



## BOARD OF COMMISSIONERS

### BOARD OF COUNTY COMMISSIONERS MEETING

9:00 AM, WEDNESDAY, DECEMBER 13, 2023

Barnes Sawyer Rooms - Deschutes Services Building - 1300 NW Wall Street – Bend  
(541) 388-6570 | [www.deschutes.org](http://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](mailto: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/3h3oqgD>.
- 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 \*9 to indicate you would like to speak and \*6 to unmute yourself when you are called on.
- When it is your turn to provide testimony, you will be promoted from an attendee to a panelist. You may experience a brief pause as your meeting status changes. Once you have joined as a panelist, you will be able to turn on your camera, if you would like to.



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](mailto: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](mailto:citizeninput@deschutes.org) or you may leave a brief voicemail at 541.385.1734.

## CONSENT AGENDA

1. Approval of Purchase Agreement and Dedication Deed from the Jesse and Kimberly Dent Joint Trust for Right of Way for the Powell Butte Highway/Butler Market Road Intersection Improvement Project
2. Approval of a grant agreement with Free on the Outside for the purchase and operation of new shelter and housing units for male justice-involved individuals on supervision with Deschutes County Parole and Probation
3. Consideration of Board Signature on letters thanking Pamela Ferguson, and appointing Denise Gardiner, for service on the Newberry Estates Special Road District
4. Consideration of Board Signature on letter appointing Diane Tolzman for service on the OSU Extension / 4H Advisory Council

## ACTION ITEMS

5. **9:10 AM** Ballot Measure 110: Public Safety Partners Presentation on a Comprehensive Approach to Addressing Oregon's Addiction and Community Livability Crisis
6. **9:40 AM** Public Hearing and consideration of ordinance to amend section 2.37.120 of the Deschutes County Code to clarify contract processing procedures
7. **9:50 AM** Sale of property at 51950 Huntington Road in La Pine to Habitat for Humanity La Pine Sunriver
8. **10:00 AM** Veteran Behavioral Health Peer Support Specialist Program Grant Application

### ***Convening as the governing body of the Deschutes County 911 Service District***

9. **10:10 AM** Contract with L3Harris for completion of DC911 Radio Enhancement Plan

[Reconvening as the governing body of Deschutes County](#)

10. **10:20 AM** Oregon State Weed Board Grant Application for Deschutes County Noxious Weed Project
11. **10:30 AM** Work Session: Plan Amendment and Zone Change at 64430 Hunnell Road
12. **10:45 AM** First reading of Ordinance No. 2023-027 – Bend Airport Text Amendment
13. **10:55 AM** Long Range Planning - Work Plan Update

**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.*

14. Executive Session under ORS 192.660 (2) (d) Labor Negotiations

**ADJOURN**



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: December 13, 2023

SUBJECT: Approval of Purchase Agreement and Dedication Deed from the Jesse and Kimberly Dent Joint Trust for Right of Way for the Powell Butte Highway/Butler Market Road Intersection Improvement Project

RECOMMENDED MOTION:

Move approval of Document Nos. 2023-793 and 2023-794 to effect a purchase of right-of-way and approve a deed of dedication from the Jesse and Kimberly Dent Joint Trust.

BACKGROUND AND POLICY IMPLICATIONS:

The Board of County Commissioners authorized the Road Department to negotiate with owners of properties impacted by the Powell Butte Highway/Butler Market Road Intersection Improvement project for the acquisition of right of way by Resolution No. 2023-049. During preliminary design of the project, it was determined that a portion of Tax Lot No. 171318D000500, owned by the Jesse and Kimberly Dent Joint Trust, would be impacted by the project. The Road Department has negotiated with the property owners for right of way acquisition. The property owners have agreed to the following:

- Instrument: Dedication Deed
Area: ±18,595 sq. ft. (±0.43 acre)
Compensation: \$58,400.00
Other Obligations: \$52,771.00 as reimbursement to property owner for relocation of irrigation system components within the dedication area.

BUDGET IMPACTS:

The County will make payment to the property owner in the amount of \$111,171.00, which is budgeted in the Department's Fiscal Year 2023-2024 Road Capital Improvement Plan budget.

ATTENDANCE:

Cody Smith, County Engineer/Assistant Road Department Director

<p style="text-align: center;"><b>REVIEWED</b></p> <hr/> <p style="text-align: center;">LEGAL COUNSEL</p>	<p>For Recording Stamp Only</p>
<p>After recording return to: Deschutes County Road Dept. 61150 S.E. 27<sup>th</sup> Street Bend, Oregon 97701</p>	

**PURCHASE AGREEMENT**  
**POWELL BUTTE HIGHWAY / BUTLER MARKET ROAD ROUNDABOUT PROJECT**  
**Jesse R. Dent and Kimberly A. Dent, or their successors, as Trustees of the Jesse and Kimberly Dent Joint Trust dated January 8, 2018**  
**File No.: 02**

**THIS AGREEMENT** is made and entered into by and between **DESCHUTES COUNTY, OREGON**, a political subdivision of the State of Oregon, ("County"); and **Jesse R. Dent and Kimberly A. Dent, or their successors, as Trustees of the Jesse and Kimberly Dent Joint Trust dated January 8, 2018**, ("Grantor"), on the following terms and conditions:

**RECITALS**

1. Powell Butte Highway and Butler Market Road are part of the County road system under the jurisdiction and control of County.
2. County is constructing the Powell Butte Highway / Butler Market Road project on Powell Butte Highway and Butler Market Road. County has identified that the property described in the attached **Exhibit A** and depicted in the attached **Exhibit B** is necessary for the Project.
3. Grantor is the owner of the property described in the attached **Exhibit A** and depicted in the attached **Exhibit B**.

**NOW THEREFORE**, it is agreed by and between the Parties hereto as follows:

## TERMS OF AGREEMENT

1. Grantor shall convey to County the real property described in the attached **Exhibit A** and depicted in the attached **Exhibit B** by Dedication Deed for the purchase price of **Fifty-Eight Thousand Four Hundred and No/100 Dollars (\$58,400.00)**.
2. County agrees to provide the relocation benefits due to the Grantor in the form of the reimbursement amount of **Fifty-Two Thousand Seven Hundred Seventy One and No/100 Dollars (\$52,771.00)**. Reimbursement to be provided upon completion of the relocation of the personal property.
3. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project or three (3) calendar years following the date all required signatures are obtained, whichever is sooner.

## GRANTOR OBLIGATIONS

1. Grantor shall provide County with fully signed and executed Dedication Deed for subject property with this Agreement. Upon receipt of purchase payment, Grantor shall immediately deliver possession of property to County.
2. Grantor makes the following representations:
  - a. Grantor has no notice from any government agency of any violation of law relating to the property.
  - b. The property has never been used for the storage or disposal of hazardous waste materials.
  - c. Grantor is not a "foreign person" as that term is defined in IRS Code Section 1445.
3. If the subject property is subject to any mortgage, deed of trust, land sales contract, or other similar encumbrance, Grantor should review that document to determine whether that document contains any provision under which default may be triggered by the Grantor's signing of this Agreement or any conveyance instrument.
4. Grantor understands that all fences and other improvements that are constructed or reconstructed on real property retained by Grantor pursuant to this Agreement

will be the property of Grantor and will be maintained and repaired by the Grantor after completion of the project.

- 5. Grantor understands that any construction lying outside of the traveled portion and shoulders but within the right of way of the county road which is made for the use and benefit of the remaining property, either under the terms of this agreement or the construction plans, shall be completed in conformance with normal engineering construction practices.
- 6. Upon Grantor's execution of Dedication Deed, Grantor shall remove from the property all personal property, fixtures, and improvements retained by Grantor under the terms of this Agreement. If personal property, fixtures, or improvements are required to be moved, Grantor may be entitled to relocation benefits and assistance which will be provided outside of this Agreement in accordance with the Uniform Relocation Act requirements in conformance with the ODOT Right-of-Way Manual.
- 7. Grantor understands that this Agreement does not convey any water rights appurtenant to the subject property. If water rights are appurtenant to the subject property, Grantor shall make the necessary arrangements with the applicable irrigation district to transfer water rights to another portion of Grantors property or quit claim water rights back to the appropriate irrigation district prior to Grantor's execution of dedication deed.
- 8. Grantor acknowledges that performance of County's Obligations under this Agreement constitutes just and full compensation for the property and any damage to property retained by Grantor.

**COUNTY OBLIGATIONS**

- 1. Within thirty (30) calendar days of execution of this Agreement and receipt of fully signed and executed Dedication Deed, County will deliver payment to Grantor in the amount of **Fifty-Eight Thousand Four Hundred and No/100 Dollars (\$58,400.00).**
- 2. County will provide Grantor with the specific date to vacate the area acquired upon delivery of payment. County will not require Grantor to vacate the property being acquired earlier than 90 days following County's Offer Letter or within 30 days after delivery of payment (less deposits), whichever is later.

3. County agrees to provide relocation payment due to the Grantor upon verification of the personal property having been moved. The relocation reimbursement is for the amount of **Fifty-Two Thousand Seven Hundred Seventy One and No/100 Dollars (\$52,771.00)**.
4. County will be responsible for payment of all recording fees or other costs required for recording conveyance instruments.

### **GENERAL PROVISIONS**

1. This Agreement supersedes any prior oral and written Agreements or understandings. This Agreement may be modified only by written amendments.
2. The conditions of this Agreement are binding upon and will inure to the benefit of the successors and legal representatives of Grantor and County and will survive conveyance of the property.
3. Time is of the essence of this Agreement. References to Grantor in this Agreement include all persons who hold title to the property.

**(Signature Page to Follow)**



THE PARTIES, by execution of this Agreement, hereby acknowledge that its signing representatives have read this Agreement, understand it and agree to be bound by its terms and conditions.

GRANTOR

DATED this 4 day of December, 2023.

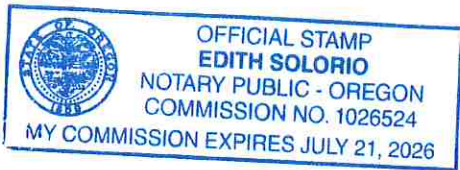
Jesse R. Dent, Trustee  
Jesse R. Dent, Trustee

Kimberly A. Dent, Trustee  
Kimberly A. Dent, Trustee

STATE OF OREGON )  
 ) SS.  
County of Deschutes )

Before me, a Notary Public, personally appeared Jesse R. Dent, Trustee, and acknowledged the foregoing instrument.

Dated this 4 day of December, 2023.

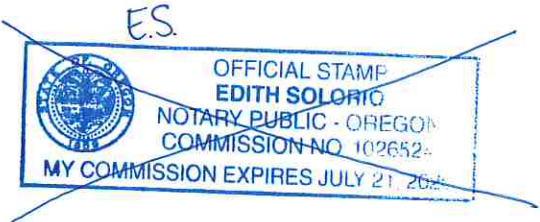


Edith Solorio  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: July 21, 2026

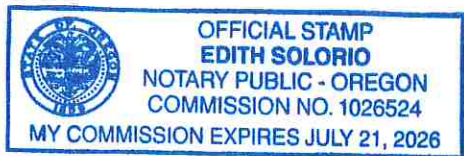
STATE OF OREGON )  
 ) SS.  
County of Deschutes )

Before me, a Notary Public, personally appeared Kimberly A. Dent, Trustee, and acknowledged the foregoing instrument.

Dated this 4 day of December, 2023.



Edith Solorio  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: July 21, 2026



**DESCHUTES COUNTY, acting by and through its Board of County Commissioners**

DATED this \_\_\_\_\_ day 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        )  
                                  ) 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 \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON

My Commission Expires: \_\_\_\_\_

# Exhibit "A"

## LEGAL DESCRIPTION

CWE-01  
April 28, 2023  
Page 1 OF 1

## RIGHT OF WAY DEDICATION

A tract of land, being a portion of that property described in Document Number 2018-01199 Deschutes County Official Records, located in the Southeast one-quarter of the Southeast one-quarter of Section 18, Township 17 South, Range 13 East, Willamette Meridian, Deschutes County, Oregon, being more particularly described as follows:

All of that property described in said Document Number 2018-01199 falling south and east of the following line:

**Beginning** at a point on the centerline of Butler Market Road No.5 ("A" - Main) alignment at station 293+68.69;  
Thence, North 00°00'35" West a distance of 31.19 feet to the north Right-of-Way of Butler Market Road No.5 ("A" - Main);  
Thence, continuing North 00°00'35" West a distance of 65.52 feet;  
Thence, North 31°12'33" East a distance of 253.27 feet to a point on the west Right-of-Way of Powell Butte Highway, said point being 40.00 feet left of Powell Butte Highway ("C") centerline station 4+44.97;  
Thence, continuing North 31°12'33" East a distance of 77.17 feet to a point on the centerline of Powell Butte Highway ("C") at station 5+10.97, said centerline also being the east line of Section 18;

Contains 18,595 square feet more or less.

Bearings and road centerline stationing are based on CS21027, Deschutes County Survey Records.

See the attached Exhibit "B", entitled "RIGHT-OF-WAY DEDICATION", which is made a part hereof.

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*[Signature]*  
OREGON  
Nov. 08, 2010  
JOHN TAYLOR HAGLUND  
55022PLS  
RENEWS: 6-30-25

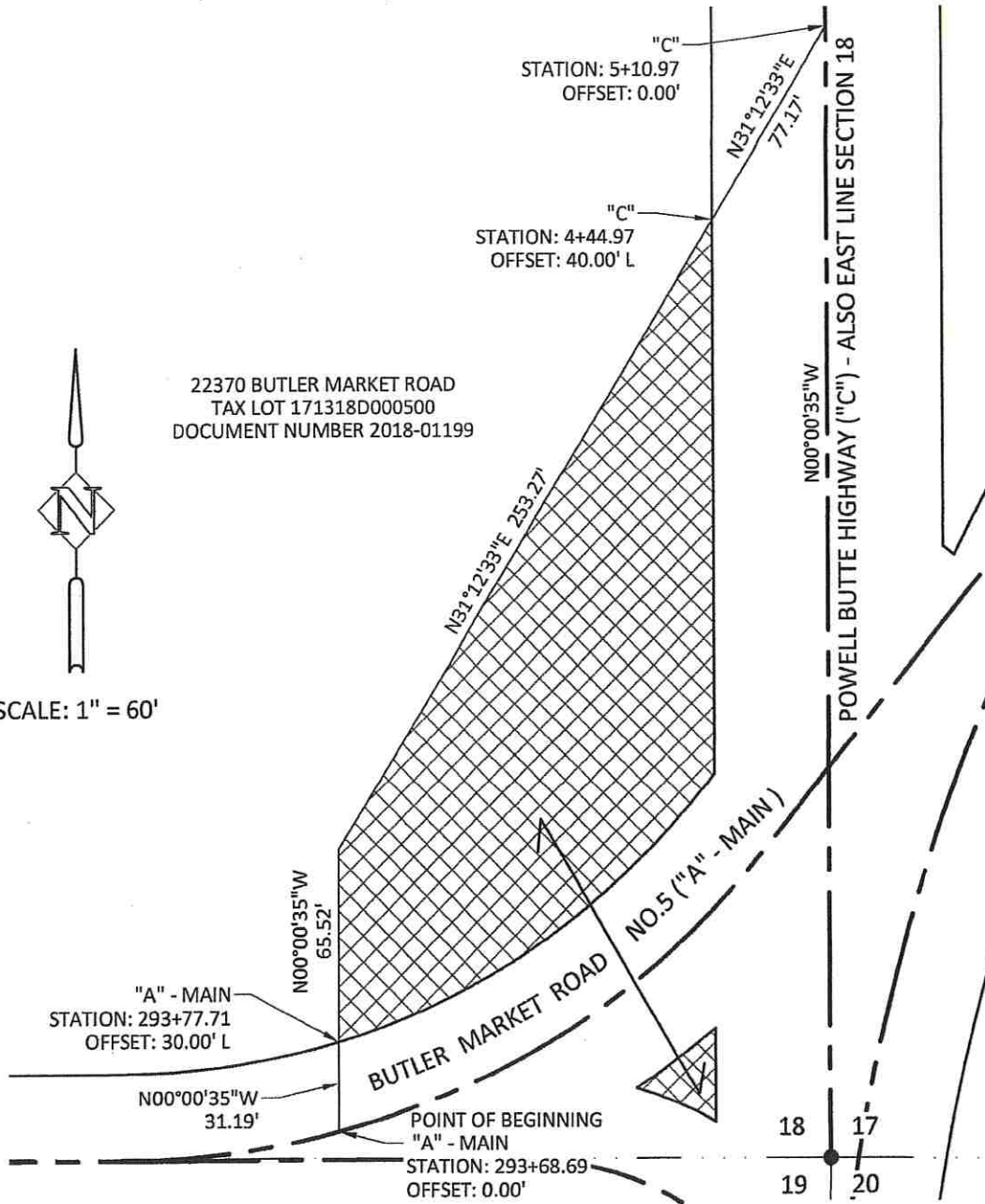
# EXHIBIT "B" RIGHT-OF-WAY DEDICATION

LOCATED IN THE SOUTHEAST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SECTION 18,  
TOWNSHIP 17 SOUTH, RANGE 13 EAST, WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON

22370 BUTLER MARKET ROAD  
TAX LOT 171318D000500  
DOCUMENT NUMBER 2018-01199





SCALE: 1" = 60'



BEARINGS AND ROAD STATIONING  
ARE PER CS21027 DESCHUTES  
COUNTY SURVEY RECORDS.

### LEGEND

-  RIGHT-OF-WAY DEDICATION  
± 18,595 SQUARE FEET (0.43 ACRES)
-  - FOUND MONUMENT PER CS21027

SEE ATTACHED LEGAL DESCRIPTION  
EXHIBIT A

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*John Taylor Haglund*

OREGON  
NOVEMBER 08, 2010  
**JOHN TAYLOR HAGLUND**  
55022

RENEWS: 6-30-2025

**HHPR** Harper  
**Houf Peterson**  
**Righellis Inc.**

ENGINEERS • PLANNERS  
LANDSCAPE ARCHITECTS • SURVEYORS  
250 NW Franklin Avenue, Suite 404, Bend, OR 97703  
phone: 541.318.1161 www.hhpr.com fax: 541.318.1141

CWE-01 CLG 4/28/2023 SHEET 1 OF 1

REVIEWED

LEGAL COUNSEL

12/13/2023 Item #1.

For Recording Stamp Only

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

**DEED OF DEDICATION**

Jesse R. Dent and Kimberly A. Dent, or their successors, as Trustees of the Jesse and Kimberly Dent Joint Trust dated January 8, 2018, Grantor, do 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 Fifty-Eight Thousand Four Hundred and No/100 Dollars (\$58,400.00) and other consideration.

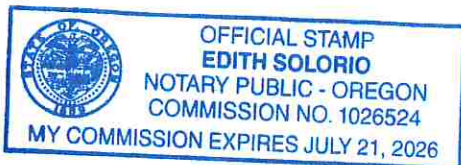
DATED this 4 day of December, 20 23

Jesse R. Dent, Trustee      Kimberly A. Dent, Trustee

STATE OF OREGON      )  
  ) SS.  
County of Deschutes    )

Before me, a Notary Public, personally appeared Jesse R. Dent, Trustee, and acknowledged the foregoing instrument.

Dated this 4 day of December, 20 23.



Edith Solorio  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_

STATE OF OREGON )  
 ) SS.  
County of Deschutes )

Before me, a Notary Public, personally appeared Kimberly A. Dent, Trustee, and acknowledged the foregoing instrument.

Dated this 4 day of December, 2023

*Edith Solorio*

NOTARY PUBLIC FOR OREGON

My Commission Expires: July 21, 2026



ACCEPTANCE

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

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

\_\_\_\_\_  
PATTI ADAIR, CHAIR

\_\_\_\_\_  
ANTHONY DEBONE, VICE CHAIR

ATTEST:

\_\_\_\_\_  
PHIL CHANG, COMMISSIONER

\_\_\_\_\_  
Recording Secretary

STATE OF OREGON     )  
                                  ) SS.  
County of Deschutes    )

Before me, a Notary Public, personally appeared Patti Adair, Anthony DeBone, and Phil Chang, 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 FOR OREGON

My Commission Expires: \_\_\_\_\_

# Exhibit "A"

## LEGAL DESCRIPTION

CWE-01  
April 28, 2023  
Page 1 OF 1

## RIGHT OF WAY DEDICATION

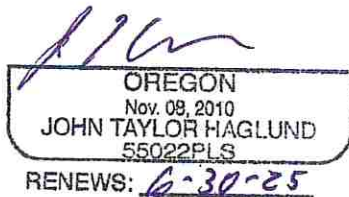
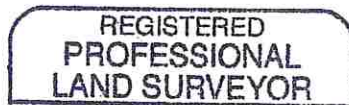
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All of that property described in said Document Number 2018-01199 falling south and east of the following line:  
**Beginning** at a point on the centerline of Butler Market Road No.5 ("A" - Main) alignment at station 293+68.69;  
Thence, North 00°00'35" West a distance of 31.19 feet to the north Right-of-Way of Butler Market Road No.5 ("A" - Main);  
Thence, continuing North 00°00'35" West a distance of 65.52 feet;  
Thence, North 31°12'33" East a distance of 253.27 feet to a point on the west Right-of-Way of Powell Butte Highway, said point being 40.00 feet left of Powell Butte Highway ("C") centerline station 4+44.97;  
Thence, continuing North 31°12'33" East a distance of 77.17 feet to a point on the centerline of Powell Butte Highway ("C") at station 5+10.97, said centerline also being the east line of Section 18;

Contains 18,595 square feet more or less.

Bearings and road centerline stationing are based on CS21027, Deschutes County Survey Records.

See the attached Exhibit "B", entitled "RIGHT-OF-WAY DEDICATION", which is made a part hereof.





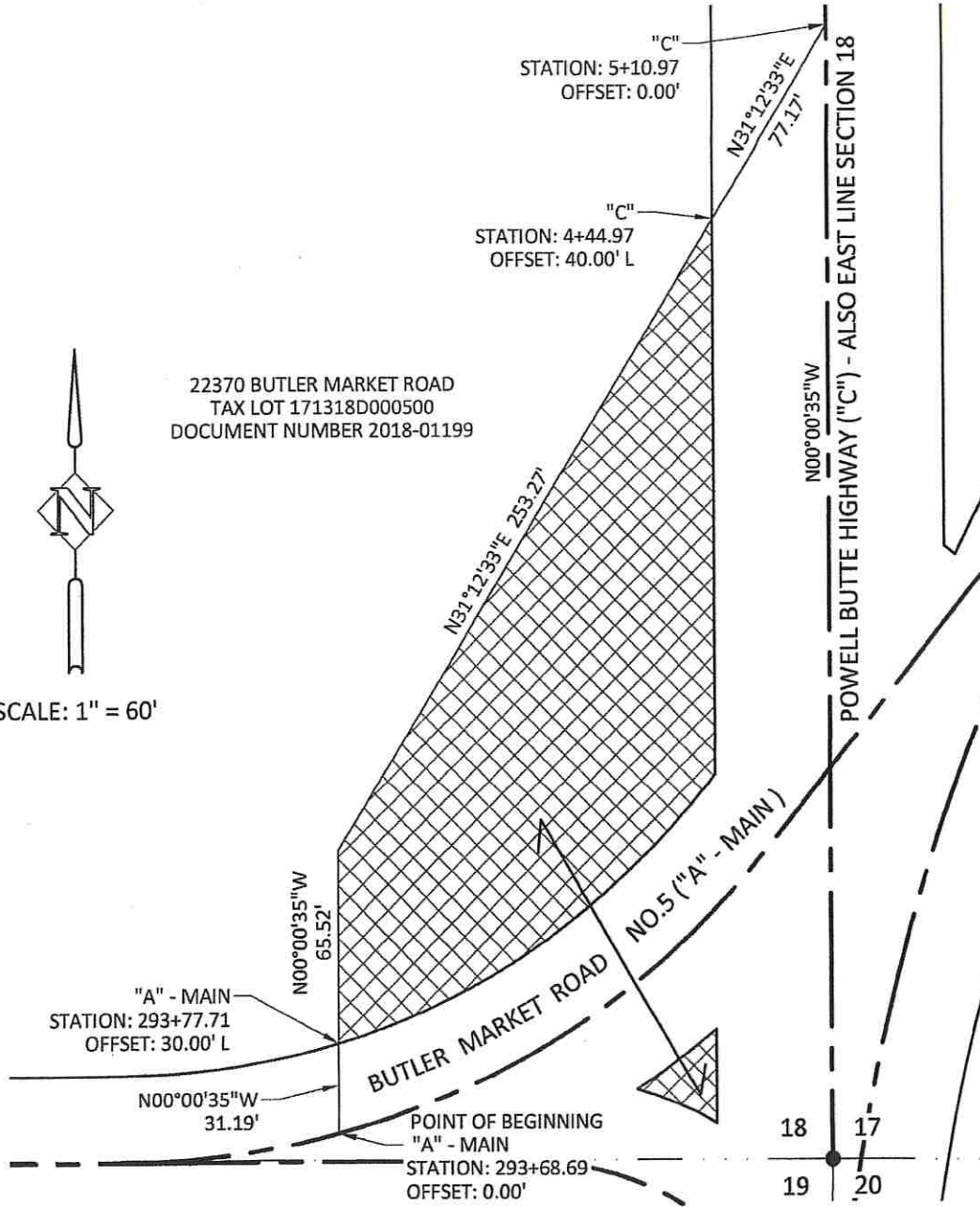
# EXHIBIT "B" RIGHT-OF-WAY DEDICATION

LOCATED IN THE SOUTHEAST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SECTION 18,  
TOWNSHIP 17 SOUTH, RANGE 13 EAST, WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON

22370 BUTLER MARKET ROAD  
TAX LOT 171318D000500  
DOCUMENT NUMBER 2018-01199





SCALE: 1" = 60'



BEARINGS AND ROAD STATIONING  
ARE PER CS21027 DESCHUTES  
COUNTY SURVEY RECORDS.

### LEGEND

-  RIGHT-OF-WAY DEDICATION  
± 18,595 SQUARE FEET (0.43 ACRES)
-  - FOUND MONUMENT PER CS21027

SEE ATTACHED LEGAL DESCRIPTION  
EXHIBIT A

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LAND SURVEYOR

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CWE-01 CLG 4/28/2023 SHEET 1 OF 1



## BOARD OF COMMISSIONERS

# AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** December 13, 2023

**SUBJECT:** Approval of a grant agreement with Free on the Outside for the purchase and operation of new shelter and housing units for male justice-involved individuals on supervision with Deschutes County Parole and Probation

**RECOMMENDED MOTION:**

Move approval of Board signature on Document No. 2023-1031, a grant agreement with Free on the Outside for the purchase and operation of new shelter and housing units for male justice-involved individuals on supervision with Deschutes County Parole and Probation.

**BACKGROUND AND POLICY IMPLICATIONS:**

On May 31, 2023 Deschutes County Community Justice through its Adult Parole and Probation division was awarded a grant for \$1,078,518 out of funds provided as part of the Governor's Emergency Order 23-02. This grant provided funds to purchase a residence in Deschutes County to provide shelter and housing for clients of Adult P&P. The Board accepted the funding in July 2023 through a subrecipient agreement (2023-690).

The Adult Parole and Probation division (Adult P&P) received approval from the Board on August 21, 2023 to issue RFP 2023-751 to select a provider which would own the residence and use it to operate a program that creates short-term shelter and longer-term housing options. Originally, the plan anticipated that up to 24 supervised individuals annually would be able to participate in the housing program, but the selected property can likely accommodate up to 40-50 participants each year.

Adult P&P conducted an RFP process with a multi-disciplinary review panel which recommended that RFP 2023-751 be awarded to Free On The Outside, a 501(c)(3) non-profit organization which has over 15 years of experience operating transitional housing in Oregon and manages over 200 beds. They utilize a live-in onsite manager and will work closely with Adult P&P to create a program where clients are good neighbors and working towards securing long-term housing while meeting the conditions of their supervision. The Board issued a Notice of Intent to Award on October 25, 2023 and the seven-day protest period passed without protest.

Free On The Outside and Deschutes County Community Justice have reviewed available properties in Deschutes County that fall within the funding constraints of the grant and public safety considerations and made the recommendation to move forward with purchasing a triplex located at 640-652 SE Wilson Ave., Bend, Oregon.

An offer has been accepted by the seller, and on December 6, 2023, the Board approved the purchase of this property. Closing will occur around December 15, 2023.

After the County purchases the property using the awarded grant funds, a quit claim deed with a reversionary interest will be issued to Free On The Outside who will then be responsible for 100% of ownership costs of the property and operation costs of the program. The grant requires that a 10-year restrictive covenant be put onto the property restricting its use to shelter and transitional housing. At the end of the 10-year period (the expiration date will be December 31, 2034) the property will belong to Free On The Outside without any restrictions.

The grant agreement outlines the initial purchase of the property along with general operations of the program. A separate operating contract/agreement will specify the referral process and program operations.

**BUDGET IMPACTS:**

Total grant funds awarded for the project: \$1,078,518

**ATTENDANCE:**

Deevy Holcomb, Community Justice Director

Trevor Stephens, Community Justice Business Manager



REVIEWED  
LEGAL COUNSEL

**GRANT AGREEMENT  
BETWEEN DESCHUTES COUNTY and  
Free On The Outside  
Deschutes County Document Number 2023-1031**

Program Name: Deschutes County Community Justice: Adult Parole and Probation Division  
Grantee: Free On The Outside  
Address: 592 Molalla Ave,  
Oregon City, Oregon 97045  
Phone Number: 503-383-1834  
Contact Person: Mike Cross, Executive Director  
Federal Tax Id: 26-3600065  
Amount of Award: Not to exceed \$1,078,518.00, which includes the value of the real property purchased by the County and transferred to the Grantee  
Date of Award: November 1, 2023

**1. Background**

On May 31<sup>st</sup>, 2023 Deschutes County Community Justice through its Adult Parole and Probation division (Adult P&P) was awarded a grant for \$1,078,518 out of funds provided as part of the Governor's Emergency Order 23-02. This grant provides funds to purchase through a private provider a house in Deschutes County to provide shelter and housing for clients of Adult P&P.

Adult P&P received approval from the Board on August 21, 2023 to issue RFP 2023-751 to select a provider to utilize State funding for the creation of short-term shelter and longer-term housing options for up to 24 supervised individuals annually. The Board accepted the funding in July 2023 through a subrecipient agreement (2023-690). Adult P&P conducted the RFP process with a multi-disciplinary review panel and they recommended to the Board of County Commissioners that RFP 2023-751 be awarded to Free On The Outside, a 501(c)(3) non-profit organization which operates transitional housing in Oregon.

The Board of County Commissioners accepted the recommendation and authorized the issuance of an Intent to Award. The protest period for the Intent to Award expired on November 1, 2023.

Free On The Outside and Adult P&P staff have reviewed several locations and have selected a triplex located off Wilson Ave in Bend, Oregon. The addresses are 640, 648, and 652 SE Wilson Ave, Bend, Oregon 97702. The County will purchase the property and will subsequently execute a quit claim deed for the property to Free On The Outside with a reversionary interest for the 10-year grant period (Exhibit D). The reversionary interest will expire at the end of the 10-year grant period and Free On The Outside will retain ownership of the property not subject to the reversionary interest. If for any reason before the end of this grant agreement, Free On The Outside is unable to continue to provide the agreed upon services the property will revert back to Deschutes County. If County is unable to continue with the program their reversionary interest will transfer to Central Oregon Intergovernmental Council and they will work with Free On The Outside to work out operating agreements and procedures if Free On The Outside wants to continue providing services. County will facilitate and support this process to help with transition.

**2. Grant Agreement Purpose**

The purpose of this Grant Agreement is to: establish a sub-grantee relationship with Free On The Outside who will utilized the award funds to operate a shelter and housing program as outlined in RFP 2023-751 (See Exhibit C for details). Free On The Outside's core mission is to restore hope and rebuild lives through their managed housing program. They provide housing to more than 200 individuals and operate more than 23 homes in Oregon.

See Exhibit A for details.

**3. Grant Disbursement**

The maximum not-to-exceed amount payable to Grantee under this Grant Agreement, which includes any allowable expenses and the in-kind value of the purchased property by the County, is \$1,078,518. Exhibit A and Deschutes County Subrecipient Agreement 2023-690 (See Exhibit B) outline the requirements under the grant for payment of funds and allowable expenses and how payment will work. Funds shall be paid to Grantee upon approval of Grantee's invoice and must be approved by County before purchase or expenditure is incurred. County will not disburse funds to Grantee in excess of the not-to-exceed amount less the in-kind value of the property and will not disburse funds until this Grant Agreement has been signed by all parties and all conditions precedent, if any, have been satisfied to the satisfaction of Deschutes County. Some of these funds will likely be reserved for County costs associated with administration and staff support of the program, the details will depend on actual program expenditures and funds remaining. All Invoices shall be submitted to: [housing@deschutes.org](mailto:housing@deschutes.org). This grant generally operates as a reimbursement style grant and approved expenditures will be reimbursed. If there is a purchase that Grantee needs to make, but is unable to financially cover and seek reimbursement they will outline the details of the purchase in writing to the County and work with County staff to facilitate the purchase.

#### 4. Reporting Requirements

Grantee shall submit monthly reports to the County. Reports shall reflect information as necessary to meet the report requirement as outlined in Exhibit B and any other reporting requirements requested by the Governor's Office and/or Central Oregon Intergovernmental Council. Adult P&P will complete the HMIS reporting or ensure that Grantee is trained and provided access to this system in order to complete the HMIS reporting directly. Monthly expenditure reports for any grant funds utilized will also be required as part of the reporting process including back up documentation.

#### 5. Effective Date and Termination Date.

The effective date of this Grant Agreement ("Agreement") shall be deemed November 1, 2023. Unless extended or terminated earlier in accordance with its terms, this Agreement shall terminate on December 31, 2034. Grant Agreement termination shall not extinguish or prejudice County's right to enforce this Grant Agreement with respect to any default by Grantee that has not been cured. This Grant Agreement may be renewed or extended only upon written agreement of the Parties. Any termination of this Agreement shall be in accordance as outlined below in Section 7, Standard Terms and Conditions.

#### 6. Real Property Requirements

The property will be restricted to use by the Grantee as outlined in Exhibit A, Section 1 until December 31, 2034 ("Restrictive Period"). If Grantee changes or stops utilizing the property for the agreed-upon purpose as outlined in Exhibit A, Section 1, ownership of the property will immediately revert to the County. During the restrictive period, the Grantee shall not transfer ownership of the real property without written approval from Deschutes County.

#### 7. Insurance Requirements

**Workers Compensation Insurance:** Workers Compensation Insurance in compliance with ORS 656.017, requiring Contractor and all subcontractors to provide workers' compensation coverage for all subject workers, or provide certification of exempt status. Worker's Compensation Insurance to cover claims made under Worker's Compensation, disability benefit or any other employee benefit laws, including statutory limits in any state of operation with Coverage B Employer's Liability coverage all at the statutory limits. In the absence of statutory limits the limits of said Employer's Liability coverage shall be not less than \$1,000,000 each accident, disease and each employee. This insurance must be endorsed with a waiver of subrogation endorsement, waiving the insured's right of subrogation against County.

**Commercial General Liability Insurance:** Commercial General Liability insurance includes coverage for personal injury, bodily injury, advertising injury, property damage, premises, operations, products, completed operations and contractual liability. The insurance coverages provided for herein must be endorsed as primary and non-contributory to any insurance or self-insurance of County, its officers, employees or agents. Each such policy obtained by Contractor shall provide that the insurer shall defend any suit against the named insured and the additional insureds, their officers, agents, or employees, even if such suit is frivolous or fraudulent.

The policy shall be endorsed to name Deschutes County, its officers, agents, employees and volunteers as an additional insured. The additional insured endorsement shall not include declarations that reduce any per occurrence or aggregate insurance limit. The Contractor shall provide additional coverage based on any outstanding claim(s) made against policy limits to ensure that minimum insurance limits required by the County are maintained. Construction contracts may include aggregate limits that apply on a "per location" or "per project" basis. The additional insurance protection shall extend equal protection to County as to Contractor or subcontractors and shall not be limited to vicarious liability only or any similar limitation. To the extent any aspect of this Paragraph shall be deemed

unenforceable, then the additional insurance protection to County shall be narrowed to the maximum amount of protection allowed by law.

The minimums for Commercial General Liability shall be \$2,000,000 per single claimant and in-cent and \$4,000,000 for all claimants arising from a single incident.

Professional Liability Insurance: Professional Liability insurance covers damages caused by error, omission, or negligent acts related to professional services provided under this Contract. The policy must provide extended reporting period coverage, sometimes referred to as "tail coverage" for claims made within two years after the contract work is completed or the facts underlying County's claim could reasonably have been discovered, whichever is later.

The minimums for Professional Liability Insurance shall be \$1,000,000 per occurrence and \$2,000,000 annual aggregate limit.

Automobile Liability Insurance: Automobile Liability insurance includes coverage for bodily injury and property damage resulting from operation of a motor vehicle. Commercial Automobile Liability Insurance shall provide coverage for any motor vehicle (symbol 1 on some insurance certificates) driven by or on behalf of Contractor during the course of providing services under this contract. Commercial Automobile Liability is required for contractors that own business vehicles registered to the business. Examples include: plumbers, electricians or construction contractors. An Example of an acceptable personal automobile policy is a contractor who is a sole proprietor that does not own vehicles registered to the business.

The minimums for Automobile Liability Insurance shall be \$2,000,000 per occurrence.

Homeowners Insurance: Grantee must carry at least enough homeowner insurance to cover 100% replacement cost of the property and structure.

- 6. **Exhibits.** This Grant Agreement contains the following Exhibits.
  - Exhibit A – Funding and Budget
  - Exhibit B – Deschutes County Subrecipient Agreement 2023-690
  - Exhibit C – RFP 2023-751
  - Exhibit D – Sample Quit Claim Deed with Reversionary Clause

**I have read this Agreement including the attached Exhibits. I understand this Agreement and agree to be bound by its terms.**

Mike Cross  
 Signature Mike Cross  
 Name (please print)

Executive Director  
 Title 12-6-2023  
 Date

**DESCHUTES COUNTY SIGNATURE**

Contracts with a maximum consideration of not greater than \$25,000 are not valid and not binding on the County until signed by the appropriate Deschutes County Department Head. Additionally, Contracts with a maximum consideration greater than \$25,000 but less than \$150,000 are not valid and not binding on the County until signed by the County Administrator or the Board of County Commissioners.

Dated this \_\_\_\_\_ of \_\_\_\_\_, 20\_\_

Dated this \_\_\_\_\_ of \_\_\_\_\_, 20\_\_

DESCHUTES COUNTY DIRECTOR OF \_\_\_\_\_

ANTHONY DeBONE, Chair, County Commissioner

PATTI ADAIR, Vice Chair, County Commissioner

PHIL CHANG, County Commissioner

**STANDARD TERMS AND CONDITIONS**

**1. Governing Law, Consent to Jurisdiction.**

This Grant 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.

A. Any claim, action, suit or proceeding (collectively, "Claim") between County and Grantee that arises from or relates to this Grant 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 federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

B. GRANTEE, BY EXECUTION OF THIS GRANT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. The parties agree that the UN Convention on International Sales of Goods shall not apply.

**2. Compliance with Law.**

Grantee shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Grantee, the shelter/housing program, and this Grant Agreement. This Section shall survive expiration or termination of this Grant Agreement.

**3. Independent Parties; Conflict of Interest.**

A. Grantee is not an officer, employee, or agent of Deschutes County as those terms are used in ORS 30.265 or otherwise.

B. If Grantee is currently performing work for Deschutes County or the federal government, Grantee by signature to this Grant Agreement, represents and warrants that Grantee's participation in this Grant Agreement creates no potential or actual conflict of interest as defined by ORS Chapter 244 and that no statutes, rules or regulations of the State of Oregon or federal agency for which Grantee currently performs work would prohibit Grantee's participation under this Grant Agreement.

**4. Grant Funds; Payments.**

Grantee understands and agrees that County's participation in this Grant Agreement is contingent on County receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow County, in the exercise of its reasonable administrative discretion, to participate in this Grant Agreement.

**5. Indemnity.**

GRANTEE SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY DESCHUTES COUNTY AND ITS OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER, INCLUDING ATTORNEY FEES, RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ACTIVITIES OF GRANTEE OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS GRANT AGREEMENT. THIS SECTION SHALL SURVIVE EXPIRATION OR TERMINATION OF THIS GRANT AGREEMENT.

**6. Default; Remedies.** In the event of breach of this Grant Agreement the Parties shall have the following remedies:

A. Termination under this Grant Agreement shall be without prejudice to any obligations or liabilities of either Party already reasonably incurred prior to such termination.

- 1) Grantee may not incur obligations or liabilities after Grantee receives written notice of termination.
- 2) Additionally, neither Party shall be liable for any indirect, incidental, consequential or special damages under this Grant Agreement or for any damages of any sort arising solely from the termination of this Grant Agreement in accordance with its terms.

B. If terminated by the County due to a breach by the Grantee, County may pursue any remedies available at law or in equity. Additionally, the property shall revert back to the ownership by the County.

C. If amounts previously paid to Grantee exceed the amount due to Grantee under this Grant Agreement, Grantee shall repay any excess to County upon demand.

- D. Neither County nor Grantee shall be held responsible for delay or default caused by fire, civil unrest, government declared public health emergency, labor unrest, riot, acts of God, or war where such cause was beyond reasonable control of County or Grantee, respectively.
- E. The passage of this Grant Agreement expiration date shall not extinguish or prejudice the County's or Grantee's right to enforce this Grant Agreement with respect to any default or defect in performance that has not been cured.
- F. Differences between Grantee and County will be resolved when possible at appropriate management levels, followed by consultation between governing or operating bodies, if necessary.
7. **Termination.** All or part of this Grant Agreement may be terminated by mutual consent of both Parties or by either Party at any time for convenience upon one hundred eighty (180) days' notice in writing to the other Party. If Grantee terminates the Agreement for any reason, the ownership of the property will immediately revert to the County. If County Terminates the Agreement, County will transfer its Revisionary Interest in the Property to Central Oregon Intergovernmental Council and help facilitate grantee working with them to continue program operations. Revisionary interest would remain with Central Oregon Intergovernmental Council until 12/31/2034.

The County may also terminate all or part of this Agreement as specified below:

- A. This Grant Agreement shall be terminated immediately and no obligations, financial or otherwise, shall be imposed upon County if funding to the County from the Central Oregon Intergovernmental Council or the State of Oregon is not obtained or is not continued at levels deemed sufficient by County to allow for the underlying grant award. The County will give notice whenever possible.
- B. With one hundred eighty (180) days' written notice, if Federal or State regulations are modified or changed in such a way that the subject matter of the underlying grant award is no longer lawful or deemed an allowable use under this Grant Agreement.
- C. Termination shall be without prejudice to any obligations or liabilities of either Party accrued prior to such termination.
- D. Grantee shall make no expenditures, enter into no contracts, nor encumber funds in its possession or to be transferred by County, after notice of termination and later termination as set out above, without prior written approval from County.
8. **Payment on Early Termination.** Upon termination pursuant to Paragraph 7, payment shall be made as follows:
- A. If this Grant Agreement is terminated because funding from Central Oregon Intergovernmental Council or the State of Oregon sources is not obtained or is not continued at levels sufficient to allow for payment of grant funds, the County shall pay Grantee for deemed allowable expenditures undertaken prior to the termination date if such expenditure was performed in accordance with the Grant Agreement. Provided however, County shall not be obligated to allow grant funds to be payable to Grantee for any obligations or liabilities incurred by Grantee after Grantee receives written notice of termination.
- B. If this Grant Agreement is terminated by the Grantee due to a breach by the County, then the County shall pay the Grantee for expenditures incurred prior to the termination date if such work was performed in accordance with the Grant Agreement.
9. **Repairs, Renovations, Modifications, Loans and/or Liens.** Grantee must receive written permission from County before making any repairs, renovations, and/or modification to the property that would change the useful life, function or purpose of the property. Grantee must receive written permission from the County before using the property as collateral for any loan or before completing a transaction that can/will place a lien on the property.
10. **Records Maintenance, Access.** Grantee shall maintain all financial records relating to this Grant Agreement in accordance with generally accepted accounting principles. Grantee shall retain and keep accessible all Records for the longest of:
- A. Ten (10) years following final payment and termination of this Grant Agreement; or
- B. Until the conclusion of any audit, controversy or litigation arising out of or related to this Grant Agreement.



**11. Assignment of Agreement, Successors in Interest.** Grantee shall not assign or transfer its interest in this Grant Agreement without prior written consent of County. Any such assignment or transfer, if approved in the sole discretion of County, is subject to such conditions and provisions required by County. No approval by County of any assignment or transfer of interest shall be deemed to create any obligation of County apart from those set forth in this Grant Agreement. The provisions of this Grant Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, and permitted assigns.

**12. Resolution of Disputes.** The parties shall attempt in good faith to resolve any dispute arising out of this Grant Agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation. This Section shall survive expiration or termination of this Grant Agreement.

**13. No Third Party Beneficiaries.**

- A. County and Grantee are the only Parties to this Grant Agreement and are the only Parties entitled to enforce its terms.
- B. Nothing in this Grant Agreement gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Grant Agreement and expressly described as intended beneficiaries of this Grant Agreement.

**14. Severability.**

The parties agree that if any term or provision of this Grant Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Grant Agreement did not contain the particular term or provision held to be invalid. This Section shall survive expiration or termination of this Grant Agreement.

**15. Notice.**

Except as otherwise expressly provided in this Grant Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, e-mail, or mailing the same, postage prepaid to Grantee or County at the address or number set forth in this Grant Agreement, or to such other addresses as either party may indicate pursuant to this Section. Any communication or notice so addressed and mailed by regular mail shall be deemed received and effective five days after the date of mailing. Any communication or notice delivered by e-mail shall be deemed received and effective five (5) days after the date of e-mailing. Any communication or notice given by personal delivery shall be deemed effective when actually delivered to the addressee.

<u>To Grantee:</u>	<u>To County:</u>
Mike Cross	Deevy Holcomb, Director
Free On The Outside	Deschutes County Community Justice
592 Molalla Ave	63360 NW Britta Street, Building #2
Oregon City, Oregon 97045	Bend, Oregon 97703
Phone: 503-383-1834	Email: Deevy.Holcomb@deschutes.org
Email: mikec@freeontheoutside.org	CC Email: Trevor.Stephens@deschutes.org

This Section shall survive expiration or termination of this Grant Agreement.

**16. Headings.**

The headings and captions to sections of this Grant Agreement have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret this Grant Agreement.

**17. Amendments; Waiver; Consent.**

County may amend this Grant Agreement to the extent provided herein, the solicitation document, if any from which this Grant Agreement arose, and to the extent permitted by applicable statutes and administrative rules. No amendment, waiver, or other consent under this Grant Agreement shall bind either party unless it is in writing and signed by both parties. Such amendment, waiver, or consent shall be effective only in the specific instance and for the specific purpose given. The failure of either party to enforce any provision of this Grant Agreement shall not constitute a waiver by that party of that or any other provision. This Section shall survive the expiration or termination of this Grant Agreement.

**18. Merger Clause.**

This Grant Agreement constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein, regarding this Grant Agreement.

DESCHUTES COUNTY

GRANT AGREEMENT 2023-1031

EXHIBIT A: Operations, Funding, and Maximum Award

1. **Operations.** Grantee agrees that Free On The Outside will operate their program to meet the specification as outlined in Deschutes County Subrecipient Agreement 2023-690 (Exhibit B) and RFP 2023-751 (Exhibit C). This includes but is not limited to
  - A. Assisting in the Deschutes County's purchase of real property and conducting necessary inspections and due diligence in order to ensure home is able to support the operations as outlined below. County will purchase the agreed-upon property and then quit claim the property with a 10-year reversionary clause requiring the reversion of the property to County's ownership if the Grantee fails to operate the property for its agreed-upon purpose as outlined in Exhibit A, Section 1.
  - B. Operating a house in Deschutes County for male justice involved individuals who are on supervision with Deschutes County Parole and Probation.
  - C. Providing onsite live in manager for the house.
  - D. Ensuring at least 40 hours of service will be provided by manager or other staff and must include some hours on Saturday and Sunday.
  - E. Providing at least 8 shelter style beds to be used at all times by Parole and Probation clients. These beds must meet the requirements of low barrier as outlined in Exhibit B and C. Clients will be expected to obey the conditions of their supervision.
  - F. Providing at least 2 housing style beds to be used at all times by Parole and Probation clients. These beds must meet the requirement of a housing style bed as outlined in Exhibit B and C.
  - G. Providing housing stability services that include housing readiness, short term goal setting around house, long term housing plans, and additional support to help clients find long term housing.
  - H. Maintaining house in Deschutes County and cover all insurance, taxes, utilities, salaries, and maintenance/repair costs associated with operation and ownership of the home.
  - I. Documenting expenditures, income received related to Deschutes County property, subsidies, client information, and any program elements requested by Deschutes County. Grantee will provide all of this information monthly to Deschutes County.
  
2. **Funding.** County shall provide funding via grant from Central Oregon Intergovernmental Council (COIC) to Grantee as follows:
  - A. County will purchase a property up to a purchase price of \$850,000.00 and then quit claim the property to Grantee with a reversionary clause.
  - B. Purchase of furniture, appliances and fixtures: Up to \$30,000.00
  - C. Purchase of a security system: Up to \$20,000.00
  - D. Initial operating salaries: Up to \$90,000.00
  - E. Initial operating expenses for first year of operation (includes insurance, utilities, supplies, maintenance, and repairs): Up to \$20,000.00
  - F. Administrative expenses and other expenses approved by County: Up to \$68,518.00

- G. Changes to the figures as outlined in 2 A through F can be mutually revised with approval from Central Oregon Intergovernmental Council and written approval from County.
- H. For any purchase over \$1000.00 Grantee needs written approval from County.
- I. Grant funds will be used to cover the costs of acquisition and initial operations up to June 30<sup>th</sup>, 2024. At that time the County and Free On The Outside will work together to apply for additional funding opportunities and or renewal of these grant funds. Before June 30<sup>th</sup>, 2024 County will work with Grantee to establish a service contract that will include reimbursement for services provided as agreed to by County. This will operate separately from this agreement.
- J. Grantee understands that some of these funds may be utilized to reimburse county for administrative support and staff time associated with program operations and grant process management. The total amount of funds will be dependent on final costs related to operations and acquisition.

### 3. The Maximum Funding Award.

- A. The maximum funding award under this Grant Agreement is **\$1,078,518**, which includes the County's purchase of real property up to \$850,000.
- B. Recovery of Overpayment. In the event funds paid to Grantee are not expended by the termination date of this Agreement, Grantee agrees to repay County within thirty (30) days of Agreement termination date. Amounts of funds to be repaid shall be agreed upon between County and Grantee. If Parties do not agree to the amount of repayment, the matter shall be decided by County and Grantee's Director/Executive Director and/or Legal Counsel, as applicable.
- C. Grantee shall not submit request for funds / invoices for, and County shall not pay for any sum in excess of the maximum funding award amount set forth above.
  - 1) County may have need to amend maximum funding award through amendment of this Grant Agreement. If this maximum funding award amount is decreased or increased by amendment of this Grant Agreement, the amendment shall be fully effective before Grantee undertakes operations or proceeds with deemed allowable uses subject to the amendment.
  - 2) Notwithstanding any other funding provision of this Grant Agreement, should Grantee fail to submit required reports, itemized receipts or documentation as outlined in this Grant Agreement, or fail to perform or document the performance of awarded project / uses; County shall immediately withhold funding under this Grant Agreement or reject part or the Grantee's entire request for funding.
  - 3) As applicable, in the event that a statutorily required license or insurance is suspended or not extended, County's obligation to provide funding for uses / operations rendered without the necessary license or insurance will cease as of the date of expiration or suspension of license and/or insurance.

DESCHUTES COUNTY  
GRANT AGREEMENT 2023-1031

EXHIBIT B: Deschutes County Subrecipient Agreement 2023-690

Deschutes County Document #2023-690

Agreement EO 23-02 011



SUBRECIPIENT AGREEMENT

This Subrecipient Agreement (this "Agreement") by and between Central Oregon Intergovernmental Council, an Oregon entity organized under ORS Chapter 190 ("COIC") and Deschutes County Adult Parole and Probation, a political subdivision of the State of Oregon, is entered into this 27<sup>th</sup> of June 2023 and made effective upon full execution.

BACKGROUND

The Parties acknowledge the following background related to this agreement:

On January 10, 2023, Governor Tina Kotek issued Executive Order 23-02 (the "EO"), which declared a state of emergency due to homelessness. The EO is necessary to rapidly expanding the State's low-barrier shelter capacity, to rehouse people experiencing unsheltered homelessness, and to prevent homelessness to the greatest extent possible. All executive state agencies are authorized, upon further direction from Governor Kotek and the Governor's office, to take any actions authorized under the provisions set forth in ORS 401.168 through ORS 401.192. The EO took immediate effect and remains in effect until January 10, 2024, unless extended or terminated earlier by the Governor.

During the 2023 Session of the Oregon Legislature, the Housing and Community Services Department ("OHCS") was awarded funding from House Bill 5019, subject to passage and approval. OHCS was appropriated funding for both the Biennium ending on June 30, 2023, and the Biennium beginning on July 1, 2023. OHCS will grant funding from this bill through a variety of agreements to further the objectives of Executive Order 23-02, including by granting funds under this Agreement.

Further details on the state of emergency in Oregon can be found at:

- <https://www.oregon.gov/oem/Pages/housing-emergency-executive-orders.aspx>
- <https://www.coic.org/co2302/>

AGREEMENT

By execution of this Agreement, Subrecipient agrees to perform the Services (as defined in Schedule 1.1, aka Scope of Work) in accordance with the terms and conditions contained in this Agreement.

WHEREAS COIC has applied for and received funds from the State of Oregon, acting by and through its Housing and Community Services Department, under EO 23-02; and

WHEREAS COIC wishes to engage the Subrecipient to assist in utilizing such funds.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Services

- 1.1 Subrecipient shall provide all services and materials as specified in Schedule 1.1 (and any other necessary or appropriate tasks and/or services customarily provided by subrecipient in connection with its performance of those tasks and/or services as described in Schedule 1.1) (collectively, the "services").

## Agreement EO 23-02 011

- 1.2 Related to its obligations stated throughout this Section 1, Subrecipient agrees to be bound to timely achieve the goals assigned to it that are stated in the agreement between the State of Oregon and COIC, attached hereto as Exhibit C.
- 1.3 **Standards.** Subrecipient will (i) consult with and advise COIC on all matters concerning the Services reasonably requested by COIC, (ii) devote such time and attention to the performance appropriate for the expeditious and prudent performance of the Services in accordance with Section 1.1, (iii) perform the Services to the best of Subrecipients ability, and (iv) according to industry standards. (*See also* Section 5.1, below)
- 1.4 **Schedule of Services.** Subrecipient will perform the Services in accordance with the schedule described in Section 1.2. Subrecipient's timely performance of each and every subrecipient obligation under this Agreement, including, without limitation, subrecipient performance of the Services, is of the essence.
- 1.5 **Quantity of Work throughout Contract.** The goals, objectives, services, and quantities specified within this contract are requirements for this funding. COIC retains the right to revise the goals, objective, services, and quantities, and thereby the contract amount as goals and/or objectives change subject to an equitable adjustment in the scope of work, fees, and schedule for completion. COIC shall give Subrecipient 30-day notice of any such change.
- 1.6 **Effective Date and Duration.** The effective date of this agreement is May 31, 2023 ("Effective Date") and shall remain in effect until and including January 10, 2024 ("Expiration Date") unless terminated or extended as provided in this Agreement. Expenses incurred between January 10, 2023, and the Expiration Date are allowable expenses for grant funds reimbursement, so long as the expenses are incurred pursuant to the performance of the Scope of Work set forth in Schedule 1.1.

## 2. COMPENSATION

- 2.1 COIC will pass through to the Subrecipient no more than \$1,078,518 in EO funds for eligible incurred costs and expenses as applicable to the Scope of Work set forth in Schedule 1.1. At its sole discretion and for good cause, COIC may disburse to Subrecipient up to 100% of the total contract price in advance of, or before the completion of performance by Subrecipient of its obligations herein.
- 2.2 **No Benefits.** COIC will not provide any benefits to Subrecipient, and Subrecipient will be solely responsible for obtaining Subrecipient's own benefits, including, without limitation, insurance, medical reimbursement, and retirement plans.
- 2.3 **No Reimbursement of Expenses.** Expenses incurred by Subrecipient and not included in Section 2.1 in connection with the performance of the Services will not be reimbursed by COIC.
- 2.4 **Availability of Funds.** COIC's obligation to pay any amounts and otherwise perform its duties under this Agreement is conditioned upon COIC receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow COIC, in the exercise of its reasonable administrative discretion, to meet its obligations under this

Agreement. Nothing in this Agreement may be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law limiting the activities, liabilities, or monetary obligations of COIC.

**2.5 Expenditure Restrictions**

The following additional expenditure restrictions apply to the Subrecipient Budget as found in Schedule 2.1

2.5.1 **Expenditure Period.** The period of performance – the time during which expenditures may be incurred – is January 10<sup>th</sup>, 2023, through January 10<sup>th</sup>, 2024, unless otherwise extended at COIC’s discretion.

2.5.2 **Cost Reimbursement.** This agreement is based on a partial up-front advance and the remainder cost-reimbursement method of payment.

**2.6 Expenditure Considerations.** On full execution of the Agreement, the amount of \$1,078,518.00 will be made available based on Schedule 2.1 Section B for expenditures having had occurred between the period of January 10, 2023, and June 30, 2023. After July 1, 2023, and following expenditure of any initial funding, the remaining Grant Funds will be available for Authorized Expenses incurred from July 1, 2023, to January 10, 2024, based on Schedule 2.1. The total Grant Funds amount will equal the initial funding amount available prior to June 30, 2023, plus the funding amount available for expenditures following July 1, 2023.

**2.7 Budget Line Flexibility.** Budget Line Flexibility applies separately to each fund shown within the budget. Any requested exceptions to the following limitations require prior approval and budget modification or waiver:

- 2.7.1 Expenditures by Fund may not exceed Fund budget total(s).
- 2.7.2 No single personnel line item may be over-expended.
- 2.7.3 Over-expenditure of indirect costs are not allowable.
- 2.7.4 Expenditures by cost category (ex. Personnel, operating costs, participant costs) may not exceed cost category budget totals.
- 2.7.5 With the exception of personnel, indirect and support services, which cannot go over budget with approval and budget modification, line items within a cost category (ex. Operating costs, participant costs) may be over or under budget as long as the category in total does not exceed budget.

**2.8** Any grant funds disbursed to Subrecipient under this Agreement that exceeded the amount to which Subrecipient is entitled or are expended in violation or contravention of one or more of the provisions of this Agreement, or that remain unexpended on the earlier of termination or expiration of this Agreement must be returned to COIC unless otherwise agreed to by COIC in writing.

**3. RELATIONSHIP**

**3.1 Taxes.** COIC will not withhold any taxes from any payments made to Subrecipient, and Subrecipient will be solely responsible for paying all taxes arising out of or resulting from Subrecipient's performance of the Services, including, without limitation, income, social security, workers' compensation, and employment insurance taxes.

- 3.2 **Licenses.** Subrecipient will be solely responsible for obtaining any and all licenses, approvals, and/or certificates necessary or appropriate to perform the Services.
- 3.3 **No Agency Relationship.** The agreement does not create an agency relationship between COIC and Subrecipient and does not establish a joint venture or partnership between COIC and Subrecipient. Subrecipient does not have any authority to bind COIC or represent to any person that Subrecipient is an agent of COIC.
- 3.4 **Oregon Public Contract Provisions.** The contract is subject to the Oregon Public Contract Provisions in Exhibit B. These provisions are updated periodically, and new applicable provisions shall be applied.
- 3.5 In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: Schedule 1.1, Schedule 1.2, Schedule 2.1, this Agreement without Exhibits, Exhibit A, Exhibit B and Exhibit C.

**4. REPRESENTATIONS AND WARRANTIES.**

In addition to any other Subrecipient representation or warranty made in this Agreement, Subrecipient represents and warrants to COIC as follows:

- 4.1 **Authority and Binding Obligation.** Subrecipient is duly organized, validly existing, and in good standing under applicable Oregon law. Subrecipient has full power and authority to sign and deliver this agreement and to perform all of Subrecipient's obligations under this Agreement. This agreement is the legal, valid, and binding obligation of Subrecipient, enforceable against Subrecipient in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, or other similar laws of general application or by general principles of equity.
- 4.2 **No Conflicts.** The signing and delivery of this Agreement by Subrecipient and the performance by Subrecipient of all of Subrecipient's obligations under this Agreement will not (i) breach any agreement to which Subrecipient is a party, or give any person the right to accelerate any obligation of Subrecipient, (ii) violate any law, judgement, or order to which Subrecipient is subject, or (iii) require the consent, authorization, or approval of any person, including, without limitation, any governmental body.
- 4.3 **Licenses.** Prior to Subrecipient's execution of this Agreement, Subrecipient obtained any and all licenses, approvals, and/or certificates necessary or appropriate to perform the Services.

**5. COVENANTS**

- 5.1 **Quality of Service.** Subrecipient will perform Services in accordance with industry standards and to the standard of care that other similar professionals would perform the same work, in the same locality, at the same time, and under the same conditions. Subrecipient will proceed diligently, without delay, in good faith, in a professional manner, and in accordance with this Agreement.



**5.2 Insurance.** Subrecipient will refer to Exhibit A, attached and incorporated herein, for insurance specifications. Subrecipient’s program of self-insurance may be used to meet the insurance requirements of Exhibit A.

**5.3 Workers’ Compensation Insurance.** Subrecipient will comply with Workers’ Compensation Insurance referenced in Exhibit A.

**5.4 Compliance with Laws.** Subrecipient will comply with any and all applicable federal, state, and local laws, regulations, and ordinances. Subrecipient will obtain and maintain any and all licenses, permits, registrations, and other governmental authorizations required to conduct Subrecipient’s business and perform the Services.

**5.5 Indemnification.** Subrecipient will defend and indemnify COIC, and each present and future employee, director, officer, agent, board member, and authorized representative of COIC, for, from, and against any and all claims, actions, proceedings, damages, liabilities, injuries, losses, and expenses of every kind, whether known or unknown, including, without limitation, reasonable attorneys’ fees, resulting from or arising out of, whether directly or indirectly, (i) state or federal anti-trust violations, (ii) damages to person or property caused directly or indirectly by the intentional misconduct, recklessness or negligence of Subrecipient and/or Subrecipient’s Representatives (as defined below), and/or (iii) Subrecipient’s failure to pay any tax arising out of or resulting from the performance of the Services. Subrecipient’s indemnification obligation provided herein will survive the termination of this agreement.

Subrecipient shall indemnify, defend, save and hold harmless State of Oregon and its officers, employees, and agents from and against all claims, actions, liabilities, damages, losses, or expenses, including attorney’s fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or intentionally wrongful acts or omissions of the Subrecipient, or any of its officers, agents, employees, or subcontractors (“Claims”)

Neither Subrecipient, nor subcontractor(s), nor any attorney engaged by Subrecipient or its subcontractors, shall defend any claim in the name of the State or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that any part is prohibited from defending State or that any party is not adequately defending State’s interests, or that an important government principle is at issue or that it is in the best interests of the State to do so. State reserves all rights to pursue claims it may have against Subrecipient if State elects to assume its own defense.

**6. DOCUMENTATION AND RECORD KEEPING**

**6.1 Records.** The Subrecipient shall maintain complete and accurate records concerning all services performed. Subrecipient shall establish and maintain records sufficient to enable COIC to (i) determine whether the Subrecipient has complied with this agreement, applicable local, State, and Federal statutes and regulations and the terms and conditions of the funding and (ii) satisfy recordkeeping requirements applicable to the Subrecipient.

**6.2 Access and Retention.** Subrecipients records concerning the Services, including, without limitation, Subrecipients time and billing records, will be made available to COIC for inspection, copying, and/or audit immediately upon COIC's request. The Subrecipient shall allow COIC, and other authorized representatives of the state and federal government, access to any books, documents, papers, and records of the Subrecipient that are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions. All such records and all other records pertinent to this Agreement and work undertaken under this Agreement will be retained by the Subrecipient for a period of six years after final audit for the project unless a longer period is required to resolve audit findings or litigation. In such case, it will be requested for a longer period of retention.

**6.3 Remedies.** With or without inspecting or auditing Subrecipient's records, documents, etc. as provided for in subsection 6.2 and with or without first terminating this agreement, if COIC determines that Subrecipient has misused, misapplied, or misappropriated funds disbursed to it under this agreement, Subrecipient, upon COIC's demand to do so, shall immediately return to COIC any or all funds disbursed under this agreement.

## 7. WARRANTY

**7.1** Subrecipient warrants to COIC that the Services will be performed by qualified personnel, in a professional manner, and in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Upon notice to the Subrecipient and by mutual agreement between the Parties, the Subrecipient, without additional compensation, will correct those services not meeting such a standard.

## 8. CONFIDENTIALITY AND NONDISCLOSURE.

**8.1 Maintain Confidential Information.** During the term of this Agreement, and at all times thereafter, Subrecipient will maintain all Confidential Information (as defined below) in the strictest confidence and will not directly or indirectly use, communicate, and/or disclose any Confidential Information to any person without COIC's prior written consent, except that Subrecipient may (i) use Confidential Information to perform Subrecipient's duties, (ii) disclose Confidential Information on a need-to-know basis to Subrecipient's Representatives who are informed by Subrecipient of the confidential nature the Confidential Information and the obligations of Subrecipient under the Nondisclosure Provisions (as defined below), and/or (iii) communicate or disclose Confidential Information in accordance with a judicial or other governmental order, but only if Subrecipient promptly notifies COIC of the order and complies with any applicable protective or similar order. Subrecipient will cause Subrecipient's Representatives to comply with the Nondisclosure Provisions. COIC makes no representations or warranties, either express or implied, with respect to the accuracy or completeness of the Confidential Information. For purposes of this Agreement, the term "Subrecipient's Representatives" means Subrecipient's directors, officers, managers, members, shareholders, employees, contractors, agents, consultants, advisors, and authorized representatives; the term "Nondisclosure Provision(s)" means Sections 8.1-8.4 of this Agreement.

**8.2 Notification and Assistance.** Subrecipient will (i) promptly notify COIC of any unauthorized use, communication, and/or disclosure of any Confidential Information

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and/or any Subrecipient breach of any Nondisclosure Provision, (ii) assist COIC in every way to retrieve any Confidential Information that was used, communicated, and/or disclosed by Subrecipient and/or Subrecipient's Representatives without COIC's specific prior written authorization, and (iii) exert Subrecipient's best efforts to mitigate the harm caused by the unauthorized use, communication, and/or disclosure of any Confidential Information. Upon the earlier of COIC's request or the termination of this Agreement, Subrecipient will immediately return to COIC any and all documents, instruments, and/or materials containing any Confidential Information accessed or received by Subrecipient, together with all copies and summaries of such Confidential Information. Notwithstanding anything contained in this Agreement to the contrary, this Agreement does not operate to transfer any ownership or other rights in or to the Confidential Information to Subrecipient or any other person.

**8.3 Equitable Relief.** Subrecipient acknowledges and agrees that the remedies available at law for any breach of the Nondisclosure Provisions by Subrecipient will, by their nature, be inadequate. Accordingly, COIC may obtain injunctive relief or other equitable relief to restrain a breach or threatened breach of the Nondisclosure Provisions or specifically to enforce the Nondisclosure Provisions, without proving that any monetary damages have been sustained.

**8.4 Confidential Information - Defined.** For purposes of this Agreement, the term "Confidential Information" means any and all information relating to COIC (in whatever form) that is received or assessed by Subrecipient, including, without limitation, trade secrets (as defined in ORS 646.461, as amended), business models, marketing and advertising plans, financial and technical information, computer software, customer and supplier lists, marketing plans, know-how, information concerning COIC's operations or clients, records, ideas, designs, drawings, specifications, techniques, programs, systems, processes, information derived from reports, investigations, research, work in progress, codes, marketing and sales programs, cost summaries, pricing formula, contract analyses, projections, confidential filings with any state or federal agency, and all other concepts, methods of doing business, ideas, materials, and information

## 9. TERMINATION

**9.1 Termination of Agreement. Termination of Agreement.** This Agreement may be terminated at any time by the mutual written agreement of COIC and Subrecipient. In the alternative, either party herein may terminate this agreement without cause upon delivery to the other party of not less than thirty (30) days written notice.

**9.2 Immediate Termination for Cause.** Notwithstanding anything contained in this Agreement to the contrary, COIC may terminate this Agreement immediately upon notice to Subrecipient upon the occurrence of any of the following events: (i) Subrecipient engages in any form of dishonesty or conduct involving moral turpitude related to Subrecipient's independent contractor relationship with COIC or that otherwise reflects adversely on the reputation or operations of COIC; (ii) Subrecipient fails to comply with any applicable federal, state, or local law, regulation, or ordinance; (iii) problems occur in connection with Subrecipient's performance of the Services due to Subrecipient's breach of its obligations under this Agreement; (iv) Subrecipient breaches or otherwise fails to

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perform any Subrecipient representation, warranty, covenant, and/or obligation contained in this Agreement; and/or COIC determines that Subrecipient has misused, misapplied or misappropriated funds disbursed to it under this agreement.

**9.3 Consequences of Termination.** Upon termination of this Agreement as set forth in Section 9.2, COIC will not be obligated to reimburse or pay Subrecipient for any continuing contractual commitments to others or for penalties or damages arising from the cancellation of such contractual commitments. Within a reasonable period of time after termination of this Agreement (but in no event greater than ten (10) days after termination), Subrecipient will deliver all materials and documentation, including raw or tabulated data and work in progress, to COIC. Termination of this Agreement by COIC will not constitute a waiver or termination of any rights, claims, and/or causes of action COIC may have against Subrecipient. COIC will pay Subrecipient for services (referenced in Schedule 2.1) performed up to termination, upon detailed invoicing from Subrecipient to COIC. If previous amounts paid to Subrecipient exceed the amount due to Subrecipient under this Agreement, Subrecipient shall promptly pay any excess to COIC.

**9.4 Remedies.** If a party fails to perform any of its terms, covenants, conditions, or obligations under this Agreement, the non-defaulting party may, in addition to any other remedy provided to the non-defaulting party under this Agreement, pursue any and all remedies available to the non-defaulting party at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.

9.4.1 Neither Party shall be liable for any indirect, incidental, consequential, or special damages under this Agreement or for any damages of any sort arising solely from the termination of this Agreement in accordance with its terms.

9.4.2 Subrecipient shall not incur obligations or liabilities after Subrecipient receives proper Notice of termination.

**9.5 Default.** Subrecipient will be in default under this Agreement upon occurrence of any of the following events:

9.5.1 Subrecipient fails to perform, observe, or discharge any of its covenants, agreement, or obligations under this Agreement, including, but not limited to failure to perform Grant Activities or satisfy performance measures as set forth in Schedule 1.1 and such failure is not remedied within thirty (30) days following notice from COIC specifying such failure; or

9.5.2 Any representation, warranty, or statement made by Subrecipient in this Agreement or in any documents or reports submitted by Subrecipient in connection with this Agreement, concerning the expenditure of Grant Funds or Subrecipient's performance of any of its obligations under this Agreement, is untrue in any material respect when made; or

9.5.3 Subrecipient fails to incur expenses, or to satisfy performance measures, at a rate or in a manner that would result in complete expenditure of Grant Funds in accordance with this Agreement, or successful completion of all performance measures under this Agreement, on or before January 10, 2024, as determined by COIC in its sole discretion.

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**9.6 Default Remedies.** In the event Subrecipient is in default under Section 9.5, COIC may, at its option, pursue any or all of the remedies available under this Agreement and at law or in equity, including, but not limited to: (i) termination of this Agreement under Section 9, (b) reducing, withholding or recovering payment of Grant Funds for activities that Recipient has failed to perform in accordance with this Agreement, (c) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, or (d) exercise of its right of recover of overpayments under Section 2 and Section 6 of this Agreement or setoff, or both.

**9.7 Notice of Default.** Prior to any termination of this Agreement by COIC pursuant to Section 9, COIC will provide Subrecipient with a written notice of such default and will include in such notice an offer to meet with the senior manager of Subrecipient who has primary responsibility for oversight of the Grant Activities to provide Subrecipient an opportunity to explain the reasons for the default and to present a proposal for curing the default within a time period that is acceptable to COIC. Subrecipient shall have 10 days to accept such offer. If Subrecipient does not accept such offer within such 10-day period, COIC may terminate this Agreement upon 10 days' written notice as provided in Section 9.1 or exercise any other remedies available to COIC under this Agreement unless Subrecipient has fully cured such default prior to the expiration of such 10-day notice period. If Subrecipient accepts such offer, the meeting must be held within 14 days of such acceptance or at such other time as agreed by COIC. Following the meeting, COIC shall make a determination, in its reasonable discretion, of whether to accept Subrecipient's proposal, with such modifications as are mutually acceptable to the Parties and shall give written notice of such determination to Subrecipient. If COIC's written notice states that COIC does not agree to such proposal, or if COIC accepts such proposal but Subrecipient does not satisfy the terms of the proposal, COIC may terminate this Agreement upon 10 days of written notice as provided in Section 9.1 or exercise any other remedies available to COIC under this Agreement unless Subrecipient has fully cured such default prior to the expiration of such 10-day notice period.

## 10. MISCELLANEOUS

**10.1 Severability.** Each provision contained in this agreement will be treated as a separate and independent provision. The unenforceability of any one provision will in no way impair the enforceability of any other provision contained herein.

**10.2 Notices.** Unless otherwise specified in this Agreement, any Notice required under this Agreement must be in writing. Any notice will be deemed given when personally delivered or delivered by facsimile transmission (with electronic confirmation of delivery), or will be deemed given three business days following delivery of the notice by U.S. mail, postage prepaid, by the applicable party to the address of the other party shown below (or any other address that a party may designate by notice to the other party), unless that day is a Saturday, Sunday, or legal holiday, in which event it will be deemed delivered on the next following business day.

**To COIC:**  
Central Oregon Intergovernmental Council  
Attn: Contracts  
1250 NE Bear Creek Road  
Bend, OR 97701  
[contracts@coic.org](mailto:contracts@coic.org)

**To Subrecipient:**  
Trevor Stephens  
63360 NW Britta St. #2  
Bend, OR 97701  
[Trevor.Stephens@deschutes.org](mailto:Trevor.Stephens@deschutes.org)

- 10.3 Waiver.** No provision of this Agreement may be modified, waived, or discharged unless such waiver, modification, or discharge is agreed to in writing by COIC and Subrecipient. No waiver of either party at any time of the breach of, or lack of compliance with, any conditions or provisions of this Agreement will be deemed a waiver of other provisions or conditions hereof.
- 10.4 Entire Agreement.** This Agreement contains the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement and contains all of the terms and conditions of the Parties' agreement and supersedes any other oral or written negotiations, discussions, representations, or agreements. Subrecipient has not relied on any promises, statements, representations, or warranties except as set forth expressly in this Agreement.
- 10.5 Assignment and Binding Effect.** Subrecipient will not assign any of Subrecipient's rights or obligations under this Agreement to any person without the prior written consent of COIC, which consent COIC may withhold in its sole discretion. Subject to the above-stated limitations on Subrecipient's assignment of any of Subrecipient's rights or obligations under this Agreement, this Agreement will be binding on the Parties and their respective heirs, executors, administrators, successors, and permitted assigns and will inure to their benefit.
- 10.6 Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Oregon, and venue for any action concerning this Agreement will lie in Deschutes County, Oregon.
- 10.7 Amendment.** The Agreement may be amended only by a written agreement signed by each party.
- 10.8 Further Assurances.** At any time upon the request of COIC, Subrecipient will execute all documents or instruments and will perform all lawful acts COIC considers necessary or appropriate to secure its rights hereunder and carry out the intent of this Agreement.
- 10.9 Additional Provision and Attachments.** All exhibits, schedules, instruments, and other documents referenced in this Agreement are part of this Agreement. All capitalized terms contained in such exhibits, schedules, instruments, and documents not otherwise defined therein will have the respective meanings assigned to them in this Agreement.

**10.10 Attorney Fees.** In the event litigation or arbitration is instituted to enforce or determine the Parties' rights or duties arising out of the terms of this Agreement, the prevailing party will recover from the losing party reasonable attorney fees incurred in such proceeding to the extent permitted by the judge or arbitrator, in arbitration, at trial, on appeal, or in any bankruptcy proceedings.

**10.11 Binding Arbitration.** In the event any claim, dispute, or controversy arising out of or related to this Agreement occurs (a "Dispute"), COIC and Subrecipient will exert their best efforts to seek a fair and prompt negotiated resolution of the Dispute and will meet at least once to discuss and seek a resolution of the Dispute. If the Dispute is not resolved by negotiated resolution, the Dispute will be settled by arbitration before a single arbitrator in Bend, Oregon. If the Parties agree on an arbitrator, the arbitration will be held before the arbitrator selected by the Parties. If the Parties do not agree on an arbitrator, each party will designate an arbitrator and the arbitration will be held before a third arbitrator selected by the designated arbitrators. Each arbitrator will be an attorney knowledgeable in the area of business law. The arbitration will be conducted in accordance with the then-current rules of the Arbitration Service of Portland, Inc. The resolution of any controversy or claim as determined by the arbitrator will be binding on the Parties and judgment upon the award rendered may be entered in any court having jurisdiction. A party may seek from a court an order to compel arbitration, or any other interim relief or provisional remedies, pending an arbitrator's resolution of any controversy or claim. The prevailing party in the arbitration will be entitled to recover from the other party all expenses incurred in connection with the arbitration, including reasonable attorneys' fees.

**10.12 Person and Interpretation.** For purposes of this Agreement, the term "person" means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity. All pronouns contained herein, and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular, or plural, as the identity of the Parties may require. The singular includes the plural, and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting.

**10.13 Signatures.** This Agreement may be signed in counterparts. A fax or email transmission of a signature page will be considered an original signature page. At the request of a party, the other party will confirm a fax or email transmitted signature page by delivering an original signature page to the requesting party.

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be executed as of the date first written above but effective as the effective date.

**COIC:**

Central Oregon Intergovernmental Council  
an Oregon entity organized under ORS Chapter 190

Signature: 

By: Tammy Baney  
Its: Executive Director

**Subrecipient:**

Deschutes County Adult Parole and Probation  
a political subdivision of the State of Oregon

Signature: 

By: Anthony De Bone  
Its: Chair, Deschutes County  
Board of Commissioners





Schedule 1.1

Scope of Work  
Description of Services

1. **See attached pdf.** Subrecipient EO 23-02 Funding Application.
2. **Reporting Requirements.**
  - a. **Shelter Bed Capacity Reporting.** If subrecipient uses funds under this Agreement to add new shelter bed capacity, a narrative update must be provided to COIC by the 15<sup>th</sup> day of the month following the period billing, but no less frequently than monthly. Narrative update shall include milestones, success measures, outcomes, obstacles, and impacts of the project. Reporting required for all periods in which shelter bed capacity is being added.
  - b. **Homeless Management Information System.** Subrecipient must enter all appropriate and necessary data into Homeless Management Information System (“HMIS”) at the time of client intake, if applicable, or at such other times required, or require subcontractors providing the Services for which funding has been provided under this Agreement to enter. Exceptions are only allowed with prior written approval provided from State via COIC.
  - c. **Data Collection and Evaluation.** Subrecipient, or subcontractors providing the Services for which funding has been provided under this Agreement, are required to report client-level data, such as the number of persons served and their demographic information, in a Homeless Management Information System (HMIS). HMIS is an electronic data collection system that facilitates the collection of information on persons who are homeless or at risk of becoming homeless and is managed and operated locally. Subrecipients are required to review this Agreement and ensure data standards are implemented in HMIS specifically for participants as applicable to the EO and this funding. Data requirement specifics shall be made available to Subrecipients upon request.
  - d. **Additional Reporting.** Subrecipient shall provide additional reports and shall cooperatively attend meetings as reasonably requested by COIC or State.

### Project Contact Name:

Enter the name of the individual responsible for responding to questions about the application.

Trevor Stephens

### Organization:

Enter the name of the organization submitting the supplication.

Deschutes County Adult Parole and Probation and Community Treatment Provider or Housing Provider

### Contact Email:

Enter the email address of the individual responsible for responding to questions about the application.

Trevor.Stephens@deschutes.org

### Contact Phone Number:

Enter the phone number of the individual responsible for responding to questions about the application.

+15413308261

### Entity Type:

Please select your organization's entity type.

Government

### State Where Registered:

Where is your legal entity registered?

Oregon

### HMIS:

Your organization will contribute information to the Homeless Management Information System

true

## Universal Data Elements:

Your organization agrees to input all of the Universal Data Elements for each client involved in your program

true

## Low Barrier:

Your organization agrees to abide by low-barrier principles for its clients. *Low Barrier means a program that does not require any of the following for a client to participate in one of the programs: (i) criminal background checks, (ii) credit checks or income verification, (iii) program participation, (iv) sobriety, or (v) identification. Low Barrier programs may enforce safety requirements for self, staff, place, and/or others.*

true

## Client-Centered, Housing First:

Your organization agrees to provide client-centered, housing-first case management supports. A client-centered case management approach ensures that the person who has experienced homelessness has a major say in identifying goals and service needs, and that there is shared accountability. Case management must focus on housing assessment, placement and housing stability.

true

## Provide Information and Report:

In order to assist COIC in meeting the State’s Reporting Requirements, you agree to supply COIC with any and all requested information related to meeting contractual obligations under EO 23-02. *Reporting expectations can be found on page 20 of the State’s draft contract language:* <https://www.coic.org/wp-content/uploads/2023/03/EO-23-02-Grant-Template-Final-2023-03-21.docx>

true

## Project Complete by 1/10/2024:

The deadline to have a project up and running is January 10, 2024. Your organization agrees that the project will be complete and operating at full capacity by January 10<sup>th</sup>, 2024.

true

## Project Goal:

Select the goal your project will address.

Creating 111 New Shelter Beds

## Project Overview:

Please provide an overview of your proposed project and explain how your project will make and measure impact towards the goal by January 10<sup>th</sup> 2024. Go into as much detail as possible to explain your full project concept. Please include a section that specifically explains how your project will make a measurable impact toward one of the two goals above.

Deschutes County, in partnership with a private entity/or local non-profit housing provider, is proposing to acquire a residential 4+ bedroom home located in Deschutes County to rehouse two single-households from unsheltered homelessness, and add eight new shelter beds for people 18 and over who identify as males and who are on Deschutes County Parole & Probation community supervision for conditions that restrict proximity to minors and/or require sexual offense registration. The project will prioritize men who identify as Black, Indigenous, Latinx, Asian and People of Color and men who are medically vulnerable or veterans. This project will serve up to two rehoused individuals and eight transitional shelter individuals at any time, approximately 24 individuals per year.

Individuals in our proposed population are amongst the most vulnerable Oregonians experiencing homelessness, as they face lifelong barriers and restrictions to where they are legally and socially permitted to reside, work or socialize, whether they are completed with obligations to repair harm they have caused or are still on supervision. In addition to the detrimental impact on individuals themselves, continual ostracization and inability to reintegrate into their communities creates a much higher risk to reoffend or require continued use of public safety and public health system resources. Vulnerability and risk only increases when individuals are also members of marginalized populations such as being Black, Indigenous, Latinx, Asian and People of Color (BILAPOC) or medically vulnerable. No one is safe when individuals with restrictive conditions based on prior criminal history are left with no options but homelessness.

The need in Deschutes County is clear. There are approximately 180 individuals on supervision in Deschutes County with conditions that restrict proximity to minors and/or require sexual offense registration, 98% of whom identify as male. Approximately 8% identify as Black, Indigenous, Latinx, Asian and People of Color. Currently approximately 12% of white men and 14% of BILAPOC men are homeless; 5% of white men and 29% of BILAPOC men are in jail; and 4% of white men and 7% of BILAPOC men are in transitional housing. These are higher rates than men on supervision with less restrictive conditions. Deschutes County is an expensive and limited rental or ownership market, and with eligibility restrictions for most supported shelter or housing options, clients with this type of supervision are disproportionately low-income and without pro-social and supportive personal networks to rely on. This population also faces marginalization when it comes to general low barrier shelter services that exist, given public safety concerns based on restrictions with minors. On average 25-35 clients at any time are camping, sleeping in trailers on public land, utilizing low-barrier shelters if no minors are present, or in a constant state of emergency trying to figure out where they will stay each night.

This project is a public/private/non-profit partnership that adds shelter beds and housing units to address these needs. Deschutes County if awarded these funds will work with one of our contracted private treatment providers or one of our contracted community housing/shelter providers to locate and

acquire one residential home with 4+ bedrooms in Deschutes County to provide up to eight low barrier shelter beds in two of the rooms, and low barrier two housing units (single occupancy bedroom with locked door and lease or rental agreement) to rehouse currently homeless individuals on supervision with Deschutes County Parole & Probation with conditions that restrict proximity to minors and/or require sexual offense registration. We have several providers we work with contractual and have one provider in particular who has expressed interest in this project. We are still working out details but if awarded the funds we will either work with a private treatment provider or one of our local non-profit contractual providers. The provider will develop the program in partnership with Deschutes County, hire and provide staff that will serve in house management capacity. Both the provider and Deschutes County will provide operation support up-to some level of case management. Deschutes County administrative staff will provide administrative and sub contractual oversight and program evaluation, Parole & Probation Officers will refer eligible individuals, work in partnership with provider and assist with case management and supervision based on each individual's supervision plan and needs. Together we seek to mitigate emergency and urgent sheltering needs of this population, provide options for long-term housing in a safe and supportive environment, and offer robust case management and service opportunities for residents as they complete their community supervision requirements and get back on their feet, rebuild lives and become productive community members.

**Shelter bed case management and services include:**

Stability (1 to 90 days): Individuals who have independent housing options and acceptable personal networks in the near-term but require short-term shelter while those plans are finalized

Transition (1-180 days): Individuals transitioning to community from prison/jail with no current independent and acceptable shelter options, but who have an ultimate plan/capability for independent housing or acceptable personal networks.

Case management opportunities available as needed and desired include readiness, short-term goal setting, housing plans, and treatment readiness if necessary.

**Housing case management and services include:**

Individuals with limited income insufficient for private rental or housing market and no independent or acceptable other shelter options or personal networks who may require long-term residence.

Case management opportunities available as needed and desired include independent living, housing or other benefits coordination.

**Number of Clients or Units:**

Enter the number of clients your project will serve/units your project will make available. This question helps us ensure we meet the goals of the funding allocation.

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### Detailed Project Budget:

Submit a detailed project budget that outlines your expected costs through the grant term. Please be sure to include funding from outside sources if it will be utilized.

[https://api.typeform.com/responses/files/f9add465f7cd9066deef0bbf0b74431c0b14b2781ba2acf00c313b164aec5198/Parole Probation EO 23 02 Budget TS 05 08 2023.xlsx](https://api.typeform.com/responses/files/f9add465f7cd9066deef0bbf0b74431c0b14b2781ba2acf00c313b164aec5198/Parole%20Probation%20EO%2023%2002%20Budget%20TS%2005%2008%202023.xlsx)

### Maximum Amount of Funding Requested:

Enter your funding request for this opportunity here.

1078518

### Budget Contingency:

We can't guarantee that all applicants will be granted their full funding request. Can your project be scaled down if your full request cannot be awarded? If so, please describe what parts of your request are able to be scaled down, if any.

Yes, we could scale down our acquisition request, and either purchase a smaller residential single-family home or seek a mortgage loan to offset the difference.

### Grant Experience:

Does your organization have experience with government grants? If yes, please provide details about your grant experience.

Deschutes County is one of the largest employers in the county with a well-regarded Finance department providing robust support of departments who pursue, are granted and implement state and federal grants. Additionally, Parole & Probation's budget (approximately \$9M annually) is approximately 85% funded with 4-8 state grants at any time, all of which are regulated through Intergovernmental Agreements. We have sufficient administrative focused staff who manage the multiple types, timeframes and requirements for financial, evaluation, operational and administrative monitoring and reporting. We have multiple services contracts that guide program and service delivery by community-based organizations where the funding source is government grants. We have never been sanctioned or required to return funds or correct reporting. We will bring the highest quality and standards to implementing, monitoring and reporting Emergency Order funding if our project is awarded. Additionally, we have sought and will continue to seek assistance and coordination with Deschutes County's Coordinated Houseless Response Office (CHRO) to ensure compliance and adherence with best practices in all elements of this grant. The CHRO has committed to provide ongoing technical assistance for our team to ensure continued success through implementation and completion.

## Financial Reporting:

We want to ensure that you are prepared to satisfy the financial reporting requirements of this funding opportunity. Please explain how you will meet the financial reporting requirements.

The Deschutes County Finance department which ultimately supports and maintains standards at all departmental levels, maintains the highest quality of financial and regulatory audits and has been recognized as such in the state of Oregon for decades. The Parole and Probation budget is approved through the county's annual budget process. We provide monthly financial statements to the Finance department which provides review and forwards for county administration and elected official review. The county uses an integrated financial information system with appropriate controls and checks and balances for all revenue and expense processes. Community-based or private partners entering into financial agreements are paid as vendors set up and monitored within the financial system with several layers of oversight and balance. Deschutes County Parole and Probation has an administrative team that can provide the support necessary to meeting the reporting requirements both internally and in partnership with the selected provider.

