



BOARD OF COMMISSIONERS

BOARD OF COUNTY COMMISSIONERS MEETING

9:00 AM, WEDNESDAY, AUGUST 09, 2023

Barnes Sawyer Rooms - Deschutes Services Building - 1300 NW Wall Street – Bend

(541) 388-6570 | www.deschutes.org

REVISED AGENDA

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

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

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

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

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

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



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

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

CALL TO ORDER

PLEDGE OF ALLEGIANCE

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

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

CONSENT AGENDA

- [1.](#) Approval of Deschutes County Behavioral Health Advisory Board Bylaws
- [2.](#) Approval of a Memorandum of Understanding with the American Federation of State, County and Municipal Employees to formalize Juvenile Community Justice Position Pay Differentials
- [3.](#) Approval of a contract with Iris Telehealth to provide tele-psychiatric treatment services
- [4.](#) Approval of Document No. 2023-740 to authorize the purchase of a Caterpillar 938M Loader for the Solid Waste Department
- [5.](#) Approval of a lease with Getz Properties, LLC for space at 2100 NE Wyatt Court
- [6.](#) Approval of Document No. 2023-646, an amendment extending the services contract with Clean Earth Environmental Solutions, Inc.
- [7.](#) Approval of an amendment to the contract with HHPR, Inc. for Phase 2 of the Downtown Campus Parking Project
- [8.](#) Approval of a Notice of Intent to Award a contract for the paving of Old Bend-Redmond Hwy: US 20 to Tumalo Rd Project
- [9.](#) Approval of a Notice of Intent to Award a contract for engineering services for the Hamehook Road Bridge Replacement Project
- [10.](#) Approval of Resolution No. 2023-047, appropriating a \$300,000 grant from the Oregon Department of Energy for a biomass facility at Mt. Bachelor
- [11.](#) Acceptance of an Oregon Department of Energy Community Renewable Energy Grant Award

- [12.](#) Approval of an amendment to a grant from the Oregon Health Authority (#173133-10)
13. Consideration of Board Signature on letters reappointing Alysha DeLorto, Chris Perry, Drew Norris, Jared Jeffcott and Jared Earnest for service on the Deschutes County Ambulance Service Area Committee
14. Approval of the minutes of the June 21, 26 and 28 and July 5, 10 and 12, 2023 BOCC meetings

ACTION ITEMS

- [15.](#) **9:10 AM** First reading of a revised ordinance amending Deschutes County Code relative to camping and other sleeping associated activity on public property
- [16.](#) **9:15AM** Public Hearing on a request to vacate a portion of Schibel Road
- [17.](#) **9:25 AM** Public Hearing: Repeal of the Conventional Housing Combining Zone
- [18.](#) **9:45 AM** Public Hearing on Land Use File Nos. 247-23-000162-CU, 23-516-A: Secondary Accessory Farm Dwelling
- [19.](#) **10:25 AM** Public Hearing on a declaratory ruling to determine if the marijuana production facility approved under file no. 247-17-000907-AD has been initiated

LUNCH RECESS until 1:30

ACTION ITEMS continued

- [20.](#) **1:30 PM** [Consideration of Document No. 2023-710, a Collective Bargaining Agreement with the International Union of Operating Engineers \(IUOE\), Local 701](#)
- [21.](#) **1:40 PM** Oregon Health Authority funding for Medical Reserve Corps
- [22.](#) **1:50 PM** Deliberations: Rural Accessory Dwelling Unit (ADU) Text Amendments
- [23.](#) **2:30 PM** First reading of Ordinance 2023-009 relating to Destination Resort Text Amendments
- [24.](#) **2:40 PM** Accepting a petition to incorporate a new City of Mountain View Petition and setting the date for a public hearing

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.

24. Executive Session under ORS 192.660 (2) (e) Real Property Negotiations

ADJOURN



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 9, 2023

SUBJECT: Approval of Deschutes County Behavioral Health Advisory Board Bylaws

RECOMMENDED MOTION:

Move approval of Board signature of the Deschutes County Behavioral Health Advisory Board Bylaws.

BACKGROUND AND POLICY IMPLICATIONS:

The Deschutes County Behavioral Health Advisory Board is a public body for the purpose of ORS Chapter 192 b., Authority to Make Recommendations to a Public Body, and is subject to the statutory procedures related to public records and meetings. Meetings are held the third Friday of every month.

The core functions of the Behavioral Health Advisory Board (BHAB) are to serve as a bridge of communication and advocacy between the community and the Board of County Commissioners to improve the quality of current and future behavioral health services. BHAB members are required to have lived experience and help guide the County's work by understanding the Health Services budget and strategic plan, continuously learning about behavioral health legislation that significantly affects the community, participating in periodic program reviews and site visits by state agencies and grantors, and bringing awareness to the community about BHAB.

BUDGET IMPACTS:

None.

ATTENDANCE:

Holly Harris, Deputy Director, Behavioral Health

DESCHUTES COUNTY BEHAVIORAL HEALTH ADVISORY BOARD

BYLAWS

Article I

NAME

The name of this organization is Deschutes County Behavioral Health Advisory Board (the Advisory Board) as mandated by Oregon Revised Statute ORS 430.630 (7).

Article II

APPOINTMENT

The Board of County Commissioners (BOCC) shall appoint members to the Advisory Board.

Article III

PURPOSE

We serve as a bridge of communication and advocacy between our community and the BOCC to improve the quality of current and future behavioral health services.

Article IV

FUNCTIONS

The core functions of the Behavioral Health Advisory Board are:

1. To listen to and learn from people with lived experience of behavioral health services in Deschutes County. Then, to share what we learn with Deschutes County Health Services leadership and County Commissioners.
2. To enhance community awareness of the Advisory Board
3. To participate in periodic program reviews and site visits by State agencies and grantors
4. To integrate the Regional Health Improvement Plan into Advisory Board work
5. To consistently learn about Deschutes County Health Services budget and strategic plan
6. To consistently learn about behavioral health legislation that significantly affects the community

Article V

MEETINGS

Section I: Meeting Notice

All members shall be given notice of time, date, location, and agenda of the meetings via e-mail at least seven (7) days before a regular Advisory Board meeting.

Notice of meetings will be provided for the public who have requested in writing that they be given copies of official meeting notices. Meetings are public, where deliberations of the Advisory Board will take place, and opportunities for public comment will be provided.

Section II: Regular Meetings

Board meetings are held monthly or, at minimum, once per calendar quarter. The Board Chairperson, in consultation with the Department Director, may call other meetings as necessary. Meetings are via video conferencing or in a conference room accessible to Board members and the general public

Section III: Special Meetings or Work Sessions

Special meetings or work sessions may be called by the Advisory Board Chairperson. Public law requires that members of the Advisory Board and the press receive written or verbal notice at least 24 hours prior to holding such a meeting.

Section IV: Quorum

A majority of the Board members shall constitute a quorum necessary for the transaction of any and all business of the Board.

Section V: Voting

Each Advisory Board member shall have one vote. Any matter coming before the Board shall be decided by a majority of voting members, either physically or telephonically present. The Chairperson shall refrain from voting except to break a tie.

Section VI: Minutes

Staff for recording the minutes of the Advisory Board shall be provided by the Department. Staff shall keep minutes of the Advisory Board meetings, including, without limitation, a recording of all motions and subsequent actions.

Section VII: Agenda

The chairperson, with the assistance of Co-Chairperson shall prepare the agenda requiring Advisory Board consideration or action and shall add items of business as may be requested by individual Advisory Board members and/or the Commissioners or County Administrator.

Article VI

MEMBERSHIP

Section I. Qualifications and Representation

1. The membership of the Advisory Board shall be broadly representative of the community.
2. The Board shall be composed of at least nine (9) and not more than fifteen (15) individuals. These persons shall be qualified by interest, training, or experience to review and make recommendations.

Section II. Nominations

1. The Advisory Board shall recruit, interview, and make nominations for membership on the Advisory Board to the Deschutes County BOCC for approval and appointment. Nomination recommendations shall be made jointly by the Advisory Board Chairperson and the Director of the Department.
2. The Director of the Health Service Department and the Deputy Director will be EX-officio members of the Board. Ex-officio members do not have voting rights. The Board may appoint other Ex-officio members as appropriate.

Section III. Duties and Responsibilities

1. Members shall carry out the mission, purpose and functions of the Advisory Board.
3. Terms begin on January 1 and end December 31. The selection process shall be staggered, with approximately one-third of the members' terms expiring each year.
4. Advisory Board members shall endeavor to attend all meetings. If a member is unable to attend a meeting, the member will notify the Department prior to the meeting. Participation in meetings is essential, and the Chairperson shall contact any member whose attendance has become a concern. Three (3)

consecutive unexcused absences shall constitute grounds for removal.

Section IV Nominations and Terms of Office

1. Unless extended pursuant to Article VII.2, the membership term shall be three (3) years. The term of any member appointed mid-year shall expire December 31 of the third full year of service. After a member finishes their initial term, they may apply for nomination for a second term. Members may serve two (2) successive terms if re-appointed by the Commissioners.
2. A member appointed to serve the unexpired term of another member shall begin their membership on the first day of the month immediately following the date it is approved.
3. When a vacancy occurs on the Board, a sub-committee will be convened to select a replacement to complete the unexpired term, if term is incomplete, and recommend appointment of such replacement to the Board by the BOCC.

Section V Board Removal

1. Grounds for removal from the Board include without limitation, taking a position that is in conflict with the mission of the Board and/or Health Services Department.
2. Any member may be removed whenever the best interests of the Health Services Department or the Board will be served. The member whose removal is in question shall be given prior notice of their proposed removal and reasonable opportunity to appear and be heard at a meeting of the Board. A member may be removed pursuant to this section by not less than two-thirds (2/3) of the total number of members then serving on the Board, or by majority vote of the BOCC.

Article VII **OFFICERS**

1. Officers of the Advisory Board consist of the Chairperson and the Co-Chairperson.
2. Officers are nominated from the Advisory Board membership.
3. Duties of the officers are as follows:
 - a. Chairperson shall:
 - i. Set the agenda.
 - ii. Conduct the meeting in accordance with Robert's Rules of Order and Oregon's Public Meeting Law.

- iii. Call special meetings of the Advisory Board as necessary.
- iv. Act as the signature for board related documentation.
- v. Serve as an ex-officio member of all committees.

- b. Co-Chairperson shall:
 - i. Assist the Chairperson as needed.
 - ii. Serve as the Chairperson in official duties.
 - iii. Be willing to consider serving as Chairperson if nominated.

4. Terms of Office

- a. Chair shall serve for 2 years.
- b. Co-Chair shall serve for 2 years
- c. Member shall serve for 1 to 3 years.

Article VIII

COMMITTEES

Section I: Executive Committee:

Shall be comprised of a minimum of the Chairperson and Co- Chairperson and have the authority to act on behalf of the entire Board for matters of routine business and will report to the entire Board its actions as reflected in minutes.

Section II: Membership & Onboarding Committee:

Duties will include:

- a) Review applications for Advisory Board membership and make recommendations to the Chairperson and Director
- b) Recommend Board members for nominations as Advisory Board officers
- c) Orientate new Board Members of the of By-Laws
- d) Provide overview of services that are provided by DCBH
- e) Educate on how motions and actions are approved.

Section III: Community Outreach:

Shall be comprised of Board members and is responsible for identifying and organizing community outreach events such as Health Fairs etc.

Section IV: Ad Hoc Committees:

Will be formed as needed and will complete the assigned projects and provide informational reports and documentation of meetings to the full Advisory Board.

Article IX

PUBLIC RECORDS
AND MEETING LAW

The Advisory Board is a public body for the purpose of ORS Chapter 192 b., *Authority to Make Recommendations to a Public Body*, and is subject to the statutory procedures related to public records and meetings.

Article X

CONFLICT OF
INTEREST

A conflict of interest is defined in ORS Chapter 244. Any members declaring a conflict of interest may not participate in discussion of or vote on matters for which the conflict exists. The BHAB Chair has the authority to excuse the member(s) during discussion and/or voting should the Chair consider their presence to influence the process and/or outcome.

No Board member shall be an employee of Deschutes County Health Services Department or an immediate family member of an employee. An exception is allowed for individuals who serve in an on-call, temporary, or limited duration capacity with the Department.

Article XI

AMENDMENTS

Recommendations to amend the bylaws may be made by a majority of the full membership or Executive Committee. The Commissioners may also amend these Bylaws upon their own motion. Amendments are ratified by adoption by the Commissioners.

Adopted this _____ day of _____

Deschutes County Board of Commissioners

_____	Phil Chang, Commissioner
_____	Patti Adair, Commissioner
_____	Anthony DeBone, Commissioner

ATTEST:

Recording Secretary



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 9, 2023

SUBJECT: Approval of a Memorandum of Understanding with the American Federation of State, County and Municipal Employees to formalize Juvenile Community Justice Position Pay Differentials

RECOMMENDED MOTION:

Move to authorize the County Administrator to sign Document No. 2023-720, a Memorandum of Understanding with AFSCME to formalize Juvenile Community Justice Position Pay Differentials.

BACKGROUND AND POLICY IMPLICATIONS:

Juvenile Community Justice is experiencing significant difficulty attracting and retaining employees in positions assigned to work in the Juvenile Detention Facility. This MOU enhances the shift differential pay associated with the facility's night shift and creates a new shift differential pay for hours associated with the facility's swing shift. This program will serve to enhance existing shift differential pay benefits specific to the JDF as described in the AFSCME contract.

BUDGET IMPACTS:

Community Justice anticipates that the estimated cost of providing the shift differentials (\$27,000 annually) will be offset by current expenditures associated with overtime and working out of class assignments put in place to provide adequate coverage for vacant positions.

ATTENDANCE:

Kathleen Hinman, Human Resources Director



**Memorandum of Understanding (MOU) between Deschutes County and American Federation of State, County and Municipal Employees Local 3997 (AFSCME)
Regarding Juvenile Community Justice Position Pay Differentials**

This Memorandum of Understanding ("MOU") is entered into by and between Deschutes County (the "County") and the American Federation of State, County and Municipal Employees Local 3997 ("AFSCME"). The County and AFSCME are parties to the Agreement between Deschutes County and the American Federation of State, County and Municipal Employees Local 3997 ("Agreement"). The purpose of this MOU is for the County and AFSCME to come to an agreement providing the County discretion to immediately implement a pay differential to address challenging recruitment and retention issues and stabilize staffing levels in our Juvenile Detention facility.

The Juvenile Detention Facility (JDF) is a statutory requirement of counties to provide 24/7 services for youth referred by law enforcement who pose a public safety threat and/or who are at risk of absconding. The facility processes approximately 250 total admissions per year, with a five-year average facility daily population of nine. Supervisors and staff provide detention intake and assessment, security and milieu management, and skill building/education.

State-governed staff-to-youth ratios, and industry requirements dictate that the facility is served by 14 Community Justice Specialists (CJS), two Community Justice Specialist Seniors (CJS Senior), two CJS Supervisors, and one Detention Manager. Supervisors and Manager also cover floor shifts in order to provide required staffing.

The Juvenile Community Justice Department has observed that JDF positions have been extremely difficult to fill and retain for meaningful periods because of the nature of the work, shift schedules and service operation requirements. The department has observed particular difficulty attracting and retaining staff in JDF positions with assignments to swing shift and night shift as determined by department scheduling.

As part of the department's efforts to increase the likelihood of attracting and retaining AFSCME-represented staff working in JDF positions, the Juvenile Community Justice Department seeks to update and replace shift differential structures as articulated in the AFSCME contract. The AFSCME contract (Article 8; Section 6; paragraph 2) currently provides a \$1.00 per hour shift differential for JDF employees for hours worked in a night shift as determined by department scheduling. The County seeks to enter agreement with the union to update and replace the current night shift differential pay for JDF staff as articulated in Article 8; Section 6; paragraph 2 of the AFSCME contract with the following pay differentials:

- Swing Shift (2pm-10pm, or as determined by department scheduling) – Differential pay of \$1.13 per hour.
- Night shift (10pm-6am, or as determined by department scheduling) - Differential pay of \$1.50 per hour.

These shift differentials as proposed are only applicable to AFSCME-represented members for work hours associated with fulfilling assigned duties in the JDF. Employees working night shift hours associated with assigned duties not relevant to the JDF will continue to be eligible for shift differential pay as articulated in Article 8; Section 6 of the AFSCME contract.

In furtherance of this goal, the parties agree as follows:

1. The County, in its sole discretion, subject to the availability of funds and business needs shall assign a \$1.13 per hour shift differential pay to Community Justice Specialist staff members for the hours they work during a Swing Shift (currently 2pm-10pm) and assign a \$1.50 per hour shift differential pay to Community Justice Specialist staff members for the hours they work during a Night Shift (currently 10pm-6am). The County may, at its sole discretion, determine and modify definitions of hours associated with Swing Shift and Night Shift.
2. Deschutes County Juvenile Community Justice employs Community Justice Specialists at JDF in both detention and probation services. The shift differential pay outlined in Section 1 will only apply to hours worked in detention services at JDF. This shift differential pay outlined in Section 1 would also apply to Senior Community Justice Specialist classification staff at JDF.
3. If an employee qualifies for the increased shift differential pay as outlined in Sections 1 and 2 above, they shall not qualify for the pay differential articulated in Article 8, Section 6 of the AFSCME contract.
4. The County, in its discretion, may expand, contract, or discontinue compensation or other incentives provided to employees pursuant to this MOU and as otherwise allowed under Federal, State, County laws and/or policies. Nothing in this MOU shall preclude the County from making changes, in its discretion, to the incentive programs detailed herein, including discontinuing the programs for any reason. However, the County shall honor any previously agreed to individual employee incentive compensation agreements arising pursuant to this MOU to the extent the employee fulfills their required reciprocal obligations.
5. Should any provision or provisions of this MOU be construed by a court of competent jurisdiction to be void, invalid or unenforceable, such construction shall affect only the provision of provisions so construed, and shall not affect, impair or invalidate any of the other provisions of this MOU which shall remain in full force and effect.
6. The provisions of this MOU are contractual and are not mere recitals. All terms, provisions and conditions of the MOU shall be binding upon and inure to the benefit of the parties and to their respective heirs, executors, administrators, agents, representatives, successors and assigns.
7. This MOU shall be governed by and interpreted in accordance with the laws of the State of Oregon.
8. This MOU may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by email delivery of a ".pdf" format data file or a similar format, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page is original thereof.
9. Any dispute concerning the terms and conditions of this MOU brought by the County or AFSCME on behalf of its represented employees will be resolved under the terms of Article 7- Grievance Procedure of the Agreement.
10. Except and unless specifically modified by this MOU, all terms and conditions of the Agreement shall remain in effect. To the extent any of the terms of this MOU conflict with those in the Agreement, the term and conditions of this MOU shall prevail for so long as it is in effect.
11. The parties acknowledge that they have had the opportunity to consult with their own legal counsel before signing and that they have either consulted with their own legal counsel regarding the terms and consequences of this MOU or have voluntarily elected not to consult with an attorney before signing.

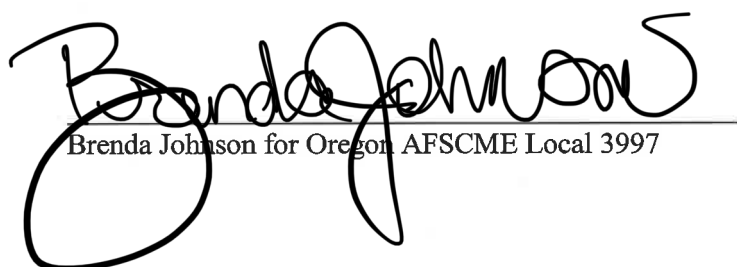
12. BY SIGNING BELOW EACH OF THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ THIS THREE-PAGE MEMORANDUM OF UNDERSTANDING, THEY UNDERSTAND AND AGREE TO ITS TERMS AND THE CONSEQUENCES THEREOF, AND THAT THEY HAVE SIGNED IT KNOWINGLY AND VOLUNTARILY.

13. Agreed to on this _____ day of _____, 2023.


Signatures:

Nick Lelack for Deschutes County

Date



Brenda Johnson for Oregon AFSCME Local 3997



Date



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 9, 2023

SUBJECT: Approval of a contract with Iris Telehealth to provide tele-psychiatric treatment services

RECOMMENDED MOTION:

Move approval of Board Signature of Document No. 2023-546, a contract with Iris Telehealth for Tele-psychiatric services.

BACKGROUND AND POLICY IMPLICATIONS:

Iris Telehealth provides services as a licensed medical provider and documentz medical services using Deschutes County's electronic medical record in a manner consistent with professional and community standards of care. For this contract, Iris Telehealth shall provide tele-psychiatric treatment for individuals obtaining services at Deschutes County Health Services. Clients shall be scheduled during the agreed upon hours of service and will occur in 60-minute sessions for new County clients and psychiatric evaluations and 30-minute sessions for returning and known clients.

County shall pay Iris Telehealth on a fee-for-service basis in accordance with the fee schedule provided.

BUDGET IMPACTS:

\$750,000

ATTENDANCE:

Chandra Mola, Program Supervisor



REVIEWED
LEGAL COUNSEL

08/09/2023 Item #3.

For Recording Stamp Only

**DESCHUTES COUNTY SERVICES CONTRACT
CONTRACT NO. 2023-546**

This Contract is made and entered into by and between Deschutes County, a political subdivision of the State of Oregon, acting by and through the Deschutes County Health Services Department, Behavioral Health Division, hereinafter referred to as "County", and Iris Telehealth Medical Group, PA, hereinafter referred to as "Contractor", collectively referred to as "Party" or "Parties". The Parties agree as follows:

Effective Date and Termination Date. The effective date of this Contract shall be retroactively effective **July 1, 2023**. Unless extended or terminated earlier in accordance with its terms, this Contract shall terminate when County accepts Contractor's completed performance or on **June 30, 2024**, whichever date occurs last. Contract termination shall not extinguish or prejudice County's right to enforce this Contract with respect to any default by Contractor that has not been cured. This Contract may be renewed or extended only upon written agreement of the Parties.

Contract Documents. This Contract includes Page 1-13 and Exhibits A-H.

CONTRACTOR DATA AND SIGNATURE

A Federal tax ID number or Social Security number is required to be provided by the Contractor and shall be used for the administration of state, federal and local tax laws. Payment information shall be reported to the Internal Revenue Service under the name and Federal tax ID number or, if none, the Social Security number provided above.

I have read this Contract including the attached Exhibits. I understand this Contract and agree to be bound by its terms. NOTE: Contractor shall also sign Exhibits D, E and G.

DESCHUTES COUNTY SIGNATURE

Contracts with a maximum consideration of not greater than \$50,000 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 \$50,000 but less than \$150,000 are not valid and not binding on the County until signed by the County Administrator.

DATED this _____ day of _____, 2023

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

PATTI ADAIR, Vice Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner

STANDARD TERMS AND CONDITIONS

Contractor shall comply with the following requirements herein to the extent that it is applicable to the agreement for services determined and agreed to by and between Contractor and County.

1. **Time is of the Essence.** Contractor agrees that time is of the essence in the performance of this Contract.
2. **Contractor's Services.** Contractor shall provide Tele-psychiatric treatment for persons identified and scheduled by County. Clients shall be scheduled during the agreed upon hours of service and will occur in thirty (30) minute sessions for returning and known clients, and sixty (60) minute sessions for new County clients and psychiatric evaluations.

Exhibit A – OUTLINE OF PROGRAM AND PROGRAM DEFINITIONS

Exhibit B – STATEMENT OF WORK

Exhibit B-1 - PAYMENT TERMS and SCHEDULE

Exhibit C – INSURANCE

Exhibit D– CERTIFICATION STATEMENT FOR CORPORATION OR INDEPENDENT CONTRACTOR

Exhibit E – WORKER'S COMPENSATION EXEMPTION CERTIFICATION

Exhibit F – EXPENSE REIMBURSEMENT

Exhibit G – CONFIDENTIALITY AGREEMENT

Exhibit H – FEDERAL AND STATE LAWS, STATUTES, RULES, REGULATIONS, EXECUTIVE ORDERS AND POLICIES

The above-referenced exhibits are attached hereto and incorporated by this reference. Contractor's services are funded by and through County's General Funds. The Tele-psychiatric Services ("Services") is further described in Exhibit A. Exhibit B and Exhibit B-1, attached hereto and incorporated by this reference.

3. **Consideration.** It is understood and agreed that in the event funds are not awarded to County from Central Oregon Health Council or other funding sources as applicable, or if the amount of funds County actually receives from funding sources is less than anticipated, County may either immediately terminate this Contract or decrease the total compensation and reimbursement to be paid hereunder upon agreement of the Parties.
 - A. Payment for services charged to this Contract shall not exceed the maximum sum of \$750,000 inclusive of travel and all other expenses. Services, charged directly to the Oregon Health Plan (OHP) or other insurance providers is not calculated as part of the contract maximum compensation.
 - B. Contractor shall invoice County in accordance with Exhibit B-1. County will only pay for completed work that is accepted by County. Invoice and supporting documentation must be sent to County Accounts Payable by mail, fax or e-mail as indicated in Paragraph 14, "Notices".
 - C. Prior to approval or payment of any invoices, County may require and Contractor shall provide any information, not available within County electronic systems, which County deems necessary to verify work has been properly performed in accordance with the Contract. If invoice or supporting documentation contains Protected Health Information (PHI) as defined by the Health Insurance Portability and Accountability Act (HIPAA), then documentation must be faxed or emailed with encryption. Invoices may require such supporting documentation as signed time cards, travel receipts, or other reports.
 - D. Contractor shall not invoice and County will not pay, any amount in excess of the maximum compensation set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs work subject to the amendment. No payment will be made for any services performed before the beginning date or after the expiration date of this Contract.
 - E. Should County discover Contractor is committing or has committed "fraud and abuse" as those terms are defined in OAR 410-120-0000, either through an audit or other means, County may recover funds paid to Contractor under this Contract. If state or federal authorities demand the repayment of funds received under this Contract and Contractor has been found willfully committing "fraud and abuse" as those terms are defined in OAR 410-120-0000, County may recover funds paid to Contractor under this Contract and any fines or penalties charged to County as a result of Contractor's actions. In the event that the County determines that Contractor is responsible for the repayment of any funds paid to Contractor, in addition to any fines or penalties charged to the County due to Contractor willfully committing "fraud and abuse", Contractor agrees to make such payment (and upon request by County, authorize County withhold of funds otherwise due to Contractor) within ten (10) days of notification by

County. If federal or state authorities demand the repayment of funds received under this Contract, County may recover all funds paid under this Contract, unless a smaller amount is disallowed or demanded from federal or state authorities.

- F. In the event that an insurance, statutorily required operating license, insurance, or letter of approval is suspended or not extended, County's obligation to provide reimbursement for services or program expenses hereunder related to services rendered without the necessary license, insurance, or approval will cease on the date of termination of this Contract (whether in whole or in part) or the date of expiration or suspension of the license or letter of approval, whichever date is earlier.

4. Expense Reimbursement. If the consideration under this Contract provides for the reimbursement to Contractor for travel expenses, in addition to Exhibit F, Exhibit B-1 shall state whether Contractor is or is not entitled to reimbursement for such approved expenses.

- A. County shall only reimburse Contractor for expenses reasonably and necessarily incurred in the performance of this Contract.
- B. Expenses reimbursed shall be at the actual cost incurred; including any taxes paid, and shall not include any mark-up unless the mark-up on expenses is specifically agreed to in this Contract.
- C. The cost of any subcontracted work approved in this Contract shall not be marked up.
- D. Contractor shall not invoice County for any time expended to complete the documents necessary for reimbursement of expenses or for payment under this Contract.
- E. The limitations applicable to reimbursable expenses are set forth in Exhibit "F," attached hereto and by reference incorporated herein.

5. Withholding of Payments. Notwithstanding any other payment provision of this Contract, should Contractor fail to submit required reports when due, or fail to perform or document the performance of contracted services; County shall immediately withhold payments under this Contract.

6. Work Standard.

- A. Contractor shall be solely responsible for and shall have control over the means, methods, techniques, sequences and procedures of performing the work, subject to the plans and specifications under this Contract and shall be solely responsible for the errors and omissions of its employees, subcontractors and agents.
- B. For goods and services to be provided under this Contract, Contractor agrees to:
 - 1) perform the work in a good, workmanlike, and timely manner using the schedule, materials, plans and specifications approved by County;
 - 2) comply with all applicable legal requirements;
 - 3) comply with all programs, directives, and instructions of County relating to safety, storage of equipment or materials;
 - 4) take all precautions necessary to protect the safety of all persons at or near County or Contractor's facilities, including employees of Contractor, County and any other contractors or subcontractors and to protect the work and all other property against damage.

7. Ownership of Work. All work of Contractor that results from this Contract (the "Work Product") is the exclusive property of County.

- A. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed author.
- B. If, for any reason, the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine.
- C. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County.

- D. Contractor forever waives any and all rights relating to Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
- E. County shall have no rights in any pre-existing work product of Contractor provided to County by Contractor in the performance of this Contract except an irrevocable, non-exclusive, perpetual, royalty-free license to copy, use and re-use any such work product for County use only.
- F. If this Contract is terminated prior to completion, and County is not in default, County, in addition to any other rights provided by this Contract, may require Contractor to transfer and deliver all partially completed work products, reports or documentation that Contractor has specifically developed or specifically acquired for the performance of this Contract.
- G. In the event that Work Product is deemed Contractor's Intellectual Property and not "work made for hire," Contractor hereby grants to County an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Contractor Intellectual Property, and to authorize others to do the same on County's behalf.
- H. In the event that Work Product is Third Party Intellectual Property, Contractor shall secure on the County's behalf and in the name of the County, an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on County's behalf.

8. Meaningful Use. "Meaningful Use" is the set of standards defined by the Centers for Medicare & Medicaid Services (CMS) Incentive Programs that governs the use of electronic health records and allows eligible providers and hospitals to earn incentive payments by meeting specific criteria.

- A. Contractor understands that County has implemented a health information technology system to comply with the Electronic Health Record (EHR) Incentive program, created by the American Recovery and Reinvestment Act, Pub. L. 111-5 (Meaningful Use). Contractor agrees to assist County in meeting the obligations and objectives set forth in 42 CFR Part 495 and to take such steps as necessary to allow County to realize the benefits of the EHR Incentive Program, including but not limited to participating in the Medicaid EHR Incentive Program as an Eligible Professional, using Certified EHR technology, and providing attestations of adoption, implementation, upgrading and meaningful use of such technology as requested or required by County or other federal or state authority.

9. Reserved.

10. County Code Provisions. Except as otherwise specifically provided, the provisions of Deschutes County Code, Section 2.37.150 are incorporated herein by reference. Such code section may be found at the following URL address:
https://deschutescounty.municipalcodeonline.com/book?type=ordinances#name=2.37.150_Standard_Contract_Provisions.

11. Successors in Interest. The provisions of this Contract shall be binding upon and inure to the benefit of the Parties and their successors and approved assigns, if any.

12. Reporting.

- A. Contractor agrees to prepare and furnish such reports and data as may be required by County, Oregon Health Authority (OHA) or PacificSource Community Health Solutions, Inc., to which they are applicable to the services being provided under this Contract. Reports may include but not be limited, to financial reports documenting all expenditures of funds under this Contract in accordance with generally accepted accounting procedures, client records which contain client's identification, problem assessment, service plan (including any training and/or care plan), appropriate medical information, and service notes, including a service termination summary and current assessment or evaluation instrument as designated in the Oregon Administrative Rules. Oregon Health Authority's Measures and Outcomes Tracking System (MOTS), Community Mental Health Provider Report, and Termination Service Recording Form, if applicable, may be completed in accordance with OHA requirements and submitted to County. Contractor agrees to, and does hereby grant County, PacificSource Community Health Solutions Inc., and OHA the right to reproduce, use and disclose for County, PacificSource Community Health Solutions or OHA purposes, all or any part of the reports, data, and technical information furnished to County under this Contract. Contractor shall make available to County and any individual for whom Contractor furnishes

services pursuant to this Contract, any and all written materials in alternate formats. For purposes of the foregoing, "written materials" includes, without limitation, all work product and contracts related to this Contract.

- B. **Access to Records and Facilities.** County and its authorized representatives shall have the right to direct access to all of Contractor's books, documents, papers and records of Contractor that are directly related to this Contract, the financial assistance provided hereunder, or any service for the purpose of making audits, examinations, excerpts, copies and transcriptions. The foregoing access is subject to the Parties and requesting agencies strict compliance with applicable provisions of 42 CFR Part 2.
- C. Contractor shall permit County to make site visits upon reasonable notice to monitor the delivery of services under this Contract.
- D. **Retention of Records.** Contractor shall retain and keep accessible all books, documents, paper, and records and client records, that are directly related to this Contract, the financial assistance provided hereunder or any service, in accordance with OAR 166-150-0005 through 166-150-0215 (State Archivist). Unless OAR 166-150-0005 through 166-150-0215 requires a longer retention period, client records must be retained for a minimum of six (6) years from termination or expiration of this Contract. If there are unresolved audit or Contract Settlement questions at the end of the retention period, Contractor shall retain the records until the questions are resolved.
- E. Contractor agrees that services provided under this Contract by Contractor, facilities used in conjunction with such services, client's records, Contractor's policies, procedures, performance data, financial records, and other similar documents and records of Contractor, that pertain, or may pertain, to services under this Contract, shall be open for inspection by County, or its agents, at any reasonable time during business hours.

13. Confidentiality. In addition to the obligations imposed upon Contractor by **Exhibit G**, Contractor shall maintain confidentiality of information obtained pursuant to this Contract as follows:

- A. Contractor shall not use, release or disclose any information concerning any employee, client, applicant or person doing business with the County for any purpose not directly connected with the administration of County's or the Contractor's responsibilities under this Contract except upon written consent of the County, and if applicable, the employee, client, applicant or person.
- B. Contractor shall ensure that its agents, employees, officers and subcontractors with access to County and Contractor records understand and comply with this confidentiality provision.
- C. Contractor shall treat all information as to personal facts and circumstances obtained on Medicaid eligible individuals as privileged communication, shall hold such information confidential, and shall not disclose such information without the written consent of the individual, his or her attorney, the responsible parent of a minor child, or the child's guardian, except as required by other terms of this Contract.
- D. Nothing prohibits the disclosure of information in summaries, statistical information, or other form that does not identify particular individuals.
- E. Personally identifiable health information about applicants and Medicaid recipients will be subject to the transaction, security and privacy provisions of the Health Insurance Portability and Accountability Act ("HIPAA").
- F. Contractor shall cooperate with County in the adoption of policies and procedures for maintaining the privacy and security of records and for conducting transactions pursuant to HIPAA requirements.
- G. This Contract may be amended in writing in the future to incorporate additional requirements related to compliance with HIPAA.
- H. If Contractor receives or transmits protected health information, Contractor and County shall enter into a Business Associate Agreement or a Confidentiality Agreement, whichever is applicable, which, if attached hereto, shall become a part of this Contract.
- I. Individually Identifiable Health Information about specific individuals is confidential. Individually Identifiable Health Information relating to specific individuals may be exchanged between County and OHA for purposes directly related to the provision of services to clients which are funded in whole or in part under this Contract. Contractor shall maintain the confidentiality of records of clients as required by applicable state and federal law, including without limitation, ORS 179-495 to 179.507. 45 CFR Part 205, 42 CFR Part 2, any administrative rule adopted by

the OHA, implementing the foregoing laws, and any written policies made available to Contractor by County or by the OHA. Contractor shall create and maintain written policies and procedures related to the disclosure of a client's information and shall make such policies and procedures available to County and the OHA for review and inspection as reasonably requested by County or the OHA.

14. Notice. Except as otherwise expressly provided in this Contract, any communications between the Parties hereto or notices to be given hereunder shall be given in writing, to Contractor or County at the address or number set forth below or to such other addresses or numbers as either Party may hereafter indicate in writing. Delivery may be by personal delivery, electronic mail, facsimile, or mailing the same, postage prepaid.

- A. Any communication or notice by personal delivery shall be deemed delivered when actually given to the designated person or representative.
- B. Any communication or notice sent by facsimile shall be deemed delivered when the transmitting machine generates receipt of the transmission. To be effective against County, such facsimile transmission shall be confirmed by telephone notice to the County Administrator.
- C. Any communication or notice mailed shall be deemed delivered five (5) days after mailing. Any notice under this Contract shall be mailed by first class postage or delivered as follows:

<u>To Contractor:</u>	<u>To County:</u>
Jeremy Unger	Holly Harris, Deputy Director
Iris Telehealth Medical Group, PA	Deschutes County Health Services
114 W. 7 th St.	2577 NE Courtney Dr.
Austin, TX 78701	Bend, Oregon 97701
Fax No.	Fax No. 541-322-7565
jeremy.unger@iristelehealth.com	Holly.harris@deschutes.org

<u>To County – for Notices & Terminations:</u>	<u>To County – Accounts Payable:</u>
Grace Justice Evans, Contract Specialist	Accounts Payable
Deschutes County Health Services	Deschutes County Health Services
2577 NE Courtney Dr.	2577 NE Courtney Dr.
Bend, Oregon 97701	Bend, Oregon 97701
Fax No. 541-322-7565	Fax No. 541-322-7565
grace.evans@deschutes.org	_HSAccountsPayable@deschutes.org

15. Termination. All or part of this Contract may be terminated by mutual consent of both Parties or by either Party at any time for convenience upon ninety (90) days' notice in writing to the other Party. The County may also terminate all or part of this Contract as specified below:

- A. This Contract shall be terminated immediately and no obligations, financial or otherwise, shall be imposed upon County if funding to the County from Federal, State, or other sources is not obtained or is not continued at levels sufficient to allow for purchase of the indicated quantity of services. The County will give notice whenever possible.
- B. With thirty (30) days' written notice, if Federal or State regulations are modified or changed in such a way that services are no longer allowable for purchase under this Contract.
- C. Upon notice of denial, revocation, or nonrenewal of any letter of approval, license, or certificate required by law or regulation to be held by the Contractor to provide a service under this Contract.
- D. With thirty (30) days' written notice, if Contractor fails to provide services, or fails to meet any performance standard as specified by the County in this Contract (or subsequent modifications to this Contract) within the time specified herein, or any extensions thereof.
- E. Upon written notice, if the Contractor fails to start services on the date specified in this Contract (or subsequent modifications to this Contract).
- F. Upon written or oral notice, if County has evidence that the Contractor has endangered or is endangering the health and safety of clients, residents, staff, or the public.

- G. Failure of the Contractor to comply with the provisions of this Contract and all applicable Federal, State and local laws and rules which may be cause for termination of this Contract. The circumstances under which this Contract may be terminated by either Party under this paragraph may involve major or minor violations. Major violations include, but are not limited to:
 - 1) Acts or omissions that jeopardize the health, safety, or security of individuals.
 - 2) Misuse of funds.
 - 3) Intentional falsification of records.
- H. In the case a failure to perform jeopardizes the safety and security of an individual the Contractor and the County shall jointly conduct an investigation to determine whether an emergency exists and what corrective action will be necessary. Such an investigation shall be completed within five (5) working days from the date the County determines that such failure exists.
- I. In those circumstances where a major violation is substantiated, continued performance may be suspended by the County immediately. In all cases involving a major violation, a written notice of intent to terminate this Contract shall be sent to the Contractor found to be in violation. Prior to termination, the Contractor shall be given a reasonable opportunity to refute the findings. If the problem is not corrected within a reasonable time as determined by County in its sole discretion, this Contract may be terminated or other remedial actions may be initiated.
- J. Minor violations usually involve less than substantial compliance with the general or special conditions of this Contract. In the event of alleged minor violations, written notice shall be given and a reasonable period shall be allowed to develop a corrective action plan. This plan shall describe activities that respond to specific violations and means by which a permanent change will be made in the procedures or practices that caused the violation. If these activities do not occur within the notice period, this Contract may be terminated. Continued substantial minor violations that threaten adequacy of services may be treated like a major violation.
- K. Termination shall be without prejudice to any obligations or liabilities of either Party accrued prior to such termination.
- L. Contractor shall make no expenditures, enter into no contracts, nor encumber funds in its possession or to be transferred by County, after notice of termination or termination as set out above, without prior written approval from County.

16. Payment on Early Termination. Upon termination pursuant to Paragraph 15, payment shall be made as follows:

- A. If Contract terminated because funding from Federal, State, or other sources is not obtained or is not continued at levels sufficient to allow for purchase of the indicated quantity of services, the County shall pay Contractor for work performed prior to the termination date if such work was performed in accordance with the Contract. Provided however, County shall not pay Contractor for any obligations or liabilities incurred by Contractor after Contractor receives written notice of termination.
- B. If this Contract is terminated due to Contractor's failure to perform services in accordance with the Contract, County obligations shall be limited to payment for services provided in accordance with this Contract prior to the date of termination, less any damages suffered by the County.
- C. If Contract is terminated by the Contractor due to a breach by the County, then the County shall pay the Contractor for work performed prior to the termination date if such work was performed in accordance with the Contract:
 - 1) with respect to services compensable on an hourly basis, for unpaid invoices, hours worked within any limits set forth in this Contract but not yet billed, authorized expenses incurred if payable according to this Contract and interest within the limits set forth under ORS 293.462, and
 - 2) with respect to deliverable-based Work, the sum designated for completing the deliverable multiplied by the percentage of Work completed and accepted by County, less previous amounts paid and any claim(s) that County has against Contractor.
 - 3) Subject to the limitations under paragraph 18 of this Contract.

17. Contractor's Tender upon Termination. Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract unless County expressly directs otherwise in such notice of termination.

- A. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had this Contract been completed.
- B. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the work.

18. Remedies. In the event of breach of this Contract the Parties shall have the following remedies:

- A. Termination under this Contract shall be without prejudice to any obligations or liabilities of either party already reasonably incurred prior to such termination.
 - 1) Contractor may not incur obligations or liabilities after Contractor receives written notice of termination.
 - 2) Additionally, neither Party shall be liable for any indirect, incidental, consequential or special damages under this Contract or for any damages of any sort arising solely from the termination of this Contract in accordance with its terms.
- B. If terminated under this Contract by the County due to a breach by the Contractor, County may pursue any remedies available at law or in equity.
 - 1) Such remedies may include, but are not limited to, termination of this Contract, return of all or a portion of this Contract amount, payment of interest earned on this Contract amount, and declaration of ineligibility for the receipt of future contract awards.
 - 2) Additionally, County may complete the work either by itself, by agreement with another Contractor, or by a combination thereof. If the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then the Contractor shall be liable to the County for the amount of the reasonable excess.
- C. If amounts previously paid to Contractor exceed the amount due to Contractor under this Contract, Contractor shall repay any excess to County upon demand.
- D. Neither County nor Contractor shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, riot, acts of God, or war where such cause was beyond reasonable control of County or Contractor, respectively; however, Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract. For any delay in performance as a result of the events described in this subparagraph, Contractor shall be entitled to additional reasonable time for performance that shall be set forth in an amendment to this Contract.
- E. The passage of this Contract expiration date shall not extinguish or prejudice the County's or Contractor's right to enforce this Contract with respect to any default or defect in performance that has not been cured.
- F. County's remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.
- G. Differences between a Contractor and County, or between contractors, will be resolved when possible at appropriate management levels, followed by consultation between boards, if necessary. County's Director will have ultimate responsibility for resolution of disagreements among subcontract agencies.

19. Suspension. Following reasonable notice to Contractor and attempts to resolve problems informally, County may suspend funding in whole or in part, terminate funding, or impose any other sanction for any of the following reasons:

- A. Failure of Contractor to become operational within sixty (60) days of the effective date of this Contract, with failure to provide reasons for the delay and the steps taken to initiate services. An extension to ninety (90) days may be allowed only under unusual circumstances.
- B. Failure of Contractor to comply substantially with the requirements or statutory objectives of the services to be provided, or other provisions of State or Federal law.
- C. Failure of the Contractor to make satisfactory progress toward the approved goals and objectives.

D. Failure of the Contractor to adhere to the requirements for the provision of services.

E. Proposing or implementing substantial changes that result in services that would not have been selected if it had to be subjected to the original review of scope of work and/or services to be provided.

20. Independent Contractor. County is not, by virtue of this Contract, a partner or joint venturer with Contractor in connection with activities carried out under this Contract, and shall have no obligation with respect to Contractor's debts or any other liabilities of each and every nature. Unless Contractor is a State of Oregon governmental agency, Contractor agrees that it is an independent contractor and not an agent of the State of Oregon, the Oregon Health Authority or County.

21. Contractor Not an Agent of County, Department or State of Oregon. It is agreed by and between the Parties that Contractor is not carrying out a function on behalf of the County, State of Oregon, or the United States and County. The State of Oregon and the United States do not have the right of direction or control of the manner in which Contractor delivers services under this Contract or exercise any control over the activities of the Contractor.

22. Contractor and Subcontractors. Workers Compensation insurance must be 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) or claiming exemption by conditions outlined in Exhibit E. 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 Employers liability coverage shall not be 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.

23. Delegation and Reports. Contractor shall not delegate the responsibility for providing services hereunder to any other individual or agency.

24. No Third Party Beneficiaries.

- A. County and Contractor are the only Parties to this Contract and are the only Parties entitled to enforce its terms.
- B. Nothing in this Contract 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 Contract and expressly described as intended beneficiaries of this Contract.

25. Constraints. Pursuant to the requirements of ORS 279B.220 through 279B.335 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract:

- A. Contractor shall:
 - 1) Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in this Contract.
 - 2) Pay all contributions or amounts due the Industrial Accident Fund from such contractor or subcontractor incurred in the performance of this Contract.
 - 3) Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.
 - 4) Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
 - 5) Be responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, County will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.
- B. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper offices representing County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of this Contract.

- C. Contractor shall promptly, as due, make payment to any person or partnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury to the employees of Contractor, of all sums which Contractor agrees to pay for such services, and all monies and sums which Contractor collected or deducted from the wages of Contractor's employees pursuant to any law, contract or Contract for the purpose of providing or paying for such services.
- D. Contractor shall pay employees at least time and a half for all overtime worked in excess of forty (40) hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under the Fair Labor Standards Act of 1938 (29 U.S. C. 201, et seq.) from receiving overtime. Persons employed under this contract shall receive at least time and a half for work performed on the legal holidays specified in ORS 279B.020(1)(b)(B) to (G) and for all time worked in excess of ten (10) hours in any one day or in excess of forty (40) hours in any one week, whichever is greater.
- E. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein, which would conflict with law, are deemed inoperative to that extent.
- F. Contractor shall abide by all mandatory standards and policies which relate to energy efficiency and which are contained in the State of Oregon energy conservation plan that was issued in compliance with the Energy Policy and Conservation Act (PL 94165).
- G. Contractor shall comply with Federal rules and statutes pertaining to the Substance Abuse and Mental Health Services Administration (SAMHSA) and Social Security (formerly Title XX) Community Health Services Block Grant(s); including the Public Health Services Act, especially sections 1914 (b)(15), 1915 (c)(12), 1916 (b)(2) and Public Law 9735.
- H. The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury that the individual is authorized to act on behalf of Contractor, the individual has authority and knowledge regarding Contractors' payment of taxes, and to the best of the individual's knowledge, Contractor is not in violation of any Oregon tax laws.

26. Insurance. Contractor shall provide insurance in accordance with Exhibit C attached hereto and incorporated by reference herein. 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 acceptable to County. County shall not authorize contractors to begin work under the Contract until the insurance is in full force. Thereafter, County shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. County shall enforce Contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Contract as permitted by the Contract provisions, or pursuing legal action to enforce the insurance requirements. In no event shall County permit Contractor to work under this Contract when the County is aware that Contractor is not in compliance with the insurance requirements.

27. Settlement of Disputes. Differences between a Contractor and County, or between contractors, will be resolved when possible at appropriate management levels, followed by consultation between boards, if necessary. The Deschutes County Health Services Director will have ultimate responsibility for resolution of disagreements among subcontract agencies.

28. Financial Audit. If requested, Contractor shall, at its sole expense, provide County with a copy of a Financial Review or Financial Audit conducted by a Certified Public Accountant within ninety (90) days following the termination of this Contract. This audit shall comply with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations."

29. Indemnity and Hold Harmless.

- A. To the fullest extent authorized by law Contractor shall defend, save, hold harmless and indemnify the County and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities costs and expenses of any nature resulting from or arising out of, or relating to the activities of Contractor or its officers, employees, contractors, or agents under this Contract, including without limitation any claims that the work, the work product or any other tangible or intangible items delivered to County by Contractor that may be the subject of protection under any state or federal intellectual property law or doctrine, or the County's use thereof,

infringes any patent, copyright, trade secret, trademark, trade dress, mask work utility design or other proprietary right of any third party.

- B. Contractor shall have control of the defense and settlement of any claim that is subject to subparagraph a of this paragraph; however neither contractor nor any attorney engaged by Contractor shall defend the claim in the name of Deschutes County or any department or agency thereof, nor purport to act as legal representative of the County or any of its departments or agencies without first receiving from the County's legal counsel, in a form and manner determined appropriate by the County's legal counsel, authority to act as legal counsel for the County, nor shall Contractor settle any claim on behalf of the Count without the approval of the County's legal counsel.
- C. To the extent permitted by Article XI, Section 10, of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, County shall defend, save, hold harmless and indemnify Contractor and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities costs and expenses of any nature resulting from or arising out of, or relating to the activities of County or its officers, employees, contractors, or agents under this Contract.
- D. Contractors that are not units of local government as defined in ORS 190.003, shall indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents 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 Contractor or any of the officers, agents, employees or subcontractors. It is the specific intention of the Parties that the State of Oregon shall, in all instances, except for claims arising solely from the negligent or willful acts or omissions of the State of Oregon, be indemnified from and against any and all claims.

30. Drugs and Alcohol. Contractor shall adhere to and enforce a zero tolerance policy for the use of alcohol and the unlawful (under either state or federal law) selling, possession or use of controlled substances while performing work under this Contract.

31. Criminal Background Investigations. Contractor understands that Contractor and Contractor's employees and agents are subject to periodic criminal background investigations by County and, if such investigations disclose criminal activity not disclosed by Contractor, such non-disclosure shall constitute a material breach of this Contract and County may terminate this Contract effective upon delivery of written notice to the Contractor, or at such later date as may be established by the County.

32. Federal Law compliance. Contractor shall comply with the provisions of those laws referred to in Exhibit H, attached hereto. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract.

33. NonAppropriation. In the event sufficient funds shall not be appropriated for the payment of consideration required to be paid under this Contract, and if County has no funds legally available for consideration from other sources, then County may terminate this Contract in accordance with Paragraph 15 of this Contract.

34. Attorney Fees. In the event an action, suit or proceeding, including appeal there from, is brought for breach of any of the terms of this Contract, or for any controversy arising out of this Contract, each Party shall be responsible for its own attorney's fees, expenses, costs and disbursements for said action, suit, proceeding or appeal.

35. Entire Contract. This Contract constitutes the entire Contract between the parties on the subject matter hereof. There are no understandings, Contracts, or representations, oral or written, not specified herein regarding this Contract.

36. Renewal. This Contract may be renewed, subject to the following conditions: (1) renewal will be based on the County approval by the Department, and (2) renewal is subject to the availability of funding.

37. Waiver.

- A. County's delay in exercising, or failure to exercise any right, power, or privilege under this Contract shall not operate as a waiver thereof, nor shall any single or partial exercise or any right, power, or privilege under this Contract preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.
- B. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

38. Governing Law. This Contract 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 Contractor that arises from or relates to this Contract 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. CONTRACTOR, BY EXECUTION OF THIS CONTRACT, 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.

39. Severability. If any term or provision of this Contract 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 this Contract did not contain the particular term or provision held invalid.

40. Merger Clause. This Contract and the attached exhibits constitute the entire agreement between the Parties.

- A. All understandings and agreements between the Parties and representations by either Party concerning this Contract are contained in this Contract.
- B. No waiver, consent, modification or change in the terms of this Contract shall bind either Party unless in writing signed by both Parties.
- C. Any written waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given.

41. Identity Theft Protection. Contractor and subcontractors shall comply with the Oregon Consumer Identity Theft Protection Act (ORS 646A.600 et seq.).

42. Representations and Warranties.

- A. **Contractor's Representations and Warranties.** Contractor represents and warrants to County that:
 - 1) Contractor has the power and authority to enter into and perform this Contract;
 - 2) This Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms;
 - 3) Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in Contractor's industry, trade or profession;
 - 4) Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work;
 - 5) Contractor prepared its proposal related to this Contract, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty; and
 - 6) Contractor's making and performance of this Contract do not and will not violate any provision of any applicable law, rule or regulation or order of any court, regulatory commission, board or other administrative agency.
- B. **Warranties Cumulative.** The warranties set forth in this paragraph are in addition to, and not in lieu of, any other warranties provided.

43. SB 675 (2015) Representation and Covenant.

- A. Contractor represents and warrants that Contractor has complied with the tax laws of this state, and where applicable, the laws of Deschutes County, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318.
- B. Contractor covenants to continue to comply with the tax laws of this state, and where applicable, the laws of Deschutes County, during the term of this Contract.

C. Contractor acknowledges that failure by Contractor to comply with the tax laws of this state, and where applicable, the laws of Deschutes County, at any time before Contractor has executed the Contract or during the term of the Contract is and will be deemed a default for which Deschutes County may terminate the Contract and seek damages and/or other relief available under the terms of the Contract or under applicable law.

44. Nondiscrimination. Contractor must provide services to clients without regard to race, color, religion, national origin, sex, age, marital status, sexual orientation, or disability (as defined under the Americans with Disabilities Act). Contracted services must reasonably accommodate the cultural, language and other special needs of clients including, but not limited to, limited English language proficiency.

45. Survival. The provisions of the following paragraphs shall survive termination or expiration of this Contract: 7 (Ownership of Work); 11 (Successors in Interest); 12 B (Access to Records); 13 (Confidentiality); 14 (Notice); 17 (Contractor's Tender upon Termination); 18 (Remedies); 24 (No Third Party Beneficiaries); 29 (Indemnity & Hold Harmless); 37 (Waiver); 38 (Governing Law); 41 (Identity Theft Protection); 42 (Representations & Warranties).

46. Non-solicitation. During the term of this agreement, and for a period of two (2) years following the expiration/termination of this agreement, County will refrain from directly or indirectly hiring, retaining, engaging, or soliciting for employment or work in any capacity any current or former Contractor employee or independent contractor who has provided services for County.

EXHIBIT A
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2023-546
OUTLINE OF PROGRAM AND PROGRAM DEFINITIONS

Contract Monitoring. County shall monitor Contractor's delivery of services and promptly report to applicable authority if County identifies a deficiency in a Contractor's delivery of a service or in a Contractor's compliance with the Contract between Contractor and County. County shall promptly take all necessary action to remedy any identified deficiency on the part of the Contractor. County shall also monitor the fiscal performance of Contractor and shall take all lawful management and legal action necessary to pursue this responsibility. In the event of a deficiency in Contractor's delivery of a service or in a Contractor's compliance with the Contract between the Contractor and County, nothing shall limit or qualify any right or authority County has under state or federal law to take action directly against the Contractor.

Services Outline:

The term "Contractor" shall be in reference to Iris Telehealth Medical Group, PA and/or the Licensed Medical Provider appointed by and contracted with Iris Telehealth Medical Group, PA for the provision of services.

Contractor shall provide Tele-psychiatric treatment for persons identified and scheduled by County. Clients shall be scheduled during the agreed upon hours of service and will occur in thirty (30) minute sessions for returning and known clients, and sixty (60) minute sessions for new County clients and psychiatric evaluations. Contractor shall provide required documentation of services in County's Electronic Medical Record (EMR) system.

Contractor shall provide Outpatient Behavioral Health Services as a Licensed Medical Practitioner (LMP) in accordance with OAR's 309-019-0105 and 309-019-0140. Services shall be performed in accordance with a schedule agreed upon by both Contractor and County. Contractor shall provide Medical Services in a manner that is in accordance with Definitions, laws, and regulations. Deschutes County Health Services' Policy entitled "Mental health and Substance Use Disorder Services and Supports Policy", (Issue Date: January 21, 2022) and in accordance with the Oregon Administrative Rules (OAR) "Outpatient Behavioral Health Services", OAR 309-019-0100 ("Purpose and Scope") through OAR 309-019-0220 ("Variances"), which is incorporated into this Contract herein by reference or required by law to be so incorporated. Deschutes County policies may be found on the Deschutes County Intranet in the Health Services' Department's "Policies and Procedures".

Definitions:

1. **Addiction Treatment, Recovery & Prevention Services**
 Services for Individuals diagnosed with disorders related to the taking of a drug of abuse including alcohol, to the side effects of a medication, and to a toxin exposure. The disorders include substance use disorders such as substance dependence and substance abuse, and substance-induced disorders, including substance intoxication, withdrawal, delirium, and dementia, mood disorder, etc., as defined in DSM criteria.
2. **Behavioral Health**
 Mental/emotional wellbeing and/or actions that affect wellness. Behavioral health problems include substance abuse and misuse, Problem Gambling, and Mental Health disorders as well as serious psychological distress and suicide.
3. **Client or individual**
 With respect to a particular Service, any person who is receiving that Service, in whole or in part, with funds provided under this Contract.
4. **Coordinated Care Organization (CCO) (OAR 309-091-0005)**
 A corporation, governmental agency, public corporation, or other legal entity that is certified as meeting the criteria adopted by the Oregon Health Authority under ORS 414.625 to be accountable for care management and to provide integrated and coordinated health care for each of the organization's members. PacificSource Community Health Solutions, Inc. has been designated by the Oregon Health Authority as the CCO for the Central Oregon region.
5. **Culturally Competent**
 The capacity to provide services in an effective manner that is sensitive to the culture, race, ethnicity, language and other characteristics of an individual. Such services may include, but are not limited to, use of bilingual and bicultural staff, provision of services in culturally appropriate alternative settings, and use of bicultural paraprofessionals as intermediaries with professional staff.
6. **Fraud and Abuse**

Fraud (OAR 410-120-0000) is defined as intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to him/herself or some other person. It includes any act that constitutes fraud under applicable federal or state law.

Abuse (OAR 410-120-0000) means provider practices that are inconsistent with sound, fiscal, business or medical practices and result in unnecessary costs to County and/or Medicaid/Medicare, or services that aren't medically necessary or medically appropriate.

7. Health Services Division or HSD

For the purpose of this Contract, the division of Oregon Health Authority (OHA) that is responsible for Community Mental Health, Addiction Treatment, Recovery & Prevention, and Problem Gambling Services.

8. Individual service record or service record or clinical record

The documentation, written or electronic, regarding an individual and resulting from entry, clinical assessment, orientation, service and support planning, services and supports provided, and service conclusion.

9. Medically appropriate (OAR 410-120-0000) means services and medical supplies that are:

- A. Recommended by a licensed health provider practicing within the scope of their license;
- B. Safe, effective and appropriate for the patient based on standards of good health practice and generally recognized by the relevant scientific or professional community based on the best available evidence;
- C. Not solely for the convenience of an individual, member, or a provider of the service item or medical supply;
- D. The most cost effective of the alternative levels or types of health services, items, or medical supplies that are covered service can be effectively provided to an individual;
- E. All covered services must be medically appropriate for the member or client, but not all medically appropriate services are covered services.

10. Measures and outcomes Tracking System or "MOTS"

The Oregon Health Authority, data system that stores data submitted by contractors and subcontractors.

11. Oregon Health Authority or "OHA"

The agency within the State of Oregon that is responsible for Problem Gambling, Addiction Treatment, Recovery & Prevention Services, children and adult Community Mental Health services, and maintaining custody of persons committed to the state, by courts, for care and treatment of mental illness.

12. Problem Gambling means prevention, treatment, maintenance and recovery Services for Individuals diagnosed with Gambling Disorder including or inclusive of any family and/or significant other impacted by the problem gambler for access to treatment. For the purposes of this Contract, Problem Gambling Services and Gambling Disorder will be used interchangeably.

13. Serious and Persistent Mental Illness (SPMI)

Means the current DSM diagnostic criteria for at least one of the following conditions as a primary diagnosis for an adult age eighteen (18) or older:

- A. Schizophrenia and other psychotic disorders;
- B. Major depressive disorder;
- C. Bipolar disorder;
- D. Anxiety disorders limited to Obsessive Compulsive Disorder (OCD) and Post Traumatic Stress Disorder (PTSD);
- E. Schizotypal personality disorder; or
- F. Borderline personality disorder

14. Service(s)

Any one of the services or group or services as described in Exhibit B, in which costs are covered in whole or in part of this Contract.

15. Trauma Informed Services

Services that are reflective of the consideration and evaluation of the role that trauma plays in the lives of people seeking Community Mental Health and Add Services, including recognition of the traumatic effect of misdiagnosis and coercive treatment. Services are responsive to the vulnerabilities of trauma survivors and are delivered in a way that avoids inadvertent re-traumatization and facilitates individual direction of services.

EXHIBIT B
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2023-546
STATEMENT OF WORK

1. **Contractor shall perform the following work.** The term "Contractor" shall be in reference to Iris Telehealth Medical Group, PA and/or the Licensed Medical Provider appointed by and contracted with Iris Telehealth Medical Group, PA for the provision of services. Contractor shall provide Tele-psychiatric treatment for persons identified and scheduled by County. Clients shall be scheduled during the agreed upon hours of service and will occur in thirty (30) minute sessions for returning and known clients, and sixty (60) minute sessions for new County clients and psychiatric evaluations. Contractor shall provide required documentation of services in County's Electronic Medical Record (EMR) system. Contractor shall provide services as a Licensed Medical Provider (LMP) and document Medical Services using County's EMR, in a manner consistent with professional and community standards of care.
 - A. Contractor shall provide: Tele-psychiatric services for County clients which may include psychiatric evaluations, medication management services, orders for laboratory and other medical procedures, and client consultation or client therapy.
 - B. Contractor shall use County's EMR and accurately document each client contact including assessments, chart notes, medication/laboratory records, service conclusion summaries and service notes (unless completed by behavioral health staff at time of service).
 - C. Contractor shall provide Medical Supervision. Medical Supervision means a LMP's review and approval, at least annually, of the clinical assessment and the medical appropriateness of services and supports identified in the service plan for each client receiving services for one (1) or more continuous years.
 - D. Contractor will comply with all privacy and security regulations under the Health Information Portability and Accountability Act (HIPAA).
 - E. Contractor shall provide full assistance to County in order to credential the contracted Licensed Medical Provider so that County may bill and recover revenue from all legal resources for the services provided. Contractor shall provide County with copies of licenses, certificates of insurance and evidence of Continuing Medical Education (CME) credits, as applicable, prior to the provision of services.
 - F. Contractor will give a minimum thirty (30) day advance notice to County of planned and/or anticipated absences. Contractor shall alert County as soon as possible in the event of unanticipated absence.
 - G. Contractor shall maintain all requirements to perform Tele-psychiatric services which includes maintaining applicable insurance and licenses as a physician within the state of Oregon.
 - H. Contractor shall maintain all requirements to perform services as a LMP according to OAR 309-019-0105(62) which includes maintaining license as a physician within the state of Oregon.
 - I. Contractor shall screen and assess clients for tobacco use, and offer tobacco cessation resources to individuals choosing to quit.
2. **County Services.** County shall provide Contractor, at County's expense, with material and services described as follows:
 - A. County shall provide EMR, training and technical support where Contract will record data as described in Paragraph 1 of this Exhibit for each specific client that Contractor provides services for.

EXHIBIT B-1
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2023-546
PAYMENT TERMS and SCHEDULE

1. **Consideration.** County shall provide payments to Contractor within thirty (30) days of County's approval of invoice. Payment for services charged to this Contract shall not exceed the maximum sum of **\$750,000** inclusive of travel and all other expenses.

A. Fee/Hourly Rate Schedule

County agrees to pay the Contractor the following fees for services rendered under this Agreement:

Services Type	Hourly Rate*
Telepsychiatry Services provided by an Adult Psychiatrist	\$206-\$238 per hour
Telepsychiatry Services provided by a Child Psychiatrist	\$235-\$270 per hour
Telepsychiatry Services provided by a Nurse Practitioner	\$135 – \$170 per hour
Teletherapy Services provided by a Licensed Therapist Specializing in Child and Family Therapy	\$76 - \$87 per hour
Teletherapy Services provided by a Licensed Therapist Specializing in Adult Therapy	\$68 - \$77 per hour

- B. For a multi-lingual clinician and/or for "specialty providers, an additional charge of \$10.00 per hour will be added to the rate. For supervision, an additional charge of between \$10 and \$20 per hour will be added to the rate.
- C. Contractor shall provide services as requested by County not to exceed one hundred and ten (110) hours per week.
- D. Any time required by County for "onboarding," including, but not limited to, orientation and training in County's EMR, shall be billed at the same rate as services billed for that clinician. Contractor shall confirm with County's Program Manager, by e-mail, the orientation time and hours of EHR training prior to invoicing County.
- E. The parties acknowledge and agree that on each January 1 during the term of this Agreement, the hourly rates set forth on Exhibit B-1 shall be adjusted by increasing the applicable hourly rates charged during the calendar year immediately preceding the upcoming calendar year by 3.2%, to allow for cost of living adjustments and merit increases for the provider; provided that the applicable hourly rates shall be adjusted on the initial January 1 of the term of this Agreement only if Contractor has provided clinical services to County's patients for at least a one hundred eighty (180) day period.
- F. Notwithstanding the foregoing, Iris Telehealth may make market-based updates/adjustments to the rate schedule set forth above from time to time by providing County with ninety (90) days' prior written notice thereof. Any compensation in addition to compensation set forth herein would be made in writing and by mutual agreement between County and the Contractor by signed amendment to this Contract. Upon the final selection of the applicable clinician(s), Contractor will provide County written notice of the applicable hourly rate(s) pursuant to a Service Summary.
- G. Notwithstanding any other payment provision of this Contract, should Contractor fail to submit required reports when due, or fail to perform or document the performance of contracted services; County may immediately withhold payments under this Contract or reject part or all of Contractor's invoice for payment.
- H. Upon County Department Director or Behavioral Health Deputy Director's written approval, provided in a separate email or a Memo with an original signature, Contractor shall be entitled to reimbursement for expenses as set forth in Exhibit F. If reimbursement for expenses is approved, supporting documentation such as detailed, itemized receipts must be included with Contractor's reimbursement request. Reimbursement requests are subject to County's approval.

2. The maximum compensation.

- A. The maximum compensation under this Contract is \$750,000
- B. Contractor shall submit invoices which notes the quantity of hours worked each day. County shall not pay for any invoice in excess of the maximum compensation amount set forth above. Contractor shall invoice County on a monthly basis, by the 15th of the month following the month in which services were performed. County will only pay for completed work that is accepted by County. Invoices are to be submitted to Accounts Payable for review and reimbursement. The final invoice for this Contract term shall be submitted no later than **July 15, 2024**.
- C. Prior to approval or payment of any invoices, County may require and Contractor shall provide any information, not available within County electronic systems, which County deems necessary to verify work has been properly performed in accordance with the Contract. If invoice or supporting documentation contains Protected Health Information (PHI) as defined by the Health Insurance Portability and Accountability Act (HIPAA), then documentation must be faxed or emailed with encryption. Invoices may require such supporting documentation as signed time cards, travel receipts, or other reports.
 - 1) County may be required to amend maximum compensation through amendment of this Contract. If this maximum compensation amount is decreased or increased by amendment of this Contract, the amendment shall be fully effective before Contractor performs work subject to the amendment.
 - 2) Notwithstanding any other payment provision of this Contract, should Contractor fail to submit required reports, itemized receipts or documentation as outlined in this Contract, or fail to perform or document the performance of contracted Services; County shall immediately withhold payments under this Contract or reject part or the Contractor's entire invoice for payment.
 - 3) In the event that a statutorily required license or insurance is suspended or not extended, County's obligation to provide reimbursement for services rendered without the necessary license or insurance will cease on the date of expiration or suspension of license and/or insurance.

3. Schedule of Performance or Delivery.

- A. County's obligation to pay depends upon Contractor's delivery or performance in accordance with Exhibit B.
- B. County will only pay for completed work that conforms to the terms of the Contract.

4. Renewal. This Contract may be renewed subject to availability of funding and County approval.

EXHIBIT C
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2023-546
INSURANCE

Contractor shall at all times maintain in force at Contractor's expense, each insurance noted below. Insurance coverage must apply on a primary or non-contributory basis. All insurance policies, except Professional Liability, shall be written on an occurrence basis and be in effect for the term of this Contract. Policies written on a "claims made" basis must be approved and authorized by Deschutes County.

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.

Professional Liability insurance with an occurrence combined single limit of not less than:

Per Occurrence limit	Annual Aggregate limit
----------------------	------------------------

- | | |
|--------------------------------------|---|
| <input type="checkbox"/> \$1,000,000 | <input type="checkbox"/> \$2,000,000 |
| <input type="checkbox"/> \$2,000,000 | <input type="checkbox"/> \$3,000,000 |
| <input type="checkbox"/> \$2,500,000 | <input checked="" type="checkbox"/> \$7,500,000 |

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.

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

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

Per Single Claimant and Incident	All Claimants Arising from Single Incident
----------------------------------	--

- | | |
|---|---|
| <input type="checkbox"/> \$1,000,000 | <input type="checkbox"/> \$2,000,000 |
| <input type="checkbox"/> \$2,000,000 | <input type="checkbox"/> \$3,000,000 |
| <input checked="" type="checkbox"/> \$3,000,000 | <input checked="" type="checkbox"/> \$5,000,000 |

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.

☒ Required by County ☐ Not required by County (One box must be checked)

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

Per Occurrence

- ☒ \$1,000,000
☐ \$2,000,000
☐ \$3,000,000

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.

EXHIBIT D
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2023-546
CERTIFICATION STATEMENT FOR CORPORATION
OR INDEPENDENT CONTRACTOR

NOTE: Contractor Shall Complete A or B in addition to C below:

A. CONTRACTOR IS A CORPORATION, LIMITED LIABILITY COMPANY OR A PARTNERSHIP.

I certify under penalty of perjury that Contractor is a [check one]:

☒ Corporation ☐ Limited Liability Company ☐ Partnership authorized to do business in the State of Oregon.

B. CONTRACTOR IS A SOLE PROPRIETOR WORKING AS AN INDEPENDENT CONTRACTOR.

Contractor certifies under penalty of perjury that the following statements are true:

1. If Contractor performed labor or services as an independent Contractor last year, Contractor filed federal and state income tax returns last year in the name of the business (or filed a Schedule C in the name of the business as part of a personal income tax return), **and**
2. Contractor represents to the public that the labor or services Contractor provides are provided by an independently established business registered with the State of Oregon, **and**
3. All of the statements checked below are true.

NOTE: Check all that apply. You shall check at least three (3) - to establish that you are an Independent Contractor.

____ A. The labor or services I perform are primarily carried out at a location that is separate from my residence or primarily carried out in a specific portion of my residence that is set aside as the location of the business.

____ B. I bear the risk of loss related to the business or provision of services as shown by factors such as: (a) fixed-price agreements; (b) correcting defective work; (c) warranties over the services or (d) indemnification agreements, liability insurance, performance bonds or professional liability insurance.

____ C. I have made significant investment in the business through means such as: (a) purchasing necessary tools or equipment; (b) paying for the premises or facilities where services are provided; or (c) paying for licenses, certificates or specialized training.

____ D. I have the authority to hire other persons to provide or to assist in providing the services and if necessary to fire such persons.

____ E. Each year I perform labor or services for at least two different persons or entities or I routinely engage in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.

C. Representation and Warranties.

Contractor certifies under penalty of perjury that the following statements are true to the best of Contractor's knowledge:

1. Contractor has the power and authority to enter into and perform this contract;
2. This contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms;
3. The services under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and
4. Contractor shall, at all times during the term of this contract, be qualified, professionally competent, and duly licensed to perform the services.
5. To the best of Contractor's knowledge, Contractor is not in violation of any tax laws described in ORS 305.380(4),
6. Contractor understands that Contractor is responsible for any federal or state taxes applicable to any consideration and payments paid to Contractor under this contract; and
7. Contractor has not discriminated against minority, women or small business enterprises in obtaining any required subcontracts.

EXHIBIT E
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2023-546
WORKERS' COMPENSATION EXEMPTION CERTIFICATION

(To be used only when Contractor claims to be exempt from Workers' Compensation coverage requirements)

Contractor is exempt from the requirement to obtain workers' compensation insurance under ORS Chapter 656 for the following reason (*check the appropriate box*):

☒ **NOT APPLICABLE**

- Contractor is providing Workers' Compensation certificate.

☐ **SOLE PROPRIETOR**

- Contractor is a sole proprietor, and
- Contractor has no employees, and
- Contractor shall not hire employees to perform this contract.

☐ **CORPORATION - FOR PROFIT**

- Contractor's business is incorporated, and
- All employees of the corporation are officers and directors and have a substantial ownership interest* in the corporation, and
- The officers and directors shall perform all work. Contractor shall not hire other employees to perform this contract.

☐ **CORPORATION - NONPROFIT**

- Contractor's business is incorporated as a nonprofit corporation, and
- Contractor has no employees; all work is performed by volunteers, and
- Contractor shall not hire employees to perform this contract.

☐ **PARTNERSHIP**

- Contractor is a partnership, and
- Contractor has no employees, and
- All work shall be performed by the partners; Contractor shall not hire employees to perform this contract, and
- Contractor is not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement to real property or appurtenances thereto.

☐ **LIMITED LIABILITY COMPANY**

- Contractor is a limited liability company, and
- Contractor has no employees, and
- All work shall be performed by the members; Contractor shall not hire employees to perform this contract, and
- If Contractor has more than one member, Contractor is not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement to real property or appurtenances thereto.

*NOTE: Under OAR 436-050-050 a shareholder has a "substantial ownership" interest if the shareholder owns 10% of the corporation or, if less than 10% is owned, the shareholder has ownership that is at least equal to or greater than the average percentage of ownership of all shareholders.

**NOTE: Under certain circumstances partnerships and limited liability companies can claim an exemption even when performing construction work. The requirements for this exemption are complicated. Consult with County Counsel before an exemption request is accepted from a contractor who shall perform construction work.

EXHIBIT F
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2023-546
EXPENSE REIMBURSEMENT

It is the policy of the County that travel shall be allowed only when the travel is essential to Contractor's performance and delivery of services outlined in Exhibit B of this Contract. If Contractor is approved to be reimbursed for expenses outlined below, it will be authorized in writing by County Deputy Director or Director, by separate email as outlined in Exhibit B-1 of this Contract, paragraph 1 H.

If Applicable, Contractor may be entitled to reimbursement for expenses as set forth in this Exhibit F:

- A. General Information: All travel shall be conducted in the most efficient and cost effective manner resulting in the best value to the County.
 - County shall not reimburse Contractor for any item that is not otherwise available for reimbursement to an employee of Deschutes County.
 - County may approve a form other than the County's Expense Reimbursement Form for Contractor to submit an itemized description of travel expenses for payment.
 - Personal expenses shall not be authorized at any time.
 - Unless otherwise stipulated, all expenses are included in the total maximum contract amount.
 - Travel expenses shall be reimbursed only in accordance with rates approved by the County and only when the reimbursement of expenses is specifically provided for in Exhibit B-1 of this Contract.
 - The current approved rates for reimbursement of travel expenses are set forth by the United States General Services Administration ("GSA") and are subject to change accordingly.
 - County shall not reimburse for any expenses related to alcohol consumption or entertainment.
 - Charge slips for gross amounts are not acceptable.
- B. Expense Reporting: Contractors must submit expense reports timely and accurately for all expense reimbursements. Such reports must be submitted within sixty (60) days from the date incurred. Untimely expenses may not be reimbursed.
- C. Documentation Requirements; Contractors are required to accurately and completely:
 - Include necessary backup data and supporting receipts (see "Receipts" section below).
 - Complete either County's Expense Reimbursement Form (Contact Deschutes County Health Services Contract Specialist for the most current version of the County form) or another form agreeable to both Contractor and County, for all expenses incurred, regardless of method of payment.
- D. Receipts: The following are required:
 - Contractor must submit **itemized** receipts.
 - Lodging receipts must be a detailed hotel bill.
 - An air travel receipt should be the passenger copy of the ticket and/or itinerary.
 - Rental vehicle receipt must be the traveler's copy.
 - Original amounts and dates must not be altered. If the original information is incorrect, the discrepancy must be explained.
 - Contractors that have been approved for reimbursement for cell phone expenses must submit the detail summary page for reimbursement.
- E. Exceptions: Exceptions from, or deviations to this Exhibit require County's Department Director's prior written approval.
- F. Per Diem. Per Diem covers meals, lodging, and incidentals. Mileage allowances cover fuel, and auto operating expenses of a personal vehicle. Per diem payments may never exceed the IRS/U.S. Government approved per diem rates.
- G. Air Travel Policy: Contractors are required to:
 - Accept the lowest logical airfare consistent with business needs. However, Contractor may elect to fly non-stop (over a lower-priced, connecting flight) provided the additional cost is less than \$100 per direction, or if the connection would add more than two (2) hours of travel time each way.
 - Use economy/coach class for all domestic flights. However, upgrades are acceptable as long as there is no additional cost to the County.
 - Flight insurance premiums are not reimbursable.

- H. Vehicle Rental Policy: When it is necessary to rent a vehicle, the cost of the rental plus tolls, fuel, and parking is reimbursable. The cost of full-size (or smaller) cars will be reimbursed. Upgrade costs for GPS are not reimbursable. If a personal vehicle is used, reimbursement shall be at the GSA's stated mileage rate. Contractors must provide a copy of Automobile Liability Insurance to be reimbursed for mileage.
- Contractor shall be entitled to mileage for travel in a private automobile while Contractor is acting within the course and scope of Contractor's duties under this Contract and driving over the most direct and usually traveled route to and from Bend, Oregon.
 - To qualify for mileage reimbursement, Contractor shall hold a valid, current driver's license for the class of vehicle to be driven and carry personal automobile liability insurance in amounts not less than those required by this contract.
 - No mileage reimbursement shall be paid for the use of motorcycles or mopeds.
- I. Lodging Policy: The daily cost of lodging is a reimbursable expense when away from the normal work place on County business. Such cost includes only the single occupancy room rate and applicable taxes. Charges for hotel amenities are not a reimbursable expense.
- County shall reimburse Contractor for Contractor's actual cost of lodging necessary to provide service to the County and shall not exceed the maximum lodge set by the GSA for Bend, Oregon.
 - Reimbursement rates for lodging are not considered "per diem" and receipts are required for reimbursement.
- J. Meals: Contractor may be reimbursed for the reasonable and actual cost of meals (including tips) subject to the GSA maximum per diem meal allowance.
- Any reimbursement for meals shall be for actual cost of meals incurred by Contractor while acting within the course and scope of Contractor's duties under this Contract.
 - For purposes of calculating individual meals where the Contractor is entitled only to a partial day reimbursement, the following maximum allocation of the meal expenses applies (most current reimbursement rates may be found online at https://www.gsa.gov/travel/plan-book/per-diem-rates/per-diem-rates-lookup/?action=perdiems_report&state=OR&fiscal_year=2022&zip=&city=Bend):

M&IE Breakdown

M&IE Total ¹	Continental Breakfast/ Breakfast ²	Lunch ²	Dinner ²	Incidental Expenses	First & Last Day of Travel ³
\$59	\$13	\$15	\$26	\$5	\$44.25
\$64	\$14	\$16	\$29	\$5	\$48.00
\$69	\$16	\$17	\$31	\$5	\$51.75
\$74	\$17	\$18	\$34	\$5	\$55.50
\$79	\$18	\$20	\$36	\$5	\$59.25

- Except in the event of necessary overnight travel as provided below, partial day meal expenses shall be reimbursed as follows and only while Contractor is acting within the course and scope of Contractor's duties under this contract:
 - Breakfast expenses are reimbursable if Contractor is required to travel more than two (2) hours: before the start Contractor's regular workday (i.e. 8:00 a.m.).
 - Lunch expenses are reimbursable only if Contractor is required to travel overnight and begins the journey before 11:00 am or ends the journey after 11:00 a.m.
 - Dinner expenses are reimbursable only if Contractor is required to travel more than two (2) hours after Contractor's regular workday (i.e. 5:00 p.m.).
- Breakfast and dinner expenses are reimbursable during Contractor's necessary overnight travel while acting within the course and scope of Contractor's duties under this Contract and shall not exceed those set by the GSA and are subject to change accordingly.

Exhibit G

DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2023-546
CONFIDENTIALITY AGREEMENT

1. INTRODUCTION

This Confidentiality (the "Agreement") is entered into as of **July 1, 2023** by and between Iris Telehealth Medical Group, PA, ("Contractor") and Deschutes County, a political subdivision of the State of Oregon, acting by and through its Health Care Component, Deschutes County Health Services ("Covered Entity").

WHEREAS, in connection with the performance of the Services, Contractor may receive from the County or otherwise have access to certain information that is required to be kept confidential in accordance with the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder, as may be amended from time to time (collectively, "HIPAA"); and

WHEREAS, as a part of the American Recovery and Reinvestment Act, the federal Health Information Technology for Economic and Clinical Health Act (the "HITECH Act") was signed into law, imposing certain privacy and security obligations on Covered Entities in addition to the obligations created by the Privacy Standards and Security Standards; and

WHEREAS, the HITECH Act revises many of the requirements of the Privacy Standards and Security Standards concerning the confidentiality of Protected Health Information (PHI) and Electronic Protected Health Information (EPHI), including extending certain HIPAA and HITECH Act requirements directly to business associates; and

WHEREAS, the HITECH Act requires that certain of its provisions be included in contractor agreements, and that certain requirements of the Privacy Standards be imposed contractually upon Covered Entities as well as contractors;

Therefore, in consideration of the foregoing premises and the mutual covenants and conditions set forth below and in the agreement between Contractor and County for Contractor's provision of services, intending to be legally bound, agree as follows.

2. DEFINITIONS

- A. *Disclosure* means the release, transfer, provision of access to, or divulging in any other manner, of PHI, outside Contractor's organization, i.e., to anyone other than its employees who have a need to know or have access to the PHI.
- B. *Electronic Protected Health Information* or "*EPHI*" means protected health information (as defined below) that is transmitted, stored, or maintained by use of any electronic media. For purposes of this definition, "electronic media" includes, but is not limited to, memory devices in computers (hard drives); removable/transportable digital memory media (such as magnetic tape or disk, removable drive, optical disk, or digital memory card); the internet; the extranet; leased lines; dial-up lines; private networks; or e-mail.
- C. *Health Care Component* means a Deschutes County department, office or division, that regularly provides healthcare services or that regularly creates, accesses, uses or maintains PHI, and that Deschutes County has designated as a HIPAA-covered component of the County.
- D. *Protected Health Information* or "*PHI*" means information transmitted by or maintained in any form or medium, including demographic information collected from an individual, that (a) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual; (b) individually identifies the individual or, with respect to which, there is a reasonable basis for believing that the information can be used to identify the individual; and (c) is received by Contractor from or on behalf of County, or is created by Contractor, or is made accessible to Contractor by County.
- E. *Secretary* means the Secretary of the United States Department of Health and Human Services or any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.
- F. *Services* means the LMP Services provided by Contractor and identified in the Personal Services Contract to

which this Exhibit G is attached.

- G. *Use* (whether capitalized or not and including the other forms of the word) means, with respect to PHI, the sharing, employment, application, utilization, transmission, examination, or analysis of such information to, from or within Contractor's organization.

3. **AGREEMENT.** Contractor shall:

- A. not use PHI except as necessary to provide the Services.
- B. not disclose PHI to any third party without County's prior written consent.
- C. not use or disclose PHI except as required by law.
- D. implement appropriate safeguards to prevent unauthorized use or disclosure of PHI.
- E. comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of EPHI other than as provided for by this Agreement.
- F. mitigate, as much as possible, any harmful effect of which it is aware of any use or disclosure of PHI in violation of this Agreement.
- G. promptly report to County any use or disclosure of PHI not permitted by this Agreement of which Contractor becomes aware.
- H. make its internal practices, books, and records (including the pertinent provisions of this Agreement) relating to the use and disclosure of PHI, available to the Secretary for the purposes of determining County's compliance with HIPAA.
- I. return to County, or destroy, any PHI of County still in Contractor's possession upon conclusion or termination of the Services.
- J. ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Contractor agree to the same restrictions, conditions, and requirements that apply to the Contractor with respect to security and privacy of such information.
- K. make PHI available to County as necessary to satisfy County's obligation with respect to individuals' requests for copies of their PHI, as well as make available PHI for amendments (and incorporate any amendments, if required) and accountings.
- L. make any amendment(s) to PHI in a designated record set as directed or agreed to by the County pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy County's obligations under 45 CFR 164.526.
- M. to the extent the Contractor is to carry out one or more of County's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the County in the performance of such obligation(s).
- N. If Contractor (a) becomes legally compelled by law, process, or order of any court or governmental agency to disclose PHI, or (b) receives a request from the Secretary to inspect Contractor's books and records relating to the use and disclosure of PHI, Contractor, to the extent it is not legally prohibited from so doing, shall promptly notify County and cooperate with County in connection with any reasonable and appropriate action County deems necessary with respect to such PHI.
- O. If any part of Contractor's performance of business functions involves creating, receiving, storing, maintaining, or transmitting EPHI:
 - i. implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that it creates, receives, stores, maintains, or transmits on behalf of County, in accordance with the requirements of 45 CFR Part 160 and Part 164, Subparts A and C; and
 - ii. report to County any security incident relating to the EPHI that Contractor maintains for County.

4. **HIPAA DATA BREACH NOTIFICATION AND MITIGATION**

- A. Contractor agrees to implement reasonable systems for the discovery and prompt reporting of any “breach” of “unsecured PHI” as those terms are defined by 45 C.F.R. §164.402 (hereinafter a “HIPAA Breach”). The parties acknowledge and agree that 45 C.F.R. §164.404, as described below in this Section, governs the determination of the date of a HIPAA Breach. Contractor will, following the discovery of a HIPAA Breach, notify County immediately and in no event later than seven business days after Contractor discovers such HIPAA Breach, unless Contractor is prevented from doing so by 45 C.F.R. §164.412 concerning law enforcement investigations.
- B. For purposes of reporting a HIPAA Breach to County, the discovery of a HIPAA Breach shall occur as of the first day on which such HIPAA Breach is known to the Contractor or, by exercising reasonable diligence, would have been known to the Contractor. Contractor will be considered to have had knowledge of a HIPAA Breach if the HIPAA Breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the HIPAA Breach) who is an employee, officer or other agent of the Contractor. No later than seven (7) business days following a HIPAA Breach, Contractor shall provide County with sufficient information to permit County to comply with the HIPAA Breach notification requirements set forth at 45 C.F.R. §164.400, *et seq.*
- C. Specifically, if the following information is known to (or can be reasonably obtained by) Contractor, Contractor will provide County with: (i) contact information for individuals who were or who may have been impacted by the HIPAA Breach; (ii) a brief description of the circumstances of the HIPAA Breach, including its date and the date of discovery; (iii) a description of the types of unsecured PHI involved in the HIPAA Breach; (iv) a brief description of what the Contractor has done or is doing to investigate the HIPAA Breach, mitigate harm to the individual impacted by the HIPAA Breach, and protect against future HIPAA Breaches; and (v) a liaison (with contact information) so that Contractor may conduct further investigation concerning the HIPAA Breach. Following a HIPAA Breach, Contractor will have a continuing duty to inform County of new information learned by Contractor regarding the HIPAA Breach, including but not limited to the information described herein.
- D. **Data Breach Notification and Mitigation Under Other Laws.** In addition to the requirements above, Contractor agrees to implement reasonable systems for the discovery and prompt reporting of any breach of individually identifiable information (including but not limited to PHI, and referred to hereinafter as “Individually Identifiable Information”) that, if misused, disclosed, lost or stolen, Contractor believes would trigger an obligation under one or more State data breach notification laws (each a “State Breach”) to notify the individuals who are the subject of the information.
- E. **Breach Indemnification.** Contractor shall indemnify, defend and hold County harmless from and against any and all actual losses, liabilities, damages, costs and expenses (collectively, “Information Disclosure Claims”) arising directly from (i) the use or disclosure of Individually Identifiable Information (including PHI) in violation of the terms of this Agreement or applicable law, and (ii) any HIPAA Breach of unsecured PHI and/or any State Breach of Individually Identifiable Information. Contractor will assume the defense of any Information Disclosure Claim; County may participate, at its expense, in the defense of such Information Disclosure Claim. Contractor shall not take any final action with respect to any Information Disclosure Claim without the prior written consent of County.

