



BOARD OF COMMISSIONERS

BOARD OF COUNTY COMMISSIONERS MEETING

9:00 AM, WEDNESDAY, OCTOBER 18, 2023

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

AGENDA

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

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

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

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

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

- To join the meeting via Zoom from a computer, use this link: <http://bit.ly/3h3oqdD>.
- To join by phone, call 253-215-8782 and enter webinar ID # 899 4635 9970 followed by the passcode 013510.
- If joining by a browser, use the raise hand icon to indicate you would like to provide public comment, if and when allowed. If using a phone, press *6 to indicate you would like to speak and *9 to unmute yourself when you are called on.



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

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

CALL TO ORDER

PLEDGE OF ALLEGIANCE

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

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

CONSENT AGENDA

1. Approval of Document No. 2023-906 terminating the Improvement Agreement for Caldera Springs Destination Resort
2. Approval of Chair signature of Document No. 2023-919, a Notice of Intent to Award a contract for the Knott Landfill Cell 9 construction project
3. Approval of a lease with Dr. Anne Onishi and Maureen McCaffrey for the Medical Examiner's Office
4. Consideration of Board Signature on letter reappointing Donna Mills for service on the Deschutes County Public Safety Coordinating Council.
5. Approval of minutes of the BOCC September 20 and 27, 2023 meetings

ACTION ITEMS

6. **9:10 AM** Proclamation: Domestic Violence Awareness Month
7. **9:20 AM** Public Hearing and first reading of Ordinance No. 2023-022, amending Deschutes County Code section 6.12
8. **9:35 AM** Road Dedication –Fryrear Butte Road
9. **9:45 AM** Ordinance No. 2023-014, amending Deschutes County Code to allow Rural Accessory Dwelling Units
10. **10:05 AM** Consideration to hear an appeal of a modification of a previously approved land use permit to change the point of access

- [11.](#) **10:15 AM** Amendment to a contract with Iris Telehealth and Resolution 2023-058 which increases appropriations and reduces reserves within the Health Services Fund
- [12.](#) **10:25 AM** Oregon Health Authority grant agreement #180009-2 and Resolution No. 2023-060 converting 1.0 limited duration FTE to regular and increasing appropriations in the Health Services Fund
- [13.](#) **10:35 AM** Public Health Advisory Board By-Laws Update
- [14.](#) **10:50 AM** Deschutes County Employee Benefits Renewal for the 2024 Plan Year
- [15.](#) **11:05 AM** FY 2024 Q2 Discretionary grant application review

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.

16. Executive Session under ORS 192.660 (2) (h) Litigation

ADJOURN



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: October 18, 2023

SUBJECT: Approval of Document No. 2023-906 terminating the Improvement Agreement for Caldera Springs Destination Resort

RECOMMENDED MOTION:

Move approval of Board signature of Document No. 2023-906 terminating the Improvement Agreement for Caldera Springs Destination Resort.

BACKGROUND AND POLICY IMPLICATIONS:

The Improvement Agreement required the developer to complete certain improvements. Pursuant to the issuance of certificates of occupancy for the required improvements, the County has determined that these have been constructed as required. The termination verifies and confirms the completion of the required improvements and removes the Improvement Agreement as an encumbrance to title against the property.

BUDGET IMPACTS:

None.

ATTENDANCE:

Haleigh King – Associate Planner

REVIEWED
LEGAL COUNSEL

For Recording Stamp Only

After Recording Return to:
Deschutes County
Community Development Department
117 NW Lafayette Avenue
Bend, OR 97703

**TERMINATION OF IMPROVEMENT AGREEMENT
Overnight Lodging
Document No. 2022-955**

This Termination of Improvement Agreement (“Termination”), is by and between DESCHUTES COUNTY, OREGON, a political subdivision of the State of Oregon (“County”) and Caldera Springs Real Estate, LLC (“Developer”).

RECITALS:

- A. Developer executed that certain Improvement Agreement identified as Deschutes County Document No. 2022-955, recorded in the real property records of Deschutes County on January 11, 2023 as Document No. 2023-00702 (the “Improvement Agreement”). All capitalized terms used in this Termination without definition shall have the meaning set forth in the Improvement Agreement.
- B. Under the Improvement Agreement Developer was required to complete the Required Improvements, as more particularly described in the Improvement Agreement. Pursuant to the issuance of certificates of occupancy for the Required Improvements, the County has determined that the Required Improvements have been constructed as required under the Improvement Agreement.
- C. County and Developer desire to enter into this Termination to verify and confirm completion of the Required Improvements and to remove the Improvement Agreement as an encumbrance to title against the Real Property.

NOW THEREFORE, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES above mentioned, for and in consideration of the mutual obligations hereinafter stated, as follows:

- 1. **Recitals.** The Recitals to this Agreement set forth above are hereby incorporated herein as if fully set out, shall constitute contractual provisions and are not mere recitals.

2. **Real Property Description.** The real property subject to this Termination (the “Real Property”) is identified as a portion of Map and Tax Lots 201108DD01300 and 201108DD00900 and which are more particularly described on the attached Exhibit A.

3. **Termination; Release of Security.** The County and Developer hereby terminate the Improvement Agreement and acknowledge and agree that the Improvement Agreement shall be of no further force or effect. To the extent already not released to Developer, the County shall deliver the Security (as calculated by and included in Document No. 2022-955, and recorded in the real property records of Deschutes County as Document No. 2023-00702) to Developer upon execution of this Termination.

4. **Counterparts.**
 - 4.1 This Termination may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart.
 - 4.2 Each copy of this Termination so executed shall constitute an original.
 - 4.3 If this Termination is signed in counterpart, each counterpart shall be recorded as provided herein for the recording of this Termination.

5. **Captions.**
 - 5.1 The captions contained in this Termination were inserted for the convenience of reference only.
 - 5.2 Captions do not, in any manner, define, limit, or describe the provisions of this Termination or the intentions of the parties.

6. **Effective Date.** Notwithstanding mutual execution of this Termination, this Termination shall not become effective until recorded.

Signatures on Following Pages

Dated this _____ of _____, 20__

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

PATTI ADAIR, Vice-Chair

ATTEST:

PHIL CHANG, Commissioner

Recording Secretary

STATE OF OREGON, County of Deschutes) ss.

Before me, a Notary Public, personally appeared ANTHONY DEBONE, PHIL CHANG, PATTI ADAIR, the above-named Board of County Commissioners of Deschutes County, Oregon and acknowledged the foregoing instrument on behalf of Deschutes County, Oregon.

DATED this __ day of _____, 20__

Notary Public, State of Oregon

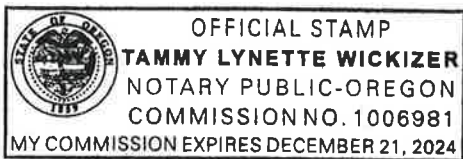
DATED this 6 day of October, 2023

DEVELOPER:

Caldera Springs Real Estate, LLC
By: Sunriver Resort Limited Partnership
Its: Member

By: Lowe Sunriver, Inc.
Its: General Partner

By: _____
Tom O'Shea, Managing Director



STATE OF OREGON, County of Deschutes) ss.

Before me, a Notary Public, personally appeared Tom O'Shea, and acknowledged the foregoing instrument as the Managing Director of Lowe Sunriver, Inc. as General Partner of Sunriver Resort Limited Partnership, as Member of Caldera Springs Real Estate, LLC on behalf of Caldera Springs Real Estate, LLC.

DATED this 6 day of October, 2023

Notary Public, State of Oregon

EXHIBIT A
Legal Description

Lot 2 and Lot 16, Caldera Springs OLU Phase A, Deschutes County, Oregon, recorded at Document No. 2022-04792.

Deschutes County Official Records

Steve Dennison, County Clerk

2023-00702

01468563202300007020800809

D-IPPS Cnt=1 Pgs=80 Stn=25
\$400.00 \$11.00 \$61.00 \$10.00 \$6.00**01/11/2023 11:33 AM**
\$488.00

REVIEWED

 LEGAL COUNSEL

For Recording Stamp Only

After Recording Return to:
 Deschutes County
 Community Development Department
 117 NW Lafayette Avenue
 Bend, OR 97703

IMPROVEMENT AGREEMENT
Overnight Lodging

This Improvement Agreement ("Agreement"), relating to the construction and installation of certain required improvements (the "Required Improvements," as defined below in Section 4) within the plat of Caldera Springs OLU, Phase A located in the Caldera Springs Destination Resort is by and between DESCHUTES COUNTY, OREGON, a political subdivision of the State of Oregon ("County") and Caldera Springs Real Estate, LLC ("Developer").

RECITALS:

- A.** Developer filed an application for final subdivision plat approval for the tentative subdivision plan approved under File No. 247-22-000182-TP (the "Land Use Approval") prior to the completion of the Required Improvements.
- B.** Deschutes County Code (DCC) Section 18.113.110 provides that a developer may, in lieu of completing the Required Improvements prior to filing a final subdivision plat, enter into an agreement with the County and provide a good and sufficient form of security to provide for the completion of such improvements.
- C.** The Required Improvements under this Agreement do not constitute a Public Improvement as the term is defined in ORS 279A.010(1)(cc).
- D.** County and Developer desire to enter into this Agreement in order to establish the obligation and to secure completion of the Required Improvements following recording of the final plat for the Land Use Approval.

NOW THEREFORE, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES above mentioned, for and in consideration of the mutual obligations hereinafter stated, as follows:

1. **Recitals.** The Recitals to this Agreement set forth above are hereby incorporated herein as if fully set out, shall constitute contractual provisions and are not mere recitals.
2. **Real Property Description.** The real property subject to this Agreement (the “Real Property”) is identified as a portion of Map and Tax Lots 201108DD01300 and 201108DD00900 and which are more particularly described on the attached Exhibit A. This Agreement shall be recorded against and shall encumber the Real Property and every developable unit of land lawfully created from the Real Property (each, a “Lot”) subject to Section 20 below.
3. **Exhibits.** The exhibits listed below and attached to the Agreement are hereby incorporated herein by reference:
 - 4.1 Exhibit A -- Legal description of Real Property.
 - 4.2 Exhibit B -- List of Required Improvements.
 - 4.3 Exhibit C – Copy of Land Use Approval.
 - 4.4 Exhibit D - Bond Instrument.
4. **Identification of Required Improvements.** Developer shall install and complete, or cause to be installed and completed, the improvements listed in Exhibit B on each Lot and required by the Tentative Plan set forth in Exhibit C to the extent that same remain to be completed (the “Required Improvements”).
5. **Construction of Required Improvements.**
 - 5.1 Developer shall install and complete the Required Improvements in accordance with the plans and construction specifications related thereto and to any additional County and/or State of Oregon specifications or applicable regulations. Developer shall cause the Required Improvements to be completed in compliance with the applicable codes, regulations, and laws then in effect.
 - 5.2 Developer shall promptly repair any damage to existing and new roads, water lines, stormwater facilities, and similar facilities within and without the Real Property, which are caused by the installation of the Required Improvements.
 - 5.3 Under DCC 18.113.060(A)(1)(b)(3) overnight lodging units guaranteed through surety bonding or equivalent financial assurances must be constructed within four (4) years of the date of execution of the surety bond or other equivalent financial assurance (the “Completion Date”). Developer shall schedule final inspections and shall have the Required Improvements in a condition determined by County to be sufficient not later than the Completion Date. For purposes of calculating the warranty of improvements under Section 6.1 below, the “Completion Date” shall be the date upon which the County has performed all final inspections of and issued a certificate of occupancy for the Required Improvements.

6. License to Enter and Remain on Property.

6.1 During the term of this Agreement, Developer hereby grants County and County’s employees, engineers, consultants, agents, contractors, subcontractors and suppliers license to come onto and remain on the Real Property as necessary to make inspections of the Required Improvements.

6.2 After the Default Grace Period specified in Section 7.2, and after providing notice to Developer, County or its employees, engineers, consultants, agents, contractors, subcontractors and suppliers may enter onto and remain on the Real Property and may cause the Required Improvements to be completed.

7. Right to Draw on Security.

7.1 Upon failure of the Developer to complete the Required Improvements as required under Section 5.3 above by the Completion Date, County shall notify Developer in writing of such failure (the “Default Notice”).

7.2 Upon receipt of the Default Notice, Developer shall have thirty (30) days to complete the Required Improvements to the condition required under Section 5 (the “Default Grace Period”).

7.3 Should Developer fail to complete the Required Improvements within the Default Grace Period, County may, at its sole discretion, cause incomplete or unsatisfactory Required Improvements to be completed.

7.4 If County causes the Required Improvements to be completed, County may draw upon the Security for any and all costs and expenses incurred by County including, but not limited to, attorneys and engineering fees, and costs and expenses reasonably anticipated or projected by the County to be incurred by the County, in construction and/or completion of the Required Improvements.

7.5 If County affirmatively elects (with written documentation of same signed by the Chair of the Board of County Commissioners) not to cause the Required Improvements to be completed, County shall within 180 days cause the Security to be released to Developer.

7.6 For the purposes of this Agreement and access to any security offered and accepted to secure Developer’s performance, Developer’s failure to complete the Required Improvements shall include failure to install or have installed any portion of the Required Improvements to the standards required under Section 5 above.

8. No County Guarantee. County does not warrant or guarantee that any of the Required Improvements referred to in this Agreement will be constructed, maintained or operated.

9. License to Use Permits, Specifications and Plans.

- 9.1 If County determines that any portion of the Required Improvements have not been completed as required by Section 5 above, Developer shall, upon request of the County, license and assign to County all of Developer's, applicable permits, plans, specifications, shop drawings, instruments, permits and approvals, and other documents necessary or useful in the completion or repair of or related in any manner to the applicable Required Improvements.
- 9.2 Developer shall ensure that any contracts for supply of labor and materials used in connection with constructing Required Improvements are assignable to the County.
- 9.3 Upon such request, Developer shall deliver or shall cause to be delivered, physical possession of such permits, plans, specifications, shop drawings, instruments, permits, approvals, and other documents to the County.
- 9.4 County may sub-assign or license the rights referred to in this Section 9 for any purpose without further approval from Developer.

10. No Third-Party Beneficiaries.

- 10.1 County and Developer are the only parties to this Agreement and are the only parties entitled to enforce its terms.
- 10.2 Nothing in this Agreement gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons.

11. Restoration of Monuments. Developer shall restore any monument erected or used for the purpose of designating a survey marker or boundary of any town, tract, plat or parcel of land that is broken, damaged, removed or destroyed, during the course of work provided for or anticipated by this Agreement, whether intentional or otherwise, by the Developer or Developer's agents, employees, independent contractors, or persons or entities other than County.

12. Costs of Inspection. Developer shall pay to County the actual costs incurred by County in the inspection of the completed Required Improvements plus any fees, such as legal review fees, plan review fees and structural, electrical, plumbing and other specialty codes inspection fees normally associated with the review and inspection of any improvements on the Real Property.

13. Security for Required Improvements.

- 13.1 Attached as Exhibit D is a copy of a performance bond in the amount of One Million Sixty-Nine Thousand One Hundred Fifty-Nine and 25/100 Dollars (\$1,069,159.25) (the "Security"). The Security represents the costs of the Required Improvements

to be constructed on each of the two Lots subject to this Agreement, together with the required twenty percent (20%) added Security.

13.2 As used herein, the issuer of the Security is referred to as “Surety.”

13.4 Cost Notice Update

13.4.1 County, in reasonable intervals, may require the Developer to provide an updated construction cost estimate for the then remaining Required Improvements (the “Cost Update Notice”).

13.4.2 Upon receipt of the Cost Update Notice, the Developer shall have thirty (30) days to provide the updated construction cost estimate (the “Developer’s Response”).

13.4.3 Upon receipt of the Developer’s Response, or if no Response is received within the thirty (30) day period, if the County reasonably determines that the Developer’s obligations under this Agreement together with the Security do not provide adequate financial assurance for completion of the Required Improvements, the County shall have the option to require Developer to increase the amount of the Security and to memorialize such increase in an amendment to this Agreement (the “Security Amendment”).

13.4.4 If the County requires Developer to increase the amount of the Security, Developer shall also file the application fees and materials to amend this Agreement to memorialize the Security Amendment within thirty (30) days of receipt of the County’s notice to increase the Security.

13.4.5 If Developer fails or refuses to increase the amount of Security as directed by the County, such failure or refusal shall be considered failure of the Developer to complete the Required Improvements as required under Section 5 and the County may draw upon the Security pursuant to Section 8.

14. Developer’s Obligation for Costs.

14.1 Developer expressly acknowledges, understands, and agrees that this Agreement shall not relieve Developer from the obligation to complete and fully pay for the Required Improvements, to warranty those Required Improvements, and other costs and fees set forth in this Agreement.

14.2 Should Developer default in its obligation to complete the Required Improvements as required by Section 5 or warranty those Required Improvements as required by Section 6, Developer agrees to compensate County for all costs, fees, charges and incurred expenses related to Developer’s default.

15. Release of Security or Obligation.

- 15.1** County shall release the Security less any Warranty Security within thirty (30) calendar days of Developer requesting in writing that the Security be released following the final inspection and approval of the Required Improvements. County shall release the Warranty Security within thirty (30) calendar days of the Developer requesting in writing that the Warranty Security be released following the Warranty Period.
- 15.2** County may, at the County’s discretion and consistent with applicable law, release Developer from any of Developer’s obligations under the terms and conditions of this Agreement.
- 15.3** County’s release of any of Developer’s obligations shall not be construed as a waiver of County’s right to require full compliance with the remainder of this Agreement and Developer’s obligation to satisfy any costs, fees, charges and expenses incurred in completion or repair of the Required Improvements.

16. Shortfall in Security.

- 16.1** If the amount available to be drawn from the Security or Warranty Security is less than the costs and expenses anticipated to be incurred, or actually incurred, by County, including, but not limited to, attorneys and engineering fees, County may apply the proceeds of the Security or Warranty Security to the anticipated or actual costs and expenses of completion or repair of the Required Improvements.
- 16.2** Developer shall be responsible and liable for any shortfall between the actual costs and expenses of completion or repair of the Required Improvements, including, but not limited to, attorneys and engineering fees, and the amount of the Security or Warranty Security available to fund such costs and expenses.

17. Incidental Costs. Without limiting the generality of Section 17, if the proceeds of the Security or Warranty Security are not remitted to County within the timeframe set forth in the Security or Warranty Security after County provides written notice to Surety in the form prescribed by the Surety, or the Required Improvements are not installed within a reasonable time period determined and specifically identified by County after County provides notice to Developer and/or Surety, then County’s costs of completing and/or repairing the Required Improvements, the costs of obtaining the proceeds of the Security, Warranty Security, or other security, all incidental costs to the extent not covered by the Security, Warranty Security, or other security, and liquidated damages calculated at the rate of \$500 per day shall be added to the amount due to County from Developer, and shall be paid to County by Developer, in addition to and with all other amounts due hereunder.

18. Successors in Interest.

- 18.1 The original of this Agreement shall be recorded with the Deschutes County Clerk and shall be a condition and covenant that shall run with the Real Property including any lots created from the Real Property (each a "Lot").
- 18.2 It is the intent of the parties that the provisions of this Agreement shall be binding upon the parties to this Agreement, and subject to the terms contained in Section 20, their respective successors, heirs, executors, administrators, and assigns, and any other party deriving any right, title or interest in or to the Real Property or any Lot, including any person who holds such interest as security for the payment of any obligation, including a mortgagee or other secured party in actual possession of said Real Property by foreclosure or otherwise or any person taking title from such security holder.

19. Lot Purchasers.

- 19.1 Notwithstanding the terms of Section 19, the terms of this Section 19 shall apply to each Lot lawfully created from the Real Property in accordance with the Land Use Approval.
- 19.2 Each Lot shall be conveyed free of any obligation to pay money or complete any obligation arising from or related to this Agreement.
- 19.3 The owner of a Lot, other than Developer, is under no obligation or burden to complete the terms and conditions of this Agreement.
- 19.4 The purpose for the recordation of this Agreement is to place owners and prospective purchasers on notice of the Agreement's terms, that the County has no obligation to construct the Required Improvements or any portion of the Required Improvements, and the Agreement does not in any way guarantee that any of the Required Improvements will be constructed.
- 19.5 The Agreement conveys no right or right of action by a Lot owner, other than Developer, against the County for any act or omission of the County including, but not limited to, County decisions or acts that required or authorized the Required Improvements, or any part of the Required Improvements, not being constructed.

20. Binding Authorization. By signing this Agreement, each signatory signing in a representative capacity, certifies that the signer is authorized to sign the Agreement on behalf of and bind the signer's principal.

21. Expiration.

- 21.1 This Agreement shall expire after the conclusion of the Warranty Period, or by the County's express written release of Developer from this Agreement.

- 21.2 Upon expiration, County shall provide Developer with a document in recordable form, formally evidencing such expiration within thirty (30) days of such a request from Developer.

- 22. **Survival.** County's rights under this Agreement, including County's right to draw upon the Security or Warranty Security in whole or in part, and Developer's obligation to pay the full costs and expenses of completing the Required Improvements and repairs or replacements required herein along with any licenses granted in this Agreement and any costs of enforcement of this Agreement, shall survive the expiration of this Agreement.

- 23. **No Agency.**
 - 23.1 It is agreed by and between the parties that Developer is not carrying out a function on behalf of County, and County does not have the right of direction or control of the manner in which Developer completes performance under this Agreement nor does County have a right to exercise any control over Developer's activities.

 - 23.2 Developer is not an officer, employee or agent of County as those terms are used in ORS 30.265.

- 24. **No Joint Venture or Partnership.** County is not, by virtue of this Agreement, a partner or joint venturer with Developer in connection with the Site Plan, the Required Improvements, the Real Property, or any Lot and shall have no obligation with respect to Developer's debts, obligations or other liabilities of each and every nature.

- 25. **Liens.**
 - 25.1 Developer shall pay as due all claims for work done on and for services rendered or materials furnished to the Real Property and shall keep the Real Property free from liens.

 - 25.2 If Developer fails to pay any such claims or to discharge any lien, County may do so and collect the cost plus ten percent (10%) from the Developer or Surety; provided, however, County may not pay such claims or discharge any lien while Developer is timely disputing the validity of such claims or liens.

 - 25.3 Such action by County shall not constitute a waiver of any right or remedy that County may have on account of Developer's failure to complete the Required Improvements or failure to observe the terms of this Agreement.

- 26. **Indemnification.** The County shall not be responsible for any injury to any and all persons or damage to property caused directly or indirectly by reason of any and all activities (including inaction) of Developer under this Agreement and on the Real Property; Developer further agrees to defend, indemnify and save harmless County, its officers, agents and employees from and against all claims, suits, actions, damages, costs, losses

and expenses in any manner resulting from, arising out of, or connected with any such injury or damage.

27. **Limitation of Liability.** County’s liability, if any, pursuant to this Agreement is subject to the Oregon Tort Claims Act, ORS 30.260 to 30.300.

28. **Attorney Fees and Costs.** In the event an action or suit or proceeding, including appeal therefrom, is brought by any party arising directly and/or indirectly out of the provisions of this Agreement or the interpretation thereof, for Developer’s failure to complete the Required Improvements or to observe any of the terms of this Agreement or the interpretation thereof, County shall be entitled to recover, in addition to other sums or performances due under this Agreement, reasonable attorney’s fees and costs as the court may adjudge in said action, suit, proceeding or appeal.

29. **Waiver.**

29.1 Waiver of the strict performance of any provision of this Agreement shall not constitute the waiver of any other provision or of the Agreement.

29.2 No waiver may be enforced against the County unless such waiver is in writing and signed by the County.

30. **Compliance with provisions, requirements of Federal and State laws, statutes, rules, regulations, executive orders and policies. Debt Limitation.**

30.1 This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution.

30.2 Any provisions herein that conflict with applicable law, including but not limited to DCC 17.24.120 and 17.24.130, are deemed inoperative to that extent.

30.3 Additionally, Developer shall comply with any requirements, conditions or limitations arising under any Federal or State law, statute, rule, regulation, executive order and policy applicable to the Required Improvements.

30.4 If this Agreement is in any manner construed to constitute the lending of the County’s credit or constitute a debt of County in violation of Article XI, Section 10, of the Oregon Constitution, this Agreement shall be void.

31. **No Inducement.** No representations, statements, or warranties have induced the making and execution of this Agreement other than those herein expressed.

32. **Governing Law.**

32.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.

- 32.2** Any claim, action, suit or proceeding (each a “Claim”) between County and Developer that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Deschutes County for the State of Oregon; provided, however, if a Claim shall be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon in Eugene, Oregon.
- 32.3** By signing below, Developer hereby consents to the *in personam* jurisdiction of the courts identified in Section 33.2.
- 32.4** The parties agree that the UN Convention on International Sales of Goods shall not apply.
- 33. Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be void, invalid or unenforceable in one respect, the validity of the term or provision in any other respect and that of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced to the extent possible.
- 34. Counterparts.**
- 34.1** This Agreement may be executed in several counterparts, all of which when taken together shall constitute one Agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart.
- 34.2** Each copy of this Agreement so executed shall constitute an original.
- 34.3.** If this Agreement is signed in counterpart, each counterpart shall be recorded as provided herein for the recording of this Agreement.
- 35. Notice.**
- 35.1** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing to Developer or County at the address or fax number set forth below or to such other addresses or fax numbers as either party may hereafter indicate in writing.
- 35.2** Delivery may be by personal delivery, facsimile, or mailing the same, postage prepaid.
- 35.2.1** Communication or notice by personal delivery shall be deemed delivered when actually given to the designated person or representative.
- 35.2.2** Any communication or notice sent by facsimile shall be deemed delivered when the transmitting machine generates receipt of the transmission.

35.2.3 To be effective against County, such facsimile transmission shall be confirmed by telephone notice to County’s Director of Administrative Services.

35.2.4 Any communication or notice mailed shall be deemed delivered five (5) days after mailing. Any notice under this Agreement shall be mailed by first class mail or delivered as follows:

To Developer:

Caldera Springs Real Estate LLC
PO Box 3609
Sunriver, Oregon 97707
Attn: Thomas Samwel

To County:

Deschutes County Administration
County Administration
1300 NW Wall Street, Ste 200
Bend, Oregon 97703
Fax No. 541-388-4752

36. Time is of the Essence. Time is of the essence of each and every provision of this Agreement.

37. Captions.

37.1 The captions contained in this Agreement were inserted for the convenience of reference only.

37.2 Captions do not, in any manner, define, limit, or describe the provisions of this Agreement or the intentions of the parties.

38. Amendment.

38.1 The Agreement may only be amended by written instrument signed by both parties and recorded, except that an amendment shall not be recorded against any Lot other than Lots then owned by Developer.

38.2 For purposes of Section 39.1, the signatures of the County shall be the signatures of the Board of Commissioners, Board Chair, or County Administrator.

38.3 Developer shall make application and pay the applicable fee to bring a proposed amendment before the County.

39. Merger Clause. This Agreement and the attached exhibits constitute the entire agreement between the parties and supersedes any and all prior or contemporaneous negotiations and/or agreements among the parties, whether written or oral.

40. **Effective Date.** Notwithstanding mutual execution of this Agreement, this Agreement shall not become effective until recorded.

Signatures on Following Pages

Dated this 21st of Dec., 2022

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

Patti Adair

PATTI ADAIR, Chair

Anthony DeBone

ANTHONY DEBONE, Vice-Chair

Phil Chang

PHIL CHANG, Commissioner

ATTEST:

Brenda Fitzgerald

Recording Secretary

STATE OF OREGON, County of Deschutes) ss.

Before me, a Notary Public, personally appeared ANTHONY DEBONE, PHIL CHANG, PATTI ADAIR, the above-named Board of County Commissioners of Deschutes County, Oregon and acknowledged the foregoing instrument on behalf of Deschutes County, Oregon.

DATED this 21st day of December, 2022

Angie Marie Powers
Notary Public, State of Oregon



DATED this 20th day of Dec, 2022

DEVELOPER:

Caldera Springs Real Estate, LLC

By: Sunriver Resort Limited Partnership

Its: Member

By: Lowe Sunriver, Inc.

Its: General Partner

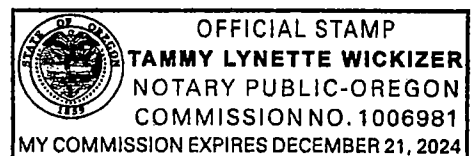
By: *Tom O'Shea*
Tom O'Shea, Managing Director

STATE OF OREGON, County of Deschutes) ss.

Before me, a Notary Public, personally appeared Tom O'Shea, and acknowledged the foregoing instrument as the Managing Director of Lowe Sunriver, Inc. as General Partner of Sunriver Resort Limited Partnership, as Member of Caldera Springs Real Estate, LLC on behalf of Caldera Springs Real Estate, LLC.

DATED this 20 day of December, 2022

Tammy Lynette Wickizer
Notary Public, State of Oregon





Des 10/18/2023 Item #1.
 117 NW Lafayette Avenue
 PO Box 6005
 Bend, OR 97703
 541-388-6575

Commercial

Certificate of Occupancy

Web Address: www.deschutes.org/cd

Email Address: cdd@deschutes.org

This structure has been inspected and, at the time of certificate issuance, was in compliance with all applicable codes and regulations for the occupancy, division of occupancy and use for which the occupancy is classified.

Structural Specialty Code Edition: 2019

Permit Number: 247-22-001292-STR **Final Inspection Date:** 5/30/23
Property Address: 18124 FORESTBROOK LP, BEND, OR 97707
Parcel Number: 201108DD01300
Owner: CALDERA SPRINGS REAL ESTATE LLC, PO BOX 3609, SUNRIVER, OR 97707

Description of Work: LOT 2 - TWO-FAMILY DWELLING: 2 RENTABLE DESTINATION RESORT OVERNIGHT LODGING ACCOMMODATIONS/UNITS. (Model B1)
Category of Construction: Commercial **Type of Work:** New
Existing Sprinklers: No **Sprinklers Included in Project:** Yes

Occupant Load: TWO-FAMILY DWELLING: 2 RENTABLE DESTINATION RESORT OVERNIGHT LODGING ACCOMMODA
Portion of Building: TWO-FAMILY DWELLING: 2 RENTABLE DESTINATION RESORT OVERNIGHT LODGING ACCOMMODATIONS/UNITS. (Model A1)
Special Conditions: None Specified

<u>Occupancy Classification</u>	<u>Type of Construction</u>	<u>Sq. Ft.</u>
R-1 hotels	VB	2,571
U Utility, misc.	VB	669

<u>Related Permits</u>	<u>Permits Status</u>
247-22-003265-PLM	Final
247-22-002789-MECH	Final
247-22-003470-FIRE	Final
247-22-001292-STR-REV-03	Revision Withdrawn
247-22-001292-STR-REV-01	Revision Complete
247-22-001292-STR-REV-02	Revision Complete
247-22-001292-STR-TCO-01	TCO Complete

Randy Scheid
 Building Official

Effective Date: May 31, 2023

Contact and license information for the general, electrical, plumbing and mechanical contractors is on file and can be obtained upon request.



Des 10/18/2023 Item #1.
 117 NW Lafayette Avenue
 PO Box 6005
 Bend, OR 97703
 541-388-6575

Commercial Certificate of Occupancy

Web Address: www.deschutes.org/cd

Email Address: cdd@deschutes.org

This structure has been inspected and, at the time of certificate issuance, was in compliance with all applicable codes and regulations for the occupancy, division of occupancy and use for which the occupancy is classified.

Structural Specialty Code Edition: 2019

Permit Number: 247-22-001296-STR **Final Inspection Date:** 5/15/23
Property Address: 18105 FORESTBROOK LP, BEND, OR 97707
Parcel Number: 201108DD00900
Owner: CALDERA SPRINGS REAL ESTATE LLC, PO BOX 3609, SUNRIVER, OR 97707

Description of Work: LOT 16 - DUPLEX: 2 RENTABLE DESTINATION RESORT OVERNIGHT LODGING ACCOMMODATION UNITS. (Model B1)

Category of Construction: Commercial **Type of Work:** New
Existing Sprinklers: No **Sprinklers Included in Project:** Yes

Occupant Load: R-1 = 2,571 sf (INCLUDES COVERED PORCHES) U = 669 sf (INCLUDES COVERED TRASH AREA)

Portion of Building: LOT 16 - DUPLEX: 2 RENTABLE DESTINATION RESORT OVERNIGHT LODGING ACCOMMODATION UNIT (MODEL B1)

Special Conditions: None Specified

<u>Occupancy Classification</u>	<u>Type of Construction</u>	<u>Sq. Ft.</u>
R-3 1 & 2 family	VB	2,571
U Utility, misc.	VB	669
247-22-002806-MECH	Final	
247-22-003268-PLM	Final	
247-22-003473-FIRE	Permit Issued	
247-22-001296-STR-REV-02	Revision Withdrawn	
247-22-001296-STR-REV-01	Revision Complete	

Randy Scheid
 Building Official

Effective Date: May 15, 2023

Contact and license information for the general, electrical, plumbing and mechanical contractors is on file and can be obtained upon request.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: October 18, 2023

SUBJECT: Approval of Chair signature of Document No. 2023-919, a Notice of Intent to Award a contract for the Knott Landfill Cell 9 construction project

RECOMMENDED MOTION:

Move approval of Chair signature of Document No. 2023-919, a Notice of Intent to Award a contract for the Knott Landfill Cell 9 construction project.

BACKGROUND AND POLICY IMPLICATIONS:

Deschutes County Solid Waste Department prepared bid solicitation documents for the Knott Landfill Cell 9 construction project. The project scope of work includes excavation of soil, rock crushing, placement of liner materials and drain rock, construction of a new water stand-pipe, installation of methane collection and leachate extraction pipes, and fencing. The project was advertised in the Daily Journal of Commerce and The Bulletin on September 6 and 8, 2023. Bids were opened at 2:00 pm on October 4, 2023.

Six (6) bids were received for this project. The bid results are as follows:

<u>BIDDER</u>	<u>TOTAL BID AMOUNT</u>
Scarsella Bros, Inc.	\$ 4,968,915.00
DelHur Industries, Inc.	\$ 5,003,086.09
M.A. DeAtley Construction, Inc.	\$ 5,767,300.00
Taylor Northwest, LLC	\$ 7,841,895.00
Goodfellow Bros., LLC	\$ 8,599,713.00
Granite Construction Company	\$ 8,988,890.00
Engineer's Estimate	\$ 5,808,050.00

This action issues a Notice of Intent to Award the contract to the apparent low bidder, Scarsella Bros, Inc., and allows seven days for the 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 project cost is budgeted in the Solid Waste Department Capital Reserve Fund for Fiscal Year 2024.

ATTENDANCE:

Tim Brownell, Director of Solid Waste

October 18, 2023

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

Subject: **Notice of Intent To Award Contract**
Contract for Knott Landfill Cell 9 Construction Project

To Whom it May Concern:

On October 18, 2023, 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 Scarsella Bros. Inc., of Seattle, Washington, with a bid of four million nine hundred sixty eight thousand nine hundred fifteen dollars and no cents (\$4,968,915.00).

This Notice of Intent to Award Contract is issued pursuant to Oregon Revised Statute (ORS) 279C.375. 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 expire at 5:00 PM on Wednesday, October 25, 2023.**

Any protest must be in writing and specify any grounds upon which the protest is based. Please refer to Oregon Administrative Rules (OAR) 137-0479-0450. 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 email 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,

BOARD OF COUNTY COMMISSIONERS
DESCHUTES COUNTY, OREGON

Anthony DeBone, Chair

Contract for Knott Landfill Cell 9 Construction Project

Scarsella Bros., Inc.
PO Box 68697
Seattle, WA 98168
Phone: (253) 872-7173
Fax: (253) 395-1209
estimating@scarsellabros.com

M. A. DeAtley Construction, Inc.
PO Box 490
Clarkston, WA 99403
Phone: (509) 751-1580
Fax: (509) 751-1922
bidding@madcon.net

Granite Construction Company
16821 SE McGillivray Blvd. Suite 210B
Vancouver, WA 98683
Phone: (360) 606-1335
Fax: (360) 254-9592
bid.vancouver@gcinc.com

Taylor Northwest LLC
18500 Bull Springs Road
Bend, OR 97703
Phone: (541) 382-7887
Fax: (541) 382-3505
jbarden@taylornw.com

DelHur Industries, Inc.
30607 Oldfield St.
Hermiston, OR 97838
Phone: (541) 567-8693
Fax: (541) 567-0369
kmassey@delhur.com

Goodfellow Bros. LLC
7515 NE Ambassador Place, Suite E
Portland, OR 97220
Phone: (503) 256-4114
Fax: (503) 256-4884
joec@goodfellowbros.com

Knott Landfill - Cell 9 Construction Project - Bid Tabulation

Bid Opening 10/4/2023

ITEM	Description	Approximate Quantity	Units	Engineer		Scarsella Bros		Del Hur		M.A. DeAtley		Taylor NW		Goodfellow Bros		Granite Construction Company	
				Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	Total
1	Mobilization	Lump Sum	LS	\$500,000.00	\$500,000.00	\$490,000.00	\$490,000.00	\$408,798.05	\$408,798.05	\$575,000.00	\$575,000.00	\$738,900.00	\$738,900.00	\$682,723.00	\$682,723.00	\$926,000.00	\$926,000.00
2	Interface Friction Angle Testing	Lump Sum	LS	\$10,000.00	\$10,000.00	\$6,000.00	\$6,000.00	\$6,457.43	\$6,457.43	\$15,000.00	\$15,000.00	\$6,895.00	\$6,895.00	\$6,500.00	\$6,500.00	\$6,000.00	\$6,000.00
3	Clearing and Grubbing	Lump Sum	LS	\$50,000.00	\$50,000.00	\$171,800.00	\$171,800.00	\$13,988.24	\$13,988.24	\$60,000.00	\$60,000.00	\$88,000.00	\$88,000.00	\$325,000.00	\$325,000.00	\$200,000.00	\$200,000.00
4	Excavation	500,000	CY	\$4.50	\$2,250,000.00	\$3.55	\$1,775,000.00	\$3.15	\$1,575,000.00	\$4.80	\$2,400,000.00	\$6.86	\$3,430,000.00	\$9.60	\$4,800,000.00	\$9.30	\$4,650,000.00
5	Embankment	10,000	CY	\$2.50	\$25,000.00	\$2.00	\$20,000.00	\$2.72	\$27,200.00	\$0.65	\$6,500.00	\$5.35	\$53,500.00	\$3.00	\$30,000.00	\$5.00	\$50,000.00
6	Cushioning Layer	10,000	CY	\$11.00	\$110,000.00	\$5.70	\$57,000.00	\$14.13	\$141,300.00	\$9.00	\$90,000.00	\$21.00	\$210,000.00	\$19.00	\$190,000.00	\$22.90	\$229,000.00
7	Drainage Layer	22,000	CY	\$10.00	\$220,000.00	\$6.40	\$140,800.00	\$7.73	\$170,060.00	\$10.00	\$220,000.00	\$11.00	\$242,000.00	\$12.00	\$264,000.00	\$15.00	\$330,000.00
8	Base Course	250	CY	\$25.00	\$6,250.00	\$35.00	\$8,750.00	\$52.43	\$13,107.50	\$40.00	\$10,000.00	\$41.50	\$10,375.00	\$98.00	\$24,500.00	\$136.00	\$34,000.00
9	2" minus aggregate	20,000	CY	\$20.00	\$400,000.00	\$9.75	\$195,000.00	\$13.70	\$274,000.00	\$6.75	\$135,000.00	\$23.75	\$475,000.00	\$8.50	\$170,000.00	\$17.50	\$350,000.00
10	Hot Mix Asphalt Concrete	125	CY	\$250.00	\$31,250.00	\$500.00	\$62,500.00	\$323.73	\$40,466.25	\$240.00	\$30,000.00	\$285.00	\$35,625.00	\$340.00	\$42,500.00	\$458.00	\$57,250.00
11	Geosynthetic Clay Liner	560,000	SF	\$0.90	\$504,000.00	\$0.94	\$526,400.00	\$1.07	\$599,200.00	\$0.94	\$526,400.00	\$1.15	\$644,000.00	\$0.95	\$532,000.00	\$1.00	\$560,000.00
12	Geomembrane	570,000	SF	\$0.95	\$541,500.00	\$0.82	\$467,400.00	\$0.96	\$547,200.00	\$0.82	\$467,400.00	\$1.00	\$570,000.00	\$0.83	\$473,100.00	\$0.85	\$484,500.00
13	Cushioning Geotextile	15,000	SF	\$0.75	\$11,250.00	\$0.82	\$12,300.00	\$0.91	\$13,650.00	\$0.82	\$12,300.00	\$1.00	\$15,000.00	\$0.83	\$12,450.00	\$0.85	\$12,750.00
14	Separating Geotextile	180,000	SF	\$1.00	\$180,000.00	\$0.59	\$106,200.00	\$0.65	\$117,000.00	\$0.59	\$106,200.00	\$1.12	\$201,600.00	\$0.60	\$108,000.00	\$0.80	\$144,000.00
15	Geonet Composite	560,000	SF	\$0.95	\$532,000.00	\$0.86	\$481,600.00	\$0.98	\$548,800.00	\$0.86	\$481,600.00	\$1.05	\$588,000.00	\$0.87	\$487,200.00	\$0.89	\$498,400.00
16	Landfill Gas Collection System	Lump Sum	LS	\$75,000.00	\$75,000.00	\$181,100.00	\$181,100.00	\$205,313.16	\$205,313.16	\$283,000.00	\$283,000.00	\$213,700.00	\$213,700.00	\$171,000.00	\$171,000.00	\$170,000.00	\$170,000.00
17	8" Perforated HDPE Pipe	660	LF	\$50.00	\$33,000.00	\$26.00	\$17,160.00	\$30.35	\$20,031.00	\$35.00	\$23,100.00	\$30.50	\$20,130.00	\$26.00	\$17,160.00	\$26.00	\$17,160.00
18	Water Truck Fill Station	Lump Sum	LS	\$150,000.00	\$150,000.00	\$90,000.00	\$90,000.00	\$102,822.16	\$102,822.16	\$145,500.00	\$145,500.00	\$107,320.00	\$107,320.00	\$88,000.00	\$88,000.00	\$94,000.00	\$94,000.00
19	Type CL-6 Chain Link Fence	3,970	LF	\$40.00	\$158,800.00	\$36.50	\$144,905.00	\$40.84	\$162,134.80	\$40.00	\$158,800.00	\$42.50	\$168,725.00	\$39.00	\$154,830.00	\$39.00	\$154,830.00
20	12-foot Double Swing Gate	5	EACH	\$4,000.00	\$20,000.00	\$3,000.00	\$15,000.00	\$3,311.50	\$16,557.50	\$4,300.00	\$21,500.00	\$4,625.00	\$23,125.00	\$4,150.00	\$20,750.00	\$4,200.00	\$21,000.00
TOTAL BID PRICE:					\$5,808,050.00	\$4,968,915.00	\$5,003,086.09	\$5,767,300.00	\$7,841,895.00	\$8,599,713.00	\$8,988,890.00						



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: October 18, 2023

SUBJECT: Approval of a lease with Dr. Anne Onishi and Maureen McCaffrey for the Medical Examiner's Office

RECOMMENDED MOTION:

Move approval of Board signature of Document No. 2023-848, a lease with Dr. Anne Onishi and Maureen McCaffrey for use of certain office space for the Medical Examiner's Office.

BACKGROUND AND POLICY IMPLICATIONS:

In October 2022, Deschutes County entered into a services contract (contract) with Dr. Anne Onishi and Maureen McCaffrey to provide medical examiner (ME) services for Deschutes County. As a requirement of the contract, the County provides office space for ME operations. As a temporary space solution, the ME's office has been occupying the County-owned property at 221 NW Lafayette Avenue, Bend, known as the Erwin Building. Due to plans associated with the Erwin Building to support the courthouse expansion project, staff has identified an alternate space for the ME's office.

County-owned property at 1130 NW Harriman Street, Bend known as the Mike Maier Services Building has an office and storage area to accommodate the ME' office. In addition to the +/- 121 square foot office and adjacent secured storage, the ME will also have access to a conference room and breakroom.

The zero-cost lease is effective upon lease execution and will continue through June 2024, and includes two-year auto-renewal periods contingent on a current services contract. The lease also includes a mutual provision to terminate the lease with a 60-day written notice.

BUDGET IMPACTS:

This is a zero-cost lease.

ATTENDANCE:

Kristie Bollinger, Property Manager
Whitney Hale, Deputy County Administrator

REVIEWED

LEGAL COUNSEL

LEASE

THIS LEASE AGREEMENT ("Lease") is made as of the date of the last signature affixed hereto ("Effective Date") by and between **DESCHUTES COUNTY**, a political subdivision of the State of Oregon ("Lessor"), and **Dr. Anne Onishi and Maureen McCaffrey**, hereinafter referred to as ("Lessee"). Lessor and Lessee are referred to herein as "Party" or "Parties."

Lessor hereby leases to Lessee and Lessee leases from Lessor the "Premises" described as follows:

+/- 121 square feet of office space known as Room 118 on the first floor of the Mike Maier Services Building located at 1130 NW Harriman Street, Bend, Oregon 97701 as shown in Exhibit A;

1. Occupancy. The parties agree that the terms of this Lease are as follows:
 - a. Term. The effective date of this Lease shall be October 1, 2023, or the date on which each party has signed this Lease, whichever is later, and shall continue until June 30, 2024. This Lease is contingent on a Deschutes County Services Contract, currently known as Deschutes County Document No. 2022-781 and amended by Deschutes County Document No. 2023-395 (Services Contract).
 - b. Lessor and Lessee each reserve the right to terminate this Lease prior to its expiration with sixty (60) days written notice, given to the other Party.
 - c. Automatic Renewal. If the Lessee is not then in default and the Lease has not been terminated in accordance hereof, this Lease shall automatically renew ("Auto Renewal") for additional two (2) year terms under the same terms and conditions set forth herein except for any modifications agreed to in writing by amendment. The Auto Renewal terms will be memorialized by a letter signed by the Parties, the Lessor (Deschutes County Property Manager or County Administrator) and Lessee.
 - d. Possession. During the Lease term, Lessee shall be entitled to access the Premises twenty-four hours a day, seven days a week. Changes to the hours and days of access are at the discretion of Lessor.
2. Rent. Lessee is using Premises for zero cost for the medical examiner services as provided by the Services Contract as referenced in Section 1.a.
3. Use of Premises. The Premises shall be used by Lessee for the purpose of operating Lessee's primary business of medical examiner services for Deschutes County proper. Lessee, its principals or agents shall not use the Premises to operate a business other than that specified in this Lease and shall not use the Premises address as the business or

mailing address for any other business than that specified in this Lease without obtaining the Lessor's written consent in advance.

4. Parking. Lessee, its employees, and clientele shall have a nonexclusive right to access and utilize vehicle parking spaces in County parking lots. Lessee's employees will be required to adhere to the County Parking Policy and Regulations, which County in its sole discretion may amend from time to time.

5. Restrictions on Use. In connection with the use of the Premises, Lessee shall:
 - a. Conform to all applicable laws and regulations affecting the Premises and correct at Lessee's own expense any failure of compliance created through Lessee's fault or by reason of Lessee's use of the Premises. Lessee shall not be required to make any structural changes to affect such compliance, unless such changes are required because of Lessee's specific use.
 - b. Refrain from any use which would be reasonably offensive to the Lessor, other tenants, or owners or users of adjoining property or unoccupied portions of the real property, or which would tend to create a nuisance or damage the reputation of the real property.
 - c. Refrain from making any unlawful or offensive use of said property or to suffer or permit any waste or strip thereof.
 - d. Exercise diligence in protecting from damage the real property and common area of Lessor covered by and used in connection with this Lease.
 - e. Be responsible for removing any liens placed on said property as a result of Lessee's use of leased premises.
 - f. Comply with Lessor's policies, as periodically amended, regarding smoking, parking, fragrances, facilities maintenance, facilities use and violence in the workplace. Those policies are incorporated by reference herein and are available from Lessor upon request.

6. Lessee's Obligations. The following shall be the responsibility of the Lessee:
 - a. Lessee shall not be required to make structural repairs that would place the Premises in a better condition than at the commencement of this lease. Lessee may place fixtures, partitions, personal property, and the like in the Premises and may make nonstructural improvements and alterations to the Premises at its own expense. Lessee may be required to remove such items at the end of the Lease term.
 - b. Any repairs necessitated by the negligence of Lessee, its agents, employees or invitees.
 - c. Any repairs or alterations required under Lessee's obligation to comply with laws and regulations as set forth in "Restrictions on Use" above.

7. Maintenance and Repair of Premises.

- a. Lessor shall perform all necessary maintenance and repairs to the structure, foundation, exterior walls, roof, doors and windows, elevators, emergency lighting, and Lessor-provided fire extinguishers, sidewalks, and parking area which are located on or serve the Premises. Lessor shall maintain the premises in a hazard free condition and shall repair or replace, if necessary and at Lessor's sole expense, the heating, air conditioning, plumbing, electrical, and lighting systems in the Premises, obtaining required permits and inspections from Code enforcement authorities, and shall keep the Premises, improvements, grounds and landscaping in good repair and appearance replacing dead, damaged or diseased plant materials when necessary.
- b. Should Lessor fail to maintain the Premises in accordance with above requirements, and after at least fourteen (14) days prior written notification to Lessor, Lessee may contract for necessary labor equipment and material to bring Premises within those requirements and invoice Lessor for reimbursement.
- c. Lessee shall take good care of the interior of the Premises and at the expiration of the term surrender the Premises in as good condition as at the commencement of this Lease, excepting only reasonable wear, permitted alterations, and damage by fire or other casualty.

8. Utilities and Services.

- a. Lessor shall provide adequate heat, electricity, water, air conditioning, trash removal service, and sewage disposal service for the Premises.
- b. Lessor shall provide telephone, Internet and janitorial services for the Premises.
- c. In coordination with the Lessor, Lessee shall apply for property tax exemption status with the Deschutes County Assessor's Office. If the Lessee is denied tax exemption, Lessor agrees to pay property taxes and assessments applicable to the Premises which are due and payable during the term of this Lease or any extension hereof.
- d. Security equipment (cameras, recording devices, wiring, and like instruments), including the installation and maintenance thereof, shall be the sole responsibility of Lessee. Prior to the placement and/or attachment of such equipment to the internal or external portions of the Premises or common areas, Lessee shall notify Lessor and obtain Lessors consent.

9. Liens.

- a. Except with respect to activities for which the Lessor is responsible, the Lessee shall pay as due all claims for work done on and for services rendered or material furnished to the leased real property and shall keep the real property free from any liens. If Lessee fails to pay any such claims or to discharge any lien, Lessor may do so and collect the cost from Lessee. Any amount so expended shall bear interest at the rate of nine percent (9%) per annum from the date expended by Lessor and

shall be payable on demand. Such action by Lessor shall not constitute a waiver of any right or remedy which Lessor may have on account of Lessee's default.

- b. Lessee may withhold payment of any claim in connection with a good faith dispute over the obligation to pay, so long as Lessor's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Lessee shall, within thirty (30) days after knowledge of the filing, secure the discharge of the lien or deposit with Lessor cash or a sufficient corporate surety bond or other surety satisfactory to Lessor in an amount sufficient to discharge the lien plus any costs, attorney fees and other charges that could accrue as a result of a foreclosure or sale under a lien.

10. Insurance:

- a. It is expressly understood that Lessor shall not be responsible for carrying insurance on any property owned by Lessee.
- b. Lessee will be required to carry fire and casualty insurance on Lessee's personal property on the Premises. Lessee shall provide to Lessor proof of workers' compensation insurance, upon request.
- c. Lessor is self-insured under ORS 30.282 and has established a self-insurance fund for liability arising out of any tort claim or property damage against any of its programs, officers, agents, employees and volunteers acting within the scope of their employment. This coverage is applicable under any Deschutes County agreement. A certificate of insurance will be provided upon request.
- d. Lessee shall carry commercial general liability insurance, with a combined single limit of not less than \$1,000,000 for each occurrence, with an annual aggregate limit of \$2,000,000. The policy shall include an additional insured endorsement, naming Deschutes County, its officers, agents, employees, and volunteers as an additional insured. The policy shall be written on an occurrence basis unless approved and authorized by Lessor. There shall be no cancellation, termination, material change, or reduction of limits of the insurance coverage during the term of this Lease. Lessee can meet the requirements of this section through a state-approved, self-insurance program so long as the program provides adequate levels of coverage to comply with this Lease.
 - i) Claims Made Policies/Tail Coverage: If any of the required insurance policies is on a "claims made" basis, the Lessee shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of this continuous "claims made" coverage is on or before the effective date of this Lease, for a minimum of twenty-four (24) months following the end of the lease agreement. Notwithstanding the foregoing twenty-four (24) month requirement, if Lessee elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the twenty-four (24) month period described above, then Lessee may request and be granted approval of the maximum "tail" coverage period reasonably available in the marketplace. If approval is granted, the Lessee shall maintain "tail" coverage for the

maximum time period that "tail" coverage is reasonably available in the marketplace.

Claims Made Policy (completed by County Risk Management)

Approved Not Approved

- e. Lessee shall furnish a current Certificate of Insurance to Lessor. The Certificate shall state the deductible or, if applicable, the self-insured retention level. Lessee shall be responsible for any deductible or self-insured retention. Lessee shall notify the County in writing at least 30 days in advance of any cancellation, termination, material change, or reduction of limits of the insurance coverage.
- f. Waiver of Subrogation: Neither Party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement, and in the event of insured loss, neither Party's insurance provider/company shall have a subrogated claim against the other. This waiver shall be valid only if the insurance policy in question expressly permits waiver or subrogation or if the insurance company agrees in writing that such a waiver will not affect coverage under the policies. Each Party agrees to use its best efforts to obtain such an agreement from its insurer if the policy does not expressly permit a waiver of subrogation.

11. Indemnification: Lessor and Lessee shall each be responsible for the negligent and willful acts of their officials, officers, agents, employees, clients, volunteers, and invitees. Lessor's liability exposure is restricted by the Oregon State Constitution, Article XI, and Oregon Revised Statutes 30.260 through 30.300, the Oregon Tort Claims Act.

12. Casualty Damage. If the Premises or improvements thereon are damaged or destroyed by fire or other casualty to such a degree that the Premises are unusable for the purpose leased, and if repairs cannot reasonably be made within ninety (90) days, Lessee may elect to cancel this Lease. Lessor shall in all cases promptly repair the damage or ascertain whether repairs can be made within ninety (90) days, and shall promptly notify Lessee of the time required to complete the necessary repairs or reconstruction. If Lessor's estimate for repair is greater than ninety (90) days, then Lessee, upon receiving said estimate will have twenty (20) days after such notice in which to cancel this Lease. Following damage, and including any period of repair, Lessee's rental obligation shall be reduced to the extent the Premises cannot reasonably be used by Lessee.

13. Surrender of Leased Premises. Upon abandonment, termination, revocation or cancellation of this Lease or the surrender of occupancy of any portion of or structure on the leased premises, the Lessee shall surrender the real property or portion thereof to Lessor in the same condition as the real property was on the date of possession, fair wear and tear excepted, except, that nothing in this lease shall be construed as to relieve Lessee of Lessee's affirmative obligation to surrender said premises in a condition which complies with all local, state or federal environmental laws, regulations and orders applicable at the time of surrender that was caused by Lessee or occurred during the term of this lease. Upon Lessor's written approval, Lessee may leave site improvements authorized by any land use or building permit. Lessee's obligation to observe and perform this covenant shall survive the expiration or the termination of the Lease.

- 14. Nonwaiver. Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice of the party’s right to require strict performance of the same provision in the future or of any other provision.
- 15. Default. Neither party shall be in default under this Lease until written notice of its unperformed obligation has been given and that obligation remains unperformed after notice for fifteen (15) days in the case of the payment or for thirty (30) days in the case of other obligations. If the obligation cannot be performed within the thirty-day period, there shall be no default if the responsible party commences a good faith effort to perform the obligation within such period and continues diligently to complete performance. In case of default the non-defaulting party may terminate this Lease with thirty (30) days' notice in writing to the defaulting party, shall be entitled to recover damages or any other remedy provided by applicable law, or may elect to perform the defaulting party's obligation. The cost of such performance shall be immediately recoverable from the defaulting party plus interest at the legal rate for judgment. If Lessee makes any such expenditures as the non-defaulting party, those expenditures may be applied to monthly rent payments(s).
- 16. Notices. Notices between the parties shall be in writing, effective when personally delivered to the address specified herein, or if mailed, effective 48 hours following mailing to the address for such party specified below or such other address as either party may specify by notice to the other:

Lessor: Deschutes County Property Management
 Attn: Property Manager
 14 NW Kearney Avenue
 Bend, Oregon 97701
 Phone: 541-385-1414
 Kristie.Bollinger@deschutes.org

Or, mail to:
 Deschutes County Property Management
 Attn: Property Manager
 P.O. Box 6005
 Bend, OR 97708

Lessee: Deschutes County Medical Examiner
 Attn: La’Nette Mason
 PO Box 6005
 Bend, Oregon 97708
 Phone: 541-728-1735
 Email: medical.examiner@deschutes.org

- 17. Assignment. Lessee shall not assign or sub-rent the premises without the prior written consent of the Lessor.
- 18. Attorneys’ Fees. In the event a suit or action of any kind is instituted on behalf of either party to obtain performance under this Lease or to enforce any rights or obligations arising from this Lease, each party will be responsible for paying its own attorney fees.

19. Authority. The signatories to this Agreement covenant that they possess the legal authority to bind their respective principals to the terms, provisions and obligations contained within this Agreement.

20. MERGER.

THIS LEASE CONSTITUTES THE ENTIRE LEASE BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS LEASE SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS LEASE. LESSOR, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT LESSOR HAS READ THIS LEASE, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be effective for all purposes as of the Effective Date.

