



## BOARD OF COMMISSIONERS

### BOARD OF COUNTY COMMISSIONERS MEETING

9:00 AM, WEDNESDAY, JANUARY 25, 2023

Barnes Sawyer Rooms - Deschutes Services Building - 1300 NW Wall St - Bend

(541) 388-6570 | [www.deschutes.org](http://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 the public meeting portal at [www.deschutes.org/meetings](http://www.deschutes.org/meetings). To view the meeting via Zoom, see below.

**Citizen Input:** The public may comment on any meeting topic that is not on the current agenda. To provide citizen input, submit an email to [citizeninput@deschutes.org](mailto:citizeninput@deschutes.org) or leave a voice message at 541-385-1734. Citizen input received by noon on Tuesday will be included in the meeting record for topics that are not on the Wednesday agenda.

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



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

## 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](mailto:citizeninput@deschutes.org) or you may leave a brief voicemail at 541.385.1734. To be timely, citizen input must be received by noon on Tuesday in order to be included in the meeting record.*

## CONSENT AGENDA

1. Consideration of Board Signature on letter appointing Bill Shurte for service on the Pinewood Country Estates Special Road District
- [2.](#) Open new checking account with First Interstate Bank for use by the Deschutes County Sheriff's Office
3. Approval of the BOCC meeting minutes of January 4, 2023

## ACTION ITEMS

4. **9:05 AM** Recognition of Deputy Herrmann's 25 Years of Service with the Deschutes County Sheriff's Office
- [5.](#) **9:10 AM** Board direction relative to the exclusion of certain candidate landfill sites from consideration in accordance with Federal Aviation Administration recommendations
- [6.](#) **9:40 AM** Special Project Grant Status Update – Friends of the Children
- [7.](#) **9:55 AM** Special Project Grant Status Update – Deschutes Collaborative Forest Project
- [8.](#) **10:10 AM** Special Project Grant Status Update – Deschutes Basin Water Collaborative
- [9.](#) **10:25 AM** Resolution No. 2023-004, converting a limited duration Health Educator II position to regular duration
- [10.](#) **10:35 AM** Request Board approval of Document Number 2023-087, an agreement with Bethlehem Inn for emergency shelter access and client stabilization services



[11.](#) **10:45 AM** Consideration of Chair Signature of Document No. 2023-079, amending an agreement with Oregon Health Authority for tobacco prevention and cessation efforts, and a resolution formalizing how these grant funds will be expended

[12.](#) **11:00 AM** Planning Division Work Plan Update / Long Range Planning / FY 2022-2023

## **LUNCH RECESS**

[13.](#) **1:00 PM** Public Hearing: A Commercial Activity in Conjunction with Farm Use (Meadery) in the Exclusive Farm Use Zone

## **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.*

14. Executive Sessions under ORS 192.660 (2) (d) Labor Negotiations and ORS 192.660 (2) (h) Litigation

## **ADJOURN**



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 25<sup>th</sup>, 2023

SUBJECT: Open new checking account with First Interstate Bank for use by the Deschutes County Sheriff's Office.

RECOMMENDED MOTION:

Move approval for Board of County Commissioners authorization to open a new business checking bank account with First Interstate Bank (FIB).

BACKGROUND AND POLICY IMPLICATIONS:

The Deschutes County Code requires authorization from the Board of County Commissioners to open a new banking account registered for use/ownership under Deschutes County. Deschutes County maintains multiple banking accounts with FIB as the contracted banking service provider.

Currently, the Deschutes County Sheriff's office maintains physical petty cash for business operating expenses of the officers within the unit. The new bank account with FIB would allow for these officers to spend funds using a debit-type payment card. This change will increase internal controls over handling of county assets.

BUDGET IMPACTS:

None.

ATTENDANCE:

- Jana Cain, Accounting Manager – Finance
Joe Brundage, Business Manager – Sheriff's Office



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 25, 2023

SUBJECT: Board direction relative to exclusion of certain candidate landfill sites from consideration in accordance with Federal Aviation Administration recommendations

RECOMMENDED MOTION:

Motion for Solid Waste staff to convene a special meeting of the Solid Waste Advisory Committee to review identified FAA Advisory Circular (No. 150/5200-33C) and provide a recommendation to the Board of Commissioners relative to implementation of the FAA Advisory Circular.

BACKGROUND AND POLICY IMPLICATIONS:

During recent discussions with the Redmond Airport, Solid Waste staff learned of Redmond Airport management's concerns with regards to Federal Aviation Administration (FAA) Circular Advisory (No. 150/5200-33C) which provides a recommendation (as opposed to a mandate) that new landfills not be sited within a 5 mile radius of public access airports. See attached.

The public access airports in Deschutes County, as provided by FAA criteria are: Redmond, Bend, and Sunriver. Solid Waste staff has met with managers at the Redmond and Bend airports and confirmed that the airport managers are in agreement with the FAA recommendation that no new landfill be sited within a 5 mile radius. [Note: there are no candidate sites within 5 miles of the Sunriver airport.]

Solid Waste staff and retained consultants recognize that the 5 mile restriction, if accepted, does in fact constitute a Fatal Flaw and could be addressed administratively meaning that the following sites would be removed from further consideration: (1) the Negus Transfer Station in Redmond, (2) the Central Oregon Irrigation District property east of Bend, and (3) the County owned property east of Bend.

Page 2

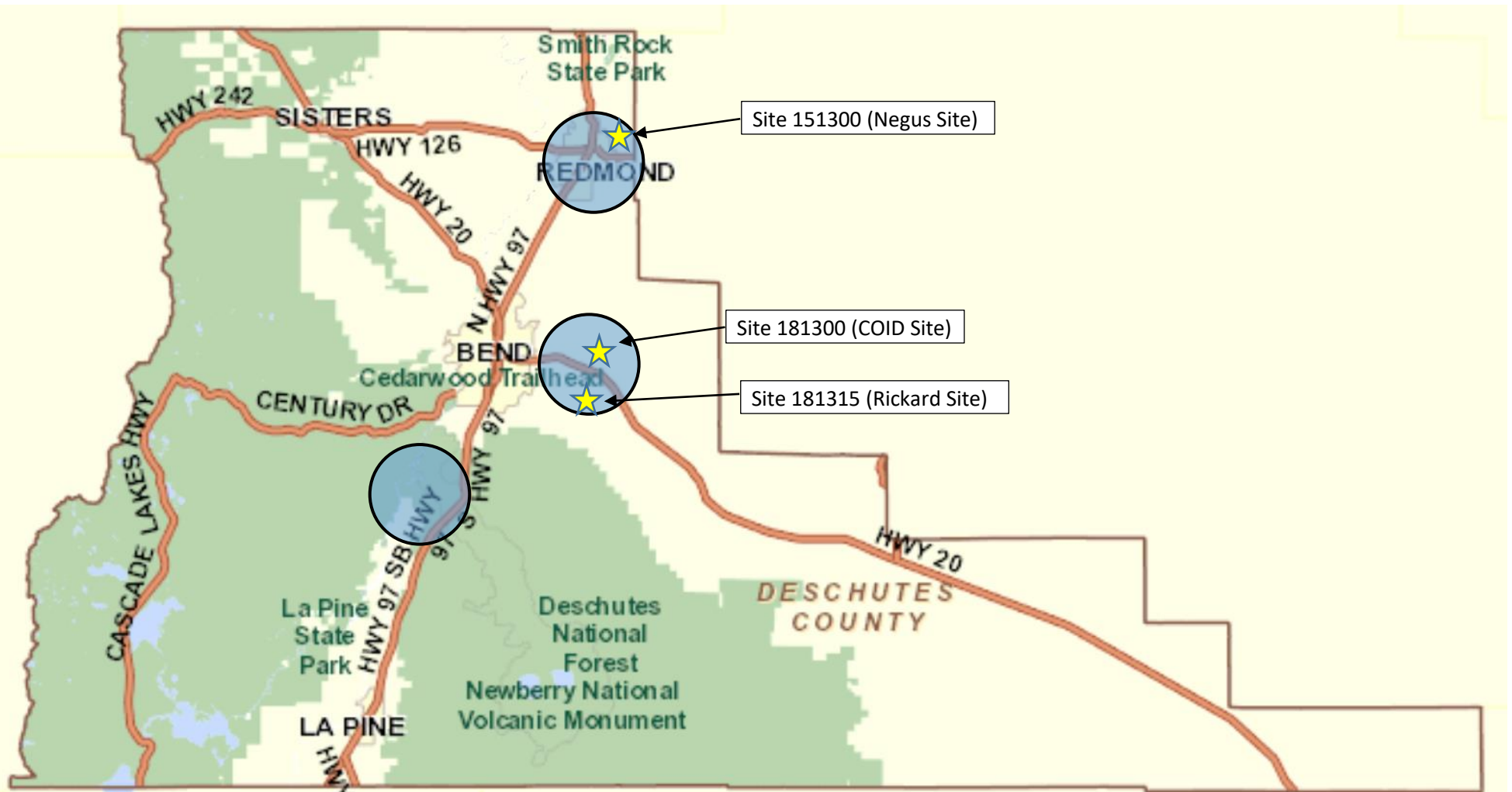
Solid Waste staff recommends that the Board of County Commissioners direct staff to convene a special meeting of the Solid Waste Advisory Committee to review identified FAA Advisory Circular (No. 150/5200-33C) and provide a recommendation to the Board of Commissioners relative to implementation of the FAA Advisory Circular.

**BUDGET IMPACTS:**

None

**ATTENDANCE:**

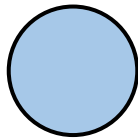
Chad Centola, Director of Solid Waste



Site 151300 (Negus Site)

Site 181300 (COID Site)

Site 181315 (Rickard Site)

 Approximate 5-Mile Exclusion Area Around Deschutes County Public Airports



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

# Advisory Circular

---

**Subject:** Hazardous Wildlife Attractants on or  
near Airports

**Date:** 02/21/2020

**AC No:** 150/5200-33C

**Initiated By:** AAS-300

**Change:**

---

1 **Purpose.**

This Advisory Circular (AC) provides guidance on certain land uses that have the potential to attract hazardous wildlife on or near public-use airports. It also discusses airport development projects (including airport construction, expansion, and renovation) affecting aircraft movement near hazardous wildlife attractants. Appendix 1 provides definitions of terms used in this AC.

2 **Cancellation.**

This AC cancels AC 150/5200-33B, *Hazardous Wildlife Attractants on or near Airports*, dated August 28, 2007.

3 **Application.**

The Federal Aviation Administration recommends the guidance in this AC for land uses that have the potential to attract hazardous wildlife on or near public-use airports. This AC does not constitute a regulation, is not mandatory, and is not legally binding in its own right. It will not be relied upon as a separate basis by the FAA for affirmative enforcement action or other administrative penalty. Conformity with this AC is voluntary, and nonconformity will not affect rights and obligations under existing statutes and regulations, except as follows:

1. Airports that hold Airport Operating Certificates issued under Title 14, Code of Federal Regulations (CFR), Part 139, Certification of Airports, Subpart D, may use the standards, practices and recommendations contained in this AC as one, but not the only, acceptable means of compliance with the wildlife hazard management requirements of Part 139.
2. The FAA recommends the guidance in this AC for airports that receive funding under Federal grant assistance programs, including the Airport Improvement Program. See Grant Assurance #34.

3. The FAA recommends the guidance in this AC for projects funded by the Passenger Facility Charge program. See PFC Assurance #9.
4. The FAA recommends the guidance in this AC for land-use planners and developers of projects, facilities, and activities on or near airports.

#### 4 **Principal Changes.**

Changes are marked with vertical bars in the margin. Change in this AC include:

1. Clarification by the FAA that non-certificated airports are recommended to conduct a Wildlife Hazard Assessment (Assessment) or a Wildlife Hazard Site Visit (Site Visit);
2. Table 1, Ranking of Hazardous Species, has been moved to Advisory Circular 150/5200-32, *Reporting Wildlife Aircraft Strikes* (5/31/2013);
3. Consolidation and reorganization of discussion on land uses of concern; and updated procedures for evaluation and mitigation. Discussion addresses off-airport hazardous wildlife attractants, followed by discussion of on-airport attractants. It also clarifies language regarding the applicability of the AC.

#### 5 **Background.**

1. Information about the risks posed to aircraft by certain wildlife species has increased a great deal in recent years. Improved reporting, studies, documentation, and statistics clearly show that aircraft collisions with birds and other wildlife are a serious economic and public safety problem. While many species of wildlife can pose a risk<sup>1</sup> to aircraft safety, they are not equally hazardous<sup>2</sup>. These hazard rankings can help focus hazardous wildlife management efforts on those species or groups that represent the greatest risk to safe air and ground operations in the airport environment. Used in conjunction with a site-specific Assessment that will determine the relative abundance and use patterns of wildlife species, these rankings combined with a systematic risk analysis can help airport operators better understand the general threat level (and consequences) of certain wildlife species. Also, the rankings can assist with the creation of a “high risk” list of hazardous species that warrant immediate attention.
2. Most public-use airports have large tracts of open, undeveloped land that provide added margins of safety and noise mitigation. These areas can also present potential hazards to aviation if they encourage wildlife to enter an airport’s approach or departure airspace or aircraft operations area. Constructed or natural areas— such as

---

<sup>1</sup> Risk is the relationship between the severity and probability of a threat. It is the product of hazard level and abundance in the critical airspace, and is thus defined as the probability of a damaging strike with a given species.

<sup>2</sup> Hazardous wildlife are species of wildlife (birds, mammals, reptiles), including feral and domesticated animals, not under control that may pose a direct hazard to aviation (i.e., strike risk to aircraft) or an indirect hazard such as an attractant to other wildlife that pose a strike hazard or are causing structural damage to airport facilities (e.g., burrowing, nesting, perching).

poorly drained locations, detention/retention ponds, roosting habitats on buildings, landscaping, odor-causing rotting organic matter (putrescible waste) disposal operations, wastewater treatment plants, agricultural or aquaculture activities, surface mining, wetlands, or some conservation-based land uses — can provide wildlife with ideal locations for feeding, loafing, reproduction, and escape. Even small facilities, such as fast food restaurants, taxicab staging areas, rental car facilities, aircraft viewing areas, and public parks, can produce substantial attractions for hazardous wildlife.

3. During the past century, wildlife-aircraft strikes have resulted in the loss of hundreds of lives worldwide, as well as billions of dollars in aircraft damage. Hazardous wildlife attractants on and near airports can jeopardize future airport expansion, making proper community land-use planning essential. This AC provides airport operators and those parties with whom they cooperate with the guidance they need to assess and address potentially hazardous wildlife attractants when locating new facilities and implementing certain land-use practices on or near public-use airports.

#### 6 **Memorandum of Agreement Between Federal Resource Agencies.**

The FAA, the U.S. Air Force, the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, and the U.S. Department of Agriculture - Wildlife Services signed a Memorandum of Agreement (MOA) to acknowledge their respective missions in protecting aviation from wildlife hazards. Through the MOA, the agencies established procedures necessary to coordinate their missions to address more effectively existing and future environmental conditions contributing to collisions between wildlife and aircraft (wildlife strikes) throughout the United States. These efforts are intended to minimize wildlife risks to aviation and human safety while protecting the Nation's valuable environmental resources.

#### 7 **Feedback on this AC.**

If you have suggestions for improving this AC, you may use the Advisory Circular Feedback form at the end of this AC.



John R. Dermody  
Director of Airport Safety and Standards



**CONTENTS**

<b>Paragraph</b>	<b>Page</b>
<b>Chapter 1. General Separation Criteria for Hazardous Wildlife Attractants on or Near Airports .....</b>	<b>1-1</b>
<b>1.1 Introduction.....</b>	<b>1-1</b>
<b>1.2 Airports Serving Piston-Powered Aircraft.....</b>	<b>1-1</b>
<b>1.3 Airports Serving Turbine-Powered Aircraft.....</b>	<b>1-2</b>
<b>1.4 Protection of Approach, Departure, and Circling Airspace.....</b>	<b>1-2</b>
<b>Chapter 2. Land-Use Practices on or Near Airports that Potentially Attract Hazardous Wildlife.....</b>	<b>2-1</b>
<b>2.1 General.....</b>	<b>2-1</b>
<b>2.2 Waste Disposal Operations.....</b>	<b>2-2</b>
<b>2.3 Water Management Facilities.....</b>	<b>2-4</b>
<b>2.4 Wetlands.....</b>	<b>2-8</b>
<b>2.5 Dredge Spoil Containment Areas.....</b>	<b>2-10</b>
<b>2.6 Agricultural Activities.....</b>	<b>2-10</b>
<b>2.7 Aquaculture.....</b>	<b>2-12</b>
<b>2.8 Golf Courses, Landscaping, Structures and Other Land-Use Considerations... </b>	<b>2-14</b>
<b>2.9 Habitat for State and Federally-Listed Species on Airports.....</b>	<b>2-16</b>
<b>2.10 Synergistic Effects of Surrounding Land Uses.....</b>	<b>2-17</b>
<b>Chapter 3. Procedures for Wildlife Hazard Management by Operators of Public-Use Airports and Conditions for Non-Certificated Airports to Conduct Wildlife Hazard Assessments and Wildlife Hazard Site Visits.....</b>	<b>3-1</b>
<b>3.1 Introduction.....</b>	<b>3-1</b>
<b>3.2 Coordination with Qualified Airport Wildlife Biologists.....</b>	<b>3-1</b>
<b>3.3 Wildlife Hazard Management at Airports: A Manual For Airport Personnel....</b>	<b>3-1</b>
<b>3.4 Wildlife Hazard Site Visits and Wildlife Hazard Assessments.....</b>	<b>3-2</b>
<b>3.5 Wildlife Hazard Management Plan.....</b>	<b>3-2</b>
<b>3.6 Local Coordination.....</b>	<b>3-3</b>
<b>3.7 Operational Notifications of Wildlife Hazards.....</b>	<b>3-3</b>
<b>3.8 Federal and State Depredation Permits.....</b>	<b>3-4</b>

**Chapter 4. Recommended Procedures for the FAA, Airport Operators and Other Government Entities Regarding Off-Airport Attractants ..... 4-1**

**4.1 FAA Notification and Review of Proposed Land-Use Practice Changes in the Vicinity of Public-Use Airports..... 4-1**

**4.2 Waste Management Facilities. .... 4-2**

**4.3 Other Land-Use Practice Changes. .... 4-3**

**4.4 Coordination to Prevent Creation of New Off-Airport Hazardous Wildlife Attractants..... 4-4**

**4.5 Coordination on Existing Off-Airport Hazardous Wildlife Attractants. .... 4-5**

**4.6 Prompt Remedial Action..... 4-5**

**4.7 FAA Assistance..... 4-5**

**Appendix A. Definitions of Terms Used in this Advisory Circular ..... A-1**

**Appendix B. Additional Resources..... B-1**

Page Intentionally Blank

## CHAPTER 1. GENERAL SEPARATION CRITERIA FOR HAZARDOUS WILDLIFE ATTRACTANTS ON OR NEAR AIRPORTS

### 1.1 Introduction.

- 1.1.1 Airport operators should maintain an appropriate environment for the safe and efficient operation of aircraft, which entails mitigating wildlife strike hazards by fencing, modifying the landscape in order to deter wildlife or by hazing or removing wildlife hazardous to aircraft from congregating on airports. When considering proposed land uses, operators and sponsors of airports certificated under Part 139, local planners, and developers must take into account whether the proposed land uses, including new development projects, will increase wildlife hazards. Land-use practices that attract or sustain hazardous wildlife populations on or near airports, specifically those listed in Chapter 2, can significantly increase the potential for wildlife strikes.
- 1.1.2 The FAA urges regulatory agencies and planning and zoning agencies to evaluate proposed new land uses within the separation criteria and prevent the creation of land uses that attract or sustain hazardous wildlife within the separation distances.
- 1.1.3 The FAA recommends the use of minimum separation criteria outlined below for land-use practices that attract hazardous wildlife to the vicinity of airports. Please note that FAA criteria include land uses that cause movement of hazardous wildlife onto, into, or across the airport's approach or departure airspace or aircraft operations area. (See the discussion of the synergistic effects of surrounding land uses in Paragraph 2.8 of this AC.). For the purpose of evaluating distance criteria, the delineation of the aircraft operations area may also consider future airport development plans depicted on the Airport Layout Plan (e.g., planned runway extension).
- 1.1.4 The separation distances are based on (1) flight patterns and performance criteria of piston-powered aircraft and turbine-powered aircraft, (2) the altitude at which most strikes happen (78 percent occur under 1,000 feet and 90 percent occur under 3,000 feet above ground level), and (3) National Transportation Safety Board recommendations.

### 1.2 Airports Serving Piston-Powered Aircraft.

Airports that do not sell Jet-A fuel normally serve piston-powered aircraft. Notwithstanding more stringent requirements for specific land uses, the FAA recommends a separation distance of 5,000 feet from these airports for any of the hazardous wildlife attractants discussed in Chapter 2 or for new airport development projects meant to accommodate aircraft movement. This distance is to be maintained between the closest point of the airport's aircraft operations area and the hazardous wildlife attractant. Figure 1 depicts an example of the 5,000-foot separation distance measured from the nearest aircraft operations area.

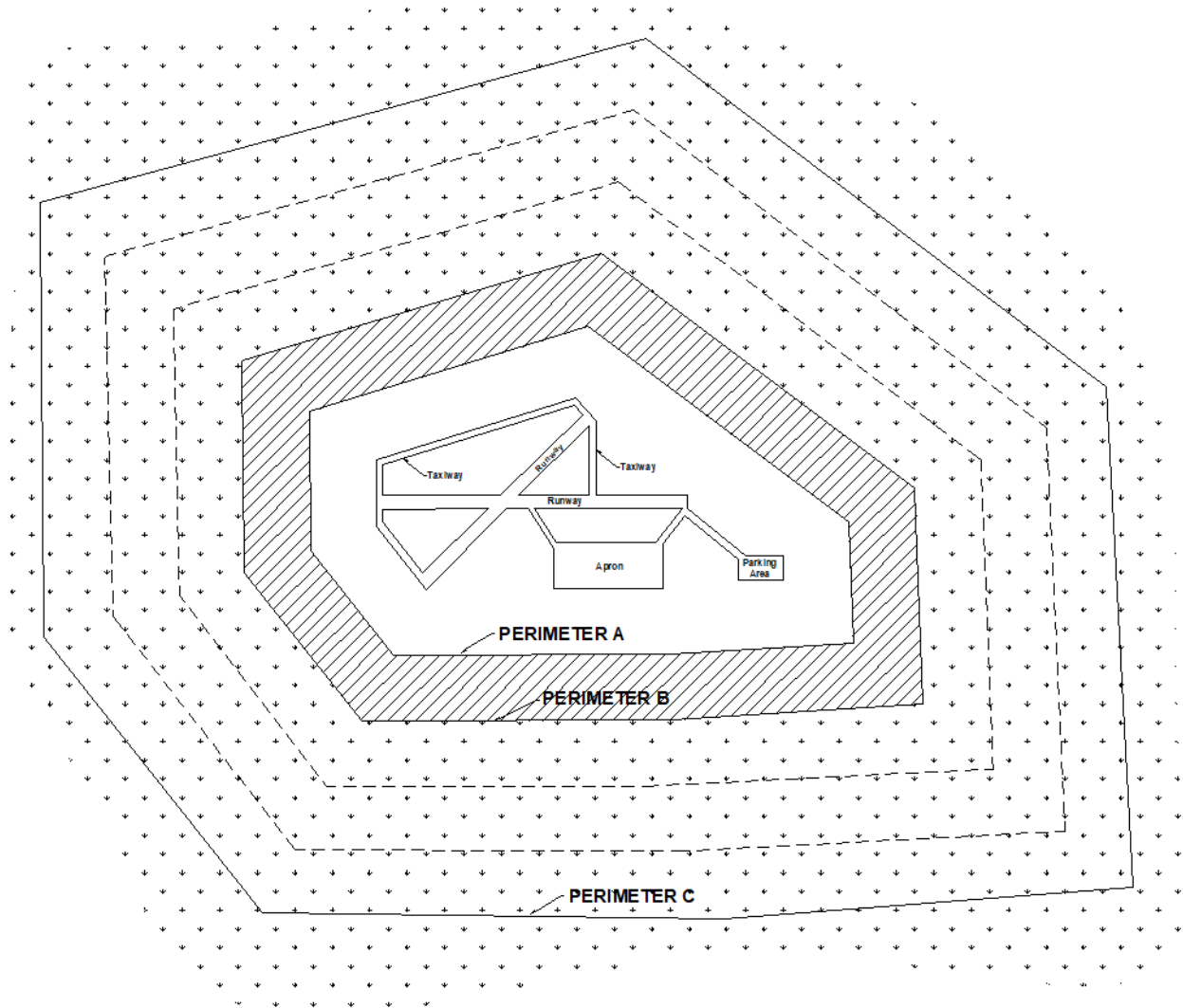
### **1.3 Airports Serving Turbine-Powered Aircraft.**

For airports serving turbine-powered aircraft, the FAA recommends a separation distance of 10,000 feet from these airports for any of the hazardous wildlife attractants discussed in Chapter 2 or for new airport development projects meant to accommodate aircraft movement. This distance is to be maintained between the closest point of the airport's aircraft operations area and the hazardous wildlife attractant. Figure 1 depicts an example of the 10,000-foot separation distance from the nearest aircraft movement areas.

### **1.4 Protection of Approach, Departure, and Circling Airspace.**

For all airports, the FAA recommends a distance of 5 miles between the closest point of the airport's aircraft operations area and the hazardous wildlife attractant. Special attention should be given to hazardous wildlife attractants that could cause hazardous wildlife movement into or across the approach or departure airspace. Figure 1 depicts an example of the 5-mile separation distance measured from the nearest aircraft operations area.

**Figure 1. Example of recommended separation distances described in Chapter 1 within which hazardous wildlife attractants should be avoided, eliminated, or mitigated.**



**PERIMETER A:** For airports serving piston-powered aircraft, it is recommended hazardous wildlife attractants be 5,000 feet from the nearest aircraft operations area.

**PERIMETER B:** For airports serving turbine-powered aircraft, it is recommended hazardous wildlife attractants be 10,000 feet from the nearest aircraft operations area.

**PERIMETER C:** Recommended for all airports, 5-mile range to protect approach, departure and circling airspace.

Page Intentionally Blank

## CHAPTER 2. LAND-USE PRACTICES ON OR NEAR AIRPORTS THAT POTENTIALLY ATTRACT HAZARDOUS WILDLIFE

### 2.1 General.

- 2.1.1 Many types of vegetation, habitats and land use practices can provide an attractant to animals that pose a risk to aviation safety. Hazardous wildlife use the natural or artificial habitats on or near an airport for food, water or cover. The wildlife species and the size of the populations attracted to the airport environment vary considerably, depending on several factors, including land-use practices on or near the airport. In addition to the specific considerations outlined below, airport operators should refer to *Wildlife Hazard Management at Airports* manual, prepared by FAA and U.S. Department of Agriculture (USDA) staff. (This manual is available in English, Spanish, and French). This manual, as well as other helpful resources can be viewed and downloaded free of charge from the Wildlife Strike Resources section of the FAA's wildlife hazard mitigation web site:  
[http://www.FAA.gov/airports/airport\\_safety/wildlife](http://www.FAA.gov/airports/airport_safety/wildlife)).
- 2.1.1.1 The USDA / Animal and Plant Health Inspection Service (APHIS) / Wildlife Services developed a new publication series on wildlife damage management and is available online. The Wildlife Damage Management Technical Series highlights wildlife species or groups of wildlife species that cause damage to agriculture, property and natural resources, and/or impact aviation and human health and safety. The publications can be found at:  
[https://www.aphis.usda.gov/aphis/ourfocus/wildlifedamage/sa\\_reports/ct\\_wildlife+damage+management+technical+series](https://www.aphis.usda.gov/aphis/ourfocus/wildlifedamage/sa_reports/ct_wildlife+damage+management+technical+series).
- 2.1.1.2 Additional resources have been provided by the USDA / APHIS / Wildlife Services National Wildlife Research Center (NWRC) at:  
[https://www.aphis.usda.gov/aphis/ourfocus/wildlifedamage/programs/nwrc/sa\\_publications/ct\\_research\\_gateway](https://www.aphis.usda.gov/aphis/ourfocus/wildlifedamage/programs/nwrc/sa_publications/ct_research_gateway). The NWRC Research Gateway contains research articles, reports, factsheets, technical notes, data and other materials on wildlife hazard mitigation, risk reduction, animal ecology, habitats, and advanced technologies and methodologies.
- 2.1.2 This section discusses land-use practices having the potential to attract hazardous wildlife and threaten aviation safety. The FAA has determined that the land uses listed below are generally not compatible with safe airport operations when they are located within the separation distances provided in Paragraphs 1.2 through 1.4.
- 2.1.3 As a reminder, these types of land uses or facilities often require permits from the appropriate permitting agency. The FAA may work with the permitting agency to include conditions for monitoring and mitigation measures, if necessary. Ultimately, the permittee is responsible for compliance to these conditions and the permitting agency is responsible for tracking compliance.



## 2.2 Waste Disposal Operations.

Municipal solid waste landfills (municipal landfills) are known to attract large numbers of hazardous wildlife, particularly birds. Because of this, these operations, when located within the separations identified in the siting criteria in Paragraphs 1.2 through 1.4, are considered incompatible with safe airport operations.

### 2.2.1 Siting for New Municipal Solid Waste Landfills Subject to AIR 21.

2.2.1.1 Section 503 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (P. L. 106-181) (AIR 21), 49 U.S.C. § 44718(d), prohibits the construction or establishment of a new municipal landfill within 6 miles of certain public-use airports. Before these prohibitions apply, both the airport and the landfill must meet the very specific conditions described below. These restrictions do not apply to airports or landfills located within the state of Alaska.

2.2.1.2 The airport must (1) have received a Federal grant(s) under 49 U.S.C. § 47101, et. seq.; (2) be under control of a public agency; (3) serve some scheduled air carrier operations conducted in aircraft with less than 60 seats; and (4) have total annual enplanements consisting of at least 51 percent of scheduled air carrier enplanements conducted in aircraft with less than 60 passenger seats.

2.2.1.3 The proposed municipal landfill must (1) be within 6 miles of the airport, as measured from airport property line to the landfill property line, and (2) have started construction or establishment on or after April 5, 2001. Section 44718(d) only limits the construction or establishment of some new landfills. It does not limit the expansion, either vertical or horizontal, of existing landfills.

2.2.1.4 Regarding existing municipal landfills and lateral expansions of landfills, 40 CFR § 258.10 requires owners or operators of a landfill units located within the separation distances provided in Paragraphs 1.2 through 1.4 to demonstrate that the unit is designed and operated so that it does not pose a bird hazard to aircraft. To accomplish this, follow the instructions provided in Paragraphs 3.2 and 3.3, document the wildlife monitoring and mitigation procedures that are cooperatively developed, and place this documentation in the operating permit of the facility.

### 2.2.2 Siting for New Municipal Landfills Not Subject to AIR 21.

If an airport and a municipal landfill do not meet the criteria of § 44718(d), then FAA recommends against locating the landfill within the separation distances identified in Paragraphs 1.2 through 1.4. In determining this distance separation, measurements should be made from the closest point of the airport property boundary to the closest point of the landfill property boundary.

### 2.2.3 Considerations for Existing Waste Disposal Facilities Within the Limits of Separation Criteria.

The FAA recommends against airport development projects that would increase the number of aircraft operations or accommodate larger or faster aircraft near landfill operations located within the separations identified in Paragraphs 1.2 through 1.4. In addition, in accordance with 40 CFR § 258.10, owners or operators of existing landfill units that are located within the separations listed in Paragraphs 1.2 through 1.4 must demonstrate that the unit is designed and operated so it does not pose a bird hazard to aircraft. (See Paragraph 4.3.2 of this AC for a discussion of this demonstration requirement.)

### 2.2.4 Enclosed Trash Transfer Stations.

Enclosed waste-handling facilities that receive garbage behind closed doors; process it via compaction, incineration, or similar manner; and remove all residue by enclosed vehicles generally are compatible with safe airport operations, provided they are constructed and operated properly and are not located on airport property or within the Runway Protection Zone. These facilities should not handle or store putrescible waste outside or in a partially enclosed structure accessible to hazardous wildlife. Trash transfer facilities that are open on one or more sides; or store uncovered quantities of municipal solid waste outside, even if only for a short time; or use semi-trailers that leak or have trash clinging to the outside; or do not control odors by ventilation and filtration systems (odor masking is not acceptable) do not meet the FAA's definition of fully enclosed trash transfer stations. The FAA considers fully enclosed waste-handling facilities constructed or operated incorrectly incompatible with safe airport operations if they are located closer than the separation distances specified in Paragraphs 1.2 through 1.4.

### 2.2.5 Composting Operations on or near Airport Property.

Composting operations that accept only yard waste (e.g., leaves, lawn clippings, or branches) generally do not attract hazardous wildlife. Sewage sludge, woodchips, and similar material are not municipal solid wastes and may be used as compost bulking agents. The compost, however, must never include food or other municipal solid waste. Composting operations should not be located on airport property unless effective, risk-reducing mitigations are in place. Off-airport property composting operations should be located no closer than the greater of the following distances: 1,200 feet from any aircraft operations area or the distance called for by airport design requirements (see AC 150/5300-13, *Airport Design*). This spacing should prevent material, personnel, or equipment from penetrating any Object Free Area, Obstacle Free Zone, Threshold Siting Surface, or Clearway. Airport operators should monitor composting operations located in proximity to the airport to ensure that steam or thermal rise does not adversely affect air traffic.

### 2.2.6 Underwater Waste Discharges.

The FAA recommends against the underwater discharge of any food waste (e.g., fish processing offal) within the separations identified in Paragraphs 1.2 through 1.4 because it could attract scavenging hazardous wildlife.

### 2.2.7 Recycling Centers.

Recycling centers that accept previously sorted non-food items, such as glass, newspaper, cardboard, aluminum, electronic, and household wastes such as paint, batteries, and oil, are, in most cases, not attractive to hazardous wildlife and are acceptable.

### 2.2.8 Construction and Demolition Debris Facilities.

2.2.8.1 Construction and demolition landfills generally do not attract hazardous wildlife and are acceptable if maintained in an orderly manner, admit no putrescible waste, and are not co-located with other waste disposal operations. However, construction and demolition landfills have similar visual and operational characteristics to putrescible waste disposal sites. When co-located with putrescible waste disposal operations, construction and demolition landfills are more likely to attract hazardous wildlife because of the similarities between these disposal facilities.

2.2.8.2 Therefore, a construction and demolition landfill co-located with another waste disposal operation should be located outside of the separations identified in Paragraphs 1.2 through 1.4.

2.2.8.3 Airport operators should be aware that on-site storage of construction and maintenance debris, as well as out-of-service aircraft or aircraft components, may provide an attractant for hazardous species (e.g., nesting or perching locations). The FAA recommends these on-site areas be monitored and/or mitigated, if necessary.

### 2.2.9 Fly Ash Disposal.

2.2.9.1 The incinerated residue from resource recovery power/heat-generating facilities that are fired by municipal solid waste, coal, or wood is generally not a wildlife attractant because it no longer contains putrescible matter. Landfills accepting only fly ash are generally not considered to be wildlife attractants and are acceptable as long as they admit no putrescible waste of any kind, and are not co-located with other disposal operations that attract hazardous wildlife.

2.2.9.2 Since varying degrees of waste consumption are associated with general incineration (not resource recovery power/heat-generating facilities), the FAA considers the ash from general incinerators a regular waste disposal by-product and, therefore, a hazardous wildlife attractant if disposed of within the separation criteria outlined in Paragraphs 1.2 through 1.4.

## 2.3 **Water Management Facilities.**

Drinking water intake and treatment facilities, storm water and wastewater treatment facilities, associated retention and settling ponds, ponds built for recreational use, ponds

and fountains for ornamental purposes, and ponds that result from mining activities often attract large numbers of potentially hazardous wildlife. Development of new open water facilities within the separation criteria identified in Paragraphs 1.2 through 1.4 should be avoided to prevent wildlife attractants. If necessary, land-use developers and airport operators may need to develop management plans, in compliance with local and state regulations, to support the operation of storm water management facilities on or near all public-use airports to ensure a safe airport environment. The FAA recommends these plans be developed in consultation with a Qualified Airport Wildlife Biologist<sup>3</sup>, to minimize hazardous wildlife attractants.

