



COMMUNITY DEVELOPMENT

HEARINGS OFFICER HEARING - LAND USE: MILLER PIT PLAN AMENDMENT/ZONE CHANGE

6:00 PM, MONDAY, NOVEMBER 13, 2023

Barnes Sawyer Rooms - Deschutes Services Bldg - 1300 NW Wall St – Bend

(541) 388-6575 | www.deschutes.org

AGENDA

MEETING FORMAT

This meeting will be conducted electronically, by phone, in person, and using Zoom.

Members of the public may view the meeting in real time via the Public Meeting Portal at www.deschutes.org/meetings.

Members of the public may listen, view, and/or participate in this meeting using Zoom. Using Zoom is free of charge. To login to the electronic meeting online using your computer, copy this link:

<https://us02web.zoom.us/j/89984675116>

Using this option may require you to download the Zoom app to your device.

Members of the public can access the meeting via telephone, dial: 1-346-248-7799. When prompted, enter the following Webinar ID: 899 8467 5116. Written comments can also be provided for the public comment section to Audrey.Stuart@deschutes.org by 4:00 PM on November 12th. They will be entered into the record.

PUBLIC HEARING

1. The applicant requests approval of a Comprehensive Plan Amendment to change the designation of the subject property from Surface Mine (SM) to Rural Residential Exception Area (RREA). The applicant also requests a corresponding Zone Change to rezone the subject property from Surface Mining (SM) to Multiple Use Agricultural (MUA10).



Deschutes County encourages persons with disabilities to participate in all programs and activities. This event/location is accessible to people with disabilities. If you need accommodations to make participation possible, please call (541) 617-4747.



STAFF REPORT

FILE NUMBER: 247-23-000547-PA, 247-23-000548-ZC

**SUBJECT PROPERTY/
OWNER:** Mailing Name: MILLER PIT LLC
Map and Taxlot: 1812210000200
Account: 110218
Situs Address: ****NO SITUS ADDRESS****

APPLICANT: Caldera Land, LLC

REQUEST: The applicant requests approval of a Comprehensive Plan Amendment to change the designation of the subject property from Surface Mine (SM) to Rural Residential Exception Area (RREA). The applicant also requests a corresponding Zone Change to rezone the subject property from Surface Mining (SM) to Multiple Use Agricultural (MUA10).

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

RECORD: Record items can be viewed and downloaded from:
<https://www.deschutes.org/cd/page/247-23-000547-pa-247-23-000548-zc-miller-pit-llc-comprehensive-plan-amendment-and-zone>

I. APPLICABLE CRITERIA

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

- Chapter 18.04, Title, Purpose, and Definitions
- Chapter 18.32, Multiple Use Agricultural (MUA10).
- Chapter 18.52, Surface Mining (SM)
- Chapter 18.136, Amendments

Title 22, Deschutes County Development Procedures Ordinance

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

Oregon Administrative Rules (OAR), Chapter 660
Division 12, Transportation Planning
Division 15, Statewide Planning Goals and Guidelines
Division 23, Procedures and Requirements for Complying with Goal 5

II. BASIC FINDINGS

LOT OF RECORD: The Burden of Proof includes the following statement:

Pursuant to the Hearings Officer’s decision in Belveron (ZC-08-04) and Powell/Ramsey (PA-14-2) legal lot of record status is not applicable to an application for a plan amendment and zone change.

Staff concurs with this analysis and notes the Applicant will be required to obtain Lot of Record Verification prior to any development of the subject property.

SITE DESCRIPTION: The subject property is 65.67 acres in size and is approximately rectangular in shape. The property is bordered to the north by Knott Road, which is classified as a City of Bend arterial. The application materials provide the following description of the site:

The property is the site of a former cinder cone that was mined beginning in the late 1940s. There are two pits in the middle of the site, the smaller one to the north and a larger one extending to the south. Natural elevations of the property range from ±3,760 feet near the northeast corner along Knott Road to ±3,825 feet along the west edge of southern pit in the south-central part of the Site. Outside the two pits, the outer edges of the property are characterized by slopes typically less than 8% with rolling topography. Existing vegetation is typical of the southeast side of Bend and predominantly juniper trees of varying heights and maturities, sagebrush, and bitterbrush. There are no drainages evident within the Site. The property is vacant, is not irrigated, and does not have water rights (Exhibit J, Arnold Irrigation District correspondence). The subject property has not been farmed or used in conjunction with any farming operation.

The property is zoned Surface Mining (SM) and is not within any overlay zones. There is no mapped floodplain on the subject property, and a small portion of the subject property is mapped on the national wetland inventory.

Figure 1: Location Map and Proximity to Bend UGB



PROPOSAL: The Applicant requests approval of a Comprehensive Plan Map Amendment to change the designation of the subject property from Surface Mine to Rural Residential Exception Area. The Applicant also requests approval of a corresponding Zoning Map Amendment to change the zoning of the subject properties from Surface Mining (SM) to Multiple Use Agricultural (MUA10).

Submitted with the application is an Order 1 Soil Survey of the subject property, titled *Site-Specific Soil Survey of Property Located South of Knott Road, also known as T18S, R12E, Section 21, Tax Lot 200 (65.67 acres), Southeast of Bend in Deschutes County, Oregon* (hereafter referred to as the "soil study") prepared by soil scientist Brian T. Rabe, CPSS, WWSS of Cascade Earth Sciences. The Applicant has also submitted a traffic analysis prepared by Transight Consulting, LLC titled *Miller Pit Rezone*, hereafter referred to as "traffic study." The application materials also include a Geotechnical Reconnaissance report, titled *Site 391- Miller Pit (formerly known as Shalex Pit) Bend, Oregon*, prepared by J. Andrew Siemens, PE, GE of Siemens and Associates.

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.

SURROUNDING LAND USES: The area surrounding the subject property is defined by the City of Bend's UGB, which is adjacent to the north and only 430 feet away to the west. Surrounding land within the UGB is primarily developed with single family dwellings but also includes a school, park, and church. Neighboring rural lands to the east, south, and west are zoned MUA10. The surrounding area outside of the UGB is generally characterized by single family dwellings and small-to-medium scale agriculture.

North.

The Bend UGB is located adjacent to the subject property to the north. Caldera High School is located across Knott Road from the subject property, on a 72.8-acre parcel. The Caldera High School property includes a number of buildings, parking areas, and sports fields, as well as approximately 23 acres of undeveloped land located to the north of SE Caldera Drive. Alpenglow Community Park is located immediately to the north of the school on a 36.48-acre parcel that is developed with trails, parking areas, and picnic shelters. Alpenglow Community Park is owned by Bend Park and Recreation District. Nativity Lutheran Church is also located across Knott Road from the subject property, on a 4.69-acre parcel. This church property is located at the intersection of Brosterhouse Road and Knott Road, and is separated from Caldera High School by SE Wolfpack Way.

There is a significant amount of undeveloped land located to the northeast of the subject property, east of 15th Street and north of Knott Road. This area is currently under development by Pahlisch Homes as the Easton master-planned community, which will be constructed in phases.

West.

Neighboring lots in the Brightenwood Estates IV subdivision range in size from 0.58 to 0.46 acres and are developed with single-family dwellings. The Brightenwood Estates subdivisions are primarily within the Bend UGB but a small section, containing eleven lots, is located outside of the UGB and to the west of the subject property.

There is also a 25.4-acre parcel adjacent to the subject property, between the subject property and the Bend UGB. This MUA10 parcel is undeveloped and is bisected by Woodside Road. The Bend UGB is located approximately 430 feet west of the subject property and surrounding land within the UGB is primarily developed with single family dwellings, and is platted as various phases of the Brightenwood Estates subdivision.

The general surrounding area to the west is characterized by single-family development and is zoned Bend Residential Low Density (RL) and Bend Residential Standard Density (RS). A railroad track is located approximately 860 feet northwest of the subject property, within the Bend UGB. A golf course is also located approximately 4,000 feet west of the subject property.

