBAN DEVELOPMENT ON RURAL LANDS

OAR 660-014-0030, Rural Lands Irrevocably Committed to Urban Levels of Development

- (1) A conclusion, supported by reasons and facts, that rural land is irrevocably committed to urban levels of development can satisfy the Goal 2 exceptions standard (e.g., that it is not appropriate to apply Goals 14's requirement prohibiting the establishment of urban uses on rural lands). If a conclusion that land is irrevocably committed to urban levels of development is supported, the four factors in Goal 2 and OAR 660-004-0020(2) need not be addressed.**

FINDING: The Applicant provided the following response in the burden of proof statement:

The proposed exception area - the Subject Property - is irrevocably committed to urban levels of development. Specifically, it is irrevocably committed to industrial and quasi-commercial uses at urban levels, as has been shown above. The Subject Property is unsuitable for rural uses including farming because of its size, configuration, poor quality soils, lack of sufficient irrigation, and the highway abutting it. Because the Subject Property has been irrevocably committed, Applicant need not address the four factors in Goal 2 and OAR 660-004- 0020(2).

For the reasons set forth above, the Hearings Officer finds: (1) the subject property is rural land; (2) the Applicant is not required to obtain a Goal 14 exception for purposes of the subject applications; therefore, Goal 2 exceptions standards are not applicable; (3) in the alternative, if the Board of County Commissioners disagrees with the Hearings Officer's findings on (1) and (2) herein, and determines that the Applicant is required to obtain a Goal 14 exception, the record does not support a finding that the subject property is irrevocably committed to urban levels of development.

- (2) A decision that land has been built upon at urban densities or irrevocably committed to an urban level of development depends on the situation at the specific site. The exact nature and extent of the areas found to be irrevocably committed to urban levels of development shall be clearly set forth in the justification for the exception. The area proposed as land that is built upon at urban densities or irrevocably committed to an urban level of development must be shown on a map or otherwise described and keyed to the appropriate findings of fact.**

FINDING: The Applicant provided the following response in the burden of proof statement:

*The Subject Property is irrevocably committed to an urban level of development as set forth in detail above. Applicant has submitted with this Application maps and aerial photos showing the Subject Property (**Exhibit 1**) and deeds to the Subject Property containing a legal description (**Exhibits 15-17**).*

The Hearings Officer finds that the Applicant has not met its burden of proving that the subject property has been built upon at urban densities and/or is irrevocably committed to urban levels of development. The Applicant has not established “the exact nature and extent of the areas found to be irrevocably committed to urban levels of development” as justification for the exception.

Nonetheless, as set forth in the findings above, the Hearings Officer has determined that a Goal 14 exception is not required. If the Board of County Commissioners agrees with the Hearings Officer’s findings, the Applicant’s alternative request for a Goal 14 exception need not be approved.

(3) A decision that land is committed to urban levels of development shall be based on findings of fact, supported by substantial evidence in the record of the local proceeding, that address the following:

(a) Size and extent of commercial and industrial uses;

FINDING: The Applicant provided the following response in the burden of proof statement:

The Subject Property is approximately 19.12 acres in size. It is currently developed with a doublewide mobile home on Tax Lot 301, and facilities used for large equipment service / repair and rentals / sales. The Subject Property has been used for equipment service, etc. for the majority of at least the past 40 years. The land use history also includes documentation that the property has been used, consistently, for industrial uses and not for any farm or agricultural use. This includes heavy equipment rental, repair, and storage, as well as various machine shop use and as a diesel repair shop. The current buildings (decades old), were designed for such uses and maintained in reasonably good working order to continue such use.

The Hearings Officer found above that the Applicant need not obtain a non-conforming use verification to establish “irrevocable commitment.” However, the Applicant’s proof on this criterion relies on industrial uses that appear to have been discontinued and, thus, are no longer non-conforming uses. Of the subject property’s approximately 19 acres, aerial photography indicates that approximately 4.5 acres have been allocated to industrial use on the property. This constitutes less than 1/3 of the subject property.

The Hearings Officer finds that the Applicant has not met its burden of proving that the size and extent of “commercial or industrial” uses on the subject property demonstrates it is irrevocably committed to urban levels of development.

Nonetheless, as set forth in the findings above, the Hearings Officer has determined that a Goal 14 exception is not required. If the Board of County Commissioners agrees with the Hearings Officer’s findings, the Applicant’s alternative request for a Goal 14 exception need not be approved.

(b) Location, number and density of residential dwellings;

FINDING: The Applicant provided the following response in the burden of proof statement:

The Subject Property is surrounded by residential dwellings. There are 17 lots to the west of the Subject Property that each contain a residential dwelling, all of which are part of the Whispering Pines subdivision. These properties are less than 3 acres each and the area is zoned RR-10. In addition, Tax Lot 306 contains two residential dwellings, one of which is a manufactured home; and Tax Lot 300 appears to contain at least one residential dwelling.

The Hearings Officer finds that the subject property is not developed with residential dwellings and that surrounding residential development is not relevant to the determination under this criterion of “irrevocably committed.” Under this consideration, the Applicant has not established that the subject property is irrevocably committed to urban levels of development.

Nonetheless, as set forth in the findings above, the Hearings Officer has determined that a Goal 14 exception is not required. If the Board of County Commissioners agrees with the Hearings Officer’s findings, the Applicant’s alternative request for a Goal 14 exception need not be approved.

(c) Location of urban levels of facilities and services; including at least public water and sewer facilities; and

FINDING: The Applicant provided the following response in the burden of proof statement:

The Subject Property is not serviced by public water or sewer facilities.

Under this consideration, the Applicant has not established that the subject property is irrevocably committed to urban levels of development because there are no urban levels of facilities and services on the property.

Nonetheless, as set forth in the findings above, the Hearings Officer has determined that a Goal 14 exception is not required. If the Board of County Commissioners agrees with the Hearings Officer’s findings, the Applicant’s alternative request for a Goal 14 exception need not be approved.

(d) Parcel sizes and ownership patterns.

FINDING: The Applicant provided the following response in the burden of proof statement:

Parcel sizes and ownership patterns for the Subject Property and those adjacent to it are discussed in detail above. That discussion is incorporated here.

Under this consideration, the Applicant has not established that the subject property is irrevocably committed to urban levels of development due to parcel sizes and ownership patterns of the subject property.

Nonetheless, as set forth in the findings above, the Hearings Officer has determined that a Goal 14 exception is not required. If the Board of County Commissioners agrees with the Hearings Officer’s findings, the Applicant’s alternative request for a Goal 14 exception need not be approved.

- (4) **A conclusion that rural land is irrevocably committed to urban development shall be based on all of the factors listed in section (3) of this rule. The conclusion shall be supported by a statement of reasons explaining why the facts found support the conclusion that the land in question is committed to urban uses and urban level development rather than a rural level of development.**

FINDING: The Applicant provided the following response in the burden of proof statement:

As discussed in detail above, the Subject Property is irrevocably committed to urban development because (1) it does not constitute agricultural land and is not suitable for farm or forest use; (2) it is a relatively small parcel (19.12 acres); (3) it has been in use as a large equipment service / repair and rental / sales facility for the majority of at least the last 40 years; (4) there are no commercial agricultural activities taking place on the adjacent EFU land - rather, that land is being used largely for residential purposes; and (5) it is adjacent to a busy highway. The public facilities and services - e.g., water and sewer - are not servicing the Subject Property but there is sufficient private infrastructure in place to support the level of urban use that has been taking place on the Subject Property for decades, and that Applicant wishes to have occur on the Subject Property should this Application be approved.

For all the reasons set forth in the findings above, the Hearings Officer finds that the Applicant has not established that the subject property is irrevocably committed to urban levels of development.

Nonetheless, as set forth in the findings above, the Hearings Officer has determined that a Goal 14 exception is not required. If the Board of County Commissioners agrees with the Hearings Officer’s findings, the Applicant’s alternative request for a Goal 14 exception need not be approved.

- (5) **More detailed findings and reasons must be provided to demonstrate that land is committed to urban development than would be required if the land is currently built upon at urban densities.**

FINDING: The Applicant provided the following response in the burden of proof statement:

The Application supports the proposed exception and demonstrates that the site is irrevocably committed to urban development.

Under this consideration, the Applicant has not established that the subject property is irrevocably committed to urban levels of development. Nonetheless, as set forth in the

findings above, the Hearings Officer has determined that a Goal 14 exception is not required. If the Board of County Commissioners agrees with the Hearings Officer's findings, the Applicant's alternative request for a Goal 14 exception need not be approved.

OREGON REVISED STATUTES (ORS)

Chapter 197, Comprehensive Land Use Planning

ORS 197.732, Goal Exceptions

- (2) A local government may adopt an exception to a goal if:**
 - (a) The land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal;**
 - (b) The land subject to the exception is irrevocably committed as described by Land Conservation and Development Commission rule to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or (c) The following standards are met:**
 - (A) Reasons justify why the state policy embodied in the applicable goals should not apply;**
 - (B) Areas that do not require a new exception cannot reasonably accommodate the use;**
 - (C) The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and**
 - (D) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.**

FINDING: The Applicant provided the following response in the burden of proof statement:

Applicant has explained in detail above the reasons for which it meets the requirements of ORS 197.732(2)(b), i.e., that the Subject Property is irrevocably committed to urban use. That explanation is incorporated here.

The Hearings Officer finds that the Applicant has not established that the subject property is either physically developed to the point that rural uses are no longer available and/or is irrevocably committed to urban levels of development. Nonetheless, as set forth in the findings above, the Hearings Officer has determined that a Goal 14 exception is not required. If the Board of County Commissioners agrees with the Hearings Officer's findings, the Applicant's alternative request for a Goal 14 exception need not be approved.

IV. CONCLUSION & RECOMMENDATION:

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer finds that the Applicant has met the burden of proof necessary to justify changing the Plan Designation of the subject property from Agriculture to Rural Industrial and Zoning of the subject property from Exclusive Farm Use to Rural Industrial through effectively demonstrating compliance with the applicable criteria of DCC Title 18 (the Deschutes County Zoning Ordinance), the Deschutes County Comprehensive Plan, and applicable sections of OAR and ORS. The Hearings Officer finds that no Statewide Planning Goal exceptions are required. The Applicant's alternative request for a Goal 14 Exception is not supported by substantial evidence and should be denied.

The Deschutes County Board of Commissioners is the final local review body for the applications before the County. DCC 18.136.030. The Hearings Officer recommends approval of the requested plan amendment and zone change with the proposed condition of approval set forth herein.

Dated this 12th day of July, 2022.



Stephanie Marshall, Hearings Officer

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07/18/23 Expanded ESEE Analyses

Introduction

This expanded Economic Social Environmental Energy (ESEE) analysis was prepared by the applicant for the Board of County Commissioners’ consideration to supplement the Board’s findings supporting Ordinance No 2022-011(File Nos. 247-21-000881-PA / 000882-ZC) or a subsequent Ordinance that the Board may adopt as part of these remand proceedings. The applicant had submitted a more condensed version to the record on June 23, 2023. This ESEE addresses all permissible and conditional uses listed in DCC 18.100.

As mentioned in that submittal, although the subject property is located within the Landscape Management Road combining zone, the resource that the LM combining zone looks to protect – scenic views – is diminished at this point along Highway 97. The scenic impacts from a conflicting use whether it be a feed lot, a substation, a cell tower, or a building to house a welding business are all generally the same. None of the allowed or conditional uses would enhance or detract from the view at this point along Highway 97 due to the fact that there is a hill that obscures views to the west and there is a rural residential subdivision developed on the hill. The view from Highway 97 consists of roof tops, siding of the houses, the hill, and the existing structures on the subject property. Additional structures for various types of uses on the subject property will only minimally affect the view. If there were unobstructed views of, for example, the Three Sisters or other Cascade peaks, or perhaps a view of the Deschutes River, those impacts could be significant. This is not the case for the subject property and the viewshed provided by the adjoining property to the west.

As the Board considers whether or how to allow new conflicting uses, the context of the site and the value it contains as a Goal 5 resource is important. Here, the relevant context includes: diminished viewshed quality, existing development on adjoining property, and development on the subject property.