### 2.3.1 Existing Stormwater Management Facilities.

- 2.3.1.1 On-airport stormwater management facilities allow the quick removal of surface water, including discharges related to aircraft deicing, from impervious surfaces, such as pavement and terminal/hangar building roofs. Existing on-airport detention ponds collect stormwater, protect water quality, and control runoff. Because they slowly release water after storms, they may create standing bodies of water that can attract hazardous wildlife. Where the airport has developed a Wildlife Hazard Management Plan, Part 139 regulations require the immediate correction of any wildlife hazards arising from existing stormwater facilities located on or near airports using appropriate wildlife hazard mitigation techniques. Airport operators should develop measures to minimize hazardous wildlife attraction in consultation with a Qualified Airport Wildlife Biologist.
- 2.3.1.2 Where possible, airport operators should modify stormwater detention ponds to allow a maximum 48-hour detention period for the design storm. The combination of open water and vegetation is particularly attractive to waterfowl and other hazardous wildlife. Water management facilities holding water longer than 48 hours should be maintained in a manner that keeps them free of both emergent and submergent vegetation. The FAA recommends that airport operators avoid or remove retention ponds and detention ponds featuring dead storage to eliminate standing water. Detention basins should remain totally dry between rainfalls. Where constant flow of water is anticipated through the basin, or where any portion of the basin bottom may remain wet, the detention facility should include a concrete or paved pad and/or ditch/swale in the bottom to prevent vegetation that may provide nesting habitat. Drainage basins with a concrete or paved pad should be maintained to prevent or remove any sediment build-up to prevent vegetation growth.
- 2.3.1.3 When it is not possible to drain a large detention pond completely, airport operators may use physical barriers, such as bird balls, wire grids, pillows,

---

<sup>3</sup> See Advisory Circular 150/5200-36, *Qualifications for Wildlife Biologist Conducting Wildlife Hazard Assessments and Training Curriculums for Airport Personnel Involved in Controlling Wildlife Hazards on Airports.*

or netting, to deter birds and other hazardous wildlife. When physical barriers are proposed, airport operators must evaluate their use, effectiveness and maintenance requirements. Airport operators must also ensure physical barriers will not adversely affect water rescue. Before installing any physical barriers over detention ponds on Part 139 airports, airport operators must get approval from the appropriate FAA Regional Airports Division Office.

- 2.3.1.4 The FAA recommends that airport operators encourage off-airport stormwater treatment facility operators to incorporate appropriate wildlife hazard mitigation techniques into stormwater treatment facility operating practices when their facility is located within the separation criteria specified in Paragraphs 1.2 through 1.4.

### 2.3.2 New Stormwater Management Facilities.

The FAA recommends that storm water management systems located within the separations identified in Paragraphs 1.2 through 1.4 be designed and operated so as not to create above-ground standing water. Stormwater detention ponds should be designed, engineered, constructed, and maintained for a maximum 48-hour detention period after the design storm and to remain completely dry between storms. To facilitate the control of hazardous wildlife, the FAA recommends the use of steep-sided, rip-rap or concrete lined, narrow, linear-shaped water detention basins. When it is not possible to place these ponds away from an airport's aircraft operations area (but still on airport property), airport operators may use physical barriers, such as bird balls, wire grids, floating covers, vegetation barriers (bottom liners), or netting, to prevent access of hazardous wildlife to open water and minimize aircraft-wildlife interactions. Caution is advised when nets or wire grids are used for deterring birds from attractants. Mesh size should be < 5 cm (2") to avoid entangling and killing birds and should not be made of a monofilament material. Grids installed above and across water to deter hazardous birds (e.g., waterfowl, cormorants, etc.) are different than using a small mesh covering but also provides an effective deterrent. Grid material, size, pattern and height above water may differ on a case-by-case basis. When physical barriers are used, airport operators must evaluate their use and ensure they will not adversely affect water rescue. Before installing any physical barriers over detention ponds on Part 139 airports, a review by a Qualified Airport Wildlife Biologist should be conducted, prior to approval from the appropriate FAA Regional Airports Division Office. All vegetation in or around detention basins that provide food or cover for hazardous wildlife should be eliminated. If soil conditions and other requirements allow, the FAA encourages the use of underground storm water infiltration systems because they are less attractive to wildlife.

### 2.3.3 Existing Wastewater Treatment Facilities.

- 2.3.3.1 The FAA recommends that airport operators immediately correct any wildlife hazards arising from existing wastewater treatment facilities located on or near the airport.

2.3.3.2 Where required, a wildlife management plan will outline appropriate wildlife hazard mitigation techniques. Accordingly, airport operators should encourage wastewater treatment facility operators to incorporate measures, developed in consultation with a Qualified Airport Wildlife Biologist, to minimize hazardous wildlife attractants. Airport operators should also encourage those wastewater treatment facility operators to incorporate these mitigation techniques into their standard operating practices. In addition, airport operators should consider the existence of wastewater treatment facilities when evaluating proposed sites for new airport development projects and avoid such sites when practicable.

#### 2.3.4 New Wastewater Treatment Facilities.

The FAA recommends against the construction of new wastewater treatment facilities or associated settling ponds within the separations identified in Paragraphs 1.2 through 1.4. Appendix 1 defines wastewater treatment facility as “any devices and/or systems used to store, treat, recycle, or reclaim municipal sewage or liquid industrial wastes.” The definition includes any pretreatment involving the reduction or elimination of pollutants prior to introducing such pollutants into a treatment facility. When a wastewater treatment facility is proposed within the separation criteria, the airport operator, project proponent, and local jurisdiction should discuss the proposed project location with regard to its location near the airport and the separation distances identified in Paragraphs 1.2 through 1.4. If possible, a more suitable location for the proposed facility should be identified. If no other suitable location exists, FAA recommends that the proposed facility plans be reviewed by a Qualified Airport Wildlife Biologist to identify measures to avoid or reduce the facility’s potential to attract hazardous wildlife. If appropriate measures cannot be incorporated to reduce potential wildlife hazards, airport operators should document their opposition in a letter to the local jurisdiction.

#### 2.3.5 Artificial Marshes.

In warmer climates, wastewater treatment facilities sometimes employ artificial marshes and use submergent and emergent aquatic vegetation as natural filters. These artificial marshes may be used by some species of flocking birds, such as blackbirds and waterfowl, for breeding or roosting activities. The FAA recommends against establishing artificial marshes within the separations identified in Paragraphs 1.2 through 1.4.

#### 2.3.6 Wastewater Discharge and Sludge Disposal.

The FAA recommends careful consideration regarding the discharge of wastewater or biosolids (i.e., secondarily treated sewage sludge) on airport property. Such discharges might improve soil moisture and quality on unpaved areas and lead to improved turf growth. Depending on the airfield plant communities and habitats present, this can be an attractive food source for many species of animals or, conversely, could result in limited attractiveness to hazardous wildlife. Also, improved turf requires more frequent mowing and could attract geese. Airports should improve their turf with the goal of a monoculture of turf that is least attractive to wildlife. Wastewater or biosolids

applications might assist in achieving this goal. Caution should be exercised when discharges saturate airfield areas adjacent to paved surfaces. The resultant soft, muddy conditions could restrict or prevent emergency vehicles from reaching accident sites in a timely manner.

## 2.4 Wetlands.

Wetlands provide a variety of functions and can be regulated by local, state, and Federal laws. Wetlands can be attractive to many types of wildlife, including many which rank high on the list of hazardous wildlife species (Table 1 - AC 150/5200-32). Some types of wetlands are not as attractive to wildlife as others and they should be reviewed on a case-by-case basis to determine the likelihood of proposed wetlands increasing the numbers of hazardous wildlife at the airport. Factors such as size, shape, location, canopy cover and vegetative composition among other things should be considered when determining compatibility.

**Note:** If questions exist as to whether an area qualifies as a wetland, contact the District Office of the U.S. Army Corps of Engineers, the Natural Resources Conservation Service, or a wetland consultant qualified to delineate wetlands.

### 2.4.1 Existing Wetlands on or near Airport Property.

If wetlands are located on or near airport property, airport operators should be alert to any wildlife use or habitat changes in these areas that could affect safe aircraft operations. At public-use airports, the FAA recommends immediately correcting, in cooperation with local, state, and Federal regulatory agencies, any wildlife hazards arising from existing wetlands located on or near airports within 5 miles of the aircraft operations area. Where required, a wildlife management plan will outline appropriate wildlife hazard mitigation techniques. Accordingly, airport operators should develop measures to minimize hazardous wildlife attraction in consultation with a FAA Qualified Airport Wildlife Biologist.

### 2.4.2 New Airport Development.

Whenever possible, the FAA recommends locating new airports using the separations from wetlands identified in Paragraphs 1.2 through 1.4. Where alternative sites are not practicable, or when airport operators are expanding an existing airport into or near wetlands, a Qualified Airport Wildlife Biologist, in coordination with the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, and the state wildlife management agency should evaluate the wildlife hazards and prepare a wildlife management plan that indicates methods of minimizing the hazards.

### 2.4.3 Mitigation for Wetland Impacts from Airport Projects.

Wetland mitigation may be necessary when unavoidable wetland disturbances result from new airport development projects or projects required to correct wildlife hazards from wetlands. Wetland mitigation must be designed so it does not create a wildlife hazard. The FAA recommends that wetland mitigation projects that may attract hazardous wildlife be sited outside of the separations identified in Paragraphs 1.2 through 1.4.

#### 2.4.3.1 **Onsite Mitigation of Wetland Functions.**

Wetland mitigation/conservation easements must not inhibit the airport operator's ability to effectively control hazardous wildlife on or near the mitigation site or effectively maintain other aspects of safe airport operations. Enhancing such mitigation areas to attract hazardous wildlife must be avoided. The FAA will review any onsite mitigation proposals to determine compatibility with safe airport operations and grant assurance compliance. Early coordination with the FAA is encouraged for any proposal to use airport land for wetland mitigation. A Qualified Airport Wildlife Biologist should evaluate any wetland mitigation projects that are needed to protect unique wetland functions and that must be located in the separation criteria in Paragraphs 1.2 through 1.4 before the mitigation is implemented. A wildlife management plan should be developed to reduce the wildlife hazards.

#### 2.4.3.2 **Offsite Mitigation of Wetland Functions.**

- 2.4.3.2.1 The FAA recommends that wetland mitigation projects that may attract hazardous wildlife be sited outside of the separations identified in Paragraphs 1.2 through 1.4 unless they provide unique functions that must remain onsite (see 2.4.3.1). Agencies that regulate impacts to or around wetlands recognize that it may be necessary to split wetland functions in mitigation schemes. Therefore, regulatory agencies may, under certain circumstances, allow portions of mitigation to take place in different locations.
- 2.4.3.2.2 The FAA encourages landowners or communities supporting the restoration or enhancement of wetlands to do so only after critically analyzing how those activities would affect aviation safety. To do so, landowners or communities should contact the affected airport sponsor, FAA, and/or a Qualified Airport Wildlife Biologist.
- 2.4.3.2.3 Those parties should work cooperatively to develop restoration or enhancement plans that would not worsen existing wildlife hazards or create such hazards. See Paragraphs 4.1.1 – 4.1.3 for land-use modifications evaluation criteria.
- 2.4.3.2.4 If parties develop a mutually acceptable restoration or enhancement plan, the landowner or community proposing the restoration or enhancement must monitor the restored or enhanced site. This monitoring must verify that efforts have not worsened or created hazardous wildlife attraction or activity. If such attraction or activity occurs, the landowner or community should work with the airport sponsor, or a Qualified Airport Wildlife Biologist to reduce the hazard to aviation.



#### 2.4.3.3 **Mitigation Banking.**

Wetland mitigation banking is the creation or restoration of wetlands in order to provide mitigation credits that can be used to offset permitted wetland losses. Mitigation banking benefits wetland resources by providing advance replacement for permitted wetland losses; consolidating small projects into larger, better-designed and managed units; and encouraging integration of wetland mitigation projects with watershed planning. This last benefit is most helpful for airport projects, as wetland impacts mitigated outside of the separations identified in Paragraphs 1.2 through 1.4 can still be located within the same watershed. Wetland mitigation banks meeting the separation criteria offer an ecologically sound approach to mitigation in these situations. Airport operators should work with local watershed management agencies or organizations to develop mitigation banking for wetland impacts on airport property.

#### 2.5 **Dredge Spoil Containment Areas.**

The FAA recommends against locating dredge spoil containment areas (also known as Confined Disposal Facilities) within the separations identified in Paragraphs 1.2 through 1.4 if the containment area or the spoils contain material that would attract hazardous wildlife. Proposals for new dredge spoil containment areas located within the separation distances should be reviewed on a case-by-case basis to determine the likelihood of resulting in an increase in hazardous wildlife. The FAA recommends that airport sponsors work with a Qualified Airport Wildlife Biologist and/or the FAA to review proposals for dredge spoil containment areas located within separation criteria.

#### 2.6 **Agricultural Activities.**

Many agricultural crops can attract hazardous wildlife and should not be planted within the separations identified in Paragraphs 1.2 through 1.4. Corn, wheat, and other small grains in particular should be avoided. If the airport has no financial alternative to agricultural crops to produce the income necessary to maintain the viability of the airport, then the airport should consider growing crops that hold little food value for hazardous wildlife, such as grass hay. Attractiveness to hazardous wildlife species during all phases of production, from planting through harvest and fallow periods, should be considered when contemplating the use of airport property for agricultural production. Where agriculture is present, crop residue (e.g., waste grain) should not be left in the field following harvest. Also, airports should consult AC 150/5300-13, *Airport Design*, to ensure that agricultural crops do not create airfield obstructions or other safety hazards. Before planning or initiating any agricultural practices on airport property, operators should get approval from the appropriate FAA regional Airports Division Office and demonstrate that the additional cost of wildlife control and potential accidents is offset by revenue generated by agricultural leases. Annual review of the Airport Certification Manual by the Certification Inspector does not constitute approval and is insufficient to meet this requirement.

### 2.6.1 Livestock Production.

Confined livestock operations (i.e., feedlots, dairy operations, hog or chicken production facilities, or egg laying operations) often attract flocking birds, such as blackbirds, starlings, or pigeons that pose a hazard to aviation. Therefore, the FAA recommends against such facilities within the separations identified in Paragraphs 1.2 through 1.4. The airport operator should be aware of any wildlife hazards that appear to be attracted to off-site livestock operations and consider working with a Qualified Airport Wildlife Biologist to identify reasonable and feasible measures that may be proposed to landowners to reduce the attractiveness of the site to the potentially hazardous wildlife species.

2.6.1.1 In exceptional circumstances, and following FAA review and approval, livestock may be grazed on airport property as long as they are off the airfield and separated behind fencing where they cannot pose a hazard to aircraft. The livestock should be fed and watered as far away from the airfield and approach/departure space as possible because the feed and water may attract birds. The wildlife management plan should include monitoring and wildlife mitigation for any areas where the livestock and their feed/water is located in case a wildlife hazard is detected. Airports without wildlife management plans should equally consider monitoring and mitigation protocols to identify and address any wildlife hazards associated with livestock and their feeding operations.

### 2.6.2 Alternative Uses of Agricultural Land.

2.6.2.1 Habitat modification both on and surrounding an airfield is one of the best and most economical long term mitigation strategies to decrease risk that wildlife pose to flight safety. Alternative land uses (e.g., solar and biofuel) at airports could help mitigate many of the challenges for the airport operator, developers, and conservationists. However, careful planning must first determine that proposed alternative energy production at airports does not create wildlife attractants or other hazards.

2.6.2.2 Some airports are surrounded by vast areas of farmed land within the distances specified in Paragraphs 1.2 through 1.4. Seasonal uses of agricultural land for activities such as hunting can create a hazardous wildlife situation. In some areas, farmers will rent their land for hunting purposes. Rice farmers, among others, flood their land to attract waterfowl or for conservation efforts. This is often done during waterfowl hunting season to obtain additional revenue by renting out duck blinds.

2.6.2.3 The waterfowl hunters then use decoys and call in hundreds, if not thousands, of birds, creating a threat to aircraft safety. It is recommended that a Qualified Airport Wildlife Biologist review, in coordination with local farmers and producers, these types of seasonal land uses and incorporate mitigating measures into the wildlife management plan, when possible.

## 2.7 **Aquaculture.**

Aquaculture is the breeding, rearing, and harvesting of fish, shellfish, and plants in all types of water environments including ponds, rivers, lakes, and the ocean. Aquaculture is used to produce food fish, sport fish, bait fish, ornamental fish, and to support restoration activities. Aquacultured species are grown in a range of facilities including tanks, cages, ponds, and raceways. When an aquaculture facility is proposed within the separation criteria, the airport operator, project proponent, and local jurisdiction should discuss the proposed project location with regard to its attraction to hazardous species, location near the airport and the separation distances identified in Paragraphs 1.2 through 1.4. If a facility is identified as a possible significant attraction, a more suitable location for the proposed facility should be identified. If no other suitable location exists, it is recommended that the proposed facility plans be reviewed by a Qualified Airport Wildlife Biologist to identify measures to avoid or reduce the facility's potential to attract hazardous wildlife.

### 2.7.1 Freshwater Aquaculture.

2.7.1.1 Freshwater aquaculture activities (e.g., catfish, tilapia, trout or bass production) are typically conducted outside of fully enclosed buildings in constructed ponds or tanks and are inherently attractive to a wide variety of birds and therefore pose a significant risk to airport safety when within the separation distances specified in Paragraphs 1.2 through 1.4. Freshwater aquaculture should only be considered if extensive mitigation measures have been incorporated to eliminate attraction to hazardous birds. Examples of such mitigation include:

1. Netting or other material to exclude hazardous birds (e.g., eagles, osprey, gulls, cormorants);
2. Acoustic hazing including pyrotechnics, propane cannons, directional sonic/hailing devices and other similar technologies;
3. Feeding procedure cleanliness, exclusion techniques prohibiting birds from perching or accessing food; efficiency of feeding operation procedures that reduce fish food attraction to hazardous birds;
4. Operation procedure efficiency transferring live fish to and from enclosures or removal of dead fish; maintenance and upkeep of facility;
5. Monitoring, mitigation and communication protocols with nearby airports as a proactive safety feature in response to specific hazardous species in the event they are identified at the facility in unacceptable numbers.

### 2.7.2 Marine Aquaculture.

Marine aquaculture (Mariculture) refers to the culturing of species that live in the ocean. When appropriately managed and mitigated as necessary, mariculture facilities do not pose a significant risk to airport safety.

### 2.7.2.1 **Finfish Mariculture.**

2.7.2.1.1 U.S. finfish mariculture primarily produces salmon and steelhead trout as well as lesser amounts of cod, moi, yellowtail, barramundi, seabass, and seabream. Maricultures use rigid and non-rigid enclosures (e.g., cages) at the surface or submerged in the water column. These enclosures may be fully enclosed, or be open at the top or covered with netted material to negate losses from depredation by birds or other predators. Different facilities employ different designs and operational protocols.

2.7.2.1.2 While mariculture operations typically do not pose a significant attractant to hazardous birds, design and operational features can be incorporated as permit conditions to mitigate attraction and effectively reduce this risk. Examples of such mitigation include:

1. Fully enclosed cages using netting or other material to exclude hazardous birds (e.g., gulls, cormorants, pelicans) and to insure retention of fish;
2. Submerged enclosures to reduce attraction to hazardous birds;
3. Feed barge cleanliness, exclusion techniques prohibiting birds from perching or accessing food; efficiency of feeding operation procedures that reduce fish food attraction to hazardous birds;
4. Operation procedure efficiency transferring live fish to and from enclosures or removal of dead fish; maintenance and upkeep of facility;
5. Monitoring, mitigation and communication protocols with nearby airports as a proactive safety feature in response to specific hazardous species in the event they are identified at the facility in unacceptable numbers.

### 2.7.2.2 **Shellfish Mariculture.**

U.S. shellfish mariculture primarily produces oysters, clams, mussels, lobster and shrimp. Shellfish may be grown directly on the bottom, in submerged cages or bags, or on suspended lines. These types of mariculture operations do not typically present a significant attractant to hazardous birds. For those operations that are found to pose a significant risk, design and operation features that diminish possible attraction to hazardous bird species (e.g., reducing areas for perching or feeding) can effectively reduce this risk.

### 2.7.2.3 **Plant Mariculture.**

2.7.2.3.1 Microalgae, also referred to as phytoplankton, microphytes, or planktonic algae constitute the majority of cultivated algae. Macroalgae, commonly known as seaweed, also have many commercial and industrial uses.

- 2.7.2.3.2 While few commercial seaweed farms exist, the sector is growing. These types of mariculture operations do not typically present an attractant to hazardous birds.

## 2.8 **Golf Courses, Landscaping, Structures and Other Land-Use Considerations.**

### 2.8.1 Golf Courses.

The large grassy areas and open water found on most golf courses are attractive to hazardous wildlife, particularly Canada geese and some species of gulls. These species can pose a threat to aviation safety. If golf courses are located on or near airport property, airport operators should be alert to any wildlife use or habitat changes in these areas that could affect safe aircraft operations. Accordingly, airport operators should develop, at a minimum, onsite measures to minimize hazardous wildlife attraction in consultation with a Qualified Airport Wildlife Biologist. Existing golf courses located within these separations that have been documented to attract hazardous wildlife are encouraged to develop a program to reduce the attractiveness of the sites to species that are hazardous to aviation safety. The FAA recommends against construction of new golf courses within the separations identified in Paragraphs 1.2 through 1.4 if determined that the new facility would create a significant wildlife hazard attractant by a Qualified Airport Wildlife Biologist. Airport operators should ensure these golf courses are monitored on a continuing basis for the presence of hazardous wildlife. If hazardous wildlife is detected, corrective actions should be immediately implemented.

### 2.8.2 Landscaping and Landscape Maintenance.

2.8.2.1 Depending on its geographic location, landscaping can attract hazardous wildlife. The FAA recommends that airport operators approach landscaping with caution and confine it to airport areas not associated with aircraft movements. Vegetation that produces seeds, fruits, or berries, or that provides dense roosting or nesting cover should not be used. Airports should develop a landscape plan to include approved and prohibited plants. The landscape plan should consider the watering needs of mature plants. A Qualified Airport Wildlife Biologist should review all landscaping plans. Airport operators should also monitor all landscaped areas on a continuing basis for the presence of hazardous wildlife. If hazardous wildlife is detected, corrective actions should be immediately implemented.

2.8.2.2 Turf grass areas on airports have the potential to be highly attractive to a variety of hazardous wildlife species. Research conducted by the USDA Wildlife Services' National Wildlife Research Center has shown that no one airfield vegetation management regimen will deter all species of hazardous wildlife in all situations. The composition and height of airfield grasslands should be properly managed to reduce their attractiveness to hazardous wildlife. In many situations, an intermediate height, monoculture turf grass might be most favorable. In cooperation with a

Qualified Airport Wildlife Biologist, airport operators should develop airport turf grass management plans on a prescription basis, including cultivar selection during reseeding efforts, that is specific to the airport's geographic location, climatic conditions, and the type of hazardous wildlife likely to frequent the airport.

2.8.2.3 Airport operators should ensure that plant varieties attractive to hazardous wildlife are not used on the airport. Disturbed areas or areas in need of re-vegetating should not be planted with seed mixtures containing millet or any other large-seed producing grass. For airport property already planted with seed mixtures containing millet, rye grass, or other large-seed producing grasses, the FAA recommends disking, plowing, or another suitable agricultural practice to prevent plant maturation and seed head production. Plantings should follow the specific recommendations for grass management and seed and plant selection made by the State University Cooperative Extension Service, the local office of Wildlife Services, or a Qualified Airport Wildlife Biologist. Airport operators should also consider developing and implementing a preferred/prohibited plant species list, reviewed by a Qualified Airport Wildlife Biologist, which has been designed for the geographic location to reduce the attractiveness to hazardous wildlife for landscaping airport property.

### 2.8.3 Structures.

2.8.3.1 Certain structures attract birds for loafing and nesting. Flat rooftops can be attractive to many species of gulls for nesting, hangars provide roosting / nesting opportunities for rock doves, towers, light posts and navigation aids can provide loafing / hunting perches for raptors and aircraft can provide loafing / nesting sites for European starlings, blackbirds and other species. These structures should be monitored and mitigated, if located on-site. Off-site structural attractions may require additional coordination to effectively mitigate their use by hazardous species.

2.8.3.2 Cellular communications towers are becoming increasingly more attractive to large birds (e.g., osprey, eagles, herons, vultures) for nesting and rearing their young. This problem is a growing concern because once the young fledge from nests built on manmade structures they are more likely to return to these kinds of sites to reproduce in future years.

### 2.8.4 Other Hazardous Wildlife Attractants.

Other land uses (e.g., conservation easements, parks, wildlife management areas) or activities not addressed in this AC may have the potential to attract hazardous wildlife. Regardless of the source of the attraction, when hazardous wildlife is noted on a public-use airport, each certificate holder must take prompt remedial action(s) to protect aviation safety and all non-certificated airports should take prompt remedial action(s) to protect aviation safety.

## 2.9 **Habitat for State and Federally Listed Species on Airports.**

An airport's air operations area is an artificial environment that has been created and maintained for aircraft operations. Because an aircraft operations area can be markedly different from the surrounding native landscapes, it may attract wildlife species that do not normally occur, or that occur only in low numbers in the area. Some of the grassland species attracted to an airport's aircraft operations area are at the edge of their natural ranges, but are attracted to habitat features found in the airport environment. Also, some wildlife species may occur on the airport in higher numbers than occur naturally in the region because the airport offers habitat features the species prefer. Some of these wildlife species are Federal or state-listed threatened and endangered species or have been designated by state resource agencies as species of special concern.

### 2.9.1 State-Listed Species Habitat Concerns.

2.9.1.1 Many state wildlife agencies have requested that airport operators facilitate and encourage habitat on airports for state-listed threatened and endangered species or species of special concern. Airport operators should exercise caution in adopting new management techniques because they may increase wildlife hazards and be inconsistent with safe airport operations. Managing the on-airport environment to facilitate or encourage the presence of hazardous wildlife species can create conditions that are incompatible with, or pose a threat to, aviation safety.

2.9.1.2 Not all state-listed threatened and endangered species or species of concern pose a direct threat to aviation safety. However, these species may pose an indirect threat and be hazardous because they attract other wildlife species or support prey species attractive to other species that are directly hazardous. Also, the habitat management practices that benefit these state-listed threatened and endangered species and species of special concern may attract other hazardous wildlife species. On-airport habitat and wildlife management practices designed to benefit wildlife that directly or indirectly create safety hazard where none existed before are incompatible with safe airport operations.

### 2.9.2 Federally Listed Species Habitat Concerns.

2.9.2.1 The FAA supports efforts to protect threatened and endangered species, as a matter of principle and consistent with the Endangered Species Act of 1973. The FAA must balance these requirements with our requirements and mission to maintain a safe and efficient airport system. Requests to enhance or create habitat for threatened and endangered species often conflict with the safety of the traveling public and may place the protected species at risk of mortality by aircraft collisions. The FAA does not support the creation, conservation or enhancement of habitat or refuges to attract endangered species on airports. If endangered species are present on an airport, specific obligations may apply under the Endangered

Species Act, 16 U.S.C. § 1531 et seq. and the airport operator should contact the Airports District Office Environmental Protection Specialist.

- 2.9.2.2 The designation of critical habitat for listed species under the Endangered Species Act on airport lands may be an incompatible land use in conflict with the intended and dedicated purpose of airport lands and may limit or preclude the ability of the airport to develop new infrastructure and growth capacity to meet future air carrier service demand. In addition, depending on the listed species (primarily but not limited to avian species), the designation of critical habitat within the separation distances provided in paragraphs 1.2 - 1.4 can represent a hazardous wildlife attractant in conflict with 14 CFR Part 139.337.

## **2.10 Synergistic Effects of Surrounding Land Uses.**

There may be circumstances where two or more different land uses would not, by themselves, be considered hazardous wildlife attractants or are located outside of the separations identified in Paragraphs 1.2 through 1.4 but collectively may create a wildlife corridor directly through the airport and/or surrounding airspace. An example involves a lake located outside of the separation criteria on the east side of an airport and a large hayfield on the west side of an airport. These two land uses, taken together, could create a flyway for Canada geese directly across the airspace of the airport. Airport operators must consider the entire surrounding landscape and community when developing the wildlife management plan.



Page Intentionally Blank

## **CHAPTER 3. PROCEDURES FOR WILDLIFE HAZARD MANAGEMENT BY OPERATORS OF PUBLIC-USE AIRPORTS AND CONDITIONS FOR NON-CERTIFICATED AIRPORTS TO CONDUCT WILDLIFE HAZARD ASSESSMENTS AND WILDLIFE HAZARD SITE VISITS**

### **3.1 Introduction.**

In recognition of the increased risk of serious aircraft damage or the loss of human life that can result from a wildlife strike, the FAA recommends all airports conduct a Wildlife Hazard Site Visit or Wildlife Hazard Assessment unless otherwise mandated after an initial triggering events defined in Part 139 Section 139.337. After the airport has completed the site visit or assessment and implemented a wildlife management plan, investigations should be conducted following subsequent triggering events to determine if the original assessment and plan adequately address the situation or if conditions have changed that would warrant an update to the plan. In this section, airports that are certificated under 14 C.F.R. § 139.337 are referred to as “certificated airports” and all others are referred to as “non-certificated airports.” When a statement refers to both certificated and non-certificated airports, “airport” or “all airports” is used.

### **3.2 Coordination with Qualified Airport Wildlife Biologists.**

Hazardous wildlife management is a complex discipline and conditions vary widely across the United States. Therefore, only airport wildlife biologists meeting the qualification requirements in Advisory Circular 150/5200-36, *Qualifications for Wildlife Biologist Conducting Wildlife Hazard Assessments and Training Curriculums for Airport Personnel Involved in Controlling Wildlife Hazards on Airports*, can conduct Site Visits and Assessments. Airports must maintain documentation that the Qualified Airport Wildlife Biologist meets the qualification requirements in Advisory Circular 150/5200-36.

### **3.3 Wildlife Hazard Management at Airports: A Manual For Airport Personnel.**

- 3.3.1 The Wildlife Hazard Management at Airports manual, prepared by FAA and USDA Wildlife Services staff, contains a compilation of information to assist airport personnel in the development, implementation, and evaluation of wildlife management plans at airports. The manual includes specific information on the nature of wildlife strikes, legal authority, regulations, wildlife management techniques, Assessments, Plans, and sources of help and information. The manual is available in three languages: English, Spanish, and French. It can be viewed and downloaded free of charge from the FAA’s wildlife hazard mitigation web site: [https://www.faa.gov/airports/airport\\_safety/wildlife](https://www.faa.gov/airports/airport_safety/wildlife). This manual only provides a starting point for addressing wildlife hazard issues at airports. FAA recommends that airports consult with a Qualified Airport Wildlife Biologists to assist with development of a wildlife management plan and the implementation of management actions by airport personnel.

- 3.3.2 There are many other resources complementary to this manual for use in developing and implementing wildlife management plans. Several are listed in the manual's bibliography or on the FAA Wildlife Mitigation website:  
[https://www.faa.gov/airports/airport\\_safety/wildlife](https://www.faa.gov/airports/airport_safety/wildlife)

### **3.4 Wildlife Hazard Site Visits and Wildlife Hazard Assessments.**

- 3.4.1 Operators of certificated airports are encouraged to conduct an initial assessment regardless of whether the airport has experienced one of the triggering events. Doing so would allow the airport to take proactive action and mitigate the wildlife risk before experiencing an incident. All other airports are encouraged to conduct an assessment or site visit (as defined in FAA Advisory Circular 150/5200-38) conducted by a Qualified Airport Wildlife Biologist (as defined in FAA Advisory Circular 150/5200-36). Part 139 certificated airports are currently required to ensure that an assessment is conducted consistent with 14 C.F.R. § 139.337.
- 3.4.2 The intent of a site visit is to provide an abbreviated analysis of an airport's wildlife hazards and to provide timely information that allows the airport to expedite the mitigation of these hazards. The FAA also recommends that airports conduct an assessment or site visit as soon as practicable in order to identify any immediate wildlife hazards and/or mitigation measures.
- 3.4.3 Non-certificated airports should submit the results of the site visit or assessment to the FAA for review. The FAA will review the submitted site visit or assessment and make a recommendation regarding the development of a wildlife management plan. A wildlife management plan can be developed based on a site visit and will be required if the non-certificated airport is going to request federal grants for the purpose of mitigating wildlife hazards.

### **3.5 Wildlife Hazard Management Plan.**

- 3.5.1 The FAA will consider the results of the assessment, along with the aeronautical activity at the airport and the views of the airport operator and airport users, in determining whether a wildlife management plan is needed for certificated airports, or recommended for non-certificated airports.
- 3.5.2 If the FAA determines that a wildlife management plan is needed for a certificated airport, the airport operator must formulate a plan, using the assessment as its basis and submit to the FAA for approval. If the FAA recommends that a non-certificated airport develop a plan, either an assessment or a site visit can be used as the basis for the wildlife management plan. Airports should consult AC 150/5200-38, *Protocol for the Conduct and Review of Wildlife Hazard Site Visits, Wildlife Hazard Assessments, and Wildlife Hazard Management Plans*, for further information on preparation and implementation requirements for their wildlife management plan.

- 3.5.3 The goal of an airport's wildlife management plan is to minimize the risk to aviation safety, airport structures or equipment, or human health posed by populations of hazardous wildlife on and around the airport. For wildlife management plans to effectively reduce wildlife hazards on and near airports, accurate and consistent wildlife strike reporting is essential. Airports should consult AC 150/5200-32, *Reporting Wildlife Aircraft Strikes*, for further information on responsibilities and recommendations concerning wildlife strikes.
- 3.5.4 The wildlife management plan must identify hazardous wildlife attractants on or near the airport and the appropriate wildlife management techniques to minimize the wildlife hazard. It must also prioritize the management measures.

### **3.6 Local Coordination.**

The FAA recommends establishing a Wildlife Hazards Working Group to facilitate the communication, cooperation, and coordination of the airport and its surrounding community necessary to ensure the effectiveness of the wildlife management plan. The cooperation of the airport community is essential to prevent incompatible development in the airport vicinity. Whether on or off the airport, input from all involved parties must be considered when a potentially hazardous wildlife attractant is being proposed. Based on available resources, airport operators should undertake public education activities with the local planning agencies because some activities in the vicinity of an airport, while harmless under normal conditions, can attract wildlife and present a danger to aircraft (see Paragraphs 4.5 to 4.8). For example, if public trails are planned near wetlands or in parks adjoining airport property, the public should know that feeding birds and other wildlife in the area may pose a risk to aircraft.

### **3.7 Operational Notifications of Wildlife Hazards.**

- 3.7.1 Operational notifications include active correspondence addressing wildlife issues on or near an airport, notifications and alerts. If an existing land-use practice creates a wildlife hazard and the land-use practice or wildlife hazard cannot be immediately eliminated, airport operators must issue a Notice to Airmen (NOTAM) and encourage the land owner or manager to take steps to control the wildlife hazard and minimize further attraction. Permanent attractions that cannot be eliminated or mitigated may be noted in the Airport/Facility Directory. NOTAMS and Airport/Facility Directory notifications are not appropriate for short-term or immediate advisories that can be relayed via Pilot Reports, direct air traffic control voice communications, or temporary Automated Terminal Advisory System alerts. Care should be given to avoid the continual broadcast of general warnings for extended periods of time. General warnings such as "birds in the vicinity of the aerodrome" offer little timely information to aid pilots and eventually may be ignored if not updated.
- 3.7.2 The Automated Terminal Advisory System (ATIS) is a continuous broadcast of recorded aeronautical information for aerodromes and their immediate surroundings. ATIS broadcasts contain essential information, such as current weather information,

active runways, available approaches, wildlife hazards and any other information required by the pilots. They indicate significant (moderate or severe) wildlife activity, as reported by an approved agency that presents temporary hazards on the ATIS broadcast. Pilots take notice of available ATIS broadcasts before contacting the local control unit, which reduces the controllers' workload and relieves frequency congestion. The recording is updated in fixed intervals or when there is a significant change in the information. Although ATIS broadcasts involving wildlife should be timely and specific, pilots do not need to know species-specific information. General descriptive information detailing size and number of animals, locations and timing of occurrence provides useful, actionable information for pilots.

- 3.7.3 A pilot report (PIREP) is reported by a pilot to indicate encounters of hazardous weather (e.g., icing or turbulence) and hazardous wildlife. Pilot reports are short-lived warnings providing immediate information on pilot observations that are transmitted in real-time to air traffic control. Large animals near active surfaces, soaring vultures and raptors within approach/ departure corridors and waterfowl such as geese feeding in grassy areas next to runways are all examples of pilot reports generated by pilots.

### 3.8 Federal and State Depredation Permits.

The FAA recommends that airports maintain federal and state depredation permits to allow mitigation and/ or removal of hazardous species. All protected species require special permits for lethal mitigation or capture and relocation procedures. Similarly, endangered or threatened species mitigation also requires special permits. The FAA recommends that airports work closely with a Qualified Airport Wildlife Biologist during the U.S. Fish and Wildlife Service consultation and permitting process. The following Orders can help airports reduce risks from hazardous species by allowing private citizens to control hazardous species off airport properties without the need for a Federal depredation permit.

#### 3.8.1 Standing Depredation Orders.

- 3.8.1.1 Federal law allows people to protect themselves and their property from damage caused by migratory birds. Provided no effort is made to kill or capture the birds, a depredation permit is not required to merely scare or herd depredating migratory birds other than endangered or threatened species or bald or golden eagles (50 CFR 21.41).
- 3.8.1.2 In addition, certain species of migratory birds may be mitigated without a federal permit under specific circumstances, many of which relate to agricultural situations. The following Standing Depredation Orders have applicability near airports:
- 50 CFR § 21.49- Control Order for Resident Canada Geese at Airports and Military Airfields.
  - 50 CFR § 21.50- Depredation Order for Resident Canada Geese Nests and Eggs.

- 50 CFR § 21.43 - Depredation Order for Blackbirds, Cowbirds, Crows, Grackles, and Magpies.
- 50 CFR § 21.54 - Control Order for Muscovy Ducks in the United States.
- 50 CFR § 21.55 - Control Order for Invasive Migratory Birds in Hawaii.

