BOARD OF COMMISSIONERS

BOARD OF COUNTY COMMISSIONERS MEETING

9:00 AM, WEDNESDAY, DECEMBER 2, 2026
DeArmond Room & Virtual - Deschutes Services Bldg - 1300 NW Wall St - Bend
(541) 388-6570 | www.deschutes.org

AGENDA

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

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

Citizen Input: The Board of Commissioners provides time during its public meetings for Citizen Input. Alternatively, comments may be submitted on any topic at any time by emailing or leaving a voice message at 541-385-1734.

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

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

- To join the meeting via Zoom from a computer, use this link: https://bit.ly/4bXfL6g.
- To join by phone, call 253-215-8782 and enter webinar ID # 160 497 4576.
- If joining by a browser, use the raise hand icon to indicate you would like to provide public comment, if and when allowed. If using a phone, press *9 to indicate you would like to speak and *6 to unmute yourself when you are called on.
- When it is your turn to provide testimony, you will be promoted from an attendee to a panelist. You may experience a brief pause as your meeting status changes. Once you have joined as a panelist, you will be able to turn on your camera, if you would like to.

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

CALL TO ORDER

APPROVAL OF AGENDA

CITIZEN INPUT

The Board of Commissioners provides time during its public meetings for Citizen Input. This is an opportunity for citizens to communicate to the Commissioners. **Citizen Input is not available for matters that have closed records, are presently scheduled for a quasi-judicial public hearing, or are anticipated or likely to come before the Commissioners as a future quasi-judicial public hearing.** Time is limited to 3 minutes.

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

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

COMMISSIONER ANNOUNCEMENTS

CONSENT AGENDA

1. Authorization to accept an amended Victims of Crime Act (VOCA) / Criminal Fines Account (CFA) grant award for the 2026-2027 grant cycle

ACTION ITEMS

2. **9:10 AM** Public Hearing to abate a hazard located in the public road right-of-way at 6997 NW 19th Street, Terrebonne

3. **9:40 AM** BCL Remand Deliberations involving a Comprehensive Plan Amendment and Zone Change for properties located at 21875 Neff Road, 21850 Hwy 20, 21700 Bear Creek Road and 62098 Ward Road

4. **9:50 AM** First reading of Ordinance No. 2026-032 approving a Comprehensive Plan Amendment and Zone Change to Rural Industrial for four properties at Tumalo Road and 85th Street

5. **10:10 AM** Deliberations on the Willitts, LLC application to change the Comprehensive Plan designation of 20 acres at 68621 Highway 20, Sisters and rezone the property from Exclusive Farm Use to Multiple Use Agricultural

6. **10:40 AM** Work Session: Caldera Ranch Plan Amendment and Zone Change (*quasi-judicial*)

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



Deschutes County encourages persons with disabilities to participate in all programs and activities. This meeting/event is accessible. Accommodations including sign and other language interpreter services, assistive listening devices, materials in alternate formats such as Braille, large print, electronic formats, or language translations are available upon advance request at no cost. Please make a request at least 24 hours in advance of the meeting/event by calling Brenda Fritsvold at (541) 388-6572 or send an email to brenda.fritsvold@deschutes.org.



El condado de Deschutes anima a las personas con discapacidad a participar en todos los programas y actividades. Esta reunión/evento es accesible. Hay disponibles servicios de intérprete de lengua de señas y de otros idiomas, dispositivos de escucha asistida, materiales en formatos alternativos como braille, letra grande, formatos electrónicos, traducciones o cualquier otra adaptación, con solicitud previa y sin ningún costo. Haga su solicitud al menos 24 horas antes de la reunión/el evento llamando a Brenda Fritsvold al (541) 388-6572 o envíe un correo electrónico a brenda.fritsvold@deschutes.org.

BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: December 2, 2026

SUBJECT: Authorization to accept an amended Victims of Crime Act (VOCA) / Criminal Fines Account (CFA) grant award for the 2026-2027 grant cycle

RECOMMENDED MOTION:
Move to authorize the Chair's signature on Document No. 2026-0734 accepting an amended VOCA/CFA grant award for the 2026–2027 grant cycle.

BACKGROUND AND POLICY IMPLICATIONS:
In September 2025, the Board authorized the acceptance of a VOCA/ CFA grant award (VOCA-CFA-2025-DeschutesCo.DAVAP-00039) for the 2025-2026 award year. The Victim Assistance Program of the District Attorney's Office now requests Board approval to accept the amended funding allocation for 2026–2027 VOCA/CFA non-competitive formula grant cycle.

This grant supports the operations of the Victims Assistance Program, including continued funding for two limited-duration Victim Advocate FTE, along with temporary personnel and program-related expenses such as training, travel, office supplies, and administrative needs.

The grant period for this cycle runs from October 1, 2026 through September 30, 2027. The amended award amount will allow the program to continue providing essential services to victims of crime. Existing limited-duration positions for Victim Advocates have previously been authorized by the Board, contingent on continued grant funding.

BUDGET IMPACTS:

Total anticipated revenue for the 2026–2027 grant period is:

- VOCA: $270,130 (total two-year award $540,260)
- CFA: $112,198 (total two-year award $224,396)

There is no requirement for county match funds. Funding will fully support 1.7 FTE, temporary staffing support, and associated program expenses.

ATTENDANCE: Jessica Chandler, DA Business Manager

DAN RAYFIELD
Attorney General

BENJAMIN GUTMAN
Deputy Attorney General

DEPARTMENT OF JUSTICE

Crime Victim and Survivor Services Division

2025-2026 VOCA AND CFA NON-COMPETITIVE GRANT AWARD COVER SHEET
Amendment No. 1

1. Applicant Agency's Name and Address: Deschutes County, acting by and through its District Attorney's Office 1164 NW Bond St. Bend, OR 97701-1913 Contact Name: Jessica Chandler Telephone: 541-317-3186 E-mail: jessica.chandler@dcda.us	**2. Special Conditions:** This grant project is approved subject to such conditions or limitations as set forth in the included grant conditions and the original Grant Agreement. **3. Statutory Authority for Grant:** **VOCA:** Federal Victims of Crime Act of 1984, as amended, 42 U.S.C. 1061 ET SEQ and ORS 147.231 (1) **CFA**: ORS 147.227 and OAR 137-078-0000
4. Award Number: VOCA/CFA-2025-DeschutesCo.DAVAP-00039	**5. Award Date:** October 1, 2025
6. Subrecipient Tax Identification Number: 93-6002292	**7. UEI Number:** SVJRCF7JN519
8. Type of Party Receiving Funds: ☒ Subrecipient ☐ Contractor	**9. Project Period:** October 1, 2025 – September 30, 2027
10. VOCA Category: General Victim Services	**11. Total VOCA Grant Award Amount / Match Amount Required**: $540,260.00/ $0.00 Assistance Listing 16-575 **Match Waiver Approved For:** $135,065.00
12. Federal VOCA Award #s 15POVC-23-GG-00410-ASSI: $126,094.61 15POVC-24-GG-00716-ASSI: $108,052.00 15POVC-25-GG-00353-ASSI: $194,035.39 15POVC-26-GG-00240-ASSI: $112,078.00	
13. Indirect Cost Rate: N/A	**14. Total CFA Grant Award Amount:** **CFA Allocation:** $224,396.00 **Carry Over:** **Total CFA Award:** $224,396.00
15. VOCA Annual Narrative Report Due Dates: October 31, 2026 October 31, 2027	**16. Total Federal Award Amount:** $540,260.00
17. VOCA Semi-Annual Narrative Report Due Dates: April 30, 2026 October 31, 2026 April 30, 2027 October 31, 2027	**18. VOCA and CFA Financial Reports, Common Outcome Measures Report, VOCA PMT Report, and CFA Statistical Report Due Dates:** January 31, 2026 January 31, 2027 April 30, 2026 April 30, 2027 July 20, 2026 July 20, 2027 October 31, 2026 October 31, 2027
This award is contingent upon the Subrecipient agreeing to the terms of award for the grant entitled "2025-2026 VOCA/CFA Non-Competitive Grant Request for Applications for Awards". The grant agreement document must be signed by an authorized official in order to validate the acceptance of this award.	

Based on this award amendment, including budgets for Year 2 VOCA and CFA funds as required, our program accepts the revised allocation amounts, to include carryover from the 2023-2025 CFA award as follows:

VOCA: $540,260.00
CFA: $224,396.00

These additional funds will be disbursed as follows after CVSSD approves the VOCA/CFA Application amendment and the application is placed back in Grant Awarded status in EGrants:

VOCA	Quarterly reimbursement for eligible expenses for the Year 2 period of October 1, 2026 to September 30, 2027.
CFA	Prospective quarterly payments beginning on or after October 1, 2026 for the Year 2 period of October 1, 2026 to September 30, 2027.

SUPPLEMENTAL CONDITIONS:

Reserved

We accept the additional VOCA 2026 Special Conditions included in Exhibit A.

Terms and Conditions of the Amendment Request:

- If accepted by the Department of Justice, Crime Victim and Survivor Services Division, my agency's original agreement, as perhaps previously amended, with the Department of Justice, Crime Victim and Survivor Services Division will be amended to include the above terms.
- Except as requested hereby, all terms and conditions of my agency's original agreement with the Department of Justice, Crime Victim and Survivor Services Division will remain in full force and effect.
- I represent and warrant to the Department of Justice that I am duly authorized to execute this request and to legally amend my agency's agreement with the Department of Justice, Crime Victim and Survivor Services Division.
- I represent and warrant to the Department of Justice that the representations and warranties contained in my agency's original agreement are true and correct.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the dates set forth below their respective signatures.

STATE OF OREGON
Acting by and through its Department of Justice

By: _____

Name: Shannon L. Sivell

Title: Director, Crime Victim and Survivor Services Division

Date: _____

AUTHORIZED AGENT FOR SUBRECIPIENT

By: _____

Name: _____

Title: _____

Date: _____

APPROVED FOR LEGAL SUFFICIENCY

Name: Shannon L. Sivell

Title: Director, Crime Victim and Survivor Services Division

Date: Approved via email on 11/9/2026.

EXHIBIT A

2026 VICTIMS OF CRIME ACT SPECIAL CONDITIONS

1. Compliance with general appropriations-law restrictions on the use of federal funds (FY 2026)

The subrecipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable restrictions on the use of federal funds set out in federal appropriations statutes. Pertinent restrictions that may be set out in applicable appropriations acts are indicated at Award Condition: General Appropriations-Law Restrictions on Use of Federal Award Funds (FY 2026) | Office of Justice Programs and are incorporated by reference here.

Should a question arise as to whether a particular use of federal funds by a recipient (or a subrecipient) would or might fall within the scope of an appropriations-law restriction, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of DOJ CVSSD.

2. Requirements pertaining to prohibited conduct related to trafficking in persons (including reporting requirements and OJP authority to terminate award)

The subrecipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of subrecipients ("subgrantees"), or individuals defined (for purposes of this condition) as "employees" of the recipient or of any subrecipient.

The details of the subrecipient's obligations related to prohibited conduct related to trafficking in persons are posted on the OJP web site at https://ojp.gov/funding/Explore/ProhibitedConduct-Trafficking.htm (Award condition: Prohibited conduct by recipients and subrecipients related to trafficking in persons (including reporting requirements and OJP authority to terminate award)) and are incorporated by reference here.

3. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 38

The subrecipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 38.

Among other things, 28 C.F.R. Part 38 states that recipients may not use direct Federal financial assistance from the Department of Justice to support or engage in any explicitly religious activities except when consistent with the Establishment Clause of the First Amendment to the U.S. Constitution and any other applicable requirements. An organization receiving Federal financial assistance also may not, in providing services funded by the Department of Justice or in outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice. Part 38 also sets out rules and requirements that pertain to subrecipient organizations that engage in or conduct explicitly religious activities, as well as rules and requirements that pertain to subrecipients that are faith-based or religious organizations. In addition, Part 38 states that a faith-based organization that participates in a Department of Justice funded program retains its independence from the Government and may continue to carry out its mission consistent with religious freedom and conscience protections in Federal law.

Subrecipients that provide social services under this award must give written notice to beneficiaries and prospective beneficiaries prior to the provision of services (if practicable) which shall include language substantially similar to the language in 28 CFR Part 38, Appendix C, sections (1) through (4). A sample written notice may be found at https://www.ojp.gov/program/civil-rights-office/partnerships-faith-based-and-other-neighborhood-organizations.

In certain instances, a faith-based or religious organization may be able to take religion into account when

making hiring decisions, provided it satisfies certain requirements. For more information, see "Nondiscrimination provisions and the Religious Freedom Restoration Act," accessible at https://www.ojp.gov/funding/explore/legaloverview2025/civilrightsrequirements.

4. Requirements of the award; remedies for non-compliance or for materially false statements

The conditions of this award are material requirements of the award. Compliance with any assurances or certifications submitted by or on behalf of the recipient that relate to conduct during the period of performance also is a material requirement of this award.

Limited Exceptions. In certain special circumstances, the U.S. Department of Justice ("DOJ") may determine that a legal notice regarding award requirements is necessary or that it will not enforce, or enforce only in part, one or more requirements otherwise applicable to the award. Any such notice or exception regarding enforcement, including any such notice or exception made during the period of performance, are (or will be during the period of performance) set out through the Office of Justice Programs ("OJP") webpage entitled "Legal Notices: Special circumstances as to particular award conditions" (ojp.gov/funding/Explore/LegalNotices-AwardReqts.htm), and incorporated by reference into the award.

By signing and accepting this award on behalf of the subrecipient, the authorized subrecipient official accepts all material requirements of the award, and specifically adopts, as if personally executed by the authorized subrecipient official, all assurances or certifications submitted by or on behalf of the subrecipient that relate to conduct during the period of performance.

Failure to comply with one or more award requirements -- whether a condition set out in full below, a condition incorporated by reference below, or an assurance or certification related to conduct during the award period -- may result in DOJ CVSSD taking appropriate action with respect to the subrecipient and the award. Among other things, DOJ CVSSD may withhold award funds, disallow costs, or suspend or terminate the award. DOJ, including OJP, also may take other legal action as appropriate.

Any materially false, fictitious, or fraudulent statement to the federal government related to this award (or concealment or omission of a material fact) may be the subject of criminal prosecution (including under 18 U.S.C. 1001 and/or 1621, and/or 34 U.S.C. 10271-10273), and also may lead to imposition of civil penalties and administrative remedies for false claims or otherwise (including under 31 U.S.C. 3729-3730 and 3801-3812).

Should any provision of a requirement of this award be held to be invalid or unenforceable by its terms, that provision shall first be applied with a limited construction so as to give it the maximum effect permitted by law. Should it be held, instead, that the provision is utterly invalid or -unenforceable, such provision shall be deemed severable from this award.

5. Effect of failure to address audit issues

The subrecipient understands and agrees that DOJ CVSSD may withhold award funds, or may impose other related requirements, if (as determined by the DOJ awarding agency) the subrecipient does not satisfactorily and promptly address outstanding issues from audits required by the Part 200 Uniform Requirements (or by the terms of this award), or other outstanding issues that arise in connection with audits, investigations, or reviews of DOJ awards.

6. Applicability of Part 200 Uniform Requirements

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200, as adopted and supplemented by DOJ in 2 C.F.R. Part 2800 (together, the "Part 200 Uniform Requirements") including, without limitation, the provisions regarding termination of 2 C.F.R. 200.340, apply to this award from OJP.

For more information and resources on the Part 200 Uniform Requirements as they relate to OJP awards and subawards ("subgrants"), see the OJP website at https://ojp.gov/funding/Part200UniformRequirements.htm.

Record retention and access: Records pertinent to the award that the subrecipient (and any subrecipient ("subgrantee") at any tier) must retain -- typically for a period of 3 years from the date of submission of the final expenditure report (SF 425), unless a different retention period applies -- and to which the subrecipient (and any subrecipient ("subgrantee") at any tier) must provide access, include performance measurement information, in addition to the financial records, supporting documents, statistical records, and other pertinent records indicated at 2 C.F.R. 200.334.

In the event that an award-related question arises from documents or other materials prepared or distributed by OJP that may appear to conflict with, or differ in some way from, the provisions of the Part 200 Uniform Requirements, the subrecipient is to contact OJP promptly for clarification.

7. Reporting potential fraud, waste, and abuse, and similar misconduct

The subrecipient, and any subrecipients ("subgrantees") at any tier, must promptly refer to the DOJ Office of the Inspector General (OIG) any credible evidence that a principal, employee, agent, subrecipient, contractor, subcontractor, or other person has, in connection with funds under this award-- (1) submitted a claim that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct.

Potential fraud, waste, abuse, or misconduct involving or relating to funds under this award should be reported to the OIG by--(1) online submission accessible via the OIG webpage at https://oig.justice.gov/hotline/contact-grants.htm (select "Submit Report Online"); (2) mail directed to: U.S. Department of Justice, Office of the Inspector General, Investigations Division, ATTN: Fraud Detection Office, 950 Pennsylvania Ave., NW, Washington, DC 20530; and/or (3) by facsimile directed to the DOJ OIG Investigations Division (Attn: Grantee Reporting) at (202) 616-9881 (fax).

Additional information is available from the DOJ OIG website at https://oig.justice.gov/hotline.

8. Requirements related to "de minimis" indirect cost rate

A subrecipient that is eligible under the Part 200 Uniform Requirements and other applicable law to use the "de minimis" indirect cost rate described in 2 C.F.R. 200.414(f), and that elects to use the "de minimis" indirect cost rate, must advise OJP in writing of both its eligibility and its election, and must comply with all associated requirements in the Part 200 Uniform Requirements. The "de minimis" rate may be applied only to modified total direct costs (MTDC) as defined by the Part 200 Uniform Requirements.

9. Compliance with applicable rules regarding approval, planning, and reporting of conferences, meetings, trainings, and other events

The subrecipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable laws, regulations, policies, and official DOJ guidance (including specific cost limits, prior approval and reporting requirements, where applicable) governing the use of federal funds for expenses related to conferences (as that term is defined by DOJ), including the provision of food and/or beverages at such conferences, and costs of attendance at such conferences.

Information on the pertinent DOJ definition of conferences and the rules applicable to this award appears in the DOJ Grants Financial Guide (currently, as section 3.10 of "Postaward Requirements" in the "DOJ Grants Financial Guide").

10. Requirement for data on performance and effectiveness under the award

The subrecipient must collect and maintain data that measure the performance and effectiveness of work under this award. The data must be provided to DOJ and DOJ CVSSD in the manner (including within the timeframes) specified in the program solicitation or other applicable written guidance. Data collection supports compliance with the Government Performance and Results Act (GPRA) and the GPRA Modernization Act of 2010, and other applicable laws.

11. Compliance with DOJ Grants Financial Guide

References to the DOJ Grants Financial Guide are to the DOJ Grants Financial Guide as posted on the OJP website (currently, the "DOJ Grants Financial Guide" available at https://ojp.gov/financialguide/DOJ/index.htm), including any updated version that may be posted during the period of performance. The subrecipient agrees to comply with the DOJ Grants Financial Guide.

12. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 42

The subrecipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 42, specifically including 28 C.F.R. § 42.106(d), 28 C.F.R. § 42.405(c), and 28 C.F.R. § 42.505(f) which contain certain notice requirements that covered subrecipient must follow regarding the dissemination of information regarding federal nondiscrimination requirements.

13. Determination of suitability to interact with participating minors

SCOPE. This condition applies to this award if it is indicated -- in the application for the award (as approved by DOJ CVSSD)(or in the application for any subaward, at any tier), the DOJ funding announcement (solicitation), or an associated federal statute -- that a purpose of some or all of the activities to be carried out under the award (whether by the subrecipient, or a subrecipient at any tier) is to benefit a set of individuals under 18 years of age.

The subrecipient, and any subrecipient at any tier, must make determinations of suitability before certain individuals may interact with participating minors. This requirement applies regardless of an individual's employment status.

The details of this requirement are posted on the OJP web site at https://ojp.gov/funding/Explore/Interact-Minors.htm (Award condition: Determination of suitability required, in advance, for certain individuals who may interact with participating minors), and are incorporated by reference here.

14. Requirement to disclose whether subrecipient is designated "high risk" by a federal grant-making agency outside of DOJ

If the subrecipient is designated "high risk" by a federal grant-making agency outside of DOJ, currently or at any time during the course of the period of performance under this award, the subrecipient must disclose that fact and certain related information to OJP by email at OJP.ComplianceReporting@ojp.usdoj.gov. For purposes of this disclosure, high risk includes any status under which a federal awarding agency provides additional oversight due to the subrecipient's past performance, or other programmatic or financial concerns with the subrecipient. The subrecipient's disclosure must include the following: 1. The federal awarding agency that currently designates the subrecipient high risk, 2. The date the subrecipient was designated high risk, 3. The high-risk point of contact at that federal awarding agency (name, phone number, and email address), and 4. The reasons for the high-risk status, as set out by the federal awarding agency.

15. Employment eligibility verification for hiring under the award

1. The subrecipient (and any subrecipient at any tier) must--

A. Ensure that, as part of the hiring process for any position within the United States that is or will be funded (in whole or in part) with award funds, the subrecipient (or any subrecipient) properly verifies the employment eligibility of the individual who is being hired, consistent with the provisions of 8 U.S.C. 1324a(a)(1).

B. Notify all persons associated with the subrecipient (or any subrecipient) who are or will be involved in activities under this award of both--

(1) this award requirement for verification of employment eligibility, and

(2) the associated provisions in 8 U.S.C. 1324a(a)(1) that, generally speaking, make it unlawful, in the United States, to hire (or recruit for employment) certain aliens.

C. Provide training (to the extent necessary) to those persons required by this condition to be notified of the award requirement for employment eligibility verification and of the associated provisions of 8 U.S.C. 1324a(a)(1).

D. As part of the recordkeeping for the award (including pursuant to the Part 200 Uniform Requirements), maintain records of all employment eligibility verifications pertinent to compliance with this award condition in accordance with Form I-9 record retention requirements, as well as records of all pertinent notifications and trainings.

2. Monitoring
The subrecipient’s monitoring responsibilities include monitoring of subrecipient compliance with this condition.

3. Allowable costs
To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions designed to ensure compliance with this condition.

4. Rules of construction

A. Staff involved in the hiring process
For purposes of this condition, persons "who are or will be involved in activities under this award" specifically includes (without limitation) any and all subrecipient (or any subrecipient) officials or other staff who are or will be involved in the hiring process with respect to a position that is or will be funded (in whole or in part) with award funds.

B. Employment eligibility confirmation with E-Verify
For purposes of satisfying the requirement of this condition regarding verification of employment eligibility, the recipient (or any subrecipient) may choose to participate in, and use, E-Verify (www.e-verify.gov), provided an appropriate person authorized to act on behalf of the subrecipient (or any subrecipient) uses E-Verify (and follows the proper E-Verify procedures, including in the event of a "Tentative Nonconfirmation" or a "Final Nonconfirmation") to confirm employment eligibility for each hiring for a position in the United States that is or will be funded (in whole or in part) with award funds.

C. "United States" specifically includes the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

D. Nothing in this condition shall be understood to authorize or require any subrecipient, any subrecipient at any tier, or
any person or other entity, to violate any federal law, including any applicable civil rights or nondiscrimination

law.

E. Nothing in this condition, including in paragraph 4.B., shall be understood to relieve any subrecipient, any subrecipient at any tier, or any person or other entity, of any obligation otherwise imposed by law, including 8 U.S.C. 1324a(a)(1).

Questions about E-Verify should be directed to DHS. For more information about E-Verify visit the E-Verify website (https://www.e-verify.gov/) or email E-Verify at E-Verify@dhs.gov. E-Verify employer agents can email E-Verify at E- VerifyEmployerAgent@dhs.gov.

Questions about the meaning or scope of this condition should be directed to OJP, before award acceptance.

16. Encouragement of policies to ban text messaging while driving

Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 1, 2009), DOJ encourages subrecipients ("subgrantees") to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this award, and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.

17. Reclassification of various statutory provisions to a new Title 34 of the United States Code

On September 1, 2017, various statutory provisions previously codified elsewhere in the U.S. Code were editorially reclassified (that is, moved and renumbered) to a new Title 34, entitled "Crime Control and Law Enforcement." The reclassification encompassed a number of statutory provisions pertinent to OJP awards (that is, OJP grants and cooperative agreements), including many provisions previously codified in Title 42 of the U.S. Code.

Effective as of September 1, 2017, any reference in this award document to a statutory provision that has been reclassified to the new Title 34 of the U.S. Code is to be read as a reference to that statutory provision as reclassified to Title 34. This rule of construction specifically includes references set out in award conditions, references set out in material incorporated by reference through award conditions, and references set out in other award requirements.

18. Restrictions and certifications regarding non-disclosure agreements and related matters

No subrecipient ("subgrantee") under this award, or entity that receives a procurement contract or subcontract with any funds under this award, may require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or restrict, the reporting (in accordance with law) of waste, fraud, or abuse to an investigative or law enforcement representative of a federal department or agency authorized to receive such information.

The foregoing is not intended, and shall not be understood by the agency making this award, to contravene requirements applicable to Standard Form 312 (which relates to classified information), Form 4414 (which relates to sensitive compartmented information), or any other form issued by a federal department or agency governing the nondisclosure of classified information.

1. In accepting this award, the subrecipient --

a. represents that it neither requires nor has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

b. certifies that, if it learns or is notified that it is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

2. If the subrecipient does or is authorized under this award to make subawards ("subgrants"), procurement contracts, or both--

a. it represents that--

(1) it has determined that no other entity that the subrecipient's application proposes may or will receive award funds (whether through a subaward ("subgrant"), procurement contract, or subcontract under a procurement contract) either requires or has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

(2) it has made appropriate inquiry, or otherwise has an adequate factual basis, to support this representation; and

b. it certifies that, if it learns or is notified that any subrecipient, contractor, or subcontractor entity that receives funds under this award is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds to or by that entity, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

19. OJP Training Guiding Principles

Any training or training materials that any subrecipient ("subgrantee") at any tier -- develops or delivers with OJP award funds must adhere to the OJP Training Guiding Principles for Grantees and Subgrantees, available at https://www.ojp.gov/funding/implement/training-guiding-principles-grantees-and-subgrantees.

20. Specific post-award approval required to use a noncompetitive approach in any procurement contract that would exceed the Simplified Acquisition Threshold.

The subrecipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements to obtain specific advance approval to use a noncompetitive approach in any procurement contract that would exceed the Simplified Acquisition Threshold, as set forth in the Federal Acquisition Regulations (FAR). See the definition of simplified acquisition threshold in the FAR at 48 CFR part 2, subpart 2.1. This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a procurement "contract" (and therefore does not consider a subaward).

The details of the requirement for advance approval to use a noncompetitive approach in a procurement contract under an OJP award are posted on the OJP web site at https://ojp.gov/funding/Explore/NoncompetitiveProcurement.htm (Award condition: Specific post-award approval required to use a noncompetitive approach in a procurement contract (if contract would Simplified Acquisition Threshold)), and are incorporated by reference here.

21. Requirement to report potentially duplicative funding

If the subrecipient currently has other active awards of federal funds, or if the subrecipient receives any other award of federal funds during the period of performance for this award, the subrecipient promptly must

determine whether funds from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items for which funds are provided under this award. If so, the subrecipient must promptly notify DOJ CVSSD in writing of the potential duplication, and, if so requested by DOJ CVSSD, must seek a budget-modification or change-of-project-scope Grant Award Modification (GAM) to eliminate any inappropriate duplication of funding.

22. Compliance with 41 U.S.C. 4712 (including prohibitions on reprisal; notice to employees)

The subrecipient (and any subrecipient at any tier) must comply with, and is subject to, all applicable provisions of 41 U.S.C. 4712, including all applicable provisions that prohibit, under specified circumstances, discrimination against an employee as reprisal for the employee's disclosure of information related to gross mismanagement of a federal grant, a gross waste of federal funds, an abuse of authority relating to a federal grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal grant.

The subrecipient also must inform its employees, in writing (and in the predominant native language of the workforce), of employee rights and remedies under 41 U.S.C. 4712.

Should a question arise as to the applicability of the provisions of 41 U.S.C. 4712 to this award, the subrecipient is to contact DOJ CVSSD for guidance.

23. Potential imposition of additional requirements

The subrecipient agrees to comply with any additional requirements that may be imposed by DOJ CVSSD during the period of performance for this award, if the subrecipient is designated as "high- risk" for purposes of the DOJ high-risk grantee list.

24. Requirement to report actual or imminent breach of personally identifiable information (PII)

The subrecipient (and any "subrecipient" at any tier) must have written procedures in place to respond in the event of an actual or imminent "breach" (OMB M-17-12) if it (or a subrecipient) -- (1) creates, collects, uses, processes, stores, maintains, disseminates, discloses, or disposes of "Personally Identifiable Information (PII)" (2 CFR 200.1) within the scope of an OJP grant-funded program or activity, or (2) uses or operates a "Federal information system" (OMB Circular A-130). The subrecipient's breach procedures must include a requirement to report actual or imminent breach of PII to DOJ CVSSD no later than 24 hours after an occurrence of an actual breach, or the detection of an imminent breach.

25. Requirements related to System for Award Management and Universal Identifier Requirements

The subrecipient must comply with applicable requirements regarding the System for Award Management (SAM), currently accessible at https://www.sam.gov/. This includes applicable requirements regarding registration with SAM, as well as maintaining the currency of information in SAM.

The subrecipient also must comply with applicable restrictions on subawards ("subgrants") to first-tier subrecipients (first- tier "subgrantees"), including restrictions on subawards to entities that do not acquire and provide (to the subrecipient) the unique entity identifier required for SAM registration.

The details of the subrecipient's obligations related to SAM and to unique entity identifiers are posted on the OJP web site at https://ojp.gov/funding/Explore/SAM.htm (Award condition: System for Award Management (SAM) and Universal Identifier Requirements), and are incorporated by reference here.

This condition does not apply to an award to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).

26. Restrictions on "lobbying"

In general, as a matter of federal law, federal funds awarded by OJP may not be used by the subrecipient, or any subrecipient ("subgrantee") at any tier, either directly or indirectly, to support or oppose the enactment, repeal, modification, or adoption of any law, regulation, or policy, at any level of government. See 18 U.S.C. 1913. (There may be exceptions if an applicable federal statute specifically authorizes certain activities that otherwise would be barred by law.)

Another federal law generally prohibits federal funds awarded by OJP from being used by the subrecipient, or any subrecipient at any tier, to pay any person to influence (or attempt to influence) a federal agency, a Member of Congress, or Congress (or an official or employee of any of them) with respect to the awarding of a federal grant or cooperative agreement, subgrant, contract, subcontract, or loan, or with respect to actions such as renewing, extending, or modifying any such award. See 31 U.S.C. 1352. Certain exceptions to this law apply, including an exception that applies to Indian tribes and tribal organizations.

Should any question arise as to whether a particular use of federal funds by a or subrecipient would or might fall within the scope of these prohibitions, the subrecipient is to contact DOJ CVSSD for guidance, and may not proceed without the express prior written approval of DOJ CVSSD.

27. All subawards ("subgrants") must have specific federal authorization

The subrecipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements for authorization of any subaward. This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a "subaward" (and therefore does not consider a procurement "contract").

The details of the requirement for authorization of any subaward are posted on the OJP web site at https://ojp.gov/ funding/Explore/SubawardAuthorization.htm (Award condition: All subawards ("subgrants") must have specific federal authorization), and are incorporated by reference here.

28. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination – 28 C.F.R. Part 54

The subrecipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 54, which relates to nondiscrimination on the basis of sex in certain "education programs."

Among other items, 28 C.F.R. § 54.140 contains notice requirements that covered subrecipient must follow regarding the dissemination of information regarding federal nondiscrimination requirements.

29. Discrimination Findings

The subrecipient assures that in the event that a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the ground of race, religion, national origin, sex, or disability against a subrecipient of victim assistance formula funds under this award, the subrecipient will forward a copy of the findings to DOJ CVSSD and the Office for Civil Rights of OJP.

30. The subrecipient agrees that it will submit (and as necessary, require subgrantees to submit) quarterly financial reports and quarterly performance reports on the performance metrics identified by CVSSD, and in the manner required by CVSSD. This information on the activities supported by the award funding will assist in assessing the effects that VOCA Victim Assistance funds have had on services to crime victims within the jurisdiction

31. Subrecipient integrity and performance matters: Requirement to report information on certain civil, criminal, and administrative proceedings to SAM and FAPIIS

The subrecipient must comply with any and all applicable requirements regarding reporting of information on civil, criminal, and administrative proceedings connected with (or connected to the performance of) either this OJP award or any other grant, cooperative agreement, or procurement contract from the federal government. Under certain circumstances, subrecipient of OJP awards are required to report information about such proceedings, through the federal System for Award Management (known as "SAM"), to the designated federal integrity and performance system (currently, "FAPIIS").

The details of subrecipient obligations regarding the required reporting (and updating) of information on certain civil, criminal, and administrative proceedings to the federal designated integrity and performance system (currently, "FAPIIS") within SAM are posted on the OJP web site at https://ojp.gov/funding/FAPIIS.htm (Award condition: Recipient Integrity and Performance Matters, including Recipient Reporting to FAPIIS), and are incorporated by reference here.

32. The Subrecipient agrees that any product (e.g., curricula, training materials, publications, reports, videos, or any other written, web-based, audio-visual, or other materials), developed under this award, shall contain the following statement: “This product was supported by VOCA Formula funds awarded by the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the contributors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

33. The Subrecipient understands and agrees that it has a responsibility to monitor its subrecipients' (“subgrantees”) compliance with applicable federal civil rights laws.

Certification: I certify that I have read and reviewed the above assurances and links to referenced Award Conditions and certify that the subrecipient will comply with all provisions of the Victims of Crime Act of 1984 (VOCA), as amended, and all other applicable Federal laws.

Print Name of Authorized Official	Title
Signature of Authorized Official	Date
Print Name of Fiscal Officer	Title
Signature of Fiscal Officer	Date

BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: December 2, 2026

SUBJECT: Public Hearing to abate a hazard located in the public road right-of-way at 6997 NW 19th Street, Terrebonne

RECOMMENDED MOTION:
Following the public hearing, move approval of Board Order No. 2026-049 ordering the property owner at 6997 NW 19th Street to remove a fence located within the right-of-way of NW Odem Avenue within 10 days and authorizing the Road Department to remove and dispose of the fence if unabated.

BACKGROUND AND POLICY IMPLICATIONS:
State statute prohibits the creation of road hazards and provides a process for the County to abate road hazards, assign responsibility, and recover any costs incurred if unabated by the responsible party. ORS 368.251 through ORS 368.281addresses road hazards and associated abatement requirements and proceedings.

Deschutes County Code Enforcement received a complaint in October 2025 regarding an intersection sight distance obstruction and safety issue created by a fence located in the right-of-way of NW Odem Avenue for the property addressed at 6997 NW 19th Street, Terrebonne. The fence is encroaching approximately 10 feet within the 60-foot right-of-way of NW Odem Avenue and is obstructing intersection sight distance for northbound traffic at the intersection of NW 19th Street/NW Odem Avenue. In addition to the fence material, a large gateway and sign structure constructed at the corner (also within the right-of-way) contributes to the sight distance obstruction. Deschutes County Code Enforcement sent a letter to Mr. Phillip S McCauley informing him of the code violation in December 2025.

In August 2026, after responding to a crash (July 20, 2026) at the intersection in which utility poles were severed, the Road Department sent an additional letter to Mr. McCauley, again informing him of the issue and requesting voluntary compliance and removal of the fence within the right-of-way. The sight obstruction created by the fence may have contributed to the crash; ambulance transport to St. Charles was noted on the crash report. Upon receipt of the letter, Mr. McCauley contacted the Road Department and had several

conversations with Road Department staff as well as additional email correspondence (attached).

Per the conversations, Mr. McCauley indicated that he constructed the new fence in 2024 in the approximate location of the prior fence and assumed the prior fence was located at the property line. Mr. McCauley correctly pointed out that many other property owners on NW Odem Avenue also have fences that encroach into the right-of-way.
Mr. McCauley communicated that he would not relocate his fence until all other encroaching fences along NW Odem Avenue are relocated. Mr. McCauley has accused the Road Department of selective enforcement.

Having exhausted requests for voluntary compliance, Mr. McCauley was sent a letter via certified mail dated October 5, 2026. This letter served as the official order from the Road Official to remove the identified hazard within 30 days per ORS 368.261 and set an abatement hearing date of December 2, 2026.

On October 8, 2026, another crash occurred at the intersection. While the sight distance obstruction does not appear to have potentially contributed to the incident, both vehicles left the roadway and struck the fence, including the large diameter steel post located in the right-of-way and constructed as a component of the gateway structure. Per the crash report, both participants were transported to St. Charles. The portion of fence along NW Odem Avenue was significantly damaged and remains unrepaired as of the date of this report.

Board Order 2026-049 satisfies the requirements of state law by identifying Mr. McCauley as the person responsible for violation of ORS 368.256 and directing removal of the fence within 10 days. If not removed within 10 days, the Order directs the Road Department to remove and dispose of the fence.

BUDGET IMPACTS:
If the fence is to be removed by the Road Department, the Road Official would be required to first present a report to the Board identifying the costs incurred to abate the hazard, and the Board would need to conduct aother hearing to decide upon cost recovery (ORS 368.261-.276)

ATTENDANCE:
Chris Doty, Road Department Director
Cody Smith, County Engineer/Assistant Director

Attachments:
Board Order 2026-049
Pictures
October 5, 2026 letter from Chris Doty, Director DCRD
August 13, 2026 letter from Chris Doty, Director DCRD
December 8, 2025 Letter from DC Code Enforcement
Various email correspondence

REVIEWED

_____
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order requiring removal a fence located within the NW Odem Avenue right-of-way at 6997 NW 19th Street, Terrebonne, OR.	* * * *	ORDER NO. 2026-049

WHEREAS, Philip S McCauley is determined to be the owner of a fence located within the right-of-way and clear zone of NW Odem Avenue at 6997 NW 19th Street, Terrebonne, OR 97760; and

WHEREAS, the fence encroachment creates a traffic safety concern by obstructing intersection sight distance and therefore constitutes a road hazard; and

WHEREAS, the County initiated a code enforcement outreach in December 2025 requesting Mr. McCauley to relocate the fence to his property; and

WHEREAS, two crashes (July, 2026 and October, 2026) have been reported at the intersection after the initial Code Enforcement outreach requesting voluntary compliance; and

WHEREAS, the County has made numerous attempts to achieve voluntary compliance, including an additional letter from the Road Official in August 2026 as well as several phone conversations with Mr. McCauley and Road Department staff; and

WHEREAS, Mr. McCauley was issued an official order from the Road Official via Certified Mail to remove the fence in a letter dated October 5, 2026 and informed of the associated road abatement hazard proceedings scheduled for December 2, 2026 per ORS 368.261 and 368.266; and

WHEREAS, ORS 368.256 establishes a process to abate road hazards and recover costs from the person responsible for the hazard; now, therefore,

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

Section 1. Mr. Philip S McCauley, the person responsible for violation of ORS 368.256, shall remove the fence located within the NW Odem Avenue right-of-way and clear zone within 10 days of the date of this order.

Section 2. If the fence is not removed in the time specified, the Deschutes County Road Department shall remove and dispose of the fence.

Dated this _____ of _____, 20__

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

_____
PHIL CHANG, Chair

_____
ANTHONY DEBONE, Vice Chair

ATTEST:

_____
PATTI ADAIR, Commissioner

_____
Recording Secretary

DESCHUTES COUNTY

ROAD DEPARTMENT

October 5, 2026

Philip S McCauley Liv Trust
6400 Peak Road
Reno, NV 89510

Subject: **Unauthorized Fence Placement within a Public Right-of-Way**
6997 NW 19th St, Terrebonne, OR 97760

Philip,

On August 13, 2026, Deschutes County Road Department sent a written notification letter, notifying you that a fence had been placed within the 60-foot-wide public right-of-way along NW Odem Avenue adjacent to the property at 6997 NW 19th Street, Terrebonne, Oregon. The August 13, 2026 letter requested voluntary compliance through removal of the encroaching fence within 30 days of receipt.

The fence obstructs intersection sight distance at NW 19th Street and NW Odem Avenue; creates a roadside hazard and reduces the available clear zone for errant vehicles; interferes with lawful parking; and may conflict with installation, maintenance, and emergency repair of underground utilities. The fence may also violate the clear vision area requirements of Deschutes County Code 18.116.020. **Under Oregon Revised Statute (ORS) 368.256, these materials constitute a road hazard, and your actions in placing these materials constitute a road hazard violation.**

As of the date of this letter, the County has not received confirmation that the hazard has been abated, and County staff have observed that the fence remains within the public right-of-way.

This letter constitutes an official order from the Road Official requiring removal of the identified hazard per ORS 368.261. **You are hereby directed to abate the violation by verifying the location of your property boundary and remove the encroaching fence from the public right-of-way to restore the required sight line within 30 days of receipt of this letter.** The enclosed tax map, Exhibit A, depicts the approximate location of the fence in relation to the property boundaries. Removal of the fence must restore the required intersection sight distance and must comply with the County's clear vision area requirements in Deschutes County Code 18.116.020(B).

If the fence is not removed within 30 days of receipt of this letter, Deschutes County will initiate formal road hazard abatement proceedings. Pursuant to ORS 368.261 and ORS 368.266, the Deschutes County Board of

61150 SE 27th Street Bend, Oregon 97702
(541) 388-6581 road@deschutes.org www.deschutes.org

Commissioners will hold a public hearing on Wednesday Dec 2, 2026 at 9:00 AM (Deschutes Services Building, 1300 NW Wall Street, Bend OR 97703), to consider an order requiring abatement of the road hazard. The hearing will be held only if the violation has not been fully abated before the hearing date.

If the Board orders abatement the Deschutes County Road Department will abate the violation by removing the encroaching fence from the public right-of-way, as authorized by ORS 368.271; relocated or replacement fencing would not be provided. The County would seek recovery of reasonable costs incurred for the abatement pursuant to ORS 368.276 and ORS 368.281.

Please contact Road Department Director, Chris Doty, at 541-322-7105 or chris.doty@deschutescounty.gov if you have any questions regarding this matter.

Sincerely,

Chris Doty

Digitally signed by Chris Doty
Date: 2026.10.05 15:26:54 -07'00'

Chris Doty, PE
Director – Deschutes County Road Department

Attachments:

Exhibit A: 14-13-20-D0
Exhibit B: Photos
Exhibit C: Select Road Hazard Abatement Statutes and County Code Provision

Exhibit A: Tax Map

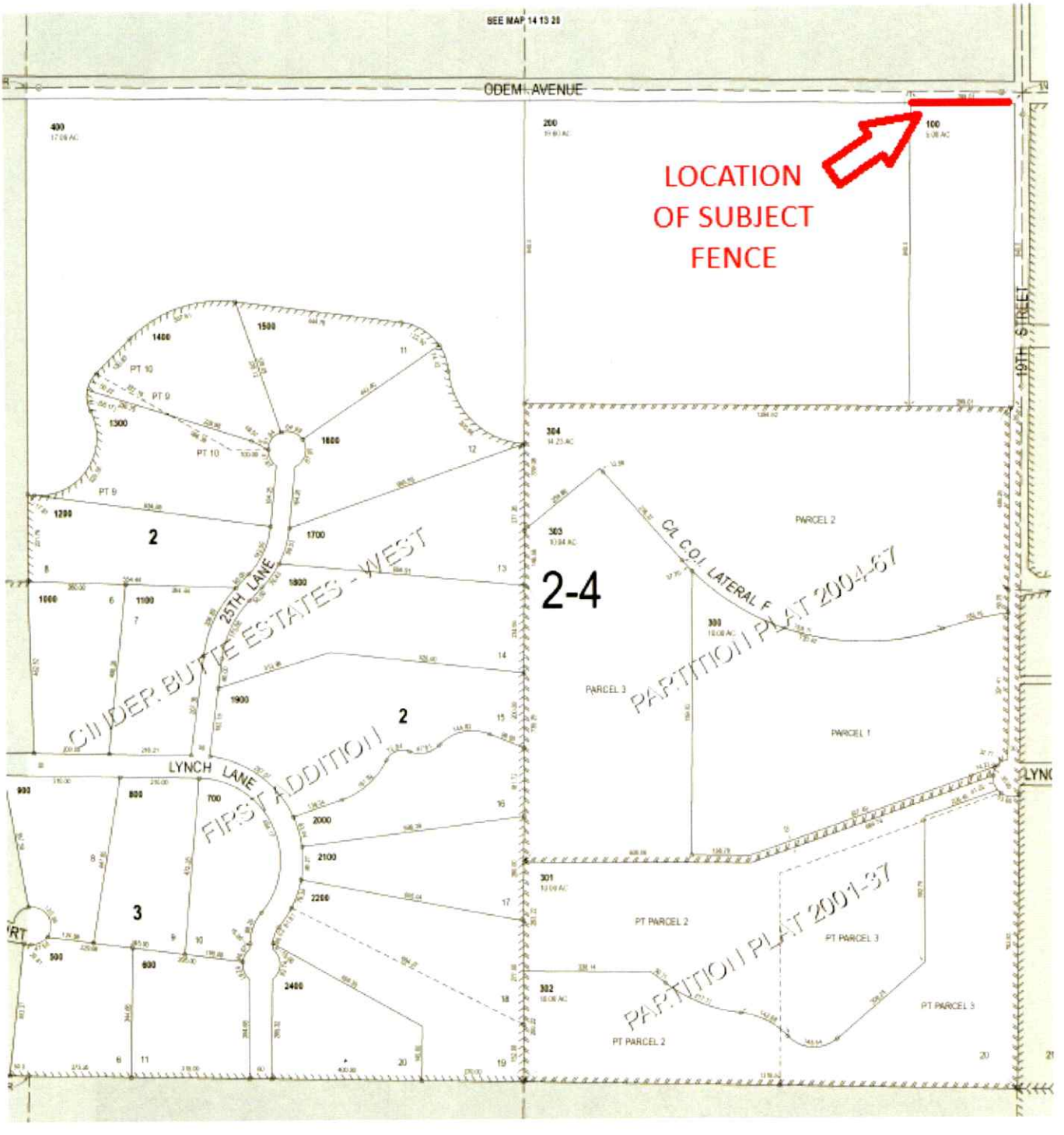


Exhibit B: Reference photos







Exhibit C: Road Hazard Statutes and County Code

Oregon Revised Statutes (ORS) provide the following regarding obstructions within a public right-of-way and associated abatement procedures (select provisions provided):

ORS 368.256 Creation of road hazard prohibited. *(1) Except as authorized by the county governing body, an owner or lawful occupant of land shall not allow:*

... (b) Any structure, tree, drainage way, soil deposit or other natural or man-made thing on that land to present a danger to or create a hazard for the public traveling on a public road or facilities within the right of way of the public road by obstructing, hanging over or otherwise encroaching or threatening to encroach in any manner on a public road that is under county jurisdiction.

ORS 368.261 Order to abate road hazard. *(1) A county road official may order a person who is in violation of ORS 368.256 to remove, divert or otherwise discontinue the violation...*

368.266 Hearing on abatement of road hazard; notice. (1) If a hearing is required under ORS 368.261, the county road official shall establish a place, date and time for the hearing. The hearing will be held if the violation is not abated before the date of the hearing. Notice provided under this section shall include the date and time set for the hearing.

(3) At the hearing the county governing body shall determine the person responsible for violation of ORS 368.256 and shall order that person to abate the violation within a time fixed by the county governing body, which time shall not be less than 10 days. [1981 c.153 §29

368.271 Abatement of road hazard by county. (1) A county road official may abate a violation of ORS 368.256 at any time if any of the following occur:

(a) If the period of time established for abatement of the violation under ORS 368.266 passes and the person ordered to abate the violation has not done so within that time.

(4) If a county road official performs any acts under this section, the county road official shall file a written report with the county governing body. The report shall contain:

(a) An explanation of the acts performed;
(b) The reasons for performing the acts described;
(c) The costs incurred in abating the violation; and
(d) Any other information required by the county governing body. [1981 c.153 §30]

368.281 County recovery of costs for road hazard abatement; lien. (1) The county governing body may recover costs ordered paid under ORS 368.276, by:

(a) Bringing an action for recovery of the costs in any court of competent jurisdiction; or
(b) If the person ordered to pay costs owns real property within the county, filing a copy of the order with the county clerk to be entered as a lien upon the real property of that person within the county.

Deschutes County Code (DCC) provides the following regarding structures and other improvements within a public right of way:

DCC 12.28.050. Permit-Required.

No person, firm or corporation shall remove, alter or construct any curb, sidewalk, driveway approach, gutter, pavement or other improvement in any public street, alley or other property owned by or dedicated to or used by the County and over which it has jurisdiction to regulate the matters covered by DCC 12.28, without first obtaining a permit from the County Road Department, and no permit shall be granted until the applicant files with the County Road Department for its approval two copies of a drawing showing the location and size of all such proposed improvements to serve the property affected.

DCC 12.24.010. Civil Remedies.

In case any facility or structure is constructed or proposed to be constructed, maintained, repaired, altered or used in violation of DCC 12.24, such violation shall constitute a nuisance and the county may institute legal proceedings to prevent, enjoin, temporarily or permanently abate, remove or correct the nuisance.

DCC 12.24.020. Violations.

Violation of the provisions of DCC 12.04 through DCC 12.24 is a Class B violation.

DCC 18.116.020 Clear Vision Areas

A. *In all zones, a clear vision area shall be maintained on the corners of all property at the intersection of two streets or a street and a railroad. A clear vision area shall contain no planting, fence, wall, structure, or temporary or permanent obstruction exceeding three and one-half feet in height, measured from the top of the curb or, where no curb exists, from the established street centerline finished grade, except that trees exceeding this height may be located in this area provided all branches and foliage are removed to a height of eight feet above the finished grade.*
B. *A clear vision area shall consist of a triangular area on the corner of a lot or parcel at the intersection of two streets or a street and a railroad. Two sides of the triangle are sections of the lot lines abutting the street or railroad measured from the corner to a distance specified in DCC 18.116.020(B)(1) and (2). Where lot lines have rounded corners, the specified distance is measured from a point determined by the extension of the lot lines to a point of intersection. The third side of the triangle is the line connecting the ends of the measured sections of the street lot lines. The following measurements shall establish clear vision areas within the County:*
    1. *In an agricultural, forestry, or industrial zone, the minimum distance shall be 30 feet or at intersections including an alley, 10 feet.*
    2. *In all other zones, the minimum distance shall be in relationship to street and road right of way widths as follows:*

Right of way Width	Clear vision
80 feet or more	20 feet
60 feet	30 feet
50 feet and less	40 feet

DESCHUTES COUNTY

ROAD DEPARTMENT

August 13, 2026

Philip S McCauley Liv Trust
6400 Peak Road
Reno, NV 89510

Subject: **Unauthorized Fence Placement within a Public Right-of-Way**
6997 NW 19th St, Terrebonne, OR 97760

To Whom it May Concern,

Deschutes County Road Department staff have observed that a fence has been placed within the 60-foot-wide public right-of-way of NW Odem Ave adjacent to your property located at 6997 NW 19th St, Terrebonne, OR 97760. The fence encroachment creates a traffic safety hazard by obstructing intersection sight distance at the intersection of NW 19th Street/NW Odem Avenue. In addition, placement of the fence in the right-of-way creates a roadside hazard, reduces the available clear zone for errant vehicles, interferes with lawful parking, and creates conflicts with the installation, maintenance, and emergency repair of underground utilities.