LESSOR:

Dated this _____ of _____, 2023 BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

PATTI ADAIR, Vice Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner

[SIGNATURE PAGE FOLLOWS]

LESSEE:

Dated this 09 of OCTOBER, 2023


LA'NETTE MASON, Chief Medicolegal
Death Investigator

MMSB 1st Floor

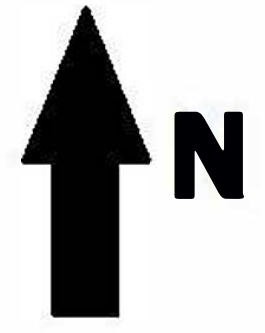
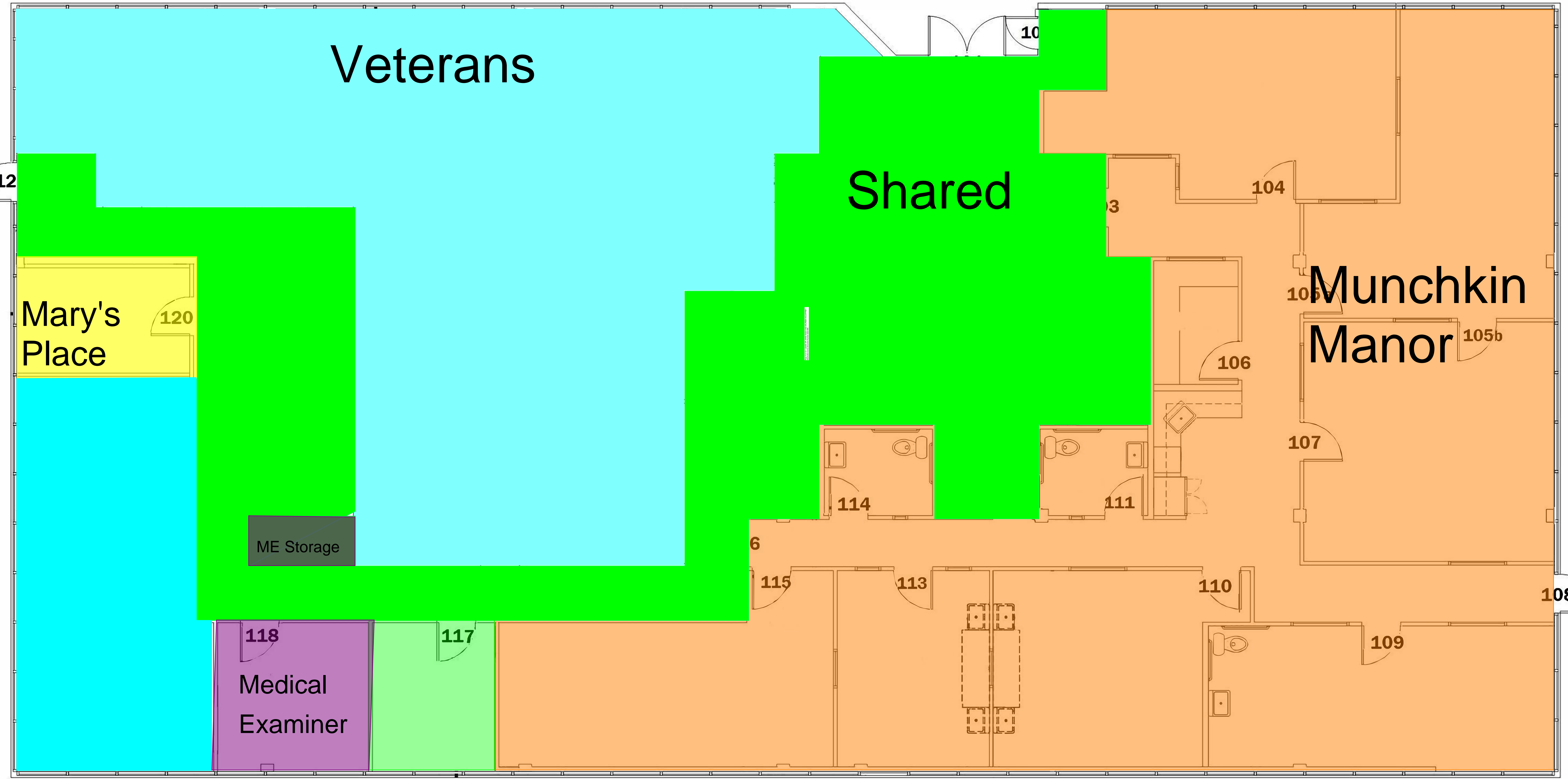


Exhibit A
Floor Plan



PROCLAMATION

DESCHUTES COUNTY BOARD OF COMMISSIONERS

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

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

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

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

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

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

DOMESTIC VIOLENCE AWARENESS MONTH

in Deschutes County.

DATED this _____ day of _____, 2023.

ANTHONY DEBONE, CHAIR

PATTI ADAIR, VICE CHAIR

PHIL CHANG, COMMISSIONER



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: October 18, 2023

SUBJECT: Public Hearing and first reading of Ordinance No. 2023-022, amending Deschutes County Code section 6.12

RECOMMENDED ACTION:

First, hold a public hearing to take testimony on the recommended amendments. Thereafter, move approval of first reading (by title only) of Ordinance No. 2023-022.

BACKGROUND AND POLICY IMPLICATIONS:

The Deschutes County Sheriff's Office reached out to County Legal and asked if Deschutes County Code section 6.12 could be amended to clarify the required conditions for chickens to be treated as "livestock" for purposes of County Code. The proposed amendment (section 6.12.020) was reviewed by the Dog Board with no objection or opposition.

BUDGET IMPACTS:

None

ATTENDANCE:

Legal

REVIEWED
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Title 6.12, Livestock Kills, *
of the Deschutes County Code. * ORDINANCE NO. 2023-022
*

WHEREAS, the Deschutes County Code (DCC) contains rules and regulations duly enacted through ordinance by Deschutes County and the Deschutes County Board of Commissioners; and

WHEREAS, from time-to-time the need arises to make amendments, including new enactments to the DCC; and

WHEREAS, staff from the Sheriff's Office have identified a need to amend DCC 6.12 to further define domesticated fowl as livestock; and

WHEREAS, the Board of County Commissioners of Deschutes County considered this matter at a duly noticed Board meeting on October 18, 2023, and determined that DCC 6.12 should be amended; now therefore,

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

Section 1. AMENDMENT. DCC 6.12 is amended to read as described in Exhibit "A," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strike~~through.

Section 2. ADOPTION. This Ordinance takes effect 90 days after second reading.

///

Dated this _____ of _____, 2023

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DeBONE, Chair

PATTI ADAIR, Vice Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner

Date of 1st Reading: 18th day of October, 2023.

Date of 2nd Reading: 1st day of November, 2023.

<u>Commissioner</u>	<u>Yes</u>	<u>No</u>	<u>Record of Adoption Vote</u>	
			<u>Abstained</u>	<u>Excused</u>
Patti Adair				
Phil Chang				
Anthony DeBone				

Effective date: 1st day of February, 2024.

EXHIBIT A

(To Ordinance 2023-022)

CHAPTER 6.12 LIVESTOCK KILLS

- [6.12.010 Definitions](#)
- [6.12.012 Definition; Animal Control Officer](#)
- [6.12.015 Definition; Board](#)
- [6.12.018 Definition; Chasing](#)
- [6.12.019 Definition; Injury, Injures Or Injuring](#)
- [6.12.020 Definition; Livestock](#)
- [6.12.025 Definition; Domesticated Fowl](#)
- [6.12.030 Killing, Wounding Or Injuring Livestock; Nuisance](#)
- [6.12.040 Harboring Of Livestock Killing Dogs Prohibited](#)
- [6.12.050 Killing, Wounding, Injuring Or Chasing Livestock; Evidence](#)
- [6.12.060 Hearing](#)
- [6.12.065 Payment Of Costs And Penalties; Liens](#)
- [6.12.070 Killing, Wounding Or Injuring Of Livestock; Disputable Presumption](#)
- [6.12.080 Owner Of Livestock; Damage Claims](#)
- [6.12.090 Damage Claims Hearing](#)
- [6.12.100 Damage Claims; Collection](#)
- [6.12.110 Civil Right Of Action](#)
- [6.12.120 Microchip Identification Of Dog](#)
- [6.12.130 Release Of Dog Found To Have Harmed Domesticated Fowl](#)

6.12.010 Definitions

As used in DCC 6.12, the words and phrases are defined as set forth in DCC 6.12.012 through DCC 6.12.025.

HISTORY

*Adopted by Ord. [95-031](#) §1 on 5/17/1995
Amended by Ord. [2012-015](#) §1 on 10/3/2012*

6.12.012 Definition; Animal Control Officer

"Animal control officer" means the Deschutes County Animal Control Officer or any Deschutes County Sheriff's Deputy performing the functions of the Deschutes County Animal Control Officer.

HISTORY

Adopted by Ord. [97-011](#) §1 on 3/19/1997

6.12.015 Definition; Board

"Board" means the board of supervisors, as defined under DCC 2.50.

HISTORY

*Adopted by Ord. [90-019](#) §1 on 6/6/1990
Amended by Ord. [95-014](#) §1 on 3/29/1995*

6.12.018 Definition; Chasing

"Chasing" means causing livestock to move from a place or remain in a place involuntarily.

HISTORY

Adopted by Ord. [97-011](#) §1 on 3/19/1997

6.12.019 Definition; Injury, Injures Or Injuring

“Injury, injures or injuring” means abrasion or laceration of skin or hide, fracture of bones, impairment of normal gait, and aborting of fetus.

HISTORY

Adopted by Ord. [97-011](#) §1 on 3/19/1997

6.12.020 Definition; Livestock

“Livestock” means ratiites, psittacines, horses, mules, jackasses, cattle, llamas, alpacas, sheep, goats, and swine. For purposes of this section 6.12 of the Deschutes County Code, “Livestock” also includes; domesticated fowl, and any fur-bearing animal bred and maintained commercially provided that the domesticated fowl or fur-bearing animal bred and maintained commercially is located wholly on private property that is not also the premises of subject dog(s) owner or keeper. or otherwise within a pen, cage or hutch.

HISTORY

Adopted by Ord. [90-019](#) §1 on 6/6/1990

Amended by Ord. [2012-015](#) §1 on 10/3/2012

Amended by Ord. [2020-005](#) §1 on 1/1/2021

Amended by Ord. [2023-022](#) §1 on 11/1/2023

6.12.025 Definition; Domesticated Fowl

“Domesticated Fowl” means chickens, geese, ducks, peafowl, guinea fowl and turkeys.

HISTORY

Adopted by Ord. [2012-015](#) §1 on 10/3/2012

6.12.030 Killing, Wounding Or Injuring Livestock; Nuisance

- A. Except as provided in DCC 6.12.030(C), any dog, whether licensed or not, that, while off the premises of its owner or keeper, kills, wounds, or injures any livestock not belonging to the owner or keeper of such dog, is a public nuisance and may be killed immediately by any person. However, nothing in DCC 6.12.030 applies to any dog acting under the direction of its owner or keeper, or the agents or employees of such owner or keeper.
- B. If any dog, not under the control of its owner or keeper, is found feeding upon the warm carcass of livestock not the property of such owner or keeper it shall be deemed prima facie, as engaged in killing, wounding or injuring livestock for purposes of this section 6.12.030.
- C. No person shall kill any dog for killing, wounding or chasing chickens upon a public place, highway or within the corporate limits of any city.
- D. Violation of DCC 6.12.030 shall be a class B violation.

HISTORY

Adopted by Ord. [90-019](#) §1 on 6/6/1990
Amended by Ord. [95-031](#) §1 on 5/17/1995
Amended by Ord. [2012-015](#) §1 on 10/3/2012
Amended by Ord. [2020-005](#) §1 on 1/1/2021

6.12.040 Harboring Of Livestock Killing Dogs Prohibited

- A. No person shall own, harbor, or keep any dog with knowledge that it has killed or wounded any livestock except as permitted by the Board, a court of competent jurisdiction, or pursuant to adoption or relocation of the dog as approved by the County or its designee.
- B. Notwithstanding the foregoing, no person shall be liable for harboring or keeping such dog with knowledge that it has killed or wounded domesticated fowl, unless the owner fails to pay full damages for the domesticated fowl killed or wounded within three days after receipt of a demand for such damages from the owner.
- C. Violation of DCC 6.12.040 shall be a class B violation.

HISTORY

Adopted by Ord. [90-019](#) §1 on 6/6/1990
Amended by Ord. [95-031](#) §1 on 5/17/1995
Amended by Ord. [2012-015](#) §1 on 10/3/2012
Amended by Ord. [2020-005](#) §1 on 1/1/2021

6.12.050 Killing, Wounding, Injuring Or Chasing Livestock; Evidence

- A. Upon observing a dog engaged in killing, wounding, injuring or chasing livestock or upon receipt from a complainant of a written complaint supported by evidence that a dog has been so engaged, the dog control officer or other law enforcement officer shall impound the dog.
 - 1. The written complaint referenced in subsection (A), above, shall be made on a form prepared by the Deschutes County Sheriff’s Office.
 - 2. Such form shall clearly state that:
 - a. The complaint is made upon declaration of the complainant of the truth of the statements contained therein, and
 - b. If the dog is ultimately determined to have not engaged in chasing, killing, injuring or wounding livestock, the complainant may be liable for the impoundment fee and/or the costs of keeping and testing the dog pursuant to DCC 6.12.060(B).
- B. If there is reason to believe that reasonable testing of a dog impounded pursuant to DCC 6.12.050(A), including, but not limited to, a fecal examination or examination of the teeth of the dog, will provide substantial further evidence as to whether the dog has been engaged in killing, wounding, injuring or chasing livestock, the County may order administration of tests by a licensed veterinarian.

- C. The decision whether to order any such testing shall be wholly within the discretion of the County, and the County’s failure to order such testing shall not be considered as evidence by the Board.

HISTORY

Adopted by Ord. [90-019](#) §1 on 6/6/1990

Amended by Ord. [95-031](#) §1 on 5/17/1995

Amended by Ord. [2012-015](#) §1 on 10/3/2012

6.12.060 Hearing

- A. If a dog is impounded pursuant to DCC 6.12.050, the owner or keeper of the dog shall be entitled to a hearing as follows:
 - 1. At the time the dog is impounded, or as soon as practicable thereafter, the County shall provide the dog’s owner or keeper notice of the right to request a hearing before the Board.
 - 2. Notice of the right to request a hearing shall be provided in a manner reasonably calculated, under all the circumstances, to apprise the owner or keeper of the specific behavior and incident alleged and the possible penalties, and to provide the owner or keeper with a fair opportunity for making the hearing request.
 - 3. A dog’s owner or keeper shall cause a hearing request to be delivered to the County not later than the 14th day after notice is provided under subsection (A)(1), above.
 - 4. If the owner or keeper does not make a timely request for hearing, the owner or keeper may be conclusively presumed to have admitted the matter alleged and the County may immediately take action under subsection (C), below.
 - 5. If the dog’s owner or keeper timely request hearing, the Board shall schedule a hearing for the first reasonably available date.
 - a. The owner or keeper of a dog shall be provided with notice of the hearing not less than three days prior to the hearing.
 - b. If the owner or keeper of the dog cannot be found, notice shall be given by mailing a certified or registered letter to the owner’s or keeper’s last known address at least five days before the date of the hearing, or, if no last known address is known to the County, by publication at least five days before the date of the hearing.
 - c. If the County has ordered that the dog be tested under DCC 6.12.050(B), the hearing shall be convened after completion of those tests.
 - 6. The owner shall be afforded the opportunity to present evidence to the Board during such hearing. Other individuals may present evidence at the hearing. The owner or keeper of the dog shall have a final opportunity to rebut any evidence submitted by others and shall be entitled to cross examine witnesses.

7. The hearing conducted by the Board pursuant to DCC 6.12.060 shall be informal and open to the public.
 8. All relevant evidence shall be considered by the Board.
 9. The Board may establish reasonable parameters for the conduct of the hearing to ensure an orderly and complete presentation of the evidence. The Board, on reasonable grounds, shall continue the hearing to allow the owner or keeper of a dog sufficient opportunity to prepare a defense.
 10. The person presiding at the hearing shall ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary to determine the matter alleged.
 11. A determination made by the Board shall be supported by reliable, probative and substantial evidence.
- B. If, after hearing, the Board determines that the dog has not engaged in killing, wounding, injuring or chasing livestock, the dog shall be released to its owner. In such cases, if the dog was impounded upon receipt of a complaint from a complainant, the complainant may be required to pay the impoundment fee and/or the costs of keeping and testing of the dog during its impoundment.
- C. If, after hearing, the Board determines that a dog has engaged in killing, wounding, injuring or chasing livestock, the Board shall take action in accordance with the following guidelines:
1. If the dog has engaged in chasing livestock and has not previously killed, wounded, injured or chased livestock:
 - a. The Board shall take reasonable measures to prevent a recurrence. Reasonable measures include, but are not limited to, requiring that the dog owner take specific measures to adequately confine the dog and provide a notarized written pledge that the owner will prevent the dog from chasing livestock again; and
 - b. The Board may impose a civil penalty of not more than \$500.
 2. If the dog has engaged in chasing livestock and has previously killed, wounded, injured or chased livestock, or if the dog has engaged in wounding or injuring livestock and has not previously killed, wounded, injured or chased livestock, the Board shall impose a civil penalty of not less than \$250 and not more than \$1,000.
 3. In addition to imposing the civil penalty, the board may:
 - a. Require the dog owner to surrender the dog for adoption by a new owner approved by the Board; or
 - b. Require the owner to remove the dog to a location where, in the opinion of the Board, the dog does not present a threat to livestock; or require that the dog be put to death in a humane manner.

4. Before requiring that a dog be put to death under this subparagraph, the Board shall make specific findings on the record that other measures are not available, are not adequate to remedy the problem or are otherwise unsuitable.
 5. If the dog has engaged in wounding or injuring livestock and has previously killed, wounded, injured or chased livestock, or if the dog has engaged in killing livestock and has not previously killed livestock, the Board shall impose a civil penalty of not less than \$500 and not more than \$1,000.
 6. In addition to imposing the civil penalty, the Board shall:
 - a. Require the dog owner to remove the dog to a location where, in the opinion of the Board, the dog does not present a threat to livestock; or
 - b. Require that the dog be put to death in a humane manner.
 7. If the dog has engaged in killing livestock and the dog has previously killed livestock, the Board shall impose a civil penalty of not less than \$500 and not more than \$1,000.
 8. In addition to imposing the civil penalty, the Board shall require that the dog be put to death in a humane manner.
 9. In establishing the history of a dog for purposes of this section, or the history of an owner for purposes of ORS 609.163, the Board shall consider all known determinations involving the dog or owner by any court, or by a governing body, official or agency of any local or state government, without regard to where or when the incident occurred.
- D. Notwithstanding any civil penalty imposed upon a dog's keeper or owner under this section, the owner or keeper of a dog that is determined to have chased, injured, wounded or killed livestock shall be responsible for paying the impoundment fee, the cost of implanting a microchip pursuant to 6.12.120, and all costs of keeping and testing the dog during the impounding.
- E. In lieu of payment of a penalty under DCC 6.12.060(C), the Board may consider a petition of indigence and all other relevant circumstances and allow credit for community service at a rate of \$10 per hour for each hour of community service performed. However, credit for community service shall not be allowed with regard to payment of the impoundment fee, the costs of microchip implantation, or the costs of keeping and testing the dog.
- F. Notwithstanding DCC 6.16.010, a dog impounded pursuant to DCC 6.16.060(A) or DCC 6.16.060(C) shall not be released until a determination is made by the Board pursuant to DCC 6.12.060.
- G. The County shall notify the dog's owner or keeper and the livestock owner of its determination and of any civil penalties or other measures imposed, by delivering or mailing a copy of the Board's written decision to the dog's owner or keeper and the livestock owner.

HISTORY

Adopted by Ord. [90-019](#) §:1 on 6/6/1990

Amended by Ord. [95-031](#) §1 on 5/17/1995

Amended by Ord. [97-011](#) §1 on 3/19/1997

Amended by Ord. [2002-036](#) §1 on 11/13/2002

Amended by Ord. [2012-015](#) §1 on 10/3/2012

6.12.065 Payment Of Costs And Penalties; Liens

- A. When the Board assesses any civil penalty, costs and/or fees against a complainant or a dog’s owner or keeper under DCC 16.12.060, if the full amount of the financial obligation is not paid within 21 days after delivery or mailing of the Board’s determination the County may record the obligation with the county clerk of any county of this state.
 - 1. The County Clerk shall thereupon record in the County Clerk Lien Record the name of the person incurring the obligation.
 - 2. The County Clerk shall not record an obligation while a request for Board of County Commissioner reconsideration or a petition for judicial review is pending.
 - 3. Immediately upon receipt, Deschutes County Legal Counsel shall provide the County Clerk with a copy of any reconsideration or petition for judicial review.
- B. In addition to any other remedy provided by law, recording an obligation in the County Clerk Lien Record pursuant to this section has the effect provided for in ORS 205.125 and 205.126, and can be enforced as provided in ORS 205.125 and ORS 205.126.
- C. When a civil penalty is assessed against a dog’s owner under this section, the county shall supply the State Department of Agriculture (“Department”) with information identifying the dog owner on forms provided by the Department for this purpose.

HISTORY

Adopted by Ord. [2012-015](#) §1 on 10/3/2012

6.12.070 Killing, Wounding Or Injuring Of Livestock; Disputable Presumption

A disputable presumption shall arise that a dog has been engaged in killing, wounding, injuring or chasing livestock within the meaning of DCC 6.12.050 if:

- A. The dog is found chasing livestock not the property of the owner or keeper of the dog in an area where freshly damaged livestock are found;
- B. The dog is found feeding upon a warm carcass of a livestock animal;
- C. An examination of the dog's feces indicates ingestion of portions or covering of the anatomy of livestock; or
- D. Portions of the anatomy or covering of the anatomy of livestock is found on the teeth of the dog, unless the dog is regularly used for the purpose of herding sheep.

HISTORY

Adopted by Ord. [90-019](#) §1 on 6/6/1990

Amended by Ord. [95-013](#) §1 on 3/29/1995

6.12.080 Owner Of Livestock; Damage Claims

- A. The owner of any livestock killed, wounded, chased or injured by any dog may, within ten (10) days after the killing, wounding, chasing or injuring occurred, or became known to him, present to the Board a verified statement containing a full account of the incident, stating in detail the amount of damage claimed on account thereof, and the name and address of the owner or keeper of the dog, if known.
- B. The livestock owner’s claim shall be supported by the affidavit of at least one disinterested person to all material facts contained in it. The affidavit shall be submitted to the Board at the same time as the verified statement.

HISTORY

Adopted by Ord. [90-019](#) §1 on 6/6/1990

Amended by Ord. [95-031](#) §1 on 5/17/1995

Amended by Ord. [2012-015](#) §1 on 10/3/2012

6.12.090 Damage Claims Hearing

- A. All claims presented as provided by DCC 6.12.080 shall be heard promptly.
- B. If the Board determines that any livestock has been damaged by being injured, chased, wounded or killed, the Board may award the livestock owner compensation for such damage in an amount not to exceed a total of \$100.00.
- C. The Board shall state on the record the basis for its award, and shall order a warrant drawn for the amount of damages awarded, to be paid by the County Treasurer out of the dog fund.
- D. If the Board determines the claim unjust, it shall disallow it and enter that fact upon its record.
- E. No claim for damages shall be allowed where it appears that the injury or damage complained of was caused by a dog owned or controlled by the claimant or his agent.

HISTORY

Adopted by Ord. [90-019](#) §1 on 6/6/1990

Amended by Ord. [95-014](#) §2 on 3/29/1995

Amended by Ord. [95-031](#) §1 on 5/17/1995

Amended by Ord. [2012-015](#) §1 on 10/3/2012

6.12.100 Damage Claims; Collection

- A. In each case where a claim against the dog fund has been paid by the County, the County shall be subrogated to all the rights of the owner of the livestock killed, wounded, chased or injured against the owner of the dog for damages, and may proceed in a lawful way to collect any amount paid.
- B. Any money so collected shall be paid over immediately to the County Treasurer and credited to the dog fund.

HISTORY

Adopted by Ord. [90-019](#) §1 on 6/6/1990

Amended by Ord. [95-031](#) §1 on 5/17/1995
Amended by Ord. [2012-015](#) §1 on 10/3/2012

6.12.110 Civil Right Of Action

Nothing in DCC 6.12 shall be construed to prohibit a livestock owner from pursuing civil redress for the injury or death of livestock through any other available means, including, but not limited to, a civil court action for damages.

HISTORY

Adopted by Ord. [97-011](#) §1 on 3/19/1997

6.12.120 Microchip Identification Of Dog

- A. When a dog is determined to have chased, injured, wounded or killed any livestock under DCC 6.12.060, the County shall require that a microchip be implanted into any such dog that is not put to death. Implantation shall be done prior to release, relocation or adoption of the dog.
- B. The dog’s owner or keeper shall be responsible for paying the reasonable costs of such implementation.
- C. The County shall forward the microchip information to the State Department of Agriculture.

HISTORY

Adopted by Ord. [2012-015](#) §1 on 10/3/2012

6.12.130 Release Of Dog Found To Have Harmed Domesticated Fowl

- A. Notwithstanding DCC 6.12.060(C), a dog found to have killed domesticated fowl may be released back to its owner or keeper if the Board finds by a preponderance of the evidence that:
 - 1. The livestock owner did not make reasonable efforts, under all of the circumstances, to protect the fowl from predation;
 - 2. The dog’s owner or keeper made reasonable efforts, under all of the circumstances, to maintain the dog on the owner’s or keeper’s property;
 - 3. The dog has not previously engaged in chasing, injuring, wounding or killing any livestock; and
 - 4. The dog’s owner or keeper will take necessary measures to prevent a reoccurrence.
- B. This section shall not exempt the dog’s owner or keeper from paying a civil penalty, taking necessary measures to prevent a reoccurrence, or satisfying any other obligations reasonably imposed upon the owner or keeper under DCC Chapter 6.12, which obligations may be imposed as a condition to release of the dog.
- C. In addition to any other penalties, fees or obligations imposed upon a dog owner under this subsection, the Board may order that the dog owner pay reasonable compensation to the livestock owner for the domesticated fowl killed, and may make payment of such compensation a condition to release of the dog.

HISTORY

Adopted by Ord. [2012-015](#) §1 on 10/3/2012

Amended by Ord. [2014-019](#) §1 on 6/30/2014



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: October 18, 2023

SUBJECT: Road Dedication –Fryrear Butte Road

RECOMMENDED MOTION:

Move approval of Board signature of Document No. 2023-097 accepting the dedication of a portion of Fryrear Butte Road for roadway and utility purposes.

BACKGROUND AND POLICY IMPLICATIONS:

The applicant, Desert Springs Ranch Limited Partnership, requests approval to dedicate a segment of Fryrear Butte Road extending through Tax Lots 1000 and 1200 (County Assessor's Map 15-11-17) and Tax Lot 3303 (County Assessor's Map 15- 11-00) for roadway and utility purposes.

BUDGET IMPACTS:

None

ATTENDANCE:

Haleigh King – Associate Planner



MEMORANDUM

TO: Board of County Commissioners

FROM: Haleigh King, Associate Planner

DATE: October 9, 2023

RE: Road Dedication – 247-23-000438-RD / Fryrear Butte Road

The Board of County Commissioners (Board) will consider whether to accept or reject a road dedication declaration on October 18, 2023 for the extension of Fryrear Butte Road across three tax lots (“Subject Property”) as shown on the attached map. The Board conducted a Work Session on this item on October 16, 2023.

To formalize a road dedication, as prescribed in Deschutes County Code (DCC), the Board is required to review an applicant’s proposal and make a determination to accept or reject the declaration of dedication within 120 days after the application is deemed complete. Staff calculates the 120th day upon which the Board shall make a determination as October 27, 2023. Document number 2023-907 has been prepared for the proposed dedication.

I. BACKGROUND

The Deschutes County Planning Division approved a road dedication application (see attached decision), submitted by the property owners, Desert Springs Ranch LP, for the extension of Fryrear Butte Road in order to provide road frontage for landlocked parcels. The property owner does not plan to construct the road at this time. Staff reviewed this application and found that it met applicable criteria¹ in DCC subject to the following conditions:

- A.** This approval is based upon the application, site plan, specifications, and supporting documentation submitted by the applicant. Any substantial change in this approved use will require review through a new land use application.

¹ DCC, Title 17, Subdivision, Chapter 17.52, Road Dedications; Title 18, Zoning, Chapters 18.16, Exclusive Farm Use Zone; 18.116, Supplementary Provisions; 18.128, Conditional Use; and Title 22, Development Procedures.

- B.** The dedication area shall consist of a 60 ft.-wide strip of land pursuant to DCC 17.48.100 with an alignment generally as depicted in the application materials.
- C.** All persons with an ownership interest in the properties subject to the road dedication shall sign the declaration of dedication. The applicant shall submit a current title report or subdivision guarantee verifying ownership of the properties prior to acceptance as a public road.
- D.** Per Deschutes County Code (DCC) Chapter 17.52.090:
 - The applicant shall submit a declaration of dedication for final action. The declaration of dedication shall include a legal description of the land to be dedicated. Upon receipt of the declaration of dedication, staff will schedule a meeting with the Board of County Commissioners to review the declaration of dedication for acceptance or rejection.
 - Upon the meeting of the Board to take final action on the road dedication, the applicant shall provide the Board with a supplemental or amended report to the preliminary title report submitted with the application. The supplemental or amended report shall show changes in the condition of title of the relevant property from the date of the preliminary title report up to and including the time immediately preceding the Board meeting.
 - Upon acceptance of the dedication deed by the Board of County Commissioners, Applicant shall immediately cause for the recording of the dedication deed in the Official Records at the Deschutes County Clerk’s Office pursuant to DCC 17.52.090(D).
 - Upon recording of the dedication deed, Applicant shall immediately cause for survey and monumentation of the new road right of way by a licensed professional land surveyor in accordance with ORS 209.250 and ORS 368.106.
- E.** Any public road created in this proposed road dedication under DCC 17.52 shall be designated as a local access road. Any new local access road will not be maintained by the County unless and until that right-of-way is established as an official County road.

As conditioned, the public road proposed with this dedication will be designated a local access road and will not be maintained by the County unless and until that right-of-way is established as an official County Road. The County Road Department coordinated with the applicant and provided conditions in the staff decision. No concerns were identified by the Road Dept. or the County Transportation Planner. Notice of the application and the decision was mailed to owners within 750 feet of the subject property. No public comments were received.

Per County policy, the Board reviews all road dedications to accept or reject the proposal. Therefore, this matter must be addressed in a public meeting.

II. STAFF RECOMMENDATION

There is one Deed of Dedication before the Board for signature to satisfy Condition D of the land use decision. Upon recording of the deed, Desert Springs Ranch LP shall cause for the newly-

dedicated right-of-way to be monumented and for a survey to be filed with the County Surveyor's Office by a professional land surveyor.

Staff recommends the Board move acceptance of and signature on Document No. 2023-097, a dedication declaration for the extension of Fryrear Butte Road.

ATTACHMENT(S):

1. Document No. 2023-097: Deed of Declaration and supporting documents
2. Preliminary Title Report
3. Findings and Decision for application no. 247-23-000438-RD

REVIEWED
LEGAL COUNSEL

After recording return to:
Deschutes County Road Dept.
61150 S.E. 27th Street
Bend, Oregon 97701

For Recording Stamp Only

DEED OF DEDICATION

DESERT SPRINGS RANCH, an Oregon limited partnership ("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 3d day of October, 2023.



Desert Springs Ranch, an Oregon limited partnership
By: Eric Vetterlein
Its: General Partner

STATE OF OREGON)
) SS.
County of Deschutes)

Before me, a Notary Public, personally appeared Eric Vetterlein and acknowledged the foregoing instrument on behalf of Desert Springs Ranch, an Oregon limited partnership.

Dated this 3rd day of October, 2023.



NOTARY PUBLIC FOR OREGON
My Commission Expires: Feb. 07. 2025



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 October, 2023.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, CHAIR

PATTI ADAIR, VICE CHAIR

ATTEST:

PHIL CHANG, COMMISSIONER

Recording Secretary

STATE OF OREGON)
) SS.
County of Deschutes)

Before me, a Notary Public, personally appeared Anthony DeBone, Patti Adair, and Phil Chang, 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 _____, 2023.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

EXHIBIT A

Fryrear Butte Road Dedication

A strip of land 60.00 feet in width, located in the West Half of the East Half of the Southwest Quarter (W1/2 E1/2 SW1/4) of Section 17 and the Northeast Quarter of the Northwest Quarter (NE1/4 NW1/4) of Section 20, Township 15 South, Range 11 East, Willamette Meridian, Deschutes County, Oregon, said strip of land lying 30.00 feet on each side of the following described centerline:

Commencing at the West One-Sixteenth (1/16) corner common to said Section 17 and said Section 20; thence along the West line of said Northeast Quarter of the Northwest Quarter (NE1/4 NW1/4) of Section 20 South 00°09'24" East 30.00 feet to the TRUE POINT OF BEGINNING; thence leaving said West line and along a line 30.00 feet Southerly and parallel with the North line of said Northeast Quarter of the Northwest Quarter (NE1/4 NW1/4) of Section 20 North 89°53'35" East 173.76 feet; thence leaving said parallel line North 03°57'20" East 1098.48 feet; thence North 71°07'29" West 195.50 feet to the Easterly centerline terminus of Fryrear Butte Road as dedicated in that certain Order recorded in Deschutes County Commissioners' Journal Volume 15, Page 331, the most Easterly tangent of which is collinear with the final tangent described in this dedication.


The sidelines of said strip of land shall be prolonged or shortened so as to terminate at said West line of said Northeast Quarter of the Northwest Quarter (NE1/4 NW1/4) of Section 20.

Containing 2.02 acres, more or less.

See attached Exhibit B, entitled "Fryrear Butte Road Dedication", which is made a part hereof.

10/2/2023

REGISTERED
PROFESSIONAL
LAND SURVEYOR

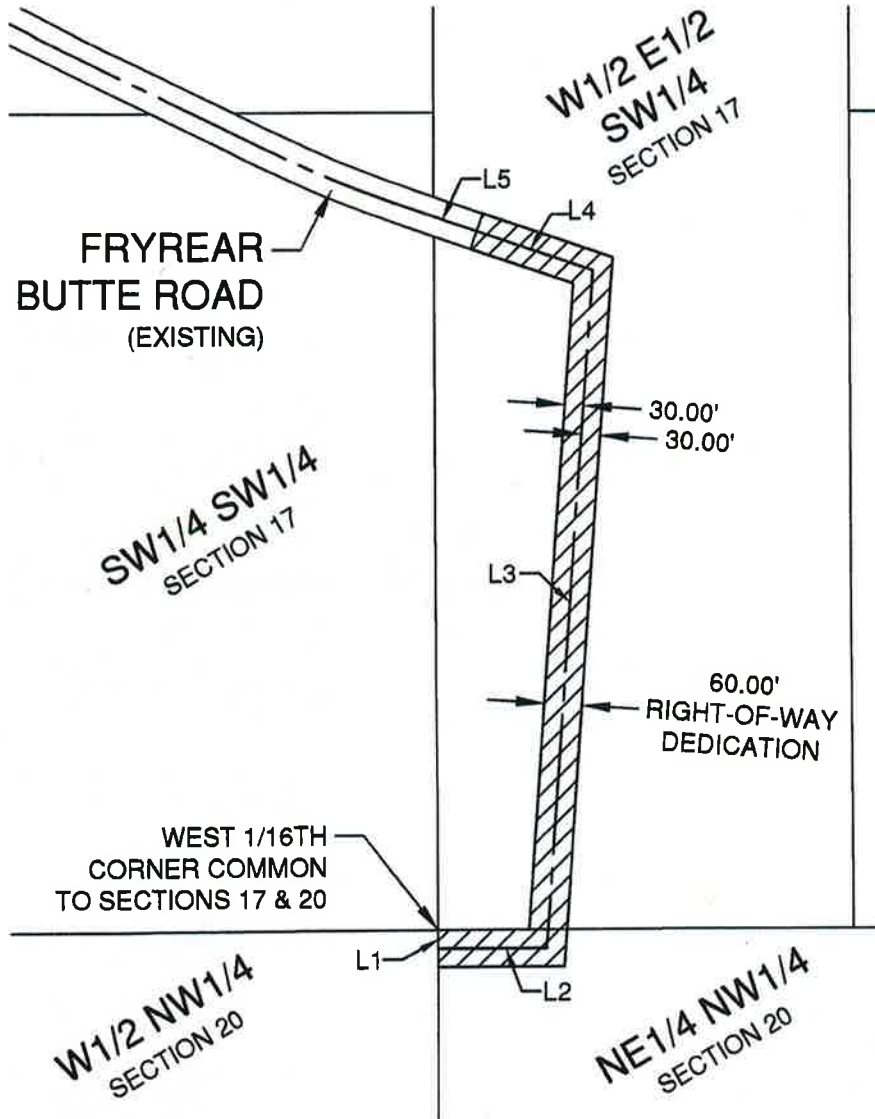


OREGON
MARCH 11, 2014
CHRISTOPHER R. MUNSON
80548PLS

RENEWS: 12/31/2024

EXHIBIT B FRYREAR BUTTE ROAD DEDICATION

LOCATED IN THE W1/2 E1/2 SW1/4 OF SECTION 17 AND THE
NE1/4 NW1/4 OF SECTION 20, TOWNSHIP 15 SOUTH, RANGE 11 EAST,
WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON



LINE TABLE		
LINE	BEARING	DISTANCE
L1	S0°09'24"E	30.00'
L2	N89°53'35"E	173.76'
L3	N3°57'20"E	1098.48'
L4	N71°07'29"W	195.50'
L5	S71°07'29"E	115.70'

NOTE: BEARINGS FOR THIS MAP ARE BASED ON THE DESCHUTES COUNTY SURVEYOR'S OFFICE CENTRAL OREGON COORDINATE SYSTEM (DESCHUTES13 TRANSFORMATION) AND THE NAD83(2011) EPOCH 2010.00 DATUM REALIZATION.

PREPARED BY:



Munson & Associates
civil engineers | land surveyors
845 NORTHEAST 11TH STREET
BEND, OREGON 97701



SCALE: 1" = 300'
DATE: 10/2/2023
W.O.#: 21-019

10/2/2023

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
MARCH 11, 2014
CHRISTOPHER R. MUNSON
80548PLS

RENEWS: 12/31/2024



AmeriTitle, LLC
15 Oregon Ave., Bend, OR 97703
PHONE (541)389-7711 FAX (541)389-0506

October 2, 2023
File Number: 610230AM
Report No.: 1
Title Officer: Tonya Vejar Email: tonya.vejar@amerititle.com

PRELIMINARY TITLE REPORT

Property Address: APN 133950; 1511000003303, Bend, OR 97703
APN 133952; 1511170001000, Bend, OR 97703

<u>Policy or Policies to be issued:</u>	<u>Liability</u>	<u>Premium</u>
OWNER'S STANDARD COVERAGE		
Endorsement: OTIRO 110 – No charge	TBD	\$200.00
Proposed Insured: TBD		

We are prepared to issue ALTA (07/01/21) title insurance policy(ies) of , in the usual form insuring the title to the land described as follows:

Legal description attached hereto and made a part hereof marked Exhibit "A"

and dated as of 26th day of September, 2023 at 7:30 a.m., title is vested in:

Desert Springs Ranch Limited Partnership, an Oregon limited partnership

The estate or interest in the land described or referred to in this Preliminary Title Report and covered herein is:

FEE SIMPLE

Except for the items properly cleared through closing, Schedule B of the proposed policy or policies will not insure against loss or damage which may arise by reason of the following:

GENERAL EXCEPTIONS:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Facts, rights, interests or claims which are not shown by the Public Records but which could be ascertained by an inspection of the Land or by making inquiry of persons in possession thereof.
3. Easements, or claims of easement, not shown by the Public Records; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
4. Any encroachment (of existing improvements located on the subject Land onto adjoining Land or of existing improvements located on adjoining Land onto the subject Land) encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the subject Land.
5. Any lien, or right to a lien, for services, labor, material, equipment rental, or workers compensation heretofore or hereafter furnished, imposed by law and not shown by the Public Records.

EXCEPTIONS 1 THROUGH 5 ABOVE APPLY TO STANDARD COVERAGE POLICIES AND MAY BE MODIFIED OR ELIMINATED ON AN EXTENDED COVERAGE POLICY.

SPECIAL EXCEPTIONS:

Tax Information:

Taxes assessed under Code No. 6012 [Account](#) No. 133950 [Map](#) No. 1511000003303
NOTE: The 2022-2023 Taxes: \$3.33, are Paid

Taxes assessed under Code No. 6012 [Account](#) No. 133952 [Map](#) No. 1511170001000
NOTE: The 2022-2023 Taxes: \$922.45, are Paid

6. The 2023-2024 Taxes: A lien not yet due or payable.
7. Taxes deferred, as disclosed by the tax roll, the premises herein described have been zoned or classified for farm use. At any time that said Land is disqualified for such use the property will be subject to additional taxes or penalties and interest.
8. Regulations, including levies, assessments, water and irrigation rights and easements for ditches and canals of Three Sisters Irrigation District.
(No inquiry has been made)
9. Right, title and interest of the public in and to those portions of the Land lying within roads, streets or highways.

10. An easement including the terms and provisions thereof, affecting the portion of said Land and for the purposes stated therein as set forth in instrument:
Granted To: Central Electric Cooperative, Inc.
Recorded: January 29, 1962
Instrument No.: [130/54](#)
As to Parcel II

The Effect, if any of Quit Claim Deed, including the terms and provisions thereof,
Recorded: April 16, 1982
Instrument No.: [355/932](#)

11. An easement including the terms and provisions thereof, affecting the portion of said Land and for the purposes stated therein as set forth in instrument:
Recorded: December 6, 1966
Instrument No.: [151/306](#)
As to Parcel II

12. An easement including the terms and provisions thereof, affecting the portion of said Land and for the purposes stated therein as set forth in instrument:
Recorded: February 15, 1967
Instrument No.: [152/178](#)
As to Parcel I

13. Covenants, conditions and restrictions, but omitting any covenant or restriction based on race, color, religion, sex, sexual orientation, disability, handicap, familial status, marital status, ancestry, national origin or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law.
Recorded: December 6, 1972
Instrument No.: [190/772](#)

Modification(s) of said covenants, conditions and restrictions
Recorded: September 22, 1989
Instrument No: [192/2013](#)

Modification(s) of said covenants, conditions and restrictions
Recorded: June 2, 2006
Instrument No: [2006-38491](#)

14. Power Line Easement, including the terms and provisions thereof,
Recorded: December 12, 2001
Instrument No.: [2001-61301](#)

Amended by Order No. 2006-093, including the terms and provisions thereof,
Recorded: June 8, 2006
Instrument No.: [2006-39710](#)

Amended by Order No. 2006-173, including the terms and provisions thereof,
Recorded: December 14, 2006
Instrument No.: [2006-81748](#)

15. Squaw Creek Irrigation District Order for the Creation of a Sub District, including the terms and provisions thereof,
Recorded: February 8, 2002
Instrument No.: [2002-07771](#)
As to Parcel I

16. Pipeline Easement, including the terms and provisions thereof,
Recorded: June 17, 2004
Instrument No.: [2004-35594](#)
17. Pipeline Easement, including the terms and provisions thereof,
Recorded: November 20, 2009
Instrument No.: [2009-49351](#)
As to Parcel I
18. An easement including the terms and provisions thereof, affecting the portion of said Land and for the purposes stated therein as set forth in instrument:
Granted To: Central Electric Cooperative Inc.
Recorded: June 10, 2015
Instrument No.: [2015-22594](#)
19. Pipeline Easement-2018 Modifications, including the terms and provisions thereof,
Recorded: February 27, 2018
Instrument No.: [2018-07798](#)
20. Declaration and Grant of Easement, including the terms and provisions thereof,
Recorded: August 11, 2022
Instrument No.: [2022-30886](#)

INFORMATIONAL NOTES:

- NOTE: Any map or sketch enclosed as an attachment herewith is furnished for information purposes only to assist in property location with reference to streets and other parcels. No representation is made as to accuracy and the company assumes no liability for any loss occurring by reason of reliance thereon.
- NOTE: Your application for title insurance was placed by reference to only a street address or tax identification number. Based on our records, we believe that the legal description in this report covers the parcel(s) of Land that you requested. If the legal description is incorrect, the parties to the transaction must notify the Company and/or the settlement company in order to prevent errors and to be certain that the correct parcel(s) of Land will appear on any documents to be recorded in connection with this transaction and on the policy of title insurance.
- NOTE: Due to current conflicts or potential conflicts between state and federal law, which conflicts may extend to local law, regarding marijuana, if the transaction to be insured involves property which is currently used or is to be used in connection with a marijuana enterprise, including but not limited to the cultivation, storage, distribution, transport, manufacture, or sale of marijuana and/or products containing marijuana, the Company declines to close or insure the transaction, and this Preliminary Title Report shall automatically be considered null and void and of no force and effect.

THIS PRELIMINARY TITLE REPORT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACTIONAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

This report is preliminary to the issuance of a policy of title insurance and shall become null and void unless a policy is issued and the full premium paid.

End of Report

"Superior Service with Commitment and Respect for Customers and Employees"

EXHIBIT "A"
LEGAL DESCRIPTION

Parcel I:

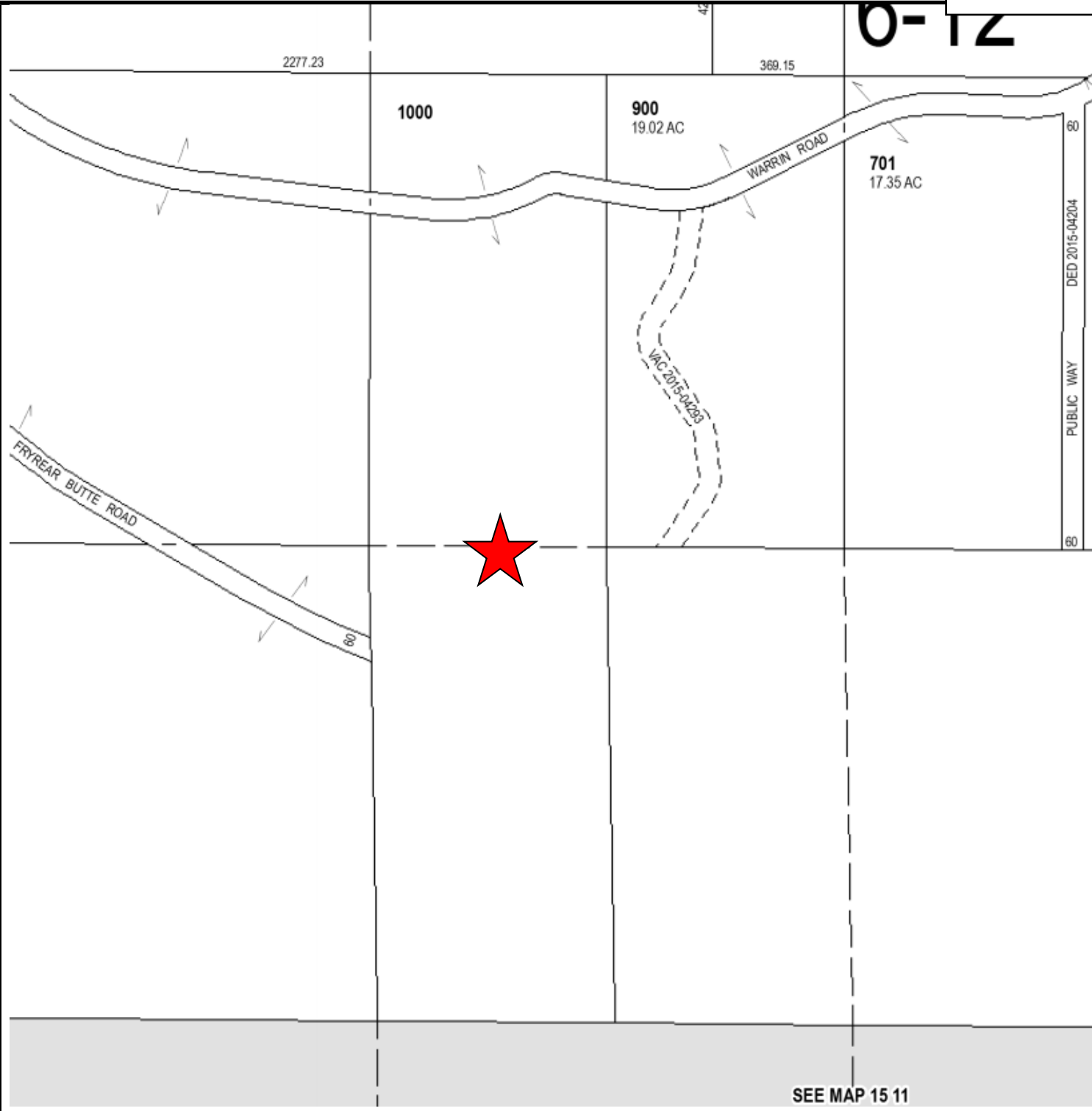
The East one half of the Northwest quarter of Section 20, Township 15 South, Range 11, East of the Willamette Meridian, Deschutes County, Oregon.

EXCEPTING therefrom those portions dedicated to the public in Instrument recorded June 9, 1983, in Book 16, Page 493, Deschutes County, Oregon

Parcel II:

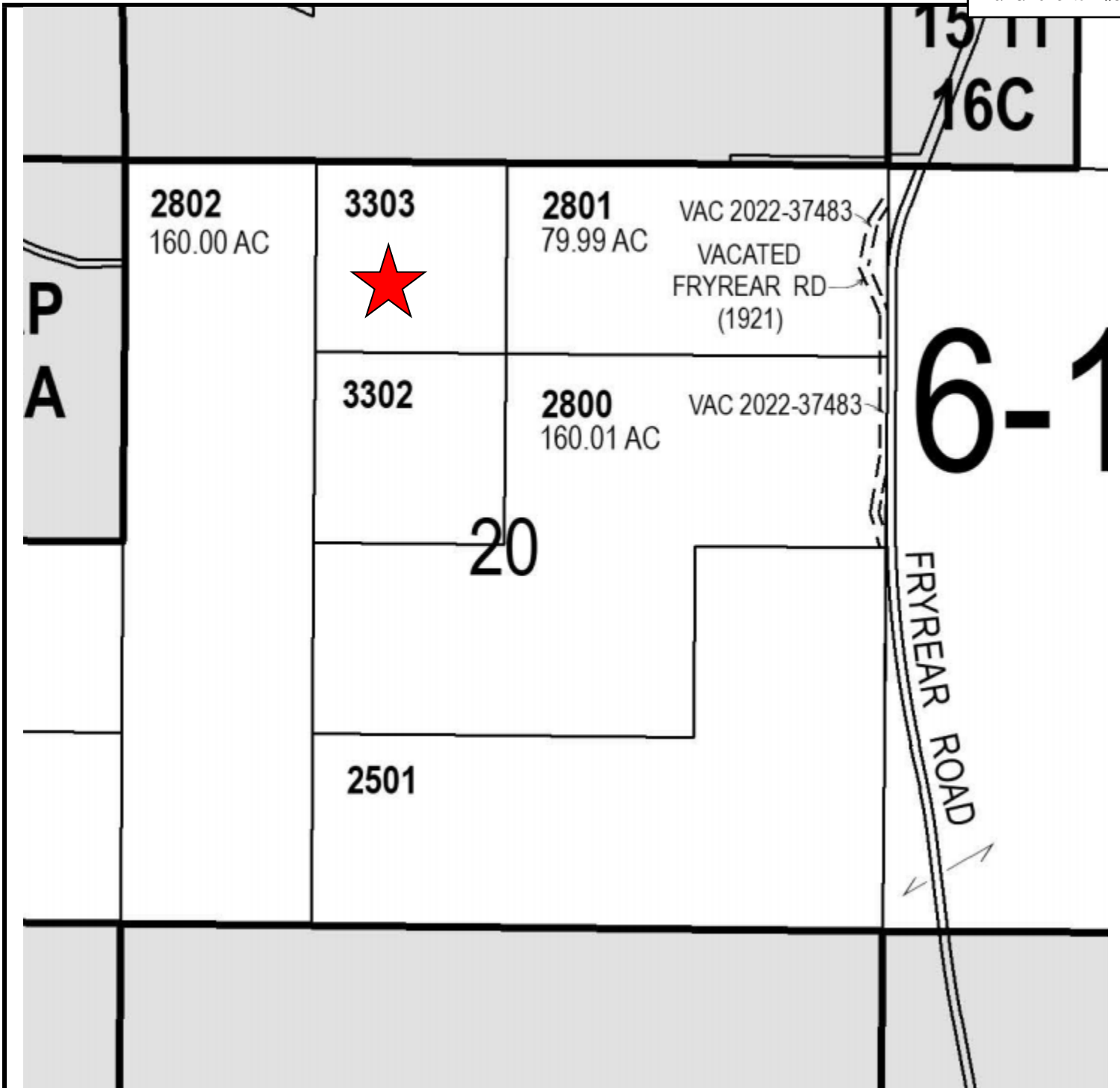
The West half of the East half of the Southwest quarter of Section 17, Township 15 South, Range 11, East of the Willamette Meridian, Deschutes County, Oregon.

0-12



APN 133950; 1511000003303
Bend, OR 97703

THIS MAP IS FURNISHED AS AN ACCOMMODATION STRICTLY FOR THE PURPOSES OF GENERALLY LOCATING THE LAND. IT DOES NOT REPRESENT A SURVEY OF THE LAND OR IMPLY ANY REPRESENTATIONS AS TO THE SIZE, AREA OR ANY OTHER FACTS RELATED TO THE LAND SHOWN THEREOF



APN 133950; 1511000003303
Bend, OR 97703

THIS MAP IS FURNISHED AS AN ACCOMMODATION STRICTLY FOR THE PURPOSES OF GENERALLY LOCATING THE LAND. IT DOES NOT REPRESENT A SURVEY OF THE LAND OR IMPLY ANY REPRESENTATIONS AS TO THE SIZE, AREA OR ANY OTHER FACTS RELATED TO THE LAND SHOWN THEREOF



COMMUNITY DEVELOPMENT

FINDINGS AND DECISION

FILE NUMBER: 247-23-000438-RD

**SUBJECT PROPERTY/
OWNER/APPLICANT:**

Mailing Name: DESERT SPRINGS RANCH LIMITED PARTNERSHIP
 Map and Taxlot: 1511000003303
 Account: 133950
 Situs Address: ****NO SITUS ADDRESS****

Mailing Name: DESERT SPRINGS RANCH LIMITED PARTNERSHIP
 Map and Taxlot: 1511170001200
 Account: 133968
 Situs Address: ****NO SITUS ADDRESS****

Mailing Name: DESERT SPRINGS RANCH LIMITED PARTNERSHIP
 Map and Taxlot: 1511170001000
 Account: 133952
 Situs Address: ****NO SITUS ADDRESS****

APPLICANT’S ATTORNEY: Myles Conway Law PC

REQUEST: The applicant requests approval to dedicate an additional segment of Fryrear Butte Road, extending through Tax Lots 1000 and 1200 (County Assessor’s Map 15-11-17) and Tax Lot 3303 (County Assessor’s Map 15-11-00) in the Exclusive Farm Use Zone (EFU).

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

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

I. APPLICABLE CRITERIA

Deschutes County Code (DCC)
 Title 17, Subdivision and Partition Ordinance
 Chapter 17.52, Road Dedications

Title 18, Deschutes County Zoning Ordinance:
Chapter 18.16, Exclusive Farm Use Zones (EFU)
Chapter 18.116, Supplementary Provisions
Chapter 18.128, Conditional Use
Title 22, Deschutes County Development Procedures Ordinance

II. BASIC FINDINGS

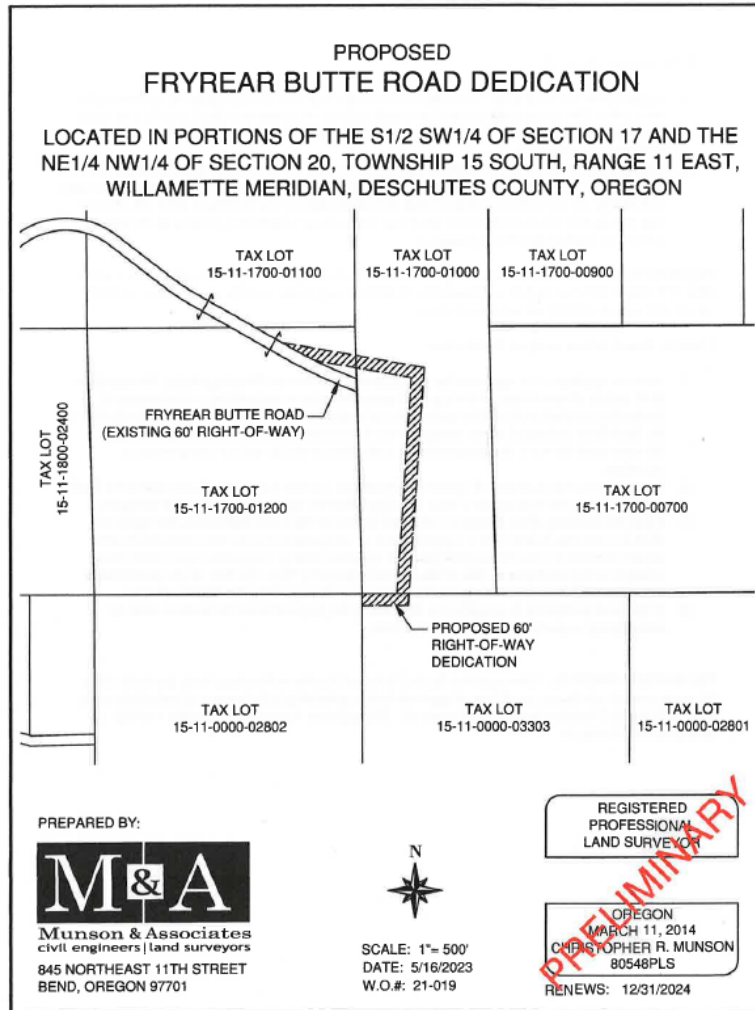
LOT OF RECORD: The three tax lots ("Subject Property") included in this application, Tax Lots 1000, 1200, and 3303, have each been verified as legal lots of record pursuant to County Land Use File Nos. 247-22-000600-LR, 599-LR, and 505-LR, respectively.

SITE DESCRIPTION: The applicant provided the following site description in their narrative:

Tax Lot 1200, County Assessor's Map 15-11-17 ("Tax Lot 1200") is an approximately 40-acre quarter-quarter section. The property is undeveloped and is bisected by the previously dedicated "Fryrear Butte Road". This property does not contain any water rights and is vegetated with juniper trees, sagebrush and native grasses. Tax Lot 1000, County Assessor's Map 15-11-17 ("Tax Lot 1000") lies to the east, does not contain any water rights and is vegetated with juniper trees, sagebrush and native grasses. Tax Lot 3303, County Assessor's Map 15-11-00 ("Tax Lot 3303") lies to the south and the affected portions of said lot are not irrigated and are vegetated with juniper trees, sagebrush and native grasses.

Staff agrees with this depiction of the subject property. The subject property also contains a 20-foot-wide, north-south Central Electric powerline easement located in the approximate center. As noted by the applicant, the subject property is undeveloped. The proposed Road Dedication is depicted in *Figure 1*, below.

Figure 1 – Proposed Road Dedication

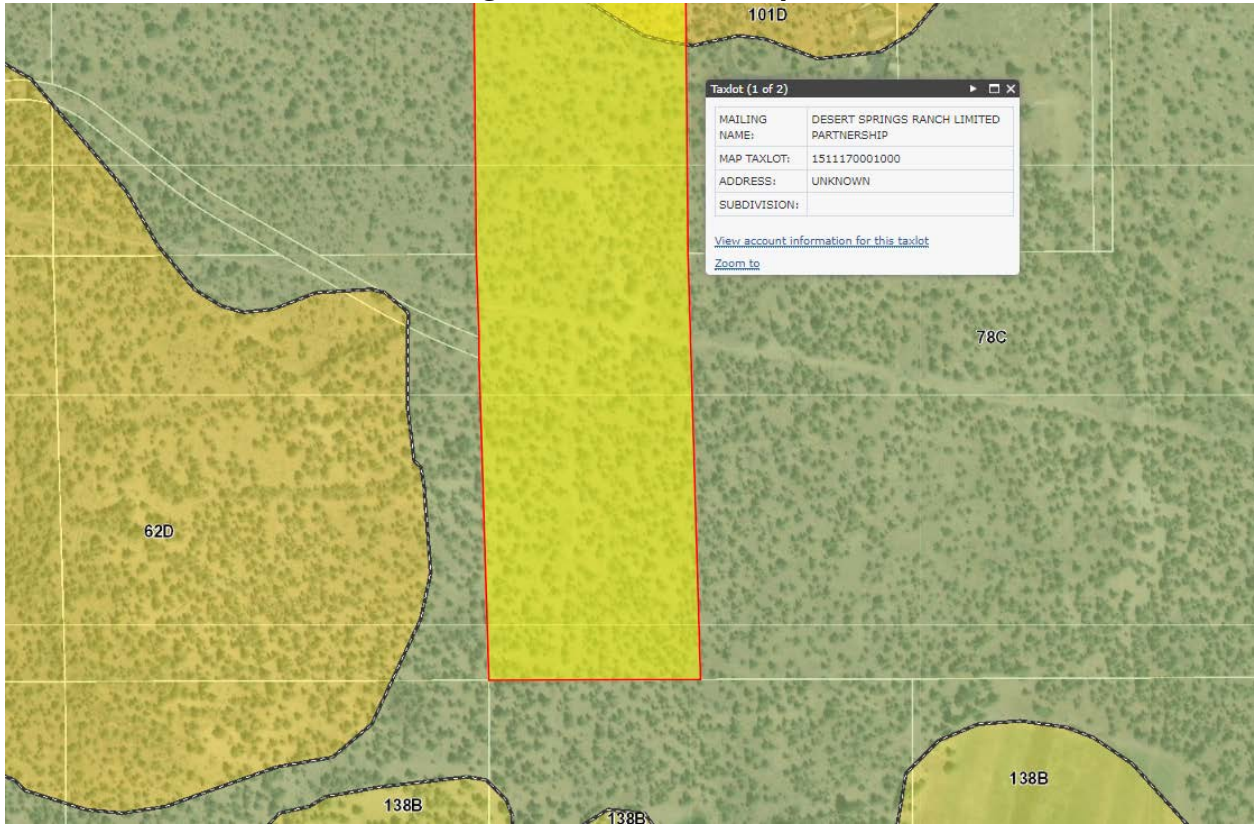


REVIEW PERIOD: The subject application was submitted on May 30, 2023 and deemed complete by the Planning Division on June 29, 2023. This is the date the application was deemed complete and accepted for review. Per Deschutes County Code (DCC) Chapter 17.52.090(B), staff calculates the 120th day on which the County must take final action on this application as October 27, 2023.