## Additional Funding:

*Is your project intended to be solely funded through Executive Order funding, or will you seek/have you sought funding elsewhere?*

We have secured funding from elsewhere.

## Additional Funding Secured:

If you have secured other funding, how much additional funding has been secured?

Our project matches operational funding (\$30,618.50) from existing public sources already secured by Deschutes County Parole and Probation. These funds will contribute to the fiscal year remainder after January 10th, and ongoing in future fiscal operating years.

## Project Sustainability:

We are hopeful that projects awarded under this one-time funding opportunity will maintain operations after January 10th, 2024. Please tell us your plan for sustaining operations after this funding has expired.

After January 10, 2024, Parole & Probation will continue to provide the parole and probation officer staff time and the analyst staff time.

Adult Parole and Probation will contract with a provider for the house management role. Funding for this plus operations of the house will be covered by Parole and Probation through department of corrections funding, grants, housing subsidies, available county funding, and well as rental/lease agreements for the individuals occupying the two housing units

We also receive regular Department of Corrections funding to support clients on supervision and

transitioning out of prison. We would continue to seek these funding streams and prioritize this population if we had the stable resource.

### Client Eligibility:

Explain how you will implement client eligibility requirements. For instance, this funding is intended to support low-barrier beds; explain how you will ensure low-barrier principles are centered in your program offerings. As another example, list the criteria clients must meet to be eligible for the program

As a program that specifically serves those with criminal backgrounds, we will center low-barrier principles throughout. Individuals on supervision will have individualized obligations and/or restrictions that will be monitored by their Parole & Probation Officer/s. These may include conditions that require sobriety or participation in a treatment program for that individual. No credit checks, identification or other requirements exist.

Eligibility criteria are:

- 1. People identifying as male who are 18+ and on community supervision with the Deschutes County Parole & Probation department with conditions associated with criminal convictions that (1) restrict proximity to minors; or (2) require them to register with the state of Oregon as sexual offenders.

Prioritization criteria are (in order):

- 1. BILAPOC
- 2. Medically vulnerable
- 3. Veteran

### Coordinated Entry:

Explain how you envision sourcing clients from [Coordinated Entry](#) in your program. Maximizing the number of providers utilizing Coordinated Entry is recognized as a Best Practice, and projects that prioritize clients from Coordinated Entry will receive priority in funding decisions.

We will provide our program eligibility and prioritization to the Coordinated Entry System (CES) lead at NeighborImpact for upload as a program in CES. While the program's single eligibility criteria will likely mean that referrals come from and go to Parole & Probation, we will utilize CES to assist with consistent and equitable application of prioritization and vulnerability principles, and system-wide data performance metrics.

### Impact on Disproportionately Affected Populations:

Early in the MAC process, the group identified subpopulations that are disproportionately more likely to experience unsheltered homelessness in Central Oregon. Please tell us if your project will impact any of these subpopulations.



**BIPOC, Medically Vulnerable, Veterans**

**Targeting Subpopulations:**

If your project will specifically impact one or more identified subpopulations, explain how exactly you will target that subpopulation and what steps you will take to ensure that the services provided are relevant, appropriate, and aligned with the desired outcome. Consider things like - staff hiring, training, outreach, program evaluation, and provision of culturally responsive services

BILAPOC individuals are our first prioritization population. BILAPOC individuals on supervision with conditions described in our program experience disproportionate homelessness and jail compared to their white counterparts. For this reason, they are our first priority subpopulation.

Medically vulnerably individuals are the second priority subpopulation for our program. Conditions described in our program are often lifelong, meaning that our eligible population has a disproportionate number of aging men, which increases risk for medical vulnerability. Unsheltered homelessness also increases risk for morbidity and mortality, and individuals with high rates of institutionalization and homelessness frequently experience worse health outcomes compared to their counterparts.

Veterans are the third priority subpopulation for our program. Veterans are more likely to experience unique trauma-related disorders and barriers than other populations.

This program serves only people who identify as male and are on community supervision with the Deschutes County Parole & Probation department with conditions associated with criminal convictions that (1) restrict proximity to minors; or (2) require them to register with the State of Oregon as sexual offenders. As such, the Department of Parole & Probation will be intimately involved in program development and implementation from the administrative and evaluation staff, to caseload carrying Parole & Probation Officers and supervisors. Parole & Probation has caseload specific officers and expertise in assessment, treatment and services provision for individuals on supervision for the types of offenses that lead to the conditions described in this program. We see firsthand the impact of conditions that prevent rehabilitation and reintegration, and are eager to collaborate and provide this vital public safety resource.

Our partner will be an established substance use disorder treatment and sober housing provider in our region, or a nonprofit housing/shelter provider. They will be subject matter experts and caring, compassionate providers of services for individuals involved with community supervision. While working with the subpopulation described in this grant will be new for them, their administrative and treatment staff are well trained in best practices working with justice-involved individuals. Our contracted providers will have experience in property ownership and management and be well-versed in the safety and security, structure and support needed to provide compassionate, supportive residential environments for justice-involved individuals.

**Region Served:**

*This question helps us keep track of the regions in Central Oregon that are served through the funding. What region(s) will you serve?*

Bend, Redmond, Sisters, La Pine, Rural Deschutes County (outside City limits)

**Partnerships:**

*We encourage partnerships to ensure the greatest impact. Please let us know who your project will partner with and what services they will provide. Explain if your partnerships are established (MOUs, IGAs, Contracts, etc) or still being discussed*

The primary partners for this project will be one of our contracted local private Treatment providers or contracted housing/shelter providers, but we have multiple established partnerships through contract, MOU or other written agreement to assist us in providing best practices for the population described in this proposal. Contracts for this project are still being discussed, but will be in place prior to acquisition and start up. We have yet to determine if the county or the provider will acquire the property. The provider will operate the program/operations piece with support from Deschutes County. Operations will include house- and case-management services to include housing and employment navigation, health and treatment connections and support, and barrier-identification and removal. Operations will also include safety and security, house rules and management, and coordination with Parole & Probation Officers working with shelter and housing residents.

In addition to whichever provider we team with we also have multiple established partners we will work with to ensure program success. These include Maritza Encinas, with whom we have a services contract to provide sexual offense treatment and who provides most of the treatment that many eligible individuals will currently be in as part of their supervision conditions. We frequently work with and have existing contracts with Turning Points Recovery Services and Pfeifer & Associates, which provide other substance use disorder treatment providers. Many people with the supervision conditions described in this program have substance use disorder treatment needs in addition to other conditions. Over the past year, we have developed a close working relationship with Lighthouse Navigation Center, a low barrier shelter that will from time to time admit minors. As one of the few resources for people experiencing homelessness who have the supervision conditions described here we have worked closely and developed a written protocol to notify and manage safety risks when both minors and Parole & Probation clients are present in the facility. Shepherd’s House which is the parent organization for Lighthouse Navigation Center, also operates a faith-based housing and program for people with the supervision conditions described here. We will continue to work with them as subject matter experts and partners in providing compassionate care that understands the unique accountability and public safety considerations of the population.

Finally, we have consulted closely with the Deschutes County Coordinated Houseless Response Office (CHRO) in pursuit of solutions to the needs identified in this proposal. Should we be granted funding for this program, we will continue to seek advice and assistance from the office to ensure we join best practices in the shelter and housing field with that of the sexual offense supervision field.

**Prior Project Experience:**

Please explain your organization’s experience with what has been proposed in your application. If your experience in an area is limited, please speak to other relevant experience that shows your ability to

execute your proposed project effectively. This could be lived experience, experience utilizing a program, or experience creating similar programs in other areas.

Deschutes County Parole & Probation has experience with the specific population and working with the private sector and community-based providers on the types of services described in this proposal, as well as lengthy experience contracting with substance use treatment and/or transitional housing in the community, both formal and informal.

Previously the owners of the former Tom Tom motel on Highway 97 in Bend offered and for approximately five (5) years found a sustainable manner to offer their location as a safe and welcoming residential option for men on community supervision with Deschutes County Parole & Probation with conditions that restrict proximity to minors and/or require sexual offense registration with the state of Oregon. From there, we developed a very informal but close partnership and an opportune learning experience for us, and sustainable housing for the vulnerable population we described for a good period of time.

Lessons learned include how to understand, mitigate and set residents up for success in relation to the unique public safety needs and risks associated with the population; the preferred level of house and case management that would be beneficial to create safe and productive residential communities; and the absolute crucial need for close communication and collaboration between Parole & Probation and house managers.

We also learned that that level of commitment and attention required to provide adequate support and safety and security is more than an informal agreement can provide. This informs our desire for the program model we propose here, where a house manager is paid to provide professional level oversight, support a partnership with Parole & Probation.

Additionally, Parole & Probation has multi-thousand dollar contracts with a variety of structured transitional or shelter resources in the county, including Bethlehem Inn, Turning Points Recovery Services, Pfeifer & Associates, private Oxford houses etc. We have administrative expertise, established referral process and other support in assisting Parole & Probation Officers to connect their clients with shelter and housing needs. We will not be recreating brand new systems or structures to start up and assist with operating the program described in this proposal. We are ready to plan and implement if our program is funded.

**Expected Challenges:**

We know that this project will not be easy. Please explain areas you are expecting challenges with your project and explain your plan(s) for overcoming expected challenges.

Expected challenges for our project relate only to property acquisition:

Location restrictions due conditions of supervision of the eligible population. The County and the provider will work with specialty realtor assistance, and lean upon its expertise in citing other treatment or transitional residential homes.

Housing market in Deschutes County. Deschutes County and the provider will work with specialty realtor assistance and be flexible in finding affordable areas of the county to pursue.

Neighborhood and community safety concerns. The selected provider will have experience in siting and managing safety concerns of neighbors and community based other treatment or transitional home development. We will also seek to locate a property that is distant from close neighborhoods. As the property will need to be more than 1,000 feet of schools, daycare facilities or parks it is likely that the neighborhood will be sparse and/or remote. We will create a clear safety plan, including installation of security systems on the property itself and share information as needed and productive with any neighbors.

Resident safety concerns. People on community supervision with the conditions described in this program face real safety threats that arise from being identified as "sex offenders." We will need to balance the public's right to notification where applicable, public safety risk, and risk to safety of residents themselves. Careful and mutual planning will need to occur with the provider and the county.

### Success Measures, Outcomes, and Impacts:

Explain what success will look like, for you, in your project.

House purchased by September 2023

Operations Plan completed by September 2023

First residents move in October 1, 2023

Eight individuals sheltered by November 1, 2023

Two formerly unhoused individuals rehoused by November 1, 2023

75% of sheltered individuals transition to next level of housing stability when they depart

85% of residents remain crime free while receiving services

50% of operations costs covered by rental income or other self-sustaining revenue by March 1, 2024

Meet all program compliance requirements, outcomes, and reporting

Contribute to COIC's 'lessons learned' report to the State

### Relevant Milestones:

Please review the list of milestones and system improvements actions starting on page 15 of the following document and explain how your project will help contribute to their success:

<https://www.coic.org/wp-content/uploads/2023/04/EO-23-02-Submission-2023-03-31.pdf>

In addition to the milestones identified above, our program will:

March 2023: Establish regional priorities and barriers to achieving those priorities.

Our program will support learning on priority populations, siting specialized population programs; public-private partnerships that join public service and market practices amongst others.

April 2023: Deal-making/Partnership Brokering among organizations with complimentary programs

May 2023: Work with CHRO to develop and submit application narratives and budget; prepare for receipt of awarded funds.

We seek to maximize the role of the private or nonprofit markets in creating mutually beneficial revenue streams that can support housing costs of our population. Based on challenges with location siting or operational costs we seek to help learn and create synergies where possible.

### Additional Help:

Are you interested in receiving technical assistance help with program implementation, reporting, fiscal administration, etc.?

true

### Help Requested:

How would you like us to help you?

Role of Parole & Probation in working with private entity for property acquisition oversight

Ensuring best practices in federal and state housing regulations and field while we also ensure best practice in community supervision field with this population.

Continued technical assistance received from CHRO, in conjunction with COIC and the State.

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Schedule 1.2

## Schedule of Services

Subrecipient will perform the Services in accordance to the following schedule:

- RFP/Bid Processed Designed and Ready to Launch by Middle of August at latest.
- 30 Day RFP/BID process.
- Provider selected by end of September.
- October and November 2023 find and site location.
- Purchase home by end December 2023.
- Operations Plan completed by November 2023.
- Revise operation plan based on location.
- First residents move in January 1, 2023.
- Six to Eight individuals sheltered by January 1, 2023.
- Two to four formerly unhoused individuals rehoused by January 10, 2023.

Schedule 2.1

## Compensation and Reporting

COIC will pay Subrecipient in accordance with the following compensation schedule:

**1. Compensation.****A. Monthly Invoice**

- a. Subrecipient will submit monthly invoices to COIC concerning the Services performed by Subrecipient during the immediately preceding month (each an "Invoice"). Each Invoice will contain the following information as applicable to the project:
  - i. a summary of the Services performed by Subrecipient;
  - ii. the number of hours each person spent to perform the Services;
  - iii. the applicable hourly billing rates;
  - iv. related invoices from vendors and subcontractors; and
  - v. any other information reasonably requested by COIC.

COIC will pay the amount due under each Invoice within thirty (30) days after COIC has reviewed and approved the applicable Invoice. No compensation will be paid by COIC for any portion of the Services not performed. COIC's payment will be accepted by Subrecipient as full compensation for performing the Services to which the applicable Invoice relates.

**B. Disbursements Generally**

- a. COIC shall disburse the Grant Funds upon receipt and acceptance of Grantee's disbursement request according to the following schedule:
  - i. \$900,000 of Grant Funds available upon execution of this Agreement for acquisition.
  - ii. Remainder of Grant Funds may be requested monthly for reimbursement of project costs.

**C. Advancement of Funds**

- a. For Subrecipients requesting cash advances, the Subrecipient must submit advance payment request to cover projected costs incurred within a reasonable time period. Subrecipient will provide a reporting of actual expenditures – separated by line item and fund source – each month, within 15 days of month end. Subsequent advances may be adjusted to reflect reconciliation of prior month advances to actual expenditures. Subrecipient may request advancement of funds for personnel and payroll related expenses to cover up to a one-month period.

**2. Financial Billing Requirements**

- a. **Billing Due Dates.** Subrecipient shall submit to COIC's Fiscal Contact all contract billings by the 15<sup>th</sup> day of the month following the period billing, but no less frequently than monthly. Subrecipient shall submit billing workbooks and cash request forms as created and provided by COIC for monthly and final billings, including all required signatures. The payment request shall include a reporting of actual expenditures – separated by line items and fund source.

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- b. Final Billing for Close-Out.** All Contract billings shall be submitted by 30 days after end of contract. This will constitute the final contract billing request for the Contract. No charges submitted more than 30 days after end of contract will be reimbursed. COIC may, at its discretion, withhold payment of the final invoice until all close-out requirements have been met in accordance with the agreement.

**3. See Attached PDF. Subrecipient Budget**





**Organization Name:** Deschutes County Parole & Probation  
**Project Name:**

CASH REVENUE	TOTAL ANNUAL BUDGET	THIS EO 23-02 REQUEST	SECURED FROM OTHER SOURCES
Private Contributions (Individual and Business)	-	-	0
Private Foundation Funding	-	-	0
Government Funding	209,136.50	178,518.00	30618.5
Earned Revenue	-	-	0
Other (please list):	-	-	0
<b>TOTAL CASH REVENUE:</b>	<b>209,136.50</b>	<b>178,518.00</b>	<b>30618.5</b>

**TOTAL CASH EXPENSES**

**Personnel:**

Salaries - 1 FTE House Manager; .15 Parole and Probation Officer .25 FTE Parole & Probation Analyst; .25 Parole & Probation Operations and Business Manager (only needed for first 6 months for acquisition and program development) (includes all Fringe Benefits).	185,136.50	157,518.00	27618.5
Associated Payroll Expenses (e.g. benefits, taxes, workers compensation, etc.)	-	-	0
<b>Personnel subtotal:</b>	<b>185,136.50</b>	<b>157,518.00</b>	<b>27618.5</b>

**Non-Personnel Operating Expenses:**

(e.g. supplies, program expenses, rent, utilities, professional services, etc.)			
Insurance (one time yearly fee, pay upfront)	6,000.00	6,000.00	0
Utilities	6,000.00	3,000.00	3000
Supplies (buy enough supplies during grant period to last for 1st year)	6,000.00	6,000.00	0
Maintenance/Repairs	6,000.00	6,000.00	0
Mileage	-	-	0
	-	-	0
	-	-	0
<b>Non-Personnel subtotal:</b>	<b>24,000.00</b>	<b>21,000.00</b>	<b>3000</b>

**Fiscal Sponsor Fee (if applicable):**

-	-	0
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**Capital Expenses:**

(e.g. construction/rennovation costs, durable equipment, land acquisition, etc.)			
	-	-	0
	-	-	0
	-	-	0
	-	-	0
	-	-	0
<b>Capital Expense subtotal:</b>	<b>-</b>	<b>-</b>	<b>0</b>

**TOTAL CASH EXPENSES: 209,136.50 178,518.00 30618.5**

**NET CASH REVENUE/EXPENSE: - - 0**

**In-Kind Contributions (if applicable):**

(e.g. value of volunteer hours, supplies/materials, donated services, etc.)	-	-	0
	-	-	0
	-	-	0
	-	-	0
	-	-	0
<b>In-Kind Contribution subtotal:</b>	<b>-</b>	<b>-</b>	<b>0</b>

**In-Kind Expenses (if applicable):**

(e.g. value of volunteer hours, supplies/materials, donated services, etc.)	-	-	0
	-	-	0
	-	-	0
	-	-	0
	-	-	0
<b>In-Kind Expense subtotal:</b>	<b>-</b>	<b>-</b>	<b>0</b>

**EXHIBIT A**

**Contractor Insurance Requirements**

**GENERAL.**

Contractor (including its subcontractors, agents, etc.) shall i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION, and CERTIFICATES OF INSURANCE before performance under the contract commences, and ii) maintain the insurance in full force, through annually renewing policies, throughout the duration of the contract. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are reasonably acceptable to State. Contractor shall not start work described herein until the insurance is in full force.

**TYPES AND AMOUNTS.**

i. **WORKERS COMPENSATION.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employers liability insurance with coverage limits of not less than \$500,000 per accident, \$500,000 policy limit for bodily injury by disease and \$500,000 each employee for bodily injury by disease must be included.

ii. **COMMERCIAL GENERAL LIABILITY.** Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are reasonably satisfactory to State. This insurance shall include personal injury liability, products, and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by State:

Bodily Injury, Death and Property Damage: \$2,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence), \$4,000,000 General Aggregate and \$2,000,000 Products/Completed Operations Aggregate.

iii. **AUTOMOBILE Liability Insurance:** Automobile Liability. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Automobile Liability Insurance must be in not less than the following amounts as determined by State: Bodily Injury, Death, and Property Damage:

\$2,000,000 per accident (for all claimants for claims arising out of a single accident or occurrence).

iv. **PROFESSIONAL LIABILITY INSURANCE.** Professional liability insurance with limits of not less than \$1,000,000 per claim, and \$2,000,000 in the aggregate.

**ADDITIONAL INSURED.** The Commercial General Liability Insurance, Automobile Liability and any Umbrella/Excess Liability insurance must include the Central Oregon Intergovernmental Council, its

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officers, employees, and agents as Additional Insureds but only with respect to the contractor's activities to be performed under this Agreement. Coverage must be primary and non-contributory with any other insurance and self-insurance.

"TAIL" COVERAGE. If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the Contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Agreement, for a minimum of 24 months following the later of: (i) the Contractor's completion and COIC's acceptance of all Services required under this Agreement or, (ii) the expiration of all warranty periods provided under this Agreement. Notwithstanding the foregoing 24-month requirement, if the Contractor elects to maintain "tail" coverage and if the maximum time "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the Contractor may request and COIC may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If COIC approval is granted, the Contractor shall maintain "tail" coverage for the maximum period that "tail" coverage is reasonably available in the marketplace.

NOTICE OF CANCELLATION OR NON-RENEWAL. Contractor or its insurer must provide 30 days' written notice to COIC before cancellation of or non-renewal of the required insurance coverage(s).

CERTIFICATE(S) OF INSURANCE. Contractor shall provide COIC a certificate(s) of insurance for all required insurance before the Contractor performs under the Contract. The certificate(s) or an attached endorsement must specify all entities and individuals who are endorsed on the policy as Additional Insured.

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## Exhibit B Oregon Public Contract Provisions

1. **DELIVERY:** Deliveries will be F.O.B destination. Contractor shall pay all transportation and handling charges. Contractor is responsible and liable for loss or damage until final inspection and acceptance of the Goods. Contractor remains liable for latent defects, fraud, and warranties.

2. **INSPECTIONS:** Agency may inspect and test the Goods and related Services (collectively, Goods). Agency may reject non-conforming Goods and require Contractor to correct them without charge or deliver them at a reduced price, as negotiated. If Contractor does not cure any defects within a reasonable time, Agency may reject the Goods and cancel the PO in whole or in part. This paragraph does not affect or limit Agency's rights, including its rights under the Uniform Commercial Code, ORS chapter 72 (UCC).

3. **PAYMENT:** Agency shall pay Contractor within 30 days from (i) the date the Goods are delivered and accepted or (ii) the date the invoice is received, whichever is later. If Agency fails to pay within 45 days of such date, Contractor may assess overdue account charges up to a rate of 2.3% per month (8% APR) or the maximum rate allowed by law on the outstanding balance.

4. **STATE PAYMENT OF CONTRACTOR CLAIMS:** If Contractor does not pay promptly any claim that is due for Goods or Services furnished to the Contractor by any subcontractor in connection with this PO, the State may pay such claim and charge that payment against any payment due to the Contractor under this PO. The State's payment of a claim does not relieve the Contractor or its surety, if any, from their obligations for any unpaid claims.

5. **REPRESENTATIONS AND WARRANTIES:** Contractor represents and warrants that: (a) the Goods are new, current, and fully warranted by the manufacturer; (b) Delivered Goods will comply with specifications and be free from defects in labor, material and manufacture; (c) Contractor shall comply with the tax laws of this state and all political subdivisions; and (d) Contractor has no undisclosed liquidated and delinquent debt owed to the State or any department or agency of the State. All UCC implied and expressed warranties are incorporated in this PO. Contractor shall transfer all warranties to the State.

6. **TERMINATION:** (i) The Parties may terminate this PO by mutual agreement. (ii) Agency may terminate this PO at any time with written notice to Contractor. Upon receipt of the written notice, Contractor shall stop performance, and Agency shall pay Contractor for Goods delivered and accepted. (iii) Agency may terminate this PO at any time if Agency fails to receive funding, appropriations, or other expenditure authority. (iv) If Contractor breaches any PO provision, including the representations and warranties related to liquidated and delinquent debt, or is declared insolvent, Agency may terminate this PO for cause with written notice to Contractor, and Contractor shall be liable for all incidental and consequential damages resulting from its breach, including all damages as provided in the UCC.

Failure to comply with the tax laws of this state or any political subdivision or violation of Contractor's warranties related to compliance with the tax laws of this state and any political subdivision of this state also constitutes a material breach of this PO. Any violation entitles Agency to terminate this PO, to pursue and recover any and all damages that arise from the breach and the termination of this PO, and to pursue any or all of the remedies available under this PO, at law, or in equity, including but not limited to: termination of this PO in whole or in part; collection by administrative offset or garnishment, if applicable, or withholding amounts otherwise due and owing to Contractor without penalty.

7. **HOLD HARMLESS:** Contractor shall indemnify, defend, and hold harmless the State and its agencies, their divisions, officers, employees, and agents, from all claims, suits or actions of any nature arising out of or related to the intentional misconduct, recklessness or negligent activities of Contractor, its officers, subcontractors, agents, or employees under this PO.

8. **GOVERNING LAW, JURISDICTION, VENUE:** This PO is governed by Oregon law, without resort to any other jurisdiction's laws. Any claim, action, suit, or proceeding between the State and the Contractor that relates to this PO (Claim) must be heard exclusively in the Circuit Court of Marion County for the State of Oregon. If the Claim must be brought in a federal forum, then it must be heard exclusively in the US District Court for the District of Oregon. Contractor consents to the *in personam* jurisdiction of these courts. *Neither this Section nor any other provision of this PO is a waiver by the State of any form of defense, sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the US Constitution, or other immunity, from any Claim or consent to the jurisdiction of any court.*

9. **FORCE MAJEURE:** Neither party is responsible for delay or default caused by an event beyond its reasonable control. Agency may terminate this PO without liability to

Contractor upon written notice after determining the delay or default reasonably prevents performance of this PO.

10. **ASSIGNMENT/SUBCONTRACT/SUCCESSORS:** Contractor shall not assign, transfer, or subcontract rights (Subcontract) or delegate responsibilities under this PO in whole or in part, without the prior written approval of Agency. This PO's provisions are binding upon and inure to the benefit of the Parties to the PO and their respective successors and assigns.

11. **ACCESS TO RECORDS:** Contractor shall maintain all accounting records relating to this PO according to GAAP and any other records relating to Contractor's performance ("Records") for six (6) years from termination or as otherwise required. Contractor shall grant the State and its agencies, the Secretary of State Audits Division, the federal government, and their duly authorized representatives, access to the Records, including reviewing, auditing, copying, and making transcripts.

12. **COMPLIANCE WITH APPLICABLE LAWS:** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as amended (Rules), including: (i) Titles VI and VII of Civil Rights Act of 1964; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990; (iv) Executive Order 11246; (v) The Age Discrimination in Employment Act of 1967, and the Age Discrimination Act of 1975; (vi) The Vietnam Era Veterans' Readjustment Assistance Act of 1974; (vii) ORS Chapter 659, (viii) ORS 279B.020, and 279B.270; (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; (x) all federal and state laws governing the handling, processing, packaging, storage, labeling, and delivery of food products; and (xi) all regulations and administrative rules established pursuant to the foregoing laws. Agency's performance is conditioned upon Contractor's compliance with 279B.220, 279B.225, 279B.230, and 279B.235, as applicable. All applicable Rules are incorporated by reference in this PO.

13. **WORKERS' COMPENSATION:** Contractor shall comply with ORS 656.017 and provide the required workers' compensation coverage, unless exempt under ORS 656.126(2). Contractor shall ensure that its Subcontractors, if any, comply with these requirements.

14. **SAFETY AND HEALTH REQUIREMENTS:** Contractor represents and warrants that the Goods comply with all federal and Oregon safety and health requirements.

15. **MATERIAL SAFETY DATA SHEET:** Contractor shall provide Agency with a Material Safety Data Sheet for any Goods which may release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use (OAR 437-002-0360 and 29 CFR 1910.1020). Contractor shall label, tag or mark such Goods.

16. **RECYCLABLE PRODUCTS:** Unless otherwise required, Contractor shall use recycled and recyclable products to the maximum extent economically feasible in the performance of the PO. These products shall include recycled paper, recycled PETE products, other recycled products (ORS 279A.010(1)(gg),(hh),(ii)), and other recycled plastic resin products.

17. **AMENDMENTS:** All amendments to this PO must be in writing, signed by Agency.

18. **SEVERABILITY:** If a court of competent jurisdiction declares any provision of this PO to be invalid, the other provisions and the rights and obligations of the Parties remain in effect.

19. **WAIVER:** Agency's failure to enforce any provision of this PO is not a waiver or relinquishment by Agency of its rights to such performance in the future or to enforce any other provisions.

20. **AWARD TO FOREIGN CONTRACTOR:** If Contractor is not registered to do business or has no office in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this PO. Agency may withhold final payment under this PO until Contractor has met this requirement.

21. **TAX CERTIFICATION:** Contractor hereby certifies under penalty of perjury: (a) the number shown on this form is the correct Federal Employer Identification Number; (b) it is not subject to backup withholding because (i) it is exempt from backup withholding, (ii) it has not been notified by the IRS that it is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that it is no longer subject to backup withholding; and (c) it is not in violation of any Oregon tax laws.

Agreement EO 23-02 011

**Exhibit C**

1. **See Attached PDF.** State of Emergency Due to Homelessness Agreement No. OR-503
2. **See Attached PDF.** Central Oregon Executive Order 23-02 Community Plan Overview.

Agreement No. OR-503

## Grant Agreement

### State of Emergency Due to Homelessness

This Agreement (this "Agreement") is by and between the State of Oregon ("State"), acting by and through its Housing and Community Services Department ("Agency"), and Central Oregon Intergovernmental Council ("Recipient"), each individually a "Party," and collectively the "Parties."

#### 1. Effective Date and Duration

This Agreement shall become effective upon full execution by the Parties and, if required, approval by the Oregon Department of Justice, and shall expire on January 10, 2024, unless extended or terminated or sooner under the provisions identified within this Agreement. Expiration or termination of this Agreement will not prejudice Agency's right to exercise remedies under this Agreement with respect to any breach that has occurred prior to expiration or termination.

#### 2. Background and Definitions

The Parties acknowledge the following background related to this Agreement:

- a. On January 10, 2023, Governor Tina Kotek issued Executive Order 23-02 (the "EO"), which declared a state of emergency due to homelessness. The EO is necessary to rapidly expand the State's low-barrier shelter capacity, to rehouse people experiencing unsheltered homelessness, and to prevent homelessness to the greatest extent possible. All executive state agencies are authorized, upon further direction from Governor Kotek and the Governor's office, to take any actions authorized under the provisions set forth in ORS 401.168 through ORS 401.192. The EO took immediate effect and remains in effect until January 10, 2024, unless extended or terminated earlier by the Governor.
- b. During the 2023 Session of the Oregon Legislature, Agency was awarded funding from House Bill 5019, subject to passage and approval. Agency was appropriated funding for both the Biennium ending on June 30, 2023, and the Biennium beginning on July 1, 2023. Agency will grant funding from this bill through a variety of agreements to further the objectives of Executive Order 23-02, including by granting funds under this Agreement.
- c. All references to "days" in this Agreement shall mean calendar days.

#### 3. Consideration

Agency agrees to pay Recipient, from available and authorized funds, the amount of actual expenses incurred by Recipient in performing the grant activities referenced below in Section 4 of this Agreement ("Authorized Expenses"), but not to exceed \$13,874,565.00 (the "Grant Funds"), as follows:

- 3.1 On full execution of this Agreement by the Parties and, when required, approval by the Oregon Department of Justice, Agency will issue a Notice of Allocation ("NOA") to Recipient,

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pursuant to which Recipient will submit a request for funds and Agency will make a lump-sum payment to Recipient in the amount of \$3,661,343.54 (the "Initial Payment"), which Recipient will expend in accordance with the NOA. Recipient may use such funds to reimburse Authorized Expenses that were incurred by Recipient at any time during the period from January 10, 2023 to January 10, 2024 (the "Performance Period").

**3.2** After July 1, 2023, and following expenditure of the Initial Payment by Recipient and submission to Agency of a report detailing such expenditures in such form as is satisfactory to or required by Agency, Agency will reimburse Recipient for additional Authorized Expenses up to the amount of \$10,213,221.46 (the "Additional Allotment"), following receipt of requests by Recipient for such reimbursement. The total Grant Funds amount will equal the Initial Payment amount plus the Additional Allotment amount. Funds from the Additional Allotment will only be used to reimburse Authorized Expenses incurred from July 1, 2023 until the end of the Performance Period (January 10, 2024). Each such reimbursement request will be made following, and in accordance with, a NOA issued by Agency to Recipient, including, but not limited to any allocation of Grant Funds in the applicable NOA to specific expense categories. Recipient will submit requests for reimbursement under this Section 3.2 at least quarterly and in such form and manner as is satisfactory to or required by Agency. Agency and Recipient may, by mutual agreement, modify or terminate a NOA at any time. In the event of a conflict between any NOA and the terms of this Agreement, including, but not limited to the not-to-exceed amount set forth under this Agreement, the terms of this Agreement will prevail.

#### **4. Grant Activities**

Recipient will use Grant Funds to conduct the grant activities set forth in Exhibit A (the "Grant Activities"), which is attached to and incorporated into this Agreement. Recipient's receipt of Grant Funds is conditioned on Recipient's compliance with Exhibit A, including, but not limited to any performance measures set forth in Exhibit A.

#### **5. Authorized Representatives**

##### **5.1 Agency's Authorized Representative is:**

Mike Savara  
725 Summer Street NE, Suite B  
Salem, OR 97301  
[Mike.Savara@hcs.oregon.gov](mailto:Mike.Savara@hcs.oregon.gov)

##### **5.2 Recipient's Authorized Representative is:**

Scott Aycock  
1250 NE Bear Creek Rd  
Bend, OR 97701  
[scotta@coic.org](mailto:scotta@coic.org)

**5.3** A Party may designate a new Authorized Representative by written notice to the other Party.



## 6. Online Systems

- 6.1** Recipient and its subrecipients must enter all appropriate and necessary data into OPUS (a web-based application developed by Agency), Homeless Management Information System (HMIS), Procorem or any other Agency-approved system designated by Agency (collectively, the "Sites") at the time of client intake, if applicable, or at such other times required by Agency. Exceptions are only allowed with prior written approval by Agency.
- 6.2** As a condition of use of the Sites, Recipient and its subrecipients (collectively, "User") agree to all terms and conditions contained in this Agreement, notices on the Sites, or other directives by Agency regarding use of the Sites. User agrees to not use the Sites for any unlawful purpose. Agency reserves the right, in its sole discretion, to update or revise the terms and conditions for use of the Sites.
- 6.3** Use of the Sites for additional reported "local" program data is at the Recipient's and subrecipients' own risk. Agency will not modify or otherwise create any screen, report, or tool in the Sites to meet needs related to this local data.
- 6.4** Recipient hereby grants and will require and cause any subrecipient to grant Agency the right to reproduce, use, display, adapt, modify, distribute, and promote the content on the Sites in any form and disclose, to the extent permitted by law, any or all of the information or data furnished to or received by Agency directly or indirectly resulting from this Agreement. Recipient also shall use and shall require and cause its subrecipients to use appropriate client release forms and privacy policy forms in connection with obtaining and transmitting client data.
- 6.5** Recipient understands and agrees, and shall require its subrecipients to agree, that all materials, information, software, products, and services included in or available through the Sites (the "Content") are provided "as is" and "as available" for use. The Content is provided without warranties of any kind, either express or implied, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, or non-infringement. Agency does not represent or warrant that: (1) the Content is accurate, reliable, or correct; (2) the Sites will be available at any particular time or location; (3) any defects or errors in the Content will be corrected; or (4) the Content is free of viruses or other harmful components. Use of the Sites is solely at the User's risk. User hereby accepts the risk of its use of the Sites, and of the use of the Sites by its subrecipients.
- 6.6** Recipient agrees that under no circumstances will Agency be liable for any direct, indirect, punitive, incidental, special, or consequential damages that result from the use of, or inability to use the Sites. This limitation applies whether the alleged liability is based on contract, tort, negligence, strict liability, or any other basis, even if Agency has been informed of the possibility of such damage.

## 7. Headings

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The headings or captions in this Agreement are for convenience only and in no way define, limit, or describe the intent of any provisions of this Agreement.

#### **8. Amendments**

The terms of this Agreement shall not be modified, supplemented, or amended in any manner whatsoever, except in writing by Agency.

#### **9. Nonexclusive Remedies Related to Funding**

Agency may withhold any and all undisbursed Grant Funds from Recipient if Agency, in its sole discretion, determines that Recipient has failed to timely satisfy any material obligation arising under this Agreement or otherwise. Recipient's material obligations include, but are not limited to, providing complete, accurate and timely reports satisfactory to Agency about Recipient's performance under this Agreement as well as timely satisfying all Agreement obligations relating to any Grant Funds.

If Grant Funds are not obligated for reimbursement by Recipient in a timely manner as determined by Agency in its sole discretion, Agency may reduce Recipient's funding as it determines to be appropriate in its sole discretion and redistribute such Grant Funds to other parties or retain such Grant Funds for other use. This remedy is in addition to any other remedies available to Agency under this Agreement or otherwise.

#### **10. Independent Contractor Relationship**

The Parties agree and acknowledge that their relationship is that of independent contracting parties and that neither Recipient, nor any of its directors, officers, employees or agents, is an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.

#### **11. Access to Records**

Recipient shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Recipient shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of Recipient, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document Recipient's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of Recipient, whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." Recipient acknowledges and agrees that Agency and the Oregon Secretary of State's Office and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. Recipient shall retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. Subject to the foregoing minimum records retention requirement, Recipient shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.

#### **12. Compliance with Law**

In connection with their activities under this Agreement, the Parties shall comply with all applicable law.

**13. Contribution**

**13.1** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (a "Third Party Claim") against a Party (the "Notified Party") with respect to which the other Party (the "Other Party") may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this Section and a meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's contribution obligation under this Section 13 with respect to the Third Party Claim.

**13.2** With respect to a Third Party Claim for which Agency is jointly liable with Recipient (or would be if joined in the Third Party Claim ), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Recipient in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of Recipient on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of Recipient on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines, or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

**13.3** With respect to a Third Party Claim for which Recipient is jointly liable with Agency (or would be if joined in the Third Party Claim), Recipient shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of Recipient on the one hand and of Agency on the other hand in connection with the events that resulted in such expenses, judgments, fines, or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Recipient on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines, or settlement amounts. Recipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

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**13.4** Recipient shall take all reasonable steps to cause its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents (“Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys’ fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Recipient’s contractor or any of the officers, agents, employees or subcontractors of the contractor (“Claims”). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims. Any defense obligations to Indemnitee are subject to compliance with applicable provisions of ORS chapter 180.

**14. Recipient Default**

Recipient will be in default under this Agreement upon the occurrence of any of the following events:

- 14.1** Recipient fails to perform, observe, or discharge any of its covenants, agreements, or obligations under this Agreement, including, but not limited to failure to perform Grant Activities or satisfy performance measures as set forth in Exhibit A and such failure is not remedied within thirty (30) days following notice from Agency to Recipient specifying such failure; or
- 14.2** Any representation, warranty or statement made by Recipient in this Agreement or in any documents or reports submitted by Recipient in connection with this Agreement, concerning the expenditure of Grant Funds or Recipient’s performance of any of its obligations under this Agreement, is untrue in any material respect when made; or
- 14.3** Recipient fails to incur expenses, or to satisfy performance measures, at a rate or in a manner that would result in complete expenditure of the Grant Funds in accordance with this Agreement, or successful completion of all performance measures under this Agreement, on or before January 10, 2024, as determined by Agency in its sole discretion.

**15. Agency Default**

Agency will be in default under this Agreement if Agency fails to perform, observe, or discharge any of its covenants, agreements, or obligations under this Agreement.

**16. Remedies**

- 16.1** In the event Recipient is in default under Section 14, Agency may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to: (a) termination of this Agreement under Section 18, (b) reducing, withholding or recovering payment of Grant Funds for activities that Recipient has failed to

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perform in accordance with this Agreement, (c) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, or (d) exercise of its right of recovery of overpayments under Section 17 of this Agreement or setoff, or both.

All of the above remedies in this Section 16.1 are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

**16.2** Prior to any termination of this Agreement by Agency pursuant to Section 18.2.3, Agency will provide Recipient with a written notice of such default and will include in such notice an offer to meet with the senior manager of Recipient who has primary responsibility for oversight of the Grant Activities to provide Recipient an opportunity to explain the reasons for the default and to present a proposal for curing the default within a time period that is acceptable to Agency. Recipient shall have 5 days to accept such offer. If Recipient does not accept such offer within such 5-day period, Agency may terminate this Agreement upon 10 days' written notice as provided in Section 18.2.3 or exercise any other remedies available to Agency under this Agreement unless Recipient has fully cured such default prior to the expiration of such 10-day notice period. If Recipient accepts such offer, the meeting must be held within 14 days of such acceptance or at such other time as agreed by Agency. Following the meeting, Agency shall make a determination, in its reasonable discretion, of whether to accept Recipient's proposal, with such modifications as are mutually acceptable to the Parties, and shall give written notice of such determination to Recipient. If Agency's written notice states that Agency does not agree to such proposal, or if Agency accepts such proposal but Recipient does not satisfy the terms of the proposal, Agency may terminate this Agreement upon 10 days written notice as provided in Section 18.2.3 or exercise any other remedies available to Agency under this Agreement unless Recipient has fully cured such default prior to the expiration of such 10-day notice period.

**16.3** In the event Agency is in default under Section 15 and whether or not Recipient elects to exercise its right to terminate this Agreement under Section 18, or in the event Agency terminates this Agreement under Sections 18.2.1, 18.2.2, or 18.2.4, Recipient's sole remedy will be a claim for reimbursement of expenses incurred in accordance with this Agreement, less any claims Agency has against Recipient. In no event will Agency be liable to Recipient for any expenses related to termination of this Agreement or for anticipated profits or loss. If previous amounts paid to Recipient exceed the amount due to Recipient under this Section 16.2, Recipient shall promptly pay any excess to Agency.

## **17. Recovery of Overpayments; Withholding of Funds**

**17.1** If payments to Recipient under this Agreement, or any other agreement between Agency and Recipient, exceed the amount to which Recipient is entitled, Agency may, after notifying Recipient in writing, withhold from payments due Recipient under this Agreement, such

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amounts, over such periods of times, as are necessary to recover the amount of the overpayment.

**17.2** Agency may withhold any and all undisbursed Grant Funds from Recipient if Agency determines, in its sole discretion, that Recipient has failed to timely satisfy any material obligation arising under this Agreement, including, but not limited to providing complete, accurate, and timely reports in a form satisfactory to Agency, or if Agency determines that the rate or scale of requests for Grant Funds in any expenditure category materially deviates from an applicable NOA or is unsubstantiated by related documentation.

### **18. Termination**

**18.1** This Agreement may be terminated at any time by mutual written consent of the Parties.

**18.2** Agency may terminate this Agreement as follows:

**18.2.1** Immediately upon written notice to Recipient, if Agency fails to receive funding, appropriations, limitations, or other expenditure authority at levels sufficient, in Agency's reasonable administrative discretion, to perform its obligations under this Agreement;

**18.2.2** Immediately upon written notice to Recipient, if federal or state laws, rules, regulations, or guidelines are modified or interpreted in such a way that Agency's performance under this Agreement is prohibited or Agency is prohibited from paying for such performance from the planned funding source;

**18.2.3** If Recipient is in default under this Agreement and such default remains uncured for a period of 10 days following completion of the process outlined in Section 16.2 ; or

**18.2.4** As otherwise expressly provided in this Agreement.

**18.3** Recipient may terminate this Agreement immediately upon written notice to Agency, if Agency is in default under this Agreement and such default remains uncured 15 days after written notice to Agency.

**18.4** Upon receiving a notice of termination of this Agreement, Recipient will immediately cease all activities under this Agreement, unless Agency expressly directs otherwise in such notice.

### **19. Insurance**

**19.1** Recipient shall insure, or self-insure, and be independently responsible for the risk of its own liability for claims within the scope of the Oregon Tort Claims Act (ORS 30.260 through 30.300).

**19.2** Recipient shall require its first-tier contractor(s) that are not units of local government as defined in ORS 190.003, if any, to obtain the insurance specified in Exhibit C.

**20. Availability of Funds**

Agency's obligation to pay any amounts and otherwise perform its duties under this Agreement is conditioned upon Agency receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement. Nothing in this Agreement may be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law limiting the activities, liabilities, or monetary obligations of Agency.

**21. Governing Law**

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Oregon, without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "claim") between Recipient and Agency or the State of Oregon that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon, provided that in the event that a claim must be brought in a federal forum, the claim shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. Recipient consents to the exclusive jurisdiction of such courts. Nothing in this Agreement constitutes consent by the State of Oregon to the jurisdiction of any court or a waiver by the State of Oregon of any defense or immunity, including, but not limited to sovereign immunity and immunity under the Eleventh Amendment to the United States Constitution.

**22. Notice.**

Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement must be given in writing by email, personal delivery, or postage prepaid certified or registered mail, with return receipt, to a Party's Authorized Representative at the physical address or email address set forth in Section 5 of this Agreement, or to such other addresses as either Party may indicate pursuant to this Section 22. Any notice so addressed and mailed becomes effective five days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective upon the sender's receipt of confirmation of delivery, either by return email or by demonstrating through other technological means that the email has been delivered to the Recipient's email address.

**23. Survival**

All rights and obligations of the Parties under this Agreement will cease upon termination of this Agreement, other than those rights and obligations that by their express terms survive termination of this Agreement or would reasonably be expected to survive termination of this Agreement; provided, however, that termination of this Agreement will not prejudice any rights or obligations accrued to the Parties under this Agreement prior to termination.

**24. Intended Beneficiaries**

Agency and Recipient are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this Agreement.

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**25. Assignment**

Recipient may not assign or transfer its interest in this Agreement without the prior written consent of Agency and any attempt by Recipient to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. Agency's consent to Recipient's assignment or transfer of its interest in this Agreement will not relieve Recipient of any of its duties or obligations under this Agreement. The provisions of this Agreement will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.

**26. Subcontracts**

Recipient shall notify Agency prior to entering into any subcontracts for any of the activities required of Recipient under this Agreement. Agency's receipt of notice of any subcontract will not relieve Recipient of any of its duties or obligations under this Agreement. For purposes of this Agreement, including, but not limited to any exhibits incorporated into this Agreement, "subcontract" means any agreement pursuant to which Recipient compensates another party to carry out any activities under this Agreement, whether by contract for goods or services, grant agreement, or otherwise. For avoidance of doubt, the term "subcontractor" includes any subgrantee or subrecipient to which Recipient awards any funds received by Recipient under this Agreement.

**27. Merger; Waiver**

This Agreement and all exhibits and attachments, if any, constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver or consent under this Agreement binds either Party unless in writing and signed by the applicable Party. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given.

**28. Counterparts**

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.

[The remainder of this page intentionally left blank.]



**29. Signatures**

**Oregon Housing & Community Services**

DocuSigned by:  
*Sandra Flickinger*  
4644B20D2A0B40F

**Signature**

Sandra Flickinger, Desig Proc Officer

**Printed Name & Title**

4/21/2023

**Date**

**Central Oregon Intergovernmental Council**

DocuSigned by:  
*Scott Aycock*  
779C905BA4A1459

**Signature**

Scott Aycock, CED Director

**Printed Name & Title**

4/20/2023

**Date**

**Exhibit A****Grant Activities****1. Description.**

On January 10, 2023, Governor Tina Kotek declared a homelessness state of emergency in response to the 80% rise in unsheltered homelessness in emergency areas since 2017. The Governor directed state agencies to prioritize efforts to reduce homelessness and established a statewide housing production advisory council. In addition to these efforts on the part of the state government, Agency will play a major role in the delivery of the Governor's early investment package that was awarded through House Bill (HB) 5019 during the 2023 Session of the Oregon Legislature. Most of these resources will be delivered to local emergency response regional planning bodies, including Continuums of Care ("CoC") within the areas that are included within the emergency declaration as determined by Agency. Agency will support communities in deploying these funds, including, but not limited to support pursuant to this Agreement, in a coordinated effort to accomplish the following statewide objectives:

1. Prevent homelessness for 8,750 households statewide;
2. Increase shelter capacity, quality, and utilization in emergency areas by 600 beds; and
3. Rehouse at least 1,200 households experiencing unsheltered homelessness in emergency areas.

Agency is deploying Grant Funds pursuant to a Homelessness Emergency Response Program designed to accomplish objectives 2 and 3 identified above (the "Program"). Objective 1 identified above will be accomplished through other agreements.

**2. Grant Activities.**

- A. Regional Unsheltered Homelessness Emergency Response Plan.** Prior to eligibility for funding, Recipient submitted a Regional Unsheltered Homelessness Emergency Response Plan ("Plan") to Agency that specifies, among other things: current local, state, federal, and other resources allocated to emergency shelter services, rehousing services, and housing stabilization services; and current service levels and gaps in services and resources in emergency response areas specifically impacting people experiencing unsheltered homelessness. The Plan is attached to and incorporated into this Agreement as Exhibit B and, together with this Exhibit A, defines the scope of grant activities ("Grant Activities") authorized for the purposes of this Agreement.
- B. Compliance with Agreement.** Recipient shall and shall cause and require by written agreement that its subcontractors comply with and perform all Grant Activities in accordance with the terms of this Agreement, including but not limited to all exhibits to this Agreement. The provisions of this Section 2 are supplemental to and do not limit the obligations of Recipient or its subcontractors arising under any other provision of this Agreement.

- C. Housing Focused.** All activities conducted under this Agreement must be Housing Focused. "Housing Focused" activities are defined as activities that seek to lower barriers for people experiencing homelessness or housing instability. Activities conducted under this Agreement may not screen participants out solely on the basis of certain behavioral, psychological, physiological, citizenship or immigration status or economic preconditions. Housing Focused services must ensure that the safety and support of both staff and clients are paramount. This is accomplished through a focus on ensuring safety by managing behaviors that pose a risk to health and safety rather than implementing blanket exclusions based on a past diagnosis or current behavioral health symptoms that do not pose a direct risk to community safety. Furthermore, Recipient must actively coordinate services and supports for helping people exit homelessness and make efforts to reduce the barriers to re-housing individuals and families in their community.
- D. No Supplanting of Other Funds.** Recipient may not use funds under this Agreement to supplant other funds available for the same purpose. Furthermore, Recipient agrees that during the term of this Agreement, the funding available for homeless services from sources other than this Agreement will not be reduced from the levels outlined in the Plan, and that in the event of any such reduction, Agency may exercise any of the remedies available to it under this Agreement or at law or in equity. Recipient also agrees to comply with reporting requirements as outlined in Section 3 of this Exhibit A (Program Specific Reporting) to demonstrate the levels of funding from other sources as outlined in the Plan are sustained throughout the term of this Agreement and that no reductions to such funding are made. Failure by Recipient to comply with this Section 2(D) is a material breach of this Agreement, and entitles Agency to exercise any remedies available to it under this Agreement or at law or in equity.
- E. Client Evaluation.** Recipient shall conduct an initial evaluation of clients in accordance with local CoC requirements applicable at the time of client evaluation. For the purposes of client eligibility, Recipient must determine which category of housing status each household meets. Eligibility based on housing status shall be determined based upon the initial engagement with the client.

The eligibility categories are as follows:

**Category 1: Literally Homeless**—Individual or family that lacks a fixed, regular, and adequate nighttime residence, meaning:

- Living in a primary nighttime residence that is a public or private place not designed for human habitation (including, but not limited to, a car, park, abandoned building, bus or train station, airport or camping ground);
- Living in a publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional shelter, and hotels or motels paid for by charitable organizations or by federal, state or local government programs); or

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- Exiting an institution where the individual or family has resided for 90 days or less AND who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution.

**Category 2: Imminent Risk of Homelessness**—Individual or family that will lose their primary nighttime residence provided that:

- The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;
- No subsequent residence has been identified; AND
- The individual or family lacks the resources or support networks (e.g., family, friends, faith-based or other social networks) needed to obtain other permanent housing.

**Category 3: Homeless Under Other Federal Statutes**—Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under another category, (literally homeless, imminent risk of homelessness or fleeing/attempting to flee domestic violence) but who:

- Are defined as homeless under other listed federal statutes;
- Have not had a lease, ownership interest, or occupancy agreement in permanent housing during the 60 days prior to the Program assistance eligibility determination;
- Have experienced persistent instability as measured by two moves or more during the preceding 60 days; AND
- Can be expected to continue in such status for an extended period of time due to special needs or barriers.

**Category 4: Fleeing/Attempting to Flee Domestic Violence**—Individual or family that:

- Is fleeing, or is attempting to flee, domestic violence;
- Has no other safe residence; AND
- Lacks the resources or support networks to obtain other permanent housing.

**Category 5: Unstably Housed**—Individual or family that:

- Is at risk of losing their housing, and does not otherwise qualify as homeless under Categories 1-4 listed above, provided that:
- Has been notified to vacate current residence or otherwise demonstrate high risk of losing current housing; AND

- Lack the resources or support networks to obtain other permanent housing.

**Category 6: Unsheltered Homelessness**—Individual or family that is living in a primary nighttime residence that is a public or private place not designed for human habitation (including, but not limited to, a car, park, abandoned building, bus or train station, airport or camping ground).

Client eligibility criteria for each of the above categories are as follows:

- Rapid Re-housing Client Eligibility Criteria:
  - Household must meet the following Housing Status Criteria at time of initial engagement:
    - **Category 6: Unsheltered Homelessness**
- Shelter and Street Outreach Client Eligibility Criteria:
  - Household must meet the following Housing Status Criteria:
    - **Category 1: Literally Homeless**
    - **Category 2: Imminent Risk of Homelessness**
    - **Category 3: Homeless Under Other Federal Statutes**
    - **Category 4: Fleeing/Attempting to Flee Domestic Violence**
    - **Category 6: Unsheltered Homelessness**
- Grant Funds under this Agreement are not allowed to be used for households meeting Category 5, Unstably Housed. Prevention funding will be deployed to local communities through other agreements.

**F. Low Barrier Shelter Requirement.** Funding under this Agreement for shelter acquisition, operation and construction must only be utilized to create new shelter bed capacity that meets the following definition of Low Barrier Shelter:

Low Barrier Shelters: Low and no barrier policies allow homeless individuals and households to access shelter, housing, and services without preconditions such as sobriety, compliance with treatment plan, no pets, or agreement to participate in specific programs, activities, or classes. These policies allow those most in need to have access to shelter and housing. These additional emergency shelter beds must be low barrier, focus on assessment and triage, and intentionally link to permanent housing resources so that people move through to housing quickly. Recipient may request

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technical assistance from the Agency to modify shelter policies to meet this definition.

In order to meet minimum standards as a Low Barrier shelter, the following three conditions must be met:

- Sobriety\* and treatment are voluntary;
- No required documentation of identification, custody, citizenship, or gender. Furthermore, shelters must meet the Department of Housing and Urban Development's Equal Access Rule, 81 FR 64763, to ensure services are available to all individuals and families regardless of sexual orientation, gender identity, or marital status; and
- Shelter accommodates pets and belongings.

\*Note: Low-barrier shelters may establish requirements that limit the use of drugs and alcohol in common or shared areas of the facility. In addition, facilities may establish behavioral expectations that limit disruptive or violent behavior resulting from intoxication. However, the requirement to abstain completely from alcohol or drug use is not a component of low-barrier shelters.

Furthermore, Agency is recommending the adoption of the following best practices as key indicators of a successful Low Barrier Shelter:

- Shelter has minimal expectations or requirements of people seeking shelter;
- Shelter focuses on addressing disruptive or dangerous behaviors rather than compliance to rules or case plans;
- Shelter welcomes self-defined family and kinship groups to seek shelter together;
- Shelter can identify financial resources that can support the adoption of low barrier policies and practices and supports extended or flexible hours and adapted service-delivery models;
- Shelter accommodates pets and belongings;
- Shelter's intake process and housing navigation services coordinate closely with community-based outreach services and coordinated entry;
- Shelter creates flexible and predictable access for people seeking shelter;

- No charge to individuals or families for stays, meals, or services at the low barrier shelter; and
- Shelter does not exclude people with criminal convictions, poor credit, or eviction histories.

Recipient may fund shelters that require sobriety or drug and alcohol treatment services, but otherwise meet the definition of Low Barrier as outlined in this Agreement in order to provide access to the special needs of people who are in recovery from drugs and alcohol. For example, a facility that meets the definition of Alcohol and Drug Free Community housing as outlined in ORS 90.243 may qualify for funding. Such use of funds for shelters that require sobriety or drug and alcohol treatment services must be as outlined in the Plan (Exhibit B). Notwithstanding any other provision of this Agreement, no more than 30% of the shelter bed capacity created in each community under this Agreement is permitted to be subject to required sobriety or drug and alcohol treatment services.

**G. New Shelter Bed Requirement.** New shelter bed capacity is defined as beds that are added to a local region as a direct result of funding under this Agreement. Beds may be counted if the building requires rehabilitation prior to the shelter being operational or put into use, if needed. It also may include beds that are added to existing shelters through expansion. If a bed is not available in a local region due to lack of operational funding and has not been previously operational, Grant Funds may be used to bring the bed into active use and the bed would count as added shelter capacity for purposes of this Agreement. Shelter funds may not be used to supplant existing resources, consistent with Section 2(D) of this Exhibit A. Shelter beds may not be counted toward the goal of new shelter beds as outlined in this Agreement unless new beds are being added into an existing shelter or an entirely new shelter facility is brought online as a result of funding under this Agreement.

**H. Habitability Requirements.** Shelters, whether congregate or non-congregate, must meet habitability requirements that include minimum safety, sanitation, and privacy standards as outlined in 24 CFR § 576.403, regardless of whether 24 CFR § 576.403 independently applies to such shelters apart from this Agreement. Shelters must be structurally sound. Tents and other structures without hardened surfaces that do not meet these minimum standards are unallowable. Recipient must document habitability requirements for all shelters funded under this Agreement. Agency will provide technical assistance reasonably requested to ensure compliance with habitability requirements.

Shelter units may be in the form of Non-Congregate Free-Standing Units if they provide the following amenities:

- Heat
- Electricity
- The ability to close and lock a door
- Showers and restrooms onsite

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- Hard-surface walls and roofing
- Food preparation facilities available onsite or with an action plan to provide meals to shelter residents

**I. Use of Grant Funds.** Consistent with the Plan as well as any applicable NOA, Grant Funds may be utilized for the following purposes:

A. Acquisition, construction, conversion, or rehabilitation of shelters that increase the shelter bed capacity in accordance with the terms of this Agreement, including but not limited to Sections 2(F), 2(G) and 2(H) of this Exhibit A.

- i. **Acquisition** means acquiring property through purchase, donation, trade, or any other method for the purposes of utilization as an emergency shelter.
- ii. **Conversion** means the process of changing or causing to change from one form to another: changing the function of a piece of property from one use to another.
- iii. **Rehabilitation** means action taken to return a property to a useful state by means of repair, modification, or alteration.

B. Shelter operations, services and supports for shelter beds that increase capacity as determined in accordance with the terms of this Agreement.

C. Street outreach services, including housing navigation and placement services

D. Sanitation services

E. Rapid-rehousing services, including landlord incentives to secure available units, through block-leasing strategies or other means, for people exiting homelessness. Rental assistance commitments, when utilized under rapid-rehousing services, may be issued for up to a 12-month period of time after client move in and may also be issued in the form of an upfront payment to the landlord. Rental assistance commitments may include pre-paid costs to encourage landlord participation. Costs may also include paying for damages or past due housing debt to secure new units or resources. Supportive housing services may be provided for block-leased units and for households that are rehoused pursuant to this Agreement to ensure participants are able to stay securely housed and landlords are supported with various needs.

For all clients who are re-housed utilizing Grant Funds, Recipient is required to provide landlord with documentation showing that the landlord participated in the Program to ensure Agency can provide further guarantees of financial



assistance through the Landlord Guarantee Program. Agency shall provide templates that Recipient may use for this purpose.

F. Administrative costs up to the limit outlined in the Plan (Exhibit B) including, but not limited to:

- i. Senior executive management personnel salaries and benefits (unless they are directly involved in Program operations), administrative staff travel costs;

General services such as accounting, budget development, personnel, contracting, marketing, agency audit, agency insurance;

- ii. Board expenses (excluding meals);

- iv. Planning and implementation of MAC group infrastructure

- v. Organization-wide membership fees and dues specific to the Program;

- vi. General agency facilities costs (including those associated with executive positions), such as rent, depreciation expenses, and operation and maintenance (as part of the organization’s direct or indirect cost allocation plan); and

- vii. Equipment rental/purchase, insurance, utilities, and IT costs that are not specific to the Program but relate to the administration of the Recipient as a whole.

Recipient may also utilize Grant Funds to address the specific needs of various homeless subpopulations as set forth in the Plan. Targeting of funds must not violate the Fair Housing Act or other applicable anti-discrimination requirements.

**3. Program Specific Reporting.**

Recipient shall and shall cause and require its subcontractors by written agreement to submit to Agency all reports as required in this Agreement. Recipient shall and shall cause and require its subcontractors by written agreement to ensure that data collection and reporting, which may include personally identifiable information, be conducted through the use of Agency-approved systems including HMIS or HMIS-Comparable systems for Victim Service Providers. Recipient shall utilize existing systems of Agency (OPUS for fiscal management, and HMIS for Program outcome management, Procorem for reporting submission) for all funding under this Agreement in accordance with applicable policies and procedures of Agency. Recipient shall provide service provider technical assistance to users in Recipient’s region and may request additional assistance from Agency as needed.

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Recipient may request a reporting deadline extension. An extension must be approved, in writing by Agency in Agency's sole discretion. Requests must be emailed to [HCS.REPORTING@hcs.oregon.gov](mailto:HCS.REPORTING@hcs.oregon.gov) prior to the submission deadline.

The following reports and other documents shall be submitted to Agency throughout the Performance Period and for any additional period as required to include all reportable activities performed during, the Performance Period and all other reportable information relating to the Performance Period:

- (1) Monthly disaggregated data using the SAP Business Objects (the HMIS reporting tool) System Query Report. Report is due 20 days following the end of each month and uploaded into Procorem. The System Query data may be submitted by the HMIS administrator for all OHCS funded HMIS Participating Agencies/Providers in the HMIS instance.
- (2) Monthly Housing Inventory (HIC) Bed/Unit Inventory updates must be 20 days following the end of each month. This can be reported using the HIC report in SAP Business Objects or an Excel spreadsheet of the CoC's Housing Inventory (complete), maintained outside of HMIS. Reports must be emailed to [HCS.REPORTING@HCS.oregon.gov](mailto:HCS.REPORTING@HCS.oregon.gov).
- (3) Quarterly Aggregated Activity Reports using the SAP Business Objects OHCS Quarterly Report are due 20 days following the end of each quarter. Reports must be emailed to [HCS.REPORTING@HCS.oregon.gov](mailto:HCS.REPORTING@HCS.oregon.gov). The Quarterly Aggregated Activity Report may be submitted by the HMIS administrator for all OHCS funded HMIS Participating Agencies/Providers in the HMIS instance.
- (4) Biannual System Performance Measure Reports (SPMs) for the CoC and for All-in funded projects (Reporting Group) are due 20 days following the end of each month. These are "canned" reports found in WellSky Community Services (ServicePoint) Report Module: System Performance Measures. Instructions on how to format and share these reports will be provided by Agency. Reports must be emailed to [HCS.REPORTING@HCS.oregon.gov](mailto:HCS.REPORTING@HCS.oregon.gov).
- (5) Requests for funds through the OPUS system must be submitted within 60 days of the end of each quarter. A final request for funds must be submitted for all fiscal year expenses within 60 days of each fiscal year end. Backup documentation for expenditures made from the Initial Payment must be submitted to Agency within 30 days of June 30, 2023. Backup documentation for expenditures made from the Additional Allotment must be submitted through Agency's OPUS system.
- (6) If Recipient uses funds under this Agreement to add new shelter bed capacity, Grantee must submit a narrative update in a manner prescribed by Agency within 20 days of the end of each month during which such new shelter bed capacity is being added.
- (7) Recipient shall provide additional reports and shall cooperatively attend meetings with Agency, as reasonably requested by Agency.

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#### 4. Performance Measures

Recipient shall and shall cause and require its subcontractors by written agreement to conduct the Grant Activities in a manner consistent with the requirements of this Agreement and to achieve the following performance goals, as well as the performance goals that are outlined in the Plan:

- A. Increased housing stability as measured by the number of individuals who were successfully re-housed and who met eligibility criteria as outlined in this Agreement before the end of the performance period (January 10, 2024) unless otherwise stated.
- B. Increased shelter availability and utilization in boundary area of the Continuum of Care or identified sub-region as defined in the Plan as measured by a percentage increase in the number of new shelter beds as defined in this Agreement available and operational in the region referenced above by the end of the Performance Period (January 10, 2024), unless otherwise stated.

#### 5. Restrictive Covenants for Shelter Facilities

Recipient shall operate the shelter facilities acquired, converted, renovated or rehabilitated pursuant to the Grant Activities (the "Facilities") and provide such related services as are required under the Grant Activities and other provisions of this Agreement for the restrictive use period as provided below (the "Restrictive Use Period").

Recipient must place a Declaration of Restrictive Covenants on the Facilities restricting the use of the Facilities to provide the housing and services as described in this Agreement. The Declaration of Restrictive Covenants shall be in such form as required by Agency and shall be filed, at the Recipient's expense, in the real property records of each county in which the Facilities are located. Notwithstanding any provision of this Agreement, the obligations set forth in the Declaration of Restrictive Covenants shall continue in full force and effect throughout the entire Restrictive Use Period and until the expiration of such obligations under the terms of the Declaration of Restrictive Covenants. Recipient acknowledges and agrees that such obligations will survive the expiration or termination of this Agreement. Recipient shall execute all other documents reasonably required by Agency in connection with the Declaration of Restrictive Covenants. Agency may waive any of the requirements pertaining to Facility restrictive covenants at its sole discretion.

##### Restrictive Use Period

The Restrictive Use Period for all Facilities that are acquired or constructed by Recipient through the use of Grant Funds is 10 years.

The Restrictive Use Periods for Facilities that are placed in service following rehabilitation or conversion of an existing structure are as set forth in the table below. The Restrictive Use Period runs from December 31 of the year the Facility is placed in service until December 31 of the final year of the Restrictive Use Period. Recipient must agree to certify compliance with this

requirement and submit that certification to Agency on an annual basis, or upon request of Agency, throughout the Restrictive Use Period.

Before Recipient uses any Grant Funds to construct, rehabilitate or convert a Facility to be located on leased property, Recipient shall request prior written approval of Agency. Agency may approve or disapprove of such use of Grant Funds in its sole discretion and any such Agency approval may include modifications to the Restrictive Use Period as determined by Agency in its sole discretion.

<b>Rehabilitation and Conversion Minimum Period of Use</b>		
<b>Type of Activity</b>	<b>Definition</b>	<b>Minimum Period of Use</b>
Minor Rehabilitation	The cost of the rehabilitation of an existing emergency shelter is 75% or less of the value of the building before rehabilitation*	3 Years
Major Rehabilitation	The cost of the rehabilitation of an existing emergency shelter exceeds 75% of the value of the building before rehabilitation*	10 Years
Minor Conversion	The cost of the conversion of a building to an emergency shelter is 75% or less of the value of the building after conversion*	3 Years
Major Conversion	The cost of the conversion of a building to an emergency shelter exceeds 75% of the value of the building after conversion*	10 Years

\* The value of each shelter building is the fair market value of the building, as determined by an independent real estate appraiser approved by Agency or by an Agency-approved process.

**Transferring Property Ownership**

Within the Restrictive Use Period, Recipient may not transfer, repurpose, sell, assign, bequeath, or dispose of any interest in the Facilities or the underlying real property to any person, entity or

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other assignee, without obtaining the prior written consent of Agency. Agency may condition any such consent on the agreement of the transferee to assume all obligations of Recipient under this Agreement for the duration of the Restrictive Use Period. The proposed use of any monies gained from the transaction must be pre-approved by Agency.

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**Exhibit B**

**Regional Plan**

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# Regional Planning Template and Funding Request



OR-503 (Central Oregon CoC)

**Contents:**

- [Overview](#)
- [Process](#)
- [Data Collection](#)
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- [Goal Setting](#)

**Overview**

On January 10, 2023, Governor Tina Kotek declared a state of emergency in response to a 63% rise in homelessness since 2016. Oregon's Departments of Emergency Management (OEM) and Housing and Community Services (OHCS) have partnered to lead this work with the Office of the Governor.

The initial priority in this crisis is to target funding in a coordinated, three-prong effort to 1) prevent homelessness for at least 8,750 households statewide, 2) increase shelter capacity in emergency areas by 600 units, and 3) rebouse at least 1,200 households statewide this year.

The Oregon Housing and Community Services Department will deliver \$130,000,000 in funding to seven of Oregon's Continuums of Care (CoCs) deemed emergency areas. OEM and OHCS will lead this work and coordinate state agency support for local implementation. Over the course of the year, state partners will support regional and community partners in the emergency areas to:

- Phase 1: January-February**
  - Determine additional state funding opportunities for unsheltered homeless services
  - Establish and begin managing MAC (multi-agency coordination) teams
- Phase 2: February-March**
- Phase 3: March-April**
  - Determine regional impact and needs
  - Gather community priorities
  - Project this year's progress and possibility
  - Set goals and milestones
  - Confirm draft regional plan

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- Determine local capacity for approved plan
- Identify outstanding support and resource needs
- Develop local implementation plans

- Support continuous quality improvement

Phase 4: April-December

- Monitor systems improvement
- Iterate on regional plan and strategies

Phase 5: August-December

- Document lessons learned
- Determine regional impact for 2023 and 2024 needs
- Celebrate and build on successes for 2024 planning

This Regional Planning Template and Funding Request is the framework for Phase 2 and is designed to support regional planning and streamline the state's funding process for homeless services under EO-23-02.

Process

In February 2023, OHCS and OEM will convene regional and local leaders to provide an overview of Phase 2: Regional Planning and Funding Requests. This document covers the three steps of Phase 2:

- 1) Data Collection
- 2) Community Analysis
- 3) Goal Setting

This document can be used as a guide throughout Phase 2 and as a repository for qualitative data and community decisions and plans. State partners have attached an editable spreadsheet to this document, which will serve to collect data and automate calculations and projections necessary to the planning and funding process. Phase 2 is outlined below with items captured in the spreadsheet noted with an \*.

Data Collection

- o Partners\*
- o Population\*
- o Services\*

- o Community Priorities
- o Unmet Needs

Goal Setting

- o Priority Strategies
- o Projections\*
- o Confirm Goals
- o Milestones

Community Analysis

- o Stakeholder Engagement
- o Data Review
- o Impact Analysis



**Data Collection**

Early in this phase of work, MAC teams and CoCs are encouraged and can be supported in seeking input from people with lived expertise and/or experience of homelessness (people who have or who are currently experienced of homelessness). This input should be prioritized in discussion and decision-making. State agencies and technical assistance providers are available to support this coordination as needed upon request through MAC teams. The region's spreadsheet\* should be used to capture a comprehensive list of partners and expertise engaged in Phase 2.

The data collection work outlined below requires the accompanying spreadsheet where MAC teams will collect the data necessary to inform local projections, analysis, and priorities. Use of the spreadsheet is noted with an asterisk (\*) throughout this template.

*Partners*

MAC teams will work with Continuums of Care to identify key partners in regional and local strategic planning for unsheltered homeless services to inform stakeholder engagement from the beginning of the regional process. Given the critical systems operations and service provision already underway, communities may elect to have representatives to this process to share information for and with multiple stakeholders and coalitions.

The initial data and impact analysis\* offered by state partners should inform whether and which additional partners should be invited to the table, particularly those representing communities and subpopulations who are disproportionately impacted by unsheltered homelessness in each region.

During the data collection process in Phase 2, MAC teams and CoCs should prioritize community engagement efforts identify preexisting connections or plan for outreach to culturally specific service providers, identity- and interest-based community groups, community organizers, and other formal and informal representatives of disproportionately impacted groups across the region.

This engagement and partnership should be prioritized over the quantitative data outlined below in early in Phase 2 because their specific perspectives will significantly improve the efficacy of the community's strategies given the disparate impact of the crisis on their communities and their resulting expertise.

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*Population*

State partners have documented\* each CoC's 2022 Point-in-Time data as well as each CoC's census data to better understand the impact of unsheltered homelessness at the subpopulation level in each region. Through the contracting process, MAC teams will be asked to coordinate HDX 2.0 access for state agencies to establish more accurate baselines and projections using annual rather than point-in-time data.

Subpopulation data is captured here based on the following publicly available demographic data for the general population as well as data specific to those experiencing homelessness: household makeup (individual/family), age or service (youth and veterans), and race and ethnicity. This initial data analysis\* is intended to highlight which subgroups in the region are at a disproportionately high risk of experiencing unsheltered homelessness. During Phase 2, there is no additional data input or quantitative data analysis required.

The region's data and impact analysis should be shared with partners engaged in the regional planning and funding request process. As information is gathered about the specific challenges, opportunities, and efforts already underway, MAC teams will document and build on that information to inform the region's priority strategies and goals.

*Services*

All In is focused on three core components of our statewide response to unsheltered homelessness: rehousing people experiencing unsheltered homelessness, preventing unsheltered homelessness, and shelter.

MAC teams will gather and input data\* to capture the relevant types of services, units, availability, and costs across the region. This will include all federal, state, local, and philanthropic contributions and funding for shelter, rehousing, and targeted homelessness prevention.

As communities identify priority strategies for each of these three areas, partners will refer to this data to identify capacity restraints and opportunities to invest in additional capacity. State agencies will also use this data to better understand and support communities in navigating unstable funding streams during and preceding the COVID-19 pandemic.

**Community Analysis**

**Part 1: Community Engagement and Data Review**

- 1) Please summarize your community engagement processes and the efforts made to ensure that the perspectives of people experiencing homelessness, frontline service providers, and groups at a high risk of experiencing homelessness inform regional priorities throughout Phase 2. Please list decision making processes and track community engagement efforts here as well.

The MAC Group has 24 members representing the following agencies across the tri-county region:

- Local jurisdictions (homelessness and EM staff)
- Public housing authority
- Community Action Agency
- Local homelessness agencies
- Rapid rehousing service providers
- Shelter developer/operator
- Behavioral Health Providers
- Healthcare/Federally Qualified Health Center
- Continuum of Care Leadership
- Encouraging MAC members to share the surveys within their networks. We've also encouraged MAC members to help channel feedback in a constructive way, by sharing information from meetings within their networks and soliciting feedback and elevating that to the broader MAC group.
- Informal Vertical Feedback (similar to Lane County)

New website ([www.coic.org/EO2302/](http://www.coic.org/EO2302/)) -

- EO 23-02 language
- MAC roster
- Zoom links to attend MAC meetings, links to meeting materials, and recordings of MAC meetings
- Regional Planning Template
- All in Workbook
- Google Surveys
- Contact information for COIC Staff

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Google Surveys – sent to 700+ people throughout Central Oregon to capture information on Community Priorities and Goal Setting.

- Over 150 responses to Community Priorities Survey
- Over 35 responses to Project Concepts Survey

The MAC is also leveraging information collected in past outreach efforts, like information gleaned from the comprehensive Emergency Homelessness Task Force (Deschutes County) process in 2021, which you can learn more about here: <https://www.homelessindeschutes.org/>. The Emergency Homelessness Task Force informed a strategic plan, which can be found here: <https://www.homelessindeschutes.org/our-plan-to-solve-homelessness>. Redmond Service Providers, with partnership with Rogue Retreat, collected input from Service Providers in 2021, which was considered as well. The Continuum of Care does regular outreach and receives feedback from culturally and population-specific providers, which was considered in this process. The Oregon Homeless Youth Needs Assessment and System Modeling was also considered.

- 2) MAC teams and CoCs will seek input from disproportionately impacted groups and communities in an ongoing effort to develop a shared understanding of individual and regional challenges facing people experiencing unsheltered homelessness. Please add any additional qualitative or quantitative data or information that was shared to better understand the impact of unsheltered homelessness on their communities.

HMIS Data, State-provided PIT Data, McKinney-Vento Youth Homelessness Data, Census Data

Discussions with and feedback from subpopulation specific providers – J Bar J, COVO, Latino Community Association, Council on Aging

*Part 2: Impact Analysis*

- 3) How many people experiencing unsheltered homelessness did your Continuum of Care region house in 2022?  
HMIS  
111 people reported their last living situation was an unsheltered situation, before entered a program, and then moved into permanent housing.  
36 head of households, who have experienced unsheltered homelessness became housed through an EHV.  
29 of the head of households were housed through an EHV in 2022.  
2 housed EHV holders who had experienced unsheltered homelessness returned to homelessness in 2022 and 2023.
- 4) Based on quantitative data and qualitative community input, these three groups have a disproportionately high risk of experiencing unsheltered homelessness:

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*Context: In 2022, our Continuum saw 1096 people engage with the homelessness response system who were experiencing unsheltered homelessness (living in a place not meant for habitation)*

- a. Subpopulation 1: BIPOC, specifically Black, Pacific Islander, and Indigenous peoples
- b. Subpopulation 2: Medically-Vulnerable individuals
- c. Subpopulation 3: LGBTQ+ Youth

- 5) What percentage of people experiencing unsheltered homelessness who exit to permanent housing, return to homelessness within 6 months?  
6% (2022 System Performance Measures)
- 6) What percentage of people experiencing unsheltered homelessness who exit to permanent housing, return to homelessness within 6-12 months?  
6% (2022 System Performance Measures)
- 7) On average, how many people experiencing unsheltered homelessness does your Continuum of Care region exit to permanent housing each month?  
9 People
- 8) What culturally specific services are available and accessible to each of the three groups of people experiencing unsheltered homelessness in your Continuum of Care region?
  - a. Subpopulation 1: Latino Community Association, Warm Springs Street Outreach and Emergency Shelter, Oregon Worker Relief Fund
  - b. Subpopulation 2: Central Oregon Council on Aging, Assisted Living Facilities, Mosaic Medical Community Health Workers
  - c. Subpopulation 3: J Bar J Youth Services
- 9) What specific services or supports are available for individuals in these groups to access and sustain mainstream (education, health care, Social Security, etc.) services and community connections once people are housed?
  - a. Subpopulation 1: Latino Community Association, Warm Springs Navigation Center, The Father's Group, Mosaic Community Health Workers, Best Care, Oregon Human Development Corporation, NeighborImpact, Thrive
  - b. Subpopulation 2: Central Oregon Council on Aging, Assisted Living Facilities, Mosaic Community Health Workers, Thrive Central Oregon, Abilitree, NeighborImpact, Thrive
  - c. Subpopulation 3: J Bar J Youth Services, Deschutes County Mental Health Youth and Young Adults, FAN, Best Care, Rimrock, NeighborImpact, Thrive

Part 3: Community Priorities

10) Please select all local needs that are immediate and major barriers to your Continuum of Care's efforts to support people experiencing unsheltered homelessness in regaining housing, safety, and stability. (25% or more of respondents selected the following answers as their top priorities)

- Housing Affordability
- Emergency Shelter Shortage
- Street Outreach Services
- Affordable Housing Landlord Engagement
- Substance Use Disorder Care and Services
- Mental Health Care and Services
- Rapid Rehousing Projects
- Service Providers – Organizational Capacity
- Service Providers – Staff/Salary
- Service Providers – Specific Expertise
- Medical Care
- Skilled Nursing Facility Care
- Nursing Home Shortage
- Manufactured Housing
- Housing Development
- Flexible System Funding/Costs
- Cleaning or maintenance (e.g., hoarding prevention)
- Housing-focused Case Management
- Housing problem-solving assistance
- Conflict mediation Services
- Housing Navigation Services
- Tenant-based rental assistance
- Project-based rental assistance
- Housing Choice Vouchers
- Targeted subsidies
- Rent buy-down
- Family reunification transportation assistance
- Flexible emergency funding
- Food security payments
- Marketing materials
- Operating costs
- Other flexible forms of financial assistance
- Other renovations
- Peer support Services
- Planning and development
- Project management
- Repairing damages
- Room and board payments
- Security deposits
- Service coordination and integration
- Signing bonuses
- Staffing
- Transportation assistance

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- 11) For each of the three subpopulations identified above as **disproportionately likely** to experience unsheltered homelessness in your region, please identify which of these needs most significantly and specifically impact their ability to regain and retain housing.
- Subpopulation 1: BIPOC - Peer Support, Service Coordination/Integration, Housing Problem-Solving Assistance, Flexible Emergency Funding, Street Outreach, Housing Affordability
  - Subpopulation 2: Medically Vulnerable - Medical Care, Skilled Nursing, Flexible Emergency Funding, Housing Affordability
  - Subpopulation 3: LGBTQ+ Youth - Emergency Shelter Shortage, Rapid Rehousing, Street Outreach, Housing Affordability
- 12) Please list the region's five most urgent and critical (important but not immediately time sensitive) unmet needs, choosing from the selected list above.
1. Most Urgent: Housing Affordability (77.9% of Respondents)
  2. Urgent and Critical: Mental Health Care and Services (68.8% of Respondents)
  3. Time Sensitive and Very Important: Emergency Shelter Shortage (59.7% of Respondents)
  4. Not Time Sensitive but Very Important: Substance Use Disorder Care and Services (55.8% of Respondents)
  5. Important: Rapid Rehousing Projects (39.6% of Respondents)

**Goal Setting**

Each region will determine priority strategies that will target its All In investments across its three goals. MAC teams and CoCs will rely on the data and community analysis above to inform which of these strategies to prioritize. MAC teams and CoCs may gather additional data to better understand what local capacity and limitations should guide these investments.

Based on the supports most needed and the services currently available in your region, please check **only** the boxes for the investment strategies that would **most benefit** your community's efforts to rehouse people experiencing unsheltered homelessness.

*Part 1: Strategies to prevent unsheltered homelessness*

Technical assistance and support to integrate housing problem-solving into street outreach.

Offering flexible housing-related funding for institution-involved families, youth, and single adults who formerly exited or are currently exiting a publicly funded child welfare and foster care, juvenile and adult corrections, long-term care, health, and mental health and substance use treatment facility by providing flexible funding that to reduce housing instability. Eligible activities include:

- Housing-focused case management
- Service coordination and integration
- Targeted subsidies
- Flexible emergency funding
- Room and board payments
- Transportation assistance
- Food security payments
- Other flexible forms of financial assistance

- Flexible emergency funding
- Room and board payments
- Transportation assistance
- Food security payments
- Other flexible forms of financial assistance

Funding encampment-specific prevention and shelter diversion to permanent housing or family reunification (if safe and appropriate) to prevent people that have been placed into permanent housing from losing their housing and falling back into unsheltered homelessness. Eligible activities include:

- Housing-focused outreach
- Housing-focused case management
- Family reunification transportation assistance
- Housing problem-solving assistance
- Flexible emergency funding

Offering flexible housing-related funding for older adults and people with disabilities – including people with mental health conditions and/or substance use disorders – to reduce housing instability by providing access to housing-related home- and community-based services. Eligible activities include:

- Housing-focused case management
- Service coordination and integration
- Targeted subsidies

Expand or establish geographically robust street outreach efforts that provide access to the full menu of services available in your community. Eligible activities include:

- Service coordination and integration
- Harm reduction training
- Peer support
- Housing problem-solving assistance
- Conflict mediation
- Family reunification transportation assistance

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*Part 2: Strategies to increase shelter capacity for individuals and families experiencing unsheltered homelessness*

- Technical assistance and support to re-evaluate current emergency shelter rules that may unnecessarily punish, divert, harm, or discourage people from staying in emergency shelter and seek unsheltered respite.**
- Expand non-congregate shelter through acquisition and development through the following eligible activities:**
  - Acquisition of existing structure or vacant land
  - Demolition costs
  - Development hard costs
  - Site improvements
- Expand emergency shelter bed capacity through the following eligible activities:**
  - Related soft costs
  - Replacement reserve
  - Major rehabilitation
  - Conversion
  - Other renovation

*Part 3: Strategies to rapidly rehouse individuals and families experiencing unsheltered homelessness*

- Technical assistance and support to establish or strengthen your Continuum of Care region's relationship with Public Housing Authorities to coordinate on securing available voucher resources to rehouse individuals and families experiencing unsheltered homelessness.**
- Technical assistance and support to examine, revise or strengthen your Continuum of Care region's coordinated entry prioritization policies and practices to rapid rehouse individuals and families experiencing unsheltered homelessness.**
- Technical assistance and support to analyze your Continuum of Care region's funding portfolio to identify braided funding opportunities to increase its capability to rapidly rehouse individuals and families experiencing unsheltered homelessness.**
- Technical assistance and support to develop and implement an encampment strategy to focus rehousing efforts and reduce the number of encampments.**
- Expand or develop a landlord incentive package to establish a pool of units with reduced or eliminated tenancy screening criteria to rehouse people experiencing unsheltered homelessness. Eligible activities include:**
  - Planning and development
  - Marketing materials
  - Holding fees
  - Signing bonuses
  - Security deposits
  - Rent buy-down

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Repairing damages

Develop and implement a housing surge and/or housing fair. Eligible activities include:

- Staffing
- Admin
- Project management
- Fiscal Agent
- Project-based rental assistance
- Housing-focused case management
- Third-party inspection services
- Operating costs

- Staffing
- Admin
- Project management
- Fiscal Agent
- Tenant-based rental assistance
- Housing-focused case management
- Third-party inspection services

Goals

Please identify what goals your Continuum of Care is prepared to set and work toward this year for each area, assuming financial support from the state for implementing some or all the strategies marked above, as well as technical assistance and collaboration.

Quantify your goal to contribute towards this statewide effort and identify the number of households, beds, and/or people you will be able to serve with additional resources.

**Increase shelter capacity**  
Our CoC Region will add a minimum  emergency shelter beds by this date: 1/9/2024.

**Rapidly rehouse**  
Our CoC Region will rapidly rehouse  people experiencing unsheltered homelessness by this date: 1/9/2024.

2

Milestones

Please provide a timeline of milestones your Continuum of Care region proposes to mark progress, evaluate strategies, and improve operations to achieve the identified above, contingent on funding, in partnership with OHCS and OEM.

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<p>June</p>	<ul style="list-style-type: none"> <li>Quarterly Check in with MAC Executive Team to measure progress towards goals (HMIS adoption, Coordinated Entry Participation, Subpopulation specific impact, etc.)</li> <li>MAC Refresh</li> <li>If properties need to be acquired, acquisition has happened or the process of escrow.</li> <li>Funded Projects/Programs have begun to serve clients. Case Management, Operations asst.</li> <li>Develop master leasing program</li> <li>Develop landlord incentive program and requirements.</li> <li>Operations funding deployed and some</li> <li>Emergency shelters up and running.</li> <li>Subcontractor procurement process determined, if necessary.</li> </ul>	<ul style="list-style-type: none"> <li>MAC Meeting for Funded Agencies to discuss progress, successful strategies, and Barriers (monthly)</li> <li>HMIS Data Quality Component (monthly)</li> <li>Coordinated Entry &amp; By Name List Progress (monthly)</li> <li>Case Manager Check ins (monthly)</li> <li>Create landlord incentive program with landlord and agency feedback.</li> <li>Create master leasing program with agency feedback.</li> <li>Review opportunities, barriers and progress on meeting goals. Target agencies needing additional support or Technical assistance.</li> <li>Funding Reserve Assessment</li> </ul>
<p>July</p>	<ul style="list-style-type: none"> <li>Subcontractor contracts in place, if necessary.</li> <li>Renovations to property have started, if necessary.</li> <li>New programs participating in HMIS are trained and have begun to input data into the system.</li> <li>Begin implementing both landlord incentive program and master leasing program.</li> </ul>	<ul style="list-style-type: none"> <li>MAC Meeting for Funded Agencies to discuss progress, successful strategies, and Barriers (monthly)</li> <li>HMIS Data Quality Component (monthly)</li> <li>Coordinated Entry &amp; By Name List Progress (monthly)</li> <li>Case Manager Check ins (monthly)</li> <li>Funding Reserve Assessment</li> </ul>
<p>August</p>	<ul style="list-style-type: none"> <li>MAC Refresh</li> <li>Shelters that are planning to expand capacity are functional and serving clients</li> <li>Halfway point... 4 months to go.                         <ul style="list-style-type: none"> <li>Prevention – 100/354 individuals</li> <li>Shelter – 30/81 beds</li> <li>Rehousing – 50/162 households</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>MAC Meeting for Funded Agencies to discuss progress, successful strategies, and Barriers (monthly)</li> <li>HMIS Data Quality Component (monthly)</li> <li>Coordinated Entry &amp; By Name List Progress (monthly)</li> <li>Case Manager Check ins (monthly)</li> <li>Funding Reserve Assessment</li> <li>Larger scale assessment of what programs have been working what programs need to pivot their approach.</li> </ul>

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September	<ul style="list-style-type: none"> <li>• Quarterly Check in with MAC Executive Team to measure progress towards goals</li> <li>• Ensure each community in Central Oregon has emergency cold weather sheltering options</li> <li>• Ensure newly funded shelter facilities are up and running</li> </ul>	<ul style="list-style-type: none"> <li>• MAC Meeting for Funded Agencies to discuss progress, successful strategies, and Barriers (monthly)</li> <li>• HMIS Data Quality Component (monthly)</li> <li>• Coordinated Entry &amp; By Name List Progress (monthly)</li> <li>• Case Manager Check ins (monthly)</li> <li>• Funding Reserve Assessment</li> </ul>
October	<ul style="list-style-type: none"> <li>• Assembling final reporting on goals met and projects complete</li> <li>• Assess future needs and resources</li> <li>• MAC Refresh</li> <li>• 2 months to go.                         <ul style="list-style-type: none"> <li>○ Prevention – 250/354 individuals</li> <li>○ Shelter – 70/81 beds</li> <li>○ Rehousing – 120/162 households</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• MAC Meeting for Funded Agencies to discuss progress, successful strategies, and Barriers (monthly)</li> <li>• HMIS Data Quality Component (monthly)</li> <li>• Coordinated Entry &amp; By Name List Progress (monthly)</li> <li>• Case Manager Check ins (monthly)</li> <li>• Funding Reserve Assessment</li> </ul>
November	<ul style="list-style-type: none"> <li>• Assembling final reporting on goals met and projects complete</li> <li>• Assess future needs and resources</li> <li>• Met goals set by state:                         <ul style="list-style-type: none"> <li>○ Prevention – 354/354 individuals</li> <li>○ Shelter – 81/81 beds</li> <li>○ Rehousing – 162/162 households</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• MAC Meeting for Funded Agencies to discuss progress, successful strategies, and Barriers (monthly)</li> <li>• HMIS Data Quality Component (monthly)</li> <li>• Coordinated Entry &amp; By Name List Progress (monthly)</li> <li>• Case Manager Check ins (monthly)</li> <li>• Funding Reserve Assessment</li> </ul>
December	<ul style="list-style-type: none"> <li>• Quarterly Check in with MAC Executive Team to measure progress towards goals</li> <li>• Assembling final reporting on goals met and projects complete</li> <li>• Assess future needs and resources</li> <li>• Lessons learned report</li> <li>• Assemble reporting for the state. Work with State on future funding.</li> <li>• Ensure we spend total amount and met goals established by the State.</li> <li>• Projects should be materially complete</li> </ul>	<ul style="list-style-type: none"> <li>• MAC Meeting for Funded Agencies to discuss progress, successful strategies, and Barriers (monthly)</li> <li>• Work with State agencies on sustainably funding programs projects created by this funding opportunity</li> <li>• Work with State to assess All IN efforts when Initiative ends to determine best practices State wide, lessons learned and innovative ideas and concepts that worked or didn't.</li> </ul>

Strategies to rehouse 162 unsheltered households

We expect this goal to be our most challenging to meet, and plan to utilize several strategies to meet the State's goals here as well. Acknowledging that Central Oregon has some of the lowest rental vacancy rates in the country, our region's main challenge is in the sheer lack of units to put people in. We are considering the following strategies at a high level to increase the impact of the region's rehousing programs:

- **Master Leasing** – Currently, housing navigators do not have a pool of master leased units to refer individuals to. Accordingly, there is a high administrative burden in having housing navigators scour the region for available housing. We hope that some of this executive order funding could be utilized to leverage a master lease agreement with a pool of units to increase the efficiency of the system.
- **Landlord incentives**
  - setting aside funding for rent buy downs,
  - renters insurance,
  - cash incentives,
  - damage repair reserves,
  - and training opportunities for property owners.
- **Intensive Housing Focused Case Management** to ensure that folks have the wrap around supports they need to remain stably housed.
- As mentioned in the shelter section above, we are designing the funding application to prioritize projects that address underlying disparities in the community. It will include specific questions on potential barriers to success, how projects support members of our community who are disproportionately likely to experience unsheltered homelessness, and how projects will leverage cross-sector partnerships to create the greatest impact.