5. **OTHER PROVISIONS**

- A. A breach under this Agreement shall be deemed to be a material default in Contractor’s agreement with Deschutes County to provide Services.
- B. Contractor authorizes termination of this Agreement by County if County determines Contractor has violated a material term of this Agreement.
- C. Upon conclusion or termination of the Services, Contractor shall promptly return or destroy all PHI that Contractor maintains in any form and retain no copies of such information. If the return or destruction of such PHI is not feasible, the obligations under this Agreement shall continue in effect for so long as Contractor retains such information, and any further use or disclosure of such PHI shall be limited to those purposes that make the return or destruction of the PHI infeasible.
- D. To the extent there are any inconsistencies between this Agreement and the terms of any other agreement, either written or oral, between County and Contractor, the terms of this Agreement shall prevail.

E. Contact Information in the event of HIPAA Data Breach or Termination.

- 1) Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing, to Covered Entity or Business Associate at the address or number set forth below or to such other addresses or numbers as either Party may hereafter indicate in writing. Delivery may be by personal delivery, electronic mail, facsimile, or mailing the same, postage prepaid.
- 2) Any communication or notice by personal delivery shall be deemed delivered when actually given to the designated person or representative.
- 3) Any communication or notice sent by facsimile shall be deemed delivered when the transmitting machine generates receipt of the transmission. To be effective against County, such facsimile transmission shall be confirmed by telephone notice to the County Administrator.
- 4). Any communication or notice mailed shall be deemed delivered five (5) days after mailing. Any notice under this Agreement shall be mailed by first class postage or delivered as follows:

<u>To Covered Entity:</u>	<u>Copy to Privacy Officer</u>	<u>To Contractor:</u>
Holly Harris, Deputy Director	Kayla Sells, Privacy Officer	Iris Telehealth Medical Group, PA
Deschutes County Health Services	Deschutes County Health Services	114 W. 7 th St.
2577 NE Courtney Dr.	2577 NE Courtney Dr.	Austin, TX 78701
Bend, Oregon 97701	Bend, Oregon 97701	Attn: Jeremy Unger
Fax No. 541-322-7565	Fax No. 541-322-7565	
Holly.harris@deschutes.org	kayla.sells@deschutes.org	jeremy.unger@iristelehealth.com

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed, either as individuals, or by their officers, thereunto duly authorized.

Exhibit H
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2023-546

Compliance with provisions, requirements of funding source and
FEDERAL AND STATE LAWS, STATUTES, RULES, REGULATIONS, EXECUTIVE ORDERS AND POLICIES

Contractor shall comply with the following federal requirements herein when federal funding is being used and to the extent that the requirements are applicable to the agreement for services determined and agreed to by and between Contractor and County. For the purposes of this Contract, all references to federal and state laws are references to federal and state laws as they may be amended from time to time.

1. **Miscellaneous Federal Provisions.** Contractor shall comply with all federal laws, regulations, and executive orders applicable to the Contract or to the delivery of Services. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (j) all federal law governing operation of Community Mental Health Programs, including without limitation, all federal laws requiring reporting of Client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. No federal funds may be used to provide Services in violation of 42 U.S.C. 14402.
2. **Equal Employment Opportunity.** If this Contract, including amendments, is for more than \$10,000, then Contractor shall comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in U.S. Department of Labor regulations (41 CFR Part 60).
3. **Clean Air, Clean Water, EPA Regulations.** If this Contract, including amendments, exceeds \$100,000 then Contractor shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to OHA, United States Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. Contractor shall include in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section.
4. **Energy Efficiency.** Contractor shall comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42 U.S.C. 6201 et. seq. (Pub. L. 94-163).
5. **Truth in Lobbying.** By signing this Contract, the Contractor certifies under penalty of perjury that the following statements are true to the best of the Contractor's knowledge and belief that:
 - a. No federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
 - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

- c. The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.
- d. This certification is a material representation of fact upon which reliance was placed when this Contract was made or entered into. Submission of this certification is a prerequisite for making or entering into this Contract imposed by section 1352, Title 31 of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- e. No part of any federal funds paid to Contractor under this Contract shall be used other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the United States Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government.
- f. No part of any federal funds paid to Contractor under this Contract shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the United States Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.
- g. The prohibitions in subsections (e) and (f) of this section shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.
- h. No part of any federal funds paid to Contractor under this Contract may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance or that federally sponsored clinical trials are being conducted to determine therapeutic advantage.

- 6. Resource Conservation and Recovery.** Contractor shall comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 U.S.C. 6901 et. seq.). Section 6002 of that Act (codified at 42 U.S.C. 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.
- 7. Audits.** Contractor shall comply, with applicable Code of Federal Regulations (CFR) governing expenditure of federal funds including, but not limited to, if a sub-recipient (as defined in 45 CFR 75.2) or contractor expends \$500,000 or more in Federal funds (from all sources) in its fiscal year beginning prior to December 26, 2014, a sub-recipient or contractor shall have a single organization-wide audit conducted in accordance with the Single Audit Act. If a sub-recipient or contractor expends \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014, it shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Copies of all audits must be submitted to OHA within thirty (30) calendar days of completion. If a sub-recipient or contractor expends less than \$500,000 in Federal funds in a fiscal year beginning prior to December 26, 2014, or less than \$750,000 in a fiscal year beginning on or after that date, it is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials.
- 8. Debarment and Suspension.** County shall not permit any person or entity to be a contractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Non-procurement Programs" in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and Suspension". (See 2 CFR Part 180). This list contains names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Contractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

- 9. Drug-Free Workplace.** Contractor shall comply with the following provisions to maintain a drug-free workplace: (i) Contractor certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in Contractor's workplace or while providing Services to OHA clients. Contractor's notice shall specify the actions that will be taken by Contractor against its employees for violation of such prohibitions; (ii) Establish a drug-free awareness program to inform its employees about: the dangers of drug abuse in the workplace, County's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations; (iii) Provide each employee to be engaged in the performance of Services under this Contract a copy of the statement mentioned in paragraph (i) above; (iv) Notify each employee in the statement required by paragraph (i) above that, as a condition of employment to provide services under this Contract, the employee will: abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) calendar days after such conviction; (v) Notify OHA within ten (10) calendar days after receiving notice under subparagraph (iv) above from an employee or otherwise receiving actual notice of such conviction; (vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988; (vii) Make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs (i) through (vii) above; (ix) Neither County, Contractor nor any of County's or Contractor's employees, officers, agents may provide any Service required under this Contract while under the influence of drugs. For purposes of this provision, "under the influence" means: observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the County or Contractor's employee, officer, agent has used a controlled substance, prescription or non-prescription medication that impairs the County or Contractor, County or Contractor's employees, officers, agents performance of essential job function or creates a direct threat to OHA clients or others. Examples of abnormal behavior include, but are not limited to: hallucinations, paranoia or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to: slurred speech, difficulty walking or performing job activities; and (x) Violation of any provision of this section may result in termination of this Contract.
- 10. Pro-Children Act.** Contractor shall comply with the Pro-Children Act of 1994 (codified at 20 U.S.C. Section 6081 et. seq.).
- 11. Medicaid Services.** To the extent Contractor provides any service in which costs are paid in whole or in part by Medicaid, Contractor shall comply with all applicable federal and state laws and regulation pertaining to the provision of Medicaid Services under the Medicaid Act, Title XIX, 42 U.S.C. Section 1396 et. seq., including without limitation:
- a. Keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving Medicaid assistance and shall furnish such information to any state or federal agency responsible for administering the Medicaid program regarding any payments claimed by such person or institution for providing Medicaid Services as the state or federal agency may from time to time request. 42 U.S.C. Section 1396 a(a)(27); 42 CFR Part 431.107(b)(1) & (2).
 - b. Comply with all disclosure requirements of 42 CFR Part 1002.3(a) and 42 CFR 455 Subpart (B).
 - c. Maintain written notices and procedures respecting advance directives in compliance with 42 U.S.C. Section 1396(a)(57) and (w), 42 CFR Part 431.107(b)(4), and 42 CFR Part 489 subpart I.
 - d. Certify when submitting any claim for the provision of Medicaid Services that the information submitted is true, accurate and complete. Contractor shall acknowledge Contractor's understanding that payment of the claim will be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.
 - e. Entities receiving \$5 million or more annually (under this Contract and any other Medicaid agreement) for furnishing Medicaid health care items or services shall, as a condition of receiving such payments, adopt written fraud, waste and abuse policies and procedures and inform employees, contractors and agents about the policies and procedures in compliance with Section 6032 of the Deficit Reduction Act of 2005, 42 U.S.C. § 1396a(a)(68).
- 12. ADA.** Contractor shall comply with Title II of the Americans with Disabilities Act of 1990 (codified at 42 U.S.C. 12131 et. seq.) in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the delivery of Services.

13. Agency-Based Voter Registration. If applicable, Contractor shall comply with the Agency-based Voter Registration sections of the National Voter Registration Act of 1993 that require voter registration opportunities be offered where an individual may apply for or receive an application for public assistance.

14. Disclosure.

- a. 42 CFR 455.104 requires the State Medicaid agency to obtain the following information from any provider of Medicaid or CHIP services, including fiscal agents of providers and managed care entities: (1) the name and address (including the primary business address, every business location and P.O. Box address) of any person (Individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity; (2) in the case of an Individual, the date of birth and Social Security Number, or, in the case of a corporation, the tax identification number of the entity, with an ownership interest in the provider, fiscal agent or managed care entity or of any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest; (3) whether the person (Individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling, or whether the person (Individual or corporation) with an ownership or control interest in any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling; (4) the name of any other provider, fiscal agent or managed care entity in which an owner of the provider, fiscal agent or managed care entity has an ownership or control interest; and, (5) the name, address, date of birth and Social Security Number of any managing employee of the provider, fiscal agent or managed care entity.
- b. 42 CFR Part 455.434 requires as a condition of enrollment as a Medicaid or CHIP provider, to consent to criminal background checks, including fingerprinting when required to do so under state law, or by the category of the provider based on risk of fraud, waste and abuse under federal law. As such, a provider must disclose any person with a 5% or greater direct or indirect ownership interest in the provider whom has been convicted of a criminal offense related to that person's involvement with the Medicare, Medicaid, or title XXI program in the last 10 years.
- c. OHA reserves the right to take such action required by law, or where OHA has discretion, it deems appropriate, based on the information received (or the failure to receive) from the provider, fiscal agent or managed care entity.

15. Special Federal Requirements Applicable to Addiction Treatment, Recovery & Prevention Services for Counties receiving Substance Abuse Prevention and Treatment (SAPT) Block Grant funds.

- a. Order for Admissions:
 - (1) Pregnant women who inject drugs;
 - (2) Pregnant substance abusers;
 - (3) Other Individuals who inject drugs; and,
 - (4) All others.
- b. Women's or Parent's Services. If Contractor provides A&D 61 and A&D 62 Services, Contractor must:
 - (1) Treat the family as a unit and admit both women or parent and their children if appropriate.
 - (2) Provide or arrange for the following services to pregnant women and women with dependent children:
 - (a) Primary medical care, including referral for prenatal care;
 - (b) Pediatric care, including immunizations, for their children;
 - (c) Gender-specific treatment and other therapeutic interventions, e.g. sexual and physical abuse counseling, parenting training, and child care.
 - (d) Therapeutic interventions for children in custody of women or parent in treatment, which address, but are not limited to, the children's developmental needs and issues of abuse and neglect; and
 - (e) Appropriate case management services and transportation to ensure that women or parents and their children have access to the services in (a) through (d) above.

- c. Pregnant Women. If Contractor provides any Addiction Treatment, Recovery & Prevention Services other than A&D 84, Problem Gambling, Client Finding Outreach Services, Contractor must:
 - (1) Within the priority categories, if any, set forth in a particular Service Description, give preference in admission to pregnant women in need of treatment who seek, or are referred for, and would benefit from, such services within 48 hours;
 - (2) If Contractor has insufficient capacity to provide treatment services to a pregnant woman, Contractor must refer the women to another provider with capacity or if no available treatment capacity can be located, the outpatient provider that the Individual is enrolled with will ensure that Interim Services are being offered. Counseling on the effects of alcohol and drug use on the fetus must be given within 48 hours, including a referral for prenatal care; and,
 - (3) Perform outreach to inform pregnant women of the availability of treatment Services targeted to them and the fact that pregnant women receive preference in admission to these programs.
- d. Intravenous Drug Abusers. If Contractor provides any Addiction Treatment, Recovery & Prevention Services, other than A&D 84 Problem Gambling, Client Finding Outreach Services, Contractor must:
 - (1) Within the priority categories, if any, set forth in a particular Service Description and subject to the preference for pregnant women described above, give preference in admission to intravenous drug abusers;
 - (2) Programs that receive funding under the grant and that treat Individuals for intravenous substance abuse, upon reaching 90 percent of its capacity to admit Individuals to the program, must provide notification of that fact to the State within 7calendar days.
 - (3) If Contractor receives a request for admission to treatment from an intravenous drug abuser, Contractor must, unless it succeeds in referring the Individual to another provider with treatment capacity, admit the Individual to treatment not later than:
 - (a) 14 calendar days after the request for admission to Contractor is made; or
 - (b) 120 calendar days after the date of such request if no provider has the capacity to admit the Individual on the date of such request and, if Interim Services are made available not less than 48 hours after such request.
 - (c) If Contractor has insufficient capacity to provide treatment Services to an intravenous drug abuser, refer the intravenous drug abuser to another provider with capacity or if no available treatment capacity can be located, the outpatient provider that the Individual is enrolled with will ensure that interim services are being offered. If the Individual is not enrolled in outpatient treatment and is on a waitlist for residential treatment, the provider from the county of the Individual's residence that is referring the Individual to residential services will make available counseling and education about human immunodeficiency virus(HIV) and tuberculosis(TB), risk of sharing needles, risks of transmission to sexual partners and infant, steps to ensure HIV and TB transmission does not occur, referral for HIV or TB treatment services, if necessary, within 48 hours.
- e. Infectious Diseases. If Contractor provides any Addiction Treatment, Recovery & Prevention Services, other than A&D 84 Problem Gambling, Client Finding Outreach Services, Contractor must:
 - (1) Complete a risk assessment for infectious disease including Human Immunodeficiency Virus (HIV) and tuberculosis, as well as sexually transmitted diseases, based on protocols established by OHA, for every Individual seeking Services from County; and
 - (2) Routinely make tuberculosis services available to each Individual receiving Services for alcohol/drug abuse either directly or through other arrangements with public or non-profit entities and, if Contractor denies Individual admission on the basis of lack of capacity, refer the Individual to another provider of tuberculosis Services.
 - (3) For the purposes of (2) above, "tuberculosis services" means:
 - (a) Counseling the Individual with respect to tuberculosis;

(b) Testing to determine whether the Individual has contracted such disease and testing to determine the form of treatment for the disease that is appropriate for the individual; and

(c) Appropriate treatment services.

- f. OHA Referrals. If Contractor provides any Addiction Treatment, Recovery & Prevention Services, other than A&D 84 Problem Gambling, Client finding Outreach Services, Contractor must, within the priority categories, if any, set forth in a particular Service Description and subject to the preference for pregnant women and intravenous drug users described above, give preference in Addiction Treatment, Recovery & Prevention and Problem Gambling Service delivery to persons referred by OHA.
- g. Barriers to Treatment. Where there is a barrier to delivery of any Addiction Treatment, Recovery & Prevention and Problem Gambling Services due to culture, gender, language, illiteracy, or disability, Contractor shall develop support services available to address or overcome the barrier, including:
 - (1) Providing, if needed, hearing impaired or foreign language interpreters.
 - (2) Providing translation of written materials to appropriate language or method of communication.
 - (3) Providing devices that assist in minimizing the impact of the barrier.
 - (4) Not charging clients for the costs of measures, such as interpreters, that are required to provide nondiscriminatory treatment.
- h. Misrepresentation. Contractor shall not knowingly or willfully make or cause to be made any false statement or representation of a material fact in connection with the furnishing of items or Services for which payments may be made of OHA.
- i. Oregon Residency. Addiction Treatment, Recovery & Prevention, and Problem Gambling Services funded through this Contract, may only be provided to residents of Oregon. Residents of Oregon are Individuals who live in Oregon. There is no minimum amount of time an Individual must live in Oregon to qualify as a resident so long as the Individual intends to remain in Oregon. A child's residence is not dependent on the residence of his or her parents. A child living in Oregon may meet the residency requirement if the caretaker relative with whom the child is living is an Oregon resident.
- j. Tobacco Use. If Contractor has Addiction Treatment, Recovery & Prevention Services treatment capacity that has been designated for children, adolescents, pregnant women, and women with dependent children, Contractor must implement a policy to eliminate smoking and other use of tobacco at the facilities where the Services are delivered on the grounds of such facilities.
- k. Client Authorization. Contractor must comply with 42 CFR Part 2 when delivering Addiction Treatment, Recovery & Prevention Service that includes disclosure of Client information for purposes of eligibility determination. Contractor must obtain Client authorization for disclosure of billing information, to the extent and in the manner required by 42 CFR Part 2, before a Disbursement Claim is submitted with respect to delivery of an Addiction Treatment, Recovery & Prevention Service to that Individual.

16. Special Federal Requirements Applicable To Addiction Treatment, Recovery, & Prevention Services for Counties Receiving Temporary Assistance for Needy Families (TANF) Grant Funds.

Funding requirements. TANF may only be used for families receiving TANF, and for families at risk of receiving TANF, and for the purpose of providing housing services (room and board) for Individuals who are dependent children ages 18 years old or younger whose parent is in adult addiction residential treatment, so that the children may reside with their parent in the same treatment facility. Families at-risk of receiving TANF must:

- a. Include a dependent child age 18 years of age or under, who is living with a parent or caretaker relative. "Caretaker relative" means a blood relative of the child; stepmother, stepfather, stepbrother, or stepsister; or an individual who has legally adopted the child.
- b. Be an Oregon resident.
- c. Have income at or below 250% of the Federal Poverty Level.

Use of TANF block grant funds and state expenditures counted towards TANF MOE must meet the requirements of 45 CFR 263. Only non-medical Services may be provided with TANF Block Grant funds.


- 17. Community Mental Health Block Grant.** All funds, if any, awarded under this Contract for Community Mental Health Services are subject to the federal use restrictions and requirements set forth in Catalog of Federal Domestic Assistance Number 93.958 and to the federal statutory and regulatory restrictions imposed by or pursuant to the Community Mental Health Block Grant portion of the Public Health Services Act, 42 U.S.C. 300x-1 et. seq., and Contractor shall comply with those restrictions.
- 18. Substance Abuse Prevention and Treatment.** To the extent Contractor provides any Service whose costs are paid in whole or in part by the Substance Abuse, Prevention, and Treatment Block Grant, Contractor shall comply with federal rules and statutes pertaining to the Substance Abuse, Prevention, and Treatment Block Grant, including the reporting provisions of the Public Health Services Act (42 U.S.C. 300x through 300x-66) and 45 CFR 96.130 regarding the sale of tobacco products. Regardless of funding source, to the extent Contractor provides any substance abuse prevention or treatment services, Contractor shall comply with the confidentiality requirements of 42 CFR Part 2. County may not use funds received under applicable agreement with Oregon Health Authority for inherently religious activities, as described in 45 CFR Part 87.
- 19. Information Required by 2 CFR Subtitle B with guidance at 2 CFR Part 200.** All required data elements in accordance with 45 CFR 75.352 are available at: <http://www.oregon.gov/oha/hsd/amh/Pages/federal-reporting.aspx>.
- 20. Super Circular Requirements.** 2 CFR Part 200, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, including but not limited to the following:
 - a. **Property Standards.** 2 CFR 200.313, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, which generally describes the required maintenance, documentation, and allowed disposition of equipment purchased with federal funds.
 - b. **Procurement Standards.** When procuring goods or services (including professional consulting services), applicable state procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C or 2 CFR §§ 200.318 through 200.326, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, as applicable.
 - c. **Contract Provisions.** The contract provisions listed in 2 CFR Part 200, Appendix II, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, that are hereby incorporated into this Exhibit, are, to the extent applicable, obligations of Recipient, and Recipient shall also include these contract provisions in its contracts with non-Federal entities.

PSYCHIATRISTS PROFESSIONAL LIABILITY INSURANCE

Certificate of Insurance

This certificate is issued as a matter of information only and confers no rights upon the certificate holder.

This certificate does not amend, extend or alter the coverage provided by the insurance policy below.


1. NAME AND ADDRESS OF NAMED INSURED			
Donna Linton, NP Iris Telehealth Medical Group, PA 114 W 7th Street, Suite 900 Austin, TX 78701		The policy of insurance listed below has been issued to the named insured for the policy period indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policy described herein is subject to all the terms, exclusions and conditions of such policy. Aggregate limits shown may have been reduced by paid claims.	
2. COMPANY		3. POLICY NUMBER	4. CERTIFICATE NUMBER
Fair American Insurance and Reinsurance Company		GP - FCO07 - 033333906	600819
5. POLICY PERIOD			
From:	February 22, 2023 at 12:01 A.M. Standard Time	To:	February 22, 2024 at 12:01 A.M. Standard Time
Retro Date (Group):	N/A at 12:01 A.M. Standard Time	Retro Date (N.I.):	N/A at 12:01 A.M. Standard Time
6. TYPE OF INSURANCE		7. COVERED SPECIALTY	
Professional Liability		Nurse Practitioner (with RX privileges)	
8. EFFECTIVE	LIMITS OF LIABILITY	COVERAGE	STATE/RATING AREA OTHER STATES
Professional Liability per claim/Business Liability per claim/Aggregate			
02/22/2023	\$1,000,000 / \$1,000,000 / \$3,000,000	Occurrence	OR1
9. NAME AND ADDRESS OF CERTIFICATE HOLDER			
Deschutes County Mental Health 1128 NW Harriman St Bend, OR 97702		Should the above described policy be canceled before the expiration date thereof, the company will endeavor to mail written notice to the certification holder named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.	
10. NAME AND ADDRESS OF ADMINISTRATOR		11. AUTHORIZED OFFICER OF COMPANY	
Professional Risk Management Services® 4300 Wilson Boulevard, Suite 700 Arlington, VA 22203 Telephone: (800) 245-3333 clientservices@prms.com February 15, 2023 Date		 President Fair American Insurance and Reinsurance Company	

FAIR TPP0025 01 12

PSYCHIATRISTS PROFESSIONAL LIABILITY INSURANCE

Certificate of Insurance

This certificate is issued as a matter of information only and confers no rights upon the certificate holder.
This certificate does not amend, extend or alter the coverage provided by the insurance policy below.

1. NAME AND ADDRESS OF NAMED INSURED			
Roberta L. Mowdy, NP Iris Telehealth Medical Group, PA 114 W 7th Street, Suite 900 Austin, TX 78701		The policy of insurance listed below has been issued to the named insured for the policy period indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policy described herein is subject to all the terms, exclusions and conditions of such policy. Aggregate limits shown may have been reduced by paid claims.	
2. COMPANY		3. POLICY NUMBER	4. CERTIFICATE NUMBER
Fair American Insurance and Reinsurance Company		GP - FCO07 - 033333906	600819
5. POLICY PERIOD			
From:	February 22, 2023 at 12:01 A.M. Standard Time	To:	February 22, 2024 at 12:01 A.M. Standard Time
Retro Date (Group):	N/A at 12:01 A.M. Standard Time	Retro Date (N.I.):	N/A at 12:01 A.M. Standard Time
6. TYPE OF INSURANCE		7. COVERED SPECIALTY	
Professional Liability		Nurse Practitioner (with RX privileges)	
8. EFFECTIVE	LIMITS OF LIABILITY	COVERAGE	STATE/RATING AREA OTHER STATES
Professional Liability per claim/Business Liability per claim/Aggregate			
02/22/2023	\$1,000,000 / \$1,000,000 / \$3,000,000	Occurrence	OR1
9. NAME AND ADDRESS OF CERTIFICATE HOLDER			
Deschutes County Health Services 2577 NE Courtney Drive Bend, OR 97701		Should the above described policy be canceled before the expiration date thereof, the company will endeavor to mail written notice to the certification holder named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.	
10. NAME AND ADDRESS OF ADMINISTRATOR		11. AUTHORIZED OFFICER OF COMPANY	
Professional Risk Management Services® 4300 Wilson Boulevard, Suite 700 Arlington, VA 22203 Telephone: (800) 245-3333 clientservices@prms.com February 15, 2023 Date		 President Fair American Insurance and Reinsurance Company	

FAIR TPP0025 01 12

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

08/09/2023 Item #3.

03/28/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION** IS **WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Marsh & McLennan Agency LLC Marsh & McLennan Ins. Agency LLC PO Box 85638 San Diego, CA 92186	CONTACT NAME: Jesse Garcia PHONE (A/C, No, Ext): 858-750-4695 FAX (A/C, No): 858-452-7530 E-MAIL ADDRESS: Jesse.Garcia@MarshMMA.com														
INSURED Iris Telehealth, Inc. 114 W 7th Street, Suite 900 Austin, TX 78701	<table border="1"> <thead> <tr> <th data-bbox="803 430 1437 451">INSURER(S) AFFORDING COVERAGE</th> <th data-bbox="1437 430 1575 451">NAIC #</th> </tr> </thead> <tbody> <tr> <td data-bbox="803 451 1437 472">INSURER A : Twin City Fire Insurance Company</td> <td data-bbox="1437 451 1575 472">29459</td> </tr> <tr> <td data-bbox="803 472 1437 493">INSURER B : Hanover Insurance Company</td> <td data-bbox="1437 472 1575 493">22292</td> </tr> <tr> <td data-bbox="803 493 1437 514">INSURER C : Underwriters at Lloyd's London</td> <td data-bbox="1437 493 1575 514">55555</td> </tr> <tr> <td data-bbox="803 514 1437 535">INSURER D :</td> <td data-bbox="1437 514 1575 535"></td> </tr> <tr> <td data-bbox="803 535 1437 556">INSURER E :</td> <td data-bbox="1437 535 1575 556"></td> </tr> <tr> <td data-bbox="803 556 1437 577">INSURER F :</td> <td data-bbox="1437 556 1575 577"></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Twin City Fire Insurance Company	29459	INSURER B : Hanover Insurance Company	22292	INSURER C : Underwriters at Lloyd's London	55555	INSURER D :		INSURER E :		INSURER F :	
INSURER(S) AFFORDING COVERAGE	NAIC #														
INSURER A : Twin City Fire Insurance Company	29459														
INSURER B : Hanover Insurance Company	22292														
INSURER C : Underwriters at Lloyd's London	55555														
INSURER D :															
INSURER E :															
INSURER F :															

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			72SBMNY8131SC	03/19/2023	03/19/2024	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 EPL \$10,000 Agg
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY			72SBMNY8131SC	03/19/2023	03/19/2024	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$10000			72SBMNY8131SC	03/19/2023	03/19/2024	EACH OCCURRENCE \$5,000,000 AGGREGATE \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> Y / N <input checked="" type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	WZ3J34566100	03/19/2023	02/22/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C	Cyber			ESL0039618942	02/22/2023	02/22/2024	\$5,000,000 per Claim \$5,000,000 Aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Evidence of Insurance.

CERTIFICATE HOLDER

CANCELLATION

Deschutes County Health System
2577 NE Courtney Dr
Bend, OR 97701

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



QUICK REFERENCE **BUSINESS LIABILITY COVERAGE FORM** **READ YOUR POLICY CAREFULLY**

BUSINESS LIABILITY COVERAGE FORM

Beginning on Page

A. COVERAGES	1
Business Liability	1
Medical Expenses	2
Coverage Extension - Supplementary Payments	2
B. EXCLUSIONS	3
C. WHO IS AN INSURED	10
D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE	14
E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS	15
1. Bankruptcy	15
2. Duties In The Event Of Occurrence, Offense, Claim Or Suit	15
3. Financial Responsibility Laws	16
4. Legal Action Against Us	16
5. Separation Of Insureds	16
6. Representations	16
7. Other Insurance	16
8. Transfer Of Rights Of Recovery Against Others To Us	17
F. OPTIONAL ADDITIONAL INSURED COVERAGES	18
Additional Insureds	18
G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS	20



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 9, 2023

SUBJECT: Approval of Document No. 2023-740 to authorize the purchase of a Caterpillar 938M Loader for the Solid Waste Department

RECOMMENDED MOTION:

Move approval of Chair signature of Document No. 2023-740 to purchase a Caterpillar 938M loader from Peterson Caterpillar in the amount of \$248,095.13.

BACKGROUND AND POLICY IMPLICATIONS:

The Department of Solid Waste has budgeted funds for equipment needed for the operation of the new Negus Transfer Station that is to be constructed and operating this fiscal year. This piece of equipment to be procured is a loader and bucket attachment needed for site operations.

Deschutes County is a member of Sourcwell, a national government agency cooperative purchasing program. The County often purchase fleet vehicles and heavy equipment through this program, which affords savings and preferred pricing as Sourcwell vendors are secured through competitively bid purchasing contracts. This loader will be purchased from Peterson Caterpillar through the Sourcwell procurement process.

BUDGET IMPACTS:

Funds are budgeted in the FY23-24 Solid Waste Department budget for the purchase of this piece of equipment.

ATTENDANCE:

Tim Brownell, Director of Solid Waste

Document # 2023-740

PETERSON MACHINERY CO. 5450 NE Five Oaks Dr. Hillsboro, Oregon 97124 Tel: (503) 288-6411 Fax: (510) 352-4570

PURCHASER	DESCHUTES COUNTY ROAD DEPT			
STREET ADDRESS	61150 27TH ST			<SAME>
CITY/STATE	BEND, OR	COUNTY	DESCHUTES	
POSTAL CODE	97702-9631	PHONE NO.	541 322 7101	
EQUIPMENT	- PHONE NO.			
PRODUCT SUPPORT	- PHONE NO.			
INDUSTRY CODE:	GOVERNMENT COUNTY GOVERNMENT (843)	PRINCIPAL WORK CODE	F.O.B. AT: Redmond	

CUSTOMER NUMBER	1756150	Sales Tax Exemption # (if applicable)	N/A	CUSTOMER PO NUMBER	
PAYMENT TERMS: (All terms and payments are subject to Finance Company - OAC approval)					
NET PAYMENT ON RECEIPT OF INVOICE	<input type="checkbox"/>	NET ON CAT CARD	<input type="checkbox"/>	FINANCIAL SERVICES	<input type="checkbox"/> Cat Fi ISC <input type="checkbox"/> LEASE
CASH WITH ORDER	\$0.00	BALANCE TO FINANCE	\$0.00	INTEREST RATE	0
PAYMENT PERIOD		PAYMENT AMOUNT	0.00	NUMBER OF PAYMENTS	0
				OPTIONAL BUY-OUT	\$0.00

DESCRIPTION OF EQUIPMENT ORDERED / PURCHASED					
MAKE: CATERPILLAR	MODEL: 938M	YEAR: 2023			
STOCK NUMBER: PM01672	SERIAL NUMBER: 0J3R10162				
338M WHEEL LOADER	536-5303	WARNING, BEACON, LED STROBE	333-1425	EMA	0P-5203
TIRES, 20.5R25 TI MXL * L3	376-0830	DECAL, HI VIS STEP, HANDRAIL, DLX	615-9210	LANE 2 ORDER	0P-9002
COUNTERWEIGHT, 4431LBS, AGG, 8PCS	467-7991	SIDE MIRROR, RH	482-5167	PACK, DOMESTIC TRUCK	0P-0210
QUICK COUPLER, FUSION	536-5314	FENDERS, STANDARD	366-8150	CERTIFICATE OF ORIGIN, ENGLISH	0G-6022
CAB, DELUXE	549-0451	TOOLBOX AUX, NONE	519-8081	GENERAL PURPOSE BUCKET - NM95650	345-2426
RIDE CONTROL	430-2860	HYDRAULIC OIL, STANDARD	619-8439		
ENVIRONMENT, MEDIUM DEBRIS	536-5340	LIGHTS, ROADING, HALOGEN, RH	541-3066		
HYDRAULICS, 3V, CPLR READY, SL	536-5343	PRODUCT LINK, CELLULAR PL641	565-0908		
GUARD, POWERTRAIN, LOWER	349-8165	HYDRAULICS, STANDARD	536-5284		
SEAT, DELUXE	563-5967	WEATHER, STANDARD	454-0612		
LIGHTS, AUX, LED, PREMIUM	559-0844	ENGINE, 938	536-5268		
GUARD, CRANKCASE	349-8163	PREP PACK, UNITED STATES	430-2943		
STANDARD RADIO (12V)	372-1868	STEERING, STANDARD	333-6858		
JUMPER LINES, AUX 3RD, FUSION	445-4725	DIFFERENTIAL, OPEN REAR	349-8014		
LINES, AUX 3RD, STD LIFT	530-1628	SERIALIZED TECHNICAL MEDIA KIT	421-8926		

TRADE-IN EQUIPMENT		SELL PRICE	\$353,642.00
MODEL:	YEAR:	SOURCEWELL DISCOUNT	(\$84,874.00)
AYOUT TO:	AMOUNT:	PDI AND SETUP	\$2,676.00
MODEL:	YEAR:	NET BALANCE DUE	\$246,689.00
AYOUT TO:	AMOUNT:	PETERSON DISCOUNT	(\$24,755.00)
MODEL:	YEAR:	SALES TAX (0.57%)	\$1,406.11
AYOUT TO:	AMOUNT:	AFTER TAX BALANCE	\$248,095.11
MODEL:	YEAR:		
AYOUT TO:	AMOUNT:		

ALL TRADE-INS ARE SUBJECT TO EQUIPMENT BEING IN "AS INSPECTED CONDITION" BY VENDOR AT TIME OF DELIVERY OF REPLACEMENT MACHINE PURCHASE ABOVE.

PURCHASER HEREBY SELLS THE TRADE-IN EQUIPMENT DESCRIBED ABOVE TO THE VENDOR AND WARRANTS IT TO BE FREE AND CLEAR OF ALL CLAIMS, LIENS, MORTGAGES AND SECURITY INTEREST EXCEPT AS SHOWN ABOVE.

☒ CATERPILLAR EQUIPMENT WARRANTY

INITIAL

☐ USED EQUIPMENT WARRANTY

INITIAL

CATERPILLAR EQUIPMENT WARRANTY It is understood that no other warranties of any kind, whether expressed or implied, including any warranty of merchantability or fitness for a particular purpose, are or have been made or authorized by PETERSON with respect to any machinery, EQUIPMENT or other products described herein unless endorsed herein and signed by the parties hereto. No adjustments, repairs or replacements of any items sold hereunder, or assistance given by seller to buyer in connection with same, shall be deemed to be a waiver of any of the provisions of the aforesaid warranty. Below lists Warranty applicable for Sold EQUIPMENT including expiration date.

Warranty applicable including expiration date where necessary:

12 Month, Unlimited Hours

All used equipment is sold as is where is and no warranty is offered or implied except as specified here:

Warranty applicable:

CSA:

NOTES:

ADDITIONAL TERMS: THE UNDERSIGNED PURCHASER (IF MORE THAN ONE, JOINTLY AND SEVERALLY) HAVING BEEN QUOTED BOTH A TIME AND A CASH PRICE, HEREBY PURCHASES AND ACCEPTS THE TERMS AND CONDITIONS SET FORTH ON BOTH SIDES HEREOF. THE ABOVE DESCRIBED EQUIPMENT, HEREIN FURTHER CALLED THE EQUIPMENT, IS SOLD SUBJECT TO THE TERMS AND CONDITIONS SET FORTH INCLUDING ALL TERMS AND CONDITIONS SET FORTH ON THE BACK HEREOF WHICH ARE HEREBY INCORPORATED HEREIN. AGREED TO BY PURCHASER AND SELLER AND PURCHASER ACKNOWLEDGES THAT HE HAS FULLY READ THIS AGREEMENT, BOTH FRONT AND BACK PAGES, AND ASSENTS TO ALL OF ITS TERMS AND CONDITIONS.

Peterson

PURCHASER

ORDER RECEIVED BY

Meyer, Shane

APPROVED AND ACCEPTED ON

REPRESENTATIVE

DESCHUTES COUNTY ROAD DEPT

PURCHASER

BY

SIGNATURE

TIT



DIGITAL AUTHORIZATION

CATERPILLAR TELEMATICS DATA AND CAT REMOTE SERVICES-SOFTWARE UPDATES PROCESS FOR SELECT PRODUCT LINK TELEMATICS AND CAT EQUIPMENT CONTROL MODULE SOFTWARE.

Customer equipment has installed devices that transmit data to Caterpillar Inc. ("Caterpillar").

Data transmitted to Caterpillar is used in accordance with Caterpillar's [Data Governance Statement](https://www.caterpillar.com/en/legal-notice/data-governance-statement.html) ("DGS"), which describes Caterpillar's practices for collecting, sharing and using data and information related to customer's machines, products, Devices or other Assets and their associated worksites. The DGS can be reviewed at <https://www.caterpillar.com/en/legal-notice/data-governance-statement.html>

Caterpillar's process for performing remote diagnostics and making available remote software and firmware updates and upgrades, such as configuration, patches, bug fixes, new or enhanced features, etc., for Assets and Devices is described in the [Cat® Remote Services – Software Update Process for select Product Link™ Telematics and Cat Equipment Control Module Software](#) document (the "RSP Document"). The RSP Document can be reviewed at https://www.cat.com/remoteservicesprocess?_ga=2.245276421.1412167159.1561985855-475983137.1559312215.

Company acknowledges and agrees to data transmission to Caterpillar via devices installed on Company equipment or by other means as outlined and described in the DGS, and grants to Caterpillar the right to collect, use, and share such information, including to its Distribution Networks or other affiliates, in accordance with the [Caterpillar Data Governance Statement](#). Company's authorization also applies to any data and information previously collected by Caterpillar.

AGREE



DECLINE



Company acknowledges and agrees to participate in Remote Services (including, remote diagnostics and remote updates and upgrades) and authorizes Caterpillar to remotely access, program, and install updates and upgrades for Company's Assets and Devices in accordance with the [Remote Services Process Document](#).

AGREE



DECLINE



The rights granted in this authorization survive the termination or expiration of the Company's subscriptions to any Digital Offerings. Except as set out in a written agreement between Company and Caterpillar expressly referencing the Data Governance Statement, this authorization supercedes and replaces any other authorizations with regard to the subject matter hereof.

Deschutes County
Company

Company (Print)

Tim Brownell
Company Representative (Print)

[Signature]
Signature

July 26, 2023
Date

FOR DEALER USE ONLY

Company UCID

Company Representative CWS ID

Main Store Dealer Code

Dealer Representative Name

Dealer Representative CWS ID

TERMS AND CONDITIONS

. The seller reserves the right to accept or reject this order and shall not be required to give any reason for non-acceptance.

. This order when accepted by seller shall become a binding contract but shall be subject to strikes, lockouts, accidents, fire, delays in manufacture or transportation, acts of God, embargoes, epidemic, pandemic or other natural disasters, government action or any other causes beyond the control of the seller or otherwise affecting the supply chain, whether the same as or different from the matters and things hereinbefore specifically enumerated; and any of said causes shall absolutely absolve the seller from any liability to the purchaser under the terms hereof.

This order when accepted by seller shall be further subject to such changes in price, terms, delivery date, delivery priorities, and other conditions varying from the terms hereof as may be current when the within ordered machinery, equipment, attachments, and parts are ready for delivery. Purchaser shall be responsible for payment of all applicable fees, taxes and charges arising from or related to the purchase and sale of the equipment and goods described on the reverse side hereof, including, without limitation, any and all sales tax, use tax, surcharges, pass through charges (including state corporate activity taxes), environmental fees and services, along with any interest, finance charges or administrative fees that may accrue if and as a result of purchaser's failure to timely and/or properly pay amounts owing from purchaser when due.

. It is understood and agreed that title to and right of possession of said equipment shall remain vested in seller until obligations of purchaser hereunder and payment of all other sums which may be due or are to become due from purchase to seller, whether evidenced by notes, book account, judgment, or otherwise, shall have been fully paid at which time ownership shall pass to the purchaser.

. The seller's responsibility for shipments ceases upon delivery to a transportation company; and any claims for shortages, delays, or damages occurring thereafter shall be made by the purchaser directly to the transportation company. Any claims against the seller for shortages in shipments shall be made within fifteen days after receipt of shipment.

. The purchaser agrees that this order shall not be countermanded by purchaser, that when it is accepted (and until the execution and delivery of the contract or contracts and note or notes required to consummate the sale as above specified), it will cover all agreements between the parties relative to this transaction, and that the seller is not bound by any representations or terms made by any agent relative to this transaction which are not embodied herein.

. When the machines necessary to fill this order are available, the purchaser agrees on demand to execute and deliver to the seller such notes and contracts as may be required by the seller to evidence the transaction. In the event that the purchaser fails to execute and deliver said notes and contracts to the seller, the entire balance of the purchase price shall at the seller's option become immediately due and payable.

. **EQUIPMENT MANAGEMENT ELECTRONIC DATA / PRIVACY NOTICE.** For EQUIPMENT equipped with Product Link™ and Vision Link™, CUSTOMER understands that data concerning this machine, its condition, and its operation is being transmitted by Product Link to Caterpillar Inc., its affiliates ("Caterpillar"), and its dealers to better serve CUSTOMER and to improve upon Caterpillar products and services. The information transmitted may include: machine serial number, machine location, and operational data, including but not limited to: fault codes, emissions data, fuel usage, service meter hours, software and hardware version numbers, and installed attachments. Caterpillar will not sell or rent collected information to any other third party and will exercise reasonable efforts to keep the information secure as Caterpillar recognizes and respects CUSTOMER's privacy. Information regarding Caterpillar's data governance and the remote services that may be a part of the EQUIPMENT, can be found at <https://www.caterpillar.com/en/legal-notice/data-governance-statement.html> and https://www.cat.com/en_US/support/technologysolutionsnew/remoteservicesprocess.html as applicable, or by contacting Caterpillar at CatConnectSupport@cat.com. CUSTOMER acknowledges, understands and agrees that any questions or requests for information regarding ongoing collection of data and information by Caterpillar or its participation in Caterpillar Remote Services, including any questions or requests to opt out of such processes or programs should be directed to Caterpillar at the email listed above. By executing this Agreement, CUSTOMER understands these disclosures and agrees to allow this data to be accessed by Caterpillar and/or its dealers.

. The seller shall not be held liable or responsible for any costs or expenses or for any damages on account of personal injuries or injuries to property or otherwise, suffered or sustained in the operation of any machinery or equipment, the subject of this order, nor for any damages alleged to result to purchaser by reason of any delays or alleged failure of said machinery or equipment to operate.

. The purchaser agrees that damages arising from failure to consummate the sale contemplated by this agreement may be difficult to measure and that a reasonable measure of damages will be the difference between the price set forth herein and the amount for which the equipment can be sold to another party, plus any costs, charges, and related expenses that may be incurred by the seller to hold, store, and maintain the equipment until a sale can be made.

0. Purchaser and seller agree that in the event it becomes necessary to undertake legal action to enforce any of the terms of this agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs. "It is agreed by and between the customer and Peterson that all disputes and matters whatsoever arising under, in connection, or incident to this agreement shall be litigated, if at all, in or before a Court located in the State of incorporation of the seller to the exclusion of the Courts of any other state or country."

1. Should this order pertain to any used machinery or equipment, the following additional terms shall apply:

a) Seller makes no representation as to the quality or functionality of such used machinery and equipment which is being sold "AS-IS".

b) Seller makes no recommendations as to the use of equipment by Buyer.

c) Buyer agrees that all equipment is purchased solely at risk of Buyer.

d) Buyer hereby releases, discharges, and covenants not to sue Seller and will hold Seller free and harmless from all liability, claims, demands, losses, damages and costs ("claims") caused or alleged to be caused in whole or in part by the equipment purchased. Buyer further agrees that if any claim is made against Seller, Buyer will defend, indemnify, save, and hold harmless Seller from any and all loss, liability, damages, or costs which may be incurred as the result of such claim(s).



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 9, 2023

SUBJECT: Approval of Board signature of a lease with Getz Properties, LLC for space at 2100 NE Wyatt Court

RECOMMENDED MOTION:

Move approval of Document No. 2023-721, a lease with Getz Properties, LLC.

BACKGROUND AND POLICY IMPLICATIONS:

In 2022, Deschutes County Health Services completed a space analysis to help determine how much additional space is needed to accommodate staff. This process realized the need for approximately 10,000 additional square feet, which was presented to the Board in July 2022. At that time, the Board supported identifying leased space to accommodate the needs.

In January 2023, staff presented an opportunity to the Board to lease 10,700 square feet located at 2100 NE Wyatt Court, Bend, which would allow Health Services to vacate the Williamson leased space (5,600 sf) and complete strategic program relocations. Since that time, Property Management completed the lease negotiations, and Health Services finalized programming and determined that the space will be occupied by Public Health: Environmental Health and Prevention, Behavioral Health: Intellectual and Development Disabilities, and Administrative Services including the Director's Office. Additionally, Facilities and Health Services worked collaboratively to determine the tenant improvement scope of work.

Lease specifics include

- Lease Term: Initial 5-year lease with two 5-year renewal options
- Lease Commencement: September 1, 2023
- Initial Base Rent: \$2.02 per square foot or \$21,625/month with 2% annual escalations
- Initial NNN: \$0.41 per square foot or \$4,400/month –reconciled annually effective 2025
- Security Deposit: Zero
- Abatement (no charge for rent or NNN): First 2-months, \$52,050
- Landlord is providing the County the first right of refusal to purchase the building

Facilities has provided a cost estimate to complete the tenant improvements to prepare the space for occupancy; +/- \$300,000 or \$28 per square foot. Of the estimated cost, it is anticipated the current tenant will cover approximately \$13,000 and the landlord will contribute approximately \$9,600, for a revised estimated total of +/- \$277,400 or \$26 per square foot.

Rough scope of work

- Access control
- Information technology equipment
- Reception window
- Carpet replacement
- Paint

It is estimated that Health Services will occupy the space November 2023 pending completion of the above work.

BUDGET IMPACTS:

Health Services has budgeted for monthly rent and most of the NNN and the cost to complete the tenant improvement scope of work. A future budget adjustment may be needed to accommodate furniture and fixtures.

ATTENDANCE:

Kristie Bollinger, Property Manager

Lee Randall, Facilities Director

Janice Garceau, Health Services Director

Christopher Weiler, Health Services Operations Officer

COMMERCIAL LEASE SUMMARY**REV. 4 (7-20-23)**

DATED: August _____, 2023

LANDLORD: Getz Properties, LLC, an Oregon limited liability company

TENANT: Deschutes County, a political subdivision of the State of Oregon

PREMISES: 2100 NE Wyatt Court
Bend, Oregon 97701

PREMISES AREA: Approximately 10,700 rentable square feet.

COMMENCEMENT DATE & POSSESSION: (Section 1.3): September 1, 2023

RENT COMMENCEMENT November 1, 2023

LEASE TERM (Section 1.1): Sixty (60) months.

ADVANCE RENT PAID (Section 2.2): First month's Base Rent and Operating Expenses (\$26,025.00)

SECURITY DEPOSIT PAID (Section 2.4): N/A

ESTIMATED MONTHLY RENT SCHEDULE:

<u>Period</u>	<u>Base Rent</u>	<u>Est. NNN's*</u>	<u>Total Monthly Rent</u>
Year 1 (10 Mos)	\$21,625.00	\$4,400.00	\$26,025.00
Year 2	\$22,050.00	\$4,400.00	\$26,450.00
Year 3	\$22,500.00	\$4,400.00	\$26,900.00
Year 4	\$22,950.00	\$4,400.00	\$27,350.00
Year 5	\$23,400.00	\$4,400.00	\$27,800.00

*All triple net NNN figures set forth herein are estimated and shall be adjusted based on actual expenses incurred as provided herein

PAYMENT ADDRESS:	Getz Properties, LLC c/o IRES PO Box 2356 Bend, OR 97709
RENEWAL OPTIONS (Section 1.7):	Two (2), five (5) year Renewal Options. As referenced in section 1.7 below.
ESTIMATED OPERATING EXPENSES (Section 2.5(c)):	Initial estimated operating expenses \$4,400.00/month
LATE FEE/INTEREST (Sections 2.6 and 17.7):	Five percent (5%) of the payment if the Rent is not received by Landlord within ten (10) days after it is due; plus interest at the rate of ten percent (10%) per annum from the due date until paid.
PERMITTED USE (Section 3.1):	Office

This summary is not intended to replace the terms of the lease. If there is a conflict between this summary and the lease, the lease shall control.

COMMERCIAL LEASE

DATED: August _____, 2023

PARTIES: Getz Properties, LLC an Oregon limited liability company (“Landlord”)
C/O IRES
PO Box 2356
Bend, Oregon 97709

AND: Deschutes County, a political subdivision of the State of Oregon
 (“Tenant”)

Deschutes County Property Management
PO Box 6005
Bend, OR 97708-6005

RECITALS

A. Landlord is the owner of the commercial building located 2100 NE Wyatt Court Bend, Oregon 97701 (the “**Building**”).

B. By the execution of this Commercial Lease (this “**Lease**”), Landlord leases to Tenant and Tenant leases from Landlord approximately 10,700 rentable square feet in the Building that is located at 2100 NE Wyatt Court, Bend Oregon 97701 (the “**Premises**”).

AGREEMENT

SECTION 1. OCCUPANCY

1.1 Original Term. The term of this Lease shall commence on the Rent Commencement Date (as defined below), and shall continue, subject to the terms and conditions provided in this Lease, for a period of sixty (60) months thereafter (the “**Lease Term**”), plus any partial calendar month in which the Lease Term commences, unless sooner terminated or extended as provided in this Lease. For the purposes of this Lease, the term “Lease Term” means the initial sixty (60) month Lease Term and any extensions or renewals thereof.

1.2 Effective Date. Landlord and Tenant agree and acknowledge that they shall be bound in accordance with the terms of this Lease from and after the date of the parties’ mutual execution of this Lease (the “**Effective Date**”). Landlord and Tenant agree and acknowledge that there are no preconditions to the effectiveness of this Lease or the performance of its terms.

1.3 Rent Commencement Date. The Rent Commencement Date shall be November 1, 2023.

1.4 Delivery of Premises. Landlord shall tender possession of the Premises to Tenant upon the move-out of SCHS (the “**Possession Date**”). Occupancy of the Premises by Tenant prior to the Rent Commencement Date shall be subject to all of the terms and provisions of this Lease excepting only those requiring the payment of Rent.

1.5 Initial Landlord Improvements. N/A

1.6 Acceptance of Premises. Landlord confirms that Building and Premises are in good working order. Tenant agrees and acknowledges that Landlord has made no promise or agreement to repair, alter, construct, and/or improve the Premises. Any Alterations (as defined below) to be made by Tenant must first be approved by Landlord in writing, which approval shall not be unreasonably withheld, conditioned or delayed, and shall be made in accordance with Section 5, below, pertaining to Alterations. Tenant shall have exclusive right to the parking lot and parking spaces associated with the Premises, which includes 36 spaces (33 standard, 1 compact and 2 ADA).

1.7 Renewal Options. If Tenant is not then in default under this Lease, Tenant shall have the option (“**Renewal Option**”) to extend the Lease Term for two (2) terms of five (5) years each, subject to the following terms and conditions:

(a) Tenant shall exercise a Renewal Option by providing Landlord written notice (“**Renewal Notice**”) not less than one-hundred & twenty (120) days prior to the last day of the expiring lease term. A renewal term shall commence on the day immediately following the expiration of the then-effective Lease Term.

(b) The terms and conditions for the renewal term shall be identical with the initial Lease Term except for Base Rent (as defined below). The Base Rent for the first year of first renewal Lease Term shall be two percent (2%) above the Base Rent payable in year 5 of the initial Lease Term. Thereafter, monthly Base Rent shall escalate by an additional two percent (2%) annually in each subsequent year of the first renewal Lease Term. Base Rent for the second renewal term shall be two percent (2%) above the Base Rent payable in year 5 of the first renewal option Lease Term. Thereafter, monthly Base Rent shall escalate by an additional two percent (2%) annually in each subsequent year of the second renewal Lease Term.

1.8 Financial Capability of Tenant. In addition to any other Tenant representation or warranty provided in this Lease, Tenant represents and warrants the following to Landlord: (i) Tenant has sufficient net worth to assure Tenant’s performance of this Lease and the payment of its obligations under this Lease as and when they become due.

SECTION 2. RENT, DEPOSIT, TAXES, FEES, AND CHARGES

2.1 Base Rent and Estimated Additional Rent. During the initial sixty (60) month Lease Term, Tenant shall pay Landlord guaranteed monthly “**Base Rent**” and estimated Additional Rent (defined below), without offset, as follows:

<u>Period</u>	<u>Base Rent</u>	<u>Est. NNN’s*</u>	<u>Total Monthly Rent</u>
Year 1 (10 Mos)	\$21,625.00	\$4,400.00	\$26,025.00
Year 2	\$22,050.00	\$4,400.00	\$26,450.00
Year 3	\$22,500.00	\$4,400.00	\$26,900.00
Year 4	\$22,950.00	\$4,400.00	\$27,350.00
Year 5	\$23,400.00	\$4,400.00	\$27,800.00

*All triple net NNN figures set forth herein are estimated and shall be adjusted based on actual expenses incurred as provided herein.

2.2 Rent Due Date. Rent shall be due and payable to Landlord commencing on the Rent Commencement Date. Rent shall be due and payable on or before the first day of each subsequent month, in advance and without notice or invoice to Tenant, at such place as may be designated by Landlord.

2.3 Additional Rent. All insurance costs, utility charges, Tenant's proportionate share of the Operating Expenses (as defined below), and any other sums Tenant is required to pay to Landlord or any third-party shall be deemed "**Additional Rent**." For purposes of this Lease, "**Rent**" shall mean both Base Rent and Additional Rent.

2.4 Security Deposit. N/A.

2.5 Tenant's Proportionate Share of Operating Expenses. The Premises constitute the entirety of the Building. Tenant shall pay Tenant's proportionate share of all Operating Expenses (as defined below) attributable to the Building, making this Lease a triple net lease. Unless and until adjusted as provided in this Lease, Tenant's proportionate share of the Operating Expenses shall be one hundred percent (100%).

(a) Operating Expenses. Except as otherwise provided in this Lease, "**Operating Expenses**" shall mean any and all costs and expenses paid or incurred by Landlord (or on Landlord's behalf) necessary or appropriate for the effective and efficient operation, maintenance, and/or repair of the Building, including, without limitation, the following: (i) any assessments now or hereafter levied against the Building/property by the City of Bend; (ii) the cost of commercial general liability and/or casualty insurance, including coverage for loss of rents, on the Building; (iii) the costs and expenses of maintaining and/or repairing the Building, or any part thereof, including (but not limited to) the exterior of the Building, exterior walls, roof, gutters, down spouts, utility systems, mechanical systems including quarterly maintenance of HVAC systems, quarterly maintenance of the elevator, electrical systems, sanitary sewer systems and storm drainage; (iv) the cost to maintain, repair the sidewalks abutting the Building; (v) the costs and expenses of snow/ice removal; (vi) the cost of all utilities and services that are not the responsibility of a tenant of the Building; (vii) all City of Bend water, sewer and stormwater charges/assessments; (viii) a property management fee not to exceed 6% of gross Rent and excluding Operating Expenses; (ix) any and all other charges, costs, or expenses commonly incurred by landlords of comparable buildings for the operation, repair, and maintenance of the Building, including, without limitation,; and (x) any other charges identified as Operating Expenses in this Lease.

(b) Operating Expense Exclusions. Except as otherwise provided in this Lease, Operating Expenses shall not include: (i) depreciation or amortization (except as provided in Section 2.5(a)); (ii) interest on and amortization of debts; (iii) refinancing costs; (iv) damages recoverable by any occupant due to violation by Landlord of any of the terms and conditions of this Lease; (v) repairs occasioned by fire, windstorm, or other casualty; (vi) leasing commissions and other costs, including, accounting and other professional fees, disputes and other transactions with individual present or prospective tenants (other than Tenant); (vii) ground rent; (viii) separately-metered utilities, but only to the extent paid directly by Tenant or other Tenant of the Building; (ix) costs incurred in renovating or otherwise improving, decorating, painting, or

Getz Properties, LLC: Wyatt Lease

Deschutes County Document No. 2023-721

5 of 31

redecorating vacant space for tenants or other occupants of the Building; (x) additions to the Building; (xi) any other expenses which, in accordance with generally accepted accounting principles, would not normally be treated as Operating Expenses by comparable landlords in comparable buildings and (xii) property taxes once Tenant receives approved property tax exemption status by Deschutes County Assessor's Office.

(c) Controllable Operating Expense Cap. Notwithstanding any language to the contrary contained in this Lease, the portion of Tenant's Proportionate Share of Operating Expenses attributable to Controllable Operating Expenses shall not increase by more than three percent (3.0%) annually on a non-cumulative basis. As used herein, "Controllable Operating Expenses" shall mean all Operating Expenses except: (i) City of Bend water, sewer and stormwater charges and/or assessments; (ii) costs of Insurance as specified in Section 6; (iii) costs related to weather related items such as snow, water and ice removal; and (iv) the cost to maintain or, repair the sidewalks.

(d) Written Statement of Estimate. Landlord shall furnish Tenant with a written statement setting forth the estimated Operating Expenses for the current lease year on or before April 1st. Tenant shall pay to Landlord as Additional Rent on the first day of each calendar month, an amount equal to 1/12 of the amount of the Operating Expenses shown on Landlord's annual written statement. In the event Landlord delivers the written statement late, Tenant shall continue to pay to Landlord an amount equal to 1/12 of the Operating Expenses for the immediately preceding lease year until Landlord does furnish the written statement, at which time Tenant shall pay the amount of any deficiency for the expired portion of the current lease year based on Tenant's actual payments during such time; any excess payments made by Tenant shall be credited to the next due payment of Rent from Tenant or refunded at Tenant's option. The late delivery of any written statement by Landlord shall not constitute a waiver of Tenant's obligation to pay the Operating Expenses nor subject the Landlord to any liability, but Landlord shall use reasonable efforts to deliver such written statements of the Operating Expenses as soon as reasonably possible after the commencement of each lease year. Tenant's initial estimated share of the Operating Expenses is \$4,400.00 per month, which does not include separately-metered utility charges paid directly by Tenant. Tenant acknowledges and agrees that Tenant's estimated share of the Operating Expenses is subject to adjustment after the yearly Operating Expense reconciliation is performed by Landlord's property manager.

(e) Accounting. Commencing 2025, on or before April 1st of each year, Landlord shall complete an accounting of the Operating Expenses included in Additional Rent during the prior calendar year and Landlord shall provide Tenant with a detailed itemization and accounting of all Operating Expenses included in the annual expense reconciliation by May 15th of each year. If Landlord's accounting determines that Tenant has paid less than its proportionate share of the Operating Expenses during the preceding calendar year., Tenant shall pay to Landlord the balance of its proportionate share of the Operating Expenses within thirty (30) days of Tenant's receipt of notice from Landlord. If Landlord's accounting determines that Tenant has paid more than its proportionate share of the Operating Expenses during the preceding calendar year, Landlord shall, in Landlord's discretion, (i) return the overpayment to Tenant within thirty (30) days of Landlord's determination that Tenant has overpaid its proportionate share of the Operating Expenses, or (ii) if further rent is due, Landlord may elect to provide Tenant a credit in the amount of Tenant's overpayment against the Rent next coming due. Landlord's accounting referred to herein need not be audited but shall contain sufficient detail to enable Tenant to verify

the calculation of the Operating Expenses. In addition, Tenant, upon at least ten (10) days' advance written notice to Landlord and during normal business hours, may examine and copy any invoices, receipts, canceled checks, vouchers, or other instruments used to support the figures shown on Landlord's accounting; provided, however, that Tenant shall only be entitled to such an examination once during each Lease year.

(f) Disputes. Each accounting provided by Landlord pursuant to Section 2.5(e) shall be conclusive and binding upon Tenant unless within sixty (60) days after Tenant's receipt of such accounting, Tenant shall notify Landlord that it disputes the correctness of the accounting, specifying the particular respects in which the accounting is claimed to be incorrect. If such disputes shall not have been settled by agreement, either party, within sixty (60) days after Tenant's receipt of such accounting, may pursue its available legal remedies; provided, however, Tenant hereby agrees that the dispute over the accounting, any error by Landlord in interpreting or applying the provisions of this Lease regarding Operating Expenses, or in calculating the amounts in the accounting, shall not constitute a breach of this Lease by Landlord and even if any legal proceeding over the accounting is resolved against Landlord, this Lease shall remain in full force and effect and Landlord shall not be liable for any consequential damages. Pending the determination of any dispute concerning the correctness of the accounting, Tenant, within ten (10) days of receipt of such accounting, shall pay Additional Rent in accordance with the accounting, without prejudice to Tenant's position. If the dispute shall be determined in Tenant's favor, within ten (10) days Landlord shall forthwith pay to Tenant the amount of Tenant's overpayment of Rent resulting from compliance with the accounting.

2.6 Late Fee on Rent and Other Charges. If Rent (or other payment due from Tenant) is not received by Landlord within fifteen (15) days after it is due, Tenant shall pay a late fee equal to 5% of the payment (a "**Late Fee**"). Subject to the terms and conditions of this Lease, Landlord may levy and collect a Late Fee in addition to all other remedies available for Tenant's failure to pay Rent (or other payment due from Tenant). All Late Fees shall be payable as Additional Rent, but not included in the property management fee calculation outlined in Section 2.5(a).

SECTION 3. USE OF THE PREMISES

3.1 Permitted Use. The Premises may be used for a typical Office environment for Deschutes County Health Services Department (the "**Business**"), and for no other purpose without the prior written consent of Landlord, which consent may not be unreasonably withheld. Operation of the Business shall be subject to any and all applicable "Legal Requirements" (defined as all federal, state and/or local statutes, laws, ordinances and/or regulations governing the use and/or operation of the Business and Building). Tenant agrees and acknowledges that neither Landlord nor Landlord's agents have made any warranties or representations, whether express or implied, concerning the permitted use that may be made of the Premises or the Building under any Legal Requirements, including, without limitation, the present general plan of the city or county in which the Premises are located, zoning ordinances, and any other existing or future restrictions that pertain to the Premises.

3.2 Restrictions on Use. In connection with Tenant's use of the Premises, Tenant shall:

(a) Conform and comply with any and all Legal Requirements. Tenant shall correct, at Tenant's own expense, any failure of compliance created through Tenant's fault or by reason of Tenant's use of the Premises. Tenant covenants that Tenant has had an opportunity to review and has reviewed any and all Legal Requirements directly or indirectly pertaining to or concerning Tenant's operation of the Business and the condition, use, or occupancy of the Building, including, but not limited to, the Premises.

(b) Refrain from any activity which would make it difficult or impossible to insure the Premises against casualty, would increase the insurance rate, or would prevent Landlord from taking advantage of any ruling of the Oregon Insurance Rating Bureau or its successor allowing Landlord to obtain reduced premium rates for long-term fire insurance policies, unless Tenant pays the additional costs of the insurance.

(c) Refrain from any use which would be reasonably offensive to Landlord or neighboring property, or which would tend to create a nuisance or damage the reputation of the Premises.

(d) Refrain from loading the floors beyond the point considered safe by a competent engineer or architect selected by Landlord.

(e) Refrain from making any marks on or attaching any sign, insignia, antenna, aerial, or other device to the exterior or interior walls, windows, or roof of the Building (including the Premises) without the prior written consent of Landlord, which consent will not be unreasonably withheld, conditioned or delayed.

(f) Refrain from causing or permitting any Hazardous Substances (as defined below) to be spilled, leaked, disposed of, or otherwise released on or under the Premises. Without otherwise limiting the immediately preceding sentence, Tenant may use, store, or otherwise handle on the Premises only those Hazardous Substances typically used, stored, sold, or handled in the prudent and safe operation of the Business. Tenant shall comply with all Environmental Laws and shall exercise the highest degree of care in the use, handling, and storage of Hazardous Substances, and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Premises. Upon the earlier of the termination or expiration of this Lease, Tenant shall remove, at its sole cost and expense, all Hazardous Substances from the Premises placed and/or caused to be placed on the Premises by Tenant, its employees, agents, contractors or invitees. For purposes of this Lease, the term "**Environmental Law(s)**" shall mean any federal, state, or local statute, regulation, or ordinance, or any judicial or other governmental order pertaining to the protection of health, safety, or the environment. The term "**Hazardous Substance(s)**" shall mean any hazardous, toxic, infectious, or radioactive substance, waste, or material as defined or listed by any Environmental Law and shall include petroleum oil and its fractions.

3.3 Hazardous Substances.

(a) **Indemnification.** Tenant shall indemnify, defend, and hold Landlord and Landlord's agents harmless for, from, and against any and all losses, costs, expenses, claims, and

liabilities resulting from or arising out of, whether directly or indirectly, the use, storage, treatment, transportation, presence, release, or disposal of Hazardous Substances in, on, under, or about the Building or Premises to the extent resulting from the activities of Tenant and/or its agents or employees. Tenant's indemnification obligations provided in this Section 3.3 shall survive the termination and/or expiration of this Lease.

(b) Certification/Landlord Indemnity. Landlord represents and warrants that, to its actual knowledge (without any duty of investigation or inquiry), there are no Hazardous Substances on, in or under the Building, in amounts or kinds that pose a threat to human health or the environment or that could give rise to liability under any Environmental Laws. Landlord shall indemnify, defend, and hold Tenant harmless for, from, and against any and all losses, costs, expenses, claims, and liabilities resulting from or arising out of, whether directly or indirectly, the use, storage, treatment, transportation, presence, release, or disposal of Hazardous Substances in, on, under, or about the Building or Premises to the extent resulting actions occurring prior to the commencement of this Lease. Landlord's indemnification obligation provided in this Section 3.3 shall survive the termination and/or expiration of this Lease.

SECTION 4. REPAIRS AND MAINTENANCE

4.1 Landlord's Obligations. The following shall be the responsibility of Landlord, which shall be done at Landlord's expense and shall not be included in the Operating Expenses:

(a) Replacement of the roof and gutters, exterior walls, bearing walls, structural members, and foundation.

(b) Replacement of water, sewage, gas, electrical services up to the point of entry to the Premises, and asphalt, curbs and sidewalks.

(c) Replacement of HVAC units and major HVAC system components consisting of compressors, motors, fans, and electronics as determined by Landlord.

(d) Repair and replacement of the elevator other than ordinary maintenance and monthly service.

(e) Any repairs necessitated by the negligence of Landlord, its agents, employees, and invitees, except as provided in Section 6.3, below, dealing with waiver of subrogation.

4.2 Landlord's Obligations Chargeable to Operating Expenses. Landlord will perform the maintenance and repairs specified in Section 2.5(a) with the cost of such items included in the Operating Expenses.

4.3 Tenant's Obligations. The following shall be the responsibility of Tenant at Tenant's own expense:

(a) Repair and maintenance of all Premises walls, ceilings, doors, windows, floor coverings, light fixtures, switches, and wiring and plumbing from the point of entry to the Premises.

(b) Repair, maintenance and/or replacement of the building entry and building envelope glass of the Premises.

(c) Repainting of all interior walls of the Premises as needed during tenancy.

(d) Any repairs necessitated by the negligence of Tenant, its agents, employees, and invitees, except as provided in Section 6.3, below, dealing with waiver of subrogation.

(e) Any repairs or alterations required under Tenant's obligation to comply with applicable Legal Requirements as set forth in Section 3.2 above.

4.4 Landlord's Interference with Tenant. Except in the case of an emergency, Landlord shall use reasonable efforts to minimize interference with the conduct of Tenant's business in connection with Landlord's repairs, replacements, alterations, or other work to be performed by Landlord in, on, or around the Premises, but Landlord shall not be required to use overtime or premium time labor, nor shall Landlord be required to perform work during other than normal business hours. Except for negligence of Landlord and Landlord's agents and contractors, Tenant waives and releases any claims for abatement of rent or damages, including loss of business, resulting from the proper exercise of Landlord's rights under this Section 4.4.

4.5 Reimbursement for Obligations Assumed by Landlord. In the event Tenant fails or refuses to perform any of its obligations specified in Section 4.3 above, Landlord may (at its discretion and without any requirement to do so) elect to perform such obligations and charge the actual costs incurred to Tenant. Tenant shall reimburse such expenditures on demand, together with interest at the rate of 10% per annum from the date of expenditure until fully reimbursed. Except in an emergency creating an immediate risk of personal injury or property damage, Landlord shall provide Tenant with 30-days advance written notice (outlining with reasonable particularity the repair, maintenance or replacement required) before commencing any work that is the responsibility of Tenant under Section 4.3.

4.6 Reimbursement for Obligations Assumed by Tenant. In the event Landlord fails or refuses to perform any of its obligations specified in Section 4.1 above, Tenant may (at its discretion and without any requirement to do so) elect to perform such obligations and charge the actual costs incurred to Landlord, Landlord shall reimburse such expenditures on demand, together with interest at the rate of 10% per annum from the date of expenditure until fully reimbursed. Except in an emergency creating an immediate risk of personal injury or property damage, Tenant shall provide Landlord with 30-days advance written notice (outlining with reasonable particularity the repair, maintenance or replacement required) before commencing any work that is the responsibility of Landlord under Section 4.1.

4.6 Inspection of Premises. Landlord shall have the right to enter and inspect the Premises, with twenty-four (24) hours' prior written notice except in the case of emergency, to determine the necessity of repair and/or the condition of the Premises. Whether or not such

inspection is made, the duty of Landlord to make repairs shall not mature until a reasonable time after Landlord has received from Tenant written notice of the required repairs.

SECTION 5. ALTERATIONS

5.1 Tenant Interior Improvements. Tenant intends to construct and install, at its sole cost and expense, with exception to the monetary contribution from the Landlord outlined in Exhibit C, the specific interior improvements to the Premises (“Tenant Improvements”) that are outlined on Exhibit C attached hereto (the “Tenant’s Work Letter”). Tenant may commence construction of the Tenant Improvements upon the Possession Date. Tenant shall obtain all necessary governmental approvals and permits before commencing the construction of any improvements. The Tenant Improvements shall be constructed by licensed contractor(s) in accordance with all applicable Legal Requirements, including but not limited to all land use, building and construction requirements. In connection with the Tenant’s Work Letter, Tenant shall not permit any lien or encumbrance to be placed on or against the Premises, Building, underlying real property or any fixtures, equipment or other property of Landlord. Except for removable machinery and unattached removable trade fixtures, all improvements, alterations, flooring, fixtures, lighting, wiring, cables, conduit, plumbing and plumbing fixtures installed by Tenant shall immediately become part of the Leased Premises, with title vested in Landlord. Any contractor used by Tenant for work in the Leased Premises will be subject to review and approval by Landlord (such approval not to be unreasonably withheld, conditioned or delayed), and Landlord may post notices of non-responsibility in connection with any work being performed in the Leased Premises or at the request of Tenant. See Exhibit c for Tenant’s description of intended tenant improvements.

5.2 Alterations Prohibited. Except as specified in Section 5.1 above, Tenant shall make no additions, improvements, modifications, or alterations on or to the Premises of any kind or nature whatsoever, including, without limitation, the installation of any improvements, fixtures, or other devices on the roof of the Building or the installation of computer and telecommunications wiring, cables, and conduit (collectively, “**Alterations**”) without first obtaining Landlord’s written consent, which consent may not be unreasonably withheld, conditioned or delayed. Alterations approved by Landlord shall be made in a good and workmanlike manner, in compliance with applicable Legal Requirements and, except as otherwise provided in this Lease, at Tenant’s sole cost and expense.

5.3 Ownership and Removal of Alterations. Alterations performed on the Premises by Tenant shall be the property of Landlord when installed unless the applicable Landlord’s consent or work sheet specifically provide otherwise. Improvements and Alterations by Tenant shall, at Landlord’s option, be removed by Tenant, at Tenant’s cost and expense, and the Premises restored, ordinary wear and tear excepted, unless the applicable Landlord’s consent or work sheet specifically provides otherwise.

5.4 Signage. Subject to Landlord’s prior written consent, Tenant shall be permitted to erect and shall maintain such signage (including on the Property Monument Sign) as may be permitted under the applicable Legal Requirements and Landlord’s sign criteria for the Building (if any), including temporary banners on exterior walls and entrances of the Premises. Signage installed by Tenant shall be removed by Tenant, at Tenant’s cost and expense, upon the termination of this Lease and the sign location restored to its former state, ordinary wear and tear excepted, unless Landlord elects to retain all or any portion of the signage.

Getz Properties, LLC: Wyatt Lease

Deschutes County Document No. 2023-721 11 of 31

SECTION 6. INSURANCE

6.1 Insurance Required. Landlord shall keep the Premises insured against fire and other risks covered by a special form building and personal property coverage policy, including coverage for earthquake damage and loss of rents.

6.2 Liability Insurance. Tenant shall procure, and thereafter shall continue to carry, comprehensive general liability insurance (occurrence version) with a responsible company against personal injury claims arising directly or indirectly out of Tenant's activities on, or any condition of, the Premises, whether or not related to an occurrence caused, or contributed to, by Landlord's negligence, and shall insure the performance by Tenant of Tenant's indemnification obligations under this Lease. Landlord shall be named as an additional insured on Tenant's liability insurance policy. Such insurance shall provide that it is primary insurance and that insurance, if any, maintained by Landlord is excess and noncontributing. Tenant's liability insurance required to be carried pursuant to this Section 6.2 shall have a general aggregate limit of not less than \$2,000,000.00 and a per occurrence limit of not less than \$1,000,000.00. Certificates evidencing the insurance Tenant is required to carry pursuant to this Section 6.2 shall bear endorsements requiring ten (10) days' written notice to Landlord prior to any change or cancellation of such insurance and such certificates shall be furnished to Landlord on Landlord's request.

6.3 Waiver of Subrogation. Notwithstanding anything in this Lease to the contrary, Landlord and Tenant release each other from any claims and demands of whatever nature for damage, loss or injury to the Premises or the Building, or to the other's property in, on or about the Premises or the Building that are caused by or result from risks or perils insured against under any property insurance policies required by the Lease to be carried by Landlord and/or Tenant, and in force at the time of any such damage, loss or injury. Each of Tenant and Landlord covenants that, to the fullest extent permitted by law and by their respective insurers, no insurer shall hold any right of subrogation against the other. Landlord shall advise its insurers of the foregoing and request such waiver be permitted under any property insurance policy maintained by Landlord pursuant to Section 6.1, above.

6.4 Tenant's Indemnification. Tenant shall indemnify, defend, and hold Landlord harmless for, from, and against any claim, loss, or liability arising out of or related to, whether directly or indirectly, (i) any negligent activity of Tenant or its agents or employees on or at the Building, (ii) any condition of the Premises in the possession or under the control of Tenant its agents, employees or invitees, but not including, any such claim, loss, or liability which may be caused or contributed to in whole or in part by Landlord's own negligence or any failure to effect any repair or maintenance required by this Lease; (iii) any claim, loss, or liability incurred by Landlord or which is asserted against or imposed upon Landlord, its successors and assigns, by any party (including, without limitation, any governmental entity) arising out of or connected with Tenant's breach of any provision of this Lease; and/or (iv) any claim, loss or liability arising out of or related to the sale, service, provision or consumption of alcoholic beverages on, about or from the Premises. Landlord shall have no liability to Tenant for any loss or damage caused by third parties or by any condition of the Premises except to the extent caused by Landlord's gross negligence or breach of duty under this Lease.

6.5 Landlord's Indemnification. Landlord shall indemnify, defend, and hold Tenant harmless for, from, and against any claim, loss, or liability arising out of or related to, whether

directly or indirectly, (i) any negligent activity of Landlord or its agents or employees on or at the Building, (ii) any condition of the Premises in the possession or under the control of Landlord its agents, employees or invitees, but not including, any such claim, loss, or liability which may be caused or contributed to in whole or in part by Tenant's own negligence or any failure to effect any repair or maintenance required by this Lease; (iii) any claim, loss, or liability incurred by Tenant or which is asserted against or imposed upon Tenant, its successors and assigns, by any party (including, without limitation, any governmental entity) arising out of or connected with Landlord's breach of any provision of this Lease; and/or (iv) any claim, loss or liability arising out of or related to the sale, service, provision or consumption of alcoholic beverages on, about or from the Premises. Tenant shall have no liability to Landlord for any loss or damage caused by third parties or by any condition of the Premises except to the extent caused by Tenant's gross negligence or breach of duty under this Lease.

SECTION 7. TAXES; UTILITIES

7.1 Personal Property Taxes. Tenant shall pay as due all taxes on its personal property located on the Premises.

7.2 Real Property Taxes and Assessments. Landlord shall pay as due all real property taxes and special assessments levied against the Premises. Landlord's payment shall be considered Operating Costs payable by Tenant under the terms of Section 2.5(a). As used herein, real property taxes include any assessment related to the ownership, use, or rental of the Premises, other than taxes on the net income of Landlord or Tenant. Tenant shall not be responsible for payment of any taxes assessed for a period prior to the Commencement Date, or otherwise out of the Lease term. Tenant shall receive credit for Tenant's Share of any refund of taxes that Landlord receives which is applicable during the Lease Term hereof. Should Tenant secure a property tax exemption, the reduction in Operating Costs shall be passed on directly to Tenant.

7.3 Special Assessments. If an assessment for a public improvement is made against the Premises, Building and/or underlying real property, Landlord may elect to cause such assessment to be paid in installments in which case all of the installments payable with respect to the Lease shall be included in recoverable expenses for the purposes of this Section 7.

7.4 Payment of Utilities Charges. When not included as part of the Operating Expenses, Tenant shall pay when due all charges for services and utilities incurred in connection with the use, occupancy, operation, and maintenance of the Premises, including, but not limited to, charges and expenses for fuel, water, gas, electricity, sewage disposal, power, refrigeration, air conditioning, telephone, internet, and janitorial services. If any utility services are provided by or through Landlord, charges to Tenant shall be actual charges incurred to Landlord. If the charges are not separately metered or stated, Landlord shall apportion the charges on an equitable basis, and Tenant shall pay its apportioned share on demand.

7.5 Triple Net Lease. Landlord and Tenant agree and acknowledge that this Lease is to be construed and interpreted as a "**Triple Net Lease**." Accordingly, except as expressly provided in this Lease, all charges, costs, and expenses directly or indirectly related to the use, occupation, operation or management of the Building, including the Premises, shall be part of the Operating Expenses, unless Tenant is required to pay such charges, costs, and expenses directly, and excepting such costs as outlined in this Lease.

SECTION 8. DAMAGE AND DESTRUCTION

8.1 Partial Damage. If the Premises are partially damaged and Section 8.2 does not apply, Landlord shall, within a reasonable amount of time after the date of the damage, and subject to the availability of insurance proceeds, repair and restore the Premises to as near the same condition as the Premises existed prior to such damage. Landlord shall have no liability to Tenant for any inconvenience, loss of business, or annoyance arising from any loss by fire (or any other casualty) or by any repair of any portion of the Premises. Repairs shall be accomplished with all reasonable dispatch subject to interruptions and delays from labor disputes and matters beyond the control of Landlord.

8.2 Destruction. If the Premises are destroyed or damaged such that the cost of repair or replacement exceeds 50% of the replacement value of the Premises before the damage, or if the Common Areas are damaged so that the Premises cannot be used for its intended purpose, given an opportunity to repair such damage in a reasonable length of time, Landlord shall so notify Tenant in writing and either party may elect to terminate this Lease as of the date of the damage or destruction by written notice given to the other not more than thirty (30) days following the date of Landlord's notice to Tenant. In such event, all rights and obligations of the parties shall cease as of the date of termination and Tenant shall be entitled to the reimbursement of any prepaid amounts paid by Tenant and attributable to the anticipated term. If neither party elects to terminate, Landlord shall proceed to restore the Premises to substantially the same form as prior to the damage or destruction. Work shall be commenced as soon as reasonably possible and thereafter shall **proceed without interruption, except for work stoppages on account of labor disputes and other matters not under Landlord's control.**

8.3 Rent Abatement. If the Premises are partially damaged or destroyed, Rent shall be abated for the period during which such damage or destruction is being repaired in proportion to the degree to which the Premises are untenantable.

8.4 Damage Late In Term. If damage or destruction to which Section 8.1 would apply occurs within six (6) months prior to the end of the then-current Lease Term, Tenant may elect to terminate this Lease by written notice to Landlord given within thirty (30) days after the date of the damage.

SECTION 9. EMINENT DOMAIN

9.1 Partial Taking. If a portion of the Premises is condemned and Section 9.2 does not apply, this Lease shall continue on the following terms:

(a) Landlord shall be entitled to all of the proceeds of condemnation; provided, however, that Tenant may claim dislocation damages and compensation for damages to Tenant's property if such amount is not subtracted from Landlord's award. Tenant shall have no claim against Landlord as a result of the condemnation.

(b) Landlord shall proceed as soon as reasonably possible to make repairs and alterations to the Premises necessary to restore the remaining Premises to a condition as comparable and reasonably practicable to that existing at the time of the condemnation.

(c) After the date on which title vests in the condemning authority, or an earlier date on which alterations or repairs are commenced by Landlord to restore the balance of the Premises in anticipation of taking, Base Rent shall be reduced in proportion to the reduction in value of the Premises as an economic unit on account of the partial taking.

(d) If a portion of Landlord's property not included in the Premises is taken, and severance damages are awarded on account of the Premises, or an award is made for detriment to the Premises as a result of activity by a public body not involving a physical taking of any portion of the Premises, this shall be regarded as a partial condemnation to which Sections 9.1(a) and 9.1(b) apply, and Base Rent shall be reduced to the extent of reduction in rental value of the Premises as though a portion had been physically taken.

9.2 Total Taking. If a condemning authority takes all of the Premises, or a portion sufficient to render the remaining portion of the Premises reasonably unsuitable for the use that Tenant was then making of the Premises, this Lease shall terminate as of the date title vests in the condemning authorities. Termination of this Lease pursuant to this Section 9.2 shall have the same effect as termination by Landlord under Section 8.2. Landlord shall be entitled to all of the proceeds of condemnation and Tenant shall have no claim against Landlord as a result of the condemnation.

9.3 Sale in Lieu of Condemnation. Sale of all or part of the Premises to a purchaser with the power of eminent domain in the face of a threat or probability of the exercise of the power of eminent domain shall be treated for the purposes of this Section 9 as a taking by condemnation.

SECTION 10. LIABILITY AND INDEMNITY

10.1 Liens. Except with respect to activities for which Landlord is responsible, Tenant shall pay as and when due all claims for work done on and for services rendered or material furnished to the Premises and shall keep the Premises free from any and all liens. If Tenant shall fail to pay any such claims or to discharge any lien, Landlord may do so and collect the costs. Any amount so added shall bear interest at the rate of 10% per annum from the date expended by Landlord and shall be payable on demand. Landlord's payment of Tenant's claims or discharge of any Tenant lien shall not constitute a waiver of any other right or remedy which Landlord may have on account of Tenant's default. If a lien is filed as a result of nonpayment, Tenant shall, within ten (10) days after knowledge of the filing, secure the discharge of the lien or deposit with Landlord cash or sufficient corporate surety bond or other surety satisfactory to Landlord in an amount sufficient to discharge the lien plus any costs, and other charges that could accrue as a result of a foreclosure or sale under the lien. Landlord may require Tenant to furnish a lien and completion bond before the commencement of any work.

10.2 Indemnification. Tenant shall indemnify, defend, and hold Landlord harmless for, from, and against any claim, loss, or liability arising out of Tenant's failure to comply with Section 10.1.

SECTION 11. QUIET ENJOYMENT

11.1 Tenant's Quiet Enjoyment. Provided Tenant is not in default of this Lease, Landlord shall defend Tenant's right to quiet enjoyment of the Premises from the lawful claims of all persons during the Lease Term.

11.2 Estoppel Certificate. Either party shall, within twenty (20) days after notice from the other, execute and deliver to the other party a certificate stating: (a) the date this Lease was executed; (b) the Commencement Date, and the expiration date of the current Lease Term; (c) the current amount of monthly Base Rent and the date to which Base Rent has been paid; (d) that the Lease is in full force and effect, that neither Landlord nor Tenant is in default under the Lease, and that the Lease has not been assigned, modified, supplemented, or amended in any way (or specifying the date and terms of any agreement so affecting this Lease); (e) that this Lease represents the entire agreement between the parties as to this lease transaction (or identifying those other documents that, together with this Lease, form the entire agreement between the parties as to this lease transaction); (f) that all conditions under the Lease to be performed by Landlord have been satisfied (or specifying those conditions that Landlord has not satisfied); (g) that all required contributions by Landlord from any tenant improvement allowance have been made (or specifying those required contributions which Landlord has not made); (h) that as of the date of said statement, there are no existing defenses or offsets that Tenant has against the enforcement of this Lease by Landlord except as specified by Tenant; (i) that no Base Rent has been paid for more than 1 month in advance except as specified by Tenant; (j) that no security has been deposited with Landlord (or the amount of such deposit, if any); and (k) any other information relating to the Lease reasonably requested by the other party. Failure to deliver the certificate within the specified time shall be conclusive upon the party from whom the certificate was requested that the Lease is in full force and effect and has not been modified except as represented in the notice requesting the certificate.

SECTION 12. ASSIGNMENT AND SUBLEASE

12.1 Assignment and Sublease. Tenant shall not assign the Lease or sublet the Premises without the express written approval of Landlord, which consent may not be unreasonably withheld, conditioned or delayed. In its consideration of a proposed assignment or sublease, Landlord may consider, among other issues, the following criteria: (i) proposed subtenant or assignee demonstrates that it is financially responsible by submission to Landlord of such reasonable information as Landlord may request; (ii) proposed subtenant or assignee demonstrates a record of successful experience in operating a business by submission to Landlord of such reasonable information as Landlord may request concerning the proposed subtenant or assignee, and (iii) proposed subtenant or assignee is reputable. Any assignment, encumbrance or sublease without Landlord's written consent shall be voidable and at Landlord's election and shall constitute a default. If Tenant is a limited liability company, any withdrawal or change, voluntary, involuntary or by operation of law of any company member or manager, or the dissolution or transfer of any ownership interest in the company shall be deemed an assignment. All rents received by Tenant from its assignees or subtenants in excess of the rent payable by Tenant to Landlord under this Lease (allocated on a square footage basis in cases of partial subleasing) shall be paid to Landlord. No interest of Tenant in this Lease shall be assignable by involuntary assignment through operation of law (including without limitation the transfer of this Lease by testacy or intestacy). Each of the following acts shall be considered an

involuntary assignment: (a) if Tenant is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes proceedings under the Bankruptcy Act in which Tenant is the bankrupt; or if Tenant is a limited liability company, if any member or manager of the company becomes bankrupt or insolvent, or makes an assignment for the benefit of creditors; or (b) if a writ of attachment or execution is levied on this Lease; or (c) if in any proceeding or action to which Tenant is a party, a receiver is appointed with authority to take possession of the Premises. Such an involuntary assignment shall also constitute a default by Tenant and Landlord shall have the right to elect to terminate this Lease, in which case this Lease shall not be treated as an asset of Tenant.

12.2 Permitted Transfers. Notwithstanding anything to the contrary in this Lease, Tenant may, without Landlord's consent, assign all or any portion of the Lease or its interest therein or sublease all or any portion of the Premises (each, a "Permitted Transfer") to (A) any entity controlling, controlled by or under common control with Tenant or an owner of Tenant; (B) any entity resulting from the merger, consolidation or reorganization of Tenant or an owner of Tenant into or with any other entity; (C) any entity acquiring all or substantially all of the ownership of Tenant or all or substantially all of Tenant's assets; or (D) in connection with the offering or subsequent sale or exchange of Tenant's stock or other ownership interest (or the stock or other ownership interests of any entity described in (A) – (C) above) (each, a "Permitted Transferee"); provided that in all cases the originally named Tenant of this Lease shall not be released from its obligations under this Lease by such Permitted Transfer, no event of default then exists beyond any applicable notice and cure period, and the Permitted Transferee intends to use the Premises for the Permitted Use or such other use as may be reasonably approved by Landlord in writing in advance.

SECTION 13. DEFAULT

13.1 Tenant Default. The occurrence of any of the following events shall constitute a default under this Lease (each an "Event of Default"):

(a) **Default in Payment of Rent or Other Charges.** Failure of Tenant to pay Rent or any other charge, cost, or expense within thirty (30) days of the date due.

(b) **Default in Other Covenants.** Failure of Tenant to comply with any term or condition or fulfill any obligation of this Lease (other than the payment of Rent or other charges) within thirty (30) days after written notice from Landlord specifying the nature of the default. If the default is of such a nature that it cannot be completely remedied within the thirty (30) day period, this Section 13.1(b) shall be deemed complied with if Tenant begins correction of the default within the thirty (30) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

(c) **Abandonment.** The vacation or abandonment of the Premises by Tenant at any time following the Rent Commencement Date as evidenced by Tenant's failure to consistently operate its business during normal business hours on twenty (20) or more consecutive normal business days.

