



BOARD OF COMMISSIONERS

BOARD OF COUNTY COMMISSIONERS MEETING

9:00 AM, WEDNESDAY, APRIL 12, 2023

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

AGENDA

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

To view the meeting via Zoom, see below.

Citizen Input: The public may comment on any topic that is not on the current agenda. *Comments and testimony regarding public hearings are allowed at the time of the public hearing.* Alternatively, comments may be submitted on any topic at any time by emailing citizeninput@deschutes.org or leaving a voice message at 541-385-1734.

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

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

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

CALL TO ORDER



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.

PLEDGE OF ALLEGIANCE

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

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

CONSENT AGENDA

- [1.](#) Approval of OHA amendment #169509-14 awarding funding for HIV Early Intervention Services and Outreach
- [2.](#) Approval of Resolution No. 2023-019, authorizing the application for an assessment and taxation grant from the Oregon Department of Revenue
- [3.](#) Adoption of Order No. 2023-016, an Order Declaring the Results of the Election Held on March 14, 2023 Regarding the Establishment and Formation of the Terrebonne Sanitary District
- [4.](#) Adoption of Order No. 2023-013, Partially Staying the Corrective Action Previously Imposed Against the La Pine Rural Fire Protection District in Order No. 2023-006
- [5.](#) Approval of the application from Hiatus Homes for a Multiple Unit Property Tax Exemption
6. Approval of the minutes of the March 31, 2023 Legislative Update meeting

ACTION ITEMS

- [7.](#) **9:10 AM** Proclamation: Sexual Assault Awareness Month
- [8.](#) **9:20 AM** Letter of support for the FEMA Building Resilient Infrastructure and Communities (BRIC) Grant
- [9.](#) **9:40 AM** 1st Reading of Ordinance 2023-007 – Marken Plan Amendment / Zone Change
- [10.](#) **9:50 AM** FY24 CDD Fee Increases – Continued Discussion
- [11.](#) **10:05 AM** Consideration to apply for a Community Development Block Grant for Housing Rehabilitation
- [12.](#) **10:20 AM** Resolution No. 2023-001 Establishing an Appeals Process for Trespass Notices and Adoption of Risk Management Policy (RM-5): Trespass Notice

Policy

- [13.](#) **10:35 AM** FY 2023 Q4 Discretionary grant review and Arts & Culture grant modification

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 Session under ORS 192.660 (2) (d) Labor Negotiations

ADJOURN



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: April 12, 2023

SUBJECT: OHA amendment #169509-14 awarding funding for HIV Early Intervention Services and Outreach

RECOMMENDED MOTION:

Move approval of Chair signature of Document No. 2023-336 to amend an agreement with the Oregon Health Authority for HIV Early Intervention Services and Outreach (#169509-14).

BACKGROUND AND POLICY IMPLICATIONS:

On November 28, 2022, the Board approved accepting funding from the Oregon Health Authority (OHA) for HIV Early Intervention Services and Outreach (EISO). This amendment #14 adds a new program element (PE) 73, HIV EISO and awards funding for the program in the amount of \$184,627 for the period July 1, 2022 to June 30, 2023. Additionally, the amendment makes minor funding adjustments to PE 42-14, Home Visiting, in the amount of \$27.65, and based on an updated Revenue and Expense Report, reverses \$240.90 of FY22 unspent funding carried over to FY23 for a net \$0 impact to PE 51-02, Regional Partnership Implementation funding.

BUDGET IMPACTS:

\$184,654.65 revenue

ATTENDANCE:

Rita Bacho, Manager, Public Health Program
Kathy Christensen, Supervisor, Health Services

Agreement #169509



**FOURTEENTH 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 or call 503-378-3486 (voice) or 503-378-3523 (TTY) to arrange for the alternative format.

This Fourteenth 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 set of Program Element Descriptions set forth in Exhibit B of the Agreement

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.

WHEREAS, OHA and LPHA wish to modify the Exhibit J information required by 2 CFR Subtitle B with guidance at 2 CFR Part 200 (FY23);

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 January 1, 2023, 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. Exhibit A “Definitions”, Section 18 “Program Element” is amended to add Program Element titles and funding source identifiers as follows:

<u>PE NUMBER AND TITLE</u> • SUB-ELEMENT(S)	<u>FUND TYPE</u>	<u>FEDERAL AGENCY/ GRANT TITLE</u>	<u>CFDA#</u>	<u>HIPAA RELATED (Y/N)</u>	<u>SUB-RECIPIENT (Y/N)</u>
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PE 73 HIV Early Intervention

<u>PE73</u> HIV Early Intervention	GF	HIV Early Intervention and Outreach Services	N/A	N	N
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- b. Exhibit B Program Element #73 “HIV Early Intervention Services and Outreach” is hereby added in its entirety by Attachment A attached hereto and incorporated herein by this reference.
 - c. Section 1 of Exhibit C of the Agreement entitled “Financial Assistance Award” for FY22 is hereby superseded and replaced in its entirety by Attachment B, entitled “Financial Assistance Award (FY22)”, attached hereto and incorporated herein by this reference. Attachment B must be read in conjunction with Section 3 of Exhibit C of the Agreement.
 - d. Section 1 of Exhibit C of the Agreement, entitled “Financial Assistance Award” for FY23 is hereby superseded and replaced in its entirety by Attachment C, entitled “Financial Assistance Award (FY23)”, attached hereto and incorporated herein by this reference. Attachment C must be read in conjunction with Section 3 of Exhibit C.
 - e. Exhibit J of the Agreement entitled “Information required by 2 CFR Subtitle B with guidance at 2 CFR Part 200” (FY23) is amended to add to the federal award information datasheet as set forth in Attachment D, attached hereto and incorporated herein by this reference.
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 Brady (or designee)

Title: LPHA Fiscal and Contracts Analyst

Date: _____

Attachment A
Program Element Description(s)

Program Element #73: HIV Early Intervention Services and Outreach

OHA Program Responsible for Program Element:

Public Health Division/Center for Public Health Practice/HIV, STD and TB (HST) Section

1. **Description.** Funds provided under this Agreement for this Program Element may only be used in accordance with, and subject to, the requirements and limitations set forth below, to deliver HIV Early Intervention and Outreach Services as defined and described below. The continuum of HIV Early Intervention Services and Outreach will be referred to as (EISO) or (EISO Services).

Background.

EISO is funded by Health Resources and Services Administration (HRSA)'s Ryan White Part B, AIDS Drug Assistance Program (ADAP), 340B Drug Pricing Program. Due to the primary purpose and variability of funds generated by this source, these resources cannot be guaranteed beyond the current allocation. Beginning January 2023, funds have been allocated to support EISO activities for four and a half years.

HRSA specifically requires that EISO activities are to supplement – not supplant – HIV services funded through other mechanisms. These activities must be planned and implemented in coordination with local and state HIV prevention and care programs to avoid duplication of effort and to ensure people receive the benefit of the full continuum of services available in Oregon. As a coordinated system of public health, OHA will share information with LPHA on directly funded contracts with community-based organizations and other entities which receive HIV/STI, harm reduction and sexual health funding from the HST program and other OHA programs.

OHA will provide EISO Standards of Service to help guide program design and implementation. These services are consistent with Oregon's plan to eliminate new HIV infections, End HIV Oregon, which is developed and approved by the End HIV/STI Statewide Planning Group. End HIV Oregon focuses on eliminating new HIV infections through testing, prevention, treatment, and responding to end inequities. This Program Element directly addresses the four End HIV Oregon priority areas (Testing, Prevention, Treatment, and Responding to End Inequities). (See <https://www.endhivoregon.org>).

This Program Element, and all changes to this Program Element, are effective the first day of the month noted in the Issue Date section of Exhibit C of the Financial Assistance Award, unless otherwise noted in the Comments and Footnotes of Exhibit C of the Financial Assistance Award.

2. **Definitions Specific to HIV Early Intervention Services and Outreach.**

- a. **Early Intervention Services:** Defined by HRSA/Ryan White Program Guidance, must contain the following four elements: (1) HIV testing; (2) referral services; (3) health literacy/education; and (4) access and linkage to care.
- b. **HRSA:** The United States Health Services & Resources Administration, which funds the Ryan White CARE Act and Ryan White HIV/AIDS Programs.
- c. **MSM:** Men who have sex with men.
- d. **Not-in-Care:** Describes a person living with HIV who has never been linked to HIV medical care or was previously in HIV medical care but has not attended an HIV medical care appointment in a specified period of time (out of care).
- e. **Outreach Services:** Defined by HRSA/Ryan White Program Guidance; Outreach Services “are aimed at identifying persons with HIV who may know or be unaware of their status and are not in care.” Outreach Services cannot be delivered anonymously.

- f. **PLWH:** People living with the human immunodeficiency virus or HIV.
- g. **Pre-Exposure Prophylaxis or PrEP:** Medications taken prior to HIV exposure to reduce or prevent infection. PrEP can stop HIV from taking hold and spreading throughout the body. It is highly effective for preventing HIV if used as prescribed, but it is much less effective when not taken consistently. (Source: <https://www.cdc.gov/hiv/basics/prep.html>)
- h. **Priority Populations:** Designated in the End HIV/STI Oregon Strategy, 2022-2026 and the focus of status neutral interventions to end HIV/STIs. These will be updated on an at-least annual basis. All EISO Programs must focus on people with STI’s as one Priority Population. LPHAs should add additional populations based on local epidemiology.
- i. **PWID:** Persons who inject drugs.
- j. **STI:** Sexually Transmitted Infections, such as Syphilis and Gonorrhea. This term may be used synonymously with Sexually Transmitted Diseases (STDs).
- k. **U=U:** Undetectable = Untransmittable is an important prevention and anti-stigma message that means if a person living with HIV has an undetectable HIV viral load, they cannot transmit HIV to others through sexual contact. U=U also refers to the concept of Treatment as Prevention.

3. **Alignment with Modernization Foundational Programs and Foundational Capabilities.** The activities and services that the LPHA has agreed to deliver under this Program Element align with Foundational Programs and Foundational Capabilities and the public health accountability metrics (if applicable), as follows (see Oregon’s Public Health Modernization Manual, http://www.oregon.gov/oha/PH/ABOUT/TASKFORCE/Documents/public_health_modernization_manual.pdf):

a. **Foundational Programs and Capabilities** (As specified in Public Health Modernization Manual)

Program Components	Foundational Program					Foundational Capabilities							
	CD Control	Prevention and Health Promotion	Environmental Health	Population Health	Direct Services	Access to Clinical Preventive Services	Leadership and Organizational Competencies	Health Equity and Cultural Responsiveness	Community Partnership Development	Assessment and Epidemiology	Policy and Planning	Communications	Emergency Preparedness and Response
<i>Asterisk (*) = Primary foundational program that aligns with each component</i> <i>X = Other applicable foundational programs</i>						<i>X = Foundational capabilities that align with each component</i>							
Assessment and Referral	X	X		X	*X		X	X					

Health Literacy and Education	*	X		*			X	X				
Linkage to HIV Care	X	X		X	*X		X	X	X			
HIV/STI Partner Services	X	X		X	*X		X	X	X			
Follow-up of PLWH Not-in-Care	X	X			*X		X	X	X			
Recruitment to Services	*							X				
HIV/STI Prevention Education, including PrEP	X	X		X	X		X	X	X			

b. The work in this Program Element helps Oregon’s governmental public health system achieve the following Public Health Accountability Metric:

Not applicable.

c. The work in this Program Element helps Oregon’s governmental public health system achieve the following Public Health Modernization Process Measure:

EISO supports the workplan reflected in PE51 for Communicable Disease work.

4. **Procedural and Operational Requirements.** By accepting and using the Financial Assistance awarded under this Agreement and for this Program Element, LPHA agrees to conduct activities in accordance with the following requirements:

- a. Engage in activities as described in its local program plan, which has been approved by and is on file with OHA.
- b. Engage in activities as described and located in the EISO Standards, developed by OHA.
- c. Use funds for this Program Element in accordance with its local program budget and as allowable by HRSA’s Ryan White Part B. Modification to the local program budget may only be made with OHA approval. Approved local program budget is on file with OHA.
- d. **Outreach.** Outreach, as defined by HRSA/Ryan White Program Guidance, are services “aimed at identifying persons with HIV who may know or be unaware of their status and are not in care.” A primary goal for End HIV Oregon is to identify people who do not know their HIV status, as this group is at highest risk of transmitting HIV and most in need of rapid access to medical care, treatment and supportive services. Identifying persons with HIV who are unaware of their status requires a combination of education, outreach, and service navigation strategies broadly focused on Priority Populations who are at increased vulnerability to HIV (e.g. people with STI, MSM, PWID). The purpose of Outreach Services is to identify individuals who:
 - Do not know their HIV status: these individuals should be referred into testing to help them learn their status and engage in appropriate adjunct services.
 - Know their HIV-positive status and are not in care: these individuals should be connected to HIV medical care and supportive services.

Outreach participants must be part of a Priority Population known through local epidemiology to be at increased vulnerability for HIV. Priority Populations for Oregon are designated in the End HIV/STI Oregon Strategy, 2022-2026; Programs may focus activities more narrowly based on

local epidemiology.

<https://www.oregon.gov/oha/ph/diseasesconditions/hivstdviralhepatitis/ipg/pages/index.aspx>

Outreach activities are client engagement strategies delivered in a clinic (e.g., integrated HIV/STI testing and partner services delivered at a set location) or in community-based settings outside of local public health clinic environments (e.g., educational setting, field testing in conjunction with social or educational activities). Outreach may also include targeted awareness activities (e.g., social media directed to a Priority Population). No broad scope awareness activities (e.g., media to general public) are allowed. Specific activities are to be defined by the County, as described in an EISO workplan.

Outreach activities may include, or leverage the services already in place:

- (1) **Integrated HIV/STI testing:** Ensures HIV and/or STI testing will be integrated for all people newly diagnosed with early syphilis and/or rectal gonorrhea, and pregnant people diagnosed with any stage of syphilis by leveraging or referring to existing HIV/STI testing.
- (2) **HIV/STI partner services:** Partner services ensures that all people with a new diagnosis of HIV, early syphilis, rectal gonorrhea, and pregnant people with syphilis at any stage will receive treatment, be interviewed for names of contacts or partners, and their contacts or partners are found, tested and treated for HIV/STIs. Highest Priority Populations for EISO-funded partner services are:
 - (a) People newly diagnosed with HIV.
 - (b) Pregnant people with syphilis of any stage.
 - (c) People with early syphilis.
 - (d) People with rectal gonorrhea.
 - (e) People with known HIV infection with a new early syphilis, rectal gonorrhea diagnosis, or are pregnant with syphilis of any stage.
- (3) **Follow-up of PLWH Not-in-Care:** Connects previously diagnosed people with HIV who are out of care into medical care and treatment thereby improving individual health outcomes and reducing transmissibility of HIV. LPHA may work with local case management systems to reconnect PLWH to medical services who have never been in care or who have fallen out of care.
- (4) **Recruitment to services:** Services shall be focused on Priority Populations, specifically individuals identified at increased vulnerability for HIV, and delivered in accordance with local outreach and education plans. Education and recruitment may be provided in-person at outreach events or in conjunction with other local services, such as syringe exchange, and/or virtually, using social media and/or geospatial dating/networking apps. Services shall reach and be made available to individuals in the LPHA service area, unless otherwise specified (e.g. if Priority Populations can be best reached in a particular geographic region or through specific, limited methods). LPHAs will delineate one or more specific Priority Population to focus Outreach Services.
- (5) **HIV/STI prevention education, including PrEP:** Provides comprehensive HIV education, including information about harm reduction, HIV Treatment as Prevention, and U=U. Provide PrEP education and refer HIV-negative individuals to PrEP services, as needed.

- (6) **Outreach testing:** Ensures testing of Priority Populations engaged through Outreach Services by leveraging or referring to existing HIV/STI testing.
- (7) **Linkage to HIV case management and medical care:** For individuals engaging in Outreach Services who test HIV positive or disclose HIV positive status and are not in medical care, provide active referrals/warm hand-offs to Ryan White HIV/AIDS Programs, such as to HIV case management services or the local EISO Program, during their appointment. Referrals/warm hand-offs should be expedited for clients who are newly diagnosed with HIV, experiencing homelessness or otherwise in behavioral health crisis. Referral pathways and timelines should be delineated in a referral map or flow chart.

e. **Early Intervention Services.** LPHA's HIV EISO Programs must include the following minimum components:

HIV Early Intervention Services (EIS) identify people living with HIV, refer them to services, link them to care and provide health education to assist with navigating HIV care and support services. EIS is designed to ensure that all people newly diagnosed with HIV in Oregon are linked to HIV medical care within 30 days, with a goal of being linked to care and starting antiretroviral therapy within seven days, preferably immediately. EIS is particularly important for newly diagnosed people who need extra help getting linked to, and retained in, HIV medical care, case management, and other services provided by the Ryan White HIV/AIDS Program. A combination of locally-defined methods (e.g., referral networks, community partnerships), systems (e.g., priority appointments for newly diagnosed), and staffing arrangements (e.g., peer navigators, community health workers) should be developed or leveraged to ensure the ability to prioritize service to a person with HIV when newly diagnosed.

HIV Early Intervention Services are for individuals with a documented HIV-positive status and Oregon residency. EIS activities include:

- (1) **HIV Testing:** Ensures HIV testing to individuals whose status is HIV-negative or unknown but at increased vulnerability to HIV (e.g. Priority Populations) by leveraging or referring to existing HIV testing.
- (2) **Initial contact & enrollment:** Initiate contact with all HIV+ individuals referred by OHA Surveillance within 72 hours of referral. Enroll clients in EIS or document reasons for non-enrollment.
- (3) **Assessment and referral:** Assesses client needs related to sexual health, STI testing, HIV prevention, medical and behavioral health care, and basic needs which may interfere with participation in services (e.g., housing, food, alcohol & drug use). Referrals and linkages are made to HIV case management, CAREAssist, medical care, food assistance programs, housing support, behavioral health services, syringe exchange, transportation, STI testing, etc.
- (4) **Health literacy/education:** Provides comprehensive HIV education, including information about harm reduction, HIV service navigation, HIV Treatment as Prevention, and U=U.
- (5) **Linkage to care:** Ensures linkage to and engagement with HIV medical care, with a goal of linking HIV+ individuals to care within 30 days of initial referral, and ideally within 0-7 days. Depending on client needs and local systems, programs may refer HIV+ individuals into existing case management services via active referral OR may play a more active role in ensuring linkage to HIV medical care.

- f. End HIV/STI Oregon Promotion & Support.** Support and promote the Oregon Health Authority End HIV/STI Oregon initiative. Required activities include:
- (1) Display the End HIV Oregon logo and website link on LPHA website (on pages related to EISO Services).
 - (2) Provide LPHA logo for inclusion on End HIV Oregon website.
 - (3) Ensure that any promotional materials developed, related to EISO services and funded by this agreement, includes information about the End HIV Oregon initiative, including the logo and website address.
 - (4) Actively use the End HIV Oregon Ambassador Kit to promote End HIV Oregon messaging.
- g. Continuing Education, Training and Partner/Systems Coordination.** Participate in community learning and ongoing training opportunities facilitated by OHA and its training contractor, Oregon AIDS Education and Training Center. Required activities include:
- (1) Staff with FTE funded through this Program Element shall complete OHA's HIV Prevention Essentials training prior to providing EISO Services. Training is available at: <https://www.oregon.gov/oha/PH/DISEASESCONDITIONS/HIVSTDVIRALHEPATITIS/HIVPREVENTION/Pages/Trainings.aspx>
 - (2) Staff with FTE funded through this Program Element for Disease Intervention Services shall complete HIV/STI Partner Services training or its equivalent prior to providing EISO Services. Training is available at: <https://www.oregon.gov/oha/PH/DISEASESCONDITIONS/HIVSTDVIRALHEPATITIS/SEXUALLYTRANSMITTEDDISEASE/Pages/trainings.aspx>
 - (3) Participate in quarterly EISO meetings convened by OHA.
 - (4) Participate in monthly EISO check-in calls or meetings with the OHA-designated contact.
 - (5) Attendance by one or more EISO program staff at the End HIV/STI Oregon Statewide Planning Group meetings, convened virtually three to five times/year.
 - (6) Participate in other training opportunities as requested by OHA.
 - (7) Participate in quarterly EISO case reviews convened virtually. Presentation of non-identifiable EISO Services cases are shared and discussed.
 - (8) Attendance at one additional conference by at least two staff. Suggested conferences include Oregon's Meaningful Care Conference, the HIV Continuum of Care Conference, and Oregon Epidemiologists' Meeting.
- h.** HRSA funding has minimum activity and reporting requirements. In addition to the activities and requirements listed above, all providers of HIV EISO Services are required to submit the following by March 30 of each year:
- (1) A staffing plan and organizational chart submitted with yearly budgets.
 - (2) Mid-Year Progress Report and Annual Progress Report.
 - (3) An Outreach Services Work Plan, to include the following required elements:
 - (a) Priority Populations for Outreach Services
 - (b) Specific methods for reaching Priority Population(s) and recruiting into services (e.g., use of social media, events, plans to engage community and public health partners)

- (c) Policies and standard operating procedures (e.g., for HIV testing, referrals, PrEP navigation, and retention/follow-up with HIV-negative clients, linkage to Ryan White HIV/AIDS Program Services for HIV-positive clients)
 - (d) A process map/flow chart detailing service and referral pathways, including expected times for getting HIV positive and HIV negative clients into services.
 - (e) A strategy map delineating key activities and how they connect to EISO Program goals
 - (f) Service goals/metrics for each Priority Population
- i. In addition to the requirements in this Program Element, all EISO Services supported in whole or in part with funds provided under this Agreement must comply with the following confidentiality and reporting requirements:
 - (1) Centers for Disease Control and Prevention. Data Security and Confidentiality Guidelines for HIV, Viral Hepatitis, Sexually Transmitted Disease, and Tuberculosis Programs: Standards to Facilitate Sharing and Use of Surveillance Data for Public Health Action. Atlanta (GA): U.S. Department of Health and Human Services, Centers for Disease Control and Prevention; 2011.
<https://www.cdc.gov/nchhstp/programintegration/docs/pcsidatasecurityguidelines.pdf>
 - (2) All HIV testing data is entered directly by providers into Evaluation Web, the CDC's database system for HIV testing, or through a pre-approved data export process. Evaluation Web is accessed using two-factor authentication through the CDC Secure Access Management System (SAMS). LPHA staff needing access to SAMS for data entry into Evaluation Web must first request access through OHA.
 - (3) All EISO data shall be entered into Orpheus, Oregon's integrated electronic disease surveillance system, on an ongoing basis in the EISO interface. An EISO Orpheus Data Entry Guide to assist in correct and consistent reporting will be provided by OHA. All LPHA staff that provide EISO Services will participate in twice yearly EISO data cleaning and participate in annual evaluation of data. OHA will provide data elements at end of second quarter and end of fourth quarter.
 - (4) Establish and comply with a written policy and procedure regarding a breach of the confidentiality requirements of this Program Element. Such policy must describe the consequences to any employee, volunteer or subcontractor for a verified breach of the confidentiality requirements as outlined in this Program Element.
 - (5) Report to the OHA the nature of confirmed breaches by LPHA staff, including volunteers and subcontractors, of the confidentiality requirements of this Program Element within 14 days from the date the breach was confirmed.
- j. Acceptable use of financial awards for HIV EISO activities include:
 - (1) Staffing and structure for programs addressing goals, objectives, strategies and activities described above.
 - (2) Collaborative work with other agencies furthering HIV EISO work.
 - (3) Advertising and promotion of activities for Priority Populations.
 - (4) Travel costs.
 - (5) Purchase and/or production of program materials.
 - (6) Necessary office equipment and/or supplies to conduct EISO activities, excluding furniture unless approved by OHA.

- (7) Training and/or conferences for staff and/or supervisors that is relevant to the intervention and/or working with Priority Populations. This includes monitoring and evaluation trainings.
- (8) Documentation, meetings, and preparation related to conducting programs.
- (9) Supervision, data collection and review and quality assurance activities.
- (10) Participation in planning, task force and other workgroups.

k. EISO funds shall not be used to pay for:

Actual HIV tests or test kits; PE7 funding allows for HIV tests and test kits and should be used for this purpose. EISO funds are intended as a resource of last resort; if an LPHA can justify why PE7 funds are unable to be used, or other resources leveraged, for HIV tests, LPHAs can submit a request to use EISO funds for this purpose. This will require OHA approval.

EISO funds shall not be used for STI tests or STI test kits or to pay cash to service clients, pay for PrEP or STI medications. EISO funds may not be used to pay for harm reduction supplies or services, such as Syringe Service Programs, syringes, cookers, cotton, or other drug paraphrenia. FTE must primarily be allocated to EISO primary/core activities but may be delivered in support of other prevention activities.

Due to the variability of these funds, LPHAs are encouraged to leverage Ryan White Part A and B monies, as well as insurance and other reimbursement to pay for and support sustainable EISO Services.

l. Subcontracted Services. LPHAs may use all or some of HIV EISO funds to subcontract with other LPHAs or community-based organizations for delivery of EISO Services. LPHA must ensure each subcontractor adheres to the standards, minimum requirements and reporting responsibilities outlined in this Program Element. LPHA must ensure each subcontractor:

- (1) Completes an OHA approved planning/reporting document.
- (2) Submits fiscal and monitoring data in a timely manner.
- (3) Meets the standards outlined in this Program Element.
- (4) Submits a strategy map delineating key activities and how they connect to EISO Program goals.

5. General Requirements Applicable to Ryan White HIV/AIDS Program Services Funding.

a. Payor of Last Resort.

Funds shall not be used to cover the costs for any item or service covered by other state, federal or private benefits or service programs and shall be used as dollars of last resort.

b. Allowable Services. Ryan White Part B Services funds must be allowable per [HRSA's Ryan White Part B and per the Ryan White HIV/AIDS Program Services: Eligible Individuals and Allowable Uses of Funds Policy Clarification Notice \(PCN\) #16-02 \(Revised 10/22/2018\)](#).

c. Direct Cash Reimbursements to Clients are Prohibited.

Funds shall not be used to provide direct cash reimbursement to a person receiving services under this Program Element.

d. Specified Services Funding Only.

Funds may only be used for those serviced detailed in the approved budget unless otherwise approved by OHA.

e. Vehicle Purchase.

Vehicle purchases by LPHA using funding provided under this Program Element are subject to 45 CFR 75.320. Equipment must be used for EISO services as long as needed. When no longer needed for EISO services, OHA shall be notified. The vehicle may be used for other activities in the following order of priority:

- (1) Allowable Ryan White Program activities.
- (2) Activities allowable under Federal awards from other U.S. Department of Health & Human Services (HHS) awarding programs.
- (3) Costs associated with use of the vehicle for non-EISO related activities shall not be charged under this Program Element.
- (4) The LPHA is considered the owner and is responsible for management requirements. At the end of this the funding period, LPHA shall retain ownership to use, sell, and dispose of the vehicle per federal rule.

f. AIDS Drug Assistance Program Funding Priority.

The OHA is required to ensure AIDS Drug Assistance Program (ADAP) services are available to eligible Oregonians. Funding availability for EISO is not guaranteed. OHA reserves the right to terminate funding under this Program Element with 90 days advance written notice to LPHA, if OHA deems it necessary to ensure the stability of ADAP services.

- g. Aggregate Administrative Costs NTE 10%.** LPHA may use up to 10% of the direct costs listed in the budget to cover costs of administrative services.

6. General Revenue and Expense Reporting. LPHA must complete an “Oregon Health Authority Public Health Division Expenditure and Revenue Report” located in Exhibit C of the Agreement. These reports must be submitted to OHA each quarter on the following schedule:

Fiscal Quarter	Due Date
First: July 1 – September 30	October 30
Second: October 1 – December 31	January 30
Third: January 1 – March 31	April 30
Fourth: April 1 – June 30	August 20

- a.** Each quarter, OHA will review LPHA expenditures to ensure allocated funds are maximized and used appropriately.
- (1) If 50 percent of funds are not spent annually by December 31, OHA and LPHA will meet to discuss barriers as well as ideas and plans for spending and use of these monies.
 - (2) If 75 percent of funds are not spent annually by April 30, LPHA will propose a formal action plan to OHA for use of unspent monies no later than May 15. This action plan may include a proposal to use unspent funds for a time-limited special project.
- b.** OHA must approve LPHA proposals on use of unspent funds when funds are underspent pursuant to Section a, above.

- c. If agreement on an action plan is not achieved between LPHA and OHA, an approved action plan implementation does not result in timely use of underspent funds, or LPHA continues to underspend funds, OHA may reallocate any unspent EISO monies on allowable statewide special projects throughout the funding cycle.

7. Reporting Requirements.

- a. The following HRSA-required data elements must be collected for all clients receiving services: client first name, client last name, complete date of birth, gender, complete zip code, HIV status, and residency. For purposes of this requirement, client self-reported residency documentation is permissible.
- b. LPHA and subcontractors must enter data into the Orpheus and Evaluation Web as referenced in Sections 4.i.(2) and (3) with all demographic, service and clinical data fields entered within 30 days of the date of service. All annual HRSA required data must be entered into Orpheus and Evaluation Web by February 1 for the prior calendar year. If these reporting timelines are not met, OHA will work with the LPHA or subcontractor to establish and implement a corrective action plan.
- c. In addition to the General Revenue and Expense reporting requirements in Section 6 of this Program Element, LPHA must submit Mid-Year Progress Report (due January 31) and Annual Progress Report (due July 31) each year starting 2023.

8. Performance Measures.

LPHA must operate its program in a manner designed to achieve the following performance goals:

- a. All people newly diagnosed with HIV linked to HIV medical care within 30 days, with a goal of being linked to care and starting antiretroviral therapy within seven days.
- b. Initiate contact with all HIV+ individuals referred by OHA Surveillance within 72 hours of referral. Enroll HIV+ individuals in EIS Services or document reasons for non-enrollment.
- c. By March 30, of every year, complete activities referenced in Section 4.h.

9. Early Intervention Services and Outreach/Orpheus-Based Outcome Measures.

- a. HIV status and residency are HRSA-required data elements that must be collected for all clients receiving services, for purposes of this requirement, client self-reported residency documentation is permissible.
- b. LPHA shall enter the following data elements into Orpheus on an ongoing basis in the EISO interface. An EISO Orpheus Data Entry Guide to assist in correct and consistent reporting will be provided by OHA.

(1) For Persons with HIV/People with an HIV Positive Status:

- (a) HIV case interviewed
- (b) EISO enrolled
- (c) Contacts/partners named and tested for HIV
- (d) EISO services provided:
 - HIV Care
 - Other STI Testing
 - Health Education
 - Case Management

- CAREAssist
 - Insurance
- (2) For persons with syphilis, rectal gonorrhea, or who are pregnant with syphilis at any state, and/or with an unknown HIV status:
- (a) STI case interviewed
 - (b) Enrolled in EISO
 - (c) Contacts/partners named and tested for HIV
- (3) For persons receiving EISO services:
- (a) HIV Testing
 - (b) PrEP Referral
 - (c) Other STI Testing
 - (d) Health Education

10. Early Intervention Services and Outreach Close-Out Measures

LPHA must use the following criteria to close out a person from EISO services:

- a. HIV positive clients – Newly Diagnosed or Out of Care: Documentation of EISO services offered and provided.
 - b. Persons with HIV with a new Syphilis or rectal gonorrhea Diagnosis, or Pregnant person with syphilis of any stage: Documentation of EISO services offered and provided and documentation of a visit for HIV medical care (defined as evidence of at least one HIV viral load laboratory test within a year of the new STD diagnosis).
 - c. Persons with unknown HIV status, a person with syphilis or rectal gonorrhea, or, Pregnant person with syphilis of any stage: Documentation of EISO services offered and provided and documentation of an HIV negative test within 30-days (plus or minus) of the syphilis or rectal gonorrhea report date.
 - d. Contacts/partners to clients listed in Section 9 above: Documentation of EISO services offered and provided and documentation of HIV status of contact. HIV status is defined as either documentation of an HIV negative test within 30 days (plus or minus) of the initiation of the contact investigation or documentation of a visit for HIV medical care defined as evidence of at least one HIV viral load laboratory test within a year of the contact investigation.
11. A client may be enrolled again in EISO if they present with a subsequent STI diagnosis, are a contact to a new EISO case, or have been determined to be out of HIV care by OHA HIV Surveillance.

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

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

4) OHA Public Health Funds Approved				
Number	Program	Previous Award Balance	Increase / Decrease	Current Award Balance
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	\$31,819.40	\$0.00	\$31,819.40
PE08-03	Ryan White B HIV/AIDS: Oral Health	\$21,005.99	\$0.00	\$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)	\$185,026.10	\$0.00	\$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

4) OHA Public Health Funds Approved				
Number	Program	Previous Award Balance	Increase / Decrease	Current Award Balance
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	\$51,214.12	\$27.65	\$51,241.77
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	\$294,528.61	\$0.00	\$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	\$240.90	\$292,519.75
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
		\$4,645,118.89	\$268.55	\$4,645,387.44

5) Foot Notes:	
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.
PE40-02	1/2023: Reduce SFY2022 total WIC state grant award for underspending.
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.

6) Comments:	
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	1/2023: SFY22 reverse close out amendment 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	2/1/23: move revised unspent funds from FY23 to FY22 based on revised R/E report 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 C
Financial Assistance Award (FY23)**

State of Oregon Oregon Health Authority Public Health Division		
1) Grantee Name: Deschutes County Street: 2577 NE Courtney Dr. City: Bend State: OR Zip: 97701-7638	2) Issue Date Sunday, January 1, 2023	This Action Amendment
	3) Award Period 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)	\$122,721.00	\$0.00	\$122,721.00
PE12-02	COVID-19 Response	\$0.00	\$0.00	\$0.00
PE13-01	Tobacco Prevention and Education Program (TPEP)	\$699,317.00	\$0.00	\$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

4) OHA Public Health Funds Approved				
Number	Program	Previous Award Balance	Increase / Decrease	Current Award Balance
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	\$360,000.00	\$0.00	\$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	(\$240.90)	\$399,275.25
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
PE73	HIV Early Intervention and Outreach Services	\$0.00	\$184,627.00	\$184,627.00
		\$7,206,241.54	\$184,386.10	\$7,390,627.64

5) Foot Notes:	
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.
PE40-01	01/2023: WIC NSA grant SFY2023 Q1 reconciliation - rescind underspent funds
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.
6) Comments:	
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
PE12-01	12/2022: SFY23 Unspent SFY22 funds \$12,331 must be spent by 6/30/2023. A revised program budget is due 1/31/2023
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

6) Comments:	
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	2/1/23: move revised unspent funds from FY23 to FY22 based upon revised R/E report 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.
PE73	01/2023: Must be spent by 06/30/23

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 D
Information required by CFR Subtitle B with guidance at 2 CFR Part 200 (FY23)

PE42-03 MCAH Perinatal General Funds & Title XIX		
Federal Award Identification:	00031222	06-0305OR5048
Federal Award Date:	12/10/21	09/26/21
Budget Performance Period:	10/01/2022-9/30/2023	10/01/2021-9/30/2022
Awarding Agency:	Medicaid XIX	Medicaid XIX
CFDA Number:	66.432	93.778
CFDA Name:	Medical Assistance Program	Medical Assistance Program
Total Federal Award:	2454666.00	N/A
Project Description:	Medical Assistance Program	N/A
Awarding Official:	Samina Panwhar	N/A
Indirect Cost Rate:	18.06	N/A
Research and Development (T/F):	FALSE	FALSE
HIPPA	No	No
PCA:	52180	52425
Index:	50336	50336

Agency	UEI	Amount	Amount	Grand Total:
Deschutes	SVJRCF7JN519	\$4,856.26	\$1,618.74	\$6,475.00

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:

Department:

Contractor/Supplier/Consultant Name:

Contractor Contact:

Contractor Phone #:

Type of Document: Intergovernmental Agreement (IGA) #169509-14

Goods and/or Services: IGA #169509 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 #14 modifies the Program Element (PE) Descriptions by adding PE 73, HIV Early Intervention and Outreach Services and provides funding for PE 73 in the amount of \$184,627 for the period July 1, 2022 to June 30, 2023. Additionally minor funding adjustments are made to PE 42-14, Home Visiting, in the amount of \$27.65, and based on an updated Revenue and Expense Report, reverses \$240.90 of FY22 unspent funding carried over to FY23 for a net \$0 impact to PE 51-02, Regional Partnership Implementation funding. The net increase in funding from this amendment is \$184,654.65.

Background & History:

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.

Agreement Starting Date:

Ending Date:

Annual Value or Total Payment:

Insurance Certificate Received (check box)
Insurance Expiration Date:

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:

Deputy Director Approval:

Director Approval:

Signature: Heather Kaisner
Heather Kaisner (Mar 27, 2023 11:02 PDT)

Signature: 

Email: heather.kaisner@deschutes.org

Email: janice.garceau@deschutes.org

Title: Public Health Deputy Director

Title: Director

Company: Deschutes County Health Services

Company: Deschutes County Health Services

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

Official Review:

County Signature Required (check one): BOCC Deputy Director (if <\$15K)

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

Legal Review _____ Date _____

Document Number 2023-336

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: _____, 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

_____ 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.



BOARD OF
COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: April 12, 2023

SUBJECT: Resolution No. 2023-019, authorizing the application for an assessment and taxation grant from the Oregon Department of Revenue

RECOMMENDED MOTION:

Approve Resolution No. 2023-019 to authorize the application for an annual assessment and taxation grant from the Oregon Department of Revenue.

BACKGROUND AND POLICY IMPLICATIONS:

The amount of the grant is based on the total assessment and taxation amounts of all Oregon counties, which is apportioned based on each county's percentage of that total.

BUDGET IMPACTS:

FY 23-24 estimated grant revenue to Deschutes County is \$850,000.

ATTENDANCE:

Scot Langton, Deschutes County Assessor

REVIEWED

LEGAL COUNSEL

04/12/2023 Item #2.

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON
A Resolution Approving a Grant Application with *
the Oregon Department of Revenue * RESOLUTION NO. 2023-019
*

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

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

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

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

Section 1. County agrees to appropriate the budgeted dollars based on 100 percent of the expenditures certified in the grant application in the amount of \$7,681,559 the total expenditure amount for consideration in the grant. If 100 percent of the expenditures is not appropriated or the county is out of compliance with the laws referred to in the recitals, no grant shall be made to the county for the quarter in which the county is out of compliance.

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

DATED this ____ day of _____, 2023.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

Anthony DeBone, Chair

Patti Adair, Vice Chair

ATTEST:

Recording Secretary

Phil Chang, Commissioner



Form 1 Grant Application Staffing

2023-2024

County <u>DESCHUTES</u>	Column 1 Approved FTE current year (2022-23)	Column 2 Budgeted FTE coming year (2023-24)	Column 3 Change (Column 2 less Column 1)
A. Assessment administration			
Assessor, deputy, etc.	2.00	2.00	0.00
Assmt. support staff, deed clerks and data entry staff	10.00	10.26	0.26
Total assessment administration staff	12.00	12.26	0.26
B. Valuation and appraisal staff			
Chief appraisers/appraiser supervisor	1.00	1.00	0.00
Lead appraisers.....	0.00	0.00	0.00
Residential appraisers.....	8.70	8.70	0.00
Commercial/industrial appraisers	2.50	2.50	0.00
Farm/forest/rural appraisers.....	0.50	0.50	0.00
Manufactured structure/floating structure appraisers	0.80	0.80	0.00
Personal property appraisers.....	2.00	2.00	0.00
Personal property clerks.....	0.00	0.00	0.00
Sales data analyst.....	1.00	1.00	0.00
Data gatherers and appraisal techs.....	2.50	2.50	0.00
Total valuation and appraisal staff	19.00	19.00	0.00
C. Board of Property Tax Appeals (BoPTA)	0.52	0.52	0.00
D. Tax collection and distribution administration			
Administration, deputy, etc.....	0.94	0.65	(0.29)
Support and collection	2.64	2.75	0.11
Tax distribution	0.25	0.25	0.00
Foreclosure and garnishment.....	0.35	0.25	(0.10)
Total tax collection and distribution	4.18	3.90	(0.28)
E. Cartography and GIS administration			
Cartographic/GIS supervisor.....	1.00	1.00	0.00
Lead cartographers	0.00	0.00	0.00
Cartographers.....	3.00	3.00	0.00
GIS specialists.....	0.00	0.00	0.00
Total cartographic and GIS staff	4.00	4.00	0.00
F. Dedicated IT services for A&T	1.25	0.88	(0.37)
G. Total assessment and taxation staffing	40.95	40.56	(0.39)



Form 2 Explanation of Staffing Issues

2023-2024

County DESCHUTES

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

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

Temporary help and part time help is used in both the Assessor and Tax Office's during peak seasons;

Two part time .63 FTE Admin Support Tech's were hired to replace one full time FTE, increase of .26 FTE

Tax Office staff was reallocated within the Finance Office resulting in an overall Tax Office staff decrease of .28 FTE

County A&T has continued to see a significant turnover in positions due to a larger number of retirements plus typical staffing changes. This coupled with difficulty in recruiting has created longer then desired timeframes in filling these positions



Form 3 General Comments

2023-2024

County DESCHUTES

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

NA



Form 4 Valuation and Appraisal Resources

2023-2024

County <u>DESCHUTES</u>	Number of accounts by activity		Number of FTE by activity	
	Actual (2022-23)	Estimated (2023-24)	Actual (2022-23)	Estimated (2023-24)
Activities				
1. Real property exceptions, special assessments and exemptions				
New construction.....	6,700	6,600	10.00	10.00
Zone changes.....	30	40	0.01	0.01
Subdivisions, segregations, and consolidations..	1,250	1,142	1.50	1.50
Omitted properties	128	75	0.01	0.01
Special assessment qualification and disqualification	50	50	0.40	0.40
Exemptions.....	700	750	0.20	0.20
Subtotal.....	8,858	8,657	12.12	12.12
2. Appeals and assessor review				
Assessor review and stipulations	58	100	0.10	0.10
BOPTA.....	70	100	0.20	0.20
Department of Revenue.....	0	0	0.00	0.00
Magistrate Division of the Oregon Tax Court.....	5	10	0.10	0.10
Regular Division of the Oregon Tax Court	0	1	0.01	0.01
Subtotal.....	133	211	0.41	0.41
3. Real property valuation				
Physical reappraisal.....	1,200	1,500	1.52	1.52
Recalculation only—no appraisal review	50,000	50,000	1.25	1.25
Subtotal.....	51,200	51,500	2.77	2.77
4. Business personal property (returns mailed)	7,400	7,630	2.00	2.00
5. Ratio			1.30	1.30
6. Continuing education			0.40	0.40
7. Other valuation—appraisal activity			0.00	0.00
8. Total valuation and appraisal staff (FTE)			19.00	19.00



Form 5 Tax Collection and Distribution Work Activity

2023-2024

County DESCHUTES

Number of accounts by activity	
Actual (2022-23)	Estimated (2023-24)

1. Number of accounts requiring roll corrections

Business personal property	118	117
Personal property manufactured structures	34	24
Real property	396	397

2. Number of accounts requiring a refund

Business personal property	6	6
Personal property manufactured structures	10	2
Real property	261	254

3. Number of delinquent tax notices sent

Business personal property	289	206
Personal property manufactured structures	401	410
Real property	2,931	2,830

4. Number of foreclosure accounts processed

Real property only	30	38
--------------------------	----	----

5. Number of accounts issued redemption notices

Real property only	10	11
--------------------------	----	----

6. Number of warrants

	452	350
--	-----	-----

7. Number of garnishments.....

	3	6
--	---	---

8. Number of seizures

	0	0
--	---	---

9. Number of bankruptcies.....

	40	41
--	----	----

10. Number of accounts with an address change processed

	6,705	6,838
--	-------	-------

11. How many second trimester statements do you mail?

10,083

12. How many third trimester statements do you mail?

8,486

13. Does the county contract for lock box service?.....

Yes No

14. Does the county use in-house remittance processing?

Yes No

15. Is tax collecting combined with another county function?

Yes No

If yes, describe that function on Form 2.



Form 6 Assessment and Administrative Support and Cartography Work Activity

2023-2024

County DESCHUTES

Assessment and administrative support work activity		
	Numbers by activity	
	Actual (2022-23)	Estimated (2023-24)
1. Number of deeds worked	<u>24,000</u>	<u>17,200</u>

Cartography work activity		
	Numbers by activity	
	Actual (2022-23)	Estimated (2023-24)
1. Number of new tax lots.....	<u>1,000</u>	<u>950</u>
2. Number of lot line adjustments	<u>200</u>	<u>150</u>
3. Number of consolidations	<u>75</u>	<u>45</u>
4. Number of new maps.....	<u>25</u>	<u>25</u>
5. Number of tax code boundary changes	<u>15</u>	<u>15</u>



Form 7 Summary of Expenses

2023-2024

County DESCHUTES

Current operating expenses	A. Assessment Administration	B. Valuation	C. BOPTA	D. Tax Collection & Distribution	E. Cartography*	F. Dedicated IT services for A&T	Totals
1. Personnel services	1,593,116	2,559,105	73,709	556,860	730,235	71,271	5,584,296
2. Materials and services	142,941	319,613	10,170	281,823	65,520	531,397	1,351,464
3. Transportation	0	47,475	0	0	0	0	47,475
4. Total current operating expenses (Total direct expenses)	1,736,057	2,926,193	83,879	838,683	795,755	602,668	6,983,235

* Include approved grant funding for ORMAP

Indirect expenses

5. Total direct expenses (line 4)	6,983,235
6. If you use the 5 percent method to calculate your indirect expenses, enter 0.05 in this box.	0
Total indirect expenses (line 5 multiplied by line 6)	0

6A. If you use a percent amount approved by a federal granting agency to calculate your indirect expenses, enter that percentage in this box.....

Total indirect expenses (line 6A multiplied by the direct expense amount for the category/categories that your certificate allows)

7. Total indirect expenses	0.10000
	698,324
	698,324

Capital outlay

Enter the actual capital outlay without regard to limitation.	Assessment Administration	Valuation	BOPTA	Tax Collection & Distribution	Cartography	Data Processing Support (IT, AT)	Total capital outlay without regard to limitation
8. Enter the actual capital outlay without regard to limitation.	0	0	0	0	0	0	0
9. Total direct and indirect expenses (sum of lines 4 and 7)							7,681,559
10. Direct and indirect expenses multiplied by 0.06							460,894
11. The greater of line 10 or \$50,000.....							460,894
12. Capital outlay (the lesser of line 8 or line 11)							0
13. Total expenditures for CAFFA consideration (sum of lines 4, 7, and 12)							7,681,559



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: April 12, 2023

SUBJECT: Adoption of Order No. 2023-016, an Order Declaring the Results of the Election Held on March 14, 2023 Regarding the Establishment and Formation of the Terrebonne Sanitary District

RECOMMENDED MOTION:

Move adoption and Board signature of Order No. 2023-016.

BACKGROUND AND POLICY IMPLICATIONS:

Upon direction of the Board of Commissioners the matter of establishing and forming the Terrebonne Sanitary District was placed before the electors of the proposed district at an election on March 14, 2023.

The results of the election were: 24 votes in favor; 16 votes opposed. Because the majority of electors voted in support, the measure is declared to have Passed.

ORS Chapter 198 requires that the Board adopt an order formally establishing and forming the District.

BUDGET IMPACTS:

None to Deschutes County.

ATTENDANCE:

Road, Legal

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF
DESCHUTES COUNTY, OREGON

An Order Declaring the Results of the *
Election Held on March 14, 2023 Regarding * ORDER NO. 2023-016
the Establishment and Formation of the *
Terrebonne Sanitary District

WHEREAS, an election in Deschutes County, Oregon was held on March 14, 2023 on the measure set forth in Exhibit A concerning the proposed formation of an ORS Chapter 255 Sanitary District; and

WHEREAS, the Abstract of Votes, a copy of which is attached as Exhibit B, shows that a majority of those persons voting voted to approve the measure; and

WHEREAS, ORS 198.820(1) requires the Board to canvass the votes and enter an Order establishing and forming the District if the Board determines that the majority of the votes cast were in support of formation of the District; now, therefore,

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

Section 1. At the election held in Deschutes County, Oregon on March 14, 2023, as evidenced by the Abstract of Votes, a copy of which is attached as Exhibit B and incorporated by reference herein, 41 electors cast ballots on the issue of formation of the District and, of those electors, 24 electors voted YES, and 16 voted NO on the measure captioned: FORMATION OF THE TERREBONNE SANITARY DISTRICT, as set forth in the attached Exhibit A, incorporated by reference herein.

Section 2. Because the majority of electors voted in support, the measure is declared to have PASSED.

Section 3. Consistent with, and pursuant to ORS Chapter 255 and ORS Chapter 198:

- a. The District is hereby established and formed and shall be known as: “Terrebonne Sanitary District.”
- b. The District’s purpose is to finance, construct and manage a wastewater system within the District boundaries.
- c. The District Boundary shall be substantially as legally described in Exhibit C and depicted (Phase A) on the map attached as Exhibit D.

Section 4. The County Legal Department shall cause certified copies of this Order to be filed with the Deschutes County Clerk and Assessor and the Oregon Department of Revenue and Secretary of State pursuant to ORS 198.780.

Dated this ____ day of _____, 2023.

THE BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

PATTI ADAIR, Vice-Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner

EXHIBIT A

(to Order No. 2023-016)

Notice of Measure Election

SEL 801

County #9-156

rev 01/18: ORS 250.035, 250.041, 250.175, 254.103, 254.465

Notice		
Date of Notice	Name of County or Counties Deschutes	Date of Election March 14, 2023

Final Ballot Title The following is the final ballot title of the measure to be submitted to the county's voters. The ballot title notice has been published and the ballot title challenge process has been completed.

Caption 10 words which reasonably identifies the subject of the measure.

Formation of the Terrebonne Sanitary District.

Question 20 words which plainly phrases the chief purpose of the measure.

Shall the Terrebonne Sanitary District be formed to finance, construct and manage a wastewater collection system?

Summary 175 words which concisely and impartially summarizes the measure and its major effect.

The unincorporated community of Terrebonne does not currently have a municipal wastewater system. Businesses and residences depend on onsite wastewater systems including septic tanks with drainfields, drill holes, and sand filters. Continued use of onsite systems causes economic and environmental health impacts.

A wastewater feasibility study recommends development of a wastewater system in Terrebonne. A petition for formation was filed with the County. Following hearings the County has directed that the issue of formation be placed before the electors within the identified boundary of the proposed district. District boundaries are subject to later annexation proceedings to expand.

The district will not be authorized to levy taxes. Positions on the district board will be filled by vote of district electors. Upon formation the district will clarify overall project costs, debt service, and the resulting costs to users. Thereafter the district will determine whether or not to proceed with development of the wastewater system.

Explanatory Statement 500 words that impartially explains the measure and its effect.

If the county is producing a voters' pamphlet an explanatory statement must be drafted and attached to this form for:
→ any measure referred by the county governing body; **or**
→ any initiative or referendum, if required by local ordinance.

Explanatory Statement Attached? Yes No

Authorized County Official Not required to be notarized.

Name Patti Adair	Title Commissioner
Mailing Address 1300 NW Wall Street, Bend, OR 97703	Contact Phone 541-388-6567

By signing this document:
→ I hereby state that I am authorized by the county to submit this Notice of Measure Election; **and**
→ I certify that notice of receipt of ballot title has been published and the ballot title challenge process for this measure completed.


Signature

12/23/2022
Date Signed 12/23/2022 AM 11:08
DESCHUTES COUNTY CLERK

EXHIBIT B

(to Order No. 2023-016)

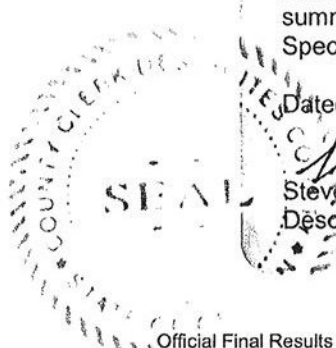
Official Final Results
Statement of Ballots Cast
 Deschutes County, March 14, 2023 Special Election
 All Precincts, All Districts, All Counter Groups, All ScanStations, All Contests, All Boxes
 Total Ballots Cast: 41, Registered Voters: 143, Overall Turnout: 28.67%
 1 precincts reported out of 1 total

9-156, Terrebonne Sanitary District (Vote for 1)
 1 precincts reported out of 1 total

Precinct	Ballots Cast	Reg. Voters	Total Votes	Yes	No	Over Votes	Under Votes
Precinct 18	41	143	40	24 60.00%	16 40.00%	0	1
Total	41	143	40	24 60.00%	16 40.00%	0	1

I, Steve Dennison, Deschutes County Clerk, do hereby certify that the votes recorded on this report correctly summarize the tally of votes cast at the March 14, 2023 Special Election.

Dated this 5th day of April, 2023.



Steve Dennison
 Steve Dennison
 Deschutes County Clerk

EXHIBIT C

(to Order No. 2023-016)

**Terrebonne Sanitary District
Service Area Boundary Description (Lot & Block)
Prepared by: Ryan Rudnick, PE (Parametrix Inc.)
Date: 4/26/2022**

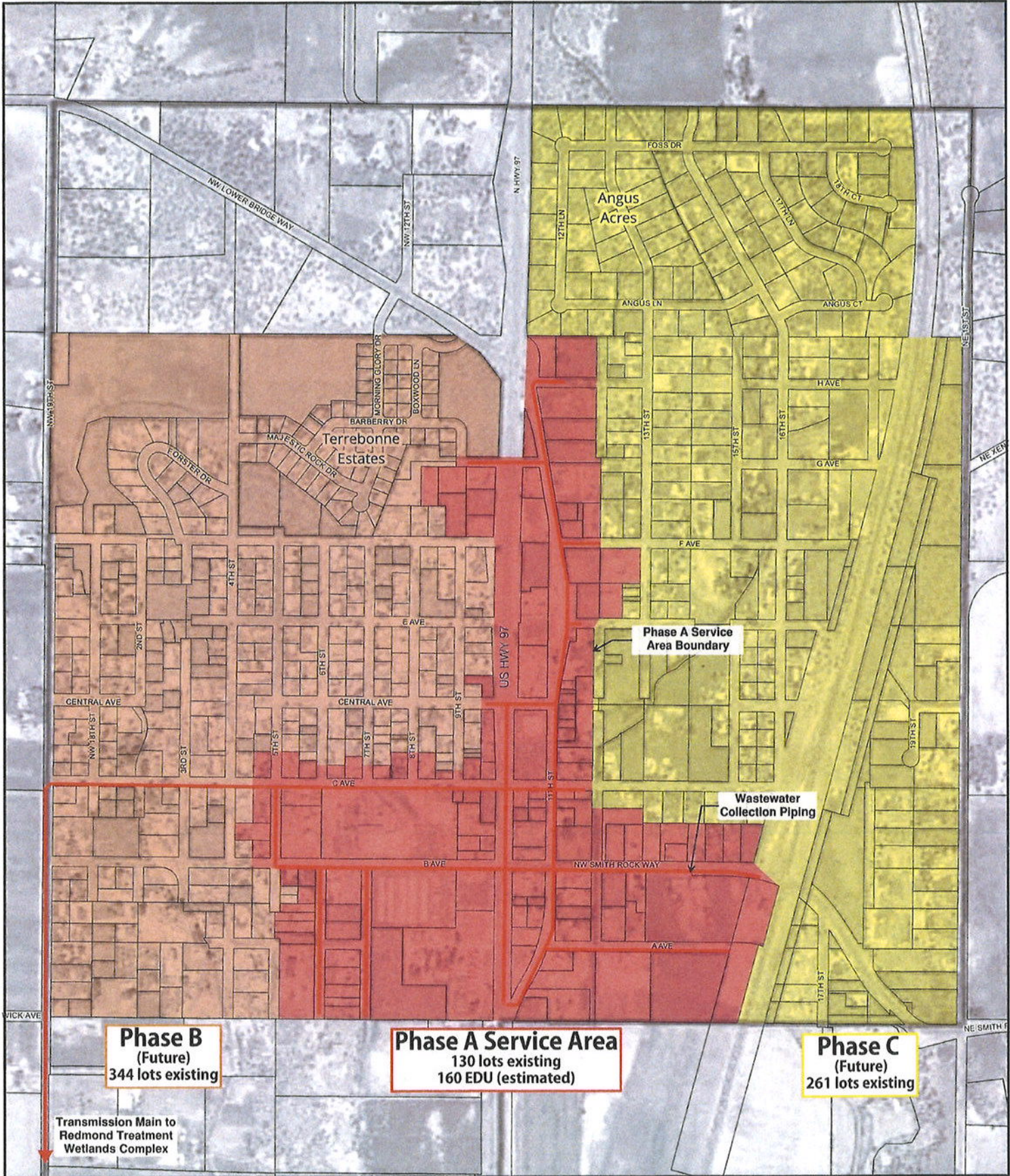
The proposed service area boundary includes the following blocks and lots in the Plat of Hillman, filed November 22, 1909 under County Survey No. 07529, records of Deschutes County Surveyor, situated in Section 16, Township 14 South, Range 13 East, W.M., Deschutes County, Oregon:

- | | | | |
|----------|-----------------|-----------|------------------|
| Block 39 | Lot 5-8, 17-32 | Block 94 | Lots 1-32 |
| Block 40 | Lots 27-32 | Block 95 | Lots 1-32 |
| Block 51 | Lots 1-6, 29-32 | Block 96 | Lots 1-32 |
| Block 52 | Lots 1-32 | Block 97 | Lots 1-32 |
| Block 53 | Lots 1-8, 13-32 | Block 98 | Lots 17-32 |
| Block 54 | Lots 1-32 | Block 99 | Lots 10-18 |
| Block 55 | Lots 1-32 | Block 100 | Lots 1-18 |
| Block 56 | Lots 1-32 | Block 101 | Lots 1-32 |
| Block 57 | Lots 1-32 | Block 102 | Lots 1-32 |
| Block 58 | Lots 1-3, 28-32 | Block 103 | Lots 1-32 |
| Block 69 | Lot 1-3, 27-32 | Block 104 | Lots 1-32 |
| Block 70 | Lots 1-32 | Block 105 | Lots 1-32 |
| Block 71 | Lots 1-32 | Block 106 | Lots 1-32 |
| Block 72 | Lots 1-32 | Block 107 | Lots 1-32 |
| Block 73 | Lots 1-32 | Block 108 | Lots 1-32 |
| Block 74 | Lots 1-32 | Block 109 | Lots 1-32 |
| Block 75 | Lots 1-32 | Block 110 | Lots 1-32 |
| Block 76 | Lots 1-6, 31-32 | Block 111 | Lots 1-12, 21-32 |
| Block 79 | Lots 8-32 | Block 114 | Lots 1-24 |
| Block 84 | Lots 1-32 | Block 124 | Lots 1-9, 24-32 |
| Block 86 | Lots 4-5, 28-32 | Block 125 | Lots 1-32 |
| Block 87 | Lots 1-5, 17-32 | Block 126 | Lots 1-32 |
| Block 88 | Lots 1-32 | Block 127 | Lots 1-32 |
| Block 89 | Lots 1-32 | Block 128 | Lots 1-32 |
| Block 90 | Lots 1-32 | Block 129 | Lots 1-9, 24-32 |
| Block 91 | Lots 1-32 | Block 142 | Lots 1-9 |
| Block 92 | Lots 1-32 | Block 143 | Lots 1-19 |
| Block 93 | Lots 1-32 | Block 144 | Lots 1-3 |

12 APR 27 6:15 PM CLERK

EXHIBIT D

(to Order No. 2023-016)



Parametrix DATE: 4/26/2022



Terrebonne Sanitary District SERVICE AREA BOUNDARY (PHASE A)

10/24/2022 5:00PM CLERK



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: April 12, 2023

SUBJECT: An Order Partially Staying the Corrective Action Previously Imposed Against the La Pine Rural Fire Protection District in Order No. 2023-006

RECOMMENDED MOTION:

Move approval of Order No. 2023-013, Partially Staying the Corrective Action Previously Imposed Against the La Pine Rural Fire Protection District in Order No. 2023-006.