The following rehousing concepts have been submitted in the project concepts survey (this is not intended to represent a list of approved or prioritized projects, Central Oregon has not officially opened up a funding application or selected sub recipients, yet):

- Purchasing apartment complex in Bend (42 units, acquisition and operating funding)
- Renovated motel in Bend (80 units, requires 5 year master lease)
- Medically Vulnerable Case Management
- Acquire Land and build tiny homes in Bend (10 units, requires acquisition and operating funding)
- Medically Vulnerable/Disabled Case Management
- Homesharing for Veterans (requires funding for renovations)
- Vehicle purchase for outreach in Redmond
- Build tiny homes for Veterans (7 units, capital funding request)
- Create landlord incentive fund
- Barrier Busting/Flexible funding to help get folks through the door
- Housing focused Case Management – moving folks from safe parking/camping into housing.

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**Current Services**

Project Type	Units Available	Total Units	Avg. Cost Per Unit
Emergency Shelter Beds - Adult Only	2	425	\$10,041
Emergency Shelter Beds - Adults with Children	2	68	\$32,164
Emergency Shelter Beds - Youth	0	9	\$63,875
Transitional Housing	2	88	\$44,694
Joint Transitional Housing/Rapid Rehousing	3	4	\$19,009
Rapid Rehousing	1	46	\$7,755
Permanent Supportive Housing	2	21	\$14,584
Other Permanent Housing	Unavailable	14	Unavailable
Housing Choice Vouchers	90	1344	\$7,016

**Service Type**    Slots Available    Total Slots    Avg. Cost Per Service

Outreach	2	1826	\$1,333
Rental Assistance	Unavailable	672	\$2,931
Case Management	2	186	\$929
Landlord Engagement	Unavailable	Unavailable	Unavailable
Housing Navigation	Unavailable	205	\$2,048

**Current Investments**

Project Type	City	County	State	Federal	Private	Total
Emergency Shelter Beds - Adult Only	\$3,020,000	\$100,000	\$489,060	\$68,094	\$27,500	\$3,704,654
Emergency Shelter Beds - Adults with Children			\$77,739	\$12,500	\$27,500	\$117,739
Emergency Shelter Beds - Youth		\$20,000	\$710,000	\$330,000	\$25,000	\$585,000
Transitional Housing	\$675,000		\$150,000	\$662,000	\$238,000	\$1,725,000

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Joint Transitional Housing/Rapid Rehousing	\$75,036	\$76,036	\$76,036
Rapid Rehousing	\$75,000	\$298,934	\$448,668
Permanent Supportive Housing	\$45,738	\$306,268	\$352,006
Other Permanent Housing			\$0
Housing Choice Vouchers	\$9,430,000		\$9,430,000
<b>Service Type</b>			<b>\$0</b>
Outreach	\$45,400	\$204,346	\$426,746
Rental Assistance		\$773,067	\$2,409,444
Case Management	\$50,000	\$175,000	\$683,900
Landlord Engagement		\$25,000	\$25,000
Housing Navigation		\$129,905	\$129,905
<b>Total Investments</b>	<b>\$3,865,400.00</b>	<b>\$12,491,150.00</b>	<b>\$20,114,097.80</b>

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**Exhibit C**  
**Insurance Requirements**



**Risk Assessment Insurance Summary**

**Service Procurement**

**Summary Document to Assist with Insurance Requirement Template**

This risk assessment insurance summary is based off of a risk assessment and is meant to be used as a guide. If a different conclusion is made, document the reasoning.

**COMMERCIAL GENERAL LIABILITY:**

Required

Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000 .

**AUTOMOBILE LIABILITY:**

Required  Not Required

Coverage shall be written on a combined single limit of not less than \$1,000,000 .

**PROFESSIONAL LIABILITY: (For Medical and Health Services)**

Required  Not Required

Coverage shall be written on an occurrence basis in an amount of not less than per claim. Annual aggregate limit shall not be less than .

**PROFESSIONAL LIABILITY: (For other than Medical & Health Services or IT Services)**

Required  Not Required

Coverage shall be written on an occurrence basis in an amount of not less than \$ 2,000,000 per claim. Annual aggregate limit shall not be less than \$ 4,000,000 .

**NETWORK SECURITY AND PRIVACY LIABILITY:**

Required  Not Required

Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per claim.

**POLLUTION LIABILITY:**

Required  Not Required

Coverage shall be written on an occurrence basis in an amount of not less than per occurrence. Annual aggregate limit shall not be less than .

**DIRECTORS AND OFFICERS:**

Required  Not Required

Coverage shall be written on a combined single limit in an amount of not less than \$2,000,000 .

**CRIME PROTECTION:**

Required  Not Required

Coverage shall be written on a combined single limit in an amount of not less than \$3,000,000 .

**PHYSICAL ABUSE AND SEXUAL MOLESTATION:**

Required  Not Required

Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$3,000,000 .

**MOTOR CARRIER AND CARGO:**

Required  Not Required

Coverage shall be written on a combined single limit in an amount of not less than [REDACTED].

**DRONE / UNMANNED AIRCRAFT SYSTEMS (UAS) / UNMANNED AERIAL VEHICLE (UAV) LIABILITY:**

Required  Not Required

Coverage shall be written on a combined single limit in an amount of not less than [REDACTED].

**AIRCRAFT LIABILITY:**

Required  Not Required

Coverage shall be written on a combined single limit in an amount of not less than [REDACTED].

**AIR CARGO LIABILITY:**

Required  Not Required

Coverage shall be written on a combined single limit in an amount of not less than [REDACTED].

**AIRCRAFT AERIAL APPLICATION LIABILITY:**

Required  Not Required

Coverage shall be written on a combined single limit in an amount of not less than [REDACTED].

**GARAGE LIABILITY:**

Required  Not Required

Coverage shall be written on a combined single limit in an amount of not less than [REDACTED].

**GARAGEKEEPERS LEGAL LIABILITY:**

Required  Not Required

Coverage shall be written on a combined single limit in an amount of not less than [REDACTED].

**BAILEE'S:**

Required  Not Required

Coverage shall be written on a combined single limit in an amount of not less than [REDACTED].

**MARINE PROTECTION LIABILITY:**

Required  Not Required

Coverage shall be written on a combined single limit in an amount of not less than [REDACTED].

**Risk Assessment Insurance Summary**

**Goods Procurement**

**Summary Document to Assist with Insurance Requirement Template**

This risk assessment insurance summary is based off of a risk assessment and is meant to be used as a guide. If a different conclusion is made, document the reasoning.

**COMMERCIAL GENERAL LIABILITY:**

Required

Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence.

Annual aggregate limit shall not be less than \$2,000,000 .

**NOTES:**

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# Central Oregon

Executive Order 23-02 Community Plan Overview



On Jan. 10, 2023, Governor Kotek signed Executive Order 23-02, declaring a state of emergency due to unsheltered homelessness in seven Continuum of Care regions across the state. The Governor chose the regions based on the 2022 Point-in-Time Count data, which showed an increase in unsheltered homelessness of 50% or greater since 2017.

In alignment with the emergency order, the Governor proposed House Bill 5019 to provide a down payment to achieve three actionable goals by Jan. 10, 2024:



Prevent  
**8,750**  
**households**  
from becoming  
homeless statewide

Add  
**600 low-barrier**  
**shelter beds**  
in emergency areas



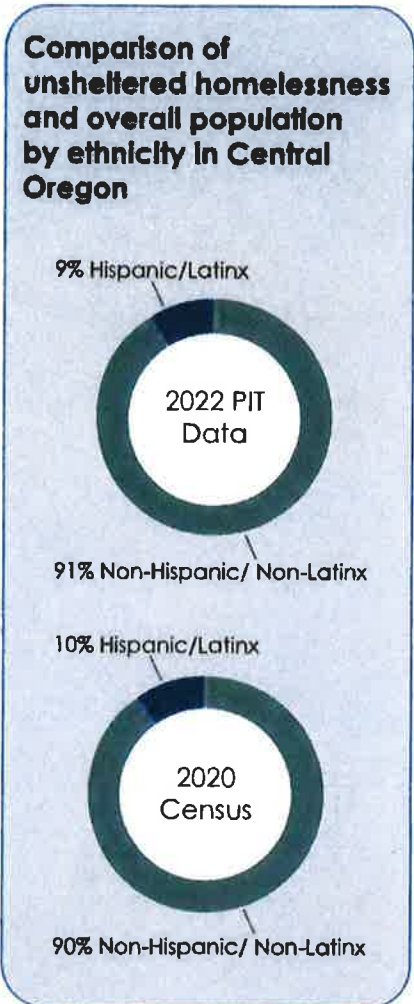
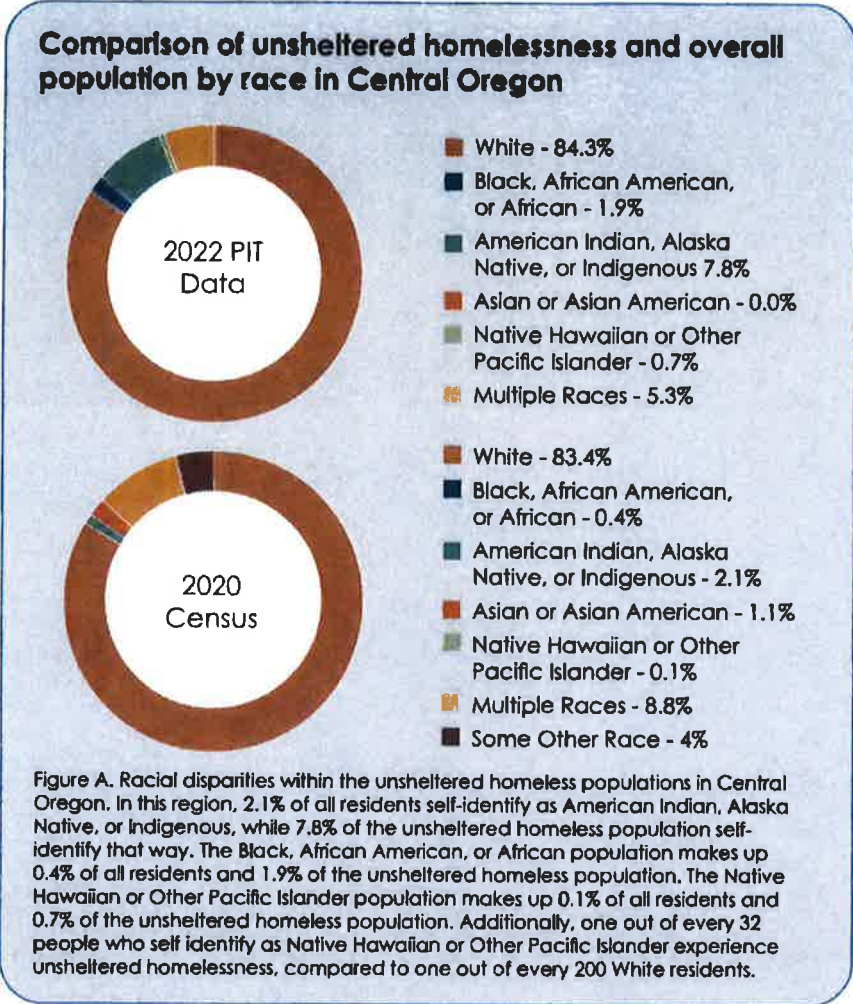

Rehouse at least  
**1,200 unsheltered**  
**households**  
in emergency areas

### A whole-community approach

Oregon's response to this crisis requires bold action and coordination between government agencies and service providers. That's why Oregon created Multi Agency Coordination (MAC) Groups, which includes representatives from multiple sectors. Central Oregon Intergovernmental Council (COIC) leads the region's MAC group. Their membership includes Central Oregon Veterans Outreach, Deschutes County Emergency Management, Crook County Emergency Management, Jefferson County Emergency Management, Deschutes County Coordinated Homeless Response Office, City of Redmond Housing Coordinator, Housing Works, Epic Property Management, LLC, NeighborImpact, Shepherd's House, Redemption House, Deschutes County Behavioral Health, J Bar J Youth Services, Homeless Leadership Coalition, City of Bend, and Mosaic Community Health.

### Executive Order 23-02 Community Plan

The Central Oregon MAC group surveyed people throughout their region to capture information on community priorities and goal setting. They also analyzed information from recent efforts to understand the needs of people experiencing unsheltered homelessness within their community and used the information gathered to develop interventions they laid out in their community plan. The MAC group will review data and amend their plan throughout the year to ensure they meet their region's goals.



**Rehousing goal**

Central Oregon plans to engage in a variety of solutions to resource 161 unsheltered populations. By collaborating with housing providers in the region, they also plan to establish and lease rental units to refer individuals to. Other interventions Central Oregon is considering include unit acquisition and operation, motel conversion, Veteran homesharing, and intensive housing-focused case management to ensure that folks have the wraparound services they need to remain stably housed. Central Oregon has designed their funding application to prioritize projects that address underlying disparities in the community.

Rehouse  
**161 unsheltered households**  
by Jan. 10, 2024

**Shelter bed goal**

To meet their shelter bed goal, Central Oregon is considering several strategies, including site expansion and new site acquisition. Most of the region's current shelter is concentrated in Deschutes County, specifically Bend, and they intend to increase provider capacity in Crook and Jefferson Counties. Other strategies under consideration include medical respite beds for people to recover from illness or injury but are not ill enough to be in a hospital, congregate and non-congregate shelters for youth and families, and a youth-specific shelter in Redmond.

Add  
**111 low-barrier shelter beds**  
by Jan. 10, 2024

**DESCHUTES COUNTY**  
**GRANT AGREEMENT 2023-1031**  
**EXHIBIT C: RFP 2023-751**

**DESCHUTES COUNTY COMMUNITY JUSTICE DEPARTMENT**

**REQUEST FOR PROPOSALS  
FOR**

**New Shelter and Housing Units for Male Justice  
Involved Individuals**

Deschutes County Document #2023-751

Proposed RFP Release Date: August 25, 2023

Deschutes County, a political subdivision of the State of Oregon, acting by and through the Deschutes County Community Justice Department, Adult Parole and Probation Division ("Deschutes County"), is releasing this competitive solicitation to secure a provider to offer Housing for clients with restrictive conditions (hereinafter referred to as "Services" and detailed further in Section 5, "Scope of Services"). Services shall be provided either through a private provider or a group of providers who through an agreement or memorandum of understanding serve together as a consortium in order to offer services.

**NOTE:** All proposals submitted in response to this Request for Proposal (RFP) shall become the property of Deschutes County and may be utilized in any manner and for any purpose by Deschutes County. *Be advised that proposals and all documents submitted in response to this RFP are subject to public disclosure as required by applicable state and/or federal laws.* If you intend to submit any information with your proposal which you believe is confidential, proprietary or otherwise protected from public disclosure (trade secret, etc.), you must separately bind and clearly identify all such material. The cover page of the separate binding must be **red**, and the header or footer for each page must provide as follows: "Not Subject to Public Disclosure." Where authorized by law, and at its sole discretion, Deschutes County will endeavor to resist disclosure of properly identified portions of the proposals.

- The proposal must be submitted by email to Adult Parole and Probation: Trevor.Stephens@deschutes.org.
- The proposal must be submitted in PDF or Microsoft Word format.

**Proposals must be received no later than 12:00 pm, on Wednesday, September 27, 2023 ("Due Date") to be eligible for consideration. Deschutes County retains full discretion to accept or deny any late submissions.** All costs associated with preparing and submitting a proposal is solely the responsibility of the proposer. This solicitation does not obligate Deschutes County to select any single proposer and Deschutes County reserves the right to cancel the procurement, reject any and all proposals, to retain all proposal materials in accordance with ORS 279B.100, and to use any material included in the proposal regardless of whether it is selected. Proposal documents will not be returned to provider at the end of the process and will be disposed of in accordance with any records retention requirements based on grant requirements and state and/or federal laws.

- Questions concerning the proposal process may be directed no later than September 6, 2023 at 12:00pm to Trevor Stephens via email to Trevor.Stephens@deschutes.org.
- If you would like to receive the response to any and all questions received please send Trevor.Stephens@deschutes.org an email requesting to be added to the list. Otherwise only those who have emailed questions will receive the response.

## **1. INTRODUCTION**

The purpose of this Request for Proposal (RFP) is to execute a contract with a community provider for the purpose of providing housing to justice-involved individuals who identify as men and are on supervision in Deschutes County. The primary target population for these services are individuals with conditions that restrict their proximity to minors or who have to register as a sex offender.

Contingent upon approval by the Deschutes County Purchasing Agent, Deschutes County intends to award one (1) contract to the provider whose proposal is determined to be the most responsive to the requirements of this RFP. The term of the resulting contract is estimated to begin on or about November 1, 2023 and terminate December 31, 2034. This is currently planned to be a reimbursement-based contract and funds shall be reimbursed for actual expenses incurred. However, County is open to modification of this in order to facilitate the purchase of the property used for these services.

Contracted entities will receive (contingent on approved budget) reimbursement for funds to:

- Purchase a house/building or renovate an existing property.

DESCHUTES COUNTY REQUEST FOR PROPOSALS 2023-751

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- Initial startup operations of the shelter and housing services.
- Purchase and install a security system.
- Purchase initial furniture and furnishing.

Deschutes County estimates that yearly this project should provide at least eight (8) shelter beds at any given time and at least two (2) longer term beds that may be used as permanent housing units at any given time. We anticipate the program to annually serve 15-25 shelter bed clients and 2-4 longer term/housing unit clients.

Services must be provided in accordance with all applicable rules, regulations, and policies as specified by federal, state, and county guidelines, including but not limited to, Oregon Administrative Rules (OAR) 309-019-0100 through OAR 309-019-0220.

The estimated amount of funds available for this contract is as follows (there is some flexibility with these funds in terms of how they are allocated):

- Property/Building Acquisition \$850,000.00
- Furniture and Fixtures \$30,000.00
- Security System \$20,000.00
- Initial Operation Start-Up Employee Expense \$100,000.00
- Other Support and Expenses \$78,518

**Total Estimated Available: \$1,078,518**

However, this amount is based on grant funding and may fluctuate depending on grant approval and budget allocation.

Deschutes County is the grant, contract, and fiscal intermediary for these funds. Deschutes County shall contract with appropriate service agencies to provide service for clients on supervision.

Ideally, the Provider selected will provide most, if not all, the Services outlined in section 5, "Scope of Services", of this RFP either through their agency or by a consortium (consortium is an agreement, combination, or group formed to undertake a common enterprise beyond the resources of any one member).

Reimbursement for Services is based upon County's approval of Contractor's submission of applicable/required documentation. Funding for Services is contingent upon the Governor's Emergency Order 23-02.

**2. GENERAL SUMMARY AND OVERVIEW**

Approximately 10% of the Adult Parole & Probation (Adult P&P) supervised population experiences unsheltered homelessness or chronically cycle between low barrier and transitional housing and unsheltered homelessness. Within this population we consistently supervise 25-30 men who do not qualify for high barrier, treatment and other subsidized housing or shelter supports due to the nature of their supervision conditions, which either prohibit their proximity to minors, or require them to register as sexual offenders. This population experiences chronic and acute homelessness. This in turn exacerbates their real and perceived public safety risk as it makes clients hard for P&P Officers to locate and support. These individuals also tend to be perpetually reliant on expensive emergency public safety and health resources.

In the past Adult P&P has accessed county- or privately-provided facilities for this priority public safety population, but has had no dedicated facility since 2019. Instead, P&P Officers rely on expensive short-term motel stays for individuals being released from prison without alternative approved housing. When motel stays become prohibitively expensive, clients remain homeless and staff constantly troubleshoot emergencies and risks therein, and work with varying degrees of success with local shelter providers to create safety protocols for when this population has incidental contact with co-located families and people under 18.

Adult P&P was awarded \$1,078,518 to purchase, through a private provider, a multi-purpose, multi-bedroom property in Deschutes County to both rehouse and to shelter individuals who have conditions that restrict their proximity to minors and/or are required to register as a sexual offender. Funds would be primarily passed through to the private provider for one-time costs, such as acquisition of the property, renovations, start-up costs, etc.

Adult P&P will select a provider through this RFP process and provide assistance to the provider in locating an appropriate and acceptable property, and developing program protocols, criteria and requirements. The provider would purchase the property and manage the program with an on-site housing manager. The provider will hold the deed and title, be responsible

for maintenance and repair, and may utilize equity from the purchase for operational costs or property maintenance. A restrictive covenant will be placed on the property and will run with the property until December 31, 2034. Individuals served through the housing portion of the program will pay rent directly to the provider. Adult P&P will provide administrative support, manage the pass-through grant funds, and provide support to the provider with P&P Officer home visits at the property and case management with the housing manager.

**The provider must select a location that can accommodate clients who have legal restriction in terms of their proximity to minors and where their residence can be located. Please review ORS 144.641, 144.642, 144.644, and any other applicable laws.**

#### **MISSION AND GOALS:**

The mission of Deschutes County Adult Parole and Probation is to protect the public, repair harm, hold clients accountable and facilitate pro-social thinking. In doing this we work to balance behavior change and public safety in the work we do with our clients.

The goal of this partnership will be to establish an option in Deschutes County for clients on supervision for whom we consistently have a hard time finding safe and stable housing.

The goals of the project are to:

1. Find and secure a long term acceptable house or building in Deschutes County to offer shelter and housing services for clients with supervision restrictions.
2. Create an environment and setting that promotes stability and behavior change for clients.
3. Reduce the fiscal impact on community agencies by promoting self-sufficiency and prosocial behavior.
4. Enhance public safety by providing a safe and managed housing options for clients on supervision with restrictive conditions.

#### **TARGET POPULATION:**

The target population is Deschutes County residents, eighteen (18) years of age or older, who:

1. Identify as male.
2. Currently are on supervision with Deschutes County Parole and Probation.
3. Preference must be given for individuals with minor contact restrictions as a part of their supervision or who have to register as a sex offender.
4. Provider cannot have any restriction that prohibit any sex offense related offense types or sex offender level restrictions. Some clients will have registration requirements using the address of the home and community notification requirements. The provider must work with client and community to ensure that these are made.
5. Provider will prioritize referrals from Parole and Probation for individuals who are;
  - Veterans
  - Medically Vulnerable
  - Identify as Black, Indigenous, Latinx, Asian and/or People Of Color (BILAPOC)

#### **PROGRAM PRICIPLES AND GUIDELINES:**

- Must adopt clear, consistent, fair, transparent, and accessible program policies.
- Must be person-centered and provide housing first case management supports.
  - A person-centered case management approach ensures that the person who has experienced homelessness has a major say in identifying goals and service needs, and that there is shared accountability. Case management must focus on housing assessment, placement and housing stability.
- Must agree to abide by low-barrier principles
  - Low barrier means a program that does not require any of the following for an individual to participate in one of the programs: (i) criminal background checks, (ii) credit checks or income verification, (iii) (treatment or other) program participation, (iv) sobriety, or (v) identification.
  - Low Barrier programs may enforce safety requirements for self, staff, place, and/or others.
  - Individuals on supervision may have requirements as part of their supervision in terms of treatment program participation or sobriety, but that cannot be a requirement of admission or participation in these funded shelter and housing services.
  - Low barrier does not prohibit the selected provider and Adult P&P from creating, monitoring and enforcing house rules that for example, may include no alcohol or drugs or usage on property; or no violent behaviors etc.
- Must support individual choice and self-determination.
- Must be oriented to help all individuals stabilize and work to find potential stable housing options.
- Must collaborate with other community-based organizations and public agency partners to bring to bear options and



opportunities for individuals to participate in ancillary support services and activities that will support stability to their shelter or housing status.

## **DEFINITIONS**

- Housing Beds
  - Single occupancy room with access to shared common spaces. More long term orientation.
- Shelter Beds
  - Dormitory style beds with multiple clients in a room that have access to shared common spaces. More short term orientation.

## **ADMINISTRATIVE SUPPORT:**

Adult Parole and Probation will provide administrative support and grant oversight.

## **COMMUNITY CORRECTIONS SUPPORT:**

Parole & Probation Officers will refer eligible individuals, work in partnership with provider and assist with case management and supervision based on each individual's supervision plan and needs. Together we seek to mitigate emergency and urgent sheltering needs of this population, provide options for long-term housing in a safe and supportive environment, and offer robust case management and service opportunities for residents as they complete their community supervision requirements and get back on their feet, rebuild lives and become productive community members.

## **DATA TRACKING/DATA COLLECTION:**

Provider will be required to submit a monthly narrative update report outlining milestones, success measures, outcomes, obstacles, and impacts of the project for the first year of the contract. After the 1<sup>st</sup> year reporting would likely move to quarterly and the format may change with input from all parties.

Provider is able and will enter all appropriate and necessary data into Homeless Management Information System ("HMIS") at the time of client intake, if applicable, or at such other times required, or require subcontractors providing the Services for which funding has been provided under this Agreement to enter. If provider is unable to enter directly into the system they will provide this information monthly to Adult Parole and Probation for entry.

Provider will be required to report client level data, such as the number of persons served and their demographic information, in a Homeless Management Information System (HMIS). HMIS is an electronic data collection system that facilitates the collection of information on persons who are homeless or at risk of becoming homeless and is managed and operated locally.

Provider shall provide additional reports as needed and shall cooperatively attend meetings as reasonably requested. Reports and meetings will be based on grant requirements.

## **4. PERIOD OF SERVICE**

A contract is expected to be awarded for the period **November 1, 2023 and terminate December 31, 2034.**

## **5. SCOPE OF SERVICES**

The selected provider will provide most, if not all, the Services outlined below either through their agency or by a consortium. All Services are to be aligned with Fair Housing State and Federal Laws as they pertain to congregate housing providers.

1. Secure and Purchase a Building or House in Deschutes County  
Provider will be responsible for locating and purchasing a residence or building to be used to provide housing services. House must have at least 2 rooms that can be used by individuals for housing units beds (suitable for single occupancy, 1-2 rooms that can be used for dorm style shelter style beds for at least 8 people, two full bathrooms and a full kitchen.
2. Provide eight (8) shelter beds at all times to be used by Parole and Probation clients.
  - A. Shelter style beds can be dormitory style with multiple clients in a room that have access to shared common spaces.
  - B. Client utilizing shelter beds may include individuals in any of the following housing situations;
    - i. Stability (1 to 90 days): Individuals who have independent housing options and acceptable personal networks in the near-term but require short-term shelter while those plans are finalized
    - ii. Transition (1-180 days): Individuals transitioning to community from prison/jail with no current independent and acceptable shelter options, but who have an ultimate plan/capability for independent housing or acceptable personal networks.

- 3. Provide two (2) housing unit beds at all times to be used by Parole and Probation clients.
  - A. Housing Units Beds are long term oriented with no specific time restrictions for the client. Client will have their own room with a locking door, and access to bathroom and full use of common areas.
  - B. Client utilizing housing unit beds may include individuals in any of the following housing situations;
    - i. Individuals with limited income insufficient for private rental or housing market and no independent or acceptable other shelter options or personal networks who may require long-term residence.
- 4. Provide housing stability services that includes housing readiness, short-term goal setting around housing, long term housing plans and additional support to help clients find long term stable housing.
- 5. Provide onsite housing management at least 40 hours a week. Preference will be for a live in onsite manager, but we are also open to other options. If house does not have live in onsite manager staff must visit the house at least 5 days a week to include at least Saturday or Sunday.
- 6. County is open to working with a contractor who would like to utilize a location they currently occupy or own (I.E. utilize acquisition funds for remodeling or paying off property). However, same restrictions as outlined in 6. REAL PROPERTY RESTRICTIVE COVENANTS will apply. If used for a property already owned by the provider the property cannot already be providing housing or shelter beds. These funds must be used to increase capacity of beds available in Deschutes County. County is also open to working with a contractor who would like to utilize acquisition funds to help purchase a property that costs more than the allocated acquisitions funds as described above. However, same restrictions as outlined in 6. REAL PROPERTY RESTRICTIVE COVENANTS will apply.
- 7. Preference will be given to providers who can also provide staff that are certified recovery mentors (Recovery Mentors) or who have lived experience with successfully navigating Parole & Probation supervision (however, staff may not currently be on active supervision status).
- 8. Preference will be given to providers who offer ancillary support services that program residents may voluntarily or through their supervision conditions seek, including but not limited to.
  - i. Homelessness prevention, mitigation and transition
  - ii. Sex offender therapy.
  - iii. Cognitive behavioral therapy.
  - iv. Interventions that promote general health and well-being: (i.e. smoking cessation, sexual and reproductive health, yoga, acupuncture);
  - v. Assistance in applying for health insurance and public assistance as needed;
  - vi. Mentor and alumni groups;
  - vii. Substance abuse disorder treatment.
  - viii. Mental and or behavioral health treatment.
- 9. Performance Measures and Outcomes.  
 Provider will be required to create and update policies and procedures for operations of this program. This will include but not limited to a referral process, house rules, cleaning requirements, notification processes, data tracking, reporting, and invoicing. These will be designed in consultation with Adult Parole and Probation and must be approved by Adult Parole and Probation before any client(s) move into housing.

**6. REAL PROPERTY RESTRICTIVE COVENANTS**

Provider will be required at their expense to place a Declaration of Restrictive Covenants on the real property purchased with grant funds. The covenants must restrict use of the property to housing and services as agreed to. The restrictive use period runs from date property is purchased using funds from the grant to December 31, 2034. Within the Restrictive Use Period, Recipient may not transfer, repurpose, sell, assign, bequeath, or dispose of any interest in the Facilities or the underlying real property to any person, entity or other assignee, without obtaining the prior written consent of County. County may condition any such consent on the agreement of the transferee to assume all obligations of Recipient under this Agreement for the duration of the Restrictive Use Period.

At the end of the Restrictive Use Period provider is able to have free use of the real property.

**7. INSTRUCTIONS AND CONDITIONS**

Proposals must be signed by an authorized representative. Proposals drafted by a consortium shall include a Memorandum of Understanding (MOU) signed by individuals of each entity choosing to participate. Proposals without an original authorized signature will be rejected.

This RFP does not commit Deschutes County to award a contract or to pay any associated cost. The proposed cost is solely the responsibility of the Provider. All proposals submitted in response to this Request for Proposal (RFP) shall become the property of Deschutes County and may be utilized in any manner and for any purpose by Deschutes County. Be advised that proposals and all documents submitted in response to this RFP are subject to public disclosure as required by applicable state and/or federal laws. If you intend to submit any information with your proposal which you believe is confidential, proprietary or otherwise protected from public disclosure (trade secret, etc.), you must separately bind and clearly identify all such material. The cover page of the separate binding must be red, and the header or footer for each page must provide as follows: "Not Subject to Public Disclosure." Where authorized by law, and at its sole discretion, Deschutes County will endeavor to resist disclosure of properly identified portions of the proposals.

Proposals should not include personal identifier information in resumes or other documents such as social security numbers, dates of birth, criminal clearance documents, etc. Deschutes County shall not in any way be liable or responsible for the disclosure of any such records.

Any proposal may be rejected if it is conditional, incomplete, or deviates from specifications in this RFP. By submitting a proposal, the Provider agrees to meet all the requirements set forth in the RFP, unless specific exceptions are noted in Attachment 3 (Executive Summary). Deschutes County reserves the right to accept any part of the proposal and not be obligated in any way to accept those parts that do not meet with the approval of Deschutes County. Deschutes County reserves the right to waive, at its discretion, any procedural irregularity, immaterial defect or other impropriety not warranting rejection of the proposal. Any waiver will not excuse a Provider from full compliance if awarded a contract. Reasons for rejecting any proposal will be supplied to the Provider.

**Deschutes County, in its sole discretion, reserves the right to modify or cancel this RFP in whole or in part. If modification or cancellation is determined to be in the County's best interest, all Providers will be notified in writing of the specific reasons for such modification or cancellation.**

Deschutes County reserves the right to seek additional proposals beyond the final submission date, if, in Deschutes County's sole discretion, the proposals received do not meet with the approval of Deschutes County.

Proposals must be valid for a minimum of one hundred eighty (180) days from the due date of this RFP.

## **8. TENTATIVE SCHEDULE OF EVENTS**

Providers must follow the instructions and conditions detailed in this RFP. Proposals that do not conform may be excluded from further review.

Deschutes County anticipates that it will announce the results of this RFP process by the end of October 2023. Deschutes County and the selected Provider will then negotiate terms and sign a legally-binding contract. Proposals must be submitted as described above no later than 12:00 pm, on September 25, 2023 ("Due Date"). Proposals received after that time will be considered late and acceptance will be at sole discretion of Deschutes County.

Proposals will not be opened publically. A list of competing providers can be requested 48 hours after submission deadline. A register of all proposals received will be prepared and available for public inspection after a contract is awarded.

August 25 <sup>th</sup> , 2023	Request for Proposals is released.
September 6 <sup>th</sup> , 2023	Proposal questions submitted by email. Submit by 12:00pm.
By 5:00pm on September 11 <sup>th</sup> , 2023	Answers to submitted questions released.
<b>September 27<sup>th</sup>, 2023</b>	<b>Proposals are due. Must be received before 12:00pm PST</b>
Late September and early October	Proposals scored and narrowed to top three.
First and Second Week of October	Interviews are conducted with top three ranking candidates, if needed.
Third Week of October	Recommendation of selected candidate is forwarded to the Deschutes County Board of County Commissioners. Board considers selection and issuance of Notice of Intent to Award.
November 2023	Contract for services is developed and signed.
November 2023	Contracted services commence.

**9. ACCEPTANCE OR REJECTION PROPOSALS**

In awarding a contract, Deschutes County will accept and consider the proposal or proposals which, in the estimation of Deschutes County, will best serve the interests of Deschutes County and our clients. Deschutes County reserves the right to award a contract to the Provider whose proposal is most advantageous to Deschutes County based upon the evaluation process and evaluation criteria contained within this RFP. Deschutes County reserves the right to accept or reject any or all proposals. Any proposal which Deschutes County judges to be incomplete or nonconforming may be rejected. Any evidence of collusion between providers may constitute a cause for rejection of any proposals so affected.

**10. EQUITY AND INCLUSION**

In the provision of all services, Deschutes County values fairness, equity, inclusion, accessibility, diversity and transparency. Provider should work to ensure that participants have access to culturally responsive supervision, treatment and resources based on self-defined racial and ethnic identity, gender identity, sexual orientation and other identities that support each person’s resilience, integrity, wellness and success.

**11. SELECTION PROCESS**

All proposals will initially be screened by a selection of staff (“review panel”) determined by the Community Justice Department. All proposals submitted by the RFP due date will be subject to a standard review process. An initial review of each proposal will be conducted by the review panel to determine if it is complete, in the required format, and in compliance with all requirements of this RFP. Failure to meet any of these requirements may result in a rejected proposal.

Each proposal that passes the initial review will be evaluated and scored by the review panel. The process may include a panel interview with the County. The review panel will evaluate and score each proposal on the basis of a 100 point scale, using the assigned weights listed below.

<b>Evaluation Criteria</b>	<b>Value</b>
Service Delivery	25 Points
Knowledge, Experience, and Expertise	25 Points
Human-Center Focus and Understanding of Low Barrier	10 Points
Collaboration and Community Awareness	10 Points
Financial Creativity	20 Points
Performance Measures and Deliverables.	10 Points
<b>Total points available</b>	<b>100 Points</b>

Narrative responses to each section of the application, any required attachments and the completed budget forms will be reviewed to determine compliance with the requested information and the feasibility and reasonableness of proposed program design, cost, and expected outcomes. Each evaluation criterion is described in full in Attachment 5.

**12. AWARD AND COMMENCEMENT OF WORK**

Recommendation for award is contingent upon successful negotiation of the contract and resolution of any protests. The successful Provider shall be required to sign the negotiated contract, which will be in the form and content as approved by Deschutes County.

The final authority to award a contract rests solely with the Deschutes County. The successful Provider shall not be allowed to begin work under any negotiated contract until such time as the contract has been approved and executed by Deschutes County. The successful Provider must agree to all terms, insurance coverage provisions, and conditions of the contract with Deschutes County.

If only one proposal is received and it is deemed that such proposal meets requirements for funding, Deschutes County reserves the option to award such entity a contract on a sole-source basis. In the event no proposals are received, or proposals received do not meet requirements for funding under this RFP Deschutes County may designate another qualified entity to operate the program on a sole-source basis. If revisions or additional information to this RFP become necessary, Deschutes County will post the addenda or supplements on the Deschutes County website.

As referenced in Attachment 2 of this RFP, the selected Provider will need to submit evidence of the following insurance requirements prior to execution of the contract:

1. Commercial General Liability "occurrence" coverage, naming **Deschutes County, the State of Oregon officers, agents, employees and volunteers as an additional insured**, in the minimum amount of \$2,000,000 combined single limit (CSL) bodily injury & property damage each occurrence and \$4,000,000 aggregate, including personal injury, broad form property damage, products/completed operations, broad form blanket contractual and \$50,000 fire legal liability.
2. Professional Liability coverage in the minimum amount of \$1,000,000 combined each occurrence and \$2,000,000 aggregate, for damages caused by error, omission, or negligent acts related to professional services provided under the contract. The policy must provide extended reporting period coverage, sometimes referred to as "tail coverage" for claims made within two (2) years after the contract work is completed.
3. Commercial Automobile Liability coverage in the minimum amount of \$2,000,000 CSL bodily injury & property damage, including owned, non-owned, and hired automobiles. Also to include Uninsured/Underinsured Motorists coverage in the minimum amount of \$100,000 when there are owned vehicles. Contractor must have on file evidence of auto insurance in the minimum amount of \$100,000 CSL bodily injury & property damage for all employees and volunteers associated with the contract.
4. Workers' Compensation coverage, including a Waiver of Subrogation in full compliance with Oregon statutory requirements, for all employees of Contractor and Employer's Liability in the minimum amount of \$1,000,000.

Misrepresentation during the procurement or contracting process in order to secure the contract will disqualify a bidder or contractor from further consideration in the procurement or contracting process. Failure to comply with contract requirements once a contract has been awarded will constitute a material breach of the contract and may result in the suspension or termination of the affected contract and debarment from future Deschutes County contracting opportunities for a period not to exceed three (3) years. Other penalties may also apply.

As applicable, the selected Provider shall also submit to Deschutes County prior to contract award the following documents:

- Articles of Incorporation or business license;
- Grievance procedures for participants;
- Handicapped Access Survey;
- Verification of credentials, including education qualifications and professional licenses/certifications, as applicable.

#### **14. SUBMISSION PACKAGE**

Applications submitted in response to this RFP must include the items and be in the order as listed below. All of the items combined comprise your completed Application pursuant to this RFP.

1. Copy of signed Proposal Response Form (form should be e-mailed to Trevor Stephens prior to Due Date upon Provider's consideration of participating in this RFP) - **Attachment 1**
2. Signed Acknowledgement of Insurance Requirements - **Attachment 2**
3. Executive Summary: Please complete as directed. **Attachment 3**
4. Narrative Section: Prepare a written response that fully addresses each of the evaluation criteria listed. The narrative must be typed in 12-point font, one-inch margins, 8½" x 11", paginated, on white paper. Narrative section is limited to twenty (20) pages, one-sided. **Attachment 4**
5. Consortium's MOU, (if applicable).

It is the responsibility of the Provider to ensure the proposal is submitted via email by the time and date as specified.

To be considered for this RFP, all proposals submitted must be received no later than 12:00 pm on September 27, 2023 ("Due Date") with one complete application package with signature by email to [Trevor.Stephens@deschutes.org](mailto:Trevor.Stephens@deschutes.org). Deschutes County reserves sole discretion to accept or reject any late proposals.

#### **15. ASSIGNMENT**

Neither the resultant contract nor any of the requirements, rights, or privileges demanded by it may be sold, assigned, sublet, contracted, or transferred by the Contractor without the express written consent of the County. The granting or withholding of such consent shall be at the County's sole discretion.

#### **16. CLARIFICATION OF RESPONSES**

The County or its agents reserve the right to obtain clarification of any point in a Proposer's Proposal or to obtain additional information necessary to properly evaluate a particular Proposal. Failure of a Proposer to answer the request for additional information or clarification could result in rejection of the Proposers response

**17. COLLUSION**

A Proposer submitting a Proposal hereby certifies that no officer, agent, or employee of the County has a pecuniary interest in the submitted Proposal; that the Proposal is made in good faith without fraud, collusion, or connection of any kind with any other Proposer; the Proposer is competing solely in its own behalf without connection with, or obligation to, any undisclosed person or firm.

**18. DISPUTES**

In case of any doubt or differences of opinions as to the items or service to be furnished hereunder, or the interpretation of the provisions of the Request for Proposal, the decision of the County shall be final and binding upon all parties.

**19. LOBBYING**

Commencing with the issuance of this RFP, Proposers or others acting on their behalf are cautioned not to undertake any activities or actions to promote their proposals. Proposers or others acting on their behalf shall not make direct or indirect (through others) contact with members of the Deschutes County Board of Commissioners, County staff, or others to promote its proposals. Violation of this requirement may, in County's sole discretion, be grounds for disqualifying the Proposer from further consideration.

**20. NON-DISCRIMINATION IN EMPLOYMENT**

The successful Provider's attention is directed to the provisions of Oregon Revised Statutes, Chapter 659, and prohibiting discrimination in employment.

**21. PROPOSAL NOT A CONTRACT**

Neither this Request for Proposals nor responses to it constitute a contract between the County and the Proposer. The County reserves the right to negotiate specific contract terms with the selected Proposer.

**22. VERBAL STATEMENTS NOT BINDING**

Statements made by County representatives concerning this Request for Proposal are not binding upon the County unless confirmed in writing by a duly authorized employee/official.

**23. STATE AND FEDERAL LAW COMPLIANCE**

Provider must comply with all applicable requirements of federal and state civil rights law and rehabilitation statutes. As applicable, the successful Provider agrees to comply with all applicable provisions of the County and Oregon public contracting law.

**Attachment 1**

**DESCHUTES COUNTY COMMUNITY JUSTICE DEPARTMENT**

**REQUEST FOR PROPOSALS FOR**

**Proposal Response Form**

Submit by e-mail to: [trevor.stephens@deschutes.org](mailto:trevor.stephens@deschutes.org)

A signature on this form acknowledges that the proposed provider is hereby submitting a proposal in response to Deschutes County's Request for Proposal. Submitting this form ensures the Provider will be included in any communications regarding addendums to the RFP or questions being responded to prior to RFP Due Date.

Authorized Signature: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Company Name: \_\_\_\_\_

Company Address: \_\_\_\_\_





Automobile Liability insurance with a combined single limit of not less than:

- Per Occurrence
- \$500,000
- \$1,000,000
- \$2,000,000

Automobile Liability insurance includes coverage for bodily injury and property damage resulting from operation of a motor vehicle. Commercial Automobile Liability Insurance shall provide coverage for any motor vehicle (symbol 1 on some insurance certificates) driven by or on behalf of Contractor during the course of providing services under this contract. Commercial Automobile Liability is required for contractors that own business vehicles registered to the business. Examples include: plumbers, electricians or construction contractors. An Example of an acceptable personal automobile policy is a contractor who is a sole proprietor that does not own vehicles registered to the business.

Required by County       Not required by County      (one box must be checked)

**Additional Requirements.** Contractor shall pay all deductibles and self-insured retentions. A cross-liability clause or separation of insured's condition must be included in all commercial general liability policies required by this Contract. Contractor's coverage will be primary in the event of loss.

**Certificate of Insurance Required.** Contractor shall furnish a current Certificate of Insurance to the County with the signed Contract. Contractor 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. The Certificate shall also state the deductible or, if applicable, the self-insured retention level. Contractor shall be responsible for any deductible or self-insured retention. If requested, complete copies of insurance policies shall be provided to the County. Any violation by Contractor of this Certificate of Insurance provision shall, at the election of County, constitute a material breach of the Contract.

**I certify that I acknowledge the above insurance information as a requirement to enter into a contract with Deschutes County. I also certify that I carry the required insurance limits as stated in this Exhibit or can, if selected as a result of this RFP, obtain the required insurance and provide proof of the required insurance certificates prior to signature and execution of the contract.**

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Printed Name and Title:** \_\_\_\_\_

**Attachment 3 – EXECUTIVE SUMMARY** (if consortium, please fill one out for each business entity).

1. Proposer's Legal Name

Firm Name	
Address	
Telephone	

2. Briefly summarize your program design:

--

3. Chief Executive Contact

Name of Chief Executive	
Title	
Telephone	
E-mail Address	

4. Primary Application Contact

Name of Primary Contact	
Title	
Telephone	
E-mail Address	

5. Legal Status Information

Federal Employer Tax Identification or Social Security Number	
Oregon Tax I.D. Number	

**An unsigned proposal will be rejected**

I certify that the information provided in this proposal is true and correct to the best of my knowledge and that I have been duly authorized by Provider's governing body or other authority to file this proposal. This proposal is submitted as firm and fixed offer valid for one hundred twenty (180) days of the submission date.

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Printed Name and Title:** \_\_\_\_\_

**Attachment 4 – Response (Please complete the questions below and attach documents to your response as necessary to provide answer to the following questions. The score for each question is provided at end of questions.)**

**Attachment 4 can be no longer than 20 pages so please limit answers accordingly to ensure it remains within 20 pages.**

**1. Please describe the structure and philosophy within which you would operate the housing program as outlined in RFP documents if you were awarded the contract. The answer should demonstrate your agency’s experience, knowledge and ability to administer the housing program as described above. The answer should demonstrate the agency’s understanding of the population served and the complex and dynamic issues facing clients on supervision who have no minor contact restrictions or who are required to register as a sex offender.**

**2. Please describe any past experience your agency has working with justice-involved individuals, including individuals who have restrictive contact conditions or who are required to register as a sex offender.**

**3. Please explain in detail your agency’s experience in locating an acceptable property for the services as described in the RFP. What have you done in the past? What has worked well? What areas do you anticipate will be challenging?**

**4. Please describe what process you will use to find a location in Central Oregon. Outline any challenges you anticipate and any strategies you will use to mitigate those. Outline any community notification or feedback process that you will incorporate. Please ensure your process includes accounting for any restrictions that the population may have in terms of distance from locations where minors are located or gather. While not all individuals will meet criteria for strict residential requirements, some may, and the county will only approve property locations that are not near to locations where children are the primary occupants or users (includes, but is not limited to, public and private elementary and secondary schools and licensed childcare centers). Please review ORS 144.641, 144.642, 144.644, and any other applicable laws.**

**5. Imagine you have found the perfect location for the house you are heading in to sign the papers to complete the purchase. You receive a phone call from an angry neighbor who has learned about the house. What would you tell the neighbor and how would you handle this?**

**6. Where do you anticipate will be the best location for this house in Deschutes County? Do you have any potential properties in mind?**

**7. How do you propose to utilize the acquisition funds? Will you buy a new property or will you be seeking permission to utilize something that you already own or something that costs more than the current allocation described above?**

**8. What do you anticipate being the biggest challenging in finding a location to purchase?**

**9. What type of staffing/management arrangement are you proposing with this house? Please describe in detail. If a live-in manager will be onsite please describe the requirements for that position and how they will be compensated for those duties. If there will be no live-in manager on site please make sure to clearly outline a schedule that shows at least 40 hours of contact with the house 5 days a week include Sat and/or Sun.**

**10. The grant provides initial funds to purchase the house, furnish it, and provide initial startup costs. It does not include funds for operational expenses year to year. How do you propose funding the operations of this service each year? At the end of the 10-year restrictive use period the house will belong to the awarded provider without any further restrictions. Do you anticipate utilizing equity in the home to fund operations? How do you anticipate this changing over time until the end of the restrictive use period? Please include a breakdown of how you would utilize the funds described above.**

**11. What cost if any do you propose you will need to charge to Adult Parole and Probation for ongoing operational costs?**

**12. Clients utilizing the housing/bed services will have differing abilities to pay. How do you propose handling clients who have funds to pay and those who do not have funds to pay? What type of client billing/funding structure would you anticipate putting in place to ensure the services meet the needs as outlined in the RFP? What is your experience with locating public housing assistance for clients in similar programs?**

**13. What housing stability services as described in 4 under 5. SCOPE OF SERVICES in the RFP do you anticipate offering and how will you structure these services?**

**14. What ancillary services do you anticipate offering?**

**15. How will you manage clients that are in different places in terms of their readiness to change (pre-contemplative versus a client in action stage) Also clients that are in different housing status and housing stability (for example shelter beds versus housing beds)? What challenges do you anticipate? How will you mitigate these challenges?**

**16. What is your agency's understanding of how social identities and community belonging impact a person's life, including their journey through the justice system? Social identities are those aspects of a person's identity or description either self-selected or socially determined such as gender, race, ethnicity, sexual orientation, geographic, linguistic or culture.**

**17. What does your agency do to recognize, honor and support social identities and community belonging that are important and impactful to your clients?**

**18. What are features of your housing program that will recognize, honor and support the diverse social identities and community belonging of residents?**

**19. What behavior or outcomes would you define as a success for clients in a Shelter bed?**

**20. What behavior or outcomes would you define as a "needs improvement" for clients in a Shelter bed?**

**21. What behavior or outcomes would you define as a success for clients in a Housing Bed?**

**22. What behavior or outcomes would you define as a "needs improvement" for clients in a Housing Bed?**

**23. Please identify any key performance measures that you would envision with this contract and explain how you would measure them and define success. Do you currently have any performance measures your track internally and is so what mechanism do you use to track them?**

**24. Please describe anything additional that you believe will help us in making a decision on awarding the contract.**

**Attachment 5 – Evaluation Criteria**

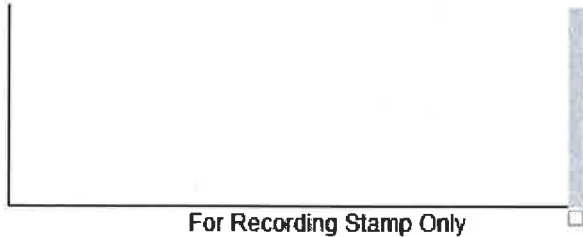
<b>Evaluation Criteria</b>	<b>Value</b>
Service Delivery: Ability of the proposer to provide services as detailed in the RFP.	25 Points
Knowledge, Experience, and Expertise: Proposers knowledge, past experience, and staff.	25 Points
Human-Centered Focus and Understanding of Low Barrier from proposal: Proposer's responses clearly articulate an understanding of client focus and low barrier.	10 Points
Collaboration and Community Awareness: proposal clearly reflects an understanding of the complexity around the project and siting a location. Proposal clearly shows an ability to collaborate with County and community stakeholders as necessary.	10 Points
Financial Creativity: creativity around solutions to fund project.	20 Points
Performance Measures and Deliverables: proposal outlines some key output and outcome measures and reflects an understanding of needing to make data informed decisions.	10 Points
<b>Total points available</b>	<b>100 Points</b>

DESCHUTES COUNTY

GRANT AGREEMENT 2023-1031

EXHIBIT D: Quit Claim Deed with Reversionary Clause

REVIEWED  
LEGAL COUNSEL



For Recording Stamp Only

After Recording, Return To:  
Free on the Outside  
Attn: Mike Cross, Executive Director  
592 Molalla Avenue  
Oregon City, OR 97045

After recording, forward all tax  
statements to: Same as above

QUITCLAIM DEED

THIS INDENTURE is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between DESCHUTES COUNTY, a political subdivision of the State of Oregon (Grantor), whose address is 14 NW Kearney Street, Bend, OR, 97703; and the Free on the Outside, an Oregon, a domestic nonprofit corporation, (Grantee), whose address is 592 Molalla Avenue, Oregon, OR 97045.

WHEREAS, ORS 271.330 grants express power to relinquish the title to any of the political subdivisions property to a qualifying nonprofit corporation for the purpose of providing social services no less than ten (10) years for a public purpose; and

WHEREAS, Grantee shall use the property for the public purpose of social services. Grantee's use shall be so restricted and if the said property is not used in conformance with such restriction for the required period, the same shall revert to and become the absolute property of Grantor; and

WHEREAS, the Board of County Commissioners has found that the property hereinafter described qualifies for transfer and has ordered it transferred to Grantee;

NOW, THEREFORE, for the consideration stated, Grantor releases and quitclaims to Grantee, all right, title and interest, subject to the Grantor's reversionary interest if the property is not utilized for ten (10) years for the agreed upon purpose specified in Grant Agreement No. 2023-1031, to the real property described in Exhibit A attached to and incorporated herein and is subject to all encumbrances of record and those common and apparent on the land.

The true and actual consideration for this conveyance is \$0, together with Grantee's agreement to use the property for a public purpose for not less than 10 years.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE



**APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.**

DATED this \_\_\_\_ day of \_\_\_\_\_, 2023. DESCHUTES COUNTY

BY: \_\_\_\_\_  
KRISTIE BOLLINGER, Deschutes County Property  
Manager authorized signature pursuant to Deschutes  
County Order 2023-055

STATE OF OREGON            )  
  ) ss.  
County of Deschutes        )

This instrument was acknowledged before me on \_\_\_\_\_ by Kristie Bollinger, as  
Property Manager for Deschutes County, Oregon.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2023

\_\_\_\_\_ My Commission Expires: \_\_\_\_\_  
Notary Public – State of Oregon

ACCEPTANCE SIGNATURE PAGE FOLLOWS

ACCEPTANCE

Free on the Outside, acting by and through \_\_\_\_\_, does hereby accept the foregoing Quitclaim Deed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2023

FREE ON THE OUTSIDE

By: \_\_\_\_\_  
Michael Cross, Executive Director

STATE OF OREGON            )  
  ) ss.  
County of Deschutes        )

This instrument was acknowledged before me on \_\_\_\_\_ by Michael Cross, as Executive Director for Free on the Outside.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2023

\_\_\_\_\_ My Commission Expires: \_\_\_\_\_  
Notary Public – State of Oregon



## BOARD OF COMMISSIONERS

# AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** December 13, 2023

**SUBJECT:** Ballot Measure 110: Public Safety Partners Presentation on A Comprehensive Approach to Addressing Oregon's Addiction and Community Livability Crisis

**BACKGROUND AND POLICY IMPLICATIONS:**

The Oregon Association of Chiefs of Police, the Oregon State Sheriffs' Association, the Oregon District Attorneys Association and the League of Oregon Cities have collaboratively developed numerous policy proposals to address Oregon's severe addiction crisis, the alarming rise in fentanyl overdose-related deaths, and the detrimental effects the crisis is having on community safety and quality of life across the state. Together, these proposals constitute a comprehensive approach to the problems being experienced.

Deschutes County District Attorney Stephen Gunnels will present the proposals and invite questions from the Board.

**BUDGET IMPACTS:**

None

**ATTENDANCE:**

Stephen Gunnels, District Attorney



## A Comprehensive Approach to Addressing Oregon’s Addiction and Community Livability Crisis

The following policy recommendations are designed to address Oregon's severe addiction crisis, the alarming rise in fentanyl overdose-related deaths, and the detrimental effects the crisis is having on community safety and quality of life across our state. While some of these solutions are specific to addressing certain provisions of Ballot Measure 110, the approach below is meant to be comprehensive.

As your partners in public safety, we believe that Ballot Measure 110 failed to recognize that drug addiction is both a public health and public safety crisis and requires solutions on both sides of the ledger. Success will require new tools and a significant allocation of resources along with an adaptable approach that recognizes the diverse needs and challenges of each Oregon community.

### RESTORING PUBLIC SAFETY SOLUTIONS:

#### **Policy Proposal #1: Reclassify Possession of a Controlled Substance (PCS) from an E-Violation to an A-Misdemeanor**

We can restore Possession of a Controlled Substance (PCS) to an A-Misdemeanor and present new post-BM 110 modifications that reflect the desire for treatment intervention. This should include diversion eligibility and dismissal of a charge upon successful completion of the one-year diversion and any required treatment (DUII approach). In addition, unlike DUII diversion, drug PCS related cases should be eligible for multiple diversion entrances. The current E-violation for possession of a controlled substance is ineffective and fails to connect persons struggling with severe addiction to the treatment they need. An A-Misdemeanor with diversion will compel those

struggling with addiction to enter treatment without turning to an approach that focuses on incarceration.

**Policy Proposal #2: “Boyd/Hubbell Fix” - Modify the statutory definition of controlled substance “delivery” to include the “transfer” of drugs and the “possession with intent to transfer” drugs:**

This fix focuses the policy solutions on the supply side of the equation with the dealer – not user – end of the drug crisis in Oregon. By restoring 34-years of state law that allowed the State to charge dealers when there is substantial evidence of the intent to deliver, like significant quantities of drugs, lists of sales, and cash. The proposed fix simply and clearly modifies the definition of “delivery” to include the “transfer” of drugs and the “possession with intent to transfer” drugs.

**Policy Proposal #3: Modify the statutory pretrial hold language from SB 48 (2021 Legislative Session) to ensure that jails and judges have the flexibility to hold drug dealers charged with Distributing a Controlled Substance (DCS) and repeat offenders.**

Senate Bill 48 (2021) required the Presiding Judge of each judicial district, following guidance from the Chief Justice and her Criminal Justice Advisory Council (CJAC), to enter a standing pretrial order specifying to the sheriff (or any other supervising entity) those persons and/or offenses that are subject to “Release on Own Recognizance” (ROR), subject to conditional release, or that are not eligible for release until arraignment. A modification in this law could make it clear that a pre-trial hold for dealers is a community priority.

**Policy Proposal #4: Fund county probation departments to supervise misdemeanor theft and property crime cases where defendants are dealing with an addiction/substance abuse disorder.**

Overall studies indicate that between 50% and 80% of property crimes committed in a community are committed by those suffering from severe addiction who steal to support that addiction. Currently county probation departments don’t supervise misdemeanor theft or property cases which means there is no opportunity for a drug/alcohol addiction screening and no requirement for drug treatment as part of their supervision package. This makes mitigating future harm almost impossible and fails to capture a population where there is significant overlap between persons committing property crimes and those possessing controlled substances. This solution doesn’t put additional pressure on the defense bar, as these individuals are already involved in the criminal justice system – and simply ensures they are screened and connected to mandatory treatment when needed.

**Policy Proposal #5: Create a new A-Misdemeanor for “Public Use of a Controlled Substance” to align with current law prohibiting public use of alcohol and marijuana**

Create a Class A Misdemeanor for public use of a controlled substance. Public use includes use in public and private buildings. The offense should be identified in statute as a “designated drug related misdemeanor” for the purposes of ORS 423.478(4)(b), which will allow for state funding of both treatment and supervision costs related to violations of the prohibition. This must be a

statewide law and not simply remove local preemption which will not allow for consistent application across local jurisdictions or the access to local county jails.

**Policy Proposal #6: Create a new Class A Misdemeanor for “Use of a Controlled Substance in an Enclosed Public Space that Endangers another Person.” (Escalates to Class C Felony for Repeat Offenses)**

Establishing a penalty for public use of a controlled substance must be accompanied with a penalty for use in an enclosed public space that endangers another person. The language would provide that “A person commits the crime of recklessly endangering another person if the person, while in an enclosed area, knowingly ingests, inhales, ignites, combusts or consumes a controlled substance in a manner that creates an immediate risk of ingestion, inhalation, or consumption by another person. For this purposes of this section, “enclosed area” is defined as a building or public transit vehicle or facility. It is an affirmative defense to this charge if all other persons placed at risk by the defendant’s conduct knowingly consent to the exposure. This crime would be punishable as a Class A Misdemeanor, escalating to a Class C Felony for repeat violations. This crime would be considered a “designated drug-related misdemeanor” for the purposes of ORS 423.478(4)(b).

**TREATMENT & COMMUNITY FOCUSED SOLUTIONS:**

**Policy Proposal #7: Prioritize adequate and sustainable funding for Oregon’s Specialty Courts:**

Inadequate state funding of Oregon’s specialty courts is the biggest threat to their long-term effectiveness and stability. In fact, Specialty Courts in several jurisdictions (including Multnomah, Deschutes and Benton County) are at risk of discontinuing their operations.

Specialty Courts combine accountability and supervision with a treatment-oriented approach that effectively addresses addiction and reduces recidivism rates among participants. Specialty Courts are designed to tailor treatment plans and support services to address the specific needs and challenges faced by participants. The approach has an established track record of success that addresses addiction and equips participants with the tools and support necessary to reintegrate into community life as productive citizens.

**Policy Proposal #8: Establish authority to utilize welfare holds of up to 72 hours for intoxicated persons who pose a danger to self or others:**

In many western states, law enforcement, EMTs and other first responders are able to utilize welfare holds of up to 72 hours where a person who is acutely intoxicated to a degree where they pose a danger to themselves or others can be held in a custodial environment and given supervised medical care. After 72 hours, the person is given the option to either leave on their own or stay and receive additional services. The states that have implemented these policies have seen a high level of engagement with aftercare and wrap-around services. This also gives

officers options other than jail or the emergency room for a person suffering from a severe substance use disorder (SUD).

**Policy Proposal #9: Create adequate stabilization, detoxification and treatment capacity in jurisdictions throughout Oregon by making sustainable investments in sobering center/stabilization and treatment bed capacity for adults and juveniles.**

Oregon's absence of dedicated sobering centers and stabilization facilities leaves communities helpless when dealing with severely addicted individuals who require detoxification and stabilization before they can successfully enter treatment. Detoxification is often the first step in the journey to recovery, as it helps individuals safely manage withdrawal symptoms and become physically stable before they can fully engage in addiction treatment programs. The lack of this capacity is a limiting factor in efforts to create an addiction to treatment pipeline. In addition, the Legislature should explore immediate grant funding for the expansion of existing juvenile and adult substance use disorder in-patient and outpatient treatment facilities.

**Policy Proposal #10: Support the establishment of Opioid Overdose Quick Response Teams:**

In response to increased opioid-related deaths, Ohio has created “Naloxone Plus” teams, also called Quick Response Teams (QRTs) that respond after a reported overdose and use of Narcan. In this model, a small team reaches out to an individual who is recovering from an overdose event and offers person-centered services. In Colerain Township, north of Cincinnati, the team has a police officer, firefighter/EMT, peer recovery mentor, or treatment professional. Between 2015 and 2019, the team responded to over 400 overdose follow ups and of the individuals contacted, 80% did an assessment and engaged in treatment. The goal of QRTs is to reach an individual in the time immediately after an overdose event, within 72 hours as best practice (but ideally much sooner than that) and to offer connections when the person may be ready to change due to the overdose event. The proposal would create grant funding for Quick Response Teams (QRT’s).

**Policy Proposal #11: Support aligning the siting of residential and secure residential facilities with the requirements in the Fair Housing Act:**

There is a significant need in our communities for residential – and secure residential – facilities for those experiencing mental health and substance abuse challenges across our State. This has become even more urgent given the recent federal court decision and the ongoing crisis taking place in our Oregon State Hospital. This is an urban and rural problem that is impacting communities throughout Oregon. Ensuring our land-use policies for siting secure facilities comply with federal requirements will expedite the desperately needed expansion of Oregon’s behavioral health residential treatment and supported housing capacity. All such facilities must meet the safety and security requirements currently existing in statute but would otherwise be treated and similarly situated housing.

Kevin Campbell, Oregon Association of Chiefs of Police  
Jason Myers, Oregon State Sheriffs’ Association  
Amanda Dalton, Oregon District Attorneys Association  
Scott Winkels, League of Oregon Cities



## BOARD OF COMMISSIONERS

# AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** December 13, 2023

**SUBJECT:** Public Hearing and consideration of ordinance to amend section 2.37.120 of the Deschutes County Code to clarify contract processing procedures

**RECOMMENDED ACTION:**

Following the public hearing, move first and second readings and emergency adoption of Ordinance 2023-026 amending DCC 2.37.120 to clarify existing procedure relative to contract processing post-Notice of Intent to Award.

**BACKGROUND AND POLICY IMPLICATIONS:**

Earlier this Fall the Board approved amendments to DCC 2.36 and DCC 2.37. The proposed amendment to section 2.37.120 should have been included in that previous packet. Adding now and proposing emergency adoption to align with the January 1, 2024, effective date for the other amendments to the contracting code.

**BUDGET IMPACTS:**

None.

**ATTENDANCE:**

Admin

Legal



REVIEWED  
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Section 2.37.120 of Title \*  
2.37, Contracting, of the Deschutes County Code; \* ORDINANCE NO. 2023-026  
Emergency Adoption. \*

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 Facilities, Administration, and Legal have from time to time identified a need to amend DCC 2.37 to reflect either state law changes or revisions appropriate for county operations; and

WHEREAS, the Board of County Commissioners of Deschutes County considered this matter at a duly noticed public hearing during the Board meeting on December 13, 2023, and determined that Section 2.37.120 of Title 2.37 should be amended; now therefore,

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

Section 1. AMENDMENT. DCC 2.37.120 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 ~~strikethrough~~.

Section 2. ADOPTION. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist; this Ordinance takes effect on January 1, 2024.

///

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: 13<sup>th</sup> day of December, 2023.

Date of 2nd Reading: 13<sup>th</sup> day of December, 2023.

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

Effective date: 1<sup>st</sup> day of January, 2024.

# EXHIBIT A

(To Ordinance No. 2023-026)

**2.37.120 Notice Of Intent To Award; Notice To Proceed And Contract Administration**

- A. At least seven (7) days before the award of a public contract, unless the Purchasing Agent or the Board determines that seven days is impractical, the Purchasing Agent shall post on the county’s website or provide each bidder or proposer notice of the county’s intent to award a contract. This subsection does not apply to a contract awarded as a small procurement under ORS 279B.065, an intermediate procurement under ORS 279B.070, a sole-source procurement under ORS 279B.075, an emergency procurement under ORS 279B.080 or a special procurement under ORS 279B.085.
- B. Unless a timely protest is received and after issuing notice in accordance with subsection A of this section, if required, the Purchasing Agent shall prepare a contract in accordance with the contractor selection results and furnish same for the contractor’s execution.
- C. After the contractor has executed the contract and furnished bonds, if required, and proofs of insurance the Purchasing Agent shall execute the contract, if within the Purchasing Agent’s authority, or submit same to the Board for approval.
- D. If the Notice of Intent to Award provides that the contract may be processed administratively and/or without further action by the Board, no additional Board action shall be required.
- D-E. If not proceeding pursuant to D above, should ~~If~~ the Board approves the contract, it shall adopt an order or otherwise authorize the Purchasing Agent or County Administrator to execute the contract and to approve change orders within the scope of 2.37.080.B.9 or amendments within the scope of the project for which the contract has been prepared.
- E-F. The contractor shall not begin work under the contract until the contract is fully executed and in the case of public works contracts the county has issued and delivered a Notice to Proceed.
- F-G. For purchases of goods the county may indicate in the solicitation that the selected contractor will be issued a purchase order, which refers to 2.37.150 for required contract terms.

HISTORY

*Adopted by Ord. 2005-010 §1 on 2/28/2005*

*Amended by Ord. 2008-023 §1 on 11/23/2008*

*Amended by Ord. 2023-026 §1 on 12/13/2023*



## BOARD OF COMMISSIONERS

# AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** December 13, 2023

**SUBJECT:** Sale of property at 51950 Huntington Road in La Pine to Habitat for Humanity La Pine Sunriver

**RECOMMENDED MOTION:**

Move approval of Board signature of Order No. 2023-043 authorizing the sale of 5.02 acres at 51950 Huntington Road in La Pine to Habitat for Humanity La Pine Sunriver, and further authorizing the Deschutes County Property Manager to execute all needed documents to effect the sale.

**BACKGROUND AND POLICY IMPLICATIONS:**

In 2021, the Board of County Commissioners directed staff to issue a Request for Proposals (RFP) for the disposition and development of +/- 43 acres in Newberry Neighborhood 2 to provide housing in the region. More specifically, Quadrant 2a known as Map and Tax Lot 2210110000400 (+/- 24.59 acres), and Quadrant 2d known as Map and Tax Lot 2210110000500 (+/-17.66 acres). As part of the RFP process, the County reserved two acres in Quadrant 2a and 2d for Habitat for Humanity La Pine Sunriver (Habitat) for affordable housing projects.

Because the two Quadrants have not sold to date, this led Habitat to request four acres in a single quadrant, specifically Quadrant 2a, which would allow Habitat to initiate the planning process for their next affordable housing development. Subsequently, Habitat requested an additional acre for a total of five acres. Upon the completion of a third party appraisal, which valued the one acre at \$75,000, the County and Habitat agreed on a sale/purchase price of \$50,000.

After Habitat completed the initial site layout, which includes up to 34 townhome lots and infrastructure to each lot including the extension of Masten Mill Drive and Barron Drive, Habitat amended the request to 5.02 acres.

Highlights of the transaction include:

1. County to convey 5.02 acres to Habitat
  - a. 4.02 acres at no cost to Habitat
  - b. 1 acre at a cost of \$50,000
2. \$5,000 refundable earnest money – becomes nonrefundable after Habitat removes contingencies

3. 180-day due diligence period from executing the purchase and sale agreement
4. Habitat to complete the partition process for 5.02 acre through the City of La Pine
5. Closing to occur within 10 days following recording of the 5.02 acre partition plat.

Habitat anticipates starting infrastructure construction Summer 2024; note, timing to start horizontal construction is contingent on receiving subdivision plat approval from the City of La Pine and weather permitting. Further, Habitat is aiming to start vertical construction in the spring of 2025 and will continue over a four- to six-year horizon. The construction timeline is partly based on the number of qualified candidate homeowners in the queue.

**BUDGET IMPACTS:**

Net sale proceeds from the sale of property in the Newberry Neighborhoods is allocated to the Groundwater Protection Fund.

**ATTENDANCE:**

Kristie Bollinger, Property Manager

REVIEWED

LEGAL COUNSEL

12/13/2023 Item #7.

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Designating the Deschutes County  
Property Manager, Kristie Bollinger as the  
Deschutes County Representative for the Purpose  
of Signing Documentation to Complete the Sale  
of 5.02-acres of County-Owned Property Located  
at 51950 Huntington Road, La Pine, Oregon,  
97739

\*  
\*  
\*  
\*

ORDER NO. 2023-043

WHEREAS, the Board of County Commissioners of Deschutes County has authorized the conveyance of property consisting of 5.02-acres in Quadrant 2a of the Newberry Neighborhood located at 51950 Huntington Road and known as Map and Tax Lot 2210110000400, La Pine, Oregon, 97739 to Habitat for Humanity La Pine Sunriver, a nonprofit that specializes in affordable housing; and

WHEREAS, Deschutes County received a request from Habitat for Humanity La Pine Sunriver (Habitat) for a real property donation of 4-acres and to purchase 1-acre for Fifty Thousand (\$50,000) Dollars in Newberry Neighborhood Quadrant 2a for a total of 5-acres; and

WHEREAS, subsequently, Habitat completed the initial site layout and determined the need for 5.02-acres for the development of 34 townhome lots and supporting infrastructure; now, THEREFORE,

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

Section 1. The Deschutes County Property Manager, Kristie Bollinger is designated as the Deschutes County representative for the purpose of signing the necessary documents to complete the sale of property consisting of 5.02-acres located at 51950 Huntington Road, La Pine, Oregon 97739.

**SIGNATURES ON FOLLOWING PAGE**

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

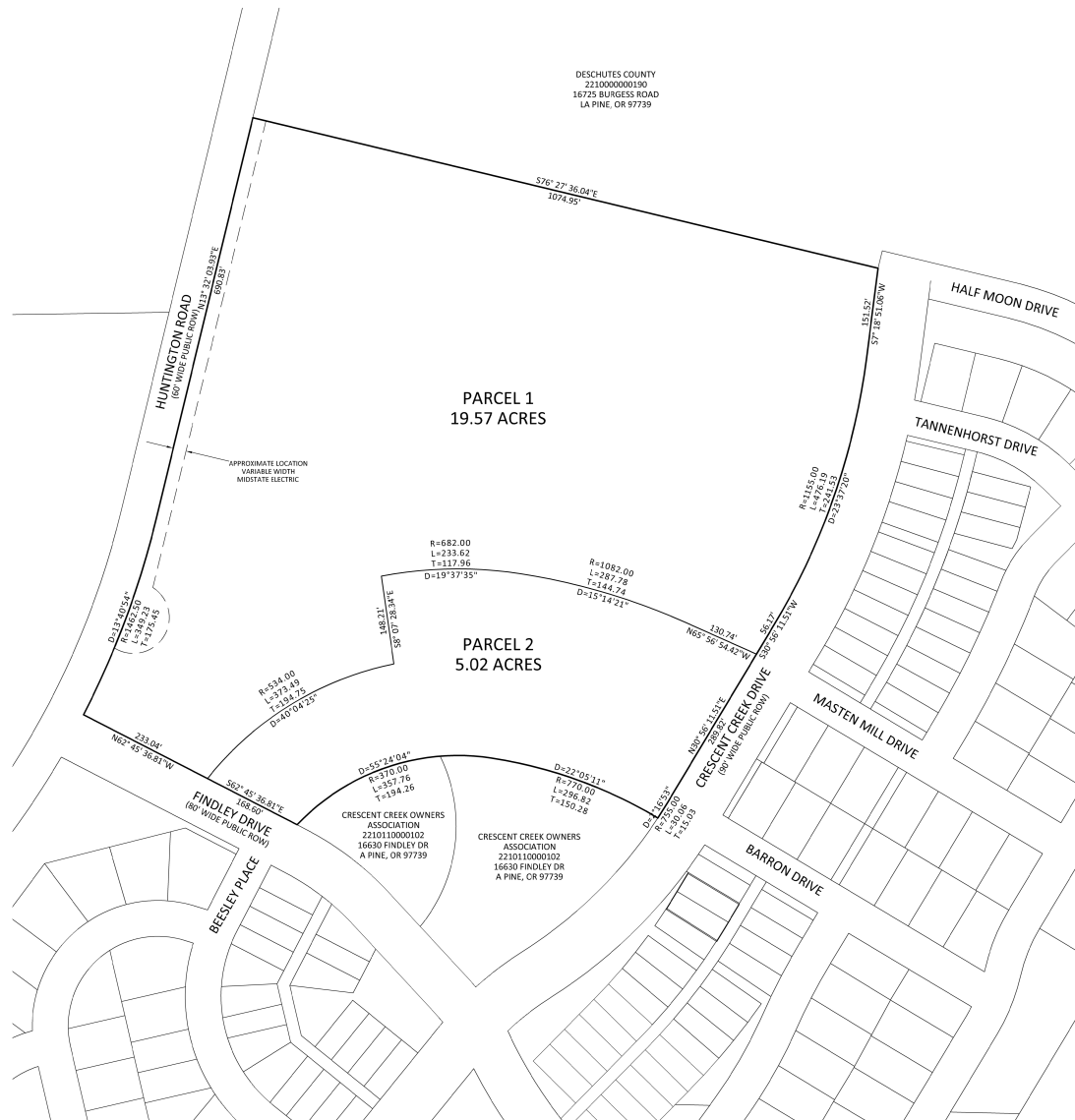


**DEVELOPMENT DATA:**

OWNER: DESCHUTES COUNTY  
 ADDRESS: 51950 HUNTINGTON ROAD, LA PINE, OR 97739  
 MAP AND TAXLOT: 2210110000400  
 OVERALL PROPERTY AREA: 24.6 ACRES

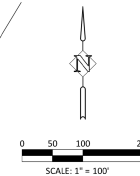
**PROPOSED PARTITION**

PARCEL 1: 19.57 ACRES (852,662 SF)  
 PARCEL 2: 5.02 ACRES (218,805 SF)



**TENTATIVE PARTITION PLAN**

SCALE: 1" = 100'



Page 18 of 18 – PURCHASE AND SALE AGREEMENT:  
 HABITAT FOR HUMANITY LA PINE SUNRIVER  
 Deschutes County Document No. 2023-897

TENTATIVE PARTITION PLAN  
**51950 HUNTINGTON ROAD**  
 LA PINE, OREGON

**Harper Houff Peterson Righellis Inc.**  
 REGISTERED PROFESSIONAL ENGINEER PLANNERS  
 240 N. F. ST. LA PINE, OR 97739  
 PHONE: 541.313.1151 WWW.HHPRI.COM

REGISTERED PROFESSIONAL ENGINEER  
 PRELIMINARY  
 LAMAR L. YANG, P.E.

KWP/IBS: 6/20/24

DESIGNED:	JLV
DRAWN:	HHPRI TEAM
CHECKED:	JLV
DATE:	OCTOBER 2023

NO.	DESCRIPTION

SHEET NO.

**C1.0**

JOB NO. HFH-02



## BOARD OF COMMISSIONERS

# AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** December 13, 2023

**SUBJECT:** Veteran Behavioral Health Peer Support Specialist Program Grant Application

**RECOMMENDED MOTION:**

Move approval to apply for a Veteran Behavioral Health Peer Support Specialist Program grant from the Oregon Health Authority.

**BACKGROUND AND POLICY IMPLICATIONS:**

Deschutes County Health Services (DCHS) is seeking approval to apply for the Oregon Health Authority's Veteran Behavioral Health Peer Support Specialist Program. The purpose of this grant program is to expand the availability of peer-delivered services to veterans with behavioral health needs to improve their health and well-being. Peer support offers participants a unique opportunity to engage in their behavioral health recovery within the context of an affirming and empowering peer-to-peer relationship. Services are to be low-barrier, community-based, and directed by the person being served. OHA intends to award up to ten grants for this program.

The Veteran Behavioral Health Peer Support Specialist (VBHPSS) position funded by this program would be part of the Adult Outpatient team, providing outreach and engagement services to difficult to engage and high-risk veterans in the community. The position would collaborate with the Adult Outpatient Team clinicians as well as North and South County Hub clinicians, psychiatrists and case managers to wrap services around up to 20 eligible veterans per year.

Duties of the VBHPSS include the following:

- Working closely with veterans and their care teams to support each veteran client in self-identifying strengths, needs, and goals, while also addressing barriers to behavioral health recovery and wellness;
- Striving to improve the behavioral health of veterans and address social determinants of health which impact veterans and military personnel in their communities by helping to navigate, as requested by the client, the VHA, state systems, local municipal systems, or local community resources;
- Linking veterans to appropriate resources, assisting veterans in overcoming barriers to availability and accessibility of services, and supporting veterans in developing and strengthening community connections and natural supports through, but not limited to, the peer relationship; and

- Providing a suite of regularly delivered peer support services and taking part in care teams.

If awarded, DCHS would use the \$227,000 funding to support the following for a 19-month term:

- \$199,364 for personnel: a 1.0 FTE VBHPSS, a 0.15 FTE Behavioral Health Supervisor, and a VBHPSS supervisory stipend (all positions are currently filled),
- \$1,000 for Training,
- \$1,000 for Travel,
- \$5,000 for Social Determinants of Health, and
- \$20,636 for indirect

**BUDGET IMPACTS:**

If awarded, \$227,000 revenue for the term February 1, 2024 through August 31, 2025

**ATTENDANCE:**

Kristin Mozzocchi, Manger, Behavioral Health Program



## BOARD OF COMMISSIONERS

# AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** December 13, 2023

**SUBJECT:** Contract with L3Harris for completion of DC911 Radio Enhancement Plan

**RECOMMENDED MOTION:**

Move approval of Chair signature on Document No. 2023-1042, an agreement with L3Harris for 911 radio system enhancements.

**BACKGROUND AND POLICY IMPLICATIONS:**

The proposed contract is for equipment and services to complete the District Radio Enhancement Plan in FY25, specifically by installing equipment at the radio site located at the new 911 back-up center and the new site in southeast Bend at the County's Road Department.

These two final sites will fulfill all the tasks from the DC911 Radio Enhancement Plan within the established five-year timeline. Plan fulfillment will significantly enhance and improve the overall system in Central Oregon for our 3,000+ users.

**BUDGET IMPACTS:**

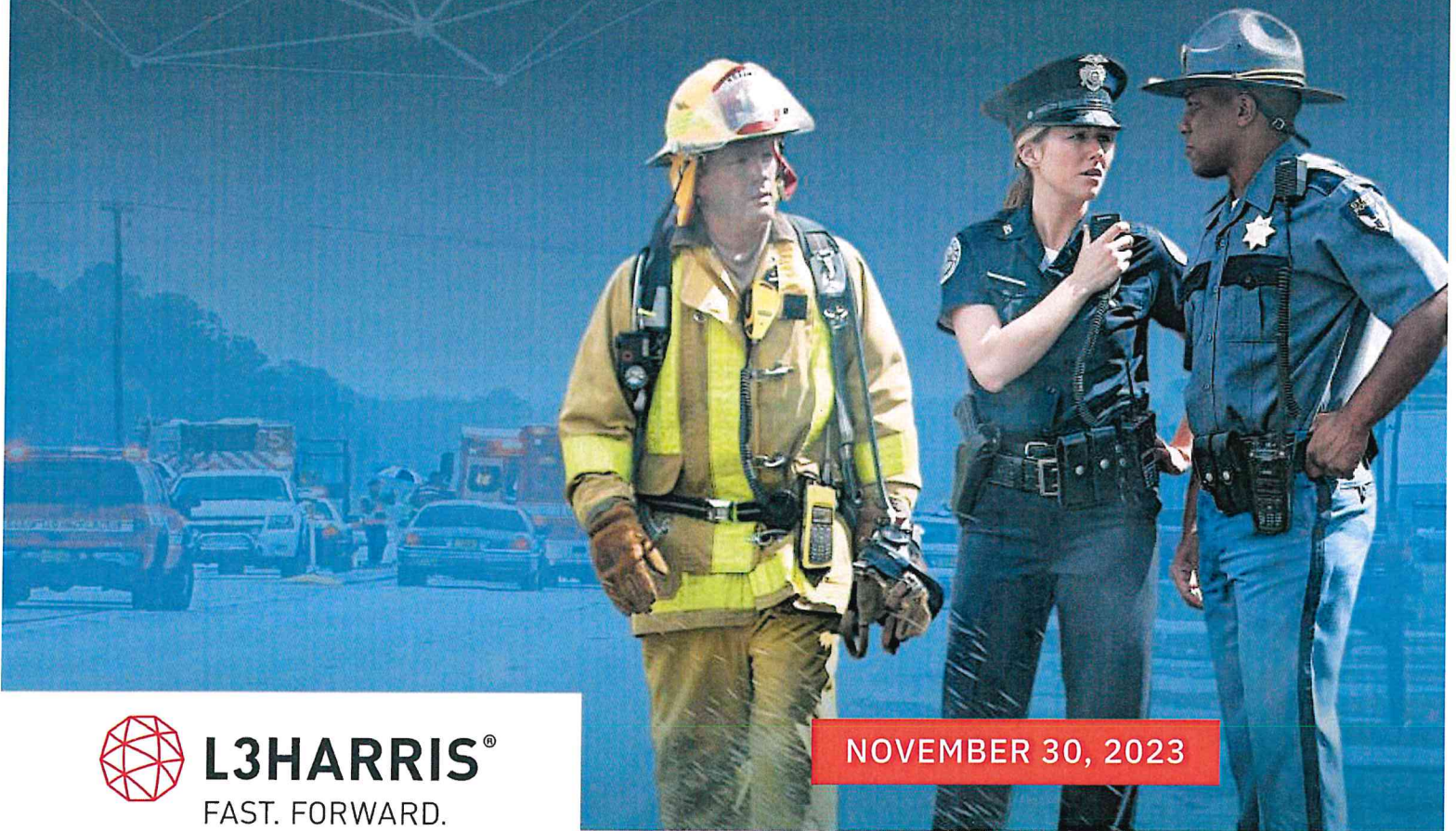
This contract, in the amount of \$805,530.93, requires signature in FY24 but will not be invoiced before July 1, 2024. Signing this contract in advance gives L3Harris the ability to order and stage the necessary equipment to complete both radio sites in FY25. In 2024, staff will present a request to the Budget Committee for the above expenditure as part of the capital requests made for the FY25 budget.

**ATTENDANCE:**

Sara Crosswhite, 9-1-1 Service District Director  
Jonathan Spring, Tech Systems Manager

# DESCHUTES COUNTY CONNECT CORE

DESCHUTES COUNTY, OREGON



**L3HARRIS**<sup>®</sup>  
FAST. FORWARD.

NOVEMBER 30, 2023

221 JEFFERSON RIDGE PKWY | LYNCHBURG, VA 24501 | L3HARRIS.COM | #L3HARRIS

PROPRIETARY INFORMATION: L3Harris Technologies, Inc., through its Communication Systems Segment, complies with all federal, state and local laws, ordinances, rules, and regulations regarding disclosure. However, L3Harris must still protect its trade secrets, intellectual property, and other confidential and competition sensitive business information. The enclosed proposal includes pricing, system design, trade secret and other confidential and competition sensitive information which is labeled as such in the proposal. Disclosure of any portion of this proposal shall be permitted only after the express written consent of L3Harris is provided. After award notification and upon official written request, L3Harris will disclose any proposal information that is no longer considered confidential or competition sensitive.

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Warranty and Maintenance

Functional Acceptance Test Plan

Factory Acceptance Test Plan

Pricing

Contractual Documentation

Product Literature



L3HARRIS TECHNOLOGIES, INC.

Communication Systems  
221 Jefferson Ridge Parkway  
Lynchburg, VA USA 24501-6952  
Phone 1-800-368-3277

L3Harris.com

November 30, 2023

Tim Beuschlein  
PS Systems Supervisor/Radio System Admin  
Deschutes County 9-1-1 Service District  
20355 Poe Sholes Drive #300  
Bend, OR 97703

**Subject: Connect Core/2 sites/150 BeOn licenses**

Dear Mr. Beuschlein:

L3Harris is pleased to provide Deschutes County 9-1-1 with the following Connect Core/2 sites/150 BeOn firm fixed price proposal. Pricing is valid until December 31, 2023. Upon expiration of the pricing validity, L3Harris reserves the right to provide an updated pricing proposal.

L3Harris looks forward to partnering with Deschutes County 9-1-1 on this critical communications project. Please contact me at 503-724-1273 or at the email address listed below if you have any questions.