Page Intentionally Blank

## **CHAPTER 4. RECOMMENDED PROCEDURES FOR THE FAA, AIRPORT OPERATORS AND OTHER GOVERNMENT ENTITIES REGARDING OFF-AIRPORT ATTRACTANTS**

### **4.1 FAA Notification and Review of Proposed Land-Use Practice Changes in the Vicinity of Public-Use Airports.**

4.1.1 For projects that are located within 5 miles of the airport's aircraft operations area, the FAA may review development plans, proposed land-use changes, operational changes, major federal actions or wetland mitigation plans to determine if such changes increase risk to airport safety by attracting hazardous wildlife on and around airports. The FAA is not a permitting agency for land use modifications that occur off airport properties, therefore, such reviews are typically initiated by state or federal permitting agencies seeking FAA input on new or revised permits. Each of the land uses listed in Chapter 2 of this AC has the potential to pose a risk to airport operations when they are located within the separation distances provided in Paragraphs 1.2 through 1.4.

4.1.2 Off-site land use modifications near airports may include an assessment of risk for facilities and land-use changes and, if necessary, mitigation strategies that may reduce risk to an acceptable level. However, the FAA recognizes that individual facilities or land-use modifications may present a range of attractants to different species, resulting in varying levels of risk. Therefore, the FAA considers each proposal on a case-by-case basis.

4.1.3 The FAA analyzes each land-use modification or new facility proposal prior to its establishment or any significant planned changes to design or operations that may increase the risk level. As part of a review, the FAA considers several factors that include, but are not limited to:

1. Type of attractant;
2. Size of attractant;
3. Location/distance of attractant from airport;
4. Design (e.g., construction, material, mitigation techniques employed into design);
5. Operation (e.g., cleanliness, constancy/ volume of use, seasonality, time of day);
6. Monitoring protocols (e.g., frequency, documentation, evaluation, species identification and number thresholds that trigger actions of communication or mitigation, baseline wildlife data);
7. Mitigation protocols (e.g., responsibilities, methods, intensity, pre-determined objectives, documentation, evaluation); and
8. Communication protocols to airport and/ or air traffic control tower;

4.1.4 The review of these factors may result in FAA recommended additions or modifications to a conditional use permit that allows the permitting agency to track compliance with the permittee obligations. Such conditions placed within a permit



may involve a comprehensive outline and recognition of individuals responsible for monitoring, communication, and mitigation measures if certain action thresholds are met. Action thresholds are defined in this instance as those pre-determined parameters (e.g., number, location, behavior, time of day) of specific hazardous species that would trigger a mitigation response. Additionally, baseline data should be used to determine the effect, if any, on wildlife populations at the proposed off-site location and/or at the airport.

- 4.1.5 Baseline data may need to be collected, depending on the existence of useful data and timeline for site modification. If, after taking into account the factors above, FAA determines that a facility poses a significant risk to airport safety, FAA will object to its establishment or renewal.
- 4.1.6 For projects that are located within 5 miles of the airport's aircraft operations area, the FAA Airport District Office may review development plans, proposed land-use changes, operational changes, major federal actions or wetland mitigation plans to determine if such changes present potential wildlife hazards to aircraft operations. The FAA considers sensitive airport areas as those that lie under or next to approach or departure airspace. This brief examination should indicate if further investigation is warranted.
- 4.1.7 Where a Qualified Airport Wildlife Biologist has conducted a further study to evaluate a site's compatibility with airport operations, the FAA may use the study results to make a determination.

## **4.2 Waste Management Facilities.**

### **4.2.1 Notification of New/Expanded Project Proposal.**

- 4.2.1.1 49 U.S.C. § 44718(d), prohibits the construction or establishment of new municipal landfills within 6 miles of certain public-use airports, when both the airport and the landfill meet specific conditions. See Paragraph 2.2 of this guidance for a more detailed discussion of these restrictions.
- 4.2.1.2 The Environmental Protection Agency (EPA) requires any landfill operator proposing a new or expanded waste disposal operation within 5 miles of a runway end to notify the appropriate FAA Regional Airports Division Office and the airport operator of the proposal. See 40 CFR § 258, *Criteria for Municipal Solid Waste Landfills*, Section 258.10, *Airport Safety*. The EPA also requires owners or operators of new landfill units, or lateral expansions of existing MSWLF landfill units, that are located within 10,000 feet of any airport runway end used by turbine-powered aircraft, or within 5,000 feet of any airport runway end used only by piston-type aircraft, to demonstrate successfully that such units are not hazards to aircraft. (See 4.3.2 below.)

- 4.2.1.3 When new or expanded municipal landfills are being proposed near airports, landfill operators must notify the airport operator and the FAA of the proposal as early as possible pursuant to 40 CFR § 258.
- 4.2.1.4 The FAA discourages the development of waste disposal and other facilities, discussed in Chapter 2, located within the separation criteria specified in Paragraphs 1.2 through 1.4. To show that a waste-handling facility sited within the separations identified in Paragraphs 1.2 through 1.4 does not attract hazardous wildlife and does not threaten aviation, the developer must establish the facility will not handle putrescible material other than that as outlined in 2.2.4. The FAA recommends against any facility other than those outlined in 2.2.4 (enclosed transfer stations). The FAA will use this information to determine if the facility will be a hazard to aviation.

### **4.3 Other Land-Use Practice Changes.**

- 4.3.1 The FAA encourages operators of public-use airports who become aware of proposed land use practice changes that may attract hazardous wildlife within 5 miles of their airports to notify their assigned Airport Certification Safety Inspector or Airports District Office Program Manager. The FAA also encourages proponents of such land use changes to notify the FAA as early in the planning process as possible. Advanced notice affords the FAA an opportunity (1) to evaluate the effect of a particular land-use change on aviation safety and (2) to support efforts by the airport sponsor to restrict the use of land next to or near the airport to uses that are compatible with the airport.
- 4.3.2 The airport operator, project proponent, or land-use operator may use FAA Form 7460-1, Notice of Proposed Construction or Alteration, or other suitable documents similar to FAA Form 7460-1 to notify the appropriate FAA Regional Airports Division Office. Project proponents can contact the appropriate FAA Regional Airports Division Office for assistance with the notification process prior to submitting Form 7460-1.
- 4.3.3 It is helpful if the notification includes a 15-minute quadrangle map of the area identifying the location of the proposed activity. The land-use operator or project proponent should also forward specific details of the proposed land-use change or operational change or expansion. In the case of solid waste landfills, the information should include the type of waste to be handled, how the waste will be processed, and final disposal methods.
- 4.3.4 Airports that have Received Federal Assistance.  
Airports that have received Federal assistance are required under their grant assurances to take appropriate actions to restrict the use of land next to or near the airport to uses that are compatible with normal airport operations. See Grant Assurance 21. The FAA recommends that airport operators oppose off-airport land-use changes or practices, to

the extent practicable, within the separations identified in Paragraphs 1.2 through 1.4, which may attract hazardous wildlife. Failure to do so may lead to noncompliance with applicable grant assurances. The FAA will not approve the placement of airport development projects pertaining to aircraft movement in the vicinity of hazardous wildlife attractants without appropriate mitigating measures. Increasing the intensity of wildlife control efforts is not a substitute for preventing, eliminating or reducing a proposed wildlife hazard. Airport operators should identify hazardous wildlife attractants and any associated wildlife hazards during any planning process for airport development projects.

#### **4.4 Coordination to Prevent Creation of New Off-Airport Hazardous Wildlife Attractants.**

Airport operators should work with local and regional planning and zoning boards to be aware of proposed land-use changes, or modification of existing land uses, that could create hazardous wildlife attractants within the separations identified in Paragraphs 1.2 through 1.4. Pay particular attention to proposed land uses involving creation or expansion of wastewater treatment facilities, development of wetland mitigation sites, or development or expansion of dredge spoil containment areas. At the very least, it is recommended that airport operators are on the notification list of the local planning board or equivalent review entity for all communities located within 5 miles of the airport, so they will receive notification of any proposed project and have the opportunity to review it for attractiveness to hazardous wildlife. This may be accomplished through one or more of the following:

##### **4.4.1 Site-specific Criteria.**

The airport should establish site-specific criteria for assessment of land uses attractive to hazardous wildlife and locations that would be of concern based on wildlife strikes and on wildlife abundance and activity at the airport and in the local area. These criteria may be more selective, but should not be less restrictive than this guidance.

##### **4.4.2 Outreach.**

Airports should actively seek to provide educational information and/ or provide input regarding local development, natural resource modification or wildlife-related concerns that affect wildlife hazards and safe air travel.

##### **4.4.2.1 External Outreach.**

Airport operators and a Qualified Airport Wildlife Biologist should consider outreach to local planning and zoning organizations on land uses of concern or to local organizations responsible for natural resource management (including wildlife, wetlands, and parks.) Airports should also consider developing and distributing position letters and educational materials on airport-specific concerns regarding wildlife hazards, wildlife activity and attraction. Finally, airports should provide formal comments on local procedures, laws, ordinances, plans, and regulatory actions such as permits related to land uses of concern.

#### 4.4.2.2 **Internal Outreach.**

Airports should consider developing and distributing position letters and educational materials on airport-specific concerns regarding species identification and mitigation procedures, wildlife hazards, wildlife activity and attraction to employees and personnel with access to the aircraft operations area.

#### 4.5 **Coordination on Existing Off-Airport Hazardous Wildlife Attractants.**

Airports are encouraged to work with landowners and managers to cooperatively develop procedures to monitor and manage hazardous wildlife attraction. If applicable, these procedures may include:

1. Conducting a wildlife hazard site visit by a wildlife biologist meeting the qualification requirements of Advisory Circular 150/5200-36, *Qualifications for Wildlife Biologist Conducting Wildlife Hazard Assessments and Training Curriculums for Airport Personnel Involved in Controlling Wildlife Hazards on Airports*
2. Conducting regular, standardized, wildlife monitoring surveys;<sup>4</sup>
3. Establishing threshold numbers of wildlife which would trigger certain actions and/or communications;
4. Establishment of procedures to deter or remove hazardous wildlife.

#### 4.6 **Prompt Remedial Action.**

For attractants found on and off airport property, and with landowner or manager cooperation, Part 139 certificated airports must take immediate action in accordance with their Airport Certification Manual and the requirements of Part 139.337, to alleviate wildlife hazards whenever they are detected. It is also recommended that non-certificated airports take immediate action to alleviate wildlife hazards whenever they are detected. In addition, airports should take prompt action to identify the source of attraction and cooperatively develop procedures to mitigate and monitor the attractant. **For Part 139 Certificated airports, immediate actions are required in accordance with 139.337(a).**

#### 4.7 **FAA Assistance.**

If there is a question on the implementation of any of the guidance in this section, contact the FAA Regional Airports Division for assistance.

---

<sup>4</sup> Recommended survey protocols can be found in AC 150/5200-38, *Protocol for the Conduct and Review of Wildlife Hazard Site Visits, Wildlife Hazard Assessments, and Wildlife Hazard Management Plans*, and DeVault, T.L., B.F. Blackwell, and J.L. Belant, eds. 2013. *Wildlife in Airport Environments: Preventing Animal–Aircraft Collisions through Science-Based Management*. Johns Hopkins University Press, Baltimore, MD, USA. 181 pp.

#### 4.7.1 Airport Documentation Procedures.

Airports should document on-site and off-site wildlife attractants as part of their “Wildlife Hazard Management Plan Annual Review,” “Wildlife Hazard Management Plan Review Following a Triggering Event,” and the airport’s Continual Monitoring Annual Report (as outlined in FAA Advisory Circular 150/5200-38). As a best management practice, airports may choose to keep a log to track contacts from landowners or managers, permitting agencies, or other entities concerning land uses near the airport.

## APPENDIX A. DEFINITIONS OF TERMS USED IN THIS ADVISORY CIRCULAR

### A.1 General.

This appendix provides definitions of terms used throughout this AC.

1. **Air operations area.** Any area of an airport used or intended to be used for landing, takeoff, or surface maneuvering of aircraft. An air operations area includes such paved areas or unpaved areas that are used or intended to be used for the unobstructed movement of aircraft in addition to its associated runway, taxiways, or apron.
2. **Airport operator.** The operator (private or public) or sponsor of a public-use airport.
3. **Approach or departure airspace.** The airspace, within 5 statute miles of an airport, through which aircraft move during landing or takeoff.
4. **Bird balls.** High-density plastic floating balls that can be used to cover ponds and prevent birds from using the sites.
5. **Certificate holder.** The holder of an Airport Operating Certificate issued under 14 C.F.R. Part 139.
6. **Construct a new municipal landfill.** To begin to excavate, grade land, or raise structures to prepare a municipal solid waste landfill as permitted by the appropriate regulatory or permitting agency.
7. **Detention ponds.** Storm water management ponds that hold storm water for short periods of time, a few hours to a few days.
8. **Establish a new municipal landfill.** When the first load of putrescible waste is received on-site for placement in a prepared municipal solid waste landfill.
9. **Fly ash.** The fine, sand-like residue resulting from the complete incineration of an organic fuel source. Fly ash typically results from the combustion of coal or waste used to operate a power generating plant.
10. **General aviation aircraft.** Any civil aviation aircraft operating under 14 CFR Part 91.
11. **Hazardous wildlife.** Species of wildlife (birds, mammals, reptiles), including feral and domesticated animals, not under control that may pose a direct hazard to aviation (i.e., strike risk to aircraft) or an indirect hazard such as an attractant to other wildlife that pose a strike hazard or are causing structural damage to airport facilities (e.g., burrowing, nesting, perching).
12. **Municipal Landfill.** A publicly or privately owned discrete area of land or an excavation that receives household waste and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 CFR § 257.2. A municipal landfill may receive other types wastes, such as commercial solid waste, non-hazardous sludge, small-quantity generator waste, and

industrial solid waste, as defined under 40 CFR § 258.2. A municipal landfill can consist of either a stand-alone unit or several cells that receive household waste.

13. **New municipal landfill.** A municipal solid waste landfill that was established or constructed after April 5, 2001.
14. **Piston-powered aircraft.** Fixed-wing aircraft powered by piston engines.
15. **Piston-use airport.** Any airport that does not sell Jet-A fuel for fixed-wing turbine-powered aircraft, and primarily serves fixed-wing, piston-powered aircraft. Incidental use of the airport by turbine-powered, fixed-wing aircraft would not affect this designation. However, such aircraft should not be based at the airport.
16. **Public agency.** A state or political subdivision of a state, a tax-supported organization, or an Indian tribe or pueblo (49 U.S.C. § 47102(19)).
17. **Public airport.** An airport used or intended to be used for public purposes that is under the control of a public agency; and of which the area used or intended to be used for landing, taking off, or surface maneuvering of aircraft is publicly owned (49 U.S.C. § 47102(20)).
18. **Public-use airport.** An airport used or intended to be used for public purposes where the area used or intended to be used for landing, taking off, or surface maneuvering of aircraft may be under the control of a public agency or privately owned and used for public purposes (49 U.S.C. § 47102(21)).
19. **Putrescible waste.** Solid waste that contains organic matter capable of being decomposed by micro-organisms and of such a character and proportion as to be capable of attracting or providing food for birds (40 CFR §257.3-8).
20. **Putrescible-waste disposal operation.** Landfills, garbage dumps, underwater waste discharges, or similar facilities where activities include processing, burying, storing, or otherwise disposing of putrescible material, trash, and refuse.
21. **Retention ponds.** Storm water management ponds that hold water for more than 48 hours.
22. **Risk.** Risk is the relationship between the severity and probability of a threat. It is the product of hazard level and abundance in the critical airspace, and is thus defined as the probability of a damaging strike with a given species.
23. **Runway protection zone.** An area off the runway end to enhance the protection of people and property on the ground (see AC 150/5300-13). The dimensions of this zone vary with the airport design, aircraft, type of operation, and visibility minimum.
24. **Scheduled air carrier operation.** Any common carriage passenger-carrying operation for compensation or hire conducted by an air carrier or commercial operator for which the air carrier, commercial operator, or their representative offers in advance the departure location, departure time, and arrival location. It does not include any operation that is conducted as a supplemental operation under 14 CFR Part 119 or as a public charter operation under 14 CFR Part 380 (14 CFR § 119.3).

25. **Sewage sludge.** Any solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment process; and a material derived from sewage sludge. Sewage does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works. (40 CFR § 257.2)
26. **Sludge.** Any solid, semi-solid, or liquid waste generated from a municipal, commercial or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other such waste having similar characteristics and effect. (40 CFR § 257.2).
27. **Solid waste.** Any garbage, refuse, sludge, from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material, including, solid liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Clean Water Act, or source, special nuclear, or by product material as defined by the Atomic Energy Act of 1954.(40 CFR § 257.2).
28. **Turbine-powered aircraft.** Aircraft powered by turbine engines including turbojets and turboprops but excluding turbo-shaft rotary-wing aircraft.
29. **Turbine-use airport.** Any airport that sells fuel for fixed-wing turbine-powered aircraft.
30. **Wastewater treatment facility.** Any devices and/or systems used to store, treat, recycle, or reclaim municipal sewage or liquid industrial wastes, including publicly owned treatment works, as defined by Section 212 of the Clean Water Act. This definition includes any pretreatment involving the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a publicly owned treatment system. (See 40 CFR § 403.3 (q), (r), & (s)).
31. **Wildlife.** Any wild animal, including without limitation any wild mammal, bird, reptile, fish, amphibian, mollusk, crustacean, arthropod, coelenterate, or other invertebrate, including any part, product, egg, or offspring thereof. 50 CFR § 10.12. As used in this AC, wildlife includes feral animals and domestic animals out of the control of their owners (14 CFR Part 139, Certification of Airports).
32. **Wildlife attractants.** Any human-made structure, land-use practice, or human-made or natural geographic feature that can attract or sustain hazardous wildlife within the landing or departure airspace or the airport's aircraft operations area. These attractants can include architectural features, landscaping, waste disposal sites, wastewater treatment facilities, agricultural or aquaculture activities, surface mining, or wetlands.



33. **Wildlife hazard.** A potential for a damaging aircraft collision with wildlife on or near an airport.
34. **Wildlife strike.** A wildlife strike is deemed to have occurred when:
- a. A strike between wildlife and aircraft has been witnessed;
  - b. Evidence or damage from a strike has been identified on an aircraft;
  - c. Bird or other wildlife remains, whether in whole or in part, are found:
    - i. Within 250 feet of a runway centerline or within 1,000 feet of a runway end unless another reason for the animal's death is identified or suspected, unless another reason for the animal's death is identified or;
    - ii. On a taxiway or anywhere else on or off airport that there is reason to believe was the result of a strike with an aircraft.
  - d. The presence of birds or other wildlife on or off the airport had a significant negative effect on a flight (i.e., aborted takeoff, aborted landing, high-speed emergency stop, aircraft left pavement area to avoid collision with animal).

## APPENDIX B. ADDITIONAL RESOURCES

### B.1 Regulations

- 14 CFR § 139.337, *Wildlife Hazard Management*
- 40 CFR § 258, *Criteria for Municipal Solid Waste Landfills*

### B.2 Advisory Circulars

- AC 150/5200-32, *Reporting Wildlife Aircraft Strikes*
- AC 150/5200-33, *Hazard Wildlife Attractants on or Near Airports*
- AC 150/5200-34, *Construction or Establishment of New Landfills Near Public Airports*
- AC 150/5200-36, *Qualifications for Wildlife Biologist Conducting Wildlife Hazard Assessments and Training Curriculum for Airport Personnel Involved in Controlling Wildlife Hazards on Airports*
- AC 150/5200-38, *Protocol for the Conduct and Review of Wildlife Hazard Site Visits, Wildlife Hazard Assessments, and Wildlife Hazard Management Plans*
- AC 150/5220-25, *Airport Avian Radar Systems*
- AC 150/5210-24, *Airport Foreign Object Debris (FOD) Management*

### B.3 Certification Alerts

- Certalert No. 97-09, *Wildlife Hazard Management Plan Outline* (11/17/1997)
- Certalert No. 98-05, *Grasses Attractive To Hazardous Wildlife* (9/21/1998)
- Certalert No. 06-07, *Requests by State Wildlife Agencies to Facilitate and Encourage Habitat for State Listed Threatened and Endangered Species and Species of Special Concern on Airports* (11/21/2006)
- Certalert No. 13-01, *Federal and State Depredation Permit Assistance* (1/30/2013)
- Certalert No.14-01, *Seasonal Mitigation of Hazardous Species at Airports: Attention to Snowy Owls* (2/26/2014)
- Certalert No. 16-03, *Recommended Wildlife Exclusion Fencing* (8/2016)

**B.4 Airport Cooperative Research Program Reports**

These, and other wildlife / aviation reports, are available from the Transportation Research Board of the National Academies (TRB) at <http://www.trb.org/Publications/Publications.aspx>.

- ACRP Research Report 198: Wetland Mitigation, Volume 2, A Guidebook for Airports (2019)
- ACRP Synthesis 92: Airport Waste Management and Recycling Practices (2018)
- ACRP Research Report 174: Guidebook and Primer (2018)
- ACRP Report 122: Innovative Airport Responses to Threatened / Endangered Species (2015)
- ACRP Report 125: Balancing Airport Stormwater and Bird Hazard Management (2015)
- ACRP Report 145: Applying an SMS Approach to Wildlife Hazard Management (2015)
- ACRP Synthesis 39 Report: Airport Wildlife Population Management (2013)
- ACRP Synthesis 52 Report: Habitat Management to Deter Wildlife at Airports (2014)
- ACRP Synthesis 23 Report: Bird Harassment, Repellent, and Deterrent Techniques for Use on and Near Airports (2011)
- ACRP Report 32: Guidebook for Addressing Aircraft/Wildlife Hazards at General Aviation Airports (2010)

**B.5 Manuals**

- Wildlife Hazard Management at Airports - A Manual for Airport Personnel (2005)

**B.6 Orders**

- 50 CFR § 21.49, Control Order for Resident Canada Geese at Airports and Military Airfields
- 50 CFR § 21.50, Depredation Order for Resident Canada Geese Nests and Eggs
- 50 CFR § 21.43, Depredation Order for Blackbirds, Cowbirds, Crows, Grackles, and Magpies
- 50 CFR § 21.54, Control Order for Muscovy Ducks in the United States
- 50 CFR § 21.55, Control Order for Invasive Migratory Birds in Hawaii

### Advisory Circular Feedback

If you find an error in this AC, have recommendations for improving it, or have suggestions for new items/subjects to be added, you may let us know by (1) mailing this form to Manager, Airport Safety and Operations Division, Federal Aviation Administration ATTN: AAS-300, 800 Independence Avenue SW, Washington DC 20591 or (2) faxing it to the attention of AAS-300 at (202) 267-5257.

Subject: AC 150/5200-33C

Date: \_\_\_\_\_

Please check all appropriate line items:

An error (procedural or typographical) has been noted in paragraph \_\_\_\_\_ on page \_\_\_\_\_.

Recommend paragraph \_\_\_\_\_ on page \_\_\_\_\_ be changed as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In a future change to this AC, please cover the following subject:  
(Briefly describe what you want added.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Other comments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I would like to discuss the above. Please contact me at (phone number, email address).

Submitted by: \_\_\_\_\_

Date: \_\_\_\_\_



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** January 25, 2023

**SUBJECT:** Special Project Grant Status Update – Friends of the Children

**RECOMMENDED MOTION:**  
N/A

**BACKGROUND AND POLICY IMPLICATIONS:**  
During the FY23 video lottery allocation discussion, the Board initiated three special project grants. One of those grantees, Friends of the Children, will present at the January 25 board meeting to provide the Board with a mid-year status update on their projects and priorities.

**BUDGET IMPACTS:**  
Special project grants are made available through the Video Lottery Fund, which is supported by state lottery proceeds. These grants were budgeted for FY 2022-23. Three grantees were awarded \$20,000 each, half of which is paid upon signature of the agreement, with the second half initiated by completion of the mid-year status update.

**ATTENDANCE:**  
Stephanie Robinson, Administrative Analyst  
Rachel Cardwell, Friends of the Children



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** January 25, 2023

**SUBJECT:** Special Project Grant Status Update – Deschutes Collaborative Forest Project

**RECOMMENDED MOTION:**  
N/A

**BACKGROUND AND POLICY IMPLICATIONS:**  
During the FY23 video lottery allocation discussion, the Board initiated three special project grants. One of those grantees, Deschutes Collaborative Forest Project, will present at the January 25 board meeting to provide the Board with a mid-year status update on their projects and priorities.

**BUDGET IMPACTS:**  
Special project grants are made available through the Video Lottery Fund, which is supported by state lottery proceeds. These grants were budgeted for FY 2022-23. Three grantees were awarded \$20,000 each, half of which is paid upon signature of the agreement, with the second half initiated by completion of the mid-year status update.

**ATTENDANCE:**  
Stephanie Robinson, Administrative Analyst  
Jacob Fritz, Deschutes Collaborative Forest Project program coordinator  
Sally Russell, Deschutes Collaborative Forest Project vice-chair



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** January 25, 2023

**SUBJECT:** Special Project Grant Status Update – Deschutes Basin Water Collaborative

**RECOMMENDED MOTION:**  
N/A

**BACKGROUND AND POLICY IMPLICATIONS:**  
During the FY23 video lottery allocation discussion, the Board initiated three special project grants. One of those grantees, Deschutes Basin Water Collaborative, will present at the January 25 board meeting to provide the Board with a mid-year status update on their projects and priorities.

**BUDGET IMPACTS:**  
Special project grants are made available through the Video Lottery Fund, which is supported by state lottery proceeds. These grants were budgeted for FY 2022-23. Three grantees were awarded \$20,000 each, half of which is paid upon signature of the agreement, with the second half initiated by completion of the mid-year status update.

**ATTENDANCE:**  
Stephanie Robinson, Administrative Analyst  
Scott Aycock, COIC Community & Economic Development director  
Lisa Seales, Deschutes River Conservancy programs manager



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 25, 2023

SUBJECT: Resolution No. 2023-004, converting a limited duration Health Educator II position to regular duration

RECOMMENDED MOTION:

Move approval of Resolution No. 2023-004, converting a limited duration Public Health Educator II position to regular duration within the 2022-2023 Deschutes County Budget.

BACKGROUND AND POLICY IMPLICATIONS:

As part of the Fiscal Year 2023 Adopted Budget, the Board of Commissioners approved a 1.0 full-time equivalent (FTE) limited duration Public Health Educator II position through June 30, 2023 for the Harm Reduction Program – Overdose Response Coordinator. At the time of approval, Measure 110 funds were expected in the coming year to support this position ongoing. The anticipated Measure 110 funds were awarded and Resolution 2022-064 approved by the Board on September 21, 2022 for an additional 11.2 FTE regular. This Public Health Educator II position was intended to be converted to regular during that process, but that action was inadvertently omitted.

Resolution 2023-004 seeks to correct that omission, and convert Position #2731 Public Health Educator II from limited duration to regular, supported by Measure 110 Funds.

BUDGET IMPACTS:

Public Health Educator II is approximately \$118,640 in FY24 paid for with Oregon Health Authority Measure 110 funds. Funds are anticipated to be ongoing.

ATTENDANCE:

- Kara Cronin, Behavioral Health Program Manager
Holly Harris, Behavioral Health Deputy Director
Laura Skundrick, Finance Department Management Analyst



REVIEWED  
\_\_\_\_\_  
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY,  
OREGON

A Resolution Converting \*  
FTE Within the 2022-23 \* RESOLUTION NO. 2023-004  
Deschutes County Budget \*

WHEREAS, the Deschutes County Public Health Department presented to the Board of County Commissioners on September 21, 2022 with regards to Measure 110 funds awarded, however conversion of 1.0 FTE was inadvertently omitted, and

WHEREAS, Deschutes County Policy HR-1 requires that the creation of or increase in FTE outside the adopted budget be approved by the Board of County Commissioners; now, therefore,

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

Section 1. That the following FTE be converted:

<b>Job Class</b>	<b>Position Number</b>	<b>Type</b>	<b>Duration if Limited Duration</b>	<b>FTE</b>
Public Health Educator II	2731	Regular	N/A	
<b>Total FTE</b>				

Section 2. That the Human Resources Director make the appropriate entries in the Deschutes County FTE Authorized Positions Roster to reflect the above FTE changes.

DATED this \_\_\_\_\_ day of January, 2023.

BOARD OF COUNTY COMMISSIONERS OF  
DESCHUTES COUNTY, OREGON

\_\_\_\_\_  
ANTHONY DEBONE, Chair

ATTEST:

\_\_\_\_\_  
PATTI ADAIR, Vice-Chair

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
PHIL CHANG, Commissioner



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 25, 2023

SUBJECT: Request Board approval of Document Number 2023-087, an agreement with Bethlehem Inn for emergency shelter access and client stabilization services

RECOMMENDED MOTION:

Move approval of Board Signature of Document Number 2023-087, an agreement with Bethlehem Inn for collaborative efforts involving the Homeless Outreach Services Team.

BACKGROUND AND POLICY IMPLICATIONS:

Deschutes County Health Services and Bethlehem Inn propose to collaborate to reserve bed space on an ongoing basis for the provision of shelter, and to offer rent readiness and brief intervention case management services to persons in need.

The Homeless Outreach Services Team (HOST) shall arrange any plan of care, including treatment plan, points of contact and safety plan, and/or arrange special accommodations prior to any client's intake at Bethlehem Inn. Bethlehem Inn will provide regular case management services and establish self-sufficiency action plans. In addition, Bethlehem Inn will provide up to four weeks of stabilization services focused on health and safety goals and ensure follow-through with established HOST goals, as needed.

BUDGET IMPACTS:

Deschutes County Health Services will reimburse Bethlehem Inn \$70 per night per bed for six beds. Bethlehem Inn will invoice a flat monthly rate of \$12,775. Funding for this comes from the M110/BHRN grant, Oregon Health Authority #177290, Document Number 2022-735.

Maximum compensation over the course of the agreement shall not exceed \$153,300.

ATTENDANCE:

Kara Cronin, Program Manager

## HOST/BI PROGRAM AGREEMENT

This PROGRAM AGREEMENT (this "Agreement"), effective as of **January 1, 2023** (the "Effective Date"), is entered into by and between Deschutes County, a political subdivision of the State of Oregon, acting by and through Deschutes County Health Services, Homeless Outreach Services Team ("HOST") and Bethlehem Inn, (the "BI"), collectively referred to as the "Parties" or individually as a "Party."

Services are funded by and through County's contract with the State of Oregon, Oregon Health Authority (OHA), Health Systems Division.

### RECITALS

- A. HOST would like to improve stability and self-sufficiency of their clients that would benefit from access to emergency shelter and client stabilization services.
- B. BI's mission is to transform lives with shelter, help and hope by providing the safety and security of housing while other social determinants are addressed with each unique circumstance.
- C. Both parties would like to collaborate to facilitate access to clean and stable shelter.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and terms contained herein, HOST and BI agree as follows:

1. Term & Termination. The effective date of this Agreement shall be **January 1, 2023** and unless extended or terminated earlier in accordance with its terms, this Agreement shall terminate on **December 31, 2023**.
  - 1.1 Either Party may terminate the agreement for any reason with 30-days advance written notification.
  - 1.2 In the event of termination, the services in process will continue until expiration of that 30 days, at which point the responsibilities of both parties shall be satisfied.
2. Amendment. This agreement may only be amended or modified during the term upon the written agreement of both Parties.
3. BI's Obligations.
  - 3.1 BI shall reserve six (6) beds (non-gender specific), three (3) in Bend and three (3) in Redmond, on an ongoing basis for the use of HOST/BI Partnership Program clients. BI has limited number of ADA compliant beds, pending current residents, should a HOST/BI Partnership Program client require one. Once placed, client is not relocated to the other BI location. BI shall provide shelter and Rent Readiness, brief intervention case management services.
  - 3.2 BI shall hold all HOST/BI Partnership Program clients to Bethlehem Inn's drug and alcohol policies. Documentation of this can be provided to HOST in a manner specified by Release of Information (ROI) terms.
  - 3.3 BI will provide regular case management services with specific and consistent contract case managers and establish self-sufficiency action plans, in accordance with Bethlehem Inn Rules and Guidelines to approved HOST/BI Partnership Program clients. (Exhibit B: Bethlehem Inn Rules and Guidelines as Exhibit.) In addition, BI will provide up to 4 weeks of health and safety focused goals, including but not limited to, daily functioning and ensuring follow through with established HOST goals, as needed.
  - 3.4 BI will work closely with HOST personnel and HOST/BI Partnership Program clients to provide best practices and have resources and personnel available on-site for ease of access to the clients.
  - 3.5 BI shall provide secure monthly invoices to HOST of the six (6) beds provided ongoing for clients in the HOST/BI Partnership Program.

#### 4. HOST' Obligations.

4.1 HOST shall inform Bethlehem Inn of the client's current legal status, or court ordered conditions, and any associated risks, as applicable. HOST shall inform Bethlehem Inn of client's plan of care, the existing resources and plan moving forward within the HOST/BI Partnership Program.

4.2 HOST shall retain an active Release of Information (ROI) for all clients within the HOST/BI Partnership Program in order to openly coordinate services with Bethlehem Inn, including once weekly check-ins between designated BI staff and HOST personnel about each HOST/BI Partnership Program client. During check-ins, HOST case managers shall share/email weekly case management notes to designated BI staff. If said ROI is refused or revoked, client is not eligible to reside in the HOST/BI Partnership Program.

4.3 HOST shall have designated on site hours at BI for HOST case managers for a minimum of two (2) days per week, totaling at least five (5) hours per week.

- Bend Bethlehem Inn: Mondays 8:30am – 10:30am, Wednesdays 2:30pm – 4:30pm, Friday afternoons for an hour
- Redmond Bethlehem Inn: Fridays 3:00pm – 4:00pm

4.4 HOST shall reimburse BI within 45-days of receipt of invoices for the following:

- \$70/night per bed for six (6) beds held in the HOST/BI Partnership Program, regardless of the bed being occupied or unoccupied. Invoices shall be emailed to Deschutes County Health Services: [\\_HSAccountsPayable@deschutes.org](mailto:_HSAccountsPayable@deschutes.org)
- Flat rate of \$12,775/month
- Maximum Compensation for the term of this Agreement shall not exceed: **\$153,300** .

4.5 HOST shall arrange any plan of care, including treatment plan, points of contact and safety plan, and/or arrange special accommodations with Bethlehem Inn for HOST/BI Partnership Program clients prior to clients' intake at Bethlehem Inn, if accommodation or assistance is needed. HOST will ensure that client follows the Reasonable Accommodation Request process for all above requests. (EXHIBIT C. Reasonable Accommodation Request Form). All Reasonable Accommodation documentation will be processed in the order received for all BI residents. A minimum of two (2) business days is required for processing RAs.

4.6 HOST shall assign one (1) personnel, to coordinate with BI Program Directors/Program Impact Analyst on all client entry/exit into the HOST/BI Partnership Program. All other HOST personnel will be directed to applicable designated point of contact for coordination of entry/exit within the program.

4.7 HOST shall provide at least a 24-hour notice before scheduled intake into the HOST/BI Partnership Program on a Monday – Friday. No intakes will occur on Saturday or Sunday. HOST will maintain the same client in a HOST/BI Partnership Program bed for a minimum of sixty (60) days, conditioned on client adhering to program and Bethlehem Inn rules and guidelines, and expectations. (If client secures outside housing, or chooses to leave of their own volition, they may exit the Bethlehem Inn at any time.) Clients can be extended in the HOST/BI Partnership Program in fourteen (14) day increments up until 120 days. HOST shall also provide at least a 72-hour notice before bed turnover from client to client within the HOST/BI Partnership Program, unless the 120 day stay is reached.

4.8 (a) If a client has been involuntary exited previously from BI, the parties agree and understand that BI is not required to accept back the client into BI.

4.9 (b) If the program participant has previously been exited or had an unplanned exit, rather than involuntary exits, HOST may request residency in the program once the mandatory exit and unplanned exit waiting period is served.

5. Indemnification. Each Party agrees to indemnify, defend and hold the other party, its officers, directors, employees and representatives, harmless from and against any and all loss or liability for any third party claims, causes of actions, suits, proceedings, losses, damages, demands, settlement amounts, fees, expenses, fines, penalties and



costs (including reasonable attorneys' fees) for personal injury or other damage to the extent arising from, based on, or caused by fault or negligence in the performance of the Party's obligations under this Agreement.

6. Compliance with Laws. The parties agree to comply with all applicable laws and ordinances, rules and regulations in its performance and obligations under this Agreement. The parties further agree to comply with all applicable requirements set forth in the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"), and regulations promulgated thereunder ("the HIPAA Regulations"), the American Recovery and Reinvestment Act of 2009, and regulations promulgated thereunder, and other applicable laws. The parties' obligations with respect to the use and disclosure of Protected Health Information ("PHI") are outlined in the Business Associate/Confidentiality Addendum attached to this Agreement as EXHIBIT D. BI acknowledges and agrees that it is subject to the provisions in the contract between HOST and the Oregon Health Authority as well as required federal terms that are required to be passed through to subcontractors, which are attached hereto and incorporated herein as EXHIBIT D.

7. Miscellaneous.

7.1 Entire Agreement. This Agreement, and the exhibits attached hereto, represents the entire understanding between the Parties with respect to its subject matter.

7.2 Relationship. Each Party will perform its obligations pursuant to this Agreement. Nothing contained in this Agreement is intended to give rise to any agency, subcontractor, partnership, or joint venture relationship between the Parties or to impose upon the Parties any of the duties or responsibilities of such a relationship.

7.3 Third Party Beneficiaries. This Agreement does not confer any legal rights on any third party, nor is it the intention of any Party hereto to create or confer any rights.