Conflicting Use	Positive Economic Consequences of Allowing	Negative Economic Consequences of Allowing
Common to all Conflicting Uses	Continuing to allow each of the conflicting uses would provide direct economic benefits to the owners of the subject properties as well as the various industries that would market and develop the new uses. For commercial uses, ongoing employment	The County’s original ESEE analysis contained in Ordinance 92-052 notes that “[t]he economic impact of maintaining the visual quality of the area would be positive. Deschutes County would remain a desirable place to live, thereby maintaining neighborhood property values. Maintaining

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Conflicting Use	Positive Economic Consequences of Allowing	Negative Economic Consequences of Allowing
	<p>opportunities and income streams are anticipated.</p> <p>The subject property would offer needed services to the rural land owners between Bend and Redmond.</p> <p>Conversations with commercial brokers reveal high demand and low vacancies for Industrial land in Central Oregon. The Quarterly Compass Commercial industry report identifies that there is 0.80% vacancy rate in the Bend industrial market and a 2.45% vacancy rate in the Redmond industrial market. Additional supply of such industrial land will provide business opportunities.</p>	<p>or enhancing visual quality makes the county a more attractive place visit, thereby attracting more visitors and inducing people to stay longer.”</p> <p>Although those observations are still generally true 30 years later, it is undeniable that at this location along Highway 97 the scenic viewshed is of marginal value. Accordingly, there would be minimal detracting to the viewshed from RI development on site. The identified conflicting uses permissible in the RI zone on this particular site will have a minimal negative economic consequence on the property or the county overall.</p>
Farming or forest use.	<p>Farm or forest uses on the subject property are already permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.</p>	<p>Farm or forest uses on the subject property are already permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.</p>
Primary processing, packaging, treatment, bulk storage and distribution of the following products:	<p>Additional job opportunities associated with processing, packaging and distribution of various agricultural, timber-related and aggregate-related products on site would be a positive economic consequence for</p>	<p>Processing, packaging and distribution of various agricultural, timber-related and aggregate-related products on site would have no negative economic consequences which differ from the “Common”</p>

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Conflicting Use	Positive Economic Consequences of Allowing	Negative Economic Consequences of Allowing
<p>1. Agricultural products, including foodstuffs, animal and fish products, and animal feeds.</p> <p>2. Ornamental horticultural products and nurseries.</p> <p>3. Softwood and hardwood products excluding pulp and paper manufacturing.</p> <p>4. Sand, gravel, clay and other mineral products.</p>	<p>the community. Such uses could provide needed construction materials (hardwood products & sand/gravel) in closer proximity to projects located in the vicinity versus driving to Redmond or Bend for such products.</p>	<p>economic consequences noted above.</p> <p>Additionally, processing facilities on the subject property are already conditionally permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.</p>
<p>Residence for caretaker or night watchman on property.</p>	<p>A residence for a caretaker would provide economic benefit to the caretaker and construction of such a residence would be positive economic activity for the housing construction industry in central Oregon. It could also have a positive economic consequence by deterring theft of materials on site impacting the specific business.</p>	<p>There are no negative economic consequences from a residence for a caretaker on the property which differ from the "Common" economic consequences noted above.</p>
<p>Freight Depot, including the loading, unloading, storage and distribution of goods and materials by railcar or truck.</p>	<p>Additional job opportunities arising from a Freight Depot on site would be a positive economic consequence for the community.</p>	<p>Construction of likely necessary access improvements to Highway 97 for a use with such substantial traffic impacts could interrupt traffic and cause delays which can disrupt economic activity.</p>
<p>Contractor's or building materials business and other construction-related business including plumbing, electrical, roof, siding, etc., provided such use is wholly enclosed within a building or no outside storage is</p>	<p>Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community.</p>	<p>There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above.</p>

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Conflicting Use	Positive Economic Consequences of Allowing	Negative Economic Consequences of Allowing
permitted unless enclosed by sight-obscuring fencing.		
Ice or cold storage plant.	Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community. For example, The benefits offered to the local brewery and cidery industries could be substantial.	There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above.
Wholesale distribution outlet including warehousing but excluding open outside storage.	Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community.	Construction of likely necessary access improvements to Highway 97 for a use with such substantial traffic impacts could interrupt traffic and cause delays which can disrupt economic activity.
Welding, sheet metal or machine shop provided such is wholly enclosed within a building or all outside storage is enclosed by sight-obscuring fencing.	Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community. For example, such a service at this location could be a benefit to local homeowners and businesses who need such service without the need to drive to Redmond or Bend for such services.	There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above..

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Conflicting Use	Positive Economic Consequences of Allowing	Negative Economic Consequences of Allowing
Kennel or a Veterinary clinic.	Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community. Such a service at this location could be a benefit to local homeowners and businesses who need such service without the need to drive to Redmond or Bend for such services.	There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above.. Additionally, commercial dog boarding kennels on the subject property are already permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.
Lumber manufacturing and wood processing except pulp and paper manufacturing.	Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community.	There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above.
Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by DCC 18.116.230.	Additional job opportunities from a class I or II road project on site would be a positive economic consequence for the community.	Loss of potential economic use of the land resulting from the Class I or II road project could be a negative economic consequence for the community and land owner.
Class III road or street project.	Additional job opportunities from allowing a class III road project on site would be a positive economic consequence for the community.	Loss of potential economic use of the land resulting from the Class I or II road project could be a negative economic consequence for the community and land owner.

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Conflicting Use	Positive Economic Consequences of Allowing	Negative Economic Consequences of Allowing
Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.	There is an existing Central Oregon Irrigation District canal that splits the property. Continued operation, maintenance and potential piping are positive economic consequences as irrigation water drives agricultural economic activity. Further, piping such canal facilities would likely improve the view shed, further enhancing the economic value of Deschutes County's view shed as seen from the subject property.	There are no negative economic consequences from this type of use locating on the subject property because of the existing Central Oregon Irrigation District facilities adjacent to and on the property.
Concrete or ready-mix plant.	Such a use on the subject property could benefit nearby residents and agricultural uses by providing needed services in close proximity. It also provides potential employment opportunities. Ready mix plants in Bend and Redmond are all at least 10 miles from this location. Projects in the rural residential areas in this vicinity would benefit from the shorter trip.	There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above.
Petroleum products storage and distribution.	Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community.	There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above.

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Conflicting Use	Positive Economic Consequences of Allowing	Negative Economic Consequences of Allowing
<p>Storage, crushing and processing of minerals, including the processing of aggregate into asphaltic concrete or Portland Cement Concrete.</p>	<p>Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community. Further, availability of such materials to local land and business owners could be of benefit removing time and cost to travel to Bend or Redmond for such resource.</p>	<p>There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above.</p>
<p>Commercial feedlot, stockyard, sales yard, slaughterhouse and rendering plant.</p>	<p>Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community. Further, such a use at this location close to agricultural uses in central Oregon may provide additional options for livestock and similar operations.</p>	<p>There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above.</p>
<p>Railroad trackage and related facilities.</p>	<p>The Burlington Northern Santa Fe railroad is roughly 1700 feet east of the property with Highway 97 and the COID canal between. Although such facilities are allowed technically in the RI Zone, it is highly unlikely the subject property would ever actually be utilized for railroad trackage and related facilities. Accordingly, the economic consequences of allowing such uses are minimal in this case.</p>	<p>The Burlington Northern Santa Fe railroad is roughly 1700 feet east of the property with Highway 97 and the COID canal between. Although such facilities are allowed technically in the RI Zone, it is highly unlikely the subject property would ever actually be utilized for railroad trackage and related facilities. Accordingly, the economic consequences of allowing such uses are minimal in this case.</p>

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Conflicting Use	Positive Economic Consequences of Allowing	Negative Economic Consequences of Allowing
Pulp and paper manufacturing.	Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community.	There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above.
<p>Any use permitted by DCC 18.100.010, which is expected to exceed the following standards:</p> <ol style="list-style-type: none"> 1. Lot coverage in excess of 70 percent. 2. Generation of any odor, dust, fumes, glare, flashing lights or noise that is perceptible without instruments 500 feet from the property line of the subject use. 	Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community.	Although outside of the identified impact area, uses that generate odor, fumes, glare, flashing lights or noise perceptible beyond 500 feet could impact property values of the rural residential homes on the subdivision directly west. This would have negative economic consequences for those landowners.
<p>Manufacture, repair or storage of articles manufactured from bone, cellophane, cloth, cork, feathers, felt, fiber, glass, stone, paper, plastic, precious or semiprecious stones or metal, wax, wire, wood, rubber, yarn or similar materials, provided such uses do not create a disturbance because of odor, noise, dust, smoke, gas, traffic or other factors.</p>	Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community. Further, the materials used for such manufacturing could drive additional local business opportunities for those looking to source such materials.	There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above.
<p>Processing, packaging and storage of food and beverages including those requiring distillation and fermentation.</p>	Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community. The benefits offered to the local brewery and cidery industries could be substantial.	There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above.

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Conflicting Use	Positive Economic Consequences of Allowing	Negative Economic Consequences of Allowing
Public Land Disposal Site Transfer Station, including recycling and other related activities.	Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community.	Although outside of the identified impact area, a transfer station at this location could have a negative impact on the value of the homes in the rural residential subdivision directly west of the subject property.
Mini-storage facility.	Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community. Providing for the storage needs of business and property owners in proximity would be an economic benefit as well to reduce cost of driving to Bend or Redmond.	There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above.
Automotive wrecking yard totally enclosed by a sight-obscuring fence.	Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community.	There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above.
Wireless telecommunications facilities, except those facilities meeting the requirements of DCC 18.116.250(A) or (B).	Due to the limited staffing required on site to operate such facilities, economic benefits likely focus on job opportunities associated with construction of such facilities and increased bandwidth in the vicinity.	There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above.
Utility facility.	Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community.	There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above.

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Conflicting Use	Positive Economic Consequences of Allowing	Negative Economic Consequences of Allowing
		<p>Additionally, commercial utility facilities on the subject property are already conditionally permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.</p>
<p>Manufacturing, storage, sales, rental, repair and servicing of equipment and materials associated with farm and forest uses, logging, road maintenance, mineral extraction, construction or similar rural activities.</p>	<p>Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community. The central location of this facility would be an economic benefit to farms and similar uses in the area saving travel time.</p>	<p>There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above.</p>
<p>Electrical substations.</p>	<p>Due to the limited staffing required on site to operate such facilities, economic benefits likely focus on job opportunities associated with construction of such facilities</p>	<p>There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above.</p> <p>Additionally, commercial utility facilities on the subject property are already conditionally permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.</p>

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Conflicting Use	Positive Economic Consequences of Allowing	Negative Economic Consequences of Allowing
Marijuana retailing, subject to the provisions of DCC 18.116.330.	Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community.	There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above.
Psilocybin testing laboratories.	Additional job opportunities from allowing such economic activity on site would be a positive economic consequence for the community.	There are no negative economic consequences from this type of use locating on the subject property which differ from the "Common" economic consequences noted above.

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Conflicting Use	Positive Social Consequences of Allowing	Negative Social Consequences of Allowing
<p>Common to all Conflicting Uses</p>	<p>The variety of uses permissible in the RI zone would offer positive social consequences to nearby residents in the rural areas between Redmond and Bend by offering needed services and employment opportunities. A welding sheet metal or machine shop, for example, located on site could offer any agricultural operations in the area access to those needed services without having to drive to Redmond or Bend.</p>	<p>The social value of the LM zone to preserve the natural appearance of landscape could be marginally impacted. As noted in Ordinance 92-052, “[h]aving good visual quality areas more accessible to the public enhances the livability of Deschutes County. As Deschutes County continues to urbanize, the need for the public to have ready access to areas of good visual quality will become more important.” The same observations are equally true today, although mitigated in this case by the diminished viewshed from Highway 97 adjacent to the subject properties.</p>
<p>Farming or forest use.</p>	<p>Farm or forest uses on the subject property are already permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.</p>	<p>Farm or forest uses on the subject property are already permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.</p>
<p>Primary processing, packaging, treatment, bulk storage and distribution of the following products:</p> <ul style="list-style-type: none"> 1. Agricultural products, including foodstuffs, animal and fish products, and animal feeds. 2. Ornamental horticultural products and nurseries. 3. Softwood and hardwood products 	<p>The positive social value of allowing such uses on site is access to additional potential employment opportunities.</p>	<p>While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site. There are therefore minimal negative social consequences of allowing such uses on site.</p> <p>Additionally, processing facilities on the subject property are already conditionally permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was</p>

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Conflicting Use	Positive Social Consequences of Allowing	Negative Social Consequences of Allowing
<p>excluding pulp and paper manufacturing.</p> <p>4. Sand, gravel, clay and other mineral products.</p>		<p>contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.</p>
<p>Residence for caretaker or night watchman on property.</p>	<p>A residence for a caretaker could create a positive social consequence by deterring theft of materials on site and surrounding properties.</p>	<p>While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site. There are therefore minimal negative social consequences of allowing such uses on site.</p>
<p>Freight Depot, including the loading, unloading, storage and distribution of goods and materials by railcar or truck.</p>	<p>The positive social value of allowing such uses on site is access to additional potential employment opportunities.</p>	<p>While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site. There are therefore minimal negative social consequences of allowing such uses on site. Additionally, construction of necessary access improvements to Highway 97 for a use with substantial traffic impacts could interrupt traffic and minimally affect scenic views on Highway 97, potentially being a negative social consequence of allowing such uses on site.</p>
<p>Contractor's or building materials business and other construction-related business including plumbing, electrical, roof, siding, etc., provided such use is wholly enclosed within a building or no</p>	<p>The positive social value of allowing such uses on site is access to additional potential employment opportunities.</p>	<p>While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site. There are therefore minimal negative social consequences of allowing such uses on site.</p>

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Conflicting Use	Positive Social Consequences of Allowing	Negative Social Consequences of Allowing
outside storage is permitted unless enclosed by sight-obscuring fencing.		
Ice or cold storage plant.	The positive social value of allowing such uses on site is access to additional potential employment opportunities.	While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site. There are therefore minimal negative social consequences of allowing such uses on site.
Wholesale distribution outlet including warehousing but excluding open outside storage.	The positive social value of allowing such uses on site is access to additional potential employment opportunities.	While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site. There are therefore minimal negative social consequences of allowing such uses on site. Additionally, construction of necessary access improvements to Highway 97 for a use with substantial traffic impacts could interrupt traffic and minimally affect scenic views on Highway 97, potentially being a negative social consequence of allowing such uses on site.
Welding, sheet metal or machine shop provided such is wholly enclosed within a building or all outside storage is enclosed by sight-obscuring fencing.	The positive social value of allowing such uses on site is access to additional potential employment opportunities.	While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site. There are therefore minimal negative social consequences of allowing such uses on site.