BACKGROUND AND POLICY IMPLICATIONS:

On January 4, 2023 in Order No. 2023-006, the Board ordered the La Pine Rural Fire Protection District to cure violations of DCC 8.30.070 and Section 8.4 of the County ASA Plan found after investigation by the ASA Advisory Committee, namely that the District (1) discouraged patients from utilizing the District for emergency transports; and (2) charged fees directly to St. Charles and LCHC pursuant to District Ordinance #2019-03 and District Policy #02-03, rather than to patients themselves or their insurers, and that such fees were invalid under Oregon law. Since the District currently is in litigation with St. Charles and La Pine Community Health Clinic, and the issue of whether the District's aforesaid conduct violated Oregon law, including ORS 478.410, staff recommends staying Order 2023-006, Section 2, paragraph 2, regarding the fee portion, until notification is received that the Court has made a determination on this issue in the pending litigation.

BUDGET IMPACTS:

None

ATTENDANCE:

Chris Bell, Legal
Tom Kuhn, ASA Plan Administrator

REVIEWED
CB
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Partially Staying the Corrective Action *
Previously Imposed Against the La Pine Rural * ORDER NO. 2023-013
Fire Protection District in Order No. 2023-006 *
*

WHEREAS, the La Pine Rural Fire Protection District (“District”) is an ambulance service franchisee of Deschutes County and is therefore subject to Chapter 8.30 of the Deschutes County Code (“DCC 8.30”) and Appendix A to DCC 8.30, the Deschutes County Ambulance Service Area Plan (“ASA Plan”);

WHEREAS, the Board of County Commissioners (“Board”) received a complaint from St. Charles Medical Group (“St. Charles”) on November 16, 2020, and from St. Charles and La Pine Community Health Clinic (“LCHC”) on February 3, 2021, each of which alleged that the District had violated provisions of DCC 8.30 and/or provisions of the ASA Plan;

WHEREAS, the Board assigned the task of investigating the allegations from St. Charles and LCHC to the Deschutes County Ambulance Service Area Advisory Committee (“Committee”), and thereafter the Committee performed their investigation;

WHEREAS, on September 28, 2022, after completing its investigation, the Committee adopted findings, which substantiated two of the five allegations made by St. Charles and LCHC, to wit, that the District (1) discouraged patients from utilizing the District for emergency transports; and (2) charged fees directly to St. Charles and LCHC pursuant to District Ordinance #2019-03 and District Policy #02-03, rather than to patients themselves or their insurers, and that such fees were invalid under Oregon law, and that each of these actions violated DCC 8.30.070 and Section 8.4 of the ASA Plan;

WHEREAS, on January 4, 2023, pursuant to Order No. 2023-006, the Board ordered the District to cure the aforesaid violations by (1) ceasing and desisting from unreasonably discouraging patients from requesting medical transport or treatment via District resources and from unreasonably refusing to provide such transports or treatment when requested, and (2) ceasing and desisting from charging fees to parties other than patients or their insurers for medical transport or treatment, or from collecting such fees that have been charged to third parties by the District, unless the District first procures an agreement from such third parties to pay fees for the medical transport or treatment of a patient prior to providing such medical transport or treatment;

WHEREAS, the District does not dispute the Committee’s first finding, has stipulated that its conduct violated DCC 8.30 and/or the ASA Plan, and has agreed to comply with the first corrective action ordered by the Board;

WHEREAS, as described in its letter and request for hearing dated February 3, 2023 (“Request for Hearing”), the District disputes the Committee’s second finding, specifically that the District willfully violated ORS 478.410, DCC 8.30.070, and/or Section 8.4 of the ASA Plan by charging and attempting to collect fees from St. Charles and LCHC rather than patients or their insurers for medical transport or treatment, and has requested a hearing before the Board to dispute or clarify the Committee’s findings and the corrective action ordered by the Board in Order No. 2023-006;

WHEREAS, the District is currently in litigation with St. Charles and LCHC in *St. Charles, Inc., and La Pine Community Health Center v. La Pine Rural Fire Protection District*, Deschutes County Circuit Court Case No. 21CV28924 (“Lawsuit”), and in the Lawsuit the issue of whether the District’s aforesaid conduct violated Oregon law, including ORS 478.410, is at issue and pending before the court; and

WHEREAS, while the Board is not legally prohibited from determining whether the District’s actions violated ORS 478.410, DCC 8.30, or Section 8.4 of the ASA Plan, for prudential reasons, out of respect for the judicial process, and with the understanding that during the pendency of the Lawsuit the District has agreed not to pursue collection of the fees imposed against St. Charles and LCHC, the Board has chosen to defer to a judicial determination in the Lawsuit of whether the District’s actions violated relevant state law before requiring corrective action or imposing sanctions against the District”, now therefore,

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

Section 1. Order No. 2023-006 is hereby stayed, in part. To wit, the Board’s Order in Section 2, paragraph 2, which ordered the District to “cease and desist from charging fees to parties other than patients or their insurers for medical transport or treatment, or from collecting such fees that have been charged to third parties by the District, unless the District first procures an agreement from such third parties to pay fees for the medical transport or treatment of a patient prior to providing such medical transport or treatment, ” is hereby stayed pending a ruling from the court in the Lawsuit on the issue of whether the District’s conduct violated ORS 478.410.

Section 2. All remaining provisions of Order No. 2023-006 remain in full force and effect.

Section 3. Upon receipt of notice that the parties have resolved the Lawsuit without a determination from the court on the issue of whether the District’s conduct violated ORS 478.410 or other Oregon law, the stay ordered herein will immediately be revoked and the Board will proceed to schedule a hearing on the issues presented by the District in its Request for Hearing as soon as practicable after receipt of such notice.

Section 4. This Order is effective upon signing.

Dated this _____ of April 2023.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DeBONE, Chair

PATTI ADAIR, Vice Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: April 12, 2023

SUBJECT: Hiatus Homes application for Multiple Unit Property Tax Exemption

RECOMMENDED MOTION:

Move approval of the application from Hiatus Homes for a Multiple Unit Property Tax Exemption relating to property at 445 Penn Avenue in Bend.

BACKGROUND AND POLICY IMPLICATIONS:

In August 2022, the Bend City Council adopted a Multiple Unit Property Tax Exemption (MUPTE) program to support development and redevelopment goals in Bend's core and transit-oriented areas. The program is available for multi-story residential projects in certain areas of Bend that provide three or more units and provide at least three defined public benefits.

The Hiatus Homes project proposes to build a three-story residential development with 40 micro housing units. For this project, the three public benefits will be:

- 1) 12 of the 40 units will be rent-restricted to be affordable to households earning not more than 120% of Area Median Income (AMI);
- 2) The provision of EV charging infrastructure for at least 30% of the parking spaces; and
- 3) The construction of stormwater facilities designed to manage a 100-year event.

According to information submitted by the applicant and reviewed by an independent financial consultant, this project would not be financially viable without the requested property tax exemption. In order for this project to qualify for the tax exemption, it must be approved by the boards which represent at least 51% of the combined levy of taxing districts.

More information is available online at:

[Multiple Unit Property Tax Exemption Program | City of Bend \(bendoregon.gov\)](https://www.bendoregon.gov/multiple-unit-property-tax-exemption-program)

BUDGET IMPACTS:

The estimated impacts to Deschutes County and the 911 Service District are detailed in the attached staff report. In summary, the estimated impact to Deschutes County (including Countywide Law Enforcement and Countywide Extension) of a full 10-year exemption is \$161,941, or an average of \$16,194 per year. The breakdown of budget impacts for the total 10-Year Exemption includes the following:

- Deschutes County: \$86,095
- Countywide Law Enforcement: \$74,251, and
- Countywide Extension: \$1,594.

The estimated impact to the 911 Service District of a full 10-year exemption is \$25,054, or an average of \$2,505 per year.

ATTENDANCE:

Nick Lelack, County Administrator
Allison Platt, Core Area Project Manager for City of Bend
Jesse Russell, Hiatus Homes
Ryan Andrews, Hiatus Homes



CITY OF BEND
COMMUNITY AND
ECONOMIC DEVELOPMENT

**STAFF REPORT FOR
MULTIPLE UNIT PROPERTY TAX EXEMPTION**

PROJECT NUMBER: PRTX202300065
CITY COUNCIL DATE: May 17, 2023
**APPLICANT/
OWNER:** Hiatus Homes
Jesse Russell
740 NE 3rd Street 3-314
Bend, OR 97703

OWNER: Hiatus Capital Fund LLC
20856 SE Sotra Loop
Bend, OR 97702

**APPLICANT'S
REPRESENTATIVE:** n/a

LOCATION: 445 NE Penn Avenue Bend, OR; Tax Lot 171233BB00200
Between Revere and Olney Avenues and NE 4th & NE 5th Street

REQUEST: Multiple Unit Property Tax Exemption, 10-year tax abatement on residential improvements

STAFF REVIEWER: Allison Platt, Core Area Project Manager

RECOMMENATION: Approval

DATE: March 21, 2023

PROJECT & SITE OVERVIEW:

The project site is located at 445 NE Penn Ave in the High Density Residential (RH) zone, outside the Core Tax Increment Finance (TIF) Area. The project proposes (1) 3-story, 43,485 square foot (sf) building of 40 micro housing units. Thirty percent (12 units) will be designated middle income housing and rented at levels affordable to those making 120% Area Median Income (AMI) or less. The project will include three (3) community rooms and a gym of approximately 260 sf and a rooftop deck of approximately 4,349 sf. 18 parking spaces will be provided on site and will serve the tenant and common area uses of the project. Six of these spaces will be served with Electric Vehicle (EV) charging infrastructure. There will also be five (5) covered parking spaces. The property is currently raw land with no buildings, so there is no residential or commercial displacement associated with this project.

A land use decision was approved by the City for this project in September of 2022 (PLSPRE20210456).



Figure 1. Site Location



Figure 2. Project Rendering

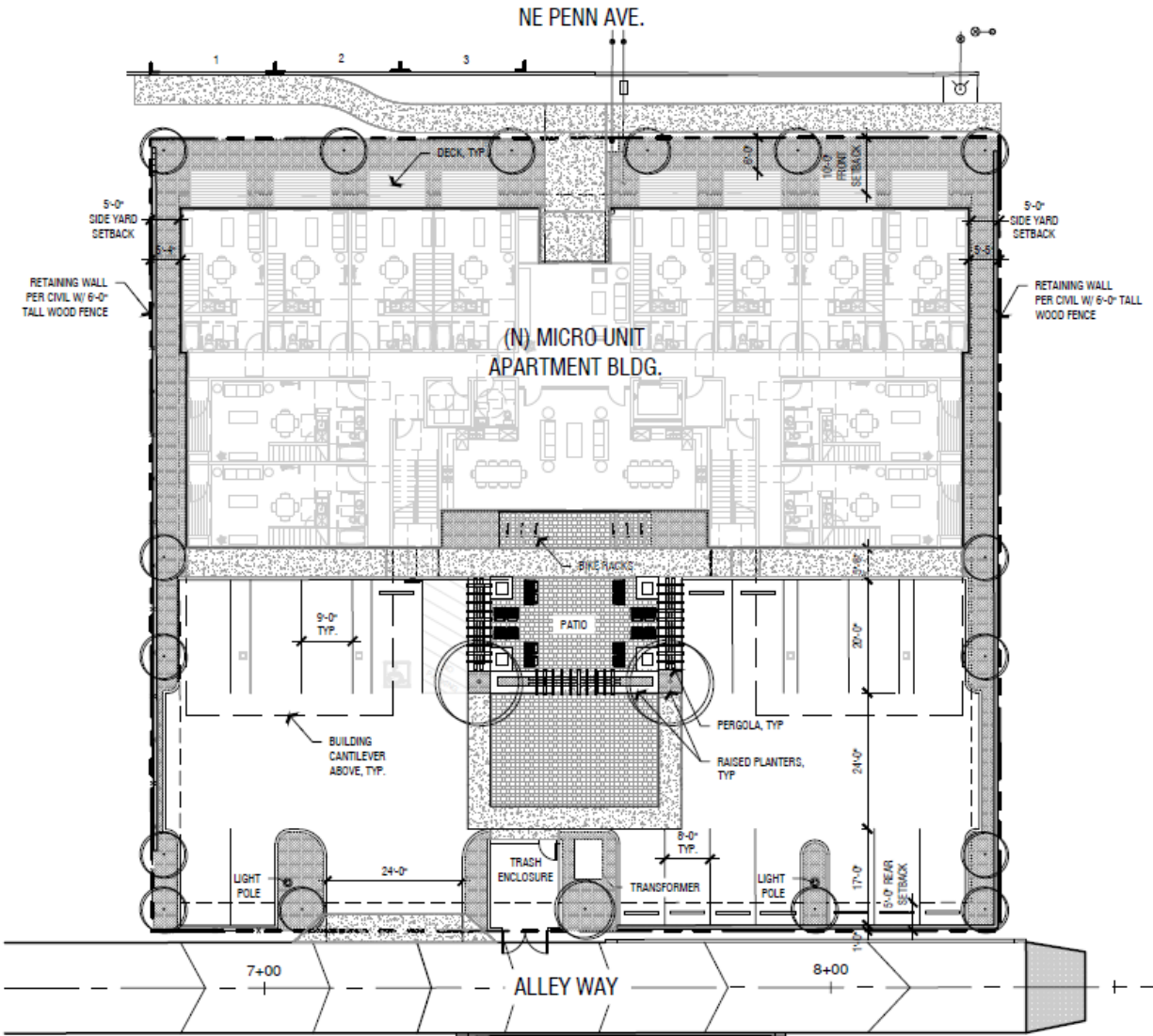


Figure 3. Site Plan

INFRASTRUCTURE NEEDED TO SERVE THE SITE

The project will be required to upsize an existing 2-inch water main located within Penn Street to an 8-inch water main to serve the site. In addition, the developer is required to improve the alley to provide access to the development. Infrastructure improvements are permitted under permit number PRINF202108539, demonstrating that the site will be served with the necessary infrastructure to serve the development. The applicant received a letter from City of Bend Private Engineering Division confirming this as part of their application.

ELIGIBILITY CRITERIA

APPLICATION OF THE CRITERIA:

LOCATION/ELIGIBLE ZONE REQUIREMENTS

This project is located within the High Density Residential (RH) zone between NE 4th Street and NE 5th Street which is an eligible zone for the MUPTE Program per BMC 12.35.015D(3).

MULTI-STORY REQUIREMENTS

Projects on lots that are greater than 10,000 sf are required to be three (3) or more stories in height to be eligible for the MUPTE Program per BMC 12.35.015(C). The proposed project is located on a 20,999 square foot lot and is proposed to be 3 or more stories and therefore satisfies this requirement.

HOTELS, MOTELS, SHORT TERM VACATION RENTALS ON SITE

The MUPTE Program requires that projects include a restriction on transient occupancy uses, including use by any person or group of persons entitled to occupy for rent for a period of less than 30 consecutive days (including bed and breakfast inns, hotels, motels, and short-term rentals). If Council approves this project, the applicant will need to demonstrate a restriction of uses on the property for the period of the exemption satisfactory to the City before staff certifies the exemption with the County Assessor’s office.

DEMONSTRATION OF FINANCIAL NEED

The applicant submitted a proforma income statement both with and without the tax exemption to demonstrate that the project would not be financially viable but for the property tax exemption. These proforma were then reviewed by a City-hired third party independent financial consultant.

PNW Economics completed a review of the proformas in March of 2023. A summary of their findings is included as Attachment A. The review confirms that the Penn Avenue project, including 12 of 40 units rent-restricted to be affordable to households earning not more than 120% of Area Median Income (AM), is not financially feasible on its own.

Based on the findings of the proforma review, the applicant was asked to clarify the basis for their rental rates compared to current market averages. The applicant noted that their project rental rates were establishing by combining average rental values of 1-bedroom apartments (\$1,750) in Bend and added the value of typical “drop in co-working” amenity spaces (\$320) as well as rental appreciation (5.5%) to account for their future rental prices in 2024-2025. They believe their project will attract remote workers and offer unique and valuable amenities (more consistent with 1-bedrooms than studios) on site to attract these rental levels and target market. Their assumptions are further clarified in Attachment B.

JUSTIFICATION FOR ELIMINATION OF ANY EXISTING HOUSING AND BUSINESSES ON THE PROJECT SITE

The existing site is vacant and therefore there is no anticipated displacement of housing or businesses by the project and therefore no mitigation is proposed. This meets the requirements of the MUPTE Program.

PUBLIC BENEFIT REQUIREMENTS

MUPTE requires that applicants provide three public benefits including one priority public benefit to qualify for the MUPTE program, per BMC 12.35.025.

Priority Public Benefit

The applicant plans to provide Middle Income Housing as their Priority Public Benefit. This requires the applicant to record a deed restriction limiting 30% of the units as only available to those making 120% Area Median Income (AMI) or less. The project includes 40 residential units, therefore 12 units are required to be deed restricted to middle income levels. The applicant has met with City of Bend Housing Department staff and if the applicant receives approval for the exemption, they will need to demonstrate compliance with this public benefit in a form satisfactory to the City before staff certifies the exemption with the County Assessor’s office.

Additional Public Benefits

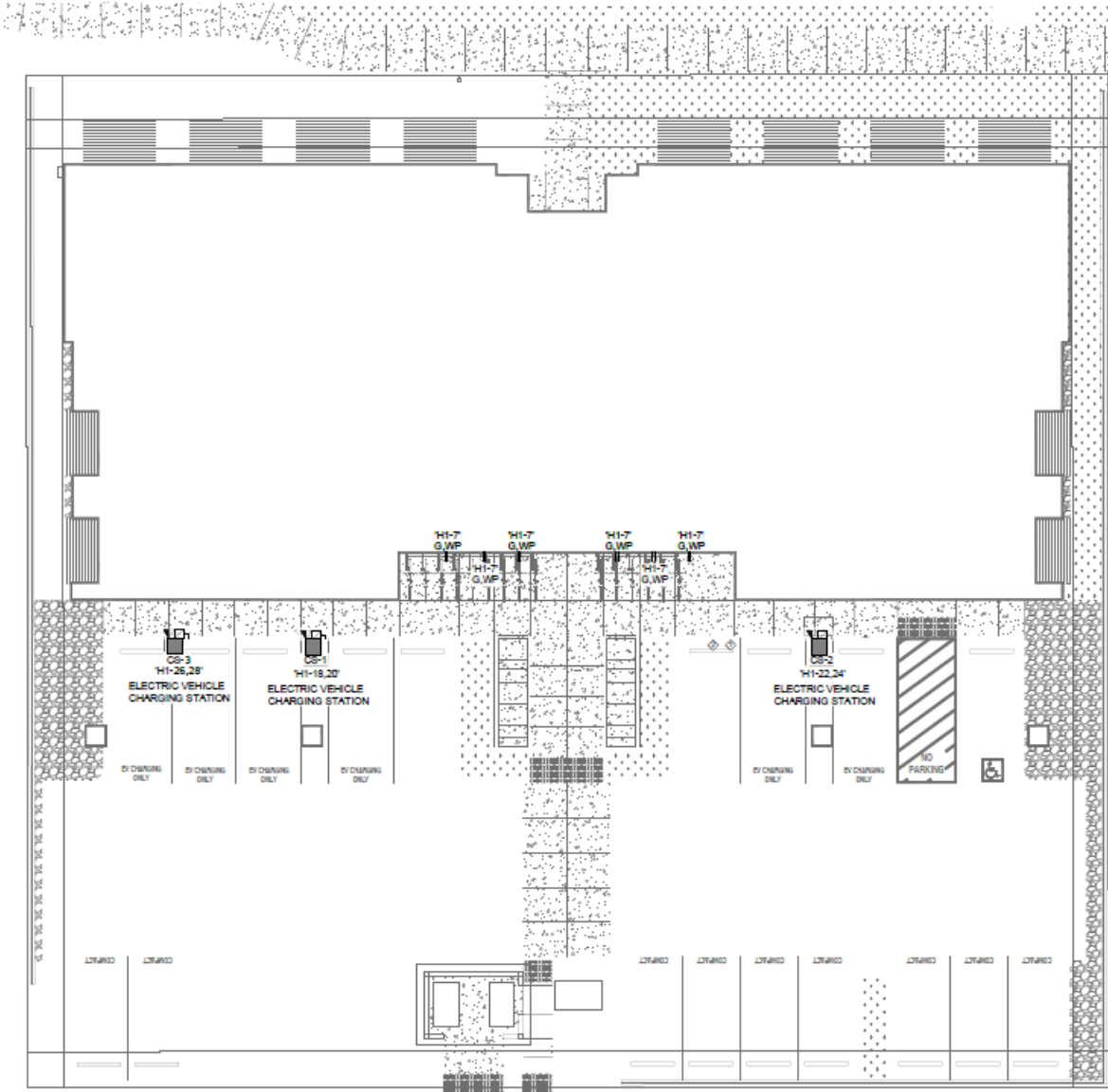
In addition to the Priority Public Benefit, the applicant is required to provide two additional public benefits. The applicant plans to utilize the following benefits to meet those requirements: 1) Stormwater; and 2) Electric Vehicle (EV) Charging.

Stormwater: The applicant is required to develop the site to retain and treat stormwater from more than a 25-year storm water event by qualifying for the City’s Stormwater Credit program. City of Bend Utility Department staff have reviewed the stormwater materials provided by the applicant and have confirmed that the project meets the requirements of the stormwater credit program and that the stormwater facilities will be designed to treat a 100-year stormwater event.

Electric Vehicle (EV) Charging: Applicant is required to provide at least 10 percent more parking spaces with EV charging infrastructure, conduit for future electric vehicle charging stations, than the minimum required. Currently Oregon Building Codes require that multifamily projects provide 20% of provided parking spaces with EV charging infrastructure. Therefore, the applicant is required to provide at least 30% of parking spaces with EV infrastructure. The

applicant plans to provide 18 onsite parking spaces and therefore six (6) of these spaces must be provided with EV charging infrastructure.

The applicant provided a power plan for the site as part of their application that demonstrates the required six (6) spaces that will be served with EV charging infrastructure.



1 SITE - POWER PLAN
SCALE: 1/8" = 1'-0"



Figure 4. EV Charging Locations

ESTIMATED EXEMPTION: This project is estimated to receive a total 10-year tax exemption of approximately **\$1,140,000**.

Based on an estimated building value of \$9,503,121, the total estimated tax collection for this project between 2027 through 2037 is estimated to be \$1,200,000 without the exemption and \$60,000 with the exemption. If the project were to not move forward, total tax collection for the 10-year period of the site would be approximately \$67,000.

The estimated impact to each taxing district is shown below in Table 1.

Taxing District	% of Tax Levy	Total 10-year Exemption	Average Annual Impact
Bend La Pine School District*	41.3%	\$ 470,335	\$ 47,033
City of Bend	22.0%	\$ 250,542	\$ 25,054
Deschutes County (All)	14.2%	\$ 161,941	\$ 16,194
<i>Deschutes County</i>	7.6%	\$ 86,095	\$ 8,610
<i>Countywide Law Enforcement</i>	6.5%	\$ 74,251	\$ 7,425
<i>Countywide Extension</i>	0.1%	\$ 1,594	\$ 159
911 Service District	2.2%	\$ 25,054	\$ 2,505
Bend Park and Recreation District	9.9%	\$ 112,744	\$ 11,274
Central Oregon Community College	4.3%	\$ 48,969	\$ 4,897
Library District	5.5%	\$ 62,635	\$ 6,264
High Desert Education Service District*	0.6%	\$ 6,833	\$ 683
Total	100%	\$ 1,140,000	\$ 114,000

* The Bend/La Pine School District and the High Desert Education Service District are funded through per pupil allocations from the State School Fund which is comprised of many sources, including property tax revenues. The State Legislature sets the per pupil allocations and funds the State School Fund accordingly. Therefore, tax exemptions have an “indirect” impact on the funding for those districts. Tax exemptions throughout the state all have an impact on the State School Fund.

TAXING DISTRICT REVIEW PROCESS

In order for the tax exemption to apply to the full taxable amount, approval by taxing district agency boards that comprise at least 50% of the combined tax levy is required. Since the City and School District tax rates combine equate to 63.3% of the combined tax levy for the 2022-23 assessment year, if the project is approved by those two districts, the project would be exempt from all taxes on residential and parking improvements. All of the Taxing District agencies will be provided with a 45-day comment period to review the application materials and this staff report beginning on March 21, 2023 through May 5, 2023. The following district reviews are scheduled for this project:

- April 4, 2023: Applicant Presentation to Bend Park and Recreation District Board
- April 12, 2023: Applicant Presentation to Deschutes County Board of County Commissioners
- May 9: Bend La Pine School District Board Review and Decision on Application

- May 17: City Council Review and Decision on Application

CONCLUSION: Based on the application materials submitted by the applicant, and these findings, the proposed project meets all applicable criteria for City Council approval.

CONDITONS TO BE MET IF APPROVED, IN ADVANCE OF EXEMPTION CERTIFICATION WITH TAX ASSESSOR’S OFFICE:

1. Applicant must provide proof of a deed restriction that prohibits the use of hotels, motels, and short-term vacation rentals on the site for the period of the exemption.
2. Applicant must provide proof of a deed that restricts income levels for 30% of the units at 120% Area Median Income or less for the period of the exemption.
3. Applicant must demonstrate that EV Charging infrastructure and stormwater facilities are provided as approved for the MUPTE Program in future inspections prior to Certificate of Occupancy.

ATTACHMENTS

- **Attachment A:** Review of Financial Feasibility Penn Avenue Project Hiatus Development, PNW Economics
- **Attachment B:** Project and Rental Information provided by applicant.
- **Attachment C:** Application Materials

**REVIEW OF FINANCIAL
FEASIBILITY
PENN AVENUE PROJECT
HIATUS DEVELOPMENT
MUPTTE PROGRAM
APPLICATION**

Prepared for: City of Bend, Oregon

Prepared by: PNW Economics, LLC

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1. Executive Summary

Introduction

PNW ECONOMICS, LLC was retained by the City of Bend to review the Hiatus Development Penn Avenue Project Multi-Unit Property Tax Exemption (“MUPTE”) program application as part of City review of the project application. Specifically, PNW ECONOMICS was tasked with:

- Reviewing project application assumptions including rent income, non-rent income, operating expenses, bank underwriting assumptions, and other pertinent assumptions;
- Evaluating projected return on investment for the project without MUPTE and with MUPTE, which grants a ten-year property tax exemption for the project in order to incentivize its financial performance such that investment and development is possible and positively contributes to the Bend economy in place of property underutilization; and
- Communicating all analysis and findings appropriately for review by community members and elected officials.

This document represents completion of these tasks for review by the City of Bend and its partners and stakeholders.

Summary of Findings

An independent pro forma analysis was conducted by PNW ECONOMICS for the proposed Penn Avenue project in midtown Bend. The following table provides a concise summary of the outcome of not awarding and awarding a MUPTE to the project, which comprises 40 apartment units.

Table 1 – Penn Avenue Project Measures of Return With & Without MUPTE: 40 Units

40 One-Bed Units	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
12 Units at 120% of AMI	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033
NO MUPTE										
+ MUPTE	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Extended Internal Rate of Return	-7.3%	6.5%	6.6%	6.7%	6.8%	6.9%	6.9%	6.9%	7.0%	7.0%
Cash-on-Cash Return	-5.1%	4.8%	5.3%	5.9%	6.4%	7.0%	7.6%	8.3%	8.9%	9.6%
YES MUPTE										
+ MUPTE	\$92,713	\$95,494	\$98,359	\$101,310	\$104,349	\$107,480	\$110,704	\$114,025	\$117,446	\$120,969
Extended Internal Rate of Return	1.7%	11.7%	10.7%	10.1%	9.7%	9.4%	9.2%	9.1%	8.9%	8.8%
Cash-on-Cash Return	-1.9%	4.8%	5.4%	6.0%	6.6%	7.2%	7.8%	8.4%	9.1%	9.8%

Without MUPTE Conclusion: The Penn Avenue project, including 12 of 40 units rent-restricted to be affordable to households earning not more than 120% of Area Median Income (AM), is not financially feasible on its own.

- 30% of available units would earn below-market rents, reducing potential project Net Operating Income.

- The project would cost the same to build with or without income-restricted units and have similar terms of finance.
- Less rent revenue and no reduction in development costs or project financing costs translates into a lower Cash Flow project with too-low measures of rate of return, starting with Extended Internal Rate of Return (XIRR).
- Being unable to offer a competitive rate of return for the risk, the project would be highly unlikely to attract the necessary equity to make up the total cost of the project that cannot be debt financed (35%).

With MUPTE Conclusion: The Penn Avenue project, including 12 of 40 units rent-restricted to be affordable to households earning not more than 120% of Area Median Income (AM), approaches financial feasibility with the MUPTE and only with the tax exemption compared to the No MUPTE scenario.

- 10.1% to 11.7% Extended Internal Rate of Return (XIRR) with a MUPTE exceeds the 10% benchmark to attract equity investment;
- XIRR with the MUPTE exceeds the long-term stock portfolio average of 8% annually; and
- XIRR with the MUPTE certainly exceeds the 6.5% to 7.0% XIRR without the MUPTE.

In final completion of this analysis, both the second-largest and third-largest bank failures in US History happened over the same March 2023 weekend. Over the next two years, economic turbulence and lending standards are likely to be affected by these large bank failures: ¹

- Lending standards will likely tighten beyond already experienced. In other words, projects are likely to be able to borrow even less of their total cost and will need to seek a greater share of financing through equity investment. Accordingly, the affirmative findings of MUPTE need in this analysis may prove even more pronounced should the Penn Avenue’s lending situation constrict and the project requires even more equity investment share.
- The Penn Avenue project’s sole focus on Studio units, though only 40 total units, places it in some economic risk as in the rental market, households will tend to double-up/roommate in larger units vs. solo rent studio units when economic circumstances are unfavorable or uncertain. The entire mix of Penn Avenue are Studio units and may see more difficult lending circumstances due to this factor.

Review of all development and financial assumptions in the MUPTE Application for the Penn Avenue project yielded the following other general finds and comments:

- The Penn Avenue project has proposed unit rents that are across the board higher than any identified comparable in Bend. In fact, even the 120% of AMI rents at Penn Avenue exceed

¹ PNW Economics would like to thank Greg Manning, Principal of Pioneer Project Partners, LLC for current lending market feedback and bank failure impacts upon commercial real estate lending in Oregon.

studio units and 1 bed unit rents at very new projects on the west side of Bend, where rents would be expected to be at least as high as new product in the eastside Midtown area. It would be appropriate for the City of Bend to seek clarification of rents at Penn Avenue within this context.

- Development costs of the project are seemingly consistent with current construction market conditions in Suburban Portland.

Otherwise overall, it was found that the Penn Avenue MUPTE Application financial analysis used reasonable assumptions overall and much of the independent pro forma and cash flow analysis in this report utilizes similar assumptions as the Applicant. Differences in assumptions are noted in this document.

2. Financial Feasibility Analysis

This report is a set of new, independent pro formas conducted by PNW ECONOMICS given review of the Penn Avenue project MUPTE application. In that application, the Applicant presents sophisticated pro forma/cash flow analysis that does not necessarily provide apples-to-apples comparison of a No MUPTE/Yes MUPTE comparison. For instance, terms of financing of the project with the income-restricted units (Yes MUPTE) is different than terms of financing without those units (No MUPTE). In practice, that would potentially be true as a project without income-restricted units will generate higher Net Operating Income, which then could potentially allow a project to borrow a higher percentage of its total development cost.

But by comparing Yes MUPTE vs. No MUPTE development scenarios that let terms of financing be dynamic depending upon the revenue generated by the project, it is difficult from a policy perspective to isolate the need of the MUPTE to achieve the intended public good: 30% of proposed units affordable to households that earn up to 120% of Area Median Income.

This report therefore conducts pro forma analysis isolating as much as reasonably possible about project development financing and other details in order to demonstrate whether or not the project can deliver the public good – 12 income-restricted units – with or without the MUPTE. This report also makes some conservative assumptions about development financing that do not necessarily identically match assumptions by the Applicant. Modified assumptions are not dramatically different, but are intended to offer fundamentally conservative and apples-to-apples analysis to help better answer the MUPTE policy question. Assumptions are outlined below.

Financial Feasibility (“Pro Forma”) Assumptions

Debt vs. Equity & Project Financing

Table 2 provides a summary of project permanent financing assumptions considered in this analysis. The Applicant considered various lending scenarios, including a 72% Loan to Value scenario. But for conservative independent analysis, this report assumes the total project cost will be able to get 65%

financed with the remaining 35% of total project cost needing to come from equity investment sources.

Table 2 – Penn Avenue Project Permanent Debt Finance Assumptions

	40 Units	
	65% LTV	72% LTV
Total Development Cost	\$ 12,698,256	\$ 12,698,256
Permanent Loan	\$ 8,253,866	\$ 9,142,744
Equity	\$ 4,444,390	\$ 3,555,512
Percent Financed	65%	72%
Annual Interest Rate	6.00%	6.00%
Amortization (Years)	30	30
Annual Permanent Debt Service	(\$ 593,833)	(\$ 657,784)

Development Costs

At a total development cost of \$12,698,256 for 40 units in a three-story “low-rise” structure, total cost per door for the Penn Avenue project is \$317,456. PNW Economics recently reviewed total costs per door for two 52-unit, three-story projects in suburban Washington County for context. Those projects averaged \$267,850 per door in 2022. Escalating by a modest 10% over the past twelve months translates into \$294,635 per unit in total cost.

The projects used for context were more modest construction design for underserved rural markets in Washington County. Accordingly, three-story rural apartment buildings would be expected to have a construction cost discount. Based on this comparison, total development costs and costs-per-unit at the Penn Avenue project are viewed as reasonable.

Assumed Rents & Escalation

Table 3 provides a summary of apartment rents utilized in the pro forma analyses in this section. Rents assumed are planned rents for each of the unit types as proposed by the Applicant. Annually after 2023, rents are assumed to escalate by 3% annually.

Table 3 – Penn Avenue Project Market Apartment Rent Assumptions – 40 Units

Unit Type	Unit Mix		Average Unit Size (Sq. Ft.)	Monthly Rent	Rent per Square Foot
	Units	Percentage			
Lofted One bed	24	60%	474	\$2,050	\$4.32
Lofted One bed Deck	4	10%	474	\$2,250	\$4.75
MUPTE Units: 120% AMI	<u>12</u>	<u>30%</u>	<u>474</u>	<u>\$1,888</u>	<u>\$3.98</u>
Subtotals/Averages	40	100%	474	\$2,021	\$4.26

Rents overall appear somewhat high compared to market. During review of the Applicant pro forma, the following rents were identified for most-comparable, though not perfectly comparable units at other newest competitive projects in Bend:

- **The Nest** (1609 SW Chandler Avenue, Bend): 490 square foot Studio/1 bath for \$1,719 average (\$3.51 per square foot)
- **Solis at Petrosa** (63190 Deschutes Market Road): 620 square foot 1 bed/1 bath for \$1,850 average (\$2.98 per square foot).
- **The Eddy Apartments** (801 SW Bradbury Way): 640 square foot 1 bed/1 bath for \$1,800 average (\$2.81 per square foot).

The Penn Avenue project’s unit mix most resembles The Nest’s Studio/1 bath unit in terms of size (474 sq. ft. vs 490 sq. ft. at The Next). That newer unit rents for \$300 less monthly than the Penn Avenue “market rate” unit average of \$2,150 per month. In fact, The Nest’s Studio unit rents cheaper than the 120% of AMI units at Penn Avenue, planned to rent at \$1,888.

The Solis at Petrosa and The Eddy both advertise available larger 1 bed/1 bath units that are not entirely comparable to Studio-sized units. But both projects larger 1 bed/1 bath units also rent cheaper than both the full market units at Penn Avenue and the 120% of AMI units planned under the MUPTE program.

The rent difference is not clearly explained, as the Penn Avenue project location should be viewed as a generally inferior location compared to the locations of the projects mentioned in this comparison. New development and redevelopment in Bend has intensely been done on the west side of the City, proximate to the river. The Penn Avenue location, located on the east side of town in the Midtown area, is less amenity-filled and is more distant from employment concentrations and amenities both downtown and generally on the west side. PNW ECONOMICS, therefore, would anticipate rents at Penn Avenue to *at most* be equal to rents or rents per square foot, but likely below project rents located on the west side.

Conclusion: Both full market rents and income-restricted rents at the planned Penn Avenue project are higher than new market-rate rents at better-located units on the west side of Bend in newer and revitalized areas. Accordingly, it would be appropriate of the City of Bend to ask the Applicant to clarify both full market rents (\$2,150 average) as well as 120% of AMI rents (\$1,880) within this competitive context.

Should market and restricted rents be adequately clarified, assuming higher rents in the pro forma will tend to make the need for a MUPTE less likely. That is, higher rent income will tend to increase cash flow for a project after debt service is accounted. Project rents that were inexplicably low relative to market would run the risk of overstating MUPTE need. That is certainly not the case here.

Non-Rent Revenues

Table 4 summarizes the various sources of revenue for the project in addition to standard rent planned for the occupancy for units. All revenue categories are standard or increasingly common for new, urban-style apartment development.

Table 4 – Penn Avenue Project Market Apartment Non-Rent Assumptions

Income Source	Penn Avenue	Annual Income	
		Units	2023
Parking	\$180	17	\$36,720
Electric Vehicle Parking	\$300	3	\$10,800
Bike Storage Boxes	\$20	12	\$2,880
Electric Bike Charging	\$30	15	\$5,400
Utilities	\$113	40	\$54,240
Total Non-Rent Revenue:			\$110,040

Operating Expenses

Apartment Operating Expenses

Table 5 below provides a comparison of annual operations expenses per unit anticipated by the Applicant. For context, annual per-unit operating expenses for recent urban apartment MUPTE applicants in the City of Eugene are provided purely for context. Based upon these findings, it was assumed that operations expenses at the project are reasonable if not somewhat low.

Table 5 –Penn Avenue Project Operating Expenses Per Unit vs. Comparable Projects

	Per Unit Expenses Annually	
	Penn Avenue	Eugene Projects
Before Property Tax		
Expenses: Stabilized	\$4,679	\$6,700

For pro forma financial analysis in the next section of this report, PNW ECONOMICS assumes operating expenses supplied by the Applicant. While a bit lower, lower estimated expenses will tend to give more optimistic financial performance projections that would tend to reduce the importance of tax exemption on the bottom line, all things equal.

Property Taxes

Table 6 provides estimates for property taxes that will be paid on both the land as well as expected improvements value on a “Cost of Replacement” basis – the total development cost of improvements alone if built new.

Parcel taxable assessed value (TAV) data is directly from the Deschutes County Assessor’s Office parcel database online (DIAL). Taxable assessed value estimated for the value of improvements assumes total improvement development costs as expressed by the Applicant and then converted to Measure 50 TAV via the Deschutes County 2023 Multifamily Exception Value Ratio of 0.461. Finally, the tax rate of

\$15.8378 per \$1,000 of TAV was utilized for Tax Code Area 1001 that includes the project address of 445 NE Penn Avenue in Bend, Oregon.

Table 6 – Penn Avenue Project Estimated Property Tax: Land & Improvements in FY 23

				Cost of Replacement - Improvements	\$12,698,256		
				Exception Value Ratio - Multifamily (7)	<u>0.461</u>		
				FY 23 Taxable Assessed Value	\$5,853,896		
				Taxable Assessed Value (FY 23)			
<u>Parcel</u>	<u>Account #</u>	<u>Acres</u>	<u>Zoning</u>	Land	Improvements	Total	
445 NE Penn	105177	0.48	RH High Density Residential	\$128,880	\$0	\$128,880	
				Tax Code Area 1001 (per \$1,000 TAV)	<u>15.8378</u>	<u>15.8378</u>	<u>15.8378</u>
				Total Property Tax - Land Only	\$2,041	\$0	\$2,041
445 NE Penn	105177	0.48	RH High Density Residential	\$128,880	\$5,853,896	\$5,982,776	
				Tax Code Area 1001 (per \$1,000 TAV)	<u>15.8378</u>	<u>15.8378</u>	<u>15.8378</u>
				Total Property Tax - Combined	\$2,041	\$92,713	\$94,754

Financial Feasibility Analysis of the Penn Avenue Project

Introduction to Terms

To evaluate whether or not a project is financially feasible, that is whether or not the project meets investment rates of return benchmarks, a pro forma analysis is conducted. A pro forma is simply a financial modeling exercise to examine how a development project performs as a business investment over a specified period of time.

Variables that are modeled, or estimated, in this report are as follows:

Apartment Rent Income: The annual rent income if all apartment units in a project were occupied and charging full, assumed market rent. This grows by 3% each year.

Gross Project Income: The sum of Apartment Rent Income, Retail Lease Income (not present in this project), and Other Income streams such as parking, storage fees, electric vehicle parking fees, bike storage fees, electric bike charging fees, and utility revenue that represent utilities paid by the development and reimbursed with charges to units as part of rent.

Vacancy: 5% of apartment space and retail space is assumed to always be vacant and represent income loss.

Lease-Up Vacancy & Concessions: This category of expense reflects different sources of loss to revenue as a result of project vacancy and discounts to apartment rents to realize and keep an average 5% vacancy rate.

- In year 1 of the project only, PNW Economics assumes a standard 20% loss in potential rent income will occur due to new units being vacant prior to first occupancy (“absorption”) as it leases up to at least 95% occupancy.

Effective Gross Income: Gross Project Income less Vacancy and Lease-Up Vacancy & Concessions.

Apartment Operating Expense: Annual operating expenses of \$4,679 per apartment unit starting in year 1 and growing by 3% annually thereafter. In year 1 only, apartment operating expenses are reduced by the 20% absorption vacancy described in the Lease-Up Vacancy & Concessions definition.

Retail Operating Expense: The Penn Avenue project does not include retail space and, therefore, retail space operating expense.

MUPTE: When included, MUPTE is a 10-year exemption from local property taxes levied on the value of the improvement constructed in place, in this case the Penn Avenue project. Based on an estimated cost-of-replacement of \$12.7 million in 2023 dollars and a local, existing total property tax rate of \$0.0158378 (Tax Code Area 1001), the estimated MUPTE exemption beginning in year 1 would be \$95,494. This would increase by an assumed 3% annually, consistent with the annual maximum under Oregon property tax law.

Net Operating Income (NOI): Effective Gross Income less Apartment Operating Expense plus the MUPTE (if assumed).

Construction Loan Interest: The interest (assumed to be 10.0%) paid on a construction loan for development of the property that is “taken out” or paid off by permanent, long-term debt financing. Such interest is only paid during the duration of construction activity until permanent financing is secured.

Equity: The share of total development cost that is funded by invested dollar assets rather than by debt.

Debt Service: The annual, fixed debt service payment made by the developer for permanent debt financing of the project.

Before Tax Cash Flow: Net Operating Income Less Debt Service.

Cash-on-Cash Return: Before Tax Cash Flow divided by development equity (\$4.44 million in this analysis). Cash-on-Cash Return is also known as Return on Equity and usually needs to be at least 6%-7% in early years of a project to be a satisfactory investment for equity partners in a project. This can vary depending upon developer and equity partners, however.

Loan-To-Cost (LTC): The amount of debt a project can take on as a percentage of its cost to develop. This analysis assumes a 65% LTC ratio. In the current lending environment, commercial lenders have required at least 35% equity share of total project cost, for maximum LTC of 65%. In the current environment, LTC will likely continue to decrease through 2023-24.

Capitalization (“Cap”) Rate: The percentage rate factor utilized to translate capitalize the Net Operating Income of an asset into its market value. The better an asset and/or the stronger the market for that asset, lower the cap rate tends to be. The weaker the asset and/or the worse the market for that asset, the higher the cap rate tends to be.

Value (Market Value): Net Operating Income divided by the Cap Rate. The market value of the real estate asset when potentially sold on the commercial real estate market, or purely for appraisal purposes.

Net Proceeds: (Market) Value in any particular year less cumulative payments of principal on the permanent loan.

Project Profit: In any particular year, Net Proceeds less Initial Equity invested by equity sources.

(Equity) Investor Distribution: One half of Project Profit in any particular year.

Yield: The rate of return in any specific year that factors initial equity investment outflow, investor distributions inflow, and number of years the investor(s) has committed equity including pre-development years.

Extended Internal Rate of Return (XIRR): The total rate of return on equity invested when factoring in the cumulative time investors have held interest in a project during development and during project operations, as well as investor cash-out of their initial investment. XIRR is calculated when inflows and outflows occur at some monthly basis rather than cumulative annual basis. When transactions are more simply accounted on an annual basis, Internal Rate of Return calculation is more standard. A 10% XIRR (IRR) is considered a minimum rate of return to make the risk of a real estate development attractive to the equity investment required for a project to be financed.

Penn Avenue Project Pro Forma Without MUPTE

Table 7 reports the cash flow analysis of the pro forma for the Penn Avenue project without a MUPTE.

Table 7 – Penn Avenue Project Net Operating Income & Cash Flow Without MUPTE

	Ann. Esc.	Year 1 2024	Year 2 2025	Year 3 2026	Year 4 2027	Year 5 2028	Year 6 2029	Year 7 2030	Year 8 2031	Year 9 2032	Year 10 2033
Apartment Rent Income	3%	\$999,380	\$1,029,362	\$1,060,242	\$1,092,050	\$1,124,811	\$1,158,556	\$1,193,312	\$1,229,112	\$1,265,985	\$1,303,964
<i>Other - Parking</i>	3%	\$30,257	\$38,956	\$40,125	\$41,329	\$42,569	\$43,846	\$45,161	\$46,516	\$47,911	\$49,349
<i>Other - EV Parking</i>	3%	\$8,899	\$11,458	\$11,801	\$12,155	\$12,520	\$12,896	\$13,283	\$13,681	\$14,092	\$14,514
<i>Other - Bike Storage</i>	3%	\$2,373	\$3,055	\$3,147	\$3,241	\$3,339	\$3,439	\$3,542	\$3,648	\$3,758	\$3,870
<i>Other - Electric Bike Charging</i>	3%	\$4,450	\$5,729	\$5,901	\$6,078	\$6,260	\$6,448	\$6,641	\$6,841	\$7,046	\$7,257
<i>Other - Utilities Revenue</i>	3%	<u>\$44,694</u>	<u>\$57,543</u>	<u>\$59,270</u>	<u>\$61,048</u>	<u>\$62,879</u>	<u>\$64,765</u>	<u>\$66,708</u>	<u>\$68,710</u>	<u>\$70,771</u>	<u>\$72,894</u>
Other Income		\$90,673	\$116,741	\$120,244	\$123,851	\$127,567	\$131,394	\$135,335	\$139,395	\$143,577	\$147,885
Gross Project Income		\$1,090,053	\$1,146,103	\$1,180,486	\$1,215,901	\$1,252,378	\$1,289,949	\$1,328,647	\$1,368,507	\$1,409,562	\$1,451,849
- Stabilized Vacancy	5%	(\$54,503)	(\$57,305)	(\$59,024)	(\$60,795)	(\$62,619)	(\$64,497)	(\$66,432)	(\$68,425)	(\$70,478)	(\$72,592)
- Lease-Up Vacancy & Concessions	-20%	(\$163,508)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
= Effective Gross Income (EGI)		\$872,042	\$1,088,798	\$1,121,462	\$1,155,106	\$1,189,759	\$1,225,452	\$1,262,215	\$1,300,082	\$1,339,084	\$1,379,257
<i>Apartment Operating Expense</i>	3%	(\$149,722)	(\$183,128)	(\$188,622)	(\$194,281)	(\$200,109)	(\$206,112)	(\$212,296)	(\$218,665)	(\$225,225)	(\$231,981)
<i>Property Tax (Land)</i>	3%	(\$2,102)	(\$2,165)	(\$2,230)	(\$2,297)	(\$2,366)	(\$2,437)	(\$2,510)	(\$2,586)	(\$2,663)	(\$2,743)
<i>Property Tax (Improvements)</i>	3%	(\$95,494)	(\$98,359)	(\$101,310)	(\$104,349)	(\$107,480)	(\$110,704)	(\$114,025)	(\$117,446)	(\$120,969)	(\$124,598)
- Operating Expenses		(\$247,318)	(\$283,653)	(\$292,162)	(\$300,927)	(\$309,955)	(\$319,254)	(\$328,831)	(\$338,696)	(\$348,857)	(\$359,323)
+ MUPTE		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
= Net Operating Income (NOI)		\$624,724	\$805,145	\$829,299	\$854,178	\$879,804	\$906,198	\$933,384	\$961,385	\$990,227	\$1,019,934
- Construction Loan Interest (10.0%)		(\$556,182)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
- Debt Service (65% Loan-to-Cost)		(\$296,917)	(\$593,833)	(\$593,833)	(\$593,833)	(\$593,833)	(\$593,833)	(\$593,833)	(\$593,833)	(\$593,833)	(\$593,833)
= Before Tax Cash Flow		(\$228,374)	\$211,312	\$235,466	\$260,345	\$285,971	\$312,365	\$339,551	\$367,552	\$396,394	\$426,101

Analysis finds the following:

- Lease-up vacancy and collections loss (assumed to average 20%) costs the project roughly \$220,000 in Effective Gross Income (EGI) in the analysis, reflecting that the project will take some time in its first year to fill up.

- Operating expenses are estimated to grow from roughly \$150,000 in Year 1 to almost \$232,000 annually by project Year 10.
- The property tax bill for improvements put in place is estimated to grow from roughly \$95,500 in Year 1 to almost \$125,000 by Year 10. Property tax bill growth is due solely to the Measure 50 3% taxable assessed value growth rate cap.
- Net Operating Income (NOI), calculated as EGI less Operating Expenses (which include property taxes), is estimated to grow from nearly \$625,000 in Year 1 to roughly \$1.02 million by Year 10.
- Except for the first year, when the project is assumed to only be 80% occupied due to active lease-up and construction loan interest is attributed, Cash Flow is positive and grows from roughly \$211,000 in Year 2 to approximately \$426,000 by Year 10. Again, Cash Flow is calculated as that year’s NOI less any debt service payments. Debt service for the project is significant, estimated to be roughly \$600,000 annually.

Given the above cash flow findings, Figure 8 provides Measures of Return for the Penn Avenue project without a MUPTE. Two measures of return are displayed at the bottom of Table 8: Extended Internal Rate of Return (XIRR – utilized by the Applicant) and Cash-on-Cash Return, another measure of attractiveness of a project to equity investors for context.

Table 8 – Penn Avenue Project Measures of Return Without MUPTE

Value - 5.5% Cap Rate	5.5%	\$11,358,623	\$14,639,002	\$15,078,172	\$15,530,517	\$15,996,432	\$16,476,325	\$16,970,615	\$17,479,734	\$18,004,126	\$18,544,249
Equity Holding Period (Year)	1	2	3	4	5	6	7	8	9	10	
Interest Payment	(\$495,232)	(\$488,968)	(\$482,328)	(\$475,289)	(\$467,829)	(\$459,920)	(\$451,538)	(\$442,652)	(\$433,233)	(\$423,249)	
Principal Payment	(\$98,601)	(\$104,865)	(\$111,505)	(\$118,544)	(\$126,004)	(\$133,913)	(\$142,296)	(\$151,181)	(\$160,600)	(\$170,584)	
Net Proceeds	\$3,203,358	\$6,588,602	\$7,139,277	\$7,710,166	\$8,302,086	\$8,915,892	\$9,552,477	\$10,212,777	\$10,897,769	\$11,608,478	
Less: Initial Equity	\$4,444,390	\$4,444,390	\$4,444,390	\$4,444,390	\$4,444,390	\$4,444,390	\$4,444,390	\$4,444,390	\$4,444,390	\$4,444,390	\$4,444,390
Project Profit	(\$1,241,032)	\$2,144,212	\$2,694,888	\$3,265,776	\$3,857,696	\$4,471,502	\$5,108,088	\$5,768,387	\$6,453,380	\$7,164,088	
Investor Distribution	(\$620,516)	\$1,072,106	\$1,347,444	\$1,632,888	\$1,928,848	\$2,235,751	\$2,554,044	\$2,884,194	\$3,226,690	\$3,582,044	
Yield	-3.0%	3.7%	3.9%	4.0%	4.1%	4.2%	4.2%	4.3%	4.3%	4.3%	4.3%
Equity Holding Period (Years)											
Equity + Investor Distribution	\$3,823,874	\$5,516,496	\$5,791,833	\$6,077,278	\$6,373,238	\$6,680,141	\$6,998,433	\$7,328,583	\$7,671,080	\$8,026,434	
50% of Cash Flow	(\$114,187)	\$105,656	\$117,733	\$130,173	\$142,985	\$156,182	\$169,775	\$183,776	\$198,197	\$213,050	
Extended Internal Rate of Return (XIRR)	-7.3%	6.5%	6.6%	6.7%	6.8%	6.9%	6.9%	6.9%	7.0%	7.0%	
Cash-on-Cash Return	-5.1%	4.8%	5.3%	5.9%	6.4%	7.0%	7.6%	8.3%	8.9%	9.6%	

Without a MUPTE, the 40-unit Penn Avenue project, including 12 units with rents restricted to 30% of 120% of AMI, is estimated to have a **maximum Extended Internal Rate of Return (XIRR) of 7.0%** for any equity holding period in the first ten years.

In other words, when investors place their own equity into this project, no matter how quickly after the project fills up or how long after they hold and receive cash disbursements as return before they ultimately cash out, those investors considering this project are estimated to never earn more than 7.0% on their money.

7.0% maximum XIRR, or equivalently Internal Rate of Return (IRR), is insufficiently low because they have choices that will be far better. Investors weigh different opportunities for best choice, their risk, and the relative return for that risk. Considering that a balanced, traditional stock portfolio will tend to average 8% growth annually, a 7.0% XIRR is below that and an investor would be better off simply investing in traditional stock funds or finding another equity investment opportunity with measurably better XIRR/IRR.

Given that real estate development is significantly riskier than traditionally stock portfolios, particularly a project that is unprecedented in the market area where it will be located, XIRR/IRR needs to higher than just 8% to pay higher return for the higher risk taken. PNW ECONOMICS agrees with the Applicant that a 10% XIRR/IRR minimum is a reasonable benchmark of whether equity investment will be interested in a real estate development project. 10% would reflect a 2% risk premium over lower effort, lower risk traditional stock portfolio rate of return.

Conclusion: The Penn Avenue project, including 12 of 40 units rent-restricted to be affordable to households earning not more than 120% of Area Median Income (AM), is not financially feasible on its own.

- 30% of available units would earn below-market rents, reducing potential project Net Operating Income.
- The project would cost the same to build with or without income-restricted units, and cost the same to finance making the same annual debt service payments.
- Less rent revenue and no reduction in development costs or project financing costs translates into a lower Cash Flow project with too-low measures of rate of return, starting with Extended Internal Rate of Return (XIRR).
- Being unable to offer a competitive rate of return for the risk, the project would be highly unlikely to attract the necessary equity to make up the total cost of the project that cannot be financed (35%).

Penn Avenue Project Pro Forma WITH MUPTE

Table 9 reports the cash flow analysis of the pro forma for the Penn Avenue project with a MUPTE. All operations findings are the same as the Without MUPTE scenario, except for the addition of the property tax exemption each year equal to the value of the property taxes paid on improvements put in place.

