BOARD OF COMMISSIONERS

BOARD OF COUNTY COMMISSIONERS MEETING

1:00 PM, MONDAY, NOVEMBER 30, 2026
DeArmond Room, Deschutes Services Building 1300 NW Wall Street, Bend
(541) 388-6570 | www.deschutes.org

AGENDA

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

Members of the public may view the meeting in real time via YouTube using this link: http://bit.ly/3mmlnzy. ***To 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. Approval of Document No. 2026-897, a Deed of Dedication for a portion of NW Coyner Lane for public roadway and utilities

2. Approval of Order No. 2026-044, Vacating a Portion of NW Coyner Lane

3. Approval of a Notice of Intent to Award a contract for the Supply and Hauling of Crushed, Uncoated Rock for Chip Seal 2027

ACTION ITEMS

4. **1:10 PM** Public Hearing and consideration of Order No. 2026-045 approving an annexation of property into the Lazy River Special Road District

5. **1:15 PM** Public Hearing concerning a request for a Comprehensive Plan Amendment and rezone of approximately 135 acres on Fryrear Road from Exclusive Farm Use to Multiple Use Agricultural (Curtis)

6. **2:45 PM** Update on the Courthouse Expansion project, including an evaluation of the Construction Manager / General Contractor alternative contracting method

7. **3:15 PM** Work Session for Ordinance No. 2026-031 to correct the Comprehensive Plan Map and Zoning Map associated with Ordinance 2005-032

8. **3:20 PM** Work Session: Title 22 – Development Procedures Text Amendments

9. **3:40 PM** Work Session: Farm Store Text Amendments

10. **4:10 PM** Fall 2026 Discretionary Grant Application Review and Allocation

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: November 30, 2026

SUBJECT: Approval of Document No. 2026-897, a Deed of Dedication for a portion of NW Coyner Lane for public roadway and utilities

RECOMMENDED MOTION:
Move approval of Document No. 2026-897.

BACKGROUND AND POLICY IMPLICATIONS:
The Deschutes County Road Department has received a Deed of Dedication from Eden Central Properties LLC, conveying approximately 1.10 acres of right-of-way for public roadway and utility purposes. The proposed dedication area is a portion of Parcel 2 of Partition Plat No. 2015-15, located in the Southeast Quarter of Section 28, Township 14 South, Range 12 East, W.M., Deschutes County, Oregon as described and depicted in Exhibits A and B of the Deed of Dedication.

The proposed dedication is a coordinated component of the Skybourne subdivision access improvements (File No. 247-23-000261-TP). It will provide the replacement alignment for NW Coyner Lane in conjunction with the proposed vacation of the existing right-of-way segment (proposed Order No. 2026-044, submitted as a separate agenda item for the 11/30/26 Board meeting). The existing right-of-way was dedicated with Partition Plat No. 2015-15 and was not intended to serve as a subdivision primary access route, as its existing alignment and curve radii do not support the roadway geometry needed to meet applicable road standards for a primary access route. The proposed replacement right-of-way provides a 60-foot-wide corridor along an improved alignment with horizontal curves designed to support the required roadway geometry. The associated roadway improvements will be constructed by the property owner as part of the subdivision development.

Based on the findings in the Road Official's Report for proposed Order No. 2026-044, Road Department staff recommend that the Board of County Commissioners approve the proposed dedication. Acceptance and recording of Order No. 2026-897 will dedicate the portion of NW Coyner Lane described in the order.

BUDGET IMPACTS: None

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

REVIEWED LEGAL COUNSEL	For Recording Stamp Only
After recording return to: Deschutes County Road Dept. 61150 S.E. 27th Street Bend, Oregon 97701	

DEED OF DEDICATION

Eden Central Properties LLC, Grantor, does hereby dedicate to the public for roadway and utility purposes that parcel of land described in Exhibit "A" and depicted in Exhibit "B", attached hereto and by this reference incorporated herein.

The true consideration for this conveyance is other consideration.

DATED this 24th day of August, 2026.

Charles F. Thomas III
Manager

STATE OF OREGON)
) SS.
County of Deschutes)

Before me, a Notary Public, personally appeared Charles F. Thomas III, and acknowledged the foregoing instrument.

Dated this 24th day of August, 2026.

NOTARY PUBLIC FOR OREGON
My Commission Expires: July 14, 2029

OFFICIAL STAMP
KRISTI JEAN BOROVEC
NOTARY PUBLIC-OREGON
COMMISSION NO. 1060052
MY COMMISSION EXPIRES JULY 14, 2029

ACCEPTANCE

Deschutes County, acting by and through its Board of County Commissioners, does hereby accept the foregoing Deed of Dedication as a public road pursuant to ORS 93.808.

DATED this _____ day of _____, 2026.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

_____
PHIL CHANG, CHAIR

_____
ANTHONY DEBONE, VICE CHAIR

ATTEST:

_____
PATTI ADAIR, COMMISSIONER

_____
Recording Secretary

STATE OF OREGON)
) SS.
County of Deschutes)

Before me, a Notary Public, personally appeared Phil Chang, Anthony DeBone, and Patti Adair, the above-named Board of County Commissioners of Deschutes County, Oregon, acknowledged the foregoing instrument, on behalf of Deschutes County, Oregon.

Dated this _____ day of _____, 2026.

_____
NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

EXHIBIT A
RIGHT OF WAY DEDICATION - NW COYNER LANE

A parcel of land containing 1.10 acres, more or less, being a portion of Parcel 2, Partition Plat No. 2015-15, located in the Southeast Quarter (SE1/4) of Section 28, Township 14 South, Range 12 East, W.M., Deschutes County, Oregon, being more particularly described as follows:

Commencing at the southeast corner of Parcel 2, Partition Plat No. 2015-15, lying on the south right of way line of said NW Coyner Lane; thence along said south right of way line the following two (2) courses and one (1) curve:

North 77°22'16" West a distance of 44.39 feet;
26.52 feet along the arc of a non-tangent curve to the right with a radius of 81.97 feet, the chord of which bears North 66°29'12" West a distance of 26.41 feet;
North 57°23'27" West a distance of 469.63 feet to the **True Point of Beginning** of this description;

thence leaving said south right of way line, 227.63 feet along the arc of a non-tangent curve to the left with a radius of 170.00 feet, the chord of which bears South 84°15'01" West a distance of 211.00 feet; thence South 45°53'30" West a distance of 112.42 feet; thence 484.38 feet along the arc of a tangent curve to the right with a radius of 230.00 feet, the chord of which bears North 73°46'32" West a distance of 399.70 feet; thence North 76°33'27" East a distance of 60.00 feet; thence 358.02 feet along the arc of a non-tangent curve to the left with a radius of 170.00 feet, the chord of which bears South 73°46'32" East a distance of 295.43 feet; thence North 45°53'30" East a distance of 112.42 feet; thence 307.96 feet along the arc of a tangent curve to the right with a radius of 230.00 feet, the chord of which bears North 84°15'01" East a distance of 285.47 feet; thence South 32°36'33" West a distance of 60.00 feet to the **True Point of Beginning,** the terminus of this description.

See attached map titled "Exhibit B" hereby incorporated by reference.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

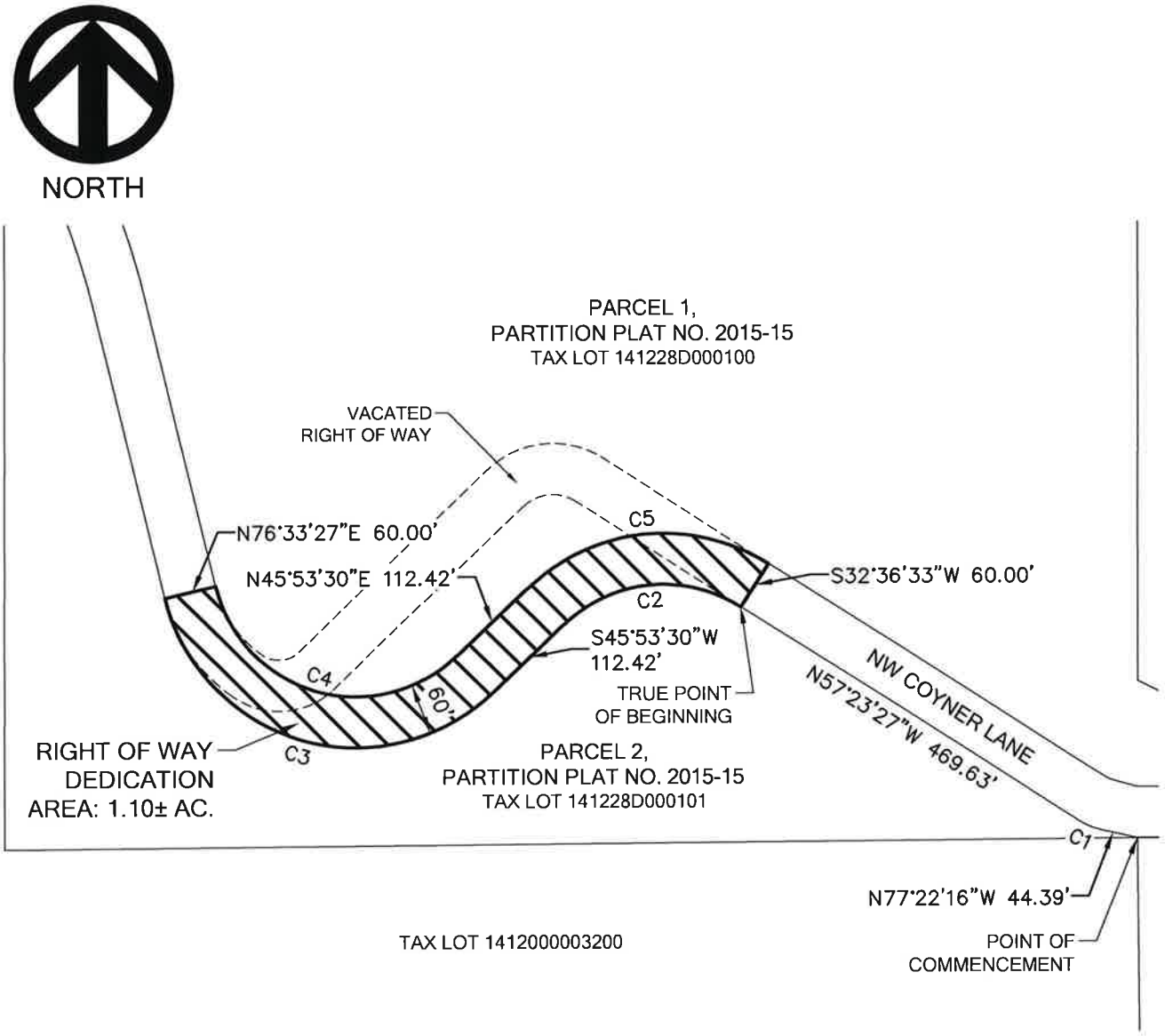
Aquila Reed 10/20/26

OREGON
MAY 10, 2022
AQUILA REED
93179

EXPIRES: 12/31/26

EXHIBIT B

LOCATED IN THE SOUTHEAST QUARTER (SE1/4)
OF SECTION 28, TOWNSHIP 14 SOUTH, RANGE 12 EAST, W.M.,
DESCHUTES COUNTY, OREGON



CURVE TABLE				
CURVE	DISTANCE	RADIUS	DELTA	CHORD
C1	26.52'	81.97'	18°32'24"	N66°29'12"W 26.41'
C2	227.63'	170.00'	76°43'04"	S84°15'01"W 211.00'
C3	484.38'	230.00'	120°39'57"	N73°46'32"W 399.70'
C4	358.02'	170.00'	120°39'57"	S73°46'32"E 295.43'
C5	307.96'	230.00'	76°43'04"	N84°15'01"E 285.47'

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Aquila Reed 10/20/26

OREGON
MAY 10, 2022
AQUILA REED
93179

EXPIRES: 12/31/26

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HWA
CIVIL ENGINEERING | SURVEYING | PLANNING

RIGHT OF WAY DEDICATION
NW COYNER LANE

SCALE: 1" = 200' | DRAWN BY: AQR | DATE: 10/20/2026

SHEET 1/1

BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: November 30, 2026

SUBJECT: Approval of Order No. 2026-044, Vacating a Portion of NW Coyner Lane

RECOMMENDED MOTION:
Move approval of Order No. 2026-044.

BACKGROUND AND POLICY IMPLICATIONS:
The Deschutes County Road Department has received a petition from Eden Central Properties, LLC, to vacate approximately 1.18 acres of public road right-of-way known as NW Coyner Lane. The area proposed for vacation is located between Tax Lots 141228D000100 and 141228D000101 in the Southeast Quarter of Section 28, Township 14 South, Range 12 East, W.M., Deschutes County, Oregon. The subject right-of-way was dedicated by Partition Plat No. 2015-15.

The vacation is needed to fulfill a condition of approval for the Skybourne subdivision (File No. 247-23-000261-TP). The existing right-of-way dedication was not intended to serve as the primary access route for a subdivision. Its existing alignment and curve radii do not support the roadway geometry required to meet applicable road standards for a primary access route. The applicant will dedicate replacement right-of-way by dedication deed (proposed Document No. 2026-897, submitted as a separate agenda item for the 11/30/26 Board meeting) and construct the associated road improvements to realign the roadway.

The petition includes acknowledged consent from the owners of all property abutting the portion of NW Coyner Lane proposed for vacation. Central Electric Cooperative has also consented to the vacation and confirmed that it has no existing facilities within the area proposed for vacation. Accordingly, the Board may consider the vacation without a public hearing under ORS 368.351, based on the Road Official's finding that the vacation is in the public interest.

Based on the findings in the Road Official's Report, Road Department staff recommend that the Board of County Commissioners approve the proposed vacation. The vacation will remove the obsolete right-of-way alignment so that the replacement right-of-way and roadway improvements may implement the approved subdivision access plan. Adoption

and recording of Order No. 2026-044 will vacate the portion of NW Coyner Lane described in the order; title will vest as provided by ORS 368.366.

BUDGET IMPACTS:
None

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

REVIEWED

_____
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Vacating a Portion of NW Coyner Lane in Deschutes County, Oregon	* *	ORDER NO. 2026-044

WHEREAS, proceedings for vacating the public right of way for a portion of NW Coyner Lane, described in Exhibit "A" and depicted in Exhibit “B”, attached hereto and by this reference incorporated herein, were initiated by the Board of County Commissioners pursuant to ORS 368.341 upon the owners of property abutting said portion of NW Coyner Lane filing a petition, attached hereto as Exhibit “C” and by this reference incorporated herein; and

WHEREAS, said petition contains the acknowledged signatures of owners of one hundred percent of property abutting said portion of the right of way for NW Coyner Lane and indicates said owners’ approval of vacation; and

WHEREAS, the County Engineer, on behalf of the County Road Official, has prepared and filed with the Board of County Commissioners a written report, attached hereto as Exhibit “D” and by this reference incorporated herein, concerning the proposed vacation pursuant to ORS 368.346(1); and

WHEREAS, said report contains the County Engineer’s assessment that the proposed vacation is in the public interest; now, therefore,

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

Section 1. That vacation of the property described in the attached Exhibit “A” and depicted in the attached Exhibit “B” is in the public interest.

Section 2. That the property described in the attached Exhibit “A” and depicted in the attached Exhibit “B” is hereby vacated.

Section 3. That the property vacated in Section 2 herein shall vest with the rightful owner or owners holding title according to law in accordance with ORS 368.366(1)(c).

Section 4. That this Order shall be recorded in the Official Records with the Deschutes County Clerk, and that copies shall be filed with the Deschutes County Surveyor and Deschutes County Assessor.

Dated this _____ day of _____, 2026.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PHIL CHANG, Chair

ATTEST:

ANTHONY DEBONE, Vice Chair

Recording Secretary

PATTI ADAIR, Commissioner

EXHIBIT A
RIGHT OF WAY VACATION - NW COYNER LANE

A parcel of land containing 1.18 acres, more or less, being a portion of NW Coyner Lane as dedicated on Partition Plat No. 2015-15, located in the Southeast Quarter (SE1/4) of Section 28, Township 14 South, Range 12 East, W.M., Deschutes County, Oregon, being more particularly described as follows:

Commencing at the southeast corner of Parcel 2, Partition Plat No. 2015-15, lying on the south right of way line of said NW Coyner Lane; thence along said south right of way line the following two (2) courses and one (1) curve:

North 77°22'16" West a distance of 44.39 feet;
26.52 feet along the arc of a non-tangent curve to the right with a radius of 81.97 feet, the chord of which bears North 66°29'12" West a distance of 26.41 feet;
North 57°23'27" West a distance of 469.63 feet to the **True Point of Beginning** of this description;

thence continuing along said south right of way line the following two (2) courses and three (3) curves:

North 57°23'27" West a distance of 230.94 feet;
67.16 feet along the arc of a tangent curve to the left with a radius of 50.16 feet, the chord of which bears South 84°15'01" West a distance of 62.26 feet;
South 45°53'30" West a distance of 305.13 feet;
132.64 feet along the arc of a tangent curve to the right with a radius of 95.00 feet, the chord of which bears South 85°53'22" West a distance of 122.12 feet;
141.55 feet along the arc of a compound curve to the right with a radius of 199.42 feet, the chord of which bears North 33°46'39" West a distance of 138.60 feet;

thence leaving said south right of way line, North 76°33'27" East a distance of 60.00 feet to the north right of way line of said NW Coyner Lane; thence along said north right of way line the following three (3) curves and two (2) courses:

98.96 feet along the arc of a non-tangent curve to the left with a radius of 139.42 feet, the chord of which bears South 33°46'39" East a distance of 96.90 feet;
48.87 feet along the arc of a compound curve to the left with a radius of 35.00 feet, the chord of which bears North 85°53'22" East a distance of 44.99 feet;
North 45°53'30" East a distance of 305.13 feet;
147.50 feet along the arc of a tangent curve to the right with a radius of 110.16 feet, the chord of which bears North 84°15'01" East a distance of 136.73 feet;
South 57°23'27" East a distance of 230.94 feet;

thence leaving said north right of way line, South 32°36'33" West a distance of 60.00 feet to the **True Point of Beginning,** the terminus of this description.

See attached map titled "Exhibit B" hereby incorporated by reference.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

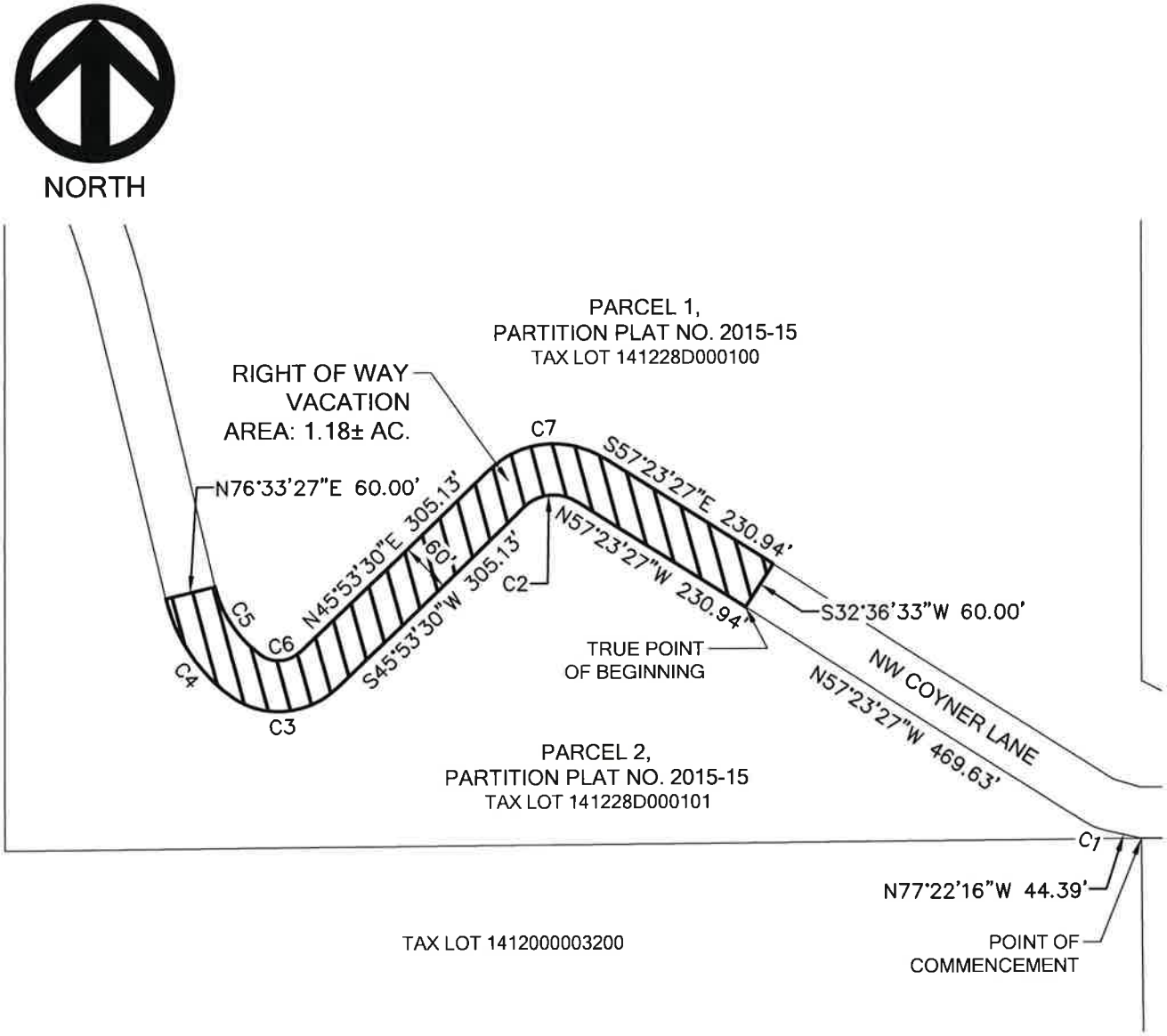
Aquila Reed 10/20/26

OREGON
MAY 10, 2022
AQUILA REED
93179

EXPIRES: 12/31/26

EXHIBIT B

LOCATED IN THE SOUTHEAST QUARTER (SE1/4)
OF SECTION 28, TOWNSHIP 14 SOUTH, RANGE 12 EAST, W.M.,
DESCHUTES COUNTY, OREGON



CURVE TABLE				
CURVE	DISTANCE	RADIUS	DELTA	CHORD
C1	26.52'	81.97'	18°32'24"	N66°29'12"W 26.41'
C2	67.16'	50.16'	76°43'04"	S84°15'01"W 62.26'
C3	132.64'	95.00'	79°59'45"	S85°53'22"W 122.12'
C4	141.55'	199.42'	40°40'13"	N33°46'39"W 138.60'
C5	98.96'	139.42'	40°40'13"	S33°46'39"E 96.90'
C6	48.87'	35.00'	79°59'45"	N85°53'22"E 44.99'
C7	147.50'	110.16'	76°43'04"	N84°15'01"E 136.73'

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Aquila Reed 10/20/26

OREGON
MAY 10, 2022
AQUILA REED
93179

EXPIRES: 12/31/26

S:\Land Projects\210110 Skvorak Coyner Road\dwg\SURVEY\210112-VACATION and DEDICATION.dwg Oct 20, 2026

HWA
CIVIL ENGINEERING | SURVEYING | PLANNING

RIGHT OF WAY VACATION
NW COYNER LANE

SCALE: 1" = 200' | DRAWN BY: AQR | DATE: 10/20/2026

SHEET 1/1

EXHIBIT C

PETITION FOR VACATION OF A PUBLIC ROAD

TO: THE DESCHUTES COUNTY BOARD OF COMMISSIONERS

We, the undersigned (holding recorded interest or abutting the proposed property or owning improvements constructed on the proposed property for vacation), respectfully request the following described road be vacated.

Description of road to be vacated: **A portion of Coyner Road between tax lots 1412280-00100 and 141228D0-00101**

Located in the **SW ¼ of the SE ¼ of Section 28, T14S, R12E**, Deschutes County.

Reason for road vacation request: **A portion of Coyner Road with sharp, non-compliant curves to be reconstructed with curves that meet AASHTO requirements as part of approved rural subdivision 247-23-000261-TP. Dedication of a replacement right of way will be made in conjunction with this vacation.**

DATED this 24th day of August, 2026.

PRINT NAME	SIGNATURE	ADDRESS	CITY	STATE ZIP
EDEN PROPERTIES LLC CHARLES F. THOMAS III	Charles F Thomas III Mgr	10325 NW Coyner	REDMOND	OR 97756

STATE OF OREGON)
) ss.
County of Deschutes)

OFFICIAL STAMP
KRISTI JEAN BOROVEC
NOTARY PUBLIC-OREGON
COMMISSION NO. 1060052
MY COMMISSION EXPIRES JULY 14, 2029

On this 24 day of August, in the year 2026, before me, a Notary Public, personally appeared Charles F Thomas III ~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is(are) subscribed to this instrument, and acknowledged that he (she, they) executed it.

WITNESS my hand and official seal

Kristi Jean Borovec
Notary Public for Oregon.
My Commission expires: July 14, 2029

OFFICIAL STAMP
KRISTI JEAN BOROVEC
NOTARY PUBLIC-OREGON
COMMISSION NO. 1060052
MISSION EXPIRES JULY 14, 2029

STATE OF OREGON)
) ss.
County of _____)

On this ____ day of _____, in the year 2026, before me, a Notary Public, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is(are) subscribed to this instrument, and acknowledged that he (she, they) executed it.

WITNESS my hand and official seal

_____
Notary Public for Oregon.
My Commission expires: _____

STATE OF OREGON)
) ss.
County of _____)

On this ____ day of _____, in the year 2026, before me, a Notary Public, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is(are) subscribed to this instrument, and acknowledged that he (she, they) executed it.

WITNESS my hand and official seal

_____
Notary Public for Oregon.
My Commission expires: _____

STATE OF OREGON)
) ss.
County of _____)

On this ____ day of _____, in the year 2026, before me, a Notary Public, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is(are) subscribed to this instrument, and acknowledged that he (she, they) executed it.

WITNESS my hand and official seal

_____
Notary Public for Oregon.
My Commission expires: _____

I CERTIFY THAT THIS IS THE TRUE AND ORIGINAL PETITION CIRCULATED BY ME.

Stanley F. Thomas III MGR
SIGNATURE

10325 NW Conner Redmond OR 97756
ADDRESS

TELEPHONE: 541-977-1830

EXHIBIT D

ROAD DEPARTMENT

MEMORANDUM

TO: Board of County Commissioners

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

DATE: November 30, 2026

SUBJECT: **Road Official's Report**
Vacation of a Portion of NW Coyner Lane in Section 28, Township 14S, Range 12E, W.M.

Background:

The Deschutes County Road Department has received a petition to vacate a portion of the public road right-of-way of NW Coyner Lane within Section 28, Township 14S, Range 12E, W.M. The chief petitioner, Mark Stockamp, is the signatory of Eden Central Properties LLC, the owner of Tax Lot 100 on Assessor's Map 14-12-28D0, which encompasses all underlying property to the subject right-of-way. The subject right-of-way is a consistent width of 60' amounting to a total of roughly 1.18 acres. The subject right-of-way was originally dedicated to the public through Partition Plat 2015-15 to provide public right of way connectivity and frontage to Tax Lot 300 on Assessor's Map 14-12-28D0 to the north.

The vacation is needed to fulfill conditions of approval for the Skybourne subdivision (File No. 247-23-000261-TP). The original right-of-way dedication was not intended to serve as the primary access route for a subdivision. As dedicated, the alignment includes curve radii that do not support the roadway geometry required for a primary access route under applicable road standards. The applicant proposes to vacate the existing right-of-way segment, dedicate a replacement right-of-way by deed, and construct roadway improvements to realign NW Coyner Lane.

The petitioner provided the following reason for the proposed vacation:

A portion of NW Coyner Lane with sharp, non-compliant curves will be reconstructed with curves that meet AASHTO requirements as part of approved rural subdivision 247-23-000261-TP. Dedication of a replacement right-of-way will be made in conjunction with this vacation.

Road Department staff find that vacating the existing right-of-way segment and replacing it with a properly aligned public right-of-way will allow the primary subdivision access to meet applicable road design standards. The replacement dedication and roadway improvements are coordinated with the Skybourne subdivision

approval process. The existing right-of-way segment is not needed for current or future public road purposes once the replacement alignment is dedicated and improved.

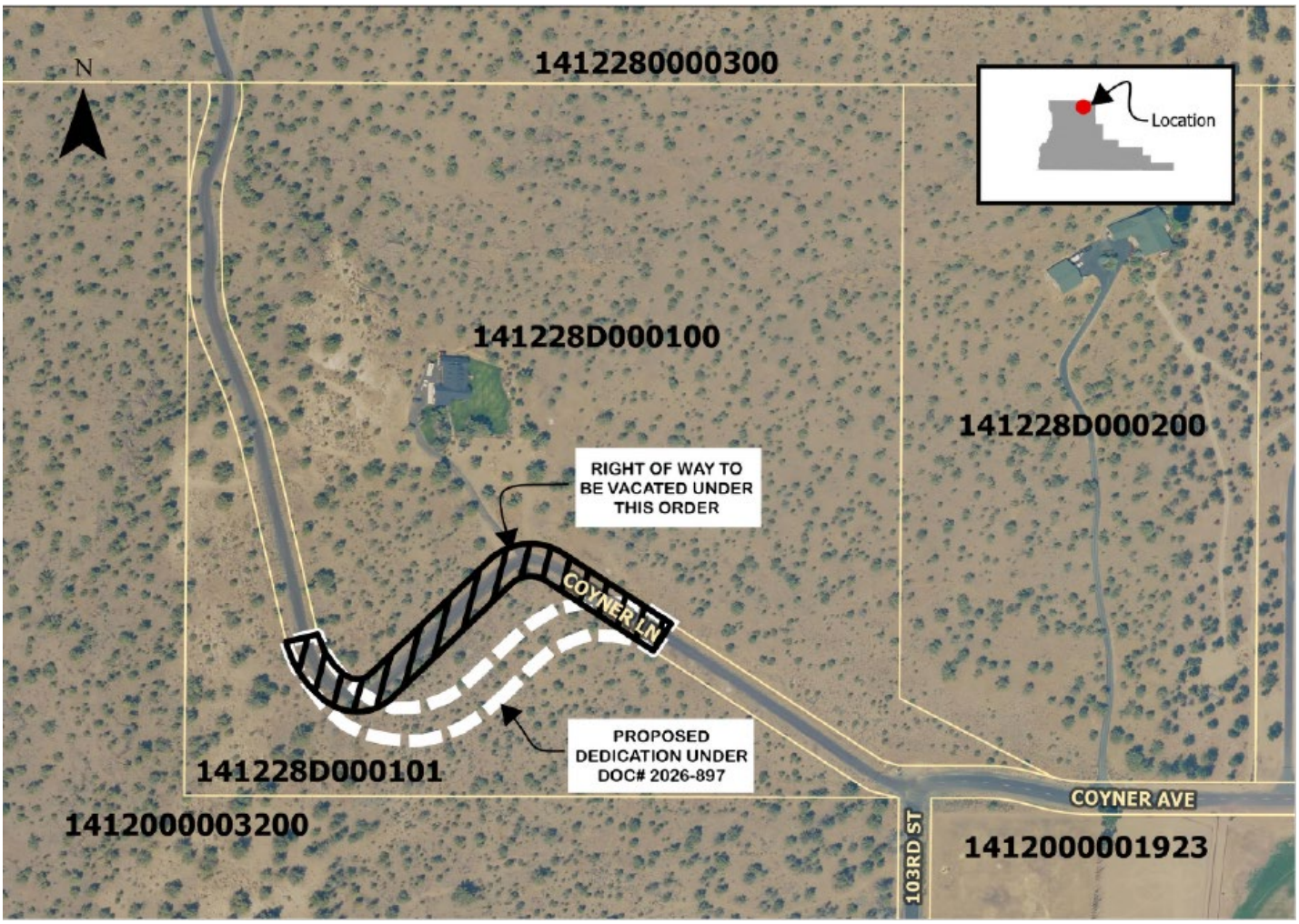


Figure - Location Map - Proposed Vacation Area (NTS)

The proposed vacation affects only the existing alignment. The replacement right-of-way will preserve public access while providing an alignment capable of supporting the required roadway geometry. The vacation area is shown on Exhibit B to the petition and is described in the accompanying legal description.

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

- Central Electric Cooperative
  - Representative: Kevin Rohde, VP of Operations and Engineering
  - Service provider does have existing facilities within the area proposed for vacation
  - Service provider consents to the proposed vacation but requests that a separate right of way be dedicated across the subject Tax Lots by the property owner.

Findings:

Based upon the submitted petition materials, the Central Electric Cooperative consent, and the Road Department's review of the subject right-of-way, the Road Department makes the following findings:

- The proposed vacation area was dedicated to the public by plat declaration with Partition Plat No. 2015-15 (ORS 368.326).

- The proposed vacation, together with the replacement right-of-way dedication and roadway realignment, will not deprive any owner of a recorded property right of access necessary for the exercise of that property right (ORS 368.331).

- The petitioners represent owners of more than 60 percent of the property abutting the subject right-of-way, submitted a completed petition, and paid the required fee (ORS 368.341(1)(c), ORS 368.341(3), ORS 368.341(4), and ORS 368.351).

- The petition includes acknowledged signatures of the owners of 100 percent of the property abutting the proposed vacation area. Therefore, the vacation proceeding is not subject to a public hearing (ORS 368.351).

- The existing right-of-way alignment is not necessary for current or future public use because the replacement right-of-way and road improvements will provide the required public access in an alignment that meets applicable road design standards.

- Central Electric Cooperative has consented to the proposed vacation. As a condition of its consent, Central Electric Cooperative requests that the property owner dedicate a separate right-of-way easement across the subject tax lots to preserve access for existing and/or future cooperative facilities. The required easement dedication will be provided separately by the property owner and will preserve Central Electric Cooperative's ability to construct, operate, maintain, repair, replace, and access its facilities following the vacation.

Recommendation:

Based on the above findings, the Road Department has determined that the proposed vacation is in the public interest. The Road Department recommends that the Board of County Commissioners approve the proposed vacation by adoption of Order No. 2026-044. Upon vacation, the property shall vest with the rightful owner or owners holding title according to law in accordance with ORS 368.366(1)(c).

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

BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: November 30, 2026

SUBJECT: Approval of a Notice of Intent to Award a contract for the Supply and Hauling of Crushed, Uncoated Rock for Chip Seal 2027

RECOMMENDED MOTION:
Move approval of Document No. 2026-0873, a Notice of Intent to Award a contract for the Supply and Hauling of Crushed, Uncoated Rock for Chip Seal 2027.

BACKGROUND AND POLICY IMPLICATIONS:
Deschutes County Road Department prepared bid solicitation documents for the Supply and Hauling of Crushed, Uncoated Rock for Chip Seal 2027 project. The project scope of work includes the supply and hauling of crushed, uncoated rock for chip seal to specified stockpiles in the Redmond and Bend Maintenance Zones. The project was advertised in the *Daily Journal of Commerce* on October 29, 2026. The Department opened bids at 2:00 P.M. on November 18, 2026.

One (1) bid was received for this project. The bid results are as follows:

BIDDER	TOTAL BID AMOUNT
KNIFE RIVER CORPORATION - NW	$475,150.00

This action issues a Notice of Intent to Award the contract to the apparent low bidder, Knife River Corporation NW, and allows seven days for concerned parties to protest the award. If there is no protest within the seven-day period, the contract will be awarded to the apparent low bidder. The bid tabulation, including the Engineer's estimate, is attached.

BUDGET IMPACTS:
The material cost is budgeted in the Road (325) Fund for Fiscal Year 2027.

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

BOARD OF COUNTY COMMISSIONERS

November 30, 2026

Posted on the Deschutes County, Oregon Bids and RFPs website at http://www.deschutes.org/rfps prior to 5:00 PM on the date of this Notice.

Subject: **Notice of Intent to Award Contract**
SUPPLYING AND HAULING OF CRUSHED, UNCOATED ROCK FOR CHIP SEAL 2027

To Whom It May Concern:

On November 30, 2026, the Board of County Commissioners of Deschutes County, Oregon considered proposals for the above-referenced project. The Board of County Commissioners determined that the successful bidder for the project was KNIFE RIVER CORPORATION - NW with a bid of Four Hundred Seventy Five Thousand One Hundred Fifty dollars ($475,150.00).

This Notice of Intent to Award Contract is issued pursuant to Oregon Revised Statute (ORS) 279B.135. Any entity which believes that they are adversely affected or aggrieved by the intended award of contract set forth in this Notice may submit a written protest within seven (7) calendar days after the issuance of this Notice of Intent to Award Contract to the Board of County Commissioners of Deschutes County, Oregon, at Deschutes Services Building, 1300 NW Wall Street, Bend, Oregon 97703. **The seven (7) calendar day protest period will end at 5:00 PM on Wednesday, December 7, 2026.**

Any protest must be in writing and specify any grounds upon which the protest is based. Please refer to Oregon Administrative Rules (OAR) 137-047-0740. If a protest is filed within the protest period, a hearing will be held at a regularly-scheduled business meeting of the Board of County Commissioners of Deschutes County, Oregon, acting as the Contract Review Board, in the Deschutes Services Building, 1300 NW Wall Street, Bend, Oregon 97703 within two (2) weeks of the end of the protest period.

If no protest is filed within the protest period, this Notice of Intent to Award Contract becomes an Award of Contract without further action by the County unless the Board of County Commissioners, for good cause, rescinds this Notice before the expiration of the protest period.

If you have any questions regarding this Notice of Intent to Award Contract or the procedures under which the County is proceeding, please contact Deschutes County Legal Counsel: telephone (541) 388-6625; FAX (541) 383-0496; or e-mail to david.doyle@deschutes.org.

Be advised that if no protest is received within the stated time period, the County is authorized to process the contract administratively.

Sincerely,

DESCHUTES COUNTY, OREGON

_____
Phil Chang, Chair

ROAD DEPARTMENT

BID RESULTS

SUPPLYING AND HAULING OF CRUSHED, UNCOATED
ROCK FOR CHIP SEAL 2027
DESCHUTES COUNTY, OREGON

BID OPENING : 2:00 PM 11/18/2026

				ENGINEER'S ESTIMATE		**KNIFE RIVER CORP - NW** 64500 OB RILEY ROAD BEND, OR 97703	
	ITEMS	**UNITS**	**QNTY**	**UNIT PRICE**	**TOTAL**	**UNIT PRICE**	**TOTAL**
1	Uncoated Asphalt Chip Seal Aggregate - ALFALFA TRANSFER STATION	TON	4,000	$32.00	$128,000.00	$28.50	$114,000.00
2	Uncoated Asphalt Chip Seal Aggregate -MCGRATH RD STOCKPILE SITE	TON	3,000	$32.00	$96,000.00	$27.00	$81,000.00
3	Uncoated Asphalt Chip Seal Aggregate - DESCHUTES COUNTY BEND YARD	TON	6,000	$32.00	$192,000.00	$27.00	$162,000.00
4	Uncoated Asphalt Chip Seal Aggregate - BROTHERS ODOT YARD	TON	1400	$32.00	$44,800.00	$33.50	$46,900.00
5	Uncoated Asphalt Chip Seal Aggregate - GERKING PIT STOCKPILE SITE	TON	2,250	$32.00	$72,000.00	$26.00	$58,500.00
6	Uncoated Asphalt Chip Seal Aggregate - GERKING PIT STOCKPILE SITE	TON	500	$32.00	$16,000.00	$25.50	$12,750.00
				TOTAL	**$548,800.00**	**TOTAL**	**$475,150.00**

BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: November 30, 2026

SUBJECT: Public Hearing and consideration of Order No. 2026-045 approving an annexation of property into the Lazy River Special Road District

RECOMMENDED MOTION:
Following the public hearing, move approval of Order No. 2026-045.

BACKGROUND AND POLICY IMPLICATIONS:
Petitioner Glenn Holbrook submitted a petition to annex property into the Lazy River Special Road District. The Assessor's Office certified the petition, Community Development reviewed the petition, and the District approved the petition.

BUDGET IMPACTS:
None

ATTENDANCE:
Dave Doyle, Legal Counsel

REVIEWED
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

Order Approving Glenn Holbrook annexation into Lazy River Special Road District

ORDER NO. 2026-045

WHEREAS, chief petitioner Glenn Holbrook ("Petitioner") submitted a petition requesting annexation of the property identified in Exhibit A in the petition attached to this Order, into Lazy River Special Road District ("District"); and

WHEREAS, the Deschutes County Assessor's Office verified that the petition was signed by the landowner of the property and as indicated in Exhibit B in the petition attached to this Order; and

WHEREAS, the Community Development Department reviewed this petition to ensure it is consistent with Title 18, Deschutes County Zoning Ordinance, and Title 23, Deschutes County Comprehensive Plan, as indicated in Exhibit C in the petition attached to this Order; and

WHEREAS the Oregon Department of Revenue reviewed the petition map and legal description and issued preliminary approval, as indicated in Exhibit A, and

WHEREAS, the Board held a duly noticed public hearing on November 30, 2026, to determine whether the affected area would benefit by annexation of said territory into the District; now, therefore

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

Section 1. The petition for annexation and all exhibits attached to this Order are hereby incorporated by reference.

Section 2. The petition for annexation is hereby approved, and the property identified in Exhibit A is declared annexed and included in the District.

Section 3. A copy of the signed Order will be forwarded to the Oregon Department of Revenue, Oregon Secretary of State Archives Division, Deschutes County Assessor's Office and County Clerk's Office, and the District.

Section 4. The purpose of this District is to provide road services.

Dated this _____ day of _____, 2026.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

_____
PHIL CHANG, Chair

_____
ANTHONY DeBONE, Vice Chair

ATTEST:

_____
Recording Secretary

_____
PATTI ADAIR, Commissioner

FOR COUNT

_____ Date Submitted

_____ Date Verified/ Filed

PETITION TO ANNEX A SINGLE PROPERTY WITHOUT ELECTION INTO

LAZY RIVER SPECIAL ROAD DISTRICT
(Name of District)

To: The Board of County Commissioners, Deschutes County, Oregon

The undersigned, in support of this Petition, states as follows:

1. This Petition for Annexation is submitted pursuant to ORS 198.857 and Petitioner(s) request the Board commence proceedings to annex the territory described herein into LAZY RIVER SPECIAL ROAD DISTRICT *(name of district)*, Deschutes County, Oregon.
2. This Petition for Annexation affects only Deschutes County and is not in any incorporated city limits.
3. The Board of LAZY RIVER SPECIAL ROAD DISTRICT (*name of district)* approved the Petition pursuant to ORS 198.857 on _____ (*insert date).*
4. The principal act for LAZY RIVER SPECIAL ROAD DISTRICT (*name of district)* is ORS ORS 198.010(7).
   (Proper statutory reference required, see ORS 198.010 for listing of appropriate principal act)
5. The territory subject to this Petition for Annexation is primarily inhabited / uninhabited *(circle one)*. This Petition is signed by all the land owners of the subject property proposed to be annexed as indicated opposite their respective signature, and all signatures were obtained on or after the _____ day of, 20__.
6. The property street address of land for annexation *(if known)* is _____ 54880 MAPLE DRIVE, BEND, OR 97707 and the total acreage is 15.40. A description of the boundaries of the territory to be annexed is attached hereto as **Exhibit "A"** and depicted on the map attached as **Exhibit "B".**
7. The Oregon Department of Revenue has conducted a preliminary review of the planned annexation and determined it meets the requirements of ORS 308.225.

Signed this 17 *day of* October, 20 26 *by* Glenn Holbrook, *Chief Petitioner*

[redacted]

13737 E Montgomery Road Scottsdale AZ 85262
Address, City, State, ZIP

DATED this 17th day of SEPTEMBER, 2026

Approved by the Board of
LAZY RIVER SPECIAL ROAD DISTRICT
Name of District

District Signature
By: SAL ANGELONE
(Print Name)
Title: President

State of Arizona
County of Maricopa
Subscribed and sworn to (or affirmed) before me this 17 day of OCT, 20 26

Rodney Wistrom

RODNEY WISTROM
Notary Public, State of Arizona
Maricopa County
Commission # 668824
My Commission Expires
July 31, 2028

rev 09/22

NAME OF DISTRICT: LAZY RIVER SPECIAL ROAD DISTRICT ☑ Annexation

	PRINT NAME	DATE SIGNED	PROPERTY ADDRESS/ RESIDENCE ADDRESS (If Different)	LANDOWNER IN THE PROPOSED TERRITORY/
1	GLENN HOLBROOK H & H BUSINESS DEVELOPMENT LLC Print Name Signature	Date	54880 MAPLE DRIVE, BEND, OR PROPERTY ADDRESS * 13737 E. MONTGOMERY RD SCOTTSDALE, AZ 85262 RESIDENCE ADDRESS (If Different)	**Landowner** Yes X No ____ Acreage 15.40
2	Print Name Signature	Date	PROPERTY ADDRESS RESIDENCE ADDRESS (If Different)	**Landowner** Yes ____ No ____ Acreage ____
3	Print Name Signature	Date	PROPERTY ADDRESS RESIDENCE ADDRESS (If Different)	**Landowner** Yes ____ No ____ Acreage ____
4	Print Name Signature	Date	PROPERTY ADDRESS RESIDENCE ADDRESS (If Different)	**Landowner** Yes ____ No ____ Acreage ____
5	Print Name Signature	Date	PROPERTY ADDRESS RESIDENCE ADDRESS (If Different)	**Landowner** Yes ____ No ____ Acreage ____

I, ____, certify that I circulated this petition, and every person who signed this petition did so in my presence. Signature: ____

State of ____
County of ____
SUBSCRIBED AND SWORN before me this ____ day of ____, 20__
Notary Public for Oregon ____
My Commission Expires: ____

* HOME - NEW UNDER DESCHUTES COUNTY PERMIT # 247-26-004409-DWL

Exhibit A

Lot 5, Block 3, PINEWOOD COUNTRY ESTATES, in Deschutes County, Oregon, according to the plat filed March 15, 1990, in Cabinet C, Page 386, Deschutes County Records.

Also known as 54880 Maple Drive, Bend, Oregon. 97707

Subject to:

Easements, conditions, restrictions and notes as delineated on the recorded plat of Sitkum East Acres.

Easements, conditions, restrictions and notes as delineated on the recorded plat of Pinewood Country Estates.

