



BOARD OF COMMISSIONERS

BOARD OF COUNTY COMMISSIONERS MEETING

1:00 PM, MONDAY, AUGUST 07, 2023

Allen Room - Deschutes Services Building - 1300 NW Wall Street - Bend

(541) 388-6570 | www.deschutes.org

AGENDA

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

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

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

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

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

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



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

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

CALL TO ORDER

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.*

ACTION ITEMS

- [1.](#) **1:00 PM** Application for COHC Opportunity Grant
- [2.](#) **1:10 PM** Update from Terrebonne Sanitary District
- [3.](#) **1:30 PM** Work Session – Vacation of a Portion of Schibel Road
- [4.](#) **1:35 PM** Work Session – Mountain View Petition to Incorporate
- [5.](#) **1:45 PM** Work Session: Appeal of a decision regarding a secondary accessory farm Dwelling
- [6.](#) **1:55 PM** Preparation for Public Hearing: Repeal of Conventional Housing Combining Zone

OTHER ITEMS

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

EXECUTIVE SESSION

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

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

ADJOURN



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 7, 2023

SUBJECT: Application for COHC Opportunity Grant

RECOMMENDED MOTION:

Move to authorize Public Health staff to apply for a COHC Opportunity grant.

BACKGROUND AND POLICY IMPLICATIONS:

Deschutes County Health Services (DCHS) is seeking approval to apply for the Central Oregon Health Council 2023 Opportunity Grant. This grant opportunity is unique in that it is open to organizations who have already been awarded funding from another grantor and whose projects align with the Regional Health Improvement Plan (RHIP) Future State Measures. COHC will award up to \$200,000 per organization to assist in enhancing and sustaining grant funded programs. Allowable use of funds are for project capacity expansion, service area expansion, project timeline extension and/or including additional populations. DCHS-Public Health has prioritized the Drug Free Community (DFC) grant funded program for this COHC funding opportunity.

DCHS' current DFC grant, awarded by the Centers for Disease Control and Prevention (CDC), addresses the geographic area of the City of Bend with a focus on preventing youth under 18 years from consuming alcohol, e-cigarettes and vape pens, and increasing their perception of risk for underage cannabis use.

DFC required goals include:

1. Increase community collaboration - including engagement and coalition sustainability.
2. Reduce youth substance use- including Information dissemination, education problem identification and referral, and environmental strategies

The DFC grant expires September 29, 2025. The COHC Opportunity Grant would allow DCHS Pubic Health (PH) to expand the DFC grant timeline through December 2026, expand the service area from Bend only to broader Deschutes County, and expand service population from youth under 18 only to include young adults, 18-25 year olds, while strengthening the sustainability of recent projects.

For example, this grant opportunity could allow more time and expertise to adapt youth-

focused tobacco cessation materials to reach all of Deschutes County communities and help to expand the alcohol binge drinking prevention efforts to young adults in Deschutes County, a heavy drinking, and high-risk population. Please see "DFC Accomplishments" document, attached.

If awarded, DCHS intends to use all funding to support a current 1.0 FTE Community Health Specialist II (limited duration currently ending Sept. 2025). Total cost of salary and benefits for the proposed 15-month timeframe is \$205,503. DCHS will secure additional resources to cover the \$5,503, which exceeds the grant amount. Additionally, it should be noted that the COHC grant opportunity does not allow for indirect costs. The loss of indirect revenue from the DFC grant is \$12,500. In recognition of this loss, DCHS will consider multiple options to address the shortfall in FY26 and 27 budgets; this may include reprioritization of current resources or reduction of FTE.

BUDGET IMPACTS:

If awarded, \$200,000 revenue for the term September 30, 2025 to December 31, 2026

ATTENDANCE:

Jessica Jacks, Public Health Program Manager
Lauren Wood, Drug Free Communities Program Coordinator

Drug Free Communities Accomplishments



	UPSHIFT	CONNECT PARENT WORKSHOPS	MEDIA CAMPAIGNS	YOUTH VAPING LEGISLATION	RX DRUG MISUSE PREVENTION
INITIATIVE 	<p><u>Screening and evidence-based curriculum, or referral to treatment</u> (instead of suspension) for substance-use policy violations.</p>	<p><u>Workshops</u> equip parents to have effective prevention conversations with their children regarding substance misuse.</p>	<p><u>Parent-focused media campaigns</u>, (2018 & 2023), supporting effective parent-child communication regarding substance misuse. Media drives parents to vetted resources on website.</p>	<p>Active youth leaders engaged with local decision-makers on harms of e-cigarettes & impact on youth (particularly flavored vaping products).</p>	<p><u>Regional awareness campaigns and website</u> (in English & Spanish) promoting safe use, storage, and disposal of prescription drugs, to prevent RX drug misuse.</p>
DATA/ RESULTS 	<p>187 students diverted to Upshift vs. unsupervised time out of school (22-23 school year). 90% of students report non-use or reduced use since program start.</p>	<p>34 workshops delivered to 287 parents. 90% of parents felt confident/very confident to talk to their kids about harms of substance use.</p>	<p>Website engagement increased 7x vs. pre-campaign rates (avg. 1,000+ new visitors/month on English site, 500 on Spanish site).</p>	<p>Youth testified to OR State Legislature on youth impact of vaping products, and participated on the OR Tobacco Retail License Rules Advisory Panel.</p>	<p>300k impressions each across broadcast & cable TV, plus 200K radio impressions (2020).</p>
CURRENT STATUS & SUSTAINABILITY 	<p>Sustainability through outside funding, expanded to Bend, Redmond, and Sisters School Districts.</p>	<p>Sustainability through outside funding, partnership with Deschutes County school districts.</p>	<p>Add'l funds received from OR Dept. of Transportation and County Cannabis Advisory Panel.</p>	<p><u>OR Tobacco Retail Licensing law</u> passed in 2021.</p>	<p>Serves as regional resource hub.</p>



BOARD OF
COMMISSIONERS

AGENDA REQUEST AND STAFF REPORT

MEETING DATE: August 7, 2023

SUBJECT: Update from Terrebonne Sanitary District

RECOMMENDED MOTION:
None; information only.

BACKGROUND AND POLICY IMPLICATIONS:
Board members for the recently formed Terrebonne Sanitary Sewer District will provide the BOCC an update on the status of the district formation, project development, funding, and other items.

BUDGET IMPACTS:
Update only.

ATTENDANCE:
Terrebonne Sanitary District Board Members
Chris Doty, Road Department



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 7, 2023

SUBJECT: Work Session – Vacation of a Portion of Schibel Road

BACKGROUND AND POLICY IMPLICATIONS:

Deschutes County Road Department has received a petition to vacate a portion of Schibel Road in Section 05 of Township 17S, Range 12E, W.M. As the petition for vacation does not include acknowledged signatures of owners of 100 percent of property abutting the proposed vacation area, the vacation proceedings are subject to a public hearing which will be held on Wednesday, August 9, 2023. This work session is to prepare the Board for the August 9th public hearing.

BUDGET IMPACTS:

None

ATTENDANCE:

Cody Smith, County Engineer/Assistant Road Department Director



MEMORANDUM

TO: Board of County Commissioners

FROM: Cody Smith, County Engineer/Assistant Road Department Director

DATE: July 14, 2023

SUBJECT: **Road Official’s Report**
Vacation of a Portion of Schibel Road in Section 05, Township 17S, Range 12E, W.M.

Background:

Deschutes County Road Department has received a petition to vacate a portion of Schibel Road in Section 05 of Township 17S, Range 12E, W.M.. The Petitioners, who are owners of abutting or underlying property to the proposed vacation area, are:

- Jeffrey and Kathryn Gates, owners of Tax Lot 1800 on Assessor’s Map 17-12-05B (Chief Petitioner);
- Marlene Wheeler Rennie, owner of Tax Lot 1901 and joint owner of Tax Lot 1400 on Assessor’s Map 17-12-05B; and
- Terry A. Rennie, joint owner of Tax Lot 1400 on Assessor’s Map 17-12-05B.

The following individuals are owners of abutting or underlying property to the proposed vacation area who are not Petitioners to the proposed vacation:

- Carl Elwyn Owens III, owner of Tax Lot 1900 on Assessor’s Map 17-12-05B; and
- John Kevin O’Leary, owner of Tax Lot 100 on Assessor’s Map 17-12-05C.

Schibel Road is a local access road that is not maintained by Deschutes County. From Old Bend Redmond Highway, Schibel Road proceeds west; approximately 1,240 ft. west of Old Bend Redmond Highway (within the boundaries of Tax Lot 1800), Schibel Road branches into two alignments, one alignment bearing north and one alignment bearing southwest. The northerly alignment across Tax Lot 1800 presently does not coincide with the established right of way. The subject right of way proposed for vacation includes the entirety of the right of way lying within the boundaries of Tax Lots 1800 and 1901, which includes the intersection of the two aforementioned alignments and the southwest alignment. The owners of Tax Lot 1800 have agreed to dedicate a new public right of way across their property to coincide with the existing as-travelled alignment of Schibel Road for the north alignment. The subject right of way proposed for vacation is 60 feet wide and was

created by dedication deed recorded at the Deschutes County Clerk's Office as Deed No. 1994-46818. Most of the length of Schibel Road within the proposed vacation is paved at varying widths; Road Department staff understand that the road improvements were funded and constructed by current or previous owners of the underlying properties and that the improvements were not funded by the County. There are presently public utilities within the proposed vacation area consisting of facilities owned and operated by Central Electric Cooperative.

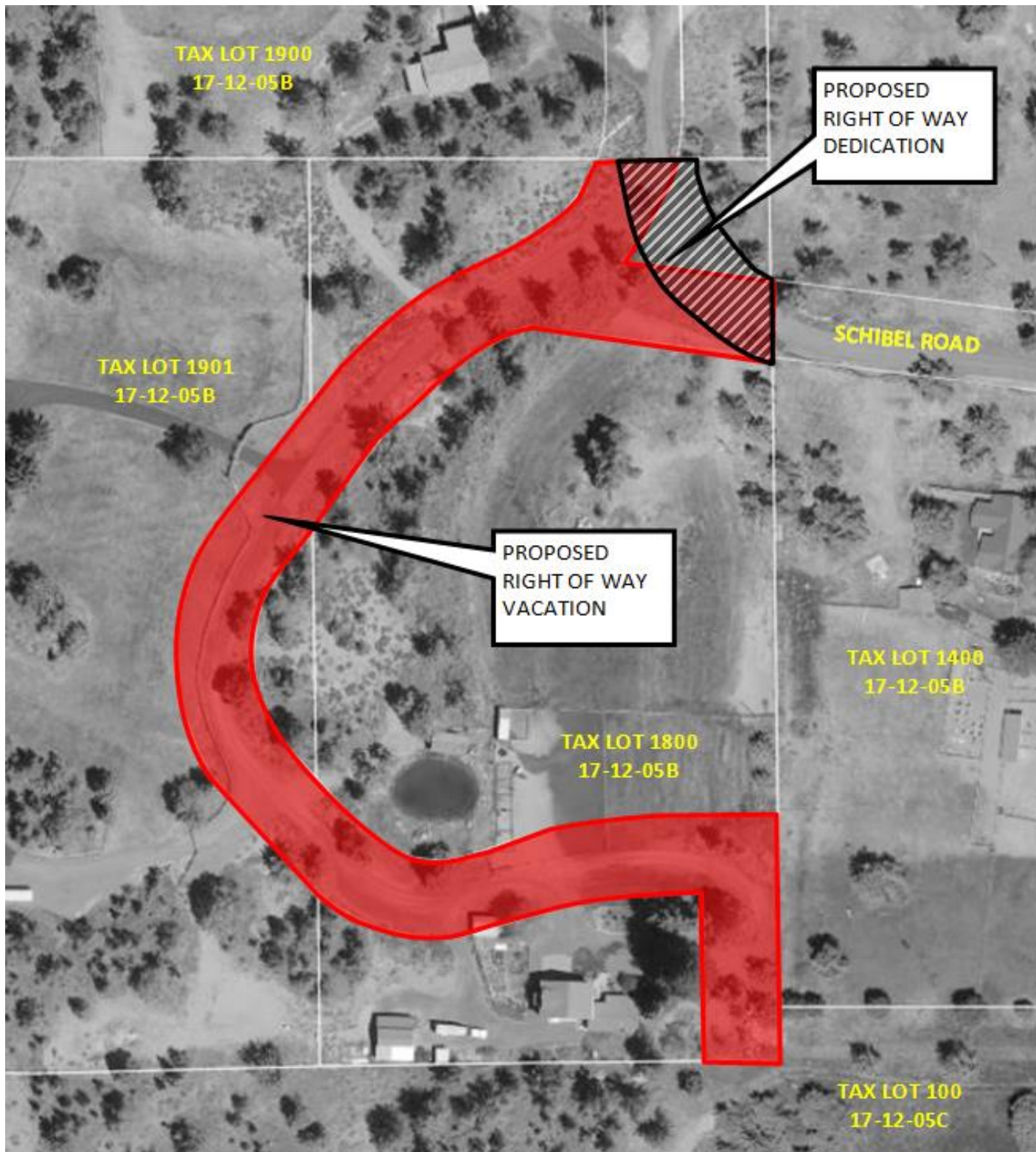


Figure – Aerial Photo of Proposed Vacation Area

The Petitioners provided the following reasons (in bold italics) for the proposed vacation; Road Department staff responses to the reasons provided by the Petitioners are also given below:

1. ***Invalid Dedication due to Restrictions and Reservations –Septic was installed & permitted by Deschutes County in 1980, repaired and permitted by Deschutes County in 1991. The Deed of Dedication was accepted in 1994 by Deschutes County. The 60 foot width encroaches upon the septic system that was approved by Deschutes County.*** Road Department staff assert that the dedication of the subject portion of Schibel Road was valid, as Deed No. 1994-46818 includes valid offer of the dedication by the owners of the underlying property at the time of dedication and acceptance by the County governing body at the time of dedication. Based on a review of Community Development Department property records for Tax Lot 1800 on Assessor’s Map 17-12-05B, it does appear that a portion of the disposal field and reserve area for the subject property’s onsite wastewater system may exist within the proposed vacation area. Additionally, an outbuilding and a portion of a livestock corral also appear to exist within the proposed vacation area. Road Department staff note that, while this situation encumbers both the public right of way and the underlying property, it does not invalidate the public road dedication.
2. ***Reduces property values of the 3 tax lots requesting this Vacation, which is 75% of the owners.*** Road Department staff will not address this statement as it is not verifiable or indicative of a necessity to vacate the public’s interest in a property.
3. ***Decades old trees and landscaping would be lost.*** Road Department staff will not address this statement as it is not verifiable or indicative of a necessity to vacate the public’s interest in a property.
4. ***Since 1994, the county has never used, improved, nor plowed this road to our knowledge. Not once that we know of has the county plowed the snow during the major snowstorms of 2017 & 2019.*** Road Department records indicate that no County-funded maintenance or improvement of the subject portion of Schibel Road has ever occurred; however, Road Department staff note that County-funded maintenance of a local access road is forbidden under state law and that absence of County-funded maintenance is not indicative of a necessity to vacate the public’s interest in a property.
5. ***The southern portion of the road that is requested to be vacated has not been used by the general public and has only been used as access and a driveway for tax lots 1800 and 1901.*** John Kevin O’Leary, owner of Tax Lot 100 on Assessor’s Map 17-12-05C, has indicated to Road Department staff that he has interest in using it for future access. Nonetheless, Road Department staff believe that, generally, the subject right of way has only been used to access Tax Lots 1800 and 1901 as indicated by the Petitioners. The primary access to Tax Lot 100 on Assessor’s Map 17-12-05C is from Old Bend Redmond Highway.
6. ***Traffic will increase, and no traffic study has been done that we know of.*** Road Department staff will not address this statement as it is not verifiable or indicative of a necessity to vacate the public’s interest in a property.

- 7. **Safety of the young children living on Schibel Road is a concern of the parents and neighbors.** Road Department staff will not address this statement as it is not verifiable or indicative of a necessity to vacate the public’s interest in a property.
- 8. **It is not in the General Public’s best interest.** The Board of County Commissioners will make this determination.
- 9. **Induced to sign dedication under false pretenses. We were told we could remove the southern portion of the dedication with a “single item deletion.** Current Road Department staff have no knowledge of the requirements or circumstances under which the subject right of way was dedicated in 1994. Road Department staff note that Jeffrey and Kathryn Gates, Chief Petitioners and owners of Tax Lot 1800 on Assessor’s Map 17-12-05B, were partial grantors for the 1994 dedication deed.
- 10. **Tax lot 100 to the south will not suffer loss of access as the site address of 64145 Old Bend Redmond Hwy is permitted, approved and installed.** As indicated above, the primary access to Tax Lot 100 on Assessor’s Map 17-12-05C is from Old Bend Redmond Highway.

A review of Assessor’s Tax Map 17-12-05B indicates that the proposed vacation would effectively landlock Tax Lot 1901, potentially depriving the owners of that property of access necessary for the exercise of their property right. In regards to this matter, Road Department staff note that the submitted petition included a loss of access consent form signed by the property owners.

The Petitioners submitted completed service provider consent forms from those providers serving within or adjacent to the proposed vacation area; those service providers and their responses are listed below:

- Avion Water Company, Inc.
 - Representative: Mike Heffernan, Engineering Department
 - Service provider does not have existing facilities within the area proposed for vacation
 - **Service provider consents to the proposed vacation**
- Central Electric Cooperative
 - Representative: Parneli Perkins, Land and ROW Specialist
 - Service provider does have existing facilities within the area proposed for vacation
 - **Service provider consents to the proposed vacation but requests that an easement for utilities be granted within the proposed vacation area.** Service provider emailed Road Department staff on June 12, 2023 indicating that easement documents had been secured and that their organization was supportive of the proposed vacation.

Findings:

Based upon the submitted petition materials, responses to service provider notices, and the Road Department’s research of the subject right of way, the Road Department makes the following findings:

- The proposed vacation area was dedicated to the public by dedication deed recorded at the Deschutes County Clerk’s Office as Deed No. 1994-46818 (ORS 368.326).
- Owners of a recorded property right that would potentially be deprived of access necessary for the exercise of that property right with the proposed vacation have consented to the proposed vacation (ORS 368.331).

- The Petitioners, who represent the owners of more than sixty (60) percent of property abutting the subject right of way, have submitted complete petitions and submitted the required fee (ORS 368.341(1)(c); ORS 368.341(3); ORS 368.341(4); ORS368.351).
- As the petition for vacation does not include acknowledged signatures of owners of 100 percent of property abutting the proposed vacation area, the vacation proceedings are subject to a public hearing (ORS 368.346).
- The subject right of way does not appear to be necessary for current or future public use.
- The subject right of way appears to coincide with onsite wastewater system components, an outbuilding, and other private property improvements for Tax Lot 1800 on Assessor’s Map 17-12-05B.

Recommendation:

Based on the above findings, the Road Department has determined that the proposed vacation is in the public interest. The Road Department recommends that the Board of County Commissioners approve the proposed vacation with adoption of Order No. 2023-017 subject to the following conditions:

1. Prior to vacation of the subject right of way, the owners of Tax Lot 1800 on Assessor’s Map 17-12-05B shall execute a dedication deed to coincide with the existing as-travelled north alignment of Schibel Road.
2. The vacated property shall vest with the rightful owner or owners holding title according to law in accordance with ORS 368.366(1)(c).

This report is made pursuant to ORS 368.326 through 368.366, concerning the vacation of county property.



BOARD OF
COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 7, 2023

SUBJECT: Work Session – Mountain View Petition to Incorporate

RECOMMENDED MOTION:

Staff seeks Board direction to return on August 9, 2023 with an order initiating the public hearing process to consider a petition to incorporate the city of Mountain View. Staff further seeks direction from the Board on cost recovery associated with required notices.

BACKGROUND AND POLICY IMPLICATIONS:

Staff will conduct a work session with the Board to discuss the hearing approach and parameters for a petition to incorporate.

BUDGET IMPACTS:

None

ATTENDANCE:

Nicole Mardell, AICP, Senior Planner – Long Range
Peter Gutowsky, AICP, Community Development Director
Stephanie Marshall, Assistant Legal Counsel



MEMORANDUM

TO: Deschutes County Board of Commissioners (“Board”)

FROM: Nicole Mardell, AICP, Senior Planner
Peter Gutowsky, AICP, Community Development Director

DATE: August 2, 2023

SUBJECT: Work Session – Mountain View Petition to Incorporate

Staff will conduct a work session with the Board on Monday, August 7, 2023, to discuss the hearing approach and parameters for a petition to incorporate.

The record is available at the following website: www.deschutes.org/mountainviewincorporation

I. BACKGROUND

On February 14, 2023, a Prospective Petition for Incorporation of a City was submitted to the Deschutes County Clerk’s office. The Chief Petitioner, Andrew Aasen, seeks to establish a new city, approximately 265 square miles (169,550 acres) in size, extending west of Diamond T Road to the intersection of Highway 20 and 27 (George Millican Highway) as shown in the attached map.

Oregon Revised Statute (ORS) sections 221.005 to 221.106 outline the procedures for incorporation of new cities. Under these rules, an unincorporated area of at least 150 persons can submit a petition to incorporate to the county clerk’s office for consideration by the Board.