Table 9 – Penn Avenue Project Net Operating Income & Cash Flow WITH MUPTE

	Ann. Esc.	Year 1 2024	Year 2 2025	Year 3 2026	Year 4 2027	Year 5 2028	Year 6 2029	Year 7 2030	Year 8 2031	Year 9 2032	Year 10 2033
Apartment Rent Income	3%	\$999,380	\$1,029,362	\$1,060,242	\$1,092,050	\$1,124,811	\$1,158,556	\$1,193,312	\$1,229,112	\$1,265,985	\$1,303,964
<i>Other - Parking</i>	3%	\$30,257	\$38,956	\$40,125	\$41,329	\$42,569	\$43,846	\$45,161	\$46,516	\$47,911	\$49,349
<i>Other - EV Parking</i>	3%	\$8,899	\$11,458	\$11,801	\$12,155	\$12,520	\$12,896	\$13,283	\$13,681	\$14,092	\$14,514
<i>Other - Bike Storage</i>	3%	\$2,373	\$3,055	\$3,147	\$3,241	\$3,339	\$3,439	\$3,542	\$3,648	\$3,758	\$3,870
<i>Other - Electric Bike Charging</i>	3%	\$4,450	\$5,729	\$5,901	\$6,078	\$6,260	\$6,448	\$6,641	\$6,841	\$7,046	\$7,257
<i>Other - Utilities Revenue</i>	3%	\$44,694	\$57,543	\$59,270	\$61,048	\$62,879	\$64,765	\$66,708	\$68,710	\$70,771	\$72,894
Other Income		\$90,673	\$116,741	\$120,244	\$123,851	\$127,567	\$131,394	\$135,335	\$139,395	\$143,577	\$147,885
Gross Project Income		\$1,090,053	\$1,146,103	\$1,180,486	\$1,215,901	\$1,252,378	\$1,289,949	\$1,328,647	\$1,368,507	\$1,409,562	\$1,451,849
- Stabilized Vacancy	5%	(\$54,503)	(\$57,305)	(\$59,024)	(\$60,795)	(\$62,619)	(\$64,497)	(\$66,432)	(\$68,425)	(\$70,478)	(\$72,592)
- Lease-Up Vacancy & Concessions	-20%	(\$163,508)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
= Effective Gross Income (EGI)		\$872,042	\$1,088,798	\$1,121,462	\$1,155,106	\$1,189,759	\$1,225,452	\$1,262,215	\$1,300,082	\$1,339,084	\$1,379,257
<i>Apartment Operating Expense</i>	3%	(\$149,722)	(\$183,128)	(\$188,622)	(\$194,281)	(\$200,109)	(\$206,112)	(\$212,296)	(\$218,665)	(\$225,225)	(\$231,981)
<i>Property Tax (Land)</i>	3%	(\$2,102)	(\$2,165)	(\$2,230)	(\$2,297)	(\$2,366)	(\$2,437)	(\$2,510)	(\$2,586)	(\$2,663)	(\$2,743)
<i>Property Tax (Improvements)</i>	3%	(\$95,494)	(\$98,359)	(\$101,310)	(\$104,349)	(\$107,480)	(\$110,704)	(\$114,025)	(\$117,446)	(\$120,969)	(\$124,598)
- Operating Expenses		(\$247,318)	(\$283,653)	(\$292,162)	(\$300,927)	(\$309,955)	(\$319,254)	(\$328,831)	(\$338,696)	(\$348,857)	(\$359,323)
+ MUPTE		\$95,494	\$98,359	\$101,310	\$104,349	\$107,480	\$110,704	\$114,025	\$117,446	\$120,969	\$124,598
= Net Operating Income (NOI)		\$720,218	\$903,504	\$930,609	\$958,528	\$987,283	\$1,016,902	\$1,047,409	\$1,078,831	\$1,111,196	\$1,144,532
- Construction Loan Interest (10.0%)		(\$556,182)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
- Debt Service (65% Loan-to-Cost)		(\$296,917)	(\$593,833)	(\$593,833)	(\$593,833)	(\$593,833)	(\$593,833)	(\$593,833)	(\$593,833)	(\$593,833)	(\$593,833)
= Before Tax Cash Flow		(\$132,880)	\$309,671	\$336,776	\$364,694	\$393,450	\$423,069	\$453,576	\$484,998	\$517,363	\$550,699

Analysis finds the following:

- Effective Gross Income for the project under this scenario is identical to the No MUPTE scenario. That is, after a first year of reduced revenue due to units being vacant prior to full lease-up, EGI is positive in Year 2 and grows to \$1.452 million by Year 10 in this analysis.
- Identically to the No MUPTE scenario, operating expenses are estimated to grow from roughly \$150,000 in Year 1 to almost \$232,000 annually by project Year 10.
- **Value of the MUPTE:** The 10-year property tax exemption for this project (based on the value of property tax on improvements), if awarded, is estimated to **grow from roughly \$95,500 in Year 1 to almost \$125,000 by Year 10.**
- Net Operating Income (NOI), calculated as EGI less Operating Expenses (which include property taxes, but exempted in the With MUPTE scenario), is estimated to grow from roughly \$720,000 in Year 1 to almost \$1.145 million by Year 10 due to the enhancement of the MUPTE.
- After the project is entirely leased up (by 2025), Cash Flow is positive and grows from roughly \$310,000 in Year 2 to approximately \$551,000 by Year 10.

Given the above cash flow findings, Figure 10 provides Measures of Return for the Penn Avenue project WITH a MUPTE. The same two measures of return are displayed at the bottom of Table 9: Extended Internal Rate of Return (XIRR – utilized by the Applicant) and Cash-on-Cash Return

With a MUPTE, the 40-unit Penn Avenue project, including 12 units with rents restricted to 30% of 120% of AMI, is estimated to have a **maximum Extended Internal Rate of Return (XIRR) of 11.7%**, with XIRR calculated to exceed the benchmark of 10% through the fourth year of the project.

Table 10 – Penn Avenue Project Measures of Return WITH MUPTE

Value - 5.5% Cap Rate	5.5%	\$13,094,882	\$16,427,348	\$16,920,168	\$17,427,773	\$17,950,607	\$18,489,125	\$19,043,799	\$19,615,113	\$20,203,566	\$20,809,673
Equity Holding Period (Year)		1	2	3	4	5	6	7	8	9	10
Interest Payment		(\$495,232)	(\$488,968)	(\$482,328)	(\$475,289)	(\$467,829)	(\$459,920)	(\$451,538)	(\$442,652)	(\$433,233)	(\$423,249)
Principal Payment		(\$98,601)	(\$104,865)	(\$111,505)	(\$118,544)	(\$126,004)	(\$133,913)	(\$142,296)	(\$151,181)	(\$160,600)	(\$170,584)
Net Proceeds		\$4,939,616	\$8,376,948	\$8,981,274	\$9,607,423	\$10,256,260	\$10,928,691	\$11,625,661	\$12,348,156	\$13,097,210	\$13,873,901
Less: Initial Equity		<u>\$4,444,390</u>	<u>\$4,444,390</u>	<u>\$4,444,390</u>	<u>\$4,444,390</u>	<u>\$4,444,390</u>	<u>\$4,444,390</u>	<u>\$4,444,390</u>	<u>\$4,444,390</u>	<u>\$4,444,390</u>	<u>\$4,444,390</u>
Project Profit		\$495,227	\$3,932,558	\$4,536,884	\$5,163,033	\$5,811,871	\$6,484,302	\$7,181,271	\$7,903,766	\$8,652,820	\$9,429,512
Investor Distribution		\$247,613	\$1,966,279	\$2,268,442	\$2,581,517	\$2,905,935	\$3,242,151	\$3,590,636	\$3,951,883	\$4,326,410	\$4,714,756
Yield		1.1%	6.3%	6.1%	5.9%	5.7%	5.6%	5.5%	5.4%	5.4%	5.3%
Equity Holding Period (Years)											
Equity + Inventory Distribution		\$4,692,003	\$6,410,669	\$6,712,832	\$7,025,906	\$7,350,325	\$7,686,540	\$8,035,025	\$8,396,273	\$8,770,800	\$9,159,145
50% of Cash Flow		(\$66,440)	\$154,835	\$168,388	\$182,347	\$196,725	\$211,534	\$226,788	\$242,499	\$258,681	\$275,349
Extended Internal Rate of Return (XIRR)		1.7%	11.7%	10.7%	10.1%	9.7%	9.4%	9.2%	9.1%	8.9%	8.8%
Cash-on-Cash Return		-3.0%	7.0%	7.6%	8.2%	8.9%	9.5%	10.2%	10.9%	11.6%	12.4%

In other words, the annual exemption of property tax payments, which are calculated to grow from roughly \$95,400 in Year 1 to \$124,600 by Year 10, make a significant difference to the rate of return for investors who will be needed to make this project happen under known market conditions.

- 10.1% to 11.7% XIRR (IRR) with a MUPTE exceeds the 10% benchmark to attract equity investment;
- XIRR with the MUPTE exceeds the long-term stock portfolio average of 8% annually; and
- XIRR with the MUPTE certainly exceeds the 6.5% to 7.0% XIRR without the MUPTE.

Conclusion: The Penn Avenue project, including 12 of 40 units rent-restricted to be affordable to households earning not more than 120% of Area Median Income (AM), approaches financial feasibility with the MUPTE and only with compared to the No MUPTE scenario.

HIATUS PENN



HIATUS HOMES
Request for Debt

HIATUS PENN

445 Penn Avenue, Bend, Oregon 97701

In 2024, Hiatus Homes will open a first-of-its-kind apartment building in Bend, Oregon. The project is envisioned as a three-story building that has 40 open one bedroom one bathroom units with a kitchenette and a private outdoor patio. The residential units are designed around four community spaces to strike a balance between private space and collaborative community space. The shared spaces offer a full kitchen and living room on each floor, including a farm table for communal meals and plenty of coworking space. The building will also include a workout room, conference room, and a rooftop deck with BBQs, a fire pit, hammocks, and breathtaking views of the Cascade Mountains. Transportation includes car-share parking as well as bike lockers and electric bike charging stations.

The intelligently designed units feature a sleeping loft, vaulted 13-foot ceilings, and large windows that bring a flood of light into the room. The private units are around 440 square feet with a lofted bedroom for additional space. Integrated storage for bikes, a built-in workspace, and clever cabinetry maximize the storage in each unit.

The building is located at 445 N Penn Avenue around the corner from the Midtown Yacht Club food carts. The location is walkable and bikeable, located less than a mile from Pioneer Park on the Deschutes River and a short ride to Central Oregon Community College (COCC).

Hiatus Homes is delivering the dream of living in Bend to more people, thoughtfully increasing housing density in the region, and creating community minded living, concentrating on the influx of remote workers into Bend.

DEVELOPMENT STATS

Asset class: **Apartments + Community/Coworking**

Number of units: 40

Building SF: 45,003 (roof is 9,590 SF)

Unit mix: Studio1BD - lofted bedroom

Unit avg. SF: Main 339, loft 136 = total unit SF 474

Lot: .48 acres (20,946 SF)

Height: 49'6"

Parking 18 spaces (3 EV parking spaces)

Bike parking: 40 in-unit, 31 common

Total bike parking = 71

Status: Construction begins January 2023





Exterior view from the south



BUILDING AMENITIES

COMMON AREAS for communal cooking, dining, and cocktail hour

COWORKING SPACE for collaboration or production

ROOFTOP DECK with hammocks, BBQs, and a fire pit



Third floor common space





Rooftop deck common space



Second floor common space

UNIT AMENITIES

SLEEPING LOFT with built-in wardrobe and desk

LARGE WINDOWS with 13' vaulted ceilings bringing a flood of light into the space

PRIVATE PATIO space with outside storage

BIKE RACK that fits 2 bikes

UPGRADED APPLIANCES and stylish, modern finishes

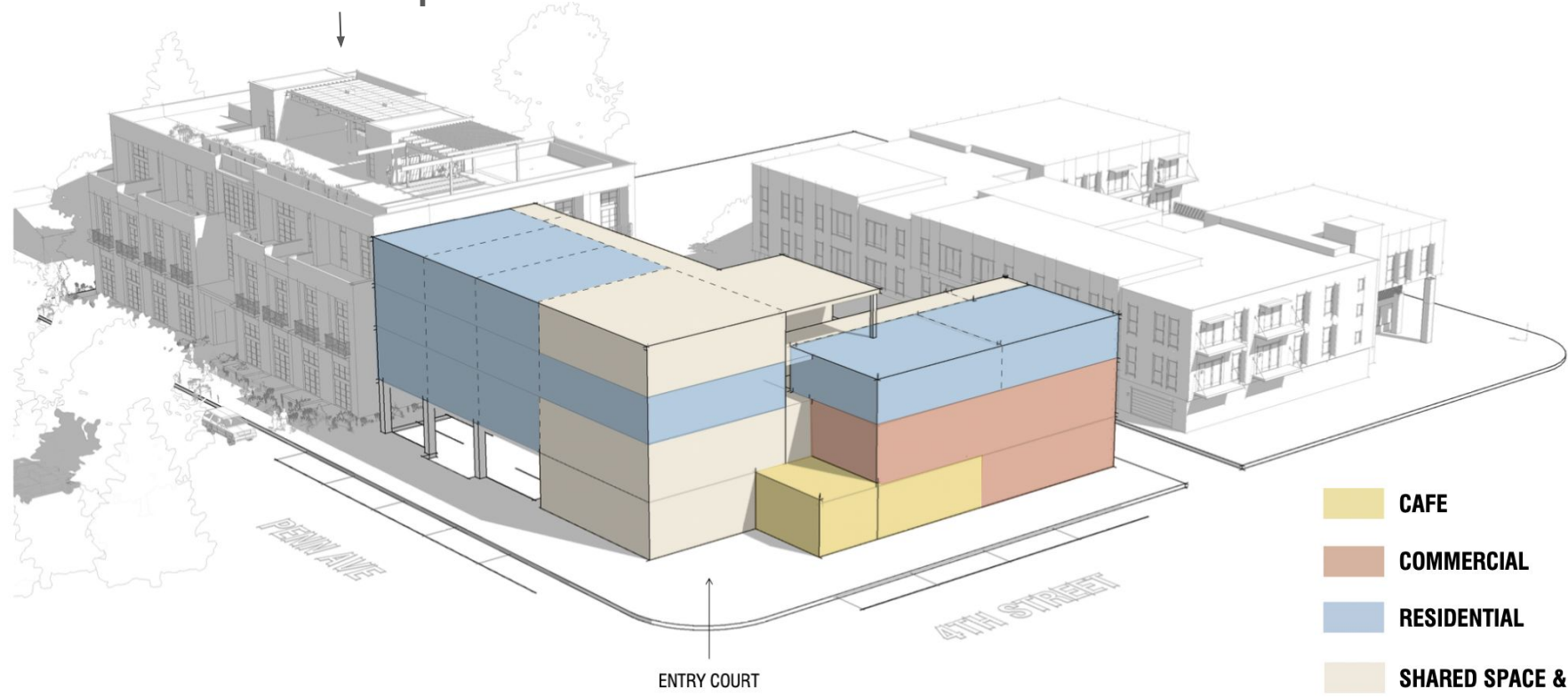




FUTURE OF PENN AVE

First of three projects planned

Hiatus Penn Apts



-  CAFE
-  COMMERCIAL
-  RESIDENTIAL
-  SHARED SPACE & CIRCULATION



TARGET MARKET

REMOTE WORKERS



12.1%

In Bend Telecommute

[MovingToBend.com](https://movingtobend.com) reports that **Bend, Oregon leads the US** with 12.1% of the workforce telecommuting

Open 1-Bedroom Apartments

PROPERTY	SQ/FT	RENT TODAY	2024 RENT
HIATUS PENN	440SF	\$1,750/mo	\$1,892
The Hixon	667SF	\$1,600/mo	\$1,731
The Eddy	635SF	\$1,700/mo	\$1,840
The Nest	455SF	\$1,760/mo	\$1,903

Co-working Spaces

PROPERTY	RENT TODAY
BendTech	\$200-300/mo
The Haven	\$265-475/mo
The Collective NWX	\$100-425/mo

HIATUS PENN

\$2,070 at today's rents

(equivalent to \$1,750 apartment rent + \$320 coworking rent)

At 5.5% rent appreciation: \$2,243 average rent in 2024



ABOUT THE ARCHITECT

TEN OVER STUDIO

Started in 2014 in San Luis Obispo, California, Ten Over Studio also has offices in San Jose, California, and Bend, Oregon. Principals Jim Duffy and Joel Snyder and their team have led the design on buildings across hospitality, office, mixed-use, and public projects. Ten Over's specialty is outside-of-the-box multifamily and creating spaces that are livable and set a building apart.

The team has brought 47 multifamily and mixed-use buildings through design and construction.

Ten Over has led the design on the Hiatus Penn Apartments since the project was conceived in 2020. The principals of the firm are equity investors in the Hiatus Capital Fund and are active stakeholders in the community in Bend, Oregon, which is why we have been excited to collaborate with them on this project.



ABOUT THE DEVELOPER

HIATUS HOMES

Hiatus Homes is a residential and multifamily land developer and home builder based in Bend, Oregon. The company was founded in 2015 by Jesse Russell (CEO, Managing Partner). After successfully completing two developments: Hiatus Benham and Hiatus Roanoke, Russell partnered with Ryan Andrews (CFO, Managing Partner) in 2020 to form the Hiatus Capital Fund (borrower entity is Hiatus Capital Fund LLC, sponsor is Hiatus Capital Management LLC). The Fund is capitalized with \$5.5+ million in LP investor equity and is in the process of developing 4 portfolio projects totaling 110 residential units with a finished value over \$65 million.

Hiatus' first project pioneered a new housing type in the Pacific Northwest by being the first to utilize Bend's ground breaking cottage development code.

Hiatus is focused on a design-first mentality that starts with the people. By designing the dwellings, buildings, and neighborhoods around how people actually use their space, Hiatus achieves a design that supports the lifestyle of the people who choose to make Bend their home.



HIATUS BENHAM

22 cottage homes**500 SF**

Sales Price

\$230k - \$330k

Investor Yield

20%+ IRR

HIATUS ROANOKE

10 2-bedroom homes**910 SF**

Sales Price

\$798k - \$898k

Investor Yield

29% IRR

ABOUT

THE SPONSORS



JESSE RUSSELL
Managing Partner,
CEO

jesse@hiatushomes.com
646.436.6196
@hiatushomes

Jesse is the founder of Hiatus Homes—a Bend, Oregon-based company known for high-quality, ecologically sound, and intelligently designed home construction. The small footprint of these homes helps create urban density and provide more housing inventory during a time of national housing shortages. He is considered a thought leader in the design and development of small spaces and communities, and is an advocate for people living in smaller, more efficient, net-zero homes.

Jesse grew up in Bend, Oregon, and after a stint travelling around the world and working in New York and Los Angeles as a television producer, he returned to his hometown in 2015 and started building his first tiny house in a friend's backyard. That early prototype debuted at the Bend Design Conference the same year, garnering media attention and lines around the block for a tour. Jesse went on to experiment with designs for various small structures, including a tiny tavern on wheels, two mini pubs for 10 Barrel Brewing Co., and a food truck at Brasada Ranch. He has been devoted to the small-home movement ever since.

In 2019, Hiatus Homes pioneered the first community of small-scale homes in the city, called Hiatus Benham. It was inspired by Washington architect Ross Chapin's concept of 'pocket neighborhoods' and Bend's need for efficient, sustainable, high-quality housing. The development required years of close work with the city in order to permit this new style of housing. "Building that first development was the most challenging thing I'd ever done, but all the support I felt from city staff, investors, and homeowners has made it one of the best life experiences I've ever had," recalls Jesse.

Now, Jesse brings 20+ years of experience in executive-level leadership, project management, construction, and land development as CEO of Hiatus Homes, and Managing Partner of the Hiatus Capital Fund. Every Hiatus development is guided by the same principles embodied by Jesse's first house build: employing smart design, using high-quality materials, reducing utility consumption, and with an eye toward creating community.



ABOUT

THE SPONSORS

**RYAN ANDREWS**

Managing Partner,
CFO

ryan@hiatushomes.com

949.637.0355

[@ryndrws](https://www.linkedin.com/company/ryndrws)

[linkedin/in/ryndrws](https://www.linkedin.com/in/ryndrws)

Ryan is the Chief Financial Officer of Hiatus Homes and the Hiatus Capital Fund. Ryan has managed 8 investment funds across real estate debt, equity, and venture capital specializing in capitalizing construction and development. In concert with Hiatus Homes' goal of providing housing to a new type of buyer, Ryan aimed to provide local investors with access and opportunities to invest in development projects in their own community. He structured the Hiatus Capital Fund to be owned and funded primarily by local investors who live in Bend, Oregon. When a project is financially successful, the profits flow back to the people have invested in the local community instead of to out-of-the-area professional investors.

Ryan grew up in Orange County, California, and attended the business school at Cal Poly San Luis Obispo, where he earned a bachelor's in finance concentrating in sustainable real estate development. Ryan worked in Pacific Investment Management Company's (PIMCO) institutional investment division and later became an early employee at CrowdStreet, a fintech startup that pioneered online real estate syndications.

In 2014, Ryan became a principal and head of capital markets at Trueline Capital, a boutique construction debt fund focused on financing infill residential projects. He was involved in capitalizing over 100 development projects. In 2018, Ryan launched the Recession Resistant Fund, where he invested in over fifty mobile home parks, apartment buildings, and self-storage facilities across thirteen states. The fund generated an 8.8% annualized yield to investors through Q2 2022.

Between 2019 and 2022, Ryan was the Portfolio Manager for the Phoenix Real Estate Debt Fund, a subsidiary of Tel Aviv-based Phoenix Insurance. The portfolio specialized in investing in syndicated multifamily construction debt. Ryan oversaw the growth and investment of the fund as it grew from \$13 million to over \$500 million in assets in three years.

Ryan and Jesse partnered in 2020 to create the Hiatus Capital Fund. The goal was to connect local investors with a series of local development projects that would focus on density, energy efficiency, and small-footprint modern design. By 2022 the Hiatus Capital Fund included fifty investors, four development projects totaling 110 homes, and over \$5.5 million in equity capital. Three-quarters of the Fund's investors are local to Bend, Oregon, and are active stakeholders in the community.



HIATUS PENN APARTMENTS



hiatushomes.com
@hiatushomes
connect@hiatushomes.com





Economic Development Division
 City of Bend
 mupte@bendoregon.gov
 710 NW Wall Street, Bend OR 97703

This submittal form is to be completed as part of your Multiple Unit Property Tax Exemption (MUPTe) application with the City of Bend. *Download this form before completing fillable fields*, then upload with your application through the Online Permit Center at www.bendoregon.gov/permitcenter.

MUPTe PUBLIC BENEFITS CHECKLIST

Use the following checklist to identify which public benefits you plan to utilize to meet the public benefit requirements of the MUPTe program as defined in [Bend Code 12.35.025](#) and further explained in the MUPTe Program Guidelines. **Projects must provide a minimum of three public benefits including at least one priority public benefit.**

Priority Public Benefits (must select at least one)

- 10% of units deed-restricted as Affordable Housing
- 30% of units deed-restricted as Middle Income Housing
- Childcare Facilities
- Open Space and Publicly Accessible Park or Plaza Space
 - Please confirm that you have a letter from Bend Park and Recreation District included in your application.
- High Standard of Energy Efficiency/Green Building Features (if yes, please select which pathway)
 - Energy Trust New Buildings Path to Net Zero
 - LEED Platinum
 - Earth Advantage Platinum or higher

Additional Public Benefits

- Energy Efficiency/Green Building Features (if yes, select which pathway)
 - Energy Trust of Oregon New Building Whole Building
 - Energy Trust Multifamily Market Solutions Best
 - Earth Advantage Silver or higher
 - LEED Silver or higher
 - Solar installation that will supply some of the building's energy using solar
- Transit Supportive Amenities
 - Please confirm you have a letter from Cascade East Transit to include in your application.
- Mobility Supportive Amenities
- Ground floor commercial (more than 35% of the ground floor as commercial uses)

- Stormwater
 - Confirm that you have submitted stormwater credit program application form as part of your application

- Environmental Remediation
 - Confirm that you have submitted documentation of recent site clean up efforts and current DEQ status of site.

- Public Facilities
Please provide a short description of proposed public facility:

- Enhanced Landscaping
 - Please confirm that you have submitted landscape plan as part of site plan
 - Please confirm that you have submitted a proposed water budget as part of your application

- Electric Vehicle (EV) charging

- Wrapped Parking Structure

- Other Public Benefit (must be authorized by City Council)
If using this, please provide a description of the proposed public benefit:



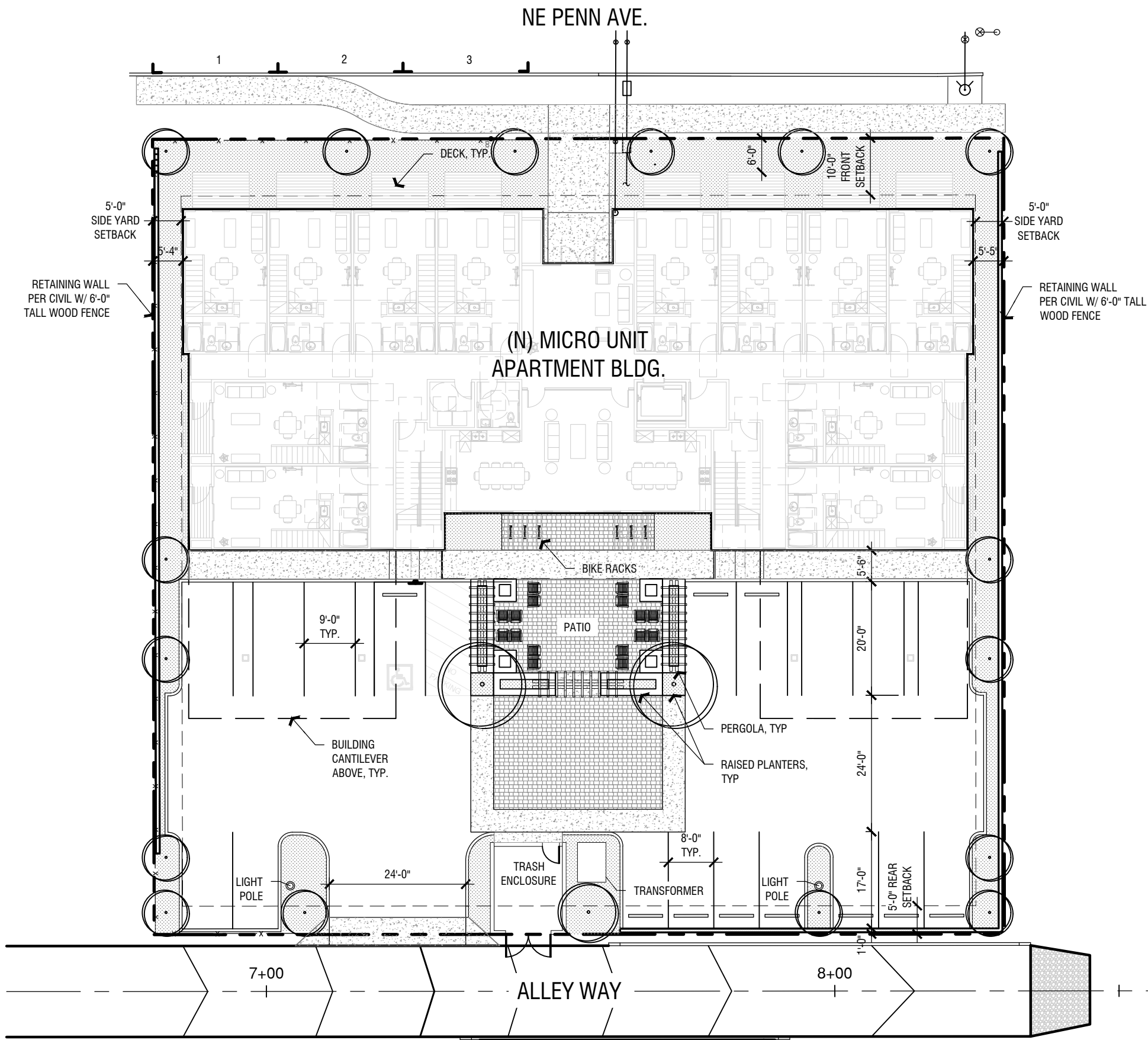
Accommodation Information for People with Disabilities

To obtain this information in an alternate format such as Braille, large print, electronic formats, etc. please contact Development services at development@bendoregon.gov, 541-388-5580; Relay Users Dial 7-1-1.

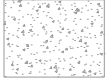

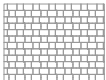
PROJECT DESCRIPTION:

The project site is located at 445 NE Penn Ave. and is an approved high density residential zoned lot. The project proposes (1) 3 story, 43,485 sf building of (40) micro housing units. **Thirty percent (12 units) will be designated middle income housing and rented at 30 percent of 120 percent AMI.** We are planning the project provides (3) community rooms and a gym of approximately 260 sf and a rooftop deck of approximately 4,349 sf. (18) parking spaces will be provided on site and will serve the tenant and common area uses of the project. There are (5) covered parking spaces, prioritizing ADU and 6 EV parking spaces.

Existing use displacement – the property is currently raw land with no buildings, so there is no residential displacement.



SITE PLAN LEGEND

-  CONCRETE
-  LANDSCAPING AREA
-  PAVERS

PARKING CALCULATIONS

PARKING REQUIRED

USE	UNIT COUNT (OR SF)	PARKING FACTOR	PARKING SPACES
RESIDENTIAL	MICRO UNIT 40	0.5	20
(PER 3.3.300 (B))	REDUCTION FROM ON-STREET PKG.		3
	REQ. TOTAL		17
	PROVIDED TOTAL		18

ADA STND SPACES

REQUIRED 1 PROVIDED 1

ADA VAN SPACES

REQUIRED 1 PROVIDED 1

COMPACT SPACES

ALLOWED 50% (9 SPACES) PROVIDED 9 SPACES

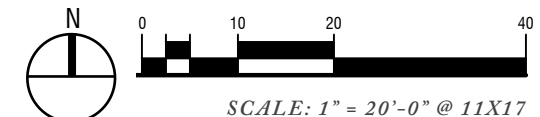
(PER 3.8.200.I.4)

BIKE PARKING

REQUIRED 40 SPACES (1/UNIT) PROVIDED 1/UNIT + 12 COMMON

52 SPACES TOTAL

FIRST FLOOR PLAN





CITY OF BEND

January 18, 2023

LOCATION

710 NW Wall Street
Downtown Bend

MAILING ADDRESS

PO Box 431
Bend, OR 97709

PHONE

(541) 388-5505
Relay Users Dial 7-1-1

FAX

(541) 385-6676

WEB

bendoregon.gov

MAYOR

Melanie Kebler

MAYOR PRO-TEM

Megan Perkins

CITY COUNCILORS

Anthony Broadman
Barb Campbell
Ariel Mendez
Mike Riley

CITY MANAGER

Eric King

Allison Platt

Business Advocate

Economic Development Department

710 NW Wall St.

Bend, OR 97702

Allison,

A letter from the City of Bend Private Development Engineering Department has been requested from the Hiatus Development Team to complete an application for a Multiple Unit Property Tax Exemption, MUPTE, application. The requirement for MUPTE is to provide information that the proposed development can be served by water and sewer services, Bend Code 12.35.020(f).

The Hiatus development group proposed to construct 40 micro-units of housing on tax lot 171233BB00200. A land use decision was issued under PLSPR20210456 with conditions to upsize the existing 2-inch water main located within NE Penn Street to an 8-inch water main and improve the alley to provide access to the development.

The infrastructure improvements are permitted under permit number PRINF202108539. These improvements will mitigate the under sized water main and increase access providing the necessary infrastructure to serve the development.

Sincerely,

Jill Clough

Engineering Associate

Private Development Engineering

jclough@bendoregon.gov



Accommodation Information for People with Disabilities

To obtain this information in an alternate format such as Braille, large print, electronic formats, etc. please contact Jill Clough at jclough@bendoregon.gov or [telephone # (541)388-5539; Relay Users Dial 7-1-1.



CITY OF BEND

February 13, 2023

LOCATION

710 NW Wall Street
Downtown Bend

MAILING ADDRESS

PO Box 431
Bend, OR 97709

PHONE

(541) 388-5505
Relay Users Dial 7-1-1

FAX

(541) 385-6676

WEB

bendoregon.gov

MAYOR

Melanie Kebler

MAYOR PRO TEM

Megan Perkins

CITY COUNCILORS

Anthony Broadman
Barb Campbell
Ariel Méndez
Megan Norris
Mike Riley

CITY MANAGER

Eric King

Jesse Russell
Hiatus Homes
Address

Jesse,

This letter is intended to satisfy your application requirements for the City of Bend’s Multiple Unit Property Tax Exemption (MUPTTE) Program in order to qualify for the Middle-Income Public Benefit. This letter does not certify that you have provided a proof of a deed restriction nor certify that you have met the income qualification that will be needed in order to verify the exemption, if approved.

The City of Bend Housing Department has met with you and your team and understands that you plan to construct 40 micro-units at 455 NE Penn Avenue. We also understand that you plan to deed restrict 12 units that would be as Middle-Income units that would be available to community members making 120% Area Median Income or less if approved for the MUPTTE program. Deed restricting 12 units satisfied the 30% or more of unit requirement to qualify for the MUPTTE Program.

We have verified that your project proforma, as submitted with your MUPTTE application, includes rental rates that are consistent with current estimates of eligible levels for people making 120% Area Median Income in Deschutes County. Based on the information that we have today, we believe your project will satisfy the requirements of the MUPTTE Program Middle Income Priority Public Benefit requirement.

Sincerely,

Lynne McConnell
Housing Director, City of Bend



Accommodation Information for People with Disabilities

To obtain this information in an alternate format such as Braille, large print, electronic formats, etc. please contact Allison Platt at aplatt@bendoregon.gov or 541-322-6394; Relay Users Dial 7-1-1.



CITY OF BEND

March 6, 2023

LOCATION

710 NW Wall Street
Downtown Bend

MAILING ADDRESS

PO Box 431
Bend, OR 97709

PHONE

(541) 388-5505
Relay Users Dial 7-1-1

FAX

(541) 385-6676

WEB

bendoregon.gov

MAYOR

Melanie Kebler

MAYOR PRO-TEM

Megan Perkins

CITY COUNCILORS

Anthony Broadman
Barb Campbell
Mike Riley
Ariel Méndez
Megan Norris

CITY MANAGER

Eric King

Ryan Andrews
Managing Partner, CFO
Hiatus Homes

Penn Avenue Micro Apartment Project – 445 NE Penn Avenue, Bend Dear Mr.

Dear Mr. Andrews:

We received your Storm Water Utility Service Charge Credit Application on 1/31/2023. After reviewing your credit application, we have determined it to be consistent with the requirements of the Stormwater Credit Program (to manage the 100-year storm event onsite), which satisfies the conditions of the MUPTE Program.

Should you have questions about MUPTE program please contact Allison Platt at (541) 322-6394.

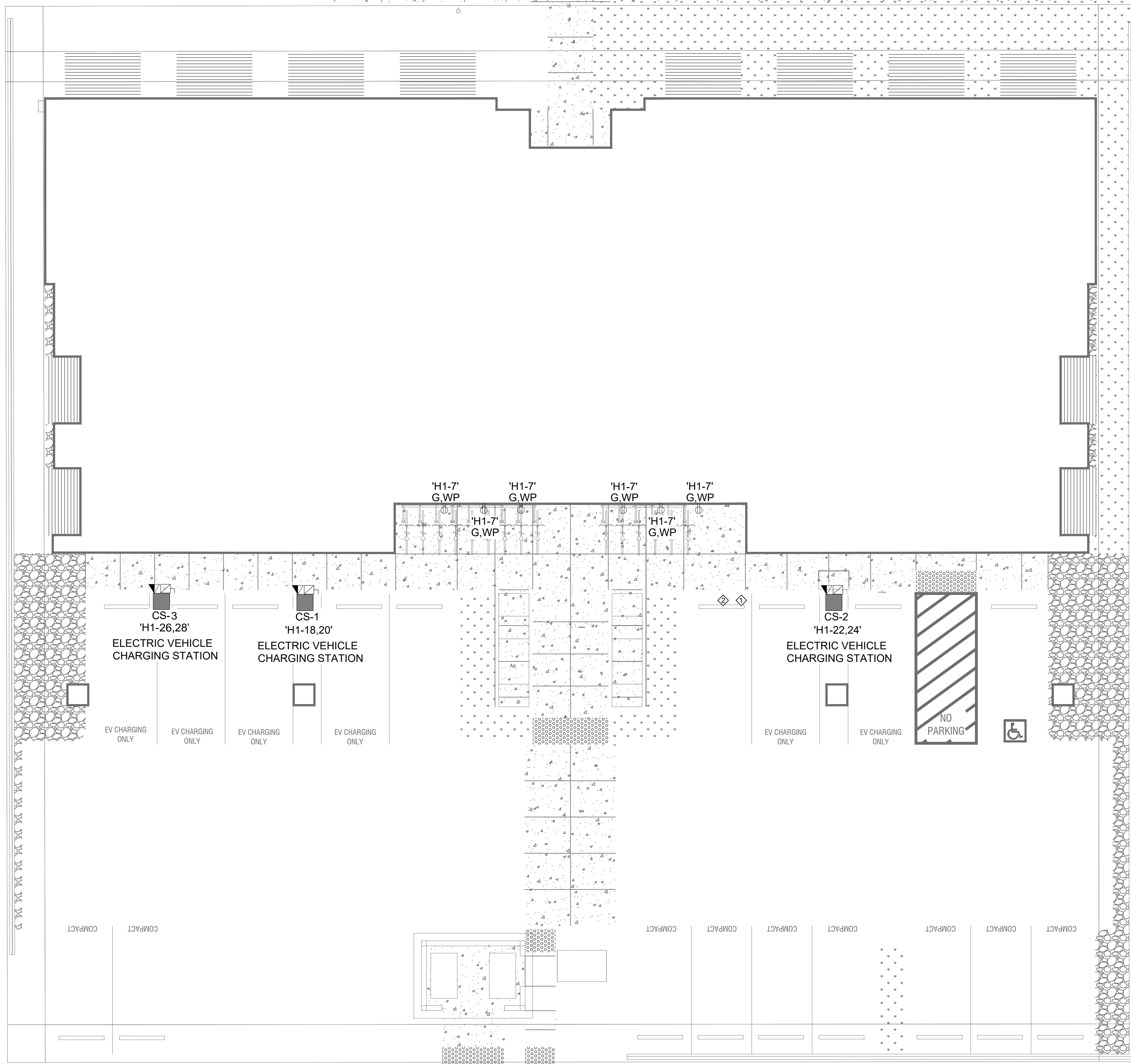
Sincerely,

David Buchanan,
Stormwater Program Analyst
City of Bend Utility Department

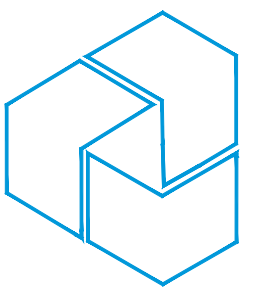


Accommodation Information for People with Disabilities

To obtain this information in an alternate format such as Braille, large print, electronic formats, etc. please contact David Buchanan at dbuchanana@bendoregon.gov or (541) 693-2176; Relay Users Dial 7-1-1.



GENERAL ELECTRICAL NOTES	
1	ALL WIRING TO COMPLY WITH 2020 NEC
2	CIRCUIT LABELS DENOTED WITH ('PNL-CKT'), IE '2A-1'.
3	THE TOP OF ALL RECEPTACLE OUTLET BOXES AT 18" AFF U.N.O.
4	EC TO PERFORM A BOX WALK WITH OWNER PRIOR TO INSTALLING CONDUIT AND WIRING OF ALL OUTLETS AND JUNCTION BOXES.
ELECTRICAL KEY NOTES	
①	INCOMING POWER COMPANY CONDUITS. REFERENCE CIVIL DRAWINGS. COORDINATE WITH LOCAL POWER COMPANY AND SITE WORK CONTRACTOR.
②	INCOMING TELCO COMPANY CONDUITS. REFERENCE CIVIL DRAWINGS. COORDINATE WITH LOCAL POWER COMPANY AND SITE WORK CONTRACTOR.

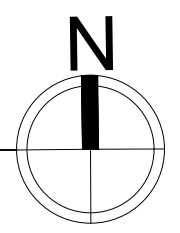


Solera
Engineering Consulting
320 SW Century Drive,
Suite 405-151
Bend, Oregon 97702
(541) 640-9146
RSWHITAKER@GMAIL.COM

BID SET 221219
PENN AVE. MICRO UNIT APARTMENTS
445 NE PENN AVE. BEND, OR 97701

DRAWN BY: RSW	
DATE	SUBMITTAL
04/13/2022	PERMIT SUBMITTAL
05/27/2022	60% CD SET
07/15/2022	PERMIT SET
12/09/22	CITY COMMENTS
12/29/22	100% CD SET

1 SITE - POWER PLAN
SCALE: 1/8" = 1'-0"



POWER PLAN

E2.5



CITY OF BEND
COMMUNITY AND
ECONOMIC DEVELOPMENT

Application #: PRTX202300065

City of Bend
710 NW Wall Street
Bend, OR 97701

February 13, 2023
Jesse Russell
740 NE 3rd St 3-314
Bend, OR 97703

Dear Mr. Russell,

Thank you for your application to the City of Bend's Multiple Unit Property Tax Exemption (MUPTEx) Program for 40-unit project located at 445 NE Penn Avenue. We are contacting you to inform you that the City of Bend has deemed your MUPTEx application Complete.

Your application will be reviewed and a decision on your application will be made by Friday August 11, 2023 however our intent is to complete your review sooner. We understand that you plan to utilize the following public benefits to qualify for the program: Middle Income Housing, EV charging, Stormwater. In an initial review of your application staff noted that the current documentation submitted is insufficient to qualify for the stormwater public benefit. To receive a staff recommendation for approval, please submit documentation from the engineer certifying the onsite drywells are designed and will be tested for the 100-year storm event.

You should hear from Allison Platt, aplatt@bendoregon.gov, regarding the following over the next several months:

- A summary of your independent financial reviews
- Schedule the review(s) of your application with City Council and relevant taxing district agency staff or boards
- Public comments received on your application
- Staff review and recommendation regarding your application

Best,

Allison Platt

Allison Platt, City of Bend

Permit Center City of Bend P.O. Box 431 Bend, OR 97709



TECHNICAL MEMORANDUM

DATE: March 3, 2023
TO: David Buchanan, City of Bend Utility Department
FROM: Adam Erlandson, PE
RE: Penn Avenue Micro Apartment Project – 445 NE Penn Avenue, Bend OR

This memorandum is intended to supplement the previously submitted Penn Avenue Micro Apartment Stormwater Design Report and Private Site Improvement Plans to demonstrate that the stormwater system has been designed to capture and retain the 100-year stormwater design event.

The attached HydroCAD analysis demonstrates the proposed stormwater management system design is intended to fully manage the 100-year stormwater design event. As shown on the attached updated analysis, the stormwater management systems have been designed to have the appropriate storage volume to fully retain and dispose of the 100-year storm event, as demonstrated with no secondary (overflow) runoff calculated to leave the subject property site during the 100-year storm event.

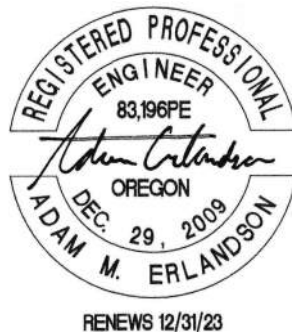
The attached revised Construction Plans (Sheet C302 - Overall Drainage Plan & Sheet C400 – Civil Details) have also been updated to include the modified performance testing criteria that will be implemented during the site construction period to verify the actual infiltration rates of the proposed stormwater management facilities meet or exceed the assumptions within the analysis.

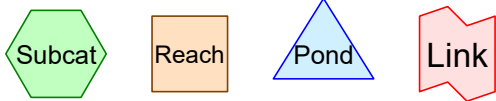
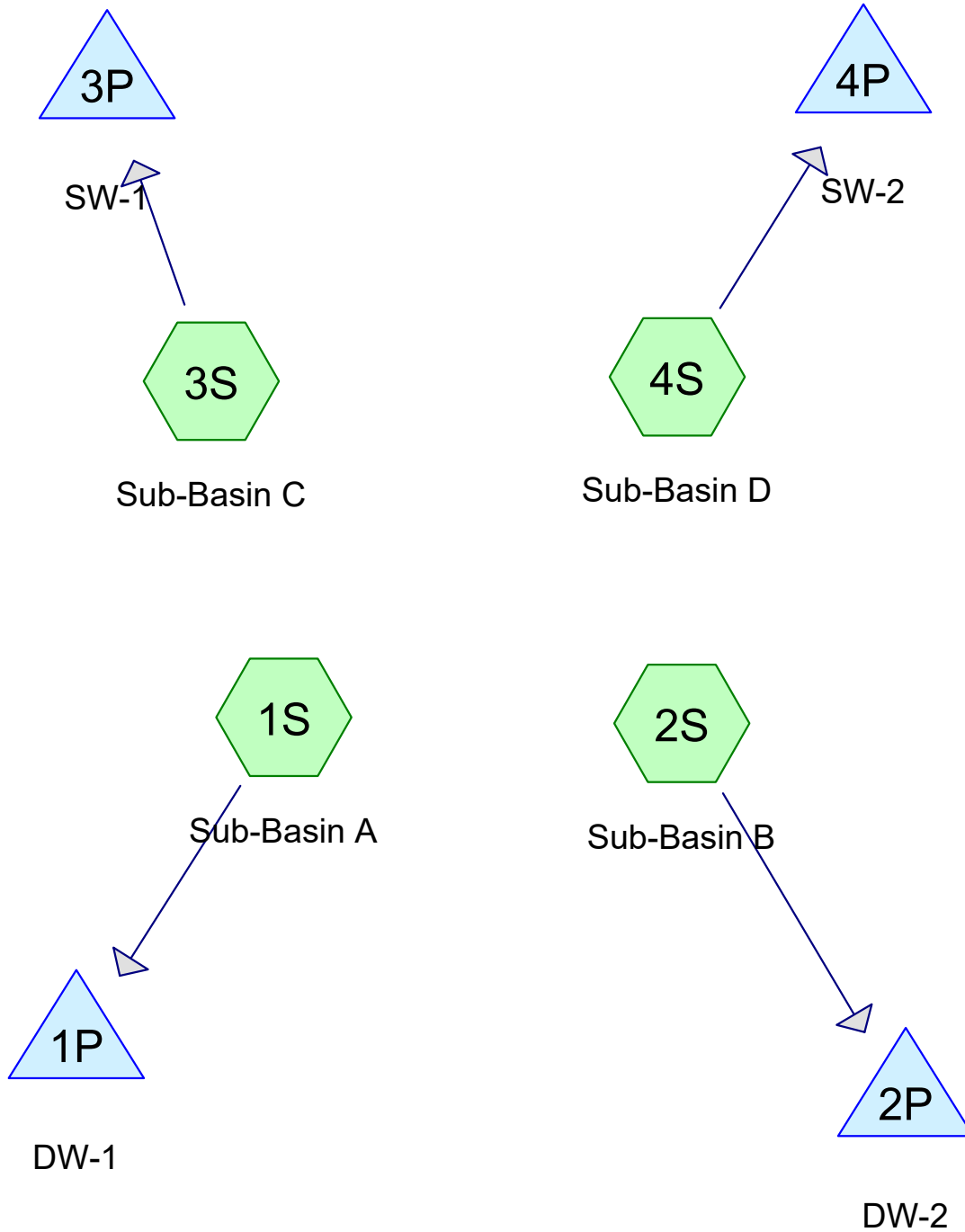
If you have any questions on this, please feel free to contact me directly.

Respectfully,

Adam Erlandson (handwritten signature)

Adam Erlandson, PE
541.728.6347
adam@kl-engineering.com





Routing Diagram for Penn Micro Unit
Prepared by Know Ledge Engineering LLC, Printed 2/28/2023
HydroCAD® 10.20-2g s/n 12830 © 2022 HydroCAD Software Solutions LLC

Penn Micro Unit

Prepared by Know Ledge Engineering LLC
HydroCAD® 10.20-2g s/n 12830 © 2022 HydroCAD Software Solutions LLC

Penn Micro_230228
Type I 24-hr 100-YR Rainfall=3.00"
Printed 2/28/2023
Page 30

Time span=0.00-72.00 hrs, dt=0.05 hrs, 1441 points
Runoff by SCS TR-20 method, UH=SCS, Split Pervious/Imperv.
Reach routing by Stor-Ind+Trans method - Pond routing by Stor-Ind method

Subcatchment1S: Sub-Basin A	Runoff Area=7,880 sf 100.00% Impervious Runoff Depth=2.77" Tc=6.0 min CN=0/98 Runoff=0.39 cfs 1,818 cf
Subcatchment2S: Sub-Basin B	Runoff Area=8,400 sf 100.00% Impervious Runoff Depth=2.77" Tc=6.0 min CN=0/98 Runoff=0.41 cfs 1,938 cf
Subcatchment3S: Sub-Basin C	Runoff Area=2,230 sf 80.72% Impervious Runoff Depth=2.46" Tc=6.0 min CN=79/98 Runoff=0.10 cfs 458 cf
Subcatchment4S: Sub-Basin D	Runoff Area=2,030 sf 78.82% Impervious Runoff Depth=2.43" Tc=6.0 min CN=79/98 Runoff=0.09 cfs 412 cf
Pond 1P: DW-1	Peak Elev=106.55' Storage=622 cf Inflow=0.39 cfs 1,818 cf Discarded=0.02 cfs 1,818 cf Secondary=0.00 cfs 0 cf Outflow=0.02 cfs 1,818 cf
Pond 2P: DW-2	Peak Elev=107.26' Storage=690 cf Inflow=0.41 cfs 1,938 cf Discarded=0.02 cfs 1,938 cf Secondary=0.00 cfs 0 cf Outflow=0.02 cfs 1,938 cf
Pond 3P: SW-1	Peak Elev=598.55' Storage=198 cf Inflow=0.10 cfs 458 cf Discarded=0.00 cfs 458 cf Primary=0.00 cfs 0 cf Outflow=0.00 cfs 458 cf
Pond 4P: SW-2	Peak Elev=598.94' Storage=165 cf Inflow=0.09 cfs 412 cf Outflow=0.00 cfs 412 cf

Total Runoff Area = 20,540 sf Runoff Volume = 4,625 cf Average Runoff Depth = 2.70"
4.19% Pervious = 860 sf 95.81% Impervious = 19,680 sf

Penn Micro Unit

Prepared by Know Ledge Engineering LLC
HydroCAD® 10.20-2g s/n 12830 © 2022 HydroCAD Software Solutions LLC

Penn Micro_230228
Type I 24-hr 100-YR Rainfall=3.00"
Printed 2/28/2023
Page 31

Summary for Subcatchment 1S: Sub-Basin A

Runoff = 0.39 cfs @ 9.95 hrs, Volume= 1,818 cf, Depth= 2.77"
Routed to Pond 1P : DW-1

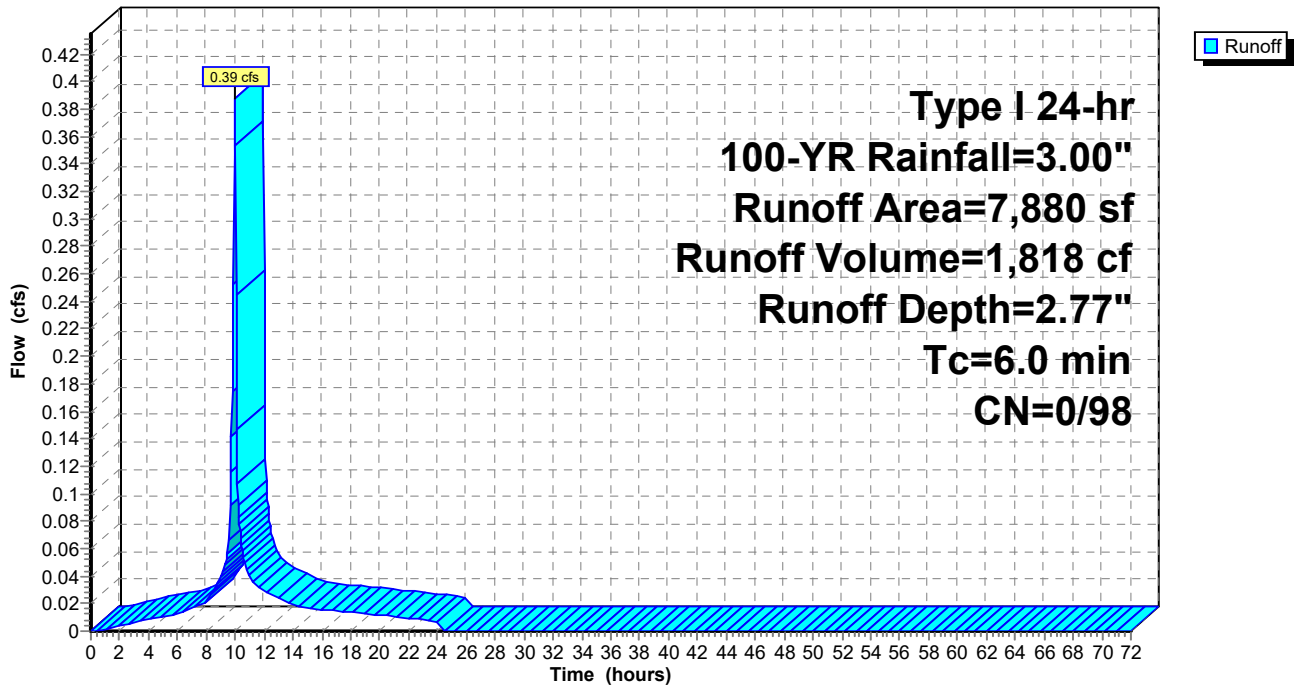
Runoff by SCS TR-20 method, UH=SCS, Split Pervious/Imperv., Time Span= 0.00-72.00 hrs, dt= 0.05 hrs
Type I 24-hr 100-YR Rainfall=3.00"

Area (sf)	CN	Description
7,880	98	Paved parking, HSG A
7,880	98	100.00% Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
6.0					Direct Entry, Tc-Min

Subcatchment 1S: Sub-Basin A

Hydrograph



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Type I 24-hr 100-YR Rainfall=3.00"
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Summary for Subcatchment 2S: Sub-Basin B

Runoff = 0.41 cfs @ 9.95 hrs, Volume= 1,938 cf, Depth= 2.77"
Routed to Pond 2P : DW-2

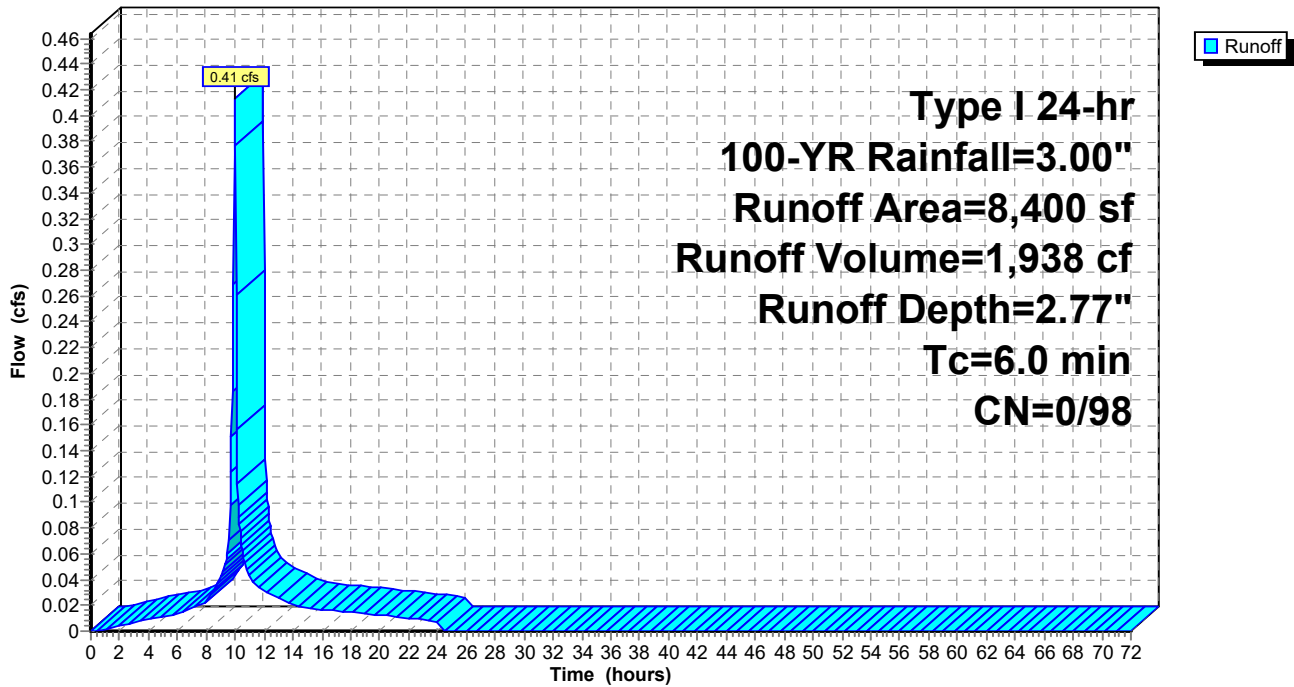
Runoff by SCS TR-20 method, UH=SCS, Split Pervious/Imperv., Time Span= 0.00-72.00 hrs, dt= 0.05 hrs
Type I 24-hr 100-YR Rainfall=3.00"

Area (sf)	CN	Description
8,400	98	Paved parking, HSG A
8,400	98	100.00% Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
6.0					Direct Entry, Tc-Min

Subcatchment 2S: Sub-Basin B

Hydrograph



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Summary for Subcatchment 3S: Sub-Basin C

Runoff = 0.10 cfs @ 9.95 hrs, Volume= 458 cf, Depth= 2.46"
 Routed to Pond 3P : SW-1

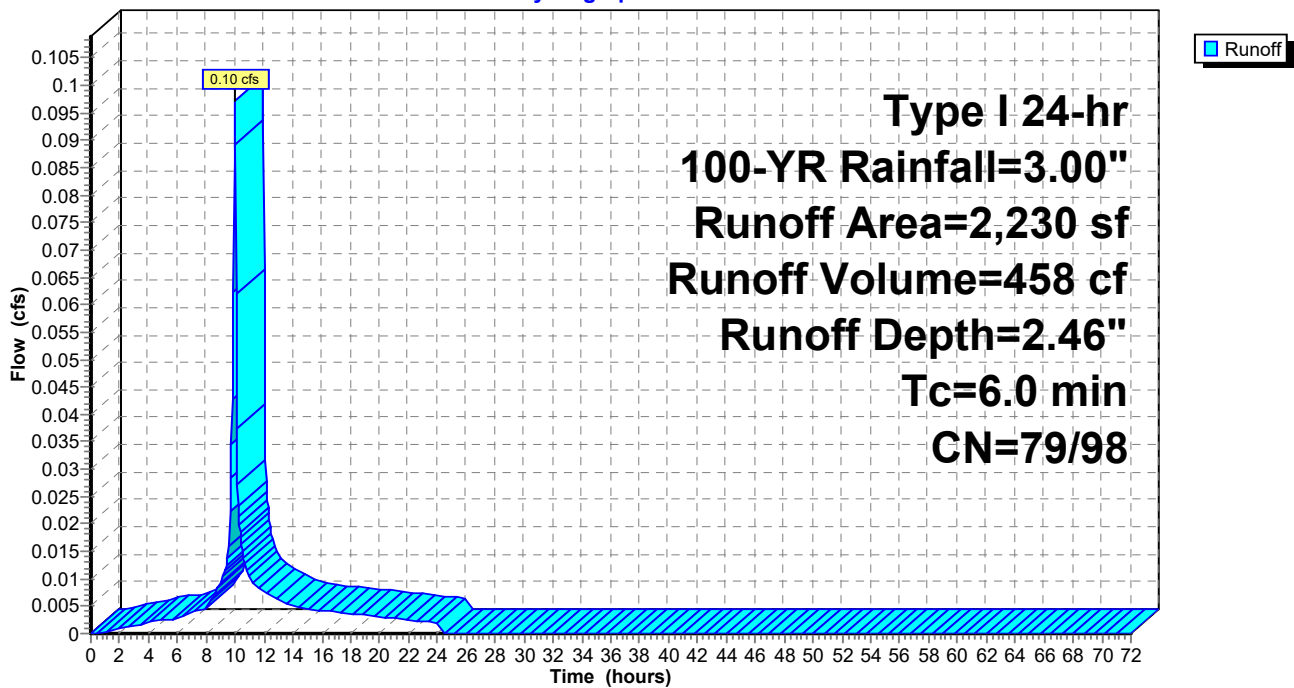
Runoff by SCS TR-20 method, UH=SCS, Split Pervious/Imperv., Time Span= 0.00-72.00 hrs, dt= 0.05 hrs
 Type I 24-hr 100-YR Rainfall=3.00"