Exhibit B Additional Mapping Information

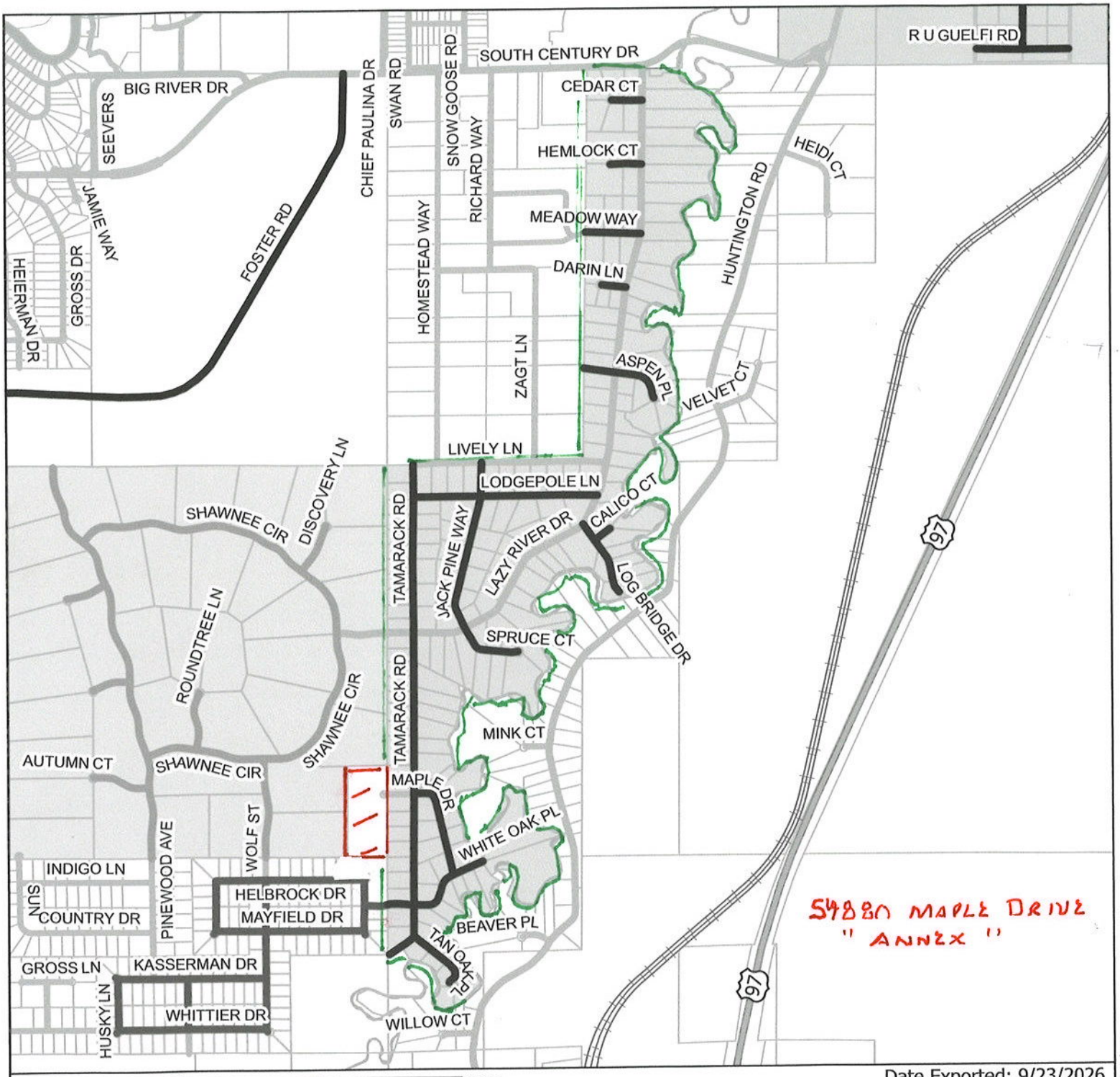
Map #: 2010 36 0001100

Tax Lot #: 106897

54880 Maple Drive Annex

EXHIBIT A EXHIBIT B

LAZY RIVER ROAD DISTRICT



Date Exported: 9/23/2026

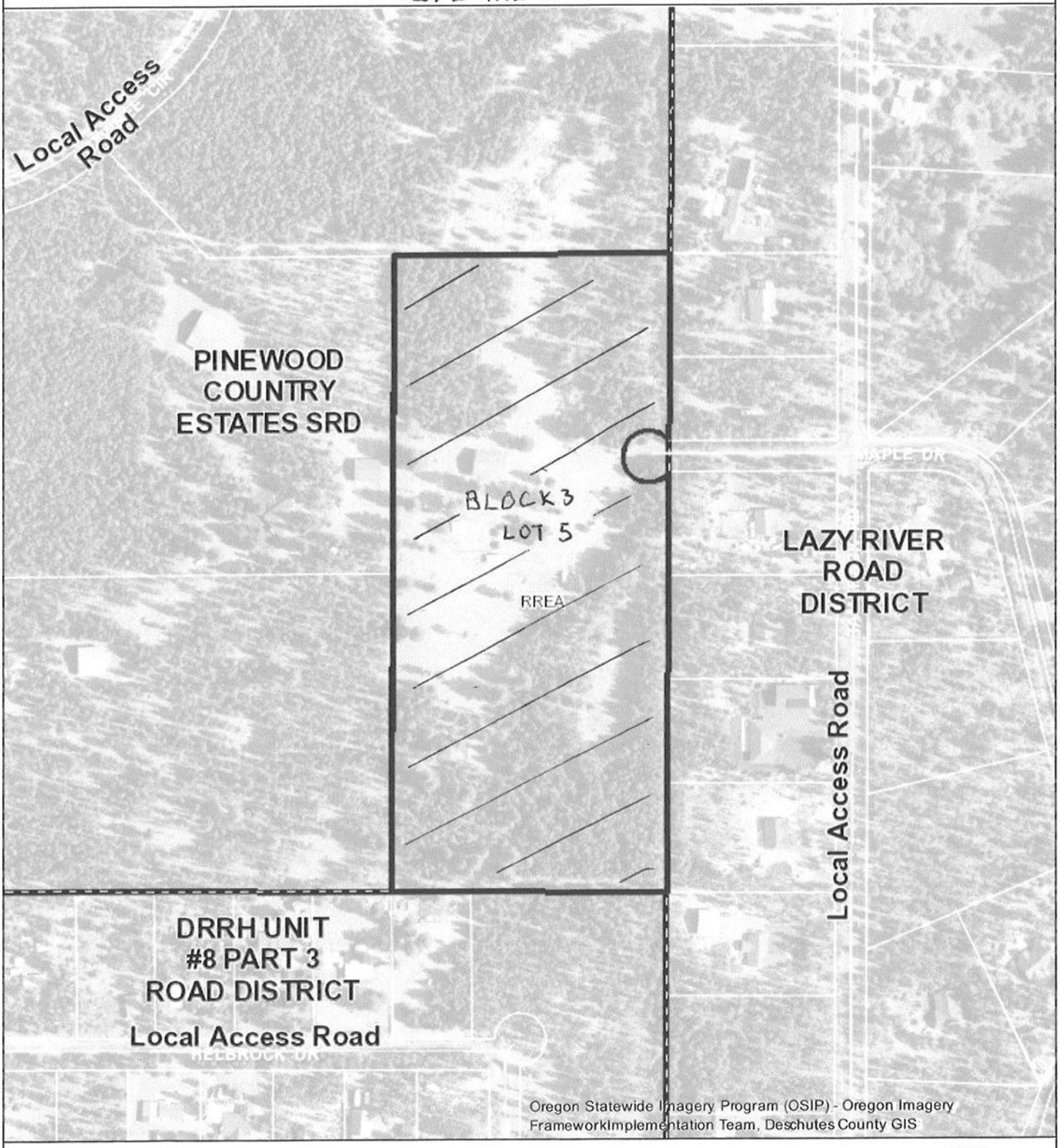
The information on this map was derived from digital databases on Deschutes County G.I.S. Care was taken in the creation of this map, but it is provided "as-is". Deschutes County cannot accept any responsibility for errors, omissions, or potential accuracy in the digital data or the underlying records. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.

https://or-deschutescounty.civicplus.com/1188/Special-Road-Districts-Maps

Z:\ArcGIS Products\Special Road Districts

Annex Map 54880

"EXHIBIT B
"SPECIAL DISTRICT" MAP



AREA TO BE ANNEXED

N

0 162.5 325 650 ft

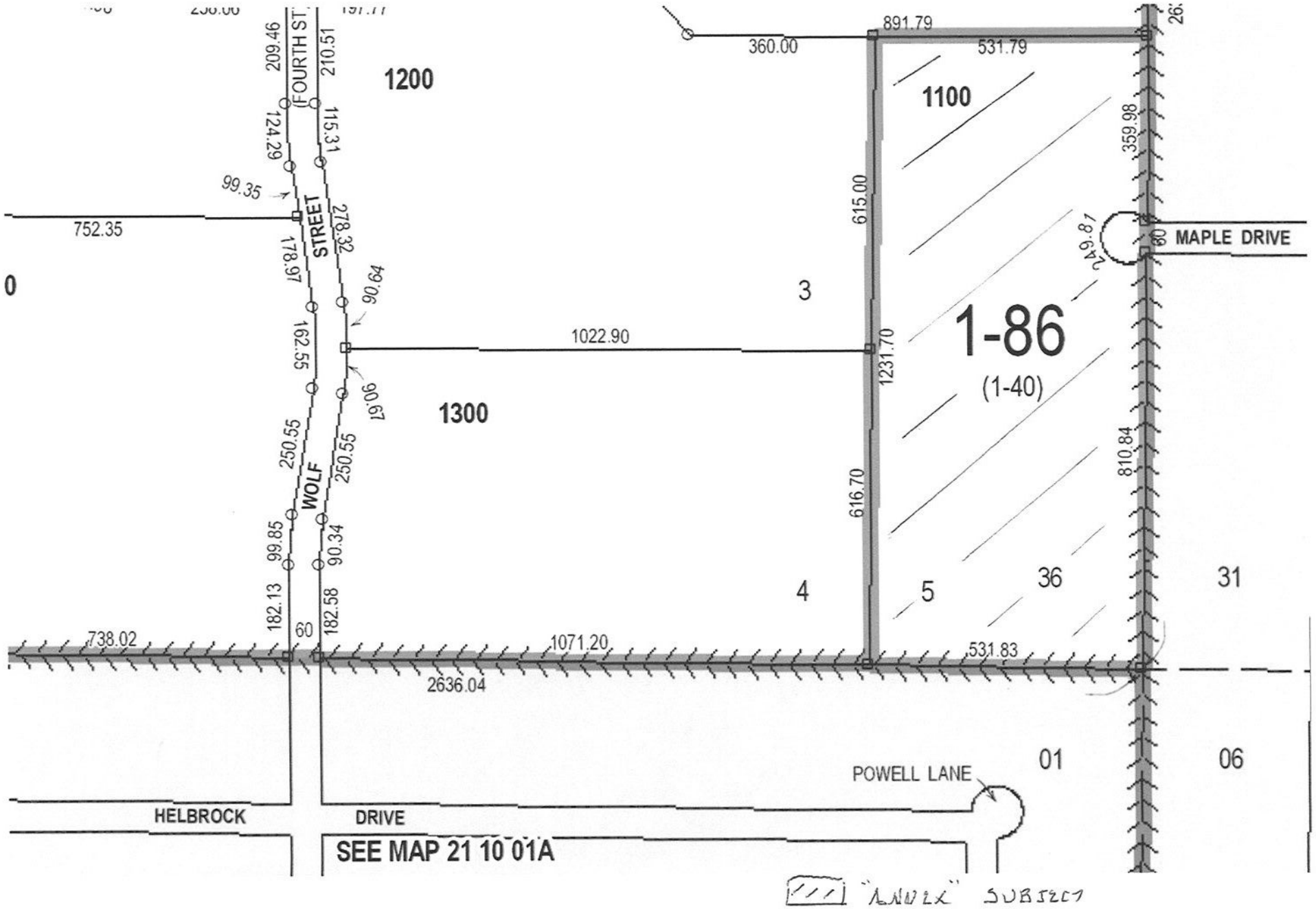
1 inch = 376 feet

Date: 10/26/2026

DESCHUTES COUNTY

EXHIBIT A

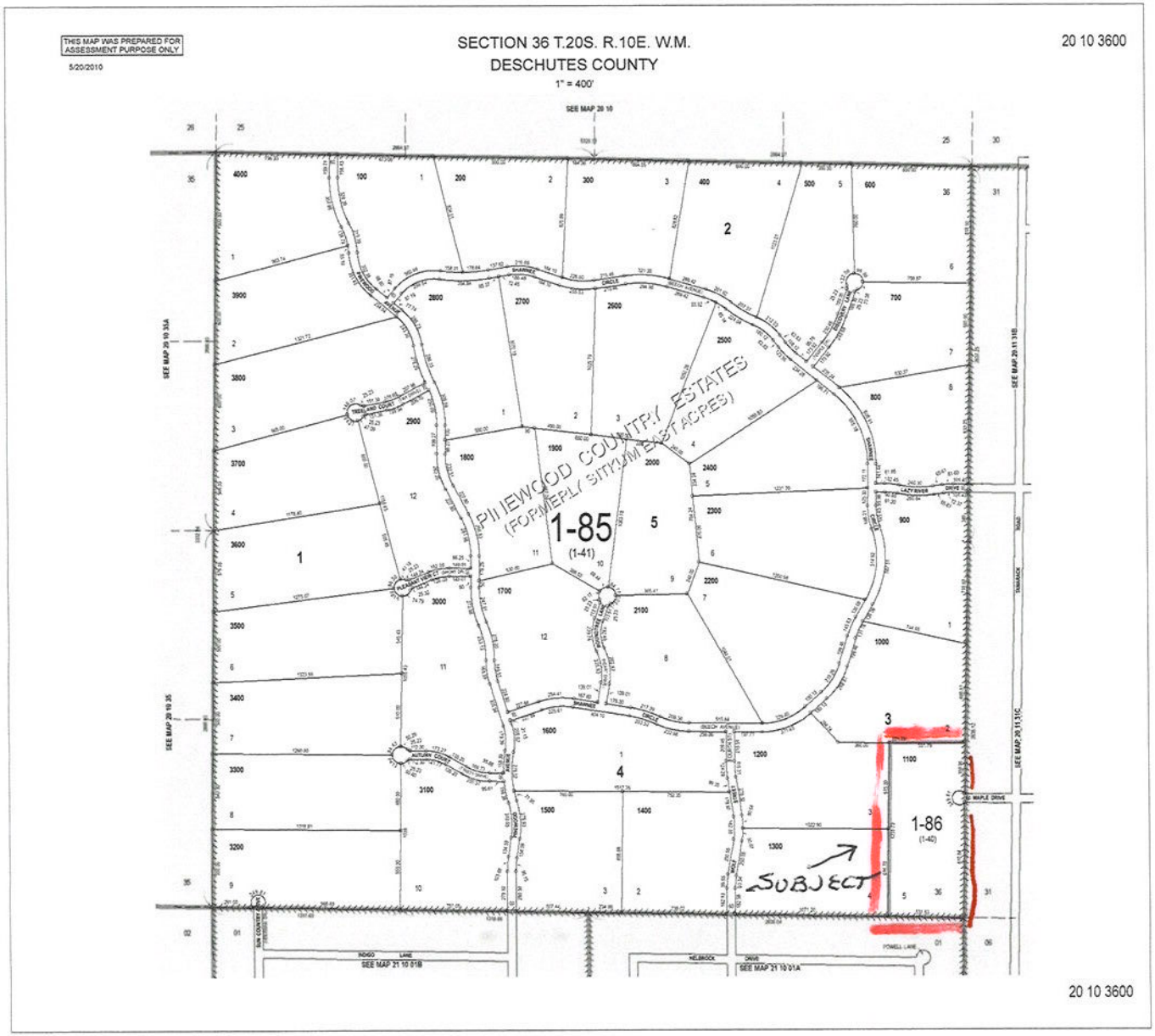
EXHIBIT B, #2



"ANNEX" SUBJECT

EXHIBIT A

EXHIBIT B, p1



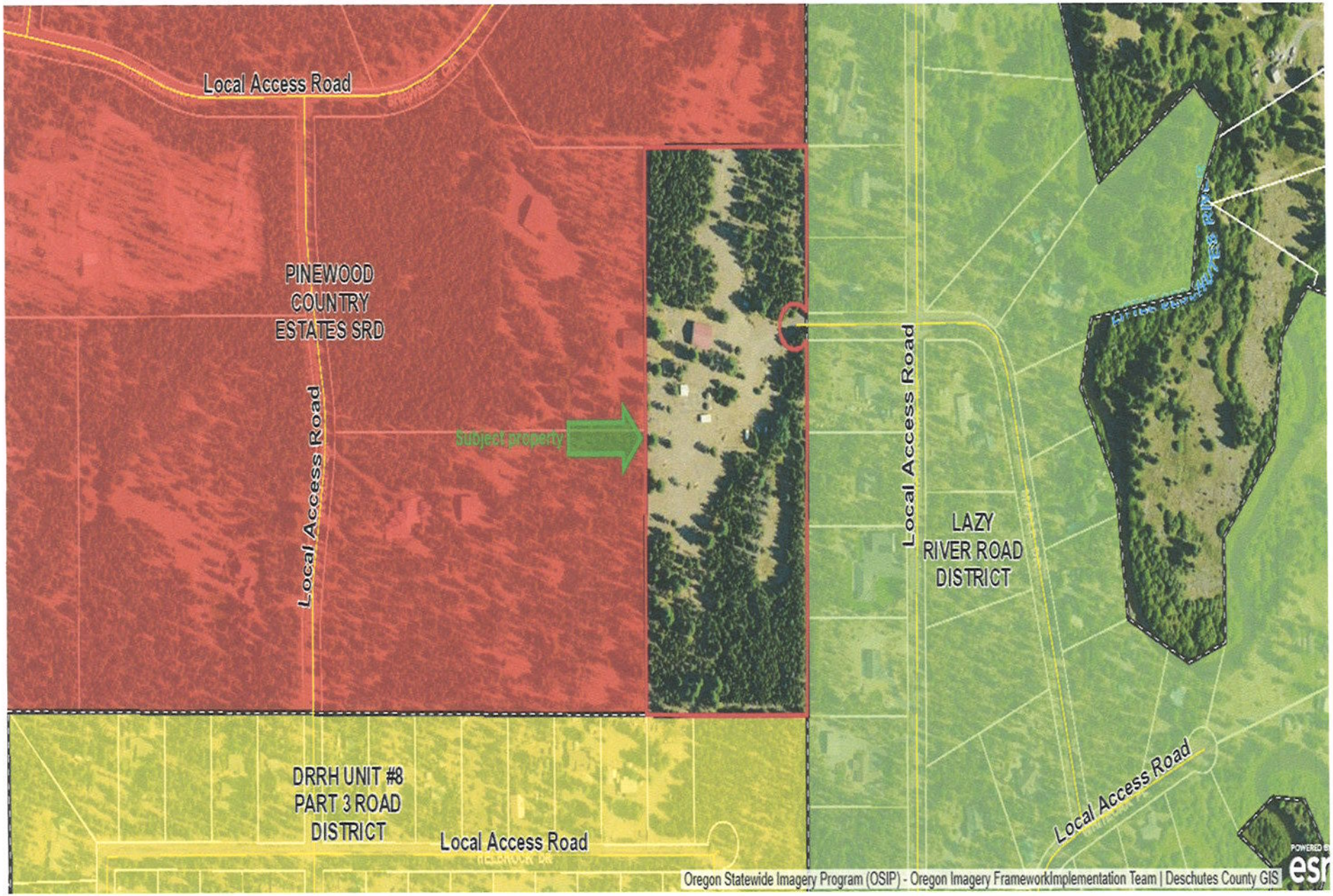
LEGEND

" " - OUTLINE OF PROPERTY BOUNDARY

EXHIBIT A

EXHIBIT B #3

Map by: Road Districts



Boundary Change Preliminary Review

DOR 9-P164-

OREGON DEPARTMENT OF REVENUE

Cadastral Information Systems Unit
PO Box 14380
Salem, OR 97309-5075
fax 503-945-8737
boundary.changes@dor.oregon.gov

Deschutes County Legal Counsel
Attn: David Doyle & Pauline Word
1300 NW Wall Street, Suite 200
Bend OR 97701

October 30, 2026

Documents received: 10/28/2026
From: Pauline Word

This letter is to inform you that the Description and Map for your planned Annex into the Lazy River Special Road District in Deschutes County have been reviewed per your request. They MEET the requirements of ORS 308.225 for use with an Order, Ordinance, or Resolution which must be submitted to the Deschutes County Assessor and the Department of Revenue in final approved form before March 31 of the year in which the change will become effective.

Preliminary Review

If you have any questions please contact Mike Allen, 503-983-3033

DESCHUTES COUNTY ASSESSOR'S OFFICE
CARTOGRAPHY DEPARTMENT
1300 NW Wall Street, Suite 204 | Bend, Oregon 97703
Office: (541) 388-6508 | **Fax**: (541) 382-1692
Website: https://www.deschutes.org/assessor
Property Info: https://dial.deschutes.org/

November 4, 2026

Steve Dennison

Deschutes County Clerk

Re: **LAZY RIVER SPECAIL ROAD DISTRICT** (H&H BUSINESS DEVELOPMENT LLC)

Account #160897 & 259239
Map/Taxlot # 2010360001100

Please be advised the attached petition meets the requirements of ORS 198.

Sincerely,

Gregg Rossi

Gregg Rossi | Chief Cartographer
Deschutes County Assessor's Office, Cartography Dept.
1300 NW Wall St. Suite 204 | Bend, Oregon 97703 PO Box 6005 | Bend, Oregon 97708
Tel: (541) 617-4703 | Fax: (541) 382-1692

EXHIBIT C

COMMUNITY DEVELOPMENT

TO: Deschutes County Board of Commissioners

FROM: Will Groves, Planning Manager

DATE: November 2, 2026

SUBJECT: Land Use Compatibility - Lazy River Special Road District Annexation

---

The materials contained in the petition propose to annex land to the Lazy River Special Road District. Specifically:

- Lot 5, Block 3, Pinewood Country Estates, also known as 54880 Maple Drive, Bend, Oregon.

This review is limited to land use and Comprehensive Plan compatibility of the proposed district-boundary action. The proposed annexation does not, by itself, authorize development, change the property's zoning or Comprehensive Plan designation, divide land, or modify applicable development standards.

Considered solely as a district-boundary action, the proposed annexation is not inconsistent with the applicable provisions of Title 18, Deschutes County Zoning Ordinance, or Title 23, Deschutes County Comprehensive Plan. Planning has not identified a local land use regulation or Comprehensive Plan policy that specifically prohibits the proposed annexation.

Comprehensive Plan Policy 3.6.1 encourages the formation of special service districts to serve rural needs rather than having the County provide those services. The proposed annexation is not inconsistent with that policy. This memorandum addresses only land use compatibility.

BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: November 30, 2026

SUBJECT: Public Hearing concerning a request for a Comprehensive Plan Amendment and rezone of approximately 135 acres on Fryrear Road from Exclusive Farm Use to Multiple Use Agricultural (Curtis)

RECOMMENDED MOTION:
None.

BACKGROUND AND POLICY IMPLICATIONS:
The applicant requests a rezone of approximately 135 acres located on Fryrear Road between Bend and Sisters. The applicant, Cameron Curtis, proposes that the property's Comprehensive Plan designation be changed from Agriculture to Rural Residential Exception Area and that the zoning be changed from Exclusive Farm Use to Multiple Use Agricultural.

At a work session on November 23, 2026, staff provided information to the Board in advance of the public hearing.

The record for files 247-26-000298-PA, 299-ZC is available at the following link: www.deschutescounty.gov/CurtisPAZC

BUDGET IMPACTS:
None.

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

COMMUNITY DEVELOPMENT

MEMORANDUM

TO: Board of County Commissioners

FROM: Audrey Stuart, Associate Planner

DATE: November 23, 2026

SUBJECT: November 30th Public Hearing for the Curtis Plan Amendment and Zone Change

The Board of County Commissioners ("Board") will hold a public hearing for a Comprehensive Plan Amendment and Zone Change application (file nos. 247-26-000298-PA, 299-ZC). The applicant requests to change the zoning of approximately 135 acres from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA10), and to change the Comprehensive Plan designation from Agriculture (AG) to Rural Residential Exception Area (RREA).

I. BACKGROUND

The subject property is located between Bend and Sisters, and is identified as 66920 Fryrear Road, 67100 Fryrear Road, and an intervening strip of vacant land (Tax Lot 100). The property is located approximately seven miles to the southeast of the City of Sisters and is bordered by land that is zoned EFU and MUA10. The application was submitted on May 8, 2026, and a public hearing before a Hearings Officer was held on September 24, 2026.

The applicant has not requested an exception to Statewide Planning Goal 3, on the basis that the property does not meet the definition of agricultural land. The applicant argues that the subject property does not meet the definition of "agricultural land" due to its poor soil quality, and that farm uses are not economically viable on the subject property. For these reasons, the applicant states a mistake was made when the property was originally zoned and MUA10 zoning is more appropriate.

A 3.5-acre portion of the property at 66920 Fryrear Road is zoned FP and the applicant proposes to leave that portion of the subject property within the FP zone. However, the applicant proposes to change the underlying Comprehensive Plan designation of the entire subject property to RREA. The figure below shows the boundary of the FP zone within the subject property.



The applicant has provided a supplementary soil study that identifies non-high value (Class VII and VIII) soils on 61.7% of the subject property. As discussed below, the Department of Land Conservation and Development (DLCD) did not complete their review of this soil study until after the record had closed following the Hearings Officer hearing. This completeness review letter from DLCD was not part of the record that the Hearings Officer considered but the Board may consider it in their decision making, since it will be part of the public record for the Board hearing. Additionally, the applicant has provided a traffic study prepared by a traffic engineer, as well as a burden of proof that addresses relevant approval criteria.

II. PUBLIC COMMENTS

All property owners within 750 feet of the subject property received a mailed Notice of Application and Notice of Public Hearing. 21 written comments were received prior to the Hearings Officer hearing and 13 members of the public testified in opposition to the application at the hearing.

The group Friends of Fryrear Road (FOFR) submitted 19 emails during the open record period following the hearing. 14 other comments in opposition were received during the open record period. The FOFR submittals compiled petitions and letters from a number of different neighbors in opposition to the application. Therefore, the number of letters in the record is significantly higher than the number of scanned documents that appear within the public record. An additional batch of 253 petitions was submitted by Friends of Fryrear Road following the mailed notice of the Board hearing.

III. HEARINGS OFFICER RECOMMENDATION

The Deschutes County Hearings Officer held a public hearing on September 24, 2026. On November 18, 2026, the Hearings Officer issued a recommendation of denial for the subject applications.

The basis for the Hearings Officer's recommendation of denial are:

- Statewide Planning Goal 3, Agricultural Lands: The applicant relies on a site-specific soil study to demonstrate that the property does not meet the definition of 'agricultural land' under OAR 660-033-0020(1). Opponents argued that the property does meet the definition of agricultural land and the Zone Change must be denied or take an exception to Statewide Planning Goal 3. DLCD did not finish its completeness review of the applicant's soil study until after the record had closed and the Hearings Officer therefore found it could not be relied upon when issuing his recommendation.

- Statewide Planning Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces: OAR 660-023-0250(3) requires the County to apply Statewide Planning Goal 5 if the subject zone change will affect a Goal 5 resource. Opponents argue that golden eagle habitat is present in the surrounding area and that golden eagles are a Goal 5 protected species in the County's Comprehensive Plan. The Hearings Officer found that additional analysis was needed to evaluate the new uses that would be permitted under the MUA10 zoning and their impact on golden eagle habitat.

- DCC 18.136.020(A): Requires the proposed zone change to conform with the County's Comprehensive Plan. The Hearings Officer found that Policies 2.2.1, 2.2.9, 2.2.11, and 2.2.13, related to preserving agricultural land, had not been met based on the earlier findings that the applicant hadn't demonstrated that the property is not agricultural land. The Hearings Officer also found the zone change was inconsistent with Policy 2.6.2, related to preserving wildlife habitat, based on the lack of evidence regarding impacts to wildlife habitat.

- DCC 18.136.020(D): Requires the applicant to show that there has been a change in circumstances or a mistake was made when the property was last zoned. The applicant argues that the site-specific soil study provides new, more accurate information and represents a change in circumstances. However, the Hearings Officer found that the soil study cannot be used to justify a 'change in circumstances' because it had not been certified by DLCD.

IV. BOARD CONSIDERATION

As the property includes lands designated for agricultural use, Deschutes County Code 22.28.030(C) requires the application to be heard de novo before the Board, regardless of the determination of the Hearings Officer. 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 record is available for inspection at the following link:

www.deschutescounty.gov/CurtisPAZC

V. NEXT STEPS

At the conclusion of the public hearing, the Board can choose one of the following options:

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

ATTACHMENT(S):

1. Location Map
2. Hearings Officer's Recommendation
3. Staff Report

Land Use File #247-26-000298-PA, 299-ZC

66920 Fryrear Rd and 67100 Fryrear Rd





Date: 5/7/2026

N

0 625 1,250 2,500 ft

1 inch = 1,505 feet

DESCHUTES COUNTY

RECOMMENDATION AND FINDINGS OF
THE DESCHUTES COUNTY HEARINGS OFFICER

FILE NUMBERS:	247-26-000298-PA / 247-26-000299-ZC
HEARING DATE:	September 24, 2026, 1:00 p.m.
HEARING LOCATION:	Videoconference and Barnes & Sawyer Rooms Deschutes Services Building – First Floor 1300 NW Wall Street Bend, OR 97703
APPLICANT:	Cameron Curtis
SUBJECT PROPERTY:	Map and Tax Lots / Situs Addresses: 151133D000200 – 66920 Fryrear Road, Bend, OR 97703 151133D000100 – No situs address 151133A000900 – 67100 Fryrear Road, Bend, OR 97703
OWNERS:	Cameron D. and Emily S. Curtis (151133D000200) Edgar W. Gillet et al (151133D000100) Kris Olsen (151133A000900)
REQUEST:	The Applicant requests to change the Comprehensive Plan Map designation of the Subject Property from Agricultural ("AG") to Rural Residential Exception Area ("RREA"), with a partial corresponding zone change from Exclusive Farm Use – Sisters/Cloverdale ("EFU-SC") to Multiple Use Agricultural ("MUA-10"), but retaining the existing Flood Plain ("FP") zoning designation on approximately 3.5 acres of Tax Lot 200.
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 sufficient to show compliance with Statewide Planning Goal 3, Statewide Planning Goal 5, DCC 18.136.020(A), and DCC 18.136.020(D). The Hearings Officer therefore recommends the County's Board of Commissioners deny the Application unless the Applicant satisfactorily addresses those criteria and standards.

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 Agricultural
  - Chapter 18.96, Flood Plain Zone ("FP")
  - Chapter 18.136, Amendments
- Title 22, Deschutes County Development Procedures Ordinance

Deschutes County Comprehensive Plan
- Title 23, Deschutes County Comprehensive Plan ("DCCP")
  - Chapter 2, Resource Management
  - Chapter 3, Rural Growth Management
    - Appendix C – Transportation Plan

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 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 by Cameron Curtis (the "Applicant"), on behalf of the Owners, for approval of a quasi-judicial Comprehensive Plan Map Amendment ("Plan Amendment") to change the Comprehensive Plan ("Plan") Map designation of approximately 135.45 acres comprising Tax Lots 151133D000200, 151133D000100, and 151133A000900 (collectively, 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 majority of the Subject Property from Exclusive Farm Use – Sisters/Cloverdale Subzone ("EFU-SC") to Multiple Use Agricultural ("MUA-10"). A 3.5-acre portion of Tax Lot 200, however, is zoned Flood Plain ("FP") and does not carry an exclusive farm use ("EFU") designation. The Applicant proposed to keep the FP zone

intact on that portion of the Subject Property, but intends to rezone that portion later after obtaining confirmation that Tax Lot 200 is not within a flood hazard area.

The Application requests the 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. 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. The Staff Report also identifies Deschutes County Code ("DCC" or "Code") 22.20.040(D) as providing that the requested quasi-judicial Plan Amendment and Zone Change are not subject to the 150-day review period.[1]

C. Notices, Hearing, Record Period, and Record Materials

The Applicant initially filed the Application on May 8, 2026. On June 26, 2026, staff in the County's Community Development Department ("Staff") sent the Applicant an Issues Letter identifying additional information Staff believed was needed to address applicable approval criteria. The Applicant provided a response dated July 24, 2026, and provided additional supplemental materials after that time as part of this proceeding.

On June 2, 2026, Staff mailed a Notice of Application to property owners within 750 feet of the Subject Property. The Applicant submitted a Land Use Action Sign Affidavit indicating that notice of the land use action was posted on May 15, 2026. On August 24, 2026, Staff mailed a Notice of Public Hearing ("Hearing Notice") to property owners within 750 feet of the Subject Property and public agencies, announcing a public hearing for September 24, 2026, at 1:00 p.m. The Hearing Notice was published in the Bend Bulletin on August 26, 2026. Notice of the first evidentiary hearing was also submitted to the Department of Land Conservation and Development ("DLCD") on August 20, 2026 ("DLCD Notice"). Staff did not issue its report, dated September 23, 2026 ("Staff Report"), until the day before the scheduled Hearing.

Pursuant to the Hearing Notice, I presided over the Hearing as the Hearings Officer on September 24, 2026, beginning at 1:00 p.m. The Hearing was held in person and via videoconference, with the Hearings Officer and most participants appearing in person. 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.

[1] ORS 215.427(7).

The Hearing concluded at approximately 2:22 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 October 8, 2026, ("Open Record Period"); (2) any participant could submit rebuttal materials (evidence or argument), responding to information submitted during the Open Record Period, until October 15, 2026 ("Rebuttal Period"); and (3) the Applicant could submit a final legal argument, but no additional evidence, until October 22, 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.

1. Requests to Postpone Hearing and for Extended Record Period

At the beginning of the Hearing, and in separate written comments, participants Friends of Fryrear Road and the Brown Family Trust (collectively, "FOFR"), Central Oregon LandWatch ("COLW"), and others, requested that the Hearing be postponed for 60 days. In the alternative, FOFR and COLW requested that the written record remain open for a lengthy period, up to 60 days, after the Hearing. The basis for these requests was two-fold. First, the Applicant's supplemental submittal responding to Staff's Issues Letter was apparently not included on the County's website where record materials can be accessed until just before the Hearing, even though it had been submitted two months prior. Second, the Staff Report, which is typically made available seven days prior to a hearing, was not published until the day before the Hearing. The objecting participants asserted that they, and others, should be afforded sixty days to review the Applicant's materials, which is the amount of time they would have had if those materials had been publicized immediately upon receipt by the County, and that they were not put on notice that the Application was actually complete for purposes of review by the public.

DCC 22.24.140 sets forth a process and the standards for participants to seek a continuation of a hearing or an extension of the record. Pursuant to DCC 22.24.140(A)(2), participants are generally entitled to one of those options where additional documents or evidence are submitted by any participant (which is any evidence submitted after the Hearing Notice). DCC 22.24.140(B) provides that, except for a continuance request made by the applicant, the Hearings Officer has the discretion to choose between a continuance and a record extension.

Before taking substantive comments from participants at the Hearing, I announced that I was not going to continue the Hearing, but that I would keep the record open after the Hearing. The following explanation memorializes that decision, and explains the basis of the discretion I used to arrive at that conclusion.

First, while it is unusual for materials to not be made available on the County's website that hosts the record shortly after they are submitted, it is not unusual for new materials, including voluminous and technical documents, to be added to the record just before or during a hearing. Thus, while I sympathize with the objecting participants that it would have been nice to have more time before the Hearing to review and address those materials, there is no requirement that all of an applicant's materials be submitted prior to a hearing and, to the contrary, the Code expressly contemplates that any party may submit additional documents or evidence during the proceeding.

Second, I do not agree with the objecting participants that the absence of some materials from the Applicant somehow makes the Application incomplete for purposes of review by the public and that they therefore had insufficient "notice" of a complete application. Pursuant to DCC 22.08.020, an application is complete when Staff have determined that all applicable issues have been adequately addressed. Here, the fact that Staff had made that determination was evident by the fact that Staff issued the Hearing Notice, which informed the public that the Applicant's request was being reviewed through this quasi-judicial process. As noted in DCC 22.08.020(C), acceptance of application materials as complete is not equivalent to a determination that the application substantively demonstrates compliance with applicable criteria – that is a determination to be made at the end of the review process after the record is fully developed.

Third, while it is also unusual for a staff report to be completed only one day prior to a hearing, that is not an independent basis for mandating a continuance of the hearing. Rather, as set forth in DCC 22.24.010, that circumstance is to be treated like other circumstances involving additional documents or evidence, and that Code provision refers back to DCC 22.24.140, which allows a request for a continuance, but nevertheless makes the grant of that request discretionary.

Fourth, a large number of participants showed up in person at the scheduled Hearing date, many of whom stated they had reviewed the initial Application materials. While it is conceivable that those participants may have had additional (or different) comments based on their review of the Applicant's supplemental materials and the Staff Report, nothing prevented those participants from providing evidence relating to the approval criteria, which were included in the Hearing Notice.

Fifth, to the extent the delayed publication of the Applicant's supplemental materials and the Staff Report were in error, I find that error will not be prejudicial to a substantial right to participate in this proceeding. Not only have participants submitted comprehensive and detailed comments on the Application, the nature of this proceeding is such that another *de novo* hearing will occur before the County Board. Thus, even if a participant was limited in any way as a result of the late-published materials, that error will be cured through their ability to fully participate in the *de novo* hearing.

Finally, although I did not grant the continuance of the Hearing, I did leave the post-Hearing record open for new evidence and testimony for 14 days after the Hearing, seven days longer than the Code contemplates, to provide additional time for participants to review and comment on the Applicant's new evidence.

2. DLCD Notice

In its pre-Hearing comments, participant FOFR asserts that the County's DLCD Notice is inadequate. FOFR specifically asserts that the notice did not contain information regarding when or how the Staff Report would be made available, in contravention to ORS 197.610(3)(f). In support of that assertion, FOFR includes a printout from DLCD's website regarding the notice.

On the one hand, the information provided by FOFR is unhelpful, because it indicates only that DLCD received the notice and, by itself, does not indicate what information was actually included

in the County's notice to DLCD. On the other hand, the record does not appear to contain the actual notice and, instead, includes only a confirmation generated by DLCD to the County once it submitted the notice. The absence of the content of the notice is likely because it was submitted online.

FOFR appears to raise this issue in support of its request for a continued or extended hearing, and FOFR does not assert that an inadequate notice is a basis for denial of the Application or that it warrants any other remedy.

The requirements of ORS 197.610 are procedural in nature. Compliance with those procedures may affect things like standing on appeal,[2] but they do not serve as approval criteria for a post-acknowledgement plan amendment ("PAPA"). As noted above, all participants have now had an opportunity to review the Staff Report, including through an extension of the post-Hearing record.

Based on the foregoing, I find there is no need to further alter these proceedings to address potential inadequacies in the DLCD Notice.

3. Request to Exclude Applicant's Post-Hearing Evidence

As part of its Rebuttal Period submittal, FOFR requests that the Hearings Officer reject some of the Applicant's materials submitted during the Open Record Period. Specifically, FOFR asks to exclude Applicant's Exhibits PH1 and PH3. The basis for this request is FOFR's assertion that these materials were provided without any supporting explanation, and that they do not rebut previously submitted evidence or testimony, as required by DCC 22.24.140(D).

The Code does not require that all evidence submitted to the record be accompanied by an explanation of how that evidence is to be used. That would, of course, be helpful, and the participant submitting evidence runs the risk that the Hearings Officer will discount the value of that evidence if it is not clear how the evidence is to be used. That risk, however, does not mean the evidence must be excluded from the record.

With respect to Applicant's Exhibit PH1, the information in the exhibit relates to groundwater wells, an issue raised by multiple participants in their pre-Hearing comments. With respect to Applicant's Exhibit PH3, that exhibit contains a prior County ordinance adopting the RREA Plan Map designation. Comments in the record raised issues relating to the purpose of the RREA. Although the participants may dispute the relevance and weight of the information in those exhibits, I find that they are responsive to issues raised by other participants and, therefore, may be used to rebut previously submitted evidence or testimony. I therefore decline to exclude those exhibits from the record.

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[2] *See, e.g.,* ORS 197.620(2).

III. SUBSTANTIVE FINDINGS AND CONCLUSIONS

A. 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. Because some of the information provided in the Staff Report is unchallenged, the Findings below refer to and adopt portions of the Staff Report.

B. Plan Amendment

DCC 18.136.010 contemplates that an applicant may seek a quasi-judicial amendment to the County's Comprehensive 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 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 1, Goal 3, Goal 5, Goal 12, and Goal 14, which are addressed in more detail in findings below, I adopt the Applicant's position on the remaining Goals as recited on pages 53 to 57 of the Burden of Proof submitted with 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 1 – Citizen Involvement

Goal 1 directs the County to facilitate community engagement in all phases of the planning process. Participants in this proceeding challenge compliance with Goal 1 based on an assertion that the late submittal of the Applicant's supplemental materials and the Staff Report inhibited full public engagement.

In response to the late-submitted materials, I extended the written record in this proceeding. Not only were participants provided additional time to review and comment on the Applicant's materials and the Staff Report, the record includes voluminous and detailed information provided after the Hearing during the record extension periods. Further, as noted above, the County Board will conduct a *de novo* hearing in this matter.

Based on the foregoing, I find that the process the County has used, and will continue to use, to

consider the Application is consistent with Goal 1.

2. Goal 3 – Agricultural Lands

Goal 3 and its implementing rules protect agricultural lands. OAR 660-033-0020(1) provides the following definition:

> *(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 predominantly (61.7%) Class 7 and 8 soils and, therefore, that the Subject Property is not agricultural land. 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.

Participants COLW and FOFR disagree, arguing that the Subject Property is agricultural land. COLW specifically asserts that under ORS 215.211, OAR 660-033-0030(5), and 660-033-0045, an applicant may rely on more detailed soils information instead of NRCS data to show land is not agricultural land under OAR 660-033-0020(1)(a)(A), but only if the more detailed information is reviewed and certified by DLCD. In the absence of such data, the Applicant can rely only on the NRCS classifications, which in this case show the Subject Property contains predominantly Class 6 soils. FOFR builds on this argument and states that, if the Subject Property is agricultural land

under OAR 660-033-0020(1)(a)(A), the other definitions in that rule are irrelevant, because a property needs to satisfy only one of those definitions to warrant Goal 3 protections.

As of the close of the record in this matter, the Applicant's soil survey had not yet been certified by DLCD. It appears from the record materials posted on the County's website that, on October 30, 2026, after the Applicant submitted its final legal argument, the County received a communication from DLCD noting that DLCD had reviewed the soil assessment and determined it to be complete. However, no participant has requested that DLCD's communication be included in the record. I will therefore not consider that late-submitted information for purposes of this Recommendation, although I recognize that the County Board may consider it, in which case, the County Board will need to consider and weigh the detailed counterarguments presented by FOFR and others who challenge the contents of the Order 1 Soil Survey the Applicant relies on.

For purposes of this Recommendation, and based on the record before me, I agree with COLW that the Applicant's Order 1 Soil Survey is not sufficient to overcome the NRCS classification of the Subject Property in the absence of DLCD's certification. Because it is undisputed that the NRCS classification shows the Subject Property as having predominantly Class 6 soils, I find that the Subject Property qualifies as "agricultural land." Because of that finding, there is no need for this Recommendation to address the detailed counterarguments presented by FOFR and others who challenge the contents of the Applicant's Order 1 Soil Survey. Nor is there a need to address OAR 660-033-0020(1)(a)(B) and (C) because, as FOFR notes, the Subject Property needs to satisfy only one of the definitions of "agricultural land" in that administrative rule.

Based on the foregoing, I recommend that the County Board deny the Application unless the record before the County Board demonstrates that the Subject Property is not agricultural land under OAR 660-033-0020(1), or unless the record supports taking an exception to Goal 3.

3. 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."[3]

The Applicant addressed Goal 5 largely through the lens of scenic resources. According to the Applicant, the County protects scenic resources by imposing the Landscape Management ("LM") combining zone. Because the Subject Property is not within the LM combining zone, the Applicant asserts that the Plan Amendment and Zone Change are consistent with Goal 5.

Notwithstanding the foregoing, FOFR asserts that Goal 5 is also implicated because of the presence of eagles and other sensitive birds in the vicinity of the Subject Property. FOFR specifically asserts that golden eagles are Goal 5 protected species under the County's Plan.

[3] OAR 660-023-0250(3)(b).

The Applicant does not dispute that golden eagles are protected under the County's Plan as part of Goal 5. Instead, the Applicant asserts that the Plan Amendment and Zone Change will not alter existing or proposed wildlife protections, and that they will "not directly impact any habitat as there is not development proposed." The Applicant further asserts that impacts from agricultural activities allowed in the EFU zone are "likely as impactful", or even more impactful, than the uses allowed in the MUA-10 zone.

Based on the record before me, I find that the Applicant has not adequately met its burden of demonstrating compliance with Goal 5. To satisfy Goal 5 in the context of a PAPA, the Applicant must identify any new uses that will be allowed, and must assess whether those new uses could conflict with a particular Goal 5 resource. The Applicant must then explain how those conflicts can be addressed through a Goal 5 program. Rather than undertake that full analysis, the Applicant relies wholly on the County's existing Goal 5 program. That program may ultimately be adequate, but such a determination cannot be made without undertaking the initial steps of identifying specific new uses and potential conflicts with existing Goal 5 resources. I also find that the Applicant cannot rely on the fact that no specific development is being proposed. The Goal 5 analysis requires the Applicant to consider all new uses that may be developed in the future.

Based on the foregoing, I recommend that the County Board deny the Application unless the record before the County Board demonstrates a more complete Goal 5 analysis that identifies new uses allowed under the proposed Plan Amendment and Zone Change, along with information demonstrating whether any conflicts with existing Goal 5 resources will result from those new uses.

4. Goal 12 – Transportation

Goal 12 and OAR 660-012-0060 (the "Transportation Planning Rule" or "TPR" that implements Goal 12) are applicable to the Plan Amendment and the Zone Change. The Applicant asserts that its request complies with OAR 660-012-0060 and, therefore, is consistent with Goal 12. In support of that assertion, the Applicant submitted a transportation impact analysis memorandum dated April 2, 2026, prepared by traffic engineer Julia Kuhn, PE, addressing the requirements of the TPR. The County's Transportation Planner agreed with the report's methodologies and conclusions.

FOFR submitted comments and expert-supported materials challenging some of the methods and conclusions in the Applicant's analysis. Among the criticisms offered, FOFR asserts that the Applicant's analysis understates levels of development, and resulting traffic impacts, that can result from the MUA-10 zone, does not use the correct planning horizon, and ignores transportation safety concerns. Multiple other participants expressed general concerns over increased traffic and potential traffic safety concerns.

The Applicant's traffic engineer provided supplemental comments addressing the issues raised by FOFR and others. That response incorporated the fact that, after the initial transportation impact analysis was performed, the Applicant proposed a condition of approval limiting land divisions of the Subject Property such that the minimum size of any new parcel would be 10 acres. The supplemental information also addressed the trip threshold for conducting additional analyses, the

appropriate planning horizon, what constitutes a significant effect on a transportation system, and safety concerns.

Having reviewed the Applicant's materials, the comments of the County's Transportation Planner, and the criticisms of the Applicant's materials, I find that the Applicant's materials demonstrate compliance with Goal 12 and the TPR. This finding, however, is based in part on the Applicant's proposed condition limiting the size of new parcels, which is addressed in more detail below.

Based on the foregoing, I find that the requested Plan Amendment and Zone Change are consistent with Goal 12.

5. 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."[4] 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 acknowledged that the MUA-10 zone limits the intensity and density of developments to rural levels. Other participants disagree, arguing 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.

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 comply with Goal 14.[5] In that case, the County 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."[6]

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[4] OAR 660-015-0000(14).
[5] *Central Oregon LandWatch v. Deschutes County*, __ Or LUBA __ (LUBA No. 2023-049, Feb. 15, 2024) (slip op at 10).
[6] *Id.* (slip op at 8).

LUBA upheld the County's interpretation that the MUA-10 zone uses are rural in nature and therefore do not conflict with Goal 14.[7] 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.[8]

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 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.[9] LUBA held that the site-specific analysis was necessary to demonstrate Goal 14 compliance.[10]

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."[11]

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 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 the allowed density in the MUA-10 zone is generally based on one dwelling per 10 acres. In *Curry County*, the Court concluded that one dwelling per ten acres does not constitute urban zoning.

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[7] *Id.* (slip op at 11).
[8] *Id.* (slip op at 10).
[9] *Destiny Court* (slip op at 10).
[10] *Destiny Court* (slip op at 14-15).
[11] *BCL LLC* (slip op at 25-26).

However, the Applicant acknowledges that the actual density that is allowed in the MUA-10 zone could be greater due to various options for cluster development or planned unit development in that zone. LUBA addressed this 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 initially asserts that the ability to create smaller parcels or more dense development will not result in urbanization of the Subject Property, and compares the density and lot size allowed in the MUA-10 zone to the density and lot sizes allowed in the EFU zone. But the Applicant also proposes a condition that will limit future divisions of the Subject Property to parcels that are no less than 10 acres. However, the Applicant suggests that the limit on new parcel sizes will apply only while the Subject Property remains outside of an urban growth boundary ("UGB").

Other participants argue that the Plan Amendment and Zone Change cannot be conditioned in this manner. FOFR additionally asserts that it would be difficult to enforce such a condition.

As discussed in more detail below relating to DCC 18.136, the Code does not place any limits on the County's ability to restrict a Plan Amendment or Zone Change as suggested by the Applicant. To comply with Goal 14 without taking an exception to that Goal, the Applicant must show that the resulting proposal will not result in urbanization through the creation of urban-level density. A limitation on the County's approval that prohibits such density is sufficient to show that only rural-level density will result. That being said, the Applicant does not explain why that limit should automatically be removed if the Subject Property is brought inside of a UGB in the future, which will also change the Plan Map and Zoning Map designation of the Subject Property. The decision to bring property within a UGB will necessarily involve a different analysis and policy choice to increase the density of the Subject Property. This Recommendation is therefore based on the minimum parcel size remaining unless and until a new Plan Amendment is approved.

Based on the foregoing, I find that the first *Curry County* factor provides weight to the argument that the proposal will not 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 sewer service is prohibited for the Subject Property and that only wells can provide water to the Subject Property. 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 closest UGB to the Subject Property is the Sisters UGB, which is nearly 8 miles away. 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 not result in urbanization.

Having considered the *Curry County* factors, I find that, based on the current record, the proposal will not result in urbanization of the Subject Property, and the Applicant has therefore met its burden of showing that the proposal is consistent 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, there would unlikely be no basis for the County Board to approve the Zone Change as requested.

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 would 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 Applicant and the Staff Report note that the County generally does not consider the Plan's goals and policies to be mandatory criteria. With one exception – Plan Policy 3.3.1 – other participants in this proceeding assert that the Application is inconsistent with various Plan provisions, but they do not assert that those Plan provisions are mandatory criteria, or otherwise

dispute Staff's position that the goals and policies are generally 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, Resource Management, 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.

FOFR asserts that the Application is inconsistent with Plan Policy 3.3.1. Policy 3.3.1 states: "Except for parcels in the Westside Transect Zone, the minimum parcel size for new rural residential parcels shall be 10 acres." FOFR 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.

As briefly discussed in earlier findings, the Applicant ultimately responds to FOFR's argument by proposing a limit on the approval of the Zone Change that would serve as a condition on future divisions of the Subject Property – specifically that any new parcels be no smaller than 10 acres so long as the Subject Property is not within a UGB.

It does not appear to be disputed in this matter that the Subject Property could be divided into parcels smaller than 10 acres once the MUA-10 zone applies. Without more, such an outcome would be inconsistent with Plan Policy 3.3.1, which uses mandatory language that prohibits smaller parcels in the MUA-10 zone. As LUBA held in *BCL LLC*, consistency with Plan policies must be determined at the time of the PAPA rather than a subsequent land use application,[12] so the only way for this Application to comply with the minimum parcel size is to impose a limit on smaller parcel sizes if the Application is approved.

FOFR asserts that limiting the approval in this way is not possible. In part, FOFR argues that such an approach is an admission that the new zone is not consistent with the Plan, otherwise such a modification would not be needed. FOFR also argues that such a limit serves to alter existing Code language that would otherwise allow smaller parcels. Finally, FOFR argues that enforcement of such a limitation would be difficult and unlikely to occur.

Having considered the arguments of FOFR and the Applicant, I do not find language in the Code that prohibits a limitation like the one the Applicant proposes. The new zoning designation can be made consistent with Plan Policy 3.3.1 by prohibiting land divisions resulting in parcels smaller than 10 acres. This limit is not a re-write of the MUA-10 Code provisions, as those will still apply to other parcels already zoned MUA-10. Rather, it serves as a waiver by the Applicant to seek to apply those provisions as a means of ensuring consistency with the Plan. Finally, I do not agree that such a limit is unlikely to be enforced. Unlike other enforcement matters, where a property owner may develop property without County oversight or awareness, the only way to divide

[12] *BCL LLC* (slip op at 10).

property is through a partition or subdivision process decided by the County. The County will therefore be immediately aware if the Owner attempts to create smaller parcels.

Based on the foregoing, I find that the Application can satisfy Plan Policy 3.3.1 as long as the County Board imposes a limit on the future division of the Subject Property in a manner that prohibits the creation of parcels smaller than 10 acres. However, I do not agree with the Applicant that the limit should apply only during the time period that the Subject Property remains outside of a UGB. Unless and until a new Plan amendment or zone change is approved, the Subject Property will carry the RREA and MUA-10 designations and, therefore, Plan Policy 3.3.1 will be applicable. If the Applicant or Owner wishes to change those designations based on the Subject Property being included in a UGB, it will be free to seek such a change at that time.

FOFR asserts that the Application is inconsistent with Plan Policies 2.2.1, 2.2.9, 2.2.11, and 2.2.13, each of which relates in some way to retaining agricultural land within the EFU zone and encouraging farming on those lands. In separate findings above, I determined that the Subject Property, based on the evidence currently in the record, is agricultural land. As such, I agree with FOFR that changing the zoning of the Subject Property would be inconsistent with these Plan Policies that are applicable to agricultural land. If the County Board later concludes that the Subject Property is not agricultural land, it will need to address consistency with these policies.

FOFR asserts that the Application is inconsistent with Plan Policies 2.5.23, 2.5.24, and 2.5.25, each of which relates to water use. These policies state that the County will "encourage", "ensure", and "evaluate" water impacts. Those policies do not contain "mandatory" language specific to how the County is to undertake those activities, or what standards the County is to apply when doing so. As such, I find that these are the types of policies that are implemented through the Code, and that compliance with the Code determines if the Application is consistent with these policies. Even so, the Applicant provided additional information describing the impacts of domestic water use if the MUA-10 zone is applied. Based on the information the Applicant has provided, I find that the Applicant has met its burden of demonstrating the Application is consistent with Plan Policies 2.5.23, 2.5.24, and 2.5.25, provided that all other applicable Code provisions are satisfied, which are addressed throughout this Recommendation.

FOFR asserts that the Application is inconsistent with Plan Policy 2.6.2, which is to "[p]romote stewardship of wildlife habitats and corridors, particularly those with significant biological, ecological, aesthetic and recreational value." As with other policies FOFR points to, this policy does not contain "mandatory" language specific to how the County is to achieve this policy. However, as explained in earlier findings addressing Goal 5, the County has protected some wildlife habitat through its Goal 5 program, and those findings conclude that the Applicant has not adequately addressed potential conflict with the County's listed Goal 5 resources. As such, I agree with FOFR that changing the zoning of the Subject Property would be inconsistent with Plan Policy 2.6.2 based on the current record.

Finally, FOFR asserts that the Application is inconsistent with Plan Policies 3.6.9 and 3.6.14. Plan Policy 3.6.9 states that "[n]ew development shall address impacts on existing facilities and plans through the land use entitlement process." Because the requested Plan Amendment and Zone Change do not propose development, I find that this Plan Policy is not applicable to Applicant's

proposal. Plan Policy 3.6.14 similarly speaks to the "location and design of rural development", which would be applicable where development is proposed, but which is not applicable to the Applicant's request as presented.

Based on the foregoing, I find that the Application as presented does not satisfy DCC 18.136.020(A).

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 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 agricultural land but that its soils can be preserved for future part-time or diversified agricultural use. The Applicant also claims that the low level of allowed development will conserve open spaces and protect natural and scenic resources, consistent with how properties in the vicinity are used.

COLW asserts that the Zone Change does not satisfy DCC 18.136.020(B) because the Applicant proposes to retain the FP zoning on a portion of the Subject Property. COLW notes that the FP zone is not one of the zones that implements the RREA Plan Map designation. Although COLW's logic makes sense, I find that this Code provision focuses on a "change in classification." The existing zoning designation, or any zoning designation that is not proposed to change, is not relevant under the express terms of this Code provision.