If at least 20 percent of registered voters within the proposed incorporation boundary sign on to the petition, it can then move forward to a public hearing. The purpose of the public hearing is threefold, the Board must determine:

1. Whether the proposed boundary correctly includes all lands that would be benefited from being in the proposed city;
2. Whether the taxation rate will support the proposed services; and,
3. Whether the proposed city can and will be able to comply with relevant statewide planning goals, County Comprehensive Plan goals and policies, and implementing ordinances.

The first two issues are required by the ORS and the third is related to land use and is required by OAR and *1000 Friends of Oregon v. Wasco County Court*, 299 Or. 344, 358-60, 67 (1985).

If the Board were to find all three issues are sufficiently supported by the applicant’s analysis and burden of proof, the petitioner could then move forward to a ballot initiative. At that time, registered voters in the proposed city boundary would vote on official incorporation and formation of a governing body.

II. PROPOSAL

The Deschutes County Clerk determined the Petition to Incorporate the proposed City of Mountain View has sufficient certified signatures from at least 20% of voters in the proposed boundary and can continue to the public hearing process.

The petitioner provided application materials, which are currently under review. Additional information on the details of the application and review criteria will be provided to the Board at a subsequent work session prior to the initial public hearing. All application materials are posted on the project website: www.deschutes.org/mountainviewincorporation

III. PUBLIC HEARING PROCESS

The Oregon Supreme Court in *1000 Friends of Oregon v. Wasco County Court*, 299 Or. 344, 358-60, 67 (1985) determined that a petition to incorporate is a quasi-judicial land use action. Therefore, staff intend to follow the typical quasi-judicial hearing process outlined in Deschutes County Code 22.24 (Land Use Action Hearings), unless certain requirements are superseded by ORS Chapter 221.

Staff, in coordination with the chief petitioner, have identified Wednesday, September 20, 2023, at 9 am as the preferred hearing date and time.

Notice of public hearing will be provided to property owners within the proposed incorporation boundary, to property owners within 750 of the proposed boundary, service providers, and agencies. Notice of public hearing will also be published in the *Bend Bulletin* for a consecutive two weeks to meet the noticing requirements in ORS 221.040(1).

Staff recommends including time limits in the public hearing notice to ensure an orderly and efficient hearing process. The following are standard practice for land use related hearings:

- Petitioner: 30 minutes
- Agency: 10 minutes
- Public Comment: 3 minutes
- Petitioner rebuttal: 10 minutes

Staff seeks Board direction to move forward with an order establishing the hearing date, time, and time limitations on testimony.

IV. ASSOCIATED REVIEW COSTS

Processing a petition to incorporate is extremely rare. In the last 41 years, only three cities in Oregon have successfully incorporated – Keizer (1982), Damascus (2004, disincorporated 2020), and La Pine (2006). The Community Development Department (CDD) has not adopted fees for reviewing or processing a petition, nor are fees discussed in relevant statute or rule. Staff is seeking Board input on cost recovery associated with mailed Notice of Application, Notice of Public Hearing, and two postings of the Notice of Public Hearing in the *Bend Bulletin* as required by statute.

Options:

- 1. Absorb the mailing and publishing costs in CDD’s operating fund (Fund 295) which assigns a budgeted amount for advertising and public notice requirements for land use applications (450401); or
- 2. Use General Fund or other sources to reimburse CDD’s mailing and publishing costs for processing the petition for incorporation.

V. NEXT STEPS

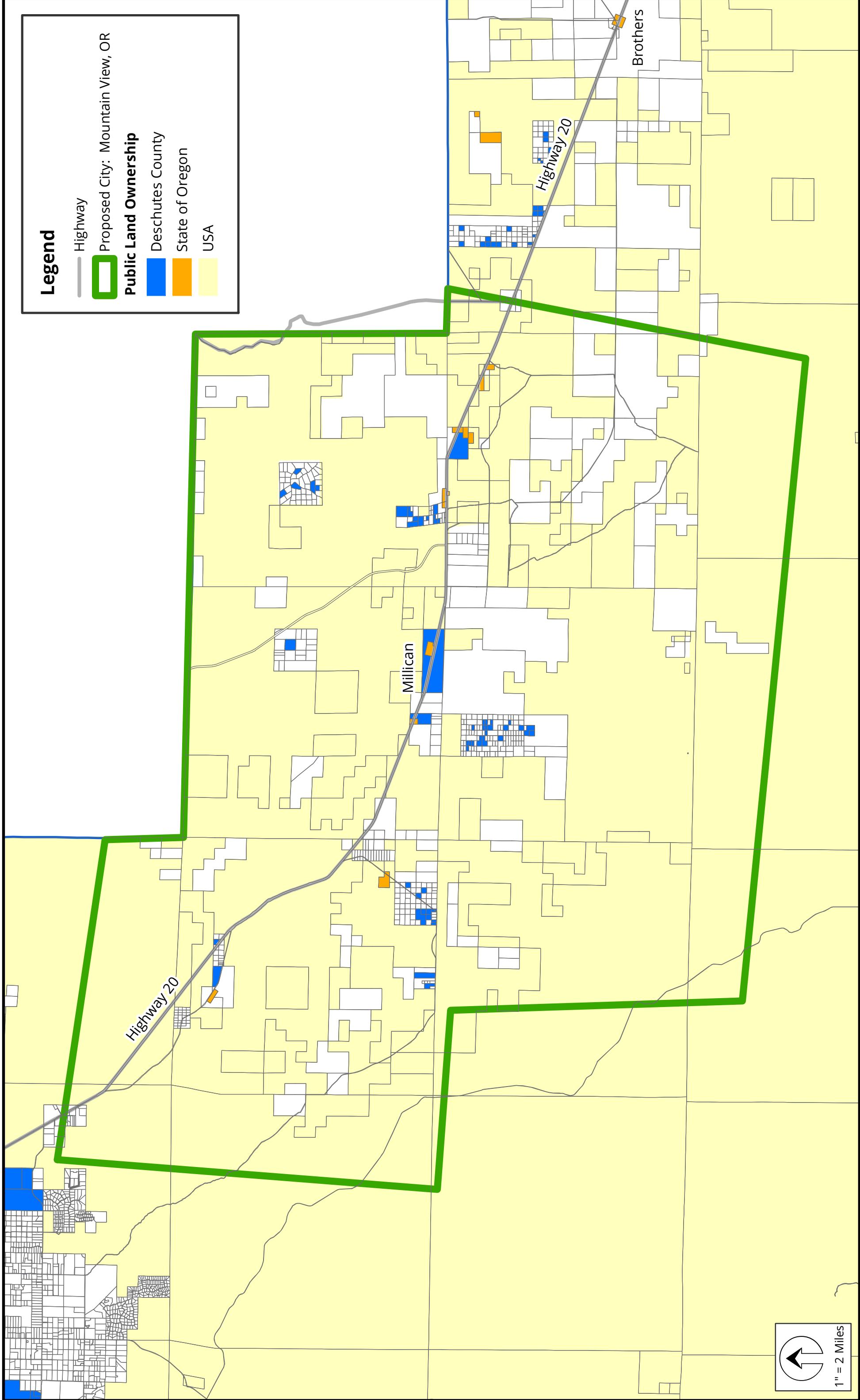
Staff will return with a Board order initiating the public hearing process, setting the date and time for the initial public hearing, and time limitations on testimony under ‘Other Items’ on August 9.

Prior to the public hearing, staff will return for a work session to discuss the application contents and criteria in more detail.

Attachments

Map – Proposed City of Mountain View Boundary and Existing Zoning

Proposed City of Mountain View, Oregon - Public Land Ownership

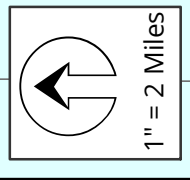
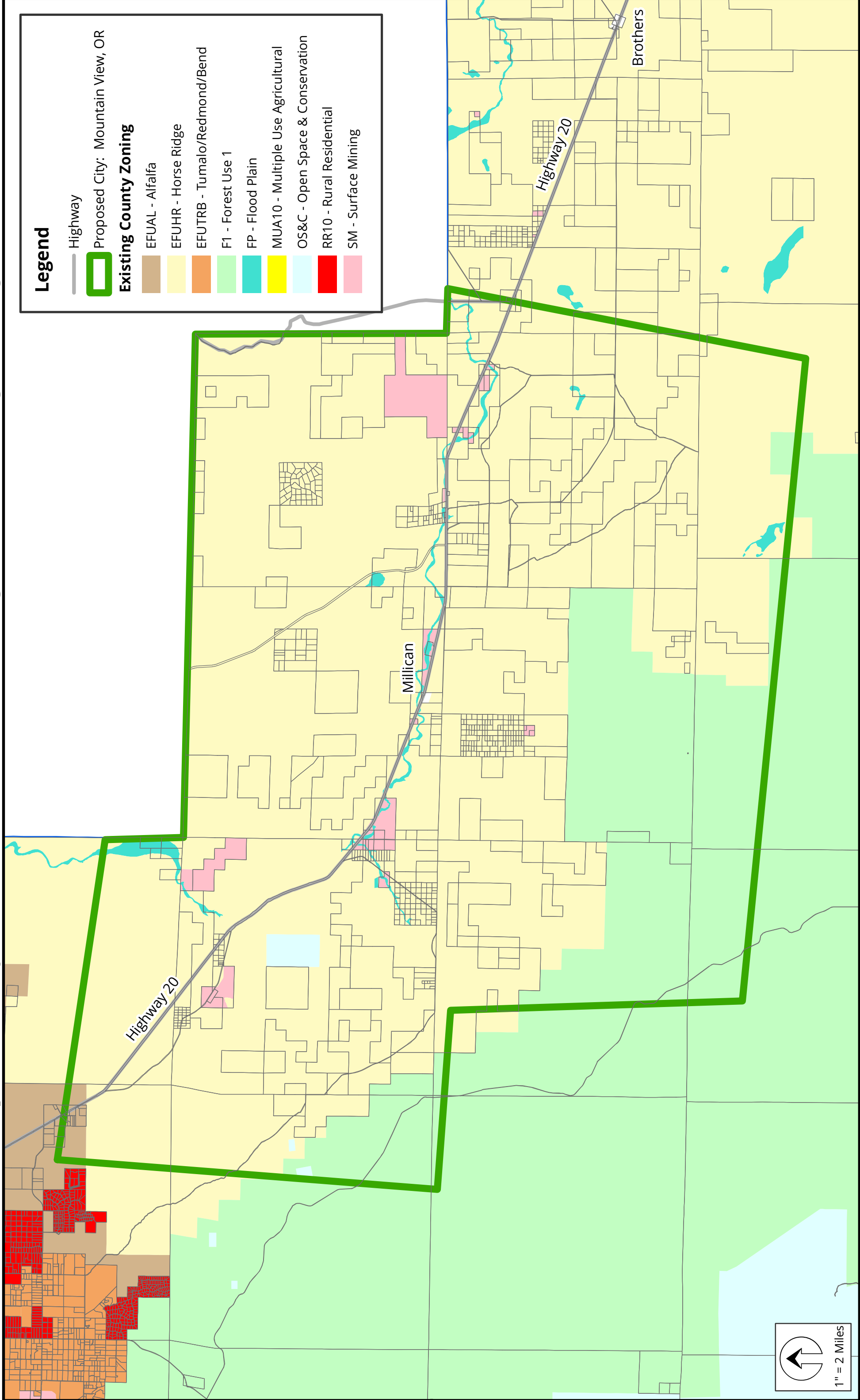


Legend

- Highway
- Proposed City: Mountain View, OR
- Public Land Ownership**
 - Deschutes County
 - State of Oregon
 - USA

1" = 2 Miles

Proposed City of Mountain View, Oregon - Existing Zoning





BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 7, 2023

SUBJECT: Work Session: Appeal of a decision regarding a secondary accessory farm dwelling

RECOMMENDED MOTION:
N/A; work session in preparation for a public hearing on August 9th.

BACKGROUND AND POLICY IMPLICATIONS:
Staff will provide background and discuss issue areas with the Board to consider for the proposed Conditional Use Permit for a secondary accessory farm dwelling (file nos. 247-23-000162-CU, 23-516-A).

BUDGET IMPACTS:
None

ATTENDANCE:
Haleigh King – Associate Planner
Jacob Ripper – Principal Planner



MEMORANDUM

TO: Deschutes County Board of County Commissioners

FROM: Haleigh King, AICP, Associate Planner

DATE: August 2, 2023

RE: Work Session: Deschutes County Land Use File Nos. 247-23-000162-CU, 23-516-A: Secondary Accessory Farm Dwelling

The Board of County Commissioners (Board) will conduct a Work Session on August 7, 2023, in preparation for a Public Hearing on August 9, 2023, to consider a request for a secondary accessory farm dwelling. The applications and appeals are identified as file nos. 247-23-000162-CU, 23-516-A. The subject property is located approximately 1.4 miles north of Tumalo, between Cline Falls Road and Gerking Market Road. The property is addressed at 19825 Connarn Road, and is further identified on County Assessor's Map 16-12-19 as tax lot 501. A location map is included as **Attachment E**.

I. BACKGROUND

The subject 9.70-acre property is currently in farm use consisting primarily of lavender plant production and pasture grasses. The subject property is located approximately 1.4 miles north of Tumalo, between Cline Falls Road and Gerking Market Road. The property is addressed as 19825 Connarn Road, and is further identified on County Assessor's Map 16-12-19 as tax lot 501. The subject property is zoned Multiple Use Agricultural (MUA10) and is within the Airport Safety (AS) Combining Zone.

The Applicant, Tumalo Lavender Property, LLC, has requested a Conditional Use Permit to establish a secondary accessory farm dwelling using an existing manufactured home. The secondary accessory farm dwelling is proposed in an existing, Class A manufactured home located on the southeast side of the property. The manufactured home was previously permitted as a Temporary Medical Hardship Dwelling in 2010 and again in 2015. In the southern portion of the property, the property is developed with a stick-built single-family dwelling that is within the larger agricultural structure and was permitted in 2005 which allowed the central portion of an existing barn to be converted into the primary residence.

Staff referred the Conditional Use Permit application to a public hearing due to a number of interpretative questions. A public hearing before a Hearings Officer was held on May 16, 2023. The Hearings Officer issued a denial on June 14, 2023. Ms. Olson (the Applicant) filed a timely appeal of the Hearings Officer’s denial on June 26, 2023. In a Consideration to Hear on July 12, 2023, the Board agreed to hear the appeal limited *de novo* in a Public Hearing.

II. HEARINGS OFFICER DECISION

The Deschutes County Hearings Officer rendered a decision denying the Applicant’s request for a Conditional Use Permit for the secondary accessory farm dwelling on the grounds that:

- The Hearings Officer interpreted DCC 18.116.070 (A)(1) to require Class A manufactured homes (with exceptions for CH zoned property and also R-1 and SM zones which allow caretaker’s residences) to be used as “primary dwellings.” The Hearings Officer concluded that the Applicant’s proposed use of a Class A manufactured home does not satisfy the requirements of DCC 18.116.070.
- The Hearings Officer found that all relevant approval criteria were met by the applicant in this case, except for DCC 18.116.070. On the basis that the application did not meet the requirements of DCC 18.116.070 the application was denied.

III. APPEAL FROM APPLICANT (247-23-000516-A)

The Applicant (Tumalo Lavender LLC) submitted a timely appeal of the Hearings Officer’s decision on June 26, 2023. The Applicant requested the Board conduct a limited *de novo* Public Hearing to review the following issues:

- Interpretation of DCC 18.116.070 (Hearing Officer’s Decision pages 10-13)
- Application of that interpretation to DCC 18.32.030(G) (Hearing Officer’s Decision pages 20-23)
- Application of DCC 18.116.070 to subject application (Hearing Officer’s Decision pages 32-33)

IV. 150-DAY LAND USE CLOCK

The application for 247-23-000162-CU was considered complete and the 150-day clock started on April 6, 2023. At the time the Hearings Officer decision was issued, the 150th day was September 17, 2023. However, the applicant initiated a toll from July 14, 2023 to August 9, 2023 which extended the clock by 27 days.

The 150th day on which the County must take final action on this application is October 14, 2023.

V. RECORD

The record for File No. 247-23-000162-CU and the Notices of Appeal for Appeal No. 247-23-000516-A are as presented at the following Deschutes County Community Development Department website:

<https://www.deschutes.org/247-23-000162-CU>

VI. NEXT STEPS

Based on the feedback received from the Board at the Work Session, Staff will prepare for the upcoming Public Hearing.

ATTACHMENT(S):

- Attachment A** – 2023-06-14 Hearing Officer Decision 23-162-CU
- Attachment B** – 2023-06-26 Notice of Appeal
- Attachment C** – Deschutes County Code Sections 18.116.050 and 18.116.070
- Attachment D** – Board Order No 2023-029 to hear appeal limited *de novo*
- Attachment E** – Location Map

HEARINGS OFFICER DECISION

FILE NUMBER: 247-23-000162-CU

**SUBJECT PROPERTY/
OWNER/APPLICANT:** Mailing Name: TUMALO LAVENDER PROPERTY LLC
Map and Tax Lot: 1612190000501
Account: 132493
Situs Address: 19825 CONNARN RD, BEND, OR 97703
(hereafter referred to as the "Subject Property")

**AGENT FOR
APPLICANT:** Douglas White
Oregon Planning Solutions LLC

REQUEST: Review of a Conditional Use Permit to establish a secondary accessory farm dwelling in an existing manufactured home in the Multiple Use Agricultural (MUA10) Zone and Airport Safety (AS) Combining Zone.

HEARING DATE: Tuesday, May 16, 2023

HEARING START: 6:00 pm

STAFF CONTACT: Haleigh King, Associate Planner
Phone: 541-383-6710
Email: Haleigh.King@deschutes.org

RECORD: Record items can be viewed and downloaded from:
<https://www.deschutes.org/247-23-000162-CU>

Record items can also be viewed and downloaded from:
www.buildingpermits.oregon.gov

I. APPLICABLE CRITERIA

Deschutes County Code (DCC)

Title 18, Deschutes County Zoning Ordinance

Chapter 18.32, Multiple Use Agricultural Zone (MUA10)

Chapter 18.56, Surface Mining Impact Area Combining Zone (SMIA)

Chapter 18.80, Airport Safety Combining Zone (AS)

Chapter 18.116, Supplementary Provisions

Chapter 18.128, Conditional Use
Title 22, Deschutes County Development Procedures Ordinance

II. BACKGROUND FINDINGS

A. LOT OF RECORD: The Subject Property has been verified as a legal lot of record pursuant to file no. LR-02-25.

B. SITE DESCRIPTION: The Subject Property is 9.70-acres in size and is currently in farm use consisting primarily of lavender plant production and pasture grasses. In the southern portion of the Subject Property a “stick-built” single-family dwelling is located within a larger agricultural structure¹ (the “Barn”). The Barn has an attached greenhouse on its south side and there are additional large detached greenhouses in the area². In the southeast region development includes an irrigation pond, detached garage, and a manufactured home previously used as a medical hardship home (see below for land use history). The Subject Property is developed with other small accessory structures, including a 504 square foot building used for displaying lavender products available for purchase (permit AG-13-12). Connarn Road, which provides access to the Subject Property, is adjacent to the north property boundary. The Subject Property is served by an on-site septic disposal system, with domestic water provided by a private well. The Subject Property has at least 8.7 acres of irrigation water rights and includes an irrigation pond. According to the Flood Insurance Rate Map (FIRM) and National Wetlands Inventory for Deschutes County, the Subject Property is not located in the 100-year flood plain nor does it contain wetlands. The grade of the Subject Property is relatively even across the property.

C. REVIEW PERIOD: The application in this case was submitted on March 7, 2023 and deemed complete by the Planning Division on April 6, 2023. The Hearings Officer notes that a request to keep the record open was made at the public hearing and the Hearings Officer kept the record open pursuant to the following schedule:

Initial Open-Record Period: Submission of New Evidence by 4:00 pm May 23, 2023; and

Responsive Open-Record Period (evidence in response to that submitted during the Initial Open-Record Period): Submission of Responsive Evidence by 4:00 pm May 30, 2023; and

Rebuttal Open-Record Period (Applicant’s final argument): Submission of Applicant’s Final Argument by 4:00 pm on June 6, 2023.

Staff provided the following comments, during its Initial Open-Record Period submission (Memorandum, May 23, 2023, page 2), related to the date when the final County decision in this

¹ County building permit B59977 (2005) allowed for the central portion of an existing barn (originally reviewed under permit AG-04-3) to be converted into the primary residence (approximately 1,080 square feet).

² The attached and detached greenhouses were established around 2006. Staff (Staff Report, page 2) indicated that the greenhouse structures did not appear to meet the required 25-foot rear setback for the MUA10 Zone. The Hearings Officer notes that this decision does not review or approve these potentially nonconforming setbacks.

case is due:

“As discussed at the conclusion of the May 16, 2023 hearing, the Hearings Officer left the written record open for a total of 21 days to include three periods of seven days. DCC 22.24.140.E states the following,

E. A continuance or record extension granted under DCC 22.24.140 shall be subject to the 150- day time limit unless the continuance or extension is requested or otherwise agreed to by the applicant. When the record is left open or a continuance is granted after a request by an applicant, the time period during which the 150-day clock is suspended shall include the time period made available to the applicant and any time period given to parties to respond to the applicant's submittal.