Area (sf)	CN	Description
430	79	<50% Grass cover, Poor, HSG B
1,800	98	Unconnected roofs, HSG A
2,230	94	Weighted Average
430	79	19.28% Pervious Area
1,800	98	80.72% Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
6.0					Direct Entry, Tc-Min

Subcatchment 3S: Sub-Basin C

Hydrograph



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Summary for Subcatchment 4S: Sub-Basin D

Runoff = 0.09 cfs @ 9.95 hrs, Volume= 412 cf, Depth= 2.43"
Routed to Pond 4P : SW-2

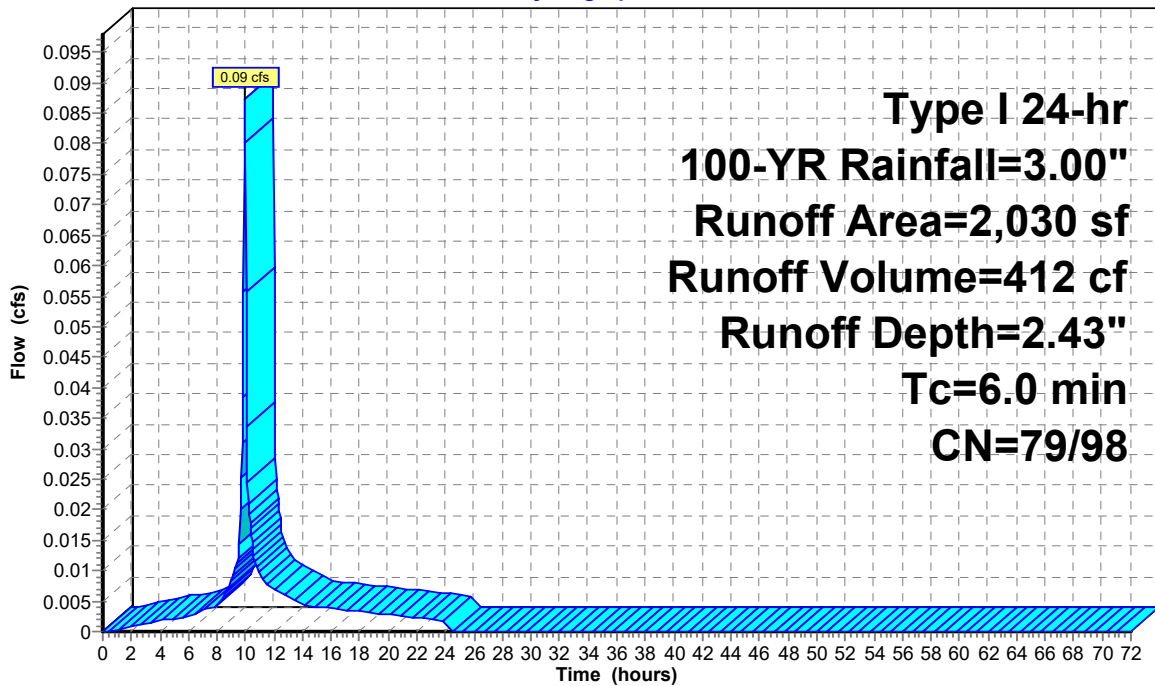
Runoff by SCS TR-20 method, UH=SCS, Split Pervious/Imperv., Time Span= 0.00-72.00 hrs, dt= 0.05 hrs
Type I 24-hr 100-YR Rainfall=3.00"

Area (sf)	CN	Description
430	79	<50% Grass cover, Poor, HSG B
1,600	98	Unconnected roofs, HSG A
2,030	94	Weighted Average
430	79	21.18% Pervious Area
1,600	98	78.82% Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
6.0					Direct Entry, Tc-Min

Subcatchment 4S: Sub-Basin D

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Summary for Pond 1P: DW-1

Inflow Area = 7,880 sf, 100.00% Impervious, Inflow Depth = 2.77" for 100-YR event
 Inflow = 0.39 cfs @ 9.95 hrs, Volume= 1,818 cf
 Outflow = 0.02 cfs @ 8.40 hrs, Volume= 1,818 cf, Atten= 94%, Lag= 0.0 min
 Discarded = 0.02 cfs @ 8.40 hrs, Volume= 1,818 cf
 Secondary = 0.00 cfs @ 0.00 hrs, Volume= 0 cf

Routing by Stor-Ind method, Time Span= 0.00-72.00 hrs, dt= 0.05 hrs
 Peak Elev= 106.55' @ 13.05 hrs Surf.Area= 255 sf Storage= 622 cf

Plug-Flow detention time= 239.8 min calculated for 1,817 cf (100% of inflow)
 Center-of-Mass det. time= 239.8 min (945.0 - 705.2)

Volume	Invert	Avail.Storage	Storage Description
#1	100.00'	659 cf	Custom Stage Data (Prismatic) Listed below (Recalc) 2,040 cf Overall - 157 cf Embedded = 1,883 cf x 35.0% Voids
#2	100.00'	101 cf	4.00'D x 8.00'H Vertical Cone/Cylinder Inside #1 157 cf Overall - 6.0" Wall Thickness = 101 cf
#3	108.00'	50 cf	4.00'D x 4.00'H Vertical Cone/Cylinder Impervious
		810 cf	Total Available Storage

Elevation (feet)	Surf.Area (sq-ft)	Inc.Store (cubic-feet)	Cum.Store (cubic-feet)
100.00	255	0	0
108.00	255	2,040	2,040

Device	Routing	Invert	Outlet Devices
#1	Discarded	100.00'	4.000 in/hr Exfiltration over Surface area
#2	Secondary	110.00'	8.0" Round Culvert L= 10.0' CMP, projecting, no headwall, Ke= 0.900 Inlet / Outlet Invert= 110.00' / 109.90' S= 0.0100 '/' Cc= 0.900 n= 0.010 PVC, smooth interior, Flow Area= 0.35 sf

Discarded OutFlow Max=0.02 cfs @ 8.40 hrs HW=100.12' (Free Discharge)
 ↑1=Exfiltration (Exfiltration Controls 0.02 cfs)

Secondary OutFlow Max=0.00 cfs @ 0.00 hrs HW=100.00' (Free Discharge)
 ↑2=Culvert (Controls 0.00 cfs)

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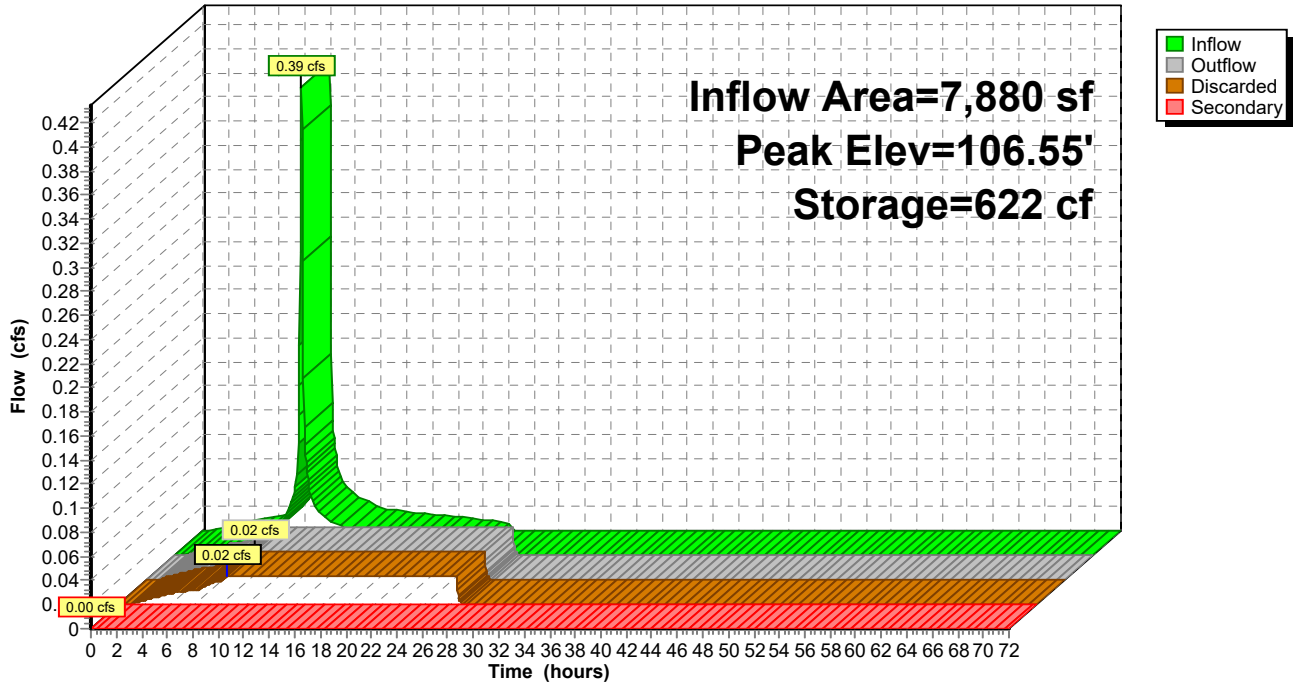
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Pond 1P: DW-1

Hydrograph



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Summary for Pond 2P: DW-2

Inflow Area = 8,400 sf, 100.00% Impervious, Inflow Depth = 2.77" for 100-YR event
 Inflow = 0.41 cfs @ 9.95 hrs, Volume= 1,938 cf
 Outflow = 0.02 cfs @ 8.30 hrs, Volume= 1,938 cf, Atten= 94%, Lag= 0.0 min
 Discarded = 0.02 cfs @ 8.30 hrs, Volume= 1,938 cf
 Secondary = 0.00 cfs @ 0.00 hrs, Volume= 0 cf

Routing by Stor-Ind method, Time Span= 0.00-72.00 hrs, dt= 0.05 hrs
 Peak Elev= 107.26' @ 13.32 hrs Surf.Area= 255 sf Storage= 690 cf

Plug-Flow detention time= 270.6 min calculated for 1,938 cf (100% of inflow)
 Center-of-Mass det. time= 270.6 min (975.8 - 705.2)

Volume	Invert	Avail.Storage	Storage Description
#1	100.00'	659 cf	Custom Stage Data (Prismatic) Listed below (Recalc) 2,040 cf Overall - 157 cf Embedded = 1,883 cf x 35.0% Voids
#2	100.00'	101 cf	4.00'D x 8.00'H Vertical Cone/Cylinder Inside #1 157 cf Overall - 6.0" Wall Thickness = 101 cf
#3	108.00'	50 cf	4.00'D x 4.00'H Vertical Cone/Cylinder Impervious
		810 cf	Total Available Storage

Elevation (feet)	Surf.Area (sq-ft)	Inc.Store (cubic-feet)	Cum.Store (cubic-feet)
100.00	255	0	0
108.00	255	2,040	2,040

Device	Routing	Invert	Outlet Devices
#1	Discarded	100.00'	4.000 in/hr Exfiltration over Surface area
#2	Secondary	110.00'	8.0" Round Culvert L= 10.0' CMP, projecting, no headwall, Ke= 0.900 Inlet / Outlet Invert= 110.00' / 109.90' S= 0.0100 '/' Cc= 0.900 n= 0.010 PVC, smooth interior, Flow Area= 0.35 sf

Discarded OutFlow Max=0.02 cfs @ 8.30 hrs HW=100.12' (Free Discharge)
 ↑1=Exfiltration (Exfiltration Controls 0.02 cfs)

Secondary OutFlow Max=0.00 cfs @ 0.00 hrs HW=100.00' (Free Discharge)
 ↑2=Culvert (Controls 0.00 cfs)

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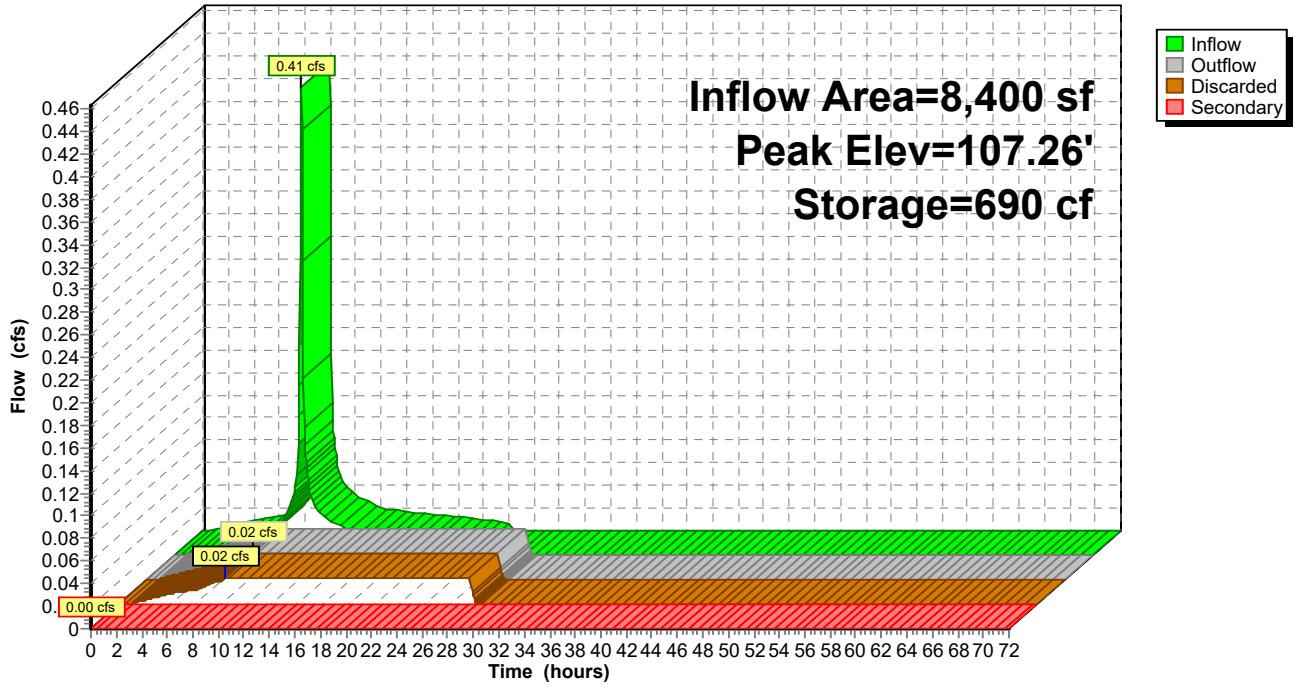
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Pond 2P: DW-2

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 Type I 24-hr 100-YR Rainfall=3.00"
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Summary for Pond 3P: SW-1

Inflow Area = 2,230 sf, 80.72% Impervious, Inflow Depth = 2.46" for 100-YR event
 Inflow = 0.10 cfs @ 9.95 hrs, Volume= 458 cf
 Outflow = 0.00 cfs @ 7.60 hrs, Volume= 458 cf, Atten= 96%, Lag= 0.0 min
 Discarded = 0.00 cfs @ 7.60 hrs, Volume= 458 cf
 Primary = 0.00 cfs @ 0.00 hrs, Volume= 0 cf

Routing by Stor-Ind method, Time Span= 0.00-72.00 hrs, dt= 0.05 hrs
 Peak Elev= 598.55' @ 16.57 hrs Surf.Area= 101 sf Storage= 198 cf

Plug-Flow detention time= 479.2 min calculated for 458 cf (100% of inflow)
 Center-of-Mass det. time= 479.1 min (1,196.7 - 717.5)

Volume	Invert	Avail.Storage	Storage Description	
#1	594.60'	210 cf	Custom Stage Data (Prismatic) Listed below (Recalc)	
Elevation (feet)	Surf.Area (sq-ft)	Voids (%)	Inc.Store (cubic-feet)	Cum.Store (cubic-feet)
594.60	10	0.0	0	0
594.70	175	35.0	3	3
597.20	175	35.0	153	156
597.25	1	0.0	0	156
598.20	37	100.0	18	174
598.65	120	100.0	35	210

Device	Routing	Invert	Outlet Devices											
#1	Discarded	594.60'	1.000 in/hr Exfiltration over Horizontal area											
#2	Primary	598.60'	2.0' long x 2.0' breadth Broad-Crested Rectangular Weir											
			Head (feet) 0.20 0.40 0.60 0.80 1.00 1.20 1.40 1.60 1.80 2.00											
			2.50 3.00 3.50											
			Coef. (English) 2.54 2.61 2.61 2.60 2.66 2.70 2.77 2.89 2.88											
			2.85 3.07 3.20 3.32											

Discarded OutFlow Max=0.00 cfs @ 7.60 hrs HW=594.70' (Free Discharge)
 ↑1=**Exfiltration** (Exfiltration Controls 0.00 cfs)

Primary OutFlow Max=0.00 cfs @ 0.00 hrs HW=594.60' (Free Discharge)
 ↑2=**Broad-Crested Rectangular Weir**(Controls 0.00 cfs)

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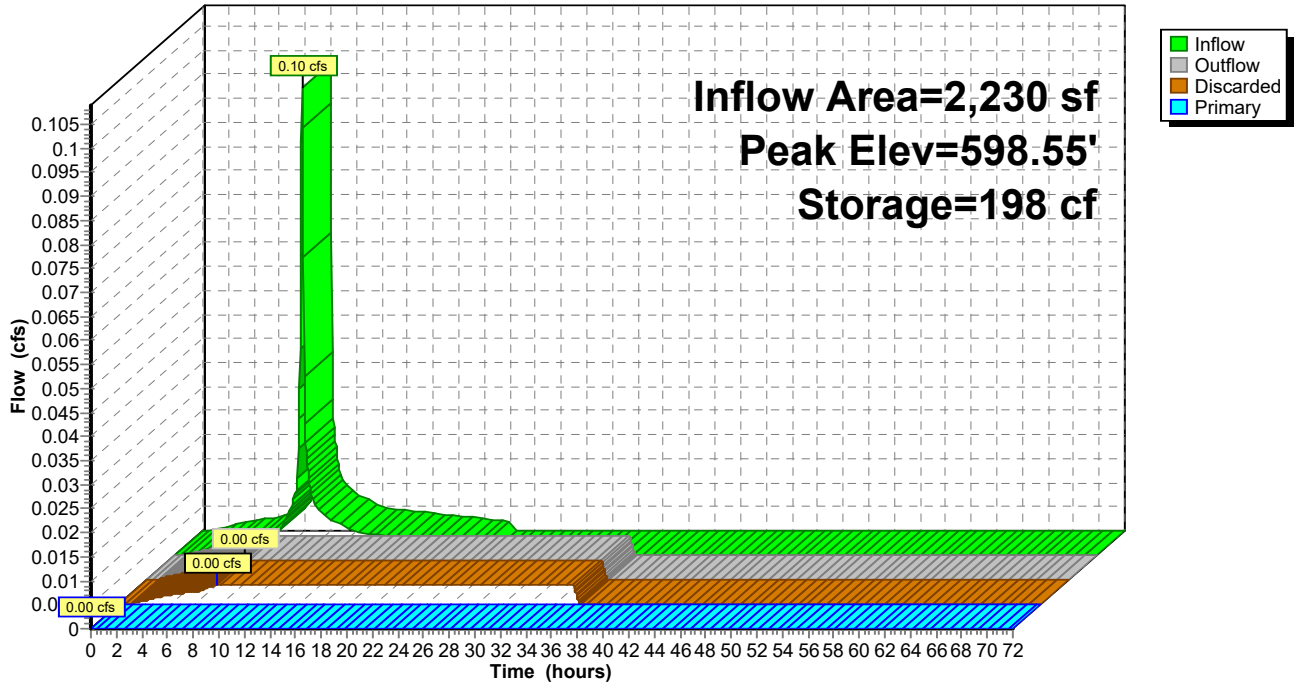
Type I 24-hr 100-YR Rainfall=3.00"

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Pond 3P: SW-1

Hydrograph



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 Type I 24-hr 100-YR Rainfall=3.00"
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Summary for Pond 4P: SW-2

Inflow Area = 2,030 sf, 78.82% Impervious, Inflow Depth = 2.43" for 100-YR event
 Inflow = 0.09 cfs @ 9.95 hrs, Volume= 412 cf
 Outflow = 0.00 cfs @ 8.15 hrs, Volume= 412 cf, Atten= 95%, Lag= 0.0 min
 Discarded = 0.00 cfs @ 8.15 hrs, Volume= 412 cf

Routing by Stor-Ind method, Time Span= 0.00-72.00 hrs, dt= 0.05 hrs
 Peak Elev= 598.94' @ 15.01 hrs Surf.Area= 51 sf Storage= 165 cf

Plug-Flow detention time= 399.0 min calculated for 412 cf (100% of inflow)
 Center-of-Mass det. time= 399.0 min (1,117.9 - 718.9)

Volume	Invert	Avail.Storage	Storage Description	
#1	595.25'	221 cf	Custom Stage Data (Prismatic) Listed below (Recalc)	
Elevation (feet)	Surf.Area (sq-ft)	Voids (%)	Inc.Store (cubic-feet)	Cum.Store (cubic-feet)
595.25	10	0.0	0	0
595.30	175	35.0	2	2
597.80	175	35.0	153	155
597.85	1	0.0	0	155
598.80	12	100.0	6	161
598.90	40	100.0	3	164
599.40	190	100.0	58	221

Device	Routing	Invert	Outlet Devices
#1	Discarded	595.25'	1.000 in/hr Exfiltration over Horizontal area

Discarded OutFlow Max=0.00 cfs @ 8.15 hrs HW=595.30' (Free Discharge)
 ↑**1=Exfiltration** (Exfiltration Controls 0.00 cfs)

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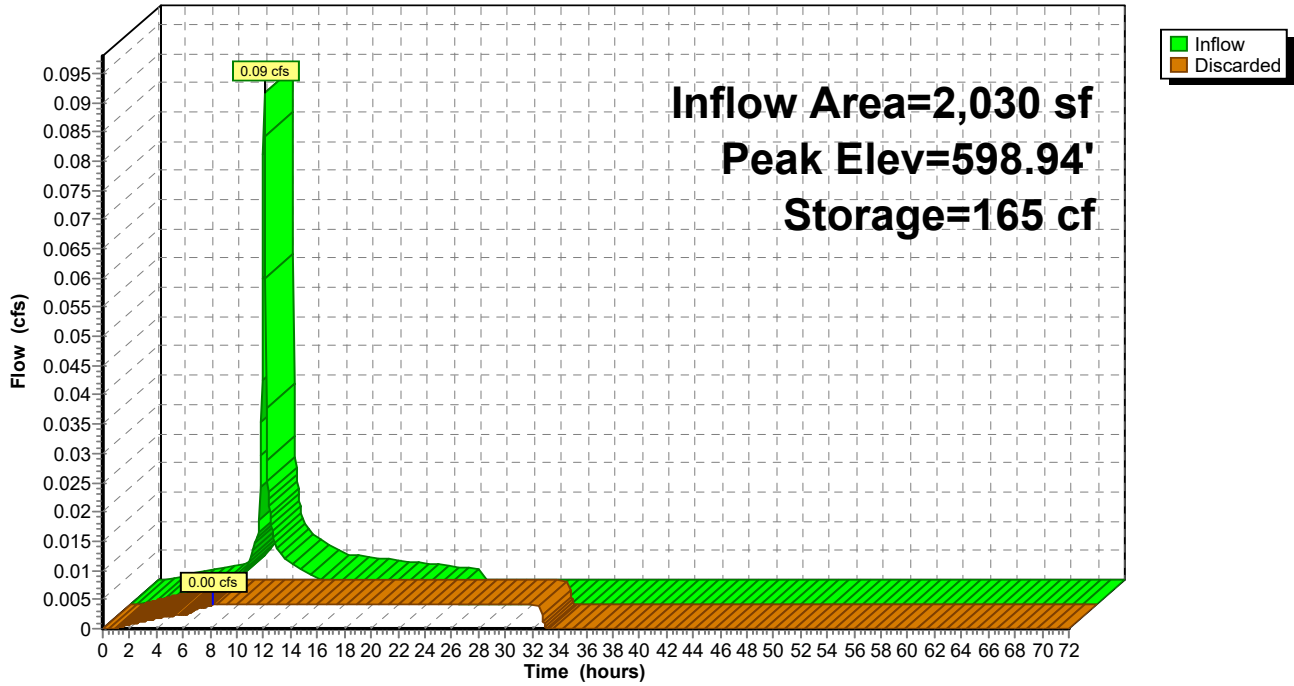
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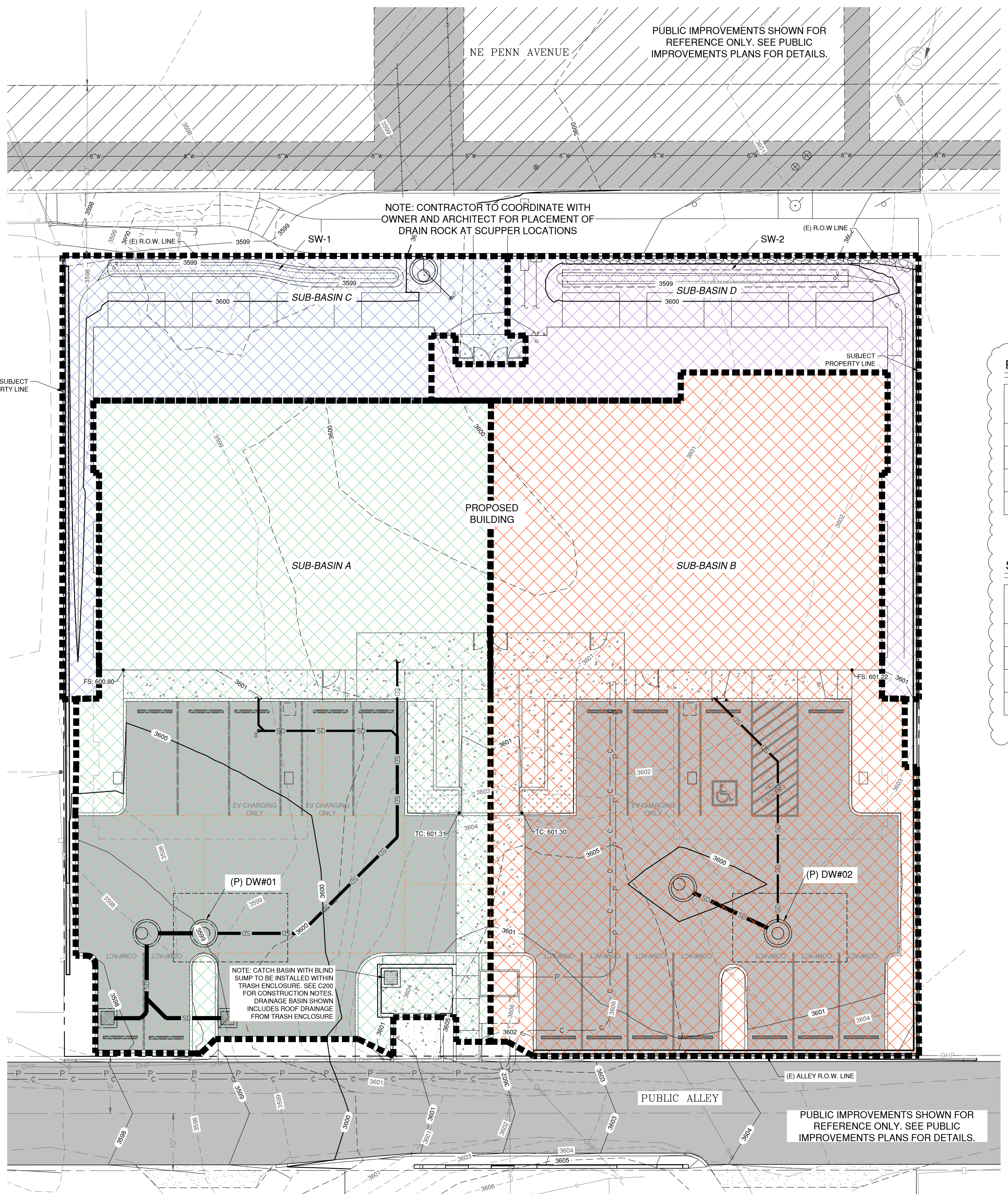
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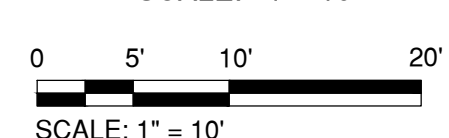
Pond 4P: SW-2

Hydrograph





OVERALL DRAINAGE PLAN
SCALE: 1" = 10'



PUBLIC IMPROVEMENTS SHOWN FOR REFERENCE ONLY. SEE PUBLIC IMPROVEMENTS PLANS FOR DETAILS.

NOTE: CONTRACTOR TO COORDINATE WITH OWNER AND ARCHITECT FOR PLACEMENT OF DRAIN ROCK AT SCUPTER LOCATIONS

NOTE: CATCH BASIN WITH BLIND SUMP TO BE INSTALLED WITHIN TRASH ENCLOSURE. SEE C200 FOR CONSTRUCTION NOTES. DRAINAGE BASIN SHOWN INCLUDES ROOF DRAINAGE FROM TRASH ENCLOSURE

PROPOSED STORMWATER MANAGEMENT DESIGN SUMMARY:

SUB-BASIN AREA DESIGNATION	SUB-BASIN AREA (SF)	WEIGHTED NRCS CURVE NUMBER	25-YEAR PEAK FLOW RATE (CFS)	25-YEAR RUNOFF VOLUME (CF)	25-YEAR STORAGE VOLUME REQUIRED (CF)	FACILITY ID	MIN. DRAIN ROCK (CY)	STORAGE VOLUME PROVIDED (CF)	MINIMUM PERFORMANCE TESTING REQUIREMENT
A	7,880	98	0.32	1,491	453	DW#01	75	810	SEE TABLE BELOW FOR 100-YEAR STORM TESTING CRITERIA
B	8,400	98	0.34	1,590	504	DW#02	75	810	
C	2,230	94 (98/79)	0.08	371	142	SW-1	17	210	
D	2,030	94 (98/79)	0.07	333	118	SW-2	17	221	

SUPPLEMENTAL 100-YEAR STORMWATER MANAGEMENT DESIGN AND TESTING SUMMARY:

SUB-BASIN AREA DESIGNATION	SUB-BASIN AREA (SF)	WEIGHTED NRCS CURVE NUMBER	100-YEAR PEAK FLOW RATE (CFS)	100-YEAR RUNOFF VOLUME (CF)	100-YEAR STORAGE VOLUME REQUIRED (CF)	FACILITY ID	MIN. DRAIN ROCK (CY)	STORAGE VOLUME PROVIDED (CF)	MINIMUM PERFORMANCE TESTING REQUIREMENT
A	7,880	98	0.39	1,818	622	DW#01	75	810	10,000 GAL IN 60 MINUTES SEE DRYWELL TESTING PROCEDURE
B	8,400	98	0.41	1,938	690	DW#02	75	810	10,000 GAL IN 60 MINUTES SEE DRYWELL TESTING PROCEDURE
C	2,230	94 (98/79)	0.10	458	198	SW-1	17	210	SWALE FLOOD TEST PER THE CENTRAL OREGON STORMWATER MANUAL (COSM) APPENDIX 4E
D	2,030	94 (98/79)	0.09	412	165	SW-2	17	221	SWALE FLOOD TEST PER THE CENTRAL OREGON STORMWATER MANUAL (COSM) APPENDIX 4E

DRYWELL CONSTRUCTION AND TESTING NOTES:

- THE CONTRACTOR SHALL BLAST AND EXCAVATE THE PROPOSED DRYWELLS AND NOTIFY THE ENGINEER OF RECORD AT LEAST 48 HOURS PRIOR TO THE PLACEMENT OF DRAIN ROCK, FABRIC, OR DRYWELL STRUCTURE TO OBSERVE, DOCUMENT, AND CONDUCT PRELIMINARY DRAINAGE FLOW TEST UTILIZING A MIN. 2,000 GALLON WATER TRUCK TO ENSURE THAT DRYWELL EXCAVATIONS DRAIN AND FUNCTION IN GENERAL ACCORDANCE WITH THE DESIGN PRIOR TO THE INSTALLATION OF ANY OTHER UTILITIES. PENDING THE RESULTS OF THE PRELIMINARY FLOW TEST, THE DRYWELL EXCAVATION LIMITS MAY NEED TO BE MODIFIED AS DIRECTED BY THE ENGINEER.
- THE CONTRACTOR SHALL PROVIDE ALL TOOLS, EQUIPMENT, WATER, AND LABOR TO PERFORM THE PRELIMINARY AND FINAL DRYWELL TESTS.
- SEE STORMWATER DESIGN MEMORANDUM FOR NOTES AND DETAILS NOT SHOWN ON THIS PLAN.
- GENERAL DRYWELL EXCAVATION PARAMETERS:
 - 75 CY: 255 SF FOOTPRINT, 13-FOOT MIN. DEPTH
 - 125 CY: 440 SF FOOTPRINT, 13-FOOT MIN. DEPTH
 - EXCAVATION DOES NOT NEED TO BE CENTERED ON THE DRYWELL STRUCTURE.
- DRYWELLS SHALL NOT BE USED FOR STORMWATER MANAGEMENT DURING ACTIVE SITE WORK CONSTRUCTION AND THE CONTRACTOR SHALL INSTALL TEMPORARY PLUGS OR OWNERS REP APPROVED ALTERNATIVE MEASURE TO ENSURE THAT SEDIMENT LADEN WATER DOES NOT ENTER STORMWATER MANAGEMENT DEVICES. UPON FINAL PAVING AND FINAL ACCEPTANCE, THE CONTRACTOR SHALL ENSURE THAT ANY ACCUMULATED SEDIMENT IS REMOVED FROM THE DRYWELLS SEDIMENTATION MANHOLES, STORM PIPES, AND CATCH BASINS AND TEMPORARY PLUGS ARE REMOVED.

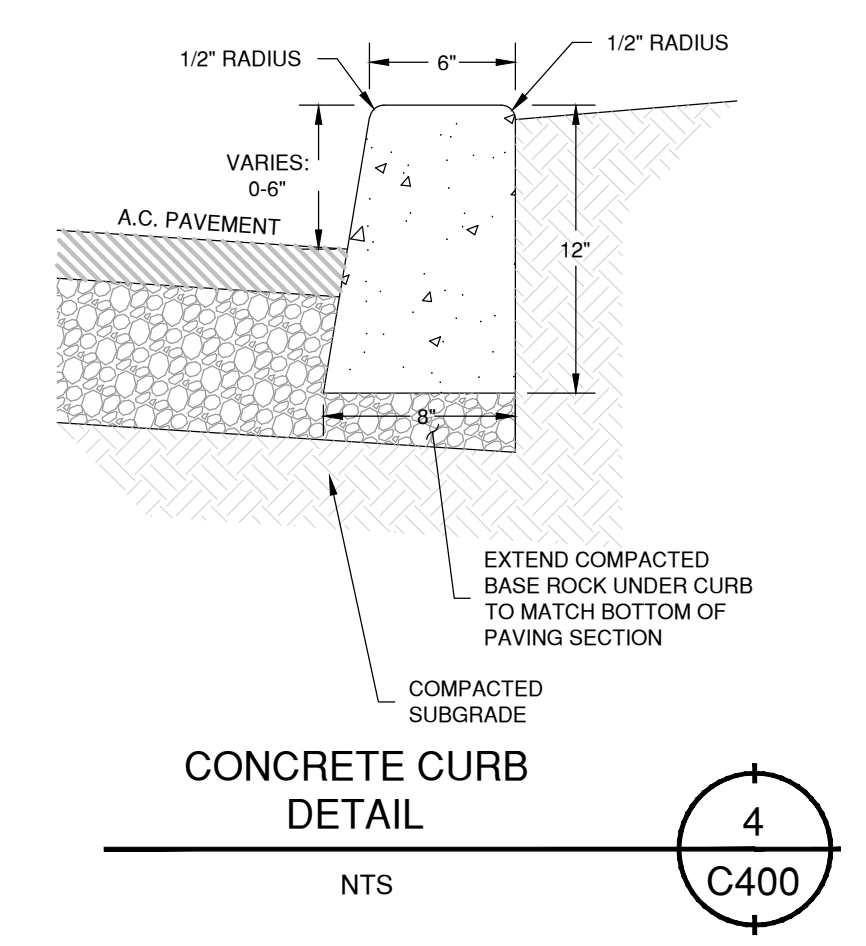
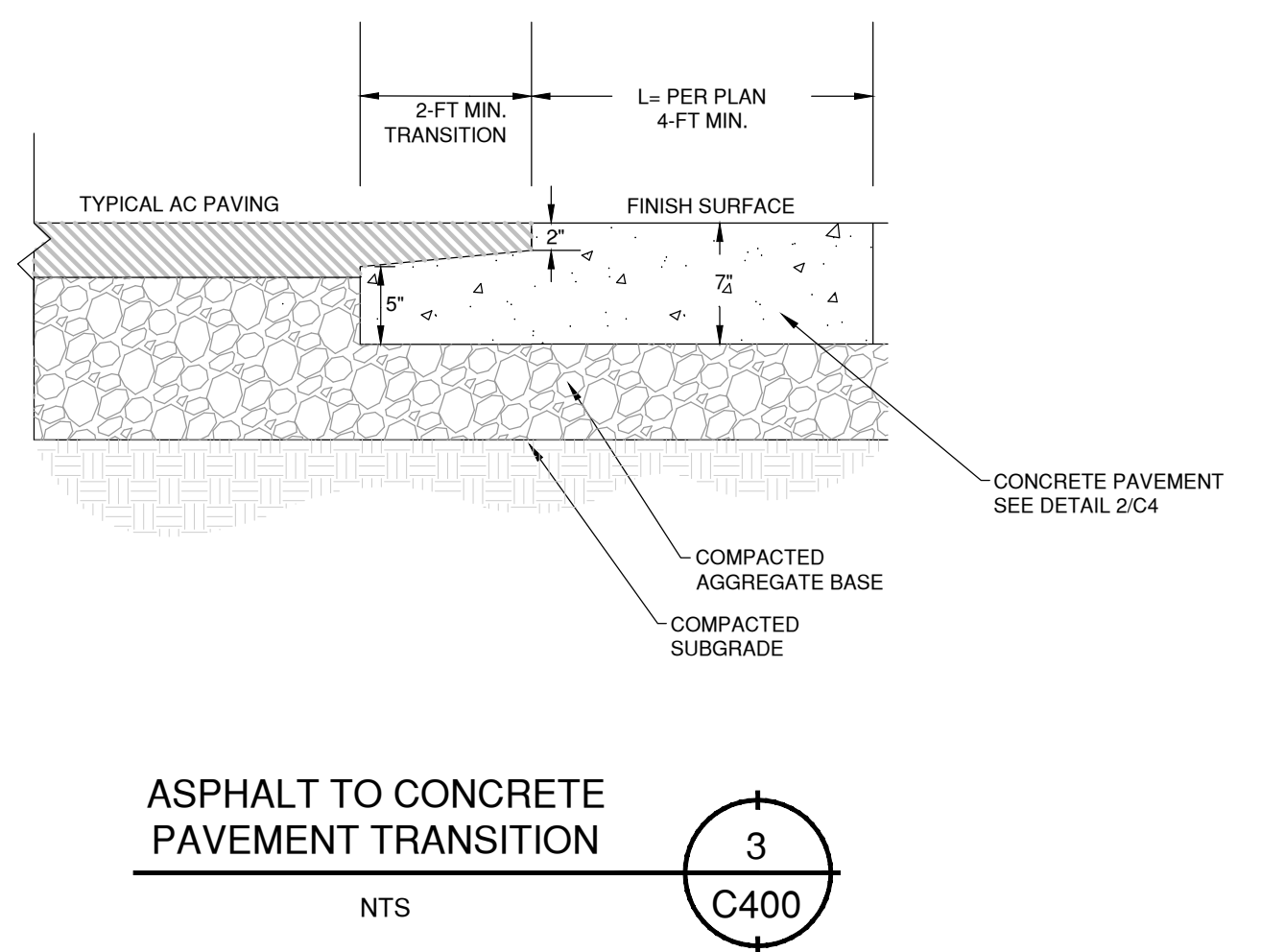
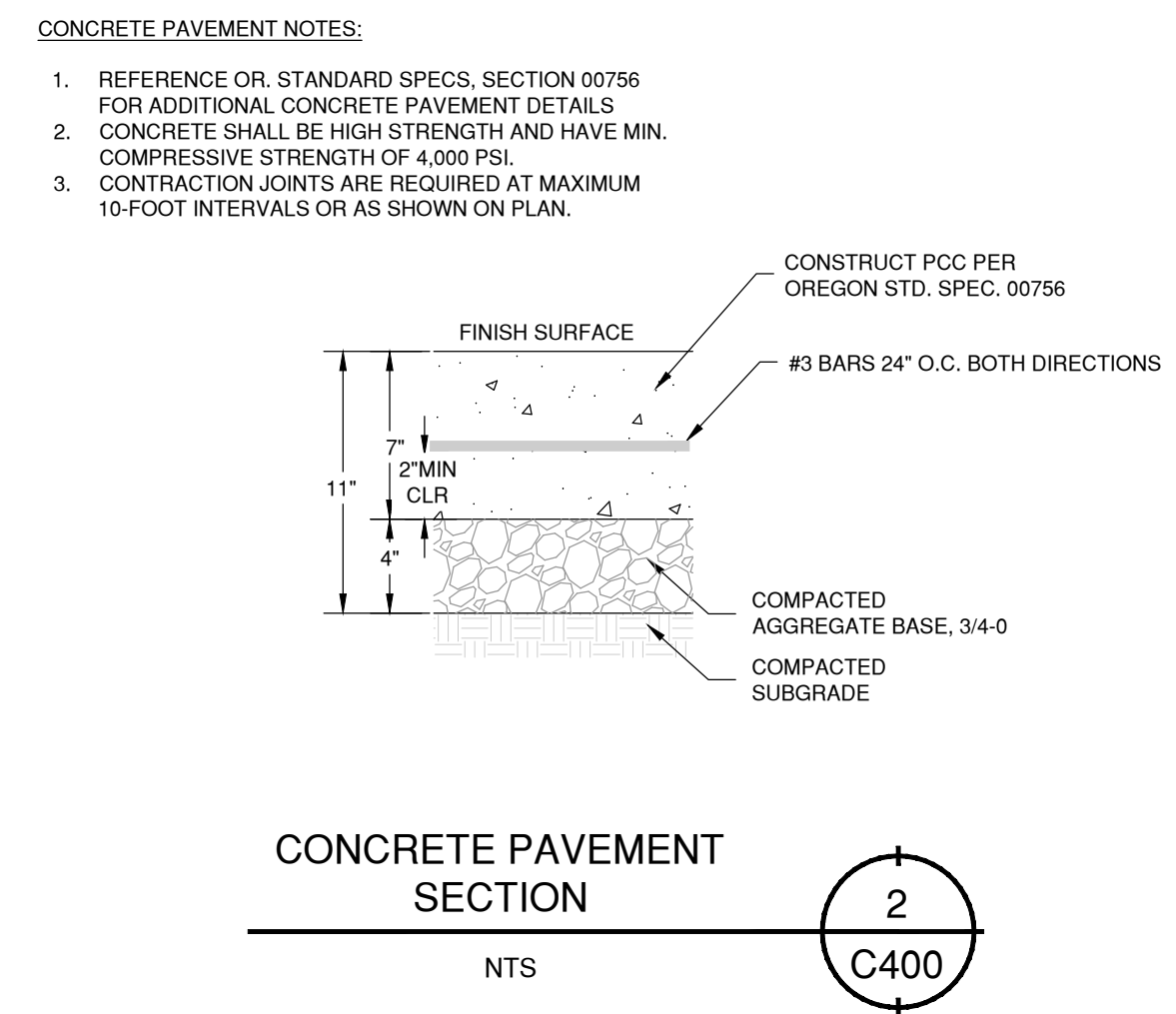
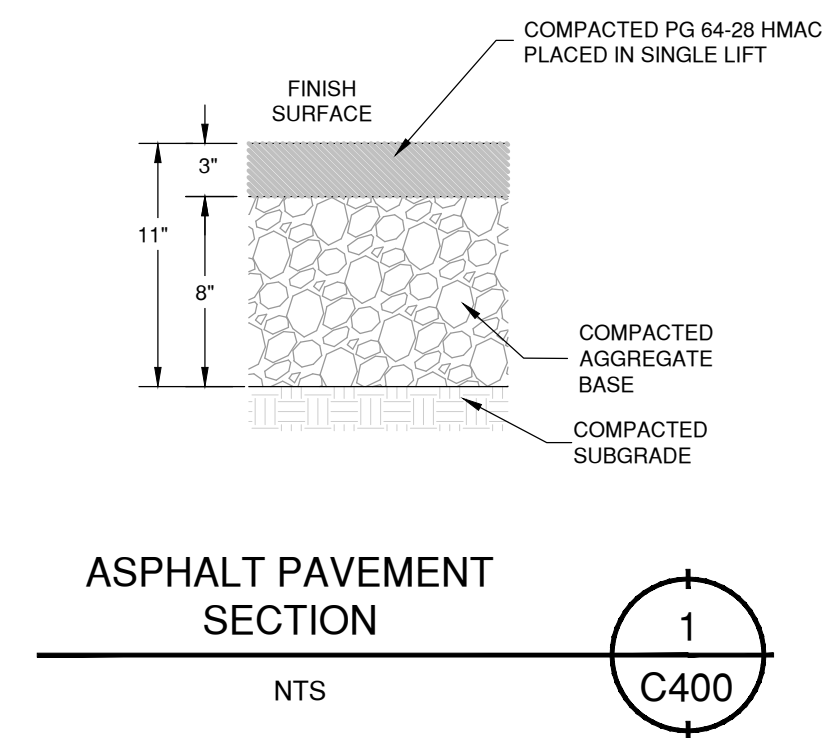
PRIVATE DRYWELL FACILITY TESTING PROCEDURE:

- INSTALL THE DRYWELL PER THE APPROVED PLANS, SPECIFICATIONS AND APPLICABLE CONSTRUCTION GUIDELINES. THE EOR SHALL WITNESS THE CONSTRUCTION OF THESE FACILITIES TO ENSURE THAT THE DRAIN ROCK QUANTITY IS BEING PLACED, DRAIN ROCK HAS SUFFICIENT VOIDS, AND THE CONSTRUCTION IS PER THESE PLANS. PICTURES SHALL BE TAKEN AND PROVIDED WITH THE EOR'S CERTIFICATION.
- INSPECT DRYWELL PRIOR TO TESTING, MAKING SURE THE DRYWELL IS CLEAN AND FREE OF SEDIMENTS.
- FIELD CHECK THE ACCURACY OF THE FLOW METER BY FILLING UP A SUITABLE CONTAINER WITH KNOWN VOLUME; FOR EXAMPLE A CALIBRATED 55-GALLON BARREL.
- INTRODUCE CLEAN WATER INTO THE DRYWELL AND MONITOR USING AN IN-LINE FLOW METER.
 - IF THE DRYWELL TOTAL INFLOW DESIGN VOLUME IS 10,000 GALLONS (1,336 CF) OR LESS, PLACE THE DESIGN VOLUME IN THE DRYWELL WITHIN A 1 HOUR PERIOD AND VERIFY THAT THE WATER EITHER DISAPPEARS IMMEDIATELY OR DOCUMENT THE STANDING WATER PER THE COSM APPENDIX 4B, FULL SCALE DRYWELL TEST METHOD.
 - IF THE DRYWELL TOTAL INFLOW DESIGN VOLUME IS MORE THAN 10,000 GALLONS, PLACE AN INITIAL 10,000 GALLONS (1,336 CF) INTO THE DRYWELL WITHIN 1 HOUR.
 - IF ANY STANDING WATER IS PRESENT AT THE END OF THE 10,000 GALLON TEST, THEN INTRODUCE THE REMAINING 100-YEAR DESIGN INFLOW VOLUME (NOTED IN TABLE ABOVE) WITHIN 1 HOUR OF ADDITIONAL TESTING COMMENCEMENT.
- UPON COMPLETION OF THE PERFORMANCE TESTING PERIOD, DISCONTINUE FLOW AND RECORD THE WATER LEVEL OF THE DRYWELL AT INTERVALS NO MORE THAN 5 MINUTES IN LENGTH FOR A 30-MINUTE TIME PERIOD. VERIFY THE DRYWELL HAS COMPLETELY DRAINED WITHIN 72 HOURS.

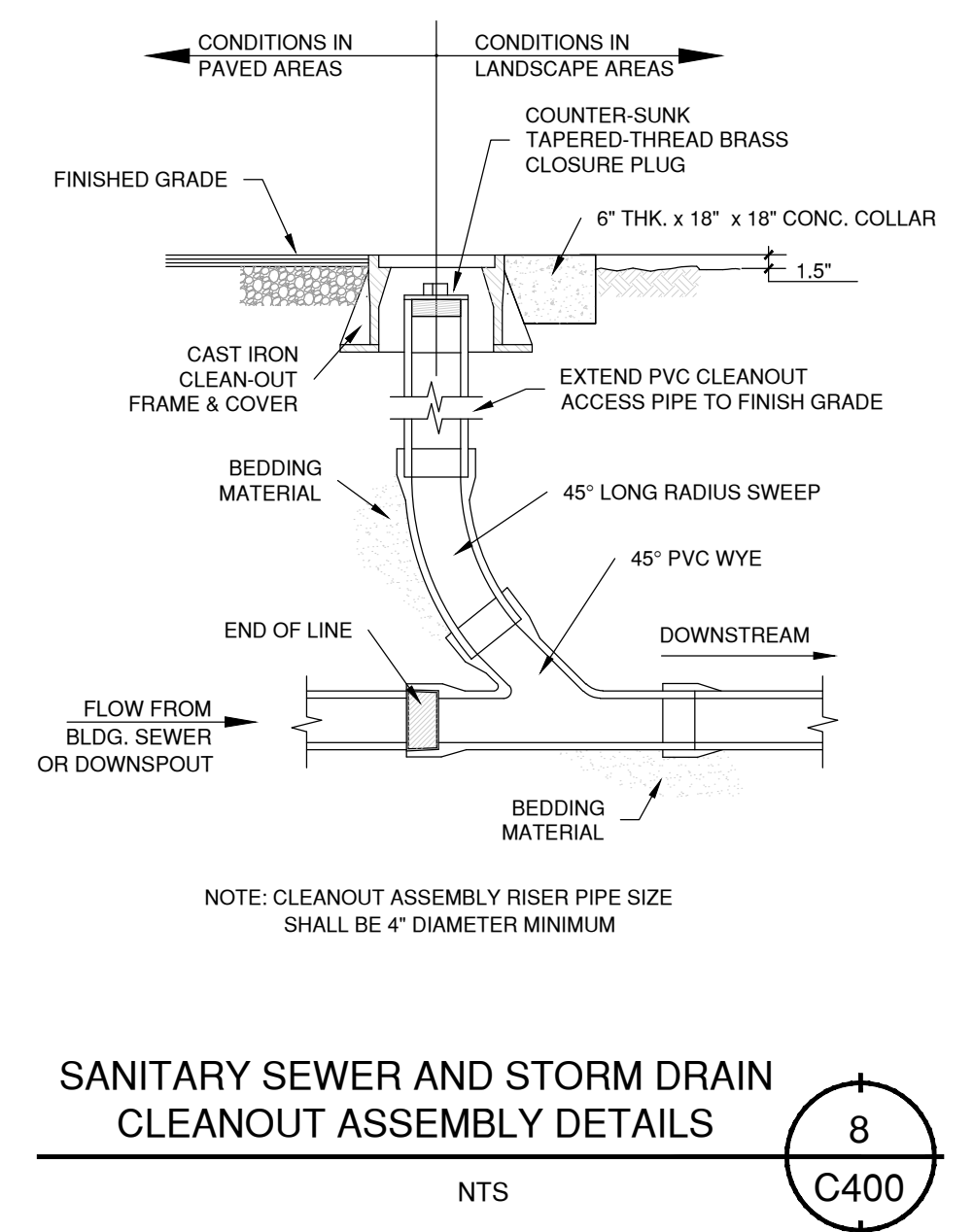
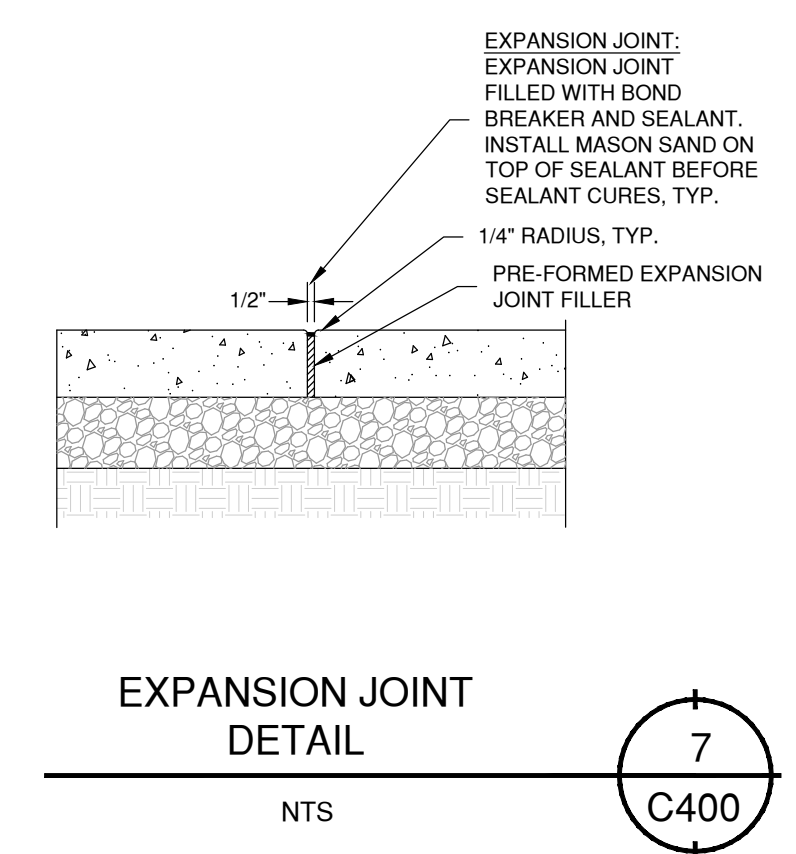
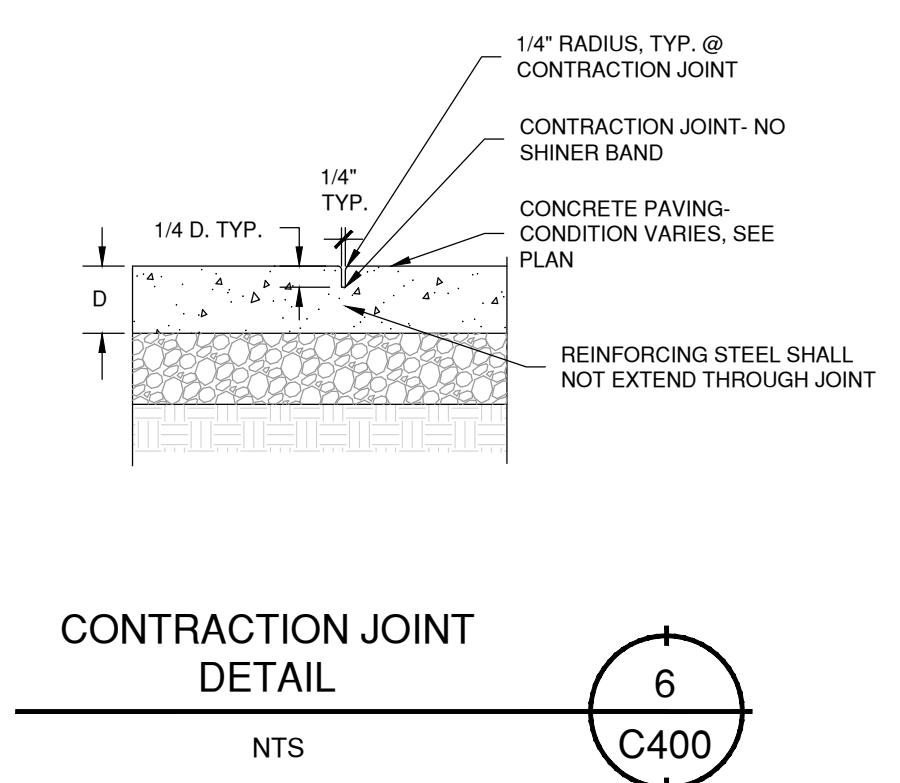
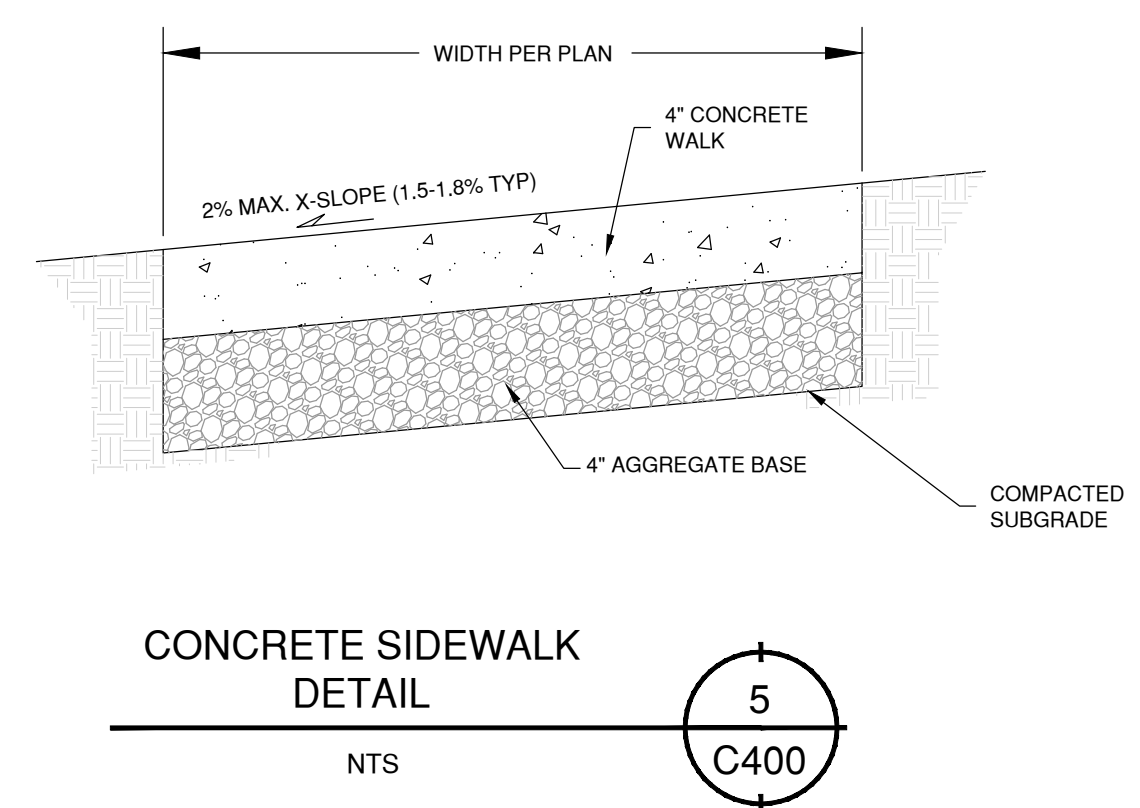
SWALE FLOOD TEST TESTING PROCEDURES:

- INTRODUCE CLEAN WATER INTO THE SWALE BY DIRECTING THE WATER (VIA HOSE FROM A HYDRANT OR OTHER CLEAN WATER SOURCE) ALONG THE CURB AND GUTTER UPSTREAM OF THE SWALE INLET.
- RAISE THE WATER LEVEL IN THE SWALE UNTIL IT REACHES 6 INCHES IN DEPTH AND NOTE THE TIME; THIS IS THE BEGINNING OF THE FLOOD TEST.
- IF THE SWALE IS DRAINING RAPIDLY, THE PROGRESS IS OBSERVED, AND WHEN THE SWALE IS EMPTY, THE TIME IS DOCUMENTED, AND THE FLOOD TEST HAS ENDED.
- IF THE SWALE IS NOT DRAINING, MEASURE THE DEPTH OF WATER CURRENTLY IN THE SWALE, DOCUMENTING THE TIME, AND RETURN TO THE SWALE SITE AT A LATER TIME IN ORDER TO VERIFY THAT THE SWALE HAS COMPLETELY DRAINED WITHIN 72 HOURS.