South.

Land to the south of the subject property is located outside of the Bend UGB and is more rural in character. Neighboring properties to the south are zoned MUA10 and range in size from 3.69 to 6.99 acres. Three of these four neighboring properties are developed with dwellings, and irrigated fields are visible on two of these properties. Farther south, the surrounding area is zoned Rural Residential (RR10) and Exclusive Farm Use (EFU).

The RR10 land is located to the southwest of the subject property and consists of several rural subdivisions, including Woodside Ranchettes and Woodside Ranch phases one through six. These subdivision lots are generally two-to-four acres in size and are developed with dwellings, residential accessory structures, and some small hobby farming.

EFU-zoned land is located approximately 420 feet south of the subject property. Surrounding EFU parcels range in size from 3.68 to 20 acres. Many of these parcels appear to be receiving farm tax deferral and contain irrigated fields and pasture.

East.

Adjacent properties to the east are zoned MUA10 and are platted lots in the Skylandia subdivision, which range in size from 2.09 to 4.66 acres. These lots are developed with single family dwellings and some appear to contain irrigated pasture. MUA10 parcels east of Tekampe Road also appear to be developed with a mix of residential uses and small-scale agriculture, with the exception of a church located at the intersection of Knott Road and Tekampe Road.

EFU-zoned land is located approximately 0.33 miles east of the subject property, beyond the MUA10-zoned parcels. This EFU land generally contains larger lots and more intensive farm uses than the MUA10 parcels adjacent to the subject property.

PUBLIC AGENCY COMMENTS: The Planning Division mailed notice on July 7, 2023, to several public agencies and received the following comments:

Deschutes County Senior Transportation Planner, Tarik Rawlings

I have reviewed the application materials submitted on behalf of file no. 247-23-000547-PA, 548-ZC for a Plan Amendment from Surface Mine (SM) to Rural Residential Exception Area (RREA) and Zone Change from Surface Mining (SM) to Multiple Use Agricultural (MUA10) for property located on Assessor's Map 18-12-21 Tax Lot 200.

This property does not have a mailing address and the applicant should work with the County Property Address Coordinator to establish valid mailing addresses for the property.

The site itself is a surface mine that has been reclaimed according to the Department of Geologic and Mineral Industries (DOGAMI) within which the surface mine resource has been exhausted and trip generation is essentially zero based on the lack of activity or an established land use on the property.

I have reviewed Mr. Bessman's March 23, 2023, Traffic Impact Analysis and I'm mostly fine with its assumptions, methodology, and conclusions. Mr. Bessman utilizes the acceptable road segment standard of 13,400 Average Daily Trips (ADT) which is incorporated into the County's most recent 2020-2040 Transportation System Plan. As Mr. Bessman utilizes the 2040 planning horizon year (reflective of the most recent data included in the County's

forthcoming Transportation System Plan update) this analysis appears to comply with relevant criteria.

Department of Geology and Mineral Industries, Becky Johnson

I did a review of the site in question (DOGAMI ID# 09-0013) and it was a 34 acre Limited Exemption site, closed in August of 1998. We have nothing permitted in the area currently, nor any active applications. DOGAMI has no comments or concerns with the land use application! Thank you so much for checking in with us about it.

Arnold Irrigation District, Juanita Harvey

The above-mentioned property does not have any Arnold Irrigation District water rights appurtenant to it nor does it have any District facilities within its property boundaries or associated with it.

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

PUBLIC COMMENTS: The Planning Division mailed notice of the application to all property owners within 250 feet of the subject property on July 7, 2023. The Applicant also complied with the posted notice requirements of Section 22.24.030(B) of Title 22. The Applicant submitted a Land Use Action Sign Affidavit indicating the Applicant posted notice of the land use action on September 13, 2023. Four public comments were received. These public comments generally included questions about future use of the property and the process of filling in the surface mine, as well as concerns regarding impacts to wetlands, available water, wildfire risk, impacts to wildlife, and increased residential density.

NOTICE REQUIREMENT: On October 10, 2023, the Planning Division mailed a Notice of Public Hearing to all property owners within 250 feet of the subject property and public agencies. A Notice of Public Hearing was published in the Bend Bulletin on Sunday, October 22, 2023. Notice of the first evidentiary hearing was submitted to the Department of Land Conservation and Development on October 9, 2023.

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

III. FINDINGS & CONCLUSIONS

Title 18 of the Deschutes County Code, County Zoning

Chapter 18.32, Multiple Use Agricultural Zone

Section 18.32.010, Purpose

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.

FINDING: The Applicant proposes to change the zoning designation of the subject property from SM to MUA10. The submitted Burden of Proof includes the following explanation of how the proposed zone change is consistent with the purpose of the MUA10 Zone.

The MUA-10 Zone is appropriate for the subject property because it is surrounded on three sides by other properties zoned MUA-10. Portions of the property may support some agricultural uses, but the property could never be high-quality agricultural land that would support commercial farming. The maximum density, if developed under a planned or cluster development is one unit per five acres because the property is within one mile of the Bend UGB. This equates to ±13 units for the ±65-acre property. This relatively low density will conserve open space and maintain or improve the quality of air, water, and land resources. It also allows for clustering to maximize flexibility in siting future uses, which is particularly suited for a former surface mining site that may come with some grading challenges. Finally, the MUA-10 zoning provides a logical transition zone between urban and EFU zoning, appropriate for this property and location. The standard is met.

As described in additional detail under the findings for DCC 18.136, staff finds the proposed zoning designation is consistent with DCC 18.32.010.

Chapter 18.52, Surface Mining Zone

Section 18.52.200, Termination Of The Surface Mining Zoning And Surrounding Surface Mining Impact Area Combining Zone

- A. *When a surface mining site has been fully or partially mined, and the operator demonstrates that a significant resource no longer exists on the site, and that the site has been reclaimed in accordance with the reclamation plan approved by DOGAMI or the reclamation provisions of DCC 18, the property shall be rezoned to the subsequent use zone identified in the surface mining element of the Comprehensive Plan.***

FINDING: The submitted Burden of Proof includes the following response to this criterion:

As described in Kimble (PA-07, ZC-07-2), this standard requires that Site No. 391 be 1) fully or partially mined, 2) no longer a significant resource, and 3) reclaimed in accordance with the reclamation plan approved by DOGAMI. The first two prongs are addressed in the responses to OAR 660-023-0180, above, which sets out the standards for determining whether an aggregate resource is significant. The third prong is satisfied by documentation contained in Exhibit E demonstrating that Site No. 391 has been reclaimed and DOGAMI has approved the reclamation of the site. A memo to DOGAMI file# 09-0013 Shalex Mine dated August 12, 1998 states: "The site has operated as a Limited Exemption since 1974. A reclamation plan was submitted in October 1974. Thirty-four acres were effected [sic] by mining at this site...Thirty-four acres have been voluntarily reclaimed. It is recommended that this file be closed."

The mining element of the Comprehensive Plan does not identify a subsequent use for Site No. 391 and subsequent uses are not identified in the ESEE analysis for Site No. 391 adopted by the County. The Applicant proposes rezoning the property MUA-10 because the subject property is surrounded by MUA-10 land on three sides and it is appropriate for the context abutting the Bend City Limits and UGB. Therefore, the criteria are met.

Staff concurs with this analysis and notes comments dated August 24, 2023 from Department of Geology and Mineral Industries confirm the subject mine was closed in August, 1998. The application materials also include a report dated September 29, 2022 from J. Andrew Siemens, a licensed engineer, concluding that no significant cinder resource exists on the property anymore. For these reasons, staff finds the subject property has been partially or fully mined and has been reclaimed in accordance with the approved reclamation plan.