FOFR asserts that the Zone Change does not satisfy DCC 18.136.020(B) because the Applicant has proposed to limit the full application of the MUA-10 zone to the Subject Property through a condition of approval that would prohibit creating parcels smaller than 10 acres. Specifically, FOFR argues that an applicant who must remove or restrict allowed uses to get approval concedes that the zone does not fit its property. In earlier findings, I concluded that it is possible for the Applicant to voluntarily waive applicability of some components of the MUA-10 zone in order to demonstrate consistency with the Plan. For similar reasons, I find that the proposed condition of approval does not serve as a "concession" that the proposed Zone Change is inconsistent with the intent of the MUA-10 zone.

As set forth above, the MUA-10 zone has multiple purposes, and there is no requirement that the proposed zone change must achieve all of those purposes. Rather, the express language of DCC 18.136.020(B) requires consideration of whether the Zone Change "is consistent with" those purposes. Although the Applicant relies in part on the Subject Property not qualifying as agricultural land as a basis for showing consistency with the purpose of the MUA-10 zone, that is not the only basis of the Applicant's arguments. Further, I find that the Applicant's proposed condition prohibiting smaller parcels actually creates better consistency, because it applies the MUA-10 zone in a manner that is also consistent with the Plan.

Based on the foregoing, I find that the Applicant has met its burden of showing that the change in zone classification it seeks is consistent with the purposes of the MUA-10 zone, as described by the Applicant. DCC 18.136.020(B) is therefore 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.*
>
> *2. The impacts on surrounding land use will be consistent with the specific goals and policies contained within the Comprehensive Plan.*

This Code provision requires a determination that the requested MUA-10 zoning will presently serve the public health, safety, and welfare based on the availability and efficiency of providing necessary public services and facilities, and considering the impacts on surrounding land uses to ensure that such impacts are consistent with the specific goals and policies of the Plan.

The Applicant asserts that this standard is met because necessary public services are available to serve the Subject Property. Specifically, the Applicant argues that the Subject Property can be served with electricity from a local provider, and that water and wastewater can be served through on-site wells and septic systems, respectively. The Applicant adds that other services, like police, fire, and transportation, are also currently available. With respect to off-site impacts, the Applicant argues that the MUA-10 zoning allows rural uses consistent with how nearby properties are currently being used.

FOFR responds that development under the MUA-10 zoning will deplete groundwater, thereby impacting neighboring wells, and that the transportation system is inadequate. Other participants raised general concerns about impacts to water, traffic, and fire, but do not assert that those concerns prevent the County from finding compliance with this Code provision.

The findings in this Recommendation addressing Goal 12 and the TPR conclude that the transportation system is adequate. With respect to groundwater, the Applicant responds to FOFR by providing evidence in the form of well logs, which the Applicant asserts show wells in the area as being sufficient, and arguing that domestic use of the Subject Property will require less water than if the Applicant attempted to irrigate to support agricultural activities in the current EFU zone. The Applicant provided additional evidence in the form of a report showing sufficient groundwater

in the Deschutes Basin, even in the face of rapid growth in areas like the City of Bend. Finally, the Applicant notes that the Oregon Water Resources Department, which regulates groundwater, has not felt the need to take action in this area, which it is authorized to do if groundwater resources decline to unacceptable levels.

Having reviewed the evidence and argument of the participants, and based on the technical information provided by the Applicant, I find that the Applicant has met its burden of showing that changing the zoning of the Subject Property is consistent with the standards set forth in DCC 18.136.020(C). That Code provision is therefore satisfied.

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

The Applicant addresses this Code provision first by asserting that a mistake was made when the property was first zoned EFU. The Applicant also asserts there has been a change in circumstances since the property was last zoned - the "change" being 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 do not agree with the Applicant that the original zoning of the Subject Property constitutes a "mistake," but it is possible for the Applicant to show a "change in circumstances". The original zoning was based on the process the County used at that time to identify agricultural land, which was based on NRCS classifications. The Applicant has not argued that the County applied the wrong NRCS classifications based on the information the County had at that time. Rather, the Applicant seeks to present more granular information to show the actual soil characteristics currently on the Subject Property. With that more granular information, it is possible to then conclude that there has been a change in circumstances. However, as discussed in earlier findings, the Applicant's ability to rely on its Order 1 Soil Survey is in doubt, as the record does not include certification by DLCD approving the Applicant's methodology for the soil survey. Thus, while it may be possible for the Applicant to demonstrate a change in circumstances, it cannot do so on the current record.

Based on the foregoing, and since the Applicant relies on the Order 1 Soil Survey to satisfy this Code provision, I find that the Applicant has not met its burden of demonstrating compliance with DCC 18.136.020(D).

D. <u>Code Enforcement Issues</u>

COLW asserts that the County cannot approve the Plan Amendment and Zone Change in light of DCC 22.20.015(A). Pursuant to that Code provision, if any property is in violation of applicable land use regulations, approvals, or permits, the County cannot make land use decisions relating to that property. COLW provided evidence of a pending Code enforcement matter for the Subject Property.

The Applicant notes that the County Board interprets DCC 22.20.015(A) as applicable only if there has been an "adjudicated violation", or if the subject matter is the best forum to adjudicate the

violation. COLW's argument is only that there is a pending Code enforcement matter, not that there has been an adjudicated violation that still exists. Further, I find it is not necessary to resolve such a violation as part of this Recommendation, and that a Plan amendment or zone change application is not an appropriate venue to adjudicate the alleged violation, which will necessarily require the development of a record that is unrelated to the approval criteria applicable in this proceeding. Even if the Plan Amendment and Zone Change are approved, the County retains the right to enforce its Code based on the alleged violations that have already occurred. I therefore find that DCC 22.20.015(A) does not prevent further consideration of the Application.

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 3, Goal 5, DCC 18.136.020(A), and DCC 18.136.020(D). I therefore recommend to the County Board of Commissioners that it DENY the request in the Application based on the current record, and that it approve the Application only if the Applicant sufficiently addresses the deficient standards.

Dated this 18th day of November 2026



Tommy A. Brooks
Deschutes County Hearings Officer

STAFF REPORT

FILE NUMBER(S): 247-26-000298-PA, 247-26-000299-ZC

SUBJECT PROPERTY/ OWNER:

Mailing Name: CURTIS, CAMERON D & EMILY S
Map and Taxlot: 151133D000200
Account: 267831
Situs Address: 66920 FRYREAR RD, BEND, OR 97703

Mailing Name: GILLET, EDGAR W ET AL
Map and Taxlot: 151133D000100
Account: 268133
Situs Address: **NO SITUS ADDRESS**

Mailing Name: OLSEN,KRIS
Map and Taxlot: 151133A000900
Account: 130808
Situs Address: 67100 FRYREAR RD, BEND, OR 97703

APPLICANT: Cameron Curtis

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") and Floodplain (FP) to Multiple Use Agricultural ("MUA-10").

STAFF CONTACT:

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

RECORD: Record items can be viewed and downloaded from: www.deschutescounty.gov/CurtisPAZC

I. APPLICABLE 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
Chapter 18.32, Multiple Use Agricultural
Chapter 18.96, Flood Plain Zone
Chapter 18.136, Amendments
Title 22, Deschutes County Development Procedures Ordinance
Deschutes County Comprehensive Plan ("DCCP")
Chapter 2, Resource Management
Chapter 3, Rural Growth Management
Appendix C, Transportation System Plan
Oregon Administrative Rules ("OAR")
Chapter 660, Land Conservation and Development Department
Division 6, Goal 4 Forest Lands
Division 12, Transportation Planning
Division 15, Statewide Planning Goals
Division 33, Agricultural Land
Oregon Revised Statutes ("ORS")
Chapter 215, County Land Use Planning; Resource Lands

II. BASIC FINDINGS

LOT OF RECORD: DCC 22.04.040(B)(1) specifies the types of land use applications that require lot of record verification, and a Comprehensive Plan Amendment and Zone Change are not listed. In the *Powell/Ramsey* (PA-14-2, ZC-14-2) decision, the Hearings Officer held to a prior zone change decision (*Belveron* ZC-08-04; page 3) that a property's lot of record status was not required to be verified as part of a plan amendment and zone change application. Rather, the applicant would be required to receive lot of record verification prior to any development on the subject property. Therefore, this criterion does not apply.

SITE DESCRIPTION: The subject property consists of three tax lots, which are located to the east of Fryrear Road and to the north of Plainview Road. Tax Lot 200 is developed with a single-unit dwelling and a number of accessory structures, which are concentrated towards the center of the property. Tax Lot 900 also contains a single-unit dwelling and a several small accessory structures, which are located in the south portion of the property. Tax Lot 100 is an undeveloped strip of land which borders Tax Lot 900 to the south. Large portions of the subject properties have been cleared of vegetation and in areas where the tree cover remains, it primarily consists of scattered juniper trees and native shrubs.

PROPOSAL: The applicant requests approval of a Comprehensive Plan Map Amendment to change the designation of the subject properties from an Agricultural (AG) designation to a Rural Residential Exception Area (RREA) designation. The applicant also requests approval of a corresponding Zoning Map Amendment to change the zoning of the subject properties from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA10). The applicant asks that Deschutes County change the zoning and

the plan designation because the subject property does not qualify as "agricultural land" under Oregon Revised Statutes (ORS) or Oregon Administrative Rules (OAR) definitions. The applicant proposed that no exception to Statewide Planning Goal 3, Agricultural Land is required because the subject property is not agricultural land.

Approximately 3.5 acres of Tax Lot 200 is zoned Flood Plain (FP) and the applicant does not propose to rezone this portion of the subject property. However, as clarified in a letter dated July 24, 2026, the applicant requests that the Comprehensive Plan Amendment apply to the entirety of the subject property. As proposed, this would result in a portion of Tax Lot 200 remaining in the FP Zone with a Comprehensive Plan designation of RREA. The applicant provided the following explanation in the July 24, 2026 letter:

> The Applicant is pursuing a Letter of Map Revision (LOMR) with the Federal Emergency Management Agency (FEMA) to revise FIRM 41017C0450D for Deschutes County, Oregon to remove the 3.5-acre area of 100-year flood plain on Tax Lot 200… Once final approval is granted from FEMA, the Applicant intends to submit an application to Deschutes County to rezone the 3.5- acre portion from FP to MUA-10.

Staff notes the subject Zone Change application does not review any future request to rezone the FP-zoned portion of Tax Lot 200, which would require a separate application and would be evaluated against applicable criteria.

Submitted with the application is an analysis of the soils on the subject property, titled *Order 1 Soil Survey Addendum* (hereafter referred to as the "soil study") prepared by soil scientist Gary Kitzrow, CPSS, SC of Growing Soils Environmental Associates. The applicant has also submitted a traffic analysis prepared by Kittleson and Associates dated April 2, 2026, hereafter referred to as "traffic study." Additionally, the applicant has submitted an application form, a burden of proof statement, and other supplemental materials, all of which are included in the record for the subject applications.

SOILS: According to Natural Resources Conservation Service (NRCS) maps of the area, the subject property contains six soil types: 34C, 152A, 98A, 141C, 106E, 63C. The 98A and 152A soil types are defined as high-value farmland when they are irrigated.

The applicant submitted a soil study to inventory and assess the soils on the subject properties and to provide more detailed data on soil classifications and ratings than is contained in the NRCS soils maps. This soil study included the following statement:

> As a total of the entire 135.45 acre site, a preponderance of 61.7% or 83.56 acres consist of Class 7 and Class 8 soils. These soils are unsuited for farm production. Additionally, the adjoining 'suited' soils are plagued with equally coarse loamy soils which again do not adequately retain both water and nutrients. These too are marginal in composition and no supplemental water is available to improve their status.

The NRCS soil map unit identified on the property is described below.

34C, Deschutes-Stukel, 0 to 15 percent slopes: This soil complex is composed of 50 percent Deschutes soils and similar inclusions, 35 percent Stukel soils and similar inclusions, and 15 percent contrasting inclusions. The Deschutes soils are well drained with a moderately rapid permeability and an available water capacity of about four (4) inches. The Stukel soils are also well drained with a moderately rapid permeability and an available water capacity of about two (2) inches. The contrasting inclusions consist of Redmond soils in swales, soils with loamy sand surfaces, and rock outcrops. The major uses of this soil complex are irrigated cropland and livestock grazing. The NRCS ratings for the Deschutes soils are 6E when unirrigated, and 3E when irrigated. The NRCS ratings for the Stukel soils are 6E when unirrigated, and 4E when irrigated. This soil complex is not considered high value farmland when irrigated.

63C, Holmzie-Searles Complex, 0 to 15% slopes: This soil mapping unit is comprised of 50% Holmzie soil and similar inclusions, 35% Searles soils and similar inclusions, and 15% contrasting inclusions. The Holmzie soils are well drained with slow permeability and about 5 inches of available water capacity. The Searles complex are well drained soils with moderately slow permeability and available water capacity of about 3 inches. Major uses for this soil type include livestock grazing. The soil capability rating of these soils is 6e nonirrigated. (There is no irrigated soil capability rating for these soil types.) This soil type is not considered a high-value soil when irrigated.

98A, Plainview sandy loam, 0 to 3 percent slopes: This soil type is composed of 85 percent Plainvew soil and similar inclusions, and 15 percent contrasting inclusions. This soil is well drained with a moderately-rapid permeability and an available water capacity of about five inches. The major uses of this soil type are irrigated cropland and livestock grazing. The NRCS rates this soil type as 3e when irrigated, and 6e when unirrigated.

106E, Redslide-Lickskillet complex, 30 to 50% north slopes: This complex is typically composed of 50 percent Redslide soil and similar inclusions, 30 percent Lickskillet soil and similar inclusions, and 15 percent contrasting inclusions. This complex is found on canyon sides between 2,000 and 4,000 feet in elevation, with native vegetation of western juniper, antelope bitterbrush, mountain big sagebrush, Idaho fescue and grasses. These soils are well drained, with moderately rapid permeability and a water capacity of about 2 inches. Major uses include livestock grazing. The Redslide soil has a soil capability rating of 6e when unirrigated, and 7e when irrigated. The Lickskillet soil has a soil capability rating of 7e when irrigated or unirrigated.

141C, Stukel-Deschutes-Rock Outcrop complex, 0 to 15 percent slopes: This soil is typically composed of 40 percent Stukel soil and similar inclusions; 25 percent Deschutes soil and similar inclusions; 20 percent rock outcrop and 15 percent contrasting inclusions. The Stukel-Deschutes-Rock Outcrop complex is well-drained with a moderately rapid permeability. It has an available water capacity of about 2-4 inches. The major agricultural use for this type of soil is livestock grazing. The agricultural capability rating for this soil is 6e and 8 for unirrigated land with no rating for irrigated land. This soil is not considered high value farmland.

152A, 152B, Tumalo sandy loam, 0 to 3% and 3 to 8% slopes: These soil types are composed of 85% Tumalo soils and similar inclusions, and 15% contrasting inclusions. The Tumalo soil is well drained with a moderately rapid above the duripan and very rapid below the duripan permeability and an

available water capacity of about 4 inches. The major uses of these soil types are irrigated cropland and livestock grazing. The NRCS rates the Tumalo soil as 6S/3S. These soil types are designated high value soil when irrigated.

Further discussion regarding soils is found in Section III below.

SURROUNDING LAND USES: The Burden of Proof provides the following detail on surrounding properties:

> The Subject Property is located within an area that consists of largely rural residential land with dwellings, and which are zoned Multiple Use Agricultural (MUA-10), EFU-SC, and EFU-TRB. Tax Lot 900 is surrounded on three sides by MUA-10 zoned land. In general, both the MUA-10 and EFU-zoned lands in the surrounding area contain dwellings with some hobby farm use as well as dwellings with no apparent farm use. Land zoned MUA-10 generally abuts the Subject Property to the north and west, while land zoned EFU generally abuts the Subject Property to the south and east.
>
> Larger contiguous acreage exists outside the immediate surrounding area. For example, the State of Oregon owns a 224-acre parcel approximately ½ mile (2,640 feet) to the southeast, and the U.S. Bureau of Land Management (BLM) manages over 6,000 acres to the east, north, and south of the property. At their closest, these lands are almost 3,000 feet from the Subject Property.
>
> To the north of the Subject Property is Map and Tax Lot 151133A000899, which is a sliver of land that runs from Fryrear Road to the east about ½ mile, and contains Fryrear Ranch Road, which is owned by the Fryrear Ranch Road HOA Corporation. North of this road are two tax lots (Map and Tax Lot 151133A000800 and 151133A000700) that are both zoned MUA-10 and both contain single-family dwellings. Neither are in farm tax deferral but both contain various farm buildings and appear to be engaged in some level of hobby farming. Map and Tax Lot 151133A000400, located to the northeast of the Subject Property, is also zoned MUA-10 and contains a dwelling.
>
> To the east of the northernmost property within the Subject Property (Map and Tax Lot 151133A000900) is Map and Tax Lot 151133A001000, zoned MUA-10, and not in farm tax deferral. Tax Lot 1000 is approximately 10 acres and contains a dwelling, originally constructed in the early 1980s, a farm building, and a pond. Directly east of Map and Tax Lot 151133D000100 (which is part of the Subject Property) is another tax lot within the Subject Property (Map and Tax Lot 151133D000200). To the northeast of Tax Lot 100 is a similar shaped sliver of land (Map and Tax Lot 151133A000096), which contains 0.16 acres and is zoned MUA-10.
>
> To the east of Map and Tax Lot 151133D000200 (which is part of the Subject Property), are four properties zoned EFU-SC. These include Map and Tax Lot 151134C000600, 151134C000100, 151134C000200, and 151133D000201. Tax Lot 600 is 2.63 acres and is vacant, is not in farm tax deferral, and contains no apparent farm use. Tax Lot 100 is 24.84

acres, contains a dwelling (that replaced an older manufactured home), is not in farm tax deferral and does not appear to be engaged in farm use. Tax Lot 200 is 23.86 acres, contains an approved nonfarm dwelling, is not in farm tax deferral, and does not appear to be engaged in any farm use. Tax Lot 201 is 14.70 acres, contains a dwelling, and is not in farm tax deferral. This parcel was created by lot line adjustment per County Land Use File No. LL-13-9 and subsequently adjusted again to abut Plainview Road per County Land Use File No. 247-16-000775-LL. To the southeast of the Subject Property is Map and Tax Lot 151134C000400, an approximately 40-acre property zoned EFU-SC, which is not in farm tax deferral and vacant.

Land to the south of the Subject Property is comprised of Map and Tax Lots 151133D000203, 151133D000300, 1611040000400, and 151133D000201. Tax Lot 203 is 5.74 acres, contains a dwelling and is not in farm tax deferral. This tax lot is subject to County Land Use File Nos. MP-13-2, CU-13-19, CU-13-20 (Exhibit D).6 County Land Use File No. CU-13-19 authorized the property's nonfarm dwelling. Tax Lot 300 is approximately 38.76 acres, contains at least one dwelling and is also not in farm tax deferral. A nonfarm dwelling was approved on this parcel, located at 66900 Fryrear Road, in 2012 (CU-12-16). Tax Lot 400 is 7.39 acres, is zoned EFU-TRB, and is in farm tax deferral. This parcel does not have irrigated/wet acres, according to County records, nor any apparent farm use. As mentioned above, Tax Lot 201 is 14.70 acres, contains a dwelling, and is not in farm tax deferral. This parcel was created by lot line adjustment per County Land Use File No. LL-13-9 and subsequently adjusted again to abut Plainview Road per County Land Use File No. 247-16-000775-LL.

To the west, southwest, and northwest of the Subject Property is several parcels zoned MUA-10, including Map and Tax Lots 151133C003101, 151133C003200, 151133C003302, 151133C003303, 151133B004400, 151133B004300, 151133B004200, 151133B004100, and 151133B003600. These relatively smaller parcels to the west of Fryrear Road, range between two (2) and ten (10) acres, contain dwellings, with some engaged in apparent hobby farm use. None of these tax lots are in farm tax deferral.

Map and Tax Lot 151133D000202 contain 5.51 acres and is also located west of the Subject Property. Tax Lot 202 is zoned EFU-SC and is subject to County Land Use File Nos. MP-13-2, CU-13-19, CU-13-20 (Exhibit D). County Land Use File No. CU-13-20 authorized the property's nonfarm dwelling.

PUBLIC AGENCY COMMENTS: The Planning Division mailed notice on June 2, 2026, to several public agencies and received the following comments:

Deschutes County Senior Transportation Planner, Tarik Rawlings

I have reviewed the application materials for file no. 247-26-000298-PA, 299-ZC for a Plan Amendment to change the designation of a ~135.45-acre subject property from Agriculture (AG) to Rural Residential Exception Area (RREA) and a corresponding Zone Change to rezone the subject property from Exclusive Farm Use (EFUSC) and Flood Plain (FP) to Multiple Use Agricultural (MUA10) for the following properties:

The submitted application materials include a report prepared by Kittelson & Associates (dated April 2, 2026 and labeled as Exhibit H) analyzing the proposal's compliance with the Transportation Planning Rule (TPR) and Oregon Statewide Planning Goal 12 per OAR 660-012-0060. Staff generally agrees with the assumptions, methodology, and conclusions outlined in the report supporting the central conclusion that reasonable EFU development potential would exceed the trip generation potential under the requested MUA10 Zone. Further, the report concludes that the proposal would not change County Road facility classifications or applicable classification standards. Collectively, the report demonstrates the proposal's compliance with Oregon Statewide Planning Goal 12 and TPR. No additional traffic analysis is required beyond this report.

As the subject application does not include a site plan or development proposal, the transportation analysis requirements of DCC 18.116.310 will need to be met during subsequent development review on the subject properties.

All three tax lots comprising the subject property have frontage along Fryrear Road, to the west. Fryrear Road is a public road right-of-way maintained by Deschutes County and functionally classified as a Rural Collector. The property records for Tax Lot 200 include Driveway Access Permits (permit no. 247-SW9549 and 247-18-002632-DA) issued by Deschutes County, demonstrating compliance with the access permitting requirements of DCC 17.48.210 and DCC 12.28.050 for that parcel. The property records for Tax Lots 100 and 900, however, do not include Driveway Access Permits approved by Deschutes County and the applicant will need to either provide copies of driveway permits approved by Deschutes County or be required to obtain such permits as a condition of approval for any subsequent development in order to meet the access permit requirements of DCC 17.48.210(A) and DCC 12.28.050.

Staff notes that, due to Fryrear Road's classification as a Rural Collector, the provisions of DCC 12.28.090 may apply to any subsequent development proposal.

Board Resolution 2024-038 sets a transportation system development charge (SDC) rate of $5,856 per p.m. peak hour trip. As the plan amendment/zone change by itself does not generate any traffic, no SDCs apply at this time. SDCs will be assessed based on development and/or division of the property. When development occurs, the SDC is due prior to issuance of certificate of occupancy; if a certificate of occupancy is not applicable, then the SDC is due within 60 days of the land use decision becoming final.

THE PROVIDED SDC AMOUNT IS ONLY VALID UNTIL JUNE 30, 2026 PENDING ANY AMENDMENTS TO THE COUNTY'S CURRENT SDC RESOLUTION 2024-038. DESCHUTES COUNTY'S SDC RATE IS INDEXED AND RESETS EVERY JULY 1. WHEN PAYING AN SDC, THE ACTUAL AMOUNT DUE IS DETERMINED BY USING THE CURRENT SDC RATE AT THE DATE THE BUILDING PERMIT IS PULLED.

ON JULY 1, 2026, THE SDC RATE WILL DECREASE TO A BASE RATE OF $5,633 PER P.M. PEAK HOUR TRIP AND ANY ASSESSED SDCS FOR THE PROPOSAL WILL ADJUST ACCORIDNGLY. AGAIN, THE SDC IS ONLY ASSESSED WHEN ACTUAL DEVELOPMENT OCCURS OR LAND USE BECOMES FINAL.

The following agencies did not respond to the notice: Cloverdale Fire Department, Department of Land Conservation and Development, Deschutes County Assessor, Deschutes County Road Department, and State Watermaster's Office.

PUBLIC COMMENTS: The Planning Division mailed notice of the application to all property owners within 750 feet of the subject property on June 2, 2026. The applicant also complied with the posted notice requirements of Section 22.24.030(B) of Title 22. The applicant submitted a Land Use Action Sign Affidavit indicating the applicant posted notice of the land use action on May 15, 2026. Sixteen (16) public comments were received from surrounding residents and Central Oregon LandWatch. These public comments were generally in opposition and concerns include:

- Increased traffic and traffic safety issues.
- Availability of infrastructure, including water.
- Impacts to surrounding residences.
- Impacts to property value.

NOTICE REQUIREMENT: On August 24, 2026, the Planning Division mailed a Notice of Public Hearing to all property owners within 750 feet of the subject property and public agencies. A Notice of Public Hearing was published in the Bend Bulletin on August 26, 2026. Notice of the first evidentiary hearing was submitted to the Department of Land Conservation and Development on August 20, 2026.

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

LAND USE HISTORY: Previous land use actions associated with the subject property are:

Tax Lot 200:

- LR-12-12: Lot of Record Verification, which found that Tax Lot 200 (as configured at the time) contained two legal lots.
- LL-13-9: Property line adjustment between two legal lots of record within Tax Lot 200.
- CU-13-1: Conditional Use Permit for a nonfarm dwelling.
- MP-13-2: Minor Partition that created Tax Lot 200.
- 247-16-000108-E, 247-18-000918-E: Extensions of CU-13-1.
- 247-16-000775-LL: Property Line Adjustment between Tax Lot 200 and Tax Lot 201.
- 247-19-000214-DR: Declaratory Ruling that the nonfarm dwelling had been initiated.

Tax Lot 900:

- 247-17-000933-LR: Lot of Record Verification.
- 247-18-000060-CU: Deposit packet for a nonfarm dwelling.

III. FINDINGS & CONCLUSIONS

Title 18 of the Deschutes County Code, County Zoning

Chapter 18.136, Amendments

Section 18.136.010, Amendments

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

FINDING: The applicant, with written consent from the property owners, has requested a quasi-judicial plan amendment and filed the applications for a plan amendment and zone change. The applicant has filed the required Planning Division land use application forms for the proposal. The application will be reviewed utilizing the applicable procedures contained in Title 22 of the Deschutes County Code.

Section 18.136.020, Rezoning Standards

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

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

FINDING: The applicant provided the following response in its submitted burden of proof statement:

1. **Conformance with the Comprehensive Plan:** The applicant proposes a plan amendment to change the Comprehensive Plan designation of the subject property from Agriculture to Rural Residential Exception Area. The proposed rezoning from EFU-SC to MUA-10 will need to be consistent with its proposed new plan designation.

2. **Consistency with the Plan's Introductory Statement and Goals.** In previous decisions, the Hearings Officer found the introductory statement and goals are not approval criteria for the proposed plan amendment and zone change. However, the Hearings Officer in the *Landholdings* decision found that depending on the language, some plan provisions may apply and found the following amended comprehensive plan goals and policies require consideration and that other provisions of the plan do not apply as stated below in the *Landholdings* decision:

"Comprehensive plan statements, goals and policies typically are not intended to, and do not, constitute mandatory approval criteria for quasi-judicial/and use permit applications. Save Our Skyline v. City of Bend, 48 Or LUBA 192 (2004). There, LUBA held:

> *'As intervenor correctly points out, local and statutory requirements that land use decisions be consistent with the comprehensive plan do not mean that all parts of the comprehensive plan necessarily are approval standards. [Citations omitted.] Local governments and this Board have frequently considered the text and context of cited parts of the comprehensive plan and concluded that the alleged comprehensive plan standard was not an applicable approval standard. [Citations omitted.] Even if the comprehensive plan includes provisions that can operate as approval standards, those standards are not necessarily relevant to all quasi-judicial land use permit applications. [Citation omitted.] Moreover, even if a plan provision is a relevant standard that must be considered, the plan provision might not constitute a separate mandatory approval criterion, in the sense that it must be separately satisfied, along with any other mandatory approval criteria, before the application can be approved. Instead, that plan provision, even if it constitutes a relevant standard, may represent a required consideration that must be balanced with other relevant considerations. [Citations omitted.]'*

LUBA went on to hold in Save Our Skyline that it is appropriate to 'consider first whether the comprehensive plan itself expressly assigns particular role to some or all of the plan's goals and policies.' Section 23.08.020 of the county's comprehensive plan provides as follows:

The purpose of the Comprehensive Plan for Deschutes county is not to provide a site-specific identification of the appropriate land uses which may take place on a particular piece of land but rather it is to consider the significant factors which affect or are affects by development in the county and provide a general guide to the various decision which must be made to promote the greatest efficiency and equity possible, which managing the continuing growth and change of the area. Part of that process is identification of an appropriate land use plan, which is then interpreted to make decision about specific sites (most often in zoning and subdivision administration) but the plan must also consider the sociological, economic and environmental consequences of various actions and provide guidelines and policies for activities which may have effects beyond physical changes of the land (Emphases added.)

The Hearings Officer previously found that the above-underscored language strongly suggests the county's plan statements, goals and policies are not intended to establish approval standards for quasi-judicial/and use permit applications.

In Bothman v. City of Eugene, 51 Or LUBA 426 (2006), LUBA found it appropriate also to review the language of specific plan policies to determine whether and to what extent they may in fact establish decisional standards. The policies at issue in that case included those

*ranging from aspirational statements to planning directives to the city to policies with language providing 'guidance for decision-making' with respect to specific rezoning proposals. In Bothman LUBA concluded the planning commission erred in not considering in a zone change proceeding a plan policy requiring the city to '[r]ecognize the existing general office and commercial uses located * * * [in the geographic area including the subject property] and discourage future rezonings of these properties.' LUBA held that:*

> *'* * * even where a plan provision might not constitute an independently applicable mandatory approval criterion, it may nonetheless represent a relevant and necessary consideration that must be reviewed and balanced with other relevant considerations, pursuant to ordinance provisions that require * * * consistency with applicable plan provision.' (Emphasis added.)*
>
> *The county's comprehensive plan includes a large number of goals and policies. The applicant's burden of proof addresses goals for rural development, economy, transportation, public facilities, recreation, energy, natural hazards, destination resorts, open spaces, fish and wildlife, and forest lands. The Hearings Officer finds these goals are aspirational in nature and therefore are not intended to create decision standards for the proposed zone change."*

Hearings Officer Karen Green adhered to these findings in the Powell/Ramsey decision (file nos. PA-14-2/ZC-14-2), and found the above-referenced introductory statements and goals are not approval criteria for the proposed plan amendment and zone change. This Hearings Officer also adheres to the above findings herein. Nevertheless, depending upon their language, some plan provisions may require "consideration" even if they are not applicable approval criteria. Save Our Skyline v. City of Bend, 48 Or LUBA 192, 209 (2004). I find that the following amended comprehensive plan goals and policies require such consideration, and that other provisions of the plan do not apply:"

The applicant utilized this analysis, as well as analyses provided in prior Hearings Officers' decisions to determine and respond to only the Comprehensive Plan Goals and policies that apply, which are listed in the Comprehensive Plan section of this staff report in further detail. Staff generally agrees with the applicant's analysis and finds the above provision to be met based on Comprehensive Plan conformance as demonstrated in subsequent findings. As discussed in more detail under the Statewide Planning Goals section below, staff requests the Hearings Officer make findings regarding Comprehensive Plan policy 3.3.1, which establishes the minimum parcel size for new rural residential parcels. If the Hearings Officer finds that the subject Zone Change conflicts with Comprehensive Plan policy 3.3.1, the findings under DCC 18.136.020(A) may need to be revised accordingly.

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

FINDING: The applicant provided the following response in the submitted burden of proof statement:

The Applicant is proposing to change the zoning from EFU-SC to MUA-10. Approval of the application is consistent with the purpose of the MUA-10 zoning district, which is stated in DCC 18.32.010 as follows:

> The purposes of the Multiple Use Agricultural Zone are to preserve the rural character of various areas of the County while permitting development consistent with that character and with the capacity of the natural resources of the area; to preserve and maintain agricultural lands not suited to full-time commercial farming for diversified or parttime 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 Subject Property does not meet the definition of agricultural land and therefore is not consistent with the purpose and intent of its existing EFU zoning. The purpose and intent of the MUA-10 zone is to preserve the rural character of the land and allow uses consistent with that character. The MUA-10 zone will preserve non-agricultural soil for future part-time or diversified agricultural use. The low-density of development allowed by the MUA-10 zone will conserve open spaces and protect natural and scenic resources.

Staff finds the applicant has demonstrated that the proposed Zone Change is consistent with the purpose and intent of the MUA10 zone. Staff notes the subject property is bordered to the north, west, and northeast by MUA10-zoned land, and that rural residential uses are the predominant development pattern of the general surrounding area.

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

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

FINDING: Although there are no plans to develop the properties in their current state, the above criterion specifically asks if the proposed zone exchange will *presently* serve public health, safety, and welfare. The applicant provided the following response in the submitted burden of proof statement:

> Necessary public facilities and services are available to serve the Subject Property, including electrical power from Central Oregon Cooperative and water service from on-site wells. Transportation access to the property is readily available from Highway 20 and Fryrear Road. The Transportation Memo prepared by Kittleson & Associates (Exhibit H), shows that the proposed change in zoning from EFU-SC to MUA-10 would not result in a significant effect on the transportation system, as defined by the TPR. The net increase in vehicle trips associated with the zone change that would occur if the Subject Properties develop under

the "reasonable worse case" for the proposed zoning as compared to development under the existing zoning is not considered "significant" per the Oregon Highway Plan (OHP) Policy 1F.5. In other words, the study concludes that the zone change would have no significant impact on the transportation system.

The Subject Property receives police services from the Deschutes County Sheriff and they are located within the Cloverdale Fire District. Neighboring properties contain residential uses, which have water service from wells, on-site sewage disposal systems, electrical service, telephone services, etc. There are no known deficiencies in public services or facilities that would negatively impact public health, safety, or welfare.

There are no known deficiencies in public services or facilities that would negatively impact public health, safety, or welfare. Prior to development of the properties, the applicant would be required to comply with the applicable requirements of the Deschutes County Code, including possible land use permit, building permit, and sewage disposal permit processes. Through these development review processes, assurance of adequate public services and facilities will be verified. Staff finds this provision is met.

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

FINDING: The applicant provided the following response in the submitted burden of proof statement:

The MUA-10 zoning is consistent with the specific goals and policies in the comprehensive plan discussed above. The MUA-10 zoning allows rural uses consistent with the uses of many other properties in the area of the subject property. Approval of the subject application will not impose new impacts on the EFU-zoned land adjacent to or nearby the Subject Property because many of those properties are residential properties, hobby farms, already developed with dwellings, not engaged in commercial farm use, are idle, or are otherwise not suited for farm use due to soil conditions, topography, or ability to make a profit farming.

As discussed below, the Subject Property is not agricultural land, is comprised of predominantly Class 7 and 8 soils, and the nonproductive soils on the Subject Property make it not suitable for commercial farming or livestock grazing, as demonstrated by soil scientist Gary Kitzrow (Exhibit F). The Subject Property is not land that historically has been or could be used in conjunction with any adjacent irrigated property for any viable agricultural use and any future development of the Subject Property would be subject to building setbacks.

In addition to these comments, the applicant provided specific findings for each relevant Comprehensive Plan goal and policy, which are addressed below. Staff finds the applicant has demonstrated the impacts on surrounding land use will be consistent with the specific goals and policies contained within the Comprehensive Plan, but asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit.

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

FINDING: The applicant proposed to rezone the properties from EFU to MUA10 and re-designate the properties from Agriculture to Rural Residential Exception Area. The applicant provided the following response in the submitted burden of proof statement:

> **1. Mistake:** In 1979, Deschutes County adopted its first comprehensive plan and zoning ordinance that implemented the Statewide Land Use Planning Goals. The County's comprehensive plan map was prepared prior to the USDA/NRCS's publication of the "Soil Survey of Upper Deschutes River Area, Oregon." This study replaced a prior study that provided very general information about soils. This Soil Survey of the Upper Deschutes River Area is more comprehensive than the prior soils mapping publication but it continues to provide only general soils information rather than not an assessment of soils on each parcel in the study area.
>
> When the County first implemented the Statewide Goals, it applied resource zoning using a broad brush. All undeveloped rural lands were assumed to be resource land. Then-existing developed rural lands not suited for resource use were granted exceptions to the Goals that protect resource lands. The County allowed landowners a brief period of time after adoption of PL-15 (1979) to petition the County to remove nonresource properties from resource zone protections but made no effort to determine whether lands might be nonresource lands that do not merit the imposition of stringent land use regulations that protect rural resources – typical farm and forest resources. The EFU zoning designation was likely based on the best soils data that was available to the County at the time it was originally zoned, during the late 1970's, when the County's Comprehensive Plan and Map were first adopted and when agricultural zoning was applied to land with no history of farming.
>
> **2. Change in Circumstances:** There has clearly been a change in circumstances since the Subject Property was last zoned in the 1970s:
>
> > Soils: New and site-specific soils data provided in Mr. Kitzrow's soils report shows the Subject Property does not have agricultural soils.
> >
> > Water: At the time EFU zoning was adopted and placed over the Subject Property, it was served by the Plainview Irrigation Ditch and had some limited water rights associated with the Plainview ditch and potentially others in the area. The record establishes, herein, that this ditch - nor any other ditch or canal in the area with the ability to provide water - has not been active for over 30 years and that there is no available water to serve the Subject Property.
> >
> > Farming Economics and Viability of Farm Uses: The economics of farming and the viability of commercial farm uses in Deschutes County have significantly changed. Making a profit in farming has become increasingly difficult, particularly on parcels that are relatively small for livestock grazing and that have inadequate soils or

irrigation for raising crops such as the Subject Property. The economics of farming have worsened over the decades making it difficult for most Deschutes County property owners to make money farming good ground and impossible to earn a profit from attempting to farm Class 7 and 8 farm soils, with still only a small fraction of farm operators achieving a net profit from farming in 2022 (Exhibit I).

The reality of the difficulties agricultural producers face in Deschutes County is demonstrated below in the stakeholder interview of the Deschutes County Farm Bureau in the County's 2014 Agricultural Lands Program, Community Involvement Results:

> Today's economics make it extremely difficult for commercial farmers in Deschutes County to be profitable. Farmers have a difficult time being competitive because other regions (Columbia Basin, Willamette Valley) produce crops at higher yields, have greater access to transportation and consumer markets, and experience more favorable growing climates and soils. Ultimately, the global economy undermines agricultural opportunities in the county because commodities derived from outside the region can be produced at a lower cost. Water limitations also play a role. Junior water right holders are constrained as the summer progresses and they lose their rights to those with higher priority dates.

In 2022, according to Table 4 of the 2022 US Census of Agriculture, included as Exhibit I, only 18.64% of farm operators in Deschutes County achieved a net profit from farming (293 of 1572 farm operations (see also, Exhibit J). In 2017, that percentage was 16.03% (238 of 1484 farm operations), in 2012, that percentage was 16.45% (211 of 1283 farm operations), and in 2007, that figure was 17% (239 of 1405 farm operations) (Exhibit I and J). The vast majority of farms in Deschutes County have soils that are superior to those found on the subject property. As farming on those superior soils is typically not profitable, it is reasonable to conclude that no reasonable farmer would purchase the Subject Property for the purpose of attempting to earn a profit in money from agricultural use of the land.

Population Changes: Encroaching development: According to the US Census, the population of Deschutes County increased by 219% between 1980 (when the County last zoned this property) and 2020, from 62,142 persons to 198,253 persons. The supply of rural residential dwelling lots has been diminishing in the same time period. Encroaching development east of Bend's Urban Growth Boundary has brought both traffic and higher density residential uses and congestion to the area, and within a mile of the Subject Property.

Staff generally concurs with the applicant's response and finds that the applicant's site-specific soil study also provides updated, more precise information on the agricultural capability of the subject property. In *Central Oregon LandWatch v. Deschutes County* (Destiny Court), LUBA No. 2025-015, the

Land Use Board of Appeals (LUBA) provided the following guidance on whether a site-specific soil study constitutes a "change in circumstances" for the purpose of this criterion:

> However, we agree with respondents that the Order 1 soil study can be viewed as a "change in circumstances" for purposes of DCC 18.136.020(D)...
>
> The board of commissioners adopted the hearings officer's findings concluding that the new and more detailed information provided by the soils study is sufficient to constitute a "change in circumstance" for purposes of DCC 18.136.020(D). We understand those incorporated findings to embody an implicit interpretation of the phrase "change in circumstances." The board of commissioners clearly understood the phrase "change in circumstances" to encompass more than physical changes to the soil or site conditions, and to broadly include development of new information that fundamentally challenges the agricultural status of the property.

Staff finds a mistake was made in the zoning of the subject property and there has been a change in circumstances since the property was last zoned.

Deschutes County Comprehensive Plan

Chapter 2, Resource Management

Section 2.2 Agricultural Lands

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

FINDING: The applicant provided the following response in the Burden of Proof:

> The Applicant is pursuing a Comprehensive Plan Amendment and Zone Change on the basis that the Subject Property does not constitute "agricultural lands", and therefore, it is not necessary to preserve or maintain the subject lands as such and this goal does not apply. In the *Landholdings* decision (and the *Powell/Ramsey* decision) the Hearings Officer found that Goal 1 is an aspirational goal and not an approval criterion.
>
> As demonstrated in this application, the Subject Property does not constitute "agricultural land" and therefore, is not necessary to preserve and maintain the County's agricultural industry. Mr. Kitzrow's soils assessment (Exhibit F) demonstrates that the Subject Property consists predominantly of Class 7 and 8 non-agricultural soils.
>
> In the *Eastside Bend* decision, Class 7 and 8 soils have severe limitations for farm use as well as poor soil fertility, shallow and very shallow soils, surface stoniness, low available water capacity, and limited availability of livestock forage. According to Agricultural Handbook No. 210, published by the Soil Conservation Service of the USDA, soils in Class 7 "have very severe limitations that make them unsuited to cultivation and that restrict their use largely to

grazing, woodland, or wildlife." Class 8 soils "have limitations that preclude their use for commercial plant production and restrict their use to recreation, wildlife, or water supply or to esthetic purposes."

According to Mr. Kitzrow, these soils have severe limitations for agricultural use of the Subject Property based upon adverse soil characteristics and the fact that the properties contains frigid soils with the inability to hold water. Specifically, he notes that "Since all soils on these subject parcels have extremely low fine particle percentages (which are attributes which contribute to good water holding capacities WHC), combined with no available irrigation waters, makes this study area an extremely harsh growing environment by all standards" and that "Even the preferred soil mapping units: Deschutes, Plainview and Tumalo offer low abilities to retain both water and nutrients for plant uptake and use. Lickskillet soils, which are extremely prevalent making up 55.2 acres or 40.8% of the landbase, have less than 1" of cumulative water holding ability on this parcel making the environment very harsh and not suited for agronomic crops. All soils on this 135.45 acre study base exhibit very low abilities to provide essential water and nutrients required for farm use."

According to Mr. Kitzrow the Subject Property is not suited for livestock grazing on a commercial scale. The forage potential is quite limited based upon the soil characteristics. The rangeland productivity potential of the soils mapped within this survey area are shown in Table 6 of the USDA Soil Survey Report for the Deschutes County Area. The productivity range is estimated at 900 pounds of dry matter per acre per year for map units 31A, 98A, and 152A which make up 41.0 or 30.2% of the area. This, however, is based upon water being available when the crop is germinating and growing to maturity.

For the 139B Stukel Monotaxa unit, a total dry-weight production of 700 lb/ac is cited, while 600 lb./ac. is stated for Lickskillet (south aspects) for 'Normal' years. Stukel Sandy Variant (139B*) will be expected to produce much less equivalent to 500 lb./ac. or less. Plainview Sandy Variant (98A*) will produce an estimated 600 lb./ac. HAHT areas, along with Rock Outcrops produce 0 pounds of dry matter per year.

As Mr. Kitzrow states, "*In Table 6 of the USDA published soil survey report for Deschutes County, the terms unfavorable, normal and favorable are used to connote production based upon below normal, normal and above normal rainfall and thus moisture available to support the growth of forage plants. According to Technical Note #3 (TN Range No. 3 NRCS, June 2009) it takes 912.5 pounds of dry matter to feed a cow / calf pair for one month defined as an AUM. Based upon the acreages for each soil present within the study area, the total dry matter production for the entire property under review is 86,290 pounds of dry matter for assumed normal conditions. The accepted standard for sustainable grazing is 25% of dry matter production (with 75% residual grazing products for future crop production and wildlife habitat). Therefore, the sustainable grazing potential for the entire study area (135.45 acres) is 1.97 pair per one month, or 23.6 pair per year. A commercial operation is not sustainable based upon only 1.95 AUM/month. This number does not reflect this site is unusually droughty with inordinately coarse sandy soils lacking ash. The value most likely is around 1.25 to 1.5 AUM per month given the harsh soil conditions.*

The soil and growing conditions DO NOT represent a sufficient number of AUMs for a commercially viable livestock operation. The fact remains too much of the site is comprised of soils with very poor to virtually no livestock grazing potential due to a variety of soil-based conditions. In other words, due to its limitations for growing forage, the properties cannot produce enough food to support livestock, and is therefore unsuitable for livestock grazing.

This application would also like to address the issue of soil amendments, i.e., the general idea of adding topsoil, compost, Ready Grow Soil, etc., to the underlying soil landscape to help remedy the ground for beneficial agricultural use and improved productivity. At the onset, this application submits that there is no clear law stipulating that an Applicant is required to assess the soil amendment process as part any state statute or rule. The law requires an assessment of a property or building envelope's soils, but not about whether it is, or would be, possible to augment the soils to assess whether a particular piece of property is, or is not, Agricultural land. Nevertheless, the Applicant has investigated the feasibility of amending the soils on this 135.45-acre Subject Property and, based on this evidence, believes that the astronomical costs associated with this amendment process further prove the general unsuitability of the Subject Property for agricultural use (Soil Amendment Cost Analysis, included as Exhibit S).

Staff generally concurs with the applicant's analysis and finds that the submitted soil study demonstrates that the property predominantly consists of soils that are not suitable for farm use. As discussed below, staff requests the Hearings Officer make specific findings regarding OAR 660-033-030, Identifying Agricultural Land. A recent Land Use Board of Appeals remand decision (LUBA No. 2026-015; *Central Oregon Landwatch v Deschutes County and BCL LLC*) has provided additional guidance on the factors that must be weighed, in addition to a soil study, to determine whether a property meets the definition of agricultural land.

> ***Policy 2.2.2 Exclusive Farm Use sub-zones shall remain as described in the 1992 Farm Study and shown in the table below, unless adequate legal findings for amending the sub-zones are adopted or an individual parcel is rezoned as allowed by Policy 2.2.3.***

FINDING: The applicant did not ask to amend the subzone that applies to the subject property; rather, the Applicant requested a change under Policy 2.2.3 and has provided evidence to support rezoning the subject property to MUA10.

> ***Policy 2.2.3 Allow comprehensive plan and zoning map amendments, including for those that qualify as non-resource land, for individual EFU parcels as allowed by State Statute, Oregon Administrative Rules and this Comprehensive Plan.***

FINDING: The applicant requested approval of a plan amendment and zone change to re-designate the property from Agricultural to Rural Residential Exception Area and rezone the property from EFU to MUA10. The applicant did not seek an exception to Goal 3 – Agricultural Lands, but rather to demonstrate that the subject property does not meet the state definition of "Agricultural Land" as defined in Statewide Planning Goal 3 (OAR 660-033-0020).

The applicant provided the following response to this policy:

> This plan policy specifically allows non-resource amendments on EFU land. In this case, the Applicant is seeking approval of a Comprehensive Plan Map amendment and zone change to re-designate the Subject Property from Agricultural to Rural Residential Exception Area and rezone the Subject Property from EFU-SC to MUA-10. The Applicant is not seeking an exception to Goal 3 –Agricultural Lands, but seeks to demonstrate that the Subject Property does not meet the state definition of "Agricultural Land", as defined in Statewide Planning Goal 3 (OAR 660-033-0020). Deschutes County has allowed this approach in previous Deschutes County Board and Hearings Officer's decisions as previously cited and summarized herein. Additionally, Oregon's Land Use Board of Appeals (LUBA) allowed this approach in *Wetherell v. Douglas County*, 52 Or LUBA 677 (2006), where LUBA states, at pp. 678-679:
>
> > *"As we explained in DLCD v. Klamath County, 16 Or LUBA 817, 820 (1988), there are two ways a county can justify a decision to allow nonresource use of land previously designated and zoned for farm use or forest uses. One is to take an exception to Goal 3 (Agricultural Lands) and Goal 4 (Forest Lands). The other is to adopt findings which demonstrate the land does not qualify either as forest lands or agricultural lands under the statewide planning goals. When a county pursues the latter option, it must demonstrate that despite the prior resource plan and zoning designation, neither Goal 3 or Goal 4 applies to the property. Caine v. Tillamook County, 25 Or LUBA 209, 218 (1993); DLCD v. Josephine County, 18 Or LUBA 798, 802 (1990)."*
>
> LUBA's decision in *Wetherell* was appealed to the Oregon Court of Appeals and the Oregon Supreme Court but neither court disturbed LUBA's ruling on this point. In fact, the Oregon Supreme Court changed the test for determining whether land is agricultural land to make it less stringent. *Wetherell v. Douglas County*, 342 Or 666, 160 P3d 614 (2007). In that case, the Supreme Court stated that:
>
> > "Under Goal 3, land must be preserved as agricultural land if it is suitable for "farm use" as defined in ORS 215.203(2)(a), which means, in part, "the current employment of land for the primary purpose of obtaining *a profit in money*" through specific farming-related endeavors." *Wetherell*, 342 Or at 677.
>
> The *Wetherell* court held that when deciding whether land is agricultural land "a local government may not be precluded from considering the costs or expenses of engaging in those activities." *Wetherell,* 342 Or at 680. The facts presented in the subject application are sufficiently similar to those in the *Wetherall* decisions and in the above-mentioned Deschutes County plan amendment and zone change applications. The Subject Property is primarily composed of Class 7 and 8 nonagricultural soils making farm-related endeavors not profitable. This application complies with Policy 2.2.3.

Staff agrees that the facts presented by the applicant in the burden of proof for the subject application are similar to those in the *Wetherell* decisions and in the aforementioned Deschutes County plan amendment and zone change applications. The applicant provided evidence in the record addressing whether the property qualifies as non-resource land. Therefore, the applicant has the potential to prove the property is not agricultural land and does not require an exception to Goal 3 under state law.

Policy 2.2.4 Develop comprehensive policy criteria and code to provide clarity on when and how EFU parcels can be converted to other designations.

FINDING: The applicant provided the following response in the submitted burden of proof:

> This plan policy provides direction to Deschutes County to develop new policies to provide clarity when EFU-zoned parcels can be converted to other designations. In the *Landholdings* decision (and *Powell/Ramsey* decision), the Hearings Officer found this policy is directed at the County rather than at an individual applicant. The County's interpretation of Policy 2.2.3 above, spells out when and how EFU parcels can be converted to other designations, and the facts presented by this case merit conversion of the Subject Property into a new plan designation under the County's interpretation of Policy 2.2.3.

Staff concurs with the County's previous determinations in plan amendment and zone change applications and finds the proposal is consistent with this policy.

Goal 3, Ensure Exclusive Farm Use policies, classifications and codes are consistent with local and emerging agricultural conditions and markets.

Policy 2.2.13 Identify and retain accurately designated agricultural lands.

FINDING: The applicant provided the following response to this policy:

> This plan policy requires the county to identify and retain agricultural lands that are accurately designated. In the *Landholdings* decision (and *Powell/Ramsey* decision), the Hearings Officer found this policy is directed at the County rather than at an individual applicant. As demonstrated herein, the Subject Property was not accurately designated as agricultural lands as evidenced by the soil study and NRCS soil data that found the Subject Property consists of predominantly Class 7 and 8 soils, is unsuitable for farm use, and does not constitute agricultural lands. It does not meet the definition of "Agricultural Land" provided by Statewide Goal 3.