NOT FOR CONSTRUCTION



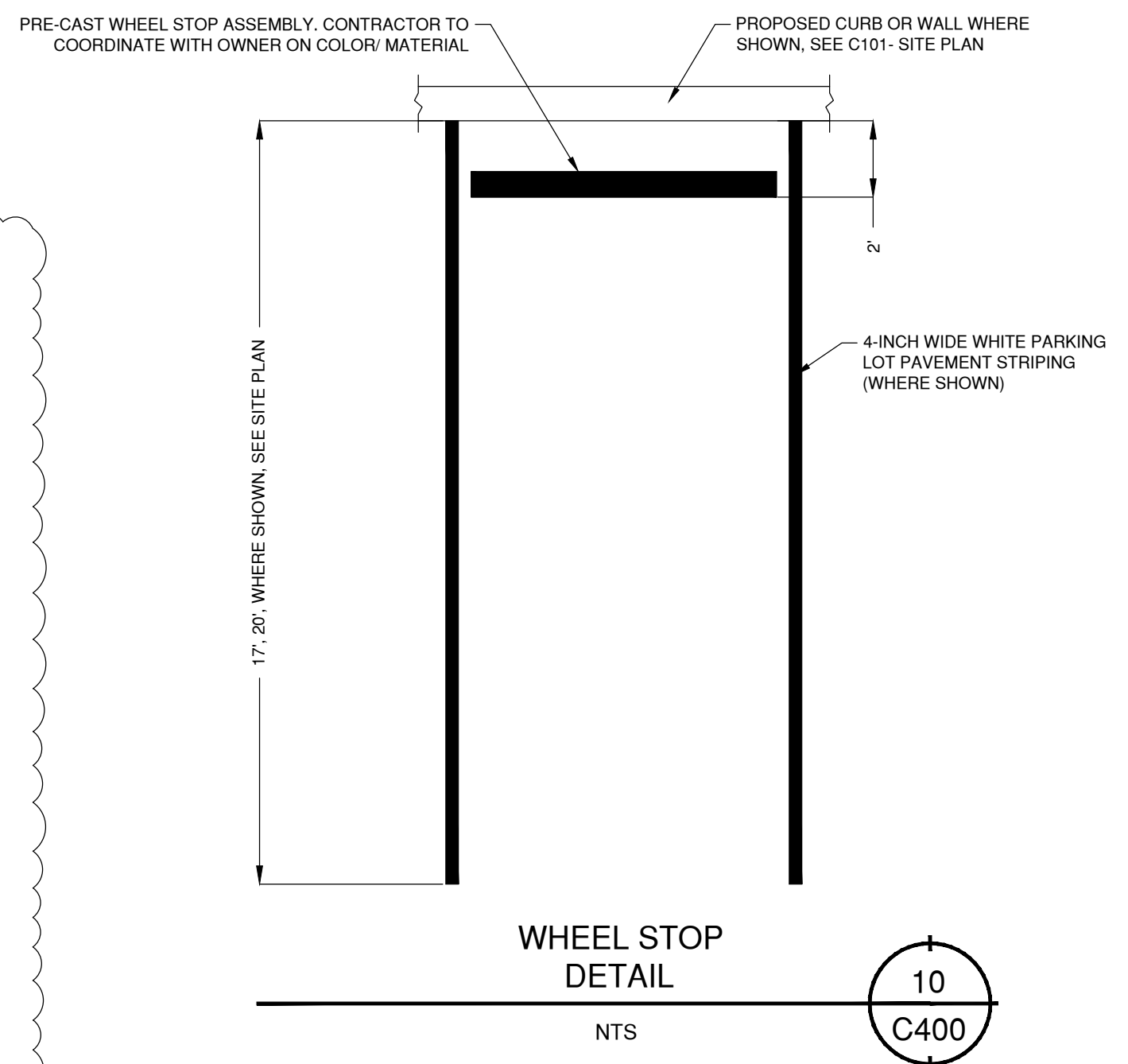
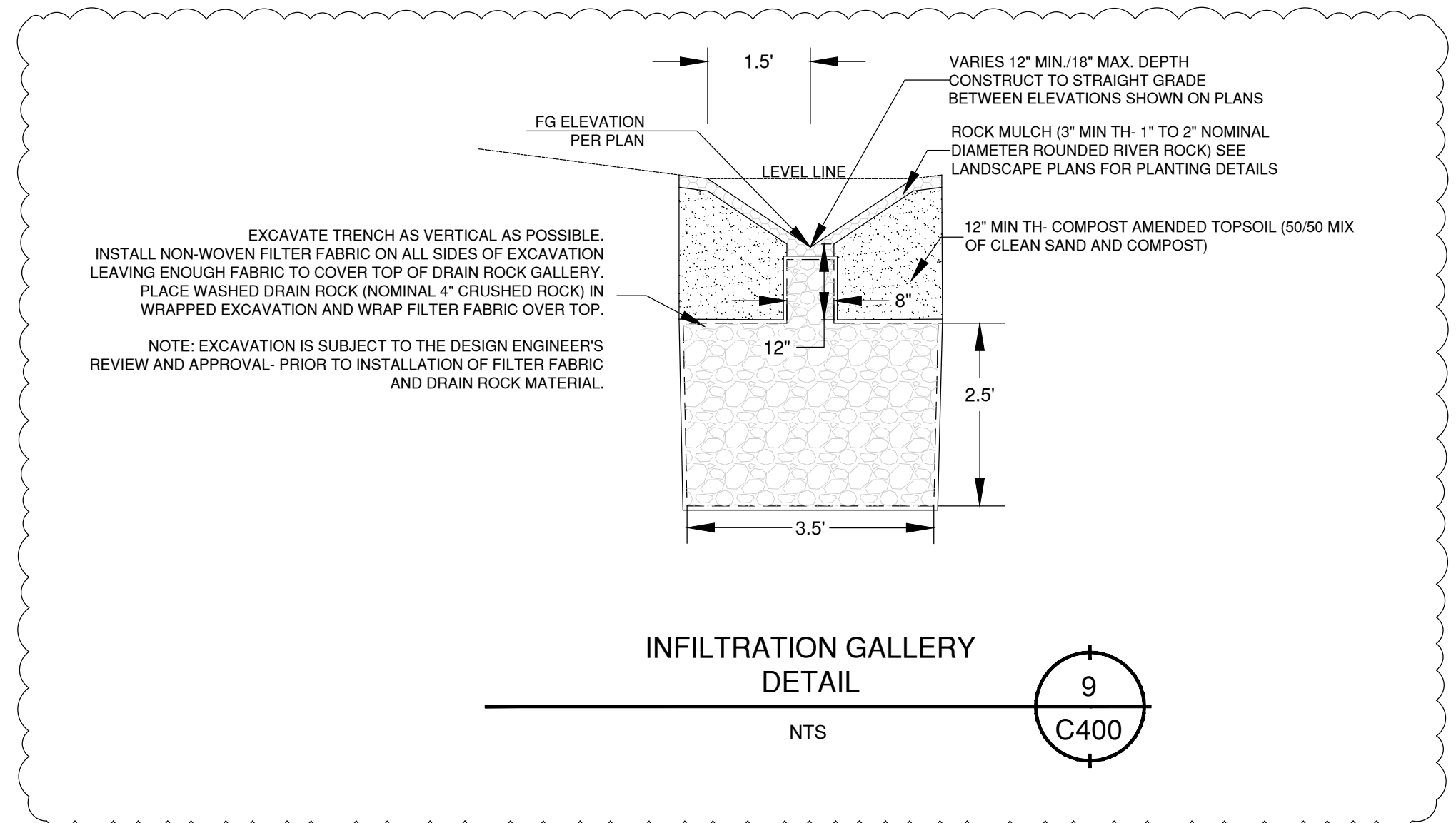
- CONCRETE CURB AND SIDEWALK NOTES:**
- SEE OREGON STANDARD DRAWING RD700 FOR ADDITIONAL NOTES AND DETAILS.
 - CONCRETE SHALL BE HIGH STRENGTH, 4000 PSI MIN. COMPRESSIVE STRENGTH PER OREGON STD SPECIFICATION SECTION 00400 AND CONTAIN NO ADDITIVES TO CAUSE RAPID SETTING. 4% - 7% AIR ENTRAINMENT REQUIRED.
 - EXPANSION JOINTS ARE REQUIRED AT END OF RADI, DRIVEWAY APRONS, POINTS OF CURVATURE, CURB TRANSITIONS, AND SHALL HAVE NO GREATER THAN 150-FOOT MAXIMUM SPACING.
 - CONTRACTION JOINTS ARE REQUIRED AT 5-FOOT INTERVALS, WITH EXPANSION JOINTS SPACED NO GREATER THAN 25 FEET.
 - COMPACTED STATE SPEC AGGREGATE BASE ROCK SHALL EXTEND UNDER CURB AND MATCH THE BOTTOM OF THE STREET SECTION (3-IN MIN)
 - LIGHT BROOM FINISH ON EXPOSED FACES.



JOINT RESTRAINT TABLE

HORIZONTAL BENDS	MIN. RESTRAINED LENGTH (Lr)	PLAN VIEW	
8" - 45°	11'		
8" - 22.5°	6'		
8" - 11.25°	3'		
DEAD END	MIN. RESTRAINED LENGTH (Lr)	PLAN VIEW	
8"	62'		
REDUCER	MIN. RESTRAINED LENGTH (Lr)	PLAN VIEW	
8" x 4"	45'		
VERTICAL BENDS	MIN. RESTRAINED LENGTH UPPER SIDE (Lu)	MIN. RESTRAINED LENGTH LOWER SIDE (Ll)	PROFILE VIEW
8" - 45°	26'	7'	
8" - 22.5°	13'	4'	
8" - 11.25°	7'	2'	
TEE	MIN. LENGTH ALONG RUN (Lr)**	MIN. RESTRAINED LENGTH ALONG BRANCH (Lb)	PLAN VIEW
8" x 8"	4'	41'	
8" x 6"	4'	19'	

NOTES:
* MIN. RESTRAINED LENGTH LOWER SIDE SHALL HAVE A MINIMUM 5-FOOT COVER
**LENGTH ALONG RUN FROM TEE SHALL EXTEND THE MINIMUM SPECIFIED IN THE TABLE IN EACH DIRECTION FROM THE TEE AND SHALL BE SOLID PIPE WITHOUT JOINTS, FITTING, ETC.
RESTRAINED LENGTHS HAVE BEEN CALCULATED UTILIZING THE EBAA IRON RESTRAINT LENGTH CALCULATOR V7.1.3 IN ACCORDANCE WITH CITY OF BEND DESIGN STANDARDS SECTION 5.1.8 UTILIZING THE FOLLOWING PARAMETERS:
SF: 2.1, TRENCH TYPE: 5, DEPTH OF BURY: 3- FEET, TEST PRESSURE: 150 PSI, SOIL TYPE: GM



DESCHUTES COUNTY

PROCLAMATION

FROM THE BOARD OF COUNTY COMMISSIONERS

WHEREAS: Sexual violence affects every person in Deschutes County, whether as a victim or survivor, or as a family member, friend, partner, neighbor, educator, employer, or co-worker; and

WHEREAS: Now, more than ever, we are being reminded that we are capable of change, and each person makes choices every day that either support or challenge a culture of violence; and

WHEREAS: Every individual in Deschutes County has a role to play in promoting health and safety for all people, by not tolerating violence, by promoting accountability, and by participating in efforts to end violence; and

WHEREAS: New efforts build on foundations laid by dedicated advocates, preventionists, activists, and other partners who have been doing this work for decades; and

WHEREAS: By taking action where you work, play, learn, worship, or live, change is possible and sexual violence is preventable when we are all working together to end sexual violence.

NOW THEREFORE: The Board of Commissioners of Deschutes County hereby proclaims April 2023 to be

SEXUAL ASSAULT AWARENESS MONTH

in Deschutes County and encourages all citizens to join in this observance.

Anthony DeBone, Chair

Patti Adair, Vice Chair

Phil Chang, Commissioner

ATTEST:

Recording Secretary



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: April 12, 2023

SUBJECT: Letter of support for the FEMA Building Resilient Infrastructure and Communities (BRIC) Grant

RECOMMENDED MOTION:

Move approval of the proposed Letter of Recommendation for the BRIC Grant application.

BACKGROUND AND POLICY IMPLICATIONS:

During the January 2023 presentation to the Deschutes County Board of County Commissioners, Oregon Living With Fire (OLWF) was given permission to submit application for the FEMA sponsored BRIC Grant, with Deschutes County named as the subgrantee. The application was completed, and we have learned the application was forwarded for National Competition by Oregon Emergency Management with the highest recommendation from Oregon. In June 2023 announcements will be made to the successful applicants. The BRIC application requested a water storage and sensor activated sprinkler system for the external buildings and infrastructure at the High Desert Museum (HDM). If the application is successful, this will prevent the need for evacuations for all values at the High Desert Museum, it has been determined that it will likely take weeks to successfully evacuate the irreplaceable items and animals from the Museum. For previous FEMA grant applications, letters of support from elected officials have proved beneficial.

BUDGET IMPACTS:

The BRIC Application requested \$3.25 million for the installation and maintenance of the water storage and delivery system at the Museum. There is a 10% match requirement of \$325,000 that can be attained with in kind match from the Museum. Additionally, there is a 5% administrative allowance that would come to Deschutes County to administer the grant during the three year period. Due to the necessity of agreements and environmental compliance, it is likely this would not become a fiscal impact until next fiscal year.

ATTENDANCE:

Dana Whitelaw, HDM Executive Director
Joe Stutler, Deschutes County Senior Advisor

Stakeholder/Elected Official Letterhead Here

Eric Letvin, Assistant FEMA Administrator
Mitigation Directorate
FEMA Headquarters
500 "C" Street S.W.
Washington DC 20472

Date:

The High Desert Museum has worked in partnership with Deschutes County and The Oregon Department of Emergency Management to submit the **High Desert Museum Water Delivery System** project for consideration under FEMA’s Building Resilient Infrastructure and Communities (BRIC) grant in the 2023 program cycle.

The High Desert Museum is located near Bend, Oregon, United States and been inspiring families since 1982. The Museum’s exhibit space offers access to hands-on historical and scientific learning opportunities. It brings together over 60 wildlife species and more than 30,000 irreplaceable cultural artifacts from across North America’s High Desert Country. Over 200,000 visitors per year experience a close-up view of historical characters, may listen to stories of early Oregon explorers, and develop an understanding of Native American culture. Overall, The High Desert Museum creates learning experiences to help audiences to discover their connection to the past, their role in the present, and their responsibility to the future including, learning to live with wildland fire.

Central Oregon continues to live under the constant threat of catastrophic wildland fire events. In fact, this area has experienced upwards of 500 wildland fires which burn an average of 200,000 acres annually. The frequency and increasing severity of these events are of great concern to the emergency response community. The potential loss of the High Desert Museum coupled with the safe evacuation of wildlife, irreplaceable artifacts, and the general population continues to be a top priority for first responders and public safety agencies.

The proposed 100,000-gallon system will be utilized for storage while offering remote or sensor activated water deployment around the Museum’s 134- acre campus including dozens of historical structures. This new technology will alleviate the improbability of successful evacuation strategies (and their costs) for the Museum under imminent threat of wildfire. In fact, the installation of this system would enable the museum to “shelter in place” in the event of a wildfire while ensuring emergency responders may focus their efforts where the need is greatest.

The Museum has and continues to complete hazardous fuels reduction strategies across their landscape in defense of catastrophic wildfire events. Nevertheless, wildland fire professionals have witnessed the extreme fire behavior in Western United States and agree that the Museum is vulnerable to the ongoing threat of extended fire seasons. As elected officials from Deschutes County, we urge FEMA to recognize the critical need of this investment through the BRIC Grant Program.

Sincerely,
Deschutes County Board of County Commissioners



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: April 12, 2023

SUBJECT: 1st Reading of Ordinance 2023-007 – Marken Plan Amendment / Zone Change

RECOMMENDED MOTION:

Move approval of first reading of Ordinance 2023-007 by title only.

BACKGROUND AND POLICY IMPLICATIONS:

The Board will consider a first reading of Ordinance 2023-007 to implement a Plan Amendment and Zone Change (file nos. 247-22-000353-PA, 354-ZC) for property totaling approximately 59 acres to the east of Bend and south of Highway 20 (Marken).

The entirety of the record can be found on the project website at:

https://www.deschutes.org/cd/page/247-22-000353-pa-and-247-22-000354-zc-marken-comprehensive-plan-amendment-and-zone-change

BUDGET IMPACTS:

None

ATTENDANCE:

Audrey Stuart, Associate Planner



MEMORANDUM

TO: Deschutes County Board of Commissioners (Board)

FROM: Audrey Stuart, Associate Planner

DATE: April 4, 2023

SUBJECT: Consideration of First Reading of Ordinance 2023-007- Marken Plan Amendment and Zone Change

The Board of County Commissioners (Board) will consider a first reading of Ordinance 2023-007 on April 12, 2023 to consider a request for a Plan Amendment and Zone Change (file nos. 247-22-000353-PA, 354-ZC) for two tax lots totaling approximately 59 acres, to the east of Bend and south of Highway 20.

I. BACKGROUND

The applicant and property owner, Harold Marken, is requesting a Comprehensive Plan Amendment to re-designate the subject property from Agriculture to Rural Residential Exception Area and a Zoning Map Amendment to rezone the property from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA-10). The applicant argues that the subject property does not meet the definition of “agricultural land” due to its poor soil quality, and previous attempts to engage in farm use on the property were unsuccessful. For these reasons, the applicant states a mistake was made when the property was originally zoned and MUA-10 zoning is more appropriate. The applicant provided a supplementary soil study that identifies non-high value (Class VII and VIII) soils on a majority (61.2%) of the subject properties.

A public hearing before a Hearings Officer was conducted on September 6, 2022 with the Hearings Officer’s recommendation of approval issued on November 7, 2022. The Board held a public hearing on January 18, 2023 and initiated a 21-day open record period, which concluded February 8, 2023. On March 1, 2023, the Board deliberated to approve the requests, with a unanimous vote in favor of the subject applications.

II. NEXT STEPS / SECOND READING

The Board is scheduled to conduct the second reading of Ordinance 2023-007 on April 26, 2023, fourteen (14) days following the first reading.

ATTACHMENTS:

1. Draft Ordinance 2023-007 and Exhibits

Exhibit A: Legal Descriptions

Exhibit B: Proposed Plan Amendment Map

Exhibit C: Proposed Zone Change Map

Exhibit D: Comprehensive Plan Section 23.01.010, Introduction

Exhibit E: Comprehensive Plan Section 5.12, Legislative History

Exhibit F: Board of County Commissioners Draft Decision

Exhibit G: Hearings Officer Recommendation

REVIEWED _____
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

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

ORDINANCE NO. 2023-007

WHEREAS, Harold Marken, applied for changes to both the Deschutes County Comprehensive Plan Map (247-22-000353-PA) and the Deschutes County Zoning Map (247-22-000354-ZC), to change the comprehensive plan designation of the subject property from Agricultural (AG) to Rural Residential Exception Area (RREA), and a corresponding zone change from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA-10); and

WHEREAS, after notice was given in accordance with applicable law, a public hearing was held on September 6, 2022, before the Deschutes County Hearings Officer and, on November 7, 2022, the Hearings Officer recommended approval of the Comprehensive Plan Map Amendment and Zone Change;

WHEREAS, pursuant to DCC 22.28.030(C), the Board heard *de novo* the applications to change the comprehensive plan designation of the subject property from Agricultural (AG) to Rural Residential Exception Area (RREA) and a corresponding zone change from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA-10); now, therefore,

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

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

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

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

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

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

Section 6. EFFECTIVE DATE. This Ordinance takes effect on the 90th day after the date of adoption or, if appealed, the date the ordinance is no longer subject to appeal.

Dated this _____ of _____, 2022

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

PATTI ADAIR, Vice Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner

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

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

Record of Adoption Vote:

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

Effective date: ____ day of _____, 2023. Or, if appealed, the date the ordinance is no longer subject to appeal.

ATTEST

Recording Secretary

Exhibit "A" to Ordinance 2023-007

Legal Descriptions of Affected Properties

For Informational Purposes Only: Parcel nos. 1812020000201 and 1812020000203

(Legal Description Begins Below)

THE EAST 1/2 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 AND THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 2, TOWNSHIP 18 SOUTH, RANGE 12 EAST OF THE WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS,

BEGINNING AT THE INITIAL POINT, A 1 1/4" IRON PIPE WITH A BOLT INSIDE AT THE CENTER EAST 1/16TH CORNER OF SAID SECTION 2,

THENCE; NORTH 89°33'03" WEST ALONG THE SOUTH LINE OF THE NORTHEAST 1/4, A DISTANCE OF 1322.40 FEET TO THE CENTER 1/4 CORNER OF SECTION 2,

THENCE; NORTH 0°22'21" EAST ALONG THE WEST LINE OF THE NORTHEAST 1/4 OF SECTION 2, A DISTANCE OF 1318.43 FEET,

THENCE; NORTH 89°53'30" EAST ALONG THE NORTH LINE OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 2, A DISTANCE OF 661.42 FEET TO THE WEST LINE OF THE EAST 1/2 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 2,

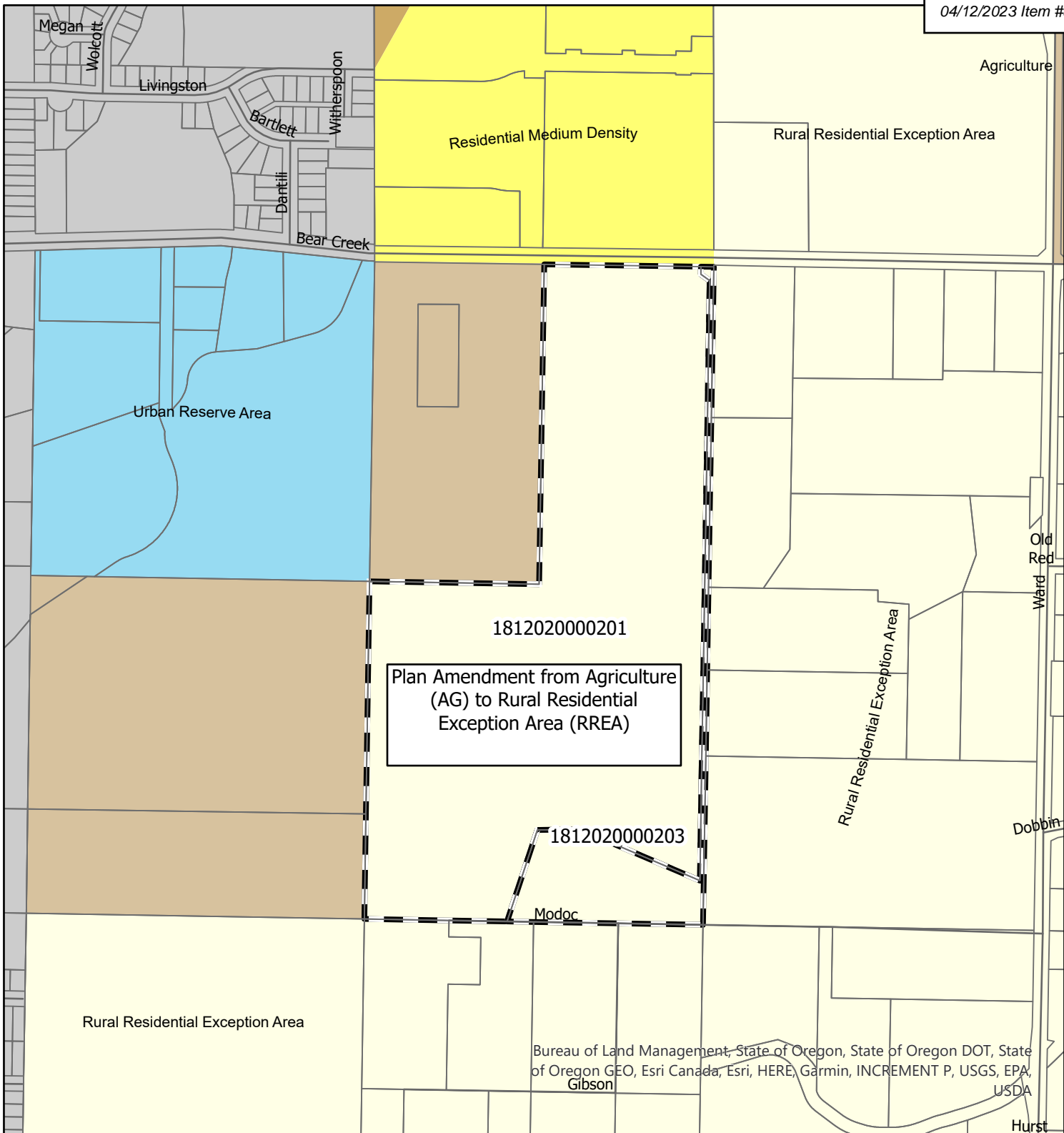
THENCE; NORTH 0°24'05" EAST ALONG SAID WEST LINE, A DISTANCE OF 1271.36 FEET TO THE NORTH LINE OF THE NORTHEAST 1/4 OF SECTION 2,

THENCE; SOUTH 89°42'45" EAST ALONG SAID NORTH LINE, A DISTANCE OF 662.11 FEET TO THE EAST LINE OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 2,

THENCE; SOUTH 0°26'49" WEST ALONG SAID EAST LINE, A DISTANCE OF 1279.91 FEET TO THE NORTHEAST 1/16TH CORNER OF SECTION 2,

THENCE; SOUTH 0°22'33" WEST ALONG THE EAST LINE OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4, A DISTANCE OF 1318.18 FEET TO THE INITIAL POINT OF THIS DESCRIPTION,

SAID DESCRIPTION CONTAINING 59.497 ACRES MORE OR LESS.



Proposed Comprehensive Plan Map

- Bend City Limit
- Proposed Comprehensive Plan Boundary
- AG - Agriculture
- RH - High Density Residential
- RL - Low Density Residential
- RM - Medium Density Residential
- RREA - Rural Residential Exception Area
- RS - Standard Density Residential
- URA - Urban Reserve Area

File: 247-22-000353-PA, 354-ZC
 Applicant: Harold Marken
 Taxlots: 1812020000201, 1812020000203

Exhibit "B" to Ordinance 2023-007

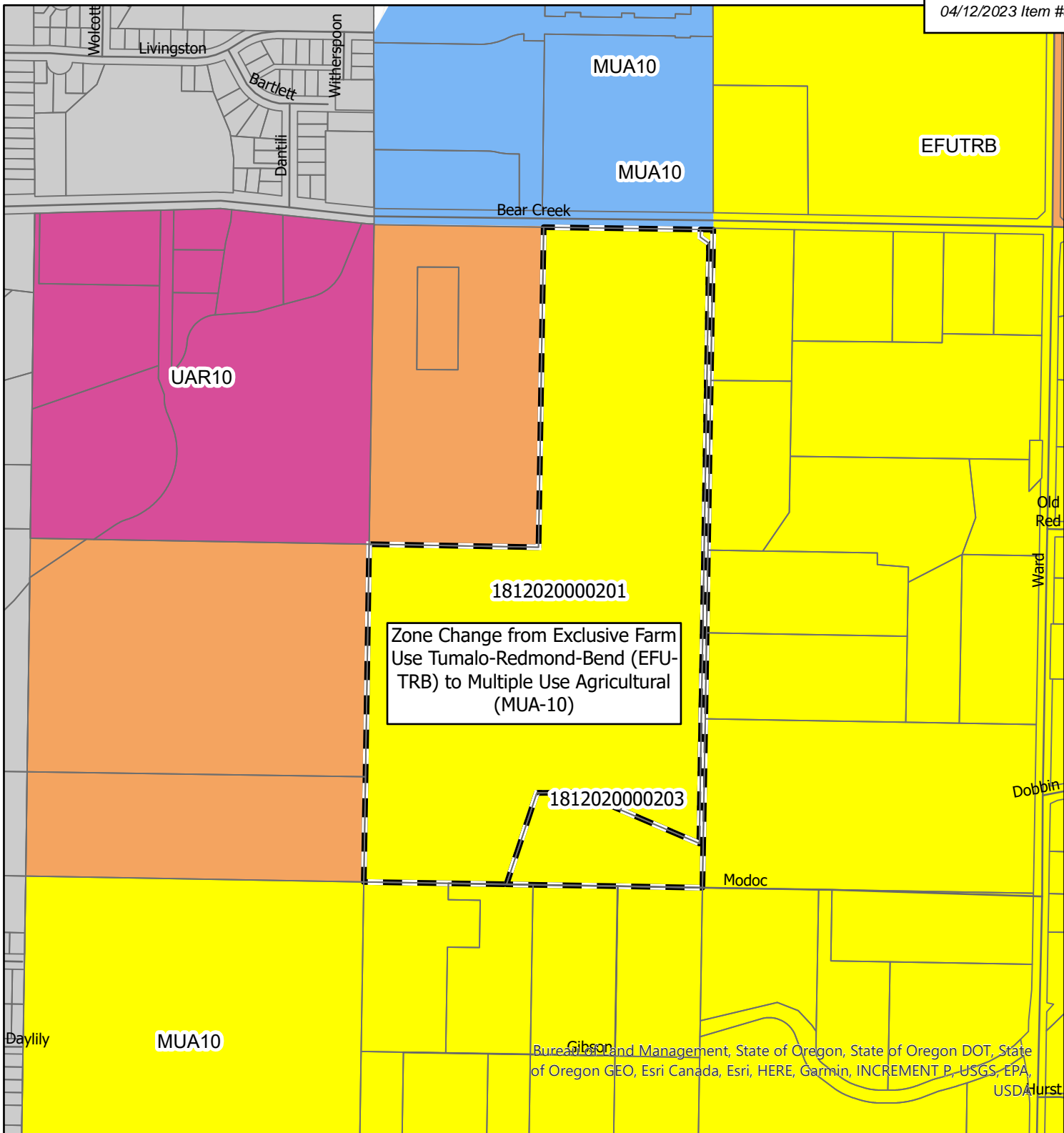
BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

Tony DeBone, Chair

Patti Adair, Vice Chair

Phil Chang, Commissioner

ATTEST: Recording Secretary
 Dated this ____ day of ____, 2023
 Effective Date: ____, 2023









1812020000201

Zone Change from Exclusive Farm Use Tumalo-Redmond-Bend (EFU-TRB) to Multiple Use Agricultural (MUA-10)

1812020000201

1812020000203

-  Proposed Zone Boundary
-  EFUTRB - Tumalo/Redmond/Bend Subzone
-  MUA10 - Multiple Use Agricultural
-  UAR10 - Urban Area Reserve - 10 Acre Minimum
-  URBANIZABLE AREA DISTRICT
-  Bend City Limit

Proposed Zoning Map

File: 247-22-000353-PA, 354-ZC
 Applicant: Harold Marken
 Taxlots: 1812020000201, 1812020000203

Exhibit "C" to Ordinance 2023-007

BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

Tony DeBone, Chair

Patti Adair, Vice Chair

Phil Chang, Commissioner

ATTEST: Recording Secretary
 Dated this ____ day of ____, 2023
 Effective Date: ____, 2023

Exhibit “D” to Ordinance 2022-013

Chapter 23.01 COMPREHENSIVE PLAN

Chapter 23.01 COMPREHENSIVE PLAN

23.01.010. Introduction.

- A. The Deschutes County Comprehensive Plan, adopted by the Board in Ordinance 2011-003 and found on the Deschutes County Community Development Department website, is incorporated by reference herein.
- B. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2011-027, are incorporated by reference herein.
- C. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-005, are incorporated by reference herein.
- D. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-012, are incorporated by reference herein.
- E. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-016, are incorporated by reference herein.
- F. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-002, are incorporated by reference herein.
- G. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-009, are incorporated by reference herein.
- H. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-012, are incorporated by reference herein.
- I. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-007, are incorporated by reference herein.
- J. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-005, are incorporated by reference herein.
- K. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-006, are incorporated by reference herein.
- L. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-012, are incorporated by reference herein.
- M. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-021, are incorporated by reference herein.
- N. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-027, are incorporated by reference herein.
- O. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-021, are incorporated by reference herein.
- P. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-029, are incorporated by reference herein.
- Q. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-018, are incorporated by reference herein.
- R. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-010, are incorporated by reference herein.
- S. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-001, are incorporated by reference herein.
- T. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-022, are incorporated by reference herein.

- U. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-005, are incorporated by reference herein.
- V. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-027, are incorporated by reference herein.
- W. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-029, are incorporated by reference herein.
- X. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2017-007, are incorporated by reference herein.
- Y. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-002, are incorporated by reference herein.
- Z. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-006, are incorporated by reference herein.
- AA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-011, are incorporated by reference herein.
- BB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-005, are incorporated by reference herein.
- CC. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-008, are incorporated by reference herein.
- DD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-002, are incorporated by reference herein.
- EE. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-001, are incorporated by reference herein.
- FF. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-003, are incorporated by reference herein.
- GG. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-004, are incorporated by reference herein.
- HH. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-011, are incorporated by reference herein.
- II. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-006, are incorporated by reference herein.
- JJ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-016, are incorporated by reference herein.
- KK. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-019, are incorporated by reference herein.
- LL. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-001, are incorporated by reference herein.
- MM. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-002, are incorporated by reference herein.
- NN. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-003, are incorporated by reference herein.
- OO. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-008, are incorporated by reference herein.
- PP. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-007, are incorporated by reference herein.
- QQ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-006, are incorporated by reference herein.
- RR. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-009, are incorporated by reference herein.

- SS. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-013, are incorporated by reference herein.
- TT. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-02, are incorporated by reference herein.
- UU. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2021-005, are incorporated by reference herein.
- VV. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2021-008, are incorporated by reference herein.
- WW. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-001, are incorporated by reference herein.
- XX. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-003, are incorporated by reference herein.
- YY. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-006, are incorporated by reference herein.
- ZZ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-0010, are incorporated by reference herein.
- AAA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-011, are incorporated by reference herein.
- BBB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-013, are incorporated by reference herein.
- CCC. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-007, are incorporated by reference herein.

(Ord. 2023-007 §2, 2022; Ord. 2022-013 §2, 2022; Ord. 2022-011 §2, 2022; Ord. 2022-0010 §2, 2022; Ord. 2022-006 §2, 2022; Ord. 2022-003 §2, 2022; Ord. 2022-001 §1, 2022; Ord. 2021-008 §1; Ord. 2021-005 §1, 2021; Ord. 2021-002§3, 2020; Ord. 2020-013§1, 2020; Ord. 2020-009§1, 2020; Ord. 2020-006§1, 2020; Ord. 2020-007§1, 2020; Ord. 2020-008§1, 2020; Ord. 2020-003 §1, 2020; Ord. 2020-002 §1, 2020; Ord. 2020-001 §26, 2020; Ord. 2019-019 §2, 2019; Ord. 2019-016 §3, 2019; Ord. 2019-006 § 1, 2019; Ord. 2019-011 § 1, 2019; Ord. 2019-004 §1, 2019; Ord. 2019-003 §1, 2019; Ord. 2019-001 §1, 2019; Ord. 2019-002 §1, 2019; Ord. 2018-008 §1, 2018; Ord. 2018-005 §2, 2018; Ord. 2018-011 §1, 2018; Ord. 2018-006 §1, 2018; Ord. 2018-002 §1, 2018; Ord. 2017-007 §1, 2017; Ord. 2016-029 §1, 2016; Ord. 2016-027 §1, 2016; Ord. 2016-005 §1, 2016; Ord. 2016-022 §1, 2016; Ord. 2016-001 §1, 2016; Ord. 2015-010 §1, 2015; Ord. 2015-018 § 1, 2015; Ord. 2015-029 § 1, 2015; Ord. 2015-021 § 1, 2015; Ord. 2014-027 § 1, 2014; Ord. 2014-021 §1, 2014; Ord. 2014-12 §1, 2014; Ord. 2014-006 §2, 2014; Ord. 2014-005 §2, 2014; Ord. 2013-012 §2, 2013; Ord. 2013-009 §2, 2013; Ord. 2013-007 §1, 2013; Ord. 2013-002 §1, 2013; Ord. 2013-001 §1, 2013; Ord. 2012-016 §1, 2012; Ord. 2012-013 §1, 2012; Ord. 2012-005 §1, 2012; Ord. 2011-027 §1 through 12, 2011; Ord. 2011-017 repealed; Ord.2011-003 §3, 2011)

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

Exhibit “E” to Ordinance 2022-013

Section 5.12 Legislative History

Background

This section contains the legislative history of this Comprehensive Plan.

Table 5.12.1 Comprehensive Plan Ordinance History

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

2013-016	10-21-13/10-21-13	23.01.010	Comprehensive Plan Map Amendment, including certain property within City of Sisters Urban Growth Boundary
2014-005	2-26-14/2-26-14	23.01.010	Comprehensive Plan Map Amendment, including certain property within City of Bend Urban Growth Boundary
2014-012	4-2-14/7-1-14	3.10, 3.11	Housekeeping amendments to Title 23.
2014-021	8-27-14/11-25-14	23.01.010, 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from Sunriver Urban Unincorporated Community Forest to Sunriver Urban Unincorporated Community Utility
2014-021	8-27-14/11-25-14	23.01.010, 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from Sunriver Urban Unincorporated Community Forest to Sunriver Urban Unincorporated Community Utility
2014-027	12-15-14/3-31-15	23.01.010, 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Industrial
2015-021	11-9-15/2-22-16	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Surface Mining.
2015-029	11-23-15/11-30-15	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Tumalo Residential 5-Acre Minimum to Tumalo Industrial
2015-018	12-9-15/3-27-16	23.01.010, 2.2, 4.3	Housekeeping Amendments to Title 23.

Exhibit “E” to Ordinance 2022-013

2015-010	12-2-15/12-2-15	2.6	Comprehensive Plan Text and Map Amendment recognizing Greater Sage-Grouse Habitat Inventories
2016-001	12-21-15/04-5-16	23.01.010; 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from, Agriculture to Rural Industrial (exception area)
2016-007	2-10-16/5-10-16	23.01.010; 5.10	Comprehensive Plan Amendment to add an exception to Statewide Planning Goal II to allow sewers in unincorporated lands in Southern Deschutes County
2016-005	11-28-16/2-16-17	23.01.010, 2.2, 3.3	Comprehensive Plan Amendment recognizing non-resource lands process allowed under State law to change EFU zoning
2016-022	9-28-16/11-14-16	23.01.010, 1.3, 4.2	Comprehensive plan Amendment, including certain property within City of Bend Urban Growth Boundary
2016-029	12-14-16/12/28/16	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from, Agriculture to Rural Industrial
2017-007	10-30-17/10-30-17	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2018-002	1-3-18/1-25-18	23.01, 2.6	Comprehensive Plan Amendment permitting churches in the Wildlife Area Combining Zone

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

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

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

Exhibit “E” to Ordinance 2022-013

2020-008	06-24-20/09-22-20	23.01.010, Appendix C	Comprehensive Plan Transportation System Plan Amendment to add roundabouts at US 20/Cook-O.B. Riley and US 20/Old Bend-Redmond Hwy intersections; amend Tables 5.3.T1 and 5.3.T2 and amend TSP text.
2020-007	07-29-20/10-27-20	23.01.010, 2.6	Housekeeping Amendments correcting references to two Sage Grouse ordinances.
2020-006	08-12-20/11-10-20	23.01.01, 2.11, 5.9	Comprehensive Plan and Text amendments to update the County’s Resource List and Historic Preservation Ordinance to comply with the State Historic Preservation Rule.
2020-009	08-19-20/11-17-20	23.01.010, Appendix C	Comprehensive Plan Transportation System Plan Amendment to add reference to J turns on US 97 raised median between Bend and Redmond; delete language about disconnecting Vandevent Road from US 97.
2020-013	08-26-20/11/24/20	23.01.01, 5.8	Comprehensive Plan Text And Map Designation for Certain Properties from Surface Mine (SM) and Agriculture (AG) To Rural Residential Exception Area (RREA) and Remove Surface Mining Site 461 from the County's Goal 5 Inventory of Significant Mineral and Aggregate Resource Sites.
2021-002	01-27-21/04-27-21	23.01.01	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) To Rural Industrial (RI)

2021-005	06-16-21/06-16-21	23.01.01, 4.2	Comprehensive Plan Map Amendment Designation for Certain Property from Agriculture (AG) To Redmond Urban Growth Area (RUGA) and text amendment
2021-008	06-30-21/09-28-21	23.01.01	Comprehensive Plan Map Amendment Designation for Certain Property Adding Redmond Urban Growth Area (RUGA) and Fixing Scrivener’s Error in Ord. 2020-022
2022-001	04-13-22/07-12-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2022-003	04-20-22/07-19-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2022-006	06-22-22/08-19-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Rural Residential Exception Area (RREA) to Bend Urban Growth Area
2022-010	07-27-22/10-25-22	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) To Rural Industrial (RI)
2022-011	12-12-22/03-14-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Industrial (RI)
2022-013	12-14-22/03-14-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)

Exhibit “E” to Ordinance 2022-013

<u>2023-007</u>	<u>TBD</u>	<u>23.01.010</u>	<u>Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)</u>
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EXHIBIT F

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

FILE NUMBERS: 247-22-000353-PA, 247-22-000354-ZC

APPLICANT: Harold K. Marken
21495 Bear Creek Road
Bend, Oregon 97701

OWNER: Harold K. Marken and Joann M. Marken

ATTORNEY(S) FOR APPLICANT: Liz Fancher
2464 NW Sacagawea Lane
Bend, Oregon 97703

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

APPLICATION: Comprehensive Plan Amendment to re-designate the subject property from Agriculture (AG) to Rural Residential Exception Area (RREA) and a corresponding Zone Change to change the zoning from Exclusive Farm Use – Tumalo-Redmond-Bend subzone (EFU-TRB) to Multiple Use Agricultural (MUA10).

SUBJECT PROPERTY: Assessor’s Map 18-12-02, Tax Lots 201 and 203

I. FINDINGS OF FACT:

A. Hearings Officer’s Recommendation: The Hearings Officer’s recommendation dated November 7, 2022, adopted as **Exhibit G** of this ordinance, is hereby incorporated as part of this decision, including any and all interpretations of the County’s code and Comprehensive Plan, and modified as follows:

1. Proximity to Bend Urban Growth Boundary

The findings on pages 3 and 14 of the HOff Recommendation that the Marken property is .13 miles from the City of Bend and findings elsewhere in the HOff Recommendation based on this prior condition are no longer correct and should reflect the fact that the Marken property adjoins the City of Bend. The finding on page 3 of the HOff Recommendation that the subject property is “separated from

the UGB by 90 feet” is also incorrect because the Bear Creek right-of-way is a type of easement; not a parcel of land.

2. Current Employment of Land for Farm Use

The Board finds, contrary to findings beginning on page 28 of the HOff Recommendation that find otherwise, the prior and potential use of the Marken property for “farm use” is relevant in determining whether the Marken property is otherwise suitable for farm use. While the term “farm use” defines the term based on the “current employment” of land, appellate bodies have conducted a broader review of farm use when considering whether land is Goal 3 “agricultural land.” After considering the prior, current and future potential farm use of the subject property, the Board finds that Marken property is not otherwise suitable for farm use based on a consideration of all seven Goal 3 suitability factors. These factors are set out and addressed on pages 45-48 of the HOff Recommendation.

3. Water Rights/Suitability for Farm Use Test

The Board disagrees with the HOff and finds water rights held in the past are relevant to whether the subject property is suitable for farm use. The Board finds that despite having 36 acres of irrigation water rights, the Markens financially subsidized hay crop production and livestock operations conducted on their property for decades.

5. Other Corrections and Clarifications

On page 43, the soil classification referred to as “364” is “36A.” The Board also finds that the findings requested by staff regarding OAR 660-033-0020(1)(b) are provided on pages 34-37 of the HOff Recommendation.

The HOff Recommendation adopts pages 20-34 of Staff Report. The part of these findings that request the hearings officer to make finding addressing specific issues have been addressed by this decision and the HOff Recommendation. The HOff Recommendation, on page 57, relies on both the Staff Report and evidence and arguments provided by the Applicant to find that the subject property is not “Agricultural Land.” This includes but is not limited to the applicant’s evidence and findings regarding the farm use suitability test found on pages 45-48, findings regarding whether land is necessary to permit farm practices to be undertaken on adjacent or nearby lands on pages 49-52 and findings regarding the farm unit rule at pages 34-37 and pages 52-53.

The HOff Recommendation, on page 53, quotes text from the staff report that comments that Mr. Rabe’s soil study did not look to soils on other area properties

and that requests that the hearings officer make specific findings regarding OAR 660-033-0030. Such findings were not provided but the findings regarding OAR 660-033-0020(1)(a)(C) address the issue. The record shows that only approximately 60 acres of land (58.1 acres per Assessor) adjoin the Marken property or are nearby lands.¹ The subject property is not necessary to permit farm practices to be undertaken on these properties. The only such property engaging in farm practices is the former Springer property (discussed in more detail below). It operates an irrigation pivot but does not rely in any way on use of the subject property to operate the pivot. The same is true for the irrigation of yards and lawns occurring on the remaining adjoining/area EFU properties.

In the event of conflict, the findings in this decision control.

B. Procedural History: The County’s land use hearings officer conducted the initial hearing regarding the Marken Comprehensive Plan Amendment and Zone Change applications on September 6, 2022, and recommended approval of the applications by the Deschutes County Board of Commissioners (“Board”) in a decision dated November 7, 2022. The Board conducted a de novo land use hearing on January 18, 2023. The Board deliberated and voted to approve the applications on March 1, 2023.

C. Deschutes County Land Use Regulations: The Deschutes County Comprehensive Plan and Title 18 of the Deschutes County Code have been acknowledged by LCDC as being in compliance with every statewide planning goal, including Goal 14. The County specifically amended its comprehensive plan in 2016 to provide that the Rural Residential Exception Area Plan and its related MUA-10 and RR-10 zones should be applied to non-resource lands. Ordinance 2016-005. This amendment is acknowledged, which means that the RREA plan designation and its related zoning districts, when applied to non-resource lands such as the subject property, do not result in a violation of Goal 14.

II. ADDITIONAL FINDINGS AND CONCLUSIONS OF LAW:

The Board provides the following supplemental findings to address new evidence filed with the Board and to support its decision to approve the Marken applications:

1. Location of Marken Property

The Marken property adjoins the City of Bend. It is one half of a 120-acre island of unproductive, marginal EFU-zoned land surrounded by urban, urban reserve and MUA-10

¹ These properties are tax lots 200, 202, 1001 and 1003; Assessor’s Map 18-12-02.

zoned land. No “farm use” as defined by ORS 215.203(1) is occurring in the EFU-zoned island. The dominant character of the area is urban and rural residential development, including development on many lots smaller than 10 acres in size.

The location of the Bend urban growth boundary changed during the County’s review of the Marken applications. The entire northern boundary of the Marken property now adjoins the City of Bend. Land to the north of the Marken property has received City of Bend approval to be developed with an affordable housing project that will have a density of approximately 11 dwelling units per acres.

2. ORS 215.203(2)(a), Current Employment of Land for Farm Use

The subject property has never been suitable for “farm use” as defined by ORS 215.203(2) and has never been “currently employed” in farm use. The subject property was designated by the 1979 Deschutes County comprehensive plan as “marginal land – undeveloped” which is described by the plan as land that “will support agricultural production only if subsidized to some extent.” According to the record, the Markens attempted to break even by producing crops and livestock on their property. They did not expect/intend to make a profit in money. They sustained financial losses in every year of operation as expected by the comprehensive plan. Despite holding 36 acres of irrigation water rights and growing hay, the predominant crop raised in the County, the Markens lost money in every year of operation. The Markens, therefore, never established a farm use on their property nor was their property part of a farm unit engaged in farm use.

Deschutes County farms have a long history of generating farm losses rather than farm income as shown by the 2012 and 2017 US Census of Agricultural data (approximately 83% and 84% respectively). The fact that the Marken property never turned a profit is neither atypical or an indication that the land was mismanaged.

Certified soil scientist and classifier Brian Rabe explained that one reason the Marken property is not suitable for farm use is that the soils are too shallow to retain sufficient water to support a sufficient crop yield to allow a farmer to have hope of making a profit in money from raising crops. Mr. Rabe showed it is not financially feasible to improve the productivity of existing soil conditions by importing top soil. Additionally, the cost of irrigation water from Central Oregon Irrigation District has sharply increased. Fees were raised in 2020. Rate increases of over 100% are being phased in through 2026 without being adjusted for the sharply reduced amount of water delivered by the district. Both increasing cost and the limited supply of irrigation water support the Board’s finding that no reasonable farmer would intend to make a profit in money by conducting agricultural activities on the Marken property.

The Board agrees with the hearings officer's analysis of COLW's water impoundment argument on pages 28-30 of the HOff Recommendation.

3. Suitability for Farm Use as Defined by ORS 215.203(2)(a)

COLW claimed that the Marken application describes a long history of farm use "for profit" and that the applicant argued that "profits yielded from the subject property were not satisfactory." This, however, is incorrect. The applicant engaged in agricultural activities for decades and did not make a profit in money in any year. COLW claims that "many properties of the same size and same soil quality in Deschutes County are home to very profitable commercial agricultural operations." This claim, however, is not supported by facts in the record. Furthermore, given COLW's view that forty years of farm losses by the Markens constitute a history of farm use for profit, COLW's claim about profitability does not establish that other similar properties are engaged in "farm use" with an intention to make a profit in money – the test that applies here. As a result, COLW's unsubstantiated claim in not substantial evidence that contradicts the Board's finding that the Marken property is not agricultural land.

Central Oregon LandWatch ("COLW") argued that the Board's decision in this case is controlled by the *Newland* decision. In that decision, a prior Board denied approval of a plan amendment and zone change because it was determined that the Newland property was capable of making a small profit in money. In *Newland*, the former Board found that "the primary consideration for what constitutes agricultural lands in the county is irrigation water." The availability of irrigation water, however, is just one of seven Goal 3 factors considered in determining whether land comprised of a majority of Class VII and/or VIII soils is "otherwise suitable" for farm use. Farm uses are, by definition, agricultural activities undertaken with an intention to make a profit in money. The fact that irrigation water is available does not necessarily mean that its availability makes a property suitable for farm use. For instance, irrigating a rock pile will not make it agricultural land. The facts of the Marken property are different because the record shows a history of farm losses over four decades.

After the BOCC issued the *Newland* decision, the BOCC approved three plan amendment and zone change applications for recently irrigated farmland. These decisions are the *Eastside Bend*, *Porter Kelly Burns* and *Aceti* decisions. In the *Eastside Bend* and *Porter Kelly Burns* cases, efforts to farm these formerly irrigated properties failed – like they did for the Marken property. This history did not make these properties suitable for farm use.

The Board does not agree with the notion advanced by COLW that income can be earned by employing accepted farm practices on the worst soils in Deschutes County, such as those found on the Marken property. In *Aceti*, the BOCC relied on information provided by OSU Extension Agent Mylen Bohle that it took 200-250 acres of productive, regularly-shaped, irrigated farmland to break even on producing hay crops in Deschutes County at

2014 prices. Economic conditions for farmers in Deschutes County have not improved since that time.

Abby Kellner-Rode argued that the soil on her farm, Boundless Farmstead, was not considered profitable for farming but is now a successful vegetable farm due to efforts made to slowly increase the fertility of the soil. This success is admirable. Nonetheless, the Boundless Farmstead property and Marken properties are not similar. 100% of the Boundless Farms property is composed of soils that are high-value when irrigated. Even so, the Boundless Farms soils required improvement to support the growth of vegetables. The lack of soil depth and Class VII/VIII soils on the Marken property preclude productive farm use and the production of crops. Attempting to remedy the soil depth and quality issue by importing soil is financially infeasible.

Megan Kellner-Rode of Boundless Farms advised the County that “[w]ith soil research, land tending, perseverance, and intense crop and business planning, we have been able to be profitable on our land.” This does not mean, however, that the same is true for the Marken property because its soils are superior to those of the Marken property. 100% of the approximately 18.5 acres of irrigated farm land farmed by Boundless Farms is Class III high-value farm soil. The Marken property is comprised of a majority of Class VII and VIII nonagricultural soils that the NRCS states are unsuitable for cultivation.

The Board finds it would be imprudent for the Markens to invest substantial sums of money to improve the soils fertility and depth on their property. A reasonable farmer would not expect to obtain a profit in money from such efforts.

Furthermore, when the Marken property was identified by Deschutes County as EFU farmland in 1979, it was determined that it is “marginal farmland.” “Marginal farmland – undeveloped,” the category applied to the Marken property in 1979 by the comprehensive plan, was then defined as follows:

*“This land will support agricultural production **only if subsidized** to some extent. The lands are suitable for [unprofitable] hay and pasture, and more particularly, the raising of livestock, particularly if access to grazing land is available. ***”*

The 1979 comprehensive plan recognized the fact that approximately 21,500 of approximately 23,000 acres of the harvested cropland in Deschutes County was devoted to hay production (93%) and that the average yield per acre was low (2.65 tons per acre in 1974 and 3.3 tons per acre in 1977 for farms with sales of \$2,500 or more). According to the 2017 US Census of Agriculture, hay/haylage remains the dominant farm crop in Deschutes County at approximately 93% of the acres in crop production (excluding the approximately 1% used for field/grass seed crops). Given the expert opinion of OSU Extension Agent Mylen Boyle in the Aceti case, the marginal lands designation of the

Marken property and evidence of unprofitability of farms in Deschutes County, it is not reasonable to expect the Marken property to produce a profit in money from growing hay.

No major changes have occurred in Deschutes County accepted farm practices for hay operations. Dick Springer, the former owner of an adjoining EFU-zoned property, converted his flood irrigation to pivot irrigation to increase efficiency of his hay operation but this change proved financially crippling.

Given the hard facts of farming in Deschutes County, no reasonable farmer would expect to make a profit in money by employing accepted farm practices on the Marken property regardless of how well it is managed. The trend in Central Oregon agriculture is one of increasing farm losses. Average farm losses went from \$11,538 in 2012 to \$12,866 in 2017. The number of farms with losses increased from 1072 to 1246 farms between 2012 and 2017. In 2017, approximately 84% of farms in Deschutes County in 2017 lost money – up from approximately 83% in 2012.

Accepted farm practices and proper farm management have occurred on the Marken property but have resulted in monetary losses only. Losses occurred despite the fact the Markens removed extensive amounts of rock from their property; something that exceeds what is considered an accepted farm practice in Deschutes County. The Markens used machinery and fertilized their fields to increase crop yields, which still resulted in financial losses. There are good reasons why this was the case. As explained by Mr. Rabe, the revenue from growing most locally adapted crops will not cover the costs of fertilizing the Marken property. See, p. 5, 9/7/2021 Soil Survey Report. Also, Class VII soils, according to the NRCS, are soils with severe limitations that make them unsuitable for cultivation. 61% of the soils on the Marken property are NRCS Class VII and VIII. Soil depth is a major limiting factor for the Marken property. Mr. Rabe demonstrated, and we find, that the cost of importing soil to the yield of crops on the Marken property would not be economically viable.

COLW argued that the applicant “appears to argue that the unavailability of irrigation on the property is a reason it should not be considered agricultural land.” The applicant, however, did not make this argument. Irrigation is one factor in determining the suitability of the Marken property for farm use. The fact that the Markens were unable to make a profit in money in any year of operation, even with 36 acres of irrigation water rights, is one of many factors that supports the Board’s conclusion that the property is not suitable for farm use.

Central Oregon LandWatch (“COLW”) filed aerial photographs of the Marken property showing green fields and a lawn. They claim this shows the Marken property is “demonstrably suitable for farm use regardless of its soil class.” This is not correct.

4. OAR 660-033-0020(1)(b), Farm Unit Rule

COLW argued that the farm unit rule applies to the Marken property. We agree with the findings of the hearing officer on this topic. We also find that the Marken property is not and has not been a part of a farm unit as it has never been engaged in “farm use” as the term is used in Statewide Goal 3. The property has not been engaged in farm use with adjoining lands and has been owned by a single owner and for over 40 years.

5. OAR 660-033-0020(1)(a)(C), Land Necessary to Permit Farm Practices on Adjacent or Nearby Agricultural Lands

Megan Kellner-Rode hypothesized that rezoning acreage in the middle of EFU zoning can cause conflicts with farmers and non-farmers. The Marken property, however, is not located in the middle of EFU land; it is surrounded by nonresource land and adjoins the Bend urban growth boundary and adjoins about 60 acres of EFU land on one side only (west). The EFU land adjacent to the Marken property adjoins the City of Bend and urban reserve lands. The only EFU property in the 120-acre island of land that includes the Marken property that is engaged in an agricultural activity is the former Springer property that raises hay and irrigates a part of the property with a pivot. The current owner of this property supports approval of the Marken applications. The Marken zone change will not substantially alter this farm practice or increase its cost. 86.5% of its soils are NRCS Class VII and VIII. According to Mr. Springer, raising hay on this property generates farm losses.

6. DCC 18.136.020(B), Change Consistent with Purpose of Proposed Zoning District

COLW argued that rezoning the Marken property is not consistent with the purpose of the Rural Residential (RR) zoning district, because the subject property is Goal 3 agricultural land. This, however, is an application seeking approval of MUA-10 zoning. In any event, the purpose of the RR zone is irrelevant.