7.4 Governing Law. The validity, construction, and interpretation of this Agreement, including the rights and duties of the Parties hereto, shall be governed by the laws of the State of Oregon.

7.5 Exhibits. The exhibits attached hereto, including their respective terms and conditions, are made part of this Agreement as if they were set forth in their entirety herein. The exhibits may be amended from time to time as agreed upon by the Parties, or as required to comply with federal and/or state laws and regulations.

7.6 Severability. Each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, however, if any provision is deemed to be invalid or unenforceable for any reason, then the Agreement shall be ineffective as to that provision only, and the remainder shall continue in full force and effect.

7.7 Notices. All notices and other communications sent pursuant to this Agreement must be in writing and will be deemed to have been given on the date delivered personally, mailed by certified mail, or overnight delivery to the Parties at the following addresses and facsimile numbers:

- |   |                      |
|---|----------------------|
| If to HOST:                               | If to Bethlehem Inn: |
| Colleen Thomas                            | Gwenn Wysling        |
| HOST Supervisor                           | Executive Director   |
| Deschutes County Behavioral Health        | Bethlehem Inn        |
| 1128 NW Harriman St.                      | P.O. Box 8540        |
| Bend, OR 97701                            | Bend, OR 97708       |
| With a copy to: grace.evans@deschutes.org |                      |

7.8 Interpretation. This Agreement shall be interpreted, to the maximum extent possible, to comply with applicable federal and state laws and regulations, including, but not limited to, HIPAA. Any and all references to "the Agreement" shall be construed to include the exhibits attached hereto, including any terms and conditions included therein.

7.9 Waiver. Any provision of this Agreement may be waived by the Party entitled to the benefit of such provision, provided that such waiver shall be in writing. Waiver of any breach or provision will not be construed as a waiver of any successive breach or provision.

7.10 Parties agree that services shall be provided without regard to race, color, religion, national origin, sex, age, marital status, sexual orientation, or disability (as defined under the Americans with Disabilities Act). Contracted services must reasonably accommodate the cultural, language and other special needs of clients including, but not limited to, limited English language proficiency.

**SIGNATURES**

IN WITNESS WHEREOF, the Parties have executed this Agreement and referenced exhibits, referenced below, which are attached hereto and incorporated by this reference, by and through their duly authorized representatives.

- Exhibit A – INSURANCE REQUIREMENTS
- Exhibit B - BETHLEHEM INN RULES AND GUIDELINES
- Exhibit C – REASONABLE ACCOMMODATION REQUEST FORM
- Exhibit D – BUSINESS ASSOCIATE/CONFIDENTIALITY AGREEMENT
- Exhibit E – REQUIRED PROVIDER CONTRACT PROVISIONS

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2023

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

\_\_\_\_\_  
ANTHONY DEBONE, Chair, Chair

\_\_\_\_\_  
PATTI ADAIR , Vice Chair

\_\_\_\_\_  
PHIL CHANG , Commissioner

ATTEST:

\_\_\_\_\_  
Recording Secretary

**Signature:** Gwenn Wysling  
Gwenn Wysling (Jan 11, 2023 12:50 PST)

**Email:** gwenn@bethleheminn.org

**Title:** Executive Director

**Company:** Bethlehem Inn

**EXHIBIT A  
HOST-BI PROGRAM AGREEMENT  
INSURANCE REQUIREMENTS**

Bethlehem Inn shall obtain at Bethlehem Inn's expense the insurance specified in this section prior to performing under this Agreement and shall maintain it in full force and at its own expense throughout the duration of this Agreement, as required by any extended reporting period or tail coverage requirements, and all warranty periods that apply. Bethlehem Inn shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to County and Oregon Health Authority (OHA). Coverage shall be primary and non-contributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers' Compensation. Bethlehem Inn shall pay for all deductibles, self-insured retention and self-insurance, if any.

**WORKERS' COMPENSATION & EMPLOYERS' LIABILITY**

All employers, including Bethlehem Inn, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Bethlehem Inn shall require and ensure that each of its subcontractors complies with these requirements. If Bethlehem Inn is a subject employer, as defined in ORS 656.023, Bethlehem Inn shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If Bethlehem Inn is an employer subject to any other state's workers' compensation law, Bethlehem Inn shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

**COMMERCIAL GENERAL LIABILITY:**

Required     Not Required

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this contract, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000.00 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.00.

**AUTOMOBILE LIABILITY INSURANCE:**

Required     Not Required

Bethlehem Inn shall provide auto liability insurance with limits if \$1,000,000 per occurrence for all claimants for claims arising out of a single accident or occurrence.

**PROFESSIONAL LIABILITY:**

Required     Not Required

Professional Liability insurance covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Agreement by the Bethlehem Inn and Bethlehem Inn's subcontractors, agents, officers or employees in an amount not less than \$1,000,000 per claim. Annual aggregate limit shall not be less than \$2,000,000. If coverage is on a claims made basis, then either an extended reporting period of not less than 24 months shall be included in the Professional Liability insurance coverage, or the Bethlehem Inn shall provide Tail Coverage as stated below.

**EXCESS/UMBRELLA INSURANCE:**

A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.

**ADDITIONAL INSURED:**

All liability insurance, except for Workers' Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Agreement must include an additional insured endorsement specifying Deschutes County, the State of Oregon, their officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Bethlehem Inn's activities to be performed under this Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 07 04 or equivalent.



**WAIVER OF SUBROGATION:**

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

**TAIL COVERAGE:**

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, Bethlehem Inn shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Agreement, for a minimum of 24 months following the later of (i) Bethlehem Inn's completion and County's acceptance of all Services required under this Agreement, or, (ii) County or Bethlehem Inn termination of this Agreement, or, (iii) The expiration of all warranty periods provided under this Agreement.

**CERTIFICATE(S) AND PROOF OF INSURANCE:**

Bethlehem Inn shall provide to County Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Agreement. The Certificate(s) shall list Deschutes County, the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) shall also include all required endorsements or copies of the applicable policy language effecting coverage required by this Agreement. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance County and OHA has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Agreement.

**NOTICE OF CHANGE OR CANCELLATION:**

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

**INSURANCE REQUIREMENT REVIEW:**

Bethlehem Inn agrees to periodic review of insurance requirements by County under this Agreement and to provide updated requirements as mutually agreed upon by Bethlehem Inn and County.

**STATE ACCEPTANCE:**

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

**Signature:** *Sarah Key*

**Email:** sarah.key@deschutes.org

**Title:** Loss Prevention Coordinator

**Company:** Deschutes County Risk Management

**EXHIBIT B  
HOST-BI PROGRAM AGREEMENT  
BETHLEHEM INN RULES AND GUIDELINES**

**BETHLEHEM INN GUIDELINES – NEXT STEPS/SINGLE ADULTS  
\*These rules are a modified version in response to COVID-19\***

The Bethlehem Inn (the “Inn”) offers emergency shelter for Individual Adults and Families. Individuals without minor children (regardless of marital status) are housed in rooms according to their gender identity. Registered sex offenders cannot be sheltered at the Inn. Post intake Bethlehem Inn collaborates with Oregon State Police to verify status. Adult applicants must pass urinalysis and breathalyzer tests at intake and may be retested during their stay. The Inn staff do not provide medical care, medication management, housekeeping, shower assistance, transportation or assistance around the site, or other services related.

**IMPORTANT: Residents agree to follow any and all CDC/OHA COVID-19 requirements including wearing a mask onsite.**

---

**CASE MANAGEMENT PROGRAM:** The Inn currently offers case management. Residents agree to communicate with staff regarding immediate needs and goals they would like to work towards (budgeting, agency referral, personal development, and educational/training opportunities, rent ready status, etc).

**RESIDENT ACCOUNTABILITY:** Residents of the Inn agree to be responsible for their behavior and actions while at the facility. Breaking this agreement may affect continued shelter at the Inn. In extreme Safety and Security cases a resident may be asked to leave and not return.

**ACCESSING STAFF:** Community volunteers/Staff are available at the Front Desk to assist residents from 4:00am – 10:00pm. After hours between 10:00pm – 4:00am residents may ring the building doorbell located left of the front lobby doors if assistance is needed.

**PRIVACY AND CONFIDENTIALITY:** The staff at the Inn are committed to employ best efforts to ensure the confidentiality of its residents. Inn residents agree to respect the confidentiality of other residents. Resident information may be shared by Inn staff with agencies and other organizations only under the conditions of the *Release of Information (ROI)* agreement signed by the resident during intake. Privacy, including, without limitation, auditory privacy, is not guaranteed in common areas of the Inn, which are subject to video and other surveillance. Resident property is subject to search.

**REASONABLE ACCOMMODATION REQUESTS:** Any Inn resident may request reasonable accommodation in relation to Inn procedures and practices. Inn management and the Inn Fair Housing Officer will evaluate the request on a case-by-case basis and attempt to resolve the issue through an interactive process. All reasonable accommodation requests should be directed to Inn management and/or the Inn Fair Housing Officer. Forms are available for this purpose at the Front Desk.

**SERVICE ANIMALS:** Residents with service animals must submit a written request for reasonable accommodation as provided above. Service animal immunizations must be current, animal must be spayed or neutered, and a Deschutes county license is required. The resident is responsible for the behavior of the service animal, for its care and grooming. The resident is required to dispose of all animal waste. Service animals must be kept under control and respond to verbal command. Any damage to the Inn facility by the service animal and/or hostile behavior or harm to other residents or staff by the service animal may result in immediate revoke of the reasonable accommodation. Prior to any animal intake, an animal interview is required.

**EMERGENCY SHELTER ACCESS**

**Key Cards:** Keys are to be kept on resident’s person while on-site and will be turned in at the front office when leaving site. When residents return to site they need to immediately report to the office to receive their key back.

**Late Curfews:** Residents are able to leave site at 4am and must return back on site by 5:45pm. Curfew extensions will only be made for employment, treatment, medical needs or housing. Late Curfews need to be turned in **48 Hours** in advance of the requested day and approved by staff. Forms are available at the front desk.



**Entering and Exiting the Inn Facility:** Residents agree to not walk/drive/ride through neighboring parking lots, driveways, or alleys. All residents agree to drive slowly and carefully through the Inn parking lot.

**Unplanned Exit:** If a resident does not return by curfew without explanation or notification they are believed to have ended their residency at the Inn. Exceptions are made in the case of jail or hospital stay.

**Visitors and Pickups:** To ensure confidentiality, on-site visitors and pick-ups **ARE STRICTLY PROHIBITED** unless coordinated with and approved by staff and involves an official agency (DHS, Parole and Probation, Medical transport, etc.).

**Transportation:** Each resident is permitted to have one vehicle on site. The vehicle must be in running condition and currently licensed, registered, and insured. Documentation will be requested during intake. No vehicle maintenance may be performed on-site. Once parked, no resident may remain in the vehicle. Police will be notified if a resident does not pass a Breathalyzer test and attempts to drive off site. Residents may not park in parking lots of neighboring businesses. The Inn is not responsible for the security of any vehicle left on-site. Abandoned vehicles will be towed after 72 hours.

Bicycles are to be parked in designated bike area with resident initials tagged on the bike. Tags provided.

**Off-limits Areas:** Off-limits areas include resident rooms or lounges of the opposite gender and rooms that are not assigned to you. Residents must be accompanied in the clothing room and/or commercial laundry by a staff. Families First Program designated areas are off-limits to Next Steps.

**Resident Reminders & Exits:**

**Resident Reminders:** Safety and Security is priority of Bethlehem Inn. Bethlehem Inn’s accountability system comes in a way of resident reminders. A resident who receives three resident reminders for the same offense a resident will receive a letter. If this occurrence happens again, resident will exit.

**Voluntary Exit:** Residents exiting the Inn voluntarily agree to fill out an Exit Form (available at the Front Desk). Key cards are to be returned before exiting the facility. All linens, blankets, pillows, and towels are to be taken to the blue laundry cart in Next Steps entry way.

After exiting the Inn, an individual may not return for 30 days. The Inn will hold personal items left behind for **48 HOURS** only.

All mail received after two-weeks will be returned to sender. As noted above, change-of-address forms do not work for business addresses. Accordingly, it is the resident’s responsibility to notify all businesses, agencies, and employers of an address change.

**Involuntary Exit:** Involuntary Exited individuals may not return to the Inn under any circumstances and will be immediately trespassed via law enforcement if refusal to leave. These exits are effective immediately. When exiting the Inn as a result of an Involuntary Exit, residents agree to sign the appropriate paperwork. Only after 90 days may a resident submit a reasonable accommodation to have their Involuntary Exit status reviewed and have their status changed. Documentation is required in order for them to get another chance. This documentation must include a strategy for correcting the behavior.

**Grievance and Incident Reports:** Grievance and Incident Reports are available from staff on shift. A grievance is filed against a staff member(s) or can be a grievance against the organization. An incident report is filed against another resident.

**EMERGENCY SHELTER RULES**

**Damage to Inn Property:** Residents agree to respect Inn property. Residents agree to clean up after themselves (kitchen, lounge, smoking areas, etc.). Residents agree to refer any unknown/nonresidents found onsite to staff immediately.

**Hygiene:** Residents agree to maintain personal hygiene appropriate for living in a communal environment. The Inn has hygiene products at the front desk for resident use. Ask staff about donated clothing for men and women.

**Clothing:** Residents agree to remain fully clothed while at the shelter except when in their room or bathroom. Residents agree to not wear clothing that is overly revealing or has images or messages that promote violence, discrimination or is overtly sexual in nature. Residents agree to not wearing a sleeveless undershirt as a t-shirt, sleeveless muscle shirts, or spaghetti-strap. No swim suits or pajamas may be worn outside a resident’s room.

**Language and Behavior:** Residents agree to treat staff, outside agency workers, volunteers, and fellow residents with respect. Abusive language and aggressive behavior is prohibited. The Inn will not tolerate abusive language, yelling, gossip, bullying, aggressive actions, speech or actions that are racist, homophobic, and/or sexist or that in any way belittle an individual's race, sexual orientation, gender, or religious beliefs. Any unwanted sexual advances either in person or electronically will not be tolerated. Threats of harm or the causing of actual harm are prohibited. **Bethlehem Inn is committed to providing an inclusive environment for everyone, regardless of ability or identity. We expect residents, staff and volunteers to demonstrate respect and consideration in speech and actions, refrain from demeaning, discriminatory or harassing behavior and speech, and be mindful of others and our surroundings. Please inform Bethlehem Inn staff if you experience or hear about any threatening or inappropriate situations that violate this agreement. Bethlehem Inn follows an anti-harassment policy in these situations.**

**Communication with Family Residents:** For the safety and security of residents enrolled in the Inn's Families First Program, single residents agree to not communicate with Family residents regardless if there is a past/current relationship with Families First resident(s).

**Public Displays of Affection:** Residents agree to avoid public displays of affection among residents while on shelter property.

**Tobacco:** Residents agree to use Tobacco – regular, e-cigarettes, vapes, and chewing tobacco in permitted smoking area only from 4 a.m. to lights-out. Smoking areas are closed during evening chores. No cigarettes are to be rolled in resident rooms, the dining room or lounges; please use the smoking area for rolling cigarettes.

**Drugs and Alcohol:** All residents agree to random urinalysis and breathalyzer tests. Resident use and/or possession of drugs and alcohol, including, without limitation, marijuana (all ways you can consume), Kratom, both on- and off-site, is strictly prohibited. Being under the influence of drugs or alcohol while a resident will result in an exit. Possession of either drugs or alcohol on site will result in immediate Involuntary Exit. Mouthwash, cologne, perfume with alcohol is not permitted.

Drug paraphernalia (including needles, pipes, syringes, cooking devices, etc.) are not permitted. Violation will result in immediate Involuntary Exit. Residents may not possess prescription drugs that they themselves have not been prescribed. Prescribed medications must be kept in the original container and new medications must be reported to staff. Prescription drugs are to be used as prescribed.

**Personal Possessions:** The Bethlehem Inn is not responsible for any lost, missing or stolen property. **ALL** personal possessions must fit into the wardrobe assigned to each bed. This includes clothing, shoes and dirty clothing. All toiletries are to be stored in the provided tote and placed in the wardrobe. All medications and valuables must be stored in the locking wardrobe. Residents will be issued a combination lock that is left on the locker at exit. Fishing poles, skateboards and guitars are permitted to be stored in wardrobes. Residents agree to not use personal bedding, sleeping bags, personal pillows, or decorative pillows/items in rooms.

**Electronic Devices:** Residents agree to use electronic devices in resident rooms between wake-up and lights-out hours and use head phones or ear buds rather than speakers. As a courtesy to all residents, electronic devices, including cell phones, must be in "silent mode" from 9 p.m. until the next morning. Residents agree to use headphones, ear buds, air pods while listening to electronic devices in common areas. Filming, photographing, or audio recording of residents or staff are not permitted without permission from the person(s) being recorded.

**Weapons and Tools:** **Projectile weapons (guns/bows) are never allowed.** Weapons (non-projectile) and tools of any kind must be turned over to staff during intake. If a tool is needed for work, it may be picked up from staff before leaving for work and returned at check-in.

**Pornography:** Pornographic or sexually-explicit material (electronic/video/print) is not permitted anywhere on Inn property.

**Lending, Borrowing, Trading, or Sale of Belongings:** Residents agree to not lend, borrow, trade, or sell belongings or request the same, including, without limitation, over-the-counter medications, prescription drugs, tobacco products, and rides to, from, or with any other resident, staff member, volunteer, or donor.

**Resident Rooms:** Residents agree to not switch rooms/beds or use totes that belong to a different room unless directed by staff. Residents agree to not knock on another resident's door, including residents of the same gender. Beds must not be obstructed. Bunks are not to be shadowed or tented by any material. All towels must be hung on hooks and not on bed posts. If locked out, ask staff for assistance.



**Fire Safety:** Fires or burning of any kind (candles, smoking, incense, oils, plug-in deodorizers, etc.) are not permitted in any room. Tampering with smoke detectors or unnecessarily discharging a fire extinguisher is prohibited. Fireworks or explosives may not be on property at any time. Violation will result in an immediate Involuntary Exit.

All residents agree to participate in random fire drills. In the event of an emergency, an alarm will be heard, and all residents must proceed immediately to designated evacuation area. Individuals using oxygen cannot be in the Smoking Area with their oxygen.

**Food and Drinks:** Residents agree to not have food or drinks (except water) in rooms. Dry goods not immediately consumable (i.e., instant coffee) may be stored but not consumed in rooms. Personal food items may not be stored in the facility’s kitchen or pantry, including in the refrigerators or freezers. Food and drinks may not be stored or brought outside of rooms except in a vehicle. If found, these items will be confiscated.

**Cleaning and Chores:** Residents agree to keep their beds and rooms and the common areas neat and orderly at all times. There is a weekly deep clean check of the room/bathroom and expectations are posted on the door the previous day. This is a chance to change bedding weekly as well. Residents are expected to participate in morning/evening chores and complete community contributions.

RESIDENT SCHEDULE							
	Mon.	Tues.	Weds.	Thurs.	Fri.	Sat.	Sun.
<b>Daily Check-in &amp; Key Pickup:</b>	Between 4:00 AM - 5:45 PM					by 5:45 PM	
<b>Dinner Meeting:</b>	Every day - 5:45 PM - In the dining area						
<b>Lights out:</b>	----		10:00 PM Every Night		----		
MEALS	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Sun.
- Breakfast	5:00 - 7:00 AM					Brunch - 10am	
- Lunch	Sack Lunch (sign up for a full week)					N/A	
- Dinner	5:45 PM						
Tobacco Permitted:	4:00 am - 10:00 PM (designated Smoking Area ONLY) <b>NO SMOKING DURING DINNER/CHORES</b>						
Mail:	Mail is handed out to residents during dinner time						
Hygiene Supplies:	As needed at front desk						
Laundry:	See signup sheet in laundry room						
Clothing Room:	Dependent on staff availability						
Phone Calls:	4:00 AM – 10:00 PM						
Televisions:	4:00AM – Lights Out except <b>no television during meal times and chores</b>						
Electronics:	Must be on silent when in room from 9:00 PM – 6:00 AM						
HOUSEKEEPING & CHORES							
Deep Clean and Room Checks	The time of room checks varies between rooms. Deep cleans should be completed by noon on the day a room is set for cleaning. Staff will enter a room for room checks and rounds at least 3 times a day.						
Chores and Community Contributions	Chores should be completed by all residents Community contributions are to be completed daily.						
Bedding exchange:	Same day as Deep Clean Room Check						



Important: This side of the form may only be completed by a reliable, third party that can verify this request is directly related to applicant's disability and who is in a position to know about the applicant's disability.  
**This side may not be completed by Applicant, Resident or Participant.**

**REASONABLE ACCOMMODATION VERIFICATION**

Explanation: Bethlehem Inn is required by law to provide reasonable accommodations to disabled applicants, residents, and participants that will facilitate their ability to function and provide equal opportunity to use and enjoy our housing programs. Applicable federal and state law defines "disability," with respect to the individual, as: (1) a physical or mental impairment which substantially limits one or more of such person's major life activities; (2) a record of having such an impairment; (3) being regarded as having such an impairment; but such term does not include current, illegal drug use or addiction to a controlled substance. Major life activities are defined as functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

Name of person requiring accommodation: \_\_\_\_\_

Description of accommodation being requested:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

I verify that this request is directly related to this applicant's disability and is necessary. (Necessary indicates necessity as opposed to only a matter of convenience or preference.)  
I recommend that this request be approved.

I certify that the above information is true and correct.

_____ Signature	_____ Date
_____ Printed Name	_____ Phone #
_____ Professional Title	_____ Fax #
_____ Address	_____ City/State/Zip

Warning: Section 1001 of Title 18 of the US Code makes it a criminal offense to make any willful false statements or misrepresentations to any Department or Agency of the United States as to any matter within its jurisdiction, punishable by fine not to exceed \$250,000 and/or imprisonment of not more than 5 years.

**EXHIBIT D  
HOST-BI PROGRAM AGREEMENT  
BUSINESS ASSOCIATE/CONFIDENTIALITY AGREEMENT**

**1. INTRODUCTION**

This Confidentiality (the “Agreement”) is entered into as of **January 1, 2023** by and between Bethlehem Inn (“BI”) and Deschutes County, a political subdivision of the State of Oregon, acting by and through its Health Care Component Deschutes County Health Services, Homeless Outreach Services Team (“HOST”), “Covered Entity”.

**WHEREAS**, in connection with the performance of the Services, BI may receive from the County or otherwise have access to certain information that is required to be kept confidential in accordance with the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder, as may be amended from time to time (collectively, “HIPAA”); and

**WHEREAS**, as a part of the American Recovery and Reinvestment Act, the federal Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”) was signed into law, imposing certain privacy and security obligations on Covered Entities in addition to the obligations created by the Privacy Standards and Security Standards; and

**WHEREAS**, the HITECH Act revises many of the requirements of the Privacy Standards and Security Standards concerning the confidentiality of Protected Health Information (PHI) and Electronic Protected Health Information (EPHI), including extending certain HIPAA and HITECH Act requirements directly to business associates; and

**WHEREAS**, the HITECH Act requires that certain of its provisions be included in contractor agreements, and that certain requirements of the Privacy Standards be imposed contractually upon Covered Entities as well as contractors;

Therefore, in consideration of the foregoing premises and the mutual covenants and conditions set forth below and in the agreement between BI and County for BI’s provision of Obligations, intending to be legally bound, agree as follows.

**2. DEFINITIONS**

- A. *Disclosure* means the release, transfer, provision of access to, or divulging in any other manner, of PHI, outside BI’s organization, i.e., to anyone other than its employees who have a need to know or have access to the PHI.
- B. *Electronic Protected Health Information* or “*EPHI*” means protected health information (as defined below) that is transmitted, stored, or maintained by use of any electronic media. For purposes of this definition, “electronic media” includes, but is not limited to, memory devices in computers (hard drives); removable/transportable digital memory media (such as magnetic tape or disk, removable drive, optical disk, or digital memory card); the internet; the extranet; leased lines; dial-up lines; private networks; or e-mail.
- C. *Health Care Component* means a Deschutes County department, office or division, that regularly provides healthcare services or that regularly creates, accesses, uses or maintains PHI, and that Deschutes County has designated as a HIPAA-covered component of the County.
- D. *Protected Health Information* or “*PHI*” means information transmitted by or maintained in any form or medium, including demographic information collected from an individual, that (a) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual; (b) individually identifies the individual or, with respect to which, there is a reasonable basis for believing that the information can be used to identify the individual; and (c) is received by BI from or on behalf of County, or is created by BI, or is made accessible to BI by County.
- E. *Secretary* means the Secretary of the United States Department of Health and Human Services or any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.
- F. *Services* means the Obligations provided by BI and HOST identified in the Pilot Program Agreement to which this Exhibit D is attached.



- G. *Use* (whether capitalized or not and including the other forms of the word) means, with respect to PHI, the sharing, employment, application, utilization, transmission, examination, or analysis of such information to, from or within BI's organization.
3. **AGREEMENT.** BI shall:
- A. not use PHI except as necessary to provide the Services.
  - B. not disclose PHI to any third party without County's prior written consent.
  - C. not use or disclose PHI except as required by law.
  - D. implement appropriate safeguards to prevent unauthorized use or disclosure of PHI.
  - E. comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of EPHI other than as provided for by this Agreement.
  - F. mitigate, as much as possible, any harmful effect of which it is aware of any use or disclosure of PHI in violation of this Agreement.
  - G. promptly report to County any use or disclosure of PHI not permitted by this Agreement of which BI becomes aware.
  - H. make its internal practices, books, and records (including the pertinent provisions of this Agreement) relating to the use and disclosure of PHI, available to the Secretary for the purposes of determining County's compliance with HIPAA.
  - I. return to County, or destroy, any PHI of County still in BI's possession upon conclusion or termination of the Services.
  - J. ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the BI agree to the same restrictions, conditions, and requirements that apply to the BI with respect to security and privacy of such information.
  - K. make PHI available to County as necessary to satisfy County's obligation with respect to individuals' requests for copies of their PHI, as well as make available PHI for amendments (and incorporate any amendments, if required) and accountings.
  - L. make any amendment(s) to PHI in a designated record set as directed or agreed to by the County pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy County's obligations under 45 CFR 164.526.
  - M. to the extent the BI is to carry out one or more of County's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the County in the performance of such obligation(s).
  - N. If BI (a) becomes legally compelled by law, process, or order of any court or governmental agency to disclose PHI, or (b) receives a request from the Secretary to inspect BI's books and records relating to the use and disclosure of PHI, BI, to the extent it is not legally prohibited from so doing, shall promptly notify County and cooperate with County in connection with any reasonable and appropriate action County deems necessary with respect to such PHI.
  - O. If any part of BI's performance of business functions involves creating, receiving, storing, maintaining, or transmitting EPHI:
    - i. implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that it creates, receives, stores, maintains, or transmits on behalf of County, in accordance with the requirements of 45 CFR Part 160 and Part 164, Subparts A and C; and
    - ii. report to County any security incident relating to the EPHI that BI maintains for County.

#### 4. HIPAA DATA BREACH NOTIFICATION AND MITIGATION

- A. BI agrees to implement reasonable systems for the discovery and prompt reporting of any “breach” of “unsecured PHI” as those terms are defined by 45 C.F.R. §164.402 (hereinafter a “HIPAA Breach”). The parties acknowledge and agree that 45 C.F.R. §164.404, as described below in this Section, governs the determination of the date of a HIPAA Breach. BI will, following the discovery of a HIPAA Breach, notify County immediately and in no event later than seven business days after BI discovers such HIPAA Breach, unless BI is prevented from doing so by 45 C.F.R. §164.412 concerning law enforcement investigations.
- B. For purposes of reporting a HIPAA Breach to County, the discovery of a HIPAA Breach shall occur as of the first day on which such HIPAA Breach is known to the BI or, by exercising reasonable diligence, would have been known to the BI. BI will be considered to have had knowledge of a HIPAA Breach if the HIPAA Breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the HIPAA Breach) who is an employee, officer or other agent of the BI. No later than seven (7) business days following a HIPAA Breach, BI shall provide County with sufficient information to permit County to comply with the HIPAA Breach notification requirements set forth at 45 C.F.R. §164.400, *et seq.*
- C. Specifically, if the following information is known to (or can be reasonably obtained by) BI, BI will provide County with: (i) contact information for individuals who were or who may have been impacted by the HIPAA Breach; (ii) a brief description of the circumstances of the HIPAA Breach, including its date and the date of discovery; (iii) a description of the types of unsecured PHI involved in the HIPAA Breach; (iv) a brief description of what the BI has done or is doing to investigate the HIPAA Breach, mitigate harm to the individual impacted by the HIPAA Breach, and protect against future HIPAA Breaches; and (v) a liaison (with contact information) so that BI may conduct further investigation concerning the HIPAA Breach. Following a HIPAA Breach, BI will have a continuing duty to inform County of new information learned by BI regarding the HIPAA Breach, including but not limited to the information described herein.
- D. Data Breach Notification and Mitigation Under Other Laws. In addition to the requirements above, BI agrees to implement reasonable systems for the discovery and prompt reporting of any breach of individually identifiable information (including but not limited to PHI, and referred to hereinafter as “Individually Identifiable Information”) that, if misused, disclosed, lost or stolen, BI believes would trigger an obligation under one or more State data breach notification laws (each a “State Breach”) to notify the individuals who are the subject of the information.
- E. Breach Indemnification. BI shall indemnify, defend and hold County harmless from and against any and all actual losses, liabilities, damages, costs and expenses (collectively, “Information Disclosure Claims”) arising directly from (i) the use or disclosure of Individually Identifiable Information (including PHI) in violation of the terms of this Agreement or applicable law, and (ii) any HIPAA Breach of unsecured PHI and/or any State Breach of Individually Identifiable Information. BI will assume the defense of any Information Disclosure Claim; County may participate, at its expense, in the defense of such Information Disclosure Claim. BI shall not take any final action with respect to any Information Disclosure Claim without the prior written consent of County.

#### 5. OTHER PROVISIONS

- A. A breach under this Agreement shall be deemed to be a material default in BI’s agreement with Deschutes County to provide Services.
- B. BI authorizes termination of this Agreement by County if County determines BI has violated a material term of this Agreement.
- C. Upon conclusion or termination of the Services, BI shall promptly return or destroy all PHI that BI maintains in any form and retain no copies of such information. If the return or destruction of such PHI is not feasible, the obligations under this Agreement shall continue in effect for so long as BI retains such information, and any further use or disclosure of such PHI shall be limited to those purposes that make the return or destruction of the PHI infeasible.
- D. To the extent there are any inconsistencies between this Agreement and the terms of any other agreement, either written or oral, between County and BI, the terms of this Agreement shall prevail.

E. Contact Information in the event of HIPAA Data Breach or Termination.

- 1) Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing, to Covered Entity or Business Associate at the address or number set forth below or to such other addresses or numbers as either Party may hereafter indicate in writing. Delivery may be by personal delivery, electronic mail, facsimile, or mailing the same, postage prepaid.
- 2) Any communication or notice by personal delivery shall be deemed delivered when actually given to the designated person or representative.
- 3) Any communication or notice sent by facsimile shall be deemed delivered when the transmitting machine generates receipt of the transmission. To be effective against County, such facsimile transmission shall be confirmed by telephone notice to the County Administrator.
- 4). Any communication or notice mailed shall be deemed delivered five (5) days after mailing. Any notice under this Agreement shall be mailed by first class postage or delivered as follows:

<u>To Covered Entity:</u>	<u>Copy to Privacy Officer</u>	<u>To Bethlehem Inn:</u>
Holly Harris, Deputy Director	Kayla Sells, Privacy Officer	Gwenn Wysling
Deschutes County Health Services	Deschutes County Health Services	Bethlehem Inn
2577 NE Courtney Dr.	2577 NE Courtney Dr.	P.O. Box 8540
Bend, Oregon 97701	Bend, Oregon 97701	Bend, Oregon 97708
Fax No. 541-322-7565	Fax No. 541-322-7565	
Holly.harris@deschutes.org	kayla.sells@deschutes.org	gwenn@bethleheminn.org

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed, either as individuals, or by their officers, thereunto duly authorized.

**Signature:** Holly Harris  
Holly Harris (Jan 11, 2023 14:57 PST)  
**Email:** holly.harris@deschutes.org  
**Title:** Deputy Director  
**Company:** Deschutes County

**Signature:** Gwenn Wysling  
Gwenn Wysling (Jan 11, 2023 12:50 PST)  
**Email:** gwenn@bethleheminn.org  
**Title:** Executive Director  
**Company:** Bethlehem Inn



**EXHIBIT E**  
**HOST-BI PROGRAM AGREEMENT**  
**REQUIRED PROVIDER CONTRACT PROVISIONS**

**BI shall comply with the following requirements herein when Oregon Health Authority funding is being used and to the extent that the requirements are applicable to the contract for services determined and agreed to by and between BI and County. For the purposes of this Agreement, all references to federal and state laws are references to federal and state laws as they may be amended from time to time.**

- 1. Regulations and Duties.** Contactor shall comply with all applicable provisions of that certain contract, as amended, including applicable Service Descriptions attached thereto, effective August 15, 2022, between the State of Oregon acting by and through its Oregon Health Authority (OHA) and Deschutes County, OHA Agreement #177290. BI agrees to comply with the rules and regulations of County, applicable provisions in the contract between County and OHA, incorporated herein by reference, as of the effective date of the Contract, applicable provisions of the Administrative Rules and Procedures of OHA, applicable Federal regulations and all provisions of Federal and State statutes, rules and regulations relating to BI's performance of services under this Contract. Any act or duty of County, imposed upon County by OHA, which, by the nature of this Contract County determines to be within the scope of this Contract and is to be performed by BI, BI shall perform on behalf of County. No federal funds may be used to provide services in violation of 42 USC 14402.
- 2. County Code Provisions.** Except as otherwise specifically provided, the provisions of Deschutes County Code, Section 2.37.150 are incorporated herein by reference. Such code section may be found at the following URL address: [https://deschutescounty.municipalcodeonline.com/book?type=ordinances#name=2.37.150\\_Standard\\_Contract\\_Provisions](https://deschutescounty.municipalcodeonline.com/book?type=ordinances#name=2.37.150_Standard_Contract_Provisions).
- 3. Miscellaneous Federal Provisions.** BI shall comply with all federal laws, regulations, and executive orders applicable to the Contract or to the delivery of Services. Without limiting the generality of the foregoing, BI expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (j) all federal law governing operation of Community Mental Health Programs, including without limitation, all federal laws requiring reporting of Client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. No federal funds may be used to provide Services in violation of 42 U.S.C. 14402.
- 4. Incorporated Provisions, Oregon Health Authority #177290.** Applicable Federal and State laws, statute, rules, regulations, executive orders and policies are incorporated herein by reference and available to BI upon request.
- 5. Nondiscrimination.** BI must provide services to clients without regard to race, color, religion, national origin, sex, age, marital status, sexual orientation, or disability (as defined under the Americans with Disabilities Act). Contracted services must reasonably accommodate the cultural, language and other special needs of clients including, but not limited to, limited English language proficiency.



**Carrier no:** 20001

**Endorsement no:** WC000313

**SAIF policy:** 775034 Bethlehem Inn

### **Waiver of Our Right to Recover from Others Endorsement**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule.

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

#### **Schedule**

**Description:** DESCHUTES COUNTY AND ALL PARTIES NAMED IN DESCHUTES COUNTY'S CONTRACT WITH THE NAMED INSURED

**Contract:** DESCHUTES COUNTY

**Contractor name:** DESCHUTES COUNTY

**Address:** 63360 NW BRITTA ST, BLDG #2  
BEND  
Oregon  
97703

This endorsement does not alter the rights of an injured worker to pursue recovery from another party or SAIF to receive a statutory share of recoveries by an injured worker, even from the party listed in the schedule.

The premium charge for this endorsement is based on one (1) percent of your manual premium.

**Effective date:** December 01, 2020

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Countersigned October 27, 2020 at Salem, Oregon



Kerry Barnett  
President and Chief Executive Officer





**Carrier no:** 20001

**Endorsement no:** WC000313

**SAIF policy:** 775034 Bethlehem Inn

### **Waiver of Our Right to Recover from Others Endorsement**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule.

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

#### **Schedule**

Description: DESCHUTES COUNTY AND ALL PARTIES NAMED IN DESCHUTES COUNTY'S CONTRACT WITH THE NAMED INSURED

Contract: DESCHUTES COUNTY

Contractor name: DESCHUTES COUNTY

Address: 63360 NW BRITTA ST, BLDG #2  
BEND  
Oregon  
97703

This endorsement does not alter the rights of an injured worker to pursue recovery from another party or SAIF to receive a statutory share of recoveries by an injured worker, even from the party listed in the schedule.

The premium charge for this endorsement is based on one (1) percent of your manual premium.

**Effective date:** December 01, 2020

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Countersigned October 27, 2020 at Salem, Oregon



Kerry Barnett  
President and Chief Executive Officer

400 High Street SE  
Salem, OR 97312  
P: 800.285.8525  
F: 503.373.8020



# ADDITIONAL COVERAGES

Ref #	Description Prepay Credit	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
				Premium -\$68.61
Ref #	Description Premium discount	Coverage Code PDIS	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
				Premium -\$188.16
Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
				Premium
Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
				Premium
Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
				Premium
Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
				Premium
Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
				Premium
Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
				Premium
Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
				Premium
Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
				Premium
Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
				Premium
Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
				Premium

# ADDITIONAL COVERAGES

01/25/2023 Item #10.