B. Concurrent with such rezoning, any surface mining impact area combining zone which surrounds the rezoned surface mining site shall be removed. Rezoning shall be subject to DCC 18.136 and all other applicable sections of DCC 18, the Comprehensive Plan and DCC Title 22, the Uniform Development Procedures Ordinance.

FINDING: Staff notes this criterion is contingent on approval of the subject Comprehensive Plan Amendment and Zone Change. If the subject application is ultimately approved by the Board of County Commissioners, the adopting Ordinance will also remove the Surface Mining Impact Area Combining Zone associated with the property.

Chapter 18.136, Amendments

Section 18.136.010, Amendments

DCC Title 18 may be amended as set forth in DCC 18.136. The procedures for text or legislative map changes shall be as set forth in DCC 22.12. A request by a property owner

for a quasi-judicial map amendment shall be accomplished by filing an application on forms provided by the Planning Department and shall be subject to applicable procedures of DCC Title 22.

FINDING: The Applicant, also the property owner, 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’s land use application forms for the proposal. The application will be reviewed utilizing the applicable procedures contained in Title 22 of the Deschutes County Code.

Section 18.136.020, Rezoning Standards

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

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

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

In several previous decisions, Deschutes County Hearings Officers have found the introductory statements and goals are not approval criteria for the proposed plan amendment and zone change.

...
“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 affected 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.”

Staff agrees with the Applicant’s analysis and finds the above provision to be met based on Comprehensive Plan conformance as demonstrated in subsequent findings. The Applicant utilized 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.

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

FINDING: The findings for DCC 18.32.010, above, address this criterion and staff incorporates them herein. The Applicant has demonstrated that proposed Zone Change is consistent with the purpose and intent of the MUA 10 Zone, which allows for residential development by preserving agricultural resources and large lot sizes. The proposed MUA10 zoning is consistent with the surrounding area and will provide an orderly and efficient transition from rural to urban land use.

Staff finds the Applicant has demonstrated the change in classification is consistent with the purpose and intent of the MUA10 Zone, but asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit.

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:

In Tumalo Irrigation District (247-17-000775-ZC/247-17-000776-PA), the BOCC acknowledged that “a zone change, in and of itself, does not create any demand for public services or impact surrounding land uses” before concluding that an applicant for a zone change “must demonstrate that public services and facilities are either presently available for specified development or that there are no significant impediments to providing public services and facilities when site specific development, within the context of the proposed zoning, is actually proposed.”

Necessary public facilities and services are available to serve the subject property. Transportation access is available from Knott Road, designated a Minor Arterial in the City of Bend Transportation System Plan (TSP). According to the Transportation Memorandum prepared by Transight Consulting (Exhibit G), the planned rezone results in a reduction in the trip generation potential of the property, even at higher residential densities only permitted through a conditional use.

The property receives police services from the Deschutes County Sheriff. It is in Rural Fire Protection District #2 and ±1.4 miles from Bend Fire Department Station 303. Surrounding properties contain residential uses, which receive water service from Avion Water or wells, on-site sewage disposal systems, electrical service, telephone service, etc. Exhibit H contains correspondence from Avion Water, Cascade Natural Gas, Central Electric Cooperative, Inc (CEC), Lumen, and TDS, documenting that necessary public services and facilities are

available and can be provided efficiently in a manner that serves the public health, safety and welfare.

No issues have been identified in the record regarding service provision to the subject property. The Bend UGB is adjacent to the north side of the subject property, and nearby land within the UGB includes a mix of established neighborhoods and undeveloped land that is currently being master planned. Staff finds the proximity to the Bend UGB will allow for efficient provision of public services.

The subject property is bordered to the north by Knott Road, which is maintained by the City of Bend. This road connection provides direct access to land within the Bend UGB as well as surrounding rural lands. There are no known deficiencies in public services or facilities that would negatively impact public health, safety, or welfare. In addition, the application materials include materials from water, gas, and electricity providers indicating necessary public facilities and services can be provided.

Prior to development of the properties, the Applicant would be required to comply with the applicable requirements of the Deschutes County Code. 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:

Any potential impacts on surrounding land would be minimal due to the consistent zoning and the fact that most of the surrounding MUA-10 properties are less than five acres in size, have been subdivided, and contain residential uses. Regardless, the development and uses permitted under the MUA-10 Zone are far less impactful to surrounding land than uses permitted under the SM Zone. Applicable Comprehensive Plan goals and policies are addressed in the responses above. The standards are met.

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, and 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 SM to MUA10 and re-designate the properties from Surface Mine to Rural Residential Exception Area. The Applicant provided the following response in the submitted burden of proof statement:

The major change of circumstance since the property was zoned SM is that Site No. 391 no longer contains significant resources, and the site has been voluntarily reclaimed. Consequently, there are no longer any viable uses under the SM zone and designation. The subject property may support some resource uses, but not any form of commercial agriculture or forestry. Additional requirements for changing conditions related to surface mining are addressed in the responses to DCC 18.52.200, above. The applicable standards are met.

Staff finds the termination of mining and the reclamation of the property constitute a change in circumstances since the property was last zoned.

Deschutes County Comprehensive Plan

Chapter 1, Comprehensive Planning

Section 1.3, Land Use Planning

Goal 1, Maintain an open and public land use process in which decisions are based on the objective evaluation of facts.

FINDING: The subject application is being evaluated based on an objective review of compliance with Statewide Planning Goals, Deschutes County Comprehensive Plan policies, and Oregon Administrative Rules. A public hearing will be held before a Hearings Officer on November 13, 2023, and members of the public can attend and testify at that hearing. Pursuant to DCC 22.28.030, the Board of County Commissioners will take final action on the application and may choose to either adopt the Hearings Officer findings or conduct their own hearing. This Comprehensive Plan Amendment and Zone Change application will be evaluated through an open process that allows for public input and follows Deschutes County's Procedures Ordinance.

Staff finds that within each of the steps described above, there is an open and public process that is based on an objective evaluation of facts. This criterion will be met.

Chapter 2, Resource Management

Section 2.2, Agricultural Lands Policies

FINDING: The subject property has a Comprehensive Plan designation of Surface Mine and is therefore not categorized as agricultural lands. In addition, staff finds there is nothing in the record that indicates the property is in farm use. The Applicant submitted a soil study (Applicant's Exhibit F), which was prepared by a certified soils scientist and soil classifier. A letter dated August 9, 2021 indicates the Order 1 soil study was accepted by the Department of Land Conservation and Development. The property-specific soil study made the following findings:

Based on observed conditions, it is unlikely that this site would have ever qualified as resource land. Areas where mining occurred most likely would have been classified as cinders or Class VII Bluesters. This is evidenced by the classification of soils immediately abutting the pits and the overburden deposits present on site. The minimal volume and makeup (comprised of little soil) of overburden deposits suggest that cinder resources were very close to the surface.

...

Since the Site predominantly consists of Class VII and VIII soils, the site does not qualify as "Agricultural Land" based on soil conditions.

The soil study goes on to provide additional analysis regarding the soil fertility and suitability for grazing, again concluding that the property could not support a commercially viable livestock operation. There is no evidence the subject property is in agricultural use and the Applicant has demonstrated that it does not contain agricultural soils. Staff therefore finds agricultural lands policies do not apply.

Section 2.3, Forests

FINDING: The subject property has a Comprehensive Plan designation of Surface Mine and is therefore not categorized as forest land. Staff therefore finds forest land policies do not apply.

Section 2.4, Goal 5 Overview Policies

Goal 1, Protect Goal 5 Policies

FINDING: The Applicant does not propose to modify or repeal Goal 5 policies. The Applicant proposes to remove the subject property from the list of significant aggregate and mineral resources in Deschutes County, based on site-specific conditions. Re-designating the subject property will not impact any County-wide Goal 5 policies. Staff therefore finds the proposed Comprehensive Plan Amendment and Zone Change will not have an adverse impact on Goal 5 policies.