7. Statewide Goal 3

The HOff Recommendation addresses all requirements of Goal 3 in its discussion of the requirements of OAR 660-033-0020 and in other sections of the recommendation. OAR 660-033-0020 addresses all requirements of Goal 3, but it also includes an additional requirement at OAR 660-033-0020(1)(b) that is not a part of the goal and that applies to the extent it does not conflict with and serves the purposes of the goal.

Goal 3 provides that it is a Statewide Goal “[t]o preserve and maintain agricultural lands.” The Marken property is not Agricultural Land as defined by Goal 3, so it is not required to be preserved and maintained for farm use. Farm use is an agricultural activity undertaken for the purpose of making a profit in money.

The HOff Recommendation does not set out the text of the goal so it is set out below. Goal 3 defines agricultural land as follows:

*Agricultural Land -- ***in Eastern Oregon is land of predominantly Class I, II, III, IV, V and VI soils as identified in the Soil Capability Classification System of the United States Soil Conservation Service, and other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land-use patterns, technological and energy inputs required, or accepted farming practices. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands, shall be included as agricultural land in any event.*

More detailed soil data to define agricultural land may be utilized by local governments if such data permits achievement of this goal.

Agricultural land does not include land within acknowledged urban growth boundaries or land within acknowledged exceptions to Goals 3 or 4.

Goal 3’s definition, as well as ORS 215.211, authorize the Board to rely on “more detailed soil data” to define agricultural land. DLCD rules require that assessments of soil capability use the “Soil Capability Classification System of the United States Soil Conservation Service” to determine whether land is “agricultural land” protected by Goal 3. This is the land capability class (LCC) system utilized by the Natural Resources Conservation Service (“NRCS”) and Mr. Rabe in his site-specific soil survey of the Marken property. The information provided in the survey is more detailed than the information provided by the NRCS Web Soil Survey and has been approved for use by the County by DLCD.

C. RECORD/PROCEDURAL ARGUMENTS

On March 1, 2023, the County Planning Division received an e-mail regarding the Marken applications from Robert Currie. The Board determined, in deliberations on March 1, 2023, that this e-mail was filed after the record had closed. As a result, the Board excluded this e-mail from the record and did not consider it when deliberating on this matter.

Abby Kellner-Rode claimed “there was no way for me to join and testify” at the BOCC hearing on January 18, 2023, by Zoom. This, however, is not correct. Others participated by Zoom and instructions for participating via Zoom were provided by the BOCC Agenda that is available to the public via the County website. The January 18, 2023, hearing was also open for attendance in person by any member of the public. Abby Kellner-Rode filed extensive written comments. As a result, she was not prejudiced by her inability to locate and utilize the Zoom instructions and choice not to attend the hearing in person.

III. DECISION:

Based upon the forgoing Findings of Fact and Conclusion of Law, the Board of County Commissioners hereby **APPROVES** Applicant’s applications for a DCCP amendment to re-designate the subject property from Agriculture (AG) to Rural Residential Exception Area (RREA) and a corresponding zone map amendment to change the zoning of the property from Exclusive Farm Use—Tumalo-Redmond-Bend subzone (EFU-TRB) to Multiple Use Agricultural (MUA10).

Dated this ____ day of _____, 2023.

HEARING OFFICER FINDINGS AND RECOMMENDATIONS

FILE NUMBERS: 247-22-000353-PA, 354-ZC

HEARING: September 6, 2022, 6:00 p.m.
Virtual (Zoom), and
In Person @ Barnes & Sawyer Rooms
Deschutes Services Center
1300 NW Wall Street
Bend, OR 97708

**SUBJECT PROPERTIES/
OWNER:**

Property 1:
Mailing Name: HAROLD K MARKEN REV TRUST ETAL
Map and Tax Lot: 1812020000201
Account: 119057
Situs Address: 21495 BEAR CREEK RD, BEND, OR 97701

Property 2:
Mailing Name: HAROLD K MARKEN REV TRUST ETAL
Map and Tax Lot: 1812020000203
Account: 265281
Situs Address: 21493 BEAR CREEK RD, BEND, OR 97701

(Property 1 and 2 collectively referred to as the "Subject Property")

APPLICANT: Harold Marken

**ATTORNEY
FOR APPLICANT:** Liz Fancher
2465 NW Sacagawea Lane
Bend, OR 97703

**TRANSPORTATION
ENGINEER:** Joe Bessman, PE
Transight Consulting, LLC

REQUEST: The Applicant requested approval of a Comprehensive Plan Amendment to change the designation of the Subject Property from Agricultural ("AG") to Rural Residential Exception Area ("RREA"). The Applicant also requested a corresponding Zone Change to rezone the

Subject Property from Exclusive Farm Use – Tumalo-Redmond-Bend subzone (“EFU-TRB”) to Multiple Use Agricultural (“MUA10”).

STAFF CONTACT: Audrey Stuart, Associate Planner
Phone: 541-388-6679
Email: Audrey.Stuart@deschutes.org

RECORD: Record items can be viewed and downloaded from:
<https://www.deschutes.org/cd/page/247-22-000353-pa-and-247-22-000354-zc-marken-comprehensive-plan-amendment-and-zone-change>

I. APPLICABLE CRITERIA

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

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

Title 22, Deschutes County Development Procedures Ordinance

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

Oregon Administrative Rules (OAR), Chapter 660

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

Oregon Revised Statutes (ORS)

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

II. BASIC FINDINGS

LOT OF RECORD: Property 1 described above is a legal lot of record because it is Parcel 1 of Partition Plat 2009-36. Property 2 described above is a legal lot of record because it is Parcel 2 of Partition Plat 2009-36.

SITE DESCRIPTION: The Subject Property consists of two tax lots. Tax Lot 201 is 53.3 acres in size and Tax Lot 203 is 5.74 acres in size. Both tax lots contain frontage on Bear Creek Road to the north and Modoc Lane to the south. Bear Creek Road is designated as a County-maintained Rural Collector and Modoc Lane is designated as a privately-maintained Rural Local Road.

The grade of the Subject Property slopes up gently from the north to the southwest, with areas of more pronounced slopes and rock outcrops. A significant portion of the Subject Property was

previously cleared and used as pasture and to grow hay. A portion of the Subject Property was previously irrigated. Vegetation on the Subject Property differs between areas that were previously irrigated and areas that were retained as native vegetation, including juniper trees, sagebrush, rabbit brush and bunch grasses. Vegetation in areas that were formerly irrigated consists of sparse grasses.

Property 1 is developed with a dwelling and agricultural accessory structure, which are both located in the southeast portion of the Subject Property. Property 2 is developed with a manufactured home. Both residences take access from Bear Creek Road via a shared driveway that extends south along the west boundary of Property 1.

The Subject Property has 9.49 acres of water rights with Central Oregon Irrigation District ("COID"). The Subject Property has previously been in farm use with Property 1 currently receiving special tax assessment for farm use. The Applicant indicated that he intends to relinquish the farm tax status. The submitted Burden of Proof includes the following background on the Subject Property's current water rights:

"Given continued financial losses over approximately four decades, the applicant relinquished most of his Central Oregon Irrigation District water rights so that they could be applied on properties better suited for irrigated farm use. A part of the subject property is irrigated to maintain a lawn for the Marken residence on TL 201. There is also an irrigation pond on this tax lot."

The nearest portion of the City of Bend's Urban Growth Boundary ("UGB") is located approximately 0.13 miles to the east of the Subject Property, to the north of Bear Creek Road. Two parcels located to the north of the Subject Property, across Bear Creek Road, are pending a Comprehensive Plan Amendment and Zone Change for inclusion in the City of Bend's UGB. These properties are identified on Assessor's Map 17-12-35D, as Tax Lots 100 and 200. Assuming this UGB expansion receives all final approvals, the Subject Property will only be separated from the UGB by 90 feet of Bear Creek Road right-of-way. The south portion of the Subject Property is located approximately 0.25 miles from the City of Bend's UGB.

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

Submitted with the application was an Order 1 Soil Survey of the Subject Property, titled *Site-Specific Soil Survey of Property Located at 21493 and 21495 Bear Creek Road, also known as T18S, R12E, Section 2, Tax Lots 203 and 201 (total of 59.04 acres), East of Bend in Deschutes County, Oregon* (hereafter referred

to as the "Applicant Soil Study") prepared by soil scientist Brian T. Rabe, CPSS, WWSS of Valley Science and Engineering (hereafter collectively referred to as "Rabe/Valley"). The Applicant also submitted a traffic analysis prepared by Transight Consulting, LLC titled *Marken Property Rezone* (hereafter referred to as "Traffic Study"). Additionally, the Applicant submitted an application form, a burden of proof statement ("Burden of Proof"), and other supplemental materials, all of which are included in the record for the subject applications.

SOILS: The composition/characterization of the soils at the Subject Property is in dispute in this case. Central Oregon LandWatch ("COLW") argued that the Subject Property soil composition/characterization should be based upon the Natural Resources Conservation Service ("NRCS") maps of the area. Based upon the NRCS maps, the Subject Property contains two different soil types as described below. The Subject Property, per the NRCS maps, contains 58C – Gosney-Rock Outcrop-Deskamp complex, and 36A – Deskamp loamy sand. The 36A soil unit, per the NRCS maps/descriptions, is defined as high-value soil by DCC 18.04 when it is irrigated. The 58C soils complex is not defined as high-value farmland, regardless of irrigation. Using the NRCS maps, COLW argued that the Subject Property is comprised of soils that do qualify as Agricultural Land¹.

The Applicant Soil Study was prepared by Rabe/Valley. The purpose of the Applicant Soil Study was to inventory and assess the soils on the Subject Property and to provide more detailed data on soil classifications and ratings than is contained in the NRCS soils maps. The Applicant Soil Study determined the Subject Property contained approximately 61 percent Land Capability Class 7 and 8 non-irrigated soils, which was primarily observed as shallow, sandy Gosney soils and smaller rock outcroppings. The Land Capability Class 6 soil identified by the Applicant Soil Study was entirely classified as Deskamp soils, which is consistent with the NRCS soils unit map. The Gosney and Deskamp soils are interspersed throughout the Subject Property in pockets that range in size from 6.9 acres to less than one acre. The rock outcroppings were primarily observed in the southeast portion of the Subject Property. Based upon the Applicant Soil Study the Subject Property is comprised of soils that do not qualify as Agricultural Land.

The NRCS soil map units identified on the Subject Property is described below.

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

58C, Gosney-Rock Outcrop-Deskamp complex, 0 to 15 percent slopes: This soil type is comprised of 50 percent Gosney soil and similar inclusions, 25 percent rock outcrop, 20 percent Deskamp soil and similar inclusions, and 5 percent contrasting inclusions. Gosney soils are somewhat excessively drained with rapid permeability. The available water capacity is about 1 inch. Deskamp soils are somewhat excessively drained with rapid permeability. Available water

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

capacity is about 3 inches. The major use for this soil type is livestock grazing. The Gosney soils have ratings of 7e when unirrigated, and 7e when irrigated. The rock outcrop has a rating of 8, with or without irrigation. The Deskamp soils have ratings of 6e when unirrigated, and 4e when irrigated. Approximately 3.7 percent of the subject properties is made up of this soil type, all located within the northern parcel.

Further discussion regarding soils is found in the relevant findings below.

UTILITY SERVICES, PUBLIC SERVICES AND COUNTY ZONING AND COMPREHENSIVE PLAN HISTORY: Applicant, in its Burden of Proof (pages 12 – 14), provided a summary of utility services, public services and the county zoning and comprehensive plan history.

SURROUNDING LAND USES: The general surrounding area of the Subject Property is defined by the City of Bend’s UGB to the west and then a mix of residential and agricultural uses spreading out to the east. The Subject Property is surrounded on three sides by lands zoned MUA10, including a 35.32-acre parcel located to the north of Bear Creek Road which is pending annexation into the City of Bend for development with affordable housing. Other surrounding MUA10 properties are developed with dwellings, and hobby farming primarily consisting of stables and fenced pastures. The northwest corner of the Subject Property adjoins land zoned UAR10, which is developed with dwellings and hobby farming consisting of irrigated fields. Adjoining properties to the west and northwest are zoned EFU and located immediately between the Subject Property and the City of Bend’s UGB.

The adjacent properties are outlined below in further detail:

North: The property immediately north of the Subject Property (Tax Lots 100 and 200 on Assessor’s Map 17-12-35D) is zoned MUA10 and is pending an application for inclusion in the City of Bend’s UGB. In 2017, Deschutes County previously approved a Comprehensive Plan Amendment from Agriculture to Rural Residential Exception Area and Zone Change from EFU to MUA10 through file numbers 247-16-000317-ZC, 247-16-000318-PA for this property. The current application with City of Bend (file number PLUGB20220115) is for a Comprehensive Plan designation change to Residential Medium Density and a concurrent Zone Change to Urbanizable Area. If approved, the Subject Property will be located across Bear Creek Road from the City of Bend UGB. To the northeast of the Subject Property are three other MUA10 zoned parcels, two of which are developed with single-family dwellings (Tax Lots 1601 and 1600 on Assessor’s Map 17-12-35). Farther north are properties zoned UAR10 (Urban Area Reserve) and EFU, none of which appear to be engaged in farm use. Overall, surrounding properties to the north appear to be undeveloped or developed with single-family dwellings.

West: Adjacent properties to the west of the Subject Property are all zoned EFU. Beyond that, the City of Bend UGB is located 0.25 miles from the western boundary of the Subject Property. These adjacent EFU parcels (Tax Lots 200, 1003, and 1001 on Assessor’s Map 18-12-2) are 16.99 acres, 27.19, and 12.45 acres in size and all appear to contain some type of farm use. Tax Lot 1003 contains pivot irrigation system and no structures, but was recently approved for a Lot of Record Dwelling through Deschutes County file 247-21-000018-CU. Tax Lot 1001 contains a nonfarm dwelling

approved through Deschutes County file CU-01-75 and Tax Lot 200 contains a 1969 dwelling that predates the EFU Zone. The property northwest of the Subject Property is comprised of urban area reserve and urban lands. One UAR10 property grows hay and the remainder of the UAR10 lands are either developed with single-family homes or vacant.

East: All properties due east of the Subject Property for a distance of one mile are zoned MUA10 and developed with single-family dwellings. The Dobbin Acres subdivision is located to the east of Ward Road, approximately 0.25 miles from the Subject Property. Lots within the Dobbin Acres subdivision generally range in size from one to two acres. Surrounding MUA10 properties to the east that are not within the Dobbin Acres subdivision range in size from approximately one acre to 19.52 acres (Tax Lot 1312 on Assessor’s Map 18-12-2) and are developed with single-family dwellings in addition to small-scale hobby farming. Properties to the northeast of the Subject Property primarily consist of large, undeveloped lots that are zoned MUA10 and EFU. These larger properties do not appear to be in active farm use and contain two churches, a Pacific Power substation, and two commercial-scale solar farms. The remainder of this area to the northeast includes vacant, non-irrigated lands with the exception of a few small EFU-zoned properties north of Highway 97 that have irrigated fields. These smaller, irrigated properties are almost one-half mile away from the Subject Property and separated by Bear Creek Road, Highway 20, and large undeveloped tracts.

South: Immediately south of the Subject Property are four MUA10-zoned parcels that are approximately five acres each in size. Tax Lots 1102, 1105, 1104, and 1100 (Assessor’s Map 18-12-2) are each developed with a dwelling, residential and agricultural accessory structures, and irrigated and non-irrigated pasture. This development pattern continues farther south to Stevens Road, and properties to the east and west of Thunder Road are also approximately five acres each in size and are developed with single-family dwellings, with several appearing to contain small-scale agriculture uses. Tax Lot 1208 on Assessor’s Map 18-12-2 is 36.65 acres in size and consists of undeveloped land with native vegetation. This parcel is owned by Central Oregon Irrigation District and the Central Oregon canal passes through this property and runs from southwest to northeast. The majority of land to the south of the Subject Property is zoned MUA10; only two parcels located to the south of the Subject Property and to the west of Ward Road are zoned EFU. These parcels, Tax Lot 1005 and Tax Lot 1308 on Assessor’s Map 18-12-2, are 3.34 and 39.18 acres in size, respectively. Both parcels contain a dwelling, and Tax Lot 1308 is currently receiving special tax assessment for farm use and appears to contain some pasture or hay production.

The Applicant, in its Burden of Proof (pages 8 – 12), provided a detailed inventory of nearby properties setting forth the specific tax lot, size, physical improvements, tax status and comments related to the use (i.e., “farm use”) of each property.

PUBLIC AGENCY COMMENTS: The Planning Division mailed notice on May 12, 2022, to several public agencies and received the following comments:

Deschutes County Senior Transportation Planner, Peter Russell, May 20, 2022, Comments

"I have reviewed the transmittal materials for 247-22-000353-PA/354-ZC to amend the Comprehensive Plan designation of two abutting properties totaling approximately 59 acres from Agriculture (AG) to Rural Residential Exception Area (RREA) and change the zoning for those same properties from Exclusive Farm Use (EFU) to Multiple Use Agriculture (MUA-10). The properties are located at 21493 and 21495 Bear Creek Rd., aka County Assessors Map 18-12-02, Tax Lots 203 and 18-12-02, Tax Lot 201, respectively. For reasons discussed below, staff finds more information is needed to address the Transportation Planning Rule (TPR) and County code.

The applicant's traffic study dated April 22, 2022, is incomplete for two reasons. The TPR at Oregon Administrative Rule (OAR) 660-012-0060 requires the demonstration of whether a plan amendment/zone change will have a significant effect or not. To determine that, the traffic study must include the operational analysis of the affected intersections pre-development and post-development. The traffic study lacks this information and thus does not comply with the TPR. Second, Deschutes County Code (DCC) 18.116.310(G)(4) requires zone changes to include a 20-year analysis. DCC 18.116.310(G)(10) requires existing and future years levels of service (LOS), average vehicle delay, and volume/capacity (V/C) ratios both with and without the project. (The V/C ratios are only applicable if ODOT facilities are analyzed.) The TIA lacks this feature and thus does not comply with County code. Further, the combination of the TPR and County code helps identify whether the transportation system has adequate capacity to serve the plan amendment/zone change or if the system is already overcapacity regardless of the proposed plan amendment/zone change. By contrast, the applicant has submitted what is in essence a trip generation memo.

The property accesses Bear Creek Road, a public road maintained by Deschutes County and functionally classified as a collector. The property has a driveway permit approved by Deschutes County (#247-SW8923) and thus complies with the access permit requirements of DCC 17.48.210(A).

The County will assess transportation system development charges (SDCs) when development occurs based on the type of proposed use. However, as a plan amendment or a zone change by itself does not generate any traffic, no SDCs are triggered at this time."

In response to Mr. Russell's comments, above, the Applicant made two subsequent revisions to their traffic study. Updated traffic information was submitted on June 23, 2022, and June 29, 2022.

Deschutes County Senior Transportation Planner, Peter Russell, June 29, 2022, Comments

"I have reviewed the June 23, 2022, revised traffic analysis for 22-353-PA/354-ZC. While it is better, it still does not provide the information requested in my original comments on April 22, which is attached. Specifically, the revised traffic impact analysis still lacks any data on Level of Service (LOS) of affected County roads pre- and post-plan amendment. Similarly, if there are affected State highways, there is no pre- and post-plan amendment Volume to Capacity (V/C) ratios. The traffic analysis needs to provide that information for the 20-year horizon year. A traffic analysis has two major components: 1) the trip generation from the proposed use and 2) the current and

projected traffic volumes from the affected facilities. The combination of information from #1 and #2 then informs how the affected intersections perform now and in 20 years.”

Deschutes County Senior Transportation Planner, Peter Russell, June 30, 2022, Comments

This is exactly what I needed. The information demonstrates the project complies with the Transportation Planning Rule (TPR) and Deschutes County Code (DCC) 18.116.310. Appreciate the fast response.

Central Oregon Irrigation District

“Please be advised that Central Oregon Irrigation District (COID) has reviewed the application received on May 13, 2022 for the above referenced project located 21495 BEAR CREEK RD, BEND, OR 97701/tax lot: 1812020000201 and 21493 BEAR CREEK RD, BEND, OR 97701/ tax lot: 1812020000203. The applicant requests approval of a Comprehensive Plan Amendment to change the designation of the subject property from Agricultural (AG) to Rural Residential Exception Area (RREA). The applicant also requests a corresponding Zone Change to rezone the subject property from Exclusive Farm Use – Tumalo-Redmond-Bend subzone (EFU-TRB) to Multiple Use Agricultural (MUA10).

Tax lot 1812020000201 has 9.49 acres of mapped water rights appurtenant COID irrigation water. COID has facilities (point of delivery) adjacent to the southern boundary of tax lot 1812020000201. There appears to be a private irrigation ditch adjacent to the eastern boundary of tax lot 1812020000203.

Listed below are COIDs initial comments to the provided pre-application site plan. All development affecting irrigation facilities shall be in accordance with COID’s Development Handbook and/or as otherwise approved by the District.

- Map and Tax lot: 1812020000201 has 9.49 acres of appurtenant COID irrigation water. Historically there were 36.0 acres of irrigation appurtenant to this tax map. Since 2018, 26.51 acres of irrigation were voluntarily removed by the property owner. Prior to removal, the 36.0 acres was under active irrigation and producing crop.*
- Map and Tax lot: 1812020000203: There are no COID water rights appurtenant to this parcel.*
- Irrigation infrastructure and rights-of-way are required to be identified on all maps and plans*
- Any irrigation conveyance, District or private, which passes through the subject property shall not be encroached upon without written permission from this office.*
- No structures of any kind, including fence, are permitted within COID property/easement/right of way without written permission from this office.*
- Policies, standards and requirements set forth in the COID Developer Handbook must be complied with.*

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

The following agencies did not respond to the notice: Bend Fire Department, City of Bend Planning Department, Oregon Department of Agriculture, Oregon Department of Land Conservation and Development, Deschutes County Assessor, Deschutes County Building Division, Deschutes County Road Department, and District 11 Watermaster.

PUBLIC COMMENTS: The Planning Division mailed notice of the application to all property owners within 750 feet of the Subject Property on May 12, 2022. The Applicant also complied with the posted notice requirements of Section 22.24.030(B) of Title 22. The Applicant submitted a Land Use Action Sign Affidavit indicating the Applicant posted notice of the land use action on May 12, 2022.

Prior to the public hearing, four public comments were received into the record. Courtney Eastwood ("Eastwood") requested the application in this case be denied because approval would impact wildlife and increase density in the general area. Julia and Justin Geraghty ("Geraghty") (May 23, 2022), as neighboring property owners, requested the application be denied. Drew Mills (May 23, 2022) also requested the application be denied. Kristy Sabo, on behalf of COLW (May 27, 2022), indicated that COLW was reviewing the application but indicated that it appeared that all relevant approval criteria were not met by the application.

At the September 6, 2022, hearing (the "Public Hearing") Joleyne Brown ("Brown") and Geraghty testified in opposition to the application's approval. Brown testified that she is concerned with how an approval of the application would impact her adjacent property. In addition, Brown stated that the Applicant had removed rocks on the Subject Property and that Applicant had grown hay for many years. Brown stated that she believed the Subject Property could be successfully farmed with the application of water (irrigation) and fertilizer. Geraghty questioned whether or not the Applicant had made beneficial use of irrigation water within the last five years. Geraghty also questioned whether the application in this case was attempting to circumnavigate urban growth boundary rules.

COLW, through attorney Rory Isbell, submitted a document on the date of the hearing (September 6, 2022) setting forth its evidence/arguments related to the application. In summary, the 9/6/22 COLW submission argued that the application did not meet the Goal 3 agricultural land requirements, did not meet the requirements of Goal 14 and did not satisfy the change/mistake requirements of DCC 18.136.020(D). After the public hearing, and during the open-record period, COLW submitted two additional documents into the record (September 13, 2022 and September 20, 2022). These two COLW documents expanded upon the COLW 9/6/22 submission arguments; excepting that the 9/13/2022 submission also argued that the County had "previously rejected a similar application."

Brown submitted a post-hearing document (September 11, 2022) indicating that she and her husband had grown hay on their property suggesting that hay could be successfully grown on the

Subject Property. Brown also (9/11/2022) expressed her belief that additional traffic that would result if the application in this case is approved.

Tamara Sullivan Holcomb submitted a document (September 6, 2022) indicating she was neutral related to approval/denial of this application in this case. 143 Investments LLC submitted a document on September 2, 2022, indicating general support for approval of the application. The 143 Investments LLC document also indicated that it owns property adjacent to the Subject Property and that the 143 Investment property has poor soil (rocky and unproductive) similar to the Subject Property.

The Hearings Officer addressed relevant public comments in the findings below.

NOTICE REQUIREMENT: On August 9, 2022, the Planning Division mailed a Notice of Public Hearing to all property owners within 750 feet of the Subject Property and public agencies. A Notice of Public Hearing was published in the Bend Bulletin on Sunday, August 14, 2022. Notice of the first evidentiary hearing was submitted to the Department of Land Conservation and Development on July 26, 2022.

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

III. FINDINGS & CONCLUSIONS

Preliminary Findings:

Central Oregon LandWatch raised an issue that did not neatly fit into the relevant approval criteria discussed below. The Hearings Officer addresses that issue in this Preliminary Findings section.

COLW's Argument: Similar Application Rejected.

COLW, in its 9/13/2022 record submission (page 2), stated the following:

"In 1980, a previous owner of the subject property applied to allow non-farm uses, similar to what is proposed in the current application, arguing that the property is not properly agricultural land. The County squarely denied that application, finding that "[s]ome type of farming and/ or grazing can [be] put to use on this property." Exhibit 1 (Deschutes County File No. TP-596). The application in that file also included a soil study, which concluded that the property is predominantly Class I-VI soils and suitable for farm use."

Applicant responded to COLW's similar application rejected argument (Final Argument, page 18) as follows:

"COLW claims that a similar application was previously denied by the County. The application, however, was not similar. It was an application that sought approval of the Moore View Acres

*subdivision. The subdivision proposed lot sizes smaller than allowed by the then-applicable EFU-20 zoning district. As stated by Planning Director John Anderson, 'evidence regarding low soil capability might justify a change to a non-EFU zone but would not permit residential subdivision in a farm use district. *** A zone change to a Multiple Use Agricultural Zone to be followed by a conditional use for a cluster development would appear to be more productive for the applicant and more consistent with the Plan.'*

The finding quoted by COLW that 'some type of farming and/or grazing' may occur on the property is correct but those activities are not 'farm use' as defined by ORS 215.203. COLW's claim that a soils study concluded in 1980 that the Marken property is predominantly Class I-VI soils is correct but the 'study' is not one of the quality and detail provided by Mr. Rabe.

No formal, scientific soils study was conducted. The applicant's engineer, William Tye, PE provided soils information based on an aerial photograph, visual observations and the application of general soils maps from three different sources (Deschutes Irrigation Project maps circa 1945, 1958 Soil Survey Deschutes Area based on 1945 mapping and Assessor's tax lot maps with soils information. Mr. Tye was not a soils scientist and did not conduct an Order 1 soil survey. The Supplemental Report provided by Mr. Tye says that he subject property 'has limited farm capabilities and has been farmed very little due to location of the farmable land use to rock outcropping and Class VII type soils.'

COLW claims, without citing any specific document, that the soils study found that the subject property was suitable for farm use. We have searched the materials filed by COLW and have been unable to find any statement in a document that might be considered a soil study that concludes that the subject property is suitable for farm use."

The Hearings Officer concurs with Applicant's above-quoted comments. The Hearings Officer reviewed the Moore Acres 1980 land use documents included in the record of this case. The Hearings Officer notes (Applicant Rebuttal, 9/20/2022, Exhibit R-3) that County Staff indicated that the Subject Property (at the time of Moore Acres land use decision) was "not in agricultural use." (Staff Conclusion D.) The Moore Acres application was not a comprehensive plan or zone change application; rather it was requesting a variance. The Hearings Officer also notes that the Moore Acres application (see Burden of Proof, Applicant Rebuttal, 9/20/2022 Exhibit R-3) did not directly and/or comprehensively address the applicability of Goal 3 or whether the Subject Property was Goal 3 "agricultural land."

The Hearings Officer finds COLW's "similar application" argument to have little applicability or relevance, if any, to this case.

Title 18 of the Deschutes County Code, County Zoning

Chapter 18.136, Amendments

Section 18.136.010, Amendments

DCC Title 18 may be amended as set forth in DCC 18.136. The procedures for text or legislative map changes shall be as set forth in DCC 22.12. A request by a property owner for a quasi-judicial map amendment shall be accomplished by filing an application on forms provided by the Planning Department and shall be subject to applicable procedures of DCC Title 22.

FINDING: The Applicant, also the property owner, requested a quasi-judicial plan amendment and filed the applications for a plan amendment and zone change. The Applicant filed the required Planning Division’s land use application forms for the proposal. The application will be reviewed utilizing the applicable procedures contained in Title 22 of the Deschutes County Code.

Section 18.136.020, Rezoning Standards

The applicant for a quasi-judicial rezoning must establish that the public interest is best served by rezoning the property. Factors to be demonstrated by the applicant are:

A. That the change conforms with the Comprehensive Plan, and the change is consistent with the plan's introductory statement and goals.

FINDING: The Applicant provided the following response (Burden of Proof, pages 19 & 20) related to this standard:

“The Plan's introductory statement explains that land use must comply with the statewide planning system and sets out the legal framework set by State law. It summarizes the Statewide Planning Goals. It also explains the process the County used to adopt the current comprehensive plan. This application is consistent with this introductory statement because the requested change has been shown to be consistent with State law and County plan provisions and zoning code that implement the Statewide Planning Goals.

The following provisions of Deschutes County's amended comprehensive plan set out goals or text that may be relevant to the County's review of this application. Other provisions of the plan do not apply.”

The Applicant utilized this analysis, as well as analyses provided in prior Hearings Officers’ decisions, to determine and respond to only the Comprehensive Plan Goals and policies that apply, which are listed in the Comprehensive Plan section of this decision/recommendation. The Hearings Officer agrees with the Applicant’s Burden of Proof analysis. The Hearings Officer finds, as demonstrated in subsequent findings, that this provision is met.

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

FINDING: The Applicant provided the following response (Burden of Proof, pages 14 & 15) related to this criterion:

"The approval of this application is consistent with the purpose of the MUA-10 zoning district which [is] stated in DCC 18.32.010 as follows:

'The purposes of the Multiple Use Agricultural Zone are to preserve the rural character of various areas of the County while permitting development consistent with that character and with the capacity of the natural resources of the area; to preserve and maintain agricultural lands not suited to full-time commercial farming for diversified or part-time agricultural uses; to conserve forest lands for forest uses; to conserve open spaces and protect natural and scenic resources; to maintain and improve the quality of the air, water and land resources of the county; to establish standards and procedures for the use of those lands designated unsuitable for intense development by the Comprehensive Plan, and to provide for an orderly and efficient transition from rural to urban land use.'

The approval of the application will allow the property to provide rural residential living on land that is not suited to full-time commercial farming without eliminating part-time, non-commercial agricultural use of the land. The large lot size of the MUA-10 zone and planned development rules both help conserve open spaces and protect scenic resources. The location of the property near the City of Bend will help maintain air quality by reducing vehicle trip lengths by future residents of the property and provide an orderly and efficient transition from rural to urban land use."

The Hearings Officer concurs with the above-quoted Applicant comments. The Hearings Officer finds the Applicant has demonstrated the change in classification is consistent with the purpose and intent of the MUA10 Zone.

C. That changing the zoning will presently serve the public health, safety and welfare considering the following factors:

1. The availability and efficiency of providing necessary public services and facilities.

FINDING: Although there are no disclosed plans to develop the Subject Property, the above criterion specifically asks if the proposed zone exchange will *presently* serve public health, safety, and welfare. The Applicant provided the following response (Burden of Proof, page 20) related to this criterion:

*"Necessary public facilities and services are available to serve the subject property. Will-serve letters from Pacific Power, **Exhibit C** and Avion Water Company, **Exhibit D** show that electric power is available to serve the property.*

*The existing road network is adequate to serve the use. This has been confirmed by the transportation system impact review conducted by Joe Bessman, PE of Transight Consulting, LLC, **Exhibit L** of this application. The property receives police services from the Deschutes County Sheriff. The Marken property is within the boundaries of a rural fire protection district and is close to the City of Bend."*

Adjacent properties on all sides contain dwellings, with the exception of one property that has received approval for a dwelling which has not been constructed yet. Neighboring properties are served by wells, on-site sewage disposal systems, electrical service, and telephone service. No issues have been identified in the record regarding service provision to the surrounding area.

The northwest corner of the Subject Property is located 0.13 miles from the City of Bend UGB. This close proximity to urban development will allow for, in the future, efficient service provision. The application materials include will-serve letters indicating electrical service and water service are available to the Subject Property.

There are no known deficiencies in public services or facilities that would negatively impact public health, safety, or welfare. Prior to development of the Subject Property, the Applicant would be required to comply with the applicable requirements of the Deschutes County Code, including possible land use permits, building permits, and sewage disposal permits processes. Assurance of adequate public services and facilities will be verified in future land use permitting processes. The Hearings Officer finds this provision is met.

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

FINDING: The Applicant provided the following response (Burden of Proof, pages 20 & 21) related to this criterion:

“The application of MUA-10 zoning to the subject property is consistent with the specific goals and policies in the comprehensive plan as shown by the discussion of non-resource land plan policies above.

Four EFU-zoned properties lie between the City of Bend and the Marken property. These properties will remain protected for farm use by the EFU zoning district as intended by the goals and policies of the comprehensive plan, including Policy 2.2.1. None of the four properties is, however, engaged in commercial farm use and they, also, appear to be good candidates to be rezoned MUA-10 and designated RREA so that they are positioned to be considered for annexation into the City of Bend...

*...
All other surrounding properties for a distance of .25 miles and more are zoned MUA- 10 and developed with single-family homes on lots that are predominantly much smaller than 10 acres in size. The rezoning of the Marken property will not have impacts that are inconsistent with any specific comprehensive plan goal or policy.”*

In addition to these comments, the Applicant provided specific findings for each relevant Comprehensive Plan goal and policy, which are addressed below the Burden of Proof (pages 15 - 20). These findings are included later in this recommendation in the Findings section titled: DIVISION 15, STATEWIDE PLANNING GOALS AND GUIDELINES, OAR 660-015, Division 15, Statewide Planning Goals and Guidelines. The Hearings Officer incorporates the findings for DIVISION 15, STATEWIDE PLANNING GOALS AND GUIDELINES, OAR 660-015, Division 15, Statewide Planning Goals and Guidelines as additional findings for this criterion.

The Hearings Officer finds Applicant’s Comprehensive Plan goal/policy specific findings (Burden of Proof, pages 15 – 20) are reasonable and appropriate, and constitute substantial evidence that this criterion has been met. The Hearings Officer finds the Applicant demonstrated the impacts on surrounding land use will be consistent with the specific goals and policies contained within the Comprehensive Plan.

D. That there has been a change in circumstances since the property was last zoned, or a mistake was made in the zoning of the property in question.

FINDING: The Applicant proposed to rezone the Subject Property from EFU to MUA10 and re-designate the properties from Agriculture to Rural Residential Exception Area. COLW argued that the Applicant had failed to provide substantial evidence in the record that this criterion had been met. COLW (September 6, 2022, page 3) stated the following:

“There has been no change in circumstances since the property was last zoned. The soils and agricultural suitability of the subject property have also not changed since it was planned and zoned for agricultural use by the County. There has further been no mistake in the current EFU zoning of the subject property. The County embarked on legislative efforts in both 2014 and 2019 to establish whether errors exist in its EFU zoning designations, but concluded both times that no such errors exist. In 2015, the County consulted with Jon Andersen, who was a Senior Planner, and later became the Community Development Department Director, when the County developed its first comprehensive plan. Mr. Andersen confirmed that none of the County’s agricultural land designations were made in error. Exhibit 1 (January 15, 2015 Deschutes County Community Development Department notes from phone conversation with John Andersen). DLCD also commented to the County at the time that it was ‘unable to determine the nature and scope of the mapping error’ of agricultural land designations. Exhibit 2 (January 8, 2015 DLCD letter).”

The Hearings Officer notes that “DLCD” refers to the Oregon Department of Land Conservation and Development. Applicant provided the following responsive comments to COLW’s above-quoted evidence and argument (Final Argument, 9/26/2022, pages 12 -14):

“There are numerous changes in circumstance that merit approval of a zone change and plan amendment for the Marken property. Zoning the Marken property EFU in 1979/1980 was also a mistake because its soils were far less productive than believed at the time. Additionally, zoning Marginal Land believed to be unprofitable to farm was a mistake as shown by the Supreme Court’s Wetherell decision. The following are some of the many changes that have occurred since the Marken property was zoned EFU and mistakes that support approval of the Markens’ applications:

- A. *Since the time the property was zoned EFU, a large tract of land zoned EFU has been rezoned MUA-10 (Porter Kelly Burns and Eastside Bend) and annexed to the City of Bend. The residential development area of the Porter Kelly Burns property will be developed at an urban density of 11 units per acre.*

- B. *In 2022, the COID property that adjoins the SE corner of the Marken property was rezoned from EFU to MUA-10. Its plan designation was changed from Agriculture to RREA, Rural Residential Exception Area.*
- C. *The State of Oregon located a short distance due south of the Marken and COID properties obtained County approval to rezone and redesignate 640 acres of land from Agricultural Land and EFU to RREA and MUA-10 by ordinances approved in 2013 and 2018. The land rezoned in 2013 has been annexed to the City of Bend.*
- D. *The adjoining 143 Investments, LLC property (TL 1003, Map 18-12-02) recently received approval of a lot of record dwelling after demonstrating that approximately 86.5% of the soils on that property are LCC VII (Gosney) and VIII (Rock outcrop) nonagricultural soils. NRCS mapping was mistaken in mapping the majority of the 143 Investments property Class 36A, Deskamp loamy sand – the same soil the NRCS erred in mapping as being found on more than 50% of the Marken property.*
- E. *US Census data shows that the population of Deschutes County has increased by at least 336% since the time the County last zoned the Marken property.*
- F. *The potential viability of farming has decreased since 1979/1980 when the Marken property was zoned for farm use. Even when the plan was adopted, it was recognized that farming the area that includes the Marken property was marginal and not likely to produce a profit in money.*
- G. *The Oregon Supreme Court decided the Wetherell case and struck LCDC’s administrative rule that defined “farm use” as any agricultural activity that generates gross income.*
- H. *The applicant obtained a more-detailed soils survey that shows that NRCS mapping was in error. This is both a change of circumstances and an error that justify rezoning and redesignating the Marken property.*

COLW argues no that no mistake or change in circumstances exist to support approval of the Marken applications. This argument is based on the following representation that is not correct:

‘The County embarked on legislative efforts in both 2014 and 2019 to establish whether errors exist in its EFU zoning designations, but concluded both times that no such errors exist.’

The County did not conclude that mapping errors do not exist and the legislative efforts were not designed to establish whether error exist in its EFU zoning designations.

COLW offered two documents to support its erroneous assertions –notes of a phone conversation with former CDD Director John Andersen (“Anderson Notes”) and a January 8, 2015 letter written by Rob Hallyburton, Community Services Division Manager for DLCD (DLCD letter).

The Anderson Notes do not, however, “confirm that none of the County’s agricultural land designations were made in error” as is claimed by COLW. The Anderson Notes indicate only that the County relied on what was the best available information available in 1979/1980 – historic soil maps no longer in use that were general and incomplete and information regarding irrigated

lands provided by irrigation districts. The Anderson Notes do not say that the County mapping efforts were conducted without error or that soils information was such that it was infallible. The County's 1979 comprehensive plan's Resource Element explains that a "general soil study" was completed in 1973 and that detailed mapping was done only for land north of Bend (not the Marken property). The 1979 plan relied on this general information; not property specific Order 1 soils surveys. Exhibit PH-6. The very general nature of the soils mapping information relied on to apply EFU zoning to the Marken property is evident on the Soils Associations map included in the Resource Element, Exhibit PH-6.

Furthermore, as documented by our Post-Hearing Evidence, the County's 2014 and 2019 legislative efforts were not undertaken to determine whether errors exist in its EFU zoning designation. In fact, Deschutes County believed that it was not necessary for it to make such a determination. Exhibit PH-12. The County's 2014 legislative effort was confined to 840 acres of the County. DLCD questioned whether the County would be able to establish that an error in mapping had occurred for the 840 acres but the claim that the County concluded no errors existed is not correct. The 2014 effort was paused by the Board of Commissioners in 2015 with a request for LCDC rulemaking because DLCD and the County held differing views of whether HB 2229 is limited to properties with mapping errors or may be applied more broadly to any resource property based on changed circumstances. Exhibit PH-12, PH-7 (Applicant's PostHearing Evidence).

Likewise, the DLCD Letter says that the County's 2014 HB 2229 "re-acknowledgment" effort relates to "several non-contiguous problem areas" – not to the entire County. The letter notes that it was unable to determine the nature and scope of the mapping error the county intends to address in rezoning "the areas the county has shared with the department" (a number of small areas totaling 840 acres). The DLCD Letter clearly does not support COLW's claim that no errors were made by Deschutes County in mapping resource lands.

The County's 2019 legislative review revitalized efforts to rezone the 840 acres and to create a zoning district to apply to non-resource lands. The County did not seek to determine whether mapping errors exist in designating resource lands. See, Exhibits PH-3 and PH-6 Considering the Applicant's above response, staff requests the Hearings Officer make specific findings on this issue."

The Hearings Officer finds the above-quoted Applicant's Final Argument comments, along with the accompanying referenced exhibits, represent credible substantial evidence. The Hearings Officer adopts the above-quoted Applicant comments as the Hearings Officer's findings for this criterion. The Hearings Officer finds, based upon the Applicant's above-quoted comments, that there have been changes in circumstances since the Subject Property was last zoned. Further, the Hearings Officer finds, based upon the Applicant's above-quoted comments and the record as a whole, that the NRCS soil classifications were imprecise (mistaken) and that the Applicant's site-specific soil study accurately represents the correct soil classifications.

Deschutes County Comprehensive Plan

Chapter 2, Resource Management

Section 2.2 Agricultural Lands

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

FINDING: COLW and Applicant disagree as to whether the Subject Property is Goal 3-defined "Agricultural Land" (see, COLW's 9/6/2022, 9/13/2022 and 9/2022 record submissions and Applicant's Burden of Proof plus Applicant's 9/6/2022, 9/20/2022 and 9/26/2022 record submissions). The "Agricultural Land" issue is closely related to the Applicant and COLW disagreement with respect to whether the Subject Property is "Non-resource Land." The "Agricultural Land" issue is relevant to a number of approval criteria in this case. The Hearings Officer, in these findings for Section 2.2 Agricultural Lands, Goal 1, provides general findings related to the "Agricultural Land" issue.

The Hearings Officer finds that COLW most concisely set forth its "Agricultural Land" evidence and arguments in its 9/6/2022 record submission. The Hearings Officer quotes the relevant COLW comments below:

"The subject property is agricultural land and protected for exclusive farm use by statewide land use planning Goal 3 because it is predominantly comprised of Class I-VI soils as determined by the NRCS. Goal 3, OAR 660-033-0020(1)(a), DCC 18.040.030. According to the NRCS, the soils of the subject property are predominantly Class III irrigated and Class VI unirrigated, as documented in the application. Application at Exhibit A, Appendix A (NRCS Web Soil Survey).

It is also well documented in the application that the property has a long history of farm use, and that the primary purpose of that use has been to obtain a profit. The application readily admits that the applicants obtained the property in 1981 and since then "grew hay and occasionally raised cattle." The application explains that while the profit from those agricultural activities has varied, the applicants made "efforts to make a profit in money by farming the property." Application at 24. The purpose of those agricultural activities was to obtain a profit from raising crops. The property is agricultural land because it has been in farm use for over 30 years.

Further, the County's definition of "agricultural use" specifically excludes considerations of profit. DCC 18.04.030 ("Agricultural use" means any use of land, whether for profit or not, related to raising, harvesting and selling crops[.]")

The property is additionally in farm use because it contains an impoundment of water. ORS 215.203(2)(b)(G).

The applicant's hired soil scientist's study is deficient for excluding "water" and "developed land" from its analysis. Application Exhibit A Figure 4.

The soil study further finds that 29 of its observation sites found "conditions most closely matching Deskamp soils" which are Class III irrigated and Class VI unirrigated; and finds that only 24 of its

observation sites found “conditions mostly closely matching Gosney soils” which are Class VII. Application Exhibit A at page 4. Despite this majority of the soil study’s observations showing Class III/VI soils, the soil study finds a majority of the property as Class VII-VIII. This conclusion cannot be squared with the reported results of the 58 observation locations, which show a majority of Class III/VI Deskamp soils.

The property currently has 9.49 acres of water rights. The application explains that it used to have 36 acres of water rights, but the applicant chose to sell the majority of those water rights. Application at 26. That choice is now being used to argue that the property’s limited water rights detract from its suitability for agriculture. This applicant’s own willful choice to reduce water availability on the property should not now be considered as a reason the property’s agricultural land status. The applicant could buy back water rights just as readily as they sold them.”

Applicant, through its Burden of Proof, hearing testimony of attorney Fancher, and its record submissions, addressed each of the “Agricultural Land” issues raised above by COLW. Applicant also provided a Subject Property site-specific soil study/survey (the “Applicant Soil Study”) and supplemental comments provided by Rabe/Valley. The Hearings Officer finds that Applicant’s Final Argument (September 26, 2022 submission), while lengthy, provides a credible and persuasive analysis of the “Agricultural Land” issue. The Hearings Officer includes Applicant’s Final Argument “Agricultural Land” comments below:

“1. Central Oregon LandWatch’s Claim that Marken Property is Goal 3 “Agricultural Land” based on its NRCS Soils Mapping (COLW Letters of September 6, 2022 and September 20, 2022)

Summary of Response: *The text of Statewide Goal 3 allows counties to rely on soil surveys that are more detailed than soil surveys prepared by the NRCS. ORS 215.211 allows property owners to obtain and submit soil surveys to a county to determine whether land is “Agricultural Land.” DLCD reviews all such surveys. It requires that the surveys be prepared by soils classifiers and that the NRCS (SCS) land capability classification system (LCC Classes I through VIII) be used in the survey. This process provides an exception to LCDC’s rule that says that soils classified LCC I-VI in Eastern Oregon by the NRCS are agricultural land. DLCD’s program and website recognize this fact.*

Detailed Response: *COLW repeats an argument that it has made without success before – that the County must rely on NRCS soils mapping work to determine whether land is “Agricultural Land” and that it must disregard the more-detailed soil survey results presented by DLCD approved soils classifier, Brian Rabe. COLW’s argument was presented and rejected by LUBA Page 2 – Applicant’s Final Argument (Marken) in Central Oregon LandWatch v. Deschutes County (Aceti), 74 Or LUBA 156 (2016). It was also presented and rejected in the Swisher plan amendment and zone change application by the County’s hearings officer and Board of Commissioners at pages 28-43 of **Exhibit E** to Ordinance 2022-003 (decision filed 9/6/2022 by Liz Fancher). **PH-10 and PH-11** (Applicant’s Post-Hearing Evidence).*

In Aceti, COLW argued that the results of an Order 1 soil survey were not supported by substantial evidence because the data in the Order 1 soil survey and the NRCS soil survey conflict. LUBA found

that OAR 660-033-00030 allows the county to rely on more detailed data on soil capability than provided by NRCS soil maps to define agricultural land provided the soils survey has been certified for use by Deschutes County by DLCD. LUBA also noted that “NRCS maps are intended for use at a higher landscape level and include the express statement “Warning: Soil Ratings may not be valid at this scale.” The Order 1 survey prepared by Mr. Rabe for the Markens is a higher order survey than the NRCS survey. This fact was confirmed by DLCD’s review of the soil survey, **Exhibit A** (Applicant’s Burden of Proof). The Rabe soil survey was approved by DLCD for use by the County to determine whether the Marken Property is “Agricultural Land” as defined by Statewide Goal 3. As a result, COLW’s argument lacks merit.

The following is a step-by-step analysis of the applicable law. It shows that LUBA’s decision is correct and should be followed by Deschutes County:

- 1. Goal 3’s definition of ‘agricultural land’ does not say that counties must rely on the soils maps and ratings provided by NRCS soil surveys. Instead, it says that the determination of whether land is agricultural land is based on the soil classes (I-VIII) described in the Soil Capability Classification System of the US Soil Conservation Service.

The following is the relevant part of the Goal 3 definition:

“Agricultural Land - *** in eastern Oregon is land predominantly Class I, II, III, IV, V and VI soils as identified in the Soil Capability Classification System of the United States Soil Conservation Service ***”

The Soil Capability Classification System of the US Soil Conservation Service (now NRCS) is the NRCS Land Capability Classification (LCC) system used to rate soils in classes from Class I to VIII based on soil characteristics. It is described on page 187 of the Soil Survey of Upper Deschutes River Area, Oregon (hereinafter “NRCS Soil Survey”). It is not an NRCS soil survey or survey maps that show the approximate locations of soil mapping units based on the NRCS’s “landscape level” soils work. The NRCS mapping is less detailed than Mr. Rabe’s Order 1 soil survey.

- 2. Goal 3 specifically allows local governments to rely on more detailed soils data than provided by the NRCS. It says:

‘More detailed soil data to define agricultural land may be utilized by local governments if such data permits achievement of this goal.’

The purpose of Goal 3 is to preserve agricultural land. It is not intended to preserve land that does not meet the definition of “agricultural land.”

- 3. LCDC administrative rule OAR 660-033-0020(1)(a)(A), Definitions, says that “agricultural land” includes “lands classified (mapped) by the US Natural Resources Conservation Service (NRCS) as predominantly *** Class I-VI soils in Eastern Oregon.” The rule broadens the definition of Agricultural Land provided by Statewide Goal 3 to rely on

NRCS mapping. This is permissible, however, only if the rule is consistent with Goal 3. Wetherell v. Douglas County, 342 Or 666, 160 P3d 614 (2007) (administrative rule that conflicts with definition of Agricultural Land in Goal 3 is invalid). The rule is consistent with Statewide Goal 3 only if it respects the plain language of the Goal and State law that allows counties to rely on more detailed soils data to determine whether land is "Agricultural Land" in lieu of the less accurate NRCS soils maps.

- 4. *The Oregon Legislature adopted ORS 215.211(1) to regulate the more-detailed soil surveys allowed by Goal 3. The statute also assures property owners the right to provide local governments with more detailed soils information than provided by the NRCS's Web Soil Survey to "assist a county to make a better determination of whether land qualifies as agricultural land." ORS 215.211 requires that the soil scientists who conduct the more-detailed assessment be soils classifiers who are certified in good standing with the Soil Science Society of America and who have received approval from DLCD to conduct more-detailed soil surveys. ORS 215.211 also requires that soils reports be reviewed and approved for use by counties by DLCD. Mr. Marken obtained DLCD's permission to rely on the Valley/Rabe soils study to address the question whether his property is "agricultural land."*

ORS 215.211(5) recognizes the fact that this "additional information" may be used "in the determination of whether land qualifies as agricultural land" and explains that the soils report information does not "otherwise affect the process by which a county determines whether land qualifies as agricultural land. The use of the word "otherwise" makes it clear that more-detailed soils information does affect the process of determining whether land is agricultural land.

- 5. *LCDC's Goal 3 rules plainly state that property owners may rely on more detailed data to define "agricultural land." The rules require that the more detailed data be related to the NRCS land capability classification system (LCC) which places soils in LCC I-VIII based on their suitability for agricultural use. OAR 660-033-0030(5)(a) states:*

*'(5)(a) More detailed data on soil capability than is contained in the USDA Natural Resources Conservation Service (NRCS) soil maps and soil surveys may be used to define agricultural land. However, the more detailed soils data **shall be related to the NRCS land capability classification system.**' (emphasis added by Applicant)*

The fact that this LCDC rule requires that the soils survey report results be based on the NRCS soil classification system (LCC I through VIII) makes it clear that the classifications determined by the survey are intended to be considered by counties when they determine whether land is "Agricultural Land."

- 6. *Subsection (5)(b) of OAR 660-033-0030, Identifying Agricultural Land, says:*

*'If a person concludes that **more detailed soils information than that contained in the Web Soil Survey operated by the NRCS**, would assist a county to make a better determination of **whether land qualifies as agricultural land**, the person must request that the department arrange for an assessment of the capability of the land by a professional soil classifier who is chosen by the person using the process in OAR 660-033- 0045.'* (emphasis added by Applicant)

*Mr. Marken followed the process in OAR 660-033-0045 to obtain permission to provide the County with more detailed soils information about the subject property. He hired a soil scientist certified by DLCD to conduct a more detailed soils study. The Order 1 soils detailed study prepared by soils classifier Brian Rabe relates to the soil classification system of the NRCS as required by OAR 660-033-0030(5)(a). **Exhibit A**, Burden of Proof. The more-detailed Order 1 soil study prepared by soil classifier Brian Rabe was then reviewed and approved for use by Deschutes County by DLCD for the purpose of determining whether the Marken property "qualifies as agricultural land" protected by Statewide Goal 3. **Exhibit A**, Burden of Proof.*

7. *LCDC rules explain that the more-detailed soils study may be used during the review of a zone change and plan amendment application. OAR 660-033- 0030(5)(c)(A) says that its soils study rules apply to:*

'A change to the designation of a lot or parcel planned and zoned for exclusive farm use to a non-resource plan designation and zone on the basis that such land is not agricultural land.'

8. *DLCD understands that the more detailed soils surveys allowed by Statewide Goal 3 and ORS 197.211 may be used in lieu of NRCS soils surveys. On its website, DLCD explains:*

*'Soil mapping done by the USDA Natural Resources Conservation Service (NRCS) is the most common tool used for identifying the types of soils in an area. The NRCS provides a rating for each soil type that indicates how suited the soil is for agriculture. ****

*NRCS does not have the ability to map each parcel of land, so it looks to larger areas. This means that the map may miss a pocket of different soils. DLCD has a process landowners can use to challenge NRCS soils Page 5 – Applicant's Final Argument (Marken) information on a specific property. Owners who believe soil on their property has been incorrectly mapped may retain a 'professional soil classifier ... certified by and in good standing with the Soil Science Society of America' *** through a process administered by DLCD. This soils professional can conduct an assessment that may result in a change of the allowable uses for the property.'*

Exhibit PH-2, pp. 1-2 (Applicant's Post-Hearing Comments).

- 9. *The NRCS states, in the Web Soil Survey report provided with the Rabe soils survey, Exhibit A of the Burden of Proof (Appendix A), that:*

*'Although soil survey information can be used for general farm, local, and wider area planning, onsite investigation is needed to supplement this information in some cases. ** Great differences in soil properties can occur within short distances.'*

** **

'The objective of mapping is not to delineate pure taxonomic classes but rather to separate the landscape into landforms or landform segments that have similar use and management requirements. The delineation of such segments on the map provides sufficient information for the development of resource plans. If intensive use of small areas is planned, however, onsite investigation is needed to define and locate the soils and miscellaneous areas.' Page 13, Appendix A, **Exhibit A** (Applicant's Burden of Proof).

*In the Soil Survey of Upper Deschutes River Area, the NRCS explains on page 16 that the average size of the delineations of soils for the typical higher-level survey (Order 2) provided by NRCS maps is 40 acres and the smallest mapped delineation is five acres. Exhibit PH-1. Mr. Rabe's Order 1 soil survey surveyed the entire Marken property in far greater detail. DLCD's review of the Rabe soil survey confirms that the survey is an Order 1 survey and that it is more detailed than the NRCS soil survey. **Exhibit A**, Burden of Proof, pdf page 2.*

- 10. *State law, including DLCD's rules and Goal 3, would not allow use of a more-detailed soils survey based on the NRCS soil classification system if the soils classifications provided by NRCS soils studies that utilize the same system at a less detailed less were intended to be unassailable.*

II. COLW's Challenge to Expert Evidence Provided by Order 1 Soils Survey (COLW Letters of September 6, 2022 and September 20, 2022)

Summary of Response: *Brian Rabe's soil survey for the Marken property provides substantial evidence upon which the county may rely on to determine whether the Marken property is 'Agricultural Land' as defined by Statewide Goal 3. It has been approved by DLCD for this purpose. It is more-detailed than the NRCS soils survey and it utilizes the NRCS soil classification system as required by OAR 660-033-0030(5)(a).*

COLW's criticism of Mr. Rabe's professional and expert assessment of soils reflects a lack of understanding of the fundamentals of the soil classification system. COLW's attempt to equate the percentage of observation points documented in the soils report with the percentage of land in each soil classification presents an illogical argument that is thoroughly disproven by the detailed soils map provided with the Rabe study and the text of the Rabe report.

Detailed Response: *Mr. Rabe is an expert soil scientist and soils classifier. He has been qualified by the Department of Land Conservation to conduct more detailed soils surveys for use by the County in determining whether the Marken property is Statewide Goal 3 "Agricultural Land." Mr. Isbell is a lawyer. He has no known expertise or training in soils science. His comments should be considered in that light. Oregon Coast Alliance v. City of Brookings, 72 Or LUBA 222 (2015)(the nature of certain issues may be such that some technical expertise is necessary to provide substantial evidence to support required findings; attorney's opinion that stormwater runoff will not adversely impact salmon is not substantial evidence).*

Mr. Isbell claims that Mr. Rabe erred by "excluding" water and developed land from his soils survey. Mr. Rabe did not, however, exclude water and developed land from his survey. Instead, Mr. Rabe correctly classified these areas according to the NRCS land capability classification system. This is what he is required to do by OAR 660-033-0030(5)(a), quoted in Section I, Number 5, above.

The NRCS soil classification system classifies miscellaneous areas including ponds and urban/developed land Class VIII and this is the classification applied by Mr. Rabe. Mr Rabe explained in his post-hearing comments, Exhibit PH-8 (Applicant's Post-Hearing Evidence):

'Miscellaneous areas are addressed in the Soil Survey Manual (USDA/NRCS Soil Survey Staff, 1993). "Miscellaneous areas have essentially no soil and support little or no vegetation . . . Map units are designed to accommodate miscellaneous areas, and most map units named for miscellaneous areas have inclusions of soil." Specifically listed and defined miscellaneous areas include "Urban land (identified as Developed Land in my report) is land mostly covered by streets, parking lots, buildings, and other structures of urban areas." The roadways on this property are mostly paved and, together with the structures and other developed elements, meet the definition of this miscellaneous area. Another applicable miscellaneous area is water. "Water includes streams, lakes, ponds, and estuaries that in most years are covered with water at least during the period warm enough for plants to grow . . ." Rock outcrop is another miscellaneous area. All miscellaneous areas are considered Class VIII.

The areas identified and delineated as Water and Developed Land in the sitespecific soil survey are consistent with the definitions in the Soil Survey Manual. Even if, for the sake of argument, the acreage represented by these two map units were excluded from the analysis, the property would still predominantly consist of Class VII and VIII soils. The Water and Developed Page 7 – Applicant's Final Argument (Marken) Land represent 5.19 acres, or 8.67% of the property. Gosney and Rock outcrop represent 52.51% of the remaining acreage.'