Discussion on whether the property meets the definition of agricultural land is included in more detail under OAR 660-033-0020, below. Staff requests the Hearings Officer make findings regarding whether the subject property is 'accurately designated agricultural lands.'

Section 2.5, Water Resources Policies

Goal 6, Coordinate land use and water policies.

Policy 2.5.24 Ensure water impacts are reviewed and, if necessary, addressed for significant land uses or developments.

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

> The Applicant is not proposing a specific development proposal or proposing a significant land use at this time. Therefore, the Applicant is not required to demonstrate water impacts associated with development. Regardless, the map amendment and zone change should have little or no impact on water resources. If applicable, the Applicant will be required to address this criterion during future development of the Subject Property, which would be reviewed under any necessary land use process (e.g., conditional use permit, tentative plat). This criterion, therefore, does not apply because no pending development proposal or use of the Subject Property is proposed in association with this application.

Staff includes the following findings from *Aceti IV* (247-20-000438-PA, 439-ZC) for reference. In this previous land use decision, the Hearings Officer and the Board of County Commissioners (Board) made the following findings:

> The Hearings Officer found in *Aceti 1* that this policy is directed at the County. In said decision, the Hearings Officer cited a previous decision of Hearings Officer Green for file nos. PA-14-2 and ZC-14-2 that stated, "Nevertheless, in my decision in *NNP* I held it is not clear from this plan language what ''water impacts" require review -- impacts to water supplies from use or consumption on the subject property, or Impacts to off-site water resources from development on the subject property." The Applicant has not proposed any particular land use or development, and any subsequent applications for development of the subject property would be reviewed under the County's land use regulations that include consideration of a variety of on- and off-site impacts.
>
> The Hearings Officer finds it is premature to review "water impacts" because the Applicant has not proposed any particular land use or development. Thus, there are no "significant land uses or developments" that must be reviewed or addressed in this decision. Any subsequent applications for development of the subject property will be reviewed under the County's land use regulations, which include consideration of a variety of on- and off-site impacts. Notwithstanding this statement, the Hearings Officer includes the following findings.
>
> The Applicant's requested zone change to RI would allow a variety of land uses on the subject property. The land east of the subject property (57 acres) is zoned RI and developed with a variety of rural industrial uses. Consequently, it is likely that similar development may occur on the property if it were re-designated and rezoned to RI. In light of existing uses in the surrounding area, and the fact that Avion Water Company provides water service in the Deschutes Junction area, and a 12-inch diameter Avion water line and two fire hydrants are

already installed on site, future development of the subject property with uses permitted in the RI Zone will have water service.

The subject property has 16 acres of irrigation water rights and, therefore, the proposed plan amendment and zone change will result in the loss or transfer of water rights unless it is possible to bring some irrigated water to the land for other allowed beneficial uses, such as irrigated landscaping. As stated in the Applicant's Burden of Proof, the 16 acres of irrigation water rights are undeliverable and are not mentioned in the property deed. The Applicant has not grown a crop on the subject property or effectively used his water right since the overpass was constructed in 1998.

The Hearings Officer finds that the proposal will not, in and of itself, result in any adverse water impacts. The proposal does not request approval of any significant land uses or development.

Staff finds the applicant has demonstrated compliance with this Comprehensive Plan policy but requests the Hearings Officer modify these findings as they see fit.

Section 2.7, Open Spaces, Scenic Views and Sites

Goal 1, Coordinate with property owners to ensure protection of significant open spaces and scenic view and sites.

Policy 2.7.3 Support efforts to identify and protect significant open spaces and visually important areas including those that provide a visual separation between communities such as the open spaces of Bend and Redmond or lands that are visually prominent.

Policy 2.7.5 Encourage new development to be sensitive to scenic views and sites.

FINDING: The submitted burden of proof includes the following analysis:

The County protects scenic views and sites along major rivers and roadways by imposing Landscape Management (LM) Combining Zones to adjacent properties. As the County Hearings Officer recently ruled in a similar matter (Deschutes County File Nos. 247-21-001043-PA, 247-21-001044-ZC) these policies are fulfilled by the County's Goal 5 program. The LM combining zone is not applicable to the Subject Property.

Staff agrees with the applicant's analysis and notes that the Landscape Management Combining Zone does not apply to the subject property.

Chapter 3, Rural Growth

Section 3.2, Rural Development

Growth Potential

As of 2010, the strong population growth of the last decade in Deschutes County was thought to have leveled off due to the economic recession. Besides flatter growth patterns, changes to State regulations opened up additional opportunities for new rural development. The following list identifies general categories for creating new residential lots, all of which are subject to specific State regulations.

- ***2009 legislation permits a new analysis of agricultural designated lands***
- ***Exceptions can be granted from the Statewide Planning Goals***
- ***Some farm lands with poor soils that are adjacent to rural residential uses can be rezoned as rural residential***

FINDING: This section of the Comprehensive Plan does not contain Goals or Policies, but does provide the guidance above. In file nos. 247-24-000097-PA, 98-ZC 247-25-000021-MA (*BCL*), the Hearings Officer and Board made the following findings regarding this Comprehensive Plan section:

> The Hearings Officer agrees with Applicant that this part of the Comprehensive Plan is not a relevant approval criteria. The Hearings Officer finds the language in this section is purely aspirational and provides no clear and objective standards which must be met by an applicant for a plan and zone change.

The applicant provided the following response to this Comprehensive Plan section:

> The above part of the plan is not a plan policy and is not an applicable approval criterion but rather an explanation of how the County calculated expected growth that might occur on rural residential lands in the future based on its understanding of the types of changes allowed by law. As demonstrated above, the County's Comprehensive Plan provisions anticipate the need for additional rural residential lots as the region continues to grow. This includes providing a mechanism to rezone farm lands with poor soils to a rural residential zoning designation. While this Zone Change application does not include the creation of new residential lots, the Applicant has demonstrated that the Subject Property is comprised of poor soils that are adjacent to rural residential uses. The Subject Property has extremely poor soils and do not qualify as agricultural land that must be protected by Goal 3. Rezoning the Subject Property to MUA-10 is consistent with this criterion, as it will provide for an orderly and efficient transition to rural and agricultural lands.

Staff concurs with the applicant's analysis and finds, to the extent this section includes relevant approval criteria, the applicant has demonstrated compliance.

> Section 3.3, Rural Housing
>
> ***Rural Residential Exception Areas***
>
> ***In Deschutes County most rural lands are designated for farms, forests or other resources and protected as described in the Resource Management chapter of this Plan. The majority of the land not recognized as resource lands or Unincorporated Community is designated***

Rural Residential Exception Area. The County had to follow a process under Statewide Goal 2 to explain why these lands did not warrant farm or forest zoning. The major determinant was that many of these lands were platted for residential use before Statewide Planning was adopted.

In 1979 the County assessed that there were over 17,000 undeveloped Rural Residential Exception Area parcels, enough to meet anticipated demand for new rural housing. As of 2010 any new Rural Residential Exception Areas need to be justified through initiating a nonresource plan amendment and zone change by demonstrating the property does not meet the definition of agricultural or forest land, or taking exceptions to farm, forest, public facilities and services and urbanization regulations, and follow guidelines set out in the OAR.

FINDING: The applicant provided the following response to this Comprehensive Plan language:

> Prior Hearings Officer's decisions have found that Section 3.3 is not a plan policy or directive. Further, no goal exception to Statewide Planning Goal 3 is required for the subject application because the Subject Property does not qualify as farm or forest zoning or agricultural lands under the statewide planning goals. The County has interpreted the RREA plan designation as the proper "catchall" designation for non-resource land and therefore, the Rural Residential Exception Area (RREA) plan designation is the appropriate plan designation to apply to the Subject Property.

Staff agrees with prior Deschutes County Hearings Officer interpretations and finds that the above language is not a policy and does not require an exception to the applicable Statewide Planning Goal 3. The applicant provided evidence in the record demonstrating that the property does not qualify as agricultural or forest land. Staff asks the Hearings Officer to make specific findings related to this language.

Section 3.7, Transportation

Appendix C – Transportation System Plan
ARTERIAL AND COLLECTOR ROAD PLAN
…
Goal 4. Establish a transportation system, supportive of a geographically distributed and diversified economic base, while also providing a safe, efficient network for residential mobility and tourism.

> ***…***
> ***Policy 4.4 Deschutes County shall consider roadway function, classification and capacity as criteria for plan map amendments and zone changes. This shall assure that proposed land uses do not exceed the planned capacity of the transportation system.***

FINDING: This policy applies to the County and advises it to consider the roadway function, classification and capacity as criteria for plan amendments and zone changes. The County will

comply with this direction by determining compliance with the Transportation Planning Rule (TPR), also known as OAR 660-012, as described below in subsequent findings.

OREGON ADMINISTRATIVE RULES CHAPTER 660, LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

Division 6, Goal 4 – Forest Lands

OAR 660-006-0005, Definitions

(7) "Forest lands" as defined in Goal 4 are those lands acknowledged as forest lands, or, in the case of a plan amendment, forest lands shall include:

(a) Lands that are suitable for commercial forest uses, including adjacent or nearby lands which are necessary to permit forest operations or practices; and

(b) Other forested lands that maintain soil, air, water and fish and wildlife resources.

FINDING: The applicant provided the following response in the Burden of Proof:

> The Subject Property and surrounding areas do not include any lands that are suited for forestry operations. Goal 4 says that forest lands "are those lands acknowledged as forest lands as of the date of adoption of this goal amendment." The Subject Property does not include lands acknowledged as forest lands as of the date of adoption of Goal 4. Goal 4 also says that "where a plan amendment involving forest lands is proposed, forest land shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water and fish and wildlife resources." This Comprehensive Plan Map Amendment does not involve any forest land. The Subject Property does not contain any merchantable timber and are not located in a forested part of Deschutes County. The nearest forest-zoned lands are almost one (1) mile from the Subject Property.
>
> The Subject Property is not zoned for forest lands. The Subject Property does not contain merchantable tree species and there is no evidence in the record that the Subject Property has been employed for forestry uses historically.

Staff concurs with the applicant's response and finds the subject property does not constitute forest lands, as defined above.

Division 33 - Agricultural Lands & Statewide Planning Goal 3 - Agricultural Lands;

OAR 660-015-0000(3)

To preserve and maintain agricultural lands.

Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space and with the state's agricultural land use policy expressed in ORS 215.243 and 215.700.

FINDING: Goal 3 continues on to define "Agricultural Land," which is repeated in OAR 660-033-0020(1). Staff makes findings on this topic below and incorporates those findings herein by reference.

OAR 660-033-0020, Definitions

For purposes of this division, the definitions in ORS 197.015, the Statewide Planning Goals, and OAR Chapter 660 shall apply. In addition, the following definitions shall apply:
(1)(a) "Agricultural Land" as defined in Goal 3 includes:

(A) Lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon[1];

FINDING: The applicant's basis for not requesting an exception to Goal 3 is based on the premise that the subject properties are not defined as "Agricultural Land." In support, the applicant offered the following response in the burden of proof:

> ORS 215.211 grants a property owner the right to rely on more detailed information that provided by the NRCS Web Soil Survey of the NRCS to "assist the county to make a better determination of whether land qualifies as agricultural land." Statewide Goal 3, discussed above, and OAR 660-033-0030(5) also allow the County to rely on the more detailed and accurate information by a higher order soil survey rather than information provided by the NRCS. The law requires that this survey use the NRCS soil classification system in conducting the survey, making it clear that the point of the survey is to provide better soil classification information than provided by the NRCS for use in making a proper decision whether land is or is not "Agricultural Land." The Subject Property is not properly classified as Agricultural Land and does not merit protection under Goal 3. The soils are predominately Class 7 and 8, as demonstrated by the site-specific Order 1 soils study (Exhibit F) conducted by Mr. Kitzrow, a certified soils scientist.
>
> State law, OAR 660-033-0030, allows the County to rely on for more accurate soils information, such as Mr. Kitzrow's soil assessment. Mr. Kitzrow found that approximately 62 percent of the soils on the Subject Property is Class 7 and 8 soils that have severe limitations for farm use. He also found the Subject Property to have low soil fertility, shallow and very shallow soils, and low available water holding capacity, all of which are considerations for the determination for suitability for farm use.

[1] OAR 660-033-0020(5): "Eastern Oregon" means that portion of the state lying east of a line beginning at the intersection of the northern boundary of the State of Oregon and the western boundary of Wasco County, then south along the western boundaries of the Counties of Wasco, Jefferson, Deschutes and Klamath to the southern boundary of the State of Oregon.

Because the Subject Property is comprised predominantly of Class 7 and 8 soils, the land under application does not meet the definition of "Agricultural Land" under OAR 660-033-020(1)(a)(A), listed above as having predominantly Class I-VI soils.

Staff has reviewed the Order 1 soil study prepared by Gary Kitzrow and concurs with the applicant's analysis.

> ***(B) Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices; and***

FINDING: The applicant's basis for not requesting an exception to Goal 3 is that the subject properties are not defined as "Agricultural Land." The applicant provided the following analysis:

> The subpart is important because it provides the relevant definition for "farm use" and thus what to review the "considerations" in (B) against. In other words, this part of the definition of "Agricultural Land" requires the County to consider whether the Class 7 and 8 soils found on the Subject Property is suitable for farm use despite their Class 7 and 8 soil classification. The Oregon Supreme Court has determined that the term "farm use" as used in this rule and Goal 3 means the current employment of land for the primary purpose of obtaining a profit in money through specific farming-related endeavors. In relevant part, ORS 215.203(2)(a) states that:
>
> > *"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." Emphasis added.*
>
> Importantly, the definition and Oregon law require more than just having a cow or horses, growing a patch of grapes, or having a passion for rural living. What the law requires is that the land be "currently employed" for "the primary purpose of obtaining a profit in money[.]" ORS 215.203(2)(a). Oregon courts have consistently addressed profitability as an element of the definition of "agricultural land." The costs of engaging in farm use are thus relevant to determining whether farm activities are profitable and this is a factor in determining whether land is agricultural land. Wetherell v. Douglas County, 342 Or 666, 160 P3d 614 (2007). In Wetherell, the Oregon Supreme Court held that profitability is a "profit in money" rather than gross income. In Wetherell, the Court invalidated a rule that precluded a local government from analyzing profitability in money as part of this consideration.
>
> The Subject Property has no current valid water rights and have not been grazed with irrigation for at least 30 years. The Subject Property is not in farm use and has not been in any productive farm use for close to 30 years, when irrigation water ceased to flow to the

Subject Property. Regarding Tax Lot 200, in its Decision of County Land Use File No. MP-13-2, CU-13-19, CU13-20 (Exhibit D), the County details that the irrigation pond on Tax Lot 200 "is no longer in use because the Plainview Irrigation Ditch that once served the properties has not been used for the delivery of water for a period of approximately 30 years. When active, this ditch provided water to [Tax Lot 200]; however, since its discontinuation, the water rights have been considered to have been abandoned by the State of Oregon and have since been cancelled as shown by the Final Order from the Water Resources Department of the State of Oregon (Exhibit O)." This same conclusion can be said for other properties in the area which were reliant on the Plainview Ditch (or others nearby), including Tax Lot 900 and the abutting Map and Tax Lot 151133D000300, located northeast of the intersection Fryrear Road and Plainview Road.14 No water rights appear to ever have been associated with Tax Lot 100.

As mentioned above, water availability is the defining constraint for agricultural productivity in this area. Without access to surface or groundwater irrigation, the Subject Property is fully dependent on natural precipitation, which is limited and highly variable. This limitation reduces the ability of this property to grow crops or support reliable forage production for livestock compared to irrigated agricultural lands elsewhere in the county. Acquisition of water rights is not economically or practically feasible under current regulatory and market conditions. Even under optimistic conditions, seasonal grazing on the property would generate minimal annual lease or production revenue due to soil limitations and lack of water. These returns would be insufficient to compensate for the underlying costs such as property taxes, fencing maintenance, labor, water and supplemental feed. The Subject Property lacks the infrastructure necessary to support efficient livestock operations at any meaningful scale, and significant investment would be required to repair existing fencing and install new fencing where needed, and provide livestock water infrastructure and access improvements. When combined with soil remediation costs and water limitations, total capital requirements far exceed the potential agricultural return on investment. In summary, the Subject Property lacks water, contains poor soils, and would produce crops or livestock well below regional agricultural viability thresholds, even in the best of cases. Based upon this information, the Subject Property is not suitable for farm use based upon the relevant suitability factors (OAR 660-033-0020(1)(a)(B)).

Soil Fertility:

As detailed in the site specific Order 1 Soils Survey, the Subject Property has extremely poor soils, "consistently infertile" and will not grow crops without inordinate amounts of added fertilizers.15 This impacts the ability of the Subject Property to grow crops, including grass seed or hay. It also contributes to the Subject Property's low forage impacting the grazing factor as more particularly described below. This contributes to poor fertility and makes the Subject Property unsuitable for farm use. Specifically, Mr. Kitzrow made the following findings regarding soil fertility on the Subject Property:

> *The soils under consideration for this report are predominately shallow to (lava bedrock). As confirmed by both field and lab data, soil textures within the preponderance areas of*

Lickskillet show less than 10% clay in every soil profile at every test location. In fact, most sites tested show between 4 to 6% clay which is extremely low by all standards. Low silt, clay and ash contents (<10%) equate to low fertility since these sands do not readily hold nutrients as they do not hold water as well. Clay micelles are essential to retain NPK fertilizers for reuptake of these macronutrients by any crop including hay and pasture products. Low clay in conjunction with low silt plus ash percentages ensure any nutrient additions will immediately leach through the soil profile.

Two inches of water holding capacity is the threshold for successful farm crop establishment based upon both Oregon LCC guidelines, local experience, AND OSU and WSU Extension empirical research. The preponderance of the soils contained within the study area (135.45 acres) does not contribute 2+" of water holding capabilities. Capability Class 7 soils (Lickskillet) have very low nutrient status and little ability to improve with amendment.

Along with droughty conditions, the high sand contents and unusually low clay contents yield low fertility levels in all soils present. Sand does not hold nutrients therefore cropping is severely limited. The CEC (Cation Exchange Capacity) is very low in these sandy soils. No crops can adequately grow
without supplemental fertilizers. The use of fertilization must be frequent and complete given the soils present. The revenue from most locally adapted crops will not be able to cover the costs of the inputs and management. No crops can adequately grow without supplemental fertilizers. The revenue from most locally adapted crops will not be able to cover the costs of the inputs and management. The addition of fertilizers for the vast majority of this landbase will NOT be usable since there is inadequate water in the soil profile to solubilize any added complete fertilizers. No irrigation combined with very low (WHCs) means the fertilizer is not dissolved for use during the critical initial growing period in early spring. This pertains to ALL soils on this study area including both Class 6 and Class 7 soils. Water is just not available to initiate crop establishment.

The fact that the soils are low fertility unless made fertile through artificial or amended means supports the Applicant's position that the Class 7 and 8 soils and the entire Subject Property is not suitable for farm use. The costs to purchase and apply soil amendments are a part of the reason why it is not profitable to farm the Subject Property (Exhibit S). Additionally, as Mr. Kitzrow states, “the soils on the Subject Property are shallow and very shallow further limiting any potential for commercially farming because the shallow soil depth limits the overall volume of soil available for plant roots and limits the size of the overall nutrient pool.”

Unsuitability for Grazing:

Overall, dryland farming on the Subject Property is not an option and irrigation, even if it were available, will not raise the production to a commercially viable level. The Subject Property cannot sustain more than very limited grazing and an insignificant amount of

Animal Unit Months (AUMs). This is the case even assuming the entire Subject Property qualifies for irrigation and water is applied.

As discussed in Exhibit F, the site-specific soils study provides an estimate of the forage production potential on the Subject Property based on soil characteristics. It estimates that the total annual dry matter production in a typical year is approximately 82,290 lbs. With harvest efficiency of the grazing livestock taken into account, the total net dry matter production on the Subject Property that would be available for livestock consumption each year is approximately 20,572.5 lbs.16 As explained in Estimating Initial Stocking Rates published by Dan Ogle and Brendan Brazee at the USDA Natural Resources Conservation Services, an estimated 912.5 lbs. of dry matter is required to feed one cow-calf pair, or equivalent, for one month, equivalent to one Animal Unit Month ("AUM"). Therefore, based on the site-specific soils study, the sustainable grazing potential for the entire Subject Property (±135.45 acres) is 20,572.5 pounds of net dry matter available which equates to 1.97 cow/calf pair per one month (AUM), or 23.6 pair per year. However, Mr. Kitzrow adds that this number does not account for the fact that the Subject Property is unusually droughty with inordinately coarse sandy soils lacking ash, and thus, the value most likely is around 1.25 to 1.5 AUM per month given these harsh soil conditions.

…

For the Applicant to consider the potential for beef cattle production, the calculations regarding potential productivity for livestock forage in this part of the Subject Property are shown below. The assumptions used below and the calculations showing an expected annual profit, have been updated to account for recent changes.

- One AUM is the equivalent to the forage required for a 1,000 lb. cow and calf to graze for 30 days (±912.5 pounds of forage).17
- On good quality forage, an animal unit will gain 2 pounds per day.
- Two animal units will eat as much in one month as one animal unit will eat in two months.
- Forage production of dry land is not continuous; once the forage is eaten, it generally will not grow back until the following spring.
- An average market price for beef is $3.24 per pound as of 2024.

Based on these assumptions, and using (1.97 AUMs), the value of beef production that could be generated on the approximately 135.45-acre Subject Property is shown below:

Days	Average Daily Gain (lbs.)	AUM	AUE	Price Per Pound ($)	Annual Profit ($)
30	2	1.97	1	3.24	382.97

Thus, the total gross beef production potential for the Subject Property is approximately $382.97 annually. This is an extremely low number that could not support production of livestock. In addition, the $382.97 annual profit figure represents gross income and does not deduct the costs of land acquisition or farm operating costs such as fencing costs, water

expenses, land preparation, calves, veterinary costs, or any other costs of production. After deducting costs associated with livestock grazing, it is clear that the subject properties could not be farmed profitably and would not be suitable for the production of livestock.

The key metric in this analysis is the calculated AUM because that AUM number is not specific to any single grazing species. In other words, AUMs are applicable to other types of animals beyond beef cattle, including goats, sheep, etc. However, because cattle is generally the most profitable, if cattle is not found to be profitable using the above formula on a given property, other types of animals are also highly unlikely to be profitable. Accordingly, calculating the anticipated gross profit assuming cattle grazing is a "best case scenario" when determining potential under ORS 215.284(2)(b). In this case (and in any case), rather than cow, more sheep or goats could be grazed on the Subject Property because sheep and goats are smaller animals that eat less forage. But similarly, because they are smaller animals that eat less forage, sheep and goats understandably produce fewer farm products per animals, which then has a direct and proportionate impact on any anticipated gross profit and the viability of grazing on the Subject Property.

In Deschutes County, horse and equine facilities also commonly rely upon irrigated pasture to supplement feed as opposed to just grazing, and thus such operations typically have associated and irrigated pasture lands, which do not exist on the Subject Property. These operations typically include horse boarding, stables, arenas, and other infrastructure, and standard expenses including cost of supplemental feed, and thus the Subject Property is not suitable for the production and keeping of equines.

Climatic Features:

The climate in Central Oregon is cold and dry, with a very short growing season. According to the OSU Extension Service the growing season for Bend is only 80-90 days long. According to Mr. Kitzrow, climatic conditions of this area make is difficult for production of most crops, as stated below:

> *The West Bend Region of Deschutes County represents typical weather conditions for the county Approximately 12" or less per year with little to no rainfall occurring during the growing season. Due to the large acreage in this survey area of non-arable soils, climate restrictions are not the primary limiting factor. Poor soil quality for 61.7% of the parcel dictates the viability (lack thereof) of future farming operations by soil conditions. This survey area will NOT support a commercial livestock operation. The low annual precipitation, high summer temperature and shortened frost-free growing season make this a difficult climate for production of most crops. Precipitation falls mainly between November and June, with long summer drought. These soils do not retain the moisture required. The average annual air temperature is 48 degrees F (bordering Frigid Soil Temperature Regime in this specific geographic microsite area) with extreme temperatures ranging from -26 to 104 degrees F. Frigid soils (which begin less than 2 miles to the west) decrease the frost-free season and annual soil temperature statistically. On this specific site the number of Frost-Free days is less than 70 days which is inordinately low and will*

combined with high albedo and low relative humidity during all portions of the growing season prevent this site from producing commercial farm production. Loamy Sands, Sands and non-ashy Sandy Loams do not use snow melt nor spring rain in an efficient manner.

Existing and Future Availability of Water for Farm Irrigation Purposes:

In this specific study area, the frost-free period is typically less than 65 days and the "freeze-free" period averages 90 days. The optimum period for plant growth is from late March through June. These harsh climatic conditions coupled with very low soil available water holding capacity limits the potential of crop production on the mapped soils.

In addition, the Subject Property contains zero acres of water rights and irrigation rights. Due to the preponderance of Capability Class 7 and 8 soils on the Subject Property, irrigation would not improve the growth of crops. The Class 7 and 8 soils are degraded or naturally poor enough that irrigation does not change their Capability Class nor utility status. If irrigation waters become available in the future, the extra water on these poorer mapping units (comprising 61.7% of the Subject Property), would not elevate the number of AUMs enough to make the Subject Property sustain a viable livestock operation.

Even if the Subject Property was considered "irrigated" under OAR 660-033- 0020(9), and supplemental water was available, which it is not, the added water would be immediately lost due to percolation and lost from the critical area (rhizosphere) where plant growth takes place. Adding extra water during the growing season does not add enough extra net dry production matter statistically to raise the status from unfavorable to normal, and if fertilizer and water were added, the solubilized fertilizer could move straight down the soil profile and go directly into nearby waterbodies, thereby polluting ground waters and local streams. Irrigating the soils found on the Subject Property, which has low fertility, low capacity to store nutrients, and very low available water holding capacity translates into low productivity for crops that would amount to no profit for a farm operator and an irresponsible waste of scarce water resources.

Existing Land Use Patterns:

Existing land use patterns in the area are varied, but largely contain larger lots with residential uses and some hobby farm use. The Subject Property is north of Highway 20 and approximately equidistant between the City of Sisters to the northwest and the unincorporated community of Tumalo to the southeast. The Subject Property is bordered by Fryrear Road to the west while Plainview Road borders the Subject Property to the south. To the north, the Subject Property abuts Fryrear Ranch Road. Zoning to the west, north, and northeast is MUA-10, while to the immediate south, the zoning is EFU-TRB. Besides a few larger farm units, growing crops, located south of the Subject Property and along Highway 20, wide expanses of contiguous farming operations are not present in the existing land use pattern. The contiguous properties surrounding the Subject Property, even with some zoned MUA-10 and some zoned EFU, display comparable existing conditions and geomorphic surfaces to the Subject Property.

Technological and Energy Inputs Required:

Any animal husbandry on the Subject Property would require substantial capital investment and would be unlikely to offer reasonable results such that a reasonable farmer would attempt to engage in such farm use on the property. These improvements include, but are not limited to, construction of new fencing, barns and other agricultural structures, development of water sources, and the attempted development of pasture lands associated with uses for horses, cattle, goats, sheep, alpaca, and other farm animals. The cost of capital for farm operations and improvements is also relevant to the inquiry of suitability. Current USDA lending rates are included as Exhibit Q.

…

As described in the Soils Report, due to variable land use patterns in this general area combined with a lack of any current farming practices in the immediate area, re-zoning these properties from EFU-SC to MUA-10 will not lead to an increase in conflict regarding normal farming practices. This specific area has not been in sustainable farm production; therefore, adjacent and adjoining lands will not be impacted by a change in zoning.

Accepted Farming Practices

Deschutes County has previously found that it is not an accepted farm practice to irrigate Capability Class 7 and 8 soils (*Aceti* Decision). Here, although LUBA's remand instructions include that availability of irrigation water must be assumed, it remains true that it is not an accepted farm practice to irrigate such poor soils.

According to Mr. Kitzrow:

> *Approved and standard farming practices are not applicable to the current study parcel. The subject property contains soils which are not suited to farming operations. Infertile, extremely sandy and non-ashy soils with low water holding Lickskillet, Stukel and Plainview/Stukel Sandy Variant soils mixed with rock out crops prohibits proper farm crop establishment and maturation. Extremely shallow top soils for over 50% of the subject study area combined with exclusively Sandy Loams and Loamy Sand textures further reitierate the use of accepted farming practices is not commercially viable for a preponderance of the landbase (61.7%/83.56 acres). The very short Frost-Free growing season combined with shallow, extremely sandy soils (which do not adequately retain water or nutrients) ensure this study area will not accommodate commercial farming practices nor development.*

In *Central Oregon LandWatch v. Deschutes County* (BCL), LUBA No. 2026-015, LUBA provided the following overview of the analysis required under this section:

> As noted, OAR 660-03 3 -0020(1)(a)(B) defines "agricultural land" to also include "[1] 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."

...

In Destiny Court, we agreed with the county that the applicant is not required to go through a "rate 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.

Staff requests the Hearings Officer make specific findings on this issue and determine whether the applicant has demonstrated that the Class 7 and Class 8 soils are not suitable for farm use based on the factors listed above.

(C) Land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.

FINDING: The applicant offered the following response as included in the submitted burden of proof statement:

> The Subject Property is not land necessary to permit farm practices to be undertaken on adjacent or nearby lands. The nearest properties to the Subject Property that is agriculturally zoned and appears to be irrigated and engaged in farm use are located to the south of Plainview Road and Snow Creek Lane, and owned by Joseph and Lorraine Kennedy Family Trust (1611040000807, 1611040000804, 1611090000101) and Angel's Equine LLC (

1611040000803). These properties abut Highway 20, are irrigated, in farm tax deferral, and appear to be growing pasture grass and/or hay. The Subject Property is separated from this land by two roads, Plainview Road and Snow Creek Lane. History demonstrates that the Subject Property is not necessary to permit the agricultural activity that is occurring on the above-mentioned land.

In addition, there is no history of the Subject Property being used in conjunction with adjacent or nearby farming operations, and there has been no apparent impact from the Subject Property to any adjacent or nearby farm practices. Based on this historical evidence, it does not appear likely that the rezoning of the Subject Property would detract from any adjacent or nearby agricultural operations. In summary, none of the current nor past use of neighboring properties impact, nor are impacted by, the status or use of this Subject Property. Thus, it is not necessary for the Subject Property to remain in its existing designation to permit nearby and adjacent lands to undertake farm practices or to achieve consistency with the DCCP Agricultural Lands Goal 1.

In files 247-25-000727-PA, 728-ZC (*Dickey Road*), the Hearings Officer provided the following statements regarding the analysis required under this section:

OAR 660-033-0020(1)(a)(C) has been the subject of prior Deschutes County land use decisions. The Hearings Officer finds the Oregon Court of Appeals opinion in *Central Oregon Landwatch v. 1000 Friends of Oregon (2024 710 Opinion)*, 330 Or App 321 (2024) is particularly relevant to this case. The *2024 710 Opinion* (@ 333) contains the following holdings that should be applied in this case:

"…consideration of whether land is 'agricultural land' under OAR 660-033-0020(1)(a)(C) must include consideration of whether the land's resource designation and zoning is 'necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands."

And;

"We note that we also agree with LUBA that 'necessary to permit farm practices on adjacent or nearby agricultural lands' is a 'high standard.' Webster's Third New Int'l Dictionary 1510 (unabridged ed 2002) ('necessary' means 'whatever is essential for some purpose' and things that must be had'). That is, we do not understand land to be agricultural land under OAR 660-033-0020(1)(a)(C) merely because its designation as such would merely be 'useful" or 'desirable' for nearby farm practices. Rather, for 'land' to be agricultural land under OAR 660-033-0020(1)(a)(C), that land, considering its resource designation and zoning, must truly be necessary to adjacent and nearby farm practices."

The Hearings Officer concurs with the two above-quoted Oregon Court of Appeals statements. The Hearings Officer finds that to determine if the Subject Property is "necessary" to permit farm practices to be undertaken on adjacent or nearby agricultural lands the Hearings Officer must consider (1) is the Subject Property (itself) physically "necessary" and (2) is retaining the EFU

designation "necessary?" The Hearings Officer agrees with the description of the "necessary" standard set forth by the Court of Appeals in the quoted section above.

Staff finds that the subject property is not necessary for farm practices to be undertaken on adjacent or nearby agricultural land. However, the Hearings Officer may modify these findings as they see fit.

(b) Land in capability classes other than I-IV/I-VI that is adjacent to or intermingled with lands in capability classes I-IV/I-VI within a farm unit, shall be inventoried as agricultural lands even though this land may not be cropped or grazed;

FINDING: The applicant provided the following response in the submitted burden of proof statement:

> The important consideration for the above language is the lands must be a part of a farm unit for this requirement to be implicated. Farm unit is defined as "the contiguous and noncontiguous tracts in common ownership used by the farm operator for farm use as defined in ORS 215.203." The present case does not involve a farm unit as the Subject Property is not currently being used for a farm use.
>
> Goal 3 applies a predominant soil type test to determine if a property is "agricultural land." If a majority of the soils are Class 1-6 in Central or Eastern Oregon, it must be classified "agricultural land." Case law indicates that the Class 1-6 soil test applies to a subject property proposed for a non-agricultural plan designation while the farm unit rule looks out beyond the boundaries of the subject property to consider how the subject property relates to lands in active farming in the area that was once a part of the area proposed for rezoning. It is not a test which requires that 100% of soils on a subject property be Class 1-6.
>
> The farm unit rule is written to preserve large farming operations in a block. It does this by preventing property owners from dividing farmland into smaller properties that, alone, do not meet the definition of "agricultural land."
>
> The Subject Property has no record of being formerly part of a larger area of land that is or was used for farming operations. As demonstrated by the historic use patterns and soils report (Exhibit F), the Subject Property does not have soils which are adjacent to or intermingled with good soils within a farm unit. The Subject Property is not in farm use and contain soils that make the properties generally unsuitable for farm use as the term is defined by State law. The Subject Property is predominately Class 7 and 8 soils and would not be considered a farm unit itself nor part of a larger farm unit based on the poor soils and the fact that they have not been used in conjunction with any adjacent farm properties. As demonstrated by the site specific Order I Soil Survey, conducted by Mr. Kitzrow, the predominant soil types found on the Subject Property are Class 7 and 8, nonagricultural land. The predominance test says that the Subject Property is not agricultural soil and the farm unit rule does not require that the Class 7 and 8 soils that comprise the majority of the

Subject Property be classified as agricultural land due to the presence of a small amount of Class 6 soils on the Subject Property that are not employed in farm use and are not part of a farm unit. As a result, this rule does not require the Class 7 and 8 soils on the Subject Property to be classified agricultural land because a minority of the Subject Property contains soils rated Class 6.

No party has submitted evidence that the subject property is part of a farm unit or has historically been used for farming operations in conjunction with other properties. Staff concurs with the applicant's assessment that this criterion is not applicable but requests the Hearings Officer modify these findings as they see fit.

(c) "Agricultural Land" does not include land within acknowledged urban growth boundaries or land within acknowledged exception areas for Goal 3 or 4.

FINDING: The subject property is not within an acknowledged urban growth boundary or land within acknowledged exception areas for Goals 3 or 4.

OAR 660-033-0030, Identifying Agricultural Land

(1) All land defined as "agricultural land" in OAR 660-033-0020(1) shall be inventoried as agricultural land.

(2) When a jurisdiction determines the predominant soil capability classification of a lot or parcel it need only look to the land within the lot or parcel being inventoried. However, whether land is "suitable for farm use" requires an inquiry into factors beyond the mere identification of scientific soil classifications. The factors are listed in the definition of agricultural land set forth at OAR 660-033-0020(1)(a)(B). This inquiry requires the consideration of conditions existing outside the lot or parcel being inventoried. Even if a lot or parcel is not predominantly Class I-IV soils or suitable for farm use, Goal 3 nonetheless defines as agricultural "lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands". A determination that a lot or parcel is not agricultural land requires findings supported by substantial evidence that addresses each of the factors set forth in 660-033-0020(1).

FINDING: The submitted application materials demonstrate that the subject property is predominantly comprised of Class 7 and Class 8 soils and is not necessary to permit farming operations on surrounding properties.

(3) Goal 3 attaches no significance to the ownership of a lot or parcel when determining whether it is agricultural land. Nearby or adjacent land, regardless of ownership, shall be examined to the extent that a lot or parcel is either "suitable for farm use" or "necessary to permit farm practices to be undertaken on adjacent or nearby lands" outside the lot or parcel.

FINDING: The ownership of the subject parcel is not used to determine whether the parcel is "agricultural land." Staff asks the Hearings Officer to confirm the requirements of this section have been satisfied.

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

(b) If a person concludes that more detailed soils information than that contained in the Web Soil Survey operated by the NRCS as of January 2, 2012, would assist a county to make a better determination of whether land qualifies as agricultural land, the person must request that the department arrange for an assessment of the capability of the land by a professional soil classifier who is chosen by the person, using the process described in OAR 660-033-0045.

FINDING: The soil study prepared by Mr. Kitzrow provides more detailed soils information than contained in the NRCS Web Soil Survey. Mr. Kitzrow's soil study is related to the NRCS Land Capability Classification ("LLC") system that classifies soils as Class 1 through 8. An LCC rating is assigned to each soil type based on rules provided by the NRCS.

The County has consistently relied, in part, on Order 1 soil surveys when determining if a property contains "agricultural lands". LUBA and other appellate bodies have affirmed the County's consideration of this information as substantial evidence. Staff believes the applicant's soil study should be considered as part of the County's determination if the subject property is "agricultural land".

As described below, the application materials do not include a DLCD Soil Assessment Completeness Review in accordance with OAR 660-033-0045(6)(a). Staff therefore requests the Hearings Officer determine, for the purpose of this Goal 3 analysis, whether the site-specific soil study may be relied upon to determine the agricultural productivity of the soils on the subject property.

(c) This section and OAR 660-033-0045 apply to:

(A) A change to the designation of land planned and zoned for exclusive farm use, forest use or mixed farm-forest use to a non-resource plan designation and zone on the basis that such land is not agricultural land; and

FINDING: The applicant requested approval of a non-resource plan designation on the basis that the subject property is not defined as agricultural land.

(d) This section and OAR 660-033-0045 implement ORS 215.211, effective on October 1, 2011. After this date, only those soils assessments certified by the department under section (9) of this rule may be considered by local governments in land use proceedings described in subsection (c) of this section. However, a local government may consider soils assessments that have been completed and submitted prior to October 1, 2011.

FINDING: The applicant submitted a soil study dated April 21, 2026. The soil study was submitted following the ORS 215.211 effective date and the applicant has submitted the soil study to DLCD for a completeness review, which is pending at the time of this staff report. The applicant requests a condition of approval that the subject Comprehensive Plan Amendment and Zone Change continue to be reviewed pending the submittal of the DLCD completeness certification. In a letter dated July 24, 2026, the applicant states they are amenable to a condition requiring submittal of the DLCD completeness review "prior to finalization of the Comprehensive Plan Map amendment and zone change." Staff requests the Hearings Officer make specific findings for this section and determine whether a condition of approval is sufficient, and if so, any timing requirements for such a condition.

(e) This section and OAR 660-033-0045 authorize a person to obtain additional information for use in the determination of whether land qualifies as agricultural land, but do not otherwise affect the process by which a county determines whether land qualifies as agricultural land as defined by Goal 3 and OAR 660-033-0020.

FINDING: The applicant has provided an Order 1 soil survey, which can be considered additional information on the agricultural capability of the property under OAR 660-033-0045. Staff notes this supplemental information does not alter the process by which the county determines whether the subject property is agricultural land as defined by Goal 3 and OAR 660-033-0020, which is described in detail above. However, if the Hearings Officer determines the soil study cannot be reviewed as supplemental information prior to the DLCD completeness review, the findings of this section will need to be updated accordingly.

DIVISION 12, TRANSPORTATION PLANNING

OAR 660-012-0060 Plan and Land use Regulation Amendments

(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:

(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);

(b) Change standards implementing a functional classification system; or

(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand

management. This reduction may diminish or completely eliminate the significant effect of the amendment.

(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or

(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.

FINDING: This above language is applicable to the proposal because it involves an amendment to an acknowledged comprehensive plan. The proposed plan amendment would change the designation of the subject property from AG to RREA and change the zone from EFU to MUA10. The applicant is not proposing any land use development of the property at this time.

The applicant submitted a Transportation Planning Rule ("TPR") assessment, Exhibit H, dated April 2, 2026, and prepared by Julia Kuhn, PE, of Kittleson and Associates. This TPR assessment was reviewed by the County Transportation Planner, who agreed with the report's conclusions. Staff finds that the proposed plan amendment and zone change will be consistent with the identified function, capacity, and performance standards of the County's transportation facilities in the area. The proposed zone change will not change the functional classification of any existing or planned transportation facility or change the standards implementing a functional classification system. The County Transportation Planner provided the following comments in an email dated June 4, 2026:

> The submitted application materials include a report prepared by Kittelson & Associates (dated April 2, 2026 and labeled as Exhibit H) analyzing the proposal's compliance with the Transportation Planning Rule (TPR) and Oregon Statewide Planning Goal 12 per OAR 660-012-0060. Staff generally agrees with the assumptions, methodology, and conclusions outlined in the report supporting the central conclusion that reasonable EFU development potential would exceed the trip generation potential under the requested MUA10 Zone. Further, the report concludes that the proposal would not change County Road facility classifications or applicable classification standards. Collectively, the report demonstrates the proposal's compliance with Oregon Statewide Planning Goal 12 and TPR. No additional traffic analysis is required beyond this report.
>
> As the subject application does not include a site plan or development proposal, the transportation analysis requirements of DCC 18.116.310 will need to be met during subsequent development review on the subject properties.

Based on the County Senior Transportation Planner's comments and the traffic study from Kittleson and Associates, staff finds compliance with the Transportation Planning Rule has been effectively demonstrated. Staff asks the Hearings Officer to make specific findings related to these criteria.

DIVISION 15, STATEWIDE PLANNING GOALS AND GUIDELINES

OAR 660-015, Division 15, Statewide Planning Goals and Guidelines

FINDING: The Statewide Planning Goals and the applicant's findings are quoted outlined below:

Goal 1, Citizen Involvement. Deschutes County will provide notice of the application to the public through mailed notice to affected property owners and by requiring the applicant to post a "proposed land use action sign" on the subject property. Notice of the public hearings held regarding this application will be placed in the Bend Bulletin. A minimum of two public hearings will be held to consider the application.

Goal 2, Land Use Planning. Goals, policies, and processes related to zone change applications are included in the Deschutes County Comprehensive Plan and Titles 18 and 23 of the Deschutes County Code. The outcome of the application will be based on findings of fact and conclusions of law related to the applicable provisions of those laws as required by Goal 2.

Goal 3, Agricultural Lands. The Applicant has shown that the Subject Property is not Agricultural land because they are comprised predominantly of Class 7 and 8 soils that are not suitable for farm use. Therefore, the proposal is consistent with Goal 3. The Applicant has provided, herein, evidence and argument in support of its conclusion that the Subject Property is not "agricultural land" as defined in relevant sections of the DCC, ORS, OAR as interpreted by LUBA and the courts.

Goal 4, Forest Lands. Goal 4 is not applicable because the Subject Property does not include any lands that are zoned for, or that support, forest uses. Forest land is defined by OAR 660-005-0010 as lands suitable for commercial forest use protection under Goal 4, which are identified using NCRS soil survey maps to determine average annual wood fiber production figures.

Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces. The County protects scenic views and sites along major rivers and roadways by imposing Landscape Management (LM) Combining Zones to adjacent properties. As the County Hearings Officer recently ruled in a similar matter (Deschutes County File Nos. 247-21-001043-PA, 247-21-001044-ZC) these policies are fulfilled by the County's Goal 5 program. The application materials establish the Subject Property is not within the Landscape Management (LM) Combining Zone.

Goal 6, Air, Water, and Land Resources Quality. The approval of this application will not impact the quality of the air, water, and land resources of Deschutes County. Any future development of the Subject Property would be subject to local, state, and federal regulations that protect these resources.

Goal 7, Areas Subject to Natural Disasters and Hazards. According to the Deschutes County Property Information (DIAL), the entirety of Deschutes County, including the Subject Property, is located in a Wildfire Hazard Area. The Subject Properties are also located in the Cloverdale Fire District. Rezoning the Subject Property to MUA-10 does not change the Wildfire Hazard Area designation. Any future development of the Subject Property would need to demonstrate compliance with any fire protection regulations and requirements of Deschutes County.

Goal 8, Recreational Needs. This goal is not applicable because no development is proposed and the Subject Property is not planned to meet the recreational needs of Deschutes County. Therefore, the proposed rezone will not impact the recreational needs of Deschutes County.

Goal 9, Economy of the State. This goal does not apply to this application because the Subject Property is not designated as Goal 9 economic development land. In addition, the approval of this application will not adversely affect economic activities of the state or area.

Goal 10, Housing. The County's Comprehensive Plan Goal 10 analysis anticipates that farm properties with poor soils, like the Subject Property, will be converted from EFU to MUA-10 or RR-10 zoning and that these lands will help meet the need for rural housing. The proposed application supports the need for rural housing by providing rural housing consistent with the MUA-10 residential zone. Deschutes County has devoted significant time and resources searching for more buildable lands. This application is an example of smart planning to identify mis-zoned properties for residential use. Approval of this application, therefore, is consistent with Goal 10 as implemented by the acknowledged Deschutes County Comprehensive Plan.

Goal 11, Public Facilities and Services. The approval of this application will have no adverse impact on the provision of public facilities and services to the subject properties. Central Electric Cooperative currently serves the Subject Property with power and will continue to do so, water and septic are currently provided over the Subject Proeprty and will continue to be provided on-site, and the proposal will not result in the extension of urban services to rural areas.

Goal 12, Transportation. This application complies with the Transportation System Planning Rule, OAR 660-012-0060, the rule that implements Goal 12. Compliance with that rule also demonstrates compliance with Goal 12.

Goal 13, Energy Conservation. The approval of this application does not impede energy conservation. In fact, Planning Guideline 3 of Goal 13 states “land use planning should, to the maximum extent possible, seek to recycle and re-use vacant land…” Any proposed development under the MUA-10 zone will be required to address energy conservation strategies. The proposal is consistent with this goal because it will have no negative impact on energy use or conservation.

Goal 14, Urbanization. This goal is not applicable because the Applicant's proposal does not involve property within an Urban Growth Boundary and does not involve the urbanization of rural land. The MUA-10 zone is an acknowledged rural residential zoning district that limits the intensity and density of developments to rural levels. The County's Comprehensive Plan recognizes the fact that the MUA-10 and RR-10 zones are the zones that will be applied to lands designated Rural Residential Exception Areas. To further address Goal 14 and demonstrate that the allowed uses in the MUA-10 zone are rural in nature and not urban, a *Curry County/Shaffer* analysis is provided below:

The Court in Curry County acknowledged that there is no established definition of rural use and urban uses. The Court discussed factors to consider in evaluating whether development allowed is rural or urban including the density, dependence on urban services, and proximity to the urban area. None of the factors were deemed to be determinative and all must be applied in the context of the individual situation. A review of the factors identified by the Supreme Court in *Curry County* confirms that the MUA-10 zone does not allow urban development.

Density. 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, but only if such development complies with the County's conditional use criteria, comprehensive plan, and rules that require the dedication of open space. The large open space areas created by this type of development create large areas that maintain the rural character of the parent parcel. The maximum density for properties like the Subject Property, beyond one mile from the UGB, is one house per 7.5 acres with 65% of the acreage in protected open space. This is not an urban density or development pattern. Such a density would never be allowed in any urban residential zoning district other than a reserve or holding zone. For instance, in the City of Bend, a density of 1.1 dwellings per acre is the lowest density allowed for an urban residential district. This density is allowed only for areas not served by sewer. For properties served by sewer, a minimum density of 4.0 dwellings per one acre is required.

In *Curry County*, the Supreme Court accepted the concession of 1000 Friends that a density of one house per ten acres is generally "not an urban intensity." Furthermore, 1000 Friends argued that densities greater than one dwelling per three acres (e.g., one dwelling per one or two acres) are urban. The density allowed by the MUA-10 zone in a planned development is 2.5 times less dense. For a standard subdivision, the density allowed (1 house per 10 acres) is over 3 times less dense.

The density of the MUA-10 zone is not significantly greater than the density allowed in the EFU-zone. Deschutes County's EFU zone allows for non-irrigated land divisions for parcels as small as 40 acres that create two nonfarm parcels (1:20 acres density). It also allows for 2-lot irrigated land divisions that, in Deschutes County, can occur on parcels less than 30 acres in size (63 acres irrigated, no minimum lot size for the nonfarm parcel) that result in a density of one house per less than 15 acres.

Lot Size. The MUA-10 zoning district requires a minimum lot size of one house per ten acres. An exception to the minimum lot size is allowed only if 65% of the land being divided is dedicated as open space and a maximum density of 1 dwelling per 7.5 acres is achieved on the Subject Property. The EFU zone that applies to the Subject Property imposes no minimum lot size for new nonfarm parcels. DCC 18.16.055. The only exception is that 5-acre minimum is required for non-irrigated land divisions of properties over 80 acres in size. DCC 18.16.055(C)(2)(a)(4). The EFU zone requires that other nonfarm uses be on parcels that are "no greater than the minimum size necessary for the use." Lot size by itself is not determinative of urban vs. rural use, this is particularly true given that irrigated land division may result in lots of only 5-acres. Although not relevant to this Application, OAR 660-004-0040 contemplates lot sizes as small as two acres in rural residential areas.

Proximity to Urban Growth Boundaries. The County's zoning map shows that the Subject Property is closest to the City of Sisters UGB (7.9 miles). In the context of the present case, the requested MUA-10 zone is intended to maintain the rural character of the land while allowing for low density rural development consistent with the rural residential development surrounding the Subject Property. Is distance from the City of Sisters and the City of Bend UGB ensures it will not draw urban uses outside of the City Limits/UGB. The MUA-10 zone abuts portions of the Subject Property to the west and north and east.

Services. Sewer service is prohibited by Goal 11. An increase in the density of development is not allowed if a public water system is developed to serve the Subject Properties. Septic systems and well water will serve the Subject Properties.

Conclusion of Factors. In totality, none of the above-factors indicate that the Applicant's rezone request implicates Goal 14. Instead, approval of the proposal will enable the land to remain in a rural state, and to avoid the haphazard land use patterns that could otherwise result from serial nonfarm dwelling applications.

Goals 15 through 19. These goals do not apply to land in Central Oregon.

Staff generally accepts the applicant's responses and finds compliance with the applicable Statewide Planning Goals has been effectively demonstrated. Arguments regarding compliance with Goal 14 have been raised in a number of Zone Change applications and the most recent interpretation from LUBA on this issue comes from *Central Oregon LandWatch v. Deschutes County* (BCL), LUBA No. 2026-015, which states:

> 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. 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. 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.
>
> …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… 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.

The LUBA decision quoted above (*BCL*) was further discussed by a Hearings Officer in files 247-26-000120-PA, 121-ZC (Jaros), who made the following findings:

> 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. Although the Applicant has presented an analysis of the *Curry County* factors as an alternative to its primary argument, I find based on the current record that the Applicant has not demonstrated that no Goal 14 exception is required.
>
> The first of the *Curry County* factors looks to the allowed density under the new Plan designation. The Applicant notes that 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. The Applicant acknowledges that a greater density may be allowed, but asserts the maximum density is one house per five acres, which the Applicant says is rural in nature and much lower than, for example, the lowest density allowed in the City of Bend.
>
> 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.
>
> In light of LUBA's decision in *BCL LLC*, which indicates that the maximum density of the MUA-10 zone could be even greater than the one-dwelling-per-five-acres the Applicant states is the maximum, I find that the current record does not clearly establish that the ultimate density on the Subject Property will be limited to rural densities. This *Curry County* factor therefore provides weight to the argument that the proposal could result in urban-level development.