<b>Ref #</b>	<b>Description</b> Abuse and Molestation	<b>Coverage Code</b> ABUM	<b>Form No.</b>	<b>Edition Date</b>
<b>Limit 1</b> 1,000,000	<b>Limit 2</b> 1,000,000	<b>Limit 3</b>	<b>Deductible Amount</b>	<b>Deductible Type</b>
<b>Premium</b>				
<b>Ref #</b>	<b>Description</b> Employee Benefits	<b>Coverage Code</b> EBLIA	<b>Form No.</b>	<b>Edition Date</b>
<b>Limit 1</b> 1,000,000	<b>Limit 2</b>	<b>Limit 3</b>	<b>Deductible Amount</b>	<b>Deductible Type</b>
<b>Premium</b>				
<b>Ref #</b>	<b>Description</b> Medical payments	<b>Coverage Code</b> MEDPM	<b>Form No.</b>	<b>Edition Date</b>
<b>Limit 1</b> 5,000	<b>Limit 2</b>	<b>Limit 3</b>	<b>Deductible Amount</b>	<b>Deductible Type</b>
<b>Premium</b>				
<b>Ref #</b>	<b>Description</b> Underinsured motorist combined single limit	<b>Coverage Code</b> UNCSL	<b>Form No.</b>	<b>Edition Date</b>
<b>Limit 1</b> 1,000,000	<b>Limit 2</b>	<b>Limit 3</b>	<b>Deductible Amount</b>	<b>Deductible Type</b>
<b>Premium</b>				
<b>Ref #</b>	<b>Description</b> PIP-Basic	<b>Coverage Code</b> PIP	<b>Form No.</b>	<b>Edition Date</b>
<b>Limit 1</b> 15,000	<b>Limit 2</b>	<b>Limit 3</b>	<b>Deductible Amount</b>	<b>Deductible Type</b>
<b>Premium</b>				
<b>Ref #</b>	<b>Description</b> Waiver of Subrogation	<b>Coverage Code</b> WVSUB	<b>Form No.</b>	<b>Edition Date</b>
<b>Limit 1</b>	<b>Limit 2</b>	<b>Limit 3</b>	<b>Deductible Amount</b>	<b>Deductible Type</b>
<b>Premium</b>				\$47.33
<b>Ref #</b>	<b>Description</b> WC & Employer's liability	<b>Coverage Code</b> WCEL	<b>Form No.</b>	<b>Edition Date</b>
<b>Limit 1</b>	<b>Limit 2</b>	<b>Limit 3</b>	<b>Deductible Amount</b>	<b>Deductible Type</b>
<b>Premium</b>				
<b>Ref #</b>	<b>Description</b> TERRIOSM COV	<b>Coverage Code</b> TEROR	<b>Form No.</b>	<b>Edition Date</b>
<b>Limit 1</b>	<b>Limit 2</b>	<b>Limit 3</b>	<b>Deductible Amount</b>	<b>Deductible Type</b>
<b>Premium</b>				\$47.03
<b>Ref #</b>	<b>Description</b> Experience Mod Factor 1	<b>Coverage Code</b> EXP01	<b>Form No.</b>	<b>Edition Date</b>
<b>Limit 1</b>	<b>Limit 2</b>	<b>Limit 3</b>	<b>Deductible Amount</b>	<b>Deductible Type</b>
<b>Premium</b>				\$1,960.17
<b>Ref #</b>	<b>Description</b> Assessment Fund	<b>Coverage Code</b> ASMNT	<b>Form No.</b>	<b>Edition Date</b>
<b>Limit 1</b>	<b>Limit 2</b>	<b>Limit 3</b>	<b>Deductible Amount</b>	<b>Deductible Type</b>
<b>Premium</b>				\$552.60
<b>Ref #</b>	<b>Description</b> CATA	<b>Coverage Code</b> CATA	<b>Form No.</b>	<b>Edition Date</b>
<b>Limit 1</b>	<b>Limit 2</b>	<b>Limit 3</b>	<b>Deductible Amount</b>	<b>Deductible Type</b>
<b>Premium</b>				\$94.06



CERTIFICATE OF LIABILITY INSURANCE

01/25/2023 Item #10.

11/18/2020

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

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

PRODUCER: Brown & Brown Northwest, 1160 SW Simpson Ave, Ste 100, Bend, OR 97702. CONTACT NAME: Noel Stringer, PHONE: (541) 382-1611, FAX: (A/C, No):, E-MAIL ADDRESS: Noel.Stringer@BBrown.com. INSURER(S) AFFORDING COVERAGE: INSURER A: Philadelphia Indemnity Insurance Company, NAIC #: 18058; INSURER B: SAIF Corporation, NAIC #: 36196; INSURER C: ; INSURER D: ; INSURER E: ; INSURER F: .

COVERAGES CERTIFICATE NUMBER: CL20111890232 REVISION NUMBER:

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

Table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSD, SUBR WVD, POLICY NUMBER, POLICY EFF (MM/DD/YYYY), POLICY EXP (MM/DD/YYYY), LIMITS. Rows include: COMMERCIAL GENERAL LIABILITY, AUTOMOBILE LIABILITY, UMBRELLA LIAB, EXCESS LIAB, WORKERS COMPENSATION AND EMPLOYERS' LIABILITY, and Crime Abuse and Molestation.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) Certificate Holder is additional insured under General Liability as respects work performed under contract by the Named Insured. Such insurance is primary. Waiver of subrogation in favor of Deschutes County applies to workers compensation.

CERTIFICATE HOLDER: Deschutes County Its Officers, Employees and Agents, 1300 NW Wall, Bend, OR 97703. CANCELLATION: SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE: Noel Stringer.

**Carrier no:** 20001

**Endorsement no:** WC000313

**SAIF policy:** 775034 Bethlehem Inn

### **Waiver of Our Right to Recover from Others Endorsement**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule.

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

#### **Schedule**

**Description:** DESCHUTES COUNTY AND ALL PARTIES NAMED IN DESCHUTES COUNTY'S CONTRACT WITH THE NAMED INSURED

**Contract:** DESCHUTES COUNTY

**Contractor name:** DESCHUTES COUNTY

**Address:** 63360 NW BRITTA ST, BLDG #2  
BEND  
Oregon  
97703

This endorsement does not alter the rights of an injured worker to pursue recovery from another party or SAIF to receive a statutory share of recoveries by an injured worker, even from the party listed in the schedule.

The premium charge for this endorsement is based on one (1) percent of your manual premium.

**Effective date:** December 01, 2020

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Countersigned October 27, 2020 at Salem, Oregon



Kerry Barnett  
President and Chief Executive Officer

400 High Street SE  
Salem, OR 97312  
P: 800.285.8525  
F: 503.373.8020

# ADDITIONAL COVERAGES

01/25/2023 Item #10.

Ref #	Description Prepay Credit	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
				Premium -\$68.61
Ref #	Description Premium discount	Coverage Code PDIS	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
				Premium -\$188.16
Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
				Premium
Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
				Premium
Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
				Premium
Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
				Premium
Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
				Premium
Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
				Premium
Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
				Premium
Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
				Premium
Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
				Premium

# ADDITIONAL COVERAGES

01/25/2023 Item #10.

<b>Ref #</b>	<b>Description</b> Abuse and Molestation	<b>Coverage Code</b> ABUM	<b>Form No.</b>	<b>Edition Date</b>
<b>Limit 1</b> 1,000,000	<b>Limit 2</b> 1,000,000	<b>Limit 3</b>	<b>Deductible Amount</b>	<b>Deductible Type</b>
<b>Premium</b>				
<b>Ref #</b>	<b>Description</b> Employee Benefits	<b>Coverage Code</b> EBLIA	<b>Form No.</b>	<b>Edition Date</b>
<b>Limit 1</b> 1,000,000	<b>Limit 2</b>	<b>Limit 3</b>	<b>Deductible Amount</b>	<b>Deductible Type</b>
<b>Premium</b>				
<b>Ref #</b>	<b>Description</b> Medical payments	<b>Coverage Code</b> MEDPM	<b>Form No.</b>	<b>Edition Date</b>
<b>Limit 1</b> 5,000	<b>Limit 2</b>	<b>Limit 3</b>	<b>Deductible Amount</b>	<b>Deductible Type</b>
<b>Premium</b>				
<b>Ref #</b>	<b>Description</b> Underinsured motorist combined single limit	<b>Coverage Code</b> UNCSL	<b>Form No.</b>	<b>Edition Date</b>
<b>Limit 1</b> 1,000,000	<b>Limit 2</b>	<b>Limit 3</b>	<b>Deductible Amount</b>	<b>Deductible Type</b>
<b>Premium</b>				
<b>Ref #</b>	<b>Description</b> PIP-Basic	<b>Coverage Code</b> PIP	<b>Form No.</b>	<b>Edition Date</b>
<b>Limit 1</b> 15,000	<b>Limit 2</b>	<b>Limit 3</b>	<b>Deductible Amount</b>	<b>Deductible Type</b>
<b>Premium</b>				
<b>Ref #</b>	<b>Description</b> Waiver of Subrogation	<b>Coverage Code</b> WVSUB	<b>Form No.</b>	<b>Edition Date</b>
<b>Limit 1</b>	<b>Limit 2</b>	<b>Limit 3</b>	<b>Deductible Amount</b>	<b>Deductible Type</b>
<b>Premium</b>	\$47.33			
<b>Ref #</b>	<b>Description</b> WC & Employer's liability	<b>Coverage Code</b> WCEL	<b>Form No.</b>	<b>Edition Date</b>
<b>Limit 1</b>	<b>Limit 2</b>	<b>Limit 3</b>	<b>Deductible Amount</b>	<b>Deductible Type</b>
<b>Premium</b>				
<b>Ref #</b>	<b>Description</b> TERRIOSM COV	<b>Coverage Code</b> TEROR	<b>Form No.</b>	<b>Edition Date</b>
<b>Limit 1</b>	<b>Limit 2</b>	<b>Limit 3</b>	<b>Deductible Amount</b>	<b>Deductible Type</b>
<b>Premium</b>	\$47.03			
<b>Ref #</b>	<b>Description</b> Experience Mod Factor 1	<b>Coverage Code</b> EXP01	<b>Form No.</b>	<b>Edition Date</b>
<b>Limit 1</b>	<b>Limit 2</b>	<b>Limit 3</b>	<b>Deductible Amount</b>	<b>Deductible Type</b>
<b>Premium</b>	\$1,960.17			
<b>Ref #</b>	<b>Description</b> Assessment Fund	<b>Coverage Code</b> ASMNT	<b>Form No.</b>	<b>Edition Date</b>
<b>Limit 1</b>	<b>Limit 2</b>	<b>Limit 3</b>	<b>Deductible Amount</b>	<b>Deductible Type</b>
<b>Premium</b>	\$552.60			
<b>Ref #</b>	<b>Description</b> CATA	<b>Coverage Code</b> CATA	<b>Form No.</b>	<b>Edition Date</b>
<b>Limit 1</b>	<b>Limit 2</b>	<b>Limit 3</b>	<b>Deductible Amount</b>	<b>Deductible Type</b>
<b>Premium</b>	\$94.06			

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****GENERAL LIABILITY DELUXE ENDORSEMENT:  
HUMAN SERVICES**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE**

It is understood and agreed that the following extensions only apply in the event that no other specific coverage for the indicated loss exposure is provided under this policy. If such specific coverage applies, the terms, conditions and limits of that coverage are the sole and exclusive coverage applicable under this policy, unless otherwise noted on this endorsement. The following is a summary of the Limits of Insurance and additional coverages provided by this endorsement. For complete details on specific coverages, consult the policy contract wording.

<b>Coverage Applicable</b>	<b>Limit of Insurance</b>	<b>Page #</b>
Extended Property Damage	Included	2
Limited Rental Lease Agreement Contractual Liability	\$50,000 limit	2
Non-Owned Watercraft	Less than 58 feet	2
Damage to Property You Own, Rent, or Occupy	\$30,000 limit	2
Damage to Premises Rented to You	\$1,000,000	3
HIPAA	Clarification	4
Medical Payments	\$20,000	5
Medical Payments – Extended Reporting Period	3 years	5
Athletic Activities	Amended	5
Supplementary Payments – Bail Bonds	\$5,000	5
Supplementary Payment – Loss of Earnings	\$1,000 per day	5
Employee Indemnification Defense Coverage	\$25,000	5
Key and Lock Replacement – Janitorial Services Client Coverage	\$10,000 limit	6
Additional Insured – Newly Acquired Time Period	Amended	6
Additional Insured – Medical Directors and Administrators	Included	7
Additional Insured – Managers and Supervisors (with Fellow Employee Coverage)	Included	7
Additional Insured – Broadened Named Insured	Included	7
Additional Insured – Funding Source	Included	7
Additional Insured – Home Care Providers	Included	7
Additional Insured – Managers, Landlords, or Lessors of Premises	Included	7
Additional Insured – Lessor of Leased Equipment	Included	7
Additional Insured – Grantor of Permits	Included	8
Additional Insured – Vendor	Included	8
Additional Insured – Franchisor	Included	9
Additional Insured – When Required by Contract	Included	9
Additional Insured – Owners, Lessees, or Contractors	Included	9
Additional Insured – State or Political Subdivisions	Included	10

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****GENERAL LIABILITY DELUXE ENDORSEMENT:  
HUMAN SERVICES**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE**

It is understood and agreed that the following extensions only apply in the event that no other specific coverage for the indicated loss exposure is provided under this policy. If such specific coverage applies, the terms, conditions and limits of that coverage are the sole and exclusive coverage applicable under this policy, unless otherwise noted on this endorsement. The following is a summary of the Limits of Insurance and additional coverages provided by this endorsement. For complete details on specific coverages, consult the policy contract wording.

<b>Coverage Applicable</b>	<b>Limit of Insurance</b>	<b>Page #</b>
Extended Property Damage	Included	2
Limited Rental Lease Agreement Contractual Liability	\$50,000 limit	2
Non-Owned Watercraft	Less than 58 feet	2
Damage to Property You Own, Rent, or Occupy	\$30,000 limit	2
Damage to Premises Rented to You	\$1,000,000	3
HIPAA	Clarification	4
Medical Payments	\$20,000	5
Medical Payments – Extended Reporting Period	3 years	5
Athletic Activities	Amended	5
Supplementary Payments – Bail Bonds	\$5,000	5
Supplementary Payment – Loss of Earnings	\$1,000 per day	5
Employee Indemnification Defense Coverage	\$25,000	5
Key and Lock Replacement – Janitorial Services Client Coverage	\$10,000 limit	6
Additional Insured – Newly Acquired Time Period	Amended	6
Additional Insured – Medical Directors and Administrators	Included	7
Additional Insured – Managers and Supervisors (with Fellow Employee Coverage)	Included	7
Additional Insured – Broadened Named Insured	Included	7
Additional Insured – Funding Source	Included	7
Additional Insured – Home Care Providers	Included	7
Additional Insured – Managers, Landlords, or Lessors of Premises	Included	7
Additional Insured – Lessor of Leased Equipment	Included	7
Additional Insured – Grantor of Permits	Included	8
Additional Insured – Vendor	Included	8
Additional Insured – Franchisor	Included	9
Additional Insured – When Required by Contract	Included	9
Additional Insured – Owners, Lessees, or Contractors	Included	9
Additional Insured – State or Political Subdivisions	Included	10



Duties in the Event of Occurrence, Claim or Suit	Included	10
Unintentional Failure to Disclose Hazards	Included	10
Transfer of Rights of Recovery Against Others To Us	Clarification	10
Liberalization	Included	11
Bodily Injury – includes Mental Anguish	Included	11
Personal and Advertising Injury – includes Abuse of Process, Discrimination	Included	11

#### A. Extended Property Damage

##### SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE

**LIABILITY**, Subsection 2. **Exclusions**, Paragraph a. is deleted in its entirety and replaced by the following:

##### a. Expected or Intended Injury

“Bodily injury” or property damage” expected or intended from the standpoint of the insured. This exclusion does not apply to “bodily injury” or “property damage” resulting from the use of reasonable force to protect persons or property.

#### B. Limited Rental Lease Agreement Contractual Liability

##### SECTION I – COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE

**LIABILITY**, Subsection 2. **Exclusions**, Paragraph b. **Contractual Liability** is amended to include the following:

- (3) Based on the named insured’s request at the time of claim, we agree to indemnify the named insured for their liability assumed in a contract or agreement regarding the rental or lease of a premises on behalf of their client, up to \$50,000. This coverage extension only applies to rental lease agreements. This coverage is excess over any renter’s liability insurance of the client.

#### C. Non-Owned Watercraft

##### SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE

**LIABILITY**, Subsection 2. **Exclusions**, Paragraph g. (2) is deleted in its entirety and replaced by the following:

- (2) A watercraft you do not own that is:
- (a) Less than 58 feet long; and
  - (b) Not being used to carry persons or property for a charge;

This provision applies to any person, who with your consent, either uses or is responsible for the use of a watercraft. This insurance is excess over any other valid and collectible insurance available to the insured whether primary, excess or contingent.

#### D. Damage to Property You Own, Rent or Occupy

##### SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE

**LIABILITY**, Subsection **2. Exclusions**, Paragraph **j. Damage to Property**, Item **(1)** is deleted in its entirety and replaced with the following:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property, unless the damage to property is caused by your client, up to a \$30,000 limit. A client is defined as a person under your direct care and supervision.

#### **E. Damage to Premises Rented to You**

1. If damage by fire to premises rented to you is not otherwise excluded from this Coverage Part, the word "fire" is changed to "fire, lightning, explosion, smoke, or leakage from automatic fire protective systems" where it appears in:

- a. The last paragraph of **SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, Subsection **2. Exclusions**; is deleted in its entirety and replaced by the following:

Exclusions **c.** through **n.** do not apply to damage by fire, lightning, explosion, smoke, or leakage from automatic fire protective systems to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in **SECTION III – LIMITS OF INSURANCE**.

- b. **SECTION III – LIMITS OF INSURANCE**, Paragraph 6. is deleted in its entirety and replaced by the following:

Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning, explosion, smoke, or leakage from automatic fire protective systems while rented to you or temporarily occupied by you with permission of the owner.

- c. **SECTION V – DEFINITIONS**, Paragraph 9.a., is deleted in its entirety and replaced by the following:

A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, explosion, smoke, or leakage from automatic fire protective systems to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";

2. **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Subsection **4. Other Insurance**, Paragraph **b. Excess Insurance**, **(1) (a) (ii)** is deleted in its entirety and replaced by the following:

That is insurance for fire, lightning, explosion, smoke, or leakage from automatic fire protective systems for premises rented to you or temporarily occupied by you with permission of the owner;

3. The Damage To Premises Rented To You Limit section of the Declarations is amended to the greater of:

- a. \$1,000,000; or
- b. The amount shown in the Declarations as the Damage to Premises Rented to You Limit.

This is the most we will pay for all damage proximately caused by the same event, whether such damage results from fire, lightning, explosion, smoke, or leaks from automatic fire protective systems or any combination thereof.

## F. HIPAA

**SECTION I – COVERAGES, COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**, is amended as follows:

1. Paragraph **1. Insuring Agreement** is amended to include the following:

We will pay those sums that the insured becomes legally obligated to pay as damages because of a “violation(s)” of the Health Insurance Portability and Accountability Act (HIPAA). We have the right and the duty to defend the insured against any “suit,” “investigation,” or “civil proceeding” seeking these damages. However, we will have no duty to defend the insured against any “suit” seeking damages, “investigation,” or “civil proceeding” to which this insurance does not apply.

2. Paragraph **2. Exclusions** is amended to include the following additional exclusions:

This insurance does not apply to:

- a. **Intentional, Willful, or Deliberate Violations**

Any willful, intentional, or deliberate “violation(s)” by any insured.

- b. **Criminal Acts**

Any “violation” which results in any criminal penalties under the HIPAA.

- c. **Other Remedies**

Any remedy other than monetary damages for penalties assessed.

- d. **Compliance Reviews or Audits**

Any compliance reviews by the Department of Health and Human Services.

3. **SECTION V – DEFINITIONS** is amended to include the following additional definitions:

- a. “Civil proceeding” means an action by the Department of Health and Human Services (HHS) arising out of “violations.”
- b. “Investigation” means an examination of an actual or alleged “violation(s)” by HHS. However, “investigation” does not include a Compliance Review.
- c. “Violation” means the actual or alleged failure to comply with the regulations included in the HIPAA.

**G. Medical Payments – Limit Increased to \$20,000, Extended Reporting Period**

If **COVERAGE C MEDICAL PAYMENTS** is not otherwise excluded from this Coverage Part:

1. The Medical Expense Limit is changed subject to all of the terms of **SECTION III - LIMITS OF INSURANCE** to the greater of:

- a. \$20,000; or
- b. The Medical Expense Limit shown in the Declarations of this Coverage Part.

2. **SECTION I – COVERAGES, COVERAGE C MEDICAL PAYMENTS**, Subsection 1. **Insuring Agreement**, a. (3) (b) is deleted in its entirety and replaced by the following:

- (b) The expenses are incurred and reported to us within three years of the date of the accident.

**H. Athletic Activities**

**SECTION I – COVERAGES, COVERAGE C MEDICAL PAYMENTS**, Subsection 2. **Exclusions**, Paragraph e. **Athletic Activities** is deleted in its entirety and replaced with the following:

**e. Athletic Activities**

To a person injured while taking part in athletics.

**I. Supplementary Payments**

**SECTION I – COVERAGES, SUPPLEMENTARY PAYMENTS - COVERAGE A AND B** are amended as follows:

1. b. is deleted in its entirety and replaced by the following:

1. b. Up to \$5000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these.

- 1.d. is deleted in its entirety and replaced by the following:

1. d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$1,000 a day because of time off from work.

**J. Employee Indemnification Defense Coverage**

**SECTION I – COVERAGES, SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** the following is added:

We will pay, on your behalf, defense costs incurred by an "employee" in a criminal proceeding occurring in the course of employment.

The most we will pay for any "employee" who is alleged to be directly involved in a criminal proceeding is \$25,000 regardless of the numbers of "employees," claims or "suits" brought or persons or organizations making claims or bringing "suits."

## K. Key and Lock Replacement – Janitorial Services Client Coverage

**SECTION I – COVERAGES, SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** is amended to include the following:

We will pay for the cost to replace keys and locks at the “clients” premises due to theft or other loss to keys entrusted to you by your “client,” up to a \$10,000 limit per occurrence and \$10,000 policy aggregate.

We will not pay for loss or damage resulting from theft or any other dishonest or criminal act that you or any of your partners, members, officers, “employees”, “managers”, directors, trustees, authorized representatives or any one to whom you entrust the keys of a “client” for any purpose commit, whether acting alone or in collusion with other persons.

The following, when used on this coverage, are defined as follows:

- a. "Client" means an individual, company or organization with whom you have a written contract or work order for your services for a described premises and have billed for your services.
- b. "Employee" means:
  - (1) Any natural person:
    - (a) While in your service or for 30 days after termination of service;
    - (b) Who you compensate directly by salary, wages or commissions; and
    - (c) Who you have the right to direct and control while performing services for you; or
  - (2) Any natural person who is furnished temporarily to you:
    - (a) To substitute for a permanent "employee" as defined in Paragraph (1) above, who is on leave; or
    - (b) To meet seasonal or short-term workload conditions;
 while that person is subject to your direction and control and performing services for you.
  - (3) "Employee" does not mean:
    - (a) Any agent, broker, person leased to you by a labor leasing firm, factor, commission merchant, consignee, independent contractor or representative of the same general character; or
    - (b) Any "manager," director or trustee except while performing acts coming within the scope of the usual duties of an "employee."
- c. "Manager" means a person serving in a directorial capacity for a limited liability company.

## L. Additional Insureds

**SECTION II – WHO IS AN INSURED** is amended as follows:

1. If coverage for newly acquired or formed organizations is not otherwise excluded from this

Coverage Part, Paragraph **3.a.** is deleted in its entirety and replaced by the following:

a. Coverage under this provision is afforded until the end of the policy period.

2. Each of the following is also an insured:

a. **Medical Directors and Administrators** – Your medical directors and administrators, but only while acting within the scope of and during the course of their duties as such. Such duties do not include the furnishing or failure to furnish professional services of any physician or psychiatrist in the treatment of a patient.

b. **Managers and Supervisors** – Your managers and supervisors are also insureds, but only with respect to their duties as your managers and supervisors. Managers and supervisors who are your “employees” are also insureds for “bodily injury” to a co-“employee” while in the course of his or her employment by you or performing duties related to the conduct of your business.

This provision does not change Item 2.a.(1)(a) as it applies to managers of a limited liability company.

c. **Broadened Named Insured** – Any organization and subsidiary thereof which you control and actively manage on the effective date of this Coverage Part. However, coverage does not apply to any organization or subsidiary not named in the Declarations as Named Insured, if they are also insured under another similar policy, but for its termination or the exhaustion of its limits of insurance.

d. **Funding Source** – Any person or organization with respect to their liability arising out of:

(1) Their financial control of you; or

(2) Premises they own, maintain or control while you lease or occupy these premises.

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

e. **Home Care Providers** – At the first Named Insured's option, any person or organization under your direct supervision and control while providing for you private home respite or foster home care for the developmentally disabled.

f. **Managers, Landlords, or Lessors of Premises** – Any person or organization with respect to their liability arising out of the ownership, maintenance or use of that part of the premises leased or rented to you subject to the following additional exclusions:

This insurance does not apply to:

(1) Any “occurrence” which takes place after you cease to be a tenant in that premises; or

(2) Structural alterations, new construction or demolition operations performed by or on behalf of that person or organization.

g. **Lessor of Leased Equipment – Automatic Status When Required in Lease Agreement With You** – Any person or organization from whom you lease equipment when you and such person or organization have agreed in writing in a contract or agreement that such person or organization is to be added as an additional insured on your policy. Such person or

organization is an insured only with respect to liability for "bodily injury," "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

A person's or organization's status as an additional insured under this endorsement ends when their contract or agreement with you for such leased equipment ends.

With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

- h. Grantors of Permits** – Any state or political subdivision granting you a permit in connection with your premises subject to the following additional provision:
- (1) This insurance applies only with respect to the following hazards for which the state or political subdivision has issued a permit in connection with the premises you own, rent or control and to which this insurance applies:
    - (a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners or decorations and similar exposures;
    - (b) The construction, erection, or removal of elevators; or
    - (c) The ownership, maintenance, or use of any elevators covered by this insurance.
- i. Vendors** – Only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:
- (1) The insurance afforded the vendor does not apply to:
    - (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
    - (b) Any express warranty unauthorized by you;
    - (c) Any physical or chemical change in the product made intentionally by the vendor;
    - (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
    - (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
    - (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;



- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
  - (i) The exceptions contained in Sub-paragraphs (d) or (f); or
  - (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
- (2) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing.
- j. **Franchisor** – Any person or organization with respect to their liability as the grantor of a franchise to you.
- k. **As Required by Contract** – Any person or organization where required by a written contract executed prior to the occurrence of a loss. Such person or organization is an additional insured for "bodily injury," "property damage" or "personal and advertising injury" but only for liability arising out of the negligence of the named insured. The limits of insurance applicable to these additional insureds are the lesser of the policy limits or those limits specified in a contract or agreement. These limits are included within and not in addition to the limits of insurance shown in the Declarations
- l. **Owners, Lessees or Contractors** – Any person or organization, but only with respect to liability for "bodily injury," "property damage" or "personal and advertising injury" caused, in whole or in part, by:
  - (1) Your acts or omissions; or
  - (2) The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured when required by a contract.

With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

- (a) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- (b) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

**m. State or Political Subdivisions** – Any state or political subdivision as required, subject to the following provisions:

- (1) This insurance applies only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit, and is required by contract.
- (2) This insurance does not apply to:
  - (a) "Bodily injury," "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
  - (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard."

**M. Duties in the Event of Occurrence, Claim or Suit**

**SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Paragraph 2. is amended as follows:

a. is amended to include:

This condition applies only when the "occurrence" or offense is known to:

- (1) You, if you are an individual;
- (2) A partner, if you are a partnership; or
- (3) An executive officer or insurance manager, if you are a corporation.

b. is amended to include:

This condition will not be considered breached unless the breach occurs after such claim or "suit" is known to:

- (1) You, if you are an individual;
- (2) A partner, if you are a partnership; or
- (3) An executive officer or insurance manager, if you are a corporation.

**N. Unintentional Failure To Disclose Hazards**

**SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, 6. Representations** is amended to include the following:

It is agreed that, based on our reliance on your representations as to existing hazards, if you should unintentionally fail to disclose all such hazards prior to the beginning of the policy period of this Coverage Part, we shall not deny coverage under this Coverage Part because of such failure.

**O. Transfer of Rights of Recovery Against Others To Us**

**SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, 8. Transfer of Rights of**

**Recovery Against Others To Us** is deleted in its entirety and replaced by the following:

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

Therefore, the insured can waive the insurer's rights of recovery prior to the occurrence of a loss, provided the waiver is made in a written contract.

**P. Liberalization**

**SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, is amended to include the following:

If we revise this endorsement to provide more coverage without additional premium charge, we will automatically provide the additional coverage to all endorsement holders as of the day the revision is effective in your state.

**Q. Bodily Injury – Mental Anguish**

**SECTION V – DEFINITIONS**, Paragraph 3. Is deleted in its entirety and replaced by the following:

"Bodily injury" means:

- a. Bodily injury, sickness or disease sustained by a person, and includes mental anguish resulting from any of these; and
- b. Except for mental anguish, includes death resulting from the foregoing (Item a. above) at any time.

**R. Personal and Advertising Injury – Abuse of Process, Discrimination**

If **COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY COVERAGE** is not otherwise excluded from this Coverage Part, the definition of "personal and advertising injury" is amended as follows:

1. **SECTION V – DEFINITIONS**, Paragraph 14.b. is deleted in its entirety and replaced by the following:

- b. Malicious prosecution or abuse of process;

2. **SECTION V – DEFINITIONS**, Paragraph 14. is amended by adding the following:

Discrimination based on race, color, religion, sex, age or national origin, except when:

- a. Done intentionally by or at the direction of, or with the knowledge or consent of:
  - (1) Any insured; or
  - (2) Any executive officer, director, stockholder, partner or member of the insured;
- b. Directly or indirectly related to the employment, former or prospective employment, termination of employment, or application for employment of any person or persons by an insured;

**DESCHUTES COUNTY DOCUMENT SUMMARY**

(NOTE: This form is required to be submitted with ALL contracts and other agreements, regardless of whether the document is to be on a Board agenda or can be signed by the County Administrator or Department Director. If the document is to be on a Board agenda, the Agenda Request Form is also required. If this form is not included with the document, the document will be returned to the Department. Please submit documents to the Board Secretary for tracking purposes, and not directly to Legal Counsel, the County Administrator or the Commissioners. In addition to submitting this form with your documents, please submit this form electronically to the Board Secretary.)

Please complete all sections **above** the Official Review line.

**Date:** January 9, 2023

**Department:** Health Services, Behavioral Health Division

**Contractor/Supplier/Consultant Name:** Bethlehem Inn

**Contractor Contact:** Gwenn Wysling

**Type of Document:** HOST/BI Program Agreement

**Goods and/or Services:** Deschutes County Health Services and Bethlehem Inn are entering a collaboration regarding the Homeless Outreach Services Team (HOST) to reserve bed space on an ongoing basis for the provision of shelter, rent readiness, and brief intervention case management services.

**Background & History:** Bethlehem Inn is a non-denominational, community-based facility providing shelter and hope to those experiencing homelessness in Central Oregon. They provide case management services, access to transportation and a work experience program, which utilizes residents and their skills to complete on-site tasks. Every year Bethlehem Inn provides shelter and services to over 1,000 adults and children in crisis and serves over 66,000 meals.

HOST shall arrange any plan of care, including treatment plan, points of contact and safety plan, and/or arrange special accommodations with Bethlehem Inn for HOST/BI Partnership Program clients prior to clients' intake at Bethlehem Inn, if accommodation or assistance is needed. HOST will ensure that client follows the Reasonable Accommodation Request process for all above requests. Bethlehem Inn will provide regular case management services with specific and consistent contract case managers and establish self-sufficiency action plans, in accordance with Bethlehem Inn Rules and Guidelines to approved HOST/BI Partnership Program clients. In addition, Bethlehem Inn will provide up to four (4) weeks of health and safety focused goals, including but not limited to, daily functioning and ensuring follow through with established HOST goals, as needed.

Deschutes County Health Services will reimburse Bethlehem Inn \$70 per night per bed for six (6) beds. Bethlehem Inn will invoice a flat monthly rate of \$12,775.

**Agreement Starting Date:** January 1, 2023      **Ending Date:** December 31, 2023

**Annual Value or Total Payment:** Maximum compensation shall not exceed \$153,300.

Insurance Certificate Received (check box)  
Insurance Expiration Date: May 1, 2023

Check all that apply:

- RFP, Solicitation or Bid Process
- Informal quotes (<\$150K)
- Not Applicable
- Exempt from RFP, Solicitation or Bid Process (specify – see DCC §2.37)

Funding Source: Oregon Health Authority - #177290

Project Code: HSADLTINT – HS2BHRN

Included in current budget?  Yes  No  
If **No**, has budget amendment been submitted?  Yes  No

Is this a Grant Agreement providing revenue to the County?  Yes  N/A

Special conditions attached to this grant:

Deadlines for reporting to the grantor:

If a new FTE will be hired with grant funds, confirm that Personnel has been notified that it is a grant-funded position so that this will be noted in the offer letter:  Yes  No

Contact information for the person responsible for grant compliance: Name:   
Phone #:

Departmental Contact: Kara Cronin Phone #: 541-322-7526

Deputy Director Approval:

Director Approval:

Signature: Holly Harris  
Holly Harris (Jan 11, 2023 14:57 PST)

Email: holly.harris@deschutes.org

Title: Deputy Director

Company: Deschutes County

Signature: 

Email: janice.garceau@deschutes.org

Title: Director

Company: Deschutes County Health Services

Distribution of Document: Grace Justice Evans, Health Services Department.

Official Review:

County Signature Required (check one):  BOCC  Director (if <\$50K)  
 Administrator (if >\$50K but <\$150K; if >\$150K, BOCC Order No. \_\_\_\_\_)

Legal Review \_\_\_\_\_ Date \_\_\_\_\_

Document Number 2023-087



## BOARD OF COMMISSIONERS

# AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** January 25, 2023

**SUBJECT:** Consideration of Chair Signature of Document No. 2023-079, amending an agreement with Oregon Health Authority for tobacco prevention and cessation efforts, and a resolution formalizing how these grant funds will be expended

**RECOMMENDED MOTION:**

- 1) Move approval of Chair signature of Document No. 2023-079, amending an agreement with Oregon Health Authority for tobacco cessation efforts; and
- 2) Move approval of Resolution No. 2023-006, increasing appropriations within the Health Services Fund and the 2022-23 Deschutes County budget.

**BACKGROUND AND POLICY IMPLICATIONS:**

Oregon Health Authority IGA #169509, approved by the Board of County Commissioners in July of 2021, outlines the program descriptions and funding for Deschutes County's Public Health Division for the period July 1, 2021 through June 30, 2023. This amendment #12 provides \$395,172 of measure 108 funding for Program Element (PE) 13-01, Tobacco Prevention and Education; increases funding for two PEs totaling \$77,213; and de-obligates unspent FY 22 funding for five PEs in the amount of (\$99,528.55). The net funding increase is \$372,856.45.

In November of 2020, Oregon Ballot Measure 108 passed, resulting in a tax on inhalant delivery systems and cigarettes. Of the revenue generated from this tax, 10% was provided to Oregon Health Authority for state and local prevention and cessation. Starting July 1, 2022, OHA has allocated \$10 million of these resources to local public health authorities based on a funding formula. Deschutes County was awarded \$395,172 through this amendment. The BOCC approved FTE resolution #2022-071, in anticipation of this award, on November 2, 2022.

Additional funding attached to this Amendment #12 include: \$47,213 for PE 13-01, Tobacco Prevention and Education (funds carried over from FY 22); \$30,000 of funding for PE44-01 School Based Health Centers (SBHC), to bring it to the correct amount; and (\$99,528.55), de-

obligating unspent FY 22 funds, for the following program elements (PE): PE 08-02, Ryan White B HIV/AIDS: Support Services; PE 08-03, Ryan White B HIV/AIDS: Oral Health; PE-13-01, Tobacco Prevention and Education, 42-14, Home Visiting; and 44-01, SBHC Base.

**BUDGET IMPACTS:**

This resolution recognizes funds from OHA, and appropriates \$395,172, measure 108 funding for Tobacco Prevention and Education, within the Health Services Fund.

**ATTENDANCE:**

Jessica Jacks, Public Health Program Manager

Dan Emerson, Budget Manager



**DESCHUTES COUNTY DOCUMENT SUMMARY**

(NOTE: This form is required to be submitted with ALL contracts and other agreements, regardless of whether the document is to be on a Board agenda or can be signed by the County Administrator or Department Director. If the document is to be on a Board agenda, the Agenda Request Form is also required. If this form is not included with the document, the document will be returned to the Department. Please submit documents to the Board Secretary for tracking purposes, and not directly to Legal Counsel, the County Administrator or the Commissioners. In addition to submitting this form with your documents, please submit this form electronically to the Board Secretary.)

Please complete all sections **above** the Official Review line.