Respectfully,

Jennine Weber  
Sr. Sales Account Manager  
L3Harris Technologies, Inc.  
[Jennine.Weber@L3Harris.com](mailto:Jennine.Weber@L3Harris.com)

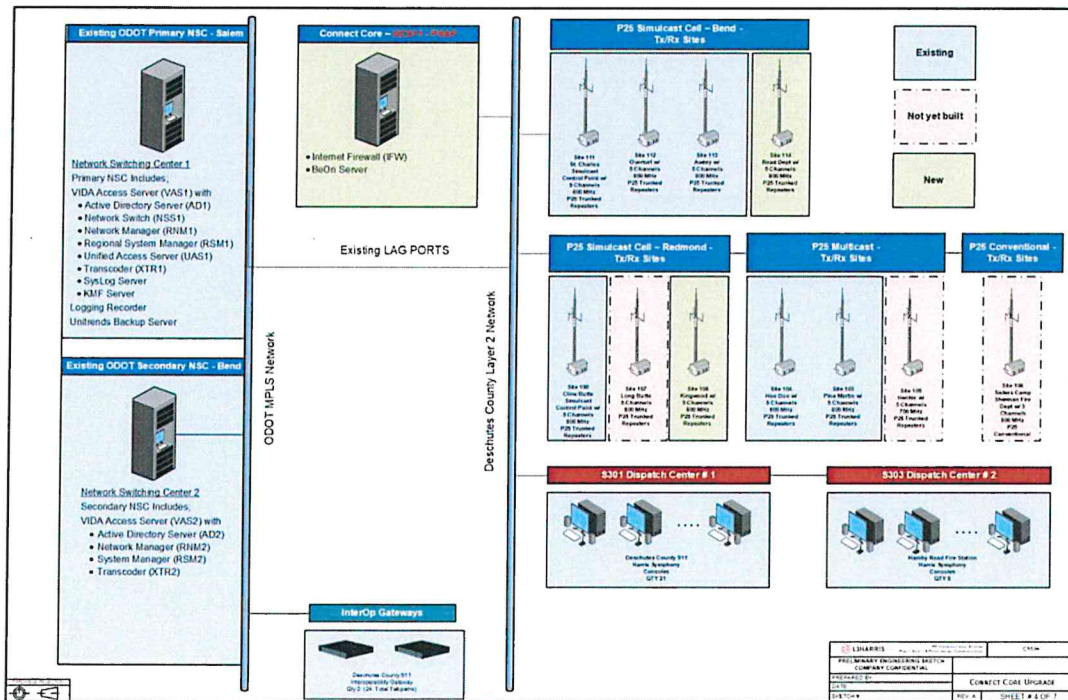
# SYSTEM DESCRIPTION

L3Harris excels in the multifaceted implementation of mission critical radio systems to fulfill the specific needs of our customers and support their vital public safety operations. L3Harris is pleased to partner with Deschutes County, Oregon in providing an equipment and design for a VIDA Connect core and two new simulcast RF sites that will be added to Deschutes County's existing radio communications system. As services are not part of the L3Harris responsibility, test plans, however, have been provided for the use of Deschutes County and/ or Deschutes Count third-party implementors.

Deschutes County's existing system is made up of two 800 MHz P25 Simulcast Cells, 5 Channels sites at Bend and Redmond locations. The three RF sites at Bend are site 111 (St. Charles), site 112 (Overturf) and site 113 (Awbry). The new RF site at Bend is site 114 (Road Department). The two RF sites at Redmond are site 100 (Cline Butte) and site 107 (Long Butte). The new RF site at Redmond is site 108 (Kingwood).

There are three 800 MHz P25 Multisite, 5 Channels sites at Redmond. They are site 104 (Hoodoo), site 103 (Pine Martin), and site 105 (Henkle). Henkle site already have P25 Trunked site common equipment, AC Power Plant and only requires RF Antenna System. There is one P25 Conventional 800 MHz, 3 channels at site 106 (Sisters Camp Sherman Fire Department). Two dispatch centers at the 911 Center and Hambry Road Fire Station, two interoperability gateways with 24 total talkpaths, one Eventide Logging Recorder, and BeOn server.

Figure 1. Deschutes County, Oregon Block Diagram





Deschutes County currently uses Oregon Department of Transportation (ODOT)'s VIDA Premier NSC High Availability (HA). The primary NSC 1 is located at Salem and the secondary NSC 2 is located at Bend. The new VIDA Connect core will be located at the Deschutes County DC 911 dispatch center and will connect to ODOT's primary and secondary NSCs. L3Harris shall provide the VIDA Unite Core with Connect core features and licenses. The VIDA Connect core will have a BeOn application that will support 150 users. Since this will be an addition to an existing system there are no special cybersecurity requirements and no third-party equipment upgrades.

## THE L3HARRIS OFFERING

L3Harris will provide equipment and design information for Deschutes County to add two new RF simulcast sites and a VIDA Connect (Unite) core with BeOn.

1. Addition of two new RF simulcast sites at Bend (Road Department) and Redmond (Kingwood) locations.
  - > New P25 Trunked Site Common Equipment
  - > Deschutes County provided AC Power Plant
  - > RF Antenna System including:
    - 5-Channel Combiner (Qty 1)
    - Multicoupler/TAA (Qty 1)
    - Tx Antenna (Qty 1)
    - Rx Antenna (Qty 1)
    - Coax, Cables, and Connectors
2. Addition of VIDA Connect core (VIDA Unite core)
  - > Deschutes County requested that the VIDA Connect Core be equipped with the Key Management Facility (KMF), however, this is supported only on the NSC. This can be added once Deschutes County's VIDA Connect is converted/upgraded to a VIDA Unite Core since KMF requires its own UAS for key Management.
    - For the interim, L3Harris recommends that Deschutes County use the existing KMF from ODOT's VIDA Premier NSC.
    - Modification of the existing Deschutes County backhaul is not in the L3Harris design scope.
    - Backhaul bandwidth requirements for this design include addition of C1111-4P router sufficient for WAR and SARs
3. Addition of BeOn to the new VIDA Connect core.
  - > L3Harris shall provide the VIDA Unite core to process voice traffic and support BeOn for Deschutes County, however, NSC applications such as UAS, Enterprise Network Manager (ENM), Regional Network Manager (RNM) and KMF are still part of ODOT Premier core and share with Deschutes County.
    - The Unite Core will be configured to function as a VIDA Connect core with BeOn server.

- As requested, 150 mobile licenses for iOS/Android OS are provided.

## Overview System Features

### VIDA CONNECT CORE

Deschutes County's VIDA Unite core will be reconfigured to function as a VIDA Connect with Application High Availability and shall be connected to the State's (ODOT) VIDA Premier Core.

The VIDA Network Switching Center (NSC) is the heart of L3Harris' P25 packet-switched network. Deschutes County NSC is configured for geographically separated Location High Availability with geographically separated primary and secondary switching servers. L3Harris will provide a VIDA Connect core based on Deschutes County's system and infrastructure requirements. The VIDA Unite hardware platform is scalable to meet current (VIDA Connect) and future (VIDA Unite) Deschutes County system requirements.

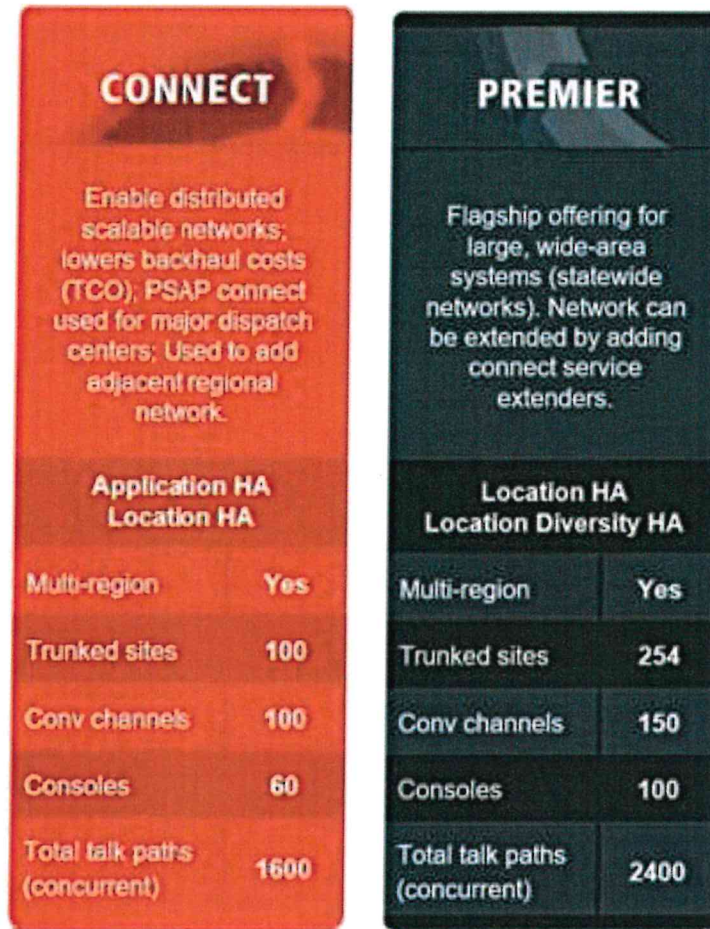
The VIDA Unite NSC provides centralized administration services and activity log storage location for all VIDA system locations. VIDA Unite also supports traffic management, including trunked voice, console, and interoperability calls.

The desired availability and reliability determine the amount and type of redundancy designed within a mission critical system. L3Harris has devised multiple choices for system HA. The VIDA Unite supports Application HA and Location HA. Deschutes County prefers VIDA Connect (Unite) NSC with Application HA.

The maximum allowed for VIDA Unite core is 800 Talkpaths. Deschutes County has two dispatch centers, the first dispatch center S301 has 21 symphony consoles, and the second dispatch center Hamby Road Fire Station has 5 symphony consoles. L3Harris shall customize Deschutes County's VIDA Unite (Connect) to handle the 26 symphony consoles.

Deschutes County shall use ODOT's VIDA Premier Core Location HA and VIDA Unite Core Application HA.

Figure 2. VIDA Premier and Connect NSC HA Options and Subsystem Capacity



## BeOn Group Communications Services

The BeOn® solution is a Voice over IP (VoIP) based, push-to-talk (PTT) communications system operating over public or private wireless networks. The solution extends traditional Land Mobile Radio (LMR) services onto broadband capable third generation (3G) and 4G/LTE cellular networks and Wi-Fi.

BeOn® users can communicate using L3Harris BeOn® capable subscribers, smart phones (Android and Apple iOS), tablets, and PCs, providing secure PTT communications far beyond the boundaries of regional radio systems and opening affordable PTT communications to new user groups. This includes the ability to provide highly integrated interoperability services between BeOn® users on the cellular network and users of traditional Private Mobile Radio (PMR) networks.

L3Harris' Private Mobile Radio VIDA IP network switching technology is the foundation for the BeOn® application infrastructure. As a result, the application and product suite provide many advanced features not found in competing technologies and provides internetworking of those services between public and private communications networks.

## BeOn Application Server

L3Harris offers BeOn Application on VIDA cores. BeOn server supports up to 5,000 users. BeOn is available on Android™, Windows® PC, and iOS™ platforms and supports managed group and push-to-talk communications utilizing most consumer smart phones. All platforms support geographic mapping and use Google® Mapping data. The application identifies BeOn users who are talkgroup members of the LMR system and forwards transmissions to their BeOn device. Using a PTT function on the BeOn device, the application receives and sends transmissions to the server. The BeOn server can handle thousands of users and recognizes logical talkgroups established in the digital radio system, allowing designated users to communicate over managed channels, much like a traditional digital radio.

The BeOn Windows Client (BWC) allows any administrator to listen to LMR traffic from a PC at a desk, or in a command-and-control vehicle, as well as talk to BeOn and P25 radio users in the field. The administrator can participate in PTT traffic and view the location and presence state of users on a map with optional “Status Aware” and “Situational Awareness Mapping” functions.

## Voice Network Interface Controller (VNIC)

The Voice Network Interface Controller (VNIC) is a voice controller application that runs on the VAS and performs routing functions for digital trunked voice messages through an IP backbone. The VNIC maintains a database of voice group files, it tracks the radio site location of voice group members to ensure delivery of voice messages only to those radio sites essential to reach identified radios. In addition, the VNIC supports a wide range of interfaces for third-party products, including dispatch consoles, logging recorders, and interoperability gateways.

## Network Requirements

To guarantee the quality of voice through the VIDA network, all WAN links will need to strictly adhere to the requirements provided in the following sections. Conformance with these design requirements is a necessary condition for L3Harris to meet the overall performance needs of the VIDA system. All of these requirements are necessary to provide a guaranteed level of service for voice quality. Failure to adhere to these requirements could result in poor audio for which L3Harris cannot be held accountable. In the event of audio problems, L3Harris shall work with the customer to determine the source of the problem. If the problem is determined to be in the customer supplied backhaul, L3Harris shall be available on a contract basis to help resolve the issue.

## Packet Loss Requirements

Due to the connectionless nature of UDP used in transmitting voice packets, minimal packet loss is tolerable in the VIDA network. However, any packet loss could result in degraded voice quality or loss of voice. L3Harris shall not be held responsible for degraded voice quality that comes from the result of packet loss in the customer provided transport network.

Performance testing to be measured based on the following:

- > RFC 2544 standard to be used.
- > Length of test per link shall be 24hrs.
- > Frame loss shall be less than .01%

- > Out-of-Order packets shall be less than .01%

## Multisite Jitter (One-way)

Jitter is the variability of packet delays within the same voice packet stream (talk spurt). The requirement is for the overall jitter to average near zero and to never build up to more than 60 msec one-way. Any streams with excessive jitter will be considered to have packet loss and L3Harris shall not be responsible for voice quality issues.

For example, if a voice packet were 60 milliseconds late, then it would be optimal for the next few voice packets to be early to get the average jitter back to zero. This will allow the voice buffer to build back to a stable point.

For allowable Simulcast Jitter, refer to the IP Simulcast Latency and Jitter section.

## Latency Requirements (One way)

Some degree of latency, such as satellite links, can be supported within the VIDA network. L3Harris shall not be held responsible for voice latency requirements if the provided WAN connection has more latency than the requirement. Any latency within the system will need to stay constant to avoid jitter. Latency requirements differ based on the site type and traffic patterns. This section defines latency requirements for Multisite to NSC, NSC to NSC, Simulcast Site to Control Point, and Control Point to NSC. Latency is measured one-way. Asymmetric latency is permitted if one-way measurements meet specifications below.

## Layer 2 Quality of Service Requirements

If Layer 2 WAN services are being provided, the layer 2 WAN should map our layer 3 DSCP markings into the appropriate layer 2 queues that meet the layer 3 requirements.

## Layer 3 Quality of Service Requirements

At OSI Layer 3, the network will recognize and forward L3Harris voice traffic marked using the Differentiated Services Code Point (DSCP) byte and the network will also meet the following requirements:

- > The Platinum (DSCP EF) queue should be treated as a strict priority queue for voice.
- > All other queues should be treated as CBWFQ.
- > All DSCP values should not be manipulated during transport.

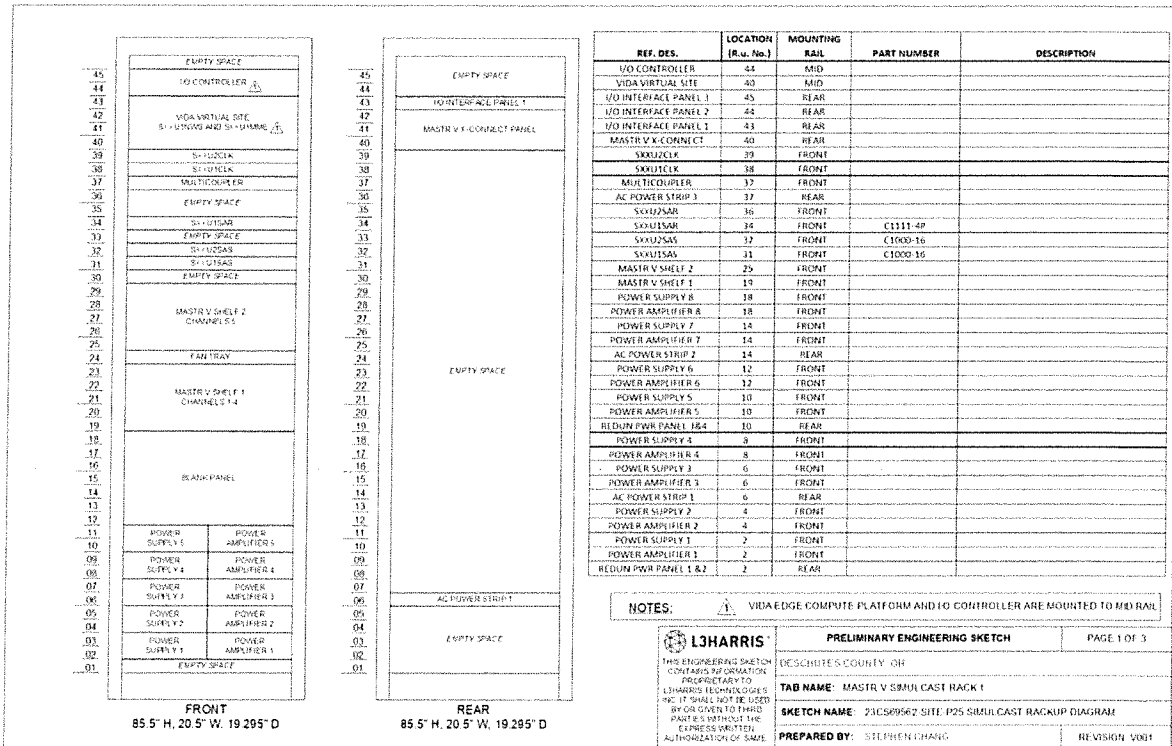
## Bandwidth Requirements

All of the links that are provided will need to meet or exceed the bandwidth requirements established by L3Harris.

Figure 3. Bandwidth Requirements

System Name	Type	Site Channels	Consoles	Talkpaths	Total VNIC Talkpaths	VIP Consoles	Number of Sites	Logging Recorder BW (kbps)	BW per Symphony (kbps)	Simulcast and Site Aggregated Traffic (kbps)	Core to Core Bandwidth (kbps)	Minimum Recommended Ring Requirement (kbps)
Bend DCP Cell	DCP Simulcast	5		10	10		4			1,621	430	3,242
Redmond DCP Cell	DCP Simulcast	5		10	10		3			1,153	370	2,306
Primary Dispatch	Dispatch		20	12	240		1		514	10,280	10,280	20,560
Secondary Dispatch	Dispatch		6	12	72		1		514	3,084	3,084	6,168
Pine Marten	Multisite	5		10	10					1,536	1,536	3,072
Hoo Doo	Multisite	5		10	10					1,536	1,536	3,072
Henkle	Multisite	5		10	10					1,536	1,536	3,072
Sister Camp	Multisite	5		10	10					1,536	1,536	3,072
ISSI	Interoperability				0					0	0	0
IOWY	Interoperability			24	24		2			1,472	1,472	2,944
Logging Recorder	NSC				44		1	1534		1,534	1,534	3,068
<b>Aggregation Total</b>					<b>440</b>					<b>25,288</b>	<b>23,314</b>	<b>50,576</b>

Figure 4. MASTR V Simulcast Rack 1



# Power Requirements

New DC-powered RF sites for Road Department and Kingwood. The figure below shows power load calculations per site.

Figure 5. New DC-powered RF Sites

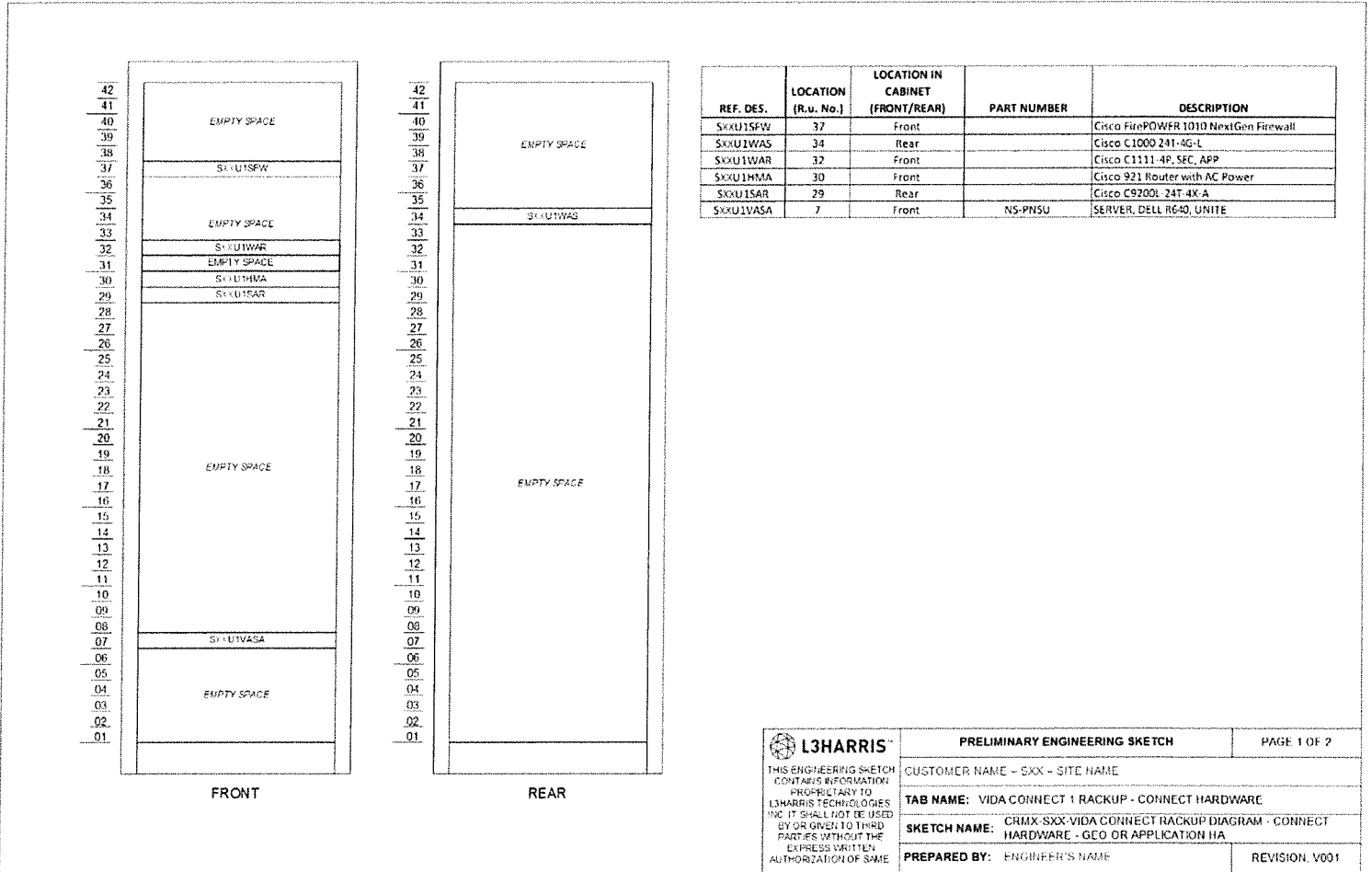
<b>Site Name(s) RF Site</b>			
<b>Equipment load when all Stations TX (Maximum Plant)</b>	<b>Peak 48 VDC equipment Load</b>	<b>68.14 Amps</b>	
<b>Average current during battery run time</b>	<b>Average 48 V equipment Load</b>	<b>32.93 Amps</b>	
<b>Desired run time on Batteries</b>	<b>Hours run time</b>	<b>8 Hours</b>	
<b>Inverter and Converter Load in addition to 48 VDC load</b>	<b>120 VAC Load</b>	<b>0.70 Amps</b>	
	<b>24 VDC Load</b>	<b>0.00 Amps</b>	
	<b>12 VDC Load</b>	<b>0.00 Amps</b>	
	<b>48 VDC Battery voltage range</b>	<b>43-56 Volts</b>	
	<b>Battery Recharge time</b>	<b>24 Hours</b>	
	<b>Growth required</b>	<b>5 %</b>	
<b>Note: Battery recharge current is NOT included in these.</b>	<b>Est 48 VDC Total Peak Load</b>	<b>73.6 Amps</b>	<b>Inc Converters &amp; Growth</b>
	<b>Est 48 V Total Avg Load</b>	<b>36.6 Amps</b>	<b>Inc Converters &amp; Growth</b>

New Connect Core (Unite Core) UPS backup power design is listed in the figure below.

Figure 6. UPS Backup Power Design

<b>UPS Vendor SOW SnapShot</b>	
<b>Site Name(s): Road Department</b>	
<b>Peak</b>	<b>1.36 KW</b>
<b>Average Load</b>	<b>1.36 KW</b>
<b>Hours run time</b>	<b>1 hours</b>

Figure 7. VIDA Connect Core with Application HA Rack-up, Typical.



<p><b>L3HARRIS</b> THIS ENGINEERING SKETCH CONTAINS INFORMATION PROPRIETARY TO L3HARRIS TECHNOLOGIES INC. IT SHALL NOT BE USED BY OR GIVEN TO THIRD PARTIES WITHOUT THE EXPRESS WRITTEN AUTHORIZATION OF SAME</p>	<b>PRELIMINARY ENGINEERING SKETCH</b>	PAGE 1 OF 2
	CUSTOMER NAME - SXX - SITE NAME	
	<b>TAB NAME:</b> VIDA CONNECT 1 RACKUP - CONNECT HARDWARE	
	<b>SKETCH NAME:</b> CRMX-SXX-VIDA CONNECT RACKUP DIAGRAM - CONNECT HARDWARE - GEO OR APPLICATION HA	
	<b>PREPARED BY:</b> ENGINEER'S NAME	REVISION: V001



# STANDARD WARRANTY

## WARRANTY SUPPORT

L3Harris offers a standard one-year warranty on all proposed infrastructure equipment as outlined in the Standard Conditions of Sale.

### Equipment

Warranty provides that the hardware furnished by L3Harris shall be free from defects in material and workmanship.

During the Warranty if any Hardware component fails to meet the warranty, L3Harris will remedy by: (1) repairing any defective component of the Hardware, or (2) by furnishing any necessary repaired, refurbished, or replacement parts.

L3Harris will perform, at its discretion, all warranty labor at a L3Harris location. Where L3Harris has determined it is not feasible to ship fixed equipment for repair, L3Harris will repair on premise. Standard warranty response times are standard business days, 8:00 a.m. to 5:00 p.m. Eastern. For additional levels of support, premium services are available.

### Software

During the Warranty, if the L3Harris licensed software does not successfully operate, the error or defect will be corrected free of charge or make available a substitute program.

Warranty provides corrections to software defects and known errors reported to L3Harris' Technical Assistance Center (TAC) during the warranty period at no additional cost to the Customer. Installation of corrections to software defects reported to TAC during the warranty period is not included in the Warranty.

### Third-Party Warranties

L3Harris will ensure that warranty on any third-party Original Equipment Manufacturer (OEM) equipment and services sold by L3Harris meets the same warranty requirements and we will act on behalf of the Customer to coordinate and settle all warranty issues with any integrated third-party equipment or software companies throughout the warranty period.

L3Harris will transfer third-party warranties provided directly from equipment manufacturers to the Customer as part of the final acceptance.

### Warranty Returns Process

The following procedure describes the returns process for equipment under warranty:

1. L3Harris creates a support case number, verifies product part numbers, serial numbers, reasons for return and then forwards the approved request for processing.
2. L3Harris reviews the request and provides a return merchandise authorization number (RMA) to the County, along with instructions for return of the equipment.

3. The County ships the equipment back to L3Harris Depot Repair and Return.
4. L3Harris repairs or replaces any equipment free of charge unless there is evidence of abuse or damage beyond the terms of the service
5. L3Harris ships the repaired or replacement unit back to the County.
6. L3Harris closes the RMA and updates the tracking database.

Requests for repairs out of warranty will require a purchase order unless a service agreement exists. Any repairs out of warranty are subject to a flat rate, per-unit fee, regardless of fault found with the equipment. If the item for repair does not have a flat rate fee listed, a time and material charge will apply. The turn-around time for equipment repair or replacement is typically ten business days.

## Depot Level Repair and Return

The Depot Repair and Return service covers the cost to fix covered equipment at L3Harris or other third-party manufacturer's factories. This service is part of our standard warranty and is a premium service during the maintenance periods. The L3Harris Depot Repair and Return facility is ISO 9001:2015, UL, and Factory Mutual certified. Master technicians using state-of-the-art test equipment verify that all repairs meet or exceed prescribed specifications.

The Depot Repair and Return Facility utilize a stockroom of common repair parts to reduce repair time. Our technicians can repair over 95% of radio and infrastructure equipment on-site, decreasing turn-around time. Customers are encouraged to call in advance regarding equipment returns to verify inventory and serviceability.

## Demand Services

Demand services are available when an unexpected event or situation occurs outside the scope of work and requires repairs from L3Harris, its agents, or partners. For demand services, the County will receive an invoice on a time and materials basis. Examples may include the following:

- > Installation, updating, upgrading, maintaining, or removing software, hardware, or non-L3Harris infrastructure after initial installation.
- > Repair of equipment damaged by vandalism, abuse, neglect, or noncompliance to L3Harris recommended practices, to the extent such equipment damage is not caused by L3Harris or any of its agents.
- > Damages due to acts of God or other uncontrollable events
- > Any other repair or service not outlined in the Scope of Work

## Exclusions

Standard exclusions apply as referenced in the following documents:

- > Standard Conditions of Sale
- > Equipment Warranty



# TEST PLAN FOR SYSTEM ACCEPTANCE

Customer:  
Deschutes County, OR

Prepared by:  
S. Chang and B. Opee

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# TEST PLAN

## INTRODUCTION

This is a design-only effort on the part of L3Harris and test plans are intended for the use by Deschutes County implementation team(s).

L3Harris designed this System Test Plan to validate the installation and functionality of our P25 Phase 2 Trunking system at the SR10A.7 release. It defines the plan for conducting tests and analyzing test results, to confirm that the system satisfies design objectives.

The Test Team will perform these tests in the order they appear in the plan and test procedures, or as required by the L3Harris systems engineer. The team will record test results in the appropriate test procedure referenced by this document. The prescribed test procedures have been developed and rigorously vetted by L3Harris engineering to provide extensive functional verification of the system features under test.

## ROLES AND RESPONSIBILITIES

A Test Team consisting of at least one L3Harris system engineer and one Deschutes County representative to act as a witness to the testing is required to execute the test plan. It may be necessary for a secondary team, consisting of an additional L3Harris employee and a Deschutes County witness, to be present at another location to test certain features, such as multisite calls or for the secondary team to initiate site alarms so that the primary team can observe them from a system management terminal (SMT).

An L3Harris employee shall execute the test steps outlined in the test procedure using the required equipment and with optional assistance from the DESCHUTES COUNTY 911 representatives. Additional personnel may attend as desired, or as required, to provide access or escort others to certain locations, such as RF shelters or other restricted access areas. Deschutes County shall provide access for the entire team to its facilities, including, the Network Switching Center (NSC) locations, RF site shelters, and dispatch locations. For secure facilities, appropriate access permissions must be granted prior to the testing events.

## ACCEPTANCE TESTING CLARIFICATION

Final acceptance testing shall occur in two separate phases. The first phase of testing begins with functional testing performed in the L3Harris staging facility immediately after initial factory configuration is completed. During this first phase, the DESCHUTES COUNTY 911 representatives will be on-site to witness the testing. The second phase occurs after final installation at customer facilities.

Staging tests, as detailed in the identified test procedures, verify equipment functionality that L3Harris can reasonably perform in a factory environment. L3Harris will perform all identified functional testing in the field after final install and commissioning of the system.

Factory staging tests shall be virtually conducted via a remote video conferencing session. The virtual testing allows for a greater number of participants than typically allowed for during an on-site visit.

Once acceptance testing begins, L3Harris will lock system configurations, hardware platforms, and software versions, except to correct software defects affecting system performance. Prior to conducting the factory tests, L3Harris will perform a system audit to verify installation of the appropriate software system release version on each platform.

## ELECTRICAL SPECIFICATIONS

If requested, L3Harris will provide raw test data and site alignment measurements from the factory Automated Manufacturing Test Station (AMTS) for the L3Harris provided transceiver equipment.

## BASELINE CONFIGURATION

L3Harris systems include a baseline configuration with a predefined test agency and group structure to support the defined test procedures. L3Harris system engineering shall determine the hardware and software revisions during program planning and check the system conforms to that baseline prior to the start of testing.

A complete set of as-built system schematics will be available during testing and includes:

- > System block diagrams
- > Network schematics
- > Connection diagrams
- > Wiring and cabling schematics
- > Rack up drawings.
- > Alarm punch down drawings
- > Grounding and power schematics

## TESTING PREREQUISITES

Following installation and commissioning of the applicable hardware and software, L3Harris will verify the system readiness for test. If the testing includes RF sites, L3Harris will complete site alignment and optimization by setting site configurations, aligning stations, and optimizing system timing parameters. As part of the standard installation practices, we measure equipment settings and record levels. L3Harris will provide these site measurements as part of the final documentation package. These parameters include:

- > Transmit frequency and deviation.
- > Output and reflected power.
- > Receiver sensitivity
- > Receiver multicoupler gain (if applicable)
- > Receiver preamplifier gain (if applicable)
- > Time domain reflectometry of transmission line
- > Combiner loss (if applicable)
- > Audio line out
- > Audio line in

Prior to conducting installation testing, L3Harris shall perform a system audit to verify installation of the appropriate system release version of software on each platform.

Finally, prior to conducting the testing procedures detailed in this document, L3Harris and Deschutes County representatives will agree upon the dates and times of the test.

## SYSTEMS AND SITES TO BE TESTED

L3Harris will test the P25 Phase 2 Trunking system installed at each of Deschutes County’s locations. Functional testing is expected to take up to two to three days per site but may be completed sooner.

Final system acceptance testing will take place at each of the RF site locations. A site will be chosen to initiate the testing, and all test procedures appropriate to the site will be executed and recorded. Once a site has completed the test cycle, the team will move on to the next site. This approach will be repeated until all sites have been tested.

Equipment is located at various locations across the facilities and is identified as the following:

System/Site Location	Address or Building Number	System/Equipment Description
Deschutes County 911	20355 Poe Sholes Dr, Bend, OR 97701	Connect Core
Kingwood	44-17-13.18N 121-10-13.69W	RF Site
Road Department	44-1-17.38N 121-15-41.07W	RF Site

## PASS/FAIL CRITERIA

Criteria for Pass / Fail is determined by execution of the test procedures in the Acceptance Test Plan. If a feature test is successfully executed, that feature is deemed to be compliant and results in a PASS. If a failure occurs, the failed test may be repeated to address missed steps or configuration requirements overlooked during execution.

If a certain piece of equipment is deemed to be malfunctioning and duplicate spare equipment is available to replace it, the test may be executed using the spare equipment. If the feature test is successfully executed on the spare equipment, the feature will be deemed compliant and result in a PASS. When the original piece of equipment is repaired or replaced and can function as designed, the original equipment will be returned to service and tested to ensure functionality.

If a feature is found to be non-compliant, L3Harris will address the non-compliance and retest. Until a successful retest, the feature is deemed to be non-compliant and results in a FAIL.

If it is necessary to defer a test for any reason, it will be marked as Not Yet Evaluated (NYE). The test will be executed, with appropriate witnessing, at any time afterward to change the result to a PASS.

A Deschutes County designated representative will provide a signature on the approval documentation of the completed FAT as a prerequisite to shipping the equipment.

## TROUBLE REPORTING

Any issues found during testing will first be recorded on the comment page at the end of the feature set, and then they will be reported directly to the L3Harris program manager to be logged in the project issues log for corrective action.

Failures must be appropriately addressed. For hardware failures occurring during test events, failed hardware will be removed from the system being tested and turned over to L3Harris’ quality organization for repair or replacement.

# Test Procedures

## FEATURES TO BE TESTED

The following list of acceptance procedures will be used to validate system performance:

- > Network Switching Center
- > Symphony Dispatch Consoles

## TOOLS / TEST EQUIPMENT

Unless otherwise specified, L3Harris will supply all special tools necessary to test the product.

Equipment list TBD during program planning.

EQUIPMENT MODEL NUMBER	DESCRIPTION	SERIAL NUMBER
TBD	TBD	TBD

RADIO MODEL NUMBER	DESCRIPTION	SERIAL NUMBER
TBD	TBD	TBD

# Safety

L3Harris will take reasonable safety precautions to ensure personnel against harm while operating within and traversing the installations.

General safety guidelines for portable radios:

- > Do not hold onto the antenna when the radio is powered on.
- > To ensure you do not exceed FCC RF exposure compliance requirements, always keep the antenna at least 0.43 inches (1.1 cm) away from the body and 0.98 inches (2.5 cm) from the face when transmitting.
- > Do not use the portable radio with a damaged or missing antenna. A minor burn may result if skin comes into contact with a damaged antenna. Replace a damaged antenna immediately. Operating a portable radio with the antenna missing could cause personal injury, damage the radio, and may violate FCC regulations.
- > Use only manufacturer-approved antennas. Use of unauthorized antennas, modifications, or attachments could cause damage to the radio unit and may violate FCC regulations.
- > RF energy from portable radios may affect some electronic equipment. Most modern electronic equipment in cars, hospitals, homes, etc., is shielded from RF energy. However, in areas in which you are instructed to turn off two-way radio equipment, always observe the rules. If in doubt, turn it off!



L3Harris engineering will identify environmental detriments prior to testing, if deemed applicable. L3Harris will make adjustments to the extent required to address any such deficiencies deemed to present a danger to either system performance or personnel safety; examples include excessive temperature variations, contaminants, hazardous materials, or obstructions to LMR equipment.

# TEST PROCEDURES

## SYSTEM FEATURE SET

### P25 TDMA Phase 2 Functionality (Single site / Simulcast Single Site)

**Purpose:** Demonstrate P25 TDMA Phase 2 implementation provides the additional traffic channel capacity and features of P25 TDMA Phase 2 while allowing backwards compatibility with FDMA Phase 1 radios and talkgroups.

**Expected Results:** Verify that a P25 FDMA call will work on a TDMA system.

**Setup:** In the following tests, Radios 1 and 2 will be set up as FDMA only. Radios 3 and 4 will be set up as TDMA and FDMA capable, depending upon TG.

FDMA refers to Phase 1 and TDMA refers to Phase 2.

Log into RNM, Realtime Tab, start RSM Site Activity or VNIC site calls to monitor system channel assignment and call type during active calls.

DESCRIPTION	RADIO LID	TG DESCRIPTION	TG ID	SYSTEM
Radio 1	9980001	TG 64051 P25	64051	Phase 1
Radio 2	9980002	TG 64051 P25	64051	Phase 1
Radio 3	9980003	TG 64051 P25	64051	Phase 2
Radio 4	9980004	TG 64051 P25	64051	Phase 2

## MIXED MODE SITE TO MIXED MODE SITE CALL — FDMA TO FDMA

**Purpose:** Demonstrates that an FDMA call will work on a FDMA system.

**Expected Results:** Verify that a P25 FDMA call will work on the system.

**Setup:** Turn off Radios 3 and 4.

**Execution:**

1. PTT Radio 1 and talk. The transmit (TX) indicators should turn on at Radio 1.
  - > Verify that the call is assigned as an FDMA by viewing the real time viewer site activity on the RNM.
  - > Verify Radio 2 can hear Radio 1.

TEST RESULTS	
Tester:	

Date:				
Result:	<input type="checkbox"/>	Pass	<input type="checkbox"/>	Fail

# MIXED MODE SITE TO MIXED MODE SITE CALL — FDMA AND TDMA

**Purpose:** Demonstrates that a mixed mode call can function on a TDMA system.

**Expected Results:** Verify that a TDMA radio will hear a call from a FDMA radio.

**Setup:** Turn on Radios 1, 2, 3, and 4.

**Execution:**

1. PTT Radio 1 and talk. The transmit (TX) indicators should turn on at Radio 1.
  - > Verify that the call is assigned as an FDMA by viewing the real time viewer site activity on the RNM.
  - > Verify Radios 2, 3, and 4 can hear Radio 1.

TEST RESULTS			
Tester:			
Date:			
Result:	<input type="checkbox"/>	Pass	<input type="checkbox"/> Fail

# MIXED MODE SITE TO MIXED MODE SITE CALL — FDMA.

**Purpose:** Demonstrates that a mixed mode call can function on a TDMA system.

**Expected Results:** Verify that an FDMA radio will hear a call from a TDMA radio.

**Setup:** Turn on Radios 1, 2, 3, and 4.

**Execution:**

1. PTT Radio 3 and talk. The transmit (TX) indicators should turn on at Radio 3.
  - > Verify that the call is assigned as an FDMA by viewing the real time viewer site activity on the RNM.
  - > Verify Radios 1, 2, and 4 can hear Radio 3.

TEST RESULTS			
Tester:			
Date:			
Result:	<input type="checkbox"/>	Pass	<input type="checkbox"/> Fail

# TDMA SITE CALL

**Purpose:** Demonstrates that a TDMA call will work on a TDMA system.

**Expected Results:** Verify that a P25 TDMA call will work on a TDMA system.

**Setup:** Turn off Radios 1 and 2.

**Execution:**

1. PTT Radio 3 and talk. The transmit (TX) indicators should turn on at Radio 3.
  - > Verify that the call is assigned as an TDMA by viewing the real time viewer site activity on the RNM.
  - > Verify Radio 4 can hear Radio 3.

TEST RESULTS			
Tester:			
Date:			
Result:	<input type="checkbox"/>	Pass	<input type="checkbox"/>
			Fail

# TRANSMISSION TRUNKING

**Purpose:** Test will demonstrate that the system is working as a transmission trunking system.

**Expected Results:** Verify the control channel will assign a working channel to the radio and that the radio and site will work as a trunking set by dropping radio transmission upon PTT release.

**Setup:** Radios 1, 2, and 3 should be the only radios on the system.

Use RNM real time viewers to monitor system channel assignment.

DESCRIPTION	RADIO LID	TG DESCRIPTION	TG ID	SITE
Radio 1	9980001	TG 64001 P25	64001	1
Radio 2	9980002	TG 64001 P25	64001	1
Radio 3	9980003	TG 64001 P25	64001	1

### Execution:

- Log into RNM, Realtime Tab, start RSM Site Activity, to monitor system channel assignment. Observe all channels on Site 1.
- PTT Radio 1 and talk.
  - > The transmit (TX) indicators should turn on at Radio 1.
  - > Verify the number of the channel assigned.
  - > Un-PTT Radio 1.
- PTT Radio 2 and talk.
  - > The transmit (TX) indicators should turn on at Radio 2.
  - > Verify the next channel is assigned.
  - > Un-PTT Radio 2.
- PTT Radio 3 and talk.
  - > The transmit (TX) indicators should turn on at Radio 3.
  - > Verify the next channel is assigned.
  - > Un-PTT Radio 3.
  - > Verify the channel immediately drops, or as configured by station hang timers.

TEST RESULTS			
Tester:			
Date:			
Result:	<input type="checkbox"/> Pass	<input type="checkbox"/> Fail	

# BeOn Features

**Purpose:** Demonstrate the BeOn features.

**Expected Results:** Following tests will demonstrate that BeOn works as designed.

**Setup:** Tests will show that the BeOn system allows a smartphone to communicate with the radio system.

## TRANSMIT GRANT TONE

**Purpose:** Demonstrate the grant tone on BeOn.

**Expected Results:** When the smartphone PTTs on the BeOn app, it will play a grant tone.

**Setup:** Grant tone (Ready to Talk tone) enabled in smartphone radio personality.

DESCRIPTION	TG DESCRIPTION
BeOn Phone 1	TG A
BeOn Phone 2	TG A
BeOn Phone 3	TG A

### Execution:

1. Press PTT button on smartphone with valid group selected.

- > Verify grant tone is heard at smartphone when working channel access is granted.

*Note: If the call is queued, the grant tone will be delayed until the call is assigned a working channel.*

TEST RESULTS			
Tester:			
Date:			
Result:	<input type="checkbox"/> Pass	<input type="checkbox"/> Fail	



# GROUP CALL

**Purpose:** Confirms BeOn can make group calls.

**Expected Results:** Selected talkgroup call audio is heard.

**Setup:** Set Smartphones 1, 2, and 3 to (Group A) per test group structure. Make sure Scan is turned OFF.

DESCRIPTION	TG DESCRIPTION
BeOn Phone 1	TG A
BeOn Phone 2	TG A
BeOn Phone 3	TG A

### Execution:

- PTT on BeOn Phone 1 and talk.
  - > The transmit (TX) indicators should turn on at BeOn Phone 1.
  - > Audio should be heard in BeOn Phone 2 and BeOn Phone 3.
  - > The ID of BeOn Phone 1 should be seen at BeOn Phone 2 and BeOn Phone 3.
- Set BeOn Phone 3 to TG B. PTT on BeOn Phone 1 and talk.
  - > The transmit (TX) indicators should turn on at BeOn Phone 1.
  - > Audio should be heard in BeOn Phone 2 only.
  - > The ID of BeOn Phone 1 should be seen at BeOn Phone 2 only.

TEST RESULTS	
Tester:	
Date:	
Result:	<input type="checkbox"/> Pass <input type="checkbox"/> Fail

# INDIVIDUAL (PRIVATE) CALL

**Purpose:** Confirms individual calls can be initiated using BeOn enabled smartphones.

**Expected Results:** Individual calls are confirmed.

**Setup:**

DESCRIPTION	TG DESCRIPTION
BeOn Phone 1	TG A
BeOn Phone 2	TG A
BeOn Phone 3	TG A

**Execution:**

- Using the BeOn Phone 1, select the pre-stored ID of BeOn Phone 2 or enter the BeOn Phone 2 ID directly from the keypad, and PTT Smartphone 1.
  - > Verify that BeOn Phone 2 receives the call and displays the ID of Smartphone 1.
  - > Verify that BeOn Phone 3 remains idle.

TEST RESULTS			
Tester:			
Date:			
Result:	<input type="checkbox"/> Pass	<input type="checkbox"/> Fail	

# GROUP SCAN

**Purpose:** Confirms the scan function which allows a smartphone to hear audio on selected talkgroups other than the current talkgroup.

**Expected Results:** Selected talkgroup call audio is heard.

**Setup:** BeOn Phone 1 set up with Talkgroup A P25 and B P25 in the scan list, Talkgroup A P25 selected, and group scan initially disabled.

DESCRIPTION	TG DESCRIPTION
BeOn Phone 1	TG B
BeOn Phone 2	TG A

### Execution:

- Place a call from BeOn Phone 2 on Talkgroup A P25.
  - > Verify the call is not received by BeOn Phone 1.
- Enable group scan on BeOn Phone 1.
- Place another call from BeOn Phone 2 on Talkgroup A P25.
  - > Verify that the call is now received, and audio is heard on BeOn Phone 1.

TEST RESULTS	
Tester:	
Date:	
Result:	<input type="checkbox"/> Pass <input type="checkbox"/> Fail

# EMERGENCY GROUP CALL

**Purpose:** Confirms an emergency can be declared, recognized, and cleared by a smartphone.

**Expected Results:** The emergency is declared, recognized, and cleared.

**Setup:**

DESCRIPTION	TG DESCRIPTION
BeOn Phone 1	TG A
BeOn Phone 2	TG B
BeOn Phone 3	Talkgroup C

**Execution:**

- Press the emergency call button on BeOn Phone 3 and then PTT BeOn Phone 3.
  - > Verify that BeOn Phone 3 indicates the "TX EMER" declaration and that it reverts to the home group.
  - > Verify that BeOn Phone 1 and BeOn Phone 2 indicate a "RX EMER" and hear audio on the emergency home group.
- Clear the emergency with supervisor phone or console.

TEST RESULTS			
Tester:			
Date:			
Result:	<input type="checkbox"/> Pass	<input type="checkbox"/> Fail	

# SYMPHONY CONSOLE FEATURE SET

## TRANSMITTING WITH A MICROPHONE

**Purpose:** Demonstrate Symphony operator can initiate communication with a radio using Symphony select functions and foot pedal.

**Expected Results:** Confirms Symphony communication with radio.

**Setup:** Radio set to same TG as console

### Execution:

1. Press INSTANT TX function (right mouse button) on module with test group.
  - > Verify call is heard on radio.
  - > Verify a ripple effect on 'TX' indicator is displayed.
  - > Verify a channel access tone is heard.
  - > Release the Instant TX key.
2. Click the 'Select' button on the module to make the TG the selected talkgroup.
  - > Verify module for TG is highlighted, indicating it is selected talkgroup.
3. Make a call on TG by pressing PTT foot pedal.
  - > Verify a channel access tone is heard.
  - > Verify halo around the 'TX' indicator is displayed.
  - > Verify call is heard on radio.
  - > Verify audio is heard at radio on talkgroup.
  - > Release foot pedal to end call.
4. Make a call on TG by pressing headset button.
  - > Verify a channel access tone is heard.
  - > Verify halo around 'TX' indicator is displayed.
  - > Verify call is heard on radio.
  - > Verify audio is heard at radio on talkgroup.
  - > Release headset button to end call.
5. Make a call on TG by selecting it with a mouse.
  - > Verify a channel access tone is heard.
  - > Verify halo around 'TX' indicator is displayed.
  - > Verify call is heard on radio.
  - > Verify audio is heard at radio on talkgroup.
  - > Release mouse button to end call.

### TEST RESULTS



Tester:			
Date:			
Result:	<input type="checkbox"/>	Pass	<input type="checkbox"/> Fail

# RECEIVING CALLS (UNIT ID DISPLAY, TALKGROUP ID DISPLAY, ALIASING)

**Purpose:** Confirm Symphony operator can receive communications from a radio, using both TG A and individual calling.

**Expected Results:** Communications are initiated and received on appropriate speaker (select or unselect) and radio’s ID is displayed.

**Setup:** Symphony has talkgroups A, B, and C configured with TG B selected.

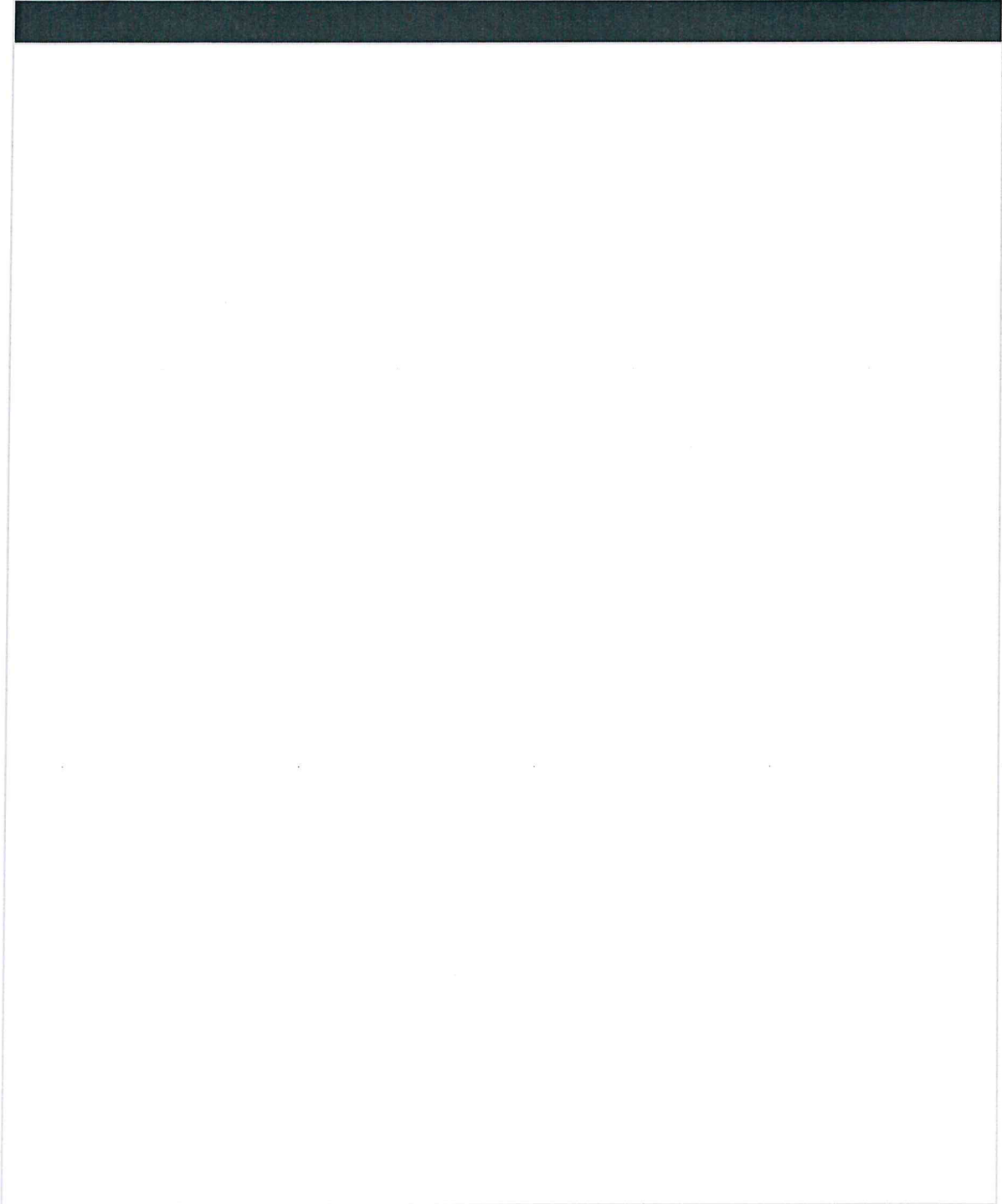
## Talkgroup Call

### Execution:

1. Key radio and verify.
  - > That call is heard at unselect speaker.
  - > Calling radio ID is displayed on module for TG.
  - > A green light ID displayed indicating an incoming call on module TG A.
2. Switch radios talkgroup to TG B and key radio.
  - > Verify call is heard at select speaker.
  - > Verify calling radio ID is displayed on TG B module.
  - > Verify a green light ID displayed indicating an incoming call on module for TG B.

TEST RESULTS	
Tester:	
Date:	
Result:	<input type="checkbox"/> Pass <input type="checkbox"/> Fail

# Symphony Console Test Notes / Issues





# Symphony Console Test Acceptance

This Functional Test Acceptance Procedure has been fully and successfully completed with all action items resolved.

Deschutes County Representative

L3Harris Technologies Representative

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

# APPENDIX A – ACRONYMS AND DEFINITIONS

ACRONYM	DEFINITION
AD	Active Directory
AES	Advanced Encryption Standard
ATP	Acceptance Test Procedure
CAI	Common Air Interface (usually in reference to P25)
CME	Cisco Mobility Exchange (Telco Interconnect)
CNM	Central Network Manager, a L3Harris product
Confirmed Call	A confirmed call is a special type of call where the call is queued until all sites have resources available, or until the confirmed call timer expires (configurable, typically one or two seconds)
COTS	Commercial-off-the-Shelf
CPC	Channel Performance Criterion
DAQ	Delivered Audio Quality
DES	Digital Encryption Standard
LMR	Enterprise Land Mobile Radio
ESN	Electronic Serial Number (64 bits)
FDMA	Frequency Division Multiple Access
GID	Group ID (16 bit). This corresponds to a talkgroup. The group ID is unique within a VNIC and can be reused on other VNICs within the same WACN. Some of the older P25 documents refer to the GID as a talkgroup ID (TGID)
HA	High Availability
Individual Call	An individual call is a private call between one user and another. It can be between two radios, or between one radio and a dispatch console
KEK	Key Encryption Key
KID	16-bit encryption key ID
KMF	Key Management Facility
KMM	Key Management Message
LAN	Local Area Network
MASTR V	An L3Harris base station product
MES	Mobile End System, a subscriber radio
MME	Miniature mobility exchange, which consists of L3Harris software running on a SitePro card at the base site. The MME runs the SMDCP layer of the data protocol and is the equivalent of the P25 RFG (RF Gateway)

ACRONYM	DEFINITION
N(S)	A 3-bit sequence number for the packet data unit
NSC	Network Switching Center
NSS	Network Switching Server
NWS	Network Sentry
OTAP	Over-the-air-programming
OTAR	Over-the-air-rekeying
P25	Project 25, a suite of standards for digital radio communications, developed by the Association of Public Safety Communications Officials (APCO) under the TIA TR-8 engineering committee, and published as the TIA-102 set of documents
Priority Talkgroup	The priority talkgroup selected on the subscriber device. Usually this is the talkgroup that the radio will transmit on when the user presses PTT
ProFile	An L3Harris product used for configuring radios over the P25 radio channel
ProScan	An L3Harris software algorithm used for radio roaming
PTT	Push-to-Talk
RAR	Regional Access Router
RF	Radio Frequency
RNM	Regional Network Manager
RSM	Regional Site Manager, a server that runs the RSM, Activity Warehouse and Device Manager applications
RSSI	Received Signal Strength Indicator
RVM	Regional VIDA Manager, a server that runs the UAS and RNM applications
SAN	Storage area network
SMT	System management terminal.
SU	Subscriber unit. In the P25 world, an SU is a mobile or portable radio
SUT	System Under Test
SUMS	Security Update Management Service (an L3Harris product)
SUMSplus	Version of SUMS
TAC	Technical Assistance Center, an L3Harris service
TDMA	Time Division Multiple Access
TEK	Traffic Encryption Key
TGID	Talkgroup ID (16-bit, equivalent to GID). The P25 documents usually use GID but some of the older documents use TGID
Traffic Controller	Software entity that resides in a base station at the site and generates the P25 control channel
Tx	Transmit

ACRONYM	DEFINITION
UAC	Unified Audio Card
UAS	Unified Administration System
UKEK	User Key Encryption Key
UPS	Uninterrupted Power Supply
VAS	VIDA Application Server
VIDA	Voice, Interoperability, Data, Access (an L3Harris system product)
VLAN	Virtual Local Area Network
VM	Virtual Machine
VNIC	Voice Network Interface Controller, the L3Harris voice switch
VPN	Virtual Private Network
VTI	VIDA Telephone Interconnect
WACN	Wide area communication network (20-bit network ID, part of SUID). This is a customer network that can include many VNICs
WAR	Wide Area Router
Zeroize	A P25 control channel command which causes the mobile radio to erase its encryption keys (but then requires manual loading to restore encryption keys)

# PRICING SUMMARY

L3Harris is pleased to provide Deschutes County with the following firm fixed price proposal. Pricing is valid through December 31, 2023. Upon expiration of the pricing validity, L3Harris reserves the right to provide an updated pricing proposal.

<b>P25 TRUNKED LMR SYSTEM</b>	<b>Qty</b>	<b>PRICE (USD \$)</b>
VIDA Premier Core Licenses	Lot	\$66,624.32
Unite Connect Core	Lot	\$302,153.15
Kingwood - P25 Simulcast TX Site Equipment & Antenna Network	Lot	\$209,616.73
Road Dept. - P25 Simulcast TX Site Equipment & Antenna Network	Lot	\$209,521.73
<b>P25 TRUNKED SYSTEM SUBTOTAL</b>		<b>\$787,915.93</b>
<b>PROFESSIONAL SERVICES</b>	<b>Qty</b>	<b>PRICE (USD \$)</b>
Engineering Services	Lot	\$16,040.00
Staging & Freight	Lot	\$1,575.00
<b>PROFESSIONAL SERVICES SUBTOTAL</b>		<b>\$17,615.00</b>
<b>PROJECT TOTAL</b>		<b>\$805,530.93</b>

*\*State and Local taxes not included*

<b>Milestone Payments</b>	<b>%</b>
Projected invoice/ship date of July 1, 2024	100%



**L3HARRIS TECHNOLOGIES, INC.  
GOODS AND SERVICES TERMS AND CONDITIONS OF SALE**

The following terms and conditions of sale shall apply to the Equipment and Services to be provided by L3Harris Technologies, Inc., through its Communication Systems Segment (hereinafter "Seller") to DESCHUTES COUNTY 9-1-1 SERVICE DISTRICT (hereinafter "Buyer") as set forth in the Statement of Work ("Agreement"). The agreement between Buyer and Seller shall be formed upon execution of this Agreement ("Effective Date") and shall terminate upon completion of the warranty period.

WHEREAS THIS CONTRACT IS PLACED AGAINST PRICE AGREEMENT #0491. THE PRICE AGREEMENT TERMS AND CONDITIONS APPLY TO THIS CONTRACT AND TAKE PRECEDENCE OVER ALL CONFLICTING TERMS AND CONDITIONS.

**1. STATEMENT OF WORK.**

Buyer now desires to contract with Seller to provide Buyer with the radio communications system equipment ("Equipment") and services ("Services") set forth in Exhibit A – Statement of Work (SOW) referenced as Seller's Proposal dated November 30, 2023. The SOW describes the work to be performed by Seller to deliver and install the Equipment and provide the other Services under this agreement. Seller shall furnish, deliver and install the Equipment and Software and provide the documentation deliverables and Services in accordance with the terms of the SOW. Buyer and Seller each agree to perform their respective tasks and obligations as set forth in the SOW.

**2. WARRANTY.**

A. Seller warrants to Buyer that Equipment manufactured by or for the Seller shall be free from defects in material and workmanship and shall conform to its published specifications. With respect to all non-Seller Equipment, Seller gives no warranty, and only the warranty, if any, given by the manufacturer shall apply. Seller warrants the installation services furnished by Seller ("Installation Services") hereunder shall be free from defects in and workmanship for one (1) year.

B. Seller's obligations set forth in Paragraph C below shall apply only to failures to meet the above warranties occurring within one (1) year following acceptance and are conditioned on Buyer's giving written notice to Seller within thirty (30) days of Buyer's awareness of such occurrence.

C. During the Warranty Period, if Equipment or Installation Services fails to meet the foregoing warranties, Seller shall, at its option, correct the failure by : (i) repairing defective or damaged parts or Equipment, or (ii) making available any necessary repaired or replacement parts, or (iii) by correcting the faulty Installation Service(s) (iv) providing new or refurbished parts or new or refurbished equipment. Seller will be responsible for all shipping charges incurred in returning defective parts to Seller's plant and shipping repaired or replacement parts to Buyer. All warranty repairs must be conducted during normal

business hours at Seller's place of business. Any repaired or replacement parts or Equipment furnished hereunder shall be warranted for the remaining unexpired portion the original Warranty Period of that part or Equipment. The original Warranty Period shall not be extended. Where such failure cannot be corrected by Seller's commercially reasonable efforts, Seller will refund to Buyer the fees paid for the parts or Equipment less depreciation.

D. Seller's obligations under Paragraph C shall not apply to any Equipment, or part thereof, which (i) has been modified or otherwise altered other than pursuant to Seller's written instructions or written approval or, (ii) is normally consumed in operation or, (iii) has a normal life inherently shorter than the warranty periods specified in Paragraph B, or (iv) is not properly stored, installed, used, maintained or repaired, or, (v) has been subjected to any other kind of misuse or detrimental exposure, or has been involved in an accident.

E. The preceding paragraphs set forth the exclusive remedies for claims based upon defects in or nonconformity of the Equipment, whether the claim is in contract, warranty, tort (including negligence), strict liability or otherwise, and however instituted. Upon the expiration of the warranty period, all such liability shall terminate. The foregoing warranties are exclusive and in lieu of all other warranties, whether oral, written, expressed, implied or statutory. NO IMPLIED OR STATUTORY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE SHALL APPLY. IN NO EVENT SHALL THE SELLER BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT OR EXEMPLARY DAMAGES.

**3. LIMITATIONS OF LIABILITY.**

A. THE TOTAL LIABILITY OF SELLER, INCLUDING ITS SUBCONTRACTORS OR SUPPLIERS, ON ANY AND ALL CLAIMS WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR PATENT INFRINGEMENT) OR OTHERWISE, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THE PERFORMANCE OR NON-PERFORMANCE OF ANY OBLIGATION UNDER THIS AGREEMENT RESULTING HERE FROM OR FROM THE MANUFACTURE, SALE, DELIVERY, RESALE, REPAIR, REPLACEMENT OR USE OF ANY EQUIPMENT OR THE FURNISHING OF ANY SERVICE, SHALL NOT EXCEED THE PRICE ALLOCABLE TO THE EQUIPMENT OR SERVICE WHICH GIVES RISE TO THE CLAIM. EXCEPT AS TO TITLE ANY SUCH LIABILITY SHALL TERMINATE UPON THE EXPIRATION OF THE APPLICABLE WARRANTY PERIOD SPECIFIED IN THE ARTICLE ENTITLED "WARRANTY".

B. IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR PATENT INFRINGEMENT) OR OTHERWISE, SHALL SELLER, OR ITS SUBCONTRACTORS OR SUPPLIERS, BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR EXEMPLARY



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DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT OR REVENUES, LOSS OF USE OF THE EQUIPMENT OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE GOODS, FACILITIES, SERVICES OR REPLACEMENT POWER, DOWNTIME COSTS OR CLAIMS OF BUYERS CUSTOMERS FOR SUCH DAMAGES. IF BUYER TRANSFERS TITLE TO, OR LEASES THE EQUIPMENT SOLD HEREUNDER TO, OR OTHERWISE PERMITS OR SUFFERS USE BY, ANY THIRD PARTY, BUYER SHALL OBTAIN FROM SUCH THIRD PARTY A PROVISION AFFORDING SELLER AND ITS SUBCONTRACTORS AND SUPPLIERS THE PROTECTION OF THE PRECEDING SENTENCE.

#### 4. PATENTS.

A. Seller warrants that the Equipment furnished hereunder, and any part thereof, shall be delivered free of a rightful claim of any third party for infringement of any United States patent. If notified promptly (within 30 days of notice to Buyer) in writing and given authority, information and assistance, Seller at its expense shall defend, or may settle, any suit or proceeding against Buyer so far as based on a claimed infringement which breaches this warranty. In case any such Equipment, or any part thereof, is in such suit held to constitute such an infringement and if the use of said Equipment or part is enjoined, Seller shall, at its expense and option, either procure for Buyer the right to continue using said Equipment or part, or replace same with any functionally equivalent, non-infringing equipment, or modify same so it becomes non-infringing, or remove said Equipment and refund the purchase price (less reasonable depreciation for use and any transportation costs separately paid by Buyer). The foregoing states the entire liability of Seller for patent infringement by said Equipment or any part thereof, and is subject to the limitations of liability set forth in the article entitled "Limitation of Liability".

B. The preceding paragraph shall not apply to any Equipment or part manufactured to Buyer's design, or to the use of any Equipment or part furnished hereunder in conjunction with any other equipment, in a combination not furnished by Seller as a part of this transaction. As to any such Equipment, part, use or combination, Seller assumes no liability whatsoever for patent infringement.

#### 5. COVERAGE, INTERFERENCE, AND THIRD-PARTY FACILITIES.

Representations concerning the distance at which usable radio signals will be transmitted and received by the Equipment supplied hereunder shall not be binding upon the Seller unless reduced to a writing signed by an official of Seller in Lynchburg, Virginia and made a part of this instrument. Radio systems are subject to degradation of service from natural phenomena and other causes beyond the reasonable control of the Seller such as motor ignition and other electrical noises, and interference from other users assigned to the same or adjacent frequencies. The Seller cannot be responsible for interference or disruption of service caused by operation of other radio systems or by natural phenomena or by motor ignition or other

interference over which there is no reasonable control. Such interference and noise can be minimized by addition (at Buyer's expense) of corrective devices adapted for particular locations and installations. Seller will make recommendations as to the use of such devices; however, total freedom from noise and interference cannot be guaranteed. In the event Buyer utilizes facilities or services supplied by others such as Common Carrier Services or shared services, Seller shall have no responsibility for the availability or adequacy of any such facilities or services.

#### 6. DELAYS.

Seller shall not be liable for delays in delivery or performance or for failure to manufacture or deliver or perform due to (i) causes beyond its reasonable control, or (ii) acts of God, acts of Buyer, acts of civil or military authority, governmental priorities, strikes or other labor disturbances, floods, epidemics, war, riot, delays in transportation or car shortages, or (iii) inability on account of causes beyond the reasonable control of Seller or its suppliers to obtain necessary materials, components, services, or facilities. In the event of any such delay, the date of delivery or of performance shall be extended for a period equal to the time lost by reason of the delay.

#### 7. DELIVERY, ACCEPTANCE, TITLE, AND RISK OF LOSS.

Services shall be accepted upon completion by Seller and reasonable inspection of services by Buyer, if applicable. Shipping dates are approximate and are based upon prompt receipt of all necessary information. Delivery will be made F.O.B. destination to Buyer. Equipment shall be accepted by Buyer upon delivery to Buyer or approved Buyer storage location. Partial deliveries are allowed. Title and all risk of loss or damages for Equipment shall pass to Buyer upon delivery to Buyer or approved Buyer storage location.

#### 8. PRICE, TERMS OF PAYMENT, and LATE CHARGES.

The total selling price of the Equipment and services shall be \$805,530.93, which is further described in the Exhibit A.2 section of the SOW. Equipment shall be invoiced when delivered, and payment is due 30 days from the date of each invoice. Seller shall provide monthly invoices for services completed, and payment shall be due 30 days from the date of each invoice. If manufacture or shipment is delayed by the Buyer, payment, based on the contract price and the percentage of completion, shall become immediately due. Equipment held for the Buyer shall be at its risk and expense. All amounts past due over thirty (30) days shall accrue interest from their due date at the rate of one and one-half percent (1-1/2%) per month (or such lesser rate as may be the maximum permissible rate under applicable law). If after default, this contract is placed with an attorney for collection, Buyer agrees to pay reasonable attorney's fees

#### 9. TAXES.

In addition to any price specified herein, and excepting taxes imposed by any state or local jurisdiction outside of Oregon, Buyer shall pay the gross amount of any present or future sales, use, excise, value-added, or other similar tax applicable to the price, sale of any



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products or services furnished hereunder or to their use by Seller or Buyer, or Buyer shall furnish Seller with a tax-exemption certificate acceptable to the taxing authorities.

## 10. SOFTWARE LICENSE.

Buyer is granted hereunder a perpetual, nonexclusive, non-transferable, fully paid license subject to the terms and conditions of the Software License Agreement, which is attached hereto and incorporated herein as **Exhibit B**, which gives the Buyer the right to use the software embedded in the products manufactured by the Seller, and any modifications thereof, only for Buyer's own use. The license granted hereunder may not be assigned or transferred without the prior written consent of the Seller.

## 11. Insurance

In order to protect itself and Buyer, its officers, boards, commissions, agencies, employees and representatives under the indemnity and other provisions of this contract, Seller shall obtain and at all times during the term of this contract keep in full force and effect comprehensive general liability and auto liability insurance policies issued by a company or companies authorized to do business in the State of Oregon and licensed by the Insurance Department, with liability coverage provided for therein in the amounts of at least \$2,000,000.00 CSL (Combined Single Limits). Coverage afforded shall apply as primary. Within ten (10) days after execution of this Agreement, Seller shall furnish Buyer with a Certificate of Insurance listing Buyer as an additional insured. Seller shall maintain coverage for the duration of this contract. Seller shall furnish Buyer, annually on the policy renewal date, a Certificate of Insurance as evidence of coverage. It is further agreed that Seller shall furnish the Buyer with a 30-day notice of cancellation or renewal. Seller shall furnish evidence of adequate Worker's Compensation Insurance.

## 12. Termination.

A. In the event of a material breach of this Agreement by Seller which shall continue for one hundred twenty (120) or more days after written notice of such breach (including a reasonably detailed statement of the nature of such breach) shall have been given to Seller by Buyer, Buyer shall be entitled to avail itself cumulatively of any and all remedies available at law or in equity (provided such remedies are not otherwise limited under the terms of this Agreement) and either: (i) suspend performance of its payment obligations under the Agreement for as long as the breach continues uncorrected; or (ii) terminate this Agreement by written notice to Seller if the breach remains uncorrected. The following shall constitute material breaches of this Agreement: (i) violation by Seller of any State, Federal or local law, or failure by Seller to comply with any applicable States and Federal service standards, as expressed by applicable statutes, rules and regulations, (ii) failure by Seller to carry applicable licenses or certifications as required by law, (iii) failure of Seller to comply with reporting requirements contained herein, or (iv) inability of Seller to perform the Work provided for herein.

B. In the event of: (i) any failure by Buyer for sixty (60) or more days to make any payment when due, or (ii) any other material breach of this Agreement by Buyer which shall continue for one hundred twenty (120) or more days after written notice of such breach (including a reasonably detailed statement of the nature of such breach) shall have been given to Buyer by Seller, Seller shall be entitled to avail itself cumulatively of any and all remedies available at law or in equity (provided such remedies are not otherwise limited under the terms of this Agreement) and either: (i) suspend performance of its obligations under this Agreement for as long as the breach remains uncorrected; or (ii) terminate this Agreement by written notice to Buyer if the breach remains uncorrected.

C. In the event of a termination under this Agreement as provided herein, all Services performed and finished and unfinished Equipment and documentation deliverables produced or made by Seller for Buyer, up to and including the date of termination, shall become the property of Buyer and Seller shall be entitled to receive full price accrued up to the point of termination, for any such Services performed and finished and unfinished Equipment and documentation deliverables.

## 13. GENERAL.

A. Buyer is solely responsible for obtaining and complying with any necessary permits and licenses from the Federal Communications Commission, or any other Federal, State or local governmental authority, related to the purchase, installation, erection and operation of any Equipment purchased hereunder.

B. The provisions of these conditions of sale are for the benefit of the parties hereto and not for any other person. The delegation or assignment by Buyer of any or all of its duties or rights hereunder without Seller's prior written consent shall be void.

C. Seller will comply with applicable Federal, State and local laws and regulations as of the date of Seller's acceptance of Buyer's Order which relate to equal employment opportunity (including applicable provisions of Executive Order 11246, as amended), workmen's compensation, and the manufacture in Seller's facilities of the Equipment delivered hereunder (including applicable provisions of the Fair Labor Standards Act of 1938, as amended). The price and, if necessary, delivery of any Equipment will be equitably adjusted to compensate Seller for the cost of compliance with laws or regulations except as specified above.

D. The invalidity, in whole or in part, of any Article or paragraph hereof shall not affect the validity of the remainder of such Article or paragraph.

E. The validity, performance and all matters relating to the interpretation and effect of these conditions of sale and any amendment hereto shall be governed by the laws of the State of Oregon.

F. These conditions of sale constitute the entire understanding between the Buyer and Seller concerning the subject hereof, and any representation, promise, understanding, proposal, agreement, warranty, course of dealing or trade usage not expressly contained or referenced herein shall not be



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binding on Seller. No modification, amendment, rescission, waiver or other change of these terms and conditions shall be binding on Seller unless specifically agreed upon in writing by Seller. ANY ADDITIONAL OR CONFLICTING TERMS AND CONDITIONS PROPOSED BY ONE PARTY MUST BE SPECIFICALLY AGREED UPON BY THE OTHER PARTY IN WRITING OTHERWISE THE ADDITIONAL OR CONFLICTING TERMS AND CONDITIONS PROPOSED BY ONE PARTY ARE DEEMED REJECTED BY THE OTHER PARTY. SELLER DOES NOT ASSUME ANY OBLIGATIONS OR LIABILITIES IN CONNECTION WITH THE SALE OF ITS EQUIPMENT OTHER THAN THOSE EXPRESSLY STATED IN THIS INSTRUMENT, AND DOES NOT AUTHORIZE ANY PERSON (INCLUDING SELLER'S MANUFACTURER'S REPRESENTATIVES AND SALES AGENTS) TO ASSUME FOR SELLER ANY OTHER OBLIGATIONS OR LIABILITIES.

*[Signatures Next Page]*



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IN WITNESS WHEREOF, Buyer and Seller have executed this Contract.

**BUYER**

Deschutes County 9-1-1 Service District  
20355 Poe Sholes Road, #300  
Bend, OR 97708

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**SELLER**

L3Harris Technologies, Inc.  
221 Jefferson Ridge Parkway  
Lynchburg, Virginia 24501

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT A**  
**STATEMENT OF WORK**  
**Seller's Proposal Dated November 30, 2023**



## EXHIBIT B SOFTWARE LICENSE AGREEMENT

This License Agreement ("Agreement") is made on November 30th, 2023 (the "Effective Date") between L3Harris Technologies, Inc., a Delaware Corporation, through its Communication Systems Segment, ("LICENSOR" or "L3Harris") with offices at 221 Jefferson Ridge Parkway, Lynchburg, VA 24501 and DESCHUTES COUNTY 9-1-1 SERVICE DISTRICT ("LICENSEE"). LICENSOR is the owner of certain wireless communications software programs and LICENSEE desires to obtain a license from LICENSOR to use such wireless communications programs.

### 1.0 Definitions.

1.1 "Designated Systems": Means the L3Harris system(s), products, and Designated Terminals purchased by Buyer and identified in the Primary Agreement for which the Licensed Programs and documentation are intended to be used.

1.2 "Designated Terminals": Means the LICENSOR'S Terminals purchased by LICENSEE.

1.3 "Licensed Programs": The term Licensed Programs shall mean the wireless communications computer programs in software or firmware supplied under this Agreement by LICENSOR in binary object code format to the LICENSEE (stand alone or in conjunction with the purchase of a LICENSOR wireless communications system.) Licensed Programs shall also include all other material related to the Licensed Programs supplied by LICENSOR to LICENSEE hereunder, and which may be in machine readable or printed form, including but not limited to user documentation and/or manuals.

1.4 "Open Source Software": Means software with either freely obtainable source code, license for modification, or permission for free distribution.

1.5 "Open Source Software License": The terms or conditions under which the Open Source Software is licensed.

1.6 "Primary Agreement": The agreement to which this exhibit is attached.

1.7 "Third Party Software Products": Shall mean programs that are not developed by LICENSOR which are licensed/purchased by LICENSOR for inclusion in its products.

### 2.0 License Grant for Licensed Programs.

2.1 Subject to the terms of this License Agreement and the performance by Licensee of its obligations hereunder, LICENSOR hereby grants to Licensee, and Licensee hereby accepts from LICENSOR, (a) a personal, non-transferable, non-exclusive, perpetual, limited license to use the Licensed Programs in object code format only and (b) install and execute such Licensed Programs on Licensee's equipment and (c) which are to be used for internal business purposes only. All licensed programs under this License Agreement shall only be used in conjunction with the Designated System. This license does not transfer any right, title, or interest in the Licensed Programs. The license granted authorizes Licensee to use the Licensed Programs in object code format and does not grant any rights to source code.

2.2 LICENSEE will not reproduce, modify, or make derivative works of the Licensed Programs, except that LICENSEE may make one archival, and one inactive backup, copy of the Licensed Programs. In addition, LICENSEE, its agents, consultants and/or its subcontractors will not attempt to reverse engineer, decompile, or reverse-compile any software contained in the Licensed Programs and any attempt to do so shall be a material breach of this License Agreement. With respect to the Licensed Programs, LICENSEE will not alter, deface, discard, or erase any media, documentation, or LICENSOR or Third Party Licensor's trademarks or proprietary rights notices.



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2.3 Third Party Software Products may be subject to additional license terms, which, if applicable, are set out in Product Specific License Terms delivered with each product. Additional To the extent applicable, LICENSEE shall comply with any additional Third Party Software Product license terms.

2.4 If the Software licensed under this License Agreement contains or is derived from Open Source Software, the terms and conditions governing the use of such Open Source Software are in the Open Source Software Licenses of the copyright owner and not this License Agreement and, to the extent applicable, and provided LICENSOR timely provide LICENSEE with a full copy of all such Open Source Software License(s), LICENSEE will comply with the Open Source Software License terms. If there is a conflict between the terms and conditions of this License Agreement and the terms and conditions of the Open Source Software Licenses governing Licensee's use of the Open Source Software, the terms and conditions of the license grant of the applicable Open Source Software Licenses will take precedence over the license grants in this License Agreement. If requested by Licensee, L3Harris will use commercially reasonable efforts to: (i) determine whether any Open Source Software is provided under this License Agreement; (ii) identify the Open Source Software and provide Licensee a copy of the applicable Open Source Software License (or specify where that license may be found).

### 3.0 Protection and Security of Licensed Programs.

LICENSEE acknowledges and agrees that the Licensed Programs and any materials and/or documentation related thereto, and any portion thereof, supplied by LICENSOR hereunder are proprietary and confidential to LICENSOR or applicable third party licensors and are a valuable commercial asset of LICENSOR or their third party owners. LICENSEE also acknowledges and agrees that LICENSOR and/or the third party licensors have and shall retain all proprietary rights in their respective portions of the Licensed Programs and any materials and/or documentation related thereto. LICENSEE (i) shall respect such proprietary rights, (ii) shall protect LICENSOR and any third party licensor's proprietary rights at least to the extent that it protects its own proprietary information, or such (iii) shall not use the Licensed Programs nor any materials or documentation related thereto except for the purposes for which they are being made available as set forth in this Agreement and (iv) shall not reproduce, print, disclose, or otherwise make said Licensed Programs or materials and/or documentation related thereto available to any third party, in whole or in part, in whatever form, except as permitted in the terms of this Agreement.

### 4.0 Warranty

Seller warrants, for the greater of a period of one year or, if a longer warranty period for the product containing the Licensed Program is set forth in a Primary Agreement, the longer warranty period shall apply commencing with the date of Licensee's acceptance of their Designated System, that any Licensed Program furnished to Licensee under this License Agreement shall be capable of successfully operating on the Designated System in accordance with the logic defined in the operator's manuals when the system is supplied with correct input data. If, on the basis of evidence submitted to LICENSOR within the term of this warranty, it is shown that any Licensed Program does not meet this warranty, LICENSOR will, at its option, either correct the defect or error in the Licensed Program, free of charge, or make available to Licensee a substitute program. The foregoing warranty is exclusive and in lieu of all other warranties whether written, oral, implied or statutory. **NO IMPLIED OR STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, SHALL APPLY, ALL OF WHICH ARE EXPRESSLY DISCLAIMED BY LICENSOR.**

Licensed Programs which have been developed or are owned by a third party licensor and which are sublicensed by LICENSOR to LICENSEE hereunder shall be warranted to LICENSEE only to the extent that the licensor of such sublicensed programs warrants such sublicensed programs to LICENSOR.

In the event that the Licensed Programs do not conform to the representation above, LICENSEE's sole remedy and LICENSOR's sole and exclusive liability shall be to replace such Licensed Programs with the then current released version of such Licensed Programs.

### 5.0 Limitation of Liability.



**5.1 THE LIMITATION OF LIABILITY PROVISION IN THE PRIMARY AGREEMENT SHALL GOVERN THIS LICENSE AGREEMENT AND SECTION 5.2 SHALL NOT APPLY. IF THERE IS NO LIMITATION OF LIABILITY PROVISION IN THE PRIMARY AGREEMENT, SECTION 5.2 SHALL APPLY.**

**5.2 IN NO EVENT WILL LICENSOR AND/OR ANY THIRD PARTY LICENSOR(S) BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS OR LOSS OF BUSINESS, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY OR FORM OF ACTION, EVEN IF LICENSOR AND/OR ITS THIRD PARTY LICENSOR(S) HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LICENSOR'S AND THIRD PARTY LICENSORS', LIABILITY IN CONTRACT, TORT OR OTHERWISE ARISING OUT OF OR IN CONNECTION WITH THIS LICENSE AGREEMENT OR THE USE OF THE LICENSED PROGRAMS SHALL NOT EXCEED THE TOTAL COMPENSATION PAID TO LICENSOR BY LICENSEE FOR THE PRODUCTS CONTAINING THE LICENSED PROGRAMS.**

#### **6.0 Term and Termination.**

**6.1 LICENSOR reserves the right, in addition to any other remedies it may retain in this License Agreement or may be entitled to in law or equity (including immediate injunctive relief and repossession of all non-embedded Licensed Programs and documentation), to terminate this License Agreement at any time prior to the expiration of any Term in the event LICENSEE breaches any material term or condition or fails to perform or observe any obligations or covenants of this License Agreement and such failure and/or breach is not remedied within sixty(60) days of written notice from LICENSOR.**

**6.2 Within thirty (30) days after termination or expiration of this License Agreement, LICENSEE will return to LICENSOR all confidential material including but not limited to all copies, partial copies, and/or modified copies (if any) of Licensed Programs and any equipment owned by LICENSOR in LICENSEE's possession.**

#### **7.0 Assignment/Transfer.**

**This License Agreement, the licenses granted hereunder and the Licensed Programs provided to LICENSEE under this License Agreement may not be assigned, sub-licensed, or otherwise transferred by LICENSEE to any third party without LICENSOR's prior written consent which was not to be unreasonably withheld, except that this license may be assigned if the Products containing the Licensed Programs are transferred but the new owner or user of the Products may only use the Licensed Programs in accordance with terms of this License Agreement. Subject to the foregoing, any assignee hereunder shall be subject to all of the terms, conditions and provisions of this License Agreement. Any attempt by LICENSEE to assign, sub-license, or transfer the Licensed Programs, or any of the rights or duties contained in this Agreement, without LICENSOR's prior written consent shall be void.**

#### **8.0 Severability.**

**If any term or provision of the License Agreement is determined by a court or government agency of competent jurisdiction to be invalid under any applicable statute or rule of law, such provision(s) are, to that extent, deemed omitted, but this License Agreement and the remainder of its provision shall otherwise remain in full force and effect.**

#### **9.0 Waiver.**

**No waiver will be implied from conduct or failure to enforce rights. No waiver will be effective unless in writing signed on behalf of the party against whom the waiver is asserted.**

#### **10.0 Compliance with Laws.**



Licensee acknowledges that the Licensed Programs are subject to the laws and regulations of the United States and Licensee will comply with all applicable laws and regulations, including export laws and regulations of the United States. Licensee will not, without the prior authorization of L3Harris and the appropriate governmental authority of the United States, in any form export or re-export, sell or resell, ship or reship, or divert, through direct or indirect means, any item or technical data or direct or indirect products sold or otherwise furnished to any person within any territory for which the United States Government or any of its agencies at the time of the action, requires an export license or other governmental approval. Violation of this provision is a material breach of this Agreement.

#### **11.0 Governing Law.**

This License Agreement will be governed by the laws of the United States to extent that they apply and otherwise to the laws of the State of New York. The terms of the U.N. Convention on Contracts for the International Sale of Goods do not apply. The parties expressly agree that the Uniform Computer Information Transactions Act ("UCITA") applicable in any jurisdiction shall not apply to this Agreement.

#### **12.0 U.S. Government.**

If Licensee is the U.S. Government, the Licensed Programs and documentation qualify as "commercial items," as that term is defined at Federal Acquisition Regulation ("FAR") (48 C.F.R.) 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in FAR 12.212. Consistent with FAR 12.212, and notwithstanding any other FAR or other contractual clause to the contrary in any agreement into which the Agreement may be incorporated, Customer may provide to Government end user or, if the Agreement is direct, Government end user will acquire, the software and documentation with only those rights set forth in the Agreement. Use of either the software or documentation or both constitutes agreement by the Government that the software and documentation are "commercial computer software" and "commercial computer software documentation," and constitutes acceptance of the rights and restrictions herein.

#### **13.0 Agreement.**

This License Agreement may be part of a Primary Agreement between LICENSOR and LICENSEE for the purchased products by LICENSEE from LICENSOR. The Primary Agreement and this License Agreement contain the full understanding of the parties with respect to the subject matter hereof and which supersede all prior understandings and writings relating thereto and which shall become binding on the Effective Date of this License Agreement. No waiver, consent, modification, amendment, or change to the terms of this License Agreement shall be binding unless agreed to in a writing signed by LICENSEE and LICENSOR. If there is any conflict between the terms of the Primary Agreement and this License Agreement as to the Licensed Programs, the terms of this License Agreement will prevail.

#### **14.0 Notices.**

Notices shall be provided as set forth in the Primary Agreement. In the event there is no notice provision in the Primary Agreement, notices and other communications between the parties shall be transmitted in writing by certified mail or nationally recognized overnight courier service.

#### **15.0 Survival.**

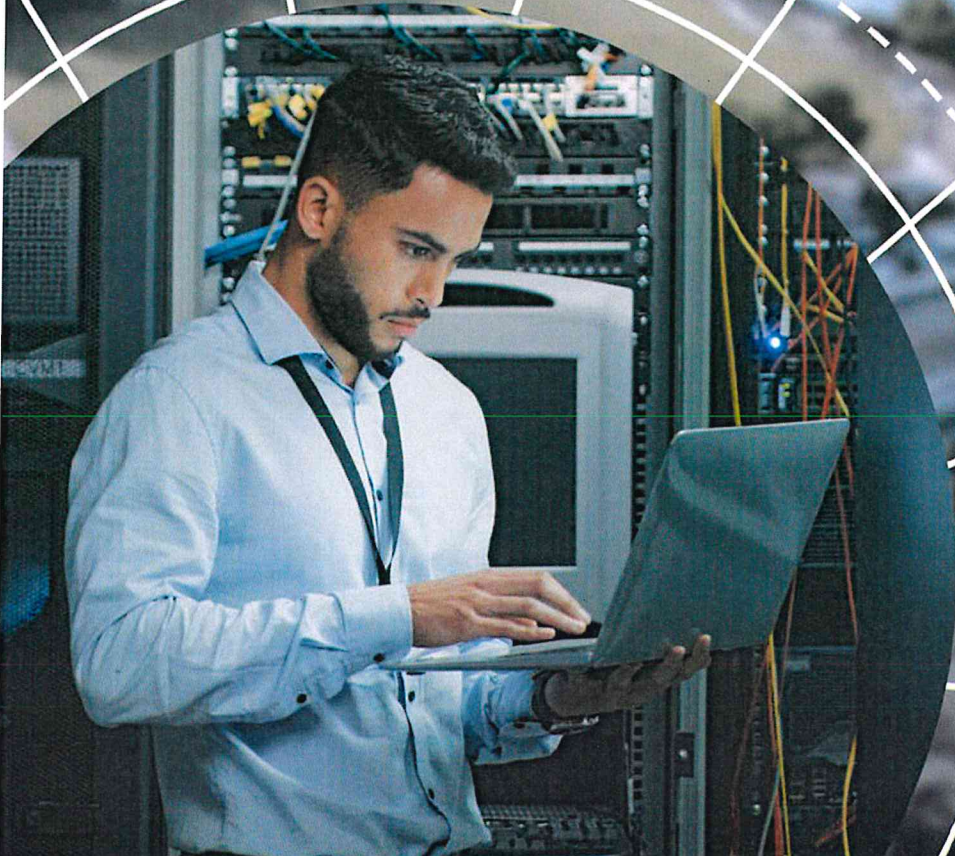
Sections 2.2, 3, 5, 6, 8, 9, 11, and 13 of this License Agreement shall survive termination of this License Agreement.