SURROUNDING LAND USES: Immediately surrounding properties to the north, west, east, and south are all EFU-zoned lots in similar sizes and shapes to the subject property. Properties to the northeast are developed with rural residential uses and are over 1,500 feet from the northern extent of the road dedication. Surrounding EFU-zoned property is generally vacant and contains juniper scrub woodland. There are some areas of irrigated fields to the west of Tax Lot 3303. The Forked Horn Estates residential subdivision, zoned Multiple Use Agriculture – 10 (MUA10) lies farther west with lots developed with single-family dwellings.

SOILS: According to the Natural Resources Conservation Service (NRCS) maps of the area, there is one soil unit mapped within the boundaries of the proposed right-of-way. See Figure 1 below:

Figure 2 – NRCS Soil Map



78C Lickskillet-Deschutes complex, 0 to 15 percent slopes: The agricultural capability rating for this soil is 6e/7e for nonirrigated and no rating for irrigated land. This soil is not considered high value farmland when irrigated.

PUBLIC AGENCY COMMENTS: The Planning Division mailed notice on June 13, 2023, to several public agencies and received the following comments:

Deschutes County Road Department, Cody Smith

I have reviewed the application materials for the above-referenced file number, proposing the dedication of a public right of way to provide for the extension of Fryrear Butte Road across Tax Lots 1000 and 1200 on County Assessor’s Map 15-11-17 and Tax Lot 3303 on County Assessor’s Map 15-11-00. The proposed right of way dedication will provide for public road frontage and connectivity to Tax Lot 2802 on County Assessor’s Map 15-11-00 to meet requirements under other pending land use applications (File Nos. 247-22-000372-MP and 247-22-000373-CU) for Tax Lot 4001 on County Assessor’s Map 15-11-00; all tax lots referenced herein are under the Applicant’s ownership. The application materials indicate that no road improvements are planned within the proposed dedication area. Road Department staff conclude that road surface improvement requirements are not warranted until such time as any tract of land abutting or accessed by the proposed right of way dedication is divided under applicable Deschutes County Code (DCC).

Deschutes County Road Department requests that approval of the proposed road dedication be subject to the following conditions:

- The dedication area shall consists of a 60 ft.-wide strip of land pursuant to DCC 17.48.100 with an alignment generally as depicted in the application materials.
- All parties with an ownership interest in the property subject to the road dedication shall execute a dedication deed pursuant to DCC 17.52.090(A). The dedication shall be granted to the public. The dedication deed shall be in a form acceptable to the Deschutes County Road Department pursuant to DCC 17.52.040 and shall include a legal description and exhibit map prepared by a licensed professional land surveyor.
- Applicant shall submit the executed dedication deed and a current preliminary title report for the proposed dedication to the Deschutes County Community Development Department pursuant to DCC 17.52.090(A) and (C). Upon final review and approval of the dedication deed by the Road Department, the Community Development Department shall present the dedication deed to the Board of County Commissioners for acceptance pursuant to DCC 17.52.090(B).
- Upon acceptance of the dedication deed by the Board of County Commissioners, Applicant shall immediately cause for the recording of the dedication deed in the Official Records at the Deschutes County Clerk’s Office pursuant to DCC 17.52.090(D).
- Upon recording of the dedication deed, Applicant shall immediately cause for survey and monumentation of the new road right of way by a licensed professional land surveyor in accordance with ORS 209.250 and ORS 368.106.

Deschutes County Senior Transportation Planner, Peter Russell, Tarik Rawlings

I have reviewed the transmittal materials for file 247-23-000438-RD to dedicate a 60-foot-wide right of way to extend Fryrear Butte Road through 15-11-17, Tax Lots 1000 and 1200 and 15-11-00, Tax Lot 15-11-00, Tax Lot 3303. Tax lots 1000 and 1200 are zoned Exclusive Farm Use (EFU) while 3300 is Multiple Use Agriculture (MUA-10). I have no adverse comments on the road dedications. I will defer to the Road Dept. to see if the two right angle curves are acceptable and comply with Deschutes County Code (DCC) 17.48.070 for horizontal curves. One is the right angle in the middle of Tax Lot 1000 where the Fryrear Butte Road dedication changes from west-east to a north-south orientation. The second is in the northeast corner of Tax Lot 3303 where the north-south orientation makes another 90-degree turn to an east-west alignment.

The following agencies did not respond to the notice: Deschutes County Assessor, Cloverdale Fire Department, Three Sisters Irrigation District.

PUBLIC COMMENTS: The Planning Division mailed notice of the application to all property owners within 750 feet of the subject property on June 13, 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 June 10, 2023. No public comments were received.

III. **FINDINGS & CONCLUSIONS**

Title 17, Deschutes County Subdivision Ordinance

Chapter 17.52. Road Dedications

Section 17.52.010. Purpose.

The purpose of DCC 17.52.010 is to establish procedures for the dedication of more than minor amounts of road right of way to the public where the dedication will not be reviewed as part of another land use application. Minor amounts of road right of way means rights of way no greater than those required for modernization, traffic safety improvement, maintenance or repair of an existing road or street. DCC 17.52.010 applies to road dedications which occur outside of urban growth boundaries in Deschutes County. DCC 17.52.010 requires that road dedications be reviewed for consistency with the Transportation Policies for new roads or major road modifications of the Comprehensive Plan.

FINDING: Staff has reviewed the proposal for consistency with the Transportation Policies for new roads or major road modifications of the Comprehensive Plan in subsequent findings.

Section 17.52.030. Application.

Any person proposing the dedication of more than minor amounts of road right of way, where the proposed dedication will not be reviewed as part of another land use application, shall submit a written application for a land use permit to the Planning Director. The land use permit application shall include a completed request form, a written burden of proof statement which indicates the proposal complies with the applicable criteria, a map showing the location of the land to be dedicated, a preliminary title report covering the land to be dedicated, and the appropriate filing fee.

FINDING: Staff finds the proposed dedication of the roadway constitutes more than a minor amount of road right-of-way. The applicant has submitted a map showing the location of the land to be dedicated, a preliminary title report covering the land to be dedicated, and the appropriate filing fee in support of this application.

Section 17.52.050. Approval Criteria.

- A. *Applications for road dedications in zones where Class I or II road projects, as defined by DCC 18.04.030, are permitted outright shall address the criteria in DCC 18.116.230. Such applications shall also address any applicable criteria in the zone in which the road dedication is proposed.***
- B. *Applications for road dedications in zones where Class I or II road projects defined by DCC 18.04.030, or public road or highway projects defined by ORS 215.283(2)(p) through (r) and 215.283(3), are permitted as conditional uses shall address the***

criteria in DCC 18.116.230 and 18.128.015. Such applications shall also address any applicable criteria in the zone in which the road dedication is proposed.

FINDING: The applicant’s burden of proof provides the following proposed findings:

The proposed right-of-way dedication is permitted as a conditional use under ORS 215.283(3), DCC 18.16.030 and OAR 660-12-0065. Compliance with the requirements of DCC 18.116.230 and 18.128.015 are referenced above.

Staff agrees and finds the subject application is a conditional use and must address the criteria in DCC 18.116.230 and 18.128.015.

Section 17.52.090. Board Action on Road Dedication.

- A. Once an application is approved by the Planning Director or Hearings Body, the applicant shall satisfy all conditions of the land use approval prior to submitting a declaration of dedication for final action. The declaration of dedication shall include a legal description of the land to be dedicated. Upon receipt of the declaration of dedication, the Planning Director shall forward the declaration of dedication to the Board for acceptance or rejection.**
- B. Except as otherwise provided under the Deschutes County Code, the Board shall take final action on the road dedication within 120 days after the application is deemed complete.**
- C. Upon the meeting of the Board to take final action on the road dedication, the applicant shall provide the Board with a supplemental or amended report to the preliminary title report submitted with the application. The supplemental or amended report shall show changes in the condition of title of the relevant property from the date of the preliminary title report up to and including the time immediately preceding the Board meeting.**
- D. If the road dedication is accepted by the Board, the declaration of dedication shall be immediately recorded with the County Clerk.**

FINDING: The applicant will be required to submit a declaration of dedication and legal descriptions for the proposed road dedication, which must be signed by the property owner(s), and include a title report. If the road dedication is accepted by the Board, the declaration of dedication must be recorded with the County Clerk’s Office. The declaration of dedication for the proposed road shall be completed and recorded with the County Clerk’s Office within 120 days of the application being deemed complete. Staff calculates this day to be October 27, 2023. To ensure compliance, staff has added these actions as Conditions of Approval.

Section 17.52.100. Maintenance of Dedicated Roads.

Any public road created in conjunction with the dedication of public road right of way under DCC 17.52 shall be designated as a Local Access Road, as defined by ORS 368.001(3), which shall not be maintained by the County unless and until that road right of way is established

as a County road, as defined by ORS 368.001(1), by order or resolution of the County governing body as authorized by ORS 368.016(2)(c).

FINDING: Any public road created in this proposed road dedication under DCC 17.52 shall be designated as a local access road. Any new local access road will not be maintained by the County unless and until that right-of-way is established as an official County road. Staff will include this requirement as a condition of approval.

Title 18 of the Deschutes County Code, County Zoning

Chapter 18.16, Exclusive Farm Use Zones (EFU)

Section 18.16.030 Conditional Uses Permitted; High Value and Non-High Value Farmland
The following uses may be allowed in the Exclusive Farm Use zones on either high value farmland or non-high value farmland subject to applicable provisions of the Comprehensive Plan, DCC 18.16.040 and 18.16.050, and other applicable sections of DCC Title 18.

- ...
- U. Roads, highways and other transportation facilities, and improvements not otherwise allowed under DCC 18.16, if an exception to Goal 3, Agricultural Lands, and to any other applicable goal is first granted under state law. Transportation uses and improvements may be authorized under conditions and standards as set forth in OAR 660-012-0035 and 660-012-0065.***

FINDING: The applicant’s burden of proof provides the following proposed findings:

DCC 18.36.080 requires the extension of public rights-of-way in connection with any subdivision or partition in the EFU Zone. As noted above, the applicant seeks to extend a right-of-way connection from Fryrear Butte Road to Tax Lot 2802 in connection with pending County land use files 247-22-000372-MP and 247-22-000373-CU. OAR 660-12-0065 identifies transportation facilities, services and improvements that are permitted on rural lands consistent with Goals 3, 4, 11 and 14 without a goal exception, including low volume public “Access Roads” that provide access to property. The proposed dedication is authorized under OAR 660-12-0065.

Staff agrees with the applicant’s statement. The proposed road dedication is reviewed as a Conditional Use. Applicable standards are addressed below.

Section 18.16.040. Limitations on Conditional Uses

- A. Conditional uses permitted by DCC 18.16.030, 18.16.031, and 18.16.033 may be established subject to ORS 215.296, applicable provisions in DCC 18.128, and upon a finding by the Planning Director or Hearings Body that the proposed use:***

1. ***Will not force a significant change in accepted farm or forest practices as defined in ORS 215.203(2)(c) on surrounding lands devoted to farm or forest uses; and***
2. ***Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use; and***
3. ***That the actual site on which the use is to be located is the least suitable for the production of farm crops or livestock.***

FINDING: The applicant’s burden of proof provides the following proposed findings:

The subject property does not contain any water rights and is not actively utilized for agricultural production. The subject property is comprised entirely of Class 7 soils that are not suitable for agricultural production. In addition, the property is encumbered by power and utility easements granted to the Central Electric Cooperative (recorded in the Deschutes County public records as documents 2001-61301 and 2015-22594). The applicant seeks to extend a public right-of-way south along the eastern boundary of the property in an area comprised of Class 7 soils (classified by NRCS as 78C) that is encumbered by the existing power line easements. A depiction of the proposed right-of-way dedication segment is depicted on Exhibit A attached hereto. The proposed right-of-way area is vegetated by juniper and sagebrush. The dedication of public right-of-way in this location will not have any effect on agricultural use or production on the Desert Springs Ranch and/or any surrounding parcels. The neighboring properties are also comprised of Class 7 soils, do not have any irrigation water rights and are not utilized for ongoing agricultural production. The proposed right-of-way is located in the least suitable area for the production of farm crops and livestock and will not impact agricultural production on any surrounding parcel as required by this section.

Staff agrees with the applicant’s response. Further, staff notes the proposed road dedication application does not include the construction of a physical road within the proposed dedication area; therefore, no construction or traffic impacts are expected in association with the dedication.

Chapter 18.116, Supplementary Provisions

Section 18.116.230, Standards for Class I and II Road Projects

Class I and II road or street projects shall be reviewed against the applicable Comprehensive Plan Transportation Plan element, shall be consistent with applicable road standards and shall meet the following criteria:

- A. ***Compatibility with existing land use and social patterns, including noise generation, safety hazards (e.g. children in a residential area), and zoning.***
- B. ***Environmental impacts, including hazards imposed to and by wildlife (e.g. migration or water use patterns).***
- C. ***Retention of scenic quality, including tree preservation.***
- D. ***Means to improve the safety and function of the facility, including surrounding zoning, access control and terrain modifications.***

- E. In the case of roadways where modification results in a change of traffic types or density, impacts on route safety, route land use patterns, and route nonmotorized/pedestrian traffic.**
- F. Consideration of the potential developmental impact created by the facility.**
- G. Cost effectiveness.**

FINDING: The applicant’s burden of proof provides the following proposed findings:

As noted above, no road or street construction is proposed in connection with the subject application. Rather, the applicant seeks to dedicate an additional right-of-way segment to extend the existing Fryrear Butte public right-of-way (designated as a “Local Access Road”) south to the boundary of Tax Lot 2802. The proposed dedication area is intended to facilitate the construction of a new local access roadway at such time as Tax Lot 2802 is further partitioned. The proposed dedication area is located entirely within areas of Class 7 soil (as mapped by NRCS) and will have no impact on agricultural practices on surrounding lands. Construction of a local access roadway within this area will facilitate access for the land uses permitted within the EFU zone. Any future roadway construction will comply with applicable County roadway standards. The minimal additional traffic created by this proposal (if any) will not result in any change in traffic types or density, route safety and/or route land use patterns.

Staff agrees with the applicant’s response. Further, staff notes the proposed road dedication application does not include the construction of a physical road within the proposed dedication area; therefore, no construction or traffic impacts are expected in association with the dedication. The dedicated area includes a 60-foot right-of-way which is consistent with County standards. The road dedication will extend approximately 500 feet from Fryrear Butte Road to the east before turning south for approximately 1,100 feet and then making one additional extension to the west to front on Tax Lot 2802. Staff notes there is no Landscape Management (LM) or Wildlife Area (WA) or any other overlays affecting the subject property. These overlays help to protect Goal 5 resources. However, as noted, the subject property does not contain any inventoried Goal 5 resources.

In regards to potential development impact created by the facility, the road dedication will give frontage to Tax Lot 2802 and Tax Lot 3303, where none currently exists. This may allow for these tax lots to be partitioned in the future. It is unclear at this point whether these tax lots would be eligible for a partition. However, future partitions are subject to Title 17 and Title 18 standards and submittal and review of a formal land use application. The County has not received any applications for land divisions involving Tax Lot 2802 and Tax Lot 3303. This road dedication itself does not approve or establish any development.

The applicant has submitted a Minor Partition to divide a 157.3-acre property (Map and Tax Lot 15-11, Tax Lot 4001) within the Exclusive Farm Use (EFU) Zone into two parcels (County File No. 247-22-000372-MP, 373-CU). Parcel 1 is proposed to be 153.1 acres, and Parcel 2 is proposed to be 4.2 acres. The applicant also requests approval of a conditional use permit for a non-farm (single-family) dwelling on Parcel 2. However, the newly created parcel and the remainder parcel will be accessed via Cloverdale Road and will not require improvement of the proposed road dedication.

Lastly, staff note no public funds will be expended for construction or maintenance of this road. Staff has included a condition of approval which requires any road created in this proposed dedication under DCC 17.52 shall be designated as a local access road, which shall not be maintained by the County unless and until that right-of-way is established as a County-maintained road.

Chapter 18.128, Conditional Use

Section 18.128.010, Operation.

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

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

Section 18.128.015, General Standards Governing Conditional Uses.

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

- A. The site under consideration shall be determined to be suitable for the proposed use based on the following factors:**
 - 1. Site, design and operating characteristics of the use;**

FINDING: The applicant’s burden of proof provides the following proposed findings:

The applicant seeks to dedicate an extension of public right-of-way from the existing terminus of Fryrear Butte Road, through the subject property, to Tax Lot 2802. The proposed dedication area will be 60-feet in width and generally within the alignment depicted on Exhibit A attached hereto. The proposed dedication is intended to comply with the requirements of DCC 17.36.080 (Future Extension of Streets) as applicable to the larger Desert Springs Ranch property. The proposed dedication area is located entirely within mapped Class 7 soils and in a location that will have no impact on agricultural activities being conducted within Desert Springs Ranch or any surrounding property. Tax Lot 2802 has existing access from Forked Horn Drive (to the west) and no roadway construction is planned or anticipated within the proposed dedication area until such future time as said parcel may be further divided. The length and width of the proposed dedication area is sufficient to

facilitate a local access roadway supporting any future partition of Tax Lot 2802. The proposed dedication is compatible with the existing and projected uses of surrounding properties based on the factors listed in DCC 18.128.015(A), as referenced above.

As noted, the proposed road dedication does not include construction of a roadway at this time. The road dedication includes the extension of the existing Fryrear Butte Road to the south in order to provide future road access to landlocked parcels. The dedicated area includes a 60-foot right-of-way which is consistent with County standards. The road dedication will extend approximately 500 feet from Fryrear Butte Road to the east before turning south for approximately 1,100 feet and then making one additional extension to the west to front on Tax Lot 2802.

As discussed, the subject property is located on undeveloped land zoned EFU. The subject properties contain a vegetative cover of juniper and sagebrush. No portion of the subject property is currently irrigated and the dedication area does not cross any irrigated pasture or fields. The applicant proposed the dedication within an existing powerline easement to limit disturbance to the property should a road be constructed in the future. The applicant included a statement¹ from Central Electric Cooperative, the easement authority, which states the following:

Thank you for reaching out. CEC is in favor of the dedication. Please keep our facilities on one side of the ROW.

Based on the information above, staff believes the proposed site location is suitable for the road dedication considering its size, design, and operating characteristics of the use.

2. Adequacy of transportation access to the site; and

FINDING: The proposed road dedication will extend the existing Fryrear Butte road right-of-way which connects to Jordan Road, a public road maintained by the County and functionally classified as a local road. The Deschutes County Road Department and Deschutes County Transportation Planner were sent a request for comment on this application and identified no required improvements to other area roadways. Comments from other agencies and the general public did not identify any transportation infrastructure deficiencies. Staff finds, as conditioned, the site is suitable for the proposed use based on adequacy of transportation access to the site.

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

FINDING: The site is generally flat and presents no topographical constraints on the proposed road dedication. The *Deschutes County Natural Hazards Mitigation Plan* (2015) identifies drought, earthquake, flood, landslide, volcanic, wildfire, windstorm, and winter storm hazards in the County. Of these, wildfire is of special concern regarding the suitability of the use. The subject property is located within a wildfire hazard area, however, the road dedication application does not include the construction of any structures or habitable space. Further, the road dedication does not propose road construction at this time. Although, if a future road is built within the dedicated right-of-way it

¹ Reference email from Parneli Perkins, CEC, dated May 19, 2023.

may allow greater access for emergency vehicles in the event of an emergency. The subject property is currently served by Cloverdale Fire District.

Natural resource values typically include agricultural soils, forest lands, wildlife and their habitats, wetlands, and natural water features. The subject property is not located within a special flood hazard area. Further, there is no road construction proposed at this time, so there would be no impacts to any potential mapped wetlands.

Comments from agencies did not identify any site unsuitability due to general topography, natural hazards, or natural resource values. There were no public comments received which identified unsuitability based on the above listed factors.

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

FINDING: Staff finds this this criterion requires that the proposed use must be compatible with existing and projected uses on surrounding properties. Staff finds “surrounding properties” are those that might be significantly adversely impacted by their proximity to the proposed use. Existing uses on surrounding properties include rural residential uses to the west and vacant, undeveloped EFU parcels with some in apparent farm use. Projected uses on surrounding properties are those that have received approvals or are allowed outright and are typical of development of the area. These projected uses on property surrounding the subject property include residential use, and agriculture and farm use. Staff finds existing uses are a reasonable representation of uses allowed in the underlying zones of surrounding properties. For this reason, staff finds projected uses are likely to be similar to existing uses.

Staff finds that the proposed road dedication will be compatible with the existing and projected uses due to the scale of the operation and operating characteristics as analyzed in DCC 18.128.015(A) above.

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

Staff finds the proposed road dedication would be unsuitable if the siting, design and operating characteristics of the use significantly adversely impacted existing and projected uses on surrounding properties. Typically, potential adverse impacts could include visual, noise, dust, and odor impacts.

Staff finds the road dedication, which does not include construction of a roadway at this time, will not have a visual, noise, dust or odor impact. If a road is improved within the proposed dedication area, staff finds the road will not have a visual impact, as the dedication area will not include structures.No odors would be generated by a future roadway. Any noise impacts are expected to be temporary in nature and associated with construction, including any grading or clearing that is necessary. No significant noise, visual, dust, or odor impacts are identified in the record for the application.

(A)(2). Adequacy of transportation access to the site; and

Staff finds the road dedication would be unsuitable if access to the area of dedication would significantly adversely impact existing and projected uses on surrounding properties. The proposed road dedication will extend the existing Fryrear Butte road right-of-way which connects to Jordan Road, a public road maintained by the County and functionally classified as a local road. The Deschutes County Road Department and Deschutes County Transportation Planner were sent a request for comment on this application and identified no required improvements to other area roadways. Staff finds, as conditioned, the site is suitable for the proposed use based on adequacy of existing transportation access to the site.

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

Staff finds the proposed use would be unsuitable if it significantly adversely impacted off-site topography, natural hazards, or natural resource values. As discussed above, the proposed road dedication application does not include the actual construction of a roadway. However, staff finds a future roadway in this location would not significantly impact off-site topography, natural hazards or natural resource values. The subject property is located within a wildfire hazard area, although due to its location within the boundary of the Cloverdale Fire District, staff finds this natural hazard is greatly reduced. No significant natural hazards have been identified in the record. There is no evidence in the record that the proposed use will significantly adversely impact natural resource values of the area. The area of dedication is partially within a disturbed easement area associated with an existing powerline easement and contains juniper and sagebrush vegetation. The placement of the roadway in this area will minimize disturbance to potentially viable EFU-zoned land. However, as noted, the subject properties currently do not have irrigation rights and are not in farm use.

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

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

Section 18.128.020, Conditions.

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

- A. Require a limitation on manner in which the use is conducted, including restriction of hours of operation and restraints to minimize environmental effects such as noise, vibrations, air pollution, glare or odor.**
- B. Require a special yard or other open space or a change in lot area or lot dimension.**
- C. Require a limitation on the height, size or location of a structure.**
- D. Specify the size, number, location and nature of vehicle access points.**

- E. Increase the required street dedication, roadway width or require additional improvements within the street right of way.**
- F. Designate the size, location, screening, drainage, surfacing or other improvement of a parking or loading area.**
- G. Limit or specify the number, size, location, height and lighting of signs.**
- H. Limit the location and intensity of outdoor lighting and require shielding.**
- I. Specify requirements for diking, screening, landscaping or other methods to protect adjacent or nearby property and specify standards for installation and maintenance.**
- J. Specify the size, height and location of any materials to be used for fencing.**
- K. Require protection and preservation of existing trees, vegetation, water resources, wildlife habitat or other significant natural resources.**
- L. Require that a site plan be prepared in conformance with DCC 18.124.**

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

IV. CONCLUSION

Based on the foregoing findings, staff concludes that the proposed use can comply with the applicable standards and criteria of the Deschutes County zoning ordinance if conditions of approval are met.

Other permits may be required. The applicants are responsible for obtaining any necessary permits from the Deschutes County Building Division and Deschutes County Environmental Soils Division as well as any required state and federal permits.

V. DECISION

APPROVAL, subject to the following conditions of approval.

VI. CONDITIONS OF APPROVAL

- A.** This approval is based upon the application, site plan, specifications, and supporting documentation submitted by the applicant. Any substantial change in this approved use will require review through a new land use application.
- B.** The dedication area shall consist of a 60 ft.-wide strip of land pursuant to DCC 17.48.100 with an alignment generally as depicted in the application materials.
- C.** All persons with an ownership interest in the properties subject to the road dedication shall

sign the declaration of dedication. The applicant shall submit a current title report or subdivision guarantee verifying ownership of the properties prior to acceptance as a public road.

D. Per Deschutes County Code (DCC) Chapter 17.52.090:

- The applicant shall submit a declaration of dedication for final action. The declaration of dedication shall include a legal description of the land to be dedicated. Upon receipt of the declaration of dedication, staff will schedule a meeting with the Board of County Commissioners to review the declaration of dedication for acceptance or rejection.
- Upon the meeting of the Board to take final action on the road dedication, the applicant shall provide the Board with a supplemental or amended report to the preliminary title report submitted with the application. The supplemental or amended report shall show changes in the condition of title of the relevant property from the date of the preliminary title report up to and including the time immediately preceding the Board meeting.
- Upon acceptance of the dedication deed by the Board of County Commissioners, Applicant shall immediately cause for the recording of the dedication deed in the Official Records at the Deschutes County Clerk’s Office pursuant to DCC 17.52.090(D).
- Upon recording of the dedication deed, Applicant shall immediately cause for survey and monumentation of the new road right of way by a licensed professional land surveyor in accordance with ORS 209.250 and ORS 368.106.

E. Any public road created in this proposed road dedication under DCC 17.52 shall be designated as a local access road. Any new local access road will not be maintained by the County unless and until that right-of-way is established as an official County road.

VII. DURATION OF APPROVAL, NOTICE, AND APPEALS

The declaration of dedication for the proposed road shall be completed and recorded with the County Clerk’s Office within 120 days of the application being deemed complete. Staff calculates this day to be October 27, 2023.

This decision becomes final twelve (12) days after the date mailed, unless appealed by a party of interest. To appeal, it is necessary to submit a Notice of Appeal, the appeal fee of \$250.00 and a statement raising any issue relied upon for appeal with sufficient specificity to afford the Hearings Body an adequate opportunity to respond to and resolve each issue.

Copies of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost. Copies can be purchased for 25 cents per page.

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

DESCHUTES COUNTY PLANNING DIVISION

Haleigh King

Written by: Haleigh King, Associate Planner

Will Groves

Reviewed by: Will Groves, Planning Manager

Attachment: Proposed Road Dedication Map

owner	agent	inCareof	address	cityStZip	type	cdd id	email
Myles Conway			2503 NW Coe Court	Bend, OR 97703	FD	23-438-RD	myles@mconwaylaw.com
Desert Springs Ranch Limited Partnership			5051 SW Barnes Road	Portland, OR 97221	FD	23-438-RD	antonvett@comcast.net
Anton Vetterlein			430 SW Hamilton Street	Portland, OR 97239	FD	23-438-RD	
Chris Munson			845 NE 11th Street	Bend, OR 97701	FD	23-438-RD	



NOTICE OF DECISION

The Deschutes County Planning Division has approved the land use application described below:

FILE NUMBER: 247-23-000438-RD

**SUBJECT PROPERTY/
OWNER/APPLICANT:**

Mailing Name: DESERT SPRINGS RANCH LIMITED PARTNERSHIP
 Map and Taxlot: 1511000003303
 Account: 133950
 Situs Address: ****NO SITUS ADDRESS****

Mailing Name: DESERT SPRINGS RANCH LIMITED PARTNERSHIP
 Map and Taxlot: 1511170001200
 Account: 133968
 Situs Address: ****NO SITUS ADDRESS****

Mailing Name: DESERT SPRINGS RANCH LIMITED PARTNERSHIP
 Map and Taxlot: 1511170001000
 Account: 133952
 Situs Address: ****NO SITUS ADDRESS****

APPLICANT’S ATTORNEY: Myles Conway Law PC

REQUEST: The applicant requests approval to dedicate an additional segment of Fryrear Butte Road, extending through Tax Lots 1000 and 1200 (County Assessor’s Map 15-11-17) and Tax Lot 3303 (County Assessor’s Map 15-11-00) in the Exclusive Farm Use Zone (EFU).

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

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

I. APPLICABLE CRITERIA

Deschutes County Code (DCC)
 Title 17, Subdivision and Partition Ordinance

Chapter 17.52, Road Dedications
Title 18, Deschutes County Zoning Ordinance:
Chapter 18.16, Exclusive Farm Use Zones (EFU)
Chapter 18.116, Supplementary Provisions
Chapter 18.128, Conditional Use
Title 22, Deschutes County Development Procedures Ordinance

DECISION: Staff finds the application meets applicable criteria and approval is being granted subject to the following conditions:

CONDITIONS OF APPROVAL

- A. This approval is based upon the application, site plan, specifications, and supporting documentation submitted by the applicant. Any substantial change in this approved use will require review through a new land use application.
- B. The dedication area shall consist of a 60 ft.-wide strip of land pursuant to DCC 17.48.100 with an alignment generally as depicted in the application materials.
- A. All persons with an ownership interest in the properties subject to the road dedication shall sign the declaration of dedication. The applicant shall submit a current title report or subdivision guarantee verifying ownership of the properties prior to acceptance as a public road.
- D. Per Deschutes County Code (DCC) Chapter 17.52.090:
 - The applicant shall submit a declaration of dedication for final action. The declaration of dedication shall include a legal description of the land to be dedicated. Upon receipt of the declaration of dedication, staff will schedule a meeting with the Board of County Commissioners to review the declaration of dedication for acceptance or rejection.
 - Upon the meeting of the Board to take final action on the road dedication, the applicant shall provide the Board with a supplemental or amended report to the preliminary title report submitted with the application. The supplemental or amended report shall show changes in the condition of title of the relevant property from the date of the preliminary title report up to and including the time immediately preceding the Board meeting.
 - Upon acceptance of the dedication deed by the Board of County Commissioners, Applicant shall immediately cause for the recording of the dedication deed in the Official Records at the Deschutes County Clerk’s Office pursuant to DCC 17.52.090(D).
 - Upon recording of the dedication deed, Applicant shall immediately cause for survey and monumentation of the new road right of way by a licensed professional land surveyor in accordance with ORS 209.250 and ORS 368.106.
- E. Any public road created in this proposed road dedication under DCC 17.52 shall be designated as a local access road. Any new local access road will not be maintained by the

County unless and until that right-of-way is established as an official County road.

This decision becomes final twelve (12) days after the date mailed, unless appealed by a party of interest. To appeal, it is necessary to submit a Notice of Appeal, the appeal fee of \$250.00 and a statement raising any issue relied upon for appeal with sufficient specificity to afford the Hearings Body an adequate opportunity to respond to and resolve each issue. Pursuant to Ordinance 2021-014 and Deschutes County Code Section 22.32.015(B), appeals must be received by 4:00 pm.

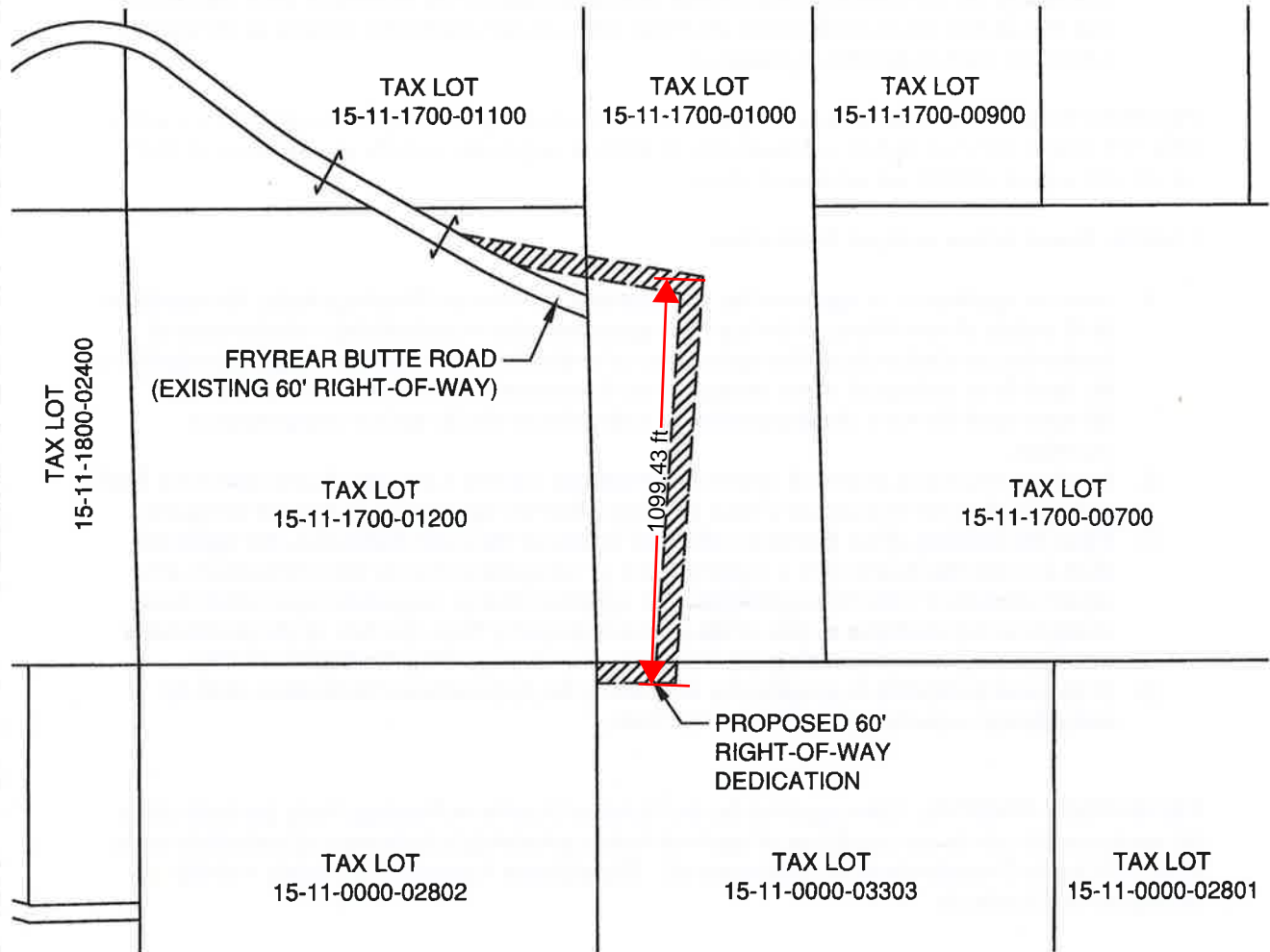
Copies of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost. Copies can be purchased for 25 cents per page.

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

This Notice was mailed pursuant to Deschutes County Code Chapter 22.24.

PROPOSED FRYREAR BUTTE ROAD DEDICATION

LOCATED IN PORTIONS OF THE S1/2 SW1/4 OF SECTION 17 AND THE
NE1/4 NW1/4 OF SECTION 20, TOWNSHIP 15 SOUTH, RANGE 11 EAST,
WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON



PREPARED BY:



Munson & Associates
civil engineers | land surveyors

845 NORTHEAST 11TH STREET
BEND, OREGON 97701



SCALE: 1" = 500'
DATE: 5/16/2023
W.O.#: 21-019

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
MARCH 11, 2014
CHRISTOPHER R. MUNSON
80548PLS

PRELIMINARY

RENEWS: 12/31/2024

owner	agent	inCareof	address	cityStZip	type	cdd id
DESCHUTES CO. ASSESSOR			ELECTRONIC		NOD	23-438-RD
DESCHUTES CO. ROAD DEPT.	CODY SMITH		ELECTRONIC		NOD	23-438-RD
DESCHUTES CO. SR. TRANS. PLANNER	TARIK RAWLINGS		ELECTRONIC		NOD	23-438-RD
JOAN R HULL TRUST	HULL,WENDY C TRUSTEE	C/O MIKELYN HULL	25715 SW AIRPORT AVE	CORVALLIS, OR 97333	NOD	23-438-RD
LAWRENCE, DENISE J			28102 S SALO RD	MULINO, OR 97042	NOD	23-438-RD
DESERT SPRINGS RANCH LIMITED PARTNERSHIP		C/O VETTERLEIN, ERIC GENERAL PARTNER (A)	5051 SW BARNES RD	PORTLAND, OR 97221	NOD	23-438-RD
JOAN R HULL TRUST	HULL,WENDY C TRUSTEE	C/O MIKELYN HULL	25715 SW AIRPORT AVE	CORVALLIS, OR 97333	NOD	23-438-RD
DESCHUTES COUNTY		C/O PROPERTY MANAGEMENT	PO BOX 6005	BEND, OR 97708-6005	NOD	23-438-RD
JSTC LIMITED PARTNERSHIP			11339 S ELYSIUM AVE	PORTLAND, OR 97219	NOD	23-438-RD
SUMMER, COLBY & APRIL			17835 WARRIN RD	SISTERS, OR 97759	NOD	23-438-RD
NEWMAN, TREVOR L & TY N			3848 NW 91ST ST	REDMOND, OR 97756	NOD	23-438-RD
BALDOCK, JEROME M & DONNA M			17530 SE FORKED HORN DR	SISTERS, OR 97759	NOD	23-438-RD
JANSSENS, ERIN			43000 SE TROUT CREEK RD	CORBETT, OR 97019	NOD	23-438-RD
EDWARDS, CHERYL ANNE			17771 WARRIN RD	SISTERS, OR 97759	NOD	23-438-RD
VOGT, HOWARD F ET AL			UNKNOWN		NOD	23-438-RD



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: October 18, 2023

SUBJECT: Ordinance No. 2023-014, amending Deschutes County Code to allow Rural Accessory Dwelling Units

RECOMMENDED MOTIONS:

1. Move approval of first and second reading of Ordinance No. 2032-014 by title only.
2. Move adoption of Ordinance No. 2023-014 on an emergency basis to take effect on November 17, 2023, pending final acknowledgement from the Oregon Department of Land Conservation and Development.

Alternatively, the Board may elect to approve first reading of Ordinance No. 2032-014 at this time and conduct second reading in two weeks. In that case, the ordinance would take effect 90 days after second reading and adoption.

BACKGROUND AND POLICY IMPLICATIONS:

Ordinance No. 2023-014 would amend Deschutes County Code Titles 18, 19 and 22 to adopt provisions for rural accessory dwelling units (ADUs). If the Board conducts first and second reading and adoption on October 18th, the amendments would take effect on November 17, 2023 provided that final acknowledgement of the amendments has been received by the Oregon Department of Land Conservation and Development.

BUDGET IMPACTS:

None

ATTENDANCE:

Will Groves, Planning Manager
Kyle Collins, Associate Planner



COMMUNITY DEVELOPMENT

MEMORANDUM

TO: Deschutes County Board of Commissioners

FROM: Kyle Collins, Associate Planner

DATE: October 11, 2023

SUBJECT: Consideration of First and Second Reading – Rural Accessory Dwelling Unit (ADU) Amendments

On October 18, 2023, staff will present Ordinance No. 2023-014 to the Board of County Commissioners (Board) for consideration of first and second reading. On August 9, 2023, the Board conducted deliberations to consider legislative text amendments concerning local provisions for rural accessory dwelling units (ADUs) as identified in Senate Bills (SB) 391¹ and 644² (file no. 247-22-000671-TA). The ordinance provided here reflects the decisions made during those deliberations.

Staff submitted an initial 35-day Post-Acknowledgement Plan Amendment (PAPA) notice to the Department of Land Conservation and Development (DLCD) on August 17, 2022. A public hearing was held with the Deschutes County Planning Commission (Commission) on September 22, 2022³. The Commission held deliberations and provided recommendations on October 27, 2022⁴.

Subsequently, legislation was passed by the Oregon Legislature which required several changes to the original proposed amendments to maintain compliance with state standards. Specifically, SB 644 was passed in May 2023 and provides direction to local jurisdictions looking to adopt rural ADU standards prior to formal release of the Statewide Wildfire Hazard Map required by SBs 762 and 80. Additionally, SB 80⁵ was passed which alters the original standards and terminology used within the forthcoming Statewide Wildfire Hazard Map. Per Board direction, staff submitted a revised 35-day PAPA notice to DLCD on June 7, 2023 and held a new work session with the Commission on July 13, 2023⁶.

¹ <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB0391/A-Engrossed>

² <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB644/Enrolled>

³ <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB80/Enrolled>

⁴ See Deschutes County Planning Commission October 27, 2022 Agenda for more information: <https://www.deschutes.org/bc-pc/page/planning-commission-21>

⁵ <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB80/Enrolled>

⁶ See Deschutes County Planning Commission July 13, 2023 Agenda for more information: <https://www.deschutes.org/bc-pc/page/planning-commission-29>

Following a Board work session on July 24, 2023⁷ and public hearing on July 26, 2023⁸, the Board voted to keep the written record open until Wednesday August 9th, 2023 with deliberations scheduled for the same day.

I. RECORD

The record, which contains all memoranda, notices, and written testimony received, is available at the following website: <https://www.deschutes.org/adu>

II. OVERVIEW OF ORDINANCE

During deliberations, staff presented several decision points for Board consideration. A brief summary of the Board decisions and subsequent modifications to the draft amendments is provided below. For a more in-depth overview of each of these issues, please refer to the staff memorandum from deliberations on August 9, 2023.⁹

Primary Modifications

1. How should “Useable Floor Area” be defined?

- “Useable floor area” is defined as “the area of the accessory dwelling unit included within the surrounding exterior walls, exclusive of garages, carports, decks and porch covers.”
- Based on staff’s understanding of the Board’s legislative intent and discussions during deliberations, language has been removed from the “useable floor area” definition to clarify that accessory components of ADUs such as garages can also be insulated without counting towards the 900 square-foot size limitation.

2. How should the 100-Foot Siting Distance requirement be interpreted?

- A unit must be located no farther than 100 feet from the existing single-family dwelling, measured from a wall of the single-family dwelling to the nearest part of the “useable floor area” of the accessory dwelling unit.
- Based on Board direction, staff has added the following exception language to the siting distance standard: “An existing structure converted to an accessory dwelling unit must be located no farther than 100 feet from the existing single-family dwelling, measured from existing single-family dwelling to the nearest part of the accessory dwelling unit structure. For the purposes of this section, “existing” means the structure was lawfully established on or before

⁷ See Board of County Commissioners July 24, 2023 Agenda for more information: <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-115>

⁸ See Board of County Commissioners July 26, 2023 Agenda for more information: <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-116>

⁹ See Board of County Commissioners August 9, 2023 Agenda for more information: <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-118>

October 18, 2023.” As currently defined, the “accessory dwelling unit structure” can include any portion of an ADU, including garages and any other components not included in the “useable floor area” definition. The October 18, 2023 date is based on a presumption of Board adoption by emergency during the October 18, 2023 work session. Should the Board elect to follow a different path, this language will need to be modified accordingly.

3. To maintain Southern Deschutes County Groundwater Protection efforts, should rural ADUs in Southern Deschutes County be limited to properties 5 acres or larger?

- Based on Board direction, staff has modified the code to allow ADU development on qualifying properties 2 acres or larger County-wide, including Southern Deschutes County, pursuant to state statute standards.

4. Should rural ADU development be allowed in designated Goal 5 areas such as the Wildlife Area Combining Zone, subject to existing standards and requirements?

- The code allows ADU development in designated Goal 5 areas subject to existing standards and requirements.

5. Do the current amendments adequately address Senate Bill 762, Senate Bill 80, and Wildfire Mitigation?

- Based on concerns from Community Development staff and local fire protection officials, certain features of the wildfire mitigation standards have been slightly modified. These modifications do not appreciably alter the original proposal, but rather provide greater direction and clarity for implementation purposes.
- For example, the dimensional standards for adequate access and onsite driveways have been modified from requiring a “20-foot minimum width, with minimum vertical clearance of 13.5 feet” to a “12-foot minimum width, a minimum horizontal clearance of 20 feet, and a minimum vertical clearance of 13.5 feet.” These standards align with best practices from other jurisdictions and minimum standards from several fire protection districts. All other components of the adequate access standards remain unchanged from the original proposal.
- Additionally, based on further discussion with Community Development staff, it has been concluded that “staged evacuation areas” are formally determined during specific emergency situations and thus it may be unnecessary or misleading to have potential future applicants identify specific evacuation sites prior to development of an ADU. Based on this interpretation and nuance, the code has been modified to only require formal “written authorization from the property owner(s) of the staged evacuation area” in the event that property owners would rather identify private parcels as staged evacuation areas instead of formal sites identified during a specific emergency event. All other applicants will be notified at the time of application that staged evacuation areas will be identified by emergency services personnel during an evacuation event

and applicants will be directed to emergency notification networks in Deschutes County such as Deschutes Alerts¹⁰.

6. Should ADUs be allowed in the Westside Transect Zone?

- Based on Board direction, staff has modified the amendments to allow ADU development within the Westside Transect Zone.

7. Should Vacation Occupancy be prohibited in the existing residence, as well as the ADU?

- Based on Board direction, staff has modified the amendments to prohibit vacation occupancy within the ADU as well as the primary dwelling.

Secondary Modifications

After discussions with Community Development staff, a number of minor modifications have been made to the previous amendments which are intended to facilitate implementation of the ADU program and provide clear direction for both staff and applicants. These minor modifications do not change the legislative intent of the previous amendments, but add clarifying standards or new definitions when previous language may have offered competing interpretations. These changes can be summarized as follows:

- Several amendments have been modified to clarify when application or verification materials are required during a formal ADU application process. For example, language has been included to require applicants to receive approval from a sewer authority or the Deschutes County Onsite Wastewater Division for onsite wastewater disposal and treatment, prior to an application for an ADU.
- A new definition for “accessory dwelling unit structure” has been added to provide guidance for standards which may affect areas of a proposed ADU outside of the “useable floor area,” such as setbacks or wildfire mitigation building standards. This new definition is as follows: “Accessory dwelling unit structure” means all areas of an accessory dwelling unit inclusive of garages, carports, decks, and porch covers.
- A clarification has been added to ensure that all structures which serve a primarily residential dwelling use, such as additional ADUs, guest houses, or temporary residences such as medical hardship dwellings will be disallowed on properties containing an approved ADU.

II. NEXT STEPS & STAFF RECOMMENDATION

As noted in the language of Ordinance No. 2023-014, staff has recommended that the Board vote on and adopt the ordinance by emergency, with an effective date of 30 days and after final acknowledgement

¹⁰ <https://www.deschutes.org/911/page/sign-deschutes-alerts>

by the Department of Land Conservation and Development (DLCD). This proposed action requires a unanimous vote. Alternatively, if the vote is not unanimous, the Board will hold first and second readings at least 14 days apart, and then the ordinance will be effective 90 days after second reading. Should the Board elect to follow an approach different than that offered by staff, the existing ordinance language will need to be modified for a future Board meeting concerning first reading.

Attachments:

Ordinance No. 2023-014 and Corresponding Exhibits – Emergency

REVIEWED
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code *
Title 18, Zoning Ordinance, Title 19, Bend Urban *
Area Zoning Ordinance, and Title 22, Procedures * ORDINANCE NO. 2023-014
Ordinance, to Adopt Provisions for Rural Accessory *
Dwelling Units. *

WHEREAS, the Board of County Commissioners directed Deschutes County Community Development Department staff to initiate amendments (Planning Division File No. 247-22-000671-TA) to Deschutes County Code (“DCC”), Chapter 18.32 – Multiple Use Agricultural Zone, Chapter 18.60 – Rural Residential Zone, Chapter 18.116 – Supplementary Provisions, Chapter 18.132 – Variances, Chapter 19.12 – Urban Area Reserve Zone, Chapter 19.20 – Suburban Low Density Residential Zone, Chapter 19.22 – Westside Transect Zone, Chapter 19.76 – Site Plan Review, Chapter 19.92 – Interpretations and Exceptions, Chapter 19.108 – Variances, Chapter 22.04 – Introductions and Definitions; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed changes on September 22, 2022 and forwarded to the Deschutes County Board of County Commissioners (“Board”) a 4-2 recommendation of approval; and

WHEREAS, the Deschutes County Planning Commission reviewed new edits to the proposed changes on and July 13, 2023, and forwarded to the Deschutes County Board of County Commissioners (“Board”) a 5-0 recommendation of approval; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on July 26, 2023 and concluded that the public will benefit from the proposed changes to the Deschutes County Code Titles 18, 19, and 22; now, therefore,

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

Section 1. AMENDMENT. Deschutes County Code Chapter 18.32, Multiple Use Agricultural Zone, is amended to read as described in Exhibit “A”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 2. AMENDMENT. Deschutes County Code Chapter 18.60, Rural Residential Zone, is amended to read as described in Exhibit “B”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 3. AMENDMENT. Deschutes County Code Chapter 18.116, Supplementary Provisions, is amended to read as described in Exhibit “C”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 4. AMENDMENT. Deschutes County Code Chapter 18.132, Variances, is amended to read as described in Exhibit “D”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 5. AMENDMENT. Deschutes County Code Chapter 19.12, Urban Area Reserve Zone, is amended to read as described in Exhibit “E”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 6. AMENDMENT. Deschutes County Code Chapter 19.20, Suburban Low Density Residential Zone, is amended to read as described in Exhibit “F”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 7. AMENDMENT. Deschutes County Code Chapter 19.22, Westside Transect Zone, is amended to read as described in Exhibit “G”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 8. AMENDMENT. Deschutes County Code Chapter 19.76, Site Plan Review, is amended to read as described in Exhibit “H”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 9. AMENDMENT. Deschutes County Code Chapter 19.92, Interpretations and Exceptions, is amended to read as described in Exhibit “I”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 10. AMENDMENT. Deschutes County Code Chapter 19.108, Variances, is amended to read as described in Exhibit “J”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 11. AMENDMENT. Deschutes County Code Chapter 22.04, Introductions and Definitions, is amended to read as described in Exhibit “K”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 12. FINDINGS. The Board adopts as its findings Exhibit “L”, attached and incorporated by reference herein.

Section 13. EMERGENCY. This Ordinance being necessary for the public peace, health, and safety, an emergency is declared to exist, and this Ordinance becomes effective thirty (30) days after adoption and after final acknowledgement by the Oregon Department of Land Conservation and Development.

Dated this _____ of _____, 2023

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

PATTI ADAIR, Vice Chair

ATTEST:

Recording Secretary

PHILIP CHANG

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

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

Record of Adoption Vote:

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

Effective date: _____ day of _____, 2023.

CHAPTER 18.32 MULTIPLE USE AGRICULTURAL ZONE; MUA

18.32.020 Uses Permitted Outright

* * *

18.32.020 Uses Permitted Outright

The following uses and their accessory uses are permitted outright:

- A. Agricultural uses as defined in DCC Title 18.
- B. A single family dwelling, or a manufactured home subject to DCC 18.116.070.
- C. Propagation or harvesting of a forest product.
- D. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by DCC 18.116.230.
- E. Class III road or street project.
- F. Noncommercial horse stables, excluding horse events.
- G. Horse events, including associated structures, involving:
 - 1. Fewer than 10 riders;
 - 2. Ten to 25 riders, no more than two times per month on nonconsecutive days; or
 - 3. More than 25 riders, no more than two times per year on nonconsecutive days.
Incidental musical programs are not included in this definition. Overnight stays by participants, trainers or spectators in RVs on the premises is not an incident of such horse events.
- H. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.
- I. Type 1 Home Occupation, subject to DCC 18.116.280.
- J. Historic Home Accessory Dwelling Units, subject to DCC 18.116.350.
- K. Residential Accessory Dwelling Units, subject to DCC 18.116.355.

HISTORY

Adopted by Ord. PL-15 on 11/1/1979

Amended by Ord. 91-002 §6 on 2/6/1991

Amended by Ord. 91-005 §18 on 3/4/1991

Amended by Ord. 91-020 §1 on 5/29/1991

Amended by Ord. 91-038 §1 on 9/30/1991

Amended by Ord. 93-001 §1 on 1/27/1993
Amended by Ord. 93-043 §4 on 8/25/1993
Amended by Ord. 94-008 §10 on 6/8/1994
Amended by Ord. 2001-016 §2 on 3/28/2001
Amended by Ord. 2001-039 §2 on 12/12/2001
Amended by Ord. 2004-002 §3 on 4/28/2004
Amended by Ord. 2019-009 §1 on 9/3/2019
Recorded by Ord. 2019-009 §1 on 9/3/2019
Amended by Ord. 2023-014 §1 on 10/18/2023

Exhibit B

CHAPTER 18.60 RURAL RESIDENTIAL ZONE; RR-10**18.60.020 Uses Permitted Outright**

* * *

18.60.020 Uses Permitted Outright

The following uses and their accessory uses are permitted outright.

- A. A single-family dwelling, or a manufactured home subject to DCC 18.116.070.
- B. Utility facilities necessary to serve the area including energy facilities, water supply and treatment and sewage disposal and treatment.
- C. Community center, if shown and approved on the original plan or plat of the development.
- D. Agricultural use as defined in DCC Title 18.
- E. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by DCC 18.116.230.
- F. Class III road or street project.
- G. Noncommercial horse stables as defined in DCC Title 18, excluding horse events.
- H. Horse events, including associated structures, involving:
 - 1. Fewer than 10 riders;
 - 2. Ten to 25 riders, no more than two times per month on nonconsecutive days; or
 - 3. More than 25 riders, no more than two times per year on nonconsecutive days.
Incidental musical programs are not included in this definition. Overnight stays by participants, trainers or spectators in RVs on the premises is not an incident of such horse events.
- I. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.
- J. Type 1 Home Occupation, subject to DCC 18.116.280.
- K. **Historic Home** Accessory Dwelling Units, subject to DCC 18.116.350.
- L. **Residential Accessory Dwelling Units, subject to DCC 18.116.355.**

HISTORY

Adopted by Ord. PL-15 on 11/1/1979

Amended by Ord. 91-005 §§30 & 31 on 3/4/1991

Amended by Ord. 91-020 §1 on 5/29/1991

Amended by Ord. 93-043 §8 on 8/25/1993
Amended by Ord. 94-008 §12 on 6/8/1994
Amended by Ord. 2001-016 §2 on 3/28/2001
Amended by Ord. 2001-039 §5 on 12/12/2001
Amended by Ord. 2004-002 §7 on 4/28/2004
Amended by Ord. 2019-009 §2 on 9/3/2019
Recorded by Ord. 2019-009 §2 on 9/3/2019
Amended by Ord. 2023-014 §2 on 10/18/2023

Exhibit C

CHAPTER 18.116 SUPPLEMENTARY PROVISIONS

18.116.350 Historic Home Accessory Dwelling Units In The RR10 And MUA Zones

18.116.355 Residential Accessory Dwelling Units In The RR10 And MUA 10 Zones

* * *

18.116.350 Historic Home Accessory Dwelling Units In The RR10 And MUA Zones

A. As used in this section:

1. "Historic Accessory-accessory dwelling unit" means a residential structure that is used in connection with or that is auxiliary to a single-family dwelling. For the purposes of this section, "auxiliary" means a use or structure incidental and subordinate to the single-family dwelling on the property, and located on the same lot as the single-family dwelling.
2. "Area zoned for rural residential use" means land that is not located inside an urban growth boundary as defined in ORS 195.060 and that is subject to an acknowledged exception to a statewide land use planning goal relating to farmland or forestland and planned and zoned by the county to allow residential use as a primary use.
3. "Historic home" means a single-family dwelling constructed between 1850 and 1945.
4. "New" means that the dwelling being constructed did not previously exist in residential or nonresidential form. "New" does not include the acquisition, alteration, renovation or remodeling of an existing structure.
5. "Place a manufactured home" means the placement of a manufactured home that did not previously exist on the subject lot of record; it may include the placement of a manufactured home that was previously used as a dwelling on another lot and moved to the subject lot of record.
6. "Single-family dwelling" means a residential structure designed as a residence for one family and sharing no common wall with another residence of any type.

B. An owner of a lot or parcel within an area zoned for rural residential use (RR10 and MUA zonesZones) may construct a new single-family dwelling or place a manufactured home on the lot or parcel, provided:

1. The lot or parcel is not located in an area designated as an urban reserve as defined in ORS 195.137;
2. The lot or parcel is at least two acres in size;
3. A historic home is sited on the lot or parcel;

- 4. The owner converts the historic home to a historic accessory dwelling unit upon completion of the new single-family dwelling or placement of a manufactured home; and
 - 5. The historic accessory dwelling unit may be required to comply with all applicable laws and regulations relating to sanitation and wastewater disposal and treatment.
- C. The construction of a historic accessory dwelling unit under subsection (B) of this section is a land use action subject to DCC 22.20.
- D. An owner that constructs a new single-family dwelling or places a manufactured home under subsection (B) of this section may not:
- 1. Subdivide, partition or otherwise divide the lot or parcel so that the new single-family dwelling or manufactured home is situated on a different lot or parcel from the historic accessory dwelling unit.
 - 2. Alter, renovate or remodel the historic accessory dwelling unit so that the square footage of the historic accessory dwelling unit is more than 120 percent of the historic home’s square footage at the time construction of the new single-family dwelling commenced.
 - 3. Rebuild the historic accessory dwelling unit if the structure is deemed a dangerous building due to fire or other natural disaster, pursuant to the Uniform Code for the Abatement of Dangerous Buildings, which defines “dangerous building” as “Whenever any portion thereof has been damaged by fire, earthquake, wind, flood or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements of the Building Code for new buildings of similar structure, purpose or location.”
 - 4. Construct an additional accessory dwelling unit on the same lot or parcel.
- E. A new single-family dwelling constructed or a manufactured home placed under this section may be required to be served by the same water supply source as the historic accessory dwelling unit.
- F. Owner occupancy of either the historic accessory dwelling unit or the new single-family dwelling is not required. However, the historic accessory dwelling unit and the new single-family dwelling placed under this section and the accessory dwelling unit may not be used simultaneously for short-term rentals of thirty (30) consecutive days or less.