13.2 Landlord Default. No act or omission of Landlord shall be considered a default under this Lease until Landlord has received thirty (30) days' prior written notice from Tenant specifying the nature of the default with reasonable particularity. Commencing from Landlord's

Getz Properties, LLC: Wyatt Lease
Deschutes County Document No. 2023-721 17 of 31

receipt of such default notice, Landlord shall have thirty (30) days to cure or remedy the default before Landlord shall be deemed in default of this Lease; provided, however, that if the default is of such a nature that it cannot be completely remedied or cured within the thirty (30) day period, there shall not be a default by Landlord under this Lease if Landlord begins correction of the default within the thirty (30) day period and thereafter proceeds with reasonable diligence to effect the remedy as soon as practical.

SECTION 14. REMEDIES ON DEFAULT

14.1 Termination. Upon the happening of an Event of a Default, this Lease may be terminated at the option of Landlord by notice to Tenant, or at the option of Tenant by notice to Landlord. If this Lease is not terminated by the election of Landlord, Landlord shall be entitled to recover damages from Tenant for the default. If this Lease is not terminated by the election of Tenant, Tenant shall be entitled to recover damages from Landlord for the default. Regardless of whether this Lease is terminated, Tenant's liability to Landlord for damages shall survive such termination, and Landlord may reenter, take possession of the Premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages.

14.2 Reletting. Following reentry or abandonment, Landlord may relet the Premises, and in that connection may make any suitable alterations or refurbish the Premises (or both), or change the character or use of the Premises, but Landlord shall not be required to relet for any use or purpose other than that either specified in this Lease or consistent with other uses of the Building made by other tenants, or which Landlord may reasonably consider injurious to the Premises, or to any tenant which Landlord may reasonably consider objectionable. Landlord may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the Lease Term, upon any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

14.3 Damages.

(a) Upon the occurrence of an Event of Default by Tenant, Landlord shall be entitled to recover immediately, without waiting until the due date of any future Rent or until the date fixed for expiration of this Lease, and in addition to any other damages recoverable by Landlord, the following amounts as damages:

(1) The loss of reasonable rental value from the date of default until a new tenant has been, or with the exercise of reasonable efforts could have been, secured.

(2) The reasonable costs of reentry and reletting including, without limitation, the cost of any clean-up, refurbishing, removal of Tenant's property and fixtures, or any other expense occasioned by Tenant's failure to quit the Premises upon termination and to leave the Premises in the required condition, including any remodeling costs, court costs, broker commissions, and advertising costs.

(3) The unamortized portion, during the initial Lease Term, of any concessions (e.g. free rent or tenant improvement allowance) granted, and any brokerage commissions incurred, by Landlord in connection with this Lease.

(4) Any excess of the present value of the Rent for the balance of the Lease Term over the present value of the anticipated fair market rent, excluding Operating Expenses for the Premises that could be achieved for said period, after deduction of all anticipated expenses of reletting, including, without limitation, all actual allowances, abatements, construction costs, brokerage commissions and tenant concessions likely to be required under then-existing market conditions. The present value of future amounts shall be computed using a discount rate equal to the prime loan rate of major Oregon banks in effect on the date of trial, or if no trial, on the date the Premises were relet.

(b) Upon the occurrence of an Event of Default by Landlord, Tenant shall be entitled to recover immediately, without waiting until the date fixed for expiration of this Lease, and in addition to any other damages recoverable by Tenant, the following amounts as damages:

(1) The loss of reasonable rental value from the date of default.

(2) The reasonable costs of reletting a new facility including, without limitation, the cost of removal of Tenant's property and fixtures and moving to a new location, refurbishing a new location, or any other expense occasioned by Landlord's default, including any remodeling costs.

(3) Any excess of the present value of the Rent for the balance of the Lease Term over the present value of the anticipated fair market rent, excluding Operating Expenses for the Premises that could be achieved for said period, after deduction of all anticipated expenses of reletting, including, without limitation, all actual allowances, abatements, construction costs, brokerage commissions and tenant concessions likely to be required under then-existing market conditions. The present value of future amounts shall be computed using a discount rate equal to the prime loan rate of major Oregon banks in effect on the date of trial, or if no trial, on the date the Premises were relet.

14.4 Right to Sue More Than Once. Landlord may sue periodically to recover damages during the period corresponding to the remainder of the Lease Term, and no action for damages shall bar a later action for damages subsequently accruing.

14.5 Remedies Cumulative. The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Landlord under applicable law.

14.6 Landlord's Right to Cure Defaults. If Tenant shall fail to perform any obligation under this Lease, Landlord shall have the option to do so after thirty (30) days' written notice to Tenant specifying the nature of the default. Landlord's performance of any Tenant obligation under this Lease shall not waive any other remedy available to Landlord. All of Landlord's expenditures to correct the default shall be reimbursed by Tenant on demand with interest at the rate of 10% per annum from the date of expenditure by Landlord.

SECTION 15. SURRENDER AT EXPIRATION

15.1 Condition of Premises. Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Premises in good condition, reasonable wear and tear excepted., and broom clean. Upon written request by the Landlord, alternations constructed by Tenant shall be removed and the condition of the Premises repaired and restored to its original condition. .

Depreciation and wear from ordinary use for the purpose for which the Premises were let need not be restored, but all maintenance and repairs for which the Tenant is responsible shall be completed to the latest practical date prior to such surrender. Tenant's obligations under this Section 15.1 shall be subordinate to the provisions of Section 8.2 related to destruction. Upon surrender, Tenant shall deliver all keys in Tenant's possession to Landlord, including interior and exterior Premises doors. Tenant shall reimburse Landlord for the cost of re-keying any Premises door for which a key is not delivered to Landlord.

15.2 Fixtures.

(a) All fixtures and attached trade fixtures (hood & fire suppression systems, built in coolers, freezers, etc.) placed upon the Premises during this Lease, shall at Landlord's option, become the property of Landlord. If Landlord so elects, and unless the terms of the permission for the Alteration provide otherwise, Tenant shall remove any or all fixtures which would otherwise remain the property of Landlord and shall repair any physical damage resulting from the removal. If Tenant shall fail to remove such fixtures, Landlord may do so and charge the cost to Tenant with interest at the rate of 10% per annum from the date of expenditure.

(b) Prior to the expiration or termination of this Lease, Tenant shall remove all furnishings, furniture, and un-attached trade fixtures which remain its property. If Tenant fails to do so, this shall constitute an abandonment of the property, and Landlord may retain the property and all rights of Tenant with respect to it shall cease or, by notice in writing given to Tenant within ten (10) days after removal was required, Landlord may elect to hold Tenant to its obligation of removal. If Landlord elects to require Tenant to remove, Landlord may effect a removal and place the property in public storage for Tenant's account. Tenant shall be liable to Landlord for the cost of removal, transportation to storage, and storage with interest at 10% per annum on all such expenses from the date of expenditure by Landlord.

15.3 Holdover.

(a) If Tenant does not vacate the Premises at the time required and Tenant and Landlord have not agreed to a certain date to vacate the Premises, Landlord shall have the option to treat Tenant as a tenant from month-to-month, subject to all of the provisions of this Lease (except the provisions for term and renewal), at a rental rate equal to one hundred and fifty percent (150%) of the Base Rent last paid by Tenant. Failure of Tenant to remove fixtures, furniture, furnishings, or trade fixtures which Tenant is required to remove under this Lease shall constitute a failure to vacate to which this Section 15.3 shall apply if the property not removed interferes with the occupancy of the Premises by another tenant or with the occupancy by Landlord for any purpose including preparation for a new tenant.

(b) If a month-to-month tenancy results from a holdover by Tenant under this Section 15.3, the tenancy shall be terminable at the end of any monthly rental period on written notice from Landlord given not less than thirty (30) days prior to the termination date which shall be specified in the notice. Tenant waives any notice which would otherwise be provided by law with respect to a month-to-month tenancy.

SECTION 16. SUBORDINATION AND ATTORNMENT; MORTGAGEE PROTECTION.

16.1 Subordination. Any mortgage, deed of trust, or ground lease (collectively “Mortgage”) to which this Lease is, at the time referred to, subject and subordinate is called a “Superior Mortgage,” and the holder of a Superior Mortgage, or its successor in interest, at the time referred to, is called a “Superior Mortgagee.” For a Superior Mortgage, if the terms of this Section 16.1 and Section 16.3 below are complied with, this Lease, and all rights of Tenant, will be subject and subordinate to the Superior Mortgage, whether now or hereafter affecting the Building, whether or not the Superior Mortgage also covers other lands and buildings, to each and every advance under such Superior Mortgage, and to all renewals, modifications, replacements, and extensions of such Superior Mortgage. This Section 16.1 is self-operative, and, except for the requirement to comply with Section 16.3 below, and the last sentence of this Section 16.1, no further instrument of subordination will be required. In confirmation of the subordination, Tenant will promptly execute, acknowledge, and deliver any instrument that Landlord or any Superior Mortgagee may reasonably request to evidence the subordination. As a condition of the foregoing, Tenant may require any Superior Mortgagee to enter into a non-disturbance agreement whereby the Superior Mortgagee agrees not to disturb Tenant unless and until there is an Event of Default (as defined in Section 13).

16.2 Notice. If any act or omission of Landlord would give Tenant the right, immediately or after lapse of a period of time, to cancel or terminate this Lease, to claim damages from Landlord, or to claim a partial or total eviction, Tenant will not exercise the right: (i) until it has given written notice of the act or omission to Landlord and each Superior Mortgagee whose name and address previously has been furnished to Tenant; and (ii) until a reasonable period of time for the parties to cure the condition has passed.

16.3 Attornment. For the purposes of this Section, the term “Successor Landlord” means the Superior Mortgagee if the same succeeds to the rights of Landlord under this Lease, whether through possession or foreclosure action (including by power of sale under a deed of trust) or delivery of a new lease or deed, or any third party that succeeds to the rights of Landlord under this Lease by virtue of having purchased the Building at a foreclosure sale. The Successor Landlord will accept Tenant’s attornment, assume Landlord’s obligations under the Lease, and will agree in writing not to disturb Tenant’s quiet possession of the Premises. Tenant will attorn to and recognize the Successor Landlord as Tenant’s Landlord under this Lease, and Tenant and the Successor Landlord will promptly execute and deliver an instrument reasonably acceptable to the parties to evidence the attornment and non-disturbance. Upon the attornment, this Lease will continue in full force and effect as a direct lease between the Successor Landlord and Tenant on all of the terms, conditions, and covenants as are set forth in this Lease except that the Successor Landlord will not: (i) be liable for any previous act or omission of Landlord under this Lease; (ii) be subject to any offset, deficiency, or defense that has accrued to Tenant against Landlord; (iii) be bound by any previous modification of this Lease or by any previous prepayment of more than one (1) month’s Base Rent, unless the modification or prepayment has been expressly approved in writing by the Superior Mortgagee; or (iv) be liable for the return of any security deposit that was not actually transferred to the Successor Landlord.

SECTION 17. MISCELLANEOUS

17.1 Non-waiver. Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party’s right to require strict performance of the same provision in the future or of any other provision.

17.2 Attorney Fees. If suit or action is instituted in connection with any controversy arising out of this Lease, each party shall be responsible for its own costs and attorney fees for any claim, action, suit or proceeding, including any appeal. Any such action will be in the Circuit Court of Deschutes County, Oregon.

17.3 Notices. All notices or other communications required or permitted by this Lease must be in writing, must be delivered to the parties at the addresses set forth below, or any other address that a party may designate by notice to the other parties, and shall be considered delivered upon actual receipt if delivered personally or by fax or an overnight delivery service, or at the end of the 3rd Business Day after the date deposited in the United States mail, postage pre-paid, certified, return receipt requested.

Landlord: Getz Properties, LLC c/o Scott Gibbs IRES PO Box 2356 Bend, Oregon 97709 541-285-0110 With a copy to:	Tenant: Deschutes County Property Management PO Box 6005 Bend, OR 97708-6005 Attn: Property Manager 541-385-1414 _____ _____ _____ With a copy to:
---	--

17.4 Succession. Subject to the above-stated limitations concerning the transfer and assignment of this Lease by Tenant this Lease shall be binding upon and inure to the benefit of the parties, their respective successors and assigns.

17.5 Recordation. Neither this Lease nor any memorandum thereof shall be recorded.

17.6 Entry for Inspection. Landlord shall have the right to enter upon the Premises, with twenty-four hours’ prior written notice except in the case of emergency, to determine Tenant’s compliance with this Lease, to make necessary repairs to the Premises, or to show the Premises to any prospective tenant or purchaser. In addition, Landlord shall have the right, at any time during the last 6 months of the Lease Term, to place and maintain upon the Premises notices for sale or leasing of the Premises. Tenant shall give Landlord keys for all of the doors in the

Premises, excluding Tenant's vaults, safes, lockers, cabinets and files. Tenant shall not change any locks or rekey any Premises doors without prior written authorization from Landlord, which shall not be unreasonably withheld. Tenant shall promptly supply Landlord with copies of new keys.

17.7 Interest on Rent and Other Charges. Except as otherwise provided in this Lease, any Rent or other payment required to be paid by Tenant under this Lease (including without limitation a Late Fee and/or Late Charge under Section 2.6) shall, if not paid within fifteen (15) days ten after it is due, bear interest at the rate of 10% per annum from the due date until paid.

17.8 Severability. If a provision of this Lease is determined to be unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions of this Lease shall not be impaired.

17.9 Further Assurances. The parties shall sign such other documents and take such other actions as are reasonably necessary to further effect and evidence this Lease.

17.10 Governing Law. This Lease is governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing the Lease.

17.12 Entire Agreement. This Lease contains the entire understanding of the parties regarding the subject matter of this Lease and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Lease.

17.13 Signatures. This Lease may be signed in counterparts. Electronic transmission of a signature page shall be considered an original signature page. At the request of a party, a party shall confirm a fax-transmitted signature page by delivering an original signature page to the requesting party.

17.14 Brokerage. Each party hereto warrants to the other that it has not incurred liability for any real estate brokerage fees or any other fees to any third party in connection with this Lease other than Scott Gibbs of Investors Real Estate Solutions, LLC representing Landlord. In the event that any third-party institutes legal action in an effort to recover brokerage fees, then the party through whom the third-party is making the claim shall defend such action and indemnify and hold the other party harmless from any related damages, liability or cost.

17.15 Time. In the event the date for performance of an obligation or delivery of any notice hereunder falls on a day other than a Business Day, the date for such performance or delivery of such notice shall be postponed until the next ensuing Business Day.

17.16 Nonrecourse Lease. Tenant shall look only to Landlord's interest in the Building and the Premises (or the proceeds thereof) for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money by the Landlord in the event of any default by Landlord hereunder and no other property or assets of the Landlord or its members or managers, whether disclosed or undisclosed, shall be subject to levy, execution, or other enforcement procedure for the satisfaction of Tenant's remedies under or with

respect to this Lease, the relationship of Landlord and Tenant hereunder, or Tenant's use or occupancy of the Premises.

17.17 Authority. Each party hereby represents and warrants that the person executing this Lease on the party's behalf has the full right, power, and authority to execute, deliver, and perform this Lease on behalf of the party, and that when this Lease is executed and delivered by such person, this Lease shall constitute the valid and binding agreement of the party, enforceable against such party in accordance with its terms.

17.18 Time of Essence. Time is of the essence with respect to all dates and time periods in this Lease.

17.19 Standard for Discretion. When exercising Landlord's discretion under this Lease, or if this Lease is silent on the standard for any consent, approval, determination, or similar discretionary action by Landlord, except as otherwise provided herein, the standard shall be Landlord's commercially reasonable discretion.

Exhibits, attached hereto and incorporated within:

Exhibit A – Site Plan

Exhibit B – Floor Plans, First and Second Floors Prior to Tenant Improvement Work

Exhibit C – Description of Tenant Improvement Work

Exhibit D – Option To Purchase

Signature Pages Follow

IN WITNESS WHEREOF, the undersigned have caused this Lease to be executed as of the day and year first written above.

LANDLORD:

DATED this 24th day of July, 2023.

Getz Properties, LLC

By: 
Judith M. Getz, Co-Managing Member

DATED this 24th day of July, 2023.

Getz Properties, LLC

By: 
Wyatt B. Getz, Co-Managing Member

Signature Page Follows

TENANT:

DATED this ____ day of _____, 2023

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE , Chair

PATTI ADAIR, Vice-Chair

Recording Secretary

PHIL CHANG, Commissioner

EXHIBIT A SITE PLAN

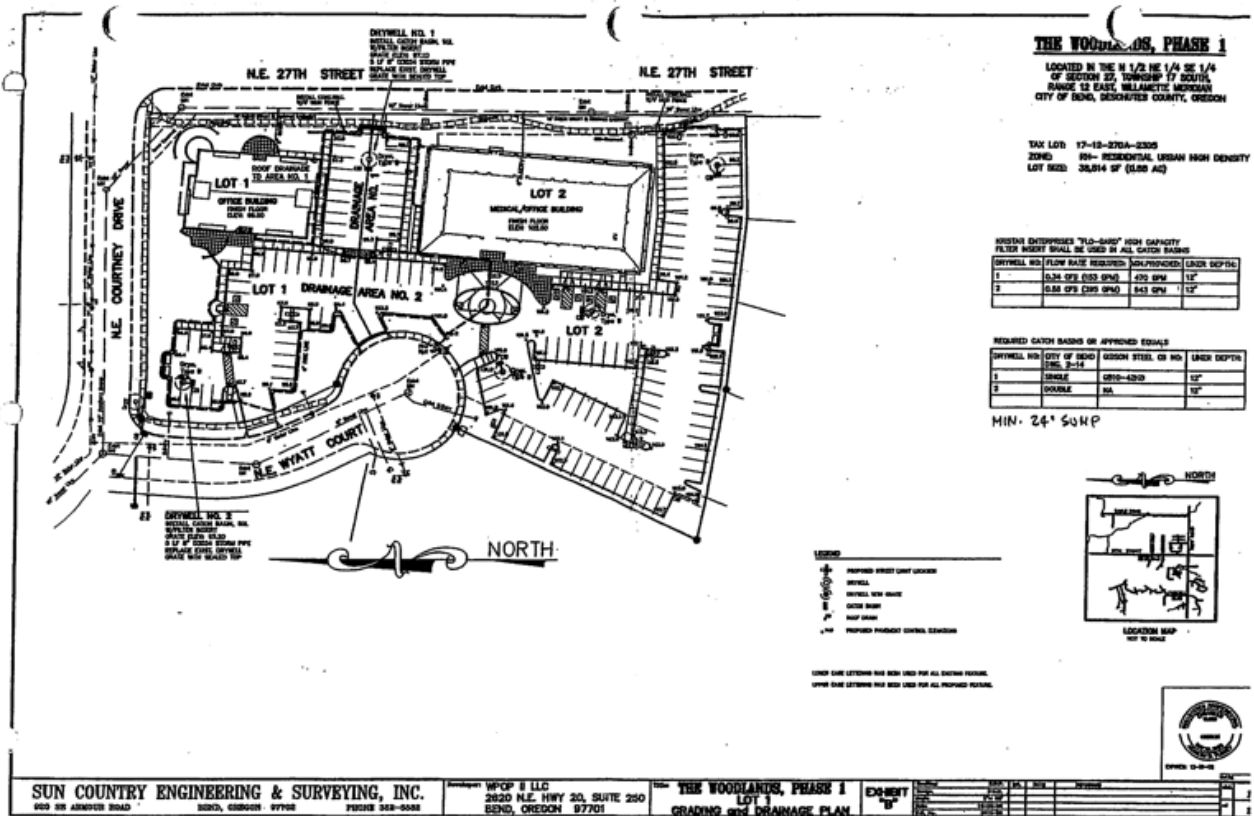


EXHIBIT B FLOOR PLAN (1st Floor)

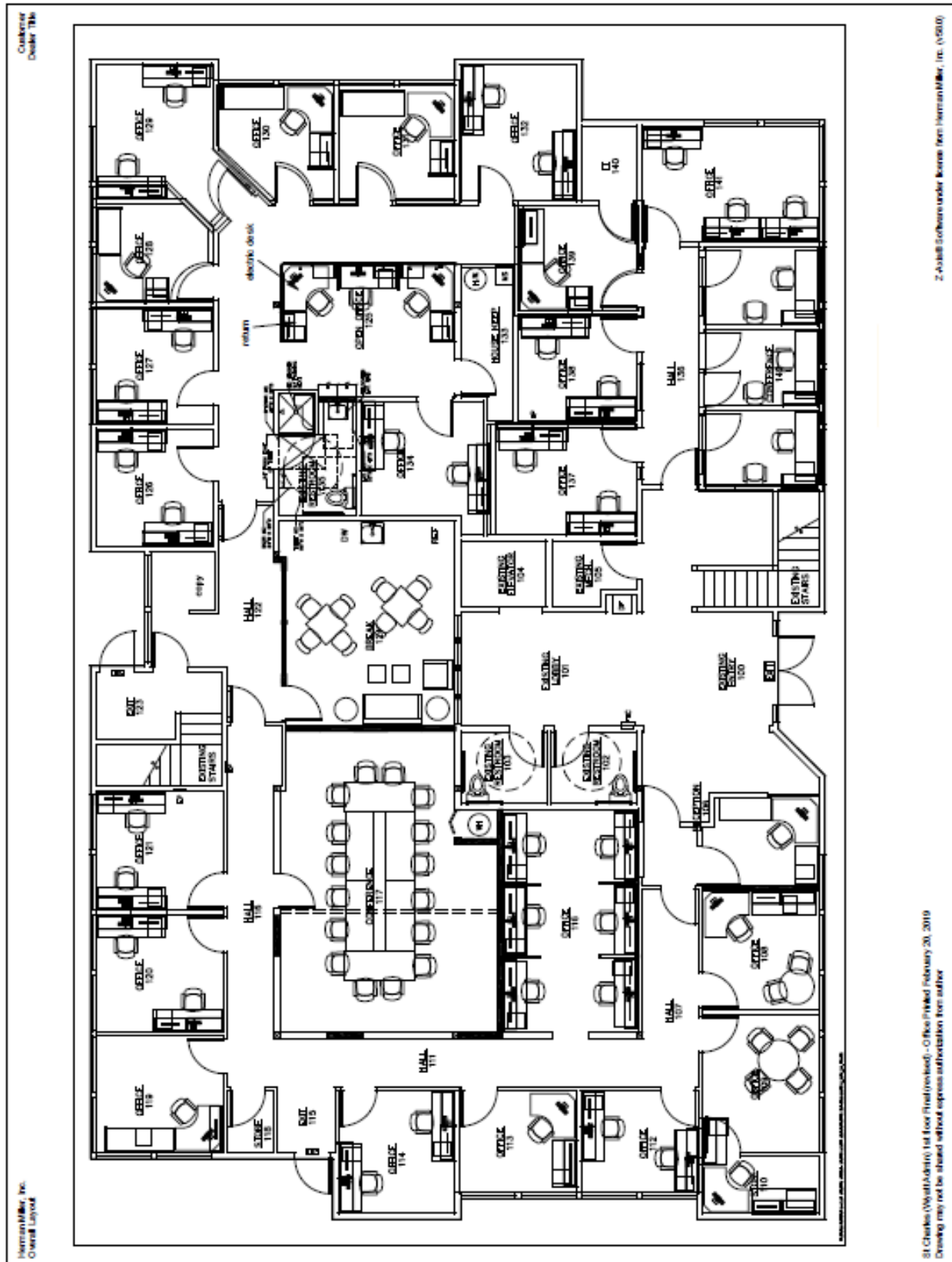


EXHIBIT B
FLOOR PLAN (2nd Floor)

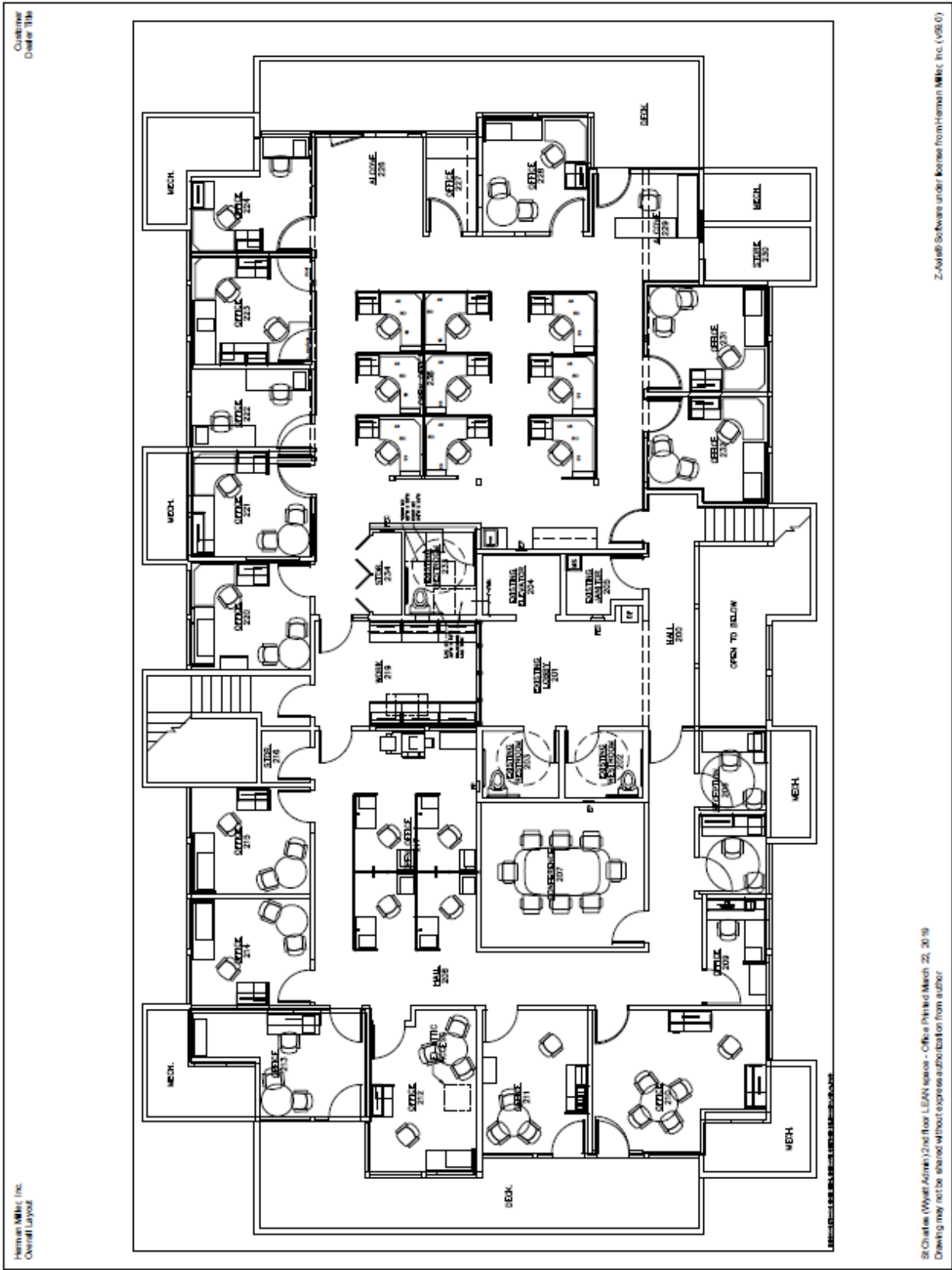


EXHIBIT C
DESCRIPTION OF TENANT IMPROVEMENT WORK

Tenant will complete the following tenant improvements to the Premises. Landlord agrees to contribute \$9,600 towards the identified improvements. Upon termination of this Agreement, Landlord will not require Tenant to remove any improvements described below from the Premises.

- Carpet replacement
- Paint
- Reception window
- Card access system
- Information technology infrastructure
- Audio/visual equipment

EXHIBIT D

OPTION TO PURCHASE

At any time during the initial term of the Lease and/or any subsequent Option Period, Tenant may notify Landlord in writing that it is interested in purchasing the Property (the “Purchase Notice”). Landlord and Tenant shall have 30-days from the date of the Purchase Notice (a “Negotiation Period”) to reach an agreement regarding the terms of sale and to execute a binding Purchase and Sale Agreement for the Property. In the event Landlord and Tenant do not reach an agreement and fail to execute a binding Purchase and Sale Agreement during the Negotiation Period, neither party shall have any further rights or obligations under this Exhibit D.

In the event Landlord elects to sell the Property to a third-party during the initial term of this Lease and/or any subsequent Option Period, Landlord shall provide Tenant with notice of its intent to sell (the “Sale Notice”). Landlord and Tenant shall have 30-days from the date of the Sale Notice (also a “Negotiation Period”) in which to agree in writing on mutually acceptable terms of sale and to execute a binding Purchase and Sale Agreement for the Property. In the event Landlord and Tenant do not reach an agreement and fail to execute a binding Purchase and Sale Agreement during the Negotiation Period, neither party shall have any further rights or obligations under this Exhibit D and Landlord may sell the Property to any third-party under terms and conditions acceptable to Landlord (in its discretion). For purposes of this provision, the term “third-party” shall not include: (i) entities and/or trusts under the control of any member, manager and/or shareholder of the Landlord entity; or (ii) any individual family member of the members/shareholders of the Landlord entity.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 9, 2023

SUBJECT: Approval of Board signature of Document No. 2023-646, an amendment extending the services contract with Clean Earth Environmental Solutions, Inc.

RECOMMENDED MOTION:

Approve Document No. 2023-646 to amend the services contract with Clean Earth Environmental Solutions, Inc.

BACKGROUND AND POLICY IMPLICATIONS:

In July of 2022, the Solid Waste Department contracted with Clean Earth Solutions, Inc. for the operation of the Household Hazardous Waste (HHW) management program at the Knott Landfill Recycling and Transfer Facility. The scope of work involves overall HHW facility operation including facility staffing and the packaging, transportation and management of hazardous wastes received at the facility. The scope also includes the operation of three one-day temporary HHW collection events in La Pine, Redmond and Sisters during the summer. The contractor will also provide hazardous waste management services for businesses that are regulated as "Conditionally Exempt Small Quantity Generators" (businesses that generate small quantities of hazardous waste). The business hazardous waste management program is operated on a cost recovery basis by the contractor, at no additional cost to the County. The contract also provides for 24-hour emergency response services in the event of a hazardous materials incident that requires services beyond the capabilities of the County to provide.

The amendment would extend the services contract an additional year through FY24. A 6% increase in disposal and staffing costs was implemented in January of 2023. An additional 4.8% is proposed for FY24. The proposed fee schedule reflects those changes. An additional Per Diem day has been proposed in the Services Agreement for FY24 due to concerns over federal DOT hours of service rules for commercial drivers.

The FY23 service contract has a not to exceed amount of \$350,000. This amount has been increased to \$370,000 for FY24.

BUDGET IMPACTS:

Fund have been budgeted in the Solid Waste Department budget for this project.

ATTENDANCE:

Tim Brownell, Director of Solid Waste

Jeff Merwin, Compliance and Infrastructure Manager

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

**DOCUMENT NO. 2023-646
AMENDING DESCHUTES COUNTY CONTRACT NO. 2022-647**

THAT CERTAIN AGREEMENT, Deschutes County Contract No. 2022-647 dated August 9, 2022, by and between DESCHUTES COUNTY, a political subdivision of the State of Oregon ("County") and Clean Earth Environmental Solutions, Inc. (Contractor), is amended, effective upon signing of all parties, as set forth below. Except as provided herein, all other provisions of the contract remain the same and in full force.

County's performance hereunder is conditioned upon Contractor's compliance with provisions of ORS 279B.220, 279B.225, 279B.230, and 279B.235, which are hereby incorporated by reference. In addition Standard Contract Provisions contained in Deschutes County Code Section 2.37.150 are hereby incorporated by reference. Contractor certifies that the representations, warranties and certifications contained in the original Contract are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

The above listed contract is amended as follows:

Effective Date and Termination Date. The effective date of this Contract shall be August 1, 2022 or the date, on which each party has signed this Contract, whichever is later. Unless extended or terminated earlier in accordance with its terms, this Contract shall terminate when County accepts Contractor's completed performance or on July 31, 2023 2024, whichever date occurs last. Contract termination shall not extinguish or prejudice County's right to enforce this Contract with respect to any default by Contractor that has not been cured. At the County's discretion, this Contract is subject to two (2) one-year extensions for up to a total of three (3) years. This Amendment authorizes the first renewal for year 2 of Contract 2022-647.

Exhibit 1, Section 3 (a). Consideration

- a. From August 1, 2022 to January 1, 2023, County shall pay Contractor on a unit price basis for each household hazardous waste collection event completed, as presented in the Clean Earth Environmental Solutions, Inc. Bid Proposal dated June 27, 2022.

From January 1, 2023 to July 31, 2023, County shall pay Contractor on a unit price basis for each household hazardous waste collection event completed, as presented in the Clean Earth Environmental Solutions, Inc. Household Hazardous Waste Management Program Fee Schedule.

From August 1, 2023, County shall pay Contractor on a unit price basis for each household hazardous waste collection event completed, as presented in the Clean Earth Environmental Solutions, Inc. Household Hazardous Waste Management Program Fee Schedule which is attached herin.

Exhibit 1, Section 4. The maximum compensation.

- a. The maximum compensation under this contract, including allowable expenses, is ~~\$350,000~~ \$370,000.
- b. Contractor shall not submit invoices for, and County shall not pay for any amount in excess of the maximum compensation amount set forth above.
 - 1) If this maximum compensation amount is increased by amendment of this contract, the amendment shall be fully effective before contractor performs work subject to the amendment.

- 2) Contractor shall notify County in writing of the impending expiration of this Contract thirty (30) calendar days prior to the expiration date.

Clean Earth Environmental Solutions, Inc. Household Hazardous Waste Management Program Fee Schedule is hereby amended in accordance with the attached:

- **2023 Household Hazardous Waste Fee Schedule – Effective 8/1/23**

CONTRACTOR: [NAME] *Jake Ponce*


Authorized Signature

Dated this 31st of July, 2023.

COUNTY:

Dated this _____ of _____, 20__

BOARD OF COUNTY COMMISSIONERS

ANTHONY DeBONE, CHAIR

PATTI ADAIR, VICE CHAIR

ATTEST:

Recording Secretary

PHIL CHANG, COMMISSIONER

2023 HOUSEHOLD HAZARDOUS WASTE FEE SCHEDULE
REVISED PRICING EFFECTIVE AUGUST 1, 2023

1. FACILITY STAFFING AND OPERATION-KHW FIXED FACILITY

Fee Category		Estimated Annual Quantity ¹	Unit	Unit Price	Extension (Estimated Annual Quantity X unit price)
Mobilization		22	Lump Sum	\$1,250 \$1,388.60	\$27,500 \$30,549.20
Site Supervisor	Regular Time	352	/hour	\$51.98 \$57.74	\$18,296.96 \$20,324.48
	Overtime	0	/hour	\$77.97 \$86.62	\$0
Chemist	Regular Time	352	/hour	\$49.75 \$55.27	\$17,512 \$19,455.04
	Overtime	0	/hour	\$74.63 \$82.91	\$0
Hazardous Waste Technician	Regular Time	704	/hour	\$42.44 \$47.15	\$29,877.76 \$33,193.60
	Overtime	0	/hour	\$63.66 \$70.72	\$0
Per Diem ²	---	66 176	/staff person	\$159.95 \$177.69	\$14,075.60 \$31,273.44
				TOTAL	\$107,262.32 \$134,795.76

¹ Assumptions: 22 events/year, 4 staff persons/event (1 supervisor, 1 chemist, 2 hazardous waste technicians), 16 hours/event/staff person (8 hours/day), no overtime included for fee evaluation (overtime will be compensated for if incurred).

² Per diem applies only to Contractor personnel requiring overnight accommodations necessary for operation of the KHW facility. Per diem shall include lodging, food, and other sustenance and incidental charges and will only apply to **Thursday** and Friday overnight stays for Friday-Saturday KHW Facility operations.

2. FACILITY STAFFING AND OPERATION-TEMPORARY HHW EVENTS

Fee Category		Estimated Annual Quantity ¹	Unit	Unit Price	Extension (Estimated Annual Quantity X unit price)
Mobilization		3	Lump Sum	\$2,750.00 \$3,054.92	\$8,250.00 \$9,164.76
Site Supervisor	Regular Time	24	/hour	\$51.98 \$57.74	\$1,247.52 \$1,385.76
	Overtime	0	/hour	\$77.97 \$86.62	\$0
Chemist	Regular Time	48	/hour	\$49.75 \$55.27	\$2,388 \$2,652.96
	Overtime	0	/hour	\$74.63 \$82.91	\$0
Hazardous Waste Technician	Regular Time	96	/hour	\$42.44 \$47.15	\$4,074.24 \$4,526.40
	Overtime	0	/hour	\$63.66 \$70.72	\$0
TOTAL					\$15,959.76 \$17,729.88

¹ Assumptions: 3 events/year, 7 staff persons/event (1 supervisor, 2 chemists, 4 hazardous waste technicians), 8 hours/event/staff person, no overtime included for fee evaluation (overtime will be compensated for if incurred).

3. HHW PACKAGING, TRANSPORTATION AND MANAGEMENT

Waste Type	Packing Method	Management Method	Container Size	Estimated Annual Quantity	Unit	Unit Price	Extension (Estimated Annual Quantity X Unit Price)
Paint Related Materials (Includes paints and stains not acceptable for Oregon Paint Recycling Program)	Loosepack	Fuel Blend/ Energy Recovery	CY box	35	/box	\$375.00 \$416.58	\$13,125.00 \$14,580.30
			55-gal drum	60	/drum	\$175.00 \$194.40	\$10,500.00 \$11,664.00
Flammable/Combustible Liquids (Fuels, lubricants, solvents, etc.)	Bulk	Fuel Blend/ Energy Recovery	275-gal IBC Tank	18	/tank	\$775.00 \$860.93	\$13,950.00 \$15,496.74
			55-gal drum	30	/drum	\$195.00 \$216.62	\$5,850.00 \$6,498.60
Combustible Liquids (Oils, fuels etc.)	Bulk	Fuel Blend/ Energy Recovery	55-gal drum	4	/drum	\$195.00 \$216.62	\$780.00 \$866.48
Antifreeze Solutions (Ethylene Glycol, etc.)	Bulk	Recycle	55-gal drum	4	/drum	\$299.00 \$332.15	\$1,196.00 \$1,328.60
Toxic Liquids, Organic, Flammable	Labpack	Destructive Incineration	55-gal drum	150	/drum	\$275.00 \$305.49	\$41,250.00 \$45,823.80
Toxic Solids, Organic	Loosepack	Destructive Incineration	CY box	20	/box	\$795.00 \$883.15	\$15,900.00 \$17,663.00
Aerosols, Flammable (paints, adhesives, etc.)	Loosepack	Destructive Incineration	CY box	25	/box	\$725.00 \$805.39	\$18,125.00 \$20,134.75
Compressed Gas, Flammable (propane)	Loosepack	Recycling/ Energy Recovery	5-gal tank packaged in CY box	35	/box	\$475.00 \$527.67	\$16,625.00 \$18,468.45
			16 oz. +/- cylinder packaged in 55-gal drum	12	/drum	\$475.00* \$527.67*	\$5,700.00 \$6,332.04 *For comparison we assumed 20 cylinders per DM55. Actual amount to be charged at \$25.18 per cylinder
Corrosive Liquids, Acidic, Inorganic	Labpack	Destructive Incineration	55-gal drum	15	/drum	\$275.00 \$305.49	\$4,125.00 \$4,582.35
Corrosive Liquids, Basic, Inorganic	Labpack	Destructive Incineration	55-gal drum	15	/drum	\$275.00 \$305.39	\$4,125.00 \$4,582.35
Oxidizing Solid	Loosepack	Destructive Incineration	30-gal drum	2	/drum	\$350.00 \$388.81	\$700.00 \$777.62
Oxidizing Liquid	Labpack	Destructive Incineration	30-gal drum	6	/drum	\$350.00 \$388.81	\$2,100.00 \$2,332.86

3. HHW PACKAGING, TRANSPORTATION AND MANAGEMENT (Cont'd)

Waste Type	Packing Method	Management Method	Container Size	Estimated Annual Quantity	Unit	Unit Price	Extension (Estimated Annual Quantity X Unit Price)
Organic Peroxide	Labpack	Destructive Incineration	5-gal pail	3	/pail	\$165.00 \$183.30	\$495.00 \$549.90
Hypochlorite Solutions	Labpack	Destructive Incineration		13		\$145.00 \$161.08	\$1,885.00 \$2,094.04
Mercury	Labpack	Recycle	5-gal pail	2	/pail	\$175.00 194.40	\$350.00 388.80
Fluorescent Tubes	Loosepack	Recycle	Box	75,000	/lin. ft.	\$0.18 \$0.20	\$13,500.00 \$15,000
Non-DOT Regulated HID/CFL Bulbs	Loosepack	Recycle	55-gal drum	15	/drum	\$475.00 \$527.67	\$7,125.00 \$7,915.05
Non-RCRA PCB Waste, Solid (Capacitors, Ballasts)	Loosepack	Recycle	55-gal drum	2	/drum	\$275.00 \$305.39	\$550.00 \$610.78
Batteries-Lithium	Labpack	Recycle	5-gal pail	40	/pail	\$250.00 \$277.72	\$10,000.00 \$11,108.80
Batteries-Nickel Cadmium	Labpack	Recycle	30-gal drum	6	/drum	\$395.00 \$438.80	\$2,370.00 \$2,632.80
Fusees	Loosepack	Destructive Incineration	5-gal pail	5	/pail	\$445.00 \$494.34	\$2,225.00 \$2,471.70
Fire Extinguishers	Loosepack	Recycle	55-gal drum	8	/drum	\$350.00 \$388.81	\$2,800.00 \$3,110.48
						TOTAL	\$195,351.00 \$217,014.29

2023 HOUSEHOLD HAZARDOUS WASTE SUPPLEMENTAL FEE SCHEDULE

Item	Item Description	UOM	Jan. 1 - July 31, 2023 Price (\$)	August 1, 2023 Price (\$)	Notes
AF01	Flammable/Combustible Liquids (Fuels, Lubricants, solvents, etc.) Alternate fuel, <1" sludge, (<3% halogens) for thermal treatment	DM55		\$216.62	
AF01	Flammable/Combustible Liquids (Fuels, Lubricants, solvents, etc.) Alternate fuel, <1" sludge, (<3% halogens) for thermal treatment	TZ75	206.7	\$860.93	
AF02	Flammable/Combustible Liquids (Fuels, Lubricants, solvents, etc.) Alternate fuel, 0-25% sludge, (<3% halogens) for thermal treatment	DM55		\$315.00	
AF02	Flammable/Combustible Liquids (Fuels, Lubricants, solvents, etc.) Alternate fuel, 0-25% sludge, (<3% halogens) for thermal treatment	TZ75		\$1,172.00	Depends on % of sludge received at the plant
AF03	Flammable/Combustible Liquids (Fuels, Lubricants, solvents, etc.) Alternate fuel, 25-50% sludge, (<3% halogens) for thermal treatment	DM55		\$381.00	
AF03	Flammable/Combustible Liquids (Fuels, Lubricants, solvents, etc.) Alternate fuel, 25-50% sludge, (<3% halogens) for thermal treatment	TZ75		\$1,562.00	
AF04	Flammable/Combustible Liquids (Fuels, Lubricants, solvents, etc.) Alternate fuel, >50% sludge, (<3% halogens) for thermal treatment	DM55		\$463.00	
AF04	Flammable/Combustible Liquids (Fuels, Lubricants, solvents, etc.) Alternate fuel, >50% sludge, (<3% halogens) for thermal treatment	TZ75		\$2,537.00	
AF06	Paint Related Materials (Includes paints and stains not acceptable for Oregon Pa	BX	397.5	\$416.58	
AF06	Paint Related Materials (Includes paints and stains not acceptable for Oregon Pa	DM55	185.5	\$194.40	
AF08	Aerosols, Flammable (paint, adhesives, etc)	BX	768.5	\$805.39	
AF08	Aerosols, Flammable (paint, adhesives, etc)	DM55		\$352.00	
INC02	Aerosols, pesticide, adhesive, corrosive	BX	2811.12	\$2,853.00	
INC02	Aerosols, pesticide, adhesive, corrosive	DM05	245.97	\$257.78	
INC02	Aerosols, pesticide, adhesive, corrosive	DM15	351.39	\$368.26	
INC02	Aerosols, pesticide, adhesive, corrosive	DM30	527.09	\$552.39	
INC02	Aerosols, pesticide, adhesive, corrosive	DM55	702.78	\$736.51	
INC03-2LE	Non Flammable Gas Cylinders (Helium, Nitrogen, Carbon Dioxide, Argon) Lecture bottles (3" dia. X 12" length)	EA		\$497.00	
INC14-A	Corrosive Liquids, Acidic, Inorganic	DM55	291.5	\$305.49	
INC14-B	Corrosive Liquids, Basic, Inorganic	DM55	291.5	\$305.49	
INC14-E	Oxidizing Solutions	DM05	153.7	\$161.08	Changed named to Oxidizing from Hypochlorites
INC14-E	Oxidizing Solutions	DM30	371	\$388.81	
INC14-E	Oxidizing Solutions	DM55		\$1,043.00	
INC14-E	Oxidizing Solid	DM30	371	\$388.81	
INC14-F	Toxic Liquids, Organic, Flammable	DM55	291.5	\$305.49	
INC14-F	Toxic Solids, Organic	BX	842.7	\$883.15	
INC15-D1	Lab Pack, Incineration, Flammable Solids (DOT 4.1)	DM05	283.82	\$297.44	
INC15-D1	Lab Pack, Incineration, Flammable Solids (DOT 4.1)	MN15	567.63	\$594.88	
INC15-D1	Lab Pack, Incineration, Flammable Solids (DOT 4.1)	MN30	1248.79	\$1,308.73	
INC15-D1	Lab Pack, Incineration, Flammable Solids (DOT 4.1)	MN55	2838.15	\$2,974.38	
INC15-D1	Lab Pack, Incineration, Flammable Solids (DOT 4.1)	P	11.35	\$11.89	
INC15-D2	Fuses	DM05	471.7	\$494.34	
INC15-E2	Organic Peroxide	DM05	174.9	\$183.30	
INC15-W	Lab Pack, Incineration, Water Reactives (DOT 4.3)	DM05	283.82	\$297.44	
INC15-W	Lab Pack, Incineration, Water Reactives (DOT 4.3)	MN15	567.63	\$594.88	
INC15-W	Lab Pack, Incineration, Water Reactives (DOT 4.3)	MN30	1248.79	\$1,308.73	
INC15-W	Lab Pack, Incineration, Water Reactives (DOT 4.3)	MN55	2838.15	\$2,974.29	
INC15-W	Lab Pack, Incineration, Water Reactives (DOT 4.3)	P	11.35	\$11.89	
LBCHEMOT	Fixed Facility Chemist OT	H	79.11	\$82.91	
LBCHEMOT	Temp Event Chemist OT	R	79.11	\$82.91	
LBCHEMST	Fixed Facility Chemist ST	H	52.74	\$55.27	
LBCHEMST	Temp Event Chemist ST	R	52.74	\$55.27	
LBDIEMST	Per Diem	E	169.55	\$177.69	

Item	Item Description	UOM	Jan. 1 - July 31, 2023 Price (\$)	August 1, 2023 Price (\$)	Notes
LBENV7ST	Fixed Facility Tech ST	H	44.99	\$47.15	
LBENV7ST	Temp Event Tech ST	R	44.99	\$47.15	
LBMOBDST	Fixed Facility Mob	E	1325	\$1,388.60	
LBMOBDST	Temp Event Mob	R	2915	\$3,054.92	
LBSUPVOT	Fixed Facility Site Supervisor OT	H	82.65	\$86.62	
LBSUPVOT	Temp Event Site Supervisor OT	R	82.65	\$86.62	
REC04-H1	Mercury, retort, inorganic mercury compounds/solutions	DM05	185.5	\$194.40	
REC05	Lead acid batteries	LB	1.17	\$1.17	
REC06	Fluorescent Tubes	F	0.19	\$0.20	
REC09	Batteries-Lithium	DM05	265	\$277.72	
REC11	Batteries-Nickel Cadmium	DM30	418.7	\$438.80	
REC13	Metallic mercury, pourable	DM05		\$525.00	
REC14	Mercury contained in manufactured articles, or dirt	DM05	592.00	\$592.00	
REC14	Mercury contained in manufactured articles, or dirt	DM15	1,285.00	\$1,285.00	
REC38	Freon refrigerant, for recycle	EA	95.00	\$95.00	
REC42	Non-DOT Regulated HID/CFL Bulbs	DM55	503.5	\$527.67	
REC60	Fire Extinguishers	DM55	371	\$388.81	
REC61	Compressed Gas, Flammable (propane)	BX	503.5	\$527.67	
REC61	Compressed Gas, Flammable (propane)	DM55	503.5	\$527.67	
REC61	Propane Cylinders, for recycle	E	25.18	\$26.39	
WAT16-B	Liquid hypochlorites / bleach	DM55		\$421.00	



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 9, 2023

SUBJECT: Approval of Board signature of an amendment to the contract with HHP, Inc. for Phase 2 of the Downtown Campus Parking Project

RECOMMENDED MOTION:

Move approval of Document No. 2023-390, a contract amendment with HHP, Inc., for Phase 2 of the Downtown Bend Campus Parking Project.

BACKGROUND AND POLICY IMPLICATIONS:

On July 26, 2023 the Board approved Phase 2 of the Downtown Campus Parking Project which included four related tasks:

1. Campus Signage
2. Parking Management
3. Accessible Routes and Parking Improvements
4. Campus Traffic Demand Management (TDM) Options and Strategies

The contract amendment with HHP includes a full scope of work for each task including four specific conceptual plans for Task 3. This work was budgeted in FY 24 budget in Campus Improvement Fund 463.

ATTENDANCE:

Eric Nielsen, Capital Improvement Manager
Lee Randall, Facilities Director

DESCHUTES COUNTY DOCUMENT SUMMARY

(NOTE: This form is required to be submitted with ALL contracts and other agreements, regardless of whether the document is to be on a Board agenda or can be signed by the County Administrator or Department Director. If the document is to be on a Board agenda, the Agenda Request Form is also required. If this form is not included with the document, the document will be returned to the Department. Please submit documents to the Board Secretary for tracking purposes, and not directly to Legal Counsel, the County Administrator or the Commissioners. In addition to submitting this form with your documents, please submit this form electronically to the Board Secretary.)

Please complete all sections **above** the Official Review line.

Date: August 1, 2023

Department: Facilities

Contractor/Supplier/Consultant Name: Harper Houf Peterson Righellis, Inc.

Contractor Contact: Nicolas Speros **Contractor Phone #:** 541-318-1161

Type of Document: Contract Amendment

Goods and/or Services: Engineering Design Services

Background & History: Perform Engineering and related design services for Phase 2 of the Deschutes County Bend Downtown Parking project as described in the Statement of Work attached as Exhibit 1A. Projects identified in Task 5 of Exhibit 1A will commence on a per-project basis. This work is budgeted in Fund 463 for FY2023 and FY2024.

Agreement Starting Date: 08/01/2023

Ending Date: 12/31/2023

Annual Value or Total Payment: \$219,890

X Insurance Certificate Received (check box)

Insurance Expiration Date: 05/01/2024

Check all that apply:

X RFP, Solicitation or Bid Process

☐ Informal quotes (<\$150K)

☐ Exempt from RFP, Solicitation or Bid Process (specify – see DCC §2.37)

Funding Source: (Included in current budget? ☒ Yes ☐ No

If **No**, has budget amendment been submitted? ☐ Yes ☐ No

Is this a Grant Agreement providing revenue to the County? ☐ Yes ☒ No

Special conditions attached to this grant: N/A

Deadlines for reporting to the grantor: N/A

If a new FTE will be hired with grant funds, confirm that Personnel has been notified that it is a grant-funded position so that this will be noted in the offer letter: N/A

Contact information for the person responsible for grant compliance: N/A

Departmental Contact and Title: Lee W. Randall **Phone #:** 541-617-4711

Department Director Approval: _____
Signature Date

Distribution of Document: Please return all documents to the Facilities Department.

Official Review:

County Signature Required (check one):

X BOCC if >\$150K

☐ Administrator (if >\$25K but <\$150K)☐ Department Director (if <\$25K)

Legal Review _____ Date _____

Document Number 2023-390

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

DOCUMENT NO. 2023-390
AMENDMENT NO. 1 TO DESCHUTES COUNTY CONTRACT NO. 2022-713

THAT CERTAIN AGREEMENT, Deschutes County Contract No. 2022-713 dated August 26, 2022, by and between DESCHUTES COUNTY, a political subdivision of the State of Oregon ("County") and Harper Houf Peterson Righellis, Inc. ("Contractor"), is amended, effective upon signing of all parties, as set forth below. Except as provided herein, all other provisions of the contract remain the same and in full force.

County's performance hereunder is conditioned upon Contractor's compliance with provisions of ORS 279B.220, 279B.225, 279B.230, and 279B.235, which are hereby incorporated by reference. In addition Standard Contract Provisions contained in Deschutes County Code Section 2.37.150 are hereby incorporated by reference. Contractor certifies that the representations, warranties and certifications contained in the original Contract are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

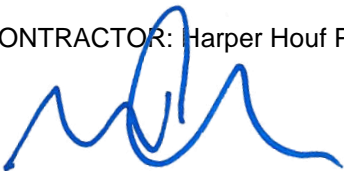
The above listed contract is amended as follows:

Consideration: The Contract scope of work and budget shall be amended to provide for Engineering and related design services for the Deschutes County Bend Downtown Parking project as described in the attached Exhibits 1A and 1B. Projects identified in Task 5 of Exhibit 1A will commence on a per-project basis.

Maximum Compensation: The maximum compensation under the original contract was \$29,361.25. The maximum additional compensation under this amendment is \$219,890.00. The total maximum compensation under the original Contract as amended is \$249,251.25.

Effective Date and Termination Date: The effective date of this Amendment No. 1 shall be August 1, 2023 or the date on which each party has signed this Contract, whichever is later. Unless extended or terminated earlier in accordance with its terms, the Contract shall terminate when County accepts Contractor's completed performance or on December 31, 2023, whichever date occurs last.

CONTRACTOR: Harper Houf Petersen Righellis, Inc.



Authorized Signature

Dated this 10th of July, 2023.

COUNTY:

Dated this _____ of _____, 2023

BOARD OF COUNTY COMMISSIONERS

ANTHONY DeBONE, CHAIR

PATTI ADAIR, VICE-CHAIR

PHIL CHANG, COMMISSIONER

ATTACHMENT A - 2023-390

EXHIBIT 1A**Deschutes County - Bend Downtown Campus (Phase 2 Scope Summary)**

Background: The Deschutes County Board of County Commissioners (BOCC) have provided direction to proceed with the four items noted below. The scoping description below is based upon completing these four items with the minor modifications noted below.

Randall asked for direction from the Board on five specific items to direct future work on this subject. The Board was in consensus to direct proceeding with the following four items:

- Scope Task 2 & 3** • Review the campus parking policy and signage to ensure messaging is clear and intuitive;
- Scope Task 3 & 4** • Provide accessible routes and wayfinding for staff and visitors;
- Scope Task 2** • Improve parking management and enforcement to ensure that parking is appropriately prioritized for campus users; and
- Scope Task 6** • Explore Transportation Demand Management options and strategies to increase walking, biking, and transit use and reduce single-occupant vehicle trips and parking demand.
-

Task 1: Project Administration

The purpose of this task is to account for administrative project functions. This will include general schedule monitoring and maintenance of internal/external status updates, maintaining an internal online repository for document and product storage/sharing, and any required administrative project update materials.

- 1.1 Attend weekly check-in project meetings.
- 1.2 Develop and maintain the project schedule.
- 1.3 Develop an online repository for draft and final documents.
- 1.4 Provide monthly progress reports.

Task 2: Parking Management Recommendations

The intent of this task is to ensure that the County's desired parking priority for visitors is maintained within its parking strategies. This should prioritize 1) visitors, 2) employees, and then 3) fleet vehicles.

- 2.1 County to provide current fleet usage policies and data for County and State vehicles.
- 2.2 County to provide current parking enforcement policy.
- 2.3 Conduct a review of fleet vehicle policies and utilization based on available information. Identify utilization rates of fleet vehicles (by types), and assess whether there are efficiencies that could be obtained from a "pooled" fleet.
- 2.4 Review current parking enforcement strategies employed within the campus.
- 2.5 Review completed employee parking survey, identify any current issues.
- 2.6 Coordinate with the City of Bend parking management plans to identify whether parking management/shared parking could be beneficial to the campus.

ATTACHMENT A - 2023-390

- 2.7 Coordinate with the courthouse expansion project team and incorporate resulting parking and circulation modifications.
- 2.8 Attend meetings with individual departments as requested.
- 2.9 Provide draft recommendations of parking management strategies for client review.
- 2.10 Obtain consolidated County staff review comments. Provide documents on shared sites for ease of commenting.
- 2.11 Incorporate feedback and provide final recommendations for parking management strategies.

Task 3: Campus Signage Review

The overall intent of this task is to reduce the numerous categories of parking signage so that more flexible parking is available to campus users. This task will be coordinated with and completed concurrent with Task 2, as elements of Task 2 will help inform campus parking allocation needs.

- 3.1 Identify how parking signage can be consolidated into fewer classifications. Initiate work efforts with a parking signage review summary, identifying which parking categories can be consolidated and/or eliminated. Review existing signage to identify more appropriate signage that more clearly specifies the intended use.
- 3.2 Coordinate with the Courthouse expansion project and incorporate any planned courthouse parking and street modifications and other campus improvement plans.
- 3.3 Coordinate with the City of Bend parking management plans to understand signage being employed within the downtown area, and whether there are specific measures that could readily allow similar expansion of parking management strategies to the County campus.
- 3.4 Incorporate the findings of Task 2, Parking Management Recommendations, into this process.
 - Coordinate with client regarding schedule impacts.
- 3.5 Provide draft recommendations on how to relocate or consolidate designated parking areas. Include within these changes information obtained from the campus parking demand survey related to overall campus parking utilization by type, and identify priorities.
- 3.6 Provide a draft parking map identifying proposed parking revisions throughout the campus for internal team review and comment. Provide a summary report detailing any changes within specific parking areas describing the rationale for the changes.
- 3.7 Obtain consolidated County staff review comments. Provide documents on shared sites for ease of commenting.
- 3.8 Incorporate team feedback and comments and prepare a final report detailing recommended parking changes and priorities.

Task 4: Accessible Routes Concept Plans

The purpose of this task is to review the connectivity, safety, and access between the parking areas and campus building entrances. This task captures the conceptual identification and development of design options, with Task 5 accounting for more detailed civil design.

- 4.1 Prepare conceptual improvements graphics and range of magnitude (ROM) cost estimate for budget purposes.
- 4.2 Provide a review of parking/wayfinding information and signage both online and throughout the campus. Include review of information provided for jury selection/orientation.

ATTACHMENT A - 2023-390

- 4.3 Conduct field review and assessment of all public sidewalks, crossings, and landings within the campus, ensuring clearly designated routes are provided from parking areas to building entrances. Identify areas that are deficient in terms of pavement condition, grades, width/obstructions, or markings.
 - Field review will utilize visual inspection and not a detailed topographic survey. Methods may include a smart level or other basic measuring tools to identify accessibility deficiencies.
 - Include a photo log of deficiencies.
- 4.4 Review on-site services such as the ballot drop-off location, existing ROW, and other geometric/channelization issues that could improve circulation and access.
- 4.5 Review parking opportunities within the campus, such as:
 - Opportunities with the Erwin Building removal.
 - Along the western frontage of the Deschutes Services building.
 - Surrounding the perimeter of Worrell Park.
 - Along and within current right-of-way.
 - Other areas that may be identified.
- 4.6 Obtain consolidated County staff review comments. Provide documents on shared sites for ease of commenting.
- 4.7 Provide a prioritized list of recommended accessibility and wayfinding improvements in illustrative format supplemented with a brief and photographic (illustrative/conceptual) narrative of the proposed projects.

Task 5: Accessible Route Design Plans

This task will include more detailed civil design, topographic survey, site plan/land use approvals, construction plan development, permitting, and construction support. This work will follow the identification of conceptual alignments and connections from previous tasks. This task is anticipated to progress from Conceptual Exhibits to Schematic Design (SD) plans to Due Diligence (DD) plans to Construction Documents (CD) with client review at each milestone before advancement to the next stage of design. Not all concepts will be advanced to subsequent design phases. Prior to beginning task, Client will confirm all improvement areas to be considered. Areas of improvement may include, but are not limited to the following:

- 5.1 Lafayette Avenue Sidewalk and Driveway modification
- 5.2 Worrell Park Surrounding Area, Trail and Parking Lot Improvements
- 5.3 Maier Building Parking Lot Improvements
- 5.4 1190 Wall Street and 221 Lafayette Ave (Erwin House) Parking Lot Improvements
- 5.5 Deschutes Services Building North Parking Lot and Norton Avenue Pedestrian Improvements
- 5.6 Other locations that may be identified in Task 4.

Task 6: Campus TDM Options and Strategies

Within this task the team will explore a limited number of options that could improve campus access. This would include review of bicycle parking, transit access, and other strategies that could reduce vehicular parking demands within the campus.

- 6.1 Review existing and planned transit stops along Greenwood Avenue and the current bus stop amenities. Identify whether walking access is available from these locations into the campus. Coordinate with CET staff and the Courthouse team to identify potential strategies to improve campus access, transit stop locations, and/or stop amenities to better support the campus.

ATTACHMENT A - 2023-390

- 6.2 Review existing bicycle parking locations near each building entrance. Identify where secure, covered, and indoor bicycle parking are provided, whether onsite lockers are available, and where showers are available.
- 6.3 Identify if there are barriers to campus access through missing sidewalks/walkways, extended crossings, or other safety issues within a 1-mile radius of the campus. Identify if there are priority projects that could be coordinated with the City of Bend to address deficiencies if located outside the campus.
- 6.4 Summarize results and recommendations to reduce vehicle parking demands campus wide.

Task 7: Parking and Campus Access Summary Report

This task will create a report summarizing the preceding tasks and key recommendations. The report will include a brief executive summary with key campus recommendations and identification of action items (e.g., design and construct accessible pathway from building “x” to north parking area).

- 7.1 Provide a draft report to the internal project team in Word format for review and comment. The draft report will include figures, tables, and supporting technical materials, including details from the parking survey.
- 7.2 Incorporate internal team comments and provide draft for County staff and/or BOCC review.
- 7.3 Incorporate County comments and finalize the report in PDF format. Provide Deschutes County with the PDF and Word document to support future revisions.

Task 8: Public Involvement and Outreach

This task will support public outreach and engagement work efforts that may be needed. This will include preparation of presentation materials, flyers, on-going public-facing website materials and/or hosting, meetings with stakeholders (such as department managers), or other similar coordination efforts. This task also includes preparation for and attendance at public meetings, hearings, and workshops.

Elements to consider may include, but are not limited to the following:

- Engagement around changes to Worrell Park (sidewalks/parking/lighting).
- Any desire to enhance the park with a landscape architect.
- General communication with directors/managers about parking changes.
- “Staff-wide” messaging vs. Countywide (customer) messaging
- Internal County/External public Presentations/meetings

Due to the undefined nature of the project scope, task line item budgets are estimated, and will be completed on a Time and Materials Basis. Individual task line item budgets may be exceeded; however, the total budget will not be exceeded without authorization. HHPR will provide monthly progress billings and notify client of any budget concerns should they arise.

EXHIBIT 1B

EXHIBIT: BREAKDOWN OF COST Deschutes County Bend Downtown Campus Parking Study - Phase 2 Harper Houf Peterson Righellis Inc. April 21, 2023																		
	Project Manager	Project Engineer	Civil Engineer	Civil Designer	Project Surveyor	Survey Technician	Survey Crew Chief	Survey Instrument Person	1-Person Survey Crew	Landscape Architect	Landscape Designer	Clerical		Principal Traffic Engineer		Public Outreach Specialist		Total Hours by Task
TASK DESCRIPTIONS																		Subtotal
Task 1: Project Administration	96											4		80			180	\$33,980 \$ - \$33,980
Task 2: Parking Management Recommendations	8			40										40			88	\$13,800 \$ - \$13,800
Task 3: Campus Signage Review	12			40										60			112	\$17,700 \$ - \$17,700
Task 4: Accessible Routes Concept Plans	16	12	12	16										16			72	\$13,020 \$ - \$13,020
Task 5: Accessible Route Design Plans	64	64	100	120	15	60			64	24	24			16			551	\$93,920 \$ - \$93,920
Task 6: Campus TDM Options and Strategies	10													20			30	\$5,250 \$ - \$5,250
Task 7: Parking and Campus Access Report	12	16		32								4		40			104	\$17,240 \$ - \$17,240
Task 8: Public Involvement and Outreach	40		8	8								4		40	40		140	\$24,980 \$ - \$24,980
Total Hours by Staff Type	258	92	120	256	15	60	0	0	64	24	24	12		312	40		1277	\$219,890 \$219,890
Hourly Rates	\$225	\$210	\$175	\$150	\$180	\$140	\$150	\$95	\$160	\$150	\$135	\$95		\$150	\$175			
Total Cost per Staff Type	\$58,050	\$19,320	\$21,000	\$38,400	\$2,700	\$8,400	\$0	\$0	\$10,240	\$3,600	\$3,240	\$1,140		\$46,800	\$7,000		\$219,890	\$219,890
													\$166,090	\$46,800	\$7,000			



BOARD OF
COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 9, 2023

SUBJECT: Approval of Chair Signature of a Notice of Intent to Award a contract for the paving of Old Bend-Redmond Hwy: US 20 to Tumalo Rd Project

RECOMMENDED MOTION:
Move approval of Board Chair signature of Document No. 2023-696.

BACKGROUND AND POLICY IMPLICATIONS:
Deschutes County Road Department prepared bid solicitation documents for the Paving of Old Bend-Redmond Hwy: US 20 to Tumalo Rd project. The project scope of work includes asphalt paving, delineation and other miscellaneous improvements on Old Bend-Redmond Hwy between the US 20 and Tumalo Rd roundabouts. The project was advertised in the *Daily Journal of Commerce* and *The Bulletin* on July 12, 2023. The Department opened bids at 2:00 P.M. on July 26, 2023.

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

<u>BIDDER</u>	<u>TOTAL BID AMOUNT</u>
KNIFE RIVER CORPORATION - NORTHWEST	\$ 1,200,000.00
Engineer’s Estimate	\$ 1,337,650.58

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

BUDGET IMPACTS:
A portion of the project cost is budgeted in the Road Capital Improvement Plan (CIP) budget for Fiscal Year 2023. The remaining project cost will be included in the proposed Road CIP budget for Fiscal Year 2024.

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



BOARD OF COUNTY COMMISSIONERS

August 9, 2023

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

Subject: Notice of Intent to Award Contract
Contract for Paving of Old Bend-Redmond Hwy: US 20 to Tumalo Rd

To Whom It May Concern:

On August 9, 2023, the Board of County Commissioners of Deschutes County, Oregon considered proposals for the above-referenced project. The Board of County Commissioners determined that the successful bidder for the project was KNIFE RIVER CORPORATION - NORTHWEST, with a bid of One Million Two Hundred Thousand Dollars (\$1,200,000.00).

This Notice of Intent to Award Contract is issued pursuant to Oregon Revised Statute (ORS) 279C.375. Any entity which believes that they are adversely affected or aggrieved by the intended award of contract set forth in this Notice may submit a written protest within seven (7) calendar days after the issuance of this Notice of Intent to Award Contract to the Board of County Commissioners of Deschutes County, Oregon, at Deschutes Services Building, 1300 NW Wall Street, Bend, Oregon 97703. **The seven (7) calendar day protest period will end at 5:00 PM on August 16, 2023.**

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

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

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

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

Sincerely,

Anthony DeBone, Chair



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 9, 2023

SUBJECT: Approval of Chair signature of a Notice of Intent to Award a contract for engineering services for the Hamhook Road Bridge Replacement Project

RECOMMENDED MOTION:

Move approval of Board Chair signature of Document No. 2023-071.

BACKGROUND AND POLICY IMPLICATIONS:

Hamhook Road is a north-south collector with an average daily traffic volume of approximately 3,564 vehicles per day connecting the area immediately east of the City of Bend to Deschutes Market Road. Hamhook Road Bridge #17C32 is located at Milepost 0.85 and carries Hamhook Road over the North Unit Main Canal; the canal, which is concrete lined at the bridge, is owned by the U.S. Bureau of Reclamation and is operated by the North Unit Irrigation District. The existing bridge structure is a two-span timber bridge constructed in 1977.

Deschutes County Road Department is preparing to replace the existing Hamhook Road Bridge with a modern single-span bridge. The scope of the project will include:

- Removing the existing structure, including all existing foundation elements within the canal channel.
- Replacing the structure with a single-span structure and associated foundation elements.
- Reconstructing the roadway approaches, including paving and approach guardrail.

The Department issued a request for proposals (RFP) for engineering and related services for the project on March 22, 2023. Two (2) proposals were received in response to the RFP on or prior to the RFP closing date of April 21, 2023 from the following firms:

- David Evans & Associates, Inc.
- Parametrix, Inc.

The Department scored the proposals using a qualifications-based selection process pursuant to ORS 279C.110. Based on this process, Parametrix, Inc. ("Consultant") was selected as the top-ranking proposer on May 26, 2023. A summary of the proposal scoring

is attached. Department staff conducted negotiations with the Consultant between May 26, 2023 and July 10, 2023.

The preliminary engineering work will include:

- Conducting topographic and boundary retracement survey work.
- Developing alternative improvement concepts and planning-level cost estimates for the bridge replacement, including:
 - Construction of replacement bridge along existing alignment
 - Construction of replacement bridge along new road alignment
- Facilitating acquisition of temporary easements, permanent easements, and right of way dedications as required for the project.
- Performing all environmental, cultural, and historic resources clearances required for the project.
- Producing project plans for the selected concept, including 30%, 90% and 100% plan sets and refined construction cost estimates with each submittal.

The Notice of Intent to Award Contract will assert the County's intent to award contract to the Consultant and will begin a one-week protest period for interested parties to submit written protest of contract award. If no protests are received during that period, the contract will be awarded administratively. The contract not-to-exceed amount will be \$385,560.00.

BUDGET IMPACTS:

A portion of the project engineering cost is budgeted in the Road Capital Improvement Plan (CIP) budget for Fiscal Year 2024. The remaining project cost will be included in the proposed Road CIP budget for Fiscal Year 2025.

ATTENDANCE:

Cody Smith, County Engineer/Assistant Road Department Director



BOARD OF COUNTY COMMISSIONERS

August 9, 2023

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

Subject: Notice of Intent to Award Contract
Contract for Engineering Services for Hamehook Rd Bridge #17C32 Replacement

To Whom It May Concern:

On August 9, 2023, the Board of County Commissioners of Deschutes County, Oregon considered proposals for the above-referenced project. The Board of County Commissioners determined that the contract for the above-referenced project shall be awarded to PARAMETRIX INC. and that the maximum compensation under the contract shall be not to exceed Three Hundred Eighty Five Thousand Five Hundred Sixty dollars (\$385,560.00).

Any entity which believes that they are adversely affected or aggrieved by the intended award of contract set forth in this Notice of Intent to Award Contract may submit a written protest within seven (7) calendar days after the issuance of this Notice to the Board of County Commissioners of Deschutes County, Oregon, at Deschutes Services Building, 1300 NW Wall Street, Bend, Oregon 97703. **The seven (7) calendar day protest period will end at 5:00 PM on Wednesday, August 16, 2023.**

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

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

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

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

Sincerely,

Anthony DeBone, Chair



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 9, 2023

SUBJECT: Resolution No. 2023-047, appropriating a \$300,000 grant from the Oregon Department of Energy for a biomass facility at Mt. Bachelor

RECOMMENDED MOTION:

Move approval of Resolution No. 2023-047 increasing appropriations within the General Fund – Non Departmental and the 2023-24 Deschutes County Budget.

BACKGROUND AND POLICY IMPLICATIONS:

Deschutes County, on behalf of Mt. Bachelor, was selected to receive a \$1 million Community Renewable Energy Program (CREP) grant from the ODOE. The grant money will be used to construct a biomass facility at Mt. Bachelor.

The CREP grant allows recipients to receive 30% of the grant award up front and the remainder of the grant award is distributed upon project completion. The County and Mt. Bachelor entered into a MOU regarding grant distribution dollars which states that grant awards received by the County from ODOE will be paid to Mt. Bachelor within 30 days. The County has received the initial ODOE CREP grant award in the amount of \$300,000.

This resolution encompasses a budget adjustment to recognize the revenue received from ODOE in the General Fund and authorization to expend the received revenue in the same fund as a grant payment to Mt. Bachelor.

BUDGET IMPACTS:

Recognize \$300,000 in State Grant revenue and increase Program Expense appropriations by \$300,000 in the General Fund.

ATTENDANCE:

Jen Patterson, Strategic Initiatives Manager
Cam Sparks, Senior Budget Analyst

REVIEWED

LEGAL COUNSEL

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY,
OREGON

A Resolution to Increase Appropriations *
 Within the 2023-24 Deschutes County Budget * RESOLUTION NO. 2023-047
 *

WHEREAS, Deschutes County and Mt. Bachelor entered into an MOU regarding the Oregon Department of Energy (ODOE) grant distribution dollars being passed-thru to Mt. Bachelor for the biomass facility, and

WHEREAS, ORS 294.471 allows a supplemental budget adjustment when authorized by resolution of the governing body, and

WHEREAS, it is necessary to increase appropriations by \$300,000 within General Fund - Non- Departmental Program Expense now, therefore;

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, as follows:

Section 1. That the following revenue be recognized in the 2023-24 County Budget:

General Fund – Non-Departmental

State Grant Revenue

\$ 300,000

General Fund – Non Departmental Total

\$ 300,000

Section 2. That the following expenditures be appropriated in the 2023-24 County Budget:

General Fund – Non-Departmental

Program Expense

\$ 300,000

General Fund – Non Departmental Total

\$ 300,000

Section 3. That the Chief Financial Officer make the appropriate entries in the Deschutes County Financial System to show the above appropriations:

DATED this _____ day of August, 2023.

BOARD OF COUNTY COMMISSIONERS OF
DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

ATTEST:

PATTI ADAIR, Vice-Chair

Recording Secretary

PHIL CHANG, Commissioner



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 9, 2023

SUBJECT: Oregon Department of Energy Community Renewable Energy Grant Award
Acceptance

RECOMMENDED MOTIONS:

Move to accept the grant award and authorize the County Administrator to sign Document No. 2023-756, a grant performance agreement with the Oregon Department of Energy.

BACKGROUND AND POLICY IMPLICATIONS:

In 2021, the Oregon Legislature created the Community Renewable Energy Grant Program to support projects outside Portland city limits. The program has a total budget of \$50 million.

Deschutes County was selected to receive a planning grant award in the amount of \$100,000 for a community energy planning project located at the County Fair & Expo Center. The planning grant will support a project to install a solar PV grid-tied system with onsite energy storage. The system will provide power to a proposed development of a water well site, potable water filtration system, water storage system, emergency water fill stations, and electric vehicle charging stations.

BUDGET IMPACTS:

\$100,000 in revenue.

ATTENDANCE:

Lee Randall, Facilities Director
Jen Patterson, Strategic Initiatives Manager

**STATE OF OREGON DEPARTMENT OF ENERGY
PERFORMANCE AGREEMENT
(Community Renewable Energy Grant Program)**

This Agreement is between the State of Oregon, acting by and through its Department of Energy, hereinafter referred to as “Agency,” and Deschutes County, hereinafter referred to as “Grantee.”

Administrators of this Agreement are:

GRANTEE	AGENCY
Administrator: Nick Lelack Title: County Administrator Address: 1300 NW Wall Street, Ste 206 Bend, OR 97703 Phone: (541) 388-6565 Fax: Email: Nick.lelack@deschutes.org Federal ID #: 93-6002292	Administrator: Pandian Krishnaswamy Title: Energy Services Manager Address: 550 Capitol Street NE Salem, OR 97301 Phone: (503) 378-4040 Fax: Email: community.grants@energy.oregon.gov

AGREEMENT

1. **Authority.** This Agreement is authorized by Oregon Laws 2021, chapter 508, sections 29 through 32 (House Bill 2021 and Oregon Administrative Rule Chapter 330 Division 250.

2. **Definitions.**

“Community renewable energy project” means one or more renewable energy systems, storage systems, microgrids or energy-related infrastructure that promote energy resilience, increase renewable energy generation or renewable energy storage capacity and provide a direct benefit to a particular community in the form of increased community energy resilience, local jobs, economic development or direct energy costs savings to families and small businesses.

“Partner” means an entity listed as a partner to an eligible applicant on an application for a grant award. A partner may be a federally recognized Oregon Indian tribe, public body, nonprofit entity, private business with a business site in Oregon, or owner of a rental property in Oregon.

“Planning costs” means the costs related to planning paid by an applicant described under Oregon Laws 2021, chapter 508, section 30.

“Project cost” means the actual cost of the acquisition, construction and installation of a renewable energy system incurred by an applicant, before considering utility incentives.

“Renewable energy system” includes:

(a) A system that uses biomass, solar, geothermal, hydroelectric, wind, landfill gas, biogas or wave, tidal or ocean thermal energy technology to produce energy.

(b) One or more energy storage systems paired with an existing or newly constructed system described in paragraph (a) of this section.

(c) One or more vehicle charging stations paired with an existing or newly constructed system described in paragraph (a) of this section.

(d) Microgrid enabling technologies paired with an existing or newly constructed system described in paragraph (a) of this section, including microgrid controllers and any other related technologies needed to electrically isolate a community energy resilience project from the electric grid so that the project is capable of operating independently from the electric grid.

3. **Effective Date and Duration.** This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law (the “Effective Date”). Grantee shall have 30 calendar days from the date on which this performance agreement is provided to Grantee to accept the performance agreement. Grantee’s failure to accept this performance agreement by the deadline may cause rejection of the grant application and the performance agreement may be terminated. Unless earlier terminated, amended or extended, this Agreement shall expire **12 months from the execution date**.
4. **Agreement Documents.** This Agreement consists of the following documents, which are listed in descending order of precedence: this Agreement less all Exhibits, Exhibit A (Project Description), Exhibit B (Agency’s Opportunity Announcement #22-017), Exhibit C (Reporting Forms), Exhibit D (Financial Reporting Guidance) and Exhibit E (Grantee’s Application). Exhibits A, C and D are attached hereto, Exhibit C is also available online through the online reporting portal, Exhibit B is available to view online on Agency’s website, and Exhibit E is available from the online application portal for the Community Renewable Energy Grant program. All Exhibits are incorporated herein by this reference.
5. **Grant.** In accordance with the terms and conditions of this Agreement, Agency shall provide Grantee an amount not to exceed **\$100,000** (“Grant” or “Grant Monies”) for the purpose of planning the Community Renewable Energy Project described in Exhibit A (the “Project”). Agency shall pay Grantee from monies dedicated from the Community Renewable Investment Fund. Disbursement of Grant Monies is contingent, as of the time of disbursement, on Agency having received sufficient expenditure authorizations to allow Agency, in the exercise of its reasonable administrative discretion, to make the disbursement.
6. **Reporting.**
 - a. **Quarterly Reporting.** Grantee must submit Quarterly Reports beginning the first calendar quarter following the Effective Date of this Agreement and each calendar quarter thereafter until the Project planning is complete. Reports are due by the 15th day of the month immediately following the end of each quarter (January 15th, April 15th, July 15th, October 15th). Quarterly Reports shall be submitted using the Quarterly Report Form in the online reporting portal, as it may be modified from time to time by Agency.
 - b. **Final Report.** Grantee must submit a Final Report promptly after completion of the project planning, and before receiving final payment of funds from Agency. The Final Report must be submitted using the Final Report Form provided in online reporting portal, as it may be modified from time to time by Agency, and must be accompanied by the information described below.
 1. A copy of the plan completed under this performance agreement which must include a proposal for developing a community renewable energy project that provides at a minimum the following details:
 - A description of how consultation with the following groups was incorporated into the planning:

- Members of qualifying communities served by the proposed community renewable energy project;
 - Businesses located in the communities served by the proposed community renewable energy project;
 - Electric utilities that have customers in the communities served by the proposed community renewable energy project; and
 - Other regional stakeholders.
 - A description of the project that includes the following information:
 - An assessment of the suitability of the site.
 - A detailed description of the project including type and quantity of equipment, how the system will integrate into existing site or building conditions and any additional work needed.
 - If the project is for generating renewable energy:
 - Technical specifications of the selected technology.
 - Nameplate capacity (KW) of the entire project.
 - Projected amount of net energy the project will generate, in KWh per year for electricity generation or Btu for other types of energy.
 - A renewable resource assessment demonstrating adequate renewable resource availability for the proposed system operations that includes the data collected to support the assessment and any assumptions made.
 - If the project is for energy storage:
 - Technical specifications of the selected technology.
 - Nameplate power storage capacity in KW.
 - Projected amount of net energy the project will supply, in KWh per year.
 - Duration the project will provide backup for selected purposes.
 - Proposed operational use cases for the energy storage project.
 - A project management plan that includes:
 - A detailed construction plan and project schedule.
 - A description of who would manage the planning, construction, and system start-up.
 - If applicable, a description of the community resilience aspects of the project.
 - A project budget that includes:
 - The anticipated total project cost with an itemized list of costs.
2. An account of total Planning Costs that identifies all funding sources and includes receipts, paid invoices, cancelled checks (if applicable), and bank loan or promissory note documentation. It should also include an itemized list of equipment and incurred Planning Costs. Reasonable Planning Costs itemized may include, but is not limited to, costs associated with:
1. Consulting fees, including design and engineering;
 2. Load analysis;
 3. Siting, excluding property acquisition;
 4. Ensuring code compliance;
 5. Interconnection studies;
 6. Transmission studies; and
 7. Other expenditures, summarized by purpose

If the total Planning Costs are \$50,000 or more, Grantee must also include an independent Certified Public Accountant's attestation to the validity and accuracy of the account.

3. If a description of how disadvantaged business enterprises, emerging small businesses, or businesses that are owned by minorities, women, or disabled veterans would be involved in the planning of the Project was provided in the application, Grantee must provide proof of their involvement, including the amount of involvement they had, or a statement of why they were not involved.
4. If they pay property taxes, proof that Grantee or owner of the proposed Project's location, if other than Grantee, is current on the property taxes for the Project's location.

7. Disbursement and Recovery of Grant.

a. Disbursement.

If requested by the Grantee, the Agency shall disburse up to 30 percent of the Grant Monies to Grantee upon execution of this performance agreement.

Agency shall disburse, the remaining Grant Monies, up to 100 percent of the Grant Monies, to Grantee following completion of the planning of the Community Renewable Energy Project and receipt and approval of a Final Report meeting the requirements of Section 6(b) and Exhibit C, subject to the following conditions:

1. Agency shall not disburse an amount that exceeds the actual Planning Costs.
2. Agency shall not disburse an amount that exceeds 100 percent of the Planning Costs, when combined with other incentives or grants available to Grantee.
3. Grantee has complied with all the terms and conditions of this Agreement.

Agency may audit all documentation relating to the Project prior to disbursement. Planning is considered complete upon the completion of the project plan document. Agency will communicate audit findings within 60 days and Grantee will have 60 days to respond to audit findings.

- b. **Allowable Costs.** The Grant is for planning the Project. Grant funds may be used only for eligible costs described in OAR 330-250-0050 and shall not be used to cover any fixed costs the Grantee would incur in the normal course of business or for any other purpose not described in OAR 330-250-0050. No Grant Monies will be disbursed for any changes to the Project planning unless such changes are approved by Agency by Amendment pursuant to Section 13.b hereof.
- c. **Recovery of Grant Monies.** Grantee shall repay Agency all Grant Monies if Grantee has not cured any default under Section 11 hereof within 30 days of notice of default by Agency, or such other longer period as may be set by Agency in its notice of default. Agency's notice that Grantee is in default shall specify a deadline for the repayment of the Grant Monies.

8. Representations and Warranties of Grantee. Grantee represents and warrants to Agency as follows:

a. Organization and Authority. Grantee is a:

- ☐ Federally recognized Oregon Indian tribe
☒ Public body
☐ Consumer-owned Utility

Grantee has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Grantee of this Agreement: (1) have been

duly authorized by all necessary action of Grantee, (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Grantee's organizational documents, and (3) do not and will not result in the breach of, or constitute a default or require any consent under, any other agreement or instrument to which Grantee is a party or by which Grantee or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Grantee of this Agreement.

- b. Binding Obligation.** This Agreement has been duly executed and delivered by Grantee and constitutes a legal, valid and binding obligation of Grantee, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- c. Location of System.** The Project will be permanently located in Oregon.
- d. Authorizations.** Grantee will obtain all applicable licenses, permits, or other authorizations that are required for planning the Project and will comply with applicable federal, state, and local laws and regulations.
- e. Full Disclosure.** Grantee has disclosed in writing to Agency all material facts related to planning the Project or the ability of Grantee to plan the Project. Grantee has made no false statements of fact to Agency, nor has it omitted information necessary to prevent any statements from being misleading. The information contained in this Agreement and Grantee's application for the Grant is true and accurate in all respects.
- f. Release of relevant information.** The Grantee authorizes any incentivizing entity outside of the department to release all relevant information on this project and associated planning to the department. This includes, but is not limited to, project information, incentives offered and received, and inspection results.

The warranties set forth above are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

9. Certain Covenants of Grantee.

- a. Grant Monies.** Grantee shall vigilantly safeguard the Grant Monies received hereunder and maintain financial controls sufficient to protect such monies and ensure that the Grant Monies are used solely for the planning of the Project.
- b. Completion.** The planning of the Project shall be completed within 6 months of the Effective Date of this Agreement. Planning of the Project is complete upon the completion of the project plan document.

10. Records Maintenance and Access.

- a. Access to Records.** Grantee acknowledges and agrees that Agency and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and

writings of Grantee that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts, transcripts, and copies.

- b. Retention of Records.** Grantee shall retain and keep accessible all books, documents, papers, plans, records, and writings, that are directly related to this Agreement, the Grant Monies or the Project for a minimum of 6 years, or such longer period as may be required by applicable law, following the later of (1) termination or expiration of this Agreement or (2) the date of the conclusion of any audit, controversy or litigation arising out of or related to this Agreement.

11. Default. Grantee shall be in default under this Agreement upon the occurrence of any of the following events:

- a.** Grantee fails to perform, observe, or discharge any of its covenants, agreements, or obligations set forth herein;
- b.** Any representation, warranty or statement made by Grantee herein or in any documents or reports relied upon by Agency to monitor planning of the Project, the expenditure of Grant Monies or the performance by Grantee is untrue in any material respect when made;
- c.** The Director of the Oregon Department of Energy determines that Grantee has violated the provisions of Oregon Laws 2021, chapter 508, sections 29 through 32 (House Bill 2021), and applicable rules;
- d.** Grantee (i) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all or any substantial portion of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) commences a voluntary case under the U.S. Bankruptcy Code (as now or hereafter in effect), (v) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vi) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the U.S. Bankruptcy Code (as now or hereafter in effect), or (vii) takes any action for the purpose of effecting any of the foregoing; or
- e.** A proceeding or case is commenced, without the application or consent of Grantee, in any court of competent jurisdiction, seeking (i) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Grantee, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of Grantee or of all or any substantial part of its assets, or (iii) similar relief in respect to Grantee under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive days, or an order for relief against Grantee is entered in an involuntary case under the U.S. Bankruptcy Code (as now or hereafter in effect).
- f. Remedies upon Default.** Upon the occurrence of Grantee's default under Section 11. b., d. or e, or if Grantee's default under Section 11.a. or c. is not cured within 30 calendar days of written notice thereof to Grantee from Agency or such longer period as Agency may authorize in its sole discretion, Agency may pursue any remedies available under this Agreement, at law or in equity. Such remedies include, but are not limited to, termination of Agency's obligation to make the Grant under this Agreement, return of the Grant Monies, payment of interest earned on the Grant Monies, and declaration of ineligibility for the receipt of future grant awards from Agency. If, as a result of Grantee's default, Agency demands return of the Grant Monies or payment of interest earned on the Grant Monies, Grantee shall pay the amount upon Agency's demand in accordance with Section 7.

- g. Failure to meet timeline.** If a grantee fails, or expects to fail, to complete planning of the Project within the six months of the execution date of this agreement, or fails to submit all final reporting requirements within the time frame specified in this agreement, the grantee must notify the department in writing in a timely manner and no later than one month after the six month deadline and prior to the expiration date of this agreement. The notification must describe the cause of the delay, measures taken by the grantee to resolve the delay, and a revised timeline for completing the planning. If the director determines that the grantee has demonstrated good cause for the delay, the department, in its sole discretion, may agree to an extended deadline. If the director determines that the grantee has not demonstrated good cause for the delay, the department may terminate the performance agreement and recover any grant moneys released to the applicant.