Policy 2.4.4, Incorporate new information into the Goal 5 inventory as requested by an applicant or as County staff resources allow.

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

This application provides new information supporting removal of Site No. 391 from the County's Surface Mining Mineral and Aggregate Inventory (Comprehensive Plan Table 5.8.1). The Geotechnical Reconnaissance Report (Exhibit D) concludes the site no longer qualifies as a significant Goal 5 resource based on the quantity, quality, and location of the resource. Documentation from DOGAMI (Exhibit E) shows Site No. 391 has been voluntarily reclaimed in accordance with a DOGAMI reclamation plan and DOGAMI has approved the reclamation of the site. The plan policy is met.

Staff finds the Applicant has submitted new information for the purpose of amending the Goal 5 mineral aggregate inventory.

Section 2.5, Water Resources Policies

Goal 6, Coordinate land use and water policies.

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

FINDING: The Applicant has not proposed a specific development application at this time. Therefore, the Applicant is not required to address water impacts associated with development. Rather, the Applicant will be required to address this criterion during development of the subject property, which would be reviewed under any necessary land use process for the site (e.g. conditional use permit, tentative plat). This criterion does not apply to the subject application.

Section 2.6, Wildlife

FINDING: There are no Goal 5-listed wildlife species present on the subject property, based on the Goal 5 inventory nor threatened or endangered species. There is no identified wildlife habitat on the subject property.

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 2.7.1 Goal 5 open spaces, scenic views and sites inventories, ESEEs and programs are retained and not repealed.

FINDING: The subject proposal will not repeal any open space designations, or impact identified scenic corridors. The subject property is not identified as significant open space and any future development will be subject to setbacks, height limitations, lot coverage standards, and use limitations, which will effectively limit the impact on scenic views.

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

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

FINDING: These policies are fulfilled by the County's Goal 5 program. The County protects scenic views and sites along major rivers and roadways by imposing Landscape Management (LM) Combining Zones to adjacent properties. Staff notes that no LM Combining Zone applies to the

subject property at this time. The subject property is adjacent to the Bend UGB and there is a significant amount of existing development in the surrounding area. The subject property was historically mined but has been inactive for many years, and photographs submitted with the application materials show little vegetation or scenic features on the subject property. Furthermore, no new development is proposed under the present application. These provisions of the plan, therefore, are not impacted by the proposed zone change and plan amendment.

Section 2.10, Surface Mining

Goal 1, Protect and utilize mineral and aggregate resources while minimizing adverse impacts of extraction, processing and transporting the resource.

Policy 2.10.1, Goal 5 mining inventories, ESEEs and programs are retained and not repealed.

FINDING: The Applicant proposes to amend the County’s Goal 5 mining inventory on the basis the subject property has been substantially mined and does not contain a significant aggregate resource. The Applicant submitted a Geotechnical Reconnaissance study dated September 29, 2022, prepared by a registered professional engineer. The study estimates that over 800,000 tons of cinder may have been extracted from the subject property when it was an active surface mine. The report addresses OAR 660-023-0180 and provides an analysis of how the property is eligible to be rezoned based on the limited quantity and quality of remaining aggregate resources. In part, the report states:

Mining activities at Site 391 appear to have terminated for several technical reasons including:

- Depleted quantities of readily minable cinder
- Declining cinder quality with depth
- No favorable areas for expansion

Within the perimeter of the former cinder cones, only small quantities of loose cinder remain available for export (less than a few thousand tons). Developing additional cinder would require extending the depth of the mine using aggressive methods for excavation (ripping, drilling, and blasting). Evidence is present that some of this has been done, probably to explore the feasibility of expansion. These efforts were terminated when indurated, volcanics were discovered and likely judged to offer poor characteristics for economic cinder production. Hence, declining cinder quality.

Based on surface reconnaissance, SA [Siemens & Associates] has identified limited quantities of other, non-significant materials including surficial soils and Newberry basalt. Surficial soil thickness appears to be limited and the basalt is judged to be of low quality, with durability characteristics far below Oregon Department of Transportation (ODOT) standards.

As described further under Policy 2.10.6, below, the Applicant has demonstrated the mineral and aggregate resources on the subject property have been substantially mined. No changes are

proposed to Comprehensive Plan policies or other programs regarding surface mining in Deschutes County. Table 5.8.2 of the Deschutes County Comprehensive Plan lists the Non-Significant Mining Mineral and Aggregate Inventory, and the subject property would be eligible for inclusion in this table based on submitted evidence demonstrating there is no longer a significant aggregate resource. The Hearings Officer decision for files 247-17-000775-ZC, 776-ZC provides the following analysis of sites listed in this table:

The applicant and COLW appear to agree that this Non-Significant Mining Mineral and Aggregate Inventory is not a Goal 5 provision. The County has retained it apparently to address potential use for reservoirs which may or may not require “mining” or extraction.

...

There do not appear to be any express criteria for inclusion on the Non-significant inventory.

The Applicant does not propose to modify the ESEE associated with the subject property, or modify the County’s Goal 5 program. The Applicant has demonstrated that limited aggregate resources remain on the subject property, and it is therefore eligible to be rezoned and removed from Table 5.8.1 of the Comprehensive Plan, Surface Mining Mineral and Aggregate Inventory.

Policy 2.10.2, Cooperate and coordinate mining regulations with the Oregon Department of Geology and Mineral Industries.

FINDING: The Oregon Department of Geology and Mineral Industries provided comments on the subject application and indicated there were no concerns. The application materials also include reclamation documents and file notes from DOGAMI regarding the subject surface mine.

Policy 2.10.3, Balance protection of mineral and aggregate resources with conflicting resources and uses.

FINDING: The record does not include any comments or objections regarding the conflict between surface mining and surrounding uses.

Policy 2.10.4, Review surface mining codes and revise as needed to consider especially mitigation factors, imported material and reclamation.

FINDING: No amendment is proposed to the provisions of the Surface Mining Zone or the Surface Mining Impact Area Combining Zone. Staff finds this policy does not apply.

Policy 2.10.5, Review surface mining site inventories as described in Section 2.4, including the associated Economic, Social, Environmental and Energy (ESEE) analyses.

Policy 2.10.6, Support efforts by private property owners and appropriate regulatory agencies to address reclamation of Goal 5 mine sites approved under 660-016 following mineral extraction.

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

DOGAMI formally closed the file for Site No. 391 in August 1998 after confirming the site had been voluntarily reclaimed consistent with the 1974 reclamation plan (Exhibit E). The Geotechnical Reconnaissance Report (Exhibit D) concludes that Site No. 391 no longer qualifies as a significant Goal 5 resource based on the quantity, quality, and location of the resource. The report, prepared by a registered engineer specializing in geologic engineering who has conducted geotechnical explorations in the area since 1992, states: "Cinder fails to meet the identified ODOT specification for base rock since the particles offer poor durability characteristics compared to base rock produced from quality hard rock sources and crushed sand and gravel. Therefore, cinder is not considered 'significant' and cinder products are no longer used in municipal road building activities." This determination is consistent with prior decisions in Tumalo Irrigation District (247-17-000775-ZC/247-17-000776-PA) and TID/Cascade Pumice (PA-02-8/ZC-02-4).

Even if the cinders met ODOT standards, a sufficient amount of these materials has been removed such that the site does not possess the 500,000-ton significance threshold for sites outside the Willamette Valley. Based on aerial photography, site geology, and onsite investigation, Mr. Siemens concludes that "over one million cubic yards (over 800,000 tons) of cinder may have been extracted from Site 391 over the lifetime of the mine and the remaining cinder resource is far less than 500,000 tons." Consequently, to the extent the site ever met OAR 660-023-0180(3)(a) standards for significance, the majority of the significant material has been removed such that there is no longer a "deposit" on the site. The plan policies are met.

Staff concurs with this analysis but requests the Hearings Officer modify as they see fit.