HISTORY

Adopted by Ord. 2019-009 §3 on 9/3/2019

Recorded by Ord. 2019-009 §3 on 9/3/2019

Amended by Ord. 2023-014 §3 on 10/18/2023

18.116.355 Residential Accessory Dwelling Units In The RR-10 And MUA Zones

A. As used in this section:

1. “Accessory dwelling unit” means a residential structure that is used in connection with or that is auxiliary to a single-family dwelling. For the purposes of this section, “auxiliary” means a use or structure incidental and subordinate to the single-family dwelling on the property, and located on the same lot as the single-family dwelling.
 2. “Accessory dwelling unit structure” means all areas of an accessory dwelling unit inclusive of garages, carports, decks, and porch covers.
 3. “Rural residential use” means a lot or parcel located in the RR-10 or MUA-10 Zones, consistent with the definition in ORS 215.501.
 4. “Safe evacuation plan” means an identifiable route on a right(s)-of-way and any onsite driveways from the accessory dwelling unit to a staged evacuation area.
 5. “Single-family dwelling” means a residential structure designed as a residence for one family and sharing no common wall with another residence of any type.
 6. “Staged evacuation area” means a public or private location that occupants of the accessory dwelling unit may evacuate to reorganize.
 7. “Useable floor area” means all areas of an accessory dwelling unit included within the surrounding exterior walls, exclusive of garages, carports, decks, and porch covers.
 8. “Vacation occupancy” means occupancy in a dwelling unit, not including transient occupancy in a hotel or motel, that has all of the following characteristics:
 - a. The occupant rents the unit for vacation purposes only, not as a principal residence; and
 - b. The occupant has a principal residence other than at the unit; and
 - c. The period of authorized occupancy does not exceed 45 days.
- B. One accessory dwelling unit is permitted outright on a lot or parcel zoned RR-10 or MUA-10, provided all of the following standards are met:
1. One single-family dwelling is sited on the lot or parcel:
 - a. As used in this section, “sited” means established onsite or applied for prior to issuance of any building or land use permits for an accessory dwelling unit.
 - b. An existing single-family dwelling meeting all other criteria in this section may be converted to an accessory dwelling unit during construction of a new primary single-family dwelling.
 2. There is no guest house, temporary residence as identified in DCC 18.116.090, or additional dwelling units except the primary single-family dwelling established on the subject property.

- a. An existing lawfully established guest house, temporary residence as identified in DCC 18.116.090, or an additional dwelling unit meeting all other criteria in this section may be converted to an accessory dwelling unit.
3. The lot or parcel is not located within an Urban Reserve Area, consistent with ORS 195.137.
4. No portion of the lot or parcel is within the Metolius Area of Critical State Concern, as defined in ORS 197.416.
5. The lot area is at least two acres in size.
6. The accessory dwelling unit structure will have a minimum setback of 100 feet from adjacent properties zoned F-1, F-2, or EFU and meet any other minimum setback requirements of the underlying zone and combining zones.
7. The accessory dwelling unit will not include more than 900 square feet of useable floor area.
8. The accessory dwelling unit will be located no farther than 100 feet from the existing single-family dwelling, measured from a wall of the existing single-family dwelling to the nearest part of the useable floor area of the accessory dwelling unit.
- a. An existing structure converted to an accessory dwelling unit must be located no farther than 100 feet from the existing single-family dwelling, measured from the existing single-family dwelling to the nearest part of the accessory dwelling unit structure. For the purposes of this section, "existing" means the structure was lawfully established on or before October 18, 2023.
9. Prior to application, the accessory dwelling unit receives approval from a sewer authority or the Deschutes County Onsite Wastewater Division for onsite wastewater disposal and treatment.
10. The lot or parcel is served by a fire protection service provider with professionals who have received training or certification described in ORS 181A.410.
11. The accessory dwelling unit provides for all of the following:
- a. Adequate access connecting an accessory dwelling unit with a fire protection service provider with professionals who have received training or certification described in ORS 181A.410. Adequate access is met by demonstrating compliance with section 10(a)i and 10(a)(ii), or section 10(a)(iii):
- i. A continuous, minimum 20-foot width right(s)-of-way with an unobstructed vertical clearance of not less than 13.5 feet. For the purposes of this section, right(s)-of-way are defined as:
1. Public roads with maintenance responsibility accepted by a unit of local or state government or assigned to landowners or homeowners association by covenant or agreement; or

- 2. Private roads, as permitted by DCC Title 18, with maintenance responsibility assigned to landowners or homeowners associations by covenant or agreement pursuant to ORS 105; and
- ii. A continuous, minimum 12-foot width onsite driveway with an unobstructed horizontal clearance of not less than 20 feet and an unobstructed vertical clearance of not less than 13.5 feet, designed and maintained as follows:
 - 1. Composed of an all-weather surface including asphalt or concrete; or
 - 2. Designed and maintained to support a minimum gross vehicle weight (GVW) of 75,000 lbs as certified by a Professional Engineer, registered in Oregon;
- iii. Written confirmation from a fire protection service provider with professionals who have received training or certification described in ORS 181A.410, on a form prepared by Deschutes County, that access to the property meets minimum fire district requirements to provide emergency services to the property;
- b. A safe evacuation plan; and
- c. For private properties utilized as staged evacuation areas, written authorization from the property owner(s) of the staged evacuation area that the occupants of the accessory dwelling unit may evacuate to the staged evacuation area.

12. Wildfire Hazard Mitigation Building Code Standards:

- a. If the Statewide Wildfire Hazard Map described in ORS 477.490 has been approved, the following requirements shall apply to the accessory dwelling unit structure:
 - i. For areas designated as high wildfire hazard that are identified pursuant to ORS 477.490:
 - 1. The Wildfire Hazard Mitigation building code standards as described in section R327 of the Oregon Residential Specialty Code.
- b. If the Statewide Wildfire Hazard Map described in ORS 477.490 has not been approved, the following requirements shall apply to the accessory dwelling unit structure:
 - i. The Wildfire Hazard Mitigation building code standards as described in section R327 of the Oregon Residential Specialty Code.

13. Wildfire Hazard Mitigation Defensible Space Standards:

- a. If the Statewide Wildfire Hazard Map described in ORS 477.490 has been approved, the following requirements shall apply:
 - i. For all wildfire hazard designations in the wildland-urban interface that are identified pursuant to ORS 477.490:
 - 1. The minimum defensible space rules established by the State Fire Marshal as described in ORS 476.392.

b. If the Statewide Wildfire Hazard Map described in ORS 477.490 has not been approved, then either the section 12(b)(i) or 12(b)(ii) requirements shall apply:

i. Prior to issuance of building permits, the property owner(s) shall construct and maintain the following firebreaks on land surrounding the accessory dwelling unit that is owned or controlled by the owner:

1. Primary Firebreak. A primary firebreak, not less than 10 feet wide, shall be constructed containing nonflammable materials. This may include lawn, walkways, driveways, gravel borders or other similar materials; and

2. Secondary Firebreak. A secondary firebreak of not less than 20 feet wide shall be constructed outside the primary firebreak. This firebreak need not be bare ground, but can include a lawn, ornamental shrubbery or individual or groups of trees separated by a distance equal to the diameter of the crowns adjacent to each other, or 15 feet, whichever is greater. All trees shall be pruned to at least eight feet in height. Dead fuels shall be removed; and

3. Fuel Break. A fuel break shall be maintained, extending a minimum of 100 feet in all directions around the secondary firebreak. Individual and groups of trees within the fuel break shall be separated by a distance equal to the diameter of the crowns adjacent to each other, or 15 feet, whichever is greater. Small trees and brush growing underneath larger trees shall be removed to prevent spread of fire up into the crowns of the larger trees. All trees shall be pruned to at least eight feet in height. Dead fuels shall be removed; and

4. No portion of a tree or any other vegetation shall extend to within 15 feet of the outlet of a stovepipe or chimney.

~~h.~~i. Prior to issuance of building permits, the property owner(s) shall construct and maintain defensible space and fuel breaks as developed in consultation with local fire protection service providers who have received training or certification described in ORS 181A.410. Applicable defensible space and fuel breaks shall be on land surrounding the accessory dwelling unit on land that is owned or controlled by the owner.

14. The existing single-family dwelling property on the lot or parcel is not subject to an order declaring it a nuisance or subject to any pending action under ORS 105.550 to 105.600.

15. A lot or parcel with an accessory dwelling unit approved under this section is ineligible for:

a. A subdivision, partition, other division of the lot or parcel, or a property line adjustment where the result of such application would be to situate the existing

single-family dwelling on a different lot or parcel than the accessory dwelling unit.

16. If the accessory dwelling unit is served by a well, the construction of the accessory dwelling unit shall maintain all setbacks from the well required by the Water Resources Commission or Water Resources Department.
17. At the time of application, a letter confirming that the supplier of water is "Willing and Able to Serve" the accessory dwelling unit shall be provided if the accessory dwelling unit is to be served by any water source other than an onsite domestic well.
18. An existing single-family dwelling and an accessory dwelling unit allowed under this section are considered a single unit for the purposes of calculating ground water right exemptions under ORS 537.545(1).
19. If the water supply source for the accessory dwelling unit or associated lands or gardens will be a well using water under ORS 537.545 (1)(b) or (d), no portion of the lot or parcel is within an area in which new or existing ground water uses under ORS 537.545 (1)(b) or (d) have been restricted by the Water Resources Commission.
20. Prior to issuance of building permits, the applicant shall sign and record with the County Clerk, a restrictive covenant stating an accessory dwelling unit allowed under this section and the primary single-family dwelling cannot be used for vacation occupancy, as defined in DCC 18.116.355(A)(8) and consistent with ORS 90.100.

HISTORY

Adopted by Ord. 2023-014 §3 on 10/18/2023

CHAPTER 18.132 VARIANCES

18.132.020 Authority Of Hearings Body

18.132.025 Minor Variances

18.132.020 Authority Of Hearings Body

A variance may be granted unqualifiedly or may be granted subject to prescribed conditions, provided that the Planning Director or Hearings Body shall make all of the following findings:

A. Area variance.

1. That the literal application of the ordinance would create practical difficulties resulting in greater private expense than public benefit.
2. That the condition creating the difficulty is not general throughout the surrounding area but is unique to the applicant's site.
3. That the condition was not created by the applicant. A self-created difficulty will be found if the applicant knew or should have known of the restriction at the time the site was purchased.
4. That the variance conforms to the Comprehensive Plan and the intent of the ordinance being varied.

B. Use variance.

1. That the literal application of the ordinance would result in unnecessary hardship to the applicant. An unnecessary hardship will be found when the site cannot be put to any beneficial use under the terms of the applicable ordinance.
2. Each of the findings listed in DCC 18.132.020(A)(1), (2) and (4).

C. Statutory Provisions.

1. Notwithstanding the provisions of this section, a variance may not be granted which amends any standards mandated by the Oregon Revised Statutes (ORS) or Oregon Administrative Rules (OAR).

HISTORY

Adopted by Ord. [PL-15](#) on 11/1/1979

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

Amended by Ord. [93-043](#) §24 on 8/25/1993

Amended by Ord. [2023-014](#) §4 on 10/18/2023

18.132.025 Minor Variances

A variance seeking to depart from on-site requirements of DCC Title 18, such as setbacks and area requirements, by no greater than 10 percent of the required distance or area may be granted by the Planning Director or Hearings Body in conformance with DCC 18.132.025.

- A. In the case of a setback or size variance, the applicant shall show that the approval will result in:
 - 1. More efficient use of the site;
 - 2. Preservation of natural features where appropriate;
 - 3. Adequate provision of light and privacy to adjoining properties; and
 - 4. Preservation of topographic, vegetative and drainage features which would be adversely affected by application of the standards otherwise required by DCC Title 18.
- B. A parcel that is smaller than the minimum lot size at the time of application may not be reduced by more than 10 percent from its current size without a variance.
- C. Notwithstanding B, above, a property may be reduced by more than 10 percent of its current size without a variance if :
 - 1. The property is located outside of a Farm (EFU) or Forest (F) zone;
 - 2. The long-standing occupation area is different than the legal description in the deed for the subject property;
 - 3. The purpose of the property line adjustment is to correct the deed description to match the long-standing occupation lines of the properties; and
 - 4. The discrepancy between the deed lines and the occupation lines is documented by submittal of a narrative and maps prepared by an Oregon Licensed Professional Surveyor.
 - 5. As used in this sub-section, "long-standing" means in excess of ten (10) years.

D. Statutory Provisions.

1. Notwithstanding the provisions of this section, a variance may not be granted which amends any standards mandated by the Oregon Revised Statues (ORS) or Oregon Administrative Rules (OAR).

HISTORY

- Adopted by Ord. [91-038](#) §3 on 9/30/1991*
- Amended by Ord. [2004-013](#) §15 on 9/21/2004*
- Amended by Ord. [2010-003](#) §1 on 7/6/2010*
- [Amended by Ord. 2023-014 §4 on 10/18/2023](#)*

Exhibit E

CHAPTER 19.12 URBAN AREA RESERVE ZONE UAR-10

19.12.020 Permitted Uses

* * *

19.12.020 Permitted Uses

The following uses are permitted:

- A. Farm uses as defined in DCC Title 19.
- B. Single-family dwelling.
- C. Home occupation subject to DCC 19.88.140.
- D. Other accessory uses and accessory buildings and structures customarily appurtenant to a permitted use subject to DCC 19.92.020.
- E. Day care center facilities subject to site review, DCC 19.76 and DCC 19.88.160.
- F. Farm stands subject to DCC 19.76 and DCC 19.88.290.

G. **Historic Home** Accessory Dwelling Units, subject to DCC 19.92.150.

H. **Residential Accessory Dwelling Units**, subject to DCC 19.92.160

HISTORY

Adopted by Ord. PL-11 on 7/11/1979

Amended by Ord. 88-042 §4 on 12/19/1988

Repealed & Reenacted by Ord. 90-038 §1,2 on 10/3/1990

Amended by Ord. 91-001 §2 on 1/28/1991

Amended by Ord. 2008-014 §3 on 3/31/2008

Repealed & Reenacted by Ord. 2009-002 §1,2 on 2/11/2009

Amended by Ord. 2019-009 §4 on 9/3/2019

Recorded by Ord. 2019-009 §4 on 9/3/2019

Amended by Ord. 2023-014 §5 on 10/18/2023

Exhibit F

CHAPTER 19.20 SUBURBAN LOW DENSITY RESIDENTIAL ZONE; SR 2 1/2

19.20.020 Permitted Uses

* * *

19.20.020 Permitted Uses

The following uses are permitted:

- A. Single-family dwelling.
- B. Agriculture, excluding the keeping of livestock.
- C. Home occupations subject to DCC 19.88.140.
- D. Other accessory uses and accessory buildings and structures customarily appurtenant to a permitted use subject to DCC 19.92.020.
- E. [Historic Home](#) Accessory Dwelling Units, subject to DCC 19.92.150.
- F. [Child care facility and/or preschool.](#)
- G. [Residential Accessory Dwelling Units, subject to DCC 19.92.160.](#)

HISTORY

- Adopted by Ord. PL-11 on 7/11/1979*
- Amended by Ord. 88-042 §6 on 12/19/1988*
- Repealed & Reenacted by Ord. 90-038 §1,2 on 10/3/1990*
- Amended by Ord. 91-001 §4 on 1/28/1991*
- Amended by Ord. 93-018 §3 on 5/19/1993*
- Repealed & Reenacted by Ord. 2009-002 §1,2 on 2/11/2009*
- Amended by Ord. 2019-009 §5 on 9/3/2019*
- Recorded by Ord. 2019-009 §5 on 9/3/2019*
- Amended by Ord. 2020-001 §20 on 4/21/2020*
- Amended by Ord. 2020-010 §9 on 7/3/2020*
- [Amended by Ord. 2023-014 §6 on 10/18/2023](#)*

Exhibit G

CHAPTER 19.22 WESTSIDE TRANSECT ZONE; WTZ

19.22.020 Permitted Uses

* * *

19.22.020 Permitted Uses

The following uses and their accessory uses are permitted outright:

- A. Single-family dwelling.
- B. Home occupation subject to DCC 19.88.140.
- C. Other accessory uses and accessory buildings and structures customarily appurtenant to a permitted use subject to DCC 19.92.020.
- D. Residential Accessory Dwelling Units, subject to DCC 19.92.160.

HISTORY

Adopted by Ord. 2019-001 §8 on 4/16/2019

Amended by Ord. 2023-014 §7 on 10/18/2023

CHAPTER 19.76 SITE PLAN REVIEW

19.76.070 Site Plan Criteria

19.76.020 Site Plan Requirements

In all zones, except for a single-family, duplex or triplex unit, or an accessory dwelling unit, on one lot, all new uses, buildings, outdoor storage or sales areas and parking lots or alterations thereof shall be subject to the provisions of DCC 19.76.020. Site plan approval shall not be required where a proposed alteration of an existing building does not exceed 25 percent of the size of the original structure unless the Planning Director finds the original structure or proposed alteration does not meet the requirements of DCC Title 19 or other ordinances of the County.

HISTORY

Adopted by Ord. [PL-11](#) on 7/11/1979

Repealed & Reenacted by Ord. [90-038](#) §1 on 10/3/1990

[Amended by Ord. 2023-014 §8 on 10/18/2023](#)

Exhibit I

CHAPTER 19.92 INTERPRETATIONS AND EXCEPTIONS

[19.92.150 Historic Home Accessory Dwelling Units In The UAR-10 And SR-2 1/2 Zones](#)

[19.92.160 Residential Accessory Dwelling Units In The UAR-10, SR-2 ½, And WTZ Zones](#)

* * *

19.92.150 Historic Home Accessory Dwelling Units In The UAR-10 And SR-2 1/2 Zones

A. As used in this section:

1. "Historic Accessory-accessory dwelling unit" means a residential structure that is used in connection with or that is auxiliary to a single-family dwelling. For the purposes of this section, "auxiliary" means a use or structure incidental and subordinate to the single-family dwelling on the property, and located on the same lot as the single-family dwelling.
2. "Area zoned for rural residential use" means land that is not located inside an urban growth boundary as defined in ORS 195.060 and that is subject to an acknowledged exception to a statewide land use planning goal relating to farmland or forestland and planned and zoned by the county to allow residential use as a primary use.
3. "Historic home" means a single-family dwelling constructed between 1850 and 1945.
4. "New" means that the dwelling being constructed did not previously exist in residential or nonresidential form. "New" does not include the acquisition, alteration, renovation or remodeling of an existing structure.
5. "Single-family dwelling" means a residential structure designed as a residence for one family and sharing no common wall with another residence of any type.

B. An owner of a lot or parcel within an area zoned for rural residential use (UAR-10 and SR-2 1/2 ~~zones~~Zones) may construct a new single-family dwelling on the lot or parcel, provided:

1. The lot or parcel is not located in an area designated as an urban reserve as defined in ORS 195.137;
2. The lot or parcel is at least two acres in size;
3. A historic home is sited on the lot or parcel;
4. The owner converts the historic home to a historic-accessory dwelling unit upon completion of the new single-family dwelling; and
5. The historic accessory dwelling unit may be required to comply with all applicable laws and regulations relating to sanitation and wastewater disposal and treatment.

- C. The construction of a historic accessory dwelling unit under subsection (B) of this section is a land use action subject to DCC 22.20.
- D. An owner that constructs a new single-family dwelling under subsection (B) of this section may not:
 - 1. Subdivide, partition or otherwise divide the lot or parcel so that the new single-family dwelling is situated on a different lot or parcel from the historic accessory dwelling unit.
 - 2. Alter, renovate or remodel the historic accessory dwelling unit so that the square footage of the historic accessory dwelling unit is more than 120 percent of the historic home’s square footage at the time construction of the new single-family dwelling commenced.
 - 3. Rebuild the historic accessory dwelling unit if the structure is deemed a dangerous building due to fire or other natural disaster, pursuant to the Uniform Code for the Abatement of Dangerous Buildings, which defines “dangerous building” as “Whenever any portion thereof has been damaged by fire, earthquake, wind, flood or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements of the Building Code for new buildings of similar structure, purpose or location.”
 - 4. Construct an additional accessory dwelling unit on the same lot or parcel.
- E. A new single-family dwelling constructed under this section may be required to be served by the same water supply source as the historic accessory dwelling unit.
- F. Owner occupancy of either the historic accessory dwelling unit or the new single-family dwelling is not required. However, the historic accessory dwelling unit and the new single-family dwelling placed under this section ~~the new single-family dwelling and the accessory dwelling unit~~ may not be used simultaneously for short-term rentals of thirty (30) consecutive days or less.

HISTORY

Adopted by Ord. [2019-009 §6](#) on 9/3/2019

Recorded by Ord. [2019-009 §6](#) on 9/3/2019

Amended by Ord. [2023-014 §9](#) on 10/18/2023

19.92.160 Residential Accessory Dwelling Units In The UAR-10, SR-2 ½, And WTZ Zones

A. As used in this section:

- 1. “Accessory dwelling unit” means a residential structure that is used in connection with or that is auxiliary to a single-family dwelling. For the purposes of this section, “auxiliary” means a use or structure incidental and subordinate to the single-family dwelling on the property, and located on the same lot as the single-family dwelling.
- 2. “Accessory dwelling unit structure” means all areas of an accessory dwelling unit inclusive of garages, carports, decks, and porch covers.

3. “Rural residential use” means a lot or parcel located in the UAR-10, SR-2 ½, or WTZ Zones, consistent with the definition in ORS 215.501.
4. “Safe evacuation plan” means an identifiable route on a right(s)-of-way and any onsite driveways from the accessory dwelling unit to a staged evacuation area.
5. “Single-family dwelling” means a residential structure designed as a residence for one family and sharing no common wall with another residence of any type.
6. “Staged evacuation area” means a public or private location that occupants of the accessory dwelling unit may evacuate to reorganize.
7. “Useable floor area” means all areas of an accessory dwelling unit included within the surrounding exterior walls, exclusive of garages, carports, decks, and porch covers.
8. “Vacation occupancy” means occupancy in a dwelling unit, not including transient occupancy in a hotel or motel, that has all of the following characteristics:
 - a. The occupant rents the unit for vacation purposes only, not as a principal residence; and
 - b. The occupant has a principal residence other than at the unit; and
 - c. The period of authorized occupancy does not exceed 45 days.

B. One accessory dwelling unit is permitted outright on a lot or parcel zoned UAR-10, SR-2 ½, or WTZ, provided all of the following standards are met:

1. One single-family dwelling is sited on the lot or parcel:
 - a. As used in this section, “sited” means established onsite or applied for prior to issuance of any building or land use permits for an accessory dwelling unit.
 - b. An existing single-family dwelling meeting all other criteria in this section may be converted to an accessory dwelling unit during construction of a new primary single-family dwelling.
2. There is no guest house, temporary residence as identified in DCC 19.88.090, or additional dwelling units except the primary single-family dwelling established on the subject property.
 - a. An existing lawfully established guest house, temporary residence as identified in DCC 19.88.090, or an additional dwelling unit meeting all other criteria in this section may be converted to an accessory dwelling unit.
3. The lot or parcel is not located within an Urban Reserve Area, consistent with ORS 195.137.

4. No portion of the lot or parcel is within the Metolius Area of Critical State Concern, as defined in ORS 197.416.
5. The lot area is at least two acres in size.
6. The accessory dwelling unit structure will have a minimum setback of 100 feet from adjacent properties zoned F-1, F-2, or EFU and meet any other minimum setback requirements of the underlying zone and combining zones.
7. The accessory dwelling unit will not include more than 900 square feet of useable floor area.
8. The accessory dwelling unit will be located no farther than 100 feet from the existing single-family dwelling, measured from a wall of the existing single-family dwelling to the nearest part of the useable floor area of the accessory dwelling unit.
 - a. An existing structure converted to an accessory dwelling unit must be located no farther than 100 feet from the existing single-family dwelling, measured from the existing single-family dwelling to the nearest part of the accessory dwelling unit structure. For the purposes of this section, "existing" means the structure was lawfully established on or before October 18, 2023.
9. Prior to application, the accessory dwelling unit receives approval from a sewer authority or the Deschutes County Onsite Wastewater Division for onsite wastewater disposal and treatment.
10. The lot or parcel is served by a fire protection service provider with professionals who have received training or certification described in ORS 181A.410.
11. The accessory dwelling unit provides for all of the following:
 - a. Adequate access connecting an accessory dwelling unit with a fire protection service provider with professionals who have received training or certification described in ORS 181A.410. Adequate access is met by demonstrating compliance with section 10(a)i and 10(a)(ii), or section 10(a)(iii):
 - i. A continuous, minimum 20-foot width right(s)-of-way with an unobstructed vertical clearance of not less than 13.5 feet. For the purposes of this section, right(s)-of-way are defined as:
 1. Public roads with maintenance responsibility accepted by a unit of local or state government or assigned to landowners or homeowners association by covenant or agreement; or
 2. Private roads, as permitted by DCC Title 19, with maintenance responsibility assigned to landowners or homeowners associations by covenant or agreement pursuant to ORS 105; and
 - ii. A continuous, minimum 12-foot width onsite driveway with an unobstructed horizontal clearance of not less than 20 feet and an unobstructed vertical clearance of not less than 13.5 feet, designed and maintained as follows:

1. Composed of an all-weather surface including asphalt or concrete; or
 2. Designed and maintained to support a minimum gross vehicle weight (GVW) of 75,000 lbs as certified by a Professional Engineer, registered in Oregon;
 - iii. Written confirmation from a fire protection service provider with professionals who have received training or certification described in ORS 181A.410, on a form prepared by Deschutes County, that access to the property meets minimum fire district requirements to provide emergency services to the property;
- b. A safe evacuation plan; and
- c. For private properties utilized as staged evacuation areas, written authorization from the property owner(s) of the staged evacuation area that the occupants of the accessory dwelling unit may evacuate to the staged evacuation area.
12. Wildfire Hazard Mitigation Building Code Standards:
- a. If the Statewide Wildfire Hazard Map described in ORS 477.490 has been approved, the following requirements shall apply to the accessory dwelling unit structure:
 - i. For areas designated as high wildfire hazard that are identified pursuant to ORS 477.490:
 1. The Wildfire Hazard Mitigation building code standards as described in section R327 of the Oregon Residential Specialty Code.
 - b. If the Statewide Wildfire Hazard Map described in ORS 477.490 has not been approved, the following requirements shall apply to the accessory dwelling unit structure:
 - i. The Wildfire Hazard Mitigation building code standards as described in section R327 of the Oregon Residential Specialty Code.
13. Wildfire Hazard Mitigation Defensible Space Standards:
- a. If the Statewide Wildfire Hazard Map described in ORS 477.490 has been approved, the following requirements shall apply:
 - i. For all wildfire hazard designations in the wildland-urban interface that are identified pursuant to ORS 477.490:
 1. The minimum defensible space rules established by the State Fire Marshal as described in ORS 476.392.
 - b. If the Statewide Wildfire Hazard Map described in ORS 477.490 has not been approved, then either the section 12(b)(i) or 12(b)(ii) requirements shall apply:
 - i. Prior to issuance of building permits, the property owner(s) shall construct and maintain the following firebreaks on land surrounding the accessory dwelling unit on land that is owned or controlled by the owner:

1. Primary Firebreak. A primary firebreak, not less than 10 feet wide, shall be constructed containing nonflammable materials. This may include lawn, walkways, driveways, gravel borders or other similar materials; and
 2. Secondary Firebreak. A secondary firebreak of not less than 20 feet wide shall be constructed outside the primary firebreak. This firebreak need not be bare ground, but can include a lawn, ornamental shrubbery or individual or groups of trees separated by a distance equal to the diameter of the crowns adjacent to each other, or 15 feet, whichever is greater. All trees shall be pruned to at least eight feet in height. Dead fuels shall be removed; and
 3. Fuel Break. A fuel break shall be maintained, extending a minimum of 100 feet in all directions around the secondary firebreak. Individual and groups of trees within the fuel break shall be separated by a distance equal to the diameter of the crowns adjacent to each other, or 15 feet, whichever is greater. Small trees and brush growing underneath larger trees shall be removed to prevent spread of fire up into the crowns of the larger trees. All trees shall be pruned to at least eight feet in height. Dead fuels shall be removed; and
 4. No portion of a tree or any other vegetation shall extend to within 15 feet of the outlet of a stovepipe or chimney.
 - ii. Prior to issuance of building permits, the property owner(s) shall construct and maintain defensible space and fuel breaks as developed in consultation with local fire protection service providers who have received training or certification described in ORS 181A.410. Applicable defensible space and fuel breaks shall be on land surrounding the accessory dwelling unit that is owned or controlled by the owner.
14. The existing single-family dwelling property on the lot or parcel is not subject to an order declaring it a nuisance or subject to any pending action under ORS 105.550 to 105.600.
15. A lot or parcel with an accessory dwelling unit approved under this section is ineligible for:
- a. A subdivision, partition, other division of the lot or parcel, or a property line adjustment where the result of such application would be to situate the existing single-family dwelling on a different lot or parcel than the accessory dwelling unit.
16. If the accessory dwelling unit is served by a well, the construction of the accessory dwelling unit shall maintain all setbacks from the well required by the Water Resources Commission or Water Resources Department.

17. At the time of application, a letter confirming that the supplier of water is “Willing and Able to Serve” the accessory dwelling unit shall be provided if the accessory dwelling unit is to be served by any water source other than an onsite domestic well.
18. An existing single-family dwelling and an accessory dwelling unit allowed under this section are considered a single unit for the purposes of calculating ground water right exemptions under ORS 537.545(1).
19. If the water supply source for the accessory dwelling unit or associated lands or gardens will be a well using water under ORS 537.545 (1)(b) or (d), no portion of the lot or parcel is within an area in which new or existing ground water uses under ORS 537.545 (1)(b) or (d) have been restricted by the Water Resources Commission.
20. Prior to issuance of building permits, the applicant shall sign and record with the County Clerk, a restrictive covenant stating an accessory dwelling unit allowed under this section and the primary single-family dwelling cannot be used for vacation occupancy, as defined in DCC 19.92.160(A)(8) and consistent with ORS 90.100.

HISTORY

Adopted by Ord. 2023-014 §9 on 10/18/2023

Exhibit J

CHAPTER 19.108 VARIANCES**19.108.020 Criteria**

19.108.020 Criteria

No variance shall be granted pursuant to the provisions of DCC 19.108.010 unless the applicant can establish:

- A. That special conditions exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, buildings or structures in the same zone; and
- B. That strict interpretation of the provisions of DCC Title 19 would deprive the applicant of rights commonly enjoyed by other properties in the same zone under the terms of DCC Title 19; and
- C. That the special conditions and circumstances do not result from the actions of the applicant and such conditions and circumstances do not merely constitute pecuniary hardship or inconvenience; and
- D. That granting the variance will be in harmony with the objectives of DCC Title 19 and not injurious to the neighborhood or otherwise detrimental to the public welfare.

D-E. Notwithstanding the provisions of this section, a variance may not be granted which amends any standards mandated by the Oregon Revised Statutes (ORS) or Oregon Administrative Rules (OAR).

HISTORY

Adopted by Ord. [PL-11](#) on 7/11/1979

Repealed & Reenacted by Ord. [90-038](#) §1 on 10/3/1990

[Amended by Ord. 2023-014 §10 on 10/18/2023](#)

Exhibit K

CHAPTER 22.04 INTRODUCTION AND DEFINITIONS**22.04.040 Verifying Lots of Record**

* * *

22.04.040 Verifying Lots of Record

- A. Purpose; scope. Concurrent with or prior to the issuance of certain permits, a lot or parcel shall be verified pursuant to this section to reasonably ensure compliance with the zoning and land division laws in effect on the date the lot or parcel was created. Not all permits require verification. If required, verifying that the lot or parcel was lawfully created is a threshold issue that should be addressed before the permit may be issued, but does not supersede or nullify other permit requirements. This section 22.04.040 provides an applicant the option to concurrently verify a lot or parcel as part of applying for a permit that requires verification, or preliminarily apply for a declaratory ruling to thereby determine the scope of available permits.
- B. Permits Requiring Verification.
1. Unless an exception applies pursuant to subsection (B)(2) below, verifying a lot or parcel pursuant to subsection (C) shall be required prior to the issuance of the following permits:
 - a. Any land use permit for a unit of land in the Exclusive Farm Use Zones (DCC Chapter 18.16), Forest Use Zone – F1 (DCC Chapter 18.36), or Forest Use Zone – F2 (DCC Chapter 18.40);
 - b. Any permit for a lot or parcel that includes wetlands as shown on the Statewide Wetlands Inventory;
 - c. Any permit for a lot or parcel subject to wildlife habitat special assessment;
 - d. In all zones, a land use permit relocating property lines that reduces in size a lot or parcel;
 - e. In all zones, a land use, structural, or non-emergency on-site sewage disposal system permit if the lot or parcel is smaller than the minimum area required in the applicable zone;
 - f. In all zones, a permit for a Historic Home Accessory Dwelling Unit as defined in DCC 18.116.350 or 19.92.150;
 - e-g. In all zones, a permit for a Residential Accessory Dwelling Unit as defined in DCC 18.116.355 or 19.92.160.
 2. Exceptions. Verification shall not be required if one of the following exceptions apply:
 - a. The lot or parcel was created by a subdivision plat, partition plat, condominium plat, or town plat so long as the plat was recorded and approved by the County, another political subdivision of the State of Oregon, or the State of Oregon;

- b. The lot or parcel was previously validated by the County and an applicable partition plat was subsequently recorded within 365 days as required by ORS 92.176(5);
 - c. The lot or parcel was previously determined to be a lot of record in a formal decision issued by the County or a finding in a land use action prior to November 1, 2017;
 - d. The lot or parcel was previously verified pursuant to subsection (C) and a finding was issued to that effect in a land use action or declaratory ruling; or
 - e. For permits listed in subsection (B)(1)(e) only, the lot or parcel previously received a land use or building permit prior to November 1, 2017, a structural permit after November 1, 2017, or a non-emergency on-site sewage disposal permit.
 - f. Notwithstanding DCC 22.04.040(B)(2)(b), if a unit of land has been validated by a city or county under ORS 92.176 before January 1, 2022, such unit of land becomes a lawfully established parcel, provided that the owner of the unit of land caused a partition plat to be recorded on or before December 31, 2022.
- C. Verified Lots of Record. Permits that require verification shall only be issued to lots or parcels that meet the “lot of record” definition in 18.04.030.
- D. Findings; Declaratory Ruling. If an applicant is applying for a land use permit listed in subsection (B)(1), the County shall include a finding verifying that the lot or parcel meets the “lot of record” definition in 18.04.030, a finding noting that the lot or parcel does not meet the “lot of record” definition in 18.04.030, or a finding noting that verification was not required because the lot or parcel qualified for an exception pursuant to subsection (B)(2). If an applicant is applying for a permit listed in subsection (B)(1) that does not require public notice, or prior to applying for any permit, an applicant may request a declaratory ruling pursuant to DCC Chapter 22.40. If the lot or parcel meets the “lot of record” definition in 18.04.030, the County shall issue the declaratory ruling determining that the lot or parcel qualifies for all permits listed in subsection (B)(1). If the lot or parcel does not meet the “lot of record” definition in 18.04.030, the County shall not issue the declaratory ruling and instead shall provide the applicant information on permit options that do not require verification and information on verification exceptions that may apply pursuant to subsections (B)(2).

HISTORY

Adopted by Ord. 2017-015 §3 on 11/1/1979

[Amended by Ord. 2023-014 §11 on 10/18/2023](#)



STAFF REPORT

FILE NUMBER: 247-22-000671-TA

APPLICANT: Deschutes County Community Development
117 NW Lafayette Avenue
Bend, Oregon 97703

PROPERTY OWNER: N/A

REQUEST: Pursuant to Senate Bills (SB) 391 and 644, Text Amendments to allow an owner of a lot or parcel within a rural residential exception area to construct one accessory dwelling unit (ADU) subject to certain restrictions and limitations.

STAFF CONTACT: Kyle Collins, Associate Planner

I. APPLICABLE CRITERIA:

Deschutes County lacks specific criteria in DCC Titles 18, 19, 22, or 23 for reviewing a legislative text amendment. Nonetheless, since Deschutes County is initiating a legislative text amendment, the County bears the responsibility for justifying that the amendments are consistent with Statewide Planning Goals and its existing Comprehensive Plan

II. BASIC FINDINGS:

A. Senate Bill 391

On June 23, 2021, the Oregon Legislature adopted Senate Bill (SB) 391, which authorizes counties to allow an owner of a lot or parcel within a rural residential exception area to construct one accessory dwelling unit (ADU) subject to certain restrictions and limitations.¹ SB 391 does not obligate a county to allow ADUs, nor does it prohibit a county from imposing any additional restrictions beyond what is mandated in state law.

Rural residential exception areas and their corresponding zones exist throughout Oregon. By definition, rural residential zones exist outside urban growth boundaries (UGBs), but are excluded

¹ <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB391>

from the state’s resource land (farm and forest zone) protections. While the protections afforded to resource lands allow residential uses only in conjunction with a farm or forest use, rural residential zones allow a dwelling as a primary use of the land. Prior to the adoption of SB 391, state law allowed counties to permit an additional dwelling on a property containing a house built prior to 1945.² However, unlike urban zones, rural residential zones did not have other by-right accessory dwelling options, making inter-generational and alternative housing options difficult to achieve.

SB 391 only authorizes ADUs on lands zoned for rural residential use. Areas zoned for rural residential use are defined by ORS 215.501 to mean “land that is not located inside a UGB as defined in ORS 195.060 (Definitions) and that is subject to an acknowledged exception to a statewide land use planning goal relating to farmland or forestland and planned and zoned by the county to allow residential use as a primary use.” The applicable zoning designations in Deschutes County for these lands are Multiple Use Agricultural (MUA-10), Rural Residential (RR-10), Suburban Low Density Residential (SR 2.5), Urban Area Reserve (UAR-10), and Westside Transect Zone (WTZ).

B. Senate Bill 644

On May 8, 2023, the Oregon Legislature adopted Senate Bill (SB) 644, which amends requirements relating to wildfire hazard mitigation for development of accessory dwelling units on lands zoned for rural residential use.³ Prior to adoption of SB 644, counties were required to wait for final adoption of the Statewide Map of Wildfire Risk (Statewide Wildfire Hazard Map) from the Oregon Department of Forestry (ODF) as identified in SB 762⁴ prior to adoption of any local administering rural ADU standards. SB 644 decouples adoption of the Statewide Map of Wildfire Risk (Statewide Wildfire Hazard Map) from the adoption of any local rules allowing rural ADUs. During any interim period where a local jurisdiction has adopted rules allowing ADUs and prior to the release of the final map, any constructed ADUs will be subject to the home hardening building codes as described in section R327 of the Oregon Residential Specialty Code.

C. Deschutes County Rural ADU Ordinance

In addition to only applying to lands recognized as rural residential exception areas, SB 391 also contains minimum criteria that must be met for a lot or parcel to qualify for an ADU. Many of those criteria are general in nature and therefore require counties to provide their own interpretations or definitions. At the same time, SB 391 contains several provisions related to wildfire hazard mitigation, which relied on and referred to actions at the state level as directed by the passage of SB 762, a comprehensive wildfire hazard mitigation bill.⁵ While wildfire requirements were being created at the state level, staff worked with the Board of County Commissioners to “translate” the language of SB 391 into the local code presented in these amendments.

² House Bill 3012 (2017).

³ <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB644/Enrolled>

⁴ <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB762/Enrolled>

⁵ SB 1533 (2022) corrected broken links in SB 762 related to wildfire mapping.

III. PROPOSAL:

This is a legislative text amendment to Deschutes County Code (DCC), Title 18, County Zoning, and Title 19, Bend Urban Growth Boundary Zoning Ordinance. The primary purpose of the amendments is to allow rural ADUs per the adoption of SB 391 and SB 644. The proposal creates two new subsections (effectively the same, but pertaining to different zones in Titles 18 and 19) that govern the criteria for rural ADUs. Table 1 provides a summary of each provision of the amendments.

Table 1 – SB 391 & SB 644 Requirements

Topic	SB 391/SB 644 Requirements	Comment
Single Family Dwelling	SB 644 Section 1(2)(c) requires one single-family dwelling to be located on the lot or parcel.	DCC 18.116.355(B)(1) and DCC 19.92.160(B)(1) are consistent with SB 391/SB 644.
Urban Reserve Area	SB 644 Section 1(2)(a) requires that the lot or parcel is not located within an area designated as an urban reserve as defined in ORS 195.137. In Deschutes County, the Redmond Urban Reserve Area is the only urban reserve that meets this definition.	DCC 18.116.355(B)(2) and DCC 19.92.160(B)(2) are consistent with SB 391/SB 644.
Nonresource Lands	SB 644 Section 1(1)(b) requires that “Area zoned for rural residential use” has the meaning given that term in ORS 215.501. ORS 215.501(1)(b), “Area zoned for rural residential use” means land that is not located inside an urban growth boundary as defined in ORS 195.060 (Definitions) and that is subject to an acknowledged exception to a statewide land use planning goal relating to farmland or forestland and planned and zoned by the county to allow residential use as a primary use.	Pursuant to DLCD, Acknowledged nonresource plan amendments and zone changes from Exclusive Farm Use (EFU) to RR-10 or MUA-10 are eligible for an ADU.
Areas of Critical State Concern	SB 644 Section 1(2)(i) requires that no portion of the lot or parcel is within a designated area of critical state concern. Areas of critical state concern are generally defined in ORS 197.405 and apply to the Metolius Area of Critical State Concern in ORS 197.416.	DCC 18.116.355(B)(3) and DCC 19.92.160(B)(3) are consistent with SB 391/SB 644.
Minimum Lot Size	SB 644 Section 1(2)(b) requires the subject lot or parcel be at least two acres in size.	DCC 18.116.355(B)(4) and DCC 19.92.160(B)(4) are consistent with SB 391/SB 644.

Topic	SB 391/SB 644 Requirements	Comment
Setbacks	SB 644 Section 1(2)(m)(A) requires that the ADU has adequate setbacks from adjacent lands zoned for resource use.	DCC 18.116.355(B)(5) and DCC 19.92.160(B)(5) are consistent with SB 391/644. Both require a minimum setback of 100 feet between the ADU and adjacent EFU and Forest Use zoned (F-1, F-2) properties.
ADU Size	SB 644 Section 1(2)(f) limits the size of the ADU to 900 square feet of useable floor area.	DCC 18.116.355(B)(6) and DCC 19.92.160(B)(6) are consistent with SB 391/SB 644. Usable floor area is defined as, "the area of the accessory dwelling unit included within the surrounding insulated exterior walls, exclusive of garages, carports, decks and porch covers."
Distance from Dwelling	SB 644 Section 1(2)(g) requires the ADU to be located no farther than 100 feet from the single-family dwelling. ⁶	DCC 18.116.355(B)(7) and DCC 19.92.160(B)(7) are consistent with SB 391/SB 644. Both require the ADU be located no farther than 100 feet from the existing single-family dwelling, measured from a wall of the single-family dwelling to the nearest part of the useable floor area of the ADU. An exception to this standard has been provided for pre-existing structures converted to ADUs by allowing measurements to be taken from non-useable floor area portions of the dwelling.
Sanitation and Wastewater	SB 644 Section 1(2)(e) requires the ADU to comply with applicable sanitation and wastewater regulations.	DCC 18.116.355(B)(8) and DCC 19.92.160(B)(8) are consistent with SB 391/SB 644.
Fire Protection District Service	SB 644 Section 1(2)(j) requires the lot or parcel be served by a fire protection service provider with professionals who have received training or certification described in ORS 181A.410.	DCC 18.116.355(B)(9) and DCC 19.92.160(B)(9) are consistent with SB 391/SB 644.

⁶ The bill language and legislative history are unclear if the entire ADU must be entirely within 100 feet of the dwelling or just a portion. Local governments are therefore granted deference to interpret this provision.

Topic	SB 391/SB 644 Requirements	Comment
Access and Evacuation	SB 644 Section 1(2)(m)(B) requires that the ADU has adequate access for firefighting equipment and safe evacuation and staged evacuation areas.	DCC 18.116.355(B)(10) and DCC 19.92.160(B)(10) are consistent with SB 391/SB 644. As an alternative standard, both sections allow certification of access by the applicable fire protection district and that there are evacuation plans and staged evacuation areas.
Wildland Urban Interface (WUI) Defensible Space Requirements	SB 644 Section 1(2)(k) requires that if the lot or parcel is in an area identified on the statewide map of wildfire risk described in ORS 477.490 as within the wildland-urban interface, the lot or parcel and accessory dwelling unit comply with any applicable minimum defensible space requirements for wildfire risk reduction established by the State Fire Marshal under ORS 476.392 and any applicable local requirements for defensible space established by a local government pursuant to ORS 476.392	DCC 18.116.355(B)(12) and DCC 19.92.160(B)(12) are consistent with SB 391/SB 644. Consistent with SB 644, the code sections identify alternatives for properties wishing to develop rural ADUs prior to and after the adoption of the Statewide Wildfire Hazard Map identified in SB 762/SB 80.
Wildland Urban Interface (WUI) Fire Hardening	SB 644 Section 1(2)(l)(A) requires that if the lot or parcel is in an area identified on the statewide map of wildfire risk described in ORS 477.490, the ADU must comply with R327 (fire hardening standards) in the Oregon Residential Specialty Code. SB 644 Section 1(2)(l)(B) requires that if no statewide map of wildfire risk has been adopted, the ADU must comply with R327 (fire hardening standards) in the Oregon Residential Specialty Code	DCC 18.116.355(B)(11) and DCC 19.92.160(B)(11) are consistent with SB 391/SB 644. Consistent with SB 644, the code sections identify alternatives for properties wishing to develop rural ADUs prior to and after the adoption of the Statewide Wildfire Hazard Map identified in SB 762/SB 80.
Nuisance	SB 644 Section 1(2)(d) requires the existing single-family dwelling property on the lot or parcel is not subject to an order declaring it a nuisance or subject to any pending action under ORS 105.550 to 105.600.	DCC 18.116.355(B)(13) and DCC 19.92.160(B)(13) are consistent with SB 391/SB 644.
Subdivision and Other Accessory Dwelling Unit Limitations	SB 644 Section 1(2)(m)(C)(4)(a) and (b) preclude a subdivision, partition or other division of the lot or parcel so that the existing single-family dwelling is situated on a different lot or parcel than the ADU; and precludes construction of an additional ADU on the same lot or parcel.	DCC 18.116.355(B)(14) and DCC 19.92.160(B)(14) are consistent with SB 391/SB 644.

Topic	SB 391/SB 644 Requirements	Comment
Water Supply	SB 644 Section 1(2)(m)(C)(5) allows a county to require that the ADU be served by the same water source or water supply system as the existing single-family dwelling. If the ADU is served by a well, the construction of the ADU shall maintain all setbacks from the well required by the Water Resources Commission or Water Resources Department.	DCC 18.116.355(B)(15) and DCC 19.92.160(B)(15) are consistent with SB 391/SB 644. While not requiring the same water source, DCC 18.116.355(B)(15) and DCC 19.92.160(B)(15) require setbacks from the well to be maintained from an ADU.
Water Right Exempt Use	SB 644 Section 1(2)(m)(C)(6) recognizes that a single-family dwelling and an ADU are considered a single unit and therefore do not require a groundwater permit from the Oregon Water Resources Department.	DCC 18.116.355(B)(17) and DCC 19.92.160(B)(17) are consistent with SB 391/SB 644.
Water Right Restrictions	SB 644 Section 1(2)(h) requires that no ADUs be permitted in areas if the water supply source for the accessory dwelling unit or associated lands or gardens will be a well using water under ORS 537.545 (1)(b) or (d), no portion of the lot or parcel is within an area in which new or existing ground water uses under ORS 537.545 (1)(b) or (d) have been restricted by the Water Resources Commission ⁷ .	DCC 18.116.355(B)(18) and DCC 19.92.160(B)(18) are consistent with SB 391/SB 644.
Vacation Occupancy	SB 644 Section 1(2)(m)(C)(3) prevents an ADU from being used for vacation occupancy as defined in ORS 90.100.	DCC 18.116.355(B)(19) and DCC 19.92.160(B)(19) are consistent with SB 391/SB 644. Additional standards prohibit the primary single-family dwelling onsite from use as a vacation rental after construction of a lawful ADU Both require a restrictive covenant be recorded to ensure compliance.

IV. FINDINGS:

CHAPTER 22.12, LEGISLATIVE PROCEDURES

Section 22.12.010.

Hearing Required

FINDING: This criterion will be met because a public hearing was held before the Deschutes County Planning Commission and Board of County Commissioners.

⁷ Deschutes County does not contain any critical groundwater areas as defined by the Water Resources Commission.

Section 22.12.020, Notice

Notice

A. Published Notice

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

FINDING: This criterion will be met as notice was published in the Bend Bulletin newspaper for the Planning Commission public hearing, and the Board of County Commissioners' 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: Given the proposed legislative amendments do not apply to any specific property, no individual notices were sent.

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

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

Section 22.12.030 Initiation of Legislative Changes.

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

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

Section 22.12.040. Hearings Body

- A. The following shall serve as hearings or review body for legislative changes in this order:**
 - 1. The Planning Commission.**

2. The Board of County Commissioners.

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

FINDING: The Deschutes County Planning Commission held the initial public hearing on September 22, 2022 and subsequently reviewed the proposed amendments on July 13, 2023. The Board then held a public hearing on July 26, 2023. These criteria are met.

Section 22.12.050 Final Decision

All legislative changes shall be adopted by ordinance

FINDING: The proposed legislative changes will be implemented by Ordinance No. 2023-014 upon approval and adoption by the Board of County Commissioners. This criterion will be met.

B. Statewide Planning Goals and Guidelines

Goal 1: Citizen Involvement: 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: This goal is met because ORS 197.610 allows local governments to initiate post acknowledgments plan amendments (PAPA). An Oregon Land Conservation and Development Department 35-day notice was initiated on August 17, 2022. An Oregon Land Conservation and Development Department 35-day notice was reinitiated on June 7, 2023 to capture amendments required by state legislative action. The Planning Commission held a public hearing on September 22, 2022 and the Board of County Commissioners held a public hearing on July 26, 2023. The Findings document provides the adequate factual basis for the amendments.

Goal 3: Agricultural Lands: No changes related to agricultural lands are proposed as part of the text amendments. This goal does not apply.

Goal 4: Forest Lands: No changes related to forest lands are proposed as part of the text amendments. This goal does not apply.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources: By adopting SB 391 in 2021 and SB 644 in 2023, the Oregon Legislature added a new use, Accessory Dwelling Units (ADUs), to rural residential exception areas. Local governments can choose to allow this use by: 1) amending their zoning codes and complying with SB 391/SB 644's development standards. Goal 5 does not apply.

However, to the extent that it does, local governments apply Goal 5 to a PAPA when the amendment allows a new use and the new use “could be” a conflicting use with a particular Goal 5 resource site on an acknowledged resource list. Certain areas in rural Deschutes County, zoned MUA-10 and RR-10 contain Goal 5 resources because they are overlaid with a Wildlife Area Combining Zone. Two zoning codes are being amended to allow Rural ADUs and are therefore subject to an ESEE Analysis. No other changes to the code warrant specific ESEE Analysis as they are not adding new uses that conflict with Goal 5 resources. The ESEE analysis is included in *Appendix A* which is attached to this document.

Goal 6: Air, Water and Land Resources Quality: The proposed text amendments do not propose changes to the County’s Comprehensive Plan policies or implementing regulations for compliance with Goal 6, and therefore are in compliance.

Goal 7: Areas Subject to Natural Disasters and Hazards: The proposed text amendments do not propose to changes the County’s Comprehensive Plan or implementing regulations regarding natural disasters and hazards; therefore, they are in compliance. Eligible properties subject to SB 762/SB 644 and those constructed prior to adoption of the Statewide Wildfire Hazard Map, will be required to comply with Oregon Residential Specialty Code (R327) to fire harden the ADU and coordinate with the Oregon State Fire Marshal or local fire protection districts to ensure the property has defensible space.

Goal 8: Recreational Needs: Accessory Dwelling Units are not a recreational use or need. This goal does not apply.

Goal 9: Economic Development: Accessory Dwelling Units are not primarily economic in nature. This goal does not apply.

Goal 10: Housing: This goal is not applicable because unlike municipalities, unincorporated areas are not obligated to fulfill certain housing requirements.

Goal 11: Public Facilities and Services: Accessory Dwelling Units in the rural county typically rely on domestic wells and onsite wastewater treatment systems. A Goal 11 exception would be required for a centralized sewer system and would need to be applied on a property specific, needs related basis. This goal does not apply.

Goal 12: Transportation: By adopting SB 391 in 2021 and SB 644 in 2023, the Oregon Legislature added a new use, Accessory Dwelling Units (ADUs), to rural residential exception areas. Local governments can choose to allow this use by amending their zoning codes and complying with SB 391/SB 644’s development standards. ADUs will still be subject to Transportation System Development Charges (SDCs) prior to the issuance of a building permit.

To the extent that the Transportation Planning Rule at OAR 660-012-0060 does apply, staff notes the following comments from the County’s Senior Transportation Planner:

The Transportation Planning Rule (TPR) at OAR 660-012-0060 requires a determination if a new land use regulation will significantly affect a transportation facility. Approximately 9,831 lots could be eligible for a rural accessory dwelling unit (ADU) based on zoning and size of the tax lot with roughly 3,000 tax lots being eligible immediately. The remaining roughly 6,000 tax lots' eligibility will need to be determined based on the wildfire rules and requirements in development based on Senate Bill (SB) 763 [sic].

The potential lots for a rural ADU are geographically spread out:

- Bend area: 3,876 lots
- Redmond area: 2,886 lots
- Sisters area: 1,576 lots
- South County: 1,123 lots

The County is currently updating its 2010-2030 Transportation System Plan (TSP) to 2020-2040. The analysis of future traffic volumes only indicated a few intersections that would not meet County performance standards. Both were tied to the Deschutes Junction interchange at US 97/Deschutes Market Road-Tumalo. The TSP has planned improvements to mitigate the deficiencies at those intersections.

The geographic distribution of the lots, the adequate reserve capacity on the County system, the low trip generation of each home, an average of nine daily trips, including one p.m. peak hour trip, and the fact the lots will develop over years and years, means the road system is adequate to handle the traffic volumes generated by rural ADUs.

The rural ADUs do not result in any changes to the County's functional classifications or access management policies. The County collects transportation system development charges (SDCs) for all new developments, including single-family homes. The SDC rate is indexed to construction costs and resets every July 1. As a rural ADU is essentially a second home on the property, the County would collect SDCs as each rural ADU develops. The current SDC rate for a single-family home is \$4,115. If the SDC rate remained unchanged, which is highly unlikely, the 9,831 lots would generate \$38.6 million dollars in SDCs.

The addition of a second rural ADU on approximately 9,381 lots will not create a significant nor adverse effect to the County transportation system and thus complies with the TPR.

Goal 13: Energy Conservation: Any future site-specific application for an ADU will be required to incorporate energy conservation measures through the Oregon Building Code. This goal does not apply.

Goal 14: Urbanization: The purpose of Goal 14 is to direct urban uses to areas inside UGBs. As the proposed amendments do not seek to allow urban uses on rural land, nor do they seek to expand an existing urban growth boundary, this goal does not apply.

Goals 15 through 19: Deschutes County does not contain any of the relevant land types included in Goals 15-19. Therefore these goals do not apply.

C. Deschutes County Comprehensive Plan

Chapter 3, Rural Growth

Section 3.3, Rural Housing

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

FINDING: Implementing SB 391 and SB 644, which allows ADUs to be sited in rural residential exception areas, is consistent with Policy 3.3.5.

V. CONCLUSION:

Based on the information provided herein, the staff recommends the Board of County Commissioners approve the proposed text amendments to allow an owner of a lot or parcel within a rural residential exception area to construct one accessory dwelling unit (ADU) subject to certain restrictions and limitations.

Rural Accessory Dwelling Unit Text Amendment

Appendix A: ESEE Analysis Document to

File No. 247-22-000671-TA

Deschutes County Community Development

September 27, 2023

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Chapter 1: Overview of Goal 5 and ESEE Analyses

Introduction

This appendix report was prepared to supplement the findings document associated with File No. 247-22-000671-TA. Deschutes County is amending Deschutes County Code (DCC), Titles 18 and 19 to allow Rural Accessory Dwelling units (ADUs) consistent with Senate Bill (SB) 391 (2021) and SB 644 (2023) in Multiple Use Agricultural (MUA-10), Rural Residential (RR-10), Suburban Low Density Residential (SR 2.5), Urban Area Reserve (UAR-10), and Westside Transect Zones (WTZ). DCC Chapter 18.88 is the Wildlife Area (WA) Combining Zone, which recognizes four Goal 5 inventories: Antelope Range, Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat. Certain areas in rural Deschutes County, zoned MUA-10 and RR-10, are overlaid with a Deer Migration Corridor, Deer Winter Range, and/or Significant Elk Habitat.

In addition, there are some areas zoned MUA-10 and RR-10 that contain Goal 5 riparian resources and their associated fish, furbearer, waterfowl, and upland game bird habitat. Recognizing that an ADU is a new conflicting use in the WA Combining Zone, Deschutes County is applying Goal 5 in consideration of this Post Acknowledgment Plan Amendment (PAPA). The full findings document provides additional detail and background information regarding the intent of the amendments and compliance with other applicable local and state regulations outside of Statewide Land Use Planning Goal 5 – *Natural Resources, Scenic and Historic Areas, and Open Spaces*.

Deschutes County Goal 5 Program

The purpose of Goal 5 is “to protect natural resources and conserve scenic and historic areas and open spaces.” Local governments, as part of the Comprehensive Planning process, are required to inventory the extent, location, quality, and quantity of significant natural resources within their jurisdictional boundaries. Following this inventory, local governments then conduct an economic, social, environmental, and energy (ESEE) analysis to determine the extent to which land uses should be limited in order to adequately protect significant resources. Following an ESEE analysis, governments then establish a program to protect significant natural resources. Deschutes County established its initial Goal 5 natural resource inventory, ESEE analyses, and protection programs between the years of 1988-1994, as part of periodic review.

In reviewing this document, it is important to acknowledge there are six policies and development standards within the Deschutes County Comprehensive Plan and DCC that were established through ESEEs over time that could still limit the development of ADUs near inventoried Goal 5 resources. Deschutes County finds the proposed amendments do not alter the following existing protections.

1. Setback Protections: 100-foot structural setback from the ordinary high water mark (OHWM) of rivers and streams.

2. Scenic Protections: Development near rivers in the Landscape Management Combining Zone must be reviewed for aesthetic compatibility.
3. Wetland Protections: Prohibition of fill or removal of any material or wetland vegetation, regardless of the amount, within the bed and banks of any stream or river or in any wetland unless approved as a conditional use.
4. Mitigation Protections: Impacts to any wetland or riverbank impacts to be fully mitigated, as evaluated by Oregon Department of Fish and Wildlife (ODFW).
5. Flood Plain Protections: All new construction, expansion or substantial improvement of an existing dwelling, an agricultural related structure, a commercial, industrial or other non-residential structure, or an accessory building in a designated Flood Plain must obtain a conditional use permit.
6. Combining Zone Requirements: Deer Migration Corridor, Deer Winter Range, Elk Habitat, and Sensitive Bird and Mammal Habitat have site specific requirements including development setbacks and/or seasonal construction requirements to prevent impacts to sensitive species and habitat.

Required Steps and Discretionary Review

Local governments are required to comply with Goal 5 when a PAPA allows a new use and the new use “could be” a conflicting use with a particular Goal 5 resource site on an acknowledged resource list.⁸ Deschutes County is amending the MUA-10, RR-10, SR 2.5, UAR-10 and WTZ zoning chapters to allow ADUs consistent with SB 391 (2021) and SB 644 (2023).