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Conflicting Use	Positive Social Consequences of Allowing	Negative Social Consequences of Allowing
<p>Kennel or a Veterinary clinic.</p>	<p>The positive social value of allowing such uses on site is access to additional potential employment opportunities. Such a service at this location could be benefit to local homeowners and businesses who need such service for livestock, pets, etc. without the need to drive to Redmond or Bend for such services.</p>	<p>While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site. There are therefore minimal negative social consequences of allowing such uses on site.</p> <p>Additionally, commercial dog boarding kennels on the subject property are already permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.</p>
<p>Lumber manufacturing and wood processing except pulp and paper manufacturing.</p>	<p>The positive social value of allowing such uses on site is access to additional potential employment opportunities. There may be additional positive social consequences of a new business tied to Central Oregon’s timber industry roots.</p>	<p>While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site. There are therefore minimal negative social consequences of allowing such uses on site.</p>
<p>Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by DCC 18.116.230.</p>	<p>The positive social value of allowing such uses on site is access to additional potential employment opportunities. There may also be new “short cuts” that benefit residents of the area – a positive social consequence for those residents.</p>	<p>While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site. There are therefore minimal negative social consequences of allowing such uses on site. Further, any minimal negative social consequence is likely to diminish further when the construction of such road or street project is completed.</p>

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Conflicting Use	Positive Social Consequences of Allowing	Negative Social Consequences of Allowing
Class III road or street project.	The positive social value of allowing such uses on site is access to additional potential employment opportunities. Further, if such a project improved traffic flow on Highway 97, there could be positive social consequences from allowing such a use.	While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site. There are therefore minimal negative social consequences of allowing such uses on site. Further, any minimal negative social consequence is likely to diminish further when the construction of such road or street project is completed.
Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.	There is an existing Central Oregon Irrigation District canal that splits the property. Continued operation, maintenance and potential piping are positive social consequences as irrigation water drives agricultural economic activity and a rural country lifestyle.	While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site. Additionally, there is an existing canal on the subject property. There are therefore minimal negative social consequences of allowing such uses on site.
Concrete or ready-mix plant.	The positive social value of allowing such uses on site is access to additional potential employment opportunities.	While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site. Additionally, while a concrete plant is potentially among uses that present the most significant impacts to scenic views, the proposed RI zone limits the scale of any operation on the subject property. For example, the height of any building within the RI zone is limited to 45 feet pursuant to DCC 18.100.040. Therefore the impact will not be as significant compared to a similar use developed within a UGB.

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Conflicting Use	Positive Social Consequences of Allowing	Negative Social Consequences of Allowing
<p>Petroleum products storage and distribution.</p>	<p>The positive social value of allowing such uses on site is access to additional potential employment opportunities.</p>	<p>While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site. Additionally, while petroleum storage and distribution is potentially among uses that present the most significant impacts to scenic views, the proposed RI zone limits the scale of any operation on the subject property. For example, the height of any building within the RI zone is limited to 45 feet pursuant to DCC 18.100.040. Therefore the impact will not be as significant compared to a similar use developed within a UGB.</p>
<p>Storage, crushing and processing of minerals, including the processing of aggregate into asphaltic concrete or Portland Cement Concrete.</p>	<p>The positive social value of allowing such uses on site is access to additional potential employment opportunities.</p>	<p>While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site. Additionally, while mineral operations are potentially among uses that present the most significant impacts to scenic views, the proposed RI zone limits the scale of any operation on the subject property. For example, the height of any building within the RI zone is limited to 45 feet pursuant to DCC 18.100.040. Therefore the impact will not be as significant compared to a similar use developed within a UGB.</p>
<p>Commercial feedlot, stockyard, sales yard, slaughterhouse and rendering plant.</p>	<p>The positive social value of allowing such uses on site is access to additional potential employment opportunities. Additional facilities for livestock operations would be of value to the local ranching community.</p>	<p>While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site.</p>

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Conflicting Use	Positive Social Consequences of Allowing	Negative Social Consequences of Allowing
		<p>Additionally, while slaughterhouses and rendering plants are potentially among uses that present the most significant impacts to scenic views, the proposed RI zone limits the scale of any operation on the subject property. For example, the maximum size of any building within the RI zone is limited to 7,500 square feet of floor space pursuant to DCC 18.100.040. Therefore the impact will not be as significant compared to a similar use developed within a UGB height of any structure to 45 feet under DCC 18.100.040. Therefore, the impact will not be significant.</p>
<p>Railroad trackage and related facilities.</p>	<p>The Burlington Northern Santa Fe railroad is roughly 1700 feet east of the property with Highway 97 and the COID canal between. Although such facilities are allowed technically in the RI Zone, it is highly unlikely the subject property would ever actually be utilized for railroad trackage and related facilities. Accordingly, the social consequences of allowing such uses are minimal in this case.</p>	<p>The Burlington Northern Santa Fe railroad is roughly 1700 feet east of the property with Highway 97 and the COID canal between. Although such facilities are allowed technically in the RI Zone, it is highly unlikely the subject property would ever actually be utilized for railroad trackage and related facilities. Accordingly, the social consequences of allowing such uses are minimal in this case.</p>
<p>Pulp and paper manufacturing.</p>	<p>The positive social value of allowing such uses on site is access to additional potential employment opportunities.</p>	<p>While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site. Additionally, while pulp and paper manufacturing plants are potentially among uses that present the most significant impacts to scenic views, the proposed RI zone limits the scale of any operation on the subject property. For example, the height of any building within the RI zone is limited to 45 feet pursuant to DCC 18.100.040. Therefore</p>

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Conflicting Use	Positive Social Consequences of Allowing	Negative Social Consequences of Allowing
		the impact will not be as significant compared to a similar use developed within a UGB.
<p>Any use permitted by DCC 18.100.010, which is expected to exceed the following standards:</p> <ol style="list-style-type: none"> 1. Lot coverage in excess of 70 percent. 2. Generation of any odor, dust, fumes, glare, flashing lights or noise that is perceptible without instruments 500 feet from the property line of the subject use. 	The positive social value of allowing such uses on site is access to additional potential employment opportunities.	Although outside of the identified impact area, uses that generate odor, fumes, glare, flashing lights or noise perceptible beyond 500 feet could impact property values and lifestyles of the neighbors in the rural residential subdivision directly west of the subject property. Limited enjoyment of outdoor areas on their private property could result. This would have negative social consequences for those landowners.
<p>Manufacture, repair or storage of articles manufactured from bone, cellophane, cloth, cork, feathers, felt, fiber, glass, stone, paper, plastic, precious or semiprecious stones or metal, wax, wire, wood, rubber, yarn or similar materials, provided such uses do not create a disturbance because of</p>	The positive social value of allowing such uses on site is access to additional potential employment opportunities.	While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site.

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Conflicting Use	Positive Social Consequences of Allowing	Negative Social Consequences of Allowing
odor, noise, dust, smoke, gas, traffic or other factors.		
Processing, packaging and storage of food and beverages including those requiring distillation and fermentation.	The positive social value of allowing such uses on site is access to additional potential employment opportunities.	While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site.
Public Land Disposal Site Transfer Station, including recycling and other related activities.	The positive social value of allowing such uses on site is access to additional potential employment opportunities.	Although outside of the identified impact area, a transfer station at this location could have a negative impact on the value of the homes in the rural residential subdivision directly west of the subject property and associated dust, odors and other externalities could impact outdoor lifestyles of those property owners. Both are negative social consequences of allowing this particular use.
Mini-storage facility.	The positive social value of allowing such uses on site is access to additional potential employment opportunities.	While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site.
Automotive wrecking yard totally enclosed by a sight-obscuring fence.	The positive social value of allowing such uses on site is access to additional potential employment opportunities.	While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site.
Wireless telecommunications facilities, except those facilities meeting the	Such a facility could improve wireless access for our increasingly wireless-device dependent society.	Tier 3 wireless telecommunications facilities as they are defined in DCC 18.116.250(C) could be taller than 75 feet with required aviation lighting. The site and light impacts of such a facility

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Conflicting Use	Positive Social Consequences of Allowing	Negative Social Consequences of Allowing
requirements of DCC 18.116.250(A) or (B).		of this magnitude would be difficult if not impossible to mitigate. Light pollution could be a concern and impact the many rural residential properties in direct and close proximity. Additionally, the proposed RI zone limits the height of any structure to 45 feet under DCC 18.100.040. Therefore, the impact will not be significant.
Utility facility.	The positive social value of allowing such uses on site is access to additional potential employment opportunities.	While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site. Additionally, commercial utility facilities on the subject property are already conditionally permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.
Manufacturing, storage, sales, rental, repair and servicing of equipment and materials associated with farm and forest uses, logging, road maintenance, mineral extraction, construction or similar rural activities.	The positive social value of allowing such uses on site is access to additional potential employment opportunities. Businesses that have a connection to some of central Oregon’s traditional industries such as logging and farming could have overall positive social consequences.	While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site.

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Conflicting Use	Positive Social Consequences of Allowing	Negative Social Consequences of Allowing
Electrical substations.	Due to the limited staffing required on site to operate such facilities, social benefits likely focus on access to job opportunities associated with construction of such facilities	<p>While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site.</p> <p>Additionally, commercial utility facilities on the subject property are already conditionally permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.</p>
Marijuana retailing, subject to the provisions of DCC 18.116.330.	The positive social value of allowing such uses on site is access to additional potential employment opportunities.	While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site.
Psilocybin testing laboratories.	The positive social value of allowing such uses on site is access to additional potential employment opportunities.	While any development on the subject property could impact the scenic quality from Highway 97, the limited scenic quality from Highway 97 relating to the subject property will not be significantly improved through prohibiting such uses on site.

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Conflicting Use	Positive Environmental Consequences of Allowing	Negative Environmental Consequences of Allowing
Farming or forest use.	Farm or forest uses on the subject property are already permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.	Farm or forest uses on the subject property are already permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.
<p>Primary processing, packaging, treatment, bulk storage and distribution of the following products:</p> <p>1. Agricultural products, including foodstuffs, animal and fish products, and animal feeds.</p> <p>2. Ornamental horticultural products and nurseries.</p> <p>3. Softwood and hardwood products excluding pulp and paper manufacturing.</p> <p>4. Sand, gravel, clay and other mineral products.</p>	The positive environmental consequences of such a use would be the reduced travel distance and associated reduced carbon emissions for suppliers of agricultural products, ornamental horticultural products, softwood and hardwood products or aggregate products in the vicinity without having to travel to Bend or Redmond or elsewhere for processing, packaging, treatment, storage or distribution of their product.	<p>Development of the site with facilities for such uses could remove existing trees and brushes that provide habitat for small vertebrates. Increased dust from aggregate activities could impact air quality for those in close proximity.</p> <p>Additionally, processing facilities on the subject property are already conditionally permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.</p>
Residence for caretaker or night watchman on property.	The positive environmental consequence of a caretaker residence on site is the reduced travel distance and associated reduced carbon emissions that result from the commute to and from the site from a community in central Oregon. Additionally, a caretaker or night watchman	Development of the site with facilities for such uses could remove existing trees and brushes that provide habitat for small vertebrates.