While staff notes the open record period was not initially requested by the applicant, the applicant, Holly Olsen, did not object to the specific schedule as set forth above. This occurred at approximately 1 hours and 27 minutes during the hearing on May 16, 2023. Staff notes the applicant was asked if they wanted to be the initiator of the open record period, to which Ms. Olsen responded, “No”, around 1 hours 28 minutes. Despite the applicant not requesting the open record period, they did agree to it as discussed above.

Therefore, Staff believes the 150-day clock is suspended for the first 14 days of the open record period pursuant to the language above “...or otherwise agreed to by the applicant.” Staff wanted to clarify this for the Hearing Officer’s consideration.”

The Hearings Officer concurs with the above-quoted Staff analysis and conclusion. The Hearings Officer adopts the above-quoted Staff comments as the Hearings Officer’s findings related to the open-record period and impact on the date the final County decision is due.

The Hearings Officer notes that an open-record submission was received from Applicant on June 1, 2023 which stated:

“We will close out the record so that Gregory Frank can start his review and expedite the process. Does that shorten his 21-day review period? In other words, if we close the record today, does the 21-day review period begin today or does it still begin on June 6 (ending June 27)?”

The Hearings Officer finds that Applicant, on June 1, 2023 waived the balance of its final argument period and requested the record be closed. The Hearings Officer finds that the record shall be deemed closed on June 1, 2023.

The 150th day on which the County must take final action on this application is September 17, 2023.

D. PROPOSAL: The Applicant requests a Conditional Use Permit to establish an existing manufactured home as a secondary accessory farm dwelling pursuant to DCC 18.32.030.G and DCC 18.128.³

The Applicant provided the following statement in their Proposal section (Burden of Proof, page 5):

“The applicant is requesting a Conditional Use to establish an existing manufactured home (previously a medical hardship dwelling) as a secondary accessory farm dwelling pursuant to the requirements of the MUA-10 Zone. As stated above, the property is currently engaged in the growing of lavender and production of lavender products. The subject manufactured home was originally put in place and permitted as a temporary use for a medical hardship by the previous owners (see Attachment B showing the 2010 Land Use permit). The subject site was purchased in 2022 by present owners Tumalo Lavender Property LLC which is comprised of an equal 1/3 owner-operator split by the following parties: Holly Olson, Summer Hagedorn, and Marilyn Thompson (see Attachment C showing Property Deed and Attachment D showing operating agreement for Tumalo Lavender Property LLC). One of the owners and primary operators of the farm is currently residing in the subject manufactured home while the primary single-family dwelling is to be rented to farm help.” [underlining included in original document]

Based upon the application materials the Hearings Officer interprets Applicant’s proposal for a secondary accessory farm dwelling to be inextricably linked to the existing manufactured home. The Hearings Officer is constrained by Applicant’s request to locate the existing manufactured home as the secondary accessory farm dwelling. The Hearings Officer is not allowed to consider unspecified alternatives such as locating an alternative Class manufactured home on the Subject Property.

E. SURROUNDING LAND USES: The area surrounding the Subject Property consists of a mix of farm and rural residential properties. To the north, south, and east are properties primarily developed with residences and carry the same zoning as the Subject Property. To the west are properties, developed and undeveloped, which are also zoned for farm use. A majority of the properties in the area exhibit some level of farm or agricultural use. The Deschutes River is approximately 0.5 miles to the east of the Subject Property. Zoning in the area is a mixture of Exclusive Farm Use (EFU), Multiple Use Agricultural (MUA10), Surface Mining (SM), and Flood Plain (FP).

F. LAND USE HISTORY: The Applicant submitted the current land use permit application in response to code enforcement case, file no. 247-22-000400-CE. In summary, the Applicant did not decommission or remove the temporary manufactured home when the medical hardship previously approved in 2010 and again in 2015 ceased to exist and the Subject Property was sold. The Applicant did not apply for a new medical hardship dwelling. The Applicant is requesting an after-the-fact approval for the existing manufactured home to be used as a secondary accessory

³ See Deschutes County Application question #1: “Request Conditional Use for Manufactured Home as Secondary Farm Dwelling.”

farm dwelling. Although the secondary accessory farm dwelling use may have been operational on the Subject Property for some time, Staff and the Hearings Officer reviewed it as a new application.

Below is a summary listing of recent land use actions affecting the Subject Property:

- 247-18-000526-CU, 527-SP: Conditional Use and Site Plan Review to establish a commercial activity in conjunction with the existing lavender farm use; and
- 247-15-000238-TU: Temporary Use Medical Hardship Dwelling⁴; and
- TU-10-8: Temporary Use Medical Hardship Dwelling; and
- SMA-04-4: Surface Mining Impact Area (SMIA) review for single-family dwelling; and
- LR-02-25: Legal lot of record verification.

G. PUBLIC AGENCY COMMENTS: The Deschutes County Planning Division mailed notice on March 21, 2023, to several public agencies and received the following comments:

Deschutes County Onsite Wastewater, Todd Cleveland

“This proposal will require septic system review and permits. Upgrades to the existing system or a new system may be necessary.”

STAFF REPORT COMMENT (Staff Report, pages 4 and 5): *“Staff recommends the following condition of approval be included in any decision which approves the application:*

Prior to the initiation of use, the property owner shall obtain any necessary permits from the Deschutes County Building Division and Onsite Wastewater Division.”

Deschutes County Senior Transportation Planner, Peter Russell

“I have reviewed the transmittal materials for 247-23-000162-CU to change a manufactured home previously approved as a temporary medical hardship dwelling into an accessory farm dwelling on a 9.7-acre parcel in the Multiple Use Agricultural (MUA-10) and Airport Safety (AS) zones at 19825 Connarn Road, aka 16-12-19, Tax Lot 501. The result would be two permanent dwellings on the property, which contains Tumalo Lavender Farm.

The most recent edition of the Institute of Traffic Engineers (ITE) Trip Generation Handbook indicates a single-family home (Land Use #210) produces approximately nine weekday trips. Thus the site’s two dwellings would produce approximately 20 weekday trips (9.43 + 9.43). Under DCC 18.116.310(C), no further traffic analysis is required for a

⁴ The dwelling approved through file 247-15-000238-TU utilizes the same dwelling approved through file TU-10-8. The requirement for a new land use - 247-15-000238-TU – was based on the change of circumstances (change in family member using the dwelling).

use of less than 50 new weekday trips. Staff notes the burden of proof states the farm would have workers ranging in four to 10 in number. Even with 10 employees, which would equal 20 new daily weekday trips, the combination of the roughly 30 weekday trips from the two dwellings (20 from the farm worker dwelling, 9.43 from the main home) would not exceed the 50-trip threshold.

The property accesses Connarn Road, a public road maintained by Deschutes County and functionally classified as local. The property has two driveway permits approved by Deschutes County (#247-19-001534-DA and #247-SW4543) and thus complies with the access permit requirements of DCC 17.48.210(A).

The property is approximately nine miles west-southwest of the Redmond Airport. Between the distance to the airport and the height limit in the zone, the use will not penetrate any imaginary surfaces related to Roberts Field.

Board Resolution 2013-020 sets a transportation system development charge (SDC) rate of \$5,080 per p.m. peak hour trip. From an SDC perspective, staff finds the proposed use would in effect establish the trip generation equivalent of a new second dwelling on the property. Staff notes the burden of proof on Page 5 describes the intensity of the use as "...year-round farm help, seven days a week, with part-time and full-time staff varying in between four and up to 10 employees throughout the year." On Page 6, the burden of proof it states "...it is necessary to have farm help reside in both dwellings." County staff has determined a local trip rate of 0.81 p.m. peak hour trips per single-family dwelling unit; therefore the applicable SDC is \$4,115 (\$5,080 X 0.81). The SDC is due prior to issuance of certificate of occupancy; if a certificate of occupancy is not applicable, then the SDC is due within 60 days of the land use decision becoming final.

THE PROVIDED SDC AMOUNT IS ONLY VALID UNTIL JUNE 30, 2023. DESCHUTES COUNTY'S SDC RATE IS INDEXED AND RESETS EVERY JULY 1. WHEN PAYING AN SDC, THE ACTUAL AMOUNT DUE IS DETERMINED BY USING THE CURRENT SDC RATE AT THE DATE THE BUILDING PERMIT IS SUBMITTED.

ON JULY 1, 2023, THE SDC BECOMES \$5,406 PER PEAK HOUR TRIP AND THIS RATE WILL BE VALID UNTIL JUNE 30, 2024. THIS WILL INCREASE THE SDC FROM \$4,115 TO \$4,379 (\$5,406 X 0.81)."

Deschutes County Building Safety Division, Randy Scheid

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

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

The following agencies did not respond to the notice: Bend Fire Department, Deschutes County Assessor, Deschutes Code Enforcement, Deschutes Road Department, Oregon Department of Aviation, Tumalo Irrigation District.

H. PUBLIC COMMENTS: The Deschutes County Planning Division mailed notice of the public hearing to all property owners within 250 feet of the subject property on March 21, 2023. The Applicant also complied with the posted notice requirements of Section 22.24.030(B) of Title 22. The Applicant submitted a Land Use Action Sign Affidavit indicating the Applicant posted notice of the public hearing on March 22, 2023. Notice of the public hearing was published in *The Bulletin* newspaper on March 22, 2023.

Staff, prior to the publication of the Staff Report, received two public comments from nearby property owners.

The first comment received by Staff was received from David Arnold, resident and owner of property located at 19830 Connarn Road, Bend, OR 97703 on March 16, 2023:

“I see that a conditional use application has been submitted by Tumalo Lavender to add a secondary farm dwelling (the medical hardship manufactured trailer) to their property. Please include me with all correspondence at this email address and at my physical address, David Arnold, 19830 Connarn Rd, Bend, OR 97703. I will be asking that this application be denied.”

Mr. Arnold sent a follow-up comment on March 16, 2023,

“I have read the Conditional Use applications from Tumalo Lavender Properties LLC and feel that the application is incomplete. Specifically the plot map provided is incomplete. The applicants have failed to meet the applicants responsibilities for required documentation as required when a conditional use application is submitted to the county. Here is a list of information I feel that needs to be provided for me to respond.
Driveways (existing and proposed).
Location of all existing and proposed structures on the property.
Distance from all existing and proposed structures to property lines (setbacks).
Location of water source.
Location of septic tank, drainfield and replacement area.
Location of major features such as rivers, streams, canals, irrigation ditches, and/or rock ledges/outcrops.
Specifically I am most concerned about location of the water source. This property is registered with the Oregon Department of Agriculture with a Food Processing License and Nsy Stk Growers Collectors of Native Plants license (nursery). Both of these licenses require specific permits from the Oregon Water Resources Department (OWRD). For this reason I

request the application be returned to the applicants as incomplete and not be accepted until all the requirements are met.”

The second comment was received from Gail Burton and Gregg Riegel, residents and owners of property located at 19816 Connarn Road, Bend, OR 97703 on March 16, 2023. Burton/Riegel stated:

“We recently became aware the Tumalo Lavender property at 19825 Connarn Road, Bend OR 97703 has applied for a conditional use permit for a secondary farm dwelling.

We are opposed to their attempt to change the designation of the ‘medical hardship’ manufactured home (granted to the previous owners), which should have been removed, per their agreement with the county, when Judy Knight’s mother died.

Instead, she and her husband, Gordon, were able to finagle its continued existence on the property, by pretending he needed help, ostensibly for a medical condition. Instead, they rented it out, while he was overseeing the operations, driving the tractor, and working on the farm.

The current owners are living in the ‘medical hardship’ manufactured home, rather than in the primary dwelling. As this is zoned MUA-10, where one single family home is allowed, they should be required to remove the manufactured home and bring the property into compliance.

Many of us farm in Tumalo, yet we don’t request county approval for a secondary dwelling to house our ‘farm workers.’ Historically, their farm workers have been seasonal, few in numbers, and have lived elsewhere, except for the illegal travel trailer, which was finally removed, following a code violation complaint.

In the survey records, it appears the south and east property lines were never surveyed. This should be required before determining the actual setbacks, as the manufactured home, its adjacent stick built garage, the primary residence, and the large greenhouses are all very close to the south and east property lines.

In fact, Gordon Knight had a boundary dispute with the neighbor to the south, when he realized the primary residence was laid out incorrectly, and a part of it was too close to the property line.

In conclusion, we formally request a public hearing on this application, and to be informed, via email, and in paper correspondence, of any matters pertaining to the application.”

At the public hearing, in addition to Staff and Applicant (including Applicant representatives), a number of persons testified (Gail Burton, David Arnold, Nunzie Gould). The Hearings Officer reviewed and considered all hearing testimony and all documents submitted into the record when

making this decision. Testimony and documents directed to relevant approval criteria may be referenced in the findings set forth below.

III. FINDINGS & CONCLUSIONS

A. PRELIMINARY FINDING - SCOPE

A number of opponents offering testimony and record documents raised issues related to the *operation* of the lavender farm apart from the proposed secondary accessory farm dwelling. For example, testimony/documentary evidence was offered related to code violations not related to the manufactured home that is subject of the application in this case. Additionally, testimony and evidence were offered related to the commercial activities located on the Subject Property.

The Hearings Officer finds that the application in this case seeks approval of the use of an existing manufactured home proposed to be used as a secondary accessory farm dwelling. The Hearings Officer is limited to considering evidence and argument related to whether or not the application for a secondary accessory farm dwelling meets the relevant approval criteria. This case is not the proper time or forum to reconsider and/or review issues not related to the approval criteria relevant to the specific application for a secondary accessory farm dwelling on the Subject Property.

B. PRELIMINARY FINDING - INCOMPLETE APPLICATION

Two participants (Arnold and Gould) argued that the application was incomplete, should not have been accepted by Staff and therefore should be denied. Initially, the Hearings Officer finds that no participant in this case provided the Hearings Officer with a citation or legal reference to a specific section of State law, DCC or regulation that imposed “application requirements” as relevant approval criteria. The Hearings Officer finds that generally “application requirements” do not operate as relevant approval criteria and therefore, an application cannot be denied on the basis that “application requirements” have not been met.

In this case many of the “application requirement” deficiencies raised by participants related to evidentiary topics that were contained in relevant approval criteria.⁵ In those instances the Hearings Officer considered all evidence in the record when determining if a specific approval criterion was met. In numerous instances evidentiary deficiencies were noted by the Hearings Officer and addressed through the imposition of conditions of approval. The Hearings Officer only utilized conditions of approval to satisfy evidentiary deficiencies where a future administrative decision would be made using objective standards (as opposed to discretionary standards).

C. PRELIMINARY FINDINGS: STAFF ISSUES

⁵ Example of application requirement that is also related to relevant approval criterion: David Arnold May 16, 2023 email to Haleigh King - “distance from all existing and proposed structures to property lines (setbacks).”

Staff (Staff Report [page 15] & Staff PowerPoint Presentation [Issue Areas and Considerations] & hearing testimony) requested that the Hearings Officer address specific issues. The Hearings Officer provides findings below for each issue raised by Staff.

1. Staff Issue: Class A Manufactured Home

“Can a Class A manufactured home be utilized as a secondary accessory farm dwelling pursuant to DCC 18.116.070?”

Applicant requested (Application form & Burden of Proof) that the County approve a conditional use permit for a “manufactured home as a secondary accessory farm dwelling subject to the requirements set forth in DCC 18.116.070.” The reason that DCC 18.116.070 is relevant to this case is found in DCC 18.32.030 G. which states that a conditional use request may be approved for a:

Manufactured home as a secondary accessory farm dwelling, subject to the requirements set forth in DCC 18.116.070.

Applicant’s proposal is for a conditional use permit to allow an existing manufactured home to be allowed as a secondary accessory farm dwelling on the Subject Property. Applicant acknowledged that the existing manufactured home located on the Subject Property is a Class A manufactured home per DCC 18.116.050 A.

DCC 18.116.070, as relevant to this case, states the following:

- A. *As defined in DCC 118.116.050, Class A and B manufactured homes shall be permitted as follows, subject to the requirements of the underlying zones:*
 - 1. *In the following zones, except where there is a Conventional Housing Overlay Zone (CH): Any EFU zone, MUA-10, F-1, F-2, RR-10, any area zoned as an unincorporated community (as that term is defined herein), RSR-M, RSR-5, and FP as the primary dwelling, and R-1 and SM as a caretaker's residence.*

Applicant, in its May 23, 2023 open-record submission, responded to Staff’s above-stated question as follows:

“The Staff Report clearly acknowledges that the existing manufactured home (the one that is the subject of this application) is a Class A manufactured home (page 24 of the Staff Report). The above subsection (1) clearly provides that Class A and B manufactured homes are permitted in any MUA-10 and the ‘FP as the primary dwelling, and R1 and SM as a caretaker residence’.

The provisions of DCC 18.116.070 (A)(1) clearly provide that Class A and B manufactured homes are permitted in certain zones, including MUA-10 Zones, without restriction unless such zoning imposes additional requirements. The MUA-10 zoning regulations do not impose additional requirements as to use of Class A or B manufactured homes. The limit to Class A and B

manufactured homes in the (FP) Flood Plain Zone to only the ‘primary dwelling’ doesn’t apply to the MUA-10 zone, in the same way that a ‘caretaker’s residence’ is permitted in the Rural Industrial (RI) and Surface Mining (SM) zones.”

Staff, in its May 23, 2023 Memorandum, provided the following comments related to the interpretation of DCC 18.116.070 (A)(1):

“As stated in A.1, the sentence construction of the code requirement may be unclear on whether a Class A manufactured home can be utilized only as a primary dwelling in any zone besides RI and SM, as a primary dwelling only in the FP zone, or if allowed as any type of dwelling in the MUA Zone. Although unclear, Staff believes this requirement to specify that Class A manufactured homes are allowed in the FP zone only as a primary dwelling.

It is clear that DCC 18.116.070(B) allows for a Class C manufactured home to be permitted as a secondary accessory farm dwelling. However, as discussed in the staff report, the subject dwelling is classified as a Class A manufactured home. Although unclear, Staff believes this provision for Class C manufactured homes to be used as secondary accessory farm dwellings was intended to allow Class C manufactured homes to be utilized for this specific use on properties where otherwise a Class C manufactured home would not be permitted. In other words, DCC 18.116.070(A)(1) allows Class A and B in a large variety of situations and (B)(2) is an exception to the implicit preclusion of Class C manufactured homes in the .070(A)(1) scenarios.

However, the sentence construction of 18.116.070(A)(1) makes this unclear. Staff requests interpretation and specific findings from the Hearings Officer on this issue.”

The Hearings Officer agrees with Staff that it is necessary to interpret DCC 18.116.070 (A)(1) in order to make the decision in this case.

As a backdrop for the interpretive process the Hearings Officer takes notice of ORS 174.010. While this section of the Oregon Revised Statutes is not determinative in this case the Hearings Officer finds it provides a relevant conceptual perspective. ORS 174.010 states:

“In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all.”

The Hearings Officer also takes note of prior Court and Oregon Land Use Board of Appeals (“LUBA”) interpretative guidelines. A long line of Oregon cases instructs decision makers (such as a hearings officer) to focus on the “text” and the “context” of the relevant code. Portland Gen. Elec. Co v. Bureau of Labor and Indus., 317 Or 606 (1993), State v. Gaines, 346 Or 160 (2009) and Sarathy v Washington County, LUBA No. 2011-065. These cases are consistent with the Hearings Officer’s interpretation of ORS 174.010.

The Hearings Officer finds that the words, and only the words, used by the drafters (Deschutes County Commission) should be considered. The Hearings Officer does not have the authority to insert words into DCC 18.116.070 (A)(1) that were not included or to omit words that were included in DCC 18.116.070 (A)(1). The Hearings Officer also finds it to be proper to consider the actual text of DCC 18.116.070 (A)(1) in the context of other sections of DCC 18.116.070.

The Hearings Officer finds that DCC 18.116.070 is focused on where specific types/categories of manufactured homes may be located in Deschutes County. DCC 18.116.070 (A) addresses where Class A and B manufactured homes are allowed to be placed. The Hearings Officer finds that DCC 18.116.070 (A)(2), (A)(3) and (A)(4) are not relevant to these findings. The preface of DCC 18.116.070 (A) states, in part that DCC 18.116.070 (A) is “subject to the requirements of the underlying zone.” The Hearings Officer finds the “subject to” language is an important part of DCC 18.116.070 (A) and in this case the application for a secondary accessory farm dwelling is allowed as a conditional use in the MUA-10 zone.⁶

The Hearings Officer agrees with Staff that the language of DCC 18.116.070 (A)(1) is challenging to read. This is primarily because of the “except where...” language and the use of a colon (following “(CH)”). However, the Hearings Officer finds that DCC 18.116.070 (A)(1) is capable of a clear interpretation.