The enclosed tax map (Exhibit A) depicts the approximate location of the fence in relation to the property boundaries. **We request that you please abate this hazard by verifying the location of your property boundary and remove the encroaching fence from the public right-of-way to restore the required sight line within 30 days of receipt of this letter.** Placement of the fence must also comply with the County's clear vision area requirements in Deschutes County Code (DCC) 18.116.020(B). Please receive this as a friendly request from Deschutes County to achieve voluntary compliance.

If not addressed within 30 days, the next correspondence from the County will be in the form of an Order which will initiate road hazard abatement proceedings pursuant to ORS 368.261 through 368.281 or other legal proceedings pursuant to the laws of the State of Oregon and Deschutes County. An Order from the County Road Official will include a description of the procedure to identify and recover any costs from you in association with County abatement of the hazard.

Again, we would sincerely appreciate your voluntary compliance in removal of the identified hazard(s). Please contact Transportation Engineer, Quinn Shubert, at 541-322-7131 or quinn.shubert@deschutescounty.gov if you have any questions regarding this matter.

61150 SE 27th Street Bend, Oregon 97702
(541) 388-6581 road@deschutes.org www.deschutes.org

Sincerely,

Chris Doty, PE
Director – Deschutes County Road Department

Attachments:

Exhibit A: 14-13-20-D0
Exhibit B: Photos
Exhibit C: Select Road Hazard Abatement Statutes and County Code Provision

Exhibit A: Tax Map

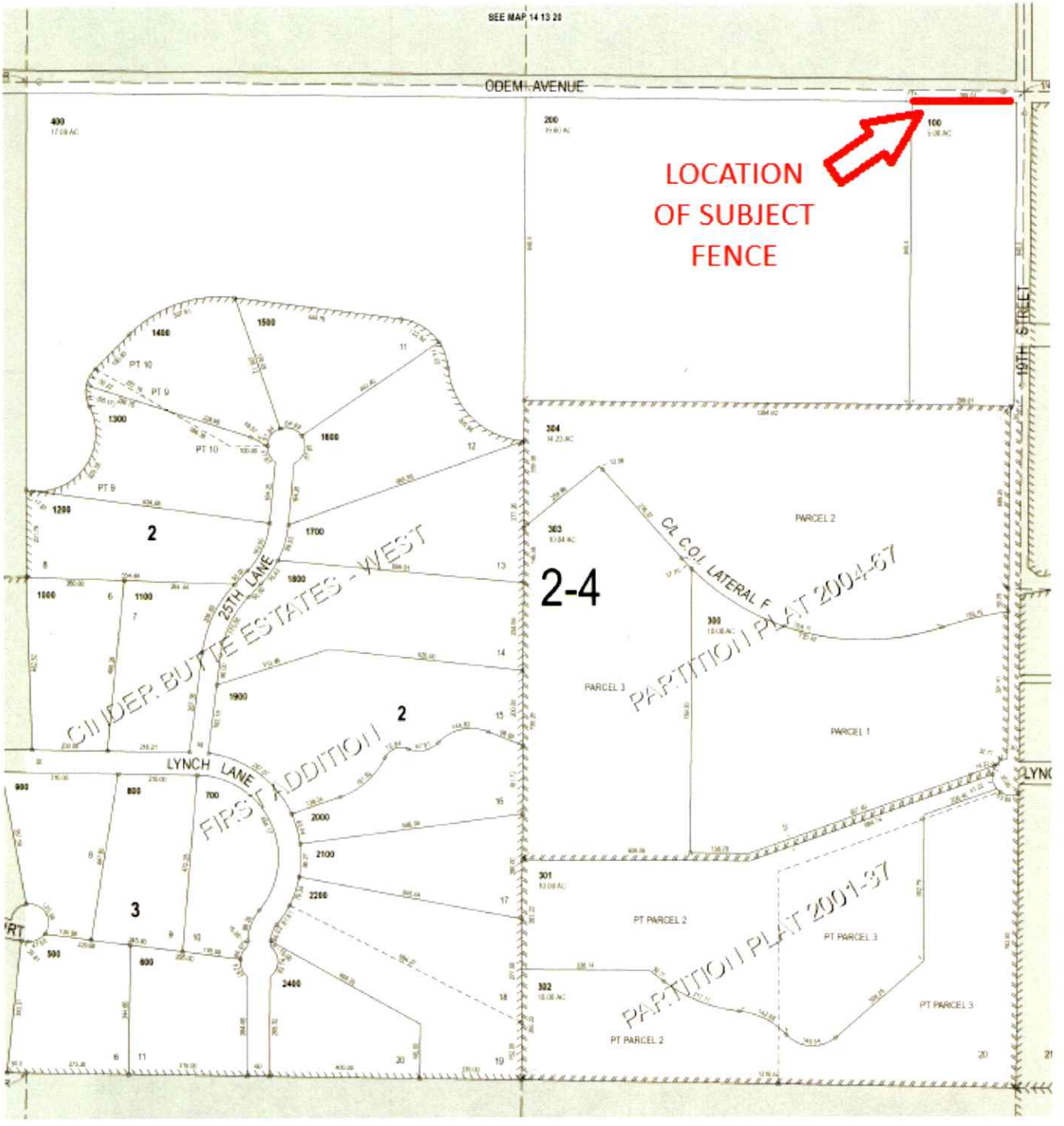


Exhibit B: Reference photos



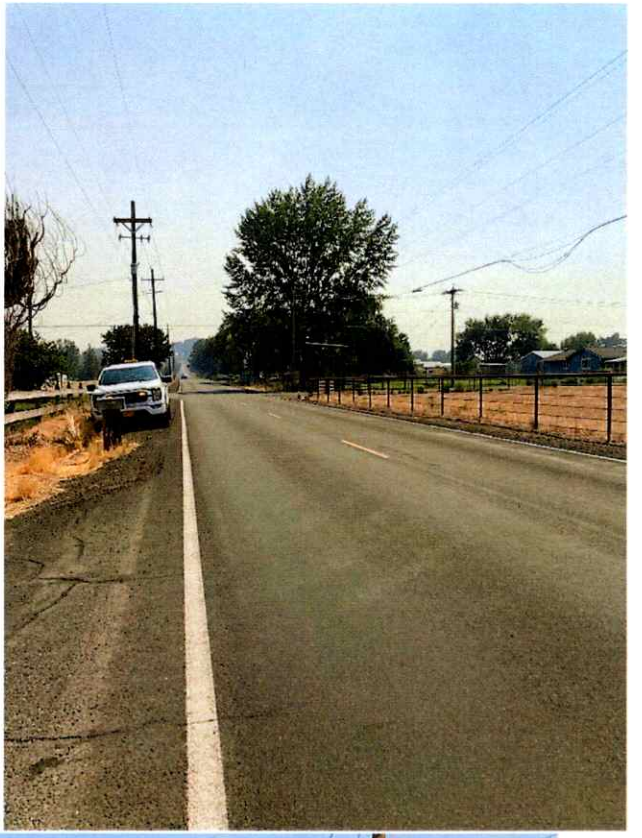




Exhibit C: Road Hazard Statutes and County Code

Oregon Revised Statutes (ORS) provide the following regarding obstructions within a public right-of-way and associated abatement procedures (select provisions provided):

ORS 368.256 Creation of road hazard prohibited. *(1) Except as authorized by the county governing body, an owner or lawful occupant of land shall not allow:*

... (b) Any structure, tree, drainage way, soil deposit or other natural or man-made thing on that land to present a danger to or create a hazard for the public traveling on a public road or facilities within the right of way of the public road by obstructing, hanging over or otherwise encroaching or threatening to encroach in any manner on a public road that is under county jurisdiction.

ORS 368.261 Order to abate road hazard. *(1) A county road official may order a person who is in violation of ORS 368.256 to remove, divert or otherwise discontinue the violation...*

368.266 Hearing on abatement of road hazard; notice. (1) If a hearing is required under ORS 368.261, the county road official shall establish a place, date and time for the hearing. The hearing will be held if the violation is not abated before the date of the hearing. Notice provided under this section shall include the date and time set for the hearing.

(3) At the hearing the county governing body shall determine the person responsible for violation of ORS 368.256 and shall order that person to abate the violation within a time fixed by the county governing body, which time shall not be less than 10 days. [1981 c.153 §29

368.271 Abatement of road hazard by county. (1) A county road official may abate a violation of ORS 368.256 at any time if any of the following occur:

(a) If the period of time established for abatement of the violation under ORS 368.266 passes and the person ordered to abate the violation has not done so within that time.

(4) If a county road official performs any acts under this section, the county road official shall file a written report with the county governing body. The report shall contain:

(a) An explanation of the acts performed;
(b) The reasons for performing the acts described;
(c) The costs incurred in abating the violation; and
(d) Any other information required by the county governing body. [1981 c.153 §30]

368.281 County recovery of costs for road hazard abatement; lien. (1) The county governing body may recover costs ordered paid under ORS 368.276, by:

(a) Bringing an action for recovery of the costs in any court of competent jurisdiction; or
(b) If the person ordered to pay costs owns real property within the county, filing a copy of the order with the county clerk to be entered as a lien upon the real property of that person within the county.

Deschutes County Code (DCC) provides the following regarding structures and other improvements within a public right of way:

DCC 12.28.050. Permit-Required.
No person, firm or corporation shall remove, alter or construct any curb, sidewalk, driveway approach, gutter, pavement or other improvement in any public street, alley or other property owned by or dedicated to or used by the County and over which it has jurisdiction to regulate the matters covered by DCC 12.28, without first obtaining a permit from the County Road Department, and no permit shall be granted until the applicant files with the County Road Department for its approval two copies of a drawing showing the location and size of all such proposed improvements to serve the property affected.

DCC 12.24.010. Civil Remedies.
In case any facility or structure is constructed or proposed to be constructed, maintained, repaired, altered or used in violation of DCC 12.24, such violation shall constitute a nuisance and the county may institute legal proceedings to prevent, enjoin, temporarily or permanently abate, remove or correct the nuisance.

DCC 12.24.020. Violations.
Violation of the provisions of DCC 12.04 through DCC 12.24 is a Class B violation.

DCC 18.116.020 Clear Vision Areas

A. *In all zones, a clear vision area shall be maintained on the corners of all property at the intersection of two streets or a street and a railroad. A clear vision area shall contain no planting, fence, wall, structure, or temporary or permanent obstruction exceeding three and one-half feet in height, measured from the top of the curb or, where no curb exists, from the established street centerline finished grade, except that trees exceeding this height may be located in this area provided all branches and foliage are removed to a height of eight feet above the finished grade.*
B. *A clear vision area shall consist of a triangular area on the corner of a lot or parcel at the intersection of two streets or a street and a railroad. Two sides of the triangle are sections of the lot lines abutting the street or railroad measured from the corner to a distance specified in DCC 18.116.020(B)(1) and (2). Where lot lines have rounded corners, the specified distance is measured from a point determined by the extension of the lot lines to a point of intersection. The third side of the triangle is the line connecting the ends of the measured sections of the street lot lines. The following measurements shall establish clear vision areas within the County:*
    1. *In an agricultural, forestry, or industrial zone, the minimum distance shall be 30 feet or at intersections including an alley, 10 feet.*
    2. *In all other zones, the minimum distance shall be in relationship to street and road right of way widths as follows:*

Right of way Width	Clear vision
80 feet or more	20 feet
60 feet	30 feet
50 feet and less	40 feet

DESCHUTES COUNTY

COMMUNITY DEVELOPMENT

December 8th, 2025

RE: 6997 19th St. Terrebonne, OR 97760

Dear Philip S McCauley Liv Trust,

This letter is to inform you of an alleged violation of the County Code associated with your property. The violation involves the recently constructed fence at the intersection of 19th and Odem Ave. The complaint we received was regarding your fence impinging on the clear vision area for traffic heading North on 19th. Fences must meet the code requirements of DCC 18.116.120 for Clear Vision areas, setbacks, and a height requirement, not to exceed 3.5 feet.

Given the location of the fence, a representative of the Road Department was contacted, and he also confirmed the Clear Vision violation in the Right of Way. One possible solution would be to relocate the fence back within your property lines. Our Senior Transportation Planner, Tarik Rawlings, has offered to assist with this and can be reached at 541-317-3148, or Tarik.Rawlings@deschutes.org. Mr. Rawlings would be a good place to start.

Another option would be to contact Quinn Shubert at the Road Department to discuss Right of Way considerations. It's my understanding that there is a lot of history with property lines and the Right of Way in this area and he would be a good point of contact. His number is 541-322-7131.

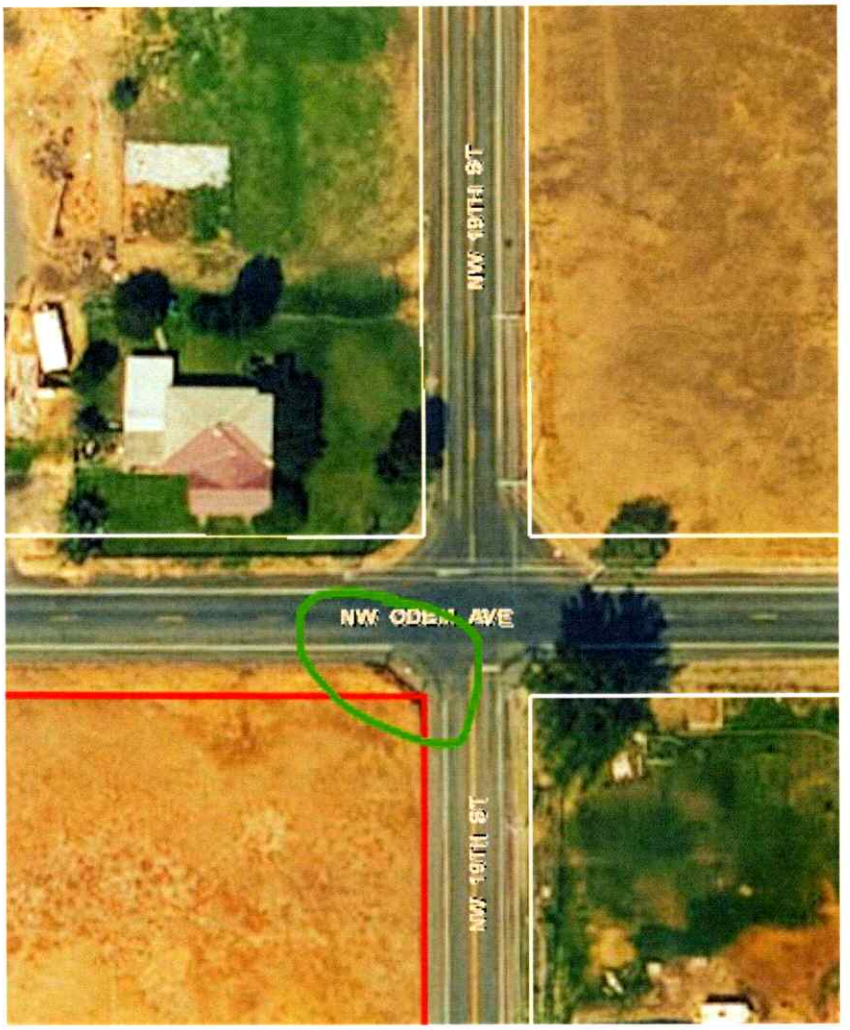
The case associated with your property for violations will be closed and referred to the Road Department, since we do not enforce violations within the Right of Way. If you have any questions, please feel free to contact me through the information provided below. Thank you.

Sincerely,

Jeff Williams
Code Enforcement Specialist – Deschutes County
541-330-4679
Jeff.Williams@deschutes.org

DESCHUTES COUNTY

COMMUNITY DEVELOPMENT



Chris Doty

From: Chris Doty
Sent: Wednesday, September 9, 2026 4:11 PM
To: 'Phillip McCauley'; Cody Smith
Cc: David Doyle
Subject: RE: 6997 NW 19th St - Fence Encroachment Discussion Follow-Up
Attachments: ENCROACHMENT LETTER FENCE - FINAL.pdf; A01000014489518YVBI29US40OXKL2.pdf

Mr. McCauley,

The Road Department has received multiple complaints related to the sight obstructing fence improvements that you have constructed in the southwest corner of the intersection of Odem Avenue/19th Street. The first complaint was received in October of 2025 and our records reflect you were issued a letter from Deschutes County Code Enforcement (Community Development Department) dated December 8, 2025 (attached). The second complaint we received occurred in response to a crash that occurred at the intersection in July of this year. You were issued a letter dated August 13, 2026, again requesting the fence be relocated to your property and compliance with the County's clear vision requirements (per County Code). Both letters requested voluntary compliance and invited contact with County staff.

We appreciate that you have contacted County staff and have engaged in conversations regarding the matter; the most recent conversation included myself and Mr. Shubert. In a follow-up email on August 27, 2026, you requested information related to the right-of-way establishment of Odem Avenue. That information was provided to you on August 31, 2026 in an email response from the County Engineer, Cody Smith.

At this point, it appears that you have no interest in moving forward with relocation of your fence from the Odem Avenue right-of-way and abating the hazard as previously requested. The next correspondence from the County will be in the form of an Order which will initiate road hazard abatement proceedings pursuant to ORS 368.261 through 368.281 or other legal proceedings pursuant to the laws of the State of Oregon and Deschutes County. An Order from the County Road Official will include a description of the procedure to identify and recover any costs from you in association with County abatement of the hazard.

If you would like to discuss a reasonable modification of schedule for relocation efforts to forgo initiation of the abatement proceedings, I would be happy to have that conversation with you.

The placement of your fence within the right-of-way has generated complaints related to a public safety issue and has potentially contributed to a motor vehicle crash at the intersection of Odem Avenue/19th Street. I firmly reject any suggestion that our efforts to mitigate this hazard are motivated by anything other than addressing the safety issue that you created.

Respectfully,

Chris Doty, PE | Director
DESCHUTES COUNTY ROAD DEPARTMENT
61150 SE 27th Street | Bend, Oregon 97702
Tel: (541) 322-7105 | Fax: (541) 388-2719 | Cell: (541) 279-1134
Email: Chris.Doty@deschutes.org
Website: www.deschutes.org/road

From: Phillip McCauley <ChicoMccauley@outlook.com>
Sent: Tuesday, September 1, 2026 9:39 PM

To: Cody Smith <Cody.Smith@deschutes.org>; Chris Doty <Chris.Doty@deschutes.org>; David Doyle <David.Doyle@deschutes.org>
Subject: Re: 6997 NW 19th St - Fence Encroachment Discussion Follow-Up

Some people who received this message don't often get email from chicomccauley@outlook.com. Learn why this is important

! **Caution:** External email - If unexpected, verify with known contacts. If suspicious, use **Report > Report Phishing**. If you clicked/opened/replied/entered credentials, contact **Service Desk** immediately.

Hi Cody,

Thank you very much for your response. Please also verify for me that the ENTIRE Odem Street, which if I understand correctly, was the old Lower Bridge to Terrebonne Road has a 60 foot right away from the centerline.
Because I strongly believe after talking with Chris Doty last Thursday that this is selective enforcement at its finest, as well as possible discrimination due to race/ethnicity, please disclose how many other property owners on Odem have been notified to move their existing fences that are in the same spot as mine, out of the "right away"? This information will be absolutely helpful in determining whether discrimination and selective enforcement are indeed taking place because as Chris Doty said, it's the public's property and the public wants it back.
Finally, please advise as to the complaint process. If the county has done nothing to enforce this issue with other neighbors with fences in the right of way, Do I need to turn in a separate complaint for every property that has a fence in the same space as mine or can I turn in one complaint with all the addresses on it to make sure the public gets all their property back.
Thank you for your attention on this matter,

Phillip McCauley
775-443-1466 cell

On Aug 31, 2026, at 2:58 PM, Cody Smith <Cody.Smith@deschutes.org> wrote:

Mr. McCauley,

Quinn Shubert is out of the office this week. In response to your request below, attached are the following:

1. Survey Number CS00331, Deschutes County Surveyor's Office – **This is a 1969 survey of your property which depicts your northerly property boundary at 30 feet south of the roadway centerline.**
2. Establishment Documents for Lower Bridge-Terrebonne Market Rd (zip folder) – Please note that NW Odem Avenue was originally established as the *Lower Bridge-Terrebonne Road* (aka *Terrebonne to Lower Bridge Market Road No. 3)* by the Deschutes County Commissioners on 9/3/1920 as recorded in Deschutes County Commissioners' Journal 1, Page 282. According to Oregon Law in effect at the time this road was established, the default road width was 60 feet (explicitly specified by statute, see reference below). The road proceedings in this case do not state a lesser width, therefore the statutory width of 60 feet applies.

> ***§4 Width of County Roads.*** *All county roads shall be sixty feet in width, unless the county court shall determine upon a different width, not less than thirty feet nor more than eighty feet in width. [Laws 1917, Chap. 295, Sec. 4, p. 589.]*

The road establishment applies to the public road corridor adjoining and crossing private properties along the route, including the area adjoining your parcel (see the map "RD01484.pdf" in zip folder). Where it abuts your property, the 60 feet-wide right-of-way is centered on the northerly line of the southeast quarter of Section 20 in Township 14N, Range 13E, W.M., which is generally coincidental with the centerline of the-as-constructed roadway.

3. Statutory Warranty Deed, Document No. 2014-24333, Official Records, Deschutes County Clerk's Office – This is a copy of your deed. Please note that the road establishment is explicitly acknowledged in the legal description in your deed (*"EXCEPTING THEREFROM that portion lying within Terrebonne Lower Bridge Market Road on the North and Davidson Road on the East"*).
4. Assessor's Tax Map 14-13-20D0 – Please note that the Assessor's Tax Map for your property also clearly depicts a total right-of-way width of 60 feet.

Sincerely,

Cody Smith, P.E. | County Engineer/Assistant Director
DESCHUTES COUNTY ROAD DEPARTMENT
61150 SE 27th Street | Bend, Oregon 97702
Office: (541) 322-7113
Email: Cody.Smith@deschutescounty.gov
Website: www.deschutescounty.gov/road

From: Phillip McCauley <ChicoMccauley@outlook.com>
Sent: Thursday, August 27, 2026 1:29 PM
To: Quinn Shubert <Quinn.Shubert@deschutes.org>
Subject: Re: 6997 NW 19th St - Fence Encroachment Discussion Follow-Up

! **Caution:** External email - If unexpected, verify with known contacts. If suspicious, use **Report > Report Phishing**. If you clicked/opened/replied/entered credentials, contact **Service Desk** immediately.

Hi Quinn,

Can you please forward me the following:;

The recorded document establishing the 60-foot right-of-way along my property on Odem ave.
The **recording date and recording number**.
The **legal description or survey** showing exactly where the 60 feet is measured from.
The document showing that this right-of-way applies specifically to **6997 NW 19th St / my parcel**.
Whether the county is claiming **30 feet from the road centerline** or 30 feet from some other reference point.

Thank you,
Phillip McCauley

On Aug 27, 2026, at 10:53 AM, Quinn Shubert <Quinn.Shubert@deschutes.org> wrote:

Hello Chico,

Following up on today's meeting, please see the requested contacts below:

Dave Doyle – County Legal Counsel
David.Doyle@deschutescounty.gov

Chris Doty – Road Department Director
Chris.Doty@deschutescounty.gov

Regards,

Quinn Shubert, P.E. | Transportation Engineer
DESCHUTES COUNTY ROAD DEPARTMENT
61150 SE 27th Street | Bend, Oregon 97702
Direct Line: (541) 322-7131 | Fax: (541) 388-2719
Email: Quinn.Shubert@deschutescounty.gov
Website: www.deschutescounty.gov/road

Site Photos: NW 19th Street/NW Odem Avenue

DOCUMENTATION OVERVIEW

Road Department staff made multiple site visits to document the encroachment. The initial visit occurred on July 23, 2026; conditions at that time are shown on this slide.

The picture is taken from the approximate position/angle of a driver looking west – highlighting the impact of the obstruction on intersection sight distance.

Additional visits were completed on October 12, 2026, immediately following a crash involving the fence, and on November 12, 2026, to evaluate relocation progress. Photos from those visits follow.



Initial site conditions July 23, 2026, looking west.

Site Visit Photos

October 12, 2026



Photo 1 — Fence damage and roadside condition, looking east.



Photo 2 — View of the sign and fence alignment, looking west.

Site Visit Photos

November 12, 2026



Photo 1 — Roadside view during follow-up inspection, looking east.



Photo 2 — Overall view of the sign and fence location, looking west.

BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: December 2, 2026

SUBJECT: BCL Remand Deliberations involving a Comprehensive Plan Amendment and Zone Change for properties located at 21875 Neff Road, 21850 Hwy 20, 21700 Bear Creek Road and 62098 Ward Road

RECOMMENDED MOTION:
At the conclusion of deliberations, staff recommends that the Board proceed with one of the following motions:

1. Move approval of the BCL PA/ZC Remand request; or
2. Move to deny the BCL PA/ZC Remand request.

BACKGROUND AND POLICY IMPLICATIONS:
On September 16, 2026, BCL, LLC, initiated a Land Use Board of Appeals (LUBA) remand application (file no. 247-26-000560-A). This remand is related to a Comprehensive Plan Amendment and Zone Change application for approximately 240 acres located east of Bend, which was approved by the Board of County Commissioners and then appealed to LUBA. LUBA remanded the County's decision back for further review on five issue areas. The Board held the remand hearing on October 26, 2026, and the written record was left open following that hearing. The record is now closed and staff will return to the Board for deliberations.

BUDGET IMPACTS:
None.

ATTENDANCE:
Audrey Stuart, Associate Planner
Anthony Raguine, Principal Planner
Will Groves, Planning Manager

MEMORANDUM

TO: Board of County Commissioners

FROM: Audrey Stuart, Associate Planner

DATE: November 24, 2026

SUBJECT: December 2nd Deliberations for the *BCL LLC* LUBA Remand

The Board of County Commissioners ("Board") will hold deliberations for a Land Use Board of Appeals (LUBA) remand. This remand is regarding a Comprehensive Plan Amendment and Zone Change for approximately 240 acres of land located east of Bend (file nos. 247-24-000097-PA, 247-24-000098-ZC).

I. BACKGROUND

The applicant, BCL LLC, received approval for a Comprehensive Plan Amendment to re-designate the subject properties from Agriculture to Rural Residential Exception Area and a Zoning Map Amendment to rezone the properties from Exclusive Farm Use – Tumalo-Redmond-Bend subzone (EFU-TRB) to Multiple Use Agricultural – 10 Acre Minimum (MUA-10). The subject property consists of four tax lots, which are located to the north and south of Highway 20, approximately 0.26 miles east of the Bend Urban Growth Boundary. The subject property primarily consists of undeveloped land, however, one of the tax lots is developed with a dwelling and one tax lot is developed with a solar voltaic array (solar farm).

An initial public hearing was held before a Hearings Officer on May 9, 2025, and on July 9, 2025, the Hearings Officer issued their recommendation of approval. A public hearing was held before the Board on August 20, 2025, and the Board voted 2-1 to approve the subject application. Ordinance no. 2026-004 was signed by the Board on January 28, 2026, formally approving the application. A remand hearing was held before the Board on October 26, 2026. The written record period following that hearing has closed, and staff will return to the Board for deliberations.

II. REMAND

Central Oregon LandWatch (COLW) appealed the Board's decision to LUBA and raised four assignments of error. LUBA's final opinion and order (LUBA No. 2026-015) was issued on June 26,

2026, and remanded the decision back to Deschutes County for additional analysis regarding the following issues:

1. Conformance with the Deschutes County Comprehensive Plan, specifically regarding lot sizes under the proposed MUA-10 zoning.
2. Additional information on historic water use on the property, to evaluate existing and future availability of water for irrigation under OAR 660-033-0020(1)(a)(B).
3. Additional analysis under Statewide Planning Goal 14 regarding the density that would be possible under the proposed MUA-10 zoning, in order to address the density factor under the *Curry County* test.
4. Additional analysis under Statewide Planning Goal 14 regarding how the Zone Change would impact the effectiveness of the Bend Urban Growth Boundary (UGB).
5. The process for adopting a site-specific Economic, Social, Environmental, and Energy (ESEE) analysis for the subject property, which is in the Landscape Management Combining Zone associated with Highway 20.

The applicant initiated the remand proceedings on September 16, 2026, and this remand is file no. 247-26-000560-A.

III. PARTICIPATION

Per Deschutes County Code ("DCC") 22.34.030(A), only those persons who participated in the County's original review of the subject Comprehensive Plan Amendment and Zone Change request are entitled to participate in this remand hearing.

Pursuant to Board Order 2026-039, parties to this proceeding can only present new evidence related to the following remand issues:

1. The history of irrigation on the subject parcels, for the purpose of evaluating availability of water for irrigation under OAR 660-033-0020(1)(a)(B).
2. Evidence related to density under the proposed zoning, for the purpose of the Goal 14 *Curry County* analysis.
3. Evidence related to the effectiveness of the Bend UGB, for the purpose of the Goal 14 *Curry County* analysis.

A public hearing was held before the Board on October 26, 2026. Central Oregon LandWatch provided written comments and testified in opposition to the applicant's request. Four members of the public submitted written comments in opposition.

IV. BOARD DELIBERATIONS

If the Board finds no additional deliberations are necessary, the Board may vote on whether to approve or deny the application.

If the Board finds that additional deliberations are necessary, the Board may schedule a future date for continued deliberations.

Board Decision Matrix

Staff has prepared a deliberations matrix that outlines key issue items for Board consideration. The deliberations matrix is included as an attachment to this memorandum.

V. 120-DAY REVIEW CLOCK

In consultation with County Legal Counsel, it has been determined the 120-day review clock under ORS 215.435(2) and DCC 22.34.030 does not apply to the subject remand application because the request includes a Comprehensive Plan Amendment. Nevertheless, staff will be processing the subject remand application in an efficient and timely manner.

V. RECORD

The record for this file is available through the following link:

www.deschutescounty.gov/BCLRemand

VI. NEXT STEPS

If the Board concludes their deliberations during the December 2, 2026, meeting, the Board may vote on whether to approve or deny the application. If the Board renders a vote during the December 2, 2026, meeting, staff will coordinate with the Board to return for a future meeting to review the draft decision, draft ordinance, and the relevant exhibits. If appropriate, the first reading of the ordinance can be initiated at that time.

If the Board determines that additional deliberations are necessary, staff will work with the Board to coordinate a future meeting for continued deliberations.

ATTACHMENT(S):

1. Location Map
2. Board Decision Matrix
3. LUBA Order No. 2026-015

BCL, LLC PA/ZC Remand Deliberation Matrix

(File Nos. 247-24-000097-PA, 247-24-000098-ZC, & 247-26-000560-A)

REMAND ISSUE 1

The Board of County Commissioners ("Board") must evaluate conformance with the Deschutes County Comprehensive Plan, specifically potential future lot or parcel sizes under the proposed MUA-10 zoning.

Board Decision Options:

1. Agree with Applicant's response and *approve* the PA/ZC request.
2. Agree with Central Oregon LandWatch's ("COLW) response and *deny* the PA/ZC request.
3. Other Board interpretation.

Remand Issue 1 Description	*Applicant Response*	*COLW Response*	*Staff Comments*
The Land Use Board of Appeals (LUBA) remanded the decision, finding that compliance with the Deschutes County Comprehensive Plan (DCCP) policies regarding minimum lot or parcel size needed to be addressed at the time of a Zone Change application. DCCP Policy 3.3.1 requires the minimum lot or parcel size for new rural residential parcels shall be 10 acres. LUBA stated, "nothing in the county's decision would prevent a future applicant from seeking cluster development or PUD on the subject tract at sub-10-acre densities." Additional analysis is therefore required to show how application of the Multiple Use Agricultural (MUA10) zone would be consistent with DCCP Policy 3.3.1.	The applicant proposed a condition of approval that restricts the creation of parcels smaller than ten acres as long as Policy 3.3.1 remains in effect. The applicant states their proposed condition of approval would resolve any potential conflict between the proposed MUA10 zoning and this DCCP policy. The applicant provided an alternate argument that any future subdivision of the subject property would have to comply with the DCCP, therefore the subject zone change does not authorize the creation of parcels smaller than ten acres.	Opponents argue that the proposed condition of approval does not resolve the conflict between DCCP 3.3.1 and the allowances of the MUA10 zone because it relies on speculation regarding future amendments to DCCP. Central Oregon Landwatch (COLW) points out the temporary nature of the proposed condition and argues that it does not guarantee indefinite compliance with the DCCP. COLW argues that the County cannot use a condition of approval to approve a zone change that would otherwise be non-compliant with the DCCP.	Several pending Comprehensive Plan Amendment/Zone Change application decisions have addressed this issue by requiring a condition of approval limiting the size of lots or parcels created in future land divisions. To ensure consistency and streamline future enforcement of these conditions, staff recommends that any Board-adopted Condition of Approval and Conditions of Approval Agreement follow a similar format and signature process as it has with respect to other applications.

REMAND ISSUE 2

The Board must evaluate new evidence regarding the history of irrigation on the subject property to determine "existing and future availability of water for farm irrigation purposes."

Board Decision Options:

1. Agree with Applicant's response and *approve* the PA/ZC request.
2. Agree with Central Oregon LandWatch's ("COLW) response and *deny* the PA/ZC request.
3. Other Board interpretation.

Remand Issue 2 Description	*Applicant Response*	*COLW Response*	*Staff Comment*
Determining whether the property meets the definition of 'agricultural land' requires considering the "existing and future availability of water for farm irrigation purposes," per OAR 660-033-0020(1)(a)(B). LUBA found it is the applicant's responsibility to provide information on the history of irrigation on the different tax lots that make up the subject property. Information from Central Oregon Irrigation District (COID) on historical irrigation on Tax Lot 100 was provided; however, information was lacking regarding historical irrigation on the remaining tax lots.	The applicant obtained additional information from COID regarding the history of irrigation. This information confirms that none of the tax lots north of Highway 20 have ever had documented irrigation rights. For the portion of the subject property south of Highway 20, approximately four acres of water rights were transferred off in 1985. No portion of the subject property has had irrigation rights since. The applicant asserts that, even considering those previously existing four acres of irrigation rights, the subject property does not meet the definition of agricultural land.	Opponents argue that the new information regarding the history of irrigation requires a reassessment of whether the subject property is suitable for various farm uses. COLW states that the previous assessment of potential farm uses and soil capability was based on the finding that there was no irrigation on the subject property. Therefore, an updated analysis of the suitability factors outlined in OAR 660-033-0020(1)(a)(B) is required. COLW also argues the materials provided by the applicant are incomplete and do not include a legible map of the location of previous water rights.	LUBA noted that the previous County decision incorrectly shifted the burden to COLW to prove the subject property *did* have a history of irrigation. The applicant appears to have addressed LUBA's concerns regarding the lack of evidence regarding historical irrigation of the property. Revised findings should therefore be based on the updated COID information provided by the applicant.

REMAND ISSUE 3

The Board must evaluate whether Statewide Planning Goal 14 is met, considering allowable density under the proposed MUA10 zoning.

Board Decision Options:

1. Agree with Applicant's response and *approve* the PA/ZC request.
2. Agree with Central Oregon LandWatch's ("COLW) response and *deny* the PA/ZC request.
3. Other Board interpretation.

Remand Issue 3 Description	*Applicant Response*	*COLW Response*	*Staff Comment*
Statewide Planning Goal 14 generally prohibits the urban use of rural land. A previous interpretation by the Oregon Supreme Court in *1000 Friends of Oregon v. LCDC (Curry Co.)* outlined factors that should be weighed when determining if Goal 14 is met. One of the factors to be considered in the *Curry County* analysis is the density of development that would be allowed under the new zoning. LUBA rejected applicant's argument that the MUA10 zone has been acknowledged as a rural zone, and therefore any uses permitted within that zone are rural in nature. LUBA referred to its findings in *Destiny Court* and reiterated that the County must complete a *Curry County* analysis to determine whether Goal 14 will be met. LUBA found that cluster development and planned unit development (PUD) may allow future land division with no minimum lot size. LUBA rejected the argument that the equivalent density could be considered when evaluating Goal 14, and ruled the County must evaluate the actual minimum lot or parcel sizes that could be created under the MUA10 zoning.	The applicant states that LUBA did not disagree that a ten-acre parcel size would be consistent with Goal 14 but LUBA did not fully address this issue because the original application was not conditioned to limit the creation of future lot or parcel sizes to ten acres. The applicant argues that LUBA's analysis regarding this issue was largely based on speculation that cluster development and PUDs could be approved on the subject property.	COLW argues that the applicant incorrectly compared the potential density under the MUA10 zoning to the density permitted under the City of Bend's Residential Standard Density (RS) zone to exaggerate the difference in allowed density, and that a comparison to the City's Low Density Residential (RL) zone is more appropriate.	LUBA stated that a minimum lot size of ten acres is considered a "safe harbor" and can be presumed to be rural without completing a full *Curry County* analysis. If the Board adopts a condition of approval limiting future land divisions to a ten-acre minimum lot size, the Board may find that a full *Curry County* analysis is not required.

REMAND ISSUE 4

The Board must evaluate whether Statewide Planning Goal 14 is met, considering proximity to the Bend urban growth boundary (UGB).

Board Decision Options:

1. Agree with Applicant's response and *approve* the PA/ZC request.
2. Agree with Central Oregon LandWatch's ("COLW) response and *deny* the PA/ZC request.
3. Other Board interpretation.

Remand Issue 4 Description	*Applicant Response*	*COLW Response*	*Staff Comment*
One of the factors to be considered under a Goal 14 *Curry County* analysis is the proximity to a UGB. LUBA stated: "In *Curry County*, the Court noted that Goal 14 has long been understood to be concerned with intensification of rural lands near UGBs that could adversely impact or undermine the effectiveness of the UGB." The subject property is located 0.25 miles to the east of the City of Bend's UGB. LUBA found that if residential development of the subject property could function as a suburban neighborhood and pull residents who would otherwise live within the UGB, the zone change would not comply with Goal 14. LUBA stated that lots or parcels created through a cluster development or PUD could function in a manner similar to residential lots within the UGB.	The applicant states their proposed condition of approval, described under Remand Issue 1, addresses this remand issue. As conditioned, the subject property would not be eligible for subdivision as a cluster development or PUD. This will ensure that new lots or parcels will be at least ten acres in size. This larger lot size would differentiate the subject property from the size of residential lots allowable within the UGB.	Opponents argue that residents seeking proximity to urban amenities will be drawn to the subject property because of its close proximity to the UGB. COLW states that the subject zone change will result in parcelization of land near the UGB and undermine the efficient transition from urban to rural uses, which will hinder future urbanization. COLW argues that the applicant's proposed condition of approval does not resolve this remand issue, because the analysis of "proximity to UGB" evaluates factors other than merely lot or parcel size.	Staff notes that LUBA's findings regarding this remand issue were largely connected to concerns regarding cluster developments and PUDs. However, staff recommends that revised findings address both the proposed condition of approval requiring a 10-acre minimum lot size, as well as the subject property's distance to the Bend UGB.

REMAND ISSUE 5

The Board must determine the process for adopting a site-specific Economic, Social, Environmental, and Energy (ESEE) analysis for the subject property.

Board Decision Options:

1. Agree with Applicant's response and *approve* the PA/ZC request.
2. Agree with Central Oregon LandWatch's ("COLW) response and *deny* the PA/ZC request.
3. Other Board interpretation.

Remand Issue 5 Description	*Applicant Response*	*COLW Response*	*Staff Comment*
The subject property is within the Landscape Management Combining Zone associated with Highway 20, and there is an existing ESEE in place to protect this scenic resource. The applicant proposed a revised ESEE that is specific to the subject property and addresses new uses that would be allowed under the MUA10 zoning. LUBA remanded this issue for the County to determine the appropriate process to adopt this site-specific ESEE. OAR 660-023-0040(4) requires an ESEE to be adopted as part of the DCCP or as a land use regulation, but LUBA left it to the County to determine the specific manner of adoption.	The applicant requests that an ordinance approving the subject application should expressly adopt the site-specific ESEE created in support of the application. The applicant proposed findings that the site-specific ESEE, along with the County's existing Goal 5 program, are sufficient to ensure compliance with Statewide Planning Goal 5. The applicant maintains it is not required to update the entire ESEE analysis for the Highway 20 scenic corridor.	COLW stated that the site-specific ESEE should be adopted in a manner that gives future applicants fair notice of its existence.	In recent examples such as *Last Ranch*, this issue has been addressed by referencing the ESEE as part of the adopting ordinance. Staff notes the record was only opened to accept new evidence regarding certain remand issues, and this issue was not one of them. Therefore, arguments related to this remand issue are based on materials already in the record.

JUN 26 2026

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

CENTRAL OREGON LANDWATCH,
Petitioner,

vs.

DESCHUTES COUNTY,
Respondent,

and

BCL LLC,
Intervenor-Respondent.

LUBA No. 2026-015

FINAL OPINION
AND ORDER

Appeal from Deschutes County.

Robin Hayakawa filed the petition for review and argued on behalf of petitioner. Rory Isbell filed the reply brief on behalf of petitioner.

No appearance by Deschutes County.

Christopher P. Koback filed the intervenor-respondent's brief and argued on behalf of intervenor-respondent. Also on the brief was Buchanan Schmid Koback.

BASSHAM, Board Member; ZAMUDIO, Board Chair; WILSON, Board Member, participated in the decision.

REMANDED 06/26/2026

You are entitled to judicial review of this Order. Judicial review is

1 governed by the provisions of ORS 197.850.

Opinion by Bassham.

NATURE OF THE DECISION

Petitioner appeals a board of commissioners ordinance adopting a post-acknowledgement plan amendment (PAPA) redesignating and rezoning a tract of 240 acres.

MOTION TO INTERVENE

BCL LLC (intervenor), the applicant below, moves to intervene on the side of the county. There is no opposition and the motion is allowed.

FACTS

The subject tract consists of four tax lots totaling approximately 240 acres, designated Agriculture and zoned Exclusive Farm Use – Tumalo/Redmond/Bend (EFU-TRB). The tract consists of tax lots 100 (100 acres) and 400 (38 acres), both located north of Highway 20, and tax lots 900 (44 acres) and 1000 (57 acres), both located south of Highway 20.[1] That stretch of Highway 20 is designated a scenic route protected under the county's Statewide Planning Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) program, via an overlay zone known as Landscape Management Combining (LM) zone. Under the LM zone, development within one-quarter mile of Highway 20 is subject to restrictions designed to protect scenic views.

---

[1] The application originally included a fifth tax lot, 300, which has higher value soils than most of the rest of the tract. Intervenor later modified the application to remove tax lot 300 from the proposed redesignation and rezoning.

Tax lot 100 is developed with a 62-acre solar panel array, approved in 2015 as a conditional use in the EFU zone. Tax lots 900 and 1000 are developed with a lot-of-record dwelling and a nonfarm dwelling, respectively.

In February 2024, intervenor applied to the county to redesignate the tract to Rural Residential Exception Area (RREA) and to rezone it Multiple-Use Agriculture – 10-acre (MUA-10). In the application, intervenor argued that an exception to Statewide Planning Goal 3 (Agricultural Lands) is unnecessary, because the subject tract does not qualify as "agricultural land" as defined at OAR 660-033-0020(1)(a).[2] According to Natural Resources Conservation Survey (NRCS) maps of the area, soils on the tract consist of three soil types, Deskamp 36A, Deskamp 36B, and Gosney-Rock Outcrop-Deskamp Complex (Gosney Complex) 58C. Record 73. The Deskamp 36A and 36B soils are considered

---

[2] OAR 660-033-0020(1)(a) defines "agricultural land" as defined in Goal 3 to include:

> "(A) Lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon;
>
> "(B) Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices; and
>
> "(C) Land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands."

agricultural soils and high-value if irrigated, while the Gosney Complex 58C soil is considered non-agricultural Class 7 or 8 soils, regardless of irrigation. Record 1254-55. The property currently has no irrigation rights. Record 1256. Intervenor hired a soil scientist to interpret the NRCS maps, and based on that interpretation the soil scientist concluded that the subject tract is comprised predominantly of nonagricultural Gosney Complex 58C soils, and hence does not qualify as "agricultural land" under OAR 660-033-0020(1)(a)(A). Record 1254.[3] The soil scientist also opined that the subject tract is not "land in other soil classes that is suitable for farm use" for purposes of OAR 660-033-0020(1)(a)(B), or "necessary to permit farm practices" on adjacent or nearby agricultural lands under OAR 660-033-0020(1)(a)(C).

---

[3] OAR 660-033-0030(2) provides, in part, that "[w]hen a jurisdiction determines the predominant soil capability classification of a lot or parcel it need only look to the land within the lot or parcel being inventoried." Thus, for purposes of determining the predominant soil capability classification, the unit of analysis is the "lot or parcel." "Lot" and "parcel" are defined at OAR 660-033-0020(10) and (13), with reference to statutory definitions at ORS 92.010 and ORS 215.010, which in turn describe discrete units of land created in certain ways. A "tract," on the other hand, means "one or more contiguous lots or parcels under the same ownership." OAR 660-033-0020(14). The subject tract apparently consists of multiple discrete units of land, or "lots of record" in the county's parlance. Record 71. On appeal, no party questions the methodology of intervenor's soil report in using the entire 240-acre tract as the unit of analysis to determine the *predominant* soil capability classification for purposes of OAR 660-033-0020(1)(a)(A), and we consider that question no further.

The subject tract is located approximately one-quarter mile east of the City of Bend's urban growth boundary (UGB). Surrounding uses include two churches, an electrical power substation, a 95-acre city park, lands developed with solar panel arrays, and a number of smaller parcels developed with residential uses.

The county hearings officer conducted a hearing on the application and recommended approval. The board of commissioners conducted *de novo* hearings on the application and, on January 28, 2026, issued an ordinance approving the proposed comprehensive plan and zoning amendments.

This appeal followed.

FIRST ASSIGNMENT OF ERROR

The MUA-10 zone is a rural residential zone that, as its name suggests, provides for a minimum lot or parcel size of 10 acres. Deschutes County Code (DCC) 18.32.040(A). That minimum lot or parcel size is consistent with Deschutes County Comprehensive Plan (DCCP) 3.3.1, which prescribes that "the minimum parcel size for new rural residential parcels shall be 10 acres."[4]

However, DCC 18.116.400(A)(1) and (2) provide that within the MUA-10 zone cluster and planned unit developments (PUDs) are allowed as conditional

---

[4] As discussed further, below, and extensively explained in *Central Oregon Landwatch v. Deschutes County*, LUBA No 2024-080 (Apr 13, 2026) (*Pohaku Farms*), the county is in the process of amending its comprehensive plan, which includes amending and renumbering DCCP 3.3.1. We continue to refer and cite to this policy as DCCP 3.3.1.

uses, subject to DCC 18.128. DCC 18.128.200 provides conditional use standards for cluster development, while DCC 18.128.210 sets out standards for PUDs. Both sets of standards allow for smaller lot or parcel sizes than 10 acres. Under DCC 18.128.200(B)(2), the area not dedicated to open space or common use in a cluster development may be platted for dwelling units with a minimum lot area of two acres and a maximum lot area of three acres. For PUDs, a minimum lot area "shall be 40 acres[,]" although "[a]n equivalent overall density factor may be utilized in lieu of the appropriate minimum lot area[]" and "the densities shall not exceed that established by the underlying zone." DCC 18.128.210(D)(2)-(4). Pursuant to DCC 18.116.400(3), the minimum equivalent density in the MUA-10 zone for cluster and planned unit development is one unit per seven and one-half acres, although cluster developments and PUDs within one mile of a UGB are allowed a five-acre minimum lot area or equivalent density.[5]

In *Central Oregon Landwatch v. Deschutes County*, we remanded to the county to consider in the first instance whether the sub-10-acre lot sizes in cluster developments and PUDs allowed in the MUA-10 zone conflicted with DCCP

[5] The DCC does not define the terms "overall density" or "equivalent density," but we understand them to mean something like average density per dwelling unit, including all land within the tract, including acreage dedicated to open space or common areas. Under this approach, individual residential lots within a cluster development or PUD can be two acres in size, for example, but the development as a whole may have an overall or equivalent density of 10 acres per dwelling unit, when open space and common areas are factored in.

3.3.1, citing *Baker v. City of Milwaukie*, 271 Or 500, 514, 533 P2d 772 (1975), for the proposition that a comprehensive plan provision controls over a conflicting zoning code provision. LUBA No 2025-015 (June 26, 2025) (*Destiny Court*) (slip op at 7-8). At the time we issued *Destiny Court*, the county was engaged in a legislative update to the DCCP. In response to our remand in *Destiny Court*, the county adopted new DCCP policies that allowed, as an explicit exception to the 10-acre-minimum imposed by DCCP 3.3.1, cluster and PUD lot sizes smaller than 10-acres in county rural residential zones. Subsequently, on appeal of that update to the DCCP, we concluded that the new DCCP policies facially conflicted with state law, at least to the extent they authorized cluster developments and PUDs on non-resource land, that is, land found not to qualify as agricultural land as defined at OAR 660-033-0020(1)(a). *Central Oregon Landwatch v. Deschutes County*, LUBA No 2024-080 (Apr 13, 2026) (*Pohaku Farms*).

In the present case, petitioner argued to the county, as it did in *Destiny Court*, that sub-10-acre development allowed in the MUA-10 zone facially conflicts with DCCP 3.3.1. Neither the board of commissioners' findings nor the incorporated hearings officer's findings address that argument. On appeal, petitioner argues that remand is necessary for the county to address the alleged conflict. Alternatively, petitioner argues that LUBA should simply reverse the decision, as the sub-10-acre minimum lot sizes allowed in the MUA-10 zone clearly conflict with DCCP 3.3.1.

Intervenor responds that the application did not propose, and the county did not approve, cluster development or PUD allowed in the MUA-10 zone, or any particular development at any particular density. Intervenor argues that it remains to be seen what kind of development, at what density, future land use applications will seek. Intervenor argues that remanding or reversing the county's decision based on hypothetical development scenarios would essentially result in an advisory opinion on a future land use application not before the county, or LUBA.

Moreover, intervenor submits that, given the current state of the law as reflected in LUBA's rulings in *Density Court* and *Pohaku Farms*, the county would likely deny any application for cluster developments or PUDs that proposed sub-10-acre equivalent minimum lot sizes. According to intervenor, until the county takes further steps to resolve the apparent conflict between DCCP 3.3.1 and the cluster development and PUD standards allowing sub-10-acre minimums on non-resource lands, a prudent applicant would apply only for a straightforward subdivision under the MUA-10 zone's default 10-acre minimum lot size, and not seek cluster or PUD development at sub-10-acre minimums.