*[End of Document]*

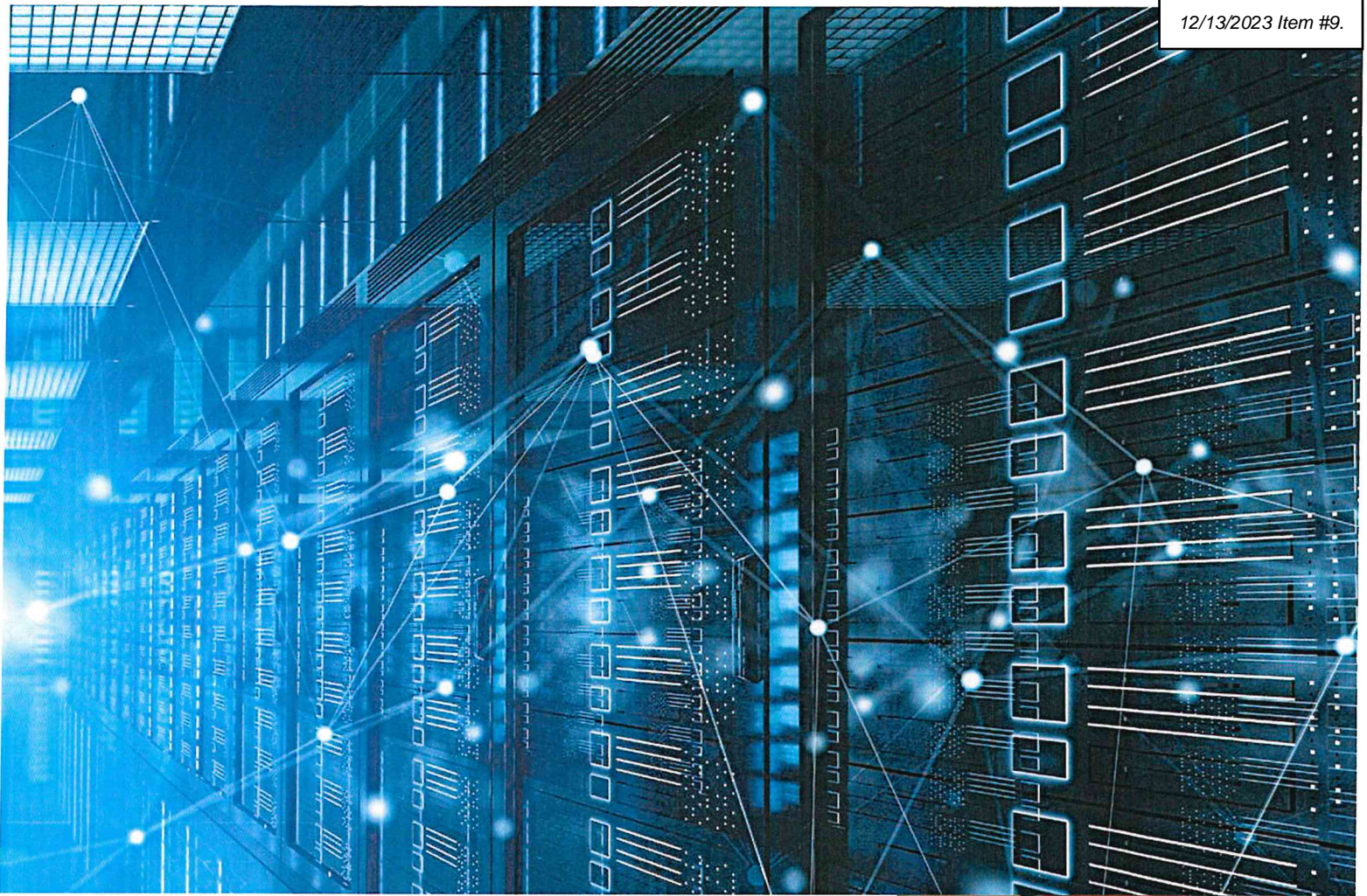


# VIDA® NETWORK SOLUTIONS

Unified End-to-End Connectivity







## VIDA NETWORK SOLUTIONS

We understand the importance of your mission and have built a network that delivers critical communications to the right resources whenever and wherever needed. Designed for those on the front lines, the L3Harris VIDA (Voice, Interoperability, Data and Access) network solutions are ready to handle the diverse needs of any environment. **We're ALL-IN.**

### READY AND RELIABLE

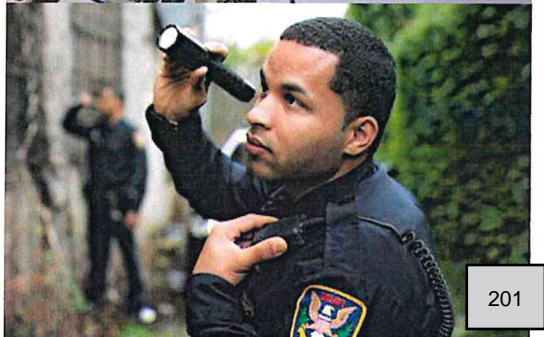
The industry's most reliable P25 Land Mobile Radio system delivers voice and data over LMR, LTE and Wi-Fi® with leading High-Availability failover solutions, so you stay connected when it matters most.

### BUILT FOR INTEROPERABILITY

Open standards-based architecture and flexible solutions offer greater choice of carriers, devices and applications.

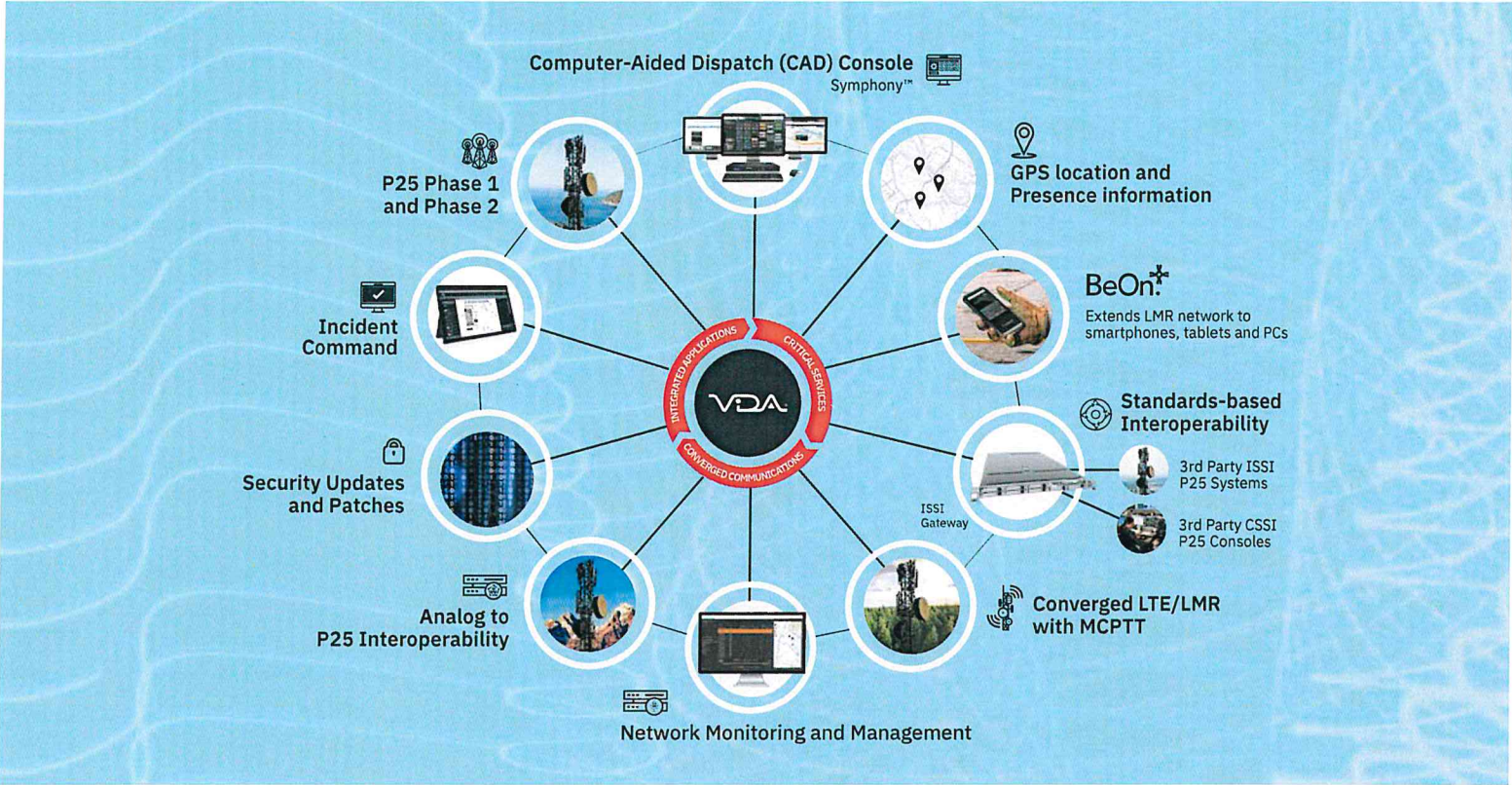
### TRUSTED SECURITY

A comprehensive portfolio of cybersecurity services engineered to evolve with emerging security threats.



# POWERFUL NETWORK COVERAGE

Unified end-to-end connectivity is the foundation of our VIDA network. This means solid communications anytime, anywhere, no matter how you choose to communicate.



# UNRIVALED NETWORK CAPABILITIES

### STAY CONNECTED

Leverage LMR, LTE, and Wi-Fi to enhance your communication footprint, or turn your smartphone, tablet, or PC into an encrypted push-to-talk (PTT) communications device using our BeOn® solution.

L3Harris BeOn Mobile Application extends your LMR network to approved devices delivering secure, PTT communications to teams within or beyond your regional network.

### FUTURE READY

The fully virtualized core keeps your system future ready and supports painless updates and system expansion while maintaining your system's compatibility with future technologies. VIDA's flexible design supports adding applications to your system during installation or later, as needs change.

### OPERATIONAL AWARENESS

Real-time tracking of personnel, vehicles and other mobile assets delivers a clear view of your resources. Our situational awareness solutions help you drive faster response times, increasing efficiency and enhancing the safety of everyone.

### GREATER CHOICE

We partner with the best in the industry to give you more control of your system with more technology options to fit your unique needs.

**MISSION CRITICAL ALLIANCE™**

Through the Mission Critical Alliance, L3Harris works with proven vendors to create fully customized solutions for uncompromised radio communications.



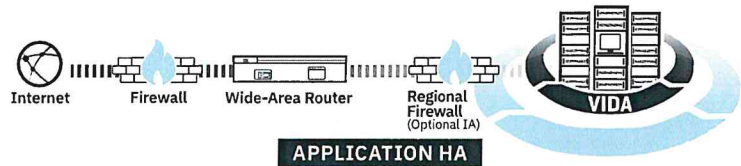
Scan to learn more about the MCA

# ROBUST, HIGH AVAILABILITY AND REDUNDANCY

Reliable communications is a daily lifeline, more so during emergency operations. VIDA High Availability (HA) technologies reduce downtime by keeping on-scene workers connected to dispatch.

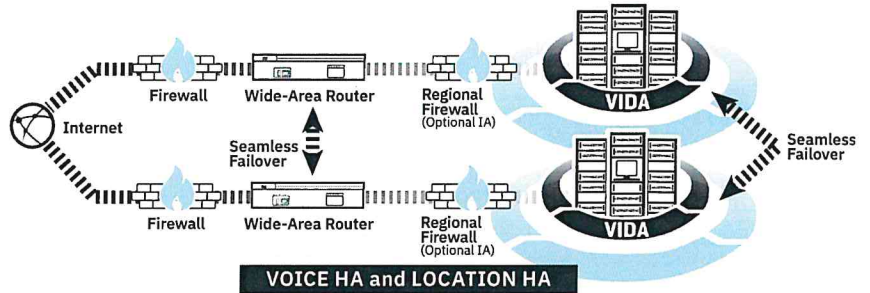
## APPLICATION HA (VIDA Unite and Connect)

A virtual backup instance for applications on the primary server



## VOICE HA (VIDA Essentials only)

Redundant real-time voice applications on separate servers

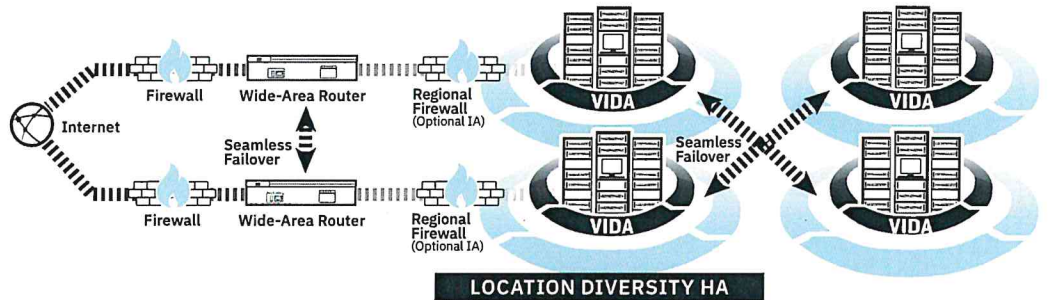


## LOCATION HA (VIDA Premier, Unite and Connect)

Separate primary and secondary servers that can be geographically separated

## LOCATION DIVERSITY HA (VIDA Premier only)

Hardware and application redundancy in both primary and secondary locations



## FLORIDA STATEWIDE LAW ENFORCEMENT RADIO SYSTEM (SLERS)

Over the last two decades, the State of Florida and L3Harris Technologies have worked together to ensure the effectiveness of communications, not only for First Responders, but also the citizens they serve.

In the face of 15 hurricanes, 10 named tropical storms and numerous large-venue events, the system has maintained a 99.96 percent uptime rate in some of the region's most-treacherous conditions. "We have a proven track record showing we can provide the State of Florida's emergency personnel uninterrupted connectivity during critical operations," Steve Williams, L3Harris SLERS Director, said. "The technology we can provide into SLERS would be light years ahead of other companies. When you talk about resiliency and redundancy, our technological investments are focused on assuring communications for the network, so you can lose a control site and other sites can take over that role. That, in itself, is a solution you need in Florida, given its nature as a hot bed of hurricane targets."



Scan to learn more about the SLERS system

With cyber and ransomware attacks against governments and businesses on the rise, is your critical communications system currently protected?

## PEACE OF MIND

Protecting mission-critical communications from cyber threats has never been more important. With cybersecurity a fundamental part of system design, our network solutions are engineered to operate so you can rest easy. We address evolving and ongoing challenges with a comprehensive portfolio of security products and services for VIDA, including access control, boundary control & network segmentation, host & network intrusion detection, system auditing and accounting, communication protection, session auditing, scanning and disaster recovery. These cyber applications, along with services that provide scheduled policy, configuration, and patch updates to your system and customer processes and training provide a layered defense to help protect against the next attack.

### UNCOMPROMISING DEFENSE

VIDA's cybersecurity solutions for wireless communication systems are designed around U.S. federal and industry standards, and best practices including NIST 800-53, DHS-4300, CNSS 1253 and STIG compliance.

### CONSTANT VIGILANCE

Ongoing system evaluations by cybersecurity engineers identify vulnerabilities for quick response and action. We follow industry best practices for advanced security enhancements.

### ENCRYPTED VOICE AND DATA

End-to-end encryption from the moment you push-to-talk to when your message is received.



## END-TO-END PROTECTION

Our Cybersecurity Solutions deliver the latest technologies, maintenance and processes to keep organizations effective and vigilant against cyber threats.

- > Probing and scanning for network vulnerabilities
- > Sniffing and eavesdropping
- > Malicious coding and malware
- > Denial of service
- > Spoofing
- > Password cracking
- > Man-in-the-middle

# ADVANCED NETWORK MANAGEMENT SOLUTIONS

VIDA Network Solutions consolidate the management of your network into a single, unified platform. A convenient approach that allows you to manage your network and devices with ease while reducing operational costs and total cost of ownership.



## ACTIVE MONITORING

Monitor your network with ease using our real-time network management and monitoring tools. Receive information and alerts regarding the current state of the network, applications and hardware through simplified web browser interfaces. Understand and visualize who is operating on your network and what data is being passed.



## DEVICE MANAGEMENT

Remotely program LTE or Wi-Fi enabled devices on your network using Device Management. This simple-to-use, cloud-based application cuts programming time in half by reducing field technician time, resulting in an increased Total Cost of Ownership (TCO) savings.



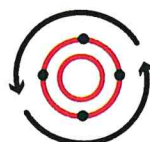
## MANAGED ENCRYPTION

Centralized management of your voice encryption keys for all supported network devices including subscriber devices. This allows you to seamlessly generate and distributes encryption keys to your devices via Over-The-Air-Rekeying (OTAR).



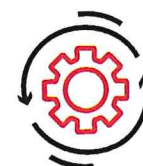
## 24/7 NETWORK MONITORING

Allow us to help maintain your network through 24/7 remote monitoring by dedicated L3Harris technicians who are trained to quickly resolve issues and minimize downtime.



## LIFECYCLE MANAGEMENT

Comprehensive, long-term infrastructure lifecycle management of system hardware and software to keep your network updated, running at peak performance and to protect against security threats.



## PREVENTIVE MAINTENANCE

Give yourself the tools you need to ensure that your system functions when it needs to with support from L3Harris technical experts. This includes regularly scheduled tests, checks and routine alignment of your equipment to optimize your system's performance and ensure it meets factory and FCC specifications.

# FLEXIBLE BY DESIGN

The VIDA platform is offered in various configurations so you can choose which option best fits your current demands and future growth.



### LARGE-SCALE DEPLOYMENTS

Designed for large state or country-wide communications systems in single or multi-regional configurations. Premier employs Virtual Machine (VM) technology to streamline the addition of public safety and utility applications into its voice, system management and administration services.



### MEDIUM-SIZED DEPLOYMENTS

Supports larger city or county-wide agency communications. Value-engineered to retain critical features and system redundancy. Offers the same voice, system management and administration services as Premier with the same choice of applications.



### SMALLER DEPLOYMENTS

Cost-effective and ideal for smaller county, town or rural utility needs. Essentials features LTE and robust cybersecurity options. Also includes Voice High Availability (HA) for real-time applications and Symphony™/ BeOn only configurations.



### EXTEND YOUR COVERAGE

Interfaces with RF sites, consoles and gateways to extend service from larger, regional systems to remote locations and dispatch centers. Add other VIDA systems and any combination of P25 Trunked, Conventional and Simulcast RF sites to a Connect region for outstanding reach.

### CONTACT US

Speak with one of our experts about the complexities and challenges you are facing with your critical communications system and a tailored solution to meet your needs.

PSPC\_custfocus@L3Harris.com  
(800) 368-3277

	Premier	Unite	Essentials	Connect
Designed for	Large wide-area systems (State-wide, Large Investor Owned Utility / Transportation)	Medium-size systems (County-wide or municipal utilities)	Entry-level offering/ smaller systems (Rural public safety, Co-op utilities)	Enables distributed scalable networks
Capacity (Sites)	254	16	9	100
Consoles (Max)	100	20	12	60
Simultaneous talk paths	2400	800	300	1600
Cybersecurity support	Premier Cybersecurity Package	Unite Cybersecurity Package	Essentials Cybersecurity Package	Connect Cybersecurity Package
High Availability for management applications	Location HA or Location Diversity HA	Application HA or Location HA	Voice HA	Location HA (part of Premier Core)
BeOn (Broadband PTT) server	Standard			
Link Layer Authentication	Optional			
High Velocity Data	Optional			
StatusAware™ for Location services	Optional			
P25 Inter-agency interoperability via ISSI/CSSI	Optional			
P25 Conventional Interoperability (DFS1)	Optional			
Infrastructure Managed Services	Optional services including regular patch and cybersecurity updates			

# FAST. FORWARD.

## VIDA® Network Solutions

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Refer to your Trade Compliance Lead or Empowered Official for exact disclaimer language.

L3Harris Technologies is an agile global aerospace and defense technology innovator, delivering end-to-end solutions that meet customers' mission-critical needs. The company provides advanced defense and commercial technologies across air, land, sea, space and cyber domains.





**L3HARRIS™**  
FAST. FORWARD.

## **BeOn® MOBILE** **APPLICATION**

Public Safety's Most Advanced P25  
Push-To-Talk Application



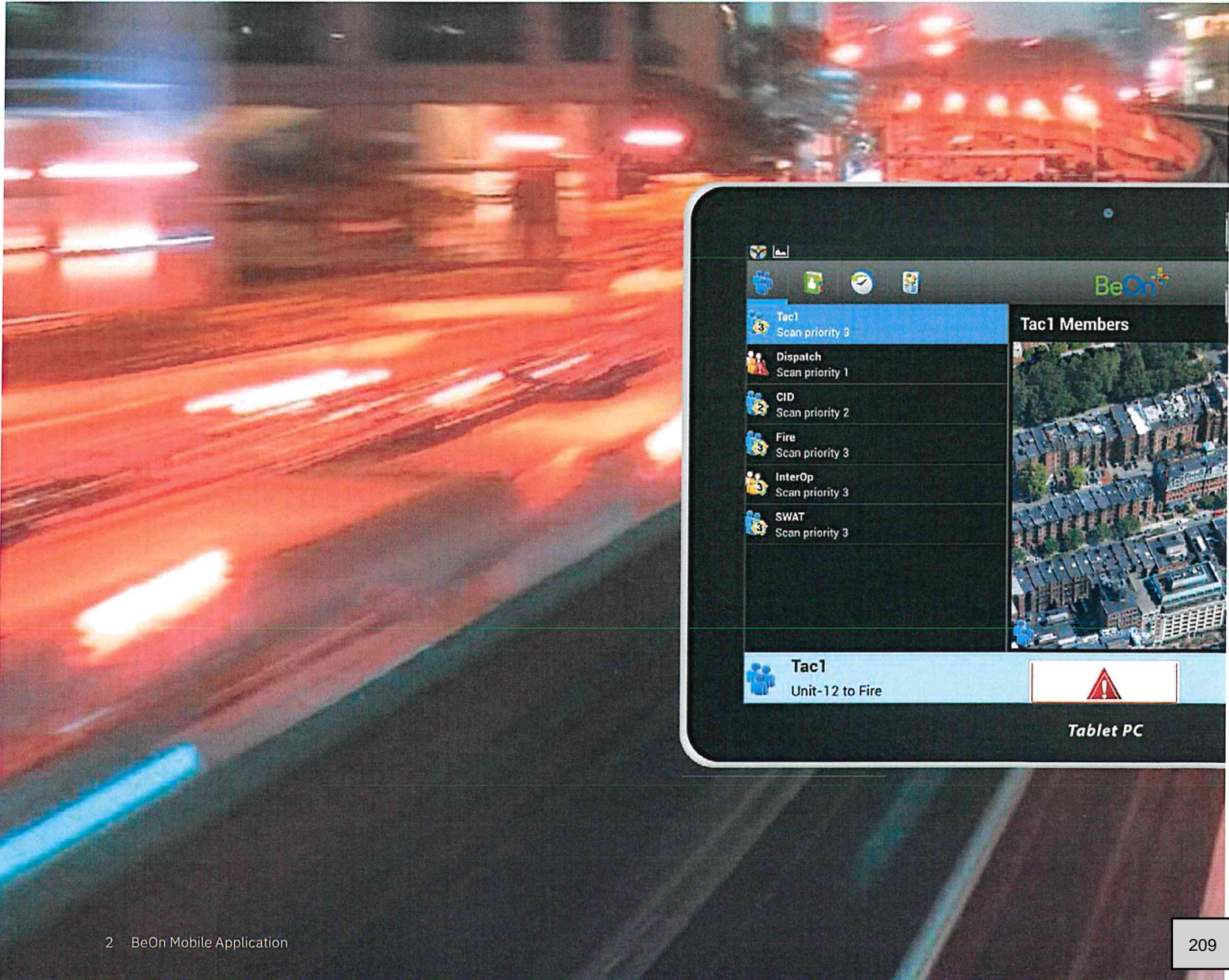


# CONNECT EASILY AND AFFORDABLY

## Public safety's most advanced P25 Push-To-Talk application

Public safety agencies and utility companies rely on the Land Mobile Radio's Push-To-Talk (PTT) capabilities as a primary means for transmitting voice communications. BeOn is an application that extends the capabilities of your LMR network to smartphones, tablets and PCs—providing PTT communications far beyond the boundaries of regional radio systems, and opening up affordable PTT communications to new user groups.

BeOn keeps you connected to your LMR system anywhere you have a cellular data signal, Wi-Fi® or other data connectivity, and provides a direct connection to the backbone of your LMR system—fully supporting the features of a P25 radio network. This enables BeOn to have the same PTT user experience, fleet management and security experience as the P25 system—simplifying management with only a single system to maintain.

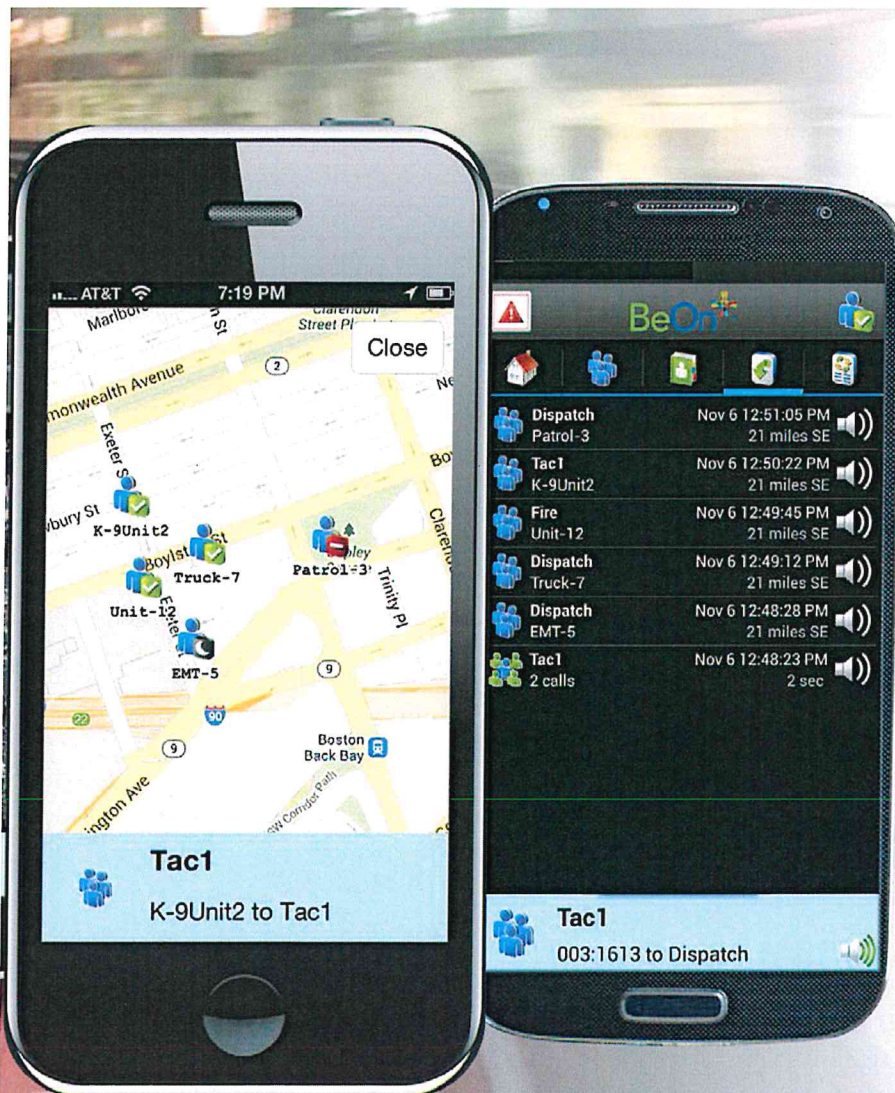


# BeOn<sup>®</sup>

**FAST, INTUITIVE ACCESS  
TO KEY FEATURES**

## **MOST ADVANCED FEATURE SET ON THE MARKET**

- > Display location of LMR radios
- > Full AES end-to-end encryption
- > Group voice call
- > Individual voice call
- > Distress indication
- > Announcement group calls
- > Instant recall / call logging
- > Console / supervisory override
- > Talkgroup scanning
- > Late call entry
- > P25 confirmed call
- > Priority / preemptive support
- > P25 OTAR key management
- > Console patch / simselect
- > Group location
- > User presence indication
- > Location privacy
- > BeOn text messaging



# EXTEND LMR COVERAGE BEYOND REGIONAL BOUNDARIES



BeOn offers an economical path to P25 through the use of legacy system gateways.



### The BeOn application can be an essential enhancement to P25 and legacy network systems.

BeOn allows users to maintain a full set of advanced LMR features on an ordinary smartphone, and will work anywhere in the world where Wi-Fi\* or cellular data service is available—regardless of the carrier.

This advanced Push-To-Talk application is supported on iOS™, Android™ and Windows®, and is integrated into the L3Harris XL-185P and XL-200P LTE Land Mobile Radios. This extends the range of the XL portables' coverage and allows users to leverage broadband to improve situational awareness.


BeOn can quickly be added to existing L3Harris VIDA® networks as a core service, or deployed on legacy and non-L3Harris LMR networks via gateways.

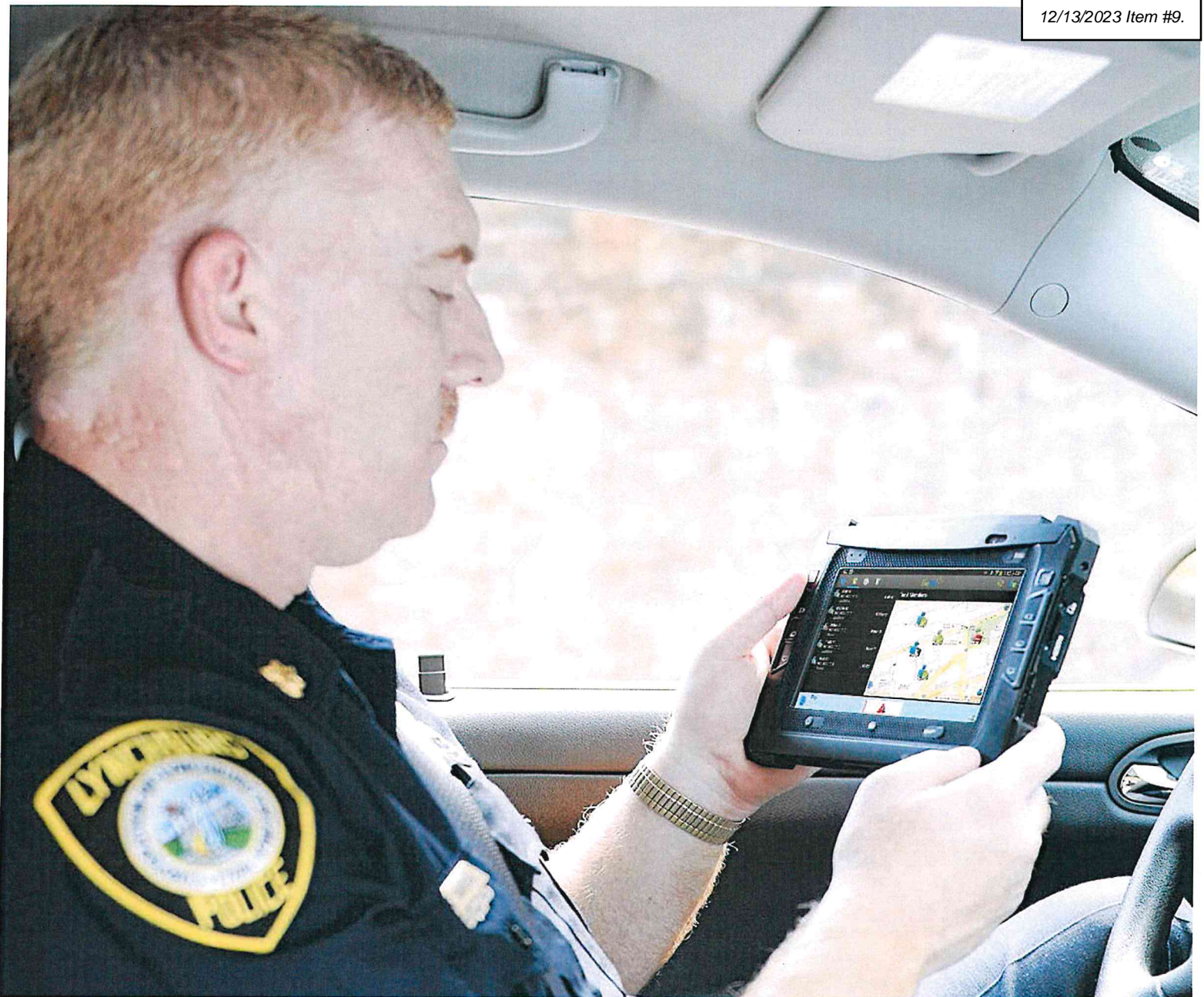
By utilizing the capacity of broadband networks, BeOn helps divert traffic from narrowband communications, providing an additional level of redundancy for those systems while reducing traffic load on the LMR system.

 PUBLIC SAFETY LTE

 LEGACY DEVICES AND SYSTEMS

 BeOn ENABLED DEVICES

 P25 DEVICES AND SYSTEMS



## STAY CONNECTED WITHOUT BREAKING THE BANK

Command staff and administrators can stay in touch with LMR network activities using PCs and mobile devices.

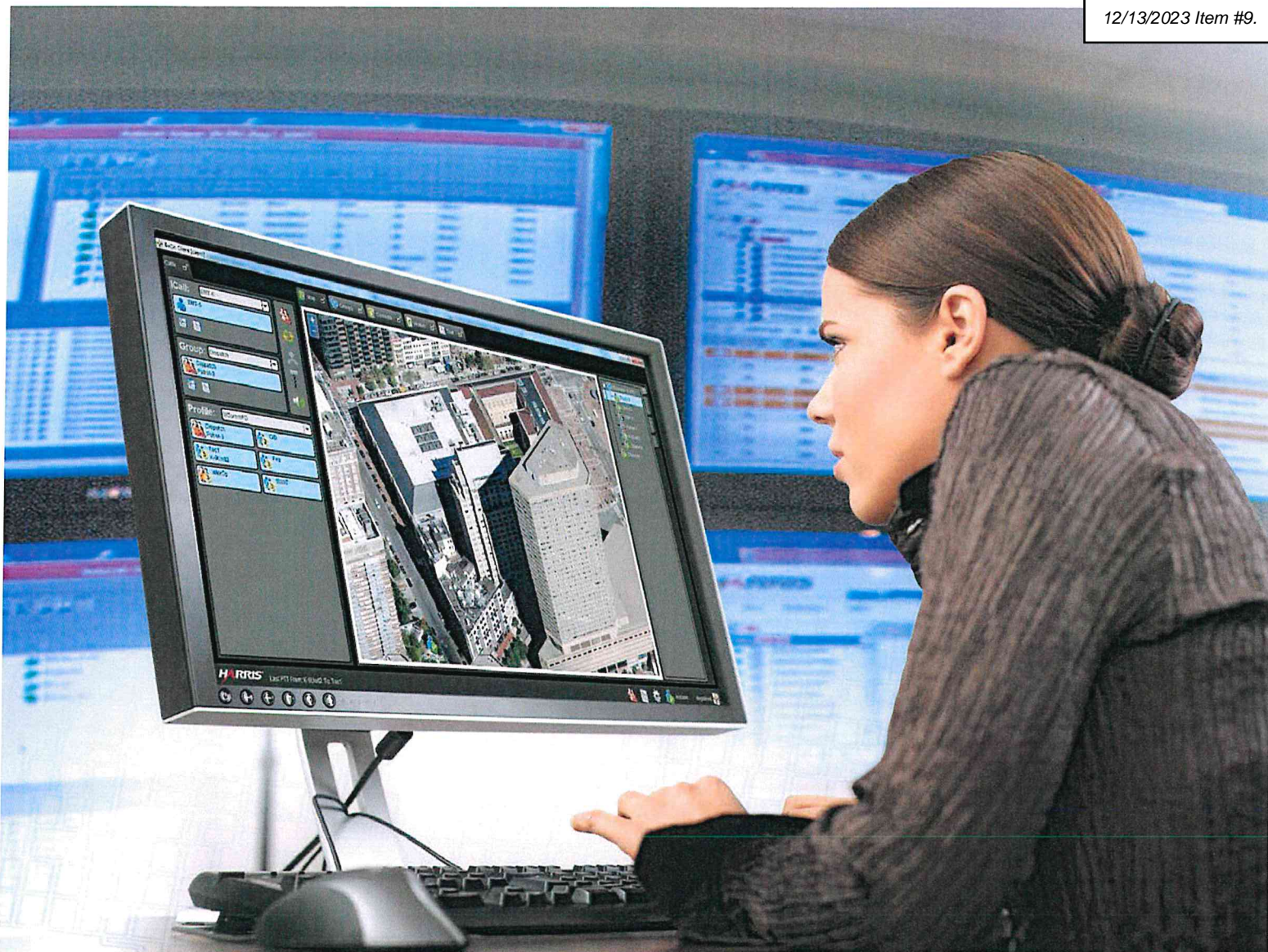
Behind a desk or behind a screen at incident command, BeOn Windows Client allows users to stay in full, direct contact with their LMR system without investing in additional, more-costly equipment. BeOn runs as an application on PCs and smartphones, but it looks like an LMR radio to your system.

This makes BeOn the perfect solution for administrators needing to communicate or track location of team members, without adding the expense of an additional LMR radio.

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BeOn is a broadband PTT tool built from the ground up to support the P25 LMR feature set.

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# TRULY INTEGRATED P25 EXPERIENCE

Most advanced P25 PTT application on the market



**THIS FEATURE-RICH APPLICATION DELIVERS FAR MORE THAN JUST PUSH-TO-TALK CAPABILITY.**

BeOn is an integrated part of the L3Harris solution. BeOn is more secure, using the same encryption keys for radios and smartphones, making it easier to manage and maintain—only one database of users and one console to access both radios and smartphones.

BeOn harnesses converged LMR and LTE technologies to connect group communications between P25 systems and broadband networks.

BeOn users can exchange text messages and pass real-time location and presence information between connected team members. The application also enhances security by sharing same encryption keys between radios and smartphones.

P25 AMBE VOCODER	✓	✓
Group, individual and confirmed calls	✓	✓
Distress calls	✓	✓
Priority and preemption	✓	✓
256-bit AES encryption	✓	✓
Late call entry	✓	✓
Featured dispatch capabilities	✓	✓
Patch and Simulselect	✓	✓

**FAST. FORWARD.**



## PSPC CUSTOMER CARE CENTER

The L3Harris Public Safety and Professional Communications (PSPC) Customer Care Center (CCC) is a dedicated team accessible by phone, e-mail, web and fax.

The CCC offers support for order processing, quoting, return material authorizations (i.e., replacements, returns and repairs), warranty, contract administration and general inquiries.

Our CCC representatives recognize the importance of proactive communications and vigorously promote a positive relationship between field, factory and customer.

Our team provides a wide variety of services, including efficient order processing and status updates. Representatives also handle inquiries related to pricing quotes, products, shipping and billing status.

Our team further enhances customer support by facilitating communication between customers and internal departments to ensure an open channel of communication is maintained.



COMMUNICATION  
ACCOUNTABILITY  
RESPONSIVENESS  
EXECUTION

---

### KEY BENEFITS

- > Product and accessories quotes
- > Return material authorizations
- > Warranty information
- > Contract administration



**TELEPHONE SUPPORT**

The CCC in Lynchburg, Virginia provides telephone support from 8 a.m. to 5 p.m. (Eastern Time), Monday through Friday, excluding holidays and alternate Friday closures.

**Telephone**

U.S. and Canada 1-800-368-3277

International +1-434-385-2857

**E-mail**

U.S. PSPC\_CustFocus@L3Harris.com

Federal PSPC\_FedCustFocus@L3Harris.com

International PSPC\_IntCustFocus@L3Harris.com

**PSPC INFO CENTER**

The PSPC Info Center website (<https://premier.pspc.harris.com/infocenter/default.jsp>) provides increased self-service capabilities which accommodate our customers by improving accessibility to our products and services. We offer web ordering for service parts and accessories, which provides flexibility and automation to ease order placement. Links on our website provide access to many useful functions:

- > e-Catalog
- > Material Availability Inquiry
- > Pricing Inquiry
- > Service Parts/ Accessories Order Placement
- > Order Status/ Order Tracking
- > Tech-Link (paid subscription)

Contact your CCC representative for further information about this valuable web feature.

**PSPC CUSTOMER SERVICE WEBSITE**

Visit our Customer Service website to find the information below:

- > Literature – Warranty, Terms and Conditions, Repair Rates
- > Forms – Equipment, Service Parts, U.S. Return Request
- > Product Registration
- > Track Shipment Status
- > Contact Information

**AUTOMATED ORDER ACKNOWLEDGMENT AND SHIPMENT CONFIRMATION**

In addition to dedicated customer service representatives, automated order acknowledgments and shipment confirmations, we provide an extra layer of efficiency to the services currently available to our customers On the Web: <https://www.l3harris.com/all-capabilities/pspc-customer-care>.

**PSPC Customer Care Center**

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Melbourne, FL 32919



## **PSPC TECHNICAL ASSISTANCE CENTER**

When critical communication systems malfunction, customers need fast, responsive support to get equipment back up and running. The L3Harris Public Safety and Professional Communications (PSPC) Technical Assistance Center (TAC) provides industry-leading expertise and critical product support.

With their choice of Priority or Preferred TAC support, customers get real-time maintenance, programming and troubleshooting guidance from L3Harris product specialists and engineers.

Priority TAC services are available around-the-clock and all-year-round. Coverage includes fixed-site equipment, mobiles and portables. Preferred TAC customers are provided with toll-free assistance for all PSPC equipment during regular business hours, with a commitment for return call or email within 24 hours.

A variety of technical online products are available to enhance Priority and Preferred support, giving customers access to product information, technical knowledge bases and latest software upgrades.



### **TECHNICAL EXPERTS AVAILABLE AROUND-THE-CLOCK**

#### **KEY BENEFITS**

- > **Technical assistance available 24/7, 365 days a year**
- > **On-call experts help customers rapidly resolve issues**
- > **Easy online access to product knowledge base and technical information**
- > **Variety of service options tailored to business needs**

## PSPC TECHNICAL ASSISTANCE CENTER

### Priority TAC Support

Priority TAC Support links customers access with technical experts 24 hours per day, 7 days a week, including holidays. If on-site support is needed, TAC will coordinate the effort with L3Harris personnel.

### Priority TAC support services

- > Guaranteed callback within 2 hours, or 1 hour for system off-the-air emergencies
- > Coverage for L3Harris PSPC mobiles, portables and system configurations including OpenSky®, P25 and EDACS®
- > Level 3 and Level 4 support for resolution of complex issues
- > Pricing options are based on system complexity, with annual and multi-year agreements available
- > Subscriptions to Tech-Link support services are included

Call or email the PSPC Technical Assistance Center for priority TAC support pricing.

### Preferred TAC Support

Preferred TAC Support is accessible to all L3Harris customers from 8 a.m. to 5 p.m. EST, Monday through Friday, excluding holidays. Specialists provide Level 1 and Level 2 Help Desk guidance and troubleshooting for product operations, programming and maintenance.

Each customer issue and its resolution is logged, stored and categorized within a state-of-the-art tracking and knowledge system, giving TAC specialists a dynamic search tool for quick, efficient issue resolution.

### Preferred TAC support services

- > Technical assistance for L3Harris PSPC mobiles, portables, accessories, trunked and conventional system
- > First-in, first-out service with commitment to contact customers by phone or email by the next business day
- > Toll-free service throughout all North American time zones
- > State-of-the-art tracking system gives customers easy access to call status

### Telephone:

1-800-528-7711 in the U.S. and Canada  
+1-434-385-2400 Worldwide

Email: [PSPC\\_TAC@L3Harris.com](mailto:PSPC_TAC@L3Harris.com)

### Enhanced Technical Service Options

Customers can choose from the following digital services to tailor Priority and Preferred coverage for more specific needs:

### Tech-Link support services

This website service offers electronic retrieval and exchange of technical information, along with rapid access to product information and expert assistance. Subscribers can use this service to:

- > Access and search technical libraries
- > Read current software release notes
- > Request technical assistance from TAC

### Technical service memos and important product notifications

This time-critical solution provides subscribers with email updates on use, maintenance and service of L3Harris PSPC products. Customers are also alerted to new downloads available on Tech-Link. Email notifications are sent to subscribers announcing materials available for download from the Tech-Link website.

### Field feature encryption upgrades

As customer needs and requirements grow, L3Harris radio capabilities can also expand. Field Feature Encryption allows users to selectively upgrade terminals to better match latest operational and budgetary demands.

#### PSPC Technical Assistance Center

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# MASTR® V BASE STATION

VHF, UHF, 700, 800, 900 MHz

The L3Harris MASTR V Base Station features an IP-based architecture engineered to scale with each organization’s critical communication needs as they change over time.

The MASTR V Base Station provides trunked communications to incorporate P25 digital voice and data. Compliant with the P25 CAI, this linear simulcast solution employs an on-board voice encoder/decoder to translate digital voice for immediate access through a user’s existing network.

MASTR V delivers significant IP-based enhancements including seamless integration of COTS data applications

and devices. It supports more economical routing and backhaul of network information and critical data redundancy.

The L3Harris MASTR V Base Station has a user-friendly software interface for easy setup, field upgrades and remote programming. Its compact, integrated hardware design allows up to eight channels per cabinet and simplifies maintenance and servicing.



## PROVEN, FUTURE-PROOF P25 PLATFORM

### KEY BENEFITS

- > Scalable Internet Protocol (IP) network
- > Secure digital trunked voice and data
- > Supports Project 25 Common Air Inter-face (P25 CAI)
- > Seamless integration of Commercial-Off-The-Shelf (COTS) applications and equipment
- > Simplified user interface with compact and integrated hardware footprint

GENERAL	
Size (Base Station)	4 Channels per 5 Rack Unit Shelf
Open Rack Dimensions	86.0 H x 20.5 W x 19.295 D in (218 H x 52 W x 49 D cm)
Cabinet Dimensions	86.0 H x 23.0 W x 31.5 D in (218 H x 58 W x 80 D cm)
Power	100-240 VAC (47-63 Hz) or -48 VDC
Ambient Temperature Range	-22° to +140°F (-30° to +60°C)
Humidity	90% @ 122° F (+50°C)
Altitude	Operational: Up to 15,000 ft (4,572 m) Shippable: Up to 50,000 ft (15,240 m)

TRANSMITTER					
	VHF	UHF	700	800	900
Frequency Range (MHz)	150-174	380-400 403-430 450-470 470-494 494-520	764-776	851-870	935-941
Rated Power Output (W)	100	100	100	100	100
RF Output Impedance (ohm)	50	50	50	50	50
Conducted Spurious and Harmonic Emissions (dBc)	<-86	<-86	<-70	<-70	<-70
Frequency Stability (ppm)	<0.1	<0.1	<0.1	<0.1	<0.1
Channel Spacing (kHz)	12.5	12.5	12.5	12.5	12.5
Synthesizer Step Size (kHz)	1.25	1.25	6.25	6.25	6.25

REGULATORY DATA						
Frequency Range (MHz)	Power Output (Adjustable) (W)	FCC Type Acceptance Number	Applicable FCC Rules	Industry Canada Certification Number	Applicable Industry Canada Rules	NTIA Certification Number
150-174	10-100	OWDTR-0065-E	22, 80, 90	3636B-0065	RSS-119	J/F 12/09628
380-400	10-100	N/A	N/A	N/A	N/A	J/F 12/09628
406.1-420	10-100	N/A	N/A	N/A	N/A	J/F 12/09628
420-430	10-100	OWDTR-0129-E	90	3636B-0129	RSS-119	N/A
450-470	10-100	OWDTR-0130-E	22, 80, 90	3636B-0130	RSS-119	N/A
470-494	10-100	OWDTR-0100-E	90	N/A	N/A	N/A
494-512	10-100	OWDTR-0101-E	90	N/A	N/A	N/A
769-775	10-100	OWDTR-0159-E	90	3636B-0159	RSS-119	N/A
851-869	10-100	OWDTR-0158-E	90	3636B-0158	RSS-119	N/A
935-940	10-100	OWDTR-0156-E	90	3636B-0156	RSS-119	N/A

\*VHF: 420-430, 450-470, 935-940

RECEIVER					
	VHF	UHF	700	800	900
Frequency Range (MHz)	150-174	380-400 403-430 450-470 470-494 494-520	799-817	806-824	896-902
Sensitivity, TIA-P25 (dBm)	<-118	<-118	<-119	<-119	<-119
RF Output Impedance (ohm)	50	50	50	50	50
Intermodulation Rejection, TIA-P25 (dB)	>80	>80	>80	>80	>80
Spurious and Image Rejection (dB)	≥90	≥90	≥90	≥90	≥90
Frequency Stability (ppm)	<0.1	<0.1	<0.1	<0.1	<0.1
Channel Spacing (kHz)	12.5	12.5	12.5	12.5	12.5
Synthesizer Step Size (kHz)	1.25	1.25	6.25	6.25	6.25

OPERATIONAL MODES			
Mode	Modulation	Bit Rate (kbps)	Emission Designator
P25 Phase 1	C4FM	9.6	8K00F1D/8K00F1E*
P25 Phase 1 Simulcast HVD-FDMA	WCQPSK	9.6	9K70D1W
P25 Phase 2	H-DQPSK	12	9K80D7W
HVD-TDMA	DQPSK	19.2	18KD1W, 12K5D1W

Technical specifications are subject to change without notice.  
Product sales are subject to applicable U.S. export control laws.

L3Harris MASTR® V Base Station  
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# MASTR® V DCP SIMULCAST SYSTEM

VHF, UHF, 700, 800, 900 MHz

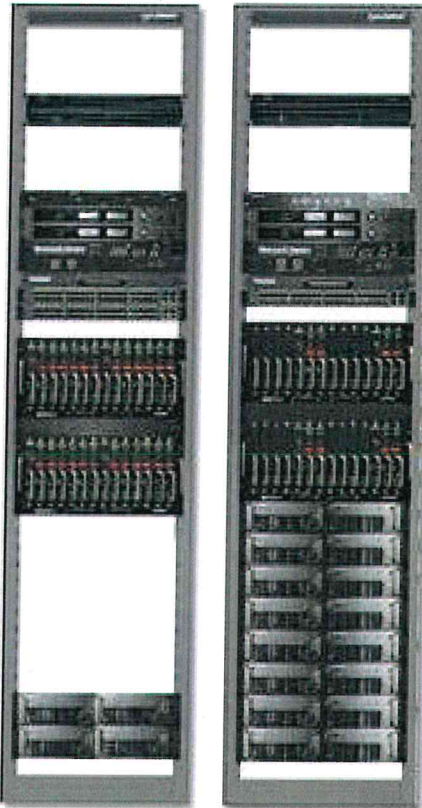
The L3Harris MASTR V Distributed Control Point (DCP) Simulcast System provides unmatched flexibility for large-scale, multi-agency connectivity in coverage areas too large for a single, centralized transmitter.

## WIDE-AREA COVERAGE

MASTR V Simulcast Systems provide a reliable solution for wide-area coverage demands in frequency-constrained systems. Where there is a need to extend coverage to multiple agencies in a common territory, the MASTR V DCP Simulcast System provides a flexible, proven solution that delivers increased capacity for critical communication needs.

## STANDARDIZED PLATFORM

- > VIDA® Network Sentry for status and alarming
- > Mini-mobility Exchange (MME) data handling
- > Redundant GPS time base receivers
- > Optional Intrusion Detection System
- > Redundant ethernet switches
- > Router connectivity to VIDA network
- > MASTR V Control Shelf and Modules
- > Power supply units: 115 VAC or -48 VDC
- > Linear Mode Transmitters for improved RF system performance



## COST-EFFECTIVE WIDE-AREA COVERAGE

### KEY BENEFITS

- > Cost-effective way to increase coverage for systems with limited available frequencies
- > Continuous overlapping coverage enhances user-mobility
- > P25 Phase 1 and Phase 2 operations. Software upgradeable to P25 Phase 2
- > Remote capabilities for timing, setup, status, alignment verification and alarms

GENERAL	
Size (Base Station)	4 channels per 5 Rack Unit Shelf
Open Rack Dimensions	86.0 H x 20.5 W x 19.295 D in (218 H x 52 W x 49 D cm)
Cabinet Dimensions	86.0 H x 23.0 W x 31.5 D in (218 H x 58 W x 80 D cm)
Power	90-230 VAC or -48 VDC
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Frequency Range (MHz)	150-174	380-400 403-430 450-470 470-494 494-520	764-776	851-870	935-941
Rated Power Output (W)	100	100	100	100	100
RF Output Impedance (ohm)	50	50	50	50	50
Conducted Spurious and Harmonic Emissions (dBc)	<-86	<-86	<-70	<-70	<-70
Frequency Stability (ppm)	<0.1	<0.1	<0.1	<0.1	<0.1
Channel Spacing (kHz)	12.5	12.5	12.5	12.5	12.5
Synthesizer Step Size (kHz)	1.25	1.25	6.25	6.25	6.25

REGULATORY DATA						
Frequency Range (MHz)	Power Output (Adjustable) (W)	FCC Type Acceptance Number	Applicable FCC Rules	Industry Canada Certification Number	Applicable Industry Canada Rules	NTIA Certification Number
150-174	10-100	OWDTR-0065-E	22, 80, 90	3636B-0065	RSS-119	J/F 12/09628
380-400	10-100	N/A	N/A	N/A	N/A	J/F 12/09628
406.1-420	10-100	N/A	N/A	N/A	N/A	J/F 12/09628
420-430	10-100	OWDTR-0129-E	90	3636B-0129	RSS-119	N/A
450-470	10-100	OWDTR-0130-E	22, 80, 90	3636B-0130	RSS-119	N/A
470-494	10-100	OWDTR-0100-E	90	N/A	N/A	N/A
494-512	10-100	OWDTR-0101-E	90	N/A	N/A	N/A
764-776	10-100	OWDTR-0057-E	90	3636B-0057	RSS-119	N/A
851-869	10-100	OWDTR-0053-E	90	3636B-0053	RSS-119	N/A
935-940	10-100	OWDTR-0156-E	90	3636B-0156	RSS-119	N/A

\*VHF, 420-430, 450-470, 935-940

RECEIVER					
	VHF	UHF	700	800	900
Frequency Range (MHz)	150-174	380-400 403-430 450-470 470-494 494-520	799-817	806-824	896-902
Sensitivity, TIA-P25 (dBm)	<-118	<-118	<-119	<-119	<-119
RF Output Impedance (ohm)	50	50	50	50	50
Intermodulation Rejection, TIA-P25 (dB)	>80	>80	>80	>80	>80
Spurious and Image Rejection (dB)	≥90	≥90	≥90	≥90	≥90
Frequency Stability (ppm)	<0.1	<0.1	<0.1	<0.1	<0.1
Channel Spacing (kHz)	12.5	12.5	12.5	12.5	12.5
Synthesizer Step Size (kHz)	1.25	1.25	6.25	6.25	6.25

OPERATIONAL MODES			
Mode	Modulation	Bit Rate (kbps)	Emission Designator
P25 Phase 1	C4FM	9.6	8K00F2D/8K00F1E*
P25 Phase 1 Simulcast, HVD-FDMA	WCQPSK	9.6	9K70D1W
P25 Phase 2	HDQPSK	12	9K80D7W
HVD-TDMA	DQPSK	19.2	18KD1W, 12K5D1W

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# FACT SHEET

## A Focus on Cybersecurity

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- Analog
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- Cisco SIP
- IPC
- Mitel®
- Nortel
- Shoretel
- Siemens
- SIP

### NG 9-1-1 PSAPs

- Compunetix
- Emergency Call Worx
- Motorola Solutions™ Vesta (formerly Airbus)
- Solacom
- Intrado (formerly West)

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**BOARD OF  
COMMISSIONERS**

**AGENDA REQUEST & STAFF REPORT**

**MEETING DATE:** December 13, 2023

**SUBJECT:** Oregon State Weed Board Grant Application for Deschutes County Noxious Weed Project

**RECOMMENDED MOTION:**

Move to authorize the submittal of an application for an Oregon State Weed Board Grant for Deschutes County.

**BACKGROUND AND POLICY IMPLICATIONS:**

The Natural Resources Department seeks Board authorization to apply for a State Weed Board Grant for the purpose of producing outreach material, updating the noxious weed trailer, and to survey and treat key noxious weed species within Deschutes County. The Oregon Department of Agriculture (ODA) and the Oregon Watershed Enhancement Board (OWEB) work together to administer the ODA Noxious Weed Grant Program Lottery funded grant program. The project would utilize partners on the Deschutes County Noxious Weed Board to develop outreach material and generate a unified message that could be distributed throughout the County. Partners would also collaborate on surveys and treatment for key A rated species like Hoary Alyssum and Orange Hawkweed.

Partners include: the Oregon Department of Agriculture, the USDA Forest Service, the Bureau of Land Management, the City of Bend, the Deschutes Soil and Water Conservation District, Bend Park and Recreation District and Black Butte Ranch.

If granted, the funds would be used for new trailer upgrades such as a bulletin board, new audio/video equipment, aquatic and terrestrial invasive species models and presses, printable material and short videos to display at outreach events. In addition, posters, brochures and audio PSA messaging would be developed for distribution through media channels. The Deschutes County Noxious Weed board would collaborate on surveys and work with landowners to treat high priority species.

The grant cycle would be for approximately 18 months ending on April 30, 2025. A State Weed Board grant has not been applied for since 2014, and our partners have requested to increase efforts towards combating noxious weeds in Deschutes County. The awarded

funding would be the first phase in those efforts.

**BUDGET IMPACTS:**

If approved, the application could result in a grant award of \$30,780. \$12,000 would be used for outreach material and trailer upgrades. \$15,000 would be used for landowner noxious weed treatments. Administrative or indirect costs would be \$3,780.

The minimum 25% match would be provided through the Natural Resource Noxious Weed Financial Assistance Agreement (\$15,000) and funding allocated for consultation and surveys (\$15,000) for a total of a cash match of \$30,000.

The cash match is from the Natural Resource Department 326 Fund.

**ATTENDANCE:**

Kevin Moriarty, County Forester



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** December 13, 2023

**SUBJECT:** Work Session: Plan Amendment and Zone Change at 64430 Hunnell Road

**RECOMMENDED MOTION:**

No motion required.

**BACKGROUND AND POLICY IMPLICATIONS:**

The Board of County Commissioners (Board) will conduct a work session on December 13, 2023, in preparation for a public hearing on December 20 to consider a Plan Amendment and Zone Change. The applicant requests approval of a Comprehensive Plan Map Amendment to change the designation of the subject property from Agricultural (AG) to a Rural Residential Exception Area (RREA). The applicant also requests approval of a corresponding Zoning Map Amendment (Zone Change) to change the zoning of the subject property from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA-10). This will be the second of two required public hearings.

**BUDGET IMPACTS:**

None

**ATTENDANCE:**

Jacob Ripper, Principal Planner



## STAFF MEMORANDUM

**Date:** December 5, 2023

**To:** Board of County Commissioners

**From:** Jacob Ripper, Principal Planner

**Re:** Public Hearing following a Hearings Officer's Decision on a Plan Amendment and Zone Change at 64430 Hunnell Road (File Nos. 247-23-000210-PA & 247-23-000211-ZC).

The Board of County Commissioners (Board) is conducting a work session on December 13, 2023, in preparation for a public hearing on December 20 to consider a Plan Amendment and Zone Change. The applicant requests approval of a Comprehensive Plan Map Amendment to change the designation of the subject property from Agricultural (AG) to a Rural Residential Exception Area (RREA). The applicant also requests approval of a corresponding Zoning Map Amendment (Zone Change) to change the zoning of the subject property from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA-10). This will be the second of two required public hearings. The Hearings Officer's Decision recommending approval of the application is attached to this memo as Attachment 2. There was no appeal filed.

### I. STANDARDS & APPLICABLE CRITERIA

Deschutes County Code, Title 18, County Zoning Ordinance  
 Chapter 18.04, Title, Purpose, and Definitions  
 Chapter 18.16, Exclusive Farm Use Zones  
 Chapter 18.32, Multiple Use Agricultural Zone  
 Chapter 18.136, Amendments

Deschutes County Code, Title 22, Procedures Ordinance

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

Oregon Administrative Rules (OAR), Chapter 660

Division 6, Forest Lands  
 Division 12, Transportation Planning  
 Division 15, Statewide Planning Goals and Guidelines  
 Division 33, Agricultural Land

Oregon Revised Statutes (ORS)  
 Chapter 215.211, Agricultural Land, Detailed Soils Assessment.

## **II. BACKGROUND**

The applicant requests that Deschutes County change the zoning and the plan designation because the subject property does not qualify as “agricultural land” under Oregon Revised Statutes (ORS) or Oregon Administrative Rules (OAR) definitions. The applicant proposes that no exception to Statewide Planning Goal 3, Agricultural Land, is required because the subject property is not agricultural land.

A soils assessment conducted by a qualified soils professional approved by the Department of Land Conservation and Development (DLCDD) can be used by property owners to determine the extent of agricultural land as defined in Oregon Administrative Rule (OAR) 660-033 Agricultural Land. Submitted as the applicant’s Exhibit 4, is a soil assessment titled, Site-Specific Soil Survey of Property Located at 64430 Hunnell Road [...], dated December 11, 2020, with field work completed by Soil Scientist Michael Sowers, CCA-WR, CPSS, and the report prepared by Soil Scientist Brian T. Rabe, CPSS, WWS, of Cascade Earth Sciences.

Staff notes the original proposal included a Tentative Plan (TP) application for a four-lot subdivision. Because that subdivision application would be dependent on the successful outcome of the subject plan amendment and zone change, the TP application has been placed “on hold” and decoupled from the current applications. Several documents and materials submitted by the applicant include information directed towards the approval of a subdivision but are not applicable to the plan amendment and zone change.

## **III. TIMELINE**

This proposal is not subject to the statutory 150-day timeline that applies to other land use actions.

## **IV. HEARINGS OFFICER RECOMMENDATION**

The Deschutes County Hearings Officer held a public hearing on November 14, 2023. Only the applicant’s attorney provided testimony.

On November 23, 2023, the Hearings Officer issued a recommendation of approval for the proposed Plan Amendment and Zone Change.

**V. BOARD CONSIDERATION**

As the property includes lands designated for agricultural use, Deschutes County Code 22.28.030(C) requires the application to be heard de novo before the Board, regardless of the determination of the Hearings Officer. The record is available for inspection at the following link: <https://www.deschutes.org/cd/page/247-23-000210-pa-247-23-000211-zc-hunnell-road-plan-amendment-and-zone-change>

**VI. CONCLUSION**

The Hearings Officer's decision for this application identifies all applicable zoning ordinances and evaluates compliance with the criteria and standards of those ordinances. The Hearings Officer found the proposal meets all the requirements and recommends approval.

## Attachments:

1. Area Map
2. Hearings Officer's Recommendation

## HEARINGS OFFICER RECOMMENDATION

**FILE NUMBERS:** 247-23-000210-PA, 247-23-000211-ZC

**HEARING:** November 14, 2023, 6:00 p.m. (the "Hearing")  
Videoconference and Barnes & Sawyer Rooms  
Deschutes Services Center  
1300 NW Wall Street  
Bend, OR 97708

**SUBJECT PROPERTY/  
OWNER:** Groves Family Revocable Trust  
Map and Taxlot: 1612330000800  
Situs Address: 64430 Hunnell Rd, Bend, OR 97703  
(the "Subject Property")

**APPLICANT/OWNER:** Michael F. Groves and Cathie L. Groves (the "Applicant")  
20075 Cox Lane  
Bend, OR 97703

**ATTORNEY:** Elizabeth A. Dickson  
Dickson Hatfield, LLP  
400 SW Bluff Dr., Ste. 240  
Bend, OR 97702

**PROPOSAL:** The Applicant requested approval of a Comprehensive Plan Map Amendment to change the designation of the Subject Property from Agricultural ("AG") to a Rural Residential Exception Area ("RREA"). The Applicant also requests approval of a corresponding Zoning Map Amendment (Zone Change) to change the zoning of the Subject Property from Exclusive Farm Use ("EFU") to Multiple Use Agricultural ("MUA-10").

**STAFF REVIEWER:** Jacob Ripper, Principal Planner  
Jacob.Ripper@deschutes.org  
541-385-1759

### I. APPLICABLE STANDARDS AND CRITERIA:

Deschutes County Code, Title 18, County Zoning Ordinance  
Chapter 18.04, Title, Purpose, and Definitions  
Chapter 18.16, Exclusive Farm Use Zones



Chapter 18.32, Multiple Use Agricultural Zone  
Chapter 18.136, Amendments

Deschutes County Code, Title 22, Procedures Ordinance

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

Oregon Administrative Rules (OAR), Chapter 660  
Division 6, Forest Lands  
Division 12, Transportation Planning  
Division 15, Statewide Planning Goals and Guidelines  
Division 33, Agricultural Land

Oregon Revised Statutes (ORS)  
Chapter 215.211, Agricultural Land, Detailed Soils Assessment.

**II. BASIC FINDINGS:**

**LOT OF RECORD:** The Subject Property has been verified as a lawfully created lot of record as it was created by a Land Patent in April of 1922, recorded in Volume 33, Page 67 of the Deschutes County Book of Records. However, per DCC 22.04.040 (Verifying Lots of Record) lot of record verification is only required for certain 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;*

In the *Powell/Ramsey* (PA-14-2, ZC-14-2) decision, a County Hearings Officer held in a prior zone change decision (*Belveron* ZC-08-04; page 3), that a property's lot of record status was not required

to be verified as part of a plan amendment and zone change application. Rather, the Hearings Officer concluded that the Applicant would be required to receive lot of record verification prior to any development on the property. Therefore, the Hearings Officer, in this case, finds that this criterion does not apply.

**PROPOSAL:** The Applicant requested approval of a Comprehensive Plan Map Amendment to change the designation of the Subject Property from AG to RREA. The Applicant also requested approval of a corresponding Zoning Map Amendment (Zone Change) to change the zoning of the subject property from EFU to MUA-10. The Applicant requested that Deschutes County change the zoning and the plan designation because the Subject Property does not qualify as “agricultural land” under Oregon Revised Statutes (“ORS”), Oregon Administrative Rules (“OAR”) or Deschutes County Code definitions. The Applicant proposed that no exception is required to Statewide Planning Goal 3, Agricultural Land, because the Subject Property is not “agricultural land.”

Staff, in the Staff Report (page 3), noted that the original proposal included a Tentative Plan (“TP”) application for a four-lot subdivision. Because that subdivision application would be dependent on the successful outcome of the subject plan amendment and zone change, the TP application has been placed “on hold” and decoupled from the current applications. Several documents and materials submitted by the Applicant include information directed towards the approval of a subdivision but are not applicable to the plan amendment and zone change.

**SITE DESCRIPTION:** The Subject Property is undeveloped and scattered with sagebrush and juniper and is relatively flat. Although the Subject Property is zoned EFU, there is no indication in the record of current or historic farm uses or agricultural uses. The Subject Property is not in farm tax deferral and does not contain any irrigated areas nor does it have irrigation water rights.

**SURROUNDING LAND USES:** Surrounding land uses generally consist of rural residential uses as well as some agricultural or small-scale farm uses. Zoning in the areas to the north, west, and south are smaller 5- to 10-acre lots or parcels in the MUA10 Zone. The property directly to the east of the Subject Property is approximately 80 acres in size, vacant, owned by Deschutes County, and is within the EFU Zone. Properties further to the east are relatively large lots, owned by Deschutes County and the City of Bend, and are predominately in the EFU and Open Space and Conservation (“OS&C”) Zones. Highway 97 runs approximately 0.85 miles to the southeast. The City of Bend’s Urban Growth Boundary and city limits are approximately 1.5 miles directly south. The Subject Property fronts on Hunnell Road to the west, which is designated as a rural collector.

**SOILS:** According to Natural Resources Conservation Service (“NRCS”) maps of the area, the Subject Property contains three soil units:

*NRCS Soil Map*

27A, Clovkamp Loamy Sand: Clovkamp Loamy Sand soils consist of 85 percent Clovkamp soils and similar inclusions and 15 percent contrasting inclusions. The agricultural capability ratings of this

soil are 3s when irrigated and 6s when not irrigated. Section 18.04.030 of the DCC considers this soil type high-value farmland<sup>1</sup> soil when irrigated.

38B, Deskamp-Gosney complex, 0 to 8 percent slopes: This soil is composed of 50 percent Deskamp soil and similar inclusions, 35 percent Gosney soil and similar inclusions, and 15 percent contrasting inclusions. The Deskamp soils have ratings of 6e when unirrigated, and 3e when irrigated. The Gosney soils have ratings of 7e when unirrigated, and 7e when irrigated. This soil type is not considered high-value farmland soil.

58C, Gosney-Rock Outcrop-Deskamp complex, 0 to 15 percent slopes: This soil type is comprised of 50 percent Gosney soil and similar inclusions, 25 percent rock outcrop, 20 percent Deskamp soil and similar inclusions, and 5 percent contrasting inclusions. The Gosney soils have ratings of 7e when unirrigated, and 7e when irrigated. The rock outcrop has a rating of 8, with or without irrigation. The Deskamp soils have ratings of 6e when unirrigated, and 4e when irrigated. This soil type is not considered high-value farmland soil.

### *Site-Specific Soil Survey*

Submitted as Exhibit 4 is a soil assessment titled, Site-Specific Soil Survey of Property Located at 64430 Hunnell Road [...], dated December 11, 2020, with field work completed by Soil Scientist Michael Sowers, CCA-WR, CPSS, and the report prepared by Soil Scientist Brian T. Rabe, CPSS, WWS, of Cascade Earth Sciences (the "Applicant Soil Study").

A letter from the DLCD, dated April 12, 2021, and included with Exhibit 4, stated:

*"In accordance with OAR 660-033-0045(6)(a), the Department of Land Conservation and Development (DLCD) finds that this soils assessment is complete and consistent with reporting requirements. The county may make its own determination as to the accuracy and acceptability of the soils assessment. DLCD has reviewed the soils assessment for completeness only and has not assessed whether the parcel qualifies as agricultural land as defined in OAR 660-033-0020(1) and 660-033-0030."*

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<sup>1</sup> Deschutes County code, 18.04, defines "High Value Farmland" as:

"High-value farmland" means land in a tract composed predominantly of the following soils when they are irrigated: Agency loam (2A and 2B), Agency sandy loam (1A), Agency-Madras complex (3B), Buckbert sandy loam (23A), Clinefalls sandy loam (26A), Clovkamp loamy sand (27A and 28A), Deschutes sandy loam (31A, 31B and 32A), Deschutes-Houstake complex (33B), Deskamp loamy sand (36A and 36B), Deskamp sandy loam (37B), Era sandy loam (44B and 45A), Houstake sandy loam (65A, 66A and 67A), Iris silt loam (68A), Lafollette sandy loam (71A and 1B), Madras loam (87A and 87B), Madras sandy loam (86A and 86B), Plainview sandy loam (98A and 98B), Redmond sandy loam (104A), Tetherow sandy loam (150A and 150B) and Tumalo sandy loam (152A and 152B). In addition to the above described land, high-value farmland includes tracts growing specified perennials as demonstrated by the most recent aerial photography of the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture taken prior to November 4, 1993. For purposes of this definition, "specified perennials" means perennials grown for market or research purposes including, but not limited to, nursery stock, berries, fruits, nuts, Christmas trees or vineyards but not including seed crops, hay, pasture or alfalfa.

Soil Scientist Mr. Rabe included the following summary and conclusions within the Applicant Soil Study:

*"The purpose of this report is to present the results of an assessment to verify and, where necessary, refine the soils, map units, and boundaries mapped on the Site and to determine whether the soils on the Site meet the land capability classification criteria for a non-resource zoning designation.*

*The published soil survey information was reviewed and direct observations of soil conditions were made at representative locations across the Site. CES has determined that the information from the published soil survey was generally consistent with observations on the ground with boundary refinements primarily limited to delineating components of the complex mapped by the NRCS and/or commonly occurring inclusions. CES has determined that 26.2 acres, or 65.4%, of the Site consists of Class VII and Class VIII soils. Since the Site is predominantly Class VII and Class VIII soils and does not otherwise meet the criteria for further consideration as agricultural land, the Site meets the soils criteria for consideration of a non-resource zoning designation."*

**AGENCY COMMENTS:** The Planning Division mailed notice on April 14, 2023, to several public and private agencies and received the following comments:

Deschutes County Building Safety – Randy Sheid, Building Official:

*"NOTICE: The Deschutes County Building Safety Divisions code mandates that Access, Egress, Setbacks, Fire & Life Safety, Fire Fighting Water Supplies, etc. must be specifically addressed during the appropriate plan review process with regard to any proposed structures and occupancies. Accordingly, all Building Code required items will be addressed, when a specific structure, occupancy, and type of construction is proposed and submitted for plan review."*

Deschutes County Onsite Wastewater – Todd Cleveland, Manager:

*"A complete approved site evaluation is required for each proposed residential lot prior to final plat approval. Site evaluation applications for new properties need to include details of the proposed lot lines and proposed septic system areas/test pit locations for each parcel."*

Planning Staff Comment (Staff Report, page 5):

*"The original application included a proposal for a four-lot subdivision, which this comment was directed towards. Subsequently, it was determined that the subdivision would be reviewed once the subject Plan Amendment and Zone Change decision becomes final."*

Deschutes County Senior Transportation Planner – Peter Russel:

*"I have reviewed the transmittal materials for 247-23-000210-PA/211-ZC/212-TP to amend the Comprehensive Plan designation of a 40-acre property from Agriculture (AG) to Rural Residential*

Exception Area (RREA) and change the zoning for that same property from Exclusive Farm Use (EFU) to Multiple Use Agriculture (MUA-10) and a tentative plan to subdivide the property into four, 10-acre lots. The property is located at 64430 Hunnell Rd., aka County Assessors Map 16-12-33 Tax Lots 800. For reasons discussed below, staff finds more information is needed to address the Transportation Planning Rule (TPR) and County code.

The applicant's traffic study dated April 17, 2023, is incomplete for two reasons. The TPR at Oregon Administrative Rule (OAR) 660-012-0060 requires the demonstration of whether a plan amendment/zone change will have a significant effect or not. To determine that, the traffic study must include the operational analysis of the affected intersections predevelopment and post-development. The traffic study lacks this information and thus does not comply with the TPR. The TIA does analyze the segment of Hunnell Road itself for throughput, but not the intersection of the future Groves Road/Hunnell Road. Second, Deschutes County Code (DCC) 18.116.310(G)(4) requires zone changes to include a 20-year analysis. DCC 18.116.310(G)(10) requires existing and future years levels of service (LOS), average vehicle delay, and volume/capacity (V/C) ratios both with and without the project. (The V/C ratios are only applicable if ODOT facilities are analyzed.) The TIA lacks this feature and thus does not comply with County code. The TIA does not use the traffic volume standard of 9,600 Average Daily Traffic (ADT), which is set forth in the Transportation System Plan (TSP) at Page 81, Table 2.2T2 (Generalized County Road Segment and LOS). Further, the combination of the TPR and County code helps identify whether the transportation system has adequate capacity to serve the plan amendment/zone change or if the system is already overcapacity regardless of the proposed plan amendment/zone change. By contrast, the applicant has submitted what is in essence a trip generation memo.

The property accesses Hunnell Road, a public road maintained by Deschutes County and functionally classified as a collector. The property lacks a driveway permit; the applicant will need to either provide a copy of an access permit approved by Deschutes County or be required to obtain one as a condition of approval to meet the access permit requirements of DCC 17.48.210(A).

The County will assess transportation system development charges (SDCs) when development occurs based on the type of proposed use. However, as a plan amendment or a zone change by itself does not generate any traffic and neither does the subdividing of the land, no SDCs are triggered at this time. The SDCs are triggered by actual development."

Planning Staff Comment (Staff Report, page 6):

*"The applicant submitted additional information to address these comments. Below is the response from the Senior Transportation Planner."*

Deschutes County Senior Transportation Planner – Tarik Rawlings

*"These updated materials and the application materials in record satisfy the County's requirements and no further materials or analysis are required from the applicant."*

The following agencies either had no comment or did not respond to the notice: Arnold Irrigation

District, Avion Water Company, Bend Fire, Bend La Pine School District, Bend Metro Parks and Rec, Bend Planning Dept., Bend Public Works, BLM – Prineville, Department of State Lands, Dept of Land Conservation & Development, Deschutes County Assessor, Deschutes County Property Mgmt., Deschutes County Road Department, OR Dept of Ag Land Use Planning, OR Dept of Agriculture, OR Dept of Agriculture, OR Dept of Fish & Wildlife, OR Parks and Recreation, Swalley Irrigation District, and Watermaster - District 11.

**PUBLIC COMMENTS:** On April 14, 2023, the Planning Division mailed a Notice of Application to all property owners within 750 feet of the Subject Property. No comments from the public were received. Only the Applicant, Applicant’s representative and County Staff appeared at the Hearing. No request was received prior to or at the Hearing to keep the record open to allow the submission of additional evidence/argument. The Hearings Officer closed the record at the conclusion of the Hearing. Following the Hearing a letter was received from Kenneth Katzaroff (Schwabe, November 20, 2023). The Hearings Officer finds that the Katzaroff letter was submitted after the close of the record and therefore cannot be considered in the making of this recommendation.

**NOTICE REQUIREMENT:** The Applicant complied with the posted notice requirements of Section 22.23.030(B) of Deschutes County Code (DCC) Title 22. The Applicant submitted a Land Use Action Sign Affidavit, dated March 30, 2023, indicating the Applicant posted notice of the land use action on the Subject Property on that same date. On September 25, 2023, the Planning Division mailed a Notice of Public Hearing to all property owners within 750 feet of the Subject Property. A Notice of Public Hearing was published in the Bend Bulletin on Sunday, October 1, 2023. Notice of the first evidentiary hearing was submitted to the Department of Land Conservation and Development on September 22, 2023.

**REVIEW PERIOD:** According to Deschutes County Code 22.20.040(D), the review of the proposed quasi-judicial Plan Amendment and Zone Change application is not subject to the 150-day review period.

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

- LR-90-16: Lot of record verification.

### III. FINDINGS & CONCLUSIONS

#### **PRELIMINARY FINDINGS**

As noted above no person or entity offered oral testimony or written documentation, in a timely manner, in opposition of the Applicant’s proposal or the Staff Report in this case. As such, the Hearings Officer finds that the Staff Report, as drafted, provides substantial evidence and legal argument to allow the Hearings Officer to adopt the Staff Report as findings for this recommendation.

Staff discussed, in the Staff Report (see pages 12-23), evidence and legal issues related to Applicant's choice to not seek a Goal 3 exception. The Hearings Officer provides the following supplemental findings related to Applicant's decision not to seek a Goal 3 exception.

### **Relevant Law**

The following quoted sections of statutes, regulations and case law represent a general overview of the law related to whether a Goal 3 exception is warranted and/or necessary:

#### **OAR 660-033-0020 (1)(a)**

*"Agricultural Land" as defined in Goal 3 includes:*

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

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

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

#### **OAR 660-033-0030 (5 (b))**

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

#### **ORS 215.203 (2)(a)**

*As used in this section, "farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. "Farm use" also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. "Farm use" also includes the propagation, cultivation, maintenance and harvesting of aquatic, bird and animal species that are under the jurisdiction of the State Fish and Wildlife Commission, to the extent allowed by the rules adopted by the commission. "Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities*

described in this subsection. "Farm use" does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees or land described in ORS 321.267 (3) or 321.824 (3).

**DCC 18.04**

"Agricultural Land" means lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominately Class I-VI soils, and other lands in different soil classes which are suitable for farm use, taking into consideration soil fertility, suitability for grazing and cropping, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land use patterns, technological and energy inputs required, and accepted farming practices. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands shall be included as agricultural lands in any event.

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

*Wetherell v. Douglas County*, 342 Or 666 (2007) [hereafter referred to as "Wetherell Decision"]<sup>2</sup>

*Central Oregon LandWatch v. Deschutes County*, LUBA No. 2023-006 (2023) [hereafter referred to as the "LUBA 710 Decision"]

**Goal 3 Analysis**

The following represents the Hearings Officer's overview findings related to the legal approach to be taken with respect to addressing Applicant's argument that the Subject Property is not "agricultural land" and therefore no Goal 3 exception is required.

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<sup>2</sup> Staff, in the Staff Report (page 13), referenced the LUBA decision (52 Or LUBA 677 (2006)); the LUBA decision was appealed to the Oregon Supreme Court. The legal issue referenced by Staff was not a focus of the *Wetherell* Oregon Supreme Court decision.



LUBA stated, in the *LUBA 710 Decision* (page 11), that “generally counties apply Exclusive Farm Use (EFU) zones to ‘agricultural land’” (citing OAR 660-033-0090(1)). LUBA then proceeded to analyze the laws/regulations/codes referenced above in the context of determining if the property identified in that case was “agricultural land.”

The *LUBA 710 Decision* (pages 13-18) analysis of OAR 660-033-0020(1)(a)(A) addressed the need to meet identified U.S. Natural Resources Conservation Service (“NRCS”) soil classifications. Generally, OAR 660-033-0020(1)(a)(A) identifies soils (Eastern Oregon) classified as I-VI as “agricultural land.” However, LUBA (*LUBA 710 Decision*) held that OAR 660-033-0030(5) permits a county to rely, if certain conditions are met, upon a site-specific soils assessment.

OAR 660-033-0020(1)(a)(B) provides that property can be considered “agricultural land” in “other soil classes” if it is:

*“suitable for farm use as defined in ORS 215.203(2)(a) taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices.”*

The Hearings Officer refers to the OAR 660-033-0020(1)(a)(B) factors (i.e., soil fertility, suitability for grazing, ect.) as the “Suitability Factors.” OAR 660-033-0020(1)(a)(B) refers to ORS 215.203(2)(a) for the definition of “farm use.” ORS 215.203(2)(a), in part, states:

*“farm use” means the current employment of land for the primary purpose of obtaining a profit in money by...”*

The Oregon Supreme Court (*Wetherell Decision*) and LUBA (*LUBA 710 Decision*) addressed the “primary purpose of obtaining a profit” language in ORS 215.203(2)(a). The underlying County interpretation of “primary purpose of obtaining profit” focused on whether or not each of the Suitability Factors, in the context of whether it was reasonably possible (reasonable farmer concept) to obtain a profit, were met on the specific subject property. The *LUBA 710 Decision* refined LUBA’s interpretation of “primary purpose of obtaining profit” to require consideration of property other than (in addition to) just the property subject to the application (i.e., neighboring properties).

OAR 660-033-0020(1)(a)(C) provides that “agricultural land” includes “land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural land.”

DCC 18.04 definitions of “farm use” and “agricultural land” are generally consistent with the OAR 660-033-0020(1)(a) and ORS 215.203 definitions.

The Hearings Office finds the *LUBA 710 Decision* is currently under appeal to the Oregon Court of Appeals. The Hearings Officer considered the *LUBA 710 Decision* as instructional but not a final statement of the law related to the determination of what is “agricultural land” under Oregon and Deschutes County statutes/regulations/code. The Hearings Officer, however, did consider in this

recommendation the Applicant's Hearing testimony and submitted exhibits in the context of the LUBA 710 Decision.

## Title 18 of the Deschutes County Code

### Chapter 18.136, Amendments

#### Section 18.136.010, Amendments

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

**FINDING:** The Applicant, also the property owner, requested a quasi-judicial plan amendment and filed the applications for a plan amendment and zone change. The Applicant filed the required land use application forms for the proposal. The application will be reviewed utilizing the applicable procedures contained in Title 22 of the Deschutes County Code.

#### Section 18.136.020, Rezoning Standards

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

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

**FINDING:** Conformance with relevant sections of the Deschutes County Comprehensive Plan is reviewed below. The proposed rezoning from EFU to MUA-10 is required to be consistent with the proposed new plan designation. In previous comprehensive plan and zone change recommendations<sup>3</sup> to the Board of County Commissioners ("BCC") County hearings officers have found that the introductory statement of the Comprehensive Plan to be aspirational in nature and not necessarily approval criteria. The Hearings Officer, in this case, concurs with the prior BCC and hearings officer findings that this section is aspirational and not an approval criterion.

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

**FINDING:** In response to subsection (B) of this policy, the Applicant's Burden of Proof provides the following:

<sup>3</sup> Powell/Ramsey decision (PA-14-2, ZC-14-2) and Landholdings Decision (247-16-000317-ZC, 318-PA).

*"The proposed Plan change from Agricultural to Rural Residential Exception Area and Zone change from EFU-TRB to MUA-10 is consistent with the purposes and intents of the MUA zone classification. Per DCC 18.32.010, the stated purposes of the MUA zone are as follows:*

*The purposes of the Multiple Use Agricultural Zone are to preserve the rural character of various areas of the County while permitting development consistent with that character and with the capacity of the natural resources of the area; to preserve and maintain agricultural lands not suited to full time commercial farming for diversified or part time agricultural uses; to conserve forest lands for forest uses; to conserve open spaces and protect natural and scenic resources; to maintain and improve the quality of the air, water and land resources of the County; to establish standards and procedures for the use of those lands designated unsuitable for intense development by the Comprehensive Plan, and to provide for an orderly and efficient transition from rural to urban land use.*

*The County's Transportation System Plan includes planned improvements for the triangle between Highway 20 and Highway 97, as ODOT's management of the highways themselves is focusing on streamlining these through-ways by reducing local points of ingress and egress to the highways. The City of Bend and Deschutes County must develop local transportation networks that do not rely on these highways for local trips. This change includes improvements to Hunnell Road, scheduled for 2023. See Exhibit 7, Hunnell Road Project. City UGB Expansion includes expansion northward as well, presently approximately 7600' south of the subject property. The MUA-10 lands and other exception zone designations in the area are preferred lands for such expansion, as they do not require conversion of resource lands to urban uses, which is disfavored as part of the urban management process.*

*The MUA-10 zone is the optimal county zone designation to transition the Subject Property to a rural residential use. As detailed above and incorporated herein by reference, the Subject Property is not suited for agricultural use, as evidenced by the site-specific study of its soils (Exhibit 4). This property is more appropriately zoned MUA-10, like the surrounding property on 3 sides. The Subject Property is currently zoned Exclusive Farm Use (EFU) likely due to generalized designations in the overall area and/or prior ownership of larger parcels, rather than consideration of the agricultural capability of the land itself. The Property is not documented as ever having been in farm or pasture use, since it is unirrigated. It is not feasible to engage in productive or profitable farming activity without water rights, and the soils classified Classes VII and VIII will not sustain significant usable plant growth without irrigation.*

*This Comprehensive Plan Map and Zoning Map Amendment request will standardize zoning in the area and address the potential conflict and incompatibility between the EFU permitted uses and the adjacent, surrounding lands developed or committed for exception uses. The requested Comprehensive Plan Map and Zoning Map amendments will result in a zoning assignment that is compatible with neighboring properties rather than the current EFU zoning.*

*Rezoning of the Subject Property from EFU to MUA-10 will resolve the latent conflict between EFU permitted uses and the immediately adjacent rural residential uses. Furthermore, the Comprehensive Plan Map and Zone Map change will serve the interests of the northwest Bend*

*residents, surrounding neighborhoods, and existing and future public investments in public facilities and services along Hunnell Road.*

*By allowing for single family dwellings as an outright permitted use (DCC 18.32.020(B), the MUA-10 zone recognizes that rural lands may sometimes be better suited for residential use than agricultural uses. Other non-resource land uses are conditionally permitted; any nonresource land development proposal on the property other than a single family dwelling would not be allowed unless it was found to be consistent with the surrounding properties and the applicable conditional use evaluation standards. Therefore, the proposed change in zoning is consistent with the intent and purpose of the MUA-10 zone, and will be compatible with surrounding properties. The Hunnell Road improvements already planned serve this change well. As a straightened, widened, paved roadway, it is well planned to handle additional trips likely to be coming soon to this growing area."*

The Hearings Officer finds, based upon Applicant’s record submissions, that Applicant has demonstrated that the requested change in classification is consistent with the purpose of the proposed zoning.

- C. *That changing the zoning will presently serve the public health, safety and welfare considering the following factors:***
  - 1. *The availability and efficiency of providing necessary public services and facilities.***

**FINDING:** Although there are no plans to develop the Subject Property in its current state, the above criterion specifically asks if the proposed zone change will *presently* serve public health, safety, and welfare. The Applicant provided the following response in the submitted Burden of Proof statement:

*"The proposed change from EFU to MUA-10 will not require the extension of new public services to the Subject Property. The site is already adjacent to enhanced infrastructure (Hunnell Road, Avion water lines, and electrical power). The site will be served by on-site septic systems. Thus, public facilities are available and can be efficiently provided to the site.*

*Subdividing the property and the Plan Amendment / Zone Change will presently serve public health, safety, and welfare. The 40-acre parcel is not used as farm land at the present time because its soils are not sufficient and it is not irrigated. The proposed land use approvals would allow this land to be used safely and efficiently for uses allowed in the MUA-10 zone, benefiting public health, safety, and welfare by utilizing the facilities already in place to expand housing in the area. The surrounding areas contain numerous properties that are residentially developed and have water service from a quasi-municipal source or wells, on-site sewage disposal systems, electrical service, telephone services, etc. There are no known deficiencies in public services or facilities that would negatively impact public health, safety, or welfare by allowing a housing supply increase. Development of the property under MUA-10 zoning would need to comply with applicable requirements of the DCC, including land use permits, building permits, and sewage disposal permit processes. Through development review processes, assurance of adequate public services and*

*facilities will be verified and public health, safety, and welfare overall will be improved by the addition of much needed housing in an underutilized area."*

Staff noted (Staff Report, page 10) that prior to development of the Subject Property the Applicant would be required to comply with the applicable requirements of the DCC, including possible land use, building, and sewage disposal permits, in addition to approval of the related subdivision. Through these development review processes, assurance of adequate public services and facilities will be verified. The Hearings Officer agrees with Staff and the Applicant that Applicant's record submissions demonstrate compliance with this criterion.