ADUs have the potential to generate a certain level of noise and habitat alteration. As this new use could potentially impact Goal 5 resources, Deschutes County is conducting an ESEE Analysis to identify potential consequences and protections related to the amendments. ADUs will be added as a new permitted use in the MUA-10, RR-10, SR 2.5, UAR-10 and WTZ zones. As shown below, only two of those zones, MUA-10 and RR-10 contain Goal 5 resources and are being reviewed as part of this ESEE analysis.

Table 2: Zones Containing Goal 5 Resources

Contain Goal 5 Resources	Do Not Contain Goal 5 Resources
<ul style="list-style-type: none"> • DCC Chapter 18.32, Multiple Use Agricultural Zone • DCC Chapter 18.60, Rural Residential Zone 	<ul style="list-style-type: none"> • DCC Chapter 19.12, Urban Area Reserve Zone • DCC Chapter 19.20, Suburban Low Density Residential Zone • DCC Chapter 19.22, Westside Transect Zone

⁸ OAR 660-023-0250(3)(b)

ESEEs are meant to be analytical tools. The content of the ESEE is discretionary and is intended to be conducted by planning staff using existing information. An ESEE is not meant to focus exclusively on environmental impacts such as an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA). Additionally, Goal 5 explains “the ESEE analysis need not be lengthy or complex, but should enable reviewers to gain a clear understanding of the conflicts and the consequences to be expected.”⁹ In utilizing this analytical tool, there are a few steps jurisdictions must include and address in accordance with OAR 660-023 – *Procedures and Requirements for Complying with Goal 5*:

1. Identify Conflicting Uses – Does the land use or activity negatively impact natural resources?
2. Determine Impact Area – What is the geographic extent to which land uses or activities adjacent to natural resources could negatively impact those resources?
3. Analyze ESEE Consequences – What are the positive and negative consequences (both for development and natural resources) of a decision to fully protect natural resources, fully allow conflicting uses, or limit conflicting uses?
4. Develop a program – How and to what extent will the natural resources be protected based on the ESEE analysis?

A response to each of these steps is included throughout this report. The relevant page and chapter can be found in the table of contents.

⁹ OAR 660-023-0040(1)

Chapter 2: Deschutes County Goal 5 Inventory and Methodology

660-23-0030 – Inventory Goal 5 Resources

Stemming from periodic review, Deschutes County adopted inventories for a variety of Goal 5 natural resources (Attachment 1). Some of these resources have mapped geographic boundaries such as Deer Winter Range, whereas others are described as being located in general areas – such as furbearer habitat in riparian corridors. The inventories were produced at a countywide scale, with additional detail for the Deschutes River and its tributaries through the Deschutes County/City of Bend River Study. County staff digitized these habitat boundaries into Geographic Information Systems (GIS) shape files in the 2000s for public awareness. The shape files were created from hard copy maps and descriptions found in the ordinances establishing the County’s Goal 5 program, in consultation with the Oregon Department of Fish and Wildlife (ODFW).

Maps provided in this document include inventoried habitat that spatially overlaps with the MUA-10 and RR-10 zones impacted by the proposed text amendments (Attachment 2). The habitat areas include: deer migration corridor, deer winter range, elk habitat, flood plain, and wetlands. Staff utilized the County’s WA Combining Zone layers to determine the general extent of habitat for big game species as the Combining Zone was designed to cover a larger area than the habitat itself (Ordinance 92-046). Inventoried streams and rivers are shown on the map, as well as wetlands and flood plains. Goal 5 Riparian areas (flood plain, wetlands and 100 feet measured from ordinary high water mark) associated with these water bodies is also the habitat area for fish, furbearers, waterfowl, and upland game birds (Ordinance 92-041, 94-007). As the proposed text amendments are legislative and do not impact any specific properties, staff did not review Goal 5 impacts on an individual parcel level basis. Instead staff identified the following potential resource sites in which the allowance of ADUs could potentially intersect with Goal 5 resources:

Riverine Resources: Some properties in the MUA-10 and RR-10 zones are located in relative proximity to the Deschutes River, Little Deschutes River, Paulina Creek, and Whychus Creek and its associated Goal 5 Riparian Area.¹⁰ Ordinance 92-041 stated the following additional Goal 5 resources depend on riparian corridors for habitat: furbearer, waterfowl, and upland game bird habitat. As the extent of the habitat locations for these species are not detailed in a boundary description or on a map, staff assumes the species habitat is found entirely inside the Riparian Area boundary shown in Attachment 2.

Wildlife Area Combining Zone: The WA Combining Zone was adopted as a protection measure for antelope, deer, and elk in Deschutes County. As an overlay zone, the mapped area conservatively identified typical habitat and migration areas and provided additional development requirements to ensure impacts to wildlife are properly mitigated alongside the underlying base zone regulations. The zone encompasses the previously inventoried area for Antelope Range, Deer Migration

¹⁰ There are 386 RR-10 tax lots, two acres or greater that abut the Little Deschutes River or Deschutes River and 505 tax lots that are split-zoned RR-10 or MUA-10 with the Flood Plain Zone. The Flood Plain Zone is not recognized as a rural residential exception area. RR-10 and MUA-10 split zoned properties will be required to contain the minimum lot or parcel area to qualify for an ADU.

Corridor, Deer Winter Range, and Significant Elk Habitat. The proposed amendments add a conflicting use, ADUs which affect three habitat ranges in MUA-10 and RR-10: Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat. These habitat ranges are shown in Attachment 2. The maps include federal land. However, these properties are not subject to Deschutes County land use regulations.

The Deschutes County Goal 5 inventory also includes scenic and open space sites such as Landscape Management Rivers and Streams, State Scenic Waterways and Federal Wild and Scenic Rivers, and Ecologically and Scientifically Significant Natural Areas - Little Deschutes River / Deschutes Confluence (Attachment 1). As these are resources associated with mitigating visual impacts and do not impact development potential, they are not impacted by the proposed amendments and therefore are not reviewed in this document.

Chapter 3: Conflicting Use Analysis

660-023-0040(2): Identify conflicting uses. Local governments shall identify conflicting uses that exist, or could occur, with regard to significant Goal 5 resource sites. To identify these uses, local governments shall examine land uses allowed outright or conditionally within the zones applied to the resource site and in its impact area. Local governments are not required to consider allowed uses that would be unlikely to occur in the impact area because existing permanent uses occupy the site.

Deschutes County is proposing to add ADUs in the MUA-10 and RR-10 zones in the WA Combining Zone. ADUs could be a conflicting use to significant Goal 5 resources as they generate vehicle trips, buildable footprints, and noise. Other uses that are allowed in the two zones are shown below.

Table 3: Allowed Uses

Zoning	Outright Uses	Conditional Uses
MUA-10	Agricultural uses Single family dwelling or manufactured home Harvesting a forest product Class I and II road or street projects subject to land division standards Class III road or street project Noncommercial horse stables Horse events Operation, maintenance and piping of canals Type I Home occupation Historic accessory dwelling units	Public use Semipublic use Dude ranch Kennel and/or veterinary clinic Guest house Manufactured home as a secondary accessory farm dwelling Exploration for minerals Private parks Personal use airstrip Golf course Type 2 or 3 Home occupation Destination resorts Planned developments Cluster developments Landfills Timeshare Hydroelectric facility Storage, crushing and processing of minerals Bed and breakfast inn Excavation, grading and fill Religious institutions Private or public schools Utility facility Cemetery Commercial horse stables Horse events Manufactured home park or RV park Wireless telecommunication facilities Guest lodge Surface mining in conjunction with operation and maintenance of irrigation system

Zoning	Outright Uses	Conditional Uses
RR-10	Single family dwelling or manufactured home Utility facility Community center Agricultural use Class I and II road or street projects subject to land division standards Class III road or street project Noncommercial horse stables Horse events Operation, maintenance and piping of canals Type I Home occupation Historic accessory dwelling units	Public park Dude ranch Personal use airstrip Planned developments Cluster developments Recreation-oriented facility Landfills Cemetery Timeshare Hydroelectric facility Bed and breakfast inn Golf course Excavation, grading and fill Religious institutions Public use Semipublic use Commercial horse stables Private or public schools Manufactured home park or RV park Wireless telecommunication facilities Surface mining in conjunction with operation and maintenance of irrigation system

General Impacts of Conflicting Uses

The proposed amendments would allow ADUs in inventoried Goal 5 resources. As part of the ESEE review “a local government may conduct a single analysis for two or more resource sites that are within the same area or that are similarly situated and subject to the same zoning”.¹¹ In reviewing the proposed amendments, Deschutes County finds that the impacts from ADUs in the MUA-10 and RR-10 zones as they relate to Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat are of such a similar nature that the impacts for these areas may be reviewed together via the general impacts described below.

- *Noise and Light*

ADUs as a secondary dwelling may distress inventoried wildlife, as they seek to avoid noise and light.

- *Habitat Removal*

ADUs would likely require removal of upland vegetation, grading, and soil compaction that could alter drainage and runoff patterns. This could increase peak runoff, cause bank erosion, flooding, or increase the flow of sediment into water bodies. The removal of upland vegetation could also reduce tree canopy and understory vegetation which could be utilized by wildlife, outside of their primary habitat.

¹¹ OAR 660-023-0040(4)

- *Introduction of Invasive, Nonnative Plants*

ADUs may contribute to the spread of invasive, nonnative plants which could replace and degrade native vegetation of which many species depend.

- *Habitat Fragmentation*

Additional human development may result in fences, roads, traffic and other barriers to the movement of terrestrial wildlife that is critical to their survival.

Greater detail on these potential conflicts and their consequences are provided below.

Chapter 4: Impact Areas

660-023-0040(3): Determine the impact area. Local governments shall determine an impact area for each significant resource site. The impact area shall be drawn to include only the area in which allowed uses could adversely affect the identified resource. The impact area defines the geographic limits within which to conduct an ESEE analysis for the identified significant resource site.

This step is discretionary and allows for the local jurisdiction to define which areas are the most vulnerable and/or most likely to be affected by the proposed amendments. The impact area for this ESEE analysis are properties that are within the Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat in the MUA-10 and RR-10 zones. As this ESEE is not for any specific property, but instead reflects changes to the code generally, there is no individual property specific data.

Properties in this impact area can be found in Attachment 2 – *Impact Area Maps*

Impact Area Methodology

To understand the impact of the proposed amendments, an estimate of the number of parcels is shown in Table 4 below.

Table 4: Number of Affected Non-Federal Properties in Impact Area ¹²

Zone	Deer Migration	Deer Winter	Elk
Multiple Use Agricultural Zone	0	9	0
Rural Residential Zone	1,293	446	39
Total	1,293	455	39

¹² See footnote #8.

Chapter 5: ESEE Analysis

660-023-0040(4): Analyze the ESEE consequences. Local governments shall analyze the ESEE consequences that could result from decisions to allow, limit, or prohibit a conflicting use. The analysis may address each of the identified conflicting uses, or it may address a group of similar conflicting uses. A local government may conduct a single analysis for two or more resource sites that are within the same area or that are similarly situated and subject to the same zoning. The local government may establish a matrix of commonly occurring conflicting uses and apply the matrix to particular resource sites in order to facilitate the analysis. A local government may conduct a single analysis for a site containing more than one significant Goal 5 resource. The ESEE analysis must consider any applicable statewide goal or acknowledged plan requirements, including the requirements of Goal 5. The analyses of the ESEE consequences shall be adopted either as part of the plan or as a land use regulation.

Background

Deschutes County is choosing to conduct a single analysis for all resource sites as the impacts from ADUs could have very similar impacts to both riparian areas and fish and wildlife that depend on the riparian for their habitat, and for big game including deer and elk.

As described above, the potential impacts fall into four general areas:

- *Noise and Light*

ADUs as a secondary dwelling may distress inventoried wildlife, as they seek to avoid noise and light.

- *Habitat Removal*

ADUs would likely require removal of upland vegetation, grading, and soil compaction that could alter drainage and runoff patterns. This could increase peak runoff, cause bank erosion, flooding, or increase the flow of sediment into water bodies. The removal of upland vegetation could also reduce tree canopy and understory vegetation which could be utilized by wildlife, outside of their primary habitat.

- *Introduction of Invasive, Nonnative Plants*

ADUs may the spread of invasive, nonnative plants which could replace and degrade native vegetation of which many species depend.

- *Habitat Fragmentation*

Additional human development may result in fences, roads, traffic and other barriers to the movement of terrestrial wildlife that is critical to their survival.

This step is discretionary. The purpose of an ESEE analysis is to provide a qualitative exercise for local governments to weigh the positive and negative consequences of three scenarios in order to determine a preferred outcome. Governments may choose to use quantitative data as necessary, but are not required to gather new information or hire wildlife biologists, economists, sociologists, or energy consultants.

ESEE Scenario Descriptions

Scenario (A) – Allow the Conflicting Use

In this scenario, the local government may decide that a conflicting use should be allowed fully, without any restrictions, no matter the potential impacts on the inventory site(s). In this instance, the Goal 5 rule would require the government to determine the conflicting use is of such importance compared to the site that the use should be allowed without any protections or limitations. In choosing this scenario, the local government could still use other tools to protect the inventories that are currently in place.

Scenario (B) – Prohibit the Conflicting Use

In this scenario, the local government may decide that the inventory site is of such importance or the conflicting use has the potential to be so detrimental to the inventory site(s), that the conflicting use should be entirely prohibited.

Scenario (C) – Limit the Conflicting Use

In this scenario, the local government may decide that the inventory site and the conflicting use are both important when compared to each other, and the use should be allowed with limitations to balance the impacts to the inventory site(s).

Accessory Dwelling Unit ESEE Analysis

Scenario (A) Allow the Conflicting Use

In this scenario, Deschutes County would allow ADUs in MUA-10 and RR-10 zones without any additional requirements to protect the inventoried resources.

Economic Consequences:

Permitting ADUs would have positive consequences by allowing a second dwelling on a property. Deschutes County is experiencing a housing shortage. Allowing ADUs, which are limited to 900-square-feet of useable floor area and cannot be used as vacation rentals, could help address work force housing shortages in the region. It could reduce commuting costs for those workers that live in adjoining Crook, Jefferson and Klamath counties, and coupled with other work force housing strategies, attract businesses and employment opportunities in Central Oregon.

Allowing ADUs could also have negative consequences. The development of ADUs in MUA-10 and RR-10 zones could significantly increase land value, which could price out low and middle-income residents from the opportunity to own a home. Previous testimony from ODFW estimates that hunting and wildlife viewing contributed more than \$50 million to the Deschutes County economy annually. Deschutes County is proposing to allow ADUs in some areas that contain riparian areas

and species that rely on the riparian area for habitat including fish, furbearers, upland game birds, and waterfowl. Allowing for ADUs near these areas could reduce income associated with wildlife viewing and hunting of these species.

In some parts of the county, mule deer populations have declined up to 70% since 2000 as a result of human caused habitat reduction, fragmentation, and disturbance on winter range. By allowing ADUs in Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat, there is the potential for greater disturbance of deer and elk populations that could reduce hunting and viewing opportunities.

Social Consequences:

Permitting ADUs could have positive consequences by allowing property owners with an existing single-family dwelling to build an ADU that accommodates aging parents or family members, farm help for those that are working on MUA-10 zoned agricultural properties or nearby Exclusive Farm Use zoned properties. By providing affordable housing, it could help lift people out of poverty and increase economic mobility. It could bring a positive impact on the surrounding community, encouraging social connections and lowering crime rates.

It could also have negative consequences by allowing ADUs in rural areas with inadequate access to employment, schools, food markets, medical facilities and parks. This could lead to higher automobile-dependence and vehicle emissions caused by more people driving to and from rural areas. Based on previous testimony from ODFW, there could also be negative impacts due to the potential loss of wildlife habitat. Many residents, advocacy organizations, and wildlife agencies continue to express concerns regarding the loss of fish and wildlife habitat due to the region's rapid growth and development. There is a recognition that increases in human activity, especially in rural areas, displace habitat and diminish, incrementally, Deschutes County's rural character and quality of life. The proposed amendments could have negative consequences due to increased human presence and infrastructure near the inventoried Goal 5 resources, which could lead to a reduced level of access and enjoyment for recreationalists.

Environmental Consequences:

In this scenario, ADUs would be permitted outright. As stated previously, ADUs could present negative impacts as they have the potential to increase noise and light near fish and wildlife habitats, and in turn cause distress to inventoried Goal 5 species.

Developing an ADU would likely require removal of upland vegetation, grading, and soil compaction that could alter drainage and runoff patterns. This could increase peak runoff, cause bank erosion, flooding, or increase the flow of sediment into water bodies. The removal of upland vegetation could also reduce tree canopy and understory vegetation which could be utilized by wildlife, outside of their primary habitat. Permitting ADUs could create negative impacts to designated habitat for Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat. Based on previous testimony from ODFW, mule deer populations have declined up to 70% since 2000. Their testimony identified other elements contributing to reductions in mule deer populations tied to human caused habitat reduction, fragmentation, and disturbance on winter range.

As previously stated, the following Goal 5 protections established during the creation of the initial inventory would remain in place:

1. Setback Protections: 100-foot structural setback from the ordinary high water mark of rivers or streams.
2. Scenic Protections: Development near rivers in the Landscape Management Combining Zone must be reviewed for aesthetic compatibility.
3. Wetland Protections: Prohibition of fill or removal of any material or wetland vegetation, regardless of the amount, within the bed and banks of any stream or river or in any wetland unless approved as a conditional use.
4. Mitigation Protections: Impacts to any wetland or riverbank impacts to be fully mitigated, as evaluated by ODFW.
5. Flood Plain Protections: All new construction, expansion or substantial improvement of an existing dwelling, an agricultural related structure, a commercial, industrial or other non-residential structure, or an accessory building in a designated Flood Plain shall obtain a conditional use permit.
6. Combining Zone Requirements: Deer Migration Corridor, Deer Winter Range, Significant Elk Habitat and Sensitive Bird and Mammal Habitat have site specific requirements including development setbacks and seasonal construction requirements to prevent impact to sensitive species and habitat.

Existing protections would prevent riparian areas from being developed with ADUs established near them. As the existing Goal 5 measures in place today protect riparian areas and the fish and wildlife within that habitat area, the addition of ADUs near these areas will be neutral.

Energy Consequences:

ADUs are unlikely to cause any major energy consequences. Per SB 391 and SB 644, the ADU must be within 100 feet of the existing dwelling. It must utilize the existing onsite system or an upgraded onsite system if there is no pre-existing centralized wastewater treatment system. It can also rely on an existing domestic well.

A potential negative consequence of the proposed amendments could be additional development in rural Deschutes County. Depending on the location of the ADU, it could lead to additional Vehicle Miles Traveled and greater congestion on county owned roads for employment, education, and basic services.

Scenario (B) Prohibit the Conflicting Use

In this scenario, Deschutes County would not allow ADUs in the MUA-10 and RR-10 zones associated with the WA Combining Zone and Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat.

Economic Consequences:

Prohibiting ADUs could have negative economic consequences, as it prevents certain property owners from using their land and building a secondary dwelling unit. This could contribute to work force housing deficiencies in the region and compel residents to commute from adjoining areas in Crook, Jefferson, and Klamath counties.

It could also have neutral consequences based on previous testimony from ODFW. Prohibiting ADUs could contribute to stabilizing mule deer populations, thereby maintaining economic benefits from wildlife viewing or hunting. Wildlife viewing, hunting, and fishing experiences in Deschutes County is a major economic asset to the region. Continuing with the current regulations could minimize further habitat fragmentation and help maintain wildlife viewing, hunting, and fishing revenues in Deschutes County.

Social Consequences:

Prohibiting ADUs could have negative consequences. Many residents and multi-generational families in Deschutes County need affordable housing and are rent-burdened. Limiting the potential supply of ADUs could exacerbate Central Oregon’s housing crisis by forcing some residents to pay higher rents, commute longer distances for basic services, or relocate. Those circumstances could lead to further mental and physical stress.

It could also have positive consequences. Many residents express their appreciation for undisturbed landscapes because they contribute to Deschutes County’s rural character and quality of life. Prohibiting ADUs, which generate noise and light would continue to limit disturbance to existing fish and wildlife habitats.

Environmental Consequences:

There are 386 RR-10 tax lots, two acres or greater that abut the Little Deschutes River or Deschutes River and 505 tax lots that are split-zoned RR-10 or MUA-10 with Flood Plain. These properties contain a Goal 5 Riparian Area which is also the habitat for Goal 5 inventoried waterfowl, upland game bird, furbearers, and fish. The WA Combining Zone contains Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat. By prohibiting ADUs and maintaining the status quo, these species will continue to be protected against habitat fragmentation and distress from second dwellings. The environmental consequences are therefore neutral.

Energy Consequences:

Energy consumption would have neutral consequences as this scenario maintains the status quo. Development associated with ADUs may be displaced to other areas of rural Deschutes County, which could still have demands on utilities.

Scenario (C) Limit the Conflicting Use

In this scenario, Deschutes County would allow ADUs in the MUA-10 and RR-10 zones, with additional limitations to protect the inventoried resources, outside of existing protections. For example, a limitation requiring the entire ADU to be within a 100 feet of the existing dwelling.

Economic Consequences:

Permitting ADUs would have positive consequences by allowing a second dwelling on a property. Deschutes County is experiencing a housing shortage. Allowing ADUs, which are limited to 900-square-feet of livable floor area and cannot be used as vacation rentals, could help address work force housing shortages in the region. It could reduce commuting costs for those workers that live in adjoining Crook, Jefferson and Klamath counties and coupled with other work force housing strategies, attract businesses and employment opportunities in Central Oregon.

Compared to scenario (a) in which only a portion of the ADU must be within a 100 feet of the existing dwelling, the addition of limitations could lessen the impact by minimizing the buildable footprint and ultimately, the number of eligible properties, recognizing that some may not have enough area to accommodate an ADU. This could positively impact the hunting and wildlife viewing economy in Central Oregon, valued at \$50 million annually. While such measures could lessen impacts, the overall burden caused by allowing ADUs nevertheless may still overall impact wildlife and thereby impact revenue generated from the recreation economy.

In comparison to scenario (a), which would allow the use outright, Deschutes County finds that this scenario would provide a limitation to reduce the amount of impacts, even if those impacts still exist.

Social Consequences:

The positive social consequences in this scenario are very similar to scenario (a). Permitting ADUs could have positive consequences by allowing property owners with an existing single family dwelling to build an ADU that accommodates aging parents or family members, farm help for those that are working on MUA-10 zoned agricultural properties or nearby Exclusive Farm Use zoned properties. By providing affordable housing, it could help lift people out of poverty and increase economic mobility. It could bring a positive impact on the surrounding community, encouraging social connections and lowering crime rates.

Adding a limitation requiring the entire ADU to be within a 100 feet of the existing dwelling (or others), could establish a negative consequence of ADUs in rural areas with inadequate access to employment, schools, food markets, medical facilities and parks. This could lead to higher automobile-dependence and vehicle emissions caused by more people driving to and from rural areas. Based on previous testimony from ODFW, there could also be negative impacts due to the potential loss of wildlife habitat stemming from the possible removal of habitat areas and construction of structures and their associated human presence. Many residents, advocacy organizations, and wildlife agencies continue to express concerns regarding the loss of fish and wildlife habitat due to the region’s rapid growth and development. There is a recognition that increases in human activity, especially in rural areas, displace habitat and diminish, incrementally, Deschutes County’s rural character and quality of life. The proposed amendments could have

negative consequences due to increased human presence and infrastructure near or within the inventoried Goal 5 resources, which could lead to a reduced level of access and enjoyment for recreationalists.

Environmental Consequences:

ADUs could present negative consequences as they have the potential to increase activity, noise, and light near fish and wildlife habitats, and in turn cause distress to inventoried Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat.

Development of an ADU would likely require removal of upland vegetation, grading, and soil compaction that could alter drainage and runoff patterns. This could increase peak runoff, cause bank erosion, flooding, or increase the flow of sediment into water bodies. The removal of upland vegetation could also reduce tree canopy and understory vegetation which could be utilized by fish and wildlife species, outside of their primary habitat. Permitting ADUs could result in further negative impacts to the Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat. Based on recent testimony from ODFW, mule deer populations have declined up to 70% since 2000. Their testimony identified other elements contributing to reductions in mule deer populations tied to human caused habitat reduction, fragmentation, and disturbance on winter range.

Existing protections in place today (discussed above) would prevent Goal 5 riparian areas from being developed when ADUs are nearby. The establishment of ADUs in these areas would likely be neutral.

By limiting the entire ADU within a 100 feet of the existing dwelling, the negative environmental consequences associated with ADU could be mitigated to a certain extent.

Energy Consequences:

The energy consequences in this scenario are the same as in scenario (a). Limiting the entire ADU to within a 100 feet of the existing dwelling could decrease the amount of energy used to operate the ADU.

Chapter 6: ESEE Decision

660-023-0040(5): Develop a program to achieve Goal 5. Local governments shall determine whether to allow, limit, or prohibit identified conflicting uses for significant resource sites. This decision shall be based upon and supported by the ESEE analysis. A decision to prohibit or limit conflicting uses protects a resource site. A decision to allow some or all conflicting uses for a particular site may also be consistent with Goal 5, provided it is supported by the ESEE analysis. One of the following determinations shall be reached with regard to conflicting uses for a significant resource site:

(c) A local government may decide that the conflicting use should be allowed fully, notwithstanding the possible impacts on the resource site. The ESEE analysis must demonstrate that the conflicting use is of sufficient importance relative to the resource site, and must indicate why measures to protect the resource to some extent should not be provided, as per subsection (b) of this section.

The graphic below is meant to be a simplified representation to balance each of the ESEE factors. As stated in the ESEE analysis, there are a variety of positive, negative, and neutral consequences associated with each scenario. Deschutes County finds that the issue of allowing an ADU in MUA-10 and RR-10 zones are both a social and economic issue that outweighs the other ESEE consequences. The County considered allowing the use with limitations by limiting the entire ADU within a 100 feet of the existing dwelling, but this practice could limit the number of affordable housing opportunities. Therefore the County is choosing scenario (a) which will allow the use fully notwithstanding the possible impacts on the resource sites.

Table 5: ESEE Factors

ESEE Factors	Support habitat functions (Environmental, economic, social)	Support Affordable Housing (Social, economic)	Support Recreational Economy (Economic, Social)	Preserves Rural Character (Social, economic)	Transportation (Energy)
Prohibit conflict (No code change)	0	-	0	0	0
Allow conflict Allow ADUs with no additional requirements	-	+	-	-	-
Limit conflict Allow ADUs with additional limitation	-	+	-	-	-

Chapter 7: Program to Achieve Goal 5

660-023-0050(1): *For each resource site, local governments shall adopt comprehensive plan provisions and land use regulations to implement the decisions made pursuant to OAR 660-023-0040(5). The plan shall describe the degree of protection intended for each significant resource site. The plan and implementing ordinances shall clearly identify those conflicting uses that are allowed and the specific standards or limitations that apply to the allowed uses. A program to achieve Goal 5 may include zoning measures that partially or fully allow conflicting uses (see OAR 660-023-0040(5)(b) and (c)).*

660-023-0050(2): *When a local government has decided to protect a resource site under OAR 660-023-0040(5)(b), implementing measures applied to conflicting uses on the resource site and within its impact area shall contain clear and objective standards. For purposes of this division, a standard shall be considered clear and objective if it meets any one of the following criteria:*
(a) It is a fixed numerical standard, such as a height limitation of 35 feet or a setback of 50 feet;
(b) It is a nondiscretionary requirement, such as a requirement that grading not occur beneath the dripline of a protected tree; or ...

Deschutes County has determined that allowing ADUs within the MUA-10 and RR-10 zones and within the Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat should be allowed fully, notwithstanding the possible impacts on the inventoried resources. The implementing measures do not include alternative, discretionary procedures for compliance.

Attachment 1 - Deschutes County Significant Goal 5 Resources

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
<p>Fish Habitat (Inventory – Ord. No. 92-041, page 18; creeks, rivers and lakes)</p>	<p>Yes</p>	<p>Major conflicts are removal of riparian vegetation, fill and removal activities within the bed and banks of streams or wetlands, hydroelectric, rural residential development and water regulation</p>	<p>Floodplain zone recognized as program to achieve the goal to conserve fish habitat (Ordinance Nos. 88-030, 88-031, 89-009).</p> <p>Others include: fill and removal permits, wetland removal regulations, hydro prohibitions, rimrock setbacks, 100’ setback from OHW, conservation easements and restrictions on boats and docks.</p>	<p>Ordinance Nos. 86-018, 86-053, 86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041</p>
<p>Deer Winter Range (Inventory – Ord. No. 92-041, page 22; Metolius, Tumalo, North Paulina, and Grizzly ranges identified by ODFW)</p>	<p>Yes</p>	<p>Major conflicts are dwellings, roads, and dogs. Activities which cause deterioration of forage quality and quantity or cover are conflicting uses. Fences which impede safe passage are also a conflicting use.</p>	<p>Floodplain zone recognized as a program to achieve the goal to protect deer winter range (Ordinance Nos. 88-030, 88-031, 89-009).</p> <p>Others include Wildlife Area Combining Zone. Requires 40-acre minimum lot size for all new residential land divisions. Underlying zoning in most of the deer winter range is: EFU, Forest, and Floodplain. These zones provide for large lot sizes and limit uses that are not compatible with farm or forest zones.</p>	<p>Ordinance Nos. 88-030, 88-031, 89-009, 92-040, 92-041, 92-042, 92-046</p>
<p>Deer Migration Corridor (Inventory – Ord. No. 92-041, page 26; Bend-La Pine migration corridor identified by ODFW)</p>	<p>Yes</p>	<p>Major conflicts are dwellings, roads, and dogs. Fences which impede safe passage are also a conflicting use.</p>	<p>Wildlife Area Combining Zone was recognized as the only program to achieve the goal to protect the deer migration corridor. Underlying zoning is RR-10. It was amended to require cluster development for all land divisions in the RR-10 zone in the Bend/La Pine migration corridor (92-042). A 20-acre parcel is the minimum size required for a cluster development. Siting and fencing standards also apply in the deer migration corridor. Migration corridor includes some EFU, Forest, and Floodplain zoned land. These resource zones provide for large lot sizes and limit uses that are not compatible with farm or forest zones.</p>	<p>Ordinance Nos. 92-040, 92-041, 92-042, 92-046</p>

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
<p>Elk Habitat (Inventory – Ord. No. 92-041 – page 32; identified by USFS and ODFW)</p>	<p>Yes</p>	<p>Major conflict is the loss of habitat due to increased residential densities in the habitat areas. Increased human disturbance can cause conflict with elk. The use of land which necessitates the removal of large amounts of vegetative cover can also alter the quality of elk habitat.</p>	<p>Wildlife Area Combining Zone was recognized as the only program to achieve the goal to protect the elk habitat.</p> <p>It was amended to require a 160-acre minimum lot size for areas identified as significant elk habitat. Siting standards are required to minimize conflicts of residences with habitat protection.</p> <p>Underlying zoning in the elk habitat areas is either Floodplain, Forest, or Open Space and Conservation. These resource zones restrict high density residential development and prohibit industrial and commercial uses.</p> <p>* Some lands are zoned RR10, including lots that are split zoned with flood plain. They are already parcelized, preventing future land divisions.</p>	<p>Ordinance Nos. 88-030, 88-031, 89-009, 92-040, 92-041, 92-042, 92-046</p>
<p>Antelope Habitat (Inventory – Ord. No. 92-041 – page 38; identified by ODFW)</p>	<p>No</p>	<p>Land use or development activities which would result in the loss of habitat, and animal harassment and disturbance associated with human activity.</p>	<p>To achieve the goal to conserve antelope habitat, uses conflicting with antelope habitat are limited to the Wildlife Area Combining Zone. In antelope range, the minimum lot size is 320 acres. Except for rural service centers, the antelope habitat is zoned EFU or F1.</p>	<p>Ordinance Nos. 92-040, 92-041, 92-042, 92-046</p>
<p>Habitat for Sensitive Birds (Inventory – Ord. No. 92-041 – page 41 and Table 5; identified by ODFW, ODF, OSU, Oregon Natural Heritage Data Bases).</p> <p>The area required for each nest site varies between species.</p>	<p>No</p>	<p>Nest sites are found in Forest, EFU and Open Space and Conservation zones. Uses that could conflict with the habitat site are surface mining, residential use, recreation facilities, roads, logging, and air strips.</p> <p>Any activity which would disturb the nesting birds, including intensive recreational use or removal of trees or</p>	<p>The Sensitive Bird and Mammal Combining Zone achieves the goal to protect sensitive bird sites.</p>	<p>Ordinance Nos. 92-040, 92-041, 92-042, 92-046</p>

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
		vegetation could conflict with the habitat site.		
<p>(UPDATE - Inventory – Ord. No. 94-004 –pages 3 to 140 Site specific ESEE analysis and decisions follow each site.</p>	No	See above.	<p>Habitat areas for sensitive birds of the Fish and Wildlife Element, adopted in No. 92-041 is repealed and replaced by inventories in Exhibit 1. Area required around each nest site needed to protect the nest from conflict varies between species. It’s called “sensitive habitat area.”</p> <p>Note: Northern bald eagle, osprey, golden eagle, prairie falcon, and great blue heron rookeries are located on federal land. Classified as “2A” Goal 5 Resources. Great Grey owl site no longer exists. Some bald eagle, golden eagle sites are controlled by the Sensitive Bird and Mammal Combining Zone.</p>	Ordinance Nos. 94-004, 94-005 and 94-021
<p>Waterfowl Habitat (Inventory – Ord. No. 92-041 – page 56; includes all rivers, streams, lakes and perennial wetlands and ponds identified on the 1990 US Fish and Wildlife Wetland Inventory Maps; ODFW provided lists of all bird species; Co/City of Bend River Study provides additional information)</p>	Yes	Future resort and vacation home development, human activity associated with recreation along rivers and lakes, timber-cutting around sensitive habitats, fill and removal of material in wetlands and within the bed and banks of rivers and streams, and removal of riparian vegetation are conflicting uses.	<p>Floodplain zone recognized as program to achieve the goal to conserve waterfowl habitat (Ordinance Nos. 88-030, 88-031, 89-009).</p> <p>Others include: fill and removal permits, wetland removal regulations, rimrock setbacks, 100’ setback from OHW, conservation easements, restrictions on boats and docks, landscape management, state and federal scenic water regulations. In addition, the Forest and EFU zones require large minimum lot size which limits the potential density of development in the areas adjacent to many of the rivers, streams, wetlands, and ponds used for waterfowl habitat.</p>	Ordinance Nos. 86-018, 86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041, 92-042- 92-045, 92-046

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
<p>Upland Game Bird Habitat (Inventory – Ord. No. 92-041 – page 60; ODFW did not identify critical habitat for any of the upland game species except for the sage grouse; habitat for upland game birds is dispersed throughout the county in riparian, forest, agricultural, and rangeland areas)</p>	<p>Yes</p>	<p>Pheasant and quail are affected whenever agricultural land is taken out of production through urban sprawl, road construction, industrial development and other land clearing activities.</p> <p>Farming practices on existing agricultural lands also have an impact. Fence row, woodlots, and riparian vegetation are constantly being removed at the expense of upland bird use.</p> <p>Chapter 6 of County/City of Bend River Study identifies conflicting uses with upland bird habitat.</p>	<p>For all of the upland game birds except sage grouse, the habitat is adequately protected by the existing EFU and Forest zoning and the provisions to protect wetlands and riparian areas to achieve the goal of protecting upland game birds.</p> <p>County provisions to protect riparian areas and wetlands protect one of the most significant components of upland game habitat.</p> <p>Note: conflicts with sage grouse are limited by EFU zoning with a 320 acre minimum parcel size. Sensitive Bird and Mammal Combining Zone pertaining to sage grouse and leks have been repealed due to LCDC enacted rules in OAR 660, Division 23.</p>	<p>Ordinance Nos. 86-018, 86-053, 86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041, 92-042, 92-046</p>
<p>UPDATE - Inventory – Ord. No. 94-004 – pages 156-201.</p>	<p>Yes</p>	<p>See above.</p>	<p>Habitat areas for Upland Game Bird Habitat, adopted in No. 92-041 is repealed and replaced and further amended in Exhibit 4 with the ESEE Analysis and inventory for upland game bird habitat.</p> <p>Conflicts with sage grouse are reduced by the limitations on uses in the EFU and Floodplain zone, by the 320 acre minimum lot size and predominance of BLM lands.</p> <p>Note: conflicts with sage grouse are limited by EFU zoning with a 320 acre minimum parcel size. Sensitive Bird and Mammal Combining Zone pertaining to sage grouse and leks have been repealed due to LCDC enacted rules in OAR 660, Division 23.</p>	<p>Ordinance Nos. 94-004 and 94-021</p>

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
<p>Furbearer Habitat (Inventory – Ord. No. 92-041 – page 65; ODFW has not identified any specific habitat sites other than riparian and wetland areas that are critical for the listed species.</p>	<p>Yes</p>	<p>The conflicting uses are those activities or development which would degrade or destroy habitat, or disturb the animals causing them to relocate.</p> <p>Conflicts between furbearers and other land uses are minimal in the county.</p>	<p>Furbearer habitat is adequately protected by the existing EFU and Forest zoning and the provisions to protect farm use and forest zoning, and the provisions to protect wetlands and riparian areas to achieve the goal to protect furbearers.</p> <p>The farm and forest zones require large minimum lot sizes and many uses are permitted only as conditional uses. The measures to protect riparian and wetland habitat are detailed in this plan in the Riparian and Wetland Habitat section.</p>	<p>Ordinance Nos. 86-018, 86-053, 86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041</p>
<p>Habitat Areas for Townsend’s Big-Eared Bats (Inventory – Ord. No. 92-041 – page 69; identified by ODFW, ODF, OSU, Oregon Natural Heritage Data Bases)</p>	<p>No</p>	<p>Caves located in EFU zones. Uses permitted in those zones that could conflict with the habitat site are surface mining, recreation facilities including golf courses and destination resorts, roads, logging, and air strips.</p>	<p>Program to achieve the goal is Sensitive Bird and Mammal Combining Zone</p>	<p>Ordinance No. 92-041 and 042</p>
<p>UPDATE - Inventory – Ord. No. 94-004 – pages 140 to 155 Site specific ESEE analysis and decisions follow each site.</p>	<p>No</p>	<p>See above.</p>	<p>Habitat areas for Townsend Bats, adopted in No. 92-041 is repealed and replaced and further amended in Exhibit 2. The ESEE for Townsend’s big-eared bats is amended for additional bat sites in Exhibit 3.</p>	<p>Ordinance Nos. 94-004 and 94-021</p>

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
<p>Wetlands and Riparian Areas (Inventory – Ord. No. 92-041 – page 73; identified on USFWS NWI)</p>	<p>Yes</p>	<p>Conflicting uses include fill and removal of material, including vegetation which could cause a reduction in the size or quality or function of a wetland, or cause destruction or degradation of the riparian habitat and vegetation.</p> <p>Structural development in wetlands or riparian areas would reduce the habitat and the use of the structure could cause conflicts such as harassment or disturbance or wildlife dependent on the habitat. Cutting of riparian vegetation can remove important shade for streams, eliminate habitat for various waterfowl, furbearers, and nongame bird species, and can increase the potential for erosion or bank instability in riparian areas.</p>	<p>Floodplain zone recognized as program to achieve the goal to conserve wetland and riparian habitat (Ordinance Nos. 88-030, 88-031, 89-009).</p> <p>Others include: fill and removal permits, wetland removal regulations, hydro prohibitions, 100’ setback from OHW, conservation easements, restrictions on boats and docks, and landscape management.</p>	<p>Ordinance Nos. 86-018, 86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041, 92-045</p>

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
<p>UPDATE – Riparian inventory – Ord. No. 94-007; Significant riparian habitat is located in three areas:</p> <p>Area within 100’ of OHW of an inventoried stream or river;</p> <p>Area adjacent to an inventoried river or stream and located within a flood plain mapped by FEMA and zoned Floodplain by the county (Deschutes River, Little Deschutes River, Paulina Creek, Fall River, Indian Ford Creek, Tumalo Creek, Squaw (Whychus) Creek, and Crooked River</p> <p>Area adjacent to a river or stream and inventoried as a wetland on the NWI</p>	<p>Yes</p>	<p>Conflicting uses:</p> <p>Locating septic systems in riparian area could cause pollution of ground and surface water systems. The potential for this conflict depends on the characteristics of the soil.</p> <p>Locating structural development in riparian areas can reduce the habitat and the use of structures could cause conflicts such as harassment or disturbance of wildlife dependent on habitat.</p> <p>Recreational use of the riparian area including boat landing areas, formal and informal trails, and camping areas can alter soil composition and cause destruction of vegetation.</p> <p>Increase in density of residential lots in or adjacent to riparian areas could result in a decrease of habitat effectiveness because of disturbance to wildlife.</p>	<p>Riparian Areas inventory and ESEE analysis adopted by Ordinance No. 92-041 is deleted and replaced by an inventory and ESEE contained in Exhibit A.</p> <p>New parcels meeting the minimum lot size in the resource zones (EFU, Forest, non-exception flood plain) will not cause an increase in residential density that would conflict with riparian habitat values.</p> <p>In RR10, MUA-10, and Floodplain zones found adjacent to inventoried riparian areas, the creation of new 10 acre parcels would not significantly increase the overall density of residential use adjacent to riparian areas because the areas where new parcels could be created, with the exception of Tumalo Creek, are already divided into lots considerably smaller than 10 acres.</p> <p>Program to achieve Goal 5 for Riparian Habitat: fill and removal regulations to protect wetlands, 100’ setback from OHW, Floodplain zone (regulates docks too), Landscape Management zone, Conservation easements, State Scenic Waterway</p>	<p>Ordinance Nos. 94-007</p>

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
<p>UPDATE – Wetland Inventory – Ord. No. 94-007, Exhibit B – inventory is NWI (Ord. No. 92-045)</p>	<p>Yes</p>	<p>Conflicting uses include fill and removal of material, including vegetation, which could cause reduction in the size, quality or function of a wetland.</p> <p>Locating structural development in wetlands could reduce the habitat and the use of the structure could cause conflicts such as harassment or disturbance of wildlife dependent on the habitat.</p> <p>Draining wetlands for agriculture or other development purposes destroys the hydrological function of the wetland and alters the habitat qualities that certain wildlife depend on.</p> <p>Cutting wetland vegetation adjacent to streams can remove important shade for streams, eliminate habitat for various waterfowl, furbearers, and nongame bird species, and can also increase the potential for erosion or bank instability in riparian areas.</p>	<p>Wetlands Inventory and ESEE analysis adopted by Ordinance No. 92-041 is deleted and replaced by an inventory and ESEE contained in Exhibit B, Wetlands.</p> <p>Program to achieve Goal 5 for Wetland Habitat:</p> <ul style="list-style-type: none"> • Fill and removal regulations to protect wetlands • 100’ setback from OHW • Flood plain zone (regulates docks too) • DSL Removal / Fill law 	<p>Ordinance Nos. 94-007</p>

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
<p>Ecologically and Scientifically Significant Natural Areas * Little Deschutes River / Deschutes River Confluence (Inventory – Ord. No. 92-052, Exhibit B, Page 1; identified by Oregon Natural Heritage Program); Analysis of Pringle Falls and Horse Ridge Research Areas, West Hampton Butte and Davis Lakes excluded b/c they’re on federal land and/or not related to flood plains.</p>	<p>Yes</p>	<p>Resort and vacation home development, recreational uses, livestock grazing, and fill and removal in wetlands are conflicting uses.</p>	<p>Programs for resource protection include the zoning of the property, the provisions of the flood plain, wetlands and the river corridor.</p> <p>The implementing measures which protect and regulate development in the confluence area are: EFU zoning, Floodplain zoning, conservation easements, and fill and removal permits.</p> <p>The confluence area is located in the undeveloped open space area of the Sunriver development (Crosswater). 80% of the property is retained as open space.</p> <p>Today, zoning is Floodplain and Forest Use.</p>	<p>Ordinance Nos. 86-018, 86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041, 92-045</p>
<p>Landscape Management Rivers and Streams (Inventory – Ord. No. 92-052, Exhibit C, Page 3; identified by state and federal wild and scenic corridors; and within 660’ of OHW of portions of Deschutes River, Little Deschutes River, Paulina Creek, Fall River, Spring river, Tumalo Creek, Squaw (Whychus) Creek, and Crooked River not on the state or federal scenic designations)</p>	<p>Yes</p>	<p>Uses conflicting with open space and scenic resources along the designated Landscape Management rivers and streams include land management activities that result in habitat loss or development within river or stream corridors which would excessively interfere with the scenic or natural appearance of the landscape as seen from the river or stream or alteration of existing natural landscape by removal of vegetative cover.</p>	<p>Program for resource protection includes: Floodplain zone and restrictions, fill and removal permits, wetland removal regulations, hydro prohibitions, rimrock setbacks, conservation easements, restrictions on boats and docks, and landscape management.</p>	<p>Ordinance Nos. 86-018, 86-053, 86-054, 86-056, 88-030, 88-031, 89-009, 92-033, 93-034</p>

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
<p>Lakes and Reservoirs (Inventory – Ord. No. 92-052, Exhibit C, Page 10; includes Upper Tumalo Reservoir; remaining are on federal land)</p>	<p>No</p>	<p>Conflicting uses with the open space and scenic values of the land adjacent to the inventoried lakes include development which would cause a loss of open space or a decrease in the aesthetic and scenic resources, and land management activities resulting in the removal of natural vegetation which provides wildlife habitat and scenic value.</p>	<p>Conflicting uses around Tumalo Reservoir are specifically limited by Title 18.48, Open Space Conservation Zone and a 100’ setback for any structure from OHW.</p>	<p>Ordinance No. 91-020</p>
<p>State Scenic Waterways and Federal Wild and Scenic Rivers (Inventory – Ord. No. 92-052, Exhibit E, Page 1;</p>	<p>Yes</p>	<p>See County / City of Bend River Study and 1986 River Study Staff Report. Both referenced in Ord. 92-005, Exhibit E.</p>	<p>Program for resource protection includes: Floodplain zone and restrictions, fill and removal permits, wetland removal regulations, hydro prohibitions, rimrock setbacks, conservation easements, restrictions on boats and docks, and landscape management.</p>	<p>Ordinance Nos. 86-018, 86-053, 86-054, 86-056, 88-030, 88-031, 89-009, 92-033, 93-034</p>
<p>Wilderness Areas, Areas of Special Concern, Energy Sources (Ord. No 92-052), and Groundwater Resources (Ord. No. 94-003) not analyzed because they’re on federal land or don’t relate to flood plains.</p>	<p>No</p>	<p>N/A</p>	<p>N/A</p>	<p>N/A</p>

Attachment 2 - Inventory Site Maps







1" = 10,000'

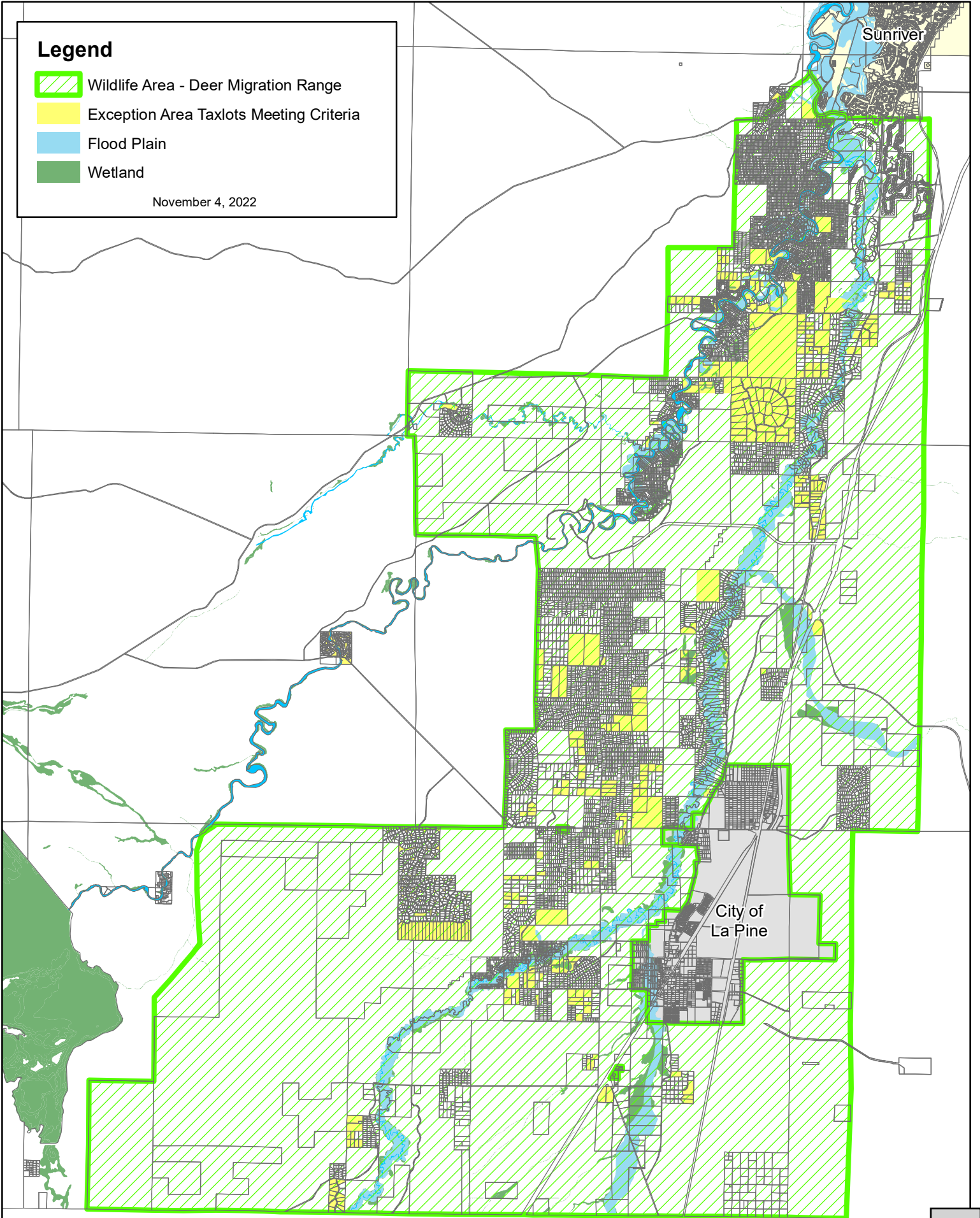
Exception Area Taxlots Meeting ADU Criteria - Deer Migration R

10/18/2023 Item #9.

Legend

-  Wildlife Area - Deer Migration Range
-  Exception Area Taxlots Meeting Criteria
-  Flood Plain
-  Wetland

November 4, 2022

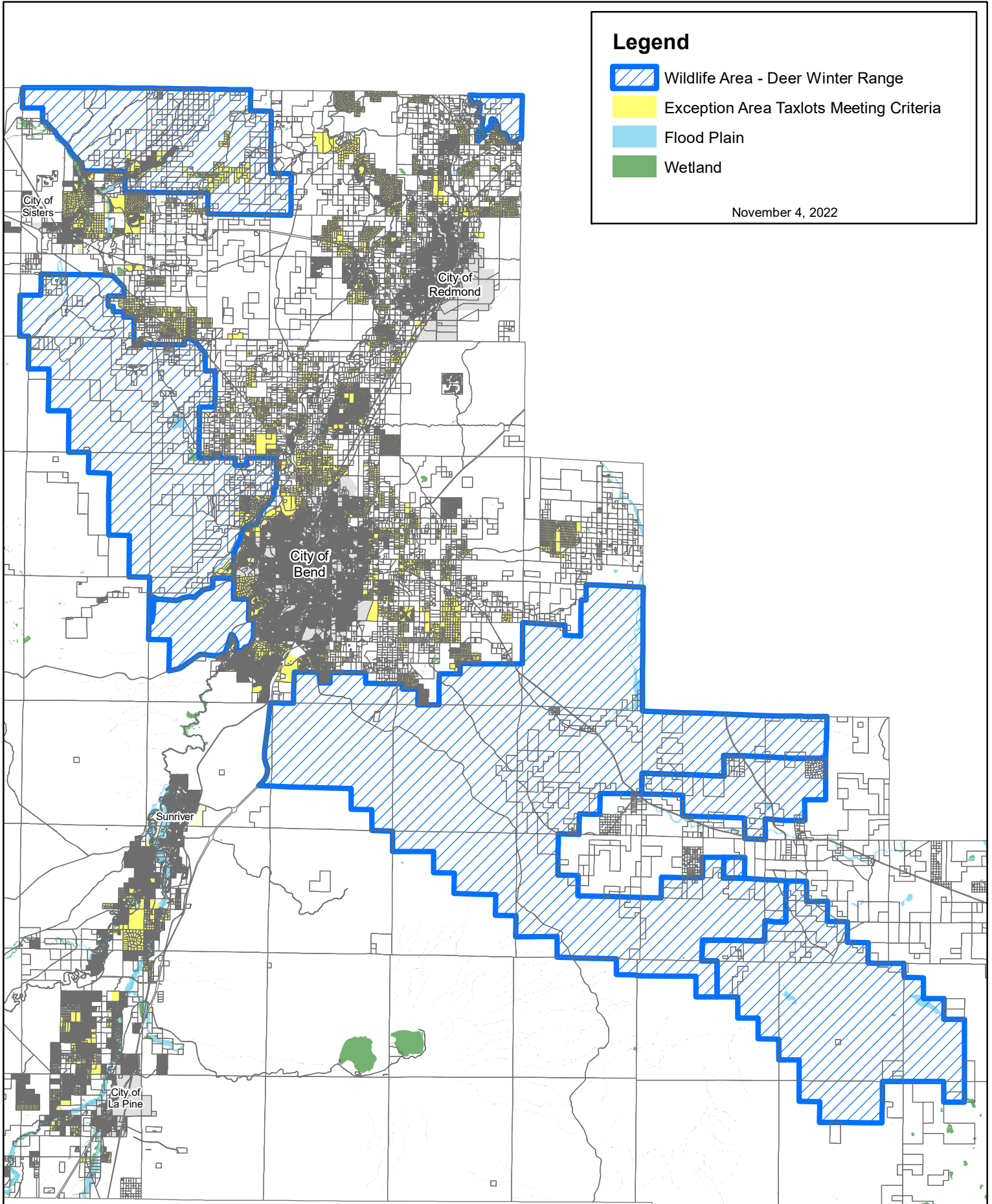




Exception Area Taxlots Meeting ADU Criteria - Deer Winter Range

10/18/2023 Item #9.

1" = 6 mi.

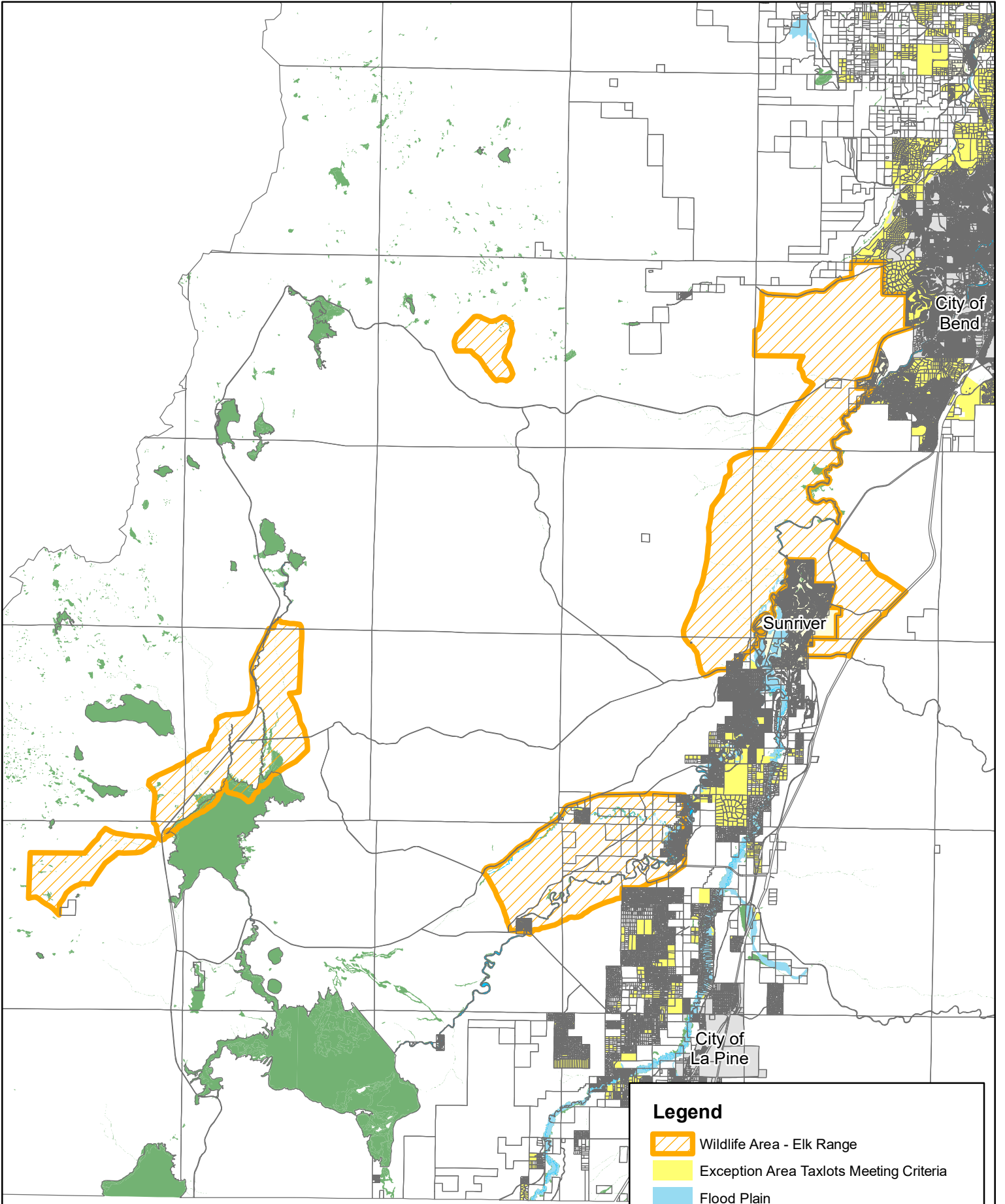






1" = 4 mi.

Exception Area Taxlots Meeting ADU Criteria - Elk Range

10/18/2023 Item #9.



Legend

-  Wildlife Area - Elk Range
-  Exception Area Taxlots Meeting Criteria
-  Flood Plain
-  Wetland

November 4, 2022



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: October 18, 2023

SUBJECT: Consideration to hear an appeal of a modification of a previously approved land use permit to change the point of access

RECOMMENDED MOTION:

Move approval of Order No. 2023-044 accepting or declining to hear an appeal of the Hearings Officer’s decision on a modification of a previously approved land use permit to change the point of access.

BACKGROUND AND POLICY IMPLICATIONS:

Staff referred the Modification of Conditions application to a public hearing, which was held on July 12, 2023, before the Hearings Officer. On September 13, 2023, the Hearings Officer issued a decision which denied the proposal (see Deschutes County Land Use File Nos. 247-23-000249-MC, 23-704-A).

The applicant filed a timely appeal of the Hearings Officer’s decision (reference appeal No. 247-23-000704-A) and requests that the application be reviewed by the Board of County Commissioners.

BUDGET IMPACTS:

None

ATTENDANCE:

Dan DiMarzo, Assistant Planner
Jacob Ripper, Principal Planner



MEMORANDUM

TO: Board of County Commissioners
FROM: Dan DiMarzo, Assistant Planner
DATE: October 18, 2023
RE: Consideration to Hear – Deschutes County Land Use File Nos. 247-23-000249-MC, 23-704-A: Modification of a previously-approved land use permit to change the point of access.