The Hearings Officer finds that DCC 18.116.070(A)(1) permits the placement of a Class A or Class B manufactured home in certain designated land use planning zones. DCC 18.116.070 (A)(1) sets forth two lists of zones where Class A and Class B manufactured homes can be placed as “primary dwelling” and where they (Class A and Class B manufactured homes) can be placed as a “caretaker’s residence.” The first list includes the following zones: EFU, MUA-10, F-1, F-2, RR-10, any area zoned as an unincorporated community, RSR-M, RSR-5 and FP. The second list contains the R-1 and SM zones.

The Hearings Officer disagrees with Applicant that the only zone where a “primary dwelling” can be located is the FP zone. The Hearings Officer disagrees with Applicant for two reasons. First, immediately preceding the FP designation in DCC 18.116.070 (A)(1) is the word “and.” The Hearings Officer finds that the word “and,” as used in DCC 18.116.070 (A)(1) between “RSR-5” and “FP,” is a conjunction linking the listed zones.⁷ The word “and” ties together all zones in the list. The Hearings Officer finds that the “FP” zone is included in the list of zones where a Class A or Class B manufactured home must be used as a “primary residence.”

The second reason the Hearings Officer disagrees with Applicant’s “FP is the only zone requiring a ‘primary residence’” is Applicant’s statement that “The MUA-10 zoning regulations do not

⁶ The Hearings Officer finds no participant in this case identified a relevant “underlying zone” (MUA) requirement (other than compliance with DCC 18.116.070) that would limit the location of a Class A or B manufactured home, as a conditional use, on the Subject Property.

⁷ Dictionary definition of “and”: “used to connect words of the same part of speech, clauses, or sentences, that are to be taken jointly.”

impose additional requirements as to use of Class A or B manufactured homes.” DCC 18.32.030 G does in fact “impose additional requirements” for the placement of a manufactured home in the MUA-10 zone; DCC 18.116.070 restrictions and limitations on the various classes of manufactured homes within identified zoning districts. Further, the Hearings Officer finds that had the Commission intended there be no requirements to use Class A or B manufactured homes it could have clearly said that. To the contrary the Commission included a finite list of zones where a Class A or Class B manufactured home must be used as the “primary dwelling.”

The Hearings Officer also considered the context of DCC 18.116.070 (A). The Hearings Officer finds it is reasonable to consider language of other sections of DCC 18.116.070 when interpreting DCC 18.116.070 (A)(1). The Hearings Officer takes note that DCC 18.116.070 (B) is directed to where Class C manufactured homes may be placed. Specifically, DCC 18.116.070 (B)(2) allows a Class C manufactured home to be permitted “as a secondary accessory farm dwelling.” The Hearings Officer finds that the Commission, when drafting DCC 18.116.070 was aware of the difference between “primary dwellings” and “secondary accessory farm dwellings.” The Hearings Officer finds that the Commission’s inclusion of the phrase “secondary accessory farm dwellings” in DCC 18.116.070 (B) but not in DCC 18.116.070 (A) clearly expressed the Commission’s intent. The Hearings Officer finds that the Commission’s omission of the phrase “secondary accessory farm dwellings” from DCC 18.116.070 (A) was intentional. Consistent with ORS 174.010 the Hearings Officer finds that he may not “insert” terms or phrases that are not included in the actual text of a questioned code section. The Hearings Officer cannot insert the “secondary accessory farm dwellings” text into DCC 18.116.070 (A)(1).

The Hearings Officer does not find Applicant’s interpretation of DCC 18.116.070 (A)(1) is without merit. However, the Hearings Officer finds interpreting DCC 18.116.070 (A)(1) to require that Class A and Class B manufactured homes, within the MU-10 zone, must be used for “primary dwelling” purposes best reflects the actual words used (text) in DCC 18.116.070 (A)(1) and is consistent with the overall context of DCC 18.116.070.

2. Staff Issue: Need

“Does an applicant need to demonstrate a need for the ‘secondary accessory farm dwelling?’ and if so, has the applicant demonstrated a need for the ‘secondary accessory farm dwelling?’”

It appears to the Hearings Officer this query arose from Staff’s review of prior County land use decisions. Staff cited two prior County decisions (CU-90-163 and CU-95-122) dealing with applications for a secondary accessory farm dwelling proposed to be located within the MUA-10 zone. County staff, in the CU-90-163 decision (Conclusionary Findings, page 3), stated

*“the applicant has an established farm operation with livestock and has shown a **need** for an accessory dwelling in conjunction with the farm use...”* [bolding added for emphasis by the Hearings Officer]

The Hearings Officer issuing the CU-95-122 decision stated:

*“In order to satisfy this criterion, the applicant must show that farm use of the property is the main use of the property and there is connection between the farm use and the proposed accessory use or structure. Or, in the words of the applicants’ counsel, the issue is ‘whether or not the dwelling will be **necessary** for the farm use.’” [bolding added for emphasis by the Hearings Officer]*

Staff, in this case and in the CU-90-163 Staff decision, and the prior Hearings Officer’s decision (CU 95-122), sourced its “need,” “necessary,” or “connection” concerns from the definition of “accessory use or accessory structure.” (See DCC 18.04.030) The DCC defines “accessory use or accessory structure” as:

“a use or structure incidental and subordinate to the main use of the property, and located on the same lot as the main use. Accessory uses include drilling for, and utilization of, low-temperature geothermal fluid in conjunction with the main use of the property.”

The Hearings Officer finds the above-quoted “Accessory use or accessory structure” definition does not contain the either the word “need” or the word “necessary.” The definition does contain the words “incidental” and “subordinate.” Staff, in its CU 95-122 decision, did reference dictionary definitions for “incidental” and “subordinate.” Staff, in CU 95-122 stated:

“Incidental means ‘being likely to ensure as a chance or minor consequence. Webster’s New Collegiate Dictionary. Subordinate means ‘inferior, submissive to or controlled by authority.’ Id. The use of these terms in the definition of accessory use or structure suggests that there be a connection of the proposed use or structure to the main use of the property.”

The Hearings Officer, in addition to considering the DCC definition of the phrase “accessory use or accessory structure” considered the dictionary definition of “accessory” as an interpretative aide. Webster’s Online Dictionary ([Accessory Definition & Meaning - Merriam-Webster](#)) defines “accessory” as:

*aiding or contributing in a secondary way: supplementary
accessory materials*

*present in a minor amount and not essential as a constituent
an accessory mineral in a rock*

The Hearings Officer finds that the literal meaning of “accessory,” as used in the context of DCC 18.32.030 G., requires that an applicant successfully demonstrate the a proposed “secondary accessory farm dwelling” has a connection to a demonstrated primary farm use. The Hearings Officer finds that the extent or degree of connection could plausibly include a demonstration of “need” or “necessity.” However, the Hearings Officer finds that the use of the phrase “incidental” suggests a lesser standard of proof than “need.” The Hearings Officer finds that use of the term

“incidental” is better paired with the terms “contributing” or “supportive.” The Hearings Officer finds that an applicant is not required to demonstrate “need” in an application for a secondary accessory farm dwelling.

3. Staff Issue: Relationship – Primary use/residence to Secondary Accessory Farm Dwelling

“How does a ‘secondary accessory farm dwelling’ relate to a property’s primary use or primary residence?”

The Hearings Officer incorporates the interpretation of “accessory” set forth in the Need findings above (Section III.C.2). The Hearings Officer finds that DCC does not define the term “secondary” or the phrase “farm dwelling.” The Hearings Officer finds that “primary use” is defined by DCC 18.04.030.

Secondary is defined by Webster’s Online Dictionary ([Secondary Definition & Meaning | Dictionary.com](https://www.merriam-webster.com/dictionary/secondary)) as:

- “next after the first in order, place, time, etc.*
- belonging or pertaining to a second order, division, stage, period, rank, grade, etc.*
- dependent on or generated by something more basic; derivative.”*

The Hearings Officer finds that the phrase “farm dwelling,” while not defined by the DCC, is a structure that is intended to be occupied for living purposes and is connected/associated with a farm use. The Hearings Officer, considering the above-referenced definitions, finds that a **secondary accessory farm dwelling** is a dwelling (place of occupancy) located on a farm that is supportive of or is subordinate in rank/importance to a “primary dwelling.”

In the context of an application for the location of a secondary accessory farm dwelling the Hearings Officer finds (1) that the structure must be used in connection with farm use(s) occurring on a property and (2) there is a primary dwelling to which the proposed secondary accessory farm dwelling is additional to and subordinate.

The Hearings Officer finds that the “primary use” of a property, when considering “secondary accessory farm use” is important. As noted in the Need findings an applicant for a secondary accessory farm use must demonstrate that the proposed structure contributes to or is supportive of a farm use on a subject property. The same can be said of a “secondary accessory farm structure or dwelling.

The Hearings Officer finds that to have a secondary accessory farm dwelling there must be a primary farm dwelling. The Hearings Officer finds that a primary farm dwelling, in the MUA-10 zone, is allowed as a matter of right and a secondary farm dwelling is only allowed as a conditional use. Therefore, the right to have a secondary farm dwelling is derivative of the right to having a

primary farm dwelling. In the event the primary farm dwelling would be removed or eliminated, in some manner, the secondary accessory farm dwelling rights would no longer exist; a secondary farm dwelling needs, for it to be legally recognizable, a primary farm dwelling.

4. Staff Issue: Occupant(s) of Secondary Accessory Farm Dwelling

“Can a primary farm operator reside in a secondary accessory farm dwelling?”

Staff expressed uncertainty as to whether or not “who” lived in a “primary farm dwelling” and “who” lived in a “secondary farm dwelling” was relevant and/or important. The Hearings Officer reviewed the record in this case and sections of the DCC the Hearings Officer considered relevant. The Hearings Officer could find no provision of the DCC that unequivocally identified “who” should live in a “primary farm dwelling” or “who” should live in a “secondary farm dwelling.”

As noted in the preceding findings the Hearings Officer concluded that a secondary farm dwelling has the right to exist because of the existence of a “primary farm dwelling.” The right of a secondary farm dwelling to exist is derivative of a primary farm dwelling. This right of existence is not dependent upon “who” resides in either the “primary farm dwelling” or the “secondary farm dwelling.”

As alternative findings to the above paragraph the Hearings Officer finds there is no requirement in the DCC that a “primary farm dwelling” be occupied by an “owner” of a property. It is reasonable to assume, in some instances, that the primary farm dwelling could be occupied by a lessee (person renting the farm property) or a farm employee (i.e., foreperson, farm operator, farm worker). Likewise, the Hearings Officer found no requirement in the DCC that a “secondary farm dwelling” be occupied by any class/category of person(s). The Hearings Officer finds an owner, lessee, primary farm operator, secondary farm operator (if there is such a title) or farm employee can all reside in a secondary accessory farm dwelling.

5. Staff Issue: Occupant(s) Stick-built/Primary Dwelling

“Can a stick-built dwelling or primary dwelling, as defined in DCC 18.04.030, be occupied by farm help or employees?”

The Hearings Officer finds DCC 18.04.030 does not include a definition of “stick-built dwelling” or “primary dwelling.”⁸ There is reference to “primary dwelling” in the “primary or principal use” DCC 18.04.030 definition. That reference is strictly temporal in nature; the dwelling that was first located on a lot is the “primary dwelling.” “

⁸ The phrase “Primary or principal use” is defined, in DCC 18.04.030, as “the first use to which property is or may be devoted, and to which all other uses on the premises are accessory or secondary uses. As used relative to dwelling units, the primary dwelling would be the first dwelling unit to be located on a specific parcel or lot.”

The Hearings Officer could find nothing in the DCC either authorizing or prohibiting the occupancy of a “primary farm dwelling” or a “secondary accessory farm dwelling” by farm help or employees. Because there is no DCC reference to who may occupy a “stick-built dwelling” or a “primary dwelling” the Hearings Officer finds there are no limitations on who may occupy such structure. The Hearings Officer finds that a “stick-built dwelling” and also a “primary dwelling” may be occupied by farm help and/or employees.

D. Approval Criteria Findings

Title 22, Deschutes County Development Procedures Ordinance

Chapter 22.20 Review of Land Use Action Applications

Section 22.20.015, Code Enforcement and Land Use.

- A. *Except as described in (D) below, if any property is in violation of applicable land use regulations and/or conditions of approval of any previous land use decisions or building permits previously issued by the County, the County shall not:***
 - 1. *Approve any application for land use development;***
 - 2. *Make any other land use decision, including land divisions and/or property line adjustments;***
 - 3. *Issue a building permit.***
- B. *As part of the application process, the applicant shall certify:***
 - 1. *That to the best of the applicant’s knowledge, the property in question, including any prior development phases of the property, is currently in compliance with both the Deschutes County Code and any prior land use approvals for the development of the property; or***
 - 2. *That the application is for the purposes of bringing the property into compliance with the Deschutes County land use regulations and/or prior land use approvals.***
- C. *A violation means the property has been determined to not be in compliance either through a prior decision by the County or other tribunal, or through the review process of the current application, or through an acknowledgement by the alleged violator in a signed voluntary compliance agreement (“VCA”).***
- D. *A permit or other approval, including building permit applications, may be authorized if:***
 - 1. *It results in the property coming into full compliance with all applicable provisions of the federal, state, or local laws, and Deschutes County Code, including sequencing of permits or other approvals as part of a voluntary compliance agreement;***
 - 2. *It is necessary to protect the public health or safety;***
 - 3. *It is for work related to and within a valid easement over, on, or under the affected property; or***

- 4. ***It is for emergency repairs to make a structure habitable or a road or bridge to bear traffic.***
- E. ***Public Health and Safety.***
 - 1. ***For the purposes of this section, public health and safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger life, health, personal property, or safety of the residents of the property or the public.***
 - 2. ***Examples of that situation include, but are not limited to issuance of permits to replace faulty electrical wiring, repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel or power; and actions necessary to stop earth slope failure.***

FINDING: The Hearings Officer acknowledges that one or more code violations currently exist at the Subject Property. The Hearings Officer finds that a current code violation exists related to the manufactured home that is subject to this application and decision.

The Hearings Officer takes note of the Deschutes County Board of Commissioners’ decision in *Tumalo Irrigation District* (247-17-000775-ZC, 247-17-000776-PA). In that decision the Board provided interpretive guidance to all Deschutes County Hearings Bodies related to DCC 22.20.015. Staff, in the Staff Report (pages 8, 9 & 10), pointed out to the Hearings Officer that the following Board comments may be relevant to this case and decision:

“As DCC 22.20.015 is a relatively new provision first adopted in 2015 and frequently arises in contested land use hearings, the Board takes this opportunity to provide interpretation and guidance on the implementation of this provision.

As discussed more fully below, the Board interprets DCC 22.20.015 to require a sequential three-step analysis.

- 1. *Is there a previously “adjudicated violation” on the property?*
- 2. *Does the subject land use application present the best forum for adjudicating a new allegation, i.e. is there time to investigate something more than a vague allegation?*
- 3. *When there is an “adjudicated violation” or the property is found to be in violation as part of the land use application process, can the land use permit nevertheless be issued pursuant to DCC 22.20.015(D) and (E)?*

First, the Board starts by noting that the primary purpose (and benefit) of DCC 22.20.015 is to address “adjudicated violations,” i.e. violations that were already conclusively determined through the normal applicable code enforcement process prior to an applicant submitting a land use application. This interpretation is supported by the use of the past tense in the codified definition of “violation” in DCC 22.20.015(C): “[a] violation means the property has been determined to not be in compliance either through a prior decision by

the County or other tribunal, ... or through an acknowledgment by the alleged violator in a signed voluntary compliance agreement ('VCA')" (emphasis added).

Second, differing from the "adjudicated violations" scenario described above, there are cases where the Board anticipates that a County hearings body will need to determine if a property is in violation during the land use application process. DCC 22.20.015(C) addresses this possibility by including in the definition of "violation" the phrase "or through the review process of the current application." However, the Board cautions that County hearings bodies should take up this inquiry in rare cases because of the obvious practical difficulties born from comingling the County's land use application process with the separate and distinct code enforcement process. For example, when a vague allegation is alleged by an opponent late in the land use application process, there rarely will be time to comprehensively investigate and appropriately adjudicate that violation due to the 150-day time limit for issuing final decisions per ORS 215.427. Nothing within DCC 22.20.015 requires a County hearings body to process a code complaint pursuant to the County's adopted Code Enforcement Policy and Procedures Manual and conclusively determine the status of a previously un-adjudicated violation solely on the basis that an opponent submits a vague and unsubstantiated allegation during the land use application process.

As such, the Board interprets DCC 22.20.015 to require something more than a vague allegation (i.e., clear evidence of a violation) to compel the County hearings body to determine if a property is in violation and the pending land use application process is the appropriate forum in which to determine whether a violation exists. As discussed below, this case does not provide a sufficient basis for determining what more is needed and the Board thereby will wait for a subsequent case to establish a bright-line rule. Further, prior to electing to adjudicate an allegation as part of the land use application process, the Board interprets DCC 22.20.015 as necessitating the County hearings body to likewise consider procedural, equitable, and legal issues, including but not limited to the time it will take to conduct an investigation pursuant to the Code Enforcement Policy and Procedures Manual, the severity of the alleged violation (i.e., clear cutting vegetation in a wetland is severe while minimal solid waste that is not creating a public health hazard is not), and the 150-day land use decision making clock.

Third, the Board takes this opportunity to reiterate what is self-evident in DCC 22.20.015. A County hearings body's inquiry is not completed by simply noting a past "adjudicated violation" or finding that a property is in violation. DCC 22.20.015(D) and (E) compel a subsequent analysis to determine, for example, if the permit "protect[s] the public health and safety" or "results in the property coming into full compliance." Further, the final phrase of DCC 22.20.015(D)(1) notes that "coming into full compliance" also "include[s] sequencing of permits or other approvals as part of a voluntary compliance agreement." The Board thereby interprets that aforementioned language to specifically allow a County hearings body to approve a land use permit conditioned on the applicant subsequently

executing and complying with a voluntary compliance agreement even for an unrelated violation on the same property.”

As referenced above, the Subject Property has active code compliance cases, 247-22-000400-CE, 247-22-000399-CE, and 247-22-000398-CE for multiple dwellings, non-approved disposal and RV occupancy. Staff indicated that it believed that the RV occupancy has ceased on the Subject Property. With consideration to the above-mentioned interpretive guidance from the BOCC, Staff expressed its belief that it would be appropriate to use this land use application to resolve the outstanding violation(s).

Staff noted that there are many options for the property owners to achieve compliance with the zoning regulations of the MUA10 Zone; the request to establish the manufactured home as a secondary accessory farm dwelling is one potential pathway. Other options include but are not limited to; removal of the manufactured home from the Subject Property, decommission the manufactured home to a non-residential use, decommission the existing stick-built dwelling to a non-residential use, or remove the existing stick-built dwelling from the Subject Property.

The applicant elected, through the submittal of the subject application, to establish the manufactured home as a secondary accessory farm dwelling. If approved this land use application will address the manufactured home related code violation. Staff stated that the comments from the Onsite Wastewater Division should be included as conditions of approval to ensure the property owner receives any necessary permits as it pertains to the onsite wastewater system.

The Hearings Officer finds that the Board’s DCC 22.20.015 interpretative guidance, as quoted above, is supportive of a holding that this application, if approved, is an appropriate method of addressing the manufactured home related code violation.

Title 18 of the Deschutes County Code, County Zoning

Chapter 18.32, Multiple Use Agricultural Zone (MUA10)

Section 18.32.030, Conditional Uses Permitted

The following uses may be allowed subject to DCC 18.128:

...

- G. Manufactured home as a secondary accessory farm dwelling, subject to the requirements set forth in DCC 18.116.070.***

FINDING: The Hearings Officer incorporates the Preliminary Findings for Staff Issue: Class A Manufactured Home [Section III.C.1.], Staff Issue: Need [Section III.C.2.], Staff Issue: Relationship – Primary use/residence to Secondary Accessory Farm Dwelling [Section III.C.3], Staff Issue: Occupant(s) of Secondary Accessory farm Dwelling (Section III.C.4), and Staff Issue: Occupant(s) of Stick-built/Primary Dwelling [Section III.C.5] as additional findings for this approval criterion.

The Hearings Officer includes the following statements taken from Applicant’s Burden of Proof Statement in support of its application:

The applicant is requesting a Conditional Use to establish an existing manufactured home as a secondary accessory farm dwelling, subject to the requirements set forth in Section 18.116.070 (one dwelling was permitted by Deschutes County in 2007, as the primary residence of the subject property). The subject manufactured home was originally permitted in 2010 by Deschutes County on the grounds of a temporary hardship permit for a relative (TU-10-8). There was a change of circumstances with a different family member needing to reside in the manufactured home. The manufactured home was approved as a second hardship dwelling in 2015 (247-15-000238-TU).

The proposed use of the subject manufactured home, as a secondary accessory farm dwelling, may be allowed as a Conditional Use in the MUA-10 Zone. The terms used in County Zoning are defined in DCC 18.04.30, Definitions. The following definitions are relied upon in this burden of proof:

“Accessory use or accessory structure means a use or structure incidental and subordinate to the main use of the property, and located on the same lot as the main use. Accessory uses include drilling for, and utilization of, low-temperature geothermal fluid in conjunction with the main use of the property.”