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Conflicting Use	Positive Environmental Consequences of Allowing	Negative Environmental Consequences of Allowing
	may be able to alert potential wildfires on the subject property.	
Freight Depot, including the loading, unloading, storage and distribution of goods and materials by railcar or truck.	Due to the nature of the materials managed at freight depots, such a use could offer agricultural uses in the area a closer distribution point for commodities such as hay, reducing carbon emissions for transport of such products.	Development of the site with facilities for such uses could remove existing trees and brushes that provide habitat for small vertebrate.
Contractor's or building materials business and other construction-related business including plumbing, electrical, roof, siding, etc., provided such use is wholly enclosed within a building or no outside storage is permitted unless enclosed by sight-obscuring fencing.	The positive environmental consequences of such a use would be the reduced travel distance and associated reduced carbon emissions for such businesses serving the local homes and businesses.	Development of the site with facilities for such uses could remove existing trees and brushes that provide habitat for small vertebrates.
Ice or cold storage plant.	The positive environmental consequences of such a use would be the reduced travel distance and reduced carbon emissions for those businesses that requires this type of storage in southern Deschutes County versus having to access cold storage in Redmond.	Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates.
Wholesale distribution outlet including warehousing but excluding open outside storage.	The positive environmental consequences of such a use would be the reduced travel distance and reduced carbon emissions for local businesses and property owners who could access such service without	Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates.

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Conflicting Use	Positive Environmental Consequences of Allowing	Negative Environmental Consequences of Allowing
	having to travel to Redmond or Bend.	
Welding, sheet metal or machine shop provided such is wholly enclosed within a building or all outside storage is enclosed by sight-obscuring fencing.	The positive environmental consequences of such a use would be the reduced travel distance and reduced carbon emissions for local businesses and property owners who could access such service without having to travel to Redmond or Bend.	Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates.
Kennel or a Veterinary clinic.	The positive environmental consequences of such a use would be the reduced travel distance and reduced carbon emissions for local businesses and property owners who could access such services without having to travel to Redmond or Bend.	Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates. Additionally, commercial dog boarding kennels on the subject property are already permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.
Lumber manufacturing and wood processing except pulp and paper manufacturing.	Such a use could offer a shorter trip for hauling lumber from areas in central Oregon versus to mills in Redmond or La Pine thereby potentially reducing carbon emissions.	Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates.

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Conflicting Use	Positive Environmental Consequences of Allowing	Negative Environmental Consequences of Allowing
Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by DCC 18.116.230.	There are minimal positive environmental consequences from such a project on the subject property other than a potential minimal reduction in travel time for area residents and businesses that may benefit from such a project.	Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates.
Class III road or street project.	There are minimal positive environmental consequences from such a project on the subject property versus a minimal reduction in travel time for area residents and businesses that may benefit from such a project.	Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates.
Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.	There is an existing Central Oregon Irrigation District canal that splits the property. Continued operation, maintenance and potential piping of the canal provide minimal environmental benefit save for continued delivery of water to agricultural uses and habitat offered by such uses.	There are no negative environmental consequences of allowing such uses on site.
Concrete or ready-mix plant.	Such a use on the subject property could benefit nearby residents and agricultural uses by providing needed services in close proximity. Ready mix plants in Bend and Redmond are all at least 10 miles from this location. Projects in the rural residential areas in this vicinity would benefit from the shorter trip. This would reduce the carbon footprint of such projects if travel distance is cut substantially.	The dust from such uses can introduce particles into the air, reducing air quality for the many nearby rural residential properties (especially for those with compromised respiratory systems). Particulate matter (PM) emissions from batch plants if inhaled, can affect the heart and lungs and cause serious health effects, including increased risk of heart attacks, aggravation of asthma, and decreases in lung function. See EPA Particulate Matter Pollution link on list of attachments.

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Conflicting Use	Positive Environmental Consequences of Allowing	Negative Environmental Consequences of Allowing
Petroleum products storage and distribution.	Such uses typically do not contain a retail component so would not offer a closer fueling option for local businesses and property owners. There are limited positive environmental consequences of such a use at the site.	Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates.
Storage, crushing and processing of minerals, including the processing of aggregate into asphaltic concrete or Portland Cement Concrete.	The positive environmental consequences of such a use would be the reduced travel distance and reduced carbon emissions for local businesses and property owners who could access such goods without having to travel to Redmond or Bend.	Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates. Dust from such uses could adversely impact nearby residents and business owners with respiratory issues.
Commercial feedlot, stockyard, sales yard, slaughterhouse and rendering plant.	The positive environmental consequences of such a use would be the reduced travel distance and reduced carbon emissions for local livestock operations that could benefit from such a facility at this location.	Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates. Dust from such uses could adversely impact nearby residents and business owners with respiratory issues.
Railroad trackage and related facilities.	The Burlington Northern Santa Fe railroad is roughly 1700 feet east of the property with Highway 97 and the COID canal between. Although such facilities are allowed technically in the RI Zone, it is highly unlikely the subject property would ever actually be utilized for railroad trackage and related facilities. Accordingly, the environmental consequences of allowing such uses are minimal in this case.	The Burlington Northern Santa Fe railroad is roughly 1700 feet east of the property with Highway 97 and the COID canal between. Although such facilities are allowed technically in the RI Zone, it is highly unlikely the subject property would ever actually be utilized for railroad trackage and related facilities. Accordingly, the environmental consequences of allowing such uses are minimal in this case.

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Conflicting Use	Positive Environmental Consequences of Allowing	Negative Environmental Consequences of Allowing
Pulp and paper manufacturing.	Such uses typically do not contain a retail component local businesses and property owners could access. There are limited positive environmental consequences of such a use at the site.	Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates. Dust from such uses could adversely impact nearby residents and business owners with respiratory issues.
<p>Any use permitted by DCC 18.100.010, which is expected to exceed the following standards:</p> <ol style="list-style-type: none"> 1. Lot coverage in excess of 70 percent. 2. Generation of any odor, dust, fumes, glare, flashing lights or noise that is perceptible without instruments 500 feet from the property line of the subject use. 	Expansion of the lot coverage for permitted uses generally wouldn't provide positive environmental consequences of such uses on the subject property. Additional emissions would not a be a positive environmental consequence.	Although outside of the identified impact area, uses that generate odor, fumes, glare, flashing lights or noise perceptible beyond 500 feet could have negative environmental consequences impacting air quality for nearby businesses and property owners. Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates with the increased lot coverage allowance.
Manufacture, repair or storage of articles manufactured from bone, cellophane, cloth, cork, feathers, felt, fiber, glass, stone, paper, plastic, precious or semiprecious stones or metal, wax, wire, wood, rubber, yarn or similar materials, provided such uses do not create a disturbance because of odor, noise, dust,	The positive environmental consequences of such a use would be the reduced travel distance and reduced carbon emissions for local businesses and property owners who would use such services or provide raw materials for manufacturing purposes.	Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates.

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Conflicting Use	Positive Environmental Consequences of Allowing	Negative Environmental Consequences of Allowing
smoke, gas, traffic or other factors.		
Processing, packaging and storage of food and beverages including those requiring distillation and fermentation.	The positive environmental consequences of such a use would be the reduced travel distance and reduced carbon emissions for local businesses and property owners who would use such services.	Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates.
Public Land Disposal Site Transfer Station, including recycling and other related activities.	The positive environmental consequences of such a use would be the reduced travel distance and reduced carbon emissions for local businesses and property owners who would use such services.	Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates.
Mini-storage facility.	The positive environmental consequences of such a use would be the reduced travel distance and reduced carbon emissions for local businesses and property owners who would use such services.	Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates.
Automotive wrecking yard totally enclosed by a sight-obscuring fence.	The positive environmental consequences of such a use would be the reduced travel distance and reduced carbon emissions for local businesses and property owners who would use such services.	Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates.
Wireless telecommunications facilities, except those facilities meeting the requirements of DCC 18.116.250(A) or (B).	There are no known environmental benefits from such a use at the site.	Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates.

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Conflicting Use	Positive Environmental Consequences of Allowing	Negative Environmental Consequences of Allowing
Utility facility.	Positive environmental consequences of such a use on site are limited.	Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates. Additionally, commercial utility facilities on the subject property are already conditionally permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.
Manufacturing, storage, sales, rental, repair and servicing of equipment and materials associated with farm and forest uses, logging, road maintenance, mineral extraction, construction or similar rural activities.	The positive environmental consequences of such a use would be the reduced travel distance and reduced carbon emissions for local businesses and property owners who would use such services.	Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates.
Electrical substations.	The positive environmental consequences of such a use on site are limited.	Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates. Additionally, commercial utility facilities on the subject property are already conditionally permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.

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Conflicting Use	Positive Environmental Consequences of Allowing	Negative Environmental Consequences of Allowing
Marijuana retailing, subject to the provisions of DCC 18.116.330.	The positive environmental consequences of such a use would be the reduced travel distance and reduced carbon emissions for local businesses and property owners who would use such services versus having to travel to Bend.	Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates.
Psilocybin testing laboratories.	There are limited positive environmental consequences of allowing such a use on site.	Development of the site for such a use could remove existing trees and brushes that provide habitat for small vertebrates.

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Conflicting Use	Positive Energy Consequences of Allowing	Negative Energy Consequences of Allowing
Farming or forest use.	Farm or forest uses on the subject property are already permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.	Farm or forest uses on the subject property are already permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.
<p>Primary processing, packaging, treatment, bulk storage and distribution of the following products:</p> <p>1. Agricultural products, including foodstuffs, animal and fish products, and animal feeds.</p> <p>2. Ornamental horticultural products and nurseries.</p> <p>3. Softwood and hardwood products excluding pulp and paper manufacturing.</p> <p>4. Sand, gravel, clay and other mineral products.</p>	The positive energy consequences of such a use would be the reduced travel distance and conserved energy for suppliers of agricultural products, ornamental horticultural products, softwood and hardwood products or aggregate products in the vicinity without having to travel to Bend or Redmond or elsewhere for processing, packaging, treatment, storage or distribution of their product.	<p>The energy usage for these uses would vary. There could be substantial energy needs for processing raw materials into consumer goods.</p> <p>Additionally, processing facilities on the subject property are already conditionally permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.</p>
Residence for caretaker or night watchman on property.	Such a use would reduce energy usage associated with travel to and from the site for security needs.	There are limited negative energy consequences associated with such a use on site.

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Conflicting Use	Positive Energy Consequences of Allowing	Negative Energy Consequences of Allowing
Freight Depot, including the loading, unloading, storage and distribution of goods and materials by railcar or truck.	Due to the nature of the materials managed at freight depots, such a use could offer agricultural uses in the area a closer distribution point for commodities such as hay, reducing the amount of energy needed to transport items to market.	There are limited negative energy consequences associated with such a use on site.
Contractor's or building materials business and other construction-related business including plumbing, electrical, roof, siding, etc., provided such use is wholly enclosed within a building or no outside storage is permitted unless enclosed by sight-obscuring fencing.	The positive energy consequences of such a use would be the reduced consumption of energy for such businesses serving the local homes and businesses versus contractors having to drive from Redmond or Bend.	There are limited negative energy consequences associated with such a use on site.
Ice or cold storage plant.	The positive energy consequences of such a use would be the reduced energy consumption for those businesses that requires this type of storage in southern Deschutes County versus having to access cold storage in Redmond.	The energy usage associated with a cold storage plant is anticipated to be substantial.
Wholesale distribution outlet including warehousing but excluding open outside storage.	The positive energy consequences of such a use would be the reduced energy consumption for local businesses and property owners who could access such service without having to travel to Redmond or Bend.	There are limited negative energy consequences associated with such a use on site.
Welding, sheet metal or machine shop provided such is wholly enclosed within a building or all outside storage is	The positive energy consequences of such a use would be the reduced energy consumption for local businesses and property owners	There are limited negative energy consequences associated with such a use on site.

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Land Use Planning & Development Services

Conflicting Use	Positive Energy Consequences of Allowing	Negative Energy Consequences of Allowing
enclosed by sight-obscuring fencing.	who could access such service without having to travel to Redmond or Bend.	
Kennel or a Veterinary clinic.	The positive energy consequences of such a use would be the reduced energy consumption for local businesses and property owners who could access such services without having to travel to Redmond or Bend.	There are limited negative energy consequences associated with such a use on site. Additionally, commercial dog boarding kennels on the subject property are already permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.
Lumber manufacturing and wood processing except pulp and paper manufacturing.	Such a use could offer a shorter trip for hauling lumber from areas in central Oregon versus to mills in Redmond or La Pine thereby potentially reducing energy consumption.	There are limited negative energy consequences associated with such a use on site.
Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by DCC 18.116.230.	There are limited positive energy consequences from such a use on site.	There are limited negative energy consequences associated with such a use on site.
Class III road or street project.	There are limited positive energy consequences from such a use on site other than a potential minimal reduction in travel time for area residents and businesses that may benefit from such a project.	There are limited negative energy consequences associated with such a use on site.