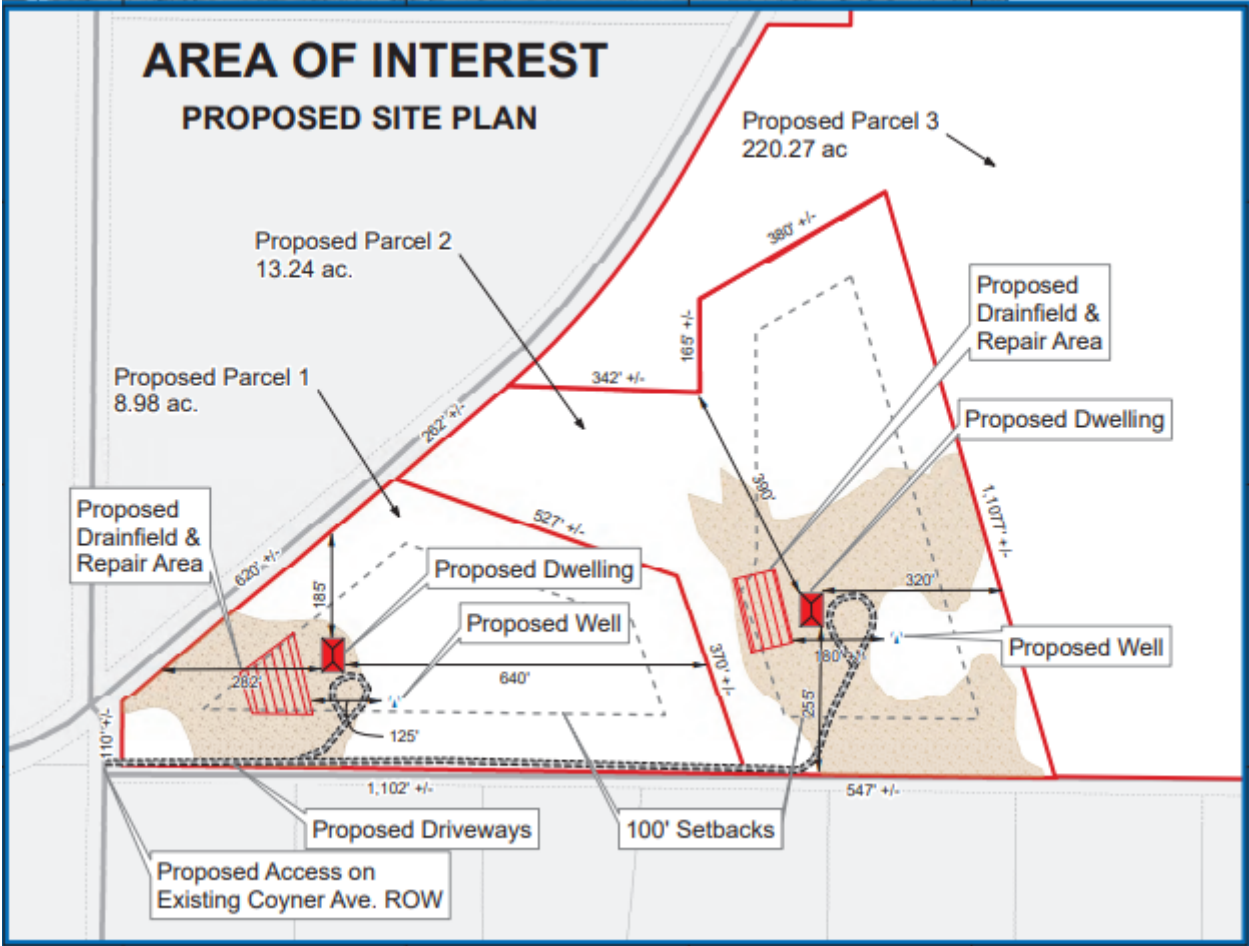
On October 18, 2023, the Board of County Commissioners (Board) will consider whether to hear an appeal of a Hearings Officer’s decision (ref. File No. 247-23-000249-MC) denying an application to modify a previously approved land use permit to change the point of access.

I. BACKGROUND AND PROCEDURAL HISTORY

The subject ± 242.49-acre property is not currently in farm use, nor does it possess any irrigation rights. The property is currently developed with one (1) single-family dwelling and several accessory structures, all located within its northern region. The subject property is located ± 2 miles northeast of the City of Redmond, and is adjacent to the Crook County line. The property’s mailing address is 4180 NE O’Neil Way, and is further identified on County Assessor’s Map 14-13-25 as tax lot 1200. The subject property is zoned Exclusive Farm Use – Terrebonne Subzone.

Through land use permit nos. 247-21-000593-MP, 594-CU, 595-CU, the applicant received approval to divide the ± 242.49-acre parcel into three (3) parcels, and approval to establish nonfarm dwellings on both Parcel #1 and Parcel #2. The existing single-family dwelling is located on proposed Parcel #3. The approved parcel configuration is shown below:

Figure 1 – Approved Parcel/Access Configuration



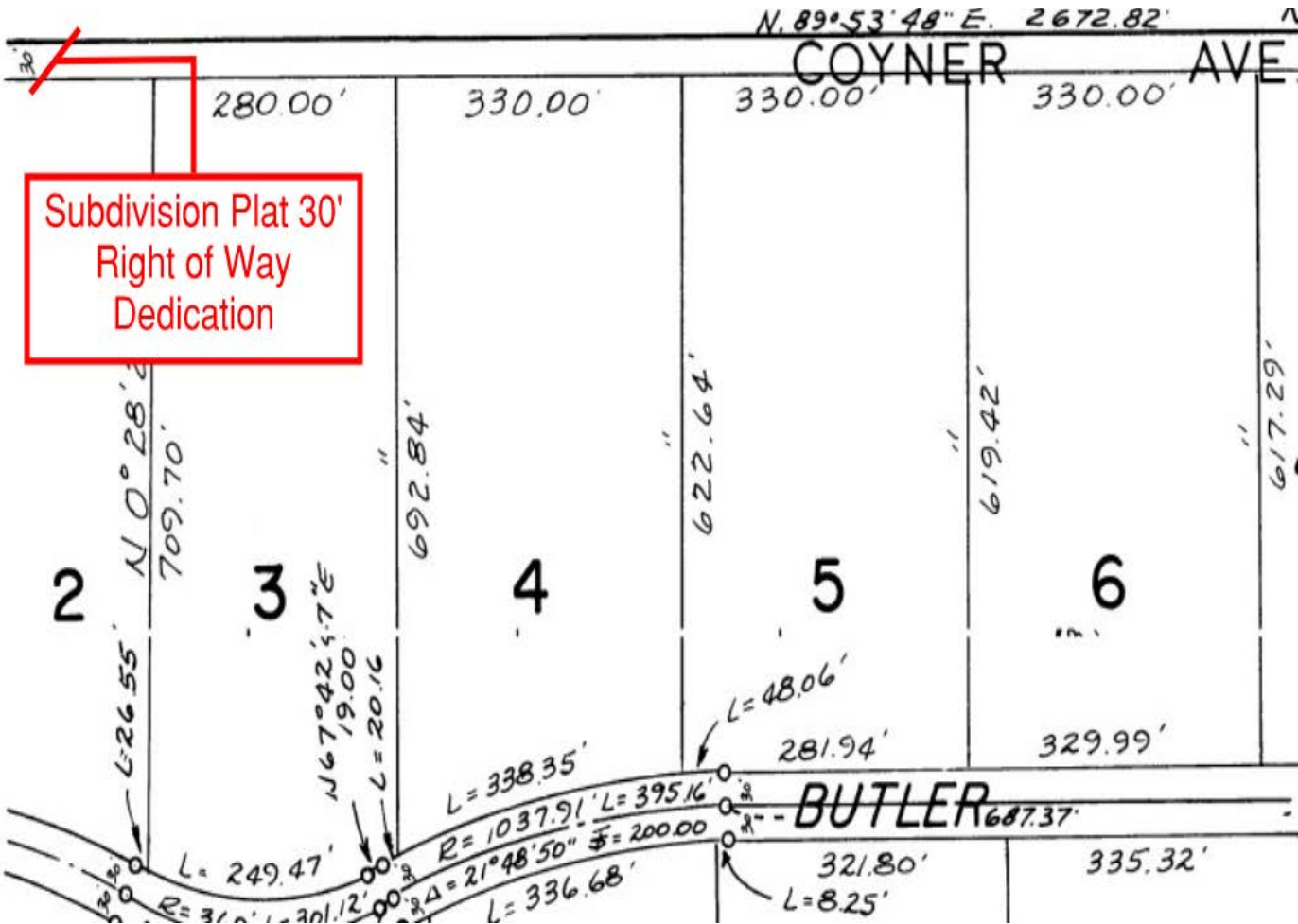
Source: Application materials, 247-21-000593-MP, 594-CU, 595-CU

The Applicant, Simmons Brothers, LLC, has requested a Modification of Conditions to this previously approved land use permit (247-21-000593-MP, 594-CU, 595-CU). The modification seeks to change the point of access to the nonfarm parcels from NE Coyner Avenue to NE O'Neil Way (Highway 370). NE O'Neil Way is a state highway under the jurisdiction of Oregon Department of Transportation (ODOT), functionally classified as Principal Arterial. The partition originally approved under 247-21-000593-MP, 594-CU, 595-CU granted access via NE Coyner Avenue, functionally classified as Rural Local. The modification application also seeks to remove the permit's conditions of approval that require road improvements and right of way dedication to NE Coyner Avenue.

Staff notes where it abuts the subject property, NE Coyner Avenue does not meet the minimum local road standards given in Deschutes County Code (DCC) 17.48 Table A and 17.48.100, which would include a 20 ft.-wide aggregate-surfaced road centered within a 60 ft.-wide public right of way. The existing 30 ft.-wide public right of way exists south of the subject property and was dedicated with the Lake Park Estates subdivision plat (shown below, Figure 2). The Road Department has considered the need to improve NE Coyner

Avenue along the south frontage of the subject property and has determined that approval of the proposed partition should not be subject to road surface improvement requirements along the entire south frontage. Instead, dedication of an additional 30 ft. of public right of way and the minimum standard gravel roads improved only to the point of access for the new parcels should be required to provide the full 60 ft. right of way required under DCC 17.48.100 and 17.48 Table A. In the case of potential approval to use O'Neil Highway as the modified point of access, the Road Department determined that dedications of the additional 30 ft. of public right of way should still be required, but not road improvements, to comply with DCC 17.48.100 and 17.48 Table A to provide for any future installation of utility facilities or road improvements.

Figure 2 – NE Coyner Avenue Dedication (Lake Park Estates)



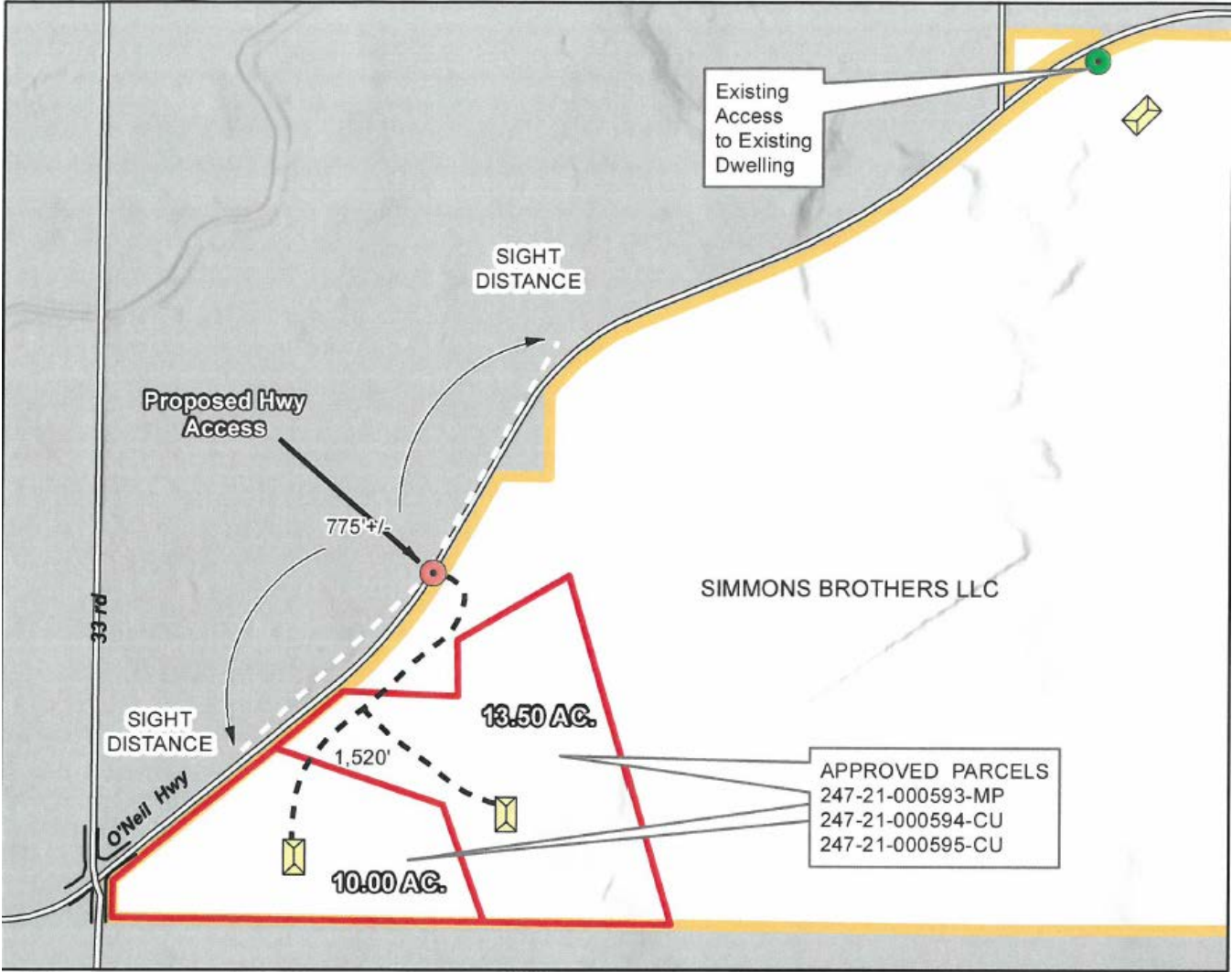
For clarity, the requested modifications are summarized below:

1. Allow new access from NE O'Neil Way that would serve the driveways to the two new nonfarm parcels;

- 2. Remove any conditions of approval which require dedication of private property to public right of way along NE Coyner Avenue;
- 3. Remove any conditions of approval which require road improvements to NE Coyner Avenue.

The proposed access requested in the Modification of Conditions application is shown below:

Figure 3 – Proposed New Access



Source: Application materials, 247-23-000249-MC¹

¹ Staff notes the discrepancy between the acreage calculations between Figure 1 & Figure 3. The subject modification application does not propose to re-configure the approved nonfarm parcels. For the purposes of the subject modification application, the configuration of the parcels shall remain the same, as approved through land use file nos. 247-21-000593-MP, 594-CU, 595-CU (Figure 1).

A relevant timeline of events is described below:

October 3, 2021	Land use approval became final (247-21-000593-MP, 594-CU, 595-CU).
December 12, 2022	Application submittal to ODOT for State Highway Approach.
January 30, 2023	ODOT Staff Report; Findings of Fact.
February 23, 2023	ODOT approval letter which approved new access from the property to NE O’Neil Way.
February 27, 2023	Revised ODOT approval letter which conditionally approved new access from the property to NE O’Neil Way; conditional on local land use approval
April 4, 2023	Modification of Conditions application submittal (247-23-000249-MC)
September 13, 2023	Hearings Officer decision (denial)

Staff referred the Modification of Conditions application to a public hearing and recommended denial based on comments from the County Transportation Planner, and the County Road Department. A public hearing before a Hearings Officer was held on July 12, 2023. The Hearings Officer issued a denial on September 13, 2023. The Applicant filed a timely appeal of the Hearings Officer’s denial on September 25, 2023.

II. DECISION

The Deschutes County Hearings Officer rendered a decision to deny the applicant’s request to modify the point of access for the nonfarm parcels and to remove the conditions of approval requiring right-of-way dedication and road improvements to NE Coyner Avenue on the grounds that:

- NE O’Neil Way’s status as an Arterial is a settled matter.
- DCC 17.48.210(B) – copied below – is applicable to the proposal; therefore, access from NE O’Neil Way is prohibited.

Section 17.48.210 Access

...

B. Access Restrictions and Limitations. The creation of access onto arterials and collectors is prohibited unless there is no other possible means of

accessing the parcel. In any event, residential access onto arterials and collectors shall not be permitted within 100 feet of an intersection or the maximum distance obtainable on the parcel, whichever is less.

- The conditions of approval related to NE Coyner Avenue improvements and right of way dedication are both rationally related and have a rough proportionality to the impact of the approved proposal.
- ODOT’s conditional approval does not prevent the County from applying its land use regulations.

III. APPEAL

APPLICANT/PROPERTY OWNER

The Applicant (Simmons Brothers, LLC) submitted a timely appeal of the Hearings Officer’s Decision on September 25, 2023. The Applicant requests the Board accept review and conduct a hearing to review and make a decision based the following issues:

- The Hearings Officer’s interpretation and application of DCC 17.48.210(B)
- ODOT’s conditional approval of access to/from NE O’Neil Way
- Whether the right-of-way dedication and road improvement conditions of approval related to NE Coyner Avenue are rationally related, and roughly proportionate, to the impacts of the proposed partition.

The Applicant requests *de novo* review.

IV. BOARD OPTIONS

In determining whether to hear the appeal, the Board may consider only:

1. The record developed before the Hearings Officer;
2. The notice of appeal; and
3. Recommendation of staff²

If the Board decides to hear the appeal, it must direct whether the appeal will be considered *de novo*, or *limited de novo*. The Board also may consider providing time limits for public testimony, if it decides to hear the appeal.

² Deschutes County Code 22.32.035(D)

Staff has attached three alternative versions of Order No. 2023-044 to this memo; one to hear the appeal *de novo*, one to hear the appeal *limited de novo*, and one to decline to hear the appeal.

Reasons to hear

The Board may wish to accept review of the application on appeal so that its Code interpretations may be accorded deference by the Land Use Board of Appeals (LUBA) if the matter is further appealed. Unlike a Hearings Officer decision, a Board decision that is based on interpretation of the County Code is entitled to local deference. Moreover, the Board may want to reinforce or revisit some the Hearings Officer's findings/interpretations in what would then become the final decision of the County.. Further, beyond the subject application, the Board may want to interpret DCC 17.48.210(B), the application of which has County-wide implications. related to the safety of the traveling public. Staff notes that they received no public comments – neither in support nor opposition – during the Hearings Officer review process.

If the Board chooses to hear this matter, the appellant requests the Board conduct a *de novo* hearing. Under Deschutes County Code 22.32.027(B)(2), the Board may grant an appellant's request to hear a matter *de novo* after considering the factors of DCC 22.32.027(B)(2)(a-d). If the Board chooses to hear this matter, Staff includes considerations for the Board below on *limited de novo vs. de novo*.

Reasons to hear *de novo*:

- This allows the Board to consider any relevant issue not related to the reason for denial and may allow new evidence and testimony on any applicable criteria as it sees appropriate.
- Any scope of review exercised by the Board (*de novo* or *limited de novo*) will provide an opportunity for the Board to make a final decision on interpretation of local criteria to which LUBA may defer.
- The applicant has requested *de novo* proceedings.

Reasons to hear *limited de novo*:

- The Hearings Officer found that the applicability of DCC 17.48.210(B) prohibited approval for the change of access onto NE O'Neil Way. A *limited de novo* hearing would allow the Board to consider new evidence and testimony that would be focused solely on this decision point.
- *Limited de novo* review may focus the Board's attention on the Code interpretation issue on which it may be accorded deference by LUBA.

Reasons not to hear

- The Board may determine that the Hearings Officer’s Decision is consistent with its interpretation of DCC 17.48.210(B) and is supported, by the record, if the decision is appealed to LUBA. In addition, the Board may take note that the applicant was represented by a land use attorney.

If the Board decides the Hearings Officer’s Decision shall be the final decision of the county, then the Board shall not hear the appeal and the party appealing may continue the appeal as provided by law. The decision on the land use application and associated appeals becomes final upon the mailing of the Board’s decision to decline review.

V. 150-DAY LAND USE CLOCK

The applicant has requested a 150-day extension of the land use clock. The 150th day on which the County must take final action on this application is March 20, 2024.

VI. RECORD

The record for File No. 247-23-000249-MC and the Notice of Appeal for Appeal No. 247-23-000704-A are as presented at the following Deschutes County Community Development Department website:

<https://www.deschutes.org/cd/page/247-23-000249-mc-modification-conditions-247-21-000593-mp-594-cu-595-cu>

Attachments:

1. DRAFT Board Order 2023-044 Accepting Review of the Hearings Officer’s Decision (*de novo*)
2. DRAFT Board Order 2023-044 Accepting Review of the Hearings Officer’s Decision (*limited de novo*)
3. DRAFT Board Order 2023-044 Declining Review of the Hearings Officer’s Decision
4. Notice of Appeal (Appeal No. 247-23-000704-A)
5. Hearing’s Officer Decision (File No. 247-23-000249-MC)
6. Deschutes County Code 17.48.210

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Accepting Review of Hearings *
Officer’s Decision in File No. 247-23-000249- * ORDER NO. 2023-044
MC.

WHEREAS, on September 13, 2023, the Hearings Officer issued a decision in File No. 247-23-000249-MC denying an application for modification of conditions; and

WHEREAS, on September 25, 2023, Simmons Brothers, LLC, the Appellant, appealed (Appeal No. 247-23-000704-A) the Deschutes County Hearings Officer’s Decision on File No. 247-23-000249-MC; and

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

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

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

Section 1. That it will hear on appeal Appeal No. 247-23-000704-A pursuant to Title 22 of the DCC and other applicable provisions of the County land use ordinances.

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

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

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

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

developed before the lower hearings body for File No. 247-23-000249-MC as present following website:

<https://www.deschutes.org/cd/page/247-23-000249-mc-modification-conditions-247-21-000593-mp-594-cu-595-cu>

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

DATED this ____ day of October 2023.

BOARD OF COUNTY COMMISSIONERS

ANTHONY DEBONE, Chair

ATTEST:

PATTI ADAIR, Vice Chair

Recording Secretary

PHIL CHANG, Commissioner

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Accepting Review of Hearings *
Officer’s Decision in File No. 247-23-000249- * ORDER NO. 2023-044
MC.

WHEREAS, on September 13, 2023, the Hearings Officer issued a decision in File No. 247-23-000249-MC denying an application for modification of conditions; and

WHEREAS, on September 25, 2023, Simmons Brothers, LLC, the Appellant, appealed (Appeal No. 247-23-000704-A) the Deschutes County Hearings Officer’s Decision on File No. 247-23-000249-MC; and

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

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

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

Section 1. That it will hear on appeal Appeal No. 247-23-000704-A pursuant to Title 22 of the DCC and other applicable provisions of the County land use ordinances.

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

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

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

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

developed before the lower hearings body for File No. 247-23-000249-MC as present following website:

<https://www.deschutes.org/cd/page/247-23-000249-mc-modification-conditions-247-21-000593-mp-594-cu-595-cu>

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

DATED this ____ day of October 2023.

BOARD OF COUNTY COMMISSIONERS

ANTHONY DEBONE, Chair

ATTEST:

PATTI ADAIR, Vice Chair

Recording Secretary

PHIL CHANG, Commissioner

DATED this ____ day of October 2023.

BOARD OF COUNTY COMMISSIONERS

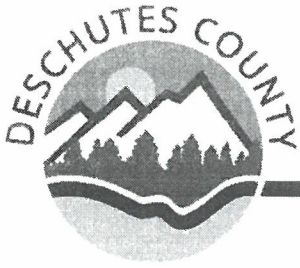
ANTHONY DEBONE, Chair

ATTEST:

PATTI ADAIR, Vice Chair

Recording Secretary

PHIL CHANG, Commissioner



APPEAL APPLICATION – BOARD OF COUNTY COMMISSIONERS

FEE: \$3794

EVERY NOTICE OF APPEAL SHALL INCLUDE:

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

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

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

Appellant's Name (print): Simmons Brothers LLC Phone: (541) 316-1588

Mailing Address: 139 NW Third Street City/State/Zip: Prineville, OR 97754

Email Address: Lisa @FitchandNeary.com

Land Use Application Being Appealed: 247-23-000249-MC

Property Description: Township 14 Range 13 Section 25 Tax Lot 1200

Appellant's Signature: Hank Simmons Date: Sep 22, 2023

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

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



Lisa Andrach
lisa@fitchandneary.com

LAND USE AUTHORIZATION FORM

For: Deschutes County Community Development

Re: **Map and Tax Lot: 1413250001200 (Account # 128367)**
Situs Address: 4180 NE O'Neil Way, Redmond, Oregon 97756

Let it be known that the firm of Fitch & Neary PC has been retained to act as my authorized agent to perform all acts for development on my property noted above. These acts include: Pre-application conference, filing applications, and/or other required documents relative to all Permit applications., modifications, appeal, extension.

Property Owner: Simmons Brothers LLC

Hank Simmons Sep 21, 2023

Hank Simmons date

Signature: Hank Simmons
Hank Simmons (Sep 21, 2023 10:50 PDT)

Email: simmonsrealty@yahoo.com

NOTICE OF APPEAL
TO DESCHUTES COUNTY BOARD OF COMMISSIONERS

FILE NUMBER: 247-23-000249-MC (Hearings Officer)

APPLICANT/OWNER: Simmons Brothers, LLC
139 NW Third Street
Prineville OR 97754
P: 541-447-5638

APPLICANT’S ATTORNEY: Lisa Andrach
Fitch & Neary, P.C.
210 SW 5th St., Ste. #2
Redmond OR 97756
P: 541-316-1588
Email: lisa@fitchandneary.com

Appeal of hearings officer decision denying modification of conditions to previously approved land use submittal (247-21-000593-MP, 594-CU,595-CU) to modify the point of access to a location approved by ODOT (NE O’Neil Way).

I. APPLICABLE CRITERIA

22.32.010 Who May Appeal

- A. The following may file an appeal:**
- 1. A party**

FINDING: The appellant is the applicant in Deschutes County File No. 247-23-000249-MC that is the subject of this appeal. This criterion is satisfied.

22.32.015 Filing Appeals

- 1. 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.**
- 2. 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 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 4:00 PM on the twelfth day following mailing of the decision as modified. Notices of Appeals may not be received by facsimile machine.**

- 3. **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.**
- 4. **The appeal fee shall be paid by method that is acceptable to Deschutes County.**

FINDING: The appellant has filed herewith the required notice of appeal on the prescribed form, and the appeal fee, within the 12 days from the date of mailing of the decision. This criterion is met.

22.32.020 Notice Of Appeal

Every notice of appeal shall include:

- A. **A statement raising any issue relied upon for appeal with sufficient specificity to afford the Hearings Body an adequate opportunity to respond to and resolve each issue in dispute.**

FINDING: The appellant appeals the hearings officer’s decision denying the modification application pursuant to DCC 22.36.040(C) based upon a finding that the proposed modification does not comply with applicable criteria of Title 17.

The appellant requests review on the following issues:

1. The decision is in error in its application of DCC 17.48.210(B) to deny the application. The hearings officer’s interpretation of DCC 17.48 is not binding on the Board of Commissioners, which, as the legislative body of the county, is charged with interpreting the county code. As set forth in the decision, it appears that the interpretation of DCC 17.48.210 is a matter of first impression for the Board. Appellant submits that the decision erred in more than one way in finding that DCC 17.48.210(B) prohibits the use of the state highway access (O’Neil Way). The Board must determine whether DCC 17.48.210, which regulates “Access” for partitions, applies here when:

A. The proposed access is from a state highway within the jurisdiction of ODOT, and the access permit is reviewed, approved, and issued by ODOT;

B. If it does apply, does DCC 17.48.210(B) prohibit the use of a state arterial for access even if ODOT has determined that the access point from the arterial is approved because it passed the state’s rigorous safety and operational review criteria and other hurdles to approval; and

C. If DCC 17.48.210(B) does trump any such access simply because NE O’Neil Way is an “arterial” as used in DCC 17.48.210(B), even though approved by ODOT, does the exception in DCC 17.48.210(B) to allow the use of the arterial when there is no other possible means of accessing the parcel apply here.

2. The Hearings Officer’s decision overlooked evidence in the record and misinterpreted and misapplied the applicable law and misunderstood the appellant’s arguments below as it applied to the balance of Title 17. DCC 22.36.040(C) requires that an application to modify a decision be directed to one or more discrete aspects of the approval. In compliance with this criterion, the applicant addressed the fact that if the O’Neil Way access is approved on modification, the partition would not use NE Coyner Ave for any purpose, and if NE Coyner Ave is not used for any purpose, then the applicable criteria and corresponding conditions of approval in the original decision that required dedication of right of way and development requirements to establish NE Coyner Ave are negated. The modification sought removal of the conditions of approval requiring the dedication of right of way and development of NE Coyner Ave because these conditions of approval would no longer be required to satisfy any applicable criteria – because the criteria to which they relate no longer apply.

In addition, the hearings officer identified a few particular criteria that he thought might be applicable, albeit in dicta, but his comments on those criteria were in error because those criteria were addressed in the initial decision, the substantial evidence in the record, and/or the findings on those criterion in the original decision were not being disturbed by the modification. Specifically:

DCC 17.22.020(A)(3) – The hearings officer questioned whether Ne O’Neil Way is a “road dedicated to the public.” However, the record made clear that O’Neil Way (Highway 370) is a state highway, it is owned by the state and governed within the jurisdiction of ODOT, and as set forth in the original decision addressing this criterion, it is a “roadway dedicated to the public.” This issue was addressed and satisfied and was not an issue subject to modification.

DCC 17.22.020(A)(2) – The hearings officer wondered if there are public access easements that conflict with the proposal. However, as addressed in the record, there are no public access easements that exist or that are in conflict with the proposed partition and/or new access point. The original decision addressed this criterion and found that there were no public access easements to which the proposed partition would be in conflict and that there were no public access easements within the property. ODOT found that the proposed access did not conflict with any nearby public access intersections or O’Neil Way. There is substantial evidence in the record on this issue and the criterion was satisfied. The applicant did not request a modification to this criterion pertaining to public access easements.

DCC 17.36.100 – The hearings officer wondered whether a frontage road is required. However, here, neither ODOT nor the County Road Department mentioned or required

any frontage road for O'Neil Way with the proposed modified access point on O'Neil Way. Neither authority required a condition of approval to establish a frontage road along O'Neil Way. On modification, the application addressed that the frontage dedication for NE Coyner Ave would no longer be applicable because there was no impact to NE Coyner because there is no use of NE Coyner with the modified access point. There was no requirement for a frontage road triggered by the modification to the access point and this criterion was satisfied.

B. If the Board of County Commissioners is the Hearings Body, a request for review by the Board stating the reasons why the Board should review the lower Hearings Body's decision.

FINDING: The appeal seeks an interpretation of the Deschutes County Code 17.48.210(B), concerning when it applies, and what does "possible" mean as used in the code. These appear to be issues of first impression for the Board of Commissioners. The applicant's rights are substantially prejudiced by the hearings officer's decision in this matter if the applicant cannot use an ODOT approved access point simply because it is an "arterial" as used in Code. The other issues outlined above were raised by the hearings officer in dicta as possible applicable criteria that needed to be addressed, but the decision was in error in that the issues were either addressed in the record, the prior decision, or were not applicable to the modification.

C. If the Board of County Commissioners is the Hearings Body and de novo review is desired, a request for de novo review by the Board stating the reasons why the Board should provide de novo review as provided in DCC 22.32.030.

FINDING: The applicant requests de novo review of this issue because it appears to be an issue of first impression for the Board of Commissioners, and because the hardship imposed on the applicant if the applicant cannot use the ODOT approved access but must dedicate nearly a mile of right of way (and remove all of his personal property within that 30' area to be dedicated) and improve a road that even ODOT's experienced engineer said is not reasonable to use, when the road is a dead end at the NUID canal and serves no other property or public purpose or benefit. The road would only serve the 2 new non-farm dwellings and nothing more. The result is a huge exaction of real property and financial investment from the applicant when there is another safe, ODOT approved, reasonable and available option. The only improvement to the NE O'Neil Way access is a driveway apron.

The Board of Commissioners, as the legislative body of the county, is the only body that can issue a binding interpretation of the county code. Here it is necessary for de novo review so that the Board has an opportunity to fully and properly evaluate the issues on review which are of first impression. The Board's application and interpretation of DCC 17.48.210(B) is important enough and the stakes are extremely high for the applicant all which further warrant the Board addressing the issues raised *de novo*.

2.32.024 Transcript Requirement

1. 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.
2. 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.
3. 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.
4. 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.

FINDING: The appellant agrees to the transcript requirements imposed by this criterion.

22.32.027 Scope Of Review

1. Before Hearings Officer or Planning Commission. The review on appeal before the Hearings Officer or Planning Commission shall be de novo.
2. 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:
 1. Whether hearing the application de novo could cause the 150-day time limit to be exceeded; and
 2. 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
 3. 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

- 4. 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.

FINDING:

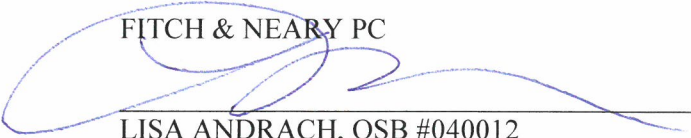
1. The applicant is the appellant, and the 150-day clock is near expiration. Therefore, the applicant / appellant hereby agrees to restart the clock to allow time for the appeal as set forth above.

2. The substantial rights of the applicant are prejudiced by the decision on review. Here, the State ODOT has reviewed and approved for use an alternate access for two non-farm dwellings, but the decision on review has rejected the use of that access and requires that the applicant make a substantial dedication of real property to create a new road, and then make a substantial investment financially to improve the new road just to access the same two dwellings. The decision is not based upon any health, life, safety issues – but merely an interpretation of the county code.

- 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.

FINDING: The appellant requests that the Board limit the issues on appeal to those listed in appellant's notice of appeal.

DATED this 25th day of September 2023.

FITCH & NEARY PC


LISA ANDRACH, OSB #040012
 Of Attorneys for Appellant / Applicant below
 210 SW 5th St, Suite 2
 Redmond, OR 97756
 P: 541.316.1588 F: 541.316.1943
 Email: lisa@fitchandneary.com

From: [CDD Planning](#)
To: [Tracy Griffin](#)
Subject: FW: Appeal of 247-23-00249-MC App Materials
Date: Monday, September 25, 2023 4:39:15 PM
Attachments: [Appeal filed 9.25.23.pdf](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

Hi Tracy,

App materials for 247-23-000704-A

Thanks,



Ben Wilson | Assistant Planner
Deschutes County Community Development
117 NW Lafayette Ave | Bend, Oregon 97703
Tel: (541) 385-1713 | Mail: PO Box 6005, Bend, OR 97708



Let us know how we're doing: [Customer Feedback Survey](#)
Disclaimer: Please note that the information in this email is an informal statement made in accordance with DCC 22.20.005 and shall not be deemed to constitute final County action effecting a change in the status of a person's property or conferring any rights, including any reliance rights, on any person.

From: Lisa Andrach <lisa@fitchandneary.com>
Sent: Monday, September 25, 2023 2:17 PM
To: CDD Planning <planning@deschutes.org>
Cc: simmonsrealty@yahoo.com; Craig & Cathy Kilpatrick <ckrimrock@yahoo.com>; Linda Nichols <linda@fitchandneary.com>
Subject: Appeal of 247-23-00249-MC

[EXTERNAL EMAIL]

Attached please find the appeal documents for an appeal to the Board of Commissions of the hearings officer decision in 247-23-00249-MC.

When the invoice is ready, please send me the information to pay the filing fee.

Thank you.

Lisa Andrach, Attorney



Fitch and Neary, PC
210 SW 5th St, Suite 2

Redmond, OR 97756

Ph: 541-316-1588

Fax: 541-316-1943

www.fitchandneary.com

CONFIDENTIALITY NOTICE: This email transmission, and any documents, files or previous email messages attached to it, may contain confidential information that is legally privileged. If you are not the intended recipient or a person responsible for delivering it to the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of any of the information contained in or attached to this message is STRICTLY PROHIBITED. If you have received this transmission in error, please notify us by reply at info@fitchandneary.com or by telephone at [541 316-1588](tel:541-316-1588), and destroy the original transmission and its attachments without reading them or saving them to a disk.

**DECISION AND FINDINGS OF
THE DESCHUTES COUNTY HEARINGS OFFICER**

FILE NUMBER: 247-23-000249-MC

HEARING DATE: July 12, 2023

HEARING LOCATION: Videoconference and
Barnes & Sawyer Rooms
Deschutes Services Center
1300 NW Wall Street
Bend, OR 97708

APPLICANT/OWNER: Simmons Brothers, LLC

SUBJECT PROPERTY: Map and Tax Lot:
1413250001200

Situs Addresses:
4180 NE Oneil Way
Redmond, OR 97756

REQUEST: The Applicant requests a modification of conditions to a previously-approved land use permit (247-21-000593-MP, 594-CU, 595-CU) to change the point of access from NE Coyner Avenue to NE Oneil Way.

HEARINGS OFFICER: Tommy A. Brooks

SUMMARY OF DECISION: This Decision concludes that the Applicant has not met its burden of demonstrating the requested modification satisfies the applicable criteria and, therefore, DENIES the Application.

I. STANDARDS AND CRITERIA

Deschutes County Code (DCC)
Title 17, Subdivisions
Chapter 17.22, Approval of Tentative Plans for Partitions
Chapter 17.36, Design Standards
Chapter 17.48, Design and Construction Specifications
Title 22, Deschutes County Development Procedures Ordinance
Chapter 22.36, Limitations on Approvals

II. BACKGROUND AND PROCEDURAL FINDINGS

A. Nature of Proceeding

This matter comes before the Hearings Officer as a request to modify the conditions of approval of a prior land use action on the Subject Property.

In September 2021, through Casefiles 247-21-000593-MP, 594-CU, and 595-CU (together, the “2021 Minor Partition”), the County approved a Minor Partition to divide the Subject Property into three parcels, together with conditional use permits authorizing the establishment of a nonfarm dwelling on each of two of the new parcels (“New Dwelling Parcels”).

The 2021 Minor Partition contemplates that access from the New Dwelling Parcels will be via NE Coyner Avenue, an undeveloped right-of-way that runs along the south side of the Subject Property. Relatedly, the 2021 Minor Partition includes conditions of approval requiring the applicant to design and construct road improvements on NE Coyner Avenue, and to dedicate additional right-of-way along NE Coyner Avenue, to meet certain road standards.

After the County’s approval of the 2021 Minor Partition, the Applicant sought approval from the Oregon Department of Transportation (“ODOT”) to allow access from the New Dwelling Parcels to NE O’Neil Way/Highway 370 (“O’Neil Way”). ODOT initially approved an approach permit for that purpose on February 23, 2023. ODOT re-issued its approval for the Applicant’s requested access on February 27, 2023. ODOT’s second approval was styled as a “Conditional Approval” and was conditioned on ODOT’s receipt of land use approval from the County.

As described by the Applicant, the purpose of the Application is to modify the approved access for the New Dwelling Parcels (i.e., from NE Coyner Avenue to O’Neil Way), and to remove the conditions of approval in the 2021 Minor Partition relating to the right-of-way dedication and improvements to NE Coyner Avenue, since that right-of-way would no longer be used for access. As set forth in the Applicant’s initial Application materials, the Applicant specifically requests the removal of Condition numbers 8, 9, 12, 15, 16, 17, 18, and 20 from the 2021 Minor Partition.

B. Application, Notices, Hearing

The initial Application was submitted on April 4, 2023. Staff in the County’s Community Development Department (“Staff”) deemed the Application complete on May 4, 2023.

On June 14, 2023, Staff mailed a Notice of Public Hearing (“Hearing Notice”). The Hearing Notice was also published in the Bend Bulletin on June 16, 2023.

Pursuant to the Hearing Notice, I presided over the Hearing as the Hearings Officer on July 12, 2023, opening the Hearing at 6:00 p.m. The Hearing was held in person and via videoconference, with the Hearings Officer appearing remotely. At the beginning of the Hearing, I provided an overview of the quasi-judicial process and instructed participants to direct comments to the approval criteria and standards, and to raise any issues a participant wanted to preserve for appeal if necessary. I stated I had no *ex parte*

contacts to disclose or bias to declare. I invited but received no objections to the County's jurisdiction over the matter or to my participation as the Hearings Officer.

The Hearing concluded at approximately 7:21 p.m. Prior to the conclusion of the Hearing, and at the Applicant's request, I announced that the written record would remain open as follows: (1) any participant could submit additional materials until July 19, 2023 ("Open Record Period"); (2) any participant could submit rebuttal materials (evidence or argument) until July 26, 2023 ("Rebuttal Period"); and (3) the Applicant could submit a final legal argument, but no additional evidence, until August 2, 2023, at which time the record would close. Staff provided further instruction to participants, noting that all post-Hearing submittals needed to be received by the County by 4:00 p.m. on the applicable due date. No participant objected to the post-hearing procedures.

C. Review Period

Using May 4, 2023, as the date of completeness for the Application, the deadline within which the County must make a final decision under ORS 215.427 – "the 150-day clock" – was initially October 1, 2023. Pursuant to DCC 22.24.140(E), a continuance or record extension is subject to the 150-day clock, unless the Applicant requests or otherwise agrees to the extension. Here, the Applicant requested and agreed to a 21-day extension of the record. Under the Code, therefore, the additional 21 days the record was left open do not count toward the 150-day clock. Adding that time period to the original deadline, the new deadline for the County to make a final decision is October 22, 2023.

III. SUBSTANTIVE FINDINGS AND CONCLUSIONS

The Application requests a Modification of Approval pursuant to DCC 22.36.040. The approval the Applicant seeks to modify is the 2021 Minor Partition. The specific modification the Applicant seeks to make to the 2021 Minor Partition is the portion of that decision establishing the location that the New Dwelling Parcels will use to take access to a public road.

As presented to the Hearings Officer, the requested Modification of Approval would revise the approved site plan by establishing an access point on O'Neil Way. Such an access point already exists for "Parcel 3" and ODOT's conditional approval would allow a new access point to O'Neil Way farther west where it would be accessed by the New Dwelling Parcels. If the location of the road access is approved, the Applicant also requests the removal of the conditions of approval in the 2021 Minor Partition that require additional right-of-way dedication and improvements on NE Coyner Avenue.

1. Compliance with DCC 22.36.040

The standards for a Modification of Approval are set forth in DCC 22.36.040:

- A. *An applicant may apply to modify an approval at any time after a period of six months has elapsed from the time a land use action approval has become final.*

The Applicant seeks to modify the 2021 Minor Partition, which the County approved on or about September 21, 2021. The requested modification is therefore more than six months after that decision

became final. No participant in this proceeding has challenged the timing of the Application. Based on the foregoing, I find that this Code provision is satisfied.

B. Unless otherwise specified in a particular zoning ordinance provision, the grounds for filing a modification shall be that a change of circumstances since the issuance of the approval makes it desirable to make changes to the proposal, as approved. A modification shall not be filed as a substitute for an appeal or to apply for a substantially new proposal or one that would have significant additional impacts on surrounding properties.

A Modification of Approval requires a showing of a change in circumstances that makes it desirable to make changes to the prior approval. The “change in circumstances” the Applicant describes for purposes of this Code provision is that a new access is now available and conditionally approved by ODOT. The Applicant asserts that it is desirable to change the point of access because the change “only requires access improvements in lieu of NE Coyner right-of-way dedication and road improvements,” and that the “expense to the applicant to take access via NE Coyner is considerably more than to take access from O’Neil Hwy.”

During the Hearing, I raised the question whether the source of the change in circumstances matters for purposes of applying this Code provision. On the one hand, the language of the Code refers only to “a change in circumstances.” On the other hand, not all changes in circumstances can be used for purposes of obtaining a Modification of Approval. For example, if the resulting modification is “filed as a substitute for an appeal”, the modification would not be allowed under the Code. The source of the change in circumstances, therefore, could be relevant in a particular situation to determine the intent and purpose of the modification. In response to my questions, the Applicant submitted to the record several past decisions where the County approved modifications of prior approvals, some of which appear to be based on changes in circumstances created by the applicant in those matters, and some of which appear to be based on changes that were outside of the applicant’s control. It is not clear, however, if those prior decisions addressed the source of the change in circumstances.

Some comments in the record do question whether this Code provision is satisfied, but those comments address whether the proposed modification is a substitute for an appeal of the 2021 Minor Partition. No participant appears to directly challenge the Applicant’s assertion that there has been a change in circumstances, or the Applicant’s assertion that such a change in circumstances makes it desirable to make changes to the original approval. Nor do I read those opposing comments as making an express connection between the Applicant’s role in creating the change in the circumstances and the allegation that the request is being used as a substitute for an appeal. In the absence of a clear interpretation of this Code provision by the County’s Board of Commissioners, and in the absence of a counter argument regarding the change in circumstances the Applicant relies on, I find that, based on this record, the Applicant has established that a change of circumstances since the issuance of the 2021 Minor Partition makes it desirable to make changes to that approval.

The primary comment in the record challenging the Applicant’s ability to satisfy this Code requirement is a memo from the County’s Senior Transportation Planner. That memo asserts that the 2021 Minor Partition is a final, unappealable decision and that the “County cannot now consider an application that

requires a determination that the access and conditions related thereto in the original, unappealed approval should be changed.” That assertion, however, runs counter to the language in DCC 22.36.040, which expressly allows an applicant to seek a change in the conditions of a prior approval, and which allows such a change only if it has been more than six months since the approval became final. If the interpretation the Senior Transportation Planner offers were correct, no modification to a prior approval would ever be allowed and DCC 22.36.040 would serve no purpose.

The question before the Hearings Officer with respect to this Code provision is whether the requested modification is a “substitute” for an appeal. The Applicant makes multiple statements in the record expressing dissatisfaction with the 2021 Minor Partition, particularly with regard to the improvements required on NE Coyner Avenue. For example, the Applicant asserts that its original proposal was for the New Dwelling Parcels to take access via 33rd Street, but that the County misunderstood that request and, on its own, required access via NE Coyner Avenue. Even so, dissatisfaction with the outcome of a decision does not mean that any requested modification rises to the level of a substitute for an appeal. As the Applicant notes, the analysis might turn out differently if the Applicant were seeking to re-instate something the County previously denied. For example, if the Applicant had originally proposed access via O’Neil Way, and if the County had rejected that portion of the proposal, it would be more likely viewed as a substitute for an appeal if the Applicant then sought a Modification of Approval allowing the O’Neil Way access anyway. But that is not the case here, as the Applicant never proposed access to O’Neil Way and is proposing that access now only in light of the change in circumstances consisting of ODOT’s conditional approval. Based on these considerations and the evidence in this record, I find that the Applicant is not using the Modification of Approval as a substitute for an appeal by proposing access to O’Neil Way.

The final element of this Code provision is that the Application cannot be a substantially new proposal or one that would have significant additional impacts on surrounding properties. The Applicant addresses this criterion and notes that the fundamental proposal in the 2021 Minor Partition – three new parcels and the ability to build two nonfarm dwellings – remains unchanged and has the same general impacts. No participant in this proceeding asserts that the Application proposes a substantially new proposal or that there is any difference in actual impacts from the proposal. In light of the Applicant’s unchallenged assertions, I find that the proposal in the Application does not result in a substantially new proposal or one that would have significant additional impacts on surrounding properties.

In summary, I find that DCC 22.36.040(B) is satisfied.

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C. An application to modify an approval shall be directed to one or more discrete aspects of the approval, the modification of which would not amount to approval of a substantially new proposal or one that would have significant additional impacts on surrounding properties. Any proposed modification, as defined in DCC 22.36.040, shall be reviewed only under the criteria applicable to that particular aspect of the proposal. Proposals that would modify an approval in a scope greater than allowable as a modification shall be treated as an application for a new proposal.

The Applicant seeks to modify only those aspects of the 2021 Minor Partition that relate to the point of access for the Subject Property, including the New Dwelling Parcels. I find that the requested modifications are discrete aspects of that prior approval and, therefore, within the scope of a modification allowed by this Code provision.

The first half of this Code provision repeats some of the same requirements set forth in DCC 22.36.040(B) and requires that the modification not comprise a substantially new proposal or otherwise have significant additional impacts on surrounding properties. Those standards are addressed in the previous findings and are incorporated here. For the same reasons set forth in those findings, I find that this portion of DCC 22.36.040(C) is satisfied.

The second half of this Code provision requires a review of the modification “under the criteria applicable to the particular aspect of the proposal.” Whether the Applicant has met its burden to demonstrate that the requested modification satisfied the applicable criteria is addressed in more detail in the findings below. Those findings conclude that the Applicant has not met its burden.

D. An application for a modification shall be handled as a land use action.

The Application is being processed as a land use action, and no participant in this proceeding objects to that approach. Based on the foregoing, I find that this Code provision is satisfied.

2. Compliance with Criteria Applicable to the Requested Modification

As noted in the findings above, DCC 22.36.040(C) states in part that a requested modification “shall be reviewed only under the criteria applicable to that particular aspect of the proposal”. The criteria applicable to the original approval are set forth in DCC Title 17. The proposal in the Application must therefore comply with any of those criteria applicable to the modification being proposed.

While the Applicant responds to comments in the Staff Report and argues certain Code provisions identified by Staff do not apply to the requested modification – primarily DCC 17.48.210(B) – I am unable to discern from the Applicant’s initial materials, supplemental materials, or post-hearing materials which criteria from the 2021 Minor Partition are applicable to the modification sought in the present Application. Nor does there appear to be any statement from the Applicant that there are no criteria to apply. In the absence of any evidence or argument from the Applicant regarding which criteria do apply to the requested modification, I am unable to review “the criteria applicable to that particular aspect of the proposal” as required by DCC 22.36.040(C). On that basis, I find that the Applicant has not met its burden of

demonstrating that the Application complies with DCC 22.36.040(C). Additionally, the findings below address criteria that do apply, or that may apply, and which I find are either not addressed by the Application or not satisfied by the proposal.

A review of the 2021 Minor Partition indicates that there may be multiple criteria that apply to the requested modification. DCC 17.22.020(A)(3) appears to be the primary criterion applicable to the modification and requires a partition to be accessed by roads dedicated to the public. There is no affirmative statement in any of the materials in the record regarding that Code provision, but that criterion appears to be met here. It is less clear whether other criteria are applicable and, if so, whether the proposed modification satisfies those criteria.

DCC 17.22.020(A)(2), for example, requires that the proposal in a partition not conflict with existing public access easements within or adjacent to the partition. That criterion was deemed satisfied in the 2021 Minor Partition's findings, but I am unable to determine from the record before me if the change in access to the New Dwelling Parcels would yield the same result, as there is no indication of what, if any, public access easements exist, much less whether the new access point would conflict with those easements.

DCC 17.36.100 relates to frontage roads and imposes certain requirements when a land division abuts an existing arterial. The 2021 Minor Partition found that O'Neil Way is an arterial. That decision also concluded that the improvements required along NE Coyner Avenue were sufficient for purposes of this Code provision and that, as such, no additional improvements on O'Neil Way would be required. The Applicant now proposes to modify the 2021 Minor Partition in a manner that would not require the improvements on NE Coyner Avenue, but the Applicant does not address what effect that change has on the improvements otherwise required by DCC 17.36.100 and if improvements on O'Neil Way are now necessary to meet this Code provision.

DCC 17.48.210 relates to access to the partition. The Staff Report identifies this Code provision as applicable to the requested modification. Specifically, the Staff Report asserts the modification is not allowed under DCC 17.48.210(B), which states that the "creation of access onto arterials and collectors is prohibited unless there is no other possible means of accessing the parcel...". The Applicant disagrees with the Staff Report and presents several arguments that DCC 17.48.210(B) is not applicable.

One argument the Applicant presents in its final submittal is O'Neil Way is not an arterial and, therefore, DCC 17.48.210(B) does not prohibit the new access the Applicant proposes. As just noted, however, the fact that O'Neil Way is an arterial was established in the 2021 Minor Partition. The Applicant has confirmed – for example in its Supplemental Burden of Proof – that it "is not challenging the prior decision was procedurally or substantively incorrect". I therefore find that the status of O'Neil Way as an arterial is a settled matter.

The other argument the Applicant makes is that DCC 17.48.210(B) does not apply to ODOT-controlled rights-of-way and, instead, applies only to limit new access onto arterials and collectors within the County's jurisdiction. This argument is based on the County's conclusion that DCC 17.48.210(A) – which requires a permit from the County for any new access onto a public right-of-way – does not apply to an ODOT right-of-way. According to the Applicant, if subsection (A) of this Code provision does not apply to ODOT roads, then subsection (B) cannot not apply.

No participant in this proceeding has presented any evidence regarding how the County's Board of Commissioners interprets this Code provision. In the absence of such an interpretation, I must address the plain language of the Code. That plain language states simply that the "creation of access onto arterials and collectors is prohibited" absent certain exceptions. The record indicates that both County-controlled and ODOT-controlled roads may be classified as "arterials" under the County's regulations. This portion of the Code, however, does not qualify "arterials" and limit its application only to County-controlled arterials. Rather, it applies to all arterials. Nor does this Code provision contain any language that ties subsection (B) to subsection (A). In other words, the language of subsection (B) stands on its own, and the prohibition on new access onto arterials can apply whether or not a permit is required under subsection (A). Testimony from ODOT during the Hearing stated that ODOT would honor any County regulations that are more restrictive than State regulations, even if ODOT could otherwise issue its own permit. Indeed, this seems to be the purpose of ODOT's conditional approval of the access point, which required the Applicant to obtain land use approval from the County.

The final argument the Applicant makes is that, even if DCC 17.48.210(B) applies in general, the exception in that Code provision applies because "there is no other possible means of accessing the parcel". The Applicant asserts that no other access is possible because the County already rejected access to 33rd Street in the 2021 Minor Partition, and that the approved access to NE Coyner Avenue "is prohibitive rendering it not possible". However, the possibility of using NE Coyner Avenue as access was affirmatively established in the 2021 Minor Partition. Again, the Applicant has acknowledged that it is not challenging the substance of the 2021 Minor Partition. To the extent the Applicant is asserting that the 2021 Minor Partition was wrong, or that it otherwise approved an access that is "not possible", that is not an argument the Applicant can raise in this proceeding. To do so would be to attack the substance of the prior decision and convert the requested modification into a substitute for an appeal of that decision.

Based on the foregoing, I find that DCC 17.48.210(B) is applicable, that it prohibits the Applicant from creating an access on O'Neil Way, and that the requested modification is therefore not allowed under the criteria applicable to the proposal.¹

¹ The Applicant's materials assert that denial of the Applicant's request would be an unconstitutional taking of the Applicant's private property in the form of an improper exaction. During the Hearing, the Applicant confirmed that its takings argument applied only if the County approved the new access onto O'Neil Way and also required improvements to NE Coyner Avenue even though that road would no longer be how the New Dwelling Parcels accessed a public road. If that were the case, I would tend to agree, and the County would be required to show that the improvements to NE Coyner Avenue were both rationally related to the Applicant's proposal and had a rough proportionality to the impact of the Applicant's proposal. There would seem to be little connection between NE Coyner Avenue improvements and the Subject Property's use of O'Neil Way. But this decision does not result in such an outcome and, because the modification is being denied, the improvements to NE Coyner Avenue required by the 2021 Minor Partition remain applicable. Again, to the extent the Applicant is objecting to the improvements the County required in the 2021 Minor Partition, that is not an issue that can be challenged now in this Modification of Approval proceeding.

Despite the Applicant's clarification during the Hearing, the Applicant's post-Hearing submittals assert that denying the Application based on DCC 17.48.210(B) constitutes a taking *per se*, because the Applicant would be denied use of an access permit approved by ODOT. ODOT's access permit, however, was conditioned on the Applicant obtaining land use approval from the County. The Applicant has not described what vested right or other property interest it has in ODOT's conditional approval that prevents the County from applying its land use regulations or otherwise absolves the Applicant from having to satisfy the criteria in those regulations.

IV. CONCLUSION

Based on the foregoing findings, I find that the Applicant has not met its burden with respect to the applicable standards for a Modification of Approval. The Application is therefore DENIED.

Dated this 13th day of September 2023



Tommy A. Brooks
Deschutes County Hearings Officer

17.48.210 Access

- A. Permit Required. Access onto public right of way or change in type of access shall require a permit. Permits are applied for at offices of the Community Development Department.
- B. Access Restrictions and Limitations. The creation of access onto arterials and collectors is prohibited unless there is no other possible means of accessing the parcel. In any event, residential access onto arterials and collectors shall not be permitted within 100 feet of an intersection or the maximum distance obtainable on the parcel, whichever is less.
- C. Commercial and Industrial Access.
 - 1. Requirements for commercial and industrial access will be determined by the Road Department Director in accordance with DCC 17.48.090.
 - 2. Safety improvements, including left turn lanes and traffic signals, may be required.
- D. Sight Distance. Access shall be denied at locations that do not meet AASHTO sight distance standards.

HISTORY

Adopted by Ord. [81-043](#) §1, Exhibit A, §8.400(1)-(4) on 12/31/1981

Amended by Ord. [93-012](#) §53(A) on 8/4/1993

Amended by Ord. [2001-016](#) §1 on 3/28/2001



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: October 18, 2023

SUBJECT: Amendment to a contract with Iris Telehealth and Resolution 2023-058 which increases appropriations and reduces reserves within the Health Services Fund

RECOMMENDED MOTION:

1. Move approval of Board Signature of Document No. 2023-871, amending a contract with Iris Telehealth for tele-psychiatric services.
2. Move approval of Resolution No. 2023-058 reducing reserves and increasing appropriations within the Health Services Fund and the 2023-24 Deschutes County Budget.

BACKGROUND AND POLICY IMPLICATIONS:

Iris Telehealth provides services as a Licensed Medical Provider (LMP) and documents these medical services using Deschutes County's electronic medical record in manners consistent with professional and community standards of care. The County has contracted with Iris Telehealth to provide tele-psychiatric treatment for individuals obtaining services at Deschutes County Health Services.

This amendment increases funding by \$280,000 to include services of a Psychiatric Mental Health Nurse Practitioner at the North County (Kingwood) clinic. County shall pay Iris Telehealth on a fee-for-service basis in accordance with the fee schedule provided.

BUDGET IMPACTS:

This adjustment to the contract will increase program expense appropriations by \$280,000 in the Health Services Fund and increase appropriations and reduce reserves in the Health Services Reserve Fund (legally adopted with the Health Services Fund) by \$280,000.

ATTENDANCE:

Chandra Mola, Program Supervisor
Dan Emerson, Budget & Financial Planning Manager



REVIEWED

LEGAL COUNSEL

**DESCHUTES COUNTY SERVICES AMENDMENT #1
DOCUMENT NO. 2023-871
AMENDING DESCHUTES COUNTY CONTRACT NO. 2023-546**

THAT CERTAIN AGREEMENT, Deschutes County Contract No. 2023-546 dated July 1, 2023, by and between DESCHUTES COUNTY, a political subdivision of the State of Oregon, acting by and through its Health Services Department, Behavioral Health Division (“County”) and Iris Telehealth Medical Group, PA (“Contractor”), is amended, effective upon signing of all parties, as set forth below. Except as provided herein, all other provisions of the contract remain the same and in full force.