12. Termination.

- a. Termination for Convenience.** Either party may terminate this Agreement at any time prior to the expiration date of this Agreement upon 15 days of written notice to the other party. Upon termination under this Section 12.a by Grantee, Grantee shall repay Agency all amounts disbursed by Agency to Grantee under this Agreement. Upon termination by Agency, Agency will not be obligated to make payments for any work not completed by Grantee as of the date of the Notice of Termination.
- b. Agency Termination.** Agency may terminate this Agreement:
 1. Immediately upon written notice to Grantee, if Agency does not obtain sufficient funding and expenditure authorizations to allow Agency to meet its payment obligations under this Agreement.
 2. Immediately upon written notice to Grantee if state or federal laws, regulations, or guidelines are modified, changed or interpreted in such a way that Agency does not have the authority to provide Grant Monies for planning the Project or no longer has the authority to provide the Grant Monies from the funding source it had planned to use.

13. General Provisions.

- a. Indemnification.** Grantee shall indemnify, defend (subject to ORS chapter 180), and hold harmless the State of Oregon and Agency and their officers, employees, and agents from all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature, resulting from, arising out of or relating to the activities of the Grantee or Grantee's officers, employees, sub-contractors, or agents under this Agreement.
- b. Amendments.** This Agreement may be amended only by a written instrument signed by both parties. Any such amendment is effective only when fully executed and approved as required by applicable law. Requests for amendments must follow the process outlined in [OAR 330-250-0140](#).
- c. Participation in Similar Activities.** This Agreement in no way restricts Grantee or Agency from participating in similar activities with other public or private agencies, organizations, or individuals, except that Grant Monies may not exceed 100 percent of the Planning Costs, when combined with other incentives or grants available to Grantee.
- d. No Third Party Beneficiaries.** The State of Oregon and Grantee are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a

third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

- e. **Notices.** Except as otherwise expressly provided in this Agreement, any notice to be given hereunder to a party shall be given in writing by personal delivery, facsimile, email, or mailing the same, postage prepaid, to that party's Agreement Administrator at the address or number set forth on page 1 of this Agreement. Any communication or notice so addressed and mailed shall be effective 5 days after mailing. Any notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the recipient, or on the next business day, if transmission was outside normal business hours of the recipient. Any notice given by email shall be effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system. Any notice given by personal delivery shall be effective when actually delivered.

Either party may designate a different Agreement Administrator or change the contact information given herein by providing notice in the manner provided in this section and such change shall be effective without need for amendment under Section 13.b.

- f. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between Agency (and any other agency or department of the State of Oregon) and Grantee that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. Grantee hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum. If a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.
- g. **Compliance with Law.** Grantee shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the planning of the Project. All employers, including Grantee, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126(2). Grantee shall require each of its subcontractors, if any, to comply with, and shall ensure that each of its subcontractors, if any complies with, these requirements.
- h. **Public Records.** Grantee acknowledges that all information and records submitted to Agency are subject to the Oregon Public Records Law, ORS 192.311 to 192.478. If Grantee believes that any information or records it submits to Agency contain trade secrets, as defined by ORS 192.345(2), or are otherwise exempt from disclosure under the Oregon Public Records Law, Grantee must identify such information or records with particularity and describe the bases for Grantee's belief that the information or records are exempt from disclosure.

Funding from the State of Oregon may be reported on Oregon Transparency, a state agency tool available for Oregonians to learn about how state government works, taxes are used, and more. The information on this website is provided to users for general knowledge and information. It excludes

date and information that is confidential, protected, or private under state and federal laws, and is unaudited.

i. Oregon False Claims Act.

1. Grantee acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any action or conduct by the Grantee pertaining to this Agreement that constitutes a “claim” (as defined by ORS 180.750 (1)). By its execution of this Agreement, the Grantee certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or causes to be made that pertains to this Agreement or the System for which the Agreement work is being performed. In addition to other penalties that may be applicable, Grantee further acknowledges that if it makes, or causes to be made, a false claim or performs a prohibited act under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against Grantee. Nothing in this section or this Agreement may be construed as limiting or derogating from any authority granted the Oregon Attorney General under 180.750 to 180.785.
2. Grantee shall immediately report in writing, to the Agency, any credible evidence that a principal, employee, agent, or subcontractor of the Grantee, or any sub-grantee or other person, has made a false claim or committed a prohibited act under the Oregon False Claims Act, or has committed a criminal or civil violation of laws pertaining to fraud, bribery, gratuity, conflict of interest, or similar misconduct in connection with this Agreement or moneys paid by the Agency under this Agreement.
3. Grantee must include subsections (i) through (ii) of this section in each subcontract or sub grant the Grantee may award in connection with the performance of this Agreement. In doing so, the Grantee may not modify the terms of those subsections, except to identify the subcontractors or sub grantee that will be subject to those provisions.

j. Sensitive Information. Except for information that is already a matter of public record, Grantee shall not publish or otherwise disclose, except to Agency or as otherwise required by law, any information or data obtained hereunder from private individuals, organizations, or public agencies in a publication wherein the information or data furnished by or about any particular person or establishment can be identified, except with the written consent of such person or establishment. Unless otherwise required by law, information concerning the business of Agency, its financial affairs, and its relations with its clients and employees, as well as any other information that may be specifically classified as confidential by Agency, shall be kept confidential. Grantee shall instruct its employees and subcontractors to keep such information confidential by using the same care and discretion that they use with similar information that the Grantee designates as confidential.

k. Severability. If any term or provision of this 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 this Agreement did not contain the particular term or provision held to be invalid.

l. Assignment of Agreement, Successors in Interest. Grantee shall not assign or transfer any interest in this Agreement without the prior written approval of Agency. Any such assignment or transfer, if approved, is subject to such conditions and provisions, as Agency may deem necessary, including without limitation that Agency shall have reasonable access to the records and facilities of the assignee or transferee to the same extent as to the records and facilities of Grantee as described in Section 10 hereof. No approval by Agency of any assignment or transfer shall be deemed to create any obligation of Agency in addition to those set forth in this Agreement nor will Agency’s approval of an assignment or transfer relieve Grantee of any of its duties or obligations under this Agreement.

- m. Headings.** The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and shall not be used to construe the meaning of or to interpret this Agreement.
- n. Construction.** The parties agree and acknowledge that the rule of construction that ambiguities in a written agreement are to be construed against the party preparing or drafting the agreement shall not be applicable to the interpretation of this Agreement.
- o. Independent Contractors.** The parties agree and acknowledge that their relationship is that of independent contracting parties and that Grantee is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.
- p. Force Majeure.** Neither Agency nor Grantee shall be held responsible for delay or default caused by fire, civil unrest, natural causes or war which is beyond, respectively, the Agency's or Grantee's reasonable control. Each party shall, however, make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- q. Integration and Waiver.** This Agreement, including all Exhibits, 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 Agreement. The delay or failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision.
- r. Survival.** All provisions of this Agreement set forth in the following sections shall survive termination of this Agreement: Sections 10, 13.a, and any other provisions that by their terms are intended to survive termination of this Agreement.

Signatures on following page.

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

DESCHUTES COUNTY

By:

*(Signature of Printed Name below)*_____
*Printed Name*_____
*Title*_____
*Date***OREGON DEPARTMENT OF ENERGY**

By:

*Danae Hammitt, Designated Procurement Officer Date*_____
*Michael Williams, Assistant Director Date*_____
*Janine Benner, Director Date***Approved for Legal Sufficiency in accordance with ORS 291.047***Template approved per email from Patrick Rowe dated 3/28/23*
Assistant Attorney General

The remainder of the page is blank intentionally.

EXHIBIT A – PROJECT DESCRIPTION**Project Data**

Application ID	CG-02-184
Contact Name	Nick Lelack
Organization Name	Deschutes County
Organization Type	Public Body (County)
Project Type	Community Energy Planning Project OA #22-017
ODOE PA Number	#23-030

Project Scope Baseline

Project Address:	3800 SW Airport Way, Redmond, OR 97756
Geo Coordinates [Lat/Long]	44.23815, -121.18537

Project Site Ownership and/or Control Details:	Owned by County
--	-----------------

Project Planning Partners (List all)	n/a
--------------------------------------	-----

Anticipated Project Details

Generation System Nameplate Capacity (kW) (If known)	500 KW / 4,380,000 kWh per year (PV Solar) & 100 KW / 4,000kWh Min Storage Capacity (Energy Storage)
System Technologies	Solar, Energy Storage, Microgrid technologies, EV Charging
Resource Description	Solar capture
Operational Use Description	Solar PV grid-tied system with onsite energy storage controlled by a microgrid system with power diversion to onsite EV Chargers when not needed for water distribution but diverted primarily for water use during times of emergency. The system will provide power to a proposed development of a water well site, potable water filtration system, water storage system, emergency water fill stations, and electric vehicle charging stations at county Fair & Expo Center grounds (regional Emergency Operations Center).
Net-metered to Utility	Yes

Project Planning Schedule Baseline

Project Start Date (Est)	05/15/2023
Project Completion Date (Est)	09/30/2023

* Reference: [OAR 330-250-0080 \(2\)](#) & [OAR 330-250-0040 \(4\)\(a\)\(B\)](#)

Project Planning Budget Baseline

Total Planning Cost	\$ 108,000
Total Grants / Incentives / Other Funding	\$ 8,000 (Deschutes County)
Projected ODOE Grant Award	\$ 100,000
Total Funding	\$ 108,000

* Reference: [OAR 330-250-0080 \(2\)\(5\)\(a\)\(A-G\)](#) & [OAR 330-250-0050](#)

Program Equity Priorities & Project Benefits

Information contained below taken from Grantee's application.

Involvement of and leadership by members of Environmental Justice communities	
Located in an Environmental Justice community	X
Project will serve one or more Environmental Justice communities	X
Project policy for using DBEs, Emerging SMB &/or Minority-Veteran Owned Businesses	X
Project includes community outreach and stakeholder partnerships	X
Project includes an Equity Framework	
Project provides direct energy cost savings to local families and small businesses	
Project will increase Economic Development	
Project will create jobs	
Project include Inclusive Hiring and Promotion policies	X

* Reference: [OAR 330-250-0130 \(2\)\(6\)\(i\)](#)

Notes and Definitions:

EXHIBIT C – REPORTING FORMS**Quarterly Report Form**

Grant ID:**Grantee:****Quarterly Report**

Reviewed Project Data: Yes? No?

Reviewed Project Scope Baseline: Yes? No?

Reviewed Schedule Baseline: Yes? No?

Reviewed Budget Baseline: Yes? No?

Scope Status: Remains same/Changed

If changed, provide details:

Schedule Status: On time/Not on time

If not on time, provide information:

Has planning been completed: Yes/No

If planning has completed, provide planning completion date:

Budget Status: Under budget/over budget

If not under budget, provide information:

Comments:

Final Report Form

Grant No: ODOE PA #23-030

Grantee:

Final Report

1. Was the project completed as specified in the performance agreement? Y/N
2. If project has completed, provide project completion date:

Please upload the following documentation:

1. CPA verification letter, if the total Planning Costs are \$50,000 or more.
2. A copy of the plan completed under the performance agreement which must include a proposal for developing a community renewable energy project that provides at a minimum the following details:
 - A description of how consultation with the following groups was incorporated into the planning:
 - Members of qualifying communities served by the proposed community renewable energy project;
 - Businesses located in the communities served by the proposed community renewable energy project;
 - Electric utilities that have customers in the communities served by the proposed community renewable energy project; and
 - Other regional stakeholders.
 - A description of the project that includes the following information:
 - An assessment of the suitability of the site.
 - A detailed description of the project including type and quantity of equipment, how the system will integrate into existing site or building conditions and any additional work needed.
 - If the project is for generating renewable energy:
 - Technical specifications of the selected technology.
 - Nameplate capacity (KW) of the entire project.
 - Projected amount of net energy the project will generate, in KWh per year for electricity generation or Btu for other types of energy.
 - A renewable resource assessment demonstrating adequate renewable resource availability for the proposed system operations that includes the data collected to support the assessment and any assumptions made.
 - If the project is for energy storage:
 - Technical specifications of the selected technology.
 - Nameplate power storage capacity in KW.
 - Projected amount of net energy the project will supply, in KWh per year.
 - Duration the project will provide backup for selected purposes.
 - Proposed operational use cases for the energy storage project.
 - A project management plan that includes:
 - A detailed construction plan and project schedule.

- A description of who would manage the planning, construction, and system start-up.
 - If applicable, a description of the community resilience aspects of the project.
 - A project budget that includes:
 - The anticipated total project cost with an itemized list of costs.
- 3. If a description of how disadvantaged business enterprises, emerging small businesses, or businesses that are owned by minorities, women, or disabled veterans would be involved in the planning of the Project was provided in the application, please provide proof of their involvement or a statement of why they were not involved.
- 4. If they pay property taxes, proof that Grantee or owner of the proposed Project's location, if other than Grantee, is current on the property taxes for the Project's location.
- 5. An itemized list of the incurred costs associated with:
 - Consulting fees
 - Load Analysis
 - Siting, excluding property acquisition
 - Ensuring code compliance
 - Interconnection studies
 - Transmission studies
 - Other expenditures

Financial Summary

The Grant amount is initially calculated based on Grantee's estimate of the total Planning Costs. Agency will withhold the final payment of the estimated grant funds, up to 100 percent, until submission of the Final Report. Upon receipt of the Final Report, Agency will recalculate the Grant amount using actual Planning Costs, and Agency's disbursement of the Grant Monies may be reduced as a result. So that Agency may calculate the disbursement, provide the following information:

Actual Total Planning Cost: \$
(replaces the "Estimated Planning Cost" from Grantee's application)

Other Government Incentives & Grants Available: \$
(directly related to the Project; not including this Grant; identify source(s) and amount(s))

Prepared By: Name, Title
Date Prepared: MM/DD/YYYY

EXHIBIT D**Financial Reporting Guidance**

Promptly following completion of the project planning, the Grantee must submit an account of total Planning Costs that identifies all funding sources and includes all receipts, paid invoices, cancelled checks (if applicable), and bank loan or promissory note documentation. It should also include an itemized list of equipment and incurred Planning Costs. If they pay property taxes, Grantee must also provide proof that Grantee or owner of the Project location, if other than Grantee, is current on the property taxes for the Project's location. If the total Planning Costs are \$50,000 or more, Grantee must include an independent Certified Public Accountant's attestation to the validity and accuracy of the account. The following guidance is intended to help Grantee comply with these requirements.

A. Total Planning Costs (Grantee should provide this guidance to the Certified Public Accountant responsible for verifying cost and payments.)

"Planning costs" means the costs related to planning paid by an applicant described under Oregon Laws 2021, chapter 508, section 30.

To verify the total Planning Costs that received a Community Renewable Energy Program (CREP) grant from the Oregon Department of Energy, you must be a Certified Public Accountant with a current license who is **NOT** an employee or affiliate of the Grantee or a partner listed on the grant application.

Obtain the following documents to complete your verification:

- A copy of the Grantee's Performance Agreement (the project planning must comply with all conditions of the Performance Agreement).
- All receipts, paid invoices, cancelled checks (if applicable), and bank loan or promissory note documentation that pertains to planning the Project.
- A copy of the applicable Oregon Administrative Rules (OAR). The permanent rules related to Community Renewable Energy Program grants can be found here:
<https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=6901>

Verify and document the following information:

- The actual total Planning Costs (regardless of whether the costs are eligible for CREP grants).
- The actual total **eligible** Planning Costs. These are the costs that concur with the "Project Description" in the Performance Agreement and that are eligible costs according to [OAR 330-250-0050](#).
- The total amount of the payments made by the Grantee.
- An itemization of all financial incentives and grants received for planning the Project by the Grantee or any affiliate (e.g., utility incentives, Energy Trust of Oregon incentives, federal tax credits, grants, etc.).
- The planning completion date. This is the date on which the planning document was completed.
- The date the planning was paid for in full (paid outright or loan contracts were fully executed).

B. Property Tax Status. If they pay property taxes, provide proof that Grantee or owner of the proposed Project's location, if other than Grantee, is current on the property taxes for the Project's location. This can be provided in the form of a receipt or statement indicating no balance is due.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 9, 2023

SUBJECT: Oregon Health Authority grant amendment #173133-10

RECOMMENDED MOTION:

Move approval of Board signature of Document No. 2023-728 to accept additional funding from the Oregon Health Authority and extend the term of an intergovernmental agreement.

BACKGROUND AND POLICY IMPLICATIONS:

Oregon Health Authority (OHA) amendment #173133-10 extends the term of Intergovernmental Agreement (IGA) #173133 to December 31, 2023 and awards \$3,425,925.04 funding for the July 1, 2023 through December 31, 2023.

In December 2021, the Board of County Commissioners (BOCC) approved OHA IGA #173133, which outlines the services and financing of Community Mental Health, Addiction Treatment, Recovery & Prevention, and Problem Gambling Services for January 1, 2022 to December 31, 2022. In February 2023, the BOCC approved IGA #173133-7 which extended the term of the original agreement through June 30, 2023. This amendment, IGA 173133-10, extends the term another 6 months to December 31, 2023.

Funding provided in this amendment, #10, is \$1,337,278 less when compared to funding provided for the previous six-month period (amendments #7 through #9), due to the following changes:

PREVIOUS 6-MONTH AWARD TOTAL	\$4,763,203
SE 17 - Community & Residential Assistance - Removed in #10 erroneous over estimate	-874,205
SE 04 - Aid and Assist - Added in #10 - These funds were previously awarded in a separate IGA	107,695
SE 25 - Community Crisis Services - Removed in #10 - One time ARPA funding	-428,569
SE 80 - Problem Gambling Prevention - Removed in #10 - One time inflation funding	-13,335
SE 84 - Problem Gambling Outreach - Removed in #10 - One time inflation funding	-6,000
SE 25 - Community Crisis Services - Seeking clarification from OHA, but in-line with expectation at time FY 24 budget was drafted	-96,614
SE 26 - Non-residential MH for Youth & Young Adults - Seeking clarification from OHA, but in-line with expectation at time FY 24 budget was drafted	-26,250
TOTAL - Agreement #173133-10	3,425,925
Difference from previous 6 month award	-1,337,278

BUDGET IMPACTS:

\$3,425,925.04 revenue through December 2023.

ATTENDANCE:

Holly Harris, Deputy Director, Health Services

Cheryl Smallman, Health Services Business Officer

In compliance with the Americans with Disabilities Act, this document is available in alternate formats such as Braille, large print, audio recordings, Web-based communications and other electronic formats. To request an alternate format, please send an e-mail to dhs-oha.publicationrequest@state.or.us or call 503-378-3486 (voice) or 503-378-3523 (TTY) to arrange for the alternative format.

**TENTH AMENDMENT TO
OREGON HEALTH AUTHORITY
2022 INTERGOVERNMENTAL AGREEMENT FOR THE FINANCING OF
COMMUNITY MENTAL HEALTH, ADDICTION TREATMENT, RECOVERY, &
PREVENTION, AND PROBLEM GAMBLING SERVICES AGREEMENT #173133**

This Tenth Amendment to Oregon Health Authority 2022 Intergovernmental Agreement for the Financing of Community Mental Health, Addiction Treatment, Recovery, & Prevention, and Problem Gambling Services effective as of January 1, 2022 (as amended, the “Agreement”), is entered into, as of the date of the last signature hereto, by and between the State of Oregon acting by and through its Oregon Health Authority (“OHA”) and **Deschutes County** (“County”).

RECITALS

WHEREAS, OHA and County wish to extend the Financial Assistance Award through June 30, 2023 and amend the Agreement as follows.

AGREEMENT

1. This Amendment, when fully executed by every party, regardless of the date of execution by every party, shall become effective on the date this Amendment has been approved by the Department of Justice or June 30, 2023, whichever date is later per the authority under OAR 125-247-0288, and shall be governed by the terms and conditions herein, and such expenses incurred by Recipient may be reimbursed once this Agreement is effective in accordance with the schedule of payments in Exhibit C, “Financial Assistance Award”. Unless extended or terminated earlier in accordance with its terms, this Agreement shall expire on **December 31, 2023**. Agreement termination shall not extinguish or prejudice OHA’s right to enforce this Agreement with respect to any default by Recipient that has not been cured. **All references to the expiration date of June 30, 2023 in this Agreement shall be amended to December 31, 2023.**

2. The financial and service information in the Financial Assistance Award are hereby amended as described in Attachment 1 attached hereto and incorporated herein by this reference. Attachment 1 must be read in conjunction with the portion of Exhibit C of the Agreement that describes the effect of an amendment of the financial and service information.
3. Capitalized words and phrases used but not defined herein shall have the meanings ascribed thereto in the Agreement.
4. County represents and warrants to OHA that the representations and warranties of County set forth in section 4 of Exhibit F of the Agreement are true and correct on the date hereof with the same effect as if made on the date hereof.
5. Except as amended hereby, all terms and conditions of the Agreement remain in full force and effect.
6. This Amendment may be executed in any number of counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Amendment so executed shall constitute an original.

The remainder of this page is intentionally blank

IN WITNESS WHEREOF, the parties hereto have executed this amendment as of the dates set forth below their respective signatures.

7. Signatures.

Deschutes County

By:

Authorized Signature

Printed Name

Title

Date

State of Oregon acting by and through its Oregon Health Authority

By:

Authorized Signature

Printed Name

Title

Date

Approved by: Director, OHA Health Systems Division

By:

Authorized Signature

Printed Name

Title

Date

Approved for Legal Sufficiency:

Approved by Joseph Callahan, Assistant Attorney General, on June 06, 2023; e-mail in agreement file.

Attachment 1

EXHIBIT C
Financial Pages

MODIFICATION INPUT REVIEW REPORT													
MOD#: A0115													
CONTRACT#: 173133				CONTRACTOR: DESCHUTES COUNTY									
INPUT CHECKED BY: _____				DATE CHECKED: _____									
SE#	FUND	PROJ	CPMS	PROVIDER	EFFECTIVE	SLOT	RATE	OPERATING	STARTUP PART	PART	PAAF	CLIENT	SP#
		CODE			DATES	CHANGE/TYPE		DOLLARS	DOLLARS ABC	IV	CD	BASE	CODE
FISCAL YEAR: 2023-2024													
BASEAD				DESCHUTES CO.									
63	420	-0-			7/1/2023 -12/31/2023	0 /NA	\$0.00	\$26,700.47	\$0.00	A	1	Y	
BASEAD				DESCHUTES CO.									
63	421	-0-			7/1/2023 -12/31/2023	0 /NA	\$0.00	\$11,608.90	\$0.00	A	1	Y	
BASEAD				DESCHUTES CO.									
63	450	-0-			7/1/2023 -12/31/2023	0 /NA	\$0.00	\$19,735.13	\$0.00	A	1	Y	
TOTAL FOR SE# 63								\$58,044.50	\$0.00				
BASEAD				DESCHUTES CO.									
66	420	-0-			7/1/2023 -12/31/2023	0 /NA	\$0.00	\$3,949.42	\$0.00	A	1	Y	1
BASEAD				DESCHUTES CO.									
66	421	-0-			7/1/2023 -12/31/2023	0 /NA	\$0.00	\$3,725.25	\$0.00	A	1	Y	1
BASEAD				DESCHUTES CO.									
66	450	-0-			7/1/2023 -12/31/2023	0 /NA	\$0.00	\$95,624.10	\$0.00	A	1	Y	1
BASEAD				DESCHUTES CO.									
66	520	-0-			7/1/2023 -12/31/2023	0 /NA	\$0.00	\$92,505.51	\$0.00	A	1	Y	1
TOTAL FOR SE# 66								\$200,804.28	\$0.00				
GAMBL				DESCHUTES CO.									
80	888	-0-			7/1/2023 -12/31/2023	0 /NA	\$0.00	\$102,233.00	\$0.00	A	1	Y	
TOTAL FOR SE# 80								\$102,233.00	\$0.00				
GAMBL				DESCHUTES CO.									
84	888	-0-			7/1/2023 -12/31/2023	0 /NA	\$0.00	\$46,000.00	\$0.00	A	1	Y	
TOTAL FOR SE# 84								\$46,000.00	\$0.00				
TOTAL FOR 2023-2024								\$407,081.78	\$0.00				
TOTAL FOR A0115 173133								\$407,081.78	\$0.00				

Financial Pages

OREGON HEALTH AUTHORITY Financial Assistance Award Amendment (FAAA)

CONTRACTOR: DESCHUTES COUNTY
DATE: 07/13/2023

Contract#: 173133
REF#: 011

REASON FOR FAAA (for information only):

Payments provided through this Financial Assistance Agreement (FAA) are subject to the 2023-2025 Legislative Approved Budget (LAB) for Oregon Health Authority, as allocated for the 2023-2025 biennia, at the level proposed for the (continuing service level or "CSL"). This FAA may require modification by written amendment to reflect actual changes in funding amounts, or by administrative amendment (memo) provided that such administrative amendment is only used to change fund source coding and not the amount of funding.

The following special condition(s) apply to funds as indicated by the special condition number in column 9. Each special condition set forth below may be qualified by a full description in the Financial Assistance Award.

A0115 1 These funds must result in the delivery of A&D 66 Services to a minimum of 334 unduplicated individuals receiving outpatient Services and enrolled in the MOTS system on or after January 1, 2022. Up to 20% of 334 can be provided as Prevention, Education, and Outreach to non-enrolled individuals. Cases without evidence of treatment engagement in the clinical record do not count toward the service delivery requirement, except as listed above for Prevention, Education, and Outreach. Report of Prevention, Education, and Outreach must be submitted annually on the form located at <https://www.oregon.gov/OHA/HSD/AMH/Pages/federal-reporting.aspx> Under delivery of Services subject to this financial assistance may result in recovery of funds at the rate of \$1200 per individual.

MODIFICATION INPUT REVIEW REPORT

MOD#: M0737

CONTRACT#: 173133

CONTRACTOR: DESCHUTES COUNTY

INPUT CHECKED BY: _____

DATE CHECKED: _____

SE#	FUND	PROJ CODE	CPMS PROVIDER	EFFECTIVE DATES	SLOT CHANGE/TYPE	RATE	OPERATING DOLLARS	STARTUP PART DOLLARS ABC	PART IV	PAAF CD	BASE	CLIENT CODE	SP#
FISCAL YEAR: 2023-2024													
1	804	BASE	SYSTEM MANAGEMENT AN										
1	804	MHS01	7/1/2023 - 12/31/2023	0	/NA	\$0.00	\$34,817.42	\$0.00	A	1	Y		
1	804	BCIVLM	SYS MGT CO-12TH ST	7/1/2023 - 12/31/2023	0	/NA	\$4,327.59	\$26,325.54	\$0.00	A	1	Y	1
1	804	BCIVLM	SYS MGT CO-DESCHUTES	7/1/2023 - 12/31/2023	0	/NA	\$9,053.00	\$54,318.00	\$0.00	A	1	Y	3
1	804	BCIVLM	SYS MGT CO-EDGECLIFF	7/1/2023 - 12/31/2023	0	/NA	\$4,327.59	\$26,325.54	\$0.00	A	1	Y	2
1	804	BPSRPM	SYS MGT CO-DESCHUTES	7/1/2023 - 12/31/2023	0	/NA	\$9,053.00	\$54,318.00	\$0.00	A	1	Y	3
TOTAL FOR SE# 1							\$196,104.51	\$0.00					
4	804	BASE	AID & ASSIST PROJECT										
4	804	AAP	7/1/2023 - 12/31/2023	0	/NA	\$0.00	\$164,627.77	\$0.00	A	1	Y		
TOTAL FOR SE# 4							\$164,627.77	\$0.00					
5	804	BASE	ASSERTIVE COMMUNITY										
5	804	MHACT	7/1/2023 - 12/31/2023	0	/NA	\$0.00	\$92,424.49	\$0.00	A	1	Y		
TOTAL FOR SE# 5							\$92,424.49	\$0.00					
9	406	BASE	NI JAIL DIVERSION										
9	406	NIJAIL	7/1/2023 - 12/31/2023	0	/NA	\$0.00	\$165,404.34	\$0.00	A	1	Y		
9	804	BASE	JAIL DIVERSION										
9	804	JAIL	7/1/2023 - 12/31/2023	0	/NA	\$0.00	\$50,596.30	\$0.00	A	1	Y		
TOTAL FOR SE# 9							\$216,000.64	\$0.00					
10	411	BASE	NI MH PROMO AND PREV										
10	411	NIMHPP	7/1/2023 - 12/31/2023	0	/NA	\$0.00	\$68,666.66	\$0.00	A	1	Y		
10	804	BASE	NI MH PROMO AND PREV										
10	804	NIMHPP	7/1/2023 - 12/31/2023	0	/NA	\$0.00	\$3,037.30	\$0.00	A	1	Y		
TOTAL FOR SE# 10							\$71,703.96	\$0.00					
12	804	BASE	RENTAL ASSISTANCE										
12	804	RNTAST	7/1/2023 - 12/31/2023	0	/NA	\$0.00	\$124,260.98	\$0.00	A	1	Y		
12	804	BASE	RENTAL ASSISTANCE										

MODIFICATION INPUT REVIEW REPORT

MOD#: M0737

CONTRACT#: 173133

CONTRACTOR: DESCHUTES COUNTY

INPUT CHECKED BY: _____ DATE CHECKED: _____

SE#	FUND	PROJ CODE	CPMS PROVIDER	EFFECTIVE DATES	SLOT CHANGE/TYPE	RATE	OPERATING DOLLARS	STARTUP PART DOLLARS ABC	PART IV	PAAF CD	BASE	CLIENT CODE	SP#
FISCAL YEAR: 2023-2024													
12	804		RNTAST	7/1/2023 - 12/31/2023	30 /SLT	\$0.00	\$145,080.00	\$0.00	C	1	Y		6
TOTAL FOR SE# 12							<u>\$269,240.98</u>	<u>\$0.00</u>					
15	411		NI YOUNG ADULT HUB P	7/1/2023 - 12/31/2023	0 /NA	\$0.00	\$129,780.00	\$0.00	A	1	Y		
15	804		NI YOUNG ADULT HUB	7/1/2023 - 12/31/2023	0 /NA	\$0.00	\$5,246.66	\$0.00	A	1	Y		
15	806		NI YOUNG ADULT HUB P	7/1/2023 - 12/31/2023	0 /NA	\$0.00	\$2,400.00	\$0.00	A	1	Y		
TOTAL FOR SE# 15							<u>\$138,026.66</u>	<u>\$0.00</u>					
17	804		INVOICE SERVICES	7/1/2023 - 12/31/2023	0 /NA	\$0.00	\$130,295.00	\$0.00	C	1	Y		4
TOTAL FOR SE# 17							<u>\$130,295.00</u>	<u>\$0.00</u>					
20	301		CMHS MH BLOCK GRANT	7/1/2023 - 12/31/2023	0 /NA	\$0.00	\$101,442.75	\$0.00	A	1	Y		
20	804		NON-RESIDENTIAL MENT	7/1/2023 - 12/31/2023	0 /NA	\$0.00	\$264,735.60	\$0.00	A	1	Y		
TOTAL FOR SE# 20							<u>\$366,178.35</u>	<u>\$0.00</u>					
24	804		ACUTE AND INTERMEDIA	7/1/2023 - 12/31/2023	0 /NA	\$0.00	\$226,605.49	\$0.00	A	1	Y		
TOTAL FOR SE# 24							<u>\$226,605.49</u>	<u>\$0.00</u>					
25	406		CRISIS AND ACUTE TRA	7/1/2023 - 12/31/2023	0 /NA	\$0.00	\$3,977.50	\$0.00	A 25A	1	Y		
25	406		COMMUNITY CRISIS SER	7/1/2023 - 12/31/2023	0 /NA	\$0.00	\$136,753.09	\$0.00	A	1	Y		
25	804		CRISIS AND ACUTE TRA	7/1/2023 - 12/31/2023	0 /NA	\$0.00	\$61,802.25	\$0.00	A 25A	1	Y		
25	804		COMMUNITY CRISIS SER	7/1/2023 - 12/31/2023	0 /NA	\$0.00	\$514,452.12	\$0.00	A	1	Y		
25	815		CRISIS AND ACUTE TRA	7/1/2023 - 12/31/2023	0 /NA	\$0.00	\$108,089.25	\$0.00	A 25A	1	Y		

MODIFICATION INPUT REVIEW REPORT

MOD#: M0737

CONTRACT#: 173133

CONTRACTOR: DESCHUTES COUNTY

INPUT CHECKED BY: _____ DATE CHECKED: _____

SE#	FUND	PROJ CODE	CPMS PROVIDER	EFFECTIVE DATES	SLOT CHANGE/TYPE	RATE	OPERATING DOLLARS	STARTUP PART DOLLARS ABC	PART IV	PAAF CD	BASE	CLIENT CODE	SF#
FISCAL YEAR: 2023-2024													
TOTAL FOR SE# 25							\$815,074.21	\$0.00					
CMHS EARLY ASSESSMENT AN													
26	301	EASA	7/1/2023 - 12/31/2023	0	/NA	\$0.00	\$43,632.00	\$0.00	A 26A	1	Y		
BASE EARLY ASSESSMENT AN													
26	804	EASA	7/1/2023 - 12/31/2023	0	/NA	\$0.00	\$165,187.25	\$0.00	A 26A	1	Y		
TOTAL FOR SE# 26							\$208,819.25	\$0.00					
BPSRM PSRB DESIG CLIENT													
30	804	PSRB	7/1/2023 - 12/31/2023	13	/SLT	\$465.27	\$37,896.31	\$0.00	A	1	Y		
TOTAL FOR SE# 30							\$37,896.31	\$0.00					
BASE GERO SPECIALISTS													
35	804	GERO	7/1/2023 - 12/31/2023	0	/NA	\$0.00	\$5,037.50	\$0.00	A 35A	1	Y		
TOTAL FOR SE# 35							\$5,037.50	\$0.00					
BASE SUPPORTED EMPLOYMENT													
38	406	SUPEMP	7/1/2023 - 12/31/2023	0	/NA	\$0.00	\$30,095.75	\$0.00	A	1	Y		
TOTAL FOR SE# 38							\$30,095.75	\$0.00					
BASE PATH GRANT													
39	313	PATH	7/1/2023 - 12/31/2023	0	/NA	\$0.00	\$48,468.50	\$0.00	A	1	Y		5
BASE PATH GRANT													
39	804	PATH	7/1/2023 - 12/31/2023	0	/NA	\$0.00	\$2,143.89	\$0.00	A	1	Y		5
TOTAL FOR SE# 39							\$50,612.39	\$0.00					
TOTAL FOR 2023-2024							\$3,018,843.26	\$0.00					
TOTAL FOR M0737 173133							\$3,018,843.26	\$0.00					

OREGON HEALTH AUTHORITY
Financial Assistance Award Amendment (FAAA)

CONTRACTOR: DESCHUTES COUNTY
DATE: 07/14/2023

Contract#: 173133
REF#: 012

REASON FOR FAAA (for information only):

Payments provided through this Financial Assistance Agreement (FAA) are subject to the 2023-2025 Legislative Approved Budget (LAB) for Oregon Health Authority, as allocated for the 2023-2025 biennia, at the level proposed for the (continuing service level or "CSL"). This FAA may require modification by written amendment to reflect actual changes in funding amounts, or by administrative amendment (memo) provided that such administrative amendment is only used to change fund source coding and not the amount of funding.

The following special condition(s) apply to funds as indicated by the special condition number in column 9. Each special condition set forth below may be qualified by a full description in the Financial Assistance Award.

- M0737 1A) The financial assistance subject to this special condition is awarded for system management and coordination of Services in the Mental Health Services Program Area. If County terminates its obligation to include this Program Area under this Agreement, OHA shall have no obligation, after the termination, to pay or disburse to County financial assistance subject to this special condition. B) These funds are for MHS 1 at 12th Street RTH.
- M0737 2A) The financial assistance subject to this special condition is awarded for system management and coordination of Services in the Mental Health Services Program Area. If County terminates its obligation to include this Program Area under this Agreement, OHA shall have no obligation, after the termination, to pay or disburse to County financial assistance subject to this special condition. B) These funds are for MHS 1 at Edgecliff House RTH.
- M0737 3A) The financial assistance subject to this special condition is awarded for system management and coordination of Services in the Mental Health Services Program Area. If County terminates its obligation to include this Program Area under this Agreement, OHA shall have no obligation, after the termination, to pay or disburse to County financial assistance subject to this special condition. B) These funds are for MHS 1 at Deschutes Recovery Center SRIF.
- M0737 4A) These funds are for MHS 17, which encompasses Invoice Services found in service elements 26, 27, 28, 30, 34 and 36 from 07/01/2023 to 12/31/2023 with Part C. B) For Services delivered

OREGON HEALTH AUTHORITY
Financial Assistance Award Amendment (FAAA)

CONTRACTOR: DESCHUTES COUNTY
DATE: 07/14/2023

Contract#: 173133
REF#: 012

to individuals, financial assistance awarded to County shall be disbursed to County and expended by County in accordance with and subject to the residential rate on the date of service delivery based upon the rate schedule found at www.oregon.gov/OHA/HSD/OHP/Pages/Fee-Schedule.aspx and incorporated into this Agreement by reference that is effective as of the effective date of this Agreement unless a new rate schedule is subsequently incorporated by amendment. Any expenditure by County in excess of the authorized rates as set forth www.oregon.gov/OHA/HSD/OHP/Pages/Fee-Schedule.aspx may be deemed unallowable and subject to recovery by OHA in accordance with the terms of this Agreement.

- M0737 5A) These funds may only be used in accordance with federal regulations related to Projects For Assistance In Transition From Homelessness (PATH) grant. B) Providers of MHS 39 Services shall conduct outreach to a minimum of 85 adult individuals including outreach to a minimum of 170 PATH-Eligible consumers between 07/01/2023 to 12/31/2023.
- M0737 6 These funds are for MHS 12 Services. B) The funds subject to this special condition will be disbursed to Contractor upon receipt of quarterly invoices from 7/1/2023-12/31/2023.

Certificate Of Completion

Envelope Id: 06EC371F48A847059EF499370E4D7084

Status: Sent

Subject: 173133-10 Deschutes County

Source Envelope:

Document Pages: 10

Signatures: 0

Envelope Originator:

Certificate Pages: 5

Initials: 0

Larry Briggs

AutoNav: Enabled

Larry.O.Briggs@odhsoha.oregon.gov

Enveloped Stamping: Enabled

IP Address: 209.112.106.2

Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Record Tracking

Status: Original

Holder: Larry Briggs

Location: DocuSign

7/17/2023 10:31:55 AM

Larry.O.Briggs@odhsoha.oregon.gov

Security Appliance Status: Connected

Pool: StateLocal

Storage Appliance Status: Connected

Pool: Carahsoft OBO Oregon Health Authority - CLM Location: DocuSign

Signer Events**Signature****Timestamp**Security Level: Email, Account Authentication
(None)**Electronic Record and Signature Disclosure:**
Not Offered via DocuSign

Jon Collins

JON.C.COLLINS@dhsoha.state.or.us

Security Level: Email, Account Authentication
(None)**Electronic Record and Signature Disclosure:**
Not Offered via DocuSign

Shawna McDermott

Shawna.m.Mcdermott@oha.oregon.gov

Security Level: Email, Account Authentication
(None)**Electronic Record and Signature Disclosure:**
Accepted: 7/17/2023 10:38:11 AM
ID: f4d750ad-5527-406d-838b-c30b48414427**In Person Signer Events****Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp**

Grace Evans

grace.evans@deschutes.org

Contract Specialist

Deschutes County Health Services

Security Level: Email, Account Authentication
(None)

Sent: 7/17/2023 10:34:43 AM

Viewed: 7/17/2023 1:38:58 PM

Electronic Record and Signature Disclosure:
Accepted: 9/22/2021 9:13:25 AM
ID: 1c2f1b1a-bce9-4e77-a9ac-00927d21eb03**Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp**

Carbon Copy Events	Status	Timestamp
HSD In HSD.Contracts@odhsoha.oregon.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign Shawn Kintner shawn.Kintner@oha.oregon.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	7/17/2023 10:34:43 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, Carahsoft OBO Oregon Health Authority - CLM (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Carahsoft OBO Oregon Health Authority - CLM:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: mick.j.mitchell@dhsosha.state.or.us

To advise Carahsoft OBO Oregon Health Authority - CLM of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at mick.j.mitchell@dhsosha.state.or.us and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from Carahsoft OBO Oregon Health Authority - CLM

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to mick.j.mitchell@dhsosha.state.or.us and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with Carahsoft OBO Oregon Health Authority - CLM

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;

ii. send us an email to mick.j.mitchell@dhsosha.state.or.us and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

By selecting the check-box next to ‘I agree to use electronic records and signatures’, you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Carahsoft OBO Oregon Health Authority - CLM as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Carahsoft OBO Oregon Health Authority - CLM during the course of your relationship with Carahsoft OBO Oregon Health Authority - CLM.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 9, 2023

SUBJECT: First reading of a revised ordinance amending Deschutes County Code relative to camping and other sleeping associated activity on public property

RECOMMENDED ACTION:

Move new first reading of Ordinance No. 2023-013 providing amendments to Deschutes County Code section 11.04, including a new subsection 11.04.065.

BACKGROUND AND POLICY IMPLICATIONS:

On July 26, 2023, the Board concluded deliberations and approved first reading of Ordinance No. 2023-013. Since that time, County Legal has prepared further revisions to include new subsection 11.04.065. The purpose of this new subsection is to expressly provide that Deschutes County Code section 11.04 can apply, where authorized by written agreement with another public jurisdiction, to federal, state and/or city property.

Because of the substantive impact of this new subsection, a new first reading is required. The new section 11.04.065 reads:

11.04.065 Extra-Jurisdictional Application

Where authorized by written agreement between Deschutes County and the appropriate federal, state and/or city representatives, this section 11.04 is applicable to specifically identified federal, state and/or city property located within unincorporated Deschutes County upon such terms, conditions and limitations stated therein.

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 Title 11.04, Public Use, of
the Deschutes County Code.

*
*
*

ORDINANCE NO. 2023-013

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, upon direction from the Board of Commissioners, County Legal drafted revisions to DCC 11.04 to specifically address homeless camping issues raised by the Sheriff at a public work session on June 7, 2023; and

WHEREAS, the Board of County Commissioners of Deschutes County considered this matter at a duly noticed public hearing during the Board meeting on July 19, 2023, and determined that DCC 11.04 should be amended; now therefore,

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

Section 1. AMENDMENT. DCC 11.04 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 takes effect 90 days after second reading.

///

Dated this _____ of _____, 2023

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON_____
ANTHONY DeBONE, Chair_____
PATTI ADAIR, Vice Chair

ATTEST:

Recording Secretary_____
PHIL CHANG, Commissioner

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

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

CommissionerYesNoRecord of Adoption Vote
Abstained Excused

Patti Adair

Phil Chang

Anthony DeBone

Effective date: _____ day of _____, 2023.

EXHIBIT A

(To Ordinance No. 2023-013)

CHAPTER 11.04 PUBLIC USE

11.04.010 Purpose

11.04.020 Definitions

11.04.030 Policies

11.04.040 Justice Building; Searches

11.04.050 Road Closures

11.04.060 Prohibited Activities

11.04.070 Alienation

11.04.080 Violation; Penalty

11.04.010 Purpose

Public use regulations are adopted for the purpose of protecting public property.

HISTORY

Adopted by Ord. 96-013 §1 on 5/22/1996

11.04.020 Definitions

For the purposes of DCC 11.04, unless otherwise apparent from the context, certain words and phrases used in DCC 11.04 are defined and as set forth in DCC 1.04 and DCC 11.04.020.

"Alternate shelter" means an outdoor location that provides access for sleeping and/or camping through the use of a vehicle, a recreational vehicle, a tent, or some other structure which offers some protection from the outdoor elements, provided that any alternate shelter shall not be located: (1) in a manner that will create a physical impediment to emergency or nonemergency ingress, egress or access to public or private property, including but not limited to driveways, sidewalks and entrances or exits from buildings and/or other real property; and/or (2) within 1000 feet of a school or public park;

"Bed" means an item(s) utilized for sleeping.

"Bedding" means the collective term for the articles which compose a bed.

"Camping" means any form of sleeping or use of a bed, to include bedding materials, whether outdoors or through use of a vehicle, recreational vehicle, tent or other structure which can offer some protection from the outdoor elements.

"Campsite" means the location where camping is occurring.

"Industrial land" means any County-owned real property zoned for industrial, commercial, manufacturing, research and development or warehousing purposes as authorized.

"Park" means any County owned real property designated by resolution of the Board as a County park, pursuant to ORS 275.320.

"Parking lot" means an area consisting of one or more parking spaces grouped.

"Program Administrator" means the Board, the County Property and Real Estate Manager, Deschutes County department head or designees.

"Public places" means County-owned or controlled real property that is open and available for use by the public. It does not include "vacant county land" or any County-owned or controlled real property designated by the County Administrator as not open for public use, or as use limited.

"Public service facility" means any real property that is owned or leased by County where public services are provided or conducted and shall include, but not be limited to, buildings, facilities, or real property which is fenced, enclosed or otherwise developed and any associated grounds.

"Right of way" means the area between the boundary lines of a street, road or other public easement.

"Shelter" means an indoor location that provides access for sleeping.

"Sleeping" means sitting, lying and/or employing rudimentary forms of protection from outdoor elements.

"Vacant county land" means all County owned land which does not qualify as a "public place," "public service facility," "park" or "right of way." Unless specifically authorized by Order of the Board of Commissioners, sleeping, camping, taking shelter or taking alternate shelter is at all times prohibited on vacant county land.

HISTORY

Adopted by Ord. 96-013 §1 on 5/22/1996

Amended by Ord. 2023-013 §1 on 8/23/2023

11.04.030 Policies

- A. Real Property. Except as otherwise provided in this section 11.04, pPublic use of County-owned or controlled real property, not including vacant county land, shall be limited to day use (dawn to dusk) except as permitted herein or otherwise permitted by adoption of resolution of the Board.
 1. Any County owned real property leased by authority of the Board of Commissioners to other public agencies or private parties shall be governed by the terms and provisions of such leases.
 2. County-owned or controlled real property may be posted closed, not open for public use, or use limited, upon direction of ~~by~~ the County Administrator, County Property Manager, Director of Road Department, Director of Solid Waste, or Risk Manager.
 3. County shall not accept conveyance or transfer of real property except upon recording of a written acceptance from the Board of Commissioners.
 4. Exclusive or other special use of County-owned or controlled real property by private entities or other agencies shall only be granted pursuant to a written lease or license authorized by the Board of Commissioners.
- B. County Owned/Occupied Buildings. The open common areas of County public service facilities and other buildings occupied by County employees are open to members of the public who have

business with County employees. However, these buildings are also places where County employees do their work. That work often involves sensitive and confidential issues. County employees require work areas that are quiet, free from unnecessary foot traffic and where they may discuss sensitive or confidential matters without being overheard by persons not employed by the County.

1. Each department or other program occupying a building shall where feasible, establish a waiting area which is, to the extent possible, located near the department or program receptionist and outside the department's or program's work area. Members of the public are to wait in this area until the person they are waiting to see is available. Each waiting area shall be clearly posted as such.
2. Areas other than open common areas and designated waiting areas are open to visitors by invitation only. County department heads and staff are responsible for their offices, and may request (or order) visitors to leave their offices at their discretion. County department heads and department support staff supervisors are responsible for support staff work areas, and may, in their discretion, ask visitors to leave those areas.

C. Public Service Facilities.

Public service facilities which provide services beyond the hours of dawn to dusk shall operate in a manner deemed appropriate by the Program Administrator. Public access may be restricted by the Program Administrator, on the basis of public safety or administrative efficiency to those areas deemed by the Program Administrator to be necessary for provision of the intended services.

D. Parking Lots

1.

2. County parking lots may be posted with time and use restrictions, and unless otherwise posted, are not available for overnight use, to include but not limited to sleeping, camping or taking alternate shelter. Violations may be cited as authorized by this section 11.04, by the Facilities Director or County Administrator designee. The recommended penalty for the citation of violation of DCC 11.04 shall be 35 dollars, which shall double each 24 hours up to four days, and which may be paid as a bail for forfeiture. If not paid at that time, a warrant may be issued by the Circuit Court to the violator.

HISTORY

Adopted by Ora. 96-013 §1 on 5/22/1996

Amended by Ord. 2020-005 §1 on 1/1/2021

Amended by Ord. 2023-013 §1 on 8/23/2023

11.04.040 Justice Building; Searches

Except for on-duty law enforcement personnel, and individually designated county staff, every person entering through the public entrances of the Courthouse facility, District Attorney facility, Community and Juvenile Justice facilities, and all other Deschutes County Justice / Law Enforcement facilities,

including any annex thereto, is subject to search of his or her possessions and must pass through metal detectors.

HISTORY

Adopted by Ord. 97-046 §1 on 6/4/1997

Amended by Ord. 2020-005 §1 on 1/1/2021

11.04.050 Road-Property Closures

Where ~~vacant c~~County ~~land~~property, not generally open for public use, is or has been used by automobiles, motorcycles and other off-road vehicles or bicycles for recreation, or for other purposes including sleeping, camping, or taking alternate shelter as defined in this section 11.04, and the County has a need to close ~~and discontinue~~ the property to ~~these is~~ uses, the County will notify the general public of the intent to close in a local paper of general circulation in addition to the notification procedures outlined in applicable County Encampment Removal Policy-. The design of ~~and~~ the closure shall be in accordance with applicable County Encampment Removal Policy and also the requirements of the Manual on Uniform Traffic Control Devices, published by the Federal Highway Administration, in terms of signing and barricading. Any person who refuses to leave after implementation of applicable County Encampment Removal Policy may be cited/charged as authorized by this section 11.04. Permanent closures ~~shall may, to the extent directed by the County Administrator~~, consist of appropriate berms, ditches and obliteration of existing roads. The closure design shall be in written form and approved by the County Engineer or County Traffic Engineer. In no case shall ropes or cables be used to close the road or area.

HISTORY

Adopted by Ord. 96-013 §1 on 5/22/1996

Amended by Ord. 2023-013 §1 on 8/23/2023

11.04.060 Prohibited Activities

- A. Excepting for site-specific authorization by Order of the Board of Commissioners, nNo person shall construct, install, ~~or~~ encroach, sleep, camp, or obtain shelter or alternate shelter upon County-owned or controlled real property~~land~~.
- A.B. No person shall sever, excavate, damage, vandalize, burn, litter, remove materials from or cause other site disturbing activity upon or to County-owned or controlled real property~~land~~ without obtaining an appropriate permit or license authorizing such activity, from the ~~Board~~, Property Manager, Director of Road Department or Director of Solid Waste. Open fires are strictly prohibited at all times on County-owned or controlled real property.
- B.C. No person shall cut or remove wood vegetation or trees on or from County-owned or controlled real property except upon first obtaining a wood cutting permit from the County Property Manager or County Forester.
- C.D. Excepting for site-specific authorization by Order of the Board of Commissioners, mMotor vehicles (operable and inoperable), including but not limited to R.V's, trailers and personal use vehicles, shall be limited to existing parking lots during business hours, (subject to time, place

~~and manner regulations, if any, as posted)~~ and operation on established roads. Motor vehicles are prohibited on dedicated public pedestrian/bicycle trails.

~~D.E.~~ Discharge of firearms is prohibited in and on public service facilities and County-owned or controlled real property except as may be provided by Orderresolution of the Board of Commissioners.

~~E.F.~~ No person or group shall exclude any other member of the public from County-owned or controlled real property that is open for public use~~and~~, except as provided by lease, license or Orderresolution ofby the Board of Commissioners.

~~F.G.~~ No person shall engage in any conduct in or on property where public services are provided which hinders, interferes with or prevents those employees from performing their duties.

H. No person shall smoke or carry any lighted or electronic smoking instrument in any Deschutes County-owned, controlled or occupied building, except as permitted by the Deschutes County Smoke Free Policy.

~~G.I.~~ No person shall discharge or dump any sewage or wastewater from baths, sinks and showers on or adjacent to County-owned or controlled real property.

~~J.K.~~ No person shall cause or contribute to the accumulation of solid waste materials on County-owned or controlled real property.

HISTORY

Adopted by Ord. 96-013 §1 on 5/22/1996

Amended by Ord. 97-057 §1 on 10/8/1997

Amended by Ord. 2020-005 §1 on 1/1/2021

Amended by Ord. 2023-013 §1 on 8/23/2023

11.04.065 Extra-Jurisdictional Application

Where authorized by written agreement between Deschutes County and the appropriate federal, state and/or city representatives, this section 11.04 is applicable to specifically identified federal, state and/or city property located within unincorporated Deschutes County upon such terms, conditions and limitations stated therein.

HISTORY

Adopted by Ord. 2023-013 §1 on 8/23/2023

11.04.070 Alienation

Excepting conveyances signed by the County Property Manager upon written authorization of the County Commissioners or the County Administrator, no County-owned real property shall be sold,

leased, dedicated, licensed, donated, exchanged, encumbered or otherwise alienated except upon signature, authorization, order or ratification of the Board.

HISTORY

Adopted by Ord. [96-013](#) §1 on 5/22/1996

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

11.04.080 Violation; Penalty

Any violation or failure to comply with any provision of DCC 11.04, may be prosecuted in Justice Court as a Class A violation, or may be charged and prosecuted in Circuit Court as Trespass pursuant to ORS 164.205 et seq. except DCC 11.04.030(B), is a Class A violation. If imposed civil penalties are not timely paid, upon application by the County a warrant may be issued by the Circuit Court to the violator.

HISTORY

Adopted by Ord. [96-013](#) §1 on 5/22/1996

Amended by Ord. [2003-021](#) §24 on 4/9/2003

Amended by Ord. [2023-013](#) §1 on 8/23/2023



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 9, 2023

SUBJECT: Public Hearing on a request to vacate a portion of Schibel Road

RECOMMENDED MOTIONS:

First, hold a public hearing; thereafter, provide staff with further direction on the request.

BACKGROUND AND POLICY IMPLICATIONS:

Deschutes County Road Department has received a petition to vacate a portion of Schibel Road in Section 05 of Township 17S, Range 12E, W.M. As the petition for vacation does not include acknowledged signatures of owners of 100 percent of property abutting the proposed vacation area, the vacation proceedings are subject to a public hearing.

BUDGET IMPACTS:

None

ATTENDANCE:

Cody Smith, County Engineer/Assistant Road Department Director



ROAD DEPARTMENT

MEMORANDUM

TO: Board of County Commissioners

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

DATE: July 14, 2023

SUBJECT: **Road Official's Report**
Vacation of a Portion of Schibel Road in Section 05, Township 17S, Range 12E, W.M.

Background:

Deschutes County Road Department has received a petition to vacate a portion of Schibel Road in Section 05 of Township 17S, Range 12E, W.M.. The Petitioners, who are owners of abutting or underlying property to the proposed vacation area, are:

- Jeffrey and Kathryn Gates, owners of Tax Lot 1800 on Assessor's Map 17-12-05B (Chief Petitioner);
- Marlene Wheeler Rennie, owner of Tax Lot 1901 and joint owner of Tax Lot 1400 on Assessor's Map 17-12-05B; and
- Terry A. Rennie, joint owner of Tax Lot 1400 on Assessor's Map 17-12-05B.

The following individuals are owners of abutting or underlying property to the proposed vacation area who are not Petitioners to the proposed vacation:

- Carl Elwyn Owens III, owner of Tax Lot 1900 on Assessor's Map 17-12-05B; and
- John Kevin O'Leary, owner of Tax Lot 100 on Assessor's Map 17-12-05C.

Schibel Road is a local access road that is not maintained by Deschutes County. From Old Bend Redmond Highway, Schibel Road proceeds west; approximately 1,240 ft. west of Old Bend Redmond Highway (within the boundaries of Tax Lot 1800), Schibel Road branches into two alignments, one alignment bearing north and one alignment bearing southwest. The northerly alignment across Tax Lot 1800 presently does not coincide with the established right of way. The subject right of way proposed for vacation includes the entirety of the right of way lying within the boundaries of Tax Lots 1800 and 1901, which includes the intersection of the two aforementioned alignments and the southwest alignment. The owners of Tax Lot 1800 have agreed to dedicate a new public right of way across their property to coincide with the existing as-travelled alignment of Schibel Road for the north alignment. The subject right of way proposed for vacation is 60 feet wide and was

created by dedication deed recorded at the Deschutes County Clerk's Office as Deed No. 1994-46818. Most of the length of Schibel Road within the proposed vacation is paved at varying widths; Road Department staff understand that the road improvements were funded and constructed by current or previous owners of the underlying properties and that the improvements were not funded by the County. There are presently public utilities within the proposed vacation area consisting of facilities owned and operated by Central Electric Cooperative.

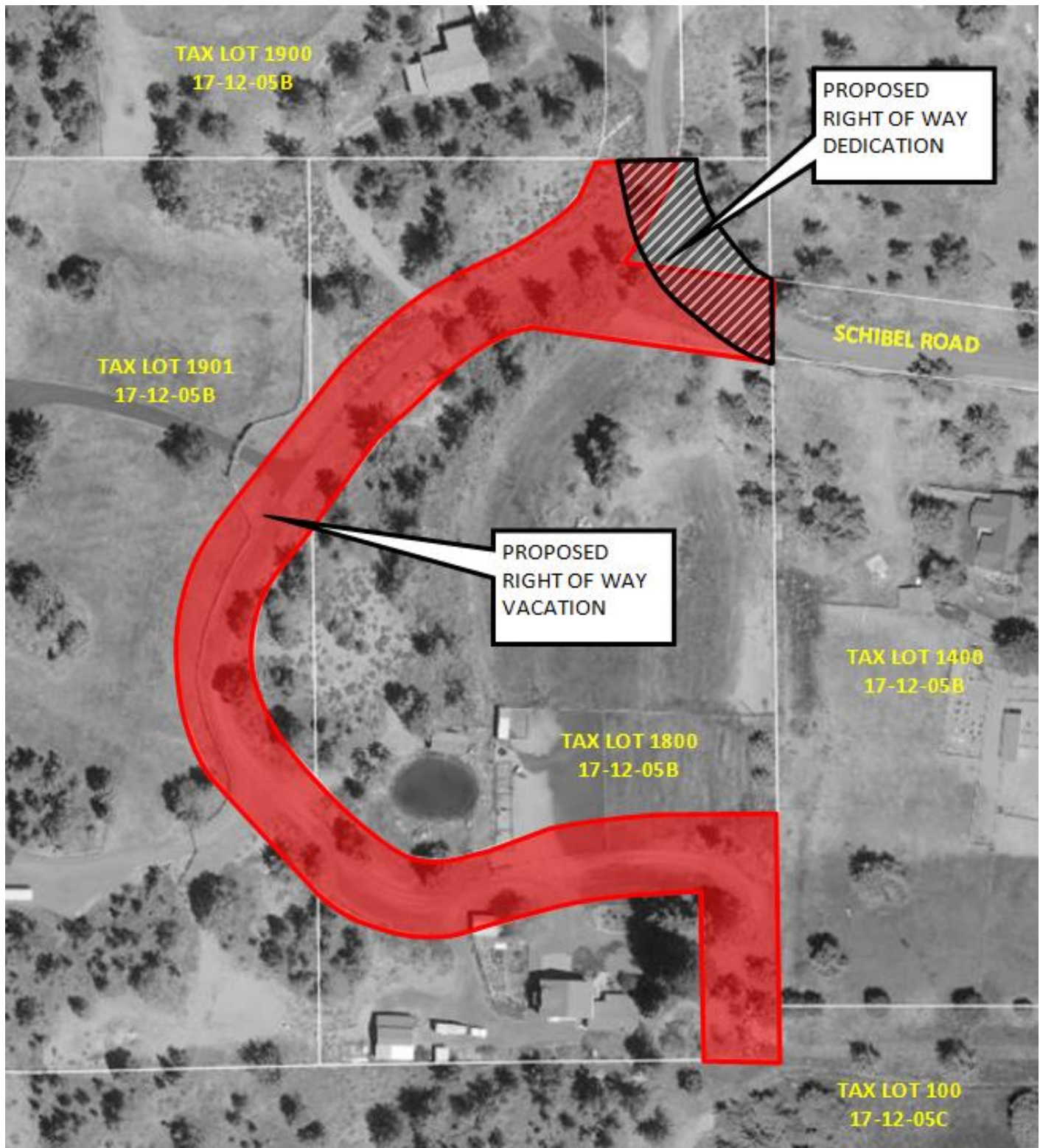


Figure – Aerial Photo of Proposed Vacation Area

The Petitioners provided the following reasons (in bold italics) for the proposed vacation; Road Department staff responses to the reasons provided by the Petitioners are also given below:

1. ***Invalid Dedication due to Restrictions and Reservations –Septic was installed & permitted by Deschutes County in 1980, repaired and permitted by Deschutes County in 1991. The Deed of Dedication was accepted in 1994 by Deschutes County. The 60 foot width encroaches upon the septic system that was approved by Deschutes County.*** Road Department staff assert that the dedication of the subject portion of Schibel Road was valid, as Deed No. 1994-46818 includes valid offer of the dedication by the owners of the underlying property at the time of dedication and acceptance by the County governing body at the time of dedication. Based on a review of Community Development Department property records for Tax Lot 1800 on Assessor's Map 17-12-05B, it does appear that a portion of the disposal field and reserve area for the subject property's onsite wastewater system may exist within the proposed vacation area. Additionally, an outbuilding and a portion of a livestock corral also appear to exist within the proposed vacation area. Road Department staff note that, while this situation encumbers both the public right of way and the underlying property, it does not invalidate the public road dedication.
2. ***Reduces property values of the 3 tax lots requesting this Vacation, which is 75% of the owners.*** Road Department staff will not address this statement as it is not verifiable or indicative of a necessity to vacate the public's interest in a property.
3. ***Decades old trees and landscaping would be lost.*** Road Department staff will not address this statement as it is not verifiable or indicative of a necessity to vacate the public's interest in a property.
4. ***Since 1994, the county has never used, improved, nor plowed this road to our knowledge. Not once that we know of has the county plowed the snow during the major snowstorms of 2017 & 2019.*** Road Department records indicate that no County-funded maintenance or improvement of the subject portion of Schibel Road has ever occurred; however, Road Department staff note that County-funded maintenance of a local access road is forbidden under state law and that absence of County-funded maintenance is not indicative of a necessity to vacate the public's interest in a property.
5. ***The southern portion of the road that is requested to be vacated has not been used by the general public and has only been used as access and a driveway for tax lots 1800 and 1901.*** John Kevin O'Leary, owner of Tax Lot 100 on Assessor's Map 17-12-05C, has indicated to Road Department staff that he has interest in using it for future access. Nonetheless, Road Department staff believe that, generally, the subject right of way has only been used to access Tax Lots 1800 and 1901 as indicated by the Petitioners. The primary access to Tax Lot 100 on Assessor's Map 17-12-05C is from Old Bend Redmond Highway.
6. ***Traffic will increase, and no traffic study has been done that we know of.*** Road Department staff will not address this statement as it is not verifiable or indicative of a necessity to vacate the public's interest in a property.

- 7. Safety of the young children living on Schibel Road is a concern of the parents and neighbors.** Road Department staff will not address this statement as it is not verifiable or indicative of a necessity to vacate the public's interest in a property.
- 8. It is not in the General Public's best interest.** The Board of County Commissioners will make this determination.
- 9. Induced to sign dedication under false pretenses. We were told we could remove the southern portion of the dedication with a "single item deletion."** Current Road Department staff have no knowledge of the requirements or circumstances under which the subject right of way was dedicated in 1994. Road Department staff note that Jeffrey and Kathryn Gates, Chief Petitioners and owners of Tax Lot 1800 on Assessor's Map 17-12-05B, were partial grantors for the 1994 dedication deed.
- 10. Tax lot 100 to the south will not suffer loss of access as the site address of 64145 Old Bend Redmond Hwy is permitted, approved and installed.** As indicated above, the primary access to Tax Lot 100 on Assessor's Map 17-12-05C is from Old Bend Redmond Highway.

A review of Assessor's Tax Map 17-12-05B indicates that the proposed vacation would effectively landlock Tax Lot 1901, potentially depriving the owners of that property of access necessary for the exercise of their property right. In regards to this matter, Road Department staff note that the submitted petition included a loss of access consent form signed by the property owners.

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

- Avion Water Company, Inc.
 - Representative: Mike Heffernan, Engineering Department
 - Service provider does not have existing facilities within the area proposed for vacation
 - **Service provider consents to the proposed vacation**
- Central Electric Cooperative
 - Representative: Parneli Perkins, Land and ROW Specialist
 - Service provider does have existing facilities within the area proposed for vacation
 - **Service provider consents to the proposed vacation but requests that an easement for utilities be granted within the proposed vacation area.** Service provider emailed Road Department staff on June 12, 2023 indicating that easement documents had been secured and that their organization was supportive of the proposed vacation.

Findings:

Based upon the submitted petition materials, responses to service provider notices, and the Road Department's research of the subject right of way, the Road Department makes the following findings:

- The proposed vacation area was dedicated to the public by dedication deed recorded at the Deschutes County Clerk's Office as Deed No. 1994-46818 (ORS 368.326).
- Owners of a recorded property right that would potentially be deprived of access necessary for the exercise of that property right with the proposed vacation have consented to the proposed vacation (ORS 368.331).

- The Petitioners, who represent the owners of more than sixty (60) percent of property abutting the subject right of way, have submitted complete petitions and submitted the required fee (ORS 368.341(1)(c); ORS 368.341(3); ORS 368.341(4); ORS 368.351).
- As the petition for vacation does not include acknowledged signatures of owners of 100 percent of property abutting the proposed vacation area, the vacation proceedings are subject to a public hearing (ORS 368.346).
- The subject right of way does not appear to be necessary for current or future public use.
- The subject right of way appears to coincide with onsite wastewater system components, an outbuilding, and other private property improvements for Tax Lot 1800 on Assessor's Map 17-12-05B.

Recommendation:

Based on the above findings, the Road Department has determined that the proposed vacation is in the public interest. The Road Department recommends that the Board of County Commissioners approve the proposed vacation with adoption of Order No. 2023-017 subject to the following conditions:

1. Prior to vacation of the subject right of way, the owners of Tax Lot 1800 on Assessor's Map 17-12-05B shall execute a dedication deed to coincide with the existing as-travelled north alignment of Schibel Road.
2. The vacated property shall vest with the rightful owner or owners holding title according to law in accordance with ORS 368.366(1)(c).

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

PETITION FOR VACATION OF A PUBLIC ROAD

TO: THE DESCHUTES COUNTY BOARD OF COMMISSIONERS

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

Description of road to be vacated: See Attached Survey

Located in Schibel Rd Bend, Deschutes County.

Reason for road vacation request: _____

DATED this 29 day of July, 2022.

PRINT NAME	SIGNATURE	ADDRESS	CITY	STATE	ZIP
<u>Hollyhock Living Trust</u>	<u>Marlene Wheeler</u>	<u>64245 Schibel</u>	<u>Bend</u>	<u>OR</u>	<u>97703</u>
<u>TERRY RENNIE TRUST</u>	<u>Marlene Wheeler</u>	<u>64245 Schibel</u>	<u>Bend</u>	<u>OR</u>	<u>97703</u>
<u>Hollyhock Survivor's TRUST</u>	<u>Marlene Wheeler</u>	<u>64225 Schibel</u>	<u>Bend</u>	<u>OR</u>	<u>97703</u>

STATE OF OREGON)
County of Deschutes) ss.

On this 29 day of July, in the year 2022, before me, a Notary Public, personally appeared Marlene Wheeler Rennie personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is(are) subscribed to this instrument, and acknowledged that he (she, they) executed it.

WITNESS my hand and official seal

Tina Marie Morris
Notary Public for Oregon.

My Commission expires: 01/28/2024



STATE OF OREGON

County of Deschutes

ss.

On this 29th day of JULY, in the year 2022, before me, a Notary Public, personally appeared TERRY A. Rennie personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is(are) subscribed to this instrument, and acknowledged that he (she, they) executed it.



WITNESS my hand and official seal

Notary Public for Oregon.

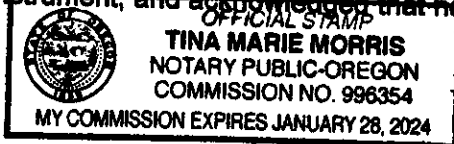
My Commission expires: 01/28/2024

STATE OF OREGON

County of Deschutes

ss.

On this 29th day of JULY, in the year 2022, before me, a Notary Public, personally appeared Marlene Wheeler Rennie personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is(are) subscribed to this instrument, and acknowledged that he (she, they) executed it.



WITNESS my hand and official seal

Notary Public for Oregon.

My Commission expires: 01/28/2024

STATE OF OREGON

County of _____

ss.

On this _____ day of _____, in the year 20____, before me, a Notary Public, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is(are) subscribed to this instrument, and acknowledged that he (she, they) executed it.

WITNESS my hand and official seal

Notary Public for Oregon.

My Commission expires: _____

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

SIGNATURE _____

ADDRESS _____

TELEPHONE: _____

PETITION FOR VACATION OF A PUBLIC ROAD

TO: THE DESCHUTES COUNTY BOARD OF COMMISSIONERS

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

Description of road to be vacated: See attached

Located in _____, Deschutes County.

Reason for road vacation request: See attached

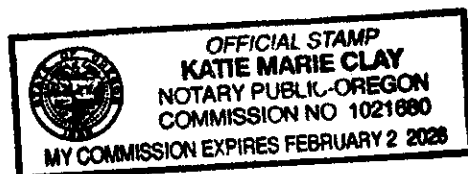
DATED this 29 day of July, 2022.

PRINT NAME	SIGNATURE	ADDRESS	CITY	STATE	ZIP
Kathryn Gates, Trustee	<i>Kathryn Gates</i>	Trustee	64227 Schibel Rd, Bend, OR 97703		
Jeffrey Gates, Trustee	<i>Jeffrey Gates</i>	Trustee	64227 Schibel Rd, Bend, OR 97703		

STATE OF OREGON)
County of Deschutes) ss.

On this 29 day of July, in the year 2022 before me, a Notary Public, personally appeared Kathryn Gates, Trustee of the Jeffrey & Kathryn Gates Rev LIV Trust, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is(are) subscribed to this instrument, and acknowledged that he (she, they) executed it.

WITNESS my hand and official seal

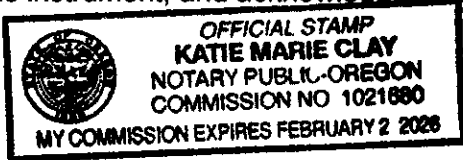


Notary Public for Oregon.

My Commission expires: 2/2/2026

STATE OF OREGON)
)
 County of Deschutes) ss.

On this 29 day of July, in the year 2022, before me, a Notary Public, personally appeared Jeffrey Gates, Trustee of the Jeffrey & Kathryn Gates Rev LIV Trust, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is(are) subscribed to this instrument, and acknowledged that he (she, they) executed it.



WITNESS my hand and official seal

Notary Public for Oregon.

My Commission expires: 2/2/2026

STATE OF OREGON)
)
 County of _____) ss.

On this ____ day of _____, in the year 20____, before me, a Notary Public, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is(are) subscribed to this instrument, and acknowledged that he (she, they) executed it.

WITNESS my hand and official seal

Notary Public for Oregon.

My Commission expires: _____

STATE OF OREGON)
)
 County of _____) ss.

On this ____ day of _____, in the year 20____, before me, a Notary Public, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is(are) subscribed to this instrument, and acknowledged that he (she, they) executed it.

WITNESS my hand and official seal

Notary Public for Oregon.

My Commission expires: _____

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

Kathryn J. Gates
 SIGNATURE

64227 Schibel Rd
 ADDRESS

TELEPHONE: 541-815-9608

Reason for Vacating the southern portion of Schibel Rd

1-Invalid Dedication due to Restrictions and Reservations-

Septic was installed & permitted by Deschutes County in 1980, repaired and permitted by Deschutes County in 1991.

The Deed of Dedication was accepted in 1994 by Deschutes County. The 60foot width encroaches upon the septic system, that was approved by Deschutes County.

2-Reduces property values of the 3 tax lots requesting this Vacation, which is 75% of the owners.

3-Decades old trees and landscaping would be lost.

4-Since 1994, the county has never used, improved, nor plowed this road to our knowledge. Not once that we know of has the county plowed the snow during the major snowstorms of 2017 & 2019.

5-The southern portion of the road that is requested to be vacated has not been used by the general public and has only been used as access and a driveway for tax lots 1800 and 1901.

6-Traffic will increase, and no traffic study has been done that we know of.

7-Safety of the young children living on Schibel Road is a concern of the parents and neighbors

8-It is not in the General Public's best interest.

9-Induced to sign the dedication under false pretenses. We were told we could remove the southern portion of the dedication with a "single item deletion"

10-Tax lot 100 to the south will not suffer loss of access as the site address of 64145 Old Bend Redmond Hwy is permitted, approved and installed.

EXHIBIT A
SCHIBEL ROAD – VACATION

A STRIP OF LAND BEING 60.00 FEET WIDE, 30.00 FEET ON EACH SIDE OF CENTERLINE (WHEN MEASURED AT RIGHT ANGLES) LOCATED IN THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER (SE 1/4, SW 1/4, NW 1/4) AND THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER (NW 1/4, SW 1/4), ALL IN SECTION 5, TOWNSHIP 17 SOUTH, RANGE 12 EAST, WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON, THE CENTERLINE OF WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT FROM WHICH THE CENTER WEST ONE-SIXTEENTH CORNER OF SAID SECTION 5 BEARS NORTH 34°42'51" EAST, 51.73 FEET, THENCE NORTH 00°43'51" WEST, 161.76 FEET; THENCE SOUTH 88°32'18" WEST, 76.94 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 300.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 16°54'37", AN ARC LENGTH OF 88.54 FEET (THE CHORD OF WHICH BEARS SOUTH 80°05'00" WEST, 88.22 FEET); THENCE SOUTH 71°37'41" WEST, 39.52 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 110.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 65°21'54", AN ARC LENGTH OF 125.49 FEET (THE CHORD OF WHICH BEARS NORTH 75°41'22" WEST, 118.80 FEET); THENCE NORTH 43°00'25" WEST, 81.60 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 140.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 80°07'12", AN ARC LENGTH OF 195.77 FEET (THE CHORD OF WHICH BEARS NORTH 02°56'49" WEST, 180.21 FEET); THENCE NORTH 37°06'47" EAST, 125.37 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 300.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 27°17'49", AN ARC LENGTH OF 142.93 FEET (THE CHORD OF WHICH BEARS NORTH 50°45'42" EAST, 141.58 FEET); THENCE NORTH 64°24'36" EAST, 40.87 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 150.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 48°27'11", AN ARC LENGTH OF 126.85 FEET (THE CHORD OF WHICH BEARS NORTH 40°11'00" EAST, 123.10 FEET) TO A POINT ON THE ONE-SIXTYFORTH LINE AND THE TERMINUS OF THIS CENTERLINE DESCRIPTION, THE SIDELINES ARE TO BE LENGTHENED OR SHORTENED TO TERMINATE AT SAID ONE-SIXTYFORTH LINE AND AT THE SOUTH LINE OF TAX LOT 171205B001800.

TOGETHER WITH THE FOLLOWING DESCRIBED STRIP OF LAND BEING 60.00 FEET WIDE, 30.00 FEET ON EACH SIDE OF CENTERLINE (WHEN MEASURED AT RIGHT ANGLES) WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH-SOUTH CENTERLINE OF THE NORTHWEST QUARTER OF SAID SECTION 5 FROM WHICH THE CENTER WEST ONE-SIXTEENTH CORNER BEARS SOUTH 00°43'51" EAST, 536.04 FEET, THENCE NORTH 83°16'31" WEST, 147.04 FEET TO THE SIDELINE OF THE ABOVE DESCRIBED STRIP OF LAND AND THE TERMINUS OF THIS CENTERLINE DESCRIPTION, THE SIDELINES ARE TO BE LENGTHENED OR SHORTENED TO TERMINATE AT SAID SIDELINE OF THE ABOVE DESCRIBED STRIP OF LAND AND AT SAID NORTH-SOUTH CENTERLINE OF THE NORTHWEST QUARTER.

THIS LEGAL DESCRIPTION AND EXHIBIT MAP ARE BASED ON COUNTY SURVEY NO. 11789.



'EXHIBIT B' SCHIBEL ROAD VACATION

LOCATED IN THE SW 1/4, NW 1/4 AND THE NW 1/4,
SW 1/4 OF SECTION 5, T. 17 S., R. 12 E., W. M.

SCHIBEL ROAD

S-N 1/64 LINE N89°58'42"W 795.52'

102.86'

HOLLYHOCK 1994 LIVING TRUST
64245 SCHIBEL ROAD
TAX LOT 171205B001901

PORTION OF SCHIBEL ROAD
TO BE VACATED

JEFF AND KATHY GATES
64227 SCHIBEL ROAD
TAX LOT 171205B001800



SCALE 1" = 100'

E-W CENTER 1/4 LINE

N-S CENTERLINE OF NW 1/4
S00°43'51"E 536.04'

LEGAL DESCRIPTION AND EXHIBIT MAP
ARE BASED ON COUNTY SURVEY NO. 11789

CW 1/16 CORNER
SECTION 5
T17S, R12E, W.M.

P.O.B. OF 60' WIDE
EASEMENT BEARS
S34°42'51"W, 51.73'
FROM CW 1/16 CORNER

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 19, 1994
BRIAN W. REEVES
2677

RENEWAL DATE 12-31-20

CURVE TABLE

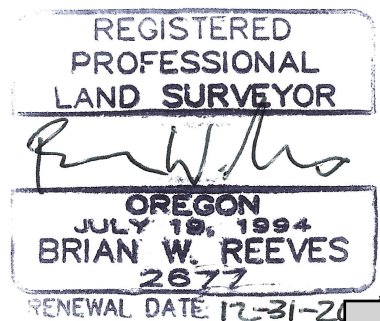
CURVE	LENGTH	RADIUS	DELTA	BEARING	CHORD
C1	88.54'	300.00'	16°54'37"	S80°05'00"W	88.22'
C2	125.49'	110.00'	65°21'54"	N75°41'22"W	118.80'
C3	195.77'	140.00'	80°07'12"	N02°56'49"W	180.21'
C4	142.93'	300.00'	27°17'49"	N50°45'42"E	141.58'
C5	126.85'	150.00'	48°27'11"	N40°11'00"E	123.10'

EXHIBIT A
SCHIBEL ROAD – DEDICATION

A STRIP OF LAND BEING 60.00 FEET WIDE, 30.00 FEET ON EACH SIDE OF CENTERLINE (WHEN MEASURED AT RIGHT ANGLES) LOCATED IN THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER (SE 1/4, SW 1/4, NW 1/4) IN SECTION 5, TOWNSHIP 17 SOUTH, RANGE 12 EAST, WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON, THE CENTERLINE OF WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH-SOUTH CENTERLINE OF THE NORTHWEST QUARTER OF SAID SECTION 5 FROM WHICH THE CENTER WEST ONE-SIXTEENTH CORNER BEARS SOUTH $00^{\circ}43'51''$ EAST, 536.04 FEET, THENCE NORTH $83^{\circ}16'31''$ WEST, 3.92 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 105.88 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF $82^{\circ}05'22''$, AN ARC LENGTH OF 151.70 FEET (THE CHORD OF WHICH BEARS NORTH $42^{\circ}13'50''$ WEST, 139.05 FEET); THENCE NORTH $01^{\circ}11'09''$ WEST, 20.44 FEET TO A POINT ON THE ONE-SIXTYFORTH LINE AND THE TERMINUS OF THIS CENTERLINE DESCRIPTION, THE SIDELINES ARE TO BE LENGTHENED OR SHORTENED TO TERMINATE AT SAID NORTH-SOUTH CENTERLINE OF THE NORTHWEST QUARTER AND AT THE ONE-SIXTYFORTH LINE.

THIS LEGAL DESCRIPTION AND EXHIBIT MAP ARE BASED ON COUNTY SURVEY NO. 11789.



'EXHIBIT B' SCHIBEL ROAD DEDICATION

LOCATED IN THE SE 1/4, SW 1/4, NW 1/4 OF
SECTION 5, T. 17 S., R. 12 E., W. M.

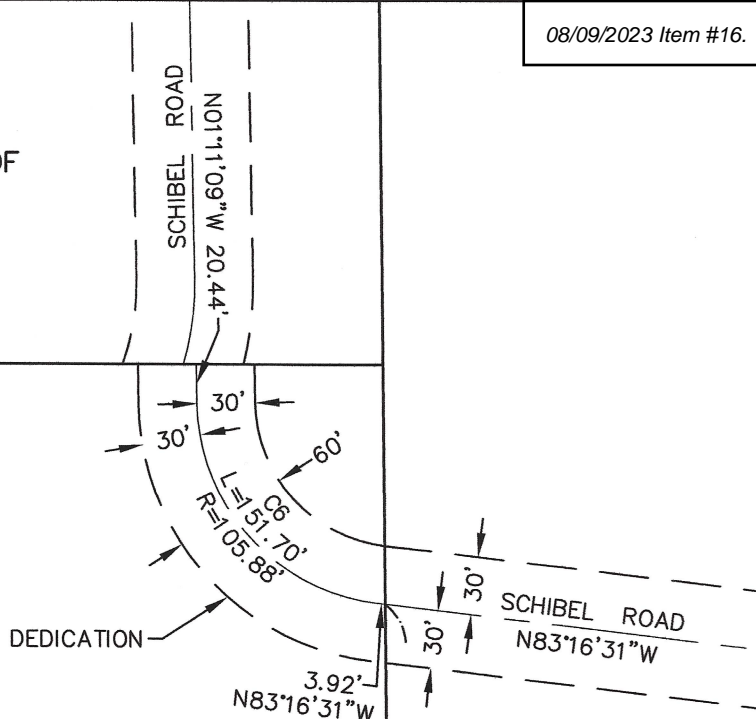
S-N 1/64 LINE N89°58'42"W 795.52'

HOLLYHOCK 1994 LIVING TRUST
64245 SCHIBEL ROAD
TAX LOT 171205B001901



SCALE 1" = 100'

JEFF AND KATHY GATES
64227 SCHIBEL ROAD
TAX LOT 171205B001800



LEGAL DESCRIPTION AND EXHIBIT MAP
ARE BASED ON COUNTY SURVEY NO. 11789
S00°43'51"E 536.04'
N-S CENTERLINE OF NW 1/4

CW 1/16 CORNER
SECTION 5
T17S, R12E, W.M.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Brian W. Reeves

OREGON
JULY 19, 1994
BRIAN W. REEVES
2677

RENEWAL DATE 12-31-20

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	BEARING	CHORD
C6	151.70'	105.88'	82°05'22"	N42°13'50"W	139.05'

VACATION LOSS OF ACCESS CONSENT FORM

We, the undersigned, are the owners of Tax Lot 171205B001901 in Deschutes County, Oregon. The proposed road vacation of a portion of Schibel Road will deprive us of access to a public road necessary for the exercise of our recorded property right.

According to Oregon Revised Statutes 368.331:

368.331 Limitation on use of vacation proceedings to eliminate access. A county governing body shall not vacate public lands under ORS 368.326 to 368.366 if the vacation would deprive an owner of a recorded property right of access necessary for the exercise of that property right unless the county governing body has the consent of the owner.

We hereby give the Board of County Commissioners of Deschutes County, Oregon consent to proceed with the proposed road vacation of a portion of Schibel Road.

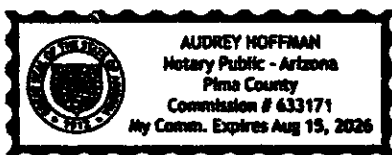
DATED this 27 day of FEBRUARY, 2023.

Marlene S. Wheeler
Marlene S. Wheeler, Owner as Trustee
Hollyhock 1994 Living Trust,

Terry A. Rennie
Terry A. Rennie, Owner

STATE OF ~~OREGON~~ ^{AH} ARIZONA)
County of ~~Deschutes~~ ^{AH} PIMA) SS.

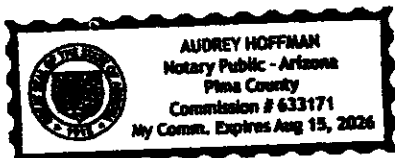
The foregoing instrument was acknowledged before me by Marlene S. Wheeler this 27 day of FEBRUARY, 2023.



Terry A. Rennie
NOTARY PUBLIC FOR ~~OREGON~~ ^{AH} ARIZONA
MY COMMISSION EXPIRES: 08/15/24

STATE OF ~~OREGON~~ ^{AH} ARIZONA)
County of ~~Deschutes~~ ^{AH} PIMA) SS.

The foregoing instrument was acknowledged before me by Terry A. Rennie this 27 day of FEBRUARY, 2023.



Terry A. Rennie
NOTARY PUBLIC FOR ~~OREGON~~ ^{AH} ARIZONA
MY COMMISSION EXPIRES: 08/15/24

SERVICE PROVIDER CONSENT FOR RIGHT OF WAY VACATION

Kathry Gates, as Chief Petitioner, intends to submit a petition for Deschutes
(Chief Petitioner's Name)

County, Oregon to vacate the public right of way described or depicted in the attached documents.

As a utility or other service provider, Avion Water Company, Inc.

- ☒ Does not have existing facilities within the area proposed for vacation.
- ☐ Have existing facilities within the area proposed for vacation.

Further, as a utility or other service provider, Avion Water Company, Inc.

- ☒ Consents to the vacation of this section of public right of way.
- ☐ Consents to the vacation of this section of public right of way but requests that an easement for utilities be granted within the area to be vacated by the underlying property owner.
- ☐ Does not consent to the proposed right of way vacation for the following reason:

Mike Heffernan
Print Name of Service Provider Representative

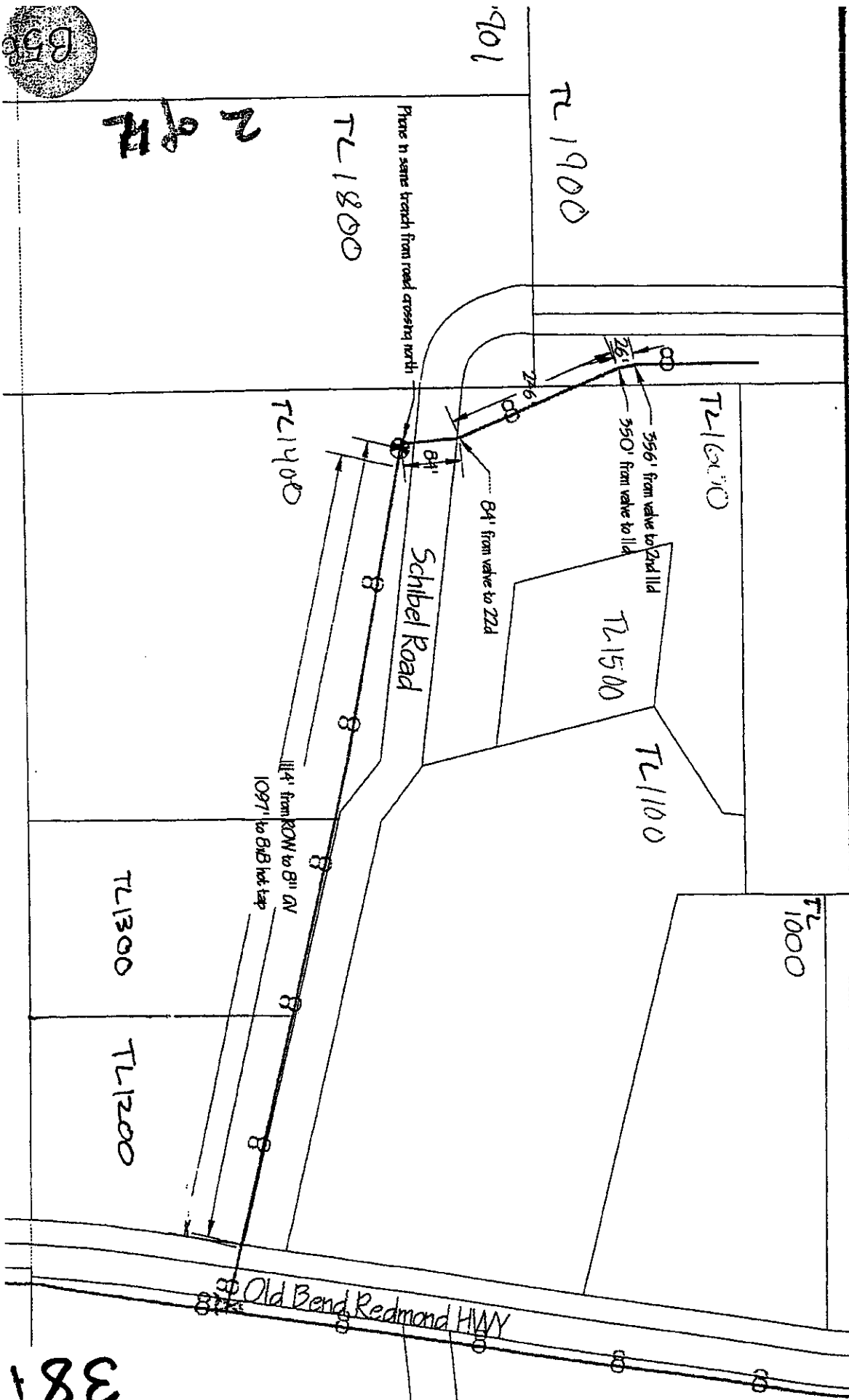
Engineering Department
Representative's Title

Mike Heffernan
Signature

7/27/22
Date

Ref: Schibel Road Vacation

1712 OS B
Schibel Road



B58

2912

381

SERVICE PROVIDER CONSENT FOR RIGHT OF WAY VACATION

Kathy Gates as Chief Petitioner, intends to submit a petition for Deschutes
(Chief Petitioner's Name)
County, Oregon to vacate the public right of way described or depicted in the attached documents.