Chapter 3, Rural Growth

Section 3.3, Rural Housing Policies

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

FINDING: No new rural housing is proposed. Residential uses are permitted in the MUA10 Zone, so changing the zoning of the subject property to MUA10 may provide for additional housing units in unincorporated Deschutes County. The Applicant has not specified the intended use of the subject property and any future housing will be subject to all applicable provisions of Deschutes County Code. The types of housing permitted in the MUA10 Zone are relatively low density and will therefore maintain a rural character if housing is developed.

Policy 3.3.1, Except for parcels in the Westside Transect Zone, the minimum parcel size for new rural residential shall be 10 acres.

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

The planned MUA-10 zoning allows residential uses with a minimum parcel size of 10 acres. The plan policy is met.

Staff concurs and finds no land division is proposed as part of the subject application.

Policy 3.3.2, Incorporate farm and forest housing reports into a wider system for tracking the cumulative effects of rural housing development.

FINDING: The subject Comprehensive Plan Amendment and Zone Change does not review or approve any new uses or construction on the subject property. In addition, the proposed MUA10 zoning is not a farm or forest zone, therefore new residential construction would not be subject to this reporting requirement. Staff therefore finds this criterion does not apply.

Policy 3.3.4, Encourage new subdivisions to incorporate alternative development patterns, such as cluster developments, that mitigate community and environmental impacts.

FINDING: No land divisions, including subdivisions, are proposed with the subject application. The proposed MUA10 zoning allows for cluster development with a Conditional Use Permit. Future development will be subject to applicable provisions of Deschutes County Code, and will be reviewed at the time a land use application is submitted.

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

FINDING: The Applicant provided the following response to this criterion:

This policy is implemented by the development standards DCC Title 18. The planned MUA-10 zoning matches the existing zoning on three sides of the subject property and allows housing opportunities that are more rural in appearance. Future development will be subject to the applicable code standards in effect at that time. The plan policy is met.

Staff concurs and finds that the portion of this policy regarding accessory dwelling units does not apply. The Applicant does not propose to change allowed uses or establish an accessory dwelling unit in the MUA10 Zone. Uses permitted in the MUA10 Zone are generally rural in character, and will maintain relatively large lot sizes. No specific use has been proposed for the subject property, but housing may be provided as allowed by DCC 18.32.020. Staff therefore finds the proposal complies with the applicable sections of this policy, namely those regarding rural character and provision of housing opportunities.

Section 3.4, 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 rural economic development opportunities.

FINDING: The Applicant provided the following response to this criterion:

Up through the 1980s when the subject property contained a significant Goal 5 aggregate resource, it was capable of supporting rural economic opportunities and the County complied with the plan policy by imposing the SM zoning and designation. Now that the significant resource has been exhausted, the property can no longer support the economic development opportunities that come from surface mining. Given the surrounding MUA-10 zoning and residential uses, it is not an appropriate site for either rural commercial or rural industrial uses. The MUA-10 zone allows for limited economic initiatives, including home occupations, that would maintain the integrity of the surrounding MUA-10 character and context. The plan policy is met.

Staff concurs with this analysis and notes any future commercial uses on the subject property will be subject to separate review. As outlined in the Geotechnical Reconnaissance report submitted with the application materials, the subject property currently provides limited economic value for surface mining.

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 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 properties from SM to RREA and change the zone from SM to MUA10. The applicant is not proposing any land use development of the properties at this time.

The Applicant submitted a traffic memorandum, Exhibit G, dated March 22, 2023, and prepared by Joe Bessman of Transight Consulting LLC. The traffic study examined vehicle trips under the proposed MUA10 zoning and made the following conclusions:

The proposed comparative assessment of scenarios with and without the rezone shows that in consideration of outright allowed residential use (or even with conditionally allowed clustered development) the overall trip generation potential is reduced with the proposed rezone. This does not meet Deschutes County’s or the City of Bend’s significance thresholds to require further analysis.

The report was reviewed by the County Transportation Planner, who agreed with its assumptions and methodology. 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.

Based on the County Senior Transportation Planner’s comments and the traffic study from Transight Consulting LLC, staff finds compliance with the Transportation Planning Rule has been effectively demonstrated. However, staff asks the Hearings Officer to modify these findings as they see fit.

DIVISION 15, STATEWIDE PLANNING GOALS AND GUIDELINES

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

Goal 1, Citizen Involvement. *To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.*

FINDING: A land use action sign was posted on the subject property on September 13, 2023, and a Notice of Application was mailed to nearby property owners on July 7, 2023. A public hearing will be held before a Hearings Officer and a decision will ultimately be made by the Board of County Commissioners. Notice of all public hearings will be mailed to impacted individuals and a notice will also be printed in the Bend Bulletin newspaper. The published and mailed notices will all comply with the requirements of DCC 22.12.020.

Goal 2, Land Use Planning. *To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.*

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

The County will review and process this quasi-judicial Plan Amendment and Zone Change consistent with the procedures detailed in DCC Title 22, including consideration of any public comments received regarding the application. Therefore, consistency with this Statewide Planning Goal is established.

The County can also find the other two substantive requirements of Goal 2 are satisfied. First, the application provides an adequate factual basis for the County to approve the application because it describes the site and its physical characteristics and applies those facts to the relevant approval criteria. Second, Goal 2 requires coordination of the application by the County with affected governmental entities. Coordination requires notice of an application, an opportunity for the affected governmental entity to comment on the application, and the County’s incorporation of the comments to a reasonable extent. The County can find that coordination of this application will be accomplished in two ways: by the Applicant prior to submittal of the application and by the County in the review process for the application.

Staff agrees with this analysis and finds this Goal will be met.

Goal 3, Agricultural Lands. To preserve and maintain agricultural lands.

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

The subject property is designated as Surface Mining and had been mined since the late 1940s. There is no evidence of prior agricultural use, the property predominantly consists of Class VII and VIII soils (Exhibit F), and the property does not have water rights (ExhibitJ). The subject property is not identified as agricultural land on the acknowledged Deschutes County Comprehensive Plan map. The 1980 zone change (Z-80-13) to SM included findings acknowledging that active surface mining sites at the time of plan adoption should have been zoned SM, the subject property was active and designated as site #58 on a preliminary map, and a “simple error” resulted in site #58 not being transposed to the final zoning map with adoption of the 1979 Comprehensive Plan(Exhibit C). The property was again identified as containing mineral resources in the Deschutes County Goal 5 Aggregate inventory adopted by the BOCC on December 6, 1988. In 1990, the County listed the property as Site No. 391 on the Goal 5 Inventory, adopted a site-specific economic, social, environmental and energy (ESEE) analysis (Exhibit I), and imposed the SM and SMIA zoning (Ord No. 90-014, 90-025, 90-028, and 90-029).

The subject property’s status as something other than agricultural land was confirmed in the 1990 ESEE. Ordinarily, the ESEE identifies the post-mining uses and zoning for properties deemed Goal 5 significant mineral resources. The ESEE for the subject property does not include any such discussion. In *Tumalo Irrigation District (247-17-000775-ZC/247-17-000776-PA)*, the BOCC interpreted that a similar ESEE omission on a Goal 5 site would have specified EFU zoning if the property had been classified as agricultural land, and concluded that the SM Zone was “intended to be a distinct zoning and Comprehensive Plan designation and the properties designated as other than ‘resource uses’ (lands subject to Goals 3 and 4).”

In 1992, as part of periodic review and a revamping of the County’s agricultural lands program, the County again inventoried its agricultural lands. Once again, the County did not classify the subject property as agricultural land. The agricultural land analysis was incorporated into the County’s Comprehensive Plan, which was again acknowledged.