The subject application includes an analysis of the *Curry County* factors and addresses the density that may potentially be available through a cluster or planned development under DCC 18.116.400. The *BCL* LUBA Decision (LUBA No. 2026-015) was issued after the subject application was submitted,

and in a letter dated July 24, 2026, the applicant provided additional arguments that respond specifically to the issues raised in *BCL*. This letter from the applicant states:

> Again, the LUBA Decision in the *BCL, LLC* case is based specifically on the evidence and legal argument in that record and the proximity of that property to the UGB, thereby allowing even more increased density under planned or cluster subdivision standards in the DCC. The Decision was also based on the idea that there is no minimum lot size in the MUA-10 zone under a planned development. Slip Op. at 28-34. The subject property in the present case is over six (6) miles from the Sisters UGB and almost ten (10) miles from the Bend UGB. The maximum density that could be permitted under a cluster or planned development is 7.5 acres per unit; provided consistency with the Comprehensive Plan can be demonstrated as required by DCC 17.12.010. As discussed in the original application materials, one unit for every 7.5 acres is nowhere near an urban level of density.
>
> Cluster developments under DCC 18.128.200(B)(2) have a 2-acre minimum lot size. Planned developments regulated under DCC 18.128.210 do not have a specific minimum lot size but in addition to the general consistency requirement for subdivisions in 17.12.010(A), also independently have a consistency with the Comprehensive Plan requirement at
>
> 18.128.210(B)(2). OAR 660-004-0041(8)(e)(C) requires a 2-acre minimum lot size for new lots or parcels in a PUD on lands subject to an exception to the Statewide Planning Goals. Even though the administrative rule applies only to exception lands and not lands rezoned through the nonresource process, LUBA found it instructive as to the density issue under Goal 14 and held that individual lot size, not overall density, is the relevant factor to consider to determine whether the use is rural or urban in nature. For this reason, the Applicant agrees that no lot or parcel under the new MUA-10 zoning will be created smaller than 2 acres in size and that such development will only occur if consistency with the Comprehensive Plan can be demonstrated at the time of the development/subdivision application.

It appears to staff that the applicant has demonstrated compliance with Statewide Planning Goal 14 but staff requests the Hearings Officer make specific findings.

IV. CONCLUSION & RECOMMENDATION

Staff requests the Hearings Officer determine if the applicant has met the burden of proof necessary to justify changing the Plan Designation from Agriculture to Rural Residential Exception Area and Zoning of the subject properties from Exclusive Farm Use to Multiple Use Agricultural through effectively demonstrating compliance with the applicable criteria of DCC Title 18 (the Deschutes County Zoning Ordinance), the Deschutes County Comprehensive Plan, and applicable sections of OAR and ORS.

DESCHUTES COUNTY PLANNING DIVISION



Written by: Audrey Stuart, Associate Planner



Reviewed by: Anthony Raguine, Principal Planner

BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: November 30, 2026

SUBJECT: Update on the Courthouse Expansion project, including an evaluation of the Construction Manager / General Contractor alternative contracting method

RECOMMENDED MOTION:
N/A

BACKGROUND AND POLICY IMPLICATIONS:.
The Facilities Department will give a presentation to update the Board on the status of the Courthouse Expansion project. The update will include a summary of the project schedule and budget, evaluation of the Construction Manager / General Contractor (CM/GC) alternative contracting method, and challenges and lessons learned.

BUDGET IMPACTS:
None.

ATTENDANCE:
Lee Randall, Facilities Director
Eric Nielsen, Facilities Capital Improvement Manager
Wayne Powderly, Cumming Group

Deschutes County Courthouse Expansion Update

Board of County Commissioners Meeting

November 30, 2026

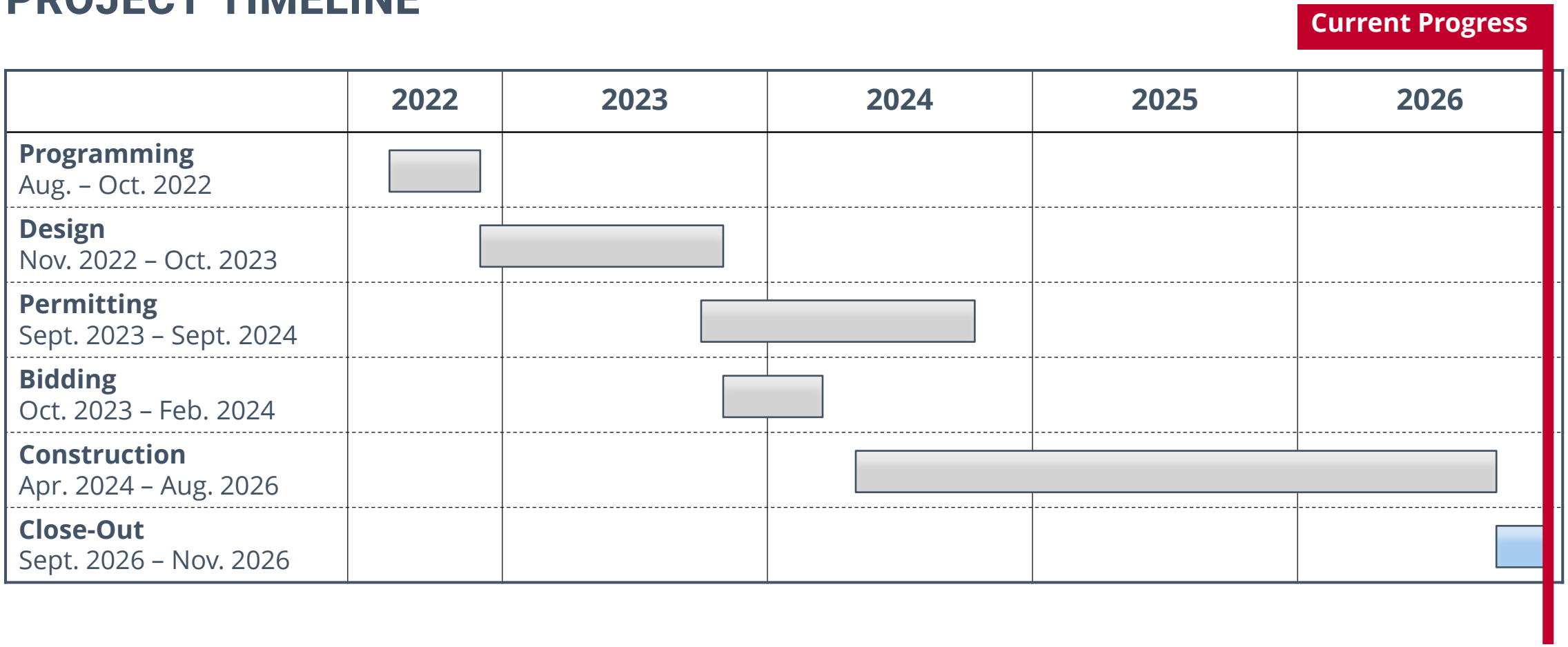
Courthouse Expansion Update



- Project timeline and budget
- Construction Manager / General Contractor (CM/GC) Evaluation
- Challenges and lessons learned

Project Timeline and Budget

PROJECT TIMELINE



Deschutes County
Courthouse Expansion
BUDGET STATUS REPORT
Current Through: 11/23/2026

	Budgeted Amounts		Actual Spend	Remaining		
	Original Budget	Revised Budget	to Date	Balance		Comments
CONSTRUCTION COSTS						
Cost of Work - Construction	$ 32,510,428.00	$ 40,204,456.32	$ 40,204,456.32	$ -		Pence Contract (thru Final Pay App & OCO 20)
Contractor's Contingency	1,641,965	1,641,965	1,641,965	-	0.00%	Contractor's Contingency Remaining (% based on remaining balance)
Subtotal	34,152,393	41,846,421	41,846,421	-		
AJ Tucker - Demolition, Stone Salvage, and Storage	-	172,426	172,426	-		
Subtotal Construction Costs	34,152,393	42,018,847	42,018,847	-		
DIRECT COSTS						
Architecture / Engineering / Interiors / Low Voltage	2,800,397	3,048,160	3,048,160	-		LRS (thru ASA #32 & Final invoice) - Revised Budget balance moved to County Contingency
CM/GC Pre-Construction	62,040	-	-	-		Moved up to Cost of Work - Construction
Land Use Attorney	50,000	-	-	-		
Land / Building Survey / TOPO	40,000	16,618	16,618	-		
Arborist / Tree Surgeon	9,799	-	-	-		
Historic Conservationist/Tribal Survey	20,000	-	-	-		
Geotechnical Reports and Inspections	39,197	17,314	17,314	-		
Commissioning	97,000	100,737	100,737	-		
Traffic Impact Analysis	35,000	6,500	6,500	-		
Hazmat Assessment / Abatement	60,000	5,780	5,780	-		
Construction Testing and Special Inspections	100,000	125,790	125,790	-		Revised Budget balance moved to County Contingency
Miscellaneous (Marketing, Postcards, Prints/reprographics)	-	1,661	1,661	-		
Unknown Additional Services Contingency	165,672	-	-	-		
Subtotal Direct Costs	3,479,105	3,322,559	3,322,559	-		
ADMINISTRATION COSTS						
Project Management / Owners Representative	401,220	556,894	556,894	-		Revised Budget balance moved to County Contingency
Subtotal Administration Costs	401,220	556,894	556,894	-		
OTHER PROFESSIONAL FEES						
Miscellaneous / Insurance	78,394	69,889	69,889	-		
Subtotal Other Professional Fees	78,394	69,889	69,889	-		
PERMITS AND FEES						
Land Use Approval	48,996	-	-	-		
Plan Check and Permits	342,974	1,006,924	1,006,924	-		
System Development Charges (SDC's) and Engineering Review	385,320	-	-	-		
BOLI Fee	7,500	9,655	9,655	-		
Unknown Additional Permits and Fees Contingency	117,719	163,338	163,338	-		
Subtotal Permits and Fees	902,509	1,179,917	1,179,917	-		

Deschutes County
Courthouse Expansion
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FFE (incl A-V Systems / communications, fit-out)	900,000.00	687,010.88	687,010.88	-		
External / Internal Signage	25,000	371	371	-		
Telephone / Data / Network Build	58,796	5,528	5,528	-		
Mover / Relocation / Temp Facilities/ Fairgrounds Building Rental	50,000	11,342	11,342	-		
Misc / Bldg & Grounds R&M / Supplies / Furn & Fixt. / Travel	-	89,461	89,461	-		
City Services & Street Improvements & Utility Connections	215,584	67,030	67,030	-		
Green Energy Costs Mandated per Oregon State (1.5%)	600,000	646,845	646,845	-		
County Contingency	1,114,438	368,634	-	368,634	100%	
Subtotal Owner Costs / Third Party Contracts	2,963,818	1,876,222	1,507,588	368,634		
PROJECT TOTALS	**$ 41,977,438**	**$ 49,024,329**	**$ 48,655,695**	**$ 368,634**	**99%**	**% Complete**

Original Budget	$	42,000,000	
Budget Adjustment		1,900,000	(2/21/2024)
Budget Adjustment		2,900,000	(1/29/2025)
Subtotal	$	46,800,000	

Courthouse Expansion Funding Sources		
Bond Proceeds	$	20,500,000
State of Oregon Expansion		15,000,000
State of Oregon Remodel		1,500,000
LATCF		4,622,145
Interest		3,570,000
Reserves		1,607,855
Total	$	46,800,000

Worked tracked by County with funds from other sources

AJ Tucker	$	172,426
OJD FF&E	$	500,000
OJD FF&E	$	800,000
Existing Courthouse Re-Roof (Fund 070)	$	130,580
Lafayette Parking Lot Project	$	446,324
Total Budget	$	48,849,330

Construction Manager / General Contractor Evaluation

Construction Budget Summary

Financial Measure		Amount
Design Development Construction Cost Estimate		$37,978,286
CM/GC Guaranteed Maximum Price		$36,722,789
Net Value of Owner Change Orders (OCOs)		$5,296,058
Final CM/GC Contract Amount		$42,018,847
Difference from Design Development Construction Estimate	(10.6%)	$4,040,561
Final CM/GC Contract Amount – Excluding OCOs in Support of Expansion ($1,282,741)		$40,736,106
Difference from Design Development Construction Cost Estimate	(7.3%)	$2,757,820

Change Order Context and Major Drivers

Change Orders Directly Related to Expansion	Net OCO Value
Permit Delay Costs	$1,328,914
Expansion Scope Revisions	$2,684,403
Total Net Owner Change Orders	**$4,013,317**

Change Orders in Support of Expansion	Net OCO Value
Oregon Judicial Department Audio-Visual Scope **(1)**	$577,896
Existing Courthouse Roofing and Interior Finishes Replacement **(2)**	$305,580
221 Lafayette Improvements **(3)**	$399,265
Total Net Owner Change Orders	**$1,282,741**

(1) Funded by Oregon Judicial Department

(2) Maintenance project funded separately with Fund 070

(3) Parking project funded separately with Fund 463

Project Challenges Managed

- Design development and issued-for-construction coordination
- Existing conditions and existing building interfaces
- Utility, waterline, drainage, excavation, and site work
- Temporary public entrance conditions and traffic control
- Construction adjacent to ongoing court operations
- Public and staff circulation, secure-area separation, in-custody movement, noise and vibration, and utility interruptions

Key Takeaway: These were interrelated constraints typical of complex work at an occupied courthouse—not isolated construction issues.

Lessons Learned

- Begin permitting strategy and jurisdictional coordination as early as practical.
- Conduct early existing-condition investigation and utility coordination.
- Maintain schedule contingency for permitting, utility, and existing-condition risk.
- Engage operational stakeholders early and throughout design and construction.
- Plan phased work, temporary conditions, access, and security separation early.
- Continue considering CM/GC for highly complex, occupied, phased, or security-sensitive public projects.

Conclusion

- The project delivered critical courthouse capacity, security, operational, and public-service improvements.
- The project experienced material permit, coordination, site, utility, and occupied-campus challenges.
- The CM/GC contracting method did not eliminate those risks, but it provided a structured process to identify, evaluate, price, sequence, and manage the risks.
- The CM/GC contracting method was appropriate and provided substantial benefits compared with traditional design-bid-build delivery.

Questions?

Deschutes County
Courthouse Expansion
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Existing Courthouse Interior Finishes & Lighting (Fund 070)	$ 175,000
Lafayette Parking Lot Project	$ 446,324
Total Budget	$ 49,024,330

EVALUATION OF PUBLIC IMPROVEMENT UTILIZING AN ALTERNATIVE CONTRACTING METHOD

Courthouse Expansion Project

Issued: November 30, 2026

1. Introduction

This evaluation is required by ORS 279C.355 for the Deschutes County Courthouse Expansion Project, which was delivered using the Construction Manager/General Contractor (CM/GC) alternative contracting method. On February 9, 2022, the Board of County Commissioners, acting as the County's Local Contract Review Board, approved use of CM/GC in Board Order No. 2022-162.

The evaluation compares actual project cost with the original estimate and Guaranteed Maximum Price (GMP); summarizes Owner Change Orders; documents successes and challenges during design, engineering, and construction; and assesses actual CM/GC outcomes against the Findings of Fact supporting the alternative contracting method. The Findings of Fact and Board Order are included in Appendix A.

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3. Project Identification and Purpose

Project: Deschutes County Courthouse Expansion
Location: Bend, Oregon
Owner: Deschutes County
Delivery Method: Construction Manager/General Contractor (CM/GC)
Architect: LRS Architects
CM/GC Contractor: Pence Contractors LLC

Deschutes County undertook the Courthouse Expansion Project to address current and anticipated capacity, security, operational, and facility needs at the existing courthouse campus in Bend, Oregon. Initial programming in 2009 envisioned a 38,000- to 40,000-square-foot addition, including approximately 29,000 square feet of finished space and 9,000 square feet of basement-level space. The program included new courtroom space; jury assembly and hearing rooms; public-entry screening and lobby functions; Court Administration space; secure parking; and secure in-custody transport and holding areas.

The project was intended to support safe, accessible, functional, and efficient court services while maintaining courthouse operations. Key objectives were to improve public-entry screening; separate public, staff, judicial, and in-custody circulation; provide secure in-custody transport and holding; improve courtroom and Court Administration functions; accommodate modern courtroom technology; and address near-term growth within a constrained courthouse site.

4. Project Background and Programming Strategy

Deschutes County engaged LRS Architects and HDR in July 2022 to complete programming and advance design for the Courthouse Expansion Project. Programming occurred from July through October 2022 and established the project's space needs, functional relationships, preliminary configuration, budget considerations, and priorities for design, permitting, and construction.

Programming confirmed the need for additional courthouse capacity and modernization of critical security and operational functions. Existing in-custody movement and holding arrangements did not meet current best practices because in-custody persons moved through or near public areas, the vehicle sallyport was undersized, and holding capacity was limited. The existing public-entry checkpoint was also constrained by available space and lacked adequate interior queuing capacity and flexibility to address changing security conditions.

The selected baseline program included a new basement level for secure parking, in-custody transport, and holding; expanded Court Administration and public-entry security functions at the first level; two courtrooms and related judicial-support functions at the second level; and upper-level shell space for potential future courtroom expansion; totaling approximately 61,600 square feet. The programming analysis recognized that the constrained courthouse site limited future expansion options and that incorporating expansion capacity into the initial project would better preserve long-term flexibility.

The programming strategy was developed through facility tours, stakeholder questionnaires and interviews, programming meetings, review of court-facility standards and best practices, tours of comparable facilities, design charrettes, and coordination with the City of Bend regarding public-right-of-way considerations.

Stakeholders included representatives of the courts, Court Administration, Deschutes County Sheriff's Office, County Facilities, the design team, and the CM/GC team.

Programming established the following project priorities:

- **Security and circulation:** Improve public screening; provide secure in-custody transport and holding; separate public, staff, judicial, and in-custody circulation; and evaluate exterior hardening measures.
- **Public service and functionality:** Provide organized public areas, customer-service functions, wayfinding, protected interior queuing, efficient courtrooms, judicial-support space, staff work areas, and modern technology infrastructure.
- **Lifecycle value and workplace quality:** Select durable, cost-effective systems and finishes; consider energy efficiency; incorporate Facilities input regarding long-term operations and maintenance; and support staff well-being through appropriate ventilation, natural light, and work environments.
- **Design integration and future capacity:** Create an addition compatible with the existing courthouse in massing and materials while preserving practical opportunities for future expansion.

These programming conditions supported the County's use of CM/GC delivery. The project required early input regarding constructability, estimating, phasing, logistics, security, site constraints, existing-building interfaces, and continuity of courthouse operations. CM/GC provided a framework for early collaboration among the County, design team, Oregon Judicial Department, Sheriff's Office, Facilities, and contractor as the scope, budget, sequencing, and project risks were refined.

5. Statutory Evaluation Requirements

ORS 279C.355 requires a contracting agency to prepare an evaluation of a public improvement project delivered through an alternative contracting method following project completion and final payment. The evaluation must address:

1. The actual project cost compared with the original project estimate;
2. The amount of any Guaranteed Maximum Price;
3. The number of Owner Change Orders issued by the contracting agency;
4. Successes and failures during design, engineering, and construction; and
5. An objective assessment of the alternative contracting method compared with the Findings of Fact supporting the exemption from competitive bidding.

The following sections provide the required financial information, narrative of project successes and challenges, and assessment of CM/GC delivery compared with the Findings of Fact adopted in Order No. 2022-162.

6. Alternative Contracting Method and Findings of Fact

Deschutes County used the Construction Manager/General Contractor (CM/GC) alternative contracting method for the Courthouse Expansion Project rather than traditional design-bid-build procurement. The Board of County Commissioners, acting as the County's Local Contract Review Board, approved the CM/GC exemption in Board Order No. 2022-162.

Under ORS 279C.335, the Board adopted Findings of Fact supporting use of CM/GC for this project. Consistent with those Findings, the County competitively procured CM/GC services through a Request for Proposals process and selected Pence Contractors LLC to provide preconstruction and CM/GC services. Pence was engaged during design to provide estimating, constructability review, scheduling, phasing and logistics planning, trade-procurement planning, value-engineering support, and evaluation of existing conditions and project risks. Trade-contractor work was competitively procured.

The project conditions supporting CM/GC delivery included construction within and adjacent to an active courthouse campus; complex security, public-access, judicial, and in-custody circulation requirements; coordination with existing building systems and site infrastructure; phased work and continuity of courthouse operations; integration of new and existing courtroom technology; constrained site conditions; and market, labor, material-lead-time, and pricing considerations.

The CM/GC method provided a framework for collaboration among the County, design team, Oregon Judicial Department, Sheriff's Office, Facilities, and contractor during design and construction. The process supported early pricing, constructability review, phased and early work, trade-contractor engagement, allowance and contingency management, value engineering, and formal reconciliation of scope changes through the GMP and Owner Change Order process.

A copy of the Findings of Fact and Board Order No. 2022-162 is included in Appendix A.

7. Financial Information

The following information summarizes the CM/GC contract baseline, Owner Change Orders (OCO), the baseline construction cost estimate, and the final CM/GC construction contract cost.

Original CM/GC Preconstruction Contract:		$62,040.00
Early Work Amendment:		$4,513,562.00
GMP Amendment:		$32,147,187.00
CM/GC Contract Baseline Before OCOs:		$36,722,789.00
Construction Cost Estimate at Design Development:		$37,978,286.00
Final CM/GC Construction Contract Cost:		$42,018,847.32
Difference from Design Development Construction Cost Estimate:	(10.6%)	$4,040,561.32

Through OCO 020 the County authorized $5,296,058.32 in net changes, resulting in a final CM/GC construction contract cost of $42,018,847.32. Net Owner Change Orders represent approximately 14.4% of the CM/GC contract baseline before Owner Change Orders.

The change order record reflects multiple categories of work and should not be viewed as a single measure of cost growth or CM/GC performance. Changes included permit-delay impacts, separately funded and County-directed work, design and existing-condition coordination, utility and site work, operational and security requirements, allowance reconciliation, value-engineering adjustments, and owner credits.

Change Category & Primary OCOs	Categorized Net OCO Value	Evaluation Context
Permit-delay costs OCO 003	$1,328,914.00	Direct, documented permit-delay compensation for Pence general conditions/general requirements and subcontractor impacts. OCO 002 authorized the associated 191-calendar-day permit-delay extension.
Schedule extensions with no net cost OCOs 002 and 015	$0.00	OCO 002 authorized a 191-calendar-day permit-delay extension. OCO 015 authorized a separate 15-working-day Phase 1 extension; its identified time-related cost was offset by construction contingency.
Expansion Scope Revisions OCOs 001, 002, 005, 007 - 009, 011, 012, and 014–019	$2,684,403.32	Includes a range of scope adjustments arising from design development and construction revisions; site, utility, and temporary-entry work; existing-conditions coordination; security, accessibility, and operational improvements; allowance reconciliation; value-engineering adjustments; and owner credits.
Oregon Judicial Department-funded audiovisual scope OCOs 006 and 010	$577,896.00	Audiovisual work in new and existing courtroom spaces. Funded separately from Courthouse Expansion Project with Oregon Judicial Department FF&E funds.
Existing Courthouse Roof Replacement & Maintenance OCO 004, 015, 018	$305,580.00	County-directed asset-renewal work for roofing and interior finishes replacement adjacent to the expansion. Funded separately from Courthouse Expansion Project with Fund 070.
221 Lafayette Improvements OCO 013 and 020	$399,265.00	County-directed site-improvement scope to construct parking and stormwater facilities at 221 Lafayette. Funded separately from Courthouse Expansion Project with Fund 463.
Total Net Owner Change Orders	**$5,296,058.32**	**Owner Change Orders (OCO) through OCO 020**

Note: OCO 002 is listed separately to document the permit-delay schedule extension; its associated non-delay financial scope is included in the “Other Scope, Coordination, and Site Changes” category. OCO 015 is listed separately to document the Phase 1 schedule extension and had no separately categorized net cost.

8. Successes, Challenges, and Lessons Learned During Design, Engineering, and Construction

Successes

The Courthouse Expansion Project was completed using a collaborative CM/GC process involving Deschutes County, Pence Contractors LLC, LRS Architects, the Oregon Judicial Department, the Sheriff's Office, County Facilities, and other stakeholders. Early CM/GC involvement supported estimating, constructability review, scheduling, phasing, site logistics, trade-procurement planning, market input, and risk evaluation during design.

The CM/GC process established a defined contract baseline before Owner Change Orders through the original preconstruction contract, Early Work Amendment, and GMP Amendment. This structure supported management of early work, allowances, contingency, scope development, trade procurement, and later-authorized changes.

The project delivered key courthouse program elements identified during programming, including expanded public-entry and security functions, courtroom and court-support space, Court Administration functions, secure parking, secure in-custody transport and holding, and associated building and site improvements. Construction was completed adjacent to an occupied courthouse while court operations, public access, security screening, judicial functions, Court Administration services, Sheriff's Office functions, and in-custody movement continued.

The CM/GC process supported construction logistics, temporary conditions, secure-area separation, utility coordination, access planning, and sequencing necessary for work within an active courthouse environment. It also provided the County with ongoing contractor input regarding labor availability, material lead times, pricing, scheduling, and existing-building interfaces.

The County used the Owner Change Order process to evaluate, price, approve, and track changes through OCO 020. The process distinguished among permit-delay impacts, owner-directed and separately funded work, design and existing-condition coordination, utility and site work, security and operational requirements, allowance reconciliation, value-engineering adjustments, and owner credits. Accordingly, the change-order record should not be viewed as a single measure of project cost growth or CM/GC performance.

Challenges and Lessons Learned

The most significant project challenge was the permit-related delay. OCO 002 authorized a 191-calendar-day schedule extension associated with the delay. OCO 003 subsequently authorized $1,328,914.00 in direct permit-delay compensation, including general conditions/general requirements costs and subcontractor impacts. The delay materially affected the project schedule and final CM/GC contract cost and demonstrated the importance of early permitting coordination, schedule contingency, and clear allocation of permitting-related risks on future projects.

The project also required ongoing coordination of design development, issued-for-construction revisions, security and accessibility requirements, operational refinements, existing conditions, utility interfaces, and constrained-site conditions. Work included drywell decommissioning, waterline and utility work, temporary public-entry arrangements, excavation, traffic control, water-meter work, site improvements, and interfaces with existing courthouse systems. These conditions required continued field investigation, stakeholder coordination, sequencing, temporary measures, and construction-phase adjustments.

The occupied courthouse campus added complexity to construction execution. The work required management of construction access, public and staff circulation, secure areas, in-custody movement, temporary entry conditions, noise and vibration, utility interruptions, safety controls, and separation between construction activities and courthouse operations. These constraints prevented the project from being managed as a conventional, isolated new-construction project.

OCO 015 documented an additional 15 working days, or 21 calendar days, for Phase 1 substantial completion. The identified time-related cost was offset through construction contingency. The extension illustrates the sensitivity of phased construction to occupancy, sequencing, and operational coordination.

Although the project required 20 Owner Change Orders, the record includes a mix of permit impacts, design development, field conditions, utility and site work, security and operational requirements, owner-directed scope, separately funded Oregon Judicial Department audiovisual work, County-directed roof replacement and 221 Lafayette improvements, allowance reconciliation, and owner credits. The change-order record should not be interpreted as a single measure of unforeseen construction problems or CM/GC performance.

These challenges demonstrated the importance of early permitting strategy, existing-condition and utility investigation, operational stakeholder engagement, phased-construction planning, and clear documentation distinguishing owner-directed scope from unforeseen conditions. These lessons should inform future County capital projects.

9. Assessment of the Use of the Alternative Contracting Method as Compared to the Findings of Fact

The following assessment compares actual CM/GC project outcomes with the Findings of Fact adopted by the Board in Order No. 2022-162.

(a) The exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts.

Assessment: The County competitively selected the CM/GC through a qualifications-based Request for Proposals process authorized by the Board. Four firms submitted proposals. Proposals and interviews were evaluated using predetermined criteria consistent with ORS 279C.337 and the Attorney General's Model Contract Rules, and the County negotiated with the highest-ranked proposer, Pence Contractors LLC. The procurement process provided meaningful competition and did not encourage favoritism.

(b) Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the contracting agency or the state agency that seeks the exemption to the contracting agency or the public. In approving a finding under this paragraph, the local contract review board shall consider the type, cost and amount of the contract and, to the extent applicable to the particular public improvement contract or class of public improvement contracts, the following:

Assessment: CM/GC provided substantial process and risk-management benefits through early contractor estimating, constructability review, phasing, logistics planning, trade-procurement planning,

and market input. These services assisted the County in identifying and managing cost and schedule risks before and during construction. The record does not separately quantify dollar savings attributable solely to CM/GC; however, the method provided substantial benefits in managing a complex, occupied-courthouse project.

(A) How many persons are available to bid;

Assessment: Four general contractors submitted proposals in response to the CM/GC Request for Proposals. The procurement therefore produced meaningful competition while allowing the County to evaluate qualifications, relevant experience, project approach, and preconstruction services.

(B) The construction budget and the projected operating costs for the completed public improvement;

Assessment: CM/GC did not materially affect projected operating costs for the completed improvement. However, early contractor involvement provided estimating, constructability, trade-procurement, and market information before establishment of the GMP, assisting the County in evaluating scope, contingencies, sequencing, and cost risks.

(C) Public benefits that may result from granting the exemption;

Assessment: CM/GC supported early coordination of courthouse security, public access, judicial operations, Court Administration functions, Sheriff's Office requirements, and in-custody circulation. It also supported planning for construction logistics, existing-building interfaces, site constraints, and continuity of courthouse operations during construction adjacent to an active courthouse campus.

(D) Whether value engineering techniques may decrease the cost of the public improvement;

Assessment: CM/GC supported value-engineering review during design and preconstruction through estimating, constructability review, allowance management, scope evaluation, and trade-procurement planning. The process allowed the County to evaluate cost, schedule, operational, and lifecycle implications of design decisions before and during construction.

(E) The cost and availability of specialized expertise that is necessary for the public improvement;

Assessment: The CM/GC procurement required demonstrated experience with public buildings, access control, security requirements, and remodel or retrofit work. This expertise supported evaluation of construction logistics, security requirements, existing-building interfaces, and safe project sequencing.

(F) Any likely increases in public safety;

Assessment: Early CM/GC participation supported planning for construction access, public and staff circulation, secure areas, temporary conditions, site logistics, and separation of construction activities from courthouse operations. This coordination assisted the County in managing safety and security risks associated with construction adjacent to an occupied courthouse.

(G) Whether granting the exemption may reduce risks to the contracting agency, the state agency or the public that are related to the public improvement;

Assessment: CM/GC enabled the County, design team, and contractor to identify and evaluate constructability, sequencing, existing-condition, utility, security, and operational risks during design and preconstruction. Although the method did not eliminate permit-related, design-development, or field-condition risks, it provided a structured process to evaluate and manage those risks throughout the project.

(H) Whether granting the exemption will affect the sources of funding for the public improvement;

Assessment: The CM/GC exemption did not affect project funding sources.

(I) Whether granting the exemption will better enable the contracting agency to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement;

Assessment: CM/GC gave the County access to contractor market information, trade-procurement planning, pricing input, and material lead-time considerations during design and before establishment of the GMP. This information assisted the County in evaluating procurement strategy, sequencing, contingencies, and market-related cost and schedule risks.

(J) Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement;

Assessment: CM/GC better enabled the County to manage the project's size and technical complexity than traditional design-bid-build procurement. The project required construction adjacent to and integration with an operating courthouse while maintaining public access, court operations, security screening, judicial functions, in-custody movement, and coordination with existing building systems and site infrastructure.

Early contractor involvement supported constructability review, cost estimating, phasing, site logistics, temporary conditions, security planning, existing-condition and utility coordination, early work, trade procurement, and GMP development. Although the project experienced permit-related, design-development, utility, and field-condition impacts, the CM/GC process provided a structured framework for collaborative risk management.

(K) Whether the public improvement involves new construction or renovates or remodels an existing structure;

Assessment: The project involved both new construction and work affecting the existing courthouse and campus infrastructure. The addition included new courtroom, court-support, security, public-entry, in-custody, and building-support spaces, while requiring integration with existing building systems, utilities, circulation patterns, security functions, technology systems, and adjacent areas.

CM/GC supported constructability review, existing-condition investigation, utility and systems coordination, access planning, and sequencing of interfaces between the new addition and the operating courthouse.

(L) Whether the public improvement will be occupied or unoccupied during construction;

Assessment: The Courthouse Expansion Project was constructed at and adjacent to an active courthouse campus. Court operations, public access, judicial functions, Court Administration services, security screening, Sheriff's Office functions, and in-custody movement continued throughout construction.

The occupied-site conditions required coordination of construction access, public and staff circulation, secure areas, temporary conditions, noise and vibration, utility interruptions, safety controls, and separation between construction activities and courthouse operations. CM/GC supported the ongoing coordination necessary to maintain safety, security, and continuity of public court services.

(M) Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions; and

Assessment: The project required multiple, coordinated phases rather than a single isolated construction phase. Work included preconstruction services, early work, GMP development, construction of the addition, site and utility work, security and technology integration, and coordination with existing courthouse systems and functions.

Phasing was necessary to maintain courthouse operations, manage the constrained site, protect public and in-custody circulation, coordinate utilities and infrastructure, and integrate new work with existing systems. CM/GC supported phased delivery through early schedule development, constructability review, procurement planning, site logistics, early-work planning, trade coordination, and adjustment of sequencing as conditions evolved.

(N) Whether the contracting agency or state agency has, or has retained under contract, and will use contracting agency or state agency personnel, consultants and legal counsel that have necessary expertise and substantial experience in alternative contracting methods to assist in developing the alternative contracting method that the contracting agency or state agency will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract;

Assessment: Deschutes County used its capital improvement, facilities, procurement, and legal resources, together with the project design team, to develop, procure, administer, and enforce the CM/GC contract. Pence Contractors LLC provided preconstruction expertise in estimating, constructability review, scheduling, phasing, logistics, and trade-procurement planning. Together,

these resources provided the County with public-contracting, design, cost-estimating, construction-administration, and legal expertise throughout project delivery.

10. Summary Conclusion

The County concludes that use of the Construction Manager/General Contractor (CM/GC) alternative contracting method was appropriate for the Courthouse Expansion Project and provided substantial operational, risk-management, and project-delivery benefits compared with traditional design-bid-build procurement.

The project required construction adjacent to and integration with an active courthouse campus while maintaining court operations, public access, security screening, judicial functions, Court Administration services, Sheriff's Office functions, and in-custody movement. The work also required coordination with existing building systems, utilities, site infrastructure, security functions, courtroom technology, and existing courthouse interfaces. These conditions created significant technical, operational, security, logistics, and phasing challenges.

CM/GC delivery enabled the County to engage Pence Contractors LLC during design and preconstruction for estimating, constructability review, market input, schedule and phasing support, site-logistics planning, trade-procurement planning, value engineering, and risk evaluation. The process supported collaboration among the County, design team, Oregon Judicial Department, Sheriff's Office, Facilities, and other stakeholders; early work and GMP development; competitive trade procurement; allowance and contingency management; and formal review of scope changes.

The original Design Development construct cost estimate was $37,978,286.00. The County established a CM/GC contract baseline of $36,722,789.00 before Owner Change Orders. Through OCO 020, the County authorized 20 Owner Change Orders with a net cumulative value of $5,296,058.32, resulting in a final CM/GC contract cost of $42,018,847.32. The final contract cost was $4,040,561.32, or 10.6%, above the original Design Development estimate. As detailed in Section 7, the change-order record included permit-delay impacts, design and coordination changes, utility and field conditions, existing-building interfaces, security and operational improvements, County-directed work, separately funded scope, allowance reconciliation, value-engineering adjustments, and owner credits.

The project experienced material challenges, including permit-related schedule and cost impacts, design development, utility and site coordination, existing-condition interfaces, and construction adjacent to an occupied courthouse. CM/GC did not eliminate these risks; however, it provided a structured and collaborative process to identify, evaluate, price, sequence, and manage them.

Overall, the CM/GC method was consistent with the Findings of Fact adopted in Board Order No. 2022-162. It supported meaningful competition, early contractor involvement, and enhanced management of the project's complexity, security requirements, operational constraints, market conditions, and phased construction needs. This evaluation is submitted following project completion and final payment in accordance with ORS 279C.355.

11. Appendix A – Findings of Fact

Appendix A contains Board Order No. 2022-162 and the associated Findings of Fact approving use of the Construction Manager/General Contractor alternative contracting method for the Courthouse Expansion Project.

REVIEWED
LEGAL COUNSEL

DESCHUTES COUNTY, Bend Oregon

FINDINGS OF FACT
Doc #2022-162

For Exemption from Competitive Bidding and the Use of the Construction Manager/General Contractor (CM/GC) Services of Contracting for

for

Deschutes County – Courthouse Expansion Project

1. General

ORS 279C.335(2) permits a local contracting agency to exempt public improvement projects from traditional competitive bidding upon approval of Findings of Fact ("Findings") showing that an alternative contracting process is a) unlikely to encourage favoritism or diminish competition and that b) the process will result in substantial benefit to the local contracting agency.

ORS 279C.400 – ORS 279C.410 describe the Request for Proposals method of solicitation as an alternative to traditional competitive bidding. Pursuant to ORS 279C.410(8), a public Agency using the Request for Proposals method may award a contract to the responsible proposer "whose proposal is determined in writing to be the most advantageous to the contracting agency based on the evaluation factors set forth in the request for proposals and, when applicable, the outcome of any negotiations authorized by the request for proposals."

ORS 279C.330 defines "Findings" and identifies specific information to be provided as a part of Deschutes County's justification. Under ORS 279C.335(5) a public hearing must be held before the findings are adopted, allowing an opportunity for interested parties to comment on the draft findings.

2. General

The current regional and local construction market is navigating unprecedented challenges, including labor shortages, global – local supply chain issues, as well as multiple public projects slated for construction over the coming year.

In consideration of these circumstances, Deschutes County Facilities seeks to utilize CM/GC Services, an alternative method of contracting, based on the Findings of Fact presented herein.

FINDINGS OF FACT

SUMMARY FINDINGS

1. **Competition will not be diminished.** This exception will likely encourage more competition in this tight market, rather than diminish competition. The Request for Proposals selection process will be competitive based on relevant selection criteria, will be publicly advertised, and will be open to all interested proposers as described in the findings below.

2. **This process will attract more contractors in this currently tight market.** This exemption will result in attracting more contractors in this tight market and result in better construction costs. Also, value will be added to the project and outcomes that would not otherwise be obtained under the standard design-bid-build process, especially in these current market conditions.

SPECIFIC FINDINGS, WHICH SUPPORT THE SUMMARY FINDINGS, ARE AS FOLLOWS:

1. **The CM/GC will be selected through a competitive process in accordance with the qualifications-based selection process authorized by Deschutes County Board of Commissioners. Therefore, it is unlikely that the awarding of the construction contract for the Project will encourage favoritism or substantially diminish competition. This finding is supported by the following:**

   A. **SOLICITATION PROCESS:** Pursuant to ORS 279C.360, the CM/GC solicitation will be advertised at least once in the Daily Journal of Commerce, as well as The Bulletin to maximize exposure.

   The CM/GC proposals and interviews will be rated based on a predetermined list of criteria as required by ORS 279C.337 and the Attorney General's Model Contract Rules. The County will enter into contract negotiations with the highest-ranking firm. Should negotiations fail, the County will have the right to negotiate with the second highest-ranking firm.

   B. **FULL DISCLOSURE:** To ensure full disclosure of all information, the Request for Proposals solicitation package will include:

      a. Detailed Description of the Project
      b. Contractual Terms and Conditions
      c. Selection Process
      d. Evaluation Criteria
      e. Role of Selection Committee
      f. Provisions for Comments
      g. Complaint Process and Remedies Available

   C. **COMPETITION:** As outlined below, the County will follow processes which maintain competition in the procurement of a CM/GC.

a. The County anticipates that competition for this contract will be similar to that experienced in other Projects of this type. The competition will remain open to all qualifying proposers.

b. The selection and solicitation process employed will be open and impartial. Selection will be made on the basis of final proposal scores derived from qualifications, price and other components, which expand the ground of competition beyond price alone to include experience, quality, and approach to market conditions.

c. The competitive process used to award subcontracts for all competitively bid construction work will be specified in the CM/GC contract and will be monitored by the County. The County will designate in the contract the proposed percentage of construction work that must be subcontracted and may not be self-performed by the CM/GC. The CM/GC contract will comply with the subcontractor competition requirements in ORS 279C.337.

D. SELECTION PROCESS: Other highlights of the selection process will include:

a. A mandatory Pre-Proposal Conference and Site Tour will be announced and held. This conference will be open to all interested parties. During this Pre-Proposal Conference, as well as any time prior to five (5) business days before the close of the solicitation, interested parties will be able to ask questions, request clarifications and suggest changes in the solicitation documents if such parties believe that the terms and conditions of the solicitation are unclear, inconsistent with industry standards, or unfair and unnecessarily restrictive of competition.

b. The evaluation process will determine whether a proposal meets the screening requirements of the RFP, and to what extent. The following process will be used:

   i. Proposals will be evaluated for completeness and compliance with the screening requirements of the RFP. Those proposals that are materially incomplete or non-responsive will not be accepted.

   ii. Proposals considered complete and responsive will be evaluated to determine if they meet and comply with the qualifying criteria of the RFP. If a proposal is unclear, the proposer may be asked to provide written clarification. Those proposals that do not meet all requirements will be rejected.

   iii. Proposals will independently be scored by the voting members of the Selection Committee. Scores will then be combined and assigned to each proposal.

   iv. The Selection Committee will convene to select from the highest-scoring proposers, a finalist(s) for formal interviews.

   v. The Selection Committee will conduct the interview/s with the short-listed proposer/s.

   vi. The Selection Committee will use the interview to confirm the scoring of the proposal and to clarify any questions. Based upon the revised scoring, the Selection Committee will rank the proposers, and provide an award recommendation.

   vii. Deschutes County will negotiate a contract with the top-ranked firm. If an agreement cannot be reached, the County will have the option to enter into an agreement with the second-ranked firm, and so forth.

c. Competing proposers will be notified in writing of the selection of the apparent successful proposer and will be given seven (7) calendar days after receipt of the notice to file any questions, concerns, or protests about the selection process. Protests will be subject to the requirements of the OAR 137-049-0450, must be in writing, and must be delivered to the County within seven (7) calendar days after receipt of the selection notice. No protest of the award selection shall be considered after this time period.

d. The contract achieved through this process will require the CM/GC to use an open competitive selection process to bid all components of the job. The CM/GC's general conditions and fee make-up of the total cost will be evaluated as one of the scoring criteria. General Conditions must include supervision, bonding, insurance, and mobilization, and must be within the current industry standard range. The CM/GC's fee must be within the industry's standard range for a project of this size. The entire value of the project will be awarded through open, competitive processes, at either the general contractor and/or the subcontractor level.

2. The awarding of a construction contract for the Project using CM/GC method would offer the County critical construction expertise and value to the Project. This finding is supported by the following information required by ORS 279C.335(2)(b) and ORS 279C.330.

A. SPECIALIZED EXPERTISE: Early selection of the CM/GC creates more informed, better quality decision making by the project team. A more efficient design and construction team saves the County money and helps the team anticipate and mitigate challenges in the current construction market.

This exemption will allow Deschutes County to proactively seek construction and constructability expertise during the design process, well in advance of the standard competitive bid timeline, to address the complexities of existing conditions and the current construction market, to help inform the best decisions on behalf of the County. Value will be added to the Project, via early and time-critical construction expertise, that could not otherwise be obtained to the same depth, duration, or quality.

a. **COORDINATION:** Use of a CM/GC in conjunction with the team approach will result in a better coordinated Project. By having the CM/GC part of the project team early, the CM/GC will have time to fully evaluate and understand the existing facilities and systems, along with the intended design direction prior to start of construction. This information will inform design direction and approach to site logistics and safety and security measures during construction.

b. The CM/GC clarifies several critical variables valuable to the Project design. The CM/GC will guarantee the maximum price (GMP) to complete the Project; determines the construction schedule; establishes the sequence of work; is contractually bound to implement the final Project design within the GMP; and participates as an essential member of the Project design and construction team. By utilizing the Request for Proposal selection process, which allows the County to consider factors such as experience and expertise in addition to price, the County will ensure that the selected CM/GC will be competent addition to the team.

The CM/GC would help assess material selections relative to lead time issues, best opportunities to secure subcontractors and labor for trade coverage, better pricing, and will

help discuss and/or adjust the work plan to address project and construction market needs. This component cannot be addressed by the usual design/bid/build method of construction because selection is typically based on the lowest bidder and occurs at the completion of the design process.

c. **CONSTRUCTION COORDINATION:** A CM/GC participating on this Project would provide timely assistance and support to the development of the design and the most suitable approach to accommodate existing infrastructure and safety for the adjacent tenant.

d. **MARKET CONDITIONS:** As well as the multitude of construction market factors that currently exist today in Oregon and Washington (e.g., supply chain and lead time issues, construction labor shortages, significant competition of and with other projects), the difficulty in establishing the best work sequence complicates our ability to accurately estimate the cost of this Project. The current construction market challenges the interest and capacity for contractors to bid for jobs. CM/GC Services, an alternative contracting method, will be more likely to result in a more experienced and better suited contractor for this Project than the usual competitive/low bid procurement.

B. OPERATIONAL, BUDGET, FINANCIAL DATA

a. **BUDGET:** The County has a fixed budget available for the Project, as well as a desired "as soon as possible" project delivery date. Early reliable pricing provided by the CM/GC, as well as scheduling and procuring help with long lead items during the design phase will allow for the potential to mitigate later related challenges.

b. **LONG TERM COSTS:** The Project will require expertise regarding the constructability and long-term cost/benefit analysis of innovative design. This knowledge is best obtained directly from the construction industry. Many decisions will be required during the design process that will encompass immediate feedback on constructability and pricing. Under the traditional design-bid-build process, there is a high risk of increased change orders and schedule impacts for Project of this size and complexity. Since there are significant costs associated with delay, time is of the essence. Because the contractor participates during the design phase, the CM/GC process will assist in providing a scope of work, constructible design and phasing solutions that best meet the requirements of the Project with significantly lower risk to the Project' costs. Involving the CM/GC during design will also allow Project risks to be addressed early and teamwork between the County, the design consultants, and the construction contractor (CM/GC) to minimize those risks.

c. **FEWER CHANGE ORDERS:** When the CM/GC participates in the design process, fewer change orders occur during project construction. This is due to the CM/GC's better understanding of the owner's needs, the existing building and the architectural and engineering team's intent. As a result, the Project is more likely to be completed on time and within budget. In addition, fewer change orders reduce the administrative time and costs of project management for both the County and the contractor.

d. **GMP CHANGE ORDERS COST LESS:** CM/GC change orders will be processed at a lower cost under the GMP. The design-bid-build method typically results in the contractor charging 15%+ markup on construction change orders. The GMP method applies lower predetermined markups.

e. **POTENTIAL SAVINGS:** Under the GMP method the County will enjoy the full savings, if actual costs are below the GMP. When the CM/GC completes the Project, any savings between the GMP and the actual cost accrue to the County.

f. **CONTRACTOR'S FEE IS LESS:** Contracts with CM/GC's are designed to create a better working relationship with the contractor. Consequentially, the overhead and profit fee is typically slightly lower than the fee anticipated on similar design-bid-build contracts.

C. ADDITIONAL PUBLIC BENEFITS

a. **TIME SAVINGS:** The use of CM/GC as an alternative contracting method allows for more streamlined construction documents, in lieu of a fully bid set where everything needs to be documented for pricing. This will help streamline the project and the completion date.

b. **COST SAVINGS:** The Project will benefit from the active involvement of a CM/GC contractor during the design process in the following ways:

i. The contractor's input regarding material availability and lead times, as well as the cost-effectiveness of various alternatives will guide the design toward the most economic choices.

ii. Consideration of the specific equipment available to the contractor will allow the designer to implement solutions that utilize the capacity and availability of that equipment.

iii. The contractor will be able to provide current and reliable information regarding the cost of materials that are experiencing price volatility and the availability of scarce materials.

iv. The contractor will also be able to order materials while design is being completed in order to avoid inflationary price increases and/or lead time issues, to mitigate the lead-times that may be required for scarce materials.

c. **GUARANTEED MAXIMUM PRICE (GMP) ESTABLISHES A MAXIMUM PRICE PRIOR TO COMPLETION OF DOCUMENTS:** The CM/GC will be able to obtain a complete understanding of the County's needs, the architect's design intent, the scope of the Project, and the operational needs of the Project by participating in the construction document phase. With the CM/GC participating in this phase they will be able to offer suggestions for improvement and make suggestions that will reduce costs. With the benefit of this knowledge, the CM/GC will also be able to guarantee a maximum price to be paid by the County for constructing the Project.

D. VALUE ENGINEERING

a. **WITH THE DESIGN-BID-BUILD PROCESS:** If the County were to utilize the design-bid-build method, the contractor would not participate in this evaluation. In conducting value engineering under the design-bid-build approach, a value engineering consultant is hired to participate in the design and cost evaluation process. This process adds extra costs and administrative complications, without providing the same benefits of early and committed through construction contractor participation.

b. **WITH CM/GC:** The CM/GC process offers a unique opportunity for value engineering that is not possible through the design-bid-build process. Value engineering is the means used to determine the best project design that meets the needs and priorities of the owner, within the

owner's budget. Value engineering is done most effectively by a team consisting of the owner, architect, consultants, and the contractor. When the contractor participates, the team can render the most comprehensive evaluation of all factors that affect the cost, quality, and schedule of the project.

i. The CM/GC method has the benefit of:

- the ability to best set/anticipate the schedule within these current market conditions;
- the ability to anticipate long lead items and how to best gain subcontractor commitment to this project,

Through integrated participation, a project's scope and design evolve that has greater value for the owner, and is not likely to be the same project or product created by the design-bid-build method.

CONCLUSIONS OF LAW

The above "Findings" show that the CM/GC process for the Construction of the Deschutes County Courthouse Expansion project complies with the requirements of ORS 279C.335(2) for exemption of the project from competitive bidding.

REVIEWED
LEGAL COUNSEL

PROPOSED ORDER

ORDER GRANTING EXEMPTION FROM COMPETITIVE BIDDING, AUTHORIZING THE CONSTRUCTION OF THE Deschutes County Courthouse Expansion PROJECT BY MEANS OF A CONSTRUCTION MANAGER/GENERAL CONTRACTOR AND AUTHORIZING SELECTION BY REQUEST FOR PROPOSAL

WHEREAS, the Board of County Commissioners of Deschutes County is the Local Contract Review Board for the County and in that capacity has authority to exempt certain contracts from competitive bidding requirements of 279C and associated county code provision, and

WHEREAS, the Board has determined that the Construction of the Deschutes County Courthouse Expansion Project should be constructed by a CM/GC.

The Board finds as follows:

1. The Board adopts the specific "Findings of Fact" set forth above.
2. The "Findings" show that an exemption from competitive bidding for the project complies with the requirements of ORS 279C.335 (2) and the Attorney General's Model Contract Rules, OAR 137-049-0630 (2) for exemption of the project from competitive bidding.

NOW, THEREFORE, the Board of Commissioners orders as follows:

The contract for the construction of the Deschutes County Courthouse Expansion Project in Bend, Oregon by a Construction Manager/General Contractor is exempted from competitive bidding and the CM/GC shall be selected by the Request-for-Proposals method in accordance with the Attorney General's Model Contract Rules and the process described in the above findings.