Petitioner replies that the challenged decision does not limit development to 10-acre parcels, but on the contrary the findings assumed that the property would be developed with cluster development or PUD at sub-10-acre minimums. Petitioner argues that the time to determine whether development and densities allowed under the MUA-10 zone are consistent with DCCP 3.3.1 is the present

PAPA, not a future land use application under the MUA-10 zone. Petitioner contends that without some limitation or condition imposed in this decision, nothing guarantees that in evaluating a future development proposal on the property the county would apply DCCP 3.3.1 or ensure compliance with its mandate for 10-acre-minimum parcel sizes for rural residential development.

Petitioner is correct that the county's findings assume that the property, once redesignated and rezoned to MUA-10, could be developed with cluster development or PUD at sub-10-acre minimums, as the highest density use of the property. Record 67 (Statewide Planning Goal 14 (Urbanization) analysis). Although petitioner raised below the issue of whether densities allowed under the MUA-10 zone would be consistent with DCCP 3.3.1, the findings do not address that issue, or explain why it need not be addressed. We agree with petitioner that that issue is most appropriately addressed in the context of the present plan and zoning amendment that creates the potential conflict, not a subsequent land use application for a specific development proposal. As it stands, nothing in the county's decision would prevent a future applicant from seeking cluster development or PUD on the subject tract at sub-10-acre densities, and nothing cited to us in the DCCP or DCC or elsewhere would ensure that the issue of consistency with DCCP 3.3.1 would be addressed and resolved in approving or denying a specific development proposal. Accordingly, we agree with petitioner that remand is appropriate for the county to address and resolve in the first

instance the issues raised below regarding whether application of the MUA-10 zone in the present case is consistent with DCCP 3.3.1.

The first assignment of error is sustained.

SECOND ASSIGNMENT OF ERROR

As noted, OAR 660-033-0020(1)(a)(B) defines "agricultural land" to also include "[l]and in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices[.]" As shorthand, we refer to this test as the "suitability" test.

The suitability test sets out seven factors or considerations that must be applied to determine whether a property with non-agricultural soils is nonetheless "suitable for farm use as defined at ORS 215.203(2)(a)." The statute defines "farm use" broadly to include, in relevant part:

> "As used in this section, '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 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' also includes the current employment of 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."

ORS 215.203(2)(a) distinguishes "farm use" from other kinds of potential agronomic pursuits by imposing the qualification that the listed activities must be conducted "for the primary purpose of obtaining a profit in money[.]" This qualification is sometimes referred to as the "profitability" test.

To address the suitability test, intervenor initially submitted the testimony of its soil scientist, opining that given the lack of irrigation for crops the only potential farm use of the property is dry land cattle grazing, but that the poor soils and other limitations of the property rendered it unsuitable even for grazing. Petitioner asserted in response that the subject 240-acre tract is suitable for other kinds of animal husbandry encompassed by ORS 215.203(2)(a), including "[h]oney bees, raising poultry, mink farms, feedlots, and stabling or training equines[.]" Record 1053. The hearings officer generally rejected those assertions, noting the absence of any argument or evidence that such activities could be undertaken with the primary purpose of obtaining a profit in money. Record 187-88.

Before the board of commissioners, petitioner presented additional argument, supported by some evidence, regarding animal husbandry and equine facilities, arguing that to approve the application the county must adopt findings that the property cannot be used to raise poultry, goats, sheep, llamas, alpacas and similar animals, and that the property cannot be used for horse breeding, boarding, or training facilities. Record 684. Petitioner submitted evidence regarding an equine facility in the area, and a goat farm in North Carolina. In

response, intervenor submitted testimony from a farmer and equine facility owner that addressed the equine facility and some of the animal husbandry uses identified by petitioner. Records 702-06. The board of commissioners adopted findings addressing the farm uses cited by petitioner, and cited the testimony provided by intervenor's experts to conclude that intervenor had demonstrated that the subject property is not suitable for any of the farm uses identified by petitioner. Record 62-63.

On appeal, petitioner argues that the county misconstrued ORS 215.203(2)(a), OAR 660-033-0020(1)(a)(B), and LUBA's *Destiny Court* decision, in improperly shifting the burden of proof to petitioner to demonstrate that the property is suitable for the farm uses described in ORS 215.203(2)(a), rather than requiring the applicant to demonstrate, and the county to find, that the property is not suitable for those farm uses.

In *Destiny Court*, we agreed with the county that the applicant is not required to go through a "rote initial exercise of evaluating every possible type of activity that potentially falls within the broad definition of 'farm use,' and produce evidence regarding whether the subject property is suitable for all conceivable farm uses." LUBA No 2025-015 (slip op at 18). Instead, the applicant has the initial burden of evaluating farm uses that are commonly employed on similar EFU-zoned lands in the area or county. Intervenor's experts testified, and petitioner does not dispute, that the most prevalent farm uses in the area, as well as the county as a whole, are growing hay and raising livestock,

specifically cattle. Intervenor's application initially addressed these locally prevalent farm uses, and that is consistent with the approach described in *Destiny Court*.

The ORS 215.203(2)(a) definition of "farm use" includes raising other kinds of livestock than cattle (*e.g.*, goats, sheep), raising non-livestock kinds of animals (*e.g.*, poultry, fur-bearing animals), and generating products from animals (*e.g.*, eggs, fur, honey, milk). In *Destiny Court*, we stated that responsive analysis and findings may be necessary if other parties "identify specific farm uses that are common in the area or county on EFU-zoned lands, and provide some evidence or argument that the [subject] property is suitable for such uses, considering the listed factors [in OAR 660-033-0020(1)(a)(B)]." LUBA No 2025-015 (slip op at 19). We noted that the applicant retains the ultimate burden of proof and persuasion on these points. We remanded the decision in *Destiny Court* because the petitioner submitted both argument and evidence that the subject property was suitable for an equine facility, but the applicant did not respond with any countervailing argument or evidence, and the hearings officer adopted no findings on those points.

In the present case, petitioner argues that under *Destiny Court* all an opponent has to do to oblige the applicant to prove, and the county to find, that the subject property is *not* suitable for a specific farm use listed in ORS 215.203(2)(a) is to present an affirmative argument on that point, that is, assert that the subject property *is* suitable for any and all farm uses described in the

statute. Petitioner notes that in *Destiny Court* LUBA referred to "some evidence *or* argument," not some evidence *and* argument. Even if bare argument may be insufficient, petitioner contends that they presented evidence or cited evidence already in the record to support their claims with respect to some of the identified farm uses.

Intervenor responds, and we agree, that a bare assertion, without more, that a property is suitable for a type of farm use that is uncommon or locally less prevalent is an insufficient basis to obligate responsive evidence from the applicant and findings from the county regarding that farm use. With limited exceptions, petitioner's assertions regarding less prevalent types of farm uses (raising goats, etc.) were not supported by citation to any basis to conclude that the subject property is suitable for such uses. Petitioner submitted a county-wide census published by the US Department of Agriculture, which describes raising poultry and livestock of various kinds as widespread and valuable farm activities in the county. Record 687-88. Petitioner also submitted evidence regarding an equine facility on a property near Bend, and a goat farm in North Carolina. However, the question under OAR 660-033-0020(1)(a)(B) is the suitability of the subject property for listed farm uses. In our view, to warrant obliging the applicant to provide responsive evidence and the county to provide responsive findings regarding less common or less prevalent farm uses that fall within the statutory definition, a party cannot merely cite evidence that such ORS 215.203(2)(a) farm uses are conducted on other lands elsewhere in the county or

in the country. At a minimum, the party must also provide some basis to conclude that the subject property shares relevant characteristics with the other property, or some other similar basis to conclude that the subject property is suitable for the identified farm use.

Obligating a party opponent to provide some support for assertions regarding less common or prevalent farm uses does not, in our view, shift the burden of proof and persuasion from the applicant. That is because if the initial application addresses locally prevalent farm uses (in this case, hay-production and cattle grazing), such farm uses stand to some extent as proxies for less common or less prevalent farm uses. If lack of irrigation, soils and other factors makes the property unsuitable for growing hay, the most common or prevalent crop grown with the primary purpose of obtaining a profit in money, it is likely that the property is also unsuitable for less common types of crops. Similarly, if the property is unsuitable for raising cattle, the most common or prevalent form of livestock operation in the area, then it is likely that the property is also unsuitable for raising goats or other less common types of livestock. If that initial showing is made, then the applicant has met its initial burden of proof by establishing what is essentially a rebuttable presumption. A party opponent can rebut that presumption by identifying a farm use that was not evaluated and providing some basis to conclude that the subject property is suitable for that farm use, considering the factors listed in OAR 660-033-0020(1)(a)(B). One way to do so is to identify a similarly situated property on which the identified farm

use is, has been, or could be conducted. If that showing or a similar showing is made, the applicant can meet its ultimate burden of proof and persuasion only by providing evidence and argument that the property is not suitable for that identified farm use. But we repeat that the mere unsupported assertion that the property is suitable for an identified farm use listed in ORS 215.203(2)(a) is insufficient to overcome the initial presumption.

In the present case, the county's findings addressing the evidence and issues raised, including application of the burdens of proof and persuasion, appear to be consistent with the approach described in *Destiny Court*, as elaborated on in this opinion. We address below petitioner's arguments regarding specific farm uses.

A. Conjoined Grazing

OAR 660-033-0030(3) provides, in part, that "Goal 3 attaches no significance to the ownership of a lot or parcel when determining whether it is agricultural land. Nearby or adjacent land, regardless of ownership, shall be examined to the extent that a lot or parcel is * * * 'suitable for farm use[.]'" Under the rule, the county must generally consider whether the subject property could be grazed or farmed in conjunction with other nearby lands. Intervenor presented evidence, cited by the hearings officer, that conjoined use is not feasible with the few nearby lands that are in farm use. Record 197-98. On appeal, petitioner advances general assertions that conjoined grazing is possible, but without identifying or discussing any specific grazing operations on nearby lands

that the county failed to consider or consider fully. We agree with intervenor that petitioner's arguments regarding conjoined grazing does not establish that the county's findings are inadequate or not supported by substantial evidence.

B. Irrigation

Determining whether the subject tract is "agricultural land" required the county to consider "existing and future availability of water for farm irrigation purposes[.]" OAR 660-033-0020(1)(a)(B).

> "'Irrigated' means watered by an artificial or controlled means, such as sprinklers, furrows, ditches, or spreader dikes. An area or tract is 'irrigated' if it is currently watered, or has established rights to use water for irrigation, including such tracts that receive water for irrigation from a water or irrigation district or other provider. For the purposes of this division, an area or tract within a water or irrigation district that was once irrigated shall continue to be considered 'irrigated' even if the irrigation water was removed or transferred to another tract." OAR 660-033-0020(9).

As the proponent for removing the agricultural resource designation, intervenor has the burden of establishing "existing and future availability of water for farm irrigation purposes[,]" including whether the area is within an irrigation district, whether it was once irrigated, and future irrigation availability. OAR 660-033-0020(1)(a)(B), (9). The county's decision must "take into consideration" and make findings on those facts. As noted, OAR 660-033-0020(9) provides that "an area or tract within a water or irrigation district that was once irrigated shall continue to be considered 'irrigated' even if the irrigation water was removed or transferred to another tract." Thus the historical

availability of irrigation on the subject property is a potentially important consideration under this factor.

Initially, we are not cited to any evidence or findings regarding whether the tract or an area within the tract is within an irrigation district. Record 602 includes a map showing a Central Oregon Irrigation District (COID) canal across the road from the northeast corner of tax lot 100. Other canals are present in the area, but not adjoining or near the subject tract. Intervenor, as the applicant, bears the burden of demonstrating whether or not the subject property is within an irrigation district. Given the lack of evidence and findings on this point, for purposes of our analysis we will assume the property is within an irrigation district.

The next question under this factor is whether any part of the subject property has, or once had, irrigation rights. It is undisputed that the subject property currently lacks irrigation rights. With respect to historical irrigation, intervenor cited evidence from COID that tax lot 100, currently developed with the solar array, has never had irrigation rights. Record 698. However, we are cited to no similar evidence from COID or elsewhere regarding history of irrigation on the remaining tax lots within the tract.

Petitioner argues that it introduced aerial photographs from the 1940s to 1968 that, petitioner argued below, indicates that a roughly 30-acre portion of the tract south of Highway 20 was once irrigated. Record 10. Petitioner argued below that soils on this portion of the tract are mostly high-value soils if irrigated, and

that that history of irrigating high value soils is evidence that the "existing and future availability of water for farm irrigation purposes" factor points toward suitability for farm use, under OAR 660-033-0020(1)(a)(B). Petitioner also argued below that new irrigation rights could be purchased and transferred to the property.

The county adopted a finding rejecting both contentions:

> "As an initial matter, the [b]oard [of commissioners] finds that the subject property is not irrigated and has no ability to be irrigated presently. The images that [petitioner] submitted as evidence of past farming are not clear and do not prove that there was any farm activity engaged in on the property for the purpose of making a profit. Furthermore, the latest photograph was 50 years ago and there is no evidence of any farming activity on the property since that time. The [b]oard [of commissioners] finds persuasive the testimony of Eric Hagerty, a local farmer/rancher who stated that the cost to acquire water rights, if that is even possible, would be prohibitive. Further, his testimony on the ability to conduct dry grazing for any profit is credible." Record 63.

On appeal, we agree with petitioner that in the above-quoted finding the board of commissioners appeared to place on petitioner the obligation to demonstrate that portions of the property were once irrigated, and further that the farm uses supported by that irrigation were conducted with the purpose of making a profit. The initial and ultimate burden on both those points lies with the applicant. With the exception of tax lot 100, intervenor submitted no evidence whatsoever regarding the presence or historic use of irrigation on portions of the property. The soil report and other evidence submitted by intervenor did not

evaluate whether portions of the property were once irrigated and, if so, how such historic irrigation bears on either the "availability of water" factor or the ultimate conclusion that the subject property is not suitable for farm use, considering all relevant factors. The soils report and other evidence submitted by intervenor assumed only non-irrigated soil productivity.

Intervenor argues that its soil expert noted the difficulty of operating irrigation equipment on the property, given the predominant Gosney complex soils, and the fact that much of the 95-acres total of higher-quality Deskamp 36A and 36B soils on the tract are found in isolated pockets scattered among areas of rocky, poor quality soils, rather than concentrated together into a large field. Record 1259-60. Such evidence might support an ultimate conclusion that, even considering historic irrigation and the potential for irrigated farm uses on portions of the property, the tract as a whole is not suitable for farm use under OAR 660-033-0020(1)(a)(B). However, the county did not frame the inquiry in that way, or attempt to answer that question, under its erroneous view that petitioner, rather than the applicant, had the obligation to demonstrate whether historic irrigation was present on the property and, if so, whether the activities supported by that irrigation constituted "farm use." As explained, the initial and ultimate burden on those points lies with intervenor, if anyone. Because intervenor did not meet its initial burden to address the "availability of water" factor as it applies to historic water use, the alleged lack of clarity in the photographs that petitioner submitted

is not a basis to simply assume, as the county did, that no historic irrigation occurred or, if it did, the associated farm activities did not qualify as "farm use."

Intervenor also argues that petitioner does not dispute intervenor's expert's testimony that buying and transferring new irrigation rights to the property, and establishing a new irrigation system, would be prohibitively expensive. The expert cited an example of 100 acres of irrigation rights for sale for $2 million, and opined that developing an irrigation system for the subject tract would cost upwards of another $1 million. Intervenor is correct that petitioner does not dispute the evidence regarding the cost of acquiring and transferring new water rights, and installing new irrigation facilities. However, we note that such testimony is not relevant to consideration of historic irrigation for purposes of OAR 660-033-0020(9). The rule presumes that property once irrigated is still currently irrigated, even if in fact the irrigation water was removed or transferred to another tract and is no longer available.

In sum, we agree with petitioner that remand is necessary for the county to accept evidence regarding historic water use, and adopt more adequate findings on the "availability of water" factor. Based on such evidence and findings, the county will be in a better position to render an ultimate conclusion whether the property is suitable for farm use, considering all factors together.

C. Agrivoltaics

In a one-sentence argument, petitioner points out that it argued below that sheep or other small animals could be grazed beneath and beside the 62-acres of

solar panel arrays on tax lot 100, a practice known as "solar grazing" or "agrivoltaics." Petition for Review 20-21 (citing Record 794). We understand petitioner to argue that intervenor's expert erroneously assumed that no grazing was possible on tax lot 100.

We understand agrivoltaics to be a relatively new practice that is possible for some solar installations in some circumstances. Petitioner offered no support below for their assertion that agrivoltaics is possible on tax lot 100, and on appeal does not develop any such argument. Absent a developed argument on this point, petitioner does not provide a basis for reversal or remand. *Deschutes Development v. Deschutes Cty.*, 5 Or LUBA 218, 220 (1982) (LUBA declines to review insufficiently developed arguments).

D. Equine Facilities and Other Farm Uses

As noted, one farm use petitioner identified and supported by property-specific information concerns equine facilities. Intervenor submitted responsive evidence, which the county relied upon to conclude that the subject property is not suitable for an equine facility:

> "As to a horse facility, [intervenor] presented evidence from Mr. Hagerty, who also operates an equestrian facility, who explained that the subject property is not suitable for such use noting the prohibitive cost with constructing the required facilities, the need for irrigation for pasturing and the cost to obtain irrigation rights and then, install the necessary equipment. * * * Further, [intervenor] presented evidence that the equestrian facility used by [petitioner] in its arguments has better soil and ample irrigation, and yet still operates as a non-profit. The [b]oard [of commissioners] finds that farm use is defined as the current employment of land primarily for

> the purpose of making a profit from activities listed in ORS 215.203." Record 63.

Petitioner does not challenge the above-quoted finding or the testimony relied upon with respect to suitability for an equine facility.

Intervenor's expert addressed some of the other farm uses identified by petitioner, including raising poultry, honeybees, aquatic species and game birds. Petitioner does not dispute that the expert's conclusions on these farm uses constitute substantial evidence supporting the county's findings. Petitioner does argue, however, that the expert failed to address other farm uses petitioner identified, raising non-cattle livestock such as hogs, pigs, donkeys, mules, goats, sheep, ponies, burros, llamas and alpacas, and producing associated animal products such as goat milk. However, as noted, petitioner offered no property-specific argument or evidence that the subject property is suitable for raising such livestock. In addition, intervenor's farm expert arguably subsumed all types of livestock into their main conclusion that the property is not suitable for grazing the most locally prevalent form of livestock, cattle. Because the property lacks water, forage and arable soils for growing hay, the expert concluded that raising cattle on the property would require prohibitively expensive supplemental feeding and water transport, and thus would not be undertaken with the primary purpose of obtaining a profit in money. Petitioner does not offer any basis to conclude that non-cattle types of livestock could be raised on the property without similarly prohibitive inputs of feed and water. Petitioner argues only that intervenor's expert and the county's findings fail to address whether the property

is suitable for raising non-cattle types of livestock and animal products that petitioner identified. However, as explained in *Destiny Court*, and elaborated upon in this decision, in the absence of property-specific examples of less common or prevalent farm uses, intervenor and the county were not obligated to generate responsive evidence and findings on this point, in order to conclude that the subject property is not suitable for farm use under OAR 660-033-0020(1)(a)(B).

The second assignment of error is sustained, in part.

THIRD ASSIGNMENT OF ERROR

Statewide Planning Goal 14 (Urbanization) is to

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

The Oregon Supreme Court has interpreted Goal 14 to prohibit urban use of rural land. *1000 Friends of Oregon v. LCDC* (*Curry Co.*), 301 Or 447, 742 P2d 268 (1986) (*Curry County*). Under *Curry County*, in redesignating rural land from plan designations implementing the resource goals, counties must evaluate whether development allowed under the new designation and associated zoning would allow for the urban use of rural land.[6] That evaluation requires

[6] DLCD has defined "rural land" as follows:

"Land outside urban growth boundaries that is:

consideration of a number of factors described in *Curry County* and its progeny. With respect to PAPAs involving residential use of rural land, the relevant factors include the density of development allowed under the new plan designation and zone, the types and levels of services to be provided, and proximity to urban growth boundaries. 301 Or at 504-05. Under *Curry County* and its progeny, residential density at one dwelling unit per 10 or more acres is generally presumed to be rural. 301 Or at 504. A minimum density standard of 10 acres per unit is thus something of a "safe harbor" for purposes of Goal 14. Residential development at higher densities may be either rural or urban, depending on application of relevant factors and applicable administrative rules.[7] The relevant

---

> "(a) Non-urban agricultural, forest or open space,
>
> "(b) Suitable for sparse settlement, small farms or acreage homesites with no or minimal public services, and not suitable, necessary or intended for urban use, or
>
> "(c) In an unincorporated community." Oregon Statewide Planning Goals and Guidelines 104 (2019).

[7] In 2000, the Land Conservation and Development Commission (LCDC) adopted OAR 660-004-0040, which specifies how Goal 14 applies to rural lands in acknowledged exception areas planned for rural residential uses. OAR 660-004-0040 generally prohibits creation of residential parcels within exception areas that are less than two acres in size, effectively deeming development at such densities a clear "urban" use. OAR 660-004-0040(7). Subject to the rule's requirements, the rule generally allows residential development within exception areas at a density of at least two acres per dwelling unit without taking an exception to Goal 14. However, OAR 660-004-0040 expressly applies only to residential development of exception areas, and thus does not apply or govern

factors must be considered together, not in isolation. *Oregon Shores Conservation Coalition v. Coos County*, 55 Or LUBA 545, 556, *aff'd*, 219 Or App 429, 182 P3d 325 (2008). No one factor is determinative.

In *Destiny Court*, we rejected arguments that the acknowledged status of the RREA plan designation and the MUA-10 zone means that, as a matter of law, the designation and zone allow only rural uses, and therefore no evaluation of consistency with Goal 14 is necessary. We held that

> "all comprehensive plan amendments are potentially subject to review for compliance with applicable statewide planning goals, even if the amendment only applies an acknowledged plan designation and zoning district to a specific property. The acknowledged status of the plan provisions and zoning code applied may simplify any required goal analysis, and in limited cases render it redundant. However, the county had not established any basis in the present case to completely eliminate the contextual analysis required by *Curry County*[.]" *Destiny Court*, LUBA No 2025-015 (slip op at 13).

In the present case, the county initially found that application of the RREA plan designation and the MUA-10 zone to the subject property requires no evaluation of consistency with Goal 14, because when the plan designation and zone were legislatively adopted the adopting ordinances were acknowledged to comply with Goal 14. In the alternative, the county adopted findings addressing

---

zoning or development of non-resource lands, for which no exception to a resource goal is taken. *See Pohaku Farms*, LUBA No 2024-080 (explaining the history of OAR 660-004-0040 and its application) (slip op at 23-32). The rule is thus of limited utility in the present case, which does not involve an exception area.

consistency with Goal 14 and applying the *Curry County* factors concerning residential uses.

On appeal, petitioner challenges both sets of alternative findings. Intervenor does not attempt to defend the first alternative, that the acknowledged status of the RREA designation and MUA-10 zone means that as a matter of law no Goal 14 analysis is required. For the reasons stated in *Destiny Court*, we agree with petitioner that that legal conclusion is erroneous, and that the county must demonstrate that the proposed redesignation and rezoning is consistent with Goal 14, applying the relevant *Curry County* factors. We turn then to the parties' arguments regarding the county's application of the three residential *Curry County* factors: density, extension of urban services, and proximity to a UGB.

A. Density

With respect to density, the county concluded that even under the maximum five-acre "equivalent density" permitted within cluster development and PUD under the MUA-10 zone, pursuant to DCC 18.116.400, the resulting density would not be "urban" in nature.[8]

---

[8] The county's findings regarding the density factor state:

> "Allowing MUA-10 uses on the subject property will not lead to urban density. The minimum parcel size in the MUA-10 zone is 10 acres. The current zoning code allows smaller parcels for cluster developments and planned developments. In *Central Oregon LandWatch v. Deschutes County (Destiny Court)*, LUBA No. 2025-015, LUBA remanded a plan amendment and rezone approval for

On appeal, petitioner notes that pursuant to DCC 18.128.210(D)(3) a PUD could be developed on the subject property with no minimum residential lot or parcel size, limited only by an "equivalent density" of five acres per dwelling unit, which takes into account acreage used for open space and common areas. DCC 18.128.210(D)(3) provides that the "minimum lot area" otherwise applying

---

> the [b]oard [of commissioners] to address a perceived inconsistency between the DCCP that limits parcels size in the MUA-10 zone to 10 acres and the zoning code that allows smaller parcels under the cluster and planned development provisions. The [b]oard [of commissioners] is currently in the process of updating the DCCP to address the remand; however, in the event that cluster and planned development remain in the code and allow parcels less than 10 acres with corresponding open space, such development does not result in urban density.
>
> "The smallest parcel in the MUA-10 zone, even using a cluster development application and for property within a mile of a UGB, is five acres or the equivalent density. The Board notes that in *Curry County*, 1000 Friends asserted that densities greater than one dwelling per three acres are urban. That argument did not account for provisions requiring large undeveloped open space either. The [b]oard [of commissioners] finds that five-acre parcels along with 65 [percent] undeveloped open space are not urban density. By way of contrast, the lowest density allowed in the City of Bend is 1.1 units per acre in the [Low Density Residential (RL)] zone. There is a significant difference between one dwelling per acre and one dwelling per five acres. Moreover, the allowance of 65 [percent] of otherwise unrestricted and unconstrained property to be left open and undeveloped is inconsistent with development at urban densities. Even under the cluster development and planned development provisions, while smaller parcels may be approved, the overall density remains consistent with the rural character of the area." Record 67.

to individual structures in the zone in which a PUD is proposed "do not apply within a planned development." Instead, "[a]n equivalent overall density factor may be utilized in lieu of the appropriate minimum lot area."

Petitioner argues that application of a county zone with no minimum residential lot size is inconsistent with Goal 14. *Wood v. Crook County*, 49 Or LUBA 682, 693 (2005) (remanding the application of zone that allows planned unit development without a minimum lot size and requiring the local government to either condition the zone to ensure consistency with Goal 14 or take an exception to the goal); *1000 Friends of Oregon v. Josephine County*, LUBA No 2021-116 (June 2, 2022) (similar conclusion and disposition) (slip op at 25). We understand petitioner to argue that, for purposes of evaluating density for purposes of Goal 14, under zoning that allows cluster development or PUD, it is the *actual* lot size per dwelling that matters, not the "equivalent overall density" once open space and common areas are averaged in.

DCC 18.128.210(B)(7) requires that in a PUD at least 65 percent of the lot area be maintained as open space. Petitioner appears to be correct that under DCC 18.128.210 the remainder of the PUD could be developed with residential lots of any size, potentially less than two acres for each dwelling unit.

Intervenor responds that petitioner's speculations about potential actual lot size in a potential PUD are very interesting, but academic, because as discussed under the first assignment of error, intervenor did not propose cluster development or PUD and the county did not approve such development.

Intervenor repeats its arguments that it is premature to consider what kind of development, at what density, intervenor or a future applicant will propose. Further, intervenor repeats its argument that under *Destiny Court* and *Pohaku Farms* an applicant is unlikely to gain approval for cluster development or PUD at sub-10-acre minimums, but instead would likely be limited to approval of a straightforward subdivision within the MUA-10 zone, where each lot is a minimum 10 acres in size.

However, as previously noted, the county expressly assumed that the subject property would be developed with cluster development and PUD at the maximum potential density allowed under the applicable code provisions. For purposes of evaluating whether the PAPA is consistent with Goal 14 under *Curry County*, that assumption is appropriate. The applicant did not propose, or the county impose, any conditions or restrictions that would limit the density or intensity of development. Accordingly, we disagree with intervenor that it is premature or advisory to reach the merits of petitioner's arguments regarding actual lot size allowed under potential cluster development or PUD of the property.

On the merits, the question of whether evaluation of the density factor under *Curry County* focuses on actual residential lot size per dwelling, or can be based on "equivalent overall density" of the development as a whole – taking into account and averaging acreage devoted to open space and common areas – appears to be a novel issue. We are not aware of any caselaw, statutes, or

administrative rules that address that issue, with the possible exception of OAR 660-004-0040, which specifies how Goal 14 applies to rural lands in acknowledged resource-goal exception areas planned for rural residential uses. In relevant part, that rule addresses minimal parcel sizes and circumstances under which cluster development and PUD can be approved within exception areas without taking an exception to Goal 14.[9] While OAR 660-004-0040 expressly

---

[9] OAR 660-004-0040(8)(e) provides, in relevant part:

> "A local government may authorize a planned unit development (PUD), specify the size of lots or parcels by averaging density across a parent parcel, or allow clustering of new single-family dwellings in a rural residential area only if all conditions set forth in paragraphs (A) through (H) are met:
>
> "(A) The number of new single-family dwellings to be clustered or developed as a PUD does not exceed 10;
>
> "(B) The number of new lots or parcels to be created for new single-family dwellings does not exceed 10;
>
> "(C) None of the new lots or parcels will be smaller than two acres;
>
> "(D) The development is not to be served by a new community sewer system;
>
> "(E) The development is not to be served by any new extension of a sewer system from within an urban growth boundary or from within an unincorporated community;
>
> "(F) The overall density of the development will not exceed one single-family dwelling for each unit of acreage specified in

applies only to exception areas, and does not apply to non-resource lands, in our view how LCDC chose to treat density within cluster development and PUD for purposes of ensuring consistency with Goal 14 is instructive in the present circumstances. We note that while averaging or overall density plays a role under the rule, OAR 660-004-0040(8)(e)(C) specifies that "[n]one of the new lots or parcels will be smaller than two acres." That is clearly a reference to the actual or individual lot size, not averaging or overall density that takes into account open space or common areas. Under the rule, even where use of average or overall density is permitted for some purposes, the rule is careful to specify limits on actual or individual residential lot sizes, regardless of how much open space is provided and actual residential lot size density is thereby diluted. LCDC apparently deemed such limits necessary to ensure consistency with Goal 14. An otherwise indisputably urban use cannot be recharacterized to a rural use simply by surrounding it with open space to dilute the "average" density. Accordingly, we agree with petitioner that the appropriate unit of analysis for purposes of applying the density factor under *Curry County*, to evaluate zoning of non-resource land that would allow cluster development or PUD, is not the overall or average density taking open or common space into account, but the highest density lot area allowed for residential lots under the county's cluster development or PUD regulations.

---

the local government's land use regulations on October 4, 2000 as the minimum lot size for the area[.]"

With respect to cluster development, DCC 18.128.200(B)(2) imposes a two-acre minimum lot area. As noted, the PUD provisions at DCC 18.128.210(D) exempt planned development from any minimum lot area requirements for individual dwellings, but require a minimum lot area of 40 acres for the planned development and the equivalent overall density cannot exceed that allowed in the base zone.

The county's findings addressing the density factor under *Curry County* evaluated only the overall or equivalent density of five acres per dwelling unit within potential cluster development or PUD located within one mile of a UGB, and concluded that such overall density is rural and not urban. That evaluation is not based on the actual or individual lot sizes allowed within cluster development or PUD. We agree with petitioner that the findings on this point are inadequate, and that remand is necessary for the county to adopt more adequate findings that evaluate the actual or individual lot sizes allowed under the DCC.

B. Types and Levels of Services

A factor under *Curry County* is what types and levels of services the allowed uses will require, including public facilities or services. The county concluded that residential development of the subject property would not require the extension of any public facilities or services to the property.[10] On appeal,

---

[10] The county's findings state:

petitioner does not dispute that conclusion, but argues that the county failed to address issues raised below regarding whether, given the close proximity to the City of Bend UGB, the future residents of any development on the subject property would be reliant on public facilities and services within the UGB, for schools, libraries, healthcare, etc., and hence the development would function as a de facto urban neighborhood rather than a rural residential development. Petitioner contends that Goal 14 is concerned not only with the extension of urban services and facilities to rural lands, but also with whether development on rural land is functionally reliant on services and facilities within nearby urban areas. According to petitioner, relatively dense cluster or planned unit development located within one-quarter mile of the Bend UGB will be inextricably connected to the public facilities and services available within the UGB.

Intervenor responds, and we agree, that *Curry County* does not require the county to consider the extent to which future residents of the property will travel

---

> "The [b]oard [of commissioners] rejects the notion that rezoning the subject parcel to MUA-10 will lead to the extension of urban facilities to the area. The City of Bend has no obligation to extend public services and in some cases is prohibited from providing extraterritorial service to rural lands. Development will be served primarily by private water and onsite septic systems. Electricity already extends onto the property as evidenced by the approved plat from 1990. For fire and public safety, the area is served by the Bend Rural Fire District and Deschutes County Sheriff's office, both of which serve rural areas. Further, that coverage will remain unchanged under any county zoning." Record 68.

to urban areas to take advantage of public services and facilities such as schools, libraries and medical facilities. By definition, rural lands do not have much, if any, public services and facilities.[11] This *Curry County* factor is not concerned with the practical reality that residents of most rural areas must travel (sometimes a considerable distance) to the nearest urban area to obtain public services such as schools, libraries and hospitals, because such public services are not usually available in rural areas.

Petitioner's arguments regarding the functional relationship between the UGB and a proximate cluster or planned unit development have more traction under the next factor considered below, but in our view those arguments do not demonstrate any error or insufficiency with respect to the county's consideration with respect to the "services and facilities" factor.

C. Effectiveness of the Bend UGB

In *Curry County*, the Court noted that Goal 14 has long been understood to be concerned with intensification of rural lands near UGBs that could adversely impact or undermine the effectiveness of the UGB. 301 Or 474 n 19 (citing *1000 Friends of Oregon v. Clackamas Cty.*, 3 Or LUBA 316, 327 (1981); *Medford v Jackson Cty.*, 2 Or LUBA 387, 391 (1981), *aff'd in part and rem'd in*

---

[11] As the court noted in *Curry County*, the term "rural land" is defined for purposes of the statewide planning goals to include lands "with no or hardly any public services." 301 Or at 456; *see also* Oregon Statewide Planning Goals and Guidelines 104 (2019).

part, 57 Or App 155, 643 P2d 1353 (1982); *Metropolitan Serv. Dist. v. Clackamas Cty.*, 2 Or LUBA 300, 307-08 (1981); *Sandy v. Clackamas Cty.*, 3 LCDC 139, 148-50 (1979)).

In *DLCD v. Klamath County*, 42 Or LUBA 368 (2002), the county rezoned a 680-acre tract, located 2.5 miles from the City of Klamath Falls' UGB, to allow subdivision into five-acre residential lots. After two remands to consider compliance with Goal 14, we ultimately affirmed the county's conclusion that, given the 2.5-mile distance between the subject property and the UGB, evidence that persons likely to reside in the proposed development would not otherwise reside in the UGB, and the size difference between the proposed five-acre lots and the .16-acre lots allowed within the UGB, among other factors, the proposed rezoning would not undermine the effectiveness of the UGB. *Id.* at 375-76.

In the present case, petitioner argued below that rezoning the subject parcel to MUA-10 would undermine the effectiveness of the Bend's UGB, given the one-quarter-mile proximity, because it would attract residents who seek proximity to the urban area and who would otherwise reside in the UGB. The county rejected that argument:

> "The [b]oard [of commissioners] does not agree that rezoning the subject property to MUA-10 will be a magnet pulling rural residents into the urban area and urban residents to the rural area. That position does not reflect reality. Currently, there are few, if any, resources available to rural residents that are located in rural areas. The schools that rural residents around Bend attend are in the City. The medical services and major grocery stores are in urban areas. Rural residents living close to Bend already come in large numbers

to urban areas for goods and services." Record 68.

On appeal, petitioner argues that the county's findings reinforce its argument, that residents seeking proximity to urban amenities will be drawn to the subject property precisely *because* of its close proximity to the urban area and its employment opportunities, services, and amenities.

Intervenor responds that the county correctly observed that all rural residents rely to some extent on urban services and amenities, such as schools, libraries, medical facilities, large grocery stores, etc., because such services and amenities are usually not available in rural areas. While that general observation is true, we agree with petitioner that it does not necessarily answer the question of whether rezoning a particular property to allow relatively high-density cluster development or PUD could undermine the effectiveness of a UGB located only one-quarter mile away. In our view, if, due to proximity, density, and other relevant factors, residential development of rural land could have a similar functional relationship to an urban area as would a residential development within the UGB, that is, function essentially as a suburban neighborhood, attracting residents drawn to proximity to the urban area, then rezoning rural land to allow such development would undermine the effectiveness of the UGB, and require a Goal 14 exception.

A comparison with the circumstances in *DLCD v. Klamath County* is instructive. There, the applicable zoning allowed five-acre parcels, while the nearby UGB allowed lots as large as .16-acre in size. Thus, the proposed zoning

imposed a minimum lot size roughly 30 times larger than the largest lots allowed in the UGB. Here, the MUA-10 zone potentially allows two-acre parcels within a cluster development, and imposes no minimum lot size on lots within a PUD, whereas as the county's findings note the largest lot allowed in the City of Bend UGB is 1.1-acres per dwelling unit. At least theoretically, the county could approve a PUD on the subject property with residential lots that are comparable in size to those allowed on urban or urbanizable lands within the UGB.

Further, in the present case the subject property is only one-quarter mile from the UGB, and is even closer to a city park. In *DLCD v. Klamath County* the subject property was located in a rural area 2.5 miles from the UGB, ten times the distance in the present case.

Finally, in *DLCD v. Klamath County*, the record included evidence that persons likely to purchase lots in the proposed development differed from those who would purchase lots within the UGB, and would not otherwise reside in the UGB. There is no similar evidence in the present case. The county's findings do not attempt to explain how persons attracted to relatively high-density cluster development or PUD on the subject property would materially differ from those attracted to comparably sized lots allowed within some areas of the UGB.

D. Conclusion

In sum, we agree with petitioner that the evidence and findings addressing the density factor and the proximity to the UGB factor do not support the county's conclusion that the proposed redesignation and zoning is consistent with, and

require no exception to, Goal 14. Remand is necessary for the county to adopt more adequate findings addressing these two factors, supported by substantial evidence, and then reach a new conclusion regarding consistency with Goal 14, based on consideration of all relevant factors.

The third assignment of error is sustained, in part.

FOURTH ASSIGNMENT OF ERROR

As noted, portions of the subject property located within one-quarter mile of Highway 20 are subject to the LM overlay zone, which implements the county's program to achieve Goal 5 with respect to scenic views from the highway. The county's program to achieve Goal 5 with respect to scenic views was developed in 1992, based on an analysis of the economic, social, environmental and energy (ESEE) consequences of allowing, limiting, or prohibiting conflicting uses. The existing program, implemented in the LM overlay zone, represents the county's original choice to limit and regulate the identified conflicting uses to some extent.

Under OAR 660-023-0250(3), a local government adopting a PAPA is not required to address Goal 5 unless the PAPA "affects" a Goal 5 resource. One way a PAPA could affect a Goal 5 resource is if the PAPA "allows new uses that could be conflicting uses with a particular significant Goal 5 resource[.]" OAR 660-0023-0250(3)(b). To demonstrate consistency with Goal 5, intervenor submitted an analysis of the ESEE consequences of rezoning the property from EFU to MUA-10, with respect to the new or different uses allowed in the MUA-10 zone.

Intervenor's ESEE analysis concluded that some of the new uses allowed in the MUA-10 zone could conflict with the scenic resource, but ultimately recommended that all conflicting uses be "allowed in a limited manner after application of all applicable development standards in Chapter DCC 18.032 and the LM Overlay." Record 1074. Essentially, the ESEE analysis concluded that no modification was needed to the existing program to achieve the goal.

The hearings officer found that the ESEE analysis sufficiently addressed Goal 5 requirements. Record 120. Petitioner challenged the sufficiency of the ESEE analysis before the board of commissioners, arguing that it omitted some uses, but the board of commissioners rejected those challenges and found that "the applicant's ESEE analysis satisfied the applicable administrative rules and County code." Record 64.

A. Omitted Uses

On appeal, petitioner repeats its argument that the ESEE analysis did not address all of the uses conditionally allowed in the MUA-10 zone, but omitted a few uses. However, with one exception, petitioner does not cite or discuss any specific uses allowed in the MUA-10 that were omitted from the analysis. Absent a more developed argument, petitioner's general assertion that the ESEE analysis is incomplete does not provide a basis for reversal or remand.

The only specific use cited is personal use landing strips for airplanes and helicopter pads, a land use category that is allowed in both the MUA-10 and EFU zones, and thus would not seem to constitute a "new" conflicting use. However,

petitioner notes that the two zones have different setback and usage requirements. We understand petitioner to argue that the different setback and usage requirements mean that a landing strip in a MUA-10 zone and in the EFU zone are different uses, for purposes of conflicting use analysis under OAR 660-023-0040(4). However, petitioner cites no basis under the rule or elsewhere to require the ESEE analysis to treat the same use category as a different use, simply because as instantiated in different zones the use is subject to different setback and usage requirements.

B. Adoption of the ESEE Analysis

OAR 660-023-0040(4) requires that "[t]he analyses of the ESEE consequences shall be adopted either as part of the plan or as a land use regulation." Citing the rule, petitioner argues that it is unclear whether the board of commissioners formally adopted the ESEE analysis as part of the comprehensive plan. Intervenor responds that no issue was raised during the proceedings below regarding OAR 660-023-0040(4) or its adoption requirement, and thus this issue is waived, pursuant to ORS 197.797(1).[12] Petitioner replies

---

[12] ORS 197.797(1) provides:

> "An issue which may be the basis for an appeal to [LUBA] shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the local government. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the governing body, planning

that it could not have anticipated that the county would fail to follow the rule and adopt the ESEE analysis as part of the comprehensive plan or as a land use regulation.

Petitioner cites *Hildenbrand v. City of Adair Village*, 217 Or App 623, 629-30 (2008), for the proposition that a party is not required to "anticipate and identify" to a decision-maker "all the ways that its future decision could be wrong." *Hildenbrand* concerns preservation for judicial review under the Oregon Rules of Appellate Procedure (ORAP), and it is not clear why petitioner believes preservation doctrines under the ORAP should control or even be persuasive reasoning in construing the scope of waiver under ORS 197.797(1). Nonetheless, we understand petitioner to argue that a similar "could not anticipate" doctrine should apply under ORS 197.797(1).

Hildenbrand involved an appeal of a LUBA decision where the petitioner assigned error to the local government's calculation of "need" for an expansion of its UGB, arguing that the calculation was not supported by substantial evidence. LUBA rejected that assignment of error, citing a comprehensive plan policy that supported the local government's need calculation. On appeal, the court held for purposes of the ORAP that petitioner's arguments to LUBA preserved the right to challenge LUBA's rejection of its assignment of error, stating:

> commission, hearings body or hearings officer, and the parties an adequate opportunity to respond to each issue."

> "If a party sufficiently raises an issue before the agency – here, the assertion that the local governments' decision regarding the amount of land to be added is not supported by substantial evidence in the record – the party can challenge the agency decision rejecting that assertion on whatever basis is articulated by the agency order." *Id.* at 630.

Thus, under *Hildenbrand* the petitioner must first raise an issue regarding an approval criterion before the decision maker, sufficient to require a response. On appeal, the petitioner may then challenge the basis on which the decision maker resolves the issue, even if that basis was unanticipated or not specifically challenged below. We assume for purposes of this opinion that that framework can be generalized to ORS 197.797(1) and applied in the present case.

Intervenor acknowledges that petitioner and others argued below that an updated ESEE analysis was required under OAR 660-023-0040. Prompted by those arguments, intervenor prepared an ESEE analysis and submitted it to the hearings officer, who found that it complied with all requirements of OAR 660-023-0040. The hearings officer cited OAR 660-023-0040(4) and noted that it "directs that the County adopt the ESEE analysis." Record 119. On appeal to the board of commissioners, petitioner challenged the adequacy of the ESEE analysis in certain ways, but did not specifically raise any issues regarding OAR 660-023-0040(4)'s adoption requirement. Intervenor argues that petitioner's failure to raise issues below regarding OAR 660-023-0040(4)'s adoption requirement means that all issues regarding the adoption requirement are waived on appeal to LUBA. Intervenor argues that petitioner's challenges to the adequacy of the

ESEE analysis is a "qualitatively different" issue than the issue of adopting the ESEE analysis into the comprehensive plan or land use regulations. *Willamette Oaks, LLC v. City of Eugene*, 295 Or App 757, 766, 437 P3d 314, *rev den*, 365 Or 192 (2019).

In our view, waiver under ORS 197.797(1) applies differently when the regulation at issue, like the OAR 660-023-0040(4) adoption requirement, concerns not an approval criterion but rather a mandatory action that the local government must undertake in making or issuing the land use decision. In this sense, the OAR 660-023-0040(4) adoption requirement is similar to the requirement that the county adopt the reasons for a reasons exception into the comprehensive plan. OAR 660-004-0015(1) ("A local government approving a proposed exception shall adopt, as part of its comprehensive plan, findings of fact and a statement of reasons that demonstrate that the standards for an exception have been met."); *see also* OAR 660-004-0020(1) ("If a jurisdiction determines there are reasons consistent with OAR 660-0040-0022 to use resource lands for uses not allowed by the applicable Goal or to allow public facilities or services not allowed by the applicable Goal, the justification shall be set forth in the comprehensive plan as an exception."). Those rules require that the local government embody its policy reasoning in the comprehensive plan, to provide a roadmap for future applicants and local government decision makers. The OAR 660-023-0040(4) adoption requirement serves a similar purpose. Both processes are mandatory actions unrelated to an approval criteria, that ripen as a potential

"issue" for purposes of appeal to LUBA only at the time the decision is made or issued.

The OAR 660-023-0040(4) adoption requirement is also somewhat similar to the requirement in ORS 197.615(1) that the local government provide notice of a PAPA decision to DLCD.[13] Generally, a party to a PAPA proceeding can, on appeal to LUBA, assign error to a local government's failure to comply with the notice requirements at ORS 197.615(1). *See, e.g., Oregon City Leasing, Inc. v. Columbia County*, 121 Or App 173, 854 P2d 495 (1993) (violation of the ORS 197.615(1) notice requirement is a substantive error, rather than a procedural error that requires a showing of prejudice to the petitioner). Noncompliance with the notice requirement of ORS 197.615 is not infrequently assigned as error in LUBA appeals, yet we are not aware of any case where waiver has been asserted against such assignments. That presumably reflects the nature of the ORS 197.615(1) notice requirement, which functions not as an approval criterion, but rather a post-decision mandatory action. The OAR 660-023-0040(4) adoption requirement differs somewhat in that the required action is not necessarily post-decision, but typically would occur as part of the decision, as discussed below.

---

[13] ORS 197.615(1) provides:

> "When a local government adopts a proposed change to an acknowledged comprehensive plan or a land use regulation, the local government shall submit the decision to the Director of the [DLCD] within 20 days after making the decision."

Nonetheless, both requirements are mandatory actions regarding the processing of PAPA decisions that the parties reasonably expect the local government will follow.

Accordingly, we agree with petitioner that ORS 197.797(1) does not require parties to anticipate that the local government will fail to comply with such mandatory actions, and proactively "raise issues" regarding those future actions before the close of the final evidentiary hearing.

Even if ORS 197.797(1) requires raising issues below regarding compliance with mandatory actions such as the OAR 660-023-0040(4) adoption requirement, we conclude that the issue was in fact sufficiently raised below. Petitioner argued below, successfully, that an updated ESEE analysis under OAR 660-023-0040 was required, implicitly arguing that all requirements of the rule must be met. The hearings officer apparently recognized that implicit argument, and expressly recommended that the commissioners adopt the ESEE analysis, as required by OAR 660-023-0040(4). Given that recommendation, no party should have been surprised that, if the board of commissioners chose to rely upon the ESEE analysis to establish consistency with Goal 5, the OAR 660-023-0040(4) adoption requirement must be complied with. *See Boldt v. Clackamas County*, 21 Or LUBA 40, 46, *aff'd*, 107 Or App 619, 813 P2d 1078 (1991) (the "raise it or waive it" principle does not limit the parties on appeal to the exact same arguments made below, only that the issue be raised below with sufficient

specificity so as to prevent "unfair surprise" on appeal). Accordingly, we reject intervenor's waiver argument.

Turning to the merits, OAR 660-023-0040(4) requires, again, that "[t]he analyses of the ESEE consequences shall be adopted either as part of the plan or as a land use regulation." Petitioner argues that OAR 660-023-0040(4) plainly requires the county to "adopt" the analysis in some form into the comprehensive plan or as a land use regulation. Petitioner suggests that the required "adoption" must be accomplished by amending the text of the county's Goal 5 program with respect to scenic views to include, or at least reference, the ESEE analysis.

Intervenor responds that OAR 660-023-0040(4) does not require that "adoption" take any specific form, and that the board of commissioners sufficiently complied with the rule by expressly adopting the hearings officer's findings and recommendations, which included the recommendation to "adopt" the ESEE analysis. Record 38. We understand intervenor to argue that the requirement to "adopt" the analysis into the comprehensive plan or land use regulation can be accomplished without amending the text of the relevant plan or regulatory provisions, as long as the board of commissioners "adopt" the analysis in the sense of adopting findings concluding that the analysis establishes that the PAPA is consistent with Goal 5.

OAR 660-023-0040(4), like the rest of the rule, sets out the process for developing a program to achieve Goal 5 with respect to certain resources, based on an initial ESEE analysis. The county initially adopted its Goal 5 program with

respect to scenic resources, supported by a comprehensive ESEE analysis, in 1992. Some or all of that 1992 ESEE analysis was adopted into the DCCP as an appendix or supplement, and the program to achieve the goal is represented by the LM overlay zone. Where a PAPA allows new uses that could conflict with an identified Goal 5 resource, OAR 660-023-0250(3) requires that the county demonstrate that the PAPA is consistent with Goal 5, and that demonstration typically, if not invariably, will be carried out by adopting an ESEE analysis focused on the new conflicting uses allowed by the PAPA, pursuant to the process set out in OAR 660-023-0040.

We generally agree with intervenor that such a narrow-focus ESEE analysis need not be "adopted" in the exact same manner and form as the county's initial comprehensive ESEE analysis. But we also agree with petitioner that OAR 660-023-0040(4) plainly requires that the ESEE analysis be adopted as needed into the comprehensive plan or as a land use regulation. The exact form and manner of that adoption may vary, depending on the ESEE analysis and other relevant variables. An ESEE analysis concluding that some new conflicting uses must be fully allowed, or must be prohibited, or that requires changes to the existing Goal 5 program, might be embodied in the county's plan and regulations very differently than an ESEE analysis concluding that new potentially conflicting uses do not, in fact, conflict with the resource, or that the existing program to achieve the goal is sufficient, without changes, to address conflicts from new uses. Regardless, we agree with petitioner that remand is necessary

under this assignment of error for the county to grapple with these questions in the first instance, and decide what form and manner of "adoption" is required by OAR 660-023-0040(4) in the present case.

The fourth assignment of error is sustained, in part.

The county's decision is remanded.

BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: December 2, 2026

SUBJECT: First reading of Ordinance No. 2026-032 approving a Comprehensive Plan Amendment and Zone Change to Rural Industrial for four properties at Tumalo Road and 85th Street

RECOMMENDED MOTION:
Move approval of first reading of Ordinance No. 2026-032 by title only.