In *Caldwell v. Klamath County*, 45 Or. LUBA 548 (2003), LUBA concluded that a proposed zone change from Non-Resource to Rural Residential (e.g., SM to MUA-10) did not require revising the County's original determination that the property did not qualify as agricultural land, memorialized through a zoning designation that zoned the property Non-Resource, a zone that applied to lands that were not protected by Goals 3 and 4. On several occasions, Deschutes County has determined that the subject property is not agricultural land and those prior determinations were incorporated into the County's acknowledge Comprehensive Plan. Those determinations are binding and not subject to challenge as part of a subsequent land use decision.

Furthermore, in *Urquhart v. Lane Council of Governments*, 80 Or App 176, 181-82, 721 P2d 870 (1986), the Court of Appeals held that a statewide goal is only implicated for review purposes if the PAPA itself affects the goal, either directly or indirectly. Under the Urquhart rule, a PAPA is not reviewable "on the basis of a defect in the inventory which is not directly or indirectly attributable to the plan amendment." This was affirmed in *Central Oregon Landwatch v. Deschutes County*, 301 Or App 701 (2020), where the Court of Appeals upheld Deschutes County's approval in *Tumalo Irrigation District* of a similar plan amendment and zone change from SM to MUA-10, and concluded Deschutes County was not required to revisit its prior determination that the subject property was not agricultural land subject to Goal 3. Therefore, Goal 3 does not apply.

The findings above are applicable to other sections of this staff report, including Comprehensive Plan policies regarding agricultural lands. Staff therefore requests the Hearings Officer make specific findings on whether Statewide Planning Goal 3 applies to the subject property.

Goal 4, Forest Lands. To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

FINDING: The subject property does not contain any forest lands and therefore this goal is not applicable.

Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces. To protect natural resources and conserve scenic and historic areas and open spaces.

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

The subject property does not contain any inventoried significant resources related to energy sources, habitat, natural areas, scenic views, water areas or watersheds, wilderness areas, historic areas, or cultural areas. As described below in the responses to OAR 660-023-0180, the subject property no longer contains any significant aggregate resources.

Deschutes County DIAL property information and Interactive Map show the subject property contains a small strip of “wetland” within the southern pit. According to the Comprehensive Plan (Chapters 2, Resource Management and 5, Supplemental Sections), in 1992 Deschutes County Ordinance 92-045 adopted all wetlands identified on the US Fish and Wildlife Service National Wetland Inventory (NWI) Maps as the Deschutes County wetland inventory. Additionally, as described in the Comprehensive Plan, the NWI Map “shows an inventory of wetlands based on high-altitude aerial photos and limited field work. While the NWI can be useful for many resource management and planning purposes, its small scale, accuracy limitations, errors of omission that range up to 55 percent (existing wetlands not shown on NWI), age (1980s), and absence of property boundaries make it unsuitable for parcel-based decision making” [emphasis added].

The Comprehensive Plan has no specific protections for wetlands. Protections are provided by code sections that implement Goal 5 protections (for example, fill and removal zoning code regulations). Because the proposed plan amendment and zone change are not development, there is no impact to any Goal 5 wetland (to the extent one even exists). Any potential future development of a wetland—regardless of the zoning—will be subject to review by the County's fill and removal regulations. Therefore, Goal 5 is satisfied.

Staff generally concurs with this analysis, but notes the presence of mapped wetlands on a property does not in itself mean that this Goal cannot be met. Statewide Planning Goal 5 offers protection to a wide range of natural and scenic resources, and the mineral resources are the only ones currently inventoried on the subject property.

Goal 6, Air, Water, and Land Resources Quality. *To maintain and improve the quality of the air, water, and land resources of the state.*

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

The surface mine has been reclaimed and mining activities have ceased. Rezoning the subject property will not impact the quality of the air, water, and land resources of the County because no specific development is proposed at this time. However, any future uses permitted in the MUA-10 zone are likely to have less adverse impacts to air, water, and land resources than the historical mining use or uses permitted in the SM Zone. Future development of the property will be subject to local, state, and federal regulations that protect these resources. Therefore, Goal 6 is satisfied.

Staff agrees with this analysis and finds development of the subject property under the proposed MUA10 zoning will not likely have a measurable impact on air, water, and land resources quality.

Goal 7, Areas Subject to Natural Disasters and Hazards. *To protect people and property from natural hazards.*

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

The site does not include areas subject to flooding or landslide activity. According to the Deschutes County Property Information (DIAL) Interactive Map, the entirety of Deschutes County, including the subject property, is located in a Wildfire Hazard Area. The subject property is also located in Rural Fire Protection District #2. Rezoning the property to MUA10 does not change the Wildfire Hazard Area designation. Any future development of the subject property will have to demonstrate compliance with applicable local and state health, environmental quality, and wildfire regulations. Therefore, Goal 7 is satisfied.

Staff agrees with this analysis and notes the subject property is adjacent to Knott Road, which is developed to urban standards and maintained by the City of Bend. There is a significant amount of development in the surrounding area due to the proximity to the Bend UGB, and development of the subject property is not likely to have a noticeable impact on wildfire risk in the general area. In addition, the road access and proximity to service providers will benefit the subject property if a natural disaster were to occur.

Goal 8, Recreational Needs. *To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.*

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

Goal 8 is not applicable because the proposed plan amendment and zone change do not reduce or eliminate any opportunities for recreational facilities on the subject property or in the general vicinity.

Staff agrees with this statement and notes the subject property has not been identified as a current or future recreational facility.

Goal 9, Economy of the State. *To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.*

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

The subject property no longer contains sufficient quantity or quality of mining or aggregate materials for profitable economic use. However, the proposed plan amendment and zone change will promote continued economic opportunities by allowing the currently undeveloped and underutilized property to be put to productive use. Therefore, Goal 9 is satisfied.

Staff agrees with this analysis and finds it is supported by the Geotechnical Reconnaissance report submitted with the application materials. This report detailed the limited economic value of the subject property for future surface mining, based on the amount and deposition of remaining mineral aggregate.

Goal 10, Housing. To provide for the housing needs of citizens of the state.

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

The plan amendment and zone change do not reduce or eliminate any opportunities for housing on the subject property or in the general vicinity. Rather, the plan amendment and zone change will allow rural residential development, consistent with Goal 10 as implemented by the acknowledged Deschutes County comprehensive plan. Therefore, Goal 10 is satisfied.

Staff agrees with this analysis. The Applicant has not identified the intended use of the subject property but single family dwellings are a permitted use in the MUA10 Zone. The MUA10 Zone is generally more permissive of residential development than the SM Zone, and the proposed rezone may lead to the creation of additional housing.

Goal 11, Public Facilities and Services. To plan and develop a timely, orderly, and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

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

The approval of this application will have no adverse impact on the provision of public facilities and services to the subject site. Utility service providers have confirmed (Exhibit H) that they have the capacity to serve the maximum level of residential development allowed by the MUA-10 zoning district. Therefore, Goal 11 is satisfied.

Staff agrees with this statement and notes the proximity to the Bend UGB and existing development will allow for more efficient public service delivery to the subject property.

Goal 12, Transportation. To provide and encourage a safe, convenient and economic transportation program.

FINDING: Compliance with Goal 12 is demonstrated by meeting the Transportation System Planning Rule, OAR 660-012-0060. Compliance with this rule is addressed above and the application materials include a traffic study.

Goal 13, Energy Conservation. To conserve energy.

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

Approval of this application does not reduce or eliminate the ability to conserve energy. 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..." Surface mining activities have ceased on the subject property and has been vacant for decades. The subject property abuts the Bend City Limits and is surrounded by other rural residential uses. The plan amendment and zone change will allow for rural residential development that would provide homes close to urban services and employment, as opposed to more remote rural locations. Siting homes close to urban services and employment results in fewer vehicle miles traveled and related energy expenditures as residents travel to work, school, and essential services. Therefore, Goal 13 is satisfied.

Staff agrees with this analysis.