Mr. Isbell's September 6, 2022 letter then makes the illogical claim that the Rabe soil survey cannot be correct because more of the observation sites listed in the survey reported Class III or VI soils than reported Class VII and VIII soils. Mr. Rabe responded:

The analysis by Central Oregon Land Watch misrepresents what was presented in the soil report. "Conditions most closely matching Gosney soils were observed at 24 grid locations and at least 21 additional locations along boundaries between grid points."1 The additional locations were used to refine the boundary conditions between differing grid points (e.g. between 36 and 53, 39 and 42, 43 and 44, etc.). Although the additional locations were not shown on the map or tabulated, they were identified and noted nonetheless. In addition, there are 55 spot symbols (R) for Rock outcrops too small to delineate. The number of observation points identifying Class VII and Class VII conditions were more than 3 times the number of observation points identifying Class VI conditions and fully support the delineated boundaries and associated acreages.

Gosney is only given a better rating for irrigation when mapped as a minor component in a complex, such as with Deskamp (Map Unit 38B, Deskamp-Gosney complex, 0 to 8% slopes). In this example, the incidental production from the Gosney acreage is expected to be only 1/3 to 1/2 that of the Deskamp. That equates to 1/3 to 1/2 the gross revenue but with the same expenses for fertilizer, water, power, equipment, and labor. When mapped alone or as the major component of a complex, Gosney is not rated when irrigated. Irrigation of Gosney soils would not change the NRCS rating of this soil and irrigation is an inefficient and inappropriate use of a scarce resource.'

On September 20, 2022, Mr. Isbell responded to Mr. Rabe's comments by claiming that the table of test hole location in the Marken soils survey is "the only substantial evidence in the soil scientist report." This claim is not correct. The soils survey sets out Mr. Rabe's expert opinion about the soil types found on the Marken property and the land capability classifications for each soil found. Mr. Rabe's determinations are based on all information gathered during his survey of the Marken property. The results of the survey are reported on a Site Specific Soils Map that delineates the areas of land of each identified soil type. This map is Figure 4 of Exhibit A of the Applicant's Burden of Proof.

The NRCS reports soil mapping units using a similar but less detailed map than provided by Mr. Rabe. The NRCS soils survey (included in Rabe report) provides no observation point information whatever. Despite the complete lack of observation point information, COLW argues that the information presented by the NRCS map is reliable and that Mr. Rabe's map is not substantial evidence. It only follows that if the NRCS map is substantial evidence of the information it provides, the same must be true for the more-detailed Rabe soils survey map. It, together with the rest of the Rabe soil survey document, is substantial evidence upon which to find that 61.2% of the subject property is comprised of Class VII and VIII soils classified according to the NRCS soil classification system.

III. COLW Argument that the Marken Pond is a Farm Use

COLW argues that the Marken pond is a farm use due to the provisions of ORS 215.203(2)(b)(G). This argument is not correct as applied to the Marken property. Furthermore, even if it were correct, this argument has no bearing on the results of the Rabe soils survey which must be based on the NRCS land capability classification system.

No agriculture use has been occurring on the Marken property for many years. The use of the property is residential. Ponds are in "farm use" only when "lying in or adjacent to and in common ownership with farm use land." Farm use is defined in ORS 215.203(1) as the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of livestock and similar activities not occurring on the Marken property. As explained further below, the Markens have never engaged in "farm use." They have never believed they would make a profit in money by using their land for agricultural purposes. They hoped they would break even but ended up losing money.

IV. COLW re County Definition of 'Agricultural Use'

The County Code definition of the term "Agriculture Use" is not relevant to a resolution of the issues presented by this application. The issue presented is whether the Marken property is "Agricultural Land" as defined by Statewide Goal 3; not whether the property is suitable for "agricultural use" as the term is defined by the County. Goal 3 asks whether the Marken property is suitable for "farm use" as defined by ORS 215.203(1) – a use conducted with an intention of making a profit in money.

V. Repurchase of Water Rights

The applicant is not arguing that the limited water rights appurtenant to the Marken property detract from its suitability for farm use. Instead, as explained in the Rabe soils survey and post-hearing comments, irrigating Class VII and VIII soils will not increase their soil classification and will not make them suitable for farm use. In this case, irrigating more of the property would be a waste of water that is a precious resource in the Deschutes Basin.

VI. COLW's Claim of Long History of Farm Use (September 6, 2022 Letter)

COLW's claim that the Markens' evidence shows that primary purpose of engaging in agricultural activities was to obtain a profit. This claim is, however, erroneous. The burden of proof does not say, as COLW alleges, that "profit has varied." Instead, it says that unsuccessful efforts were made to make a profit in money by farming the property. This statement was made by the Markens' attorney based on an unwitting and erroneous assumption.

In discussing this specific issue with Mr. Marken, the applicant's attorney learned that the Markens purchased their property hoping to break even on their agricultural activities. They purchased the subject property but did not expect to make a profit. Given the poor soil conditions of the property and the fact that the property was considered marginal farmland by the County's 1979 comprehensive plan, the Markens hope to break even was overly optimistic – hope that quickly evaporated due to an unbroken string of farm losses.

Any reasonable farmer would, like the Markens, consider it unlikely that they would make a profit farming the Marken property due to its extremely poor soils, high cost of inputs and

*extensive amount of rock existing on the property when purchased (rocks have been removed from some areas of the property but it remains unsuitable for 'farm use). The County's 1979 comprehensive plan (see **Exhibit R-3**, Applicant's Rebuttal) classified the subject property Marginal Farm Land which it describes as "land [that] will support agricultural production only if subsidized to some extent." In other words, it is land that is not suitable for 'farm use' as defined by ORS 215.213(1), the Supreme Court's Wetherell decision and Statewide Goal 3.*

*The 1979 Deschutes County Comprehensive Plan's Resource Element (**Exhibit PH-6**) noted that many farmers could only hope to make a profit when selling their property. This situation has not improved over time. The 2017 Census of Agriculture shows that 83.96% of farm operators report significant farm losses that average \$12,866 per year per farm and that a similar situation existed in 2012. This issue is discussed further in Section IX, below.*

*The Markens' experience is mirrored by that of their former neighbor[s], Dick Springer. The Springer family, until recently, owned the 143 Investments, LLC property (TL 1003, Map 18-12-02) that adjoins the west boundary of the Marken property for decades. Mr. Springer explained in comments filed with Deschutes County that Tax Lot 1003 "is too rocky to farm and too small for major, profitable grazing," "barren, rock bound" and "anything but farmland." According to Mr. Springer, due to zone changes "[w]e have become an island with Harold Marken directly to the east of us, between/among the City/UGB and County five acre parcels." Mr. Springer explained that his family typically lost \$8,000 to \$10,000 per year to obtain gross farm income of \$3,000. His effort to grow grass hay resulted in a loss of \$35,000 over a period of two years despite Mr. Springer's reliance on expert advice and his installation of an irrigation pivot system. The prior owner of the property, Bill Tye, also attempted to farm the property and gave up due to the rocky soil conditions. **Exhibit PH-6**, Applicant's Post-Hearing Evidence"*

The Hearings Officer, after considering the COLW and Applicant evidence and arguments, addresses COLW's specific "Agricultural Land" arguments in the following findings.

COLW ARGUMENT: NCRS soil mapping designations (COLW 9/6/2022 submission - page 1)

The Hearings Officer finds that the essence of this COLW argument is whether or not the NRCS soil mapping designations constitute the only or the persuasive authority when determining, for Oregon land use planning purposes, the soil classifications of a discrete parcel of real property (such as the Subject Property). The Hearings Officer finds Applicant's above-quoted discussion related to NCRS mapping and site-specific soils study mapping accurately reflects Oregon law. The Hearings Officer finds that the clear and unequivocal language of Goal 3 and OAR 660-033-0030(5) allows Deschutes County and the Applicant to use more detailed soil capability studies, than the NCRS, to determine if a specific parcel/property is "Agricultural Land." (See also, *Wetherell v. Douglas County*, 342 Or 666 (2007) and *Central Oregon Landwatch v. Deschutes County (Aceti)* (2016)).

Applicant employed Rabe/Valley to conduct a site-specific soil study/survey of the Subject Property (the "Applicant Soil Study" - Burden of Proof, Exhibit A). Based upon the review of the record, the Hearings Officer finds Rabe/Valley is a currently certified soil classifier and recognized as such by

DLCD (Burden of Proof, Exhibit A – DLCD Soil Assessment Completeness Review). The Hearings Officer finds that DLCD reviewed the Applicant Soil Study and found that it met all OAR 660-033-0030 requirements (Burden of Proof, Exhibit A). The Hearings Officer finds that the Applicant Soil Study utilized the required NCRS land capability system (“LCC”). The Hearings Officer finds that the Applicant Soil Study is a more detailed site-specific analysis of the soil conditions and classifications at the Subject Property than the NCRS soil survey. The Hearings Officer finds the County may rely upon the detailed site-specific Applicant Soil Study in determining whether or not the Subject Property is “Agricultural Land.”

COLW ARGUMENTS: History of Farm Use & Impoundment of Water (COLW 9/6/2022 submission, pages 1 and 2)

COLW, in its 9/6/2022 submission, stated the following:

“It is also well documented in the application that the property has a long history of farm use, and that the primary purpose of that use has been to obtain a profit. The application readily admits that the applicants obtained the property in 1981 and since then “grew hay and occasionally raised cattle.” The application explains that while the profit from those agricultural activities has varied, the applicants made “efforts to make a profit in money by farming the property.” Application at 24. The purpose of those agricultural activities was to obtain a profit from raising crops. The property is agricultural land because it has been in farm use for over 30 years.”

The Hearings Officer finds COLW did not reference any legal authority that would empower the Hearings Officer to conclude the Subject Property is “Agricultural Land” on the sole basis that it has a long *history* of “farm use.” The Hearings Officer finds that COLW’s historical use argument could possibly be relevant to the COLW “primary purpose is profit” or Goal 3; OAR 660-033-0020(1)(b) arguments. The Hearings Officer discusses those arguments in findings below.

The Hearings Officer takes notice of the ORS 215.203 (2)(a) definition of “farm use” which, in part, states the following:

*“As used in this section, ‘farm use’ means the **current employment** of land for the primary purpose of obtaining a profit in money by...harvesting and selling crops...” (bolding emphasis added by the Hearings Officer)*

The Hearings Officer finds that “farm use,” as defined by ORS 215.203(2)(a), means the **current employment** of land *not* the **historical** employment of land. “Current employment” is defined in ORS 215.203(2)(b) by a listing of very specific activities (or, non-activities). The Hearings Officer finds that COLW did argue that the Subject Property is being used for a specific activity that meets the current employment of land requirement of ORS 215.203(2)(a). Specifically, COLW argued that the existence of a water impoundment on the Subject Property is a ORS 215.203(2)(b)(G) current use of land.²

² COLW, in its 9/6/2022 submission, made the following statement: “The property is additionally in farm use because it contains an impoundment of water. ORS 215.203(2)(b)(G).”

Applicant responded with the following comments related to COLW's ORS 215.203(2)(b)(G) water impoundment argument as follows:

“COLW argues that the Marken pond is a farm use due to the provisions of ORS 215.203(2)(b)(G). This argument is not correct as applied to the Marken property. Furthermore, even if it were correct, this argument has no bearing on the results of the Rabe soils survey which must be based on the NRCS land capability classification system.

No agriculture use has been occurring on the Marken property for many years. The use of the property is residential. Ponds are in “farm use” only when “lying in or adjacent to and in common ownership with farm use land.” Farm use is defined in ORS 215.203(1) as the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of livestock and similar activities not occurring on the Marken property. As explained further below, the Markens have never engaged in “farm use.” They have never believed they would make a profit in money by using their land for agricultural purposes. They hoped they would break even but ended up losing money.”

The Hearings Officer concurs with Applicant's above-quoted comments and incorporates them as findings for this COLW Argument. In addition, the Hearings Officer finds that the plain language of ORS 215.203(2)(b)(G) refutes the COLW “water impoundment” argument. ORS 215.203(2)(b)(G) says that “current employment” of land for farm use includes:

“Water impoundments lying in or adjacent to and in common ownership with farm use land.”

The Hearings Officer finds that Applicant does not dispute there is a pond on the Subject Property and does not dispute that the pond is a water impoundment as described in ORS 215(2)(b)(G). The Hearings Officer finds the Subject Property is not “farm use” land, per ORS 215.203 (2)(a), because the Subject Property is not currently being employed for the primary purpose of obtaining a profit from engaging in farm related activities. The Hearings Officer incorporates, as additional findings for this COLW argument, the findings for COLW Argument: Primary Purpose is Profit. The Hearings Officer finds that that the Subject Property water impoundment (pond) does not lay in or adjacent to and in common ownership with “farm use” land. The Hearings Officer finds that the COLW water impoundment argument is not persuasive.

The Hearings Officer finds COLW's only reference to the pond (water impoundment) and ORS 215.203(2)(b)(G) is the quoted statement above (COLW, 9/6/2022, page 2 – see footnote 2 above). Therefore, as alternative findings, the Hearings Officer notes that COLW did not provide the Hearings Officer, Applicant or any participant in this case even a basic analysis of ORS 215.203(2)(b)(G) in the context of the Subject Property. Therefore, the Hearings Officer finds that COLW failed to present any persuasive legal support for its Impoundment of Water (ORS 215(2)(b)(G)) argument. The Hearings Officer finds that COLW's Impoundment of Water argument

was not sufficiently developed and supported to allow the Hearings Officer to authoritatively make a decision. The Hearings Officer finds COLW’s Impoundment of Water argument is not persuasive.

COLW ARGUMENT: Primary Purpose is Profit (COLW 9/6/2022 submission, pages 1 and 2)

The Hearings Officer incorporates the findings for the preceding section (COLW ARGUMENTS: History of Farm Use & Impoundment of Water) as additional findings for this COLW Argument.

As noted above, ORS 215.203(2)(a), includes the following language:

“As used in this section, ‘farm use’ means the current employment of land for the primary purpose of obtaining a profit in money by...harvesting and selling crops...”

The Hearings Officer finds the **current employment** of the Subject Property is not for the primary purpose of growing/harvesting any crop or any other activity described in ORS 215.203(2)(a).

The Hearings Officer incorporates as additional findings for this COLW Final Argument the quoted sections of the above-quoted Applicant’s Burden of Proof statements related to soil fertility, suitability for grazing, climate, and existing and future availability of water for farm irrigation purposes (Burden of Proof, pages 24 – 26). The Hearings Officer interprets Applicant’s Burden of Proof statements as credible and substantial evidence that the Applicant did not farm the Subject Property for the primary purpose of making a profit. The Hearings Officer finds, based upon the evidence in the record, that Applicant’s intent or purpose of farming the Subject Property, in the past, was to break even financially. The Hearings Officer also finds no persuasive evidence in the record that either the Subject Property or any adjacent or nearby parcel of real property is being farmed for the primary purpose of making a net profit.

The Hearings Officer finds, based upon the record of this case, that the Subject Property is not currently employed for the primary purpose of obtaining a profit from raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the production of livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use.

COLW Argument: DCC 18.04.030 (COLW 9/6/2022 submission, page 2)

COLW, in its 9/6/2022 submission, made the following statement:

“... the County’s definition of ‘agricultural use’ specifically excludes considerations of profit. DCC 18.04.030 (‘Agricultural use’ means any use of land, whether for profit or not, related to raising, harvesting and selling crops[.]”

Applicant, in its Final Argument quoted above (section VI. COLW re County Definition of ‘Agricultural Use’), asserted that the County definition of “Agricultural Use” is not relevant to this case/application. The Hearings Officer agrees with Applicant’s statement that the issue in this case is whether or not

the Subject Property is "Agricultural Land" under Goal 3. Determining if a Goal 3 exception is required is the issue to be decided; not whether DCC 18.04.030 is satisfied.

The Hearings Officer finds the Oregon Supreme Court's *Wetherell* analysis clearly pointed out that if there is a conflict between the language of the statute (ORS 215.203) and enabling regulation (OAR 660-033-030(5)), the statute prevails. In this instance a relevant statute (ORS 215.203) includes reference to obtaining a profit and a County Code section (DCC 18.04.030) states "agricultural use" means "any use of land, whether for profit or not..." The Hearings Officer finds that the "Agricultural Land" or "agricultural use" issue must be decided consistent with the relevant ORS 213.203 statutory language and not by a contrary/conflicting DCC 18.04.030 provision.

The Hearings Officer concurs with and adopts as the Hearings Officer findings the Applicant's analysis quoted above (section VI. COLW re County Definition of 'Agricultural Use'). The Hearings Officer finds COLW's DCC 18.04.030 argument is not persuasive.

**COLW Argument: Soil Study Excluded "Water" and "Developed Land."
(COLW 9/6/2022 submission, page 2)**

COLW, in its 9/6/2022 submission, made the following statement:

"The applicant's hired soil scientist's study is deficient for excluding "water" and "developed land" from its analysis. Application Exhibit A Figure 4."

The Hearings Officer incorporates as findings for this COLW argument the Applicant's above-quoted comments related to "water" and "developed land" (Section II. COLW's Challenge to Expert Evidence Provided by Order 1 Soils Survey). Applicant also provided a post hearing record submission (Applicant's Post-Hearing Evidence, Exhibit PH-8) addressing this COLW assertion.

"Miscellaneous areas are addressed in the Soil Survey Manual (USDA/NRCS Soil Survey Staff, 1993). 'Miscellaneous areas have essentially no soil and support little or no vegetation . . . Map units are designed to accommodate miscellaneous areas, and most map units named for miscellaneous areas have inclusions of soil.' Specifically listed and defined miscellaneous areas include 'Urban land (identified as Developed Land in my report) is land mostly covered by streets, parking lots, buildings, and other structures of urban areas.' The roadways on this property are mostly paved and, together with the structures and other developed elements, meet the definition of this miscellaneous area. Another applicable miscellaneous area is water. "Water includes streams, lakes, ponds, and estuaries that in most years are covered with water at least during the period warm enough for plants to grow . . ." Rock outcrop is another miscellaneous area. All miscellaneous areas are considered Class VIII.

The areas identified and delineated as Water and Developed Land in the site-specific soil survey are consistent with the definitions in the Soil Survey Manual. Even if, for the sake of argument, the acreage represented by these two map units were excluded from the analysis, the property would still predominantly consist of Class VII and VIII soils. The Water and Developed Land

represent 5.19 acres, or 8.67% of the property. Gosney and Rock outcrop represent 52.51% of the remaining acreage."

The Hearings Officer finds COLW's assertion that Applicant excluded "water" and "developed land" from the Applicant Soil Study is a mere allegation unsupported by substantial evidence or persuasive legal argument. The Hearings Officer finds Applicant's above-quoted Final Argument comments and the Rabe/Valley post hearing comments to be credible and persuasive. The Hearings Officer finds that Rabe/Valley did consider "water" and "developed land" in the Applicant Soil Study. The Hearings Officer finds COLW's Soil Study Excluded "Water" and "Developed Land" argument is not persuasive.

COLW ARGUMENT: Predominant Soils (COLW 9/6/2022 submission, page 2)

COLW, in its 9/6/2022 submission, made the following statement:

"The soil study further finds that 29 of its observation sites found 'conditions most closely matching Deskamp soils' which are Class III irrigated and Class VI unirrigated; and finds that only 24 of its observation sites found 'conditions mostly closely matching Gosney soils' which are Class VII. Application Exhibit A at page 4. Despite this majority of the soil study's observations showing Class III/VI soils, the soil study finds a majority of the property as Class VII-VIII. This conclusion cannot be squared with the reported results of the 58 observation locations, which show a majority of Class III/VI Deskamp soils."

COLW also addressed the issue of "predominant soils" in a 9/20/2022 record submission. The Hearings Officer considered both the COLW 9/6/2022 statements quoted above and the COLW 9/20/2022 submission in making these findings.

Applicant, in its above-quoted comments (Section II. COLW's Challenge to Expert Evidence Provided by Order 1 Soils Survey – pages 5 to 8 of the Final Argument), responded to COLW's Predominant Soils arguments. Rabe/Valley responded to COLW's Predominant Soils arguments in a September 12, 2022, email (Applicant's Post-Hearing Evidence, Exhibit PH-8). In relevant part, Rabe/Valley stated, in Exhibit PH-8, the following:

"The analysis by Central Oregon Land Watch misrepresents what was presented in the soil report. 'Conditions most closely matching Gosney soils were observed at 24 grid locations and at least 21 additional locations along boundaries between grid points.' The additional locations were used to refine the boundary conditions between differing grid points (e.g. between 36 and 53, 39 and 42, 43 and 44, etc.). Although the additional locations were not shown on the map or tabulated, they were identified and noted nonetheless. In addition, there are 55 spot symbols (R) for Rock outcrops too small to delineate. The number of observation points identifying Class VII and Class VI conditions were more than 3 times the number of observation points identifying Class VI conditions and fully support the delineated boundaries and associated acreages.

Gosney is only given a better rating for irrigation when mapped as a minor component in a complex, such as with Deskamp (Map Unit 38B, Deskamp-Gosney complex, 0 to 8% slopes). In this

example, the incidental production from the Gosney acreage is expected to be only 1/3 to 1/2 that of the Deskamp. That equates to 1/3 to 1/2 the gross revenue but with the same expenses for fertilizer, water, power, equipment, and labor. When mapped alone or as the major component of a complex, Gosney is not rated when irrigated. Irrigation of Gosney soils would not change the NRCS rating of this soil and irrigation is an inefficient and inappropriate use of a scarce resource."

The Hearings Officer reviewed the Rabe/Valley Applicant Soil Study (Application Materials, Exhibit A). The Hearings Officer finds that DLCD conducted a Soil Assessment Completeness Review and concluded that the Applicant Soil Study was "complete and consistent with reporting requirements." The Hearings Officer finds the Applicant Soil Study was conducted by Rabe/Valley; a currently certified soil scientist/classifier. The Hearings Officer finds the opinions and conclusions of Rabe/Valley should be considered as opinions and conclusions of an expert soil scientist/classifier.

Isbell, an attorney representing COLW and the person making the above-quoted COLW comments, objected to "predominant soils" conclusions made by Rabe/Valley. Isbell argued that the percentage of soils (i.e., LLC Class IV, V, VI or VII, etc.) should be based on data points used by Rabe/Valley. Specifically, Isbell argued that the Rabe/Valley general characterization of soil types as either Deskamp or Gosney provided the correct basis to determine which LLC soil class or classes were predominant. Isbell also argued that the Rabe/Valley comments contained in Exhibit PH-8 related to "additional locations" did not constitute "substantial evidence." Isbell argued that the "additional locations" were not shown on the Applicant Soil Study map and therefore not "actually analyzed for their capability."

Applicant argued that the Isbell comments were made by a lawyer who had not provided, into the record, any evidence that he (Isbell) was also trained or had special expertise in the preparation, interpretation or technically critiquing soil studies. Citing *Oregon Coast Alliance v. City of Brookings*, 72 Or LUBA 222 (2015) Applicant included the following statement:

"The nature of certain issues may be such that some technical expertise is necessary to provide substantial evidence to support required findings; attorney's opinion that stormwater runoff will not adversely impact salmon is not substantial evidence."

The Hearings Officer finds Isbell provided no evidence in the record that he is qualified in the science of soil analysis and classification. The Hearings Officer finds that Isbell provided no persuasive evidence to support his statement that the utilization of only the raw number of data points is a justified technique (i.e., by reference to recognized soil scientist industry conventions or standards). The Hearings Officer finds that Isbell's opinion related to the use of the raw number of data points as the appropriate technique/method in determining soil classifications, in this case, is not substantial evidence of the actual soil classifications at the Subject Property.

The Hearings Officer finds that Rabe/Valley is a qualified soil classifier. The Hearings Officer finds, following review of the Applicant Soil Study and the September 12, 2022 supplemental submission (Exhibit PH-8), that the methods used by Rabe/Valley are reasonable and appropriate. The Hearings Officer finds that the Rabe/Valley soil classification conclusions reached in the Applicant Soil Study constitute credible and substantial evidence in this case. The Hearings Officer finds the Rabe/Valley

September 12, 2022 supplemental submission (Exhibit PH-8) provided a rational and plausible response to Isbell’s Predominant Soils arguments. The Hearings Officer finds the Rabe/Valley conclusion (Application Materials, Exhibit A, page 7) that “36.62 acres, or 61.2%, of the Site consists of Class VII and Class VIII soils” is supported by substantial evidence in the record.

COLW ARGUMENT: Water Rights (COLW 9/6/2022 submission, page 2)

COLW, in its 9/6/2022 submission, made the following statement:

“The property currently has 9.49 acres of water rights. The application explains that it used to have 36 acres of water rights, but the applicant chose to sell the majority of those water rights. Application at 26. That choice is now being used to argue that the property’s limited water rights detract from its suitability for agriculture. This applicant’s own willful choice to reduce water availability on the property should not now be considered as a reason the property’s agricultural land status. The applicant could buy back water rights just as readily as they sold them.”

The Hearings Officer is uncertain as to what, if any, relevant approval criterion is being addressed by COLW in the above-quoted comments. The Hearings Officer finds that COLW failed to provide into the record, with sufficient specificity, evidence or legal argument related to the COLW Water Rights issue.

In the alternative, the Hearings Officer finds that the current status at the Subject Property is that it owns 9.49 acres of water rights. The Hearings Officer finds that evidence of water rights held by the Subject Property, in the past, is not relevant to making the current decision as to whether the Subject Property is “Agricultural Land.”

COLW ARGUMENT: Goal 3; OAR 660-033-0020(1)(b) (COLW 9/13/2022 submission, page 1)

COLW, in its 9/13/2022 submission, made the following statement:

“In addition to the reasons we explained in our September 6, 2022 submittal, the subject property is also “agricultural land” and protected by Goal 3 because it is a farm unit. The definition of “agricultural land” at OAR 660-033-0020(1)(b) includes land that may include some soils Class VI-VIII when that land is intermingled with soils Class I-VI in a farm unit:

(b) Land in capability classes other than I-IV/I-VI that is adjacent to or intermingled with lands in capability classes I-IV/I-VI within a farm unit, shall be inventoried as agricultural lands even though this land may not be cropped or grazed;’ (OAR 660-033- 0020(1)(b))

Oregon courts have interpreted the meaning of this rule, finding that the history of farm operations on a parcel and whether there is a significant obstacle to resuming farm operations are key factors in determining whether land is a “farm unit” for purposes of OAR 660-033-0020(1)(b):

'[W]hen farm operations have recently ceased on a parcel that historically has been used for farming operations with other lands as part of a single 'farm unit,' the parcel is within the unit unless the applicant can demonstrate circumstances—the most important of 2 which is whether there is a significant obstacle to resumed joint operation—that dictate a contrary result.' (Wetherell v. Douglas County, 235 Or App 246, 260, 230 P3d 976, 984 (2010), rev den, 349 Or 57 (2010))

Here, the subject property was historically used for farm operations for decades as one single farm unit operation, as documented in the application, and only recently ceased. Now, the applicant argues that because its hired soil scientist found portions of the subject property as having Class VII-VIII soils, which are intermingled with Class I-VI soils, those portions of the subject property cannot be cropped or grazed and should not be identified as agricultural land. The "farm unit" rule at OAR 660-033-0020(1)(b) specifically precludes that conclusion.

Further, the application's response to this criterion fails to identify any significant obstacle that would prevent resumed operation of the farming operation on the subject property. Instead, the application argues this rule does not apply: "This rule does not apply here because the Markens are seeking to rezone an entire farm tract rather than a part of it." Application at 27. Although some cases applying the "farm unit" rule have dealt with factual circumstances where a parcel had previously been part of a larger farm unit operation, there is nothing in the rule limiting the rule to those circumstances. The 59.1 acre property here has been a single farm unit operation for decades, and OAR 660-033-0020(1)(b) requires it remain agricultural land protected by Goal 3."

Applicant responded to the COLW above-quoted Goal 3; OAR 660-033-0020(1)(b) comments (Final Argument, pages 16 & 17) as follows:

"The Wetherell v. Douglas County, 235 Or App 246, 230 P3d 976 (2010) rev den 349 Or 57 (2010)(Wetherell/Garden Valley) case cited by COLW applies the farm unit rule to a part of a farm property that had been removed from a farm tract and operated separately that had been operated profitably before being divided. According to DLCD, the rule is 'a rule designed to address a parcel's relationship to surrounding land' – 'by its location with respect to neighboring land in certain soil classes and its relationship to those lands as a farm unit.' Wetherell/Garden Valley, 235 Or App at 256. The Wetherell/Garden Valley court applied this purpose to interpret the meaning of the rule. With this in mind, it is clear that the farm unit rule prevents the rezoning of land that was a part of and then removed from a tract of land employed in 'farm use.' This is how the rule has been applied by Oregon's appellate courts. Given this intent, it would be erroneous for the County to apply the farm unit rule to the Marken property because it has not since the later half of the 1970s [been] farmed in conjunction with other area properties. [footnote omitted]

The Oregon Supreme Court has stated, when applying a tract analysis to EFU farm land, that "the philosophy of SB 101 was 'to keep the economical farm units intact.'" Smith v. Clackamas County, 313 Or 519, 836 P2d 716 (1992). In the case of the entire unit of land that the Markens attempted to farm is before the County for rezoning in its entirety. It is not a part of an 'economical farm unit' that merits protection by the farm unit rule. The land, in its entirety, does not meet Goal 3's

definition of Agricultural Land.

In Meyer v. Lord, 37 Or App 59, 586 P2d 367(1978)(“Meyer”), the Court of Appeals laid the groundwork for the ‘farm unit’ rule. The Court held that a 70-acre parcel of a 250-acre commercial farm that might not by itself be an economically profitable farm unit is within the definition of ‘farm use’ if employed as part of a ‘profit-capable farming operation.’ The purpose of this approach was to assure that an unproductive part of a farm unit is not considered for rezoning as an isolated tract. In this case, all land the Markens attempted to farm is proposed for rezoning. All of it is not productive farm land.

The farm unit rule is an LCDC rule. It supplements Goal 3. The rule says that it applies when ‘land’ is ‘adjacent and intermingled’ within a farm unit. The term ‘land’ is not defined but, as it has been applied by appellate courts, it means a parcel or area of land that is or was a part of a larger farm property proposed to be rezoned without addressing the zoning of the rest of the tract that has historically been engaged in farm use. It is not applied to convert the results of a soils survey from a mix of Class I-VI soils and VII-VII soils into 100% Class I-VI soils/Agricultural Land.

*COLW’s argues that the farm unit rule should be applied to any piece of property proposed for rezoning from EFU to a nonresource zoning district. This, however, differs from how the rule has been applied and is inconsistent with the intent of the rule. It is also an interpretation conflicts with and renders meaningless the predominance test set out in Goal 3. An interpretation of an LCDC rule must be consistent with Goal 3 or it will not be applied by Oregon courts. Wetherell v. Douglas County, 204 Or App 732, 132 P3d 41 (2005), *aff’d and reversed* 342 Or 666, 160 P3d 614 (2007). When the farm unit rule is applied to parcels removed from a larger ‘profit-capable’ farm unit, Oregon courts have held that it is. When the rule is applied to a single tract of land like the Marken property, it is not consistent with Goal 3 or the intent of the rule set out in Meyer. [footnote: We have found no appellate court case that applies the farm unit rule in any situation other than one where a unit of ‘land’ was removed from a tract of land that was used in one farm operation and then proposed for rezoning. Deschutes County has declined to apply the rule as requested by COLW in prior decisions. [footnote: Deschutes County has declined to apply the farm unit rule to applications where the entire unit of land formerly used for agricultural activities was before it for rezoning/redesignation. The ‘farm unit’ rule issue was an issue and was addressed in two cases with similar facts to those presented by the Marken application (prior unsuccessful farm use and a mix of Class VI and VII/VIII soils): Kelly Porter Burns (adjoins N boundary of Marken) and Eastside Bend (property touches NE corner of Marken).*

To read the farm unit rule to apply within the boundaries of land proposed for rezoning if any Class VI-VIII soils are present and any effort was to farm it would render the predominance soils test used by Goal 3 to define ‘Agricultural Land’ meaningless. To do so would replace the predominance test of the Goal (over 50%) with a 100% rule of DLCD’s own making for essential any EFU-zoned property because few if any EFU-zoned properties are comprised 100% of Class VII and VIII soils.”

The Hearings Officer adopts as additional findings for this section the above-quoted Applicant Final Argument comments. The Hearings Officer finds that the above-quoted Applicant Final Argument

comments related to OAR 660-033-020 (b) are legally correct. The Hearings Officer finds the Subject Property to be a single tract of land that is not, because of soil classifications, Goal 3 "Agricultural Land." The Hearings Officer finds that the Subject Property is not adjacent to or intermingled with one/more "farm unit" unit as defined by Oregon law. The Hearings Officer finds COLW's Goal 3; OAR 660-033-0020(1)(b) argument is not supported by substantial evidence or persuasive legal argument contained in the record of this case.

Policy 2.2.2 Exclusive Farm Use sub-zones shall remain as described in the 1992 Farm Study and shown in the table below, unless adequate legal findings for amending the sub-zones are adopted or an individual parcel is rezoned as allowed by Policy 2.2.3.

FINDING: The Applicant did not ask to amend the subzone that applies to the Subject Property; rather, the Applicant requested a change under Policy 2.2.3 and has provided evidence to support rezoning the Subject Property to MUA10.

Policy 2.2.3 Allow comprehensive plan and zoning map amendments, including for those that qualify as non-resource land, for individual EFU parcels as allowed by State Statute, Oregon Administrative Rules and this Comprehensive Plan.

FINDING: The Applicant requested approval of a plan amendment and zone change to re-designate the Subject Property from Agricultural to Rural Residential Exception Area and rezone the Subject Property from EFU to MUA10. The Applicant did not seek an exception to Goal 3 – Agricultural Lands, but rather sought to demonstrate that the Subject Property does not meet the state definition of "Agricultural Land" as defined in Statewide Planning Goal 3 (OAR 660-033-0020).

The Applicant provided the following response in its Burden of Proof (pages 15 & 16):

"This plan policy has been updated to specifically allow non-resource land plan and zone change map amendments on land zoned EFU. The applicant is seeking a comprehensive plan amendment from Agriculture to RREA and a zone change from EFU-TRB to MUA-10 for non-resource land. This is the same change approved by Deschutes County in PA-11-1/ZC-11-2 on land owned by the State of Oregon (DSL) on a property with a significantly lower percentage of Class VII and VIII soils. In findings in the decision attached as Exhibit G, Deschutes County determined that State law as interpreted in Wetherell v. Douglas County, 52 Or LUBA 677 (2006) allows this type of amendment. LUBA said, in Wetherell at pp. 678-679:

'As we explained in DLCD v. Klamath County, 16 Or LUBA 817, 820 (1988), there are two ways a county can justify a decision to allow nonresource use of land previously designated and zoned for farm use or forest uses. One is to take an exception to Goal 3 (Agricultural Lands) and Goal 4 (Forest Lands). The other is to adopt findings which demonstrate the land does not qualify either as forest lands or agricultural lands under the statewide planning goals. When a county pursues the latter option, it must demonstrate that despite the prior resource plan and zoning designation, neither Goal 3 or Goal 4 applies to the

property. *Caine v. Tillamook County*, 25 Or LUBA 209, 218 (1993); *DLCD v. Josephine County*, 18 Or LUBA 798,802 (1990).'

LUBA's decision in *Wetherell* was appealed to the Oregon Court of Appeals and the Oregon Supreme Court but neither court disturbed LUBA's ruling on this point. In fact, the Oregon Supreme Court used this case as an opportunity to change the test for determining whether land is agricultural land to make it less stringent. *Wetherell v. Douglas County*, 342 Or 666, 160 P3d 614 (2007). In that case, the Supreme Court stated that:

*'Under Goal 3, land must be preserved as agricultural land if it is suitable for "farm use" as defined in ORS 215.203(2)(a), which means, in part, 'the current employment of land for the **primary purpose of obtaining a profit in money**' through specific farming-related endeavors.'* *Wetherell*, 343 Or at 677 (emphasis added).

The Wetherell court held that when deciding whether land is agricultural land "a local government may not be precluded from considering the costs or expenses of engaging in those activities." Wetherell, 342 Or at 680. In this case, the applicant has shown that the subject property is primarily composed of Class VII and VIII nonagricultural soils making farm-related endeavors, including livestock grazing, unprofitable. The property is not currently employed in any type of agricultural activity and prior efforts at farming were unprofitable. The property is not forest land. Accordingly, this application complies with Policy 2.2.3."

The Hearings Officer adopts and incorporates as additional findings for this policy the findings for Chapter 2, Resource Management, Section 2.2 Agricultural Lands, Goal 1, Preserve and maintain agricultural lands and the agricultural industry (findings related to COLW specific arguments). The Hearings Officer finds the above-quoted Applicant Final Argument statements to be credible and persuasive. The Hearings Officer finds that Applicant provided evidence in the record adequately addressing whether the Subject Property qualified as non-resource land. The Staff also noted that the Applicant provided evidence in the record addressing whether the Subject Property qualifies as non-resource land. The Hearings Officer, based upon the incorporated findings (Chapter 2, Resource Management, Section 2.2 Agricultural Lands, Goal 1, Preserve and maintain agricultural lands and the agricultural industry), the above-quoted Applicant Final Argument statements, and the Staff Report comments referenced above, finds that the Subject Property is not Goal 3 "Agricultural Land" and does not require an exception to Goal 3 under state law.

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

FINDING: This plan policy provides direction to Deschutes County to develop new policies to provide clarity when EFU parcels can be converted to other designations. Staff, in the Staff Report (page 16) indicated that it concurred with Applicant's conclusion that this application was consistent with prior County determinations in similar plan amendment and zone change applications. The Hearings Officer agrees with these Staff comments. The Hearings Officer finds that Applicant's proposal in this case is consistent with this policy.

Goal 3, Ensure Exclusive Farm Use policies, classifications and codes are consistent with local and emerging agricultural conditions and markets.

Policy 2.2.13 Identify and retain accurately designated agricultural lands.

FINDING: This plan policy requires the County to identify and retain agricultural lands that are accurately designated. The Applicant asserted that the Subject Property was not accurately designated as "Agricultural Land". Restated, the Applicant asserted that the NRCS map soil designations did not accurately reflect the actual soil conditions on the Subject Property. The Applicant, through the Applicant Soil Study, demonstrated that the Subject Property was not Goal 3 "Agricultural Land."

The Hearings Officer adopts and incorporates as additional findings for this policy the findings for Chapter 2, Resource Management, Section 2.2 Agricultural Lands, *Goal 1, Preserve and maintain agricultural lands and the agricultural industry* (findings related to COLW specific arguments). The Hearings Officer also adopts and incorporates as additional findings for this policy the findings for Policy 2.2.3. The Hearings Officer finds approval of Applicant's application in this case would accurately reflect the actual soil conditions at the Subject Property. The Hearings Officer finds that approval of Applicant's application would accurately reflect the fact that the Subject Property is not Goal 3 "Agricultural Land." Further, discussion on the soil analysis provided by the Applicant is detailed under the OAR Division 33 criteria below.

Section 2.5, Water Resources Policies

Goal 6, Coordinate land use and water policies.

Policy 2.5.24 Ensure water impacts are reviewed and, if necessary, addressed for significant land uses or developments.

FINDING: The Applicant has not proposed a specific development application at this time. Therefore, the Hearings Officer finds that the Applicant is not required to address water impacts associated with development. Rather, the Applicant will be required to address this criterion during development of the Subject Property, which would be reviewed under any necessary land use process for the site (i.e., conditional use permit, tentative plat). The Hearings Officer finds that this criterion does not apply to the application in this case.

Section 2.7, Open Spaces, Scenic Views and Sites

Goal 1, Coordinate with property owners to ensure protection of significant open spaces and scenic view and sites.

Policy 2.7.3 Support efforts to identify and protect significant open spaces and visually important areas including those that provide a visual separation between communities such as the open spaces of Bend and Redmond or lands that are visually prominent.

Policy 2.7.5 Encourage new development to be sensitive to scenic views and sites.

FINDING: These policies are fulfilled by the County’s Goal 5 program. The County protects scenic views and sites along major rivers and roadways by imposing Landscape Management (“LM”) Combining Zones to adjacent properties. Staff noted, in the Staff Report (page 17), that no LM Combining Zone applies to the Subject Property at this time. Furthermore, no new development is proposed under the present application. The Hearings Officer finds that these provisions of the plan are not impacted by the proposed zone change and plan amendment.

Chapter 3, Rural Growth

Section 3.2, Rural Development

Growth Potential

As of 2010, the strong population growth of the last decade in Deschutes County was thought to have leveled off due to the economic recession. Besides flatter growth patterns, changes to State regulations opened up additional opportunities for new rural development. The following list identifies general categories for creating new residential lots, all of which are subject to specific State regulations.

- ***2009 legislation permits a new analysis of agricultural designated lands***
- ***Exceptions can be granted from the Statewide Planning Goals***
- ***Some farm lands with poor soils that are adjacent to rural residential uses can be rezoned as rural residential***

FINDING: This section of the Comprehensive Plan does not contain Goals or Policies, but does provide the guidance in the language set forth above. The Applicant provided the following response to this section in its Burden of Proof (page 18):

“This part of the comprehensive plan is not a plan policy. It is simply text that explains how the County calculated expected growth. It is also not a relevant approval criterion for a plan amendment and zone change application. Instead, it is the County’s assessment of the amount of population growth might occur on rural residential lands in the future based on its understanding of the types of changes allowed by law. Comprehensive Plan Policy 2.2.3 specifically authorizes rezoning and comprehensive plan map amendments for any property zoned EFU and is the code section that defines the scope of allowed zone changes.

This section makes it clear, however, that EFU-zoned land with poor soils adjacent to rural residential development is expected to be rezoned for rural residential development during the planning period. The subject property has poor soils and it adjoins rural residential areas and uses on three sides. The property that adjoins the Marken property to the north is pending annexation to the City of Bend for the development of affordable housing.”

Staff noted that the MUA10 Zone is a rural residential zone and, as discussed in previous findings, is located adjacent to properties to the north, east and south that are zoned MUA10. One of these surrounding MUA10 properties has received approval for a Comprehensive Plan Amendment and Zone Change to be included in the City of Bend UGB. This property is identified on Assessor’s Map 17-12-35 as Tax Lot 1500, and is located to the north of the Subject Property, across Bear Creek Road. Staff noted this policy also references the soil quality. Soil quality is discussed in the findings for Chapter 2, Resource Management, Section 2.2 Agricultural Lands, *Goal 1, Preserve and maintain agricultural lands and the agricultural industry.*

The Hearings Officer finds that this policy is not an approval criterion applicable to this case. The Hearings Officer finds this policy is aspirational. Further, the Hearings Officer incorporates the findings for Chapter 2, Resource Management, Section 2.2 Agricultural Lands, *Goal 1, Preserve and maintain agricultural lands and the agricultural industry.* The Hearings Officer finds that even if this policy is determined to apply, the incorporated findings adequately address the policy.

Section 3.3, Rural Housing

Rural Residential Exception Areas

In Deschutes County most rural lands are designated for farms, forests or other resources and protected as described in the Resource Management chapter of this Plan. The majority of the land not recognized as resource lands or Unincorporated Community is designated Rural Residential Exception Area. The County had to follow a process under Statewide Goal 2 to explain why these lands did not warrant farm or forest zoning. The major determinant was that many of these lands were platted for residential use before Statewide Planning was adopted.

In 1979 the County assessed that there were over 17,000 undeveloped Rural Residential Exception Area parcels, enough to meet anticipated demand for new rural housing. As of 2010 any new Rural Residential Exception Areas need to be justified through initiating a nonresource plan amendment and zone change by demonstrating the property does not meet the definition of agricultural or forest land, or taking exceptions to farm, forest, public facilities and services and urbanization regulations, and follow guidelines set out in the OAR.

FINDING: The Applicant provided the following response to this provision in its Burden of Proof (page 18 & 19):

“The quoted language is a part of the background text of the County's comprehensive plan. It is not a plan policy or plan goal written to guide the review of zone change and plan amendment applications. It does, however, recognize the fact that a Rural Residential Exception Area designation is an appropriate plan designation to apply to nonresource lands.

As LUBA and the Oregon Supreme Court recognized in the Wetherell decision, there are two ways a county can justify a decision to allow non-resource use of land previously designated and zoned

for farm or forest uses. The first is to take an exception to Goal 3 and Goal 4 and the other is to adopt findings that demonstrate the land does not qualify either as forest lands or agricultural lands under the statewide planning goals. Here, the applicant is pursuing the latter approach.”

The Hearings Officer incorporates the Applicant’s above-quoted statements as findings for this policy. The Hearings Officer finds Applicant sought to demonstrate that the Subject Property was nonrecourse land. The Hearings Officer adopts and incorporates the findings for Chapter 2, Resource Management, Section 2.2 Agricultural Lands, *Goal 1, Preserve and maintain agricultural lands and the agricultural industry* as additional findings for this policy. The Hearings Officer also adopts and incorporates as additional findings for this policy the findings for Policy 2.2.3.

The Hearings Officer takes note that Staff agreed (Staff Report, pages 18 & 19) with prior Deschutes County Hearings Officers’ interpretations and decisions which concluded that the above language is not a policy and does not require an exception to the applicable Statewide Planning Goal 3. The Hearings Officer agrees with this Staff approach and conclusion. The Hearings Officer finds that the proposed RREA plan designation is the appropriate plan designation to apply to the Subject Property.

Section 3.7, Transportation

**Appendix C – Transportation System Plan
ARTERIAL AND COLLECTOR ROAD PLAN**

...

Goal 4. Establish a transportation system, supportive of a geographically distributed and diversified economic base, while also providing a safe, efficient network for residential mobility and tourism.

...

Policy 4.4 Deschutes County shall consider roadway function, classification and capacity as criteria for plan map amendments and zone changes. This shall assure that proposed land uses do not exceed the planned capacity of the transportation system.

FINDING: This policy applies to the County and advises it to consider the roadway function, classification and capacity as criteria for plan amendments and zone changes. The Hearings Officer finds that the County will comply with this direction by determining compliance with the Transportation Planning Rule (“TPR”), also known as OAR 660-012, as described below in subsequent findings.

OREGON ADMINISTRATIVE RULES CHAPTER 660, LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

Division 6, Goal 4 – Forest Lands

OAR 660-006-0005, Definitions

- (7) "Forest lands" as defined in Goal 4 are those lands acknowledged as forest lands, or, in the case of a plan amendment, forest lands shall include:**
 - (a) Lands that are suitable for commercial forest uses, including adjacent or nearby lands which are necessary to permit forest operations or practices; and**
 - (b) Other forested lands that maintain soil, air, water and fish and wildlife resources.**

FINDING: The Applicant provided the following response to Goal 4 in their burden of proof:

*"The existing site and surrounding areas do not include any lands that are suited for forestry operations. Goal 4 says that forest lands "are those lands acknowledged as forest lands as of the date of adoption of this goal amendment." The subject property does not include lands acknowledged as forest lands as of the date of adoption of Goal 4. Goal 4 also says that "[w]here **a plan amendment involving forest lands is proposed, forest land shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water and fish and wildlife resources."*

This plan amendment does not involve any forest land as the term is defined by OAR 660-005-0010. That rule says that lands suitable for commercial forest use and protection under Goal 4 shall be identified using NRCS soils survey mapping to determine the average annual wood production figures. The NRCS maps the subject property as soil mapping units 364 and 58C. The NRCS Soils Survey of the Upper Deschutes River lists all soils mapped by its survey that are suitable for wood crop production in Table 8. Neither 36A nor 58C soils are soil mapping units the NRCS considers suitable for wood crop production because neither is listed on Table 8 as such."

The Subject Property is not zoned for forest lands, nor are any of the properties within a 3.5-mile radius. The Subject Property does not contain merchantable tree species and there is no evidence in the record that the Subject Property has been employed for forestry uses historically. The Hearings Officer finds that the Subject Property does not qualify as forest land.

Division 33 - Agricultural Lands & Statewide Planning Goal 3 - Agricultural Lands;

FINDINGS: The Hearings Officer incorporates as additional findings for this section the findings for Chapter 2, Resource Management, Section 2.2 Agricultural Lands, *Goal 1, Preserve and maintain agricultural lands and the agricultural industry*. The Hearings Officer also adopts and incorporates as additional findings for this policy the findings for Policy 2.2.3. In addition, the Hearings Officer finds that the Staff proposed findings set forth in the Staff Report (pages 20-34), except as modified or supplemented by the Hearings Officer in this recommendation, are factually and legally correct. The Hearings Officer includes (unedited) the Staff Report proposed findings from pages 20-34 as additional findings for Division 33 – Agricultural Lands & Statewide Planning Goal 3 – Agricultural Lands.

Quoted Staff Report Findings (Pages 20-34)

"OAR 660-015-0000(3)

To preserve and maintain agricultural lands.

Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space and with the state's agricultural land use policy expressed in ORS 215.243 and 215.700.

Goal 3 continues on to define "Agricultural Land," which is repeated in OAR 660-033-0020(1). Staff makes findings on this topic below and incorporates those findings herein by reference.

OAR 660-033-0020, Definitions

For purposes of this division, the definitions in ORS 197.015, the Statewide Planning Goals, and OAR Chapter 660 shall apply. In addition, the following definitions shall apply:

(1)(a) "Agricultural Land" as defined in Goal 3 includes:

- (A) Lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon[footnote omitted];***

FINDING: The Applicant's basis for not requesting an exception to Goal 3 is based on the premise that the Subject Property is not defined as "Agricultural Land." In support, the Applicant offered the following response as included in the submitted burden of proof statement:

ORS 215.211 grants a property owner the right to rely on more detailed information than provided by the NRCS Web Soil Survey of the NRCS to "assist the county to make a better determination of whether land qualifies as agricultural land." Statewide Goal 3, discussed above, and OAR 660-033-0030(5) also allow the County to rely on the more detailed and accurate information by a higher order soil survey rather than information provided by the NRCS. The law requires that this survey use the NRCS soil classification system in conducting the survey, making it clear that the point of the survey is to provide better soil classification information than provided by the NRCS for use in making a proper decision whether land is or is not "Agricultural Land."

Continued: Quoted Staff Report Findings (Pages 20-34)

*The more detailed **Exhibit A** soils survey prepared by certified soil classifier Brian Rabe shows that approximately 61.2% of the subject property is composed of Class VII and VIII soils and, therefore, is not predominantly Class I-VI soils.*

Staff has reviewed the soil study provided by Brian Rabe of Valley Science and Engineering, and agrees with the Applicant's representation of the data for the Subject Property. Staff finds, based on the submitted soil study and the above OAR definition, that the Subject Property is comprised

predominantly of Class 7 and 8 soils and, therefore, does not constitute "Agricultural Lands" as defined in OAR 660-033-0020(1)(a)(A) above.

(B) Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices; and

FINDING: The Applicant's basis for not requesting an exception to Goal 3 is based on the proposal that the subject properties are not defined as "Agricultural Land." The Applicant provided the following analysis of this determination in the burden of proof.

This part of the definition of "Agricultural Land" requires the County to consider whether the Class VII and VIII soils found on the subject property are suitable for farm use despite their Class VII and VIII classification. The Oregon Supreme Court has determined that the term "farm use" as used in this rule and Goal 3 means the current employment of land for the primary purpose of obtaining a profit in money through specific farming-related endeavors. The costs of engaging in farm use are relevant to determining whether farm activities are profitable and this is a factor in determining whether land is agricultural land. Wetherell v. Douglas County, 342 Or 666,160 P3d 614 (2007).

The Exhibit A soils report includes an evaluation of whether the subject property is land in other soil classes that is suitable for farm prepared by soil classifier, Brian Rabe that begins on page 4 of the study. The review considers all of factors set out in the rule, above, and concludes that the Marken property is not suitable for farm use as defined in ORS 215.203(2)(a).

The applicant offers the following additional information regarding the seven considerations:

Soil Fertility: *Class 7 and 8 soils are not fertile soils. They are not suited for the production of farm crops. This fact has been recognized in numerous County land use cases, including*

Continued: Quoted Staff Report Findings (Pages 20-34)

The zone change and plan amendment applications being filed with this land use application. Farm use on these soils is limited to rangeland grazing at a level that does not qualify as "farm use." No person would expect to make a profit by grazing livestock on the subject property. Additionally, it is not profitable to irrigate the islands of Class VI or better soils that are located on the property.

The primary agricultural activity that has occurred on the subject property during the time the property has been owned by the Markens is growing hay. The Markens acquired the property in 1981 and thereafter made determined and unsuccessful efforts to make a profit in money by farming the property. The Markens grew hay and occasionally raised cattle. Neither endeavor was profitable. The Markens removed rocks from the land to improve crop yields but this and accepted

farm practices (irrigation, fertilization, etc.) did not yield a profit in money from their agricultural enterprises. The Markens suffered financial losses in every year of farm operations, including the following years:

Year	Loss
2016	\$5,153
2015	\$3,049
2014	\$6,020
2013	\$1,480
2012	\$7,571
2011	\$6,316
2009	\$11,417
2008	\$3,949
2007	\$13,854

From 2017 until present, the Markens continued to irrigate their property but did not grow hay or attempt to earn a profit in money from farming. This, on average, resulted in smaller losses as follows:

Year	Loss
2021	\$2,762
2020	\$3,395
2019	\$2,276
2018	\$4,704
2017	\$4,407

Suitability for Grazing: *The primary agricultural use conducted on properties that lack irrigation water rights and have poor soils is grazing cattle. The poor soils and development pattern of the surrounding area make the Marken property a poor candidate for dryland grazing at an economic scale. The dry climate makes it difficult to produce adequate forage on the property to support a viable or potentially profitable grazing operation or other agricultural use of the property. This issue is addressed in greater detail in the **Exhibit A** soils study.*

Given the high cost of irrigating and maintaining the property as pasture or cropland (high labor costs, labor-intensive, high cost of irrigation equipment and electricity, high cost of fertilizer, etc.), dry land grazing is the only accepted farm use of poor soils in Deschutes County. This use can be conducted until the native vegetation is removed by grazing (see the discussion of the suitability of the property for grazing, below). The soils study includes an analysis of the level of cattle grazing that would be able to be conducted on the property without overgrazing it. It finds that the Marken property would support from 9 to 14 cow-calf pairs (AUMs) for a month or about one cow-calf pair for a year.

Deschutes County uses a more aggressive formula to assess potential income from dry land grazing. It assumes that the Marken property would support 49 AUMs per year which is approximately 4 cow-calf pairs per year. We've been told that this formula was developed by the

OSU Extension Service. It assumes that one acre will produce 900 pounds of forage per year and makes no allowance for good soil stewardship.

- One AUM is the equivalent to the forage required for a 1000 lb. cow and calf to graze for 30 days (900 pounds of forage).
- On good quality forage, an animal unit will gain 2 pounds per day.
- Two animal units will eat as much in one month as one animal unit will eat in two months.
- Forage production on dry land is not continuous. Once the forage is consumed, it typically will not grow back until the following spring.
- An average market price for beef is \$ 1.15 per pound.

Based upon these assumptions, the value of beef production on the entire subject property can be calculated using the following formula:

$$30 \text{ days} \times 2 \text{ \#/day/acre} = 60.0 \text{ lbs. Beef/acre}$$

(1 acre per AUM)

$$60.0 \text{ lbs. Beef/acre} \times 49 \text{ acres of undeveloped land with Deskamp and Gosney soils} \times \$1.15/\text{lb.} =$$

\$ 3,381 of gross income per year

Using the OSU/County formula, the total gross beef production potential for the subject property would yield approximately \$3,381 annually. This figure represents gross income. It does not take into account real property taxes, fencing costs, land preparation, purchase costs of livestock, veterinary costs, labor costs or any other costs of production. These costs would far exceed gross income. One veterinary emergency could easily erase all \$3,381 of annual gross income.

Property taxes for the subject properties were \$7,886.01 in 2021. The payment of a modest wage of \$15.00 per hour to the rancher and/or employee for one FTE would cost the ranch operation \$31,200 in wages and approximately an additional \$7,800 to \$12,480 (1.25 to 1.4 of salary) for employment taxes paid by the employer and standard employee benefits. Even at part-time only, labor costs would far exceed the income received from the sale of cattle.

While the amount of forage will be higher on irrigated land, the costs of farm operations and cost to purchase irrigation water rights impose costs that are not offset by the additional income obtained because the quality of the soil is so poor. Additionally, raising hay on the irrigated acreage, although unprofitable, makes better economic sense due to higher gross income, lower labor costs and a lack of a need for veterinary care and fencing. It, however, is not profitable.

Climate: The climate is cold and dry. The growing season is very short. The subject property is located between Redmond and Sisters. According to the OSU Extension Service the growing season for Bend is only 80 to 90 days long. **Exhibit O.** The average annual precipitation for Bend is only 11.36 inches. This means that the amount of forage available for dry land grazing is low and will be slow to regrow. This also means that a farmer has a short period of amount of time to grow crops. Crops require irrigation to supplement natural rainfall. This makes it difficult for a farmer

to raise sufficient income to offset the high costs of establishing, maintaining and operating an irrigation system and to purchase water from Central Oregon Irrigation District.

Existing and Future Availability of Water for Farm Irrigation Purposes: *The subject property is located in the Central Oregon Irrigation District. The subject property has 9.49 acres of irrigation water rights. He originally had 36 acres of COID water rights but sold them because he was unable to make a profit from farm the poor soils present on his property. Water rights in the Deschutes Basin are limited because surface water is fully or over appropriated and now new groundwater withdrawals are allowed without retiring existing water rights - typically water rights from other irrigated land in Central Oregon that, most likely, is better suited for farm use than the subject property. Such a transaction would run counter to the purpose of Goal 3 to maintain productive Agricultural Land in farm use.*

Existing Land Use Patterns: *The applicant's analysis of existing land use patterns provided earlier in this burden of proof shows that the subject property is surrounded on three sides by properties zoned MUA-10. On one side (west) it on adjoins a narrow strip of EFU-zoned land that lies between the Bend UGB and the Marken property. This strip contains a total of four properties that total approximately 60 acres and that are not engaged in commercial farm activities intended to make a profit in money. The only property being assessed as farm land contains 86.5% Class VII and VIII soils that do not yield farm profits. **Exhibit P.** The proposed MUA-10 zoning will allow future development that will be consistent with this established land use pattern.*

Technological and Energy Inputs Required: *Given its poor soils, the Marken property requires technology and energy inputs over and above accepted farming practices. The poor soils and dry climate create a need for excessive fertilization and soil amendments and very frequent irrigation. Pumping irrigation water requires energy inputs. The application of lime and fertilizer typically requires the use of farm machinery that consumes energy. The irrigation of the property requires the installation and operation of irrigation systems.*

Accepted Farming Practices: *As determined by the County in the Aceti case, farming lands comprised of soils that are predominately Class VII and VIII is not an accepted farm practice in Central Oregon. Dryland grazing, the farm use that can be conducted on the poorest soils in the County, typically occurs on Class VI non-irrigated soils. Crops are typically grown on soils in soil class III and IV when irrigated. These soils are Class VI without irrigation. No accepted farm practice will enable the Markens to obtain a profit in money from agricultural use of the property.*

Staff agrees with the Applicant that many of the factors surrounding the subject property – such as the current residential land uses in the area, soil fertility, and amount of irrigation required result in a relatively low possibility of farming on the subject property.