“Farm use means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or by the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. “Farm use” includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. “Farm Use” also includes the current employment of the land for the primary purpose of obtaining a profit in money by stabling or training equines, including but not limited to, providing riding lessons, training clinics and schooling shows. “Farm use” also includes the propagation, cultivation, maintenance and harvesting of aquatic species and bird and animal species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission. “Farm use” includes the on-site construction and maintenance of equipment and facilities used for the activities described above. “Farm use” does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees as defined in ORS 215.203(3). Current employment of the land for farm use also includes those uses listed under ORS 215.203(2)(b).”

The applicant is proposing to keep the existing manufactured home as an accessory farm dwelling. The subject manufactured dwelling will be “incidental and subordinate to the main farm use of the property.” Incidental means to “being likely to ensure as a chance

or minor consequences.” Webster’s New Collegiate Dictionary. Subordinate means “inferior, submissive to or controlled by authority.” *Id.* The use of these terms suggests in the definition of accessory use or structure that there be a connection of the proposed use or structure with the main use of the property.[footnote omitted]

The definition also requires the “main use of the property” be identified. The main use of the subject property is currently an established lavender farm (Tumalo Lavender) that has gross annual sales exceeding \$80,000 (see Attachment E showing profit and loss for Tumalo Lavender farm operations in 2021). The farm at the subject site consists of approximately 5 acres of established lavender fields, greenhouses for plant propagation/nursery growing of potted plants, commercial activity in conjunction with the lavender farm with an operated store (open to the public with set hours during the spring, summer, and fall months and by appointment during the winter months), a production area for distillation of lavender plants and for making lavender products. The activities described above require year-round farm help, seven days a week, with part-time and full-time staff varying between 4 and up to 10 employees throughout the year.

One of the owners of the subject site who also serves primarily as a farm operator will be residing within the existing manufactured home, while employee(s) of the farm will be residing in the existing single-family dwelling. The manufactured home is supplied with domestic water from the onsite private well and is connected to the on-site septic disposal system servicing the primary single-family dwelling (see Attachment F showing certificate of completion for septic system). The applicant is aware that the existing manufactured home’s use of the on-site septic disposal system was temporarily allowed under the medical hardship permit; thus, Deschutes County approval of the manufactured home as an accessory farm dwelling be conditionally based upon installment of an additional county-approved on-site septic disposal system solely for the manufactured home. The existing on-site disposal system will be used only by the existing primary dwelling that will be used for farm help.

The applicant is employing the property for the primary purpose of obtaining a profit by growing and harvesting lavender. The proposed accessory farm dwelling will be an integral part of the current and future lavender farm operation as it serves as the farm operator’s residence, in addition to the primary single-family dwelling being utilized as residence for farm help. Because of the daily year-round activities required for the success and profitability of the farm, it is necessary to have farm help reside in both dwellings (the accessory dwelling manufactured home in conjunction with the primary single-family dwelling).

Similar to a family medical hardship dwelling, the applicant is applying for a conditional use to allow a different type of “temporary use” for a manufactured home as an accessory farm dwelling and as allowed in the acknowledged MUA-10 Zone.

The Applicant’s request, in this case, is for a Conditional Use Permit to establish an existing manufactured home as a secondary accessory farm dwelling.

Staff noted (Staff Report, page 13), the Title 18 definitions Section (DCC 18.04.030) do not define “secondary accessory farm dwelling.” Staff included a number of Title 18 definitions (Accessory use or accessory structure, Agricultural Use, Dwelling Unit, Family, Manufactured Home, Primary or Principal Use) to assist the Hearings Officer in interpreting “secondary accessory farm dwelling.” Consistent with the findings set forth in Staff Issue: Relationship – Primary use/residence to Secondary Accessory Farm Dwelling (Section III, C.3.) the Hearings Officer defines secondary accessory farm dwelling as a dwelling (place of occupancy) located on a farm that is supportive of or is subordinate in rank/importance to a ‘primary dwelling’.”

The Hearings Officer finds, based upon substantial evidence in the record, that the primary use of the Subject Property is for the cultivation and processing of lavender. The Hearings Officer considered the historical use of the Subject Property as a lavender farm, the number of acres in lavender cultivation, the onsite greenhouses and processing structure and retail location when determining the primary use.

The Hearings Officer finds conflicting evidence in the record with respect to the “necessity” or “need” of employees to live onsite. The Hearings Officer was persuaded by Applicant’s record submissions indicating that it is very important to have two farm operators onsite to assure the efficient and successful operation of the lavender farm (propagation, processing and selling of products). The Hearings Officer agrees with opponents that it may not be absolutely “necessary” that two farm operators reside on the Subject Property; however, the Hearings Officer finds that the likelihood of economic sustainability and growth of the lavender operation at the Subject Property is substantially enhanced by having two onsite farm operators. The Hearings Officer finds there is the requisite/required “connection” between the farm operation (lavender farm) and a secondary accessory farm dwelling being located on the Subject Property.

The Hearings Officer found (Staff Issue: Class A Manufactured Home findings [Section III.C.1]) that DCC 18.116.070(A)(1) does not allow a Class A Manufactured Home to be used as a secondary accessory farm dwelling. The Hearings Officer finds that DCC 18.32.030 G allows a manufactured home to be used as a secondary accessory farm dwelling only if the requirements of DCC 18.116.070 are met. The Hearings Officer finds Applicant’s proposal to use a Class A manufactured home as a secondary accessory farm dwelling does not meet the requirements of DCC 18.116.070. The Hearings Officer finds this criterion is not met.

Section 18.32.040. Dimensional Standards

In an MUA Zone, the following dimensional standards shall apply:

...

- D. Building height. No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed by DCC 18.120.040.**

FINDING: The Applicant provided the following response in the submitted Burden of Proof statement:

“The proposed accessory farm dwelling does not include buildings or structures to be erected or enlarged. Therefore, this criterion does not apply.”

The Hearings Officer finds that, per Staff’s comments, the application in this case is being treated as a new application for a secondary accessory farm dwelling. The Hearings Officer finds that despite the fact that the specific structure subject to the Applicant’s proposal is an “existing” manufactured home this criterion is relevant. The Hearings Officer agrees with Staff that this criterion can be met if a condition of approval is included that requires confirmation that the manufactured home does not exceed 30 feet in height except as allowed by DCC 18.120.040.

Building Height

No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed by DCC 18.120.040.

Section 18.32.050. Yards

- A. The front yard setback from the property line shall be a minimum of 20 feet for property fronting on a local street right of way, 30 feet from a property line fronting on a collector right of way, and 80 feet from an arterial right of way unless other provisions for combining accesses are provided and approved by the County.**
- B. Each side yard shall be a minimum of 20 feet. For parcels or lots created before November 1, 1979, which are one-half acre or less in size, the side yard setback may be reduced to a minimum of 10 feet. For parcels or lots adjacent to property receiving special assessment for farm use, the adjacent side yard for a dwelling shall be a minimum of 100 feet.**
- C. Rear yards shall be a minimum of 25 feet. Parcels or lots with rear yards adjacent to property receiving special assessment for farm use, the rear yards for a dwelling shall be a minimum of 100 feet.**
- D. The setback from the north lot line shall meet the solar setback requirements in DCC 18.116.180.**
- E. In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.**

FINDING: The Applicant provided the following response in the submitted Burden of Proof statement:

“The proposed accessory farm dwelling will occupy the existing manufactured home previously approved on the property as a family medical hardship dwelling. In its approval of the hardship dwelling, the county found that the submitted plot plan for the

hardship manufactured home met the required setbacks of DCC 18.32.040. The location of the proposed use will remain on the exact same structure and footprint as the existing manufactured home. Therefore, this section does not apply.”

Staff (Staff Report, page 16) reiterated that this application was reviewed by Staff as an application for a new use despite the manufactured home pre-existing condition. Staff concluded that this criterion is applicable to the application. The Hearings Officer concurs.

The application materials include a site plan which shows the location of the manufactured home on the Subject Property. The site plan shows the manufactured home is setback 30 feet from the side (east) property line. The site plan did not include dimensions for other setbacks. However, staff noted that the Manufactured Home Placement permit depicts a ±460-foot front (north) yard setback, ±550-foot side (west) yard setback, and a ±107-foot rear (south) yard setback. Staff concluded that there is nothing in the record to suggest the location of the manufactured home has changed since permitted in 2010. Staff concluded that the proposed manufactured dwelling complied with setbacks in (A) through (C).

The Hearings Officer finds that the evidentiary record included a copy of the Manufactured Home Placement permit. The Manufactured Home Placement permit information can be considered as evidence in the record of this case. Staff (Staff Report) recommended conditions of approval to assure that the information contained in the Manufactured Home Placement permit remained accurate. The Hearings Officer agrees with Staff’s recommended conditions (see below).

Under DCC 18.116.180, the purpose of the solar setback is, “...to provide as much solar access as practical during the winter solar heating hours to existing or potential buildings...” The northern lot line of the Subject Property abuts Connarn Road, where future structural development is impracticable. Staff determined that the area immediately adjacent to the north lot line is not a location of a “Potential Structure,” as defined in DCC 18.04.030. Staff concluded that the solar protections of DCC 18.116.180 do not apply to this area and, therefore, the solar setback does not apply to the manufactured dwelling. The Hearings Officer concurs with Staff’s analysis and conclusions related to solar setbacks.

General Setbacks

All buildings or structures shall meet the setback standards as outlined in DCC 18.16.070 (A – C).

Building and Structural Code Setbacks

All buildings or structures shall comply with any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.

Section 18.32.060. Stream Setbacks

To permit better light, air, vision, stream pollution control, fish and wildlife areas and

to preserve the natural scenic amenities and vistas along the streams and lakes, the following setbacks shall apply:

- A. All sewage disposal installations, such as septic tanks and septic drainfields, shall be set back from the ordinary high water mark along all streams or lakes a minimum of 100 feet, measured at right angles to the ordinary high water mark. In those cases where practical difficulties preclude the location of the facilities at a distance of 100 feet and the County Sanitarian finds that a closer location will not endanger health, the Planning Director or Hearings Body may permit the location of these facilities closer to the stream or lake, but in no case closer than 25 feet.*
- B. All structures, buildings or similar permanent fixtures shall be set back from the ordinary high water mark along all streams or lakes a minimum of 100 feet measured at right angles to the ordinary high water mark.*

FINDING: There are no streams or lakes in the project vicinity.

Section 18.32.070. Rimrock Setback

Setbacks from rimrock shall be as provided in DCC 18.116.160.

FINDING: There is no rimrock in the project vicinity.

Chapter 18.56, Surface Mining Impact Area Combining Zone (SMIA)

FINDING: The Subject Property is located within the SMIA-X Zone in association with mine site 368. Mining at this site was completed in 1998 and subsequently mine site 368 was reclaimed as confirmed by the Oregon Department of Geology and Mineral Industries on March 17, 2000. The Hearings Officer finds the application is not subject to the provisions of Chapter 18.56.

Chapter 18.80, Airport Safety Combining Zone (AS)

Section 18.80.020. Application of Provisions.

The provisions of DCC 18.80.020 shall only apply to unincorporated areas located under airport imaginary surfaces and zones, including approach surfaces, transitional surfaces, horizontal surfaces, conical surfaces and runway protection zones. While DCC 18.80 identifies dimensions for the entire imaginary surface and zone, parts of the surfaces and/or zones do not apply within the Redmond, Bend or Sisters Urban Growth Boundaries. The Redmond Airport is owned and operated by the City of Redmond, and located wholly within the Redmond City Limits.

Imaginary surface dimensions vary for each airport covered by DCC 18.80.020. Based on the classification of each individual airport, only those portions (of the AS Zone) that overlay existing County zones are relevant.

Public use airports covered by DCC 18.80.020 include Redmond Municipal, Bend Municipal, Sunriver and Sisters Eagle Air. Although it is a public-use airport, due to its size and other factors, the County treats land uses surrounding the Sisters Eagle Air Airport based on the ORS 836.608 requirements for private-use airports. The Oregon Department of Aviation is still studying what land use requirements will ultimately be applied to Sisters. However, contrary to the requirements of ORS 836.608, as will all public-use airports, federal law requires that the FAA Part 77 surfaces must be applied. The private-use airports covered by DCC 18.80.020 include Cline Falls Airpark and Juniper Airpark.

FINDING: The proposed development is located beneath the approach surface for the Redmond Municipal Airport. Therefore, the provisions of this chapter apply.

Section 18.80.028. Height Limitations.

All uses permitted by the underlying zone shall comply with the height limitations in DCC 18.80.028. When height limitations of the underlying zone are more restrictive than those of this overlay zone, the underlying zone height limitations shall control. [ORS 836.619; OAR 660-013-0070]

- A. Except as provided in DCC 18.80.028(B) and (C), no structure or tree, plant or other object of natural growth shall penetrate an airport imaginary surface. [ORS 836.619; OAR 660-013-0070(1)]**
- B. For areas within airport imaginary surfaces but outside the approach and transition surfaces, where the terrain is at higher elevations than the airport runway surfaces such that existing structures and permitted development penetrate or would penetrate the airport imaginary surfaces, a local government may authorize structures up to 35 feet in height.**
- C. Other height exceptions or variances may be permitted when supported in writing by the airport sponsor, the Department of Aviation and the FAA. Applications for height variances shall follow the procedures for other variances and shall be subject to such conditions and terms as recommended by the Department of Aviation and the FAA (for Redmond, Bend and Sunriver.)**

FINDING: The proposed structure will have a maximum elevation of 3,302 feet above sea level. Per DCC 18.80.022, the Redmond Municipal Airport has a runway elevation of 3,077 feet and the approach surface for Airport above the Subject Property has an approximate elevation of 4,485 feet. The Hearings Officer finds the proposed development will not penetrate the imaginary surfaces and that this criterion will be met.

Section 18.80.044. Land Use Compatibility.

Applications for land use or building permits for properties within the boundaries of this overlay zone shall comply with the requirements of DCC 18.80 as provided herein. When

compatibility issues arise, the Planning Director or Hearings Body is required to take actions that eliminate or minimize the incompatibility by choosing the most compatible location or design for the boundary or use. Where compatibility issues persist, despite actions or conditions intended to eliminate or minimize the incompatibility, the Planning Director or Hearings Body may disallow the use or expansion, except where the action results in loss of current operational levels and/or the ability of the airport to grow to meet future community needs. Reasonable conditions to protect the public safety may be imposed by the Planning Director or Hearings Body. [ORS 836.619; ORS 836.623(1); OAR 660-013-0080]

A. *Noise. Within airport noise impact boundaries, land uses shall be established consistent with the levels identified in OAR 660, Division 13, Exhibit 5 (Table 2 of DCC 18.80). Applicants for any subdivision or partition approval or other land use approval or building permit affecting land within airport noise impact boundaries, shall sign and record in the Deschutes County Book of Records, a Declaration of Anticipated Noise declaring that the applicant and his successors will not now, or in the future complain about the allowed airport activities at the adjacent airport. In areas where the noise level is anticipated to be at or above 55 Ldn, prior to issuance of a building permit for construction of a noise sensitive land use (real property normally used for sleeping or as a school, church, hospital, public library or similar use), the permit applicant shall be required to demonstrate that a noise abatement strategy will be incorporated into the building design that will achieve an indoor noise level equal to or less than 55 Ldn. [NOTE: FAA Order 5100.38D provides that interior noise levels should not exceed 45 decibels in all habitable zones.]*

FINDING: The Subject Property is not within the noise impact boundary associated with the Airport. This criterion does not apply.

B. *Outdoor lighting. No new or expanded industrial, commercial or recreational use shall project lighting directly onto an existing runway or taxiway or into existing airport approach surfaces except where necessary for safe and convenient air travel. Lighting for these uses shall incorporate shielding in their designs to reflect light away from airport approach surfaces. No use shall imitate airport lighting or impede the ability of pilots to distinguish between airport lighting and other lighting.*

FINDING: The proposed use is not an industrial, commercial, or recreational use. This criterion also requires that no use shall imitate airport lighting or impede the ability of pilots to distinguish between airport lighting and other lighting.

Staff (Staff Report, pages 20 & 21) recommended a condition of approval be included in any decision which approves the application. The Hearings Officer concurs with Staff that this criterion can be met if the following condition is included.

Outdoor Lighting.

No use shall imitate airport lighting or impede the ability of pilots to distinguish between airport lighting and other lighting.

- C. Glare. No glare producing material, including but not limited to unpainted metal or reflective glass, shall be used on the exterior of structures located within an approach surface or on nearby lands where glare could impede a pilot's vision.***

FINDING: Staff (Staff Report, page 21) recommended a condition of approval be included in any decision which approves the application. The Hearings Officer finds that with Staff’s recommended condition this criterion can be met.

Glare.

No glare producing material, including but not limited to unpainted metal or reflective glass, shall be used on the exterior of structures located within an approach surface or on nearby lands where glare could impede a pilot's vision.

- D. Industrial emissions. No new industrial, mining or similar use, or expansion of an existing industrial, mining or similar use, shall, as part of its regular operations, cause emissions of smoke, dust or steam that could obscure visibility within airport approach surfaces, except upon demonstration, supported by substantial evidence, that mitigation measures imposed as approval conditions will reduce the potential for safety risk or incompatibility with airport operations to an insignificant level. The review authority shall impose such conditions as necessary to ensure that the use does not obscure visibility.***

FINDING: The proposed use is not an industrial, mining or similar use, or expansion of an existing industrial, mining or similar use. This criterion does not apply.

- E. Communications Facilities and Electrical Interference. No use shall cause or create electrical interference with navigational signals or radio communications between an airport and aircraft. Proposals for the location of new or expanded radio, radiotelephone, and television transmission facilities and electrical transmission lines within this overlay zone shall be coordinated with the Department of Aviation and the FAA prior to approval. Approval of cellular and other telephone or radio communication towers on leased property located within airport imaginary surfaces shall be conditioned to require their removal within 90 days following the expiration of the lease agreement. A bond or other security shall be required to ensure this result.***

FINDING: Staff (Staff Report, page 21) indicated that the proposed use in this case will not cause or create electrical interference. The Hearings Officer concurs with this Staff analysis and conclusion. This criterion can be met.

F. *Limitations and Restrictions on Allowed Uses in the RPZ, Transitional Surface, Approach Surface, and Airport Direct and Secondary Impact Areas. For the Redmond, Bend, Sunriver, and Sisters airports, the land uses identified in DCC 18.80 Table 1, and their accessory uses, are permitted, permitted under limited circumstances, or prohibited in the manner therein described. In the event of conflict with the underlying zone, the more restrictive provisions shall control. As used in DCC 18.80.044, a limited use means a use that is allowed subject to special standards specific to that use.*

FINDING: The Subject Property is located within the approach surface associated with the Redmond Airport. The proposal includes a secondary accessory farm dwelling; a residential use. Based on DCC 18.80, Table 1, the proposed residential use may be allowed under limited circumstances as outlined in note L (10) of Table 1. The Subject Property is approximately 29,000 feet from the outer edge of the Runway Protection Zone (“RPZ”). At this distance from the RPZ, there is no limitation on the density of residential development. Therefore, the proposed residential use will comply with DCC 18.80, Table 1 and the Hearings Officer finds the criterion is met.

Section 18.80.054. Conditional Uses.

Uses permitted conditionally shall be those identified as conditional uses in the underlying zone with which the AS Zone is combined, and shall be subject to all conditions of the underlying zone except as provided in DCC 18.80.044.

FINDING: The proposed use is permitted conditionally in the underlying zone. The Hearings Officer finds the Applicant’s proposal is also permitted conditionally in the AS Zone. The Hearings Officer finds that DCC 18.80.044 does not prohibit the proposed use.

Chapter 18.116, Supplementary Provisions

Section 18.116.050, Manufactured Homes

Manufactured Home Classes. For purposes of these regulations, manufactured homes are divided into the following types:

- A. *A Class A manufactured home shall:***
 - 1. *Have more than 1,000 square feet of occupied space in a double section or larger multi-section unit;***
 - 2. *Be placed on a foundation or support system, as specified by the manufacturer. Skirting shall be required;***
 - 3. *Have wheels, axles and hitch mechanisms removed;***
 - 4. *Have utilities connected subject to the requirements of the Building Codes Agency and manufacturer's specifications;***

5. ***Bear an insignia of compliance with the Manufactured Housing and Construction and Safety Standards Code as of June 15, 1976;***
6. ***Have roofing materials of a type customarily used on site constructed residences, including wood shakes or shingles, asphalt or fiberglass shingles, corrugated mat finish colored metal and tile materials, but not including high gloss corrugated aluminum or fiberglass panels. The roof pitch shall be a minimum of two over 12; and***
7. ***Have siding materials of a type customarily used on site-constructed residences such as clapboard, horizontal vinyl or aluminum lap-siding, cedar or other wood siding, brick or stone, and not including high gloss finished material, corrugated metal or fiberglass, or metal or plastic panels.***

B. A Class B manufactured home shall:

1. ***Have at least 750 square feet of occupied space in a single, double, expand or multi-section unit;***
2. ***Be placed on a foundation, as specified by the manufacturer. Skirting shall be required;***
3. ***Have wheels, axles and hitch mechanisms removed;***
4. ***Have utilities connected subject to the requirements of the Building Codes Agency and manufacturer's specifications;***
5. ***Bear an insignia of compliance with the Manufactured Housing and Construction and Safety Standards Code as of June 15, 1976;***
6. ***Have roofing materials of a type customarily used on site constructed residences, including wood shakes or shingles, asphalt or fiberglass shingles, corrugated matte finish colored metal and tile materials, but not including high gloss corrugated aluminum or fiberglass panels. The roof pitch shall be a minimum of two over 12; and***
7. ***Have siding materials of a type customarily used on site constructed residences such as clapboard, horizontal vinyl or aluminum lap siding, cedar or other wood siding, brick or stone, and not including high gloss finished material, corrugated metal or fiberglass, or metal or plastic panels.***

C. A Class C manufactured home shall:

1. ***Have at least 576 square feet of occupied space, excluding tipouts and hitches;***
2. ***Be placed on a foundation or support system, as specified by the manufacturer. Skirting shall be required;***
3. ***Bear an insignia of compliance with the Manufactured Housing and Construction and Safety Standards Code as of June 15, 1976, or bear the Oregon Department of Commerce "Insignia of Compliance"; and***

4. Have utilities connected subject to the requirements of the Building Codes Agency and manufacturer's specifications.

FINDING: The Burden of Proof states,

“The placement of the manufactured dwelling had its final inspection approved in 2010. The applicant believes the subject manufactured home still meets the code as required for a Class A manufactured home described above.”