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Conflicting Use	Positive Energy Consequences of Allowing	Negative Energy Consequences of Allowing
<p>Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.</p>	<p>There is an existing Central Oregon Irrigation District canal that splits the property. Continued operation, maintenance and potential piping of the canal provide positive energy consequences by assuring continued delivery of water to agricultural uses primarily through gravity delivery.</p>	<p>There are no negative energy consequences of allowing such uses on site.</p>
<p>Concrete or ready-mix plant.</p>	<p>Such a use on the subject property could benefit nearby residents and agricultural uses by providing needed services in close proximity. Ready mix plants in Bend and Redmond are all at least 10 miles from this location. Projects in the rural residential areas in this vicinity would benefit from the shorter trip and reduced energy consumption.</p>	<p>There are no negative energy consequences of allowing such uses on site.</p>
<p>Petroleum products storage and distribution.</p>	<p>Such uses typically do not contain a retail component so would not offer a closer fueling option for local businesses and property owners. There are limited positive energy consequences of such a use at the site.</p>	<p>There are no negative energy consequences of allowing such uses on site.</p>
<p>Storage, crushing and processing of minerals, including the processing of aggregate into asphaltic concrete or Portland Cement Concrete.</p>	<p>The positive energy consequences of such a use would be the reduced travel distance and reduced energy consumption for local businesses and property owners who could access such goods without having to travel to Redmond or Bend.</p>	<p>There are no known negative energy consequences of allowing such uses on site.</p>

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Conflicting Use	Positive Energy Consequences of Allowing	Negative Energy Consequences of Allowing
Commercial feedlot, stockyard, sales yard, slaughterhouse and rendering plant.	The positive energy consequences of such a use would be the reduced energy consumption for local livestock operations that could benefit from such a facility at this location.	There are no known negative energy consequences of allowing such uses on site.
Railroad trackage and related facilities.	The Burlington Northern Santa Fe railroad is roughly 1700 feet east of the property with Highway 97 and the COID canal between. Although such facilities are allowed technically in the RI Zone, it is highly unlikely the subject property would ever actually be utilized for railroad trackage and related facilities. Accordingly, the energy consequences of allowing such uses are minimal in this case.	The Burlington Northern Santa Fe railroad is roughly 1700 feet east of the property with Highway 97 and the COID canal between. Although such facilities are allowed technically in the RI Zone, it is highly unlikely the subject property would ever actually be utilized for railroad trackage and related facilities. Accordingly, the energy consequences of allowing such uses are minimal in this case.
Pulp and paper manufacturing.	Such uses typically do not contain a retail component local businesses and property owners could access. There are limited positive energy consequences of such a use at the site.	Pulp and paper manufacturing could require substantial energy consumption.
Any use permitted by DCC 18.100.010, which is expected to exceed the following standards: <ol style="list-style-type: none"> 1. Lot coverage in excess of 70 percent. 2. Generation of any odor, dust, fumes, glare, flashing lights or noise that is perceptible without instruments 500 feet from the 	There are no identified positive energy consequences from such a use on site.	There are no known negative energy consequences from such a use on site.

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Conflicting Use	Positive Energy Consequences of Allowing	Negative Energy Consequences of Allowing
property line of the subject use.		
Manufacture, repair or storage of articles manufactured from bone, cellophane, cloth, cork, feathers, felt, fiber, glass, stone, paper, plastic, precious or semiprecious stones or metal, wax, wire, wood, rubber, yarn or similar materials, provided such uses do not create a disturbance because of odor, noise, dust, smoke, gas, traffic or other factors.	The positive energy consequences of such a use would be the reduced energy consumption for local businesses and property owners who would use such services or provide raw materials for manufacturing purposes.	There are no known negative energy consequences from such a use on site.
Processing, packaging and storage of food and beverages including those requiring distillation and fermentation.	The positive energy consequences of such a use would be the reduced energy consumption for local businesses and property owners who would use such services.	There are no known negative energy consequences from such a use on site.
Public Land Disposal Site Transfer Station, including recycling and other related activities.	The positive energy consequences of such a use would be the reduced energy consumption for local businesses and property owners who would use such services.	There are no known negative energy consequences from such a use on site.
Mini-storage facility.	The positive energy consequences of such a use would be the reduced energy consumption for local businesses and property owners who would use such services.	There are no known negative energy consequences from such a use on site.

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Conflicting Use	Positive Energy Consequences of Allowing	Negative Energy Consequences of Allowing
Automotive wrecking yard totally enclosed by a sight-obscuring fence.	The positive energy consequences of such a use would be the reduced energy consumption for local businesses and property owners who would use such services.	There are no known negative energy consequences from such a use on site.
Wireless telecommunications facilities, except those facilities meeting the requirements of DCC 18.116.250(A) or (B).	There are no known energy benefits from such a use at the site.	There are no known negative energy consequences from such a use on site.
Utility facility.	There could be positive energy consequences of such a use on site if developed for photovoltaic energy production or an energy substation.	There are no known negative energy consequences from such a use on site. Additionally, commercial utility facilities on the subject property are already conditionally permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.
Manufacturing, storage, sales, rental, repair and servicing of equipment and materials associated with farm and forest uses, logging, road maintenance, mineral extraction, construction or similar rural activities.	The positive energy consequences of such a use would be the reduced energy consumption for local businesses and property owners who would use such services.	There are no known negative energy consequences from such a use on site.

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Conflicting Use	Positive Energy Consequences of Allowing	Negative Energy Consequences of Allowing
Electrical substations.	There would be positive energy consequences of such a use at this site as it would provide additional energy capacity for the community.	There are no known negative energy consequences from such a use on site. Additionally, commercial utility facilities on the subject property are already conditionally permissible via the existing EFU zoning and the property has been zoned EFU since the 1992 adoption of the LM regulations. Allowance of such uses was contemplated in the original ESEE and does not warrant a new ESEE here as it is a not a new conflicting use.
Marijuana retailing, subject to the provisions of DCC 18.116.330.	The positive energy consequences of such a use would be the reduced energy consumption for local businesses and property owners who would use such services versus having to travel to Bend.	There are no known negative energy consequences from such a use on site.
Psilocybin testing laboratories.	There are no known positive energy consequences from such a use on site.	There are no known negative energy consequences from such a use on site.

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Allowing Conflicting Uses, Prohibiting Conflicting Uses, or Limiting Conflicting Uses:

The ESEE consequences of the permitted and conditional uses in DCC 18.100 have been analyzed and are provided for consideration by the Board of County Commissioners in deciding this land use application. This exhaustive list provides sufficient detail to consider the economic, social, environmental and energy factors to balance in making this decision regarding the proposal and the Landscape Management Roads Goal 5 resource.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 30, 2023

SUBJECT: Second Reading of Ordinance No. 2023-018 – Griffin Plan Amendment / Zone Change

RECOMMENDED MOTIONS:

- 1. Move approval of second reading of Ordinance No. 2023-018 by title only.
2. Move adoption of Ordinance No. 2023-018.

BACKGROUND AND POLICY IMPLICATIONS:

The Board will consider second reading of Ordinance No. 2023-018 to implement a request a Comprehensive Plan Amendment to redesignate 40 acres located the east of Bend and south of Highway 20 from Agriculture to Rural Residential Exception Area and a Zoning Map Amendment to rezone the property from Exclusive Farm Use to Multiple Use Agricultural (file nos. 247-22-000792-PA, 793-ZC).

The entirety of the record can be found on the project website at:
https://www.deschutes.org/cd/page/247-22-000792-pa-793-zc-%E2%80%93-comprehensive-plan-amendment-and-zone-change

BUDGET IMPACTS:

None

ATTENDANCE:

Rachel Vickers, Associate Planner



MEMORANDUM

TO: Deschutes County Board of Commissioners (Board)

FROM: Rachel Vickers, Associate Planner

DATE: August 30, 2023

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

The Board of County Commissioners (Board) will consider a second reading of Ordinance 2023-018 on August 30, 2023 to consider a request for a Plan Amendment and Zone Change (file nos. 247-22-000792-PA, 793-ZC) for one tax lot totaling approximately 40 acres, to the east of the City of Bend and south of Highway 20.

I. BACKGROUND

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

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

II. SECOND READING

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

ATTACHMENTS:

1. Draft Ordinance 2023-018 and Exhibits

Exhibit A: Legal Descriptions

Exhibit B: Proposed Plan Amendment Map

Exhibit C: Proposed Zone Change Map

Exhibit D: Comprehensive Plan Section 23.01.010, Introduction

Exhibit E: Comprehensive Plan Section 5.12, Legislative History

Exhibit F: Hearings Officer Recommendation

REVIEWED _____
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

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

ORDINANCE NO. 2023-018

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

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

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

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

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

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

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

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

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

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

Dated this ____ of _____, 2023

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

PATTI ADAIR, Vice Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner

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

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

Record of Adoption Vote:

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

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

ATTEST

Recording Secretary

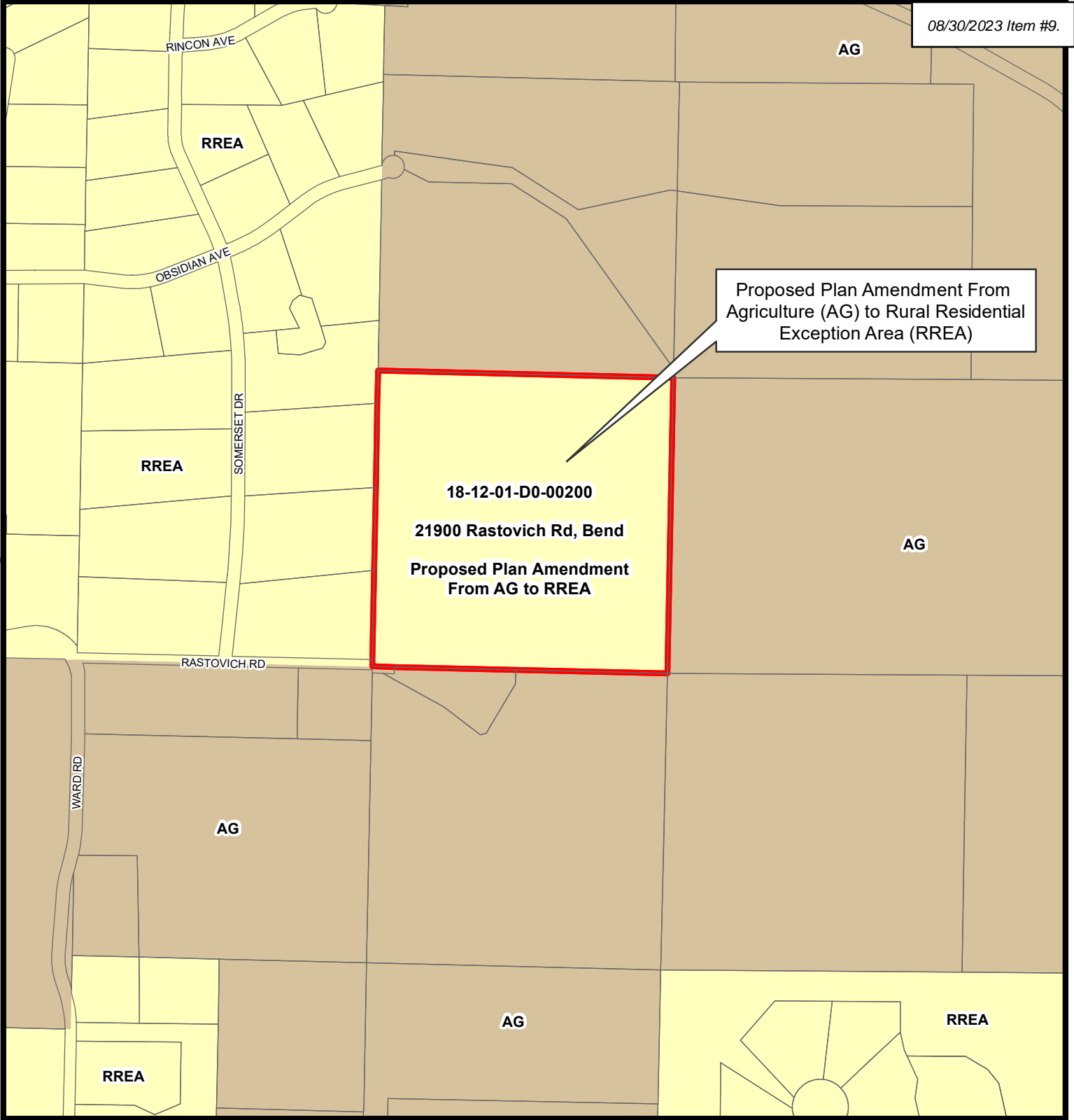
Exhibit “A” to Ordinance 2023-018

Legal Descriptions of Affected Property

For Informational Purposes Only: Parcel no. 181201D000200

(Legal Description Begins Below)