County’s performance hereunder is conditioned upon Contractor’s compliance with provisions of ORS 279B.220, 279B.225, 279B.230, and 279B.235, which are hereby incorporated by reference. In addition Standard Contract Provisions contained in Deschutes County Code Section 2.37.150 are hereby incorporated by reference. Contractor certifies that the representations, warranties and certifications contained in the original Contract are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

Effective October 16, 2023, the County desires to expand the services to provide a Psychiatric Mental Health Nurse Practitioner (PMHNP) for the North County location (Kingwood Clinic, 244 Kingwood, Redmond, OR 97756). This expansion requires an increase in the not to exceed amounts in the original contract. The above listed contract is amended as follows (new language is indicated by **bold** font and deleted language is indicated by ~~strikeout~~ font):

- 1. Exhibit B-1, Section 1 entitled Consideration is amended as follows:

County shall provide payments to Contractor within thirty (30) days of County’s approval of invoice. Payment for services charged to this Contract shall not exceed the maximum sum of ~~\$750,000~~ **\$1,030,000** inclusive of travel and all other expenses.

- 2. Exhibit B-1, Section 2 entitled The maximum compensation is amended as follows:

The maximum compensation under this Contract is ~~\$750,000~~ **\$1,030,000**.

DESCHUTES COUNTY SERVICES AMENDMENT #1
DOCUMENT NO. 2023-871
AMENDING DESCHUTES COUNTY CONTRACT NO. 2023-546

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this amendment as of the dates set forth below their respective signatures.

DATED this ____ day of _____, 2023

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DeBONE, Chair

PATTI ADAIR, Vice Chair

PHIL CHANG, Commissioner

ATTEST:

Recording Secretary

Signature: 
Tom Milam (Sep 21, 2023 21:38 EDT)
Email: tom.milam@iristelehealth.com
Title: CMO
Company: Iris Telehealth

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY,
OREGON

A Resolution to Increase Appropriations *
Within the 2023-24 Deschutes County Budget * RESOLUTION NO. 2023-058
*

WHEREAS, Deschutes County Health Services staff presented to the Board of County Commissioners on 10/18/2023 with regards to an Amendment to Iris Telehealth, and

WHEREAS, ORS 294.471 allows a supplemental budget adjustment when authorized by resolution of the governing body, and

WHEREAS, it is necessary to recognize Transfers In revenue and increase Program Expense appropriations by \$280,000 in the Health Services Fund, and

WHEREAS, it is necessary to reduce Reserves and increase Transfers Out appropriations by \$280,000 in the Health Services Reserve Fund (legally adopted with Health Services Fund), now, therefore;

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

Section 1. That the following revenue be recognized in the 2023-24 County Budget:

<u>Health Services</u>	
Transfers In – Fund 270	\$ 280,000
Total Health Services	<u>\$ 280,000</u>

Section 2. That the following expenditures be budgeted in the 2023-24 County Budget:

<u>Health Services</u>	
Program Expense	\$ 280,000
Transfers Out – Fund 274	280,000
Health Services Reserves	<u>(280,000)</u>
Total Health Services	<u>\$ 280,000</u>

Section 3. That the Chief Financial Officer make the appropriate entries in the Deschutes County Financial System to show the above appropriations:

DATED this _____ day of October, 2023.

BOARD OF COUNTY COMMISSIONERS OF
DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

ATTEST:

PATTI ADAIR, Vice-Chair

Recording Secretary

PHIL CHANG, Commissioner

Deschutes County
Supplemental Budget

REVENUE

Item	Line Number	Project Code	Segment 2	Org	Object	Description	Current Budgeted Amount	To (From)	Revised Budget
1		HSMEDICAL	HS2OTHER	2743152	391270	Transfers In - Fund 270	\$ 1,529,358	\$ 280,000	\$ 1,809,358
TOTAL							\$ 1,529,358	\$ 280,000	\$ 1,809,358

APPROPRIATION

Item	Line Number	Project Code	Segment 2	Org	Object	Category (Pers, M&S, Cap Out, Contingency)	Description (Element-Object, e.g. Time Mgmt, Temp Help, Computer Hardware)	Current Budgeted Amount	To (From)	Revised Budget
1		HSMEDICAL	HS2OTHER	2743152	430312	M&S	Contracted Services	\$ 4,552,805	\$ 280,000	\$ 4,832,805
2				2702250	491274	Transfers - Out	Transfers Out - Fund 274	1,529,358	280,000	1,809,358
3				2702250	521874	Reserves	Reserve for OHP Future Expenditures	15,825,803	(280,000)	15,545,803
TOTAL							\$ 21,907,966	\$ 280,000	\$ 22,187,966	

Transfer funds from Fund 270 (OHP Mental Health Reserves) to cover Iris Telehealth pediatric contract.

Fund:	274
Dept:	Health Services
Requested by:	Cheyrl Smallman
Date:	9/12/2023



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: October 18, 2023

SUBJECT: Oregon Health Authority grant agreement #180009-2 and Resolution No. 2023-060 converting 1.0 limited duration FTE to regular and increasing appropriations in the Health Services Fund

RECOMMENDED MOTIONS:

- 1) Move approval of Chair signature of Document No. 2023-902, Oregon Health Authority agreement #180009-2.
- 2) Move approval of Resolution No.2023-060 to convert 1.0 limited duration FTE to a regular FTE position and increase appropriations within the Health Services Fund and the 2023-24 Deschutes County Budget.
- 3) Move approval to extend the end date to use ARPA funding earmarked for Health Services through December 2026 to be used for the original purposes set forth by the Board of County Commissioners.

BACKGROUND AND POLICY IMPLICATIONS:

Oregon Health Authority (OHA) intergovernmental agreement (IGA) #180009, approved by the Board of County Commissioners on June 28, 2023, outlined program descriptions and reporting requirements for Deschutes County, the Local Public Health Authority (LPHA), for fiscal year (FY) 2024 and 2025, and provided funding for most Program Elements (PEs) for FY 2024.

This amendment #2 modifies program element descriptions for three PEs: PE 12 - Public Health Emergency Preparedness and Response (PHEPR), PE 44 - School Based Health Centers (SBHC), and PE 51 - Public Health Modernization. Additionally, the amendment awards anticipated funding totaling \$922,746 for the following Program Elements:

- \$197,456 for PE 01-01 State Support for Public Health
- \$83,935 for PE 12-01 Public Health Emergency Preparedness and Response
- -\$10,928 for PE 44-02 SBHC – Mental Health Expansion
- \$652,283 for PE 51-01 LPHA Leadership, Governance and Program Implementation (Public Health Modernization)

Health Services is requesting to convert one Public Health Program Manager from limited duration to regular FTE position effective January 1, 2024. As Public Health continues to move

toward implementation of PH Modernization, our next step is to focus on the foundational capabilities of Emergency Preparedness, Community Partnership Development, and Risk Communications. Currently, the limited duration Emergency Preparedness and COVID Recovery Manager position has been implementing and overseeing much of this work and we want to sustain this core capacity and expertise. The Public Health Program Manager will continue to provide leadership and oversight of public health emergency preparedness and response activities, community based organization partnerships and engagement, assessment of community need and services as well as strategic and risk communication, and epidemiology of emerging public health threats. This position would be funded through additional PE 51-01 PH Modernization funds received in this biennium. Should funding no longer support the position, DCHS will consider the future of this position within the budgeting process.

Currently the Public Health Manager position is funded through December 31, 2024 by American Rescue Plan Act (ARPA) funds. As this position will now be funded by OHA for this time period, DCHS is requesting the end date to use these ARPA funds be extended through December 2026, for use by DCHS and used according to the original purpose—community-wide Emergency Preparedness activities, supporting emerging community health issues, and community outreach related to COVID-19 and other public health threats.

BUDGET IMPACTS:

Recognizing State grant revenue of \$922,746, and increasing appropriations within Program Expense in the amount of \$88,264 in the 2023-24 Health Services budget to fund the Public Health Manager for fiscal year 2024, which was formerly funded by the ARPA fund.

ATTENDANCE:

Heather Kaisner, Public Health Director
 Cheryl Smallman, Health Services Business Officer
 Dan Emerson, Budget & Financial Planning Manager

Agreement #180009



**AMENDMENT TO OREGON HEALTH AUTHORITY
2023-2025 INTERGOVERNMENTAL AGREEMENT FOR THE
FINANCING OF PUBLIC HEALTH SERVICES**

In compliance with the Americans with Disabilities Act, this document is available in alternate formats such as Braille, large print, audio recordings, Web-based communications and other electronic formats. To request an alternate format, please send an e-mail to dhs-oha.publicationrequest@state.or.us or call 503-378-3486 (voice) or 503-378-3523 (TTY) to arrange for the alternative format.

This Second Amendment to Oregon Health Authority 2023-2025 Intergovernmental Agreement for the Financing of Public Health Services, effective July 1, 2023, (as amended the “Agreement”), is between the State of Oregon acting by and through its Oregon Health Authority (“OHA”) and Deschutes County, (“LPHA”), the entity designated, pursuant to ORS 431.003, as the Local Public Health Authority for Deschutes County. OHA and LPHA are each a “Party” and together the “Parties” to the Agreement.

RECITALS

WHEREAS, OHA and LPHA wish to modify the set of Program Element Descriptions set forth in Exhibit B of the Agreement;

WHEREAS, OHA and LPHA wish to modify the Fiscal Year 2024 (FY24) Financial Assistance Award set forth in Exhibit C of the Agreement;

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

NOW, THEREFORE, in consideration of the premises, covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. This Amendment is effective on **August 1, 2023**, regardless of the date this amendment has been fully executed with signatures by every Party and when required, approved by the Department of Justice. However, payments may not be disbursed until the Amendment is fully executed.
2. The Agreement is hereby amended as follows:
 - a. Exhibit A “Definitions”, Section 18 “Program Element” is amended to replace the Program Element titles and funding source identifiers for PE12 “Public Health Emergency Preparedness and Response (PHEP)” with the following:

<u>PE NUMBER AND TITLE</u> • SUB-ELEMENT(S)	<u>FUND TYPE</u>	<u>FEDERAL AGENCY/ GRANT TITLE</u>	<u>CFDA#</u>	<u>HIPAA RELATED (Y/N)</u>	<u>SUB-RECIPIENT (Y/N)</u>
<u>PE12 - Public Health Emergency Preparedness and Response (PHEP)</u>					
<u>PE 12-01 Public Health Emergency Preparedness Program (PHEP)</u>	FF	CDC/Public Health Emergency Preparedness	93.069	N	Y
<u>PE 12-02 COVID-19 Response</u>	FF	CDC/Public Health Emergency Response: Cooperative Agreement for Emergency Response: Public Health Crisis Response	93.354	N	Y
<u>PE12-03 - MPOX Event Funding</u>	FF	Public Health Emergency Response	93.354	N	Y
<u>PE12-04 - MRC-STTRONG</u>	FF	Medical Reserve Corps Small Grant Program	93.008	N	Y
<u>PE12-05 - Hospital Preparedness Program</u>	FF	National Bioterrorism Hospital Preparedness Program	93.889	N	Y

- b. Exhibit B Program Element #12 “Public Health Emergency Preparedness and Response (PHEPR) Program” and Program Element 44 “School Based Health Centers (SBHC)” and Program Element 51 “Public Health Modernization” are hereby superseded and replaced by Attachment A attached hereto and incorporated herein by this reference.
 - c. Exhibit C, Section 1 of the Agreement, entitled “Financial Assistance Award” for FY24 is hereby superseded and replaced in its entirety by Attachment B, entitled “Financial Assistance Award (FY24)”, attached hereto and incorporated herein by this reference. Attachment B must be read in conjunction with Section 3 of Exhibit C.
 - d. Exhibit J of the Agreement entitled “Information required by 2 CFR Subtitle B with guidance at 2 CFR Part 200” is amended to add to the federal award information datasheet as set forth in Attachment C, attached hereto and incorporated herein by this reference.
3. LPHA represents and warrants to OHA that the representations and warranties of LPHA set forth in Section 4 of Exhibit F of the Agreement are true and correct on the date hereof with the same effect as if made on the date hereof.

- 4. Capitalized words and phrases used but not defined herein shall have the meanings ascribed thereto in the Agreement.
- 5. Except as amended hereby, all terms and conditions of the Agreement remain in full force and effect.
- 6. This Amendment may be executed in any number of counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Amendment so executed shall constitute an original.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the dates set forth below their respective signatures.

7. **Signatures.**

STATE OF OREGON, ACTING BY AND THROUGH ITS OREGON HEALTH AUTHORITY

Approved by: _____

Name: /for/ Nadia A. Davidson

Title: Director of Finance

Date: _____

DESCHUTES COUNTY LOCAL PUBLIC HEALTH AUTHORITY

Approved by: _____

Printed Name: _____

Title: _____

Date: _____

DEPARTMENT OF JUSTICE – APPROVED FOR LEGAL SUFFICIENCY

Agreement form group-approved by Steven Marlowe, Senior Assistant Attorney General, Tax and Finance Section, General Counsel Division, Oregon Department of Justice by email on August 11, 2023, copy of email approval in Agreement file.

REVIEWED BY OHA PUBLIC HEALTH ADMINISTRATION

Reviewed by: _____

Name: Rolonda Widenmeyer (or designee)

Title: Program Support Manager

Date: _____

Attachment A
Program Element Descriptions

Program Element #12: Public Health Emergency Preparedness and Response (PHEPR) Program

OHA Program Responsible for Program Element:

Public Health Division/Center for Public Health Practice/Health Security, Preparedness & Response Section

1. **Description.** Funds provided under this Agreement for this Program Element may only be used in accordance with, and subject to, the requirements and limitations set forth below to deliver the Oregon Health Authority (OHA) Public Health Emergency Preparedness and Response (PHEPR) Program.

The PHEPR Program shall address prevention, protection, mitigation, response, and recovery phases for threats and emergencies that impact the health of people in its jurisdiction through plan development and revision, exercise and response activities based on the 15 Centers for Disease Control and Prevention (CDC) Public Health Emergency Preparedness and Response Capabilities.¹

Emergency Preparedness and Response is one of the seven foundational capabilities described in the Oregon Public Health Modernization Manual.² The foundational capabilities are needed for governmental public health to meet its charge to improve the health of everyone in Oregon. The vision for this foundational capability as stated in the Public Health Modernization Manual is as follows: “A healthy community is a resilient community that is prepared and able to respond to and recover from public health threats and emergencies.”

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

2. **Definitions Specific to Public Health Emergency Preparedness and Response.**

- a. **Access and Functional Needs:** Population defined as those whose members may have additional response assistance needs that interfere with their ability to access or receive medical care before, during, or after a disaster or public health emergency,³ including but not limited to communication, maintaining health, independence, support and safety, and transportation. Individuals in need of additional response assistance may include children, people who live in congregate settings, older adults, pregnant and postpartum people, people with disabilities,⁴ people with chronic conditions, people with pharmacological dependency, people with limited access to transportation, people with limited English proficiency or non-English speakers, people with social and economic limitations, and people experiencing homelessness.⁵
- b. **Base Plan:** A plan that is maintained by the LPHA, describing fundamental roles, responsibilities, and activities performed during prevention, preparedness, mitigation, response, and recovery phases of FEMA’s disaster management cycle. This plan may be titled as the Emergency Support Function #8, an annex to the County Emergency Operations Plan, Public Health All-Hazards Plan, or other title that fits into the standardized county emergency preparedness nomenclature.
- c. **Budget Period:** The intervals of time (usually 12 months) into which a multi-year project period is divided for budgetary/ funding use. For purposes of this Program Element, the Budget Period is July 1 through June 30.
- d. **CDC:** U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

- e. **CDC Public Health Emergency Preparedness and Response Capabilities:** The 15 capabilities developed by the CDC to serve as national public health preparedness standards for state and local planning.¹
- f. **Due Date:** If a Due Date falls on a weekend or holiday, the Due Date will be the next business day following.
- g. **Equity:** The State of Oregon definition of Equity acknowledges that not all people, or all communities, are starting from the same place due to historic and current systems of oppression. Equity is the effort to provide different levels of support based on an individual's or group's needs in order to achieve fairness in outcomes. Equity actionably empowers communities most impacted by systemic oppression.⁶ Historically underserved and marginalized populations include but are not limited to people with Access and Functional Needs and disabilities, racial/ethnic minorities, people who are economically disadvantaged, those whose second language is English, and rural and remote communities, etc.
- h. **Health Alert Network (HAN):** A web-based, secure, redundant, electronic communication and collaboration system operated by OHA, available to all Oregon public health officials, hospitals, labs and other health service providers. The data it contains is maintained jointly by OHA and all LPHAs. This system provides continuous, high-speed electronic access to public health information including the capacity for broadcasting information to registered partners in an emergency, 24 hours per day, 7 days per week, 365 days per year. The secure HAN has a call-down engine that can be activated by state or local HAN administrators.
- i. **Health Security Preparedness and Response (HSPR):** A state-level program that is a joint effort with the Conference of Local Health Officials (CLHO) and Native American Tribes (Tribes) to develop public health systems to prepare for and respond to major threats, acute threats, and emergencies that impact the health of people in Oregon.
- j. **Health Care Coalition (HCC):** A coordinating body that incentivizes diverse and often competitive health care organizations and other community partners with differing priorities and objectives and reach to community members to work together to prepare for, respond to, and recover from emergencies and other incidents that impact the public's health.
- k. **Hospital Preparedness Program: (HPP)** Grant funding from the U.S. Department of Health and Human Services Administration for Strategic Preparedness & Response (ASPR) in preparing for, responding to, and recovering from the adverse health effects of emergencies and disasters.
- l. **Medical Countermeasures (MCM):** Vaccines, antiviral drugs, antibiotics, antitoxins, etc. in support of treatment or prophylaxis to the identified population in accordance with public health guidelines or recommendations. This includes the Strategic National Stockpile (SNS), a CDC program developed to provide rapid delivery of pharmaceuticals, medical supplies, and equipment in the early hours of an ill-defined threat, a large shipment of specific items when a specific threat is known or technical assistance to distribute SNS material.
- m. **Medical Reserve Corps (MRC):** The Medical Reserve Corps is a network in the U.S. of community-based volunteer units. LPHAs with MRCs have developed these volunteer organizations to help meet the public health needs of their communities.
- n. **MRC-STTRONG:** Applicable only to LPHAs who have successfully been notified of their award as a sub-recipient of OHA's MRC-STTRONG application. STTRONG is an ASPR Cooperative Agreement to strengthen the MRC network – focusing on emergency preparedness, response, and health Equity needs. Funded projects will bolster community response capabilities, building on the invaluable role that the MRC played during our fight against COVID-19.

- o. National Incident Management System (NIMS):** The U.S. Department of Homeland Security system for integrating effective practices in emergency preparedness and response into a comprehensive national framework for incident management. The NIMS enables emergency responders at all levels and in different disciplines to effectively manage incidents no matter what the cause, size or complexity.⁷
- p. Public Information Officer (PIO):** The person responsible for communicating with the public, media, and/or coordinating with other agencies, as necessary, with incident-related information.⁸
- q. Public Health Accreditation Board:** A non-profit organization dedicated to improving and protecting the health of the public by advancing the quality and performance of tribal, state, local and territorial public health departments.⁹
- r. Public Health Emergency Preparedness and Response (PHEPR):** Local public health programs designed to better prepare Oregon to prevent, protect, mitigate, respond to, and recover from emergencies with public health impacts.
- s. Public Health Preparedness Capability Surveys:** A series of surveys sponsored by HSPR for capturing information from LPHAs for HSPR to report to CDC and inform trainings and planning for local partners.
- t. Regional Emergency Coordinator (REC):** Regional staff that work within the Health Security, Preparedness, and Response section of the Oregon Health Authority. These staff support the Public Health Emergency Preparedness and Response (PHEPR) and Healthcare Coalition (HCC) programs. The PHEPR REC supports local public health authorities’ public health emergency preparedness activities and assures completion of required activities as outlined in this PE-12 document.

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

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

Program Components	Foundational Program				Foundational Capabilities						
	CD Control	Prevention and health promotion	Environmental health	Access to clinical preventive services	Leadership and organizational competencies	Health Equity and cultural responsiveness	Community Partnership Development	Assessment and Epidemiology	Policy & Planning	Communications	Emergency Preparedness and Response
<i>Asterisk (*) = Primary foundational program that aligns with each component</i>					<i>X = Foundational capabilities that align with each component</i>						

<i>X = Other applicable foundational programs</i>												
Planning	X	X	X	X		X	X	X	X	X	X	X
Partnerships and MOUs	X	X	X	X		X	X	X	X	X	X	X
Surveillance and Assessment	X	X	X	X		X	X	X	X	X	X	X
Response and Exercises	X	X	X	X		X	X	X	X	X	X	X
Training and Education	X	X	X	X		X	X	X	X	X	X	X

Note: Emergency preparedness crosses over all foundational programs.

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

Not applicable

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

Not applicable

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

a. Engage in activities as described in its approved PHEPR Work Plan and Integrated Preparedness Plan (IPP), which are due to OHA HSPR on or before August 15 and which has been approved by OHA HSPR by September 15. LPHA must use the PHEPR Work Plan Template Instructions and Guidance which OHA will provide to LPHA.

b. Focus on health Equity by assessing and addressing Equity gaps during all facets of the disaster management cycle (prevention, protection, mitigation, response, recovery) to reduce and/or eliminate disproportionate impacts on historically underserved and marginalized populations, including but not limited to people with Access and Functional Needs and disabilities, racial/ethnic minorities, people who are economically disadvantaged, those whose second language is English, and rural and remote communities, etc. All response plans, procedures, workplans, exercises, or other activities performed under the PE-12 should address disparities and health inequities and work collaboratively with members of affected populations and community-based organizations to identify ways to minimize or eliminate disproportionate impacts and incorporate these solutions into all activities.²

c. Use funds for this Program Element in accordance with its approved PHEPR budget, which is due to OHA HSPR on or before August 15 and which has been approved by OHA HSPR by September 15. LPHA must use the PHEPR Budget Template, which is set forth in Attachment 1, incorporated herein with this reference.

(1) Contingent Emergency Response Funding: Such funding, as available, is subject to restrictions imposed by the CDC at the time of the emergency and would provide funding under circumstances when a delay in award would result in serious injury or other adverse impact to the public.

Since the funding is contingent upon Congressional appropriations, whether contingent emergency response funding awards can be made will depend upon the facts and

circumstances that exist at the time of the emergency; the particular appropriation from which the awards would be made, including whether it contains limitations on its use; authorities for implementation; or other relevant factors. No activities are specified for this authorization at this time.

- (2) **Non-Supplantation.** Funds provided under this Agreement for this Program Element must not be used to supplant state, local, other non-federal, or other federal funds.
 - (3) **Public Health Preparedness Staffing.** LPHA must identify a PHEPR Coordinator who is directly funded from the PHEPR grant. LPHA staff who receive PHEPR funds must have planned activities identified within the approved PHEPR Work Plan. The PHEPR Coordinator will be the OHA's chief point of contact related to grant deliverables. LPHA must implement its PHEPR activities in accordance with its approved PHEPR Work Plan.
 - (4) **Use of Funds.** Funds awarded to the LPHA under this Agreement for this Program Element may only be used for activities related to the CDC Public Health Emergency Preparedness and Response Capabilities in accordance with Attachment 2 (Use of Funds), incorporated herein with this reference and an approved PHEPR budget using the template set forth as Attachments 1 to this Program Element.
 - (5) **Modifications to Budget.** Modifications to the budget exceeding a total of \$5,000, adding a new line item, or changing the indirect line item by any amount require submission of a revised budget to the Regional Emergency Coordinator (REC) and final receipt of approval from the HSPR fiscal officer.
 - (6) **Conflict between Documents.** In the event of any conflict or inconsistency between the provisions of the approved PHEPR Work Plan or PHEPR Budget and the provisions of this Agreement, this Agreement shall control.
 - (7) **Unspent funds.** PHEPR funding is not guaranteed as a carryover to a subsequent fiscal year if funds are unspent in any given fiscal year.
- d. Statewide and Regional Coordination:** LPHA must coordinate and participate with state, regional, and local Emergency Support Function partners and stakeholders to include, but not limited to, other public health and health care programs, HCCs, emergency management agencies, EMS providers, behavioral/mental health agencies, community-based organizations (CBOs), older adult-serving organizations, and educational agencies and state childcare lead agencies as applicable.¹⁰
- (1) Attendance by LPHA leadership, PHEPR coordinator, or other staff involved in preparedness activities or conferences is strongly encouraged.
 - (2) Participation in emergency preparedness subcommittees, work groups and projects for the sustainment of public health emergency preparedness and response as appropriate is required.
 - (3) LPHA must collaborate with HCC partners to develop and maintain plans, conduct training and exercises, and respond to public health threats and emergencies using a whole-community approach to preparedness management that includes:¹⁰
 - (a) Prioritizing health Equity as referenced in [Section 4b](#).
 - (b) Coordination with community-based organizations.
 - (c) Development or expansion of child-focused planning and partnerships.
 - (d) Engaging field/area office on aging.

- (e) Engaging behavioral health partners and stakeholders.
 - (4) LPHA shall participate and engage in planning at the local level in all required statewide exercises as referenced in the Workplan Minimum Requirements and IPP Blank Template tabs, which OHA has provided to LPHA.
 - (5) LPHA shall participate in activities associated with local, regional, or statewide emerging threats or incidents as identified by HSPR or LPHA that includes timely assessment and sharing of essential elements of information for identification and investigation of an incident with public health impact, as agreed upon by HSPR and the CLHO Emergency Preparedness and Response subcommittee.¹⁰
 - (6) LPHA shall work to develop and maintain a portfolio of community partnerships to support prevention, preparedness, mitigation, response and recovery efforts. Portfolio must include viable contact information from local community-based organizations and community sectors as defined by the CDC: business; community leadership; cultural and faith-based groups and organizations; emergency management; healthcare; human services; housing and sheltering; media; mental/behavioral health; office of aging or its equivalent; education and childcare settings.
 - (7) As applicable for MRC-STTRONG recipients only, LPHA shall coordinate with the MRC Unit Coordinator, volunteers, the OHA MRC State Program Office, the National MRC Program, community partners, and any other necessary stakeholders for the duration of the MRC-STTRONG project period (June 1, 2023 – May 31, 2025).
 - (8) As applicable for HPP recipients only, LPHA shall coordinate with the HPP Regional Emergency Coordinator at the OHA MRC State Program Office for the duration of the HPP project period (July 1, 2023 – June 30, 2024).
- e. **Public Health Preparedness Capability Survey:** LPHA must complete all applicable Public Health Preparedness Capability Survey(s) sponsored by HSPR by November 1 of each year or an applicable Due Date based on CDC requirements.¹
- f. **PHEPR Work Plan:** PHEPR Work Plans must be written with clear and measurable objectives in support of the CDC Public Health Emergency Preparedness and Response Capabilities with timelines and include:
- (1) At least three broad program goals that address gaps, operationalize plans, and guide the following PHEPR Work Plan activities.
 - (a) Planning
 - (b) Training and education
 - (c) Exercises.
 - (d) Community Education and Outreach and Partner Collaboration.
 - (e) Administrative and Fiscal activities.
 - (2) Activities should include or address health Equity considerations as outlined in [Section 4b](#).
 - (3) Local public health leadership will review and approve PHEPR Work Plans.
- g. **PHEPR Work Plan Performance:** LPHA must complete all minimum requirements of the PE-12 by June 30 each year. If LPHA does not meet the minimum requirements of the PE-12 for each of the three years during a triennial review period, not due to unforeseen public health events, it may not be eligible to receive funding under this Program Element in the next fiscal year. Minimum requirements are delineated in the designated tab of the PHEPR Work Plan

Template which OHA has provided to LPHA. Work completed in response to a HSPR-required exercise, a response to an uncommon disease outbreak, or other uncommon event of significance that requires an LPHA response and is tied to the CDC Public Health Emergency Preparedness and Response Capabilities may, upon HSPR approval, be used to replace PHEPR Work Plan activities interrupted or delayed.

h. 24/7/365 Emergency Contact Capability:

- (1)** LPHA must establish and maintain a single telephone number whereby, physicians, hospitals, other health care providers, OHA and the public can report public health emergencies within the LPHA service area.
 - (a)** The contact number must be easy to find through sources in which the LPHA typically makes information available including local telephone directories, traditional websites, and social media pages. It is acceptable for the publicly listed phone number to provide after-hours contact information by means of a recorded message. LPHA must list and maintain both the switchboard number and the 24/7/365 numbers on the HAN.
 - (b)** The telephone number must be operational 24 hours a day, 7 days a week, 365 days a year and be an eleven-digit telephone number available to callers from outside the local emergency dispatch. LPHA may use an answering service or their Public Safety Answering Point (PSAP) in this process, provided that the eleven-digit telephone number of the PSAP is made available for callers from outside the locality.²
 - (c)** The LPHA telephone number described above must be answered by a knowledgeable person with the ability to properly route the call to a local public health administrator or designee.
- (2)** An LPHA official must respond within 60 minutes, to calls received on 24/7/365 telephone number, during statewide communication drills and quarterly tests.²
 - (a)** Quarterly test calls to the 24/7/365 telephone line will be conducted by HSPR program staff.
 - (b)** Following a quarterly test, LPHA must take any corrective action on any identified deficiency within 30 days of such test or communication drills, to the best of their ability.

i. HAN:

- (1)** A HAN Administrator must be appointed for LPHA and this person's name and contact information must be provided to the HSPR REC and the State HAN Coordinator.
- (2)** The HAN Administrator must:
 - (a)** Agree to the HAN Security Agreement and State of Oregon Terms and Conditions.
 - (b)** Complete appropriate HAN training for their role.
 - (c)** Ensure local HAN user and county role directory is maintained (add, modify and delete users; make sure users have the correct license).
 - (d)** Act as a single point of contact for all LPHA HAN issues, user groups, and training.
 - (e)** Serve as the LPHA authority on all HAN related access (excluding hospitals and Tribes).

- (f) Coordinate with the State HAN Coordinator to ensure roles are correctly distributed within each county.
 - (g) Ensure participation in OHA Emergency Support Function 8 (Health and Medical) tactical communications exercises. Deliverable associated with this exercise will be the test of the LPHA HAN system roles via alert confirmation for: Health Officer, Communicable Disease (CD) Coordinator(s), Preparedness Coordinator, PIO and LPHA County HAN Administrator within one hour.²
 - (h) Initiate at least one local call down exercise/ drill for LPHA staff annually. If the statewide HAN is not used for this process, LPHA must demonstrate through written procedures how public health staff and responding partners are notified during emergencies.
 - (i) Perform general administration for all local implementation of the HAN system in their respective organizations.
 - (j) Review LPHA HAN users two times annually to ensure users are updated, assigned their appropriate roles and that appropriate users are deactivated.
 - (k) Facilitate in the development of the HAN accounts for new LPHA users.
- j. Integrated Preparedness Plan (IPP):** LPHA must annually submit to HSPR on or before August 15, an updated IPP as part of their annual work plan update.¹ The IPP must meet the following conditions:
- (1) Demonstrate continuous improvement and progress toward increased capability to perform functions and tasks associated with the CDC Public Health Emergency Preparedness and Response Capabilities.
 - (2) Address health Equity considerations as outlined in [Section 4b](#).
 - (3) Include priorities that address lessons learned from previous exercises events, or incidents as described in the LPHA's After Action Reports (AAR)/ Improvement Plans (IP).
 - (4) LPHA must work with Emergency Management, local health care partners and other community partners to integrate exercises and align IPPs, as appropriate.
 - (5) Identify at least two exercises per year if LPHA's population is greater than 10,000 and one exercise per year if LPHA's population is less than 10,000.
 - (6) **Identify** a cycle of exercises that increase in complexity over a three-year period, progressing from discussion-based exercises (e.g., seminars, workshops, tabletop exercises, games) to operation-based exercises (e.g., drills, functional exercises and full-scale exercises); exercises of similar complexity are permissible within any given year of the plan.
 - (7) A HSPR-required exercise, a response to an uncommon disease outbreak, or other uncommon event of significance that requires an LPHA response and is tied to the CDC Public Health Emergency Preparedness and Response Capabilities may, upon HSPR approval, be used to satisfy exercise requirements.

- (8) For an exercise or incident to qualify, under this requirement the exercise or incident must:
- (a) **Exercise:**
- LPHA must:**
- Submit to HSPR REC 30 days in advance of each exercise an exercise notification or exercise plan that includes a description of the exercise, exercise objectives, CDC Public Health Emergency Preparedness and Response Capabilities addressed, a list of invited participants, and a list of exercise planning team members. An incident/exercise notification form that includes the required notification elements is included in Attachment 3 and is incorporated herein with this reference.
 - Involve two or more participants in the planning process.
 - Involve two or more public health staff and/ or related partners as active participants.
 - Submit to HSPR REC an After-Action Report that includes an Improvement Plan within 60 days of every exercise completed. An improvement plan template is included as part of the incident/exercise notification form in Attachment 3.
- (b) **Incident:**
- During an incident, LPHA must:**
- Submit LPHA incident objectives or Incident Action Plan to HSPR REC within 48 hours of receiving notification of an incident that requires an LPHA response. An incident/exercise notification form that includes the required notification elements is included in Attachment 3.
 - Submit to HSPR REC an After-Action Report that includes an Improvement Plan within 60 days of every incident or public health response completed. An improvement plan template is included as part of the incident/exercise notification form in Attachment 3.
- (9) LPHA must coordinate exercise design and planning with local Emergency Management and other partners for community engagement, as appropriate.²
- (10) Staff responsible for emergency planning and response roles must be trained for their respective roles consistent with their local emergency plans and according to CDC Public Health Emergency Preparedness and Response Capabilities,¹ the Public Health Accreditation Board⁹, and the National Incident Management System.⁷ The training portion of the plan must:
- (a) Include training on how to discharge LPHA statutory responsibility to take measures to control communicable disease in accordance with applicable statute.
- (b) Identify and train appropriate LPHA staff¹¹ to prepare for public health emergency response roles and general emergency response based on the local identified hazards.
- k. **Maintaining Training Records:** LPHA must maintain training records that demonstrate NIMS compliance for all local public health staff for their respective emergency response roles.⁷

- l. Plans:** LPHA must maintain and execute emergency preparedness procedures and plans as a component of its jurisdictional Emergency Operations Plan.
- (1) LPHA must establish and maintain at a minimum the following plans:
- (a) Base Plan.
 - (b) Medical Countermeasure Dispensing and Distribution (MCMDD) plan.¹²
 - (c) Continuity of Operations Plan (COOP)¹⁰
 - (d) Communications and Information Plan.
- (2) All plans, annexes, and appendices must:
- (a) Be updated whenever an After-Action Report improvement item is identified as requiring a change or biennially at a minimum,
 - (b) Address, as appropriate, the CDC Public Health Emergency Preparedness and Response Capabilities based on the local identified hazards,
 - (c) Be functional and operational by June 30, 2023,¹⁰
 - (d) Comply with the NIMS,⁷
 - (e) Include a record of changes that includes a brief description, the date, and the author of the change made, and
 - (f) Include health Equity considerations as outlined in [Section 4b](#).
- m. MRC-STTRONG:** Any deliverables resulting from this project should recognize ASPR, OHA, and MRC sponsoring organizations for their respective contributions to the body of work.
- (1) **Roles and responsibilities**
- LPHA shall:**
- (a) Manage the approved MRC-STTRONG projects identified in finalized MRC-STTRONG application. Before use of the federal ASPR logo, LPHA must consult with the OHA MRC State Program.
 - (b) Participate in an annual OHA MRC State Program check-in: LPHA shall attend two check-in meetings with OHA MRC State Program and other sub-recipients to provide progress reports and engage collaboratively with other units for resource sharing.
 - (c) Complete performance measurement and evaluation tasks including the quarterly and annual reporting, LPHA status report (spent/unspent/encumbered), , and annual check-ins with the OHA MRC State Program Office.
- (2) **Deliverables:**
- (a) Standard Workplan: LPHA shall populate and maintain a workplan template provided by the OHA MRC State Program Office.
 - This workplan must be referenced during the two annual OHA MRC State Program check-ins to discuss and monitor progress.
 - As applicable, the workplan must integrate steps that incorporate population and membership driven methodologies for resource allocations that center equitable distribution of material or consumable resources and training resources.

- (b) Reporting Requirement: LPHA shall submit all required reports and any additional reporting as requested, throughout the course of the project.
- (c) LPHA shall present monthly to the MRC Unit Coordinator network during the 1st year (7/1/2023-6/30/2024) and at least once to the coordinator in the 2nd year of the project (7/1/2024-6/30/2025), regarding progress or outcomes of their project.
- (d) National preparedness network abstracts: LPHA is *encouraged* to submit abstracts to present at state and national preparedness conferences and other technical assistance resource sharing platforms.
 - **Limitations and Restrictions:** The following special conditions are in place for the Terms and Conditions of funding under this Program Element PE12-04: Purchase of uniforms: These supplies must meet the guidelines established for use as personal protective equipment found in “MRC Safety Equipment Guidelines for MRC-STTRONG Awardees” in Attachment 4 which is incorporated herein with this reference.
 - Uniform components must be returned to the respective unit/program office at the end of the event/project/volunteer tenure. Note: If the federal/ASPR MRC logo is expected to be utilized or placed on any items, please ensure to consult with a member of the MRC- STTRONG Project Team on the logo use guidelines.
- (e) **Change Approval Requirements:** Any deviations from what was approved in the original application (for example, key personnel changes, work plan changes, budget changes) must be reviewed and approved by the OHA MRC State Program Office, Grants Management Specialist and the ASPR’s Project Officer. Contact the OHA MRC State Program Office to initiate workplan/budget changes.

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

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

- a. **MRC-STTRONG:** LPHA have the following expectations for revenue and expense reporting
 - (1) **Annual Federal Financial Report:** Due to the OHA MRC State Program Office
 - (2) **LPHA Status Report:** Due to the OHA MRC State Program Office no later than March 2, 2025. The LPHA Status Report communicates the status of allocated funds (spent/unspent/encumbered) 3-months prior to end of project period (March 2, 2025). The OHA MRC State Program will provide a reporting template to LPHA.

6. **Reporting Requirements.**

- a. **PHEPR Work Plan.** LPHA must implement its PHEPR activities in accordance with its OHA HSPR-approved PHEPR Work Plan. Dependent upon extenuating circumstances, modifications to this PHEPR Work Plan may only be made with OHA HSPR agreement and approval.

Proposed PHEPR Work Plan will be due on or before August 15. Final approved PHEPR Work Plan will be due on or before September 15.

- b. **Mid-year and end of year PHEPR Work Plan reviews.** LPHA must complete PHEPR Work Plan updates in coordination with their HSPR REC on at least a minimum of a semi-annual basis.
 - (1) Mid-year work plan reviews may be conducted between October 1 and March 31.
 - (2) End of year work plan reviews may be conducted between April 1 and August 15.
- c. **Triennial Review.** This review will be completed in conjunction with the statewide Triennial Review schedule as determined by the Office of the State Public Health Director. A year-end work plan review may be scheduled in conjunction with a Triennial Review. This Agreement will be integrated into the Triennial Review Process.
- d. **Integrated Preparedness Plan (IPP).** LPHA must annually submit an IPP to HSPR REC on or before August 15. Final approved IPP will be due on or before September 15.
- e. **Exercise Notification.** LPHA must submit to HSPR REC 30 days in advance of each exercise an exercise notification that includes a description of the exercise, exercise objectives, CDC Public Health Emergency Preparedness and Response Capabilities addressed, a list of invited participants, and a list of exercise planning team members.
- f. **Response Documentation.** LPHA must submit LPHA incident objectives or an Incident Action Plan to HSPR REC within 48 hours of receiving notification of an incident that requires an LPHA response.
- g. **After-Action Report / Improvement Plan.** LPHA must submit to HSPR REC an After-Action Report/Improvement Plan within 60 days of every exercise, incident, or public health response completed.
- h. **MRC-STTRONG LPHA Progress Reports:** These required reports aim to capture impact of MRC STTRONG funded activities as they relate to [ASPR Strategic Focus Areas](#), [MRC STTRONG goals](#), and [expanded emergency preparedness and response capabilities](#).
 - (1) **Annual Progress Reports:** If LPHA is funded under this PE12-04, LPHA shall submit annual program reports. As part of the progress report financial information will be reported both per major category of expense and by objective. OHA ASPR will provide a template for these reports.
 - (a) Scheduled Due Dates for annual reports from LPHA to the MRC State Program (OHA-PHD):

STTRONG Budget Period	Annual Report Due Date
2023 - 2024	August 1, 2024
2024 - 2025	August 1, 2025

- (2) **Quarterly Progress Reports:** LPHA, if funded under this PE12-04 shall submit quarterly program progress reports. As part of the progress report financial information will be reported both per major category of expense and by objective. ASPR will provide a template for these reports.
 - (a) Scheduled Due Dates for quarterly reports from LPHA to the MRC State Program (OHA-PHD):

BP Quarter	Quarter Period	Quarterly Report Due Date
2023 - 2024 Budget Period		
1	June – August	September 15, 2023
2	September – November	December 15, 2023
3	December – February	March 15, 2024
4	March – May	June 14, 2024
2024 - 2025 Budget Period		
1	June – August	September 13, 2024
2	September – November	December 13, 2024
3	December – February	March 14, 2025
4	March – May	June 13, 2025

- (3) **Other MRC-STTRONG Reports:** Additional reports may apply to LPHA’s project. OHA will contact you if it requires additional information to be submitted to ASPR.
 - (a) **MRC National Website:** For any activities reported in the MRC activity reporting system that are affiliated with your MRC-STTRONG project, please include key words “MRC-STTRONG” in the activity report and/or description.
 - (b) **Other Reporting Requirements** as identified by OHA throughout the project period.

7. **Performance Measures:** LPHA will progress local emergency preparedness planning efforts in a manner designed to achieve the 15 CDC National Standards for State and Local Planning for Public Health Emergency Preparedness and is evaluated by Mid-year, End of Year and Triennial Reviews.¹

Attachment 2: Use of Funds

Subject to CDC grant requirements, funds may be used for the following:

- a. Reasonable program purposes, including personnel, travel, supplies, and services.
- b. To supplement but not supplant existing state or federal funds for activities described in the budget.
- c. To purchase basic, non-motorized trailers with prior approval from the CDC OGS.
- d. For overtime for individuals directly associated (listed in personnel costs) with the award with prior approval from HSPR.
- e. For deployment of PHEPR-funded personnel, equipment, and supplies during a local emergency, in-state governor-declared emergency, or via the Emergency Management Assistance Compact (EMAC).
- f. To lease vehicles to be used as means of transportation for carrying people or goods, e.g., passenger cars or trucks and electrical or gas-driven motorized carts with prior approval from HSPR.
- g. To purchase material-handling equipment (MHE) such as industrial or warehouse-use trucks to be used to move materials, such as forklifts, lift trucks, turret trucks, etc. Vehicles must be of a type not licensed to travel on public roads with prior approval from HSPR.
- h. To purchase caches of antibiotics for use by first responders and their families to ensure the health and safety of the public health workforce.
- i. To support appropriate accreditation activities that meet the Public Health Accreditation Board's preparedness-related standards

Subject to CDC grant requirements, funds may not be used for the following:

- a. Research.
- b. Clinical care except as allowed by law. Clinical care, per the CDC Funding Opportunity Announcement FOA, is defined as "directly managing the medical care and treatment of patients."
- c. The purchase of furniture or equipment - unless clearly identified in grant application.
- d. Reimbursement of pre-award costs (unless approved by CDC in writing).
- e. Publicity or propaganda purposes, for the preparation, distribution, or use of any material designed to support or defeat the enactment of legislation before any legislative body.
- f. The salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before any legislative body.
- g. Construction or major renovations.
- h. Payment or reimbursement of backfilling costs for staff.
- i. Paying the salary of an individual at a rate in excess of Executive Level II or \$187,000.00 per year.
- j. The purchase of clothing such as jeans, cargo pants, polo shirts, jumpsuits, or t-shirts.
- k. The purchase or support of animals for labs, including mice.
- l. The purchase of a house or other living quarter for those under quarantine.
- m. To purchase vehicles to be used as means of transportation for carrying people or goods, such as passenger cars or trucks and electrical or gas-driven motorized carts.

ATTACHMENT 3*

Incident/Exercise Summary Report

Notification			
<i>Exercise: Due 30 Days Before Exercise</i>			
<i>Incident: Within 48 hours of notification of incident requiring a response</i>			
Name of Exercise or Incident:	Name of Exercise or Incident and OERS number, if relevant	Date(s) of LPHA Play:	Dates of Play
Scope	Type of Exercise/Event:	<input type="checkbox"/> Drill	<input type="checkbox"/> Functional Exercise
		<input type="checkbox"/> Tabletop Exercise	<input type="checkbox"/> Full Scale Exercise
	Participating Organizations:	List all the names (if available) and agencies participating in your exercise	
	Duration:	How long will the exercise last? Or start/end time	Location
	Objectives:	List 1 to 3 SMART objectives	
Primary Activities:	List primary activities to be conducted with this incident or exercise		
Design Team:	List people who are participating in designing the exercise by name, agency		
Point of Contact:	Typically, the PHEP Coordinator's name	LPHA or Tribe:	Agency Name
POC Email:	Enter POC's email address	Phone:	Phone
Capabilities Addressed			
BIOSURVEILLANCE <input type="checkbox"/> 12: Public Health Laboratory Testing <input type="checkbox"/> 13: Public Health Surveillance and Epidemiological Investigation COMMUNITY RESILIENCE <input type="checkbox"/> 1: Community Preparedness <input type="checkbox"/> 2: Community Recovery COUNTERMEASURES AND MITIGATION <input type="checkbox"/> 8: Medical Countermeasure Dispensing and Administration <input type="checkbox"/> 9: Medical Materiel Management and Distribution <input type="checkbox"/> 11: Nonpharmaceutical Interventions <input type="checkbox"/> 14: Responder Safety and Health		INCIDENT MANAGEMENT <input type="checkbox"/> 3: Emergency Operations Coordination INFORMATION MANAGEMENT <input type="checkbox"/> 4: Emergency Public Information and Warning <input type="checkbox"/> 6: Information Sharing SURGE MANAGEMENT <input type="checkbox"/> 5: Fatality Management <input type="checkbox"/> 7: Mass Care <input type="checkbox"/> 10: Medical Surge <input type="checkbox"/> 15: Volunteer Management	
After Action Report			
<i>To be completed within 60 days of exercise or incident completion</i>			
Strengths:	What were the strengths identified during this exercise or incident?		
Areas of Improvement:	Were there any areas of improvement identified? List all in this space, then complete improvement plan on next page.		

Improvement Plan <i>To be completed with action review</i> <i>and submitted to liaison within 60 days of exercise or incident completion</i>				
Name of Event or Exercise		Name of Exercise or Incident	Date(s)	Date(s) of Exercise or Incident
CDC Public Health Capability Addressed	Issue(s)/Area(s) of Improvement	Corrective Action	Timeframe	Date Completed
Capability Name	Describe the issue or refer to an item number in the after action report	Corrective action or planned activity	When do you expect to complete this activity?	To be filled in when completed
		Corrective action or planned activity	When do you expect to complete this activity?	To be filled in when completed
	Describe the issue or refer to an item number in the after action report	Corrective action or planned activity	When do you expect to complete this activity?	To be filled in when completed
		Corrective action or planned activity	To be filled in when completed	To be filled in when completed
Capability Name	Describe the issue or refer to an item number in the after action report	Corrective action or planned activity	When do you expect to complete this activity?	To be filled in when completed
		Corrective action or planned activity	When do you expect to complete this activity?	To be filled in when completed
	Describe the issue or refer to an item number in the after action report	Corrective action or planned activity	When do you expect to complete this activity?	To be filled in when completed
		Corrective action or planned activity	To be filled in when completed	To be filled in when completed
Capability Name	Describe the issue or refer to an item number in the after action report	Corrective action or planned activity	When do you expect to complete this activity?	To be filled in when completed
		Corrective action or planned activity	When do you expect to complete this activity?	To be filled in when completed
	Describe the issue or refer to an item number in the after action report	Corrective action or planned activity	When do you expect to complete this activity?	To be filled in when completed
		Corrective action or planned activity	To be filled in when completed	To be filled in when completed

Attachment 4

U.S. Department of Health & Human Services



MRC Safety Equipment Guidelines for MRC-STTRONG Awardees:

Purpose: These guidelines are intended to provide guidance on the purchase and use of Medical Reserve Corps (MRC) personal protective equipment (PPE) and force protection items under the Funding Opportunity: MRC- State, Territory and Tribal Nations, Representative Organizations for Next Generation (MRC-STTRONG) Awards. These guidelines apply to PPE and force protection purchases with *MRC-STTRONG Awards funding only*.

Important Note: All purchase requests will be reviewed on a case-by-case basis by the HHS Project Officer and Grants Management Specialist and will require pre-approval.

- 1) Safety equipment must fall under the purposes of personal protective equipment, security, and/or identification during a planned or unplanned event where MRC personnel are deployed.
 - a) Personal protective equipment: MRC personnel may need personal protective equipment (PPE) to keep them safe during natural disasters, biological hazards, accidental releases, infectious disease outbreaks, and terrorism events. PPE can be used to minimize worker exposure to hazards, but they are the last line of defense after engineering controls and administrative controls.
 - i) Emergency response-type PPE is classified into four levels, ranging from the most protective (Level A) to the least protective (Level D). Workers must be trained on the conditions that require PPE and the procedures to prevent and reduce exposure, including decontamination and proper disposal procedures. LEVEL A* Highest level of respiratory, skin, and eye protection. LEVEL B* Highest level of respiratory protection with a lower level of skin protection. LEVEL C* Same level of skin protection as Level B, with a lower level of respiratory protection. LEVEL D* No respiratory protection and only minimal skin protection.¹
 - b) Security and Identification: MRC security/identification items should only be used and worn by MRC leadership and volunteers who have been identified and vetted by their housing organization. Wearing MRC-identified items allows MRC personnel to be easily identified during an unplanned or planned event where MRC volunteers are deployed.
- 2) PPE and force protection items must be returned to the originating distribution office or program after the volunteer tenure has ended.
- 3) Purchased items must meet the classifications as described above under PPE and/or must be worn for security or identification purposes. All purchase requests will be reviewed on a case-by-case basis by the HHS Project Officer and Grants Management Specialist and will require pre-approval.

¹ U.S. Department of Labor, Occupational Safety and Health Administration (OSHA): [PPE for Emergency Response and Recovery Workers](#) and [General Description and Discussion of the Levels of Protection and Protective Gear](#)

References

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Program Element #44: School-Based Health Centers (SBHC)

OHA Program Responsible for Program Element: Public Health Division/Center for Prevention & Health Promotion/ Adolescent Health, ScreenWise & Reproductive Health

1. **Description.** Funds provided under this Agreement for this Program Element may only be used in accordance with, and subject to, the requirements and limitations set forth below, to deliver School-Based Health Centers (SBHC) Services. SBHC Services must only be used to support activities related to planning, oversight, maintenance, administration, operation, and delivery of services within one or more SBHC as required by OHA's SBHC funding formula.

Many school-aged youth do not routinely access preventive health care services due to barriers such as insurance, cost, transportation and concerns around confidentiality. According to the 2020 Oregon Student Health Survey, approximately 41% of 11th graders and 44% of 8th graders reported having not seen a doctor or nurse for a check-up in the last 12 months. SBHCs provide physical, mental and preventive health services to all students regardless of their ability to pay at an easily accessible location for students and families.

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

2. **Definitions Specific to School-Based Health Centers.**

- a. **Biennium:** June 1 to June 30 of the specified years as set forth on the first page of this Agreement.
- b. **Culturally and Linguistically Responsive Services:** means the provision of effective, equitable, understandable and respectful quality care and services that are responsive to diverse cultural health beliefs and practices, preferred languages, health literacy and other communication needs.
- c. **School-Based Health Center ("SBHC"):** has the meaning given the term in ORS 413.225
- d. **SBHC Standards for Certification:** In order to be certified as a SBHC, a SBHC must meet all requirements for certification in the SBHC Standards for Certification. SBHC Standards for Certification are found at:
<http://www.oregon.gov/oha/PH/HEALTHYPEOPLEFAMILIES/YOUTH/HEALTHSCHOOL/SCHOOLBASEDHEALTHCENTERS/Documents/SBHC%20Certification/SBHCstandardsforcertificationV4.pdf>

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

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

Program Components	Foundational Program					Foundational Capabilities						
	CD Control	Prevention and health promotion	Environmental health	Population Health	Access to clinical preventive services Direct services	Leadership and organizational competencies	Health equity and cultural responsiveness	Community Partnership Development	Assessment and Epidemiology	Policy & Planning	Communications	Emergency Preparedness and Response
<i>Asterisk (*) = Primary foundational program that aligns with each component</i>					<i>X = Foundational capabilities that align with each component</i>							
<i>X = Other applicable foundational programs</i>												
SBHC Standards for Certification Compliance	X	X		X	*	X	X	X	X	X		
Mental Health Expansion Grants		X		X	*	X	X	X	X	X		
School-Linked Telehealth Grant		X		X	*	X	X	X	X	X		

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

Not applicable

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

Not applicable

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

- a.** Use funds provided under this Agreement for SBHC Services only to support activities related to planning, oversight, maintenance, administration, operation, and delivery of services within one or more SBHC as required by OHA’s SBHC funding formula.
- b.** Deliver all SBHC Services in accordance with OAR Chapter 333, Division 28, a copy of which is accessible on the Internet at <https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=1243>
- c.** The SBHC Standards for Certification including administrative, operations and reporting guidance, and minimum standards and requirements in the areas of: Certification Process,

Sponsoring Agency, Facility, Operations/Staffing, Comprehensive Pediatric Care, Data Collection/Reporting, and Billing.

- d. Provide oversight and technical assistance so that each SBHC in the LPHA's jurisdiction meets SBHC Certification Requirements as set forth in OAR 333-028-0220.
- e. Assure to OHA that all certification documentation and subsequent follow-up items are completed by the requested date(s) in accordance with the OHA's certification review cycle as set forth in OAR 333-028-0230.
- f. This Section 4.f. is only applicable to LPHA if LPHA is selected to receive a Mental Health Expansion Grant from OHA. LPHA agrees to conduct Mental Health Expansion Grant activities in accordance with the following requirements:
 - (1) Use funds provided under this Agreement to support mental health staff capacity (FTE) within the school-based health center system. Funding can be used to support multiple positions within each SBHC. Funding must be used to provide Culturally and Linguistically Responsive Health Services that are inclusive and welcoming for youth from diverse backgrounds.
 - (2) Use funds in compliance with the full list of SBHC Mental Health Expansion Grant award requirements that are posted on the OHA website:
<https://www.oregon.gov/oha/PH/HEALTHYPEOPLEFAMILIES/YOUTH/HEALTHSCHOOL/SCHOOLBASEDHEALTHCENTERS/Pages/mh-expansion-grant.aspx>
- g. This Section 4.g. is only applicable to LPHA if LPHA is selected to receive a School-Linked Telehealth Grant from OHA. LPHA agrees to conduct School-Linked Telehealth Grant activities in accordance with the following requirements:
 - (1) SBHC must be the distant site (i.e., where the provider is located) that provides telehealth in originating sites (i.e., where the patient is receiving the telehealth service) that are schools without SBHCs as outlined in HB 2591 (Chapter 619, Or Laws, 2021).
 - (2) Funds provided under this Agreement must be used to support a School-Linked Telehealth Pilot Project by:
 - (a) Supporting staffing, the purchase of technical equipment, costs associated with conducting a needs assessment, and/or supporting technical assistance related to School-Linked Telehealth Pilot planning and operations; and
 - (b) Supporting increased school nurse capacity and offsetting costs incurred by the school district/educational service district's participation in the pilot project.
 - (3) LPHA must participate in monthly technical assistance or learning collaborative calls with other School-Linked Telehealth Grantees and engage in evaluation planning and data collection with the OHA SBHC State Program Office (SPO).
- h. This Section 4.h. is only applicable to LPHA if LPHA is selected to receive one-time funding from OHA. OHA occasionally provides one-time grant funding to support activities related to planning, oversight, maintenance, administration, operation, and delivery of services within one or more SBHCs. LPHA will be notified when these one-time grant funding opportunities become available.
 - (1) If one-time only funding becomes available, OHA will issue one-time funding guidance and LPHA may submit an application outlining activities, timeline and budget. The application is subject to approval by the OHA School-Based Health Center program.

- (2) If LPHA is awarded one-time grant funds, it will fulfill all activities and use funds in accordance with funding guidance and OHA-approved application and submit reports as prescribed by OHA.

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

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

6. **Reporting Requirements.**

- a. LPHA must submit client encounter data in a form acceptable to OHA and in accordance with the SBHC Standards for Certification two times a year, no later than January 31 for the previous calendar year (July 1 – Dec 31) and no later than July 15 for the preceding service year (July 1 – June 30).
- b. LPHA must submit annual SBHC financial data via the SPO’s online Operational Profile in the form acceptable to OHA no later than October 1 for the preceding service year (July 1-June 30).
- c. LPHA must submit annual hours of operation and staffing via the SPO’s online Operational Profile in the form acceptable to OHA no later than October 1 for the current service year.
- d. LPHA must submit completed annual patient satisfaction survey data no later than June 30.
- e. LPHA must complete the triennial School-Based Health Alliance SBHC Census Survey. Current SBHC Census Survey timeline and details can be found at <http://www.sbh4all.org/>
- f. If LPHA received a Mental Health Expansion Grant from OHA, LPHA must track data related to mental health encounters as outlined in the SBHC Standards for Certification.
- g. If LPHA received a Mental Health Expansion Grant from OHA, LPHA must participate in check-in meetings (via phone or email) with the SPO and submit 3 mid-project reports and a final project report. OHA will work with the LPHA to schedule calls and supply the due date and required format for the reports.
- h. If LPHA received a School-Linked Telehealth Grant, LPHA must submit a mid-project report and a final project report. OHA will work with the LPHA to supply the due date and required format for the reports.

7. **Performance Measures.**

LPHA must submit annual SBHC KPM data in a form acceptable to OHA and in accordance with the SBHC Standards for Certification no later than October 1 for the preceding service year (July 1 –June 30). The current list of KPMs can be found at: <http://www.oregon.gov/oha/PH/HEALTHYPEOPLEFAMILIES/YOUTH/HEALTHSCHOOL/SCHOOLBASEDHEALTHCENTERS/Pages/data-requirements.aspx>

Program Element #51: Public Health Modernization

OHA Program Responsible for Program Element:

Public Health Division/Office of the State Public Health Director/Policy and Partnerships Unit

- 1. Description.** Funds provided under this Agreement for this Program Element may only be used in accordance with, and subject to, the requirements and limitations set forth below, to deliver Public Health Modernization.

Section 1: LPHA Leadership, Governance and Implementation

- a. Establish leadership and governance to plan for full implementation of public health modernization.** Demonstrate strategies to build and sustain infrastructure for public health Foundational Capabilities with a focus on health equity and cultural responsiveness throughout and within each Foundational Capability. This may include developing business models for the effective and efficient delivery of public health services, developing and/or enhancing community partnerships to build a sustainable public health system, and implementing workforce diversity and leadership development initiatives.
- b. Implement strategies to improve local infrastructure for communicable disease control, emergency preparedness and response, environmental health, and health equity and cultural responsiveness.** In partnership with communities, implement local strategies to prevent and control communicable disease, strengthen emergency preparedness and response planning, protect communities from environmental health threats, and reduce health inequities.

Section 2: Regional Public Health Service Delivery

- a. Demonstrate regional approaches for providing public health services.** This may include establishing and maintaining a Regional Partnership of local public health authorities (LPHAs) and other stakeholders, utilizing regional staffing models, or implementing regional projects.
- b. Implement regional strategies to improve Regional Infrastructure for communicable disease control, emergency preparedness and response, environmental health, and health equity and cultural responsiveness.** Implement regional strategies to prevent and control communicable disease, strengthen emergency preparedness and response planning, protect communities from environmental health threats, and reduce health inequities.