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

**FINDING:** In response to this criterion the Applicant's Burden of Proof included the following comments:

*"This application asks for approval to change the Comprehensive Plan designation of non-agricultural land to the more accurate Rural Residential Exception Area category, and rezone the Subject Property from EFU-TRB to MUA-10. The MUA-10 zone serves as a transition between EFU lands with productive soils and other rural lands that are "not suited to full time commercial farming" and are more appropriately suited for "diversified or part time agricultural uses." The MUA-10 zone retains consistency with EFU lands by allowing a limited array of rural uses and mandating a 10-acre minimum lot size. There are only a limited number of uses allowed in the MUA-10 zone that are not also allowed in the EFU zone. Further, the majority of the different non-resource land uses in the MUA-10 zone are conditional, thereby ensuring that potential impacts on surrounding land uses are reviewed by the County during each application.*

*In summary, the MUA-10 zone remains a rural zone devoted to a mix of mixed rural and residential uses that acknowledges soil deficiencies precluding profitable farm use. This minimizes potential impacts on surrounding lands. The MUA-10 zoning would emphasize the continued protection of the open space and wildlife values of the property with its 10-acre minimums."*

In addition to these comments, the Applicant provided specific findings for relevant Comprehensive Plan goals and policies, which are addressed below. The Hearings Officer concurs with Staff and Applicant that the Applicant demonstrated, with evidence in the public record, that the impacts on surrounding land use will be consistent with the specific goals and policies contained within the Comprehensive Plan.

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

**FINDING:** In response to this criterion, the Applicant's Burden of Proof provides the following:

*"Circumstances have changed since the zoning of the property in November, 1979. Much of unirrigated lands were zoned EFU in large blocks in the interest of efficiency and expediency, even*

*though these parcels were dry and not profitably farmable. This property was zoned without detailed or site specific consideration given to its history, soil, geologic, or topographic characteristics. Now that a certified soils scientist has conducted a detailed Soils Investigation, it is documented that the parcel does not qualify as agricultural farmland and is properly rezoned to a practical designation reflecting the true facts of the parcel. See Exhibit 4.*

*In summary, the County's zoning of agricultural lands has been a process of refinement since the 1970s. The Subject Property appears to have never been suitable for production as profitable agriculture and there is no record of it ever been actively farmed, due to its poor soil and lack of irrigation water. Although it was originally assigned EFU zoning, this property likely should have been originally zoned MUA-10 due to its location, soils, geology, and lack of irrigation water supply. However, in 1979, only tracts with dwellings or divisions below minimum sizes were classified as exception lands, regardless of soils. It is now known that the parcel should be rezoned to MUA-10, consistent with the zoning of adjacent rural-residential uses and its poor soil. The MUA-10 zoning assignment supports logical, compatible, and efficient use of the land in keeping with its highest and best use."*

Staff, in the Staff Report (page 12), stated the following:

*"It is unclear to staff why the subject property was initially zoned EFU. Staff is unaware of any evidence such as soil classification, availability of irrigation, or historic farming, which explains its current zoning. Staff agrees with the applicant's findings that there have been several particularly relevant changes in circumstances that warrant a zone change, especially in consideration of the detailed information provided by the soil study. Staff finds the applicant has demonstrated compliance with this criterion, but asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit."*

The Hearings Officer agrees, after reviewing the documents in the record and considering the testimony of County Staff and Applicant's representative at the Hearing, that the underlying rationale and reasoning underlying the original zoning the Subject Property being zoned as EFU is not clear and/or certain. The Hearings Officer finds that whatever the circumstances leading to the decision to assign the Subject Property with the EFU designation there are many relevant factors that are different today. Currently, urban style growth is moving towards the Subject Property and farm uses in the immediate vicinity are rare; if they exist at all. Properties to the north and west of the Subject Property are not in farm use; the property boarding to the north has been developed as the Sun Cloud Estates subdivision and properties to the south and west are divided into residential use parcels. The property boarding the Subject Property to the east is owned by the County and based upon evidence in the record has not been used for farming or agricultural purposes.

The Hearings also finds, based primarily upon the Applicant's site-specific soil study, that the soils on the Subject Property do not support the original EFU zoning designation. The Hearings Officer finds that there has been a change in circumstances since the Subject Property was zoned EFU. The Hearings Officer also finds that the EFU zoning was a mistake. The Hearings Officer finds this criterion is met.

**The Deschutes County Comprehensive Plan**

**Chapter 2, Resource Management**

Section 2.2, Agricultural Lands Policies

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

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

*“As discussed below, the Subject Property is not correctly categorized as agricultural land, because of its inability to retain water and sustain plant growth to a sufficient degree to make it profitable. See the Applicant’s soil study (Exhibit 4) and the responses in the submitted burden of proof, which effectively demonstrate that the Subject Property is not suitable for designation as Agriculture in the Comprehensive Plan. Changing the Subject Property’s Comprehensive Plan designation and zoning is an acknowledgment of site-specific facts, not interpretation.*”

The Hearings Officer incorporates the Preliminary Findings as additional findings for this criterion. The Hearings Officer also incorporates the findings for Comprehensive Plan Policy 2.2.3 and OAR 660-006-0005, 660-015-0000(3), 660-033-0020 and 660-033-0030 as additional findings for this criterion.

The Hearings Officer, based upon Applicant’s record submissions and the incorporated findings, concludes that the Subject Property is not “agricultural land” as that phrase is described in relevant laws/rules and relevant land use case law. Therefore, the Hearings Officer finds this policy is not applicable to the Subject Property.

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

**FINDING:** The Applicant is not asking to amend the subzone that applies to the Subject Property; rather, the Applicant is seeking a change under Policy 2.2.3 and has provided evidence to support rezoning the subject property to MUA-10.

***Policy 2.2.3 Allow comprehensive plan and zoning map amendments for individual EFU parcels as allowed by State Statute, Oregon Administrative Rules and this Comprehensive Plan.***

**FINDING:** The Hearings Officer incorporates the Preliminary Findings as additional findings for this criterion. The Hearings Officer also incorporates the findings for Comprehensive Plan Policy 2.2.3

and OAR 660-006-0005, 660-015-0000(3), 660-033-0020 and 660-033-0030 as additional findings for this policy.

The Applicant is seeking approval of a plan amendment and zone change to re-designate and rezone the properties from Agricultural to Rural Residential Exception Area. The Applicant is not seeking an exception to Goal 3 – Agricultural Lands, but rather demonstrated that the Subject Property does not meet the state definition of “Agricultural Land” as defined in Statewide Planning Goal 3 (OAR 660-033-0020).

Staff provided the following comments in the Staff Report (page 13):

*“The Land Use Board of Appeals (LUBA) allowed this approach in Wetherell v. Douglas County, 52 Or LUBA 677 (2006), and this approach has been utilized in the previous Plan Amendment and Zone Change applications within Deschutes County. The County Hearings Officer also accepted this method in file PA-10-5 (Rose & Associates). In Wetherell v. Douglas County, LUBA states at pp. 678-679:*

*‘As we explained in DLCD v. Klamath County, 16 Or LUBA 817, 820 (1988), there are two ways a county can justify a decision to allow nonresource use of land previously designated and zoned for farm use or forest uses. One is to take an exception to Goal 3 (Agricultural Lands) and Goal 4 (Forest Lands). The other is to adopt findings which demonstrate the land does not qualify either as forest lands or agricultural lands under the statewide planning goals. When a county pursues the latter option, it must demonstrate that despite the prior resource plan and zoning designation, neither Goal 3 or Goal 4 applies to the property. Caine v. Tillamook County, 25 Or LUBA 209, 218 (1993); DLCD v. Josephine County, 18 Or LUBA 798, 802 (1990).’*

*Staff agrees that the facts presented by the applicant in the burden of proof for the subject application are similar to those in the Wetherell decisions and in previous Deschutes County plan amendment and zone change applications. Therefore, the applicant has the potential to prove the properties are not agricultural land and do not require an exception to Goal 3 under state law.”*

The Hearings Officer, based upon the above-quoted Staff comments and the incorporated findings, concurs with Staff’s conclusion that the Applicant may attempt to prove the Subject Property is not “agricultural land” and therefore does not require a Goal 3 exception.

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

**FINDING:** This plan policy provides direction to Deschutes County to develop new policies to provide clarity when EFU parcels can be converted to other designations. In the findings for previous Plan Amendment and Zone Change applications, the County has found that this policy does not impose a moratorium on requests for applications of this type, and that nothing in this plan policy prohibits the conversion of EFU parcels to other designations (see also PA-11-7, 247-16-000318-PA, PA-10-5, PA-07-1 and more). The Hearings Officer concurs with the County’s previous determinations and finds the proposal is consistent with this policy.



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

**Policy 2.2.13 Identify and retain accurately designated agricultural lands.**

**FINDING:** The Hearings Officer incorporates the Preliminary Findings as additional findings for this criterion. The Hearings Officer also incorporates the findings for Comprehensive Plan Policy 2.2.3 and OAR 660-006-0005, 660-015-0000(3), 660-033-0020 and 660-033-0030 as additional findings for this policy.

This plan policy makes it clear that it is County policy to identify and retain agricultural lands that are accurately designated. The Applicant proposed that the Subject Property was not accurately designated as demonstrated by the soil study and the applicant’s Burden of Proof. The Hearings Officer finds that the EFU designation was not accurately placed on the Subject Property.

Section 2.5, Water Resources Policies

**Goal 6, Coordinate land use and water policies.**

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

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

Section 2.7, Open Spaces, Scenic Views and Sites

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

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

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

**FINDING:** These policies are fulfilled by the County’s Goal 5 program. The County protects scenic views and sites along major rivers and roadways by imposing Landscape Management (“LM”) Combining Zone to certain adjacent properties. Staff noted (Staff Report, page 15) that no LM Combining Zone applies to the subject property at this time. The Subject Property is also not located

within the Open Space and Conservation (“OS&C”) Zone. Furthermore, no new development is proposed under the present application. These provisions of the plan, therefore, are not impacted by the proposed zone change and plan amendment.

## Chapter 3, Rural Growth

### Section 3.2, Rural Development

#### ***Growth Potential***

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

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

**FINDING:** The Hearings Officer incorporates the Preliminary Findings as additional findings for this criterion. The Hearings Officer also incorporates the findings for Comprehensive Plan Policy 2.2.3 and OAR 660-006-0005, 660-015-0000(3), 660-033-0020 and 660-033-0030 as additional findings for this policy.

This section of the Comprehensive Plan does not contain Goals or Policies, but does provide the guidance above. In response to this section, the Applicant’s Burden of Proof provides the following:

*“The County Comprehensive Plan above notes that “Some farm lands with poor soils that are adjacent to rural residential uses can be rezoned as rural residential.” The requested Plan amendment is based on the results of the submitted Soils Investigation (Exhibit 4) which has demonstrated that the Subject Property does not constitute “agricultural lands” as defined in the goal, based upon a site-specific soils study conducted by a certified, professional soil scientist (Brian Raby). Therefore, the proposal is consistent with this section of the Comprehensive Plan, given that the Subject Property has been determined to be non-resource land appropriate for rural residential development. Its poor soil and adjacency to rural residential areas on 3 sides and 7600’ from the Bend UGB make it an appropriate candidate for the change contemplated by this section of the Plan.”*

Based upon the incorporated findings and the above-quoted Applicant response the Hearings Officer finds Applicant’s proposal in this case complies with this policy.

### Section 3.3, Rural Housing

#### ***Rural Residential Exception Areas***

***In Deschutes County most rural lands are designated for farms, forests or other resources and protected as described in the Resource Management chapter of this Plan. The majority of the land not recognized as resource lands or Unincorporated Community is designated Rural Residential Exception Area. The County had to follow a process under Statewide Goal 2 to explain why these lands did not warrant farm or forest zoning. The major determinant was that many of these lands were platted for residential use before Statewide Planning was adopted.***

***In 1979 the County assessed that there were over 17,000 undeveloped Rural Residential Exception Area parcels, enough to meet anticipated demand for new rural housing. As of 2010 any new Rural Residential Exception Areas need to be justified through taking exceptions to farm, forest, public facilities and services and urbanization regulations, and follow guidelines set out in the OAR.***

**FINDING:** The Hearings Officer incorporates the Preliminary Findings as additional findings for this criterion. The Hearings Officer also incorporates the findings for Comprehensive Plan Policy 2.2.3 and OAR 660-006-0005, 660-015-0000(3), 660-033-0020 and 660-033-0030 as additional findings for this policy.

A County hearings officer's decision for file numbers PA-11-17/ZC-11-2 provides the following findings in response to this portion of Section 3.3 of the Comprehensive Plan:

*"To the extent that the quoted language above represents a policy, it appears to be directed at a fundamentally different situation than the one presented in this application. The quoted language addresses conversions of "farm" or "forest" land to rural residential use. In those cases, the language indicates that some type of exception under state statute and DLCD rules will be required in order to support a change in Comprehensive Plan designation. See ORS 197.732 and OAR 660, Division 004. That is not what this application seeks to do. The findings below explain that the applicant has been successful in demonstrating that the subject property is composed predominantly of nonagricultural soil types. Therefore, it is permissible to conclude that the property is not "farmland" as defined under state statute, DLCD rules, and that it is not correctly zoned for exclusive farm use. As such, the application does not seek to convert "agricultural land" to rural residential use. If the land is demonstrated to not be composed of agricultural soils, then there is no "exception" to be taken. There is no reason that the applicant should be made to demonstrate a reasons, developed or committed exception under state law because the subject property is not composed of the type of preferred land which the exceptions process was designed to protect. For all these reasons, the Hearings Officer concludes that the applicant is not required to obtain an exception to Goal 3.*

*There is one additional related matter which warrants discussion in connection with this issue. It appears that part of Staff's hesitation and caution on the issue of whether an exception might be required is rooted in the title of the Comprehensive Plan designation that would ultimately apply to the subject property – which is "Rural Residential Exception Area." There appears to be seven countywide Comprehensive Plan designations as identified in the plan itself. These include*

*“Agriculture, Airport Development, Destination Resort Combining Zone, Forest, Open Space and Conservation, Rural Residential Exception Area, and Surface Mining.” Of the seven designations, only Rural Residential Exception Area provides for associated zoning that will allow rural residential development. As demonstrated by reference to the Pagel decision discussed above, there appears to be instances in which rural residential zoning has been applied without the underlying land necessarily being identified as an exception area. This makes the title of the “Rural Residential Exception Area” designation confusing, and in some cases inaccurate, because no exception is associated with the underlying land in question. However, it is understandable that since this designation is the only one that will allow rural residential development, that it has become a catchall designation for land types that are authorized for rural residential zoning. That is the case with the current proposal, and again, for the same reasons set forth in Hearings Officer Green’s decision in Pagel, I cannot find a reason why the County would be prohibited from this practice.*

Based on the incorporated findings and the above-quoted comments this Hearings Officer agrees with the past Deschutes County hearings officer interpretations and finds that the above language is not a policy and does not require an exception to the applicable Statewide Planning Goal 3. The Hearings Officer finds that the proposed RREA plan designation is the appropriate plan designation to apply to the Subject Property.

Section 3.7, Transportation

***The Transportation System was adopted in Ordinance 2012-005 and is hereby incorporated into this Plan as Appendix C ...***

**Appendix C – Transportation System Plan**

**ARTERIAL AND COLLECTOR ROAD PLAN**

**Goal 4**

- 4. Establish a transportation system, supportive of a geographically distributed and diversified economic base, while also providing a safe, efficient network for residential mobility and tourism.***

**Policies**

...

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

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

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

**OREGON ADMINISTRATIVE RULES CHAPTER 660, LAND CONSERVATION AND DEVELOPMENT DEPARTMENT**

**Division 6, Goal 4 – Forest Lands**

OAR 660-006-0005, Definitions

- (7) “Forest lands” as defined in Goal 4 are those lands acknowledged as forest lands, or, in the case of a plan amendment, forest lands shall include:**
  - (a) Lands that are suitable for commercial forest uses, including adjacent or nearby lands which are necessary to permit forest operations or practices; and**
  - (b) Other forested lands that maintain soil, air, water and fish and wildlife resources.**

**FINDING:** The Subject Property is not zoned for forest lands, nor are any of the properties within an approximately 3.6-mile radius. The Subject Property does not contain merchantable tree species and there is no evidence in the record that the Subject Property has been employed for forestry uses historically. None of the soil units comprising the parcel are rated for forest uses according to NRCS data. The Subject Property does not qualify as forest land.

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

OAR 660-015-0000(3)

***To preserve and maintain agricultural lands.***

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

**FINDING:** Goal 3 defines “agricultural land,” which is repeated in OAR 660-033-0020(1). The Hearings Officer incorporates the Preliminary Findings as additional findings for this criterion. The Hearings Officer also incorporates the findings for Comprehensive Plan Policy 2.2.3 and OAR 660-033-0020 and 660-033-0030 as additional findings for this policy. The Hearings Officer finds that the Subject Property is not “agricultural land” as defined by relevant Oregon laws/regulations.

OAR 660-033-0020, Definitions

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

**(A) Lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon<sup>4</sup>;**

**FINDING:** The Hearings Officer incorporates the Preliminary Findings as additional findings for this criterion.

The Applicant's basis for not requesting an exception to Goal 3 is that the Subject Property is not "agricultural land." In support, the Applicant offered the following response to the above definition in addition to subsection (1)(c)<sup>5</sup> as included in the submitted Burden of Proof statement:

*"A professionally conducted Soils Investigation has demonstrated that the Subject Property is not composed predominantly of Class I - VI soils (Eastern Oregon administrative standard cited above). To analyze the soils on the site, the Applicant obtained the services of Brian Raby, a Certified Professional Soil Scientist. The complete Soils Investigation report, detailing the procedures and methodology used as well as the complete findings, is attached to this application as Exhibit 4. It is certified by DLCD and that certification is included in the cited exhibit.*

*The purpose of the Soils Investigation for the Property was to determine the existence of agricultural soils on the Subject Property for planning purposes. The soils were found to be predominantly non-agricultural soils according to a certified and well-qualified soils scientist using state sanctioned and approved field investigation methods and techniques. Thus, the Subject Property as defined in OAR 660-033-0020 does not legally qualify as Agricultural land.*

*The Subject Property is characterized as a "lava plain north of Bend" on Page 2 of Exhibit 4. It has no record of ever having been irrigated, used for producing crops or grazing livestock, and is not part of a farm unit and is currently vacant and unused. None of the surrounding properties are used for profitable agriculture including the MUA-10 on three sides and the one EFU-zoned abutting property to the east. They are predominantly developed with rural residences and small hobby farms or are unused. There are no known commercial farm practices being undertaken on adjacent or nearby agricultural lands.*

*The Subject Property is zoned Exclusive Farm Use (EFU), but this designation is not based on the agricultural capability of the land, as the Subject Property has no record of ever having been in farm or pasture use.*

*This is understandable, now that the soil classification of this specific property is known. The soil types are Class VII and VIII and the property has no irrigation water rights. This Comprehensive Plan Map and Zoning Map Amendment request will help to resolve the potential conflict and*

<sup>4</sup> OAR 660-033-0020(5): "Eastern Oregon" means that portion of the state lying east of a line beginning at the intersection of the northern boundary of the State of Oregon and the western boundary of Wasco County, then south along the western boundaries of the Counties of Wasco, Jefferson, Deschutes and Klamath to the southern boundary of the State of Oregon.

<sup>5</sup> "Agricultural Land" does not include land within acknowledged urban growth boundaries or land within acknowledged exception areas for Goal 3 or 4.

*incompatibility between the EFU permitted uses and the adjacent, surrounding lands developed or committed for rural residential uses, and allow the land to be put to its highest and best use, rather than continue to go fallow."*

Staff (Staff Report, pages 19-20) provided the following comments:

*"Staff has reviewed the soil study provided by Brian Rabe of Cascade Earth Sciences (dated December 11, 2020) and agrees with the applicant's representation of the data for the subject property. Staff finds, based on the submitted soil study and the above OAR definition, that the subject property is comprised predominantly of Class VII and VIII soils and, therefore, does not constitute "Agricultural Lands" as defined in OAR 660-033-0020(1)(a)(A) above."*

The Hearings Officer finds that the Applicant Soil Study is credible and constitutes substantial evidence. The Hearings Officer finds that the Applicant Soil Study was conducted consistent with DLCDC requirements (Exhibit 4 – Letter from DLCDC). The Applicant Soil Study found that the Subject Property has 26.2 acres (65.4%) of Class VII and Class VIII soils. The Applicant Soil Study concluded that the Subject Property is "predominantly" Class VII and Class VIII soils. The Hearings Officer finds that OAR 660-033-0020 (1)(a)(B) describes "agricultural land," in Eastern Oregon, to include lands that are predominantly Class I – VI. Based upon the Applicant Soil Study that the Subject Property is predominantly Class VII and Class VIII soils. The Hearings Officer finds, per OAR 660-033-0020 (1)(a)(A) that the Subject Property is not "agricultural land."

- (B) *Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices; and***
- (C) *Land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.***
- (b) *Land in capability classes other than I-IV/I-VI that is adjacent to or intermingled with lands in capability classes I-IV/I-VI within a farm unit, shall be inventoried as agricultural lands even though this land may not be cropped or grazed;***

**FINDING:** The Hearings Officer incorporates the Preliminary Findings as additional findings for this criterion. The Hearings Officer finds that the Applicant addressed the OAR 660-033-0020 (1)(a)(B) "Suitability Factors" in the Applicant Soil Study and in Applicant's Hearing testimony and Hearing documentary submissions.

Staff, in the Staff Report (pages 20 – 21) included the following statements from the Applicant Soil Study:

### **Soil Fertility**

These soils are predominantly shallow with sandy textures (low clay content) and low organic matter content. These conditions result in a low Cation Exchange Capacity (CEC) that limits the ability of these soils to retain nutrients. Fertilizer must be applied to achieve optimum yields. Proper management requires that fertilizers be applied in small doses on a frequent basis. The revenue from most locally adapted crops will not cover the costs of inputs and management.

### **Suitability for Grazing**

Without water, dryland grazing is the only potential agricultural use. The rangeland productivity potential of the soils mapped at the Site are shown in Table 6 of the published soil survey<sup>1</sup>. The productivity ranges from 700 to 900 to 1,100 pounds of dry matter per acre per year (unfavorable, normal, and favorable conditions, respectively) for Deskamp soils. The productivity ranges from 500 to 700 to 900 pounds of dry matter per acre per year (unfavorable, normal, and favorable conditions, respectively) for Gosney. It is often recommended that a sustainable level of grazing only removes about 25% of the total production leaving the remainder for maintenance of the stand, wildlife, and detritus for building soil organic matter. According to Ogle & Brazee<sup>3</sup>, it takes an estimated 912.5 pounds of dry matter to feed a cow and calf pair, or equivalent, for one month (animal unit month – AUM). Based on the acreages of each soil, the sustainable dry matter production potential for the Site ranges from 5,000 to 6,725 to 8,450 pounds, or about 5 to 7 to 9 AUM (unfavorable, normal, and favorable conditions, respectively). So the grazing potential is limited to 5 to 9 pair for one month or less than one pair for a year. This does not represent a viable source of grazing.

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<sup>3</sup> Ogle, D., & Brazee, B. (2009). *Technical note: estimating initial stocking rates*, (TN Range No. 3). Boise, ID: U.S. Department of Agriculture - Natural Resources Conservation Service.

(continued)



**Climatic Conditions**

The general climate conditions at the Site are typical of those in the Bend area with cold winters and warm, dry summers. There is no reason to believe there is anything unique about the climate at this specific location that would, by itself, warrant special attention.

**Existing and Future Availability of Water for Irrigation**

The Site is within the Swalley Oregon Irrigation District and has no water assigned to it. Most water for irrigation is fully allocated (or over-allocated) throughout the region. In most cases, water for any newly irrigated acreage would have to be removed from acreage elsewhere. This only makes sense if the land that the water is being moved to is better than the land where it is currently being used. There are substantial costs related to acquiring or moving water rights, as well as costs for acquiring or modifying and maintaining irrigation equipment. These costs would not be justified for small or irregular shaped areas.

The Class VII and VIII soils documented on the Site will remain Class VII and VIII regardless of irrigation. Even if water were available, the dispersed nature and irregular shapes of the Class VI (Deskamp) soils make the installation of irrigation equipment impractical for the limited added benefit irrigation would provide. The only potential agricultural use would be for dryland grazing of native grasses (discussed previously). The limited forage potential for the Site does not represent a sufficient number of AUMs for a commercially viable livestock operation.

**Existing Land Use Patterns**

The Site and parcel to the east are zoned Exclusive Farm Use Tumalo-Redmond-Bend (EFU TRB). The parcel to the east consists of 80 acres, is owned by Deschutes County, and is not managed for agricultural use. The parcels to the north, west, and south are zoned Multiple Use Agricultural 10-acre minimum (MUA10) with no indications of current or recent agricultural activity.

**Technological and Energy Inputs Required**

There is nothing that has been revealed during the course of this investigation that would suggest there is any technological or energy-related reason to retain the subject property in an agricultural classification. The low fertility, cost of irrigation systems and other infrastructure, as well as the irregular pattern of potentially suitable soils make the use of the Site for commercial agricultural production impractical and unprofitable.

**Accepted Farming Practices**

Since the Site is surrounded by parcels that are not managed for commercial farm use and there does not appear to be any recent history of farm use, the re-zoning of this parcel is not likely to represent any significant increase in the potential for conflicts with accepted agricultural practices.

Applicant’s legal counsel, Liz Dickson (“Dickson”), offered oral testimony and additional documents at the Hearing. Dickson’s additional documents were referenced, at the Hearing, as Exhibits 11, 12, 13 and 14. The focus of Dickson’s Hearing testimony was upon the *LUBA 710 Decision* and LUBA’s analysis of the Suitability Factors. The Hearings Officer finds Dickson’s testimony and accompanying documentary submissions to be credible and persuasive.

Dickson, in her Hearing testimony, emphasized that the Subject Property soils are predominantly class VII and VIII. Dickson stated the Applicant attempted to ascertain the level, if any, of historical farming activity in the immediate vicinity of the Subject Property. Dickson indicated, based upon Applicant’s research, that the Subject Property has never been used for farm or agricultural

purposes. Dickson noted that the Subject Property has not been cleared and has no water (irrigation rights).

Dickson testified that Applicant considered the Suitability Factors in the context of the *LUBA 710 Decision*. Dickson stated that Applicant considered adjacent / neighboring properties in relation to all relevant Suitability Factors. Dickson stated, based upon Applicant's research, that adjacent/ neighboring properties are not used for commercial farming or "agricultural purposes." Dickson stated that some nearby properties may conduct "hobby farm" activities but those activities were subordinate to the primary residential use and are not conducted for the primary purpose of obtaining a profit.

Dickson opined that the only possible "agricultural use" or farm use that might be considered feasible at the Subject Property is "grazing." Dickson, referencing the Applicant Soil Study, stated that the Subject Property standing alone, could not support commercial grazing. Dickson noted that property adjacent to the north, west and south are developed for residential uses. Dickson stated that combining the Subject Property with any of the adjacent properties would not result in creating a profitable situation for grazing.

Dickson reiterated that the Subject Property does not possess any irrigation rights. Dickson stated that existing land use patterns preclude the likelihood of combining the Subject Property with one or more adjacent property for the purpose of creating a profitable agricultural or farm use. Likewise, Dickson stated that the "accepted farming practices" Suitability Factor was not relevant to the Subject Property as no farming occurs on the Subject Property or any adjacent property.

Dickson, relying upon Exhibits 11, 12, 13 and 14, demonstrated geographical and land use differences between the property subject to the *LUBA 710 Decision* and the Subject Property. Dickson noted that the property subject to the *LUBA 710 Decision* is located in an area where agricultural/farm uses are prevalent. Dickson noted that ranches adjacent to or nearby the property subject to the *LUBA 710 Decision* expressed the desire to combine to facilitate improved agricultural/farm efficiency.

Dickson noted that the *LUBA 710 Decision* is under appeal and it is possible that the Oregon Court of Appeals and/or Oregon Supreme Court could reverse or modify the *LUBA 710 Decision*. However, despite the appellate status of the *LUBA 710 Decision* Dickson opined that there is evidence in the record sufficient to meet the requirements of that decision.

The Hearings Officer finds Applicant addressed, with substantial evidence, the *LUBA 710 Decision* Suitability Factors analysis. The Hearings Officer agrees with Staff and Applicant that there is sufficient evidence in the record to conclude that the Subject Property does not qualify as "agricultural land" as defined in OAR 660-033-0020.

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

**FINDING:** This criterion is addressed above.

OAR 660-033-030, Identifying Agricultural Land

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

**FINDING:** The Hearings Officer incorporates the Preliminary Findings as additional findings for this criterion. The Hearings Officer also incorporates as additional findings the findings for OAR 660-033-0020 (1)(a)(A) & (B). The Hearings Officer finds that the Applicant addressed the OAR 660-033-0020 (1)(a)(B) "Suitability Factors" in the Applicant Soil Study and in Applicant's Hearing testimony in documentary submissions.

Staff provided (Staff Report, pages 22-24) additional discussion of the LUBA 710 Decision. "

*"... in a recent decision by the Land Use Board of Appeals (LUBA)<sup>6</sup>, LUBA remanded the Deschutes County Board of County Commissioners decision to approve a post-acknowledgement plan amendment and rezone application submitted by 710 Properties, LLC to change the designation and zoning of the subject property from AG/EFU to RREA/RR-10 on 710 acres of property west of Terrebonne and Redmond and north of Highway 126.*

*LUBA remanded the decision to "consider the ability to use the subject property for farm use in conjunction with other property, including the Keystone property," and directed that the Board "may not limit its review to the profitability of farm use of the subject property as an isolated unit." LUBA further stated that the Board "must consider the ability to import feed for animals and may not limit its consideration to the raising of animals where adequate food may be grown on the subject property." LUBA continued that the Board "must also consider whether the subject property is suitable for farm use as a site for construction and maintenance of farm equipment," and must "consider the evidence and adopt findings addressing the impacts of redesignation of the property related to water, wastewater, and traffic and whether retaining the property's agricultural designation is necessary to permit farm practices on adjacent or nearby lands." Each of the remanded issues is listed separately below.*

<sup>6</sup> *Central Oregon Landwatch, et al. v. Deschutes County and 710 Properties, LLC, et al.* (LUBA No. 2023-009)

- LUBA's discussion at pages 36-37 sustained DLCD's second assignment of error and portions of Redside's and Keystone's assignments of error based on a determination that the County did not consider the ability to use the subject property with a primary purpose of obtaining a profit in money **in conjunction with other property**. LUBA stated that "Relating the profitability of farm related activity solely to the activity on the subject property places undue weight on profitability." More discussion on this is found on pages 46-49 of the decision.
- "Source of Feed" – this discussion is found at pages 37-42 of the decision. **LUBA's decision states that the County erred in construing OAR 660-033-0020(1)(a)(B) and ORS 215.203(2)(a) in concluding that land is suitable for farm uses involving animals only if sufficient feed can be grown on-site.** LUBA stated that these authorities are silent as to the source of the feed that is necessary to sustain animals involved in farm uses. It also noted that, in determining whether land is suitable for dryland grazing, a farmer would have a reasonable expectation of obtaining a profit in money from that activity, based on the factors listed in OAR 660-033-0020(1)(a)(B) (soil fertility, suitability for grazing, climactic conditions, availability of water for irrigation, etc.)
- "On-Site Construction and Maintenance of Equipment and Facilities" – this discussion is found at pages 42-46 of the decision. **LUBA determined that the County erroneously concluded that this use need not be limited to supporting farm activities that occur on the subject property.** In other words, it does not matter where the equipment and facilities are used, whether on or off-site. That said, after a consideration of whether equipment and facilities can be stored onsite for the purpose of making a profit in money also requires a determination of the suitability of the property based on the factors listed in OAR 660-033-0020(1)(a)(B).
- "Nearby and Adjacent Land" – discussion at pages 46-49 of the decision. LUBA directs the County to make findings and conclusions on the question of whether the subject property is suitable for farm use in conjunction with nearby or adjacent land. It noted that several farms and ranchers testified they would not consider incorporating the subject property into their farm operations, and that it **"may be that the subject property is not suitable for farm use even in conjunction with nearby or adjacent land. However, the county did not reach that conclusion."**
- DCC 18.136.020(C)(2) and DCCP Agricultural Lands Goal 1 – see pages 69-74 of the decision. The County's findings that the impacts on surrounding land use from rezoning will be consistent with DCCP Agricultural Lands Goal 1 are inadequate and not supported by substantial evidence. LUBA states that the County only considered impacts on surrounding nonresource lands, and that it was error to consider that the subject property is functionally separated from surrounding agricultural lands due to its location on a plateau. LUBA remands for further consideration of water, wastewater, traffic impacts on surrounding agricultural lands and the agricultural industry.

The Hearings Officer appreciates Staff's above-quoted analysis and perspective. The Hearings Officer finds that Applicant, in its Burden of Proof, Applicant Soil Study and Dickson's Hearing testimony and record submissions, provided evidence and argument relating to (1) the ability to use the Subject Property with a primary purpose of obtaining a profit in money in conjunction with other

property, (2) the impacts of providing feed for grazing stock from outside properties, (3) the on-site construction and maintenance of equipment and facilities to serve other properties, and (4) the off-site impacts on resource and nonresource lands.

As summarized in the findings for OAR 660-033-0020 (1)(a)(B) above, the Subject Property has soils that are not considered suitable for "agricultural use" and that the Subject Property is not and has not been used for "agricultural uses." The OAR 660-033-0020 (1)(a)(B) findings indicated that the adjacent or nearby properties are not used for "agricultural uses" or farm uses. The OAR 660-033-0020 (1)(a)(B) findings indicate that combining the Subject Property with any adjacent or nearby property would not improve the chances that the Subject Property, or any nearby or adjacent property, could be operated for the primary purpose of obtaining a profit from agricultural or farm related uses. Impacts on nearby properties is discussed elsewhere in this recommendation. The Hearings Officer approval of Applicant's request would have minimal impacts, if any, on adjacent properties. Rather, the Hearings Officer finds that the proposed change would more consistently reflect the existing land use pattern in the area.

The Hearings Officer agrees with Staff and Applicant that there is sufficient evidence in the record to conclude that the Subject Property does not qualify as "Agricultural Land" as defined in OAR 660-033-0030.

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

**FINDING:** The Hearings Officer incorporates the Preliminary Findings as additional findings for this criterion. The Hearings Officer also incorporates as additional findings the findings for OAR 660-033-0020 (1)(a)(A) & (B). The Hearings Officer finds that the Applicant addressed the OAR 660-033-0020 (1)(a)(B) "Suitability Factors" in the Applicant Soil Study and in Applicant's Hearing testimony and Hearing documentary submissions.

The Hearings Officer finds, based upon the evidence and arguments in the record that the Subject Property is not suitable for any identified "agricultural use" or farm use. Further, the Hearings Officer finds that is not necessary to conduct any sort of "agricultural use" or farm use on the Subject Property to facilitate or promote agricultural or farm practices to be undertaken on adjacent or nearby lands. In this review the Hearings Officer has not assigned any significance to the ownership of the Subject Property or adjoining properties.

- (5)(a) More detailed data on soil capability than is contained in the USDA Natural Resources Conservation Service (NRCS) soil maps and soil surveys may be used to define agricultural land. However, the more detailed soils data shall be related to the NRCS land capability classification system.**
- (b) If a person concludes that more detailed soils information than that contained in the Web Soil Survey operated by the NRCS as of January 2, 2012, would assist a**

**county to make a better determination of whether land qualifies as agricultural land, the person must request that the department arrange for an assessment of the capability of the land by a professional soil classifier who is chosen by the person, using the process described in OAR 660-033-0045.**

**FINDING:** The Hearings Officer incorporates the Preliminary Findings as additional findings for this criterion. The submitted Applicant Soil Study provided more detailed soils information than contained in the NRCS Web Soil Survey. NRCS sources provide general soils data for large units of land. The Applicant Soil Study provided detailed and accurate information about a single property based on numerous soil samples taken from the Subject Property. The Applicant Soil Study reports data and conclusions consistent with the NRCS Land Capability Classification (LCC) system that classifies soils class 1 through 8. An LCC rating is assigned to each soil type based on rules provided by the NRCS.

The Applicant Soil Study concluded that the Subject Property contains 65.4 percent Class 7 and 8 soils, based on site observations and examination of 111 test holes. The Applicant Soil Study is accompanied in the record by correspondence from the DLCDC. The DLCDC correspondence confirms that the Applicant Soil Study was completed and consistent with the reporting requirements for agricultural soils capability as dictated by DLCDC. Based on qualifications of the professionals conducting the site work and report preparation, the Hearings Officer finds the submitted Applicant Soil Study to be definitive and accurate in terms of site-specific soil information for the Subject Property.

- (c) ***This section and OAR 660-033-0045 apply to:***  
 (A) ***A change to the designation of land planned and zoned for exclusive farm use, forest use or mixed farm-forest use to a non-resource plan designation and zone on the basis that such land is not agricultural land; and***

**FINDING:** The Hearings Officer incorporates the Preliminary Findings as additional findings for this criterion. The Hearings Officer also incorporates as additional findings the findings for OAR 660-033-0020 (1)(a)(A) & (B). The Hearings Officer finds that the Applicant addressed the OAR 660-033-0020 (1)(a)(B) "Suitability Factors" in the Applicant Soil Study and in Applicant's Hearing testimony and Hearing documentary submissions. The Hearings Officer finds the Subject Property is not "agricultural land" as that phrase is defined within relevant Oregon law.

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

**FINDING:** The Applicant submitted the Applicant Soil Study which was prepared by Michael Sowers and Brian Rabe of Cascade Earth Sciences and dated December 11, 2020. The Applicant Soil Study was submitted following the ORS 215.211 effective date. The Applicant submitted to the record an

acknowledgement from Hilary Foote, Farm and Forest Specialist with the DLCD, dated April 12, 2021, that the Applicant Soil Study is complete and consistent with DLCD's reporting requirements. The Hearings Officer finds this criterion to be met based on the submitted Applicant Soil Study and confirmation of completeness and consistency from DLCD.

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

**FINDING:** The Applicant has obtained additional information regarding soils and how these soils relate to the agricultural designation of the Subject Property. The Applicant has also submitted DLCD's certification of its soils analysis, attached as part of Exhibit 4, and has complied with the soils analysis requirements of OAR 660-033-0045 in order to obtain that certification. DLCD's certification establishes compliance with OAR 660-033-0045.

**DIVISION 12, TRANSPORTATION PLANNING**

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

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

- (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);**
- (b) Change standards implementing a functional classification system; or**
- (c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.**
  - (A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;**
  - (B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or**

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

**FINDING:** This above language is applicable to the proposal because it involves an amendment to an acknowledged comprehensive plan. The proposed plan amendment would change the designation of the Subject Property from AG to RREA and change the zone from EFU to MUA-10. The Applicant is not proposing any land use development of the properties at this time.

As referenced in the agency comments section in the Basic Findings section above, the Senior Transportation Planner for Deschutes County requested additional information to clarify the conclusions provided in the Transportation Planning Rule (TPR) analysis prepared by Joe Bessman, PE of Transight Consulting, LLC, dated March 17, 2023. The Applicant submitted an updated report and responses to issues raised also from Mr. Bessman, dated June 27, 2023, to address the additional information that was requested.

Staff noted (Staff Report, page 26) that the original application included a subdivision proposal in addition to the comprehensive plan and zone change proposal that is subject to this recommendation. Applicant has decoupled the subdivision proposal from the comprehensive plan amendment and zone change applications. The Hearings Officer notes that traffic impact studies take into account requirements for a subdivision in addition to the plan amendment and zone change.

In response to the revisions noted above, the County Senior Transportation Planner stated, *"These updated materials and the application materials in [the] record satisfy the County's requirements and no further materials or analysis are required from the applicant."* As such, the Hearings Officer finds that the proposed plan amendment and zone change will be consistent with the identified function, capacity, and performance standards of the County's transportation facilities in the area.

## **DIVISION 15, STATEWIDE PLANNING GOALS AND GUIDELINES**

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

**FINDING:** The Statewide Planning Goals are outlined below in the Applicant's Burden of Proof:

***"Goal 1, Citizen Involvement.*** *This proposal satisfies this goal because the Planning Division will provide notice of the proposed plan amendment and zone change to the public through individual notice to affected property owners, posting of the Subject Property with a notice of proposed land use action sign, online notice of the application on the County's website, and publishing notice of the public hearing in the "Bend Bulletin" newspaper. In addition, at least two public hearings will be held on the proposed plan amendment before it can be approved - one before the Hearings Officer and one before the Deschutes County Board of Commissioners.*

***Goal 2, Land Use Planning.*** *This proposal satisfies this goal because the applications were handled pursuant to the procedures applicable to plan amendments and zone changes in the*



County's Comprehensive Plan and Zoning Ordinance. An exception to Goal 3 is not required because site soils have been conclusively determined to be not Agricultural as that term is legally defined.

**Goal 3, Agricultural Lands.** The Applicant is not required to take an exception to Goal 3 for the Subject Property, but rather to provide evidence supporting response that the Subject Property does not constitute "agricultural land" as legally defined in Goal 3 and supporting administrative rules. The application includes a professionally prepared Soils Analysis (**Exhibit 4**) that proves the Subject Property does not constitute "agricultural land" and therefore the proposed plan amendment to Rural Residential Exception Area and zone change to MUA-10 is consistent with Goal 3.

**Goal 4, Forest Lands.** The proposal is consistent with Goal 4 because the Subject Property is not zoned for forest use and the Applicant's soil survey shows the Subject Property does not contain any forest soils or related resources.

**Goal 5, Open Spaces, Scenic and Historic Areas and Natural Resources.** The proposal is consistent with Goal 5 because the site is not identified as containing scenic, historic, or natural resource areas. It is not unique as open space in the area and has not been designated as significant for that purpose. It is reasonable to conclude that the proposed plan amendment and zone change will have no effect on any designated Goal 5 resources.

**Goal 6, Air, Water and Land Resources Quality.** The proposal is consistent with Goal 6 because it will not result in any legally significant detrimental impact on air or water quality and land resources.

**Goal 7, Areas Subject to Natural Disasters and Hazards.** Goal 7 is not applicable to the proposal because the Subject Property is not located in a known natural disaster or hazard area (i.e., flood hazard zone, steep slopes, historic landslide areas or other hazards identified under Goal 7).

**Goal 8, Recreational Needs.** Goal 8 is not applicable to the proposal because the proposal will not affect property zoned for recreation or impact recreational needs.

**Goal 9, Economy of the State.** The proposal is consistent with Goal 9 because it will not adversely impact legally identified economic activities in the state. It may have a minimal impact on the construction industry eventually when the four homesites are developed, but these have not been recognized as significant for purposes of evaluating goal impacts.

**Goal 10, Housing.** Goal 10 is not directly applicable to the proposal because it does not include development of additional housing. The proposal does not remove any land from the county's supply of land for needed housing. The proposal supports a potential, though not certain, eventual transition to development of four homes on the respective parcels. Applicant plans to develop the four created sites for rural residential homes in the future.

**Goal 11, Public Facilities and Services.** *The proposal is consistent with Goal 11 because the proposed plan amendment and zone change will have minimal impact upon the provision of public facilities and services to the Subject Property. Avion Water is already available to the site in Hunnell Road, power is available and sufficient, and Hunnell Road is scheduled for paving, widening, and straightening in 2023 already by the County. These facilities will not be strained by the addition of four lots made possible by the Plan Amendment and Zone Change.*

**Goal 12, Transportation.** *The proposal is consistent with the TPR, and therefore is also consistent with Goal 12 as demonstrated by the attached, professionally prepared Transportation Analysis. See Exhibit 5.*

**Goal 13, Energy Conservation.** *The proposal is consistent with this goal because it will have no legally significant impact on energy use or conservation. Southern exposure and spacing of the four proposed lots will allow solar power development if desired. Rezoning the Subject Property from EFU to MUA-10 will allow future dwellings to be developed on the site, which will be advantageous to the water supply, since the proposed change makes it less likely that the tracts will be irrigated with surface water, where such irrigation would not be productive considering the poor quality of the soils. Current irrigation practices commonly use electricity for pumping of water for distribution. This wasteful use would be made less likely by approval of this proposal.*

**Goal 14, Urbanization.** *The proposal is consistent with Goal 14 for the following reasons:*

1. *The proposal supports a likely, though not certain, eventual transition from rural to urban land use that responds to identified needed lands as the Bend UGB expands north 7600 feet;*
2. *The proposal represents an orderly growth pattern that eventually will efficiently utilize public facilities and services, including the 2023 improvements to Hunnell Road;*
3. *The proposal will ultimately result in the maximum efficiency of land uses on the fringe of the existing urban area;*
4. *The Subject Property has been found to be not predominantly agricultural land as defined in OAR 660-033-0020; and*
5. *The proposal will promote compatibility with surrounding rural residential uses and will not adversely impact any nearby commercial agricultural uses because there are none.*

**Goals 15 through 19.** *These goals, which address river, ocean, and estuarine resources, are not applicable to the proposal because the Subject Property is not located in or adjacent to any such areas or resources."*

The Hearings Officer incorporates the Preliminary Findings as additional findings for this criterion. The Hearings Officer also incorporates as additional findings the findings for OAR 660-033-0020 (1)(a)(A) & (B). The Hearings Officer finds that the Applicant addressed the OAR 660-033-0020 (1)(a)(B) "Suitability Factors" in Applicant's Soil Study and in Applicant's Hearing testimony and Hearing documentary submissions.

The Hearings Officer, based upon Applicant's above-quoted responses and the incorporated findings, concludes that Applicant's proposal complies with the applicable Statewide Planning Goals.

The Hearings Officer finds the overall proposal appears to comply with the applicable Statewide Planning Goals for the purposes of this review.

**IV. CONCLUSION & RECOMMENDATION:**

The Hearings Officer finds that the Applicant has met the burden of proof necessary to justify changing the Plan Designation from Agriculture to Rural Residential Exception Area and Zoning of the Subject Property from Exclusive Farm Use to Multiple Use Agricultural through effectively demonstrating compliance with the applicable criteria of DCC Title 18 (The Deschutes County Zoning Ordinance), The Deschutes County Comprehensive Plan, and applicable sections of OAR and ORS.

**DESCHUTES COUNTY HEARINGS OFFICER**



---

Gregory J. Frank, Hearings Officer

owner	agent	inCareOf	address	cityStZip	type	cdd id	email
Michael Groves and Cathie Groves			20075 Cox Lane	Bend, OR 97703	HOD	23-210-PA, 211-ZC	
Elizabeth Dickson	Dickson Hatfield LLP		400 SW Bluff Dr. Ste 240	Bend, OR 97702	HOD	23-210-PA, 211-ZC	



COMMUNITY DEVELOPMENT

**NOTICE OF HEARINGS OFFICER'S RECOMMENDATION**

The Deschutes County Hearings Officer has recommended approval of the land use application(s) described below:

**FILE NUMBER:** 247-23-000210-PA, 247-23-000211-ZC

**LOCATION:** Map and Taxlot: 1612330000800  
Situs Address: 64430 Hunnell Rd, Bend, OR 97703

**OWNER:** Groves Family Revocable Trust

**APPLICANT:** Michael F. Groves and Cathie L. Groves

**SUBJECT:** The Applicant requested approval of a Comprehensive Plan Map Amendment to change the designation of the Subject Property from Agricultural ("AG") to a Rural Residential Exception Area ("RREA"). The Applicant also requests approval of a corresponding Zoning Map Amendment (Zone Change) to change the zoning of the Subject Property from Exclusive Farm Use ("EFU") to Multiple Use Agricultural ("MUA-10").

**STAFF CONTACT:** Jacob Ripper, Principal Planner  
Jacob.Ripper@deschutes.org  
541-385-1759

**RECORD:** Record items can be viewed and downloaded from:  
[www.buildingpermits.oregon.gov](http://www.buildingpermits.oregon.gov) and  
<https://www.deschutes.org/cd/page/247-23-000210-pa-247-23-000211-zc-hunnell-road-plan-amendment-and-zone-change>

**APPLICABLE CRITERIA:**

Deschutes County Code, Title 18, County Zoning Ordinance  
Chapter 18.04, Title, Purpose, and Definitions  
Chapter 18.16, Exclusive Farm Use Zones

Chapter 18.32, Multiple Use Agricultural Zone  
Chapter 18.136, Amendments

Deschutes County Code, Title 22, Procedures Ordinance

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

Oregon Administrative Rules (OAR), Chapter 660  
Division 6, Forest Lands  
Division 12, Transportation Planning  
Division 15, Statewide Planning Goals and Guidelines  
Division 33, Agricultural Land

Oregon Revised Statutes (ORS)  
Chapter 215.211, Agricultural Land, Detailed Soils Assessment.

**DECISION:** The Hearings Officer finds that the application meets applicable criteria, and recommended approval to the Board of County Commissioners.

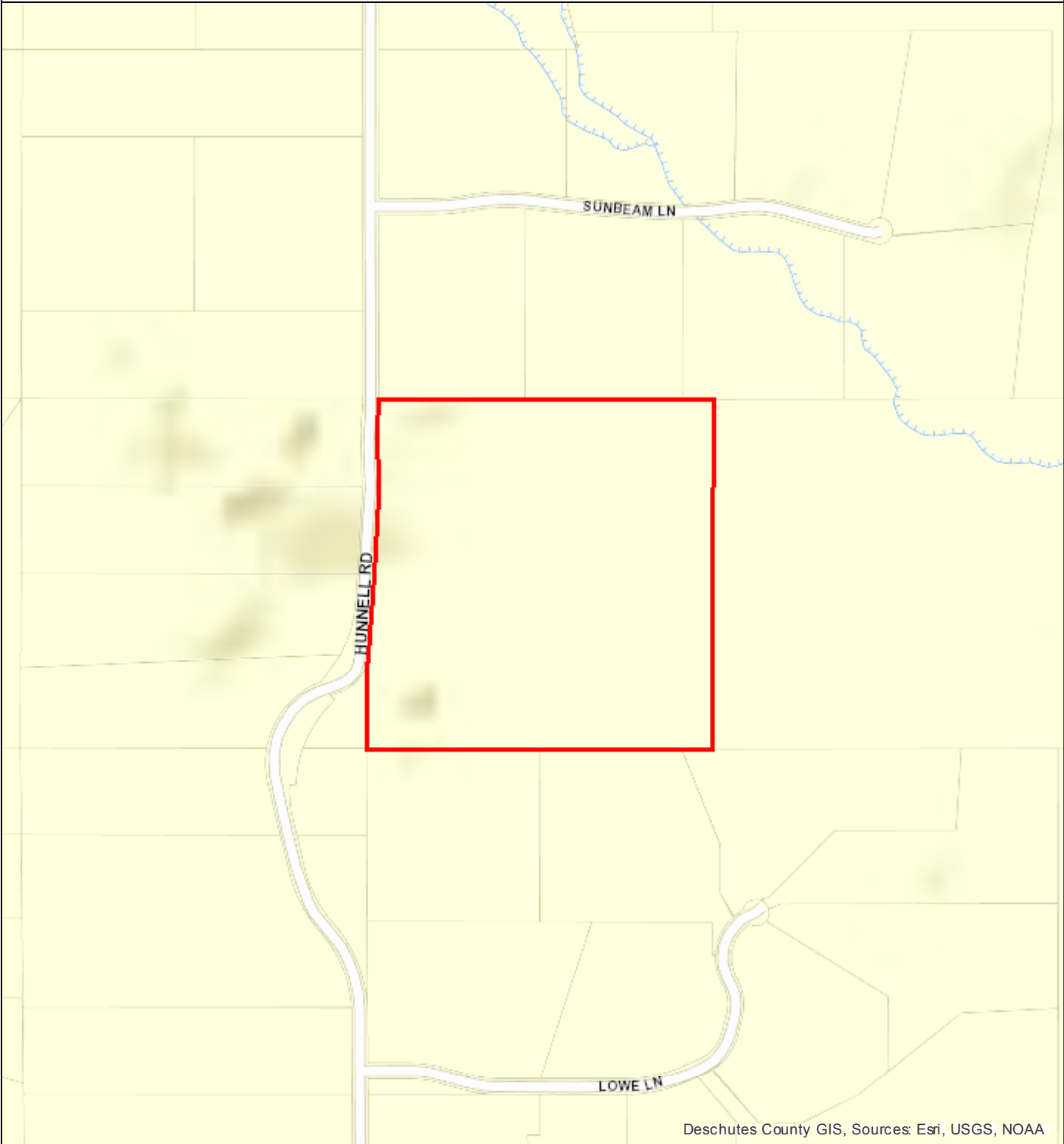
**This decision becomes final twelve (12) days after the date mailed**, unless appealed by a party of interest. To appeal, it is necessary to submit a Notice of Appeal, the base appeal deposit plus 20% of the original application fee(s), and a statement raising any issue relied upon for appeal with sufficient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

Copies of the decision, 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.

# File Nos 247-23-000210-PA, 211-ZC

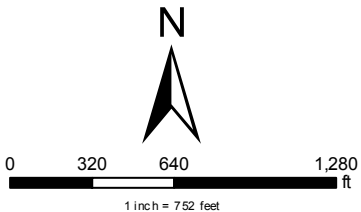
64430 HUNNELL RD, BEND, OR 97703



Deschutes County GIS, Sources: Esri, USGS, NOAA



Date: 9/22/2023

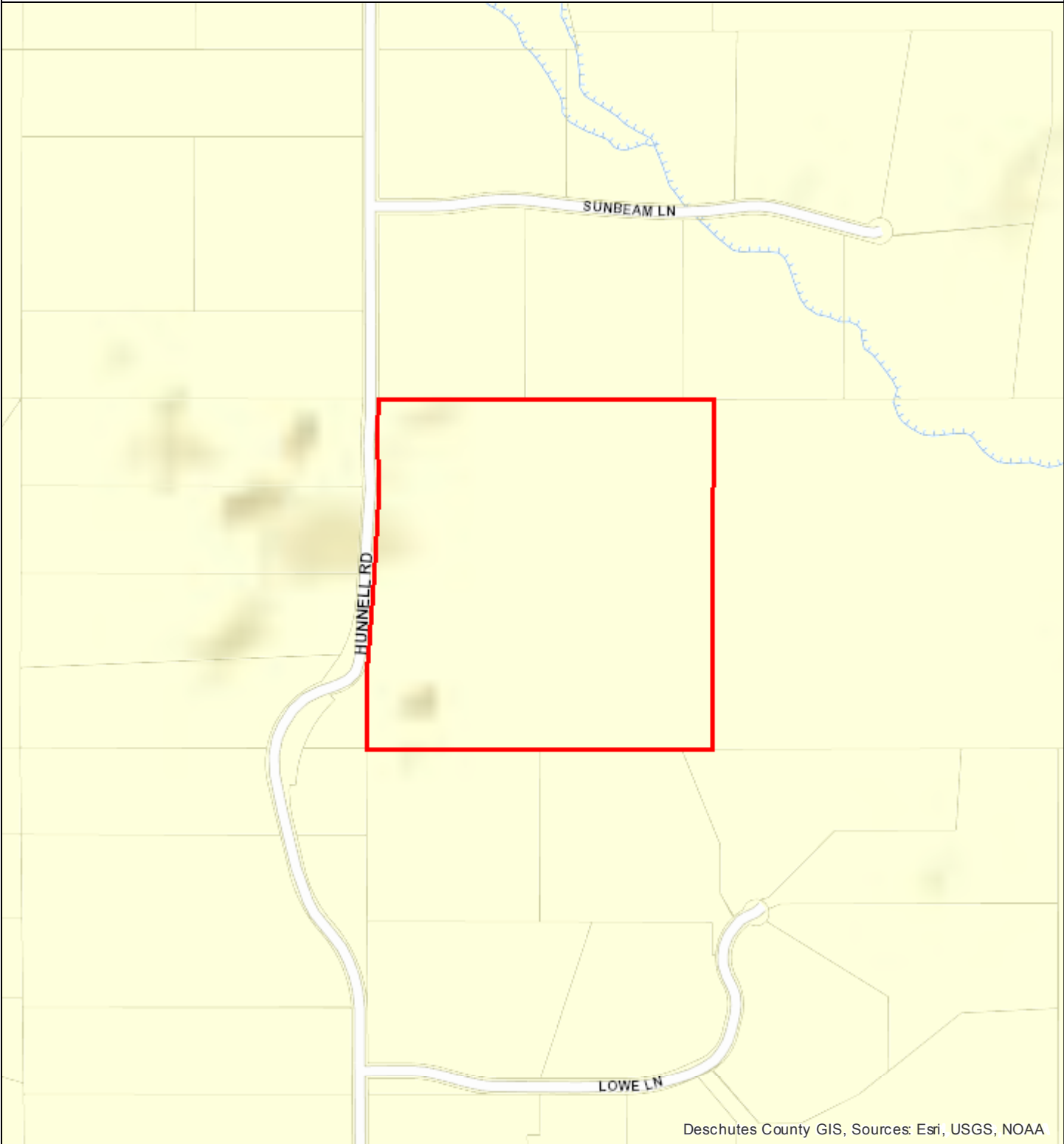


owner	agent	inCareOf	address	cityStZip	type	cdd id	email
Michael Groves and Cathie Groves			20075 Cox Lane	Bend, OR 97703	NOD	23-210-PA, 211-ZC	
Elizabeth Dickson	Dickson Hatfield LLP		400 SW Bluff Dr. Ste 240	Bend, OR 97702	NOD	23-210-PA, 211-ZC	
DESCHUTES CO. SR. TRANS. PLANNER	Tarik Rawlings		ELECTRONIC		NOD	23-210-PA, 211-ZC	Tarik.Rawlings@deschutes.org
Kenneth Katzaroff	Schwabe		1420 5th Ave., Suite 3400	Seattle, WA 98101	NOD	23-210-PA, 211-ZC	
NORBERT & JOAN VOLNY TRUST	VOLNY, JOAN TTEE		64545 HUNNELL RD	BEND, OR 97703	NOD	23-210-PA, 211-ZC	
WILK,DAVID BLAISE & LINDA J			64455 HUNNELL RD	BEND, OR 97703	NOD	23-210-PA, 211-ZC	
CAROLYN CARTER ESKY TRUST	ESKY, CAROLYN C TTEE		20575 SUNBEAM LN	BEND, OR 97703	NOD	23-210-PA, 211-ZC	
MCDONALD, DAVID A & ELIZABETH A			64445 HUNNELL RD	BEND, OR 97703	NOD	23-210-PA, 211-ZC	
THORNEYCROFT, ROY & KAREN E			20605 SUNBEAM LN	BEND, OR 97703	NOD	23-210-PA, 211-ZC	
FARKAS, PETER & KAMILLA AGNES			64520 HUNNELL RD	BEND, OR 97703	NOD	23-210-PA, 211-ZC	
TERESA J FREEMAN LIVING TRUST	FREEMAN, TERESA J & PHILLIPPE C TTEES		20610 SUNBEAM LN	BEND, OR 97703	NOD	23-210-PA, 211-ZC	
HALPERIN FAMILY 2019 TRUST	HALPERIN, BRUCE B & CONSTANCE C TTEES		20655 SUNBEAM LN	BEND, OR 97703	NOD	23-210-PA, 211-ZC	
MITCHELL & PETERS REV LIVING TRUST	MITCHELL, HUGH S COTEE ETAL		64435 HUNNELL RD	BEND, OR 97703-8158	NOD	23-210-PA, 211-ZC	
VERN E & CAROLE L HEEREN FAM TRUST	HEEREN, VERN E TTEE ET AL		20560 LOWE LN	BEND, OR 97703	NOD	23-210-PA, 211-ZC	
NEIDORF, DAVID A & LYDERS, PAULINE			64352 HUNNELL RD	BEND, OR 97703	NOD	23-210-PA, 211-ZC	
WILKINSON, JESSICA L			20590 LOWE LN	BEND, OR 97701	NOD	23-210-PA, 211-ZC	
BURGIN, JEFFREY WILLIAM & SUZANNE MARIE			20550 LOWE LN	BEND, OR 97703	NOD	23-210-PA, 211-ZC	
BRUCE W BUNDY TRUST	BUNDY, BRUCE WAYNE TTEE		20595 LOWE LN	BEND, OR 97703	NOD	23-210-PA, 211-ZC	
CHARLES & BARBARA ROBERTS FAM TRUST	ROBERTS, CHARLES A & BARBARA M TTEES		PO BOX 940248	SIMI VALLEY, CA 93094	NOD	23-210-PA, 211-ZC	
MCKEAGE BYPASS TRUST ET AL	MCKEAGE, COLLEEN M TTEE		20585 LOWE LN	BEND, OR 97703	NOD	23-210-PA, 211-ZC	
GROVES FAMILY REVOCABLE TRUST	GROVES, MICHAEL F & CATHIE L TTEES		20075 COX LN	BEND, OR 97703	NOD	23-210-PA, 211-ZC	
DESCHUTES COUNTY		C/O PROPERTY MANAGEMENT	PO BOX 6005	BEND, OR 97708-6005	NOD	23-210-PA, 211-ZC	
OLSON FAMILY TRUST	OLSON, KRISTOPHER W & ELLEN L TTEES		20600 LOWE LN	BEND, OR 97703	NOD	23-210-PA, 211-ZC	
GROSCUP FAMILY TRUST	GROSCUP, ROBERT A & MARLENE A TTEES		2301 WEMBLEY PARK RD	LAKE OSWEGO, OR 97034	NOD	23-210-PA, 211-ZC	
CAMERON, KAREN ANN			64425 HUNNELL RD	BEND, OR 97703	NOD	23-210-PA, 211-ZC	
SULLIVAN, GREGORY P & ALISA D			1857 KINGSTON RD	RICHLAND, WA 99354	NOD	23-210-PA, 211-ZC	
COOPER, RUSSELL L & LORI C			64385 HUNNELL RD	BEND, OR 97703	NOD	23-210-PA, 211-ZC	



# File Nos 247-23-000210-PA, 211-ZC

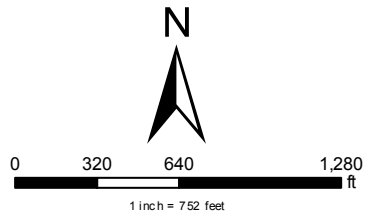
64430 HUNNELL RD, BEND, OR 97703



Deschutes County GIS, Sources: Esri, USGS, NOAA



Date: 9/22/2023





**BOARD OF  
COMMISSIONERS**

## **AGENDA REQUEST & STAFF REPORT**

**MEETING DATE:** December 13, 2023

**SUBJECT:** First reading of Ordinance No. 2023-027 – Bend Airport Text Amendment

**RECOMMENDED MOTION:**

Move approval of first reading of Ordinance No. 2023-027 by title only.

**BACKGROUND AND POLICY IMPLICATIONS:**

The City of Bend applied for a text amendment to Title 18 of Deschutes County Code. The proposed amendments to Chapter 18.76, Airport Development Zone, and Chapter 18.80, Airport Safety Combining Zone, would allow an air traffic control tower as a new permitted use and allow an air traffic control tower to be up to 115 feet in height. The Airport Development Zone only applies to the Bend Municipal Airport, which is located to the northeast of Bend.

A public hearing was held before the Deschutes County Hearings Officer on October 2, 2023 and the Hearings Officer's recommendation was mailed on November 21, 2023. The Hearings Officer found the proposal complied with all applicable criteria and recommended approval. At a work session on November 29, 2023, the Board voted to adopt the Hearings Officer's recommendation.

The entirety of the record can be viewed from the project website at:

<https://www.deschutes.org/cd/page/247-23-000470-ta-%E2%80%93-air-traffic-control-tower-text-amendment>

**BUDGET IMPACTS:**

None

**ATTENDANCE:**

Audrey Stuart, Associate Planner

REVIEWED  
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code \*  
Title 18, Chapter 18.76, Airport Development \*  
("AD") Zone, and Chapter 18.80, Airport Safety \*  
("AS") Combining Zone, to add an Air Traffic \*  
Control Tower as a new permitted use and allow an \*  
Air Traffic Control Tower to be up to 115 feet in  
height.

ORDINANCE NO. 2023-027

WHEREAS, the City of Bend ("City") applied under land use file number 247-23-000470-TA to amend Chapter 18.76 of Title 18, Deschutes County Zoning, to adopt a definition of an Air Traffic Control Tower, allow a single Air Traffic Control Tower as a use permitted outright, and allow an Air Traffic Control Tower to be up to 115 feet in height; and

WHEREAS, the City applied under said land use file to amend Chapter 18.80 of Title 18, Deschutes County Zoning, to adopt a definition of an Air Traffic Control Tower, clarify the review criteria that apply to an Air Traffic Control Tower, and allow an Air Traffic Control Tower to be up to 115 feet in height; and

WHEREAS, after notice was given in accordance with applicable law, a public hearing was held on October 2, 2023, before the Deschutes County Hearings Officer, and;

WHEREAS, on November 21, 2023, the Hearings Officer approved the amendments and recommended the Board adopt an ordinance; and

WHEREAS, pursuant to Deschutes County Code 22.28.030(B), the Board shall, in the absence of an appeal adopt the Hearings Officer's recommendation; now, therefore,

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

Section 1. AMENDMENT. Chapter 18.76, Airport Development Zone, is amended to read as 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. Chapter 18.80, Airport Safety Combining Zone, is amended to read as in Exhibit "B", attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 3. FINDINGS. The Board adopts as its findings, Exhibit "C" attached and incorporated by reference herein.

Dated this \_\_\_\_\_ of \_\_\_\_\_, 2023

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

\_\_\_\_\_  
ANTHONY DEBONE, Chair

\_\_\_\_\_  
PATTI ADAIR, Vice Chair

ATTEST:

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
PHILIP CHANG

Date of 1<sup>st</sup> Reading: \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Date of 2<sup>nd</sup> Reading: \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Record of Adoption Vote:

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

Effective date: \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**Chapter 18.76. AIRPORT DEVELOPMENT ZONE – A-D**

- 18.76.010. Purpose.**
- 18.76.020. Standards in All Districts.**
- 18.76.030. Uses Permitted Outright.**
- 18.76.040. Conditional Uses.**
- 18.76.050. Use Limitations.**
- 18.76.060. Dimensional Standards.**
- 18.76.070. Airfield Operations District (AOD).**
- 18.76.080. Aviation Support District (ASD).**
- 18.76.090. Aviation-Related Industrial District (ARID).**
- 18.76.100. Design and Use Criteria.**
- 18.76.110. Additional Requirements.**

**18.76.010. Purpose.**

The purpose of the Airport Development (AD) Zone is to allow for development compatible with ongoing airport use consistent with the most recently adopted Deschutes County Year Comprehensive Plan and the most recently approved Bend Airport Master Plan, while providing for public review of proposed development likely to have significant impact on surrounding lands. The AD Zone is composed of three separate zoning districts, each with its own set of allowed uses and distinct regulations, as further set forth in DCC 18.76.

(Ord. 2020-018 §1, 2020; Ord. 2003-036 §2, 2003; Ord. 91-020 §1, 1991)

**18.76.015. Definitions.**

The following definitions apply only to Chapter 18.76.

"Air Traffic Control Tower" means a terminal facility which, through the use of air/ground communications, visual signaling, and other devices, provides air traffic control services to airborne aircraft operating in the vicinity of an airport and to aircraft operating on the airport movement area.

“Customary and usual aviation-related activities” include, but are not limited to, takeoffs, landings, aircraft hangars, tiedowns, construction and maintenance of airport facilities, fixed-base operator facilities, a residence for an airport caretaker or security officer, and other activities incidental to the normal operation of an airport. Residential, commercial, industrial, manufacturing, and other uses, except as provided in this rule, are not customary and usual aviation-related activities and may only be authorized pursuant to OAR 660-013-0110.

“Fixed-base operator or FBO” means a commercial business granted the right by the airport sponsor to operate on an airport and provide aeronautical services such as fueling, hangaring, tie-down and parking, aircraft rental, aircraft maintenance, flight instruction, etc.

“Hangar” means an airport structure intended for the following uses:

- A. Storage of active aircraft.
- B. Shelter for maintenance, repair, or refurbishment of aircraft, but not the indefinite storage of non-operational aircraft.
- C. Construction of amateur-built or kit-built aircraft

- D. Storage of aircraft handling equipment, e.g., tow bar, glider tow equipment, workbenches, and tools and materials used to service, maintain, repair or outfit aircraft; items related to ancillary or incidental uses that do not affect the hangars' primary use.
- E. Storage of materials related to an aeronautical activity, e.g., balloon and skydiving equipment, office equipment, teaching tools, and materials related to ancillary or incidental uses that do not affect the hangars' primary use; storage of non-aeronautical items that do not interfere with the primary aeronautical purpose of the hangar (for example, televisions, furniture).
- F. A vehicle parked at the hangar while the aircraft usually stored in that hangar is flying, subject to local airport rules and regulations.
- G. A hangar may include restrooms, pilot lounge, offices, briefing rooms, and crew quarters.  
([Ord. 2023-027 §1, 2023](#); Ord. 2020-018 §1, 2020)

**18.76.020. Standards in All Districts.**

- A. Approval Required. Any use in an AOD, ASD, or ARID District shall be subject to DCC 18.124.
  - 1. Hangars not associated with a commercial or industrial use are exempt from DCC 18.124.
  - 2. Airfield improvements including but not limited to runways, taxiways, taxilanes, aircraft parking aprons, service roads, navigational aids, and runway and safety facilities required by the Federal Aviation Administration (FAA) are not subject to County review.
- B. Solar Setbacks. The setback from the north lot line shall meet the solar setback requirements of DCC 18.116.180.
- C. Building Code Setbacks. In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or Deschutes County under DCC 15.04 shall be met.
- D. Off-Street Parking and Loading. Off-street parking and loading shall be provided subject to the parking provisions of DCC 18.116.
- E. Outdoor Lighting. All outdoor lighting shall be installed in conformance with DCC 15.10.
- F. Excavation, Grading and Fill and Removal. Excavation, grading and fill and removal within the bed and banks of a stream or river or in a wetland shall be subject to DCC 18.120.050 and/or DCC 18.128.270.
- G. Signs. All signs shall be constructed in accordance with the provisions of DCC 15.08.
- H. Notification. Deschutes County shall provide notification of all land use applications in an AD zone to the airport manager owner's designee in accordance with the provisions of DCC Title 22.  
(Ord. 2020-018 §1, 2020; Ord. 2003-036 §2, 2003)

**18.76.030. Uses Permitted Outright.**

The following uses and their accessory uses are permitted outright in all of the Airport Districts:

- A. 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.
- B. Class III road or street project.
- C. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.
- D. Farm use as defined in DCC Title 18.
- E. Customary and usual aviation-related activities.
- F. Hangars are subject to the standards and criteria established by DCC 18.76.105.
- G. [A single air traffic control tower in the Airport Development Zone, no higher than 115 feet in height.](#)  
([Ord. 2023-027 §1, 2023](#); Ord. 2020-018 §1, 2020; Ord. 2003-036 §2, 2003; Ord. 2001-039 §10, 2001; Ord. 2001-016 §2, 2001; Ord. 93-043 §11, 1993; Ord. 91-020 §1, 1991)

**18.76.040. Conditional Uses.**

The following uses may be allowed in all of the Airport Districts subject to DCC 18.128.

- A. Farm accessory buildings and uses, excluding residential uses.
  - B. Utility facility necessary for public service except landfills.
  - C. Excavation, grading and fill and removal within the bed and banks of a stream or river or in a wetland subject to DCC 18.120.050 and/or DCC 18.128.270.
- (Ord. 2003-036 §2, 2003; Ord. 2001-039 §10, 2001; Ord. 2001-016 §2, 2001; Ord. 91-038 §1, 1991)

**18.76.050. Use Limitations.**

The following limitations and standards shall apply to all permitted uses in the Airport Districts:

- A. The height of any plant growth or structure or part of a structure such as chimneys, towers, antennas, power lines, etc., shall not exceed 35 feet.
  - ~~B.~~ B. A single air traffic control tower up to 115 feet in height shall not require a height exception or variance.
  - ~~B~~C. In approach zones beyond the clear zone areas, no meeting place designed to accommodate more than 25 persons for public or private purposes shall be permitted.
  - ~~C~~D. All parking demand created by any use permitted by DCC 18.76 shall be accommodated on the subject premises entirely off-street.
  - ~~D~~E. No use permitted by DCC 18.76 shall require the backing of traffic onto a public or private street or road right of way.
  - ~~E~~F. No power lines shall be located in clear zones.
  - ~~F~~G. No use shall be allowed which is likely to attract a large quantity of birds, particularly birds which normally fly at high altitudes.
- (Ord. 2023-027 §1, 2023; Ord. 2003-036 §2, 2003; Ord. 91-020 §1, 1991)

**18.76.060. Dimensional Standards.**

The following dimensional standards shall apply in the Airport Districts:

- A. The minimum lot size shall be determined subject to the provisions of DCC 18.76 relative to setback requirements, off-street parking and loading requirements, lot coverage limitations or as deemed necessary by the Planning Director or Hearings Body to maintain air, land and water resource quality, protect adjoining and area land uses, and to ensure resource carrying capacities are not exceeded.
  - B. An airport related use or structure located adjacent to or across the street from an existing residential use or platted residential lot shall not exceed 70 percent lot coverage and shall require off-street parking and loading areas.
  - C. The minimum setback between any structure and an arterial or collector right of way shall be 50 feet. The minimum setback between any structure and all local streets shall be 20 feet.
  - D. The minimum setback between any structure and a property line adjoining a residential use or lot shall be 50 feet.
  - E. The minimum lot frontage shall be 50 feet.
  - F. The minimum side setback between any structure and a property line shall be three feet, and the minimum total of both side setbacks shall be 12 feet.
  - G. The minimum rear setback between any structure and a rear property line shall be 20 feet.
  - H. The minimum setback from internal airport streets, access roads, and drives shall be 10 feet from the edge of pavement.
- (Ord. 2020-018 §1, 2020; Ord. 2003-036 §2, 2003; Ord. 94-008 §24, 1994; Ord. 91-020 §1, 1991)

**18.76.070. Airfield Operations District (AOD).**

Uses Permitted Outright. The uses permitted outright are those listed under DCC 18.76.030.  
(Ord. 2020-018 §1, 2020; Ord. 2003-036 §2, 2003)

**18.76.080. Aviation Support District (ASD).**

- A. Uses Permitted Outright. The uses permitted outright are those listed under DCC 18.76.030.
  - B. Conditional Uses Permitted. The following conditional uses may be permitted subject to DCC 18.128 and a conditional use permit:
    - 1. Restaurant, which may include a bar or cocktail lounge as an accessory use. One restaurant per airport. Restaurant, including any accessory use, to be 2,500 square feet or less in size.
    - 2. Airport or aviation-related businesses that benefit from an on-airport location.
- (Ord. 2020-018 §1, 2020; Ord. 2004-013 §8, 2004; Ord. 2003-036 §2, 2003)

**18.76.090. Aviation-Related Industrial District (ARID).**

- Uses Permitted Outright. The uses permitted outright are those listed under DCC 18.76.030.
- A. Airport or aviation-related commercial or industrial businesses that benefit from an on-airport location.
- (Ord. 2020-018 §1, 2020; Ord. 2003-036 §2, 2003)

**18.76.100. Design and Use Criteria.**

- The following dimensional standards shall apply in the Airport Districts:
- The Planning Director or Hearings Body shall take into account the impact of any proposed conditional use within the AD Zone on nearby residential and commercial uses, and on the capacity of transportation and other public facilities and services. In approving a proposed conditional use, the Planning Director or Hearings Body shall find that:
- A. The proposed use is in compliance with the Comprehensive Plan, including the current version of the adopted Bend Airport Master Plan.
  - B. The proposed use is in compliance with the intent and provisions of DCC Title 18.
  - C. Any adverse social, economical, physical or environmental impacts are minimized.
  - D. The proposed use is not sensitive to noise of the character anticipated by the current and expected noise level contours of the airport.
  - E. The proposed use is compatible with adjacent agricultural and residential uses.
  - F. There are sufficient public facilities and services to support the proposed use.
  - G. The location and site design of the proposed facility will not be hazardous to the safety and general welfare of surrounding properties, and that the location will not unnecessarily restrict existing and future development of surrounding lands as indicated in the Comprehensive Plan.
  - H. The use shall make the most effective use reasonably possible of the site topography, existing landscaping and building placement so as to preserve existing trees and natural features, preserve vistas and other views from public ways, minimize visibility of parking, loading and storage areas from public ways and neighboring residential uses, and minimize intrusion into the character of existing developments and land uses in the immediate vicinity of the proposed use.
- (Ord. 2018-006 §9, 2018; Ord. 2003-036 §2, 2003; Ord. 91-020 §1, 1991)

**18.76.105. Hangars.**

- A. Review Process.
  - 1. Hangars, as defined in section 18.76.015, shall be processed as a development action pursuant to DCC 22.16 and are not subject to DCC 18.124.
  - 2. Hangars intended to support fixed based operators, flight schools, paint shops, and other commercial and industrial uses are subject to DCC 18.124.
- B. Hangar Approval Criteria.



1. The location and height of proposed structures must be clear of FAA protected surfaces including runway safety area, runway protection zone, runway object free area, taxiway/taxilane object free area, FAA Part 77 surfaces, FAA TERPS surfaces, and other clear areas identified on the currently adopted Airport Layout Plan.
2. No above ground utility installations shall be allowed
3. All exterior lighting shall be shielded so that direct light does not project off site pursuant to DCC 15.10.
4. Parking Requirement.
  - a. Hangars under 10,000 square feet of floor space are not subject to the parking requirement under DCC 18.116.030(8).
  - b. Hangars greater than or equal to 10,000 square feet of floor space are subject to the parking requirement under DCC 18.116.030(8). This required vehicle parking can be accommodated inside the hangar.

(Ord. 2020-018 §1, 2020)

**18.76. 110. Additional Requirements.**

As a condition of approval for any conditional use proposed within the AD Zone, the Planning Director or Hearings Body may require:

- A. An increase in required setbacks.
- B. Additional off-street parking and loading facilities and building standards.
- C. Limitations on signs or lighting, hours of operation, points of ingress and egress and building heights.
- D. Additional landscaping, screening and other improvements.
- E. Glare-resistant materials in construction or other methods likely to reduce operating hazards.
- F. Other conditions considered necessary to achieve compliance and policies of the Comprehensive Plan.

(Ord. 2003-036 §2, 2003; Ord. 91-020 §1, 1991; Ord. 80-221 §1, 1980)

**Chapter 18.80 AIRPORT SAFETY COMBINING ZONE - AS**

- 18.80.010. Purpose.**
- 18.80.020. Application of Provisions.**
- 18.80.022. Definitions.**
- 18.80.024. Imaginary Surfaces and Noise Impact Boundaries.**
- 18.80.026. Notice of Land Use and Permit Applications.**
- 18.80.028. Height Limitations.**
- 18.80.030. Redmond Municipal Airport.**
- 18.80.032. Bend Municipal Airport.**
- 18.80.034. Sunriver Airport.**
- 18.80.036. Sisters Eagle Air Airport.**
- 18.80.038. Cline Falls Airpark.**
- 18.80.040. Juniper Airpark.**
- 18.80.044. Land Use Compatibility.**
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- 18.80.064. Procedures.**
- 18.80.072. Water Impoundments.**
- 18.80.074. Wetland Mitigation, Creation, Enhancement and Restoration.**
- 18.80.076. Water Impoundment Notification.**
- 18.80.078. FAA Notification (Form 7460-1).**

**18.80.010. Purpose.**

In any zone that is overlain by an Airport Safety Combining Zone (AS Zone), the requirements and standards of DCC 18.80.010 shall apply in addition to those specified in the ordinance for the underlying zone. If a conflict in regulations or standards occurs, the more restrictive provisions shall govern.

The purpose of the AS Zone is to restrict incompatible land uses and airspace obstructions around airports in an effort to maintain an airport’s maximum benefit. The imaginary surfaces and zones; boundaries and their use limitations comprise the AS Zone. Any uses permitted outright or by conditional use in the underlying zone are allowed except as provided for in DCC 18.80.044, 18.80.050, 18.80.054, 18.80.056 and 18.80.058. The protection of each airport’s imaginary surfaces will be accomplished through the use of those land use controls deemed necessary to protect the community it serves. Incompatible uses may include the height of trees, buildings, structures or other items and uses that would be subject to frequent aircraft over-flight or might intrude into areas used by aircraft.  
(Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

**18.80.020. Application of Provisions.**

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

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

Public use airports covered by DCC 18.80.020 include Redmond Municipal, Bend Municipal, Sunriver and Sisters Eagle Air. Although it is a public-use airport, due to its size and other factors, the County treats land uses surrounding the Sisters Eagle Air Airport based on the ORS 836.608 requirements for private-use airports. The Oregon Department of Aviation is still studying what land use requirements will ultimately be applied to Sisters. However, contrary to the requirements of ORS 836.608, as will all public-use airports, federal law requires that the FAA Part 77 surfaces must be applied. The private-use airports covered by DCC 18.80.020 include Cline Falls Airpark and Juniper Airpark. (Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

**18.80.022. Definitions.**

**A.** Air Traffic Control Tower. A terminal facility which, through the use of air/ground communications, visual signaling, and other devices, provides air traffic control services to airborne aircraft operating in the vicinity of an airport and to aircraft operating on the airport movement area.

**AB.** Aircraft. Helicopters and airplanes, but not hot air balloons or ultralights. (Balloons are governed by FAR Part 30, and ultralights by FAR Part 103. Ultralights are basically unregulated by the FAA.)

**BC.** Airport. The strip of land used for taking off and landing aircraft, together with all adjacent land used in connection with the aircraft landing or taking off from the strip of land, including but not limited to land used for existing airport uses.

**CD.** Airport Direct Impact Area. The area located within 5,000 feet of an airport runway, excluding lands within the runway protection zone and approach surface. (Redmond, Bend, and Sunriver)

**DE.** Airport Elevation. The highest point of an airport's usable runway, measured in feet above mean sea level.

**EF.** Airport Imaginary Surfaces (and zones). Imaginary areas in space and on the ground that are established in relation to the airport and its runways.

For the Redmond, Bend, Sunriver and Sisters airports, the imaginary surfaces are defined by the primary surface, runway protection zone, approach surface, horizontal surface, conical surface and transitional surface.

For the Cline Falls and Juniper airports, the imaginary areas are only defined by the primary surface and approach surface.

**FG.** Airport Noise Criterion. The State criterion for airport noise is an Average Day-Night Sound Level (DNL) of 55 decibels (dBA). The Airport Noise Criterion is not designed to be a standard for imposing liability or any other legal obligation except as specifically designated pursuant to OAR 340, Division 35.

**GH.** Airport Noise Impact Boundary. Areas located within 1,500 feet of an airport runway or within established noise contour boundaries exceeding 55 DNL.

**HI.** Airport Safety Combining Zone (AS Zone). A Deschutes County zone intended to place additional land use conditions on land impacted by the airport while retaining the existing underlying zone. The airport imaginary surfaces, impact areas, boundaries and their use limitations comprise the AS Zone. The AS Zone may apply to either public-use or private-use airports.

**IJ.** Airport Secondary Impact Area. The area located between 5,000 and 10,000 feet from an airport runway. (Redmond, Bend, and Sunriver)

**JK.** Airport Sponsor. The owner, manager, or other person or entity designated to represent the interests of an airport.

**KL.** Airport Uses. Those uses described in OAR 660-013-0100 and 660-013-0110.

**LM.** Approach Surface. A surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface.

For Redmond, Bend, Sunriver, and Sisters airports:

1. The inner edge of the approach surface is the same width as the primary surface and it expands uniformly to a width of:

- a. 1,250 feet for a utility runway having a visual approach;
  - b. 1,500 feet for other than a utility runway having a visual approach;
  - c. 2,000 feet for a utility runway having a non-precision instrument approach;
  - d. 3,500 feet for a non-precision instrument runway, other than utility, having visibility minimums greater than three-fourths statute mile;
  - e. 4,000 feet for a non-precision instrument runway, other than utility, having visibility minimums at or below three-fourths statute mile; and
  - f. 16,000 feet for precision instrument runways.
2. The approach surface extends for a horizontal distance of
    - a. 5,000 feet at a slope of 20 feet outward for each foot upward for all utility runways;
    - b. 10,000 feet at a slope of 34 feet outward for each foot upward for all non-precision instrument runways, other than utility; and
    - c. 10,000 feet at a slope of 50 feet outward for each one foot upward, with an additional 40,000 feet at slope of 40 feet outward for each one foot upward, for precision instrument runways.
  3. The outer width of an approach surface will be that width prescribed in DCC 18.80.022~~(L)~~(M)(3) for the most precise approach existing or planned for that runway end.

For the Cline Falls and Juniper airports:

4. The inner edge of the approach surface is the same width as the primary surface and it expands uniformly to a width of 450 feet for that end of a private use airport with only visual approaches. The approach surface extends for a horizontal distance of 2,500 feet at a slope of 20 feet outward for each one foot upward.

**MN.** Average Day-Night Sound Level (DNL). Average day-night sound level is the FAA standard measure for determining the cumulative exposure of individuals to noise. DNL is the equivalent of noise levels produced by aircraft operations during a 24-hour period, with a ten-decibel penalty applied to the level measured during nighttime hours (10:00 p.m. to 7:00 am).

**NO.** Conical Surface. An element of the airport imaginary surfaces that extends outward and upward from the periphery of the horizontal surface at a slope of 20:1 for a horizontal distance of 4,000 feet and to a vertical height of 350 feet above the airport elevation.

**OP.** Department of Aviation. The Oregon Department of Aviation, formerly the Aeronautics Division of the Oregon Department of Transportation.

**PQ.** FAA. Federal Aviation Administration.

**QR.** FAA's Technical Representative. As used in DCC 18.80, the federal agency providing the FAA with expertise on wildlife and bird strike hazards as they relate to airports. This may include, but is not limited to, the USDA-APHIS-Wildlife Services.

**RS.** FAR. Regulation issued by the FAA.

**ST.** FAR Part 77. Regulation, Part 77, "Objects Affecting Navigable Airspace," establishes standards for determining obstructions to navigable airspace.

**TU.** Height. The highest point of a structure or tree, plant or other object of natural growth, measured from mean sea level.

**UV.** Horizontal Surface. A horizontal plane 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the primary surface of each runway of each airport and connecting the adjacent arcs by lines tangent to those arcs. The radius of each arc is:

1. 5,000 feet for all runways designated as utility.
2. 10,000 feet for all other runways.
3. The radius of the arc specified for each end of a runway will have the same arithmetical value. That value will be the highest determined for either end of the runway. When a 5,000-foot arc is encompassed by tangents connecting two adjacent 10,000-foot arcs, the 5,000-foot arc shall be disregarded on the construction of the perimeter of the horizontal surface.

**VW.** Non-precision Instrument Runway. A runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for

which a straight-in non-precision instrument approach has been approved, or planned, and for which no precision approach facilities are planned or indicated on an FAA-approved airport layout plan or other FAA planning document.

~~WX~~. Non-Towered Airport. An airport without an existing or approved control tower on June 5, 1995.

~~XY~~. Obstruction. Any structure or tree, plant or other object of natural growth that penetrates an imaginary surface.

~~YZ~~. Other than Utility Runway. A runway that is constructed for and intended to be used by turbine-driven aircraft or by propeller-driven aircraft exceeding 12,500 pounds gross weight.

~~ZA~~ Precision Instrument Runway. A runway having an existing instrument approach procedure utilizing air navigation facilities that provide both horizontal and vertical guidance, such as an Instrument Landing System (ILS) or Precision Approach Radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated by an FAA-approved airport layout plan or other FAA planning document.

~~AA~~~~BB~~. Primary Surface. A surface longitudinally centered on a runway.

For the Redmond, Bend, Sunriver, and Sisters airports, when a runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway. When a runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of the primary surface is:

1. 250 feet for utility runways with only visual approaches,
2. 500 feet for utility runways having non-precision instrument approaches,
3. 500 feet for other than utility runways having non-precision instrument approaches with visibility minimums greater than three-fourths statute mile, and
4. 1,000 feet for non-precision instrument runways with visibility minimums at or below three-fourths statute mile, and for precision instrument runways.

For the Cline Falls and Juniper airports, the primary surface ends at each end of a runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of the primary surface is 200 feet.

~~BB~~~~CC~~. Public Assembly Facility. A permanent or temporary structure or facility, place or activity where concentrations of people gather in reasonably close quarters for purposes such as deliberation, education, worship, shopping, employment, entertainment, recreation, sporting events, or similar activities. Public assembly facilities include, but are not limited to, schools, religious institutions or assemblies, conference or convention facilities, employment and shopping centers, arenas, athletic fields, stadiums, clubhouses, museums, and similar facilities and places, but do not include parks, golf courses or similar facilities unless used in a manner where people are concentrated in reasonably close quarters. Public assembly facilities also do not include air shows, structures or uses approved by the FAA in an adopted airport master plan, or places where people congregate for short periods of time such as parking lots or bus stops.