Dated this 9 of February, 2022

Patti Adair

PATTI ADAIR, Chair, County Commissioner

ANTHONY DeBONE, Vice Chair, County Commissioner

PHIL CHANG, County Commissioner

Document # 2022-162

12. Appendix B – Contract Amendment and Owner Change Order Log

Contract Action	Approval Date	Net Change	Cumulative Contract Amount	Description / Purpose
Original CM/GC Contract Doc. 2022-452	7/15/2022	$ 62,040.00	$ 62,040.00	Initial agreement for CM/GC preconstruction and design-phase services.
Amendment No. 1 — Early Work Doc. 2023-839	9/13/2023	4,513,562.00	4,575,602.00	Authorized early construction work before establishment of the GMP.
Amendment No. 2 — GMP Doc. 2024-138	2/21/2024	32,147,187.00	36,722,789.00	Established the Guaranteed Maximum Price, inclusive of the original CM/GC contract and Early Work Amendment.
OCO 001 Doc. 2024-833	9/25/2024	(34,244.00)	36,688,545.00	Reconciled tower-crane and temporary-shoring allowances; AJ Tucker demolition allowance reconciliation
OCO 002 Doc. 2024-976	12/18/2024	1,388,765.00	38,077,310.00	Consolidated design directives, site and utility work, early-work and IFC revisions, security scope, allowance activity, and owner credits. Approved a no-cost 191-calendar-day permit-delay schedule extension.
OCO 003 Doc. 2025-225	2/27/2025	1,328,914.00	39,406,224.00	Documented permit-delay impacts, including general conditions/general requirements and subcontractor impacts.
Amendment No. 3 Doc. 2025-223	3/25/2025	-	39,406,224.00	Revised change-order and payment-administration provisions and extended the contract termination date to July 31, 2026.
OCO 004 Doc. 2025-593	6/4/2025	130,580.00	39,536,804.00	Re-roofing of existing main courthouse areas adjacent to the expansion.
OCO 005 Doc. 2025-594	6/4/2025	32,927.00	39,569,731.00	Future utility pathway, courtroom paint, detention speak-through devices, plan-review-related work, allowance activity, and owner credit.
OCO 006 Doc. 2025-595	6/4/2025	360,908.00	39,930,639.00	Audio/visual work for Oregon Judicial Department expansion spaces; funded with Oregon Judicial Department FF&E funds.
OCO 007 Doc. 2025-704	6/25/2025	10,304.00	39,940,943.00	Electrical and data feeds, water-bottle filling station, and gate-hardware revisions; includes separate allowance activity.

OCO 008 2025-923	9/16/2025	31,426.00	39,972,369.00	Electrical, hearing-room, conduit, and existing-condition/interface work; includes allowances credits.
OCO 009 2025-978	10/13/2025	72,266.00	40,044,635.00	Coiling-door, casework, conduit, elevator-lighting, and sallyport CCTV work; includes allowance and value-engineering reconciliation.
OCO 010 2025-1143	12/23/2025	216,988.00	40,261,623.00	Replacement audiovisual systems in existing courtrooms; funded by Oregon Judicial Department FF&E.
OCO 011 2025-1144	12/23/2025	206,303.00	40,467,926.00	PR 04, Saving Grace wall assembly, CCD 009, and credit associated with non-insulated coiling doors.
OCO 012 2025-1145	12/23/2025	116,349.00	40,584,275.00	Bond & Harriman St. vehicle barriers and frontage improvements
OCO 013 2026-0190	3/8/2026	446,324.00	41,030,599.00	Lafayette Improvements.
OCO 014 2026-0213	3/11/2026	118,595.00	41,149,194.00	HK-pad dowels, Gray Building credit, CCD 010, negative VE allowance, ASA 025 credit, CMU pen infill, soffit, shades, and recessed-monitor work.
OCO 015 2026-0287	3/30/2026	141,180.00	41,290,374.00	PR 06, glazing, RFI items, electrical revisions, and allowance reconciliation. Includes a no-cost Phase 1 substantial-completion extension.
OCO 016 2026-0393	5/5/2026	32,571.25	41,322,945.25	Corner guards, elevator-pit guard, coiling-door key switches, roof platform, CCD 013, and framing credit.
OCO 017 2026-0556	6/26/2026	236,990.00	41,559,935.25	City of Bend waterline impacts, RFI and design coordination, security/accessibility work, CCD 014, roof platform, window film, ladder dock, and detention speak-through devices.
OCO 018 2026-0740	8/24/2026	533,222.00	42,093,157.25	Consolidated exterior-envelope, excavation, AV, electrical/life-safety, existing-building remodel, site/utility, ADA/security, temporary-entry, allowance, and credit items. Includes a $26,408 brick-repair credit.
OCO 019 2026-0909	11/23/2026	(27,250.93)	42,065,906.32	Structural revisions, site work, and reconciliation of credits, allowances, and contingency.
OCO 020 2026-0910	11/23/2026	$ (47,059.00)	$ 42,018,847.32	Reconciled costs for the 221 Lafayette Improvements

BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: November 30, 2026

SUBJECT: Work Session for Ordinance No. 2026-031 to correct the Comprehensive Plan Map and Zoning Map associated with Ordinance 2005-032

RECOMMENDED MOTION:
N/A

BACKGROUND AND POLICY IMPLICATIONS:
In 2005, the Board of County Commissioners approved a Comprehensive Plan Amendment ("PA") and a Zone Change ("ZC") to amend the Comprehensive Plan designation for 64105 Johnson Road, Bend from Surface Mining (SM) to Rural Residential Exception Area ("RREA") with a corresponding zone change from SM to Multiple Use Agricultural ("MUA10") under file numbers PA-04-04 and ZC-04-02. The adopted PA and ZC maps depicted the right-of-way for Johnson Road (formerly Johnson Market Road) rather than the physical road alignment that existed in 2005. Consequently, an approximately one-acre portion of the property has a Comprehensive Plan designation of Agriculture ("AG") rather than RREA and a zoning designation of Exclusive Farm Use ("EFU") rather than MUA10. The proposed Ordinance will correct the PA/ZC maps.

BUDGET IMPACTS:
None

ATTENDANCE:
Anthony Raguine, Principal Planner
Stephanie Marshall, Senior Assistant Legal Counsel

STAFF MEMORANDUM

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

FROM: Anthony Raguine, Principal Planner

DATE: November 24, 2026

RE: Work session to correct maps associated with Ordinance No. 2005-032

I. PROPOSAL

On November 30, 2026, a work session before the Board is scheduled for an applicant-initiated request to correct the Comprehensive Plan ("Plan") Amendment map and the Zone Change map associated with Ordinance No. 2005-032. The 25.20-acre subject property is located at 64105 Johnson Road and is the former location of Surface Mining ("SM") Site No. 305.

II. BACKGROUND

Pursuant to Ordinances No. 2005-031 and 2005-032, the Board approved amendments to the Plan designation of two properties from SM to Rural Residential Exception Area ("RREA") and approved a zone change from SM to Multiple Use Agricultural ("MUA10") for both properties. Ordinance No. 2005-031 is associated with former SM Site No. 306 and Ordinance No. 2005-032 is associated with former SM Site No. 305. Because both Ordinances were processed concurrently, they share a few exhibits.

Attachment No. 1 to this memo is a survey that was included as Exhibit B to Ordinance No. 2005-031. This survey depicts the boundaries of the former mining sites. The survey also depicts the relatively straight alignment of Johnson Market Road (now Johnson Road) along the southeast border of the subject property (former SM Site No. 305).

Attachment No. 2 to this memo is the Plan map that was included as Exhibit C to Ordinance No. 2005-031. The curved alignment of Johnson Road depicted on the Plan map appears to be the right-of-way associated with Johnson Road rather than the physical alignment of Johnson Road. Based on staff's consultation with the Road Department, the straight alignment of Johnson Road has existed since at least 1994.

This mapping error was repeated in the zone change map (Exhibit A to Ordinance No. 2005-032) shown in Attachment No. 3 to this memo. Attachment No. 4 to this memo more clearly illustrates

the mapping error.

As a result of the errors adopted in the Plan and zone change maps, an approximately 1-acre portion of the subject property received a Plan designation of Agricultural ("AG") rather than RREA and was zoned Exclusive Farm Use ("EFU") rather than MUA10.

III. SCOPE OF REVIEW

As noted previously, the scope of the Board's review is to evaluate the mapping errors and correct them via Ordinance No. 2026-031. Staff will return with the Ordinance package on December 14, 2026. In consultation with Legal Counsel, this review does not require a public hearing.

IV. BOARD OPTIONS

At the December 14, 2026, meeting, the Board can choose one of the following options:

1. Approve Ordinance No. 2026-031 and initiate first reading; or
2. Decline to approve Ordinance No. 2026-031.

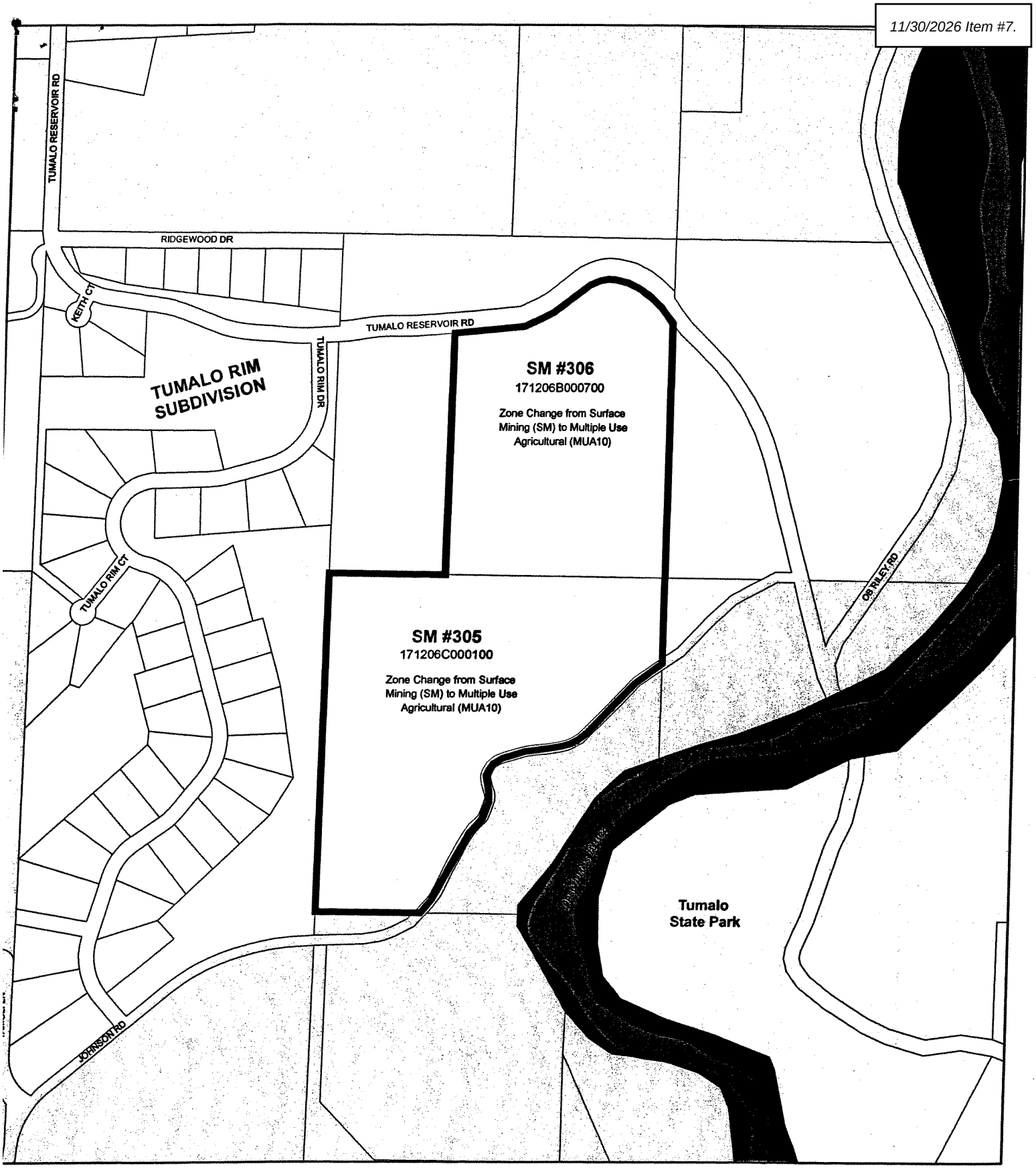
Should the Board approve Ordinance No. 2026-031 and complete first reading, staff will return to the Board on December 28, 2026, for second reading.

V. TIMELINE

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

Attachments:

1. Survey – Exhibit B to Ordinance No. 2005-031
2. Comprehensive Plan Map – Exhibit C to Ordinance No. 2005-031
3. Zoning Map – Exhibit A to Ordinance No. 2005-032
4. Before and After Maps



PROPOSED ZONING MAP
File No. ZC-04-02

Exhibit A
to Ordinance 2005-032

egend

- Subject Property
- FP - Flood Plain
- SM - Surface Mining
- OS&C - Open Space & Conservation
- MUA10 - Multiple Use Agricultural
- EFUTRB - Exclusive Farm Use Tumalo/Redmond/Bend

N W E S

0 250 500 1,000

LAIMER:
formation on this map was derived from digital databases on Deschutes County's G.I.S. was taken in the creation of this map, but it is provided "as is". Deschutes County s accept any responsibility for errors, omissions, or positional accuracy in the digital the underlying records. There are no warranties, express or implied, including the

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

Tom DeWolf, Chair

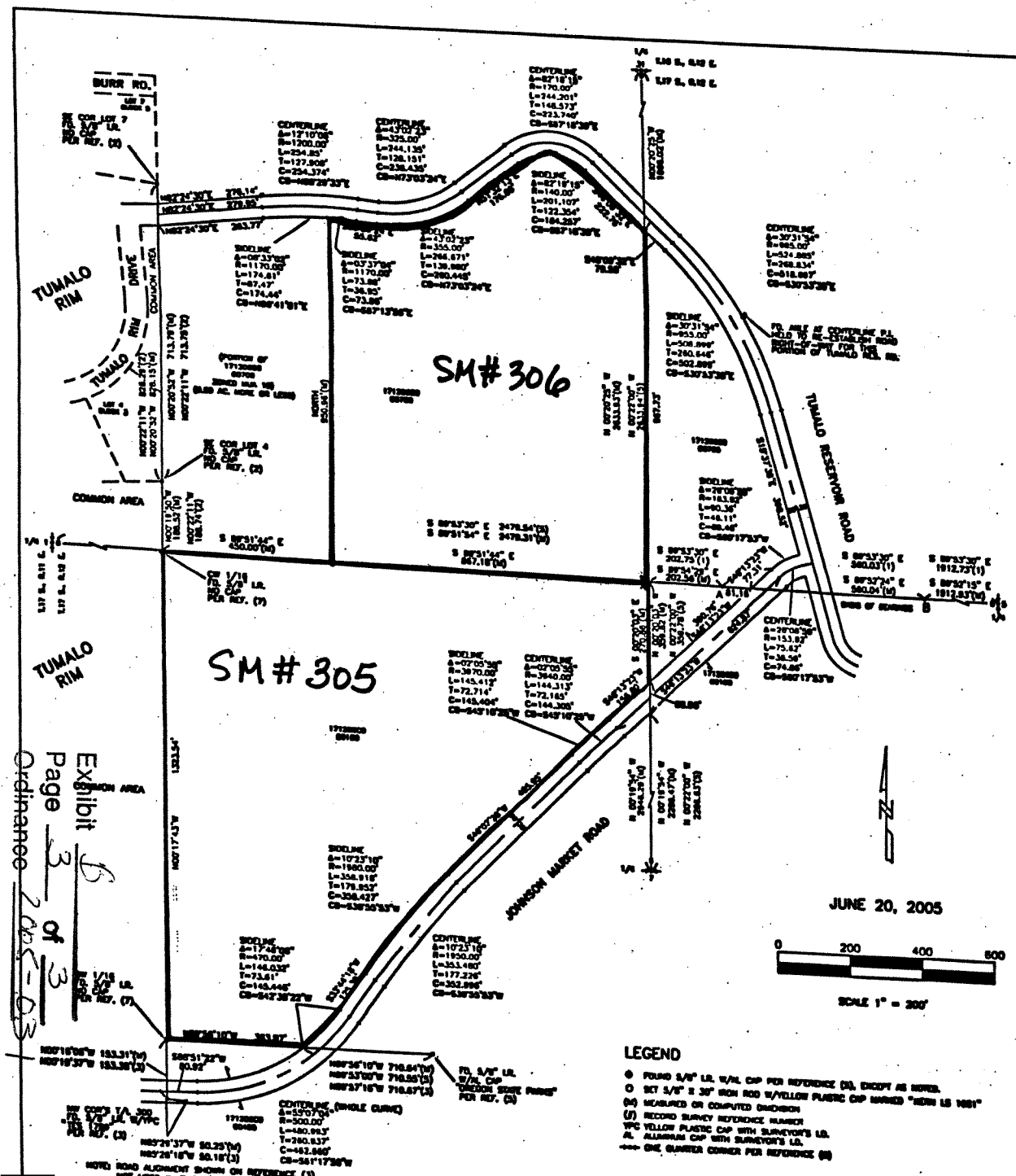
Michael M. Daly, Commissioner

Dennis R. Luke, Commissioner

ATTEST: Recording Secretary

Dated this _____ day of August, 2005

Effective Date: August _____, 2005



BOUNDARY SURVEY
FOR
SHEVLIN SAND & GRAVEL, LLC
LOCATED IN THE
SW 1/4 NE 1/4, SE 1/4 NW 1/4, AND THE NE 1/4 SW 1/4 OF SECTION 6, T. 17 S., R. 12 E., W.M.
DESCHUTES COUNTY, OREGON

TAX LOT 17-12-06 00 00705
TAX LOT 17-12-06 B0 00700
TAX LOT 17-12-06 C0 00100

SURVEYOR'S NARRATIVE

THE PURPOSE OF THIS SURVEY WAS TO LOCATE AND MARK EXISTING PROPERTY CORNER MONUMENTS, AND TO SET NEW MONUMENTS AT CORNERS NOT MARKED.

THE WEST LINE WAS BASED ON THE EAST LINE OF TUMALO RIM SUBDIVISION AND FOUND MONUMENTS OF RECORDS (1) AND (2) AS SHOWN HEREON. THE WEST LINE OF TAX LOT 17-12-06 00 00705 WAS BASED ON THE CENTER SECTION LINE BETWEEN THE NORTH AND SOUTH QUARTER CORNERS OF SECTION 6 PER RECORD (4).

TUMALO RESERVOIR ROAD AND JOHNSON MARKET ROAD FORM THE BOUNDARIES ON THE NORTH, EAST AND SOUTH. THE ROAD RIGHTS-OF-WAY WERE BASED ON THE MEASURED LOCATIONS OF THE CENTERLINES OF PAVEMENT AS OF THIS DATE. THE ROAD LOCATIONS ARE SUBJECT TO FUTURE SURVEY AND LEGALIZATIONS OF THE THEIR RIGHTS-OF-WAY BY THE GOVERNING AUTHORITY.

THE BASIS OF BEARINGS FOR THIS SURVEY WAS THE EAST-WEST CENTERLINE OF SECTION 6 AS MEASURED BETWEEN MONUMENTS "A" AND "B" FOUND AS SHOWN, AND ROTATED TO THE DESCHUTES COUNTY COORDINATE SYSTEM GRID.

SURVEYS AND DEEDS OF RECORD

1. SURVEY OF SECTION 6, (W 1/2), T.17 S., R.12 E., W.M.,BY SUN COUNTRY ENG. & SURVEYING, DATED 3/28/77, MICHAEL W. TYE, PLS1046, CS02254.
2. PLAT NO. 292, TUMALO RIM, BY SUN COUNTRY ENG. & SURVEYING, MICHAEL W. TYE, PLS 1046, DATED MARCH, 1977, CS10257.
3. LOT LINE ADJUSTMENT, (LL-98-8), FOR ERIC HOFFMAN, BY TYE ENG. & SURVEYING, WILLIAM R. TYE, PLS 1788, DATED 3/17/98, CS13274.
4. SURVEY OF TUMALO STATE PARK, BY RUSSEL T. PINARD, PLS 958, DATED MAY 1983, CS11482.
5. SURVEY OF TUMALO STATE PARK, BY JOHN E. HOLLINGSWORTH, PLS 881, DATED 4/18/80, CS02258.
6. SURVEY FOR CARL BURWELL, LOCATED IN THE SE1/4 SW1/4 OF SEC. 6, T.17 S., R.12 E., W.M., BY GARY L. DEJARNATT, PLS 2208, DATED MARCH 13, 1998, CS02257.
7. REVISION OF SURVEY IN SEC. 6, T.17 S., R.12 E., W.M. FOR R.L. COATS, BY BURTON BROS. ENG., INC., BY RICHARD W. BURTON, PLS 842, DATED FEB. 15, 1971, CS02255.
8. CONTROL MAPH DATA SHEETS 18123104, 17120940, 17120804, AND 17120840, BY THE DESCHUTES COUNTY SURVEYOR'S OFFICE, DATED 1992-1993.
9. STATUTORY BARGAIN & SALE DEED, CORRECTION DEED FROM JOYCE E. COATS TO JOYCE E. COATS AND ERIC W. COATS, CO-TRUSTEES OF THE JOYCE E. COATS REVOCABLE TRUST U/A/D OCTOBER 23, 2002, RECORDED 11/12/2003, IN VOL. 2003, PAGE 70418, DESCHUTES COUNTY RECORDS.

LEGEND

- ● FOUND 5/8" I.D. W/AL CAP PER REFERENCE (3), EXCEPT AS NOTED.
- ○ SET 5/8" X 30" IRON ROD W/YELLOW PLASTIC CAP MARKED "KERN LS 1681"
- (M) MEASURED OR COMPUTED DIMENSION
- (1) RECORD SURVEY REFERENCE NUMBER
- YPC YELLOW PLASTIC CAP WITH SURVEYOR'S I.D.
- AL ALUMINUM CAP WITH SURVEYOR'S I.D.
- ⊕ ONE QUARTER CORNER PER REFERENCE (4)

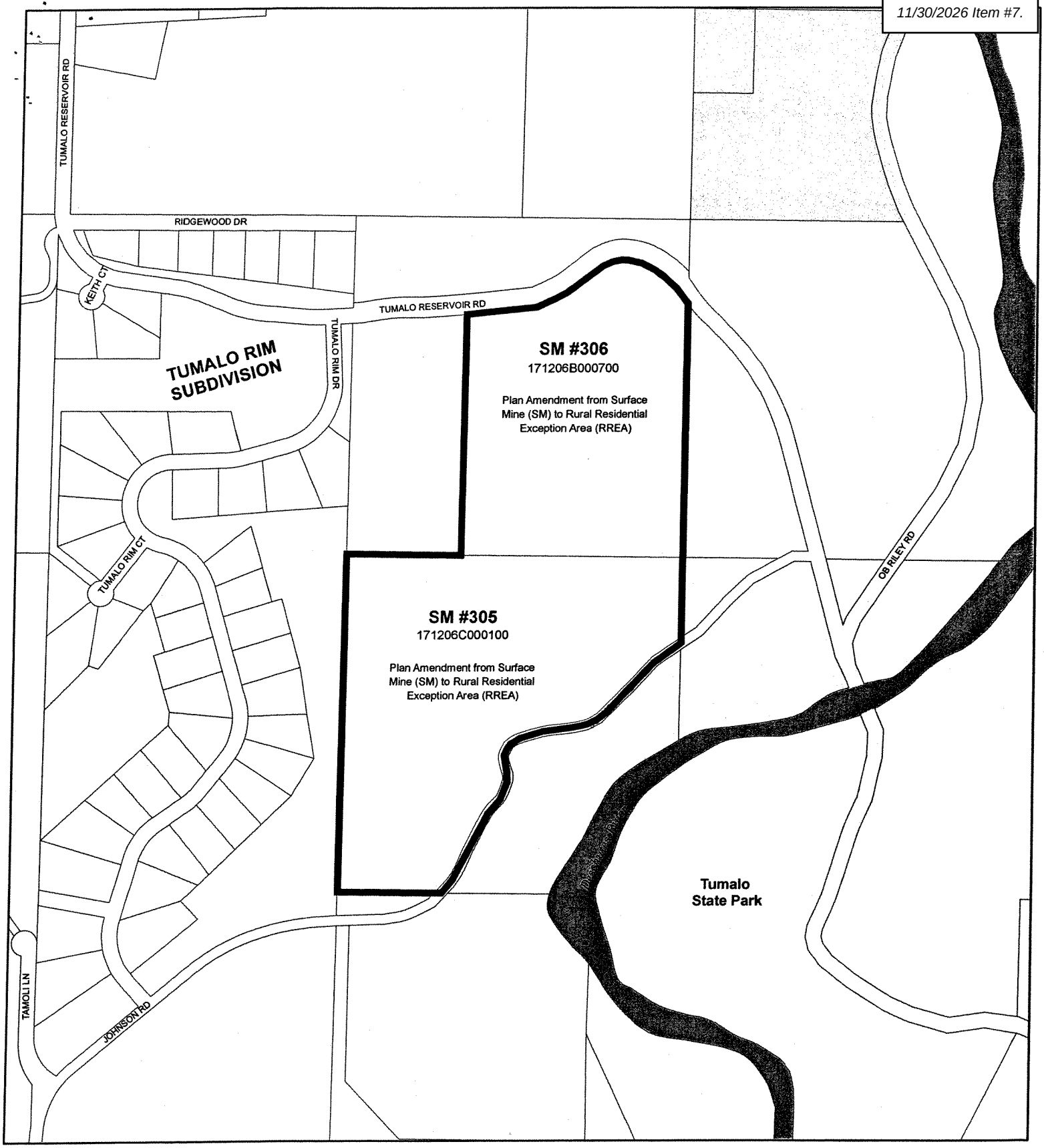
KERN SURVEYING

PREPARED BY:
JEFF KERN AND ASSOC. INC.
PROFESSIONAL LAND SURVEYORS
P.O. BOX 1244
BEND, OREGON 97709
(541) 388-4138

REGISTERED PROFESSIONAL LAND SURVEYOR
OREGON
JULY 30, 1979
JEFFREY A. KERN
1081

RENEWAL: JUNE 30, 2006

Exhibit D
Page 3 of 3
Ordinance 2005-03



PROPOSED COMPREHENSIVE PLAN MAP
File No. PA-04-04

Exhibit C
to Ordinance 2005-031

Legend

- Subject Property

Comprehensive Plan

- AG - Agriculture
- OS&C - Open Space & Conservation
- RREA - Rural Residential Exception Area
- SM - Surface Mining

N
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0 250 500 1,000 Feet

July 21, 2005

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

Tom DeWolf, Chair

Michael M. Daly, Commissioner

Dennis R. Luke, Commissioner

ATTEST: Recording Secretary

Dated this _____ day of August, 2005

Effective Date: August _____, 2005

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 accuracy in the digital data or the underlying records. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.

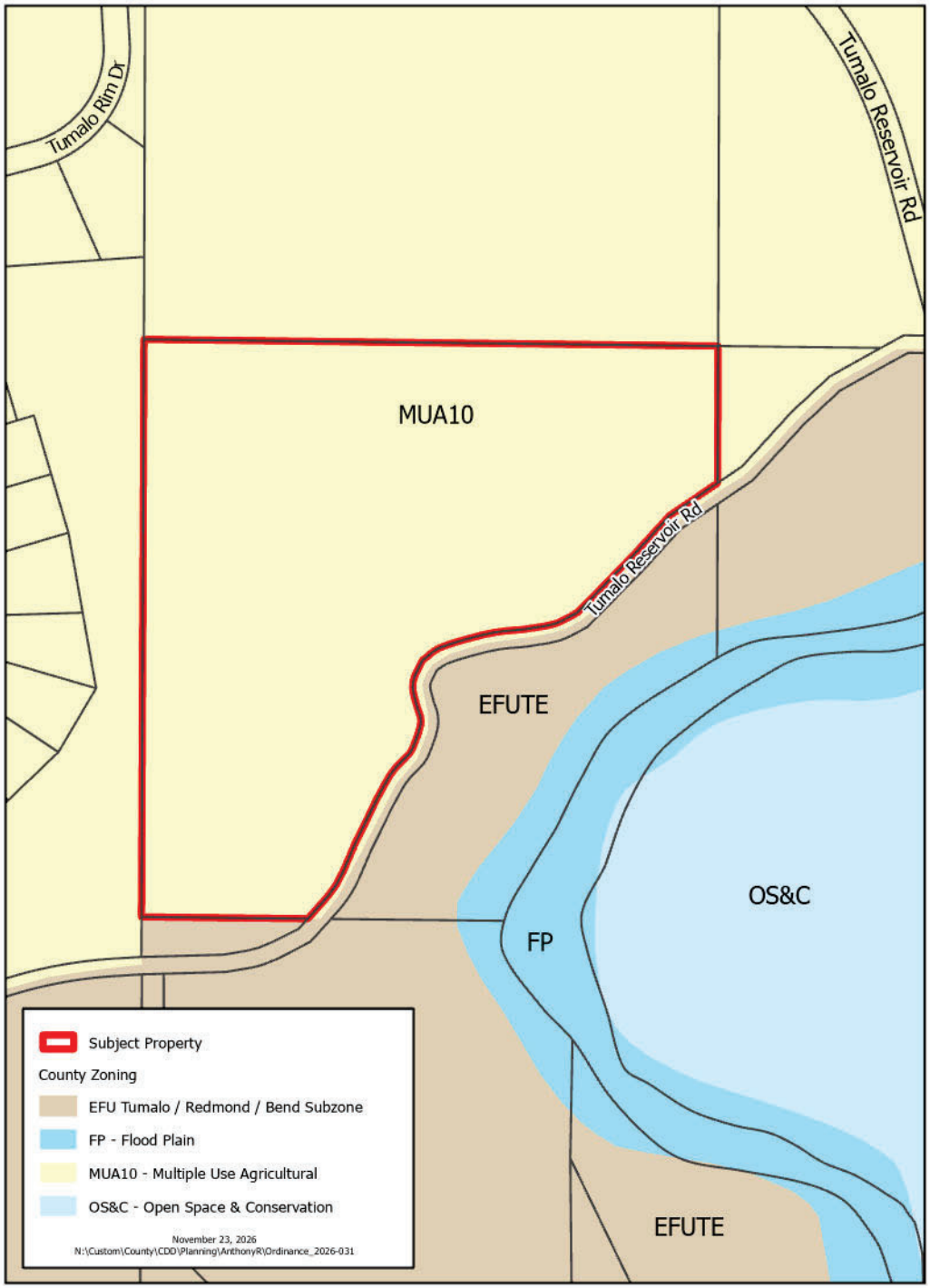
N:\CustomCounty\CDD\Planning\Cathy\T\171206B000700\pa_04_04.mxd

Todd Plan Amendment / Zone Change Correction

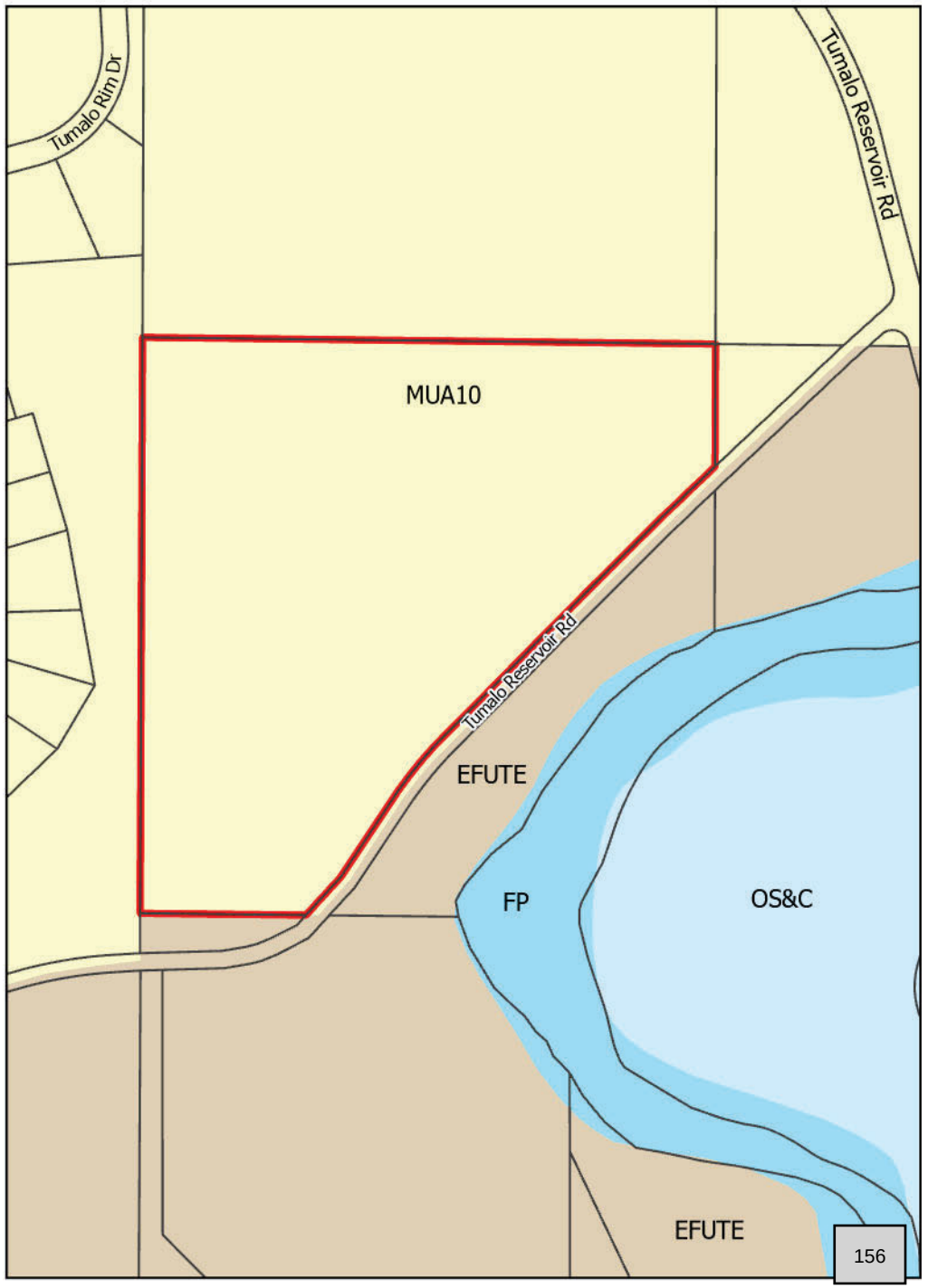
Exhibit "C" to Ordinance No. 2026-031

1" = 400'

Before



After



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: November 30, 2026

SUBJECT: Work Session: Title 22 – Development Procedures Text Amendments

RECOMMENDED MOTION:
N/A

BACKGROUND AND POLICY IMPLICATIONS:
The Board of Commissioners will conduct a work session on November 30, 2026 in preparation for a public hearing on December 9th to consider amendments to the Deschutes County Code (file no. 247-26-000557-TA). The amendments seek to update Title 22, Development Procedures, to incorporate current practices, update outdated terminology, and incorporate recent state rulemaking requirements for tribal notification and nomination of culturally sensitive landscape features.

BUDGET IMPACTS:
None

ATTENDANCE:
Nicole Mardell, Principal Planner
Will Groves, Planning Manager

COMMUNITY DEVELOPMENT

MEMORANDUM

TO: Deschutes County Board of Commissioners

FROM: Nicole Mardell, AICP, Principal Planner
Will Groves, Planning Manager

DATE: November 25, 2026

SUBJECT: Work Session: Title 22 - Development Procedures Text Amendments

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The Deschutes County Board of Commissioners (Board) will conduct a work session on November 30, 2026, in preparation for a December 9 public hearing to consider amendments to the Deschutes County Code (file no. 247-26-000557-TA). The amendments seek to update Title 22, Development Procedures Ordinance to incorporate current practices, update outdated terminology, and incorporate recent state rulemaking requirements for tribal notification and nomination of culturally sensitive landscape features.

The Department of Land Conservation and Development (DLCD) received a 35-day notice on September 17, 2026. The Planning Commission held a work session on this item on October 8 and held a public hearing and deliberations to recommend approval of the amendments on October 22, 2026.

Attached to this memorandum are the proposed text amendments (Exhibit A) and findings (Exhibit B) summarizing the changes. Within the proposed amendments, added language is shown underlined and deleted language is shown as ~~strikethrough~~.

All record materials can be found on the project website: https://www.deschutescounty.gov/Title22TA

I. BACKGROUND

Title 22 is the County's Development Procedures Ordinance, which establishes procedural requirements for development actions, land use actions, hearings, appeals, legislative amendments, and limitations on approvals. The proposed amendments align the code with current County practices, correct internal references, update terminology, and establish new tribal notice and cultural landmark nomination procedures resulting from recent state rulemaking.

II. OVERVIEW OF AMENDMENTS

Chapter 22.08 General Provisions

The proposed amendments create procedures for County tribal notification resulting from recent state rulemaking. They also create procedures for applications by Oregon-based governments to nominate culturally sensitive landscape features to the County's Goal 5 inventory, also authorized by rulemaking. Finally, the amendments clarify document submission procedures.

Chapter 22.12 Legislative Procedures

The amendments expand notice for legislative applications beyond newspapers to other media organizations. This reflects current practice of releasing a press release to radio stations, TV stations, and other media organizations.

Chapter 22.16 Development Action Procedures

The amendments clarify procedures to be used for development action appeals, reflecting current practice.

Chapter 22.20 Review of Land Use Action Applications

The amendments clarify noticing requirements based on current practice.

Chapter 22.22 Deschutes River Corridor Design Review

The amendments remove outdated references to Bend Urban Area Planning Commission, which no longer exists.

Chapter 22.24 Land Use Action Hearings

The amendments clarify procedures for transmission of the staff report and notices by email, reflecting current practice. The amendments also remove outdated references relating to exhibit procedures, and prescribe mailing procedures for continuances when the date, time, and/or place are not set at the initial hearing, reflecting current practice.

Chapter 22.32 Appeals

The amendments clarify deadlines for appeal notices and fees and remove outdated transcript and electronic tape requirements.

Chapter 22.36 Limitations on Approvals

The amendments repeal a carve-out provision for extensions to certain approvals issued by June 8, 2011. Staff understands that no approvals are eligible for the allowance.

III. AGENCY & PUBLIC COMMENT

One agency comment was received from the Klamath Tribes, expressing support for the proposed amendments pertaining to tribal notification, and interest in a Memorandum of Understanding to allow for more tailored notification practices, as allowed by state law.

IV. PLANNING COMMISSION HEARING AND RECOMMENDATION

The Planning Commission held a public hearing on October 22. With no oral testimony, the Planning Commission closed the public hearing and deliberated to recommend unanimous approval of the proposed amendments.

V. NEXT STEPS

The Board will conduct a public hearing on December 9, 2026.

At the conclusion of the public hearing, the Board may:

- Continue the hearing to a date certain;
- Close the hearing and leave the written record open to a date certain;
- Close the hearing and set a date for deliberations; or
- Close the hearing and commence deliberations.

Attachments

Exhibit A Draft Text Amendments
Exhibit B Draft Findings

Draft Amendments 11.20.26

TITLE 22 DESCHUTES COUNTY DEVELOPMENT PROCEDURES ORDINANCE

CHAPTER 22.04 INTRODUCTION AND DEFINITIONS
CHAPTER 22.08 GENERAL PROVISIONS
CHAPTER 22.12 LEGISLATIVE PROCEDURES
CHAPTER 22.16 DEVELOPMENT ACTION PROCEDURES
CHAPTER 22.20 REVIEW OF LAND USE ACTION APPLICATIONS
CHAPTER 22.22 DESCHUTES RIVER CORRIDOR DESIGN REVIEW PROCEDURES
CHAPTER 22.23 DESTINATION RESORT MAP AMENDMENT PROCEDURES
CHAPTER 22.24 LAND USE ACTION HEARINGS
CHAPTER 22.28 LAND USE ACTION DECISIONS
CHAPTER 22.30 RECONSIDERATION
CHAPTER 22.32 APPEALS
CHAPTER 22.34 PROCEEDINGS ON REMAND
CHAPTER 22.36 LIMITATIONS ON APPROVALS
CHAPTER 22.40 DECLARATORY RULING

...

CHAPTER 22.08 GENERAL PROVISIONS

22.08.005 Pre-Application Conference
22.08.010 Application Requirements
22.08.020 Acceptance Of Application
22.08.030 Incomplete Applications
22.08.035 False Statements On Application And Supporting Documents
22.08.037 Withdrawal Of Application
22.08.040 Applicable Standards
22.08.050 Notice To Division Of State Lands
22.08.055 Notice To Tribal Governments
22.08.060 Conflicting Procedures
22.08.070 Time Computation
22.08.080 Mailing List
22.08.090 Submission Of Documents

...

22.08.010 Application Requirements

A. Property Owner. For the purposes of DCC 22.08.010, the term "property owner" shall mean the owner of record or the contract purchaser and does not include a person or organization that holds a security interest.

B. Applications for development or land use actions shall:

1. Be submitted by the property owner or a person who has written authorization from the property owner as defined herein to make the application;

2. Be completed on a form prescribed by the Planning Director;

3. Include supporting information required by the zoning and subdivision ordinance(s) and ~~that~~ all information necessary to demonstrate compliance with applicable criteria; and

4. Be accompanied by the appropriate filing fee, unless such fees are waived by the Board of County Commissioners.

5. Include an affidavit attesting to the fact that the notice has been posted on the property in accordance with DCC 22.24.030(B).

C. The following applications are not subject to the ownership requirement set forth in DCC 22.08.010(B)(1):

1. Applications submitted by or on behalf of a public entity or public utility having the power of eminent domain with respect to the property subject to the application; or

2. Applications for development proposals sited on lands owned by the state or the federal government; or

3. Applications submitted by an Oregon-based government pursuant to OAR 660-023-0210(4)(c) to determine whether a Cultural Landscape Feature is significant.

D. A deposit for hearings officers' fees may be requested at any time prior to the application being deemed complete and, if the application is heard by a hearings officer, the applicant will be responsible for the actual costs of the hearings officer.

HISTORY
Repealed & Reenacted by Ord. 82-011 on 8/9/1982
Repealed & Reenacted by Ord. 90-007 §§1, 2 on 12/7/1990
Amended by Ord. 95-045 §3 on 6/28/1995

Amended by Ord. 96-071 §1B on 12/30/1996
Amended by Ord. 2015-017 §1 on 3/28/2016
Amended by Ord. 2026-xx §x on x/xx/xxxx
...

22.08.030 Incomplete Applications

A. If an application is incomplete, the planning director shall, within 30 days of receipt of the application, notify the applicant in writing of exactly what information is missing. The applicant may amend ~~his~~ the application or submit a new application supplying the missing information.

B. If an application for a permit, limited land use decision, or zone change not associated with a concurrent plan amendment, is incomplete, the Planning Director shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information.

C. The application shall be deemed complete upon receipt by the Planning Division of:

1. All of the missing information;
2. Some of the missing information and written notice from the applicant that no other information will be provided; or
3. Written notice from the applicant that none of the missing information will be provided.

D. On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required above in subsection B and has not submitted:

1. All of the missing information;
2. Some of the missing information and written notice from the applicant that no other information will be provided; or
3. Written notice from the applicant that none of the missing information will be provided.

HISTORY
Repealed & Reenacted by Ord. 82-011 on 8/9/1982
Repealed & Reenacted by Ord. 90-007 §1 on 12/7/1990
Amended by Ord. 95-045 §4 on 6/28/1995
Amended by Ord. 2008-027 §1 on 1/6/2009

Amended by Ord. 2026-xx §x on x/xx/xxxx

...

22.08.040 Applicable Standards

A. With respect to the acknowledged portions of the County's comprehensive plan, the standards and criteria applicable to an application shall be the standards and criteria applicable at the time the application was first submitted if the application and requested information, if any, are received within 180 days of the time the application was first submitted.

B. For applications that involve the development of housing and are eligible to be reviewed pursuant to ORS 197A.400:

1. In all cases where the Deschutes County Code contains alternative standards or criteria describing processes for: (1) Clear and Objective Standards or Criteria (i.e., review pursuant to ORS 197A.400), and (2) General/Discretionary Standards or Criteria (i.e., review not pursuant to ORS 197A.400), the applicant shall identify in the application materials if the proposal will be reviewed under Clear and Objective Standards or Criteria, or General/Discretionary Standards or Criteria.

    a. Partial application of Clear and Objective Standards or Criteria shall not be permitted. If an applicant selects Clear and Objective Standards or Criteria as the review criteria, the entirety of the proposal will be reviewed under Clear and Objective Standards or Criteria for all relevant sections of the Deschutes County Code.

2. The County shall review the application exclusively under the standards and criteria selected by the applicant – either the Clear and Objective Standards or Criteria, or the General/Discretionary Standards or Criteria.

3. Any request to elect to use different standards/criteria than those identified in the application materials shall constitute a modification of application subject to DCC 22.20.055.

4. For applications subject to ORS 197A.400(1), the notice, pre-decision of hearing, local appeal, and LUBA appeal limitations in ORS 197A.400 control over conflicting provisions of this code. Applications subject to ORS 197A.400(1) shall be reviewed without prior notice of application or a pre-decision of public hearing.

HISTORY
Repealed & Reenacted by Ord. 82-011 on 8/9/1982
Repealed & Reenacted by Ord. 90-007 §1 on 12/7/1990
Amended by Ord. 2025-008 §13 on 6/25/2025
Amended by Ord. 2026-xx §x on x/xx/xxxx
...

22.08.055 Notice to Tribal Governments and Cultural Landscape Feature Applications

A. Definitions and Tribal List
1. "Tribe" has the meaning given in OAR 660-023-0210(1)(h).
2. For notice required under this section, the County shall use the list obtained from the Legislative Commission on Indian Services of tribes with an ancestral connection to land within the County, as provided in OAR 660-023-0210(10)(c).

B. Cultural Landscape Feature Applications
1. The County shall accept an application submitted by an Oregon-based government under OAR 660-023-0210(4)(c) to determine whether a cultural landscape feature is significant and shall process the application as an amendment to the comprehensive plan in accordance with that rule and applicable County procedures. Property-owner consent or authorization shall not be required.
2. After receiving the application, the County shall notify owners of property that contains all or a portion of the subject landscape feature or its impact area, as described by the applicant, and within seven days shall notify tribes with an ancestral connection to the land within the County.
3. For a cultural landscape feature found to be significant, the County shall adopt protection measures concurrently with creation or amendment of the local inventory as required by OAR 660-023-0210(4)(e) and shall complete the applicable Goal 5 process.

C. Tribal Coordination
1. The County shall provide notice to tribes with an ancestral connection to land within the County for an application that involves ground disturbance and that is:
   a. A permit as defined in ORS 215.402(4)
   b. A limited land use decision for which public notice is required under ORS 197.195 or 197.797; or
   c. A land use action subject to ORS 197A.146.

2. The County shall notify tribes no later than five days after determining that the application is complete and shall include tribes in the notice of the public comment period or public hearing required for the application.
    a. When a tribe responds, the County shall inform the applicant and transmit the tribe's recommendations for avoiding or mitigating impacts. This information shall be included in the record in a manner that preserves confidentiality as provided in OAR 660-023-0210(3)(d).
    b. In the event a tribe has indicated a negative impact, the County shall offer to arrange a meeting with the tribe(s) and the applicant within the required review timeline.
3. Notification to tribes required as part of a federal action satisfies the requirements of this subsection.

D. Archaeological Sites.

1. Where the record indicates the presence of a known archaeological site, approval shall be conditioned on obtaining an Oregon Archaeological Permit under ORS 390.235 and OAR chapter 736, division 51.

HISTORY
Adopted by Ord. 2026-xx §x on x/xx/xxxx

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~~**22.08.080 Mailing List**~~

~~Any person may, upon payment of a fee set by the Planning Director, request to receive the planning division's weekly media update packet, which may include a list of accepted applications, planning commission agendas and hearings body notices.~~

HISTORY
Repealed & Reenacted by Ord. 82-011 on 8/9/1982
Repealed & Reenacted by Ord. 90-007 §1 on 12/7/1990
Repealed by Ord. xx-xx §x on xx/x/xxxx

22.08.090 Submission Of Documents

A document is "submitted" when it is received.

A. Physical s~~S~~ubmittals shall be made either at a noticed hearing or at the offices of the Planning Division during regular business hours, unless specified otherwise by the Hearings Body or notice.
B. Electronic submittals may be accepted at any time, subject to limitations imposed as part of a hearing or similar action, if any. Electronic acceptance does not extend

or alter any filing deadline imposed by DCC Title 22, applicable law, a notice, or a Hearings Body order.

C. Any submittal received after the closure of a record shall not be considered part of the record.

HISTORY
Adopted by Ord. 96-071 §1 on 12/30/1996

Amended by Ord. 2026-xx §x on x/xx/xxxx

CHAPTER 22.12 LEGISLATIVE PROCEDURES

22.12.010 Hearing Required
22.12.020 Notice
22.12.030 Initiation Of Legislative Changes
22.12.040 Hearings Body
22.12.050 Final Decision
22.12.060 Corrections
...

22.12.020 Notice

A. Published Notice.

1. Notice of a legislative change shall be published in a newspaper of general circulation in the county at least 10 days prior to each public hearing.

2. The notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.

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

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

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

HISTORY
Repealed & Reenacted by Ord. 82-011 on 8/9/1982
Repealed & Reenacted by Ord. 90-007 §1 on 12/7/1990

Amended by Ord. 2026-xx §x on x/xx/xxxx

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CHAPTER 22.16 DEVELOPMENT ACTION PROCEDURES

22.16.010 Review Of Development Action Applications
22.16.020 Decision
22.16.030 Review Of Development Action

...

22.16.020 Decision

A. Development action applications acted upon without notice or hearing shall be approved or denied by the Planning Director or his designee within 30 days of the application's acceptance by the Planning Director.

B. Notice of a decision shall be provided to the applicant or the applicant's representative.

C. The decision may be appealed under DCC 22.16.030 subject to the procedures of 22.32.050.

D. A development action decision becomes final when no further appeal under DCC Title 22 is possible.

HISTORY
Repealed & Reenacted by Ord. 82-011 on 8/9/1982
Repealed & Reenacted by Ord. 90-007 §1 on 12/7/1990
Amended by Ord. 2026-xx §x on x/xx/xxxx

22.16.030 Review Of Development Action

If the authority under which a development action is undertaken provides a means of review or appeal of a decision independent from DCC Title 22, the review or appeal shall be in accordance with the procedures independently provided and not in accordance with DCC Title 22. If the authority under which a development action is reviewed does not provide a means of review or appeal of a decision, then review or appeal shall be in accordance with DCC 22.32.050.

HISTORY
Repealed & Reenacted by Ord. 82-011 on 8/9/1982
Repealed & Reenacted by Ord. 90-007 §1 on 12/7/1990
Amended by Ord. 2026-xx §x on x/xx/xxxx

CHAPTER 22.20 REVIEW OF LAND USE ACTION APPLICATIONS

22.20.005 Effect Of Determinations Made Outside Of Established Processes
22.20.010 Action On Land Use Action Applications
22.20.015 Code Enforcement And Land Use
22.20.020 Administrative Land Use Decisions With Prior Notice
22.20.030 Administrative Decision Without Prior Notice
22.20.040 Final Action In Land Use Actions
22.20.050 Temporary Approval
22.20.052 Supplementation Of Application Within First 30 Days Of Submittal
22.20.055 Modification Of Application
22.20.060 (Repealed)
22.20.070 Availability Of Administrative Decisions

...

22.20.020 Administrative Land Use Decisions With Prior Notice

A. Notice of the application shall be sent within 10 days of submittal of the application to persons entitled to notice under DCC 22.24.030. Such notice shall include all the information specified under DCC 22.24.040(A) except for the information specified in DCC 22.24.040(A)(7) and (10).