BACKGROUND AND POLICY IMPLICATIONS:
The applicant proposes to change the Comprehensive Plan designation of four properties from Agriculture to Rural Industrial, and to change the zoning designation from Flood Plain and Multiple Use Agricultural to Rural Industrial. The properties are located at the intersection of Tumalo Road and 85th Street, north of Bend. The properties went through a process with FEMA in 2015 to revise the special flood hazard area on the flood insurance maps; this Zone Change will remove the FP zoning designation to reflect that the properties were recognized by FEMA as being outside of the special flood hazard area.

A public hearing was held before a Hearings Officer on September 14, 2026, and on November 10, 2026, the Hearings Officer issued a decision approving this application. The Hearings Officer's decision was not appealed and at a work session on November 16, 2026, the Board voted to adopt the Hearings Officer's decision. Staff has prepared an adopting ordinance for the Board's consideration.

The full record can be viewed through the following link:
https://www.deschutescounty.gov/1624/247-26-000431-PA-432-ZC-Fagen-Plan-Amend

BUDGET IMPACTS:
None.

ATTENDANCE:
Audrey Stuart, Associate Planner
Anthony Raguine, Principal Planner
Will Groves, Planning Manager

REVIEWED_____

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code Title 23, the Deschutes County Comprehensive Plan, to Change the Comprehensive Plan Map Designation for Certain Property From Rural Residential Exception Area to Rural Industrial, and Amending Deschutes County Code Title 18, the Deschutes County Zoning Map, to Change the Zone Designation for Certain Property From Multiple Use Agricultural and Flood Plain to Rural Industrial.	* * * * * * *	ORDINANCE NO. 2026-032

WHEREAS, Harry and Beverly Fagen ("Applicant"), applied for changes to both the Deschutes County Comprehensive Plan Map (247-26-000431-PA) and the Deschutes County Zoning Map (247-26-000432-ZC), to change the Comprehensive Plan designation of four properties from Rural Residential Exception Area ("RREA") to Rural Industrial ("RI"), and a corresponding Zone Change from Flood Plain ("FP") and Multiple Use Agricultural ("MUA-10") to Rural Industrial ("RI"); and

WHEREAS, after notice was given in accordance with applicable law, a public hearing was held on September 14, 2026, before the Deschutes County Hearings Officer and, on November 10, 2026, the Hearings Officer approved the Comprehensive Plan Amendment and Zone Change;

WHEREAS, pursuant to DCC 22.28.050, on November 16, 2026, the Board of County Commissioners ("Board") voted not to initiate review of the subject Comprehensive Plan Amendment and Zone Change application;

WHEREAS, no appeal of the Hearings Officer's decision was filed; and

WHEREAS, pursuant to DCC 22.28.030(B), the Board shall adopt the Hearings Officer's decision unless an appeal is filed or review is initiated by the Board; now, therefore,

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

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

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

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

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

Section 5. FINDINGS. The Board adopts as its findings in support of this Ordinance the Decision of the Hearings Officer as set forth in Exhibit "F" and incorporated by reference herein.

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

Dated this _____ of _____, 2026

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

_____
PHIL CHANG, Chair

_____
ANTHONY DeBONE, Vice Chair

ATTEST:

_____
Recording Secretary

_____
PATTI ADAIR, Commissioner

Date of 1st Reading: _____ day of _____, 2026.

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

Record of Adoption Vote:

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

Effective date: _____ day of _____, 2026.

Exhibit A to Ordinance 2026-032
Legal Description of Subject Property

Lot 23, Block 7, First Addition to Whispering Pines Estates,
Deschutes County, Oregon

Lot 22, Block 7, First Addition to Whispering Pines Estates, located in the Northeast One-Quarter of Section 27, Township 16 South, Range 12 East, Willamette Meridian, Deschutes County, Oregon.

EXCEPTING THEREFROM: A portion of said lot 22 being more particularly described as follows:
Beginning at the Northeast corner of said Lot 22, thence along the East line of said Lot 22 South 00°00'08" East 226.61 feet; thence leaving said East line North 89°53'18" West 27.65 feet; thence North 00°01'59" East 226.55 feet to a point on the North line of said Lot 22; thence along said North line North 89°59'11" East 27.51 feet to the Point of Beginning.

TOGETHER WITH: A portion of Lot 21, Block 7, First Addition to Whispering Pines Estates, located in the Northeast One-Quarter of Section 27, Township 16 South, Range 12 East, Willamette Meridian, Deschutes County, Oregon being more particularly described as follows:

Beginning at the Southwest corner of said Lot 21, thence North 00°00'08" West 171.68 feet; thence South 89°53'18" East 36.67 feet; thence South 00°01'59" West 171.68 feet to a point on the South line of said Lot 21; thence along said South line North 89°53'18" West 36.56 feet to the Point of Beginning.

All containing 1.07 Acres more or less.

Exhibit A to Ordinance 2026-032
Legal Description of Subject Property

Lot 21, Block 7, First Addition to Whispering Pines Estates, located in the Northeast One-Quarter of Section 27, Township 16 South, Range 12 East, Willamette Meridian, Deschutes County, Oregon.

EXCEPTING THEREFROM: A portion of said Lot 21 being more particularly described as follows:
Beginning at the Southwest corner of said Lot 21, thence North 00°00'08" West 171.68 feet; thence South 89°53'18" East 36.67 feet; thence South 00°01'59" West 171.68 feet to a point on the South line of said Lot 21; thence along said South line North 89°53'18" West 36.56 feet to the Point of Beginning.

TOGETHER WITH: A portion lot 22, Block 7, First Addition to Whispering Pines Estates, located in the Northeast One-Quarter of Section 27, Township 16 South, Range 12 East, Willamette Meridian, Deschutes County, Oregon being more particularly described as follows:

Beginning at the Northeast corner of said Lot 22, thence along the East line of said Lot 22 South 00°00'08" East 226.61 feet; thence leaving said East line North 89°53'18" West 27.65 feet; thence North 00°01'59" East 226.55 feet to a point on the North line of said Lot 22; thence along said North line North 89°59'11" East 27.51 feet to the Point of Beginning.

All containing 1.07 Acres more or less.

Lot 20, Block 7, Whispering Pines Estates, First Addition, 16-12-27A, Tax Lot 2600, Deschutes County, Oregon

TITLE 23 COMPREHENSIVE PLAN

CHAPTER 23.01 COMPREHENSIVE PLAN

A. The Deschutes County Comprehensive Plan, adopted by the Board in Ordinance 2011-003 and found on the Deschutes County Community Development Department website, is incorporated by reference herein.

B. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2011-027, are incorporated by reference herein.

C. [Repealed by Ordinance 2013-001, §1]

D. [Repealed by Ordinance 2023-017]

E. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-012, are incorporated by reference herein.

F. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-016, are incorporated by reference herein.

G. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-002, are incorporated by reference herein.

H. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-009, are incorporated by reference herein.

I. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-012, are incorporated by reference herein.

J. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-007, are incorporated by reference herein.

K. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-005, are incorporated by reference herein.

L. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-006, are incorporated by reference herein.

M. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-012, are incorporated by reference herein.

N. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-021, are incorporated by reference herein.

O. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-027, are incorporated by reference herein.

P. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-021, are incorporated by reference herein.

Q. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-029, are incorporated by reference herein.

R. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-018, are incorporated by reference herein.

S. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-010, are incorporated by reference herein.

T. [Repealed by Ordinance 2016-027 §1]

U. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-022, are incorporated by reference herein.

V. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-005, are incorporated by reference herein.

W. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-027, are incorporated by reference herein.

X. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-029, are incorporated by reference herein.

Y. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2017-007, are incorporated by reference herein.

Z. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-002, are incorporated by reference herein.

AA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-006, are incorporated by reference herein.

AB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-011, are incorporated by reference herein.

AC. [repealed by Ord. 2019-010 §1, 2019]

AD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-008, are incorporated by reference herein.

AE. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-002, are incorporated by reference herein.

AF. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-001, are incorporated by reference herein.

AG. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-003, are incorporated by reference herein.

AH. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-004, are incorporated by reference herein.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AZ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-006, are incorporated by reference herein.

BA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-010, are incorporated by reference herein.

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

BC. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-013, are incorporated by reference herein. (supplemented and controlled by Ord. 2024-010)

BD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-001, are incorporated by reference herein.

BE. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-007, are incorporated by reference herein.

BF. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-010 are incorporated by reference herein.

BG. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-018, are incorporated by reference herein.

BH. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-015, are incorporated by reference herein.

BI. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-025, are incorporated by reference herein.

BJ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-001, are incorporated by reference herein.

BK. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-003, are incorporated by reference herein.

BL. The Deschutes County Comprehensive Plan, adopted by the Board in Ordinance 2024-007 and found on the Deschutes County Community Development Department website, is incorporated by reference herein (superseded by Ord. 2025-007).

BM. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-010, are incorporated by reference herein.

BN. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-017, are incorporated by reference herein.

BO. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-016, are incorporated by reference herein.

BP. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-011, are incorporated by reference herein.

BQ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-012, are incorporated by reference herein.

BR. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-001, are incorporated by reference herein.

BS. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-003, are incorporated by reference herein.

BT. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-010, are incorporated by reference herein.

BU. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-007, are incorporated by reference herein (superseded by Ord. 2026-015).

BV. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-014, are incorporated by reference herein.

BW. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-004, are incorporated by reference herein.

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

BY. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-009, are incorporated by reference herein.

BZ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-013, are incorporated by reference herein.

CA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-015, are incorporated by reference herein.

CB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-014, are incorporated by reference herein.

CC. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-024, are incorporated by reference herein.

CD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-026, are incorporated by reference herein.

CE. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-020, are incorporated by reference herein.

CF. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-023, are incorporated by reference herein.

CG. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-032, are incorporated by reference herein.

Click here to be directed to the Comprehensive Plan (https://weblink.deschutes.org/CDD/Browse.aspx?id=1317439&dbid=0&repo=LFCDD)

Section 5.12 Legislative History

Background

This section contains the legislative history of this Comprehensive Plan.

Table 5.12.1 Comprehensive Plan Ordinance History

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

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

2015-029	11-23-15/11-30-15	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Tumalo Residential 5-Acre Minimum to Tumalo Industrial
2015-018	12-9-15/3-27-16	23.01.010, 2.2, 4.3	Housekeeping Amendments to Title 23.
2015-010	12-2-15/12-2-15	2.6	Comprehensive Plan Text and Map Amendment recognizing Greater Sage-Grouse Habitat Inventories
2016-001	12-21-15/04-5-16	23.01.010; 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from, Agriculture to Rural Industrial (exception area)
2016-007	2-10-16/5-10-16	23.01.010; 5.10	Comprehensive Plan Amendment to add an exception to Statewide Planning Goal 11 to allow sewers in unincorporated lands in Southern Deschutes County
2016-005	11-28-16/2-16-17	23.01.010, 2.2, 3.3	Comprehensive Plan Amendment recognizing non-resource lands process allowed under State law to change EFU zoning
2016-022	9-28-16/11-14-16	23.01.010, 1.3, 4.2	Comprehensive plan Amendment, including certain property within City of Bend Urban Growth Boundary
2016-029	12-14-16/12/28/16	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from, Agriculture to Rural Industrial

2017-007	10-30-17/10-30-17	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2018-002	1-3-18/1-25-18	23.01, 2.6	Comprehensive Plan Amendment permitting churches in the Wildlife Area Combining Zone
2018-006	8-22-18/11-20-18	23.01.010, 5.8, 5.9	Housekeeping Amendments correcting tax lot numbers in Non-Significant Mining Mineral and Aggregate Inventory; modifying Goal 5 Inventory of Cultural and Historic Resources
2018-011	9-12-18/12-11-18	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2018-005	9-19-18/10-10-18	23.01.010, 2.5, Tumalo Community Plan, Newberry Country Plan	Comprehensive Plan Map Amendment, removing Flood Plain Comprehensive Plan Designation; Comprehensive Plan Amendment adding Flood Plain Combining Zone purpose statement.
2018-008	9-26-18/10-26-18	23.01.010, 3.4	Comprehensive Plan Amendment allowing for the potential of new properties to be designated as Rural Commercial or Rural Industrial

2019-002	1-2-19/4-2-19	23.01.010, 5.8	Comprehensive Plan Map Amendment changing designation of certain property from Surface Mining to Rural Residential Exception Area; Modifying Goal 5 Mineral and Aggregate Inventory; Modifying Non-Significant Mining Mineral and Aggregate Inventory
2019-001	1-16-19/4-16-19	1.3, 3.3, 4.2, 5.10, 23.01	Comprehensive Plan and Text Amendment to add a new zone to Title 19: Westside Transect Zone.
2019-003	02-12-19/03-12-19	23.01.010, 4.2	Comprehensive Plan Map Amendment changing designation of certain property from Agriculture to Redmond Urban Growth Area for the Large Lot Industrial Program
2019-004	02-12-19/03-12-19	23.01.010, 4.2	Comprehensive Plan Map Amendment changing designation of certain property from Agriculture to Redmond Urban Growth Area for the expansion of the Deschutes County Fairgrounds and relocation of Oregon Military Department National Guard Armory.
2019-011	05-01-19/05-16/19	23.01.010, 4.2	Comprehensive Plan Map Amendment to adjust the Bend Urban Growth Boundary to accommodate the refinement of the Skyline Ranch Road alignment and the refinement of the West Area Master Plan Area I boundary. The ordinance also amends the Comprehensive Plan designation of Urban Area Reserve for those lands leaving the UGB.

2019-006	03-13-19/06-11-19	23.01.010,	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2019-016	11-25-19/02-24-20	23.01.01, 2.5	Comprehensive Plan and Text amendments incorporating language from DLCD's 2014 Model Flood Ordinance and Establishing a purpose statement for the Flood Plain Zone.
2019-019	12-11-19/12-11-19	23.01.01, 2.5	Comprehensive Plan and Text amendments to provide procedures related to the division of certain split zoned properties containing Flood Plain zoning and involving a former or piped irrigation canal.
2020-001	12-11-19/12-11-19	23.01.01, 2.5	Comprehensive Plan and Text amendments to provide procedures related to the division of certain split zoned properties containing Flood Plain zoning and involving a former or piped irrigation canal.

2020-002	2-26-20/5-26-20	23.01.01, 4.2, 5.2	Comprehensive Plan Map Amendment to adjust the Redmond Urban Growth Boundary through an equal exchange of land to/from the Redmond UGB. The exchange property is being offered to better achieve land needs that were detailed in the 2012 SB 1544 by providing more development ready land within the Redmond UGB. The ordinance also amends the Comprehensive Plan designation of Urban Area Reserve for those lands leaving the UGB.
2020-003	02-26-20/05-26-20	23.01.01, 5.10	Comprehensive Plan Amendment with exception to Statewide Planning Goal 11 (Public Facilities and Services) to allow sewer on rural lands to serve the City of Bend Outback Water Facility.
2020-008	06-24-20/09-22-20	23.01.010, Appendix C	Comprehensive Plan Transportation System Plan Amendment to add roundabouts at US 20/Cook-O.B. Riley and US 20/Old Bend-Redmond Hwy intersections; amend Tables 5.3.T1 and 5.3.T2 and amend TSP text.
2020-007	07-29-20/10-27-20	23.01.010, 2.6	Housekeeping Amendments correcting references to two Sage Grouse ordinances.

2020-006	08-12-20/11-10-20	23.01.01, 2.11, 5.9	Comprehensive Plan and Text amendments to update the County's Resource List and Historic Preservation Ordinance to comply with the State Historic Preservation Rule.
2020-009	08-19-20/11-17-20	23.01.010, Appendix C	Comprehensive Plan Transportation System Plan Amendment to add reference to J turns on US 97 raised median between Bend and Redmond; delete language about disconnecting Vandevert Road from US 97.
2020-013	08-26-20/11/24/20	23.01.01, 5.8	Comprehensive Plan Text And Map Designation for Certain Properties from Surface Mine (SM) and Agriculture (AG) To Rural Residential Exception Area (RREA) and Remove Surface Mining Site 461 from the County's Goal 5 Inventory of Significant Mineral and Aggregate Resource Sites.
2021-002	01-27-21/04-27-21	23.01.01	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) To Rural Industrial (RI)
2021-005	06-16-21/06-16-21	23.01.01, 4.2	Comprehensive Plan Map Amendment Designation for Certain Property from Agriculture (AG) To Redmond Urban Growth Area (RUGA) and text amendment
2021-008	06-30-21/09-28-21	23.01.01	Comprehensive Plan Map Amendment Designation for Certain Property Adding Redmond Urban Growth Area (RUGA) and Fixing Scrivener's Error in Ord. 2020-022

2022-001	04-13-22/07-12-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2022-003	04-20-22/07-19-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2022-006	06-22-22/08-19-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Rural Residential Exception Area (RREA) to Bend Urban Growth Area
2022-011	07-27-22/10-25-22 (superseded by Ord. 2023-015)	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) To Rural Industrial (RI)
2022-013	12-14-22/03-14-23 (supplemented and controlled by Ord. 2024-010)	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2023-001	03-01-23/05-30-23	23.01.010, 5.9	Housekeeping Amendments correcting the location for the Lynch and Roberts Store Advertisement, a designated Cultural and Historic Resource
2023-007	04-26-23/6-25-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)

2023-010	06-21-23/9-17-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2023-018	08-30-23/11-28-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2023-015	9-13-23/12-12-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Industrial (RI)
2023-025	11-29-23/2-27-24	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Rural Residential Exception Area (RREA) to Bend Urban Growth Area
2024-001	1-31-24/4-30-24	23.01.010	Comprehensive Plan Map Amendment for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2023-016	5-8-24/8-6-24	23.01(BM) (added), 4.7 (amended), Appendix B (replaced)	Updated Tumalo Community Plan
2023-017	3-20-24/6-20-24	23.01(D) (repealed), 23.01(BJ) (added), 3.7 (amended), Appendix C (replaced)	Updated Transportation System Plan

2024-003	2-21-24/5-21-24	23.01.010, 5.8	Comprehensive Plan Map Amendment, changing designation of certain property from Surface Mining (SM) to Rural Residential Exception Area (RREA); Modifying Goal 5 Mineral and Aggregate Inventory
2024-007	10-02-24/12-31-24 (superseded by Ord. 2025-007)	23.01(A)(repealed) 23.01(BK) (added)	Repeal and Replacement of 2030 Comprehensive Plan with 2040 Comprehensive Plan
2024-010	10-16-24/01-14-25	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2024-011	11-18-24/02-17-25	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Redmond Urban Growth Area (RUGA)
2024-012	1-8-25/4-8-25	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2025-001	2-5-25/2-5-25	23.01.010	Comprehensive Plan and Zoning Map Amendment updating the Greater Sage-Grouse Area Combining Zone boundary.
2025-003	4-2-25/7-1-25	23.01.010	Comprehensive Plan Designation for Certain Property from Agriculture (AG) to Rural Industrial (RI)

2025-010	6-25-25/9-23-25	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2025-007	8-27-25/11-25-25 (superseded by Ord. 2026-015)	23.01(BU)	Amendments to Comprehensive Plan resulting from Deschutes County 2040 Update process.
2025-014	10-6-25/10-6-25	23.01.010	Comprehensive Plan Map Designation for Certain Property from Forest (F) to Rural Residential Exception Area (RREA)
2026-004	1-28-26/4-28-26	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2026-005	3-11-26/6-9-26	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) and Surface Mine (SM) to Rural Residential Exception Area (RREA)
2026-009	4-15-26/7-14-26	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2026-013	7-29-26/10-27-26	23.01.010	Comprehensive Plan Map Designation for Certain Property from Surface Mine (SM) to Rural Industrial (RI)

2026-015	9-2-26/12-1-26	23.01.010	Amendments to Comprehensive Plan resulting from Deschutes County 2040 Update Process, Reconsideration, and LUBA Remand.
2026-014	9-23-26/12-22-26	23.01.010	Comprehensive Plan Designation for Certain Property from Agriculture (AG) to Rural Industrial (RI)
2026-024	11-9-26/11-9-26	1.3, 4.2, 23.01.010	Amendments to Comprehensive Plan to Update the List of Applicable Zones Allowed Under a Sisters Urban Growth Area Plan Designation
2026-026	11-9-26/11-9-26	23.01.010	Comprehensive Plan Designation for Certain Properties from Rural Residential Exception Area (RREA) to Sisters Urban Growth Area (SUGA)
2026-020	11-23-2026/2-21-2027	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2026-023	TBD / TBD	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
<u>2026-032</u>	<u>TBD / TBD</u>	<u>23.01.010</u>	<u>Comprehensive Plan Map Designation for Certain Property from Rural Residential Exception Area (RREA) to Rural Industrial (RI)</u>

BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: December 2, 2026

SUBJECT: Deliberations on the Willitts, LLC application to change the Comprehensive Plan designation of 20 acres at 68621 Highway 20, Sisters and rezone the property from Exclusive Farm Use to Multiple Use Agricultural

RECOMMENDED MOTION:
At the conclusion of deliberations, staff recommends that the Board proceed with one of the following motions:

1. Move approval of the Willitts, LLC PA/ZC application; or
2. Move to deny the Willitts, LLC PA/ZC application.

If the Board votes to approve the application and proceeds with first reading of the implementing ordinance, staff recommends the following motion:

1. Move approval of first reading of Ordinance No. 2026-021 by title only

BACKGROUND AND POLICY IMPLICATIONS:
Applicant Willitts, LLCrequests approval of a Comprehensive Plan Amendment to change the designation of 20 acres at 68621 Highway 20, Sisters from Agricultural to Rural Residential Exception Area and a corresponding Zone Change to rezone the subject property from Exclusive Farm Use to Multiple Use Agricultural.

Following a public hearing on September 2, 2026, the Board began deliberations on October 21, 2026. During those deliberations, the Board directed staff to provide additional information regarding a potential condition of approval that would restrict development of the subject property until it is included within the City of Sisters Urban Growth Boundary and annexed into the City of Sisters. On November 9, 2026, as part of continued deliberations, staff presented the potential conditions to the Board. Following discussion of the potential conditions, the Board directed staff to schedule an additional evidentiary hearing and provide additional notice to the Department of Land Conservation and Development.

The Board conducted a second public hearing on November 23, 2026, to consider new evidence and arguments on potential conditions of approval for this request. The Board will conduct deliberations on December 2, 2026, to discuss the potential conditions of approval and potentially reach a decision on whether to approve this application. Please see attached

deliberation matrix and memorandum for additional background.

BUDGET IMPACTS:
None.

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

MEMORANDUM

TO: Board of County Commissioners (the "Board")

FROM: Caroline House, Senior Planner

DATE: November 24, 2026

RE: Board Deliberations on the Willitts, LLC Comprehensive Plan Amendment and Zone Change Request

---

The Board will conduct deliberations on December 2, 2026, to discuss potential conditions of approval and to reach a decision on whether to approve the Applicant's request.

I. PROPOSAL

Willitts, LLC (the "Applicant") requests approval of a Comprehensive Plan Amendment to change the designation of the subject property from Agricultural ("AG") to Rural Residential Exception Area ("RREA") and a corresponding Zone Change to rezone the subject property from Exclusive Farm Use ("EFU") to Multiple Use Agricultural ("MUA10"). No exceptions to any Statewide Planning Goals are requested.

II. BACKGROUND

The Board held a public hearing on September 2, 2026, and following the hearing the Board elected to keep the record open for additional materials to be submitted. The record closed on September 23, 2026. As part of the Board's review process, the Applicant submitted additional supporting materials and arguments into the record for the Board's consideration to demonstrate compliance with Statewide Planning Goal 14 and other issue areas. Central Oregon LandWatch, along with more than 100 members of the public, submitted comments opposing the Applicant's proposal. These comments primarily raised issues related to the subject property being agricultural land protected under Goal 3, negative impacts on the Goal 5 Highway 20 scenic corridor, and the proposal violating Goal 14.

On October 21, 2026, the Board initiated deliberations and voted on the issue areas identified in the Board's deliberation matrix. For each issue area, a majority of the Board voted in favor of the Applicant's arguments. At the conclusion of deliberations, the Board directed staff to review the recording of the September 2, 2026, public hearing and draft a potential condition of approval based on the discussion between the Applicant and Chair Chang. The proposed condition would limit

development of the subject property until it is included within an Urban Growth Boundary ("UGB"). On November 9, 2026, as part of continued deliberations, the Board directed staff to schedule an additional evidentiary hearing and provide additional notice to the Department of Land Conservation and Development ("DLCD").

On November 23, 2026, the Applicant and other participants presented additional evidence and argument for the Board's consideration. The record is now closed.

III. CONDITIONS OF APPROVAL

Version 1 – Limitations on Land Divisions:

The Applicant requested that the following condition of approval be imposed to ensure compliance with Deschutes County Comprehensive Plan ("DCCP") Policy 3.3.1 and Goal 14:

> This decision and any ordinance adopted pursuant to it do not authorize a future application for the creation of any parcels in the MUA-10 zone that are less than 10 acres under DCC 18.116.400, DCC 18.128.200, DCC 18.128.210, or any other DCC provision unless and until (1) the County formally adopts amendments to the MUA-10 DCCP rural lands policies that authorize such developments and parcel sizes with provision to ensure that consistency with Goal 14 is evaluated, and (2) those amendments are acknowledged by the DLCD. Unless and until such acknowledgement, the applicant and all future applicants for the subject property are restricted to the creation of parcels not less than 10 acres regardless of the proximity of the property to the UGB and any DCC code provision to the contrary.

Version 2 – Limitations on Land Divisions and Development:

Based on staff's review of the September 2, 2026, public hearing, the following alternative condition of approval is presented for the Board's consideration:

> Limitation on Development. Until and unless the subject property is included within the City of Sisters urban growth boundary and annexed into the City of Sisters through separate applicable processes, no new development or rural residential use otherwise authorized by the RREA designation or MUA-10 zoning may be approved or established on the subject property. This condition does not prohibit the continued lawful use, maintenance, or repair of existing development. Nothing in this condition authorizes, requires, assumes, or commits the City of Sisters, Deschutes County, or any other governmental entity to approve inclusion within the City of Sisters urban growth boundary, annexation, urban services, City plan or zoning designations, or future development of the subject property.

If the Board elects to adopt the Limitation on Development condition, staff recommends that the following condition of approval be adopted in lieu of the Applicant's proposed condition to ensure compliance with DCCP Policy 3.3.1 and Goal 14:

Any future subdivision of the Subject Property shall be limited to a minimum lot size of 10 acres. This condition shall be in effect so long as the property remains outside of an urban growth boundary.

Staff notes that the Board may modify any of the conditions described above as part of its final decision.

IV. NEXT STEPS

The Board will need to vote on whether to approve the applications and, if yes, first and second readings of the Ordinance and adoption must be completed.

Staff has prepared two draft ordinance packages for the Board's consideration.

1. Version 1: Board decision with the *Limitations on Land Divisions* Conditions of Approval
2. Version 2: Board decision with the *Limitations on Land Divisions and Development* Conditions of Approval.

V. TIMELINE

This proposal is not subject to the statutory 150-day review timeline.

VI. RECORD

The record is presented at the following Deschutes County Community Development Department website:

www.deschutescounty.gov/WillittsPAZC

Attachments:
1) Deliberations Matrix
2) Version 1 - Draft Ordinance 2026-021 and Exhibits
   - Exhibit A: Legal Description
   - Exhibit B: Proposed Comprehensive Plan Amendment Map
   - Exhibit C: Proposed Zone Change Map
   - Exhibit D: Comprehensive Plan Section 23.01, Introduction
   - Exhibit E: Comprehensive Plan Section 5.12, Legislative History
   - Exhibit F: Decision of the Board of County Commissioners V1
   - Exhibit G: Hearings Officer's Recommendation
   - Exhibit H: 2026 Economic, Social, Environmental, & Energy ("ESEE") Analysis
   - Exhibit I: Conditions of Approval Agreement V1
3) Version 2 - Draft Ordinance 2026-021 and Exhibits
   - Exhibit A: Legal Description
   - Exhibit B: Proposed Comprehensive Plan Amendment Map
   - Exhibit C: Proposed Zone Change Map
   - Exhibit D: Comprehensive Plan Section 23.01, Introduction

Exhibit E: Comprehensive Plan Section 5.12, Legislative History
Exhibit F: Decision of the Board of County Commissioners V2
Exhibit G: Hearings Officer's Recommendation
Exhibit H: 2026 Economic, Social, Environmental, & Energy ("ESEE") Analysis
Exhibit I: Conditions of Approval Agreement V2

Willitts, LLC PA/ZC Deliberation Matrix 2

(File Nos. 247-25-000537-PA, 247-25-000538-ZC)

ISSUE ITEM #1

Potential Conditions of Approval

Board Decision Options:

1. Adopt Version 1 (Limitations on Development) Conditions of Approval and *approve* the PA/ZC request.
2. Adopt Versions 2 (Limitations on Land Divisions and Development) Conditions of Approval and *approve* the PA/ZC request.
3. Other Board Conditions and/or outcome.

Draft Conditions of Approval	*Applicant's Response*	*COLW's Response*	*Staff Comments*
Version 1 – Limitations on Land Divisions 1. This decision and any ordinance adopted pursuant to it do not authorize a future application for the creation of any parcels in the MUA-10 zone that are less than 10 acres under DCC 18.116.400, DCC 18,128.200, DCC 18.128.210, or any other DCC provision unless and until (1) the County formally adopts amendments to the MUA-10 DCCP rural lands policies that authorize such developments and parcel sizes with provision to ensure that consistency with Goal 14 is evaluated, and (2) those amendments are acknowledged by the DLCD. Unless and until such acknowledgement, the applicant and all future applicants for the subject property are restricted to the creation of parcels not less than 10 acres regardless of the proximity of the property to the UGB and any DCC code provision to the contrary. 2. The attached Conditions of Approval Agreement, with restrictive covenants enforceable by Deschutes County, must be recorded within 180 days of the date this decision is final. If the decision is appealed, the 180-day period will run from the date a final decision and, if applicable, judgment on appeal has been entered.	The Applicant prefers the Board adopt these conditions.	Conditions of approval do not address the DCCP Policy 3.3.1 and DCC Lot Size conflict.	Staff recommends the Board adopt these conditions.
Version 2 – Limitations on Land Divisions and Development 1. Limitation on Development. Until and unless the subject property is included within the City of Sisters urban growth boundary and annexed into the City of Sisters through separate applicable processes, no new development or rural residential use otherwise authorized by the RREA designation or MUA-10 zoning may be approved or established on the subject property. This condition does not prohibit the continued lawful use, maintenance, or repair of existing development. Nothing in this condition authorizes, requires, assumes, or commits the City of Sisters, Deschutes County, or any other governmental entity to approve inclusion within the City of Sisters urban growth boundary, annexation, urban services, City plan or zoning designations, or future development of the subject property. 2. Any future subdivision of the Subject Property shall be limited to a minimum lot size of 10 acres. This condition shall be in effect so long as the property remains outside of an urban growth boundary. 3. The attached Conditions of Approval Agreement, with restrictive covenants enforceable by Deschutes County, must be recorded within 180 days of the date this decision is final. If the decision is appealed, the 180-day period will run from the date a final decision and, if applicable, judgment on appeal has been entered.	The Applicant states their client will agree to these conditions, but they have significant concerns about whether these conditions can be legally imposed.	Conditions of approval do not address the DCCP Policy 3.3.1 and DCC Lot Size conflict.	These conditions appear more susceptible to appeal and legal challenges.

REVIEWED_____

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code Title 23, the Deschutes County Comprehensive Plan, to Change the Comprehensive Plan Map Designation for Certain Property From Agriculture to Rural Residential Exception Area, and Amending Deschutes County Code Title 18, the Deschutes County Zoning Map, to Change the Zone Designation for Certain Property From Exclusive Farm Use to Multiple Use Agricultural.	* * * * * * *	ORDINANCE NO. 2026-021

WHEREAS, Willitts, LLC ("Applicant"), applied for changes to both the Deschutes County Comprehensive Plan Map (247-25-000537-PA) and the Deschutes County Zoning Map (247-25-000538-ZC), to change the Comprehensive Plan designation of the subject property from Agricultural ("AG") to Rural Residential Exception Area ("RREA"), and a corresponding Zone Change from Exclusive Farm Use ("EFU") to Multiple Use Agricultural ("MUA-10"); and

WHEREAS, after notice was given in accordance with applicable law, a public hearing was held on May 21, 2026, before the Deschutes County Hearings Officer;

WHEREAS, pursuant to DCC 22.28.030(C), on September 2, 2026, and November 23, 2026, the Board heard *de novo* the applications; now, therefore,

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

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

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

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

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

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

Section 6. AMENDMENT. The Board hereby amends the County's Goal 5 Scenic Roadway program as it relates to the subject property by adopting the site-specific Economic, Social, Environmental, and Energy ("ESEE") Analysis prepared by the Applicant attached as Exhibit "H" and incorporated herein by reference. This site-specific ESEE supersedes and replaces the 1992 ESEE analysis as applied to the subject property and constitutes the applicable Goal 5 ESEE findings for purposes of evaluating conflicting uses and determining the appropriate level of resource protection under OAR 660-023-0040.

Section 7. AGREEMENT. The Board adopts the Conditions of Approval Agreement as set forth in Exhibit "I," which Agreement shall be executed on the date this Ordinance is adopted.

Section 8. EFFECTIVE DATE. This Ordinance takes effect on the 90th day after the date of adoption, or if appealed, the date the ordinance is no longer subject to appeal and is deemed acknowledged.

Dated this _____ of _____, 2026

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

_____
PHIL CHANG, Chair

_____
ANTHONY DeBONE, Vice Chair

ATTEST:

_____
Recording Secretary

_____
PATTI ADAIR, Commissioner

Date of 1st Reading: _____ day of _____, 2026.

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

Record of Adoption Vote:

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

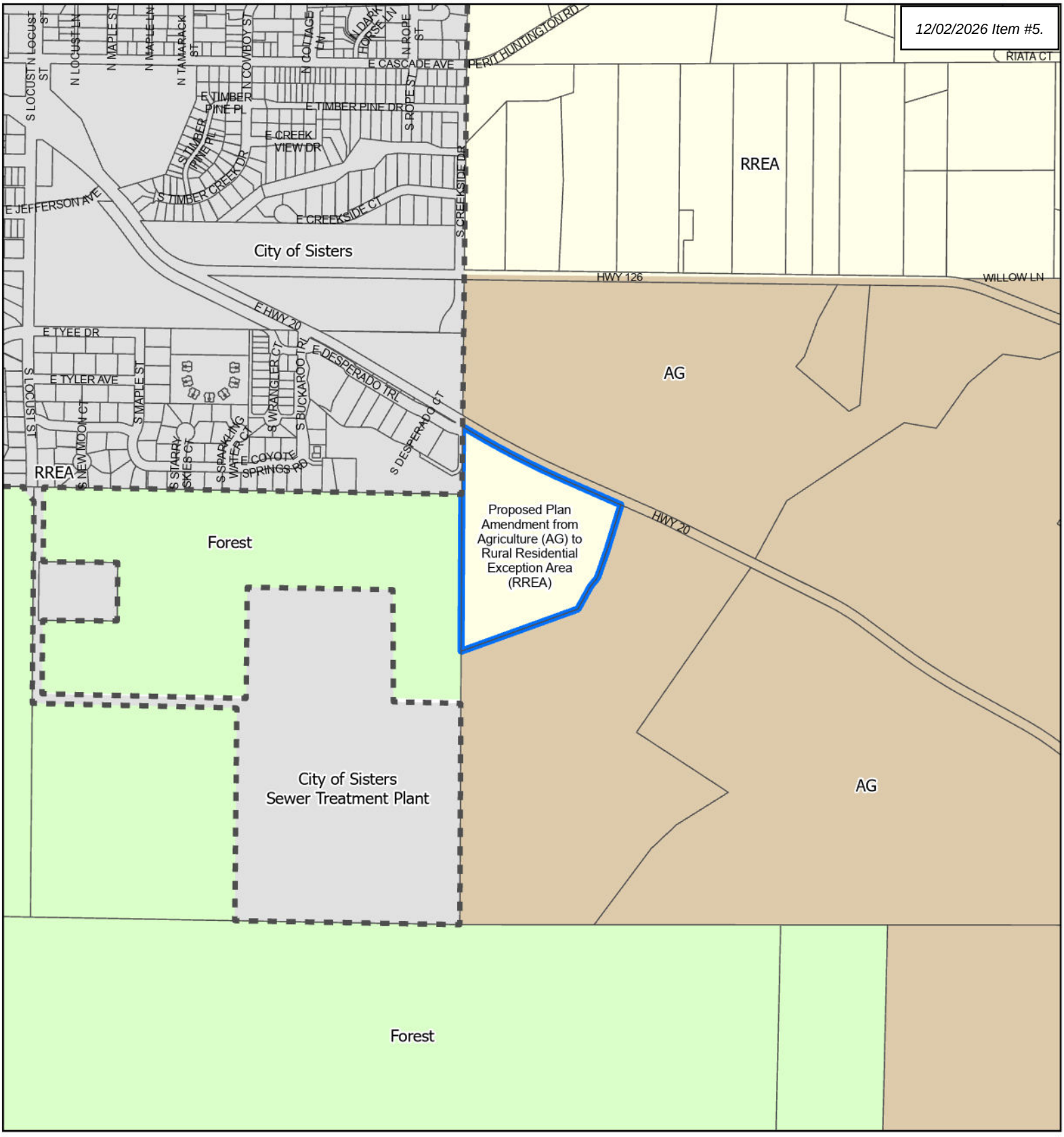
Effective date: _____ day of _____, 2027.

Exhibit "A" To Ordinance 2026-021

Legal Description of Subject Property

A parcel of land situated in the West Half (W1/2) of Section 10, Township 15 South, Range 10 East of the Willamette Meridian, Deschutes County, Oregon, being more particularly described as follows:

Beginning at a brass capped iron pipe at the West Quarter corner of said Section 10; thence North 00° 07' 05" West on the West line of said Section 10, 416.44 feet to a point on the South right of way line of the Sisters-Bend Highway; thence South 59° 52' 40" East on said right of way line, 36.67 feet to a 5/8 inch iron rod; thence on said right of way on the arc of a 5650.00 foot radius curve to the left, (chord bears South 63° 26' 25" East, 702.19 feet), 702.64 feet to a 5/8 inch iron rod; thence South 67° 00' 11" East on said right of way line, 348.45 feet to a 5/8 inch iron rod; thence South 16° 17' 02" West leaving said right of way line, 289.57 feet to a 5/8 inch iron rod; thence South 18° 27' 59" West, 181.60 feet to a 5/8 inch iron rod; thence South 38° 24' 55" West, 66.93 feet to a 5/8 inch iron rod; thence South 28° 18' 58" West, 160.76 feet to a 5/8 inch iron rod; thence South 69° 22' 54" West, 763.94 feet to a 5/8 inch iron rod on the West line of said Section 10; thence North 00° 29' 01" West on said West line, 965.28 feet to the point of beginning.



PROPOSED COMPREHENSIVE PLAN MAP

Exhibit "B"
to Ordinance 2026-021

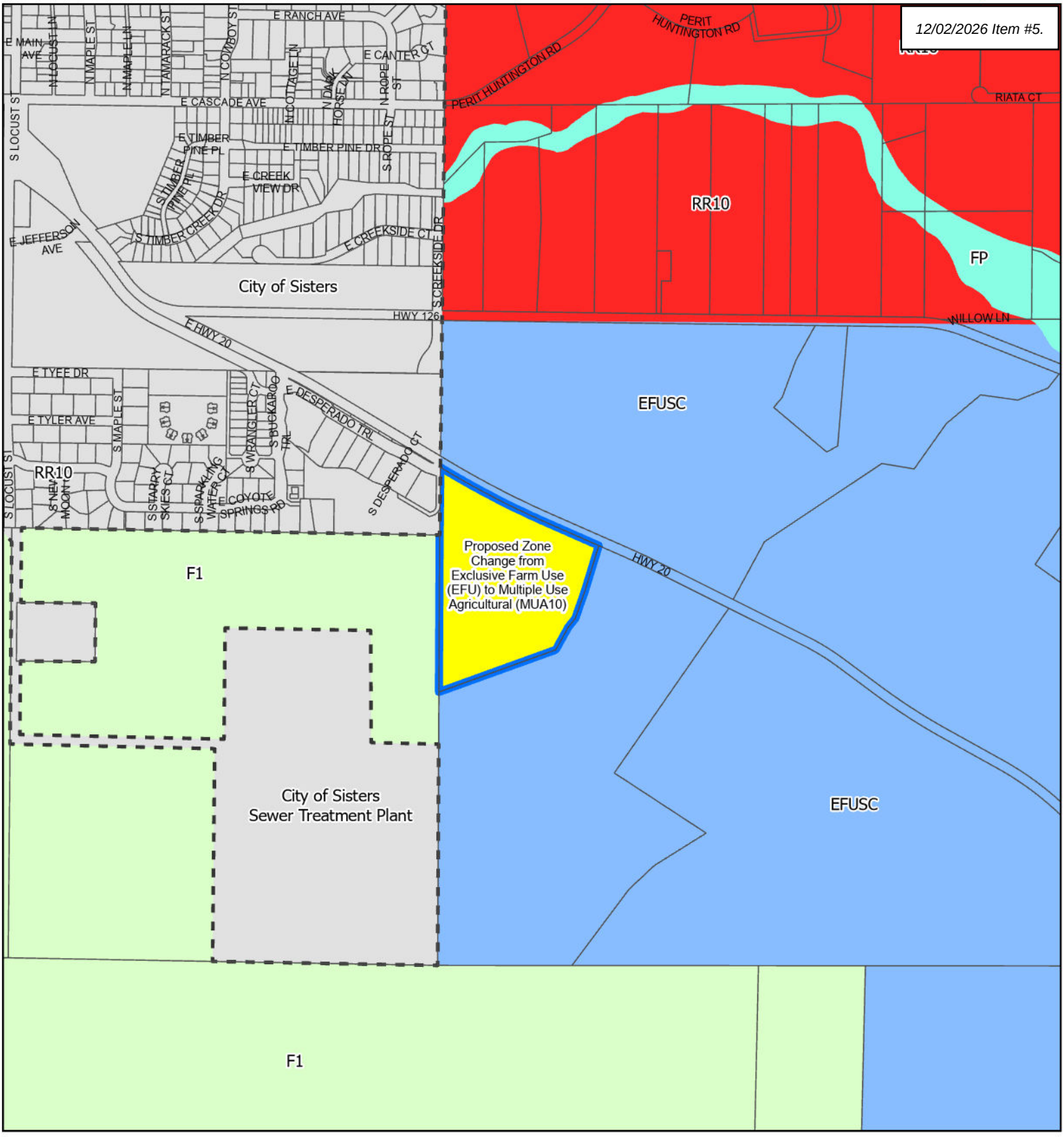
City of Sisters UGB
Proposed Plan Amendment Boundary

Comprehensive Plan Designation
AG - Agriculture
F - Forest
RREA - Rural Residential Exception Area

0 400 800 1,600 Feet

DISCLAIMER:
The information on this map was derived from digital databases on Deschutes County's G.I.S. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or positional accura data or the underlying records. There are no warranties, express or impli warranty of merchantability or fitness for a particular purpose, accompan However, notification of any errors will be appreciated.

File: N:\Custom\County\CDD\Planning\Caroline\247-25-000537-PA



PROPOSED ZONING MAP

Exhibit "C"
to Ordinance 2026-021

City of Sisters UGB
Proposed Zone Change Boundary

Zoning
EFUSC - Exclusive Farm Use
F1 - Forest Use 1
FP - Flood Plain
MUA10 - Multiple Use Agricultural
RR10 - Rural Residential

0 400 800 1,600 Feet

DISCLAIMER:
The information on this map was derived from digital databases on Deschutes County's G.I.S. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or positional accura data or the underlying records. There are no warranties, express or impli warranty of merchantability or fitness for a particular purpose, accompan However, notification of any errors will be appreciated.

File: N:\Custom\County\CDD\Planning\Caroline\247-25-000538-ZC

TITLE 23 COMPREHENSIVE PLAN

CHAPTER 23.01 COMPREHENSIVE PLAN

A. The Deschutes County Comprehensive Plan, adopted by the Board in Ordinance 2011-003 and found on the Deschutes County Community Development Department website, is incorporated by reference herein.

B. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2011-027, are incorporated by reference herein.

C. [Repealed by Ordinance 2013-001, §1]

D. [Repealed by Ordinance 2023-017]

E. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-012, are incorporated by reference herein.

F. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-016, are incorporated by reference herein.

G. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-002, are incorporated by reference herein.

H. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-009, are incorporated by reference herein.

I. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-012, are incorporated by reference herein.

J. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-007, are incorporated by reference herein.

K. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-005, are incorporated by reference herein.

L. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-006, are incorporated by reference herein.

M. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-012, are incorporated by reference herein.

N. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-021, are incorporated by reference herein.

O. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-027, are incorporated by reference herein.

P. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-021, are incorporated by reference herein.

Q. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-029, are incorporated by reference herein.

R. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-018, are incorporated by reference herein.

S. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-010, are incorporated by reference herein.

T. [Repealed by Ordinance 2016-027 §1]

U. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-022, are incorporated by reference herein.

V. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-005, are incorporated by reference herein.

W. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-027, are incorporated by reference herein.

X. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-029, are incorporated by reference herein.

Y. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2017-007, are incorporated by reference herein.

Z. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-002, are incorporated by reference herein.

AA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-006, are incorporated by reference herein.

AB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-011, are incorporated by reference herein.

AC. [repealed by Ord. 2019-010 §1, 2019]

AD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-008, are incorporated by reference herein.

AE. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-002, are incorporated by reference herein.

AF. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-001, are incorporated by reference herein.

AG. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-003, are incorporated by reference herein.

AH. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-004, are incorporated by reference herein.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AZ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-006, are incorporated by reference herein.

BA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-010, are incorporated by reference herein.

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

BC. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-013, are incorporated by reference herein. (supplemented and controlled by Ord. 2024-010)

BD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-001, are incorporated by reference herein.

BE. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-007, are incorporated by reference herein.

BF. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-010 are incorporated by reference herein.

BG. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-018, are incorporated by reference herein.

BH. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-015, are incorporated by reference herein.

BI. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-025, are incorporated by reference herein.

BJ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-001, are incorporated by reference herein.

BK. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-003, are incorporated by reference herein.

BL. The Deschutes County Comprehensive Plan, adopted by the Board in Ordinance 2024-007 and found on the Deschutes County Community Development Department website, is incorporated by reference herein (superseded by Ord. 2025-007).

BM. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-010, are incorporated by reference herein.

BN. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-017, are incorporated by reference herein.

BO. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-016, are incorporated by reference herein.

BP. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-011, are incorporated by reference herein.

BQ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-012, are incorporated by reference herein.

BR. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-001, are incorporated by reference herein.

BS. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-003, are incorporated by reference herein.

BT. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-010, are incorporated by reference herein.

BU. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-007, are incorporated by reference herein (superseded by Ord. 2026-015).

BV. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-014, are incorporated by reference herein.

BW. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-004, are incorporated by reference herein.

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

BY. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-009, are incorporated by reference herein.

BZ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-013, are incorporated by reference herein.

CA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-015, are incorporated by reference herein.

CB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-014, are incorporated by reference herein.

CC. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-024, are incorporated by reference herein.

CD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-026, are incorporated by reference herein.

CE. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-020, are incorporated by reference herein.

CF. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-023, are incorporated by reference herein.

CG. CF. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-032, are incorporated by reference herein.

CH. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-021, are incorporated by reference herein.

Click here to be directed to the Comprehensive Plan (https://weblink.deschutes.org/CDD/Browse.aspx?id=1317439&dbid=0&repo=LFCDD)

Section 5.12 Legislative History

Background

This section contains the legislative history of this Comprehensive Plan.

Table 5.12.1 Comprehensive Plan Ordinance History

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

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

2015-029	11-23-15/11-30-15	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Tumalo Residential 5-Acre Minimum to Tumalo Industrial
2015-018	12-9-15/3-27-16	23.01.010, 2.2, 4.3	Housekeeping Amendments to Title 23.
2015-010	12-2-15/12-2-15	2.6	Comprehensive Plan Text and Map Amendment recognizing Greater Sage-Grouse Habitat Inventories
2016-001	12-21-15/04-5-16	23.01.010; 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from, Agriculture to Rural Industrial (exception area)
2016-007	2-10-16/5-10-16	23.01.010; 5.10	Comprehensive Plan Amendment to add an exception to Statewide Planning Goal 11 to allow sewers in unincorporated lands in Southern Deschutes County
2016-005	11-28-16/2-16-17	23.01.010, 2.2, 3.3	Comprehensive Plan Amendment recognizing non-resource lands process allowed under State law to change EFU zoning
2016-022	9-28-16/11-14-16	23.01.010, 1.3, 4.2	Comprehensive plan Amendment, including certain property within City of Bend Urban Growth Boundary
2016-029	12-14-16/12/28/16	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from, Agriculture to Rural Industrial

2017-007	10-30-17/10-30-17	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2018-002	1-3-18/1-25-18	23.01, 2.6	Comprehensive Plan Amendment permitting churches in the Wildlife Area Combining Zone
2018-006	8-22-18/11-20-18	23.01.010, 5.8, 5.9	Housekeeping Amendments correcting tax lot numbers in Non-Significant Mining Mineral and Aggregate Inventory; modifying Goal 5 Inventory of Cultural and Historic Resources
2018-011	9-12-18/12-11-18	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2018-005	9-19-18/10-10-18	23.01.010, 2.5, Tumalo Community Plan, Newberry Country Plan	Comprehensive Plan Map Amendment, removing Flood Plain Comprehensive Plan Designation; Comprehensive Plan Amendment adding Flood Plain Combining Zone purpose statement.
2018-008	9-26-18/10-26-18	23.01.010, 3.4	Comprehensive Plan Amendment allowing for the potential of new properties to be designated as Rural Commercial or Rural Industrial

2019-002	1-2-19/4-2-19	23.01.010, 5.8	Comprehensive Plan Map Amendment changing designation of certain property from Surface Mining to Rural Residential Exception Area; Modifying Goal 5 Mineral and Aggregate Inventory; Modifying Non-Significant Mining Mineral and Aggregate Inventory
2019-001	1-16-19/4-16-19	1.3, 3.3, 4.2, 5.10, 23.01	Comprehensive Plan and Text Amendment to add a new zone to Title 19: Westside Transect Zone.
2019-003	02-12-19/03-12-19	23.01.010, 4.2	Comprehensive Plan Map Amendment changing designation of certain property from Agriculture to Redmond Urban Growth Area for the Large Lot Industrial Program
2019-004	02-12-19/03-12-19	23.01.010, 4.2	Comprehensive Plan Map Amendment changing designation of certain property from Agriculture to Redmond Urban Growth Area for the expansion of the Deschutes County Fairgrounds and relocation of Oregon Military Department National Guard Armory.
2019-011	05-01-19/05-16/19	23.01.010, 4.2	Comprehensive Plan Map Amendment to adjust the Bend Urban Growth Boundary to accommodate the refinement of the Skyline Ranch Road alignment and the refinement of the West Area Master Plan Area I boundary. The ordinance also amends the Comprehensive Plan designation of Urban Area Reserve for those lands leaving the UGB.