~~CC~~~~DD~~. Runway. A defined area on an airport prepared for landing and takeoff of aircraft along its length.

~~DD~~~~EE~~. Runway Protection Zone (RPZ). An area off the runway end used to enhance the protection of people and property on the ground. The RPZ is trapezoidal in shape and centered about the extended runway centerline. The inner width of the RPZ is the same as the width of the primary surface. The outer width of the RPZ is a function of the type of aircraft and specified approach visibility minimum associated with the runway end. The RPZ extends from each end of the primary surface for a horizontal distance of:

1. 1,000 feet for utility runways.
2. 1,700 feet for other than utility runways having non-precision instrument approaches.
3. 2,500 feet for precision instrument runways.

[NOTE: the outer width of the RPZ is specified by airport type in OAR 660, Division 13, Exhibit 4]

~~EE~~~~FF~~. Significant. As it relates to bird strike hazards, "significant" means a level of increased flight activity by birds across an approach surface or runway that is more than incidental or occasional, considering the existing ambient level of flight activity by birds in the vicinity.

**FFGG.** Structure. Any constructed or erected object, which requires a location on the ground or is attached to something located on the ground. Structures include but are not limited to buildings, decks, fences, signs, towers, cranes, flagpoles, antennas, smokestacks, earth formations and overhead transmission lines. Structures do not include paved areas.

**GGHH.** Transitional Surface. Those surfaces that extend upward and outward at 90 degree angles to the runway centerline and the runway centerline extended at a slope of seven feet horizontally for each foot vertically from the sides of the primary and approach surfaces to the point of intersection with the horizontal and conical surfaces. Transitional surfaces for those portions of the precision approach surfaces which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at a 90-degree angle to the extended runway centerline.

**HHII.** Utility Runway. A runway that is constructed for and intended to be used by propeller driven aircraft of 12,500 maximum gross weight and less.

**HJJ.** Visual Runway. A runway intended solely for the operation of aircraft using visual approach procedures, where no straight-in instrument approach procedures or instrument designations have been approved or planned, or are indicated on an FAA-approved airport layout plan or any other FAA planning document.

**JJKK.** Water Impoundment. Includes wastewater treatment settling ponds, surface mining ponds, detention and retention ponds, artificial lakes and ponds, and similar water features. A new water impoundment includes an expansion of an existing water impoundment except where such expansion was previously authorized by land use action approved prior to the effective date of this ordinance.

(Ord. 2023-027 §1, 2023; Ord. 2020-001 §10, 2020; Ord. 2018-006 §10, 2018; Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

**18.80.024. Imaginary Surface and Noise Impact Boundaries.**

For the Redmond, Bend, Sunriver, and Sisters airports, the airport elevation, the airport noise impact boundary, and the location and dimensions of the runway, primary surface, runway protection zone, approach surface, horizontal surface, conical surface and transitional surface shall be delineated for each airport subject to this overlay zone and shall be made part of the official Zoning Map. All lands, waters and airspace, or portions thereof, that are located within these boundaries (including direct and secondary impact boundaries) or surfaces shall be subject to the requirements of this overlay zone.

For the Cline Falls and Juniper airports, The airport elevation, the airport noise impact boundary, and the location and dimensions of the runway, primary surface and approach surface shall be delineated for each private use airport subject to this overlay zone and shall be made part of the official Zoning Map. All lands, waters and airspace, or portions thereof, that are located within these surfaces shall be subject to the requirements of this overlay zone. [ORS 836.608(2), (8); OAR 660-013-0050; OAR 660-013-0070(1)(b); OAR 660-013-0155(2)] [ORS 836.619; OAR 660-013-0040(8); OAR 660-013-0070(1)] (Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

**18.80.026. Notice of Land Use and Permit Applications.**

Except as otherwise provided herein, written notice of applications for land use or limited land use decisions, including comprehensive plan or zoning amendments, in an area within this overlay zone, shall be provided to the airport sponsor and the Department of Aviation in the same manner as notice is provided to property owners entitled by law to written notice of land use or limited land use applications. [ORS 836.623(1); OAR 738-100-010; ORS 215.416(6); ORS 227.175(6)]

For the Redmond, Bend, Sunriver, and Sisters airports:

- A. Notice shall be provided to the airport sponsor and the Department of Aviation when the property, or a portion thereof, that is subject to the land use or limited land use application is located within 10,000 feet of the sides or ends of a runway:
- B. Notice of land use and limited land use applications shall be provided within the following timelines.

1. Notice of land use or limited land use applications involving public hearings shall be provided prior to the public hearing at the same time that written notice of such applications is provided to property owners entitled to such notice.
2. Notice of land use or limited land use applications not involving public hearings shall be provided at least 20 days prior to entry of the initial decision on the land use or limited land use application.
3. Notice of the decision on a land use or limited land use application shall be provided to the airport sponsor and the Department of Aviation within the same timelines that such notice is provided to parties to a land use or limited land use proceeding.
4. Notices required under DCC 18.80.026(B)(1-3) need not be provided to the airport sponsor or the Department of Aviation where the land use or limited land use application meets all of the following criteria:
  - a. Would only allow structures of less than 35 feet in height;
  - b. Involves property located entirely outside the approach surface;
  - c. Does not involve industrial, mining or similar uses that emit smoke, dust or steam; sanitary landfills or water impoundments; or radio, radiotelephone, television or similar transmission facilities or electrical transmission lines; and
  - d. Does not involve wetland mitigation, enhancement, restoration or creation.

For the Cline Falls and Juniper airports:

- C. Written notice of applications for land use or limited land use decisions, including comprehensive plan or zoning amendments, shall be provided to the airport sponsor and the Department of Aviation in the same manner and within the same timelines as notice is provided to property owners entitled by law to written notice of land use or limited land use applications. Where the application does not involve a public hearing, such notice shall be provided at least 20 days prior to entry of the initial decision on the land use or limited land use application. [ORS 215.416(6); ORS 227.175(6); OAR 738-100-010]
- D. Notice of the decision on a land use or limited land use application shall be provided to the airport sponsor and the Department of Aviation within the same timelines that such notice is provided to parties to a land use or limited land use proceeding.  
(Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

**18.80.028. Height Limitations.**

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

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

D. A single air traffic control tower may be up to 115 feet in height.  
(Ord. 2023-027 §1, 2023; Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

**18.80.030. Redmond Municipal Airport.**

The Redmond Municipal Airport is a Category 1, Commercial Service Airport. Its function is to accommodate scheduled major/national or regional commuter commercial air carrier service. The two approximately 7,040' long by 100'-150' wide, "other than utility" paved runways are located at an elevation

of 3,077'. The proposed extension to runway 4-22 and the planned new parallel runway are both identified on the FAA-adopted Airport Layout Plan. Therefore, these improvements are used in the layout of the Airport Safety Combining Zone. The same safety zone dimensional standards used for Runway 4-22 will also apply to the planned parallel runway.

- A. Primary Surface - For Redmond, the primary surfaces are 1,000' wide by 7,440' long for Runway 10-28, 1,000' wide by 9,100' long for Runway 4-22, and 1,000' wide by 7,400' long for the proposed new parallel runway.
- B. Runway Protection Zone (RPZ)- Two different RPZs apply to the Redmond Airport because it has a total of three potential runways with two possible approaches. Runway 4-22 and the planned parallel runway will both have precision approaches. Runway 10-28 has a non-precision approach on each end. The precision RPZ forms a 1,000' wide by 2,500' long by 1,750' wide trapezoid while the non-precision RPZ forms a 500' wide by 1,700' long by 1,010' wide trapezoid.
- C. Approach Surface - The current ILS precision approach surface to runway 22, and the planned precision approaches to Runway 4 and future parallel runway 4-22, are 1,000' wide by 50,000' long by 16,000' wide, with an upward approach slope ratio of 50:1(one foot vertical for each 50 feet horizontal) for the first 10,000', then a slope ratio of 40:1 for the remaining 40,000'. The non-precision approach surface is 500' wide by 10,000' long by 3,500' wide, with an upward approach slope ratio of 34:1.
- D. Horizontal Surface - The surface boundary is comprised of connected arcs drawn 10,000 feet outward and centered on the ends of the primary surface. The elevation of the horizontal surface for the Redmond Airport is 3,227 feet.

(Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

**18.80.032. Bend Municipal Airport.**

Bend Municipal Airport is a Category 2, Business or High Activity General Aviation Airport. The 5,005 long by 75' wide paved runway is located at an elevation is 3,453'. Imaginary surface dimensions for the Bend Airport are based on planned improved operational characteristics, and an upgrade from a “utility” to “other than utility” runway, but do not reflect any planned extension to the existing runway.

- A. Primary Surface - For Bend, the primary surface is 500' wide by 5,405' long.
- B. Runway Protection Zone (RPZ) –Both Runway #16 and #34 have, or are proposed to have non-precision approaches. Both RPZs begin 200-feet off the ends of the runway. The non-precision RPZs form 500' wide by 1,700' long by 1,010' wide trapezoids.
- C. Approach Surface - The non-precision approach surfaces are 500' wide by 10,000' long by 3,500' wide, with an upward approach slope ratio of 34:1(one-foot vertical for each 34 feet horizontal).
- D. Horizontal Surface - The surface boundary is comprised of connected arcs drawn 10,000 feet outward and centered on the ends of the primary surface. The height of the horizontal surface for the Bend Airport is 3,603 feet.

(Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

**18.80.034. Sunriver Airport.**

The Sunriver Airport is a Category 4, Community General Aviation Airport. It is privately owned and open to the public. The 5,500' long by 65' wide paved runway is located at an elevation of 4,155'. The Sunriver Airport imaginary surfaces are based on the existing “utility” runway, not any planned improvements or airport upgrades. If and when planned airport improvements are identified through a master planning process, the County will have the option of adjusting the boundaries of the imaginary surfaces to reflect any planned changes.

- A. Primary Surface - For Sunriver, the primary surface is 500' wide by 5,900' long.
- B. Runway Protection Zone (RPZ) - The Sunriver Airport has two different approaches. Runway #18 has a non-precision approach, while Runway #36 has a visual approach. The non-precision RPZ forms a 500' wide by 1,700' long by 1,010' wide trapezoid. The visual RPZ is 500' wide by 1,000' long by 700' wide.



- C. Approach Surface – The non-precision approach surface is 500' wide by 5,000' long by 2,000' wide, with an upward approach slope ratio of 20:1 (one-foot vertical for each 20 feet horizontal). The visual approach is 500' wide by 5,000' long by 1,500 wide at the same 20:1 slope ratio.
- D. Horizontal Surface - The surface boundary is comprised of connected arcs drawn 5,000 feet outward and centered on the ends of the primary surface. The elevation of the horizontal surface for the Sunriver Airport is 4,305 feet.  
(Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

**18.80.036. Sisters Eagle Air Airport.**

- The Sisters Eagle Air Airport is a Category 4, Community General Aviation Airport. It is privately owned and open to the public. The 3,550' long by 50' wide paved runway is located at an elevation of 3,165'.
- A. Primary Surface - For Sisters, the primary surface is 250' wide by 3,950' long.
  - B. Runway Protection Zone (RPZ) - The Sisters Airport has two similar visual approaches. The visual RPZ is 250' wide by 1,000' long by 700' wide.
  - C. Approach Surface – The visual approach surfaces are 250' wide by 5,000' long by 1,250' wide, with an upward approach slope ratio of 20:1 (one-foot vertical for each 20 feet horizontal).
  - D. Horizontal Surface - The surface boundary is comprised of connected arcs drawn 5,000 feet outward and centered on the ends of the primary surface. The elevation of the horizontal surface for the Sisters Airport is 3,315 feet.  
(Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

**18.80.038. Cline Falls Airpark.**

- The Cline Falls Airpark is classified by the state as a privately owned, private-use airport that was the base for three or more aircraft as of December 31, 1994. Located at an elevation of 2,920', the single dirt/turf runway is 3,000' long by 100' wide.
- A. Primary Surface - The primary surface is 200' wide by 3,000' long.
  - B. Approach Surface - The dimensions of the visual approach surfaces are 200' wide by 2,500' long by 450' wide, with an upward approach slope ratio of 20:1 (one-foot vertical for each 20 feet horizontal).  
(Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

**18.80.040. Juniper Airpark.**

- The Juniper Airpark is classified by the state as a privately owned, private-use airport that was the base for three or more aircraft as of December 31, 1994. Located at an elevation of 3,490', the single turf runway is 2,640' long by 100' wide.
- A. Primary Surface - The primary surface is 200' wide by 2,640' long.
  - B. Approach Surface - The dimensions of the visual approach surfaces are 250' wide by 2,500' long by 450' wide, with an upward approach slope ratio of 20:1 (one-foot vertical for each 20 feet horizontal).  
(Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

**18.80.044. Land Use Compatibility.**

Applications for land use or building permits for properties within the boundaries of this overlay zone shall comply with the requirements of DCC 18.80 as provided herein. When compatibility issues arise, the Planning Director or Hearings Body is required to take actions that eliminate or minimize the incompatibility by choosing the most compatible location or design for the boundary or use. Where compatibility issues persist, despite actions or conditions intended to eliminate or minimize the incompatibility, the Planning Director or Hearings Body may disallow the use or expansion, except where the action results in loss of current operational levels and/or the ability of the airport to grow to meet future community needs. Reasonable conditions to protect the public safety may be imposed by the Planning Director or Hearings Body. [ORS

836.619; ORS 836.623(1); OAR 660-013-0080] An air traffic control tower, as defined in DCC 18.80.022, is not subject to this section.

- A. Noise. Within airport noise impact boundaries, land uses shall be established consistent with the levels identified in OAR 660, Division 13, Exhibit 5 (Table 2 of DCC 18.80). Applicants for any subdivision or partition approval or other land use approval or building permit affecting land within airport noise impact boundaries, shall sign and record in the Deschutes County Book of Records, a Declaration of Anticipated Noise declaring that the applicant and his successors will not now, or in the future complain about the allowed airport activities at the adjacent airport. In areas where the noise level is anticipated to be at or above 55 DNL, prior to issuance of a building permit for construction of a noise sensitive land use (real property normally used for sleeping or as a school, religious institutions or assemblies, hospital, public library or similar use), the permit applicant shall be required to demonstrate that a noise abatement strategy will be incorporated into the building design that will achieve an indoor noise level equal to or less than 55 DNL. [NOTE: FAA Order 5100.38A, Chapter 7 provides that interior noise levels should not exceed 45 decibels in all habitable zones.]
- B. Outdoor lighting. No new or expanded industrial, commercial or recreational use shall project lighting directly onto an existing runway or taxiway or into existing airport approach surfaces except where necessary for safe and convenient air travel. Lighting for these uses shall incorporate shielding in their designs to reflect light away from airport approach surfaces. No use shall imitate airport lighting or impede the ability of pilots to distinguish between airport lighting and other lighting.
- C. Glare. No glare producing material, including but not limited to unpainted metal or reflective glass, shall be used on the exterior of structures located within an approach surface or on nearby lands where glare could impede a pilot's vision.
- D. Industrial emissions. No new industrial, mining or similar use, or expansion of an existing industrial, mining or similar use, shall, as part of its regular operations, cause emissions of smoke, dust or steam that could obscure visibility within airport approach surfaces, except upon demonstration, supported by substantial evidence, that mitigation measures imposed as approval conditions will reduce the potential for safety risk or incompatibility with airport operations to an insignificant level. The review authority shall impose such conditions as necessary to ensure that the use does not obscure visibility.
- E. Communications Facilities and Electrical Interference. No use shall cause or create electrical interference with navigational signals or radio communications between an airport and aircraft. Proposals for the location of new or expanded radio, radiotelephone, and television transmission facilities and electrical transmission lines within this overlay zone shall be coordinated with the Department of Aviation and the FAA prior to approval. Approval of cellular and other telephone or radio communication towers on leased property located within airport imaginary surfaces shall be conditioned to require their removal within 90 days following the expiration of the lease agreement. A bond or other security shall be required to ensure this result.
- F. Limitations and Restrictions on Allowed Uses in the RPZ, Transitional Surface, Approach Surface, and Airport Direct and Secondary Impact Areas.  
For the Redmond, Bend, Sunriver, and Sisters airports, the land uses identified in DCC 18.80 Table 1, and their accessory uses, are permitted, permitted under limited circumstances, or prohibited in the manner therein described. In the event of conflict with the underlying zone, the more restrictive provisions shall control. As used in DCC 18.80.044, a limited use means a use that is allowed subject to special standards specific to that use.

(Ord. 2023-027 §1, 2023; Ord. 2020-007 §12, 2020; Ord. 2020-001 §10, 2020; Ord. 2018-006 §10, 2018; Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

**18.80.050. Uses Permitted Outright.**

Any uses permitted outright in the underlying zone with which the AS Zone is combined shall be allowed except as provided in DCC 18.80.044.

(Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

**18.80.054. Conditional Uses.**

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

(Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

**18.80.056. Additional Requirements.**

As a condition of approval of any conditional use proposed within any AS Zone, the Planning Director or Hearings Body may require:

- A. An increase in required setbacks.
- B. Additional off-street parking and loading facilities and building standards.
- C. Limitations on signs or lighting, hours of operation, points of ingress and egress and building heights.
- D. Additional landscaping, screening and other improvements.
- E. Use of glare-resistant materials in construction or other methods likely to reduce operating hazards.
- F. Other conditions considered necessary to achieve compliance and policies of the comprehensive plan.

(Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991; Ord. 80-221 §1, 1980)

**18.80.058. Non-conforming Uses.**

- A. These regulations shall not be construed to require the removal, lowering or alteration of any structure not conforming to these regulations. These regulations shall not require any change in the construction, alteration or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this overlay zone.
- B. Notwithstanding DCC 18.80.058(A), the owner of any existing structure that has an adverse effect on air navigational safety as determined by the Department of Aviation shall install or allow the installation of obstruction markers as deemed necessary by the Department of Aviation, so that the structures become more visible to pilots.
- C. No land use or limited land use approval or other permit shall be granted that would allow a nonconforming use or structure to become a greater hazard to air navigation than it was on the effective date of this overlay zone.

(Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

**18.80.060. Variances.**

- A. Any person desiring to erect or increase the height of any structure, or use not in accordance with provisions prescribed in DCC 18.80 may apply for a variance.
- B. Application for Variance must be accompanied by a determination from the Oregon Department of Aviation and the Federal Aviation Administration (FAA) as to the effect of the proposal on the safe and efficient use of navigable airspace.
- C. Any variance granted may be conditioned as to require the owner of the structure to install, operate and maintain obstruction markers, at the owner's expense.

(Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

**18.80.062. Dimensional Standards.**

- A. Minimum lot size and setbacks shall be those indicated in the underlying zone with which the AS Zone is combined.
- B. Where an area is covered by more than one height limitation, the more restrictive shall prevail.
- C. The airport owners, or their agents, shall be permitted at mutually agreed upon times to enter onto private property to reduce the height of trees that exceed the height limitations herein established.

(Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

**18.80.064. Procedures.**

An applicant seeking a land use or limited land use approval in an area within this overlay zone shall provide the following information in addition to any other information required in the permit application:

- A. A map or drawing showing the location of the property in relation to the airport imaginary surfaces. The Community Development Department shall provide the applicant with appropriate base maps upon which to locate the property.
- B. Elevation profiles and a site plan, both drawn to scale, including the location and height of all existing and proposed structures, measured in feet above mean sea level.  
And, additionally, if a height variance is requested:
- C. Letters of support from the airport sponsor, the Department of Aviation and for Redmond, Bend and Sunriver Airports, the FAA as well. The letter(s) shall include specific references to the particular variance and findings for approval.

(Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

**18.80.072. Water Impoundments.**

Any use or activity that would result in the establishment or expansion of a water impoundment shall comply with the requirements of DCC 18.80.072. (ORS 836.623(2); OAR 660-013-0080(1)(f))

- A. No new or expanded water impoundments of one-quarter acre in size or larger are permitted:
  - 1. Within an approach surface and within 5,000 feet from the end of a runway; or
  - 2. On land owned by the airport sponsor that is necessary for airport operations.
- B. New or expanded water impoundments of one-quarter acre in size or larger are permitted:
  - 1. Within 10,000 feet from the end or edge of a runway (outside an approach surface), or
  - 2. Between 5,000 feet and 40,000 feet within an approach surface for an airport with a precision instrument approach, unless Deschutes County first adopts findings of fact, supported by substantial evidence in the record, that the impoundments are likely to result in a significant increase in hazardous movements of birds feeding, watering or roosting in areas across the runways or approach corridors.

[NOTE: FAA Part 77 discourages water impoundments within 50,000 feet of a runway, within an approach surface.] [ORS 836.623(2)(c); OAR 660, Division 13, Exhibit 1, Section 3(b)(C)]

- C. Process. An application for approval of a new water impoundment shall be considered utilizing the review process applied to applications for conditional use permits. In addition to the parties required by law to be mailed written notice of the public hearing on the application, written notice of the hearing shall be mailed to the airport sponsor, the Seattle Airports District Office of the FAA, the FAA's technical representative, and the Oregon Department of Aviation.
  - 1. Prior to filing its application, the applicant shall coordinate with the airport sponsor, the Department of Aviation, and the FAA (Seattle Airports District Office) and FAA's technical representative regarding the proposed water impoundment, its short and long term potential to significantly increase hazardous movements of birds feeding, watering or roosting in areas across runways or approach surfaces, and proposed mitigation.
    - a. For water impoundments individually or cumulatively exceeding five acres in size on the subject property, the applicant shall prepare a draft bird strike study as provided in DCC 18.80.072(C)(1)(a). The airport sponsor, the Department of Aviation, and the FAA and FAA's technical representative shall have 45 days to review the study draft. Their comments shall be included and addressed in a final bird strike study.
    - b. For water impoundments that do not individually or cumulatively exceed five acres in size on the subject property, the bird strike study requirements in DCC 18.80.072(B)(2) may be reduced or waived upon agreement by the airport sponsor, the Department of Aviation, and the FAA and FAA's technical representative if the applicant can demonstrate, to the satisfaction of the airport sponsor, the Department of Aviation, and the FAA and FAA's technical representative that the proposed water impoundment, with appropriate short and long term mitigation, will not result in

- a significant increase in hazardous movements of birds feeding, watering or roosting in areas across runways or approach surfaces. As used herein, "appropriate mitigation" means small-scale measures of proven reliability that can be applied in perpetuity and that the applicant has the financial resources to support.
- c. An application shall not be deemed complete for land use review purposes until the applicant has filed with the Director the final bird strike study addressing comments from the airport sponsor, the Department of Aviation, and the FAA and FAA's technical representative. When no bird strike study is required, the application shall not be deemed complete until the applicant has filed with the Director correspondence or other proof demonstrating agreement among the airport sponsor, the Department of Aviation, and the FAA and FAA's technical representative that no bird strike study is required.
2. Bird Strike Study. A bird strike study required under DCC 18.80.072 shall contain at least the following information:
    - a. A description of the proposed project, its location in relation to the airport, and the bird strike study area, which shall include at least the project site, the airport property, all lands within 10,000 feet from the end or edge of the airport runway, and other surrounding habitat areas which form the local bird ecosystem.
    - b. A description of bird feeding, watering and roosting habitats in the bird strike study area, including discussion of feeding behavior and food sources and identification of loafing, watering, roosting and nesting area locations.
    - c. A description of existing and planned airport operations and air traffic patterns and any available history of bird strike incidents.
    - d. Wildlife surveys and documentation of existing bird species, populations, activities and flight patterns in the bird strike study area. The surveys shall address bird species and their composition; bird population estimates and densities per unit area; feeding behavior; food sources; seasonal use patterns; frequency of occurrence; location of loafing, roosting and nesting areas; and analysis of the relation of bird flight movements to airport traffic patterns and navigational safety. The airport sponsor shall provide approach and departure air space information up to five statutory miles from the airport.
    - e. An evaluation of the anticipated effects of the proposal on the population density, behavior patterns, movements and species composition of birds within the bird strike study area and of the impact of these effects on air navigation and safety considering possible mitigation.
    - f. Identification and evaluation of proposed and alternative short and long term mitigation measures that would prevent a significant increase in hazardous movements of birds feeding, watering or roosting in areas across runways and approach surfaces that otherwise might result from the proposed use. The evaluation shall discuss the proven reliability of proposed measures, their effectiveness over both the short and long term, their costs, and the applicant's financial ability to assure their perpetual implementation, i.e. ongoing implementation for as long as a potential bird strike hazard persists.
    - g. Such other information as is recommended by the FAA's technical representative or is required to demonstrate compliance with the requirements of DCC 18.80.072(C)(3).
  3. Required Findings. The determination whether a proposed new water impoundment, with reasonable and practicable mitigation measures, is likely to significantly increase hazardous movements of birds feeding, watering or roosting in areas across runways or approach surfaces shall be based upon the proposal's potential, both in the short term and in the long term, to significantly increase bird strike hazards to air navigation, and the appropriateness, effectiveness and affordability of proposed mitigation measures or other conditions needed to reduce bird strike hazards. In determining compliance with this standard, the findings shall address each of the following factors:
    - a. The demonstrated overall effectiveness and reliability of proposed measures and conditions, in both the short and long term and under similar circumstances and conditions, to avoid a significant increase in bird strike hazards to air navigation. Experimental measures or measures

- not based on accepted technology and industry practices shall be considered ineffective, inappropriate and of unproven reliability.
- b. The economic, social and environmental impacts of proposed measures to the neighboring community and the affected natural environment.
  - c. The applicant's ability to pay for necessary short and long-term mitigation measures, including fallback measures that may be required if initially proposed mitigation measures prove ineffective, and to assure the perpetual implementation of those measures for as long as a potential bird strike hazard persists. An applicant's failure to demonstrate its financial ability to assure the perpetual implementation of necessary and appropriate measures shall render those measures unreasonable and impracticable for purposes of the application.
  - d. The applicant's ability to accurately monitor the effectiveness of mitigation over time.
  - e. The potential impacts to navigational safety and air travel if the applicant cannot perform necessary mitigation measures or maintain those measures in perpetuity, or if those measures prove to be ineffective at avoiding a significant increase in bird strike hazards to air navigation.
  - f. The applicant's reclamation plan.
4. Mitigation Measures and Approval Conditions. A decision approving an application shall require, as conditions of approval, all measures and conditions deemed appropriate and necessary to prevent in perpetuity a significant increase in hazardous movements of birds feeding, watering or roosting in areas across runways and approach surfaces.
- a. Only customary measures based on accepted technology and industry practice may be considered and imposed as approval conditions.
  - b. Serious consideration shall be given to all measures and conditions recommended by the Department of Aviation and the FAA and FAA's technical representative. Generally, such measures and conditions shall be attached to a decision approving an application unless findings are adopted, supported by substantial evidence, demonstrating why such measures and conditions are not necessary to reduce bird hazard impacts resulting from the water impoundment to an insignificant level.
  - c. A decision to approve shall require from the applicant a performance bond or other form of secure financial support. Such bond or security shall be in an amount sufficient to assure perpetual implementation of appropriate and necessary mitigation measures for as long as a potential bird strike hazard persists.
  - d. A decision to approve shall require appropriate monitoring of the effectiveness of mitigation over time. Upon request, monitoring data and reports shall be made available to the airport sponsor, the Department of Aviation, and the FAA and FAA's technical representative. The decision shall allow for modifications to approval conditions should existing mitigation measures prove ineffective at preventing a significant increase in hazardous movements of birds feeding, watering or roosting in areas across runways and approach surfaces. Modifications to approval conditions shall be considered utilizing the review process applied to applications for conditional use permits.
5. Exemptions. The requirements of DCC 18.80.072 shall not apply to:
- a. Storm water management basins established by an airport identified under ORS 836.610(1).
  - b. Seaplane landing areas within airports identified under ORS 836.610(1).
  - c. Lands owned or managed by Sunriver Resort, Crosswater and their affiliates.
- (Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

**18.80.074. Wetland Mitigation, Creation, Enhancement and Restoration.**

- A. Notwithstanding the requirements of DCC 18.80.072, wetland mitigation, creation, enhancement or restoration projects located within areas regulated under DCC 18.080.072 shall be allowed upon demonstration of compliance with this requirements of DCC 18.80.074.

- B. Wetland mitigation, creation, enhancement or restoration projects existing or approved on the effective date of this ordinance and located within areas regulated under DCC 18.80.072 are recognized as lawfully existing uses.
- C. To help avoid increasing safety hazards to air navigation near public use airports, the establishment of wetland mitigation banks in the vicinity of such airports but outside approach surfaces the areas regulated under DCC 18.80.072 is encouraged.
- D. Applications to expand wetland mitigation projects in existence as of the effective date of this ordinance, and new wetland mitigation projects, that are proposed within areas regulated under DCC 18.80.072 shall be considered utilizing the review process applied to applications for conditional use permits and shall be permitted upon demonstration that:
  - 1. The affected wetlands provide unique ecological functions, such as critical habitat for threatened or endangered species or ground water discharge, and it is not practicable to provide the mitigation off-site; and
  - 2. The wetland creation, enhancement or restoration is designed and will be maintained in perpetuity in a manner that will not increase hazardous movements of birds feeding, watering or roosting in areas across runways or approach surfaces.
- E. Wetland mitigation permitted under DCC 18.80.074(D) shall be designed and located to avoid creating a wildlife hazard or increasing hazardous movements of birds across runways or approach surfaces.
- F. Proposals for new or expanded wetland mitigation, creation, enhancement or restoration projects regulated under DCC 18.80.074 shall be coordinated with the airport sponsor, the Department of Aviation, the FAA and FAA's technical representative, the Oregon Department of Fish & Wildlife (ODFW), the Oregon Division of State Lands (DSL), the US Fish & Wildlife Service (USFWS), and the US Army Corps of Engineers (Corps) as part of the permit application.
- G. Exemptions. The requirements of DCC 18.80.74 shall not apply to activities related to the management or modification of golf courses owned or managed by Sunriver Resort, Crosswater and their affiliates. (Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

**18.80.076. Water Impoundment Notification.**

- A. Deschutes County shall provide notice to the Oregon Department of Aviation when it, or its designee, receives an application for a comprehensive plan amendment, zone change or permit as defined in ORS 215.402 or 227.160 that, if approved, would result in a water impoundment larger than one-quarter acre within 10,000 feet of the Redmond, Bend, Sunriver or Sisters Airports.
- B. A final determination regarding a new water impoundment described in ORS 836.623 shall be made by local governments as provided in ORS 836.623. (Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

**18.80.078. FAA Notification (Form 7460-1).**

- A. Federal and State Notice.  
Federal Aviation Regulation (FAR) Part 77 requires that anyone proposing to construct anything which may obstruct the use of airspace by aircraft to provide a notice to that effect to the FAA. In addition, OAR 738.070.0060 requires notice also be sent to the Oregon Department of Aviation. Generally, construction proposals in the vicinity of airports may obstruct airspace. Notice to the FAA and Oregon Department of Aviation is required for anything which may affect landing areas, either existing or planned, which are open to the public, or are operated by one of the armed forces.
- B. FAA Form 7460-1 "Notice of Proposed Construction or Alteration" is the notification form. It is to be submitted by the applicant directly to the FAA and Oregon Department of Aviation. Forms are available from the Oregon Department of Aviation or the Northwest Regional Office of the FAA.
- C. FAA Form 7460-1 should be submitted if the proposed construction or alteration meets the following criteria:

1. Anything over 200' AGL (above ground level at the site).
2. Proposals in the vicinity of an airport, if the proposal would be higher than a slope from the nearest point on a runway and increasing its elevation at a ratio of:

Longest Runway	Proximity to Runway	Slope
> 3,200'	Within 20,000'	100 to 1
3,200' or less	Within 10,000'	50 to 1
For a Heliport	Within 5,000'	25 to 1

D. For identification purposes, Deschutes County has established FAA Notification Areas around each of the public use airports within Deschutes County. The boundaries of these areas are based on the runway length. If a proposed construction project is located in one of these areas, the applicant shall determine if the height of the proposed project will require FAA notification as per DCC 18.80.076(C). In Deschutes County, each of the public-use airports has a runway longer than 3,200 feet. Therefore, each FAA notification area includes all land within 20,000 feet of each airport’s runway(s), and the slope to be used is 100 to 1.

E. FAA notification is NOT required for any of the following construction or alteration:

1. Any object that would be shielded by existing structures of a permanent and substantial character or by natural terrain or topographic features of equal or greater height, and would be located in the congested area of a city, town, or settlement where it is evident beyond all reasonable doubt that the structure so shielded will not adversely affect safety in air navigation.
2. Any antenna structure of 20 feet or less in height except one that would increase the height of another antenna structure.
3. Any air navigation facility, airport visual approach or landing aid, aircraft arresting device, or meteorological device, of a type approved by the Administrator, or an appropriate military service on military airports, the location and height of which is fixed by its functional purpose.
4. Any construction or alteration for which notice is required by any other FAA regulation. (Ord. 2014-009 §2, 2014; Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

**TABLE 1--Land Use Compatibility**

Use:	Location:				
	RPZ(1)	Transitional Surface	Approach Surface(8)	Direct Impact Area	Secondary Impact Area
Public Airport	L(2)	P	L(9)	P	P
Residential	N	N	L(10)	P	P
Commercial	N	L(14)	L(9)	P	P
Industrial	N	P	L(9)	P	P
Institutional	N	L(14)	L(9)	P	P
Farm Use	P(3)	P(3)	P(3)	P(3)	P(3)
Road/Parking	L(4)	P	P	P	P
Utility	L(5)	L(5)	L(5)	L(5)	L(5)
Parks/Open Space	L(6)	P	P	P	P
Golf Course (17)	L(7)	L(7)	L(7,9)	L(7)	L(7)
Athletic Field	N	N	L(9)	P	P
Sanitary Landfill	N	N	N	N	N(16)
Waste Water Treatment Plant	N	N	N	N	L(15)
Mining	N	N	L(11)	L(11)	L(11)



Water Impoundment	N	N	N,L(12)	L(12)	L(12)
Wetland Mitigation	N	N	L(13)	L(13)	L(13)

Key to Table:

- P = Use is Permitted.
- L = Use is Allowed Under Limited Circumstances (see notes).
- N = Use is Not Allowed.

Numbers in parentheses refer to notes on next page.

Notes for Table 1:

1. No structures shall be allowed within the Runway Protection Zone. Exceptions shall be made only for structures accessory to airport operations whose location within the RPZ has been approved by the Federal Aviation Administration.
2. In the RPZ, public airport uses are restricted to those uses and facilities that require location in the RPZ.
3. Farming practices that minimize wildlife attractants are encouraged.
4. Roads and parking areas are permitted in the RPZ only upon demonstration that there are no practicable alternatives. Lights, guardrails and related accessory structures are prohibited. Cost may be considered in determining whether practicable alternatives exist.
5. In the RPZ, utilities, power lines and pipelines must be underground. In approach surfaces and in airport direct and secondary impact areas, the proposed height of utilities shall be coordinated with the airport sponsor and the Department of Aviation.
6. Public assembly facilities are prohibited within the RPZ.
7. Golf courses may be permitted only upon demonstration, supported by substantial evidence, that management techniques will be utilized to reduce existing wildlife attractants and avoid the creation of new wildlife attractants. Such techniques shall be required as conditions of approval. Structures are not permitted within the RPZ. For purposes of DCC 18.80, tee markers, tee signs, pin cups and pins are not considered to be structures.
8. Within 10,000 feet from the end of the primary surface of a non-precision instrument runway, and within 50,000 feet from the end of the primary surface of a precision instrument runway.
9. Public assembly facilities may be allowed in an approach surface only if the potential danger to public safety is minimal. In determining whether a proposed use is appropriate, consideration shall be given to: proximity to the RPZ; density of people per acre; frequency of use; level of activity at the airport; and other factors relevant to public safety. In general, high-density uses should not be permitted within airport approach surfaces, and non-residential structures should be located outside approach surfaces unless no practicable alternatives exist.
10. Residential densities within approach surfaces should not exceed the following densities: (1) within 500 feet of the outer edge of the RPZ, 1 unit/acre; (2) within 500 to 1,500 feet of the outer edge of the RPZ, 2 units/acre; (3) within 1,500 to 3,000 feet of the outer edge of the RPZ, 4 units/acre.
11. Mining operations involving the creation or expansion of water impoundments shall comply with the requirements of DCC 18.80 regulating water impoundments.
12. See DCC 18.80.072 regulating water impoundments.
13. See requirements in DCC 18.80.074.
14. Overnight accommodations, such as hotels, motels, hospitals and dormitories, are not permitted.
15. Due to land availability constraints, limited wastewater treatment plants within the Secondary Impact Area are permitted on lands owned or managed by the Sunriver Resort or Sunriver utilities.
16. Organic composting facility is permitted.

17. Since Sunriver Resort owns and controls the Sunriver Airport, golf courses operated as part of the Sunriver Resort, Crosswater and their affiliates are exempted.

**TABLE 2--Noise Compatibility\***

Yearly Day-Night Average Sound Levels (DNL) in decibels

<b>Land Uses</b>	<b>Below 65</b>	<b>65-70</b>	<b>70-75</b>	<b>75-80</b>	<b>80-85</b>	<b>Over 85</b>
<b>Residential</b>						
Residential, other than mobile homes and transient lodgings	Y	N(1)	N(1)	N	N	N
Mobile home parks	Y	N	N	N	N	N
Transient lodgings	Y	N(1)	N(1)	N(1)	N	N
<b>Public Use</b>						
Schools	Y	N(1)	N(1)	N	N	N
Hospitals and nursing homes	Y	25	30	N	N	N
Religious institutions or assemblies, auditoriums, and concert halls	Y	25	30	N	N	N
Governmental services	Y	Y	25	30	N	N
Transportation	Y	Y	Y(2)	Y(3)	Y(4)	Y(4)
Parking	Y	Y	Y(2)	Y(3)	Y(4)	N
<b>Commercial Use</b>						
Offices, business and professional	Y	Y	25	30	N	N
Wholesale and retail—building materials, Hardware and farm equipment	Y	Y	Y(2)	Y(3)	Y(4)	N
Retail trade—general	Y	Y	25	30	N	N
Utilities	Y	Y	Y(2)	Y(3)	Y(4)	N
Communication	Y	Y	25	30	N	N
<b>Manufacturing and Production</b>						
Manufacturing general	Y	Y	Y(2)	Y(3)	Y(4)	N
Photographic and optical	Y	Y	25	30	N	N
Agriculture (except livestock) and forestry	Y	Y(6)	Y(7)	Y(8)	Y(8)	Y(8)
Livestock farming and breeding	Y	Y(6)	Y(7)	N	N	N
Mining and fishing, resource production and extraction	Y	Y	Y	Y	Y	Y
<b>Recreational</b>						
Outdoor sports arenas and spectator sports	Y	Y(5)	Y(5)	N	N	N
Outdoor music shells, amphitheaters	Y	N	N	N	N	N
Nature exhibits and zoos	Y	Y	N	N	N	N
Amusements, parks, resorts and camps	Y	Y	Y	N	N	N
Golf courses, riding stables and water recreation	Y	Y	25	30	N	N

Numbers in parentheses refer to notes.

\*The designations contained in this table do not constitute a Federal determination that any use of land covered by the program is acceptable or unacceptable under Federal, State, or local law. The responsibility for determining the acceptable and permissible land uses and the relationship between specific properties and specific noise contours rests with the local authorities. FAA determinations under Part 150 are not intended to substitute federally determined land uses for those determined to be appropriate by local authorities in response to locally determined needs and values in achieving noise compatible land uses.

Key to Table:

- SLUCM = Standard Land Use Coding Manual.
- Y (Yes) = Land Use and related structures compatible without restrictions.
- N (No) = Land Use and related structures are not compatible and should be prohibited.
- NLR = Noise Level Reduction (outdoor to indoor) to be achieved through incorporation of noise attenuation into the design and construction of the structure.
- 25, 30, or 35 = Land use and related structures generally compatible; measures to achieve NLR of 25, 30, or 35 dB must be incorporated into design and construction of structure.

Notes for Table 2:

1. Where the community determines that residential or school uses must be allowed, measures to achieve outdoor to indoor Noise Level Reduction (NLR) of at least 25 dB and 30 dB should be incorporated into building codes and be considered in individual approvals. Normal residential construction can be expected to provide a NLR of 20 dB, thus, the reduction requirements are often stated as 5, 10 or 15 dB over standard construction and normally assume mechanical ventilation and closed windows year round. However, the use of NLR criteria will not eliminate outdoor noise problems.
2. Measures to achieve NLR 25 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.
3. Measures to achieve NLR of 30 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.
4. Measures to achieve NLR 35 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal level is low.
5. Land use compatible provided special sound reinforcement systems are installed.
6. Residential buildings require an NLR of 25.
7. Residential buildings require an NLR of 30.
8. Residential buildings not permitted.

**Declaration of Anticipated Noise**

As a condition of the grant of development approval pursuant to DCC 18.80, the undersigned, hereinafter referred to as Grantor hereby covenants and agrees that it shall not, by reason of their ownership or occupation of the following described real property, protest or bring suit or action against the \_\_\_\_\_ [Name of Airport] or Deschutes County, for aviation-related noise, including property damage or personal injury from said noise connected when such activities conform to:

1. Airport activities lawfully conducted in connection with a pre-existing airport, as that term is defined in DCC 18.80.022(B-C), at the described airport; or
2. Airport activities that might be lawfully conducted in the future at the described airport under County or State permits or exemptions.

The real property of Grantor subject to this covenant and agreement is situated in Deschutes County, State of Oregon, and described as set forth in that certain [Statutory Warranty Deed] dated [date], as record in [the Official Records of Deschutes County as instrument number 20xx-xxxx] OR [Volume xx, Page xx of the Deschutes County Board of Records];

Grantor acknowledge that by virtue of such grant he/they have no remaining rights to complain or protest about the protected activities described above.

This Declaration of Anticipated Noise runs with the land and is binding upon the heirs, successors and assigns of the undersigned's interest in the described real property or any persons acquiring through he undersigned an interest in the described real property.

Deschutes County requires the execution of this covenant and agreement by the Grantor as a pre-requisite to Deschutes County approving a partition, subdivision, or issuing a building permit for Grantor's development on the above described real property, which real property is located within the noise impact boundary of the \_\_\_\_\_ [Name of Airport]. This Declaration is executed for the protection and benefit of the \_\_\_\_\_ [Name of Airport] and Deschutes County's interest in said airport and to prevent development in adjacent lands to said airport which will interfere with the continued operation existent and development of said airport.

Dates this \_\_\_\_ day of \_\_\_\_, 20\_\_

Grantor  
[Name]

On this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_, before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of \_\_\_\_\_ who executed the above document on behalf of said Department.

\_\_\_\_\_  
Notary Public for: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**DECISION, FINDINGS AND RECOMMENDATION OF  
THE DESCHUTES COUNTY HEARINGS OFFICER**

**FILE NUMBERS:** 247-23-000470-TA

**HEARING DATE:** October 2, 2023, 6:00 p.m.

**HEARING LOCATION:** Videoconference and  
Barnes & Sawyer Rooms  
Deschutes Services Center  
1300 NW Wall Street  
Bend, OR 97708

**APPLICANT:** City of Bend

**SUBJECT PROPERTIES:** The subject properties comprise the Bend Municipal Airport, which includes the following addresses and tax lots:

1. 63155 Gibson Air Rd – 1713200000200
2. 63110 Powell Butte Hwy – 1713200000201
3. 63205 Gibson Air Rd – 171317C000100
4. 63482 Powell Butte Hwy – 1713170000200
5. 22550 Nelson Pl – 1713200000202
6. 63144 Powell Butte Hwy – 1713200000300

**REQUEST:** Applicant requests text amendments to Deschutes County Code (“DCC” or “Code”) Chapter 18.04, Title Purpose and Definitions; DCC Chapter 18.76, Airport Development Zone; DCC Chapter 18.80, Airport Safety Combining Zone; and DCC Chapter 18.120, Exceptions. The proposed text amendments would modify the Code to add a definition of an air traffic control tower, establish air traffic control towers as a use permitted outright in the Airport Development Zone, and modify the height limit to allow air traffic control towers up to 115 feet in height.

**HEARINGS OFFICER:** Tommy A. Brooks

**SUMMARY OF DECISION:** The Hearings Officer finds that the Applicant’s request satisfies all procedural and substantive criteria necessary to approve the Applicant’s request for amendments to the text of the Code as modified during this proceeding. The Hearings Officer recommends the Deschutes County Board of County Commissioners adopt by ordinance the Code language set forth in this Recommendation as Exhibit A.

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**I. APPLICABLE STANDARDS AND CRITERIA**

Deschutes County Code

- Title 18, Deschutes County Zoning Ordinance
  - Chapter 18.04, Title, Purpose and Definitions
  - Chapter 18.76, Airport Development Zone
  - Chapter 18.80, Airport Safety Combining Zone (AS)
  - Chapter 18.120, Exceptions
  - Chapter 18.136, Amendments

Title 22, Deschutes County Development Procedures Ordinance

State Statutes

- ORS 836.610
- ORS 836.616

State Administrative Rules

- OAR Chapter 660, Division 013
- OAR Chapter 660, Division 015

**II. BACKGROUND AND PROCEDURE**

A. Background

The Applicant in this proceeding is the City of Bend (“City”). The City owns and operates the Bend Municipal Airport (“Airport”) on the Subject Properties.<sup>1</sup> The Subject Properties are zoned Airport Development (AD) (“AD Zone”) and are the only properties in the County with that zoning designation. The City initially requested various text amendments to Deschutes County Code (“DCC” or “Code”) Chapter 18.04, Title Purpose and Definitions; DCC Chapter 18.76, Airport Development Zone; DCC Chapter 18.80, Airport Safety Combining Zone; and DCC Chapter 18.120, Exceptions. The City included its requested text amendments in the Application. After the Hearing, the City submitted a revised version of the specific text amendments it seeks, which modify only DCC Chapter 18.76, Airport Development Zone, and DCC Chapter 18.80, Airport Safety Combining Zone. This Recommendation will refer to the Applicant’s final version of the text amendments, attached as Exhibit A, as the “Text Amendments.”

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<sup>1</sup> The Subject Properties listed above differ slightly from the list of properties included in the Application. Specifically, the Application does not refer to Tax Lot 1719200000300. The Applicant and the Staff Report also refer to a different source for the address of each lot, which makes the addresses appear to be different, although they likely are not. Because the Applicant did not object to the list of properties presented in the Staff Report, and because the Staff Report list of properties appears more inclusive, I have used the list of properties as presented in the Staff Report as the “Subject Properties.”

Staff from the County’s Community Development Department (“Staff”) issued a Staff Report on September 25, 2023, describing the Application and the applicable criteria (“Staff Report”). As described by the City and acknowledged in the Staff Report, the purpose of the Text Amendments is as follows:

The proposed text amendments will support master planning for the Bend Municipal Airport. The proposed amendments are intended to support the construction of an air traffic control tower, which is now an improvement supported by the FAA. The amendments are proposed to ensure the establishment of a tower will support airport operations and, in a manner, consistent with the master planning for the Bend Municipal Airport. The amendments are further limited to the Bend Airport so that another use could not be established through these amendments.

**B. Notice and Hearing**

On September 7, 2023, the County issued a Notice of Public Hearing (“Hearing Notice”) for this matter. The County mailed the Hearing Notice to all owners of property within 250 feet of the AD Zone and the Airport boundaries. The County also published the Hearing Notice in the Bend Bulletin on September 10, 2023.

Pursuant to the Hearing Notice, I presided over the Hearing as the Hearings Officer on October 2, 2023, at 6:00 p.m. The Hearing took place in a hybrid format, with the Applicant, Staff, and other participants present in the Hearing Room and the Hearings Officer participating remotely.

At the beginning of the Hearing, I noted for the record that this phase of the adoption of the Text Amendments would be quasi-judicial in nature and, therefore, I directed participants to direct comments to the approval criteria and standards, and to raise any issues a participant wanted to preserve for appeal if necessary. At the conclusion of the evidentiary Hearing, and at the request of the Applicant, I announced that the record would remain open for written materials as follows: (1) any participant could submit additional materials until October 9, 2023; (2) any participant could submit rebuttal materials until October 16, 2023 (“Rebuttal Period”); and (3) the Applicant could submit a final legal argument without new evidence until October 23, 2023. Participants were further instructed that all submittals must be received by the County by 4:00 p.m. on the applicable due date.

**C. Nature of Decision**

The Text Amendments involve changes only to the language of the Code. Due to the unique nature of the AD Zone, the changes, if adopted, impact only one property owner – the City. This matter therefore involves a threshold question of whether the Text Amendments are legislative, or whether they are quasi-judicial in nature. As explained below, this is a unique situation in which the Text Amendments are both. DCC 18.136.010 governs amendments to the Code:

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

accomplished by filing an application on forms provided by the Planning Department and shall be subject to applicable procedures of DCC Title 22.

By its express terms, this provision states that the process for a text amendment is as set forth in DCC 22.12. But DCC 22.12 broadly governs “legislative” procedures. DCC 22.04.020 defines legislative changes as follows:

Legislative changes generally involve broad public policy decisions that apply to other than an individual property owner. These include, without limitation, amendments to the text of the comprehensive plans, zoning ordinances, or the subdivision or partition ordinance and changes in zoning maps not directed at a small number of property owners.

As Staff points out in the Staff Report (attached to this decision as Exhibit B), the Text Amendments do not fit squarely within this definition. Further, the Code does not expressly define “text amendment” in the context of legislative changes or in the context of a quasi-judicial land use application, even though DCC 22.12.030 allows an individual to seek legislative changes through an application process. The Staff Report suggests that the Text Amendments should be processed in the same manner as a quasi-judicial plan amendment, which is governed by DCC 22.28.030.

In support of its conclusion, Staff provides a detailed analysis under *Strawberry Hill 4 Wheelers v. Benton Co. Bd. of Comm.*, 287 Or 591, 601 P2d 769 (1979) (“*Strawberry Hill 4 Wheelers*”). In that case, the Oregon Supreme Court set out a multi-factor test to determine what process applies to a land use application:

Generally, to characterize a process as adjudication presupposes that the process is bound to result in a decision and that the decision is bound to apply preexisting criteria to concrete facts. The latter test alone [applying preexisting criteria to concrete facts] proves too much; there are many laws that authorize the pursuit of one or more objectives stated in general terms without turning the choice of action into an adjudication. Thus a further consideration has been whether the action, even when the governing criteria leave much room for policy discretion, is directed at a closely circumscribed factual situation or a relatively small number of persons. The coincidence both of this factor and of preexisting criteria of judgment has led the court to conclude that some land use laws and similar laws imply quasijudicial procedures for certain local government decisions. *Strawberry Hill 4 Wheelers* at 602-03.

As Staff correctly notes, the *Strawberry Hill 4 Wheelers* decision sets out three factors which must be considered:

1. Is the inquiry bound to result in a decision?
2. Are there preexisting criteria that are applied to concrete facts?



- 3. Is the inquiry directed at a closely circumscribed factual situation or a relatively small number of persons?

Although it is a close call, the Hearings Officer agrees with Staff that the three factors listed above, in this case, warrant following a quasi-judicial process for the City’s Application, at least initially. First, even if the Text Amendments are legislative changes, the Code provides an opportunity for an individual to make an application to initiate amendments. Whether the County approves or denies that application, a decision will result, so the inquiry is bound to result in a decision. Second, the Code contains preexisting criteria applicable to the City’s request. Although those Code provisions are largely procedural, the quasi-judicial process can determine if those requirements are met. Third, as already acknowledged, this matter is directed at a relatively small number of persons because the City is the only property owner within the AD Zone and, therefore, the only property owner directly impacted by the Text Amendments.

At the same time, the Text Amendments carry the qualities of a legislative act. The language in DCC 22.04.020 provides that legislative changes “generally involve broad public policy decisions that apply to other than an individual property owner” (emphasis added), and that definition does not state that decisions applicable to only one individual property owner cannot be legislative. Indeed, that Code provision goes on to list examples of legislative decisions, including amendments to the text of zoning ordinances.

An important component of DCC 22.12 is DCC 22.12.050, addressing final decisions. That Code provision states that “[a]ll legislative changes shall be adopted by ordinance.” That language does not distinguish between purely legislative changes and those legislative changes that may be processed using a quasi-judicial process. This makes sense because the DCC is adopted by ordinance, and any changes to the text of the Code would be an amendment to that adopted ordinance. It also makes sense because ORS 215.503(2) requires that “[a]ll legislative acts relating to comprehensive plans, land use planning or zoning adopted by the governing body of a county shall be by ordinance” (emphasis added).

Based on the foregoing, I find that, in this case, the adoption of text amendments proposed by an applicant is a two-step process. In the first step of the process, the Applicant has a right under the Code to submit and to have considered an application to amend the Code’s text. This phase of the process is quasi-judicial in nature and it is appropriate to have a hearing and to build a record following the principles of a quasi-judicial process. As part of that process, the Hearings Officer is addressing the application only of the County’s existing laws. The second step of the process is for the Deschutes County Board of Commissioners (“County Board”) to adopt an ordinance to incorporate any text amendments to the Code. Amendments to the text of a zoning ordinance are a change in the County’s law, and only the County Board can make such a change. In other words, the Hearings Officer is without authority to amend the County’s Code. The Hearings Officer, however, can make a recommendation to the County Board based on what develops in the quasi-judicial phase of the process. The County Board is free to accept or to reject the Hearings Officer’s recommendation.

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### III. FINDINGS AND CONCLUSIONS

#### A. Adoption and Incorporation of Findings in Staff Report

The Staff Report contains a comprehensive discussion and conclusion of the criteria applicable to the Application. The vast majority of the conclusions in the Staff Report are not challenged in this proceeding. I find that the Staff Report correctly lists the applicable criteria, and I hereby adopt the discussion and conclusions in the Staff Report as my findings. The remainder of the findings in this Recommendation are intended to supplement the Staff Report. To the extent any of the findings in this Recommendation conflict with the discussion and conclusions in the Staff Report, the findings set forth in this Recommendation control anything to the contrary in the Staff Report.

#### B. Issues Raised in Opposition to the Application

Other than the Applicant and Staff, only one individual participated in this proceeding. That individual, Dorinne Tye, resides near the Airport and opposes the Application. The comments and evidence submitted by participant Tye largely address health and safety concerns associated with aviation activities in general. Very few, if any, of those comments identify a Code criterion they are intended to address, and very few of those comments, if any, specifically address air traffic control towers. In the findings below, I attempt to identify and address criteria that may be invoked by participant Tye's testimony, and these findings explain why the issues raised by participant Tye do not undermine the conclusions set forth in the Staff Report.

As an initial matter, there is some uncertainty as to whether participant Tye submitted all post-Hearing materials in a timely manner. As explained at the conclusion of the Hearing, post-hearing submittals were due at 4:00 p.m. on the applicable due date. For electronic submittals, the timing of a submittal is determined based on the date and time the submittal is received by the County's servers. Multiple submittals from participant Tye appear to have time stamps after 4:00 p.m. on the due date. However, those submittals also appear to be re-submittals of items that were sent before the 4:00 p.m. deadline but that may have been initially delivered to the wrong Staff email address. Because the record is unclear whether the County's servers did not receive the submittals by the appropriate deadline, I am allowing them to be included in the record.

The record also contains an email from participant Tye to Staff, dated October 16, 2023, stating a desire to have "a few extra days to reply." It is not clear if that request was intended to be a request to the Hearings Officer to modify the Rebuttal Period. Because this portion of the proceeding is being conducted as a land use action, the hearing procedures are set forth in DCC Chapter 22.24. Within that Code chapter, DCC 22.24.140 sets forth the specific basis for continuances and record extensions. Because participant Tye does not identify a specific basis under the Code for seeking a record extension, the request, to the extent it is one to the Hearings Officer, is subject to the discretion of the Hearings Officer. In light of the fact that participant Tye was able to submit materials during the Rebuttal Period, and in the absence of any particular information explaining what additional information would be provided that is not already in the record, I find that it is not necessary to extend the record period and, therefore, decline that request.

As noted above, the majority of the comments opposing the Application are general in nature and relate to health and safety issues, and those comments do not identify specific Code criteria on which the Application should be analyzed. Indeed, most of the comments fail to recognize that the specific issue before the County is a proposal to amend the text of the Code rather than an approval of a specific development. Those comments also fail to recognize the purpose of the Text Amendments as allowing an air traffic control tower as a permitted use, rather than amendments to Code language that alter whether and how airplanes use the Airport – an activity that already occurs under the current Code.

One specific argument participant Tye makes is that the County should not approve any changes to the Airport without first conducting a “cumulative impacts analysis” that considers factors like noise and air emissions from airplanes. Like other comments, participant Tye does not identify any Code provision that requires a cumulative impacts analysis before the County can adopt text changes to the Code. On that basis alone, I find that this argument should be rejected. In the alternative, to the extent that the cumulative impacts of flight operations should be considered, the record reveals that the purpose of the Text Amendments is to allow the Applicant to better manage existing and planned air operations. Participant Tye does not explain whether or how the Text Amendments themselves will add air operations that are not already planned and, therefore, lead to the additional impacts as asserted. To the contrary, it is the existing impacts from the Airport as it is currently developed that seem to be the center point of participant Tye’s arguments. As presented to the Hearings Officer, there is no basis to review the Airport’s current operations through this proceeding.

Another specific argument participant Tye makes relates to the adequacy of notice related to this proceeding. However, that argument appears to assert that the notice of the Application and the Hearing Notice are “unacceptable” rather than assert that they were not legally sufficient or otherwise did not occur as required by the Code. To the contrary, participant Tye’s comments acknowledge that the Hearing Notice was given to property owners within 250 feet of the Subject Properties and 26 days prior to the Hearing, both of which satisfy the Code’s requirements.

Participant Tye’s comments assert a general conflict of interest by an un-named member of the County Board. The source of that conflict of interest appears to be that the Commissioner also serves on the Redmond Airport Advisory Board, although that assertion, too, is not clear. I find that any arguments relating to conflicts of interest are not well formulated and, therefore, impossible for me to address in these findings. To the extent that a different decision maker has a conflict of interest, that issue can be raised if and when this matter comes before that decision maker.

Participant Tye submitted several comments relating to the behavior of pilots using the Airport. Those comments, however, do not explain what relationship individual pilot behavior has to the Text Amendments. Without such an explanation, I find that this argument is not well formulated and, therefore, impossible for me to address in these findings.

Participant Tye makes several comments, the theme of which is that an air traffic control tower is merely a desire of the Applicant and not actually needed for the Airport. Those comments, however, do not identify a Code provision that requires a text amendment to allow only those uses that are needed, or that prohibits a text amendment to allow a use that is desirable even if it is not needed. Further, whether an air traffic control tower is needed appears to be a question for the Airport operator and the entities that

regulate the Airport's operations. As proposed, the Text Amendments and Code still require the Airport operator to comply with all federal and state laws. Thus, to the extent the need for an air traffic control tower is relevant, that decision would be made in a different venue.

Participant Tye makes several generic assertions that the Text Amendments are not consistent with Statewide Planning Goals ("Goal"). One specific argument participant Tye makes is that the Text Amendments violate Goal 1, the language of which aims to "develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process." Participant Tye appears to take issue with how the Airport's master plans have been developed and, as noted above, the type of notice provided for the Hearing. I agree with the finding in the Staff Report, however, that the process for adopting the Text Amendments complies with Goal 1 "because the County is relying on its citizen involvement program and land use procedures ordinance to conduct public review of these amendments." Further, even if the development of the Airport's master plans was relevant, the Applicant provided evidence of the myriad of ways in which the public is involved in that process.

Participant Tye asserts the Text Amendments do not comply with Goal 3 (and its related statutes), the language of which aims to "preserve and maintain agricultural lands." The specific assertion relating to Goal 3 appears to be that the Applicant has not addressed ORS 215.243.<sup>2</sup> That statute, however, is a legislative policy statement, which provides guidance on the intent of other language in ORS Chapter 215. ORS 215.243 does not appear to impose any specific requirements with respect to the County's ability to adopt Text Amendments relating to land that is not zoned for farm use, nor does participant Tye attempt to identify any such requirement. Participant Tye does describe potential impacts on farming resulting from airplane operations. As the Staff Report notes, however, there do not appear to be any operating characteristics of an air traffic control tower (the subject of the Text Amendments) that would impact nearby farm properties.

Participant Tye asserts that the Text Amendments do not comply with Goal 5 and Goal 6, but does not explain why. The insinuation in the testimony is that airplane operations potentially impact historic buildings, natural resources such as wildlife, and environmental quality. However, as noted in the Staff Report, Goal 5 is not directly applicable to the Text Amendments because they do not include any changes to the County's Goal 5 inventories. Further, in the absence of any specific assertion that an air traffic control tower itself would impact an inventoried Goal 5 resource, I find that this argument is not well formulated and cannot otherwise be addressed in these findings. For a similar reason, I find that participant Tye's arguments relating to Goal 6 are unavailing, because they do not assert that an air traffic control tower itself will cause any harm to air or water quality.

Participant Tye asserts that the Text Amendments do not comply with Goal 12, which aims to provide and encourage a safe, convenient and economic transportation plan. In support of the Applicant, the Applicant provided a Traffic Impact Analysis ("TIA"). The Applicant also submitted a revised TIA based on initial comments it received from the County's transportation planning staff. The County's Senior Transportation Planner reviewed the TIA as revised and agreed with its assumptions, methodology, and conclusions, which demonstrate compliance with the applicable provisions of Goal 12 as implemented

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<sup>2</sup> Participant Tye cites to ORS 215.241, but that appears to be a typo and the statutory language quoted in the testimony mirrors the language in ORS 215.243.

through state administrative rules. Participant Tye expresses disagreement with the outcome of the TIA, but does not identify any purported errors in the TIA. Participant Tye does question whether the number of employees associated with an air traffic control tower is an accurate assumption in the TIA. However, the record reveals that the number of employees assumed in the TIA – five – is based on a literature review and engineering studies. In the absence of any counter evidence as to the appropriate number of employees that should be used in the TIA, I find that the preponderance of the evidence in this record demonstrates that five employees is an appropriate number to use in the TIA.

Based on the foregoing,<sup>3</sup> I find that the adoption of the Text Amendments will be consistent with the Goals.

**V. CONCLUSION AND RECOMMENDATION**

Based on the Findings above, the Applicant’s proposed amendments to DCC Chapter 18.76 and DCC Chapter 18.80 comply with the County’s provisions for amending the Code. The Hearings Officer therefore recommends that the Deschutes County Board of Commissioners adopts the amendments presented in Exhibit A by ordinance unless the Board of Commissioners determines there is a legislative reason not to adopt the amendments.

Dated this 20th day of November 2023



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Tommy A. Brooks  
Deschutes County Hearings Officer

Attachment:  
Exhibit A – Text Amendments  
Exhibit B – Staff Report

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<sup>3</sup> Participant Tye mentions other Goals, but does so without a well formulated argument for why those Goals are not met. For example, with respect to Goal 10 relating to housing, participant Tye makes statements like “calling our farms ‘suburban’ in documents is damaging to our housing....” Such a statement does not present an argument supporting a conclusion that the Text Amendments violate Goal 10, and I find that it is not possible to further address those statements in these findings.

## Chapter 18.76, Airport Development Zone

### **18.76.015 Definitions**

The following definitions apply only to Chapter 18.76.

"Air Traffic Control Tower" means a terminal facility which, through the use of air/ground communications, visual signaling, and other devices, provides air traffic control services to airborne aircraft operating in the vicinity of an airport and to aircraft operating on the airport movement area.

"Customary and usual aviation-related activities" include, but are not limited to, takeoffs, landings, aircraft hangars, tiedowns, construction and maintenance of airport facilities, fixed-base operator facilities, a residence for an airport caretaker or security officer, and other activities incidental to the normal operation of an airport. Residential, commercial, industrial, manufacturing; and other uses, except as provided in this rule, are not customary and usual aviation-related activities and may only be authorized pursuant to OAR 660-013-0110.

"Fixed-base operator or FBO" means a commercial business granted the right by the airport sponsor to operate on an airport and provide aeronautical services such as fueling, hangaring, tie-down and parking, aircraft rental, aircraft maintenance, flight instruction, etc.

"Hangar" means an airport structure intended for the following uses:

1. Storage of active aircraft.
2. Shelter for maintenance, repair, or refurbishment of aircraft, but not the indefinite storage of nonoperational aircraft.
3. Construction of amateur-built or kit-built aircraft
4. Storage of aircraft handling equipment, e.g., tow bar, glider tow equipment, workbenches, and tools and materials used to service, maintain, repair or outfit aircraft: items related to ancillary or incidental uses that do not affect the hangars' primary use.
5. Storage of materials related to an aeronautical activity, e.g., balloon and skydiving equipment, office equipment, teaching tools, and materials related to ancillary or incidental uses that do not affect the hangars' primary use; storage of non-aeronautical items that do not interfere with the primary aeronautical purpose of the hangar (for example, televisions, furniture).
6. A vehicle parked at the hangar while the aircraft usually stored in that hangar is flying, subject to local airport rules and regulations.
7. A hangar may include restrooms, pilot lounge, offices, briefing rooms, and crew quarters.

### **18.76.030 Uses Permitted Outright**

The following uses and their accessory uses are permitted outright in all of the Airport Districts:

- A. 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.
- B. Class III road or street project.
- C. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.
- D. Farm use as defined in DCC Title 18.
- E. Customary and usual aviation-related activities.
- F. Hangars are subject to the standards and criteria established by DCC 18.76.105.
- G. [A single air traffic control tower in the Airport Development Zone, no higher than 115 feet in height](#)

**18.76.050 Use Limitations**

The following limitations and standards shall apply to all permitted uses in the Airport Districts:

- A. The height of any plant growth or structure or part of a structure such as chimneys, towers, antennas, power lines, etc., shall not exceed 35 feet.
- B. [A single air traffic control tower up to 115 feet in height shall not require a height exception or variance.](#)
- C. In approach zones beyond the clear zone areas, no meeting place designed to accommodate more than 25 persons for public or private purposes shall be permitted.
- D. All parking demand created by any use permitted by DCC 18.76 shall be accommodated on the subject premises entirely off-street.
- E. No use permitted by DCC 18.76 shall require the backing of traffic onto a public or private street or road right of way.
- F. No power lines shall be located in clear zones.
- G. No use shall be allowed which is likely to attract a large quantity of birds, particularly birds which normally fly at high altitudes.

## Chapter 18.80, Airport Safety Combining Zone

### **18.80.022 Definitions**

- A. [Air Traffic Control Tower. A terminal facility which, through the use of air/ground communications, visual signaling, and other devices, provides air traffic control services to airborne aircraft operating in the vicinity of an airport and to aircraft operating on the airport movement area.](#)
- B. Aircraft. Helicopters and airplanes, but not hot air balloons or ultralights. (Balloons are governed by FAR Part 30, and ultralights by FAR Part 103. Ultralights are basically unregulated by the FAA.)
- C. Airport. The strip of land used for taking off and landing aircraft, together with all adjacent land used in connection with the aircraft landing or taking off from the strip of land, including but not limited to land used for existing airport uses.
- D. Airport Direct Impact Area. The area located within 5,000 feet of an airport runway, excluding lands within the runway protection zone and approach surface. (Redmond, Bend, and Sunriver)
- E. Airport Elevation. The highest point of an airport's usable runway, measured in feet above mean sea level.
- F. Airport Imaginary Surfaces (and zones). Imaginary areas in space and on the ground that are established in relation to the airport and its runways.

For the Redmond, Bend, Sunriver and Sisters airports, the imaginary surfaces are defined by the primary surface, runway protection zone, approach surface, horizontal surface, conical surface and transitional surface.

For the Cline Falls and Juniper airports, the imaginary areas are only defined by the primary surface and approach surface.

- G. Airport Noise Criterion. The State criterion for airport noise is an Average Day-Night Sound Level (DNL) of 55 decibels (dBA). The Airport Noise Criterion is not designed to be a standard for imposing liability or any other legal obligation except as specifically designated pursuant to OAR 340, Division 35.
- H. Airport Noise Impact Boundary. Areas located within 1,500 feet of an airport runway or within established noise contour boundaries exceeding 55 DNL.
- I. Airport Safety Combining Zone (AS Zone). A Deschutes County zone intended to place additional land use conditions on land impacted by the airport while retaining the existing underlying zone. The airport imaginary surfaces, impact areas, boundaries and their use limitations comprise the AS Zone. The AS Zone may apply to either public-use or private-use airports.
- J. Airport Secondary Impact Area. The area located between 5,000 and 10,000 feet from an airport runway. (Redmond, Bend, and Sunriver)



- K. Airport Sponsor. The owner, manager, or other person or entity designated to represent the interests of an airport.
- L. Airport Uses. Those uses described in OAR 660-013-0100 and 660-013-0110.
- M. Approach Surface. A surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface.

For Redmond, Bend, Sunriver, and Sisters airports:

1. The inner edge of the approach surface is the same width as the primary surface and it expands uniformly to a width of:
  - a. 1,250 feet for a utility runway having a visual approach;
  - b. 1,500 feet for other than a utility runway having a visual approach;
  - c. 2,000 feet for a utility runway having a non-precision instrument approach;
  - d. 3,500 feet for a non-precision instrument runway, other than utility, having visibility minimums greater than three-fourths statute mile;
  - e. 4,000 feet for a non-precision instrument runway, other than utility, having visibility minimums at or below three-fourths statute mile; and
  - f. 16,000 feet for precision instrument runways.
2. The approach surface extends for a horizontal distance of
  - a. 5,000 feet at a slope of 20 feet outward for each foot upward for all utility runways;
  - b. 10,000 feet at a slope of 34 feet outward for each foot upward for all non-precision instrument runways, other than utility; and
  - c. 10,000 feet at a slope of 50 feet outward for each one foot upward, with an additional 40,000 feet at slope of 40 feet outward for each one foot upward, for precision instrument runways.
3. The outer width of an approach surface will be that width prescribed in DCC 18.80.022 ~~(H)~~(M)(3) for the most precise approach existing or planned for that runway end.

For the Cline Falls and Juniper airports:

4. The inner edge of the approach surface is the same width as the primary surface and it expands uniformly to a width of 450 feet for that end of a private use airport with only visual approaches. The approach surface extends for a horizontal distance of 2,500 feet at a slope of 20 feet outward for each one foot upward.

- N. Average Day-Night Sound Level (DNL). Average day-night sound level is the FAA standard measure for determining the cumulative exposure of individuals to noise. DNL is the equivalent of noise levels produced by aircraft operations during a 24-hour period, with a ten-decibel penalty applied to the level measured during nighttime hours (10:00 p.m. to 7:00 am).
- O. Conical Surface. An element of the airport imaginary surfaces that extends outward and upward from the periphery of the horizontal surface at a slope of 20:1 for a horizontal distance of 4,000 feet and to a vertical height of 350 feet above the airport elevation.
- P. Department of Aviation. The Oregon Department of Aviation, formerly the Aeronautics Division of the Oregon Department of Transportation.
- Q. FAA. Federal Aviation Administration.
- R. FAA's Technical Representative. As used in DCC 18.80, the federal agency providing the FAA with expertise on wildlife and bird strike hazards as they relate to airports. This may include, but is not limited to, the USDA-APHIS-Wildlife Services.
- S. FAR. Regulation issued by the FAA.
- T. FAR Part 77. Regulation, Part 77, "Objects Affecting Navigable Airspace," establishes standards for determining obstructions to navigable airspace.
- U. Height. The highest point of a structure or tree, plant or other object of natural growth, measured from mean sea level.
- V. Horizontal Surface. A horizontal plane 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the primary surface of each runway of each airport and connecting the adjacent arcs by lines tangent to those arcs. The radius of each arc is:
1. 5,000 feet for all runways designated as utility.
  2. 10,000 feet for all other runways.
  3. The radius of the arc specified for each end of a runway will have the same arithmetical value. That value will be the highest determined for either end of the runway. When a 5,000-foot arc is encompassed by tangents connecting two adjacent 10,000-foot arcs, the 5,000-foot arc shall be disregarded on the construction of the perimeter of the horizontal surface.
- W. Non-precision Instrument Runway. A runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in non-precision instrument approach has been approved, or planned, and for which no precision approach facilities are planned or indicated on an FAA-approved airport layout plan or other FAA planning document.
- X. Non-Towered Airport. An airport without an existing or approved control tower [on June 5, 1995](#).
- Y. Obstruction. Any structure or tree, plant or other object of natural growth that penetrates an imaginary surface.

- Z. Other than Utility Runway. A runway that is constructed for and intended to be used by turbine-driven aircraft or by propeller-driven aircraft exceeding 12,500 pounds gross weight.
- AA. Precision Instrument Runway. A runway having an existing instrument approach procedure utilizing air navigation facilities that provide both horizontal and vertical guidance, such as an Instrument Landing System (ILS) or Precision Approach Radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated by an FAA-approved airport layout plan or other FAA planning document.
- BB. Primary Surface. A surface longitudinally centered on a runway.

For the Redmond, Bend, Sunriver, and Sisters airports, when a runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway. When a runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of the primary surface is:

1. 250 feet for utility runways with only visual approaches,
2. 500 feet for utility runways having non-precision instrument approaches,
3. 500 feet for other than utility runways having non-precision instrument approaches with visibility minimums greater than three-fourths statute mile, and
4. 1,000 feet for non-precision instrument runways with visibility minimums at or below three-fourths statute mile, and for precision instrument runways.

For the Cline Falls and Juniper airports, the primary surface ends at each end of a runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of the primary surface is 200 feet.

- CC. Public Assembly Facility. A permanent or temporary structure or facility, place or activity where concentrations of people gather in reasonably close quarters for purposes such as deliberation, education, worship, shopping, employment, entertainment, recreation, sporting events, or similar activities. Public assembly facilities include, but are not limited to, schools, religious institutions or assemblies, conference or convention facilities, employment and shopping centers, arenas, athletic fields, stadiums, clubhouses, museums, and similar facilities and places, but do not include parks, golf courses or similar facilities unless used in a manner where people are concentrated in reasonably close quarters. Public assembly facilities also do not include air shows, structures or uses approved by the FAA in an adopted airport master plan, or places where people congregate for short periods of time such as parking lots or bus stops.
- DD. Runway. A defined area on an airport prepared for landing and takeoff of aircraft along its length.
- EE. Runway Protection Zone (RPZ). An area off the runway end used to enhance the protection of people and property on the ground. The RPZ is trapezoidal in shape and centered about the extended runway centerline. The inner width of the RPZ is the same as the width of the primary

surface. The outer width of the RPZ is a function of the type of aircraft and specified approach visibility minimum associated with the runway end. The RPZ extends from each end of the primary surface for a horizontal distance of:

1. 1,000 feet for utility runways.
2. 1,700 feet for other than utility runways having non-precision instrument approaches.
3. 2,500 feet for precision instrument runways.

[NOTE: the outer width of the RPZ is specified by airport type in OAR 660, Division 13, Exhibit 4]

- FF. Significant. As it relates to bird strike hazards, "significant" means a level of increased flight activity by birds across an approach surface or runway that is more than incidental or occasional, considering the existing ambient level of flight activity by birds in the vicinity.
- GG. Structure. Any constructed or erected object, which requires a location on the ground or is attached to something located on the ground. Structures include but are not limited to buildings, decks, fences, signs, towers, cranes, flagpoles, antennas, smokestacks, earth formations and overhead transmission lines. Structures do not include paved areas.
- HH. Transitional Surface. Those surfaces that extend upward and outward at 90 degree angles to the runway centerline and the runway centerline extended at a slope of seven feet horizontally for each foot vertically from the sides of the primary and approach surfaces to the point of intersection with the horizontal and conical surfaces. Transitional surfaces for those portions of the precision approach surfaces which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at a 90-degree angle to the extended runway centerline.
- II. Utility Runway. A runway that is constructed for and intended to be used by propeller driven aircraft of 12,500 maximum gross weight and less.
- JJ. Visual Runway. A runway intended solely for the operation of aircraft using visual approach procedures, where no straight-in instrument approach procedures or instrument designations have been approved or planned, or are indicated on an FAA-approved airport layout plan or any other FAA planning document.
- KK. Water Impoundment. Includes wastewater treatment settling ponds, surface mining ponds, detention and retention ponds, artificial lakes and ponds, and similar water features. A new water impoundment includes an expansion of an existing water impoundment except where such expansion was previously authorized by land use action approved prior to the effective date of this ordinance.

**18.80.028 Height Limitations**

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

- A. Except as provided in DCC 18.80.028(B-D), no structure or tree, plant or other object of natural growth shall penetrate an airport imaginary surface. [ORS 836.619; OAR 660-013-0070(1)]
- B. For areas within airport imaginary surfaces but outside the approach and transition surfaces, where the terrain is at higher elevations than the airport runway surfaces such that existing structures and permitted development penetrate or would penetrate the airport imaginary surfaces, a local government may authorize structures up to 35 feet in height.
- C. Other height exceptions or variances may be permitted when supported in writing by the airport sponsor, the Department of Aviation and the FAA. Applications for height variances shall follow the procedures for other variances and shall be subject to such conditions and terms as recommended by the Department of Aviation and the FAA (for Redmond, Bend and Sunriver.)
- D. [A single air traffic control tower may be up to 115 feet in height.](#)

**18.80.044 Land Use Compatibility**

Applications for land use or building permits for properties within the boundaries of this overlay zone shall comply with the requirements of DCC 18.80 as provided herein. When compatibility issues arise, the Planning Director or Hearings Body is required to take actions that eliminate or minimize the incompatibility by choosing the most compatible location or design for the boundary or use. Where compatibility issues persist, despite actions or conditions intended to eliminate or minimize the incompatibility, the Planning Director or Hearings Body may disallow the use or expansion, except where the action results in loss of current operational levels and/or the ability of the airport to grow to meet future community needs. Reasonable conditions to protect the public safety may be imposed by the Planning Director or Hearings Body. [ORS 836.619; ORS 836.623(1); OAR 660-013-0080] [An air traffic control tower, as defined in DCC 18.80.022, is not subject to this section.](#)

...

**18.80 Declaration Of Anticipated Noise**

As a condition of the grant of development approval pursuant to DCC 18.80, the undersigned, hereinafter referred to as Grantor hereby covenants and agrees that it shall not, by reason of their ownership or occupation of the following described real property, protest or bring suit or action against the \_\_\_\_\_ [Name of Airport] or Deschutes County, for aviation-related noise, including property damage or personal injury from said noise connected when such activities conform to:

- 1. Airport activities lawfully conducted in connection with a pre-existing airport, as that term is defined in DCC 18.80.022(~~B~~)(C), at the described airport; or 2. Airport activities that might be lawfully conducted in the future at the described airport under County or State permits or exemptions.

The real property of Grantor subject to this covenant and agreement is situated in Deschutes County, State of Oregon, and described as set forth in that certain [Statutory Warranty Deed] dated [date], as record in [the Official Records of Deschutes County as instrument number 20xx-xxxxx] OR [Volume xx, Page xx of the Deschutes County Board of Records];.

Grantor acknowledge that by virtue of such grant he/they have no remaining rights to complain or protest about the protected activities described above.

This Declaration of Anticipated Noise runs with the land and is binding upon the heirs, successors and assigns of the undersigned’s interest in the described real property or any persons acquiring through he undersigned an interest in the described real property.

Deschutes County requires the execution of this covenant and agreement by the Grantor as a prerequisite to Deschutes County approving a partition, subdivision, or issuing a building permit for Grantor’s development on the above described real property, which real property is located within the noise impact boundary of the \_\_\_\_\_ [Name of Airport]. This Declaration is executed for the protection and benefit of the \_\_\_\_\_ [Name of Airport] and Deschutes County’s interest in said airport and to prevent development in adjacent lands to said airport which will interfere with the continued operation existent and development of said airport.

Dates this \_\_\_\_ day of \_\_\_\_, 20 \_\_\_\_\_

Grantor [Name]

*[insert notarial certificate]*



**STAFF REPORT**  
**AIRPORT DEVELOPMENT ZONE CONTROL TOWER TEXT AMENDMENT**

- FILE NUMBER(S):** 247-23-000470-TA
- SUBJECT PROPERTY:** The Airport Development (AD) Zone encompasses the Bend Municipal Airport (Airport), which includes the following addresses and tax lots:
- 63155 Gibson Air Rd – 1713200000200
  - 63110 Powell Butte Hwy – 1713200000201
  - 63205 Gibson Air Rd – 171317C000100
  - 63482 Powell Butte Hwy – 1713170000200
  - 22550 Nelson Pl – 1713200000202
  - 63144 Powell Butte Hwy – 1713200000300
- APPLICANT:** City of Bend
- REQUEST:** Amendments to Deschutes County Code (DCC) Chapters 18.04, Title Purpose and Definitions; Chapter 18.76, Airport Development Zone; Chapter 18.80, Airport Safety Combining Zone; and Chapter 18.120, Exceptions. The proposed amendments will modify the DCC to add a definition of an air traffic control tower, establish air traffic control towers as a use permitted outright in the Airport Development Zone, and modify the height limit to allow air traffic control towers up to 115 feet in height.
- STAFF CONTACT:** Audrey Stuart, Associate Planner  
 Phone: 541-388-6679  
 Email: [Audrey.Stuart@deschutes.org](mailto:Audrey.Stuart@deschutes.org)
- RECORD:** Record items can be viewed and downloaded from:  
<https://www.deschutes.org/cd/page/247-23-000470-ta-%E2%80%93-air-traffic-control-tower-text-amendment>

**I. APPLICABLE CRITERIA**

Deschutes County Code

Title 18, Deschutes County Zoning Ordinance:

117 NW Lafayette Avenue, Bend, Oregon 97703 | P.O. Box 6005, Bend, OR 97708-6005

(541) 388-6575

@cdd@deschutes.org

www.deschutes.org/cd

Chapter 18.04, Title, Purpose and Definitions  
Chapter 18.76, Airport Development Zone  
Chapter 18.80, Airport Safety Combining Zone (AS)  
Chapter 18.120, Exceptions  
Chapter 18.136, Amendments

Title 22, Deschutes County Development Procedures Ordinance

Oregon Revised Statutes

ORS 836.610  
ORS 836.616

Oregon Administrative Rules

OAR Chapter 660, Division 013

**II. BASIC FINDINGS**

**LOT OF RECORD:** The Bend Municipal Airport consists of multiple legal lots of record through previous land use decision issued by Deschutes County. In addition, DCC 22.04.040(B) does not require lot of record verification for Text Amendment applications.

**SITE DESCRIPTION:** The AD Zone encompasses the Airport, which has a total area of 340 acres. The AD Zone is comprised of three zoning districts—Airfield Operations District (AOD), Aviation Support District (ASD), and Aviation-Related Industrial District (ARID). The Bend Municipal Airport is developed with a number of aviation-related uses including taxiways, runways, a helipad, internal roads and parking areas, and a number of structures. Powell Butte Highway, a Rural Arterial, runs along the west boundary of the airport property and Gibson Air Road is a private road within the airport property.

**PROPOSAL:** The submitted Burden of Proof includes the following background on why this Text Amendment is necessary for the Airport:

The applicant proposes several amendments to the text of the Deschutes County Zoning Ordinance that would allow construction of an air traffic control tower at the Bend Municipal Airport. The City of Bend has established a need for an [Air Traffic Control Tower] ATCT at the Bend Municipal Airport, and the Federal Aviation Administration (FAA) has accepted the airport as a candidate in the Federal Contract Tower Program. The proposed amendments to the Deschutes County Zoning Ordinance would allow the City to establish an air traffic control tower at the Bend Airport, and to a height no greater than 115 feet. This proposed height would provide for a cab level height of 85 feet from which air traffic controllers could direct aircraft operations (takeoffs, landings) at the airport.

The proposed language of the Text Amendment is included as Exhibit 1 and summarized as follows:

- The Applicant proposes to add the Federal Aviation Administration (FAA) definition for Airport Traffic Control Tower.<sup>1</sup>

<sup>1</sup> Reference FAA website: <https://aspm.faa.gov/aspmhelp/index/Glossary.html>



- The Applicant proposes to add an Air Traffic Control Tower as a new use permitted outright in the AD Zone.
- The Applicant proposes to allow Air Traffic Control Towers up to 115 feet in height.

**PUBLIC AGENCY COMMENTS:** The Planning Division mailed notice on July 5, 2023, to several public agencies and received the following comments:

Deschutes County Senior Transportation Planner, Tarik Rawlings, August 17, 2023 Comments

I have reviewed the application materials for a control tower at the Bend Airport (File 247-23-000470-TA) and it appears that the application may not be complete where it pertains to the Transportation Planning Rule (OAR 660-012-060) for the following reasons. The application addresses Goal 12 (Transportation) on pages 10-11. Under the Goal 12 findings, the burden of proof states there will be five (5) staff resulting in 10 new daily trips. It is unclear where that number of employees came from; perhaps there are standard staffing levels recommended or required by the FAA for aircraft control towers based on number of operations, i.e., takeoffs and landings. For the purpose of this comment, staff utilizes the applicant's assumption for five (5) employees.

The submitted analysis does not appear to review potentially affected County intersections. The application materials do not appear to have a site plan and, as a result, it is unclear to staff how the five employees may enter the Bend Airport. Potential intersections that could be utilized by the employees are Powell Butte Hwy/Bend Airport driveway; Nelson Road/Nelson Place; Nelson/Gibson Air Road; McGrath Road/Rotor Way. To answer the TPR questions posed by OAR 660-012-060(1)(c)(B) and (C), the applicant should provide at least minimal traffic analysis related to the proposal. Examples could include, but not be limited to, current operational level of the selected intersection(s); projected operation based on the current TSP; and number of employee trips sent to the selected intersection(s), and resulting operations of those intersections. The applicant has addressed the trip generation portion of analysis in projecting 10 new trips but the applicant should also provide additional analysis related to the existing volumes and operations of the affected roadway segments and/or intersections. Examples of needed information would be Average Daily Traffic (ADT), whether the acknowledged 2020-2040 TSP has identified any failing intersections or road segments or whether these intersections or road segments meet County performance standards; if there are deficiencies, identify if there are already programmed or planned improvement to mitigate the deficiencies, etc. It would also be helpful if the applicant could provide more information about the hours during which the proposed tower will be staff, including any applicable FAA recommendations, if available.

This additional analysis could be included in a brief trip generation memo given the small number of new trips associated with the proposal.

Deschutes County Senior Transportation Planner, Tarik Rawlings, September 18, 2023 Comments

I have reviewed Mr. Bessman's September 6, 2023, Traffic Impact Analysis related to County file no. 247-23-000370-TA and I agree with the assumptions, methodology, and conclusions contained therein. As Mr. Bessman utilizes the 2040 planning horizon year (reflective of the most recent data included in the County's forthcoming Transportation System Plan update) this analysis appears to comply with relevant criteria. Mr. Bessman utilizes the acceptable road segment standard of 13,900 Average Daily Trips (ADT) which is incorporated into the County's most recent 2020-2040 Transportation System Plan. The literature review and engineering studies referenced in relation to staffing numbers and associated peak hour trips (5 employees and 5 total p.m. peak hour trips) are adequate. Staff agrees with Mr. Bessman's summary of Transportation Planning Rule (TPR) Compliance and finds that relevant TPR provisions appear to be satisfied through the submittal of this additional information.

The subject Text Amendment will not absorb any road capacity as that term is commonly accepted and, therefore, no SDC fees are associated with the subject Text Amendment at this time.

Central Oregon Irrigation District, Spencer Stauffer

Please be advised that Central Oregon Irrigation District (COID) has reviewed the application received on July 10, 2023, for the above referenced project located tax lots 1713200000200, 1713200000201, 171317C000100, 1713170000200, 1713200000202, 1713200000300. The applicant is requesting Amendments to Deschutes County Code (DCC) Chapters 18.04, Title Purpose and Definitions, Chapter 18.76, Airport Development Zone, Chapter 18.80, Airport Safety Combining Zone, and Chapter 18.120, Exceptions. The proposed amendments will modify DCC to add a definition of an air traffic control tower, establish air traffic control towers as a use permitted outright in the Airport Development Zone, and modify the height limit so that air traffic control towers can be up to 115 feet in height.

There are 0.84 acres COID mapped water rights appurtenant to tax lot 1713200000202. There are 2.5 acres of mapped pond water rights appurtenant to tax lot 1713200000200. Please note, COID's B-Lateral enters tax lot 1713200000200 in its southwest corner. The B-lateral travels east through tax lot 1713200000202 before continuing east through tax lot 1713200000200. The B-Lateral then turns north before leaving tax lot 1713200000200 to the east. The B-Lateral has a 30-foot right of way easement, 15-feet either side of the center of the pipe. The B-Lateral also has a 20-foot road easement on the east side of the pipe. That road easement is not utilized.

Listed below are COIDs initial comments to the provided application. All development affecting irrigation facilities shall be in accordance with COID's Development Handbook and/or as otherwise approved by the District.

- Tax Map 1713200000202 has 0.84 acres of appurtenant COID irrigation water mapped to a specific place of use. Construction of a structure, driveway, or other impermeable surface on top of a mapped water right is not allowed.

- The application will not impact COID facilities or water rights. Should the plans change, please contact COID to determine if COID water rights or facilities will be impacted.
- Irrigation infrastructure and rights-of-way are required to be identified on all maps and plans.
- No structures or encroachment of any kind, including fence or crossing, are permitted within COID property/easement/right of way without written permission from this office.
- Comply with Requirements of COID Developer Handbook including restriction on drilling / blasting and excavation within and adjacent to the existing canal embankment.
- Policies, standards and requirements set forth in the COID Developer Handbook must be complied with.

Our comments are based on the information provided, which we understand to be preliminary nature at this time. Our comments are subject to change and additional requirements may be made as site planning progresses and additional information becomes available. Please provide updated documents to COID for review as they become available.