Applicant and Staff agree that the manufactured home that is subject to this application is a Class A manufactured home. The Hearings Officer finds no substantial evidence or persuasive evidence in the record to suggest otherwise. The Hearings Officer finds the manufactured home subject to this application is a Class A manufactured home.

Section 18.116.070, Placement Standards for Manufactured Homes.

- A. As defined in DCC 18.116.050, Class A and B manufactured homes shall be permitted as follows, subject to the requirements of the underlying zone:**
 - 1. In the following zones, except where there is a Conventional Housing Overlay Zone (CH): Any EFU zone, MUA 10, F-1, F 2, RR 10, any area zoned as an unincorporated community (as that term is defined herein), RSR M, RSR 5, and FP as the primary dwelling, and R I and SM as a caretaker's residence.**

FINDING: The Hearings Officer incorporates the Preliminary Findings for Staff Issue: Class A Manufactured Home (Section III.C.1.), Staff Issue: Need (Section III.C.2.), Staff Issue: Relationship – Primary use/residence to Secondary Accessory Farm Dwelling (Section III.C.3.), Staff Issue: Occupant(s) of Secondary Accessory farm Dwelling (Section III.C.4.), and Staff Issue: Occupant(s) of Stick-built/Primary Dwelling (Section III.C.5.) as additional findings for this approval criterion.

DCC 18.32.030 sets forth the uses that may (if standards are met) be approved as conditional uses in the MUA-10 zone. The Hearings Officer concluded that the Applicant’s proposal to locate a Class A manufactured home within the MUA-10 zoned Subject Property cannot be approved if the requirements of DCC 18.116.070 (A)(1) were not satisfied/met. The Hearings Officer found, based upon the representation of Applicant, that the manufactured home sought to be approved as a secondary accessory farm dwelling is a Class A manufactured home. The Hearings Officer found that a Class A manufactured home can be approved, under DCC 18.116.070 (A)(1) “only” as a primary residence. The Hearings Officer finds that Applicant represented the primary residence on the Subject Property was located within the barn structure.

Staff suggested that this criterion could be met with a condition of approval. The Hearings Officer disagrees. The Hearings Officer finds that Applicant’s proposal is for the Class A manufactured home to be the secondary accessory farm dwelling; not some other class of manufactured home. The Hearings Officer finds that adopting Staff’s recommended condition is a modification of

Applicant’s proposal and the Hearings Officer does not have such authority. The Hearings Officer finds Applicant’s proposal does not satisfy the requirements of DCC 18.116.070 and therefore does not satisfy the requirements of DCC 18.32.030 G.

2. In manufactured home parks and subdivisions.

FINDING: The Subject Property is not within a mobile home park or subdivision. The Subject Property does not contain a mobile home park or subdivision. Burden of Proof states,

3. As permitted in DCC 18.116.080 and 18.116.090.

FINDING: DCC 18.116.080 is titled “Manufactured Home Or RV As A Temporary Residence On Individual Lot During Construction.” DCC 18.116.090 is titled “A Manufactured Home OR Recreational Vehicle as a Temporary Residence for Medical Condition.” The application in this case is for approval of a secondary accessory farm dwelling. The application is not for either a temporary residence for use during construction or a temporary vehicle to be used for a medical condition. The Hearings Officer finds this criterion is not relevant.

4. Class A and B manufactured homes are not permitted in any historic district or on any historic site.

FINDING: The Hearings Officer finds the Subject Property is not located in an inventoried historic district. The Hearings Officer finds this criterion is not relevant.

B. Class C manufactured homes shall be permitted as follows:

- 1. Except as otherwise allowed in DCC 18.116.070, on parcels 10 acres in size or larger.**
- 2. As a secondary accessory farm dwelling.**
- 3. In manufactured home parks and manufactured home subdivisions.**
- 4. As permitted in DCC 18.116.080 and 18.116.090.**
- 5. As a replacement to an existing non-conforming manufactured home destroyed by fire or other natural act, or as an upgrade to an existing manufactured home.**
- 6. In the following subdivisions: Rockview II, Tetherow Crossing, Chaparral Estates, Crystal Acres, Hidden Valley Mobile Estates, Johnson Acres, Seven Peaks, Sun Mountain Ranches, Deschutes River Homesites Rimrock Addition, Happy Acres, Rancho El Sereno, Whispering Pines, Bend Cascade View Estates, Raintree, Holmes Acres, La Pine Meadows North, Pine Crest Ranchettes, Dora’s Acres, Pierce Tracts, Roan Park, South Forty, Tomes, Crooked River Ranch, Dale Acres, Replat/Hillman, Lake Park Estates, Mary K. Falls Estates.**

7. Class C manufactured homes are not permitted in any historic district or on any historic site.

FINDING: The Applicant proposes to establish an existing Class A manufactured home as a secondary accessory farm dwelling. The Hearings Officer finds these criteria relate only to Class C manufactured homes. The Hearings Officer finds these criteria are not relevant.

Chapter 18.128, Conditional Use

Section 18.128.010, Operation.

- A. A conditional use listed in DCC Title 18 shall be permitted, altered or denied in accordance with the standards and procedures of this title; DCC Title 22, the Uniform Development Procedures Ordinance; and the Comprehensive Plan.**
- B. In the case of a use existing prior to the effective date of DCC Title 18 and classified in DCC Title 18 as a conditional use, any change in use or lot area or an alteration of structure shall conform with the requirements for a conditional use.**

FINDING: The proposed conditional use is reviewed in accordance with the standards and procedures of this title; DCC Title 22, the Uniform Development Procedures Ordinance; and the Comprehensive Plan. No prior use now classified as a conditional use is being modified by this proposal.

Section 18.128.015, General Standards Governing Conditional Uses.

Except for those conditional uses permitting individual single family dwellings, conditional uses shall comply with the following standards in addition to the standards of the zone in which the conditional use is located and any other applicable standards of the chapter:

FINDING: This criterion applies “except for those conditional uses permitting individual single family dwellings...” The first issue the Hearings Officer must address is whether or not an application for a secondary accessory farm dwelling is an application for permitting a “single family dwelling?”

DCC 18.04.030 defines “dwelling, single family” as:

“a detached building containing one dwelling unit and designed for occupancy by one family only, not including temporary structures such as tents, teepees, travel trailers and other similar structures.”

The Hearings Officer finds that the Class A manufactured home that is being proposed as a secondary accessory farm dwelling is a single detached dwelling unit designed to be occupied by one family only. The Hearings Officer finds that the Class A manufactured home is not a

temporary structure similar to a tent, teepee, travel trailer or other similar structure. Therefore, the Hearings Officer finds that the Class A manufactured home meets the definitional requirements to be considered a “dwelling, single family.” The Hearings Officer finds that a “dwelling, single family” is the same as a “single family dwelling.”

The Hearings Officer, based upon the above stated definitional findings, concludes that the application for a manufactured home to be approved as a conditional use as a secondary accessory farm dwelling falls within the single family dwelling exception for this criterion.

The Hearings Officer, as alternative findings to those set forth above, finds that this criterion is relevant and undertakes evaluation of the factors set forth in DCC 18.128.015, General Standards Governing Conditional Uses.

A. The site under consideration shall be determined to be suitable for the proposed use based on the following factors:

1. Site, design and operating characteristics of the use;

FINDING: The conditional use proposed under this application is the establishment of an existing manufactured home as a secondary accessory farm dwelling.

The Applicant provided the following response in the submitted Burden of Proof statement:

“The site is suitable for the proposed conditional use as an accessory farm dwelling because of its on-site proximity to the use of the property as a commercial lavender farm. The operating characteristic of the proposed use of the manufactured home is to serve as the on-site residence for the primary farm operators and part owner of the lavender farm. The site is accessed by an existing driveway off of Connarn Road. The location of the proposed conditional use of the for accessory farm dwelling is within the same existing manufactured home placed on the same location of the property and found suitable for a temporary dwelling.”

Comments from governmental agencies and the general public did not identify any site, design, or operating characteristic deficiencies related to the proposed secondary accessory farm dwelling. Comments were received from participants related to impacts created by the commercial lavender operation. As noted in the Preliminary Findings this application is for a manufactured home to be used as a secondary accessory farm dwelling. Impacts from the commercial lavender operation are not relevant to a decision in this case. Further, participants indicated that if this application were to be approved then other proximate property owners would be making “similar requests” and if those are approved then negative impacts, such as increased traffic, could result. The Hearings Officer finds the “similar requests” argument is not relevant to this case.

The Hearings Officer finds that there is no substantial or persuasive evidence in the record that

demonstrates that approval of the manufactured home as a secondary accessory farm dwelling at the Subject Property would have negative impacts based on the location, design or operating characteristics of the manufactured home.

2. Adequacy of transportation access to the site; and

FINDING: Transportation access is provided to the site by Connarn Road, a County-maintained rural local roadway. Comments from the Deschutes County Road Department and Deschutes County Transportation Planner did not identify any transportation infrastructure deficiencies. Comments from other agencies and the general public did not identify any transportation infrastructure deficiencies. As noted by the Deschutes County Transportation Planner, the Subject Property has two driveway permits approved by Deschutes County (247-19-001534-DA and 247-SW4543) and thus complies with the access permit requirements of DCC 17.48.210(A). The subject application does not propose additional driveways.

The Hearings Officer reiterates that the request in this case involves a request for approval of a manufactured home to be used as a secondary accessory farm dwelling. The only traffic impacts relevant to this case are those attributable to the *addition* of the secondary accessory farm dwelling. Traffic impacts from other farm uses, including the commercial farm use, are not subject to reconsideration in this case.

The Hearings Officer finds the written comments from the Deschutes County Road Department and the Deschutes County Transportation Planner are credible and constitute substantial evidence in support of the conclusion that the transportation access to the Subject Property and to the proposed secondary accessory farm dwelling is adequate.

3. The natural and physical features of the site, including, but not limited to, general topography, natural hazards and natural resource values.

FINDING: The Subject Property is generally level and presents no topographical constraints on the proposed manufactured home to be used as a secondary accessory farm dwelling. The *Deschutes County Natural Hazards Mitigation Plan (2015)* identifies drought, earthquake, flood, landslide, volcanic, wildfire, windstorm, and winter storm hazards in the County. Of these, wildfire is of special concern regarding the suitability of the use. Natural resource values typically include agricultural soils, forest lands, wildlife and their habitats, wetlands, and natural water features. There are no Goal 5 inventoried natural resources on the site that merit protection. Further, the property does not contain any mapped wetlands or special flood hazard areas. The Hearings Officer finds, based upon the evidence in the record, that this criterion can be met.

Comments from agencies and the general public did not identify any site unsuitability due to general topography, natural hazards, or natural resource values. The Hearings Officer finds, based upon the evidence in the record, that this criterion can be met.

B. The proposed use shall be compatible with existing and projected uses on surrounding properties based on the factors listed in DCC 18.128.015(A).

FINDING: The Applicant provided the following response to DCC 18.128.015(B&C) in the submitted Burden of Proof statement:

“The proposed use is compatible with existing and projected uses on surrounding properties based on the existing location of the manufactured home, driveway and its operating characteristics as the on-site home of the primary farm operator and partial owner.

The applicant and owners understand that approval of the proposed accessory farm dwelling may include conditions ensuring that the standards will be met. This may include a limitation that only farm help may occupy the dwellings.”

Pursuant to the factors listed in DCC 18.128.015(A), staff opined (Staff Report, pages 28 & 29) that the proposed use (manufactured home as a secondary accessory farm dwelling) would be unsuitable if the siting, design, and operating characteristics of the use significantly adversely impacted existing and projected uses on surrounding properties. Typically, potential adverse impacts include visual, noise, dust, and odor impacts. Staff (Staff Report, page 29) also noted that the proposed use would be unsuitable if access to the Subject Property would significantly adversely impact existing and projected uses on surrounding properties. Lastly, Staff (Staff Report, page 29) noted that the proposed use would be unsuitable if it significantly adversely impacts off-site topography, natural hazards, or natural resource values.

The Hearings Officer reiterates that the proposal in this case is a request for approval of a secondary accessory farm dwelling on the Subject Property. The proposal, and therefore this decision, does not include reconsideration or review of any of the existing approved farm uses on the Subject Property. Included in the existing approved farm uses is the growing, processing and commercial sales of lavender products. The impacts from these approved uses is not relevant to this approval criterion.

The Hearings Officer finds the proposed location of the manufactured home will not impact surrounding properties related to the design of the manufactured home or the operating characteristics associated with the manufactured home. The Hearings Officer finds there is no evidence in the record demonstrating that approval of a manufactured home as a secondary accessory farm dwelling on the Subject Property could be expected to cause any significant visual, noise, dust or odor impacts. The Hearings Officer finds no evidence in the record to demonstrate that the proposed location of the manufactured home will have any impact on off-site topography, natural hazards or natural resource values.

The Hearings Officer finds that approval of the application to locate a manufactured home on the Subject Property as a secondary accessory farm dwelling is compatible with surrounding properties.

- C. *These standards and any other standards of DCC 18.128 may be met by the imposition of conditions calculated to insure that the standard will be met.***

FINDING: To the extent this decision is conditioned under DCC 18.128 criterion, the Hearings Officer notes such conditions are authorized by this criterion.

Section 18.128.020, Conditions.

In addition to the standards and conditions set forth in a specific zone or in DCC 18.124, the Planning Director or the Hearings Body may impose the following conditions upon a finding that additional restrictions are warranted.

- A. *Require a limitation on manner in which the use is conducted, including restriction of hours of operation and restraints to minimize environmental effects such as noise, vibrations, air pollution, glare or odor.***
- B. *Require a special yard or other open space or a change in lot area or lot dimension.***
- C. *Require a limitation on the height, size or location of a structure.***
- D. *Specify the size, number, location and nature of vehicle access points.***
- E. *Increase the required street dedication, roadway width or require additional improvements within the street right of way.***
- F. *Designate the size, location, screening, drainage, surfacing or other improvement of a parking or loading area.***
- G. *Limit or specify the number, size, location, height and lighting of signs.***
- H. *Limit the location and intensity of outdoor lighting and require shielding.***
- I. *Specify requirements for diking, screening, landscaping or other methods to protect adjacent or nearby property and specify standards for installation and maintenance.***
- J. *Specify the size, height and location of any materials to be used for fencing.***
- K. *Require protection and preservation of existing trees, vegetation, water resources, wildlife habitat or other significant natural resources.***
- L. *Require that a site plan be prepared in conformance with DCC 18.124.***

FINDING: To the extent that any conditions of approval contained in this decision require improvement to the Subject Property beyond the minimum standards of DCC Title 18, the Hearings Officer finds such conditions are authorized by this section.

Section 18.128.040, Specific Use Standards.

A conditional use shall comply with the standards of the zone in which it is located and with the standards and conditions set forth in DCC 18.128.045 through DCC 18.128.370.

FINDING: As described herein, the proposed conditional use is reviewed in accordance with the standards of the zone in which it is located and with the standards and conditions set forth in

DCC 18.128.045 through DCC 18.128.370, as applicable.

IV. CONCLUSION

The application in this case is to locate a Class A manufactured home on the Subject Property to be used as a secondary accessory farm dwelling. Secondary accessory farm dwellings are allowed in the MUA-10 zone so long as all relevant conditional use approval criteria are met. DCC 18.32.030 G states a manufactured home may be approved as a secondary accessory farm dwelling conditional use in the MUA-10 zone “subject to the requirements set forth in DCC 18.116.070.”

Applicant represented that a “stick-built” structure (part of a barn) is the “primary dwelling” on the Subject Property and the proposed manufactured home would be the “secondary accessory farm dwelling.” Applicant represented that the manufactured home proposed to be used as the secondary accessory farm dwelling is a Class A manufactured home.

The Hearings Officer interpreted DCC 18.116.070 (A)(1) to require Class A manufactured homes (with exceptions for CH zoned property and also R-1 and SM zones which allow caretaker’s residences) to be used as a “primary dwellings.” The Hearings Officer concluded that Applicant’s proposed use of a Class A manufactured home does not satisfy the requirements of DCC 18.116.070.

The Hearings Officer found that all relevant approval criteria were met by the application in this case excepting for DCC 18.116.070. On the basis that the application did not meet the requirements of DCC 18.116.070 the application must be denied.

V. DECISION

Denial of Applicant’s request for Secondary Accessory Farm Dwelling Conditional Use permit at the Subject Property.

Deschutes County Hearings Officer



Gregory J. Frank, Hearings Officer

Date: June 14, 2023

This decision becomes final twelve (12) days after the date mailed, unless appealed by a party of interest. To appeal, it is necessary to submit a Notice of Appeal, the base appeal deposit plus 20% of the original application fee(s), and a statement raising any issue relied upon for appeal with sufficient specificity to afford the Board of County Commissioners an adequate opportunity to respond to and resolve each issue.

owner	agent	inCareof	address	cityStZip	type	cdd id
Tumalo Lavender Property LLC	Holly Olson and Summer		3318 NW Rademacher Place	Bend, OR 97703	HOFF Decision	23-162-CU
Douglas White	Hagedorn		60762 River Bend Drive	BEND, OR 97702	HOFF Decision	23-162-CU
Marilyn Thompson			29475 NE Miller View Lane	Newberg, OR 97132	HOFF Decision	23-162-CU



APPEAL APPLICATION – BOARD OF COUNTY COMMISSIONERS

FEE: _____

EVERY NOTICE OF APPEAL SHALL INCLUDE:

1. A statement describing the specific reasons for the appeal.
2. If the Board of County Commissioners is the Hearings Body, a request for review by the Board stating the reasons the Board should review the lower decision.
3. If the Board of County Commissioners is the Hearings Body and *de novo* review is desired, a request for *de novo* review by the Board, stating the reasons the Board should provide the *de novo* review as provided in Section 22.32.027 of Title 22.
4. If color exhibits are submitted, black and white copies with captions or shading delineating the color areas shall also be provided.

It is the responsibility of the appellant to complete a Notice of Appeal as set forth in Chapter 22.32 of the County Code. The Notice of Appeal on the reverse side of this form must include the items listed above. Failure to complete all of the above may render an appeal invalid. Any additional comments should be included on the Notice of Appeal.

Staff cannot advise a potential appellant as to whether the appellant is eligible to file an appeal (DCC Section 22.32.010) or whether an appeal is valid. Appellants should seek their own legal advice concerning those issues.

Appellant's Name (print): Tumalo Lavender Property LLC Phone: (541) 383-2441

Mailing Address: 3318 Rademacher Place City/State/Zip: Bend, OR 97703

Email Address: holly@tumulolavender.com

Land Use Application Being Appealed: 247-23-000162-CU

Property Description: Township 16 Range 12 Section 9 Tax Lot 501

Appellant's Signature: [Signature] Date: June 26, 2023

By signing this application and paying the appeal deposit, the appellant understands and agrees that Deschutes County is collecting a deposit for hearing services, including "whether to hear" proceedings. The appellant will be responsible for the actual costs of these services. The amount of any refund or additional payment will depend upon the actual costs incurred by the county in reviewing the appeal.

Except as provided in section 22.32.024, appellant shall provide a complete transcript of any hearing appealed, from recordings provided by the Planning Division upon request (there is a \$5.00 fee for each recording copy). Appellant shall submit the transcript to the planning division no later than the close of

(This page may be photocopied if additional space is needed.)