Goal 14, Urbanization. *To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.*

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

Goal 14 is not applicable because the proposal does not involve property within a UGB and does not involve the urbanization of rural land. The acknowledged Deschutes County Comprehensive Plan confirms that MUA-10 is not an urban zone and the intensity and density of uses permitted therein do not constitute urban development. The Comprehensive Plan recognizes that the MUA-10 and RR zones are the zones that will be applied to lands designated Rural Residential Exception Areas.

Staff agrees with this analysis.

Goal 15, Willamette Greenway.

FINDING: This criterion does not apply because the subject property is not located in the Willamette Greenway.

Goals 16 through 19.

FINDING: These goals do not apply to land in Central Oregon.

Staff finds that compliance with the Statewide Planning Goals has been effectively demonstrated.

DIVISION 23, PROCEDURES AND REQUIREMENTS FOR COMPLYING WITH GOAL 5

OAR 660-023-0180 Mineral and Aggregate Resources

FINDING: The applicable provisions identified below and the associated findings are quoted from the applicant’s Burden of Proof. Staff agrees with this analysis but requests the Hearings Officer make specific findings.

- (2) Local governments are not required to amend acknowledged inventories or plans with regard to mineral and aggregate resources except in response to an application for a post acknowledgement plan amendment (PAPA) or at periodic review as specified in section (9) of this rule. The requirements of this rule modify, supplement, or supersede the requirements of the standard Goal 5 process in OAR 660-023-0030 through 660-023-0050, as follows:**
 - (b) Local governments shall apply the criteria in section (3) or (4) of this rule, whichever is applicable, rather than OAR 660-023-0030(4), in determining whether an aggregate resource site is significant;**

FINDING: The proposed amendment constitutes a PAPA. As outlined in the *Stott and Kimball* decisions, a determination of significance is required to de-list a Goal 5 aggregate resource. The thresholds for significance are addressed in the responses to OAR 660-023-0180(3) and (4), below.

- (3) An aggregate resource site shall be considered significant if adequate information regarding the quantity, quality, and location of the resource demonstrates that the site meets any one of the criteria in subsections (a) through (c) of this section, except as provided in subsection (d) of this section:**
 - (a) A representative set of samples of aggregate material in the deposit on the site meets applicable Oregon Department of Transportation (ODOT) specifications for base rock for air degradation, abrasion, and soundness, and the estimated amount of material is more than 2,000,000 tons in the Willamette Valley, or more than 500,000 tons outside the Willamette Valley;**

FINDING: The County’s Goal 5 inventory indicates that Site No. 391 contains the following:

#	Taxlot	Name	Type	Quantity	Quality	Access/Location
391	181221-00-00200	Central OR Pumice	Cinders	500,000	Good	

The material at the site likely never satisfied the OAR 660-023-0180(3)(a) standard for significance. According to the Geotechnical Reconnaissance Report (Exhibit D) provided by J. Andrew Siemens, of Siemens & Associates—a registered engineer specializing in geologic

engineering who has conducted geotechnical explorations in the area since 1992—"Cinder fails to meet the identified ODOT specification for base rock since the particles offer poor durability characteristics compared to base rock produced from quality hard rock sources and crushed sand and gravel. Therefore, cinder is not considered 'significant' and cinder products are no longer used in municipal road building activities." This determination is consistent with prior decisions in Tumalo Irrigation District (247-17-000775-ZC/247-17-000776-PA) and TID/Cascade Pumice (PA-02-8/ZC-02-4).

Even if the cinders met ODOT standards, a sufficient amount of these materials has been removed such that the site does not possess the 500,000-ton significance threshold for sites outside the Willamette Valley. Based on aerial photography, site geology, and on-site investigation, Mr. Siemens concludes that "over one million cubic yards (over 800,000 tons) of cinder may have been extracted from Site 391 over the lifetime of the mine and the remaining cinder resource is far less than 500,000 tons." Consequently, to the extent the site ever met OAR 660-023-0180(3)(a) standards for significance, the majority of the significant material has been removed such that there is no longer a "deposit" on the site.

(b) *The material meets local government standards establishing a lower threshold for significance than subsection (a) of this section; or*

FINDING: Subsection (b) is not applicable because Deschutes County has not established lower standards for significance.

(c) *The aggregate site was on an inventory of significant aggregate sites in an acknowledged plan on September 1, 1996.*

FINDING: Site No. 391 is included in the County's inventory of significant aggregate sites and was acknowledged prior to September 1, 1996. However, Subsection (c) is not applicable to this PAPA because the request includes removing the site from the acknowledged inventory.

In *Stott* (PA-98-12/ZC-98-6), the Hearings Officer made the following finding, adopted by the BOCC:

"The subject site is included in the county's inventory of significant mineral and aggregate sites. The Hearings Officer is aware this inventory was acknowledged prior to the effective date of the new Goal 5 administrative rules. Therefore, I find the subject site falls within the 'significant' standard in paragraph (c). Arguable that finding would end the inquiry since under this provision a site is considered 'significant' if it meets any of the three criteria. However, I find such a result would create a 'Catch-22' where, as here, the applicant is seeking to remove a site from the inventory as no longer 'significant.' Consequently, I find the 'significant' standard in paragraph (c) should not be applied to PAPAs requesting removal of a site from an acknowledged inventory..."

The Hearings Officer in *Tumalo Irrigation District* (247-17-000775-ZC/247-17-000776-PA) concurred and concluded that “as in ZC-98-6 and PA-98-12, subsections (b) and (c) are not applicable. Therefore the aggregate resource is significant only if it meets all the criteria in subsection (a).” The BOCC adopted the Hearings Officer’s finding in their ultimate approval of the application.

(d) Notwithstanding subsections (a) and (b) of this section, except for an expansion area of an existing site if the operator of the existing site on March 1, 1996, had an enforceable property interest in the expansion area on that date, an aggregate site is not significant if the criteria in either paragraphs (A) or (B) of this subsection apply:

(A) More than 35 percent of the proposed mining area consists of soil classified as Class I on Natural Resource and Conservation Service (NRCS) maps on June 11, 2004; or

(B) More than 35 percent of the proposed mining area consists of soil classified as Class II, or of a combination of Class II and Class I or Unique soil, on NRCS maps available on June 11, 2004, unless the average thickness of the aggregate layer within the mining area exceeds:

- (i) 60 feet in Washington, Multnomah, Marion, Columbia, and Lane counties;**
- (ii) 25 feet in Polk, Yamhill, and Clackamas counties; or**
- (iii) 7 feet in Linn and Benton counties.**

FINDING: The criterion does not apply. The subject property does not contain any Class I, Class II, or Unique soils as confirmed by the Site-Specific Soil Survey that was conducted by Cascade Earth Sciences (CES) and assessed as complete by the Department of Land Conservation and Development (DLCD) in accordance with OAR 660-033-0045(6)(a) (Exhibit F).

(4) Notwithstanding section (3) of this rule, a local government may also determine that an aggregate resource site on farmland is significant if subsections (a) and (b) of this section apply or if subsection (c) of this section applies:

FINDING: The criterion does not apply. The subject property is not identified as agricultural lands on the acknowledged Deschutes County Comprehensive Plan map, and it has not been farmed or used in conjunction with any farming operation.

Staff finds the Applicant has demonstrated compliance with OAR-660-023-0180, above, but requests the Hearings Officer make specific findings on this topic.

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 Surface Mine to Rural Residential Exception Area and Zoning of the subject property from Surface Mining 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: Jacob Ripper, Principal Planner



COMMUNITY DEVELOPMENT

NOTICE OF PUBLIC HEARING

HEARING FORMAT

The Deschutes County Hearings Officer will conduct the public hearing described below by video and telephone. If participation by video and telephone is not possible, in-person testimony is available. Options for participating in the public hearing are detailed in the Public Hearing Participation section.