B. Any person may comment in writing on the application until a decision is final or hearing is conducted. Comments are recommended to be submitted within 10 days from the date notice was mailed or a longer period as specified in the notice~~.~~

C. The Planning Director's decision to approve, deny or send to a hearing shall be made within 30 days after an application is accepted as complete. This time limit may be waived by the written consent of the applicant.

D. Notice of the Planning Director's decision and the appeal period shall be sent to all persons entitled to notice under DCC 22.24.030 and~~,~~ to all persons who commented prior to the issuance of the decision ~~and to all members of the Planning Commission~~. The notice shall contain the applicable information required under DCC 22.24.040.

E. The applicant, all persons entitled to notice under DCC 22.24.030 and all other persons commenting as provided in DCC 22.20.020 constitute parties to the administrative decision. Any party can appeal the decision in accordance with DCC 22.32.

F. Applications subject to ORS 197A.400(1) shall be reviewed without prior notice of application or a pre-decision of public hearing.

HISTORY
Repealed & Reenacted by Ord. 82-011 on 8/9/1982
Repealed & Reenacted by Ord. 90-007 §1 on 12/7/1990
Amended by Ord. 91-013 §3 on 2/27/1991
Amended by Ord. 95-045 §7 on 6/28/1995
Amended by Ord. 96-071 §1C on 12/30/1996
Amended by Ord. 2026-xx §x on x/xx/xxxx
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CHAPTER 22.22 DESCHUTES RIVER CORRIDOR DESIGN REVIEW PROCEDURES

22.22.010 Deschutes River Corridor Design Review Procedures

22.22.010 Deschutes River Corridor Design Review Procedures

For all property subject to the Deschutes River design review process under DCC Title 19, the following procedures shall apply:

A. There shall be two types of review for design review depending on the level and type of activity proposed.

1. Type I review shall be performed by the Planning Director for the following activities:

a. Minor alterations of 10 percent or less to an existing building facade facing river.

b. Changes in window or door placement visible from the river.

c. Changes in parking locations.

d. Fill or removal activity within 10 feet of the ordinary high water mark of the Deschutes River.

The Planning Director, at his/her discretion, may refer a Type I application to the ~~Bend Urban Area~~ Planning Commission for approval. The Planning Commission's consideration shall be subject to Type II procedures.

2. Notwithstanding DCC 22.24.020(A), Type II review shall be performed by the ~~Bend Urban Area~~ Planning Commission for the following activities:

a. Appeal of a Type I decision.

b. New construction and new development.

c. Master Plan approval for large-scale projects.

d. Variances to application under DCC 19.76.090.

e. Fill and removal activities associated with new development or for creation of firebreaks in association with appropriate fire prevention authorities.

B. Type I Procedures: The applicant shall request approval for a Type I procedure in writing to the Planning Division. The request shall include a site plan and a description of work and materials that will be used. The Planning Director shall review the request and respond to the applicant in writing of the decision and any conditions placed on the decision.

C. Type II Procedures: Type II review shall be conducted by the ~~Bend Urban Area~~ Planning Commission as follows:

1. Notice for Type II applications shall be as set forth in DCC 22.24.030, and DCC 22.24.040. The Commission may hold a public hearing for any Type II applications. The hearings procedure shall be as set forth in DCC 22.24, Land Use Action Hearings.

2. Appeals of the decision of the ~~Bend Urban Area~~ Planning Commission shall be to the Board of County Commissioners and the process shall be as set forth in DCC 22.32, Appeals.

D. Where the procedures in DCC 22.22.010 conflict with other provisions of DCC Title 22 with respect to Deschutes River Corridor Design Review, the provisions of DCC Title 22 shall prevail.

HISTORY

Adopted by Ord. 94-028 §1 on 6/15/1994

Amended by Ord. 2026-xx §x on x/xx/xxxx

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CHAPTER 22.24 LAND USE ACTION HEARINGS

22.24.010 Filing Of Staff Report For Hearing

22.24.020 Hearings Body

22.24.030 Notice Of Hearing Or Administrative Action

22.24.040 Contents Of Notice
22.24.050 Burden Of Proof
22.24.060 Nature Of Evidence
22.24.070 Limitation On Oral Presentations
22.24.080 Standing
22.24.090 Record
22.24.100 Disclosure Of Ex Parte Contacts
22.24.105 Disclosure Of Personal Knowledge
22.24.110 Challenge For Bias, Prejudgment Or Personal Interest
22.24.120 Hearings Procedure
22.24.125 Setting The Hearing
22.24.130 Close Of The Record
22.24.140 Continuances Or Record Extensions
22.24.150 Objections To Jurisdiction, Procedure, Notice Or Qualifications
22.24.160 Reopening The Record

22.24.010 Filing Of Staff Report For Hearing

A. At the time an application that in the judgment of the Planning director requires a hearing is deemed complete, a hearing date shall be set.

B. A staff report shall be completed seven days prior to hearing. If the report is not completed by such time, the hearing shall be held as scheduled, but any party may at the hearing or in writing prior to the hearing request a continuance of the hearing to a date that is at least seven days after the date the initial staff report is complete. Pursuant to DCC 22.24.140(A)(3), grant of a continuance under these circumstances shall be discretionary.

C. A copy of the staff report shall be provided ~~mailed~~ to the applicant by mail or electronic mail, ~~-~~shall be made available to such other persons who request a copy, and shall be filed with the Hearings Body.

D. Oral or written modifications and additions to the staff report shall be allowed prior to or at the hearing.

HISTORY
Repealed & Reenacted by Ord. 82-011 on 8/9/1982
Repealed & Reenacted by Ord. 90-007 §1 on 12/7/1990
Amended by Ord. 95-045 §11 on 6/28/1995
Amended by Ord. 96-071 §1D on 12/30/1996

Amended by Ord. xxxx-xxx §x on xx/xx/xxxx

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22.24.030 Notice Of Hearing Or Administrative Action

A. Individual Mailed Notice.

1. Except as otherwise provided for herein, notice of a land use application shall be ~~mailed~~ provided at least 20 days prior to the hearing for those matters set for hearing, or within 10 days after receipt of an application for those matters to be processed administratively with notice. Written notice shall be sent by mail or electronic mail to the following persons:

    a. The applicant.

    b. Owners of record of property as shown on the most recent property tax assessment roll of property located:

        1) Within 100 feet of the property that is the subject of the notice where any part of the subject property is within an urban growth boundary;

        2) Within 250 feet of the property that is the subject of the notice where the subject property is outside an urban growth boundary and not within a farm or forest zone, except where greater notice is required under DCC 22.24.030(A)(4) for structures proposed to exceed 30 feet in height; or

        3) Within 750 feet of the property that is the subject of the notice where the subject property is within a farm or forest zone, except where greater notice is required under DCC 22.24.030(A)(4) for structures proposed to exceed 30 feet in height.

    c. For a solar access or solar shade exception application, only those owners of record identified in the application as being burdened by the approval of such an application.

    d. The owner of a public use airport if the airport is located within 10,000 feet of the subject property.

    e. The tenants of a mobile home park when the application is for the rezoning of any part or all of a mobile home park.

~~f. The Planning Commission.~~

~~g.~~f. Any neighborhood or community organization formally recognized by the board under criteria established by the Board whose boundaries include the site.

~~h.~~g. At the discretion of the applicant, the County also shall provide notice to the Department of Land Conservation and Development.

2. Notwithstanding DCC 22.24.030(A)(1) (b)(1), all owners of property within 250 feet of property that is the subject of a plan amendment application or zone change application shall receive notice.

3. The failure of a property owner to receive mailed or electronically mailed notice shall not invalidate any land use approval if the Planning Division can show by affidavit that such notice was given.

4. For structures proposed to exceed 30 feet in height that are located outside of an urban growth boundary, the area for describing persons entitled to notice under DCC 22.24.030(A)(1)(b) shall expand outward by a distance equal to the distance of the initial notice area boundary for every 30 foot height increment or portion thereof.

B. Posted Notice.

1. Notice of a land use action application for which prior notice procedures are chosen shall be posted on the subject property for at least 10 continuous days prior to any date set for receipt of comments. Such notice shall, where practicable, be visible from any adjacent public way.

2. Posted notice of an application for a utility facility line approval shall be by posting the proposed route at intervals of not less than one-half mile. The notice shall be posted as close as practicable to, and be visible from, any public way in the vicinity of the proposed route.

3. Notice of a solar access application shall be posted as near as practicable to each lot identified in the application.

C. Published Notice. In addition to notice by mail, electronic mail, and posting, notice of an initial hearing shall be published in a newspaper of general circulation in the County at least 20 days prior to the hearing.

D. Media Notice. Copies of the notice of hearing shall be transmitted to other ~~newspapers~~ media sources published in Deschutes County, at the discretion of the Planning Director.~~.~~

HISTORY
Repealed & Reenacted by Ord. 82-011 on 8/9/1982
Repealed & Reenacted by Ord. 90-007 §1 on 12/7/1990
Amended by Ord. 91-013 §7-8 on 2/27/1991
Amended by Ord. 95-045 §12 on 6/28/1995
Amended by Ord. 95-071 §1 on 12/13/1995
Amended by Ord. 96-071 §1D on 12/30/1996
Amended by Ord. 99-031 §6 on 10/27/1999
Amended by Ord. 2018-012 §5 on 11/23/2018
Repealed & Reenacted by Ord. 2019-012 §1,2 on 12/2/2019
Amended by Ord. xxxx-xxx §x on xx/xx/xxxx
...

22.24.080 Standing

A. Any interested person may appear and be heard in a ~~land use action~~ hearing, except that in appeals heard on the record, a person must have participated in a previous hearing on the subject application.

B. Any person appearing on the record at a hearing (including appeals) or presenting written evidence in conjunction with an administrative action or hearing shall have standing and shall be a party. A person whose participation consists only of signing a petition becomes a party only if his or her signature is legible and his or her address is clearly written on the petition.

C. Additionally, any owner of property to be burdened by a solar access permit shall be considered a party at every stage of the solar access permit decision process.

HISTORY
Repealed & Reenacted by Ord. 82-011 on 8/9/1982
Repealed & Reenacted by Ord. 90-007 §1 on 12/7/1990
Amended by Ord. 95-045 §15 on 6/28/1995
Amended by Ord. 96-071 §1D on 12/30/1996
Amended by Ord. xxxx-xxx §x on xx/xx/xxxx

22.24.090 Record

A. A ~~tape~~ recording of the hearing shall be made.

B. All exhibits presented at a hearing shall be marked to show the identity of the person offering the exhibit.

C. Exhibits shall be numbered in the order presented. ~~in two categories, proponents and opponents, and shall be dated.~~

~~D. When exhibits are introduced, the proponent or opponent exhibit number or letter shall be read into the record.~~

(Ord. 05-051 §1, 2005)

HISTORY
Repealed & Reenacted by Ord. 82-011 on 8/9/1982
Repealed & Reenacted by Ord. 90-007 §1 on 12/7/1990
Amended by Ord. xxxx-xxx §x on xx/xx/xxxx
...

22.24.140 Continuances Or Record Extensions

A. Grounds.

1. Prior to the date set for an initial hearing, an applicant shall receive a continuance upon any request. If a continuance request is made after the published or mailed notice has been provided by the County, the Hearings Body shall take evidence at the scheduled hearing date from any party wishing to testify at that time after notifying those present of the continuance.

2. Any party is entitled to a continuance of the initial evidentiary hearing or to have the record left open in such a proceeding in the following instances:

   a. Where additional documents or evidence are submitted by any party; or

   b. Upon a party's request made prior to the close of the hearing for time to present additional evidence or testimony.
   For the purposes of DCC 22.24.140(A)(2), "additional documents or evidence" shall mean documents or evidence containing new facts or analysis that are submitted after notice of the hearing.

   c. The grant of a continuance or record extension in any other circumstance shall be at the discretion of the Hearings Body.

B. Except for continuance requests made under DCC 22.24.140(A)(1), the choice between granting a continuance or leaving the record open shall be at the discretion of the Hearings Body. After a choice has been made between leaving the record open and granting a continuance, the hearing shall be governed thereafter by the provisions that relate to the path chosen.

C. Continuances.

1. If the Hearings Body grants a continuance of the initial hearing, the hearing shall be continued to a date, time, and place certain at least seven days from the date of the initial hearing, or the 22.24.030(A) individual mailed notice procedures shall be followed if the continued hearing date, time, and place are not set at the initial hearing.

2. An opportunity shall be provided at the continued hearing for persons to rebut new evidence and testimony received at the continued hearing.

3. If new written evidence is submitted at the continued initial hearing, any person may request prior to the conclusion of the continued hearing that the record be left open for at least seven days to allow submittal of additional written evidence or testimony. Such additional written evidence or testimony shall be limited to evidence or testimony that rebuts the new written evidence or testimony.

4. If the hearing is other than an initial hearing, any continuances are at the discretion of the hearings body.

D. Leaving record open. If at the conclusion of the initial hearing the Hearings Body leaves the record open for additional written evidence or testimony, the record shall be left open for at least 14 additional days, allowing at least the first seven days for submittal of new written evidence or testimony and at least seven additional days for response to the evidence received while the record was held open. Written evidence or testimony submitted during the period the record is held open shall be limited to evidence or testimony that rebuts previously submitted evidence or testimony.

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

HISTORY
Repealed & Reenacted by Ord. 82-011 on 8/9/1982
Repealed & Reenacted by Ord. 90-007 §1 on 12/7/1990
Amended by Ord. 91-013 §9 on 2/27/1991
Amended by Ord. 95-045 §18 on 6/28/1995
Amended by Ord. 96-071 §1D on 12/30/1996
Amended by Ord. 99-031 §9 on 10/27/1999
Amended by Ord. xxxx-xxx §x on xx/xx/xxxx

...

CHAPTER 22.32 APPEALS

22.32.010 Who May Appeal
22.32.015 Filing Appeals
22.32.020 Notice Of Appeal
22.32.022 Determination Of Jurisdictional Defects
22.32.024 Transcript Requirement
22.32.025 Consolidation Of Multiple Appeals
22.32.027 Scope Of Review
22.32.030 Hearing On Appeal
22.32.035 Declining Review
22.32.040 Land Use Action Hearings On Appeal From The Hearings Officer
22.32.050 Development Action Appeals
22.32.060 Rehearing
22.32.070 Remands
22.32.080 Withdrawal Of An Appeal

...

22.32.015 Filing Appeals

A. To file an appeal, an appellant must file a completed notice of appeal on a form prescribed by the Planning Division and an appeal fee.

B. Unless a request for reconsideration has been filed, the notice of appeal and appeal fee must be received at the offices of the Deschutes County Community Development Department no later than close of business~~than 4:00 PM~~ on the twelfth day following mailing of the decision. If a decision has been modified on reconsideration, an appeal must be filed no later than close of business~~4:00 PM~~ on

the twelfth day following mailing of the decision as modified. Notices of Appeals may not be received by facsimile machine.

C. If the Board of County Commissioners is the Hearings Body and the Board declines review, a portion of the appeal fee may be refunded. The amount of any refund will depend upon the actual costs incurred by the County in reviewing the appeal. When the Board declines review and the decision is subsequently appealed to LUBA, the appeal fee may be applied toward the cost of preparing a transcript of the lower Hearings Body's decision.

D. The appeal fee shall be paid by method that is acceptable to Deschutes County.

HISTORY
Repealed & Reenacted by Ord. 82-011 on 8/9/1982
Repealed & Reenacted by Ord. 90-007 §1 on 12/7/1990
Amended by Ord. 91-013 §11 on 2/27/1991
Amended by Ord. 94-042 §2 on 8/3/1994
Amended by Ord. 95-045 §32 on 6/28/1995
Amended by Ord. 96-071 §1G on 12/30/1996
Amended by Ord. 98-019 §2 on 3/11/1998
Amended by Ord. 99-031 §15 on 10/27/1999
Amended by Ord. 2015-017 §3 on 3/28/2016
Amended by Ord. 2018-012 §6 on 11/23/2018
Repealed & Reenacted by Ord. 2019-012 §1,2 on 12/2/2019
Amended by Ord. 2021-014 §1 on 1/3/2022
Amended by Ord. xxxx-xxx §x on xx/xx/xxxx

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~~**22.32.024 Transcript Requirement**~~

~~A. Except as otherwise provided in DCC 22.32.024, appellants shall provide a complete transcript of any hearing appealed from, from recorded magnetic tapes provided by the Planning Division.~~

~~B. Appellants shall submit to the Planning Division the transcript no later than the close of the day five days prior to the date set for a de novo appeal hearing or, in on-the-record appeals, the date set for receipt of written arguments. Unless excused under DCC 22.32.024, an appellant's failure to provide a transcript shall cause the Board to decline to consider the appellant's appeal further and shall, upon notice mailed to the parties, cause the lower Hearings Body's decision to become final.~~

~~C. An appellant shall be excused from providing a complete transcript if appellant was prevented from complying by: (1) the inability of the Planning Division to supply appellant with a magnetic tape or tapes of the prior proceeding; or (2) defects on the magnetic tape or tapes of the prior proceeding that make it not reasonably possible for applicant to supply a transcript. Appellants shall comply to the maximum extent reasonably and practicably possible.~~

~~D. Notwithstanding any other provisions in DCC 22.32, the appeal hearings body may, at any time, waive the requirement that the appellant provide a complete transcript for the appeal hearing.~~

~~HISTORY~~
~~*Adopted by Ord. 96-071 §1C on 12/30/1996*~~
~~*Amended by Ord. 2015-017 §3 on 3/28/2016*~~
Repealed by Ord. 2026-xx §xx on x/xx/xxxx

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22.32.027 Scope Of Review

A. Before Hearings Officer or Planning Commission. The review on appeal before the Hearings Officer or Planning Commission shall be de novo.

B. Before the Board.

1. Review before the Board, if accepted, shall be on the record except as otherwise provided for in DCC 22.32.027.

2. The Board may grant an appellant's request for a de novo review at its discretion after consideration of the following factors:

a. Whether hearing the application de novo could cause the 150-day time limit to be exceeded; and

~~b. If the magnetic tape of the hearing below, or a portion thereof, is unavailable due to a malfunctioning of the recording device during that hearing, whether review on the record would be hampered by the absence of a transcript of all or a portion of the hearing below; or~~

~~c.~~b. Whether the substantial rights of the parties would be significantly prejudiced without de novo review and it does not appear that the request is necessitated by failure of the appellant to present evidence that was available at the time of the previous review; or

~~d.~~c. Whether in its sole judgment a de novo hearing is necessary to fully and properly evaluate a significant policy issue relevant to the proposed land use action.

For the purposes of DCC 22.32.027, if an applicant is an appellant, factor DCC 22.32.027(B)(2)(a) shall not weigh against the appellant's request if the applicant has submitted with its notice of appeal written consent on a form approved by the County to restart the 150-day time clock as of the date of the acceptance of applicant's appeal.

3. Notwithstanding DCC 22.32.027(B)(2), the Board may decide on its own to hear a timely filed appeal de novo.

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

HISTORY
Adopted by Ord. 96-071 §1G on 12/30/1996
Amended by Ord. 99-031 §16 on 10/27/1999
Amended by Ord. xx-xxx §x on xx/xx/xxxx

22.32.030 Hearing On Appeal

A. The appellant and all other parties to the decision below shall be mailed notice of the hearing on appeal at least 10 days prior to any de novo hearing or deadline for submission of written arguments.

B. Except as otherwise provided in DCC 22.32, the appeal shall be heard as provided in DCC 22.24. The applicant shall proceed first in all de novo appeals.

C. The order of Hearings Body shall be as provided in DCC 22.24.020.

D. The record of the proceeding from which appeal is taken shall be a part of the record on appeal.

E. The record for a review on the record shall consist of the following:

1. A recording ~~written transcript~~ of any prior hearing;

2. All written and graphic materials that were part of the record below;

3. The Hearings Body decision appealed from;

4. Written arguments, based upon the record developed below, submitted by any party to the decision;

5. Written comments submitted by the Planning Commission or individual planning commissioners, based upon the record developed below; and

6. A staff report and staff comment based on the record.

F. No oral evidence, argument or comment other than staff comment based on the record shall be taken. The Board shall not consider any new factual information.

HISTORY
Repealed & Reenacted by Ord. 82-011 on 8/9/1982
Repealed & Reenacted by Ord. 90-007 §1 on 12/7/1990
Amended by Ord. 95-045 §36 on 6/28/1995
Amended by Ord. 96-071 §1G on 12/30/1996
Amended by Ord. 97-008 §2 on 2/19/1997
Amended by Ord. xx-xxx §x on xx/xx/xxxx
...

CHAPTER 22.36 LIMITATIONS ON APPROVALS

22.36.010 Expiration Of Approval
22.36.020 Initiation Of Use
22.36.025 Transition Rules; Applicability
22.36.030 Extensions To Avoid Environmental Or Health Hazards
22.36.040 Modification Of Approval
22.36.050 Transfer Of Permit
22.36.060 Revocation Of Approvals

22.36.010 Expiration Of Approval

A. Scope.

1. Except as otherwise provided herein, DCC 22.36.010 shall apply to and describe the duration of all approvals of land use permits provided for under the Deschutes County Land Use Procedures Ordinance, the various zoning ordinances administered by Deschutes County and the subdivision/partition ordinance.

2. DCC 22.36.010 does not apply to:

a. Those determinations made by declaratory ruling, such as verifications of nonconforming uses, verifying a lot or parcel meets the “lot of record” definition in 18.04.030, and expiration determinations, that involve a determination of the legal status of a property, land use or land use permit rather than whether a particular application for a specific land use meets the applicable standards of the zoning ordinance. Such determinations, whether favorable or not to the applicant or landowner, shall be final, unless appealed, and shall not be subject to any time limits.

b. Temporary use permits of all kinds, which shall be governed by applicable ordinance provisions specifying the duration of such permits.

c. Quasi-judicial map changes.

B. Duration of Approvals.

1. Except as otherwise provided under DCC 22.36.010 or under applicable zoning ordinance provisions, a land use permit is void two years after the date the discretionary decision becomes final if the use approved in the permit is not initiated within that time period.

2. Except as otherwise provided under applicable ordinance provisions, preliminary approval of plats or master plans shall be void after two years from the date of preliminary approval, unless the final plat has been submitted to the Planning Division for final approval within that time period, an extension is sought under DCC 22.36.010 or the preliminary plat or master plan approval has been initiated as defined herein.

3. In cases of a land use approval authorized under applicable approval criteria to be completed in phases, each phase must be initiated within the time specified in the approval, or initiated within two years of completion of the prior phase if no timetable is specified.

4. The approval period for the following dwellings in the Exclusive Farm Use and Forest Use Zones is for 4 years:

a. Nonfarm dwelling

b. Lot of record dwelling

c. Large tract dwelling

d. Template dwelling.

e. Alteration, restoration, or replacement of a lawfully established dwelling.

f. Caretaker residences for public parks and public fish hatcheries.

g. Hardship dwelling.

C. Extensions.

1. The Planning Director may grant one extension of up to one year for a land use approval or a phase of a land use approval, and two years for those dwellings listed in DCC 22.36.010(B)(4) above, regardless of whether the applicable criteria have changed, if:

   a. An applicant makes a written request for an extension of the development approval period;

   b. The request, along with the appropriate fee, is submitted to the County prior to the expiration of the approval period;

   c. The applicant states reasons that prevented the applicant from beginning or continuing development or meeting conditions of approval within the approval period; and

   d. The County determines that the applicant was unable to begin or continue development or meet conditions of approval during the approval period for reasons for which the applicant was not responsible, including, but not limited to, delay by a state or federal agency in issuing a required permit.

2. Except for those dwellings listed under DCC 22.36.010(B)(4) above, up to two additional one-year extensions may be granted by the Planning Director or the Planning Director's designees where applicable criteria for the decision have not changed, if:

   a. An applicant makes a written request for an extension of the development approval period;

   b. The request, along with the appropriate fee, is submitted to the County prior to the expiration of the approval period;

c. The applicant states reasons that prevented the applicant from beginning or continuing development or meeting conditions of approval within the approval period; and

d. The County determines that the applicant was unable to begin or continue development or meet conditions of approval during the approval period for reasons for which the applicant was not responsible, including, but not limited to, delay by a state or federal agency in issuing a required permit.

3. For those dwellings listed under DCC 22.36.010(B)(4), up to five additional one-year extensions may be granted if:

   a. The applicant makes a written request for the additional extension prior to the expiration of an extension;

   b. The applicable residential development statute has not been amended following the approval of the permit; and

   c. An applicable rule or land use regulation has not been amended following the issuance of the permit, unless allowed by the county, which may require that the applicant comply with the amended rule or land use regulation.

~~4. In addition to the extensions granted in DCC 22.36.010(C)(1), one additional two-year extension for a land use approval or a phase of a land use approval may be granted by the Planning Director or the Planning Director's designee under the criteria listed under DCC 22.36.010(C)(1) for approvals issued prior to June 8, 2011. This subsection does not apply for those dwellings listed under DCC 22.36.010(B)(4) above.~~

D. Procedures.

1. A determination of whether a land use has been initiated shall be processed as a declaratory ruling.

2. Approval of an extension granted under DCC 22.36.010 is an administrative decision, is not a land use decision described in ORS 197.015 or Title 22 and is not subject to appeal as a land use decision and shall be processed under DCC Title 22 as a development action, except to the extent it is necessary to determine whether the use has been initiated.

E. Effect of Appeals. The time period set forth in DCC 22.36.010(B) shall be tolled upon filing of an appeal to LUBA until all appeals are resolved.

HISTORY

Repealed & Reenacted by Ord. 82-011 on 8/9/1982
Repealed & Reenacted by Ord. 90-007 §1 on 12/7/1990
Amended by Ord. 95-018 §1 on 4/26/1995
Amended by Ord. 95-045 §43A on 6/28/1995
Amended by Ord. 2004-001 §4 on 7/14/2004
Amended by Ord. 2011-016 on 6/8/2011
Amended by Ord. 2015-017 §5 on 3/28/2016
Amended by Ord. 2017-015 §5 on 11/1/2017
Amended by Ord. 2020-022 §2 on 5/20/2020
Amended by Ord. 2020-007 §22 on 10/27/2020
Amended by Ord. 2024-008 §22 on 1/7/2025
Amended by Ord. xx-xxx §x on xx/xx/xxxx

...

FINDINGS
TITLE 22 – DEVELOPMENT PROCEDURES ORDINANCE
TEXT AMENDMENTS
FILE NO. 247-26-000557-TA

I. APPLICABLE CRITERIA:

Title 22, Deschutes County Development Procedures Ordinance

II. BACKGROUND:

Title 22 is the County's Development Procedures Ordinance, which establishes procedural requirements for development actions, land use actions, hearings, appeals, legislative amendments, and limitations on approvals. The proposed amendments align the code with current County practices, correct internal references, update terminology, and establish new tribal notice procedures resulting from recent state rulemaking.

III. PROPOSED TEXT AMENDMENTS:

The proposed text amendments are detailed in the referenced ordinance, with additional text identified by underline and deleted text by ~~strikethrough~~. Below are summary explanations of the proposed changes.

Chapter 22.08 Application Requirements

The proposed amendments create procedures for County tribal notification resulting from recent state rulemaking. They also create procedures for applications by Oregon-based governments to nominate culturally sensitive landscape features to the County's Goal 5 inventory, also authorized by rulemaking. Last, clarifications are made to the submission of documents in land use proceedings.

Chapter 22.12 Legislative Procedures

The amendments expand notice for legislative applications beyond newspapers to other media organizations. This reflects current practice of releasing a press release to radio stations, TV stations, and other media organizations.

Chapter 22.16 Development Action Procedures

The amendments clarify procedures to be used for development action appeals, reflecting current practice.

Chapter 22.20 Review of Land Use Action Applications

The amendments clarify noticing requirements based on current practice.

Chapter 22.22 Deschutes River Corridor Design Review

The amendments remove outdated reference to Bend Urban Area Planning Commission, which no longer exists.

Chapter 22.24 Land Use Action Hearings

The amendments clarify procedures for transmission of the staff report and notices by email, reflecting current practice. The amendments also remove outdated references relating to exhibit procedures, and prescribe mailing procedures for continuances when the date, time, or place are not set at the initial hearing, reflecting current practice.

Chapter 22.32 Appeals

The amendments clarify deadlines for appeal notices and fees and remove outdated transcript and electronic tape requirements,

Chapter 22.36 Limitations on Approvals

The amendments repeal a carve-out provision for extensions to certain approvals issued by June 8, 2011. Staff understands that no approvals are eligible for the allowance.

IV. BASIC FINDINGS:

The Planning Division determined that amendments are necessary to clarify and improve administration of Title 22. Staff initiated the proposed changes and notified the Oregon Department of Land Conservation and Development on September 17, 2026 (File no. 247-26-000557-TA). As demonstrated in the findings below, the amendments remain consistent with Deschutes County Code, the Deschutes County Comprehensive Plan, and the Statewide Planning Goals.

V. FINDINGS:

CHAPTER 22.12, LEGISLATIVE PROCEDURES

Section 22.12.010.

Hearing Required

No legislative change shall be adopted without review by the Planning Commission and a public hearing before the Board of County Commissioners. Public hearings before the Planning Commission shall be set at the discretion of the Planning Director, unless otherwise required by state law.

FINDING: This criterion will be met because public hearings will be held before the Deschutes County Planning Commission (Commission) and the Board of County Commissioners (Board).

Section 22.12.020, Notice

Notice

A. Published Notice

1. Notice of a legislative change shall be published in a newspaper of general circulation in the county at least 10 days prior to each public hearing.

2. The notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.

FINDING: This criterion is met as notice will be published in *The Bulletin* newspaper at least 10 days prior to each public hearing.

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

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

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

FINDING: The proposed amendments are legislative and do not apply to any specific property. Therefore, individual notice is not required.

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

FINDING: Notice will be provided to the County public information official for wider media distribution. This criterion has been met.

Section 22.12.030 Initiation of Legislative Changes.

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

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

Section 22.12.040. Hearings Body

A. The following shall serve as hearings or review body for legislative changes in this order:
1. The Planning Commission.
2. The Board of County Commissioners.
B. Any legislative change initiated by the Board of County Commissioners shall be reviewed by the Planning Commission prior to action being taken by the Board of Commissioners.

FINDING: This criterion will be met because public hearings will be held before the Deschutes County Planning Commission (Commission) and the Board of County Commissioners (Board).

Section 22.12.050 Final Decision

All legislative changes shall be adopted by ordinance

FINDING: The proposed legislative changes included in file no. 247-26-000557-TA will be implemented by ordinances upon approval and adoption by the Board.

OAR 660-015, STATEWIDE PLANNING GOALS AND GUIDELINES

Goal 1: Citizen Involvement:
FINDING: The amendments clarify the County's Development procedures, codifying current department practices related to notices, public hearings, appeals, and general process for reviewing applications. Codifying this information will provide a consistent approach to public engagement associated with review of development proposals. Notice of the proposed amendments was provided to the *Bulletin* for the Board public hearing.

Goal 2: Land Use Planning:
FINDING: The proposed amendments integrate case law and updated state regulations into the County's Development Procedures Ordinance to ensure consistency. This goal is met.

Goal 3: Agricultural Lands:
FINDING: The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 3. This goal does not apply.

Goal 4: Forest Lands:
FINDING: The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 4. This goal does not apply.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources:
FINDING: The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 5. This goal does not apply.

Goal 6: Air, Water and Land Resources Quality:
FINDING: The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 6. This goal does not apply.

Goal 7: Areas Subject to Natural Disasters and Hazards:
FINDING: The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 7. This goal does not apply.

Goal 8: Recreational Needs:
FINDING: The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 8. This goal does not apply.

Goal 9: Economic Development:
FINDING: The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 9. This goal does not apply.

Goal 10: Housing:
FINDING: The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 10. This goal does not apply.

Goal 11: Public Facilities and Services:
FINDING: The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 11. This goal does not apply.

Goal 12: Transportation:
FINDING: The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 12. This goal does not apply.

Goal 13: Energy Conservation:
FINDING: The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 13. This goal does not apply.

Goal 14: Urbanization:
FINDING: The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 14. This goal does not apply.

Goals 15 through 19
FINDING: These goals are not applicable to the proposed plan and text amendments because the County does not contain these types of lands.

2011 DESCHUTES COUNTY COMPREHENSIVE PLAN

Chapter 1 – Comprehensive Planning -Section 1.2 Community Involvement Policies

Policy 1.2.5. Ensure effective, efficient planning procedures.

FINDING: The proposed amendments align the code with current County practices, correct internal references, update terminology, and establish new tribal notice procedures resulting from recent state rulemaking. These amendments ensure a effective and efficient planning process. This policy is met.

Chapter 1 – Comprehensive Planning -Section 1.3 Land Use Planning Policies

Goal 1. Maintain an open and public land use process in which decisions are based on the objective evaluation of facts.

FINDING: The intent of the text amendment is to integrate a new use into local code for implementation. Where possible, staff has directly referenced state statute and administrative rule. These policies are met.

Goal 2. Promote Regional cooperation and partnerships on planning issues.

Policy 1.3.11. Participate in and, where appropriate, coordinate regional planning efforts.

a. Provide affected agencies, including irrigation districts, an opportunity to comment and coordinate on land use policies or actions that would impact their jurisdictions.

FINDING: The proposed amendments establish new tribal noticing procedures resulting from state rulemaking. These procedures ensure tribes have visibility on development proposals on lands they may have an ancestral connection to, and create opportunity for mitigation or minimization of risks in consultation with applicants. This goal and policy are met.

Chapter 2 – Resource Management – Section 2.11 Cultural and Historic Resources

Goal 1. Promote the preservation of designated historic and cultural resources through education, incentives and voluntary programs.

Policy 2.11.3 Encourage the preservation of lands with significant historic or cultural resources.

FINDING: The proposed amendments establish a program for nomination of culturally significant landscape features, as permitted by recent state rulemaking. This process allows for the nomination of these resources by Oregon-based governments to the County's Goal 5 program for Cultural and Historic Resources. This goal and policy are met.

VI. CONCLUSION:

Based on the information provided herein, the staff recommends the Board of County Commissioners approve the proposed text amendments to the Deschutes County Code.

BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: November 30, 2026

SUBJECT: Work Session: Farm Store Text Amendments

RECOMMENDED MOTION:
N/A

BACKGROUND AND POLICY IMPLICATIONS:
The Board of Commissioners will conduct a work session on November 30, 2026 in preparation for a public hearing on December 9th to consider amendments to the Deschutes County Code (file no. 247-26-000539-TA). The amendments seek to update Title 18 of the Development Code to adopt local siting standards for farm stores, a new use allowed in the Exclusive Farm Use zone beginning January 1, 2027, by HB 4153.

BUDGET IMPACTS:
None

ATTENDANCE:
Nicole Mardell, Principal Planner
Will Groves, Planning Manager

COMMUNITY DEVELOPMENT

MEMORANDUM

TO: Deschutes County Board of Commissioners

FROM: Nicole Mardell, AICP, Principal Planner
Will Groves, Planning Manager

DATE: November 25, 2026

SUBJECT: Work Session: Farm Stores Text Amendments

The Deschutes County Board of Commissioners (Board) will conduct a work session on November 30, 2026, in preparation for a December 9 public hearing to consider amendments to the Deschutes County Code (file no. 247-26-000539-TA). The amendments seek to update Title 18 of the Deschutes County Development Code to adopt local siting standards for farm stores.

The Department of Land Conservation and Development (DLCD) received a 35-day notice on September 17, 2026. The Planning Commission held a work session on this item on October 8, held a public hearing on October 22, and held deliberations to recommend approval of the amendments with revisions on November 12, 2026.

Attached to this memorandum are the proposed text amendments (Exhibit A) and findings (Exhibit B) summarizing the changes. Within the proposed amendments, added language is shown underlined and deleted language is shown as ~~strikethrough~~.

All record materials can be found on the project website: https://www.deschutescounty.gov/FarmStoreTA.

I. BACKGROUND

House Bill 4153 (Exhibit C), adopted during the 2026 Regular Session, authorized "farm stores" as a new use permitted outright in areas zoned for Exclusive Farm Use. The legislation allows qualifying farm operations to sell farm products and conduct related farm store activities, subject to applicable state law.

Effective January 1, 2027, HB 4153 adds farm stores as a "subsection (1)" or "sub-1" use under ORS 215.283, meaning that a qualifying farm store must be permitted subject to the governing state-law requirements and may not be subjected to additional County-created

land-use approval criteria except where state law authorizes them. Independently applicable building, fire, health, road, and similar requirements continue to apply under their own authority. In the adopting bill, the legislature expressly permitted counties to adopt local siting standards for farm stores related to:

- Access, egress, and parking;
- Traffic management;
- Noise management;
- Hours of event operation; and
- Sanitation and solid waste.

Deschutes County is proposing amendments to Deschutes County Code (DCC) Chapter 18.16, Exclusive Farm Use Zone, to implement the new farm store allowance. The proposed regulations are intended to support farm-based economic development and seasonal operations while providing clear, predictable operating parameters that reduce avoidable impacts to neighboring property owners and rural infrastructure.

II. HOUSE BILL 4153

In the 2026 legislative session, the legislature approved HB 4153, which permitted Farm Stores as a sub-1 use on Exclusive Farm Use lands in Oregon. The bill is effective on January 1, 2027.

Allowed Uses

Through the bill, farm operators may use up to 10,000 square feet of one or more permanently enclosed structures on a property for any of the following uses:

- Sale of farm products or processed farm products produced in the local agricultural area (state of Oregon).
- Sale of other retail items, if displayed in an area not to exceed 25 percent of the floor area of the permanent enclosed farm store structures.
- Sale of beverages and prepared food items that are cooked or otherwise made ready for immediate consumption, subject to the statutory restriction that food and beverages may not be served in a manner that causes on-site kitchen facilities to function as a cafe or drive-through dining establishment.
- Agritourism activities such as:
    - Farm tours;
    - Educational exhibits or classes;
    - Crop mazes;
    - Play structures;
    - Farm-to-table meals;
    - Animal petting and feeding exhibits;
    - Hay or tractor rides; or
    - Other seasonal or holiday events.

Except for the sale of other retail items, which must occur within a permanent enclosed structure, other allowable farm store uses may occur outside or in temporary or unenclosed structures. Temporary structures or mobile vending units may be used in conjunction with

agritourism activities. The bill does not authorize using a farm store for lodging or as a dwelling.

Structures used for farm store activities remain subject to independently applicable building, fire, and life-safety requirements when those laws apply. Under ORS 455.315, a structure used by the public does not qualify as an exempt "agricultural building"; an existing exempt agricultural building therefore may require building-code review, permits, or conversion before it is used by the public for farm store activities.

Eligibility

To establish a Farm Store, a farm operator must meet minimum farmed area or income requirements.

- 80-acre site, 45 acres employed for farm use
- 40-acre site up to a less than 80-acre site, 25 acres employed for farm use
- 20-acre site up to a less than 40-acre site, 15 acres employed for farm use
- Less than 20-acre site, 10 acres employed for farm use
- Alternatively, for a tract of less than 20 acres, the farm store may qualify if it operates as part of a "farm unit" that has earned at least $10,000 in gross farm income cumulatively over the preceding two years.
-

Staff estimates the majority of applicants will rely on the income test for eligibility. The bill defines a "farm unit" as "a farm operation comprising all parcels being farmed by a single operation, whether the corporation or operation owns or leases the parcels". In staff's understanding, there is no requirement for all the owned or leased parcels to be within Deschutes County.

As noted above, HB 4153 specifically authorizes County-created farm-store siting standards in the five areas identified above, while independently applicable laws continue to apply under their own authority. Section 2(7)(b) provides that "[a] county may not apply siting standards in a manner that prohibits the siting and operation of a farm store under this section." Staff understands this as an anti-prohibition limit on how the County applies its farm-store siting standards. The enacted language does not create a general "overly onerous" test or independently require alternatives or discretionary review whenever a standard cannot be met.

III. DIFFERENTIATION FROM EXISTING USES

HB 4153 was developed to respond to limitations on existing uses in the EFU zones. These existing uses are unchanged by the bill, will continue to be allowed in the EFU zone, and do not appear to be prohibited from operating in conjunction with the Farm Store use on a property.

U-Pick and Sale of Agricultural Products

The Department of Land Conservation and Development (DLCD) and the Oregon Department of Agriculture (ODA) provided testimony to the legislature on current and continuing allowances on EFU lands. Their letter noted that under current Oregon law and HB 4153, a permit is not required for a farmer to sell crops grown exclusively by their own

farm operation. Selling farm products grown or raised on the farm is considered a "farm use" in ORS 215.203. For example, under current ORS 215.203, farmers can sell produce that is grown on site and have a farm stand to sell their produce, run U-Pick operations, sell bulk crops like hay or straw grown on the property, sell live animals raised on the farm, sell nursery stock, and wholesale staging such as using farm buildings to store or load crops grown by the farmer for transport to market.

Farm Stands

Farm Stands, which are also a sub-1 use in the Exclusive Farm Use Zone, have been permitted in their current regulatory scheme since the early 1990s. In addition to the sale of agricultural products, operators can incorporate incidental retail and promotional activities into the farm stand use, with a revenue-based cap. The annual sales of incidental retail items plus fees from promotional activities may not exceed 25 percent of the farm stand's total annual sales. This use has been litigated many times since its early adoption, with case law clarifying several components of the use.

Agritourism and Commercial Activities in Conjunction with Farm Use

Agritourism uses have been allowed in their current framework since 2011, and are not a sub-1 use, meaning they may be conditionally permitted by counties in Oregon. In the existing ORS 215.283(4) framework, "agritourism" is not separately defined; the authorized commercial events and activities must be related to and supportive of agriculture. State law provides several permitting pathways differentiated by the frequency and intensity of events, including expedited and land-use permit pathways. State law includes requirements for this use related to maximum duration and attendance, use of structures, traffic management, waste and sanitation, hours of operation, noise, and public notice.

IV. APPROACH TO LOCAL SITING STANDARDS

The proposed local siting standards intend to address common neighbor concerns resulting from high-intensity uses on agricultural land, while still within the allowances of the bill and supportive of the use as an income-generating activity for agricultural producers. Common concerns may include but are not limited to: traffic and road safety, parking spillover, noise, sanitation, public safety, and general impacts to farming operations. The proposed standards address access, parking capacity, circulation, traffic management, noise, event hours, and sanitation facilities through a combination of fixed requirements and site-specific review provisions, with traffic analysis limited to identified issues reasonably attributable to the farm store.

V. AGENCY & PUBLIC COMMENT

The Planning Commission held a public hearing on October 22 and voted to close the oral portion of the hearing and leave the written record open until November 4, 2026, at 4 p.m.

Three individuals provided oral testimony at the hearing, with the following themes:

- General support for farm store use
- Simplify requirements to the greatest extent possible

- Ensure requirements are flexible and adaptable to changing conditions
- Clarify intersection of agritourism with event permits
- Clarify unclear requirements to ensure expectations for all parties

Seventeen public comments were received with the following themes:

- Many would prefer additional opportunities for engagement, including a stakeholder group or committee.
- Support for regulations generally, but ideally a tiered approach. As drafted, the requirements are too rigid, expensive, and difficult for small farm operators to navigate without professional assistance.
- Support for performance-based code objectives, rather than prescriptive requirements. Ideally, those would allow flexibility to make routine changes to vendors, seasonal layouts, programming, and operations without requiring repeated land use approvals.
- Desire for a ministerial or objective review.
- Desire for amendments to other County code sections to avoid conflicts or duplications among County and Development Code requirements and applications.
- Desire for clearer guidance on intersection between County land-use standards and separately applicable building, fire, health, and food-safety requirements.
- Concern regarding vehicle parking in the right-of-way and pullouts
- Requests to:
    - Amend 100' setbacks for parking and sanitation facilities, as they may render existing facilities unusable
    - Extend hours for events with amplified sound to 9 p.m. on weekdays and 10 p.m. on weekends.
    - Clarify when sanitation facilities will be required.
    - Allow seasonal traffic management plans for similar, recurring events.
    - Allow alternative paving materials, remove requirement for paved accessible parking spaces, and remove requirement for delineation of parking spaces.
    - Allow parking on adjoining or adjacent parcels.
    - Allow signage in public rights-of-way.
    - Explicitly acknowledge existing farm stand approvals as valid.
    - Have an impact-based trigger for traffic plans or studies, rather than just a routine requirement.

Two agency comments were received from the County's Senior Transportation Planner with recommended redline edits.

VI. PLANNING COMMISSION RECOMMENDATION

The Planning Commission deliberated on November 12, 2026, and provided the following recommendations to the Board.

General recommendations:

- Make applications, fees, and regulations as straightforward and flexible for operators as possible. Limit expenses where possible.

- Create a resource guide/checklist at the time of implementation to help applicants.

Feedback on the September 17 draft code is found below. Suggestions were unanimous among commissioners unless otherwise specified.

Access, Egress, and Parking

- Remove 100' setback for parking (majority in favor, one commissioner in favor of maintaining 25' setback).
- Remove parking stall delineation requirements and provide flexibility in the location of the parking area dependent on season, crop rotation, or activity on the property.
- Remove surface requirement for vehicle maneuvering areas and requirement for paved accessible spaces (where not already required by building code).
- Add requirement for queuing distance – 75' from public road to reduce potential safety conflicts (added at recommendation of Sr. Transportation Planner).
- Add requirement for approval from Fire Marshal or relevant fire protection district for emergency access and circulation (added at recommendation of Sr. Transportation Planner).

Traffic Management

- Amend threshold for traffic management plans. Some supported a 100-attendee threshold; others preferred between 250-500[1] as the threshold. Commission unanimously recommended an interpretation of "attendees" as total attendees, not attendees on the property at the same time.
- Amend traffic management plan to allow one seasonal plan if farm store has similar recurring events.
- Amend verbiage in traffic analysis requirement to define what constitutes "substantial evidence" in determining a traffic-related issue. Also recommended defining road authority.

Noise Management

- Amend maximum decibels from 65 dBA to 75 dBA at any lot line; remove requirement for 55 dBA at the location of noise-sensitive use on abutting or nearby properties. Two in favor of current draft, three in favor of amended language.
- Remove 100' setback and placement requirements for amplification equipment.

[1] Events with over 500 attendees require an additional review through an Outdoor Mass Gathering Permit, which specifies more detailed traffic management requirements.

Hours of Event Operation

- Amend hours of operation for greater flexibility. Two commissioners recommended code as drafted. Three commissioners recommended hours be extended to match county noise ordinance – 7 a.m. to 10 p.m. regardless of amplified sound.

Sanitation and Solid Waste

- Remove 100' setback for sanitation and solid waste facilities.

VII. NEXT STEPS

The Board will conduct a public hearing on December 9, 2026.

At the conclusion of the public hearing, the Board may:

- Continue the hearing to a date certain;
- Close the hearing and leave the written record open to a date certain;
- Close the hearing and set a date for deliberations; or
- Close the hearing and commence deliberations.

Attachments

Exhibit A Draft Text Amendments
Exhibit B Draft Findings
Exhibit C House Bill 4153

CHAPTER 18.16 EXCLUSIVE FARM USE ZONES

18.16.010 Purpose
18.16.020 Uses Permitted Outright
18.16.023 Lawfully Established Dwelling Replacement (Repealed)
18.16.025 Uses Permitted Subject To The Special Provisions Under DCC Section 18.16.038 Or DCC Section 18.16.042 And A Review Under DCC Chapter 18.124 Where Applicable
18.16.030 Conditional Uses Permitted; High Value And Non-High Value Farmland
18.16.031 Conditional Uses On Non-High Value Farmland Only
18.16.033 Conditional Uses On High Value Farmland Only
18.16.035 Destination Resorts
18.16.037 Guest Ranch
18.16.038 Special Conditions For Certain Uses Listed Under DCC 18.16.025
18.16.039 Farm Stores
18.16.040 Limitations On Conditional Uses
18.16.042 Agri-Tourism And Other Commercial Events Or Activities Limited Use Permit
18.16.043 Single Permit
18.16.050 Standards For Dwellings In The EFU Zones
18.16.055 Land Divisions
18.16.060 Dimensional Standards
18.16.065 Subzones
18.16.067 Farm Management Plans
18.16.070 Setbacks
18.16.080 Ordinary High Water Mark Setbacks
18.16.090 Rimrock Setback

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18.16.025 Uses Permitted Subject To The Special Provisions Under DCC Section 18.16.038 Or DCC Section 18.16.042 And A Review Under DCC Chapter 18.124 Where Applicable

A. Dwellings customarily provided in conjunction with farm use (farm-related dwellings), subject to DCC 18.16.050.

B. A relative farm assistance dwelling, subject to DCC 18.16.050.

C. Religious institutions or assemblies and cemeteries in conjunction with religious institutions or assemblies consistent with ORS 215.441 and OAR 660-033-0130(2) on non-high value farmland.

D. Expansion of an existing church or cemetery in conjunction with a church on the same tract as the existing use, subject to Oregon Administrative Rules 660-033-0130.

E. Utility facilities necessary for public service, including wetland waste treatment systems, but not including commercial facilities for the purpose of generating electrical power for public use by sale and transmission towers over 200 feet in height. A utility facility necessary for public service may be established as provided in:

1. DCC 18.16.038(A); or
2. DCC 18.16.038(E) if the utility facility is an associated transmission line, as defined in ORS 469.300.

F. Winery, as described in ORS 215.452.

G. Farm stands, subject to DCC 18.16.038.

H. A site for the takeoff and landing of model aircraft, including such buildings or facilities as may be reasonably necessary.

I. A facility for the processing of farm crops, subject to the following standards:

1. The facility:
    a. Uses less than 10,000 square feet for its processing area and complies with all applicable siting standards. Siting standards shall not be applied in a manner that prohibits the siting of a facility for the processing of farm products; or
    b. Exception: A facility which uses less than 2,500 square feet for its processing area is exempt from any applicable siting standards. However, applicable standards and criteria pertaining to floodplains, geologic hazards, beach and dune hazards, airport safety, tsunami hazards and fire siting standards shall apply.
2. The County shall not approve any division of a lot or parcel that separates a facility for the processing of farm products from the farm operation on which it is located.

J. Agri-tourism and other commercial events and activities subject to DCC 18.16.042.

K. Dog training classes or testing trials conducted outdoors or in farm buildings that existed on January 1, 2019, when:

1. The number of dogs participating in training does not exceed 10 per training class and the number of training classes to be held on-site does not exceed six per day; and
2. The number of dogs participating in a testing trial does not exceed 60 and the number of testing trials to be conducted on-site does not exceed four per calendar year.

L. Farm Store, subject to DCC 18.16.039. DCC Chapter 18.124 does not apply to a farm store except where specified.

HISTORY
Adopted by Ord. 2004-001 §2 on 7/14/2004
Amended by Ord. 2008-001 §2 on 5/6/2008
Amended by Ord. 2009-014 §1 on 6/22/2009
Amended by Ord. 2010-022 §2 on 7/19/2010
Amended by Ord. 2012-004 §2 on 4/16/2012
Amended by Ord. 2012-007 §2 on 5/2/2012
Amended by Ord. 2014-010 §1 on 4/28/2014
Amended by Ord. 2016-015 §2 on 7/1/2016
Amended by Ord. 2020-001 §3 on 4/21/2020
Amended by Ord. 2021-004 §1 on 5/27/2021
Amended by Ord. 2021-013 §4 on 4/5/2022

Amended by Ord. 202x-0xx §x on x/x/20xx

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18.16.039 Farm Store

A. Scope of Use.

1. A farm store may be approved only if the applicant demonstrates that the proposal complies with the Oregon Revised Statutes (ORS) and Administrative Rules (OAR) governing farm stores that apply to the application, including the farm-store provisions originally enacted as ORS 215.283(1)(aa), as those provisions may be codified, amended or superseded, and satisfies the applicable criteria of this section. The standards in this section are in addition to, and do not replace or modify the requirements of the applicable ORS and OAR.