2019-006	03-13-19/06-11-19	23.01.010,	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2019-016	11-25-19/02-24-20	23.01.01, 2.5	Comprehensive Plan and Text amendments incorporating language from DLCD's 2014 Model Flood Ordinance and Establishing a purpose statement for the Flood Plain Zone.
2019-019	12-11-19/12-11-19	23.01.01, 2.5	Comprehensive Plan and Text amendments to provide procedures related to the division of certain split zoned properties containing Flood Plain zoning and involving a former or piped irrigation canal.
2020-001	12-11-19/12-11-19	23.01.01, 2.5	Comprehensive Plan and Text amendments to provide procedures related to the division of certain split zoned properties containing Flood Plain zoning and involving a former or piped irrigation canal.

2020-002	2-26-20/5-26-20	23.01.01, 4.2, 5.2	Comprehensive Plan Map Amendment to adjust the Redmond Urban Growth Boundary through an equal exchange of land to/from the Redmond UGB. The exchange property is being offered to better achieve land needs that were detailed in the 2012 SB 1544 by providing more development ready land within the Redmond UGB. The ordinance also amends the Comprehensive Plan designation of Urban Area Reserve for those lands leaving the UGB.
2020-003	02-26-20/05-26-20	23.01.01, 5.10	Comprehensive Plan Amendment with exception to Statewide Planning Goal 11 (Public Facilities and Services) to allow sewer on rural lands to serve the City of Bend Outback Water Facility.
2020-008	06-24-20/09-22-20	23.01.010, Appendix C	Comprehensive Plan Transportation System Plan Amendment to add roundabouts at US 20/Cook-O.B. Riley and US 20/Old Bend-Redmond Hwy intersections; amend Tables 5.3.T1 and 5.3.T2 and amend TSP text.
2020-007	07-29-20/10-27-20	23.01.010, 2.6	Housekeeping Amendments correcting references to two Sage Grouse ordinances.

2020-006	08-12-20/11-10-20	23.01.01, 2.11, 5.9	Comprehensive Plan and Text amendments to update the County's Resource List and Historic Preservation Ordinance to comply with the State Historic Preservation Rule.
2020-009	08-19-20/11-17-20	23.01.010, Appendix C	Comprehensive Plan Transportation System Plan Amendment to add reference to J turns on US 97 raised median between Bend and Redmond; delete language about disconnecting Vandevert Road from US 97.
2020-013	08-26-20/11/24/20	23.01.01, 5.8	Comprehensive Plan Text And Map Designation for Certain Properties from Surface Mine (SM) and Agriculture (AG) To Rural Residential Exception Area (RREA) and Remove Surface Mining Site 461 from the County's Goal 5 Inventory of Significant Mineral and Aggregate Resource Sites.
2021-002	01-27-21/04-27-21	23.01.01	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) To Rural Industrial (RI)
2021-005	06-16-21/06-16-21	23.01.01, 4.2	Comprehensive Plan Map Amendment Designation for Certain Property from Agriculture (AG) To Redmond Urban Growth Area (RUGA) and text amendment
2021-008	06-30-21/09-28-21	23.01.01	Comprehensive Plan Map Amendment Designation for Certain Property Adding Redmond Urban Growth Area (RUGA) and Fixing Scrivener's Error in Ord. 2020-022

2022-001	04-13-22/07-12-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2022-003	04-20-22/07-19-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2022-006	06-22-22/08-19-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Rural Residential Exception Area (RREA) to Bend Urban Growth Area
2022-011	07-27-22/10-25-22 (superseded by Ord. 2023-015)	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) To Rural Industrial (RI)
2022-013	12-14-22/03-14-23 (supplemented and controlled by Ord. 2024-010)	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2023-001	03-01-23/05-30-23	23.01.010, 5.9	Housekeeping Amendments correcting the location for the Lynch and Roberts Store Advertisement, a designated Cultural and Historic Resource
2023-007	04-26-23/6-25-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)

2023-010	06-21-23/9-17-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2023-018	08-30-23/11-28-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2023-015	9-13-23/12-12-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Industrial (RI)
2023-025	11-29-23/2-27-24	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Rural Residential Exception Area (RREA) to Bend Urban Growth Area
2024-001	1-31-24/4-30-24	23.01.010	Comprehensive Plan Map Amendment for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2023-016	5-8-24/8-6-24	23.01(BM) (added), 4.7 (amended), Appendix B (replaced)	Updated Tumalo Community Plan
2023-017	3-20-24/6-20-24	23.01(D) (repealed), 23.01(BJ) (added), 3.7 (amended), Appendix C (replaced)	Updated Transportation System Plan

2024-003	2-21-24/5-21-24	23.01.010, 5.8	Comprehensive Plan Map Amendment, changing designation of certain property from Surface Mining (SM) to Rural Residential Exception Area (RREA); Modifying Goal 5 Mineral and Aggregate Inventory
2024-007	10-02-24/12-31-24 (superseded by Ord. 2025-007)	23.01(A)(repealed) 23.01(BK) (added)	Repeal and Replacement of 2030 Comprehensive Plan with 2040 Comprehensive Plan
2024-010	10-16-24/01-14-25	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2024-011	11-18-24/02-17-25	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Redmond Urban Growth Area (RUGA)
2024-012	1-8-25/4-8-25	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2025-001	2-5-25/2-5-25	23.01.010	Comprehensive Plan and Zoning Map Amendment updating the Greater Sage-Grouse Area Combining Zone boundary.
2025-003	4-2-25/7-1-25	23.01.010	Comprehensive Plan Designation for Certain Property from Agriculture (AG) to Rural Industrial (RI)

2025-010	6-25-25/9-23-25	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2025-007	8-27-25/11-25-25 (superseded by Ord. 2026-015)	23.01(BU)	Amendments to Comprehensive Plan resulting from Deschutes County 2040 Update process.
2025-014	10-6-25/10-6-25	23.01.010	Comprehensive Plan Map Designation for Certain Property from Forest (F) to Rural Residential Exception Area (RREA)
2026-004	1-28-26/4-28-26	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2026-005	3-11-26/6-9-26	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) and Surface Mine (SM) to Rural Residential Exception Area (RREA)
2026-009	4-15-26/7-14-26	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2026-013	7-29-26/10-27-26	23.01.010	Comprehensive Plan Map Designation for Certain Property from Surface Mine (SM) to Rural Industrial (RI)

2026-015	9-2-26/12-1-26	23.01.010	Amendments to Comprehensive Plan resulting from Deschutes County 2040 Update Process, Reconsideration, and LUBA Remand.
2026-014	9-23-26/12-22-26	23.01.010	Comprehensive Plan Designation for Certain Property from Agriculture (AG) to Rural Industrial (RI)
2026-024	11-9-26/11-9-26	1.3, 4.2, 23.01.010	Amendments to Comprehensive Plan to Update the List of Applicable Zones Allowed Under a Sisters Urban Growth Area Plan Designation
2026-026	11-9-26/11-9-26	23.01.010	Comprehensive Plan Designation for Certain Properties from Rural Residential Exception Area (RREA) to Sisters Urban Growth Area (SUGA)
2026-020	11-23-2026/2-21-2027	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2026-023	TBD / TBD	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2026-032	TBD / TBD	23.01.010	Comprehensive Plan Map Designation for Certain Property from Rural Residential Exception Area (RREA) to Rural Industrial (RI)

2026-021	TBD / TBD	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)

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

FILE NUMBERS: 247-25-000537-PA / 247-25-000538-ZC

APPLICANT/OWNER: Willitts, LLC (the "Applicant")

APPLICATION: The Applicant requests a Comprehensive Plan Amendment to change the designation of the Subject Property from Agricultural ("AG") to Rural Residential Exception Area ("RREA") and a Zone Change to rezone the subject property from Exclusive Farm Use ("EFU") to Multiple Use Agricultural ("MUA-10").

SUBJECT PROPERTY: Situs Address: 68621 HWY 20, Sisters, OR 97759
Map/Tax Lot: 151010000080 (the "Property")

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

I. PROCEDURAL HISTORY:

The County's land use Hearings Officer conducted the initial evidentiary hearing regarding the subject applications on May 21, 2026. In a Recommendation and Findings mailed on July 21, 2026, the Hearings Officer recommended that the Board of County Commissioners ("Board") deny the application based on a recent Land Use Board of Appeals ("LUBA") decision that held that without conditions or other measures to restrict parcel sizes a decision to approve rezoning to MUA-10 presented a possibility of a future approval of parcels smaller than 10-acres in violation of Deschutes County Comprehensive Plan ("DCCP") Policy 3.3.1 and also that could be inconsistent with Goal 14. The Board conducted a *de novo* land use hearing on September 2, 2026. The Board closed the public hearing on September 2, 2026, and ordered an open record period that ended September 23, 2026. On October 14, 2026, the Board began deliberations.

During deliberations, Commissioners discussed two potential conditions of approval, one originally presented by the Applicant and one articulated by a Commissioner to which the Applicant stated it would agree. The Board decided to return for further deliberation after reviewing the recording of the public hearing and allowing staff to draft a potential condition of approval consistent with the discussion that occurred at that hearing. The Board returned for deliberations on November 9, 2026, and decided that the potential condition required a new notice to DLCD, and the County was required to conduct a final evidentiary hearing. On November 11, 2026, the County sent a notice of a public hearing. On November 23, 2026,

the Board voted to approve the subject applications as conditioned below. The findings in this Decision are intended to supplement those findings by the Hearings Officer and the findings in this Decision control over any inconsistent findings in the Hearings Officer Recommendation.

II. FINDINGS AND CONCLUSIONS OF LAW:

The Board expressly adopts and incorporates into this decision the findings and conclusions of the Hearings Officer, subject only to modifications contained in this decision. Specifically, the Hearings Officer found based upon the Applicant's Order 1 Soil Study, that the Property was predominantly non-agricultural land. OAR 660-033-0020(1)(a) The Board finds that no participant produced evidence that contradicted the Applicant's Order 1 study or the Hearings Officer's finding. The Board agrees that the Property does not meet the definition of agricultural land under OAR 6660-033-0020(1)(a)(A).

The Board agrees with the Hearings Officer's application of the suitability factors in OAR 660-033-0020(1)(a)(B) and adopts his finding that the Property is not suitable for farm use. The Board agrees with the Hearings Officer that the Property is not necessary to allow farm practices on adjacent or nearby agricultural land. Finally, the Board agrees with the Hearings Officer that rezoning the Property to MUA-10 is consistent with the purpose of the MUA-10 zone.

As noted, the Hearings Officer, could not recommend approval of the application because a recent LUBA decision concluded the existence of DCC provisions that conflict with DCCP 3.3.1, could, without restrictions or conditions, lead to future applications for the creation of cluster and planned developments with parcels 2-acres or smaller. The Board will address this aspect of the Hearings Officer's recommendation in detail below but concludes that, as conditioned, the issues on which LUBA remanded the applications will be addressed and the subject applications can be approved.

Based on the Board's deliberations conducted on October 14, 2026, and November 23, 2026, the Board adopts the following additional findings:

1. Whether the Property is agricultural land considering the factors in OAR 660-033-0020(1)(a)(B)

OAR 660-033-0020(1)(a)(B) requires a decisionmaker to consider several factors to determine whether land, even if predominantly Class 7 and 8 soil, qualifies as agricultural land. The factors include soil fertility, suitability for grazing, climate, availability of water, land use patterns and accepted farming practices. After the Hearings Officer issued his recommendations wherein, he found that the Property was not agricultural land suitable for farming, Central Oregon LandWatch ("COLW") and the Applicant submitted additional evidence and argument. The Hearings Officer relied on the Order 1 soil study that

demonstrated that almost 70% of the Property consists of Class 7 and 8 soil that is not agricultural soil with or without irrigation. The Hearings Officer relied upon the fact that the Property has no irrigations rights at present. The Hearings Officer accepted the testimony of the Applicant's experts, both of whom are farming experts. One expert, a renowned regenerative farming consultant who in 2019 attempted to grow crops using advanced farming practices and was unsuccessful. The other expert is a local farmer who physically evaluated the Property and concluded that it was not suitable for farm use considering the required factors. That expert found that the Property consists of rocky soil under the surface with the structure that simulates a French drain, which removes water from land rapidly. That conclusion affects water holding capacity which is significant for farming.

The Applicant's local expert evaluated the steps it would take to attempt to convert the property into suitable agricultural land and the cost associated with those measures. The Applicant's expert concluded that the cost made it infeasible to conduct any farm use primarily for the purpose of making a profit. The Applicant's expert could not locate any past or present irrigation rights. The Property has a ground water right for a well, but the Applicant's expert questioned the ability to use such water for irrigation for farming, confirmed that to install a commercial size pump would be prohibitive, and determined that the amount of water required to irrigate the Property could negatively impact ground water in the area.

The Board rejects COLW's assertions regarding irrigation of the Property. As noted, the evidence in the record is that there are no irrigation rights associated with the Property, past or present. COLW did not rebut that evidence with any evidence of its own. COLW instead relied solely on historic photographs that it claims depict farming activity on the Property. That evidence does not establish that the subject Property was irrigated or had irrigation rights.

In the proceedings before the Board, COLW submitted material that came from websites and other sources as examples of other properties upon which farm use was conducted asserting that the examples demonstrated that the same farm uses could be conducted on the Property. The Board finds that COLW's examples do not overcome the direct evidence and testimony presented by the Applicant.

COLW failed to offer any qualitative comparison of the properties it identified with the Property. COLW asserted that because the properties it identified are in the same general ecoregion, have the same climate and are in the same plant hardiness zone, they demonstrate that the Property is equally able to support the same farming activities.

The Board rejects that conclusory argument. The ecoregion and plant hairiness zones identified are large and include most of Central Oregon. Indeed, some of the properties COLW identified are miles away from the Property in other counties such as Crook. The Board finds that soil fertility and quality vary dramatically on properties within Deschutes

County and Central Oregon in general. It is not accurate to conclude that every EFU zoned property in Central Oregon has the same suitability for farm use as other properties in the area simply because it is in the same broad ecoregion or plant hardiness zone.

COLW did not provide any details on the soil fertility or overall quality in any of its examples. It did not provide any detailed information on the current or future availability of water for irrigation on those properties. COLW did not examine whether those properties already had structures, fencing and other infrastructure required for farm uses. In contrast, the Applicant provides detailed information on several of COLW's examples that illustrate that the properties are comprised of better agricultural soil than that confirmed for the Property in the Order 1 soil study.

The Board finds that there is substantial evidence in the record, much of which was unrefuted, demonstrating that the Property is not suitable for farming applying the factors in OAR 660-033-0020(1)(a)(B).

2. Whether the Property is agricultural land because it is necessary to permit farm practices on adjacent and nearby agricultural land under OAR 660-033-0020(1)(a)(C).

The Board agrees with the Hearings Officer's finding that the Property is not agricultural land because it is necessary to permit farm practices on adjacent or nearby agricultural land. The Board notes that in prior LUBA cases, LUBA adopted the dictionary definition of necessary which includes the term "indispensable". The Board finds that the Property is not necessary or indispensable in the sense that no reasonable farmer would try to incorporate it into any ongoing farm operation given the exorbitant cost to transform the land into land that could be farmed agricultural land. Most of the nearby agricultural land in current farm use is north and east of the Property. According to NRCS mapping those areas are comprised of more agricultural land. It is unreasonable to expect that those owners would take on the exorbitant cost associated with trying to convert the Property into agricultural land. Finally, those properties are on the other side of a busy highway creating significant barriers to any efficient conjoined use.

The properties east of the Property and south of Highway 20 that are zoned EFU are primarily not in farm use. The property immediately east was approved for a DCCP amendment and zone change to MUA-10. Beyond this property there are parcels used as part of the Sisters' wastewater treatment facilities. One of the city-owned parcels is used seasonally for grazing horses associated with Black Butte Ranch. However, the record informs that the city will be incorporating that parcel into its treatment facilities. The record has substantial evidence that the city's approval for its facilities, including the use of effluent for irrigation comes with significant restrictions that are contrary to farm use. Thus, like the other city parcels, it will not be available for farm use in the future.

Nor does the Board find that rezoning the subject Property to MUA-10 will result in impacts to adjacent or nearby agricultural land that would render it impractical to engage in farm practices on those lands. COLW did not present any specific evidence of impacts form rezoning the Property that would render it impossible to engage in farm practices on nearby agricultural lands.

The Applicant's professional traffic study did not note any anticipated impacts on nearby or adjacent land. COLW officered speculation, but no substantial evidence of any impacts that would render retaining the EFU zoning on the Property indispensable to other agricultural land. In fact, the record demonstrates that in 2022, the county approved a commercial activity in conjunction with farm use on agricultural land northeast of the Property. In that decision, the County evaluated potential impacts from the commercial activities on adjacent and nearby properties finding potential impact to be acceptable. The Board finds that impacts from potential uses allowed on the Property in the MUA-10 zone will be similar in nature and extent to those generated by the commercial activity in conjunction with farm use.

The Board finds that substantial evidence in the record supports the Hearing Officer's conclusion that the Property is not necessary to permit farm practice on adjacent or nearby agricultural properties.

3. Does the proposed plan amendment and zone change comply with Goal 5.

As the Hearings Officer concluded, the Applicant submitted a site-specific ESEE identifying potentially conflicting uses in the MUA-10 zone if it applied to the Property and the conflicting uses could be allowed subject to the Landscape Management ("LM") Combining Zone which ensures compatibility of new uses with Goal 5. The Hearings Officer noted that no participant produced evidence to rebut the ESEE analysis.

Before the Board, COLW submitted photographs purportedly representing the Property from Highway 20. COLW asserted that the LM zone was not adequate to protect the scenic resource and that the Applicant had to make some further showing under Goal 5. The Applicant submitted additional photographs that were more focused on the Property. The Applicant also demonstrated that on other MUA-10 properties within the same scenic corridor, the LM overlay has been applied to permit potentially conflicting uses in a manner that is compatible with the Goal 5 scenic resource. In fact, one of those decisions approved a dwelling on the Property.

The Board finds the Applicant's evidence and argument superior to that of COLW. The Board finds that the Applicant's site-specific ESEE is consistent with the requirements. The Board finds that the LM zone is the appropriate measure to protect the Goal 5 resource. The Board expressly adopts the Applicant's Goal 5 ESEE for the Property.

4. Has the Applicant demonstrated compliance with DCCP Policy 3.3.1.

The Board acknowledges that the County's consideration of applications to rezone resource land to MUA-10 has been impacted by multiple recent LUBA decisions. In *Destiny Court*, LUBA agreed with COLW that DCCP Policy 3.3.1 establishes a minimum parcel size in the MUA-10 zone at 10 acres and does not authorize cluster or planned development that are allowed uses in the MUA-10 zone pursuant to Deschutes County Code ("DCC") Chapter 18.

On June 26, 2026, LUBA issued its decision in the *BCL LLC* matter where it held that even though the application did not request approval of any parcels smaller than 10 acres, because the application and decision did not include any restriction to that effect, there remained a potential conflict because nothing prevented a future applicant from applying to subdivide the property into parcels smaller than 10 acres.

On September 10, 2026, the Board adopted amendments to Chapter 10 of the 2040 DCCP that authorize cluster and planned developments in the MUA-10 zone, subject to various standards. The Board's amendments are on appeal to LUBA. Thus, currently, DCCP Policy 3.3.1 is the controlling policy and applicable law.

The Board finds, despite LUBA's concern described above, any partition or subdivision application must be submitted under DCC Title 17. DCC 17.12.010 mandates that all applicants for a division of land demonstrate that the application is consistent with the County's Comprehensive Plan. That includes demonstrating consistency with DCCP Policy 3.3.1.

Nevertheless, to be certain that the Board addresses LUBA's concern, the Board agrees with the Applicant that a condition of approval is appropriate to ensure that approval of the application does not result in an inconsistency between the DCCP and the DCC.

The Applicant proposed a condition that would restrict the current and future applicants/owners from obtaining approval to create any parcels on the Property that are less than 10-aces unless and until the County has acknowledged DCCP policies that authorize such as provided for in the DCC.

COLW asserted that there is no authority for the Board to impose such a condition. The Board disagrees. DCC 18.136.030 expressly authorizes the Board to impose conditions in a rezoning application. Further, LUBA authority is consistent. See, *Olson Memorial Clinic v. Clackamas County*, 21 Or LUBA 418 (1991).

COLW further asserts that the Applicant's proposed condition eliminates uses allowed in the MUA-10 zone and therefore is inconsistent with the purpose of the MUA-10 zone. The Board

rejects that assertion. As noted, the proposed condition does not eliminate any uses that are allowed. It restricts the size of future parcels created from the subject property to that which is allowed under DCCP Policy 3.3.1. Moreover, the proposed condition is in response to developing law and is an interim measure to respond to a LUBA decision. The proposed condition confirms that as long as DCCP Policy 3.3.1 is the controlling law, applicants may not obtain approval to create any parcels smaller than 10 acres. When new DCCP policies that authorize parcels smaller than 10 acres in the MUA-10 zone are acknowledged, any perceived inconsistency between the DCCP and the DCC will be resolved, and the condition of approval will no longer be effective. Any future application to divide land in the MUA-10 zone will have to comply with both the new DCCP policies and the relevant DCC standards in effect at that time.

While the acknowledged condition does restrict development otherwise allowed in the MUA-10 zone, the Board does not believe that the law prohibits any owner from voluntarily agreeing to restrict use of its Property. DCC 18.136.030 restricts the Board from imposing certain conditions. The Board interprets that provision to be for the protection of owners against involuntary conditions. It does not prohibit an owner from agreeing to conditions consistent with the owner's desired use of the Property.

5. Will the approval of the application result in urban uses that require a Goal 14 exception.

On the issue of whether designating land RREA and rezoning it to MUA-10 is consistent with Goal 14 or requires an exception, the Board continues to adhere to the conclusion it has reached in prior rezoning applications. The Board finds that its acknowledged Comprehensive Plan, amended in 2016 to create the RREA designation, and its MUA-10 and RR-10 zones confirm that uses allowed within those zones are all rural uses and not urban uses. The Comprehensive Plan states that "[e]ach Comprehensive Plan map designation provides the land use framework for establishing zoning districts. Zoning defines in detail what uses allowed for each area." DCCP Section 1.3. Rural Residential Exception Areas, according to the DCCP, "provide opportunities for rural residential living outside urban growth boundaries and unincorporated communities …" DCCP Section 1.3. DCCP Table 1.3.3 provides that Title 18's RR-10 and MUA-10 zones are the associated zoning codes for the RREA plan designation.

The determination that the RREA plan designation and RR-10 and MUA-10 zoning districts should apply to exception lands was made when the County amended the DCCP in 2016. (Ordinance 2016-005). The ordinance was acknowledged by DLCD as complying with the Statewide Goals. Thus, the lot sizes and uses allowed by the RREA plan designation and the RR-10 and MUA-10 zones comply with Goal 14. The proposed amendment to the Comprehensive Plan map conforms to the DCCP provisions.

Further, the purpose statement for the MUA-10 zone expressly states that it is to preserve the rural character of various areas of the County while permitting development consistent with that character and the capacity of the natural resources of the area. When DCC Chapter 18.32 is read in context with that purpose statement, the only plausible interpretation is that all uses allowed in the MUA-10 zone are rural uses. The Board expressly interprets DCC Chapter 18.32 to mean that. Thus, the application does not provide any basis for the County to revisit whether the RREA designation, or the RR-10/MUA-10 zones violate Goal 14 by allowing urban development and requires no individual analysis of specific uses or of whether the MUA-10 uses violate Goal 14 is required.

As an alternative basis to find that the proposal is consistent with Goal 14 and does not require an exception to that Goal, the Board finds that the proposed condition of approval will ensure compliance with Goal 14 as interpreted by the Oregon Supreme Court in the *Curry County* case. The only future use/development that COLW argues is the creation of parcels smaller than 10-acrtes, specifically, cluster and planned developments. Those are the only uses that LUBA questioned as being potentially inconsistent with Goal 14 because they could have the effect of introducing urban density in close proximity to the Urban Growth Boundary ("UGB").

The proposed condition will establish as a matter of fact and law that the current application will not result in any parcel less than 10 acres. In *Curry County*, the court announced that parcels 10 acres or larger are presumed to result in rural densities. Thus, the condition will ensure consistency with Goal 14. The condition will remain until the amendments to the DCCP authorizing cluster and planned developments in the MUA-10 zone are authorized. As written, those provisions also mandate that future applicants for such proposal demonstrate compliance with Goal 14.

The Board finds that the City of Sisters' zoning immediately adjacent to the Property allows a minimum density of 3 units per acre and a maximum density of 8 units per acre. Under the Applicant's proposed condition, the smallest parcel that could be created from the Property will be 10-acres. Regardless of the close proximity to the UGB, the dramatic difference in lot/parcel size will differentiate the urban and rural properties reinforcing the effectiveness of the UGB.

III. DECISION

Based upon the foregoing Findings and Conclusions of Law, the Board of County Commissioners hereby **APPROVES** the Applicant's request for a Deschutes Comprehensive Plan Amendment and Zone Change for the Subject Property, subject to the following conditions of approval below.

IV. CONDITIONS OF APPROVAL

1. This decision and any ordinance adopted pursuant to it do not authorize a future application for the creation of any parcels in the MUA-10 zone that are less than 10 acres under DCC 18.116.400, DCC 18,128.200, DCC 18.128.210, or any other DCC provision unless and until (1) the County formally adopts amendments to the MUA-10 DCCP rural lands policies that authorize such developments and parcel sizes with provision to ensure that consistency with Goal 14 is evaluated, and (2) those amendments are acknowledged by the DLCD. Unless and until such acknowledgement, the applicant and all future applicants for the subject property are restricted to the creation of parcels not less than 10 acres regardless of the proximity of the property to the UGB and any DCC code provision to the contrary.

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

Exhibit "G" to Ordinance No. 2026-021

RECOMMENDATION AND FINDINGS OF THE DESCHUTES COUNTY HEARINGS OFFICER

FILE NUMBERS:	247-25-000537-PA / 247-25-000538-ZC
HEARING DATE:	May 21, 2026, 1:00 p.m.
HEARING LOCATION:	Videoconference and Barnes & Sawyer Rooms Deschutes Services Center 1300 NW Wall Street Bend, OR 97708
APPLICANT/OWNER:	Willitts LLC
SUBJECT PROPERTY:	Map and Tax Lot: 1510100000800 Situs Addresses: 68621 HWY 20, Sisters, OR 97759
REQUEST:	The Applicant requests a Comprehensive Plan Amendment to change the designation of the Subject Property from Agricultural ("AG") to Rural Residential Exception Area ("RREA") and a Zone Change to rezone the subject property from Exclusive Farm Use – Sisters/Cloverdale Subzone ("EFU-SC") to Multiple Use Agricultural ("MUA-10").
HEARINGS OFFICER:	Tommy A. Brooks

SUMMARY OF RECOMMENDATION: The Hearings Officer finds that the current record is not sufficient to support the requested Comprehensive Plan Amendment and Zone Change. Specifically, the Hearings Officer finds that the current record is not sufficent to show compliance with Statewide Planning Goal 14 or Comprehensive Plan Policy 3.1.1. The Hearings Officer therefore recommends the County's Board of Commissioners deny the Application unless the Applicant satisfactorily addresses those issues.

I. APPLICABLE STANDARDS AND CRITERIA

Deschutes County Code ("DCC")
Title 18, Deschutes County Zoning Ordinance:
Chapter 18.04, Title, Purpose, and Definitions
Chapter 18.16, Exclusive Farm Use Zones ("EFU")
Chapter 18.32, Multiple Use Agriculture
Chapter 18.80, Airport Safety Combining Zone ("AS")

Chapter 18.84, Landscape Management Combining Zone ("LM")
Chapter 18.136, Amendments
Title 22, Deschutes County Development Procedures Ordinance

Deschutes County Comprehensive Plan
Title 23, Deschutes County Comprehensive Plan ("DCCP")
Chapter 1, Comprehensive Planning
Chapter 2, Resource Management
Chapter 3, Rural Growth Management
Appendix C – Transportation Plan
Chapter 5, Supplemental Sections

Oregon Administrative Rules ("OAR") - Chapter 660
Chapter 660, Land Conservation and Development Department
Division 6, Goal 4 Forest Lands
Division 12, Transportation Planning
Division 15, Statewide Planning Goals
Division 23, Procedures and Requirements for Complying with Goal 5
Division 33, Agricultural Lands

Oregon Revised Statutes ("ORS")
Chapter 215, County Land Use Planning: Resource Lands

II. BACKGROUND AND PROCEDURAL FINDINGS

A. Nature of Proceeding

This matter comes before the Hearings Officer as a request for approval of a quasi-judicial Comprehensive Plan Map Amendment ("Plan Amendment") to change the designation of the Subject Property from Agricultural ("AG") to Rural Residential Exception Area ("RREA"). The Applicant also requests approval of a corresponding Zoning Map Amendment ("Zone Change") to change the zoning of the Subject Property from Exclusive Farm Use – Sisters/Cloverdale Subzone ("EFU-SC") to the Multiple Use Agriculture ("MUA-10") zone.

The Application requests a Plan Amendment, which is ultimately a decision for the County's Board of Commissioners ("County Board"). Several applicable criteria require a weighing of policy choices, and the record before the County Board may be different than the current record. This Recommendation therefore determines if the Applicant has met its burden of proof in a manner that would support the County Board's approval of the Application based on the current record.

/ / /

B. Notices, Hearing, Record Materials

The Applicant initially filed the Application on August 27, 2025, and provided supplemental materials throughout this proceeding.

On October 24, 2025, staff in the County's Community Development Department ("Staff") mailed a Notice of Application identifying the standards and criteria governing the review of the Application and seeking public comment on the Application. On April 2, 2026, Staff mailed a Notice of Public Hearing ("Hearing Notice") to agencies, interested persons, and all property owners within 750 feet of the Subject Property, announcing a public hearing to be held on May 21, 2026. The Hearing Notice was also published in the Bend Bulletin on Sunday, April 5, 2026. Notice of the Hearing was submitted to the Department of Land Conservation and Development on April 2, 2026.

Pursuant to the Hearing Notice, I presided over the Hearing as the Hearings Officer on May 21, 2026, opening the Hearing at approximately 1:05 p.m. The Hearing was held in person and via videoconference, with the Hearings Officer appearing remotely. At the beginning of the Hearing, I provided an overview of the quasi-judicial process and instructed participants to direct comments to the approval criteria and standards, and to raise any issues a participant wanted to preserve for appeal if necessary. I stated I had no *ex parte* contacts to disclose or bias to declare. I invited but received no objections to the County's jurisdiction over the matter or to my participation as the Hearings Officer.

The Hearing concluded at approximately 2:05 p.m. Prior to the conclusion of the Hearing, I announced that the written record would remain open as follows: (1) any participant could submit additional materials until May 28, 2026, ("Open Record Period"); (2) any participant could submit rebuttal materials (evidence or argument) until June 4, 2026 ("Rebuttal Period"); and (3) the Applicant could submit a final legal argument, but no additional evidence, until June 11, 2026. Staff provided further instruction to participants, noting that all post-Hearing submittals needed to be received by the County by 4:00 p.m. on the applicable due date. No participant objected to the post-hearing procedures.

Various participants submitted post-Hearing materials within the time limits described above, and no objections were made to any of those submittals. However, two participants submitted comments after the close of both the Open Record Period and the Rebuttal Period. Participant Janice Farney submitted comments on June 6, 2026, and participant Scott Mather submitted comments on June 19, 2026. Participant Farney's and participant Mather's comments do not explain the purpose of the comments or otherwise provide an explanation for why the late-filed comments should be included in the record. I find that these submittals should therefore be rejected as untimely. The record therefore includes all materials submitted to the County as reflected on the County's website for this matter, with the exception of the two submittals from participants Farney and Mather just described.

/ / /

/ / /

C. Review Period

Because the Application includes the request for a Plan Amendment, the 150-day review period set forth in ORS 215.427(1) is not applicable.[1] The 150-day review period is also not applicable by virtue of Deschutes County Code ("DCC" or "Code") 22.20.040(D). No participant to the proceeding disputes those conclusions.

III. SUBSTANTIVE FINDINGS AND CONCLUSIONS

A. Staff Report

On May 14, 2026, Staff issued a report setting forth the applicable criteria and presenting evidence in the record at that time ("Staff Report").

The Staff Report, although it expresses agreement with the Applicant in most places, does not make a final recommendation. Instead, the Staff Report asks the Hearings Officer to determine if the Applicant has met the burden of proof necessary to justify the Plan Amendment and Zone Change.

B. Plan Amendment

DCC 18.136.010 contemplates that an applicant may seek a quasi-judicial amendment to the County's Comprehensive Plan Map ("Plan Map"). Other than a reference to the procedural provisions of DCC Title 22, the Code does not appear to contain any substantive standards or criteria specific to an amendment to the Plan Map. Pursuant to ORS 197.175(2), however, if the County amends its Plan or Plan Map, it must do so in compliance with Statewide Planning Goals (each a "Goal" and, together, the "Goals"). Because the existing Plan and Plan Map have been acknowledged, the requested Plan Amendment must adhere to the procedures for a post-acknowledged plan amendment ("PAPA") set forth in state statutes and rules.

Division 15 of OAR Chapter 660 sets forth the Statewide Planning Goals and Guidelines with which a PAPA must demonstrate compliance. The Applicant asserts the Application is consistent with all applicable Goals and Guidelines. Except for Goal 3, Goal 5, and Goal 14, which are addressed in more detail in findings below, I adopt the Applicants' position on the remaining Goals as recited on pages 29 to 34 of the Application, which is supported by findings in the Staff Report, and I find that the Plan Amendment and Zone Change are consistent with the applicable Goals and Guidelines as described in the Application and the Staff Report.

The remainder of the findings in this section address specific Goals that are in dispute.

1. Goal 3 – Agricultural Lands

Goal 3 and its implementing rules protect agricultural lands. OAR 660-033-0020(1) provides the following definition:

[1] ORS 215.427(7).

(a) "Agricultural Land" as defined in Goal 3 includes:

(A) Lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon;

(B) Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices; and

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

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

A primary dispute in this proceeding is whether the Subject Property qualifies as "agricultural land" under this definition. If the Subject Property is agricultural land, the Application cannot be approved unless the County justifies an exception to Goal 3. If the Subject Property is not agricultural land, it is not protected by Goal 3 and, therefore, the County can conclude that the Plan Amendment is consistent with Goal 3.

The Applicant primarily relies on an Order 1 Soil Survey, prepared by a qualified soil scientist, to demonstrate that the soils on the Subject Property are predominately Class 7 and 8 soils and, therefore, that the Subject Property is not agricultural land. But the Applicant also provides evidence to support its assertion that the Subject Property is not suitable for farm use, that it is not necessary to permit farm practices to be undertaken on adjacent or nearby lands, and that it is not adjacent to or intermingled with lands with higher values within a farm unit.

Participant Central Oregon LandWatch ("COLW") disagrees and argues the Subject Property is agricultural land. COLW does not counter the specific information provided in the Order 1 Soil Survey or otherwise assert that the County cannot rely on that survey to determine the on-site soil conditions. Rather, COLW asserts that the Subject Property remains agricultural land because it is suitable for farm use, that it is necessary to permit farm practices to be undertaken on adjacent or nearby lands, and that it is adjacent to or intermingled with lands with higher values within a farm unit.

In light of the detailed information provided by the Applicant's expert soil scientist, which information is uncontroverted, I find that the Applicant has met its burden of demonstrating the Subject Property is not agricultural land under OAR 660-033-0020(1)(a)(A). The findings below address the remainder of OAR 660-033-0020(1).

The question under OAR 660-033-0020(1)(a)(B), which LUBA refers to as the "suitability test,"[2] is whether a reasonable farmer would be motivated to put the land to agricultural use for the primary purpose of obtaining a profit in money.[3] Accordingly, the question is whether the property is capable of farm use with a reasonable expectation of yielding a profit in money, either on a standalone basis or in conjunction with other farms.

The Applicant asserts that the Subject Property is not suitable for farm use. In support of that assertion, the Applicant initially points to the information provided in the Order 1 Soil Survey, which includes evidence that the soils on the Subject Property have low fertility, limited forage potential for grazing, and poor water retention capabilities. The Applicant also submitted a Statement of Agricultural Feasibility prepared by an expert consultant who has direct experience attempting to conduct grazing activities on the Subject Property.

Participant COLW addresses this issue through its specific assertion that the Applicant has failed to demonstrate "that a farmer could not use the subject property to raise goats or chickens or any of the livestock types identified by the USDA…" and that "[t]he relevant analysis is whether, for example, a farmer could raise chickens on the subject property and sell the eggs at the farmer's market for the primary purpose of obtaining a profit in money." COLW also relies on historical aerial photos it asserts show that the Subject Property has produced crops in the past. COLW also asserts that, because the Subject Property was previously irrigated and remains within the boundaries of an irrigation district, it should still be considered irrigated.

As LUBA recently explained, an applicant is not required to evaluate "every possible type of activity that potentially falls within the broad definition of 'farm use,' and produce evidence regarding whether the subject property is suitable for all conceivable farm uses."[4] But, if other participants identify specific farm uses that are common, and provide some evidence or argument that the subject property is suitable for such uses," the Applicant must address those uses.[5] That being said, "a bare assertion, without more, that a property is suitable for a type of farm use that is uncommon or locally less prevalent is an insufficient basis to obligate responsive evidence from the applicant."[6]

For the most part, COLW makes bare assertions about the suitability of the Subject Property without supporting details about the commonality of those uses or the specific characteristics of the Subject Property that would make those uses feasible. Where COLW has been specific, such as asserting that livestock grazing is possible, or that irrigation could enhance the productivity of the soils, I find that the Applicant's information is more detailed and backed by expert opinions. For example, the Order 1 Soil Survey expressly addresses how additional irrigation water applied

---

[2] *See Central Oregon Landwatch v. Deschutes County*, __ Or LUBA __ (LUBA No. 2025, June 26, 2026) ("*BCL LLC*") (slip op at 11).
[3] *See Central Oregon Landwatch v. Deschutes County*, __ Or LUBA __ (LUBA No. 2025-015, June 26, 2025) ("*Destiny Court")* (slip op at 20). In that case, LUBA acknowledged that the phrase "reasonable farmer" can be used as shorthand for the suitability test, which is an objective test.
[4] *See BCL LLC* (slip op at 13).
[5] *Id.* (slip op at 14).
[6] *Id.* (slip op at 15).

to the Subject Property, even assuming it is available, does not raise the status of the soils from unfavorable to normal. Having weighed the competing evidence, I find that the Applicant has met its burden of demonstrating the Subject Property is not suitable for farm uses as set forth in OAR 660-033-0020(1)(a)(B) and, therefore, is not agricultural land on that basis.

The question under OAR 660-033-0020(1)(a)(C) is whether the Subject Property "is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands." (Emphasis added). COLW argues that the Subject Property is indeed necessary as described in the statute, but the basis for that argument is a policy-based one. For example, COLW argues that the purpose of the farm protection statutes is to preserve large blocks of farmland. COLW does not, however, further develop this argument to explain what role the Subject Property plays in that policy, much less why a farm zone designation is necessary to keep in place to serve that role. Even so, COLW does not provide specific examples of what farm practices would no longer be undertaken on adjacent or nearby agricultural lands if the Subject Property no longer carries the EFU zoning designation.

Even though COLW has not shown that the Subject Property is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands, the burden is on the Applicant to show that the property is not necessary for that purpose. To meet that burden, the Applicant provided evidence describing the limited number of nearby farming operations, many of which are separated from the Subject Property by a state highway and which operate on a stand-alone basis.

Having weighed the competing evidence, I find that the Applicant has met its burden of demonstrating the Subject Property is not necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands for farm uses as set forth in OAR 660-033-0020(1)(a)(C) and, therefore, is not agricultural land on that basis.

As a final step in this analysis, OAR 660-033-0020(1)(b) requires an assessment of whether the Subject Property is adjacent to or intermingled with higher class soils within a farm unit. COLW asserts that the Subject Property has this characteristic because there are higher classes of soils on the Subject Property itself, and because the Subject Property is adjacent to other agricultural lands. I find that this argument fails as a matter of law.

The express language of the statutes requires a determination that the land "is adjacent to or intermingled with lands in capability classes I-IV/I-VI within a farm unit." (Emphasis added). First, COLW does not fully explain why the Subject Property is currently part of a "farm unit" as required by the statutory language. COLW seems to argue that the Subject Property once was part of a farm unit, but does not explain if the designation remains. To the contrary, the Applicant provided additional detail to show that the Subject Property is not currently part of a farm unit. Further, the test under this part of the statute is whether the Subject Property itself is intermingled with other properties of higher soil class, not whether the Subject Property contains lower class soils intermingled with higher class soils.

Based on the foregoing, I find that the Applicant has met its burden of demonstrating the Subject Property is not agricultural land under the definition in OAR 660-033-0020(1)(b).

In summary, I find that the record is sufficient for the County Board to find that the Subject Property is not agricultural land and, therefore, the requested Plan Amendment is consistent with Goal 3.[7]

2. Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces

Goal 5 and its implementing rules protect natural resources, scenic and historic areas, and open spaces. Pursuant to OAR 660-023-0250(3), the County does not have to apply Goal 5 as part of a PAPA "unless the PAPA affects a Goal 5 resource." One scenario in which a PAPA may affect a Goal 5 resource is when the "PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list."[8] The Subject Property is near the scenic resources along Highway 20. The Applicant acknowledges this fact, and the fact that the Plan Amendment allows new uses that could conflict with the County's identified scenic resource.

To address Goal 5, the Applicant provided an analysis of the economic, social, environmental, and energy ("ESEE") consequences of the proposed PAPA as required by OAR 660-023-0040(1). In accordance with that administrative rule, the Applicant's ESEE analysis identifies conflicting uses, determines an impact area, analyzes the ESEE consequences, and proposes a "program" to achieve Goal 5 protections. The program the Applicant proposes is the application of the Landscape Management ("LM") combining zone to the Subject Property, which is the mechanism the County uses to protect scenic resources on other properties, including properties zoned MUA-10. The Applicant asserts the LM combining zone in DCC Chapter 18.84 is designed to achieve compatibility and that the County should apply this program and allow the uses permitted by the Plan Amendment and Zone Change to be subject to LM review.

The record contains many comments generally asserting that development on the Subject Property will conflict with the County's inventoried Goal 5 scenic resource. Participant Michele McKay provided slightly more detail, arguing that development on the Subject Property will block views of the Three Sisters, and participant COLW asserts that residential development specifically is not compatible with the landscape. As noted above, the Applicant does not dispute the existence of such conflicts and, instead, provides a full ESEE analysis to determine what conflicts might exist and how those conflicts may be mitigated. No participant disputes the details of the ESEE analysis or otherwise claims with any specificity that the LM combining zone will not protect the identified Goal 5 resource. Indeed, participant McKay acknowledges that the County's current program, which the Applicant seeks to replicate on the Subject Property, protects scenic views.

Based on the Applicant's full ESEE analysis and the lack of countervailing evidence, I find that the record is sufficient for the County Board to find that the requested Plan Amendment is consistent with Goal 5 by applying the LM combining zone to the Subject Property.

---

[7] COLW's arguments regarding agricultural land include multiple assertions relating to whether the Subject Property was lawfully created. I find that this argument is not developed enough for me to respond to, and COLW does not explain what criterion or standard it is addressing with these arguments.

[8] OAR 660-023-0250(3)(b).

3. Goal 14 – Urbanization

Goal 14 seeks to "provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure the efficient use of land, and to provide for livable communities."[9] When a PAPA results in the urbanization of rural land, it generally requires an exception to Goal 14. The Applicant asserts that no Goal 14 exception is required because the Plan Amendment and Zone Change will not result in the urbanization of land, and because the County has previously determined that the MUA-10 zone is consistent with Goal 14. Participant COLW argues that the proposed Plan Amendment does result in the urbanization of the Subject Property and, therefore, it is not consistent with Goal 14 without a Goal 14 exception.

By way of background, it is true that the MUA-10 zone has previously been interpreted as being compatible with Goal 14. In LUBA's opinion in the *Marken* case, for example, LUBA considered whether the density and lot size permitted under the MUA-10 zoning complies with Goal 14.[10] In that case, the Board had approved a PAPA to change the Plan designation of the subject property from AG to RREA and a corresponding zone change from Exclusive Farm Use-Tumalo-Redmond Bend Subzone ("EFU-TRB") to MUA-10. Prior to addressing the petitioner's argument, LUBA acknowledged the County's findings:

> "The Deschutes County Comprehensive Plan and Title 18 of the Deschutes County Code have been acknowledged by [the Land Conservation and Development Commission (LCDC)] as being in compliance with every statewide planning goal, including Goal 14. The County specifically amended its comprehensive plan in 2016 to provide that the Rural Residential Exception Area Plan and its related MUA-10 and RR-10 zones should be applied to non-resource lands. Ordinance 2016-005. This amendment is acknowledged, which means that the RREA plan designation and its related zoning districts, when applied to non-resource lands such as the subject property, do not result in a violation of Goal 14."[11]

The Court upheld the County's interpretation that the MUA-10 zone uses are rural in nature and therefore do not conflict with Goal 14.[12] That decision relied in part on the density permitted under the MUA-10 zone – one dwelling per 10 acres – not being an urban density, a determination the petitioner in that case did not challenge.[13]

In more recent decisions, however, LUBA has been more specific about what is required to demonstrate that the application of the MUA-10 zoning designation complies with Goal 14. In the *Destiny Court* case, for example, the Petitioner requested a Plan Map amendment from AG to RREA and a zoning change from EFU-TRB to MUA-10. The hearings officer in that case took

---

[9] OAR 660-015-0000(14).
[10] *Central Oregon LandWatch v. Deschutes County*, __ Or LUBA __ (LUBA No. 2023-049, Feb. 15, 2024) (slip op at 10).
[11] *Id.* (slip op at 8).
[12] *Id.* (slip op at 11).
[13] *Id.* (slip op at 10).

official notice of LCDC's acknowledgment that the MUA-10 zone complies with all statewide planning goals. The hearings officer also considered a site-specific analysis prepared by the intervenor's attorney.[14] LUBA held that the site-specific analysis was necessary to demonstrate Goal 14 compliance.[15]

In the most recent case addressing this issue – *BCL LLC* – LUBA again determined that the application of the MUA-10 zoning is not, as a matter of law, always consistent with Goal 14, and that the County "must demonstrate that the proposed redesignation and rezoning is consistent with Goal 14, applying the relevant *Curry County* factors." The reference to the *Curry County* factors is *1000 Friends of Oregon v. LCDC,* 301 Or 447 (1986). As explained by LUBA:

> "Under *Curry County*, in redesignating rural land from plan designations implementing the resource goals, counties must evaluate whether development allowed under the new designation and associated zoning would allow for the urban use of rural land. That evaluation requires consideration of a number of factors described in *Curry County* and its progeny. With respect to PAPAs involving residential use of rural land, the relevant factors include the density of development allowed under the new plan designation and zone, the types and levels of services to be provided, and proximity to urban growth boundaries."[16]

Based on the most recent LUBA decisions, it is clear that the Applicant must show that the Plan Amendment and Zone Change comply with Goal 14 by applying the *Curry County* factors to the Subject Property rather than relying on the MUA-10 zone alone as demonstrating compliance with that Goal. As discussed in more detail below, I find that the Applicant has not met that burden based on the current record.

The first of the *Curry County* factors looks to the allowed density under the new Plan designation. The Applicant notes that, pursuant to Policy 3.3.1 of the Plan and Section 18.32.040 of the Code, the allowed density in the MUA-10 zone is no greater than one dwelling per ten acres because ten acres is the minimum lot size in that zone. In *Curry County*, the Court concluded that one dwelling per ten acres does not constitute urban zoning.

Participant COLW argues that, despite the minimum parcel size in the MUA-10 zone provisions of the Code, the actual density that is allowed under that zone could be much greater due to various options for cluster development or planned unit development in that zone. LUBA addressed this same argument in *BCL LLC*, concluding that the County must address that feature of the MUA-10 zone and determine if such densities are urban or rural.

The Applicant addresses whether the densities allowed for cluster developments or planned unit developments are urban in nature, but primarily relies on its assertion that the MUA-10 zone is a rural zone as a matter of law. Further, the Applicant insists that the default parcel size in the MUA-10 zone is sufficient to demonstrate a rural density of one dwelling per ten acres and that the

[14] *Destiny Court* (slip op at 10).
[15] *Destiny Court* (slip op at 14-15).
[16] *BCL LLC* (slip op at 25-26).

Application does not propose or request smaller parcels, and insists that the likely density of the Subject Property will consist of only two dwellings, given constraints for providing water and septic services on the property.

It is perhaps possible that the County Board could condition its approval to limit smaller parcels or to prohibit cluster development and planned unit developments on the Subject Property. The Applicant, however, has not proposed such a condition and, on this record, I find no basis to conclude that the ultimate disposition of the Subject Property will be limited to ten-acre parcels or to a maximum of only two dwellings. This *Curry County* factor therefore provides weight to the argument that the proposal could result in urban-level development.

The second *Curry County* factor looks to the types and levels of services to be provided. The Applicant asserts that any services for the Subject Property will be rural in nature. For example, water will come from a private source on the Property rather than a public system, sanitary waste will be treated through an on-site septic system, and fire and public safety will continue to be provided by the Camp Sherman Fire District and Deschutes County Sheriff, respectively. Other participants do not refute the Applicant's characterization of these services or identify specific urban-level services that will be required for the Subject Property under the requested zoning.

Based on the foregoing, I find that the second *Curry County* factor provides weight to the argument that the proposal will not result in urban-level development.

The third *Curry County* factor considers proximity to the urban growth boundary ("UGB"). The Subject Property is adjacent to the Sisters UGB. The Applicant asserts that this proximity is not material because the purpose of the MUA-10 zone is to create a transition area between rural and urban uses and, therefore, implementing this zone next to the UGB is appropriate.

Other participants do not address this factor with specificity. However, LUBA addressed this issue in its *BCL LLC* decision. There, LUBA determined that changing a parcel to the RREA is inconsistent with Goal 14 where the property was within one-quarter mile of the City of Bend's UGB, and where the allowed density on the property was similar to what would be allowed in that city. Applying that logic to the facts in this case, the third *Curry County* factor provides weight to the argument that the proposal will result in urbanization. Specifically, the Subject Property is even closer to the UGB than the property in *BCL LLC*, and the potential for some development with no minimum lot size makes potential lot sizes similar to what would be allowed in the UGB.

Having considered the *Curry County* factors, I find that, based on the current record, the proposal could result in urbanization of the Subject Property, and the Applicant has therefore not met its burden of showing that the proposal is consistent with Goal 14. For that reason, I do not recommend that the County Board approve the Application unless the Applicant justifies an exception to that Goal or otherwise creates a different record that can address compatibility with Goal 14.

/ / /

/ / /

C. Zone Change

The Applicant requests a Zone Change from EFU-SC to MUA-10. The criteria for rezoning a parcel are set forth in DCC Chapter 18.136. These findings address the applicable Zone Change criteria in the context of the Applicant's request. That is, the Applicant has also requested the Plan Amendment to change the Plan Map designation applicable to the Subject Property – from the AG designation to the RREA designation. As discussed in the findings above, I have found that the Applicant has initially not met its burden of demonstrating compliance with the Plan Amendment criteria. The findings in this section, however, are based on the assumption that the Plan designation for the Subject Property is RREA, as the Applicant requested. If the County Board does not approve the Plan Amendment, these findings may need to be altered to address the request for a Zone Change based on whatever Plan Map designation the County Board approves.