ATTACHMENT 1

June 26, 2023

Haleigh King, Associate Planner
Deschutes County Community Development Department
117 NW Lafayette Avenue
Bend, Oregon 97703

Haleigh.King@deschutes.org

SUBJECT: Deschutes County File Nos. 247-23-000162-CU – BOCC Appeal Application

Ms. King,

On June 14, 2023, Deschutes County Hearings Officer Gregory Frank (the “**Hearings Officer**”) issued a decision of denial for a conditional use permit for a secondary accessory farm dwelling in the Multiple Use Agricultural 10-acre (“**MUA-10**”) zone submitted by Tumalo Lavender Property LLC, the applicant (“**Applicant**”). The Applicant files this appeal pursuant to Deschutes County Code (“**DCC**”) Chapter 22.32. Further, the Applicant request that the Board of County Commissioners (“**BOCC**”) hear the appeal “*limited de novo*” as allowed by DCC 22.32.027(B)(4).¹ Specifically, the Applicant asks the BOCC to limit the issues on appeal to only the following:

- Interpretation of DCC 18.116.070 (Hearing Officer’s Decision pages 10-13)
- Application of that interpretation to DCC 18.32.030(G) (Hearing Officer’s Decision pages 20-23)
- Application of DCC 18.116.070 to subject application (Hearing Officer’s Decision pages 32-33)

All three aforementioned issues overlap and stem from the Hearing Officer’s interpretation of DCC 18.116.070 governing the different classes of manufactured housing allowed in different zones throughout the County. The Hearings Officer specifically found that “all relevant approval criteria were met by the application in this case excepting for DCC 18.116.070.” Accordingly, if the BOCC does not agree with the Hearings Officer’s interpretation of DCC 18.116.070, the subject Application should be approved with the conditions noted by staff and the Hearings Officer.

The BOCC should review the Hearings Officer decision because a careful examination of DCC 18.116.070 reveals that the provision is vague, inconsistent, and fails to provide clear guidelines for land use decisions. This was even stated by the Hearings Officer in his written decision. The County hasn’t clearly outlined the definition nor the distinction of the different classifications of manufactured homes and where they are and are not allowed. In fact, there is not even a clear distinction within the industry regarding the classification of manufactured homes. The lack of clarity in the DCC has resulted in conflicting interpretations and arbitrary determinations

¹ DCC 22.32.027(B)(4) provides as follows:

“4. The Board may, at its discretion, determine that it will limit the issues on appeal to those listed in an appellant’s notice of appeal or to one or more specific issues from among those listed on an applicant’s notice of appeal.”

which will have profound ramifications on future land use decisions for the County. The ambiguity of the language used in the code has led to confusion among property owners and planning authorities staff.

The Applicant understands that when accepting appeals, the BOCC prefers to conduct a *de novo* review. However, DCC 22.32.027(B)(4) would not be included in the Deschutes County Code unless exceptional circumstances at times warrant *limited de novo* review. The Applicant asserts that this is one of those exceptional circumstances. Notably, no opposing party raised DCC 18.116.070. Instead, County staff on their own volition sought the Hearings Officer’s interpretation of this clearly ambiguous provision. The Hearing Officer, in turn, asked staff to provide clarification on the issue during the open record period following the initial public hearing. Staff provided that additional information in a letter in the record dated May 23, 2023. In that letter, staff specifically suggested a broad interpretation of DCC 18.116.070 that would have led to the approval of the subject application. Nevertheless, the Hearings Officer rejected staff’s proffered interpretation, resulting in the denial of the application and necessitating the subject appeal.

Although the Applicant recognizes that County staff intended no ill will and did not set out to derail the subject application, there is no doubt that County staff did elect to utilize these quasi-judicial proceedings (paid for by the Applicant) to gain clarity on what staff otherwise acknowledge was an ambiguous DCC provision. In so doing, the Hearing Officer issued an interpretation of DCC 18.116.070 that presumably is not favored by even County staff, resulting in the unintentional denial of the subject application. The Applicant requests a *limited de novo* review specifically to limit the complexity and scope of the appeal proceedings before the BOCC, thereby making the appeal economically viable for the Applicant. The Applicant understands that precedent-setting public policy decisions are sometimes made during quasi-judicial land use proceedings, but the Applicant simply cannot afford to pay twice for the same proceedings that in this case are intended to benefit the entire Deschutes County Community.

Additionally - and perhaps most importantly - if the County’s intention going forward is to rely on an interpretation of the ambiguous and poorly phrased DCC 18.116.070 rather than amend that code provision, the Applicant asserts that such an interpretation should be issued by the BoCC rather than by an appointed Hearings Officer. The Applicant means no disrespect to Mr. Frank. But as noted above, the Hearings Officer ignored the context of DCC 18.116.070 and the County-wide implications of limiting the types of manufactured homes for certain land uses, thereby limiting a necessary and affordable housing option for many County constituents. The Applicant suspects that these unintended policy ramifications negatively influencing the County’s already strained housing supply are precisely why County staff advocated for a broader interpretation of DCC 18.116.070.

To clarify, the Applicant is not requesting a “record review” as contemplated by DCC 22.32.027(B)(1).² Instead, the Applicant’s understanding is that by accepting the appeal *limited de novo*, the record in this matter will nevertheless be re-opened to include additional evidence and testimony in addition to the record already developed before staff and the Hearings Officer as required by DCC 22.32.030(D).³ However, any additional evidence, testimony, or argument raised by the Applicant, other parties, or County staff must then be directed at the issues identified in the BOCC’s order accepting the *limited de novo* appeal.


² DCC 22.32.027(B)(1) provides as follows:
“1. Review before the Board, if accepted, shall be on the record except as otherwise provided for in DCC 22.32.027.”

³ DCC 22.32.030(D) provides as follows:
“D. The record of the proceeding from which appeal is taken shall be a part of the record on appeal.”

The Applicant notes that the BOCC has plenty of time for these appeal proceedings because the statutory deadline is not until September 17, 2023. In the unlikely event that more time is needed, the Applicant commits to working with County staff to ensure that the BOCC has the necessary time to consider this important issue.

Last, if accepting this appeal, the Applicant asks that the BOCC waive the transcript requirement as allowed by DCC 22.32.024(D). I thank you for your consideration of this appeal application request for a BOCC hearing.

Sincerely,



Holly Olson
Tumalo Lavender Property, LLC

18.116.050 Manufactured Homes

Manufactured Home Classes. For purposes of these regulations, manufactured homes are divided into the following types:

A. A Class A manufactured home shall:

1. Have more than 1,000 square feet of occupied space in a double section or larger multi-section unit;
2. Be placed on a foundation or support system, as specified by the manufacturer. Skirting shall be required;
3. Have wheels, axles and hitch mechanisms removed;
4. Have utilities connected subject to the requirements of the Building Codes Agency and manufacturer's specifications;
5. Bear an insignia of compliance with the Manufactured Housing and Construction and Safety Standards Code as of June 15, 1976;
6. Have roofing materials of a type customarily used on site constructed residences, including wood shakes or shingles, asphalt or fiberglass shingles, corrugated mat finish colored metal and tile materials, but not including high gloss corrugated aluminum or fiberglass panels. The roof pitch shall be a minimum of two over 12; and
7. Have siding materials of a type customarily used on site-constructed residences such as clapboard, horizontal vinyl or aluminum lap-siding, cedar or other wood siding, brick or stone, and not including high gloss finished material, corrugated metal or fiberglass, or metal or plastic panels.

B. A Class B manufactured home shall:

1. Have at least 750 square feet of occupied space in a single, double, expand or multi-section unit;
2. Be placed on a foundation, as specified by the manufacturer. Skirting shall be required;
3. Have wheels, axles and hitch mechanisms removed;
4. Have utilities connected subject to the requirements of the Building Codes Agency and manufacturer's specifications;
5. Bear an insignia of compliance with the Manufactured Housing and Construction and Safety Standards Code as of June 15, 1976;
6. Have roofing materials of a type customarily used on site constructed residences, including wood shakes or shingles, asphalt or fiberglass shingles, corrugated matte finish colored metal and tile materials, but not including high gloss corrugated aluminum or fiberglass panels. The roof pitch shall be a minimum of two over 12; and
7. Have siding materials of a type customarily used on site constructed residences such as clapboard, horizontal vinyl or aluminum lap siding, cedar or other wood siding, brick or stone, and not including high gloss finished material, corrugated metal or fiberglass, or metal or plastic panels.

C. A Class C manufactured home shall:

1. Have at least 576 square feet of occupied space, excluding tipouts and hitches;

- 2. Be placed on a foundation or support system, as specified by the manufacturer. Skirting shall be required;
- 3. Bear an insignia of compliance with the Manufactured Housing and Construction and Safety Standards Code as of June 15, 1976, or bear the Oregon Department of Commerce "Insignia of Compliance"; and
- 4. Have utilities connected subject to the requirements of the Building Codes Agency and manufacturer's specifications.

D. A Class D manufactured home shall:

- 1. Have more than 320 square feet of occupied space;
- 2. Be placed on a foundation or support system, as specified by the manufacturer. Skirting shall be required; and
- 3. Have utilities connected subject to requirements of the Building Codes Agency and manufacturer's specifications.

HISTORY

Adopted by Ord. 81-042 §1-3 and 4 on 12/3/1981
 Amended by Ord. 89-004 §§3 and 5 on 3/24/1989
 Amended by Ord. 91-005 §38-41 on 3/4/1991
 Amended by Ord. 91-017 §§1-3 and 4 on 4/17/1991
 Amended by Ord. 91-038 §4 on 9/30/1991
 Amended by Ord. 93-043 §§19B-E on 8/25/1993
 Amended by Ord. 2000-033 §7 on 12/6/2000
 Amended by Ord. 2001-013 §1 on 2/14/2001
 Amended by Ord. 2004-013 §12 on 9/21/2004

18.116.070 Placement Standards For Manufactured Homes

A. As defined in DCC 18.116.050, Class A and B manufactured homes shall be permitted as follows, subject to the requirements of the underlying zone:

1. In the following zones, except where there is a Conventional Housing Overlay Zone (CH): Any EFU zone, MUA-10, F-1, F-2, RR-10, any area zoned as an unincorporated community (as that term is defined herein), RSR-M, RSR-5, and FP as the primary dwelling, and R-I and SM as a caretaker's residence.
2. In manufactured home parks and subdivisions.
3. As permitted in DCC 18.116.080 and 18.116.090.
4. Class A and B manufactured homes are not permitted in any historic district or on any historic site.

B. Class C manufactured homes shall be permitted as follows:

1. Except as otherwise allowed in DCC 18.116.070, on parcels 10 acres in size or larger.
2. As a secondary accessory farm dwelling.
3. In manufactured home parks and manufactured home subdivisions.
4. As permitted in DCC 18.116.080 and 18.116.090.
5. As a replacement to an existing non-conforming manufactured home destroyed by fire or other natural act, or as an upgrade to an existing manufactured home.
6. In the following subdivisions: Rockview II, Tetherow Crossing, Chaparral Estates, Crystal Acres, Hidden Valley Mobile Estates, Johnson Acres, Seven Peaks, Sun Mountain Ranches, Deschutes River Homesites Rimrock Addition, Happy Acres, Rancho El Sereno, Whispering Pines, Bend Cascade View Estates, Raintree, Holmes Acres, La Pine Meadows North, Pine Crest Ranchettes, Dora's Acres, Pierce Tracts, Roan Park, South Forty, Tomes, Crooked River Ranch, Dale Acres, Replat/Hillman, Lake Park Estates, Mary K. Falls Estates.
7. Class C manufactured homes are not permitted in any historic district or on any historic site.

C. An exception may be granted by the Planning Director or Hearings Body to allow a Class C manufactured home to be placed in a subdivision which is not listed in DCC 18.116.070(B)(6), where all of the following conditions exist:

1. The manufactured home is specifically designed or has been substantially modified for wheelchair or disabled access (disabled accessible manufactured home).
2. There are Class C manufactured homes in the subdivision located within one-quarter mile of the lot upon which the manufactured home will be placed.
3. The disabled accessible manufactured home and lot upon which the manufactured home is to be placed were purchased by the applicant prior to February 22, 1989.

D. Class D manufactured homes shall be permitted as follows:

1. In manufactured home parks and subdivisions.
2. As permitted in DCC 18.116.080 and 18.116.090.

3. Class D manufactured homes are not permitted in any historic district or on any historic site.

HISTORY

- Adopted by Ord. PL-15 on 11/1/1979*
- Amended by Ord. 81-042 §5 on 12/3/1981*
- Amended by Ord. 89-004 §§3 and 5 on 3/24/1989*
- Amended by Ord. 89-014 §1 on 5/10/1989*
- Amended by Ord. 89-016 §1 on 7/12/1989*
- Amended by Ord. 91-005 §§42 and 43 on 3/4/1991*
- Amended by Ord. 91-020 §1 on 5/29/1991*
- Amended by Ord. 96-003 §8 on 3/27/1996*
- Amended by Ord. 2000-033 §8 on 12/6/2000*

REVIEWED
KR
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Accepting Review of Hearings *
Officer’s Decision in File No. 247-23-000162- * ORDER NO. 2023-029
CU.

WHEREAS, on June 14, 2023, the Hearings Officer denied File No. 247-23-000162-CU; and

WHEREAS, on June 26, 2023, Tumalo Lavender Farm, LLC, the Appellant, appealed (Appeal No. 247-23-000516-A) the Deschutes County Hearings Officer’s Decision on File No. 247-23-000162-CU; and

WHEREAS, Sections 22.32.027 and 22.32.035 of the Deschutes County Code (“DCC”) allow the Deschutes County Board of County Commissioners (“Board”) discretion on whether to hear appeals of Hearings Officer’s decisions; and

WHEREAS, the Board has given due consideration as to whether to review this application on appeal; now therefore,

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

Section 1. That it will hear on appeal Appeal No. 247-23-000516-A pursuant to Title 22 of the DCC and other applicable provisions of the County land use ordinances.

Section 2. The appeal shall be heard *limited de novo*.

Section 3. Staff shall set a hearing date and cause notice to be given to all persons or parties entitled to notice pursuant to DCC 22.24.030 and DCC 22.32.030.

Section 4. Pursuant to Section 22.32.024, the Board waives the requirement that the appellants provide a complete transcript for the appeal hearing.

Section 5. Pursuant to DCC 22.32.035(D), to date the only documents placed before and considered by the Board are the notice of appeal, recommendations of staff, and the record

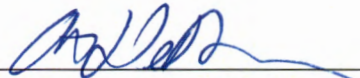
developed before the lower hearings body for File No. 247-23-000162-CU as presented at the following website:

<https://www.deschutes.org/247-23-000162-CU>

Going forward, all documents further placed before, and not rejected by, the Board shall be added to the aforementioned website, and that website shall be the Board's official repository for the record in this matter.

DATED this 12th day of July, 2023.

BOARD OF COUNTY COMMISSIONERS



ANTHONY DEBONE, Chair

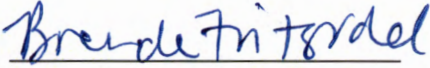


PATTI ADAIR, Vice Chair



PHIL CHANG, Commissioner

ATTEST:



Recording Secretary



**BOARD OF
COMMISSIONERS**

AGENDA REQUEST & STAFF REPORT

MEETING DATE: July 12, 2023

SUBJECT: Consideration to hear an appeal of a Hearings Officer decision on a Conditional Use Permit to establish a secondary accessory farm dwelling in the Multiple Use Agricultural Zone

RECOMMENDED MOTION:

The Board will decide whether to hear an appeal of a Hearings Officer decision on a Conditional Use Permit to establish a secondary accessory farm dwelling in the Multiple Use Agricultural Zone (MUA10) – Deschutes County Land Use File Nos. 247-23-000162-CU, 23-516-A.

BACKGROUND AND POLICY IMPLICATIONS:

Staff referred the Conditional Use Permit application to a public hearing, which was held on May 16, 2023 before the Hearings Officer. On June 14, 2023, the Hearings Officer issued a decision which denied the proposal.

The applicant filed a timely appeal of the Hearings Officer’s Decision (reference appeal No. 247-23-000516-A) and requests that the application be reviewed by the Board of County Commissioners. More detailed information is included in the staff memo.

BUDGET IMPACTS:

None

ATTENDANCE:

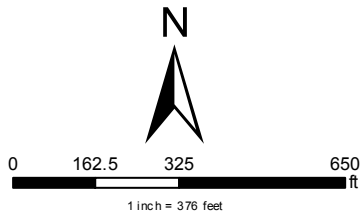
Haleigh King – Associate Planner
Jacob Ripper – Principal Planner

File Number 247-23-000162-CU, 516-A

19825 Connarn Road, Bend, OR 97703



Date: 7/24/2023





BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 7, 2023

SUBJECT: Preparation for Public Hearing: Repeal of Conventional Housing Combining Zone

RECOMMENDED MOTION:
Work session in preparation for a public hearing.

BACKGROUND AND POLICY IMPLICATIONS:
Staff will conduct a work session with the Board in preparation for an August 9, 2023, public hearing concerning legislative amendments to repeal the Conventional Housing Combining Zone. The full record is available at the project website:
<https://www.deschutes.org/cd/page/247-23-000391-ta-%E2%80%93-repeal-conventional-housing-combining-zone>

BUDGET IMPACTS:
None

ATTENDANCE:
Rachel Vickers, Associate Planner



MEMORANDUM

TO: Deschutes County Board of Commissioners (“Board”)

FROM: Rachel Vickers, Associate Planner

DATE: August 2, 2023

SUBJECT: Work Session: Conventional Housing Combining Zone Repeal

Staff will conduct a work session with the Board on August 7, 2023, in preparation for an August 9, 2023, public hearing concerning legislative amendments to repeal the Conventional Housing Combining Zone (file no. 247-23-000391-TA). The full record is available at the project website: <https://www.deschutes.org/cd/page/247-23-000391-ta-%E2%80%93-repeal-conventional-housing-combining-zone>.

Staff submitted a 35-day Post-Acknowledgement Plan Amendment (PAPA) notice to the Department of Land Conservation and Development on May 17, 2023. Staff presented the proposed amendments to the Planning Commission at a public hearing on June 22, 2023¹. Attached to this memorandum are the proposed text amendments and findings, which have not changed since the Planning Commission hearing. Within the proposed amendments, added language is shown underlined and deleted shown as strikethrough. The public hearing will be conducted in-person, electronically, and by phone.

I. BACKGROUND

The CHC Zone serves as an overlay zone and restricts placement of manufactured or prefabricated homes in specific areas of the County with the following stated purpose:

“To provide a variety of residential environments in rural areas by maintaining areas reserved for conventional and modular housing permanently attached to real property”.

Deschutes County adopted the CHC Zone in 1979 as part of Ordinance PL-15, the County's Zoning Ordinance. The CHC Zone applies to three areas – an area to the east of Tumalo, west of Tumalo and east of Bend as shown in the map in Attachment 3. From staff research, this overlay zone appears to have been created by petition of property owners, although specific findings for the intent of the zone and its location are not available in county records.

¹ <https://www.deschutes.org/bc-pc/page/planning-commission-30>

In 2020, the County produced a Rural Housing Profile, which outlined several potential strategies for removing barriers to housing production in rural Deschutes County. The repeal of the CHC Zone was listed as a strategy as it would give those properties the potential to provide affordable housing in the form of mobile or manufactured homes, which are less expensive alternatives to stick-built or modular housing.

In addition to this, on March 23, 2022, Oregon House Bill 4064 became effective. The bill amended several sections of Oregon Revised Statute which clarified that local governments may not prohibit siting of prefabricated structures in residential zones where traditional single-family homes or other common dwelling types were allowed. Although the amendments were primarily targeted toward cities and urban growth boundaries, Section 4, ORS 197.312 OR was revised to limit both city and county jurisdictions' ability to prohibit manufactured prefabricated homes in residential zones.

The purpose of these amendments is twofold: to implement the recommendation of the 2020 housing profile to allow for an affordable housing option where stick-built residential structures are otherwise allowed and also to bring the Deschutes County Code into compliance with HB 4064 by specifically removing this combining zone from residentially zoned properties.

II. PROPOSAL

This is a legislative text amendment to Deschutes County Code (DCC), Title 18 County Zoning, to repeal Chapter 18.92, Conventional Housing Combining (CHC) Zone.

Staff is proposing the following revisions to complete this text amendment:

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

The applicant, in this case Deschutes County Community Development, has provided the draft text amendments and findings as attachments to this memorandum. The findings summarize the amendments and demonstrate compliance with the Statewide Planning Goals, and applicable policies of the Deschutes County Comprehensive Plan.

III. PLANNING COMMISSION RECOMMENDATION

Notice of Public Hearing was mailed on July 14, 2023 to all property owners within the Conventional Housing zone as well as those property owners within 250 feet of the zone. The Notice of Public Hearing was also published in the Bend Bulletin on July 16, 2023. Staff received one comment in opposition to the proposed amendments prior to the Planning Commission hearing. The comment raised concerns regarding the availability of time for community members to respond, lack on information on the origin of the zone, and its actual impact on affordable housing.

The Deschutes County Planning Commission held the public hearing on June 22, 2023. No oral or written testimony was provided during the public hearing.

The Planning Commission closed the oral and written portions of the hearing on July 22, 2023 and voted 4-1 to approve the proposed amendment.

IV. NEXT STEPS

A public hearing with the Board is scheduled for Wednesday, August 9, 2023.