Deschutes County Building Division, Randy Scheid

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

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

Oregon Department of Aviation, Brandon Pike

I took a look through the ATCT Siting Report prepared by the applicant, and I don't envision ODAV having any issues with this. We would be OK with an exemption for the ATCT height, whether through a variance or codified through a text amendment. And, yes, you're correct that OAR 660-013-0070 requires the FAA, ODAV, and the airport sponsor to sign off on exceptions to this rule. We would need them to go through the usual Notice of Construction process through ODAV and FAA; that's how the FAA and ODAV would formally sign off on the development.

The highest point on the tower will be approximately 115' above ground level (AGL), correct? I believe that's what I saw in the Siting Report.

Regarding a definition for an ATCT, I would take a look at this webpage from the FAA: <https://aspm.faa.gov/aspmhelp/index/Glossary.html>

Their definition is as follows: A terminal facility which, through the use of air/ground communications, visual signaling, and other devices, provides air traffic control services to airborne aircraft operating in the vicinity of an airport and to aircraft operating on the movement area.

I think it will be important to be very clear in your text amendment to identify that it's only ATCTs that are allowed to exceed the height limit.

The following agencies did not respond to the notice: Bend Fire Department, Bend Municipal Airport, Bureau of Land Management, City of Bend Growth Management Department, Deschutes County Assessor, Deschutes County Road Department, District 11 Watermaster, and Office of the State Fire Marshal.

**PUBLIC COMMENTS:** The Planning Division mailed notice of the application to all property owners within 250 feet of the subject property on July 5, 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 August 11, 2023. No public comments were received.

**NOTICE REQUIREMENT:** On September 7, 2023, the Planning Division mailed a Notice of Public Hearing to all property owners within 250 feet of the subject property and public agencies. A Notice of Public Hearing was published in the Bend Bulletin on Sunday, September 10, 2023. Notice of the first evidentiary hearing was submitted to the Department of Land Conservation and Development on August 26, 2023.

**REVIEW PERIOD:** According to Deschutes County Code 22.20.040(D), the review of the proposed quasi-judicial Text Amendment application is not subject to the 150-day review period.

### III. FINDINGS & CONCLUSIONS

#### Title 18 of the Deschutes County Code, County Zoning

#### Chapter 18.136, Amendments

##### Section 18.136.010, Amendments

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

**FINDING:** The Applicant, as the property owner, has requested a quasi-judicial Text Amendment and filed the corresponding application. The Applicant has filed the required land use application forms for the proposal. The application will be reviewed utilizing the applicable procedures contained in Title 22 of the Deschutes County Code.

DCC 22.04.020 includes the following definition:

"Quasi-judicial" zone change or plan amendment generally refers to a plan amendment or zone change affecting a single or limited group of property owners and that involves the application of existing policy to a specific factual setting. (The distinction between legislative and quasi-judicial changes must ultimately be made on a case-by-case basis with reference to case law on the subject.)

The subject application is not a request to change the zoning or Comprehensive Plan designation of the subject property. However, as described below, the quasi-judicial process of a Comprehensive Plan Amendment is the most applicable guidance regarding Text Amendments that are not squarely legislative. Therefore, staff includes the definition of a quasi-judicial process above for reference and also addresses the provisions of DCC 22.28.030, regarding final action on Comprehensive Plan amendments. The Airport most recently went through a Text Amendment in Deschutes County file 247-20-000482-TA. The Hearings Officer decision for file 247-20-000482-TA made the following findings regarding whether the application should be processed as a quasi-judicial Text Amendment:

Based on the foregoing, the Hearings Officer finds that, in this case, the ultimate adoption of the Text Amendments is a two-step process. The role of the Hearings Officer is to apply the law, not to change it. In the first step of the process, the Applicant has a right under the DCC to submit and to have considered an application to amend the Code's text. This phase of the process is quasi-judicial in nature and it is appropriate to have a hearing and to build a record following the principles of a quasi-judicial process. As part of that process, the Hearings Officer is addressing the application of the County's existing laws. The second step of the process is for the Deschutes County Board of Commissioners ("Board") to adopt an ordinance to incorporate any text amendments to the Code. Amendments to the text of a zoning ordinance are a change in the County's law, and only the Board can make such a change. In other words, the Hearings Officer is without authority to amend the County's Code. The Hearings Officer, however, can make a recommendation to the Board based on what develops in the quasi-judicial phase of the process.

The Oregon Supreme Court case *Strawberry Hill 4 Wheelers* provides guidance on how to distinguish between a legislative and quasi-judicial process, and outlines a three-part test that continues to be applied throughout case law. The Court of Appeals applied and expanded on the *Strawberry Hill 4 Wheelers* decision in *Hood River Valley v. Board of Cty. Commissioners*, 193 Or App 485, 495, 91 P3d 748 (2004):

Given those concerns, "[t]he fact that a policymaking process is circumscribed by \* \* \* procedural requirements [such as public hearings] does not alone turn it into an

adjudication." *Id.* at 604. Rather, at least three other considerations generally bear on the determination of whether governmental action represented an "exercise of \* \* \*quasi-judicial functions." ORS 34.040(1). First, does "the process, once begun, [call] for reaching a decision," with that decision being confined by preexisting criteria rather than a wide discretionary choice of action or inaction? *Strawberry Hill 4 Wheelers*, 287 Or at 604. Second, to what extent is the decision-maker "bound to apply preexisting criteria to concrete facts"? *Id.* at 602-03. Third, to what extent is the decision "directed at a closely circumscribed factual situation or a relatively small number of persons"? *Id.* at 603.

Those three general criteria do not, however, describe a bright-line test. As we noted in *Estate of Gold v. City of Portland*, 87 Or App 45, 51, 740 P2d 812, *rev den*, 304 Or 405 (1987), *Strawberry Hill 4 Wheelers* "contemplates a balancing of the various factors which militate for or against a quasi-judicial characterization and does not create [an] 'all or nothing' test[.]" (Citation omitted.) In particular, we noted that the criteria are applied in light of the reasons for their existence-*viz.*, "the assurance of correct factual decisions" and "the assurance of 'fair attention to individuals particularly affected.'" *Estate of Gold*, 87 Or App at 51 (quoting *Strawberry Hill 4 Wheelers*, 287 Or at 604).

As noted above, the *Strawberry Hill 4 Wheelers* test requires a case-specific analysis of all three factors in combination. Individuals most affected by the proposed Text Amendment include the Airport Sponsor and neighboring property owners, all of whom were mailed notice pursuant to DCC 22.24.030.

Staff addresses each component of the *Strawberry Hill 4 Wheelers* test below:

#### Results in a decision

The applicant has submitted an application for a Text Amendment, in order to construct an Air Traffic Control Tower on the subject property. The request will result in either an approval or a denial, and a decision will be issued by the Board of County Commissioners (Board) pursuant to DCC Title 22. As opposed to a policy change initiated by staff or decision-makers, which has a wide discretionary choice between action and inaction, the subject request was submitted as a land use application by the property owner and the County must take final action on it. Staff finds the subject amendment clearly meets this component of the *Strawberry Hill 4 Wheelers* test and may be considered a quasi-judicial process.

#### Apply existing criteria

The subject request is being reviewed based on criteria in DCC Chapter 18.136, Amendments, and applicable state statutes. Oregon Revised Statutes (ORS) 836.616, Rules for airport uses and activities, provides a list of the uses that may be permitted within an airport under a local jurisdiction's land use code. The application is being reviewed to confirm compliance with the DCC along with applicable OARs and ORSs, and staff therefore finds existing criteria are being applied to the subject application. Consequently, the application meets this component of the *Strawberry Hill 4 Wheelers* test for a quasi-judicial process.

Small number of persons

The Airport Development Zone encompasses the Airport, and no other properties. The subject property is owned and operated by the City of Bend, who manages leases and oversees uses within the Bend Municipal Airport. While staff notes the Bend Municipal Airport is utilized by members of the public and various businesses, a new use can only be established on the property if the City of Bend initiates or authorizes an application. The subject request will impact the development potential of the Airport property and no other properties. Therefore, staff finds the subject request complies with this component of the *Strawberry Hill 4 Wheelers* test and may be categorized as quasi-judicial.

When the factors above are considered in combination, staff finds they indicate the subject Text Amendment is a quasi-judicial process. As noted in *Hood River Valley v. Board of Cty. Commissioners*, the differentiation between a legislative and quasi-judicial process is important in order to ensure all affected parties are given a fair process. In this case the proposal will impact one property owner, the applicant, and processing the request through a quasi-judicial process will provide for a public hearing before a Hearings Officer and final action by the Board. For these reasons, staff finds the request meets the three-part test outlined in *Strawberry Hill 4 Wheelers* as well as the intent of a quasi-judicial process.

**Title 22 of the Deschutes County Code, Development Procedures Ordinance**

**Chapter 22.12, Legislative Procedures**

Section 22.12.010, Hearing Required

***No legislative change shall be adopted without review by the Planning Commission and a public hearing before the Board of County Commissioners. Public hearings before the Planning Commission shall be set at the discretion of the Planning Director, unless otherwise required by state law.***

**FINDING:** As described above, staff finds the subject request is a quasi-judicial Text Amendment. However, the procedural steps will be similar to those outlined in the Hearing’s Officer decision for file 247-20-000482-TA, which finds amendments to allowed airport uses carry the qualities of a legislative act. The subject amendments will be adopted through an ordinance, consistent with the process for a legislative amendment. The Planning Director has exercised their discretion not to set a hearing before the Planning Commission.

Section 22.12.020, Notice

- A. *Published Notice.***
  - 1. *Notice of a legislative change shall be published in a newspaper of general circulation in the county at least 10 days prior to each public hearing.***
  - 2. *The notice shall state the time and place of the hearing and contain a***

*statement describing the general subject matter of the ordinance under consideration.*

- B. Posted Notice.** Notice shall be posted at the discretion of the Planning Director and where necessary to comply with ORS 203.045.
- C. Individual Notice.** Individual notice to property owners, as defined in DCC 22.08.010(A), shall be provided at the discretion of the Planning Director, except as required by ORS 215.503.
- D. Media Notice.** Copies of the notice of hearing shall be transmitted to other newspapers published in Deschutes County.

**FINDING:** Notice of the proposed Text Amendment was published in the Bend Bulletin. As noted above, the applicant complied with the posted notice requirement and staff mailed notice to property owners within 250 feet of the Airport boundary. Notice was provided to the County public information official for wider media distribution.

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 Commissioners or the Planning Commission.***

**FINDING:** The applicant has submitted the required fees and requested a Text Amendment. Staff finds the applicant is granted permission under this criterion to initiate a legislative change and has submitted the necessary fee and materials.

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.**

**FINDING:** As described above, the subject application meets the definition of a quasi-judicial application. For this reason, this application was referred to a Hearings Officer rather than the Planning Commission for a recommendation. The adoption of the proposed text amendments will follow a legislative process because it must be approved by the Board. For the purpose of this criterion, staff notes the application has properties of both a quasi-judicial and legislative amendment.

- 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 subject application was not initiated by the Board. Staff finds this criterion does not apply.



Section 22.12.050, Final Decision

**All legislative changes shall be adopted by ordinance.**

**FINDING:** Staff finds this criterion requires action by the Board to effect any legislative changes to Deschutes County Code. If the proposed Text Amendment is approved, it will become effective through the Board adoption of an ordinance.

**Chapter 22.28, Land Use Action Decisions**

Section 22.28.030, Decision On Plan Amendments And Zone Changes

- A. *Except as set forth herein, the Hearings Officer or the Planning Commission when acting as the Hearings Body shall have authority to make decisions on all quasi-judicial zone changes and plan amendments. Prior to becoming effective, all quasi-judicial plan amendments and zone changes shall be adopted by the Board of County Commissioners.***
- B. *In considering all quasi-judicial zone changes and those quasi-judicial plan amendments on which the Hearings Officer has authority to make a decision, the Board of County Commissioners shall, in the absence of an appeal or review initiated by the Board, adopt the Hearings Officer's decision. No argument or further testimony will be taken by the Board.***

**FINDING:** As detailed above, staff finds the proposal should be viewed as a quasi-judicial plan amendment. For this reason, staff finds these criteria apply. This application is being referred to a Hearings Officer for a recommendation. If an appeal is not filed and the Board does not initiate review, the Board shall adopt the Hearings Officer's recommendation as the decision of the county.

- C. *Plan amendments and zone changes requiring an exception to the goals or concerning lands designated for forest or agricultural use shall be heard de novo before the Board of County Commissioners without the necessity of filing an appeal, regardless of the determination of the Hearings Officer or Planning Commission. Such hearing before the Board shall otherwise be subject to the same procedures as an appeal to the Board under DCC Title 22.***

**FINDING:** The subject Text Amendment does not require a goal exception and does not concern lands designated for forest or agricultural use. For this reason, a de novo hearing before the Board is not required.

- D. *Notwithstanding DCC 22.28.030(C), when a plan amendment subject to a DCC 22.28.030(C) hearing before the Board of County Commissioners has been consolidated for hearing before the hearings Officer with a zone change or other permit application not requiring a hearing before the board under DCC 22.28.030(C), any party wishing to obtain review of the Hearings Officer's decision on any of those***

***other applications shall file an appeal. The plan amendment shall be heard by the Board consolidated with the appeal of those other applications.***

**FINDING:** No other application is being consolidated with the subject Text Amendment. Staff finds this criterion does not apply.

**Deschutes County Comprehensive Plan**

**Transportation System Plan**

Section 3.4, Rural Economy

***Goal 1. Maintain a stable and sustainable rural economy, compatible with rural lifestyles and a healthy environment.***

...

***Policy 3.4.6 Support and participate in master planning for airports in Deschutes County***

**FINDING:** The County’s Comprehensive Plan includes a number of guiding policies such as the rural economy goal cited above. In addition, Appendix C - Transportation System Plan includes goals specific to airport planning. Staff finds the relevant Comprehensive Plan policies are implemented through Deschutes County Code, and the Comprehensive Plan goals themselves are not specific approval criteria. However, to the extent the Hearings Officer finds this policy is an applicable approval criterion, staff includes the applicant’s response below as alternate findings:

The proposed text amendments will support master planning for the Bend Municipal Airport. The proposed amendments are intended to support the construction of an air traffic control tower, which is now an improvement supported by the FAA. The amendments are proposed to ensure the establishment of a tower will support airport operations and, in a manner, consistent with the master planning for the Bend Municipal Airport. The amendments are further limited to the Bend Airport so that another use could not be established through these amendments.

**OREGON REVISED STATUTES**

**Chapter 836 – Airports and Landing Fields**

836.610, Local government land use plans and regulations to accommodate airport zones and uses; funding; rules.

- 1) Local governments shall amend their comprehensive plan and land use regulations consistent with the rules for airports adopted by the Land Conservation and***

**Development Commission under ORS 836.616 and 836.619. Airports subject to the rules shall include:**

- (a) Publicly owned airports registered, licensed or otherwise recognized by the Department of Transportation on or before December 31, 1994, that in 1994 were the base for three or more aircraft; and**
  - (b) Privately owned public-use airports specifically identified in administrative rules of the Oregon Department of Aviation that:**
    - (A) Provide important links in air traffic in this state;**
    - (B) Provide essential safety or emergency services; or**
    - (C) Are of economic importance to the county where the airport is located.**
- (2)(a) Local governments shall amend their comprehensive plan and land use regulations as required under subsection (1) of this section not later than the first periodic review, as described in ORS 197.628 to 197.651, conducted after the date of the adoption of a list of airports by the Oregon Department of Aviation under subsection (3) of this section.**
- (b) A state agency or other person may provide funding to a local government to accomplish the planning requirements of this section earlier than otherwise required under this subsection.**
- (3) The Oregon Department of Aviation by rule shall adopt a list of airports described in subsection (1) of this section. The rules shall be reviewed and updated periodically to add or remove airports from the list. An airport may be removed from the list only upon request of the airport owner or upon closure of the airport for a period of more than three years. [1995 c.285 §4; 1997 c.859 52]**

**FINDING:** The AD Zone encompasses the, which is a publically-owned airport. In addition, the Airport was registered prior to December 31, 1994, and staff therefore finds it is subject to this section. The applicant proposes to amend the land use regulations for this airport consistent with ORS 836.616 and ORS 836.619.

836.616, Rules for airport uses and activities.

- (1) Following consultation with the Oregon Department of Aviation, the Land Conservation and Development Commission shall adopt rules for uses and activities allowed within the boundaries of airports identified in ORS 836.610 (Local government land use plans and regulations to accommodate airport zones and uses) (1) and airports described in ORS 836.608 (Airport operation as matter of state concern) (2).**
- (2) Within airport boundaries established pursuant to commission rules, local government land use regulations shall authorize the following uses and activities:**
  - (a) Customary and usual aviation-related activities including but not limited to takeoffs, landings, aircraft hangars, tie-downs, construction and maintenance of airport facilities, fixed-base operator facilities and other activities incidental to the normal operation of an airport;**

**FINDING:** DCC 18.76.030(E) currently permits customary and usual aviation-related activities in the AD Zone. The applicant proposes to add a new use category for air traffic control towers, which staff finds are a type of customary and usual aviation-related activity.

- (3) All land uses and activities permitted within airport boundaries, other than the uses and activities established under subsection (2) of this section, shall comply with applicable land use laws and regulations. A local government may authorize commercial, industrial and other uses in addition to those listed in subsection (2) of this section within an airport boundary where such uses are consistent with applicable provisions of the acknowledged comprehensive plan, statewide land use planning goals and commission rules and where the uses do not create a safety hazard or limit approved airport uses.**
- (4) The provisions of this section do not apply to airports with an existing or approved control tower on June 5, 1995. [1997 c.859 §5 (enacted in lieu of 836.615)]**

**FINDING:** The applicant proposes a new use category consisting of an air traffic control tower. As described above, staff finds this is a type of customary and usual aviation-related activity and is therefore a use listed in subsection (2). No additional uses are proposed within the AD Zone and staff finds subsection (3) does not apply. Furthermore, the Airport did not contain an existing or approved control tower on June 5, 1995. Therefore, staff finds subsection (4) does not apply.

836.619, State compatibility and safety standards for land uses near airports; rules.

***Following consultation with the Oregon Department of Aviation, the Land Conservation and Development Commission shall adopt rules establishing compatibility and safety standards for uses of land near airports identified in ORS 836.610 (Local government land use plans and regulations to accommodate airport zones and uses) (1). [1997 c.859 §8 (enacted in lieu of 836.620)]***

**FINDING:** Applicable Oregon Administrative Rules are addressed below.

**OREGON ADMINISTRATIVE RULES CHAPTER 660, LAND CONSERVATION AND DEVELOPMENT DEPARTMENT**

**Division 13 – Airport Planning**

OAR 660-013-0020, Definitions

***For purposes of this division, the definitions in ORS Chapter 197 apply unless the context requires otherwise. In addition, the following definitions apply:***

- ...
- (4) “Non Towered Airport” means an airport without an existing or approved control tower on June 5, 1995.**

**FINDING:** Staff includes this definition for reference, to demonstrate the Airport meets the definition of a non towered airport. The applicant proposes the subject Text Amendment for the purpose of establishing a control tower in the AD Zone in the future. The Airport did not contain an existing or approved control tower on June 5, 1995, and therefore will continue to meet the definition of a non towered airport even if a control tower is established in the future.

OAR 660-013-0303, Preparation and Coordination of Aviation Plans

- (2) ***A city or county with planning authority for one or more airports, or areas within safety zones or compatibility zones described in this division, shall adopt comprehensive plan and land use regulations for airports consistent with the requirements of this division and ORS 836.600 through 836.630. Local comprehensive plan and land use regulation requirements shall be coordinated with acknowledged transportation system plans for the city, county, and Metropolitan Planning Organization (MPO) required by OAR 660, division 12. Local comprehensive plan and land use regulation requirements shall be consistent with adopted elements of the state ASP and shall be coordinated with affected state and federal agencies, local governments, airport sponsors, and special districts. If a state ASP has not yet been adopted, the city or county shall coordinate the preparation of the local comprehensive plan and land use regulation requirements with ODA. Local comprehensive plan and land use regulation requirements shall encourage and support the continued operation and vitality of airports consistent with the requirements of ORS 836.600 through 836.630.***

**FINDING:** The submitted Burden of Proof provides the following statement.

The proposal is consistent with this rule because it proposes amendments to the text of the County's land use regulations that apply to the Bend Airport. The proposed text amendments would have the effect of allowing the development of one (1) air traffic control tower at the Bend Municipal Airport. The siting of a tower consistent with these amendments would support the continued operation and vitality of the Bend Municipal Airport by ensuring air traffic to and from the Airport was safely controlled and directed.

Staff concurs with this description and finds the proposed amendment to the DCC will encourage and support the continued operation of the Airport.

OAR 660-013-0050, Implementation of Local Airport Planning

***A local government with planning responsibility for one or more airports or areas within safety zones or compatibility zones described in this division or subject to requirements identified in ORS 836.608 shall adopt land use regulations to carry out the requirements of this division, or applicable requirements of ORS 836.608, consistent with the applicable elements of the adopted state ASP and applicable statewide planning requirements.***

**FINDING:** This administrative rule imposes a mandatory requirement on the County to adopt land use regulations consistent with the applicable elements of the adopted state Aviation System Plan (“ASP”) and applicable statewide planning requirements. The applicant proposes to amend the Airport Safety Combining Zone, which implements this administrative rule. Other applicable statewide planning requirements are addressed below, and staff finds this criterion will be met.

OAR 660-013-0070, Local Government Safety Zones for Imaginary Surfaces

- (1) A local government shall adopt an Airport Safety Overlay Zone to promote aviation safety by prohibiting structures, trees, and other objects of natural growth from penetrating airport imaginary surfaces.**
  - (a) The overlay zone for public use airports shall be based on Exhibit 1 incorporated herein by reference.**
  - (b) The overlay zone for airports described in ORS 836.608(2) shall be based on Exhibit 2 incorporated herein by reference.**
  - (c) The overlay zone for heliports shall be based on Exhibit 3 incorporated herein by reference.**
  
- (2) For areas in the safety overlay zone, but outside the approach and transition surface, where the terrain is at higher elevations than the airport runway surface such that existing structures and planned development exceed the height requirements of this rule, a local government may authorize structures up to 35 feet in height. A local government may adopt other height exceptions or approve a height variance when supported by the airport sponsor, the Oregon Department of Aviation, and the FAA.**

**FINDING:** The County has adopted an Airport Safety Combining Zone, and staff therefore finds subsection(1), is met. Subsection (2), above, allows a jurisdiction to adopt height exceptions to the imaginary surfaces of the Airport Safety Overlay Zone when supported by the airport sponsor, the Oregon Department of Aviation, and the FAA. The applicant in this case is the airport sponsor, and their request for a Text Amendment therefore indicates support for the height exception. Comments submitted August 14, 2023 from Oregon Department of Aviation indicate general support for the proposal, and the application materials document ongoing coordination between the airport sponsor and the FAA regarding the proposed tower.

OAR 660-013-0100, Airport Uses at Non-Towered Airports

**Local government shall adopt land use regulations for areas within the airport boundary of non-towered airports identified in ORS 836.610(1) that authorize the following uses and activities:**

- (1) Customary and usual aviation-related activities including but not limited to takeoffs, landings, aircraft hangars, tiedowns, construction and maintenance of airport facilities, fixed-base operator facilities, a residence for an airport caretaker or security officer, and other activities incidental to the normal operation of an airport. Residential, commercial, industrial, manufacturing, and other uses, except**

**as provided in this rule, are not customary and usual aviation-related activities and may only be authorized pursuant to OAR 660-013-0110.**

**FINDING:** The applicant proposes to add an air traffic control tower as a use permitted outright in the AD Zone. Staff finds an air traffic control tower is an airport facility and is, therefore, a customary and aviation-related activity.

## **DIVISION 12, TRANSPORTATION PLANNING**

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

- (1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:**
- (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);**
  - (b) Change standards implementing a functional classification system; or**
  - (c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.**
    - (A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;**
    - (B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or**
    - (C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.**

**FINDING:** This above language is applicable to the proposal because it involves an amendment to a land use regulation, specifically the provisions of the AD Zone. The proposed amendment would allow an air traffic control tower as a use permitted outright in the zone, with a height of up to 115 feet. While the Applicant is not proposing any land use development of the subject property at this time, the application materials indicate the intent is future construction of one air traffic control

tower at the Airport. Therefore, for the purpose of this criterion staff evaluates whether the applicant has demonstrated this future construction of an air traffic control tower will comply with the Transportation Planning Rule.

In the application materials submitted on June 9, 2023, the applicant estimates the air traffic control tower will generate no more than 10 additional vehicle trips per day, and therefore did not require additional analysis for transportation impacts. The County Transportation Planner then requested additional information, particularly regarding impacts to County intersections near the subject property. The Applicant then submitted a Traffic Impact Analysis (TIA) dated September 6, 2023, prepared by Joe Bessman of Transight Consulting LLC, which provided the following analysis of impacts to surrounding roadways and intersections:

The proposed comparative assessment of scenarios with and without the text amendment allowing an ATCT shows that there is very little change in the trip generation potential of the site. For purposes of a "reasonably likely" scenario, the assessment considered both volume scenarios with western and eastern access.

...

Based on the review presented herein, the proposed amendment to allow an Air Traffic Control Center within the adjacent Airport Development Zone would comply with the intent of the zoning, as it would allow implementation of the adopted Bend Municipal Airport Master Plan. This would only create minor impacts in area traffic volumes, as with this limited trip generation potential (5 additional weekday p.m. peak hour trips) this amendment would not:

- Change the functional classification of existing or planned transportation facilities;
- Change standards implementing a functional classification system, or
- Result in types of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility.

The revised TIA was reviewed by the County Senior Transportation Planner, who agreed with the report's conclusions. Staff finds that the proposed Text Amendment will be consistent with the identified function, capacity, and performance standards of the County's transportation facilities in the area. The proposed air traffic control tower will not change the functional classification of any existing or planned transportation facility or change the standards implementing a functional classification system. Regarding the memo dated September 6, 2023, the County Transportation Planner provided the following comments in an email dated September 18, 2023:

I have reviewed Mr. Bessman's September 6, 2023, Traffic Impact Analysis related to County file no. 247-23-000370-TA and I agree with the assumptions, methodology, and conclusions contained therein. As Mr. Bessman utilizes the 2040 planning horizon year (reflective of the most recent data included in the County's forthcoming Transportation System Plan update) this analysis appears to comply with relevant criteria. Mr. Bessman utilizes the acceptable road segment standard of 13,900 Average Daily Trips (ADT) which is incorporated into the County's most recent 2020-2040 Transportation System Plan. The literature review and engineering studies referenced in relation to staffing numbers and associated peak hour trips (5 employees and 5 total p.m. peak hour trips) are adequate. Staff agrees with Mr.



Bessman's summary of Transportation Planning Rule (TPR) Compliance and finds that relevant TPR provisions appear to be satisfied through the submittal of this additional information.

Based on the County Senior Transportation Planner's comments and the traffic memo prepared by Transight Consulting LLC, staff finds compliance with the Transportation Planning Rule has been effectively demonstrated.

## **DIVISION 15, STATEWIDE PLANNING GOALS AND GUIDELINES**

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

**FINDING:** The Statewide Planning Goals and the Applicant's findings are quoted below:

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

**FINDING:** The proposed amendments will be consistent with Goal 1 because the County is relying on its citizen involvement program and land use procedures ordinance to conduct public review of these amendments. The procedures require a public hearing before a County hearings officer and subsequent review by the Board of County Commissioners before adoption. The applicant has proposed these findings for the County to rely and/or build upon to explain their final decisions on these amendments to the public.

**Goal 2: Land Use Planning. PART 1 - PLANNING: To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure on adequate factual base for such decisions and actions.**

**FINDING:** The proposed amendments will meet this goal because the applicant has developed an adequate factual base upon which the County may base its decision. The applicant has provided documentation with these findings that demonstrate the necessity for the air traffic control tower, including a decision by the FAA to include the Bend Municipal Airport in the Federal Contract Tower Program. The applicant has provided the potential locations for the air traffic control tower that were included in the 2021 Bend Airport Master Plan, also approved by the FAA and in the 2020 Tower Siting Report.

**Goal 3: Agricultural Lands. To preserve and maintain agricultural lands.**

**FINDING:** This goal is applicable because the areas surrounding the Bend Municipal Airport includes areas designated for Agriculture on the County's Comprehensive Plan and zoned EFUTRB, Exclusive Farm Use-Tumalo/Redmond/Bend subzone. The proposed text amendments would allow the City to establish an air traffic control tower at the Bend Municipal Airport. The tower itself does not have any operating characteristics that will either force a significant change or significantly increase the cost of accepted farming practices

occurring on EFU lands around the airport. The operation of the tower will not generate levels of noise or vibrations that would result in changes to farm practices and will not generate levels of traffic to and from the airport that would interfere with movement of farm equipment. The operation of the tower will involve a beacon that will rotate white and green to inform pilots of its location. Finally, the operation of the air traffic control tower will not require the use of irrigation water and in amounts that would impact irrigating pasture grasses on properties zoned EFU.

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

**FINDING:** Goal 4 is not applicable to review of the proposed text amendments because none of the surrounding properties are designated Forest Lands under the County's Comprehensive Plan.

**Goal 5: To protect natural resources and conserve scenic and historic areas and open spaces.**

**FINDING:** Goal 5 is not applicable to review of the proposed text amendments because they do not include any changes to the County's Goal 5 inventories in its Comprehensive Plan, and do not also propose a use that would impact a Goal 5 resource.

STAFF NOTE: The County's Goal 5 protections are partially implemented through DCC Chapter 18.84, the Landscape Management Combining Zone. This overlay zone protects scenic resources through design limitations and additional protections for designated roadways, rivers, and streams. The subject property is not located within the Landscape Management Combining Zone and is not subject to these provisions.

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

**FINDING:** The proposal is consistent with Goal 6 because the operation of the air traffic control tower will help improve air quality around the airport. The establishment of the air traffic control tower and staff for its operation will help manage aircraft operations, aircraft landing and taking off, so that fewer aircraft are circling around the airport waiting to land.

**Goal 7: Natural Hazards. To protect people and property from natural hazards.**

**FINDING:** Goal 7 is not applicable to review of the proposed text amendments because there are no natural hazards mapped adjacent to the Bend Airport.

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

**FINDING:** The applicant finds that elements of Goal 8 are applicable to review of the proposed text amendments and other elements of Goal 8 are not. This finding begins by addressing the applicability of Goal 8 to the potential increase in recreational aviation activity that may result from having an ATCT at the Bend Municipal Airport. The purpose of the ATCT is to support a crew of air traffic controllers who would direct takeoffs and landings at the Bend Airport. The improved management of air traffic at the airport may provide for more reliable and safer aircraft operations, including those for tourists and visitors recreating in Central Oregon. The applicant finds that this element of the proposal would satisfy Goal 8 by providing for safer air traffic for citizens of the state recreating in Deschutes County.

The applicant finds that the elements of Goal 8 regarding destination resort siting and siting of necessary recreational facilities are not applicable to review of the proposed text amendments because they do not impact any Goal 8 destination resorts have been established in Deschutes County and do not propose any changes to the land use regulations under DCC Chapter 18.113. In addition, Goal 8 is not applicable because the proposed text amendment does not propose and will not impact recreational facilities in Deschutes County. The proposed text amendments will not influence existing or planned public parks or trails.

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

**FINDING:** The applicant finds that this goal is applicable because one of the outcomes of establishing an air traffic control tower at the Bend Municipal Airport will be safer aircraft operations, including those related to business traffic and related to airport-based businesses at the airport. The establishment of the air traffic control tower will support aviation-related economic development by improving safety and operations (takeoffs, landings) efficiency at the airport.

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

**FINDING:** Goal 10 is not applicable to review of the proposed text amendments because the amendments do not propose changes to the Deschutes County Zoning Ordinance that would provide needed housing.

**Goal 11: Public Facilities and Services**

**FINDING:** Goal 11 is not applicable to review of the proposed text amendments because they do not propose any changes to the County Toning Ordinance that would affect the provision of water, wastewater collection, or transportation facilities in Deschutes County. The amendments focus on changes that would allow the siting of one (1) air traffic control

tower at the Bend Municipal Airport. There are no amendments proposed that would involve any public facilities being extended to serve rural development. These proposed text amendments would also not have the effect of changing the existing water, wastewater, and transportation facilities that serve the Bend Municipal Airport.

**Goal 12: Transportation. To provide and encourage a safe, convenient and economic transportation system.**

**FINDING:** The proposed amendments are consistent with Goal i.2 because they will allow development of an air traffic control tower at the Bend Municipal Airport. The establishment of an air traffic control tower through these amendments will be consistent with Goal 12 by ensuring safer airport flight operations that are directed through the airport staff stationed at the air traffic control tower.

**Goal 13: Energy Conservation. To conserve energy.**

**FINDING:** Goal 13 is not applicable to these proposed text amendments because they do not include any changes that would affect energy conservation. These amendments do not propose any renewable energy facilities at the Bend Airport.

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

**FINDING:** Goal 14 is not applicable to review of the proposed text amendments because they do not affect an adopted urban growth boundary. Goal 14 is also not applicable because the proposed text amendments would not have the effect of allowing urban land uses on rural land.

**Goal 15: Willamette River Greenway; Goal 16: Estuarine Resources; Goal 17: Coastal Shorelands; Goal 18: Beaches and Dunes, and Goal 19: Ocean Resources.**

**FINDING:** These goals are not applicable to review of the proposed text amendments because the Bend Airport is not adjacent to the Willamette River and not adjacent to the coast or the Pacific Ocean.

Staff generally accepts the Applicant's responses and finds compliance with the applicable Statewide Planning Goals has been effectively demonstrated.

**IV. CONCLUSION & RECOMMENDATION**


Staff requests the Hearings Officer determine if the Applicant has met the burden of proof necessary to justify the proposed Text Amendment through effectively demonstrating

compliance with the applicable criteria of DCC Title 18 (the Deschutes County Zoning Ordinance), the Deschutes County Comprehensive Plan, and applicable sections of OAR and ORS.

**DESCHUTES COUNTY PLANNING DIVISION**



Written by: Audrey Stuart, Associate Planner



Reviewed by: Will Groves, Planning Manager

Attachments: 1) Proposed Text Amendments

## Chapter 18.76, Airport Development Zone

### **18.76.015 Definitions**

The following definitions apply only to Chapter 18.76.

“Customary and usual aviation-related activities” include, but are not limited to, takeoffs, landings, aircraft hangars, tiedowns, construction and maintenance of airport facilities, fixed-base operator facilities, a residence for an airport caretaker or security officer, and other activities incidental to the normal operation of an airport. Residential, commercial, industrial, manufacturing; and other uses, except as provided in this rule, are not customary and usual aviation-related activities and may only be authorized pursuant to OAR 660-013-0110.

“Fixed-base operator or FBO” means a commercial business granted the right by the airport sponsor to operate on an airport and provide aeronautical services such as fueling, hangaring, tie-down and parking, aircraft rental, aircraft maintenance, flight instruction, etc.

“Hangar” means an airport structure intended for the following uses:

1. Storage of active aircraft.
2. Shelter for maintenance, repair, or refurbishment of aircraft, but not the indefinite storage of nonoperational aircraft.
3. Construction of amateur-built or kit-built aircraft
4. Storage of aircraft handling equipment, e.g., tow bar, glider tow equipment, workbenches, and tools and materials used to service, maintain, repair or outfit aircraft: items related to ancillary or incidental uses that do not affect the hangars' primary use.
5. Storage of materials related to an aeronautical activity, e.g., balloon and skydiving equipment, office equipment, teaching tools, and materials related to ancillary or incidental uses that do not affect the hangars' primary use; storage of non-aeronautical items that do not interfere with the primary aeronautical purpose of the hangar (for example, televisions, furniture).
6. A vehicle parked at the hangar while the aircraft usually stored in that hangar is flying, subject to local airport rules and regulations.
7. A hangar may include restrooms, pilot lounge, offices, briefing rooms, and crew quarters.

["Air Traffic Control Tower" means a terminal facility which, through the use of air/ground communications, visual signaling, and other devices, provides air traffic control services to airborne aircraft operating in the vicinity of an airport and to aircraft operating on the airport movement area.](#)

### **18.76.030 Uses Permitted Outright**

The following uses and their accessory uses are permitted outright in all of the Airport Districts:

- A. 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.
- B. Class III road or street project.
- C. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.
- D. Farm use as defined in DCC Title 18.
- E. Customary and usual aviation-related activities.
- F. Hangars are subject to the standards and criteria established by DCC 18.76.105.
- G. [An air traffic control tower, no higher than 115 feet in height.](#)

**18.76.050 Use Limitations**

The following limitations and standards shall apply to all permitted uses in the Airport Districts:

- A. The height of any plant growth or structure or part of a structure such as chimneys, towers, antennas, power lines, etc., shall not exceed 35 feet.
  - 1. [DCC 18.76.050\(A\) does not apply to the siting of an air traffic control tower. An air traffic control tower up to 115 feet shall not require a height exception or variance.](#)
- B. In approach zones beyond the clear zone areas, no meeting place designed to accommodate more than 25 persons for public or private purposes shall be permitted.
- C. All parking demand created by any use permitted by DCC 18.76 shall be accommodated on the subject premises entirely off-street.
- D. No use permitted by DCC 18.76 shall require the backing of traffic onto a public or private street or road right of way.
- E. No power lines shall be located in clear zones.
- F. No use shall be allowed which is likely to attract a large quantity of birds, particularly birds which normally fly at high altitudes.

## Chapter 18.80, Airport Safety Combining Zone

### **18.80.022 Definitions**

- A. [Air Traffic Control Tower. A terminal facility which, through the use of air/ground communications, visual signaling, and other devices, provides air traffic control services to airborne aircraft operating in the vicinity of an airport and to aircraft operating on the airport movement area.](#)
- B. Aircraft. Helicopters and airplanes, but not hot air balloons or ultralights. (Balloons are governed by FAR Part 30, and ultralights by FAR Part 103. Ultralights are basically unregulated by the FAA.)
- C. Airport. The strip of land used for taking off and landing aircraft, together with all adjacent land used in connection with the aircraft landing or taking off from the strip of land, including but not limited to land used for existing airport uses.
- D. Airport Direct Impact Area. The area located within 5,000 feet of an airport runway, excluding lands within the runway protection zone and approach surface. (Redmond, Bend, and Sunriver)
- E. Airport Elevation. The highest point of an airport's usable runway, measured in feet above mean sea level.
- F. Airport Imaginary Surfaces (and zones). Imaginary areas in space and on the ground that are established in relation to the airport and its runways.

For the Redmond, Bend, Sunriver and Sisters airports, the imaginary surfaces are defined by the primary surface, runway protection zone, approach surface, horizontal surface, conical surface and transitional surface.

For the Cline Falls and Juniper airports, the imaginary areas are only defined by the primary surface and approach surface.

- G. Airport Noise Criterion. The State criterion for airport noise is an Average Day-Night Sound Level (DNL) of 55 decibels (dBA). The Airport Noise Criterion is not designed to be a standard for imposing liability or any other legal obligation except as specifically designated pursuant to OAR 340, Division 35.
- H. Airport Noise Impact Boundary. Areas located within 1,500 feet of an airport runway or within established noise contour boundaries exceeding 55 DNL.
- I. Airport Safety Combining Zone (AS Zone). A Deschutes County zone intended to place additional land use conditions on land impacted by the airport while retaining the existing underlying zone. The airport imaginary surfaces, impact areas, boundaries and their use limitations comprise the AS Zone. The AS Zone may apply to either public-use or private-use airports.
- J. Airport Secondary Impact Area. The area located between 5,000 and 10,000 feet from an airport runway. (Redmond, Bend, and Sunriver)



- K. Airport Sponsor. The owner, manager, or other person or entity designated to represent the interests of an airport.
- L. Airport Uses. Those uses described in OAR 660-013-0100 and 660-013-0110.
- M. Approach Surface. A surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface.

For Redmond, Bend, Sunriver, and Sisters airports:

1. The inner edge of the approach surface is the same width as the primary surface and it expands uniformly to a width of:
  - a. 1,250 feet for a utility runway having a visual approach;
  - b. 1,500 feet for other than a utility runway having a visual approach;
  - c. 2,000 feet for a utility runway having a non-precision instrument approach;
  - d. 3,500 feet for a non-precision instrument runway, other than utility, having visibility minimums greater than three-fourths statute mile;
  - e. 4,000 feet for a non-precision instrument runway, other than utility, having visibility minimums at or below three-fourths statute mile; and
  - f. 16,000 feet for precision instrument runways.
2. The approach surface extends for a horizontal distance of
  - a. 5,000 feet at a slope of 20 feet outward for each foot upward for all utility runways;
  - b. 10,000 feet at a slope of 34 feet outward for each foot upward for all non-precision instrument runways, other than utility; and
  - c. 10,000 feet at a slope of 50 feet outward for each one foot upward, with an additional 40,000 feet at slope of 40 feet outward for each one foot upward, for precision instrument runways.
3. The outer width of an approach surface will be that width prescribed in DCC 18.80.022 ~~(H)~~(M)(3) for the most precise approach existing or planned for that runway end.

For the Cline Falls and Juniper airports:

4. The inner edge of the approach surface is the same width as the primary surface and it expands uniformly to a width of 450 feet for that end of a private use airport with only visual approaches. The approach surface extends for a horizontal distance of 2,500 feet at a slope of 20 feet outward for each one foot upward.

- N. Average Day-Night Sound Level (DNL). Average day-night sound level is the FAA standard measure for determining the cumulative exposure of individuals to noise. DNL is the equivalent of noise levels produced by aircraft operations during a 24-hour period, with a ten-decibel penalty applied to the level measured during nighttime hours (10:00 p.m. to 7:00 am).
- O. Conical Surface. An element of the airport imaginary surfaces that extends outward and upward from the periphery of the horizontal surface at a slope of 20:1 for a horizontal distance of 4,000 feet and to a vertical height of 350 feet above the airport elevation.
- P. Department of Aviation. The Oregon Department of Aviation, formerly the Aeronautics Division of the Oregon Department of Transportation.
- Q. FAA. Federal Aviation Administration.
- R. FAA's Technical Representative. As used in DCC 18.80, the federal agency providing the FAA with expertise on wildlife and bird strike hazards as they relate to airports. This may include, but is not limited to, the USDA-APHIS-Wildlife Services.
- S. FAR. Regulation issued by the FAA.
- T. FAR Part 77. Regulation, Part 77, "Objects Affecting Navigable Airspace," establishes standards for determining obstructions to navigable airspace.
- U. Height. The highest point of a structure or tree, plant or other object of natural growth, measured from mean sea level.
- V. Horizontal Surface. A horizontal plane 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the primary surface of each runway of each airport and connecting the adjacent arcs by lines tangent to those arcs. The radius of each arc is:
1. 5,000 feet for all runways designated as utility.
  2. 10,000 feet for all other runways.
  3. The radius of the arc specified for each end of a runway will have the same arithmetical value. That value will be the highest determined for either end of the runway. When a 5,000-foot arc is encompassed by tangents connecting two adjacent 10,000-foot arcs, the 5,000-foot arc shall be disregarded on the construction of the perimeter of the horizontal surface.
- W. Non-precision Instrument Runway. A runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in non-precision instrument approach has been approved, or planned, and for which no precision approach facilities are planned or indicated on an FAA-approved airport layout plan or other FAA planning document.
- X. Non-Towered Airport. An airport without an existing or approved control tower on June 5, 1995.
- Y. Obstruction. Any structure or tree, plant or other object of natural growth that penetrates an imaginary surface.

- Z. Other than Utility Runway. A runway that is constructed for and intended to be used by turbine-driven aircraft or by propeller-driven aircraft exceeding 12,500 pounds gross weight.
- AA. Precision Instrument Runway. A runway having an existing instrument approach procedure utilizing air navigation facilities that provide both horizontal and vertical guidance, such as an Instrument Landing System (ILS) or Precision Approach Radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated by an FAA-approved airport layout plan or other FAA planning document.
- BB. Primary Surface. A surface longitudinally centered on a runway.

For the Redmond, Bend, Sunriver, and Sisters airports, when a runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway. When a runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of the primary surface is:

1. 250 feet for utility runways with only visual approaches,
2. 500 feet for utility runways having non-precision instrument approaches,
3. 500 feet for other than utility runways having non-precision instrument approaches with visibility minimums greater than three-fourths statute mile, and
4. 1,000 feet for non-precision instrument runways with visibility minimums at or below three-fourths statute mile, and for precision instrument runways.

For the Cline Falls and Juniper airports, the primary surface ends at each end of a runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of the primary surface is 200 feet.

- CC. Public Assembly Facility. A permanent or temporary structure or facility, place or activity where concentrations of people gather in reasonably close quarters for purposes such as deliberation, education, worship, shopping, employment, entertainment, recreation, sporting events, or similar activities. Public assembly facilities include, but are not limited to, schools, religious institutions or assemblies, conference or convention facilities, employment and shopping centers, arenas, athletic fields, stadiums, clubhouses, museums, and similar facilities and places, but do not include parks, golf courses or similar facilities unless used in a manner where people are concentrated in reasonably close quarters. Public assembly facilities also do not include air shows, structures or uses approved by the FAA in an adopted airport master plan, or places where people congregate for short periods of time such as parking lots or bus stops.
- DD. Runway. A defined area on an airport prepared for landing and takeoff of aircraft along its length.
- EE. Runway Protection Zone (RPZ). An area off the runway end used to enhance the protection of people and property on the ground. The RPZ is trapezoidal in shape and centered about the extended runway centerline. The inner width of the RPZ is the same as the width of the primary

surface. The outer width of the RPZ is a function of the type of aircraft and specified approach visibility minimum associated with the runway end. The RPZ extends from each end of the primary surface for a horizontal distance of:

1. 1,000 feet for utility runways.
2. 1,700 feet for other than utility runways having non-precision instrument approaches.
3. 2,500 feet for precision instrument runways.

[NOTE: the outer width of the RPZ is specified by airport type in OAR 660, Division 13, Exhibit 4]

- FF. Significant. As it relates to bird strike hazards, "significant" means a level of increased flight activity by birds across an approach surface or runway that is more than incidental or occasional, considering the existing ambient level of flight activity by birds in the vicinity.
- GG. Structure. Any constructed or erected object, which requires a location on the ground or is attached to something located on the ground. Structures include but are not limited to buildings, decks, fences, signs, towers, cranes, flagpoles, antennas, smokestacks, earth formations and overhead transmission lines. Structures do not include paved areas.
- HH. Transitional Surface. Those surfaces that extend upward and outward at 90 degree angles to the runway centerline and the runway centerline extended at a slope of seven feet horizontally for each foot vertically from the sides of the primary and approach surfaces to the point of intersection with the horizontal and conical surfaces. Transitional surfaces for those portions of the precision approach surfaces which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at a 90-degree angle to the extended runway centerline.
- II. Utility Runway. A runway that is constructed for and intended to be used by propeller driven aircraft of 12,500 maximum gross weight and less.
- JJ. Visual Runway. A runway intended solely for the operation of aircraft using visual approach procedures, where no straight-in instrument approach procedures or instrument designations have been approved or planned, or are indicated on an FAA-approved airport layout plan or any other FAA planning document.
- KK. Water Impoundment. Includes wastewater treatment settling ponds, surface mining ponds, detention and retention ponds, artificial lakes and ponds, and similar water features. A new water impoundment includes an expansion of an existing water impoundment except where such expansion was previously authorized by land use action approved prior to the effective date of this ordinance.

**18.80.028 Height Limitations**

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

- A. Except as provided in DCC 18.80.028(B-D), no structure or tree, plant or other object of natural growth shall penetrate an airport imaginary surface. [ORS 836.619; OAR 660-013-0070(1)]
- B. For areas within airport imaginary surfaces but outside the approach and transition surfaces, where the terrain is at higher elevations than the airport runway surfaces such that existing structures and permitted development penetrate or would penetrate the airport imaginary surfaces, a local government may authorize structures up to 35 feet in height.
- C. Other height exceptions or variances may be permitted when supported in writing by the airport sponsor, the Department of Aviation and the FAA. Applications for height variances shall follow the procedures for other variances and shall be subject to such conditions and terms as recommended by the Department of Aviation and the FAA (for Redmond, Bend and Sunriver.)
- D. [An air traffic control tower may be up to 115 feet in height.](#)

**18.80.044 Land Use Compatibility**

Applications for land use or building permits for properties within the boundaries of this overlay zone shall comply with the requirements of DCC 18.80 as provided herein. When compatibility issues arise, the Planning Director or Hearings Body is required to take actions that eliminate or minimize the incompatibility by choosing the most compatible location or design for the boundary or use. Where compatibility issues persist, despite actions or conditions intended to eliminate or minimize the incompatibility, the Planning Director or Hearings Body may disallow the use or expansion, except where the action results in loss of current operational levels and/or the ability of the airport to grow to meet future community needs. Reasonable conditions to protect the public safety may be imposed by the Planning Director or Hearings Body. [ORS 836.619; ORS 836.623(1); OAR 660-013-0080] [An air traffic control tower, as defined in DCC 18.80.022, is not subject to this section.](#)

...

**18.80 Declaration Of Anticipated Noise**

As a condition of the grant of development approval pursuant to DCC 18.80, the undersigned, hereinafter referred to as Grantor hereby covenants and agrees that it shall not, by reason of their ownership or occupation of the following described real property, protest or bring suit or action against the \_\_\_\_\_ [Name of Airport] or Deschutes County, for aviation-related noise, including property damage or personal injury from said noise connected when such activities conform to:

- 1. Airport activities lawfully conducted in connection with a pre-existing airport, as that term is defined in DCC 18.80.022(~~B~~)(C), at the described airport; or 2. Airport activities that might be lawfully conducted in the future at the described airport under County or State permits or exemptions.

The real property of Grantor subject to this covenant and agreement is situated in Deschutes County, State of Oregon, and described as set forth in that certain [Statutory Warranty Deed] dated [date], as record in [the Official Records of Deschutes County as instrument number 20xx-xxxxx] OR [Volume xx, Page xx of the Deschutes County Board of Records];.

Grantor acknowledge that by virtue of such grant he/they have no remaining rights to complain or protest about the protected activities described above.

This Declaration of Anticipated Noise runs with the land and is binding upon the heirs, successors and assigns of the undersigned’s interest in the described real property or any persons acquiring through he undersigned an interest in the described real property.

Deschutes County requires the execution of this covenant and agreement by the Grantor as a pre-requisite to Deschutes County approving a partition, subdivision, or issuing a building permit for Grantor’s development on the above described real property, which real property is located within the noise impact boundary of the \_\_\_\_\_ [Name of Airport]. This Declaration is executed for the protection and benefit of the \_\_\_\_\_ [Name of Airport] and Deschutes County’s interest in said airport and to prevent development in adjacent lands to said airport which will interfere with the continued operation existent and development of said airport.

Dates this \_\_\_\_ day of \_\_\_\_, 20 \_\_\_\_\_  
Grantor [Name]

*[insert notarial certificate]*



**BOARD OF  
COMMISSIONERS**

## **AGENDA REQUEST & STAFF REPORT**

**MEETING DATE:** December 13, 2023

**SUBJECT:** Long Range Planning - Work Plan Update

**BACKGROUND AND POLICY IMPLICATIONS:**

The adopted Community Development Department (CDD) FY 2023-24 Work Plan contains several discretionary long range planning projects varying in complexity. This agenda item will summarize upcoming work plan projects and ask for any comments and revisions from the Board of County Commissioners (Board). The purpose is to ensure that the Planning Division, which has emerging capacity following completion (or near completion) of prior projects, implements the Board's priorities within available resources.

**BUDGET IMPACTS:**

None

**ATTENDANCE:**

Will Groves, Planning Manager  
Peter Gutowsky, CDD Director



## MEMORANDUM

**TO:** Deschutes County Board of Commissioners

**FROM:** Will Groves, Planning Manager  
Peter Gutowsky, AICP, Director

**DATE:** December 4, 2023

**SUBJECT:** Planning Division Work Plan Update / Long Range Planning / FY 2023-2024

### I. WORK PLAN DIRECTION

The adopted Community Development Department (CDD) FY 2023-24 Work Plan contains several discretionary long range planning projects varying in complexity.<sup>1</sup> This memorandum summarizes upcoming work plan projects and asks for any comments and revisions from the Board of County Commissioners (Board). The purpose is to ensure that the Planning Division, which has emerging capacity following completion (or near completion) of prior projects, implements the Board's priorities within available resources.<sup>2</sup>

Tables 1-3, starting on page 2, list projects that are completed, ongoing, and yet to be initiated. Staff requests the Board assign priority to Work Plan projects for the remainder of the fiscal year. Three are listed below for consideration:

- Initiate clear and objective standards for housing (HB 3197).
- Scope Newberry Country Plan **or** Terrebonne Community Plan for initiation in FY 2024-25.
- Initiate legislative amendments.

### II. BACKGROUND

Each spring, CDD prepares an annual work plan describing proposed projects for the coming fiscal year. A review of the draft work plan enables the Planning Commission, County Administration, CDD's customers, partner agencies, and the Board the opportunity to provide input, including additions, modifications, and possible re-prioritization. The work plan describes the most important projects in each CDD division based on:

<sup>1</sup> [https://www.deschutes.org/sites/default/files/fileattachments/community\\_development/page/18781/2023-24\\_work\\_plan\\_annual\\_report.pdf](https://www.deschutes.org/sites/default/files/fileattachments/community_development/page/18781/2023-24_work_plan_annual_report.pdf). Pages 35-38.

<sup>2</sup> The Tumalo Community Plan Update and Transportation System Plan Update will be completed in January or February 2024. The Comprehensive Plan Update is anticipated to be completed in March or April 2024.



1. Board annual goals and policies;
2. Carry-over projects from current or prior years;
3. Changes in state law;
4. Grants/funding sources; and
5. Public comments.

It also serves as the context within which new projects that arise during the fiscal year are prioritized and undertaken. The Planning Division Work Plan consistently generates public interest.

**III. COMPLETED LONG RANGE PLANNING PROJECTS**

Table 1 lists completed long range planning projects identified in the FY 2023-24 work plan.

**Table 1 – Completed Long Range Planning Projects**

Project	Summary	Status
<b>Conventional Housing Combining Zone Amendment</b>	Staff-initiated amendment clarifying that the siting of prefabricated structures in residential zones are treated similarly with traditional single-family homes or other common dwelling types.	<u>Completed</u> . The Board adopted an ordinance repealing the Conventional Housing Combining Zone on August 23.
<b>Destination Resort Text Amendment</b>	Applicant-initiated amendment to add language from Oregon Revised Statute (ORS) 197.455(1)(a), limiting residential uses to those necessary for the staff and management of the resort at any new Destination Resort allowed within 24 air miles of an urban growth boundary population of at least 100,000.	<u>Completed</u> . The Board declined to consider the amendment on August 9.
<b>Historic Landmarks Commission Amendment</b>	Staff-initiated amendment suspending the Historic Landmarks Commission and for review authority to be vested with the Planning Division.	<u>Completed</u> . The Board adopted an ordinance on November 29. Applications for the HLC have been received and a selection process is forthcoming.
<b>Nonresource Land Amendments</b>	Applicant-initiated Plan Amendment and Zone Change applications to change Exclusive Farm Use (EFU) zoning.	<u>Completed</u> . The Board approved two applications, adopting ordinances on August 30 and September 13.
<b>Petition for Incorporation (City of Mountain View)</b>	Petitioner-initiated to establish a city near Millican.	<u>Completed</u> . The Board adopted an order declining the petition on September 28.
<b>Rural Accessory Dwelling Unit Amendment</b>	Staff-initiated amendment. Senate Bill 391 and SB 644 adopted into law in 2021 and 2023 authorize a county to allow an owner of a lot or parcel within a rural residential zone to construct one Accessory Dwelling Unit subject to certain restrictions and limitations.	<u>Completed</u> . The Board adopted an ordinance on November 1.
<b>Short Term Rentals</b>	Staff produced a summary of opportunities and challenges associated with residential short-term rentals.	<u>Completed</u> . Staff presented a white paper to the Board on September 18.

<b>Project</b>	<b>Summary</b>	<b>Status</b>
<b>Wildfire Hazard Zone Amendment</b>	Staff-initiated amendment clarifying Title 15, Buildings & Construction, Section 15.04.085 prohibits wooden-shake roofing for newly constructed rural residences and residential accessory structures.	<u>Completed</u> . The Board adopted an ordinance on September 13.
<b>Wildlife Inventory Update</b>	Staff-initiated amendment adding a new mule deer winter range inventory from the Oregon Department of Fish and Wildlife to the County's Goal 5 protected resources.	<u>Completed</u> . The Board declined to consider the amendments on June 26.
<b>Conventional Housing Combining Zone Repeal</b>	Staff-initiated amendment to comply with Oregon House Bill 4064 which limited jurisdictions' ability to prohibit manufactured prefabricated homes in residential zones.	<u>Completed</u> . The Board adopted an ordinance on August 23.

**IV. ONGOING LONG RANGE PLANNING PROJECTS**

Staff is currently processing or coordinating several long range land use projects.

**Table 2 - Ongoing Planning Projects**

<b>Project</b>	<b>Summary</b>	<b>Comments</b>
<b>City of Bend Coordination</b>	Coordinate with City of Bend on growth management issues.	<u>Ongoing</u> . A Hearings Officer hearing was held on October 2 to consider an applicant-initiated amendment to modify County Code to allow for an air traffic control tower at the Bend Airport. Decision pending. The Board declined to hold a second hearing on November 29. First an second reading are forthcoming.  A Hearings Officer hearing for HB 3318 was held on October 11 to consider an applicant-initiated amendment to expand Bend's urban growth boundary for the Stevens Road Tract consisting of 261 acres. Second Reading completed November 29.
<b>City of La Pine Coordination</b>	Participate with Property Management and the City of La Pine to update and amend the County owned Newberry Neighborhood comprehensive plan designations, master plan and implementing regulation. Coordinate with City of La Pine's comprehensive planning efforts.	<u>Ongoing</u> . Staff is coordinating with the Property Manager.
<b>City of Redmond Coordination</b>	Coordinate with City of Redmond on growth management issues.	<u>Ongoing</u> . A Hearings Officer has recommended approval of the Redmond Airport Master Plan and Airport Safety Combining Zone. Board hearing dates to be scheduled shortly.

Project	Summary	Comments
<b>Comprehensive Plan Update (2040)</b>	Staff-initiated amendment to its Comprehensive Plan. This update provides overarching policy guidance on land use and planning related issues for the years 2020-2040. A draft has been released for public review.	<u>Ongoing.</u> The Planning Commission held two public hearings on October 26 and November 9. A third hearing is scheduled for December 14. Deliberations and recommendations to the Board are anticipated in February 2024.
<b>Coordination Projects</b>	<ul style="list-style-type: none"> <li>o Destination Resort Overnight Lodging Unit Annual Reporting</li> <li>o Marijuana Annual Reporting / Inspections</li> <li>o Portland State University (PSU) Annual Population Estimate</li> </ul>	<u>Ongoing.</u> Staff coordinates with relevant stakeholders for these tasks and reports news, updates, and results to the Board annually.
<b>CORE 3 (Regional Emergency Training Center)</b>	Applicant-initiated urban growth boundary amendment for a 300-acre regional emergency training center in Redmond.	<u>Ongoing.</u> The Minor Partition application was approved on October 13 and the County decision was final on October 25.  The supporting Plan Amendment and Zone Change applications were deemed incomplete on July 28. Staff is awaiting an incomplete response from the applicant. These applications will require public hearings. An initial hearing date and time is to be determined.
<b>Dark Skies</b>	Revisiting the County's existing Outdoor Lighting ordinance.	<u>Ongoing.</u> Staff is preparing a summary report of steering committee comments and recommendations for the Board's consideration.
<b>Growth Management Committees</b>	Coordinate and/or participate on Deschutes County Bicycle and Pedestrian Committee (BPAC), Project Wildfire, and Deschutes County Mitigation and Enhancement Committee. BPAC is involved in the County's Transportation System (TSP) Plan Update, and Sisters Country Expansion Concept Plan.	<u>Ongoing.</u> These meetings occur monthly except for the Mitigation and Enhancement Committee, which is annual.
<b>Legislative Session</b>	Participate in legislative or rulemaking work groups to shape state laws to benefit Deschutes County.	<u>Ongoing.</u> Coordination with Administration, Board, and Association of Oregon Counties occurs in the fall and into the short and regular legislative sessions.
<b>Multiple Use Agricultural Text Amendment</b>	Applicant-initiated amendment to allow storage units in the Multiple Use Agricultural 10 zone as a permitted use subject to site plan review.	<u>Ongoing.</u> Deschutes County has a long-standing policy to timely process applicant-initiated text amendments.

Project	Summary	Comments
<b>Nonresource Land Amendments</b>	Applicant-initiated Plan Amendment and Zone Change applications to change Exclusive Farm Use (EFU) zoning. Staff is processing four applications. Two are incomplete and two received a public hearing before Hearings Officers in mid-November.	<u>Ongoing.</u> Deschutes County has a long-standing policy to timely process applicant-initiated plan amendment, zone changes. These plan amendments and zone changes require significant resources and are becoming increasingly common.
<b>Recreational Vehicles as Rental Unit Amendments</b>	Staff-initiated amendments based on Senate Bill 1013 authorizing counties to allow an owner of a lot or parcel in a rural area to site on the property one recreational vehicle that is used for residential purposes and is subject to a residential rental agreement and additional criteria.	<u>Ongoing.</u> The Planning Commission held a public hearing on November 9. A second hearing will occur on December 14.
<b>Road Naming</b>	Process Road Naming requests associated with certain types of development on a semi-annual basis.	<u>Ongoing.</u>
<b>Sage Grouse Coordination</b>	Participate as a cooperating agency with the Bureau of Land Management (BLM) to evaluate alternative management approaches to contribute to the conservation of sagebrush habitats on federal lands.	<u>Ongoing.</u> Staff will continue to represent the County at multi-agency coordination meetings as part of the BLM's Greater Sage Grouse planning process.
<b>Transportation System Plan 2020-2040</b>	Staff-initiated plan and text amendments to update the 2010-2030 Deschutes County Transportation System Plan (TSP) and accompanying map to 2040. The 2020-2040 TSP provides new traffic volumes and prioritizes improvement projects including but not limited to: motor vehicles, bicycles, and pedestrians; new goals and policies; and resetting the functional reclassifications of selected County roads.	<u>Ongoing.</u> The Board held a public hearing on November 29 with a one-week open record period. Board deliberation will follow.
<b>Tumalo Community Plan Update</b>	Staff-initiated plan and text amendments to the Tumalo Community Plan (TCP) to reflect a 20-year period from 2020-2040. The TCP provides a guide for development, capital improvements, and land use planning specific to the area within and surrounding the Tumalo Unincorporated Community.	<u>Ongoing.</u> The Board will hold a public hearing on December 6.
<b>Wildfire Mitigation</b>	Certain properties in rural Deschutes County will be subject to new wildfire mitigation measures as approved under Senate Bill (SB) 762 and ultimately amended pursuant to SB 80. One of the primary pieces of SB 762 and SB 80 is the creation of a comprehensive Statewide Wildfire Hazard Map to guide new wildfire regulations for development.	<u>Ongoing.</u> Staff in coordination with the County Forester is monitoring and will provide regular updates to the Board when the draft State Wildfire Hazard Map is released for public input.

**V. PROJECTS NOT YET INITIATED**

Table 3 lists long range planning projects that have not been initiated. It recognizes staffing resource requirements for each project. They range from “minor” to “significant” as noted below:

- A “minor” rating (2 to 6 months)

- A “moderate” rating (4 to 8 months)
- A “significant” rating (6 to 12 months)

**Table 3 - Non-initiated Long Range Planning Projects**

Project	Summary	County Resources
<i><b>Clear and Object Standards for Housing</b></i>	Initiate amendments in coordination with consultants funded through a Department of Land Conservation Development grant. The Oregon Legislature recently enacted HB 3197 into law. It requires counties to adopt and apply clear and objective standards, conditions, and procedures regulating housing in unincorporated communities, Rural Residential Exception Areas, and nonresource lands. It has a two-year effective date of July 1, 2025	Significant
<i><b>Newberry County Plan Update</b></i>	Develop a scope of work to update the Newberry Country Plan. Public engagement could kick-off in summer 2024.	Significant
<i><b>Terrebonne Community Plan Update</b></i>	Develop a scope of work to update the Terrebonne Community Plan. Public engagement could kick-off in summer 2024.	Significant
<i><b>Zoning Amendments<sup>3</sup></b></i>	<ul style="list-style-type: none"> <li>• Minor variance 10% lot area rule for farm and forest zoned properties. (Attachment A)</li> </ul>	Minor
	<ul style="list-style-type: none"> <li>• Outdoor Mass Gatherings update. (Attachment B)</li> </ul>	Moderate
	<ul style="list-style-type: none"> <li>• Lot Line Adjustments and Re-platting. (Attachment C)</li> </ul>	Moderate
	<ul style="list-style-type: none"> <li>• Sign code to become consistent with federal law. (Attachment D)</li> </ul>	Moderate
	<ul style="list-style-type: none"> <li>• Accessory structure amendments clarifying they must be built concurrent with or after the establishment of a primary residence. Specify allowed facilities (baths, cook tops, wet bar) in residential accessory structures. (Attachment E)</li> </ul>	Moderate
	<ul style="list-style-type: none"> <li>• Section 6409(a) of the Spectrum Act. (Attachment F)</li> </ul>	Minor
	<ul style="list-style-type: none"> <li>• Define family for unrelated persons HB 2538, Non-familial Individuals. (Attachment G)</li> </ul>	Moderate
	<ul style="list-style-type: none"> <li>• Allow “self-serve” farm stands in Rural residential Exception Areas. (Attachment H)</li> </ul>	Minor
	<ul style="list-style-type: none"> <li>• Comply with House Bill 3109 (2021) pertaining to establishment of childcare facilities in industrial zones. (Attachment I)</li> </ul>	Minor
	<ul style="list-style-type: none"> <li>• Medical Hardship Dwellings—review for consistency with state law. (Attachment J)</li> </ul>	Minor
	<ul style="list-style-type: none"> <li>• Title 19, 20, 21—Language related to Class I, II, and III road projects as allowed uses. (Attachment K)</li> </ul>	Minor
	<ul style="list-style-type: none"> <li>• Title 22—Procedures Ordinance for consistency with state law and planning department interpretations. (Attachment L)</li> </ul>	Minor
	<ul style="list-style-type: none"> <li>• Wetland Regulation Clarification for Irrigation or Artificially Created Wetlands. (Attachment M)</li> </ul>	Significant
	<ul style="list-style-type: none"> <li>• Improve internal and statutory consistency for Forest Zoning Code (Attachment N)</li> </ul>	Moderate

**VI. BOARD DIRECTION**

Staff seeks Board direction on the priority of the following projects:

<sup>3</sup> Detailed descriptions of Zoning Amendment projects are provided as attachments to this memo, as noted.

- Initiate clear and objective standards for housing (HB 3197).
- Scope Terrebonne **or** Newberry Country Plan for initiation in FY 2024-25.
- Initiate legislative amendments.

Given the level of interest in the work plan, the Board may decide to provide direction to CDD at a subsequent meeting.

Attachments

- A. Minor Variance /10% Lot Area Rule
- B. Outdoor Mass Gathering Update
- C. Lot Line Adjustment and Replatting
- D. Sign Code
- E. Accessory Structures
- F. Spectrum Act / Section 6409(a)
- G. Family Definition for Unrelated Persons (HB 2538)
- H. Self-serve Farm Stands
- I. Childcare Facilities
- J. Medical Hardship Dwellings
- K. Title 19, 20, 21 and Road Projects
- L. Procedures Ordinance and Interpretations
- M. Wetland Regulation Clarification
- N. Forest Zoning Code Update



**Attachment A- Minor variance 10% lot area rule for farm and forest zoned properties**

**BACKGROUND & OVERVIEW**

Lot line adjustments have been used to circumvent lot-area-based development standards both under local code and state statute. In 1991, County Code was amended (Ord. 91-038) to limit area reduction of lots that are currently smaller than the minimum lot size (to a maximum reduction of ten percent) without a more complicated variance review process.

In the past two decades, state statute (ORS 92.192) has been updated to include protections for lot-area-based standards that are more robust and nuanced than the County Code provision. Currently both the state and county protections apply. However, because the County provisions are more of a “blunt instrument”, they cause unexpected problems for operators of large farms. Specifically, because the minimum lot size for most farm-zoned properties is 80 acres, the transfer of sub-80 acre pieces between neighboring farm operations is needlessly complicated by County Code.

**CURRENT PROCESS & CHANGES**

Potential text amendments would remove the conflict between DCC and ORS by changing DCC 18.132.025 to exclude farm and forest zone properties from the County’s ten-percent reduction limitation.

Key Amendment Concerns	
Staff Effort/Resources	Medium/Low
Legal Complexity	Low
Implementation Urgency	Medium/Low



## **Attachment B - Outdoor Mass Gathering – Revise County Code to Reflect Changes in State Statute**

### **BACKGROUND & OVERVIEW**

Multi-day festivals have long been held in Oregon and multi-day music festivals became especially popular in Deschutes County in the mid-2000s. Between 2013 and 2022, the County processed 12 Outdoor Mass Gathering (OMG)<sup>1</sup> applications including Board Hearings on the dozen applications. Many of these applications were for the Four Peaks Music Festival. Issues for the OMG permits ranged from noise to traffic to incompatibility with adjacent land uses. The applicable review and approval criteria for Outdoor Mass Gatherings (OMG) are found in Deschutes County Code (DCC) 8.16 (Events, Parades, Funeral Processions, and Outdoor Mass Gatherings) specifically DCC 8.16.010 and DCC 8.16.150 through 8.16.340. This code language must be consistent with state statute, specifically Oregon Revised Statute (ORS) 433.735 to 433.770 (Regulation of Outdoor Mass Gatherings)

Concerns about the effects of OMGs as well as a patchwork approach in statute to outdoor events eventually led the Legislature to approve HB 2790 (2019) to modify Oregon Revised Statute (ORS) 433.735 to ORS 433.770. Previously, OMGs were regulated only for health and safety under ORS 433.750 and were not land use decisions under ORS 197.015(10)(d). HB 2790 made local review of a permit for a single gathering of more than 3,000 people and lasting more than 120 hours into a land use decision.

OMGs that are not a land use decision, but regulated by health and safety regulations only:

- Events of less than 3,000 people lasting up to 120 hours
- Events of more than 3,000 people, but lasting less than 24 hours
- Events of more than 3,000 people lasting up to 120 hours

### **CURRENT PROCESS & CHANGES**

Under DCC 8.16.170(A), the County requires permits for OMGs and Extended OMGs with public hearings before the Board for OMGs and the Planning Commission for Extended OMGs. Under HB

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<sup>1</sup> Defined in ORS 433.375(2) as a gathering in an open space with actual or reasonably anticipated attendance of more than 3,000 people and lasting between 24 and 120 hours and occurs once within a three-month period. DCC 8.16.010 defines an OMG sets actual or expected attendance of between 500 and 3,000 people and last for between more than 4 and less than 24 hours. DCC 8.16.010 defines an Extended OMG as attendance expected of more than 3,000 people or more than 500 persons for an event that last more than 240 hours, including set-up and breakdown.



2790, an application for an OMG becomes a land use decision – thus following the requirements of Title 22 - and the decision can be made administratively or before a hearings officer, and is appealable to the Board and ultimately the Land Use Board of Appeals (LUBA). Changes would need to be made to DCC 8.16 to reflect changes in definitions and processes.

<b>Key Amendment Concerns</b>	
Staff Effort/Resources	Medium
Legal Complexity	Low
Implementation Urgency	Low



## Attachment C - Replatting and Property Line Adjustment Amendments

### BACKGROUND & OVERVIEW

Property owners have two primary options for adjusting the boundaries of properties created through subdivisions or partitions:

1. Replats
2. Property line adjustments/consolidations

Simple lot line adjustments involving a single property line are adequately regulated under statute (ORS 92.192). Significant reconfiguration of partitions and subdivisions are regulated under replatting standards, which are more comprehensive and take into account how reconfiguration of properties might affect surrounding roads, emergency access, and infrastructure capacity. However, the Deschutes County Code contains ambiguous language defining when applicants should utilize replatting standards versus property line adjustments and property line consolidations.

### CURRENT PROCESS & CHANGES

As noted by the by the Deschutes County Road Department, under current county code, the potential exists for an applicant to apply for a series of property line adjustments to convert adjoining undevelopable properties into developable properties without any consideration for transportation infrastructure impacts. This potential is particularly present in undeveloped portions of subdivisions platted prior to the statewide land use program. Notable examples include portions of the Hillman, Millican, Centralo, and Laidlaw townsite plats. While the Road Department does not have specific recommendations to correct these issues, they outline the following possibilities:

- Property line adjustments that would reconfigure existing adjoining undevelopable units of platted land into a certain number of developable units of land shall be processed as a replat.
- Property line adjustments that would allow for development that is not subject to site plan review with the potential to generate a certain number of weekday PM peak-hour trips shall be processed as a replat.

Code amendments to address these issues would allow a more clear understanding of the thresholds for applying replatting standards versus more simplified property line adjustment

standards. While generally uncommon, staff has encountered high profile applications wherein definitional clarity between these two application types would have avoided additional legal or consultant fees for the applicant while also addressing the impact concerns of the Road and Community Development Departments.

<b>Key Amendment Concerns</b>	
Staff Effort/Resources	Medium
Legal Complexity	Medium
Implementation Urgency	Medium



**Attachment D - Sign Code Amendments**

**BACKGROUND & OVERVIEW**

Currently, Deschutes County Code includes limitations on signs based on their content. In *Reed v. Town of Gilbert (2015)*, the U.S. Supreme Court found a content-based sign ordinance may impede on an applicant’s First Amendment right to Freedom of Speech based on the content of a given sign. Building on *Reed*, the Court reviewed a separate sign code-based case under *City of Austin v. Reagan National Advertising of Austin (2022)*. In *Austin*, the U.S. Supreme Court found that certain sign code provisions (such as requiring advertising signs to be placed on the premises of the entity being advertised) can be considered content-neutral under the right to Freedom of Speech under the First Amendment of the U.S. Constitution.

Deschutes County currently implements its Sign Code through Deschutes County Code Title 15.08. *Reed* implies that Deschutes County should ensure that their Sign Code provisions are “content-neutral” or else be subject to “strict scrutiny” under the First Amendment. *Austin* implies that not all provisions of a given sign code are automatically “content-based” and, therefore, some sign code provisions are subject to “intermediate scrutiny” rather than “strict scrutiny” under the First Amendment. In *Austin*, the U.S. Supreme Court found that, in order to survive intermediate scrutiny, a restriction on speech or expression must be “narrowly tailored to serve a significant government interest”.

**CURRENT PROCESS & CHANGES**

Revisions to the Sign Code could ultimately bring Title 15.08 into compliance with Federal case law and interpretations around sign content and Freedom of Speech included in *Reed (2015)* and *Austin (2022)*. Staff foresees working closely with County Legal Counsel to review the existing Sign Code, ensuring that content-based provisions are designed to be content-neutral.

Key Amendment Concerns	
Staff Effort/Resources	Medium/High
Legal Complexity	Medium/High
Implementation Urgency	Medium



**Attachment E - Accessory Structure Amendments**

**BACKGROUND & OVERVIEW**

The County regularly receives requests for residential accessory buildings with many of the features of dwelling units (e.g. kitchen-like areas, multiple full-baths, wet bars). Despite careful communication with developers, these residential accessory buildings are often converted to illegal dwelling units or are misrepresented as ADUs to subsequent buyers of the property.

The Deschutes County Code (DCC) lacks provisions common in other Counties' code such as:

- 1) Specification of allowed plumbing and other dwelling-like features permissible in residential accessory buildings,
- 2) A requirement for a recording to the property title, alerting future buyers that the residential accessory building is not an ADU, or
- 3) A requirement that that the dwelling (primary use) must be constructed first (or at the same time) as residential accessory buildings.

**CURRENT PROCESS & CHANGES**

The Board has expressed interest in creating clarity within the County Code around these potentially ambiguous provisions. As one example, the City of Bend currently utilizes a code system that provides specific definitions of certain improvement types, and clear standards of when and where these improvements are allowed. City of Bend also provides accessory structure-related code language, clearly specifying that primary uses must be established prior to accessory structures. Revisions to County Code related to residential accessory buildings could offer more clarity for residential property owners looking to develop and could help with the differentiation between primary and accessory structures.

Key Amendment Concerns	
Staff Effort/Resources	Medium
Legal Complexity	Medium
Implementation Urgency	Medium/High



## **Attachment F - Spectrum Act - Wireless Telecommunication Amendments**

### **BACKGROUND & OVERVIEW**

On February 22, 2012, the Middle Class Tax Relief and Job Creation Act of 2012 became law. Section 6409(a) of the act, also known as the Spectrum Act, was intended to advance wireless broadband service for public safety and commercial purposes and to provide for the creation of a broadband communications network for first responders. Along with Section 704 of the Telecommunications Act of 1996 (Public Law 104-104), the Spectrum Act can be viewed as part of the ongoing effort by the wireless industry to achieve federal preemption over local telecommunications zoning regulations. As such, Deschutes County (along with many other State and local governments) must alter existing telecommunication regulations which do not align with certain aspects of the Spectrum Act.

The Spectrum Act and corresponding Federal Communications Commission (FCC) rulings outline the following standards:

- Applies to collocations, removals, or modification of equipment on wireless towers or base stations;
- Mandates that a State or local government “may not deny, and shall approve” any application covered by section 6409(a);
- Does not apply to collocation on a structure that is not a wireless tower or base station; and
- Does not apply if action substantially changes the physical dimensions of a tower or base station.

Regarding the process for reviewing an application under Section 6409(a), the FCC also provides that:

- A State or local government may only require applicants to provide documentation that is reasonably related to determining whether the eligible facilities request meets the requirements of Section 6409(a);
- A state or local government must approve an application covered by Section 6409(a) within 60 days from the date of filing, subject to tolling; the running of the period may be tolled by mutual agreement or upon notice that an application is incomplete, but not by a moratorium (an incomplete notice must be provided according with the same deadlines and requirements applicable under Section 704 of the Telecommunications Act of 1996, codified as 47 U.S.C. § 332(c)(7)); and

- An application filed under Section 6409(a) is deemed granted if a State or local government fails to act on it within the requisite time period;

In the summary, Section 6409(a) restricts local land use review of modifications and collocations by establishing a “substantial change” test as the primary eligibility determinant for review exemptions afforded by the Spectrum Act and reduces the application processing “shot clock” from 90 days to 60 days.

**CURRENT PROCESS & CHANGES**

Deschutes County Code (DCC) Section 18.116.250 contains provisions which directly contradict the standards of the Spectrum Act described above. However, the Community Development Department (CDD) currently evaluates and approves applications for non-substantial changes to physical portions of existing wireless telecommunication facilities (such as collocations of infrastructure) pursuant to the standards of Section 6409(a).

However, code amendments would allow a more seamless understanding of the Spectrum Act approval standards for both staff and applicants by codified the Spectrum Act standards in formal Deschutes County documents and ordinances. Any proposed amendments would ultimately include an objective set of standards for what constitutes “substantial changes” to existing wireless telecommunication facilities.

<b>Key Amendment Concerns</b>	
Staff Effort/Resources	Medium/Low
Legal Complexity	Medium
Implementation Urgency	Medium/Low



**Attachment G - Amend County Code to define family for unrelated persons, Non-familial Individuals (HB 2583)**

**BACKGROUND & OVERVIEW**

Until the passage of House Bill 2583 in 2021, local law in Oregon dictated residential occupancy limits based on “family” or “related” persons, essentially limiting how many unrelated people could share a home, regardless of dwelling type, size, or ownership status. This restriction served to unnecessarily limit housing choices—a particular pressure point in the current housing crisis.

HB 2583 now precludes the “family” clause from single-family occupancy requirements, stating:

“A maximum occupancy limit may not be established or enforced by any local government, as defined in ORS 197.015, for any residential dwelling unit, as defined in ORS 90.100, if the restriction is based on the familial or nonfamilial relationships among any occupants.”

**CURRENT PROCESS & CHANGES**

Deschutes County Code (DCC) Section 18.04.030, Definitions, currently defines “family” as:

***“an individual or two or more persons related by blood, marriage, legal adoption, or legal guardianship living together as one housekeeping unit using a common kitchen and providing meals or lodging to not more than three additional unrelated persons, excluding servants; or a group of not more than five unrelated persons living together as one housekeeping unit using a common kitchen.”***

This allows a total of five people if the residents are unrelated, but an undetermined number if the dwelling houses a family (which could be any size) as well as three unrelated persons.

Staff is investigating how other Oregon Counties have approached House Bill 2583. Clackamas County, for example, allows a total of 15 persons, regardless of relationship.

Utilizing a flat occupancy rate (like Clackamas County) means that a small home would have the same occupancy limit as a large home, which seems relatively illogical and could result in overcrowding of smaller dwellings as well as overloading of septic systems. Relating occupancy to number of bedrooms appears reasonable in that the occupancy limits would relate to the size of the dwelling. However, this could also lead to complications with respect to what is considered a



bedroom. Often, rooms are used as bedrooms by residents even if they do not meet the definition in the building code with respect to windows, egress, and size.

This amendment would require choosing a policy direction for a preferred definition as it relates to occupancy.

<b>Key Amendment Concerns</b>	
Staff Effort/Resources	Medium/Low
Legal Complexity	Low
Implementation Urgency	Medium/Low



**Attachment H - Self Service Farm Stands**

**BACKGROUND & OVERVIEW**

“Self-Service” farm stands are starting to pop up in commercial areas (Tumalo, outside of Redmond) and rights of way. It could be valuable to streamline requirements for certain farm stands with limited impacts to support agriculture while reducing impacts to farmlands and residential uses. A simple permitting process could allow for the uses while controlling for health/safety issues. A main concern from the Oregon Department of Agriculture (ODA) is ensuring these don’t end up being the neighborhood grocery store.

**CURRENT PROCESS & CHANGES**

Under Board direction and with public outreach and input, Staff would explore implementing regulations.

Key Amendment Concerns	
Staff Effort/Resources	Low
Legal Complexity	Low
Implementation Urgency	Medium



**Attachment I – Childcare Facilities In Industrial Zones**

**BACKGROUND & OVERVIEW**

State statute, under HB 3109 (2021), established that childcare centers are permitted use in all commercial or industrial zoned areas. Local code updates would be required to implement this standard.

**CURRENT PROCESS & CHANGES**

Under Board direction and with public outreach and input, Staff would explore updating local code relating to childcare facilities in industrial zones.

Key Amendment Concerns	
Staff Effort/Resources	Low
Legal Complexity	Low
Implementation Urgency	Medium



**Attachment J - Medical Hardship Code Update**

**BACKGROUND & OVERVIEW**

Under state law, a county may allow a temporary residence, in addition to an existing residence, for the term of the hardship suffered by the existing resident or relative. Deschutes County implements this locally in DCC 18.116.090 for all zones and DCC 18.16.050(H) for the farm zone, and DCC 18.36 and 18.40 for the forest zones.

There are some important differences between the resource zone (farm and forest) state implementation and the local rules that apply to these uses. For example:

- Temporary residences can include existing structures in state code, in addition to recreational vehicles and manufactured homes. Locally, existing structures are currently only allowed to be used as hardship dwellings in resource zones.
- Under state code, a "hardship" includes "hardship for the care of an aged or infirm person or persons", which is not expressly allowed locally.
- Local code recognizes hardships suffered by a property owner or relative off the property owner. State code more broadly recognizes hardships suffered by residents or their relatives.
- Local code required that a "medical condition exists". State code specifies that there must be a "medical hardship".
- Local code requires annual review. State code allowed review of these approvals to occurs every two years.
- State code specifies, "A manufactured dwelling shall use the same subsurface sewage disposal system used by the existing dwelling, if that disposal system is adequate to accommodate the additional dwelling."

Staff notes that these differences are allowed under the state code and that any changes to synchronize state and local codes is not compelled and would be a local choice.

**CURRENT PROCESS & CHANGES**

Under Board direction and with public outreach and input, Staff would explore updating the Medical Hardship Code.

**Key Amendment Concerns**

Staff Effort/Resources	Low
Legal Complexity	Low
Implementation Urgency	Medium



**Attachment K – Titles 19-21, Road and Street Projects Update**

**BACKGROUND & OVERVIEW**

Deschutes County Code (DCC) Title 18.04.030 (Definitions) describes the various land use activities allowed in various County zones. For transportation projects, these are defined in 18.04.030 as either Class I, Class II, or Class III road and street projects with Class I and Class II requiring land use permits while Class III does not. As growth occurs in the County’s urban areas, State highway, County roads, and City streets require either improvements or entirely new facilities. County lands that border urban areas are governed under Title 19 (Bend), Title 20 (Redmond) or Title 21 (Sisters) and there is no similar title for La Pine. While the Purpose statements in these three titles do mention transportation or congestion, they offer no definitions or criteria or processes to follow.

The issues Titles 19-21 do not list road or street project as either outright permitted uses or conditional uses. While Title 18 broadly defines road and street projects to include facilities for cars, bicycles, pedestrians, etc., there is no such language in Title 19A.01.020 (Permitted and Conditional Uses); Title 20.12.020 (Outright Permitted Uses) and 20.12.030 (Conditional Uses); and 21.16.020 (Outright Permitted Uses) and 21.16.030 (Conditional Uses). From a strict land use development code perspective, if a use is not listed in the relevant title, the use cannot occur. Thus, on County-zoned lands on the peripheries of Bend, Redmond, Sisters, and La Pine, it is currently unclear how road or street projects can be built.

The solution would be text amendments to Titles 19-21 and import the road and street projects language from Title 18, specifically the definitions found in DCC 18.04.030.

**CURRENT PROCESS & CHANGES**

Under Board direction and with public outreach and input, Staff would explore updating Titles 19-21 and import the road and street projects language from Title 18.

Key Amendment Concerns	
Staff Effort/Resources	Low
Legal Complexity	Low
Implementation Urgency	High



**Attachment L - Procedures Ordinance for consistency with state law and planning department interpretations**

**BACKGROUND & OVERVIEW**

Comments submitted into land use records sometimes include a mailing address, others only include an email address. County code currently specifies:

**22.28.020, Notice Of Decision**

**Notice of a Hearings Body's decision shall be in writing and mailed to all parties; however, one person may be designated by the Hearings Body to be the recipient of the notice of decision for a group, organization, group of petitioners or similar collection of individual participants.**

The language in the Code is broad enough that it could include email. Most times, if regular mail is directed/required, it would say: by United States First Class mail, postage pre-paid. That said, 22.28.020 was originally adopted in 1982, repealed and reenacted in 1990 and then amended in 2016. One can presume that in the 1980s and 1990s, the Board would not have considered "mailed" to include anything other than regular U.S. mail. Therefore, the question of legislative intent cannot be discerned. This is a matter that should be officially clarified in Code.

**CURRENT PROCESS & CHANGES**

Under Board direction and with public outreach and input, Staff would explore updating the Procedures Ordinance for consistency with state law and planning department interpretations.

Key Amendment Concerns	
Staff Effort/Resources	Low
Legal Complexity	Low
Implementation Urgency	Medium



**Attachment M - Wetland Regulation Clarification for Irrigation or Artificially Created Wetlands**

**BACKGROUND & OVERVIEW**

Tumalo Irrigation District has identified a number of operational concerns regarding County Wetland regulations. Specifically:

- Many of the irrigation canals and ponds, and in some instances formerly flood irrigated fields, within the County have been included in the various national, state, and local wetlands inventories.
- County code generally requires permitting for any fill/removal in wetlands, as opposed to DSL regulations that generally leave fill/removal under 50 cubic yards unregulated.
- Exceptions are provided for irrigation districts in local code, but irrigation district patrons do not have similar exceptions for on-property management of irrigation facilities.
- Existing regulation can complicate and increase the cost of irrigation piping projects

Regulatory changes may be able to simply/clarify rules relating to these operations. Specifically, local implementation of Oregon Administrative Rule (OAR) 141-085 may be useful. For example:

- 141-085-0530, Exemptions for Certain Activities and Structures
- 141-085-0535, Exemptions Specific to Agricultural Activities

**CURRENT PROCESS & CHANGES**

Under Board direction and with public outreach and input, Staff would explore updating wetland regulations to clarify for irrigation or artificially created wetlands

Key Amendment Concerns	
Staff Effort/Resources	High
Legal Complexity	Medium
Implementation Urgency	Medium





**Attachment N - Forest Zone Code Update**

**BACKGROUND & OVERVIEW**

Uses and regulations for Forest zoned properties come from ORS 215 and OAR 660, Division 4. These are implemented locally in DCC 18.36 and 18.40.

Over time, internal references and code connections in these chapters have not been kept up to date. More importantly, uses have been added to state code that have not been implemented locally, including:

- Dump truck parking as provided in ORS 215.311
- An agricultural building, as defined in ORS 455.315, customarily provided in conjunction with farm use or forest use.
- Relative Forestry Help Second Dwelling

In addition, a number of existing use categories have new or changed provisions.

**CURRENT PROCESS & CHANGES**

Under Board direction and with public outreach and input, Staff would explore updating the Title 18 code relating to forest uses.

Key Amendment Concerns	
Staff Effort/Resources	Medium
Legal Complexity	Medium
Implementation Urgency	Medium