The submitted burden of proof indicates the subject property has historically been used for agriculture but this use consistently did not generate a profit in money. Staff also notes the owner of the subject property has relinquished 25.61 acres of Central Oregon Irrigation District water rights. Staff requests the Hearings Officer make specific findings on this issue.

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

FINDING: The Applicant offered the following response as included in the submitted burden of proof statement:

The subject property is not land necessary to permit farm practices to be undertaken on adjacent or nearby lands. None of the properties in the small strip of EFU-zoned land between the Marken property and the Bend UGB relies on the Marken property to undertake farm uses.

The submitted burden of proof also included the following summary of all EFU-zoned properties within an area of approximately one mile of the subject property.

Tax Lot	Size	House/ Structures	Tax Status	Farm practices/farm use?
TL 200, 18-12-02	16.99 acres	1969 house	Not deferred	Irrigation ponds; property irrigated to keep green; no farm use
TL 202, 18-12-02	1.47 acres	1961 house	Not deferred	Not in farm use
TL 1003, 18-12-02	27.19 acres	Approved for Lot of Record dwelling	Deferred	Soil class of property was changed for purpose of Lot of Record application to 86.5% LCC 7 and 8 based on soils study and by review of the study by OR Dept of Agriculture An irrigation pivot was purchased in an attempt to grow hay and maintain farm tax deferral but not profitable due to poor soils.
TL 1001, 18-12-02	12.45 acres	Nonfarm Dwelling	Not deferred	No farming; may be keeping a horse for riding (not a farm use)
TL 1000, 18-12-02	36.65 acres	Vacant COID property	Exempt	BOCC voted to change zoning to MUA-10 from EFU-TRB and is expected to adopt ordinances rezoning property and changing plan designation to RREA; no farm use
TL 1005 18-12-02	3.34 acres	1980 single-family home and utility building	Not deferred	No farm use
TL 1308, 18-12-02	39.18 acres	1965 single-family house and shed	Deferred	Some irrigation (15 of 40 acres per Assessor) and pond; unclear whether there is any farm use; most likely farm use, if any, based on aerial photography

				would be pasturing livestock or growing hay
TL 701, 18-12-12	12.12 acres	1973 single-family home and GP building	Deferred	Landscape Maintenance of Bend (landscape and lawn maintenance business) per Assessor Some irrigation (5 acres per Assessor)
TL 700, 18-12-12	26.22 acres	2000 machine shed (2595 sq ft)	Deferred; will be disqualified when approved nonfarm dwelling is built	Hemp Farm/hemp flower/hemp biomass/hemp trimming in 2020 About one acre in row crops; likely hemp. Aerial includes two greenhouses and a pasture/hay field on part of the property. CU-08-78 approval for nonfarm dwelling notes 7.53 acres of irrigation/hay. 247-17-000891-CU/247-18-000552-MC nonfarm dwelling approval; extension granted 247-21-000915-E.
TL 600, 18-12-12	41.37 acres	2006 farm building	Deferred	Two cell towers Irrigated field (wheel lines and hand lines); likely grows hay.
TL 601, 18-12-12	4.0 acres	1999 nonfarm dwelling authorized by CU-99-19	Not deferred	No visible farm use; nonfarm dwelling.
TL 900, 17-12-36	43.89 acres	vacant	Deferred	Not irrigated; no visible farm use Mostly 58C soil per NRCS which is predominantly Class VII nonagricultural soil.
TL 1000, 17-12-36	57.33 acres	vacant	Deferred	Not irrigated; no visible farm use.
TL 500, 17-12-36D	19.46 acres	2000 single-family nonfarm dwelling per CU-99-123	Not deferred	Hay and paddocks suitable for one or two horses.
TL 500, 17-12-36D	16.97 acres	1976 single-family home	Deferred	May or may not be irrigated; no signs of commercial farm use (hay or fenced

		and loft barn and lean-to		pastures); may be flood irrigating to keep green.
TL 400, 17-12-36D	16.36 acres	2000 single-family nonfarm dwelling, CU-99-124	Not deferred	No farm use; appears to be a race track for dirt bikes
TL 100, 17-12-36	100.89 acres	Solar farm	Not deferred	No farm use
TL 700, 17-12-36	83.40 acres	Solar farm	Not deferred	No farm use
TL 500, 17-12-36	51.54 acres	Solar farm	Not deferred	No farm use
TL 400, 17-12-36	38.06 acres	Vacant; part of solar farm site	Not deferred	No farm use
TL 600, 17-12-36	18.78 acres	1994 single-family nonfarm dwelling CU-93-46 and utility building	Not deferred	No signs of farm use
TL 601, 17-12-36	19.29 acres	Nonfarm dwelling, CU-98-27	Not deferred	No signs of farm use
TL 801, 17-12-36	34.99 acres	Church and amphitheater	Some exempt; rest taxed	No farm use
TL 200, 17-12-36	3.09 acres	Church	exempt	No farm use
TL 800, 17-12-36	8.89 acres	vacant	Not deferred	No farm use
TL 1401, 17-12-35	2.19 acres	Approved for dog training facility and kennel; no kennel yet	Not deferred	No farm use; no visible irrigation or farming
TL 1200 & 1201, 17-12-35	93.36 acres	vacant	Not deferred	No apparent farm use; not irrigated
TL 1205, 17-12-35	2.78 acres	Single-family nonfarm dwelling	Not deferred	No farm use
TL 1001, 17-12-35	1.76 acres	1948 single-family	Not deferred	No farm use

		dwelling and outbuildings		
TL 1402, 17-12-35	4.97 acres	1978 single-family home and outbuildings	Not deferred	No visible farm use; Google Maps shows as location for Destination Sideways, LLC (car rebuilding).
TL 1403, 17-12-35	10.0 acres	vacant	Not deferred	No apparent farm use per aerial photography (road closed).
TL 1301, 17-12-35	10.0 acres	2003 house (replacement dwelling)	Deferred	Pond and irrigated acres; unclear if in farm use; might be able to be used as a pasture.
TL 1300 and 1302, 17-12-35	28.01 acres	Farm parcel	Deferred	Tax lots owned as a tract – one parcel is a nonfarm dwelling and the surrounding property is a farm parcel. Unable to drive by property. Aerials may show some grapevines, a pond and an irrigated field (pasture or hay).
	2.06 acres	Nonfarm dwelling	Not deferred	
TL 1203, 17-12-35	.92 acres	2016 nonfarm dwelling	Not deferred	No farm use

This review shows that a significant majority of EFU-zoned properties inventoried (about 70%) are not receiving farm tax deferral. Additionally, two large properties that are receiving farm tax deferral are dry parcels that do not appear to be engaged in any type of farm use.

Staff agrees with the Applicant’s analysis and finds no feasible way that the subject property is necessary for the purposes of permitting farm practices on any nearby parcels discussed in the Findings of Fact section above, or the larger area more generally. This finding is based in part on poor quality, small size, and existing development on surrounding EFU properties. If the Hearings Officer disagrees with Staff’s assessment, Staff requests the Hearings Officer make specific findings on this issue.

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

FINDING: The Applicant provided the following response in the submitted burden of proof statement:

*This rule applies when a property owner seeks to rezone a parcel that was formerly a part of a farm unit without addressing the land capability of the entire farm unit. This rule does not apply here because the Markens are seeking to rezone an entire farm tract rather than a part of it. Furthermore, all parts of the subject property were studied by the applicant’s soils analysis, **Exhibit A**. The analysis shows that the predominant soil type found on the property is Class VII and VIII,*

nonagricultural land. Some Class VI soils are intermingled with the nonagricultural soil not vice versa. As a result, this rule does not require the Class VII and VIII soils to be classified agricultural land.

The submitted soils analysis indicates the subject property contains land in capability classes other than I-IV that is adjacent to or intermingled with lands in capability classes I-VI. Given the soil capability and prior agricultural use of the subject property, staff requests the Hearings Officer make specific findings on this issue.

- (c) ***"Agricultural Land" does not include land within acknowledged urban growth boundaries or land within acknowledged exception areas for Goal 3 or 4.***

FINDING: The subject property is not within an acknowledged urban growth boundary or land within acknowledged exception areas for Goals 3 or 4.

OAR 660-033-0030, Identifying Agricultural Land

- (1) ***All land defined as "agricultural land" in OAR 660-033-0020(1) shall be inventoried as agricultural land.***
- (2) ***When a jurisdiction determines the predominant soil capability classification of a lot or parcel it need only look to the land within the lot or parcel being inventoried. However, whether land is "suitable for farm use" requires an inquiry into factors beyond the mere identification of scientific soil classifications. The factors are listed in the definition of agricultural land set forth at OAR 660-033-0020(1)(a)(B). This inquiry requires the consideration of conditions existing outside the lot or parcel being inventoried. Even if a lot or parcel is not predominantly Class I-IV soils or suitable for farm use, Goal 3 nonetheless defines as agricultural "lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands". A determination that a lot or parcel is not agricultural land requires findings supported by substantial evidence that addresses each of the factors set forth in 660-033-0020(1).***

FINDING: The Applicant addressed the factors in OAR 660-033-0020(1) above. The properties are not "agricultural land," as referenced in OAR 660-033-0030(1) above, and contain barriers for farm use including poor quality soils and the development pattern of the surrounding area. The soil study produced by Mr. Rabe focuses solely on the land within the subject property and the Applicant has provided responses indicating the subject property is not necessary to permit farm practices undertaken on adjacent and nearby lands. Staff requests the Hearings Officer make specific findings on this issue, in part based on the Applicant's responses to OAR 660-033-0020(1), above.

- (3) ***Goal 3 attaches no significance to the ownership of a lot or parcel when determining whether it is agricultural land. Nearby or adjacent land, regardless of ownership, shall be examined to the extent that a lot or parcel is either "suitable for farm use"***

or "necessary to permit farm practices to be undertaken on adjacent or nearby lands" outside the lot or parcel.

FINDING: The Applicant submitted evidence showing the subject property is not suitable for farm use and is not necessary to permit farm practices to be undertaken on adjacent or nearby lands. The ownership of the subject parcels is not used to determine whether the parcel is "agricultural land."

- (5)(a) *More detailed data on soil capability than is contained in the USDA Natural Resources Conservation Service (NRCS) soil maps and soil surveys may be used to define agricultural land. However, the more detailed soils data shall be related to the NRCS land capability classification system.***

- (b) *If a person concludes that more detailed soils information than that contained in the Web Soil Survey operated by the NRCS as of January 2, 2012, would assist a county to make a better determination of whether land qualifies as agricultural land, the person must request that the department arrange for an assessment of the capability of the land by a professional soil classifier who is chosen by the person, using the process described in OAR 660-033-0045.***

FINDING: The soil study prepared by Mr. Rabe provides more detailed soils information than contained in the NRCS Web Soil Survey. NRCS sources provide general soils data for large units of land. The soil study provides detailed and accurate information about individual parcels based on numerous soil samples taken from the subject property. The soil study is related to the NRCS Land Capability Classification (LCC) system that classifies soils class 1 through 8. An LCC rating is assigned to each soil type based on rules provided by the NRCS.

The NRCS mapping for the subject properties is shown below in **Figure 1**. According to the NRCS Web Soil Survey tool, the subject properties contain approximately 85.3% 36A soil and contain approximately 14.7% 58C soil.

Continued: Quoted Staff Report Findings (Pages 20-34)

Figure 1: NCRS Soil Mapping on the Subject Property



The soil study finds the soil types on the subject property vary from the NRCS identified soil types. The soil types described in the soil study are described below (as quoted from Exhibit A of the submitted application materials) and the characteristics and LCC rating are shown in **Table 1** below.

Continued: Quoted Staff Report Findings (Pages 20-34)

Table 1: Site-Specific Map Unit Acreage and LCC Rating

Site-Specific Symbol	Unit Name	Acreage	%	Land Capability Class ¹	
				non-irrigated	irrigated
36A	Deskamp loamy sand, 0 to 3% slopes	23.23	38.81%	6s	3s
57A	Gosney stony loamy sand, 0 to 3% slopes	25.76	43.0%	7e	--
57C	Gosney stony loamy sand, 0 to 15% slopes	3.85	6.4%	7e	--
109	Rock outcrop	1.82	3.0%	8s	--
D	Developed land	4.57	7.6%	8s	--
W	Water	0.62	1.0%	8s	--
Total		59.85	100%		

NOTES:

Abbreviations: "--" = no data, e = erosion, NRCS = Natural Resources Conservation Service, s = shallow.

¹ Land Capability Class as published in the Soil Survey of Upper Deschutes River Area, Oregon (Soil Survey Staff, Natural Resources Conservation Service, 2002).

Delineations of map unit 36A, Deskamp loamy sand, 0 to 3% slopes and map unit 58C, Gosney-Rock outcrop-Deskamp complex, 0 to 15% slopes were mapped on the Site by the NRCS. As shown in Table 1, the NRCS classifies Gosney soils as Class VII and Rock outcrops as Class VIII. Deskamp soils are Class VI. Map unit 58C is expected to consist of about 75%o Class VII and VIII soils. The conditions observed on the Site are generally consistent with the published soil survey (Appendix A), except that much more of the shallower Gosney soils were encountered throughout the Site. There were no issues with access across the Site. Conditions most closely matching Gosney soils were observed at 24 grid locations and at least 21 additional locations along boundaries between grid points. Rock outcrops large enough to delineate were noted at 9 locations with smaller rock outcrops observed at over 55 additional locations. Conditions most closely matching Deskamp soils were observed at 29 locations. The area between points and along boundaries was walked and often probed for confirmation. The native vegetation typically associated with both Gosney and Deskamp soils are similar. However, most of the native vegetation at the Site had been cleared in an effort to establish a stand of pasture grass with mixed results. This required a higher density of points than typical.

Slopes were typically within the range associated with letter "A" used to identify the slope class of 0 to 3% for slope phases of map units. A few areas with slopes greater than 3% were better represented by the letter "C" used to identify slope classes of 8 to 15 percent or 0 to 15% for slope phases of map units. This is the only difference between the map units formally defined by the NRCS in the published soil survey and this site-specific soil survey.

The soil study concludes that 61.2% of the subject property consists of Class 7 and Class 8 soils. The submitted soil study is accompanied in the submitted application materials by correspondence from the Department of Land Conservation and Development (DLCD). The DLCD correspondence

confirms that the soil study is complete and consistent with the reporting requirements for agricultural soils capability as dictated by DLCD. Based on Mr. Rabe’s qualifications as a certified Soil Scientist and Soil Classifier, staff finds the submitted soil study to be definitive and accurate in terms of site-specific soil information for the subject properties. Staff requests the Hearings Officer make specific findings on this issue.

- (c) ***This section and OAR 660-033-0045 apply to:***
 - (A) ***A change to the designation of land planned and zoned for exclusive farm use, forest use or mixed farm-forest use to a non-resource plan designation and zone on the basis that such land is not agricultural land; and***

FINDING: The Applicant requested approval of a non-resource plan designation on the basis that the subject property is not defined as agricultural land.

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

FINDING: The Applicant submitted a soil study dated September 7, 2021. The soils study was submitted following the ORS 215.211 effective date. The Applicant also submitted acknowledgement from Hilary Foote, Farm/Forest Specialist with the DLCD, dated December 6, 2021, that the soil study is complete and consistent with DLCD’s reporting requirements. Staff finds this criterion to be met based on the submitted soil study and confirmation of completeness and consistency from DLCD.

- (e) ***This section and OAR 660-033-0045 authorize a person to obtain additional information for use in the determination of whether land qualifies as agricultural land, but do not otherwise affect the process by which a county determines whether land qualifies as agricultural land as defined by Goal 3 and OAR 660-033-0020.***

FINDING: The Applicant has provided a DLCD certified soil study as well as NRCS soil data. Staff finds the Applicant has demonstrated compliance with this provision.”

End of Quoted Staff Report Findings (Pages 20-34)

Based upon the Hearings Officer’s findings for Chapter 2, Resource Management, Section 2.2 Agricultural Lands, Goal 1, Preserve and maintain agricultural lands and the agricultural industry, the Staff Report findings quoted above, and evidence and argument provided by the Applicant, the Hearings Officer finds that the Subject Property is not Goal 3 “Agricultural Land” and that the application in this case does not require a Goal 3 exception.

DIVISION 12, TRANSPORTATION PLANNING

OAR 660-012-0060 Plan and Land use Regulation Amendments

- (1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:**
 - (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);**
 - (b) Change standards implementing a functional classification system; or**
 - (c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.**
 - (A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;**
 - (B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or**
 - (C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.**

FINDING: The Hearings Officer finds the above language is applicable to the proposal because it involves an amendment to an acknowledged comprehensive plan. The proposed plan amendment would change the designation of the Subject Property from AG to RREA and change the zone from EFU to MUA10. The Applicant is not proposing any land use development of the Subject Property at this time.

The Applicant submitted a traffic impact analysis (“TIA”), Exhibit L, dated April 22, 2022, prepared by Joe Bessman, PE of Transight Consulting LLC. As noted in the agency comments section above, the County Transportation Planner identified deficiencies with the submitted TIA and requested additional information. The Applicant then submitted a revised TIA dated June 23, 2022. The County Transportation Planner determined that additional information was still required regarding Level of Service and Volume to Capacity ratios in order to fully address OAR 660-012-0060. The Applicant then submitted a revised TIA dated June 29, 2022.

The revised TIA was reviewed by the County Transportation Planner, who agreed with the supplemented TIA report’s conclusions. Based upon a review of the revised TIA and the County Transportation Planner’s comments, the Hearings Officer finds that the proposed plan amendment and zone change will be consistent with the identified function, capacity, and performance standards of the County’s transportation facilities in the area. The Hearings Officer finds that the proposed zone change will not change the functional classification of any existing or planned transportation facility or change the standards implementing a functional classification system. Regarding the TIA dated June 29, 2022, the County Transportation Planner provided the following comments in an email dated June 30, 2022:

“The information demonstrates the project complies with the Transportation Planning Rule (TPR) and Deschutes County Code (DCC) 18.116.310.”

Based on the County Senior Transportation Planner’s comments and the supplemented TIA, the Hearings Officer finds compliance with the Transportation Planning Rule has been effectively demonstrated.

DIVISION 15, STATEWIDE PLANNING GOALS AND GUIDELINES

OAD 660-015, Division 15, Statewide Planning Goals and Guidelines

FINDING: The Statewide Planning Goals and the Applicant’s findings are quoted below:

*“**Goal 1, Citizen Involvement.** Deschutes County will provide notice of the application to the public through mailed notice to affected property owners and by requiring the applicant to post a "proposed land use action sign" on the subject property. Notice of the public hearings held regarding this application will be placed in the Bend Bulletin. A minimum of two public hearings will be held to consider the application.*

***Goal 2, Land Use Planning.** Goals, policies and processes related to zone change applications are included in the Deschutes County Comprehensive Plan and Titles 18 and 23 of the Deschutes County Code. The outcome of the application will be based on findings of fact and conclusions of law related to the applicable provisions of those laws as required by Goal 2.*

***Goal 3, Agricultural Lands.** The applicant has shown that the subject property is not agricultural land so Goal 3 does not apply.*

***Goal 4, Forest Lands.** The existing site and surrounding areas do not include any lands that are suited for forestry operations. Goal 4 says that forest lands "are those lands acknowledged as forest lands as of the date of adoption of this goal amendment." The subject property does not include lands acknowledged as forest lands as of the date of adoption of Goal 4. Goal 4 also says that "[w]here **a plan amendment involving forest lands is proposed, forest land shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are*

necessary to permit forest operations or practices and other forested lands that maintain soil, air, water and fish and wildlife resources."

This plan amendment does not involve any forest land as the term is defined by OAR 660-005-0010. That rule says that lands suitable for commercial forest use and protection under Goal 4 shall be identified using NRCS soils survey mapping to determine the average annual wood production figures. The NRCS maps the subject property as soil mapping units 364 and 58C. The NRCS Soils Survey of the Upper Deschutes River lists all soils mapped by its survey that are suitable for wood crop production in Table 8. Neither 36A nor 58C soils are soil mapping units the NRCS considers suitable for wood crop production because neither is listed on Table 8 as such.

Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces. The subject property does not contain any inventoried Goal 5 resources.

Goal 6, Air, Water, and Land Resources Quality. The approval of this application will not cause a measurable impact on Goal 6 resources. Approval will make it more likely that the irrigation and pond water rights associated with the property will ultimately be returned to the Deschutes River or used to irrigate productive farm ground found elsewhere in Deschutes County.

Goal 7, Areas Subject to Natural Disasters and Hazards. The subject property is not identified by the comprehensive plan as a known natural disaster or hazard area with the exception that the entire county is recognized as being a wildfire hazard area. The change of zoning and plan designation is not, however, precluded by this fact. Development is allowed despite the recognized hazard and the county has taken steps to develop programs that minimize this known risk.

Goal 8, Recreational Needs. This goal is not applicable because the property is not planned to meet the recreational needs of Deschutes County residents and does not directly impact areas that meet Goal 8 needs.

Goal 9, Economy of the State. This goal does not apply to this application because the subject property is not designated as Goal 9 economic development land. In addition, the approval of this application will not adversely impact economic activities of the state or local area.

Goal 10, Housing. The County's comprehensive plan Goal 10 analysis anticipates that farm properties with poor soils, like the subject property, will be converted from EFU to MUA-10 or MUA-10 zoning and that these lands will help meet the need for rural housing. Approval of this application, therefore, is consistent with Goal 10 as implemented by the acknowledged Deschutes County comprehensive plan.

Goal 11, Public Facilities and Services. The approval of this application will have no adverse impact on the provision of public facilities and services to the subject site. Utility service providers have confirmed that they have the capacity to serve the maximum level of residential development allowed by the MUA-10 zoning district.

Goal 12, Transportation. *This application complies with the Transportation System Planning Rule, OAR 660-012-0060, the rule that implements Goal 12. Compliance with that rule, addressed above, also demonstrates compliance with Goal 12.*

Goal 13, Energy Conservation. *The approval of this application does not impede energy conservation. The subject property is located in a part of the community that contains a large amount of rural residential development. Providing homes in this location as opposed to more remote rural locations will conserve energy needed for residents to travel to work, shopping and other essential services.*

Goal 14, Urbanization. *This goal is not applicable because the applicant's proposal does not involve property within an urban growth boundary and does not involve the urbanization of rural land. The MUA-10 zone is an acknowledged rural residential zoning district that limits the intensity and density of developments to rural levels. The compliance of this zone with Goal 14 was acknowledged when the County amended its comprehensive plan in 2011. The comprehensive plan recognizes the fact that the MUA-10 and RR zones are the zones that will be applied to lands designated Rural Residential Exception Area.*

Goal 15, Willamette Greenway. *This goal does not apply because the subject property is not located in the Willamette Greenway.*

Goals 16 through 19. *These goals do not apply to land in Central Oregon."*

COLW (September 6, 2022, page 2) provided the following comments related to Goal 14:

"The application has not shown that it complies with Goal 14. The requested zoning would allow 1 dwelling per 10 acres on this 60-acre property, or perhaps more under cluster or planned development conditional uses. As the property currently has only one dwelling, a six-fold increase in the residential density on this property would urbanize rural lands in violation of Goal 14, and thus requires an exception to Goal 14."

Applicant, in its Final Argument (pages 9 – 12), provided the following response to COLW's Goal 14 arguments:

Central Oregon LandWatch ("COLW") argues that the County must approve an exception to Statewide Goal 14, Urbanization, in order to apply the MUA-10 zone and RREA plan designation to the Marken property even if it is found to be non-agricultural land. An exception to Goal 14 is only required, however, if the proposed zone and designation allows urban development of the subject property.

In another similar plan amendment and zone change case, COLW relied on the legal case of 1000 Friends of Oregon v. LCDC (Curry County), 310 Or 447, 498-511, 724 P2d 268 (1986) for the proposition that a county may need to approve a goal exception to apply the RREA plan Page 10 – Applicant's Final Argument (Marken) designation and RR-10 zoning districts to the subject property. The Curry County case, however, does not support that argument.

In Curry County, the Oregon Supreme Court determined that rural residential zoning for exception areas must be proven to be rural in nature when first adopted, even for zones and plans adopted prior to the allowance of exceptions to Goal 14. Curry County at 476. This means that when Deschutes County's comprehensive plan and zoning code were acknowledged by LCDC around 1980, it was necessarily determined that RREA plan designation and zoning comply with Goal 14 and do not allow urban development.

Deschutes County Comprehensive Plan ('DCCP') Policy 2.2.3 specifically allows nonresource lands zoned EFU to be redesignated and rezoned and identifies the property zoning and plan designations to be applied to non-agricultural lands. The plan also states, in Section 3.3, Rural Residential Exception Areas:

*'As of 2010 any new Rural Residential Exception Areas need to be justified through initiating a non-resource plan amendment and zone change by demonstrating the property does not meet the definition of agricultural or forest land ***'*

*The Plan states that '[e]ach Comprehensive Plan map designation provides the land use framework for establishing zoning districts. Zoning defines in detail what uses are allowed for each area.' DCCP Section 1.3, p. 15. Rural Residential Exception Areas, according to the DCCP, 'provide opportunities for rural residential living outside urban growth boundaries and unincorporated communities ***' DCCP Section 1.3, p. 15. DCCP Table 1.3.3 provides that Title 18's RR-10 and MUA-10 are the 'associated Deschutes County Zoning Code[s]' for the RREA plan designation.*

The determination that the RREA plan designations and RR-10 and MUA-10 zoning districts should apply to non-agricultural lands was made when the County amended the DCCP in 2016. Ordinance 2016-005. The comprehensive plan, with that amendment, has been acknowledged by DLCD as complying with the Statewide Goals. This means that the lot sizes and uses allowed by the RREA plan designation and RR-10 zone are Goal 14-compliant. The proposed plan amendment simply proceeds exactly as described by the County's acknowledged comprehensive plan. It provides no occasion for the County to revisit the issue of whether the MUA-10 zone and RREA plan designation allow urban development that violates Goal 14. [footnote 2: In Deschutes Development Co. v. Deschutes County, 5 Or LUBA 218 (1982) LUBA held that 'We lack authority after acknowledgment of a comprehensive plan to review goal issues related to the plan. Fujimoto v. MSD, 1 Or LUBA 93, 1980, aff'd, 52 Or App 875, 630 P2d 364 (1981).] COLW's challenge to the application of MUA-10 zoning to the Markens' property that is nonagricultural land is an impermissible collateral attack on the County's acknowledged comprehensive plan.

This issue is addressed in detail by the Oregon Court of Appeals in Central Oregon LandWatch v. Deschutes County, 301 Or App 701, 457 P3d 369 (2020)(TID'). In TID, the Court held that a decision made by Deschutes County decades earlier not to apply a resource plan designation to the subject property made it unnecessary for the property owner to establish that the property is nonresource land when remapping it from Surface Mining to RREA and MUA-10. This is consistent with earlier Court of Appeals decisions that hold that Goal 5 is not a relevant issue in a plan amendment and zone change application if the subject property has not been identified as a Goal 5 resource by

the applicable comprehensive plan. *Urquhart v. Lane Council of Governments*, 80 Or App 176, 181-182, 721 P2d 870 (1986); *Friends of Neabeack Hill v. City of Philomath*, 139 Or App 39, 911 P2d 350, *rev den* 323 Or 136 (1996).

The case of *Jackson County Citizens' League v. Jackson County*, 171 Or App 149, 15 P3d 42 (2000) holds that it is unnecessary to establish compliance with Goal 14 for uses conditionally allowed by the EFU zone; just as it is unnecessary for the Markens to establish that Deschutes County's comprehensive plan, a plan that provides that the RREA plan designation and RREA zones (RR-10 and MUA-10) should be applied to nonagricultural lands, complies with Statewide Goal 14.

a. RREA Argument and Goal 14 Factors

While not conceding that an analysis of Goal 14, Urbanization is required, we provide one below. The MUA-10 zoning district does not authorize urban development that violates Statewide Goal 14. DCCP Chapter 1, Section 1.3 p. 15 (Definitions) says that RREAs provide opportunities for rural residential living; not urban living that violates Goal 14. A review of the factors identified by the Supreme Court in Curry County all confirm that the MUA-10 zoning district does not allow urban development.

i. Density

The MUA-10 zone imposes a maximum density of 1 dwelling per 10 acres. This is not an urban density. Such a density would never be allowed in any urban residential zoning district other than a reserve or holding zone. By way of comparison, the Porter Kelly Burns property will be developed at a density of 11 homes per acre (excluding a small park). In *Curry County*, the Supreme Court accepted the concession of 1000 Friends a density of one house per ten acres is generally "not an urban intensity." COLW argues that the comprehensive plan requires a 10-acre minimum parcel size. If they are correct, this minimum will apply during a review of any subdivision on the subject property and assure that development is "not an urban intensity. Furthermore, in *Curry County*, 1000 Friends of Oregon argued that densities greater than one dwelling per three acres (e.g. one dwelling per one or two acres) are urban. The density allowed by the RR-10 zone in a planned development is 2.5 times less dense. For a standard subdivision, the density allowed (1 house per 10 acres) is over 3 times less dense.

The density of the RR-10 zone is not, as claimed by COLW, six times greater than the density of development allowed in the EFU-zone. Deschutes County's EFU zone allows for non-irrigated land divisions for parcels as small as 40 acres to create two nonfarm parcels (1:20 acres density). It also allows for 2-lot irrigated land divisions that, in Deschutes County can occur on parcels zoned EFU-TRB subzone that are less than 30 acres in size. This division requires 23 acres of irrigated land and imposes no minimum lot size on the nonfarm parcel or parcels. This is a density greater than one house per 15 acres. A density of one house per 10 acres is not an urban density of development.

ii. Lot Size

The MUA-10 zoning district requires a minimum lot size of one house per ten acres. Smaller lots are allowed only if 65% to 80% of the land being divided is dedicated as open space.

The EFU zone that applies to the subject property imposes no minimum lot size for new nonfarm parcels. DCC 18.16.055. The only exception is that 5-acre minimum is required for non-irrigated land divisions of properties over 80 acres in size. DCC 18.16.055(C)(2)(a)(4). The EFU zone requires that other nonfarm uses be on parcels that are “no greater than the minimum size necessary for the use.” Although not relevant to this Application because the property is nonresource land rather than land in an exceptions area, OAR 660-004-0040 contemplates lot sizes as small as two acres in rural residential exceptions areas.

iii. Proximity to Urban Growth Boundaries

The Marken property adjoins the City of Bend. This makes it an excellent candidate for inclusion in the Bend UGB if properly identified as non-agricultural land. Skipping over the Marken property to annex the MUA-10 zoned properties east of the Marken property to the City of Bend will require an inefficient extension of urban services and urban sprawl.

iv. Services

Sewer service is prohibited by Goal 11. An increase in the density of development is not allowed if a public water system is developed to serve the subject Property so the approval of this application will not result in a violation of Goal 11.

v. Conclusion of Factors

In totality, the above-factors do not indicate that the Applicant’s rezoning request implicates Goal 14. Applicant’s proposal would increase that allowable density, but not to urban levels. Instead, approval of the proposal will enable the land to remain in a rural state until such time as it is included in the Bend UGB. At that time, it can be developed at urban densities.”

Staff, in the Staff Report (page 38) stated that it generally accepted *“the Applicant’s responses and finds compliance with the applicable Statewide Planning Goals has been effectively demonstrated.”* Staff, in the Staff Report, also stated that it took:

“note of public comments concerning potential loss of farmland, impacts to wildlife, and potential for increased housing density. While these comments detail concerns related to specific potential use patterns, staff finds the overall proposal appears to comply with the applicable Statewide Planning Goals for the purposes of this review.”

The Hearings Officer concurs with and adopts, as additional findings for this section, the Applicant’s legal analysis and conclusions (Burden of Proof, page 33, Final Argument, pages 9-11) related to the applicability of Goal 14 to this case. Applicant concluded, and the Hearings Officer agrees, that Goal 14 does not apply to this case. As alternative findings (if it is later determined that Goal 14 does apply to this case) the Hearings Officer adopts Applicant’s “RREA Argument and Goal Factors” as

findings. The Hearings Officer finds that if Goal 14 is applicable to this case the analysis provided by Applicant (Final Argument, pages 11 and 12) demonstrates the requirements of Goal 14 are met.

IV. CONCLUSIONS

The Hearings Officer considered the comments of neighboring property owners and the objections expressed by COLW in making this recommendation. The Hearings Officer finds the primary issues raised by neighboring property owners involved potential impacts resulting from approval of the application and the ability of the Subject Property to be farmed. The Hearings Officer finds that COLW’s primary issues related to (1) the Applicant’s soil scientist/classifier soil classifications at the Subject Property were not correct or relevant, (2) the application did not comply with Goal 14 and, (3) the application was not consistent with DCC 18.136.020(D).

The Hearings Officer reviewed and considered each neighboring property owner and COLW objection to the approval of the application. The Hearings Officer concluded that the application did meet all relevant policies and approval criteria. The Hearings Officer recommends approval of the Applicant’s Comprehensive Plan Amendment and Zone Change requests.

V. RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer recommends the Deschutes County Board of County Commissioners approval Applicant’s request to change the designation of the Subject Property from Agricultural (AG) to Rural Residential Exception Area (RREA) and approval of Applicant’s request for a Zone Change to rezone the Subject Property from Exclusive Farm Use–Tumalo-Redmond-Bend subzone (EFU-TRB) to Multiple Use Agricultural (MUA10).

Dated: November 4th, 2022



Gregory J Frank
Deschutes County Hearings Officer



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: April 12, 2023

SUBJECT: FY24 CDD Fee Increases – Continued Discussion

RECOMMENDED MOTION:

Move approval of Option 1, Option 2, Option 3 or other option(s) as may be discussed.

BACKGROUND AND POLICY IMPLICATIONS:

The Community Development Department (CDD) is primarily a fee-supported department. CDD's permit and application volumes during FY23 have decreased in ranges of 19% to 47.7% when compared to FY22 resulting in lower than anticipated revenue collection. CDD's FY24 preliminary requested budget calculations indicate a need for fee increases in each division. CDD requests a discussion of the preliminary requested FY24 budget details and possible options to balance it while seeking Board guidance and direction on fee increases to be included in the FY24 Requested Budget.

BUDGET IMPACTS:

CDD offers three options to balance its FY24 Requested Budget. There are no impacts to the current budget.

ATTENDANCE:

Peter Gutowsky, Director
Sherri Pinner, Sr. Mgmt. Analyst



COMMUNITY DEVELOPMENT

To: Board of County Commissioners
 Nick Lelack, County Administrator

From: Peter Gutowsky, CDD Director
 Sherri Pinner, Senior Management Analyst

Date: April 12, 2023

RE: CDD FY 2023-24 Fee Increase Discussion

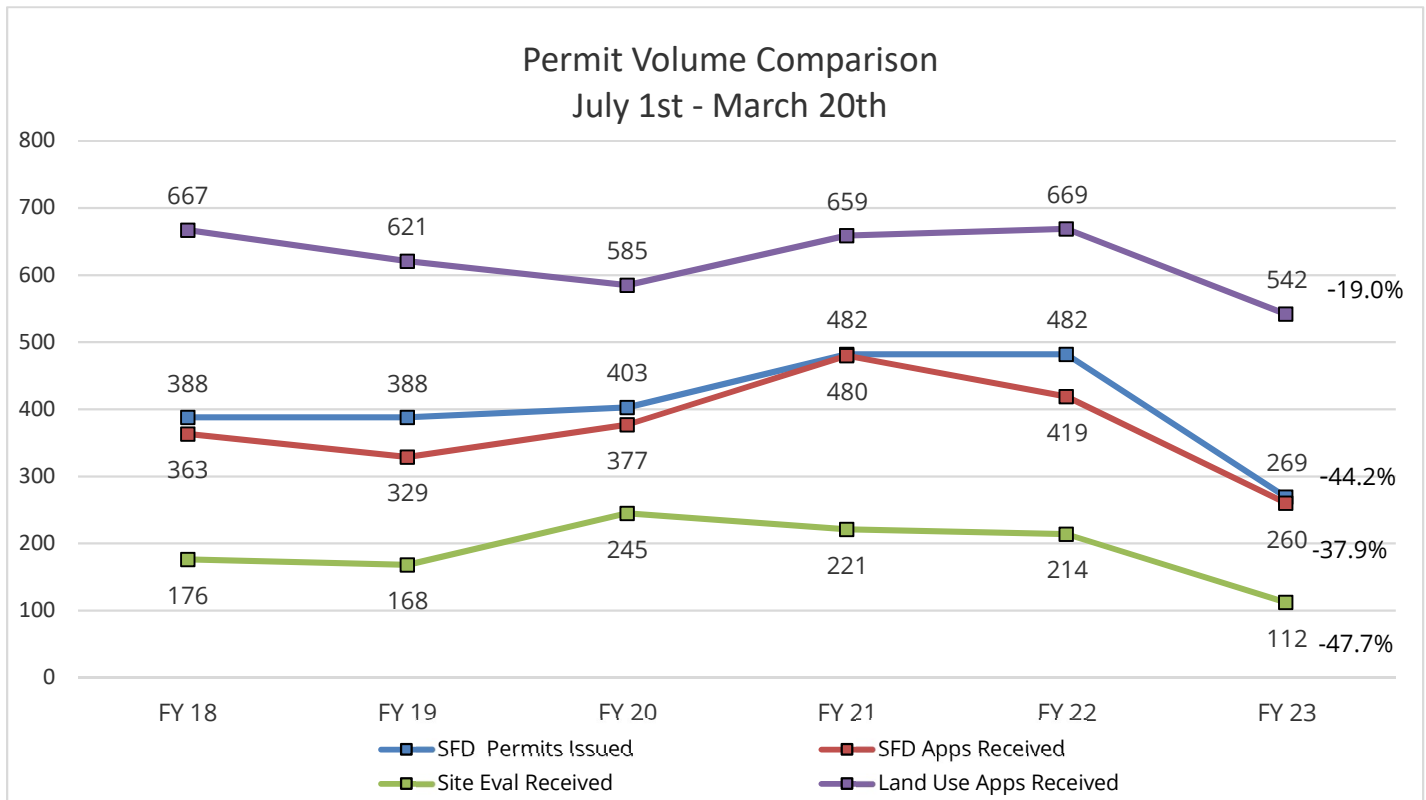
Fund 295 - Community Development Department

The Community Development Department (CDD) is primarily a fee-supported department. CDD's permit volume summary and FY24 preliminary requested budget highlights are as follows:

I. PERMIT VOLUME SUMMARY:

The graph below represents permit volume comparisons for the current and past five (5) fiscal years for the time period July 1st through March 20th of each fiscal year.

- All categories of permits issued and applications received experienced a decrease in volume ranging from 19% to 47.7% when compared to FY22.



II. FY24 PRELIMINARY REQUESTED BUDGET ASSUMPTIONS:

Expenditure Summary:

- CDD eliminated eight (8) FTE in January 2023 in an effort to align staffing with current permit and application volumes resulting in 64 FTE remaining. CDD will continue to analyze the appropriate number of FTE as retirements and resignations occur and/or if permit and application volumes continue to decrease.
- Includes increases for COLA, PERS, HBT, step increases, and general inflationary increases for materials and services;
- Includes budget for hearings officer services.

Revenue Summary:

- Permit volume is estimated to remain level with FY23 volumes which are comparable to FY15 through FY17 volumes;
- Includes 10.9% increase – ICC building valuation effective 4/1/23;
- Building valuation basis is anticipated to be less than FY23 due to anticipated reduced commercial projects;
- Strategies to balance include a combination of requested fee increases, reserve fund transfers, and/or reduction of fund balance;
- Includes General Fund for hearings officer services.

Overall Summary:

- Budgeted expenditures are an estimated \$1.3M more than base budgeted revenues;
- CDD presents three (3) options to balance;

III. STRATEGIES TO BALANCE:

Option #1

- Fee increases generate \$806K (App fees 4% to 20%; Building Valuation .02% to .05%)
- Reserve Fund Transfer \$562K
- Ending Fund Balance remains whole
- Contingency = 13.8%

Option #2

- Fee increases generate \$682K (App fees 4% to 18%; Building Valuation .02% to .04%)
- Reserve Fund Transfer \$453K
- Ending Fund Balance decreases \$183K
- Contingency = 11.6%

Option #3

- Fee Increases generate \$575K (App fees 4% to 16%; Building Valuation .02% to .03%)
- Reserve Fund Transfer \$523K
- Ending Fund Balance decreases \$219K
- Contingency = 11.3%

IV. BOARD DIRECTION:

- Prepare FY24 Budget using Option #1.
 - Application fees – 4% to 20% increase
 - Building valuation fees - .02% to .05% increase
 - Reserve Fund transfers
 - Contingency 13.8%

- Prepare FY24 Budget using Option #2.
 - Application fees – 4% to 18% increase
 - Building valuation fees - .02% to .04% increase
 - Reserve Fund transfers
 - Decrease fund balance – Contingency 11.6%

- Prepare FY24 Budget using Option #3.
 - Application fees – 4% to 16% increase
 - Building valuation fees - .02% to .03% increase
 - Reserve Fund transfers
 - Decrease fund balance – Contingency 11.3%

FY23-24 Fee Increase Discussion

Community Development

Presenter(s):

Peter Gutowsky, Director

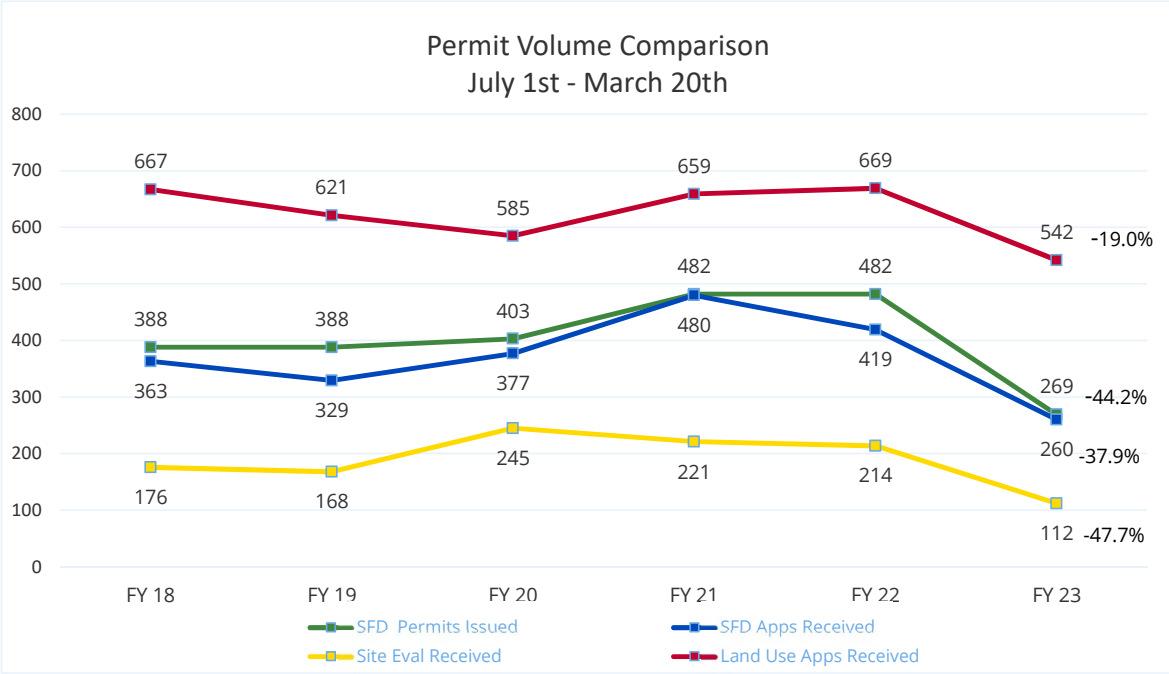
Sherri Pinner, Sr. Mgmt. Analyst



Board Meeting | April 12, 2023

Fund 295 FY24 Budget Highlights

FY23 Permit and application volumes decreased in ranges from 19% to 47.7% when compared to FY22



Fund 295 FY24 Budget Highlights

Resources:

- Anticipate level permit and application volumes;
- Includes International Code Council building valuation increase of 10.9%
- Strategies to balance include a combination of fee increases; reserve transfers and/or decrease in fund balance;
- Includes General Fund for hearings officer services.

Expenditures:

- Eliminated eight (8) FTE in January 2023; 64 FTE remaining;
- Includes increases for COLA, HBT, PERS, step increases and general inflationary materials & services, and hearings officer services.



Fund 295 FY24 Budget Summary

- Budgeted expenditures are an estimated \$1.3M more than base budgeted revenues;
- 64 FTE – succession planning, staff turnover & training, complex applications, non-fee generating inquiries, analyze future vacancies;
- Presenting three (3) options to balance for Board direction;



Balanced Budget Option #1

Fee Increases generate \$806K

- Code Compliance increase .02%
- Building Safety Supplemental Permits – 4%
- Electrical and Current Planning Apps – 15%
- Onsite Wastewater – 20%
- Public Information Counter and Advanced Planning - .05%

Reserve Transfer \$562K

- Est reserve balances:
 - Fund 300 – 4.5 months
 - Fund 301 – 20.6 months
 - Fund 302 – 8.9 months

Contingency = 13.8%

Building permit cost increase to 1,700 sq. ft. home = \$750



Balanced Budget Option #2

Fee Increases generate \$682K

- Code Compliance increase .02%
- Building Safety Supplemental Permits – 4%
- Electrical and Current Planning Apps – 13%
- Onsite Wastewater – 18%
- Public Information Counter and Advanced Planning - .04%

Reserve Transfer \$453K

- Est reserve balances:
 - Fund 300 – 4.7 months
 - Fund 301 – 20.6 months
 - Fund 302 – 8.7 months

Reduction of Fund Balance - \$183K

Contingency = 11.6%

Building permit cost increase to 1,700 sq. ft. home = \$695



Balanced Budget Option #3

Fee Increases generate \$575K

- Code Compliance increase .02%
- Building Safety Supplemental Permits – 4%
- Electrical and Current Planning Apps – 11%
- Onsite Wastewater – 16%
- Public Information Counter and Advanced Planning - .03%

Reserve Transfer \$522K

- Est reserve balances:
 - Fund 300 – 4.6 months
 - Fund 301 – 20.6 months
 - Fund 302 – 8.5 months

Reduction of Fund Balance - \$219K

Contingency = 11.3%

Building permit cost increase to 1,700 sq. ft. home = \$650



Thank you





BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: April 12, 2023

SUBJECT: Consideration to apply for a Community Development Block Grant for Housing Rehabilitation

RECOMMENDED MOTION:

Move to authorize submittal of an application for a Community Development Block Grant from Business Oregon.

BACKGROUND AND POLICY IMPLICATIONS:

Business Oregon administers the state of Oregon's annual federal allocation of Community Development Block Grant (CDBG) funds for non-metropolitan cities and counties. The primary objective of the CDBG program is to develop livable urban communities for persons of low and moderate incomes by expanding economic opportunities and providing housing and suitable living environments.

Deschutes County is a non-entitlement entity and may access CDBG funds through this grant process. The cities of Bend and Redmond are urban/entitlement communities and receive funds directly from the US Department of Housing and Urban Development.

Housing Rehabilitation project funds can be used for health and safety and other structural repairs to low- and moderate-income homeowners. Eligible project types include roof repairs, well projects, painting, septic repairs/replacement, accessibility improvements, foundations, siding, etc. The maximum grant possible from CDBG for housing rehabilitation in this program is \$400,000.

Eligible applicants for housing rehab loans are limited to low- and moderate-income homeowners (must be owner occupied homes) in Crook, Deschutes and Jefferson counties, outside of the cities of Bend or Redmond. Low- and moderate-income is defined as 80% of AMI by county and household size.

Although funds are subgranted to NeighborImpact, Deschutes County will retain responsibility for compliance with program rules, regulations, etc. NeighborImpact is responsible for various grant administration activities to support the grant recipient local government, in addition to operator of the lending program. County roles would include:

- Holding two public hearings to take public comment – one prior to submission of the application, and a second prior to closeout;
- Completing certain required plans/policies;
- Submitting draw requests to Business Oregon and paying NI invoices; and
- Completing a fair housing activity prior to grant closeout.

BUDGET IMPACTS:

None

ATTENDANCE:

Stephanie Robinson, Administrative Analyst

Andrew Spreadborough, Deputy Executive Director, NeighborImpact



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: April 12, 2023

SUBJECT: Resolution No. 2023-001 Establishing an Appeals Process for Trespass Notices and Adoption of Risk Management Policy (RM-5): Trespass Notice Policy

RECOMMENDED MOTION:

Move approval of Resolution No. 2023-001 and Risk Management Policy – RM 5, establishing a policy for trespass notices and an appeals process.

BACKGROUND AND POLICY IMPLICATIONS:

The Risk Manager investigates incidents and as appropriate, issues a trespass notice to individuals who violate the County's Prevention of Violence in the Workplace Policy or create unacceptable disturbances in the work place. Previously, there has been no established policy to guide staff in filing a trespass notice request, guide the Risk Manager and departments in issuing a trespass notice, and offer trespassed individuals an appeals process.

County Commissioners may delegate authority the Risk Manager to trespass individuals from County buildings and properties and the County Administrator to review and make a decision on trespass notice appeals to perform these actions on their behalf.

All trespassed individuals will continue to have access to County services and be required to pre-arrange any visit. The County may also develop alternative methods to provide services to the trespassed individual.

BUDGET IMPACTS:

N/A

ATTENDANCE:

Stephanie Robinson, Administrative Analyst
Erik Kropp, Deputy County Administrator

REVIEWED

LEGAL COUNSEL

04/12/2023 Item #12.

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

A Resolution to Establish an Appeals Process for *
Trespass Notices * RESOLUTION NO. 2023-001
*

WHEREAS, the Risk Manager shall be granted the authority to trespass individuals from County buildings or properties; and

WHEREAS, trespassed individuals shall have a meaningful right of appeal and an opportunity to explain their position as to why they should not have been trespassed; and

WHEREAS, the County Administrator, or their designee, shall be authorized to speak as a matter of policy on behalf of the County with regard to the County’s practice regarding or related to trespassing individuals from County buildings or properties, and independent of the Risk Manager, shall have authority to review appeals from trespassed individuals as to their trespassed status, now, therefore,

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

Section 1. That the Board of County Commissioners delegates authority to the Risk Manager to trespass individuals from County buildings or properties.

Section 2. That the Board of County Commissioners delegates authority to the County Administrator to review and decide on trespass appeals on their behalf.

Dated this _____ of _____, 2023

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DeBONE, Chair

PATTI ADAIR, Vice Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner



DESCHUTES COUNTY ADMINISTRATIVE POLICY No: RM-5
Effective Date: April 12, 2023 *DRAFT*

TRESPASS NOTICE POLICY

A. STATEMENT OF POLICY

The County supports its staff and the public by ensuring a workplace and public county buildings that promote safety from threats, threatening behavior, or acts of violence against staff, visitors, or other individuals on County worksites or as part of County work activities.

Deschutes County strives to provide “Every Time” customer service standards to all individuals, including those who may show up for services disgruntled, frustrated, confused, or angry. Both Risk Management and departments assess the level of risk within Deschutes County worksites and provide job-appropriate information and/or training to staff whose job duties will potentially expose them to workplace violence. Deschutes County has zero tolerance for acts or threats of violence in the workplace.

It is the policy of Deschutes County to issue a trespass notice to individuals who violate our Prevention of Violence in the Workplace Policy ([Deschutes County Administrative Policy No. HR-9](#)) and/or create unacceptable disturbances in the work place. A trespass notice prohibits individuals from entering or remaining in County buildings and/or property for designated length of time. The ability for the County to issue Trespass notices helps to maintain safety and security for all people at County worksites and properties.

B. APPLICABILITY

The provisions of this policy apply to any Deschutes County employee who has reason to request an individual be trespassed by the County due to acts of violence or threatening behavior, after staff has unsuccessfully attempted to de-escalate tense situations, or individuals, using specific professional techniques, department-specific protocols, or the Deschutes “Every Time” standards.

The Sheriff’s Office is exempt from these provisions and will follow its own trespass notice process. Individual departments may have additional protocols and procedures to determine which types of behaviors warrant a trespass notice and may use those in tandem with this policy.

C. POLICY AND PROCEDURES

1. Definitions

- a. Harassment: A form of behavior that to a reasonable person is intimidating, hostile, threatening, violent, abusive or offensive.
- b. Threat or Threatening Behavior: A physical, verbal, or written act that expresses, or is reasonably perceived as expressing, an intent to cause physical or psychological harm, or both, to anyone covered by this policy, or an act that is reasonably perceived as expressing intent to cause damage to property.
- c. Worksite: Any place where Deschutes County conducts business. This includes County-owned or leased offices or buildings, County-owned vehicles, personal vehicles when used within the course and scope of conducting Deschutes County work, clients' homes, and other locations where Deschutes County business is being conducted.
- d. Violence or Violent Behavior: A physical, verbal, or written act carried out or caused to be carried out which results, or may result, in physical or psychological harm, or both, to an individual covered by this policy, or damage to property. Examples of violent conduct include but are not limited to physical displays of aggression, such as hitting, pushing, pinching, grabbing, making threatening gestures or postures, or throwing objects. Also covered by this definition are situations in which physical or psychological harm occurs, even if such result was not intended (e.g., horseplay and practical jokes).
- e. Workplace Violence: Includes harassment, threats, threatening behavior, and violence and violent behavior, including behavior which causes harm where no violent intent is present (e.g. horseplay and practical jokes).

2. General

Following any department-specific assessment or de-escalation techniques, including using the Deschutes County "Every Time" customer service standards, and after notifying their immediate supervisor, staff may request to trespass an individual from a County building(s) and/or property following a single incident covered under this policy, or multiple, continued incidents covered under this policy.

Potential reasons for trespassing an individual, may include, but are not limited to the following list:

- Physical contact
- Actual violence or violent behavior, or threatening harm to an

individual

- Disrespectful and/or threatening behavior or speech
- Aggressive use of profanity directed at staff
- Intimidating or threatening phone calls to staff or department
- Intentionally or recklessly damaging County property

In any instance, if staff feel they are being subjected to or threatened with illegal behavior, they are empowered to take immediate action by calling 9-1-1 for a law enforcement response.

3. How to File a Trespass Notice Request

A trespass notice request should be filed immediately after an incident covered under this policy. A trespass notice request form is found in Exhibit A of this policy. The form is also available on the Risk Management website on InsideDC.

Trespass notice requests will be reviewed by the Risk Manager and if appropriate, the Risk Manager will draft a trespass notice for service on the individual.

A trespassed individual will not be allowed on designated County property for a specified period of time. However, trespassed individuals will still have access to County services and will be required to pre-arrange any visit related to County services at a time and location that is acceptable to the department and staff involved in such services. If necessary, the County will develop alternative methods to provide services to the trespassed individual.

4. Distribution of Responsibilities

a. Risk Management

- Review trespass notice requests and investigate incident, if necessary.
- Draft trespass notice for legal review.
- Coordinate with Sheriff's Office or law enforcement to serve the trespass notice to the individual.

b. Legal

- Review trespass notice and limitations to be imposed against the individual to be trespassed and return to Risk Management for further action.

c. Sheriff's Office

- The Sheriff's Office will serve the notice upon the individual to be trespassed.

d. County Administrator

- The County Administrator has final decision-making power on trespass appeals per the instructions in the trespass notice.

5. Appealing a Trespass Notice

Trespassed individuals may appeal their trespass notice in writing within ten (10) calendar days of receipt of the notice. A written appeal must describe the reasons why the trespassed individual should not be trespassed. Untimely appeal petitions will not be considered.

If a trespassed individual files an appeal, the County Administrator has final decision-making power (*see Resolution 2023-001*) and must communicate the decision in writing to the trespassed individual within ten (10) calendar days of receipt of the appeal petition.

6. If a Trespass Notice is Violated

If a trespassed individual violates their trespass notice, staff should immediately call 9-1-1 and report that the trespassed individual has violated a trespass. 9-1-1 will dispatch law enforcement to respond.

Approved by the Deschutes County Board of Commissioners on _____, 20__.

Nick Lelack
County Administrator

Exhibit A

TRESPASS NOTICE REQUEST FORM

Date of Request: Click or tap here to enter text.

Point of Contact: Click or tap here to enter text.

Phone Number: Click or tap here to enter text.

Trespass Request Type:

- Restrict Access to Building(s): Choose an item.
 - Other: Click or tap here to enter text.

- Restrict Access to Property(s): Click or tap here to enter text.

Person to be Trespassed (known name): Click or tap here to enter text.

Description of individual to be trespassed, if available:

Duration of Trespass: 3 months 6 months 12 months Other: Click or tap here to enter text.

Date and time of incident: Click or tap here to enter text.

Location of incident (building and floor/dept): Click or tap here to enter text.

Incident Description: Click or tap here to enter text.

Is this the first incident by this person: No Yes

Evidence: Witness(es), please list: Click or tap here to enter text.
Video Electronic Phone/Text Other: Click or tap here to enter text.

Please provide a photo of the individual, if available.

The County is required to provide alternative service to trespassed individual.

Point of contact to help with alternatively providing service: Click or tap here to enter text.

Email completed form to Erik Kropp (erik.kropp@deschutes.org) or Risk Manager (risk@co.deschutes.or.us).



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: April 12, 2023

SUBJECT: FY 2023 Q4 Discretionary grant review and Arts & Culture grant modification

RECOMMENDED MOTION:

N/A

BACKGROUND AND POLICY IMPLICATIONS:

Each quarter, the Board of Commissioners reviews applications submitted to the Deschutes County Discretionary Grant Program and makes awards accordingly. On April 12, 2023, the Board will consider requests made for activities to take place beginning or about the fourth quarter of 2022-23.

Dry Canyon Arts Association received a \$3000.00 Arts & Culture grant in 2022. Due to unforeseen circumstances, the organization was unable to complete the original grant project and has submitted a revised grant application. Staff is seeking Board approval to modify their existing grant agreement for this new educational arts program.

BUDGET IMPACTS:

Discretionary Grants are made available through the Video Lottery Fund, which is supported by state lottery proceeds. Discretionary Grant funds available during the fourth quarter were budgeted for FY 2022-23.

There are no budget impacts for the Arts & Culture grant modification request.

ATTENDANCE:

Stephanie Robinson, Administrative Analyst