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



PROPOSED COMPREHENSIVE PLAN MAP

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

Exhibit "B"
to Ordinance 2023-018

BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

Tony DeBone, Chair


Patti Adair, Vice Chair

Phil Chang, Commissioner

ATTEST: Recording Secretary

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

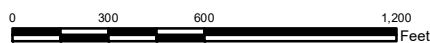
Legend

 Proposed Zone Change Boundary

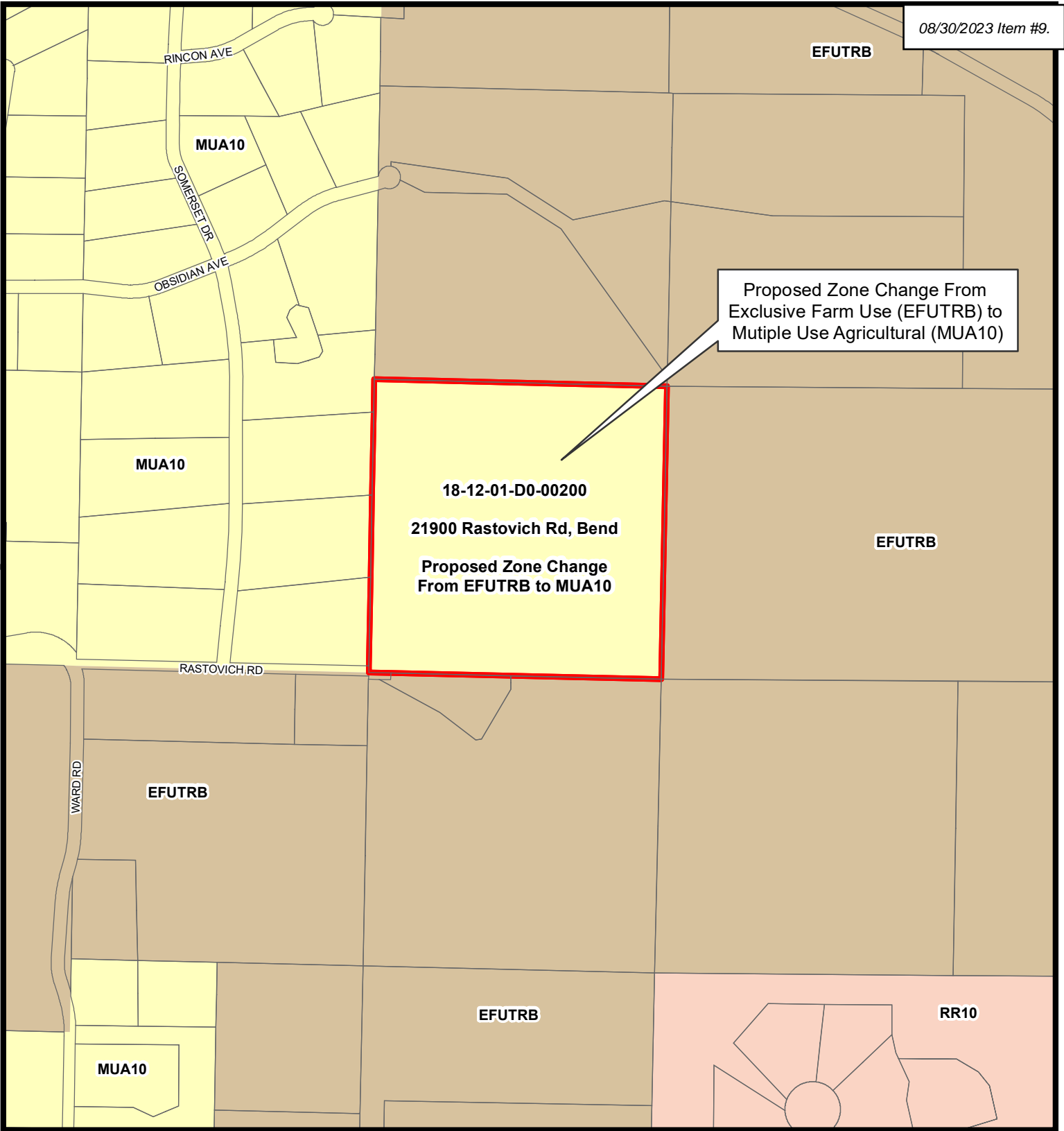
Comprehensive Plan Designation

 AG - Agriculture

 RREA - Rural Residential Exception Area



August 7, 2023




PROPOSED ZONING MAP

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


Exhibit "C"
to Ordinance 2023-018

Legend

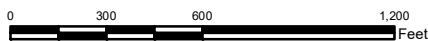
 Proposed Zone Change Boundary

Zoning

 EFUTRB - Tumalo/Redmond/Bend Subzone

 MUA10 - Multiple Use Agricultural

 RR10 - Rural Residential



August 7, 2023

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

Tony DeBone, Chair

Patti Adair, Vice Chair

Phil Chang, Commissioner

ATTEST: Recording Secretary

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

Exhibit “D” to Ordinance 2023-018

Chapter 23.01 COMPREHENSIVE PLAN

Chapter 23.01 COMPREHENSIVE PLAN

23.01.010. Introduction.

- A. The Deschutes County Comprehensive Plan, adopted by the Board in Ordinance 2011-003 and found on the Deschutes County Community Development Department website, is incorporated by reference herein.
- B. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2011-027, are incorporated by reference herein.
- C. [Repealed by Ordinance 2013-001, §1]
- D. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-005, are incorporated by reference herein.
- E. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-012, are incorporated by reference herein.
- F. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-016, are incorporated by reference herein.
- G. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-002, are incorporated by reference herein.
- H. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-009, are incorporated by reference herein.
- I. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-012, are incorporated by reference herein.
- J. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-007, are incorporated by reference herein.
- K. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-005, are incorporated by reference herein.
- L. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-006, are incorporated by reference herein.
- M. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-012, are incorporated by reference herein.
- N. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-021, are incorporated by reference herein.
- O. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-027, are incorporated by reference herein.
- P. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-021, are incorporated by reference herein.
- Q. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-029, are incorporated by reference herein.
- R. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-018, are incorporated by reference herein.
- S. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-010, are incorporated by reference herein.
- T. [Repealed by Ordinance 2016-027 §1]
- U. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-022, are incorporated by reference herein.

- V. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-005, are incorporated by reference herein.
- W. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-027, are incorporated by reference herein.
- X. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-029, are incorporated by reference herein.
- Y. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2017-007, are incorporated by reference herein.
- Z. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-002, are incorporated by reference herein.
- AA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-006, are incorporated by reference herein.
- AB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-011, are incorporated by reference herein.
- AC. [repealed by Ord. 2019-010 §1, 2019]
- AD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-008, are incorporated by reference herein.
- AE. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-002, are incorporated by reference herein.
- AF. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-001, are incorporated by reference herein.
- AG. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-003, are incorporated by reference herein.
- AH. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-004, are incorporated by reference herein.
- AI. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-011, are incorporated by reference herein.
- AJ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-006, are incorporated by reference herein.
- AK. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-019, are incorporated by reference herein.
- AL. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-016, are incorporated by reference herein.
- AM. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-001, are incorporated by reference herein.
- AN. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-002, are incorporated by reference herein.
- AO. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-003, are incorporated by reference herein.
- AP. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-008, are incorporated by reference herein.
- AQ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-007, are incorporated by reference herein.
- AR. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-006, are incorporated by reference herein.
- AS. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-009, are incorporated by reference herein.
- AT. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-013, are incorporated by reference herein.

AU. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2021-002, are incorporated by reference herein.

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

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

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

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

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

BA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-010, are incorporated by reference herein.

BB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-011, are incorporated by reference herein. (superseded by Ord. 2023-015)

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

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.

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

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

Exhibit “E” to Ordinance 2023-018

Section 5.12 Legislative History

Background

This section contains the legislative history of this Comprehensive Plan.

Table 5.12.1 Comprehensive Plan Ordinance History

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

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

Exhibit “E” to Ordinance 2023-018

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

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

Exhibit “E” to Ordinance 2023-018

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

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

Exhibit “E” to Ordinance 2023-018

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

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

Exhibit “E” to Ordinance 2023-018

2023-007	TBD	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
<u>2023-018</u>	<u>9-01-23/11-29-23</u>	<u>23.01.010</u>	<u>Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)</u>

HEARING OFFICER FINDINGS AND RECOMMENDATIONS

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

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

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

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

APPLICANT: Kevin Griffin and Libby Renfro

**ATTORNEY
FOR APPLICANT:** Tia Lewis

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

HEARINGS OFFICER: Alan A. Rappleyea

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

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

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

I. APPLICABLE CRITERIA

- Title 18 of the Deschutes County Code, the County Zoning Ordinance:
 - Chapter 18.04, Title, Purpose, and Definitions
 - Chapter 18.16, Exclusive Farm Use Zones (EFU)
 - Chapter 18.32, Multiple Use Agricultural (MUA10).
 - Chapter 18.136, Amendments
- Title 22, Deschutes County Development Procedures Ordinance
- Deschutes County Comprehensive Plan
 - Chapter 2, Resource Management
 - Chapter 3, Rural Growth Management
 - Appendix C, Transportation System Plan
- Oregon Administrative Rules (OAR), Chapter 660
 - Division 12, Transportation Planning
 - Division 15, Statewide Planning Goals and Guidelines
 - Division 33, Agricultural Land
- Oregon Revised Statutes (ORS)
 - Chapter 215.010, Definitions
 - Chapter 215.211, Agricultural Land, Detailed Soils Assessment

II. BACKGROUND AND PROCEDURAL FINDINGS

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

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

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

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

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

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

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

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

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

III. SUBSTANTIVE FINDINGS AND CONCLUSIONS

Adoption of Factual Findings in Staff Report:

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

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

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

Title 18 of the Deschutes County Code, County Zoning

Chapter 18.136, Amendments

Section 18.136.010, Amendments

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

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

Section 18.136.020, Rezoning Standards

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Deschutes County Comprehensive Plan

Chapter 2, Resource Management

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

Section 2.2 Agricultural Lands

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Policy 2.2.13 Identify and retain accurately designated agricultural lands.

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

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

Section 2.5, Water Resources Policies

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

Goal 6, Coordinate land use and water policies.

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

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

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

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

Section 2.7, Open Spaces, Scenic Views and Sites

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

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

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

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

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

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

Chapter 3, Rural Growth

Section 3.2, Rural Development

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

Growth Potential

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

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

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

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

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

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

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

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

Section 3.3, Rural Housing

Rural Residential Exception Areas

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

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

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

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

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

Section 3.7, Transportation

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

**Appendix C – Transportation System Plan
ARTERIAL AND COLLECTOR ROAD PLAN**

...

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

...

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

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

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

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

OREGON ADMINISTRATIVE RULES CHAPTER 660, LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

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

Division 6, Goal 4 – Forest Lands

OAR 660-006-0005

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

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

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

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

OAR 660-015-0000(3)

To preserve and maintain agricultural lands.

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

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

OAR 660-033-0020, Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

*"Soil mapping done by the USDA Natural Resources Conservation Service (NRCS) is the most common tool used for identifying the types of soils in an area. The NRCS provides a rating for each soil type that indicates how suited the soil is for agriculture. ***
NRCS does not have the ability to map each parcel of land, so it looks to larger areas. This means that the map may miss a pocket of different soils. DLCD has a process landowners can use to challenge NRCS soils information on a specific property. Owners who believe soil on their property has been incorrectly mapped may retain a 'professional soil classifier ... certified by and in good standing with the Soil Science Society of America ' *** through a process administered by DLCD. This soils professional can conduct an assessment that may result in a change of the allowable uses for the property."*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OAR 660-033-0030, Identifying Agricultural Land

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DIVISION 12, TRANSPORTATION PLANNING

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

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

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

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

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

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

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

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

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

DIVISION 15, STATEWIDE PLANNING GOALS AND GUIDELINES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. CONCLUSIONS

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

Dated this 17th Day of March, 2023

Alan A. Rappleyea

Alan A. Rappleyea
Deschutes County Hearings Officer



BOARD OF
COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 30, 2023

SUBJECT: Historic Landmarks Commission Update

BACKGROUND AND POLICY IMPLICATIONS:

Staff seeks Board direction on potential options for the Deschutes County Historic Landmarks Commission, which has been experiencing a slowdown in activity and currently lacks a quorum.

BUDGET IMPACTS:

None

ATTENDANCE:

Tanya Saltzman, Senior Planner
Will Groves, Planning Manager
Peter Gutowsky, CDD Director



MEMORANDUM

DATE: August 23, 2023

TO: Deschutes County Board of Commissioners

FROM: Tanya Saltzman, AICP, Senior Planner

RE: Historic Landmarks Commission Update

Staff seeks Board of County Commissioners (Board) direction on potential options for the Deschutes County Historic Landmarks Commission (HLC), which has been experiencing a slowdown in activity and currently lacks a quorum. Staff introduced this topic briefly to the Board during Other Items on August 16, 2023.

I. HLC OVERVIEW

Since 2011, the HLC has served as an advisory body for issues concerning historic and cultural resources for unincorporated Deschutes County and the City of Sisters and reviews development applications for alterations to designated historic sites and structures. The cities of Redmond and Bend have independent historic preservation review bodies. The Deschutes County Comprehensive Plan Section 2.11 Cultural and Historic Resources and Deschutes County Code (DCC) Chapter 2.28, Historic Preservation and Historic Landmarks Commission, establish the legal basis for the HLC.