Section 3: COVID-19 Public Health Workforce

Establish, expand, train and sustain the public health workforce gained during the COVID-19 pandemic. Demonstrate strategies to ensure long-term improvements for health equity and cultural responsiveness, public health and community prevention, preparedness, response and recovery, including workforce diversity recruitment, retention and workforce development.

Section 4: Public Health Infrastructure: Workforce

- a. Recruit and hire new public health staff,** with a focus on seeking applicants from communities and populations served to provide additional capacity and expertise in the Foundational Capabilities and Foundational Programs identified by the LPHA as critical workforce needs
- b. Support, sustain and retain public health staff** through systems changes and supports, as well as workforce development and training.

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

2. Definitions Specific to Public Health Modernization

- a. Foundational Capabilities. The knowledge, skills and abilities needed to successfully implement Foundational Programs.
- b. Foundational Programs. The public health system’s core work for communicable disease control, prevention and health promotion, environmental health, and assuring access to clinical preventive services.
- c. Public Health Accountability Outcome Metrics. A set of data used to monitor statewide progress toward population health goals.
- d. Public Health Accountability Process Measures. A set of data used to monitor local progress toward implementing public health strategies that are necessary for meeting Public Health Accountability Outcome Metrics.
- e. Public Health Modernization Manual (PHMM). A document that provides detailed definitions for each Foundational Capability and Foundational Program for governmental public health, as identified in ORS 431.131-431.145. The Public Health Modernization Manual is available at: http://www.oregon.gov/oha/PH/ABOUT/TASKFORCE/Documents/public_health_modernization_manual.pdf.
- f. Regional Partnership. A group of two or more LPHAs and at least one other organization that is not an LPHA that is convened for the purpose of implementing strategies for communicable disease control and reducing health disparities.
- g. Regional Infrastructure. The formal relationships established between LPHAs and other organizations to implement strategies under this funding.

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

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

Program Components	Foundational Programs				Foundational Capabilities						
	CD Control	Prevention and health promotion	Environmental health	Access to clinical preventive services	Leadership and organizational competencies	Health equity and cultural responsiveness	Community Partnership Development	Assessment and Epidemiology	Policy & Planning	Communications	Emergency Preparedness and Response

Asterisk (*) = Primary Foundational Program that aligns with each component X = Other applicable Foundational Programs					X = Foundational Capabilities that align with each component							
Use Leadership and Governance to plan for full implementation of public health modernization (Section 1)	*		X			X	X	X	X	X	X	X
Implement strategies for local communicable disease control, emergency preparedness and response, environmental health, and health equity and cultural responsiveness (Section 1)	*		X				X	X	X		X	X
Demonstrate regional approaches for providing public health services (Section 2)	*		X			X	X	X	X	X	X	X
Implement regional communicable disease control, emergency preparedness and response, environmental health, and health equity and cultural responsiveness (Section 2)	*		X				X	X	X		X	X
Establish, expand, train and sustain the public health workforce gained during the COVID-19 pandemic. (Section 3)	*					X	X	X	X			X

b. Public Health Accountability Outcome Metrics:

The Public Health Accountability Metrics adopted by the Public Health Advisory Board for communicable disease control and environmental health are:

- Rate of congenital syphilis
- Rate of any stage syphilis among people who can become pregnant
- Rate of primary and secondary syphilis
- Two-year old vaccination rates
- Adult influenza vaccination rates

- Emergency department and urgent care visits due to heat
- Hospitalizations due to heat
- Heat deaths
- Respiratory (non-infectious) emergency department and urgent care visits
- Community water system health-based violations, #/% of population affected
- Number of/type of drinking water advisories, #/% of population affected
- Number of weeks in drought annually, #/% of population affected

LPHA is not required to select these metrics as areas of focus for funds made available through this Program Element. LPHA is not precluded from using funds to address other high priority communicable disease and environmental health risks based on local epidemiology, priorities and need.

c. Public Health Accountability Process Measures:

Public Health Accountability Process Measures will be adopted by the Public Health Advisory Board for communicable disease control and environmental health by end of 2023.

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

Requirements that apply to Section 1 and Section 2 funding:

- a. Implement activities in accordance with this Program Element.
- b. Engage in activities as described in its Section 1 and/or Section 2 work plan, once approved by OHA and incorporated herein with this reference. See Attachment 1 for work plan requirements for Section 1.
- c. Use funds for this Program Element in accordance with its Section 1 and/or Section 2 Program Budget, once approved by OHA and incorporated herein with this reference. Modification to the Section 1 and/or Section 2 Program Budget of 10% or more within any individual budget category may only be made with OHA approval.
- d. Implement and use a performance management system to monitor achievement of Section 1 and/or Section 2 work plan objectives, strategies, activities, deliverables and outcomes.
- e. Participate in learning collaboratives and capacity building for achieving each public health authority's and the public health system's goals for achieving health equity.
- f. Ensure LPHA administrator, LPHA staff, and/or other partner participation in shared learning opportunities or communities of practice focused on governance and public health system-wide planning and change initiatives, in the manner prescribed by OHA. This includes sharing work products and deliverables with OHA and other LPHAs and may include public posting.
- g. Participate in evaluation of public health modernization implementation in the manner prescribed by OHA.

Requirements that apply to Section 1: LPHA Leadership, Governance and Implementation:

- a. Implement strategies for Leadership and Governance, Health Equity and Cultural Responsiveness, Communicable Disease Control, Emergency Preparedness and Environmental Health as described in Attachment 1 of this Program Element.

- b. Collaborate and partner with OHA-funded community-based organizations working in the areas of communicable disease, emergency preparedness and/or environmental public health through meetings and alignment of planned activities.
- c. In addition to the required prevention initiatives specified in Attachment 1 of this Program Element, LPHA may implement prevention initiatives that are responsive to the needs of the community, as pertains to Foundational Capabilities and Foundational Programs.

Requirements that apply to Section 2: Regional Public Health Service Delivery:

- a. Implement strategies for public health service delivery using regional approaches, which may be through Regional Partnerships, utilizing regional staffing models, or implementing regional projects.
- b. Use regional strategies to improve Regional Infrastructure for communicable disease control, emergency preparedness and response, environmental health, and health equity and cultural responsiveness.

Requirements that apply to Section 3: COVID-19 Public Health Workforce:

- a. Implement activities in accordance with this Program Element.
- b. Use funds for this Program Element in accordance with its Section 3 Program Budget, once approved by OHA and incorporated herein with this reference. Modification to Budget of 10% or more within any individual budget category may only be made with OHA approval.
- c. Use funds to establish, expand, train and sustain the public health workforce gained during the COVID-19 pandemic. This includes workforce that directly supports COVID-19 response activities and those supporting strategies and interventions for public health and community priorities beyond COVID-19.
- d. Demonstrate strategies to ensure long-term improvements for public health and community prevention, preparedness, response and recovery.
- e. Demonstrate strategies for eliminating health inequities, which may include workforce diversity recruitment, retention and development of innovative community partnerships.

Requirements that apply to Section 4: Public Health Infrastructure: Workforce

- a. Implement at least one of the following activities:
 - (1) Implement strategies and activities to recruit, hire and retain a diverse public health workforce that reflects the communities served by the LPHA.
 - (2) Recruit and hire and/or retain new public health staff to increase workforce capacity in Foundational Capabilities and programs, including but not limited to epidemiology, communicable disease, community partnership and development, policy and planning, communications, and basic public health infrastructure (fiscal, human resources, contracts, etc.). LPHA will determine its specific staffing needs.
 - (3) Support and retain public health staff through systems development and improvements.
 - (4) Support and retain public health staff through workforce training and development.
 - (5) Transition COVID-19 staffing positions to broader public health infrastructure positions.
 - (6) Recruit and hire new public health staff, with a focus on seeking applicants from communities and populations served to provide additional capacity and expertise in the Foundational Capabilities and Foundational Programs identified by the LPHA as critical workforce needs.

(7) Perform other related activities as approved by OHA in section b., below.

b. LPHA must request in writing prior approval for other related activities. No such activities may be implemented without written approval of OHA.

5. **General Budget and Expense Reporting.** LPHAs funded under Section 1, Section 2 and/or Section 3 must complete an “Oregon Health Authority Public Health Division Expenditure and Revenue Report” located in Exhibit C of the Agreement. These reports must be submitted to OHA each quarter on the following schedule:

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

6. **Reporting Requirements.**

- i. Have on file with OHA an approved Section 1 and/or Section 2 Work Plan and Budget using the format prescribed by OHA no later than 60 days after OHA notifies LPHA of anticipated funding allocation for the biennium.
- j. Have on file with OHA an approved Section 3 Budget using the format prescribed by OHA no later than 60 days after OHA notifies LPHA of anticipated funding allocation for the biennium.
- k. Submit Section 1 and Section 2 Work Plan progress reports using the timeline and format prescribed by OHA.
- l. Submit updated Section 1, 2 and 3 Budgets upon request using the format prescribed by OHA.
- m. Submit to OHA approved Section 1 and 2 work plan deliverables in the timeframe specified.
- n. Submit Section 4 data or information to OHA for evaluation purposes or as required by the Centers for Disease Control and Prevention. OHA will notify LPHA of the requirements. OHA will not require additional reporting beyond what is required by the Centers for Disease Control and Prevention.

7. **Performance Measures.**

If LPHA, including LPHAs funded as Fiscal Agents for Regional Public Health Service Delivery, complete and submit to OHA fewer than 75% of the planned deliverables in its approved Section 1 and/or Section 2 work plan for the funding period, LPHA or Fiscal Agent shall not be eligible to receive funding under this Program Element during the next funding period. The deliverables will be mutually agreed upon as part of the work plan approval process.

Attachment 1

The table below lists the goals and requirements that LPHAs will work toward with 2023-25 funding. Efforts toward the following goals and requirements will be demonstrated in the LPHA and/or regional work plan.

Programmatic goals and work plan requirements

Goal 1: Protect communities from acute and communicable diseases through prevention initiatives that address health inequities.

- LPHA will demonstrate strategies toward local or regional improvements of communicable disease prevention and response infrastructure.
- LPHA will demonstrate strategies toward local or regional reductions in inequities across populations.

Goal 2: Strengthen and expand communicable disease and environmental health emergency preparedness, and the public health system and communities' ability to respond.

- By June 30, 2025, LPHA will complete a local or regional all-hazards preparedness plan with community partners. (deliverable)
- An LPHA with a completed plan will demonstrate strategies to maintain and execute a local or regional all-hazards plan with community partners.

Goal 3: Protect communities from environmental health threats from climate change through public health interventions that support equitable climate adaptation.

- By June 30, 2025, LPHA will complete a local or regional climate adaptation plan, which may be a separate plan or incorporated into a community health assessment and plan. (deliverable)
- An LPHA with a completed plan will demonstrate strategies toward implementation of a local or regional climate adaptation plan.

Goal 4: Plan for full implementation of public health modernization and submission of local modernization plans by 2025.

- LPHA will demonstrate strategies to build and sustain infrastructure for public health Foundational Capabilities.
- LPHA will demonstrate progress toward developing a local public health modernization plan (due to OHA by December 31, 2025) to implement Foundational Capabilities (ORS 431.131) and Foundational Programs (ORS 431.141).

LPHA Requirements for increasing Capacity for Foundational Capabilities

Leadership and Organizational Competencies

- LPHA will demonstrate workforce or leadership initiatives necessary for local and/or regional public health infrastructure.
- LPHA will participate in the development of a statewide public health workforce plan.

Health Equity and Cultural Responsiveness

- By June 30, 2025, LPHA will complete a local or regional health equity plan. (deliverable)
- An LPHA with a completed plan will demonstrate strategies toward implementation of local or regional health equity plan.
- LPHA will participate in the development of a statewide health equity plan.

Assessment and Epidemiology

- LPHA will demonstrate strategies for public health data collection, analysis, reporting and dissemination that are necessary for 2023-25 goals and deliverables. This will include strategies to collect and report data that reveals health inequities in the distribution of disease, disease risks and social conditions that influence health.

Community Partnership Development

- LPHA will demonstrate strategies for sustaining or expanding partnerships with community organizations to ensure connections with BIPOC communities or other groups experiencing health inequities.
- LPHA will demonstrate co-creation of culturally and linguistically responsive public health interventions with community partners.
- LPHA will demonstrate involvement of community-based organizations in public health emergency planning or other priorities identified by communities.
- LPHA will demonstrate sustained partnerships for infection prevention and control in congregate settings which may include LTCFs, prisons, shelters or childcare facilities.

Communications

- LPHA will demonstrate the ability to provide routine public health education through a variety of communication platforms, with consideration of linguistic and culturally responsive and functional needs of the community.
- LPHA will demonstrate the ability to provide timely and accurate risk communication for areas of public health significance.

Attachment B Financial Assistance Award (FY24)

State of Oregon Oregon Health Authority Public Health Division		
1) Grantee Name: Deschutes County Street: 2577 NE Courtney Dr. City: Bend State: OR Zip: 97701-7638	2) Issue Date Tuesday, August 1, 2023	This Action Amendment FY 2024
		3) Award Period From July 1, 2023 through June 30, 2024

4) OHA Public Health Funds Approved				
Number	Program	Previous Award Balance	Increase / Decrease	Current Award Balance
PE01-01	State Support for Public Health	\$58,471.25	\$197,455.75	\$255,927.00
PE01-12	ACDP Infection Prevention Training	\$1,517.82	\$0.00	\$1,517.82
PE07	HIV Prevention Services	\$28,467.00	\$0.00	\$28,467.00
PE08-01	Ryan White B HIV/AIDS: Case Management	\$177,394.00	\$0.00	\$177,394.00
PE08-02	Ryan White B HIV/AIDS: Support Services	\$61,253.00	\$0.00	\$61,253.00
PE08-03	Ryan White B HIV/AIDS: Oral Health	\$36,371.00	\$0.00	\$36,371.00
PE12-01	Public Health Emergency Preparedness and Response (PHEP)	\$27,978.25	\$83,934.75	\$111,913.00
PE13	Tobacco Prevention and Education Program (TPEP)	\$464,824.57	\$0.00	\$464,824.57
PE36	Alcohol & Drug Prevention Education Program (ADPEP)	\$161,713.00	\$0.00	\$161,713.00
PE40-01	WIC NSA: July - September	\$186,520.00	\$0.00	\$186,520.00
PE40-02	WIC NSA: October - June	\$559,559.00	\$0.00	\$559,559.00
PE40-05	Farmer's Market	\$7,574.00	\$0.00	\$7,574.00
PE42-03	MCAH Perinatal General Funds & Title XIX	\$6,557.00	\$0.00	\$6,557.00
PE42-04	MCAH Babies First! General Funds	\$20,962.00	\$0.00	\$20,962.00
PE42-06	MCAH General Funds & Title XIX	\$12,302.00	\$0.00	\$12,302.00
PE42-11	MCAH Title V	\$69,713.00	\$0.00	\$69,713.00
PE42-12	MCAH Oregon Mothers Care Title V	\$57,515.00	\$0.00	\$57,515.00
PE42-13	Family Connects Oregon	\$50,000.00	\$0.00	\$50,000.00
PE43-01	Public Health Practice (PHP) - Immunization Services	\$47,791.00	\$0.00	\$47,791.00
PE44-01	SBHC Base	\$360,000.00	\$0.00	\$360,000.00
PE44-02	SBHC - Mental Health Expansion	\$431,081.00	(\$10,927.50)	\$420,153.50
PE46-05	RH Community Participation & Assurance of Access	\$32,197.66	\$0.00	\$32,197.66
PE50	Safe Drinking Water (SDW) Program (Vendors)	\$122,310.00	\$0.00	\$122,310.00
PE51-01	LPHA Leadership, Governance and Program Implementation	\$135,721.21	\$652,282.79	\$788,004.00
PE51-02	Regional Partnership Implementation	\$86,474.38	\$0.00	\$86,474.38
PE51-05	CDC PH Infrastructure Funding	\$622,298.28	\$0.00	\$622,298.28

4) OHA Public Health Funds Approved				
Number	Program	Previous Award Balance	Increase / Decrease	Current Award Balance
PE60	Suicide Prevention, Intervention and Postvention	\$120,767.00	\$0.00	\$120,767.00
PE73	HIV Early Intervention and Outreach Services	\$369,254.00	\$0.00	\$369,254.00
		\$4,316,586.42	\$922,745.79	\$5,239,332.21

5) Foot Notes:	
PE40-01	7/2023: Unspent SFY2024 Q1 award will be rescinded by the state, cannot be carried over to SFY2024 Q2-4 period.
PE40-02	7/2023: Q2-4 Unspent grant award will be rescinded by the state at end of SFY2024
PE42-11	7/2023: Indirect charges cap at 10%.
PE42-12	7/2023: Indirect Charges cap at 10%.
PE43-01	7/2023: Awarded funds can be spent on allowable costs for the period of 7/1/2023 - 9/30/23. Any unspent funds will be de-obligated.
PE51-01	7/2023: Bridge funding for 7/1/23-9/30/23.
PE51-01	8/2023: Prior Footnote dated 7/2023 Null and Void
PE51-02	7/2023: Bridge funding for 7/1/23-9/30/23.

6) Comments:	
PE01-01	8/2023: Prior Comment dated 7/2023 Null and Void 7/2023: SFY24 funding available 7/1/23-9/30/23 only.
PE12-01	8/2023: Prior Comment dated 7/2023 Null and Void 7/2023: SFY24 Award funding for first 3 months only
PE13	7/15/23: SFY24 Award adding funding for 10/1/23-6/30/24 7/2023: SFY24 Bridge Funding 7/1/23-9/30/23
PE40-01	7/2023: SFY2024 Q1 WIC NSA grant award. 37,304\$ must spent on Nutrition Ed; \$6,019 on BF Promotion. Underspend Q1 award cannot be carried over to Q2-4 period.
PE40-02	7/2023: SFY2024 Q2-4 grant award. \$111,912 must be spent on Nutrition Ed, \$18,056 on BF Promotion.
PE40-05	7/2023: SFY2024 WIC Farmers Market Mini grant award. Final Q2 Rev & Exp Report is required for final accounting. Underspent funds will be rescinded by the state in February 2024
PE51-05	7/2023: SFY24 Award Available 7/1/23-6/30/24. Funds are available 7/1/23-11/30/27. Unspent Funds in SFY24 will be carried over to the next fiscal year.
PE60	7/2023: Award for 7/1/23-6/29/24

7) Capital outlay Requested in this action:				
Prior approval is required for Capital Outlay. Capital Outlay is defined as an expenditure for equipment with a purchase price in excess of \$5,000 and a life expectancy greater than one year.				
Program	Item Description	Cost	PROG APPROV	

Attachment C

Information required by CFR Subtitle B with guidance at 2 CFR Part 200

PE01-12 ACDP Infection Prevention Training

Federal Award Identification	6NU50CK000541
Federal Award Date:	05/18/20
Budget Performance Period:	08/1/2019-07/31/2024
Awarding Agency:	CDC
CFDA Number:	93.323
CFDA Name:	Epidemiology & Laboratory Capacity
Total Federal Award:	98,897,708.00
Project Description:	Epidemiology & Laboratory Capacity
Awarding Official:	Brownie Anderson-Rana
Indirect Cost Rate:	16.41%
Research and Development (T/F):	FALSE
HIPPA	No
PCA:	53867
Index:	50401

Agency	UEI	Amount	Grand Total:
Deschutes	SVJRCF7JN519	\$1,517.82	\$1,517.82

PE12-01 Public Health Emergency Preparedness and Response

Federal Award Identification	NU90TP922036
Federal Award Date:	06/07/23
Budget Performance Period:	07/01/2023-06/30/2024
Awarding Agency:	CDC
CFDA Number:	93.069
CFDA Name:	Public Health Emergency Preparedness (PHEP)
Total Federal Award:	8,466,536.00
Project Description:	Public Health Emergency Preparedness (PHEP)
Awarding Official:	Ms. Sylvia Reeves
Indirect Cost Rate:	18.06
Research and Development (T/F):	FALSE
HIPPA	No
PCA:	53628
Index:	50407

Agency	UEI	Amount	Grand Total:
Deschutes	SVJRCF7JN519	\$111,913.00	\$111,913.00

PE42-03 MCAH Perinatal General Funds & Title XIX

Federal Award Identification:	00031222	00031222
Federal Award Date:	04/01/23	
Budget Performance Period:	10/01/2022-9/30/2023	10/01/2023-9/30/2024
Awarding Agency:	Medicaid XIX	Medicaid XIX
CFDA Number:	93.778	93.778
CFDA Name:	Medical Assistance Program	Medical Assistance Program
Total Federal Award:	3,142,259,221	TBD
Project Description:	Medical Assistance Program	Medical Assistance Program
Awarding Official:	Samina Panwhar	TBD
Indirect Cost Rate:	18.06	TBD
Research and Development (T/F):	FALSE	FALSE
HIPPA	No	No
PCA:	52180	TBD
Index:	50336	50336

Agency	UEI	Amount	Amount	Grand Total:
Deschutes	SVJRCF7JN519	\$1,639.00	\$4,918.00	\$6,557.00

PE42-06 MCAH General Funds & Title XIX

Federal Award Identification:	00031222	00031222
Federal Award Date:	12/10/21	TBD
Budget Performance Period:	10/01/2022-9/30/2023	10/01/2023-9/30/2024
Awarding Agency:	Medicaid XIX	Medicaid XIX
CFDA Number:	93.778	93.778
CFDA Name:	Medical Assistance Program	Medical Assistance Program
Total Federal Award:	\$2,454,666.00	TBD
Project Description:	Medical Assistance Program	Medical Assistance Program
Awarding Official:	Samina Panwhar	TBD
Indirect Cost Rate:	18.06%	TBD
Research and Development (T/F):	FALSE	FALSE
HIPPA	No	No
PCA:	52174	TBD
Index:	50336	50336

Agency	UEI	Amount	Amount	Grand Total:
Deschutes	SVJRCF7JN519	\$3,076.00	\$9,226.00	\$12,302.00

PE42-11 MCAH Title V

Federal Award Identification:	B0447441
Federal Award Date:	04/06/23
Budget Performance Period:	10/01/2022 - 09/30/2024
Awarding Agency:	DHHS/HRSA
CFDA Number:	93.994
CFDA Name:	Maternal and Child Health Services
Total Federal Award:	4,797,142
Project Description:	Maternal and Child Health Services Block Grant to the States
Awarding Official:	Lewissa Swanson
Indirect Cost Rate:	10%
Research and Development (T/F):	FALSE
HIPPA:	No
PCA:	52355
Index:	50336

Agency	UEI	Amount	Grand Total:
Deschutes	SVJRCF7JN519	\$69,713.00	\$69,713.00

PE42-12 MCAH Oregon Mothers Care Title V

Federal Award Identification:	B0447441
Federal Award Date:	04/06/23
Budget Performance Period:	10/01/2022-09/30/2024
Awarding Agency:	DHHS
CFDA Number:	93.994
CFDA Name:	Maternal and Child Health Services
Total Federal Award:	4,797,142
Project Description:	Maternal and Child Health Services Block Grant to the States
Awarding Official:	Lewissa Swanson
Indirect Cost Rate:	10%
Research and Development (T/F):	FALSE
HIPPA:	Yes
PCA:	52358
Index:	50336

Agency	UEI	Amount	Grand Total:
Deschutes	SVJRCF7JN519	\$57,515.00	\$57,515.00

PE43-01 Public Health Practice (PHP) - Immunization Services

Federal Award Identification	NH23IP922626
Federal Award Date:	7/12/2023
Budget Performance Period:	07/01/2023-06/30/2024
Awarding Agency:	HHS/CDC
CFDA Number:	93.268
CFDA Name:	Immunization Cooperative Agreements
Total Federal Award:	6,192,977
Project Description:	CDC-RFA-IP19-1901 Immunization and Vaccines for Children
Awarding Official:	Divya Cassity
Indirect Cost Rate:	18.06%
Research and Development (T/F):	FALSE
HIPPA	No
PCA:	53599
Index:	50404

Agency	UEI	Amount	Grand Total:
Deschutes	SVJRCF7JN519	\$47,791.00	\$47,791.00

PE50 Safe Drinking Water (SDW) Program (Vendors)

Federal Award Identification	State Funds	State Funds	00031223	00031224	98009022	98009023
Federal Award Date:			06/21/23	TBD	09/21/22	TBD
Budget Performance Period:			10/01/2022-09/30/2023	10/01/2023-09/30/2024	10/01/2022-09/30/2025	10/01/2023-09/30/2026
Awarding Agency:			EPA	EPA	EPA	EPA
CFDA Number:			66.432	66.432	66.468	66.468
CFDA Name:			State Public Water System Supervision	State Public Water System Supervision	Capitalization Grants for Drinking Water State Revolving Funds	Capitalization Grants for Drinking Water State Revolving Funds
Total Federal Award:			2516000	TBD	11064000	TBD
Project Description:			OHA State Public Water System Supervision (PWSS) Primacy	OHA State Public Water System Supervision (PWSS) Primacy	Oregon FFY 2022 Drinking Water State Revolving Fund (base)	Oregon FFY 2023 Drinking Water State Revolving Fund (base)
Awarding Official:			Tiffany Eastman	TBD	Megan Browning	TBD
Indirect Cost Rate:			18.06%	TBD	18.06%	TBD
Research and Development (T/F):	FALSE	FALSE	FALSE	FALSE	FALSE	FALSE
HIPPA	No	No	No	No	No	No
PCA:	51283	51058	51322	TBD2	51835	TBD1
Index:	50204	50204	50204	50204	50204	50204

Agency	UEI	Amount	Amount	Amount	Amount	Amount	Amount	Grand Total:
Deschutes	SVJRCF7JN519	\$36,693.00	\$12,231.00	\$9,173.00	\$27,520.00	\$9,173.00	\$27,520.00	\$122,310.00

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY,
OREGON

A Resolution Increasing Appropriations *
And Converting FTE Within the 2023-24 * RESOLUTION NO. 2023-060
Deschutes County Budget *

WHEREAS, the Deschutes County Health Services department presented to the Board of County Commissioners on 10/18/23, with regards to accepting Oregon Health Authority grant funding and converting 1.00 limited duration FTE to regular FTE, and

WHEREAS, ORS 294.471 allows a supplemental budget adjustment when authorized by resolution of the governing body, and

WHEREAS, it is necessary to increase appropriations by \$88,264 within Health Services to accommodate this request, and

WHEREAS, Deschutes County Policy HR-1 requires that the creation of or increase in FTE outside the adopted budget be approved by the Board of County Commissioners; now, therefore,

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

Section 1. That the following revenue be budgeted in the 2023-24 County Budget:

<u>Health Services</u>	
State Grant	\$ 88,264
Total Health Services	<u>\$ 88,264</u>

Section 2. That the following amounts be appropriated in the 2023-24 County Budget:

<u>Health Services</u>	
Program Expense	\$ 88,264
Total Health Services	<u>\$ 88,264</u>

Section 3. That the Chief Financial Officer make the appropriate entries in the Deschutes County Financial System to show the above appropriations:

Section 4. That the following FTE be converted from limited duration to regular:

Job Class	Position Number	Type	Duration if Limited Duration	FTE
Public Health Manager (9305)	3030	Reclassify 1.00 limited duration FTE to 1.00 regular FTE		-
Total FTE				-

Section 5. That the Human Resources Director make the appropriate entries in the Deschutes County FTE Authorized Positions Roster to reflect the above FTE changes.

DATED this _____ day of October 2023.

BOARD OF COUNTY COMMISSIONERS OF
DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

ATTEST:

PATTI ADAIR, Vice-Chair

Recording Secretary

PHIL CHANG, Commissioner



**BOARD OF
COMMISSIONERS**

AGENDA REQUEST & STAFF REPORT

MEETING DATE: October 18, 2023

SUBJECT: Public Health Advisory Board By-Laws Update

RECOMMENDED MOTION:
Move approval of the updates made to the Public Health Advisory Board By-Laws.

BACKGROUND AND POLICY IMPLICATIONS:
The Public Health Advisory Board (PHAB) periodically updates its By-Laws to better serve Deschutes County Public Health and the Deschutes County Board of County Commissioners. These updates enhance strategic and operational functions to make PHAB more effective in improving the health of Deschutes County residents. The majority of substantive updates recommended to the By-Laws occur in Article III, Responsibilities, with mostly grammatical updates made in the remainder of the document. The updates have been reviewed and approved by Public Health leadership as well as County Legal.

During this meeting, PHAB leadership will provide an update on the current status of the advisory board and present the recommended updates to the By-Laws.

BUDGET IMPACTS:
None

ATTENDANCE:
Tom Kuhn, Manager, Health Services
Rob Ross, MD, PHAB Chair
Colleen Sinsky, PHAB Vice-Chair



Deschutes County Health Services

Public Health Advisory Board By-Laws

Mission Statement:

To promote and protect the health and safety of our community.

BY-LAWS

Article I

NAME AND ADDRESS

The name of this body shall be the Deschutes County Public Health Advisory Board (“~~the Board~~**PHAB**”). The permanent address for the Board will be 2577 NE Courtney Drive, Bend, Oregon 97701. ~~The Board~~**PHAB** shall carry out its responsibilities consistent with ORS 431.447.

Article II

PURPOSE

~~The Public Health Advisory Board~~**PHAB** is established to enhance community relations with Deschutes County Health Services (DCHS), to increase public knowledge about public health issues and to assist in the betterment of services provided by DCHS. ~~The Board~~**PHAB** also advises the Board of County Commissioners concerning matters of public health and the operation of the public health system.

Article III

RESPONSIBILITIES

~~The Board~~**PHAB**'s responsibilities include providing advice, leadership and guidance in support of the DCHS's **Public Health** mission.

~~The Board~~**PHAB** shall:

~~Recommend advocacy positions for a strong public health system.~~

Commented [TK1]: Repetitive, this is covered more specifically in the following.
Formatted: No bullets or numbering

A. Inform the Board of County Commissioners (BOCC), the County Administrator, and DCHS Leadership about emerging public health threats, legislation, and health issues in need of attention. Take action only when in alignment or directed by the BOCC.

Commented [TK2]: Not new, just moved its place in the order.

B. Participate in ensuring that DCHS operates in accordance with applicable federal, state and local laws and regulations.

Commented [TK3]: Not sure we need this? PHAB has never been regulatory.

C. Work cooperatively with the Behavioral Health Advisory Board and other DCHS advisory groups to promote service integration, Department benefit and accountability as well as operational efficiency and effectiveness.

D. Promote the public health programs, services, and educational opportunities provided by DCHS within the community.

E. Participate in developing and endorsing the priorities and services provided or sponsored by DCHS, including health assessment review, health improvement plan development, and strategic planning.

F. Assist DCHS in fulfilling the requirements necessary to be designated as a National Public Health Accreditation Board Accredited Health Department (<http://www.phaboard.org/>)

G. Recommend advocacy positions for the resources necessary to assure the provision of essential public health functions. This includes, but is not limited to supporting Public Health budget requests made during the Deschutes County annual budget process.

H. Participate in informing, educating, and empowering people about health issues.

Commented [TK4]: Seems duplicative of the next bullet.

I. Monitor health status indicators that will help to identify and solve community health problems and work towards identifying a solution that can be recommended to the BOCC and DCHS Leadership.

Formatted: List Paragraph, No bullets or numbering

H. Determine priorities that surface organically in the community in order to be relevant, timely, and responsive.

I. Follow DCHS established communication protocol when acting as a PHAB Member in communicating with the Board of County Commissioners, the County Administrator, and Legislature.

- J. Actions to be taken by PHAB will include, but are not limited to:
1. Provide relevant information and when appropriate, recommendations to the Board of County Commissioners through presentations and informational letters.
 2. Advocate on legislation that may impact public health.
 3. Write letters of support for vetted grant applications and programs that will positively impact public health.
 4. Respond with appropriate action on information and requests presented to PHAB by persons who are well informed on public health matters, including those brought by PHAB Members.
 5. Support and amplify public awareness campaigns from DCHS, when requested.

- 6. Support interagency efforts related to public health promotion.
- 7. Other tasks as requested by the BOCC and DCHS.

I-K.

J.L. ~~Annually determine the Board's focus, projects, priorities, and progress based on the DCHS Strategic Plan and emerging public health related items which require the Board's attention.~~

Commented [TK5]: We are using a new process to determine priorities in order to be more nimble.

K. ~~Follow DCHS established communication protocol when communicating with the Board of County Commissioners and the County Administrator.~~

Commented [TK6]: Moved above.

L.M. ~~Provide summary assessments to the Board of County Commissioners and the County Administrator on the performance of the local public health system.~~

Commented [TK7]: This does not seem to be in PHAB's scope.

M. ~~Inform the Board of County Commissioners and the County Administrator about emerging public health threats, legislation, and health issues in need of attention.~~

Commented [TK8]: Moved above.

N. ~~Other tasks as requested.~~

Commented [TK9]: Moved above.

Article IV

MEETINGS

Section I. Regular Meetings:

~~BoardPHAB~~ meetings will be held, at least, once per calendar quarter. The ~~BoardPHAB~~ Chairperson, in consultation with the ~~BoardPHAB~~ Coordinator, may call other meetings as necessary. Meetings will be held virtually or in a conference room accessible to ~~BoardPHAB~~ members and the general public.

Section II. Special Meetings or Work Sessions:

Special meetings and work sessions may be called by ~~the BoardPHAB~~ Chairperson. Public law requires that members of ~~the BoardPHAB~~ and the press receive written notice at least 24 hours prior to holding such a meeting.

From time to time, ~~the BoardPHAB~~ may meet in Executive Session upon motion by any member of ~~the BoardPHAB~~. When an Executive Session is called, all non-PHAB Members will be excused.

Section III Quorum:

A majority of ~~the board~~PHAB members, including those in actual attendance as well as those attending by proxy, shall constitute a quorum necessary for the transaction of any and all business of ~~the Board~~PHAB.

Section IV Minutes:

~~The Board~~PHAB shall cause minutes of all meetings to be prepared and approved in accordance with Oregon Public Meetings law. Health Services Department staff shall prepare, maintain and have available minutes of ~~the Advisory Board~~PHAB meetings, including, without limitation, a recording of all motions and subsequent actions. Announced conflicts of interest shall be noted.

Section V. Voting:

Each ~~Board~~PHAB member shall have one vote. Any matter coming before ~~the board~~PHAB shall be decided through voting by a majority of members, either physically present, through virtual platforms, or by proxy, ~~and voting. The Chairperson shall refrain from voting except to break a tie.~~ While personal attendance is always preferred, each member is entitled to one vote. Members must declare potential conflicts of interest under consideration and will abstain from voting on issues related to conflict of interest as determined by the membership.

Proxy voting is permitted upon any issue which has been included in the notice of the meeting. Members who are ~~physically~~ present are limited to not more than one absent member’s proxy, in addition to their own vote. Members who choose to vote by proxy shall notify the ~~Board~~PHAB chair, ~~Board~~PHAB Coordinator, or ~~the Board~~PHAB member to whom the proxy is assigned via email prior to the meeting. Such votes will be documented in meeting minutes. If the matter is not voted on at the meeting for which is was noticed, then all proxies for such matter shall be deemed to have expired.

Section VI. Notice of Meetings:

~~All members shall be given notice of time, date, location and agenda for the meeting via email at least seven (7) days before a regular Board meeting. This notice shall be mailed by regular postal service to members who have no access to email. Notice of regular and special PHAB meetings shall be posted online at <https://www.deschutes.org/>. This will include the time, date, and physical or virtual location of the meetings, as well as any documentation relevant to the meetings and PHAB.~~

~~Notice will be provided for other members of the public who have requested in writing that they be given copies of the official meeting notices.~~ Unless in Executive Session, all meetings are public and will offer opportunities for public comment (at discretion of ~~Board~~PHAB Chair) and listening to ~~Board~~PHAB deliberations.

Article V

MEMBERSHIP

Section I. Qualifications & Representation:

The membership of ~~the BoardPHAB~~ shall provide a balanced representation of the geographic and social diversity of the County and shall be comprised of lay citizens, health professionals, and others with a sincere interest in advocating ~~for a strong public health system.~~ ~~The BoardPHAB~~ shall be composed of at least nine (9) and not more than fifteen (15) individuals. These persons shall be qualified by interest, training, or experience to review, ~~and~~ make recommendations, ~~and provide guidance for a strong local Public Health system in Deschutes County. the development and implementation of policies and procedures with regard to the statutory duties and services of Deschutes County Health Services.~~

The membership should attempt to reflect the varying age, ~~race,~~ gender, ~~identity,~~ ethnic, socioeconomic, geographic, and professional interests in the County. Members shall serve without remuneration.

Section II. Nominations:

~~The BoardPHAB~~ shall make nominations for membership on ~~the BoardPHAB~~ to the Deschutes County Board of Commissioners for approval and appointment

Section III. Ex-Officio Members:

In addition to the appointed ~~BoardPHAB~~ members, the Deschutes County Board of Commissioners shall appoint, from among themselves, one member to serve as liaison to the ~~BoardPHAB~~ who is expected but not required to attend at least two (2) ~~BoardPHAB~~ meetings each calendar year.

Additionally, the Public Health Director of the Health Services Department and the County Health Officer will be Ex-officio members of ~~the BoardPHAB~~. Ex-officio members do not have voting rights. ~~The BoardPHAB~~ may appoint other Ex-officio members as appropriate.

Section IV. Attendance:

~~BoardPHAB~~ members shall endeavor to attend all meetings in person. Three (3) consecutive unexcused absences shall constitute grounds for ~~removal.~~

Section V. Removal:

Any member may be removed whenever the best interests of the ~~Health Services Department~~ DCHS or ~~the BoardPHAB~~ will be is not served.

Grounds for removal from ~~the BoardPHAB~~ include without limitation, taking a position that is in conflict with the mission of ~~the BoardPHAB~~ and/or DCHS and having three (3) consecutive absences from ~~BoardPHAB~~ meetings without prior notification to ~~the BoardPHAB~~ Chair.

The member whose removal is placed in issue shall be given prior notice of his/her proposed removal and a reasonable opportunity to appear and be heard at a meeting of ~~the BoardPHAB~~. A member may

be removed pursuant to this section by not less than two-thirds (2/3) of the total number of members then serving on ~~the BoardPHAB~~, or by majority vote of the Board of County Commissioners.

Article VI

TERMS OF OFFICE AND VACANCIES

Section I. Term and Length of Service:

~~BoardPHAB~~ members shall serve staggered terms of office and be assigned a position number with expiration date to assure even rotation. A full term is three (3) years. The Founding ~~BoardPHAB~~ will be assigned initial terms of 1, 2, or 3 years by the Board of County Commissioners in order to initiate staggered rotation.

After a Founding member finishes his or her initial term, they may apply for nomination -for a second term. A member appointed to serve the unexpired term of another member shall begin their membership on the first day of the month immediately following the date it is approved. Regular terms shall begin and expire on September 1. A member may not initiate a new term on ~~the boardPHAB~~ if the member has already served for 8-10 years or more.

Section II. Vacancies:

A vacancy occurs when a ~~BoardPHAB~~ member's term expires, or when a ~~BoardPHAB~~ member moves out of the service area, dies, resigns, or is removed from ~~the BoardPHAB~~. When a vacancy occurs ~~on the Board, the nominating committee shall select a replacement to complete the unexpired termPHAB will initiate a recruitment process and recommend appointment of such replacement of an identified and vetted candidate to the BoardPHAB~~ by the Board of County Commissioners.

Article VII

OFFICERS

Section I. Officers:

~~The BoardPHAB~~ shall elect a Chairperson and Vice-Chairperson each to serve a two-year term which can be renewed for a third year upon ~~the~~ consent of ~~the BoardPHAB~~ and acceptance of the nominee. In Addition, The Vice-Chairperson shall be eligible for election to the Chair after Chairperson's term ends or they resign. If no other candidates come forward expressing interest in the Chair position, the Vice-Chair may become Chair upon ~~the~~ consent of ~~the BoardPHAB~~. In the event of a Chair resignation, the Vice-Chair may assume the Chair position upon consent of ~~the BoardPHAB~~, and finish the resigning Chair's term of office or request a full two year term.

Section II. Elections:

Elections of new officers shall take place prior to the end of the calendar year with the new term beginning at ~~the BoardPHAB's~~ first regular meeting in January. Terms will begin and end January 1, unless the election took place after such date, in which case the term will begin immediately or when

feasible. In the event that nominations for Officer positions are not received by the scheduled election, a six (6) month extension will be offered to the current officer. In the event that only one nominee is available for an Officer position, ~~the BoardPHAB~~ may elect that nominee through consensus.

Section III. Duties:

Duties of the officers are as follows:

1. ~~Chairperson~~:
 - a. Shall prepare the agenda with the assistance of ~~the BoardPHAB~~ Coordinator.
 - b. Shall conduct the meeting in accordance with parliamentary procedure and comply with the rules and regulations of County and State with regard to public meetings.
 - c. May call special meetings of ~~the BoardPHAB~~ as are necessary.
 - ~~d.~~ Shall serve as an Ex-Officio member of all committees.
 - ~~d.e.~~ Shall sign off on advocacy position letters and present to the BOCC when needed.
2. ~~Vice-Chairperson~~:
 - a. Shall assist the Chairperson as needed.
 - b. Shall serve as Chairperson during such time as the Chairperson is absent or unable to serve.
 - c. Shall sign off on advocacy position letters and present to the BOCC when needed.
 - ~~b.d.~~

Commented [TK10]: ROB & COLLEEN – should we add anything here?

Article VIII

COMMITTEES

Section I. Standing Committees:

~~The BoardPHAB~~ shall appoint standing committees and their membership at its discretion. Membership may include ~~BoardPHAB~~ members, staff, and other community members at the discretion of ~~the BoardPHAB~~.

Section II. Executive Committee:

The Executive Committee shall be comprised of the Chairperson, Vice-Chairperson, and the ~~BoardPHAB~~ Coordinator. ~~and.~~—The Executive Committee shall have the authority to act on behalf of the entire ~~BoardPHAB~~ for matters of routine business, but shall report to the entire ~~BoardPHAB~~ its actions as reflected in carefully maintained minutes. The Health Services ~~BoardPHAB~~ Coordinator shall be a non-voting member of the Executive Committee.

Section III. ~~Ad-Hoc-SubC~~committees:

~~Ad-Hoc-SubC~~committees may be established by ~~the BoardPHAB~~ as needed and may consist of additional individuals from the community chosen for their expertise and knowledge and concern about a specific issue or a field of endeavor. Once an ~~Ad-Hoc-SubC~~committee has completed all assigned tasks and reported same to the ~~BoardPHAB~~, it shall expire.

Section IV. Public Meetings:

All Committee meetings shall be open to the public..

Article IX

CONFLICT OF INTEREST

No ~~BoardPHAB~~ member shall be an employee of Deschutes County Health Services ~~Department Public Health~~ or an immediate family member of an employee. An exception is allowed for individuals who serve in an on-call, temporary, or limited duration capacity with DCHS.

Article X

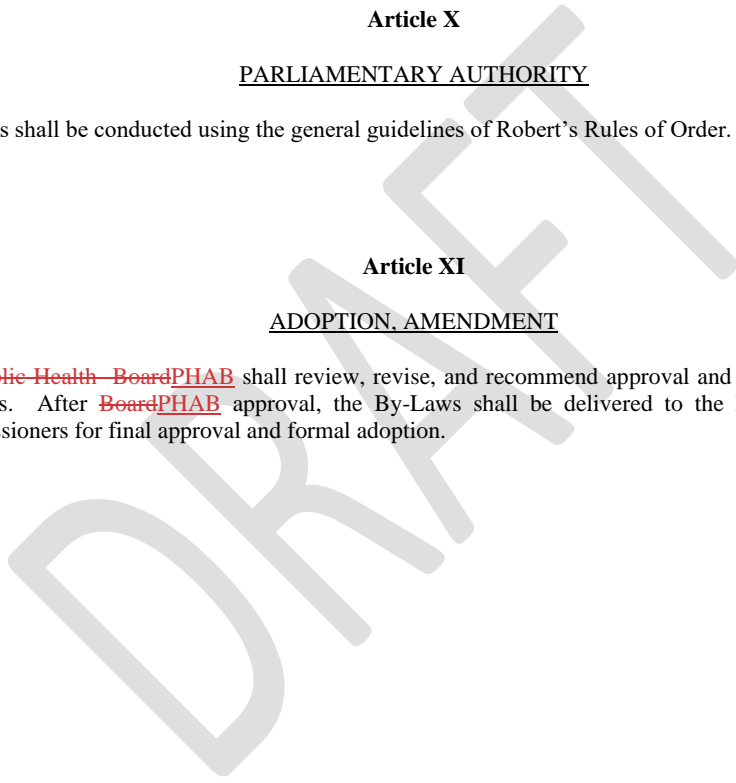
PARLIAMENTARY AUTHORITY

Meetings shall be conducted using the general guidelines of Robert’s Rules of Order.

Article XI

ADOPTION, AMENDMENT

~~The Public Health BoardPHAB~~ shall review, revise, and recommend approval and adoption of these By-Laws. After ~~BoardPHAB~~ approval, the By-Laws shall be delivered to the Board of County Commissioners for final approval and formal adoption.





BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: October 18, 2023

SUBJECT: Deschutes County Employee Benefits Renewal for the 2024 Plan Year

RECOMMENDED MOTIONS:

1. Move to approve renewing with Sunlife, the current Stop Loss provider, and deductible limits for the 2024 plan year.
2. Move to approve renewing with PacificSource, the current Third Party Administrator, for the 2024 plan year.
3. Move to approve the staff-recommended Employee Benefit Plan changes #1-10.
4. Approve County Administrator signature of the final Deschutes County Employee Benefits Health Plan documents and service agreements for the 2024 plan year.

BACKGROUND AND POLICY IMPLICATIONS:

The Deschutes County Employee Health Benefits Plan is set to renew January 1 for the 2024 Plan Year. This annual renewal period requires the County to evaluate the health benefits plans and vendor contracts supporting the plans. Deschutes County has established the Deschutes County Group Health Plan (the "Plan") to provide health care coverage for eligible employees and their dependents. Deschutes County is the Plan sponsor. This Plan document contains both the written Plan document and the Summary Plan Description ("SPD") which will be administered by PacificSource, the Third Party Administrator, and will be effective on January 1, 2024.

The attached memo and matrix provide additional detail on the recommended changes and proposed contract renewals.

BUDGET IMPACTS:

The proposed changes are anticipated to be within the currently approved Health Benefit Fund 650 budget for FY24 and will be included in the proposed budget for FY25.

ATTENDANCE:

Kathleen Hinman, Human Resources Director
Trygve Bolken, Human Resources Analyst as subject matter support



HUMAN RESOURCES

Date: October 18, 2023

To: Deschutes County Board of County Commissioners

From: Trygve Bolken, HR Analyst
Kathleen Hinman, HR Director

Re: Deschutes County Employee Benefits Renewal for the 2024 Plan Year

The Deschutes County Employee Benefits Plan is set to renew for the 2024 Plan Year. The following is a summary of program renewals and considerations for the period of January 1, 2024 – December 31, 2024.

In preparation for the annual renewal period, staff meets with the County’s legal team, benefit consultant, and Third Party Administrator (TPA) to review proposed changes to the plan. This includes an analysis of changes due to legislative requirements, industry standards, new offerings in the industry, benchmarking against comparable plans, cost impacts, and the impact on the health care needs of our employees and their dependents.

It is the County’s approach to consider changes that have proven effectiveness, are mandated by law, fiscally responsible, and competitive with benchmarking against other health plans.

After review, staff develop recommended renewal changes, and present them to the County’s Employee Benefits Advisory Committee (EBAC) for consideration. EBAC is comprised of representation of County management and represented staff. EBAC is responsible for meeting with HR staff, benefit consultants, and insurance representatives, to review possible options with regard to employee benefits. EBAC will make recommendations to the Board of County Commissioners regarding Health benefits.

On Tuesday, September 27, EBAC voted 14 yes – 1 abstain in support of the following proposed plan changes for the 2024 Plan Year:

The summary of the health and benefit program renewal, including:

- Employee Health Benefits Plan (Medical/Dental/Vision/Prescription Drugs)
- Flexible Spending Accounts (FSA)
- Employee Assistance Program (EAP)
- Livongo Diabetic Management Program
- Life Insurance, Accidental Death & Dismemberment Insurance, and Long Term Disability

Based on claims trends, proposed plan changes, and increases in the cost of healthcare, the combined annual employer costs are expected to rise approximately 5.1% or \$1,588,608. This renewal recommendation includes retaining the same vendors, increasing the employee contribution rate, and includes the changes to the health plan design as recommended below.

The following vendors and renewal rates are recommended:

- Employee Health Benefits Plan
 - ✓ Stop Loss Insurance Premium: Preliminary estimate is a 15% fee increase; \$178,528 annual cost increase. Final renewal not to exceed this estimate.
 - ✓ Includes TPA PacificSource Services Fee: 3.9% fee increase; estimated \$23,938 annual cost increase.
- Life and Disability Insurances with New York Life: No increase (rates guaranteed until 1/1/2025)
- Employee Assistance Program with Canopy: 9.3% fee increase; estimated \$3,062 annual cost increase.
- Flexible Spending Accounts with PacificSource Administrators: No increase
- Livongo Diabetic Management Program: No increase

Stop Loss Coverage: The plan continues to see improved experienced related to high-cost claims subject to stop lost coverage. Staff worked with the benefit consultants to obtain competitive bids for coverage and reviewed adjusting the policy deductible. Preliminary bids show a maximum bid of 15% increase, staff expects final bids to come in lower. Staff recommends keeping current deductible levels as well.

Third Party Administrator (TPA): Last year saw a 3.1% rate increase for TPA services with our current vendor, PacificSource. This year, PacificSource has proposed a 3.9% rate increase for TPA services.

- **Staff recommends and EBAC supports renewing with the current TPA vendor for the 2024 plan year.**

Employee Health Benefits Plan: This year continued to present challenges in forecasting claims costs due to delayed medical care and increased health care costs in general. In total, overall plan costs are on the rise and are estimated to increase by 5.1% resulting in an anticipated \$1,572,608 increase cost to the plan. This includes the increases associated with the Stop Loss and TPA services mentioned above.

- **Staff recommends and EBAC supports the following Employee Benefit Plan changes, #1-10, for the 2024 plan year.**

1. **Confirm Change to National Provider Network from First Choice to Aetna.**

PacificSource has moved their entire book of business to the Aetna network for areas outside of the regional 4-state Navigator network. This allows for continued in-network coverage throughout the United States. The current plan amendment changing to Aetna expires 12/31/2023, plan change needed to incorporate the amendment.

- **HR Staff recommends and EBAC supported making this change to the National Provider Network. There is no estimated impact to the cost of the plan.**

2. **Language updates throughout the plan for new Aetna national network.**

Plan language is updated to clearly define the benefits available and provide clarification language for services outside of the 4-state Navigator network.

- **HR Staff recommends and EBAC supported making changes to the National Provider Network plan language. There is no estimated impact to the cost of the plan.**

3. **Change copay for first three visits per plan year to \$5.00 each.**

The first three visits per plan year combined for Professional Services – Office visits, Telehealth visits, and Mental Health and Substance Use Disorder Services office visits will be \$5.00 each. Subsequent visits will follow normal cost share. This is a State mandate under SB 1529 to reduce financial barriers in receiving routine medical care.

- **HR Staff recommends and EBAC supported making this change to comply with SB 1529. The estimated cost impact to the plan is a savings of \$150,000 annually.**

4. **Update plan language – Diagnostic Breast Examinations**

A mammogram, MRI, and ultrasound for a Diagnostic Breast Examination or Supplemental Breast Examination are paid at no cost share when provided by an In-network Provider. This is a State mandate under SB 1041. This expands preventative coverage beyond mammograms and now includes MRI and ultrasounds for diagnostic and/or supplemental breast exams.

- **HR Staff recommends and EBAC supported making this change to comply with SB 1041. There is no estimated impact to the cost of the plan.**

5. **Clarify and align plan language – Mental Health and Substance Use Disorders**

Amend plan language in all sections that cover Mental Health and Substance Use Disorders to clarify and align plan language with State legislation and guidance for mental and behavioral health benefits. This is State legislation under OAR 836-053-0012, Behavioral Health Parity rules, 2021 OR, Laws ch. 629

- **HR Staff recommends and EBAC supported making this change to comply with Durable medical Equipment rules. There is no estimated impact to the cost of the plan.**

6. **Update plan language – Pediatric Hearing Aids**

Amend plan language to include Pediatric Hearing Aid benefits under the Service/Supply section of the medical plan document. This is a State mandate under HB 2994B due to a requirement of no deductible cost share for hearing aid benefits for pediatric patients.

- **HR Staff recommends and EBAC supported making this change to comply with Durable Medical Equipment rules. The estimated cost impact for this change is an annual increase of \$16,000.**

7. **Benefit Exclusions: Remove the plan exclusion for abortion services.**

PacificSource identifies this as a State mandated covered benefit and recommends removing the exclusion for these services to be in compliance. Deschutes Legal Counsel is of the opinion the abortion coverage may no longer be excluded from the health benefits plan due to HB 2002.

- **HR Staff and EBAC supports removing the exclusion. The estimated cost impact for this change is an annual increase of \$8,000 to \$12,000.**

8. **Update plan language to align with current plan interpretation and TPA best practices.**

In partnership with our TPA, HR staff have made efforts to clarify plan language. Proposed changes are clarifications to the plan document and do not change benefit coverage.

- **HR Staff recommended and EBAC supports making the corrections, clarifications and changes as described on the PacificSource Notice of Change PY24 sheet.**

9. **Establish a two-tier employee cost share structure and increase rates.**

Establish two tiers for employee cost share for 2024 plan year:

- Employee (EE) Only - \$95.00/month (\$90/medical and \$5/dental).
- EE + Dependents - \$116/month (\$111/medical and \$5/dental).

Aligns with the recent ~29% increase to department charges effective 7/1/2023. Employee rates have not increased in the past 10 years.

- **HR Staff recommended and EBAC supports establishing two tiers with increased rates. Estimate \$273,000 increase to revenue annually.**

10. **Continue Livongo Diabetic Management Program**

Davidson Benefits Planning provided a ROI update on the Livongo Diabetic Management Program. The analysis shows savings on claims for participants in the program with diabetes as a primary diagnosis.

- **HR Staff recommended and EBAC supports continuing the pilot program for another year. Estimate cost of the program is \$10,000 with an estimated claims cost savings of \$31,000 (\$21,000 net savings).**



Changes to Deschutes County Employee Benefits Plan for 2024 Plan Year

Changes effective 1/1/2024

Recommended Changes – Benefits Plan		
Plan Impact	Change	Reason For Consideration
1. Confirm change to National Provider Network from First Choice to Aetna Amendment #1 – Medical Plans	Adopt the temporary amendment language moving from First Choice to Aetna network outside of the Navigator (Oregon, Washington, Idaho, and Montana) coverage area. Staff supports this change.	PacificSource has moved their entire book of business to the Aetna network for areas outside of the regional 4-state Navigator network. This allows for continued in-network coverage throughout the United States.
2. Language updates throughout plan document – Aetna national network (Medical Document Wide)	Adopt additional plan language regarding the new Aetna nation network. Staff supports this change.	Clearly define the benefits available and provide clarification language for services outside of the 4-state navigator network.
3. Change copay for first three visits per plan year to \$5.00 each	The first three visits per plan year combined for Professional Services – Office visits, Telehealth visits, and Mental Health and Substance Use Disorder Services office visits will be \$5.00 each. Subsequent visits will follow normal cost share. Staff supports this change.	Estimate +\$150,000 (0.6%) annually. This is a State mandate under SB 1529 to reduce financial barriers in receiving routine medical care.
4. Diagnostic and Therapeutic Radiology/Laboratory – Diagnostic Breast Examination	A mammogram, MRI, and ultrasound for a Diagnostic Breast Examination or Supplemental Breast Examination are paid at no cost share when provided by an In-network Provider. Staff supports this change.	This is a State mandate under SB 1041. This expands preventative coverage beyond mammograms and now includes MRI and ultrasounds for diagnostic and/or supplemental breast exams. Estimate no cost to the plan.
5. Mental Health and Substance Use Disorders (Inpatient and Outpatient Services)	Amending plan language in all sections that cover Mental Health and Substance Use Disorders to clarify and align plan language with State legislation and guidance for mental and behavioral health benefits. Staff supports this change.	This is State legislation under OAR 836-053-0012, Behavioral Health Parity rules, 2021 OR, Laws ch. 629. Estimate no cost to the plan.

<p>6. Pediatric Hearing Aids (Service/Supply – Other Covered Servies)</p>	<p>Pediatric hearing aids (ages 18 and younger or 19-25 if enrolled in secondary school or an accredited education institution) – limited to one hearing aid per ear every 24 months. The cost share is 20% for in-network and 40% for out-of-network. No deductible applies. Staff supports this change.</p>	<p>This is a State mandate under HB 2994B due to requirement of no deductible cost share for the hearing aid benefits for pediatric patients. Estimate +\$16,000 annually.</p>
<p>7. Benefit Exclusions</p>	<p>Remove the plan exclusion for abortion services. Staff supports this change. PacificSource identifies this as a State mandated covered benefit and recommends removing the exclusion for these services to be in compliance. DC legal is of the opinion the abortion coverage may not be excluded from the upcoming health benefits plan year due to HB 2002.</p>	<p>Estimated +\$8,000 to \$12,000 cost to plan for abortion services. Current Plan Excludes: <i>Abortion – services, supplies, care or treatment in connection with an abortion unless the life of the mother is endangered by the continued pregnancy or the pregnancy is the result of rape or incest.</i></p>
<p>8. Plan language updates (Medical and Dental Documents Wide)</p>	<p>Language to be added or changed throughout the plan documents to clarify benefits, the administration of benefits, or to align with PacificSource core plan language. Staff supports this change.</p>	<p>These changes are clarification and clean-up of plan language. Not a change to the benefit or coverage. Deschutes County Legal has reviewed the changes to assure no change to benefits.</p>
<p>9. Employee cost shares and tiers.</p>	<p>Establish two-tier cost share structure for employees:</p> <ul style="list-style-type: none"> • EE Only – \$95/month • EE+Dependents - \$116/month <p>Staff supports this change.</p>	<p>Aligns with the recent ~29% increase to department charges effective 7/1/2023. Employee rates have not increased in the past 10 years. Estimate +\$273,00 increase to revenue annually.</p>
<p>10. Continue Livongo Diabetic Management Program</p>	<p>Benefits consultant has provided a review of the pilot Livongo Diabetic Management Program and recommends continuation for another year. Staff supports.</p>	<p>Estimate \$10,000 annually. The estimated savings for those with diabetes as primary diagnosis is \$31,000. Net savings of -\$21,000.</p>
<p>11. Supplemental: Stop Loss Insurance</p>	<p>Maintain current stop loss provider and deductible at \$500,000 with Sun Life. Staff supports.</p>	<p>Not to exceed Preliminary estimate +\$178,538 (15.8%) cost to the plan. County is waiting on bidders to provide final rates after they review September claims.</p>



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: October 16, 2023

SUBJECT: FY 2024 Q2 Discretionary grant application review

RECOMMENDED MOTION: N/A

BACKGROUND AND POLICY IMPLICATIONS: Each quarter, the Board of Commissioners reviews applications submitted to the Deschutes County Discretionary Grant Program and makes awards accordingly. On October 16th, the Board will consider requests made for activities to take place beginning or about the second quarter of 2023-24.

BUDGET IMPACTS: Discretionary Grants are made available through the Video Lottery Fund, which is supported by state lottery proceeds. Discretionary Grant funds available during the second quarter were budgeted for FY 2023-24.

ATTENDANCE: Stephanie Robinson, Administrative Analyst