Section 18.136.020, Rezoning Standards

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

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

This Code provision requires consideration of the public interest based on whether: (1) the Zone Change conforms to the Comprehensive Plan; and (2) the change is consistent with the Comprehensive Plan's introductory statement and goals.

The Applicant, Staff, and other participants address this Code criterion by discussing specific Plan goals and policies. Before addressing those specific arguments, I note that, if the Plan Amendment is approved, it seems necessary to rezone the Subject Property in some way. That is, the Agricultural designation of the Plan is implemented through the exclusive farm use resource zone designations. The RREA Plan designation, in contrast, is implemented through the RR-10 and MUA-10 zones. There seems to be no basis under the Plan to allow the Plan Amendment to change the designation of the Subject Property to RREA but to keep the EFU zoning. Viewed through that lens, it seems that either the RR-10 or the MUA-10 zones largely conform to the Plan in this context, and that the Applicant must show only that the Zone Change, as applied to the Subject Property, is consistent with the Plan's introductory statement and goals.

The Staff Report notes that the County generally does not consider the Plan's goals and policies to be mandatory criteria. With one exception – Plan Policy 3.1.1 – no participant to this proceeding appears to dispute Staff's position that the goals and polices are not mandatory criteria. Nevertheless, because the Code itself requires a consideration of the Plan's statements and goals, and because some participants have questioned whether the Zone Change is consistent with those Plan provisions, I address those issues in this Recommendation.

The Application identifies potentially relevant Plan provisions by pointing to several goals and policies in the Plan set forth in DCCP Chapter 2 and Chapter 3, Rural Growth Management. The Applicant states that the Application is consistent with those policies and goals. The Staff Report generally agrees with the Applicant's assessment of those policies and goals.

Notwithstanding the foregoing, COLW and other participants, such as participants McKay, Hancock, Dooley, and Swaim, assert that the Application is inconsistent with Plan Policy 3.1.1, but only participant COLW presents specific arguments to support that assertion.

Policy 3.1.1 states: "Except for parcels in the Westside Transect Zone, the minimum parcel size for new rural residential parcels shall be 10 acres." COLW argues that the Zone Change is inconsistent with this policy because the resulting MUA-10 zone could allow parcels that are smaller than 10 acres, through cluster development or planned unit development.

The Applicant responds that COLW's argument is tantamount to a facial challenge to the County's MUA-10 zone (which is being addressed by the County Board in a legislative forum) and that such an argument would result in a moratorium on applying the MUA-10 zone to any property. The Applicant also responds by noting that it has not proposed any parcels to be smaller than 10 acres and, therefore, the Application is consistent with this policy.

I do not understand COLW's argument to be a facial challenge to the MUA-10 zone. Rather, the issue raised is whether the application of the MUA-10 zone specifically to the Subject Property as part of the current Application is consistent with Policy 3.1.1. It may be true that COLW could raise this same issue in other applications, or in a legislative forum, but the current record does not attempt to address every application of the MUA-10 zone that would encompass a facial challenge. Even if it can be characterized that way, I find it is possible to address this issue in an isolated fashion that applies only to the current record.

As noted in the findings above addressing Goal 14, it is possible that the Subject Property could be divided into parcels smaller than 10 acres once the MUA-10 zone applies. The Applicant has not proposed such a parcelization, and instead urges that any limits on future parcel sizes can be addressed at the time of development or parcelization. As LUBA held in *BCL LLC*, however, consistency with Plan policies must be determined at the time of the PAPA rather than a subsequent land use application.[17] Even though the Applicant has not proposed parcels smaller than 10 acres, it also has not proposed to impose such a limit, thereby preserving in the Application the possibility that the full range of uses and development, including smaller parcel sizes, will be available under the new zoning. Based on the record as it currently exists, I therefore find that the Applicant has not met its burden to show that its proposal is consistent with Policy 3.1.1.

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

DCC 18.32.010 contains the following purpose of the MUA-10 zone:

> The purposes of the Multiple Use Agricultural Zone are to preserve the rural character of various areas of the County while permitting development consistent with that character and with the capacity of the natural resources of the area; to preserve and maintain agricultural lands not suited to full-time commercial farming

[17] *BCL LLC* (slip op at 10).

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

The Applicant states that changing the zoning designation of the Subject Property is consistent with the purpose and intent of the MUA-10 zone because the Subject Property is not suited to full-time commercial farming and that the lower level of development will conserve open spaces and protect natural and scenic resources. The Applicant also claims that the low level of allowed development will maintain and improve the quality of the air, water, and land resources of the County and encourage future owners of the property to either return irrigation water to the area or to farmlands elsewhere.

Participant COLW asserts that the intent of the MUA-10 zone is more specifically to "preserve agricultural lands not suited to full-time commercial farming for diversified or part-time agricultural uses." (Emphasis added). According to COLW, if the Applicant is correct that the Subject Property is not agricultural land protected by Goal 3, then it cannot meet the purpose of the MUA-10 zone. COLW also asserts that the MUA-10 zone "was created to regulate the use of land for which an 'irrevocably committed' or 'previously built' exception to Goal 3 was taken in the County's first comprehensive plan" and that the MUA-10 zone can therefore apply only where the County takes a new Goal 3 exception.

COLW's arguments have no basis in the text of the Code or the Plan. As noted in the express language of DCC 18.32.010, the MUA-10 zone has multiple purposes, of which the preservation of "agricultural land" is only one. The MUA-10 zone has other purposes, such as conserving open space and providing for an orderly and efficient transition from rural to urban land use. Similarly, the express language of the Plan addressing the RREA purpose states "As of 2010 any new Rural Residential Exception Areas need to be justified through initiating a non-resource plan amendment and zone change by demonstrating the property does not meet the definition of agricultural or forest land, or taking exceptions to farm, forest, public facilities and services and urbanization regulations, and follow guidelines set out in the OAR." It is clear from that language that the County intends to apply the MUA-10 zone either where it can justify a Goal 3 exception or where there is a demonstration that the property does not meet the definition of agricultural land.

Based on the foregoing, I find that the Applicant has met its burden of demonstrating this Code provision is satisfied.

/ / /

/ / /

/ / /

/ / /

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

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

Only the Applicant and Staff directly address this Code provision. The Applicant notes that services for development in the MUA-10 are adequate and the Subject Property will not rely on public services and facilities under the new zoning designation. For example, there is existing access to the public road system, which the Applicant relies on the transportation system impact review to confirm. Developments in rural areas also must generally provide their own water and septic systems. In addition, the property receives police services and fire services from the Deschutes County Sheriff and the Sisters/Camp Sherman Fire District respectively.

Based on the foregoing, I find that the Applicant has met its burden of demonstrating this Code provision is satisfied.

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

Only the Applicant and Staff directly address this Code provision. The Applicant claims that the Applicant's proposal for MUA-10 zoning will not impact surrounding land use, as it is consistent with the zoning of many other properties in the area. Participant COLW asserts that the land use pattern in the area has not changed, but COLW does not explain how that assertion leads to a conclusion that any impacts on surrounding lands will not be consistent with the goals and policies of the Plan.

Based on the foregoing, and in the absence of more specific countervailing evidence or argument addressing this provision, I find that this Code provision is satisfied as described by the Applicant.

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

The Applicant addresses this Code provision primarily through its argument that the more specific Order 1 Soil Survey shows a change in circumstances since the Subject Property was last zoned. That change is the understanding of what the actual characteristics of the soils are, and the fact that those soils are not as conducive to agriculture as originally assumed when the EFU zoning was applied.

I find that the Applicant's argument is a sufficient basis to satisfy this Code provision. In addition, as noted above, the Zone Change analysis relies on the assumption that the Plan designation for the Subject Property is RREA. When the Subject Property was last zoned, its Plan designation was AG. If the County Board approves the Plan Amendment, I find that the change in Plan designation is, by itself, sufficient to show there has been a change in circumstances and, therefore, this Code provision will be satisfied.

IV. CONCLUSION

Based on the foregoing findings, I find the Applicant has not met its burden of proof with respect to the standards for approving the requested Plan Amendment and Zone Change, because the current record is insufficient to show compliance with Goal 14 and Plan Policy 3.1.1. I therefore recommend to the County Board of Commissioners that it DENY the request in the Application based on the current record.

Dated this 20th day of July 2026



Tommy A. Brooks
Deschutes County Hearings Officer

Exhibit "H" to Ordinance No. 2026-021

ESEE ANALYSIS

Summary

The subject property is located within the Landscape Management Combining Zone ("LM") that is designed to protect scenic views. The LM zone extend .25 miles on either side of Highway 20. The scenic views from the highway will not be appreciably impacted by any new uses allowed under the MUA-10 Zone. First, the subject property is immediately adjacent to the city and parcels that are fully developed with commercial structures right along Highway 20. There are two existing structures, the "Old House" and an associated barn within about 50 feet of the highway. In addition, allowing lower-intensity development permitted in the MUA-10 zone along with the LM standards will effectively protect any scenic views. No development permitted in that zone will be so intense or tall that it will affect the view of the distant hills and mountains.

Economic Consequences

Conflicting Use - Common to all MUA-10 Permitted Uses	Positive Consequences	Negative Consequences
	Uses allowed in the MUA-10 zone will have positive economic consequences in that the uses promote the County's rural housing goals and policies creating more opportunities for rural housing. Agricultural and forest propagation uses, to the extent they can be supported on the property, add to the rural economic base. Road projects enhance the accessibility to the property supporting other MUA-10 uses. Private parks provide recreational opportunities for those who reside in the rural area. Home occupations provide owners with the ability to generate income on their properties and can provide needed services to the rural community.	The County's original 1992 ESEE analysis notes that "the economic impact of maintaining the visual quality of the area would be positive. Deschutes County would remain a desirable place to live, thereby maintaining neighborhood property values. Maintaining or enhancing visual quality makes the County a more attractive place to visit, thereby attracting more visitors and inducing people to stay longer." Allowing reasonable development of rural uses subject to applicable standards will not significantly alter the above statements.

Conflicting Use - Permitted Uses	Positive Consequences	Negative Consequences
Single Dwellings	New single dwellings attract people to the County and	There are no negative economic consequences from

	generally add to the economic base in the rural community.	this use related to the scenic corridor.

Conflicting Use - Permitted Uses	Positive Consequences	Negative Consequences
Agricultural uses and Propagation or Harvesting Forest Products	In light of the soil report confirming that the property is not agricultural land and the fact that it has no trees, these uses are unlikely. However, these uses are generally allowed in the EFU zone and any economic consequences under MUA-10 zoning will be the same and will be positive.	There are no negative economic consequences from these uses related to a scenic corridor.

Conflicting Use - Permitted Uses	Positive Consequences	Negative Consequences
Road Projects	Road projects tend to enhance the transportation system that supports rural businesses thus providing an economic benefit.	There are no negative economic consequences for this use related to a scenic corridor.

Conflicting Use - Permitted Uses	Positive Consequences	Negative Consequences
Home Occupations	This use adds to the rural economy allowing residents to work from home.	Because a home occupation is within an approved dwelling, it will not produce any additional negative economic consequences related to a scenic corridor.

Conflicting Use – MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Private Parks	Private parks have limited economic consequences related to a scenic resource but generally are consistent with the purpose of having pleasant views that may attract visitors to the County.	There are no negative economic consequences for this use related to a scenic corridor.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences

Non-Commercial Stables Horse Events	IN light of the soil quality, proximity to the urban area and relatively small size, it is unlikely that any owner could justify the cost to develop such facilities. However, if they could, these rural-based uses add to the rural economy. Private stables allow horse owners to keep animals in a safe environment close to public area for riding supporting that recreational activity. It allows owners of the facility to generate some income. Horse events support the rural community where many residents live because they enjoy having horses and other animals. They can also enhance the community involvement bringing residents together for outdoor social events.	While it is possible that some stables and event facilities could be visible from the highway, one would not expect them to be located within .25 miles of a highway, and they would not have any appreciable economic consequence related to the scenic corridor.

Conflicting Use - MUA-10 Conditional Uses	**Positive Consequences**	**Negative Consequences**
Commercial activities in conjunction with Farm Use	Because the soil quality precludes farm use on the property, these uses are also unlikely. However, these conflicting uses add to the rural economy and offer additional services to the rural community.	Commercial activities can add to vehicular traffic, and some could be seen from Highway 20. However, they would not likely detract people from moving to the County or visiting. Thus, there is not expected to be any economic consequence related to the scenic resource.

Conflicting Use – MUA-10 Conditional Uses	**Positive Consequences**	**Negative Consequences**
Dude Ranch Guest House	Dude ranches and guest housing provide an economic benefit to the rural area and offer a platform to showcase	These uses would not likely be located near the highway and would have no negative economic consequences.

	some of the characteristics of the rural area.	

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Kennel/Vet Clinic	These uses also benefit the rural economy. They offer valuable services to the rural residents.	These uses would not detract people from moving to or visiting the County and thus have no negative economic consequence.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Destination Resort Golf Course	The property is far too small for these uses. Assuming that one could be located on the subject property, these uses would provide significant economic opportunities and job growth. It does not appear that the uses could be placed on the property though.	It is not likely that these uses could be placed on the property. These uses would not detract people from moving to or visiting the County and thus have no negative economic consequence.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Forest Product Production Facility	This is another use that is not likely on the subject property because there are no trees on the property and no commercial forest operations in the area. It is, however, allowed in the MUA-10 zone conditionally. If developed, it could add to the rural economy and may add jobs.	It is not likely that these uses could be placed on the property. These uses would not detract people from moving to or visiting the County and thus have no negative economic consequence.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Hydroelectric Facility	There is no need to address this use as there is no chance one can be developed on the property. Within an MUA-10 zone that has a river, it could provide energy to the rural community and possible jobs.	Generally, if this use were developed on an MUA-10 property with a river, it could, depending on the location, impact a scenic corridor but it is not relevant to the current application.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Rural Housing, including PUDs and Cluster Development	In the near term, allowing MUA-10 uses on the subject property create opportunities for rural business and rural housing both of which can produce positive social consequences in that they offer citizens with opportunities to live in a rural setting and others to conduct socially beneficial rural businesses.	These uses would not detract from people moving to the County but rather would enhance it. Thus, there would be no negative economic consequence.

Social Consequences

Conflicting Use – Common to all MUA-10 Uses	Positive Consequences	Negative Consequences
	In general, allowing uses permitted in the MUA-10 zone will provide positive social consequences because they allow people to reside in a rural area on large parcels and other uses bolster the rural economy which provides positive social impacts to the population at large.	The 1992 County inventory confirmed that having good visual quality areas more accessible to the public enhances livability. This is still true. However, the view from Highway 20 in the subject area already has significant development close to the highway. The best way to address the goal expressed in 1992 is for the County to apply its development standards in general and the LM standards specifically to all new development.

Conflicting Use - Permitted Uses	Positive Consequences	Negative Consequences
Single Dwellings	New single dwellings attract people to the County and generally add social benefits.	There are no negative social consequences from this use related to the scenic corridor.

Conflicting Use - Permitted Uses	Positive Consequences	Negative Consequences
Agricultural uses and Propagation or Harvesting Forest Products	The poor soil quality and lack of trees render these uses unlikely. However, these uses are generally allowed in the EFU zone and any social consequences under MUA-10 zoning will be the same and will be positive.	There are no negative social consequences from these uses related to a scenic corridor.

Conflicting Use - Permitted Uses	Positive Consequences	Negative Consequences
Road Projects	Road projects tend to enhance the transportation system for rural residents which is a positive social consequence.	There are no negative social consequences for this use related to a scenic corridor.
Conflicting Use - Permitted Uses	**Positive Consequences**	**Negative Consequences**

Home Occupations	This use allows rural residents to earn income while being at home to also care for children and animals. It produces all positive social consequences.	Because a home occupation is within an approved dwelling, it will not produce any additional negative social consequences related to a scenic corridor.

Conflicting Use – MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Private Parks	Private parks have a positive social consequence related to a scenic resource because they offer more visual beauty and promote livability.	There are no negative social consequences for this use related to a scenic corridor because parks enhance livability.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Non-Commercial Stables Horse Events	For the reasons stated above, these uses do not appear to be likely. However, private stables allow horse owners to keep animals in a safe environment close to public area for riding supporting that recreational activity. It allows owners of the facility to generate some income. These are positive social consequences. Horse events support the rural community where many residents live because they enjoy having horses and other animals. They can also enhance the community involvement bringing residents together for outdoor social events.	While it is possible that some stables and event facilities could be visible from Highway 20, one would not expect them to be located within .25 miles of a highway, and they would not have any appreciable negative social consequence related to the scenic corridor.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Commercial activities in conjunction with Farm Use	For the reasons stated above, this use is not likely. However, these conflicting uses add to the rural economy and offer additional services to the rural	Commercial activities can add to vehicular traffic, and some could be seen from Highway 20. However, they would not likely detract people from

	community which is a positive social consequence.	moving to the County or affect liability. Thus, there is not expected to be any negative social consequence related to the scenic resource.

Conflicting Use – MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Dude Ranch Guest House	Dude ranches and guest housing provide a place for residents and visitors to gather and enjoy recreational activities and food. They offer a positive social consequence.	These uses would not be located near the highway and would have no negative social consequences related to scenic areas.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Kennel/Vet Clinic	These uses also benefit the rural community by providing needed services which is a positive social consequence.	These uses would need to be developed under the standards in place to protect scenic views. While they could impact peoples' perception of a view, they are likely to be developed in or close to rural service centers where existing development exists. Thay can also be compatible with the resource through compliance with the LM standards.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Destination Resort Golf Course	There is not sufficient acreage for these uses. Assuming that one could be located on the subject property, these uses would provide significant social benefit by providing a location for people to enjoy central Oregon.	It is not likely that these uses could be placed on the property. These uses would not detract people from seeing the scenic resources and in fact, such developments typically try to enhance the views for those who visit.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Forest Product Production Facility	This is another use that is not likely on the subject property	It is not likely that these uses could be placed on the

	because there are no commercial forest operations in the area. It is, however, allowed in the MUA-10 zone conditionally. If developed, it could add to the rural economy and may add jobs which are socially beneficial.	property. These uses could produce a negative social consequence if developed in certain areas. As a conditional use, conditions would have to be imposed.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Hydroelectric Facility	There is no need to address this use as there is no chance one can be developed on the property. Within an MUA-10 zone that has a river, it could provide renewable energy to the rural community which is socially beneficial.	Generally, if this use were developed on an MUA-10 property with a river, it could, depending on the location, impact a scenic corridor but it is not relevant to the current application.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Rural Housing, including PUDs and Cluster Development	In the near term, allowing these MUA-10 uses on the subject property create opportunities for rural business and rural housing both of which can produce positive social consequences in that they offer citizens with opportunities to live in a rural setting and others to conduct socially beneficial rural businesses.	These uses would not detract from people moving to the County but rather would enhance it. These developments require dedicated open space which can be located to preserve any scenic views. Thus, there would be no negative social consequence.

Environmental Consequences

Conflicting Use – Common to all MUA-10 Uses	Positive Consequences	Negative Consequences
The conflicting uses are the same uses listed under the economic consequence section. As noted, in light of the size and other limitations, some uses simply cannot be developed such as golf	Development of uses allowed in the MUA-10 zone will allow rural housing and rural businesses to be located immediately adjacent to the city in close proximity to services and attractions desired by the residents and	Almost all development comes with some perceived negative consequences to the environmental features on land. In some cases, trees are lost. In others, rock outcroppings may need to be removed or altered. In this

courses, airports, and destination resorts.	customers. Thus, it will reduce the amount of travel and thereby reduce the carbon footprint overall.	case, negative consequences to mapped environmental resources will be minimum and can be mitigated or under the Development Code. Some uses allowed in the MUA-10 zone are consistent with uses that are allowed under the current F-2 zone such as forest-related uses. Under LUBA's decision in LUBA Case 2023-008, the County's prior ESEE analysis remains applicable because the MUA-10 zone is not introducing a new use that was not allowed when that analysis was completed. However, other allowed uses will be new uses. The uses predominantly placed on MUA-10 land are large-acre residential uses and other low-intensity rural uses such as horse-related facilities. Those uses do not have large building footprints relative to the overall size of the parcels allowed. The minimum parcel size for the subject property under the MUA-10 zoning is 7.5 acres. That leaves ample area to preserve trees, vegetation, outcroppings, and other resources. Negative consequences to the scenic resource can be effectively managed.

Conflicting Use - Permitted Uses	Positive Consequences	Negative Consequences
Single Dwellings	New single dwellings are likely to have neutral environmental consequences when located on larger MUA-10 parcels.	New single dwellings are likely to have neutral environmental consequences when located on larger MUA-10 parcels.

Conflicting Use - Permitted Uses	Positive Consequences	Negative Consequences
Agricultural uses and Propagation or Harvesting Forest Products	These uses are generally allowed in the EFU zone and any environmental consequences under MUA-10 zoning will be the same and will be positive.	There are no negative environmental consequences from these uses related to a scenic corridor.

Conflicting Use - Permitted Uses	Positive Consequences	Negative Consequences
Road Projects	Road projects tend to enhance the transportation system, making travel more efficient and potentially reducing emissions.	A new road within a scenic corridor may require some removal of vegetation.

Conflicting Use - Permitted Uses	Positive Consequences	Negative Consequences
Home Occupations	This use would allow people to work from home reducing vehicle trips and emissions.	Because a home occupation is within an approved dwelling, it will not produce any additional negative environmental consequences related to a scenic corridor.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Private Parks	Private parks will have limited environmental consequences related to a scenic resource but generally are consistent with the purpose of having pleasant views that may attract visitors to the County.	There are no negative environmental consequences for this use related to a scenic corridor as trees and vegetation do not have to be removed.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Non-Commercial Stables Horse Events	Private stables on MUA-10 land close to the city limits, allow horse owners who reside in urban areas to board horses closer to town, reducing vehicle miles and emissions.	While it is possible that some stables and event facilities could be visible from the highway and would require some removal of trees and vegetation. These consequences can be mitigated for applying the LM standards.

	The same is true for horse events on MUA-10 land closer to where people live.	

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Commercial activities in conjunction with Farm Use	These conflicting uses are unlikely on property with poor soil but when feasible, add options for rural residents to travel less for goods and services reducing the carbon footprint.	Commercial activities can add to vehicular traffic, and some could be seen from Highway 20. Some could require the removal of vegetation which can be perceived as a negative consequence to a scenic corridor.

Conflicting Use – MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Dude Ranch Guest House	Dude ranches and guest housing have neutral environmental consequences in the MUA-10 zone. They are relatively low intensity development that does not require significant disturbance and require open space for the activities normally associated with them.	Even though they tend to be lower intensity developments, these uses could come with some limited vegetation removal and that could be perceived as a negative consequence in a scenic area.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Kennel/Vet Clinic	These conflicting uses add options for rural residents to travel less for goods and services reducing the carbon footprint.	These uses would likely require removal of vegetation if it were on the site, but they also are most likely to be located in or near rural service centers and unincorporated communities with other development.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Destination Resort Golf Course	Assuming that one could be located on the subject property, these uses would provide positive environmental consequences because they preserve open	It is not likely that these uses could be placed on the property. These uses would not detract from scenic beauty in the area because they are developed to provide pleasant

	space and with modern equipment reduce the use of water.	viewing of the scenic features in the County.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Forest Product Production Facility	This is another use that is not likely on the subject property because there are no trees on the site and no commercial forest operations in the area. It is, however, allowed in the MUA-10 zone conditionally. If developed, it could provide jobs for rural residents closer to where they live, reducing the amount of vehicle miles.	It is not likely that these uses could be placed on the property. These uses could require the removal of vegetation which is a negative environmental consequence.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Hydroelectric Facility	There is no need to address this use as there is no chance one can be developed on the property. Within an MUA-10 zone that has a river, it could provide renewable energy which is generally a positive environmental consequence.	Generally, if this use were developed on an MUA-10 property with a river, it could, depending on the location, impact a scenic corridor but it is not relevant to the current application.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Rural Housing, including PUDs and Cluster Development	In the near term, allowing MUA-10 uses on the subject property create opportunities for rural business and rural housing both of which can reduce vehicle miles and benefit the carbon footprint.	These uses require significant dedicated open space which is generally a positive environmental consequence.

Energy Consequences

Conflicting Use – Common to all MUA-10 Uses	Positive Consequences	Negative Consequences
The conflicting uses to consider are the same uses listed above under economic consequences. Overall, the	The positive energy consequences from MUA-10 uses are not appreciable. Some uses, such as a single	In general, it will take and consume energy to develop any uses allowed in the MUA-10 zone. That is a short-term

positive and negative energy consequences on a scenic resource are attenuated.	dwelling, are neutral as to consequences. However, allowing residential development for rural residents who may have employment nearby can reduce vehicle miles, gas consumption, and pollution.	negative consequence that is not related to a scenic view corridor. Additional electricity and propane will be needed for ongoing uses. That is a potential long-term consequence. Some of those consequences can be mitigated through the application of energy saving construction measures, many of which are not required by building codes.

Conflicting Use - Permitted Uses	Positive Consequences	Negative Consequences
Single Dwellings	New single dwellings are likely to have neutral energy consequences other than new construction which is typically required to be more energy efficient. Dwellings on larger parcel may also allow for more alternative energy sources.	There is no negative energy consequences from this use related to the scenic corridor.

Conflicting Use - Permitted Uses	Positive Consequences	Negative Consequences
Agricultural uses and Propagation or Harvesting Forest Products	For the reasons provided above, these uses are unlikely. However, they are generally allowed in the EFU zone and any energy consequences under MUA-10 zoning will be the same and will be positive.	There is no negative energy consequences from these uses related to a scenic corridor.

Conflicting Use - Permitted Uses	Positive Consequences	Negative Consequences
Road Projects	Road projects tend to enhance the transportation system, making travel more efficient and thus conserving energy.	There is no negative energy consequences for this use related to a scenic corridor.

Conflicting Use - Permitted Uses	Positive Consequences	Negative Consequences
Home Occupations	This use allows residents to work from home saving some energy resources.	Because a home occupation is within an approved dwelling, it will not produce any

		additional negative energy consequences related to a scenic corridor.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Private Parks	Private parks have limited energy consequences related to a scenic resource because they are passive uses.	There is no negative energy consequences for this use related to a scenic corridor.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Non-Commercial Stables Horse Events	There do not appear to be any specific energy consequences related to a scenic resource from these uses.	There do not appear to be any specific energy consequences related to a scenic resource from these uses.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Commercial activities in conjunction with Farm Use	Again, these uses are unlikely on a small parcel with poor soil. These conflicting uses add to the rural economy and offer additional services to the rural community reducing petroleum energy consumption.	Commercial activities can add to the demand for some energy sources, but it does not require the removal of vegetation, creating a negative consequence related to a scenic resource.

Conflicting Use – MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Dude Ranch Guest House	There do not appear to be any specific energy consequences related to a scenic resource from these uses.	There do not appear to be any specific energy consequences related to a scenic resource from these uses.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Kennel/Vet Clinic	These uses can provide service closer to the expected users conserving petroleum energy sources.	There do not appear to be any specific energy consequences related to a scenic resource from these uses.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences

Destination Resort Golf Course	These are not feasible on the subject property. Assuming that one could be located on the subject property, these uses allow people to stay in one place for many activities reducing consumption of petroleum energy.	These uses can consume other energy sources such as electricity. However, it does not appear that that consequence relates to a scenic resource.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Forest Product Production Facility	This is another use that is not likely on the subject property because there are no trees on the site and no commercial forest operations in the area. It is, however, allowed in the MUA-10 zone conditionally. If developed, it could add jobs in the rural area and reduce petroleum energy use.	This use is likely to demand a lot of energy. However, with current DEQ requirements for emissions, it does not appear that that consequence relates to a scenic resource.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Hydroelectric Facility	There is no need to address this use as there is no chance one can be developed on the property. Within an MUA-10 zone that has a river, it could provide energy for the rural community.	Generally, if this use were developed on an MUA-10 property with a river, it could, depending on the location, impact a scenic corridor but it is not relevant to the current application.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Rural Housing, including PUDs and Cluster Development	These uses could provide housing closer to rural employment requiring residents to travel less for work and use less energy. Because they will be on larger parcels, they also offer more opportunities for alternative energy sources.	Dwellings in such development will consume some forms of energy such as electricity and propane. Energy saving construction can offset this negative energy consequence.

Return to:
Caroline House, Senior Planner
Community Development Department
117 NW Lafayette, P.O. Box 6005
Bend, Oregon 97708-6005

Space Reserved for Recorder's Use

CONDITIONS OF APPROVAL AGREEMENT AND RESTRICTIVE COVENANT

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

RECITALS

WHEREAS, Willitts sought approval of a plan amendment from Agricultural (AG) to Rural Residential Exception Area (RREA) and zone change from Exclusive Farm Use – Sisters Cloverdale Subzone (EFU-SC) to Multiple Use Agricultural (MUA-10) in File Nos. 247-25-000537-PA and 247-25-000538-ZC for the property described on **Exhibit A** (the "Property"), a copy of which is attached and incorporated by reference herein; and

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

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

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

NOW THEREFORE, the parties agree as follows:

The approval of the land use applications and ordinance adopted pursuant to it do not authorize a future application for the creation of any parcels in the MUA-10 zone that are less than 10 acres under DCC 18.116.400, DCC 18.128.200, DCC 18.128.210, or any other DCC provision unless and until (1) the County formally adopts amendments to the MUA-10 DCCP rural lands policies that authorize such developments and parcel sizes with provision to ensure that consistency with Goal 14 is evaluated, and (2) those amendments are acknowledged by the DLCD. Unless and until such acknowledgement, the applicant and all future applicants for the subject property are restricted to the creation of parcels not less than 10 acres regardless of the proximity of the property to the UGB and any DCC code provision to the contrary.

Dated this _____ of _____, 2026

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

_____
PHIL CHANG, Chair

_____
ANTHONY DeBONE, Vice Chair

ATTEST:

_____
Recording Secretary

_____
PATTI ADAIR, Commissioner

Dated this _____ of _____, 2026

WILLITTS LLC

_____
By: William G. Willitts
Its: _____

STATE OF OREGON)
) *ss*.
COUNTY OF DESCHUTES)

This instrument was acknowledged before me on _____, 2026 by William G. Willitts as _____ of Willitts LLC, an Oregon limited liability company.

_____
Notary Public for Oregon
Print Name _____
My commission expires _____

EXHIBIT A
PROPERTY DESCRIPTION
(TAX LOT 800, MAP 15-10-10)

A parcel of land situated in the West Half (W1/2) of Section 10, Township 15 South, Range 10 East of the Willamette Meridian, Deschutes County, Oregon, being more particularly described as follows:

Beginning at a brass capped iron pipe at the West Quarter corner of said Section 10; thence North 00° 07' 05" West on the West line of said Section 10, 416.44 feet to a point on the South right of way line of the Sisters-Bend Highway; thence South 59° 52' 40" East on said right of way line, 36.67 feet to a 5/8 inch iron rod; thence on said right of way on the arc of a 5650.00 foot radius curve to the left, (chord bears South 63° 26' 25" East, 702.19 feet), 702.64 feet to a 5/8 inch iron rod; thence South 67° 00' 11" East on said right of way line, 348.45 feet to a 5/8 inch iron rod; thence South 16° 17' 02" West leaving said right of way line, 289.57 feet to a 5/8 inch iron rod; thence South 18° 27' 59" West, 181.60 feet to a 5/8 inch iron rod; thence South 38° 24' 55" West, 66.93 feet to a 5/8 inch iron rod; thence South 28° 18' 58" West, 160.76 feet to a 5/8 inch iron rod; thence South 69° 22' 54" West, 763.94 feet to a 5/8 inch iron rod on the West line of said Section 10; thence North 00° 29' 01" West on said West line, 965.28 feet to the point of beginning.

REVIEWED_____

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code Title 23, the Deschutes County Comprehensive Plan, to Change the Comprehensive Plan Map Designation for Certain Property From Agriculture to Rural Residential Exception Area, and Amending Deschutes County Code Title 18, the Deschutes County Zoning Map, to Change the Zone Designation for Certain Property From Exclusive Farm Use to Multiple Use Agricultural.	* * * * * * *	ORDINANCE NO. 2026-021

WHEREAS, Willitts, LLC ("Applicant"), applied for changes to both the Deschutes County Comprehensive Plan Map (247-25-000537-PA) and the Deschutes County Zoning Map (247-25-000538-ZC), to change the Comprehensive Plan designation of the subject property from Agricultural ("AG") to Rural Residential Exception Area ("RREA"), and a corresponding Zone Change from Exclusive Farm Use ("EFU") to Multiple Use Agricultural ("MUA-10"); and

WHEREAS, after notice was given in accordance with applicable law, a public hearing was held on May 21, 2026, before the Deschutes County Hearings Officer;

WHEREAS, pursuant to DCC 22.28.030(C), on September 2, 2026, and November 23, 2026, the Board heard *de novo* the applications; now, therefore,

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

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

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

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

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

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

Section 6. AMENDMENT. The Board hereby amends the County's Goal 5 Scenic Roadway program as it relates to the subject property by adopting the site-specific Economic, Social, Environmental, and Energy ("ESEE") Analysis prepared by the Applicant attached as Exhibit "H" and incorporated herein by reference. This site-specific ESEE supersedes and replaces the 1992 ESEE analysis as applied to the subject property and constitutes the applicable Goal 5 ESEE findings for purposes of evaluating conflicting uses and determining the appropriate level of resource protection under OAR 660-023-0040.

Section 7. AGREEMENT. The Board adopts the Conditions of Approval Agreement as set forth in Exhibit "I," which Agreement shall be executed on the date this Ordinance is adopted.

Section 8. EFFECTIVE DATE. This Ordinance takes effect on the 90th day after the date of adoption, or if appealed, the date the ordinance is no longer subject to appeal and is deemed acknowledged.

Dated this _____ of _____, 2026

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

_____
PHIL CHANG, Chair

_____
ANTHONY DeBONE, Vice Chair

ATTEST:

_____
Recording Secretary

_____
PATTI ADAIR, Commissioner

Date of 1st Reading: _____ day of _____, 2026.

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

Record of Adoption Vote:

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

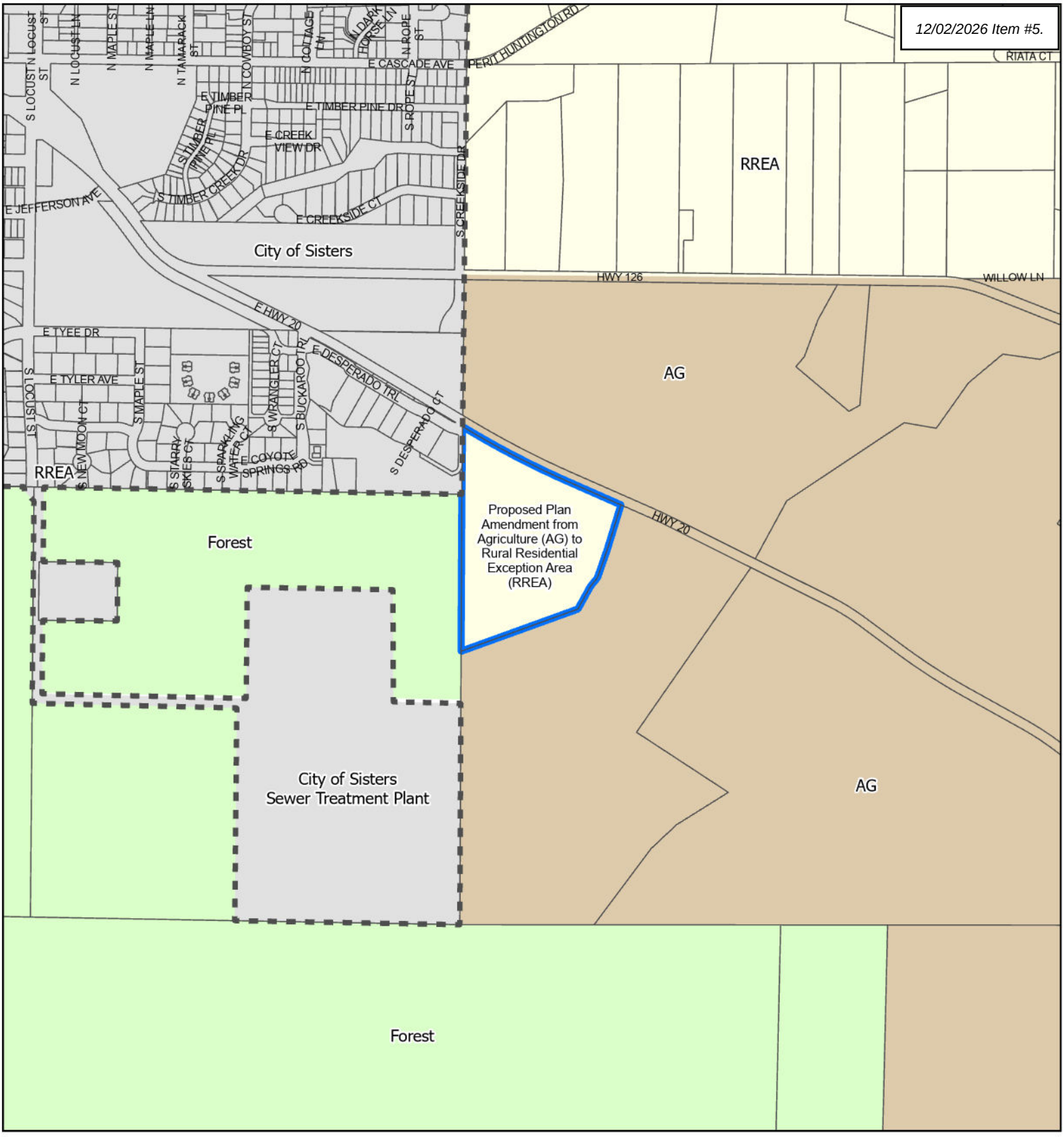
Effective date: _____ day of _____, 2027.

Exhibit "A" To Ordinance 2026-021

Legal Description of Subject Property

A parcel of land situated in the West Half (W1/2) of Section 10, Township 15 South, Range 10 East of the Willamette Meridian, Deschutes County, Oregon, being more particularly described as follows:

Beginning at a brass capped iron pipe at the West Quarter corner of said Section 10; thence North 00° 07' 05" West on the West line of said Section 10, 416.44 feet to a point on the South right of way line of the Sisters-Bend Highway; thence South 59° 52' 40" East on said right of way line, 36.67 feet to a 5/8 inch iron rod; thence on said right of way on the arc of a 5650.00 foot radius curve to the left, (chord bears South 63° 26' 25" East, 702.19 feet), 702.64 feet to a 5/8 inch iron rod; thence South 67° 00' 11" East on said right of way line, 348.45 feet to a 5/8 inch iron rod; thence South 16° 17' 02" West leaving said right of way line, 289.57 feet to a 5/8 inch iron rod; thence South 18° 27' 59" West, 181.60 feet to a 5/8 inch iron rod; thence South 38° 24' 55" West, 66.93 feet to a 5/8 inch iron rod; thence South 28° 18' 58" West, 160.76 feet to a 5/8 inch iron rod; thence South 69° 22' 54" West, 763.94 feet to a 5/8 inch iron rod on the West line of said Section 10; thence North 00° 29' 01" West on said West line, 965.28 feet to the point of beginning.



PROPOSED COMPREHENSIVE PLAN MAP

Exhibit "B"
to Ordinance 2026-021

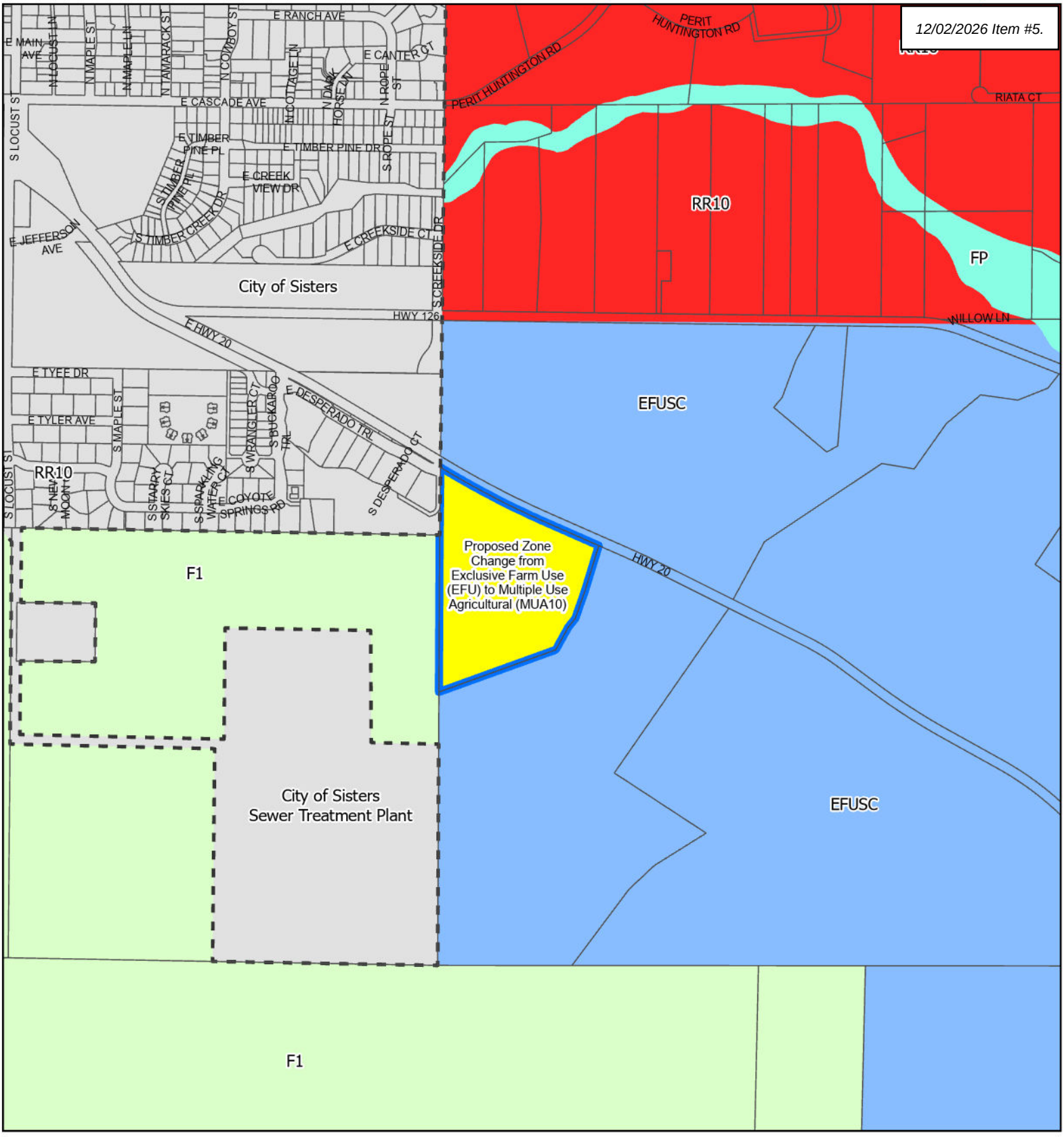
City of Sisters UGB
Proposed Plan Amendment Boundary

Comprehensive Plan Designation
AG - Agriculture
F - Forest
RREA - Rural Residential Exception Area

0 400 800 1,600 Feet

DISCLAIMER:
The information on this map was derived from digital databases on Deschutes County's G.I.S. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or positional accura data or the underlying records. There are no warranties, express or impli warranty of merchantability or fitness for a particular purpose, accompan However, notification of any errors will be appreciated.

File: N:\Custom\County\CDD\Planning\Caroline\247-25-000537-PA



PROPOSED ZONING MAP

Exhibit "C"
to Ordinance 2026-021

City of Sisters UGB
Proposed Zone Change Boundary

Zoning
EFUSC - Exclusive Farm Use
F1 - Forest Use 1
FP - Flood Plain
MUA10 - Multiple Use Agricultural
RR10 - Rural Residential

0 400 800 1,600 Feet

DESCHUTES COUNTY

DISCLAIMER:
The information on this map was derived from digital databases on Deschutes County's G.I.S. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or positional accura data or the underlying records. There are no warranties, express or impli warranty of merchantability or fitness for a particular purpose, accompan However, notification of any errors will be appreciated.

File: N:\Custom\County\CDD\Planning\Caroline\247-25-000538-ZC

October 29, 2026

TITLE 23 COMPREHENSIVE PLAN

CHAPTER 23.01 COMPREHENSIVE PLAN

A. The Deschutes County Comprehensive Plan, adopted by the Board in Ordinance 2011-003 and found on the Deschutes County Community Development Department website, is incorporated by reference herein.

B. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2011-027, are incorporated by reference herein.

C. [Repealed by Ordinance 2013-001, §1]

D. [Repealed by Ordinance 2023-017]

E. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-012, are incorporated by reference herein.

F. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-016, are incorporated by reference herein.

G. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-002, are incorporated by reference herein.

H. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-009, are incorporated by reference herein.

I. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-012, are incorporated by reference herein.

J. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-007, are incorporated by reference herein.

K. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-005, are incorporated by reference herein.

L. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-006, are incorporated by reference herein.

M. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-012, are incorporated by reference herein.

N. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-021, are incorporated by reference herein.

O. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-027, are incorporated by reference herein.

P. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-021, are incorporated by reference herein.

Q. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-029, are incorporated by reference herein.

R. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-018, are incorporated by reference herein.

S. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-010, are incorporated by reference herein.

T. [Repealed by Ordinance 2016-027 §1]

U. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-022, are incorporated by reference herein.

V. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-005, are incorporated by reference herein.

W. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-027, are incorporated by reference herein.

X. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-029, are incorporated by reference herein.

Y. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2017-007, are incorporated by reference herein.

Z. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-002, are incorporated by reference herein.

AA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-006, are incorporated by reference herein.

AB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-011, are incorporated by reference herein.

AC. [repealed by Ord. 2019-010 §1, 2019]

AD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-008, are incorporated by reference herein.

AE. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-002, are incorporated by reference herein.

AF. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-001, are incorporated by reference herein.

AG. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-003, are incorporated by reference herein.

AH. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-004, are incorporated by reference herein.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AZ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-006, are incorporated by reference herein.

BA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-010, are incorporated by reference herein.

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

BC. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-013, are incorporated by reference herein. (supplemented and controlled by Ord. 2024-010)

BD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-001, are incorporated by reference herein.

BE. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-007, are incorporated by reference herein.

BF. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-010 are incorporated by reference herein.

BG. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-018, are incorporated by reference herein.

BH. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-015, are incorporated by reference herein.

BI. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-025, are incorporated by reference herein.

BJ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-001, are incorporated by reference herein.

BK. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-003, are incorporated by reference herein.

BL. The Deschutes County Comprehensive Plan, adopted by the Board in Ordinance 2024-007 and found on the Deschutes County Community Development Department website, is incorporated by reference herein (superseded by Ord. 2025-007).

BM. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-010, are incorporated by reference herein.

BN. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-017, are incorporated by reference herein.

BO. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-016, are incorporated by reference herein.

BP. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-011, are incorporated by reference herein.

BQ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-012, are incorporated by reference herein.

BR. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-001, are incorporated by reference herein.

BS. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-003, are incorporated by reference herein.

BT. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-010, are incorporated by reference herein.

BU. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-007, are incorporated by reference herein (superseded by Ord. 2026-015).

BV. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-014, are incorporated by reference herein.

BW. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-004, are incorporated by reference herein.

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

BY. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-009, are incorporated by reference herein.

BZ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-013, are incorporated by reference herein.

CA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-015, are incorporated by reference herein.

CB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-014, are incorporated by reference herein.

CC. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-024, are incorporated by reference herein.

CD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-026, are incorporated by reference herein.

CE. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-020, are incorporated by reference herein.

CF. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-023, are incorporated by reference herein.

CG. CF. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-032, are incorporated by reference herein.

CH. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-021, are incorporated by reference herein.

Click here to be directed to the Comprehensive Plan (https://weblink.deschutes.org/CDD/Browse.aspx?id=1317439&dbid=0&repo=LFCDD)

Section 5.12 Legislative History

Background

This section contains the legislative history of this Comprehensive Plan.

Table 5.12.1 Comprehensive Plan Ordinance History

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

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

2015-029	11-23-15/11-30-15	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Tumalo Residential 5-Acre Minimum to Tumalo Industrial
2015-018	12-9-15/3-27-16	23.01.010, 2.2, 4.3	Housekeeping Amendments to Title 23.
2015-010	12-2-15/12-2-15	2.6	Comprehensive Plan Text and Map Amendment recognizing Greater Sage-Grouse Habitat Inventories
2016-001	12-21-15/04-5-16	23.01.010; 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from, Agriculture to Rural Industrial (exception area)
2016-007	2-10-16/5-10-16	23.01.010; 5.10	Comprehensive Plan Amendment to add an exception to Statewide Planning Goal 11 to allow sewers in unincorporated lands in Southern Deschutes County
2016-005	11-28-16/2-16-17	23.01.010, 2.2, 3.3	Comprehensive Plan Amendment recognizing non-resource lands process allowed under State law to change EFU zoning
2016-022	9-28-16/11-14-16	23.01.010, 1.3, 4.2	Comprehensive plan Amendment, including certain property within City of Bend Urban Growth Boundary
2016-029	12-14-16/12/28/16	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from, Agriculture to Rural Industrial

2017-007	10-30-17/10-30-17	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2018-002	1-3-18/1-25-18	23.01, 2.6	Comprehensive Plan Amendment permitting churches in the Wildlife Area Combining Zone
2018-006	8-22-18/11-20-18	23.01.010, 5.8, 5.9	Housekeeping Amendments correcting tax lot numbers in Non-Significant Mining Mineral and Aggregate Inventory; modifying Goal 5 Inventory of Cultural and Historic Resources
2018-011	9-12-18/12-11-18	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2018-005	9-19-18/10-10-18	23.01.010, 2.5, Tumalo Community Plan, Newberry Country Plan	Comprehensive Plan Map Amendment, removing Flood Plain Comprehensive Plan Designation; Comprehensive Plan Amendment adding Flood Plain Combining Zone purpose statement.
2018-008	9-26-18/10-26-18	23.01.010, 3.4	Comprehensive Plan Amendment allowing for the potential of new properties to be designated as Rural Commercial or Rural Industrial

2019-002	1-2-19/4-2-19	23.01.010, 5.8	Comprehensive Plan Map Amendment changing designation of certain property from Surface Mining to Rural Residential Exception Area; Modifying Goal 5 Mineral and Aggregate Inventory; Modifying Non-Significant Mining Mineral and Aggregate Inventory
2019-001	1-16-19/4-16-19	1.3, 3.3, 4.2, 5.10, 23.01	Comprehensive Plan and Text Amendment to add a new zone to Title 19: Westside Transect Zone.
2019-003	02-12-19/03-12-19	23.01.010, 4.2	Comprehensive Plan Map Amendment changing designation of certain property from Agriculture to Redmond Urban Growth Area for the Large Lot Industrial Program
2019-004	02-12-19/03-12-19	23.01.010, 4.2	Comprehensive Plan Map Amendment changing designation of certain property from Agriculture to Redmond Urban Growth Area for the expansion of the Deschutes County Fairgrounds and relocation of Oregon Military Department National Guard Armory.
2019-011	05-01-19/05-16/19	23.01.010, 4.2	Comprehensive Plan Map Amendment to adjust the Bend Urban Growth Boundary to accommodate the refinement of the Skyline Ranch Road alignment and the refinement of the West Area Master Plan Area I boundary. The ordinance also amends the Comprehensive Plan designation of Urban Area Reserve for those lands leaving the UGB.