**Date:** January 4, 2023

**Department:** Health Services, Public Health Division

**Contractor/Supplier/Consultant Name:** Oregon Health Authority

**Contractor Contact:** Tammy Hurst, Office of Contracts & Procurements

**Contractor Phone #:** 503-947-5298

**Type of Document:** Intergovernmental Agreement (IGA) #169509-12

**Goods and/or Services:** IGA #169509 outlines the program descriptions and funding for Deschutes County's Public Health Division.

This amendment #12 provides \$395,172 of measure 108 funding for PE13-01, Tobacco Prevention and Education; increases funding for two program elements (PE), totaling \$77,213; and deobligates unspent FY 22 funding for five PEs in the amount of \$99,528.55. The net funding increase is \$372,856.45.

**Background & History:**

In November of 2020, Oregon Ballot Measure 108 passed, resulting in a tax on inhalant delivery systems and cigarettes. Of the revenue generated from this tax, 10% was provided to Oregon Health Authority for state and local prevention and cessation. Starting July 1, 2022, OHA has allocated \$10 million of these resources to Local Public Health Authorities based on a funding formula. Deschutes County was awarded \$395,172 through this amendment.

The State of Oregon, through its Oregon Health Authority (OHA), and Deschutes County adopted the 2021-23 Intergovernmental Agreement #169509 for the Financing of Public Health Services effective July 1, 2021. The individual public health program elements (PE) represented in this Intergovernmental Agreement include disease prevention services, Maternal, Child and Adolescent Health (MCAH) services, School Based Health Centers (SBHC), the Women, Infants and Children (WIC) program, public health emergency preparedness, the Safe Drinking Water Program, tobacco, alcohol, drug and suicide prevention services, and family planning. Each PE has a set of program description, operational and reporting requirements.

Additional funding attached to this Amendment #12 include: \$47,213 for PE 13-01, Tobacco Prevention and Education (funds carried over from FY 22); \$30,000 of funding for PE44-01 School Based Health Centers (SBHC), to bring it to the correct amount; and (\$99,528.55), deobligated unspent FY 22 funds, for the following program elements (PE): PE 08-02, Ryan White B HIV/AIDS: Support Services; PE 08-03, Ryan White B HIV/AIDS: Oral Health; PE-13-01, Tobacco Prevention and Education, 42-14, Home Visiting; and 44-01, SBHC Base.

**Agreement Starting Date:** July 1, 2021

**Ending Date:** June 30, 2023

**Annual Value or Total Payment:** \$372,856.45.

Insurance Certificate Received (check box)  
Insurance Expiration Date: County is Contractor

Check all that apply:

- RFP, Solicitation or Bid Process
- Informal quotes (<\$150K)
- Exempt from RFP, Solicitation or Bid Process (specify – see DCC §2.37)

**Funding Source:** (Included in current budget?  Yes  No)

If **No**, has budget amendment been submitted?  Yes  No

**Is this a Grant Agreement providing revenue to the County?**  Yes  No

Special conditions attached to this grant:

Deadlines for reporting to the grantor:

If a new FTE will be hired with grant funds, confirm that Personnel has been notified that it is a grant-funded position so that this will be noted in the offer letter:  Yes  No

Contact information for the person responsible for grant compliance Name:

Phone #:

**Departmental Contact and Title:**

**Department Director Approval:**

**Signature:** 

**Email:** janice.garceau@deschutes.org

**Title:** Director

**Company:** Deschutes County Health Services

**Distribution of Document:** Grace Justice Evans, Deschutes County Health Services.

---

**Official Review:**

County Signature Required (check one):  BOCC  Department Director (if <\$50K)

Administrator (if >\$50K but <\$150K; if >\$150K, BOCC Order No. \_\_\_\_\_)

Legal Review \_\_\_\_\_ Date \_\_\_\_\_

Document Number 2023-079

# DOCUMENT RETURN STATEMENT

Please complete the following statement and return with the completed signature page and the Contractor Data and Certification page and/or Contractor Tax Identification Information (CTII) form, if applicable.

If you have any questions or find errors in the above referenced Document, please contact the contract specialist.

**Document number:** 169509-12, hereinafter referred to as "Document."

I, \_\_\_\_\_  
Name Title

received a copy of the above referenced Document, between the State of Oregon, acting by and through the Department of Human Services, the Oregon Health Authority, and Deschutes County Health Services \_\_\_\_\_ by email.

**Contractor's name**

On \_\_\_\_\_,  
Date

I signed the electronically transmitted Document without change. I am returning the completed signature page, Contractor Data and Certification page and/or Contractor Tax Identification Information (CTII) form, if applicable, with this Document Return Statement.



\_\_\_\_\_  
Authorizing signature Date

Please attach this completed form with your signed document(s) and return to the contract specialist via email.

REVIEWED  
\_\_\_\_\_  
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY,  
OREGON

A Resolution to Increase Appropriations \*  
Within the 2022-23 Deschutes County Budget \* RESOLUTION NO. 2023-006  
\*

WHEREAS, the Deschutes County Health Services department presented to the Board of County Commissioners on 1/25/23, with regards to Oregon Health Authority funding of \$395,172 for Tobacco Prevention and Education, and

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

WHEREAS, it is necessary to recognize funds and increase appropriations by \$395,172 within the Health Services Fund, now, therefore;

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

Section 1. That the following revenue be recognized in the 2022-23 County Budget:

<u>Health Services</u>	
State Grant	\$ 395,172
<b>Health Services Total</b>	<b><u>\$ 395,172</u></b>

Section 2. That the following expenditures be appropriated in the 2022-23 County Budget:

<u>Health Services</u>	
Program Expense	\$ 395,172
<b>Health Services Total</b>	<b><u>\$ 395,172</u></b>

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

DATED this \_\_\_\_\_ day of January, 2023.

BOARD OF COUNTY COMMISSIONERS OF  
DESCHUTES COUNTY, OREGON

\_\_\_\_\_  
ANTHONY DEBONE, Chair

ATTEST:

\_\_\_\_\_  
PATTI ADAIR, Vice-Chair

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
PHIL CHANG, Commissioner

Agreement #169509



**TWELFTH AMENDMENT TO OREGON HEALTH AUTHORITY  
2021-2023 INTERGOVERNMENTAL AGREEMENT FOR THE  
FINANCING OF PUBLIC HEALTH SERVICES**

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

This Twelfth Amendment to Oregon Health Authority 2021-2023 Intergovernmental Agreement for the Financing of Public Health Services, effective July 1, 2021, (as amended and restated the “Agreement”), is between the State of Oregon acting by and through its Oregon Health Authority (“OHA”) and Deschutes County, (“LPHA”), the entity designated, pursuant to ORS 431.003, as the Local Public Health Authority for Deschutes County.

**RECITALS**

WHEREAS, OHA and LPHA wish to modify the Fiscal Year 2022 (FY22) Financial Assistance Award set forth in Exhibit C of the Agreement.

WHEREAS, OHA and LPHA wish to modify the Fiscal Year 2023 (FY23) Financial Assistance Award set forth in Exhibit C of the Agreement.

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

**AGREEMENT**

1. This Amendment is effective on October 1, 2022, regardless of the date this amendment has been fully executed with signatures by every Party and when required, approved by the Department of Justice. However, payments may not be disbursed until the Amendment is fully executed.
2. The Agreement is hereby amended as follows:
  - a. Section 1 of Exhibit C of the Agreement entitled “Financial Assistance Award” for FY22 is hereby superseded and replaced in its entirety by Attachment A, entitled “Financial Assistance Award (FY22)”, attached hereto and incorporated herein by this reference. Attachment A must be read in conjunction with Section 3 of Exhibit C of the Agreement.
  - b. Section 1 of Exhibit C of the Agreement, entitled “Financial Assistance Award” for FY23 is hereby superseded and replaced in its entirety by Attachment B, entitled “Financial Assistance Award (FY23)”, attached hereto and incorporated herein by this reference. Attachment B must be read in conjunction with Section 3 of Exhibit C.
3. LPHA represents and warrants to OHA that the representations and warranties of LPHA set forth in Section 4 of Exhibit F of the Agreement are true and correct on the date hereof with the same effect as if made on the date hereof.
4. Capitalized words and phrases used but not defined herein shall have the meanings ascribed thereto in the Agreement.
5. Except as amended hereby, all terms and conditions of the Agreement remain in full force and effect.

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

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

7. **Signatures.**

**STATE OF OREGON, ACTING BY AND THROUGH ITS OREGON HEALTH AUTHORITY**

Signature: \_\_\_\_\_

Name: /for/ Nadia A. Davidson

Title: Director of Finance

Date: \_\_\_\_\_

**DESCHUTES COUNTY LOCAL PUBLIC HEALTH AUTHORITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**DEPARTMENT OF JUSTICE – APPROVED FOR LEGAL SUFFICIENCY**

*Agreement form group-approved by Wendy Johnson, Senior Assistant Attorney General, Tax and Finance Section, General Counsel Division, Oregon Department of Justice by email on September 19, 2022, copy of email approval in Agreement file.*

**REVIEWED BY:**

**OHA PUBLIC HEALTH ADMINISTRATION**

By: \_\_\_\_\_

Name: Lynn Marie Blankenship (or designee)

Title: LPHA Fiscal and Contracts Analyst

Date: \_\_\_\_\_

**Attachment A  
Financial Assistance Award (FY22)**

<b>State of Oregon Oregon Health Authority Public Health Division</b>		
<b>1) Grantee</b> Name: Deschutes County  Street: 2577 NE Courtney Dr. City: Bend State: OR Zip: 97701-7638	<b>2) Issue Date</b> Thursday, June 30, 2022	<b>This Action</b> Amendment
	<b>3) Award Period</b> From July 1, 2021 through June 30, 2022	

<b>4) OHA Public Health Funds Approved</b>				
<b>Number</b>	<b>Program</b>	<b>Previous Award Balance</b>	<b>Increase / Decrease</b>	<b>Current Award Balance</b>
PE01-01	State Support for Public Health	\$233,886.00	\$0.00	\$233,886.00
PE01-07	ELC ED Contact Tracing	\$0.00	\$0.00	\$0.00
PE01-08	COVID Wrap Direct Client Services	\$0.00	\$0.00	\$0.00
PE01-09	COVID-19 Active Monitoring - ELC	\$1,115,967.60	\$0.00	\$1,115,967.60
PE01-10	OIP - CARES	\$68,519.41	\$0.00	\$68,519.41
PE07	HIV Prevention Services	\$40,158.00	\$0.00	\$40,158.00
PE08-01	Ryan White B HIV/AIDS: Case Management	\$176,691.00	\$0.00	\$176,691.00
PE08-02	Ryan White B HIV/AIDS: Support Services	\$42,455.00	(\$10,635.60)	\$31,819.40
PE08-03	Ryan White B HIV/AIDS: Oral Health	\$27,187.00	(\$6,181.01)	\$21,005.99
PE12-01	Public Health Emergency Preparedness and Response (PHEP)	\$122,371.81	\$0.00	\$122,371.81
PE12-02	COVID-19 Response	\$36,337.36	\$0.00	\$36,337.36
PE13-01	Tobacco Prevention and Education Program (TPEP)	\$232,239.00	(\$47,212.90)	\$185,026.10
PE36	Alcohol & Drug Prevention Education Program (ADPEP)	\$99,198.52	\$0.00	\$99,198.52
PE40-01	WIC NSA: July - September	\$184,646.00	\$0.00	\$184,646.00



<b>4) OHA Public Health Funds Approved</b>				
<b>Number</b>	<b>Program</b>	<b>Previous Award Balance</b>	<b>Increase / Decrease</b>	<b>Current Award Balance</b>
PE40-02	WIC NSA: October - June	\$565,302.00	\$0.00	\$565,302.00
PE40-05	Farmer's Market	\$7,760.00	\$0.00	\$7,760.00
PE42-03	MCAH Perinatal General Funds & Title XIX	\$6,279.00	\$0.00	\$6,279.00
PE42-04	MCAH Babies First! General Funds	\$20,064.00	\$0.00	\$20,064.00
PE42-06	MCAH General Funds & Title XIX	\$11,779.00	\$0.00	\$11,779.00
PE42-11	MCAH Title V	\$66,429.00	\$0.00	\$66,429.00
PE42-12	MCAH Oregon Mothers Care Title V	\$58,730.00	\$0.00	\$58,730.00
PE42-14	Home Visiting	\$51,241.77	(\$27.65)	\$51,214.12
PE43-01	Public Health Practice (PHP) - Immunization Services	\$46,614.00	\$0.00	\$46,614.00
PE43-06	CARES Flu	\$11,548.94	\$0.00	\$11,548.94
PE44-01	SBHC Base	\$330,000.00	(\$35,471.39)	\$294,528.61
PE44-02	SBHC - Mental Health Expansion	\$431,081.00	\$0.00	\$431,081.00
PE46-05	RH Community Participation & Assurance of Access	\$29,982.00	\$0.00	\$29,982.00
PE50	Safe Drinking Water (SDW) Program (Vendors)	\$112,636.00	\$0.00	\$112,636.00
PE51-01	LPHA Leadership, Governance and Program Implementation	\$151,291.56	\$0.00	\$151,291.56
PE51-02	Regional Partnership Implementation	\$292,278.85	\$0.00	\$292,278.85
PE51-03	ARPA WF Funding	\$54,970.62	\$0.00	\$54,970.62
PE60	Suicide Prevention, Intervention and Postvention	\$117,003.00	\$0.00	\$117,003.00
		\$4,744,647.44	(\$99,528.55)	\$4,645,118.89

<b>5) Foot Notes:</b>	
PE01-01	5/1/21: Bridge funding for July-Sept 2021. Additional funds to be awarded once budgets are final.
PE01-01	9/1/21: Prior comment null and void. Funding is now for FY22 7/1/2021-6/30/2022.
PE01-07	9/1/2021: Funds are available 07/01/2021 - 06/30/2023
PE01-08	9/1/2021: Funds are available 07/01/2021 - 06/30/2023
PE01-09	9/1/2021: Funds are available 7/1/2021 - 06/30/2023
PE01-10	Awarded funds can be spent on allowable costs for the period of 7/1/2021 - 6/30/2024. Any unspent funds as of 6/30/22 will be rolled over into the FY23 award. Please see provided budget guidance for more details on roll over information.
PE40-01	5/2021: All SFY2022 Q1 funding award needs to be spent down by 9/30/2021. No unspent funds carryover to Q2-4 period is allowed.
PE40-01	
PE40-02	5/2021: SFY2022 Q2-4 funds need to be spent by 6/30/2022.
PE40-02	12/2021: December grant adjustment for one-time funding.
PE40-05	7/2021: Funds will be paid in two installments in August and October of 2021.
PE40-05	
PE42-11	6/2022 - indirect rate maximum is 10%
PE42-12	6/2022: indirect rate maximum is 10%
PE43-06	9/1/2021: Activities funded under PE43-06 are the same as PE01-10. Please use PE43-06 funds first and if possible, use by 6/30/2022. No additional funds will be added to PE43-06. Current FY22 awards are a rollover of unspent FY21 awards.
PE51-01	5/1/21: Bridge funding for July-Sept 2021. Additional funds to be awarded once budgets are final.
PE51-01	9/1/21. Prior comment null and void. Award is for FY22 7/1/2021-6/30/2022.
PE51-02	5/1/21: Bridge funding for July-Sept 2021. Additional funds to be awarded once budgets are final.
PE51-02	9/1/21: Prior comment null and void. Please refer to County specific comments for award timelines and restrictions.

<b>6) Comments:</b>	
PE01-09	9/2022: rollover unspent funds from FY22 to FY23; 9/2021: Rollover of unspent funds from FY21 to FY22
PE01-10	9/2022: rollover unspent funds from FY22 to FY23; 9/2021: Rollover of Unspent funds 622,202 from FY21 to FY22
PE08-02	10/2022: deob unspent award
PE08-03	10/2022: deob unspent award
PE12-01	06/2022 SFY22 De-obligation of unspent funds 10/2021: SFY22 award of unspent funds from SFY21 - must be spent by 06/30/2022 and an updated Budget is required by 12/31/2021
PE12-02	10/2021: SFY22 Rollover of unspent funds from SFY21 - must be spent by 03/15/2022
PE13-01	10/2022: De-obligate the amount based on the SFY22 final R&E report
PE36	9/2022: De-obligate the amount based on the SFY22 final R&E report
PE40-01	5/2021: SFY22 Q1 funding: Spend \$36,92 on Nutrition Ed, \$5,768 on BF Promotion
PE40-02	5/2021: SFY2022 Q2-4 funding: spend \$107,188 on Nutrition Ed, \$17,304 on BF Promotion.
PE40-05	07/2021: WIC FDNP Season 2021. Funds must be spent by 12/31/2021.
PE42-14	10/2022: SFY22 close out amendment; 6/2022: Deobligate \$3,265.94 of SFY22 award, a revised award of \$51,241.77 is for the period 7/1/21 to 12/31/21; 4/2022: SFY22 award of \$25,000 is for the period of 1/1/2022 to 6/30/2022; 12/2021: Award of \$29,507.71 is for the period of 7/1/21 to 12/31/21 of that amount \$25,411 is start up funding for the Family Connects OR (FCO) program and the remainder is estimated general fund match for FCO visits: SFY22 Initial: Award is for the period of 7/1/2021 to 12/31/2021
PE43-06	9/2021: Rollover of unspent funds from FY21
PE44-01	10/2022: deob unspent award
PE51-01	9/2022: move unspent funds from FY22 to FY23; 9/2021: added funding for FY22
PE51-02	9/2022: move unspent funds from FY22 to FY23; 1/2022: Funding is for 7/1/21-6/30/22; 9/2021: Bridge funding for 7/1/21-12/31/21
PE51-03	9/2022: move unspent funds from FY22 to FY23;
PE60	08/2021: This award is for July 1, 2021-June 29, 2022-prior comment null and void; 5/2021: This award is for July 1-September 30, 2021 only.

**7) Capital outlay Requested in this action:**

Prior approval is required for Capital Outlay. Capital Outlay is defined as an expenditure for equipment with a purchase price in excess of \$5,000 and a life expectancy greater than one year.

Program	Item Description	Cost	PROG APPROV	

**Attachment B  
Financial Assistance Award (FY23)**

State of Oregon Oregon Health Authority Public Health Division		
<b>1) Grantee</b> Name: Deschutes County  Street: 2577 NE Courtney Dr. City: Bend State: OR Zip: 97701-7638	<b>2) Issue Date</b> Tuesday, November 1, 2022	<b>This Action</b> Amendment
	<b>3) Award Period</b> From July 1, 2022 through June 30, 2023	

4) OHA Public Health Funds Approved				
Number	Program	Previous Award Balance	Increase / Decrease	Current Award Balance
PE01-01	State Support for Public Health	\$233,885.00	\$0.00	\$233,885.00
PE01-09	COVID-19 Active Monitoring - ELC	\$1,053,625.47	\$0.00	\$1,053,625.47
PE01-10	OIP - CARES	\$848,236.59	\$0.00	\$848,236.59
PE07	HIV Prevention Services	\$45,038.00	\$0.00	\$45,038.00
PE08-01	Ryan White B HIV/AIDS: Case Management	\$174,860.00	\$0.00	\$174,860.00
PE08-02	Ryan White B HIV/AIDS: Support Services	\$42,764.00	\$0.00	\$42,764.00
PE08-03	Ryan White B HIV/AIDS: Oral Health	\$34,036.00	\$0.00	\$34,036.00
PE12-01	Public Health Emergency Preparedness and Response (PHEP)	\$110,390.00	\$0.00	\$110,390.00
PE12-02	COVID-19 Response	\$0.00	\$0.00	\$0.00
PE13-01	Tobacco Prevention and Education Program (TPEP)	\$256,932.00	\$442,385.00	\$699,317.00
PE36	Alcohol & Drug Prevention Education Program (ADPEP)	\$217,004.37	\$0.00	\$217,004.37
PE40-01	WIC NSA: July - September	\$183,945.00	\$0.00	\$183,945.00
PE40-02	WIC NSA: October - June	\$551,832.00	\$0.00	\$551,832.00
PE40-05	Farmer's Market	\$7,799.00	\$0.00	\$7,799.00

<b>4) OHA Public Health Funds Approved</b>				
<b>Number</b>	<b>Program</b>	<b>Previous Award Balance</b>	<b>Increase / Decrease</b>	<b>Current Award Balance</b>
PE42-03	MCAH Perinatal General Funds & Title XIX	\$6,475.00	\$0.00	\$6,475.00
PE42-04	MCAH Babies First! General Funds	\$20,692.00	\$0.00	\$20,692.00
PE42-06	MCAH General Funds & Title XIX	\$12,149.00	\$0.00	\$12,149.00
PE42-11	MCAH Title V	\$68,546.00	\$0.00	\$68,546.00
PE42-12	MCAH Oregon Mothers Care Title V	\$72,830.00	\$0.00	\$72,830.00
PE42-14	Home Visiting	\$50,000.00	\$0.00	\$50,000.00
PE43-01	Public Health Practice (PHP) - Immunization Services	\$48,246.00	\$0.00	\$48,246.00
PE44-01	SBHC Base	\$330,000.00	\$30,000.00	\$360,000.00
PE44-02	SBHC - Mental Health Expansion	\$431,080.50	\$0.00	\$431,080.50
PE46-05	RH Community Participation & Assurance of Access	\$31,829.64	\$0.00	\$31,829.64
PE50	Safe Drinking Water (SDW) Program (Vendors)	\$117,524.00	\$0.00	\$117,524.00
PE51-01	LPHA Leadership, Governance and Program Implementation	\$934,477.44	\$0.00	\$934,477.44
PE51-02	Regional Partnership Implementation	\$399,516.15	\$0.00	\$399,516.15
PE51-03	ARPA WF Funding	\$320,809.38	\$0.00	\$320,809.38
PE60	Suicide Prevention, Intervention and Postvention	\$117,003.00	\$0.00	\$117,003.00
		\$6,721,525.54	\$472,385.00	\$7,193,910.54

<b>5) Foot Notes:</b>	
PE01-01	9/1/2022: Funds are available 07/01/2022 - 06/30/2023. Not eligible for Carryover
PE01-09	9/1/2022: Funds are available 07/01/2022 - 06/30/2023
PE01-10	9/2022: Awarded funds can be spent on allowable costs for the period of 7/1/2022 - 6/30/2024. Any unspent funds as of 6/30/23 will be rolled over into the FY24 award. Please see provided budget guidance for more details on roll over information.
PE40-01	5/2022: Underspent SFY2023 Q1 funding award needs to be spent by 9/30/2022. No unspent funds carryover to Q2-4 period.
PE40-05	5/2022: Submit final quarterly Revenue and Expense Report to State LPHA by 1/31/2023.
PE42-11	5/2022: Indirect rate maximum is 10%
PE42-12	5/2022: Indirect rate maximum is 10%
PE51-01	9/2022: Funds available for 7/1/22-6/30/23. Not eligible for carryover.
PE51-02	9/2022: Funding is for 7/1/22-6/30/23. Not eligible for carryover.
PE51-03	10/2022: unspent funds from FY23 can be carried over to FY24 – Funds must be spent by 6/30/2024.

<b>6) Comments:</b>	
PE01-09	9/2022: rollover unspent funds from FY22 to FY23;
PE01-10	9/2022: rollover unspent funds from FY22 to FY23;
PE07	5/2022: \$13,852 must be spent by 12/31/22
PE13-01	10/2022: Amendment to add FY22 Carry over funds of \$47,213 & BM108 funds of \$395,172
PE36	9/2022: move funds between PCA's. carryover from fy22
PE40-01	5/2022: SFY23 award; require spend \$36789 on Nutrition Ed, \$5088 on BF Promotion
PE40-02	5/2022: SFY23 Q2-4 award: spend \$110366 on Nutrition Ed, \$15263 on BF Promotion
PE40-05	5/2022:SFY2023 WIC FDNP mini grant, to be paid in equal installment on 7/1 and 10/1 of 2022.
PE42-04	5/2022: SFY23 award is for the period of 7/1/2022 to 6/30/2023.
PE44-01	11/2022 Increase award to correct amt. 8/2022: increase of award
PE44-02	8/2022: realignment of funding source
PE46-05	07/2022: SFY23 Title X Initial Award
PE50	10/2022: realign funding sources;
PE51-01	9/2022: move unspent funds from FY22 to FY23;
PE51-02	9/2022: move unspent funds from FY22 to FY23;
PE51-03	9/2022: rollover unspent funds from FY22
PE60	7/2022: Award for 7/1/22-6/29/23, prior comment null and void; 5/2022: FY23 funds available 7/1/22-9/30/22 only.

<b>7) Capital outlay Requested in this action:</b>				
Prior approval is required for Capital Outlay. Capital Outlay is defined as an expenditure for equipment with a purchase price in excess of \$5,000 and a life expectancy greater than one year.				
Program	Item Description	Cost	PROG APPROV	





## BOARD OF COMMISSIONERS

# AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** January 25, 2023

**SUBJECT:** Planning Division Work Plan Update / Long Range Planning / FY 2022-2023

**RECOMMENDED MOTION:**

N/A

**BACKGROUND AND POLICY IMPLICATIONS:**

The adopted Community Development Department (CDD) FY 2022-23 Work Plan contains several discretionary long range planning projects varying in complexity and anticipated staff effort. This meeting is intended to update the Board of County Commissioners (Board) on upcoming work plan projects and solicit any comments and revisions. The purpose is to ensure that long-range staff, which has emerging capacity following completion of prior projects, implements the Board's priorities within staff's available resources.

On January 11, 2023 the Board identified the Mule Deer Winter Range Inventory update and In-Conduit Hydroelectric code update as top priorities. This meeting is intended to identify priorities among the remaining discretionary items from the FY 2022-23 Work Plan.

**BUDGET IMPACTS:**

None

**ATTENDANCE:**

Will Groves, Planning Manager





## MEMORANDUM

**TO:** Deschutes County Board of Commissioners

**FROM:** Will Groves, Planning Manager  
Peter Gutowsky, AICP, Director

**DATE:** January 25, 2023

**SUBJECT:** Planning Division Work Plan Update / Long Range Planning / FY 2022-2023

## I. WORK PLAN DIRECTION

The adopted Community Development Department (CDD) FY 2022-23 Work Plan contains several discretionary long range planning projects varying in complexity and anticipated staff effort.<sup>1</sup> This memorandum is intended to update the Board of County Commissioners (Board) on upcoming work plan projects and solicit any comments and revisions. The purpose is to ensure that long-range staff, which has emerging capacity following completion of prior projects, implements the Board's priorities within staff's available resources.<sup>2</sup>

In October 2022, the Board identified priorities for Long Range projects from the Work Plan for late 2022. Tables 1-3, starting on page 2, summarize projects that are completed, ongoing, and yet to be initiated. On January 11, 2023, the Board identified the Mule Deer Winter Range Inventory update and In-Conduit Hydroelectric code update as top priorities. This meeting is intended to identify priorities among the remaining discretionary items from the FY 2022-23 Work Plan.

### **Staff seeks Board direction on prioritizing the following projects:**

- Non-initiated Long Range Planning Projects listed in Table 3, below

## II. BACKGROUND

Each spring, CDD prepares an annual work plan describing proposed projects for the coming fiscal year. A review of the draft work plan provides the Planning Commission, Historic Landmarks Commission, County Administration, CDD's customers and partner agencies, and the Board the opportunity to provide

<sup>1</sup> [https://www.deschutes.org/sites/default/files/fileattachments/community\\_development/page/110/2022-23\\_work\\_plan\\_annual\\_report\\_-\\_final.pdf](https://www.deschutes.org/sites/default/files/fileattachments/community_development/page/110/2022-23_work_plan_annual_report_-_final.pdf). Pages 35-38.

<sup>2</sup> The Long Range Planning Section consists of two Senior Planners, a Senior Transportation Planner (FTE allocated across transportation, current and long range planning duties), and two Associate Planners.

input, including additions, modifications and possible re-prioritization. The work plan describes the most important objectives and proposed projects in each CDD division based on:

1. Board annual goals and policies;
2. Carry-over projects from current or prior years;
3. Changes in state law;
4. Grants/funding sources; and
5. Public comments.

It also serves as the context within which new projects that arise during the course of the year are prioritized and undertaken. The Planning Division Work Plan consistently generates public interest.

**III. COMPLETED PLANNING PROJECTS**

Table 1 lists completed projects identified in the FY 2022-23 work plan.

**Table 1 - Completed Planning Projects**

Project	Summary	Status
<i>HB 4079 / Affordable Housing Pilot Project</i>	Amendments to the Deschutes County Comprehensive Plan and Zoning Map to change the designation of a property to Bend Urban Growth Area and Urbanizable Area (UA) District, respectively. Amendment allows the City of Bend to annex, rezone and approve urban development of the future Parkside Place affordable housing development.	<u>Completed.</u> Board adopted City of Bend Urban Growth Boundary (UGB) amendment in June. City Council adopted similar amendments in July 2022.
<i>Historic Preservation (CLG Grant)</i>	Every 24 months, the State Historic Preservation Office (SHPO) offers matching grants to counties that have been “certified” as historic preservation partners with both the state and federal governments. Deschutes County is a Certified Local Government (CLG). Staff will apply for the next round of grants (2023-2024) in February, which includes coordinating with the Historic Landmarks Commission and City of Sisters.	<u>Completed/Ongoing.</u> Grant applications are due February 24, 2023.
<i>Historic Policy and Procedures Manual</i>	Staff prepared a <i>Historic Landmarks Commission Policies and Procedures Manual</i> . It is a reference guide describing the Commission’s purpose, authorities, roles, decision making process, applicable laws/regulations and public meeting requirements.	<u>Completed.</u> Board reviewed and approved the manual in September.
<i>Historic Preservation Strategic Plan</i>	Staff prepared a <i>Deschutes County and City of Sisters Historic Preservation Strategic Plan 2022-2027</i> . It provides a framework for shaping the county and City of Sisters’ preservation programs over the next five years and creates a blueprint for allocating CLG grant funding	<u>Completed.</u> Board reviewed and approved the strategic plan in September.
<i>Psilocybin Time, Place, and Manner (TPM) Amendments</i>	Measure 109, the Oregon Psilocybin Services Act, was passed by the voters of Oregon, allowing manufacture, delivery, and administration of psilocybin at supervised, licensed facilities beginning on January 2, 2023. Pursuant to Measure 109, the county adopted ordinances that impose reasonable TPM regulations on the location of and operation of psilocybin businesses.	<u>Completed.</u> Board completed second reading of TPM amendment on January 4, 2023. These ordinances will be effective in April 2023

**IV. ONGOING PLANNING PROJECTS**

Staff is currently processing or coordinating several land use projects.

**Table 2 – Ongoing Planning Projects**

<b>Project</b>	<b>Summary</b>	<b>Comments</b>
<i>Amateur Radio Code Updates</i>	Based on Board direction and in coordination with the Deschutes County Building Division, Oregon Department of Aviation, and amateur radio operators, staff has initiated legislative updates to the amateur radio facilities.	<u>Ongoing.</u> Planning Commission will conduct a public hearing to consider legislative amendments to streamline and clarify the review process for Amateur Radio facilities on January 12.
<i>Applicant-initiated Nonresource Land Amendments</i>	Staff is processing four applicant-initiated Plan Amendment and Zone Change applications to change Exclusive Farm Use (EFU) zoning. One is set for Board hearing in January 2023. One has received Hearings Officer review and will be brought to the Board in early 2023. The other two are in incomplete status and are anticipated for hearings in 2023.	<u>Ongoing.</u> Deschutes County has a long-standing policy to timely process applicant-initiated plan amendment, zone changes, and/or text amendments. These plan amendments and zone changes require significant resources and are becoming increasingly common.
<i>City of Bend Coordination</i>	Coordinate with City of Bend on growth management issues, including technical analyses related to housing and employment needs.	<u>Ongoing.</u> Staff is coordinating with city staff regarding HB 3318, Stevens Road Tract. In 2023, the City of Bend will initiate an application to expand its urban growth boundary to include this property.
<i>City of La Pine Coordination</i>	Participate with Property Management and the City of La Pine to update and amend the County owned Newberry Neighborhood comprehensive plan designations, master plan and implementing regulation.	<u>Ongoing.</u> Staff is coordinating with the Property Manager and Strategic Initiatives Manager.
<i>City of Redmond Coordination</i>	Coordinate with City of Redmond to implement their Comprehensive Plan update.	<u>Ongoing.</u> Staff is coordinating with the City of Redmond regarding their plans to relocate and expand their wastewater treatment plant.
<i>City of Sisters</i>	Participate in the implementation of Sisters Country Vision Plan and City of Sisters Comprehensive Plan Update.	<u>Ongoing.</u> Staff participates in regular coordination meetings with the Sisters Vision Implementation Team.
<i>Comprehensive Plan Update</i>	As directed by the Board, an updated Comprehensive Plan needs to incorporate community input to craft new and updated goals and policies regarding agriculture, forestry, housing, recreation, natural resources, natural hazards, economic development, and transportation. This updated community vision is an opportunity to carefully discuss and balance community values in the face of upcoming opportunities and challenges.	<u>Ongoing.</u> Staff, in coordination with the consultant, is conducting community conversations, stakeholder meetings, and open houses throughout Deschutes County. The focus in early 2023 is to work with the Planning Commission to consolidate community feedback into updated draft goals and policies.
<i>Coordination Projects</i>	o Destination Resort Overnight Lodging Unit Annual Reporting	<u>Ongoing.</u> Staff coordinates with relevant stakeholders for these

Project	Summary	Comments
	<ul style="list-style-type: none"> <li>o Marijuana Annual Reporting / Inspections</li> <li>o Portland State University (PSU) Annual Population Estimate</li> </ul>	tasks and reports news, updates, and results to the Board annually.
<i>Dark Skies</i>	The Work Plan identifies updating the Outdoor Lighting Control Ordinance (aka Dark Skies Ordinance). As both the Planning Commission and Board have expressed support for revisiting the County's existing Outdoor Lighting ordinance, staff is preparing a report outlining opportunities and challenges.	<u>Ongoing</u> . This report will be presented to the Board in early 2023.
<i>Growth Management Committees</i>	Coordinate and/or participate on Deschutes County Bicycle and Pedestrian Committee (BPAC), Project Wildfire, and Deschutes County Mitigation and Enhancement Committee. BPAC is involved in the County's Transportation System (TSP) Plan Update, and Sisters Country Expansion Concept Plan.	<u>Ongoing</u> . These meetings occur monthly with the exception of the Mitigation and Enhancement Committee, which is an annual meeting.
<i>Housekeeping Amendments - Early 2023</i>	Initiate housekeeping amendments to ensure County Code complies with State law.	<u>Ongoing</u> . A Public Hearing will be conducted before the Planning Commission in January 2023, prior to a hearing before the Board
<i>Road Naming</i>	Process Road Naming requests associated with certain types of development on a semi-annual basis.	<u>Ongoing</u> .
<i>Rural Accessory Dwelling Units (SB 391)</i>	The Oregon Legislature adopted Senate Bill (SB) 391 into law on June 23, 2021. It authorizes a county to allow an owner of a lot or parcel within a rural residential zone to construct one ADU subject to certain restrictions and limitations.	<u>Ongoing</u> . Based on Board direction, Staff is monitoring the State 2023 Legislative session for changes to ADU or associated fire hardening requirements, prior to proceeding with local implementation.
<i>Sage Grouse Coordination</i>	Participate as a cooperating agency with the Bureau of Land Management (BLM) to evaluate alternative management approaches to contribute to the conservation of the Greater Sage-grouse and sagebrush habitats on federal lands.	<u>Ongoing</u> . Staff will continue to represent the County at multi-agency coordination meetings as part of the BLM's Greater Sage Grouse planning process.
<i>Short Term Rentals</i>	Based on Board direction, Staff is producing a summary of opportunities and challenges associated with residential short term residential rentals.	<u>Ongoing</u> . This summary will be presented to the Board in early 2023.
<i>Transportation Growth Management (TGM) Grant</i>	<p>CDD received a \$75,000 TGM grant to:</p> <ul style="list-style-type: none"> <li>o Update the Tumalo Community Plan's bike, pedestrian, and transit elements; and</li> <li>o Implement the rural trails portion of the Sisters Country Vision Action Plan.</li> </ul>	<u>Ongoing</u> . The consultant has prepared draft concepts for both items and shared them with the respective stakeholder advisory committees. Staff will then begin the process to adopt the TGM Tumalo bike/ped/transit elements into the Tumalo Community Plan (TCP) and the process to add the proposed rural trails to the County TSP map of bike routes.