PROJECT DESCRIPTION

FILE NUMBERS: 247-23-000547-PA, 247-23-000548-ZC

OWNER: MILLER PIT LLC

APPLICANT: Caldera Land, LLC

PROPOSAL: The applicant requests approval of a Comprehensive Plan Amendment to change the designation of the subject property from Surface Mine (SM) to Rural Residential Exception Area (RREA). The applicant also requests a corresponding Zone Change to rezone the subject property from Surface Mining (SM) to Multiple Use Agricultural (MUA10).

LOCATION: Tax Lot 200 on Assessor's Map 18-12-21, no assigned address

HEARING DATE: Monday, November 13, 2023

HEARING START: 6:00 pm

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

RECORD: Record items can be viewed and downloaded from:
<https://www.deschutes.org/cd/page/247-23-000547-pa-247-23-000548-zc-miller-pit-llc-comprehensive-plan-amendment-and-zone>

TIME LIMITS

The Deschutes County Planning Division has set the following time limits for testimony at the hearing:

- Applicant: 30 minutes
- Public Agencies: 10 minutes
- General Public: 3 minutes
- Applicant Rebuttal: 10 minutes

Please note, the above time limits can be modified or eliminated by the Hearings Officer at their discretion.

STANDARDS AND APPLICABLE CRITERIA:

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

- Chapter 18.04, Title, Purpose, and Definitions
- Chapter 18.32, Multiple Use Agricultural (MUA10).
- Chapter 18.52, Surface Mining (SM)
- Chapter 18.136, Amendments

Title 22, Deschutes County Development Procedures Ordinance

Deschutes County Comprehensive Plan

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

Oregon Administrative Rules (OAR), Chapter 660

- Division 12, Transportation Planning
- Division 15, Statewide Planning Goals and Guidelines
- Division 23, Procedures and Requirements for Complying with Goal 5

PUBLIC HEARING PARTICIPATION

- If you wish to provide testimony during the public hearing, please contact the staff planner by 4 pm on November 12, 2023. Testimony can be provided as described below.
- Members of the public may listen, view, and/or participate in this hearing using Zoom. Using Zoom is free of charge. To login to the electronic meeting online using your computer, copy this link: <https://us02web.zoom.us/j/89984675116>. Using this option may require you to download the Zoom app to your device.
- Members of the public can access the meeting via telephone, dial 1-312-626-6799. When prompted, enter the following Webinar ID: 899 8467 5116.
- Written comments can also be submitted to the record. Please see the Document Submission section below for details regarding written submittals.

- If participation during the hearing by video and telephone is not possible, the public can provide testimony in person at 6 pm in the Barnes and Sawyer Rooms of the Deschutes Services Center, 1300 NW Wall Street, Bend.

All documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost at the Deschutes County Community Development Department (CDD) at 117 NW Lafayette Avenue. Seven (7) days prior to the public hearing, a copy of the staff report will be available for inspection at no cost at CDD and on the websites listed above. Copies of all documents, evidence and the staff report can be purchased at CDD for (25) cents a page.

ALL INTERESTED PERSONS MAY APPEAR, BE HEARD, BE REPRESENTED BY COUNSEL, OR SEND WRITTEN SIGNED TESTIMONY. ANY PARTY TO THE APPLICATION IS ENTITLED TO A CONTINUANCE OF THE INITIAL EVIDENTIARY HEARING OR TO HAVE THE RECORD LEFT OPEN IN ACCORDANCE WITH SECTION 22.24.140 OF THE DESCHUTES COUNTY CODE.

Failure to raise an issue in person at a hearing or in writing precludes appeal by that person to the Land Use Board of Appeals (LUBA), and that failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to LUBA based on that issue.

Deschutes County encourages persons with disabilities to participate in all programs and activities. This event/location is accessible to people with disabilities. If you need accommodations to make participation possible, please contact the staff planner identified above.

DOCUMENT SUBMISSION

Any person may submit written comments on a proposed land use action. Documents may be submitted to our office in person, U.S. mail, or email.

In Person

We accept all printed documents.

U.S. Mail

Deschutes County Community Development
Planning Division, Audrey Stuart
P.O. Box 6005
Bend, OR 97708-6005

Email

Email submittals should be directed to Audrey.Stuart@deschutes.org.

Limitations

- Deschutes County does not take responsibility for retrieving information from a website link or a personal cloud storage service. It is the submitter's responsibility to provide the specific information they wish to enter into the record. We will print the email which includes the link(s), however, we will not retrieve any information on behalf of the submitter.
- Deschutes County makes an effort to scan all submittals as soon as possible. Recognizing staff availability and workload, there is often a delay between the submittal of a document to the record, and when it is scanned and uploaded to Accela Citizen Access (ACA) and Deschutes County Property Information (DIAL).
- To ensure your submission is entered into the correct land use record, please specify the land use file number(s).
- For the open record period after a public hearing, electronic submittals are valid **if received by the County's server** by the deadline established for the land use action.

NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST PROMPTLY BE FORWARDED TO THE PURCHASER.

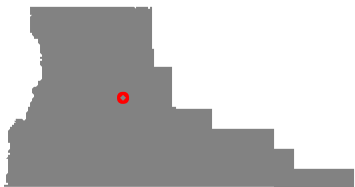
This Notice was mailed pursuant to Deschutes County Code Chapters 22.20 and 22.24.

Land Use File #247-23-000547-PA, 548-ZC

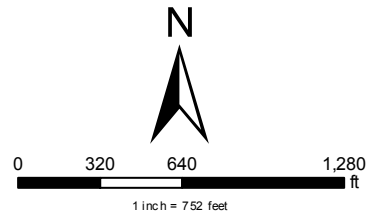
Miller Pit LLC



Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community, Deschutes County GIS



Date: 7/5/2023



owner	agent	inCareof	address	cityStZip	type	cdd id	email
ARNOLD IRRIGATION DISTRICT			ELECTRONIC		NOPH	23-547-PA, 548-ZC	office@arnoldid.com
AVION WATER COMPANY	Tanner Lemon		ELECTRONIC		NOPH	23-547-PA, 548-ZC	tel@avionwater.com
BEND FIRE DEPT.	Jeff Bond / Jason Bolen		ELECTRONIC		NOPH	23-547-PA, 548-ZC	jbond@bendoregon.gov; jbolen@bendoregon.gov
BEND GROWTH MANAGEMENT DEPT.			709 NW WALL ST., STE. 102	Bend, OR 97701	NOPH	23-547-PA, 548-ZC	
BEND PLANNING DEPT.			P.O. BOX 431	Bend, OR 97709	NOPH	23-547-PA, 548-ZC	
DEPT. OF GEOLOGY & MINERAL IND.	Becky Johnson		ELECTRONIC		NOPH	23-547-PA, 548-ZC	mlrr.info@dogami.oregon.gov
DEPT. OF LAND CONSERV. & DEVEL.			1011 SW EMKAY DR., SUITE 108	Bend, OR 97702	NOPH	23-547-PA, 548-ZC	
DEPT. OF LAND CONSERV. & DEVEL.			635 CAPITOL ST. NE, #150	Salem, OR 97301-2540	NOPH	23-547-PA, 548-ZC	
DESCHUTES CO. ASSESSOR			ELECTRONIC		NOPH	23-547-PA, 548-ZC	
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Kimberly Peterman and Phil Whitehead			60645 Tekampe Rd	Bend, OR 97702	NOPH	23-547-PA, 548-ZC	
Rex Urich			60615 Tekampe Rd	Bend, OR 97702	NOPH	23-547-PA, 548-ZC	
	Joey Shearer		ELECTRONIC		NOPH	23-547-PA, 548-ZC	shearerj@aks-eng.com
MILLER PIT LLC			61560 GOSNEY RD	BEND, OR 97702	NOPH	23-547-PA, 548-ZC	
Caldera Land, LLC			PO Box 7695	Bend, OR 97708	NOPH	23-547-PA, 548-ZC	