Deschutes County, together with Sisters, is a Certified Local Government (CLG). The Certified Local Government program is designed to promote historic preservation at the local level. It is a federal program (National Park Service) that is administered by the Oregon State Historic Preservation Office (SHPO). Local governments must meet certain qualifications to become "certified" and thereby qualify to receive federal grants through SHPO and additional technical assistance. These requirements include:

- Establish a historic preservation commission;
- Pass a preservation ordinance that outlines how the local government will address historic preservation issues;
- Agree to participate in updating and expanding the state’s historic building inventory program;

- Agree to review and comment on any National Register of Historic Places nominations of properties within the local government boundaries.

CLGs are eligible for non-competitive grants that fund work that supports the promotion of historic preservation including surveys, nominations to the National Register of Historic Places, public education, training, etc. The grants, which require a 50/50 in-kind match, have typically been in the \$5,000-\$15,000 range in recent years. Deschutes County has applied for and received CLG grants since 2009. Most recently, Deschutes County HLC applied and was approved for a smaller grant amount (\$5,500) owing to capacity issues and lack of projects that fit the grant funding parameters.

II. MEMBERSHIP AND RECRUITMENT

Until recently, the HLC had five voting members and one ex-officio member. In spring of 2023, two committee members—including the then-Chair—resigned and another, longtime Commissioner Sharon Leighty, passed away. Staff initiated recruitments for all three positions to coincide with May Preservation Month. Low interest caused staff to extend the recruitment one month until the end of June, and then again until August 15. Recruitments were posted on the HLC website and social media, the CDD e-newsletter, and promoted via staff's professional networks. Ultimately only two applications were submitted for the three open positions.

III. LOOKING AHEAD

It has become increasingly apparent that there is not currently robust interest in the HLC. This is not for a lack of residents' appreciation of the rich history of Deschutes County; however, the structure and role of the HLC does have some inherent limitations. County historic sites are generally spread out, often more difficult to access, and lack the "critical mass" of historic sites that cities can offer, an example being a downtown historic district. Most historic sites are private property and require owner consent to either nominate, rehabilitate, or provide access. As such, Deschutes County has not reviewed a property for the nomination of a local historic resource in several decades.¹

Recently, the HLC has focused on being a "connector," directing people to sources of potential grant funds, education, processes, or local resources, since the HLC lacks the ability to directly participate in (or fund) physical rehabilitation. CLG grant funds have recently been used either directly by the City of Sisters (last year's primary project was to update its StoryMap of historic resources, for instance) or for staff time in developing guiding documents such as the Strategic Plan and the Policies and Procedures Manual. Participation in May Preservation Month has been limited for various reasons, with the brunt of the planning being undertaken by local groups such as the Deschutes County Historical Society and Three Sisters Historical Society & Museum, both of which have reputations for lively and informative events, workshops, and tours.

¹ Since 2011, there have been three successful nominations to the National Register of Historic Places: Deedon Homestead, Pilot Butte Canal Historic District, and Central Oregon Canal Historic District.

IV. BOARD CONSIDERATION

Given this trajectory and the constraints noted above, staff offers the following path for Board consideration:

- Disband the Historic Landmarks Commission as it currently exists.
- Amend DCC Chapter 2.28 to delegate review of alterations to historic resources or nominations of local significance to the Planning Division. This would be achieved through a legislative process with a Planning Commission work session followed by a hearing before the Board. Review of alterations of historic sites or structures would be processed as a land use decision; local nominations of historic sites would be processed legislatively, starting with the Planning Commission.
- DCC Chapter 2.28 would retain its references to the HLC with an amendment acknowledging that if the HLC is not appointed, review authority rests with the Planning Division.
- Deschutes County/Sisters would no longer be a CLG and therefore would not be eligible for CLG funding. For this grant cycle, no funding has yet been spent and staff would coordinate with SHPO to ensure compliance.
- Staff will communicate with the City of Sisters CDD; going forward, Sisters would need to address their own responsibilities as it pertains to their historic structures.
- In the future, if the community galvanizes and expresses support for appointing an HLC, staff can coordinate with the Board during CDD's annual workplan to discuss the opportunity.

Staff recognizes the knowledge and commitment of its past and current Historic Landmarks Commissioners, and greatly appreciates the expertise those individuals have chosen to bring to the Deschutes County community.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 30, 2023

SUBJECT: County Policy update for HR-12 Family and Medical Leave to incorporate the Paid Leave Oregon program

RECOMMENDED MOTION:

Move approval of County Administrator signature of revised Human Resources Policy HR-12, Family and Medical Leave.

BACKGROUND AND POLICY IMPLICATIONS:

Staff has updated county policy HR-12 Family and Medical Leave, to incorporate the Paid Leave Oregon program. The program is effective September 3, 2023 and the proposed updated policy includes the information relevant to Paid Leave Oregon as well as Senate Bill 913 and 999 which were signed in June 2023 and intended to harmonize the Oregon Family Leave Act and the Paid Leave Oregon program. The changes are summarized as follows:

- General administrative and formatting clean-up and updates to align with current administrative processes.
- Adding the provisions of the Paid Leave Oregon (PLO) Program, begins effective September 3, 2023.
 - Allow employees to elect to use accrued leave to supplement the employee's PLO benefit up to approximately 100% of the employee's average weekly wage.
 - PLO employee eligibility, defined by ORS and OARs.
 - Defined eligible family members under PLO (same as OFLA below).
 - Eligible paid leave situations under PLO:
 - To care for family members (as defined under OFLA) with a serious health condition.
 - To bond with a child in the first year after birth, through adoption, or when they're placed in your home through foster care.
 - Medical leave to care for yourself when you have a serious health condition.

- Safe leave for survivors of sexual assault, domestic violence, harassment, and stalking.
- Updated family definition under OFLA which was recently amended to align with PLO (bolded were added):
 - To care for a family member with a "serious health condition." Under OFLA, eligible family members include those covered under FMLA as well as a child's spouse or **domestic partner**, a parent's spouse or **domestic partner**, a **sibling or stepsibling or the sibling's or stepsibling's spouse or domestic partner**, a grandparent or the grandparent's spouse or **domestic partner**, a grandchild or the grandchild's spouse or **domestic partner**, a **domestic partner**, or **any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship**.
- Duration of leave and leave year tracking method updated as required in SB 999 (2023) to align with PLO leave year. *This will change our method from a 12 month rolling backward to a 12 month rolling forward. Notice will be provided to employees in accordance with the law.*
 - OFLA leave year must be a period of 52 consecutive weeks beginning on the Sunday immediately preceding the date on which family leave commences.
 - Parental leave can be taken intermittently under PLO and with department approval under OFLA.
- Confirms all protected leaves (OFLA, FMLA, and PLO) will run concurrently when permissible.

BUDGET IMPACTS:

The premium costs associated with the State Plan for Paid Leave Oregon have been included in the budget.

ATTENDANCE:

Kathleen Hinman, Human Resources Director
Sue Henderson, Benefits and Leave Coordinator



DESCHUTES COUNTY ADMINISTRATIVE POLICY No. HR-12

EFFECTIVE DATE: JULY 21, 2008

UPDATED: SEPTEMBER 3, 2023

FAMILY AND MEDICAL LEAVE POLICY

STATEMENT OF POLICY

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

APPLICABILITY

This policy applies to all eligible Deschutes County employees.

POLICY AND PROCEDURES

General

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

Employee Eligibility

FMLA

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

OFLA

To qualify for OFLA, an employee must have been employed by the county for an average of 25 hours or more per week¹ for 180 calendar days before leave begins. However, employees taking leave due to the birth of a child or newly adopted or placed foster child become eligible after being employed for 180 calendar days, without regard to the number of hours worked per week. Additionally, during a public health emergency,

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

employees become eligible for OFLA leave if they have worked for a covered employer for at least 30 days and have worked an average of at least 25 hours per week in the 30 days before taking leave.

PLO

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

Employees applying for PLO benefits will apply directly through the Paid Leave Oregon website and will be required to request a leave of absence from the county as well. When an employee applies for this PLO, the state will determine an employee's qualifications for the benefit and will approve or deny claims for PLO benefits.

Qualifying Events for Leave

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

impending call to active duty status, in support of a contingency of operation. "Qualifying exigency" may include child or elder care (even without a serious health condition) or helping the family member prepare for departure for duty.

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

- 1) To provide home care for a child under the age of 18 with a non-serious health condition, provided another family member is not willing and able to care for the child; or
- 2) To provide childcare if your child's school or childcare provider is closed due to a statewide public health emergency, such as COVID-19 pandemic school closures; or
- 3) Up to an additional twelve (12) weeks for pregnancy disability leave before or after the birth of a child; or
- 4) Up to fourteen (14) days for military family leave if your spouse or domestic partner is a service member who has been called to active duty or is on leave from active duty; or
- 5) Up to two (2) weeks for bereavement leave related to the death of a family member; or
- 6) To care for a family member with a "serious health condition." Under OFLA, eligible family members include those covered under FMLA as well as a child's spouse or domestic partner, a parent's spouse or domestic partner, a sibling or stepsibling or the sibling's or stepsibling's spouse or domestic partner, a grandparent or the grandparent's spouse or domestic partner, a grandchild or the grandchild's spouse or domestic partner, a domestic partner, or any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship. A statement of Affinity may be required to show that such a bond exists.

A. As outlined in OAR 471-070-1000, "affinity," as the term is used in ORS 657B.010, means a relationship that meets the following requirements:

- a. There is a significant personal bond that, when examined under the totality of the circumstances, is like a family relationship, and;
- b. The bond under section (a) of this rule may be demonstrated by, but is not limited to the following factors,

with no single factor being determinative:

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

c. Employees are entitled to take paid leave in the following situations under PLO:

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

Serious Health Condition

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

- 1) Inpatient care (overnight hospital stay).
- 2) A critical illness or injury diagnosed as terminal, or which possesses an imminent danger of death.
- 3) A period of incapacity for more than three consecutive calendar days, and any subsequent treatment period of incapacity relating to the same condition, which also involves:
 - a. Two or more treatments by a health care provider, or
 - b. Treatment by a health care provider on at least one occasion, with a regimen of continuing treatment (e.g., prescription drugs.)
- 4) Permanent or long-term incapacity due to a condition for which treatment may not be effective, such as Alzheimer's disease, severe stroke, clinical depression, or terminal stages of a disease.

- 5) Absences for pre-natal care or pregnancy-related disability.
- 6) Absences for "chronic" serious health conditions, including, but not limited to diagnosed migraines, asthma, diabetes or epilepsy.
- 7) Absences to receive multiple treatments for restorative surgery after an accident or injury, or conditions that, if not treated, would likely result in an incapacity of more than three consecutive calendar days without medical intervention or treatment.

Duration of the Leave

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

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

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

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

Concurrent Leaves

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

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

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

Notice Required by Employee

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

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

Human Resources staff will review the Family and Medical Leave Request Form and provide the employee a Family and Medical Leave Designation Notice or request additional certification forms if needed. If the employee or family member has a serious health condition, the county may require the completion of a Health Care Provider Certification Form, which will be sent to the employee by the Human Resources Department.

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

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

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

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

health care provider that there is a continuing need for leave.

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

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

Obligation to Designate Leave

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

Confidentiality

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

Intermittent or Reduced Schedule Leaves

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

Status Reports

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

Use of Accrued Leave

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

If an employee is approved for PLO benefits and has requested to use leave accruals, any period of absence when they are not using any leave accruals will be considered an unpaid leave of absence. The county may request documentation of PLO benefits received when an employee elects to supplement with their accrued leave while on PLO so the appropriate amount of accrued leave to be used can be determined. An employee's regular salary will not be paid when on leave under PLO, even if their PLO benefit has not yet been received.

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

Tracking of Leave

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

Benefit Continuation

Employees on leave who are eligible for leave under FMLA and/or OFLA will have their benefits continued under the same terms and conditions as when they were an active

employee during the period of qualified leave. Employees who are eligible for protected leave under PLO will have their benefits continued after 90 consecutive days of employment.

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

Reinstatement

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

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

Failure to Return from Leave

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

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

still exists, the employee cannot return for a reason that is beyond their control, or the employee elects retirement.

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

Retaliation or Discrimination

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

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

Nick Lelack
County Administrator

FAMILY AND MEDICAL LEAVE POLICY

STATEMENT OF POLICY

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

APPLICABILITY

This policy applies to all eligible Deschutes County employees.