Project	Summary	Comments
<p><i>Transportation System Plan (TSP) 2020-2040</i></p>	<p>Road Department is funding a \$250,000 update to the TSP.</p>	<p><u>Ongoing</u>. Consultant has posted an online story map and draft list of projects with short description of project, planning level cost estimate, and prioritization. The online site was accepting public comments received until Dec. 31, 2022. Planning and Road Department will then review the comments and determine if any revisions are needed. Formal adoption of the TSP, including policies and the project list, is expected to begin in early 2023.</p>
<p><i>Tumalo Community Plan</i></p>	<p>CDD is preparing a 2020-2040 update to the Tumalo Community Plan (TCP)</p> <ul style="list-style-type: none"> <li>o Review Community Vision</li> <li>o Update tables on basic information for population, developed lots, and traffic volumes</li> <li>o Review and revise policy language as needed based on community input</li> </ul>	<p><u>Ongoing</u>. Staff has held several open houses and online presentations on the TCP. Staff brought forth draft policies at the most recent open house on August 22, 2022. Based on public feedback, staff is revising several policies. Staff intends to hold more public outreach and at least one more open house in Tumalo prior to beginning Planning Commission hearings in early 2023.</p>
<p><i>Wildfire Mitigation (SB 762)</i></p>	<p>In 2021, the Oregon Legislature passed SB 762, which has significant impacts on wildfire mitigation efforts across all jurisdictions in Oregon. The initial risk map was made available on June 30, 2022. However, based on significant concern from citizens and interest groups through the state, ODF withdrew the initial risk map to provide more time for additional public outreach and refinement of risk classification methodologies. ODF anticipates new risk maps will be finalized by late fall or early winter 2023.</p>	<p><u>Ongoing</u>. Staff is monitoring SB 762 and will provide regular updates relating to forthcoming revisions and process related to the Oregon Department of Forestry's wildfire risk map.</p>
<p><i>Wildlife Inventory Update</i></p>	<p>In fall 2021, the Board directed staff to initiate a pilot project add a new mule deer winter range inventory from the Oregon Department of Fish and Wildlife (ODFW) to the county's Goal 5 protected resources. The County's existing mule deer winter range covers approximately 315,947 acres. ODFW's new inventory proposes an additional area of 188,132 acres, resulting in total of 503,979 acres. Incorporating the new inventory into DCC would require:</p> <ul style="list-style-type: none"> <li>o Amending the Comprehensive Plan and zoning code</li> <li>o Drafting parcel-specific maps showing properties affected by the existing and proposed winter range</li> <li>o Writing extensive findings</li> <li>o Creating interactive website</li> <li>o Scheduling public open houses and hearing</li> </ul>	<p><b>Prioritized/Ongoing</b>. This project was delayed until 2023, at Board direction, to prioritize TPM regulations for psilocybin.</p> <p>Staff is seeking Board prioritization of this work plan item as part of this update.</p>

**V. PROJECTS NOT YET INITIATED**

Table 3 lists long range planning projects that have not been initiated. It recognizes staffing resource requirements for each project. They range from “minor” to “significant” as noted below:

- A “minor” rating (2 to 6 months)
- A “moderate” rating (4 to 8 months)
- A “significant” rating (6 to 12 months)

**Table 3 – Non-initiated Long Range Planning Projects**

Project	Summary	County Resources
<i>Bend Airport</i>	Update and adopt the Bend Airport Master Plan and amend the Comprehensive Plan and Development Code to incorporate implementation measures to allow new airport-related businesses. Initial coordination meetings with City of Bend were held in late 2022.	Minor to Moderate
<i>Community Plans</i>	Engage Terrebonne and Newberry Country residents to determine if community plans should be updated.	Significant
<i>Legislative Session</i>	Participate in legislative or rulemaking work groups to shape state laws to benefit Deschutes County.	Minor
<i>Zoning Amendments<sup>3</sup></i>	<ul style="list-style-type: none"> <li>• Minor variance 10% lot area rule for farm and forest zoned properties. (Attachment A)</li> </ul>	Minor
	<ul style="list-style-type: none"> <li>• Outdoor Mass Gatherings update. (Attachment B)</li> </ul>	Moderate
	<ul style="list-style-type: none"> <li>• Lot Line Adjustments and Re-platting. (Attachment C)</li> </ul>	Moderate
	<ul style="list-style-type: none"> <li>• Sign code to become consistent with federal law. (Attachment D)</li> </ul>	Moderate
	<ul style="list-style-type: none"> <li>• Accessory structure amendments clarifying they must be built concurrent with or after the establishment of a primary residence. Specify allowed facilities (baths, cook tops, wet bar) in residential accessory structures. (Attachment E)</li> </ul>	Moderate
	<ul style="list-style-type: none"> <li>• Section 6409(a) of the Spectrum Act (Attachment F)</li> </ul>	Minor
	<ul style="list-style-type: none"> <li>• In conduit hydroelectric generation code amendments (Attachment G)</li> </ul> <p><b><i>Prioritized</i></b></p>	Significant/ <b><i>Prioritized</i></b>
	<ul style="list-style-type: none"> <li>• Repeal Conventional Housing Combining Zone (Attachment H)</li> </ul>	Minor
	<ul style="list-style-type: none"> <li>• Define family for unrelated persons HB 2538, Non-familial Individuals (Attachment I)</li> </ul>	Moderate
	<ul style="list-style-type: none"> <li>• Temporary use of recreational vehicles as dwellings (Attachment J)</li> </ul>	Moderate

**VI. BOARD DIRECTION**

Staff seeks Board direction on the priority of the following projects:

- Non-initiated Long Range Planning Projects listed in Table 3

Attachments

- A. Minor Variance /10% Lot Area Rule
- B. Outdoor Mass Gathering Update

<sup>3</sup> Detailed descriptions of Zoning Amendment projects are provided as attachments to this memo, as noted.

- C. Lot Line Adjustment and Replatting
- D. Sign Code
- E. Accessory Structures
- F. Spectrum Act / Section 6409(a)
- G. In Conduit Hydroelectric Generation
- H. Conventional Housing Combining Zone
- I. Family Definition for Unrelated Persons (HB 2538)
- J. Temporary Use of Recreational Vehicles



**Attachment A- Minor variance 10% lot area rule for farm and forest zoned properties**

**BACKGROUND & OVERVIEW**

Lot line adjustments have been used to circumvent lot-area-based development standards both under local code and state statute. In 1991, County Code was amended (Ord. 91-038) to limit area reduction of lots that are currently smaller than the minimum lot size (to a maximum reduction of ten percent) without a more complicated variance review process.

In the past two decades, state statute (ORS 92.192) has been updated to include protections for lot-area-based standards that are more robust and nuanced than the County Code provision. Currently both the state and county protections apply. However, because the County provisions are more of a “blunt instrument”, they cause unexpected problems for operators of large farms. Specifically, because the minimum lot size for most farm-zoned properties is 80 acres, the transfer of sub-80 acre pieces between neighboring farm operations is needlessly complicated by County Code.

**CURRENT PROCESS & CHANGES**

Potential text amendments would remove the conflict between DCC and ORS by changing DCC 18.132.025 to exclude farm and forest zone properties from the County’s ten-percent reduction limitation.

Key Amendment Concerns	
Staff Effort/Resources	Medium/Low
Legal Complexity	Low
Implementation Urgency	Medium/Low





## **Attachment B - Outdoor Mass Gathering – Revise County Code to Reflect Changes in State Statute**

### **BACKGROUND & OVERVIEW**

Multi-day festivals have long been held in Oregon and multi-day music festivals became especially popular in Deschutes County in the mid-2000s. Between 2013 and 2022, the County processed 12 Outdoor Mass Gathering (OMG)<sup>1</sup> applications including Board Hearings on the dozen applications. Many of these applications were for the Four Peaks Music Festival. Issues for the OMG permits ranged from noise to traffic to incompatibility with adjacent land uses. The applicable review and approval criteria for Outdoor Mass Gatherings (OMG) are found in Deschutes County Code (DCC) 8.16 (Events, Parades, Funeral Processions, and Outdoor Mass Gatherings) specifically DCC 8.16.010 and DCC 8.16.150 through 8.16.340. This code language must be consistent with state statute, specifically Oregon Revised Statute (ORS) 433.735 to 433.770 (Regulation of Outdoor Mass Gatherings)

Concerns about the effects of OMGs as well as a patchwork approach in statute to outdoor events eventually led the Legislature to approve HB 2790 (2019) to modify Oregon Revised Statute (ORS) 433.735 to ORS 433.770. Previously, OMGs were regulated only for health and safety under ORS 433.750 and were not land use decisions under ORS 197.015(10)(d). HB 2790 made local review of a permit for a single gathering of more than 3,000 people and lasting more than 120 hours into a land use decision.

OMGs that are not a land use decision, but regulated by health and safety regulations only:

- Events of less than 3,000 people lasting up to 120 hours
- Events of more than 3,000 people, but lasting less than 24 hours
- Events of more than 3,000 people lasting up to 120 hours

### **CURRENT PROCESS & CHANGES**

Under DCC 8.16.170(A), the County requires permits for OMGs and Extended OMGs with public hearings before the Board for OMGs and the Planning Commission for Extended OMGs. Under HB

<sup>1</sup> Defined in ORS 433.375(2) as a gathering in an open space with actual or reasonably anticipated attendance of more than 3,000 people and lasting between 24 and 120 hours and occurs once within a three-month period. DCC 8.16.010 defines an OMG sets actual or expected attendance of between 500 and 3,000 people and last for between more than 4 and less than 24 hours. DCC 8.16.010 defines an Extended OMG as attendance expected of more than 3,000 people or more than 500 persons for an event that last more than 240 hours, including set-up and breakdown.

2790, an application for an OMG becomes a land use decision – thus following the requirements of Title 22 - and the decision can be made administratively or before a hearings officer, and is appealable to the Board and ultimately the Land Use Board of Appeals (LUBA). Changes would need to be made to DCC 8.16 to reflect changes in definitions and processes.

<b>Key Amendment Concerns</b>	
Staff Effort/Resources	Medium
Legal Complexity	Low
Implementation Urgency	Low



## **Attachment C - Replatting and Property Line Adjustment Amendments**

### **BACKGROUND & OVERVIEW**

Property owners have two primary options for adjusting the boundaries of properties created through subdivisions or partitions:

1. Replats
2. Property line adjustments/consolidations

Simple lot line adjustments involving a single property line are adequately regulated under statute (ORS 92.192). Significant reconfiguration of partitions and subdivisions are regulated under replatting standards, which are more comprehensive and take into account how reconfiguration of properties might affect surrounding roads, emergency access, and infrastructure capacity. However, the Deschutes County Code contains ambiguous language defining when applicants should utilize replatting standards versus property line adjustments and property line consolidations.

### **CURRENT PROCESS & CHANGES**

As noted by the by the Deschutes County Road Department, under current county code, the potential exists for an applicant to apply for a series of property line adjustments to convert adjoining undevelopable properties into developable properties without any consideration for transportation infrastructure impacts. This potential is particularly present in undeveloped portions of subdivisions platted prior to the statewide land use program. Notable examples include portions of the Hillman, Millican, Centralo, and Laidlaw townsite plats. While the Road Department does not have specific recommendations to correct these issues, they outline the following possibilities:

- Property line adjustments that would reconfigure existing adjoining undevelopable units of platted land into a certain number of developable units of land shall be processed as a replat.
- Property line adjustments that would allow for development that is not subject to site plan review with the potential to generate a certain number of weekday PM peak-hour trips shall be processed as a replat.

Code amendments to address these issues would allow a more clear understanding of the thresholds for applying replatting standards versus more simplified property line adjustment

standards. While generally uncommon, staff has encountered high profile applications wherein definitional clarity between these two application types would have avoided additional legal or consultant fees for the applicant while also addressing the impact concerns of the Road and Community Development Departments.

<b>Key Amendment Concerns</b>	
Staff Effort/Resources	Medium
Legal Complexity	Medium
Implementation Urgency	Medium



**Attachment D - Sign Code Amendments**

**BACKGROUND & OVERVIEW**

Currently, Deschutes County Code includes limitations on signs based on their content. In *Reed v. Town of Gilbert (2015)*, the U.S. Supreme Court found a content-based sign ordinance may impede on an applicant’s First Amendment right to Freedom of Speech based on the content of a given sign. Building on *Reed*, the Court reviewed a separate sign code-based case under *City of Austin v. Reagan National Advertising of Austin (2022)*. In *Austin*, the U.S. Supreme Court found that certain sign code provisions (such as requiring advertising signs to be placed on the premises of the entity being advertised) can be considered content-neutral under the right to Freedom of Speech under the First Amendment of the U.S. Constitution.

Deschutes County currently implements its Sign Code through Deschutes County Code Title 15.08. *Reed* implies that Deschutes County should ensure that their Sign Code provisions are “content-neutral” or else be subject to “strict scrutiny” under the First Amendment. *Austin* implies that not all provisions of a given sign code are automatically “content-based” and, therefore, some sign code provisions are subject to “intermediate scrutiny” rather than “strict scrutiny” under the First Amendment. In *Austin*, the U.S. Supreme Court found that, in order to survive intermediate scrutiny, a restriction on speech or expression must be “narrowly tailored to serve a significant government interest”.

**CURRENT PROCESS & CHANGES**

Revisions to the Sign Code could ultimately bring Title 15.08 into compliance with Federal case law and interpretations around sign content and Freedom of Speech included in *Reed (2015)* and *Austin (2022)*. Staff foresees working closely with County Legal Counsel to review the existing Sign Code, ensuring that content-based provisions are designed to be content-neutral.

Key Amendment Concerns	
Staff Effort/Resources	Medium/High
Legal Complexity	Medium/High
Implementation Urgency	Medium



**Attachment E - Accessory Structure Amendments**

**BACKGROUND & OVERVIEW**

The County regularly receives requests for residential accessory buildings with many of the features of dwelling units (e.g. kitchen-like areas, multiple full-baths, wet bars). Despite careful communication with developers, these residential accessory buildings are often converted to illegal dwelling units or are misrepresented as ADUs to subsequent buyers of the property.

The Deschutes County Code (DCC) lacks provisions common in other Counties’ code such as:

- 1) Specification of allowed plumbing and other dwelling-like features permissible in residential accessory buildings,
- 2) A requirement for a recording to the property title, alerting future buyers that the residential accessory building is not an ADU, or
- 3) A requirement that that the dwelling (primary use) must be constructed first (or at the same time) as residential accessory buildings.

**CURRENT PROCESS & CHANGES**

The Board has expressed interest in creating clarity within the County Code around these potentially ambiguous provisions. As one example, the City of Bend currently utilizes a code system that provides specific definitions of certain improvement types, and clear standards of when and where these improvements are allowed. City of Bend also provides accessory structure-related code language, clearly specifying that primary uses must be established prior to accessory structures. Revisions to County Code related to residential accessory buildings could offer more clarity for residential property owners looking to develop and could help with the differentiation between primary and accessory structures.

Key Amendment Concerns	
Staff Effort/Resources	Medium
Legal Complexity	Medium
Implementation Urgency	Medium/High



## **Attachment F - Spectrum Act - Wireless Telecommunication Amendments**

### **BACKGROUND & OVERVIEW**

On February 22, 2012, the Middle Class Tax Relief and Job Creation Act of 2012 became law. Section 6409(a) of the act, also known as the Spectrum Act, was intended to advance wireless broadband service for public safety and commercial purposes and to provide for the creation of a broadband communications network for first responders. Along with Section 704 of the Telecommunications Act of 1996 (Public Law 104-104), the Spectrum Act can be viewed as part of the ongoing effort by the wireless industry to achieve federal preemption over local telecommunications zoning regulations. As such, Deschutes County (along with many other State and local governments) must alter existing telecommunication regulations which do not align with certain aspects of the Spectrum Act.

The Spectrum Act and corresponding Federal Communications Commission (FCC) rulings outline the following standards:

- Applies to collocations, removals, or modification of equipment on wireless towers or base stations;
- Mandates that a State or local government “may not deny, and shall approve” any application covered by section 6409(a);
- Does not apply to collocation on a structure that is not a wireless tower or base station; and
- Does not apply if action substantially changes the physical dimensions of a tower or base station.

Regarding the process for reviewing an application under Section 6409(a), the FCC also provides that:

- A State or local government may only require applicants to provide documentation that is reasonably related to determining whether the eligible facilities request meets the requirements of Section 6409(a);
- A state or local government must approve an application covered by Section 6409(a) within 60 days from the date of filing, subject to tolling; the running of the period may be tolled by mutual agreement or upon notice that an application is incomplete, but not by a moratorium (an incomplete notice must be provided according with the same deadlines and requirements applicable under Section 704 of the Telecommunications Act of 1996, codified as 47 U.S.C. § 332(c)(7)); and

- An application filed under Section 6409(a) is deemed granted if a State or local government fails to act on it within the requisite time period;

In the summary, Section 6409(a) restricts local land use review of modifications and collocations by establishing a “substantial change” test as the primary eligibility determinant for review exemptions afforded by the Spectrum Act and reduces the application processing “shot clock” from 90 days to 60 days.

**CURRENT PROCESS & CHANGES**

Deschutes County Code (DCC) Section 18.116.250 contains provisions which directly contradict the standards of the Spectrum Act described above. However, the Community Development Department (CDD) currently evaluates and approves applications for non-substantial changes to physical portions of existing wireless telecommunication facilities (such as collocations of infrastructure) pursuant to the standards of Section 6409(a).

However, code amendments would allow a more seamless understanding of the Spectrum Act approval standards for both staff and applicants by codified the Spectrum Act standards in formal Deschutes County documents and ordinances. Any proposed amendments would ultimately include an objective set of standards for what constitutes “substantial changes” to existing wireless telecommunication facilities.

Key Amendment Concerns	
Staff Effort/Resources	Medium/Low
Legal Complexity	Medium
Implementation Urgency	Medium/Low





**Attachment G - Conduit Hydroelectric Facility Amendments**

**BACKGROUND & OVERVIEW**

In 1986, Deschutes County adopted Ordinance No. 86-018, allowing hydroelectric facilities as a conditional use. In 2020, Three Sisters Irrigation District (TSID) applied for a hydroelectric facility to be integrated into their existing conduit system for the purpose of generating operational revenue for the district. The Board ultimately approved the request, only applying the provisions of DCC 18.128.260(A-B) that pertained to hydroelectric facilities located along existing conduit, not located directly adjacent to natural waterways or impoundments. The Board’s approval was ultimately upheld at the Land Use Board of Appeals (LUBA) in 2022.

**CURRENT PROCESS & CHANGES**

During final reading of the Board’s hydroelectric facility approval, the Commissioners expressed an interest in revisiting the code provisions at DCC 18.128.260(A-B) for the purpose of differentiating the “riverine” and “conduit” facilities, as characterized throughout the review of the TSID application<sup>1</sup>. The Board mentioned the terms “affected stretch of river” and “maintain or enhance” as language that may be changed to differentiate between these types of hydroelectric facilities. Other changes to existing code language may be necessary to fully encapsulate the review criteria that may apply to riverine and conduit facilities, respectively. These revisions would ultimately create a more streamlined review process for conduit hydroelectric facility proposals which do not directly abut waterways or otherwise directly impact rivers or other water sources.

Key Amendment Concerns	
Staff Effort/Resources	Medium/High
Legal Complexity	Medium
Implementation Urgency	Medium

<sup>1</sup> Deschutes County BOCC Decision (Document No. 2021-223) pg. 20. 2021.



## **Attachment H - Conventional Housing Combining Zone Amendments**

### **BACKGROUND & OVERVIEW**

The purpose of these amendments is to repeal the Conventional Housing Combining Zone (CHC Zone) from the County's zoning map and zoning code. Deschutes County adopted the CHC in 1979 as part of Ordinance PL-15, the County's Zoning Ordinance. The CHC serves as an overlay district and restricts placement of manufactured or prefabricated homes in specific areas of the County with the following stated purpose:

*"To provide a variety of residential environments in rural areas by maintaining areas reserved for conventional and modular housing permanently attached to real property".<sup>1</sup>*

The CHC applies to three areas – an area to the east of Tumalo, west of Tumalo and east of Bend<sup>2</sup>. In 2020, the County produced a Rural Housing Profile, which outlined several potential strategies for removing barriers to housing production in rural Deschutes County. Repeal of the CHC was listed as a strategy as it would give those properties the potential to provide affordable housing in the form of mobile or manufactured homes, which are less expensive alternatives to stick-built or modular housing.

In addition to this, on March 23, 2022, Oregon House Bill 4064 became effective. The bill amended several sections of Oregon Revised Statute to prohibit local governments from prohibiting siting of prefabricated structures in residential areas where traditional single-family homes or other common dwelling types were allowed. Although the amendments were targeted toward cities and urban growth boundaries, several code provisions also limit the County's ability to limit manufactured prefabricated homes in residential areas.

### **PROPOSED CHANGES**

The CHC is a mapped Combining Zone and removal of the zone from the three aforementioned areas would require:

- 1) Repeal of section 18.92 Conventional Housing Combining Zone from the Deschutes County Code
- 2) Zoning Map Amendment to repeal Conventional Housing Combining Zone

<sup>1</sup> DCC 18.92.010

<sup>2</sup> [https://www.deschutes.org/sites/default/files/fileattachments/community\\_development/page/16511/housing\\_profile\\_-\\_conventional\\_housing\\_combining\\_zone\\_map.pdf](https://www.deschutes.org/sites/default/files/fileattachments/community_development/page/16511/housing_profile_-_conventional_housing_combining_zone_map.pdf)

<b>Key Amendment Concerns</b>	
Staff Effort/Resources	Low/Medium
Legal Complexity	Medium
Implementation Urgency	Medium/High



## **Attachment I - Amend County Code to define family for unrelated persons, Non-familial Individuals (HB 2583)**

### **BACKGROUND & OVERVIEW**

Until the passage of House Bill 2583 in 2021, local law in Oregon dictated residential occupancy limits based on “family” or “related” persons, essentially limiting how many unrelated people could share a home, regardless of dwelling type, size, or ownership status. This restriction served to unnecessarily limit housing choices—a particular pressure point in the current housing crisis.

HB 2583 now precludes the “family” clause from single-family occupancy requirements, stating:

“A maximum occupancy limit may not be established or enforced by any local government, as defined in ORS 197.015, for any residential dwelling unit, as defined in ORS 90.100, if the restriction is based on the familial or nonfamilial relationships among any occupants.”

### **CURRENT PROCESS & CHANGES**

Deschutes County Code (DCC) Section 18.04.030, Definitions, currently defines “family” as:

*“an individual or two or more persons related by blood, marriage, legal adoption, or legal guardianship living together as one housekeeping unit using a common kitchen and providing meals or lodging to not more than three additional unrelated persons, excluding servants; or a group of not more than five unrelated persons living together as one housekeeping unit using a common kitchen.”*

This allows a total of five people if the residents are unrelated, but an undetermined number if the dwelling houses a family (which could be any size) as well as three unrelated persons.

Staff is investigating how other Oregon Counties have approached House Bill 2583. Clackamas County, for example, allows a total of 15 persons, regardless of relationship.

Utilizing a flat occupancy rate (like Clackamas County) means that a small home would have the same occupancy limit as a large home, which seems relatively illogical and could result in overcrowding of smaller dwellings as well as overloading of septic systems. Relating occupancy to number of bedrooms appears reasonable in that the occupancy limits would relate to the size of the dwelling. However, this could also lead to complications with respect to what is considered a

bedroom. Often, rooms are used as bedrooms by residents even if they do not meet the definition in the building code with respect to windows, egress, and size.

This amendment would require choosing a policy direction for a preferred definition as it relates to occupancy.

<b>Key Amendment Concerns</b>	
Staff Effort/Resources	Medium/Low
Legal Complexity	Low
Implementation Urgency	Medium/Low



**Attachment J – DCC 18.116.095 Recreational Vehicle as a Temporary Residence on an Individual Lot**

**BACKGROUND & OVERVIEW**

County Code allows a vacant property to be occupied by a recreational vehicle (RV) for either 30 days in any 60-day period without a permit or 180 days with a permit. Ambiguity in the current regulations result in significant code enforcement burden and difficulty ensuring proper disposal of wastewater. Issue areas include:

- Failure to implement or maintain lawful wastewater disposal
- Fire safety concerns
- Occupancy beyond lawful duration
- Violation of Wetland or Floodplain regulations
- Establishment of Hipcamps (online nightly rentals of RV spaces)
- Construction of buildings accessory to the RV use of the property

**CURRENT PROCESS & CHANGES**

Under Board direction and with public outreach and input, Staff would update DCC 18.116.095 to better address these concerns.

Key Amendment Concerns	
Staff Effort/Resources	Medium
Legal Complexity	Low
Implementation Urgency	Medium



## BOARD OF COMMISSIONERS

# AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** January 25, 2023

**SUBJECT:** Public Hearing: A Commercial Activity in Conjunction with Farm Use (Meadery) in the Exclusive Farm Use Zone

**BACKGROUND AND POLICY IMPLICATIONS:**

The Board of County Commissioners will conduct a public hearing to consider a request for a commercial activity in conjunction with farm use to establish a Meadery (file nos. 247-22-000024-CU, 22-025-SP, 22-757-A, 22-914-A).

The Board has agreed to hear the appeal *de novo*. The Board will hear and consider the report by staff, the applicant's presentation and written submittal, and any member of the public that wishes to give testimony or provide written comments.

**ACTION:**

At the conclusion of the public hearing, the Board can choose to:

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

**BUDGET IMPACTS:**

None

**ATTENDANCE:**

Nathaniel Miller, Associate Planner  
Jacob Ripper, Principal Planner



## MEMORANDUM

**TO:** Deschutes County Board of County Commissioners

**FROM:** Nathaniel Miller, AICP, Associate Planner

**DATE:** January 25, 2023

**RE:** Public Hearing: A Commercial Activity in Conjunction with Farm Use (Meadery) in the Exclusive Farm Use Zone.

The Board of County Commissioners (Board) is conducting a Public Hearing on January 25, 2023, to consider a request for a commercial activity in conjunction with farm use to establish a Meadery. The applications and appeals are identified as file nos. 247-22-000024-CU, 22-025-SP, 22-757-A, 22-914-A. The subject property is located approximately 0.5 miles southeast of the city limits of Sisters along Highway 20 which borders the property to the southwest. The property is addressed at 68540 Highway 20, Sisters, and is further identified on County Assessor's Map 15-10-10 as tax lot 700. A location map is included as **Attachment A**.

### I. BACKGROUND

The Applicant, John Herman, has requested a Conditional Use Permit for commercial activities in conjunction with farm use to establish a Meadery (Honey Winery) with associated uses in the Exclusive Farm Use Zone (EFU), and within the Airport Safety (AS), Surface Mining Impact Area (SMIA) and Landscape Management (LM) Combining Zones. The request also includes a Site Plan Review for the Meadery and associated uses. The proposed Meadery would be situated on the southern portion of the property along Highway 20 and within the existing developed building, lawn, and road network. The Meadery Production and Meadery Operations (processing & tasting room) would be centralized in an existing farm structure (Winery Building) with the Winery Related Events and parking areas around this location.

On September 7, 2022, the Deschutes County Planning Division administratively approved a conditional use permit and site plan request (file nos. 247-22-000024-CU, 247-22-000025-SP) for the proposed Meadery. An appeal was filed on September 19, 2022, by Central Oregon LandWatch (file no. 247-22-000757-A) to that decision requesting a Public Hearing. The initial Public Hearing before the Hearing's Officer was conducted on Wednesday, October 26th, 2022. The Hearings Officer



issued a decision on November 18th, 2022, which denied the proposal. On November 29, 2022, the applicant filed an appeal to the Hearing Officer decision (file no. 247-22-000914-A) requesting a *limited de novo* review from the Board. In a Consideration to Hear meeting on December 21, 2022, the Board agreed to hear the appeal *de novo* in a Public Hearing.

## II. PUBLIC COMMENT

The Planning Division mailed notice of the conditional use application and site plan review to all property owners within 750 feet of the subject property on December 12, 2021. The applicant also complied with the posted notice requirements of Section 22.24.030(B) of Title 22. Staff has also mailed two notices of decisions and two notices of public hearings in accordance with Deschutes County's procedures ordinance. Public comments to the record are summarized below:

- Central Oregon LandWatch contacted the Planning Division on January 28, 2022, with concerns that the proposal did not meet the applicable criteria.
- Neighbor, Matt Cohen contacted the Planning Division on February 14, 2022, with concerns about the how access points on Highway 20 can accommodate increased traffic volumes.

## III. APPEAL FROM CENTRAL OREGON LANDWATCH (247-22-000757-A)

As noted above, Central Oregon LandWatch filed a timely appeal on September 19, 2022, to the staff decision. The Notice of Appeal from Central Oregon LandWatch includes six (6) main points of objection, which staff summarizes and include below:

- The decision violates ORS 215.416(8) which requires that approval or denial of a permit application must be based on standards and criteria that are set forth in the zoning ordinance or other appropriate ordinance or regulation of the county and relates approval or denial of a permit application to the zoning ordinance and comprehensive plan for the area in which the proposed use of land would occur.
- There is neither state nor local law permitting a meadery on EFU land.
- Mead is neither a wine nor a beer, and a set of beehives is not a vineyard. There is no legal basis for finding a meadery is an allowed use in the EFU zone.
- ORS 215.203 authorizes counties to adopt ordinances establishing EFU zones, which limit the use of the land therein to "farm use except as otherwise provided in ORS 215.213, 215.283 or 215.284." ORS 215.203(1). A Meadery is not a listed use.
- ORS 215.452 regulates wineries based on the characteristics of a vineyard, which are distinct from the characteristics of beehives.

- There is no evidence on which to base a finding that a meadery will yield an income incidental to the income from current mead sales, as there is no evidence of any mead sales.

**IV. HEARING OFFICER DECISION**

The Deschutes County Hearings Officer rendered a final decision denying the Applicant’s request for a conditional use permit for the Meadery on the grounds that:

- The applicant has not satisfied the standard for a Commercial Activity in Conjunction with Farm Use demonstrating that the Meadery use will be incidental and subordinate to the farm use on the property. These standards are outlined in DCC 18.16.030(E) with the incorporation of relevant case law *Friends of Yamhill County v. Yamhill County*, 255 Or App 636, 298 P3d 586 (2013)<sup>1</sup>.
- The applicant did not adequately address impacts to farm uses in the area pursuant to Deschutes County Code (DCC) 18.16.040(A) (1) and (2).<sup>2</sup> The corresponding Oregon Revised Statute (ORS) is ORS 215.296(1), which is also known as the “Farm Impacts Test”.

**V. APPEAL FROM APPLICANT (247-22-000914-A)**

The Applicant (John Herman) submitted a timely appeal of the Hearings Officer’s decision on November 29, 2022. The Applicant requested the Board conduct a Public Hearing to review the following issues:

- Whether the Hearings Officer erred in finding the Applicant did not demonstrate that the Meadery use will be incidental and subordinate to the farm use on the property and fulfill the requirements of DCC 18.16.030(E).

The Hearings Officer found that the *“...Applicant simply has not attempted to quantify the magnitude of the farm use or the magnitude of the non-farm commercial activities. Some attempt at quantifying those activities is necessary if they are to be compared for the purpose of identifying a primary use and a secondary use.”* The Hearings Officer further states: *“...I find that the Application must be denied because the Applicant has not met its burden of demonstrating the*

---

<sup>1</sup> The Oregon Court of Appeals has developed a test for evaluating commercial activities in conjunction with farm use. *Friends of Yamhill County v. Yamhill County*, 255 Or App 636, 298 P3d 586 (2013). It requires four findings:

1. The use relates to a farm use occurring on the subject property; and
2. Any commercial activity beyond processing and selling farm products must be incidental and subordinate to the farm use (frequency and intensity when compared to the farm use on site, spatially, operating hours); and
3. The use enhances the quality of the agricultural enterprise; and
4. The use promotes the policy of preserving farm land for farm use

<sup>2</sup> 1. Will not force a significant change in accepted farm or forest practices as defined in ORS 215.203(2) (c) on surrounding lands devoted to farm or forest uses; and 2. Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

*Meadery – as proposed – will be incidental and subordinate to a primary farm use on the Subject Property.”*

- Whether the Hearings Officer erred in finding that the Applicant did not fully satisfy the requirements of DCC 18.16.040 (A) (1) and (2), being the Farm Impacts Test.

The Hearings Officer found that *“...the record does not include a description of the farm practices on surrounding lands devoted to farm use, nor does it include any explanation for why the proposed development will not force a significant change or cost to those practices.”* The Hearings Officer further states: *“Without any analysis of the accepted farm practices that are associated with the identified farm uses, I cannot make a factual finding regarding the existence of those farm practices, or a finding that it is more likely than not that the Meadery will not force a significant change to those farm practices.”*

- Whether the applicant and subject property is currently engaged in farm activities with the intent to make a profit in money.

Under the heading of: *Is the Subject Property currently in farm use?*, the Hearings Officer found that *“...while it is an extremely close call, I find the Applicant has provided more than mere testimony that it has sold crops. The Applicant has also testified that there has been a gross profit from those sales and that the revenue earned has been reinvested in the farming operation. Based on this record, and although the Applicant has provided little corroboration of revenue from the current farm, I find it more likely than not that the Subject Property is currently in farm use.”*

**VI. BOARD CONSIDERATION**

The Board has agreed to hear the appeal *de novo*. The Board will hear and consider the report by staff, the applicant’s presentation and written submittal, and any member of the public that wishes to give testimony or provide written comments. The record is available on the project website listed below.

**VII. 150-DAY LAND USE CLOCK**

The application for 247-22-000024-CU, 247-22-000025-SP was considered complete and the 150-day clock was started on July 15, 2022. The applicant initiated the first toll from September 21, 2022, to September 23, 2022, which extended the clock by two (2) days. The applicant initiated the second toll on November 29, 2022, to March 29, 2023, which extends the clock by one hundred and twenty (120) days. With the tolls from the applicant, the original 150-day clock is extended past the original 150<sup>th</sup> day noted in the decision as December 12, 2022.

The 150th day on which the County must take final action on this application is April 13, 2023.

## VIII. RECORD

The record for file nos. 247-22-000024-CU, 247-22-000025-SP (appeal file nos. 247-22-000757-A and 247-22-000914-A) is as presented at the following Deschutes County Community Development Department website:

<https://www.deschutes.org/cd/page/247-22-000024-cu-and-247-22-000025-sp-conditional-use-and-site-plan-review-meadero>

## IX. NEXT STEPS

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

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

## ATTACHMENT(S):

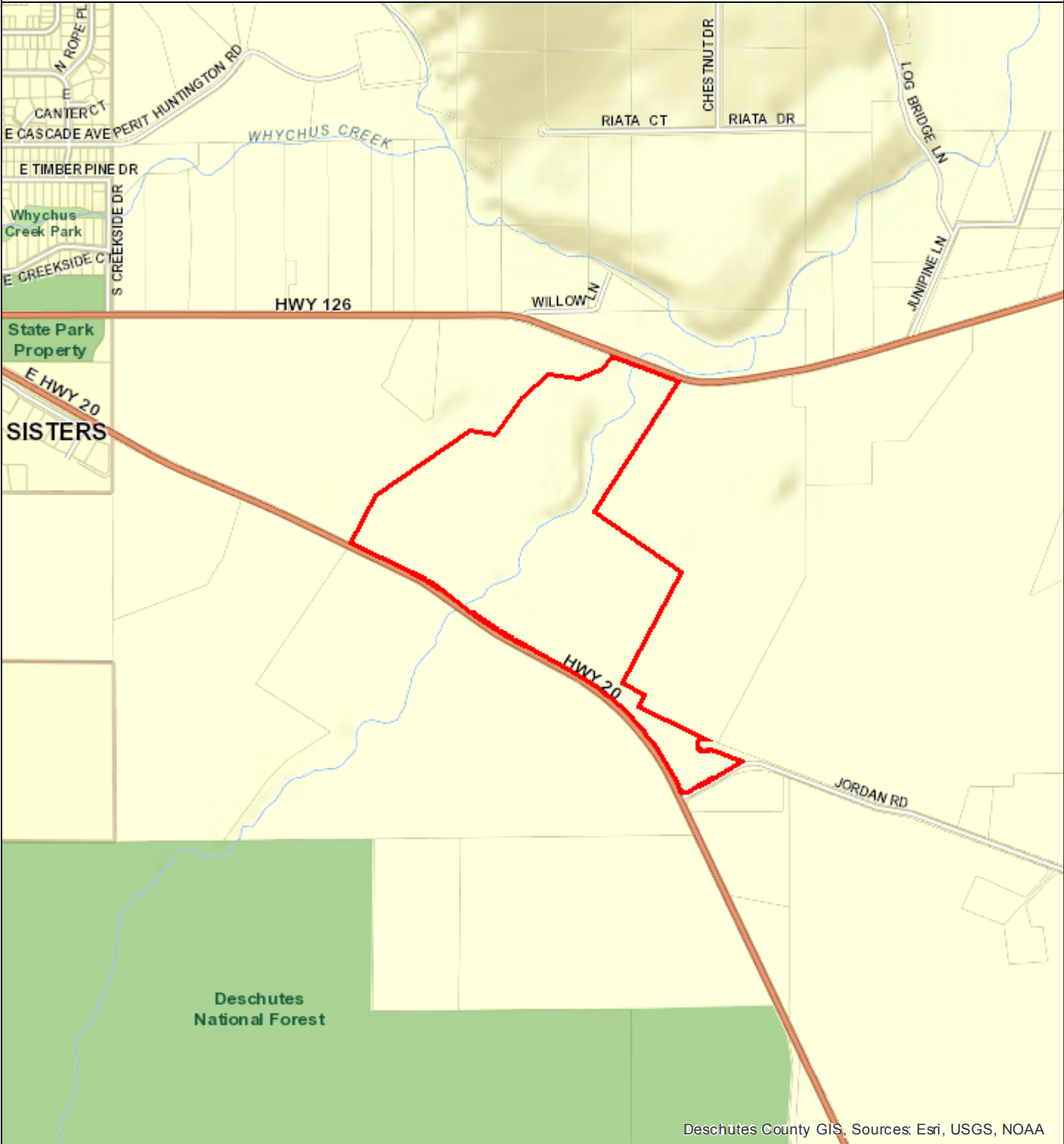
**Attachment A** - 2023-01-25 Location Map 22-024-CU, 22-025-SP, 22-757-A, 22-914-A

**Attachment B** - 2023-01-25 Hearing Officer Decision 22-024-CU, 22-025-SP, 22-757-A

**Attachment C** - 2023-01-25 Appeal 247-22-000914-A

# File: 247-22-000024-CU, 025-SP, 22-757-A, 22-914-A

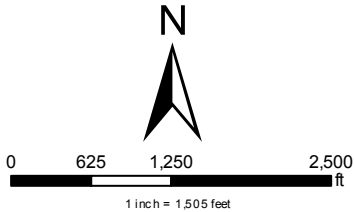
## 68540 Highway 20



Deschutes County GIS, Sources: Esri, USGS, NOAA



Date: 12/8/2022



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

**FILE NUMBERS:** File No. 247-22-000757-A  
(Appeal of files 247-22-000024-CU and 247-22-000025-SP)

**HEARING DATE:** October 26, 2022, 6:00 p.m.

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

**APPLICANT/OWNER:** John Herman

**SUBJECT PROPERTY:** Tax Lot 00700, Map 15-10-10  
Situs Address: 68540 E Highway 20, Sisters, OR 97759

**APPELLANT:** Central Oregon LandWatch

**REQUEST:** Appeal of an administrative decision: (1) approving a conditional use for a meadery and associated activities as a commercial activity in conjunction with farm use; (2) approving a site plan approval for the meadery.