ATTACHMENTS:

- 1. Proposed Text Amendments
- 2. Proposed Findings
- 3. CHC Zone Map
- 4. Draft Ordinance 2023-034
- 5. Draft Ordinance 2023-034 Emergency

Attachment 1: Proposed Text Amendments

~~Removed~~

New

CHAPTER 18.92 CONVENTIONAL HOUSING COMBINING ZONE; CH (Repealed)

(Repealed by Ord. 2023-XXX on X/XX/XXXX)

~~18.92.010 Purpose~~

~~18.92.020 Permitted Uses~~

~~18.92.030 Use Limitations~~

~~18.92.010 Purpose~~

~~To provide a variety of residential environments in rural areas by maintaining areas reserved for conventional and modular housing permanently attached to real property.~~

~~(Adopted by Ord. PL 15 on 11/1/1979)~~

~~(Repealed & Reenacted by Ord. 91-020 §1 on 5/29/1991)~~

~~18.92.020 Permitted Uses~~

~~All outright and conditional uses allowed in the underlying zone except that in no case shall a housing type be allowed that is other than conventional or modular housing permanently attached to real property.~~

~~(Adopted by Ord. PL 15 on 11/1/1979)~~

~~(Repealed & Reenacted by Ord. 91-020 §1 on 5/29/1991)~~

~~18.92.030 Use Limitations~~

~~All use and dimensional conditions contained in the underlying zones shall apply to the CH Zone.~~

~~(Adopted by Ord. PL 15 on 11/1/1979)~~

~~(Repealed & Reenacted by Ord. 91-020 §1 on 5/29/1991)~~

Attachment 2: Proposed Findings 247-23-000391-TA

FINDINGS

I. PROPOSAL SUMMARY

This is a legislative text amendment to Deschutes County Code (DCC), Title 18 County Zoning, to repeal Chapter 18.92, Conventional Housing Combining (CHC) Zone.

Staff is proposing the following revisions to complete this text amendment:

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

II. BACKGROUND

The CHC Zone serves as an overlay zone and restricts placement of manufactured or prefabricated homes in specific areas of the County with the following stated purpose:

*“To provide a variety of residential environments in rural areas by maintaining areas reserved for conventional and modular housing permanently attached to real property”.*¹

Deschutes County adopted the CHC Zone in 1979 as part of Ordinance PL-15, the County’s Zoning Ordinance. The CHC Zone applies to three areas – an area to the east of Tumalo, west of Tumalo and east of Bend as shown in the map in Attachment 2. From staff research, this overlay zone appears to have been created by petition of property owners, although specific findings for the intent of the zone and its location are not available in county records.

In 2020, the County produced a Rural Housing Profile, which outlined several potential strategies for removing barriers to housing production in rural Deschutes County. The repeal of the CHC Zone was listed as a strategy as it would give those properties the potential to provide affordable housing in the form of mobile or manufactured homes, which are less expensive alternatives to stick-built or modular housing.

In addition to this, on March 23, 2022, Oregon House Bill 4064 became effective. The bill amended several sections of Oregon Revised Statute which clarified that local governments may not prohibit siting of prefabricated structures in residential zones where traditional single-family homes or other common dwelling types were allowed. Although the amendments were primarily targeted toward cities and urban growth boundaries, Section 4, ORS 197.312 OR was revised to limit both city and county jurisdictions’ ability to prohibit manufactured prefabricated homes in residential zones.

¹ DCC 18.92.010

The CHC Zone impacts approximately 505 properties. The tables below break down the zoning of the properties within the CHC Zone. Staff notes that of the 505 properties, 381 of them have at least some portion of the property within a resource zone and 128 have at least some portion of the property within a residential zone.

Single Base Zoned Properties

Zone	Number of properties
<i>Resource Zones</i>	
Exclusive Farm Use (EFU)	353
Forest Use (F1/F2)	4
Open Space and Conservation (OSC)	3
<i>Total Resource Zoned Properties: 360</i>	
<i>Residential Zones</i>	
Multiple Use Agricultural (MUA10)	83
Rural Residential (RR10)	10
Tumalo Residential (TUR/TUR5)	7
<i>Total Residential Zoned Properties: 100</i>	
Total Single Zoned Properties in CHC Zone: 460	

Multiple Base (Split) Zoned Properties

Zones	Number of properties
EFU and F1/F2	1
EFU and MUA 10	3
EFU and RR10	1
EFU and FP	13
EFU, FP, and MUA10	2
EFU, FP, and TUR/TUR5	1
MUA10 and Flood Plain (FP)	16
Surface Mine (SM) and FP	3
TUR/TUR5 and FP	4
MUA10, TUR5, and FP	1
Total Split Zoned Properties in CHC Zone: 45	

The purpose of these amendments is twofold: to implement the recommendation of the 2020 housing profile to allow for an affordable housing option where stick-built residential structures are otherwise allowed and also to bring the Deschutes County Code into compliance with HB 4064 by specifically removing this combining zone from residentially zoned properties.

III. REVIEW CRITERIA

Deschutes County lacks specific criteria in DCC Titles 18, 22, or 23 for reviewing a legislative text amendment. Nonetheless, since Deschutes County is initiating the amendment, the County bears the responsibility for justifying that the amendments are consistent with Statewide Planning Goals and its existing Comprehensive Plan.

IV. FINDINGS

CHAPTER 22.12, LEGISLATIVE PROCEDURES

Section 22.12.010

Hearing Required

FINDING: This criterion will be met because a public hearing was held before the Deschutes County Planning Commission on June 22, 2023 and Board of County Commissioners on August 9, 2023.

Section 22.12.020, Notice

Notice

A. Published Notice

- 1. Notice of a legislative change shall be published in a newspaper of general circulation in the county at least 10 days prior to each public hearing.***
- 2. The notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.***

FINDING: This criterion will be met as notice was published in the Bend Bulletin newspaper for the Planning Commission public hearing on June 22, 2023, and the Board of County Commissioners' public hearing on August 23, 2023.

B. Posted Notice. Notice shall be posted at the discretion of the Planning Director and where necessary to comply with ORS 203.045.

FINDING: Posted notice was determined by the Planning Director not to be necessary.

C. Individual notice. Individual notice to property owners, as defined in DCC 22.08.010(A), shall be provided at the discretion of the Planning Director, except as required by ORS 215.503.

FINDING: In accordance with the above criterion, individual notice was sent to all property owners within the Conventional Housing Combining Zone, as well as those property owners within 250 of the Zone's boundaries in order to comply with DCC 22.24.030(A)(2).

D. Media notice. Copies of the notice of hearing shall be transmitted to other newspapers published in Deschutes County.

FINDING: Notice was provided to the County public information official for wider media distribution. This criterion is met.

Section 22.12.030, Initiation of Legislative Changes

A legislative change may be initiated by application of individuals upon payment of required fees as well as by the Board of County Commissioners.

FINDING: The application was initiated by the Deschutes County Planning Division at the direction of the Board of County Commissioners, and has received a fee waiver. This criterion is met.

Section 22.12.040, Hearings Body

A. The following shall serve as hearings or review body for legislative changes in this order:

- 1. The Planning Commission.**
- 2. The Board of County Commissioners.**

B. Any legislative change initiated by the Board of County Commissioners shall be reviewed by the Planning Commission prior to action being taken by the Board of Commissioners.

FINDING: The Deschutes County Planning Commission held the initial public hearing on June 22, 2023. The Board then held a public hearing on August 9, 2023. These criteria are met.

Section 22.12.050, Final Decision

All legislative changes shall be adopted by ordinance

FINDING: The proposed legislative changes will be implemented by Ordinance No. 2023-034 upon approval and adoption by the Board of County Commissioners. This criterion will be met.

A. Statewide Planning Goals and Guidelines

Goal 1: Citizen Involvement: The amendments do not propose any changes to the County's citizen involvement program. Notice of the proposed amendments were provided to the *Bulletin* for each public hearing as well as in accordance with DCC 22.12.020 (C).

Goal 2: Land Use Planning: This goal is met because ORS 197.610 allows local governments to initiate post acknowledgments plan amendments (PAPA). An Oregon Land Conservation and Development Department 35-day notice was initiated on May 18, 2023 The Planning Commission held a public

hearing on June 22, 2023 and the Board of County Commissioners held a public hearing on August 9, 2023. Staff finds compliance with Goal 2 is met.

Goal 3: Agricultural Lands: The proposed amendments are to repeal the Conventional Housing Combining Zone which restricts manufactured and pre-fabricated homes. This repeal would remove this restriction, without changing any other requirements for establishing a dwelling within the Exclusive Farm Use Zone. Adverse impacts to farming practices are not anticipated under these amendments as the change only pertains to the style of the residential dwelling to be placed onto the property. Oregon Revised Statute and Rule do not contain specific requirements for restrictions on manufactured or pre-fabricated dwellings in the Exclusive Farm Use Zones, and this text amendment will not alter other existing requirements for dwellings in the Exclusive Farm Use Zone. Staff finds compliance with Goal 3 is met.

Goal 4: Forest Lands: The proposed amendments are to repeal the Conventional House Combining Zone which restricts manufactured and pre-fabricated homes. This repeal would remove this restriction, without changing any other requirements for establishing a dwelling within the Forest Use Zone. Adverse impacts to forest practices are not anticipated under these amendments and no such impacts have been identified in the record. Oregon Revised Statute and Rule do not contain specific requirements for restrictions on manufactured or pre-fabricated dwellings in the Forest Use Zones, and this text amendment will not alter other existing requirements for dwellings in the Forest Use Zone. Staff finds compliance with Goal 4 is met.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources: Goal 5 is to protect natural resources and conserve scenic and historical areas and open spaces. OAR 660-023-0250(3) states that local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. The proposed amendment is not seeking to change any requirements in a Goal 5 resource. Staff finds compliance with Goal 5 is met.

Goal 6: Air, Water and Land Resources Quality: The proposed text amendments do not propose to change the County's Plan policies or implementing regulations for compliance with Goal 6. Staff finds compliance with Goal 6 is met.

Goal 7: Areas Subject to Natural Disasters and Hazards: The proposed text amendments do not propose to change the County's Plan or implementing regulations regarding natural disasters and hazards; therefore, they comply. Staff finds compliance with Goal 7 is met.

Goal 8: Recreational Needs: The text amendments do not propose to change the County's Plan or implementing regulations regarding recreational needs. Staff finds compliance with Goal 8 is met

Goal 9: Economic Development: Goal 9 and its implementing regulations focus on economic analysis and economic development planning required in urban Comprehensive Plans to ensure there is adequate land available to realize economic growth and development opportunities. Although not directly tied to the requirements of Goal 9, staff finds that the proposed amendments comply with the intent of this goal by providing affordable housing options for community members. Staff finds compliance with Goal 9 is met.

Goal 10: Housing: The proposed text amendment relates to Goal 10 as it is removing restrictions on the types of housing that can be placed in residential zones. As stated above, the proposed amendment is in response to the adoption of House Bill 4604 which prohibits County's from placing restrictions on manufactured and pre-fabricated housing. The text amendment is also partly in response to the 2020 Housing Profile as a method to remove barriers to housing production within the County. Staff finds compliance with Goal 10 is met.

Goal 11: Public Facilities and Services: The proposed text amendments do not propose to change the County's Plan or implementing regulations regarding public facilities and services. Staff finds compliance with Goal 11 is met.

Goal 12: Transportation: Goal 12 is to provide and encourage a safe, convenient and economic transportation system. The proposed text amendments will not change the functional classification of any existing or planned transportation facility or standards implementing a functional classification system. Staff finds compliance with Goal 12 is met.

Goal 13: Energy Conservation: The proposed text amendments do not propose to change the County's Plan or implementing regulations regarding energy conservation. Staff finds compliance with Goal 13 is met.

Goal 14: Urbanization: The proposed text amendments do not propose to change the County's Plan or implementing regulations regarding urbanization. Staff finds compliance with Goal 14 is met.

Goals 15 through 19 are not applicable to the proposed text amendments because the County does not contain these types of lands.

D. Deschutes County Comprehensive Plan

Chapter 1, Comprehensive Planning:

This chapter sets the Goals and Policies of how the County will involve the community and conduct land use planning. As described above, the proposed regulations will be discussed at work sessions with the Board of County Commissioners, as well as to the Planning Commission, which is the County's official committee for public involvement. Both will conduct separate public hearings.

These actions also satisfy the Goals and relevant Policies of Section 1.3, Land Use Planning Policies. Goal 1 of this section is to "maintain an open and public land use process in which decisions are based on the objective evaluation of facts." Staff, the Planning Commission, and the Board reviewed the text amendments. Staff finds that compliance with Chapter 1 of the Comprehensive Plan is met.

Chapter 2, Resource Management:

This chapter sets the Goals and Policies of how the County will protect resource lands, including but not limited to, Agriculture and Forest as well as Water Resources and Environmental Quality.

Section 2.3, Forest Land Policies

Goal 1 Protect and maintain forest lands for multiple uses, including forest products, watershed protection, conservation, recreation and wildlife habitat protection.

Policy 2.3.3, To conserve and maintain impacted forest lands, retain Forest 2 zoning for those lands with the following characteristics:

- a. Consist predominantly of ownerships developed for residential or non-forest uses;
- b. Consist predominantly of ownerships less than 160 acres;
- c. Consist of ownerships generally contiguous to tracts containing less than 160 acres and residences, or adjacent to acknowledged exception areas; and
- d. Provide a level of public facilities and services, including roads, intended primarily for direct services to rural residences.

Forest Lands, states that the goal is to protect forests and their economic benefits. Within this section, the future of residential development is discussed and the challenge of allowing residential fragmentation within the forest zones. Staff notes that the proposed text amendments, which would remove restrictions on placing manufactured homes in an area where residences are approved, will have no effect on this Chapter of the Comprehensive Plan and the current requirements for developing a residence on Forest Zoned lands. Staff finds compliance with this policy is met.

Chapter 3, Rural Growth Management:

Section 3.3, Rural Housing

Goal 1 Maintain the rural character and safety of housing in unincorporated Deschutes County

Policy 3.3.5, Maintain the rural character of the County while ensuring a diversity of housing opportunities, including initiating discussions to amend State Statute and/or Oregon Administrative Rules to permit accessory dwelling units in Exclusive Farm Use, Forest and Rural Residential zones

The CHC Zone places a restriction on manufactured and pre-fabricated dwellings. The repeal of this Combining Zone will align with the section of the Comprehensive Plan as it will allow housing diversity in all areas of the County where residences are permitted. Staff finds compliance with this policy is met.

Chapter 4, Urban Growth Management:

Section 4.7 Tumalo Community Plan




Residential Area Policies

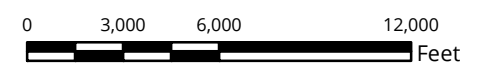
- 11. Plan and zone for a diversity of housing types and densities suited to the capacity of the land to accommodate water and sewage requirements.

The CHC Zone covers several properties located in the unincorporated community boundary of Tumalo, as such this policy applies. The CHC Zone is proposing to remove a restriction on the type of housing placed in residential zones and will promote greater diversity in housing type. The

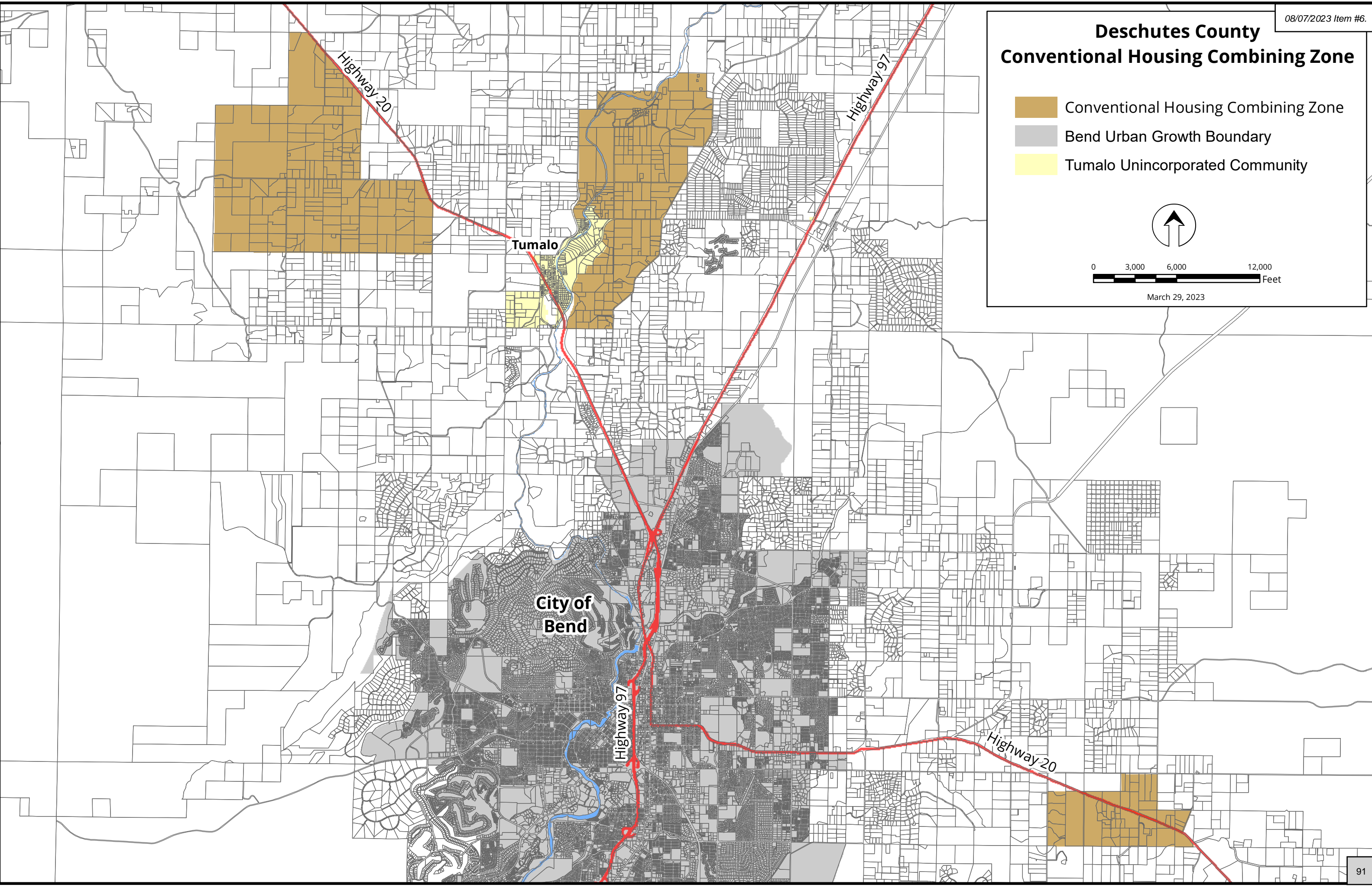
density, water, and sewage requirements are not proposed to change with this proposal. Staff finds compliance with this policy is met.

Deschutes County Conventional Housing Combining Zone

-  Conventional Housing Combining Zone
-  Bend Urban Growth Boundary
-  Tumalo Unincorporated Community



March 29, 2023



Tumalo

City of
Bend

Highway 97

Highway 97

Highway 20

Highway 20

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code
Title 18, Chapter 92, to Repeal the Conventional
Housing Combining Zone.

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ORDINANCE NO. 2023-034

WHEREAS, the Board of County Commissioners directed Deschutes County Community Development Department staff to initiate amendments (Planning Division File No. 247-23-000391-TA) to Deschutes County Code Title 18, Chapter 92, Conventional Housing Combining Zone; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed changes on June 22, 2023 and forwarded to the Deschutes County Board of County Commissioners (“Board”) a 4-1 recommendation of approval; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on August 9, 2023 and concluded that the public will benefit from the proposed changes to the Deschutes County Code Title 18; now, therefore,

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

Section 1. AMENDMENT. Chapter 18.92, Conventional Housing Combining Zone, is repealed to read as described in Exhibit “A”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

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

Dated this _____ of _____, 2023

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

PATTI ADAIR, Vice Chair

ATTEST:

Recording Secretary

PHILIP CHANG

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

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

Record of Adoption Vote:

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

Effective date: _____ day of _____, 2023.

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code Title 18, Chapter 92, to Repeal the Conventional Housing Combining Zone. *
*
* ORDINANCE NO. 2023-034
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WHEREAS, the Board of County Commissioners directed Deschutes County Community Development Department staff to initiate amendments (Planning Division File No. 247-23-000391-TA) to Deschutes County Code Title 18, Chapter 92, Conventional Housing Combining Zone; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed changes on June 22, 2023 and forwarded to the Deschutes County Board of County Commissioners (“Board”) a 4-1 recommendation of approval; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on August 9, 2023 and concluded that the public will benefit from the proposed changes to the Deschutes County Code Title 18; now, therefore,

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

Section 1. AMENDMENT. Chapter 18.92, Conventional Housing Combining Zone, is repealed to read as described in Exhibit “A”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

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

Section 3. EMERGENCY. This Ordinance being necessary for the immediate preservation of the public peace, health, safety, and welfare, an emergency is declared to exist, and this Ordinance becomes effective immediately.

Dated this _____ of _____, 2023

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

PATTI ADAIR, Vice Chair

ATTEST:

Recording Secretary

PHILIP CHANG

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

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

Record of Adoption Vote:

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

Effective date: _____ day of _____, 2023.