As a utility or other service provider, Central Electric Cooperative, Inc.
(Service Provider Name)

☐ Does not have existing facilities within the area proposed for vacation.

☒ Have existing facilities within the area proposed for vacation.

Further, as a utility or other service provider, Central Electric Cooperative, Inc.
(Service Provider Name)

☐ Consents to the vacation of this section of public right of way.

☒ Consents to the vacation of this section of public right of way but requests that an easement for utilities be granted within the area to be vacated by the underlying property owner.

☐ Does not consent to the proposed right of way vacation for the following reason:

If the proposed new Road is dedicated to the public, an easement for CEC's existing facilities located within the proposed new ROW will need to be created.

Parneli Perkins
Print Name of Service Provider Representative

Land & ROW Specialist
Representative's Title

Signature

 FOR CEC

Date

8/18/22



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 9, 2023

SUBJECT: Public Hearing: Conventional Housing Combining Zone Repeal

RECOMMENDED MOTION:

Hold a public hearing to gather testimony on a staff-initiated text amendment to repeal the Conventional Housing Combining Zone.

BACKGROUND AND POLICY IMPLICATIONS:

The Board will conduct a public hearing on August 9, 2023 to consider a staff initiated text amendment (file no 247-23-000391-TA) to repeal the Conventional Housing Combining Zone.

BUDGET IMPACTS:

None

ATTENDANCE:

Rachel Vickers, Associate Planner



COMMUNITY DEVELOPMENT

MEMORANDUM

TO: Deschutes County Board of Commissioners

FROM: Rachel Vickers, Associate Planner

DATE: August 9, 2023

SUBJECT: Public Hearing: Conventional Housing Combining Zone Repeal

The Board of County Commissioners (Board) will conduct a public hearing to consider legislative amendments to repeal the Conventional Housing Combining Zone (file no. 247-23-000391-TA) on August 9, 2023. The full record is available at the project website:

<https://www.deschutes.org/cd/page/247-23-000391-ta-%E2%80%93-repeal-conventional-housing-combining-zone>.

Staff submitted a 35-day Post-Acknowledgement Plan Amendment (PAPA) notice to the Department of Land Conservation and Development on May 17, 2023. Staff presented the proposed amendments to the Planning Commission at a public hearing on June 22, 2023¹. Attached to this memorandum are the proposed text amendments and findings, which have not changed since the Planning Commission hearing. Within the proposed amendments, added language is shown underlined and deleted shown as strikethrough. The public hearing will be conducted in-person, electronically, and by phone.

I. BACKGROUND

The CHC Zone serves as an overlay zone and restricts placement of manufactured or prefabricated homes in specific areas of the County with the following stated purpose:

"To provide a variety of residential environments in rural areas by maintaining areas reserved for conventional and modular housing permanently attached to real property".

Deschutes County adopted the CHC Zone in 1979 as part of Ordinance PL-15, the County's Zoning Ordinance. The CHC Zone applies to three areas – an area to the east of Tumalo, west of Tumalo and east of Bend as shown in the map in Attachment 3. From staff research, this overlay zone appears to have been created by petition of property owners, although specific findings for the intent of the zone and its location are not available in county records.

¹ <https://www.deschutes.org/bc-pc/page/planning-commission-30>

In 2020, the County produced a Rural Housing Profile, which outlined several potential strategies for removing barriers to housing production in rural Deschutes County. The repeal of the CHC Zone was listed as a strategy as it would give those properties the potential to provide affordable housing in the form of mobile or manufactured homes, which are less expensive alternatives to stick-built or modular housing.

In addition to this, on March 23, 2022, Oregon House Bill 4064 became effective. The bill amended several sections of Oregon Revised Statute which clarified that local governments may not prohibit siting of prefabricated structures in residential zones where traditional single-family homes or other common dwelling types were allowed. Although the amendments were primarily targeted toward cities and urban growth boundaries, Section 4, ORS 197.312 OR was revised to limit both city and county jurisdictions' ability to prohibit manufactured prefabricated homes in residential zones.

The purpose of these amendments is twofold: to implement the recommendation of the 2020 housing profile to allow for an affordable housing option where stick-built residential structures are otherwise allowed and also to bring the Deschutes County Code into compliance with HB 4064 by specifically removing this combining zone from residentially zoned properties.

II. PROPOSAL

This is a legislative text amendment to Deschutes County Code (DCC), Title 18 County Zoning, to repeal Chapter 18.92, Conventional Housing Combining (CHC) Zone.

Staff is proposing the following revisions to complete this text amendment:

- Repeal of section 18.92 Conventional Housing Combining Zone from the Deschutes County Code
- Zoning Map Amendment to repeal the Conventional Housing Combining Zone

The applicant, in this case Deschutes County Community Development, has provided the draft text amendments and findings as attachments to this memorandum. The findings summarize the amendments and demonstrate compliance with the Statewide Planning Goals, and applicable policies of the Deschutes County Comprehensive Plan.

III. PLANNING COMMISSION RECOMMENDATION

Notice of Public Hearing was mailed on July 14, 2023 to all property owners within the Conventional Housing zone as well as those property owners within 250 feet of the zone. The Notice of Public Hearing was also published in the Bend Bulletin on July 16, 2023. Staff received one comment in opposition to the proposed amendments prior to the Planning Commission hearing. The comment raised concerns regarding the availability of time for community members to respond, lack on information on the origin of the zone, and its actual impact on affordable housing.

The Deschutes County Planning Commission held the public hearing on June 22, 2023. No oral or written testimony was provided during the public hearing.

The Planning Commission closed the oral and written portions of the hearing on July 22, 2023 and voted 4-1 to approve the proposed amendment.

IV. NEXT STEPS

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

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

ATTACHMENTS:

1. Proposed Text Amendments
2. Proposed Findings
3. CHC Zone Map
4. Draft Ordinance 2023-034
5. Draft Ordinance 2023-034 Emergency

Attachment 1: Proposed Text Amendments

~~Removed~~

New

CHAPTER 18.92 CONVENTIONAL HOUSING COMBINING ZONE; CH (Repealed)

(Repealed by Ord. 2023-XXX on X/XX/XXXX)

~~18.92.010 Purpose~~

~~18.92.020 Permitted Uses~~

~~18.92.030 Use Limitations~~

~~18.92.010 Purpose~~

~~To provide a variety of residential environments in rural areas by maintaining areas reserved for conventional and modular housing permanently attached to real property.~~

~~(Adopted by Ord. PL 15 on 11/1/1979)~~

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

~~18.92.020 Permitted Uses~~

~~All outright and conditional uses allowed in the underlying zone except that in no case shall a housing type be allowed that is other than conventional or modular housing permanently attached to real property.~~

~~(Adopted by Ord. PL 15 on 11/1/1979)~~

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

~~18.92.030 Use Limitations~~

~~All use and dimensional conditions contained in the underlying zones shall apply to the CH Zone.~~

~~(Adopted by Ord. PL 15 on 11/1/1979)~~

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

Attachment 2: Proposed Findings 247-23-000391-TA

FINDINGS

I. PROPOSAL SUMMARY

This is a legislative text amendment to Deschutes County Code (DCC), Title 18 County Zoning, to repeal Chapter 18.92, Conventional Housing Combining (CHC) Zone.

Staff is proposing the following revisions to complete this text amendment:

- Repeal of section 18.92 Conventional Housing Combining Zone from the Deschutes County Code
- Zoning Map Amendment to repeal the Conventional Housing Combining Zone

II. BACKGROUND

The CHC Zone serves as an overlay zone and restricts placement of manufactured or prefabricated homes in specific areas of the County with the following stated purpose:

"To provide a variety of residential environments in rural areas by maintaining areas reserved for conventional and modular housing permanently attached to real property".¹

Deschutes County adopted the CHC Zone in 1979 as part of Ordinance PL-15, the County's Zoning Ordinance. The CHC Zone applies to three areas – an area to the east of Tumalo, west of Tumalo and east of Bend as shown in the map in Attachment 2. From staff research, this overlay zone appears to have been created by petition of property owners, although specific findings for the intent of the zone and its location are not available in county records.

In 2020, the County produced a Rural Housing Profile, which outlined several potential strategies for removing barriers to housing production in rural Deschutes County. The repeal of the CHC Zone was listed as a strategy as it would give those properties the potential to provide affordable housing in the form of mobile or manufactured homes, which are less expensive alternatives to stick-built or modular housing.

In addition to this, on March 23, 2022, Oregon House Bill 4064 became effective. The bill amended several sections of Oregon Revised Statute which clarified that local governments may not prohibit siting of prefabricated structures in residential zones where traditional single-family homes or other common dwelling types were allowed. Although the amendments were primarily targeted toward cities and urban growth boundaries, Section 4, ORS 197.312 OR was revised to limit both city and county jurisdictions' ability to prohibit manufactured prefabricated homes in residential zones.

¹ DCC 18.92.010

The CHC Zone impacts approximately 505 properties. The tables below break down the zoning of the properties within the CHC Zone. Staff notes that of the 505 properties, 381 of them have at least some portion of the property within a resource zone and 128 have at least some portion of the property within a residential zone.

Single Base Zoned Properties

Zone	Number of properties
<i>Resource Zones</i>	
Exclusive Farm Use (EFU)	353
Forest Use (F1/F2)	4
Open Space and Conservation (OSC)	3
<i>Total Resource Zoned Properties: 360</i>	
<i>Residential Zones</i>	
Multiple Use Agricultural (MUA10)	83
Rural Residential (RR10)	10
Tumalo Residential (TUR/TUR5)	7
<i>Total Residential Zoned Properties: 100</i>	
Total Single Zoned Properties in CHC Zone: 460	

Multiple Base (Split) Zoned Properties

Zones	Number of properties
EFU and F1/F2	1
EFU and MUA 10	3
EFU and RR10	1
EFU and FP	13
EFU, FP, and MUA10	2
EFU, FP, and TUR/TUR5	1
MUA10 and Flood Plain (FP)	16
Surface Mine (SM) and FP	3
TUR/TUR5 and FP	4
MUA10, TUR5, and FP	1
Total Split Zoned Properties in CHC Zone: 45	

The purpose of these amendments is twofold: to implement the recommendation of the 2020 housing profile to allow for an affordable housing option where stick-built residential structures are otherwise allowed and also to bring the Deschutes County Code into compliance with HB 4064 by specifically removing this combining zone from residentially zoned properties.

III. REVIEW CRITERIA

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

IV. FINDINGS

CHAPTER 22.12, LEGISLATIVE PROCEDURES

Section 22.12.010

Hearing Required

FINDING: This criterion will be met because a public hearing was held before the Deschutes County Planning Commission on June 22, 2023 and Board of County Commissioners on August 9, 2023.

Section 22.12.020, Notice

Notice

A. Published Notice

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

FINDING: This criterion will be met as notice was published in the Bend Bulletin newspaper for the Planning Commission public hearing on June 22, 2023, and the Board of County Commissioners' public hearing on August 23, 2023.

- B. Posted Notice. Notice shall be posted at the discretion of the Planning Director and where necessary to comply with ORS 203.045.***

FINDING: Posted notice was determined by the Planning Director not to be necessary.

- C. Individual notice. Individual notice to property owners, as defined in DCC 22.08.010(A), shall be provided at the discretion of the Planning Director, except as required by ORS 215.503.***

FINDING: In accordance with the above criterion, individual notice was sent to all property owners within the Conventional Housing Combining Zone, as well as those property owners within 250 of the Zone's boundaries in order to comply with DCC 22.24.030(A)(2).

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

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

Section 22.12.030, Initiation of Legislative Changes

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

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

Section 22.12.040, Hearings Body

- A. The following shall serve as hearings or review body for legislative changes in this order:**
- 1. The Planning Commission.**
 - 2. The Board of County Commissioners.**
- B. Any legislative change initiated by the Board of County Commissioners shall be reviewed by the Planning Commission prior to action being taken by the Board of Commissioners.**

FINDING: The Deschutes County Planning Commission held the initial public hearing on June 22, 2023. The Board then held a public hearing on August 9, 2023. These criteria are met.

Section 22.12.050, Final Decision

- All legislative changes shall be adopted by ordinance**

FINDING: The proposed legislative changes will be implemented by Ordinance No. 2023-034 upon approval and adoption by the Board of County Commissioners. This criterion will be met.

A. Statewide Planning Goals and Guidelines

Goal 1: Citizen Involvement: The amendments do not propose any changes to the County's citizen involvement program. Notice of the proposed amendments were provided to the *Bulletin* for each public hearing as well as in accordance with DCC 22.12.020 (C).

Goal 2: Land Use Planning: This goal is met because ORS 197.610 allows local governments to initiate post acknowledgments plan amendments (PAPA). An Oregon Land Conservation and Development Department 35-day notice was initiated on May 18, 2023 The Planning Commission held a public

hearing on June 22, 2023 and the Board of County Commissioners held a public hearing on August 9, 2023. Staff finds compliance with Goal 2 is met.

Goal 3: Agricultural Lands: The proposed amendments are to repeal the Conventional Housing Combining Zone which restricts manufactured and pre-fabricated homes. This repeal would remove this restriction, without changing any other requirements for establishing a dwelling within the Exclusive Farm Use Zone. Adverse impacts to farming practices are not anticipated under these amendments as the change only pertains to the style of the residential dwelling to be placed onto the property. Oregon Revised Statute and Rule do not contain specific requirements for restrictions on manufactured or pre-fabricated dwellings in the Exclusive Farm Use Zones, and this text amendment will not alter other existing requirements for dwellings in the Exclusive Farm Use Zone. Staff finds compliance with Goal 3 is met.

Goal 4: Forest Lands: The proposed amendments are to repeal the Conventional House Combining Zone which restricts manufactured and pre-fabricated homes. This repeal would remove this restriction, without changing any other requirements for establishing a dwelling within the Forest Use Zone. Adverse impacts to forest practices are not anticipated under these amendments and no such impacts have been identified in the record. Oregon Revised Statute and Rule do not contain specific requirements for restrictions on manufactured or pre-fabricated dwellings in the Forest Use Zones, and this text amendment will not alter other existing requirements for dwellings in the Forest Use Zone. Staff finds compliance with Goal 4 is met.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources: Goal 5 is to protect natural resources and conserve scenic and historical areas and open spaces. OAR 660-023-0250(3) states that local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. The proposed amendment is not seeking to change any requirements in a Goal 5 resource. Staff finds compliance with Goal 5 is met.

Goal 6: Air, Water and Land Resources Quality: The proposed text amendments do not propose to change the County's Plan policies or implementing regulations for compliance with Goal 6. Staff finds compliance with Goal 6 is met.

Goal 7: Areas Subject to Natural Disasters and Hazards: The proposed text amendments do not propose to change the County's Plan or implementing regulations regarding natural disasters and hazards; therefore, they comply. Staff finds compliance with Goal 7 is met.

Goal 8: Recreational Needs: The text amendments do not propose to change the County's Plan or implementing regulations regarding recreational needs. Staff finds compliance with Goal 8 is met.

Goal 9: Economic Development: Goal 9 and its implementing regulations focus on economic analysis and economic development planning required in urban Comprehensive Plans to ensure there is adequate land available to realize economic growth and development opportunities. Although not directly tied to the requirements of Goal 9, staff finds that the proposed amendments comply with the intent of this goal by providing affordable housing options for community members. Staff finds compliance with Goal 9 is met.

Goal 10: Housing: The proposed text amendment relates to Goal 10 as it is removing restrictions on the types of housing that can be placed in residential zones. As stated above, the proposed amendment is in response to the adoption of House Bill 4604 which prohibits County's from placing restrictions on manufactured and pre-fabricated housing. The text amendment is also partly in response to the 2020 Housing Profile as a method to remove barriers to housing production within the County. Staff finds compliance with Goal 10 is met.

Goal 11: Public Facilities and Services: The proposed text amendments do not propose to change the County's Plan or implementing regulations regarding public facilities and services. Staff finds compliance with Goal 11 is met.

Goal 12: Transportation: Goal 12 is to provide and encourage a safe, convenient and economic transportation system. The proposed text amendments will not change the functional classification of any existing or planned transportation facility or standards implementing a functional classification system. Staff finds compliance with Goal 12 is met.

Goal 13: Energy Conservation: The proposed text amendments do not propose to change the County's Plan or implementing regulations regarding energy conservation. Staff finds compliance with Goal 13 is met.

Goal 14: Urbanization: The proposed text amendments do not propose to change the County's Plan or implementing regulations regarding urbanization. Staff finds compliance with Goal 14 is met.

Goals 15 through 19 are not applicable to the proposed text amendments because the County does not contain these types of lands.

D. Deschutes County Comprehensive Plan

Chapter 1, Comprehensive Planning:

This chapter sets the Goals and Policies of how the County will involve the community and conduct land use planning. As described above, the proposed regulations will be discussed at work sessions with the Board of County Commissioners, as well as to the Planning Commission, which is the County's official committee for public involvement. Both will conduct separate public hearings.

These actions also satisfy the Goals and relevant Policies of Section 1.3, Land Use Planning Policies. Goal 1 of this section is to "maintain an open and public land use process in which decisions are based on the objective evaluation of facts." Staff, the Planning Commission, and the Board reviewed the text amendments. Staff finds that compliance with Chapter 1 of the Comprehensive Plan is met.

Chapter 2, Resource Management:

This chapter sets the Goals and Policies of how the County will protect resource lands, including but not limited to, Agriculture and Forest as well as Water Resources and Environmental Quality.

Section 2.3, Forest Land Policies

Goal 1 Protect and maintain forest lands for multiple uses, including forest products, watershed protection, conservation, recreation and wildlife habitat protection.

Policy 2.3.3, To conserve and maintain impacted forest lands, retain Forest 2 zoning for those lands with the following characteristics:

- a. Consist predominantly of ownerships developed for residential or non-forest uses;
- b. Consist predominantly of ownerships less than 160 acres;
- c. Consist of ownerships generally contiguous to tracts containing less than 160 acres and residences, or adjacent to acknowledged exception areas; and
- d. Provide a level of public facilities and services, including roads, intended primarily for direct services to rural residences.

Forest Lands, states that the goal is to protect forests and their economic benefits. Within this section, the future of residential development is discussed and the challenge of allowing residential fragmentation within the forest zones. Staff notes that the proposed text amendments, which would remove restrictions on placing manufactured homes in an area where residences are approved, will have no effect on this Chapter of the Comprehensive Plan and the current requirements for developing a residence on Forest Zoned lands. Staff finds compliance with this policy is met.

Chapter 3, Rural Growth Management:

Section 3.3, Rural Housing

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

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

The CHC Zone places a restriction on manufactured and pre-fabricated dwellings. The repeal of this Combining Zone will align with the section of the Comprehensive Plan as it will allow housing diversity in all areas of the County where residences are permitted. Staff finds compliance with this policy is met.

Chapter 4, Urban Growth Management:

Section 4.7 Tumalo Community Plan




Residential Area Policies

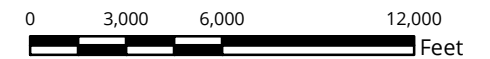
- 11. Plan and zone for a diversity of housing types and densities suited to the capacity of the land to accommodate water and sewage requirements.

The CHC Zone covers several properties located in the unincorporated community boundary of Tumalo, as such this policy applies. The CHC Zone is proposing to remove a restriction on the type of housing placed in residential zones and will promote greater diversity in housing type. The

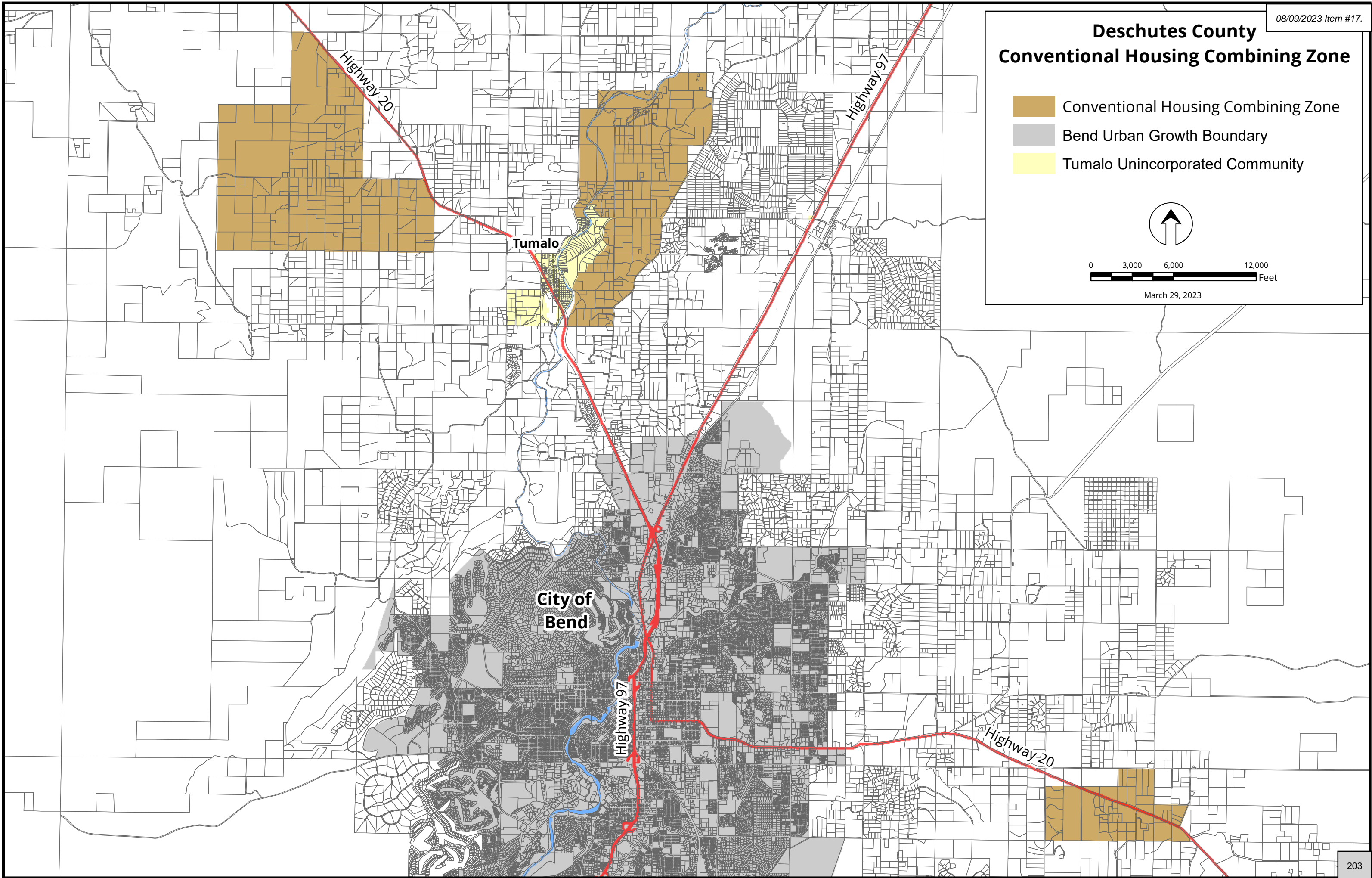
density, water, and sewage requirements are not proposed to change with this proposal. Staff finds compliance with this policy is met.

Deschutes County Conventional Housing Combining Zone

-  Conventional Housing Combining Zone
-  Bend Urban Growth Boundary
-  Tumalo Unincorporated Community



March 29, 2023



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 92, to Repeal the Conventional
Housing Combining Zone.

*
*
*
*
*

ORDINANCE NO. 2023-034

WHEREAS, the Board of County Commissioners directed Deschutes County Community Development Department staff to initiate amendments (Planning Division File No. 247-23-000391-TA) to Deschutes County Code Title 18, Chapter 92, Conventional Housing Combining Zone; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed changes on June 22, 2023 and forwarded to the Deschutes County Board of County Commissioners ("Board") a 4-1 recommendation of approval; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on August 9, 2023 and concluded that the public will benefit from the proposed changes to the Deschutes County Code Title 18; now, therefore,

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

Section 1. AMENDMENT. Chapter 18.92, Conventional Housing Combining Zone, is repealed 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 ~~striethrough~~.

Section 2. FINDINGS. The Board adopts as its findings, Exhibit "B" 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 1st Reading: _____ day of _____, 2023.

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

Record of Adoption Vote:

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

Effective date: _____ day of _____, 2023.

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 92, to Repeal the Conventional
Housing Combining Zone.

*
*
*
*
*

ORDINANCE NO. 2023-034

WHEREAS, the Board of County Commissioners directed Deschutes County Community Development Department staff to initiate amendments (Planning Division File No. 247-23-000391-TA) to Deschutes County Code Title 18, Chapter 92, Conventional Housing Combining Zone; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed changes on June 22, 2023 and forwarded to the Deschutes County Board of County Commissioners ("Board") a 4-1 recommendation of approval; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on August 9, 2023 and concluded that the public will benefit from the proposed changes to the Deschutes County Code Title 18; now, therefore,

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

Section 1. AMENDMENT. Chapter 18.92, Conventional Housing Combining Zone, is repealed 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 ~~striethrough~~.

Section 2. FINDINGS. The Board adopts as its findings, Exhibit "B" attached and incorporated by reference herein.

Section 3. EMERGENCY. This Ordinance being necessary for the immediate preservation of the public peace, health, safety, and welfare, an emergency is declared to exist, and this Ordinance becomes effective immediately.

Dated this _____ of _____, 2023

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

PATTI ADAIR, Vice Chair

ATTEST:

Recording Secretary

PHILIP CHANG

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

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

Record of Adoption Vote:

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

Effective date: _____ day of _____, 2023.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 9, 2023

SUBJECT: Public Hearing on Land Use File Nos. 247-23-000162-CU, 23-516-A:
Secondary Accessory Farm Dwelling

RECOMMENDED MOTIONS:

First, hold a public hearing; thereafter, the Board may continue the hearing to a date and time certain, close the oral portion of the hearing and leave the written record open to a date and time certain, close the hearing and commence deliberations, or close the hearing and schedule deliberations for a date and time to be determined.

BACKGROUND AND POLICY IMPLICATIONS:

The Board will conduct a Public Hearing to consider an appeal of the Hearings Officer's denial of a request for a Conditional Use Permit for a secondary accessory farm dwelling (file nos. 247-23-000162-CU, 23-516-A).

BUDGET IMPACTS:

None.

ATTENDANCE:

Haleigh King – Associate Planner
Jacob Ripper – Principal Planner



COMMUNITY DEVELOPMENT

MEMORANDUM

TO: Deschutes County Board of County Commissioners

FROM: Haleigh King, AICP, Associate Planner

DATE: August 2, 2023

RE: Public Hearing: Deschutes County Land Use File Nos. 247-23-000162-CU, 23-516-A: Secondary Accessory Farm Dwelling

The Board of County Commissioners (Board) is conducting a Public Hearing on August 9, 2023, to consider a request for a secondary accessory farm dwelling. The application and appeal are identified as file nos. 247-23-000162-CU, 23-516-A. The subject property is located approximately 1.4 miles north of Tumalo, between Cline Falls Road and Gerking Market Road. The property is addressed at 19825 Connarn Road, and is further identified on County Assessor's Map 16-12-19 as tax lot 501. A location map is included as **Attachment E**.

I. BACKGROUND

The subject 9.70-acre property is currently in farm use consisting primarily of lavender plant production and pasture grasses. The subject property is located approximately 1.4 miles north of Tumalo, between Cline Falls Road and Gerking Market Road. The property is addressed as 19825 Connarn Road, and is further identified on County Assessor's Map 16-12-19 as tax lot 501. The subject property is zoned Multiple Use Agricultural (MUA10) and is within the Airport Safety (AS) Combining Zone.

The Applicant, Tumalo Lavender Property, LLC, has requested a Conditional Use Permit to establish a secondary accessory farm dwelling using an existing manufactured home. The secondary accessory farm dwelling is proposed in an existing, Class A manufactured home located on the southeast side of the property. The manufactured home was previously permitted as a Temporary Medical Hardship Dwelling in 2010 and again in 2015. In the southern portion of the property, the property is developed with a stick-built single-family dwelling that is within the larger agricultural structure and was permitted in 2005 which allowed the central portion of an existing barn to be converted into the primary residence.

Staff referred the Conditional Use Permit application to a public hearing due to a number of interpretative questions. A public hearing before a Hearings Officer was held on May 16, 2023. The Hearings Officer issued a denial on June 14, 2023. Ms. Olson (the Applicant) filed a timely appeal of the Hearings Officer's denial on June 26, 2023. In a Consideration to Hear on July 12, 2023, the Board agreed to hear the appeal limited *de novo* in a Public Hearing.

II. HEARINGS OFFICER DECISION

The Deschutes County Hearings Officer rendered a decision denying the Applicant's request for a Conditional Use Permit for the secondary accessory farm dwelling on the grounds that:

- The Hearings Officer interpreted DCC 18.116.070 (A)(1) to require Class A manufactured homes (with exceptions for CH zoned property and also R-1 and SM zones which allow caretaker's residences) to be used as "primary dwellings." The Hearings Officer concluded that the Applicant's proposed use of a Class A manufactured home does not satisfy the requirements of DCC 18.116.070.
- The Hearings Officer found that all relevant approval criteria were met by the applicant in this case, except for DCC 18.116.070. On the basis that the application did not meet the requirements of DCC 18.116.070 the application was denied.

III. APPEAL FROM APPLICANT (247-23-000516-A)

The Applicant (Tumalo Lavender LLC) submitted a timely appeal of the Hearings Officer's decision on June 26, 2023. The Applicant requested the Board conduct a limited *de novo* Public Hearing to review the following issues:

- Interpretation of DCC 18.116.070 (Hearing Officer's Decision pages 10-13)
- Application of that interpretation to DCC 18.32.030(G) (Hearing Officer's Decision pages 20-23)
- Application of DCC 18.116.070 to subject application (Hearing Officer's Decision pages 32-33)

IV. STAFF COMMENT

As Staff noted in the Hearing's Officer proceedings, the construction of DCC 18.116.070 is unclear on whether a Class A manufactured home can be utilized or established as a secondary accessory farm dwelling. It is clearly stated in DCC 18.116.070(B) that a Class C manufactured home can be utilized as a secondary accessory farm dwelling in DCC 18.116.070(B). However, the Hearings Officer found that a Class A manufactured home can only be utilized as a "primary dwelling" based on the construction of DCC 18.116.070(A).

Staff believes this provision for Class C manufactured homes to be used as secondary accessory farm dwellings was intended to allow Class C manufactured homes to be utilized for this specific use on properties where otherwise a Class C manufactured home would not be permitted. In other

words, DCC 18.116.070(A)(1) allows Class A and B in a large variety of situations and (B)(2) is an exception to the implicit preclusion of Class C manufactured homes in the .070(A)(1) scenarios.

V. BOARD CONSIDERATION

The Board has agreed to hear the appeal limited *de novo*. The Board will hear and consider the report by staff, the applicant's presentation and written submittal, and any member of the public that wishes to give testimony or provide written comments directed towards the limited topics of the appeal. The record is available on the project website listed below.

As a reminder to the Board, the applicant, and any member of the public that wishes to give testimony, the proceedings will be limited *de novo*. A limited *de novo* review means that the Board will limit the issues on appeal to those listed in the appellant's notice of appeal, as listed below:

- Interpretation of DCC 18.116.070 (Hearing Officer's Decision pages 10-13)
- Application of that interpretation to DCC 18.32.030(G) (Hearing Officer's Decision pages 20-23)
- Application of DCC 18.116.070 to subject application (Hearing Officer's Decision pages 32-33)

VI. 150-DAY LAND USE CLOCK

The application for 247-23-000162-CU was considered complete and the 150-day clock started on April 6, 2023. At the time the Hearings Officer decision was issued, the 150th day was September 17, 2023. However, the applicant initiated a toll from July 14, 2023 to August 9, 2023 which extended the clock by 27 days.

The 150th day on which the County must take final action on this application is October 14, 2023.

VII. RECORD

The record for File No. 247-23-000162-CU and the Appeal No. 247-23-000516-A are as presented at the following Deschutes County Community Development Department website:

<https://www.deschutes.org/247-23-000162-CU>

VIII. NEXT STEPS

At the conclusion of the Public Hearing, the Board can choose one of the following options:

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

- Close the hearing and schedule deliberations for a date and time to be determined.

ATTACHMENT(S):

Attachment A – 2023-06-14 Hearing Officer Decision 23-162-CU

Attachment B – 2023-06-26 Notice of Appeal

Attachment C – Deschutes County Code Sections 18.116.050 and 18.116.070

Attachment D – Board Order No 2023-029 to hear appeal limited *de novo*

Attachment E – Location Map

HEARINGS OFFICER DECISION

FILE NUMBER: 247-23-000162-CU

**SUBJECT PROPERTY/
OWNER/APPLICANT:** Mailing Name: TUMALO LAVENDER PROPERTY LLC
Map and Tax Lot: 1612190000501
Account: 132493
Situs Address: 19825 CONNARN RD, BEND, OR 97703
(hereafter referred to as the "Subject Property")

**AGENT FOR
APPLICANT:** Douglas White
Oregon Planning Solutions LLC

REQUEST: Review of a Conditional Use Permit to establish a secondary accessory farm dwelling in an existing manufactured home in the Multiple Use Agricultural (MUA10) Zone and Airport Safety (AS) Combining Zone.

HEARING DATE: Tuesday, May 16, 2023

HEARING START: 6:00 pm

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

RECORD: Record items can be viewed and downloaded from:
<https://www.deschutes.org/247-23-000162-CU>

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

I. APPLICABLE CRITERIA

Deschutes County Code (DCC)

Title 18, Deschutes County Zoning Ordinance

Chapter 18.32, Multiple Use Agricultural Zone (MUA10)

Chapter 18.56, Surface Mining Impact Area Combining Zone (SMIA)

Chapter 18.80, Airport Safety Combining Zone (AS)

Chapter 18.116, Supplementary Provisions

Chapter 18.128, Conditional Use
Title 22, Deschutes County Development Procedures Ordinance

II. BACKGROUND FINDINGS

A. LOT OF RECORD: The Subject Property has been verified as a legal lot of record pursuant to file no. LR-02-25.

B. SITE DESCRIPTION: The Subject Property is 9.70-acres in size and is currently in farm use consisting primarily of lavender plant production and pasture grasses. In the southern portion of the Subject Property a “stick-built” single-family dwelling is located within a larger agricultural structure¹ (the “Barn”). The Barn has an attached greenhouse on its south side and there are additional large detached greenhouses in the area². In the southeast region development includes an irrigation pond, detached garage, and a manufactured home previously used as a medical hardship home (see below for land use history). The Subject Property is developed with other small accessory structures, including a 504 square foot building used for displaying lavender products available for purchase (permit AG-13-12). Connarn Road, which provides access to the Subject Property, is adjacent to the north property boundary. The Subject Property is served by an on-site septic disposal system, with domestic water provided by a private well. The Subject Property has at least 8.7 acres of irrigation water rights and includes an irrigation pond. According to the Flood Insurance Rate Map (FIRM) and National Wetlands Inventory for Deschutes County, the Subject Property is not located in the 100-year flood plain nor does it contain wetlands. The grade of the Subject Property is relatively even across the property.

C. REVIEW PERIOD: The application in this case was submitted on March 7, 2023 and deemed complete by the Planning Division on April 6, 2023. The Hearings Officer notes that a request to keep the record open was made at the public hearing and the Hearings Officer kept the record open pursuant to the following schedule:

Initial Open-Record Period: Submission of New Evidence by 4:00 pm May 23, 2023; and

Responsive Open-Record Period (evidence in response to that submitted during the Initial Open-Record Period): Submission of Responsive Evidence by 4:00 pm May 30, 2023; and

Rebuttal Open-Record Period (Applicant’s final argument): Submission of Applicant’s Final Argument by 4:00 pm on June 6, 2023.

Staff provided the following comments, during its Initial Open-Record Period submission (Memorandum, May 23, 2023, page 2), related to the date when the final County decision in this

¹ County building permit B59977 (2005) allowed for the central portion of an existing barn (originally reviewed under permit AG-04-3) to be converted into the primary residence (approximately 1,080 square feet).

² The attached and detached greenhouses were established around 2006. Staff (Staff Report, page 2) indicated that the greenhouse structures did not appear to meet the required 25-foot rear setback for the MUA10 Zone. The Hearings Officer notes that this decision does not review or approve these potentially nonconforming setbacks.

case is due:

“As discussed at the conclusion of the May 16, 2023 hearing, the Hearings Officer left the written record open for a total of 21 days to include three periods of seven days. DCC 22.24.140.E states the following,

E. A continuance or record extension granted under DCC 22.24.140 shall be subject to the 150- day time limit unless the continuance or extension is requested or otherwise agreed to by the applicant. When the record is left open or a continuance is granted after a request by an applicant, the time period during which the 150-day clock is suspended shall include the time period made available to the applicant and any time period given to parties to respond to the applicant's submittal.

While staff notes the open record period was not initially requested by the applicant, the applicant, Holly Olsen, did not object to the specific schedule as set forth above. This occurred at approximately 1 hours and 27 minutes during the hearing on May 16, 2023. Staff notes the applicant was asked if they wanted to be the initiator of the open record period, to which Ms. Olsen responded, “No”, around 1 hours 28 minutes. Despite the applicant not requesting the open record period, they did agree to it as discussed above.

Therefore, Staff believes the 150-day clock is suspended for the first 14 days of the open record period pursuant to the language above “...or otherwise agreed to by the applicant.” Staff wanted to clarify this for the Hearing Officer’s consideration.”

The Hearings Officer concurs with the above-quoted Staff analysis and conclusion. The Hearings Officer adopts the above-quoted Staff comments as the Hearings Officer’s findings related to the open-record period and impact on the date the final County decision is due.

The Hearings Officer notes that an open-record submission was received from Applicant on June 1, 2023 which stated:

“We will close out the record so that Gregory Frank can start his review and expedite the process. Does that shorten his 21-day review period? In other words, if we close the record today, does the 21-day review period begin today or does it still begin on June 6 (ending June 27)?”

The Hearings Officer finds that Applicant, on June 1, 2023 waived the balance of its final argument period and requested the record be closed. The Hearings Officer finds that the record shall be deemed closed on June 1, 2023.

The 150th day on which the County must take final action on this application is September 17, 2023.

D. PROPOSAL: The Applicant requests a Conditional Use Permit to establish an existing manufactured home as a secondary accessory farm dwelling pursuant to DCC 18.32.030.G and DCC 18.128.³

The Applicant provided the following statement in their Proposal section (Burden of Proof, page 5):

“The applicant is requesting a Conditional Use to establish an existing manufactured home (previously a medical hardship dwelling) as a secondary accessory farm dwelling pursuant to the requirements of the MUA-10 Zone. As stated above, the property is currently engaged in the growing of lavender and production of lavender products. The subject manufactured home was originally put in place and permitted as a temporary use for a medical hardship by the previous owners (see Attachment B showing the 2010 Land Use permit). The subject site was purchased in 2022 by present owners Tumalo Lavender Property LLC which is comprised of an equal 1/3 owner-operator split by the following parties: Holly Olson, Summer Hagedorn, and Marilyn Thompson (see Attachment C showing Property Deed and Attachment D showing operating agreement for Tumalo Lavender Property LLC). One of the owners and primary operators of the farm is currently residing in the subject manufactured home while the primary single-family dwelling is to be rented to farm help.” [underlining included in original document]

Based upon the application materials the Hearings Officer interprets Applicant’s proposal for a secondary accessory farm dwelling to be inextricably linked to the existing manufactured home. The Hearings Officer is constrained by Applicant’s request to locate the existing manufactured home as the secondary accessory farm dwelling. The Hearings Officer is not allowed to consider unspecified alternatives such as locating an alternative Class manufactured home on the Subject Property.

E. SURROUNDING LAND USES: The area surrounding the Subject Property consists of a mix of farm and rural residential properties. To the north, south, and east are properties primarily developed with residences and carry the same zoning as the Subject Property. To the west are properties, developed and undeveloped, which are also zoned for farm use. A majority of the properties in the area exhibit some level of farm or agricultural use. The Deschutes River is approximately 0.5 miles to the east of the Subject Property. Zoning in the area is a mixture of Exclusive Farm Use (EFU), Multiple Use Agricultural (MUA10), Surface Mining (SM), and Flood Plain (FP).

F. LAND USE HISTORY: The Applicant submitted the current land use permit application in response to code enforcement case, file no. 247-22-000400-CE. In summary, the Applicant did not decommission or remove the temporary manufactured home when the medical hardship previously approved in 2010 and again in 2015 ceased to exist and the Subject Property was sold. The Applicant did not apply for a new medical hardship dwelling. The Applicant is requesting an after-the-fact approval for the existing manufactured home to be used as a secondary accessory

³ See Deschutes County Application question #1: “Request Conditional Use for Manufactured Home as Secondary Farm Dwelling.”

farm dwelling. Although the secondary accessory farm dwelling use may have been operational on the Subject Property for some time, Staff and the Hearings Officer reviewed it as a new application.

Below is a summary listing of recent land use actions affecting the Subject Property:

- 247-18-000526-CU, 527-SP: Conditional Use and Site Plan Review to establish a commercial activity in conjunction with the existing lavender farm use; and
- 247-15-000238-TU: Temporary Use Medical Hardship Dwelling⁴; and
- TU-10-8: Temporary Use Medical Hardship Dwelling; and
- SMA-04-4: Surface Mining Impact Area (SMIA) review for single-family dwelling; and
- LR-02-25: Legal lot of record verification.

G. PUBLIC AGENCY COMMENTS: The Deschutes County Planning Division mailed notice on March 21, 2023, to several public agencies and received the following comments:

Deschutes County Onsite Wastewater, Todd Cleveland

“This proposal will require septic system review and permits. Upgrades to the existing system or a new system may be necessary.”

STAFF REPORT COMMENT (Staff Report, pages 4 and 5): *“Staff recommends the following condition of approval be included in any decision which approves the application:*

Prior to the initiation of use, the property owner shall obtain any necessary permits from the Deschutes County Building Division and Onsite Wastewater Division.”

Deschutes County Senior Transportation Planner, Peter Russell

“I have reviewed the transmittal materials for 247-23-000162-CU to change a manufactured home previously approved as a temporary medical hardship dwelling into an accessory farm dwelling on a 9.7-acre parcel in the Multiple Use Agricultural (MUA-10) and Airport Safety (AS) zones at 19825 Connarn Road, aka 16-12-19, Tax Lot 501. The result would be two permanent dwellings on the property, which contains Tumalo Lavender Farm.

The most recent edition of the Institute of Traffic Engineers (ITE) Trip Generation Handbook indicates a single-family home (Land Use #210) produces approximately nine weekday trips. Thus the site’s two dwellings would produce approximately 20 weekday trips (9.43 + 9.43). Under DCC 18.116.310(C), no further traffic analysis is required for a

⁴ The dwelling approved through file 247-15-000238-TU utilizes the same dwelling approved through file TU-10-8. The requirement for a new land use - 247-15-000238-TU – was based on the change of circumstances (change in family member using the dwelling).

use of less than 50 new weekday trips. Staff notes the burden of proof states the farm would have workers ranging in four to 10 in number. Even with 10 employees, which would equal 20 new daily weekday trips, the combination of the roughly 30 weekday trips from the two dwellings (20 from the farm worker dwelling, 9.43 from the main home) would not exceed the 50-trip threshold.

The property accesses Connarn Road, a public road maintained by Deschutes County and functionally classified as local. The property has two driveway permits approved by Deschutes County (#247-19-001534-DA and #247-SW4543) and thus complies with the access permit requirements of DCC 17.48.210(A).

The property is approximately nine miles west-southwest of the Redmond Airport. Between the distance to the airport and the height limit in the zone, the use will not penetrate any imaginary surfaces related to Roberts Field.

Board Resolution 2013-020 sets a transportation system development charge (SDC) rate of \$5,080 per p.m. peak hour trip. From an SDC perspective, staff finds the proposed used would in effect establish the trip generation equivalent of a new second dwelling on the property. Staff notes the burden of proof on Page 5 describes the intensity of the use as "...year-round farm help, seven days a week, with part-time and full-time staff varying in between four and up to 10 employees throughout the year." On Page 6, the burden of proof it states "...it is necessary to have farm help reside in both dwellings." County staff has determined a local trip rate of 0.81 p.m. peak hour trips per single-family dwelling unit; therefore the applicable SDC is \$4,115 (\$5,080 X 0.81). The SDC is due prior to issuance of certificate of occupancy; if a certificate of occupancy is not applicable, then the SDC is due within 60 days of the land use decision becoming final.

THE PROVIDED SDC AMOUNT IS ONLY VALID UNTIL JUNE 30, 2023. DESCHUTES COUNTY'S SDC RATE IS INDEXED AND RESETS EVERY JULY 1. WHEN PAYING AN SDC, THE ACTUAL AMOUNT DUE IS DETERMINED BY USING THE CURRENT SDC RATE AT THE DATE THE BUILDING PERMIT IS SUBMITTED.

ON JULY 1, 2023, THE SDC BECOMES \$5,406 PER PEAK HOUR TRIP AND THIS RATE WILL BE VALID UNTIL JUNE 30, 2024. THIS WILL INCREASE THE SDC FROM \$4,115 TO \$4,379 (\$5,406 X 0.81)."

Deschutes County Building Safety Division, Randy Scheid

"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.”

The following agencies did not respond to the notice: Bend Fire Department, Deschutes County Assessor, Deschutes Code Enforcement, Deschutes Road Department, Oregon Department of Aviation, Tumalo Irrigation District.

H. PUBLIC COMMENTS: The Deschutes County Planning Division mailed notice of the public hearing to all property owners within 250 feet of the subject property on March 21, 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 public hearing on March 22, 2023. Notice of the public hearing was published in *The Bulletin* newspaper on March 22, 2023.

Staff, prior to the publication of the Staff Report, received two public comments from nearby property owners.

The first comment received by Staff was received from David Arnold, resident and owner of property located at 19830 Connarn Road, Bend, OR 97703 on March 16, 2023:

“I see that a conditional use application has been submitted by Tumalo Lavender to add a secondary farm dwelling (the medical hardship manufactured trailer) to their property. Please include me with all correspondence at this email address and at my physical address, David Arnold, 19830 Connarn Rd, Bend, OR 97703. I will be asking that this application be denied.”

Mr. Arnold sent a follow-up comment on March 16, 2023,

“I have read the Conditional Use applications from Tumalo Lavender Properties LLC and feel that the application is incomplete. Specifically the plot map provided is incomplete. The applicants have failed to meet the applicants responsibilities for required documentation as required when a conditional use application is submitted to the county. Here is a list of information I feel that needs to be provided for me to respond.

- Driveways (existing and proposed).*
- Location of all existing and proposed structures on the property.*
- Distance from all existing and proposed structures to property lines (setbacks).*
- Location of water source.*
- Location of septic tank, drainfield and replacement area.*
- Location of major features such as rivers, streams, canals, irrigation ditches, and/or rock ledges/outcrops.*

Specifically I am most concerned about location of the water source. This property is registered with the Oregon Department of Agriculture with a Food Processing License and Nsy Stk Growers Collectors of Native Plants license (nursery). Both of these licenses require specific permits from the Oregon Water Resources Department (OWRD). For this reason I

request the application be returned to the applicants as incomplete and not be accepted until all the requirements are met."

The second comment was received from Gail Burton and Gregg Riegel, residents and owners of property located at 19816 Connarn Road, Bend, OR 97703 on March 16, 2023. Burton/Riegel stated:

"We recently became aware the Tumalo Lavender property at 19825 Connarn Road, Bend OR 97703 has applied for a conditional use permit for a secondary farm dwelling.

We are opposed to their attempt to change the designation of the 'medical hardship' manufactured home (granted to the previous owners), which should have been removed, per their agreement with the county, when Judy Knight's mother died.

Instead, she and her husband, Gordon, were able to finagle its continued existence on the property, by pretending he needed help, ostensibly for a medical condition. Instead, they rented it out, while he was overseeing the operations, driving the tractor, and working on the farm.

The current owners are living in the 'medical hardship' manufactured home, rather than in the primary dwelling. As this is zoned MUA-10, where one single family home is allowed, they should be required to remove the manufactured home and bring the property into compliance.

Many of us farm in Tumalo, yet we don't request county approval for a secondary dwelling to house our 'farm workers.' Historically, their farm workers have been seasonal, few in numbers, and have lived elsewhere, except for the illegal travel trailer, which was finally removed, following a code violation complaint.

In the survey records, it appears the south and east property lines were never surveyed. This should be required before determining the actual setbacks, as the manufactured home, its adjacent stick built garage, the primary residence, and the large greenhouses are all very close to the south and east property lines.

In fact, Gordon Knight had a boundary dispute with the neighbor to the south, when he realized the primary residence was laid out incorrectly, and a part of it was too close to the property line.

In conclusion, we formally request a public hearing on this application, and to be informed, via email, and in paper correspondence, of any matters pertaining to the application."

At the public hearing, in addition to Staff and Applicant (including Applicant representatives), a number of persons testified (Gail Burton, David Arnold, Nunzie Gould). The Hearings Officer reviewed and considered all hearing testimony and all documents submitted into the record when

making this decision. Testimony and documents directed to relevant approval criteria may be referenced in the findings set forth below.

III. FINDINGS & CONCLUSIONS

A. PRELIMINARY FINDING - SCOPE

A number of opponents offering testimony and record documents raised issues related to the *operation* of the lavender farm apart from the proposed secondary accessory farm dwelling. For example, testimony/documentary evidence was offered related to code violations not related to the manufactured home that is subject of the application in this case. Additionally, testimony and evidence were offered related to the commercial activities located on the Subject Property.

The Hearings Officer finds that the application in this case seeks approval of the use of an existing manufactured home proposed to be used as a secondary accessory farm dwelling. The Hearings Officer is limited to considering evidence and argument related to whether or not the application for a secondary accessory farm dwelling meets the relevant approval criteria. This case is not the proper time or forum to reconsider and/or review issues not related to the approval criteria relevant to the specific application for a secondary accessory farm dwelling on the Subject Property.

B. PRELIMINARY FINDING - INCOMPLETE APPLICATION

Two participants (Arnold and Gould) argued that the application was incomplete, should not have been accepted by Staff and therefore should be denied. Initially, the Hearings Officer finds that no participant in this case provided the Hearings Officer with a citation or legal reference to a specific section of State law, DCC or regulation that imposed “application requirements” as relevant approval criteria. The Hearings Officer finds that generally “application requirements” do not operate as relevant approval criteria and therefore, an application cannot be denied on the basis that “application requirements” have not been met.

In this case many of the “application requirement” deficiencies raised by participants related to evidentiary topics that were contained in relevant approval criteria.⁵ In those instances the Hearings Officer considered all evidence in the record when determining if a specific approval criterion was met. In numerous instances evidentiary deficiencies were noted by the Hearings Officer and addressed through the imposition of conditions of approval. The Hearings Officer only utilized conditions of approval to satisfy evidentiary deficiencies where a future administrative decision would be made using objective standards (as opposed to discretionary standards).

C. PRELIMINARY FINDINGS: STAFF ISSUES

⁵ Example of application requirement that is also related to relevant approval criterion: David Arnold May 16, 2023 email to Haleigh King - “distance from all existing and proposed structures to property lines (setbacks).”

Staff (Staff Report [page 15] & Staff PowerPoint Presentation [Issue Areas and Considerations] & hearing testimony) requested that the Hearings Officer address specific issues. The Hearings Officer provides findings below for each issue raised by Staff.

1. Staff Issue: Class A Manufactured Home

“Can a Class A manufactured home be utilized as a secondary accessory farm dwelling pursuant to DCC 18.116.070?”

Applicant requested (Application form & Burden of Proof) that the County approve a conditional use permit for a “manufactured home as a secondary accessory farm dwelling subject to the requirements set forth in DCC 18.116.070.” The reason that DCC 18.116.070 is relevant to this case is found in DCC 18.32.030 G. which states that a conditional use request may be approved for a:

Manufactured home as a secondary accessory farm dwelling, subject to the requirements set forth in DCC 18.116.070.

Applicant’s proposal is for a conditional use permit to allow an existing manufactured home to be allowed as a secondary accessory farm dwelling on the Subject Property. Applicant acknowledged that the existing manufactured home located on the Subject Property is a Class A manufactured home per DCC 18.116.050 A.

DCC 18.116.070, as relevant to this case, states the following:

- A. *As defined in DCC 18.116.050, Class A and B manufactured homes shall be permitted as follows, subject to the requirements of the underlying zones:*
 - 1. *In the following zones, except where there is a Conventional Housing Overlay Zone (CH): Any EFU zone, MUA-10, F-1, F-2, RR-10, any area zoned as an unincorporated community (as that term is defined herein), RSR-M, RSR-5, and FP as the primary dwelling, and R-1 and SM as a caretaker's residence.*

Applicant, in its May 23, 2023 open-record submission, responded to Staff’s above-stated question as follows:

“The Staff Report clearly acknowledges that the existing manufactured home (the one that is the subject of this application) is a Class A manufactured home (page 24 of the Staff Report). The above subsection (1) clearly provides that Class A and B manufactured homes are permitted in any MUA-10 and the ‘FP as the primary dwelling, and R1 and SM as a caretaker residence’.

The provisions of DCC 18.116.070 (A)(1) clearly provide that Class A and B manufactured homes are permitted in certain zones, including MUA-10 Zones, without restriction unless such zoning imposes additional requirements. The MUA-10 zoning regulations do not impose additional requirements as to use of Class A or B manufactured homes. The limit to Class A and B

manufactured homes in the (FP) Flood Plain Zone to only the 'primary dwelling' doesn't apply to the MUA-10 zone, in the same way that a 'caretaker's residence' is permitted in the Rural Industrial (RI) and Surface Mining (SM) zones."

Staff, in its May 23, 2023 Memorandum, provided the following comments related to the interpretation of DCC 18.116.070 (A)(1):

"As stated in A.1, the sentence construction of the code requirement may be unclear on whether a Class A manufactured home can be utilized only as a primary dwelling in any zone besides RI and SM, as a primary dwelling only in the FP zone, or if allowed as any type of dwelling in the MUA Zone. Although unclear, Staff believes this requirement to specify that Class A manufactured homes are allowed in the FP zone only as a primary dwelling.

It is clear that DCC 18.116.070(B) allows for a Class C manufactured home to be permitted as a secondary accessory farm dwelling. However, as discussed in the staff report, the subject dwelling is classified as a Class A manufactured home. Although unclear, Staff believes this provision for Class C manufactured homes to be used as secondary accessory farm dwellings was intended to allow Class C manufactured homes to be utilized for this specific use on properties where otherwise a Class C manufactured home would not be permitted. In other words, DCC 18.116.070(A)(1) allows Class A and B in a large variety of situations and (B)(2) is an exception to the implicit preclusion of Class C manufactured homes in the .070(A)(1) scenarios.

However, the sentence construction of 18.116.070(A)(1) makes this unclear. Staff requests interpretation and specific findings from the Hearings Officer on this issue."

The Hearings Officer agrees with Staff that it is necessary to interpret DCC 18.116.070 (A)(1) in order to make the decision in this case.

As a backdrop for the interpretive process the Hearings Officer takes notice of ORS 174.010. While this section of the Oregon Revised Statutes is not determinative in this case the Hearings Officer finds it provides a relevant conceptual perspective. ORS 174.010 states:

"In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all."

The Hearings Officer also takes note of prior Court and Oregon Land Use Board of Appeals ("LUBA") interpretative guidelines. A long line of Oregon cases instructs decision makers (such as a hearings officer) to focus on the "text" and the "context" of the relevant code. Portland Gen. Elec. Co v. Bureau of Labor and Indus., 317 Or 606 (1993), State v. Gaines, 346 Or 160 (2009) and Sarathy v Washington County, LUBA No. 2011-065. These cases are consistent with the Hearings Officer's interpretation of ORS 174.010.

The Hearings Officer finds that the words, and only the words, used by the drafters (Deschutes County Commission) should be considered. The Hearings Officer does not have the authority to insert words into DCC 18.116.070 (A)(1) that were not included or to omit words that were included in DCC 18.116.070 (A)(1). The Hearings Officer also finds it to be proper to consider the actual text of DCC 18.116.070 (A)(1) in the context of other sections of DCC 18.116.070.

The Hearings Officer finds that DCC 18.116.070 is focused on where specific types/categories of manufactured homes may be located in Deschutes County. DCC 18.116.070 (A) addresses where Class A and B manufactured homes are allowed to be placed. The Hearings Officer finds that DCC 18.116.070 (A)(2), (A)(3) and (A)(4) are not relevant to these findings. The preface of DCC 18.116.070 (A) states, in part that DCC 18.116.070 (A) is “subject to the requirements of the underlying zone.” The Hearings Officer finds the “subject to” language is an important part of DCC 18.116.070 (A) and in this case the application for a secondary accessory farm dwelling is allowed as a conditional use in the MUA-10 zone.⁶

The Hearings Officer agrees with Staff that the language of DCC 18.116.070 (A)(1) is challenging to read. This is primarily because of the “except where...” language and the use of a colon (following “(CH)”). However, the Hearings Officer finds that DCC 18.116.070 (A)(1) is capable of a clear interpretation.

The Hearings Officer finds that DCC 18.116.070(A)(1) permits the placement of a Class A or Class B manufactured home in certain designated land use planning zones. DCC 18.116.070 (A)(1) sets forth two lists of zones where Class A and Class B manufactured homes can be placed as “primary dwelling” and where they (Class A and Class B manufactured homes) can be placed as a “caretaker’s residence.” The first list includes the following zones: EFU, MUA-10, F-1, F-2, RR-10, any area zoned as an unincorporated community, RSR-M, RSR-5 and FP. The second list contains the R-1 and SM zones.

The Hearings Officer disagrees with Applicant that the only zone where a “primary dwelling” can be located is the FP zone. The Hearings Officer disagrees with Applicant for two reasons. First, immediately preceding the FP designation in DCC 18.116.070 (A)(1) is the word “and.” The Hearings Officer finds that the word “and,” as used in DCC 18.116.070 (A)(1) between “RSR-5” and “FP,” is a conjunction linking the listed zones.⁷ The word “and” ties together all zones in the list. The Hearings Officer finds that the “FP” zone is included in the list of zones where a Class A or Class B manufactured home must be used as a “primary residence.”

The second reason the Hearings Officer disagrees with Applicant’s “FP is the only zone requiring a ‘primary residence’” is Applicant’s statement that “The MUA-10 zoning regulations do not

⁶ The Hearings Officer finds no participant in this case identified a relevant “underlying zone” (MUA) requirement (other than compliance with DCC 18.116.070) that would limit the location of a Class A or B manufactured home, as a conditional use, on the Subject Property.

⁷ Dictionary definition of “and”: “used to connect words of the same part of speech, clauses, or sentences, that are to be taken jointly.”

impose additional requirements as to use of Class A or B manufactured homes.” DCC 18.32.030 G does in fact “impose additional requirements” for the placement of a manufactured home in the MUA-10 zone; DCC 18.116.070 restrictions and limitations on the various classes of manufactured homes within identified zoning districts. Further, the Hearings Officer finds that had the Commission intended there be no requirements to use Class A or B manufactured homes it could have clearly said that. To the contrary the Commission included a finite list of zones where a Class A or Class B manufactured home must be used as the “primary dwelling.”

The Hearings Officer also considered the context of DCC 18.116.070 (A). The Hearings Officer finds it is reasonable to consider language of other sections of DCC 18.116.070 when interpreting DCC 18.116.070 (A)(1). The Hearings Officer takes note that DCC 18.116.070 (B) is directed to where Class C manufactured homes may be placed. Specifically, DCC 18.116.070 (B)(2) allows a Class C manufactured home to be permitted “as a secondary accessory farm dwelling.” The Hearings Officer finds that the Commission, when drafting DCC 18.116.070 was aware of the difference between “primary dwellings” and “secondary accessory farm dwellings.” The Hearings Officer finds that the Commission’s inclusion of the phrase “secondary accessory farm dwellings” in DCC 18.116.070 (B) but not in DCC 18.116.070 (A) clearly expressed the Commission’s intent. The Hearings Officer finds that the Commission’s omission of the phrase “secondary accessory farm dwellings” from DCC 18.116.070 (A) was intentional. Consistent with ORS 174.010 the Hearings Officer finds that he may not “insert” terms or phrases that are not included in the actual text of a questioned code section. The Hearings Officer cannot insert the “secondary accessory farm dwellings” text into DCC 18.116.070 (A)(1).

The Hearings Officer does not find Applicant’s interpretation of DCC 18.116.070 (A)(1) is without merit. However, the Hearings Officer finds interpreting DCC 18.116.070 (A)(1) to require that Class A and Class B manufactured homes, within the MU-10 zone, must be used for “primary dwelling” purposes best reflects the actual words used (text) in DCC 18.116.070 (A)(1) and is consistent with the overall context of DCC 18.116.070.

2. Staff Issue: Need

“Does an applicant need to demonstrate a need for the ‘secondary accessory farm dwelling?’ and if so, has the applicant demonstrated a need for the ‘secondary accessory farm dwelling?’”

It appears to the Hearings Officer this query arose from Staff’s review of prior County land use decisions. Staff cited two prior County decisions (CU-90-163 and CU-95-122) dealing with applications for a secondary accessory farm dwelling proposed to be located within the MUA-10 zone. County staff, in the CU-90-163 decision (Conclusionary Findings, page 3), stated

*“the applicant has an established farm operation with livestock and has shown a **need** for an accessory dwelling in conjunction with the farm use...”* [bolding added for emphasis by the Hearings Officer]

The Hearings Officer issuing the CU-95-122 decision stated:

*"In order to satisfy this criterion, the applicant must show that farm use of the property is the main use of the property and there is connection between the farm use and the proposed accessory use or structure. Or, in the words of the applicants' counsel, the issue is 'whether or not the dwelling will be **necessary** for the farm use.'" [bolding added for emphasis by the Hearings Officer]*

Staff, in this case and in the CU-90-163 Staff decision, and the prior Hearings Officer's decision (CU 95-122), sourced its "need," "necessary," or "connection" concerns from the definition of "accessory use or accessory structure." (See DCC 18.04.030) The DCC defines "accessory use or accessory structure" as:

"a use or structure incidental and subordinate to the main use of the property, and located on the same lot as the main use. Accessory uses include drilling for, and utilization of, low-temperature geothermal fluid in conjunction with the main use of the property."

The Hearings Officer finds the above-quoted "Accessory use or accessory structure" definition does not contain the either the word "need" or the word "necessary." The definition does contain the words "incidental" and "subordinate." Staff, in its CU 95-122 decision, did reference dictionary definitions for "incidental" and "subordinate." Staff, in CU 95-122 stated:

"Incidental means 'being likely to ensure as a chance or minor consequence. Webster's New Collegiate Dictionary. Subordinate means 'inferior, submissive to or controlled by authority.' Id. The use of these terms in the definition of accessory use or structure suggests that there be a connection of the proposed use or structure to the main use of the property."

The Hearings Officer, in addition to considering the DCC definition of the phrase "accessory use or accessory structure" considered the dictionary definition of "accessory" as an interpretative aide. Webster's Online Dictionary ([Accessory Definition & Meaning - Merriam-Webster](#)) defines "accessory" as:

*aiding or contributing in a secondary way: supplementary
accessory materials*

*present in a minor amount and not essential as a constituent
an accessory mineral in a rock*

The Hearings Officer finds that the literal meaning of "accessory," as used in the context of DCC 18.32.030 G., requires that an applicant successfully demonstrate the a proposed "secondary accessory farm dwelling" has a connection to a demonstrated primary farm use. The Hearings Officer finds that the extent or degree of connection could plausibly include a demonstration of "need" or "necessity." However, the Hearings Officer finds that the use of the phrase "incidental" suggests a lesser standard of proof than "need." The Hearings Officer finds that use of the term

“incidental” is better paired with the terms “contributing” or “supportive.” The Hearings Officer finds that an applicant is not required to demonstrate “need” in an application for a secondary accessory farm dwelling.

3. Staff Issue: Relationship – Primary use/residence to Secondary Accessory Farm Dwelling

“How does a ‘secondary accessory farm dwelling’ relate to a property’s primary use or primary residence?”

The Hearings Officer incorporates the interpretation of “accessory” set forth in the Need findings above (Section III.C.2). The Hearings Officer finds that DCC does not define the term “secondary” or the phrase “farm dwelling.” The Hearings Officer finds that “primary use” is defined by DCC 18.04.030.

Secondary is defined by Webster’s Online Dictionary ([Secondary Definition & Meaning | Dictionary.com](https://www.webster.com/dictionary/secondary)) as:

“next after the first in order, place, time, etc.

belonging or pertaining to a second order, division, stage, period, rank, grade, etc.

dependent on or generated by something more basic; derivative.”

The Hearings Officer finds that the phrase “farm dwelling,” while not defined by the DCC, is a structure that is intended to be occupied for living purposes and is connected/associated with a farm use. The Hearings Officer, considering the above-referenced definitions, finds that a **secondary accessory farm dwelling** is a dwelling (place of occupancy) located on a farm that is supportive of or is subordinate in rank/importance to a “primary dwelling.”

In the context of an application for the location of a secondary accessory farm dwelling the Hearings Officer finds (1) that the structure must be used in connection with farm use(s) occurring on a property and (2) there is a primary dwelling to which the proposed secondary accessory farm dwelling is additional to and subordinate.

The Hearings Officer finds that the “primary use” of a property, when considering “secondary accessory farm use” is important. As noted in the Need findings an applicant for a secondary accessory farm use must demonstrate that the proposed structure contributes to or is supportive of a farm use on a subject property. The same can be said of a “secondary accessory farm structure or dwelling.

The Hearings Officer finds that to have a secondary accessory farm dwelling there must be a primary farm dwelling. The Hearings Officer finds that a primary farm dwelling, in the MUA-10 zone, is allowed as a matter of right and a secondary farm dwelling is only allowed as a conditional use. Therefore, the right to have a secondary farm dwelling is derivative of the right to having a

primary farm dwelling. In the event the primary farm dwelling would be removed or eliminated, in some manner, the secondary accessory farm dwelling rights would no longer exist; a secondary farm dwelling needs, for it to be legally recognizable, a primary farm dwelling.

4. Staff Issue: Occupant(s) of Secondary Accessory Farm Dwelling

“Can a primary farm operator reside in a secondary accessory farm dwelling?”

Staff expressed uncertainty as to whether or not “who” lived in a “primary farm dwelling” and “who” lived in a “secondary farm dwelling” was relevant and/or important. The Hearings Officer reviewed the record in this case and sections of the DCC the Hearings Officer considered relevant. The Hearings Officer could find no provision of the DCC that unequivocally identified “who” should live in a “primary farm dwelling” or “who” should live in a “secondary farm dwelling.”

As noted in the preceding findings the Hearings Officer concluded that a secondary farm dwelling has the right to exist because of the existence of a “primary farm dwelling.” The right of a secondary farm dwelling to exist is derivative of a primary farm dwelling. This right of existence is not dependent upon “who” resides in either the “primary farm dwelling” or the “secondary farm dwelling.”

As alternative findings to the above paragraph the Hearings Officer finds there is no requirement in the DCC that a “primary farm dwelling” be occupied by an “owner” of a property. It is reasonable to assume, in some instances, that the primary farm dwelling could be occupied by a lessee (person renting the farm property) or a farm employee (i.e., foreperson, farm operator, farm worker). Likewise, the Hearings Officer found no requirement in the DCC that a “secondary farm dwelling” be occupied by any class/category of person(s). The Hearings Officer finds an owner, lessee, primary farm operator, secondary farm operator (if there is such a title) or farm employee can all reside in a secondary accessory farm dwelling.

5. Staff Issue: Occupant(s) Stick-built/Primary Dwelling

“Can a stick-built dwelling or primary dwelling, as defined in DCC 18.04.030, be occupied by farm help or employees?”

The Hearings Officer finds DCC 18.04.030 does not include a definition of “stick-built dwelling” or “primary dwelling.”⁸ There is reference to “primary dwelling” in the “primary or principal use” DCC 18.04.030 definition. That reference is strictly temporal in nature; the dwelling that was first located on a lot is the “primary dwelling.” “

⁸ The phrase “Primary or principal use” is defined, in DCC 18.04.030, as “the first use to which property is or may be devoted, and to which all other uses on the premises are accessory or secondary uses. As used relative to dwelling units, the primary dwelling would be the first dwelling unit to be located on a specific parcel or lot.”

The Hearings Officer could find nothing in the DCC either authorizing or prohibiting the occupancy of a “primary farm dwelling” or a “secondary accessory farm dwelling” by farm help or employees. Because there is no DCC reference to who may occupy a “stick-built dwelling” or a “primary dwelling” the Hearings Officer finds there are no limitations on who may occupy such structure. The Hearings Officer finds that a “stick-built dwelling” and also a “primary dwelling” may be occupied by farm help and/or employees.

D. Approval Criteria Findings

Title 22, Deschutes County Development Procedures Ordinance

Chapter 22.20 Review of Land Use Action Applications

Section 22.20.015, Code Enforcement and Land Use.

- A. *Except as described in (D) below, if any property is in violation of applicable land use regulations and/or conditions of approval of any previous land use decisions or building permits previously issued by the County, the County shall not:***
 - 1. *Approve any application for land use development;***
 - 2. *Make any other land use decision, including land divisions and/or property line adjustments;***
 - 3. *Issue a building permit.***
- B. *As part of the application process, the applicant shall certify:***
 - 1. *That to the best of the applicant’s knowledge, the property in question, including any prior development phases of the property, is currently in compliance with both the Deschutes County Code and any prior land use approvals for the development of the property; or***
 - 2. *That the application is for the purposes of bringing the property into compliance with the Deschutes County land use regulations and/or prior land use approvals.***
- C. *A violation means the property has been determined to not be in compliance either through a prior decision by the County or other tribunal, or through the review process of the current application, or through an acknowledgement by the alleged violator in a signed voluntary compliance agreement (“VCA”).***
- D. *A permit or other approval, including building permit applications, may be authorized if:***
 - 1. *It results in the property coming into full compliance with all applicable provisions of the federal, state, or local laws, and Deschutes County Code, including sequencing of permits or other approvals as part of a voluntary compliance agreement;***
 - 2. *It is necessary to protect the public health or safety;***
 - 3. *It is for work related to and within a valid easement over, on, or under the affected property; or***

4. *It is for emergency repairs to make a structure habitable or a road or bridge to bear traffic.*
- E. **Public Health and Safety.**
1. *For the purposes of this section, public health and safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger life, health, personal property, or safety of the residents of the property or the public.*
 2. *Examples of that situation include, but are not limited to issuance of permits to replace faulty electrical wiring, repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel or power; and actions necessary to stop earth slope failure.*

FINDING: The Hearings Officer acknowledges that one or more code violations currently exist at the Subject Property. The Hearings Officer finds that a current code violation exists related to the manufactured home that is subject to this application and decision.

The Hearings Officer takes note of the Deschutes County Board of Commissioners' decision in *Tumalo Irrigation District* (247-17-000775-ZC, 247-17-000776-PA). In that decision the Board provided interpretive guidance to all Deschutes County Hearings Bodies related to DCC 22.20.015. Staff, in the Staff Report (pages 8, 9 & 10), pointed out to the Hearings Officer that the following Board comments may be relevant to this case and decision:

"As DCC 22.20.015 is a relatively new provision first adopted in 2015 and frequently arises in contested land use hearings, the Board takes this opportunity to provide interpretation and guidance on the implementation of this provision.

As discussed more fully below, the Board interprets DCC 22.20.015 to require a sequential three-step analysis.

1. *Is there a previously "adjudicated violation" on the property?*
2. *Does the subject land use application present the best forum for adjudicating a new allegation, i.e. is there time to investigate something more than a vague allegation?*
3. *When there is an "adjudicated violation" or the property is found to be in violation as part of the land use application process, can the land use permit nevertheless be issued pursuant to DCC 22.20.015(D) and (E)?*

First, the Board starts by noting that the primary purpose (and benefit) of DCC 22.20.015 is to address "adjudicated violations," i.e. violations that were already conclusively determined through the normal applicable code enforcement process prior to an applicant submitting a land use application. This interpretation is supported by the use of the past tense in the codified definition of "violation" in DCC 22.20.015(C): "[a] violation means the property has been determined to not be in compliance either through a prior decision by

the County or other tribunal, ... or through an acknowledgment by the alleged violator in a signed voluntary compliance agreement ('VCA')" (emphasis added).

Second, differing from the "adjudicated violations" scenario described above, there are cases where the Board anticipates that a County hearings body will need to determine if a property is in violation during the land use application process. DCC 22.20.015(C) addresses this possibility by including in the definition of "violation" the phrase "or through the review process of the current application." However, the Board cautions that County hearings bodies should take up this inquiry in rare cases because of the obvious practical difficulties born from comingling the County's land use application process with the separate and distinct code enforcement process. For example, when a vague allegation is alleged by an opponent late in the land use application process, there rarely will be time to comprehensively investigate and appropriately adjudicate that violation due to the 150-day time limit for issuing final decisions per ORS 215.427. Nothing within DCC 22.20.015 requires a County hearings body to process a code complaint pursuant to the County's adopted Code Enforcement Policy and Procedures Manual and conclusively determine the status of a previously un-adjudicated violation solely on the basis that an opponent submits a vague and unsubstantiated allegation during the land use application process.

As such, the Board interprets DCC 22.20.015 to require something more than a vague allegation (i.e., clear evidence of a violation) to compel the County hearings body to determine if a property is in violation and the pending land use application process is the appropriate forum in which to determine whether a violation exists. As discussed below, this case does not provide a sufficient basis for determining what more is needed and the Board thereby will wait for a subsequent case to establish a bright-line rule. Further, prior to electing to adjudicate an allegation as part of the land use application process, the Board interprets DCC 22.20.015 as necessitating the County hearings body to likewise consider procedural, equitable, and legal issues, including but not limited to the time it will take to conduct an investigation pursuant to the Code Enforcement Policy and Procedures Manual, the severity of the alleged violation (i.e., clear cutting vegetation in a wetland is severe while minimal solid waste that is not creating a public health hazard is not), and the 150-day land use decision making clock.

Third, the Board takes this opportunity to reiterate what is self-evident in DCC 22.20.015. A County hearings body's inquiry is not completed by simply noting a past "adjudicated violation" or finding that a property is in violation. DCC 22.20.015(D) and (E) compel a subsequent analysis to determine, for example, if the permit "protect[s] the public health and safety" or "results in the property coming into full compliance." Further, the final phrase of DCC 22.20.015(D)(1) notes that "coming into full compliance" also "include[s] sequencing of permits or other approvals as part of a voluntary compliance agreement." The Board thereby interprets that aforementioned language to specifically allow a County hearings body to approve a land use permit conditioned on the applicant subsequently

executing and complying with a voluntary compliance agreement even for an unrelated violation on the same property.”

As referenced above, the Subject Property has active code compliance cases, 247-22-000400-CE, 247-22-000399-CE, and 247-22-000398-CE for multiple dwellings, non-approved disposal and RV occupancy. Staff indicated that it believed that the RV occupancy has ceased on the Subject Property. With consideration to the above-mentioned interpretive guidance from the BOCC, Staff expressed its belief that it would be appropriate to use this land use application to resolve the outstanding violation(s).

Staff noted that there are many options for the property owners to achieve compliance with the zoning regulations of the MUA10 Zone; the request to establish the manufactured home as a secondary accessory farm dwelling is one potential pathway. Other options include but are not limited to; removal of the manufactured home from the Subject Property, decommission the manufactured home to a non-residential use, decommission the existing stick-built dwelling to a non-residential use, or remove the existing stick-built dwelling from the Subject Property.

The applicant elected, through the submittal of the subject application, to establish the manufactured home as a secondary accessory farm dwelling. If approved this land use application will address the manufactured home related code violation. Staff stated that the comments from the Onsite Wastewater Division should be included as conditions of approval to ensure the property owner receives any necessary permits as it pertains to the onsite wastewater system.

The Hearings Officer finds that the Board’s DCC 22.20.015 interpretative guidance, as quoted above, is supportive of a holding that this application, if approved, is an appropriate method of addressing the manufactured home related code violation.

Title 18 of the Deschutes County Code, County Zoning

Chapter 18.32, Multiple Use Agricultural Zone (MUA10)

Section 18.32.030, Conditional Uses Permitted

The following uses may be allowed subject to DCC 18.128:

...

- G. Manufactured home as a secondary accessory farm dwelling, subject to the requirements set forth in DCC 18.116.070.***

FINDING: The Hearings Officer incorporates the Preliminary Findings for Staff Issue: Class A Manufactured Home [Section III.C.1.], Staff Issue: Need [Section III.C.2.], Staff Issue: Relationship – Primary use/residence to Secondary Accessory Farm Dwelling [Section III.C.3], Staff Issue: Occupant(s) of Secondary Accessory farm Dwelling (Section III.C.4), and Staff Issue: Occupant(s) of Stick-built/Primary Dwelling [Section III.C.5] as additional findings for this approval criterion.

The Hearings Officer includes the following statements taken from Applicant's Burden of Proof Statement in support of its application:

The applicant is requesting a Conditional Use to establish an existing manufactured home as a secondary accessory farm dwelling, subject to the requirements set forth in Section 18.116.070 (one dwelling was permitted by Deschutes County in 2007, as the primary residence of the subject property). The subject manufactured home was originally permitted in 2010 by Deschutes County on the grounds of a temporary hardship permit for a relative (TU-10-8). There was a change of circumstances with a different family member needing to reside in the manufactured home. The manufactured home was approved as a second hardship dwelling in 2015 (247-15-000238-TU).

The proposed use of the subject manufactured home, as a secondary accessory farm dwelling, may be allowed as a Conditional Use in the MUA-10 Zone. The terms used in County Zoning are defined in DCC 18.04.30, Definitions. The following definitions are relied upon in this burden of proof:

"Accessory use or accessory structure means a use or structure incidental and subordinate to the main use of the property, and located on the same lot as the main use. Accessory uses include drilling for, and utilization of, low-temperature geothermal fluid in conjunction with the main use of the property."

"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)."

The applicant is proposing to keep the existing manufactured home as an accessory farm dwelling. The subject manufactured dwelling will be "incidental and subordinate to the main farm use of the property." Incidental means to "being likely to ensure as a chance

or minor consequences.” Webster’s New Collegiate Dictionary. Subordinate means “inferior, submissive to or controlled by authority.” *Id.* The use of these terms suggests in the definition of accessory use or structure that there be a connection of the proposed use or structure with the main use of the property.[footnote omitted]

The definition also requires the “main use of the property” be identified. The main use of the subject property is currently an established lavender farm (Tumalo Lavender) that has gross annual sales exceeding \$80,000 (see Attachment E showing profit and loss for Tumalo Lavender farm operations in 2021). The farm at the subject site consists of approximately 5 acres of established lavender fields, greenhouses for plant propagation/nursery growing of potted plants, commercial activity in conjunction with the lavender farm with an operated store (open to the public with set hours during the spring, summer, and fall months and by appointment during the winter months), a production area for distillation of lavender plants and for making lavender products. The activities described above require year-round farm help, seven days a week, with part-time and full-time staff varying between 4 and up to 10 employees throughout the year.

One of the owners of the subject site who also serves primarily as a farm operator will be residing within the existing manufactured home, while employee(s) of the farm will be residing in the existing single-family dwelling. The manufactured home is supplied with domestic water from the onsite private well and is connected to the on-site septic disposal system servicing the primary single-family dwelling (see Attachment F showing certificate of completion for septic system). The applicant is aware that the existing manufactured home’s use of the on-site septic disposal system was temporarily allowed under the medical hardship permit; thus, Deschutes County approval of the manufactured home as an accessory farm dwelling be conditionally based upon installment of an additional county-approved on-site septic disposal system solely for the manufactured home. The existing on-site disposal system will be used only by the existing primary dwelling that will be used for farm help.

The applicant is employing the property for the primary purpose of obtaining a profit by growing and harvesting lavender. The proposed accessory farm dwelling will be an integral part of the current and future lavender farm operation as it serves as the farm operator’s residence, in addition to the primary single-family dwelling being utilized as residence for farm help. Because of the daily year-round activities required for the success and profitability of the farm, it is necessary to have farm help reside in both dwellings (the accessory dwelling manufactured home in conjunction with the primary single-family dwelling).

Similar to a family medical hardship dwelling, the applicant is applying for a conditional use to allow a different type of “temporary use” for a manufactured home as an accessory farm dwelling and as allowed in the acknowledged MUA-10 Zone.

The Applicant's request, in this case, is for a Conditional Use Permit to establish an existing manufactured home as a secondary accessory farm dwelling.

Staff noted (Staff Report, page 13), the Title 18 definitions Section (DCC 18.04.030) do not define "secondary accessory farm dwelling." Staff included a number of Title 18 definitions (Accessory use or accessory structure, Agricultural Use, Dwelling Unit, Family, Manufactured Home, Primary or Principal Use) to assist the Hearings Officer in interpreting "secondary accessory farm dwelling." Consistent with the findings set forth in Staff Issue: Relationship – Primary use/residence to Secondary Accessory Farm Dwelling (Section III, C.3.) the Hearings Officer defines secondary accessory farm dwelling as a dwelling (place of occupancy) located on a farm that is supportive of or is subordinate in rank/importance to a 'primary dwelling'."

The Hearings Officer finds, based upon substantial evidence in the record, that the primary **use** of the Subject Property is for the cultivation and processing of lavender. The Hearings Officer considered the historical use of the Subject Property as a lavender farm, the number of acres in lavender cultivation, the onsite greenhouses and processing structure and retail location when determining the primary use.

The Hearings Officer finds conflicting evidence in the record with respect to the "necessity" or "need" of employees to live onsite. The Hearings Officer was persuaded by Applicant's record submissions indicating that it is very important to have two farm operators onsite to assure the efficient and successful operation of the lavender farm (propagation, processing and selling of products). The Hearings Officer agrees with opponents that it may not be absolutely "necessary" that two farm operators reside on the Subject Property; however, the Hearings Officer finds that the likelihood of economic sustainability and growth of the lavender operation at the Subject Property is substantially enhanced by having two onsite farm operators. The Hearings Officer finds there is the requisite/required "connection" between the farm operation (lavender farm) and a secondary accessory farm dwelling being located on the Subject Property.

The Hearings Officer found (Staff Issue: Class A Manufactured Home findings [Section III.C.1]) that DCC 18.116.070(A)(1) does not allow a Class A Manufactured Home to be used as a secondary accessory farm dwelling. The Hearings Officer finds that DCC 18.32.030 G allows a manufactured home to be used as a secondary accessory farm dwelling only if the requirements of DCC 18.116.070 are met. The Hearings Officer finds Applicant's proposal to use a Class A manufactured home as a secondary accessory farm dwelling does not meet the requirements of DCC 18.116.070. The Hearings Officer finds this criterion is not met.

Section 18.32.040. Dimensional Standards

In an MUA Zone, the following dimensional standards shall apply:

...

- D. Building height. No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed by DCC 18.120.040.***

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

"The proposed accessory farm dwelling does not include buildings or structures to be erected or enlarged. Therefore, this criterion does not apply."

The Hearings Officer finds that, per Staff's comments, the application in this case is being treated as a new application for a secondary accessory farm dwelling. The Hearings Officer finds that despite the fact that the specific structure subject to the Applicant's proposal is an "existing" manufactured home this criterion is relevant. The Hearings Officer agrees with Staff that this criterion can be met if a condition of approval is included that requires confirmation that the manufactured home does not exceed 30 feet in height except as allowed by DCC 18.120.040.

Building Height

No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed by DCC 18.120.040.

Section 18.32.050. Yards

- A. *The front yard setback from the property line shall be a minimum of 20 feet for property fronting on a local street right of way, 30 feet from a property line fronting on a collector right of way, and 80 feet from an arterial right of way unless other provisions for combining accesses are provided and approved by the County.***
- B. *Each side yard shall be a minimum of 20 feet. For parcels or lots created before November 1, 1979, which are one-half acre or less in size, the side yard setback may be reduced to a minimum of 10 feet. For parcels or lots adjacent to property receiving special assessment for farm use, the adjacent side yard for a dwelling shall be a minimum of 100 feet.***
- C. *Rear yards shall be a minimum of 25 feet. Parcels or lots with rear yards adjacent to property receiving special assessment for farm use, the rear yards for a dwelling shall be a minimum of 100 feet.***
- D. *The setback from the north lot line shall meet the solar setback requirements in DCC 18.116.180.***
- E. *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 the County under DCC 15.04 shall be met.***

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

"The proposed accessory farm dwelling will occupy the existing manufactured home previously approved on the property as a family medical hardship dwelling. In its approval of the hardship dwelling, the county found that the submitted plot plan for the

hardship manufactured home met the required setbacks of DCC 18.32.040. The location of the proposed use will remain on the exact same structure and footprint as the existing manufactured home. Therefore, this section does not apply.”

Staff (Staff Report, page 16) reiterated that this application was reviewed by Staff as an application for a new use despite the manufactured home pre-existing condition. Staff concluded that this criterion is applicable to the application. The Hearings Officer concurs.

The application materials include a site plan which shows the location of the manufactured home on the Subject Property. The site plan shows the manufactured home is setback 30 feet from the side (east) property line. The site plan did not include dimensions for other setbacks. However, staff noted that the Manufactured Home Placement permit depicts a ±460-foot front (north) yard setback, ±550-foot side (west) yard setback, and a ±107-foot rear (south) yard setback. Staff concluded that there is nothing in the record to suggest the location of the manufactured home has changed since permitted in 2010. Staff concluded that the proposed manufactured dwelling complied with setbacks in (A) through (C).

The Hearings Officer finds that the evidentiary record included a copy of the Manufactured Home Placement permit. The Manufactured Home Placement permit information can be considered as evidence in the record of this case. Staff (Staff Report) recommended conditions of approval to assure that the information contained in the Manufactured Home Placement permit remained accurate. The Hearings Officer agrees with Staff’s recommended conditions (see below).

Under DCC 18.116.180, the purpose of the solar setback is, “...to provide as much solar access as practical during the winter solar heating hours to existing or potential buildings...” The northern lot line of the Subject Property abuts Connarn Road, where future structural development is impracticable. Staff determined that the area immediately adjacent to the north lot line is not a location of a “Potential Structure,” as defined in DCC 18.04.030. Staff concluded that the solar protections of DCC 18.116.180 do not apply to this area and, therefore, the solar setback does not apply to the manufactured dwelling. The Hearings Officer concurs with Staff’s analysis and conclusions related to solar setbacks.

General Setbacks

All buildings or structures shall meet the setback standards as outlined in DCC 18.16.070 (A – C).

Building and Structural Code Setbacks

All buildings or structures shall comply with any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.

Section 18.32.060. Stream Setbacks

To permit better light, air, vision, stream pollution control, fish and wildlife areas and

to preserve the natural scenic amenities and vistas along the streams and lakes, the following setbacks shall apply:

- A. All sewage disposal installations, such as septic tanks and septic drainfields, shall be set back from the ordinary high water mark along all streams or lakes a minimum of 100 feet, measured at right angles to the ordinary high water mark. In those cases where practical difficulties preclude the location of the facilities at a distance of 100 feet and the County Sanitarian finds that a closer location will not endanger health, the Planning Director or Hearings Body may permit the location of these facilities closer to the stream or lake, but in no case closer than 25 feet.*
- B. All structures, buildings or similar permanent fixtures shall be set back from the ordinary high water mark along all streams or lakes a minimum of 100 feet measured at right angles to the ordinary high water mark.*

FINDING: There are no streams or lakes in the project vicinity.

Section 18.32.070. Rimrock Setback

Setbacks from rimrock shall be as provided in DCC 18.116.160.

FINDING: There is no rimrock in the project vicinity.

Chapter 18.56, Surface Mining Impact Area Combining Zone (SMIA)

FINDING: The Subject Property is located within the SMIA-X Zone in association with mine site 368. Mining at this site was completed in 1998 and subsequently mine site 368 was reclaimed as confirmed by the Oregon Department of Geology and Mineral Industries on March 17, 2000. The Hearings Officer finds the application is not subject to the provisions of Chapter 18.56.