2019-006	03-13-19/06-11-19	23.01.010,	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2019-016	11-25-19/02-24-20	23.01.01, 2.5	Comprehensive Plan and Text amendments incorporating language from DLCD's 2014 Model Flood Ordinance and Establishing a purpose statement for the Flood Plain Zone.
2019-019	12-11-19/12-11-19	23.01.01, 2.5	Comprehensive Plan and Text amendments to provide procedures related to the division of certain split zoned properties containing Flood Plain zoning and involving a former or piped irrigation canal.
2020-001	12-11-19/12-11-19	23.01.01, 2.5	Comprehensive Plan and Text amendments to provide procedures related to the division of certain split zoned properties containing Flood Plain zoning and involving a former or piped irrigation canal.

2020-002	2-26-20/5-26-20	23.01.01, 4.2, 5.2	Comprehensive Plan Map Amendment to adjust the Redmond Urban Growth Boundary through an equal exchange of land to/from the Redmond UGB. The exchange property is being offered to better achieve land needs that were detailed in the 2012 SB 1544 by providing more development ready land within the Redmond UGB. The ordinance also amends the Comprehensive Plan designation of Urban Area Reserve for those lands leaving the UGB.
2020-003	02-26-20/05-26-20	23.01.01, 5.10	Comprehensive Plan Amendment with exception to Statewide Planning Goal 11 (Public Facilities and Services) to allow sewer on rural lands to serve the City of Bend Outback Water Facility.
2020-008	06-24-20/09-22-20	23.01.010, Appendix C	Comprehensive Plan Transportation System Plan Amendment to add roundabouts at US 20/Cook-O.B. Riley and US 20/Old Bend-Redmond Hwy intersections; amend Tables 5.3.T1 and 5.3.T2 and amend TSP text.
2020-007	07-29-20/10-27-20	23.01.010, 2.6	Housekeeping Amendments correcting references to two Sage Grouse ordinances.

2020-006	08-12-20/11-10-20	23.01.01, 2.11, 5.9	Comprehensive Plan and Text amendments to update the County's Resource List and Historic Preservation Ordinance to comply with the State Historic Preservation Rule.
2020-009	08-19-20/11-17-20	23.01.010, Appendix C	Comprehensive Plan Transportation System Plan Amendment to add reference to J turns on US 97 raised median between Bend and Redmond; delete language about disconnecting Vandevert Road from US 97.
2020-013	08-26-20/11/24/20	23.01.01, 5.8	Comprehensive Plan Text And Map Designation for Certain Properties from Surface Mine (SM) and Agriculture (AG) To Rural Residential Exception Area (RREA) and Remove Surface Mining Site 461 from the County's Goal 5 Inventory of Significant Mineral and Aggregate Resource Sites.
2021-002	01-27-21/04-27-21	23.01.01	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) To Rural Industrial (RI)
2021-005	06-16-21/06-16-21	23.01.01, 4.2	Comprehensive Plan Map Amendment Designation for Certain Property from Agriculture (AG) To Redmond Urban Growth Area (RUGA) and text amendment
2021-008	06-30-21/09-28-21	23.01.01	Comprehensive Plan Map Amendment Designation for Certain Property Adding Redmond Urban Growth Area (RUGA) and Fixing Scrivener's Error in Ord. 2020-022

2022-001	04-13-22/07-12-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2022-003	04-20-22/07-19-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2022-006	06-22-22/08-19-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Rural Residential Exception Area (RREA) to Bend Urban Growth Area
2022-011	07-27-22/10-25-22 (superseded by Ord. 2023-015)	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) To Rural Industrial (RI)
2022-013	12-14-22/03-14-23 (supplemented and controlled by Ord. 2024-010)	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2023-001	03-01-23/05-30-23	23.01.010, 5.9	Housekeeping Amendments correcting the location for the Lynch and Roberts Store Advertisement, a designated Cultural and Historic Resource
2023-007	04-26-23/6-25-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)

2023-010	06-21-23/9-17-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2023-018	08-30-23/11-28-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2023-015	9-13-23/12-12-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Industrial (RI)
2023-025	11-29-23/2-27-24	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Rural Residential Exception Area (RREA) to Bend Urban Growth Area
2024-001	1-31-24/4-30-24	23.01.010	Comprehensive Plan Map Amendment for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2023-016	5-8-24/8-6-24	23.01(BM) (added), 4.7 (amended), Appendix B (replaced)	Updated Tumalo Community Plan
2023-017	3-20-24/6-20-24	23.01(D) (repealed), 23.01(BJ) (added), 3.7 (amended), Appendix C (replaced)	Updated Transportation System Plan

2024-003	2-21-24/5-21-24	23.01.010, 5.8	Comprehensive Plan Map Amendment, changing designation of certain property from Surface Mining (SM) to Rural Residential Exception Area (RREA); Modifying Goal 5 Mineral and Aggregate Inventory
2024-007	10-02-24/12-31-24 (superseded by Ord. 2025-007)	23.01(A)(repealed) 23.01(BK) (added)	Repeal and Replacement of 2030 Comprehensive Plan with 2040 Comprehensive Plan
2024-010	10-16-24/01-14-25	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2024-011	11-18-24/02-17-25	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Redmond Urban Growth Area (RUGA)
2024-012	1-8-25/4-8-25	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2025-001	2-5-25/2-5-25	23.01.010	Comprehensive Plan and Zoning Map Amendment updating the Greater Sage-Grouse Area Combining Zone boundary.
2025-003	4-2-25/7-1-25	23.01.010	Comprehensive Plan Designation for Certain Property from Agriculture (AG) to Rural Industrial (RI)

2025-010	6-25-25/9-23-25	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2025-007	8-27-25/11-25-25 (superseded by Ord. 2026-015)	23.01(BU)	Amendments to Comprehensive Plan resulting from Deschutes County 2040 Update process.
2025-014	10-6-25/10-6-25	23.01.010	Comprehensive Plan Map Designation for Certain Property from Forest (F) to Rural Residential Exception Area (RREA)
2026-004	1-28-26/4-28-26	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2026-005	3-11-26/6-9-26	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) and Surface Mine (SM) to Rural Residential Exception Area (RREA)
2026-009	4-15-26/7-14-26	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2026-013	7-29-26/10-27-26	23.01.010	Comprehensive Plan Map Designation for Certain Property from Surface Mine (SM) to Rural Industrial (RI)

2026-015	9-2-26/12-1-26	23.01.010	Amendments to Comprehensive Plan resulting from Deschutes County 2040 Update Process, Reconsideration, and LUBA Remand.
2026-014	9-23-26/12-22-26	23.01.010	Comprehensive Plan Designation for Certain Property from Agriculture (AG) to Rural Industrial (RI)
2026-024	11-9-26/11-9-26	1.3, 4.2, 23.01.010	Amendments to Comprehensive Plan to Update the List of Applicable Zones Allowed Under a Sisters Urban Growth Area Plan Designation
2026-026	11-9-26/11-9-26	23.01.010	Comprehensive Plan Designation for Certain Properties from Rural Residential Exception Area (RREA) to Sisters Urban Growth Area (SUGA)
2026-020	11-23-2026/2-21-2027	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2026-023	TBD / TBD	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2026-032	TBD / TBD	23.01.010	Comprehensive Plan Map Designation for Certain Property from Rural Residential Exception Area (RREA) to Rural Industrial (RI)

2026-021	TBD / TBD	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)

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

FILE NUMBERS: 247-25-000537-PA / 247-25-000538-ZC

APPLICANT/OWNER: Willitts, LLC (the "Applicant")

APPLICATION: The Applicant requests a Comprehensive Plan Amendment to change the designation of the Subject Property from Agricultural ("AG") to Rural Residential Exception Area ("RREA") and a Zone Change to rezone the subject property from Exclusive Farm Use ("EFU") to Multiple Use Agricultural ("MUA-10").

SUBJECT PROPERTY: Situs Address: 68621 HWY 20, Sisters, OR 97759
Map/Tax Lot: 151010000080 (the "Property")

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

I. PROCEDURAL HISTORY:

The County's land use Hearings Officer conducted the initial evidentiary hearing regarding the subject applications on May 21, 2026. In a Recommendation and Findings mailed on July 21, 2026, the Hearings Officer recommended that the Board of County Commissioners ("Board") deny the application based on a recent Land Use Board of Appeals ("LUBA") decision that held that, without conditions or other measures to restrict parcel sizes, a decision to approve rezoning to MUA-10 presented a possibility of a future approval of parcels smaller than 10-acres in violation of Deschutes County Comprehensive Plan ("DCCP") Policy 3.3.1 and also that could be inconsistent with Goal 14. The Board conducted a *de novo* land use hearing on September 2, 2026. The Board closed the public hearing on September 2, 2026, and ordered an open record period that ended September 23, 2026. On October 14, 2026, the Board began deliberations.

During deliberations, Commissioners discussed two potential conditions of approval, one originally presented by the Applicant and one articulated by a Commissioner to which the Applicant stated it would agree. The Board decided to return for further deliberation after reviewing the recording of the public hearing and allowing staff to draft a potential condition of approval consistent with the discussion that occurred at that hearing. The Board returned for deliberations on November 9, 2026, and decided that the potential condition required a new notice to DLCD, and the County was required to conduct a final evidentiary hearing. On November 11, 2026, the County sent a notice of a public hearing. On November 23, 2026,

the Board voted to approve the subject applications as conditioned below. The findings in this Decision are intended to supplement those findings by the Hearings Officer and the findings in this Decision control over any inconsistent findings in the Hearings Officer Recommendation.

II. FINDINGS AND CONCLUSIONS OF LAW:

The Board expressly adopts and incorporates into this decision the findings and conclusions of the Hearings Officer, subject only to modifications contained in this decision. Specifically, the Hearings Officer found based upon the Applicant's Order 1 Soil Study, that the Property was predominantly non-agricultural land. OAR 660-033-0020(1)(a) The Board finds that no participant produced evidence that contradicted the Applicant's Order 1 study or the Hearings Officer's finding. The Board agrees that the Property does not meet the definition of agricultural land under OAR 6660-033-0020(1)(a)(A).

The Board agrees with the Hearings Officer's application of the suitability factors in OAR 660-033-0020(1)(a)(B) and adopts his finding that the Property is not suitable for farm use. The Board agrees with the Hearings Officer that the Property is not necessary to allow farm practices on adjacent or nearby agricultural land. Finally, the Board agrees with the Hearings Officer that rezoning the Property to MUA-10 is consistent with the purpose of the MUA-10 zone.

As noted, the Hearings Officer, was not able to recommend approval of the application because a recent LUBA decision concluded the existence of DCC provisions that conflict with DCCP 3.3.1, could, without restrictions or conditions, lead to future applications for the creation of cluster and planned developments with parcels 2-acres or smaller. The Board will address this aspect of the Hearings Officer's decision in detail below but concludes that, as conditioned, the issues on which LUBA remanded the applications will be addressed and the applications can be approved.

Based on the Board's deliberations conducted on October 14, 2026, and November 23, 2026, the Board adopts the following additional findings:

1. Whether the Property is agricultural land considering the factors in OAR 660-033-0020(1)(a)(B).

OAR 660-033-0020(1)(a)(B) requires a decisionmaker to consider several factors to determine whether land, even if predominantly Class 7 and 8 soil, qualifies as agricultural land. The factors include soil fertility, suitability for grazing, climate, availability of water, land use patterns and accepted farming practices. After the Hearings Officer issued his recommendations wherein, he found that the Property was not agricultural land suitable for farming, Central Oregon LandWatch ("COLW") and the Applicant submitted additional evidence and argument. The Hearings Officer relied on the Order 1 soil study that

demonstrated that almost 70% of the Property consists of Class 7 and 8 soil that is not agricultural soil with or without irrigation. The Hearings Officer relied upon the fact that the Property has no irrigations rights at present. The Hearings Officer accepted the testimony of the Applicant's experts, both of whom are farming experts. One expert, a renowned regenerative farming consultant who in 2019 attempted to grow crops using advanced farming practices and was unsuccessful. The other expert is a local farmer who physically evaluated the Property and concluded that it was not suitable for farm use considering the required factors. That expert found that the Property consists of rocky soil under the surface with the structure that simulates a French drain, which removes water from land rapidly. That conclusion affects water holding capacity which is significant for farming.

The Applicant's local expert evaluated the steps it would take to attempt to convert the property into suitable agricultural land and the cost associated with those measures. The Applicant's expert concluded that the cost made it infeasible to conduct any farm use primarily for the purpose of making a profit. The Applicant's expert was not able to locate any past or present irrigation rights. The Property has a ground water right for a well, but the Applicant's expert questioned the ability to use the water for irrigation for farming, confirmed that to install a commercial size pump would be prohibitive, and the amount of water required to irrigate the Property could negatively impact ground water in the area.

The Board rejects COLW's references to the Property being irrigated. As noted, the evidence in the record is that there are no irrigation rights associated with the Property past or present. COLW did not rebut that evidence with any evidence of its own. COLW instead relied solely on historic photographs that it claims depict farming activity on the Property. That evidence does not establish that the subject Property was irrigated or had irrigation rights.

In the proceedings before the Board, COLW submitted material that came from websites and other sources as examples of other properties upon which farm use was conducted asserting that the examples demonstrated that the same farm uses could be conducted on the Property. The Board finds that COLW's examples do not overcome the direct evidence and testimony presented by the Applicant.

COLW failed to offer any qualitative comparison of the properties it identified with the Property. COLW asserted that because the properties it identified are in the same general ecoregion, have the same climate and are in the same plant hardiness zone, they demonstrate that the Property is equally able to support the same farming activities.

The Board rejects that conclusory argument. The ecoregion and plant hairiness zones identified are large and include most of Central Oregon. Indeed, some of the properties COLW identified are miles away from the Property in other counties such as Crook. The Board finds that soil fertility and quality vary dramatically on properties within Deschutes County and Central Oregon in general. It is not accurate to conclude that every EFU zoned

property in Central Oregon has the same suitability for farm use as other properties in the area simply because it is in the same broad ecoregion or plant hardiness zone.

COLW did not provide any details on the soil fertility or overall quality in any of its examples. It did not provide any detailed information on the current or future availability of water for irrigation on those properties. COLW did not examine whether those properties already had structures, fencing and other infrastructure required for farm uses. In contrast, the Applicant provides detailed information on several of COLW's examples that illustrate that the properties are comprised of better agricultural soil than that confirmed for the Property in the Order 1 soil study.

The Board finds that there is substantial evidence in the record, much of which was unrefuted, demonstrating that the Property is not suitable for farming applying the factors in OAR 660-033-0020(1)(a)(B).

2. Whether the Property is agricultural land because it is necessary to permit farm practices on adjacent and nearby agricultural land under OAR 660-033-0020(1)(a)(C).

The Board agrees with the Hearings Officer's finding that the Property is not agricultural land because it is necessary to permit farm practices on adjacent or nearby agricultural land. The Board notes that in prior LUBA cases, LUBA adopted the dictionary definition of necessary which includes the term "indispensable". The Board finds that the Property is not necessary or indispensable in the sense that no reasonable farmer would try to incorporate it into any ongoing farm operation given the exorbitant cost to transform the land into land that could be farmed agricultural land. Most of the nearby agricultural land in current farm use is north and east of the Property. According to NRCS mapping those areas are comprised of more agricultural land. It is unreasonable to expect that those owners would take on the exorbitant cost associated with trying to convert the Property into agricultural land. Finally, those properties are on the other side of a busy highway creating significant barriers to any efficient conjoined use.

The properties east of the Property and south of Highway 20 that are zoned EFU are primarily not in farm use. The property immediately east was approved for a DCCP amendment and zone change to MUA-10. Beyond this property there are parcels used as part of the Sisters' wastewater treatment facilities. One of the city-owned parcels is used seasonally for grazing horses associated with Black Butte Ranch. However, the record informs that the city will be incorporating that parcel into its treatment facilities. The record has substantial evidence that the city's approval for its facilities, including the use of effluent for irrigation comes with significant restrictions that are contrary to farm use. Thus, like the other city parcels, it will not be available for farm use in the future.

Nor does the Board find that rezoning the subject Property to MUA-10 will result in impacts to adjacent or nearby agricultural land that would render it impractical to engage in farm practices on those lands. COLW did not present any specific evidence of impacts form rezoning the Property that would render it impossible to engage in farm practices on nearby agricultural lands.

The Applicant's professional traffic study did not note any anticipated impacts on nearby or adjacent land. COLW officered speculation, but no substantial evidence of any impacts that would render retaining the EFU zoning on the Property indispensable to other agricultural land. In fact, the record demonstrates that in 2022, the county approved a commercial activity in conjunction with farm use on agricultural land northeast of the Property. In that decision, the County evaluated potential impacts from the commercial activities on adjacent and nearby properties finding potential impact to be acceptable. The Board finds that impacts from potential uses allowed on the Property in the MUA-10 zone will be similar in nature and extent to those generated by the commercial activity in conjunction with farm use.

The Board finds that there is substantial evidence in the record to support the Hearing Officer's conclusion that the Property is not necessary to permit farm practice on adjacent or nearby agricultural properties.

3. Does the proposed plan amendment and zone change comply with Goal 5.

As the Hearings Officer concluded, the Applicant submitted a site-specific ESEE identifying potentially conflicting uses in the MUA-10 zone if it applied to the Property and the conflicting uses could be allowed subject to the Landscape Management ("LM")Combining Zone which ensures compatibility of new uses with Goal 5. The Hearings Officer noted that no participant produced rebuttal evidence.

Before the Board, COLW submitted photographs purportedly representing the Property from Highway 20. COLW asserted that the LM zone was not adequate to protect the scenic resource and that the Applicant had to make some further showing under Goal 5. The Applicant submitted additional photographs that were more focused on the Property. The Applicant also demonstrated that on other MUA-10 properties within the same scenic corridor, the LM overlay has been applied to permit potentially conflicting uses in a manner that is compatible with the Goal 5 scenic resource. In fact, one of those decisions approved a dwelling on the Property.

The Board finds the Applicant's evidence and argument superior to that of COLW. The Board finds that the Applicant's site-specific ESEE is consistent with the requirements. The Board finds that the LM zone is the appropriate measure to protect the Goal 5 resource. The Board expressly adopts the Applicant's Goal 5 ESEE for the Property.

4. Has the Applicant demonstrated compliance with DCCP Policy 3.3.1.

The Board acknowledges that the County's consideration of applications to rezone resource land to MUA-10 has been impacted by multiple recent LUBA decisions. In *Destiny Court*, LUBA agreed with COLW that DCCP Policy 3.3.1 establishes a minimum parcel size in the MUA-10 zone at 10 acres and does not authorize cluster or planned development that are allowed uses in the MUA-10 zone pursuant to Deschutes County Code ("DCC") Chapter 18.

On June 26, 2026, LUBA issued its decision in the *BCL LLC* matter where it held that even though the application did not request approval of any parcels smaller than 10 acres, because the application and decision did not include any restriction to that effect, there remained a potential conflict because nothing prevented a future applicant from submitting an application seeking approval of parcels smaller than 10 acres.

On September 10, 2026, the Board adopted amendments to Chapter 10 of the 2040 DCCP that authorize cluster and planned developments in the MUA-10 zone subject to various reviews and standards. The Board's amendments are on appeal to LUBA. Thus, currently, DCCP Policy 3.3.1 is the controlling policy and applicable law.

The Board finds, despite LUBA's concern described above, any partition or subdivision application must be submitted under DCC Title 17. DCC 17.12.010 mandates that all applicants for a division of land demonstrate that the application is consistent with the County's Comprehensive Plan. That includes demonstrating consistency with DCCP Policy 3.3.1.

Nevertheless, to be certain that the Board addresses LUBA's concern over future land division applications, the Board agrees with the Applicant that conditions of approval are appropriate to ensure that approval of this application does not result in an inconsistency between the DCCP and the DCC.

At the Board's hearing on September 2, 2026, one Commissioner asked the Applicant whether it would agree to a condition restricting further development on the Property until it is included in the Sisters' Urban Growth Boundary ("UGB"). The Applicant replied that it would agree to such a condition because its long-range plan is to seek inclusion of the Property into the UGB for a future expansion of the adjacent Five Pines Resort, which is a significant economic asset to Sisters and the County. In response to that discussion, on November 9, 2026, County staff presented a potential condition that restricts development on the Property unless and until it is added to the Sister's UGB. The Board finds this decision as conditioned will adequately address LUBA's concern regarding consistency between the DCCP policies and the DCC provisions allowing for the creation of parcels less than 10-acres.

COLW asserted that there is no authority for the Board to impose a condition. The Board disagrees. DCC 18.136.030 expressly authorizes the Board to impose conditions in a rezoning application. Further, LUBA authority is consistent. See, *Olson Memorial Clinic v. Clackamas County*, 21 Or LUBA 418 (1991).

COLW further asserts that the proposed conditions eliminate uses allowed in the MUA-10 zone and therefore is inconsistent with the purpose of the MUA-10 zone. The Board rejects that assertion. As noted, the proposed condition does not eliminate uses that are allowed. It restricts parcel size to that which is allowed under Policy 3.3.1 and future development unless and until it is added to the Sisters' UGB. Moreover, the proposed conditions are in response to developing law and is an interim measure to respond to a LUBA decision.

While the acknowledged condition does restrict development otherwise allowed in the MUA-10 zone, the Board does not believe that the law prohibits any owner from voluntarily agreeing to restrict use of its property. The restriction in DCC 18.136.030 restricts the Board from imposing certain conditions. The Board interprets that provision to be for the protection of owners against involuntary conditions. It does not prohibit an owner from agreeing to conditions consistent with the owner's desired use of the property.

5. Will the approval of the application result in urban uses that require a Goal 14 exception

On the issue of whether designating land RREA and rezoning it to MUA-10 is consistent with Goal 14 or requires an exception, the Board continues to adhere to the conclusion it has reached in prior rezoning applications. The Board continues to find that its acknowledged Comprehensive Plan that was amended in 2016 to create the RREA designation and its MUA-10 and RR-10 zones confirms that uses allowed within those zones are all rural uses and not urban uses. The Comprehensive Plan states that "[e]ach Comprehensive Plan map designation provides the land use framework for establishing zoning districts. Zoning defines in detail what uses allowed for each area." DCCP Section 1.3. Rural Residential Exception Areas, according to the DCCP, "provide opportunities for rural residential living outside urban growth boundaries and unincorporated communities …" DCCP Section 1.3. DCCP Table 1.3.3 provides that Title 18's RR-10 and MUA-10 zones are the associated zoning codes for the RREA plan designation.

The determination that the RREA plan designation and RR-10 and MUA-10 zoning districts should apply to exception lands was made when the County amended the DCCP in 2016. (Ordinance 2016-005). The ordinance was acknowledged by DLCD as complying with the Statewide Goals. Thus, the lot sizes and uses allowed by the RREA plan designation and the RR-10 and MUA-10 zones comply with Goal 14. The proposed amendment to the Comprehensive Plan map conforms to the DCCP provisions.

Further, the purpose statement for the MUA-10 zone expressly states that it is to preserve the rural character of various areas of the County while permitting development consistent with that character and the capacity of the natural resources of the area. When Chapter 18.32 is read in context with that purpose statement, the only plausible interpretation is that all uses allowed in the MUA-10 zone are rural uses. The Board expressly interprets DCC Chapter 18.32 to mean that. Thus, the application does not provide any basis for the County to revisit whether the RREA designation, or the RR-10/MUA-10 zones violate Goal 14 by allowing urban development and requires no individual analysis of specific uses or of whether the MUA-10 uses violate Goal 14 is required.

As an alternative basis to find that the proposal is consistent with Goal 14 and does not require an exception to that Goal, the Board finds that conditions of approval ensure compliance with Goal 14 as interpreted by the Oregon Supreme Court in the *Curry County* case. The only future use/development that COLW argues is the creation of parcels smaller than 10-acrtes, specifically, cluster and planned developments. Those are the only uses that LUBA questioned as being potentially inconsistent with Goal 14 because they could have the effect of introducing urban density in close proximity to the UGB.

The Board's conditions of approval will establish as a matter of fact and law that the current application will not result in any parcel less than 10 acres. In *Curry County*, the court announced that parcels 10 acres or larger are presumed to result in rural densities. Thus, the conditions will ensure consistency with Goal 14.

The Board finds that the City of Sisters' zoning immediately adjacent to the Property allows a minimum density of 3 units per acre and a maximum density of 8 units per acre. As conditioned, the smallest parcel on the subject Property will be 10-acres. Regardless of the close proximity to the UGB, the dramatic difference in lot/parcel size will differentiate the urban and rural properties reinforcing the effectiveness of the UGB. Finally, the Board's condition limiting development will ensure there is no additional development on the Property while it is zoned MUA-10 that could potentially be inconsistent with Goal 14. Any additional development will be as part of a future expansion of the Five Pines Resort if the Property is annexed into the City of Sisters and Goal 14 would not apply at that time.

III. DECISION:

Based upon the foregoing Findings and Conclusions of Law, the Board of County Commissioners hereby **APPROVES** the Applicant's request for a Deschutes Comprehensive Plan Amendment and Zone Change for the Subject Property, subject to the following conditions of approval below.

IV. CONDITIONS OF APPROVAL:

1. Limitation on Development. Until and unless the subject property is included within the City of Sisters urban growth boundary and annexed into the City of Sisters through separate applicable processes, no new development or rural residential use otherwise authorized by the RREA designation or MUA-10 zoning may be approved or established on the subject property. This condition does not prohibit the continued lawful use, maintenance, or repair of existing development. Nothing in this condition authorizes, requires, assumes, or commits the City of Sisters, Deschutes County, or any other governmental entity to approve inclusion within the City of Sisters urban growth boundary, annexation, urban services, City plan or zoning designations, or future development of the subject property.

2. Any future subdivision of the Subject Property shall be limited to a minimum lot size of 10 acres. This condition shall be in effect so long as the property remains outside of an urban growth boundary.

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

Exhibit "G" to Ordinance No. 2026-021

RECOMMENDATION AND FINDINGS OF THE DESCHUTES COUNTY HEARINGS OFFICER

FILE NUMBERS:	247-25-000537-PA / 247-25-000538-ZC
HEARING DATE:	May 21, 2026, 1:00 p.m.
HEARING LOCATION:	Videoconference and Barnes & Sawyer Rooms Deschutes Services Center 1300 NW Wall Street Bend, OR 97708
APPLICANT/OWNER:	Willitts LLC
SUBJECT PROPERTY:	Map and Tax Lot: 1510100000800 Situs Addresses: 68621 HWY 20, Sisters, OR 97759
REQUEST:	The Applicant requests a Comprehensive Plan Amendment to change the designation of the Subject Property from Agricultural ("AG") to Rural Residential Exception Area ("RREA") and a Zone Change to rezone the subject property from Exclusive Farm Use – Sisters/Cloverdale Subzone ("EFU-SC") to Multiple Use Agricultural ("MUA-10").
HEARINGS OFFICER:	Tommy A. Brooks

SUMMARY OF RECOMMENDATION: The Hearings Officer finds that the current record is not sufficient to support the requested Comprehensive Plan Amendment and Zone Change. Specifically, the Hearings Officer finds that the current record is not sufficent to show compliance with Statewide Planning Goal 14 or Comprehensive Plan Policy 3.1.1. The Hearings Officer therefore recommends the County's Board of Commissioners deny the Application unless the Applicant satisfactorily addresses those issues.

I. APPLICABLE STANDARDS AND CRITERIA

Deschutes County Code ("DCC")
Title 18, Deschutes County Zoning Ordinance:
Chapter 18.04, Title, Purpose, and Definitions
Chapter 18.16, Exclusive Farm Use Zones ("EFU")
Chapter 18.32, Multiple Use Agriculture
Chapter 18.80, Airport Safety Combining Zone ("AS")

Chapter 18.84, Landscape Management Combining Zone ("LM")
Chapter 18.136, Amendments
Title 22, Deschutes County Development Procedures Ordinance

Deschutes County Comprehensive Plan
Title 23, Deschutes County Comprehensive Plan ("DCCP")
Chapter 1, Comprehensive Planning
Chapter 2, Resource Management
Chapter 3, Rural Growth Management
Appendix C – Transportation Plan
Chapter 5, Supplemental Sections

Oregon Administrative Rules ("OAR") - Chapter 660
Chapter 660, Land Conservation and Development Department
Division 6, Goal 4 Forest Lands
Division 12, Transportation Planning
Division 15, Statewide Planning Goals
Division 23, Procedures and Requirements for Complying with Goal 5
Division 33, Agricultural Lands

Oregon Revised Statutes ("ORS")
Chapter 215, County Land Use Planning: Resource Lands

II. BACKGROUND AND PROCEDURAL FINDINGS

A. Nature of Proceeding

This matter comes before the Hearings Officer as a request for approval of a quasi-judicial Comprehensive Plan Map Amendment ("Plan Amendment") to change the designation of the Subject Property from Agricultural ("AG") to Rural Residential Exception Area ("RREA"). The Applicant also requests approval of a corresponding Zoning Map Amendment ("Zone Change") to change the zoning of the Subject Property from Exclusive Farm Use – Sisters/Cloverdale Subzone ("EFU-SC") to the Multiple Use Agriculture ("MUA-10") zone.

The Application requests a Plan Amendment, which is ultimately a decision for the County's Board of Commissioners ("County Board"). Several applicable criteria require a weighing of policy choices, and the record before the County Board may be different than the current record. This Recommendation therefore determines if the Applicant has met its burden of proof in a manner that would support the County Board's approval of the Application based on the current record.

/ / /

B. Notices, Hearing, Record Materials

The Applicant initially filed the Application on August 27, 2025, and provided supplemental materials throughout this proceeding.

On October 24, 2025, staff in the County's Community Development Department ("Staff") mailed a Notice of Application identifying the standards and criteria governing the review of the Application and seeking public comment on the Application. On April 2, 2026, Staff mailed a Notice of Public Hearing ("Hearing Notice") to agencies, interested persons, and all property owners within 750 feet of the Subject Property, announcing a public hearing to be held on May 21, 2026. The Hearing Notice was also published in the Bend Bulletin on Sunday, April 5, 2026. Notice of the Hearing was submitted to the Department of Land Conservation and Development on April 2, 2026.

Pursuant to the Hearing Notice, I presided over the Hearing as the Hearings Officer on May 21, 2026, opening the Hearing at approximately 1:05 p.m. The Hearing was held in person and via videoconference, with the Hearings Officer appearing remotely. At the beginning of the Hearing, I provided an overview of the quasi-judicial process and instructed participants to direct comments to the approval criteria and standards, and to raise any issues a participant wanted to preserve for appeal if necessary. I stated I had no *ex parte* contacts to disclose or bias to declare. I invited but received no objections to the County's jurisdiction over the matter or to my participation as the Hearings Officer.

The Hearing concluded at approximately 2:05 p.m. Prior to the conclusion of the Hearing, I announced that the written record would remain open as follows: (1) any participant could submit additional materials until May 28, 2026, ("Open Record Period"); (2) any participant could submit rebuttal materials (evidence or argument) until June 4, 2026 ("Rebuttal Period"); and (3) the Applicant could submit a final legal argument, but no additional evidence, until June 11, 2026. Staff provided further instruction to participants, noting that all post-Hearing submittals needed to be received by the County by 4:00 p.m. on the applicable due date. No participant objected to the post-hearing procedures.

Various participants submitted post-Hearing materials within the time limits described above, and no objections were made to any of those submittals. However, two participants submitted comments after the close of both the Open Record Period and the Rebuttal Period. Participant Janice Farney submitted comments on June 6, 2026, and participant Scott Mather submitted comments on June 19, 2026. Participant Farney's and participant Mather's comments do not explain the purpose of the comments or otherwise provide an explanation for why the late-filed comments should be included in the record. I find that these submittals should therefore be rejected as untimely. The record therefore includes all materials submitted to the County as reflected on the County's website for this matter, with the exception of the two submittals from participants Farney and Mather just described.

/ / /

/ / /

C. Review Period

Because the Application includes the request for a Plan Amendment, the 150-day review period set forth in ORS 215.427(1) is not applicable.[1] The 150-day review period is also not applicable by virtue of Deschutes County Code ("DCC" or "Code") 22.20.040(D). No participant to the proceeding disputes those conclusions.

III. SUBSTANTIVE FINDINGS AND CONCLUSIONS

A. Staff Report

On May 14, 2026, Staff issued a report setting forth the applicable criteria and presenting evidence in the record at that time ("Staff Report").

The Staff Report, although it expresses agreement with the Applicant in most places, does not make a final recommendation. Instead, the Staff Report asks the Hearings Officer to determine if the Applicant has met the burden of proof necessary to justify the Plan Amendment and Zone Change.

B. Plan Amendment

DCC 18.136.010 contemplates that an applicant may seek a quasi-judicial amendment to the County's Comprehensive Plan Map ("Plan Map"). Other than a reference to the procedural provisions of DCC Title 22, the Code does not appear to contain any substantive standards or criteria specific to an amendment to the Plan Map. Pursuant to ORS 197.175(2), however, if the County amends its Plan or Plan Map, it must do so in compliance with Statewide Planning Goals (each a "Goal" and, together, the "Goals"). Because the existing Plan and Plan Map have been acknowledged, the requested Plan Amendment must adhere to the procedures for a post-acknowledged plan amendment ("PAPA") set forth in state statutes and rules.

Division 15 of OAR Chapter 660 sets forth the Statewide Planning Goals and Guidelines with which a PAPA must demonstrate compliance. The Applicant asserts the Application is consistent with all applicable Goals and Guidelines. Except for Goal 3, Goal 5, and Goal 14, which are addressed in more detail in findings below, I adopt the Applicants' position on the remaining Goals as recited on pages 29 to 34 of the Application, which is supported by findings in the Staff Report, and I find that the Plan Amendment and Zone Change are consistent with the applicable Goals and Guidelines as described in the Application and the Staff Report.

The remainder of the findings in this section address specific Goals that are in dispute.

1. Goal 3 – Agricultural Lands

Goal 3 and its implementing rules protect agricultural lands. OAR 660-033-0020(1) provides the following definition:

[1] ORS 215.427(7).

(a) "Agricultural Land" as defined in Goal 3 includes:

(A) Lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon;

(B) Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices; and

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

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

A primary dispute in this proceeding is whether the Subject Property qualifies as "agricultural land" under this definition. If the Subject Property is agricultural land, the Application cannot be approved unless the County justifies an exception to Goal 3. If the Subject Property is not agricultural land, it is not protected by Goal 3 and, therefore, the County can conclude that the Plan Amendment is consistent with Goal 3.

The Applicant primarily relies on an Order 1 Soil Survey, prepared by a qualified soil scientist, to demonstrate that the soils on the Subject Property are predominately Class 7 and 8 soils and, therefore, that the Subject Property is not agricultural land. But the Applicant also provides evidence to support its assertion that the Subject Property is not suitable for farm use, that it is not necessary to permit farm practices to be undertaken on adjacent or nearby lands, and that it is not adjacent to or intermingled with lands with higher values within a farm unit.

Participant Central Oregon LandWatch ("COLW") disagrees and argues the Subject Property is agricultural land. COLW does not counter the specific information provided in the Order 1 Soil Survey or otherwise assert that the County cannot rely on that survey to determine the on-site soil conditions. Rather, COLW asserts that the Subject Property remains agricultural land because it is suitable for farm use, that it is necessary to permit farm practices to be undertaken on adjacent or nearby lands, and that it is adjacent to or intermingled with lands with higher values within a farm unit.

In light of the detailed information provided by the Applicant's expert soil scientist, which information is uncontroverted, I find that the Applicant has met its burden of demonstrating the Subject Property is not agricultural land under OAR 660-033-0020(1)(a)(A). The findings below address the remainder of OAR 660-033-0020(1).

The question under OAR 660-033-0020(1)(a)(B), which LUBA refers to as the "suitability test,"[2] is whether a reasonable farmer would be motivated to put the land to agricultural use for the primary purpose of obtaining a profit in money.[3] Accordingly, the question is whether the property is capable of farm use with a reasonable expectation of yielding a profit in money, either on a standalone basis or in conjunction with other farms.

The Applicant asserts that the Subject Property is not suitable for farm use. In support of that assertion, the Applicant initially points to the information provided in the Order 1 Soil Survey, which includes evidence that the soils on the Subject Property have low fertility, limited forage potential for grazing, and poor water retention capabilities. The Applicant also submitted a Statement of Agricultural Feasibility prepared by an expert consultant who has direct experience attempting to conduct grazing activities on the Subject Property.

Participant COLW addresses this issue through its specific assertion that the Applicant has failed to demonstrate "that a farmer could not use the subject property to raise goats or chickens or any of the livestock types identified by the USDA…" and that "[t]he relevant analysis is whether, for example, a farmer could raise chickens on the subject property and sell the eggs at the farmer's market for the primary purpose of obtaining a profit in money." COLW also relies on historical aerial photos it asserts show that the Subject Property has produced crops in the past. COLW also asserts that, because the Subject Property was previously irrigated and remains within the boundaries of an irrigation district, it should still be considered irrigated.

As LUBA recently explained, an applicant is not required to evaluate "every possible type of activity that potentially falls within the broad definition of 'farm use,' and produce evidence regarding whether the subject property is suitable for all conceivable farm uses."[4] But, if other participants identify specific farm uses that are common, and provide some evidence or argument that the subject property is suitable for such uses," the Applicant must address those uses.[5] That being said, "a bare assertion, without more, that a property is suitable for a type of farm use that is uncommon or locally less prevalent is an insufficient basis to obligate responsive evidence from the applicant."[6]

For the most part, COLW makes bare assertions about the suitability of the Subject Property without supporting details about the commonality of those uses or the specific characteristics of the Subject Property that would make those uses feasible. Where COLW has been specific, such as asserting that livestock grazing is possible, or that irrigation could enhance the productivity of the soils, I find that the Applicant's information is more detailed and backed by expert opinions. For example, the Order 1 Soil Survey expressly addresses how additional irrigation water applied

---

[2] *See Central Oregon Landwatch v. Deschutes County*, __ Or LUBA __ (LUBA No. 2025, June 26, 2026) ("*BCL LLC*") (slip op at 11).
[3] *See Central Oregon Landwatch v. Deschutes County*, __ Or LUBA __ (LUBA No. 2025-015, June 26, 2025) ("*Destiny Court")* (slip op at 20). In that case, LUBA acknowledged that the phrase "reasonable farmer" can be used as shorthand for the suitability test, which is an objective test.
[4] *See BCL LLC* (slip op at 13).
[5] *Id.* (slip op at 14).
[6] *Id.* (slip op at 15).

to the Subject Property, even assuming it is available, does not raise the status of the soils from unfavorable to normal. Having weighed the competing evidence, I find that the Applicant has met its burden of demonstrating the Subject Property is not suitable for farm uses as set forth in OAR 660-033-0020(1)(a)(B) and, therefore, is not agricultural land on that basis.

The question under OAR 660-033-0020(1)(a)(C) is whether the Subject Property "is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands." (Emphasis added). COLW argues that the Subject Property is indeed necessary as described in the statute, but the basis for that argument is a policy-based one. For example, COLW argues that the purpose of the farm protection statutes is to preserve large blocks of farmland. COLW does not, however, further develop this argument to explain what role the Subject Property plays in that policy, much less why a farm zone designation is necessary to keep in place to serve that role. Even so, COLW does not provide specific examples of what farm practices would no longer be undertaken on adjacent or nearby agricultural lands if the Subject Property no longer carries the EFU zoning designation.

Even though COLW has not shown that the Subject Property is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands, the burden is on the Applicant to show that the property is not necessary for that purpose. To meet that burden, the Applicant provided evidence describing the limited number of nearby farming operations, many of which are separated from the Subject Property by a state highway and which operate on a stand-alone basis.

Having weighed the competing evidence, I find that the Applicant has met its burden of demonstrating the Subject Property is not necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands for farm uses as set forth in OAR 660-033-0020(1)(a)(C) and, therefore, is not agricultural land on that basis.

As a final step in this analysis, OAR 660-033-0020(1)(b) requires an assessment of whether the Subject Property is adjacent to or intermingled with higher class soils within a farm unit. COLW asserts that the Subject Property has this characteristic because there are higher classes of soils on the Subject Property itself, and because the Subject Property is adjacent to other agricultural lands. I find that this argument fails as a matter of law.

The express language of the statutes requires a determination that the land "is adjacent to or intermingled with lands in capability classes I-IV/I-VI within a farm unit." (Emphasis added). First, COLW does not fully explain why the Subject Property is currently part of a "farm unit" as required by the statutory language. COLW seems to argue that the Subject Property once was part of a farm unit, but does not explain if the designation remains. To the contrary, the Applicant provided additional detail to show that the Subject Property is not currently part of a farm unit. Further, the test under this part of the statute is whether the Subject Property itself is intermingled with other properties of higher soil class, not whether the Subject Property contains lower class soils intermingled with higher class soils.

Based on the foregoing, I find that the Applicant has met its burden of demonstrating the Subject Property is not agricultural land under the definition in OAR 660-033-0020(1)(b).

In summary, I find that the record is sufficient for the County Board to find that the Subject Property is not agricultural land and, therefore, the requested Plan Amendment is consistent with Goal 3.[7]

2. Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces

Goal 5 and its implementing rules protect natural resources, scenic and historic areas, and open spaces. Pursuant to OAR 660-023-0250(3), the County does not have to apply Goal 5 as part of a PAPA "unless the PAPA affects a Goal 5 resource." One scenario in which a PAPA may affect a Goal 5 resource is when the "PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list."[8] The Subject Property is near the scenic resources along Highway 20. The Applicant acknowledges this fact, and the fact that the Plan Amendment allows new uses that could conflict with the County's identified scenic resource.

To address Goal 5, the Applicant provided an analysis of the economic, social, environmental, and energy ("ESEE") consequences of the proposed PAPA as required by OAR 660-023-0040(1). In accordance with that administrative rule, the Applicant's ESEE analysis identifies conflicting uses, determines an impact area, analyzes the ESEE consequences, and proposes a "program" to achieve Goal 5 protections. The program the Applicant proposes is the application of the Landscape Management ("LM") combining zone to the Subject Property, which is the mechanism the County uses to protect scenic resources on other properties, including properties zoned MUA-10. The Applicant asserts the LM combining zone in DCC Chapter 18.84 is designed to achieve compatibility and that the County should apply this program and allow the uses permitted by the Plan Amendment and Zone Change to be subject to LM review.

The record contains many comments generally asserting that development on the Subject Property will conflict with the County's inventoried Goal 5 scenic resource. Participant Michele McKay provided slightly more detail, arguing that development on the Subject Property will block views of the Three Sisters, and participant COLW asserts that residential development specifically is not compatible with the landscape. As noted above, the Applicant does not dispute the existence of such conflicts and, instead, provides a full ESEE analysis to determine what conflicts might exist and how those conflicts may be mitigated. No participant disputes the details of the ESEE analysis or otherwise claims with any specificity that the LM combining zone will not protect the identified Goal 5 resource. Indeed, participant McKay acknowledges that the County's current program, which the Applicant seeks to replicate on the Subject Property, protects scenic views.

Based on the Applicant's full ESEE analysis and the lack of countervailing evidence, I find that the record is sufficient for the County Board to find that the requested Plan Amendment is consistent with Goal 5 by applying the LM combining zone to the Subject Property.

---

[7] COLW's arguments regarding agricultural land include multiple assertions relating to whether the Subject Property was lawfully created. I find that this argument is not developed enough for me to respond to, and COLW does not explain what criterion or standard it is addressing with these arguments.

[8] OAR 660-023-0250(3)(b).

3. Goal 14 – Urbanization

Goal 14 seeks to "provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure the efficient use of land, and to provide for livable communities."[9] When a PAPA results in the urbanization of rural land, it generally requires an exception to Goal 14. The Applicant asserts that no Goal 14 exception is required because the Plan Amendment and Zone Change will not result in the urbanization of land, and because the County has previously determined that the MUA-10 zone is consistent with Goal 14. Participant COLW argues that the proposed Plan Amendment does result in the urbanization of the Subject Property and, therefore, it is not consistent with Goal 14 without a Goal 14 exception.

By way of background, it is true that the MUA-10 zone has previously been interpreted as being compatible with Goal 14. In LUBA's opinion in the *Marken* case, for example, LUBA considered whether the density and lot size permitted under the MUA-10 zoning complies with Goal 14.[10] In that case, the Board had approved a PAPA to change the Plan designation of the subject property from AG to RREA and a corresponding zone change from Exclusive Farm Use-Tumalo-Redmond Bend Subzone ("EFU-TRB") to MUA-10. Prior to addressing the petitioner's argument, LUBA acknowledged the County's findings:

> "The Deschutes County Comprehensive Plan and Title 18 of the Deschutes County Code have been acknowledged by [the Land Conservation and Development Commission (LCDC)] as being in compliance with every statewide planning goal, including Goal 14. The County specifically amended its comprehensive plan in 2016 to provide that the Rural Residential Exception Area Plan and its related MUA-10 and RR-10 zones should be applied to non-resource lands. Ordinance 2016-005. This amendment is acknowledged, which means that the RREA plan designation and its related zoning districts, when applied to non-resource lands such as the subject property, do not result in a violation of Goal 14."[11]

The Court upheld the County's interpretation that the MUA-10 zone uses are rural in nature and therefore do not conflict with Goal 14.[12] That decision relied in part on the density permitted under the MUA-10 zone – one dwelling per 10 acres – not being an urban density, a determination the petitioner in that case did not challenge.[13]

In more recent decisions, however, LUBA has been more specific about what is required to demonstrate that the application of the MUA-10 zoning designation complies with Goal 14. In the *Destiny Court* case, for example, the Petitioner requested a Plan Map amendment from AG to RREA and a zoning change from EFU-TRB to MUA-10. The hearings officer in that case took

---

[9] OAR 660-015-0000(14).
[10] *Central Oregon LandWatch v. Deschutes County*, __ Or LUBA __ (LUBA No. 2023-049, Feb. 15, 2024) (slip op at 10).
[11] *Id.* (slip op at 8).
[12] *Id.* (slip op at 11).
[13] *Id.* (slip op at 10).

official notice of LCDC's acknowledgment that the MUA-10 zone complies with all statewide planning goals. The hearings officer also considered a site-specific analysis prepared by the intervenor's attorney.[14] LUBA held that the site-specific analysis was necessary to demonstrate Goal 14 compliance.[15]

In the most recent case addressing this issue – *BCL LLC* – LUBA again determined that the application of the MUA-10 zoning is not, as a matter of law, always consistent with Goal 14, and that the County "must demonstrate that the proposed redesignation and rezoning is consistent with Goal 14, applying the relevant *Curry County* factors." The reference to the *Curry County* factors is *1000 Friends of Oregon v. LCDC,* 301 Or 447 (1986). As explained by LUBA:

> "Under *Curry County*, in redesignating rural land from plan designations implementing the resource goals, counties must evaluate whether development allowed under the new designation and associated zoning would allow for the urban use of rural land. That evaluation requires consideration of a number of factors described in *Curry County* and its progeny. With respect to PAPAs involving residential use of rural land, the relevant factors include the density of development allowed under the new plan designation and zone, the types and levels of services to be provided, and proximity to urban growth boundaries."[16]

Based on the most recent LUBA decisions, it is clear that the Applicant must show that the Plan Amendment and Zone Change comply with Goal 14 by applying the *Curry County* factors to the Subject Property rather than relying on the MUA-10 zone alone as demonstrating compliance with that Goal. As discussed in more detail below, I find that the Applicant has not met that burden based on the current record.

The first of the *Curry County* factors looks to the allowed density under the new Plan designation. The Applicant notes that, pursuant to Policy 3.3.1 of the Plan and Section 18.32.040 of the Code, the allowed density in the MUA-10 zone is no greater than one dwelling per ten acres because ten acres is the minimum lot size in that zone. In *Curry County*, the Court concluded that one dwelling per ten acres does not constitute urban zoning.

Participant COLW argues that, despite the minimum parcel size in the MUA-10 zone provisions of the Code, the actual density that is allowed under that zone could be much greater due to various options for cluster development or planned unit development in that zone. LUBA addressed this same argument in *BCL LLC*, concluding that the County must address that feature of the MUA-10 zone and determine if such densities are urban or rural.

The Applicant addresses whether the densities allowed for cluster developments or planned unit developments are urban in nature, but primarily relies on its assertion that the MUA-10 zone is a rural zone as a matter of law. Further, the Applicant insists that the default parcel size in the MUA-10 zone is sufficient to demonstrate a rural density of one dwelling per ten acres and that the

[14] *Destiny Court* (slip op at 10).
[15] *Destiny Court* (slip op at 14-15).
[16] *BCL LLC* (slip op at 25-26).

Application does not propose or request smaller parcels, and insists that the likely density of the Subject Property will consist of only two dwellings, given constraints for providing water and septic services on the property.

It is perhaps possible that the County Board could condition its approval to limit smaller parcels or to prohibit cluster development and planned unit developments on the Subject Property. The Applicant, however, has not proposed such a condition and, on this record, I find no basis to conclude that the ultimate disposition of the Subject Property will be limited to ten-acre parcels or to a maximum of only two dwellings. This *Curry County* factor therefore provides weight to the argument that the proposal could result in urban-level development.

The second *Curry County* factor looks to the types and levels of services to be provided. The Applicant asserts that any services for the Subject Property will be rural in nature. For example, water will come from a private source on the Property rather than a public system, sanitary waste will be treated through an on-site septic system, and fire and public safety will continue to be provided by the Camp Sherman Fire District and Deschutes County Sheriff, respectively. Other participants do not refute the Applicant's characterization of these services or identify specific urban-level services that will be required for the Subject Property under the requested zoning.

Based on the foregoing, I find that the second *Curry County* factor provides weight to the argument that the proposal will not result in urban-level development.

The third *Curry County* factor considers proximity to the urban growth boundary ("UGB"). The Subject Property is adjacent to the Sisters UGB. The Applicant asserts that this proximity is not material because the purpose of the MUA-10 zone is to create a transition area between rural and urban uses and, therefore, implementing this zone next to the UGB is appropriate.

Other participants do not address this factor with specificity. However, LUBA addressed this issue in its *BCL LLC* decision. There, LUBA determined that changing a parcel to the RREA is inconsistent with Goal 14 where the property was within one-quarter mile of the City of Bend's UGB, and where the allowed density on the property was similar to what would be allowed in that city. Applying that logic to the facts in this case, the third *Curry County* factor provides weight to the argument that the proposal will result in urbanization. Specifically, the Subject Property is even closer to the UGB than the property in *BCL LLC*, and the potential for some development with no minimum lot size makes potential lot sizes similar to what would be allowed in the UGB.