POLICY AND PROCEDURES

General

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

Employee Eligibility

FMLA

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

OFLA

To qualify for OFLA, an employee must have been employed by the county for an average of 25 hours or more per week¹ for 180 calendar days before leave begins. However, employees taking leave due to the birth of a child or newly adopted or placed foster child become eligible after being employed for 180 calendar days, without regard to the number of hours worked per week. Additionally, during a public health emergency, employees become eligible for OFLA leave if they have worked for a covered employer for at least 30 days and have worked an average of at least 25 hours per week in the 30 days before taking leave.

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

PLO

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

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

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

Qualifying Events for Leave

- a. Under FMLA, employees are entitled to take family medical leave in the following situations:
 - 1) When the employee has a "serious health condition" (defined further below), which renders the employee unable to perform the functions of their position.
 - 2) To care for a family member with a "serious health condition." Under FMLA, family member is defined as a spouse, parent, or child, or someone with whom the employee has an "in loco parentis" relationship. "In loco parentis" is defined as a person with whom an employee has developed a parent/child relationship in the absence of a biological or adoptive parent.
 - 3) For the birth or adoption of a child, or for the placement of a child in foster care with the employee. This is often referred to as "parental leave."
 - 4) Immediate family members (spouses, parents, and children) as well as next of kin (nearest blood relative) of an Armed Forces service member who suffers a serious injury or illness while in military service are entitled to take up to 26 weeks of FMLA leave to care for that service member during a 12-month period. The expanded leave to care for injured service members is only available during a single 12-month period.
 - 5) "Any qualifying exigency" arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty, or has been notified of an impending call to active duty status, in support of a contingency of operation. "Qualifying exigency" may include child or elder care (even without a serious health condition) or helping the family member prepare for departure for duty.

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

- 1) To provide home care for a child under the age of 18 with a non-serious health condition, provided another family member is not willing and able to care for the child; or
- 2) To provide childcare if your child's school or childcare provider is closed due to a statewide public health emergency, such as COVID-19 pandemic school closures; or
- 3) Up to an additional twelve (12) weeks for pregnancy disability leave before or after the birth of a child; or
- 4) Up to fourteen (14) days for military family leave if your spouse or domestic partner is a service member who has been called to active duty or is on leave from active duty; or
- 4)5) Up to two (2) weeks for bereavement leave related to the death of a family member; or
- 6) To care for a family member with a "serious health condition." Under OFLA, eligible family members include those covered under FMLA as well as a child's spouse or domestic partner, a parent's spouse or domestic partner, a sibling or stepsibling or the sibling's or stepsibling's spouse or domestic partner, age 18 or over, parent-in-law, a grandparent or the grandparent's spouse or domestic partner, a grandchild or the grandchild's spouse or domestic partner, same-sex a domestic partner, or child or parent of same-sex domestic partner, or any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship. A statement of Affinity may be required to show that such a bond exists. — who has a "serious health condition."
 - A. As outlined in OAR 471-070-1000, "affinity," as the term is used in ORS 657B.010, means a relationship that meets the following requirements:
 - a. There is a significant personal bond that, when examined under the totality of the circumstances, is like a family relationship, and;
 - b. The bond under section (a) of this rule may be demonstrated by, but is not limited to the following factors, with no single factor being determinative:
 - i. Shared personal financial responsibility, including

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

c. Employees are entitled to take paid leave in the following situations under PLO:

- 1) To care for family members (as defined under OFLA,) with a serious health condition.
- 2) ~~and~~ To care for and bonding with a child in the first year after birth, adoption, or when they're placed in your home through foster care.
- 3) Medical leave to care for yourself when you have a serious health condition.
- 2)4) Safe leave to care for yourself or your child if ~~for you or your child are~~ survivors of sexual assault, domestic violence, harassment, ~~and~~ or stalking.

Serious Health Condition

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

- 1) Inpatient care (overnight hospital stay).
- 2) A critical illness or injury diagnosed as terminal, or which possesses an imminent danger of death.
- 3) A period of incapacity for more than three consecutive calendar days, and any subsequent treatment period of incapacity relating to the same condition, which also involves:
 - a. Two or more treatments by a health care provider, or
 - b. Treatment by a health care provider on at least one occasion, with a regimen of continuing treatment (e.g., prescription drugs.)
- 4) Permanent or long-term incapacity due to a condition for which treatment may not be effective, such as Alzheimer's disease, severe stroke, clinical depression, or terminal stages of a disease.
- 5) Absences for pre-natal care or pregnancy-related disability.

- 6) Absences for "chronic" serious health conditions, including, but not limited to diagnosed migraines, asthma, diabetes or epilepsy.
- 7) Absences to receive multiple treatments for restorative surgery after an accident or injury, or conditions that, if not treated, would likely result in an incapacity of more than three consecutive calendar days without medical intervention or treatment.

~~Some examples of relatively common conditions that **might** qualify for family leave are:~~

- ~~1) Outpatient surgery, when incapacitated for more than three calendar days and prescription drugs (such as pain killers, anti-inflammatories, or antibiotics) are prescribed.~~
- ~~2) Treatment for the employee or a qualifying family member for Alzheimer's disease, stroke, clinical depression, or the terminal stages of a disease.~~
- ~~3) Multiple recurring treatments such as chemotherapy or radiation treatments for cancer.~~
- ~~4) Absence for alcohol or drug treatment, if the employee is attending a recognized treatment program. Attendance in such programs does not negate potential employment action by the County in accordance with applicable drug/alcohol policies.~~

~~Some examples of common illnesses which generally **do not** qualify as a serious health condition are:~~

- ~~1) Ordinary temporary conditions, including common colds, flu, earaches, hay fever and other nasal or sinus allergies, upset stomach, sore throat, headaches (other than diagnosed migraines), routine orthodontia or dental problems including periodontal disease and routine examinations.~~
- ~~2) Job or personal stress (mental illness resulting from stress may be considered a serious health condition).~~
- ~~3) Cosmetic treatments, unless inpatient care is required or complications arise.~~

Duration of the Leave

~~Qualifying employees are entitled to 12 weeks of family medical leave in a "rolling" 12 month period. A "rolling" 12 month period is determined by "looking backward" from the first day the employee will be out on qualifying leave one-year period, which means a period of 52 consecutive weeks beginning on the Sunday immediately preceding the date on which family~~

leave commences.

For parental leave under OFLA, intermittent leave is subject to department approval and the leave the 12 weeks of leave must be taken and concluded within one (1) year from the date of birth or placement of the child. ~~The twelve weeks may be split into no more than two separate blocks of time.~~

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

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

Concurrent Leaves

To the extent permissible under the law, OFLA, and FMLA, and PLO leave will run concurrently. ~~However, the County will administer FMLA, and OFLA, and PLO policies in such a way that will provide the greatest benefit to the employee. Whenever these laws differ, the county will apply the standard which is most beneficial to the employee.~~

OFLA and PLO leave cannot run concurrently ~~with when the employee is eligible to receive~~ worker's compensation under ORS chapter 656. leave when an employee's absence is due to an on-the-job injury. OFLA leave can run concurrently only if unless the worker's compensation claim is denied, or if the employee has refused a suitable offer of light duty or modified employment. FMLA leave will run concurrently with a worker's compensation leave if the leave meets the criteria for a serious health condition under FMLA.

Notice Required by Employee

When the leave is ~~anticipated~~ foreseeable, the employee must apply for family medical leave **at least thirty (30) calendar days** in advance of the leave by completing and providing to the county obtaining a "Family and Medical Leave Request Form." ~~from their supervisor.~~ Furthermore, if the leave is foreseeable, the employee must make reasonable efforts to schedule leave in a way that does not unduly disrupt the operation of the employee's department. If an employee fails to give at least thirty (30) days' notice of foreseeable leave, and has no reasonable excuse, the county may delay the start of leave until at least 30 days

after the notice was actually given by the employee. If leave is required because of a medical emergency or other unforeseeable event, the employee must inform their supervisor within three working days so the form can be mailed provided to the employee. Employees applying for PLO benefits must also notify PLO the state within its established timeframes to avoid a possible reduction in the PLO benefit.

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

Human Resources staff will review the ~~When the~~ Family and Medical Leave Request Form ~~is received by the Personnel Human Resources Department, and the condition is anything other than a serious health condition of the employee or family member, the employee will have~~ receive provide the employee a Family and Medical Leave Designation Notice or request additional certification forms if needed ~~mailed to their home~~. If the employee or family member has a serious health condition, ~~the employee will receive a provisional Family and Medical Leave Designation Notice, and~~ the county will may require the completion of a Medical Certification Form Health Care Provider Certification Form, which will be sent to the employee by the Human Resources Department.

The ~~Medical Certification Health Care Provider Certification~~ Form must be completed by the employee's health care provider and returned to the Personnel Human Resources Department within fifteen (15) calendar days from the date ~~on the Family and Medical Leave Designation Notice of the leave request. The County's designation of the leave under either FMLA or OFLA will remain provisional until the Medical Certification Form is received by the Personnel Department.~~ Failure to provide the Medical Health Care Provider Certification Form may result in denial of the rights and protections of FMLA and OFLA.

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

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

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

If the family medical leave is for the employee's own serious health condition, ~~he/she may, at the County's discretion, the employee will~~ be required to furnish a "Release to Return to Work" from ~~his/her/their~~ health care provider upon requesting to return to work.

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

Obligation to Designate Leave

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

Confidentiality

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

Intermittent or Reduced Schedule Leaves

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

~~Intermittent leave or a reduced schedule is not allowed upon the birth or adoption of a child, except for the required legal process leading to the adoption of a child or the placement of a foster child. Upon department head approval, parental leave will be limited to two periods of time off, not to exceed 12 weeks, and must be concluded within one year from the date of birth or placement of the child.~~

Status Reports

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

Use of Accrued Leave

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

~~If an employee is approved for PLO benefits and has requested to use leave accruals, any period of absence when they are not using any leave accruals will be considered an unpaid leave of absence. The county may request documentation of PLO benefits received when an employee elects to supplement with their accrued leave while on PLO so the appropriate amount of accrued leave to be used can be determined. An employee's regular salary will not be paid when on leave under PLO, even if their PLO benefit has not yet been received.~~

~~If an employee's leave does not qualify or apply for PLO, but qualifies for other protected leaves, employees are required to use all available accrued paid leave before going into leave without pay. Compensatory time may not be used until all other leave banks have been exhausted. During the leave period, the employee must continue to use allowable paid leave available to the employee before going on unpaid leave. If the day before and after a holiday are leave without pay unpaid leave, the holiday will also be unpaid. In any case of unpaid leave Employees An employee will not earn paid leave accruals on any time coded as unpaid leave for any reason. will not accrue paid leave during any part of their leave in which they are absent without pay.~~

~~During the leave period, the employee must continue to use allowable paid leave available to the employee before going on unpaid leave. If the day before and after a holiday are unpaid leave, the holiday will also be unpaid. Employees will not accrue paid leave during any part of their leave in which they are absent without pay.~~

Tracking of Leave

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

Benefit Continuation

Employees on family leave who are eligible for leave under FMLA and/or OFLA will have their benefits continued under the same terms and conditions as when they were an active employee during the period of qualified leave. ~~Employees who are eligible for protected leave under PLO will have their benefits continued after 90 consecutive days of employment. However, employees who are on unpaid leave that is covered only under OFLA are not entitled to have their health insurance paid by the County. An employee granted unpaid leave only under OFLA will be responsible for the entire cost of the health insurance premium while on OFLA leave, if the employee chooses to continue coverage while on OFLA leave.~~

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

Reinstatement

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

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

Failure to Return from Leave

~~When an employee returning to work from family medical leave must return to his/her regular work schedule (the standard hours per month established for his/her position) unless a change or modification of the employee's schedule is approved in advance by the employee's supervisor before the employee returns to work. If an employee fails to return to work after exhausting family medical leave, his/her/their employment may be terminated in accordance with applicable laws, county policies, and union contracts. When an employee is unable to return to work due to their own serious health condition, the county will work with the employee to determine any protections that they may be afforded under the Americans with Disabilities Act (ADA).~~

~~If the employee voluntarily terminates employment has given unequivocal notice of the intent not to return after during an approved from leave, leave or does not return to work for at least thirty (30) days at the end of the leave, the employer's obligation to reinstate the employee ceases. Under FMLA only, the employment relationship generally ends after the employee clearly abandons future employment. The employee may may be required to repay the county for the employer-paid portion of the health insurance premium during any unpaid FMLA period. Health insurance premium repayment under thisThis provision will not apply if the need for leave still exists, the employee employee is unable to return to his/her regular work schedule for reasons beyond the employee's control, such as for a severe deterioration of the health status of the employee or the family member cannot return for a reason that is beyond their control, or the employee elects retirement.~~

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



DESCHUTES COUNTY ADMINISTRATIVE POLICY No. HR-12

EFFECTIVE DATE: JULY 21, 2008

UPDATED: SEPTEMBER 3, 2023

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

Approved, as updated, by the Deschutes County Board of Commissioners effective September 3, 2023 ~~on July 21, 2008~~.

Nick Lelack
County Administrator