Chapter 18.80, Airport Safety Combining Zone (AS)

Section 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.

FINDING: The proposed development is located beneath the approach surface for the Redmond Municipal Airport. Therefore, the provisions of this chapter apply.

Section 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.)***

FINDING: The proposed structure will have a maximum elevation of 3,302 feet above sea level. Per DCC 18.80.022, the Redmond Municipal Airport has a runway elevation of 3,077 feet and the approach surface for Airport above the Subject Property has an approximate elevation of 4,485 feet. The Hearings Officer finds the proposed development will not penetrate the imaginary surfaces and that this criterion will be met.

Section 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]

- 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 Ldn, 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, church, 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 Ldn. [NOTE: FAA Order 5100.38D provides that interior noise levels should not exceed 45 decibels in all habitable zones.]***

FINDING: The Subject Property is not within the noise impact boundary associated with the Airport. This criterion does not apply.

- 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.***

FINDING: The proposed use is not an industrial, commercial, or recreational use. This criterion also requires that no use shall imitate airport lighting or impede the ability of pilots to distinguish between airport lighting and other lighting.

Staff (Staff Report, pages 20 & 21) recommended a condition of approval be included in any decision which approves the application. The Hearings Officer concurs with Staff that this criterion can be met if the following condition is included.

Outdoor Lighting.

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.***

FINDING: Staff (Staff Report, page 21) recommended a condition of approval be included in any decision which approves the application. The Hearings Officer finds that with Staff's recommended condition this criterion can be met.

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.***

FINDING: The proposed use is not an industrial, mining or similar use, or expansion of an existing industrial, mining or similar use. This criterion does not apply.

- 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.***

FINDING: Staff (Staff Report, page 21) indicated that the proposed use in this case will not cause or create electrical interference. The Hearings Officer concurs with this Staff analysis and conclusion. This criterion can be met.

- 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.

FINDING: The Subject Property is located within the approach surface associated with the Redmond Airport. The proposal includes a secondary accessory farm dwelling; a residential use. Based on DCC 18.80, Table 1, the proposed residential use may be allowed under limited circumstances as outlined in note L (10) of Table 1. The Subject Property is approximately 29,000 feet from the outer edge of the Runway Protection Zone ("RPZ"). At this distance from the RPZ, there is no limitation on the density of residential development. Therefore, the proposed residential use will comply with DCC 18.80, Table 1 and the Hearings Officer finds the criterion is met.

Section 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.

FINDING: The proposed use is permitted conditionally in the underlying zone. The Hearings Officer finds the Applicant's proposal is also permitted conditionally in the AS Zone. The Hearings Officer finds that DCC 18.80.044 does not prohibit the proposed use.

Chapter 18.116, Supplementary Provisions

Section 18.116.050, Manufactured Homes

Manufactured Home Classes. For purposes of these regulations, manufactured homes are divided into the following types:

- A. *A Class A manufactured home shall:***
- 1. Have more than 1,000 square feet of occupied space in a double section or larger multi-section unit;***
 - 2. Be placed on a foundation or support system, as specified by the manufacturer. Skirting shall be required;***
 - 3. Have wheels, axles and hitch mechanisms removed;***
 - 4. Have utilities connected subject to the requirements of the Building Codes Agency and manufacturer's specifications;***

5. *Bear an insignia of compliance with the Manufactured Housing and Construction and Safety Standards Code as of June 15, 1976;*
6. *Have roofing materials of a type customarily used on site constructed residences, including wood shakes or shingles, asphalt or fiberglass shingles, corrugated matte finish colored metal and tile materials, but not including high gloss corrugated aluminum or fiberglass panels. The roof pitch shall be a minimum of two over 12; and*
7. *Have siding materials of a type customarily used on site-constructed residences such as clapboard, horizontal vinyl or aluminum lap-siding, cedar or other wood siding, brick or stone, and not including high gloss finished material, corrugated metal or fiberglass, or metal or plastic panels.*

B. A Class B manufactured home shall:

1. *Have at least 750 square feet of occupied space in a single, double, expand or multi-section unit;*
2. *Be placed on a foundation, as specified by the manufacturer. Skirting shall be required;*
3. *Have wheels, axles and hitch mechanisms removed;*
4. *Have utilities connected subject to the requirements of the Building Codes Agency and manufacturer's specifications;*
5. *Bear an insignia of compliance with the Manufactured Housing and Construction and Safety Standards Code as of June 15, 1976;*
6. *Have roofing materials of a type customarily used on site constructed residences, including wood shakes or shingles, asphalt or fiberglass shingles, corrugated matte finish colored metal and tile materials, but not including high gloss corrugated aluminum or fiberglass panels. The roof pitch shall be a minimum of two over 12; and*
7. *Have siding materials of a type customarily used on site constructed residences such as clapboard, horizontal vinyl or aluminum lap siding, cedar or other wood siding, brick or stone, and not including high gloss finished material, corrugated metal or fiberglass, or metal or plastic panels.*

C. A Class C manufactured home shall:

1. *Have at least 576 square feet of occupied space, excluding tipouts and hitches;*
2. *Be placed on a foundation or support system, as specified by the manufacturer. Skirting shall be required;*
3. *Bear an insignia of compliance with the Manufactured Housing and Construction and Safety Standards Code as of June 15, 1976, or bear the Oregon Department of Commerce "Insignia of Compliance"; and*

4. Have utilities connected subject to the requirements of the Building Codes Agency and manufacturer's specifications.

FINDING: The Burden of Proof states,

"The placement of the manufactured dwelling had its final inspection approved in 2010. The applicant believes the subject manufactured home still meets the code as required for a Class A manufactured home described above."

Applicant and Staff agree that the manufactured home that is subject to this application is a Class A manufactured home. The Hearings Officer finds no substantial evidence or persuasive evidence in the record to suggest otherwise. The Hearings Officer finds the manufactured home subject to this application is a Class A manufactured home.

Section 18.116.070, Placement Standards for Manufactured Homes.

- A. As defined in DCC 18.116.050, Class A and B manufactured homes shall be permitted as follows, subject to the requirements of the underlying zone:**
- 1. In the following zones, except where there is a Conventional Housing Overlay Zone (CH): Any EFU zone, MUA 10, F-1, F 2, RR 10, any area zoned as an unincorporated community (as that term is defined herein), RSR M, RSR 5, and FP as the primary dwelling, and R I and SM as a caretaker's residence.**

FINDING: The Hearings Officer incorporates the Preliminary Findings for Staff Issue: Class A Manufactured Home (Section III.C.1.), Staff Issue: Need (Section III.C.2.), Staff Issue: Relationship – Primary use/residence to Secondary Accessory Farm Dwelling (Section III.C.3.), Staff Issue: Occupant(s) of Secondary Accessory farm Dwelling (Section III.C.4.), and Staff Issue: Occupant(s) of Stick-built/Primary Dwelling (Section III.C.5.) as additional findings for this approval criterion.

DCC 18.32.030 sets forth the uses that may (if standards are met) be approved as conditional uses in the MUA-10 zone. The Hearings Officer concluded that the Applicant's proposal to locate a Class A manufactured home within the MUA-10 zoned Subject Property cannot be approved if the requirements of DCC 18.116.070 (A)(1) were not satisfied/met. The Hearings Officer found, based upon the representation of Applicant, that the manufactured home sought to be approved as a secondary accessory farm dwelling is a Class A manufactured home. The Hearings Officer found that a Class A manufactured home can be approved, under DCC 18.116.070 (A)(1) "only" as a primary residence. The Hearings Officer finds that Applicant represented the primary residence on the Subject Property was located within the barn structure.

Staff suggested that this criterion could be met with a condition of approval. The Hearings Officer disagrees. The Hearings Officer finds that Applicant's proposal is for the Class A manufactured home to be the secondary accessory farm dwelling; not some other class of manufactured home. The Hearings Officer finds that adopting Staff's recommended condition is a modification of

Applicant's proposal and the Hearings Officer does not have such authority. The Hearings Officer finds Applicant's proposal does not satisfy the requirements of DCC 18.116.070 and therefore does not satisfy the requirements of DCC 18.32.030 G.

2. *In manufactured home parks and subdivisions.*

FINDING: The Subject Property is not within a mobile home park or subdivision. The Subject Property does not contain a mobile home park or subdivision. Burden of Proof states,

3. *As permitted in DCC 18.116.080 and 18.116.090.*

FINDING: DCC 18.116.080 is titled "Manufactured Home Or RV As A Temporary Residence On Individual Lot During Construction." DCC 18.116.090 is titled "A Manufactured Home OR Recreational Vehicle as a Temporary Residence for Medical Condition." The application in this case is for approval of a secondary accessory farm dwelling. The application is not for either a temporary residence for use during construction or a temporary vehicle to be used for a medical condition. The Hearings Officer finds this criterion is not relevant.

4. *Class A and B manufactured homes are not permitted in any historic district or on any historic site.*

FINDING: The Hearings Officer finds the Subject Property is not located in an inventoried historic district. The Hearings Officer finds this criterion is not relevant.

B. *Class C manufactured homes shall be permitted as follows:*

- 1. *Except as otherwise allowed in DCC 18.116.070, on parcels 10 acres in size or larger.***
- 2. *As a secondary accessory farm dwelling.***
- 3. *In manufactured home parks and manufactured home subdivisions.***
- 4. *As permitted in DCC 18.116.080 and 18.116.090.***
- 5. *As a replacement to an existing non-conforming manufactured home destroyed by fire or other natural act, or as an upgrade to an existing manufactured home.***
- 6. *In the following subdivisions: Rockview II, Tetherow Crossing, Chaparral Estates, Crystal Acres, Hidden Valley Mobile Estates, Johnson Acres, Seven Peaks, Sun Mountain Ranches, Deschutes River Homesites Rimrock Addition, Happy Acres, Rancho El Sereno, Whispering Pines, Bend Cascade View Estates, Raintree, Holmes Acres, La Pine Meadows North, Pine Crest Ranchettes, Dora's Acres, Pierce Tracts, Roan Park, South Forty, Tomes, Crooked River Ranch, Dale Acres, Replat/Hillman, Lake Park Estates, Mary K. Falls Estates.***

7. Class C manufactured homes are not permitted in any historic district or on any historic site.

FINDING: The Applicant proposes to establish an existing Class A manufactured home as a secondary accessory farm dwelling. The Hearings Officer finds these criteria relate only to Class C manufactured homes. The Hearings Officer finds these criteria are not relevant.

Chapter 18.128, Conditional Use

Section 18.128.010, Operation.

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

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

Section 18.128.015, General Standards Governing Conditional Uses.

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

FINDING: This criterion applies “except for those conditional uses permitting individual single family dwellings...” The first issue the Hearings Officer must address is whether or not an application for a secondary accessory farm dwelling is an application for permitting a “single family dwelling?”

DCC 18.04.030 defines “dwelling, single family” as:

“a detached building containing one dwelling unit and designed for occupancy by one family only, not including temporary structures such as tents, teepees, travel trailers and other similar structures.”

The Hearings Officer finds that the Class A manufactured home that is being proposed as a secondary accessory farm dwelling is a single detached dwelling unit designed to be occupied by one family only. The Hearings Officer finds that the Class A manufactured home is not a

temporary structure similar to a tent, teepee, travel trailer or other similar structure. Therefore, the Hearings Officer finds that the Class A manufactured home meets the definitional requirements to be considered a “dwelling, single family.” The Hearings Officer finds that a “dwelling, single family” is the same as a “single family dwelling.”

The Hearings Officer, based upon the above stated definitional findings, concludes that the application for a manufactured home to be approved as a conditional use as a secondary accessory farm dwelling falls within the single family dwelling exception for this criterion.

The Hearings Officer, as alternative findings to those set forth above, finds that this criterion is relevant and undertakes evaluation of the factors set forth in DCC 18.128.015, General Standards Governing Conditional Uses.

A. *The site under consideration shall be determined to be suitable for the proposed use based on the following factors:*

1. *Site, design and operating characteristics of the use;*

FINDING: The conditional use proposed under this application is the establishment of an existing manufactured home as a secondary accessory farm dwelling.

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

“The site is suitable for the proposed conditional use as an accessory farm dwelling because of its on-site proximity to the use of the property as a commercial lavender farm. The operating characteristic of the proposed use of the manufactured home is to serve as the on-site residence for the primary farm operators and part owner of the lavender farm. The site is accessed by an existing driveway off of Connarn Road. The location of the proposed conditional use of the for accessory farm dwelling is within the same existing manufactured home placed on the same location of the property and found suitable for a temporary dwelling.”

Comments from governmental agencies and the general public did not identify any site, design, or operating characteristic deficiencies related to the proposed secondary accessory farm dwelling. Comments were received from participants related to impacts created by the commercial lavender operation. As noted in the Preliminary Findings this application is for a manufactured home to be used as a secondary accessory farm dwelling. Impacts from the commercial lavender operation are not relevant to a decision in this case. Further, participants indicated that if this application were to be approved then other proximate property owners would be making “similar requests” and if those are approved then negative impacts, such as increased traffic, could result. The Hearings Officer finds the “similar requests” argument is not relevant to this case.

The Hearings Officer finds that there is no substantial or persuasive evidence in the record that

demonstrates that approval of the manufactured home as a secondary accessory farm dwelling at the Subject Property would have negative impacts based on the location, design or operating characteristics of the manufactured home.

2. Adequacy of transportation access to the site; and

FINDING: Transportation access is provided to the site by Connarn Road, a County-maintained rural local roadway. Comments from the Deschutes County Road Department and Deschutes County Transportation Planner did not identify any transportation infrastructure deficiencies. Comments from other agencies and the general public did not identify any transportation infrastructure deficiencies. As noted by the Deschutes County Transportation Planner, the Subject Property has two driveway permits approved by Deschutes County (247-19-001534-DA and 247-SW4543) and thus complies with the access permit requirements of DCC 17.48.210(A). The subject application does not propose additional driveways.

The Hearings Officer reiterates that the request in this case involves a request for approval of a manufactured home to be used as a secondary accessory farm dwelling. The only traffic impacts relevant to this case are those attributable to the **addition** of the secondary accessory farm dwelling. Traffic impacts from other farm uses, including the commercial farm use, are not subject to reconsideration in this case.

The Hearings Officer finds the written comments from the Deschutes County Road Department and the Deschutes County Transportation Planner are credible and constitute substantial evidence in support of the conclusion that the transportation access to the Subject Property and to the proposed secondary accessory farm dwelling is adequate.

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

FINDING: The Subject Property is generally level and presents no topographical constraints on the proposed manufactured home to be used as a secondary accessory farm dwelling. The *Deschutes County Natural Hazards Mitigation Plan* (2015) identifies drought, earthquake, flood, landslide, volcanic, wildfire, windstorm, and winter storm hazards in the County. Of these, wildfire is of special concern regarding the suitability of the use. Natural resource values typically include agricultural soils, forest lands, wildlife and their habitats, wetlands, and natural water features. There are no Goal 5 inventoried natural resources on the site that merit protection. Further, the property does not contain any mapped wetlands or special flood hazard areas. The Hearings Officer finds, based upon the evidence in the record, that this criterion can be met.

Comments from agencies and the general public did not identify any site unsuitability due to general topography, natural hazards, or natural resource values. The Hearings Officer finds, based upon the evidence in the record, that this criterion can be met.

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

FINDING: The Applicant provided the following response to DCC 18.128.015(B&C) in the submitted Burden of Proof statement:

“The proposed use is compatible with existing and projected uses on surrounding properties based on the existing location of the manufactured home, driveway and its operating characteristics as the on-site home of the primary farm operator and partial owner.

The applicant and owners understand that approval of the proposed accessory farm dwelling may include conditions ensuring that the standards will be met. This may include a limitation that only farm help may occupy the dwellings.”

Pursuant to the factors listed in DCC 18.128.015(A), staff opined (Staff Report, pages 28 & 29) that the proposed use (manufactured home as a secondary accessory farm dwelling) would be unsuitable if the siting, design, and operating characteristics of the use significantly adversely impacted existing and projected uses on surrounding properties. Typically, potential adverse impacts include visual, noise, dust, and odor impacts. Staff (Staff Report, page 29) also noted that the proposed use would be unsuitable if access to the Subject Property would significantly adversely impact existing and projected uses on surrounding properties. Lastly, Staff (Staff Report, page 29) noted that the proposed use would be unsuitable if it significantly adversely impacts off-site topography, natural hazards, or natural resource values.

The Hearings Officer reiterates that the proposal in this case is a request for approval of a secondary accessory farm dwelling on the Subject Property. The proposal, and therefore this decision, does not include reconsideration or review of any of the existing approved farm uses on the Subject Property. Included in the existing approved farm uses is the growing, processing and commercial sales of lavender products. The impacts from these approved uses is not relevant to this approval criterion.

The Hearings Officer finds the proposed location of the manufactured home will not impact surrounding properties related to the design of the manufactured home or the operating characteristics associated with the manufactured home. The Hearings Officer finds there is no evidence in the record demonstrating that approval of a manufactured home as a secondary accessory farm dwelling on the Subject Property could be expected to cause any significant visual, noise, dust or odor impacts. The Hearings Officer finds no evidence in the record to demonstrate that the proposed location of the manufactured home will have any impact on off-site topography, natural hazards or natural resource values.

The Hearings Officer finds that approval of the application to locate a manufactured home on the Subject Property as a secondary accessory farm dwelling is compatible with surrounding properties.

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

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

Section 18.128.020, Conditions.

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

- A. *Require a limitation on manner in which the use is conducted, including restriction of hours of operation and restraints to minimize environmental effects such as noise, vibrations, air pollution, glare or odor.***
- B. *Require a special yard or other open space or a change in lot area or lot dimension.***
- C. *Require a limitation on the height, size or location of a structure.***
- D. *Specify the size, number, location and nature of vehicle access points.***
- E. *Increase the required street dedication, roadway width or require additional improvements within the street right of way.***
- F. *Designate the size, location, screening, drainage, surfacing or other improvement of a parking or loading area.***
- G. *Limit or specify the number, size, location, height and lighting of signs.***
- H. *Limit the location and intensity of outdoor lighting and require shielding.***
- I. *Specify requirements for diking, screening, landscaping or other methods to protect adjacent or nearby property and specify standards for installation and maintenance.***
- J. *Specify the size, height and location of any materials to be used for fencing.***
- K. *Require protection and preservation of existing trees, vegetation, water resources, wildlife habitat or other significant natural resources.***
- L. *Require that a site plan be prepared in conformance with DCC 18.124.***

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

Section 18.128.040, Specific Use Standards.

A conditional use shall comply with the standards of the zone in which it is located and with the standards and conditions set forth in DCC 18.128.045 through DCC 18.128.370.

FINDING: As described herein, the proposed conditional use is reviewed in accordance with the standards of the zone in which it is located and with the standards and conditions set forth in

DCC 18.128.045 through DCC 18.128.370, as applicable.

IV. CONCLUSION

The application in this case is to locate a Class A manufactured home on the Subject Property to be used as a secondary accessory farm dwelling. Secondary accessory farm dwellings are allowed in the MUA-10 zone so long as all relevant conditional use approval criteria are met. DCC 18.32.030 G states a manufactured home may be approved as a secondary accessory farm dwelling conditional use in the MUA-10 zone “subject to the requirements set forth in DCC 18.116.070.”

Applicant represented that a “stick-built” structure (part of a barn) is the “primary dwelling” on the Subject Property and the proposed manufactured home would be the “secondary accessory farm dwelling.” Applicant represented that the manufactured home proposed to be used as the secondary accessory farm dwelling is a Class A manufactured home.

The Hearings Officer interpreted DCC 18.116.070 (A)(1) to require Class A manufactured homes (with exceptions for CH zoned property and also R-1 and SM zones which allow caretaker’s residences) to be used as a “primary dwellings.” The Hearings Officer concluded that Applicant’s proposed use of a Class A manufactured home does not satisfy the requirements of DCC 18.116.070.

The Hearings Officer found that all relevant approval criteria were met by the application in this case excepting for DCC 18.116.070. On the basis that the application did not meet the requirements of DCC 18.116.070 the application must be denied.

V. DECISION

Denial of Applicant’s request for Secondary Accessory Farm Dwelling Conditional Use permit at the Subject Property.

Deschutes County Hearings Officer



Gregory J. Frank, Hearings Officer

Date: June 14, 2023

This decision becomes final twelve (12) days after the date mailed, unless appealed by a party of interest. To appeal, it is necessary to submit a Notice of Appeal, the 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.

owner	agent	inCareof	address	cityStZip	type	cdd id
Tumalo Lavender Property LLC	Holly Olson and Summer Hagedorn		3318 NW Rademacher Place	Bend, OR 97703	HOFF Decision	23-162-CU
Douglas White			60762 River Bend Drive	BEND, OR 97702	HOFF Decision	23-162-CU
Marilyn Thompson			29475 NE Miller View Lane	Newberg, OR 97132	HOFF Decision	23-162-CU



COMMUNITY DEVELOPMENT

APPEAL APPLICATION – BOARD OF COUNTY COMMISSIONERS

FEE: _____

EVERY NOTICE OF APPEAL SHALL INCLUDE:

1. A statement describing the specific reasons for the appeal.
2. If the Board of County Commissioners is the Hearings Body, a request for review by the Board stating the reasons the Board should review the lower decision.
3. If the Board of County Commissioners is the Hearings Body and *de novo* review is desired, a request for *de novo* review by the Board, stating the reasons the Board should provide the *de novo* review as provided in Section 22.32.027 of Title 22.
4. If color exhibits are submitted, black and white copies with captions or shading delineating the color areas shall also be provided.

It is the responsibility of the appellant to complete a Notice of Appeal as set forth in Chapter 22.32 of the County Code. The Notice of Appeal on the reverse side of this form must include the items listed above. Failure to complete all of the above may render an appeal invalid. Any additional comments should be included on the Notice of Appeal.

Staff cannot advise a potential appellant as to whether the appellant is eligible to file an appeal (DCC Section 22.32.010) or whether an appeal is valid. Appellants should seek their own legal advice concerning those issues.

Appellant's Name (print): Tumalo Lavender Property LLC Phone: (541) 383-2441

Mailing Address: 3318 Rademacher Place City/State/Zip: Bend, OR 97703

Email Address: holly@tumalolavender.com

Land Use Application Being Appealed: 247-23-000162-CU

Property Description: Township 16 Range 12 Section 9 Tax Lot 501

Appellant's Signature: [Signature] Date: June 26, 2023

By signing this application and paying the appeal deposit, the appellant understands and agrees that Deschutes County is collecting a deposit for hearing services, including "whether to hear" proceedings. The appellant will be responsible for the actual costs of these services. The amount of any refund or additional payment will depend upon the actual costs incurred by the county in reviewing the appeal.

Except as provided in section 22.32.024, appellant shall provide a complete transcript of any hearing appealed, from recordings provided by the Planning Division upon request (there is a \$5.00 fee for each recording copy). Appellant shall submit the transcript to the planning division no later than the close of

the day five (5) days prior to the date set for the *de novo* hearing or, for on-the-record appeals, the date set for receipt of written records.

NOTICE OF APPEAL

Please see attachment 1 for statement notice of appeal

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper appears to be a standard notebook page or a sheet of stationery. There is no handwriting or other markings on the page.

(This page may be photocopied if additional space is needed.)

ATTACHMENT 1

June 26, 2023

Haleigh King, Associate Planner
Deschutes County Community Development Department
117 NW Lafayette Avenue
Bend, Oregon 97703
Haleigh.King@deschutes.org

SUBJECT: Deschutes County File Nos. 247-23-000162-CU – BOCC Appeal Application

Ms. King,

On June 14, 2023, Deschutes County Hearings Officer Gregory Frank (the “**Hearings Officer**”) issued a decision of denial for a conditional use permit for a secondary accessory farm dwelling in the Multiple Use Agricultural 10-acre (“**MUA-10**”) zone submitted by Tumalo Lavender Property LLC, the applicant (“**Applicant**”). The Applicant files this appeal pursuant to Deschutes County Code (“**DCC**”) Chapter 22.32. Further, the Applicant request that the Board of County Commissioners (“**BOCC**”) hear the appeal “*limited de novo*” as allowed by DCC 22.32.027(B)(4).¹ Specifically, the Applicant asks the BOCC to limit the issues on appeal to only the following:

- Interpretation of DCC 18.116.070 (Hearing Officer’s Decision pages 10-13)
- Application of that interpretation to DCC 18.32.030(G) (Hearing Officer’s Decision pages 20-23)
- Application of DCC 18.116.070 to subject application (Hearing Officer’s Decision pages 32-33)

All three aforementioned issues overlap and stem from the Hearing Officer’s interpretation of DCC 18.116.070 governing the different classes of manufactured housing allowed in different zones throughout the County. The Hearings Officer specifically found that “all relevant approval criteria were met by the application in this case excepting for DCC 18.116.070.” Accordingly, if the BOCC does not agree with the Hearings Officer’s interpretation of DCC 18.116.070, the subject Application should be approved with the conditions noted by staff and the Hearings Officer.

The BOCC should review the Hearings Officer decision because a careful examination of DCC 18.116.070 reveals that the provision is vague, inconsistent, and fails to provide clear guidelines for land use decisions. This was even stated by the Hearings Officer in his written decision. The County hasn’t clearly outlined the definition nor the distinction of the different classifications of manufactured homes and where they are and are not allowed. In fact, there is not even a clear distinction within the industry regarding the classification of manufactured homes. The lack of clarity in the DCC has resulted in conflicting interpretations and arbitrary determinations

¹ DCC 22.32.027(B)(4) provides as follows:

“4. The Board may, at its discretion, determine that it will limit the issues on appeal to those listed in an appellant’s notice of appeal or to one or more specific issues from among those listed on an applicant’s notice of appeal.”

which will have profound ramifications on future land use decisions for the County. The ambiguity of the language used in the code has led to confusion among property owners and planning authorities staff.

The Applicant understands that when accepting appeals, the BOCC prefers to conduct a *de novo* review. However, DCC 22.32.027(B)(4) would not be included in the Deschutes County Code unless exceptional circumstances at times warrant *limited de novo* review. The Applicant asserts that this is one of those exceptional circumstances. Notably, no opposing party raised DCC 18.116.070. Instead, County staff on their own volition sought the Hearings Officer's interpretation of this clearly ambiguous provision. The Hearing Officer, in turn, asked staff to provide clarification on the issue during the open record period following the initial public hearing. Staff provided that additional information in a letter in the record dated May 23, 2023. In that letter, staff specifically suggested a broad interpretation of DCC 18.116.070 that would have led to the approval of the subject application. Nevertheless, the Hearings Officer rejected staff's proffered interpretation, resulting in the denial of the application and necessitating the subject appeal.

Although the Applicant recognizes that County staff intended no ill will and did not set out to derail the subject application, there is no doubt that County staff did elect to utilize these quasi-judicial proceedings (paid for by the Applicant) to gain clarity on what staff otherwise acknowledge was an ambiguous DCC provision. In so doing, the Hearing Officer issued an interpretation of DCC 18.116.070 that presumably is not favored by even County staff, resulting in the unintentional denial of the subject application. The Applicant requests a *limited de novo* review specifically to limit the complexity and scope of the appeal proceedings before the BOCC, thereby making the appeal economically viable for the Applicant. The Applicant understands that precedent-setting public policy decisions are sometimes made during quasi-judicial land use proceedings, but the Applicant simply cannot afford to pay twice for the same proceedings that in this case are intended to benefit the entire Deschutes County Community.

Additionally - and perhaps most importantly - if the County's intention going forward is to rely on an interpretation of the ambiguous and poorly phrased DCC 18.116.070 rather than amend that code provision, the Applicant asserts that such an interpretation should be issued by the BoCC rather than by an appointed Hearings Officer. The Applicant means no disrespect to Mr. Frank. But as noted above, the Hearings Officer ignored the context of DCC 18.116.070 and the County-wide implications of limiting the types of manufactured homes for certain land uses, thereby limiting a necessary and affordable housing option for many County constituents. The Applicant suspects that these unintended policy ramifications negatively influencing the County's already strained housing supply are precisely why County staff advocated for a broader interpretation of DCC 18.116.070.

To clarify, the Applicant is not requesting a "record review" as contemplated by DCC 22.32.027(B)(1).² Instead, the Applicant's understanding is that by accepting the appeal *limited de novo*, the record in this matter will nevertheless be re-opened to include additional evidence and testimony in addition to the record already developed before staff and the Hearings Officer as required by DCC 22.32.030(D).³ However, any additional evidence, testimony, or argument raised by the Applicant, other parties, or County staff must then be directed at the issues identified in the BOCC's order accepting the *limited de novo* appeal.

² DCC 22.32.027(B)(1) provides as follows:

"1. Review before the Board, if accepted, shall be on the record except as otherwise provided for in DCC 22.32.027."

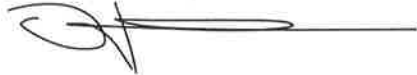
³ DCC 22.32.030(D) provides as follows:

"D. The record of the proceeding from which appeal is taken shall be a part of the record on appeal."

The Applicant notes that the BOCC has plenty of time for these appeal proceedings because the statutory deadline is not until September 17, 2023. In the unlikely event that more time is needed, the Applicant commits to working with County staff to ensure that the BOCC has the necessary time to consider this important issue.

Last, if accepting this appeal, the Applicant asks that the BOCC waive the transcript requirement as allowed by DCC 22.32.024(D). I thank you for your consideration of this appeal application request for a BOCC hearing.

Sincerely,

A handwritten signature in black ink, appearing to be "Holly Olson", followed by a horizontal line.

Holly Olson
Tumalo Lavender Property, LLC

18.116.050 Manufactured Homes

Manufactured Home Classes. For purposes of these regulations, manufactured homes are divided into the following types:

A. A Class A manufactured home shall:

1. Have more than 1,000 square feet of occupied space in a double section or larger multi-section unit;
2. Be placed on a foundation or support system, as specified by the manufacturer. Skirting shall be required;
3. Have wheels, axles and hitch mechanisms removed;
4. Have utilities connected subject to the requirements of the Building Codes Agency and manufacturer's specifications;
5. Bear an insignia of compliance with the Manufactured Housing and Construction and Safety Standards Code as of June 15, 1976;
6. Have roofing materials of a type customarily used on site constructed residences, including wood shakes or shingles, asphalt or fiberglass shingles, corrugated mat finish colored metal and tile materials, but not including high gloss corrugated aluminum or fiberglass panels. The roof pitch shall be a minimum of two over 12; and
7. Have siding materials of a type customarily used on site-constructed residences such as clapboard, horizontal vinyl or aluminum lap-siding, cedar or other wood siding, brick or stone, and not including high gloss finished material, corrugated metal or fiberglass, or metal or plastic panels.

B. A Class B manufactured home shall:

1. Have at least 750 square feet of occupied space in a single, double, expand or multi-section unit;
2. Be placed on a foundation, as specified by the manufacturer. Skirting shall be required;
3. Have wheels, axles and hitch mechanisms removed;
4. Have utilities connected subject to the requirements of the Building Codes Agency and manufacturer's specifications;
5. Bear an insignia of compliance with the Manufactured Housing and Construction and Safety Standards Code as of June 15, 1976;
6. Have roofing materials of a type customarily used on site constructed residences, including wood shakes or shingles, asphalt or fiberglass shingles, corrugated matte finish colored metal and tile materials, but not including high gloss corrugated aluminum or fiberglass panels. The roof pitch shall be a minimum of two over 12; and
7. Have siding materials of a type customarily used on site constructed residences such as clapboard, horizontal vinyl or aluminum lap siding, cedar or other wood siding, brick or stone, and not including high gloss finished material, corrugated metal or fiberglass, or metal or plastic panels.

C. A Class C manufactured home shall:

1. Have at least 576 square feet of occupied space, excluding tipouts and hitches;

2. Be placed on a foundation or support system, as specified by the manufacturer. Skirting shall be required;
3. Bear an insignia of compliance with the Manufactured Housing and Construction and Safety Standards Code as of June 15, 1976, or bear the Oregon Department of Commerce "Insignia of Compliance"; and
4. Have utilities connected subject to the requirements of the Building Codes Agency and manufacturer's specifications.

D. A Class D manufactured home shall:

1. Have more than 320 square feet of occupied space;
2. Be placed on a foundation or support system, as specified by the manufacturer. Skirting shall be required; and
3. Have utilities connected subject to requirements of the Building Codes Agency and manufacturer's specifications.

HISTORY

Adopted by Ord. 81-042 §§1-3 and 4 on 12/3/1981

Amended by Ord. 89-004 §§3 and 5 on 3/24/1989

Amended by Ord. 91-005 §§38-41 on 3/4/1991

Amended by Ord. 91-017 §§1-3 and 4 on 4/17/1991

Amended by Ord. 91-038 §4 on 9/30/1991

Amended by Ord. 93-043 §§19B-E on 8/25/1993

Amended by Ord. 2000-033 §7 on 12/6/2000

Amended by Ord. 2001-013 §1 on 2/14/2001

Amended by Ord. 2004-013 §12 on 9/21/2004

18.116.070 Placement Standards For Manufactured Homes

- A. As defined in DCC 18.116.050, Class A and B manufactured homes shall be permitted as follows, subject to the requirements of the underlying zone:
1. In the following zones, except where there is a Conventional Housing Overlay Zone (CH): Any EFU zone, MUA-10, F-1, F-2, RR-10, any area zoned as an unincorporated community (as that term is defined herein), RSR-M, RSR-5, and FP as the primary dwelling, and R-I and SM as a caretaker's residence.
 2. In manufactured home parks and subdivisions.
 3. As permitted in DCC 18.116.080 and 18.116.090.
 4. Class A and B manufactured homes are not permitted in any historic district or on any historic site.
- B. Class C manufactured homes shall be permitted as follows:
1. Except as otherwise allowed in DCC 18.116.070, on parcels 10 acres in size or larger.
 2. As a secondary accessory farm dwelling.
 3. In manufactured home parks and manufactured home subdivisions.
 4. As permitted in DCC 18.116.080 and 18.116.090.
 5. As a replacement to an existing non-conforming manufactured home destroyed by fire or other natural act, or as an upgrade to an existing manufactured home.
 6. In the following subdivisions: Rockview II, Tetherow Crossing, Chaparral Estates, Crystal Acres, Hidden Valley Mobile Estates, Johnson Acres, Seven Peaks, Sun Mountain Ranches, Deschutes River Homesites Rimrock Addition, Happy Acres, Rancho El Sereno, Whispering Pines, Bend Cascade View Estates, Raintree, Holmes Acres, La Pine Meadows North, Pine Crest Ranchettes, Dora's Acres, Pierce Tracts, Roan Park, South Forty, Tones, Crooked River Ranch, Dale Acres, Replat/Hillman, Lake Park Estates, Mary K. Falls Estates.
 7. Class C manufactured homes are not permitted in any historic district or on any historic site.
- C. An exception may be granted by the Planning Director or Hearings Body to allow a Class C manufactured home to be placed in a subdivision which is not listed in DCC 18.116.070(B)(6), where all of the following conditions exist:
1. The manufactured home is specifically designed or has been substantially modified for wheelchair or disabled access (disabled accessible manufactured home).
 2. There are Class C manufactured homes in the subdivision located within one-quarter mile of the lot upon which the manufactured home will be placed.
 3. The disabled accessible manufactured home and lot upon which the manufactured home is to be placed were purchased by the applicant prior to February 22, 1989.
- D. Class D manufactured homes shall be permitted as follows:
1. In manufactured home parks and subdivisions.
 2. As permitted in DCC 18.116.080 and 18.116.090.

3. Class D manufactured homes are not permitted in any historic district or on any historic site.

HISTORY

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

Amended by Ord. 81-042 §5 on 12/3/1981

Amended by Ord. 89-004 §§3 and 5 on 3/24/1989

Amended by Ord. 89-014 §1 on 5/10/1989

Amended by Ord. 89-016 §1 on 7/12/1989

Amended by Ord. 91-005 §§42 and 43 on 3/4/1991

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

Amended by Ord. 96-003 §8 on 3/27/1996

Amended by Ord. 2000-033 §8 on 12/6/2000



For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Accepting Review of Hearings *
 Officer's Decision in File No. 247-23-000162- * ORDER NO. 2023-029
 CU.

WHEREAS, on June 14, 2023, the Hearings Officer denied File No. 247-23-000162-CU; and

WHEREAS, on June 26, 2023, Tumalo Lavender Farm, LLC, the Appellant, appealed (Appeal No. 247-23-000516-A) the Deschutes County Hearings Officer's Decision on File No. 247-23-000162-CU; and

WHEREAS, Sections 22.32.027 and 22.32.035 of the Deschutes County Code ("DCC") allow the Deschutes County Board of County Commissioners ("Board") discretion on whether to hear appeals of Hearings Officer's decisions; and

WHEREAS, the Board has given due consideration as to whether to review this application on appeal; now therefore,

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

Section 1. That it will hear on appeal Appeal No. 247-23-000516-A pursuant to Title 22 of the DCC and other applicable provisions of the County land use ordinances.

Section 2. The appeal shall be heard *limited de novo*.

Section 3. Staff shall set a hearing date and cause notice to be given to all persons or parties entitled to notice pursuant to DCC 22.24.030 and DCC 22.32.030.

Section 4. Pursuant to Section 22.32.024, the Board waives the requirement that the appellants provide a complete transcript for the appeal hearing.

Section 5. Pursuant to DCC 22.32.035(D), to date the only documents placed before and considered by the Board are the notice of appeal, recommendations of staff, and the record

ORDER NO. 2023-029


developed before the lower hearings body for File No. 247-23-000162-CU as presented at the following website:

<https://www.deschutes.org/247-23-000162-CU>

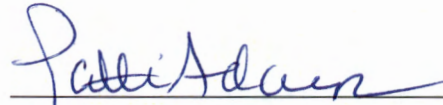
Going forward, all documents further placed before, and not rejected by, the Board shall be added to the aforementioned website, and that website shall be the Board's official repository for the record in this matter.

DATED this 12th day of July, 2023.

BOARD OF COUNTY COMMISSIONERS

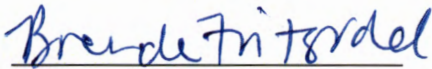


ANTHONY DEBONE, Chair

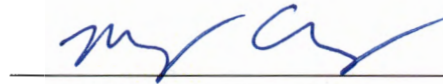


PATTI ADAIR, Vice Chair

ATTEST:



Recording Secretary



PHIL CHANG, Commissioner



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: July 12, 2023

SUBJECT: Consideration to hear an appeal of a Hearings Officer decision on a Conditional Use Permit to establish a secondary accessory farm dwelling in the Multiple Use Agricultural Zone

RECOMMENDED MOTION:

The Board will decide whether to hear an appeal of a Hearings Officer decision on a Conditional Use Permit to establish a secondary accessory farm dwelling in the Multiple Use Agricultural Zone (MUA10) – Deschutes County Land Use File Nos. 247-23-000162-CU, 23-516-A.

BACKGROUND AND POLICY IMPLICATIONS:

Staff referred the Conditional Use Permit application to a public hearing, which was held on May 16, 2023 before the Hearings Officer. On June 14, 2023, the Hearings Officer issued a decision which denied the proposal.

The applicant filed a timely appeal of the Hearings Officer's Decision (reference appeal No. 247-23-000516-A) and requests that the application be reviewed by the Board of County Commissioners. More detailed information is included in the staff memo.

BUDGET IMPACTS:

None

ATTENDANCE:

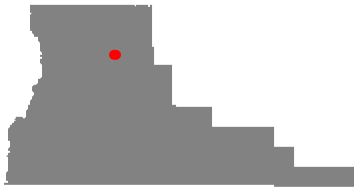
Haleigh King – Associate Planner
Jacob Ripper – Principal Planner

File Number 247-23-000162-CU, 516-A

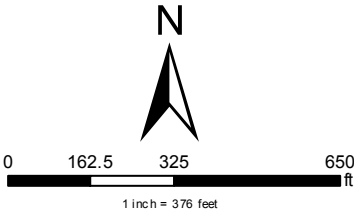
19825 Connarn Road, Bend, OR 97703



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



Date: 7/24/2023





BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 9, 2023

SUBJECT: Board review of a declaratory ruling to determine if the marijuana production facility approved under file no. 247-17-000907-AD has been initiated

BACKGROUND AND POLICY IMPLICATIONS:

On July 26, 2023, the Deschutes County Hearings Officer issued a decision ("Decision") on an initiation of use application associated with a marijuana production facility at 26295 Willard Road. Initiation of use is governed by Deschutes County Code ("DCC") 22.36.020, as detailed below.

22.36.020. Initiation of Use.

- A. For the purposes of DCC 22.36.020, development action undertaken under a land use approval described in DCC 22.36.010, has been "initiated" if it is determined that:
 - ...
 - 2. Substantial construction toward completion of the land use approval has taken place; or
 - ...
- B. For the purposes of DCC 22.36.020, "substantial construction" has occurred when the holder of a land use approval has physically altered the land or structure or changed the use thereof and such alteration or change is directed toward the completion and is sufficient in terms of time, labor or money spent to demonstrate a good faith effort to complete the development. (emphasis added)

As detailed in the Decision, there are three (3) elements for determining whether substantial construction has taken place are: (1) whether the holder of land use approval has physically altered or changed the use of the land; (2) whether the alteration or change was directed toward completion of the development; and (3) whether the expenditures of time, labor, or money demonstrate a good faith effort to complete the development. Staff notes that element number 1 includes the phrase "holder of the land use approval." The subject land use permit was approved in April of 2018. In this case, approximately 90-95% of what is needed to establish the use was completed prior to the property owner receiving land use approval. The Hearings Officer found it appropriate to consider these expenses because the property owner initiated discussions with the County on this use in early 2017; the

aforementioned expenses occurred between those early 2017 discussions and the issuance of the land use approval; and that all of the expenses were clearly directed toward completion of the use.

Staff believes this conclusion could give property owners the impression that it is permissible, and possibly advisable, to begin development of a project prior to land use approval. Staff believes perspective could then lead to a number of unintended consequences.

1. Development prior to land use approval would deprive the public and public agencies of the opportunity to participate in the land use process. One of the primary tenets of the land use system is public participation, as described under Statewide Planning Goal 1.
2. The County could see an increase in code violation cases.
3. Property owners could find themselves in the unwanted situation of having spent significant resources (time, effort, money) to establish a use prior to land use approval, only for the project to be denied.

For these reasons, staff believes it appropriate to interpret the phrase “the holder of the a land use approval” to mean the time period from the land use decision becoming final to the end of the duration approval, as amended by any extensions or applicable legal proceedings such as an appeal. Staff believes this interpretation would avoid the potentially negative consequences detailed above.

BUDGET IMPACTS:

None

ATTENDANCE:

Avery Johnson - Assistant Planner
Anthony Raguine – Principal Planner

DECISION AND FINDINGS OF THE DESCHUTES COUNTY HEARINGS OFFICER

FILE NUMBER: 247-23-000125-DR

HEARING DATE: May 30, 2023, 6:00 p.m.

HEARING LOCATION: Videoconference and
Barnes & Sawyer Rooms
Deschutes Services Center
1300 NW Wall Street
Bend, OR 97708

OWNER: Mailing Name: John Shelby Watson Jr.

APPLICANT: John Watson (the “Applicant”)

**APPLICANT’S
REPRESENTATIVE:** Michael R. Hughes, Hughes Law,
Attorney for the Applicant

SUBJECT PROPERTY: Map and Tax Lot: 1714260001000
Account: 131856
Situs Address: 26295 WILLARD RD, BEND, OR 97701
(the “Property”)

ZONING: Exclusive Farm Use (“EFU”)

REQUEST: Declaratory Ruling to determine whether the marijuana
production facility approved under File No. 247-17-000907-
AD has been initiated.

HEARINGS OFFICER: Laura Westmeyer

SUMMARY OF DECISION: The Hearings Officer finds that the Applicant has met its
burden of proof in demonstrating that all applicable criteria have been satisfied. The Hearings
Officer therefore APPROVES the Application, and finds that the marijuana production facility
approved under File No. 247-17-000907-AD has been initiated pursuant to DCC 22.36.020.

I. APPLICABLE STANDARDS AND CRITERIA

Deschutes County Code (“DCC” or “County Code”)

Title 22, Deschutes County Development Procedures Ordinance
Chapter 22.08.010, Application Requirements
Chapter 22.36.010, Expiration of Approval

Chapter 22.36.020, Initiation of Use
Chapter 22.40, Declaratory Ruling

II. BACKGROUND AND PROCEDURAL FINDINGS

A. Application

The Applicant has requested a Declaratory Ruling to determine whether the marijuana production facility approved under File No. 247-17-000907-AD has been initiated.

B. Notice and Hearing Summary

The notice of public hearing was published in The Bulletin on May 7, 2023 and was mailed pursuant to DCC 22.20 and DCC 22.24 on May 3, 2023. Pursuant to the notice of public hearing, the Hearings Officer presided over an evidentiary hearing on May 30, 2023, at 6:00 p.m. The hearing was held via videoconference, with County Planning Staff (“Staff”), the Applicant, and the Applicant’s legal counsel, Michael Hughes, Hughes Law, present in the hearings room.

At the start of the hearing, the Hearings Officer provided an overview of the quasi-judicial process, and instructed participants to direct their comments to the approval criteria and standards, and to raise any issues a participant wished to preserve for appeal. The Hearings Officer declared no *ex parte* contacts or bias to report, and asked for, but received no objections to the County’s jurisdiction or to the Hearings Officer presiding over the matter.

County Staff presented the staff report. Mr. Hughes presented the Application, on behalf of the Applicant. The Applicant testified at the hearing. There was no other testimony in favor of, in opposition to, or neutral to the Application.

C. 150-day Clock

The Application was submitted on February 22, 2023, and deemed complete on April 6, 2023. At the Hearing, the Applicant agreed to toll the clock by thirteen days, to allow time for final evidence, rebuttal, and legal argument. The 150th day on which Deschutes County (the “County”) must take final action is September 16, 2023, which is a Saturday.

D. The Record

The record materials provided to the Hearings Officer include all of the following items under County File No. 247-23-000125-DR, which are accepted into the record of this Hearing:

1. Document [Application Materials 23-125-DR](#)
2. Document [2023-03-21 Incomplete Letter 23-125-DR](#)
3. Document [2023-04-06 M. Hughes Incomplete Response](#)
4. Document [2023-03-10 R. Scheid Agency Comment.pdf](#)

5. Document [2023-03-13 P. Russell Agency Comment.pdf](#)
6. Document [2023-05-23 Staff Report 23-125-DR](#) (the “Staff Report”)
7. Document [2023-03-10 23-125-DR NOA](#)
8. Document [2023-05-03 NOPH 23-125-DR](#)
9. Document [2023-05-10 Affidavit of Publishing 23-125-DR](#)
10. Document [2023-06-02 M. Hughes Testimony](#)
11. Document [2023-06-12 Final Argument](#)

At the hearing, the Applicant requested to leave the record open for a period of thirteen days, in order to present final evidence and argument. The record was closed at the end of the open record period, on June 12, 2023.

III. SUBSTANTIVE FINDINGS AND CONCLUSIONS

A. Adoption of Staff Findings

I find that all of the applicable criteria and procedures relating to this Application are identified in the County’s Staff Report contained in the record to this Hearing. The Staff Report also contains a section of Basic Findings, which includes a determination that the Property is a legal lot of record and describes the general site. No participants to the hearing object to those portions of the Staff Report, and I adopt the Basic Findings contained therein as part of my Findings in this Decision, with the revised Review Period as identified above.

The Staff Report contains an analysis and proposed findings for each of the criteria, including whether each criterion has been met or is inapplicable. I adopt, as my findings, the proposed findings contained in the Staff Report concerning DCC 22.08.010 *Application Requirements*; DCC 22.40, *Declaratory Ruling*; and DCC 22.36.020(A)(1) and (3), which find that the criteria contained therein are either met or are inapplicable to this Application.

B. Compliance with DCC 22.36.010(B), Expiration of Approval; Duration of Approvals

Findings: This section of the County Code provides that a land use permit is void two years after the date the decision becomes final, if the use that was approved is not initiated within that time period. There are allowances for extensions. The Applicant received land use approval to establish a marijuana production facility (including one greenhouse and one storage container) on the Property under File No. 247-17-000907-AD on April 12, 2018, and the decision became final on April 24, 2018. The Applicant twice received extensions of the approval, making April of 2022 the final date to have initiated the use. For the reasons discussed below, I find that the use approved under File No. 247-17-000907-AD was initiated prior to April 2022.

D. Compliance with DCC 22.36.020(A)(2) and DCC 22.36.020(B), Initiation of Use

A. For the purposes of DCC 22.36.020, development action undertaken under a

land use approval described in DCC 22.36.010, has been "initiated" if it is determined that . . . Substantial construction toward completion of the land use approval has taken place.

B. For the purposes of DCC 22.36.020, "substantial construction" has occurred when the holder of a land use approval has physically altered the land or structure or changed the use thereof and such alteration or change is directed toward the completion and is sufficient in terms of time, labor or money spent to demonstrate a good faith effort to complete the development.

Findings: Under this section of the County Code, the three elements for determining whether substantial construction has taken place are: (1) whether the holder of land use approval has physically altered or changed the use of the land; (2) whether the alteration or change was directed toward completion of the development; and (3) whether the expenditures of time, labor, or money demonstrate a good faith effort to complete the development.

The Property was approved for a marijuana production facility under File No. 247-17-000907-AD, which proposal was to construct one greenhouse for marijuana production and one storage container for security, storage, drying, and curing of marijuana product. At the Hearing, the Applicant testified that he bought the Property in 2015 for the sole purpose of marijuana production. He began working with the County in 2017 and said that he did not anticipate any issue with receiving land use approval because the proposed use fit within the allowable zoning uses on the Property; for this reason, he began working on the development while the land use application was in progress. The Applicant testified that the approved greenhouse and storage container had not yet been constructed on the Property, although the frame for the greenhouse had been placed. The Applicant testified that the Property had existing structures on it that he believed he could use for infrastructure; and that he upgraded the electrical system to allow for more service, which would be needed for the marijuana production, and to allow for odor and noise equipment, which were required as part of the land use approval. This testimony somewhat conflicts with the Staff Report, which states that the odor and noise control systems had not been physically installed, to-date. The Applicant testified that he installed security systems in place, including cameras and a steel door. The Applicant testified that he cleared the land on the Property to accommodate the greenhouse, and changed the water rights on the Property to accommodate the greenhouse. The Applicant testified that since 2016 through the date of the Hearing, he has employed a full-time employee for the marijuana production, and has used the Property for a medical marijuana grow. The Applicant stated that he purchased plastic for the greenhouse; that he put the frame of the greenhouse on the Property; and that 90-95% of what is needed for marijuana production is existing on the Property, all of which he installed and constructed in 2017, prior to receiving the land use approval and after discussing his land use application with the County.

The Applicant testified that, at the time of the land use approval, the market for marijuana production was less favorable and he therefore put the project on hold. He stated that all that is needed to complete the development is to erect the greenhouse.

I find that the first element of the substantial construction analysis—*whether the holder of land use approval has physically altered or changed the use of the land*—is met. This element may be broken down into two parts: requiring that: (1) a physical alteration or change in use of the land be made; and (2) that it be made by the holder of a land use approval. The parties are in agreement that there has been a physical alteration or change in use of the land, and I do so find. I base this finding on the Applicant's evidence and testimony of the greenhouse frame and equipment being placed on the Property in 2017, and the expenditures and system upgrades stated by the Applicant as occurring in 2017.

The second part of the analysis requires that the alteration or change be made by the holder of a land use approval. While the Applicant is the holder of a land use approval, the Applicant was not the holder of a land use approval at the time of the physical alteration or change in use, because the Applicant's work on the Property took place prior to receiving the land use approval. Read together with the remaining elements of DCC 22.36.020(B), and from the absence of any timing requirement on a plain text reading of this County Code provision, I find that the holder of land use approval need not hold the approval at the time of the alteration or change in use, so long as the work was directed toward completion of the development.

The second element of the substantial construction analysis is whether the alteration or change was directed toward completion of the development. There is no question as to whether the alteration or change in use need occur prior to the expiration of the land use approval (and any applicable extensions). Indeed, the parties are in agreement, and I also find, that the alteration or change took place prior to the expiration of the land use approval, because the changes took place in 2016-2017 and the land use approval was not granted until April 2018 and was not set to expire until April 2022. The question in this case is whether the alterations and changes that occurred prior to receiving land use approval may be considered as being directed toward completion of the development. As I understand the County's position in the Staff Report, it believes that expenditures made prior to the approval of the land use permit should not be considered as being directed toward the development, because no action may be considered directed toward an approved development, when there is no approved development. The County also posited that alterations and changes that are uniquely directed toward other developments that are not included in the permit must not be considered. The Applicant does not read the same chronology requirement into this element of the criterion, and argued that all of the efforts by the Applicant were directed toward the completion of the marijuana production development, even though the efforts were undertaken prior to the Applicant receiving approval for the same.

I agree with the Applicant that actions taken by an applicant may be considered directed toward the completion of a development prior to receiving land use approval. To hold otherwise would be counter to the commonplace occurrence of business decisions being made in anticipation of certain events occurring. Whether or not those events actually occur is insubstantial to actions being made in their anticipation (not without risk of their nonoccurrence, which would, and commonly do, factor into the cost and liability of those business decisions). Furthermore, as the Applicant suggested, it would be impractical to require the duplication of expenditures simply for the purpose of making them after a land use approval has been provided, particularly where the expenditures

were made with the reasonable expectation that the approval would be granted. In this case, the Applicant provided credible testimony that the sole purpose for his purchase of this Property was for a marijuana production development. The Applicant also provided credible testimony that, after consultation with the County in 2017, and with his attorney, he believed the land use approval would be granted, because he was proposing a farm use in a farm zone. The Applicant applied for land use approval in late 2017, and the application was not approved until about four months later, in April of 2018, it is reasonable to conclude that within that four-month period, actions toward the development of the project might be made, in anticipation of the approval being granted. It is also reasonable to conclude that actions taken after determining the land use approval would likely be granted might be made in anticipation of the approval. In other words, any of the Applicant's actions from the time of initial consultation or pre-application with the County, through the date of approval. It is less clear whether expenditures made prior to any consultation regarding the likelihood of approval of the proposed development could be considered directed toward the completion of the development, as any such actions taken may be seen as more speculative than based in any known likelihood of success of the proposed development. For this reason, I do not consider any of the expenditures made prior to 2017, which is the first year the Applicant stated that he first began conversations with the County regarding the application.

Regarding the expenditures made in 2017: At the Hearing, the Applicant described each of the expenditures and explained how they were made in furtherance of the marijuana production use. Based on the Applicant's testimony, I find that the Applicant met its burden of proof of establishing that the upgrades and expenditures made to the electrical, odor, and noise systems, existing buildings, permits, greenhouse frame and equipment, and other items on the list presented on page 8 of the Staff Report were undertaken for the purpose of completing the marijuana production facility and constitute an alteration or change in use. Further, there is no rebuttal evidence or testimony in the record that suggest these actions were taken for any other development purpose, nor were used for any other development purpose.

The third and final element of the substantial construction analysis is whether the expenditures of time, labor, or money demonstrate a good faith effort to complete the development. Whether someone has made a "good faith effort" is inherently a subjective standard. I find that the Applicant did make a good faith effort to complete the development, based on the same reasons noted above. Specifically, I base my finding on the Applicant's credible testimony that all of the work identified above which he completed on the Property was for the purpose of completing the development; his explanation of each expenditure in regard to how it was directly made for the purpose of developing the marijuana production facility; his accounting of the expenditures and testimony and assertion that the development on this Property is 90-95% complete; the Applicant's explanation of the timing of the market, and specifically his reasons for moving quickly to further the development at the time of the initial proposal and how he put the project on hold when the market became less lucrative for the approved development. I further find no evidence in the record to rebut the Applicant's assertion that his efforts were made in good faith, nor any evidence or assertions of taking actions in bad faith. I therefore find that this element is met.


IV. CONCLUSION, CONDITIONS OF APPROVAL, DURATION OF APPROVAL

Based on the foregoing Findings, the Application is APPROVED. I find that the marijuana production facility approved under File No. 247-17-000907-AD has been initiated pursuant to DCC 22.36.020, with the following conditions of approval:

1. The conditions of approval associated with File No. 247-17-000907-AD shall remain in effect.

As earlier noted, no party has asserted, and I do not find, that the proposed use has yet lawfully occurred; instead, I find that substantial construction toward completion of the land use approval has taken place under DCC 22.36.020, which in turn means that the use was initiated under DCC 22.36.010. The County requested that the duration of the approval be noted in this Decision; however, I do not find a basis in the County Code to impose a timeline for the duration of a decision made by declaratory ruling. In contrast, DCC 22.36.010(A)(2) specifically exempts declaratory rulings from the County Code regarding expirations of approval; and DCC 22.36.010(B) specifically provides for exemptions from any limitation on the duration of approval where an initiation of use has been found. Absent any County Code provision speaking to the duration of declaratory rulings; and absent any recommendation in the record from any party regarding the duration of this declaratory ruling, I therefore decline to impose any specific, additional duration restrictions to the land use approval under File No. 247-17-000907-AD.

Dated this 26th day of July, 2023



Laura Westmeyer
Deschutes County Hearings Officer



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 9, 2023

SUBJECT: Consideration of Document No. 2023-710, a Collective Bargaining Agreement with the International Union of Operating Engineers (IUOE), Local 701

RECOMMENDED MOTION:

Move Board signature of Document #2023-710, Collective Bargaining Agreement with IUOE - 701

BACKGROUND AND POLICY IMPLICATIONS:

The International Union of Operating Engineers (IUOE) - 701 is the labor union for represented positions in the Road and Solid Waste departments. The current collective bargaining agreement with IUOE ended on June 30, 2023, although the terms and conditions remain in place until a successor agreement is approved.

The new collective bargaining agreement is a 3-year contract, effective from July 22, 2023 - June 30, 2026.

The agreement includes a 4% cost of living adjustment (COLA) effective July 22, 2023; and a 1-4% COLA based on the Consumer Price Index (CPI) in FY 2025 and 2026. The agreement includes new shift differential and intermittent skill differential pays. It also sunsets the Technical Standard Performance (TSP) certification pay program and includes pay grade adjustments for a variety of positions.

IUOE's bargaining team included James Anderson, Nate Stokes, Jacob Stallings, Chris Montgomery, Troy Thompson, Joe Jaso and Ron Preston.

The County's bargaining team included Jason Bavuso, Chris Doty, Tim Brownell, Kim Riley, Dave Doyle, Jana Cain, and Whitney Hale.

The County's bargaining team tentatively agreed to the collective bargaining agreement and recommends its approval. Employees represented by IUOE voted to ratify the labor agreement.

ATTENDANCE:

Chris Doty, Road Department Director

Tim Brownell, Solid Waste Director

Kim Riley, Assistant Legal Counsel

Jana Cain, Accounting Manager

Whitney Hale, Deputy County Administrator

AGREEMENT

Between

DESCHUTES COUNTY, OREGON

And

INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL 701

Term of Contract
July 22, 2023 - June 30, 2026

IUOE, Local 701 Contract No. 2023-710

Table of Contents

Article 1	Scope of Agreement and Recognition.....	3
Article 2	Individual Rights and Union Membership....	5
Article 3	Management Rights	6
Article 4	Union Stewards	7
Article 5	Strikes and Lockouts	8
Article 6	Grievance Procedures	8
Article 7	Probationary Period	10
Article 8	Discipline and Discharge	11
Article 9	Hours of Work	11
Article 10	Holidays	13
Article 11	Sick Leave	15
Article 12	Vacations	16
Article 13	Other Leaves of Absence	17
Article 14	Compensation	19
Article 15	Longevity and Seniority	23
Article 16	Health Laws and Safety Measures	25
Article 17	Health, Welfare and Retirement	26
Article 18	General Provisions	28
Article 19	Savings Clause	28
Article 20	Term and Termination	29
Exhibit "A"	Time Leave Management	30
Exhibit "B"	Compensation Plan	34
Exhibit "C"	CPI Methodology – All Urban Consumers (CPI-U), West Region, Size Class B/C cities.	

AGREEMENT

Between

DESCHUTES COUNTY, OREGON

and

INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 701

PREAMBLE

THIS AGREEMENT is entered into by Deschutes County, Oregon, hereinafter referred to as the County, and International Union of Operating Engineers, Local 701, hereinafter referred to as the Union, and is intended to cover rates of pay, hours of work, fringe benefits and conditions of employment of employees covered by the bargaining unit hereinafter described.

The parties agree as follows:

ARTICLE 1

SCOPE OF AGREEMENT AND RECOGNITION

1:01 Scope of Bargaining Unit.

The bargaining unit covered by this Agreement shall consist of regular full-time and regular part-time employees in the County's Road and Solid Waste Departments, excluding supervisory and confidential positions, temporary, contract, and any other employees who are not regular full-time or regular part-time employees.

1:01.01 Definitions

- Contract employee – a worker provided to the County by a privately-owned labor staffing company (e.g. Express Employment Professionals or Certified Personnel Service Agency) to perform labor for the County for the temporary, seasonal, interim or sporadic needs of the County.
- Regular full-time employee – A regular employee of the County who has successfully completed probation pursuant to Article VII of this Agreement and is scheduled to work the established hours for a full-time position on a regular, continuous, year-round basis. For the purposes of this Section 1:01.01, "full-time" is defined as not less than forty (40) hours per workweek.
- Regular part-time employee – An employee of the County who has successfully completed probation pursuant to Article VII of this Agreement and is scheduled to work a minimum of twenty (20) hours per week, but less than forty (40) hours per week performing the same duties of a regular, full-time position within the bargaining unit on a regularly scheduled, continuous, year-round basis.

- Temporary employee – An employee of the County who is notified at the time of hire that employment is temporary in nature, will continue only for a specified period of time, or will continue only for the duration of a specific project or projects.

1:02 Recognition.

The County recognizes the Union as the exclusive collective bargaining representative of all the employees covered by the Agreement.

1:03 Temporary Employees

1:03.01 Temporary employees shall be used for the purpose of meeting short-term workload needs of the County.

1:03.02 Unless the business needs of the County require otherwise, temporary assignments will not normally exceed six (6) months, nor will they normally exceed 1,039 hours per calendar year. An employee's temporary status cannot be changed to a regular full-time or regular part-time status unless formally altered by an express appointment to a regular full-time or regular part-time status by the County.

1:04 Contract Employees

1:04.01 Within the Road Department, Contract employees will generally be used to provide manual labor as well as construction/maintenance support, and will generally not be used to operate heavy equipment or to provide other functions in which a commercial driver's license is required.

1:04.02 Within the Solid Waste Department, qualified contract employees may be used to meet seasonal or interim workload needs, to fill in for regular full-time or part-time employees who are on leave, and to meet workload needs during vacancies.

1:04.03 Unless the business needs of the County require otherwise, contract employees will not normally exceed 1,300 hours per calendar year. In the event the County seeks to extend the use of a contract employee beyond 1,300 hours in a calendar year, advanced notice shall be given to the Union.

ARTICLE 2

INDIVIDUAL RIGHTS AND UNION MEMBERSHIP

2:01 Nondiscrimination.

2:01.01 The County and the Union affirm their adherence to the principles of free choice and agree that they shall not discriminate against any employee covered by this Agreement because of their inclusion in any legally recognized protected class, including but not limited to age, race, religion, color, national origin, sex, gender identity, sexual orientation, same-sex domestic partnership status, marital status, political affiliation, physical or mental disability, membership or non-membership in this Union.

2:01.02 All employees in qualifying classifications shall have the right to join or not join the Union. This choice shall be exclusively that of the individual employee and neither the Union nor the County shall discriminate against any employee based on his or her choice.

2:02 Union Membership and Fair Share

Membership or non-membership in the Union shall be the individual choice of employees covered by this Agreement.

2:03 Union Dues

Every employee within the bargaining unit who chooses to become a Member of the Union shall sign and deliver to the County an authorization allowing the deduction of the Union's monthly dues from their pay. The amounts to be deducted pursuant to this Section shall be certified to the County by the Treasurer of the Union, and the aggregate deductions of all Members shall be remitted to the Treasurer of the Union by the County not later than the 10th day of the following month after such deductions are made. The amounts to be deducted by the County shall be determined in accordance with the provisions of the Union's bylaws.

2:04 Indemnification

The Union shall indemnify and hold the County harmless from any and all claims, demands, suits or other forms of liability that shall arise out of or by reason of action taken or not taken by the County or persons acting on behalf of the County for the purpose of complying with any of the provisions of this Article, or in reliance on any list, notice, or assignment furnished to the county by the Union under this Article.

ARTICLE 3

MANAGEMENT RIGHTS

3:01 Nothing in this Agreement shall be construed to limit or impair the right of the County to exercise its own discretion on all of the following matters, whatever may be the effect upon employment, when in its sole discretion it may determine it advisable to do any or all of the following:

- to manage its business generally;
- to decide the number and location of work sites and facilities;
- to decide all machines, tools and equipment to be used;
- to move or remove the plant work site or any of its parts to other areas;
- to decide the method and place of construction and manufacture;
- to determine the schedules of production;
- to maintain order and efficiency in its work sites, facilities and operations;
- to hire, assign, transfer, promote, demote, layoff and recall employees;
- to determine the qualifications of employees;
- to determine and re-determine job content;
- to determine the starting and quitting time;
- to determine the number of hours to be worked;
- to make such reasonable rules and regulations, not in conflict with this Agreement, as it may from time to time deem best for the purposes of maintaining order, safety and/or effective operation of County facilities, and after advance notice thereof to the Union and the employees, to require compliance therewith by employees;
- to discipline and discharge employees;
- to subcontract any or all operations.

The County shall have all other rights and prerogatives including those exercised unilaterally in the past subject only to express restrictions on such rights, if any, as are provided in this agreement.

ARTICLE 4

UNION STEWARDS

4:01 The Union may appoint a job steward, or stewards, not to exceed a total of four (4). Activities by a job steward shall not interfere with their normal duties or the performance of other employees. The job steward shall be a regular full-time employee who shall, in addition to their regularly assigned work, perform the duties set forth herein, as long as such may be accomplished without disruption or interference with the work of others. The County shall allow up to the combined total of eighty (80) hours per year to the appointed stewards, for the purpose of conducting union business during normal work hours. Any work hours spent on Union business above the eighty (80) hour limit will be considered unpaid hours unless authorized by the Department Director.

4:01.01 Union steward duties shall include bringing to the attention of the County or the Union, or both, any alleged infraction of the terms and conditions of this Agreement. Such duties shall include making a good faith effort to resolve individual employee grievances as they may arise by working in cooperation with the employee and their Supervisor/Division Manager.

4:01.02 Any Steward shall have the right to investigate conditions of employment or employee grievances under this Agreement so long as such activity shall not disrupt or interfere with their normal duties or the performance of other employees.

4:01.03 No Steward shall be discriminated against for pursuing the grievance procedure as outlined in Article VI. No Steward shall be discriminated against for lawful Union activities.

4:02 The Union shall notify the County in writing of the appointment of any job stewards.

4:03 Any authorized representative of the Union, excluding stewards, shall have the right to visit work sites for the purpose of administering this Agreement. The Division Manager in charge of the work site shall be notified first and every attempt shall be made not to interfere with the work by employees covered by this Agreement.

ARTICLE 5

STRIKES AND LOCKOUTS

5:01 The Union and its members, as individuals or as a group, will not initiate, cause, permit, or participate or join in any strike, work stoppage or slowdown, picketing, or any other restriction of work at any location in the County. It is agreed that no picket line or labor dispute will affect the continued performance of Road and Solid Waste Department functions by Employees covered by this Agreement as directed by the County.

5:02 In the event of a strike, work stoppage, slowdown, picketing, observance of a picket line, or other restriction of work in any form against the County, either on the basis of individual choice or collective employee conduct, the Union will immediately upon notification attempt to secure an immediate and orderly return to work. This obligation and the obligations set forth in Section 5:01 above shall not be affected or limited by the subject matter involved in the dispute giving rise to the stoppage or by whether such subject matter is or is not subject to the grievance provisions of this Agreement.

5:03 There will be no lockout of employees in the unit by the County as a consequence of any dispute arising during the period of this Agreement.

ARTICLE 6

GRIEVANCE PROCEDURES

6:01 Grievance Procedure.

The County will promptly consider and respond to grievances. Any grievance which may arise between the parties concerning the application, meaning, or interpretation of this Agreement shall be settled in the following manner:

6:01.02 Step I

A Union Steward or Representative shall present the grievance, in writing, to an employee's Supervisor or Division Manager, within fifteen (15) calendar days of the act or occurrence giving rise to the grievance. The Supervisor or Division Manager and Union Steward or Representative shall then attempt to resolve the matter within fifteen (15) calendar days from the date the grievance is received by the Supervisor or Division Manager. If the grievance cannot be resolved at Step I, the Supervisor or Division Manager shall present a written response to the Union Steward or Representative no later than fifteen (15) calendar days from the date the grievance is received by the Supervisor or Division Manager.

6:01.03 Step II

If the grievance remains unresolved after Step I, a Union Representative shall present the grievance in writing to the Department Director or their designee(s) within fifteen (15) calendar days after the Step I response is received by the Union Steward or Representative. The Department Director and Representative shall then attempt to resolve the matter within fifteen (15) calendar days from the date the Step II grievance is received by the Department Director or their designee. If the grievance cannot be resolved at Step II, the Department Director shall present a written response to the Representative no later than fifteen (15) calendar days from the date the Step II grievance is received by the Department Director.

6:01.04 Step III

If the grievance is still unresolved after Step II, the Union shall have the right to submit the grievance in writing for review by the County Administrator within fifteen (15) calendar days after the Step II response of the Department Director is received by the Union. The County Administrator may meet with the Representative, grievant or grievants, the immediate supervisor, and the Department Director. The County Administrator shall present a written response to the representative no later than fifteen (15) calendar days from the date the Step III grievance is received by the County Administrator.

6:01.05 Step IV

In the event either of the parties disagrees with the County Administrator's decision, they may request the Board of Commissioners to review the matter. The decision of the Board of Commissioners shall be final and binding.

6:02 General Guidelines for Grievances.

6:02.01 The County and the Union prefer to correct the causes of grievances informally and encourage both supervisors and employees to resolve problems as they arise.

6:02.02 Verbal reprimands can only be grieved through Step II of the grievance procedure.

6:02.03 Written reprimands can only be grieved through Step III of the grievance procedure, unless the reprimand contains economic discipline, such as demotion, or suspension without pay. Written reprimands containing economic discipline may be grieved through Step IV.

6:02.04 Unless a step increase is withheld, performance evaluations can only be grieved through Step II of the grievance procedure.

6:02.05 Either the Union or an employee can submit a rebuttal to a documented disciplinary action within fifteen (15) calendar days of the date the discipline is imposed. The County will attach the rebuttal to the documented discipline.

6:02.06 If a grievance is not filed within the time limits specified in paragraph 6:01, the grievance shall be dismissed and considered not to have existed.

6:03 If the County fails to respond to any grievance within the time limit prescribed for such response in paragraph 6:01, the grievance shall automatically advance to the next step in the grievance process.

6:04 The time limits for the initiation and completion of the steps of the Grievance Procedure may be extended by mutual consent of the parties involved. Such mutual consent must be indicated in writing.

6:05 No employee will be disciplined or discriminated against in any way because of the employee's use of the grievance procedure.

ARTICLE 7

PROBATIONARY PERIOD

7:01 The probationary period is an integral part of the employee selection process and provides the County with the opportunity to upgrade and improve the Road and Solid Waste Departments by observing a new employee's work, training new employees, and assisting new employees in adjusting to their positions, and by providing an opportunity to release any employee whose work performance fails to meet required work standards.

7:02 Every new employee shall serve a probationary period of one (1) year unless extended by written agreement between the County and Union. Every new employee who satisfactorily completes their probation shall become a regular full-time employee or regular part-time employee depending upon the status in which they were hired. Every employee having completed less than one (1) year of employment shall be probationary employees and shall be covered by this Agreement as specified herein.

7:03 The Union recognizes the right of the County to terminate the employment of a probationary employee for any reason and to exercise all rights not specifically modified by this Agreement with respect to such employees, including but not limited to, the shifting of work schedules or job classifications, the assignment of on-the-job training, cross-training in other classifications, and the requirement that such employees attend training programs, including on their off duty time.

7:04 In order for a probationary employee to satisfactorily complete probation and receive regular status, the employee must meet all job requirements and receive an overall "meets standards" rating on their one (1) year performance evaluation in accordance with departmental policy. The County will evaluate probationary employees prior to or within the month following their completion of their one (1) year probation anniversary date to determine whether they have satisfactorily completed probation. Upon an employee's satisfactory completion of probation, the employee shall receive written documentation from the

Department Director that the employee's probationary status has ended within thirty (30) days of such completion.

ARTICLE 8

DISCIPLINE AND DISCHARGE

8:01 All discipline and discharge shall be for cause. No employee shall be disciplined without full due process of the law.

8:01.01 If the Department Director, Division Manager or Supervisors have reason to discipline any employee they shall impose such discipline in a manner that will not unduly embarrass or humiliate the employee before other employees or the public.

ARTICLE 9

HOURS OF WORK

9:01 Workweek.

The workweek is defined as seven (7) consecutive calendar days beginning at 12:01 am on Sunday and ending on the following Saturday at 12:00 midnight. A regular work schedule, to the extent consistent with operating requirements of the Road Department and Solid Waste Department, and recognizing the necessity for continuous services by that Department throughout the week and in emergencies, as determined by the Department Director, shall consist of five (5) consecutive days as scheduled by the Department Director, except that the County may institute a work schedule of four (4) consecutive ten (10) hour days within the Road Department and four (4) ten (10) hour days with at least two (2) consecutive days off within the Solid Waste Department. The rate of pay for Solid Waste Department employees shall be based on 173.33 regular work hours per month, for the duration of this contract, and shall not be subject to reduction if the County determines to schedule any unpaid holidays, other than the day after Thanksgiving for the Road Department employees. The rate of pay for Road Department employees shall be based on 172.67 regular work hours per month. Whenever possible, employees shall be given ten (10) days notification in advance of any change in the commencement or cancellation of this schedule.

9:02 Regular Hours.

A workday is the twenty-four (24) hour period beginning at 12:01 am each day and ending at 12:00 midnight. The regular hours of work each shift shall be consecutive except for interruptions for meal periods.

9:03 Work Schedules.

The normal workweek shall consist of eight (8) hours of work per day in the case of a five (5) day work schedule or ten (10) hours of work per day in the case of a four (4) day workweek schedule. All employees shall be scheduled to work on a regular shift subject to application of 14.06 and each shift shall have regular starting and quitting times, provided that the Department Director may revise such regular starting and quitting times as hereinafter provided and may direct overtime work as required by the operating needs of the Department. Work schedules showing the employee's normal shift, workdays and hours shall be posted on Department bulletin boards. Except as provided above for changes in the workweek and for situations determined in the judgment of the Department Director to be emergencies, changes in work schedules shall be posted at least one week prior to the effective date of any change. In case of adverse working conditions or other unpredictable conditions, work schedules may be canceled, modified or terminated at the option of the County. In such cases a reasonable attempt will be made to notify such employee affected as soon as practicable.

9:04 Meal Periods.

Unless one of the below exceptions apply, referenced in 9:04.01 and 9:04.01.01 as determined by a Division Manager or the Department Director, employees shall be granted a minimum of one-half (1/2) hour uncompensated meal period during each work shift. To the extent consistent with operating requirements of the Department, meal periods shall be scheduled at or about the middle of the work shift.

9:04.01 Exceptions: Consistent with applicable Oregon law governing meal periods for non-exempt hourly employees, exceptions to the meal period requirement stated above may be allowed as follows:

- 1) Where an unforeseeable equipment failure, act of nature, or other exceptional and unanticipated circumstance occurs that only rarely and temporarily precludes the provision of a meal period.
- 2) Where providing an uninterrupted one-half (1/2) hour uncompensated meal period during which employees are relieved of all duties would impose an undue hardship on the operation of the County's business. In such instances, employees must still be provided with adequate time to consume a meal, rest and use the restroom, and must be paid for this time, in addition to being provided all rest periods required by law for the number of hours worked during any given shift. When this exception applies, the County must provide written notice to each affected employee on the then-current form prescribed by the Oregon Bureau of Labor and Industries for use in instances of undue hardship and must maintain a copy of this notice for the duration of each affected employee's employment and for at least six (6) months after the termination date of each affected employee.

9:04.01.01 Examples of When These Exceptions May Apply in the Road and Solid Waste Departments (These are not intended to be an exhaustive list of when exceptions to the meal period requirement may apply):

Within the Road Department - Exception #1 may apply to snow/ice removal operations depending on the severity of circumstances, as determined by the Division Manager. Exception #2 may apply to chip seal and paving operations as well as other perishable or time sensitive activities, as determined by the Division Manager.

Within the Solid Waste Department – Exception #2 may apply to landfill attendants conducting transactions at Solid Waste facilities where hours of operation require customer service the entire day and do not allow for a full one-half (1/2) hour uninterrupted meal period away from the work station.

9:05 Breaks.

Employees shall be entitled to a mid-morning and mid-afternoon break not to exceed fifteen (15) minutes each. Each of the two (2) breaks shall be taken at a time determined by the Division Manager.

ARTICLE 10

HOLIDAYS

10:01 Observed Holidays.

The following shall be observed as holidays:

New Year's Day	Veteran's Day
President's Day	Thanksgiving Day
Memorial Day	Christmas Day
Juneteenth Day	Independence Day
Labor Day	(1) Floating Holiday
Martin Luther King's Day	

10:02 Eligible Employees.

Regular full-time and probationary employees who work, or have authorized paid time off, on the last regularly scheduled day before and the first regularly scheduled day after any of the above named holidays shall be eligible for holiday pay.

10:03 Holiday Pay.

Eligible employees shall receive one day's pay for each of the holidays listed above on which they perform no work. If a holiday falls within a 4 x 10 schedule, each eligible employee shall receive ten (10) hours pay.

10:04 Holiday During Leave.

Should an employee be on authorized leave when a holiday occurs, such holiday shall not be charged against such leave. In such event, the employee may, upon prior notice and approval by the County, schedule one additional consecutive day of leave and be paid for the holiday. If an additional consecutive day of leave is not approved by the County the employee may, upon mutual consent, reschedule such day at a later date. No employee shall be compensated twice for the same holiday.

10:05 Holiday Work.

OBSERVED Holiday Worked

- If an employee works on any day their department is closed in observance of the holidays listed above, the employee, in addition to their holiday pay, shall be paid for all hours worked at the rate of time and $\frac{1}{2}$ (1.5) of their regular straight-time hourly rate of pay.

ACTUAL Holiday Worked

- If an employee works on the actual holiday that falls on a Saturday or Sunday, the employee shall be paid for all hours worked at the rate of time and $\frac{1}{2}$ (1.5) of their regular straight-time hourly rate of pay.

OBSERVED and ACTUAL Holiday Worked

- When an employee works the observed holiday AND the actual holiday, in addition to their holiday pay for the actual holiday, the employee shall also be paid for all hours worked at the rate of time and $\frac{1}{2}$ (1.5) for all hours worked for each day.

10:06 Holiday Falling on Scheduled Day Off.

If an employee's regularly scheduled day off falls on any of the observed holidays listed above, they shall receive another day off on a date within the same pay period as the holiday or the pay period immediately following.

Exclusive to Solid Waste Department: The day off shall be scheduled by the Director or the Director's designee. The employee shall have the option of requesting a different day off and must do so within one week of the holiday. The Director or Director's designee shall not

unreasonably deny an employee's request for a day off pursuant to this Section so long as such request complies with the limitations stated herein.

Exclusive to the Road Department: If a regularly scheduled day off falls on any of the holidays listed above, the last workday prior to the holiday shall be the observed holiday for holidays occurring on Friday and Saturday; the first workday after the holiday shall be the observed holiday for holidays occurring on Sunday and Monday, unless approved otherwise by an employee's Supervisor.

ARTICLE 11

SICK LEAVE

11:01 Accumulation.

11:01.01 Employees shall accumulate sick leave at the rate of eight (8) hours for each full month of continuous service. Leave will be deducted on hour-per-hour basis.

11:01.02 Sick leave shall be used only for the following:

Where an employee is physically unable to perform duties because of illness or injury. In such a case, employees shall notify the Supervisor or Division Manager as soon as possible prior to the beginning of the shift. At the request of the Supervisor or the Division Manager, the employee will provide a written document from a Health Care Provider that an employee is unable to work due to an illness or injury;

- To obtain medical or dental care;
- As the result of exposure of a contagious disease or condition under circumstances by which the health of fellow employees or the public could be endangered.
- Due to the death of an employee's mother, father, spouse, same-sex domestic partner, sister, brother, children, grandparents or other close relatives. Up to three (3) working days in succession per occurrence may be used for these purposes. The employee's Division Manager may grant additional days if special circumstances exist and;
- All eligible leave taken in accordance with the Oregon Family Leave Act (OFLA) and the Family Medical Leave Act (FMLA).

11:01.03 In the event that an employee needs to utilize their allowance of sick leave, the employee shall notify the Supervisor or the Division Manager of the pending absence prior to the beginning of their assigned shift. Such notification should be made at the earliest possible time prior to the commencement of the employee's work shift, and will include the nature or reason for the absence and the expected length of the absence, unless the employee is unable to do so because of the serious nature of the illness or injury.

11.01:04 Unused sick leave credits may be converted to retirement benefits in accordance with state law.

11.01.05 A Health Care Provider's statement documenting that an employee is unable to work due to an illness or injury may be required at the option of the Department if an employee utilizes more than three (3) consecutive days of sick leave, or if the employee is demonstrating a pattern of sick leave abuse. Abuse of sick leave privileges shall be treated in accordance with the discipline and discharge provisions of this Agreement.

11:02 Termination.

Sick leave is provided by the County solely in the nature of insurance against loss of income, due to illness or injury. No compensation for accrued sick leave shall be provided for any employee for any reason except that one-half (1/2) of the employee's accrued, sick leave shall be paid to the employee or their beneficiary upon death, retirement or permanent total disability, or after five (5) years of continuous employment, and a voluntary resignation, (not including termination or resignation in lieu of termination for cause). Sick leave shall not accrue during any period of leave of absence without pay or layoff.

11:03 Time Management Program

Article 11 shall not apply to employees participating in the Time Management Program. Employees participating in the Time Management Program shall be covered by the Time Management policy outlined in Exhibit "A" of this contract. Time Management Leave offered to full and part-time regular employees as articulated in Exhibit "A" of this contract represent substantially equivalent paid sick time benefits in compliance with the Oregon Paid Sick Time Law ("OPST") as defined by ORS 653.601 through 653.661. Rules for employee accrual and use of paid time under OPST will be consistent with Deschutes County Administrative Policy HR-18 - Oregon Paid Sick Time.

ARTICLE 12

VACATIONS

12:01 Amount of Vacation and Eligibility Requirements

Regular full-time employees shall receive:

Years Of Service	Hours of Vacation	Accrual Rate
1-5 Years	96 Hours	8 Hrs./Month
5-10 Years	120 Hours	10 Hrs./Month
10-15 Years	144 Hours	12 Hrs./Month
15-20 Years	168 Hours	14 Hrs./Month
+20 Years	180 Hours	15 Hrs./Month

Vacation shall be compensated at the employee's regular straight-time hourly rate at the time the vacation is taken. Continuous service shall constitute service unbroken by separation from employment as a regular full-time employee in the Department. Leave will be deducted on an hour-per-hour basis.

12:02 Scheduling.

Employees shall be permitted to request either split or single vacation. Whenever possible, consistent with the Department Director's judgment as to the needs and requirements for vacation relief, employees may schedule their vacation times. Subject to such requirements, vacation time shall be scheduled between employees on the basis of seniority, provided, however, each employee will be permitted to exercise seniority only once each year. The County shall have the final determination of vacation time based on operations and the availability of vacation relief.

12:03 Vesting.

An employee's vacation shall accrue at the end of each month and vest after an employee has been in regular employment for six months. Upon termination of employment after six months of continuous service, all of the employee's unused vacation leave shall be paid to the employee. If an employee leaves before completing six months of employment, they will not be paid for the unused vacation leave.

The maximum earned but unused accrual for vacation leave shall be equal to a total of two years vacation leave credit. On May 1 of each year, any employee with accrued vacation leave greater than two years vacation leave shall forfeit the amount over the maximum accumulation. An employee may continue to accumulate earned leave for the balance of the year, provided the employee takes sufficient leave to reduce the accumulation to the maximum allowable prior to the following May 1 or forfeit the excess. Leave accrued in excess of the above is forfeited unless prior approval for an extension is granted, in writing, by the County Administrator.

12:04 Time Management Program

Article 12 shall not apply to employees participating in the Time Management Program. Employees participating in the Time Management Program shall be covered by the Time Management policy outlined in Exhibit "A" of this contract. Time Management Leave offered to full and part-time regular employees as articulated in Exhibit "A" of this contract represent substantially equivalent paid sick time benefits in compliance with the Oregon Paid Sick Time Law ("OPST") as defined by ORS 653.601 through 653.661. Rules for employee accrual and use of paid time under OPST will be consistent with Deschutes County Administrative Policy HR-18 - Oregon Paid Sick Time.

ARTICLE 13

OTHER LEAVES OF ABSENCE

13:01 Leave for Jury Duty.

Regular full-time employees shall be granted leave with full pay, computed on the basis of eight (8) or ten (10) hour day's pay per day, whichever is applicable, at the employee's regular straight-time hourly rate, any time they are scheduled to work and are required by summons or subpoena to report for jury duty or jury service. An employee shall endorse any fee, excluding mileage, to the County as a condition to receive jury duty pay. Upon being excused from jury service for any day, the employee shall immediately contact the employee's Supervisor or the Director for assignment for the remainder of the employee's regular workday, unless the employee's jury duty has been for such hours that cause the employee to be unfit for duty. In those instances where jury duty has caused the employee to be unfit for duty, the employee may utilize accrued leave.

13:02 Leave for Witness Duty.

Leave with pay shall be granted for actual work time missed for an appearance on the County's behalf, connected with their official duties before a court, legislative committee, judicial or quasi-judicial body as a witness in response to a subpoena; however, should the hearing last longer than the affected employee's regular work day, all hours beyond their regular shift, excluding travel time, shall be compensated for at one and one-half (1 1/2) times their regular straight time hourly rate. Employees shall return to the County any compensation, excluding mileage, received as a result of such duty. Upon being excused from witness duty for any day, the employee shall immediately contact the employee's Supervisor or the Director for assignment for the remainder of the employee's regular workday, unless the employee's witness duty has been for such hours that cause the employee to be unfit for duty. In those instances, the employee may utilize accrued leave. This section shall not apply if the employee's appearance is adverse, in any manner, to the County's interest.

13:03 Military Leave.

An employee who has served with the County for at least six months and who is a member of the National Guard or the reserve of any branch of the U.S. Military is entitled to military leave not to exceed fifteen (15) work days per Federal fiscal year. Such leave will be granted without loss of time, pay or other leave and without impairment of merit rating or other rights or benefits. Military leave with pay may be granted to personnel with bona fide military orders and shall not be paid if the employee does not return to their position immediately following the end of the approved duty period. Department Directors are required to report employees to the Human Resources Department and on the payroll time and leave worksheets. Copies of military orders shall be placed in the employee's personnel file. Military leave without pay will be granted to employees for performance of military service, pursuant to bona fide military orders, in accordance with the provisions of Oregon State law and the provisions of the Uniformed Service Employment and Reemployment Rights Act of 1994, as amended. Employees may, but are not

required to, use accrued and unused time management leave for any period of military service which is unpaid by the County.

13:04 Education Leave

After completing one year of continuous service, a regular full-time, upon written request, may be granted a leave of absence without pay by the County Administrator (with departmental approval), for the purpose of upgrading their professional ability through enrollment in educational courses related to their employment at an accredited school. The period of such leave of absence may not exceed one year, but may be renewed or extended upon request of the employee and approved by the County Administrator. One year's leave of absence with requested extensions for educational purposes may not be provided more than once in any three-year period.

13:05 Conferences, Seminars, Educational Training

Employees may be granted time off with pay for educational purposes to attend conferences, seminars, briefing sessions, training programs, and other programs of similar nature required and approved by the Department Director. One year's leave of absence with requested extensions for educational purposes may not be provided more than once in any three-year period.

ARTICLE 14

COMPENSATION

14:01 Wages and New Classifications.

Employees shall be compensated in accordance with a step salary schedule attached to this Agreement and marked "Exhibit B", which is hereby incorporated into and made a part of this Agreement. All entry level (new hires) will start at Step 1 or Step 2 unless a different salary is negotiated and approved by the County Administrator. New hires will serve in that step until successfully completing their probation period. Wage adjustments within a step advancement requires the employee to receive an overall "Meets Standards" rating on their performance evaluation. There will be no more than one step advancement per year.