Having considered the *Curry County* factors, I find that, based on the current record, the proposal could result in urbanization of the Subject Property, and the Applicant has therefore not met its burden of showing that the proposal is consistent with Goal 14. For that reason, I do not recommend that the County Board approve the Application unless the Applicant justifies an exception to that Goal or otherwise creates a different record that can address compatibility with Goal 14.

/ / /

/ / /

C. Zone Change

The Applicant requests a Zone Change from EFU-SC to MUA-10. The criteria for rezoning a parcel are set forth in DCC Chapter 18.136. These findings address the applicable Zone Change criteria in the context of the Applicant's request. That is, the Applicant has also requested the Plan Amendment to change the Plan Map designation applicable to the Subject Property – from the AG designation to the RREA designation. As discussed in the findings above, I have found that the Applicant has initially not met its burden of demonstrating compliance with the Plan Amendment criteria. The findings in this section, however, are based on the assumption that the Plan designation for the Subject Property is RREA, as the Applicant requested. If the County Board does not approve the Plan Amendment, these findings may need to be altered to address the request for a Zone Change based on whatever Plan Map designation the County Board approves.

Section 18.136.020, Rezoning Standards

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

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

This Code provision requires consideration of the public interest based on whether: (1) the Zone Change conforms to the Comprehensive Plan; and (2) the change is consistent with the Comprehensive Plan's introductory statement and goals.

The Applicant, Staff, and other participants address this Code criterion by discussing specific Plan goals and policies. Before addressing those specific arguments, I note that, if the Plan Amendment is approved, it seems necessary to rezone the Subject Property in some way. That is, the Agricultural designation of the Plan is implemented through the exclusive farm use resource zone designations. The RREA Plan designation, in contrast, is implemented through the RR-10 and MUA-10 zones. There seems to be no basis under the Plan to allow the Plan Amendment to change the designation of the Subject Property to RREA but to keep the EFU zoning. Viewed through that lens, it seems that either the RR-10 or the MUA-10 zones largely conform to the Plan in this context, and that the Applicant must show only that the Zone Change, as applied to the Subject Property, is consistent with the Plan's introductory statement and goals.

The Staff Report notes that the County generally does not consider the Plan's goals and policies to be mandatory criteria. With one exception – Plan Policy 3.1.1 – no participant to this proceeding appears to dispute Staff's position that the goals and polices are not mandatory criteria. Nevertheless, because the Code itself requires a consideration of the Plan's statements and goals, and because some participants have questioned whether the Zone Change is consistent with those Plan provisions, I address those issues in this Recommendation.

The Application identifies potentially relevant Plan provisions by pointing to several goals and policies in the Plan set forth in DCCP Chapter 2 and Chapter 3, Rural Growth Management. The Applicant states that the Application is consistent with those policies and goals. The Staff Report generally agrees with the Applicant's assessment of those policies and goals.

Notwithstanding the foregoing, COLW and other participants, such as participants McKay, Hancock, Dooley, and Swaim, assert that the Application is inconsistent with Plan Policy 3.1.1, but only participant COLW presents specific arguments to support that assertion.

Policy 3.1.1 states: "Except for parcels in the Westside Transect Zone, the minimum parcel size for new rural residential parcels shall be 10 acres." COLW argues that the Zone Change is inconsistent with this policy because the resulting MUA-10 zone could allow parcels that are smaller than 10 acres, through cluster development or planned unit development.

The Applicant responds that COLW's argument is tantamount to a facial challenge to the County's MUA-10 zone (which is being addressed by the County Board in a legislative forum) and that such an argument would result in a moratorium on applying the MUA-10 zone to any property. The Applicant also responds by noting that it has not proposed any parcels to be smaller than 10 acres and, therefore, the Application is consistent with this policy.

I do not understand COLW's argument to be a facial challenge to the MUA-10 zone. Rather, the issue raised is whether the application of the MUA-10 zone specifically to the Subject Property as part of the current Application is consistent with Policy 3.1.1. It may be true that COLW could raise this same issue in other applications, or in a legislative forum, but the current record does not attempt to address every application of the MUA-10 zone that would encompass a facial challenge. Even if it can be characterized that way, I find it is possible to address this issue in an isolated fashion that applies only to the current record.

As noted in the findings above addressing Goal 14, it is possible that the Subject Property could be divided into parcels smaller than 10 acres once the MUA-10 zone applies. The Applicant has not proposed such a parcelization, and instead urges that any limits on future parcel sizes can be addressed at the time of development or parcelization. As LUBA held in *BCL LLC*, however, consistency with Plan policies must be determined at the time of the PAPA rather than a subsequent land use application.[17] Even though the Applicant has not proposed parcels smaller than 10 acres, it also has not proposed to impose such a limit, thereby preserving in the Application the possibility that the full range of uses and development, including smaller parcel sizes, will be available under the new zoning. Based on the record as it currently exists, I therefore find that the Applicant has not met its burden to show that its proposal is consistent with Policy 3.1.1.

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

DCC 18.32.010 contains the following purpose of the MUA-10 zone:

> The purposes of the Multiple Use Agricultural Zone are to preserve the rural character of various areas of the County while permitting development consistent with that character and with the capacity of the natural resources of the area; to preserve and maintain agricultural lands not suited to full-time commercial farming

[17] *BCL LLC* (slip op at 10).

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

The Applicant states that changing the zoning designation of the Subject Property is consistent with the purpose and intent of the MUA-10 zone because the Subject Property is not suited to full-time commercial farming and that the lower level of development will conserve open spaces and protect natural and scenic resources. The Applicant also claims that the low level of allowed development will maintain and improve the quality of the air, water, and land resources of the County and encourage future owners of the property to either return irrigation water to the area or to farmlands elsewhere.

Participant COLW asserts that the intent of the MUA-10 zone is more specifically to "preserve agricultural lands not suited to full-time commercial farming for diversified or part-time agricultural uses." (Emphasis added). According to COLW, if the Applicant is correct that the Subject Property is not agricultural land protected by Goal 3, then it cannot meet the purpose of the MUA-10 zone. COLW also asserts that the MUA-10 zone "was created to regulate the use of land for which an 'irrevocably committed' or 'previously built' exception to Goal 3 was taken in the County's first comprehensive plan" and that the MUA-10 zone can therefore apply only where the County takes a new Goal 3 exception.

COLW's arguments have no basis in the text of the Code or the Plan. As noted in the express language of DCC 18.32.010, the MUA-10 zone has multiple purposes, of which the preservation of "agricultural land" is only one. The MUA-10 zone has other purposes, such as conserving open space and providing for an orderly and efficient transition from rural to urban land use. Similarly, the express language of the Plan addressing the RREA purpose states "As of 2010 any new Rural Residential Exception Areas need to be justified through initiating a non-resource plan amendment and zone change by demonstrating the property does not meet the definition of agricultural or forest land, or taking exceptions to farm, forest, public facilities and services and urbanization regulations, and follow guidelines set out in the OAR." It is clear from that language that the County intends to apply the MUA-10 zone either where it can justify a Goal 3 exception or where there is a demonstration that the property does not meet the definition of agricultural land.

Based on the foregoing, I find that the Applicant has met its burden of demonstrating this Code provision is satisfied.

/ / /

/ / /

/ / /

/ / /

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

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

Only the Applicant and Staff directly address this Code provision. The Applicant notes that services for development in the MUA-10 are adequate and the Subject Property will not rely on public services and facilities under the new zoning designation. For example, there is existing access to the public road system, which the Applicant relies on the transportation system impact review to confirm. Developments in rural areas also must generally provide their own water and septic systems. In addition, the property receives police services and fire services from the Deschutes County Sheriff and the Sisters/Camp Sherman Fire District respectively.

Based on the foregoing, I find that the Applicant has met its burden of demonstrating this Code provision is satisfied.

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

Only the Applicant and Staff directly address this Code provision. The Applicant claims that the Applicant's proposal for MUA-10 zoning will not impact surrounding land use, as it is consistent with the zoning of many other properties in the area. Participant COLW asserts that the land use pattern in the area has not changed, but COLW does not explain how that assertion leads to a conclusion that any impacts on surrounding lands will not be consistent with the goals and policies of the Plan.

Based on the foregoing, and in the absence of more specific countervailing evidence or argument addressing this provision, I find that this Code provision is satisfied as described by the Applicant.

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

The Applicant addresses this Code provision primarily through its argument that the more specific Order 1 Soil Survey shows a change in circumstances since the Subject Property was last zoned. That change is the understanding of what the actual characteristics of the soils are, and the fact that those soils are not as conducive to agriculture as originally assumed when the EFU zoning was applied.

I find that the Applicant's argument is a sufficient basis to satisfy this Code provision. In addition, as noted above, the Zone Change analysis relies on the assumption that the Plan designation for the Subject Property is RREA. When the Subject Property was last zoned, its Plan designation was AG. If the County Board approves the Plan Amendment, I find that the change in Plan designation is, by itself, sufficient to show there has been a change in circumstances and, therefore, this Code provision will be satisfied.

IV. CONCLUSION

Based on the foregoing findings, I find the Applicant has not met its burden of proof with respect to the standards for approving the requested Plan Amendment and Zone Change, because the current record is insufficient to show compliance with Goal 14 and Plan Policy 3.1.1. I therefore recommend to the County Board of Commissioners that it DENY the request in the Application based on the current record.

Dated this 20th day of July 2026



Tommy A. Brooks
Deschutes County Hearings Officer

Exhibit "H" to Ordinance No. 2026-021

ESEE ANALYSIS

Summary

The subject property is located within the Landscape Management Combining Zone ("LM") that is designed to protect scenic views. The LM zone extend .25 miles on either side of Highway 20. The scenic views from the highway will not be appreciably impacted by any new uses allowed under the MUA-10 Zone. First, the subject property is immediately adjacent to the city and parcels that are fully developed with commercial structures right along Highway 20. There are two existing structures, the "Old House" and an associated barn within about 50 feet of the highway. In addition, allowing lower-intensity development permitted in the MUA-10 zone along with the LM standards will effectively protect any scenic views. No development permitted in that zone will be so intense or tall that it will affect the view of the distant hills and mountains.

Economic Consequences

Conflicting Use - Common to all MUA-10 Permitted Uses	Positive Consequences	Negative Consequences
	Uses allowed in the MUA-10 zone will have positive economic consequences in that the uses promote the County's rural housing goals and policies creating more opportunities for rural housing. Agricultural and forest propagation uses, to the extent they can be supported on the property, add to the rural economic base. Road projects enhance the accessibility to the property supporting other MUA-10 uses. Private parks provide recreational opportunities for those who reside in the rural area. Home occupations provide owners with the ability to generate income on their properties and can provide needed services to the rural community.	The County's original 1992 ESEE analysis notes that "the economic impact of maintaining the visual quality of the area would be positive. Deschutes County would remain a desirable place to live, thereby maintaining neighborhood property values. Maintaining or enhancing visual quality makes the County a more attractive place to visit, thereby attracting more visitors and inducing people to stay longer." Allowing reasonable development of rural uses subject to applicable standards will not significantly alter the above statements.

Conflicting Use - Permitted Uses	Positive Consequences	Negative Consequences
Single Dwellings	New single dwellings attract people to the County and	There are no negative economic consequences from

	generally add to the economic base in the rural community.	this use related to the scenic corridor.

Conflicting Use - Permitted Uses	Positive Consequences	Negative Consequences
Agricultural uses and Propagation or Harvesting Forest Products	In light of the soil report confirming that the property is not agricultural land and the fact that it has no trees, these uses are unlikely. However, these uses are generally allowed in the EFU zone and any economic consequences under MUA-10 zoning will be the same and will be positive.	There are no negative economic consequences from these uses related to a scenic corridor.

Conflicting Use - Permitted Uses	Positive Consequences	Negative Consequences
Road Projects	Road projects tend to enhance the transportation system that supports rural businesses thus providing an economic benefit.	There are no negative economic consequences for this use related to a scenic corridor.

Conflicting Use - Permitted Uses	Positive Consequences	Negative Consequences
Home Occupations	This use adds to the rural economy allowing residents to work from home.	Because a home occupation is within an approved dwelling, it will not produce any additional negative economic consequences related to a scenic corridor.

Conflicting Use – MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Private Parks	Private parks have limited economic consequences related to a scenic resource but generally are consistent with the purpose of having pleasant views that may attract visitors to the County.	There are no negative economic consequences for this use related to a scenic corridor.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences

Non-Commercial Stables Horse Events	IN light of the soil quality, proximity to the urban area and relatively small size, it is unlikely that any owner could justify the cost to develop such facilities. However, if they could, these rural-based uses add to the rural economy. Private stables allow horse owners to keep animals in a safe environment close to public area for riding supporting that recreational activity. It allows owners of the facility to generate some income. Horse events support the rural community where many residents live because they enjoy having horses and other animals. They can also enhance the community involvement bringing residents together for outdoor social events.	While it is possible that some stables and event facilities could be visible from the highway, one would not expect them to be located within .25 miles of a highway, and they would not have any appreciable economic consequence related to the scenic corridor.

Conflicting Use - MUA-10 Conditional Uses	**Positive Consequences**	**Negative Consequences**
Commercial activities in conjunction with Farm Use	Because the soil quality precludes farm use on the property, these uses are also unlikely. However, these conflicting uses add to the rural economy and offer additional services to the rural community.	Commercial activities can add to vehicular traffic, and some could be seen from Highway 20. However, they would not likely detract people from moving to the County or visiting. Thus, there is not expected to be any economic consequence related to the scenic resource.

Conflicting Use – MUA-10 Conditional Uses	**Positive Consequences**	**Negative Consequences**
Dude Ranch Guest House	Dude ranches and guest housing provide an economic benefit to the rural area and offer a platform to showcase	These uses would not likely be located near the highway and would have no negative economic consequences.

	some of the characteristics of the rural area.	

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Kennel/Vet Clinic	These uses also benefit the rural economy. They offer valuable services to the rural residents.	These uses would not detract people from moving to or visiting the County and thus have no negative economic consequence.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Destination Resort Golf Course	The property is far too small for these uses. Assuming that one could be located on the subject property, these uses would provide significant economic opportunities and job growth. It does not appear that the uses could be placed on the property though.	It is not likely that these uses could be placed on the property. These uses would not detract people from moving to or visiting the County and thus have no negative economic consequence.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Forest Product Production Facility	This is another use that is not likely on the subject property because there are no trees on the property and no commercial forest operations in the area. It is, however, allowed in the MUA-10 zone conditionally. If developed, it could add to the rural economy and may add jobs.	It is not likely that these uses could be placed on the property. These uses would not detract people from moving to or visiting the County and thus have no negative economic consequence.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Hydroelectric Facility	There is no need to address this use as there is no chance one can be developed on the property. Within an MUA-10 zone that has a river, it could provide energy to the rural community and possible jobs.	Generally, if this use were developed on an MUA-10 property with a river, it could, depending on the location, impact a scenic corridor but it is not relevant to the current application.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Rural Housing, including PUDs and Cluster Development	In the near term, allowing MUA-10 uses on the subject property create opportunities for rural business and rural housing both of which can produce positive social consequences in that they offer citizens with opportunities to live in a rural setting and others to conduct socially beneficial rural businesses.	These uses would not detract from people moving to the County but rather would enhance it. Thus, there would be no negative economic consequence.

Social Consequences

Conflicting Use – Common to all MUA-10 Uses	Positive Consequences	Negative Consequences
	In general, allowing uses permitted in the MUA-10 zone will provide positive social consequences because they allow people to reside in a rural area on large parcels and other uses bolster the rural economy which provides positive social impacts to the population at large.	The 1992 County inventory confirmed that having good visual quality areas more accessible to the public enhances livability. This is still true. However, the view from Highway 20 in the subject area already has significant development close to the highway. The best way to address the goal expressed in 1992 is for the County to apply its development standards in general and the LM standards specifically to all new development.

Conflicting Use - Permitted Uses	Positive Consequences	Negative Consequences
Single Dwellings	New single dwellings attract people to the County and generally add social benefits.	There are no negative social consequences from this use related to the scenic corridor.

Conflicting Use - Permitted Uses	Positive Consequences	Negative Consequences
Agricultural uses and Propagation or Harvesting Forest Products	The poor soil quality and lack of trees render these uses unlikely. However, these uses are generally allowed in the EFU zone and any social consequences under MUA-10 zoning will be the same and will be positive.	There are no negative social consequences from these uses related to a scenic corridor.

Conflicting Use - Permitted Uses	Positive Consequences	Negative Consequences
Road Projects	Road projects tend to enhance the transportation system for rural residents which is a positive social consequence.	There are no negative social consequences for this use related to a scenic corridor.
Conflicting Use - Permitted Uses	**Positive Consequences**	**Negative Consequences**

Home Occupations	This use allows rural residents to earn income while being at home to also care for children and animals. It produces all positive social consequences.	Because a home occupation is within an approved dwelling, it will not produce any additional negative social consequences related to a scenic corridor.

Conflicting Use – MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Private Parks	Private parks have a positive social consequence related to a scenic resource because they offer more visual beauty and promote livability.	There are no negative social consequences for this use related to a scenic corridor because parks enhance livability.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Non-Commercial Stables Horse Events	For the reasons stated above, these uses do not appear to be likely. However, private stables allow horse owners to keep animals in a safe environment close to public area for riding supporting that recreational activity. It allows owners of the facility to generate some income. These are positive social consequences. Horse events support the rural community where many residents live because they enjoy having horses and other animals. They can also enhance the community involvement bringing residents together for outdoor social events.	While it is possible that some stables and event facilities could be visible from Highway 20, one would not expect them to be located within .25 miles of a highway, and they would not have any appreciable negative social consequence related to the scenic corridor.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Commercial activities in conjunction with Farm Use	For the reasons stated above, this use is not likely. However, these conflicting uses add to the rural economy and offer additional services to the rural	Commercial activities can add to vehicular traffic, and some could be seen from Highway 20. However, they would not likely detract people from

	community which is a positive social consequence.	moving to the County or affect liability. Thus, there is not expected to be any negative social consequence related to the scenic resource.

Conflicting Use – MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Dude Ranch Guest House	Dude ranches and guest housing provide a place for residents and visitors to gather and enjoy recreational activities and food. They offer a positive social consequence.	These uses would not be located near the highway and would have no negative social consequences related to scenic areas.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Kennel/Vet Clinic	These uses also benefit the rural community by providing needed services which is a positive social consequence.	These uses would need to be developed under the standards in place to protect scenic views. While they could impact peoples' perception of a view, they are likely to be developed in or close to rural service centers where existing development exists. Thay can also be compatible with the resource through compliance with the LM standards.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Destination Resort Golf Course	There is not sufficient acreage for these uses. Assuming that one could be located on the subject property, these uses would provide significant social benefit by providing a location for people to enjoy central Oregon.	It is not likely that these uses could be placed on the property. These uses would not detract people from seeing the scenic resources and in fact, such developments typically try to enhance the views for those who visit.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Forest Product Production Facility	This is another use that is not likely on the subject property	It is not likely that these uses could be placed on the

	because there are no commercial forest operations in the area. It is, however, allowed in the MUA-10 zone conditionally. If developed, it could add to the rural economy and may add jobs which are socially beneficial.	property. These uses could produce a negative social consequence if developed in certain areas. As a conditional use, conditions would have to be imposed.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Hydroelectric Facility	There is no need to address this use as there is no chance one can be developed on the property. Within an MUA-10 zone that has a river, it could provide renewable energy to the rural community which is socially beneficial.	Generally, if this use were developed on an MUA-10 property with a river, it could, depending on the location, impact a scenic corridor but it is not relevant to the current application.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Rural Housing, including PUDs and Cluster Development	In the near term, allowing these MUA-10 uses on the subject property create opportunities for rural business and rural housing both of which can produce positive social consequences in that they offer citizens with opportunities to live in a rural setting and others to conduct socially beneficial rural businesses.	These uses would not detract from people moving to the County but rather would enhance it. These developments require dedicated open space which can be located to preserve any scenic views. Thus, there would be no negative social consequence.

Environmental Consequences

Conflicting Use – Common to all MUA-10 Uses	Positive Consequences	Negative Consequences
The conflicting uses are the same uses listed under the economic consequence section. As noted, in light of the size and other limitations, some uses simply cannot be developed such as golf	Development of uses allowed in the MUA-10 zone will allow rural housing and rural businesses to be located immediately adjacent to the city in close proximity to services and attractions desired by the residents and	Almost all development comes with some perceived negative consequences to the environmental features on land. In some cases, trees are lost. In others, rock outcroppings may need to be removed or altered. In this

courses, airports, and destination resorts.	customers. Thus, it will reduce the amount of travel and thereby reduce the carbon footprint overall.	case, negative consequences to mapped environmental resources will be minimum and can be mitigated or under the Development Code. Some uses allowed in the MUA-10 zone are consistent with uses that are allowed under the current F-2 zone such as forest-related uses. Under LUBA's decision in LUBA Case 2023-008, the County's prior ESEE analysis remains applicable because the MUA-10 zone is not introducing a new use that was not allowed when that analysis was completed. However, other allowed uses will be new uses. The uses predominantly placed on MUA-10 land are large-acre residential uses and other low-intensity rural uses such as horse-related facilities. Those uses do not have large building footprints relative to the overall size of the parcels allowed. The minimum parcel size for the subject property under the MUA-10 zoning is 7.5 acres. That leaves ample area to preserve trees, vegetation, outcroppings, and other resources. Negative consequences to the scenic resource can be effectively managed.

Conflicting Use - Permitted Uses	Positive Consequences	Negative Consequences
Single Dwellings	New single dwellings are likely to have neutral environmental consequences when located on larger MUA-10 parcels.	New single dwellings are likely to have neutral environmental consequences when located on larger MUA-10 parcels.

Conflicting Use - Permitted Uses	Positive Consequences	Negative Consequences
Agricultural uses and Propagation or Harvesting Forest Products	These uses are generally allowed in the EFU zone and any environmental consequences under MUA-10 zoning will be the same and will be positive.	There are no negative environmental consequences from these uses related to a scenic corridor.

Conflicting Use - Permitted Uses	Positive Consequences	Negative Consequences
Road Projects	Road projects tend to enhance the transportation system, making travel more efficient and potentially reducing emissions.	A new road within a scenic corridor may require some removal of vegetation.

Conflicting Use - Permitted Uses	Positive Consequences	Negative Consequences
Home Occupations	This use would allow people to work from home reducing vehicle trips and emissions.	Because a home occupation is within an approved dwelling, it will not produce any additional negative environmental consequences related to a scenic corridor.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Private Parks	Private parks will have limited environmental consequences related to a scenic resource but generally are consistent with the purpose of having pleasant views that may attract visitors to the County.	There are no negative environmental consequences for this use related to a scenic corridor as trees and vegetation do not have to be removed.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Non-Commercial Stables Horse Events	Private stables on MUA-10 land close to the city limits, allow horse owners who reside in urban areas to board horses closer to town, reducing vehicle miles and emissions.	While it is possible that some stables and event facilities could be visible from the highway and would require some removal of trees and vegetation. These consequences can be mitigated for applying the LM standards.

	The same is true for horse events on MUA-10 land closer to where people live.	

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Commercial activities in conjunction with Farm Use	These conflicting uses are unlikely on property with poor soil but when feasible, add options for rural residents to travel less for goods and services reducing the carbon footprint.	Commercial activities can add to vehicular traffic, and some could be seen from Highway 20. Some could require the removal of vegetation which can be perceived as a negative consequence to a scenic corridor.

Conflicting Use – MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Dude Ranch Guest House	Dude ranches and guest housing have neutral environmental consequences in the MUA-10 zone. They are relatively low intensity development that does not require significant disturbance and require open space for the activities normally associated with them.	Even though they tend to be lower intensity developments, these uses could come with some limited vegetation removal and that could be perceived as a negative consequence in a scenic area.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Kennel/Vet Clinic	These conflicting uses add options for rural residents to travel less for goods and services reducing the carbon footprint.	These uses would likely require removal of vegetation if it were on the site, but they also are most likely to be located in or near rural service centers and unincorporated communities with other development.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Destination Resort Golf Course	Assuming that one could be located on the subject property, these uses would provide positive environmental consequences because they preserve open	It is not likely that these uses could be placed on the property. These uses would not detract from scenic beauty in the area because they are developed to provide pleasant

	space and with modern equipment reduce the use of water.	viewing of the scenic features in the County.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Forest Product Production Facility	This is another use that is not likely on the subject property because there are no trees on the site and no commercial forest operations in the area. It is, however, allowed in the MUA-10 zone conditionally. If developed, it could provide jobs for rural residents closer to where they live, reducing the amount of vehicle miles.	It is not likely that these uses could be placed on the property. These uses could require the removal of vegetation which is a negative environmental consequence.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Hydroelectric Facility	There is no need to address this use as there is no chance one can be developed on the property. Within an MUA-10 zone that has a river, it could provide renewable energy which is generally a positive environmental consequence.	Generally, if this use were developed on an MUA-10 property with a river, it could, depending on the location, impact a scenic corridor but it is not relevant to the current application.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Rural Housing, including PUDs and Cluster Development	In the near term, allowing MUA-10 uses on the subject property create opportunities for rural business and rural housing both of which can reduce vehicle miles and benefit the carbon footprint.	These uses require significant dedicated open space which is generally a positive environmental consequence.

Energy Consequences

Conflicting Use – Common to all MUA-10 Uses	Positive Consequences	Negative Consequences
The conflicting uses to consider are the same uses listed above under economic consequences. Overall, the	The positive energy consequences from MUA-10 uses are not appreciable. Some uses, such as a single	In general, it will take and consume energy to develop any uses allowed in the MUA-10 zone. That is a short-term

positive and negative energy consequences on a scenic resource are attenuated.	dwelling, are neutral as to consequences. However, allowing residential development for rural residents who may have employment nearby can reduce vehicle miles, gas consumption, and pollution.	negative consequence that is not related to a scenic view corridor. Additional electricity and propane will be needed for ongoing uses. That is a potential long-term consequence. Some of those consequences can be mitigated through the application of energy saving construction measures, many of which are not required by building codes.

Conflicting Use - Permitted Uses	Positive Consequences	Negative Consequences
Single Dwellings	New single dwellings are likely to have neutral energy consequences other than new construction which is typically required to be more energy efficient. Dwellings on larger parcel may also allow for more alternative energy sources.	There is no negative energy consequences from this use related to the scenic corridor.

Conflicting Use - Permitted Uses	Positive Consequences	Negative Consequences
Agricultural uses and Propagation or Harvesting Forest Products	For the reasons provided above, these uses are unlikely. However, they are generally allowed in the EFU zone and any energy consequences under MUA-10 zoning will be the same and will be positive.	There is no negative energy consequences from these uses related to a scenic corridor.

Conflicting Use - Permitted Uses	Positive Consequences	Negative Consequences
Road Projects	Road projects tend to enhance the transportation system, making travel more efficient and thus conserving energy.	There is no negative energy consequences for this use related to a scenic corridor.

Conflicting Use - Permitted Uses	Positive Consequences	Negative Consequences
Home Occupations	This use allows residents to work from home saving some energy resources.	Because a home occupation is within an approved dwelling, it will not produce any

		additional negative energy consequences related to a scenic corridor.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Private Parks	Private parks have limited energy consequences related to a scenic resource because they are passive uses.	There is no negative energy consequences for this use related to a scenic corridor.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Non-Commercial Stables Horse Events	There do not appear to be any specific energy consequences related to a scenic resource from these uses.	There do not appear to be any specific energy consequences related to a scenic resource from these uses.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Commercial activities in conjunction with Farm Use	Again, these uses are unlikely on a small parcel with poor soil. These conflicting uses add to the rural economy and offer additional services to the rural community reducing petroleum energy consumption.	Commercial activities can add to the demand for some energy sources, but it does not require the removal of vegetation, creating a negative consequence related to a scenic resource.

Conflicting Use – MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Dude Ranch Guest House	There do not appear to be any specific energy consequences related to a scenic resource from these uses.	There do not appear to be any specific energy consequences related to a scenic resource from these uses.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Kennel/Vet Clinic	These uses can provide service closer to the expected users conserving petroleum energy sources.	There do not appear to be any specific energy consequences related to a scenic resource from these uses.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences

Destination Resort Golf Course	These are not feasible on the subject property. Assuming that one could be located on the subject property, these uses allow people to stay in one place for many activities reducing consumption of petroleum energy.	These uses can consume other energy sources such as electricity. However, it does not appear that that consequence relates to a scenic resource.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Forest Product Production Facility	This is another use that is not likely on the subject property because there are no trees on the site and no commercial forest operations in the area. It is, however, allowed in the MUA-10 zone conditionally. If developed, it could add jobs in the rural area and reduce petroleum energy use.	This use is likely to demand a lot of energy. However, with current DEQ requirements for emissions, it does not appear that that consequence relates to a scenic resource.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Hydroelectric Facility	There is no need to address this use as there is no chance one can be developed on the property. Within an MUA-10 zone that has a river, it could provide energy for the rural community.	Generally, if this use were developed on an MUA-10 property with a river, it could, depending on the location, impact a scenic corridor but it is not relevant to the current application.

Conflicting Use - MUA-10 Conditional Uses	Positive Consequences	Negative Consequences
Rural Housing, including PUDs and Cluster Development	These uses could provide housing closer to rural employment requiring residents to travel less for work and use less energy. Because they will be on larger parcels, they also offer more opportunities for alternative energy sources.	Dwellings in such development will consume some forms of energy such as electricity and propane. Energy saving construction can offset this negative energy consequence.

Return to:
Caroline House, Senior Planner
Community Development Department
117 NW Lafayette, P.O. Box 6005
Bend, Oregon 97708-6005

Space Reserved for Recorder's Use

CONDITIONS OF APPROVAL AGREEMENT AND RESTRICTIVE COVENANT

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

RECITALS

WHEREAS, Willitts sought approval of a plan amendment from Agricultural (AG) to Rural Residential Exception Area (RREA) and zone change from Exclusive Farm Use – Sisters Cloverdale Subzone (EFU-SC) to Multiple Use Agricultural (MUA-10) in File Nos. 247-25-000537-PA and 247-25-000538-ZC for the property described on **Exhibit A** (the "Property"), a copy of which is attached and incorporated by reference herein; and

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

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

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

NOW THEREFORE, the parties agree as follows:

1. Limitation on Development. Until and unless the subject property is included within the City of Sisters urban growth boundary and annexed into the City of Sisters through separate applicable processes, no new development or rural residential use otherwise authorized by the RREA designation or MUA-10 zoning may be approved or established on the subject property. This condition does not prohibit the continued lawful use, maintenance, or repair of existing development. Nothing in this condition authorizes, requires, assumes, or commits the City of Sisters, Deschutes County, or any other governmental entity to approve inclusion within the City of Sisters urban growth boundary, annexation, urban services, City plan or zoning designations, or

future development of the subject property.

2. Any future subdivision shall be limited to a minimum lot size of 10 acres. This condition shall be in effect so long as the property remains outside of an urban growth boundary.

Dated this _____ of _____, 2026

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

_____
PHIL CHANG, Chair

_____
ANTHONY DeBONE, Vice Chair

ATTEST:

_____
Recording Secretary

_____
PATTI ADAIR, Commissioner

Dated this _____ of _____, 2026

WILLITTS LLC

_____
By: William G. Willitts
Its: _____

STATE OF OREGON)
) *ss*.
COUNTY OF DESCHUTES)

This instrument was acknowledged before me on _____, 2026 by William G. Willitts as _____ of Willitts LLC, an Oregon limited liability company.

_____
Notary Public for Oregon
Print Name _____
My commission expires _____

EXHIBIT A
PROPERTY DESCRIPTION
(TAX LOT 800, MAP 15-10-10)

A parcel of land situated in the West Half (W1/2) of Section 10, Township 15 South, Range 10 East of the Willamette Meridian, Deschutes County, Oregon, being more particularly described as follows:

Beginning at a brass capped iron pipe at the West Quarter corner of said Section 10; thence North 00° 07' 05" West on the West line of said Section 10, 416.44 feet to a point on the South right of way line of the Sisters-Bend Highway; thence South 59° 52' 40" East on said right of way line, 36.67 feet to a 5/8 inch iron rod; thence on said right of way on the arc of a 5650.00 foot radius curve to the left, (chord bears South 63° 26' 25" East, 702.19 feet), 702.64 feet to a 5/8 inch iron rod; thence South 67° 00' 11" East on said right of way line, 348.45 feet to a 5/8 inch iron rod; thence South 16° 17' 02" West leaving said right of way line, 289.57 feet to a 5/8 inch iron rod; thence South 18° 27' 59" West, 181.60 feet to a 5/8 inch iron rod; thence South 38° 24' 55" West, 66.93 feet to a 5/8 inch iron rod; thence South 28° 18' 58" West, 160.76 feet to a 5/8 inch iron rod; thence South 69° 22' 54" West, 763.94 feet to a 5/8 inch iron rod on the West line of said Section 10; thence North 00° 29' 01" West on said West line, 965.28 feet to the point of beginning.

BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: December 2, 2026

SUBJECT: Work Session: Caldera Ranch Plan Amendment and Zone Change

RECOMMENDED MOTION:
N/A

BACKGROUND AND POLICY IMPLICATIONS:
The Board of County Commissioners will hold a work session on December 2, 2026 to prepare for a public hearing on December 9, 2026 for a Comprehensive Plan Amendment and Zone Change application (file nos. 247-25-000428-PA, 429-ZC), also referred to as "Caldera Ranch."

The record is available for inspection at the following link:
https://www.deschutescounty.gov/CalderaRanchPAZC

BUDGET IMPACTS:
None

ATTENDANCE:
Will Groves, Planning Manager
Nicole Mardell, Principal Planner

COMMUNITY DEVELOPMENT

MEMORANDUM

TO: Deschutes County Board of Commissioners

FROM: Tanya Saltzman, AICP, Senior Planner

DATE: November 23, 2026

SUBJECT: Work Session: Caldera Ranch Plan Amendment and Zone Change (File No. 247-25-000428-PA, 429-ZC)

The Board of County Commissioners ("Board") will hold a work session on December 2, 2026 to prepare for a public hearing on December 9, 2026 for a Comprehensive Plan Amendment and Zone Change application (file nos. 247-25-000428-PA, 429-ZC), also referred to as "Caldera Ranch."

I. PROPOSAL

The applicant is requesting a Comprehensive Plan Amendment to change the designation of approximately 93 acres from RREA (Rural Residential Exception Area) to Bend UGB and a corresponding Zone Change from MUA10 (Multiple Use Agricultural) to UA (Urbanizable Area). The applicant is seeking simultaneous approval for an expansion of the City of Bend's UGB as allowed by Senate Bill 1537.

II. BACKGROUND

The subject property consists of two tax lots (Tax Lots 200 and 300 of Deschutes County Assessor's Map 181221) and a portion of the existing Woodside Road right-of-way, totaling ±93 acres and abutting the Bend city limits and UGB to the west and north. Knott Road runs along the northern frontage of Tax Lot 200 and Woodside Road bisects Tax Lot 300 north-south. The site sits directly south of Caldera High School at the intersection of Brosterhous Road and Knott Road. The application was submitted on June 26, 2025, with additional materials submitted on June 29, 2026, and a public hearing before a Hearings Officer was held on October 29, 2026.

This application was submitted under the criteria of Senate Bill 1537 (2024), which aims to support housing production statewide via a number of programs and standards. Specific to this application, SB 1537 Sections 48-60 allow for a one-time addition to UGB boundaries provided certain criteria are met; these criteria substantially replace the standard UGB amendment in Oregon Administrative

Rules (OAR) 660-024-0020 with specific unique eligibility criteria. Section 50(2) conditions County approval on compliance with sections 49 through 59:

> ***(2) A county shall approve an amendment to an urban growth boundary made under this section that complies with sections 49 to 59, chapter 110, Oregon Laws 2024, and shall cooperate with a city to facilitate the coordination of functions under ORS 195.020 to facilitate the city's annexation and the development of the site. The county's decision is not a land use decision.***

The City of Bend underwent the initial site selection process pursuant to SB 1537 in 2024. The application materials state that on August 8, 2024, the City issued a Notice of Solicitation of Site Applications for Inclusion within the City of Bend's Urban Growth Boundary Under Senate Bill 1537. An application for Caldera Ranch, consistent with Sections 53 and 54, was submitted to the City on October 10, 2024. On December 4, 2024, the City Council held a public hearing to review the applications and hear comments from the public. After deliberations and considering public testimony, the Council voted to select the Caldera Ranch site as the site eligible to move forward with a UGB Amendment and Comprehensive Plan Map and Text Amendment, solidifying their decision by Resolution No. 3411 (Exhibit F) on December 18, 2024, at a public City Council meeting. Bend City Council held a public hearing to consider the proposed urban growth boundary amendment on September 2, 2026 and was approved unanimously.

III. PUBLIC COMMENTS

Comments from 21 individuals were received prior to the Hearings Officer hearing and 9 members of the public testified in opposition to the application at the hearing. Several individuals submitted multiple written comments, and some of these individuals also provided verbal testimony at the public hearing.

After the close of the Hearings Officer hearing and until the submission of this memorandum, comments from 14 individuals have been received. Comments received after the date of this memorandum will be included in their entirety in the record.

All testimony for both hearings bodies urged denial of the application. Stated reasons for denial included, but are not limited to:

- Fire/evacuation safety
- Eligibility of property for SB 1537
- Surface mine status
- Traffic/circulation

Further details and the complete comments are available in the record.

IV. HEARINGS OFFICER RECOMMENDATION

The Deschutes County Hearings Officer held a public hearing on October 29, 2026. At the conclusion of the public hearing, the Hearings officer closed the record. On November 23, 2026, the Hearings Officer issued a recommendation of approval for the subject applications.

The basis for the Hearings Officer's recommendation of approval are as follows (excerpted from Hearings Officer Recommendation):

> An important and unique feature of the Application is that it invokes a statutory procedure allowing for a "one-time" UGB expansion that is separate from the traditional process set forth in statutes and administrative rules governing UGB expansions. Specifically, Senate Bill 1537 was adopted by the Oregon State Legislature ("Legislature") in 2024, allowing qualifying local governments a one-time option to include land in a UGB through an expedited process. In 2025, the Legislature adopted Senate Bill 48, making certain technical fixes to Senate Bill 1537. In 2026, the Legislature then adopted House Bill 4035, further refining the legislation. The foregoing bills are referred to collectively as "SB 1537."
>
> The provisions of SB 1537 relevant to this proceeding are sections 49 through 59 of that legislation ("SB 1537 Criteria"). The majority of the SB 1537 Criteria are directed at cities and set forth the standards a city must meet to bring property into its UGB on an expedited basis. With respect to counties, Section 50 of SB 1537 states "[a] county **shall approve** an amendment to an urban growth boundary made under this section that complies with sections 49 to 59." (Emphases added.) Pursuant to that mandatory language, the County must approve an Application that complies with the SB 1537 Criteria. In other words, no other local code provision, state administrative rule, or state statute can serve as an approval standard for the County's consideration of an application under SB 1537.
>
> Although participants in this proceeding address provisions of the Deschutes County Code ("DCC" or "Code") that typically apply to plan amendments and zone changes, and address Statewide Planning Goals and state administrative rules that typically apply to comprehensive plan amendments, the Hearings Officer found that those provisions are not applicable in this proceeding, and his recommendation considers those provisions only to the extent they are relevant to the application of the SB 1537 Criteria.

V. BOARD CONSIDERATION

Per DCC Section 22.20.040(D), the review of the proposed quasi-judicial Plan Amendment and Zone Change is not subject to the 150-day review period typically associated with land use decisions.

The Board may want to consider in advance options regarding an open record period after the conclusion of the public hearing, given end-of-year schedule constraints, Board continuity, and required time for staff to prepare and upload meeting materials to be available to the public.

The record is available for inspection at the following link:

https://www.deschutescounty.gov/CalderaRanchPAZC

VI. NEXT STEPS

A public hearing with the Board is scheduled for December 9, 2026.

ATTACHMENT(S):

1. Location Map
2. Hearings Officer's Recommendation

247-25-000428-PA & 247-25-000429-ZC

Plan Amendment and Zone Change



Subject Property

Bend Urban Growth Boundary (UGB)

RECOMMENDATION AND FINDINGS OF
THE DESCHUTES COUNTY HEARINGS OFFICER

FILE NUMBERS:	247-25-000428-PA, 247-25-000429-ZC
HEARING DATE:	October 29, 2026, 1:00 p.m.
HEARING LOCATION:	Videoconference and Barnes & Sawyer Rooms Deschutes Services Center 1300 NW Wall Street Bend, OR 97708
OWNER/APPLICANT:	Caldera Holdings LLC and Woodside Ventures LLC
SUBJECT PROPERTIES:	Map and Taxlots - 1812210000300, 1812210000200
REQUEST:	Applicant requests approval of a Comprehensive Plan Amendment to change the plan designation of the Subject Properties from Rural Residential Exception Area (RREA) to Bend Urban Growth Boundary (UGB), and a corresponding Zone Change to rezone the Subject Properties from Multiple Use Agricultural (MUA-10) to Urbanizable Area (UA).
HEARINGS OFFICER:	Tommy A. Brooks

SUMMARY OF RECOMMENDATION: The Hearings Officer finds that the Applicant has met its burden of proof with respect to the requested Comprehensive Plan Amendment and Zone Change and, therefore, recommends APPROVAL of the Application based on the Findings set forth in this Recommendation.

I. APPLICABLE STANDARDS AND CRITERIA

Oregon Laws 2024, Chapter 110, sections 49-59 (Senate Bill 1537), as amended by Oregon Laws 2025, chapter 530 (Senate Bill 48), and by Oregon Laws 2026, chapter 31 (House Bill 4082)

Deschutes County Code (DCC)

Title 18, Deschutes County Zoning Ordinance:
Chapter 18.32, Multiple Use Agricultural Zone (MUA-10)
Chapter 18.136, Amendments

Title 19A, Bend Urbanizable Area District

Title 22, Deschutes County Development Procedures Ordinance

Deschutes County Comprehensive Plan

Chapter 1, Comprehensive Planning
Chapter 2, Resource Management
Chapter 3, Rural Growth Management
Chapter 4, Urban Growth Management

Oregon Administrative Rules (OAR), Chapter 660
Division 15, Statewide Planning Goals and Guidelines
Division 24, Urban Growth Boundaries

II. BACKGROUND AND PROCEDURAL FINDINGS

A. Nature of Proceeding

This matter comes before the Hearings Officer as a request by the Applicant for approval of a Comprehensive Plan Map Amendment ("Plan Amendment") to change the designation of the Subject Properties from Rural Residential Exception Area (RREA) to Bend Urban Growth Boundary (UGB), and a corresponding Zone Change to rezone the Subject Properties from Multiple Use Agricultural (MUA-10) to Urbanizable Area (UA). If approved, the Plan Amendment and Zone Change would eventually allow the Subject Properties to be included in the City of Bend's ("City") urban growth boundary ("UGB").

An important and unique feature of the Application is that it invokes a statutory procedure allowing for a "one-time" UGB expansion that is separate from the traditional process set forth in statutes and administrative rules governing UGB expansions. Specifically, Senate Bill 1537 was adopted by the Oregon State Legislature ("Legislature") in 2024, allowing qualifying local governments a one-time option to include land in a UGB through an expedited process. In 2025, the Legislature adopted Senate

Bill 48, making certain technical fixes to Senate Bill 1537. In 2026, the Legislature then adopted House Bill 4035, further refining the legislation. The foregoing bills are referred to collectively as "SB 1537."

The provisions of SB 1537 relevant to this proceeding are sections 49 through 59 of that legislation ("SB 1537 Criteria"). The majority of the SB 1537 Criteria are directed at cities and set forth the standards a city must meet to bring property into its UGB on an expedited basis. With respect to counties, Section 50 of SB 1537 states "[a] county **shall approve** an amendment to an urban growth boundary made under this section that complies with sections 49 to 59." (Emphases added.) Pursuant to that mandatory language, the County must approve an Application that complies with the SB 1537 Criteria. In other words, no other local code provision, state administrative rule, or state statute can serve as an approval standard for the County's consideration of an application under SB 1537.

Although participants in this proceeding address provisions of the Deschutes County Code ("DCC" or "Code") that typically apply to plan amendments and zone changes, and address Statewide Planning Goals and state administrative rules that typically apply to comprehensive plan amendments, I find that those provisions are not applicable in this proceeding, and this Recommendation considers those provisions only to the extent they are relevant to the application of the SB 1537 Criteria.

B. Notices and Hearing

The Application is dated June 26, 2025. On July 29, 2026, the County issued a Notice of Application to several public agencies and to property owners in the vicinity of the Subject Properties (together, "Application Notice"). The Application Notice invited comments on the Application.

The County mailed a Notice of Public Hearing on September 30, 2026 ("Hearing Notice"), announcing an evidentiary hearing ("Hearing") for the requests in the Application. Pursuant to the Hearing Notice, I presided over the Hearing as the Hearings Officer on October 29, 2026, opening the Hearing at 1:00 p.m. The Hearing was held in person and via videoconference, with Deschutes County Planning Division representatives ("Staff"), representatives of the Applicant, and other participants appearing in person. The Hearings Officer appeared remotely. The Hearing concluded at approximately 2:30 p.m.

At the beginning of the Hearing, I provided an overview of the quasi-judicial process and instructed participants to direct comments to the approval criteria and standards, and to raise any issues a participant wanted to preserve for appeal if necessary. I stated I had no *ex parte* contacts to disclose or bias to declare. I asked for but received no objections to the County's jurisdiction over the matter or to my participation as the Hearings Officer.

Prior to concluding the Hearing, there was some discussion from participants seeking to have the record remain open. The basis for that request, however, appeared to be a request for more time to allow others not present in the Hearing room or online to have more time to submit comments. As presented to the Hearings Officer, this proceeding will involve two steps, with the Hearings Officer making a recommendation to the County's Board of Commissioners ("County Board"), followed by the County Board conducting its own review. Because a separate proceeding will follow, I determined it was unnecessary to keep the record open for additional participants. At the conclusion of the Hearing, I therefore announced that the record was closed at that time.

C. 150-day Clock

Because the Application includes the request for the Plan Amendment, the 150-day review period set forth in ORS 215.427(1) is not applicable[1], and SB 1537 does not appear to impose a time limit on the County's consideration of the Application. The Staff Report also notes that the 150-day review period is not applicable by virtue of DCC 22.20.040(D). No participant in the proceeding disputed that conclusion.

III. SUBSTANTIVE FINDINGS AND CONCLUSIONS

A. Staff Report

Prior to the Hearing, on October 20, 2026, Staff issued a report setting forth the applicable criteria and presenting the evidence in the record at that time ("Staff Report").

The Staff Report concludes that the Application satisfies the SB 1537 Criteria. The Staff Report also concludes that the County's standard criteria for plan amendments and zone changes (including compliance with Statewide Planning Goals) have been satisfied, but acknowledges that the SB 1537 Criteria replace those standard criteria.

Having reviewed the Staff Report, I find that it is well-reasoned, fully addresses the SB 1537 Criteria, and adequately explains the basis for its conclusions. Based on the foregoing, I adopt the Staff Report, in its entirety, as my findings. The remaining findings in this Recommendation address the specific issues that were raised during this proceeding, and explains why the issues raised do not warrant changing the conclusions of the Staff Report.

In the event of a conflict between the findings in this Recommendation and the findings in the Staff Report, the findings in this Recommendation control.

B. Issues Raised by Other Participants

1. Buildable Lands

The SB 1537 Criteria contain multiple references to "buildable" land. Section 50(1)(f), for example, states that the total acreage of the site must be up to "150 net buildable acres."[2] Similarly, Section 55(2) requires a city to adopt a binding conceptual plan for any site that is "larger than 15 new buildable acres."

Multiple participants assert that the Subject Properties are not buildable at all. Participant Jones and Participant Seim, for example, argue that the Subject Properties are an unreclaimed mining site that cannot be developed.

---

[1] ORS 215.427(7).

[2] The Application, the Staff Report, and the City's ordinance each quote from the original bill language that referred to a site not exceeding 100 net buildable acres. House Bill 4035 appears to have modified that language to refer to a site that "includes up to 150 net buildable acres."

Although it is likely not the intent of the Legislature for a city to include non-buildable lands within a UGB (the stated purpose of the legislation is to build more housing), the objecting participants do not identify a provision that requires the Subject Properties to be "buildable." The references to buildable acres serve as triggers, for example limiting the size of the property that can be included in the UGB, or setting a minimum for when a concept plan is required. But, by their express terms, the SB 1537 Criteria do not appear to prohibit a site that has zero buildable acreage. Even so, the record demonstrates that the Subject Properties have been deemed fully reclaimed under regulations governed by the Oregon Department of Geology and Mineral Industries ("DOGAMI"). While a reclaimed mine site may require additional grading or other technical improvements, nothing in the record indicates that the Subject Properties cannot be developed, even if the number of actually developable acres may not be the full acreage of the Subject Properties. The concerns raised by the objecting participants may be better addressed at the development phase rather than at this comprehensive planning stage.

2. City Need for UGB Expansion

Section 50(1)(d) of the SB 1537 Criteria sets forth a requirement that a city have a demonstrated a need for the addition to its UGB. Section 52 of the SB 1537 Criteria contains the provisions for determining need. Multiple participants assert that no such need exists. Participant Tornay, for example, states that the City has alternatives for development that undermine any necessity for bringing the Subject Properties into the UGB, and that previous sites added to the UGB are less than 75% developed, counter to the requirement of Section 52(1)(b).

The express terms of the SB 1537 Criteria state that the City must have demonstrated the need for a site to be included in its UGB. The record includes a copy of City Ordinance No. NS-2561 (the "UGB Ordinance"). The UGB Ordinance sets forth the City's determination that 82.9% of the relevant prior expansion lands were either developed or satisfied the alternative planning requirements of section 52(1)(b). Based on those City findings, I conclude that the City has demonstrated the required need. Further, the express language of Section 50(1)(d) asks whether "the City has demonstrated a need." With the passage of the UGB Ordinance, it finds that it has.

3. Application of Other State Criteria

Multiple participants generally object to the use of the SB 1537 mechanism in lieu of applying other state statutes and rules. Participant Merino-Seim, for example, states that allowing this UGB expansion will violate Statewide Planning Goals 3, 7, 12, and 14. As noted above, however, SB 1537 avoids the direct application of Statewide Planning Goals and a UGB expansion can occur under SB 1537 so long as the SB 1537 Criteria are applied. The objecting participants do not explain how or why the County can apply other state-level criteria to the proposal in the Application. Based on the foregoing, I find that other local and state provisions do not supply independent approval criteria, except to the extent incorporated into the SB 1537 Criteria.

/ / /

/ / /

IV. CONCLUSION

Based on the foregoing findings, I find the Applicant has met its burden of proof with respect to the standards for approving the requested Plan Amendment and Zone Change under SB 1537. I therefore recommend to the County Board of Commissioners that the Application be APPROVED.

Dated this 23rd day of November 2026



Tommy A. Brooks
Deschutes County Hearings Officer