**HEARINGS OFFICER:** Tommy A. Brooks

**SUMMARY OF DECISION:** The Hearings Officer finds that the Applicant has not met its burden of proof with respect to a commercial activity in conjunction with farm use and, therefore, **SUSTAINS** the appeal, and **DENIES** the Application, based on the findings in this Decision.

**I. APPLICABLE STANDARDS AND CRITERIA**

- Deschutes County Code (DCC)
- Title 18, Deschutes County Zoning Ordinance
  - Chapter 18.16, Exclusive Farm Use Zones
  - Chapter 18.120, Exceptions
  - Chapter 18.128, Conditional Use

## **II. BACKGROUND AND PROCEDURAL FINDINGS**

### **A. Nature of Proceeding**

This matter comes before the Hearings Officer as an appeal of a decision by the Deschutes County Planning Department (“Staff”) in which Staff approved: (1) the operation of a meadery as a commercial activity in conjunction with a farm use (File 247-22-000024-CU); and (2) a site plan for the meadery (File 247-22-000025-SP) (together, the “Staff Decision”).

The specific proposal in the Application underlying the Staff Decision is the Applicant’s proposal to operate a meadery on the Subject Property. According to the Applicant and other information in the record, a meadery makes mead, a type of wine fermented from honey rather than from grapes. Mead is sometimes referred to as “honey wine,” and a meadery is sometimes referred to as a “honey winery.” The Applicant currently maintains beehives on the Subject Property from which honey is harvested and engages in the production of mead. The Applicant plans to use honey from the Subject Property and from other farms around the county and state as part of the planned meadery, which will produce mead on a larger scale for sale. In addition to the meadery itself, the Applicant proposes other commercial activities such as an indoor tasting room, an outdoor tasting area, food carts, “winery-related” events, and other unidentified activities “related to the production, sale, marketing, and distribution of wine, farm products, and related incidental items.” The Application includes a request for use of the Subject Property as a music venue to support local events that may not be winery related, such as the Sisters Folk Festival. This decision will refer to the meadery and the proposed commercial activities as the “Meadery.”

### **B. Notices, Decision, Appeal, and Hearing**

The Application was filed on January 19, 2022. On January 28, 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.

On September 7, 2022, Staff issued a decision on the Application, styled “Findings and Decision” (the “Staff Decision”). On September 19, 2022, the County received an Appeal Application with a Notice of Appeal on behalf of Central Oregon Landwatch (“Appellant”), seeking review of the Staff Decision. There is no dispute in this proceeding that the appeal documents were timely filed.

On September 30, 2022, the County mailed a Notice of Public Hearing (“Hearing Notice”) announcing an evidentiary hearing (“Hearing”) for the appeal of the Staff Decision. Pursuant to the Hearing Notice, I presided over the Hearing as the Hearings Officer on October 26, 2022, opening the Hearing at 6:01 p.m. The Hearing was held via videoconference, with Staff, the Applicant, and a representative of Appellant present in the hearing room. The Hearings Officer appeared remotely.

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.

No participant requested that the record remain open. The Hearing concluded at approximately 7:35 p.m. At that time, I closed the Hearing and the record, and I took this matter under advisement.

C. 150-day Clock

The Applicant submitted the Application on January 19, 2022. Staff reviewed the Application and, on February 18, 2022, notified the Applicant that the Application was incomplete (“Incomplete Notice”). The Applicant provided additional information on or about March 8, 2022 and March 17, 2022, and continued to provide information to the record in response to Staff inquiries. On July 15, 2022, Applicant’s attorney notified Staff that the Applicant had provided information in response to the Incomplete Notice, thereby confirming that the Applicant believed the Application to be complete as of that date.

Using July 15, 2022, as the date of completeness, the deadline within which the County must make a final decision under ORS 215.427 – “the 150-day clock” – is December 12, 2022.

**III. SUBSTANTIVE FINDINGS AND CONCLUSIONS**

A. Adoption of Findings in Staff Decision

The Staff Decision contains comprehensive findings related to the Application and the Subject Property. The vast majority of the findings in the Staff Decision are not challenged in this Appeal, and, although this proceeding is *de novo*, most criteria in the Staff Decision are not re-addressed by the participants during the appeal. As a result, I hereby adopt the findings in the Staff Decision as my findings, as supplemented and modified by the findings in this Decision, which address the issues and criteria that were raised on appeal. To the extent any of the findings in this Decision conflict with the findings in the Staff Decision, my intent is to have these findings control.

B. Issues on Appeal

The Appellant’s Notice of Appeal sets forth several bases for appeal of the Staff Decision, and Appellant raised other issues during the Hearing. Appellant seeks denial of the Application based on the following assertions: (1) a meadery is not an allowed use in the Exclusive Farm Use (“EFU”) zone either because no local or state law allows such a use, or because a meadery is not a “winery”, which can be allowed by statute; (2) there is insufficient evidence on which to base a finding that there is any farm use currently on the Subject Property; (3) there is insufficient evidence on which to base a finding that the Meadery will produce income that is “incidental” or “subordinate” to income from farm uses on the Subject Property; (4) the Applicant has not adequately addressed the farm impacts test required by ORS 215.296; and (5) the Staff Decision violates ORS 215.416(8) because it is based on provisions relating to grape wineries rather than a meadery. The findings below address each of those issues.

///

///

///



1. Is a meadery an allowed use in the EFU zone?

The Applicant’s proposed Meadery includes meadery facilities for processing mead and several associated commercial activities such as tasting areas, food carts, and incidental sales of mead-related items. Appellant asserts that the Meadery is not an allowed use in the EFU zone.

ORS 215.203 establishes a statewide construct for determining which uses are allowed in the EFU zone. Under that statute, an EFU zone “shall be used exclusively for farm use except as otherwise provided in ORS 215.213, 215.283 or 215.284.”<sup>1</sup> ORS 215.213 and ORS 215.284 are not applicable in the present matter. ORS 215.283 sets forth various specific uses, other than “farm uses”, that are allowed in the EFU zone. The non-farm uses in ORS 215.283(1) are uses a county must allow by right, subject only to statutory standards rather than local standards.<sup>2</sup> The non-farm uses listed in ORS 215.283(2), in contrast, are considered “conditional” uses that a county can choose to allow, and in doing so a county can impose additional restrictions on those uses.<sup>3</sup>

Appellant is correct that neither the Deschutes County Code (“DCC” or “Code”) nor ORS 215.283 expressly lists “meadery” as an allowed non-farm use in the EFU zone. ORS 215.283(1)(n) does list a “winery” as a use permitted by right, but only if the winery is the type of winery described in ORS 215.452 or ORS 215.453. DCC 18.16.025(F) mirrors that statute and also refers to ORS 215.452, which the Code incorporates through DCC 18.16.038(B). By the express terms of those statutory and Code provisions, such wineries are wineries that produce wine from grapes.<sup>4</sup> Those statutes therefore do not provide a basis for permitting the Meadery, which processes honey rather than grapes.

In contrast to the winery example, ORS 215.283 and the Code also establish broader categories of non-farm uses that encompass multiple specific uses. ORS 215.283(1)(c), for example, authorizes “utility facilities necessary for public service”, but that category has been applied to allows different types of specific utilities.<sup>5</sup> The absence of the word “meadery” in the statute or Code, therefore, does not mean a meadery cannot ever be approved, and it is possible to approve a meadery under one of the listed use categories, as long as the Meadery is a type of use contemplated by that broader category.

The broader category the Applicant seeks as the basis for approving the Meadery is set forth in ORS 215.283(2)(a) – “commercial activities that are in conjunction with farm use.” The express terms of that statute do not limit that category to any particular type of commercial activity and, instead, require only that the commercial activity be in conjunction with a farm use. Indeed, that is how the courts have applied that statute. Applying ORS 215.283(2)(a) prior to the legislature’s enactment of ORS 215.452 and ORS 215.453, which now expressly allow certain wineries as a non-farm use, the Oregon Supreme Court upheld the issuance of a conditional use permit for a winery in the EFU zone as a commercial activity in

<sup>1</sup> ORS 215.203(1).

<sup>2</sup> *Brentmar v. Jackson Cty.*, 321 Or 481, 496 (1995).

<sup>3</sup> *Id.*

<sup>4</sup> *See, e.g.*, ORS 215.452(1), authorizing wineries that “produce wine” and that either includes an onsite vineyard, includes a contiguous vineyard, or sources grapes from a contiguous vineyard.

<sup>5</sup> *See, e.g.*, *Dayton Prairie Water Ass’n v. Yamhill County*, 38 Or LUBA 14 (2000) (applying statute to approve water facilities); *c.f. WKN Chopin, LLC v. Umatilla County*, 66 Or LUBA 1 (2012) (applying statute to approve electric transmission line).

conjunction with a farm use.<sup>6</sup> It did so because the winery at issue in that case satisfied the criteria of ORS 215.283(2)(a) and despite the fact that “winery” was not separately listed as an allowed use in the EFU zone.

Based on the foregoing, I find that the Meadery is an allowed use in the EFU zone as long as the proposed use satisfies the standards required for “commercial activities that are in conjunction with farm use” as contemplated by DCC 18.16.030, which is the County’s version of ORS 215.283(2)(a).<sup>7</sup>

a. Is the Subject Property currently in farm use?

Appellant asserts that a farm use is “a predicate for the approval of a commercial activity in conjunction with farm use.” More particularly, Appellant’s assertion is that “a current farm use” must be shown before any commercial activities in conjunction with farm use can be permitted. Appellant argues that the record is not sufficient to demonstrate that the Subject Property is “currently” in farm use, as defined by ORS 215.203(2). In support of this argument, Appellant relies on *Friends of Marion County v. Marion County*, -- Or LUBA --, LUBA No. 2021-088/089 (Apr. 21, 2022) (“*Friends of Marion County*”).

As presented to the Hearings Officer, Appellant argues only that the Applicant has not demonstrated a “current” farm use. The difficulty with Appellant’s argument is that it does not address whether the proposed use of the Subject Property as a Meadery, which would occur in the future, will be in conjunction with a farm use that will exist at that time. Rather, Appellant’s written and oral comments acknowledge that the activities the Applicant proposes to produce mead in the future – which include beekeeping and honey production – are farm uses. I therefore understand Appellant’s argument to be that, regardless of what future farm uses occur as part of the proposal, the Applicant must nevertheless demonstrate that there are currently farm uses on the Subject Property.

The *Friends of Marion County* case and other cases interpreting ORS 215.283(2)(a) make it clear that a “farm use” must exist if there is to be an allowed commercial activity in conjunction with that farm use. Contrary to Appellant’s argument, however, those cases do not hold that the farm use must already be in existence at the time of the application. In other words, they do not prevent an applicant from proposing a future commercial activity that will be in conjunction with a future farm use developed at the same time, and in fact, those cases imply or acknowledge that the farm use can be developed in the future.

In *Friends of Marion County*, for example, the issue LUBA addressed was the argument that “none of the findings or the evidence in the record demonstrates that intervenors currently operate or will operate a farm use.”<sup>8</sup> LUBA reversed the county’s approval in that case based on its conclusion that a farm use did not currently exist. However, the county’s findings in that case determined that the current uses on the subject property were “farm uses” and the county required the applicant to maintain those same uses as part of the approval of the commercial uses the applicant proposed. Because LUBA concluded that the

<sup>6</sup> *Craven v. Jackson County*, 308 Or 281 (1989).

<sup>7</sup> I also note that Appellant’s representative appears to have agreed with this conclusion during the Hearing. In response to a question from the Hearings Officer asking if all meaderies are excluded from the EFU zone as a matter of law, the representative responded that was likely not the case and that it would need to be determined on a case-by-case basis under ORS 215.283(2)(a).

<sup>8</sup> *Friends of Marion County* at \*10.

current activities were not “farm uses” as defined by statute, the applicant could therefore not rely on those same activities as a basis for the approval of commercial uses in conjunction with farm uses. That case did not involve a record that contemplated the further development of farm uses like the record in this matter does. *Craven* also illustrates this point. In that case, the Court considered a conditional use permit granted to an applicant who “proposes to establish a vineyard and winery”, which “winery is to be constructed before the accompanying vineyard is fully planted.”<sup>9</sup> Thus, the Court approved the commercial activity in conjunction with a farm use that was not yet established. The Court was concerned only whether the farm use would exist at the same time the proposed commercial activities were conducted.

Based on the foregoing, I cannot agree with Appellant’s assertion that the Applicant is required to show that a farm use “currently” exists on the Subject Property. As in *Craven*, the permit can be issued as long as the commercial activities are conducted in conjunction with a farm use, which farm use may be developed in tandem with the commercial activities once the permit is issued.

If the Applicant were required to show that the Subject Property, as it currently exists, is in farm use, this would be a more difficult issue to resolve. Appellant takes issue with the fact that the Applicant has not demonstrated a “profit” from farm activities. As explained in *Friends of Marion County*, “profit” is a broad term, and profit exists “so long as crops are raised, harvested and sold for a gross profit.”<sup>10</sup> In that case, LUBA held that a farmer had not demonstrated a profit where the farmer “simply testified that they sold the field crops with no other documentation of their production or sale.” Here, while it is an extremely close call, I find the Applicant has provided more than mere testimony that it has sold crops. The Applicant has also testified that there has been a gross profit from those sales and that the revenue earned has been reinvested in the farming operation. Based on this record, and although the Applicant has provided little corroboration of revenue from the current farm, I find it more likely than not that the Subject Property is currently in farm use.

b. Does the Meadery satisfy the standard for commercial activities in conjunction with farm use?

Appellant asserts that the Meadery does not meet the standard for allowing commercial activities in conjunction with farm use. Appellant’s specific arguments are that the Meadery is not incidental and subordinate to Applicant’s planned farm uses, and that it does not enhance the local agricultural community.

Appellant’s arguments are grounded in the case law that interprets ORS 215.283(2)(a). One clear articulation of the standard from the Court of Appeals states that any commercial activity beyond the direct processing and selling of a farm product must “be both ‘incidental’ and subordinate to” the farm use.<sup>11</sup> In *Friends of Yamhill County*, the Court of Appeals addressed a county’s approval of a permit to allow 44

<sup>9</sup> *Craven*, 308 Or at 283-84.

<sup>10</sup> *Friends of Marion County* at \*16 citing *Cox v. Polk County*, 39 Or LUBA 1, 7-12 (2000).

<sup>11</sup> *Friends of Yamhill County v. Yamhill County*, 255 Or App 636, 650-51 (2013) citing *Craven*, 308 Or at 289.

annual events as part of a winery.<sup>12</sup> Finding the approval to be “dangerously close” to creating a scenario in which the incidental and secondary activities overtake the primary activity, the court nevertheless upheld the approval. The court explained that its decision was based on a condition of approval that limited non-farm income from the commercial activity from exceeding 25 percent of the gross income from the farm use activity, which was the onsite retail sales of wine.<sup>13</sup>

The Applicant’s proposal and the Staff Decision in this matter imposed a condition of approval similar to the condition in *Friends of Yamhill County*. Specifically, the Staff Decision imposes a condition that requires the Applicant to confirm, on an annual basis, that no less than 25% of the honey used to produce mead is generated from the Subject Property. However, this condition of approval does not address the same issue the court was concerned with in *Friends of Yamhill County*. The condition in *Friends of Yamhill County* ensured that the scale of the non-farm commercial use was not greater, and therefore subordinate to, the primary farm use. In contrast, the condition in the Staff Decision that the Applicant relies on controls only the scale of the farm product being used for the commercial activity, ensuring that the Subject Property is the primary source of the farm product. That condition does not appear to impose any limitations on the scale of the non-farm commercial uses. Thus, for example, even if the Applicant sourced all of its honey from the Subject Property, nothing would prevent the Applicant from holding events and selling food from food carts in a manner the produces significantly more income than the farm use. If that occurred, the non-farm commercial activities would end up being the primary activity rather than the secondary activity.

As the Appellant points out, there are other components of the Application indicating that the non-farm commercial uses are not subordinate to the farm use. For example, the Applicant intends to have four employees for the Meadery, but perhaps only one, if any, for the farm operations. It is perhaps possible to have such a disparity in employees and still have the farm use be the primary use. However, as the Appellant notes, the Applicant simply has not attempted to quantify the magnitude of the farm use or the magnitude of the non-farm commercial activities. Some attempt at quantifying those activities is necessary if they are to be compared for the purpose of identifying a primary use and a secondary use.<sup>14</sup> That burden lies with the Applicant. Based on the record before me, I find that the Applicant has not met that burden.<sup>15</sup>

Although I agree with the Appellant that the Applicant has not demonstrated the Meadery will be incidental and subordinate to a farm use, I disagree with the Appellant’s argument that the Applicant has not demonstrated the Meadery enhances the local agricultural community. The *Craven* decision is informative in this regard. In that case, the Court determined that the proposed winery did enhance the local agricultural community because it provided a local market outlet for grapes of other growers in the area. The Court also noted that it would help transform a hayfield into a vineyard, which increases the

---

<sup>12</sup> The application in that case was made pursuant to ORS 215.283(2)(a) as a commercial activity and not under ORS 215.283(1)(n) as a winery.

<sup>13</sup> The definition of “farm use” includes “the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use.” ORS 215.203(2)(a).

<sup>14</sup> See, e.g., *Chauncey v. Multnomah County*, 23 Or LUBA 599 (1992) (holding that an application without evidence establishing the quantity of products delivered or dollar amount of sales to cannot demonstrate, as a matter of law, the proposed use is a commercial activity in conjunction with farm use).

<sup>15</sup> Appellant also relies on *Friends of Yamhill County v. Yamhill County*, 301 Or App 726 (2020). That case, although it addresses commercial activities, applies ORS 215.283(4), and is therefore not directly applicable to this matter.

intensity and value of agricultural products. LUBA has built on the decision in *Craven* and stated that, to demonstrate an activity enhances the local agricultural community, “a commercial activity in conjunction with farm use must be either exclusively or primarily a customer or supplier of farm uses.”<sup>16</sup>

The Applicant’s proposal here is nearly identical to the situation in *Craven* and *City of Sandy v. Clackamas County*. Specifically, the Applicant proposes to purchase honey from other farmers. Although the Applicant will not be a supplier of other farm uses, it will be primarily a customer of farm uses. The Applicant also proposes to develop regenerative bee pastures, which enrich the soils and, ultimately, increases the intensity and value of agricultural products. I therefore find that the Applicant’s proposal satisfies this part of the standard in ORS 215.283(2)(a).

Based on the foregoing, I find that the Application must be denied because the Applicant has not met its burden of demonstrating the Meadery – as proposed – will be incidental and subordinate to a primary farm use on the Subject Property.

c. Did the Applicant adequately address the farm impacts test required by ORS 215.296?

As noted above, a commercial activity in conjunction with farm use is an allowed use in the EFU Zone, subject to any additional conditions the County may impose in its Code. Pursuant to DCC 18.16.040, the County has imposed several limitations on conditional uses, including commercial activities in conjunction with farm use authorized under DCC 18.16.030. The specific restrictions in DCC 18.16.040(A)(1) and (2) are required by state law and are a codification of the restrictions in ORS 215.296(1). LUBA sometimes refers to these restrictions as the “Farm Impacts Test.”

An applicant carries the burden of proving that ORS 215.296(1) has been met.<sup>17</sup> LUBA has a well-established methodology for demonstrating compliance with the farm impacts test.<sup>18</sup> Under that methodology, a proposal can be approved only if it: (1) describes farm practices on surrounding lands devoted to farm use; (2) explains why the proposed development will not force a significant change in those practices; and (3) explains why the proposed development will not significantly impact or increase the cost of those practices. To begin that process, LUBA has held that “[i]n applying ORS 215.296(1), it is entirely appropriate for the applicant to begin by visually surveying surrounding lands to identify the farm and forest uses to which those lands are devoted.”<sup>19</sup> Other parties are then free to dispute the initial findings, or to add to the record additional evidence of nearby farm uses and farm practices that the applicant must respond to.<sup>20</sup>

In addressing the Farm Impacts Test, the Applicant initially followed the process described above by providing what amounted to a visual survey of the surrounding land. Specifically, the Applicant provided an inventory of all parcels within a one-mile radius of the Subject Property that are devoted to farm use. As part of that inventory, the Applicant also identified specific farm uses in the study area,

<sup>16</sup> *City of Sandy v. Clackamas County*, 28 Or LUBA 316, 321 (1994).

<sup>17</sup> *Schrepel v. Yamhill County*, -- Or LUBA – (LUBA No. 2020-066), 2020 WL 8167220, at \*6.

<sup>18</sup> *See Brown v. Union County*, 32 Or LUBA 168 (1996).

<sup>19</sup> *Dierking v. Clackamas County*, 38 Or LUBA 106, 120-21 (2000).

<sup>20</sup> *Id.*

noting that they included “a combination of grass hay, permaculture, forest, [and] bare land.” Other information provided by the Applicant indicates that some properties have horses, cattle, and pastures.

The Applicant concludes, primarily based on geographic separation, that there will be no impacts to forest or farm practices on the farm uses identified in the inventory. For example, the Applicant states a nearby property “is buffered by our own dwellings, farm buildings, 12 acres of regenerative bee pasture, and a 20-acre field that will eventually become regenerative bee pasture. At this distance, the winery will not significantly change or increase the cost of any of the accepted farm practices on this farm property.” The Applicant arrived at a similar conclusion for potential noise and light impacts, noting that, because of the adjacent noise and lights from Highway 20, these impacts are already accepted by all adjoining farm and forest land.

The flaw in the Applicant’s analysis is that it does not actually identify any farm practices that are associated with the various farm uses it identifies. As applied by LUBA and the courts, the Farm Impacts Test must focus on impacts to farm practices. Further, the fact that a similar impact may already exist does not mean that an increase in that impact is necessarily acceptable. An impact that already exists may nevertheless force a significant change to the farm practices associated with that use, or significantly increase the costs of those practices. That determination cannot be made, however, unless the Applicant first identifies specific farm practices that may be impacted.

In summary, the record does not include a description of the farm practices on surrounding lands devoted to farm use, nor does it include any explanation for why the proposed development will not force a significant change or cost to those practices. It is quite possible that the meadery will not have significant impacts on farm practices, but the burden to demonstrate compliance with the Farm Impacts Test unequivocally lies with the Applicant. Without any analysis of the accepted farm practices that are associated with the identified farm uses, I cannot make a factual finding regarding the existence of those farm practices, or a finding that it is more likely than not that the Meadery will not force a significant change to those farm practices. I therefore find that the Applicant has not met its burden to demonstrate compliance with DCC 18.16.040(A)(1) and (2).

d. Did the Staff Decision comply with ORS 215.416(8)?

Because a meadery is a type of winery, the Applicant refers to the winery statutes and compares the proposed meadery to a grape winery. As noted in earlier findings, state statutes contain provisions specific to grape wineries and grape wineries are allowed in the EFU zone either outright through ORS 215.283(1)(n), as implemented by ORS 215.452 and ORS 215.453, or conditionally through ORS 215.283(2)(a) as a commercial activity in conjunction with agriculture. Applicant’s stated purpose for comparing a meadery to a winery is that using the winery statutes as a guide helps ensure the meadery remains “incidental and subordinate to farm use.” Appellant asserts that this approach is akin to approving the meadery based on inapplicable criteria and, therefore, violates ORS 215.416(8). That statute requires that approval or denial of a permit application be based only on applicable standards and criteria set forth in a county’s land use regulations. Appellant argues that the winery statutes are not applicable and, therefore, cannot be relied on for approval of the Meadery.

Even though this Decision reverses the outcome of the Staff Decision, ORS 215.416(8) applies to both the approval or denial of an application. I therefore find it appropriate to address whether the Staff Decision violated ORS 215.416(8). I find that it did not.

There is no dispute in this proceeding that the Applicant seeks approval of the meadery under ORS 215.283(2)(a) as a commercial activity in conjunction with agriculture. The Applicant refers to the winery statutes as a guide and Applicant’s express request to the County was “We have suggested that the County consider imposing most of the limitations on the meadery that ORS 215.452 applies to small wineries as a means of assuring that activities associated with the meadery are incidental and subordinate to farm use.” Indeed, the Applicant recognized that ORS 215.452 was not a basis for approval of the meadery where it referred to ORS 215.456, which points back to ORS 215.283(2)(a) as a means of approving a winery that cannot otherwise be approved under ORS 215.283(1)(n), ORS 215.452, and ORS 215.453.

Contrary to Appellant’s assertion, the Staff Decision did not rely on the winery statutes and, therefore, did not rely on inapplicable criteria. Indeed, the Staff Decision very clearly articulated the standard under ORS 215.283(2)(a) and set forth the three components of such a use that Staff would review: (1) the use must be a “commercial” activity; (2) it must be “in conjunction with farm use;” and (3) it must not be the processing of farm crops as described in Section 18.16.025. The Staff Decision then made findings relating to each of those components, and did so without reference to the requirements of the winery statutes. The criteria the Staff Decision relied on are each incorporated into the County’s Code. The Staff Decision therefore did not violate ORS 215.416(8).

C. Conditions of Approval

The Staff Decision imposed several conditions of approval as part of Staff’s approval of the Application. The Hearings Officer notes that no participant challenged any condition of approval or otherwise asserted such conditions could not or should not be applied if the Application were approved. Because this Decision finds that the Application cannot be approved based on the current record, however, there is no basis to impose any conditions of approval.

**IV. CONCLUSION**

Based on the foregoing findings, I find the Applicant has not met its burden of proof with respect to the standards for approving commercial activities in conjunction with a farm use and with respect to the Farm Impacts Test. The appeal of the Staff Decision is therefore SUSTAINED, and the Application is DENIED.

Dated this 17<sup>th</sup> day of November 2022



Tommy A. Brooks  
Deschutes County Hearings Officer



COMMUNITY DEVELOPMENT

APPEAL APPLICATION – BOARD OF COUNTY COMMISSIONERS

FEE: \_\_\_\_\_

EVERY NOTICE OF APPEAL SHALL INCLUDE:

- 1. A statement describing the specific reasons for the appeal.
- 2. If the Board of County Commissioners is the Hearings Body, a request for review by the Board stating the reasons the Board should review the lower decision.
- 3. If the Board of County Commissioners is the Hearings Body and *de novo* review is desired, a request for *de novo* review by the Board, stating the reasons the Board should provide the *de novo* review as provided in Section 22.32.027 of Title 22.
- 4. If color exhibits are submitted, black and white copies with captions or shading delineating the color areas shall also be provided.

It is the responsibility of the appellant to complete a Notice of Appeal as set forth in Chapter 22.32 of the County Code. The Notice of Appeal on the reverse side of this form must include the items listed above. Failure to complete all of the above may render an appeal invalid. Any additional comments should be included on the Notice of Appeal.

Staff cannot advise a potential appellant as to whether the appellant is eligible to file an appeal (DCC Section 22.32.010) or whether an appeal is valid. Appellants should seek their own legal advice concerning those issues.

Appellant's Name (print): John Herman Phone: ( 541 ) 588-5299  
 Mailing Address: PO Box 1524 City/State/Zip: Sisters, OR 97759  
 Email Address: john@lazyzranch.com  
 Land Use Application Being Appealed: 247-22-000757-A (247-22-000024-CU and -000025-SP)  
 Property Description: Township 15 Range 10 Section 10 Tax Lot 700  
 Appellant's Signature: [Signature] Date: 11/28/2022

By signing this application and paying the appeal deposit, the appellant understands and agrees that Deschutes County is collecting a deposit for hearing services, including "whether to hear" proceedings. The appellant will be responsible for the actual costs of these services. The amount of any refund or additional payment will depend upon the actual costs incurred by the county in reviewing the appeal.

Except as provided in section 22.32.024, appellant shall provide a complete transcript of any hearing appealed, from recordings provided by the Planning Division upon request (there is a \$5.00 fee for each recording copy). Appellant shall submit the transcript to the planning division no later than the close of





### **NOTICE OF APPEAL – HERMAN MEADERY**

John Herman asks that the Board of Commissioners agree to hear an appeal of a decision by Hearings Officer Tommy Brooks, that declined for technical reasons to affirm County staff's approval of a winery on the Lazy Z Ranch, a farm property that is devoted to farm uses, including raising honeybees that produce honey used in making wine (mead). Mr. Herman asks that the Board limit its review to the issues identified in this Notice of Appeal and that it conduct a "de novo" review of these issues and waive the transcript requirement of DCC 22.32.024.

The primary reasons why the Board should hear the appeal is to correct an erroneous finding in the Hearings Officer's decision that shows that the hearings officer did not fully understand the applicant's proposal, and to allow the applicant to provide additional evidence that will demonstrate that the winery will not violate the "farm impacts" test. It should also hear this appeal to allow the applicant to provide additional information to show that his use of his property is a farm use supporting not only his, but also other farm uses in Deschutes County, including apiaries operated by Sisters-area and Central Oregon beekeepers and farmers who will also benefit from this Deschutes County ranch meadery.

County staff approved the meadery, after a rigorous and lengthy review, as a commercial activity in conjunction with farm use as allowed by State law and the County code. The meadery is a winery that will make honey wine. State law allows wineries as uses permitted outright in EFU zones but requires that 15 acres of grape vines be planted to qualify. State law, however, allows wineries that do not meet these requirements to be approved as commercial activities in conjunction with farm use and this is the route followed by Mr. Herman. Mr. Herman and his family have improved their property with 30 acres of regenerative bee pastures, berries, flowers, and pumpkins; with plans to plant fruit trees. They have established an apiary and are selling honey and storing it for use in making honey wine. The regenerative bee pastures are also, at targeted times of the year, used to graze livestock. The Hermans also generate farm income by boarding horses and growing pumpkins. Their gross farm income in 2022 thus far is \$31,083. The market value of the honey they produced and are saving to make mead is \$10,200 to \$12,000 for a total farm market income for eleven months of the year of \$41,283 to \$43,083. This compares favorably to the 2017 average market value of farm products sold by Deschutes County farms of \$19,386 per year.<sup>1</sup> The Herman farm is also larger than over 85% of other Deschutes County farm properties.<sup>2</sup> This increases the odds their farm will be profitable and makes it reasonable for them to expect to make a profit in money from farm use.

The hearings officer denied approval of the meadery for two reasons we list below. Mr. Herman asks that the Board limit review of this appeal to these two issues as described below, and the

---

<sup>1</sup> Information obtained from the 2017 US Census of Agriculture.

<sup>2</sup> According to the 2017 US Census of Agriculture 85% of Deschutes County farm are smaller than 50 acres in size.

issue whether the Herman property is in farm use, and accept new evidence on these three issues.

### **Appeal Issue One – Incidental and Subordinate Test**

The hearings officer made the following finding when addressing the requirement that the commercial activity be incidental and subordinate to farm use that is not correct:

*“[N]othing would prevent the Applicant from holding events and selling food from food carts in a manner the [sic] produces significantly more income than the farm use.”*

In fact, the Herman application limits income from these incidental sales and events to 25% of the gross income of on-site retail sale of wine to assure that events and incidental sales are and remain incidental to farm use. This is the limit imposed by State law on wineries that are approved as commercial activities in conjunction with farm use by ORS 215.456, rather than as a winery allowed outright by ORS 215.452 and 215.453. This strict 25% limitation clearly prevents the Herman family from obtaining significantly more income from events and food cart sales than from the farm use/winery. The Hermans also ask that this 25% requirement replace the 25% requirement of Condition C which the hearings officer found would not achieve compliance with the incidental and subordinate test. The staff decision applied Condition C based on the requirements for a crop processing facility set out in DCC 18.16.025 but the use proposed is not a crop processing facility. In a prior decision for a distillery approved as a conditional use in conjunction with farm use in the EFU and MUA-10 zones, the County’s decision removed a similar 25% of crops grown on site requirement from the initial approval concluding that “nothing in State law requires imposition of a proportionality limitation for the distillation and processing activities.” MC-13-7 (Bendistillery), page 7. The Board should do the same here.

The hearings officer also failed to understand the nature of evidence regarding employees. He believed that the applicant plans to hire four employees for the meadery and only one to assist with farm operations. The information regarding meadery employees was provided as a worst-case estimate to County staff so it could determine the amount of parking required. There will, in fact, be zero employees working at the meadery other than the owners when it opens its doors to the public, and only one person staffing the food cart when it is in operation. The estimate of four employees is sufficient to provide parking for temporary employees needed to assist with events. Events will only be held infrequently (significantly less than the maximum allowed by the staff decision) given the fact that income from events may not exceed 25% of on-site wine sales. Additionally, the two adult members of the Herman family provide farm labor. This is one reason only one employee is expected to be needed for farm work. Also, the Hermans have hired contractors as needed, rather than employees, to help with the regenerative bee pastures and other farm activities. The Hermans graze cattle as a crop share with an area ranch family. This ranching family invests their time in conducting this farm use on the Herman property, but they are not employees.

### **Appeal Issue Two – Farm Impacts Test**

Mr. Herman seeks Board review to allow him to provide even more specific information to the Board to support County staff’s finding that the meadery complies with the “farm impacts” test. Mr. Herman identified farm activities within one mile of his farm/meadery and explained, in detail, why his honey winery would not negatively impact those activities at a level that satisfied County staff that the “farm impacts” test had been met. Mr. Herman provided a map illustrating the significant separation and buffering between the meadery and farm uses on other area properties. These facts made it clear that the meadery will not interfere with farming area properties, but the hearings officer determined that more specific information should be provided regarding the farm practices of area farms to prove what is obvious – that there will be no negative impact on area farm practices from operation of the winery. As a result, Mr. Herman asks for the opportunity to provide new evidence regarding specific farm practices so that the Board can confirm that approval of the meadery will meet the farm impacts test.

A recent Oregon Supreme case holds that this more detailed review is required where parties dispute whether a nonfarm use will force a significant change to farm practices. No such challenge was presented in this case. Not a single neighbor has opposed the application, despite three separate notifications mailed, to date. The only challenge to farm impacts test findings was a general claim by Central Oregon LandWatch that the analysis provided by Mr. Herman was not sufficiently detailed. Nonetheless, Mr. Herman seeks an opportunity to provide further evidence to confirm that his meadery will meet the farm impacts test.

### **Appeal Issue Three – Farm Use**

The hearings officer determined that the Herman property is engaged in a “farm use” as the term is applied by LUBA in the recent case of *Friends of Marion County*. The Herman family is also engaged in farm activities intending to make a profit in money. They ask that the Board make a finding to that effect. To that end, they would like the opportunity to provide additional evidence regarding their farming activities and income thus far. The Hermans are making significant investments of time and money on behalf of their farm use on the property. Income from farm activities is being reinvested in the farm with the intention of obtaining a return on their investment, meeting the more rigorous “farm use” test LandWatch says should be applied.

We address, below, the County’s requirements for appeals and request approval of a waiver of the transcript requirement of DCC 22.32.024.

#### **DCC 22.32.010**

Mr. Herman is a party in the matter appealed. He is the applicant seeking approval of the meadery.

**DCC 22.32.015**

Mr. Herman is filing a completed notice of appeal on a form prescribed by the Planning Division and with the applicable appeal fee prior to the expiration of the appeal period.

**DCC 22.32.020**

This document contains a statement raising any issue relied upon for appeal with sufficient specificity to afford the Board an adequate opportunity to respond and resolve each issue. The document also states reasons why the Board should review the hearings officer's decision. The applicant is requesting that the appeal be heard *de novo* but limited to a review of the issues stated in this appeal. The Board should allow a *de novo* review to allow the parties and the Board an opportunity to provide additional information to enable the Board to make robust findings of compliance with the farm impacts, incidental and subordinate and "farm use" tests if it affirms the Planning Division's administrative decision approving the meadery.

**DCC 22.32.024**

DCC 22.32.024 (D) allows the Board the right to waive the transcript requirement of DCC 22.32.024. Given the facts that: (a) the applicant is seeking *de novo* review; and (b) the hearing was video-recorded and available for view by any party, the public and Board; and (c) transcribing the hearing will increase the financial hardship imposed on the applicant to pursue a review of his application; and (d) it is believed that that Board routinely waives the transcript requirement for *de novo* appeals.

**DCC 22.32.027**

DCC 22.32.027(B)(4) says that the Board may "limit the issues on appeal to those listed in an appellant's notice of appeal." The applicant requests that the Board so limit appeal issues in this case.