For the contract period of July 22, 2023 through June 30, 2024 the salary schedule, Exhibit "B", as amended in the paragraph above, shall be amended to reflect a COLA equal to the "average 12-month CPI percentage" from the twelve months of the Consumer Price Index for All Urban Consumers (CPI-U), West Region, Size Class B/C cities using each month's CPI 12-month percentage change from February 2022 to January 2023. The CPI% used for each month is the "12-month percent change" - meaning the month is compared (for the CPI index) to the same month from the previous year. The COLA shall have a minimum increase of not less than one percent (1.0%) and a maximum increase of not more than four percent (4.0%). Appendix C shows the calculation methodology for an example period.

For the contract period of July 1, 2024 through June 30, 2025 the salary schedule, Exhibit "B", as amended in the paragraph above, shall be amended to reflect a COLA equal to the "average 12-month CPI percentage" from the twelve months of the CPI-U, West Region, Size Class B/C cities using each month's CPI 12-month percentage change from February 2023 to January 2024. The CPI% used for each month is the "12-month percent change" - meaning the month is compared (for the CPI index) to the same month from the previous year. The COLA shall have a minimum increase of not less than one percent (1.0%) and a maximum increase of not more than four percent (4.0%). Appendix C shows the calculation methodology for an example period.

For the contract period of July 1, 2025 through June 30, 2026 the salary schedule, Exhibit "B", as amended in the paragraph above, shall be amended to reflect a COLA equal to the "average 12 month CPI percentage" from the twelve months of the CPI-U, West Region, Size Class B/C cities using each month's CPI 12-month percentage change from February 2024 to January 2025. The CPI% used for each month is the "12-month percent change" - meaning the month is compared (for the CPI index) to the same month from the previous year. The COLA shall have a minimum increase of not less than one percent (1.0%) and a maximum increase of not more than four percent (4.0%). Appendix C shows the calculation methodology for an example period.

14:01.01 When any position not listed on the salary schedule is established, the County shall designate a job classification and pay rate for the position. The Union shall be notified within seven (7) calendar days of the new designation and, within seven (7) calendar days of such notice, shall be afforded an opportunity to meet and discuss the matter.

14:02 Longevity.

County employees who have worked continuously for the County are eligible to receive an additional \$92.50 per month for each five (5) years of continuous service, effective July 22, 2023 with an increase of the following for each year of the contract:

July 1, 2024 \$95.00
July 1, 2025 \$97.50

14:03 Training.

The County will develop a training program that is consistent with the performance requirements for advancement in conformance with the needs of the County, the employee, and the terms of this Agreement.

14:03.01 Training Policy

DCRD will maintain a training policy which considers (including but not limited to):

1. The needs of the County, employees and job classifications.

2. Efficiencies in the development of specialties within the unit.
3. Seniority.

14:04 Call-back Time.

Any employee called back to work after completing their regular scheduled shift on that day shall be paid for a minimum of two (2) hours at the rate of time and one-half (1 1/2).

Any employee called back to work while on vacation leave shall be paid at the rate of time and one-half (1 1/2) for the first two hours, and straight time for all additional hours worked, unless otherwise eligible for overtime. If an employee is called back for multiple days while on vacation leave, the time and one-half (1 1/2) provision for the first two hours applies only to the first day of call back.

14:05 Flex Time (All Exempt Employees)

Exempt Employees (Design Engineer, and Traffic Engineer) may be granted flex time on a one hour for one hour basis. This flex time must be used and monetary compensation cannot be claimed. Flex time will be granted and used at Department Director discretion and records of this time will be maintained within the department in accordance with County Policy.

14:06 Overtime (All non-exempt employees)

Non-Exempt Employees covered by this Agreement shall be compensated at one and one-half (1 1/2) times their regular straight-time hourly rate under the following conditions, but in no event shall compensation be received twice for the same hours worked.

Basis for payment of overtime is as follows: any time worked over the regular scheduled full-time workweek or over 40 hours per week any time worked on work days outside the employee's regular work schedule in which the employee is called in to work or more than 10 hours per work day (for a 4 x 10hr shift) or 8 hours per work day (for a 5 x 8hr shift). Hours worked shall include holidays, vacation and compensatory hours which are authorized and scheduled in advance in accordance with departmental policy. Sick leave does not count as hours worked. The rate of pay for overtime is 1.5 times the normal hourly rate, which shall be based on the employee's current pay grade, including additional pay received for lead, skill differential, longevity, and any applicable shift differential. Overtime must be authorized and directed by the department head Department Director or Supervisor. In the event that an employee is required to work on any of the days the County is closed due to mandatory days off, the employee will receive overtime pay whether or not they worked forty (40) hours in that week. The above shall also apply to days in which the mandatory day off has been observed by the Division or subset of the Division due to the mandatory day off occurring outside the work schedule of the employee. The employee will receive overtime pay for work performed on observed mandatory days off whether or not they worked forty (40) hours in that week.

14:07 Compensatory Time (Non-Exempt employees)

In lieu of overtime pay, by mutual agreement between the Department Director and employee, a non-exempt employee may receive compensatory time off at the rate of one and one-half (1.5) times their regular rate of pay. Compensatory time shall not exceed eighty (80) hours. Scheduling of these hours will be upon request of the individual and approval by the Division Manager or their designee.

For those persons that have a legitimate reason to take time off within the same weekly pay period the additional hours are worked, the Supervisor or Division Manager may approve such a trade on a one hour for one hour basis.

14:08 Distribution of Overtime.

Overtime work shall be performed as directed by the Department Director or their designee. To the extent consistent with the operating needs of the Department, overtime work shall be distributed as equally as is reasonable among employees with comparable skills within the same job classification. Overtime work shall be scheduled by the County as deemed necessary to accomplish work schedules and to meet emergency needs. Upon notification of overtime work prior to completion of an employee's shift, such employee shall perform such overtime as directed by the County. A record of overtime hours worked will be recorded on an employee's timesheet and reflected on their paycheck stub.

14:09 Temporary Assignment of Bargaining Unit Members

A bargaining unit member's pay rate shall not be decreased when temporarily assigned work at a lower rate of pay. Bargaining unit members who are assigned to perform the full scope of duties consistent with a job classification associated with a higher pay grade shall be paid a 10% Add Pay. Out of class and Add Pay will be paid in 1/2 shift increments. In order to receive this pay you must be assigned or directed by Management.

14:10 Standby Time

Employees designated by Management as "On-Call" shall be compensated 1 hour of standby time for every 8 hours on days not scheduled to work and 1 hour standby time for each scheduled workday. All Standby time will be at a straight time rate. Calculations of hours for 4-day, and 5-day shift schedules are displayed in the chart below.

5-Day Work Week	Hours of Standby Pay	Weekly Total
5 Days scheduled	5 hours of standby pay	11 hours paid
2 Days non-scheduled	6 hours of standby pay	
4-Day Work Week		
4 Days scheduled	4 hours of standby pay	13 hours paid
3 Days non-scheduled	9 hours of standby pay	

14:11 Shift Differential

If the Road Department implements a split-shift which provides a minimum of 20-hours of daily operational coverage for winter operations or other emergencies, equipment operators and other responding personnel will receive additional pay of \$2.00 per hour for all hours worked between 6:00 p.m. and 6:00 a.m.

14:12 Skill Differential

14:12.01 ASE Certifications

Senior Store Clerks who obtain an Automotive Service Excellence (ASE) Parts Specialist Certification will receive six percent (6%) above their base hourly rate. Mechanics/Serviceers who hold an ASE Master Mechanic Certification in either Automotive or Heavy Duty Truck will receive 6% additional pay above their base hourly rate. Mechanics/serviceers who hold an ASE Master Mechanic Certification in both Automotive and Heavy Duty Truck will receive 12% additional pay above their base hourly rate.

14:12.02 Intermittent Skill Differential

Employees who obtain training and are assigned by management to operate asphalt distributor, paint striper (driver, white, and yellow applicator), or chip spreader (operator only) equipment will receive a 5% differential.

Solid Waste employees assigned to the PW Light Equipment Operator classification who obtain training and are assigned by management to operate specific equipment described in the PW Heavy Equipment Operator classification will receive a 5% differential.

Intermittent Skill Differential Pay as described in this section will be applied to specific time periods in which the employee is actively operating equipment as described in this section and will be paid in ½ shift increments. Assignments as described in this section are made at the sole discretion of management.

ARTICLE 15

LONGEVITY AND SENIORITY

15.01 Longevity

Longevity is determined by an employee's continuous full-time service as a County employee.

15:02 Seniority

Seniority is defined as the total length of service within a job classification with the Department.

15:02.01 Employees shall lose seniority in the event of voluntary termination, discharge for cause, a layoff period greater than thirteen (13) months, failure to report to work at the termination of an extended leave of absence, acceptance of employment without permission while on a leave of absence, and retirement.

15:02.02 An employee shall not lose seniority with the Department if the employee transfers from one division to another within the same job classification within the individual department.

15.03 Layoffs

Layoff shall be in the inverse order of seniority within each classification, with the exception that a senior employee may be laid off before a junior employee when the junior employee is performing the job in question in a better manner, taking into consideration job performance, experience and training, and relevant ability to do the job as determined by the department.

15:03.01 Each laid off employee shall keep the County informed of their current address. The County shall send any notice of recall by certified mail, return receipt requested, to the employee's last address of record on file with the County. A copy of each notice of recall shall also be sent to the Union. A recalled employee shall, within fourteen (14) calendar days from the date on which the notice is delivered to the employee, notify the Department Director in writing of the employee's intent to return to work. The employee shall report to work within fourteen (14) calendar days from the date on which the employee's notice of intent to return to work is sent or delivered to the Department Director, at such later date as is specified in the recall notice, or at such other date as is agreed to in writing by the employee, the Department Director and the Union. If a laid off employee fails to accept delivery of a notice of recall, or if a recalled employee fails to timely respond to a recall notice or fails to timely return to work in accordance with the deadlines set forth in this section, it shall be considered that the employee has voluntarily resigned their employment with County and that the employee has forfeited all employment rights with County and all rights to recall.

15:03.02 Any employee reclassified into a lower or higher paying job by reason of recall or layoff shall assume both the new classification and the pay rate of the classification.

15:04 Vacancies

Positions determined by the Department to be of a regular nature shall be posted on the bulletin boards referenced in Article 18:01.01 and shall be open for consideration by employees within the bargaining unit for a minimum period of forty-eight (48) hours prior to the position being posted for the public in the newspaper or any other public medium.

15:04.01 Where qualification and ability between two existing employees are relatively equal as determined by the County, seniority shall be applied. A successful applicant from within the Department filling a position under this section shall be placed on a probationary period not to exceed one year. If the employee does not satisfactorily complete their probationary period,

they shall be returned to the former position if available, or to the next available position for which they are qualified. This reinstatement right to the next available position shall apply for thirteen months and upon reinstatement, the employee's seniority shall be restored.

15:04.02 It is the general policy of the County to utilize its employees to perform work they are qualified to perform. However, the County reserves the right to contract out any work that, in its sole discretion, it deems necessary. Prior to making its final determination, the County agrees to notify the Union in writing, and upon timely written request of the Union (30 days) the County will provide all available cost comparable data to the Union based on uniform specifications. Available cost comparisons must include wage, health, welfare and pension costs comparable to those contained in this agreement. The foregoing cost comparisons shall not apply to existing contracts and practices including those that may be renewed.

15:04.03 Upon presentation by the Union of a plan indicating the County could save money or perform a job more efficiently, the County will review work which has been previously contracted out to determine whether such work can be more efficiently performed by bargaining unit personnel, or whether such work can be performed by bargaining unit personnel for reduced costs.

15:04.04 The County further agrees that if an employee loses their employment as a result of contracting out work performed by a bargaining unit employee, the County will make a diligent attempt to place the employee within the department or the County, or negotiate with the bargaining unit a severance package. This does not preclude the termination of regular status employee for just cause, nor laying off of employees for reasons other than contracting work out.

15:04.05 Deschutes County agrees to notify employees thirty (30) days in advance before layoffs occur. If an employee is laid off without a thirty (30) day notice the employee will receive one (1) additional month of Health Insurance coverage.

ARTICLE 16

HEALTH LAWS AND SAFETY MEASURES

16:01 Alcohol and Drug Policies and Procedures.

The Union and the Employer agree that the Department and County's Administrative, Drug, Alcohol and Safety policies shall be enforced.

16:01.01 Safety.

It is mutually agreed that the efforts of both the County and the Union shall be directed to maintain all equipment and tools in a safe and efficient working order, and that Federal and State regulations and safety codes shall be strictly observed by both parties. Employees shall be encouraged to raise safety issues at any time.

16:01.02 Employees shall use all protective equipment required, shall perform their work in a safe manner and shall comply with all the safety regulations stipulated by the County. Failure to comply with safety regulations shall be cause for disciplinary action up to and including termination.

16:01.03 Weather Protection.

The County will, where feasible, provide protection from cold or hot weather on County Equipment. Such protection shall be suitable for the type of equipment involved.

ARTICLE 17

HEALTH, WELFARE AND RETIREMENT

17:01 Insurance Benefits.

(A) Health Insurance

Health Insurance is to include the following:

- Medical Insurance
- Vision Insurance
- Dental Insurance
- Prescription Drug Insurance
- Orthodontic Insurance

Health insurance benefits will be provided to 701 Union members under the same conditions and/or restrictions as provided to all other County employees. A health benefits plan document shall be adopted annually by the County following a review by the Employee Benefits Advisory Committee. The per FTE cost of providing the health benefits called for in this plan shall be determined by an actuarial valuation for both a composite rate and a tiered system. The County shall annually, as part of the budget adoption process, establish an employee premium contribution. Monthly employee health insurance premium contributions shall be no greater than nine point five percent (9.5%) of the per FTE cost as calculated by the composite rate. The County reserves the right to establish a tiered system for premium contributions under which different contribution rates may be established for a single employee, employee and spouse/same sex domestic partner, employee and child(ren), or full family benefits. If the County establishes a tiered system for premium contributions, the monthly health insurance premium contribution shall be no greater than nine point five percent (9.5%) of the respective tier cost for the relevant enrollment tier.

(NOTE: In the event the County provides funds for benefits for non-701 Union members that are in excess of the scheduled amount identified in the 701 Union contract, the same benefit level will apply to 701 Union members.)

Through the duration of the contract, 701 Union members will have an employee representative on the County Employee Benefits Advisory Committee.

B) Other Insurance

Other insurance is to include the following:

- Employee life insurance
- Dependent life insurance
- Long-term disability insurance
- Worker's compensation insurance
- Unemployment insurance
- Retirement health insurance

Other insurance benefits will be provided to 701 Union members under the same conditions and/or restrictions as provided to all other County employees. If coverage is adjusted and/or modified for all other County employees, the same will apply to 701 Union members.

(C) IRS 125 Plan

In addition to health insurance and other insurance, the County will make available to 701 Union members a qualified IRS 125 plan.

(D) Eligibility

Employees become eligible for the insurance benefits on the first day of the month following one full month of employment. If an employee begins work on the first working day of the month, (e.g. if the first day of the month falls on a weekend or holiday), the employee will be considered to have completed one full month of employment at the end of that month.

17:01.01 Married Couples who Both Work for the County.

Coverage will not be duplicated. One spouse or the other should be covered as the primary recipient. (Additional coverage is extended to the second spouse via spouse rights contained in the policy).

17:01.02 The County will provide the same level of health insurance benefits as provided for an active County employee, to retirees who have worked full-time for the County for 30 years or more up to age 65, or when the retiree becomes eligible for Medicare, whichever comes first.

If active employees are required to pay a premium contribution, the retiree with 30+ years will be required to pay the same premium contribution.

17:03 Retirement.

The County shall participate in the Public Employees Retirement System (PERS), Oregon Public Service Retirement Plan (OPSRP) or its equivalent. After the employee has completed their six month waiting period and holds a position requiring that the employee works in excess of 600 hours per year, the County shall make contributions to PERS in accordance with levels established for the employee's position.

ARTICLE 18

GENERAL PROVISIONS

18:01 Bulletin Boards.

The County agrees to furnish bulletin boards located in convenient places in work places to be used by the Union. The Union shall limit its use to such boards to notices and bulletins concerning Union matters. Bulletin boards shall not be used to target or to cause embarrassment to any County employees.

18:02 Tool Replacement.

The County agrees to replace with the same brand whenever possible "in kind" personal tools which are required in the line of duty and which the employee can show are broken in the line of duty. To qualify for replacement, broken tools must be delivered to the County.

18:03 Clothing and Equipment.

The County agrees to furnish gloves, coveralls, vests, engineering equipment (holsters, tackballs, plumb bobs, etc.) and other health related clothing or equipment as necessary to the work environment.

ARTICLE 19

SAVINGS CLAUSE

19:01 Savings Clause.

If any provision of this Agreement is held to be invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with or enforcement of any provision should be restrained by any such tribunal, the remainder of the Agreement shall not be affected thereby, and upon the request of either the County or the Union, the parties shall enter into negotiations for the purpose of attempting to arrive at a mutually satisfactory replacement for such provision;

provided, however, that the provision of Strikes/Lockout Article shall continue in full force and effect even though a satisfactory replacement is not achieved.

ARTICLE 20

TERM AND TERMINATION

20:01 Term.

Unless otherwise specified, this Agreement shall be effective upon ratification by both parties, and shall remain in full force until June 30, 2026. It shall automatically be renewed from year to year thereunder unless either party shall notify the other, by registered mail, no later than January 1st, of the expiration or anniversary date that it wishes to modify this Agreement for any reason.

20:01.01 Closure.

The County shall have no obligation to bargain with the Union with respect to any subject covered by the term of this Agreement and closed to further bargaining for the term hereof and any subject which was or might have been raised in the course of collective bargaining but is closed for the term hereof, except as otherwise provided herein.

Dated this _____ day of _____ 2023

BOARD OF COUNTY COMMISSIONERS
DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, CHAIR

PATTI ADAIR, VICE-CHAIR

PHIL CHANG, COMMISSIONER

ATTEST:

BRENDA FRITSVOLD, EXECUTIVE ASSISTANT

FOR THE UNION:

JAMES ANDERSON
BUSINESS MANAGER AND FINANCIAL SECRETARY
INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 701

Exhibit "A"

SUBJECT: TIME MANAGEMENT – International Union of Operating Engineers, Local 701

1. PURPOSE

It is the purpose of the Deschutes County Time Management program to provide employees with a leave-with-pay program that is easily understood, responsive to individual needs, and easy to administer. This program is also intended to eliminate any abuse of sick leave while rewarding employees for faithful attendance and productivity.

Time Management Leave offered to full and part-time regular employees represent substantially equivalent paid sick time benefits in compliance with Oregon Paid Sick Time Law (OPST) as defined by ORS 653.601 through 653.661. Rules for employee accrual and use of paid time under OPST will be consistent with Deschutes County Administrative Policy HR-18 - Oregon Paid Sick Time.

2. SCOPE

This program is optional for all International Union of Operating Engineers; Local 701 represented employees hired prior to the signing date of this contract. If an employee elects to participate in the Time Management program, it is a permanent election. All New Hires will be placed in the Time Management program. Those employees covered by the provisions of this program shall not be eligible for separate leave benefits covering the following:

- Sick leave (non-occupational illness or injury leave)
- Vacation leave

Nonexempt employees who are eligible for 1.5 compensatory time or overtime will still receive such under this program in accordance with Article 14 (14:06) of the union contract. Exempt employees who are eligible for limited one-for-one flex time in accordance with County policy will still receive such under the Time Management program.

3. LEAVE-WITH-PAY PROVISIONS

- A. All employees entering the Time Management program will be credited with their existing vacation time balance.

Nonexempt employees will earn leave, based on full-time service, in accordance with the following schedule:

Months of Service Leave	Hours of	Earned Leave Accumulation
0 – 48 months	168 hours	14 hrs/month
49 – 108 months	192 hours	16 hrs/month
109 – 168 months	216 hours	18 hrs/month
169 – 228 months	240 hours	20 hrs/month
229 – 288 months	264 hours	22 hrs/month
289+ months	288 hours	24 hrs/month

Exempt employees will earn leave, based on full-time service, in accordance with the following schedule:

Months of Service Leave	Hours of	Earned Leave Accumulation
0 – 48 months	216 hours	18 hrs/month
49 – 108 months	240 hours	20 hrs/month
109 – 168 months	264 hours	22 hrs/month
169 – 228 months	288 hours	24 hrs/month
229+ months	312 hours	26 hrs/month

- B. For regular part-time employees, all reference to time accrual or usage in the Time Management program shall be prorated according to the percentage of full-time equivalency authorized for the position.
- C. During the course of the year, absence from work for any reason other than on-the-job illness or injury covered by Workers Compensation or paid holiday shall be charged against “earned Time Management leave” except as provided in Section 4.B. of this policy. Time Management leave shall accrue whenever an employee is on paid status with the County. Employees do not accrue Time Management leave when on leave without pay.
- D. An employee may accumulate earned leave, including the previously earned vacation balance, if any, to a maximum of twice the annual Time Management accumulation. On May 1st of each year, any employee credited with accrued leave greater than twice the annual accumulation shall have the amount above the maximum accumulation transferred to their sick bank account. If the employee does not have a sick bank account, an account will be established. An employee who has acquired the maximum allowable accumulation of earned leave may continue to accumulate earned leave for the balance of the following year, provided that the employee take sufficient earned leave to reduce the accumulation

to the maximum allowable prior to the following May 1st or the excess will be transferred to the sick bank account.

- E. Upon an employee's termination, after six months of service, all of the employee's earned leave (including vacation rollover, if any) shall be paid to the employee at the current rate of pay.
- F. In the event of an employee's death, after six months of service, all earned leave shall be paid to the employee's designated beneficiary in accordance with State law at the current rate of pay.
- G. During the first five years of employment, employees shall be required to take a minimum of one (1) week of earned leave per year. Thereafter, employees shall be required to take a minimum of two (2) weeks of earned leave per year.
- H. Employees shall, whenever possible, request time off in advance. Use of such leave must be scheduled between the employee and his or her Supervisor or designee. When an employee is sick or an emergency requires their presence elsewhere, the employee must notify the Supervisor as soon as possible.
- I. After one year of continuous employment, employees may request to convert up to 40 hours of accrued leave to cash on an annual basis. To be eligible, an employee must maintain a minimum balance of one year's accrual and must have used at least 40 or 80 hours of Time Management leave, depending on their length of service, during the previous twelve months. A request for conversion of annual leave to cash must be approved by the Department Director subject to budget restrictions and is allowed once each fiscal year. The request must be made prior to April 15th, and will be included in the employee's April paycheck. The Human Resources Department will distribute the request to sell leave forms no later than the first week of April.
- J. During the last three years prior to retirement, employees may sell up to 80 hours each fiscal year of their annual leave accrual at the current rate of pay. Extensions of an employee's scheduled retirement date notwithstanding, no employee will be entitled to this option in more than three years. This paragraph is not subject to any of the limitations expressed in Section H of this policy.

4. PRIOR SICK LEAVE ACCUMULATION AND SICK LEAVE BANK

An employee's existing sick leave accrual at the time of entering the Time Management program will be preserved in a separate sick leave bank. No additional sick leave will be earned. Existing sick leave will be treated in the following manner:

- A. Employees will be allowed to convert up to 100 hours of existing sick leave to the Time Management leave balance on a two-for-one basis. (100 hours of sick leave will convert to 50 hours of Time Management leave).
- B. For an employee to use accrued sick leave due to illness or injury, unless required by law, existing sick leave (banked sick leave) may be used by employees only after the employee has been absent from work for the equivalent of three full days for qualifying sick leave utilization due to the same illness or injury per Article 11 (11:01.02). The first three days will be either deducted from Time Management leave or if the employee does not have sufficient Time Management Leave, time will be deducted from accrued compensatory time or any other paid leave time, or be identified as leave without pay.
- C. According to Section III (D), on May 1st of each year, any Time Management leave above the maximum accrual (24 x monthly accrual) shall be transferred to the sick-bank account.
- D. No compensation for accrued sick bank shall be provided for any employee for any reason, except that one-half of the employee's accrued sick bank shall be paid to the employee or their beneficiary upon death, retirement, permanent total disability, or after five (5) years of continuous employment and a voluntary resignation (not including termination or resignation in lieu of termination for cause).

Exhibit "B"

SUBJECT: COMPENSATION PLAN – International Union of Operating Engineers, Local 701

Effective July 22, 2023, pay grades for the following classifications will be adjusted as set forth in Exhibit B. Unless otherwise indicated in this Exhibit B, employees will be placed at the pay step in the adjusted pay grade at the pay step equivalent to the employee's pay step prior to the adjustment to classification pay grade.

Pay Grade Adjustments:

1. **PW Equipment Operator, Heavy:** The PW Equipment Operator, Heavy classification will be established with a pay grade where Step 1 is equivalent to Step 4 of the pay grade for PW Equipment Operator, Light. Employees who qualify to be reclassified to PW Equipment Operator, Heavy at the time the Agreement is approved will be placed at the pay step in the pay grade established for PW Equipment Operator, Heavy equivalent to the employee's pay step prior to the employee's reclassification. Employees who become eligible for reclassification from PW Equipment Operator, Light to PW Equipment Operator, Heavy after the Agreement is approved will be placed in the pay grade established for the PW Equipment Operator, Heavy classification at the nearest pay step resulting in no loss of pay.
2. **PW Equipment Operator, Lead:** The pay grade for the classification of PW Equipment Operator, Lead classification (I100) will be increased to a rate ten (10) percent higher than the pay grade established for PW Equipment Operator, Heavy.
3. **Landfill Site Attendant:** The pay grade for the classification of Landfill Site Attendant (I020) will be increased by **4.00%**.
4. **Equipment Mechanic, Equipment Servicer, and Sr. Store Clerk:** The pay grades for the classifications of Equipment Mechanic (I110), Equipment Servicer (I080), and Senior Store Clerk will be increased by **8.75%**.
5. **Engineer and GIS Classifications:** The pay grades for the following classifications will be increased by **10.99%**:
 - a. Engineering Associate (I200)
 - b. Engineering Assistant III (I180)
 - c. Engineer, Transportation (I240)
 - d. PW GIS Analyst (I150)*
 - e. Traffic Device Specialist (I130)
 - f. Lead Traffic Device Specialist (I135)
 - g. PW GIS Specialist I (I120)
 - h. PW GIS Analyst/Programmer (I220)*
 - i. Landfill Engineer Technician (I170)
6. **Deputy County Surveyor:** The pay grade for the classification of Deputy County Surveyor (I230) will be increased by **13.93%**.

7. **PW Accounting Technician***: The PW Accounting Technician classification was not included in the prior collective bargaining agreement. The County will reinstate this classification effective upon ratification of this agreement. The pay grade for the classification of PW Accounting Technician which was not adjusted after June 30, 2018 will be reinstated and increased by **13.86%** to reflect application of cost of living adjustments consistent with that provided per IUOE agreement provisions for the fiscal years of 2019 through 2023.
8. Pay grades for the classifications of PW Accounting Clerk*, PW Applications Analyst/Programmer*, PW Customer Service Clerk*, PW Equipment Operator, Light (previously PW Equipment Operator), Records/Contract Specialist, and SW Operations Assistant will not be adjusted though are eligible for cost of living adjustments as described in Article 14:02 of this agreement.

* Pay Grades associated with the following classifications will be consolidated from their current nine (9) step format to six (6) steps:

PW Accounting Clerk
PW Accounting Technician
PW Applications Analyst/Programmer
PW Customer Service Clerk
PW GIS Analyst
PW GIS Analyst/Programmer

This consolidation will occur by converting Step 9 of the pay grade established for the 2023/24 fiscal year to Step 6 of the consolidated pay grade. Steps 1-5 of the consolidated pay grade will be calculated in a manner that provides for a five (5) percent increase between each step of the newly established pay grade. Employees working in these classifications upon adoption of the collective bargaining agreement will be placed in the new pay grade at the closest step resulting in no loss of pay. Following placement of employees in the new pay grade, any increases to pay grades as described in this Exhibit B and COLA adjustments as described in Article 14 will be applied.

APPENDIX "C"

SUBJECT: CPI Methodology - All Urban Consumers (CPI-U), West Region, Size Class B/C cities.

To illustrate the change in CPI methodology starting in FY 23-24, the following table shows the application of the rolling 12-month average look back for 2016-17, 2017-18, 2018-19, 2019-20, and 2020-21 data. The 12-months rolling average starts with January and over the prior 11 months. The CPI% used for each month is the "12-month percent change" - meaning the month is compared (for the CPI index) to the same month from the previous year.

Note: Consistent with prior years, the level of precision of percentage change will be rounded to the tenth of a percentage (i.e. 1.6% not 1.64 % or 1.7% not 1.65%)

FY Data (Budget year)	CPI-12 month rolling average
2016-17 (17/18)	1.0%
2017-18 (18/19)	2.4%
2018-19 (19/20)	2.9%
2019-20 (20/21)	2.6%
2020-21 (21/22)	1.7%

The following calculation illustrates the rolling average calculation for FY 20-21 data (21/22 Budget year) as of January 2021 (the cutoff date used for budgeting). CPI% for 12 months is determined by change in CPI index over 12 months (i.e., Feb 2020 index compared to February 2019 index)

Year	Month	CPI % "12-month percent change"
2020	<u>Feb</u>	2.9%
2020	<u>March</u>	2.5%
2020	<u>April</u>	1.5%
2020	<u>May</u>	0.5%
2020	<u>June</u>	0.8%
2020	<u>July</u>	1.5%
2020	<u>Aug</u>	1.8%
2020	<u>Sept</u>	2.0%
2020	<u>Oct</u>	1.6%
2020	<u>Nov</u>	1.6%
2020	<u>Dec</u>	1.5%
2021	<u>Jan</u>	1.6%
	<u>Total of CPI% over 12 months</u>	19.8%

	<u>Average 12 month CPI percentage (i.e. rolling average)</u>	
	<u>Total divided by 12</u>	1.7%

MEMORANDUM OF UNDERSTANDING
By and between
DESCHUTES COUNTY, OREGON
And
THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 701
in regards to Pay Periods and Paying for Actual Hours Worked

Section 1 - Pay Period and Pay Day

A Deschutes County has historically defined its pay period as the first day of the month through the last day of the same month with payment for that period to be made on the last business day of the month. As a result, there is no lag time to process payroll and employees project work hours, in some cases for up to two weeks.

B In order to build in a lag time to process payroll and to reduce the projection of work hours, Deschutes County shall have the option to change the pay period. For example, one option is for the pay period to run from the twenty-second day of the month through the twenty-first day of the following month, with payment for that period to be made on the last work day of the month. If the last day of the month falls on a holiday or a weekend, payday for that pay period will be the last work day preceding the holiday or weekend.

Section 2 - Conflicting Language in CBA

A If there are any conflicting language in the collective bargaining agreement with this MOU, this MOU shall prevail.

Section 3 - Paying for Actual Hours Worked

A Deschutes County has historically paid non-exempt employee_s a monthly salary. Deschutes County shall have the option to pay employees for actual hours worked.

Section 4 - Change in Personnel Rules

A To change the pay period and paying for actual hours worked may require a change in the Deschutes County Personnel Rules. If a change in the Personnel Rules is necessary to change the pay period and/or paying for actual hours worked, the Union agrees not to demand to bargain these changes.

Section 5 - Transition Plan

A Deschutes County will develop a transition plan to assist employees with transitioning to the new pay period and provide employees with at least 90 days' notice before changing the pay period and before paying employees for actual hours worked.

AUTHORITY:


The individuals signing this Agreement of Understanding in their official capacity hereby personally guarantee and warrant their authority to act for and bind the respective parties or organizations that their signatures purport to represent.

DATED this 18 Day of July 2018.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON



ANTHONY DE BONE, Chair



PHILIP G. HENDERSON, Vice Chair




TAMMY BANEY, Commissioner

ATTEST:



Recording Secretary

FOR THE UNION:



JAMES ANDERSON
BUSINESS MANAGER AND FINANCIAL SECRETARY
INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 701



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 9, 2023

SUBJECT: Oregon Health Authority funding for Medical Reserve Corps

RECOMMENDED MOTION:

- Move approval to accept Oregon Health Authority's funding under Program Element 12 for Medical Reserve Corps.
- Move approval of Resolution No. 2023-043 adding 1.0 regular FTE position and increasing appropriations within the Health Services Fund and the 2023-24 Deschutes County budget.

BACKGROUND AND POLICY IMPLICATIONS:

Early in 2023, Deschutes County Public Health Emergency Preparedness Program was granted approval for an official Medical Reserve Corps (MRC) for Deschutes County (DCMRC). One of the benefits of the establishment of a MRC is additional funding opportunities to support MRC operations and management. One such funding opportunity is through Oregon Health Authority (OHA), which notified Deschutes County Health Services (DCHS) in June 2023 of its intent to award \$297,000 of Federal funds to strengthen the recently-approved Deschutes County Medical Reserve Corps. Funding is for a two year term, which started June 1, 2023 and will run through May 31, 2025. Funding will be forthcoming as amendments to intergovernmental agreement (IGA) #180009 and funded under Program Element (PE) 12, Public Health Emergency Preparedness Program.

The DCMRC will support the Public Health Emergency Preparedness Program by cultivating a robust, well-trained team of volunteers to provide medical and non-medical support services for pre-planned events, public health crises, and emergency response activities.

The goals of the unit are to:

1. Be prepared to respond to community needs that overwhelm existing health services before, during and following public health crises and emergencies.
2. Establish a framework for training and exercises.
3. Provide organizational structure, administrative oversight, and recruitment tools for volunteers.

4. Facilitate and foster collaboration and a whole community approach to preparedness, response, and recovery for Deschutes County.
5. Provide education and outreach for community-based organizations and Deschutes County residents regarding public health issues, behavioral health issues, and general emergency preparedness.

Examples of potential deployment of DCMR volunteers include; supporting medical needs for sheltering operations in partnership with other organizations, medical triage for evacuations, and point of distribution centers for medical counter measures.

The Administration for Strategic Preparedness and Response (ASPR), within the U.S. Department of Health and Human Services leads the nation's medical and public health preparedness for response to, and recovery from, disasters and public health emergencies. The Office of Medical Reserve Corps (MRC), within the Office of Preparedness in ASPR, is a national network of 300,000 volunteers organized into approximately 750 local community-based groups which are committed to improving local emergency response capabilities, reducing vulnerabilities and building community preparedness and resilience. In June 2023, ASPR awarded \$50 million (MRC Strong grant funds) to 33 states and jurisdictions to strengthen Medical Reserve Corps network. Oregon Health Authority is using almost \$2 million of this funding to provide sub-awards to Deschutes and other Oregon Counties.

The goals of the funding are as follows:

- Reducing resource scarcity by providing tangible assets MRC units lack and identifying methods for allocating resources more efficiently.
- Accelerating program development by developing and expanding programs and initiatives that enhance effectiveness and community presence.
- Standardizing MRC unit readiness by planning and implementing initiatives with an equity lens to understand factors contributing to inconsistent MRC capacity to respond to emergencies or disasters.

On the assurance of funding from OHA, DCHS is requesting approval to accept PE 12 funding and add a 1.0 regular FTE Community Health Specialist II position to serve as a full-time MRC unit coordinator, with a September 1, 2023 start date. Responsibilities would include, but not be limited to, management of Deschutes County MRC deployment, partnering with community-based organizations, seeking funding opportunities, and managing general program responsibilities such as recruitment and new member orientation.

The budget for the two year award will be used as follows: fund the MRC Unit Coordinator (Community Health Specialist II), which is estimated to begin September 1, 2023, \$236,604; a large storage container for emergency supplies, \$11,000; contracted services for table top

exercises and other trainings, \$12,000; materials and supplies, \$7,870; emergency supplies, \$2,526; and \$27,000 (10%) of indirect costs. Health Services is recommending the MRC Unit Coordinator be regular instead of limited duration due to the expectation of maintaining a robust, active volunteer corps ongoing, as well as anticipation of additional resource allocations due to the creation of the DCMRC. However, should funding no longer support the increase in the position, DCHS will consider the future of this position within the budgeting process.

BUDGET IMPACTS:

Revenue \$297,000, June 1, 2023 through May 31, 2025. A five-year fiscal analysis is attached.

ATTENDANCE:

Emily Horton, Public Health Program Manager
Cheryl Smallman, Business Officer, Health Services
Cam Sparks, Senior Budget Analyst

Analysis performed on a fiscal year

Fiscal Years 2024 - 2028, 7/1/23 - 6/30/2028

	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	TOTAL
RESOURCES						
OHA PE 12-03 Funding	137,755	159,245	0	0	0	\$ 297,000
						\$ -
						\$ -
						\$ -
	\$ 137,755	\$ 159,245	\$ -	\$ -	\$ -	\$ 297,000
REQUIREMENTS						
Wages & Benefits	\$ 102,272	\$ 134,332	\$ 142,693.00	\$ 150,855	\$ 161,414	\$ 691,566
Travel	\$ -	\$ -				\$ -
Supplies	\$ 5,960	\$ 4,436				\$ 10,396
Capital Outlay	\$ 11,000					\$ 11,000
Contracted Services	\$ 6,000	\$ 6,000				\$ 12,000
Total Indirect -	\$ 12,523	\$ 14,477	\$ 14,269	\$ 15,086	\$ 16,141	\$ 72,496
Total Costs	\$ 137,755	\$ 159,245	\$ 156,962	\$ 165,941	\$ 177,555	\$ 797,458

CHS II position start date 9/1/23.

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY,
OREGON

A Resolution Increasing FTE and	*	
Appropriations Within the	*	RESOLUTION NO. 2023-043
2023-24 Deschutes County Budget	*	

WHEREAS, Deschutes County Health Service presented to the Board of County Commissioners on 7/26/2023, with regards to Oregon Health Authority (OHA) intergovernmental agreement #180009 increasing 1.0 regular duration FTE and supporting a medical reserve corps, and

WHEREAS, ORS 294.471 & 294.473 allows a supplemental budget adjustment when authorized by resolution of the governing body, and

WHEREAS, it is necessary to recognize revenue and increase program expense appropriations by \$137,755 within the Health Services Fund, and

WHEREAS, Deschutes County Policy HR-1 requires that the creation of or increase in FTE outside the adopted budget be approved by the Board of County Commissioners; now, therefore,

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, as follows:

Section 1. That the following revenue be recognized in the 2023-24 County Budget:

<u>Health Services</u>	
State Grant	\$ 137,755
Health Services Total	<u>\$ 137,755</u>

Section 2. That the following expenditures be appropriated in the 2023-24 County Budget:

<u>Health Services</u>	
Program Expense	\$ 137,755
Health Services Total	<u>\$ 137,755</u>

Section 3. That the Chief Financial Officer make the appropriate entries in the Deschutes County Financial System to show the above appropriations:

Section 4. That the following FTE be added:

Job Class	Position Number	Type	Duration if Limited Duration	FTE
Community Health Specialist II		Regular Duration		1.0
Total FTE				1.0

Section 5. That the Human Resources Director make the appropriate entries in the Deschutes County FTE Authorized Positions Roster to reflect the above FTE changes.

DATED this _____ day of July, 2023.

BOARD OF COUNTY COMMISSIONERS OF
DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

ATTEST:

PATTI ADAIR, Vice-Chair

Recording Secretary

PHIL CHANG, Commissioner



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 9, 2023

SUBJECT: Deliberations: Rural Accessory Dwelling Unit (ADU) Text Amendments

RECOMMENDED MOTION:

The Deschutes County Planning Commission recommends approval of file no. 247-22-000671-TA with modifications.

BACKGROUND AND POLICY IMPLICATIONS:

The Board will deliberate on August 9, 2023 in relation to a request for a County-initiated Legislative Text Amendment to several chapters of Deschutes County's Zoning Code (File No. 247-22-000671-TA). The proposed amendments would establish local provisions for rural accessory dwelling units (ADUs) as identified in Senate Bills 391 and 644. The full record is located on the project webpage: <https://www.deschutes.org/cd/page/247-22-000671-ta-rural-accessory-dwelling-unit-adu-text-amendments>

BUDGET IMPACTS:

None

ATTENDANCE:

Will Groves, Planning Manager
Kyle Collins, Associate Planner



COMMUNITY DEVELOPMENT

MEMORANDUM

TO: Deschutes County Board of Commissioners (Board)

FROM: Kyle Collins, Associate Planner
Will Groves, Planning Manager

DATE: August 2, 2023

SUBJECT: Deliberations: Senate Bills (SBs) 391 and 644 – Rural Accessory Dwelling Unit (ADU) Legislative Amendments

On August 9, 2023, the Board of County Commissioners (Board) will conduct deliberations on an County-initiated legislative text amendment concerning local provisions for rural ADUs as identified in Senate Bills (SB) 391¹ and 644² (file no. 247-22-000671-TA).

I. BACKGROUND

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

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

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

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

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

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

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

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

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

II. BOARD DELIBERATIONS

On August 9, 2023, the Board will deliberate on the proposed legislative text amendments. If the Board finds that additional deliberations are necessary, the Board may schedule a future date for continued deliberations. If the Board finds no additional deliberations are necessary, the Board may then vote on the proposal.

The full record is available for inspection at the Planning Division and at the following website: <https://www.deschutes.org/adu>.

Board Decision Matrix

A more thorough review and discussion of the subject proposal's compliance with the applicable approval criteria and issues is provided in Attachment 1 - Board Decision Matrix, prepared in conjunction with this deliberation memorandum.

III. NEXT STEPS

If the Board determines that additional deliberations are necessary, staff will work with the Board to schedule a future meeting for continued deliberations. If the Board concludes their deliberations during the August 9, 2023 meeting, the Board may then vote on whether to approve the proposal. If the Board renders a vote during the August 9, 2023 meeting, staff will coordinate with the Board to return for a future meeting during which a draft ordinance and relevant exhibits will be presented and a first reading of the ordinance initiated.

ATTACHMENTS:

1. Board Decision Matrix
2. Staff Report and Draft Amendments

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

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

BOCC DELIBERATION MATRIX

SENATE BILLS (SBs) 391 & 644 – RURAL ACCESSORY DWELLING UNIT (ADU) TEXT AMENDMENTS

Land Use File No. 247-22-000671-TA

	Issue Area	SB 391/644 Criterion	Draft Amendment Standards	Possible Alternatives	First Commission Recommendation	Second Commission Recommendation
1	Should rural ADUs be allowed with additional standards or prohibited?	None	Allows an owner of a lot or parcel within an area zoned for rural residential use to construct one accessory dwelling unit on the lot or parcel. Applies to Rural Residential (RR10), Multiple Use Agricultural (MUA10), Urban Area Reserve (UAR-10), Suburban Residential (SR 2.5), and Westside Transect (WTZ) zones. Additional local standards are proposed.	<ol style="list-style-type: none"> 1. Prohibit rural ADU development in Deschutes County. 	<ul style="list-style-type: none"> • Approve rural ADU development in Deschutes County • Recommended by Planning Commission 4 to 2 	<ul style="list-style-type: none"> • Approve rural ADU development in Deschutes County • Recommended by Planning Commission 5 to 0
2	How should “Useable Floor Area” be defined?	The ADU cannot include more than 900 square feet of “useable floor area.”	“Useable floor area” is undefined within SB 391 and the administering statutes. For the purposes of Deschutes County Code, “Useable Floor Area” currently means “the area of the accessory dwelling unit included within the surrounding insulated exterior walls, exclusive of garages, carports, decks and porch covers.”	<ol style="list-style-type: none"> 1. Require the 900 square-foot limit to apply to the entire ADU structure, including garages and accessory components. 2. Set a maximum size limit to accessory components of ADUs such as attached garages. 3. Including a prohibition on certain features in non-“useable floor area” portions of an ADU such as stoves, sinks, bathrooms, etc. 4. Restricting any accessory components of ADUs to non-“conditioned area” as defined in the Oregon Residential Specialty Code. 5. Accessory structures attached to an ADU do not count towards the useable floor area if they are not accessible from the interior of the ADU or if the accessory structure provides at least one allocated parking space for the ADU 	<ul style="list-style-type: none"> • Require the 900 square-foot limit to apply to the entire ADU structure, including garages and accessory components • Recommended by Planning Commission 5 to 1 	<ul style="list-style-type: none"> • “Useable Floor Area” means “the area of the accessory dwelling unit included within the surrounding insulated exterior walls, exclusive of garages, carports, decks and porch covers.” • This recommendation was unchanged by the Commission from staff’s initial proposal and thus no approval vote was taken.

BOCC DELIBERATION MATRIX

SENATE BILLS (SBs) 391 & 644 – RURAL ACCESSORY DWELLING UNIT (ADU) TEXT AMENDMENTS

Land Use File No. 247-22-000671-TA

	Issue Area	SB 391/644 Criterion	Current Amendment Standards	Possible Alternatives	First Commission Recommendation	Second Commission Recommendation
3	How should the 100-Foot Siting Distance requirement be interpreted?	The accessory dwelling unit will be located no farther than 100 feet from the existing single-family dwelling.	A unit must be located no farther than 100 feet from the existing single family dwelling, measured from a wall of the single-family dwelling to the nearest part of the “useable floor area” of the accessory dwelling unit.	<ol style="list-style-type: none"> 1. Requiring the entire footprint of an ADU to be located within 100 feet of the existing single-family dwelling. 	<ul style="list-style-type: none"> • A unit must be located no farther than 100 feet from the existing single family dwelling, measured from a wall of the single-family dwelling to the nearest part of the “useable floor area” of the accessory dwelling unit. • This recommendation was unchanged by the Commission from staff’s initial proposal and thus no approval vote was taken. 	<ul style="list-style-type: none"> • A unit must be located no farther than 100 feet from the existing single family dwelling, measured from a wall of the single-family dwelling to the nearest part of the “useable floor area” of the accessory dwelling unit. • This recommendation was unchanged by the Commission from staff’s initial proposal and thus no approval vote was taken.
4	Are specific limitations warranted for Southern Deschutes County Groundwater Protection?	None	Due to vulnerable groundwater characteristics in southern Deschutes County, the Onsite Wastewater Division recommends increasing the minimum lot or parcel size for rural ADUs to be at least five (5) acres in size. The boundaries of this recommendation were defined by the upper Deschutes watershed area studied during the La Pine Demonstration Project, US Geological Survey report 2007-5237, USGS Fact Sheet 2007-3103.	<ol style="list-style-type: none"> 1. Prohibit all rural ADU development in the identified southern Deschutes County boundaries. 2. Maintain 5-acre minimum parcel size for rural ADU development and require advanced nitrogen reducing systems for wastewater treatment for both existing single-family dwellings and proposed ADUs. 3. Set a larger minimum parcel size requirement for all southern Deschutes County properties to qualify for rural ADU development. 4. Remove the minimum size requirements for all southern Deschutes County properties to qualify for rural ADU development. 	<ul style="list-style-type: none"> • In southern Deschutes County, the minimum lot or parcel size for rural ADUs is at least five (5) acres in size. • This recommendation was unchanged by the Commission from staff’s initial proposal and thus no approval vote was taken. 	<ul style="list-style-type: none"> • In southern Deschutes County, the minimum lot or parcel size for rural ADUs is at least five (5) acres in size. • This recommendation was unchanged by the Commission from staff’s initial proposal and thus no approval vote was taken.

BOCC DELIBERATION MATRIX

SENATE BILLS (SBs) 391 & 644 – RURAL ACCESSORY DWELLING UNIT (ADU) TEXT AMENDMENTS

Land Use File No. 247-22-000671-TA

	Issue Area	SB 391/644 Criterion	Current Amendment Standards	Possible Alternatives	First Commission Recommendation	Second Commission Recommendation
5	Do the current amendments and ESEE analysis adequately address and protect Goal 5 and Natural Resources?	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> Allows rural ADU development in designated Goal 5 areas such as the Wildlife Area Combining Zone, subject to existing standards and requirements. Any development within Goal 5 sites such as the Flood Plain Zone or jurisdiction wetlands requires a Conditional Use Permit and review by local, state, and federal agencies to ensure compliance with environmental and natural hazard mitigation regulations. However, as presently drafted, the proposed amendments do not allow ADU development within the Flood Plain Zone (DCC 18.96). 	<ol style="list-style-type: none"> Prohibit rural ADU development in designated Goal 5 resource areas (i.e. – Wildlife Area Combining Zone, Greater Sage-Grouse Area Combining Zone, and the Sensitive Bird and Mammal Habitat Combining Zone) Prohibit rural ADU development in some, but not all, designated Goal 5 resource areas. Develop additional restrictions in coordination with the Oregon Department of Fish and Wildlife (ODFW) for rural ADU development in designated Goal 5 resources areas such as minimum parcel sizes, driveway access consolidation, etc. 	<ul style="list-style-type: none"> Prohibit rural ADU development in designated Goal 5 resource areas (i.e. – Wildlife Area Combining Zone, Greater Sage-Grouse Area Combining Zone, and the Sensitive Bird and Mammal Habitat Combining Zone) Recommended by Planning Commission 5 to 1 	<ul style="list-style-type: none"> Prohibit rural ADU development in designated Goal 5 resource areas (i.e. – Wildlife Area Combining Zone, Greater Sage-Grouse Area Combining Zone, and the Sensitive Bird and Mammal Habitat Combining Zone) Recommended by Planning Commission 3 to 2

BOCC DELIBERATION MATRIX

SENATE BILLS (SBs) 391 & 644 – RURAL ACCESSORY DWELLING UNIT (ADU) TEXT AMENDMENTS

Land Use File No. 247-22-000671-TA

	Issue Area	SB 391/644 Criterion	Current Amendment Standards	Possible Alternatives	First Commission Recommendation	Second Commission Recommendation
6	Do the current amendments adequately address Senate Bill 762 and Wildfire Mitigation?	<ul style="list-style-type: none"> The Statewide Wildfire Hazard Maps have been approved and the accessory dwelling unit complies with the Oregon Residential Specialty Code relating to wildfire hazard mitigation for the mapped area; or the Statewide Wildfire Hazard Maps have been approved and all accessory dwelling units comply with the Oregon Residential Specialty Code relating to wildfire hazard mitigation The accessory dwelling unit has adequate setbacks from adjacent lands zoned for resource use; The accessory dwelling unit has adequate access for firefighting equipment, safe evacuation and staged evacuation areas. 	<ul style="list-style-type: none"> The accessory dwelling unit will have a minimum setback of 100 feet between the accessory dwelling unit and adjacent land zoned F-1, F-2, or EFU and meet the other minimum setback requirements of the underlying zone and combining zones. The lot or parcel is served by a fire protection service provider with professionals who have received training or certification described in ORS 181A.410. A designated staged evacuation areas and safe evacuation route must be identified. Adequate access for firefighting equipment, safe evacuation and staged evacuation areas are met by illustrating compliance with the prescriptive standards of DCC 18.116.355 or DCC 19.92.160, or providing written confirmation that the relevant fire protection service provider has acknowledged that a property in question has met any relevant standards. 	<ol style="list-style-type: none"> Delay the adoption of rural ADU legislation until such time as the final Statewide Wildfire Hazard Map has been released by the Oregon Department of Forestry. Require all rural ADUs contain fire sprinklers (per recommendation from Chief Mike Supkis of La Pine Rural Fire Protection District). 	<ul style="list-style-type: none"> Delay the adoption of rural ADU legislation until such time as the final Statewide Wildfire Hazard Map has been released by the Oregon Department of Forestry. Recommended by Planning Commission 6 to 0. 	<ul style="list-style-type: none"> No vote undertaken by Planning Commission given the new provisions of SB 644.

BOCC DELIBERATION MATRIX

SENATE BILLS (SBs) 391 & 644 – RURAL ACCESSORY DWELLING UNIT (ADU) TEXT AMENDMENTS

Land Use File No. 247-22-000671-TA

	Issue Area	SB 391/644 Criterion	Current Amendment Standards	Possible Alternatives	First Commission Recommendation	Second Commission Recommendation
7	Should ADUs be allowed in the Westside Transect Zone?	None	Rural ADUs would be allowed on properties within the Westside Transect Zone (WTZ). All existing requirements related to development within the WTZ including subdivision and property scale fuel treatments, wildfire mitigation building code standards, and maintenance of designated open space corridors would be unaffected by the proposed amendments.	<ol style="list-style-type: none"> 1. Prohibit rural ADU development in the WTZ. 2. Develop additional restrictions for rural ADU development in the WTZ such as siting standards, etc. 	<ul style="list-style-type: none"> • Prohibit rural ADU development in the WTZ • Recommended by Planning Commission 6 to 0 	<ul style="list-style-type: none"> • Prohibit rural ADU development in the WTZ • Recommended by Planning Commission 3 to 2
8	Should Vacation Occupancy be prohibited in the existing residence, as well as the ADU?	A county may not allow an accessory dwelling unit allowed under this section to be used for vacation occupancy, as defined in ORS 90.100.	The applicant shall sign and record with the County Clerk, prior to the issuance of a building permit, a restrictive covenant stating an accessory dwelling unit allowed under this section cannot be used for vacation occupancy, as defined in ORS 90.100.	<ol style="list-style-type: none"> 1. Prohibit both the existing single-family dwelling and the ADU for vacation occupancy use, as defined in ORS 90.100. 	<ul style="list-style-type: none"> • Prohibit both the existing single-family dwelling and the ADU for vacation occupancy use, as defined in ORS 90.100 • Recommended by Planning Commission 6 to 0 	<ul style="list-style-type: none"> • Prohibit both the existing single-family dwelling and the ADU for vacation occupancy use, as defined in ORS 90.100 • Recommended by Planning Commission 4 to 0 (1 abstain)



COMMUNITY DEVELOPMENT

STAFF REPORT

FILE NUMBER: 247-22-000671-TA

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

PROPERTY OWNER: N/A

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

STAFF CONTACT: Kyle Collins, Associate Planner

I. APPLICABLE CRITERIA:

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

II. BASIC FINDINGS:

A. **Senate Bill 391**

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

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

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

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

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

B. Senate Bill 644

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

C. Deschutes County Rural ADU Ordinance

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

² House Bill 3012 (2017).

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

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

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

III. PROPOSAL:

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

Table 1 – SB 391 & SB 644 Requirements

Topic	SB 391/SB 644 Requirements	Comment
Single Family Dwelling	SB 644 Section 1(2)(c) requires one single-family dwelling to be located on the lot or parcel.	DCC 18.116.355(B)(1) and DCC 19.92.160(B)(1) are consistent with SB 391/SB 644.
Urban Reserve Area	SB 644 Section 1(2)(a) requires that the lot or parcel is not located within an area designated as an urban reserve as defined in ORS 195.137. In Deschutes County, the Redmond Urban Reserve Area is the only urban reserve that meets this definition.	DCC 18.116.355(B)(2) is consistent with SB 391/SB 644. Redmond's Urban Reserve Areas is not near lands zoned in Title 19, therefore it is not cited in DCC 19.92.160.
Nonresource Lands	SB 644 Section 1(1)(b) requires that "Area zoned for rural residential use" has the meaning given that term in ORS 215.501. ORS 215.501(1)(b), "Area zoned for rural residential use" means land that is not located inside an urban growth boundary as defined in ORS 195.060 (Definitions) and that is subject to an acknowledged exception to a statewide land use planning goal relating to farmland or forestland and planned and zoned by the county to allow residential use as a primary use.	Pursuant to DLCD, Acknowledged nonresource plan amendments and zone changes from Exclusive Farm Use (EFU) to RR-10 or MUA-10 are eligible for an ADU.
Areas of Critical State Concern	SB 644 Section 1(2)(i) requires that no portion of the lot or parcel is within a designated area of critical state concern. Areas of critical state concern are generally defined in ORS 197.405 and apply to the Metolius Area of Critical State Concern in ORS 197.416.	DCC 18.116.355(B)(3) is consistent with SB 391/SB 644. The Metolius Area of Critical State Concern is not near lands zoned in Title 19, therefore it is not cited in DCC 19.92.160.
Minimum Lot Size	SB 644 Section 1(2)(b) requires the subject lot or parcel be at least two acres in size.	DCC 18.116.355(B)(4) and DCC 19.92.160(B)(2) are consistent with SB 391/SB 644. DCC 18.116.355(B)(4) requires a minimum lot or parcel to be at least 5 acres in size south of Sunriver due to groundwater protection.

Topic	SB 391/SB 644 Requirements	Comment
Setbacks	SB 644 Section 1(2)(m)(A) requires that the ADU has adequate setbacks from adjacent lands zoned for resource use.	DCC 18.116.355(B)(5) and DCC 19.92.160(B)(3) are consistent with SB 391. Both require a minimum setback of 100 feet between the ADU and adjacent EFU and Forest Use zoned (F-1, F-2) properties.
ADU Size	SB 644 Section 1(2)(f) limits the size of the ADU to 900 square feet of useable floor area.	DCC 18.116.355(B)(6) and DCC 19.92.160(B)(4) are consistent with SB 391/SB 644. Usable floor area is defined as, "the area of the accessory dwelling unit included within the surrounding insulated exterior walls, exclusive of garages, carports, decks and porch covers."
Distance from Dwelling	SB 644 Section 1(2)(g) requires the ADU to be located no farther than 100 feet from the single family dwelling. ⁶	DCC 18.116.355(B)(7) and DCC 19.92.160(B)(5) are consistent with SB 391/SB 644. Both require the ADU be located no farther than 100 feet from the existing single family dwelling, measured from a wall of the single-family dwelling to the nearest part of the useable floor area of the ADU.
Sanitation and Wastewater	SB 644 Section 1(2)(e) requires the ADU to comply with applicable sanitation and wastewater regulations.	DCC 18.116.355(B)(8) and DCC 19.92.160(B)(6) are consistent with SB 391/SB 644.
Fire Protection District Service	SB 644 Section 1(2)(j) requires the lot or parcel be served by a fire protection service provider with professionals who have received training or certification described in ORS 181A.410.	DCC 18.116.355(B)(9) and DCC 19.92.160(B)(7) are consistent with SB 391/SB 644.
Access and Evacuation	SB 644 Section 1(2)(m)(B) requires that the ADU has adequate access for firefighting equipment and safe evacuation and staged evacuation areas.	DCC 18.116.355(B)(10) and DCC 19.92.160(B)(8) are consistent with SB 391/SB 644. As an alternative standard, both sections allow certification of access by the applicable fire protection district and that there are evacuation plan and authorized staged evacuation areas.

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

Topic	SB 391/SB 644 Requirements	Comment
Wildland Urban Interface (WUI) Defensible Space Requirements	SB 644 Section 1(2)(k) requires that if the lot or parcel is in an area identified on the statewide map of wildfire risk described in ORS 477.490 as within the wildland-urban interface, the lot or parcel and accessory dwelling unit comply with any applicable minimum defensible space requirements for wildfire risk reduction established by the State Fire Marshal under ORS 476.392 and any applicable local requirements for defensible space established by a local government pursuant to ORS 476.392	DCC 18.116.355(B)(12) and DCC 19.92.160(B)(10) are consistent with SB 391/SB 644. Consistent with SB 644, the code sections identify alternatives for properties wishing to develop rural ADUs prior to and after the adoption of the State Map of Wildfire Risk identified in SB 762.
Wildland Urban Interface (WUI) Fire Hardening	SB 644 Section 1(2)(l)(A) requires that if the lot or parcel is in an area identified on the statewide map of wildfire risk described in ORS 477.490, the ADU must comply with R327 (fire hardening standards) in the Oregon Residential Specialty Code. SB 644 Section 1(2)(l)(B) requires that if no statewide map of wildfire risk has been adopted, the ADU must comply with R327 (fire hardening standards) in the Oregon Residential Specialty Code	DCC 18.116.355(B)(11) and DCC 19.92.160(B)(9) are consistent with SB 391/SB 644. Consistent with SB 644, the code sections identify alternatives for properties wishing to develop rural ADUs prior to and after the adoption of the State Map of Wildfire Risk identified in SB 762.
Nuisance	SB 644 Section 1(2)(d) requires the existing single-family dwelling property on the lot or parcel is not subject to an order declaring it a nuisance or subject to any pending action under ORS 105.550 to 105.600.	DCC 18.116.355(B)(13) and DCC 19.92.160(B)(11) are consistent with SB 391/SB 644.
Subdivision and Other Accessory Dwelling Unit Limitations	SB 644 Section 1(2)(m)(C)(4)(a) and (b) preclude a subdivision, partition or other division of the lot or parcel so that the existing single-family dwelling is situated on a different lot or parcel than the ADU; and precludes construction of an additional ADU on the same lot or parcel.	DCC 18.116.355(B)(14) and DCC 19.92.160(B)(12) are consistent with SB 391/SB 644.
Water Supply	SB 644 Section 1(2)(m)(C)(5) allows a county to require that the ADU be served by the same water source or water supply system as the existing single-family dwelling. If the ADU is served by a well, the construction of the ADU shall maintain all setbacks from the well required by the Water Resources Commission or Water Resources Department.	DCC 18.116.355(B)(15) and DCC 19.92.160(B)(13) are consistent with SB 391/SB 644. While not requiring the same water source, DCC 18.116.355(B)(15) and DCC 19.92.160(B)(13) require setbacks from the well to be maintained from an ADU.

Topic	SB 391/SB 644 Requirements	Comment
Water Right Exempt Use	SB 644 Section 1(2)(m)(C)(6) recognizes that a single-family dwelling and an ADU are considered a single unit and therefore do not require a groundwater permit from the Oregon Water Resources Department.	DCC 18.116.355(B)(17) and DCC 19.92.160(B)(15) are consistent with SB 391/SB 644.
Water Right Restrictions	SB 644 Section 1(2)(h) requires that no ADUs be permitted in areas if the water supply source for the accessory dwelling unit or associated lands or gardens will be a well using water under ORS 537.545 (1)(b) or (d), no portion of the lot or parcel is within an area in which new or existing ground water uses under ORS 537.545 (1)(b) or (d) have been restricted by the Water Resources Commission ⁷ .	DCC 18.116.355(B)(18) and DCC 19.92.160(B)(16) are consistent with SB 391/SB 644.
Vacation Occupancy	SB 644 Section 1(2)(m)(C)(3) prevents an ADU from being used for vacation occupancy as defined in ORS 90.100.	DCC 18.116.355(B)(19) and DCC 19.92.160(B)(17) are consistent with SB 391/SB 644. Both require a restrictive covenant be recorded to ensure compliance.

IV. FINDINGS:

CHAPTER 22.12, LEGISLATIVE PROCEDURES

Section 22.12.010.

Hearing Required

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

Section 22.12.020, Notice

Notice

A. Published Notice

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

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

FINDING: This criterion will be met as notice was published in the Bend Bulletin newspaper for the Planning Commission public hearing, and the Board of County Commissioners' public hearing.

- B. *Posted Notice. Notice shall be posted at the discretion of the Planning Director and where necessary to comply with ORS 203.045.***

FINDING: Posted notice was determined by the Planning Director not to be necessary.

- C. *Individual notice. Individual notice to property owners, as defined in DCC 22.08.010(A), shall be provided at the discretion of the Planning Director, except as required by ORS 215.503.***

FINDING: Given the proposed legislative amendments do not apply to any specific property, no individual notices were sent.

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

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

Section 22.12.030 Initiation of Legislative Changes.

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

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

Section 22.12.040. Hearings Body

- A. *The following shall serve as hearings or review body for legislative changes in this order:***
- 1. The Planning Commission.***
 - 2. The Board of County Commissioners.***
- B. *Any legislative change initiated by the Board of County Commissioners shall be reviewed by the Planning Commission prior to action being taken by the Board of Commissioners.***

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

Section 22.12.050 Final Decision

All legislative changes shall be adopted by ordinance

FINDING: The proposed legislative changes will be implemented by Ordinance No. [number TBD] upon approval and adoption by the Board of County Commissioners. This criterion will be met.

B. Statewide Planning Goals and Guidelines

Goal 1: Citizen Involvement: The amendments do not propose to change the structure of the County's citizen involvement program. Notice of the proposed amendments was provided to the *Bulletin* for the Board public hearing.

Goal 2: Land Use Planning: This goal is met because ORS 197.610 allows local governments to initiate post acknowledgments plan amendments (PAPA). An Oregon Land Conservation and Development Department 35-day notice was initiated on August 17, 2022. An Oregon Land Conservation and Development Department 35-day notice was reinitiated on June 7, 2023 to capture amendments required by state legislative action. The Planning Commission held a public hearing on September 22, 2022 and the Board of County Commissioners held a public hearing on July 26, 2023. The Findings document provides the adequate factual basis for the amendments.

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

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

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

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

Goal 6: Air, Water and Land Resources Quality: The proposed text amendments do not propose changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 6, and therefore are in compliance. However, it is worth noting that the amendments preclude citing an ADU south of Sunriver on lots or parcels less than 5 acres. The eligible lot or parcel

size in this area of the County is 5 acres or larger. In the RR-10 zone south of Sunriver, there are 1,129 tax lots between 2 acres or larger, and 319 tax lots 5 acres or larger.

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

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

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

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

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

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

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

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

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

- Bend area: 3,876 lots

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

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

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

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

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

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

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

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

C. Deschutes County Comprehensive Plan

Chapter 3, Rural Growth

Section 3.3, Rural Housing

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

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

V. CONCLUSION:

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

Rural Accessory Dwelling Unit Text Amendment

Appendix A: ESEE Analysis Document to

File No. 247-22-000671-TA

Deschutes County Community Development

July 5, 2023

Table of Contents

Chapter 1: Overview of Goal 5 and ESEE Analyses 11

Chapter 2: Deschutes County Goal 5 Inventory and Methodology 14

Chapter 3: Conflicting Use Analysis..... 16

Chapter 4: Impact Areas 19

Chapter 5: ESEE Analysis..... 20

Chapter 6: ESEE Decision 27

Chapter 7: Program to Achieve Goal 5..... 28

References

- Attachment 1 – Deschutes County Goal 5 Inventory Summary Table
- Attachment 2 – Inventory Site Maps

Chapter 1: Overview of Goal 5 and ESEE Analyses

Introduction

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

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

Deschutes County Goal 5 Program

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

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

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

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

Required Steps and Discretionary Review

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

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

Table 2: Zones Containing Goal 5 Resources

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

⁸ OAR 660-023-0250(3)(b)

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

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

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

⁹ OAR 660-023-0040(1)

Chapter 2: Deschutes County Goal 5 Inventory and Methodology

660-23-0030 – Inventory Goal 5 Resources

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

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

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

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

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

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

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

Chapter 3: Conflicting Use Analysis

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

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

Table 3: Allowed Uses

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

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

General Impacts of Conflicting Uses

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

- *Noise and Light*

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

- *Habitat Removal*

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

¹¹ OAR 660-023-0040(4)

- *Introduction of Invasive, Nonnative Plants*

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

- *Habitat Fragmentation*

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

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

Chapter 4: Impact Areas

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

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

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

Impact Area Methodology

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

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

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

¹² See footnote #8.

Chapter 5: ESEE Analysis

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

Background

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

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

- *Noise and Light*

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

- *Habitat Removal*

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

- *Introduction of Invasive, Nonnative Plants*

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

- *Habitat Fragmentation*

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

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

ESEE Scenario Descriptions

Scenario (A) – Allow the Conflicting Use

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

Scenario (B) – Prohibit the Conflicting Use

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

Scenario (C) – Limit the Conflicting Use

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

Accessory Dwelling Unit ESEE Analysis

Scenario (A) Allow the Conflicting Use

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

Economic Consequences:

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

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

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

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

Social Consequences:

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

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

Environmental Consequences:

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

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

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

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

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

Energy Consequences:

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

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

Scenario (B) Prohibit the Conflicting Use

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

Economic Consequences:

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

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

Social Consequences:

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

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

Environmental Consequences:

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

Energy Consequences:

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

Scenario (C) Limit the Conflicting Use

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

Economic Consequences:

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

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

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

Social Consequences:

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

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

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

Environmental Consequences:

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

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

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

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

Energy Consequences:

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

Chapter 6: ESEE Decision

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

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

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

Table 5: ESEE Factors

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

Chapter 7: Program to Achieve Goal 5

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

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

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

Attachment 1 - Deschutes County Significant Goal 5 Resources

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

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

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

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

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

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

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

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

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

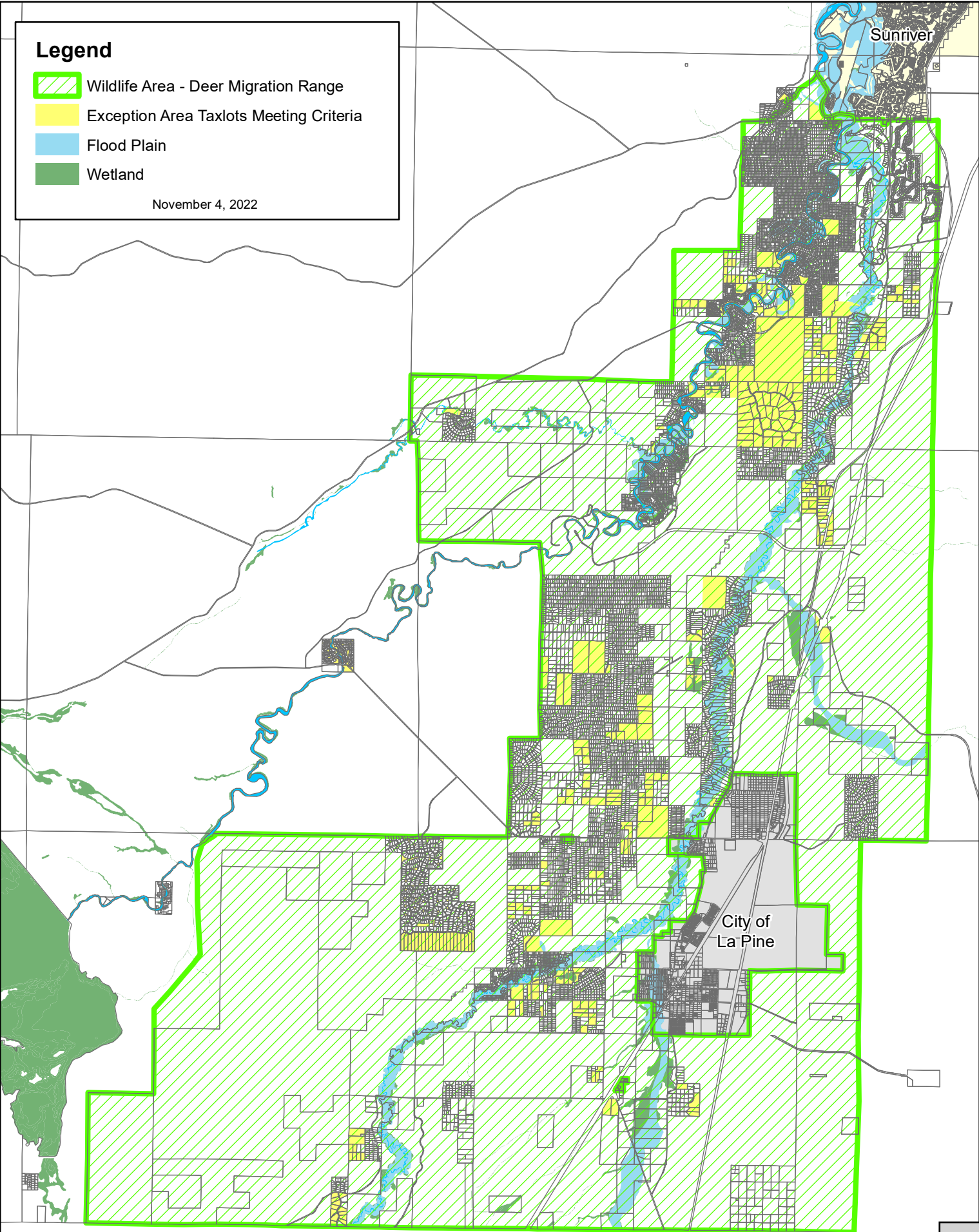
Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
Lakes and Reservoirs (Inventory – Ord. No. 92-052, Exhibit C, Page 10; includes Upper Tumalo Reservoir; remaining are on federal land)	No	Conflicting uses with the open space and scenic values of the land adjacent to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

Attachment 2 - Inventory Site Maps



Exception Area Taxlots Meeting ADU Criteria - Deer Migration

08/09/2023 Item #22.





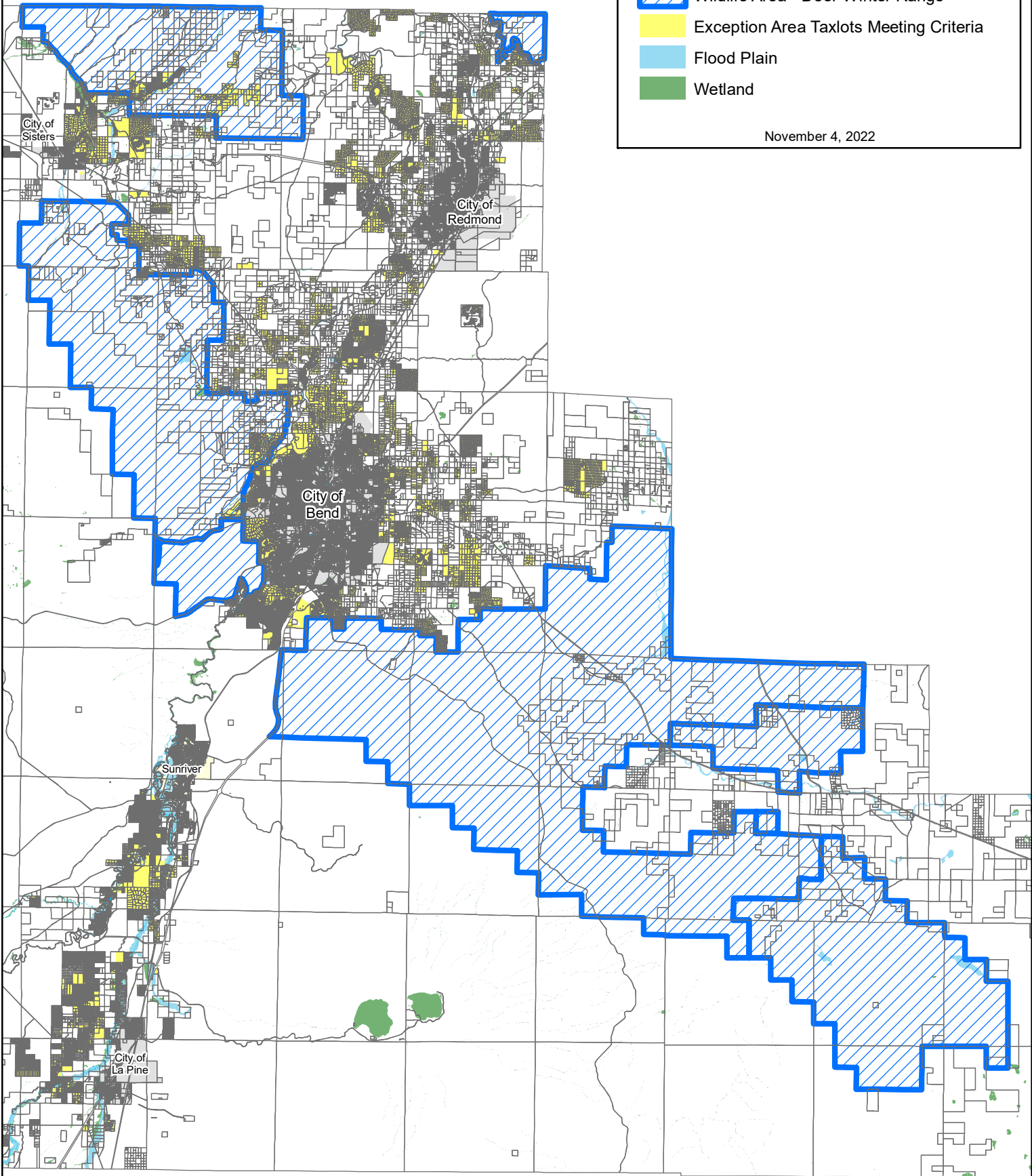
Exception Area Taxlots Meeting ADU Criteria - Deer Winter Range

08/09/2023 Item #22.

Legend

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

November 4, 2022

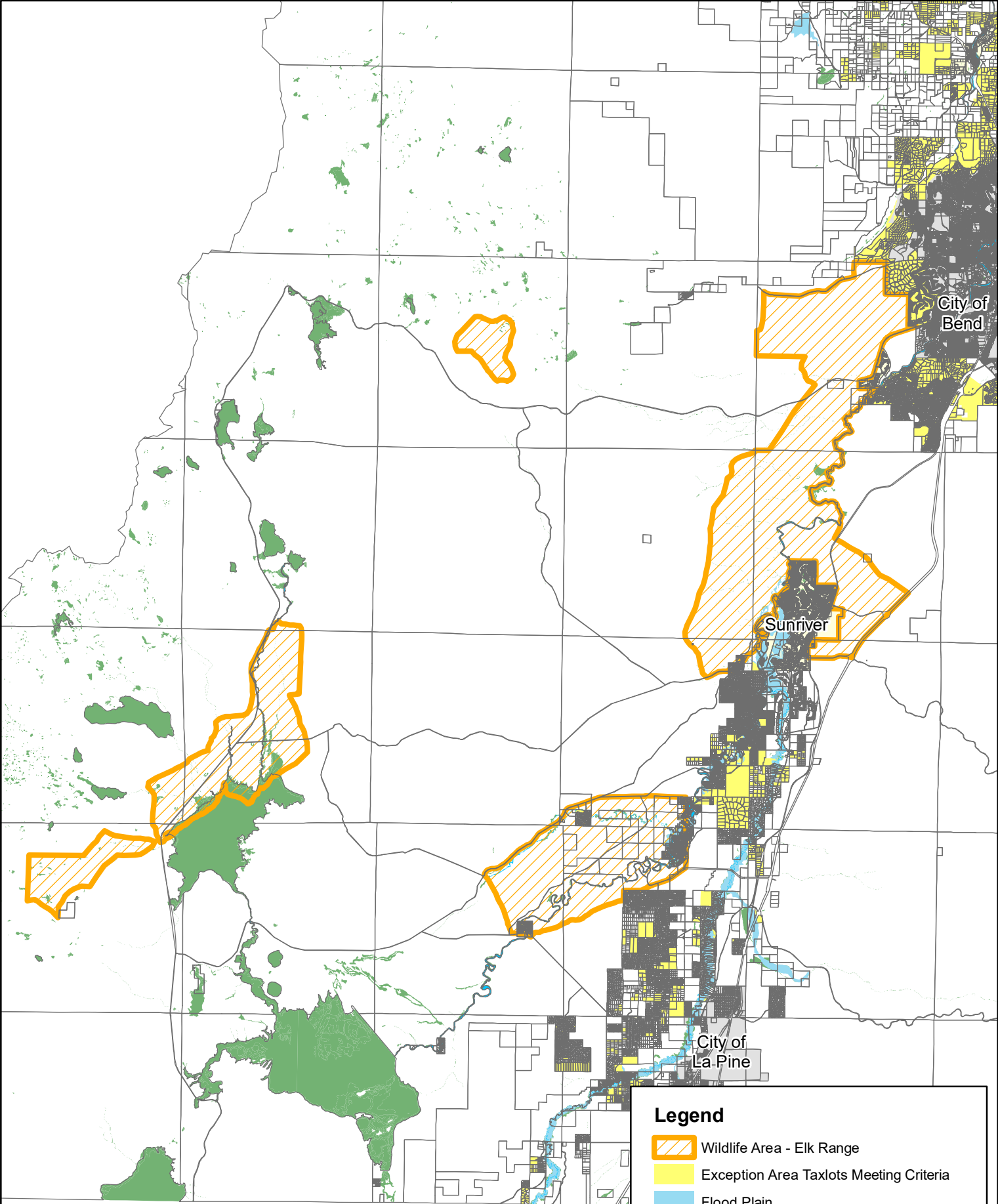








1" = 4 mi.

Exception Area Taxlots Meeting ADU Criteria - Elk Range

08/09/2023 Item #22.



Legend

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

November 4, 2022

Attachment 3 - Proposed Text Amendments

CHAPTER 18.32 MULTIPLE USE AGRICULTURAL ZONE; MUA

18.32.020 Uses Permitted Outright

* * *

18.32.020 Uses Permitted Outright

The following uses and their accessory uses are permitted outright:

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

HISTORY

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

Amended by Ord. 91-002 §6 on 2/6/1991

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

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

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

Amended by Ord. 93-001 §1 on 1/27/1993
Amended by Ord. 93-043 §4 on 8/25/1993
Amended by Ord. 94-008 §10 on 6/8/1994
Amended by Ord. 2001-016 §2 on 3/28/2001
Amended by Ord. 2001-039 §2 on 12/12/2001
Amended by Ord. 2004-002 §3 on 4/28/2004
Amended by Ord. 2019-009 §1 on 9/3/2019
Recorded by Ord. 2019-009 §1 on 9/3/2019
[*Amended by Ord. 2023-00x §x on \[date\]*](#)

DRAFT

CHAPTER 18.60 RURAL RESIDENTIAL ZONE; RR-10

18.60.020 Uses Permitted Outright

* * *

18.60.020 Uses Permitted Outright

The following uses and their accessory uses are permitted outright.

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

K. Historic Accessory Dwelling Units, subject to DCC 18.116.350.

L. Residential Accessory Dwelling Units, subject to DCC 18.116.355.

HISTORY

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

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

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

Amended by Ord. 93-043 §8 on 8/25/1993
Amended by Ord. 94-008 §12 on 6/8/1994
Amended by Ord. 2001-016 §2 on 3/28/2001
Amended by Ord. 2001-039 §5 on 12/12/2001
Amended by Ord. 2004-002 §7 on 4/28/2004
Amended by Ord. 2019-009 §2 on 9/3/2019
Recorded by Ord. 2019-009 §2 on 9/3/2019
Amended by Ord. 2023-00x §x on [date]

DRAFT

CHAPTER 18.116 SUPPLEMENTARY PROVISIONS

[18.116.350 Historic Home Accessory Dwelling Units In The RR10 And MUA Zones](#)

[18.116.355 Residential Accessory Dwelling Units In The RR10 And MUA 10 Zones](#)

* * *

[18.116.350 Historic Home Accessory Dwelling Units In The RR10 And MUA Zones](#)

A. As used in this section:

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

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

1. The lot or parcel is not located in an area designated as an urban reserve as defined in ORS 195.137;
2. The lot or parcel is at least two acres in size;
3. A historic home is sited on the lot or parcel;
4. The owner converts the historic home to an accessory dwelling unit upon completion of the new single-family dwelling or placement of a manufactured home; and

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

HISTORY

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

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

Amended by Ord. 2023-00x §x on [date]

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

A. As used in this section:

1. "Accessory dwelling unit ('ADU') means a residential structure that is used in connection with or that is auxiliary to a single-family dwelling. For the purposes of this section, "auxiliary" means a use or structure incidental and subordinate to the main use of the property, and located on the same lot as the main use.

2. "Rural residential use" means a lot or parcel located in the RR-10 or MUA-10 zones, consistent with the definition in ORS 215.501.
 3. "Safe evacuation plan" means an identifiable route on a right(s)-of-way and any onsite driveways from the accessory dwelling unit to the staged evacuation area.
 4. "Single-family dwelling" means a residential structure designed as a residence for one family and sharing no common wall with another residence of any type.
 5. "Staged evacuation area" means a public or private location that occupants of the accessory dwelling unit may evacuate to reorganize.
 6. "Useable floor area" means all areas of the accessory dwelling unit included within the surrounding insulated exterior walls, exclusive of garages, carports, decks and porch covers.
 7. "Vacation occupancy" means occupancy in a dwelling unit, not including transient occupancy in a hotel or motel, that has all of the following characteristics:
 - a. The occupant rents the unit for vacation purposes only, not as a principal residence; and
 - b. The occupant has a principal residence other than at the unit; and
 - c. The period of authorized occupancy does not exceed 45 days.
- B. One accessory dwelling unit (ADU) is permitted outright on a lot or parcel zoned RR-10 or MUA-10, provided:
1. One single-family dwelling is sited on the lot or parcel:
 - a. As used in this section, "sited" means established onsite or applied for prior to issuance of any building or land use permits for an accessory dwelling unit.
 - b. Existing dwelling units meeting all other criteria in this section may be converted to an accessory dwelling unit during construction of a new primary single-family dwelling.
 2. The lot or parcel is not located within the Redmond Urban Reserve Area, consistent with ORS 195.137.
 3. No portion of the lot or parcel is within the Metolius Area of Critical State Concern, as defined in ORS 197.416.
 4. The lot area is at least two acres in size, with the exception of those unsewered areas between Sunriver and the Klamath County border, defined as those unincorporated portions of Deschutes County contained in Townships 19S, 20S, 21S, and 22S and Ranges 9E, 10E and 11E. Within these exception areas, the lot area is at least five acres in size.

5. The accessory dwelling unit will have a minimum setback of 100 feet from adjacent land zoned F-1, F-2, or EFU and meet any other minimum setback requirements of the underlying zone and combining zones.
6. The accessory dwelling unit will not include more than 900 square feet of useable floor area.
7. The accessory dwelling unit will be located no farther than 100 feet from the existing single-family dwelling, measured from a wall of the existing single-family dwelling to the nearest part of the useable floor area of the accessory dwelling unit.
8. The accessory dwelling unit receives approval from a sewer authority or Deschutes County Environmental Soils for onsite wastewater disposal and treatment.
9. The lot or parcel is served by a fire protection service provider with professionals who have received training or certification described in ORS 181A.410.
10. The accessory dwelling unit provides for all of the following:
 - a. Adequate access connecting an accessory dwelling unit with a fire protection service provider with professionals who have received training or certification described in ORS 181A.410. Adequate access is met by demonstrating compliance with section 10(a)i and 10(a)(ii), or section 10(a)(iii):
 - i. A continuous, minimum 20-foot width right(s)-of-way with an unobstructed vertical clearance of not less than 13.5 feet. For the purposes of this section, right(s)-of-way are defined as:
 1. Public roads with maintenance responsibility accepted by a unit of local or state government or assigned to landowners or homeowners association by covenant or agreement; or
 2. Private roads, as permitted by DCC Title 18, with maintenance responsibility assigned to landowners or homeowners associations by covenant or agreement pursuant to ORS 105; and
 - ii. A continuous, minimum 20-foot width onsite driveway with an unobstructed vertical clearance of not less than 13.5 feet, designed and maintained as follows:
 1. Composed of an all-weather surface including asphalt or concrete; or
 2. Designed and maintained to support a minimum gross vehicle weight (GVW) of 75,000 lbs as certified by a Professional Engineer, registered in Oregon;
 - iii. Written confirmation from a fire protection service provider with professionals who have received training or certification described in ORS 181A.410, on a form prepared by Deschutes County, that access to the property meets minimum fire district requirements to provide emergency services to the property;
 - b. A safe evacuation plan; and

- c. Written authorization from the property owner(s) of the staged evacuation area that the occupants of the accessory dwelling unit may evacuate to the staged evacuation area.

11. Wildfire Hazard Mitigation Building Code Standards:

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

12. Wildfire Hazard Mitigation Defensible Space Standards:

- a. If the Statewide Wildfire Hazard Map described in ORS 477.490 has been approved, the following requirements shall apply:
 - i. For all wildfire hazard designations in the wildland-urban interface that are identified pursuant to ORS 477.490:
 - 1. The minimum defensible space rules established by the State Fire Marshal as described in ORS 476.392.
- b. If the Statewide Wildfire Hazard Map described in ORS 477.490 has not been approved, then either the section 12(b)(i) or 12(b)(ii) requirements shall apply:
 - i. The property owner(s) shall construct and maintain the following firebreaks on land surrounding the accessory dwelling unit on land that is owned or controlled by the owner:
 - 1. Primary Firebreak. Prior to use, a primary firebreak, not less than 10 feet wide, shall be constructed containing nonflammable materials. This may include lawn, walkways, driveways, gravel borders or other similar materials; and
 - 2. Secondary Firebreak. A secondary firebreak of not less than 20 feet wide shall be constructed outside the primary firebreak. This firebreak need not be bare ground, but can include a lawn, ornamental shrubbery or individual or groups of trees separated by a distance equal to the diameter of the crowns adjacent to each other, or 15 feet, whichever is greater. All trees shall be pruned to at least eight feet in height. Dead fuels shall be removed; and

3. Fuel Break. A fuel break shall be maintained, extending a minimum of 100 feet in all directions around the secondary firebreak. Individual and groups of trees within the fuel break shall be separated by a distance equal to the diameter of the crowns adjacent to each other, or 15 feet, whichever is greater. Small trees and brush growing underneath larger trees shall be removed to prevent spread of fire up into the crowns of the larger trees. All trees shall be pruned to at least eight feet in height. Dead fuels shall be removed. The fuel break shall be completed prior to the beginning of the coming fire season; and
4. No portion of a tree or any other vegetation shall extend to within 15 feet of the outlet of a stovepipe or chimney.
 - ii. The accessory dwelling unit has defensible space and fuel break standards as developed in consultation with local fire protection service providers who have received training or certification described in ORS 181A.410.
13. The existing single-family dwelling property on the lot or parcel is not subject to an order declaring it a nuisance or subject to any pending action under ORS 105.550 to 105.600.
14. A lot or parcel with an accessory dwelling unit approved under this section is ineligible for:
 - a. A subdivision, partition, other division of the lot or parcel, or a property line adjustment where the result of such application would be to situate the existing single-family dwelling on a different lot or parcel than the accessory dwelling unit; and
 - b. Placement or construction of any additional accessory dwelling unit or any other permanent or temporary structure or dwelling unit designed or used for residential purposes, including medical hardship dwellings.
15. If the accessory dwelling unit is served by a well, the construction of the accessory dwelling unit shall maintain all setbacks from the well required by the Water Resources Commission or Water Resources Department.
16. A letter confirming that the supplier of water is "Willing and Able to Serve" the accessory dwelling unit shall be provided if the accessory dwelling unit is to be served by any water source other than an onsite domestic well.
17. An existing single-family dwelling and an accessory dwelling unit allowed under this section are considered a single unit for the purposes of calculating ground water right exemptions under ORS 537.545(1).
18. If the water supply source for the accessory dwelling unit or associated lands or gardens will be a well using water under ORS 537.545 (1)(b) or (d), no portion of the lot or parcel

is within an area in which new or existing ground water uses under ORS 537.545 (1)(b) or (d) have been restricted by the Water Resources Commission.