B. Eligibility.

1. The farm store tract or farm unit shall meet the acreage or income requirements in ORS 215.283.

C. Application. The application shall include the following.

1. Demonstration of eligibility, including the following:
   a. Site Plan identifying all lots or parcels included in the farm store tract, or farm unit if income is required to determine eligibility.
   b. Acreage currently in farm uses under ORS 215.283(1);
   c. Narrative identifying current farm uses under ORS 215.283(1); and
   d. Income Test Only
      1) Ownership information for the farm unit
      2) Lease agreement, if applicable.
      3) Income records for the preceding two years

2. A narrative and supporting evidence identifying the proposed farm store uses described under DCC 18.16.039(A):

   a. An operating statement identifying each proposed farm store use and activities, including uses and activities involving contractors or vendors, and days and hours of operation for each use;

   b. Any farm store uses and/or activities expected to operate at the same time;

   c. Reasonably anticipated peak simultaneous customers, contractors, employees, vendors, and vehicles, and associated arrival and departure patterns;

   d. The types and locations of all permanent and temporary structures, vehicle and pedestrian access and egress, parking facilities, outdoor amplified-sound equipment and speaker orientation, and sanitation and solid waste to be used in connection with activities.

3. Site plan identifying the following:

   a. All permanent and enclosed structures used as part of the farm store, temporary and mobile vending units, temporary structures and mobile vending units, and outdoor areas to be used for farm store uses and/or activities.
   b. Floor plan(s) for all permanent enclosed structures to be used for the following farm store uses and activities:

1) Sales area for farm products or processed farm products produced by the farm operation that operates the farm store or an Oregon farm;
2) Sales area for other retail items;
3) Sales area for beverages and other prepared food items that are cooked or otherwise made ready for immediate consumption;
4) Farm-to-table meal dining and seating areas;
5) Restrooms;
6) Storage; and
7) Any area accessible to the public.

c. Existing and proposed access points, internal vehicle circulation, loading, drop-off, queuing, and turnaround areas.
d. Employee, contractor, customer, vendor, and event parking areas and dimensions including permanent, seasonal and holiday event, overflow, and/or shared parking.
e. Pedestrian routes.
f. Outdoor amplified-sound equipment and speaker orientation.
g. Sanitation and solid waste facilities and service access.

4. Inspection of Farm Store Premises Authorization. The property owner shall allow reasonable inspections by County staff and other agencies with jurisdiction, upon reasonable notice and during business hours or approved operating hours, except where immediate entry is authorized by law.

D. Siting Standards. In addition to satisfying the applicable ORS and OAR, a farm store shall comply with the following local siting standards.

1. Access, Egress, and Parking
   a. Attendance and vehicle demand may not exceed the capacity supported by the facilities. Use of ticketing or reservation systems may be used to ensure attendance does not exceed this capacity.
   b. Roadways, driveway aprons, and driveways shall be surfaces that prevent dust and may include paving, gravel, cinders, or bark/wood chips.
   c. Access shall be from a permitted driveway, or from a driveway approved through the County Road Department's applicable access-permit process. Driveways extending from paved roads shall have a paved apron.

d. Transportation access to the site shall meet the requirements of 18.124.060(K)(1-3).

e. Access, internal circulation, parking, loading, drop-off, queuing, and turnarounds shall accommodate expected vehicles without obstructing a public-road travel lane, emergency access areas, clear vision areas, bicycle or pedestrian facilities, or access to an abutting or nearby property.

f. Parking shall be provided in accordance with 18.116.030(D). Parking shall reasonably accommodate anticipated peak simultaneous vehicle demand for the farm store and all associated activities. Shared parking may be counted only when it is available during the periods for which it is relied upon and satisfies 18.116.030(E)(2).

g. Parking and access facilities shall comply with DCC 18.116.020 and DCC 18.116.030(E)(5), (F)(1-3), (5), (7-8), and (G).

h. Parking must be accommodated entirely on the same lot or parcel as the farm store and a minimum of 100 feet from any lot line. Reasonably direct pedestrian routes shall connect parking areas with customer building entrances and activity areas. All pedestrian routes shall be marked, separated, or otherwise designed to provide safe passage.

i. Parking stall dimensions shall be delineated through paint, chalk, or other visual demarcation, and separated from pedestrian areas by physical barriers, fencing, landscaping, or sizeable separation distance.

j. All parking areas must use a stabilized or permeable surface and must be maintained to prevent dust, erosion, or drainage hazards affecting a public road or abutting or nearby property. Accessible parking spaces shall be paved.

k. No farm store uses or activities, including signage, shall encroach into the public right-of-way.

2. Traffic Management

a. The proposal shall not create or materially aggravate a specific traffic-safety or operational hazard reasonably attributable to the farm store, including hazardous queuing, spillback or turning conflicts at the site access or another affected intersection.

b. Concentrated arrival or departure periods that would extend queues into a public-road travel lane or create a specific conflict among customer, contractor, vendor, delivery, employee, bicycle or pedestrian movements shall be managed through reservations, staggered starts, attendants, directional controls, delivery scheduling or another practicable operating measure sufficient to prevent the identified queue or conflict.

c. The farm store operator shall coordinate with the Deschutes County Sheriff's Office and Deschutes County Road Department on traffic management plans for events with over 100 attendees. Coordination shall occur at least 30 days prior to each event.

d. When substantial evidence, including comments from a responsible road authority, identifies a specific issue under paragraph (c) that cannot reasonably be evaluated without professional traffic analysis, the analysis shall be prepared by a professional engineer under DCC 18.116.310(C) (1-2) and (4) and shall include only those elements of DCC 18.116.310(D) through (H) reasonably necessary to evaluate the identified issue, subject to the following modifications:

1) The analysis shall evaluate the day and continuous one-hour period of reasonably anticipated greatest farm store traffic, whether weekday or weekend.

2) The analysis may use professionally supported comparable-site, linked-trip, pass-by, internal-capture, reservation, attendance, and proposed operating-limit data and shall avoid double counting persons or vehicles participating in multiple farm store activities during one visit.

3) The study area and mitigation analysis shall be limited to the specific traffic effects reasonably attributable to the farm store.

3. Noise Management

a. The cumulative sound level attributable to the farm store and associated activities shall not exceed 65 dBA at any lot line and shall not exceed 55 dBA at the location of any noise-sensitive use on abutting or nearby properties.

b. Amplification equipment shall be setback 100 feet from, and positioned facing away from, noise-sensitive uses on abutting or

nearby properties. If less than 100 feet from a noise-sensitive use, noise shall be mitigated by landscaping, intervening structures, terrain features, or other sound-buffering installations proportional to potential impact.

c. A standard sound level meter or equivalent, in good condition, that provides a weighted sound pressure level measured by use of a metering characteristic with an "A" frequency weighting network and reported as dBA shall be available on-site at all times.

d. This subsection applies only to sound generated by or attributable to the farm store and associated activities. Noise associated with accepted and customary farm activities conducted in accordance with federal and state laws are not be subject to this section.

4. Hours of Event Operation.

a. Farm store events involving amplified sound may operate only between 8:00 a.m. and 8:00 p.m.
b. Farm store events not involving amplified sound may operate only between 8:00 a.m. and 10:00 p.m.
c. Attendee arrival and departure must be included in the hours of operation in this section.

5. Sanitation and Solid Waste

a. Applications are subject to fire, health, and life safety requirements, and shall comply with all requirements of the Deschutes County Building Safety Division and the Onsite Wastewater Division and any other applicable federal, state, and local laws.
b. Sanitation and solid waste facilities shall be sufficient for the reasonably anticipated peak simultaneous demand.
c. All sanitation and solid waste facilities shall be located at least 100 feet from any lot line.
d. Facilities shall be located and serviced so that they do not obstruct required access or circulation or result in overflow, leakage, vectors, animal access, or windblown litter.
e. Farm store generated waste shall be contained during operation and removed or secured after the operating period in which it was generated. If relied-upon sanitation or solid waste capacity becomes

unavailable, farm store activities may operate only at the level supported by the remaining compliant facilities.

f. This subsection applies only to sanitation and solid waste attributable to the farm store and associated activities.

HISTORY

Adopted by Ord. 20xx-xxx on xx/xx/20xx

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FINDINGS
FARM STORE AMENDMENTS
247-26-000539-TA

I. APPLICABLE CRITERIA:

Title 22, Deschutes County Development Procedures Ordinance

II. BACKGROUND:

House Bill 4153, adopted during the 2026 Regular Session, authorized "farm stores" as a new use permitted outright in areas zoned for Exclusive Farm Use. The legislation allows qualifying farm operations to sell farm products and conduct related farm store activities, subject to applicable state law.

Farm stores are authorized as a "subsection (1)" use under ORS 215.283, meaning that the use is required to be permitted outright and no local definitions or standards can be imposed, except where specifically identified. In the adopting bill, the legislature expressly permitted counties to adopt local siting standards for farm stores related to:

- Access, egress, and parking;
- Traffic management;
- Noise management;
- Hours of event operation; and
- Sanitation and solid waste.

Deschutes County is proposing amendments to Deschutes County Code (DCC) Chapter 18.16, Exclusive Farm Use Zone, to implement the new farm store allowance. The proposed regulations are intended to support farm-based economic development and seasonal operations while providing clear, predictable operating parameters that reduce avoidable impacts to neighboring property owners and rural infrastructure.

III. AMENDMENT SUMMARY:

To comply with this legislation, staff is proposing the following amendments:

- Add use to 18.16.025 Uses Permitted Subject to Special Provisions
- Create a new section 18.16.039, Farm Store section containing eligibility criteria, application requirements, and local siting standards.

As state law only allows the County to develop local siting standards related to the five areas cited above, the amendments defer to state law for the majority of the criteria.

IV. BASIC FINDINGS:

The Planning Division determined amendments were necessary to incorporate changes to state law into various sections of the Deschutes County Code. Staff initiated the proposed amendments and notified the Oregon Department of Land Conservation and Development on September 17, 2026 (File no. 247-26-000539-TA). As demonstrated in the findings below, the amendments remain consistent with the Deschutes County Code, the Deschutes County Comprehensive Plan, and the Statewide Planning Goals.

V. FINDINGS:

CHAPTER 22.12, LEGISLATIVE PROCEDURES

Section 22.12.010.

Hearing Required

No legislative change shall be adopted without review by the Planning Commission and a public hearing before the Board of County Commissioners. Public hearings before the Planning Commission shall be set at the discretion of the Planning Director, unless otherwise required by state law.

FINDING: This criterion will be met because public hearings will be held before the Deschutes County Planning Commission (Commission) and the Board of County Commissioners (Board).

Section 22.12.020, Notice

Notice

A. Published Notice

1. Notice of a legislative change shall be published in a newspaper of general circulation in the county at least 10 days prior to each public hearing.

2. The notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.

FINDING: This criterion will be met as notice will be published in *The Bulletin* newspaper at least 10 days prior to each public hearing.

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

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

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

FINDING: The proposed amendments are legislative and do not apply to any specific property. Therefore, individual notice is not required.

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

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

Section 22.12.030 Initiation of Legislative Changes.

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

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

Section 22.12.040. Hearings Body

A. The following shall serve as hearings or review body for legislative changes in this order:
1. The Planning Commission.
2. The Board of County Commissioners.
B. Any legislative change initiated by the Board of County Commissioners shall be reviewed by the Planning Commission prior to action being taken by the Board of Commissioners.

FINDING: This criterion will be met because public hearings will be held before the Deschutes County Planning Commission (Commission) and the Board of County Commissioners (Board).

Section 22.12.050 Final Decision

All legislative changes shall be adopted by ordinance

FINDING: The proposed legislative changes included in file no. 247-25-000539-TA will be implemented by ordinance upon approval and adoption by the Board.

OAR 660-015, STATEWIDE PLANNING GOALS AND GUIDELINES

Goal 1: Citizen Involvement:
FINDING: The amendments do not propose to change the structure of the County's citizen involvement program. Notice of the proposed amendments was provided to the *Bulletin* for the Board public hearing.

Goal 2: Land Use Planning:
FINDING: The proposed amendments integrate a new use resulting from House Bill 4153 (2026) and local siting standards into the Deschutes County Code. The proposal has a factual basis and is consistent with the intent of the Comprehensive Plan and zoning districts. This goal is met.

Goal 3: Agricultural Lands:
FINDING: The proposed amendments integrate a new use resulting from House Bill 4153 (2026) and local siting standards into the Deschutes County Code. The legislature adopted the new allowances for farm stores as a way to support income-generating activities on agricultural properties. Farm stores and events are intended as a tool to further support agricultural operations on the property and promote the farm operation, visitors to the farm store, and sale of farm store products. This goal is met.

Goal 4: Forest Lands:
FINDING: The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 4 and the use is not allowed on forest zoned property. This goal does not apply.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources:
FINDING: The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 5. This goal does not apply.

Goal 6: Air, Water and Land Resources Quality:
FINDING: The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 6. This goal does not apply.

Goal 7: Areas Subject to Natural Disasters and Hazards:
FINDING: The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 7. This goal does not apply.

Goal 8: Recreational Needs:
FINDING: The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 8. This goal does not apply.

Goal 9: Economic Development:
FINDING: The proposed amendments integrate a new use resulting from House Bill 4153 (2026) and local siting standards into the Deschutes County Code. The legislature adopted the new allowances for farm stores as a way to support income-generating activities on agricultural

properties. Farm stores and events are intended as a tool to further support agricultural operations on the property and promote the farm operation, visitors to the farm store, and sale of farm store products. This goal is met.

Goal 10: Housing:
FINDING: The proposed amendments integrate a new use resulting from House Bill 4153 (2026) and local siting standards into the Deschutes County Code and do not impact any housing requirements or allowances. This goal does not apply.

Goal 11: Public Facilities and Services:
FINDING: The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 11. Impacts to public facilities and services are mitigated, to the extent allowed by state law, through the proposed local siting standards. This goal is met.

Goal 12: Transportation:
FINDING: The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 12. Impacts to transportation are mitigated, to the extent allowed by state law, through the proposed local siting standards. This goal is met.

Goal 13: Energy Conservation:
FINDING: The proposed amendments do not include changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 13. This goal does not apply.

Goal 14: Urbanization:
FINDING: The proposed amendments integrate a new use resulting from House Bill 4153 (2026) and local siting standards into the Deschutes County Code. This goal is met.

Goals 15 through 19
FINDING: These goals are not applicable to the proposed plan and text amendments because the County does not contain these types of lands.

2011 DESCHUTES COUNTY COMPREHENSIVE PLAN

Chapter 2 – Resource Management - Section 2.2 Agricultural Land Policies

Policy 2.2.5 Uses allowed in Exclusive Farm Use zones shall comply with State Statute and Oregon Administrative Rule.

Policy 2.2.6 Regularly review farm regulations to ensure compliance with changes to State Statute, Oregon Administrative Rules and case law.

FINDING: The intent of the text amendment is to integrate a new use into local code for implementation. Where possible, staff has directly referenced state statute and administrative rule. These policies are met.

Chapter 3 – Rural Growth Management - Section 2.2 Rural Economy Policies

Goal 1. Maintain a stable and sustainable rural economy, compatible with rural lifestyles and a healthy environment.

Policy 3.4.1 Promote rural economic initiatives, including home-based businesses, that maintain the integrity of the rural character and natural environment.

a. Review land use regulations to identify legal and appropriate development opportunities.

FINDING: The text amendments will allow farm stores, a use permitted by state law, to operate on agricultural lands in the rural county. These operations have the opportunity to promote economic development in the rural county through legal and appropriate development opportunities. Operations will be reviewed to ensure they are compatible with the rural character and natural environment of the surrounding area through compliance with reasonable siting standards.

VI. CONCLUSION:

Based on the information provided herein, the staff recommends the Board of County Commissioners approve the proposed text amendments to the Deschutes County Code.

83rd OREGON LEGISLATIVE ASSEMBLY--2026 Regular Session

Enrolled
House Bill 4153

Sponsored by Representative BREESE-IVERSON, Senators SOLLMAN, SMITH DB, Representatives HELFRICH, LEVY B, RIEKE SMITH, Senator ANDERSON; Representatives ELMER, LEVY E, OWENS, RESCHKE, Senators BROADMAN, GIROD, GORSEK, MCLANE, MEEK, NASH, WEBER (Presession filed.)

CHAPTER .....

AN ACT

Relating to farm stores; creating new provisions; and amending ORS 215.213, 215.283, 475A.570 and 475C.489.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2026 Act is added to and made a part of ORS chapter 215.

SECTION 2. (1) As used in this section:

(a)(A) "Agri-tourism activity" means an activity that is conducted by a farm operation to promote the farm operation, visitors to a farm store and the sale of farm store products to the public and that may also generate commercial, entertainment or educational value. Such activities may include:

(i) Farm tours;

(ii) Educational exhibits or classes;

(iii) Crop mazes;

(iv) Play structures;

(v) Farm-to-table meals;

(vi) Animal petting and feeding exhibits;

(vii) Hay or tractor rides; or

(viii) Other seasonal or holiday events.

(B) "Agri-tourism activity" does not include using a farm store for lodging or as a dwelling.

(b) "Farm-to-table meal" means a meal offered as part of a fee-based dining experience, where food grown by a farm operation or farmers in a local agricultural area is prepared and served in a manner that educates the public about agricultural production or on-site sourcing.

(c) "Farm unit" means a farm operation comprising all parcels being farmed by a single operation, whether the operation owns or leases the parcels.

(d) "Farm use" means, notwithstanding ORS 215.010, only those activities listed under ORS 215.203 (2)(a) undertaken for the primary purpose of obtaining a profit.

(e) "Local agricultural area" means Oregon or an adjacent county in California, Idaho, Nevada or Washington that borders an Oregon county in which a farm store is located.

(f) "Processed farm product" means a farm product that has been transformed into a manufactured product through methods such as cooking, baking, heating, drying, mixing,

grinding, churning, separating, extracting, cutting, butchering or freezing and has been packaged or canned for human or animal use.

(2) A farm store may be established as a permitted use on land zoned for exclusive farm use under ORS 215.213 (1) and 215.283 (1), or on land zoned for mixed farm and forest use, if:

(a) The farm store is used for the sale of farm products produced by the farm operation that operates the farm store;

(b) No more than 10,000 square feet of one or more permanently enclosed structures are used for the farm store uses listed in subsection (3) of this section; and

(c) The farm store is situated on a tract of:

(A) At least 80 acres with at least 45 acres employed for farm use;

(B) Less than 80 acres but at least 40 acres and with at least 25 acres employed for farm use;

(C) Less than 40 acres but at least 20 acres and with at least 15 acres employed for farm use; or

(D) Less than 20 acres if:

(i) At least 10 acres are employed for farm use; or

(ii) The farm store operates as part of a farm unit that has earned at least $10,000 in gross farm income cumulatively over the preceding two years.

(3) Farm stores may be used for:

(a) The sale of the farm products or processed farm products produced in the local agricultural area;

(b) The sale of other retail items, if displayed in an area not to exceed 25 percent of the floor area of the permanent enclosed farm store structures;

(c) The sale of beverages and prepared food items that are cooked or otherwise made ready for immediate consumption; or

(d) Agri-tourism activities.

(4) The sale of retail items under subsection (3)(b) of this section must take place within a permanent enclosed structure. All other allowable farm store uses may take place outside or in temporary or unenclosed structures.

(5) In conjunction with an agri-tourism activity, a farm store may use temporary structures or mobile vending units.

(6) A farm store may include on-site kitchen facilities licensed by the Oregon Health Authority under ORS 624.010 to 624.121. Food and beverages prepared under subsection (3)(c) of this section may not be served in a manner that causes the kitchen facilities to function as a cafe or drive-through dining establishment.

(7)(a) A local government with land use jurisdiction over the site of a farm store may adopt siting standards for farm stores related to:

(A) Access, egress and parking;

(B) Traffic management;

(C) Noise management;

(D) Hours of event operation; or

(E) Sanitation and solid waste.

(b) A county may not apply siting standards in a manner that prohibits the siting and operation of a farm store under this section.

SECTION 3. ORS 215.213 is amended to read:

215.213. (1) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), the following uses may be established in any area zoned for exclusive farm use:

(a) Churches and cemeteries in conjunction with churches.

(b) The propagation or harvesting of a forest product.

(c) Utility facilities necessary for public service, not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height, but including:

(A) Utility facilities as provided in ORS 215.275;

(B) Utility facilities that are associated transmission lines, as defined in ORS 215.274 and 469.300;

(C) Wetland waste treatment systems; or

(D) Facilities and service lines needed to provide water or wastewater services allowed under ORS 215.256.

(d) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator. Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel size requirements under ORS 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel.

(e) Nonresidential buildings customarily provided in conjunction with farm use.

(f) Subject to ORS 215.279, primary or accessory dwellings customarily provided in conjunction with farm use. For a primary dwelling, the dwelling must be on a lot or parcel that is managed as part of a farm operation and is not smaller than the minimum lot size in a farm zone with a minimum lot size acknowledged under ORS 197.251.

(g) Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (2)(a) or (b).

(h) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (2)(a) or (b).

(i) One manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. The governing body or its designee shall provide for periodic review of the hardship claimed under this paragraph. A temporary residence approved under this paragraph is not eligible for replacement under paragraph (q) of this subsection.

(j) Climbing and passing lanes within the right of way existing as of July 1, 1987.

(k) Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.

(L) Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.

(m) Minor betterment of existing public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.

(n) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has been classified as historic property as described in ORS 358.487 (4).

(o) Creation, restoration or enhancement of wetlands.

(p) A winery, as described in ORS 215.452 or 215.453.

(q) Alteration, restoration or replacement of a lawfully established dwelling, as described in ORS 215.291.

(r) Farm stands if:

(A) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

(B) The farm stand does not include structures designed for occupancy as a residence or for activity other than the sale of farm crops or livestock and does not include structures for banquets, public gatherings or public entertainment.

(s) An armed forces reserve center, if the center is within one-half mile of a community college. For purposes of this paragraph, "armed forces reserve center" includes an armory or National Guard support facility.

(t) A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this paragraph. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this paragraph. An owner of property used for the purpose authorized in this paragraph may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings and facilities. As used in this paragraph, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.

(u) A facility for the processing of farm products as described in ORS 215.255.

(v) Fire service facilities providing rural fire protection services.

(w) Irrigation reservoirs, canals, delivery lines and those structures and accessory operational facilities, not including parks or other recreational structures and facilities, associated with a district as defined in ORS 540.505.

(x) Utility facility service lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

(A) A public right of way;

(B) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

(C) The property to be served by the utility.

(y) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application of reclaimed water, agricultural or industrial process water or biosolids, or the onsite treatment of septage prior to the land application of biosolids, for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter. For the purposes of this paragraph, onsite treatment of septage prior to the land application of biosolids is limited to treatment using treatment facilities that are portable, temporary and transportable by truck trailer, as defined in ORS 801.580, during a period of time within which land application of biosolids is authorized under the license, permit or other approval.

(z) Dog training classes or testing trials, which may be conducted outdoors or in farm buildings in existence on January 1, 2019, when:

(A) The number of dogs participating in training does not exceed 10 dogs per training class and the number of training classes to be held on-site does not exceed six per day; and

(B) The number of dogs participating in a testing trial does not exceed 60 and the number of testing trials to be conducted on-site is limited to four or fewer trials per calendar year.

(aa) A cider business, as described in ORS 215.451.

(bb) A farm brewery, as described in ORS 215.449.

(cc) A farm store, as described in section 2 of this 2026 Act.

(2) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), the following uses may be established in any area zoned for exclusive farm use subject to ORS 215.296:

(a) A primary dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot if the farm operation or woodlot:

(A) Consists of 20 or more acres; and

(B) Is not smaller than the average farm or woodlot in the county producing at least $2,500 in annual gross income from the crops, livestock or forest products to be raised on the farm operation or woodlot.

(b) A primary dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot smaller than required under paragraph (a) of this subsection, if the lot or parcel:

(A) Has produced at least $20,000 in annual gross farm income in two consecutive calendar years out of the three calendar years before the year in which the application for the dwelling was made or is planted in perennials capable of producing upon harvest an average of at least $20,000 in annual gross farm income; or

(B) Is a woodlot capable of producing an average over the growth cycle of $20,000 in gross annual income.

(c) Commercial activities that are in conjunction with farm use, including the processing of farm crops into biofuel not permitted under ORS 215.203 (2)(b)(K) or 215.255.

(d) Operations conducted for:

(A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, not otherwise permitted under subsection (1)(g) of this section;

(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

(C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

(D) Processing of other mineral resources and other subsurface resources.

(e) Community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community, hunting and fishing preserves, public and private parks, playgrounds and campgrounds. Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296 (1). A public park or campground may be established as provided under ORS 195.120. As used in this paragraph, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance.

(f) Golf courses on land determined not to be high-value farmland as defined in ORS 195.300.

(g) Commercial utility facilities for the purpose of generating power for public use by sale. If the area zoned for exclusive farm use is high-value farmland, a photovoltaic solar power generation facility may be established as a commercial utility facility as provided in ORS 215.447. A renewable energy facility as defined in ORS 215.446 may be established as a commercial utility facility.

(h) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

(i) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203 (2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

(j) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.

(k)(A) Commercial dog boarding kennels; or

(B) Dog training classes or testing trials that cannot be established under subsection (1)(z) of this section.

(L) Residential homes as defined in ORS 197.660, in existing dwellings.

(m) The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission or insect species. Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

(n) Home occupations as provided in ORS 215.448.

(o) Transmission towers over 200 feet in height.

(p) Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.

(q) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.

(r) Improvement of public road and highway related facilities such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.

(s) A destination resort that is approved consistent with the requirements of any statewide planning goal relating to the siting of a destination resort.

(t) Room and board arrangements for a maximum of five unrelated persons in existing residences.

(u) A living history museum related to resource based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas

other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of the metropolitan urban growth boundary. As used in this paragraph:

(A) "Living history museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events; and

(B) "Local historical society" means the local historical society, recognized as such by the county governing body and organized under ORS chapter 65.

(v) Operations for the extraction and bottling of water.

(w) An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's permit to sell or provide fireworks.

(x) A landscape contracting business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.

(y) Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located.

(z) Equine and equine-affiliated therapeutic and counseling activities, provided:

(A) The activities are conducted in existing buildings that were lawfully constructed on the property before January 1, 2019, or in new buildings that are accessory, incidental and subordinate to the farm use on the tract; and

(B) All individuals conducting therapeutic or counseling activities are acting within the proper scope of any licenses required by the state.

(aa) Child care facilities, preschool recorded programs or school-age recorded programs that are:

(A) Authorized under ORS 329A.250 to 329A.450;

(B) Primarily for the children of residents and workers of the rural area in which the facility or program is located; and

(C) Colocated with a community center or a public or private school allowed under this subsection.

(3) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), a single-unit residential dwelling not provided in conjunction with farm use may be established on a lot or parcel with soils predominantly in capability classes IV through VIII as determined by the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on October 15, 1983. A proposed dwelling is subject to approval of the governing body or its designee in any area zoned for exclusive farm use upon written findings showing all of the following:

(a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use.

(b) The dwelling is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of the tract. A lot or parcel shall not be considered unsuitable solely because of its size or location if it can reasonably be put to farm use in conjunction with other land.

(c) Complies with such other conditions as the governing body or its designee considers necessary.

(4) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), one single-unit dwelling, not provided in conjunction with farm use, may be established in any area zoned for exclusive farm use on a lot or parcel described in subsection (7) of this section that is not larger than three acres upon written findings showing:

(a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use;

(b) If the lot or parcel is located within the Willamette River Greenway, a floodplain or a geological hazard area, the dwelling complies with conditions imposed by local ordinances relating

specifically to the Willamette River Greenway, floodplains or geological hazard areas, whichever is applicable; and

(c) The dwelling complies with other conditions considered necessary by the governing body or its designee.

(5) Upon receipt of an application for a permit under subsection (4) of this section, the governing body shall notify:

(a) Owners of land that is within 250 feet of the lot or parcel on which the dwelling will be established; and

(b) Persons who have requested notice of such applications and who have paid a reasonable fee imposed by the county to cover the cost of such notice.

(6) The notice required in subsection (5) of this section shall specify that persons have 15 days following the date of postmark of the notice to file a written objection on the grounds only that the dwelling or activities associated with it would force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use. If no objection is received, the governing body or its designee shall approve or disapprove the application. If an objection is received, the governing body shall set the matter for hearing in the manner prescribed in ORS 215.402 to 215.438. The governing body may charge the reasonable costs of the notice required by subsection (5)(a) of this section to the applicant for the permit requested under subsection (4) of this section.

(7) Subsection (4) of this section applies to a lot or parcel lawfully created between January 1, 1948, and July 1, 1983. For the purposes of this section:

(a) Only one lot or parcel exists if:

(A) A lot or parcel described in this section is contiguous to one or more lots or parcels described in this section; and

(B) On July 1, 1983, greater than possessory interests are held in those contiguous lots, parcels or lots and parcels by the same person, spouses or a single partnership or business entity, separately or in tenancy in common.

(b) "Contiguous" means lots, parcels or lots and parcels that have a common boundary, including but not limited to, lots, parcels or lots and parcels separated only by a public road.

(8) A person who sells or otherwise transfers real property in an exclusive farm use zone may retain a life estate in a dwelling on that property and in a tract of land under and around the dwelling.

(9) No final approval of a nonfarm use under this section shall be given unless any additional taxes imposed upon the change in use have been paid.

(10) Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:

(a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or

(b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993.

(11) The following agri-tourism and other commercial events or activities that are related to and supportive of agriculture may be established in any area zoned for exclusive farm use:

(a) A county may authorize a single agri-tourism or other commercial event or activity on a tract in a calendar year by an authorization that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract, if the agri-tourism or other commercial event or activity meets any local standards that apply and:

(A) The agri-tourism or other commercial event or activity is incidental and subordinate to existing farm use on the tract;

(B) The duration of the agri-tourism or other commercial event or activity does not exceed 72 consecutive hours;

(C) The maximum attendance at the agri-tourism or other commercial event or activity does not exceed 500 people;

(D) The maximum number of motor vehicles parked at the site of the agri-tourism or other commercial event or activity does not exceed 250 vehicles;

(E) The agri-tourism or other commercial event or activity complies with ORS 215.296;

(F) The agri-tourism or other commercial event or activity occurs outdoors, in temporary structures, or in existing permitted structures, subject to health and fire and life safety requirements; and

(G) The agri-tourism or other commercial event or activity complies with conditions established for:

(i) Planned hours of operation;

(ii) Access, egress and parking;

(iii) A traffic management plan that identifies the projected number of vehicles and any anticipated use of public roads; and

(iv) Sanitation and solid waste.

(b) In the alternative to paragraphs (a) and (c) of this subsection, a county may authorize, through an expedited, single-event license, a single agri-tourism or other commercial event or activity on a tract in a calendar year by an expedited, single-event license that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract. A decision concerning an expedited, single-event license is not a land use decision, as defined in ORS 197.015. To approve an expedited, single-event license, the governing body of a county or its designee must determine that the proposed agri-tourism or other commercial event or activity meets any local standards that apply, and the agri-tourism or other commercial event or activity:

(A) Must be incidental and subordinate to existing farm use on the tract;

(B) May not begin before 6 a.m. or end after 10 p.m.;

(C) May not involve more than 100 attendees or 50 vehicles;

(D) May not include the artificial amplification of music or voices before 8 a.m. or after 8 p.m.;

(E) May not require or involve the construction or use of a new permanent structure in connection with the agri-tourism or other commercial event or activity;

(F) Must be located on a tract of at least 10 acres unless the owners or residents of adjoining properties consent, in writing, to the location; and

(G) Must comply with applicable health and fire and life safety requirements.

(c) In the alternative to paragraphs (a) and (b) of this subsection, a county may authorize up to six agri-tourism or other commercial events or activities on a tract in a calendar year by a limited use permit that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract. The agri-tourism or other commercial events or activities must meet any local standards that apply, and the agri-tourism or other commercial events or activities:

(A) Must be incidental and subordinate to existing farm use on the tract;

(B) May not, individually, exceed a duration of 72 consecutive hours;

(C) May not require that a new permanent structure be built, used or occupied in connection with the agri-tourism or other commercial events or activities;

(D) Must comply with ORS 215.296;

(E) May not, in combination with other agri-tourism or other commercial events or activities authorized in the area, materially alter the stability of the land use pattern in the area; and

(F) Must comply with conditions established for:

(i) The types of agri-tourism or other commercial events or activities that are authorized during each calendar year, including the number and duration of the agri-tourism or other commercial events and activities, the anticipated daily attendance and the hours of operation;

(ii) The location of existing structures and the location of proposed temporary structures to be used in connection with the agri-tourism or other commercial events or activities;

(iii) The location of access and egress and parking facilities to be used in connection with the agri-tourism or other commercial events or activities;

(iv) Traffic management, including the projected number of vehicles and any anticipated use of public roads; and

(v) Sanitation and solid waste.

(d) In addition to paragraphs (a) to (c) of this subsection, a county may authorize agri-tourism or other commercial events or activities that occur more frequently or for a longer period or that do not otherwise comply with paragraphs (a) to (c) of this subsection if the agri-tourism or other commercial events or activities comply with any local standards that apply and the agri-tourism or other commercial events or activities:

(A) Are incidental and subordinate to existing commercial farm use of the tract and are necessary to support the commercial farm uses or the commercial agricultural enterprises in the area;

(B) Comply with the requirements of paragraph (c)(C), (D), (E) and (F) of this subsection;

(C) Occur on a lot or parcel that complies with the acknowledged minimum lot or parcel size; and

(D) Do not exceed 18 events or activities in a calendar year.

(12) A holder of a permit authorized by a county under subsection (11)(d) of this section must request review of the permit at four-year intervals. Upon receipt of a request for review, the county shall:

(a) Provide public notice and an opportunity for public comment as part of the review process; and

(b) Limit its review to events and activities authorized by the permit, conformance with conditions of approval required by the permit and the standards established by subsection (11)(d) of this section.

(13) For the purposes of subsection (11) of this section:

(a) A county may authorize the use of temporary structures established in connection with the agri-tourism or other commercial events or activities authorized under subsection (11) of this section. However, the temporary structures must be removed at the end of the agri-tourism or other event or activity. The county may not approve an alteration to the land in connection with an agri-tourism or other commercial event or activity authorized under subsection (11) of this section, including, but not limited to, grading, filling or paving.

(b) The county may issue the limited use permits authorized by subsection (11)(c) of this section for two calendar years. When considering an application for renewal, the county shall ensure compliance with the provisions of subsection (11)(c) of this section, any local standards that apply and conditions that apply to the permit or to the agri-tourism or other commercial events or activities authorized by the permit.

(c) The authorizations provided by subsection (11) of this section are in addition to other authorizations that may be provided by law, except that "outdoor mass gathering" and "other gathering," as those terms are used in ORS 197.015 (10)(d), do not include agri-tourism or other commercial events and activities.

SECTION 4. ORS 215.283 is amended to read:

215.283. (1) The following uses may be established in any area zoned for exclusive farm use:

(a) Churches and cemeteries in conjunction with churches.

(b) The propagation or harvesting of a forest product.

(c) Utility facilities necessary for public service, not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height, but including:

(A) Utility facilities as provided in ORS 215.275;

(B) Utility facilities that are associated transmission lines, as defined in ORS 215.274 and 469.300;

(C) Wetland waste treatment systems; or

(D) Facilities and service lines needed to provide water or wastewater services allowed under ORS 215.256.

(d) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator. Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel size requirements under ORS 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel.

(e) Subject to ORS 215.279, primary or accessory dwellings and other buildings customarily provided in conjunction with farm use.

(f) Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (2)(a) or (b).

(g) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (2)(a) or (b).

(h) Climbing and passing lanes within the right of way existing as of July 1, 1987.

(i) Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.

(j) Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.

(k) Minor betterment of existing public road and highway related facilities such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.

(L) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has been classified as historic property as described in ORS 358.487 (4).

(m) Creation, restoration or enhancement of wetlands.

(n) A winery, as described in ORS 215.452 or 215.453.

(o) Farm stands if:

(A) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

(B) The farm stand does not include structures designed for occupancy as a residence or for activity other than the sale of farm crops or livestock and does not include structures for banquets, public gatherings or public entertainment.

(p) Alteration, restoration or replacement of a lawfully established dwelling, as described in ORS 215.291.

(q) A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this paragraph. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this paragraph. An owner of property used for the

purpose authorized in this paragraph may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings and facilities. As used in this paragraph, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.

(r) A facility for the processing of farm products as described in ORS 215.255.

(s) Fire service facilities providing rural fire protection services.

(t) Irrigation reservoirs, canals, delivery lines and those structures and accessory operational facilities, not including parks or other recreational structures and facilities, associated with a district as defined in ORS 540.505.

(u) Utility facility service lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

(A) A public right of way;

(B) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

(C) The property to be served by the utility.

(v) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application of reclaimed water, agricultural or industrial process water or biosolids, or the onsite treatment of septage prior to the land application of biosolids, for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter. For the purposes of this paragraph, onsite treatment of septage prior to the land application of biosolids is limited to treatment using treatment facilities that are portable, temporary and transportable by truck trailer, as defined in ORS 801.580, during a period of time within which land application of biosolids is authorized under the license, permit or other approval.

(w) A county law enforcement facility that lawfully existed on August 20, 2002, and is used to provide rural law enforcement services primarily in rural areas, including parole and post-prison supervision, but not including a correctional facility as defined under ORS 162.135.

(x) Dog training classes or testing trials, which may be conducted outdoors or in preexisting farm buildings, when:

(A) The number of dogs participating in training does not exceed 10 dogs per training class and the number of training classes to be held on-site does not exceed six per day; and

(B) The number of dogs participating in a testing trial does not exceed 60 and the number of testing trials to be conducted on-site is limited to four or fewer trials per calendar year.

(y) A cider business, as described in ORS 215.451.

(z) A farm brewery, as described in ORS 215.449.

(aa) A farm store, as described in section 2 of this 2026 Act.

(2) The following nonfarm uses may be established, subject to the approval of the governing body or its designee in any area zoned for exclusive farm use subject to ORS 215.296:

(a) Commercial activities that are in conjunction with farm use, including the processing of farm crops into biofuel not permitted under ORS 215.203 (2)(b)(K) or 215.255.

(b) Operations conducted for:

(A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005 not otherwise permitted under subsection (1)(f) of this section;

(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

(C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

(D) Processing of other mineral resources and other subsurface resources.

(c) Private parks, playgrounds, hunting and fishing preserves and campgrounds. Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296 (1). As used in this paragraph, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance.

(d) Parks and playgrounds. A public park may be established consistent with the provisions of ORS 195.120.

(e) Community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community. A community center authorized under this paragraph may provide services to veterans, including but not limited to emergency and transitional shelter, preparation and service of meals, vocational and educational counseling and referral to local, state or federal agencies providing medical, mental health, disability income replacement and substance abuse services, only in a facility that is in existence on January 1, 2006. The services may not include direct delivery of medical, mental health, disability income replacement or substance abuse services.

(f) Golf courses on land:

(A) Determined not to be high-value farmland, as defined in ORS 195.300 (10); or

(B) Determined to be high-value farmland described in ORS 195.300 (10)(c) if the land:

(i) Is not otherwise described in ORS 195.300 (10);

(ii) Is surrounded on all sides by an approved golf course; and

(iii) Is west of U.S. Highway 101.

(g) Commercial utility facilities for the purpose of generating power for public use by sale. If the area zoned for exclusive farm use is high-value farmland, a photovoltaic solar power generation facility may be established as a commercial utility facility as provided in ORS 215.447. A renewable energy facility as defined in ORS 215.446 may be established as a commercial utility facility.

(h) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport, as used in this section, means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

(i) Home occupations as provided in ORS 215.448.

(j) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203 (2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

(k) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.

(L) One manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. The governing body or its designee shall provide for periodic review of the hardship claimed under this paragraph. A temporary residence approved under this paragraph is not eligible for replacement under subsection (1)(p) of this section.

(m) Transmission towers over 200 feet in height.

(n)(A) Commercial dog boarding kennels; or

(B) Dog training classes or testing trials that cannot be established under subsection (1)(x) of this section.

(o) Residential homes as defined in ORS 197.660, in existing dwellings.

(p) The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission or insect species. Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

(q) Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.

(r) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.

(s) Improvement of public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.

(t) A destination resort that is approved consistent with the requirements of any statewide planning goal relating to the siting of a destination resort.

(u) Room and board arrangements for a maximum of five unrelated persons in existing residences.

(v) Operations for the extraction and bottling of water.

(w) Expansion of existing county fairgrounds and activities directly relating to county fairgrounds governed by county fair boards established pursuant to ORS 565.210.

(x) A living history museum related to resource based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban growth boundary. As used in this paragraph:

(A) "Living history museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events; and

(B) "Local historical society" means the local historical society recognized by the county governing body and organized under ORS chapter 65.

(y) An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's permit to sell or provide fireworks.

(z) A landscape contracting business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.

(aa) Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located.

(bb) Equine and equine-affiliated therapeutic and counseling activities, provided:

(A) The activities are conducted in existing buildings that were lawfully constructed on the property before January 1, 2019, or in new buildings that are accessory, incidental and subordinate to the farm use on the tract; and

(B) All individuals conducting therapeutic or counseling activities are acting within the proper scope of any licenses required by the state.

(cc) Guest ranches in eastern Oregon, as described in ORS 215.461.

(dd) Child care facilities, preschool recorded programs or school-age recorded programs that are:

(A) Authorized under ORS 329A.250 to 329A.450;

(B) Primarily for the children of residents and workers of the rural area in which the facility or program is located; and

(C) Colocated with a community center or a public or private school allowed under this subsection.

(3) Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:

(a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or

(b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993.

(4) The following agri-tourism and other commercial events or activities that are related to and supportive of agriculture may be established in any area zoned for exclusive farm use:

(a) A county may authorize a single agri-tourism or other commercial event or activity on a tract in a calendar year by an authorization that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract, if the agri-tourism or other commercial event or activity meets any local standards that apply and:

(A) The agri-tourism or other commercial event or activity is incidental and subordinate to existing farm use on the tract;

(B) The duration of the agri-tourism or other commercial event or activity does not exceed 72 consecutive hours;

(C) The maximum attendance at the agri-tourism or other commercial event or activity does not exceed 500 people;

(D) The maximum number of motor vehicles parked at the site of the agri-tourism or other commercial event or activity does not exceed 250 vehicles;

(E) The agri-tourism or other commercial event or activity complies with ORS 215.296;

(F) The agri-tourism or other commercial event or activity occurs outdoors, in temporary structures, or in existing permitted structures, subject to health and fire and life safety requirements; and

(G) The agri-tourism or other commercial event or activity complies with conditions established for:

(i) Planned hours of operation;

(ii) Access, egress and parking;

(iii) A traffic management plan that identifies the projected number of vehicles and any anticipated use of public roads; and

(iv) Sanitation and solid waste.

(b) In the alternative to paragraphs (a) and (c) of this subsection, a county may authorize, through an expedited, single-event license, a single agri-tourism or other commercial event or activity on a tract in a calendar year by an expedited, single-event license that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract. A decision

concerning an expedited, single-event license is not a land use decision, as defined in ORS 197.015. To approve an expedited, single-event license, the governing body of a county or its designee must determine that the proposed agri-tourism or other commercial event or activity meets any local standards that apply, and the agri-tourism or other commercial event or activity:

(A) Must be incidental and subordinate to existing farm use on the tract;

(B) May not begin before 6 a.m. or end after 10 p.m.;

(C) May not involve more than 100 attendees or 50 vehicles;

(D) May not include the artificial amplification of music or voices before 8 a.m. or after 8 p.m.;

(E) May not require or involve the construction or use of a new permanent structure in connection with the agri-tourism or other commercial event or activity;

(F) Must be located on a tract of at least 10 acres unless the owners or residents of adjoining properties consent, in writing, to the location; and

(G) Must comply with applicable health and fire and life safety requirements.

(c) In the alternative to paragraphs (a) and (b) of this subsection, a county may authorize up to six agri-tourism or other commercial events or activities on a tract in a calendar year by a limited use permit that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract. The agri-tourism or other commercial events or activities must meet any local standards that apply, and the agri-tourism or other commercial events or activities:

(A) Must be incidental and subordinate to existing farm use on the tract;

(B) May not, individually, exceed a duration of 72 consecutive hours;

(C) May not require that a new permanent structure be built, used or occupied in connection with the agri-tourism or other commercial events or activities;

(D) Must comply with ORS 215.296;

(E) May not, in combination with other agri-tourism or other commercial events or activities authorized in the area, materially alter the stability of the land use pattern in the area; and

(F) Must comply with conditions established for:

(i) The types of agri-tourism or other commercial events or activities that are authorized during each calendar year, including the number and duration of the agri-tourism or other commercial events and activities, the anticipated daily attendance and the hours of operation;

(ii) The location of existing structures and the location of proposed temporary structures to be used in connection with the agri-tourism or other commercial events or activities;

(iii) The location of access and egress and parking facilities to be used in connection with the agri-tourism or other commercial events or activities;

(iv) Traffic management, including the projected number of vehicles and any anticipated use of public roads; and

(v) Sanitation and solid waste.

(d) In addition to paragraphs (a) to (c) of this subsection, a county may authorize agri-tourism or other commercial events or activities that occur more frequently or for a longer period or that do not otherwise comply with paragraphs (a) to (c) of this subsection if the agri-tourism or other commercial events or activities comply with any local standards that apply and the agri-tourism or other commercial events or activities:

(A) Are incidental and subordinate to existing commercial farm use of the tract and are necessary to support the commercial farm uses or the commercial agricultural enterprises in the area;

(B) Comply with the requirements of paragraph (c)(C), (D), (E) and (F) of this subsection;

(C) Occur on a lot or parcel that complies with the acknowledged minimum lot or parcel size; and

(D) Do not exceed 18 events or activities in a calendar year.

(5) A holder of a permit authorized by a county under subsection (4)(d) of this section must request review of the permit at four-year intervals. Upon receipt of a request for review, the county shall:

(a) Provide public notice and an opportunity for public comment as part of the review process; and

(b) Limit its review to events and activities authorized by the permit, conformance with conditions of approval required by the permit and the standards established by subsection (4)(d) of this section.

(6) For the purposes of subsection (4) of this section:

(a) A county may authorize the use of temporary structures established in connection with the agri-tourism or other commercial events or activities authorized under subsection (4) of this section. However, the temporary structures must be removed at the end of the agri-tourism or other event or activity. The county may not approve an alteration to the land in connection with an agri-tourism or other commercial event or activity authorized under subsection (4) of this section, including, but not limited to, grading, filling or paving.

(b) The county may issue the limited use permits authorized by subsection (4)(c) of this section for two calendar years. When considering an application for renewal, the county shall ensure compliance with the provisions of subsection (4)(c) of this section, any local standards that apply and conditions that apply to the permit or to the agri-tourism or other commercial events or activities authorized by the permit.

(c) The authorizations provided by subsection (4) of this section are in addition to other authorizations that may be provided by law, except that "outdoor mass gathering" and "other gathering," as those terms are used in ORS 197.015 (10)(d), do not include agri-tourism or other commercial events and activities.

SECTION 5. ORS 475A.570 is amended to read:

475A.570. [*Psilocybin-producing fungi as crop; exceptions to permitted uses.*] (1) Psilocybin-producing fungi is:

(a) A crop for the purposes of farm use as defined in ORS 215.203;

(b) A crop for purposes of a farm and farming practice, both as defined in ORS 30.930;

(c) A product of farm use as described in ORS 308A.062; and

(d) The product of an agricultural activity for purposes of ORS 568.909.

(2) Notwithstanding ORS chapters 195, 196, 197, 197A, 215 and 227, the following are not permitted uses on land designated for exclusive farm use:

(a) A new dwelling used in conjunction with a psilocybin-producing fungi crop;

(b) A farm stand, as described in ORS 215.213 (1)(r) or 215.283 (1)(o), used in conjunction with a psilocybin-producing fungi crop; [*and*]

(c) A farm store, as described in section 2 of this 2026 Act, used in conjunction with a psilocybin-producing fungi crop; and

[*(c)*] **(d)** Subject to subsection (3) of this section, a commercial activity, as described in ORS 215.213 (2)(c) or 215.283 (2)(a), carried on in conjunction with a psilocybin-producing fungi crop.

(3) The operation of a psilocybin service center may be carried on in conjunction with a psilocybin-producing fungi crop.

(4) A county may allow the manufacture of psilocybin products as a farm use on land zoned for farm or forest use in the same manner as the manufacture of psilocybin products is allowed in exclusive farm use zones under this section and ORS 215.213, 215.283 and 475C.053.

(5) This section applies to psilocybin product manufacturers that hold a license under ORS 475A.290.

SECTION 6. ORS 475C.489 is amended to read:

475C.489. (1) Marijuana is:

(a) A crop for the purposes of "farm use" as defined in ORS 215.203;

(b) A crop for purposes of a "farm" and "farming practice," both as defined in ORS 30.930;

(c) A product of farm use as described in ORS 308A.062; and

(d) The product of an agricultural activity for purposes of ORS 568.909.

(2) Notwithstanding ORS chapters 195, 196, 197, 197A, 215 and 227, the following are not permitted uses on land designated for exclusive farm use:

(a) A new dwelling used in conjunction with a marijuana crop;

(b) A farm stand, as described in ORS 215.213 (1)(r) or 215.283 (1)(o), used in conjunction with a marijuana crop; [*and*]

(c) A farm store, as described in section 2 of this 2026 Act, used in conjunction with a marijuana crop; and

[*(c)*] **(d)** A commercial activity, as described in ORS 215.213 (2)(c) or 215.283 (2)(a), carried on in conjunction with a marijuana crop.

(3) A county may allow the production of marijuana as a farm use on land zoned for farm or forest use in the same manner as the production of marijuana is allowed in exclusive farm use zones under this section and ORS 215.213, 215.283 and 475C.053.

(4) This section applies to:

(a) Marijuana producers that hold a license issued under ORS 475C.065;

(b) Persons registered under ORS 475C.792 and designated to produce marijuana by one or more persons who hold valid registry identification cards issued under ORS 475C.783; and

(c) For the purpose of producing marijuana or propagating immature marijuana plants, researchers of cannabis that hold a certificate issued under ORS 475C.289.

Passed by House March 4, 2026

.....
Timothy G. Sekerak, Chief Clerk of House

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Julie Fahey, Speaker of House

Passed by Senate March 6, 2026

.....
Rob Wagner, President of Senate

Received by Governor:

.....M.,....., 2026

Approved:

.....M.,....., 2026

.....
Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2026

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Tobias Read, Secretary of State

BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: November 30, 2026

SUBJECT: Fall 2026 Discretionary Grant Application Review and Allocation

RECOMMENDED MOTION:
N/A

BACKGROUND AND POLICY IMPLICATIONS:
Once a year, the Board of Commissioners reviews applications submitted to the Deschutes County Discretionary Grant Program and makes awards accordingly. This year, the application deadline was October 15th. As the BOCC previously appropriated $14,375 for the Discretionary Grant program in FY 2027, each Commissioner can allocate $4,792 in grant funding. 37 organizations have requested a total of $105,700 in grant funding.

Additionally, on September 30, 2026, the BOCC was presented with a request for grant funds from the La Pine Chamber of Commerce. Commissioners DeBone and Adair granted the Chamber $1,000 each in discretionary grant funds, and Commissioner Chang granted $500 in discretionary grant funds.

Periodically throughout the Fiscal Year, the BOCC reviews and allocates fundraising and sponsorship requests. The BOCC had allocated $10,700 in FY 2027 for fundraising and sponsorship funds. Three fundraising requests were received which together total $8,000.

BUDGET IMPACTS:
Discretionary Grants are made available through the Video Lottery Fund, which is supported by state lottery proceeds. All available Discretionary Grant funds were budgeted for FY 2027.

ATTENDANCE:
Jen Patterson, Strategic Initiatives Manager