19. The applicant shall sign and record with the County Clerk, prior to the issuance of a building permit, a restrictive covenant stating an accessory dwelling unit allowed under this section cannot be used for vacation occupancy, as defined in DCC 18.116.355(A)(7) and consistent with ORS 90.100.

HISTORY

Adopted by Ord. 2023-00x §x on [date]

DRAFT

CHAPTER 18.132 VARIANCES

18.132.010 Variance Application

18.132.020 Authority Of Hearings Body

18.132.025 Minor Variances

18.132.030 Hearings Body Action On Variance

18.132.040 Variance Procedure

18.132.010 Variance Application

The Planning Director or Hearings Body may authorize area or use variance from the requirements of DCC Title 18. Application for a variance shall be made by petition stating fully the grounds of the application and the facts relied upon by the petitioner.

HISTORY

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

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

18.132.020 Authority Of Hearings Body

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

A. Area variance.

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

B. Use variance.

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

C. Statutory Provisions.

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

HISTORY

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

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

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

Amended by Ord. 2023-00x §x on [date]

18.132.025 Minor Variances

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

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

D. Statutory Provisions.

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

HISTORY

Adopted by Ord. [91-038](#) §3 on 9/30/1991

Amended by Ord. [2004-013](#) §15 on 9/21/2004

Amended by Ord. [2010-003](#) §1 on 7/6/2010

[Amended by Ord. 2023-00x §x on \[date\]](#)

18.132.030 Hearings Body Action On Variance

In granting or denying a variance, the Planning Director or Hearings Body shall make a written record of his findings and the facts in connection therewith, and shall describe the variance granted and the conditions designated. The Planning Department shall keep the findings on file, and a copy of the variance granted and the condition thereof shall be recorded with the County Clerk.

HISTORY

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

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

18.132.040 Variance Procedure

The variance application shall be processed according to the terms of DCC Title 22, the Uniform Development Procedures Ordinance.

HISTORY

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

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

CHAPTER 19.12 URBAN AREA RESERVE ZONE UAR-10

19.12.020 Permitted Uses

* * *

19.12.020 Permitted Uses

The following uses are permitted:

- A. Farm uses as defined in DCC Title 19.
- B. Single-family dwelling.
- C. Home occupation subject to DCC 19.88.140.
- D. Other accessory uses and accessory buildings and structures customarily appurtenant to a permitted use subject to DCC 19.92.020.
- E. Day care center facilities subject to site review, DCC 19.76 and DCC 19.88.160.
- F. Farm stands subject to DCC 19.76 and DCC 19.88.290.
- G. Historic Accessory Dwelling Units, subject to DCC 19.92.150.
- H. Residential Accessory Dwelling Units, subject to DCC 19.92.160

HISTORY

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

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

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

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

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

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

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

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

Amended by Ord. 2023-00x §x on [date]

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

19.20.020 Permitted Uses

* * *

19.20.020 Permitted Uses

The following uses are permitted:

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

HISTORY

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

Amended by Ord. 88-042 §6 on 12/19/1988

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

Amended by Ord. 91-001 §4 on 1/28/1991

Amended by Ord. 93-018 §3 on 5/19/1993

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

Amended by Ord. 2019-009 §5 on 9/3/2019

Recorded by Ord. 2019-009 §5 on 9/3/2019

Amended by Ord. 2020-001 §20 on 4/21/2020

Amended by Ord. 2020-010 §9 on 7/3/2020

Amended by Ord. 2023-00x §x on [date]

CHAPTER 19.22 WESTSIDE TRANSECT ZONE; WTZ

19.22.020 Permitted Uses

* * *

19.22.020 Permitted Uses

The following uses and their accessory uses are permitted outright:

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

HISTORY

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

Amended by Ord. 2023-00x §x on [date]

CHAPTER 19.92 INTERPRETATIONS AND EXCEPTIONS

* * *

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

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

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

A. As used in this section:

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

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

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

C. The construction of an accessory dwelling unit under subsection (B) of this section is a land use action subject to DCC 22.20.

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

HISTORY

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

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

Amended by Ord. [2023-00x §x](#) on [\[date\]](#)

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

A. As used in this section:

1. "Accessory dwelling unit ('ADU')" means a residential structure that is used in connection with or that is auxiliary to a single-family dwelling. For the purposes of this section, "auxiliary" means a use or structure incidental and subordinate to the main use of the property, and located on the same lot as the main use.
2. "Rural residential use" means a lot or parcel located in the UAR-10, SR 2 ½, or Wtz zones, consistent with the definition in ORS 215.501.
3. "Safe evacuation plan" means an identifiable route on a right(s)-of-way and any onsite driveways from the accessory dwelling unit to the staged evacuation area.
4. "Single-family dwelling" means a residential structure designed as a residence for one family and sharing no common wall with another residence of any type.

5. “Staged evacuation area” means a public or private location that occupants of the accessory dwelling unit may evacuate to reorganize.
 6. “Useable floor area” means all areas of the accessory dwelling unit included within the surrounding insulated exterior walls, exclusive of garages, carports, decks and porch covers.
 7. “Vacation occupancy” means occupancy in a dwelling unit, not including transient occupancy in a hotel or motel, that has all of the following characteristics:
 - a. The occupant rents the unit for vacation purposes only, not as a principal residence; and
 - b. The occupant has a principal residence other than at the unit; and
 - c. The period of authorized occupancy does not exceed 45 days.
- B. One accessory dwelling unit (ADU) is permitted outright on a lot or parcel zoned UAR-10, SR-2 ½, or WTZ, provided:
1. One single-family dwelling is sited on the lot or parcel:
 - a. As used in this section, “sited” means established onsite or applied for prior to issuance of any building or land use permits for an accessory dwelling unit.
 - b. Existing dwelling units meeting all other criteria in this section may be converted to an accessory dwelling unit during construction of a new primary single-family dwelling.
 2. The lot area or parcel area is at least two acres in size.
 3. The accessory dwelling unit will have a minimum setback of 100 feet from adjacent land zoned F-1, F-2, or EFU and meet any other minimum setback requirements of the underlying zone and combining zones.
 4. The accessory dwelling unit will not include more than 900 square feet of useable floor area.
 5. The accessory dwelling unit will be located no farther than 100 feet from the existing single-family dwelling, measured from a wall of the existing single-family dwelling to the nearest part of the useable floor area of the accessory dwelling unit.
 6. The accessory dwelling unit receives approval from a sewer authority or Deschutes County Environmental Soils for onsite wastewater disposal and treatment.
 7. The lot or parcel is served by a fire protection service provider with professionals who have received training or certification described in ORS 181A.410.
 8. The accessory dwelling unit provides for all of the following:
 - a. Adequate access connecting an accessory dwelling unit with a fire protection service provider with professionals who have received training or certification described in

ORS 181A.410. Adequate access is met by demonstrating compliance with section 8(a)i and 8(a)(ii), or section 8(a)(iii):

i. A continuous, minimum 20-foot width right(s)-of-way with an unobstructed vertical clearance of not less than 13.5 feet. For the purposes of this section, right(s)-of-way are defined as:

1. Public roads with maintenance responsibility accepted by a unit of local or state government or assigned to landowners or homeowners association by covenant or agreement; or
2. Private roads, as permitted by DCC Title 18, with maintenance responsibility assigned to landowners or homeowners associations by covenant or agreement pursuant to ORS 105; and

ii. A continuous, minimum 20-foot width onsite driveway with an unobstructed vertical clearance of not less than 13.5 feet, designed and maintained as follows:

1. Composed of an all-weather surface including asphalt or concrete; or
2. Designed and maintained to support a minimum gross vehicle weight (GVW) of 75,000 lbs as certified by a Professional Engineer, registered in Oregon;

iii. Written confirmation from a fire protection service provider with professionals who have received training or certification described in ORS 181A.410, on a form prepared by Deschutes County, that access to the property meets minimum fire district requirements to provide emergency services to the property;

b. A safe evacuation plan; and

c. Written authorization from the property owner(s) of the staged evacuation area that the occupants of the accessory dwelling unit may evacuate to the staged evacuation area.

9. Wildfire Hazard Mitigation Building Code Standards:

a. If the Statewide Wildfire Hazard Map described in ORS 477.490 has been approved, the following requirements shall apply:

i. For areas designated as high wildfire hazard that are identified pursuant to ORS 477.490:

1. The Wildfire Hazard Mitigation building code standards as described in section R327 of the Oregon Residential Specialty Code.

b. If the Statewide Wildfire Hazard Map described in ORS 477.490 has not been approved, the following requirements shall apply:

i. The Wildfire Hazard Mitigation building code standards as described in section R327 of the Oregon Residential Specialty Code.

10. Wildfire Hazard Mitigation Defensible Space Standards:

- a. If the Statewide Wildfire Hazard Map described in ORS 477.490 has been approved, the following requirements shall apply:
 - i. For all wildfire hazard designations in the wildland-urban interface that are identified pursuant to ORS 477.490:
 - 1. The minimum defensible space rules established by the State Fire Marshal as described in ORS 476.392.
- b. If the Statewide Wildfire Hazard Map described in ORS 477.490 has not been approved, then either the section 10(b)(i) or 10(b)(ii) requirements shall apply:
 - i. The property owner(s) shall construct and maintain the following firebreaks on land surrounding the accessory dwelling unit on land that is owned or controlled by the owner:
 - 1. Primary Firebreak. Prior to use, a primary firebreak, not less than 10 feet wide, shall be constructed containing nonflammable materials. This may include lawn, walkways, driveways, gravel borders or other similar materials; and
 - 2. Secondary Firebreak. A secondary firebreak of not less than 20 feet wide shall be constructed outside the primary firebreak. This firebreak need not be bare ground, but can include a lawn, ornamental shrubbery or individual or groups of trees separated by a distance equal to the diameter of the crowns adjacent to each other, or 15 feet, whichever is greater. All trees shall be pruned to at least eight feet in height. Dead fuels shall be removed; and
 - 3. Fuel Break. A fuel break shall be maintained, extending a minimum of 100 feet in all directions around the secondary firebreak. Individual and groups of trees within the fuel break shall be separated by a distance equal to the diameter of the crowns adjacent to each other, or 15 feet, whichever is greater. Small trees and brush growing underneath larger trees shall be removed to prevent spread of fire up into the crowns of the larger trees. All trees shall be pruned to at least eight feet in height. Dead fuels shall be removed. The fuel break shall be completed prior to the beginning of the coming fire season; and
 - 4. No portion of a tree or any other vegetation shall extend to within 15 feet of the outlet of a stovepipe or chimney.
 - ii. The accessory dwelling unit has defensible space and fuel break standards as developed in consultation with local fire protection service providers who have received training or certification described in ORS 181A.410.

11. The existing single-family dwelling property on the lot or parcel is not subject to an order declaring it a nuisance or subject to any pending action under ORS 105.550 to 105.600.
12. A lot or parcel with an accessory dwelling unit approved under this section is ineligible for:
 - a. A subdivision, partition, other division of the lot or parcel, or a property line adjustment where the result of such application would be to situate the existing single-family dwelling on a different lot or parcel than the accessory dwelling unit; and
 - b. Placement or construction of any additional accessory dwelling unit or any other permanent or temporary structure or dwelling unit designed or used for residential purposes, including medical hardship dwellings.
13. If the accessory dwelling unit is served by a well, the construction of the accessory dwelling unit shall maintain all setbacks from the well required by the Water Resources Commission or Water Resources Department.
14. A letter confirming that the supplier of water is "Willing and Able to Serve" the accessory dwelling unit shall be provided if the accessory dwelling unit is to be served by any water source other than an onsite domestic well.
15. An existing single-family dwelling and an accessory dwelling unit allowed under this section are considered a single unit for the purposes of calculating ground water right exemptions under ORS 537.545(1).
16. If the water supply source for the accessory dwelling unit or associated lands or gardens will be a well using water under ORS 537.545 (1)(b) or (d), no portion of the lot or parcel is within an area in which new or existing ground water uses under ORS 537.545 (1)(b) or (d) have been restricted by the Water Resources Commission.
17. The applicant shall sign and record with the County Clerk, prior to the issuance of a building permit, a restrictive covenant stating an accessory dwelling unit allowed under this section cannot be used for vacation occupancy, as defined in DCC 19.92.160(A)(7) and consistent with ORS 90.100.

HISTORY

Adopted by Ord. 2023-00x \$x on [date]

CHAPTER 19.108 VARIANCES

19.108.010 Authorization To Grant Or Deny Variances

19.108.020 Criteria

19.108.030 Authorization To Grant Or Deny Variances To On-Site Requirements

19.108.040 Criteria For Variances Granted Under DCC 19.108.030

19.108.050 Application For A Variance

19.108.010 Authorization To Grant Or Deny Variances

Except as provided in DCC 19.108.030, the Planning Director or Hearings Body may authorize variances from the standards of DCC Title 19 where it can be shown that, owing to special and unusual circumstances related to a specific piece of property, the literal interpretation of DCC Title 19 would cause an undue or unnecessary hardship; except that no variance shall be granted to allow the use of the property for purposes not authorized within the pertinent zone or to alter any procedural requirements of DCC Title 19. In granting a variance, the Planning Director or Hearings Body may attach conditions necessary to protect the best interest of the surrounding property or neighborhood and to otherwise achieve the purposes of DCC Title 19.

HISTORY

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

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

19.108.020 Criteria

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

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

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

HISTORY

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

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

Amended by Ord. 2023-00x §x on [date]

19.108.030 Authorization To Grant Or Deny Variances To On-Site Requirements

The Planning Director or Hearings Body may authorize a variance from the standards of DCC Title 19 relating to on-site requirements (e.g. yards, parking, etc.), provided that no variance under DCC 19.108.030 shall be greater than 25% of the setback, parking or other similar area requirement from which the variance is sought.

HISTORY

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

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

19.108.040 Criteria For Variances Granted Under DCC 19.108.030

In the case of a yard variance, the applicant shall show the approval will result in:

- A. More efficient use of the site; and
- B. Preservation of natural features, where appropriate; and
- C. Adequate provision of light and privacy to adjoining properties; and
- D. Preservation of natural features of the site (topography, vegetation and drainage) which would be adversely affected by application of required parking standards, where appropriate.

HISTORY

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

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

19.108.050 Application For A Variance

A property owner or his agent, authorized in writing, may initiate a request for a variance by filing an application with the Planning Director. The application shall be accompanied by a plan, drawn to a suitable scale, showing the condition to be varied and the dimensions and arrangements of the proposed development. The application shall be reviewed in the manner provided for in the County's land use procedures ordinance.

HISTORY

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

Amended by Ord. [88-042](#) §42 on 12/19/1988

Repealed & Reenacted by Ord. [90-038](#) §1,2 on 10/3/1990

Amended by Ord. [95-050](#) §9 on 6/28/1995

CHAPTER 22.04 INTRODUCTION AND DEFINITIONS

22.04.040 Verifying Lots of Record

* * *

22.04.040 Verifying Lots of Record

- A. Purpose; scope. Concurrent with or prior to the issuance of certain permits, a lot or parcel shall be verified pursuant to this section to reasonably ensure compliance with the zoning and land division laws in effect on the date the lot or parcel was created. Not all permits require verification. If required, verifying that the lot or parcel was lawfully created is a threshold issue that should be addressed before the permit may be issued, but does not supersede or nullify other permit requirements. This section 22.04.040 provides an applicant the option to concurrently verify a lot or parcel as part of applying for a permit that requires verification, or preliminarily apply for a declaratory ruling to thereby determine the scope of available permits.
- B. Permits Requiring Verification.
 1. Unless an exception applies pursuant to subsection (B)(2) below, verifying a lot or parcel pursuant to subsection (C) shall be required prior to the issuance of the following permits:
 - a. Any land use permit for a unit of land in the Exclusive Farm Use Zones (DCC Chapter 18.16), Forest Use Zone – F1 (DCC Chapter 18.36), or Forest Use Zone – F2 (DCC Chapter 18.40);
 - b. Any permit for a lot or parcel that includes wetlands as shown on the Statewide Wetlands Inventory;
 - c. Any permit for a lot or parcel subject to wildlife habitat special assessment;
 - d. In all zones, a land use permit relocating property lines that reduces in size a lot or parcel;
 - e. In all zones, a land use, structural, or non-emergency on-site sewage disposal system permit if the lot or parcel is smaller than the minimum area required in the applicable zone;
 - f. In all zones, a permit for a Historic Accessory Dwelling Unit as defined in DCC 18.116.350 or 19.92.150;
 - e.g. In all zones, a permit for an Accessory Dwelling Unit as defined in DCC 18.116.355 or 19.92.160.
- C. Verified Lots of Record. Permits that require verification shall only be issued to lots or parcels that meet the “lot of record” definition in 18.04.030.
- D. Findings; Declaratory Ruling. If an applicant is applying for a land use permit listed in subsection (B)(1), the County shall include a finding verifying that the lot or parcel meets the “lot of record” definition in 18.04.030, a finding noting that the lot or parcel does not meet the “lot of record”

definition in 18.04.030, or a finding noting that verification was not required because the lot or parcel qualified for an exception pursuant to subsection (B)(2). If an applicant is applying for a permit listed in subsection (B)(1) that does not require public notice, or prior to applying for any permit, an applicant may request a declaratory ruling pursuant to DCC Chapter 22.40. If the lot or parcel meets the “lot of record” definition in 18.04.030, the County shall issue the declaratory ruling determining that the lot or parcel qualifies for all permits listed in subsection (B)(1). If the lot or parcel does not meet the “lot of record” definition in 18.04.030, the County shall not issue the declaratory ruling and instead shall provide the applicant information on permit options that do not require verification and information on verification exceptions that may apply pursuant to subsections (B)(2).

HISTORY

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

[Amended by Ord. 2023-00x §x on \[date\]](#)

DRAFT



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 9, 2023

SUBJECT: First reading of Ordinance 2023-009 relating to Destination Resort Text Amendments

RECOMMENDED MOTION:

Move approval of first reading of Ordinance 2023-009 by title only.

BACKGROUND AND POLICY IMPLICATIONS:

The Board of County Commissioners (Board) will consider a first reading of Ordinance 2023-009 on August 9, 2023 for a request for a legislative Text Amendment (file no. 247-22-000835-TA) related to Destination Resorts in Deschutes County, submitted by Central Oregon LandWatch (COLW). This reading follows a Board public hearing held on July 12, 2023.

BUDGET IMPACTS:

None

ATTENDANCE:

Tarik Rawlings, Senior Transportation Planner



COMMUNITY DEVELOPMENT

MEMORANDUM

TO: Deschutes County Board of Commissioners (Board)

FROM: Tarik Rawlings, Senior Transportation Planner
Will Groves, Planning Manager

DATE: August 2, 2023

SUBJECT: Consideration of First Reading of Ordinance 2023-009 – Destination Resort Text Amendments

The Board of County Commissioners (Board) will consider a first reading of Ordinance 2023-009 on August 16, 2023 for an applicant-initiated Legislative Text Amendment (file no. 247-22-000835-TA) to Deschutes County's Destination Resort (DR) Combining Zone.

Attached to this memorandum are the proposed text amendments and findings including the recommended language modifications from Caldera Springs Real Estate. Within the proposed amendments, added language is shown in **bold underline**.

The record is available for inspection on the project website:

<https://www.deschutescounty.gov/cd/page/247-22-000835-ta-destination-resort-text-amendment>

I. BACKGROUND

In October 2022, the applicant Central Oregon LandWatch (COLW), applied for a legislative amendment to Deschutes County's Destination Resort (DR) Combining Zone. The proposed amendments would add language from Oregon Revised Statute (ORS) 197.455(1)(a), which would limit 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. This proposed amendment would only apply to newly proposed Destination Resorts and would not apply to existing or approved Destination Resorts. The applicable language from ORS 197.455(1)(a) is provided below:

- (1) A destination resort may be sited only on lands mapped as eligible for destination resort siting by the affected county. The county may not allow destination resorts approved pursuant to ORS 197.435 (Definitions for ORS 197.435 to 197.467) to 197.467 (Conservation easement to protect resource site) to be sited in any of the following areas:*

- (a) *Within 24 air miles of an urban growth boundary with an existing population of 100,000 or more unless residential uses are limited to those necessary for the staff and management of the resort.*

Staff submitted a 35-day Post-Acknowledgement Plan Amendment (PAPA) notice to the Department of Land Conservation and Development on January 11, 2023. Agency notice was sent to relevant agency partners on January 18, 2023, and several agency comments were received. Notice of the proposal was sent to all property owners within Deschutes County who are within the DR Zone on January 23, 2023. The Notice explained the scope of the proposal, provided a project-specific website related to the application, and gave meeting information for the initial Planning Commission public hearing held on February 23, 2023¹.

An initial public hearing was held before the Deschutes County Planning Commission on February 23, 2023², with a continued public hearing held on March 9, 2023³. The Planning Commission held deliberations on March 23, 2023⁴, ultimately recommending approval of the proposal with three (3) Commissioners voting in favor and one (1) Commissioner voting against the proposal (two (2) Commissioners recused themselves from deliberations). Eventually, the Board conducted a work session on July 10, 2023⁵, in preparation for a public hearing on July 12, 2023⁶. Deliberations before the Board were held on July 26, 2023⁷ and two of the three Commissioners voted to approve the request, including the modified language proposed by Caldera Springs Real Estate. The Board agreed to a first reading of Ordinance 2023-009 on August 9, 2023 and a second reading two weeks later. Collectively, over 570 public comments have been submitted into record regarding the subject proposal, including supportive, oppositional, and neutral comments.

II. NEXT STEPS / SECOND READING

The Board is scheduled to conduct the second reading of Ordinance 2023-009 on August 23, 2023, fourteen (14) days following the first reading.

ATTACHMENTS:

1. Draft Ordinance 2023-009 and Exhibits
 - Exhibit A: Proposed Text Amendments (including modified language)
 - Exhibit B: Proposed Findings

¹ <https://www.deschutescounty.gov/cd/page/247-22-000835-ta-destination-resort-text-amendment>

² <https://www.deschutes.org/bc-pc/page/planning-commission-27>

³ <https://www.deschutes.org/bc-pc/page/planning-commission-24>

⁴ <https://www.deschutes.org/bc-pc/page/planning-commission-28>

⁵ <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-113>

⁶ <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-114>

⁷ <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-116>

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, Chapters 18.113.030 and 18.113.060, and *
 Title 19, Chapters 19.106.030 and 19.106.060 to *
 incorporate language from ORS 197.455(1)(a), which *
 limits residential uses on destination resorts within 24 *
 air miles of growth boundaries with a population of at
 least 100,000.

ORDINANCE NO. 2023-009

WHEREAS, Central Oregon LandWatch (COLW) applied for changes (Planning Division File No. 247-22-000835-TA) to Deschutes County Code Title 18, Chapters 18.113.030 and 18.116.060, and Title 19, Chapters 19.106.030 and 19.106.060; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed changes on February 23 and March 9, 2023 and forwarded to the Deschutes County Board of County Commissioners ("Board") a recommendation of approval on March 23, 2023; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on July 12, 2023 and concluded that the public will benefit from the proposed changes to the Deschutes County Code Title 18 and Title 19; now, therefore,

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

Section 1. AMENDMENT. Chapter 18.113.030, "Uses in Destination Resorts", Chapter 18.113.060, "Standards for Destination Resorts", Chapter 19.106.030, "Uses in Destination Resorts", and Chapter 19.106.060, "Standards for Destination Resorts", are amended to read as described in Exhibit "A", attached hereto and by this reference incorporated herein, with new language underlined.

///

Section 2. FINDINGS. The Board adopts as its findings, Exhibit “B” 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 1st Reading: _____ day of _____, 2023.

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

Record of Adoption Vote:

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

Effective date: _____ day of _____, 2023.



Exhibit A - PROPOSED TEXT AMENDMENTS

FILE NUMBER: 247-22-000835-TA

APPLICANT: Central Oregon LandWatch
2843 NW Lolo Drive Suite 200
Bend, OR 97703

PROPERTY: N/A
OWNER:

REQUEST: The applicant, Central Oregon LandWatch, has applied for a legislative text amendment to Deschutes County's Destination Resort (DR) Combining Zone to add language from Oregon Revised Statute (ORS) 197.455(1)(a), which would limit residential uses to those necessary for the staff and management of the resort at any new Destination Resort within 24 air miles of certain urban growth boundaries.

STAFF CONTACT: Tarik Rawlings, Senior Transportation Planner
Phone: 541-317-3148
Email: tarik.rawlings@deschutes.org

RECORD: Record items can be viewed and downloaded from:
<https://www.deschutes.org/cd/page/247-22-000835-ta-destination-resort-text-amendment>

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

I. APPLICABLE CRITERIA:

Deschutes County Code (DCC)

Title 18, Deschutes County Zoning Ordinance:

Chapter 18.113, Destination Resorts Zone (DR)

Title 19, Bend Urban Growth Boundary Zoning Ordinance:

Chapter 19.106, Destination Resorts

Title 22, Deschutes County Development Procedures Ordinance

Title 23, Deschutes County Comprehensive Plan

Oregon Revised Statutes (ORS)

Chapter 197 — Comprehensive Land Use Planning I

Section 455 - Siting of destination resorts; sites from which destination resort excluded

Oregon Administrative Rules (OAR)

OAR 660, Division 15, Statewide Planning Goals

II. **PROPOSED TEXT AMENDMENTS:**

The proposed text amendments are also detailed in the referenced applicant's burden of proof materials, included as an attachment. Below are the proposed changes with additional text identified by **bold underline**.

Title 18, County Zoning:

Chapter 18.113 Destination Resorts Zone; DR

Section 18.113.030 Uses in Destination Resorts

The following uses are allowed, provided they are part of, and are intended to serve persons at, the destination resort pursuant to DCC 18.113.030 and are approved in a final master plan:

- A. Visitor-oriented accommodations designed to provide for the needs of visitors to the resort:
 - 1. Overnight lodging, including lodges, hotels, motels, bed and breakfast facilities, time share units and similar transient lodging facilities;
 - 2. Convention and conference facilities and meeting rooms;
 - 3. Retreat centers;
 - 4. Restaurants, lounges and similar eating and drinking establishments; and
 - 5. Other similar visitor-oriented accommodations consistent with the purposes of DCC 18.113 and Goal 8.
- B. Developed recreational facilities designed to provide for the needs of visitors and residents of the resort;
 - 1. Golf courses and clubhouses;
 - 2. Indoor and outdoor swimming pools;
 - 3. Indoor and outdoor tennis courts;
 - 4. Physical fitness facilities;
 - 5. Equestrian facilities;
 - 6. Wildlife observation shelters;
 - 7. Walkways, bike paths, jogging paths, equestrian trails;
 - 8. Other similar recreational facilities consistent with the purposes of DCC 18.113 and Goal 8.
- C. Residential accommodations:

1. Single-family dwellings;
 2. Duplexes, triplexes, fourplexes and multi-family dwellings;
 3. Condominiums;
 4. Townhouses;
 5. Living quarters for employees;
 6. Time-share projects.
 7. **Within 24 air miles of an urban growth boundary with an existing population of 100,000 or more, residential uses are limited to those necessary for the staff and management of the resort, provided that this provision shall apply only to newly proposed resorts seeking Conceptual Master Plan approval under DCC 18.113.050 or expansion proposals of existing developments under DCC 18.113.025.**
- D. Commercial services and specialty shops designed to provide for the visitors to the resort:
1. Specialty shops, including but not limited to delis, clothing stores, bookstores, gift shops and specialty food shops;
 2. Barber shops/beauty salons;
 3. Automobile service stations limited to fuel sales, incidental parts sales and minor repairs;
 4. Craft and art studios and galleries;
 5. Real estate offices;
 6. Convenience stores;
 7. Other similar commercial services which provide for the needs of resort visitors and are consistent with the purposes of DCC 18.113 and Goal 8.
- E. Uses permitted in open space areas generally include only those uses that, except as specified herein, do not alter the existing or natural landscape of the proposed open space areas. No improvements, development or other alteration of the natural or existing landscape shall be allowed in open space areas, except as necessary for development of golf course fairways and greens, hiking and bike trails, lakes and ponds and primitive picnic facilities including park benches and picnic tables. Where farming activities would be consistent with identified preexisting open space uses, irrigation equipment and associated pumping facilities shall be allowed.
- F. Facilities necessary for public safety and utility service within the destination resort.
- G. Other similar uses permitted in the underlying zone consistent with the purposes of DCC 18.113.030.
- H. Accessory Uses in Destination Resorts:
1. The following accessory uses shall be permitted provided they are ancillary to the destination resort and consistent with the purposes of DCC 18.113 and Goal 8:
 - a. Transportation-related facilities excluding airports;
 - b. Emergency medical facilities;
 - c. Storage structures and areas;
 - d. Kennels as a service for resort visitors only;
 - e. Recycling and garbage collection facilities;
 - f. Other similar accessory uses consistent with the purposes of DCC 18.113 and Goal 8.

- I. Within 24 air miles of an urban growth boundary with an existing population of 100,000 or more, residential uses are limited to those necessary for the staff and management of the resort, provided that this provision shall apply only to newly proposed resorts seeking Conceptual Master Plan approval under DCC 18.113.050 or expansion proposals of existing developments under DCC 18.113.025.**

Section 18.113.060 Standards for Destination Resorts

The following standards shall govern consideration of destination resorts:

- A. The destination resort shall, in the first phase, provide for and include as part of the CMP the following minimum requirements:
 1. At least 150 separate rentable units for visitor oriented overnight lodging as follows:
 - a. The first 50 overnight lodging units must be constructed prior to the closure of sales, rental or lease of any residential dwellings or lots.
 - b. The resort may elect to phase in the remaining 100 overnight lodging units as follows:
 - 1) At least 50 of the remaining 100 required overnight lodging units shall be constructed or guaranteed through surety bonding or equivalent financial assurance within 5 years of the closure of sale of individual lots or units, and;
 - 2) The remaining 50 required overnight lodging units shall be constructed or guaranteed through surety bonding or equivalent financial assurance within 10 years of the closure of sale of individual lots or units.
 - 3) If the developer of a resort guarantees a portion of the overnight lodging units required under subsection 18.113.060(A)(1)(b) through surety bonding or other equivalent financial assurance, the overnight lodging units must be constructed within 4 years of the date of execution of the surety bond or other equivalent financial assurance.
 - 4) The 2.5:1 accommodation ratio required by DCC 18.113.060(D)(2) must be maintained at all times.
 - c. If a resort does not chose to phase the overnight lodging units as described in 18.113.060(A)(1)(b), then the required 150 units of overnight lodging must be constructed prior to the closure of sales, rental or lease of any residential dwellings or lots.
 2. Visitor oriented eating establishments for at least 100 persons and meeting rooms which provide seating for at least 100 persons.
 3. The aggregate cost of developing the overnight lodging facilities, developed recreational facilities, and the eating establishments and meeting rooms shall be at least \$ 7,000,000 (in 1993 dollars).
 4. At least \$ 2,333,333 of the \$7,000,000 (in 1993 dollars) total minimum investment required by DCC 18.113.060(A)(3) shall be spent on developed recreational facilities.

5. The facilities and accommodations required by DCC 18.113.060(A)(2) through (4) must be constructed or financially assured pursuant to DCC 18.113.110 prior to closure of sales, rental or lease of any residential dwellings or lots or as allowed by DCC 18.113.060(A)(1).
- B. All destination resorts shall have a minimum of 160 contiguous acres of land. Acreage split by public roads or rivers or streams shall count toward the acreage limit, provided that the CMP demonstrates that the isolated acreage will be operated or managed in a manner that will be integral to the remainder of the resort.
- C. All destination resorts shall have direct access onto a state or County arterial or collector roadway, as designated by the Comprehensive Plan.
- D. A destination resort shall, cumulatively and for each phase, meet the following minimum requirements:
 1. The resort shall have a minimum of 50 percent of the total acreage of the development dedicated to permanent open space, excluding yards, streets and parking areas. Portions of individual residential lots and landscape area requirements for developed recreational facilities, visitor oriented accommodations or multi family or commercial uses established by DCC 18.124.070 shall not be considered open space;
 2. Individually owned residential units that do not meet the definition of overnight lodging in DCC 18.04.030 shall not exceed two and one-half such units for each unit of visitor oriented overnight lodging. Individually owned units shall be considered visitor oriented lodging if they are available for overnight rental use by the general public for at least 38 weeks per calendar year through one or more central reservation and check in service(s) operated by the destination resort or by a real estate property manager, as defined in ORS 696.010.
 - a. The ratio applies to destination resorts which were previously approved under a different standard.
- E. Phasing. A destination resort authorized pursuant to DCC 18.113.060 may be developed in phases. If a proposed resort is to be developed in phases, each phase shall be as described in the CMP. Each individual phase shall meet the following requirements:
 1. Each phase, together with previously completed phases, if any, shall be capable of operating in a manner consistent with the intent and purpose of DCC 18.113 and Goal 8.
 2. The first phase and each subsequent phase of the destination resort shall cumulatively meet the minimum requirements of DCC 18.113.060 and DCC 18.113.070.
 3. Each phase may include two or more distinct noncontiguous areas within the destination resort.
- F. Destination resorts shall not exceed a density of one and one-half dwelling units per acre including residential dwelling units and excluding visitor oriented overnight lodging.
- G. Dimensional Standards:
 1. The minimum lot area, width, lot coverage, frontage and yard requirements and building heights otherwise applying to structures in underlying zones and the provisions of DCC 18.116 relating to solar access shall not apply within a destination resort. These standards shall be determined by the Planning Director

or Hearings Body at the time of the CMP. In determining these standards, the Planning Director or Hearings Body shall find that the minimum specified in the CMP are adequate to satisfy the intent of the comprehensive plan relating to solar access, fire protection, vehicle access, visual management within landscape management corridors and to protect resources identified by LCDC Goal 5 which are identified in the Comprehensive Plan. At a minimum, a 100-foot setback shall be maintained from all streams and rivers. Rimrock setbacks shall be as provided in DCC Title 18. No lot for a single family residence shall exceed an overall project average of 22,000 square feet in size.

2. Exterior setbacks.
 - a. Except as otherwise specified herein, all development (including structures, site-obscuring fences of over three feet in height and changes to the natural topography of the land) shall be setback from exterior property lines as follows:
 - 1) Three hundred fifty feet for commercial development including all associated parking areas;
 - 2) Two hundred fifty feet for multi family development and visitor oriented accommodations (except for single family residences) including all associated parking areas;
 - 3) One hundred fifty feet for above grade development other than that listed in DCC 18.113.060(G)(2)(a)(1) and (2);
 - 4) One hundred feet for roads;
 - 5) Fifty feet for golf courses; and
 - 6) Fifty feet for jogging trails and bike paths where they abut private developed lots and no setback for where they abut public roads and public lands.
 - b. Notwithstanding DCC 18.113.060(G)(2)(a)(3), above grade development other than that listed in DCC 18.113.060(G)(2)(a)(1) and (2) shall be set back 250 feet in circumstances where state highways coincide with exterior property lines.
 - c. The setbacks of DCC 18.113.060 shall not apply to entry roadways and signs.
- H. Floodplain requirements. The floodplain zone (FP) requirements of DCC 18.96 shall apply to all developed portions of a destination resort in an FP Zone in addition to any applicable criteria of DCC 18.113. Except for floodplain areas which have been granted an exception to LCDC goals 3 and 4, floodplain zones shall not be considered part of a destination resort when determining compliance with the following standards;
 1. One hundred sixty acre minimum site;
 2. Density of development;
 3. Open space requirements.

A conservation easement as described in DCC Title 18 shall be conveyed to the County for all areas within a floodplain which are part of a destination resort.
- I. The Landscape Management Combining Zone (LM) requirements of DCC 18.84 shall apply to destination resorts where applicable.

- J. Excavation, grading and fill and removal within the bed and banks of a stream or river or in a wetland shall be a separate conditional use subject to all pertinent requirements of DCC Title 18.
- K. Time share units not included in the overnight lodging calculations shall be subject to approval under the conditional use criteria set forth in DCC 18.128. Time share units identified as part of the destination resort's overnight lodging units shall not be subject to the time share conditional use criteria of DCC 18.128.
- L. The overnight lodging criteria shall be met, including the 150-unit minimum and the 2-1/2 to 1 ratio set forth in DCC 18.113.060(D)(2).
 - 1. Failure of the approved destination resort to comply with the requirements in DCC 18.113.060(L)(2) through (6) will result in the County declining to accept or process any further land use actions associated with any part of the resort and the County shall not issue any permits associated with any lots or site plans on any part of the resort until proof is provided to the County of compliance with those conditions.
 - 2. Each resort shall compile, and maintain, in perpetuity, a registry of all overnight lodging units.
 - a. The list shall identify each individually-owned unit that is counted as overnight lodging.
 - b. At all times, at least one entity shall be responsible for maintaining the registry and fulfilling the reporting requirements of DCC 18.113.060(L)(2) through (6).
 - c. Initially, the resort management shall be responsible for compiling and maintaining the registry.
 - d. As a resort develops, the developer shall transfer responsibility for maintaining the registry to the homeowner association(s). The terms and timing of this transfer shall be specified in the Conditions, Covenants & Restrictions (CC&Rs).
 - e. Resort management shall notify the County prior to assigning the registry to a homeowner association.
 - f. Each resort shall maintain records documenting its rental program related to overnight lodging units at a convenient location in Deschutes County, with those records accessible to the County upon 72 hour notice from the County.
 - g. As used in this section, "resort management" includes, but is not limited to, the applicant and the applicant's heirs, successors in interest, assignees other than a home owners association.
 - 3. An annual report shall be submitted to the Planning Division by the resort management or home owners association(s) each February 1, documenting all of the following as of December 31 of the previous year:
 - a. The minimum of 150 permanent units of overnight lodging have been constructed or that the resort is not yet required to have constructed the 150 units;
 - b. The number of individually-owned residential platted lots and the number of overnight-lodging units;

- c. The ratio between the individually-owned residential platted lots and the overnight lodging units;
- d. For resorts for which the conceptual master plan was originally approved on or after January 1, 2001, the following information on each individually-owned residential unit counted as overnight lodging.
 - 1) Who the owner or owners have been over the last year;
 - 2) How many nights out of the year the unit was available for rent;
 - 3) How many nights out of the year the unit was rented out as an overnight lodging facility under DCC 18.113;
 - 4) Documentation showing that these units were available for rental as required.
- e. For resorts for which the conceptual master plan was originally approved before January 1, 2001, the following information on each individually owned residential unit counted as overnight lodging. Notwithstanding anything to the contrary in Deschutes County Code, these resorts may count units that are not deed-restricted and/or do not utilize a central check-in system operated by the resort so long as such units meet the Oregon statutory definition of overnight lodgings in Eastern Oregon
 - 1) For those units directly managed by the resort developer or operator.
 - a) Who the owner or owners have been over the last year;
 - b) How many nights out of the year the unit was available for rent;
 - c) How many nights out of the year the unit was rented out as an overnight lodging facility under DCC 18.113;
 - d) Documentation showing that these units were available for rent as required.
 - 2) For all other units.
 - a) Address of the unit;
 - b) Name of the unit owner(s);
 - c) Schedule of rental availability for the prior year. The schedule of rental availability shall be based upon monthly printouts of the availability calendars posted on-line by the unit owner or the unit owner's agent.
- f. This information shall be public record subject to the non-disclosure provisions in ORS Chapter 192.
- 4. To facilitate rental to the general public of the overnight lodging units, each resort shall set up and maintain in perpetuity a telephone reservation system..
- 5. Any outside property managers renting required overnight lodging units shall be required to cooperate with the provisions of this code and to annually provide rental information on any required overnight lodging units they represent to the central office as described in DCC 18.113.060(L)(2) and (3).
- 6. Before approval of each final plat, all the following shall be provided:
 - a. Documentation demonstrating compliance with the 2-1/2 to 1 ratio as defined in DCC 18.113.060(D)(2);

- b. Documentation on all individually-owned residential units counted as overnight lodging, including all of the following:
 - 1) Designation on the plat of any individually-owned units that are going to be counted as overnight lodging;
 - 2) Deed restrictions requiring the individually-owned residential units designated as overnight lodging units to be available for rental at least 38 weeks each year through a central reservation and check-in service operated by the resort or by a real estate property manager, as defined in ORS 696.010;
 - 3) An irrevocable provision in the resort Conditions, Covenants and Restrictions ("CC&Rs) requiring the individually-owned residential units designated as overnight lodging units to be available for rental at least 38 weeks each year through a central reservation and check-in service operated by the resort or by a real estate property manager, as defined in ORS 696.010;
 - 4) A provision in the resort CC&R's that all property owners within the resort recognize that failure to meet the conditions in DCC 18.113.060(L)(6)(b)(3) is a violation of Deschutes County Code and subject to code enforcement proceedings by the County;
 - 5) Inclusion of language in any rental contract between the owner of an individually-owned residential unit designated as an overnight lodging unit and any central reservation and check in service or real estate property manager requiring that such unit be available for rental at least 38 weeks each year through a central reservation and check-in service operated by the resort or by a real estate property manager, as defined in ORS 696.010, and that failure to meet the conditions in DCC 18.113.060(L)(6)(b)(5) is a violation of Deschutes County Code and subject to code enforcement proceedings by the County.

7. Compliance Fee.

- a. In the event that a resort that was originally approved before January 1, 2001 fails to report compliance with the 2.5:1 ratio in a calendar year as reported in accordance with 18.113.060(L)(3)(e), the remedy shall be that such resort shall pay a compliance fee due not later than April 15 of the year following the year in which the shortfall occurred.
- b. The compliance fee will be calculated as follows:
 - 1) First, by calculating the average per unit transient lodging tax paid by the resort the prior calendar year by dividing the total amount paid by the resort in transient lodging taxes for the prior calendar year by the sum of the number of overnight units managed by the resort for which the resort paid transient lodging taxes that same year and the number of timeshare units;
 - 2) Second, by multiplying that average per unit transient lodging tax amount by the number of additional overnight lodging units that

would have been necessary to comply with the 2.5:1 ratio for the applicable calendar year.

- c. If the Resort were to apply to create more residential lots, the Resort may not apply the compliance fee to meet the 2.5:1 ratio of individually-owned residential units to overnight lodging units per DCC 18.113.060(D)(2) and will have to demonstrate compliance per the new reporting methods or construct more overnight lodging units in order to comply with the 2.5:1 ratio.

M. Within 24 air miles of an urban growth boundary with an existing population of 100,000 or more, residential uses are limited to those necessary for the staff and management of the resort, provided that this provision shall apply only to newly proposed resorts seeking Conceptual Master Plan approval under DCC 18.113.050 or expansion proposals of existing developments under DCC 18.113.025.

Title 19, Bend Urban Growth Boundary Zoning Ordinance:

Chapter 19.106 Destination Resorts

Section 19.106.030 Uses in Destination Resorts

The following uses are allowed, provided they are part of and are intended to serve persons at the destination resort pursuant to DCC 19.106.030 and are approved in a final master plan:

- A. Visitor-oriented accommodations designed to provide for the needs of visitors to the resort:
 - 1. Overnight lodging, including lodges, hotels, motels, bed and breakfast facilities, time share units and similar transient lodging facilities;
 - 2. Convention and conference facilities and meeting rooms;
 - 3. Retreat centers;
 - 4. Restaurants, lounges and similar eating and drinking establishments; or
 - 5. Other similar visitor-oriented accommodations consistent with the purposes of DCC 19.106 and Goal 8.
- B. Developed recreational facilities designed to provide for the needs of visitors and residents of the resort including:
 - 1. Golf courses and clubhouses;
 - 2. Indoor and outdoor swimming pools;
 - 3. Indoor and outdoor tennis courts;
 - 4. Physical fitness facilities;
 - 5. Equestrian facilities;
 - 6. Wildlife observation shelters;
 - 7. Walkways, bike paths, jogging paths, equestrian trails; or
 - 8. Other similar recreational facilities consistent with the purposes of DCC 19.106 and Goal 8.
- C. Residential accommodations:
 - 1. Single-family dwellings;

2. Duplexes, triplexes, fourplexes and multi-family dwellings;
 3. Condominiums;
 4. Townhouses;
 5. Living quarters for employees; or
 6. Time share projects.
 7. **Within 24 air miles of an urban growth boundary with an existing population of 100,000 or more, residential uses are limited to those necessary for the staff and management of the resort.**
- D. Commercial services and specialty shops designed to provide for the visitors to the resort:
1. Specialty shops including, but not limited to delis, clothing stores, book stores, gift shops and specialty food shops;
 2. Barber shops and beauty salons;
 3. Automobile service stations limited to fuel sales, incidental parts sales and minor repairs;
 4. Craft and art studios and galleries;
 5. Real estate offices;
 6. Convenience stores; or
 7. Other similar commercial services which provide for the needs of resort visitors and are consistent with the purposes of DCC 19.106 and Goal 8.
- E. Uses permitted in open space areas generally include only those uses that, except as specified herein, do not alter the existing or natural landscape of the proposed open space areas. No improvements, development or other alteration of the natural or existing landscape shall be allowed in open space areas, except as necessary for development of golf course fairways and greens, hiking and bike trails, lakes and ponds and primitive picnic facilities including park benches and picnic tables. Where farming activities would be consistent with identified pre-existing open space uses, irrigation equipment and associated pumping facilities shall be allowed.
- F. Facilities necessary for public safety and utility service within the destination resort.
- G. Other similar uses permitted in the underlying zone consistent with the purposes of DCC 19.106.020.
- H. Accessory uses in destination resorts:
1. The following accessory uses shall be permitted provided they are ancillary to the destination resort and consistent with the purposes of DCC 19.106 and Goal 8:
 - a. Transportation-related facilities excluding airports;
 - b. Emergency medical facilities;
 - c. Storage structures and areas;
 - d. Kennels as a service for resort visitors only;
 - e. Recycling and garbage collection facilities; or
 - f. Other similar accessory uses are consistent with the purposes of DCC 19.106 and Goal 8.
- I. **Within 24 air miles of an urban growth boundary with an existing population of 100,000 or more, residential uses are limited to those necessary for the staff and management of the resort.**

Section 19.106.060 Standards For Destination Resorts

The following standards shall govern consideration of destination resorts:

- A. The destination resort shall, in the first phase, provide for and include as part of the CMP the following minimum requirements:
 1. At least 150 separate rentable units for visitor-oriented lodging;
 2. Visitor-oriented eating establishments for at least 100 persons and meeting rooms which provide eating for at least 100 persons;
 3. At least \$7 million shall be spent on improvements for on-site developed recreational facilities and visitor-oriented accommodations exclusive of costs for land, sewer and water facilities and roads. Not less than one-third of this amount shall be spent on developed recreational facilities. The spending minimums provided for are stated in 1993 dollars; and
 4. The facilities and accommodations required by this DCC 19.106.060 must be physically provided or financially assured pursuant to DCC 19.106.110 prior to closure of sales, rental or lease of any residential dwellings or lots.
- B. All destination resorts shall have a minimum of 160 contiguous acres of land. Acreage split by public roads or rivers or streams shall count toward the acreage limit, provided that the CMP demonstrates that the isolated acreage will be operated or managed in a manner that will be integral to the remainder of the resort.
- C. All destination resorts shall have direct access onto a state, county, or city arterial or collector roadway, as designated by the Bend Urban Area General Plan.
- D. A destination resort shall, cumulatively and for each phase, meet the following minimum requirements:
 1. The resort shall have a minimum of 50 percent of the total acreage of the development dedicated to permanent open space, excluding yards, streets and parking areas. Portions of individual residential lots and landscape area requirements for developed recreational facilities, visitor-oriented accommodations or multi-family or commercial uses established by DCC 19.76.080 shall not be considered open space; and
 2. Individually-owned residential units shall not exceed two and one-half such units for each unit of visitor-oriented overnight lodging constructed or financially assured within the resort. Individually-owned units shall be considered visitor-oriented lodging if they are available for overnight rental use by the general public for at least 45 weeks per calendar year through one or more central reservation and check-in service(s).
- E. Phasing. A destination resort authorized pursuant to DCC 19.106.060 may be developed in phases. If a proposed resort is to be developed in phases, each phase shall be as described in the CMP. Each individual phase shall meet the following requirements:
 1. Each phase, together with previously completed phases, if any, shall be capable of operating in a manner consistent with the intent and purpose of DCC 19.106 and Goal 8;

2. The first phase and each subsequent phase of the destination resort shall cumulatively meet the minimum requirements of DCC 19.106.060 and DCC 19.76.070, and;
 3. Each phase may include two or more distinct non-contiguous areas within the destination resort.
- F. Dimensional standards:
1. The minimum lot area, width, lot coverage, frontage and yard requirements and building heights otherwise applying to structures in underlying zones and the provisions of DCC 19.88.210 relating to solar access shall not apply within a destination resort. These standards shall be determined by the Planning Director or Hearings Body at the time of the CMP. In determining these standards, the Planning Director or Hearings Body shall find that the minimum specified in the CMP are adequate to satisfy the intent of the Bend Urban Area General Plan relating to solar access, fire protection, vehicle access, and to protect resources identified by LCDC Goal 5 which are identified in the Bend Urban Area General Plan. At a minimum, a 100 foot setback shall be maintained from all streams and rivers. No lot for a single-family residence shall exceed an overall project average of 22,000 square feet in size.
 2. Exterior setbacks and buffers.
 - a. A destination resort shall provide for the establishment and maintenance of buffers between the resort and adjacent land uses, including natural vegetation and where appropriate, fences, berms, landscaped areas, and other similar types of buffers.
 - b. Exterior setbacks shall also be provided to ensure that improvements and activities are located to minimize adverse effects of the resort on uses on surrounding lands.
- G. Floodplain requirements. The Flood Plain Zone (FP) requirements of DCC 19.72 shall apply to all developed portions of a destination resort in an FP Zone in addition to any applicable criteria of DCC 19.106. Except for flood plain areas which have been granted an exception to LCDC goals 3 and 4, Flood Plain Zones shall not be considered part of a destination resort when determining compliance with the following standards;
1. One hundred sixty acre minimum site;
 2. Open space requirements.
- A conservation easement as described in DCC Title 19 shall be conveyed to the County for all areas within a flood plain which are part of a destination resort.
- H. Excavation, grading and fill and removal within the bed and banks of a stream or river or in a wetland shall be a separate conditional use subject to all pertinent requirements of DCC Title 19.
- I. Time share units not included in the overnight lodging calculations shall be subject to approval under the conditional use criteria set forth in DCC 19.100. Time share units identified as part of the destination resort's overnight lodging units shall not be subject to the time share conditional use criteria of DCC 19.100.
- J. **Within 24 air miles of an urban growth boundary with an existing population of 100,000 or more, residential uses are limited to those necessary for the staff and management of the resort. All other standards of this section continue to apply.**

Exhibit B - Findings

FINDINGS

I. PROPOSAL

In October 2022, the applicant Central Oregon LandWatch (COLW), applied for a legislative amendment to Deschutes County's Destination Resort (DR) Combining Zone. The proposed amendments would add language from Oregon Revised Statute (ORS) 197.455(1)(a), which would limit 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. This proposed amendment would only apply to newly proposed Destination Resorts and would not apply to existing or approved Destination Resorts. The applicable language from ORS 197.455(1)(a) is provided below:

(1) A destination resort may be sited only on lands mapped as eligible for destination resort siting by the affected county. The county may not allow destination resorts approved pursuant to ORS 197.435 (Definitions for ORS 197.435 to 197.467) to 197.467 (Conservation easement to protect resource site) to be sited in any of the following areas:

(a) Within 24 air miles of an urban growth boundary with an existing population of 100,000 or more unless residential uses are limited to those necessary for the staff and management of the resort.

The County's spatial analysis of the distribution of DR-Zoned properties within Deschutes County indicates that most of the DR-Zoned properties are within 24 air miles of the City of Bend's urban growth boundary¹. The only DR-Zoned properties outside of the 24-air mile buffer (approximately 20 parcels) appear to be located west and southwest of the City of La Pine's urban growth boundary, predominantly along the Little Deschutes River corridor.

II. BACKGROUND

Recently, the City of Bend's population exceeded 100,000 individuals². Notice of the proposal was sent to all property owners within Deschutes County who are encumbered by the DR Zoning District on January 23, 2023. The Notice explained the scope of the proposal, provided a project-specific website related to the application, and gave meeting information for the upcoming public hearing on February 23, 2023³. Agency notice was sent to relevant agency partners on January 18, 2023, and several agency comments were received. County staff notified the Department of Land Conservation and Development (DLCD) about the proposal on January 11, 2023 through DLCD's

¹ <https://dial.deschutes.org/Real/InteractiveMap>

² <https://www.pdx.edu/population-research/population-estimate-reports>

³ <https://www.deschutescounty.gov/cd/page/247-22-000835-ta-destination-resort-text-amendment>

online PAPA submittal⁴. Additionally, printed notice was published in the Bend Bulletin newspaper on February 7, 2023⁵.

III. REVIEW CRITERIA

Deschutes County lacks specific criteria in DCC Titles 18, 19, 22, or 23 for reviewing a legislative text amendment. Because the proposal is applicant-initiated, the applicant (COLW) bears the responsibility for justifying that the amendments are consistent with Statewide Planning Goals and its existing Comprehensive Plan. The applicant has provided the following responses to relevant criteria (also outlined in the applicant's application materials, attached):

IV. FINDINGS

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 offers the following response to this criterion in their submitted application materials:

The applicant proposes amendments to DCC Title 18 as set forth in DCC 18.136 and will follow procedures for text changes as set forth in DCC 22.12. Because the proposed amendments would apply to the many properties within 24 air miles of the City of Bend UGB, the request is for a legislative text amendment and not a quasi-judicial amendment.

Determining whether a land use decision is legislative or quasi-judicial requires an inquiry into three factors: "(1) Whether the process is bound to result in a decision, (2) preexisting criteria, and (3) closely circumscribed factual situation or a relatively small number of persons." Heitsch v. City of Salem, 65 Or LUBA 187, 193 (2012) (citing Strawberry Hill 4 – Wheelers v. Board of Comm'nrs of Benton County, 287 Or 591, 601 P2d 769 (1977)). The third factor asks whether "the land use consequences are disproportionately concentrated on a relatively small pool of persons, as opposed to a larger region or the general population." Van Dyke v. Yamhill County, __Or LUBA__, slip op. at 4, LUBA No. 2018-061 (December 20, 2018).

⁴ https://db.lcd.state.or.us/PAPA_Online/Account/Login?ReturnUrl=%2fPAPA_Online

⁵ Based on email confirmation with Bend Bulletin's Inside Sales Executive, Julius Black dated January 23, 2023

This application requests a legislative amendment. As to the first factor, this request is likely, although not bound, to result in a decision as to whether to amend the DCC as proposed herein. There are no statutory timelines under which the County must make a decision on a legislative text amendment application. Both the second and third factors clearly indicate that the proposed amendments are legislative. The County lacks preexisting criteria for text amendments, as opposed to specific standards and criteria applicable to quasi-judicial map amendments found at DCC 18.136.020. Most instructive is the third factor. The amendments involve a large number of circumscribed factual situation pertaining to one or a handful of properties. The land use consequences of the proposed amendments would be proportionately distributed on a large pool of people across this large region of Deschutes County.

Staff agrees that the subject application constitutes a legislative text amendment and is not quasi-judicial in nature.

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.***
- B. That the change in classification for the subject property is consistent with the purpose and intent of the proposed zone classification.***
- C. That changing the zoning will presently serve the public health, safety and welfare considering the following factors:***
 - 1. The availability and efficiency of providing necessary public services and facilities.***
 - 2. The impacts on surrounding land use will be consistent with the specific goals and policies contained within the Comprehensive Plan.***
- D. That there has been a change in circumstances since the property was last zoned, or a mistake was made in the zoning of the property in question.***

FINDING: The applicant offers the following response to these criteria in their submitted application materials:

As discussed above in the response to DCC 18.136.010, the proposed amendments are legislative and not quasi-judicial, and this section does not apply.

Staff agrees that the subject application constitutes a legislative text amendment and is not quasi-judicial in nature.

Section 18.136.030 Resolution Of Intent To Rezone

- A. If from the facts presented and findings and the report and recommendations of the Hearing Officer, as required by this Section, the County Commission determines that the public health, safety, welfare and convenience will be best served by a proposed change of zone, the County Commission may indicate its general approval in principal of the proposed rezoning by the adoption of a "resolution of intent to***

- rezone." This resolution shall include any conditions, stipulations or limitations which the County Commission may feel necessary to require in the public interest as a prerequisite to final action, including those provisions that the County Commission may feel necessary to prevent speculative holding of property after rezoning. Such a resolution shall not be used to justify "spot zoning" or to create unauthorized zoning categories by excluding uses otherwise permitted in the proposed zoning.*
- B.** *The fulfillment of all conditions, stipulations and limitations contained in the resolution on the part of the applicant shall make such a resolution a binding commitment on the Board of County Commissioners. Upon completion of compliance action by the applicant, the Board shall, by ordinance, effect such rezoning. The failure of the applicant to substantially meet any or all conditions, stipulations or limitations contained in a resolution of intent, including any time limit placed in the resolution, shall render the resolution null and void automatically and without notice, unless an extension is granted by the Board.*
- C.** *Content of Site Plan. Where a site plan is required pursuant to Chapter 19.92, it shall include location of existing and proposed buildings, structures, accesses, off street parking and loading spaces and landscaping; existing and proposed topography; mechanical roof facilities, if subject property is so oriented as to become part of the view from adjacent properties; architectural perspective, layout and all elevations drawn without exaggerations, except where noted, including locations, area and design of signs and all landscaping.*

FINDING: The applicant offers the following response to these criteria in their submitted application materials:

This section applies to quasi-judicial rezoning of property. As discussed above in the response to DCC 18.136.010, the proposed amendments are legislative and not quasi-judicial, and they do not propose rezoning any property. This section does not apply.

Staff agrees with the applicant's statement.

Section 18.136.040 Record of Amendments

All amendments to the text or map of DCC Title 18 shall be filed with the County Clerk.

FINDING: The applicant offers the following response to these criteria in their submitted application materials:

Upon adoption, the proposed amendments will be filed with the County Clerk.

Staff agrees that, if adopted, the proposed amendment will be filed with the County Clerk.

CHAPTER 19.116, AMENDMENTS, APPEALS AND PROCEDURES

Section 19.116.010 Amendments

DCC Title 19 may be amended by changing the boundaries of zones or by changing any other provisions thereof subject to the provisions of DCC 19.116.

- A. Text changes and legislative map changes may be proposed by the Board of County Commissioners on its own motion, by the motion of the Planning Commission, upon payment of a fee, by the application of a member of the public. Such changes shall be made pursuant to DCC 22.12 and ORS 215.110 and 215.060.***
- B. Any proposed quasi-judicial map amendment or change shall be handled in accordance with the applicable provisions of DCC Title 22.***

FINDING: The applicant offers the following response to these criteria in their submitted application materials:

The proposed amendments to DCC Title 19 are being made by the application of a member of the public as allowed by DCC 19.116.010(A). The amendments are proposed pursuant to DCC 22.12 Legislative Procedures, addressed below. The amendments are made pursuant to ORS 215.110, which provides that a planning commission and governing body may recommend and enact ordinances intended to implement the comprehensive plan. The Deschutes County Comprehensive Plan (DCCP), at Section 3.9 Destination Resort Policies, includes Policy 3.9.3(a)(1):

"Policy 3.9.3 Mapping for destination resort siting.

- a. To assure that resort development does not conflict with the objectives of other Statewide Planning Goals, destination resorts shall pursuant to Goal 8 not be sited in Deschutes County in the following areas:*
 - 1. within 24 air miles of an urban growth boundary with an existing population of 100,000 or more unless residential uses are limited to those necessary for the staff and management of the resort;"*

The proposed amendments are made pursuant to ORS 215.110 and will implement DCCP Policy 3.9.3(a)(1). The amendments are also made pursuant to ORS 215.060, which provides that a county shall conduct one or more public hearings on actions on the comprehensive plan. Public hearings on the proposed amendments will be held by both the Planning Commission and Board of County Commissioners.

Staff confirms that the subject application appears to comply with the amendment process outlined above.

Section 19.116.020 Standards For Zone Change

The burden of proof is upon the applicant. The applicant shall in all cases establish:

- A. That the change conforms with the Comprehensive Plan. Specifically, the change is consistent with the plan's intent to promote an orderly pattern and sequence of growth.***

- B. That the change will not interfere with existing development, development potential or value of other land in the vicinity of the proposed action.**
- C. That the change in classification for the subject property is consistent with the purpose and intent of the proposed zone classification.**
- D. That the change will result in the orderly and efficient extension or provision of public services. Also, that the change is consistent with the County's policy for provision of public facilities.**
- E. That there is proof of a change of circumstance or a mistake in the original zoning.**

FINDING: The applicant offers the following response to these criteria in their submitted application materials:

No zone change is proposed as part of this application. This section is inapplicable.

Staff agrees with the applicant's statement.

Section 19.116.030 Record of Amendments

The signed copy of each amendment to the text of Title 19, including the legal description of all lands rezoned legislatively or quasi-judicially, shall be maintained on file in the office of the County Clerk. A record of such amendments shall be maintained in a form convenient for the use of the public by the Planning Director, including a map showing the area and date of all amendments hereto. The County Clerk shall keep the map of DCC Title 19 as originally enacted. Every five years after the enactment hereof, a map showing the cumulative amendments hereto for that period shall be filed with the County Clerk. In case of inconsistencies, the controlling record shall be first the original map filed with the County Clerk, and its five-year updates, if any. The Planning Director's map shall control as to map amendments not shown on the original for changes less than five years old.

FINDING: The applicant offers the following response to these criteria in their submitted application materials:

A signed copy of these amendments will be provided to the County Clerk. No lands will be rezoned by this application and the zoning map for Title 19 will not be amended.

Staff agrees with the applicant's statement.

Section 19.116.040 Resolution of Intent to Rezone

If, from the facts presented and findings and the report and recommendations of the Hearings Officer, as required by DCC 19.116.040, the County Commission determines that the public health, safety, welfare and convenience will be best served by a proposed change of zone, the County Commission may indicate its general approval in principal of the proposed rezoning by the adoption of a "resolution of intent to rezone." This resolution shall include any conditions, stipulations or limitations which the County Commission may

feel necessary to require in the public interest as a prerequisite to final action, including those provisions which the County Commission may feel necessary to prevent speculative holding of property after rezoning. The fulfillment of all conditions, stipulations and limitations contained in said resolution, on the part of the applicant, shall make such a resolution a binding commitment on the County Commission. Such a resolution shall not be used to justify spot zoning or create unauthorized zoning categories by excluding uses otherwise permitted in the proposed zoning. Upon completion of compliance action by the applicant, the County Commission shall, by ordinance, effect such rezoning. The failure of the applicant to substantially meet any or all conditions, stipulations or limitations contained in a resolution of intent, including the time limit placed in the resolution, shall render said resolution null and void automatically and without notice, unless an extension is granted by the County Commission upon recommendation of the Hearings Officer.

- A. Content of Site Plan. Where a site plan is required pursuant to DCC 19.92, it shall include location of existing and proposed buildings, structures, accesses, off-street parking and loading spaces and landscaping; existing and proposed topography; mechanical roof facilities, if subject property is so oriented as to become part of the view from adjacent properties; architectural perspective, layout and all elevations drawn without exaggerations, except where noted, including locations, area and design of signs and all landscaping.*
- B. Resolution on Intent Binding. The fulfillment of all conditions, stipulations and limitations contained in the resolutions of intent on the part of the applicant shall make the resolution binding on the County Commission. Upon compliance with the resolution by the applicant, the County Commission shall, by ordinance, effect such reclassification.*

FINDING: The applicant offers the following response to these criteria in their submitted application materials:

No zone change is proposed as part of this application. This section is inapplicable.

Staff agrees with the applicant's statement.

CHAPTER 22.12, LEGISLATIVE PROCEDURES

Section 22.12.010.

Hearing Required

FINDING: The applicant offers the following response to this criterion in their submitted application materials:

The proposed amendments will be reviewed by both the Planning Commission and the Board of County Commissioners, and will include public hearings.

Staff agrees that this criterion will be met because a public hearing will be held before the Deschutes County Planning Commission and Board of County Commissioners.

Section 22.12.020, Notice

Notice

A. Published Notice

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

FINDING: The applicant offers the following response to this criterion in their submitted application materials:

This criterion will be met with notice to be published in the Bend Bulletin newspaper for the Planning Commission public hearing, and the Board of County Commissioners' public hearing.

Staff agrees that this criterion will be met by notice being published in *The Bend Bulletin* newspaper.

B. Posted Notice. Notice shall be posted at the discretion of the Planning Director and where necessary to comply with ORS 203.045.

FINDING: The applicant offers the following response to this criterion in their submitted application materials:

Notice will be posted if determined to be necessary by the Planning Director.

Posted notice is only required under ORS 203.045(5)(a) under specific circumstances described in that section. No such posting is required in this case.

C. Individual notice. Individual notice to property owners, as defined in DCC 22.08.010(A), shall be provided at the discretion of the Planning Director, except as required by ORS 215.503.

FINDING: The applicant offers the following response to this criterion in their submitted application materials:

Individual notice will be sent if determined to be necessary by the Planning Director. Given the proposed legislative amendments do not apply to any specific property, no individual notices are anticipated. The applicant conferred with County staff as to whether notice to affected property owners pursuant to ORS 215.203, also known as "Measure 56 notice," need be provided. Staff agreed in an email dated October 19, 2022 that this proposal "will not require Measure 56 notice

as the proposed addition of language referencing state law is not a “change to the zoning” that would require M56 notice.” Exhibit F

Ultimately, County staff (in coordination with County administration and legal counsel) found that the proposal would require individual notice pursuant to ORS 215.503 to provide ample public notice to affected properties and property owners about the subject proposal. The proposed amendments are legislative and do not apply to any specific property. In compliance with ORS 215.503, notice was sent to individual property owners who may be affected by the proposed amendments.

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

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

Section 22.12.030 Initiation of Legislative Changes.

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

FINDING: The application was initiated by Central Oregon LandWatch (COLW), and the Deschutes County Planning Division has received the required fees. This criterion has been met.

Section 22.12.040. Hearings Body

A. The following shall serve as hearings or review body for legislative changes in this order:

- 1. The Planning Commission.***
- 2. The Board of County Commissioners.***

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

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

Section 22.12.050 Final Decision

All legislative changes shall be adopted by ordinance

FINDING: The proposed legislative changes included in file no. 247-22-000835-TA will be implemented by ordinances if approved and adopted by the Board. This criterion will be met.

Statewide Planning Goals and Guidelines

Goal 1: Citizen Involvement: The amendments do not propose any changes to the County's citizen involvement program. Notice of the proposed amendments were provided to the *Bulletin* for each public hearing.

Goal 2: Land Use Planning: The applicant offers the following response to this criterion in their submitted application materials:

Goals, policies, and processes related to this application are included in the Deschutes County Comprehensive Plan, Title 23 and Deschutes County Code, Title 19 and Title 22. Compliance with these processes, policies, and regulations are documented within this application. Goal 2 is met.

Staff notes that an Oregon Land Conservation and Development Department 35-day notice was initiated on January 11, 2023. Public hearings before both the Planning Commission and the Board of County Commissioners will be held. This Findings document provides the applicant's basis for the proposed amendments.

Goal 3: Agricultural Lands: The applicant offers the following response to this criterion in their submitted application materials:

Goal 3 is to "preserve and maintain agricultural lands." No lands will be rezoned as part of this application. Some lands in the DRZ are designated Agriculture and zoned Exclusive Farm Use pursuant to Goal 3. The proposed amendments would reduce the amount of nonfarm residential development allowed on EFU land by ensuring certain lands in the DRZ conform with ORS 197.455(1) and Goal 8. Goal 3 is met.

Adverse impacts to farming practices are not anticipated under these amendments and no such impacts have been identified in the record. The proposed amendments appear to be consistent with Goal 3.

Goal 4: Forest Lands: The applicant offers the following response to this criterion in their submitted application materials:

Goal 4 is "to conserve forest lands[.]" No lands will be rezoned as part of this application. Some lands in the DRZ are designated Forest and zoned F1 or F2 pursuant to Goal 4. The proposed amendments would reduce the amount of residential development allowed on Forest zoned land by ensuring certain lands in the DRZ conform with ORS 197.455(1) and Goal 8. Goal 4 is met.

Adverse impacts to forests and forest practices are not anticipated under these amendments and no such impacts have been identified in the record. The proposed amendments appear to be consistent with Goal 4.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources: The applicant offers the following response to this criterion in their submitted application materials:

Similar to the previous two goals, the proposed amendments would reduce the amount of residential development allowed on certain lands in the DRZ, ensuring conformance with ORS 197.455(1) and Goal 8. Some lands in the DRZ include inventoried Goal 5 resources, including mineral and aggregate resources, scenic views, riparian areas, floodplains, and wildlife habitat. The effect of the proposed amendments would be to provide greater protection for these resources, as the amount of potential residential development (a conflicting use) on certain lands in the DRZ would be reduced. In any event, the proposed amendments do not create or amend a Goal 5 resource list or and land use regulation adopted to protect a Goal 5 resource, they do not allow new uses that could be conflicting uses with a Goal 5 resource, and they do not amend an acknowledged UGB. OAR 660-023-0250(3). Goal 5 is met.

Goal 5 is to protect natural resources and conserve scenic and historical areas and open spaces. OAR 660-023-0250(3) states that local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. The proposed amendment is not seeking to change any requirements in the Wildlife Area overlay zone which protects inventoried wildlife resources. This zone protects scenic resources through additional aesthetic requirements. The code provision will remain unchanged. Staff finds that the amendments appear to be consistent with Goal 5.

Goal 6: Air, Water and Land Resources Quality: The applicant offers the following response to this criterion in their submitted application materials:

The proposed amendments will likely not impact the quality of the air, water and land resources. If anything, the reduced potential for residential development on certain lands in the DRZ will benefit the quality of associated air, water, and land resources by reducing the potential for solid waste, water waste, noise and thermal pollution, air pollution, and industry-related contaminants on those resources. Goal 6 is met.

The proposed text amendments do not propose to change the County's Plan policies or implementing regulations for compliance with Goal 6. Staff finds that the proposed amendments appear to be consistent with Goal 6.

Goal 7: Areas Subject to Natural Disasters and Hazards: The applicant offers the following response to this criterion in their submitted application materials:

To the extent that lands in the DRZ are in areas subject to natural disasters and hazards, the proposed amendments mitigate that risk by reducing the potential for residential development on certain lands in the DRZ, in accordance with ORS 197.455(1) and Goal 8. Goal 7 is met.

The proposed text amendments do not propose to change the County's Plan or implementing regulations regarding natural disasters and hazards. Staff finds that the proposed amendments appear to be consistent with Goal 7.

Goal 8: Recreational Needs: The applicant offers the following response to this criterion in their submitted application materials:

The proposed amendments are specifically intended to implement Goal 8, as described in the response to Deschutes County Comprehensive Plan Chapter 3, Resource Management, Section 3.9 Destination Resorts, Goal 1, above. Goal 8 is met.

The text amendments do not propose to change the County's Plan or implementing regulations regarding recreational needs. Staff finds that the proposed amendments appear to be consistent with Goal 8.

Goal 9: Economic Development: The applicant offers the following response to this criterion in their submitted application materials:

Goal 9 is only applicable to urban areas and therefore is not applicable here. Port of St. Helens v. Land Conservation & Development Comm'n, 165 Or App 487, 996 P2d 1014 (2000), rev den, 330 Or 363 (2000).

Goal 9 and its implementing regulations focus on economic analysis and economic development planning required in urban Comprehensive Plans to ensure there is adequate land available to realize economic growth and development opportunities. The proposed amendments apply to rural lands and do not propose to amend the Comprehensive Plan. Compliance is met.

Goal 10: Housing: The applicant offers the following response to this criterion in their submitted application materials:

Goal 10 is "to provide for the housing needs of citizens of the state" on "buildable lands for residential use." "Buildable lands" are defined in statute as "lands in urban and urbanizable areas that are suitable, available and necessary for residential uses." ORS 197.295(1). "Buildable Lands" are described in administrative rule as "residentially designated land within the urban growth boundary, including both vacant and developed land likely to be redeveloped, that is suitable, available and necessary for residential uses." OAR 660-008-0005(2). The proposed amendments largely do not affect lands in urban and urbanizable areas inside urban growth boundaries, making Goal 10 inapplicable to the majority of lands in the DRZ that the proposed amendments would affect.

A small portion of lands inside the south and west portion of the City of Bend UGB, and in the north portion of the City of La Pine UGB, are also in the County's DRZ. To the extent that that these are "buildable lands for residential use" to which Goal 10 applies, the proposed amendments comply with Goal 10. The City of Bend, upon amending its UGB in 2016, adopted policies and Goal 10 findings into its comprehensive plan. One of those policies, at City of Bend Comprehensive Plan Policy 5-57 states that "Properties that are eligible for destination resort development will lose that eligibility upon inclusion into the UGB." Exhibit D (Chapter 5 of the Bend Comprehensive Plan, Housing). Therefore, any lands inside the City of Bend UGB are already ineligible for siting of destination resorts, and the proposed amendments do not affect the City's Goal 10 compliance. The proposed amendments also will not affect the City of La Pine's compliance with Goal 10. The La Pine comprehensive plan reports that, as of 2018, its UGB contains about "1284.4-acres of

vacant or re-developable land to respond to a calculation of about 182 – acres of need.” Exhibit E at 134-135 (La Pine Comprehensive Plan). The City’s Goal 10 Housing policies and goals do not rely on destination resort development to meet the Goal. Additionally, ORS 197.445(7) requires a site of at least 20 acres for a destination resort, and the land zoned DRZ in the City of La Pine UGB is less than 20 acres. Goal 10 is met.

Adverse impacts to residential housing in the County are not anticipated under these amendments and no such impacts have been identified in the record. The proposed amendments appear to be consistent with Goal 10.

Goal 11: Public Facilities and Services: The proposed text amendments do not propose to change the County’s Plan or implementing regulations regarding public facilities and services.

Goal 12: Transportation: The applicant offers the following response to this criterion in their submitted application materials:

By restricting certain residential uses in destination resorts within 24 air miles of the Bend UGB, the proposed amendments will reduce impacts to transportation facilities by lessening potential new trip generation in the rural county. This reduces the likelihood that transportation facilities could be significantly affected in Deschutes County. Goal 12 is met.

Goal 12 is to provide and encourage a safe, convenient and economic transportation system. The proposed text amendments will not change the functional classification of any existing or planned transportation facility or standards implementing a functional classification system. Compliance with Goal 12 is met.

Goal 13: Energy Conservation: The proposed text amendments do not propose to change the County’s Plan or implementing regulations regarding energy conservation. Therefore, compliance with Goal 13 is established.

Goal 14: Urbanization: The applicant offers the following response to this criterion in their submitted application materials:

Goal 14 concerns the provision of urban and rural land uses to ensure efficient use of land and livable communities. The proposed amendments do not amend an urban growth boundary. Although Goal 8 allows urban land uses on rural land in destination resorts in certain circumstances, the proposed amendments are intended to ensure the DCC complies with Goal 8 and ORS 197.455, which limit the type of resort development that is allowed on certain lands near certain urban growth boundaries. The effect of the amendments will be to promote Goal 14’s distinction between urban and rural levels of development, pursuant to Goal 8 and statute. Goal 14 is met.

The proposed text amendments do not propose to change the County’s Plan or implementing regulations regarding urbanization. Therefore, compliance with Goal 14 is established.

Goals 15 through 19 are not applicable to the proposed text amendments because the County does not contain these types of lands.

Deschutes County Comprehensive Plan

Chapter 1, Comprehensive Planning: The applicant did not provide a direct response to this criterion in their submitted burden of proof. This chapter sets the Goals and Policies of how the County will involve the community and conduct land use planning. As described above, the proposed regulations will be discussed at work sessions with the Board of County Commissioners, as well as to the Planning Commission, which is the County's official committee for public involvement. Both will conduct separate public hearings.

Section 1.3, Land Use Planning Policies. The applicant did not provide a direct response to this criterion in their submitted burden of proof. Goal 1 of this section is to "maintain an open and public land use process in which decisions are based on the objective evaluation of facts." Staff, the Planning Commission, and the Board will review the proposed text amendments.

Chapter 3, Resource Management

Section 3.9 Destination Resorts

Goals and Policies

Goal 1: To provide for development of destination resorts in the County consistent with Statewide Planning Goal 8 in a manner that will be compatible with farm and forest uses, existing rural development, and in a manner that will maintain important natural features, such as habitat or threatened or endangered species, streams, rivers and significant wetlands.

FINDING: The applicant offers the following response to this criterion in their submitted application materials:

The proposed amendments are specifically intended to provide for the development of destination resorts in Deschutes County consistent with Goal 8. Exhibit C. Goal 8 includes the same language as ORS 197.455(1)(a):

"Eligible Areas

(1) Destination resorts allowed under the provisions of this goal must be sited on lands mapped as eligible by the affected county. A map adopted by a county may not allow destination resorts approved under the provisions of this goal to be sited in any of the following areas:

(a) Within 24 air miles of an urban growth boundary with an existing population of 100,000 or more unless residential uses are limited to those necessary for the staff and management of the resort;"

The Oregon legislature in adopting ORS 197.455(1)(a), and LCDC in adopting Goal 8, have decided that resorts within 24 air miles of certain urban growth boundaries are limited to residential uses only necessary for staff and management of a resort. The proposed amendments would ensure that destination resorts on lands mapped as eligible by Deschutes County, but a resort that includes residential uses for people other than staff and management of a resort could not be sited within 24 air miles of the Bend urban growth boundary.

Goal 2: To provide a process for the siting of destination resorts on rural lands that have been mapped by Deschutes County as eligible for this purpose.

Goal 3: To provide for the siting of destination resort facilities that enhances and diversifies the recreational opportunities and economy of Deschutes County.

FINDING: The applicant offers the following response to these goals in their submitted application materials:

The proposed amendments will not change the existing process for siting of destination resorts described in these two goals. The amendments also will not change the map of lands determined to be eligible by Deschutes County. What will change is the type of destination resort that could be sited through the County's existing process, in order to comply with Goal 8 and ORS 197.455(1)(a). Consistent with state law, recreational facilities will still be allowed in destination resorts within 24 air miles of the Bend UGB, providing for continued enhancement and diversification of recreational opportunities.

Goal 4: To provide for development of destination resorts consistent with Statewide Planning Goal 12 in a manner that will ensure the resorts are supported by adequate transportation facilities.

FINDING: The applicant offers the following response to this goal in their submitted application materials:

By restricting certain residential uses in destination resorts within 24 air miles of the Bend UGB, the proposed amendments will reduce impacts to transportation facilities by lessening potential new trip generation in the rural county. This reduces the likelihood that transportation facilities could be significantly affected in Deschutes County, consistent with Goal 12.

Staff notes that there is no indication that the proposed amendments would result in adverse impacts to transportation facilities and no evidence in the record indicating the potential for such impacts. This goal appears to be met for the purposes of the subject application.

Policy 3.9.1: Destination resorts shall only be allowed within areas shown on the "Deschutes County Destination Resort Map" and when the resort complies with the requirements of Goal 8, ORS 197.435 to 197.457 and Deschutes County Code 18.113.

FINDING: The applicant offers the following response to this policy in their submitted application materials:

Destination resorts will continue to only be allowed within areas shown on the "Deschutes County Destination Resort Map". The proposed changes to the DCC will ensure that any such resorts comply with the requirements of Goal 8 and ORS 197.435 to 197.457. Goal 8 and ORS 197.455(1)(a) include the language limiting destination resorts with 24 air miles of certain UGBs that this proposed code amendment would implement.

Policy 3.9.2: Applications to amend the map will be collected and will be processed concurrently no sooner than 30 months from the date the map was previously adopted or amended.

FINDING: The applicant offers the following response to this policy in their submitted application materials:

The proposed amendments are not an application to amend the Deschutes County Destination Resort Map. This policy is inapplicable.

Staff concurs that the subject application is for a legislative text amendment, and not for a Comprehensive Plan amendment.

Policy 3.9.3: Mapping for destination resort siting

a. To assure that resort development does not conflict with the objectives of other Statewide Planning Goals, destination resorts shall pursuant to Goal 8 not be sited in Deschutes County in the following areas:

1). Within 24 air miles of an urban growth boundary with an existing population of 100,000 or more unless residential uses are limited to those necessary for the staff and management of the resort;

FINDING: The applicant offers the following response to this policy in their submitted application materials:

The proposed amendments are intended specifically to implement and conform the Deschutes County Code to this comprehensive plan section. Upon adoption of the proposed amendments, destination resorts shall, pursuant to Goal 8, not be sited in Deschutes County within 24 air miles of an urban growth boundary with an existing population of 100,000 or more unless residential uses are limited to those necessary for the staff and management of the resort. The proposed amendments comply with this policy.

Oregon Revised Statute (ORS) 197.455

ORS 197.455(1)

A destination resort may be sited only on lands mapped as eligible for destination resort siting by the affected county. The county may not allow destination resorts approved pursuant to ORS 197.435 (Definitions for ORS 197.435 to 197.467) to 197.467 (Conservation easement to protect resource site) to be sited in any of the following areas:

(a) Within 24 air miles of an urban growth boundary with an existing population of 100,000 or more unless residential uses are limited to those necessary for the staff and management of the resort.

FINDING: The applicant offers the following response in their submitted application materials:

Similar to the response to Deschutes County Comprehensive Plan Policy 3.9.3, above, the proposed amendments are intended specifically to implement and conform the Deschutes County Code to this statute. Upon adoption of the proposed amendments, destination resorts may not be allowed to be sited in Deschutes County within 24 air miles of an urban growth boundary with an existing population of 100,000 or more unless residential uses are limited to those necessary for the staff and management of the resort. The proposed amendments comply with this statute.

Staff concurs that the proposed amendment language is derived directly from ORS 197.455(1)(a) and would limit the residential uses allowed for newly-proposed destination resorts within 24 air miles of the City of Bend's Urban Growth Boundary.

- (b) (A) On a site with 50 or more contiguous acres of unique or prime farmland identified and mapped by the United States Natural Resources Conservation Service, or its predecessor agency.
- (B) On a site within three miles of a high value crop area unless the resort complies with the requirements of ORS 197.445 (6) in which case the resort may not be closer to a high value crop area than one-half mile for each 25 unites of overnight lodging or fraction thereof.
- (c) On predominantly Cubic Foot Site Class 1 or 2 forestlands as determined by the State Forestry Department, which are not subject to an approved goal exception.
- (d) In the Columbia River Gorge National Scenic Area as defined by the Columbia River Gorge National Scenic Act, P.L. 99-663.
- (e) In an especially sensitive big game habitat area:
 - (A) As determined by the State Department of Fish and Wildlife in July 1984, and in additional especially sensitive big game habitat areas designated by a county in an acknowledged comprehensive plan; or
 - (B) If the State Fish and Wildlife Commission amends the 1984 determination with respect to an entire county and the county amends its comprehensive plan to reflect the commission's subsequent determination, as designated in the acknowledged comprehensive plan.
- (f) On a site which the lands are predominantly classified as being in Fire Regime Condition Class 3, unless the county approves a wildfire protection plan that demonstrates the site can be developed without being at a high overall risk of fire.

FINDING: The applicant offers the following response in their submitted application materials:

The proposed amendments will not affect Deschutes County's compliance with the remaining sections of ORS 197.455(1), making these criteria inapplicable.

ORS 197.455(2)

In carrying out subsection (1) of this section, a county shall adopt, as part of its comprehensive plan, a map consisting of eligible lands within the county. The map must be based on reasonably available information and may be amended pursuant to ORS 197.610 (Submission of proposed comprehensive plan or land use regulation changes to Department of Land Conservation and Development) to 197.625 (Acknowledgment of comprehensive plan or land use regulation changes), but not more frequently than once every 30 months. The county shall develop a process for

collecting and processing concurrently all map amendments made within a 30-month planning period. A map adopted pursuant to this section shall be the sole basis for determining whether tracts of land are eligible for destination resort siting pursuant to ORS 197.435 (Definitions for ORS 197.435 to 197.467) to 197.467 (Conservation easement to protect resource site).

FINDING: The applicant offers the following response in their submitted application materials:

Deschutes County's existing map of lands eligible for destination resorts will not be amended as part of this application. This criterion is inapplicable.

Staff concurs that the subject application is for a legislative text amendment, and not for a Comprehensive Plan amendment.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 9, 2023

SUBJECT: Accepting a petition to incorporate a new City of Mountain View Petition and setting the date for a public hearing

RECOMMENDED MOTION:

Move approval of Board signature of Order No. 2023-033 setting the public hearing date and parameters to consider a petition to incorporate the City of Mountain View.

BACKGROUND AND POLICY IMPLICATIONS:

Staff will present a draft order for Board consideration relating to the hearing approach and parameters for a petition to incorporate.

BUDGET IMPACTS:

None.

ATTENDANCE:

Nicole Mardell, AICP, Senior Planner – Long Range
Peter Gutowsky, AICP, Community Development Director
Stephanie Marshall, Assistant Legal Counsel

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Accepting Petition and Setting
Date for Public Hearing for Petition for
Incorporation of City of Mountain View

*
*

ORDER NO. 2023-033

WHEREAS, a prospective petition proposing the incorporation of the City of Mountain View was duly filed with the Deschutes County Clerk ("Clerk") on or about February 14, 2023; a copy of which is attached hereto as Exhibit "A" and by this reference incorporated herein, and;

WHEREAS, the prospective petition signatures of electors within the boundary of the proposed City of Mountain View were duly filed with the Clerk on or about April 18, 2023; and

WHEREAS, on or about April 28, 2023, the Clerk certified the validity of signatures; and

WHEREAS, on or about June 9, 2023, a formal Petition for Incorporation was filed with the Board of County Commissioners; and

WHEREAS, ORS 221.040 requires the Board of County Commissioners to set a date for a public hearing on the petition, to publish notice of the hearing once each week for two successive weeks, and to post the notice in three public places; and

WHEREAS, pursuant to ORS 197.175(1), a Board decision on whether to authorize an election on the incorporation of a city is a land use decision and ORS 197.763(3)(f)(A) requires at least twenty days notice prior to the public hearing; and

WHEREAS, in coordination with the petitioner, Deschutes County has identified September, 20, 2023 as the preferred public hearing date for the Board of County Commissioner to consider whether to authorize an election on the proposed incorporation of the City of Mountain View; now therefore,

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

Section 1. The petition proposing the incorporation of the City of Mountain View, a copy of which is attached hereto as Exhibit "A", is hereby accepted for filing.

Section 2. The proposed City of Mountain View, if formed, will have a permanent rate limit for operating taxes of \$2.00 per \$1,000 assessed value that will raise an estimated \$30,000 in operating funds for the City in the 2024-2025 fiscal year.

Section 3. A public hearing regarding whether an election on the proposed incorporation of the City of Mountain View should be authorized shall be held on Wednesday, September 20, 2023 at 9:00 a.m. in the Barnes and Sawyer Rooms of the Deschutes County Service Center, 1300 NW Wall Street, Bend, Oregon, 97701.

Section 4. Hearing testimony shall be limited to the following time constraints: thirty minutes for the petitioner's presentation, ten minutes for agency comments, three minutes for public comments, and ten minutes for petitioner's rebuttal.

Section 5. Notice of Public Hearing shall be provided in accordance with ORS 221.040.

Section 6. The record for File No. 247-23-000587-TA can be found at the following website: www.deschutes.org/mountainviewincorporation

Going forward, all documents further placed before, and not rejected by, the Board shall be added to the aforementioned website, and that website shall be the Board's official repository for the record in this matter.

DATED this ____ day of _____, 2023.

BOARD OF COUNTY COMMISSIONERS

ANTHONY DEBONE, Chair

PATTI ADAIR, Vice Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner