



BOARD OF COMMISSIONERS

BOARD OF COUNTY COMMISSIONERS MEETING

2:00 PM, WEDNESDAY, OCTOBER 2, 2024

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

AGENDA

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

Members of the public may view the meeting in real time via YouTube using this link: <http://bit.ly/3mmlnzy>. **To attend the meeting virtually 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/3h3oqD>.
- To join by phone, call 253-215-8782 and enter webinar ID # 899 4635 9970 followed by the passcode 013510.
- If joining by a browser, use the raise hand icon to indicate you would like to provide public comment, if and when allowed. If using a phone, press *9 to indicate you would like to speak and *6 to unmute yourself when you are called on.
- When it is your turn to provide testimony, you will be promoted from an attendee to a panelist. You may experience a brief pause as your meeting status changes. Once you have joined as a panelist, you will be able to turn on your camera, if you would like to.



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

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. Consideration of Board Signature on letters appointing Kent Zook and thanking Bette Butler for service on the Sunriver Service District Budget Committee
2. Approval of minutes of the BOCC August 21, 2024 meeting

ACTION ITEMS

- [3.](#) **2:00 PM** Notice of Intent to Award a contract to E2 Solar for a Design-Build Solar PV System and related services at the Deschutes County Fair and Expo Center
- [4.](#) **2:10 PM** First reading of Ordinance 2024-010 – Eden Plan Amendment / Zone Change
- [5.](#) **2:25 PM** Consideration of second reading of Ordinance 2024-007 adopting the Deschutes County 2040 Comprehensive Plan Update
- [6.](#) **2:30 PM** Board Decision on Land Use File Nos. 247-23-000614-CU, 247-23-000615-SP, 247-24-000292-A, Appeal of a psilocybin service facility

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.

7. Executive Session under ORS 192.660 (2) (i) Employee Evaluation

ADJOURN



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: October 2, 2024

SUBJECT: Notice of Intent to Award Contract to E2 Solar for Design-Build Solar PV System and related services at the Deschutes County Fair and Expo Center

RECOMMENDED MOTION:

Move approval of Document No. 2024-811, a Notice of Intent to Award Contract to E2 Solar.

BACKGROUND AND POLICY IMPLICATIONS:

Oregon Revised Statute (ORS 279C.527-528) requires that public entities spend 1.5% of the total contract price of a public improvement contract for new construction projects costing \$5 million or greater on green energy technology or an alternative. Green energy technology includes solar technology such as photovoltaic systems. A photovoltaic (PV) solar technology system is proposed as part of the Courthouse Expansion project to comply with the 1.5% green energy technology requirement. Due to limitations of the Courthouse site and roof area, the system is proposed to be constructed at the Deschutes County Fair and Expo Center.

On July 24th, 2024 staff presented the Design-Build Findings of Fact. The Board then approved Order No. 2024-028 exempting the Solar PV System project from competitive bidding and authorizing the use of design-build services of contracting for the Solar PV System. The Facilities Department issued a publicly advertised RFP for a Design-Build Contractor for the Solar PV Project in accordance with ORS 279C.400 – 279C.410. Seven responsive proposals were reviewed by a scoring committee made up representatives from the Fair and Expo Center and the Facilities Department.

E2 Solar, a firm that operates in Bend, was the highest scoring proposer and the review committee recommends the selection of E2 Solar as the Design-Build Contractor for the solar project. If no protests are submitted, the County will administratively enter into a contract with E2 Solar.

BUDGET IMPACTS:

The cost of the Solar PV system project is budgeted within the Courthouse Expansion project.

ATTENDANCE:

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

BOARD OF COUNTY COMMISSIONERS

October 2, 2024

Sent via electronic mail & first-class mail

E2 Solar LLC
Attn: Dustin Tomblason
20784 NE High Desert Lane
Bend, Oregon 97701
dustin@e2.solar

RE: Contract for Deschutes County Fair and Expo Center Solar PV System

NOTICE OF INTENT TO AWARD CONTRACT

On October 2, 2024, 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 proposer for the project was E2 Solar LLC.

This Notice of Intent to Award Contract is issued pursuant to Oregon Revised Statute (ORS) 279C.410(7). Any entity which believes that they are adversely affected or aggrieved by the intended award of contract set forth in this Notice may submit a written protest within seven (7) calendar days after the issuance of this Notice of Intent to Award Contract to the Board of County Commissioners of Deschutes County, Oregon at Deschutes Services Building, 1300 NW Wall Street, Bend Oregon, 97703.

The seven (7) calendar day protest period will expire at 5:00 PM on Wednesday, October 9, 2024.

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.

Document # 2024-811

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

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

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

Sincerely,

BOARD OF COUNTY COMMISSIONERS
DESCHUTES COUNTY, OREGON

Commissioner Patti Adair, Chair

Enclosure:
OAR 137-049-0395

Cc w/ enclosure:

Pure Energy Group
Matthew Henderson
139 Ankeny Hill Rd SE
Jefferson, OR 97352
matthew@ourenergy.group

Energy Wise Services
Peter Greenberg
2340 15th Ave SW
Albany, OR 97321
nrgwiseservice@gmail.com

Power Northwest
Lance Jackson
2711 NW Saint Helens Rd
Portland, OR 97210
ljackson@powernw.com

Sunlight Solar Energy, Inc.
Joe Mazzarella
150 NE Hawthorne Ave., #200
Bend, OR 97701
joe.mazzarella@sunlightsolar.com

Elemental Energy
Zach Parrott
6800 NE 59th Pl.
Portland, OR 97218
zparrott@elementalenergy.net

A&R Solar
Jerome Lyons
19636 SW 90th Ct. Bldg. 4
Tualatin, OR 97062
jerome@a-solar.com

OAR 137-049-0395**Notice of Intent to Award**

- (1) Notice. At least seven days before the Award of a Public Improvement Contract, the Contracting Agency shall issue to each Bidder (pursuant to ORS 279C.375(2)) and each Proposer (pursuant to 279C.410(7)), or post electronically or otherwise, a notice of the Contracting Agency's intent to Award the Contract. This requirement does not apply to Award of a small or intermediate (informal competitive quotes) Public Improvement Contract awarded under 279C.335(1)(c) or (d).
- (2) Form and Manner of Posting. The form and manner of posting notice shall conform to customary practices within the Contracting Agency's procurement system, and may be made electronically.
- (3) Finalizing Award. The Contracting Agency's Award shall not be final until the later of the following:
 - (a) Seven Days after the date of the notice, unless the Solicitation Document provided a different period for protest; or
 - (b) The Contracting Agency provides a Written response to all timely-filed protests that denies the protest and affirms the Award.
- (4) Prior Notice Impractical. Posting of notice of intent to award shall not be required when the Contracting Agency determines that it is impractical due to unusual time constraints in making prompt Award for its immediate procurement needs, documents the Contract file as to the reasons for that determination, and posts notice of that action as soon as reasonably practical.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: October 2, 2024

SUBJECT: First reading of Ordinance 2024-010 – Eden Plan Amendment / Zone Change

RECOMMENDED MOTION:

Move approval of first reading of Ordinance No. 2024-010 by title only.

BACKGROUND AND POLICY IMPLICATIONS:

The Board will consider a first reading of Ordinance No. 2024-010 to approve a decision on remand from the Land Use Board of Appeals. The application is a request for a Plan Amendment and Zone Change (file nos. 247-24-000395-A, 247-21-001043-PA, 1044-ZC) for property totaling approximately 710 acres to the west of Terrebonne and north of Highway 126, submitted by 710 Properties, LLC.

BUDGET IMPACTS:

None

ATTENDANCE:

Haleigh King, Associate Planner



MEMORANDUM

TO: Deschutes County Board of Commissioners (Board)

FROM: Haleigh King, Associate Planner

DATE: September 25, 2024

SUBJECT: Consideration of First Reading of Ordinance 2024-010: Remand of Eden Properties Plan Amendment and Zone Change – 247-24-000395-A (247-21-001043-PA, 1044-ZC)

The Board of County Commissioners (Board) will review and consider a first reading of Ordinance 2024-010 on October 2, 2024 approving file nos. 247-24-000395-A (247-21-001043-PA, 1044-ZC). The applicant is requesting approval of Plan Amendment and Zone Change applications remanded by the Oregon Land Use Board of Appeals.

I. BACKGROUND

The applicant, 710 Properties, LLC/Eden Central Properties, LLC, is requesting a Comprehensive Plan Amendment to re-designate the subject properties from Agriculture to Rural Residential Exception Area and a Zoning Map Amendment to rezone the properties from Exclusive Farm Use (EFU) to Rural Residential (RR-10). The subject property totals ±710 acres in size.

The application was originally approved by a Board majority on December 14, 2022 following a public hearing held on August 17, 2022, and a subsequent open record period. Following Board approval, the application was appealed to the Oregon Land Use Board of Appeals (LUBA) and the Court of Appeals and was remanded back to the County for additional review on a number of specific issue areas discussed below. The remand was then initiated by the applicant for County review on June 26, 2024. The final day in which the County must issue a final decision is October 24, 2024.

The Board held a public hearing on July 24, 2024 and the written record period closed on August 21, 2024. On September 4, 2024 the Board deliberated on the applications and a majority voted to approve the requests.

II. NEXT STEPS / SECOND READING

The Board is scheduled to conduct the second reading of Ordinance 2024-010 on October 16, 2024, fourteen (14) days following the first reading.

ATTACHMENTS:

1. Draft Ordinance 2024-010 and Exhibits

Exhibit A: Legal Description

Exhibit B: Proposed Comprehensive Plan Amendment Map

Exhibit C: Proposed Zone Change Map

Exhibit D: Comprehensive Plan Section 23.01.010, Introduction

Exhibit E: Comprehensive Plan Section 5.12, Legislative History

Exhibit F: Decision of the Board of County Commissioners on Remand

Exhibit G: Decision of the Board of County Commissioners on Original Application

Exhibit H: Hearing's Officer Recommendation

REVIEWED _____
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County *
Code Title 23, the Deschutes County *
Comprehensive Plan, to Change the *
Comprehensive Plan Map Designation for *
Certain Property From Agriculture to Rural *
Residential Exception Area, and Amending *
Deschutes County Code Title 18, the Deschutes *
County Zoning Map, to Change the Zone *
Designation for Certain Property From *
Exclusive Farm Use to Rural Residential.

ORDINANCE NO. 2024-010

WHEREAS, 710 Properties, LLC, applied for changes to both the Deschutes County Comprehensive Plan Map (247-21-001043-PA) and the Deschutes County Zoning Map (247-21-001044-ZC), to change the comprehensive plan designation of the subject property from Agricultural (AG) to Rural Residential Exception Area (RREA), and a corresponding zone change from Exclusive Farm Use (EFU) to Rural Residential (RR-10); and

WHEREAS, the Board of County Commissioners issued a decision approving the subject application on December 14, 2022, and the decision was thereby appealed to the Oregon Land Use Board of Appeals ("Land Use Board of Appeals") and remanded back to the County for further review; and

WHEREAS, the applicant initiated review of the remand application on June 26, 2024 through file no. 247-24-000395-A; and

WHEREAS, pursuant to the Land Use Board of Appeals remand and after notice was given in accordance with applicable law, a public hearing was held on July 24, 2024; before the Deschutes County Board of County Commissioners ("Board"); and an open record period ending on August 21, 2024; and

WHEREAS, pursuant to DCC 22.28.030(C) and the LUBA remand, the Board reopened the record to take testimony on the applications to change the comprehensive plan designation of the subject property from Agricultural (AG) to Rural Residential Exception Area (RREA) and a corresponding zone change from Exclusive Farm Use (EFU) to Rural Residential (RR10); now, therefore,

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

Section 1. AMENDMENT. DCC Title 23, Deschutes County Comprehensive Plan Map, is amended to change the plan designation for certain property described in Exhibit "A" and depicted on the map set forth as Exhibit "B" from AG to RREA, with both exhibits attached and incorporated by reference herein.

Section 2. AMENDMENT. DCC Title 18, Zoning Map, is amended to change the zone designation from EFU to RR10 for certain property described in Exhibit "A" and depicted on the map set forth as Exhibit "C", with both exhibits attached and incorporated by reference herein.

Section 3. AMENDMENT. DCC Section 23.01.010, Introduction, is amended to read as described in Exhibit "D" attached and incorporated by reference herein, with new language underlined.

Section 4. AMENDMENT. Deschutes County Comprehensive Plan Section 5.12, Legislative History, is amended to read as described in Exhibit "E" attached and incorporated by reference herein, with new language underlined.

Section 5. FINDINGS. The Board adopts as its findings in support of this Ordinance the Decision of the Board on remand as set forth in Exhibit "F" and incorporated by reference herein. The Board also incorporates in its findings in support of this decision, the original Decision of the Board attached as Exhibit "G", the Recommendation of the Hearings Officer, attached as Exhibit "H", each incorporated by reference herein.

Section 6. EFFECTIVE DATE. This Ordinance takes effect on the 90th day after the date of adoption.

Dated this _____ of _____, 2024

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PATTI ADAIR, Chair

ANTHONY DEBONE, Vice Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner

Date of 1st Reading: ____ day of _____, 2024.

Date of 2nd Reading: ____ day of _____, 2024.

Record of Adoption Vote:

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

Effective date: ____ day of _____, 202_.

ATTEST

Recording Secretary

Exhibit "A"

Legal Descriptions of Affected Properties

TRACT 1 (Current tax lot 14-12-2100-00700)

That portion of the NE1/4 of the NE1/4 of Section 21, T14S, R12E, W.M. lying Easterly and Southeasterly of the following described line:

Beginning at the Northeast corner of said Section 21;
thence 10.00 feet west along the North line of said Section 21;
thence South 1000.00 feet along a line parallel to the East line of said Section 21;
thence on a straight line to the Southwest corner of said Section 21.

TRACT 2 (Current tax lot 14-12-2100-00600)

The Northerly 165.00 feet of the NE1/4 of Section 28, T14S, R12E, W.M.;
The S1/2 of the SE1/4 of Section 21, T14S, R12E, W.M.;
The NE1/4 of the SE1/4 of Section 21, T14S, R12E, W.M., and
That portion of the SE1/4 of the NE1/4 of Section 21, T14S, R12E, W.M. Lying Southeasterly of the following described line:

BEGINNING at the Northeast corner of said Section 21;
thence 10.00 feet West along the North line of said Section 21;
thence South 1000.00 feet along a line parallel to the East line of said Section 21;
thence on a straight line to the Southwest corner of said Section 21.

TRACT 3 (Current tax lot 14-12-2100-00500)

That portion of the SW1/4 of the NE1/4 of Section 21. T14S, R12E, W.M. Lying Southeasterly of the following described line:

BEGINNING at the Northeast corner of said Section 21;
thence 10.00 feet West along the North line of said Section 21;
thence South 1000.00 feet along a line parallel to the East line of said Section 21;
thence on a straight line to the Southwest corner of said Section 21.

TRACT 4 (Current tax lot 14-12-2100-00400)

That portion of the NE1/4 of the SW1/4 of Section 21, T14S, R12E, W.M. Lying Southeasterly of the following described line:

BEGINNING at the Northeast corner of said Section 21;
thence 10.00 feet West along the North line of said Section 21;
thence South 1000.00 feet along a line parallel to the East line of said Section 21;
thence on a straight line to the Southwest corner of said Section 21.

TRACT 5 (Current tax lot 14-12-2100-00300)

The Northerly 165.00 feet of the NW1/4 of Section 28, T14S, R12E, W. M., those portions of the NW1/4 of the SE1/4, the SE1/4 of the SW1/4 and the SW1/4 of the SW1/4 of Section 21 T14S, R12E, W.M. Lying Southeasterly of the following described line:

BEGINNING at the Northeast corner of said Section 21;
thence 10.00 feet West along the North line of said Section 21;
thence South 1000.00 feet along a line parallel to the East line of said Section 21;
thence on a straight line to the Southwest corner of said Section 21.

TRACT 6 (Current tax lot 14-12-2800-00100)

The NE1/4 of Section 28, T14S, R12E, W.M.

EXCEPTING the Northerly 165.00 feet THEREOF.

TRACT 7 (Current tax lot 14-12-2800-00200)

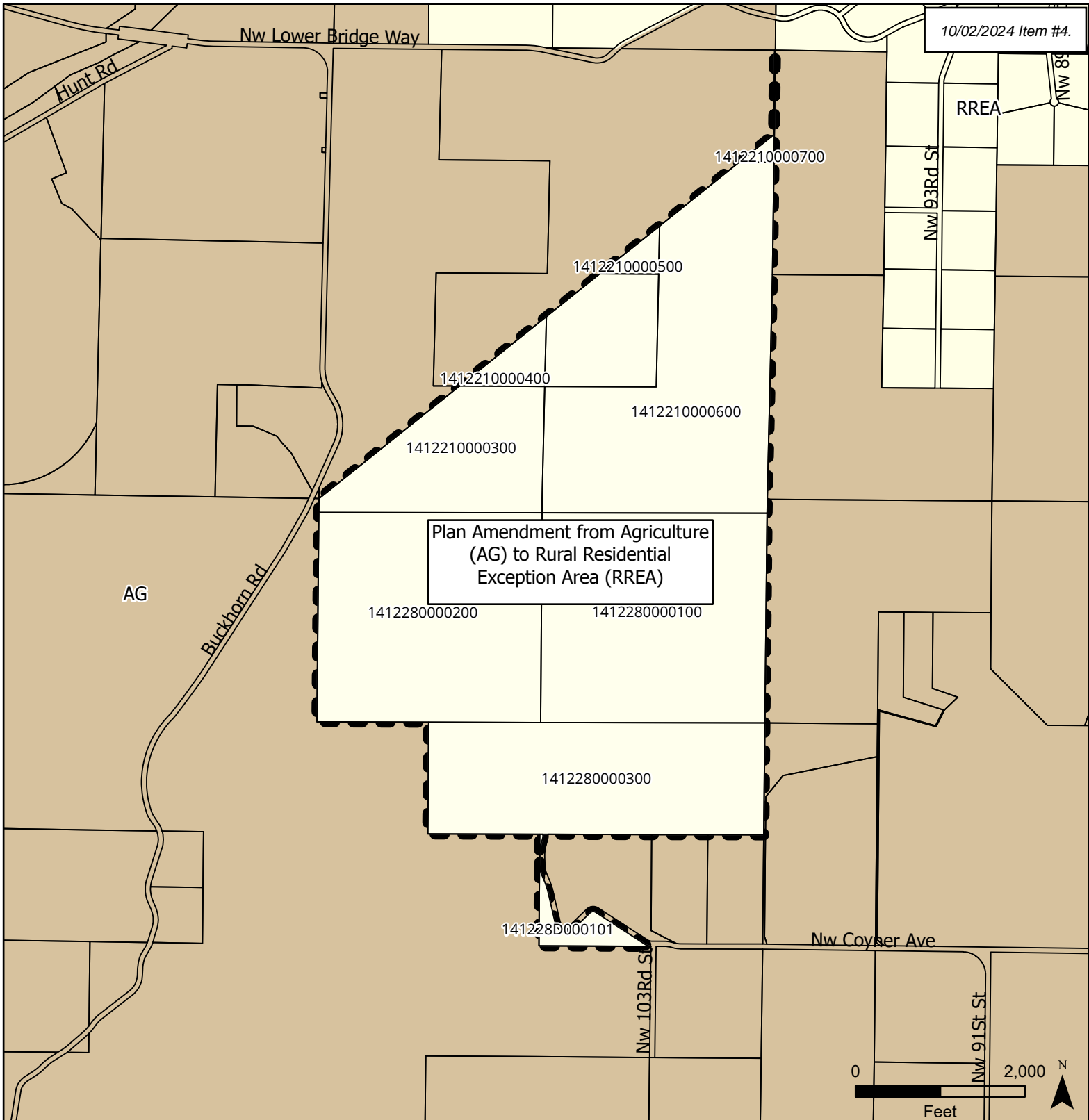
The NW1/4 of Section 28, T14S, R12E, W.M.
EXCEPTING THEREFROM the Northerly 165.00 feet THEREOF.






TRACT 8 (Current tax lot 14-12-2800-00300)

The NE1/4 of the SW1/4 and the N1/2 of the SE1/4 of Section 28, T14S, R12E, W.M.

TRACT 9 (Current tax lot 14-12-28D0-00101)

PARCEL 2 of Partition Plat No. 2015-15 according to the official Plat THEREOF as recorded in the office of County Clerk for Deschutes County, Oregon.



-  Proposed Plan Amendment Boundary
-  Comprehensive Plan Designation
-  RREA - Rural Residential Exception Area
-  AG - Agriculture
-  Subject_Property

Proposed Comprehensive Plan Map

Applicant: 710 Properties, LLC
 Taxlots: 14-12-28-D0-00101
 14-12-28-00-00100, 200, 300
 14-12-21-00-00300, 400, 500, 600, 700

Exhibit "B" to Ordinance 2024-010

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

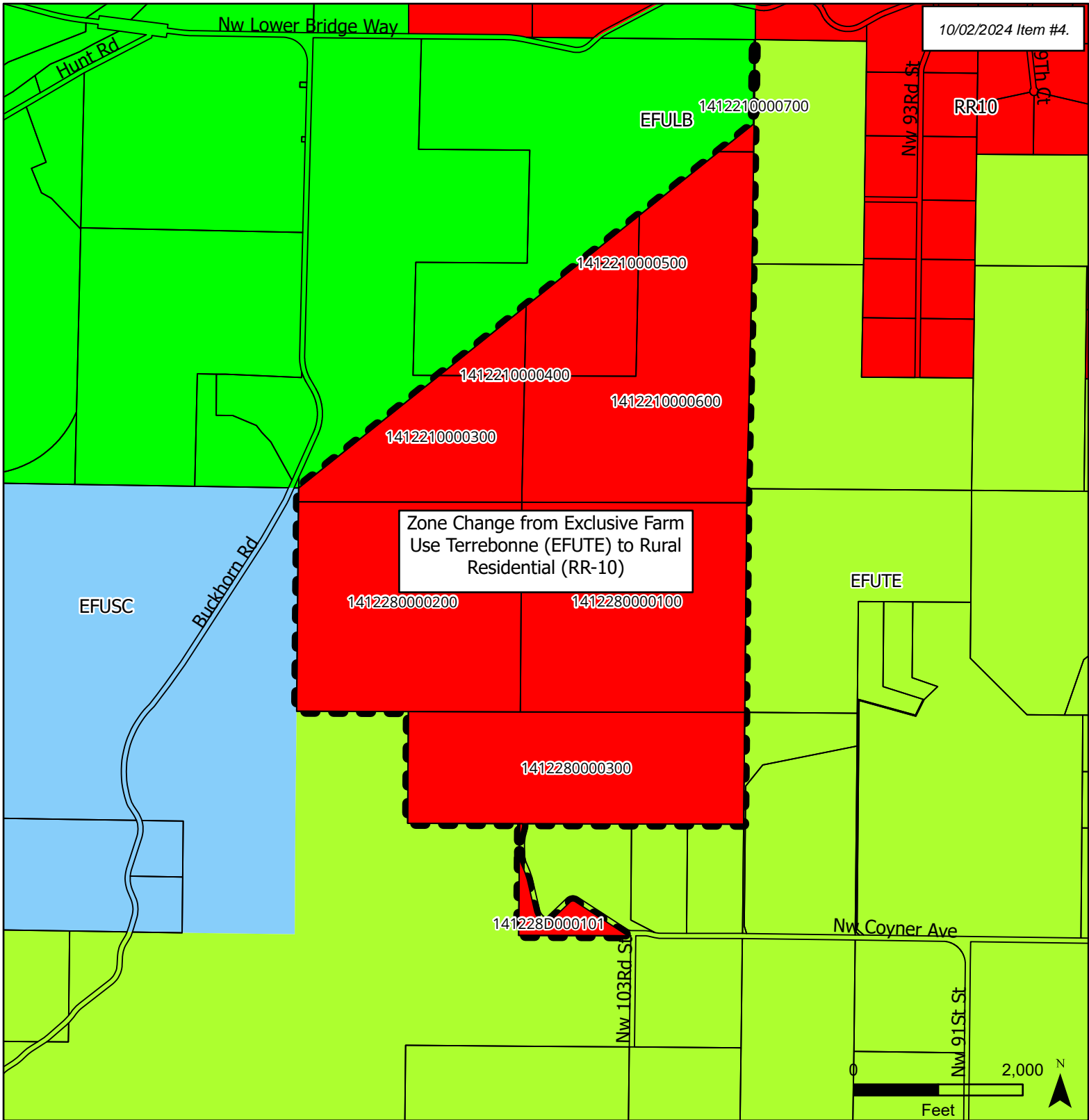
Patti Adair, Chair

Anthony DeBone, Vice Chair






Phil Chang, Commissioner

ATTEST: Recording Secretary

Dated this ____ day of ____, 20____
Effective Date: ____, 20____



Zone Change from Exclusive Farm Use Terrebonne (EFUTE) to Rural Residential (RR-10)

-  Proposed Zone Boundary
- Zoning**
-  RR10 - RURAL RESIDENTIAL
-  EFUSC - SISTERS/CLOVERDALE SUBZONE
-  EFUTE - TERREBONNE SUBZONE
-  EFULB - LOWER BRIDGE SUBZONE
- GISData.GISADMIN.Street

Proposed Zoning Map

Applicant: 710 Properties, LLC
 Taxlots: 14-12-28-D0-00101
 14-12-28-00-00100, 200, 300
 14-12-21-00-00300, 400, 500, 600, 700

Exhibit "C" to Ordinance 2024-010

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

Patti Adair, Chair

Anthony DeBone, Vice Chair

Phil Chang, Commissioner

ATTEST: Recording Secretary

Dated this ____ day of ____, 20____
 Effective Date: ____, 20____

Exhibit “D” to Ordinance 2024-010 – Comprehensive Plan Section 5.12

TITLE 23 COMPREHENSIVE PLAN

CHAPTER 23.01 COMPREHENSIVE PLAN

- ~~A. The Deschutes County Comprehensive Plan, adopted by the Board in Ordinance 2011-003 and found on the Deschutes County Community Development Department website, is incorporated by reference herein.~~
- B. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2011-027, are incorporated by reference herein.
- C. [Repealed by Ordinance 2013-001, §1]
- D. [Repealed by Ordinance 2023-017]
- E. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-012, are incorporated by reference herein.
- F. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-016, are incorporated by reference herein.
- G. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-002, are incorporated by reference herein.
- H. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-009, are incorporated by reference herein.
- I. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-012, are incorporated by reference herein.
- J. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-007, are incorporated by reference herein.
- K. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-005, are incorporated by reference herein.
- L. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-006, are incorporated by reference herein.
- M. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-012, are incorporated by reference herein.
- N. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-021, are incorporated by reference herein.
- O. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-027, are incorporated by reference herein.
- P. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-021, are incorporated by reference herein.

Exhibit D to Ordinance 2024-010 – Comprehensive Plan Section 23.01

- Q. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-029, are incorporated by reference herein.
- R. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-018, are incorporated by reference herein.
- S. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-010, are incorporated by reference herein.
- T. [Repealed by Ordinance 2016-027 §1]
- U. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-022, are incorporated by reference herein.
- V. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-005, are incorporated by reference herein.
- W. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-027, are incorporated by reference herein.
- X. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-029, are incorporated by reference herein.
- Y. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2017-007, are incorporated by reference herein.
- Z. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-002, are incorporated by reference herein.
- AA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-006, are incorporated by reference herein.
- AB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-011, are incorporated by reference herein.
- AC. [repealed by Ord. 2019-010 §1, 2019]
- AD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-008, are incorporated by reference herein.
- AE. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-002, are incorporated by reference herein.
- AF. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-001, are incorporated by reference herein.
- AG. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-003, are incorporated by reference herein.
- AH. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-004, are incorporated by reference herein.

AI. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-011, are incorporated by reference herein.

AJ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-006, are incorporated by reference herein.

AK. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-019, are incorporated by reference herein.

AL. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-016, are incorporated by reference herein.

AM. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-001, are incorporated by reference herein.

AN. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-002, are incorporated by reference herein.

AO. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-003, are incorporated by reference herein.

AP. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-008, are incorporated by reference herein.

AQ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-007, are incorporated by reference herein.

AR. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-006, are incorporated by reference herein.

AS. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-009, are incorporated by reference herein.

AT. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-013, are incorporated by reference herein.

AU. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2021-002, are incorporated by reference herein.

AV. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2021-005, are incorporated by reference herein.

AW. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2021-008, are incorporated by reference herein.

AX. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-001, are incorporated by reference herein.

AY. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-003, are incorporated by reference herein.

- AZ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-006, are incorporated by reference herein.
- BA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-010, are incorporated by reference herein.
- BB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-011, are incorporated by reference herein. (superseded by Ord. 2023-015)
- BC. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-013, are incorporated by reference herein. (superseded by Ord. 2024-010)
- BD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-001, are incorporated by reference herein.
- BE. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-007, are incorporated by reference herein.
- BF. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-010 are incorporated by reference herein.
- BG. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-018, are incorporated by reference herein.
- BH. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-015, are incorporated by reference herein.
- BI. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-025, are incorporated by reference herein.
- BJ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-001, are incorporated by reference herein.
- BK. The Deschutes County Comprehensive Plan, adopted by the Board in Ordinance 2024-007 and found on the Deschutes County Community Development Department website, is incorporated by reference herein.
- BL. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-010, are incorporated by reference herein.

Click here to be directed to the Comprehensive Plan (<http://www.deschutes.org/complan>)

Section 5.12 Legislative History

Background

This section contains the legislative history of this Comprehensive Plan.

Table 5.12.1 Comprehensive Plan Ordinance History

Ordinance	Date Adopted/ Effective	Chapter/Section	Amendment
2011-003	8-10-11/11-9-11	All, except Transportation, Tumalo and Terrebonne Community Plans, Deschutes Junction, Destination Resorts and ordinances adopted in 2011	Comprehensive Plan update
2011-027	10-31-11/11-9-11	2.5, 2.6, 3.4, 3.10, 3.5, 4.6, 5.3, 5.8, 5.11, 23.40A, 23.40B, 23.40.065, 23.01.010	Housekeeping amendments to ensure a smooth transition to the updated Plan
2012-005	8-20-12/11-19-12	23.60, 23.64 (repealed), 3.7 (revised), Appendix C (added)	Updated Transportation System Plan
2012-012	8-20-12/8-20-12	4.1, 4.2	La Pine Urban Growth Boundary
2012-016	12-3-12/3-4-13	3.9	Housekeeping amendments to Destination Resort Chapter
2013-002	1-7-13/1-7-13	4.2	Central Oregon Regional Large-lot Employment Land Need Analysis
2013-009	2-6-13/5-8-13	1.3	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2013-012	5-8-13/8-6-13	23.01.010	Comprehensive Plan Map Amendment, including certain property within City of Bend Urban Growth Boundary
2013-007	5-29-13/8-27-13	3.10, 3.11	Newberry Country: A Plan for Southern Deschutes County

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2013-016	10-21-13/10-21-13	23.01.010	Comprehensive Plan Map Amendment, including certain property within City of Sisters Urban Growth Boundary
2014-005	2-26-14/2-26-14	23.01.010	Comprehensive Plan Map Amendment, including certain property within City of Bend Urban Growth Boundary
2014-012	4-2-14/7-1-14	3.10, 3.11	Housekeeping amendments to Title 23.
2014-021	8-27-14/11-25-14	23.01.010, 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from Sunriver Urban Unincorporated Community Forest to Sunriver Urban Unincorporated Community Utility
2014-021	8-27-14/11-25-14	23.01.010, 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from Sunriver Urban Unincorporated Community Forest to Sunriver Urban Unincorporated Community Utility
2014-027	12-15-14/3-31-15	23.01.010, 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Industrial
2015-021	11-9-15/2-22-16	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Surface Mining.
2015-029	11-23-15/11-30-15	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Tumalo Residential 5-Acre Minimum to Tumalo Industrial
2015-018	12-9-15/3-27-16	23.01.010, 2.2, 4.3	Housekeeping Amendments to Title 23.

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2015-010	12-2-15/12-2-15	2.6	Comprehensive Plan Text and Map Amendment recognizing Greater Sage-Grouse Habitat Inventories
2016-001	12-21-15/04-5-16	23.01.010; 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from, Agriculture to Rural Industrial (exception area)
2016-007	2-10-16/5-10-16	23.01.010; 5.10	Comprehensive Plan Amendment to add an exception to Statewide Planning Goal II to allow sewers in unincorporated lands in Southern Deschutes County
2016-005	11-28-16/2-16-17	23.01.010, 2.2, 3.3	Comprehensive Plan Amendment recognizing non-resource lands process allowed under State law to change EFU zoning
2016-022	9-28-16/11-14-16	23.01.010, 1.3, 4.2	Comprehensive plan Amendment, including certain property within City of Bend Urban Growth Boundary
2016-029	12-14-16/12/28/16	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from, Agriculture to Rural Industrial
2017-007	10-30-17/10-30-17	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2018-002	1-3-18/1-25-18	23.01, 2.6	Comprehensive Plan Amendment permitting churches in the Wildlife Area Combining Zone

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2018-006	8-22-18/11-20-18	23.01.010, 5.8, 5.9	Housekeeping Amendments correcting tax lot numbers in Non-Significant Mining Mineral and Aggregate Inventory; modifying Goal 5 Inventory of Cultural and Historic Resources
2018-011	9-12-18/12-11-18	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2018-005	9-19-18/10-10-18	23.01.010, 2.5, Tumalo Community Plan, Newberry Country Plan	Comprehensive Plan Map Amendment, removing Flood Plain Comprehensive Plan Designation; Comprehensive Plan Amendment adding Flood Plain Combining Zone purpose statement.
2018-008	9-26-18/10-26-18	23.01.010, 3.4	Comprehensive Plan Amendment allowing for the potential of new properties to be designated as Rural Commercial or Rural Industrial
2019-002	1-2-19/4-2-19	23.01.010, 5.8	Comprehensive Plan Map Amendment changing designation of certain property from Surface Mining to Rural Residential Exception Area; Modifying Goal 5 Mineral and Aggregate Inventory; Modifying Non-Significant Mining Mineral and Aggregate Inventory
2019-001	1-16-19/4-16-19	1.3, 3.3, 4.2, 5.10, 23.01	Comprehensive Plan and Text Amendment to add a new zone to Title 19: Westside Transect Zone.

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2019-003	02-12-19/03-12-19	23.01.010, 4.2	Comprehensive Plan Map Amendment changing designation of certain property from Agriculture to Redmond Urban Growth Area for the Large Lot Industrial Program
2019-004	02-12-19/03-12-19	23.01.010, 4.2	Comprehensive Plan Map Amendment changing designation of certain property from Agriculture to Redmond Urban Growth Area for the expansion of the Deschutes County Fairgrounds and relocation of Oregon Military Department National Guard Armory.
2019-011	05-01-19/05-16/19	23.01.010, 4.2	Comprehensive Plan Map Amendment to adjust the Bend Urban Growth Boundary to accommodate the refinement of the Skyline Ranch Road alignment and the refinement of the West Area Master Plan Area I boundary. The ordinance also amends the Comprehensive Plan designation of Urban Area Reserve for those lands leaving the UGB.
2019-006	03-13-19/06-11-19	23.01.010,	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2019-016	11-25-19/02-24-20	23.01.01, 2.5	Comprehensive Plan and Text amendments incorporating language from DLCDD’s 2014 Model Flood Ordinance and Establishing a purpose statement for the Flood Plain Zone.

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2019-019	12-11-19/12-11-19	23.01.01, 2.5	Comprehensive Plan and Text amendments to provide procedures related to the division of certain split zoned properties containing Flood Plain zoning and involving a former or piped irrigation canal.
2020-001	12-11-19/12-11-19	23.01.01, 2.5	Comprehensive Plan and Text amendments to provide procedures related to the division of certain split zoned properties containing Flood Plain zoning and involving a former or piped irrigation canal.
2020-002	2-26-20/5-26-20	23.01.01, 4.2, 5.2	Comprehensive Plan Map Amendment to adjust the Redmond Urban Growth Boundary through an equal exchange of land to/from the Redmond UGB. The exchange property is being offered to better achieve land needs that were detailed in the 2012 SB 1544 by providing more development ready land within the Redmond UGB. The ordinance also amends the Comprehensive Plan designation of Urban Area Reserve for those lands leaving the UGB.
2020-003	02-26-20/05-26-20	23.01.01, 5.10	Comprehensive Plan Amendment with exception to Statewide Planning Goal 11 (Public Facilities and Services) to allow sewer on rural lands to serve the City of Bend Outback Water Facility.

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2020-008	06-24-20/09-22-20	23.01.010, Appendix C	Comprehensive Plan Transportation System Plan Amendment to add roundabouts at US 20/Cook-O.B. Riley and US 20/Old Bend-Redmond Hwy intersections; amend Tables 5.3.T1 and 5.3.T2 and amend TSP text.
2020-007	07-29-20/10-27-20	23.01.010, 2.6	Housekeeping Amendments correcting references to two Sage Grouse ordinances.
2020-006	08-12-20/11-10-20	23.01.01, 2.11, 5.9	Comprehensive Plan and Text amendments to update the County’s Resource List and Historic Preservation Ordinance to comply with the State Historic Preservation Rule.
2020-009	08-19-20/11-17-20	23.01.010, Appendix C	Comprehensive Plan Transportation System Plan Amendment to add reference to J turns on US 97 raised median between Bend and Redmond; delete language about disconnecting Vandevent Road from US 97.
2020-013	08-26-20/11/24/20	23.01.01, 5.8	Comprehensive Plan Text And Map Designation for Certain Properties from Surface Mine (SM) and Agriculture (AG) To Rural Residential Exception Area (RREA) and Remove Surface Mining Site 461 from the County's Goal 5 Inventory of Significant Mineral and Aggregate Resource Sites.
2021-002	01-27-21/04-27-21	23.01.01	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) To Rural Industrial (RI)

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2021-005	06-16-21/06-16-21	23.01.01, 4.2	Comprehensive Plan Map Amendment Designation for Certain Property from Agriculture (AG) To Redmond Urban Growth Area (RUGA) and text amendment
2021-008	06-30-21/09-28-21	23.01.01	Comprehensive Plan Map Amendment Designation for Certain Property Adding Redmond Urban Growth Area (RUGA) and Fixing Scrivener’s Error in Ord. 2020-022
2022-001	04-13-22/07-12-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2022-003	04-20-22/07-19-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2022-006	06-22-22/08-19-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Rural Residential Exception Area (RREA) to Bend Urban Growth Area
2022-011	07-27-22/10-25-22 (superseded by Ord. 2023-015)	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) To Rural Industrial (RI)
2022-013	12-14-22/03-14-23 <u>(superseded by Ord. 2024-010)</u>	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)

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2023-001	03-01-23/05-30-23	23.01.010, 5.9	Housekeeping Amendments correcting the location for the Lynch and Roberts Store Advertisement, a designated Cultural and Historic Resource
2023-007	04-26-23/6-25-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2023-010	06-21-23/9-17-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2023-018	08-30-23/11-28-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2023-015	9-13-23/12-12-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Industrial (RI)
2023-025	11-29-23/2-27-24	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Rural Residential Exception Area (RREA) to Bend Urban Growth Area
2024-001	1-31-24/4-30-24	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Rural Residential Exception Area (RREA) to Bend Urban Growth Area

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2023-017	3-20-24/6-20-24	23.01(D) (repealed), 23.01(Bj) (added), 3.7 (amended), Appendix C (replaced)	Updated Transportation System Plan
2024-007	10-02-24/12-31-24	23.01(A)(repealed) 23.01(BK) (added)	Repeal and Replacement of 2030 Comprehensive Plan with 2040 Comprehensive Plan
<u>2024-010</u>	<u>10-16-24/01-14-25</u>	<u>23.01.010</u>	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)

EXHIBIT F- Ordinance 2024-010

**BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON
FINDINGS OF FACT AND CONCLUSIONS OF LAW ON REMAND**

FILE NUMBERS: 247-24-000395-A, 247-21-001043-PA, 247-21-001044-ZC

APPLICANT: 710 Properties, LLC

OWNER: Eden Central Properties, LLC

**APPLICANT’S
ATTORNEY:** J. Kenneth Katzaroff
Schwabe, Williamson & Wyatt, P.C.
360 SW Bond St, Suite #500
Bend, OR 97702

STAFF PLANNER: Haleigh King, AICP, Associate Planner
Haleigh.King@deschutes.org, 541-383-6710

APPLICATION: Remand of Board of Commissioners’ Decision Approving a Comprehensive Plan Amendment to re-designate the subject property from Agriculture to Rural Residential Exception Area and a corresponding Zone Change to change the zoning of the subject property from Exclusive Farm Use – Terrebonne Subzone (EFU-TE) to Rural Residential (RR-10).

SUBJECT PROPERTY: Assessor’s Map 14-12-28, Tax Lots 100, 200, 300
Assessor’s Map 14-12-28D, Tax Lot 101
Assessor’s Map 14-12-21, Tax Lots 300, 400, 500, 600 and 700

I. PROCEDURAL HISTORY:

This matter is on remand to the County following remand by the Land Use Board of Appeals (“LUBA”) and the Court of Appeals. This decision (“Decision”) addresses only those issues on remand to the County and does not revisit other findings that are outside of the scope of remand; such issues, therefore, are settled. The findings in this document supplement the findings of the Board of Commissioners’ (“Board”) 2022 decision that approved the plan amendment and zone change requested by 710 Properties, LLC and control over inconsistent findings in that decision, including the Hearings Officer’s June 2, 2022 recommendation which was made a part of the decision. Additionally, as stated in our 2022 decision, findings in the Board’s decision control over inconsistent findings in the Hearings Officer’s recommendation.

The County’s land use hearings officer conducted the initial hearing regarding the 710 Properties, LLC Comprehensive Plan Amendment and Zone Change applications on April 19, 2022 and recommended approval of the applications by the Deschutes County Board of Commissioners

(“Board”) in a decision dated June 2, 2022. The Board conducted a *de novo* land use hearing on August 17, 2022. The Board deliberated and voted to approve the applications on September 28, 2022. On December 14, 2022, the Board approved the applications. Appeals of that decision were filed with the Oregon Land Use Board of Appeals (“LUBA”) by Central Oregon LandWatch and the Department of Land Conservation and Development. On July 28, 2023, LUBA issued a decision remanding the applications to the County to address five specific issues. LUBA’s decision was appealed by 710 Properties, LLC, Charles Thomas and 1000 Friends of Oregon. The Oregon Court of Appeals (“Court”) affirmed LUBA’s decision on January 24, 2024. On April 5, 2024, LUBA issued a Notice of Final Judgment that found that the Court’s decision became effective April 4, 2024.

On June 25, 2024 the applicant 710 Properties, LLC initiated a review of its applications on remand. The Board held a hearing on remand on July 24, 2024 and mailed notice of the hearing to all parties to the 2022 review of the plan amendment and zone change applications on July 1, 2024 and July 9, 2024. The notice summarized and listed the issues remanded and reopened the record to address those issues. DCC 22.34.040(C) provides that issues resolved by LUBA or that were not appealed shall be deemed waived and may not be reopened. To the extent parties submitted evidence or arguments that do not relate to the issues on remand, they are not addressed by this decision because they relate to settled issues.

At the close of the hearing on July 24, 2024, the Board considered whether to conduct a second hearing due to the volume of new information filed with the County shortly before and at the public hearing. It determined that this issue could be addressed by providing a two-week long open record period that closed on August 7, 2024 for parties to file new evidence, including evidence responsive to issues raised in those documents. The Board also allowed a 7-day rebuttal period ending August 14, 2024 and a 7-day period ending August 21, 2024 for the applicant to file final argument. No objection was raised to this schedule prior to the close of the hearing. On July 26, 2024, a request was made by opponent Steve Ahlberg to hold a second hearing for the purpose of having two of the three commissioners state their reason for voting to support the plan amendment and zone change. Other opponents supported Mr. Ahlberg's request. A second hearing was not set, however, because the Board had already decided the issue on July 24, 2024, because the hearing was not requested to address any of the issues remanded to the County by LUBA and because the reasons for supporting the approval of the 2022 decision are set out in length in the Board’s 2022 decision.

On September 4, 2024, the Board deliberated and considered all issues remanded to it by LUBA. Thereafter, it voted 2-1 to again approve the plan amendment and zone change applications. This decision supports the Board’s action.

II. FINDINGS AND CONCLUSIONS OF LAW:

The Board of County Commissioners approves the requested plan designation and zone change applications for the subject property (“Property”) and provides the following supplemental findings and conclusions of law. The Board also expressly incorporates and adopts the additional findings and analysis included in **Attachment A** as a part of this Decision.

A. Remand Issues 1 and 2: Is the Property “suitable” for farm use considering the factors under OAR 660-033-0020(1)(a)(B) if feed is imported for farm animals or if used in conjunction with other property as required by OAR 660-033-0030(3)?

Legal Requirements

LUBA remanded the Board’s 2022 decision to consider whether the subject property is suitable for farm use considering whether importing feed or using the property in conjunction with adjoining and nearby lands would make the property suitable for farm use.

OAR 660-0033-0030(3) requires that “*nearby or adjacent land*, regardless of ownership, *shall be examined to the extent that a lot or parcel is *** suitable for farm use* or ‘necessary to permit farm practices to be undertaken on adjacent or nearby lands’ outside the lot or parcel.”

OAR 660-033-0030(C) applies to “adjacent or nearby agricultural lands.” Those lands were identified in our 2022 decision in findings of compliance with OAR 660-033-0030(C). Rec-98-100. 1000 Friends argued that farm practices on those lands had not been identified in our 2022 decision, but LUBA found otherwise. We refer to these lands herein as the “Study Area.” There are four properties in the Study Area that are engaged in activities that might, if conducted with an intention to make a profit in money, qualify as “farm use.” These properties are the Buchanan and Stabb property on Coyner Road and the Nicol Valley and Volwood Farms properties that adjoin Buckhorn Road. These properties and their farm practices are addressed in more detail in our findings regarding the impact of approval of this application on adjacent or nearby agricultural lands..

The suitability analysis is set out in OAR 660-033-0020(1)(a)(B).

OAR 660-033-0020(1)(a)(B) defines agricultural land as:

[I]and in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration:

- soil fertility,
- suitability for grazing,
- climatic conditions,
- existing and future availability of water for farm irrigation purposes.
- existing land use patterns,
- technological and energy inputs required, and
- accepted farming practices.

In relevant part, ORS 215.203(2)(a) states that:

*“‘farm use’ means the current employment of land for the **primary purpose of obtaining a profit in money** by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination*

thereof.
Emphasis added.

The definition and Oregon law require more than just having a cow or horses, growing a patch of grapes, or having a passion for rural living. What the law requires is that the land be “currently employed” for “the primary purpose of obtaining a profit in money[.]” ORS 215.203(2)(a). The primary purpose test is an objective, reasonable farmer test.

Oregon courts address profitability as an element of the definition of “agricultural land.” In *Wetherell v. Douglas County*, 342 Or 666 (2007), the Oregon Supreme Court held that profitability is a “profit in money” rather than gross income. In *Wetherell*, the Court invalidated a rule that precluded a local government from analyzing profitability in money as part of this consideration. *Id.* At 683. The Court stated:

“We further conclude that the meaning of “profitability,” as used in OAR 660-033-0030(5), essentially mirrors that of “profit.” For the reasons described above, that rule’s prohibition of any consideration of “profitability” in agricultural land use determinations conflicts with the definition of “farm use” in ORS 215.203(2)(a) and Goal 3, which permit such consideration. OAR 660-033-0030(5) is therefore invalid, because it prohibits consideration of “profitability” The factfinder may consider “profitability” which includes consideration of the monetary benefits or advantages that are or may be obtained from the farm use of the property and the costs or expenses associated with those benefits, to the extent such consideration is consistent with the remainder of the definition of “agricultural land” in Goal 3.

Finally, the prohibition in OAR 660-033-0030(5) of the consideration of “gross farm income” in determining whether a particular parcel of land is suitable for farm use also is invalid. As discussed above, “profit” is the excess or the net of the returns or receipts over the costs or expenses associated with the activity that produced the returns. To determine whether there is or can be a “profit in money” from the “current employment of [the] land * * * by raising, harvesting and selling crops[.]” a factfinder can consider the gross income that is, or could be, generated from the land in question, in addition to other considerations that relate to “profit” or are relevant under ORS 215.203(2)(a) and Goal 3.

We therefore hold that, because Goal 3 provides that “farm use” is defined by ORS 215.203, which includes a definition of “farm use” as “the current employment of land for the primary purpose of obtaining a profit in money[.]” LCDC may not preclude a local government making a land use decision from considering “profitability” or “gross farm income” in determining whether land is “agricultural land” because it is “suitable for farm use” under Goal 3. Because OAR 660-033-0030(5) precludes such consideration, it is invalid.”

Emphasis added. *Id.*, at 681-683.

Opponents in the current proceeding argue extensively that it is possible to conduct agricultural practices and ranching on the subject property but typically do not claim that those practices would be conducted by a reasonable farmer for the primary purpose for obtaining a profit in money. For instance, opponents argue that the property can be used for livestock grazing for a few months in the Spring but none argue that it would support year-round grazing. This is an activity we found in our 2022 decision that would not be undertaken by a reasonable farmer with a primary purpose of making a profit in money.

LUBA’s Decision

In its 710 Properties decision, LUBA faulted the County for adopting a decision which only reviewed “farm uses” and their ability to be profitable if conducted on the *subject property*, as opposed to also being used in conjunction with “nearby and adjacent” agricultural lands. This is because, LUBA reasoned, OAR 660-033-0030(3) requires consideration of uses occurring on adjacent or nearby lands when assessing the suitability of land for farm use.¹ 710 LUBA Decision, pg. 47-48.

LUBA also found that our 2022 decision was deficient in failing to consider the importation of feed from off-site when it found “the subject property is not suitable for the feeding, breeding, management, and sale of livestock and poultry or the stabling or training of equines for the primary purpose of obtaining a profit in money, given the” suitability factors. LUBA also faulted the County for failing to consider the suitability of conducting the on-site construction and maintenance of equipment and facilities used for a “farm use” as defined by ORS 215.203(2)(a) use to serve properties other than the subject property.²

LUBA affirmed the County’s determination that “farm use” “means the current employment of land for the primary purpose of obtaining a profit in money.” LUBA agreed that the \$345,000 annual cost of financing the \$8,635,000 cost of acquiring irrigation water rights and developing an irrigation system for a part of the 710-acre Property is a permissible consideration when evaluating whether land is suitable for farm use. LUBA determined that the Board applied the correct test of profitability – “whether a reasonable farmer would be motivated to put the land to agricultural use, for the primary purpose of obtaining a profit in money” and “whether the property is capable of farm use with a reasonable expectation of yielding a profit in money.”

LUBA deferred addressing DLCD’s substantial evidence challenge presented in DLCD’s Assignment of Error 4 (“AOE 4”). DLCD claimed that our findings regarding farm uses involving livestock or other animals were based on statements of farmers and ranchers focused on cattle grazing were conclusory and unhelpful and not “substantial evidence” to support the legal conclusion that the property is not suitable for farm use. DLCD also argued that the information provided regarding animals is “basic, fact sheet-type information that someone might glance through to learn about an animal.”

¹ We address this rule in further detail below.
² We address this issue in further detail, below.

Remand Issue 1: Is the Property “suitable” for farm use when considering adjacent or nearby lands — or in conjunction with such lands —under OAR 660-033-0030(3)?

LUBA determined that relating the profitability of farm related activity solely to the activity on the Property places undue weight on profitability” when assessing whether land is suitable for farm use. LUBA held that the findings must consider the ability of a farmer to use the subject property in conjunction with adjacent or nearby agricultural lands with a primary purpose of obtaining a profit in money.

The Board’s 2022 decision identifies nearby or adjacent lands and the farm uses occurring thereon at Rec-97-100, the Study Area. The former Volwood Farms, Nicol Valley Farms, Stabb and Buchanan properties are the only Study Area properties engaged in activities that constitute farm use if conducted with a reasonable expectation of making a profit in money. The Buchanan property is the only property in the Study Area identified as keeping livestock. As determined in 2022, the subject property alone is not suitable for irrigated agriculture due to the prohibitive cost of financing the acquisition of water rights and the development and operation of wells, pumps and irrigation pivots. All other properties in the study area are engaged in crop production that is dependent on irrigation water obtained by pumping groundwater from the aquifer.

The Buchanans use their nearby property for wintering and calving cattle. They claim that the Keystone cattle operation is profitable³ and that the Eden Central property is “suitable for grazing on at least a seasonal basis, with an eye to making a profit by so doing.” 2024-07-24 Buchanan letter, p. 2. They claim to need to lease or make use of 700-900 non-irrigated acres [Eden Central] near their small ranch to expand their cattle operation and to store farm equipment and horses. 2024-07-24 Buchanan letter, p. 5. In Mr. Buchanan’s combined use plan, he would use the property from April or May until early August which we refer to as Spring or seasonal grazing herein. He would not keep cattle on the Property during other months. He would not feed them hay in that location. This plan confirms the opinion of Rancher Rand Campbell the Property is not a suitable place to feed cattle in winter months. Cattle are typically wintered on feeding grounds in low lying areas that provide cover from the elements; not on the top of a plateau where it is especially cold and windy. Rec-3022.

Mr. Buchanan claims it is feasible to farm “grounds such as this [Eden Central] and make a profit.” He claims that forage production can be increased, without irrigation, by planting additional drought tolerant grasses (crested or Siberian wheatgrass), which may be introduced via broadcasting (by airplane) rather than by drilling. Soils scientist Brian Rabe rebutted this claim with his professional opinion, backed by NRCS-provided information, that:

³ This is a change from 2022 when the Keystone business plan acknowledged a lack of profitability and its website included a cartoon that indicated that the business was losing money. Since 2022, the Keystone operation has contracted due to the sale of one of the two Powell Butte properties where Keystone cattle graze on irrigated pastures. The Buchanans offer no explanation of how Keystone can now be profitable with a smaller cattle operation. It is generally understood, that a large cattle operation is necessary to obtain a profit due to economies of scale. See, Rec-3155 (the average ranch runs about 800 cow-calf pairs; according to former OSU Extension Agent Tim DeBoodt, 200 to 250 pairs minimum without debt and low overhead is needed for a ranch to be profitable).

“[W]ithout irrigation, the very low water holding capacity [of most of the soil on the Property] precludes any significant improvement in forage yields since even drought tolerant species require water to grow harvestable (grazable) biomass. The available water holding capacity exacerbates the very low average precipitation (about 10 inches or less).” Applicant’s Exhibit 36.

“Mr. Buchanan has asserted numerous times that crested wheatgrass is a drought tolerant species that would improve forage production at this site and could be broadcast seeded. However, the NRCS, in their Plant Fact Sheet for Crested Wheatgrass states *** crested wheat grass should be seeded with a drill at a depth of ½ inch or less on medium to fine textured soils and 1 inch or less on coarse textured soils. *** The site predominantly consists of shallow and rocky Class VII soils that would preclude the use of a drill for establishment and that has a very low water holding capacity to support the production of additional grazable biomass.” Applicant’s Exhibit 76.

We find Mr. Rabe’s opinion more persuasive than that of Mr. Buchanan due to Mr. Rabe’s soils expertise and confirmation of his opinion by the NRCS, an independent government agency that employs persons with expertise on this topic.

Mr. Buchanan also claims that bulls could be raised on the Eden Central property despite the rocky hillsides and uneven terrain. This evidence indicates that cattle could be grazed on much of the subject property, but it does not demonstrate that such an operation would be conducted with an intention to make a profit in money. Mr. Buchanan does not claim that it would or that it would generate more income than would be realized using the Property as a part of the cow-calf grazing operation they currently conduct. Evidence from former owners of the Volwood Farms property also suggests, that the grazing of the property by bulls or any other cattle would not be successful. They advised that they would not graze cattle on most of the Property because the cattle would lose weight due to the lack of forage and steep terrain. Buchanans sell directly to the consumer. They filed a part of a business plan for Keystone Natural Beef. The plan lists “start-up costs” of \$300,000. It states that income, balance and cash flow statements for the business plan are in the appendix but these appendices were not provided to the County. The Keystone “business plan” states “[p]ast 3 year Tax Returns for ranching operation available upon request.” The applicant requested the returns to assess the viability of combined operations but the Buchanans declined to provide the returns and declined to provide any more specific information regarding their size, scope, income, or costs related to Keystone. The Board thus relies upon the public statements made by Keystone, which demonstrate that it operates on irrigated pasture lands, only. In fact, Keystone Natural Beef grazes cattle on irrigated pasture land it owns in Powell Butte, Oregon. Ms. Buchanan told the County in 2022 that “we buy the irrigated land, we turn the places into Airbnbs or rentals, so that pays for our irrigated ground.” Ms. Buchanan recently sold one of her two Powell Butte irrigated properties – indicating that the Keystone business is contracting rather than expanding – rebutting the Buchanans’ claim that the Eden Central property is needed to allow for the expansion of the Keystone Natural Beef business. Ms. Buchanan opted not to purchase other available and suitable adjoining and nearby dryland grazing land – suggesting that this type of land is not actually needed by Keystone.

The Buchanans and Keystone have never made a formal offer to lease or purchase the Eden Central property. They have purchased other properties instead, including irrigated pasture land in Powell Butte. The Board, based on these and other discrepancies, finds the Buchanans’ testimony to be less credible than testimony provided by area experts, farmers, and ranchers on the same topics.

Rancher Rand Campbell assessed the viability of operating a combined cattle operation on the Buchanan Coyner Avenue and Eden Central properties. Applicant’s Exhibits 73 and 111. He found that combined operations would not be profitable and would not be undertaken by a reasonable farmer with an intention of making a profit in money. Due to the lack of information on revenues and expenditures for Keystone, Mr. Campbell relied on the accepted farm practice of raising and selling cattle at auction to estimate cattle revenue. His results are credible and consistent with those of an OSU Extension Service study of livestock economics that showed losses for Eastern Oregon cattle operations ranging in size from 150 to 400 head of cattle, even where dryland grazing occurred on BLM rangeland at highly favorable lease rates. Applicant’s Exhibit 1 (also filed by DLCD). This testimony is also supported by other experts, such as Russ Mattis, Jim Stirewalt, Matt Cyrus, and the former owners of the Volwood Farms property.

Mr. Buchanan criticized Mr. Campbell’s Exhibit 73 evidence in his final rebuttal comments. He claims, without any factual support, that the State Department of Agriculture calculation of AUMs which were relied on by Mr. Campbell “don’t take into account rotational grazing management or introducing drought-tolerant grasses.” B. Buchanan letter, August 14, 2024. Mr. Buchanan, however, offers no factual support for this claim and expert evidence in the record shows that introducing additional drought-tolerant grasses on the subject property is not feasible and would have no measurable impact on forage production. We find that the AUM estimates provided by the State of Oregon Department of Agriculture are conservative (5 to 10 acres per AUM) when compared to the level of grazing allowed by the BLM on the Cline Butte allotment (15+ acres per AUM) and the level of grazing that is typical for dry land grazing of similar Eastern Oregon lands (40 acres per AUM per Pam Mayo-Phillips). Consequently, we find it reasonable for Mr. Campbell to rely on the State’s expert evidence regarding AUMs in his assessment of the suitability of the Property for farm use.

Mr. Buchanan also claims that Mr. Campbell has not visited the Property because he says in Applicant’s Exhibit 73 that the Property is not fenced or cross fenced but the property is partially fenced. Mr. Campbell has, in fact, visited the Property. Rec-3018. He understands that it is partially fenced as he reported in 2022 but also notes that the majority of the Property is not fenced. Rec-3019. We understand his current comments to mean that cross-fencing and additional perimeter fencing are needed. Mr. Buchanan claims that loading chutes, corrals and livestock handling facilities would not be needed because they exist on his wife’s property. Even if this is correct, Mr. Campbell assessed the viability of conducting a combined cattle operation on the Buchanan Coyner Road property and the subject property without consideration of these costs. Applicant’s Exhibit 111. Mr. Campbell claims that two separate domestic wells are located at homesites on the Property. There is, however, only one domestic well and it serves a nonfarm dwelling. Even if the domestic well were used as a source of water for cattle, it would need to be taken to places on the property where the cattle are grazing by pipe or by transport by a water hauling vehicle. Furthermore, Mr. Campbell’s analysis of combined operation viability does not

rely on the cost of drilling a new well when assessing the economic viability of a combined cattle operation on the Property and the Buchanan Coyner Road property. Such an operation will lose money simply due to the cost of feeding the cattle hay. Other evidence in the record documents the additional costs associated with a cattle operation on the subject property and these expenses not specifically addressed by Mr. Campbell make it clear that a combined operation would not be profitable.

No opponent or owner of any of the three other nearby or adjacent farm properties claim that their property could be used in conjunction with the Property. All three are used exclusively or primarily to raise irrigated farm crops and all three are separated from the plateau area of the subject property which is the only area with the terrain necessary to develop (at great cost) an irrigated farm field. The cost of this endeavor, however, is cost prohibitive. The record shows that it is less expensive to purchase irrigated farm land in the surrounding area than it would be to buy water rights and develop an irrigation system on the subject property.

The current owner of the Volwood Farms property, Two Canyons, LLC, grazes approximately 50 head of cattle on its extensive land holdings in the Lower Bridge area and keeps a few head of cattle on the Volwood Farms property. It has expressed no interest in combined operations. Prior owners of Volwood Farms and other area properties in farm use have not used the Eden Central property for combined operations. Reasons why include the fact that livestock would lose weight on the property due to the lack of adequate forage and the steep terrain, the property does not produce enough AUMs to support a profitable livestock operation and crested wheatgrass would be difficult to seed due to minimal rainfall and unsuitable soils. Applicant's Exhibit 107. A money-losing livestock operation is not attractive to farmers growing crops as it would reduce the profitability of their operations.

The Board's 2022 decision finds that "grazing would not be profitable on the subject property nor would any professional rancher attempt to integrate the subject property with other ranchland holdings or operations." Rec-22. The only party to challenge that finding now is Mr. Buchanan—whom we have determined is less credible than other area ranchers for the reasons discussed above.

The Board's 2022 decision found that "[g]iven the property's location on the top of a plateau, any uses in conjunction with surrounding lands are impracticable due to the substantial physical barrier to cross-property use." Rec-79. We reiterate that finding on remand.

Even if one looks beyond the Study Area of nearby and adjacent agricultural lands, the land use patterns and farm practices on those lands are similar to the Study Area farms as shown by Exhibit 71. The Board finds that no reasonable farmer would attempt to supplement or add the Property to their existing farm operations because the addition of the Property would only lead existing profitable operations to a loss. This is due to setup costs for irrigated agriculture, and lack of prospective profitability of operating a dryland grazing operation on the Property alone or combined with a cattle operation on land with irrigated pasture. Exhibit 111.

The Board finds that the Property, even considering nearby and adjacent lands, is not suitable for farm use or as a combined operation and should be redesignated as proposed by the Applicant.

Remand Issue 2: Is the Property “suitable” for farm use with Imported Feed?

With regards to dryland grazing and livestock uses, we address those now, including whether the Property could be used for such a farm use if feed is imported to supplement the amount of forage available on the Property.

No party other than Billy Buchanan challenged our previous findings in the 2022 decision regarding the amount of forage or potential AUMs that could be supported by the Property and we do not repeat our findings here. On remand, several farmers and ranchers again testified that the Property was not suitable for dryland grazing because of that low production and, even if feed was supplemented, dryland grazing would still result in losses. This included the testimony of Rand Campbell, Russ Mattis, Matt Cyrus, and others. The applicant and DLCD also submitted information from the OSU Extension service (applicant Exhibit 1), that provides a comprehensive analysis of ranching operations in eastern Oregon. That document evaluates several ranching operations of different herd sizes that graze on a mix of private and low-cost BLM grazing land, and showed that each operation would lose substantial sums of money. The report shows that a 150-head cattle operation of this type, which opponents have argued should be conducted by the applicant, would result in a loss of \$137,770 per year. A 300-head cattle operation would have a loss of \$107,155 per year. A 400-head operation would lose \$84,799 a year.

A review and comparison of the assumptions made in estimating revenue by OSU Extension Service shows that the cost of feeding hay makes a cattle operation unprofitable. The cost of purchased hay for a small 150-cattle herd is estimated to be \$75,735 of the \$137,770 loss. The larger operations that did not rely on purchased hay, would lose far less money per head of cattle than would the small operation that feeds their cattle hay.

More tailored to the Property at hand, the applicant provided substantial information regarding the cost of imported feed, the cost of equipment and other start-up costs related to hay and other feeding infrastructure, and the production of hay and alfalfa. *See e.g.*, Exhibits 2, 3, 6, 21, 22, 29. Rancher Rand Campbell also provided a comprehensive analysis regarding the viability of conducting cattle, sheep and goat operations on the Property using a combination of grazing available forage and being fed purchased hay and feed. Exhibits 43, 47. This evidence was submitted at the hearing and was not rebutted. This comprehensive and persuasive evidence supports our finding that the level of hay required to support a cattle, sheep or goat operation on the Property would be cost prohibitive and result in sustained losses. We also find that these costs, including the cost of purchased hay, would not decrease significantly if Keystone Beef used the subject property to graze its cattle.

Mr. Buchanan of Keystone Natural Beef provided testimony that he believed that the Property had enough forage such that, that for a few months of the year, he could rent the Property and graze some of his Keystone Natural Beef (“Keystone”) and it would be profitable. As described in other areas of this Decision, we do not find Mr. Buchanan’s testimony on this, and other points to be credible..

Mr. Buchanan’s testimony is also *directly contrary* to the public statements regarding the Keystone operation, which claims to only raise cows on irrigated pastures and that such lifecycle is its

competitive advantage. *See* Exhibits 13, 54, 63. Mr. Buchanan failed to provide any specific details for the Keystone “Business Plan” which is merely a summary document that doesn’t provide numbers of cows, profit/loss, costs associated with the Keystone operation, or any basic information regarding the scope of the business.. The Keystone operation raises cattle in a *different county*, on irrigated pasture, but may engage in limited calving activities on the adjacent or nearby property owned by Elizabeth Buchanan. Ms. Buchanan specifically chose not to purchase or lease other dryland adjacent to her property to expand the Keystone operation. The testimony of Rand Campbell, Russ Mattis, Matt Cyrus, and other professional ranchers is persuasive.

Several commentators suggested that the Property may be suitable for other livestock uses beyond that of a cattle operation. We reject that position. With regards to alpaca operations, evidence in the record is that in Central Oregon alpacas are raised on irrigated lands and that those operations still lose money. Exhibit 12, 14, Rec-2219, Rec-3090-3093, Rec-3244-3245. Similarly, Mr. Campbell submitted information regarding goat and sheep operations and costs that support our conclusion that such operations would not be profitable on the subject property with or without imported feed. Exhibit 43, 47.

Similarly, Mr. Jim Stirewalt, agreed that in “[his] lifelong experience raising chickens, goats, horses, cows, hogs, sheep, and cattle has taught me you need two things to have any chance of a successful operation: reliable food and water sources.⁴ This property offers neither.” We find Mr. Stirewalt’s testimony persuasive. Scott Duggan, Assistant Professor at the OSU Extension Service in Prineville, Oregon, supports Mr. Stirewalt’s testimony. Mr. Duggan provided information that explains why raising cattle or goats or stabling and training horses on the subject property would not be conducted by a reasonable farmer with an intention to make a profit in money, even if supplemented with offsite feed. According to Mr. Duggan, “there’s hardly anything you can do with it [the Property] due to all the rocks and lack of irrigation.” Rec-3243.

Elizabeth Buchanan argued that the subject property is suitable for producing free-range chickens. A review of farms that raise free-range chickens in Central Oregon reveals, however, that irrigated pastures are required for this type of chicken operation. Applicant’s Exhibit 50. We agree with the analysis in Exhibit 50. In short, the cost of financing the expense of bringing irrigation water to the Property and attempting to establish pastures on poor, rocky soils is so large that it would deter a reasonable farmer from attempting to make a profit in money by raising chickens on the Property. The property is also not suitable for an indoor chicken operation which would rely on imported feed. The temperatures experienced on the Property are too high in the summer for raising chickens. Applicant’s Exhibit 50, p. 2. An indoor chicken operation would require the use of electricity to cool the chicken coops. The subject property is not served by any electric utility company and the cost of obtaining that service is so high that no reasonable farmer would expect to obtain a profit in money by raising chickens on the subject property.

⁴ The same is true for game birds which require irrigation and stock water not present on the subject property that is cost-prohibitive to obtain. Rec-2200. Additionally, the subject property lacks the broadleaf plants that attract insects critical for pheasant chick development and quality food source and winter cover required by pheasants. Rec-3247-3248. The subject property also lacks a source of electricity which would be needed to establish a game bird hatchery.

Lastly, comments from DLCD and Ms. Nonella and others suggested that a horse training or other horse facility would be suitable on the Property. We reject that contention for the following reasons. First, we find the testimony of Ms. Fran Robertson, who runs such a facility, persuasive. Second, all examples of horse operations are on properties with irrigated fields and Professor Scott Duggan advised the applicant that pastures are required for horse operations. Exhibit 77, Rec-3242-3243. Other evidence in the record also shows the conditions of the Property based upon topography and climate conditions could cause substantial stress on horses, Exhibit 56. An analysis was also provided by Mr. Rand Campbell which supports our conclusion that the subject property is not suitable for equestrian farm uses. Exhibit 108.

This Board has reviewed all evidence submitted to this record. Project opponents have made isolated statements without supporting evidence. The applicant has submitted comprehensive analysis, expert testimony, and primary source materials. We find that the Applicant has met its burden of proof: the Property is not suitable for a farm use, including livestock or grazing operations even if supplemented by offsite feed. The cost prohibitive nature of such operations is only compounded by increasing the amount feed due to the extremely low production on the Property.

The Property is unsuitable for grazing uses due to its topography and climate conditions. The Property is on an elevated and isolated plateau, and the Applicant submitted substantial testimony regarding the negative impacts of heat and cold stress on cows and bulls, chickens, and other types of livestock.

No reasonable farmer or rancher would seek to make a successful farm operation on the Property with or without imported feed, nor alone or in conjunction with other farm operations on adjacent or nearby lands.

Other Issues Related to Suitability for Farm Use

In our 2022 proceedings, COLW (and to a limited degree, others) argued that any number of potential agricultural uses could occur on the property, such as orchard crops, berries, lavender, or other agricultural uses that require irrigation. No party advanced this issue on appeal; instead focusing their arguments on the claimed suitability of the subject property for raising animals. Before LUBA, DLCD’s Assignment of Error 4 related to the adequacy of findings related to animals.⁵ LUBA found that the County’s consideration of interest costs to finance expenditures

⁵ Central Oregon Landwatch’s 2024 comments discuss vineyards as a potential farm use. In our 2022 decision we determined that a vineyard is not a viable farm use of the subject property and no party appealed that determination; this issue is settled. The 2022 record shows that a soil depth of 20-30 inches is, according to soil scientist Brian Rabe, needed to grow grapes; not the average of 14” of soil depth found on the subject property (Rec-2220). Our 2022 decision included findings that establish that the subject property lacks the favorable growing conditions that permit the Redside vineyard to produce grapes. The Redside vineyard is located at a lower elevation (400 to 500 feet lower), has alluvial soils, south facing slope and wind protection. Conditions on the subject property make it unsuitable for farm use whether the property is farmed in conjunction with other adjoining or nearby lands. Rec-442, -443, -447. Additionally, no adjoining or nearby lands are growing grapes. The Redside vineyard is not in the

to establish an irrigation system on the Eden Central property were properly considered by the Board in addressing the issue of suitability for farm use. Generally, evidence in the record shows that the cost of establishing irrigation on the Eden Central property is so great that no reasonable farmer would purchase the required water rights to establish agricultural uses. In fact, the cost to do so exceeds the per acre cost of purchasing superior farm land in the area that is already irrigated and developed for farming. This cost is not eliminated if the Property were owned and operated as part of one, overall farm by any of the other farms in the Study Area.

Even if the Property were operated in conjunction with adjacent or nearby lands, the Property remains unsuitable for conducting agricultural uses. Seventy one percent of the subject property is comprised of Class VII soils. According to the NRCS Soil Survey of the Upper Deschutes River Area, “Class VII soils have very severe limitations that make them unsuitable for cultivation” and that the Class VI soils found on 29 percent of the subject property “have severe limitations that make them generally unsuitable for cultivation.” All four properties that are adjoining or nearby lands engaged in farm practices (identified in our 2022 decision) rely on irrigation water to conduct farm operations and are comprised of superior soils. Those lands, however, lie 200 to 250 feet below the plateau area of the subject property and are far better suited for farm use based on location, irrigation and soils and Additionally, the cost of establishing irrigation is too high on the subject property to merit installation of an irrigation system on the Property given that the cost of obtaining irrigated, developed farm land with superior soils is less expensive than attempting to irrigate the Property, with its rocky, poor soils, in order to produce crops like those on adjacent and nearby lands. And, nearby and adjacent farms are already engaged other farm uses, such as hay or grass production. It is unreasonable to assume that any of these nearby and adjacent lands that lie far below and away from the plateau area of the Property⁶ would be willing to make the investment in establishing a new, isolated crop field – excluding the purchase cost of the subject property – at a cost that exceeds the cost of buying a more suitable developed, irrigated farm property. Additionally, no area farmer has expressed an interest in conducting a farm use on the subject property other than seasonal grazing of livestock. Given these facts, a reasonable farmer of any of the four adjoining and nearby properties would not purchase and develop the subject property to expand the irrigated crop use of their property, or to graze livestock with the primary intent of making a profit in money. The Board therefore finds, consistent with its past decision, that farm uses that rely upon or require irrigation water are unsuitable on the Property and fail the suitability test under that consideration.

Oregon case law establishes that it is reasonable to look at nearby farm properties to determine whether a property is otherwise suitable for farm use. *Wetherell v. Douglas*, 62 Or LUBA 80 (2010) The only irrigated agriculture in the area includes the raising of hay and grass crops, and, potentially carrot seed. No farm in the Study Area of adjacent or nearby lands we identified in our 2022 findings regarding OAR 660-033-0030 (“Study Area”) is growing orchard crops, lavender, other vegetable crops, or is engaged in other uses such as raising honey bees.⁷ Such uses are not

Study Area of adjoining and nearby lands because it is approximately 1.5 miles north of the subject property.

⁶ The steep hillsides of the plateau are not suited for irrigated crop production. The cost of irrigation was estimated based on irrigating the top of the plateau only.

⁷ Applicant submitted additional evidence as to why bees cannot be raised on the property. Exhibits 88, 89, 91. Evidence in the 2022 record from Brittany Dye, owner of Brittany’s Bees LLC, a beekeeper,

accepted farming practices in the area. The Board finds that with the exception of a livestock use, which is discussed in more depth below, the Property is unsuitable for farm use. This finding is made having given due weight to the evidence in the record of water needs and costs and the lack of nearby operations of similar uses which we discuss in further detail below.

Although addressed more below, the Board also finds that in considering nearby and adjacent lands, the Property remains unsuitable for such uses. This is because the farm lands in the Study Area could not expand operations onto the Property due to topography and, in all but one case, lack of true adjacency. No operational efficiencies would be achieved by expansion. The record shows that no reasonable farmer would expand profitable farming operations to include a separate irrigated agricultural use on land where farm uses have not occurred in the past, no irrigation water is available and rocky, shallow, barren soils exist. No increased production would be obtained and the profitability of the combined operations would be diminished by the need to finance the expense of establishing an irrigation system on the subject property and removing rocks from the soil.

The evidence submitted regarding the water and other requirements necessary to raise water-dependent crops on the subject property as a farm use is reliable and persuasive. The evidence in the 2022 record regarding crop production is correctly identified and summarized on the chart found at Rec-2213-2221. This evidence includes testimony from a hemp grower and owner of a property used to grow hemp, a site-specific soil study, information regarding soils provided by the NRCS, and references trade organization publication, published university or other articles, and other primary and secondary sources. The fact that crops require irrigation is general knowledge borne out by the fact that all cropland in the surrounding area is irrigated. No party has offered evidence on remand that a farm use that relies on irrigation water would be viable on the subject property. There was no renewed challenge to the sufficiency of the evidence previously relied upon in our 2022 decision.

In the 2022 decision, we addressed varied arguments of opponents that a host of potential farm uses other than livestock grazing could occur on the subject property. We found that no opponent claimed that any of these potential farm uses would be able to be conducted with an intention to make a profit in money and that numerous facts regarding the subject property supported a finding that the property is not suitable for farm use. Rec-169-174. Instead, opponents claimed that the potential farm uses would be a farm use because they would generate gross income.

The Board previously found that “it is not an accepted farm practice in Deschutes County to irrigate and cultivate Class VII and VIII soils.” No party challenged this finding. Given the fact that 71 percent of the Property is comprised of Class VII soil, it follows that it also is not suited for irrigated farm use; a conclusion consistent with the description of Class VII soil provided by the NRCS. While accepted farming practices is only *one* of the considerations in OAR 660-033-0020(1)(a)(B), a determination of suitability can be made on one factor, alone. Paired with the fact that it is cost prohibitive to conduct farm uses that require irrigation water on the subject property,

estimated gross income of only \$4,000 per year from the property (Rec-2137). This gross income is insufficient to cover the costs of real property taxes, labor, insurance and travel. Additionally, the cost of establishing bee pastures, orchards and pollinator gardens for bees on this property, are cost-prohibitive in part due to the need to irrigate pastures, orchards and gardens (Rec-2219).

the fact that no nearby or adjacent properties are engaged in farm uses other than irrigated farm uses that would be cost-prohibitive to establish on the subject property and a small cattle operation on irrigated and dry land, supports our finding that the Property is not suitable for farm uses that require irrigation to be successful, whether in isolation or in potential combined operations with farms in the Study Area.

B. Remand Issue 3: Is the Property “suitable” for farm use as for the construction and maintenance of farm equipment and facilities?

ORS 215.203(2)(a) says:

“‘Farm use’ includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection.”

In our prior decision, we found that this use was only a farm use if the subject property is generally suitable for farm use. LUBA held, in response to a challenge by DLCD, that “farm use” includes the [on-site] construction and maintenance of equipment and facilities used for the activities described in ORS 215.203(2)(a) elsewhere. LUBA remanded our 2022 decision to determine whether the subject property is suitable for farm use based upon the suitability factors of OAR 660-033-0020(1)(a)(B) considering the farm uses conducted off-site or in conjunction with the subject property. As we have determined that the subject property is unsuitable for other farm uses alone or in conjunction with adjacent and nearby properties, the construction and maintenance of equipment and facilities for uses conducted on the subject property, which may include adjacent and nearby properties, is not a “farm use.” We, therefore, address the suitability of the subject property for farm uses “elsewhere.”

By its express terms, this farm use is limited to the on-site construction and maintenance of equipment and facilities used for farm uses as defined by ORS 215.203(2)(a). Construction is the act of building something, typically a large structure, and maintenance is keeping a structure or farm equipment in good repair once it is built. These acts, and these acts only, are the “farm use” covered by this part of ORS 215.203(2)(a). The construction and maintenance use does not extend to include uses that occur within constructed or maintained facilities or with equipment once it has been constructed or maintained on-site. The use of the facilities and equipment must be for a use defined elsewhere in ORS 215.203(2)(a) as a farm use.

ORS 215.203(2)(a) separately defines storage, as well as the preparation and sale of farm products, as a “farm use” but it limits the use to “products or by-products raised on such land for human or animal use.” This farm use does not include the storage, preparation or sale of farm products raised elsewhere and, therefore, the maintenance or construction of equipment or facilities to conduct that use for farm uses conducted elsewhere is not a farm use.

DLCD alleges that the on-site construction or maintenance of “barns, agricultural storage sheds and other preparation facilities, processing facilities allowed by ORS 215.255, hay covers, cattle lanes, driveways, holding pens and similar improvements and structures” are included in the definition of farm use. This is correct for farm uses occurring on the subject property but not for farm uses occurring elsewhere for at two reasons. First, a “facility” is not “construction or maintenance” which are the uses defined as a farm use by ORS 215.203(2)(a). Second, other than

processing facilities and driveways, the construction and maintenance of the facilities identified by DLCD are used to store, prepare and sell farm products. ORS 215.203(2)(a) makes it clear that the construction and maintenance of facilities or equipment used to store, prepare or sell farm products is only a farm use if the farm products are produced on the subject property; not elsewhere.

Processing facilities allowed by ORS 215.255 are *not* a “farm use” as defined by ORS 215.203(2)(a), which are the only “farm use[s]” that are relevant for the “suitability” analysis in OAR 660-033-0020(1)(a)(B). It does not include farm product processing. Processing is separately authorized by ORS 215.213(1)(u) and ORS 215.283(1)(r) and the use is limited by ORS 215.255. Consequently, the construction and maintenance of a farm product processing facility is not a “farm use” and we need not determine whether the subject property is suitable for that use.

DLCD also argues:

“We do not interpret this remand item as an obligation to evaluate the economic viability of new farm and ranch stores and farm equipment repair companies that exist without a primary farm use on the subject parcel. If allowable at all, these types of uses would need to be reviewed as commercial activities in conjunction with farm use or home occupations and are not farm uses under ORS 215.203.”
DLCD Letter, pg. 4-5.

The Board agrees that farm and ranch stores and farm equipment repair businesses require approval as commercial activities in conjunction with farm use. Nonetheless, it has considered evidence about these businesses because a literal application of the construction or maintenance use appears to include these uses if they are limited to serving “farm uses” and do not include any sales activity. The Board recognizes the fact that farm and ranch stores and farm equipment repair facilities typically sell farm equipment or parts and do not limit sales to farmers who are engaged in farm activities with an objectively reasonable belief that they will achieve a profit in money. The Board also finds that the manufacturing of farm equipment or structures for properties for use elsewhere if farm use is occurring elsewhere may fit under LUBA’s interpretation of the construction and maintenance use and, therefore, has addressed it in its findings below.

The Board, however, believes that the better answer, given the direction of the Oregon Court of Appeals regarding the construction of land use laws to protect agricultural land and the comments provided by DLCD on remand, is that a manufacturing facility is an industrial use not included with the “construction” of farm equipment and facilities uses. It is the County’s belief that Statewide Goal 14 views industrial uses as uses that will occur only within urban growth boundaries or in rural industrial development areas established in compliance with state statutes and LCDC rules. Statewide Goal 14, Rural Industrial Development. If LUBA so finds on appeal, our findings regarding manufacturing facilities will be surplusage but the remaining findings continue to support our conclusion that the subject property is unsuitable for the construction and maintenance use that is a farm use.

The applicant surveyed Deschutes County to identify uses similar to the maintenance and repair use and has shown it occurs, in conjunction with other uses, on small properties such as the seven-

acre site of farm equipment manufacturer Newhouse Manufacturing in the City of Redmond. The record includes evidence about what is necessary for a site to be suitable for manufacturing farm equipment or facilities. John Jenkins, the Sales Manager for Newhouse Manufacturing Company, a company that manufactures farm equipment in the City of Redmond, Oregon, stated that to run a successful farm equipment manufacturing or repair operation, several important factors are needed but are missing on the subject property. These include a central location, easy accessibility to a highway, and a flat grade. Mr. Jenkins also stated:

“I do not think it’s economically feasible to open an on-site farm equipment repair and maintenance facility on the rural 710-acre subject property in Redmond. The subject property is in a remote location, 3.5 miles off Highway 126, which makes it more difficult for both customers to find and large trucks to make daily deliveries of parts, broken down farm equipment, and other packages. The setup construction costs for a farm equipment repair facility on the subject property would be a high barrier to entry because the subject property is not flat and is remotely located outside of city limits.” Applicant’s Exhibit 7. I believe the various established farm equipment repair facilities in Central Oregon are located inside city limits because of the central location, easier accessibility to major highways, and they offer commercial or industrial zoning.”

Barry Penington of Bobcat of Central Oregon, a business located in the City of Bend that repairs farm equipment, echoed Mr. Jenkins’ concerns:

“Our customers require a consistent and reliable service to maintain their businesses. A location within a city allows for a better predictability of delivery times which in turn allows for better scheduling. Commercial or industrial zoned areas allow for proper freight deliveries and access. In our understanding, the EFU zoning would allow for some farm only types of services but we felt that would be impossible to keep the scope of business within the regulation. Examples would be a customer with a nursery/greenhouse operation which may be serviceable within the EFU description. However if that customer also performed commercial work as a landscaper the equipment used in that process would not be eligible for repair at the facility located in the EFU zone. This scenario would create an impossible situation for our type of business as customer satisfaction is extremely important.” Applicant’s Exhibit 40.

Mark Stockamp made a diligent search of Deschutes County to locate businesses that construct or repair farm equipment or facilities and that search confirms the information provided by Mr. Newhouse and Mr. Penington. Mr. Stockamp found no business that serves farm uses “elsewhere” that is engaged solely in “the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection [ORS 215.203(2)(a)]” anywhere in Deschutes County. Applicant’s Exhibit 79. These would be businesses that do not sell products other than parts they use to maintain farm equipment that also limit their services to persons who are not engaged in “farm use” as defined by ORS 215.203(2)(a) which makes it unlikely such a business would be conducted by anyone on the subject property. The businesses Mr. Stockamp identified, however, engage in activities that fit the construction and maintenance category in addition to other

activities that do not fit the category. Even Newhouse Manufacturing sells over-the-counter parts to customers in addition to constructing and repairing farm equipment. Exhibit 79.

The key issue on remand is whether the subject property is a suitable place to construct or maintain farm facilities or farm equipment utilized by a farm use that occurs elsewhere. In all cases, if the farm use occurs elsewhere, transportation of the farm equipment or facilities to and/or from the subject property is a necessity. For instance, a typical business day for Newhouse Manufacturing (repair and manufacturing) and Peterson Cat Redmond (repair) involves 20 to 50 visits by walk in customers (40 to 100 vehicle trip ends per day), parts delivery by a large truck (two vehicle trip ends per day) and UPS delivery (two vehicle trip ends per day). Bobcat of Central Oregon (repair) serves 50-80 customers a day (100-160 vehicle trip ends per day), parts delivery by a large truck (two vehicle trip ends per day) and UPS delivery (two vehicle trip ends per day). Applicant’s Exhibit 38. Pape Machinery Agriculture & Turf sells farm equipment parts and provides on-the-farm and in-house repair services for farmers, in addition to selling products for recreational, construction and residential use. Applicant’s Exhibit 39.

A review of the seven suitability factors of OAR 660-033-0020(1)(a)(B) shows that the property alone or in conjunction with adjacent or nearby lands is not suitable for construction and maintenance uses that serve farm uses occurring elsewhere based on three or more of the seven suitability factors. The suitability factors are discussed below.

a. Soil Fertility

The vast majority of the soil on the subject property is not fertile being 71% NRCS Class VII and VIII soils. Fertile soil is essential for growing crops but is not essential for the construction and repair of farm equipment and facilities. The lack of fertile soil, in this case, is due to the presence of a large amount of surface and subsurface rock and lack of soil depth. Testimony from John Jenkins is that seven acres of flat ground and a flat grade was necessary to support its manufacturing operation. It follows that the cost of preparing a site for the construction of a manufacturing or repair facility would be substantial due to the need to remove the rocks that render the soil infertile. As it relates to this use, the Board finds soil fertility makes the site somewhat less suitable and that the rocky condition of the site that makes the soil infertile requires extensive energy inputs to make the site potentially suitable for the construction and maintenance of farm equipment and facilities for farms located elsewhere. The Board also finds that even if it is determined that the site is suitable despite the lack of soil fertility, that other suitability factors make it clear that the subject property is not otherwise suitable for farm use.

b. Suitability for Grazing

The subject property is suitable for grazing but not at a level that constitutes a farm use due to the sparse forage and soils found on the property. This factor generally does not relate to the equipment and facilities use. To the extent this factor is relevant, the evidence supports our finding that the property is suitable for seasonal grazing only.

c. Climatic Conditions

This factor does not appear to provide a barrier to suitability, except as it relates to the location and distance from a localized customer base with easy access to highways. Several equipment repair facilities expressed easy accessibility to a highway as an important factor due to daily deliveries. Exhibit 38. The subject property is far from these areas, and, during times of inclement weather or snow, it is unlikely that ODOT or the County would provide snow removal. This would inhibit this use.

d. Existing and Future Availability of Water for Farm Irrigation Purposes

This factor does not appear to relate to the establishment of farm equipment maintenance or other facilities. The County previously found, and LUBA generally agreed, that the subject property was not generally suitable for irrigated agriculture based upon the cost of purchasing water rights and financing the improvements needed to irrigate the property.

e. Existing Land Use Pattern

No properties within one mile and more of the subject property are used for on-site construction and maintenance of equipment and facilities for any other farm property not in the same ownership. This has been documented by a survey conducted by the applicant (Applicant’s Exhibit 71). We find that this study area is sufficient to determine the existing land use pattern of the area in part because a one-mile radius is routinely used by the county to study the impacts of nonfarm dwellings on farm uses and because it includes lands in the Odin Valley and Lower Bridge areas that adjoin the subject property.

It is not also an accepted farm practice in Deschutes County to engage in the construction and maintenance of farm equipment or facilities anywhere other than on the property where farm practices are occurring or at a farm equipment maintenance facility or factory located within an urban growth boundary or rural industrial area, as we have determined above.

As shown by Applicant’s Exhibit 71, the existing land use pattern established in a one mile and more radius around the subject property is a checkerboard of non-farm dwelling and uses, rural subdivisions and farm uses. This pattern does not include facilities that provide for the maintenance or construction of farm equipment or facilities. This is an indication that the subject property is not a suitable location for these uses. Moreover, no testimony in the record asserts that the subject property could or should be used to conduct such a use. The same pattern exists in the area closest to the subject property, the Study Area of adjacent and nearby EFU zoned properties. There are four adjacent or nearby EFU zoned properties in farm use. The remainder of the adjacent and nearby privately-owned properties are developed with nonfarm dwellings and nonfarm properties. The public lands adjacent or nearby are a large property developed as an all-terrain vehicle/off-road vehicle recreational area and a property being held in a conservation status.

As we have found, in findings that precede our discussion of the seven suitability factors, these uses occur in or near cities or in rural industrial areas with clear and close access to public highways. These uses also service a variety of equipment types, and range from 20 to 80 customers walking in per day and do not restrict their customers to persons engaged in “farm use.”

Moreover, the County’s Code permits these types of facilities within the Rural Industrial and Rural Commercial zones. The County considers these zones the appropriate rural location for industrial and commercial land uses like farm equipment repair and manufacturing facilities. The land use pattern of the County reflects that choice.

Additionally, the land use pattern of the area reflects the fact that the remote nature of this property, and its lack of the typical road access to a nearby highway and nearby customer base make it an unsuitable location from which to provide maintain and construction services to persons engaged in an ORS 215.203(2)(a) farm use.

f. Technology and Energy Inputs Required

The technology and energy inputs that would be required to both establish and operate a business that provides on-site construction and maintenance of farm equipment and facilities on the subject property are significant and contribute to a determination that the subject property is unsuitable for this farm use.

The subject property lacks electric utility service. Electricity is needed to operate any type of business on the property. A reliable source of electricity is essential for any farm equipment repair or construction business as these businesses use specialized tooling and machinery to maintain equipment. A business that manufactures farm equipment or farm facilities would also uses machinery that requires electricity to be operative.

In order to establish a farm equipment maintenance or construction facility on the subject property, it would be necessary to install an extension of the electrical power infrastructure to the property. Depending on the location of the facility and utility service areas, either Central Electrical Cooperative (CEC) or Pacific Power would need to extend service lines to the site and owner of the property would need to install facilities needed to receive and use the electricity in their business.

CEC has capacity issues on its Coyner Road and Buckhorn Canyon lines. CEC indicated a couple of years ago that they would be able to upgrade the power along Buckhorn Road and bring power to the Eden Central property up the side of Buckhorn Canyon at an approximate cost of \$572,103.00. To obtain power from Pacific Power, Eden Central properties would need to pay to extend Pacific Power utility lines from NW 93rd Avenue for a distance of over 2000 feet over an undeveloped County right-of-way and land owned by the USA and managed by the BLM. This extension was estimated to cost approximately \$365,000 about two years ago. This cost alone is so expensive that it would preclude the single farm equipment repair facility DLCD says is the use allowed on the property or any other small-scale business that fits the “on-site maintenance and construction use” definition from locating on the subject property.

It is likely that only an industrial-sized farm equipment manufacturing facility, assuming LUBA finds it to be a “construction facility” allowed in the EFU zone, despite the fact industrial uses are generally urban uses or rural industrial uses that would not be able to be located on the subject property due to Statewide Goal 14, would be able to bear the high cost of bringing power to the subject property. Given the limitations on the use imposed by ORS 215.203(2)(a) (no use of the

equipment built by it for any use other than an ORS 215.203(2)(a) farm use), it is highly unlikely that such a facility would be large enough to bear the cost of bringing power to the property, installing a connection to the line and then paying to use the supplied power. Furthermore, the restriction of the EFU zone that applies to the property makes the property unsuitable for the construction and maintenance use for farm uses occurring elsewhere.” It would create an impossible situation for construction and maintenance business as it would be impossible to ensure that farm equipment or facilities would only be used as a part of a farm use. Applicant’s Exhibit 40. Additionally, sales of equipment or facilities constructed on the subject property would need to be enforced by vendors of the equipment or facilities and an expectation that they would do so is objectively unreasonable. A product with that limitation is simply not marketable and, even if it were, it would not be developed at a scale that would merit paying to extend power to the subject property and then developing it with a farm equipment or facilities manufacturing facility.

A farm equipment maintenance facility suited to serving customers would also require the construction of at least one or two restrooms and the installation of a commercial septic system which involves technology inputs and adequate soil to assure that sewage is properly treated. The approximate cost of installing a typical septic system would be several thousand dollars to more than \$35,000 if an alternative system is required. Exhibit 101. A septic facility for farm equipment construction facilities would be much more costly and would depend on the size and type of facility built. Costs might be approximately \$100-250,000+. Exhibit 101. Larger systems would require permitting through DEQ with additional requirements that could come at larger price tag.

We find that the cost of energy inputs alone, outlined above, is sufficient to support our finding that the subject property is not suitable for farm use. The following technological or energy inputs required to conduct the construction and maintenance use also contribute to making the subject property unsuitable for farm use:

- (1) At a minimum, one exempt well would need to be drilled to serve these uses and water use would be limited to 5,000 gpd per well (commercial use). The cost to drill an exempt well on the Eden Central land would be approximately \$29,610.00 according to a March 30, 2023 estimate obtained from Jack Abbas of Abbas Well Drilling. The cost to drill a larger well to serve a large manufacturing (construction) facility would be roughly similar to the cost of drilling one agricultural well at a cost of approximately \$295,000.⁸
- (2) Improving the property to permit a construction and/or maintenance use or for additional facilities will also include the cost of improving, at a minimum, the access road. This is necessary so that trucks delivering parts and equipment for repair or materials for the construction of equipment or facilities could access the property. A cost estimate from Robinson & Owen Heavy Construction concluded that preparation and construction costs for just the mile access road would cost in excess of \$612,203.50. Applicant’s Exhibit 81.
- (3) Farm equipment repair or maintenance facilities require technology inputs because they rely on specialized tooling, parts and machinery to repair farm equipment. Applicant’s Exhibit 40.

⁸ This evidence is from the 2022 record and so may be higher using today’s prices.

In total, the basic requirements to establish the onsite maintenance and construction of equipment and facilities for “farm use” on the property would likely exceed \$1,200,000.⁹ Financing the cost of such capital improvements at a favorable farm loan interest rate of 4% would cost at least \$48,000 per year in interest costs.¹⁰ This additional cost for technology and energy inputs is so substantial that no one would attempt to establish farm equipment or facilities repair or maintenance facilities on the subject property.

Moreover, the County’s Code permits these types of facilities within the Rural Industrial and Rural Commercial. These are the appropriate location and land use patterns to establish similar uses.

In summary, the Technology and Energy Inputs factor alone is sufficient for the Board to determine that such uses are not “suitable” on the subject property.

g. Accepted Farming Practices

No property within a one-mile plus radius or within in the Study Area of adjoining and nearby lands are used to conduct the maintenance or construction of farm equipment or facilities for farms located elsewhere. In other words, it is not an accepted farm practice to construct or maintain farm equipment or facilities for farms located elsewhere. This factor does not support a determination of suitability.

C. Remand Issue 4: Is the Property’s existing designation “necessary” to permit the continuance of farm practices on nearby and adjacent lands?

OAR 660-033-0020(1)(a)(C) defines “agricultural land” as “Land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.” LUBA remanded our 2022 Decision to determine whether the retention of the property’s agricultural designation and zoning is “necessary” to permit farm practices to occur on adjacent or nearby agricultural lands” based on traffic, water, nuisance and trespass impacts. We note that opponents Lori Johnson and Kelsey Nonella who live in Odin Valley about one mile from the subject property both advised the county in a letter filed July 16, 2024 that the agricultural designation of the subject property is not necessary to permit farming practices in the area. We concur for the reasons set out below.

Identification of Farm Practices on Agricultural Lands

Adjacent or nearby lands and farm practices were identified in three tables in our 2022 Decision at Rec 509-511. LUBA found that these findings “do identify the surrounding farm practices” and is the starting point for our review of compliance with OAR 660-033-0020(1)(a)(C). The charts and findings provided therein, with the addition of a response to the “necessary to permit farm practices test” and introductory findings are provided below. No party challenged our

⁹ This number reflects establishment of an exempt well at roughly \$30,000 and septic system at \$35,000, and not the larger systems that may be required by DEQ.

¹⁰ This favorable interest rate was used in the earlier proceeding and accepted by LUBA.

identification of “adjacent or nearby lands” in 2022 or in 2024. We will refer to these agricultural lands as the “Study Area.”

The record contains a wealth of evidence that shows how and where lands employed in farm use have been developed, how they are used, and what farm practices are occurring on those lands. All such properties rely on groundwater, wells and pumps to irrigate farm fields that are used either to grow crops or as pasture land. The location of irrigated land in the study area and irrigation equipment and information about wells on these properties is provided by the Applicant’s Exhibit 58, as well as elsewhere. The aerial photographs also show the location of farm buildings and homes on these properties. We have relied on this information in assessing likely impacts to area farm practices.

West and North: Properties to the west and of the subject property are separated from the subject property by topography. The dramatic change in topography makes it infeasible to use the subject property for farm use in conjunction with these properties. Additionally, the subject property is not necessary to permit farm practices to be undertaken on adjacent or nearby lands to the west. Farm practices have been occurring on these properties for decades without the necessity of having to use the subject property in order to conduct farm practices on these properties.

EFU PROPERTIES TO THE NORTH AND WEST (SOUTH TO NORTH)

Tax Map, Lot and Size	Farm Use	Potential Farm Practices	EFU Zoning Necessary for Farm Practices to Continue?
14-12-21, 200 & 100 372.71 acres Volwood Farms	Irrigated fields currently growing orchard grass, hay and alfalfa	Irrigation Growing and harvesting crops Fertilizing fields Baling hay Herbicide use	No, the separation due to elevation and distance has prevented conflicts between existing nonfarm dwelling on the property and this farming operation. No change in farm practices is necessary to allow this use to continue as demonstrated by creation of nonfarm parcels and dwellings in close proximity of irrigated fields for the Johnson/Nonella and Stabb properties. Additionally, the Volwood Farms property adjoins Lower Bridge Estates, a large rural residential subdivision and small rural parcels developed with residences that are zoned RR-10. Despite this development, farm practices are occurring on the Volwood Farms property. It also adjoins a 557.3-acre area owned by Redside that was rezoned RR-10. No traffic impact as the property lacks direct access to Buckhorn Road and Lower Bridge Road – the roads that adjoin this property. Water study by GSI determined that there would not be measurable interference with the Volwood Farms well.

			Trespass will be prevented by fencing. No wastewater impacts per soils scientist Brian Rabe.
14-12-20, 200 146.37 acres Nicol Valley	Irrigated field suitable for growing orchard grass, hay, and alfalfa	Irrigation Growing and harvesting crops Fertilizing field Baling hay Herbicide use	No, this property is located too far away from the subject property to be impacted by uses allowed in the RR-10 zone to the extent this property would need to change or discontinue farm practices. This property adjoins two nonfarm parcels (TL 300 & 301, Map 14-12-20) on its south boundary that are developed with nonfarm dwellings and its irrigated farm field is only 170 feet north of the dwelling on TL 300 and has not altered its farm use. It also adjoins a nonfarm parcel, TL 402, Map 14-12-20, on its western boundary. No traffic impact as the property lacks direct access to Buckhorn Road and Lower Bridge Road – the roads that adjoin this property. Water study by GSI determined no impact on agricultural wells. Trespass will be addressed by fencing. No wastewater impacts per soils scientist Brian Rabe.

All of the other land north of the subject property that may theoretically rely on the subject property in order to conduct farm practices is zoned RR-10, is not in farm use and is not designated as “agricultural land” by the Deschutes County Comprehensive Plan (DCCP).

EFU PROPERTIES TO EAST (NORTH TO SOUTH)

Tax Map, Lot and Size	Farm Use	Potential Farm Practices	EFU Zoning Necessary for Farm Practices to Continue?
14-12-22B, 700 80 acres	Open space public land	Livestock grazing	No farm use is occurring. Accessible from NW 93 rd north and east of the subject property.
14-12-22C, 500 120 acres	Open space public land	Livestock grazing	No farm use is occurring. Accessible from NW 93 rd north and east of the subject property.
14-12-27, 200 120 acres	Open space public land	Livestock grazing	No farm use is occurring. Accessible from NW 93 rd north and east of the subject property.
14-12-27, 301 17.50 ac	None. Nonfarm	None	No farm use is occurring.

	parcel and dwelling		
14-12-00, 300 62.58 acres Stabb	Irrigated cropland suitable for growing orchard grass, hay, and alfalfa	Irrigation Growing/ harvesting crops Fertilizing field Baling hay Herbicide use	EFU zoning is not necessary to continue the irrigated cropland use of this property because it is surrounded by nonfarm parcels (including the subdivision to permit a nonfarm dwelling) and has continued to conduct the identified farm practices. Additionally, EFU zoning permits the applicant to build a nonfarm dwelling within 45’ of this property. Thus, approval of the zoning change and comprehensive plan amendment will not alter potential impacts. Topography dictates any building location be no closer than about 700’ away from the farm field on this property (with an intervening residence on the subject property) – providing a buffer that will mitigate potential impacts. Traffic impacts will not prevent farm practices associated with growing a crop on this property. The only potential conflict would be between drivers and slow-moving farm equipment. Slow moving farm equipment does not often use this road and the added traffic will not prevent its use by farm equipment as there is room to pass on the existing roads that provide access to Highway 126. Water study by GSI determined no impact on agricultural wells. Trespass will be addressed by fencing. Additionally, this property was created by a partition that found that a nonfarm dwelling created on a nonfarm parcel removed from TL 300 would not interfere with farm use on Tax Lot 300 and other area farms.
14-12-34B, 200 80 acres	Approved for nonfarm dwelling	None	No farm use is occurring.

EFU PROPERTIES TO THE SOUTH

The land south of the subject property is zoned EFU and includes a large tract of federally-owned land in the Cline Butte Recreational area that is managed by the Bureau of Land Management (BLM) as a motorcycle and all-terrain vehicle (ATV) park. No farm use is allowed to occur on this property. There are three nonfarm dwellings and parcels zoned EFU on the north side of NW Coyner Avenue that are not engaged in farm use, 10305 NW Coyner Avenue, 10255 NW Coyner

Avenue, and 10135 NW Coyner Avenue. These parcels range in size from 19 to 28 acres. A 37.5-acre parcel at the southeast corner of NW Coyner and NW 103rd Street owned by Elizabeth Buchanan (10142 NW Coyner Avenue) is developed with a non-farm dwelling (CU-90-97). A part of this property is engaged, part of the year, in agricultural use.

Tax Map, Lot and Size	Farm Use	Potential Farm Practices	EFU Zoning Necessary for Farm Practices to Continue?
14-12-28D, 100 28.60 acres	None, nonfarm dwelling	None; land determined to be “generally unsuitable for the production of farm crops, livestock and merchantable timber” when dwelling approved.	No farm use is occurring.
14-12-28D, 200 19.11 acres	None, nonfarm dwelling	None	No farm use is occurring.
14-12-28D, 300 19.65 acres	None, nonfarm dwelling	None	No farm use is occurring.
14-12-20, 3200 1588.55 acres (duplicate listing removed)	Open space public land	Livestock grazing	No farm use is occurring. No farm use is allowed on this property. It is a part of the Cline Butte Recreational Area and is used for recreation by off-road vehicles. Accessible from a trailhead on Buckhorn Road a short distance north of Highway 126. Rec-4084.
14-12-00, 1923 37.51 acres Buchanan	Nonfarm dwelling. Small irrigated pasture for horses and small pivot suitable for growing hay, grass or alfalfa.	Irrigation Growing/harvesting crops; Fertilizing fields; Baling hay Herbicide use	All parts of this property, with one exception, are one-quarter of a mile away from the subject property and are separated from it by two nonfarm parcels, TL 200 and 300, Map 14-12-28D that are developed with nonfarm dwellings. This distance makes it unlikely that there will be any impact on farm practices. No potential impacts will occur that will result in preventing the continuation of farm use or farm practices. Traffic impacts will not prevent farm practices associated with growing crops on this property or in keeping horses or other livestock. The

			<p>only potential conflict would be between drivers and slow-moving farm equipment. Slow moving farm equipment does not often use this road and the added traffic will not prevent its use by farm equipment as there is room to pass on the existing roads that provide access to Highway 126.</p> <p>TL 101, Map 14-12-28D (part of subject property) is the only part of the subject property in close proximity to TL 1923. It is located NW across the road from this property. TL 101 has a valid land use approval for a nonfarm dwelling. The change to RR10 zone will not allow more dwellings to be built on this property due to its size (less than 10 acres) and will create no additional potential conflicts between uses. The traffic, water, wastewater, trespass and nuisance impacts associated with this parcel will be the same. Additionally, the water study by GSI determined no likely impact on agricultural or residential wells.</p>
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Additional Farm Practices Not Addressed by the Chart Above

There are two additional agricultural uses occurring on surrounding lands not addressed above. They are both small cattle operations. One is a cattle operation of about 50 head of cattle that graze, at times, on the former Volwood property that is now owned by Two Canyons, LLC and other area lands, and the other is the winter use of the Buchanan property by the Keystone Natural Beef (“Keystone”) operation that is conducted in Crook County for the remainder of the year.

We will address these uses and related farm practices because LUBA’s decision recognizes the fact that the Buchanan property is used by Keystone cattle and because new evidence was received from opponent Redside Restoration Project One, LLC (“Redside”) that cattle are moved by Dry Creek Ranch on Hunt Road, Lower Bridge Road and Buckhorn Road on a “cattle circulation route *** shown in the dashed yellow line on this map” that shows the route crosses the Volwood Farms property. Letter from James Howsley for Redside dated July 23, 2024. The applicant also provided information that a few cows are kept on the former Volwood Farms property and that the owner of that property, Two Canyons, LLC has approximately 50 head of cattle “located across other properties” that apparently include Dry Creek Ranch. First Declaration of Robert Turner, August 6, 2024. A carrot seed crop is now being grown on the Volwood Farms property in an irrigated farm field and the farm practices related to irrigated fields on the Volwood Farms property are addressed by the above chart.

From information in the record provided by the OSU Extension Service that inventories accepted farm practices in Deschutes County, grazing, dry lot feeding and moving livestock to or through unvegetated areas are accepted farm practices. All may, potentially, occur year-round. According

to OSU, grazing usually occurs for 5 to 7 months in Spring, Summer and Fall at all hours. Impacts associated with this use are dust, manure odor, flies, cattle sounds, livestock escape and property damage. According to OSU, dry lot feed may occur at all hours and result in a concentration of manure odor, flies and cattle sounds in a relatively small area. Moving livestock to or through unvegetated areas typically occurs during the daytime and may generate dust, cattle noises and result in possible interference with vehicular traffic on local roads.

Keystone cattle are kept on the Buchanan property during the Winter and then transported by truck to Powell Butte where they graze on irrigated pasture land owned by Elizabeth Buchanan. Hay is imported by truck to feed the Keystone cattle. Imported feed is needed to supplement the small amount of forage provided by the small irrigated pastures on the property. Mr. Buchanan keeps six head of Corriente roping cattle for roping practice which is not claimed by the Buchanans to be a farm use. Mr. Buchanan also keeps five horses on the Coyner Avenue property that, also, are not claimed to be farm animals. It is possible that the horses are used in conducting the cattle operation so accepted farm practices related to horses have been addressed in the chart, above.

The information provided by Redside about Dry Creek Ranch and its cattle operation is scanty. From property listing information prepared by Realtor Pam Mayo Phillips, Dry Creek Ranch is located on Hunt Road and is outside of the area identified in our prior decision as the Study Area. Rec-783-784. Impacts to its farm practices, therefore, are not a basis for denial of the 710 Properties plan amendment and zone change applications. According to the map provided by Redside, Dry Creek Ranch is owned by Two Canyons, LLC; the current owner of the Volwood Farms property (the 9 Peaks Ranch Rec-783-784).

Property-by-Property Analysis of Whether it is Necessary to Retain EFU Zoning to Protect

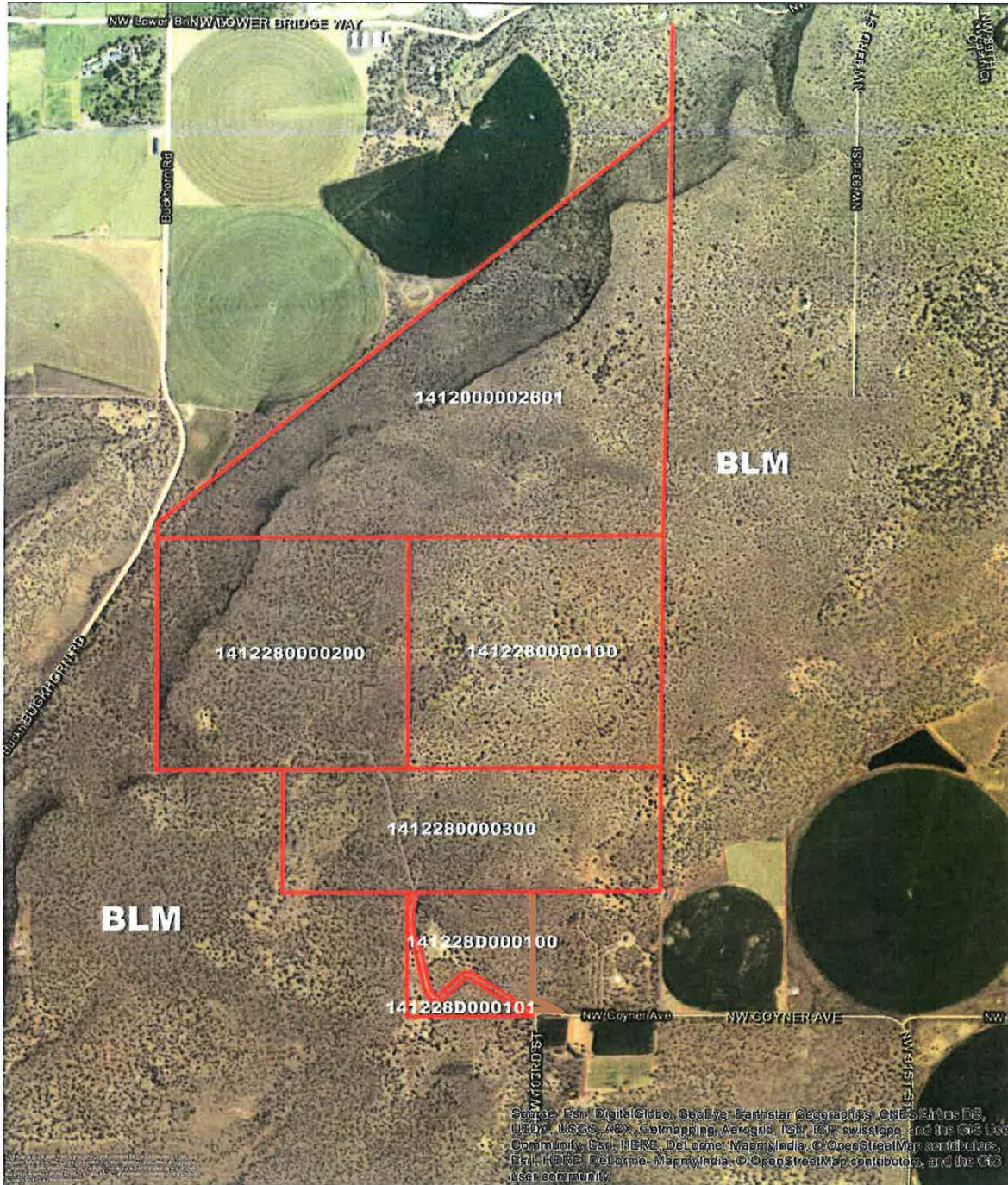
Farm Practices on Adjacent and Nearby Agricultural Lands

The Study Area contains four properties that engage in farm practices: (a) the Buchanan and Stabb properties on Coyner Avenue southeast of the subject property; and (b) the Volwood Farms and Nicol Valley properties west of the subject property. Each is addressed further below. The owners of the Nicol Valley and Volwood properties have not objected to the approval of the plan amendment and zone change and have not claimed that approval will prevent them from continuing farm practices on their agricultural properties. The subject property and the relation of each of the four properties to it is addressed below and is followed by a discussion of specific potential impacts LUBA required us to address on remand as they relate to the four properties.

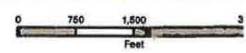
We note that opponents presented arguments that the zone change will create significant change and significant increase in cost of farm practices test of ORS 215.296 and violate that test as interpreted by the Oregon Supreme Court in the *Stop the Dump* case. Neither test, however, applies to our review of the plan amendment and zone change because ORS 215.296, in Deschutes County, applies to the review of ORS 215.283 (2) and (4) “conditional” uses only. LUBA’s decision directs the County to determine whether the retention of EFU zoning is necessary to permit farm practices to continue on adjacent or nearby agricultural lands and that is the test applied here.

Existing Status of the Subject Property

The aerial photograph below shows the location of the subject property in relationship to other area properties. The subject property and the extension of Coyner Avenue are outlined in red. Tax Lot 100, Map 14-12-28D is not a part of the subject property. Tax lot numbers are correct with the exception of the northernmost lot, Tax Lot 2601, Map 14-12-00. It is now comprised of Tax Lots 300, 400, 600, Map 14-12-21.



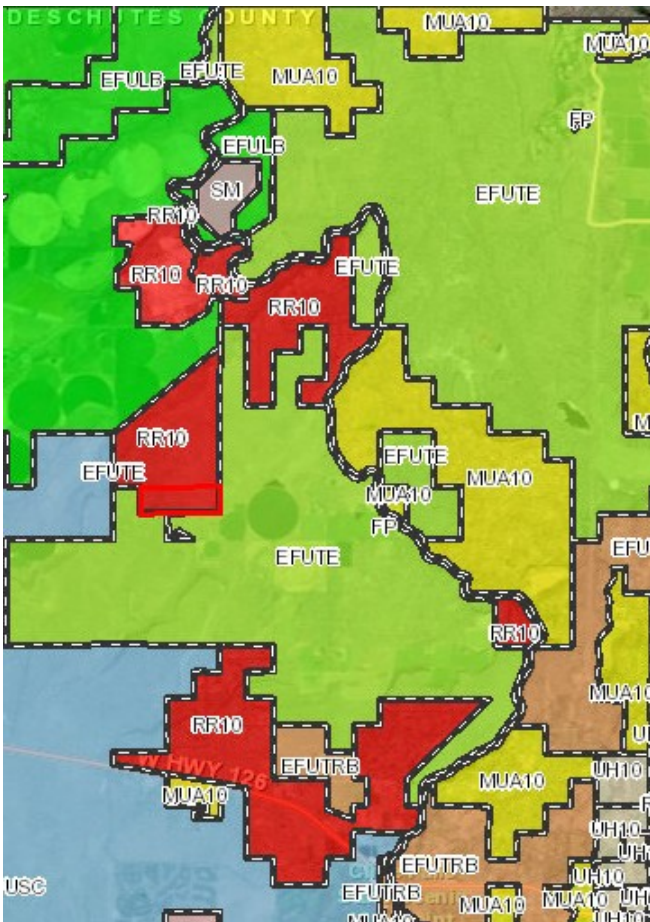
6 Subject Lots



There is an existing nonfarm dwelling in the southeast corner of Tax Lot 200, Map 14-12-28. Tax Lot 101, Map 14-12-28D and Tax Lot 300, Map 14-12-28 each have obtained a nonfarm dwelling approval that is unexpired. All of these lots are located in the southern part of the 710 Property. The Buchanan property adjoins the 8.66-acre Tax Lot 101, Map 14-12-28D at one point across the intersection of NW Coyner Avenue and NW 103rd Street. If this application is not approved, that tax lot will be able to be developed with a nonfarm dwelling and the same is true for Tax Lot 300 north of it.

The majority of the subject property is located on a long, large plateau. On the east side, the subject property drops approximately 250 feet to the closest property to the west, Volwood Farms and land owned by the USA that is not engaged in farm use. The Odin Valley is located far below the plateau as well. It drops approximately 200' in a short distance where it adjoins, for a short distance, one privately-owned parcel zoned EFU, Tax Lot 301, Map 14-12-27. Tax Lot 301 is a nonfarm parcel that has been developed with a nonfarm dwelling. The Stabb property is a short distance east and south of this property.

The only development that has occurred on the plateau is rural residential development. The typical lot size in the developed area is approximately ten acres. The developed area of the plateau is also a part of a vast area of land north of the subject property that is zoned RR-10 in the approximate center of the area shown on the County zoning map:



The remainder of the lands on the plateau are federally-owned lands managed by the BLM. These lands adjoin approximately one-half or more of the boundary of the subject property. No livestock grazing or farm use is allowed on these federally-owned lands.

A major part of the subject property, an area of approximately 250 acres, is mapped for Destination Resort development. This area adjoins the Volwood Farms property and is depicted on the County’s zoning map maintained on the DIAL system (Rec-3838) as follows (Tax Lot 300, Map 14-12-28 outlined in red):



It was established in our prior decision and on appeal that, without consideration of the DR overlay zoning, the subject property has the potential to be developed with a total of approximately 24 nonfarm dwellings.

Traffic Impacts

The proposed zone change to RR-10 zoning will not increase the maximum amount of traffic that can be generated by development of the subject property. This is the case because a destination resort use is allowed in the EFU zone and in the RR-10 zone and that use would produce a level

of traffic that would far exceed the level of traffic associated with a development of 71 homes on the subject property.

Furthermore, our conditions of approval will lessen the maximum level of traffic that may use area roadways that pass by agricultural lands inside and outside the Study Area by imposing a condition of approval that prohibits destination resort development of the property and that limits development of the property to 71 new homes. The fact that this will lower the volume of traffic that may be generated by the subject property with its current EFU-TE and DR zoning is established by expert evidence provided by Joe Bessman, P.E. of Transight Consulting LLC, Applicant’s Exhibit 94. A conditions of approval agreement with restrictive covenants enforceable by Deschutes County (**Attachment B**) must be recorded within 180 days of the date this decision is final. If the decision is appealed, the 180-day period will run from the date a final decision and, if applicable, judgment on appeal has been entered.

The record also establishes that even if development of the subject property with a destination resort is not considered, the traffic related to development of the subject property with up to 71 single-family homes will not force farm properties in the Study Area to discontinue farm use. In fact, no owner of property in the Study Area or the greater area beyond it has made such a claim.

Owner Ed Stabb’s only concern was that the west end of Coyner Avenue is not designed for heavy roadway loads such as loads associated with the build out of a residential subdivision. He did not claim that this issue would prevent him from continuing farm practices on his property, and the evidence provided by Transight Consulting makes it clear that the County facility is sufficient. Coyner Avenue is a County-maintained public road that is repaired and maintained by the county as needed. Additionally, the adequacy of this road for heavy traffic is confirmed by the fact Keystone uses the road to import hay and to transport its cattle to and from Powell Butte.

Owner Elizabeth Buchanan’s husband, Billy Buchanan stopped short of claiming that RR-10 traffic will prevent Keystone from conducting farm practices on the Buchanan property. He claimed “we would have no way of continuing our operation *if* we cannot get haying equipment down Coyner Avenue and onto our ranch” – not that he would discontinue any farm practice if the rezone is approved. He also claimed that transportation engineer Joe Bessman, P.E. “was absolutely incorrect” in testifying:

“[T]here is enough shoulder on this road [Coyner Avenue] for farm equipment to safely pass. Farm equipment (not just ours) is often seen traveling on Coyner, especially during haying season. The road is not wide shouldered enough in many places to accommodate for the expected increase in traffic to pass our trucks and our pieces of equipment, especially haying equipment. Many of these areas along the narrow 2 lanes of Coyner Avenue have fences very close to the shoulder and do not allow for large farm equipment to ‘pull off the road onto a shoulder.’ They would end up stuck in a ditch or in a situation where cars would have to stop and back up for long distances to get out of the way of the farm equipment.”

We, however, disagree with Mr. Buchanan’s characterization of Coyner Avenue and find that the road, its shoulders and fencing are such that additional traffic at the level allowed by approval of

the 710 Properties application will not prevent Mr. Buchanan or others from moving farm equipment down the 3960 feet length of Coyner Avenue to NW 91st Street. We are persuaded by the evidence and photographs provided by transportation engineer Joe Bessman on pages 1 through 4 of Applicant’s Exhibit 99 which clearly contradict Mr. Buchanan’s claim that fences are “very close to the shoulder” and that farm equipment or residential traffic would be unable to pull off onto the shoulder.

Furthermore, it is implicit in Mr. Buchanan’s statements there is existing traffic in the area other than farm traffic and that the Buchanans are able to move trucks and haying equipment onto and off of their property. The width and condition of the roadway and area fencing does not preclude passing or use of the road by farm equipment or trucks. The increase in traffic projected by Mr. Bessman, also, is not great so there will not be a steady stream of traffic leaving the subject property at any one time. Applicant’s Exhibit 46.

According to Mr. Buchanan, Keystone calves frequently crawl under “standard five wire fencing.” Mr. Buchanan argued that additional fencing would be required to ensure the safety of these calves. He fails, however, to quantify the cost of additional fencing or to show that the cost is “significant.” Mr. Buchanan does not claim that this cost would be so great that it would prevent Keystone from continuing current farm practices on his wife’s property. We find that this unquantified cost will not prevent Keystone from continuing to winter cattle on the property or to keep calves on the property. We reach this conclusion based on approximate fencing costs provided by rancher Rand Campbell.

We also find that cattle are raised along Highway 126, a busy state highway (Rec-3097), demonstrates that the existence of additional traffic alone will not prevent Keystone from keeping its cattle on the Buchanan property during the Winter.

Owner Ed Stabb’s only concern related to traffic was that the west end of Coyner Avenue is not designed for heavy roadway loads such as loads associated with the build out of a residential subdivision. He did not claim that this issue would prevent him from continuing farm practices on his property. Mr. Stabb grows hay and it is likely he moves haying equipment on Coyner Avenue because he owns other farm property in the Odin Valley. Coyner Avenue is a County-maintained public road that is repaired and maintained by the county as needed. Additionally, the adequacy of this road for heavy traffic is confirmed by the fact Keystone uses the road to import hay and to transport its cattle to and from Powell Butte and the evidence provided by the applicant, including the evidence provided by transportation engineer Joe Bessman, including the evidence discussed above regarding the Buchanan property. For the reasons we have provided in response to Mr. Buchanan’s testimony regarding new residential traffic and Coyner Avenue, we find that it is not necessary for the subject property to retain EFU zoning in order to allow Mr. Stabb to continue using Coyner Avenue to move farm equipment, including haying equipment, to and from his Coyner Avenue property.

The remaining two Study Area properties that are conducting farm practices are the Volwood Farms and Nicol Valley properties. Volwood Farms and Nicol Valley both adjoin Buckhorn Road. Volwood Farms also adjoins Lower Bridge Way. Volwood Farms is on the east side of Buckhorn Road and Nicol Valley is west of the road and the Volwood Farms property. Both are engaged in

growing crops in irrigated farm fields. A few cows are kept on the Volwood Farms property and, according to an illustration provided by Redside, a “cattle circulation route” crosses the Volwood Farms property.

Redside argued that Dry Creek Ranch cattle are moved on Hunt Road, Lower Bridge Way and Buckhorn Road as a part of the cattle circulation route and that passenger vehicles “can frighten cattle.” Howsley letter of July 23, 2024, p. 5. As noted above, Dry Creek Ranch is located outside the Study Area so impacts to this ranch property are not considered in addressing the “necessary” test. We will do so nonetheless without conceding that these findings are required as they pertain to the Dry Creek Ranch property.

Redside is not the owner of either the Dry Creek Ranch or the Volwood Farms property. Redside did not provide testimony from Two Canyons, LLC, the owner of the Volwood Farms property, regarding its use of Lower Bridge Way, Hunt Road and Buckhorn Road as a part of a cattle circulation route or to express concern about the impact of approval of the plan amendment or zone change application on its small cattle operation or other irrigated crop farm uses, including impacts related to new traffic. Given this lack of evidence and the lack of objection to the applications from the prior owner of the property (Volwood Farms), it is reasonable to conclude that none of the potential impacts, including traffic impacts, are of such a magnitude that they would force Two Canyons, LLC to discontinue farm practices, including use of public roads and the Volwood Farms property to move cattle and the raising of a few head of cattle on the Volwood Farms property.

Furthermore, the subject property does not adjoin or have convenient or direct access to Hunt Road, Buckhorn Road or Lower Bridge Way. All traffic coming and going from the subject property, with the possible future exception of emergency or public utility vehicles, will use Coyner Avenue and NW 91st to access other area roads, including Highway 126 and almost no vehicle trips associated with the RR10 development of the subject property will use these roads. Applicant’s Exhibit 49. The applicant is seeking a 20-foot wide right-of-way from BLM to cross its property to obtain access to utility lines along Buckhorn Road. The applicant is also seeking a 60’-wide right-of-way to allow access to NW 93rd Street north of the subject property for utility and emergency access use. These are the only uses that BLM will allow on either road. Residential traffic will not be able to use these rights-of-way to come and go from the subject property. We have imposed a condition of approval upon approval of this application to assure that this remains the case. Given this fact we are not persuaded that the rezoning of the subject property will force Two Canyons, LLC to discontinue using its cattle circulation route or to discontinue raising a few cattle on the Volwood Farms property.

These utility and emergency-only access points are unlikely to have significant impacts on the Volwood Farms operations and no party has claimed that they will. Using planned and existing access, the Volwood Farms property is more than 10-miles from the subject property, making it highly unlikely that any impact from typical residential traffic will be felt by any farming practices on the Volwood Farms property. Exhibit 16.

The owners of the Nicol Valley property have not opposed approval of this land use application. They have an irrigated farm field and raise hay, alfalfa and/or orchard grass. Haying and other

farm equipment associated with this use may use Buckhorn Road or Lower Bridge Road to move haying or other farm equipment. Given the fact that only a very small amount of traffic from the subject property might use Buckhorn Road to come or go from the Lower Bridge farm area after traveling a significant distance to the south to reach Highway 126, it is reasonable to find that it is not necessary to deny approval of this land use application in order to allow farm practices to continue on the Nicol Valley property.

We are also persuaded by the testimony of Mr. Riley Gallant. Mr. Gallant, a local farmer who owns a farm servicing business, provided testimony relevant to the use of area roads to access the subject property, including the roads that link the subject property to Highway 126. Mr. Gallant stated that he regularly moves his farm equipment on similar roads that have higher traffic volumes and that the nearby roads are “suitable for moving farm equipment while also sharing the road with other vehicles.” Exhibit 41.

The applicant also submitted a detailed inventory of land uses outside of the Study Area to demonstrate the land use pattern of the area. Applicant’s Exhibit 71. The properties that are in agricultural use outside of the Study Area are all engaged in uses similar to those in the Study Area. It is reasonable to find that traffic impacts to these properties that are further away from the subject property than those in the Study Area are similarly negligible and therefore it is not necessary to deny approval for farm practices to continue on these properties.¹¹

Water Impacts

All four properties in the Study Area rely on groundwater for irrigation and the Buchanans rely on groundwater for stock watering. Volwood Farms, Stabb and Nicol Valley use groundwater to grow crops. The Buchanans use groundwater to irrigate a pasture that is grazed by cattle and to provide water to livestock.¹² Given the fact that all four properties rely on groundwater pumped from the regional aquifer, our analysis of the water impacts issue addresses impacts on all four Study Area properties where farm practices are occurring, as well as farm practices beyond that area where impacts will be no greater. After a review of the expert evidence related to water impacts, we find that the existing resource designation and zoning is not necessary in order to allow existing farm practices in the Study Area and beyond to continue.

Establishing and using water in the volumes necessary to attempt irrigated agriculture—although infeasible given existing soil conditions and the high cost of purchasing water rights from existing farms that hold irrigation water right—would have far greater impacts on area wells that would the use of water by 71 homes. According to Cascade Geoengineering, a conservative estimate of the 710 Properties water use is equivalent to the irrigation of 27 acres of land whereas at least 405 acres of the subject property might, theoretically, be irrigated. Moreover, the existing zoning would permit a destination resort, which also would use substantially more water than used by up to 71 homes with small lawns. Additionally, RR-10 zone development of the subject property will result in smaller potential and in-fact water impacts than the existing designation and zoning.

¹¹ This finding is not required to address the issue on remand which requires the Board to address impacts to adjoining and nearby lands only.

¹² Mr. Buchanan has stated that he imports hay to feed his horses and roping cattle, cattle that are not, based on its advertising, a part of the Keystone business.

Putting comparison aside, the expert opinions of GSI Water Solutions (Applicant’s Exhibit 31), Cascade Geoengineering (Applicant’s Exhibits 74 and 110), and that of Kyle Gorman of OWRD (Rec-692-696), is sufficient for a reasonable person to determine that potential water impacts will not violate the “necessary to adjacent and nearby farm practices” test. Many commentators mentioned that the groundwater in the Deschutes Basin is declining and that the pending applications should be denied due to that fact. This decline is primarily due to climate change. Rec-4049 (70% impact). According to Kyle Gorman of OWRD, the decline of groundwater in the area of the subject property is gradual and an abundant supply of water exists to support new 710 property water uses. GSI’s study, confirmed by Cascade Geoengineering, shows this can be done without likely interference to agricultural or domestic wells in the area.

Robert Long of CwM-H2O offered the only technical expert opinion on water impacts. Mr. Long did not directly challenge the conclusion of GSI that water use by 71 homes on the subject property (“710 water use”) is unlikely to interfere with agricultural or domestic well use in the area around the subject property. Instead, Mr. Long asked whether this use of groundwater will have *any* adverse impact on the regional aquifer or agricultural water use and operations which is not the question that must be addressed on remand.

The gist of Mr. Long’s response to his own question is that any exempt water use, no matter how small, will “contribute to further diminishment of the area aquifer resource and reduce groundwater availability for irrigation of crops and watering of livestock.” He claims this will be the case because new homeowners will not be required to purchase and transfer irrigation water rights to their property from elsewhere in the Deschutes Basin or to provide surface water mitigation for their water use. This is true for any exempt well in the Deschutes basin, including exempt wells drilled for livestock watering or farm dwellings.

The question on remand is whether the proposed potential impacts of the 710 water use will preclude farming practices on nearby or adjacent lands. To answer that question, it is logically necessary to determine whether there will be an impact on area wells due to the 710 water use and the amount of that impact, if any. Mr. Long did not answer that question. According to Cascade Geoengineering, the conservative (high) use of water by 71 exempt wells and homes, without a restriction on irrigation water use beyond the restriction set by State law, is 51-acre feet annually. This is 0.0000182% of the annual recharge of the aquifer.

Instead, Mr. Long addressed the potential future impacts of a groundwater decline trend caused primarily by drought and discussed the cost impacts of that decline. These are costs that farmers and residents alike will address regardless of whether the subject property is zoned RR10. Mr. Long did not separate out the impact that the 710 water use might have on the water supply provided by the regional aquifer and on area wells – information needed to identify cost impacts, if any, attributable to the 710 water use and to answer the question on remand. He did not find that the 710 water use will hasten the day when wells must be deepened by area farmers due to groundwater declines due to causes unrelated to the approval of the plan amendment and zone change applications.

Mr. Long’s cost estimate of addressing the existing issue of groundwater decline as a whole is based on a theoretical five-foot drop in well water levels he selected. This amount of drop is in

excess of any slight impact the 71 new homes might have on the aquifer. According to Kyle Gorman of OWRD and the OWRD chart of historic declines in the Lower Bridge and other areas, the groundwater in the area has dropped nine feet in 25 years in a relatively steady fashion with a slight increase in recent years. With a straight-line decline, it would take almost 14 years for a decline of five feet to occur. Assuming a more rapid rate of decline, it might take as little as ten years for this amount of decline to occur due to factors other than the 710 water use. We find that, since the 710 water use and potential impact on other wells is so small, it will not create a financial hardship on area farms that will cause them to discontinue using irrigation water or to continue to farm their properties. It is important to note that this is an impact that is already occurring and cannot be attributed, based on the evidence and testimony in the record, to potential new domestic exempt use of water on the subject property.

Furthermore, none of Mr. Long’s statements overcome the test that the property’s existing designation is necessary to permit farm use to continue—they illustrate that factors outside of the existing property are leading to adverse impacts. They do not tie the proposal to those impacts. Moreover, Mr. Long’s testimony was rebutted by Cascade Geoengineering, including responses to claims made regarding annual recharge and *specific recharge rates* in the particularized area of the proposal. This more specific information is reasonable to rely upon.¹³

Mr. Long’s comments also argue that additional water use would harm groundwater resource flows of the Deschutes River. This is not the test that is to be addressed on remand nor are there agricultural uses within the Lower Bridge area or in the Study Area that rely upon surface water flows. Applicant’s Exhibit 110.

In summary, Mr. Long did not answer the question posed by LUBA on remand.

Redside’s lawyer James Howsley attacks the methodology employed by the GSI Report to assess the impact of the 710 water use on agricultural and domestic wells in the area of the subject property and the expert evidence provided by Cascade Geoengineering. Mr. Howsley faults the study for not including current well conditions and levels on nearby farm properties and not digging a test well to test results of the GSI study. Mr. Howsley also claims that the study simulated “the equivalent of the cumulative impact of pumping from 5-6 homes” which he claimed underestimated impacts of pumping by a factor of 10.

Redside’s water expert Mr. Long, however, did not support any of Mr. Howsley’s arguments. This silence on such a key issue suggests that Mr. Howsley’s lay speculation about the merits of the GSI report are not well founded. Also, the GSI report was co-authored by hydrogeologist Ken Lite (Rec-2618). Mr. Lite is a former USGS employee who is an expert on groundwater declines in the Deschutes Basin and one of the authors of the 2017 study of the topic published by the USGS, Simulation of groundwater and surface-water flow in the upper Deschutes Basin, Oregon: USGS Scientific Investigations Report 2017 (Rec 1437) and co-author of the 2013 USGS Analysis of 1997-2008 groundwater level changes in the upper Deschutes Basin, Central Oregon (Rec-1335-1378) as well as being a co-author of a number of earlier groundwater studies and flow

¹³ Interestingly, area irrigation wells are shallow with the deepest at 316 feet. This is the Buchanan’s well and based upon water recharge direction and patterns obtains water before any potential domestic exempt well on the property would. Applicant’s Exhibit 58.

simulations of the upper Deschutes Basin. Rec-2622. We find that Mr. Lite understands what information is needed to estimate impacts to groundwater in the Deschutes Basin and that Redside’s attorney, a person who is unqualified to offer an expert opinion on groundwater issues, does not.

Cascade Geoengineering directly responded to Mr. Howsley’s arguments. It stated “[i]t is not necessary to study ‘actual well condition’ nor is it an accepted practice for water experts to dig a test well to assess whether a new use will cause draw down with the well” for reasons provided on Applicant’s Exhibit 74, p.3. Cascade Geoengineering also explained that Mr. Howsley misunderstood the analysis conducted by GSI and that it did, in fact, study and overestimated the potential impact of water use by 71 homes on both agricultural and residential wells in the area surrounding the subject property. Applicant’s Exhibit 74, p.3-4. This response is not contested on its facts or “on the science” by Mr. Howsley or Mr. Long during the rebuttal comment period. Instead, Mr. Howsley argues that the conclusion of Cascade Geoengineering (and GSI) that 710 water use is unlikely to interfere with agricultural water use in the area is not legally sufficient because the failure to study current well conditions is “directly contrary to the Oregon Supreme Court’s ruling that when examining potential impacts to surrounding farms, the farm practices must be analyzed on a farm by farm basis.” *Stop the Dump Coalition v. Yamhill County*, 365 Or 432 (2019). *Stop the Dump*, however, addresses the requirements of ORS 215.296(1), a more rigorous impacts test and does not address the meaning or requirements of the “necessary to permit farm practices” test.

The *Stop the Dump* decision does not make it impermissible to address an impact that applies to all lands and farm practices with a single set of evidence related to the regional aquifer below all of the Study Area properties. The *Stop the Dump* court held that, based on the legislative history of the adoption of ORS 215.296(1), that the ORS 215.296(1) impact test applies “practice by practice and farm by farm.” We have done so for the “necessary to permit farm practices” test by identifying all farm uses occurring on adjacent and nearby lands and the farm practices occurring thereon. LUBA rejected the claim by 1000 Friends that we had not done so, and we have used that information, with supplemental information regarding one new and one overlooked farm use, to answer impact questions on remand.

Evidence in the record addresses the possible impacts of the 710 water use on **any and all** farms and farm practices in the Study Area. It supports our finding that no farm in the Study Area or beyond will require the subject property to retain EFU zoning to enable them to continue farm practices, including irrigation from agricultural wells. The evidence provided by Cascade Geoengineering addresses the water issue that exists for all farms and farm practices that might be impacted by the 710 water use. Based on this analysis, we find that there will be no likely impact on the ability of any of the farms or their groundwater use and no impact of sufficient magnitude to prevent any farmer from continuing the farm practice of using groundwater to irrigate their properties or to use water for any other farm purpose. *Stop the Dump* does not hold that this approach is impermissible where evidence answers the impact question for all farm practices within a study area.

It was also claimed by opponents that domestic exempt water uses on farm lands should be further protected because those domestic uses may be necessary for farming practices. Again, the evidence

in this record is that the potential impact of domestic exempt wells on the subject property are unlikely to impact area wells due to the significant amount of recharge in this area. Similarly, as Cascade Geoengineering opined, “[b]ased on general conditions a domestic well may last between 20 to 50 years if the best well completion and materials are used, also keeping mind that ongoing well maintenance is necessary and that may include cleaning of the well[.]” And, while not insubstantial, the only verified evidence of the costs of deepening domestic well in the record is found at Exhibit 80. In that case, a 751-foot deep well needed to be cleaned and an additional 139 feet deepened at the cost of \$6,537.00.

Despite the expert testimony of both GSI Water Solutions and Cascade Geoengineering that water impacts of the proposal are unlikely to have any impact, the fact remains that groundwater exempt wells, although not requiring a water right, are treated as if they are a certificated right. ORS 537.545(2). This also means that if such a use results in substantial or undue interference with another authorized well or water user, OWRD may regulate the exempt use of water by homes built on the subject property to prevent interference with existing agricultural and domestic wells. OAR 690-250-0130. A comprehensive legal memorandum on exempt uses that supports this finding is found at Applicant’s Exhibit 84. In the Deschutes Basin, OWRD has never regulated off a groundwater user. Applicant’s Exhibit 110, pg. 3.

Lastly, the County accepts the applicant’s offer to reduce the amount of water that could be used by the 71 new wells by agreeing to a condition of approval, enforceable by a recorded document, that the amount of land that may be irrigated per exempt well be limited to ¼ acre rather than the ½ acre figure allowed by State law. Compliance with this requirement can be monitored by aerial photography available from a number of sources, including the County Assessor’s DIAL system.

Given the evidence in the record and our findings herein we find that it is not necessary to maintain the property’s existing resource designation and zoning in order to prevent water impacts to farm practices on nearby and adjacent agricultural land in the Study Area.

The applicant also submitted a detailed inventory of land uses to determine the land use pattern of the area. Applicant’s Exhibit 71. This exhibit includes properties outside of the Study Area. The properties that are in agricultural use on the area but outside of the Study Area are all engaged in similar uses as those in the Study Area. It is reasonable to find that water impacts to these properties that are further away than those in the Study Area are similarly negligible and therefore it is not necessary to deny approval of the rezone and comprehensive plan re-designation in order for farm practices to continue on these properties.¹⁴

Nuisance and Trespass

No party has argued on remand that nuisance or trespass impacts that might affect farm practices on adjacent or nearby lands due to the RR-10 redesignation of the subject property will result in the discontinuation of accepted farm practices in the Study Area. This may be because many nonfarm dwellings have been approved in the Odin Valley with assurances from property owners like the Johnsons and Ed Stabb, assuring the County that nonfarm dwellings will not result in a

¹⁴ This finding is not required to address the issue on remand which requires the Board to address impacts to adjoining and nearby lands only.

significant change or increase in the cost of farm practices – in both cases where farm dwellings were approved nearly adjacent to irrigated farm pasture and crop land.

The county recognized the fact that the area of the Odin Valley near the Stabb property is primarily residential when it approved the Stabb nonfarm dwelling application in 2019. This dwelling was approved on Tax Lot 301, Map 14-12-27 on a nonfarm parcel that adjoins the southeast boundary of the subject property and the Stabb hay field on Tax Lot 300, Map 14-12-27. The county decision found that the one-mile study area around that property in the Odin Valley “is predominantly one of rural residential use,” that “[t]he land use pattern appears to be stable, with the dwellings in the area approved mostly as nonfarm dwellings and that “[t]he proposed dwelling will be consistent with the land use pattern of the area by allowing a nonfarm dwelling on dry, unproductive land.” It also found that the nonfarm dwelling would not force a significant change or increase in the cost of accepted farm practices, a more stringent test than the “necessary” test of OAR 660-033-0020(1)(a)(C). As shown by the testimony offered in this case, farm uses continue to occur in this area despite the prevalence of nonfarm dwellings.

Given the topography of the subject property, the level ground on top of the plateau and the steep slopes and the mountain views available from that location, new homes will be built on the plateau rather than on the steep slopes below. Given this fact, it is likely that most homes will be separated from farms to the northwest and southeast. This will make it unlikely that the owners of homes on the subject property will venture down the steep slopes and trespass onto adjacent or nearby properties where farm practices are occurring on the Volwood Farms, Stabb and Nicol Valley properties.¹⁵ Furthermore, this vertical separation will also make it unlikely that there will be any nuisance impacts due to the approval of RR10 zone and no impacts will force area farmers to discontinue farm practices. To further assure that nuisance and trespass issues will not impact area farm practices, we have imposed a condition of approval that requires the applicant to post and fence the property to discourage trespass, to require property owners to record a waiver of remonstrance agreement waiving rights to object to accepted farm practices and to observe a minimum setback of 100’ from properties where farm practices are occurring (Buchanan, Stabb and Volwood Farms). These requirements are more stringent than the requirements imposed on nonfarm development in the EFU zone that are designed to minimize potential conflicts between farm and nonfarm uses.

The farm practices that may be occurring on these four properties are irrigation, growing and harvesting crops (grass, hay, alfalfa), fertilizing farm fields, baling hay, and herbicide use. Horse and cattle grazing may also be occurring in the area. The record includes information from the Oregon State University Extension Service that describes the types of impacts farm practices in the surrounding area could generate on nearby lands. Maintaining irrigated pasture and crop land can generate dust from reseeding, drift of herbicides from spraying, vehicle noise from trucks, manure odor from fertilizing, and possible water run-off from irrigation. Grazing livestock can generate dust, manure odor, possible interference with vehicular traffic and property damage if livestock escape.

¹⁵ The likelihood of trespass onto the Buchanan property will not be materially increased because the Buchanan property only adjoins a small nonfarm parcel, Tax Lot 101, Map 14-12-28D, that has been approved for the construction of a nonfarm dwelling. RR10 zoning will not allow that parcel to be developed with more than one dwelling. All other parts of the subject property are one-quarter mile or more away from the Buchanan property and the Buchanan property is fenced.

Dry lot feeding, such as occurs on a part of the Buchanan property, may generate dust, manure, odor and flies and livestock may escape and property damage may occur as a result. Some horse and cattle operations move livestock to or through unvegetated areas. This might create dust and, on rare occasions, slow the progress of vehicular traffic on area roadways. There is a potential for overspray of irrigation water and herbicides. None of these farm practices will, however, be prevented from occurring on any of these four properties by approval of the proposed plan amendment and zone change.

There are significant federal BLM holdings in the area. These lands are part of the Cline Buttes Recreational Area. They include an OHV Trail System which adjoins the subject property. This system also adjoins or is in close proximity to the Nicol Valley, Volwood and Buchanan properties. The risk of trespass and nuisance from these activities is higher than that of a residential use because recreational users are unlikely to be as familiar with the area and the boundaries of the BLM property.

Lastly, the applicant submitted a detailed inventory of land uses within a radius of one mile and more of the subject property to demonstrate the land use pattern of the area. This includes properties outside of the Study Area. The properties that are in agricultural use in the area but outside of the Study Area are all engaged in similar uses as those in the Study Area. It is reasonable to find that nuisance and trespass impacts to these properties that are further away than those in the Study Area are similarly negligible and therefore it is not necessary to deny approval of the application in order for farm practices to continue on these properties.¹⁶

The following are additional facts related to each of the four properties that support our conclusion that neither trespass nor nuisance issues require that the subject property retain its EFU zoning designation.

Stabb Property Near Southeast Corner of Subject Property

Only one privately-owned tax lot adjoins the eastern boundary of the subject property. It is Tax Lot 301, Map 14-12-27 (“Tax Lot 301”). Tax Lot 301 is a nonfarm parcel created by an irrigated land division that is approximately 17.5 acres in size. It is located adjacent to the southeast corner of the subject property of Tax Lot 300, Map 14-12-28 (“Eden TL 300”). Mr. Stabb obtained approval of a CUP for a nonfarm dwelling on Tax Lot 301 in 2019 (File #247-18-000796-CU).

The nonfarm dwelling on Tax Lot 301 is approximately 600 feet from the farm field on the adjoining Stabb property, Tax Lot 300, Map 14-12-27 (“Tax Lot 300”). Mr. Stabb’s Tax Lot 300 also contains a dwelling that is about 200 feet away from the irrigated farm field. Rec-2522. Neither of these dwellings have prevented continuation of the Stabb farm operation or farm practices. At no point does TL 300 adjoin Eden TL 300. Rec. 4738-4739.

¹⁶ This finding is not required to address the issue on remand which requires the Board to address impacts to adjoining and nearby lands only.

Eden TL 300 has a valid land use permit that allows it to develop a nonfarm dwelling within 25 feet of Tax Lot 301 and approximately 45 feet of Tax Lot 300. Rec. 4763. That nonfarm dwelling was allowed because the County determined that the dwelling will not force a significant change in or significantly increase costs of accepted farm practices on surrounding farm lands, including the Stabb property. The impacts of a dwelling or dwellings built on Eden Tax Lot 300 once it is zoned RR10 will be less because new homes will be required to be built farther away from the Stabb farm field than required by the Eden nonfarm approval. Given this fact, the retention of EFU zoning is not necessary to protect the Stabb property from impacts, including nuisance or trespass impacts.

Furthermore, the County found, in its land use decision approving the Stabb nonfarm dwelling, that the presence of a nonfarm dwelling on Tax Lot 301 close to the irrigated farm field on the Stabb farm property (TL 300, 14-12-00) would not force a significant change in accepted farm practices or significantly increase the cost of accepted farm practices in the area, including farm practices on Tax Lot 300/Stabb and the nearby Buchanan property. According to the County decision approving the Stabb nonfarm dwelling:

“The applicant has stated in their burden of proof that the characteristics of the surrounding area is predominantly rural residential with some farming in the form of irrigated pasture, hay production, and livestock grazing.” Rec-5156.

These findings were based on information provided by Mr. Stabb and detailed information regarding the development pattern of the area within a one-mile radius of the Stabb property provided to Mr. Stabb by Deschutes County. In the case of the 710 Properties rezone, the question is whether uses allowed by the approval of RR-10 zoning for the property will prevent farm practices from occurring on adjoining and nearby lands. The Stabb property is nearby. The standard applied in nonfarm dwelling application reviews is more rigorous – whether the nonfarm dwelling will substantially interfere with or cause alteration of accepted farm practices. Compliance with the standard applied to the review of nonfarm dwelling applications would also, on the same or similar facts, demonstrate compliance with the “prevent” farm use standard applicable to the zone change application.

The fact that the surrounding area is predominantly rural residential has not prevented Mr. Stabb from growing hay, grass and/or alfalfa on Tax Lot 300. Tax Lot 300 is surrounded by five nonfarm parcels (Tax Lot 301, Map 14-12-27 on the north and east; Tax Lots 401 and 402 on the east; and Tax Lots 100 and 200, Map 14-12-34B). There are also four nonfarm parcels (including one of parcels being rezoned RR-10) and three nonfarm dwellings on the 80-acres due west of the irrigated part of the Stabb property and north of Coyner Avenue. The same is true for all properties south of Coyner Avenue and Tax Lot 300 between the subject property and NW 91st Street (including the nonfarm dwelling on the Buchanan property).¹⁷

¹⁷ Coyner Avenue provides access to the subject property. From its intersection with NW 91st Street three-quarters of a mile away, all properties on the south side of the road are nonfarm parcels or are developed with nonfarm dwellings. These parcels adjoin the part of the Cline Butte Recreational Area designated for off-highway vehicle use or another nonfarm parcel that adjoins the recreation area.

In all of these cases it was necessary for the County to find that placing nonfarm dwellings on the surrounding lots would not force a significant change in accepted farm practices or significantly increase the cost of accepted farm practices in the area, including farm practices on the Stabb property. The dwellings on the 710 Property tract, also, like the nonfarm dwellings already in closer proximity to Tax Lot 300, will not cause Mr. Stabb to discontinue any farm practice occurring on Tax Lot 300.

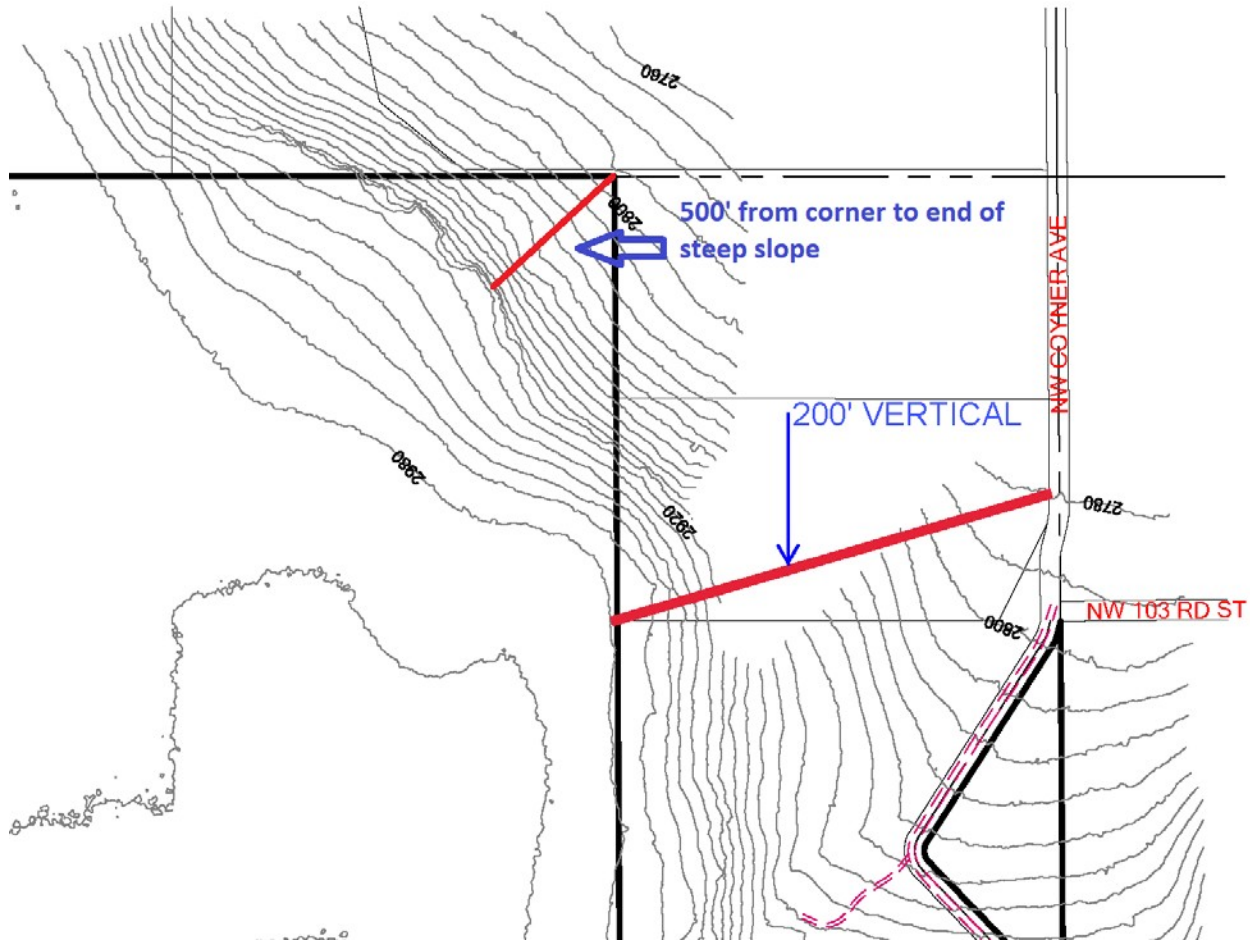
The addition of new homes on the subject property will not materially change the impacts on farm uses occurring on Tax Lot 300 and it will not prevent Mr. Stabb from engaging in any accepted farm use because they will not introduce a new or different use than already occurring in close proximity to his farm property – residential dwellings. Any of the occupants or owners of these other nonfarm dwellings will be impacted by farm practices at the same time as or before residents of the subject property due to distance and topography.

The irrigated hay ground on the Stabb property touches the flag pole part of Tax Lot 301, a nonfarm parcel. The flag pole area is a 20-foot-wide strip of land. It lies between the hay field and the Hayes nonfarm parcel and dwelling to the west, Rec-2518, 3389, 1000 (scaled aerial photograph). Three other nonfarm parcels lie west of the irrigated field along Coyner Road. The closest two nonfarm parcels are developed with nonfarm dwellings. The other has a valid approval for approval of a nonfarm development (Tax Lot 101, 14-12-28D). This parcel is a part of the plan amendment and zone change application. Approval of the pending zone change will not alter the allowed use or density of development of this parcel.

For approximately 450 feet, Mr. Stabb’s Tax Lot 300 is about 20 feet from the southeast part of the subject property. Rec-1000, 2518, 3389. This area is not irrigated and it is developed with a residence and structures that separate the hay field from the subject property. The structures also buffer potential conflicts between uses on the two properties. Rec-3389.

The irrigated field on the Stabb property is approximately 700 feet from and 200 below the part of the 710 Property that could feasibly be developed with a single-family dwelling and about 1200 feet from the top of the east side of the plateau. There is a total drop of approximately 200 feet in elevation from the subject property to the farm field on Tax Lot 300, the Stabb property. There is a drop in elevation of about 130 feet distance over a distance of 500 feet between the potentially buildable part of the subject property and the southeast corner of the 710 Property. This is the part of the property closest to the field on Tax Lot 300. This steep slope will reduce the odds that a homeowner on the 710 Property will venture onto Tax Lot 301 and onto Stabb 300 because traversing the slope is not easy.

Any building location on the 710 Property would, as a practical matter, need to be built on top of the plateau or on the slopes near the top of the rim. The point of the sloping area of the plateau that might be suitable for building a home that is the closest point to farm uses occurring on Tax Lot 300 is approximately 500 feet from the SE property corner of the 710 Property. This is illustrated below using the HWA topographic map of the 710 Property as a base map:



There is no access to the southeast part of the subject from any public road so access would need to be obtained from on top of the plateau.

This change in elevation between Tax Lot 300, the Stabb farm field, and the subject property creates a wall of separation between uses. It makes it impossible for irrigation water to create a nuisance by flooding the subject property. Overspray of irrigation water, if it occurs, will benefit the subject property because water is desirable in a desert environment to support plant life. The change in elevation will also minimize the odds that herbicide drift, if any, would rise to the level of a nuisance. The growing and harvesting and baling of grass, hay and alfalfa crops will likely create noise and dust during planting and harvesting. Harvesting might occur in evening hours but is a transient impact. The impacts of fertilizing farm fields may include odor and, fertilizing beyond the boundaries of Stabb Tax Lot 300 but these are transient impacts of very limited duration that would impact Tax Lot 301 and its nonfarm dwelling before it would impact the subject property. Furthermore, any drift would simply enrich the soils at the lower elevations of the subject property where homes will not be built. Furthermore, the farm practices on Stabb’s Tax Lot 300 have continued without diminishment, as confirmed by current and historic aerial photography despite its close proximity to single-family dwellings on the Stabb and nearby nonfarm parcels.

In evidence provided to the County in support of his CUP application for TL 301, Mr. Stabb’s representative stated that 3.85 acres of the upper part of Tax Lot 301 (60.7% of the building area of TL 301) is generally unsuitable for the production of farm crops and livestock as it is comprised of class 7 soil; the type of soil present on 71 percent of the 710 Property. Mr. Stabb’s application also said that “[t]he understory is very sparse and would only support very minimal dryland grazing” and that the property “could not be farmed profitably and therefore, would not be suitable for the production of livestock.” The same is true of the 710 Property.

The Stabb application states that Tax Lot 301 abuts two farm operations but “would not be combined with any adjacent property for farm use, as the subject property has no water rights and has an abundance of poor soil and somewhat steep slopes.”

Buchanan Property Near One Point of Southern Boundary of Subject Property

The Buchanan property is one of the three properties located on the south side of Coyner Avenue. All have been approved for development with nonfarm dwellings. Nonfarm dwellings have been built on two of the three properties, including on the Buchanan property. The Buchanans have also built a second dwelling on their property that they rent as a vacation rental. The property has a small irrigated pasture on a part of the property comprised of soils that are predominantly high-value when irrigated in close proximity to the Buchanan’s nonfarm dwelling and another small area that has irrigation water rights but that is not currently irrigated.

The part of the subject property that is the closest to the Buchanan property is Tax Lot 101, Map 14-12-28D. It is separated from the Buchanan property by a public road. This property has a valid conditional use permit that authorizes it to be developed with one nonfarm dwelling. Tax Lot 101 was created by nonfarm partition and is a nonfarm parcel that is approximately 8.66 acres in size. Since a nonfarm house is approved to be built on this lot, the closest other house – one allowed as a result of approval of the pending plan amendment and zone change – is at least at least one quarter of a mile away. The property one quarter mile away, Eden Tax Lot 300 also holds a valid nonfarm dwelling approval.

The Buchanan Coyner Avenue parcel is used to winter cattle owned by Keystone Natural Beef (“Keystone”). The farm practices occurring on the Buchanan property include growing pasture grass, livestock grazing, irrigation of pasture, importing hay to feed cattle and horses and transporting cattle to and from the subject property to the irrigated pasture land Ms. Buchanan owns property in Powell Butte. Mr. Buchanan also uses the property for roping practice and keeps six Corriente roping cattle on the property over the summer which are not a part of the Keystone farm use. The Buchanans also have five horses used for roping cattle and, most likely for moving Keystone cattle.

Accepted farm practices that are or may occur on this property are irrigation, growing and harvesting crops (grass, hay, alfalfa), fertilizing farm fields, baling hay, and herbicide use related to growing crops and maintaining pastures. The farm uses of horse and cattle grazing and dry lot feeding may generate dust, manure, odor and flies; livestock may escape and that property damage may occur. While some cattle and horse operations move livestock to or through unvegetated areas, this might create dust, but most of the subject property is irrigated. Moving livestock may cause interference with vehicular traffic. The parts of the subject property that would be eligible for a new home if RR-10 zoning is approved is about a quarter mile away and elevated about 200 feet above the

Buchanan property. The three properties between the Buchanan and subject properties are all nonfarm parcels that are developed with nonfarm dwellings. This has not prevented the Buchanans from engaging in farm practices on their property. The construction of similar homes in more distant locations should, therefore, not cause the cessation of farm practices.

The Buchanans live in a nonfarm residence on their own property in close proximity to farm uses. Rec- 3387; Rec-3861. They have a second dwelling that is frequently occupied by guests and operated year-round as a short term rental. These uses have not prevented the Buchanans from engaging in the uses of keeping horses and cattle on the property. Both distance and the change in elevation buffer impacts and will help assure that nuisance impacts associated with the farm uses conducted on the Buchanan property and impacts of the zone change impacts will not prevent the Buchanans from conducting a farm use on their property.

The odds of trespass on the Buchanan property are very low and likely no greater than the risk posed by the future nonfarm dwelling allowed to be built on Eden’s TL 101, Map 14-12-28D property. In either case, only one home will be able to be built there. Any other new homes will be at least a quarter mile away in a straight line and closer to the road, making casual trespass by new neighbors nearly impossible. Furthermore, the Buchanan property is fenced which will prevent and significantly reduce the odds of anyone trespassing on their property. Consequently, we find that the possible increase in trespassing is not an impact that would prevent the Buchanans or Keystone from continuing farm practices on their property.

Volwood Farms and Nicol Deschutes Valley Farms

There are two farm properties to the west of the subject property that located on the adjacent or nearby lands. One is Volwood Farms. It adjoins the northern part of the western boundary of the subject property. A steep canyon wall and rock outcrops lie along and east of the common boundary line of Volwood Farms and the subject property. The rim of the canyon is approximately 250 feet above the elevation of the Volwood farms property. There is no public road access to the area below the rim.¹⁸ The distance between the common boundary and the plateau area of the property where homes will be built varies from approximately 375 feet to 800 feet and a minimum setback of 100 feet from Volwood Farm is required by this decision. Steep rimrock and canyon sides separate the plateau area of the subject property from the farm fields on this property.

The other farm is Nicol Deschutes Valley Farms. It is located west of Volwood Farms and Buckhorn Road. It and Volwood Farms are engaged in the same type of farm practices – irrigation of hay fields, growing and harvesting crops, fertilizing fields, baling hay and, possibly, herbicide use. Nicol Deschutes Valley Farms is, according to DIAL’s interactive mapping measurement tool, over 1000 feet west of the 710 Property and separated from it and the Volwood Farms property by Buckhorn Road. As a result, the analysis of impacts for Volwood Farms also addresses impacts for the more distant Nicol Deschutes Valley Farms property. And, using the existing access roads, Volwood Farms is more than 10 miles from the 710 Property. Applicant’s Exhibit 16.

Neither Volwood Farms nor Nicol Deschutes Valley Farms objected to approval of the 710 Properties plan amendment and zone change nor did they raise concern about the impacts of the change on

¹⁸ There is one point of public road access to the subject property – Coyner Avenue. It provides access to the plateau area of the subject property only.

existing farm practices. The change in elevation and distance between these farms and the plateau, separate and buffer farm uses and practices from new nonfarm dwellings such that approval of the zone change will not prevent these farms from continuing conducting farm uses. Given the topography, there is no risk that the irrigation of farm fields will flood or otherwise harm the subject property. The growing of crops is mostly a quiet activity except during planting and harvesting seasons. Planting and harvesting of hay crops, including baling hay, are of short duration and the activity is protected against lawsuits by neighbors or others impacted by farm practices by the right-to-farm law and by the waiver of remonstrance we are requiring be recorded. The physical barrier provided by the canyon wall and distance will also allow these farms to continue fertilizing their fields and, if they choose to do so, use herbicides. Any drift of chemicals or fertilizer, if it occurs, should not reach homes on the plateau area of the subject property. As a result it is very unlikely, particularly given the waiver of remonstrance, that any new neighbor on the subject property will attempt to interfere with accepted farm practices on any adjacent or nearby lands. Given these facts, we find that potential nuisance impacts are not so great that they would prevent farms in the Study Area from continuing any farm practices.

We assess the risk of trespass by new homeowners onto the Volwood Farms property as low due to the steep hillside on the west side of the subject property and the attractiveness of the upper level of the plateau for building homes and the risk of trespass onto the Nicol Valley property nearly nonexistent due to topography, distance and the existence of Volwood Farms between it and the subject property. To significantly reduce and prevent trespass, because it is possible that homes might be built as close as 100’ feet from the west boundary, we have required that the subject property be fenced along or near its boundary with Volwood Farms and that no trespassing signs be posted at 250’ intervals. With this restriction, we are confident that trespassing will not present a problem of such a magnitude that it will prevent either Two Canyons LLC as owner of Volwood Farms or Nicol Valley from continuing to engage in accepted farm practices.

Alternative Findings re Trespass and Nuisance Impacts

As an additional and alternative basis for finding compliance with OAR 660-033-0020(1)(a)(C), we find that the EFU zone and the DR overlay zone and destination resort map allows development of a destination resort on the subject property. Such a development, if approved, would allow far more residences to be constructed on the subject property than allowed by RR10 zoning. We have imposed a condition of approval that prohibits destination resort development of the subject property. As a result, approval of the zone change and plan amendment applications will decrease the potential maximum development of the subject property and impacts related to trespass and nuisance. We find it is not necessary to retain EFU zoning on the subject property, given the possibility it offers of development of a destination resort, to permit the continuation of farm practices in the area.

Additionally, as a condition of approval, we require a conditions of approval agreement to be recorded against the subject property that establishes a residential setback from any property engaged in farm use and the Buchanan property consistent with **Attachment B**. We also require a recorded waiver against complaints in substantially the same form as included in **Attachment B**.

D. Remand Issue 5: Is the Decision Consistent with DCC 18.136.020(C) and the Deschutes County Comprehensive Plan’s Agricultural Goal 1?

LUBA has required the County on remand to consider evidence of traffic, water and wastewater impacts, on surrounding agricultural lands in findings addressing compliance with DCC 18.136.020(C)(2) and DCCP Agricultural Lands Goal 1. LUBA determined that the County need not address impacts on nonresource lands. All lands inventoried in our findings regarding compliance with OAR 660-033-0020(1)(a)(C), above, are designated by the comprehensive plan as agricultural land with the exception of lands to the north of the subject property that are zoned RR10 and are addressed by these findings.

DCC 18.136.020(C)(2) requires that “impacts on surrounding land use will be consistent with the specific goal and policies contained within the Comprehensive Plan.” DCCP Agricultural Lands Goal 1 is to “[p]reserve and maintain agricultural lands and the agricultural industry.”

LUBA did not interpret the meaning of DCC 18.136.020(C)(2) and DCCP Agricultural Lands Goal 1. Our prior decision, also, does not provide an express interpretation of those provisions. We, therefore, interpret each before proceeding to make findings regarding them.

DCCP Agricultural Lands Policy Goal 1 is a part of DCCP Chapter 2 and Section 2.2 Agricultural Lands Policies. The purposes of Goal 1 are met by compliance with its implementing policies, DCCP Policies 2.2.1 – 2.28. Policy 2.2.1 is to “retain agricultural lands through Exclusive Farm Use zoning.” This makes it the policy of the County to retain “agricultural lands” as defined by Statewide Goal 3 and OAR 660-033-0020(1)(a), including the “necessary to permit farm practices” test of its subsection (C). Policy 2.2.3 makes it clear that lands that do not meet these definitions may be redesignated and rezoned, and that such changes do not violate Goal 1. Policy 2.2.3 states:

“Allow comprehensive plan and zoning map amendments, including those that qualify as non-resource land, for individual EFU parcels as allowed by State Statute, Oregon Administrative Rules and this Comprehensive Plan.”¹⁹

DCCP Section 3.3 provides that a non-resource plan designation of Rural Residential Exception Area should be applied to the non-resource lands that Policy 2.2.3 allows to be redesignated.

These plan provisions make it clear that DCCP Agricultural Lands Goal 1 is met when lands that meet the Statewide definition of “agricultural land” are designated “agricultural land” and when lands that are non-resource lands are redesignated RREA in compliance with State law. The only impacts test set by State law for a redesignation of this type is OAR 660-033-

¹⁹ Policy 2.2.4 also directs the County to develop “comprehensive policy criteria and code to provide clarity on when and how EFU parcels can be converted to other designations.” We have addressed this issue in quasi-judicial land use decisions, but have not attempted to draft code and policies to provide clarity to this issue.

0020(1)(a)(C). We find that this is the impacts test required to achieve compliance with DCCP Agricultural Lands Goal 1.

DCCP Section 2.1, Introduction, supports our interpretation of DCCP Agricultural Lands Goal 1. It explains that the structure for protecting Oregon’s resource lands is provided by Statewide Planning Goals and the associated Oregon Revised Statute and Oregon Administrative Rules. It states that [f]arm lands are protected by Statewide Goal 3, Agricultural Lands, ORS 215 and OAR 660-033” and that statutes and the OARs define which land should be designated farm land. The OAR that defines farm land is OAR 660-033- 0020(1)(a). The land necessary to permit farm practices requirement is used to define farm land. Section 2.1 also states that “the policies in this chapter also acknowledge that sometimes the appropriate government act is to *** remove obstacles.” Policy 2.2.3 is one such policy.

DCC 18.136.020(C)(2) requires that we find that “impacts on surrounding land use will be consistent with the specific goal and policies contained within the Comprehensive Plan.” We interpret this requirement to be met when impacts on surrounding land comply with OAR 660-033-0020(1)(a)(C) are, therefore, are consistent with Goal 1 and the policies that implement it. We also find that the term “surrounding land use” on means land use occurring on all lands designated Agriculture by the comprehensive plan map that touch the boundaries of the subject property. Our findings of compliance with OAR 660-033-0020(1)(a)(C) address all such lands and, additionally, “nearby lands” and, therefore, serve to address the study area we must address to find compliance with DCC 18.136.020(C)(2).

Our interpretation of DCC 18.136.020(C)(2) is supported by the definition of “surround” provided by Webster’s Third New International Dictionary Unabridged. It defines “surround,” in this context, to mean “to be situated or found around, about, or in a ring around: as *** b: to live around on all or most sides *** f: to form a ring around : extend around or about the edge of : constitute a curving or circular boundary for : lie adjacent to all around or in most directions.” We apply the term “adjacent” to mean land that, as defined by DCC 18.04.030, “Adjoining” means land that is “contiguous; touching or connected” which is also how the term is used in OAR 660-033-0020(1)(a)(C) which also includes “nearby lands.” Our findings that demonstrate compliance with OAR 660-033-0020(1)(a)(C), therefore, establish compliance with DCC 18.136.020(C)(2) and DCCP Agricultural Lands Goal 1.

Water and Traffic Impacts

Findings of compliance with OAR 660-033-0020(1)(a)(C) regarding water and traffic impacts assure compliance with DCC 18.136.020(C)(2) for those impacts by ensuring that farm practices on agricultural lands will be able to continue after the subject property is redesignated RREA. The protection of farm practices will ensure that agricultural lands will be preserved and maintained for their intended purpose of engaging in farm use. This protection will logically help preserve and maintain the agricultural industry.

Findings regarding compliance with OAR 660-033-0020(1)(a)(C) look only to lands where farm practices are occurring. We find that this is sufficient to find compliance with the County’s code and plan. Impacts to nonfarm uses on surrounding lands, if they occur, are not inconsistent with any specific goal or policy contained within the comprehensive plan. Goal 1 does not extend any protections to those potentially conflicting uses. No specific policy or goal offers protection to nonfarm uses, including nonfarm dwellings.

All properties that are surrounding (“nearby and adjacent”) lands that we did not specifically address in findings related to OAR 660-033-0020(1)(a)(C) are developed or approved for development with nonfarm dwellings or are public lands where no farm use is occurring. We find that since nonfarm dwelling properties are not engaged in farm use and a nonfarm dwelling is a single-family dwelling which is the same use allowed by the RR-10 zone. Therefore, RR-10 zoning will not negatively impact these lands contrary to Goal 1 to preserve and maintain agricultural lands. Because nonfarm dwellings do not contribute to the agricultural industry, impacts to lands where nonfarm dwellings exist and have been approved, will not negatively impact the agricultural industry. All of these nonfarm properties have been determined by the County to be generally unsuitable for the production of farm crops and livestock or merchantable tree species.

In an excess of caution, however, we address potential water, traffic and wastewater impacts on all Study Area properties that are not engaged in farm use and that are also not engaged in farm practices for agricultural activities that do not amount to “farm use.” This is an alternative basis for approval of this application.

None of the public lands that adjoin the subject property are engaged in farm use; farm practices are not occurring on those lands. Tax Lot 3200, Map 14-12-20 is a recreational area designated for use by all-terrain and off-road vehicles. It is accessible from a trailhead on Buckhorn Road a short distance north of Highway 126 and a considerable distance south of the subject property. This recreational use is not water dependent so will not be impacted by the 710 water use. The traffic impact analysis and commentary provided by the applicant’s transportation engineers demonstrates the amount of 710 property traffic that will use Buckhorn Road is so low that it will not impact this recreational use which, other than coming and going from the trailhead, occurs off-road. Tax Lot 700, Map 14-12-22B, Tax Lot 500, 14-12-22C and Tax Lot 200, 14-12-27 comprise a single tract of open space land that is north and east of the subject property. Its sole use is as open space; not public recreational or private agricultural (grazing) use. Traffic from new homes in the subdivision will not create any impact that would impair the use of this property as open space. Water use by the subject property will also have no impact on this tract because it is undeveloped and does not use water as is evident in aerial photographs.

There are five nonfarm dwelling properties in the study area. All five of these properties are located south of the bulk of the subject property and east of the 8.66-acre Tax Lot 101, Map

14-12-28D. One is Tax Lot 100, Map 14-12-28D. This parcel is owned by the applicant who is not claiming that traffic or water impacts will harm its residential use of this property. Traffic will pass by this lot and the four other nonfarm dwellings and lots in the Study Area. All adjoin Coyner Avenue. Tax Lots 200 and 300, Map 14-12-28D and Tax Lot 301, Map 14-12-27 adjoin Coyner Avenue along their southern boundaries. As shown by aerial photography in the record, all homes are sited a significant distance to the north of Coyner Avenue. The remaining property is an 80-acre parcel on the south side of Coyner Avenue. It that has received approval to build a nonfarm dwelling in the south part of the property a significant distance from Coyner Avenue. Applicant’s Exhibit 32, p. 2.

While the amount of traffic that will pass by these nonfarm properties will increase, such increase will not prevent any of these properties from continuing to be used as single-family residences nor will the amount of traffic be so great that residents will be unable to come and go from their homes in motor vehicles. The impact of traffic on the livability of the homes on Tax Lots 200 and 300, Map 14-12-28D, Tax lot 301, Map 14-12-27 should be negligible because both are setback a considerable distance away from Coyner Avenue at the north end of each lot.

All nonfarm residences in the area obtain water for residential use from groundwater. GSI assessed the groundwater impacts of the 710 water use on all wells in the area, including the exempt wells that serve area residences and concluded it is unlikely that any will be adversely impacted by the 710 water use.

Given these facts, the impacts of the approval of the plan amendment and zone change will DCC 18.136.020(C)(2) and not violate DCCP Agricultural Lands Goal 1.

Wastewater Impacts

Certified Professional Soil Scientist and Registered Wastewater Specialist Brian Rabe, CPSS, WWS, based on his professional certifications, expertise and experience in addressing septic system and soils issues and his site-specific soil survey and septic site testing for the Eden Central property, advised “given the location of the property and the size of potential residential lots, it is my professional opinion that there will be no wastewater impacts on nearby or surrounding agricultural lands or the farm uses or farm practices on such lands.” Applicant Exhibit 36. Mr. Rabe explained that where soil depth is insufficient to effectively treat sewage with a standard septic system, a capping fill or a capping fill and alternative treatment technology treatment system approved by DEQ. Mr. Rabe explained that onsite sewage treatment systems are based on a prescriptive code that is intended to be protective of groundwater and that the minimum lot size of 10 acres is 20 time larger than the half-acre minimum required where sensitive groundwater conditions exist. Applicant Exhibit 36.

Redside attorney James Howsley, in comments dated July 23, 2023, offered his opinion that the permeability of subsoils on the subject property “means that wastewater from septic drain fields will flow down to the groundwater at a relatively high rate.” Mr. Rabe responded to this claim by stating:

“The fact that subsoils are highly permeable does not mean that septic tanks serving new homes will contaminate the aquifer that runs below the subject property. The aquifer is a long distance below the surface and the soils between it and a septic drainfield will effectively treat effluent discharged by the drainfield before it reaches the aquifer.” Applicant Exhibit 48, p. 1.

This means that no surrounding property, whether in agricultural use or not, will be impacted by the wastewater use associated with homes built on the subject property or by the approval of the plan amendment and zone change.

We find that the expert opinion of Mr. Rabe is more reliable than the lay opinion of Mr. Howsley. Consequently, we find that we may rely on Mr. Rabe’s opinion that there will be no negative wastewater impacts on the aquifer. on agricultural lands, or on any and all other lands surrounding the subject property. Consequently, DCC 18.136.020(C)(2) does not preclude the County from approving the 710 plan amendment and zone change applications.

Mr. Howsley also argued that testing area agricultural wells for nitrates is required to allow the county to find that septic systems will not impact groundwater quality. Mr. Rabe’s professional opinion, which we find reliable, is that “[i]t is not necessary to test adjoining wells for nitrates in order to determine that the septic systems associated with new development will not prevent nearby or adjoining farms from continuing existing farm practices – in this case irrigating farm fields or providing water for livestock because it is highly unlikely that such contamination will occur. Applicant Exhibit 48.

Billy Buchanan claimed that “the drainage of sewage from 71 homes would result in significant negative changes in our farm practices” but did not identify any farm practices that would be impacted or offer any proof of this assertion. See, Billy Buchanan letter of 2024-08-07 and testimony at July 24, 2024 hearing. Brian Rabe rebutted Mr. Buchanan’s claim stating that no evidence supports Mr. Buchan’s claim. Applicant Exhibit 76.

III. DECISION:

Based upon the foregoing Findings of Fact and Conclusions of Law, the Board of County Commissioners hereby **APPROVES** on remand the Applicant’s applications for a Comprehensive Plan Map amendment to re-designate the subject properties from Agriculture (AG) to Rural Residential Exception Area (RREA) and a corresponding zone map amendment to change the

zoning of the properties from Exclusive Farm Use – Terrebonne (EFU-TE) to Rural Residential (RR-10) subject to the following conditions of approval:

1. A conditions of approval agreement with restrictive covenants enforceable by Deschutes County must be recorded within 180 days of the date this decision is final. If the decision is appealed, the 180-day period will run from the date a final decision and, if applicable, judgment on appeal has been entered.

Attachments:

- Attachment A: Board Findings Chart
- Attachment B: Conditions of Approval Agreement and Restrictive Covenant

Dated this ____ day of _____ 2024

Exhibit F, Attachment A – Ordinance No. 2024-010

Date Received	Person/Entity	Comment Summary	Findings of Fact
2024-07-05	Gary Bendix	Additional traffic at exit from Hwy 126 to 101 st through to the end of NW Coyner – huge impact from new home and construction-related traffic/delivery vehicles.	Mr. Bendix makes no claim that traffic will impact farm practices in the area. Transportation engineer Joe Bessman has confirmed that the roads that provide access to the subject property and the Hwy 126/101 st intersection have the capacity to handle the level of traffic attributable to approval of the zone change and plan amendment applications and that they are able to do so without preventing use of the roads by farm equipment. Additional traffic will not prevent roads from being used to move livestock; although there is little to no evidence that livestock are moved using area roadways and the current traffic has not caused such an impact.
2024-07-05	Gary Bendix	Added strain on water table.	Kyle Gorman of OWRD testified that the supply of water in the water table in the area from which water will be drawn for use by new residents is “robust.” GSI Water Solutions studied the impacts of the new water use on area domestic and irrigation wells and found it unlikely the new use will result in interference with any existing well. The validity of their results was confirmed by Cascade Geoengineering.
2024-07-05	Gary Bendix	Mule deer migration through area in winter – negative impact of fences and more humans in area.	Impacts to mule deer are not an issue on remand nor are they relevant to an applicable approval criterion.
2024-07-12	Zach Russell	A successful farmer or rancher would not use the subject property in combination with their farm operations to grow and harvest crops or have cattle operations due to lack of feed.	The Board finds this evidence to be credible opinion evidence from a person who has the experience needed to render such an opinion. Mr. Russell owns and operates a cattle ranch in Redmond, OR on a 106-acre parcel that has 35 acres of irrigation water rights.
2024-07-12	Zach Russell	I have been on the subject property. The source of feed is scarce. Animals would go	An analysis of the costs associated with importing feed for livestock prepared by rancher Rand Campbell confirms Mr. Russell’s opinion that it is not cost effective to import feed and water to this property

Exhibit F, Attachment A – Ordinance No. 2024-010

		hungry. Farmers and ranchers would go broke hauling in water and feed.	to support a livestock operation. We find Mr. Russell's opinion consistent with the majority of testimony on the topic and persuasive.
2024-07-12	Zach Russell	Businesses that sell and maintain farm equipment are located on industrial or commercial property usually 1 to 10 acres in size.	This information was confirmed by Mark Stockamp who conducted a survey of businesses that maintain or construct farm equipment in Deschutes County.
2024-07-12	Zach Russell	This property is on a ridgetop of lava rock and juniper trees and has nothing to do with adjacent farm land.	This description is consistent with photographs and a topographical map prepared by Hickman Williams that is a part of the record.
2024-07-16	Robin Vora	Cattle are raised on lands similar to this throughout eastern Oregon.	The applicant and DLCD have provided persuasive evidence from the OSU Extension Service that demonstrates that cattle ranching in eastern Oregon is not profitable. A rancher with a herd between 150 to 400 head of cattle should reasonably expect to lose money rather than intend to make a profit in money.
2024-07-16	Del Johnson	I have raised hay and cattle adjacent to the subject property for 30 years.	The Johnson property, where the Johnsons have raised hay and grazed cattle for thirty years, is not adjacent to the subject property. According to DIAL, it is about 1.25 miles by road and about .9 miles in a straight line away from the southeast corner of Tax Lot 101, Map 14-12-28D. Tax Lot 101 is a nonfarm parcel that has a valid nonfarm dwelling approval and the part of the subject property closest to the Johnson property. Mr. Johnson's testimony on this point is disproven.
2024-07-16	Del Johnson	The purpose of EFU zone is to apply EFU zoning to "small inclusions of non-high-value farm soils to avoid potential conflicts between commercial farming activities" – cites "Oregon General Code 17.136.010 Purpose."	There is no such thing as OGC 17.136.010. OAR 660-033-0010 states the purpose of the Agricultural Land chapter is "to preserve and maintain agricultural lands as defined by Goal 3 for farm use, and to implement ORS 215.327 and 215.438 through 215.459 and 215.700 through 215.799." The subject property is not agricultural land and approval of the zone change will not prevent agricultural farm practices from continuing in the area impacted by the zone and plan change.

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			ORS 215.245 describes the purpose of the EFU zone. It is discussed by the Court of Appeals in this case. It does not say what Mr. Johnson claims is the purpose of the EFU zone.
2024-07-16	Del Johnson	Cites <i>Wetherell v. Douglas County</i> , 50 Or LUBA 167 (2005) and OAR 660-033-0030(5)(2005) as relevant to the remand.	This <i>Wetherell</i> decision was reversed by the Oregon Supreme Court and OAR 660-033-0030(5) has been repealed as it was inconsistent with Statewide Goal 3.
2024-07-16	Del Johnson	It is possible to graze Eden Central seasonally. This makes it suitable for farm use.	It is possible for a very small number of cattle to graze the land seasonally at a financial loss to the rancher and property owner. This does not constitute “farm use” because a reasonable farmer would not do so with an intention to make a profit in money. The record also establishes that a seasonal operation in conjunction with nearby and adjacent lands would also lose money such that no reasonable farmer would attempt that operation.
2024-07-16	Del Johnson	710 acres “would not provide the basis for a stand-alone cattle operation yet they are absolutely farmland and protected by EFU zoning.” BLM leases provide land for combined ranching operations.	There is no nearby or adjacent BLM land that is available for livestock grazing in conjunction with the Eden Central property. Nearby BLM lands are reserved for recreational use, including OHV use, and conservation.
2024-07-16	Del Johnson	Fact that 710 Properties is proposing houses on the property makes it obvious that buildings can be erected for any purpose including for maintenance of equipment and facilities used for farm use.	This issue requires an analysis of the seven suitability factors of Statewide Goal 3. That analysis demonstrates that the subject property is not suitable to conduct a use that serves a “farm use” – an agricultural activity that can be undertaken with an intention to make a profit in money.
2024-07-16	Del Johnson	71 new households on ten-acre parcels will create a large demand for water.	Evidence in the record shows that relatively speaking, the new use of water is small in comparison to the size of the aquifer and when compared to the use of water by agriculture in the Deschutes Basin and nearby areas, including by the Johnson farm that is .9 miles and more away from the subject property.

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2024-07-16	Del Johnson	We had to lower our well by 25 feet to reach water table last year.	Water remains available despite lower levels which are not caused by development and water use of the subject property. Irrigation for agricultural purposes have a greater impact on the water level of the aquifer. Drought, however, is the primary cause that the level of the aquifer is dropping.
2024-07-16	Del Johnson	Additional traffic will create more traffic problems with farm equipment. This equipment is often wider than a single land and moves down roads at speeds of 10-20 mph. It is common for drivers to pass farm equipment. "You see bad accidents in farm communities every year" from this situation.	As shown by evidence in the record, including expert evidence provided by Joe Bessman, P.E., area roads provide sufficient room for passing. This is confirmed by Mr. Riley Gallant, who frequently operates farming equipment on similar roads. Here. in most segments the roads are level and straight. The issue raised by Mr. Johnson is a road safety issue. He does not claim that additional traffic will cause area farmers to discontinue the farm practices or farming. Mr. Johnson operates a successful horse supplement business on his farm property that sells supplements across the USA. His business is supported by truck traffic that uses the same roads that will be used by new Eden Central residents to access Hwy 126 and their homes – apparently without impact to area farm practices in the Odin Valley.
2024-07-16	Del Johnson	It is not uncommon for livestock to escape fencing. This is dangerous.	The issue raised by Mr. Johnson relates to road safety but does not present a claim that additional traffic will require the discontinuation of any particular accepted farm practice or result in taking any particular agricultural land out of farm use.
2024-07-16	Del Johnson	Residential development in rural areas increases the price of farm land so that it is not affordable for farm uses.	LUBA directed the County to look at specific impacts on remand: water, wastewater, traffic, nuisance and trespass and our review on remand is limited to issues remanded to us by LUBA. The price of land is not an issue on remand and this claim is not supported by evidence that identifies the cause of rising prices as related to rural residential development.
2024-07-16	Kelsey and Roger Nonella Lori Johnson	Property can be leased for grazing.	No reasonable farmer would buy this land to lease it for cattle grazing due to its lack of forage and unavailability of other large tracts of land suitable for grazing in the area and the fact, documented in this record, that lease revenue would not cover real property taxes with farm tax deferral on all eligible parts of the Eden Central property.

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2024-07-16	Kelsey and Roger Nonella Lori Johnson	The Eden Central property is suitable for the construction of buildings.	This fact does not mean that, after a consider of the seven suitability factors, that the property is suitable for the on-site construction and maintenance of equipment and facilities for farm use.
2024-07-16	Kelsey and Roger Nonella Lori Johnson Steve Ahlberg	Concerned re dropping aquifer and water availability. Had to lower our farm well by 25 feet to reach sufficient water. RR-10 zoning will decrease water resources and add to drawdown.	The existing condition of the gradually dropping aquifer in the area impacted by water use on the subject property is not caused by residential development and will not be caused or exacerbated by approval of the plan and zone change applications. The use of water by new homes on the subject property is minor and of little impact on the level of the abundant aquifer or area wells, as shown by expert evidence from GSI, Cascade Geoengineering and Kyle Gorman of OWRD.
2024-07-16	Kelsey and Roger Nonella Lori Johnson	Retaining an agricultural designation is not necessary to permit farming practices in the area but RR-10 zoning will increase costs/value of land.	The Board, based on all evidence in the record, agrees that retaining the agricultural designation of the subject property is not necessary to permit farm practices from continuing in the area that will be impacted by approval of the plan and zone change. The cost of land is not an issue on remand.
2024-07-16	Kelsey and Roger Nonella	Rezoning will increase the cost of farming.	The Nonellas provide no explanation of how or what costs will increase due to RR-10 zoning or for whom.
2024-07-16	Pam Mayo-Phillips Steve Ahlberg	ADUs are now allowed on the property and this will double the volume of cars.	State law ORS 215.495(1)(b) and (2) allows ADUs only in areas with acknowledged exceptions to a statewide planning goals; not on nonresource lands. DLCD opined that the County, however, may elect to allow ADUs on nonresource land. Since it is unknown whether that is correct, the Board will require the recording of a conditions of approval agreement that will be enforceable by the County and that will limit residential development of the subject property to 71 additional homes.
2024-07-16	Pam Mayo-Phillips	Over 15,000 acres MUA and RR10 per AmeriTitle list	This is not an issue on remand. Furthermore, this list is not correct regarding acreage. It lists many of the large properties multiple times. The nearby Redside property that is 452.86 acres is listed at this acreage four times. The list also includes large tracts used as public park land, USA forest land, an HOA's septic system and unbuildable common areas of cluster and planned developments all of which are lands not available for residential development.

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2024-07-16	Pam Mayo-Phillips	The Eden Central property could support a “few cows” and they could “clean up the grasses.” This would help a farmer get cattle off from irrigated fields so they can recover.	The fact that the subject property may be used for limited duration grazing on sparse vegetation and rocky ground does not make the subject property suitable for farm use. No claim is made that this would be done with an intention of making a profit in money – an essential part of the definition of a farm use.
2024-07-16 2024-07-18	Pam Mayo-Phillips Renee Bates	Greenhouses for crops, chickens, goats, pigs and feedlots could be established on the Eden Central property.	No claim is made that these farm activities could be conducted with an intention of making a profit in money. These uses require a new well and/or the installation of an irrigation system to create pastures and meet the cooling and hydration needs of plants and animals. These uses also require electric service which is not present on the subject property and which is cost-prohibitive to obtain for the low returns associated with agriculture in Deschutes County, a fact confirmed by the US Census of Agriculture.
2024-07-16	Pam Mayo-Phillips	State of OR states that EFU is created to stop small inclusions of tracts composed predominantly of non-high value farm soils to avoid potential conflicts.	This property is composed of nonagricultural soils – a step below non-high value farm soils. See our findings re same claim made by Del Johnson on the same date.
2024-07-16	Pam Mayo-Phillips	Suitable for seasonal grazing e.g. occurs in surrounding counties.	This property is not designated as rangeland and is too small alone to be successfully used for livestock grazing with an intention to make a profit in money. Tim Deboodt, PhD with a doctorate in Rangeland Ecology from OSU, and former OSU Extension Agent for Crook County stated in 2014 that “[t]o stay profitable a ranch needs to run 200 to 250 pairs, minimum, without debt and with low overhead” and that the average ranch runs about 800 cow-calf pairs. At only 71 to 142 AUMs, the subject property could not accommodate herds of those sizes.
2024-07-16	Pam Mayo-Phillips	Unaffordable land due to sprawl. Urbanites do not understand farm practices.	The cost of land is not an issue on remand. The County will be requiring property owners to sign and record waivers of remonstrance against accepted farm practices to prevent conflicts between new neighbors and persons conducting farm practices.

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2024-07-16	Steve Ahlberg	I am concerned about new vehicle trips due to the “additional pollution, traffic, noise, etc.” which will be significant.	Mr. Ahlberg does not raise a concern about the possible impacts to farm practices.
2024-07-18	Ryder Redfield	Irresponsible growth constitutes “urban” sprawl.	The uses allowed in the RR-10 zone are rural uses; not urban uses. This issue was settled in favor of the applicant by LUBA during appellate review.
2024-07-18	Ryder Redfield	Mule deer habitat	The impact of the proposed change on mule deer habitat is not an issue on remand. The property is not a Goal 5 wildlife resource property.
2024-07-18	Ryder Redfield	Wildfire is a concern.	This is not an issue on remand.
2024-07-18	Ryder Redfield	More traffic in area with overwhelmed and missing infrastructure. Buckhorn Road and Lower Bridge Way intersection is too busy. Lower Bridge Road near Borden Beck Park is also too busy.	These comments appear to relate to Lower Bridge Way and Buckhorn Road. The subject property does not adjoin either of these roads or any road that would permit ready access to them. Future access to these roads, if approved, will be limited to utility and emergency access by the terms of a recorded conditions of approval agreement.
2024-07-20	Renee Bates	Drought, existing wells are failing.	Some wells are being redrilled as the aquifer drops; according to OWRD, however, water remains abundant and available to support farm and residential uses in the area.
2024-07-22 2024-07-24	Sarah Redfield Steve Ahlberg	The definition of farm use in ORS 308A.056 includes wasteland.	This definition does not apply. It is the definition for purposes of taxation. The applicable definition of farm use to determine the suitability of land for farm use is provided by ORS 215.203(2)(a). <i>See</i> , OAR 660-033-0020(1)(a)(B).
2024-07-22	Sarah Redfield	ADUs would be allowed and will dangerously impact water level, traffic patterns, neighboring agricultural uses and environmental health.	The number of new dwellings will be capped at 71 to address this issue.
2024-07-22	Paul Lipscomb	Requests denial based on LUBA and Court of Appeals decisions,	The cited statutes are not an open issue on remand. OAR 660-033-0020(1)(a)(C) is the only law that is to be addressed on remand. The

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		ORS 215.243 and ORS 215.700(2) and <i>Stop the Dump</i> in addition to OAR 660-033-0020(1)(a)(C).	<i>Stop the Dump</i> decision relates to a different impacts test. Nonetheless, the County identified the relevant study area of “nearby and adjacent” lands and the farm practices occurring in those areas and this information will be used to address the impacts issues remanded to the County by LUBA.
2024-07-22	Tygh Redfield	Lower Bridge basin is great farm ground with best growing season and water supply. This allows the area the ability to produce a wider range of crops. Subject property shares a border with this farm area and would have negative impacts on it.	The subject property is not in the Lower Bridge subzone or farm area. It does not share the favorable conditions for farming found there. Negative impacts on this area are alleged but not identified.
2024-07-23	Marilyn Koenitzer, LOWV	Water crisis has increased since 2022. Exempt wells likely to be detrimental to Deschutes River and surrounding wells. Land should be conserved and protected.	These issues have been raised by others and the response to them is the same.
2024-07-23	Carol Macbeth COLW	Property can be put to farm use to produce livestock (cattle, goats, llamas, sheep and swine), poultry or equines with imported feed. Can buy feed from feed stores in Redmond – this is a common practice for other farms so should be able to sustain a farm use on the 710 Property with supplemental feed.	This is not the relevant issue. The issue is whether a reasonable farmer would intend to make a profit in money by engaging in these agricultural uses on the subject property if they import feed to supplement the limited forage available on site. Rancher Rand Campbell has addressed this issue and has shown, as claimed by Redmond rancher Zach Russell, that farmers and ranchers would go broke hauling in water and feed to the subject property.
2024-07-23	Carol Macbeth COLW	Issue is the comparison to other farms and ranches in Central Oregon.	In 2017, approximately 84% of farm operations in Deschutes County had significant financial losses and the net income of all Deschutes County farms average a negative \$12,866 per farm. It is reasonable

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			to conclude from this information that most farms in Deschutes County are not engaged in “farm use” as defined by State law. This property has the worst possible soil conditions in Deschutes County for farm use because it has such a high percentage of Class VII and VIII soils and only .7% soils (5.05 acres in small pockets) that are high-value when irrigated and only when irrigated. Soils in the Lower Bridge area to the west that are engaged in farm use are predominantly high-value when irrigated. Soils on properties in farm use in the Odin Valley include large areas of mapping unit 26A and 65A soils that are high-value when irrigated.
2024-07-23	Carol Macbeth COLW	Cattle and chickens do not require soil fertility.	Chickens are not raised in the area for sale to the general public. Chickens in Central Oregon are pasture raised and require irrigated pasture land. It is cost-prohibitive to finance the cost of purchasing irrigation water rights, drilling a well, installing a pump and purchasing and installing a pivot irrigation system or laying and moving irrigation lines. Additionally, the subject property lacks electric utility service needed to raise chickens (to keep them cool indoors, to make ice to add to their water, and to light the chicken coops used when chicken are not able to be free ranging) which is also cost prohibitive to finance due to its high cost. Cattle, indirectly, require soil fertility. It is necessary to produce an adequate density of forage so that the cattle do not lose weight grazing the property. This is a particular concern given the fact that a part of the subject property is a steep hillside that require cattle to burn additional calories to get to ungrazed forage.
2024-07-23	Carol Macbeth COLW	Groundwater for stock watering is exempt from water rights permitting. Can use an exempt well for watering stock.	A well and pump would, however, need to be installed at considerable cost to the farmer. The interest costs for that needed infrastructure would be significant and with other expenses prevent a reasonable farmer from intending to obtain a profit in money from the raising chickens or livestock on the property.
2024-07-23	James Howsley Redside Restoration	Redside owns nearby property	The Redside property, at its closest point, is approximately .2 miles west and .25 north of the Eden Central property. It is comprised of four properties zoned RR-10 and RR-10/FP. It was rezoned RR-10 from SM and EFU zoning in 2011 by Ordinance 2011-014. It is

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			<p>comprised of Tax Lot 1501, Map 14-12-00 = 457.32 ac, Tax Lot 1502, Map 14-12-00 = 10 ac, Tax Lot 500, Map 14-12-15 = 63 ac and most of Tax Lot 1505, Map 14-12-00 = 72.47 ac less approx. 10 acres zoned EFU (the EFU part of this property is not engaged in farm use and appears to have been surface mined).</p> <p>A long narrow strip of land at the north end of the Eden Central property that is approximately 1000' long and 10' wide and that is not buildable adjoins the RR-10 zone and TL 1506, Map 14-12-00, a parcel zoned EFU that is not engaged in farm use, has no irrigated land and is developed with a single-family dwelling and accessory structure.</p>
2024-07-23	James Howsley Redside Restoration	Land that is necessary to permit farm practices on adjacent or nearby agricultural lands. Increase from 24 to 71 dwellings impact must be addressed.	This is generally correct but does not account for the fact that the EFU zone permits development of a significant part of the property immediately adjacent to the former Volwood Farms property as a destination resort. The impacts of an RR-10 development of the intensity that will be allowed by this rezone and plan amendment are lower. This statement also contradicts Mr. Howsley's subsequent claim that the impact of 71 dwellings is the impact to be addressed. The Board's findings, in an excess of caution, address the impact of allowing 71 dwellings.
2024-07-23	James Howsley Redside Restoration	This is a spot zone.	The subject property is not a spot zone. It adjoins land zoned RR-10 to the north.
2024-07-23	James Howsley Redside Restoration	GSI admits groundwater is declining and says new water demand will be less than 177,500 gallons per day.	Kyle Gorman of OWRD testified in 2022 that the Deschutes Basin, while experiencing exceptional drought conditions that have impacted water levels, is a very robust aquifer that supplies very clear, plentiful water for use in the basin. Rec 692. Mr. Gorman also testified that in-home use "is a very small use compared to outdoor agricultural use" and the aquifer in the area can sustain domestic water use (new homes). Rec 694.
2024-07-23	James Howsley Redside Restoration	Dry Creek Ranch at 70300 NW Hunt Road has had to deepen its well. Additional homes can only accelerate decline in water levels.	Dry Creek Ranch is about ½ mile and more west of the Eden Central land. The need to deepen its well is not caused by residential development of the subject property. The amount of was used by residences is small and it was determined by GSI to be unlikely to have any impact on the well on the former Volwood Farms property

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			adjacent to the subject property and predicted no impacts on other wells.
2024-07-23	James Howsley Redside Restoration	Mariah and Amin Patel of Alpaca Country Estates at 70397 Buckhorn Road also complain about the risk of additional exempt wells in the area.	The supply of water is abundant. Although not relevant to the questions on remand, the Patels do not live at 70397 Buckhorn Road and do not own Alpaca Country Estates.
2024-07-23	James Howsley Redside Restoration	GSI only performed a desktop evaluation without any study of actual well conditions on either the subject property or nearby farm properties. No test well was “dug” to test desktop assumptions.	Mr. Howsley’s water expert, Robert Long, did not find fault with the findings of the GSI study nor did he join in faulting GSI for performing a desktop evaluation. The GSI study was prepared by Ken Lite who studied the Deschutes Basin aquifer for the USGS and published a scientific analysis of the causes of dropping groundwater levels. His determination that this type of study was appropriate and is of more weight than Mr. Howsley’s lay opinion that something different should have been done and that it would be probative of the question at hand. Additionally, Mr. Howsley fails to provide any competent evidence that supports the idea that a study of “actual well conditions” or digging a test well would be appropriate or necessary to determine likely impacts of pumping by new wells on the subject property.
2024-07-23	James Howsley Redside Restoration	The Well Interference Potential portion of the applicant’s study simulated the equivalent of the cumulative impact of pumping from 5-6 homes but 71 lots are proposed; more than ten times the number of homes. The simulation thereby underestimates the adverse irrigation impacts by a factor of 10. That report doesn’t support a finding that 71 new residential lots will not adversely affect	Mr. Howsley is not correct that the study underestimates irrigation impacts by a factor of 10 as explained by Cascade Geoengineering, a firm hired to review GSI’s study methodology and results.

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		irrigation wells and farm operations.	
2024-07-23	James Howsley Redside Restoration	Must apply <i>Stop the Dump</i> analysis re identification of farm practices required to comply with ORS 215.296 to farm operations on adjacent and nearby lands.	First, the farm impacts test in this case is based on OAR 660-033-0020(1)(a)(C) not ORS 215.296 (1) – the terms and legislative history of which were relied on to create the methodology to be used to address that particular test. (364 Or App at 444, 446-458). Second, the holding of <i>Stop the Dump</i> is only that a farm-by-farm and farm practice by farm practice analysis is required and a finding that a nonfarm use will not affect the supply of agricultural land in the surrounding and nearby area despite forcing a change in accepted farm practices on nearby and adjacent farms is not sufficient. The County’s decision identifies farm land in the adjacent and nearby area, farm uses on each property and farm practices that are or may be undertaken on each property. No party challenged this identification of properties, farm uses or farm practices.
2024-07-23	James Howsley Redside Restoration	Farm operations include the water supply, well levels and irrigation practices of these farms.	The record includes facts regarding well levels, water supply (groundwater) and photographs showing irrigation practices that exist on the four properties identified as adjacent and nearby lands in the 2022 BOCC decision that are being farmed. There is no credible evidence that suggests that the retention of EFU zoning on the subject property is necessary to allow irrigation practices of these farms or any farms to continue.
2024-07-23	James Howsley Redside Restoration	Record lacks evidence of water supply of area farms.	All four farms on adjoining and nearby lands are irrigated by groundwater. The same is true for all farms in the Odin Valley that are irrigated and for farms in the part of the Lower Bridge area west of the subject property. Well information for the adjoining former Volwood Farms property and Dry Creek Ranch is also included in the record and shows that the former Volwood Farms obtains its water from groundwater.
2024-07-23	James Howsley Redside Restoration	There is no public sewer and no evidence in the record of current or potential future nitrate levels in nearby wells identified in the applicant’s water study.	The subject property is suitable for septic disposal of wastewater on the subject property. It is unlikely that septic systems will cause groundwater contamination according to sanitation and soils expert Brian Rabe. Mr. Rabe also offered evidence that nitrates are not

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			harmful to agriculture and, therefore, would not cause the farm practice of groundwater irrigation to be discontinued.
2024-07-23	James Howsley Redside Restoration	The area is open range.	Cattle and livestock in the adjoining and nearby area are all fenced and do not roam at large. The open range law protects ranchers from financial harm if their livestock escape their fencing and are harmed by motor vehicles or other means.
2024-07-23	James Howsley Redside Restoration	Traffic study shows trips will use unpaved Spruce Avenue; a road that is not maintained by Deschutes County.	The level of use will be low. No party has claimed that the infrequent use of Spruce Avenue will impact farm practices. Additionally, Spruce Avenue is outside the study area of “nearby and adjacent” lands.
2024-07-23	James Howsley Redside Restoration	Record has evidence of livestock crossings at Rec 4567.	There are no “livestock crossings” along the route of travel to Highway 126 for traffic associated with homes that might be built on the Eden Central property. The text relied on by Mr. Howsley only says “livestock crossing” which means that livestock may cross the road.
2024-07-23	James Howsley Redside Restoration	Applicant must identify other routes because evidence shows conflicts on NW Coyner and NW Spruce.	Conflicts must rise to the level that they prevent the continuation of farm practices but they do not rise to that level here. This fact was confirmed by opponents, farmers and Odin Valley area residents Lori Johnson and Kelsey Nonella who have advised the County that the agricultural designation of the subject property is not necessary to permit farming practices in the area.
2024-07-23	James Howsley Redside Restoration	New points of access will increase traffic on “other nearby roads.” Dry Creek Ranch moves cattle on Hunt Road, Lower Bridge Road and Buckman [sic] Road.	The subject property has no access to Hunt Road, Lower Bridge Road or Buckhorn Road. It is landlocked and new road access for use by residential traffic is not available from adjoining owners or BLM. The applicant is pursuing access to NW 93 rd Street to the north and east across BLM land along a previously approved route and has been told that its access will be limited to emergency and utility access only. The applicant is also seeking access to Buckhorn Road across BLM land but that access will be limited to utility use only.
2024-07-23	James Howsley Redside Restoration	Redside filed a copy of a Groundwater Application Review Summary form dated July 10, 2023 for Thornburgh Destination Resort.	This review summary has no bearing on the supply of water available for use by the subject property and does not contradict the evidence provided to the county by OWRD (Kyle Gorman) in 2022. The property is miles away in a different groundwater area and the application reviewed seeks the right to use a vast amount of water

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			to irrigate golf courses and to provide water for destination resort uses.
2024-07-23	Russ Mattis	I would never consider grazing this property alone or in conjunction with my other ranch and hay properties in Central Oregon. I would never recoup my setup costs to fence, remove rock, pay taxes and attempt to establish water rights.	This evidence confirms other evidence on this topic provided by Rand Campbell and the applicant that the subject property is not suitable for grazing livestock or for growing a hay crop.
2024-07-23	Russ Mattis	If 710 Properties land were used in conjunction for grazing cattle with any of the nearby or adjacent agricultural properties, it does not change the property. It is still not generally suitable for farm use with the intention to make a profit in money. In conjunctive use, the property still has no water rights, poor rocky soils, lack of forage, and a terrain with elevation change and a long rimrock cliff that would be costly and difficult to fence. The lack of improvements for combined grazing with other lands is missing confirming the fact that it is not suited for combined use with other area lands. Given the fact a cattle operation would lose money even in conjunction with surrounding hay or pasture lands, it would not be	The Board agrees with Mr. Mattis.

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		reasonable for a farmer to add a cattle or livestock operation on the property and diminish or erase the profits derived by the existing operation.	
2024-07-23	Russ Mattis	Given the fact a cattle operation would lose money even in conjunction with surrounding hay or pasture lands, it would not be reasonable for a farmer to add a cattle or livestock operation on the property and diminish or erase the profits derived by the existing operation.	The Board agrees. The only possible exception would be the Buchanan property. The Buchanans claim they want to use the subject property for seasonal cattle grazing (about 3 to 4 months per year) for \$28 per AUM. Combined operations with the Buchanan property, is addressed separately below and in the body of our findings document and would not constitute a “farm use” as defined by ORS 215.203(2)(a).
2024-07-23	Russ Mattis	It is impractical to import feed to support a cattle grazing operation. It would be very expensive to truck in the majority of the high-quality feed to support a cattle operation.	This is consistent with the applicant’s evidence that feeding cattle hay for most of the year would not be cost effective.
2024-07-23	Russ Mattis	Additional traffic from more rural residence near 710 Properties in the Odin Valley will not cause ranchers, hay farmers, horse owners, etc. to discontinue accepted farm practices on their properties.	We agree. Furthermore, no opponent makes the claim that EFU zoning is necessary to permit the continuation of existing farm practices in the Odin Valley or elsewhere.
2024-07-23	Karen Elliott	Lives on 101 st Street in the Odin Crest Estates subdivision on a 5.05-acre lot zoned RR10; argues that roads are inadequate for the traffic associated with the	The area roads are adequate for large and heavy vehicle traffic associated with Desert Valley Equine Center, the veterinary practice of Tim Phillips, located on Spruce Avenue and the Horse Guard business horse supplement manufacturing business occurring at 3848 NW 91 st Street on the Johnson property.

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		development of the subject property.	
2024-07-24	Elizabeth and Billy Buchanan	Land is not available due to over development with nonfarm dwellings; particularly EFU land.	This is not an alleged/possible impact of rezoning that LUBA required to be addressed on remand.
2024-07-24	Elizabeth and Billy Buchanan	Keystone Natural Beef is now profitable.	The Keystone business plan showed that the business was not profitable in 2022. Its claim to be profitable in 2024 is not substantiated by the Buchanans and not credible because they offered, but then declined, to provide proof of profitability and removed cost and income information from the business plan they filed with the County. Ms. Buchanan also sold one of the two pastures she owned in Powell Butte; the location where Keystone cattle are pasture-raised, not the adjacent property owned by Ms. Buchanan.
2024-07-24	Elizabeth and Billy Buchanan	The subject property is suitable for grazing at least on a seasonal basis, with an eye to making a profit by so doing.	Numerous other ranchers who do not have a stake in the outcome of the zone change disagree. We find their testimony more credible.
2024-07-24	Elizabeth and Billy Buchanan	The property is suitable for the construction and maintenance of equipment and facilities used in their farm activities occurring on the Buchanan property.	The three parcels of the subject property that are closest to the Buchanans' Coyner Avenue property are developed with nonfarm dwellings. They would not be put to this conflicting use. Consequently, it would be necessary for the Buchanans to travel over three quarters of a mile and up a steep hill to reach land that might be placed into this use. This is not practicable – particularly given the lack of road access to this part of the Eden Central property. It is also not an accepted farm practice in Deschutes County to use other property for the sole purpose of storing equipment or using farm buildings and facilities of other farms to supplement an off-site operation.
2024-07-24	Elizabeth and Billy Buchanan	Rezoning would have a major impact on their ability to continue and to expand their farming/ranch operations	The Buchanans lack the expertise necessary to make this claim and to dispute the findings to the contrary reached by GSI and confirmed by Cascade Geoengineering.

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		because of the consumption of water and need to deepen wells.	
2024-07-24	Elizabeth and Billy Buchanan	Rezoning will significantly affect our ability to carry out farm practices on Coyner Avenue, including movement of slow-moving farm equipment and bringing in new cows by truck.	Transportation engineer Joe Bessman has submitted evidence that shows that new traffic will not prevent the Buchanans from using roadways for slow-moving farm equipment or from bringing cows in and out of their property by truck. The roads are mostly straight and wide enough and have gravel shoulders so that passing can occur safely. The Buchanans do not claim these issues will require them to discontinue farm practices associated with their cattle business.
2024-07-24	Elizabeth and Billy Buchanan	Traffic will endanger young calves who often slip through the fence onto Coyner Avenue.	This issue can be resolved by improved fencing or by keeping young calves in a more secure location on the Buchanan's property. Additionally, if a new resident's vehicle harms a young calf, they will be required by law to pay the Buchanans for the harm caused because the area is Open Range land. The Buchanans did not claim that this increased risk would force a change in or impede their ability to continue this practice on their land.
2024-07-24	Elizabeth and Billy Buchanan	If we are able to expand across the road, we will be driving cattle back and forth and the impact would be worse.	There is no property across the road (Coyner Avenue) other than nonfarm parcels developed with nonfarm dwellings. The Buchanans have also said there is no other land in the area other than the subject property that Keystone Natural Beef would be able to use for grazing cattle. Cattle will not be driven back and forth between the Buchanan property and Eden Central applicant if these applications are approved and, most likely, if they are denied because the three properties that total 279.35 acres in size that are the closest parcels to the Buchanan property are approved for or developed with nonfarm dwellings. We also find the Buchanans' claims of wanting to expand in the area are not credible. The record shows that in recent years, the Buchanans have decided not to purchase similar property, some of which has been adjacent to Ms. Buchanan's land, in favor of property in other counties, and in at least one instance, other states.
2024-07-24	Steve Ahlberg	Property is suitable for spring grazing.	This use is not a farm use because it would not be conducted on the subject property by a reasonable farmer with an expectation to make a profit in money.

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2024-07-24	Steve Ahlberg	My well went dry 2 years ago and was deepened 100 feet. Ed Staub has needed to deepen his well within the last 10-12 years.	These facts do not establish that approval of the zone change will cause area wells to go dry. Expert evidence in the record indicates otherwise.
2024-07-24	Steve Ahlberg	One access road is a safety issue.	This is not an issue on remand as it is not linked to impacts on farm practices.
2024-07-25	Jeff W. Roberg, DVM	No mention of wildlife.	Wildlife is not an issue on remand.
2024-07-25	Jeff W. Roberg, DVM	Wells are drying up.	Water expert GSI has determined that the expected water use of new homes will have no likely impact on residential wells.
2024-07-25	Jeff W. Roberg, DVM	ADUs are now allowed.	ADUs are allowed by State law but only on exceptions lands; not the subject property. Given the fact that DLCD has opined otherwise, to assure that actual impacts of RR10 do not exceed the estimated impacts, the Board has limited the number of new residences allowed on the Eden Central property to 71.
2024-07-27	Del Johnson	Urban sprawl.	RR-10 zoning does not allow urban uses that violate Statewide Goal 14. This was settled by LUBA in this case. <i>Central Oregon LandWatch v. Deschutes County</i> (710 Properties), __ Or LUBA __ (LUBA No. 2023-006, July 28, 2023, slip op pages 80, 83).
2024-07-27	Del Johnson	I have raised hay and cattle adjacent to the subject property for over 30 years.	Mr. Johnson's property is not adjacent to the subject property. According to the DIAL measurement tool, the Johnson property is 1.2 miles by road from the subject property's entrance on Coyner Avenue. In a straight line, the Johnson property it is about .9 miles away. Rec. 2518 (identifying and illustrating lands within a one-mile radius from Johnson property).
2024-07-27	Del Johnson	"I see why so many EFU properties and [are] now zoned RR10. Yes, over 24 square miles." * * * "There are currently over 24.375 sq miles of RR-10 and MUA zoning."	These claims are inaccurate, a fact acknowledged by Pam Mayo-Phillips, the person who supplied the information upon which the claim is based. Ms. Mayo-Phillips admitted on July 24, 2024 that the 24 square mile figure was based on a list that listed large properties numerous times. Second, the information filed by Ms. Mayo-Phillips did not purport to list properties rezoned RR10 from EFU as suggested by the first of the two quotations. Instead, Ms. Phillips claimed to be providing a list of all lands in Deschutes County zoned RR10 or MUA10.

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2024-07-27	Del Johnson	The property is EFU land and “[i]t does not have to be usable farm ground or make a profit. It is usable as farm ground for seasonal grazing and other [unspecified] uses.”	Mr. Johnson does not understand the applicable legal standard that defines farm use as an activity that would be undertaken with an intention to make a profit in money.
2024-07-28 2024-07-29	Steve Ahlberg Del and Lori Johnson	Requests 2 nd hearing on remand for commissioners who voted in favor of rezone to “state their reasoning.”	The Board stated its reasoning in its prior decision and in comments made when deliberating on this application in 2022. The Board considered setting a second hearing on remand but decided, instead, to permit a two-week comment period.
2024-07-30	Kelsey Nonella	My husband and I partitioned a 4-acre parcel of land from and built a nonfarm dwelling adjacent to the irrigated farm field on my parents’ farm property to be agricultural managers of the farm property. It is prudent to live nearby.	The Nonellas drilled an exempt well on what used to be the Johnson farm property, a property that is approximately 75 acres of usable land area and 70 acres of irrigation water rights per Partition Plat No 2022-10. Rec-3367-3368. The lot and new exempt well are less than one quarter mile south of the agricultural well used to irrigate the Johnson’s farm field. Rec-2296-2298; Applicant’s Exhibits 97 and 98 .
2024-07-30	Kelsey Nonella	In 2015, we had to lower the pump in our well at 3848 NW 91 st . Brian Skidgel had to deepen his well in 2021.	There is no evidence that these events were the result of development of residential homes on a distant property. The primary cause of groundwater decline, according to all of the water experts, is drought. Furthermore, despite these facts, the Nonellas drilled an exempt well on their property.
2024-07-30	Kelsey Nonella	The property would qualify for farm use assessment provided the owner maintains an acceptable farm practice with the intent to make a profit as defined by ORS 308A.056.	Tax law and land use law are not the same; as explained by the manual filed in the record by Ms. Nonella. Furthermore, it is clear on this record that a reasonable farmer would not intend to make a profit from farming the subject property. We find the record testimony of Mr. Campbell and other ranchers and farmers to be more credible.
2024-07-30	Kelsey Nonella	Horse uses weren’t considered.	Horse uses were addressed in 2022 in comments filed by Fran Robertson, an experience equestrian and owner of Robertson Ranch, a horse boarding, training and riding facility in Tumalo. The subject property is not a suitable location for horse breeding, training, or boarding. Rec-3445, -1036.

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2024-07-30	Kelsey Nonella	Horses thrive in harsh environments e.g. the mustangs that roam south of Burns where much of the terrain is very similar to the property in question.	The terrain for the Kiger mustang herd south of Burns is not “very similar” to the subject property. Also, the Kiger mustangs are wild horses; not domesticated horses kept by owners who expect a higher level of care. Furthermore, horse boarding, training and riding facilities, arenas and similar horse facilities sited on lands unlike the subject property. They are typically sited on level land that is free of surface rock and that includes irrigated pasture.
2024-07-30	Kelsey Nonella	Many horses need dry land acreage and this land would provide that and the subject property will provide that.	Horses need both dry land and irrigated pastures. The terrain and condition of the subject property is not suitable for horse-related farm uses particularly due to the presence of so much surface rock and lack of an existing water source.
2024-07-30	Kelsey Nonella	Four examples of full-care boarding being a viable option for this property are listed from websites below.	All four full-care boarding facilities cited by Ms. Nonella have irrigated pasture land, level land devoid of observable rocks and locations near major roadways; disproving Ms. Nonella’s claim that the subject property without irrigation would be suitable for a horse center use.
2024-07-30	Kelsey Nonella	Stephanie Schmidt Performance Horses runs a profitable operation less than 2 miles from the subject property where she boards and trains horses.	The Facebook page for this business does not advertise horse boarding facilities which need to be located near the homes of horse owners so they can visit their horses regularly. The property used by Stephanie Schmidt Performance Horses is very different from the subject property. It has five acres of irrigation water rights and, in the area used by horses, has level ground without visible rocks.
2024-07-30	Kelsey Nonella	It would be profitable to raise goats on the subject property.	Information gathered by rancher Rand Campbell rebuts the claim that raising goats would be profitable. Applicant’s Exhibits 4, 5, 47 .
2024-07-31	Ian Isaacson, Oregon Chapter of Backcountry Hunters & Anglers	New zoning should not be approved due to impact on local wildlife habitats.	Wildlife impacts are not an issue on remand.
2024-07-31	Ian Isaacson, Oregon Chapter of Backcountry Hunters & Anglers	Approval will set a precedent.	The County’s local decision has no precedential effect. This also is not an issue on remand.

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2024-07-31	Pam Mayo-Phillips – PH (Post-Hearing) Comment 1	There is grass on the hillsides of the Eden Central property in the spring so it is suitable for spring grazing.	The State of Oregon determined that the property as a whole could support one AUM (animal unit month) per 10 acres in the dry years experienced in the area in recent years and one AUM per 5 acres in a wet year. Rec-1430. This level of productivity is far higher than the one AUM to 40-acre figure offered by Ms. Mayo-Phillips. Central Oregon is in an extended period of prolonged drought making the dry land productivity figure the most likely to be accurate.
2024-07-31	Pam Mayo-Phillips – PH Comment 1	If the developers allowed horses, 4-h cows, chickens, gardens then that will also support farm use.	Horses and chickens require irrigated pasture land. It is not economically feasible to establish pasture land on the subject property. Gardens must be irrigated. It is not economically feasible to bring power and water to this property to establish gardens on land that is 71% Class VII and VIII soil. It has been shown that the only theoretically viable cattle-related use of the subject property is dryland grazing. That use is not, based on evidence provided by numerous experienced and well-qualified ranchers, to be economically viable.
2024-07-31	Pam Mayo-Phillips – PH Comment 1	The Assessor’s Office says that anything on EFU is described as farming with an intent to make a profit.	This is an incorrect statement of the law as it applies to land use planning – having been rejected by the Oregon Supreme Court in its <i>Wetherell</i> decision. <i>Wetherell v. Douglas County</i> , 342 Or 666, 160 P3d 614 (2007). Furthermore, “land use laws reflect different policies than tax laws.” <i>King Estate Winery, Inc. v. Dept. of Rev.</i> , 329 Or 414, 422, 988 P2d 369 (1999).
2024-07-31	Pam Mayo-Phillips – PH Comment 1	Well reports show that area wells have been redrilled.	This evidence does not establish that the use allowed by RR10 zoning is necessary to allow the farm practice of irrigating farm land to continue. The amount of water used by RR10 houses is very small; particularly compared to the amount of water used by irrigated agriculture.
2024-07-31	Pam Mayo-Phillips – PH Comment 2	I grew up on a very large cattle ranch (50,000 deeded acres and ½ million acres of public land) in Riley, OR – about one hour from the subject property.	Riley is 124 miles south and east of the subject property. Google Maps estimates a driving time of 2 hours and 4 minutes using the fastest route.
2024-07-31	Pam Mayo-Phillips – PH Comment 2	Most ranches have a hay base for their operation.	The subject property lacks a hay base that can be used for its operation. Although they have a small irrigated pasture, the

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			Buchanans import hay to feed their cattle. Their property, therefore, would not provide a sufficient hay base for livestock operations on the subject property. An example of a Central Oregon cattle ranch that is operated with an intention to make a profit in money and that has an adequate hay base, for purposes of comparison with the Eden Central property, is included as Applicant's Exhibit 96 .
2024-07-31	Pam Mayo-Phillips – PH Comment 2	Historically, you would run 40 acres to 1 cow unit on land our ranch property which is like the subject property.	The rate of 1 AUM per 40 acres is likely more accurate than the 1 AUM per 10 acres (dry) and 1 AUM per 5 acres (wet) rate estimated by the State of Oregon that has been used to estimate cattle income. At this rate, the subject property would support only 17.75 AUMs per year. This evidence supports the conclusion that the subject property is not suitable for farm use as defined by Statewide Goal 3.
2024-07-31	Pam Mayo-Phillips – PH Comment 2	Trimming and thinning juniper trees will increase forage.	The removal and thinning of junipers would not merit the application of a different AUM rate because the soil types and depth (water holding capacity) and rocks on the property impose the primary limitations on the growth of plants and grasses. Applicant's Exhibit 95 .
2024-07-31	Pam Mayo-Phillips – PH Comment 2	Water table is a big issue. Wells in the area have been deepened.	The issue on remand is the impact of development of the subject property on farm use on surrounding and nearby lands – not the water table per se. The scientific evidence is that development of the subject property with 71 homes will not likely impact area wells, in particular agricultural wells.
2024-07-31	Pam Mayo-Phillips – PH Comment 2	Where is the fire access route? Coyner will not support the traffic if we have a fire nor will the chip base paving on our road.	The fire access route issue is not an issue on remand and has not been connected to remand issues by Ms. Mayo-Phillips. Ms. Mayo-Phillips lacks the expertise to opine on the durability of the area County-maintained roads and their capacity to handle traffic. Also, Mr. Phillips operates a full-service equine veterinary clinic at his property on Spruce and the chip base paving on their road is durable enough for the horse trailer and truck traffic associated with this business that regularly use these roads.
2024-07-31	Pam Mayo-Phillips – PH Comment 2	Spruce is a 10-mph road because half the road is very narrow and has huge rocks you must go around. You cannot	The issue on remand is not the condition of Spruce. It is whether it is necessary to retain EFU zoning of the Eden Central property in order to allow farm practices occurring in the area to continue. We find that It is not.

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		take a trailer through Spruce without damaging your vehicle. We keep half the road graveled and open to traffic but the other half is about 10' wide and would not work for traffic or any increased amount of traffic.	Spruce Avenue is passable by a passenger vehicle but is used only infrequently due to the superiority of NW 101 st Street, the primary route to Highway 126. For example, area resident Chuck Thomas has only used Spruce on three occasions in the past year. Ms. Mayo-Phillips' comments indicate that the traffic associated with her husband's equine veterinary practice on Spruce Avenue, Desert Valley Equine Center (two employees, customers and horse patients), is able to travel to and from their property on existing roads without event – most likely because they will do what Eden Central traffic will do which is using paved roads to reach Highway 126. This would include trucks pulling horse trailers which, according to Ms. Phillips, cannot traverse the east part of Spruce Avenue. Ms. Phillips' estimate of the road width of Spruce east of her property is not consistent with the width of the road when measured on DIAL aerial photographs which show a width of about 15 feet.
2024-07-31	Pam Mayo-Phillips – PH Comment 2	The property is not in a fire protection district so how will the property be protected from wildfire?	This is untrue. The subject property is located in the Redmond Fire & Rescue District. Applicant's Exhibit 78 .
2024-07-31	Pam Mayo-Phillips – PH Comment 2	The corrected list of MUA10/RR10 properties I filed on July 24, 2024 still shows there are 104,000 +/- acres of land that have not been built on.	This is not true and is not an issue on remand. The original list filed July 16, 2024 was stated by Ms. Phillips to include over 15,000 acres of land zoned MUA10/RR10 – including both developed and undeveloped land. By removing duplicate entries of an extensive amount of land, the total acreage of developed and undeveloped land of this type should be about 1/10 the size of the land area Ms. Phillips now claims is all undeveloped land. The information is not of sufficient detail to allow a determination of the facts relative to Ms. Phillips' claims.
2024-07-31	Rima Givot	Loss of agricultural land	The subject property is not agricultural land
2024-07-31	Rima Givot	Increased traffic	The livestock and crop farm uses conducted east and west of the subject property are conducted along long stretches of busy highways (e.g. Highway 20, Highway 126) and roadways (e.g. Cline

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			Falls Road and Lower Bridge Road) that carry more traffic than will uses Odin Valley roads to access Highway 126. Rec-3097.
2024-07-31	Rima Givot	Wildfire risk, strain on public services, mule deer habitat impacts are of concern.	These are not issues on remand.
2024-07-31	Rima Givot	Injury to groundwater.	Groundwater use will not interfere with area farm properties and their wells. This fact is shown by the GSI water study. The lead person who prepared the report for GSI was Ken Lite. According to the GSI website: “Ken has decades of experience conducting groundwater resource characterization studies throughout Oregon. He is an expert in the hydrogeology of volcanic terranes. Ken spent more than 30 years as a hydrogeologist for the Oregon Water Resources Department (OWRD), where he specialized intergovernmental groundwater studies and groundwater administrative law. Ken is an expert in conducting basin-wide groundwater investigations and developing strategies to effectively manage groundwater resources for all beneficial uses. He is experienced in applying groundwater study results such as hydraulic head trends and groundwater flow simulations to help guide policy development. Ken’s research has focused on quantitative analysis of groundwater flow systems in volcanic terranes; specifically, quantifying the influence of the geologic framework on groundwater recharge, water chemistry, hydraulic head distribution, and the interaction of groundwater and surface water.” He is a co-author of the OWRD publications Simulation of Groundwater and Surface-Water Flow in the Upper Deschutes Basin, Oregon (2017) and Analysis of 1997-2008 Groundwater Level Changes in the Upper Deschutes Basin, Central Oregon (2013).
2024-08-01	Deb Brewer	SB 100 purpose	Not an issue on remand.
2024-08-01	Deb Brewer	Eden Central should lease land to area farmers.	Lease payments would be insufficient to pay taxes, even if all lots potentially eligible for farm use were able to qualify for farm tax deferral. The Buchanans stated a rate of \$28 per AUM as the amount they might pay to lease the subject property. In a typical dry year, this is less than \$2000 in annual lease income. Taxes alone, with

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			farm tax deferral, would have exceeded this amount by a large margin. Lease revenue also would not compensate the property owner for the cost of financing the completion of fencing of the subject property to make it suitable for grazing or for the cost of installing water stations for cattle. If those costs were to be borne by the Buchanans instead of the property owner, they would make livestock grazing of the property by the Buchanans alone or in conjunction with their Coyner Avenue property even less unprofitable. We find the testimony of Mr. Campbell, Russ Mattis, and other ranchers as more credible with regards to combined use with other ranch or farm properties; no reasonable rancher or farmer would use the subject property in an attempt to make a profitable farm use.
2024-08-01	Jeremy Fox	High fire risk so a poor choice for residential development. Too far from urban centers.	Not issues on remand.
2024-08-02	Lindsay Overstreet	Concern re water overuse and depletion of groundwater.	This issue was addressed by GSI and OWRD in 2022. There is sufficient groundwater for the residential use allowed by RR10 zoning.
2024-08-02	Lindsay Overstreet	Precedent setting.	Not a remand issue. A county decision has no precedential effect. A number of similar rezoning applications have already been approved by Deschutes County.
2024-08-02	Lindsay Overstreet	Not a viable housing solution.	Not an issue on remand.
2024-08-02	Lindsay Overstreet	Increased urban/wildland interface impacting [allegedly] insufficient fire management resources.	Not relevant to the issues on remand. A fire started on the subject property in July 2024 and was promptly extinguished.
2024-08-02	Lindsay Overstreet	Disregard for neighboring farms; increased traffic will likely lead to stress for their animals and more automobile related livestock loss.	According to the website for the Sisters School District, her employer, Ms. Overstreet is a Child Development Specialist with a Masters in Social Work. According to DIAL, she lives in the RR10-zoned Tollgate subdivision in the forest outside Sisters on a lot that is .61 acres not in a farming area of the County.

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2024-08-06	Eva Eagle	Noise, dust and traffic impacts will result.	These impacts will not rise to the level of making it necessary to retain EFU zoning of the subject property to allow area farm practices to continue and to protect EFU-zoned lands.
2024-08-06	Eva Eagle	Wells have gone dry and development will impact government services.	Under either EFU or RR10 zoning, wells will go dry and need to be drilled deeper if groundwater continues to decline due to drought conditions in the basin. OWRD, however, has advised that the supply of water is robust and the level of decline in the area of the subject property is slow. The impact on government services is not an issue on remand.
2024-08-06	Tim Phillips	Large scale cattle grazing and ranching is not the only use.	The BOCC's decision remanded by LUBA found that grazing is the only accepted farm practice that can occur on non-irrigated Class VII soils. This finding was not challenged by any appellant. Evidence has been provided during the remand regarding other uses. In an excess of caution, it has been addressed in the Board's findings on remand.
2024-08-07	Blair Batson, 1000 Friends	Removing this land from agricultural use would increase agricultural land pricing and thus not support purpose of Goal 3.	The purpose of Goal 3 is not an issue on remand.
2024-08-07	Blair Batson, 1000 Friends	The County's past practice of approving nonagricultural lands rezoning applications has impacted land costs, introduced costly conflicts with farming and converted thousands of acres of agricultural land to nonfarm use.	This is a new argument that is not relevant to the issues on remand. It bears mention, however, that Ms. Batson offers no factual support for her claims by citing particular instances where impacts have occurred. Real property prices increased dramatically in Deschutes County between 2017 and 2022 for all types of real estate – rendering it unlikely that the price increase in farm properties is due to rezoning.
2024-08-07	Blair Batson, 1000 Friends	Goal 3 was designed to protect farmland in large blocks.	LUBA rejected this argument of 1000 Friends in their appeal.
2024-08-07	Blair Batson, 1000 Friends	Individual review of agricultural lands is not permitted. The Oregon Legislature has created the exclusive path for counties to redesignate agricultural land in ORS 215.788 and 215.794 and periodic review.	Central Oregon LandWatch raised this claim at LUBA and it was rejected. It may not be revisited.

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2024-08-07	Blair Batson, 1000 Friends	OAR 660-033-0020(1)(a)(C) implements the policy of ORS 215.423 to preserve agricultural land in large blocks.	The large block issue is settled against 1000 Friends. The scope of review of OAR 660-033-0020(1)(a)(C) is limited to the specific potential impacts identified by LUBA.
2024-08-07	Blair Batson, 1000 Friends	The subject property would not have been zoned EFU if its soils were inadequate, it was unsuitable for farm use, and it was not necessary to permit farm practices on nearby and adjacent lands.	<p>The "necessary to permit farm practices on adjacent and nearby lands" requirement is imposed by DLCD regulations that were not adopted until 1992 or later – long after the County applied EFU zoning to the subject property.</p> <p>Deschutes County did not make individualized determinations of suitability for farm use when it applied EFU zoning to a high percentage of the County land that is not forest land. It applied the zone liberally to undeveloped areas and required individual property owners to petition the County for a change to a rural residential zoning designation. In the case of the subject property, the NRCS offered the County no soils information by which to assess the suitability of the subject property for farm use. See, Applicant's Exhibit 93 (the 1958 Soil Survey that was in existence when subject property was designated agricultural land in 1979 and 1980). The County's comprehensive plan was also adopted before the Oregon Supreme Court adopted <i>Wetherell</i> and corrected the prevailing notion that any land that could produce a crop or be grazed by livestock was agricultural land if it was not urbanized, committed to development that violated the Statewide Goals or forest land. This was the wrong test and it is fair to allow individual property owners to seek a correction to zoning made without a factual basis, with an individualized review of land and without application of the correct legal standard set by Goal 3.</p>
2024-08-07	Billy Buchanan	The Eden Central property is "highly suitable for grazing cows on the site."	The subject property is suitable for grazing at a very limited level as attested to by the opinion of the State Agencies and the lower yields achieved on similar lands (1:15+ on Cline Butte Allotment and 1:40 per Pam Mayo-Phillips). It is not, however, a "farm use."
2024-08-07	Billy Buchanan	Grazing would start in April or May and continue until August.	AUMs in a typical dry year are only 17-18 AUMs for a four-month period. According to the Buchanans, their cattle only winter on their

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			property. A rancher intending to make a profit in money from cattle ranching would not keep a herd of this small size on the Buchanan property and subject property as a joint operation with an intention of making a profit in money.
2024-08-07	Billy Buchanan	Grazing cattle will enhance the soil and its fertility.	The soils on most parts of the subject property are very shallow. Cattle will erode shallow soils rather than enhance them. Additionally, the Board agrees with the analysis of this issue provided by soils scientist Brian Rabe, Applicant's Exhibit 76 .
2024-08-07	Billy Buchanan	Additional drought tolerant grasses may be introduced via broadcasting as an alternative to drilling (Crested and Siberian Wheatgrass).	Soils scientist Brian Rabe disagrees and has documented his reasons for disagreement with Mr. Buchanan on this point. His professional assessment is more persuasive than the opinion of Mr. Buchanan. Applicant's Exhibit 76 .
2024-08-07	Billy Buchanan	The land use pattern in the area is ranching and farming.	Ed Stabb, an area farmer whose property is nearby but not contiguous to the Eden Central property, advised Deschutes County that the Odin Valley area where the Buchanan property is located is primarily residential. Applicant's Exhibit 37 . All properties on Coyner Avenue from the subject property until the intersection of NW 93 rd , with the exception of two properties, are approved for or developed with nonfarm dwellings. Rec 2019-2020 . About half of the subject property adjoins large tracts of public land that are not engaged in farm use and which are not available for farm use. Large areas of land to the north and northeast are zoned RR-10 and are not engaged in farm use.
2024-08-07	Billy Buchanan	I successfully grazed 70 head of cattle on a steeper, rockier 600-acre site in Jefferson County.	The applicant has not argued that it is not possible to graze cattle on the subject property. It has, however, demonstrated that one would not do so with a reasonable expectation of making a profit in money. Mr. Buchanan provides no details about the ownership of the land grazed, its cost (if leased), or its location or whether his operation was financially successful – making it impossible to provide a meaningful response to this unsubstantiated claim or to assess whether it bears on the issue of whether a “farm use” can be conducted on the Eden Central property.

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2024-08-07	Billy Buchanan	Our natural beef business is profitable.	The Buchanan offered and then refused to share tax returns for their business. They have provided no profit and loss statements with their “business plan” to show profitability – a common element for a typical business plan. This suggests that the business, consistent with the 2022 testimony of Elizabeth Buchanan, does not earn money and that the Buchanans make money from vacation rentals and by speculating in farm real estate. The fact that Elizabeth Buchanan sold one of the two irrigated farm properties she owned in Powell Butte where Keystone cattle grazed indicates that their business is contracting; not growing. Also, the Buchanans have not asserted that wintering cattle on their Coyner Avenue property and grazing cattle on the Eden Central property in spring and summer would be done with an intention to make a profit in money. Keystone Natural Beef sells beef from pasture raised cattle; not cattle raised on rangeland.
2024-08-07	Billy Buchanan	Any reasonable rancher in the same circumstances would feel they could profitably graze that property.	Mr. Buchanan provides no facts about anticipated costs or income associated with grazing to support this claim. The subject property was for sale for many years while the Buchanans lived next door but they chose not to purchase it for use by Keystone Natural Beef. The Buchanans, also, have not purchased nearby and adjoining non-irrigated parcels that have been for sale in recent years and Keystone does not lease any of these dry pasture parcels for grazing. Also, an analysis of combined operations of the Buchanan’s Coyner Avenue property and the Eden Central property prepared by rancher Rand Campbell shows that it is not reasonable to graze cattle on the two properties with an expectation of making a profit in money. The Board finds the contrary testimony provided by rancher Rand Campbell, Russ Mattis, and others to be more persuasive: the subject property could not be profitably grazed on its own or in conjunction with nearby and adjacent lands.
2024-08-07	Billy Buchanan	A breeding development center is under consideration by us for the Eden Central property. At Buchanan Angus Ranch in	The subject property would only support this type of operation for a period of a little over one month. No more than 12 bulls would be able to be kept on the Eden Central property for six months of the year. Additionally, placing cattle on this property in the winter

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		Klamath Falls, 60 head of bulls are fed on a steep and rocky hillside for approximately 6 months (October-March). The Eden property would be used for the same period of time.	would require more forage to compensate for the weight loss caused by cold temperatures and the exposed, windy location of the property.
2024-08-07	Billy Buchanan	Traffic conflict with slow-moving vehicles. We would have no way of continuing our operation <u>if</u> we cannot get haying equipment down Coyner Ave and onto our ranch.	Mr. Buchanan does not claim that added traffic will prevent him from getting haying equipment down Coyner Avenue and onto his property. This impact is not likely to occur given the relatively low volume of Eden Central traffic that will use Coyner Avenue at any one time during the day, particularly during off-peak hours. Additionally, transportation engineer Joe Bessman has shown that there is adequate room on Coyner Avenue and its shoulders for haying equipment and other traffic to share the road.
2024-08-07	Billy Buchanan	Roads are narrow and fences are in the ROW.	Fences are in the correct location at the edge of the ROW. Photographs of area roads, including those filed by Joe Bessman, PE, confirm this fact.
2024-08-07	Billy Buchanan	The subject property will be necessary for the planned expansion of Keystone Natural Beef and to give our existing farm grasses time to rest and recover from winter grazing. Having to transport our cattle elsewhere for seasonal grazing would greatly impede our ability to make a profit.	This statement suggests that Keystone’s practice of transporting cattle to irrigated pasture land in Powell Butte in the summer and transporting them back in the winter is not profitable and may be discontinued. This is consistent with the testimony of Elizabeth Buchanan in 2022. Keystone Natural Beef, however, is a pasture raised and grass-fed beef operation. Without more irrigated pasture land than exists on the subject property, the Buchanans entire business model will not be feasible.
2024-08-07	Billy Buchanan	We and our water supply will be impacted by sewage from the 71 homes because we are downhill.	Mr. Buchanan lacks the professional qualifications needed to make such an assessment. Soil scientist and certified wastewater specialist Brian Rabe, disagrees. Exhibit 76. Also, according to water experts GSI, the groundwater in the area below the subject property is flowing towards the north, northeast and north west – away from the Buchanan property which is located at the south end of the subject property. Rec-2619.

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2024-08-07	Angie Brewer DLCD	Ms. Brewer disagrees with the claim that no reasonable farmer would make the choice to expand their farm to include the subject property due to a lack of irrigation rights.	The history of the subject property confirms the fact that it would not be put to use with a nearby or adjoining farm due to its lack of irrigation and its poor soils. The property was for sale for many years in the recent past and no area farmer chose to purchase it for combined use. The topography of the site with most of the land being located on top of a plateau separated from any other farm land is also another reason the property would not be incorporated into another adjoining farm property's operation.
2024-08-07	Angie Brewer DLCD	The greater central Oregon region includes seasonal rotation of livestock over multiple properties and large areas, many of which do not contain irrigation rights.	The issue on remand is whether using the property in conjunction with nearby and adjoining lands – not more distant lands – will make it suitable for farm use. Livestock grazing on the property alone is not profitable and this problem is not cured by conducting a farm operation on it together with a nearby and adjoining property. Additionally, Ms. Brewer filed an economic analysis of cattle ranching that analyzed the viability of cattle operations that are graze on public and private lands and all were found to be unprofitable.
2024-08-07	Angie Brewer DLCD	Buchanan Ranch said they would like to buy the land and expand their operation.	The Keystone business plan assumes that Keystone will be able to lease; not buy the subject property. Rec. 1590. The Buchanans have made no offer to purchase the subject property from its current owner. Mrs. Buchanan told the BOCC in 2022, “[w]e need this ground. Like, we’ll take it. We’ll buy it. We’ll lease it. We’re obviously not going to buy it at development pricing but that is the reason for the Oregon zoning laws.” Rec-712. Ms. Buchanan then explained if the property was valued as “nonbuildable land” – it would be in her price range. Rec-713. The EFU zone, however, offers a number of options for development including the development with up to 24 nonfarm dwellings, a church, dog training facilities, etc. The current fair market value of the Eden Central property without structures (bare land only) according to the Deschutes County Assessor is \$5,790,730. This is the EFU zone value – a value that is too high to support acquisition of the property for seasonal cattle grazing for a low number of AUMs.

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2024-08-07	Angie Brewer DLCD	Combined Buchanan/Eden Central operation must be examined for suitability for farming as required by OAR 660-033-0020(1)(B) and described at OAR 660-033-0030(2) and (3).	The applicant has provided information about a combined operation prepared by Rand Campbell that demonstrates that the combined use of these two properties to conduct the farm use occurring on the Buchanan property on both would not be conducted with a purpose of obtaining a profit in money.
2024-08-07	Angie Brewer DLCD	The applicant is implying that the short-term rental on the Buchanan property precludes the ranch from being a profitable farm.	The use of the property to generate income from Air BnB rentals is relevant to assessing the Buchanans' claims of profitability. In 2022, Mrs. Buchanan testified: "[W]e've got some places out in Powell Butte. What we do is we, we buy the irrigated land, we turn the places into Air BnBs or rentals, so that pays for our irrigated ground. " Short-term rentals such as this are not permitted anywhere in the State of Oregon in EFU zones.
2024-08-07	Angie Brewer DLCD	County must consider all farm uses, including feed lots and equestrian indoor and outdoor arenas and equestrian facilities like Expo Center. Condition of Expo Center "closely resembles the subject property with regard to underlying soil capacity."	The Expo Center is located on land that bears little if any actual resemblance to the subject property. It is not a plateau. It is not covered with rocks. It does not contain rock outcrops like those found on the Eden Central property. It was also financed with public funds and resources raised from activities not allowed on EFU lands; not by a single property owner who will derive income only from use of the equestrian facilities and who, for many equestrian uses, bears the expense of feeding the horses. It is also within an urban growth boundary and close to a population center to which it provides its services.
2024-08-07	Angie Brewer DLCD	Livestock grazed on a combination of owned and leased land and a combination of pasture and dry rangeland for six to seven months than are fed hay in late Fall to early Spring. Lands grazed are generally not the same lands where feeding occurs.	No low-cost federal land exists nearby for livestock grazing. The Buchanans confirmed this fact by testifying they would need to truck cattle two hours away if they are not grazed on the subject property. The profitability analysis relied on by DLCD in its post-hearing comments shows farm losses for all cattle operations studied that were operated in this manner. Furthermore, the issue is not the viability of grazing on the subject property in combination with remote lands – it is whether combined use with adjacent or nearby lands makes the subject property suitable for farm use.

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<p>2024-08-07</p>	<p>Angie Brewer DLCD</p>	<p>Farm and ranch stores are commercial activities in conjunction with farm use.</p>	<p>As the evidence shows, these stores repair farm equipment but also engage in businesses that would not be permitted in the farm zone as a “farm use.” This is where farm repairs occur – in these shops or on farms by workers dispatched by these businesses to area farms to perform repairs. A farm equipment repair shop without sales of parts or machinery, however, is one LUBA may find is a “farm use.” This farm use, however, was found in cities and on land zoned rural industrial; not on land zoned EFU. This is the established land use pattern of Deschutes County.</p> <p>It would be almost impossible for a store that repairs farm equipment used in farming to operate in a farm zone in compliance with the law. It would be nearly impossible for an operator of such a business to determine whether the farm equipment presented for maintenance is used for a “farm use” as defined by ORS 215.203. This cannot be readily determined by any operator of a repair or farm equipment construction business because the test is so subjective and it is highly unlikely farmers would share their private financial information with the business operator. Also, only a small percentage of area farms meet the definition of being engaged in “farm use” as only approximately 16% of Deschutes County farms made a net profit in 2017 and the number of the other farms that might be operating a farm use that is intended to achieve a profit in money is likely relatively low as this pattern of unprofitability is one that has persisted over time.</p> <p>LUBA may find that a factory that constructs farm equipment is a “farm use” so we have addressed those uses. The applicant located one such facility in all of Deschutes County that might fit the definition of “farm use” because it manufactures farm equipment. It is Newhouse Manufacturing. It is located in the City of Redmond. Applicant’s Exhibit 79. See also Exhibit 83 from Newhouse Manufacturing. Newhouse also sells farm equipment parts but this</p>
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			use would not be allowed in the EFU zone. Sales of constructed equipment on-site would also not be allowed.
2024-08-07	Angie Brewer DLCD	Residential traffic will exceed that of a single farm equipment business.	The subject property is 710 acres in size. Uses commensurate with its size are appropriately studied to determine relative impacts. If the subject property is in fact is suitable for this use, it would be able to be a very large business that would draw a high volume of trips each day. The type of trips, also, would be more impactful because farm equipment and machinery would need to be transported to the subject property for maintenance. Inoperable farm equipment would likely need to be hauled to the site on a large truck. This use would be much more likely to impact farm practices than would typical residential vehicles.
2024-08-07	Angie Brewer DLCD	Retaining EFU zoning may be necessary because residential use may have significant impacts related to new residential traffic and new water demands where there currently are none. No substantial evidence to address this issue.	The applicant has provided substantial evidence to address these issues. The GSI water report that addresses these issues has been in the record since 2022.
2024-08-07	Angie Brewer DLCD	Residents have raised concerns re safety and insufficiency of roads and impacts to area groundwater.	<p>OWRD has weighed in re water and advised the County there is a robust supply of groundwater for all users despite slowly dropping groundwater levels. GSI established that the proposed use will not be likely to have any impact on area wells on agricultural lands.</p> <p>Roads in the area that provide access to Highway 126 are sufficient to carry subdivision traffic. Both the Johnsons and the Phillips operate businesses on their area properties that generate more trips than associated with a typical farm property and trips by larger and heavier vehicles than are typically used by rural residents, e.g. trucks hauling horse trailers, trucks delivering supplies and materials used to make and package nutritional horse supplements and to export the nutritional supplement materials to dealers.</p>

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2024-08-07	Angie Brewer DLCD	71 homes and 71 ADUs would be allowed if the rezone is approved.	State law allows ADUs on exception lands only; not nonagricultural lands. The Board will require the applicant to agree, however, to record a binding covenant enforceable by Deschutes County to restrict development of the subject property to 71 new homes.
2024-08-07	Robert Long	Any exempt use, without transferring water rights, adversely affects the local groundwater resource.	Residential water use is a minor, low-level use that will not prevent farmers from continuing to irrigate their farm fields and that will not force them out of business. Also, if interference occurs between Eden Central wells and existing wells in the area, the Eden Central wells will need to stop operating and obtain water from another source, such as imported water. Jim Newton, however, has advised the applicant's attorneys that no groundwater user in the Deschutes Basin has been regulated off. This is further proof that the water supply is ample, despite slowly declining in the area of the subject property.
2024-08-07	Robert Long	Difficult to enforce limit of ½ acre of irrigation.	Aerial photography will make it relatively easy to enforce a limit on irrigation. The County has imposed a limit of ¼ acre on each exempt well enforceable by the County by a covenant recorded against the property to assure reduced water use.
2024-08-07	Robert Long	177,500 gpd predicted not able to be limited.	This amount of water, according to a discussion with Jim Newton, PE, includes far more water than will be used by the property outside of irrigation season and it is a generous estimate of use. Water law prohibits the waste of water. According to Mr. Newton, the 15,000 gpd figure allowed by law for exempt wells is so high that it would be necessary to waste water in order for an Eden Central property owner to use that much water.
2024-08-07	Robert Long	Impact to aquifer relied on by agriculture? Yes, will increase decades-long decline.	This does not rise to the level of "necessity" required by the relevant impacts test.
2024-08-07	Robert Long	No mitigation so there will be a net loss of flow in the Deschutes River	This is not the question presented on remand.
2024-08-07	Robert Long	Does additional use of groundwater harm flows in the	State law looks to nearby and surrounding lands and the County code looks to a similar area to assess impacts. Mr. Long has not identified any agricultural uses that rely on flows in the Deschutes

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		Deschutes River on which some agricultural uses rely?	River. Irrigation water for Deschutes and Jefferson County farms are taken by irrigation districts from the river a long distance upstream from the point in the Deschutes River that might be impacted by water use by the subject property. These districts and groundwater wells serve almost all farm properties in Deschutes County.
2024-08-07	Robert Long	Increased use of water will increase rate of current decline. Dropping groundwater imposes costs on agriculture.	Use won't make any real difference in when wells must be deepened because the use is so small compared to other causes of groundwater decline.
2024-08-07	Robert Long	The use allowed is a 10% reduction in recharge and a measurable reduction in the flow of the Deschutes River as defined by OAR 690-505-0605.	This is not an issue on remand.
2024-08-07	Robert Long	Well cost increases for pumping due to drop in water level at agricultural wells.	No interference is expected to occur at any agricultural wells according to the GSI study and supporting evidence from Cascade Geoengineering. Mr. Long says there will be increased costs for pumping due to lower well depths but he failed to quantify the well decline he believes is attributable to development of the Eden Central property. He provided an example of cost increases he claims would be attributable to a decline of five feet which is not a drop shown to be expected to occur from use of water by homes on the Eden Central property.
2024-08-07	James Howsley, Redsides	Deepening a well costs \$60,000 to over \$150,000.	This number is not supported by documentation from a well driller or an explanation of the source of the information. Retaining the EFU zoning of the subject property will not obviate the need to deepen wells if the current drought continues which is the primary reason well deepening has been occurring in Deschutes County.
2024-08-07	James Howsley, Redsides	No mitigation water proposed so harm will occur.	Any impact will be small compared to other factors currently impacting the level of the aquifer such as drought and agricultural groundwater use; it will not cause discontinuation of the farm practice of obtaining irrigation water for area farms from groundwater.

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2024-08-07	James Howsley, Redsides	Must address traffic impacts farm by farm.	<p>The Buchanans are the only persons conducting farm practices on nearby or adjoining lands who have suggested that farm practices on their Coyner Avenue property might be impacted by Eden Central traffic. Mr. Buchanan claimed that his calves escape from his property but has not claimed that the additional traffic will prevent him from continuing to raise cattle and calves in his pasture. With open range laws, the financial burden of a calf/car collision will be borne by the car owner – not the rancher.</p> <p>Mr. Buchanan also said he would be impacted if trucks bringing hay to his wife’s property were unable to reach the property. He did not claim that new traffic will, in fact, prevent trucks from bringing hay to their property. Trucks are larger and heavier than passenger vehicles and are able to assert their right to all of the roadway if and when necessary. The traffic associated with the Eden Central property will simply have to wait a short period of time for the truck to drive down Coyner to the Buchanan property before proceeding on their way.</p> <p>Mr. Stabb previously advised Deschutes County that a nonfarm dwelling on his property would not interfere with area farm uses, presumably including his own hay operation and presumably including the traffic generated by a nonfarm dwelling that will enter Coyner Avenue “upstream” of his farm property. Many other nonfarm dwelling approvals along Coyner Avenue west of 93rd were already granted and many such homes have been constructed along Coyner Avenue west of 93rd, including the Buchanan’s nonfarm dwelling and an Air BnB rental dwelling without any known conflicts. It is unlikely that the Buchanans would invite Air BnB guests to the Buchanan property or allow them to pass the Stabb property if additional vehicles trips would prevent Mr. Stabb from moving farm equipment or harvesting and trucking hay from his property and Mr. Buchanan from moving cattle in trucks. The only concern Mr. Stabb expressed about area roads is a concern that the road surface on</p>
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			<p>some part of NW Coyner is chip sealed and might not tolerate traffic by concrete trucks. The road currently handles similar heavy truck traffic, including trucks hauling hay to the Buchanan property, cattle to and from the Buchanan property and, likely, hay from the Stabb property.</p> <p>There will be no traffic conflicts with Nicol Valley Farms and former Volwood Farms because no residential vehicle access to Buckhorn or Lower Bridge Road is possible. The subject property does not adjoin and other road or a road that provides direct access to either road.</p>
2024-08-07	James Howsley, Redsides	Movement of cattle by Two Canyons, LLC is a farm practice.	This farm practice is occurring on Lower Bridge Road but the traffic from residential development of the subject property will not have any access to Lower Bridge Road or Buckhorn Road and, therefore, virtually no impact on this practice.
2024-08-07	Carol Macbeth, COLW	The applicant can put 71 goat sheds, sheep sheds, donkey stables, mule stables, horse stables or other livestock shelters, riding schools or horse barns on the 71 home sites.	This is untrue. EFU zoning will not allow the applicant to create 71 parcels. It will not allow the construction of 71 farm dwellings for operators of these farm uses who are needed to conduct these farm uses in this particular location. Each would need to gross \$40,000 in income which is highly unlikely for any of these uses other than equestrian uses.
2024-08-07	Carol Macbeth, COLW	The applicant can produce goats, sheep, donkeys, mules, llamas, horses, poultry, or bees on the property. Each of these types of livestock are routinely raised for the primary purpose of obtaining a profit in money in Deschutes County according to the USDA Census of Agriculture. Rec. 2400-2401.	Ms. Macbeth misstates the evidence provided by the USDA 2017 Census of Agriculture at Rec. 2400-2401. It does not offer any evidence of whether these activities are being conducted for the primary purpose of obtaining a profit in money. In fact, USDA statistics from the 2017 Census show that in that year only 16.03% of Deschutes County farms were profitable and that the remainder lost an average of \$21,386 dollars per farm. Rec-5135. The document cited by Ms. Macbeth also does not establish that bees or llamas are produced in Deschutes County because they are not listed by the cited document. It also does not establish that donkeys and mules are raised in Deschutes County because they are listed in the same category as horses, ponies and burros. The same is the case with sheep and goats. Both are listed together.
2024-08-07	Carol Macbeth, COLW	The question is not whether anyone would attempt a farm	If this is a claim that a use is a “farm use” solely if it could occur on the subject property, such a claim is not correct.

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		<p>use with an intention of making a profit in money on the property; it is whether they could do so on this land.</p>	<p>The issue is whether the land is suitable for current use for the “primary purpose of obtaining a profit in money” through certain agricultural or farm activities. <i>Wetherell</i>, 342 Or at 680-689. Evidence from farmers and ranchers as to whether they would undertake farm uses on the subject property “with an intention of making a profit in money” is relevant in determining whether the land is of such a quality as to support a farm activity that could be conducted with the primary purpose of obtaining a profit in money.</p>
<p>2024-08-07</p>	<p>Carol Macbeth, COLW</p>	<p>The definition of agricultural land is so broad, encompassing land used for poultry and honey and farm equipment maintenance and riding schools, none of which require any particular soil type, that the land easily meets the definition.</p>	<p>Soil fertility is just one of the seven suitability factors. Furthermore, it is not correct that these uses are not dependent on soil type to establish an agricultural use with the primary purpose of obtaining a profit in money. It is an accepted farm practice in raising chickens in Central Oregon to raise them on irrigated pastures. Developing pastures is reliant on irrigation water and soils suited to growing grasses that are edible by chickens. Likewise, honey bees need flowering plants that are in short supply on the subject property to survive and thrive as well as a constant source of clean water. Applicant’s Exhibits 88, 89, 91. Bee keepers who produce honey, such as the Lazy Z Ranch, have established regenerative bee pastures which they irrigate to produce the flowering plants needed by their honey bee colonies.</p> <p>Farm equipment and facilities maintenance and construction facilities could be a number of different businesses with different needs but it is clear that any such use that would offer farm uses to other farmers would require the energy input of electricity, an input not available on the subject property. Applicant’s Exhibit 100. It would also require technology inputs such as a septic system. Applicant’s Exhibit 101. Given the high likelihood that trucks and heavy farm machinery would need to be able to reliably get up the steep grade to reach the plateau of the subject property (canyon wall are not suitable for this use due to their steep grade), road building technology and expertise would be needed to build a roadway to the property. Applicant’s Exhibit 81.</p>

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2024-08-07	Carol Macbeth, COLW	The issue is whether it is more expensive to conduct farm uses on the subject property than on other agricultural land.	That is not correct, the issue is whether the land is suitable for farm use, considering the seven suitability factors of Goal 3 and whether a reasonable farmer would engage in a farm activity with an intention of making a profit in money. The costs to establish and conduct the use and likely returns are relevant in determining suitability. The expected returns from the sale of crops and animals raised on fertile, irrigated lands like those found in the Lower Bridge area to the west of the subject property are obviously higher than the paltry returns expected on the subject property.
2024-08-07	Carol Macbeth, COLW	The property can be used for seasonal grazing.	This is correct. This activity, however, is not a “farm use” because it would not be conducted on this property with an expectation of making a profit in money. Given the low number of AUMs that can be seasonally grazed on the subject property, the cost of taxes, even with farm tax deferral on all eligible parcels, would exceed the likely income of seasonal livestock grazing by cattle – the only type of livestock known to be raised on open range land in the County and in the surrounding area. No party has claimed otherwise.
2024-08-07	Carol Macbeth, COLW	Del Johnson said that the applicant can use this land in conjunction with surrounding farms.	No reasonable farmer whose use constitutes a “farm use” would add the subject property to their farm operation and thereby make the subject property suitable for “farm use.” We find the testimony of Rand Campbell and Russ Mattis, among others, to be more persuasive.
2024-08-07	Carol Macbeth, COLW	Kelsey Nonella, who opposes approval of this application, says the subject property is suitable for grazing by horses and goats.	Dr. Nonella did not claim or demonstrate that this type of grazing would be conducted with an intention to make a profit in money.
2024-08-07	Carol Macbeth, COLW	According to Dr. Nonella, horse boarding would gross over \$100,000 annually.	The horse boarding facilities referenced by Dr. Nonella all have irrigated pasture land – something that does not exist on the subject property. The subject property has no pasture and no irrigation water rights and it is cost prohibitive to acquire water rights, bring electricity to the property, install a well and pump, purchase and install an irrigation system, to clear a vast quantity of rocks and to establish pastures.

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			The Johnsons keep horses on their property but are not engaged in horse boarding notwithstanding the gross income stated by Dr. Nonella. Instead, they engage in the profitable business of making and packaging Horse Guard equine supplements on their EFU-zoned farm property for online sales and sales in farm stores in Oregon, Colorado, Texas, Wyoming, New Mexico, California, Utah, Minnesota, Illinois, Arizona, Washington, Wisconsin, Idaho, Mississippi, Louisiana, Montana, Georgia, Ohio, South Carolina, Virginia, North Carolina, Florida, Pennsylvania, Maine, Alaska, and Hawaii according to the Wilco website.
2024-08-07	Carol Macbeth, COLW	Horse boarding could be combined with facilities for goats or alpacas or sheep or swine or chickens.	Ms. Macbeth does not assert or make the case that any of these farm uses would be conducted with an intention to make a profit in money. Additionally, an alpaca operation occurs on irrigated pasture land like the lush pastures on the Chapel property in the Lower Bridge area; not rocky land lacking in adequate forage to support livestock where purchased feed would be needed for any livestock operation. Additionally, it is not an accepted farm practice in the area to combine uses of this type on a single property. Each requires different skills, facilities and conditions to be successful.
2024-08-07	Carol Macbeth, COLW	The subject property is suitable for farm use because it can be supplemented by feed imported from off-site.	Imported feed is costly. Given the exposed location of this property, livestock would need more feed to survive over the winter than would livestock kept on other area properties. Also, the subject property is, according to soils scientist and wastewater specialist Brian Rabe, not suited for a feedlot operation.
2024-08-07	Carol Macbeth, COLW	The County must consider the element of soil fertility through the proper lens of feeding livestock supplemental feed.	This is illogical. Supplemental feeding has no relevance to the issue of soil fertility.
2024-08-07	Carol Macbeth, COLW	Class VII soils are, according to the NRCS, suitable for the grazing of livestock.	The NRCS publication Soil Survey of the Upper Deschutes River Area, Oregon says the following on page 187: "Class VII soils have very severe limitations that make them unsuitable for cultivation." It does not say that they are categorically suitable for the grazing of livestock.

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2024-08-07	Carol Macbeth, COLW	The Buchanans seek to lease or buy the property to expand ranch operations.	The fair market value of the subject property with EFU zoning (bare land excluding structures) is, according to the Deschutes County Assessor, \$5,790,730. The Buchanans have not presented any offer to Eden Central to purchase or lease the subject property. They've told the County in their business plan that they would like to lease unspecified dry grazing land for \$28 per AUM but that is not enough money to pay the property taxes of the Eden Central property. The business plan does not propose to purchase of the Eden Central property, likely because it is simply too expensive to pay the cost of interest to finance the purchase price of the land from Keystone Natural Beef revenue. Even at the low rate of 4% per annum on a no down payment loan, the interest expense that would need to be paid to run cattle on the property and to own the land would be \$231,629.20 annually for an interest only loan. If Mrs. Buchanan paid 20% down (\$1,158,146.00), she would have an annual interest expense of \$185,303.36 on an interest only loan.
2024-08-07	Carol Macbeth, COLW	The Buchanans say there is an advantage to dryland acreage.	This supposed advantage is not articulated by Ms. Macbeth. Even if there is an advantage, however, vegetation on the property is so sparse livestock would lose weight grazing on the subject property.
2024-08-07	Carol Macbeth, COLW	Photographs show abundant foliage and level ground.	The forage on the subject property is sparse. This fact is borne out by the fact that in dry years only one AUM would be supported by the forage available on ten acres and in wet years only one AUM per five acres (State Agencies). The standard, accepted OSU formula for grazing income on rangeland assumes one AUM per acre – a rate 5 to 10 times better than the rate estimate of State Agencies and 15 times the rate of grazing allowed by the USA on the Cline Butte allotment that has similar conditions to the subject property and 40 time the rate of grazing on similar lands in Eastern Oregon (per Ms. Mayo-Phillips).
2024-08-07	Carol Macbeth, COLW	Unidentified photographs of the property suggest the applicant is mischaracterizing the property's suitability for farm use.	Information from the State Agencies who oppose this application was relied on to determine suitability for farm use. Ms. Macbeth is not qualified to estimate forage production on agricultural lands. Other competent evidence in the record indicates that the State Agency yield may be too high. Cattle rancher Awbrey Cyrus is only

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			allowed one AUM per 15+ acres on similar federal land (Cline Butte allotment) and opponent Pam Mayo-Phillips stated a yield of one AUM per 40 acres on similar land in Eastern Oregon.
2024-08-07	Carol Macbeth, COLW	Climactic conditions are identical to other area farms.	This is not correct. The subject property is unique because it is located high above area farms (located to the east and west) on an exposed plateau.
2024-08-07	Carol Macbeth, COLW	The County must consider the element of existing and future availability of water for farm irrigation purposes through the lens of whether livestock can be produced on the property with supplemental forage imported from off-site. Farmers typically purchase irrigation water rights usually as a part of purchasing the property. There is nothing about this land that makes acquiring water for farm irrigation purposes any different than it is for any other property.	The issue of the future availability of water is settled. The fact that the County needs to consider importing feed in assessing whether the subject property is suitable for farm use does not reopen the issue of whether irrigation water is available. LUBA rejected COLW's argument that costs associated with bringing irrigation water to the subject property should not be considered in assessing suitability for farm use. It held at slip opinion 26, "[t]he annual cost of procuring water for irrigation is a permissible consideration when evaluating whether land is suitable for farm use." This cost also includes the cost of electricity. Information about that cost for agricultural wells on the adjoining former Volwood Farms and Hunt Road Two Canyons LLC property is attached as Applicant's Exhibit 90 .
2024-08-07	Carol Macbeth, COLW	There is no impediment to raising livestock or training horses or establishing a riding school with feed imported from elsewhere and there is no impediment to doing so.	The importation of feed does not correct the issues that make the subject property unsuitable for these uses. A large part of land is too steep for horse boarding, training or riding schools. The level area of the property is covered with juniper trees and an abundance of surface rocks and shallow soils that are not found on Central Oregon horse facilities such as those identified by Dr. Nonella. The cost to purchase hay and to keep cattle on the property year round, also, are too high to make it reasonable for a property owner or farmer to expect to make a profit in money from conducting a farm operation on the Eden Central property.
2024-08-14	James Howsley	Transight Engineering addresses the TPR and does not cite OAR 660-033-0026(1)(a)(C).	Transight Engineering provides evidence that bears on the question asked by OAR 660-033-0026(1)(a)(C). Whether the rule is cited in its report does not affect the reliability of its conclusion that traffic

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			impacts from new homes will not prevent area farmers from continuing farm practices.
2024-08-14	James Howsley	Transight does not explain what farm operations are occurring on NW Coyner Avenue or explain their transportation methods or equipment.	The Board identified nearby and adjoining farm properties and their farm practices in its 2022. The two farm properties that use Coyner Avenue in this study area are the Buchanan and Stabb properties. The Buchanans offered evidence regarding their use of Coyner Avenue and Transight addressed that evidence. Applicant's Exhibit 99 . In so doing, it addressed all types of farm equipment and the same roadway thus effectively addressing the Stabb property and its hay operation which also uses farm equipment to conduct its use. Additionally, despite the fact that Mr. Stabb did not raise any concern about traffic impacting his farm practices, Transight's evidence and other evidence in the record provided by the applicant addresses the question of whether additional traffic would prevent Mr. Stabb from conducting farm practices on his hay property.
.2024-08-14	James Howsley	Transight does not consider the additional costs that nearby farms will incur such as flagging costs for slow-moving vehicles.	The law requires slow-moving farm equipment to be flagged and marked as such. This is an existing cost; not one attributable to additional traffic. Applicant's Exhibit 49 .
2024-08-14	James Howsley	The Oregon Fire Code requires a second access point for the proposed single-family development in Appendix D, Section D107.1.	This statement is not entirely correct. Section D107.1, Exception 1 says that "[w]here more than 30 dwelling units accessed from a single public or private fire apparatus access road and all dwellings are equipped throughout with an approved automatic sprinkler in accordance with Section 903.3.1.1, 903.3.1.2 or 903.3.1.3, access from two directions shall not be required."
2024-08-14	James Howsley	The site nearly abuts Buckhorn Road on the west and the flagpole part of the property to the north is clearly designed to extend to NW Teater Avenue on the north. The county must consider traffic issues impacting farm uses on all sides of the property.	Mr. Howsley's evidence demonstrates that no access exists to these roads. The Board restricts residential access to the west and the north with the exception of emergency access in its conditions of approval. There will be no traffic impacts to the only other farms on nearby and adjacent lands which are located to the west of the subject property.

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2024-08-14	James Howsley	The fact that farmers will be compensated for farm losses attributable to new traffic due to the Open Range law does not mean the cost of farm practices “will not be materially increased” due to the time and effort necessary to obtain compensation.	Mr. Howsley applies the wrong test and does not claim that this issue will prevent ranchers from continuing to raise livestock in the area. It is not likely that the effort of seeking compensation, something it already must do if harm is caused to livestock by existing area residents, will be so onerous as to put a cattle operation out of business.
2024-08-14	James Howsley	LUBA’s remand requires an analysis of surrounding lands and traffic impacts. The cattle circulation path between the Two Canyons LLC properties in the Lower Bridge area is on nearby public roads that will experience a substantial increase in passenger trips that will increase costs and thereby no longer permit customary farm practices including cattle grazing and circulation on nearby farms.	Mr. Howsley’s argument relies on his assertion that the subject property will obtain access it lacks to Buckhorn Road and Lower Bridge Road that will generate a substantial amount of new passenger trips on Lower Bridge Way and Buckhorn Road. This result has been precluded by the imposition of conditions of approval that limit access to those areas, if it is obtained, to emergency access only. Furthermore, Mr. Howsley lacks the expertise to estimate trip routes from the subject property and has provided no facts that support his position that the amount of traffic that would use these roads if access were possible would be “substantial” and would impact farm practices.
2024-08-14	James Howsley	The fact that there will be no likely measurable impact on water levels within wells off-site attributable to water use from exempt wells on the subject property is not adequate because it is necessary to study existing well conditions on each adjoining farm.	This is illogical because the issue is the impact, if any, on the aquifer; not the existing condition of area wells that bear no relation to the impact of development of the subject property. The GSI report, also, studied well logs of wells in the area and they are included with their reports. Mr. Howsley’s water expert does not join in this argument.
2024-08-14	James Howsley	Cascade Geoengineering does not measure or address the	This is not required because the use of water by the subject property will be slight and there will be no likely measurable impact

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		increased costs to nearby farms of well deepening.	on water levels from the use. If wells need to be deepened, it will not be due to use of water by the homes on the subject property.
2024-08-14	Billy Buchanan	Rand Campbell is a developer's attorney who filed comments under the letterhead of Hopper, LLC and is a principal in a large Grant County destination resort, Silvies Valley Ranch.	Mr. Campbell is "a Central Oregon hay farm owner, cattle ranch manager and lawyer who visited the subject property to assess its suitability for livestock grazing." Rec-2135. He operates his ranching and farming businesses under the names of Hopper LLC – Hopper Ranch (4,045 acres in Grant County) and Back Forty LLC – Back Forty Hay Farm (40 acres in Tumalo, Oregon). Rec-670, -3023. Silvies Valley Ranch is a guest ranch; not a destination resort.
2024-08-14	Billy Buchanan	The subject property is needed for our planned expansion.	The Buchanans have recently sold irrigated pasture land in Powell Butte that was used for grazing for most of the year by Keystone's cattle. This is a contraction rather than expansion of the Keystone cattle operation. The cattle only winter on the Buchanan Coyner Avenue property. Presumably, since the Coyner Avenue was of a sufficient size for wintering cattle when Keystone had a larger operation (prior to the sale of one of its two Powell Butte pastures), it should be of sufficient size now.
2024-08-14	Billy Buchanan	The county's calculations of AUMs don't take into account rotational grazing management or introducing drought-tolerant grasses.	Drought-tolerant grasses already exist on the subject property and soil scientist Brian Rabe has provided expert evidence that Mr. Buchanan's plan to broadcast seed the property with drought-tolerant grass seed would be unsuccessful in establishing additional grazable biomass. The calculations of AUMs, based on information about forage provided by the Oregon Department of Agriculture ("ODA"), have not been challenged by any other party and evidence in the record suggests that the calculation may overestimate the productivity of the subject property. Mr. Buchanan also fails to explain how it would be possible for him to conclude that this practice was not taken into account or that rotational grazing would increase forage yield above what was assumed by the AUM figures provided by ODA.
2024-08-14	Billy Buchanan	The subject property has partial perimeter fencing and two wells located at the homesites.	Mr. Buchanan does not understand where the subject property is located because it does not include two home sites. There is only one nonfarm dwelling home and one exempt well on one of the nine parcels and Mr. Campbell accounted for this fact in his analysis and

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			is of the opinion a separate source of water would be needed for agricultural use. <i>See, Applicant’s Exhibit 43, p. 6 and Exhibit 73, p. 3.</i>
2024-08-14	Jeffrey Kleinman	There is no legitimate question as to the real and continuing operation of Keystone’s ranching business.	This is not the issue. Keystone’s cattle operation is primarily conducted in Powell Butte on lands that are not “nearby or adjacent” to the subject property. Instead, the question is whether the use of the small Buchanan property in conjunction with the subject property will make the agricultural use of the subject property one a reasonable farmer or rancher would undertake with an intention of making a profit in money. Substantial evidence provided by rancher Rand Campbell demonstrates that the answer to this question is no and that the combined operation, itself, would not be profitable. This is consistent with the financial analysis of cattle ranching in northeastern Oregon conducted by the OSU Extension Service and other evidence in the record, including the informed opinions of ranchers.
2024-08-14	Jeffrey Kleinman	I reminded Mr. Katzaroff that my clients’ offer to share tax information was made to the Board [only].	The offer to share tax information is contained in the Keystone business plan. It says “[p]ast 3 year Tax Returns for ranching operation available upon request.” This offer was not made to the Board. If it was, it would be one that could not be accepted by the Board because all information used by the Board to decide this case must be included in the public record that is shared with all parties. The Buchanan’s refusal to provide the tax information they offered to share combined with the removal of the five annual and twelve quarterly (three years) income statements, balance sheets and cash flow statements from the business plan’s appendix is consistent with the claim made by the applicant that the cattle business is not one a reasonable rancher would operate with an intention of making a profit in money.

Exhibit F, Attachment B

After recording return to:
Deschutes County Community Development
117 NW Lafayette Avenue
Bend, OR 97703

CONDITIONS OF APPROVAL AGREEMENT AND RESTRICTIVE COVENANT

This conditions of approval agreement is made this ____ day of _____, 2024 by Eden Central Properties, LLC, an Oregon limited liability company (hereinafter “Eden”) and Deschutes County, a political subdivision of the State of Oregon (hereinafter “County”).

RECITALS

WHEREAS, Eden sought approval of a plan amendment from Agriculture to RREA and zone change from EFU-TRB to RR-10 in File Nos. 247-21-001044-ZC and 247-21-001043-PA and 247-24-000395-A, for the property described on **Exhibit A** (the “Property”), a copy of which is attached and incorporated by reference herein; and

WHEREAS, the applicant and in the land use review process asked the County to impose a condition of approval on future development of the Property that will apply while the Property is zoned RR-10: and

WHEREAS, the Board of Commissioners approved the land use applications and imposed the condition of approval requested; and

WHEREAS, the condition of approval requires that an agreement be recorded that memorializes the condition of approval and applies it to the rezoned property:

NOW THEREFORE, the parties agree as follows:

1. Eden shall sign and record a Waiver of Remonstrance in a form substantially similar to **Exhibit B** which precludes complaints against nearby farm practices.
2. No residential structure shall be constructed within 100-feet of any property that is currently engaged in farm use and is receiving farm tax deferral, including the property currently owned by Elizabeth A. Buchanan and described on **Exhibit C** that has been disqualified from the farm tax deferral program because it contains a nonfarm dwelling.

3. Any exempt well on the Property existing now or later developed shall be limited to residential use and a maximum of one quarter (1/4) acre of irrigation.
4. Residential development on the Property shall be limited to a maximum of seventy one (71) new dwellings.
5. Residential access to the Property shall be NW Coyner Avenue. Any additional access shall be limited to emergency or utility purposes.
6. No destination resort may be established on the Property.
7. “No Trespassing” signs shall be posted and maintained at intervals of no more than 250 feet near the boundary line between the Property and the Two Canyons, LLC property (former Volwood Farms) and described in **Exhibit D**. Applicant shall complete and maintain fencing along or near this border to prevent trespass. These requirements shall be met as long as that property remains in farm use.
8. This agreement is not assignable.
9. This agreement runs with the land and is enforceable against future owners of the **Exhibit A** property.

Return to:
Haleigh King, Associate Planner
Community Development Department
117 NW Lafayette, P.O. Box 6005
Bend, Oregon 97708-6005

Space Reserved for Recorder's Use

**EASEMENT
(WAIVER OF REMONSTRANCE)**

_____ and _____, herein called the Grantor/s, is/are the owner/s of real property described as set forth in that certain [Statutory Warranty Deed] dated [DATE], as recorded in [the Official Records of Deschutes County as instrument number 20xx-xxxx] OR [Volume xx, Page xx of the Deschutes County Book of Records] and by this reference incorporated herein, and further identified or depicted on Deschutes County Assessor's Map _____, as tax lot _____. In accordance with the conditions set forth in the decision of the Deschutes County Planning Division approving land use permit _____, Grantor/s hereby grant/s to the owner(s) of all property adjacent to the above described property (Grantees), a perpetual non-exclusive farm practices management easement as follows:

1. The Grantor/s, his/her/their heirs, successors, and assigns, hereby acknowledge/s by the granting of this easement that the above-described property is situated nearby to areas designated farm zone in Deschutes County, Oregon, and may be subjected to conditions resulting from farming on adjacent lands. Such operations include operations related to farm uses under ORS 215.203(2)(a) and ORS 215.283, including the 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, and other accepted and customary farm management activities conducted in accordance with federal and state laws. Such farm activities ordinarily and necessarily produce noise, dust, smoke, and other conditions that may conflict with Grantor/s/s' use of Grantor/s/s' property for residential purposes. Except as allowed by ORS 30.930 through 30.947, Grantor/s hereby waive/s all common law rights to object to normal, non-negligent farm management activities legally conducted on adjacent lands that may conflict with Grantor/s/s' use of Grantor/s/s' property for residential purposes, and Grantor/s hereby give/s an easement to the adjacent property owners for the resultant impact on Grantor/s/s' property caused by the farm management activities on adjacent lands.
2. Grantor/s shall preclude residential dwelling development within 100-feet of the property line of any adjacent property engaged in farm practices at the time of residential development.

This easement is appurtenant to all property adjacent to the above-described property, and shall bind the heirs, successors, and assigns of Grantor/s, and shall endure for the benefit of the adjacent landowners, their heirs, successors, and assigns. The adjacent landowners, their heirs, successors, and assigns are hereby expressly granted the right of third-party enforcement of this easement.

Signature Page to Follow

Dated this ___ day of _____, 20__ GRANTOR/S

(CORPORATION NAME, IF CORP.)

By: _____
Its: _____

STATE OF OREGON)
) ss.
COUNTY OF _____)

On this ___ day of _____, 20__, before me, a Notary Public in and for said County and State, personally appeared _____ and _____, who is/are known to me to be the identical individual/s described in the above document, and who acknowledged to me that he/she/they executed the same freely and voluntarily.

Notary Public for _____
My Commission Expires: _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this ___ day of _____, 20__, before me, a Notary Public in and for said County and State, personally appeared _____ known to me to be the _____ of _____ and who executed the above document on behalf of said corporation.

Notary Public for _____
My Commission Expires: _____

Exhibit "A"

Legal Descriptions of Affected Properties

TRACT 1 (Current tax lot 14-12-2100-00700)

That portion of the NE1/4 of the NE1/4 of Section 21, T14S, R12E, W.M. lying Easterly and Southeasterly of the following described line:

Beginning at the Northeast corner of said Section 21;
thence 10.00 feet west along the North line of said Section 21;
thence South 1000.00 feet along a line parallel to the East line of said Section 21;
thence on a straight line to the Southwest corner of said Section 21.

TRACT 2 (Current tax lot 14-12-2100-00600)

The Northerly 165.00 feet of the NE1/4 of Section 28, T14S, R12E, W.M.;
The S1/2 of the SE1/4 of Section 21, T14S, R12E, W.M.;
The NE1/4 of the SE1/4 of Section 21, T14S, R12E, W.M., and
That portion of the SE1/4 of the NE1/4 of Section 21, T14S, R12E, W.M. Lying Southeasterly of the following described line:

BEGINNING at the Northeast corner of said Section 21;
thence 10.00 feet West along the North line of said Section 21;
thence South 1000.00 feet along a line parallel to the East line of said Section 21;
thence on a straight line to the Southwest corner of said Section 21.

TRACT 3 (Current tax lot 14-12-2100-00500)

That portion of the SW1/4 of the NE1/4 of Section 21. T14S, R12E, W.M. Lying Southeasterly of the following described line:

BEGINNING at the Northeast corner of said Section 21;
thence 10.00 feet West along the North line of said Section 21;
thence South 1000.00 feet along a line parallel to the East line of said Section 21;
thence on a straight line to the Southwest corner of said Section 21.

TRACT 4 (Current tax lot 14-12-2100-00400)

That portion of the NE1/4 of the SW1/4 of Section 21, T14S, R12E, W.M. Lying Southeasterly of the following described line:

BEGINNING at the Northeast corner of said Section 21;
thence 10.00 feet West along the North line of said Section 21;
thence South 1000.00 feet along a line parallel to the East line of said Section 21;
thence on a straight line to the Southwest corner of said Section 21.

TRACT 5 (Current tax lot 14-12-2100-00300)

The Northerly 165.00 feet of the NW1/4 of Section 28, T14S, R12E, W. M., those portions of the NW1/4 of the SE1/4, the SE1/4 of the SW1/4 and the SW1/4 of the SW1/4 of Section 21 T14S, R12E, W.M. Lying Southeasterly of the following described line:

BEGINNING at the Northeast corner of said Section 21;
thence 10.00 feet West along the North line of said Section 21;
thence South 1000.00 feet along a line parallel to the East line of said Section 21;
thence on a straight line to the Southwest corner of said Section 21.

TRACT 6 (Current tax lot 14-12-2800-00100)

The NE1/4 of Section 28, T14S, R12E, W.M.

EXCEPTING the Northerly 165.00 feet THEREOF.

TRACT 7 (Current tax lot 14-12-2800-00200)

The NW1/4 of Section 28, T14S, R12E, W.M.
EXCEPTING THEREFROM the Northerly 165.00 feet THEREOF.

TRACT 8 (Current tax lot 14-12-2800-00300)

The NE1/4 of the SW1/4 and the N1/2 of the SE1/4 of Section 28, T14S, R12E, W.M.

TRACT 9 (Current tax lot 14-12-28D0-00101)

PARCEL 2 of Partition Plat No. 2015-15 according to the official Plat THEREOF as recorded in the office of County Clerk for Deschutes County, Oregon.

Exhibit G - Ordinance 2024-010

EXHIBIT F - Ordinance 2022-013

BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON FINDINGS OF FACT AND CONCLUSIONS OF LAW

FILE NUMBERS: 247-21-001043-PA, 247-21-001044-ZC

APPLICANT: 710 Properties, LLC
PO Box 1345
Sisters, OR 97759

OWNER: Eden Central Properties, LLC

ATTORNEY(S) FOR APPLICANT: Liz Fancher
2464 NW Sacagawea Lane
Bend, Oregon 97703

J. Kenneth Katzaroff
Schwabe Williamson & Wyatt
1420 5th Avenue, Suite 3400
Seattle, WA 98101

STAFF PLANNER: Haleigh King, AICP, Associate Planner
Haleigh.King@deschutes.org, 541-383-6710

APPLICATION: Comprehensive Plan Amendment to re-designate the subject property from Agriculture (AG) to Rural Residential Exception Area (RREA) and a corresponding Zone Change to change the zoning from Exclusive Farm Use – Terrebonne (EFU-TE) to Rural Residential (RR-10).

SUBJECT PROPERTY: Assessor’s Map 14-12-28, Tax Lots 100, 200, 300
Assessor’s Map 14-12-28D, Tax Lot 101
Assessor’s Map 14-12-21, Tax Lots 300, 400, 500, 600 and 700

I. FINDINGS OF FACT:

- A. Hearings Officer’s Decision:** The Hearings Officer’s decision dated June 2, 2022, adopted as **Exhibit G** of this ordinance, is hereby incorporated as part of this decision, including any and all interpretations of the County’s code and Comprehensive Plan, and modified as follows:

1. Replace the discussion of the tax history of the subject property in Section II. B., page 5 with the following:

“According to the Deschutes County Assessor’s office, no part of the subject property is currently receiving farm tax deferral. Tax Lot 300, Map 14-12-28 erroneously received farm tax deferral but was disqualified in 2014 because the property was not engaged in farm use. The record does not include any evidence the subject property is engaged, or has ever been engaged, in farm use.”

2. Add the following sentence to the findings related to Section 3.2, Rural Development on page 54:

“In the event Section 3.2 is determined to establish relevant approval criteria, it has been met. The subject property is comprised of poor soils and it is adjacent to the rural residential zone and rural residential uses on its northern boundary.”

In the event of conflict, the findings in this decision control.

B. Procedural History: The County’s land use hearings officer conducted the initial hearing regarding the 710 Properties, LLC Comprehensive Plan Amendment and Zone Change applications on April 19, 2022, and recommended approval of the applications by the Deschutes County Board of Commissioners (“Board”) in a decision dated June 2, 2022. The Board conducted a de novo land use hearing on August 17, 2022. The Board deliberated and voted to approve the applications on September 28, 2022.

C. Deschutes County Land Use Regulations: The Deschutes County Comprehensive Plan and Title 18 of the Deschutes County Code have been acknowledged by LCDC as being in compliance with every statewide planning goal, including Goal 14. The County specifically amended its Comprehensive Plan in 2016 to provide that the Rural Residential Exception Area Plan and its related MUA-10 and RR-10 zones should be applied to non-resource lands. Ordinance 2016-005. This amendment is acknowledged, which means that the RREA plan designation and its related zoning districts, when applied to non-resource lands such as the subject property, do not result in a violation of Goal 14.

II. ADDITIONAL FINDINGS AND CONCLUSIONS OF LAW:

The Board of County Commissioners approves the requested plan designation and zone change applications and provides the following supplemental findings and conclusions of law and the analysis provided by its Decision Matrix:

A. Statewide Goal 3 Definition of Agricultural Land

The following is the definition of Agricultural Land provided by Statewide Goal 3:

***"Agricultural Land** -- ***in Eastern Oregon is land of predominantly Class I, II, III, IV, V and VI soils as identified in the Soil Capability Classification System of the United States Soil Conservation Service, and other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land-use patterns, technological and energy inputs required, or accepted farming practices. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands, shall be included as agricultural land in any event.*

More detailed soil data to define agricultural land may be utilized by local governments if such data permits achievement of this goal.

Agricultural land does not include land within acknowledged urban growth boundaries or land within acknowledged exceptions to Goals 3 or 4."

B. Class I-VI Soils identified in Soil Classification System of the US Soil Conservation Service, Decision Matrix page 1

The Board finds, based on the Site-Specific Soils Survey prepared by Soils Classifier Brian Rabe, that 71 percent of the subject property is comprised of Class VII and VIII soils and that the remaining 29 percent is comprised of Class VI soils.

OAR 660-033-0030(5)(a) implements Goal 3’s allowance of the use of “more detailed soil data” to define agricultural land. It requires that the soils data provided to the County must be related to the NRCS land capability classification system. This makes it clear that soils information must be reported by soil classification, LCC I through VIII, and that this information may be used in lieu of the NRCS soil surveys. Mr. Rabe classified the soils on the subject property using the NRCS system.

Per OAR 660-033-0030(5)(b), if an applicant concludes that a more detailed soils analysis would assist the county “to make a better determination of whether the land qualifies as agricultural land,” the applicant is required to hire a soils scientist approved by DLDC to conduct agricultural land soil surveys that provide more detailed soils information than contained in the Web Soil Survey of NRCS. Mr. Rabe has been approved by DLCD to conduct such studies and his soils study was reviewed and approved for use by Deschutes County by DLCD. The study, according to OAR 660-033-0030(5)(c)(A), may support “a change to the designation of a lot or parcel planned and zoned for exclusive farm use to a non-resource plan designation and zone on the basis that such land is not agricultural land.” This is

consistent with LUBA's decision in *Central Oregon LandWatch v. Deschutes County*, 74 Or LUBA 156 (2016)(“Aceti”).

C. Suitability for Farm Use as Defined by ORS 215.203(2)(a), Decision Matrix page 2

Definition of Farm Use

The relevant definition of “farm use” is provided by ORS 215.203(2)(a). To constitute “farm use” various agricultural activities must be undertaken for “the primary purpose of obtaining a profit in money.” The evidence in the record establishes that no person would undertake agricultural activities on the subject property for the primary purpose of obtaining a profit in money. The costs of conducting such activities are too high and the income derived therefrom are too low. According to the 2017 US Census of Agriculture, farms in Deschutes County averaged losses of \$12,866 and approximately 84% of farms do not obtain a profit in money. The average cash farm income of Deschutes County farms that lost money in 2017 was only \$21,386. Farms that had net operating income averaged income of only \$31,739. This data suggests that only farms with ideal farm conditions (good soils, irrigation water rights, favorable climate) obtain a profit in money. It supports the collective opinions of experienced ranchers and farmers that the subject property is not suitable for any type of farm use. We agree.

Given the high cost of irrigating and maintaining the subject property as pasture or cropland (high labor costs, labor-intensive, high cost of irrigation equipment and electricity, high cost of fertilizer, etc.), dry land grazing is the only generally accepted farm use of poor soils (predominantly Class VII and VIII) in Deschutes County. However, the collective opinion submitted by several professional ranchers in this case (and discussed below) makes it clear that grazing would not be profitable on the subject property nor would any professional rancher attempt to integrate the subject property with other ranchland holdings or operations.

Income from Livestock Grazing

When assessing the potential income from dry land grazing, Deschutes County uses a formula and assumptions developed by the OSU Extension Service. This formula is used by the County to decide whether EFU-zoned land is generally unsuitable for farm use. While it does not assess income from all types of livestock, it looks at income from a type of livestock operation that typically occurs in Deschutes County on dry land. The formula assumes that one acre will produce 900 pounds of forage per year and support one Animal Unit Month per acre. The Oregon Department of Agriculture (“ODA”), DLCD and ODFW offered their professional opinion in a letter dated April 19, 2022 that the subject property produces enough forage in dry years to allow grazing by one AUM per 10 acres. In wet years, the agencies estimate that the property might be able to support grazing by one AUM per five acres. This means that the income results of using the OSU formula must be divided by five and ten to obtain the range of potential gross income that might be achieved from grazing.

- One AUM is the equivalent to the forage required for a 1000 lb. cow and calf to graze for 30 days (900 pounds of forage).
- On good quality forage, an animal unit will gain 2 pounds per day.
- Two animal units will eat as much in one month as one animal unit will eat in two months.
- Forage production on dry land is not continuous. Once the forage is consumed, it typically will not grow back until the following spring.
- An average market price for beef is \$1.15 per pound.

Based upon these assumptions, the value of beef production on the entire subject property can be calculated using the following formula:

$$30 \text{ days} \times 2\#/\text{day}/\text{acre} = 60.0 \text{ lbs. Beef}/\text{acre}$$

(1 acre per AUM)

$$60.0 \text{ lbs. Beef}/\text{acre} \times 710 \text{ acres} \times \$1.15/\text{lb.} = \$ 48,990 \text{ per year of gross income}$$

$$\$48,990/10 = \$4,899 \text{ per year of gross income in dry years}$$

$$\$48,990/5 = \$9,798 \text{ per year of gross income in wet years}$$

Thus, using the OSU/County formula based on ODA forage calculations, the total gross beef production potential for the subject property would be approximately \$4,899 to \$9,798 annually.

The State agencies argued that the applicant’s analysis of grazing capacity overlooks the fact that it is an accepted farm practice to graze cattle for five to six months of the year allowing the property owner to double the number of cattle raised by a farm operation. While this is correct, it would not alter the amount of income attributable to grazing on the subject property. The income formula produces the same result whether cattle graze year-round or for a part of the year. Any additional income from a larger herd would be grazing attributable to the other lands where the livestock graze at other times of the year and not be attributable to use of the subject property. Transporting cattle to distant pastures and paying to lease land elsewhere for a larger herd would also impose additional operating costs making it less likely that a livestock grazing operation would generate a profit in money from grazing operations.

Suitability of Property for Dryland Grazing

The record contains a considerable amount of evidence regarding the suitability of the property for dryland grazing. The evidence is generally consistent on two points; the property may be used for grazing livestock but there is inadequate forage on the property to generate net income for a rancher from grazing.

We have considered the vast amount of combined experience of these farmers and ranchers in conducting similar operations and find their testimony more probative and persuasive than that offered by the opposition on the issue of whether the subject property is suitable for farm use as defined by ORS 215.203. Based on evidence and comments submitted into the record from ranchers and farmers, including James M. Stirewalt, Rand Campbell, Matt and Awbrey Cyrus, Russ Mattis, Zach Russell, Craig May, the Board finds the subject property is not suitable for dryland grazing. No reasonable farmer would conduct a cattle or other livestock operation on the subject property intending to make a profit in money from the endeavor.

Other Potential Farm Uses

Arguments were presented that a host of activities, in addition to dryland livestock grazing, that might constitute farm use could occur on the subject property. No claim was made, however, that these activities could be undertaken on the subject property with an intention of making a profit in money use. Instead, the argument was the same argument rejected by the Oregon Supreme Court in *Wetherell v. Douglas County* – that “profit” is “gross income” without the consideration of farm expenses.

All other farm uses that might be conducted on the subject property, other than dryland grazing, would require the property owner to expend extraordinary amounts of money to speculatively attempt to make the subject property suitable for farm use. Furthermore, it is not an accepted farm practice in Deschutes County to irrigate and cultivate Class VII and VIII soils.

The following conditions further support a determination that the property is not suitable for farm use as defined in ORS 215.203:

- Property lacks irrigation water rights and is outside of an irrigation district
- The cost to finance the purchase of groundwater rights and to establish an irrigation system would overwhelm gross farm income
- Property lacks natural source of water for livestock
- Property contains an excessive amount of rocks that would need to be removed to allow the property to be cultivated
- Shallow depth of soil will not hold sufficient water to support the growth of crops
- High plateau location results in exposure to the elements unfavorable for most crops (extreme high temperatures, extreme low temperature, and wind/erosion)
- Low rainfall

First and foremost, irrigation water rights would need to be purchased and would need to be sourced from groundwater. With the cost of purchasing water rights being approximately \$21,000 per acre, the cost of obtaining irrigation water for just 405 acres of the subject property (three 135-acre) pivots would be \$7,800,000.00. The cost of installing agricultural

wells and pumps is approximately \$595,000. This totals approximately \$8,635,000 to establish an irrigation system and supply water for only 405 acres of the 710-acre subject property (three pivots). While these expenditures are capital expenses rather than operating expenses, the cost of debt service is an operating expense that would offset farm income.

In the unlikely event that a farmer could obtain a USDA loan at the favorable rate of interest of four percent per year, the annual cost of funding these improvements on an interest only loan would be approximately \$345,400 per year. Funding from a commercial lender would be even more expensive as interest rates currently range from 5.75 to 8.5 percent. Additionally, the approximate cost of electricity to operate an irrigation system would, based on costs incurred by Dry Creek Ranch, add between \$10,000 and \$12,000 per year to the expense of irrigating the subject property due to the cost of electricity needed to pump groundwater.

The expenses to establish an irrigation system and the shallow, poor quality soils present on the subject property would prevent a reasonable farmer from believing that he or she would ever make a profit in money by conducting irrigation water-dependent farm uses on the subject property. According to the US Census of Agriculture, in 2017, the average Deschutes County farm lost \$12,866 per farm; up from \$11,538 per farm in 2012. A reasonable farmer would also consider the fact that only 22 percent of farm land in the County is cropland and only 27 percent of farm land is irrigated; in other words, only the best soils in the County support irrigated crop production. Only 16 percent of farms in the County in 2017 had net farm income from farm operations. The average income of the successful farms in the County in 2017 was only \$31,739 – not enough to justify the huge expense of bringing water to the subject property or of clearing the land of surface and subsurface rock that would impede tilling – assuming that that is even feasible.

COLW argued that the applicant must show that the subject property is not suitable for any farm use mentioned by a table in the 2012 Census of Agriculture that reports on farm use in Deschutes County. COLW, however, misunderstands the table. It does not represent, as alleged, that all uses listed on the table are occurring in Deschutes County. Instead, it provides income information for groups of uses that are occurring in Deschutes County without disclosing which activities are occurring in our county. COLW mentioned lavender as a potential farm crop, but evidence provided by the applicant shows that lavender farms require irrigation and that the cost paying the interest on the expense of purchasing irrigation water and installing a system would impose interest costs that would be too significant to allow such an operation to be profitable in addition to the other costs of operations – especially considering the track record of other Central Oregon farms. Additionally, lavender farms are typically conducted on much smaller properties with fields less than five acres in size. Further, most lavender farms rely upon public visitation. No reasonable lavender grower would attempt to establish a lavender farm on the Property given the poor quality of the soil, lack of water, and other operational constraints – including lack of close proximity to area roadways and population centers.

Additionally, COLW made no substantiated claim that a reasonable farmer would undertake any of the listed uses with the intention of making a profit in money. Instead, COLW argued that gross income from farming the land is synonymous with a profit in money – a claim rejected by the Oregon Supreme Court in *Wetherell v. Deschutes County*. The commenting State agencies and opponents made similar claims arguing that certain farm uses could be established on the subject property without claiming that the uses would be able to be conducted with an intention to make a profit in money¹.

DLCD/ODA/ODFW argued that the subject property “may also be sufficiently capable of supporting *** the boarding and training of horses, raising poultry, honeybees or even ungulate species like elk or raising game birds such as pheasants, chukar or quail.” They did so without suggesting that a farmer might expect to make a profit in money from conducting any of these activities on the subject property. The suitability test, as indicated by DLCDC/ODA/ODFW comments, relates to whether the subject property itself can support a farm use. This means that the land must be able to produce crops or forage adequate to feed livestock raised on the property; something that severely limits the size of any operation.

Almost all farm uses require irrigation water and, for those that do, it is simply cost-prohibitive to purchase water rights and install wells, pump and irrigation infrastructure on the subject property. The extensive amount of rock would also make almost any agricultural activity infeasible unless the rocks are removed at a cost that would be too expensive to merit either the initial expenditure (capital cost) or finance costs (operating expense that reduces gross income). The DLCDC/ODA/ODFW comments recognize this fact and argue that uses that do not rely on irrigation water might be conducted on the subject property.

The applicant provided extensive evidence that a wide array of farm activities, including those identified by the State agencies, would not be feasible on the subject property and would not be able to be conducted with an intention to make a profit in money. This evidence includes, but is not limited to, unrebutted evidence from Fran Robertson, owner of Robertson Ranch, that she would never consider attempting to establish a horse operation on the subject property due to a lack of irrigation, rocky land, location and numerous juniper trees. Horses eat hay, and, according to opponent Pam Mayo-Phillips “[t]he property is not suitable for hay ground ***.” The State agencies did not contest the fact that the subject

¹To the extent arguments in the record are read to present a claim that a farmer or rancher would use the subject property for farm activities with an intention of making a profit in money, we find the evidence to the contrary offered by farmers and ranchers who toured the subject property and the overwhelming evidence in the record that supports their opinions more persuasive and find that no reasonable farmer would attempt to farm the subject property with an intention to obtain a profit in money.

property is not suitable for the production of crops, presumably due to the expense and difficulty of obtaining irrigation water rights for such a large, infertile property. Without hay and other feed crops, the subject property will not support the farm uses of breeding, boarding or training horses.

The suggestion that elk might be raised on the subject property overlooks the reality that elk ranching requires permits from ODFW. OAR 635-049-0015(1). Additionally, the subject property lacks irrigation which is essential to establish the pastures that should be provided for elk. Elk ranches incur significant expenses to comply with ODFW regulations that make it difficult for them to make a profit in money on any property. This includes disease testing and double fencing with fences at least 8 feet high. OAR 635-049-0245. The costs of installing this fencing would be substantial due to the rocks present on the subject property.

The State agencies' letter of April 19, 2022 states that establishing a confined animal feeding operation (feed lot) would have similar costs wherever located and might be established on the subject property. This is not correct, however, because it would be necessary to remove a substantial quantity of rock from the subject property to make it suitable for this use. It would also be necessary to grade and install a new road (in rock) that will accommodate the trucks used to transport cattle or other livestock to and from the property. Furthermore, the Rabe soils analysis show that the soils on the property are shallow which means that the site is not suitable for a large concentration of animals due to the septic disposal needs of such an operation. Additionally, the number of animals that can be sustained by vegetation produced on the subject property is very low. While hay and feed may be imported to increase production of livestock, that is not a correct measure of whether the land proposed for rezoning can support a particular farm use – the question asked by the definition of Agricultural Land in Goal 3.

As to the other uses mentioned in the State agency letter, Brittany Dye of Brittany's Bees LLC estimated gross income of only \$4,000 per year from the property. Taxes, insurance, transportation, interest on farm loans and labor would make this use one that would not be profitable. The applicant has also provided evidence that shows that conducting a commercial chicken operation is not feasible. The land itself will not produce crops to feed the chickens. The costs of bringing power to the site, obtaining water for the chickens, installing predator control fencing and constructing farm buildings, would make it unreasonable to assume that a farmer would expect to make a profit in money by conducting such an operation on the subject property. Additionally, evidence in the record shows that farm pastures are a key element for a successful chicken (eggs and meat) farm operation such as Great American Egg in Powell Butte, Oregon. Evidence in the record shows that game birds, like poultry, require water and feed not present on the subject property and that these uses are not likely to be profitable.

Redside Restoration, LLC argued that the Class VII soils on the subject property may be used to produce grapes. Its reasoning is that it grows grapes on its property north of the subject

property but their property is substantially different than the subject property. The Redside property has conditions uniquely suited to growing Marquette grape vines that are absent on the subject property. According to the Oregon Wine Press, these conditions are “a south-facing vineyard slope and wind protection” that allow the vines to survive temperatures that drop to the negative teens and twenties in the winter. Additionally, the Redside property is located “within grape seed spitting distance of the Deschutes River” and is fully irrigated. The Redside soils are alluvial because they are next to the river whereas the subject property is a considerable distance from the river. The Redside property is also at a significantly lower elevation than the subject property, which may contribute to the success of operations due to climatic pressures being diminished (warmer, less exposure to the elements). Redside claims its vineyard is growing on land in NRCS map unit 81F. While this is the mapped soil type, soil classifier Brian Rabe, based on a review of the information provided by Redside, offered his expert opinion that the Redside vineyard does not have the characteristics of 81F soil because it has slopes of between 10 and 20 percent rather than the 45 to 80 percent slopes found in areas of 81F soils. Information in the record also establishes that the soils on the subject property are too shallow, with a typical depth of approximately 14 inches, to support a productive and profitable vineyard.

Hemp was mentioned as a potential crop, but former hemp farmer Matt Cyrus is of the opinion that the subject property would not support any working farm use. Mr. Cyrus did not grow hemp in 2021 and 2022 due to poor market conditions. Hemp growers have an oversupply and back inventory of product not yet sold. Mr. Cyrus advised that the subject property is poorly suited for hemp production because it is too rocky and the soils are too shallow for proper tillage and that greenhouse production is not financially feasible. The viability of hemp was also questioned by other commenters including Paul Schutt.

It was also argued that rocks on the subject property might be sold as field stone but this activity is not a farm use or accepted farm practice. Instead, if conducted at a commercial scale it would be surface mining. It was also argued that veterinary clinics are a farm use because they are animal husbandry. The Board disagrees and finds that in the context of the definition of Agricultural Land and farm use, the use described is the day-to-day care, breeding and raising of livestock not a veterinary clinic. This interpretation is consistent with the intention of the EFU zone to preserve land for farm uses that require productive farm land to produce farm products.

In a determination of farm suitability, capital costs may also be considered as a technological and energy input in order to establish the use. The record shows that the cost of establishing an irrigation system (as well as other required capitals costs) on the subject property, would far exceed the sales price that could be obtained if the subject property were improved. Therefore, no reasonable farmer with the intention of making a profit would attempt to establish such a system. This is particularly true given that the record shows at least one example of an existing farm operation that has farm soils and over 500 acres of irrigation

water rights, and that that operation has failed to sell for over 18-months at a sales price below the cost of just purchasing the irrigation water appurtenant to that property.

In conclusion, based on a consideration of evidence in the record that might suggest that the subject property might be suitable for "farm use" and the evidence to the contrary, we find the evidence to the contrary more persuasive and find that the subject property is not "other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land-use patterns, technological and energy inputs required, or accepted farming practices." Statewide Goal 3.

D. Land Necessary to Permit Farm Practice on Nearby Agricultural Land, Decision Matrix page 3

The State agencies raised the issue of traffic impacts related to the Goal 3 issue of whether land is necessary to permit farm practices to be undertaken on nearby lands. Traffic issues are not, however, a relevant consideration in addressing this issue because Goal 3 asks whether the "land" to be rezoned, the subject property, is needed by area farms to conduct farm practices on their properties. Additionally, the record supports the finding that the small amount of traffic associated with the proposed change will not prevent farm practices associated with area farm uses of growing hay and grazing livestock from occurring in the area.

Arguments were also made that grazing might occur on the subject property and on other area land, but that is not the question posed by Goal 3. The question is whether the subject property is necessary to allow farm practices to occur on other properties, and it is clear that it is not necessary.

E. Traffic Impacts and the TPR, Decision Matrix page 4

The applicant filed expert evidence from transportation system engineer Chris Clemow that demonstrates compliance with the Transportation System Planning Rule, OAR 660-012-0060. The hearings officer and County Transportation Planner both reviewed the analysis and found it demonstrated compliance with the rule and this has not been an issue of dispute. Instead, it has been argued that road conditions are not currently adequate to support the traffic associated with a rural residential subdivision of the property. We find, however, that road condition issues will be addressed during subdivision review because the County's code allows the County to impose roadway improvement requirements to address identified inadequacies and have considered the availability and efficiency of providing all necessary

public services and facilities, including roadways, in approving the 710 applications.² DCC 18.136.020(1).

Additionally, without subdivision review a maximum of only six additional homes in addition may be built on the subject property as a matter of right under the proposed zoning. It is highly likely, however, that the same six additional homes could be approved as nonfarm dwellings on the subject property given the fact that three other nonfarm dwellings have been approved on the property and the fact that 71 percent of the property is comprised of Class VII and VIII soils.

F. Definition of Forest Lands, Decision Matrix page 5

The State agencies argued that the County must address the definition of forest land. We address that definition below.

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

- (a) Lands that are suitable for commercial forest uses, including adjacent or nearby lands which are necessary to permit forest operations or practices; and***
- (b) Other forested lands that maintain soil, air, water and fish and wildlife resources.***

The subject property is not forested land. It is not suitable for commercial forest uses and none are occurring on adjacent or nearby lands. Western Juniper is not a forest tree species. The Department of Forestry has determined that there is no forestland on the subject property or on adjacent or nearby lands. The Board agrees with the Hearings Officer on this issue.

OAR 660-006-0010(2) states:

(2) Where a plan amendment is proposed:

(a) Lands suitable for commercial forest uses shall be identified using a mapping of average annual wood production capability by cubic foot per acre (cf/ac) as reported by the USDA Natural Resources Conservation Service. ***

The NRCS Soil Survey of the Upper Deschutes River Area includes maps of the subject property and reports the average annual wood production capability (cf/ac) for all forest soils in Table 8 of the survey. Soils not suitable for wood crops are indicated by their omission from the table (zero production). All of the soils identified by the NRCS Soil Survey as being

² See, DCC 17.16.100(B)(adequate facilities), DCC 17.16.115 (Traffic Impact Study), DCC 17.36.040 (Existing Streets), DCC 17.48.160 (Road Development Requirements; Standards).

present on the subject property are not suitable for producing wood crops. The same is true for all soils identified as present on the property by soils classifier Brian Rabe. The subject property, therefore, is not land suitable for commercial forest uses.

(c) Counties shall identify forest lands that maintain soil air, water and fish and wildlife resources.

The subject property is not “forest lands.”

G. Goal 14, Urbanization, Goal Exception, Decision Matrix page 6

Opponents argued that the County must approve an exception to Statewide Goal 14, Urbanization, in order to apply the RR-10 zone and RREA plan designation to the subject property. An exception to Goal 14 is, however, only required if the proposed zone and designation allow urban development of the subject property. The Board agrees with the Hearings Officer on this issue.

Furthermore, opponents reference the legal case of *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447, 498-511, 724 P2d 268 (1986) for the proposition that a county may need to approve a goal exception to apply the RREA plan designation and RR-10 zoning districts to the subject property. The *Curry County* case, however, does not support COLW's argument.

In *Curry County*, the Oregon Supreme Court determined that rural residential zoning for exception areas must be proven to be rural in nature when first adopted, even for zones and plans adopted prior to the allowance of exceptions to Goal 14. *Curry County* at 476. This means that when Deschutes County's Comprehensive Plan and zoning code were acknowledged by LCDC around 1980, it was necessarily determined that RREA plan designation and zoning comply with Goal 14 and do not allow urban development.

Deschutes County Comprehensive Plan (“DCCP”) Policy 2.2.3 specifically allows nonresource lands zoned EFU to be redesignated and rezoned and identifies the property zoning and plan designations to be applied to non-agricultural lands. The plan also states, in Section 3.3, Rural Residential Exception Areas:

*“As of 2010 any new Rural Residential Exception Areas need to be justified through initiating a non-resource plan amendment and zone change by demonstrating the property does not meet the definition of agricultural or forest land ***”*

The Plan states that “[e]ach Comprehensive Plan map designation provides the land use framework for establishing zoning districts. Zoning defines in detail what uses are allowed for each area.” DCCP Section 1.3, p. 15. Rural Residential Exception Areas, according to the DCCP, “provide opportunities for rural residential living outside urban growth boundaries and unincorporated communities ***.” DCCP Section 1.3, p. 15. DCCP Table 1.3.3 provides

that Title 18’s RR-10 and MUA-10 are the “associated Deschutes County Zoning Code[s]” for the RREA plan designation.

The determination that the RREA plan designations and RR-10 and MUA-10 zoning districts should apply to non-agricultural lands was made when the County amended the DCCP in 2016. Ordinance 2016-005. That ordinance was acknowledged by DLCD as complying with the Statewide Goals. This means that the lot sizes and uses allowed by the RREA plan designation and RR-10 zone are Goal 14 compliant. The proposed Comprehensive Plan Amendment simply acts in accordance with the DCCP provisions. It provides no occasion for the County to revisit the issue of whether the RR-10 zone and RREA designation violate Goal 14 by allowing urban development.³

This issue is addressed in detail by the Oregon Court of Appeals in *Central Oregon LandWatch v. Deschutes County*, 301 Or App 701, 457 P3d 369 (2020)(“TID”). In *TID*, the Court held that a decision made by Deschutes County decades earlier not to apply a resource plan designation to the subject property made it unnecessary for the property owner to establish that the property is nonresource land when remapping it from Surface Mining to RREA and MUA-10. This is consistent with earlier Court of Appeals decisions that hold that Goal 5 is not a relevant issue in a plan amendment and zone change application if the subject property has not been identified as a Goal 5 resource by the applicable comprehensive plan. *Urquhart v. Lane Council of Governments*, 80 Or App 176, 181-82, 721 P2d 870 (1986); *Friends of Neabeack Hill v. City of Philomath*, 139 Or App 39, 911 P2d 350, rev den 323 Or 136 (1996).

The case of *Jackson County Citizens’ League v. Jackson County*, 171 Or App 149, 15 P3d 42 (2000) holds that it is unnecessary to establish compliance with Goal 14 for uses conditionally allowed by the EFU zone; just as it is unnecessary for 710 Properties, LLC to establish that Deschutes County’s Comprehensive Plan, a plan that provides that the RREA plan designation and RREA zones (RR-10 and MUA-10) should be applied to non-agricultural lands, complies with Statewide Goal 14.

COLW Goal 14 argument is also based on erroneous facts. COLW’s argument assumes that the RREA plan designation and RR-10 and MUA-10 zones were granted exceptions to Statewide Goal 14. In fact, the only required exceptions granted to Deschutes County by LCDC were to Statewide Goals 3 and 4 – not to Goal 14. The DCCP explains:

- **“1979 Exceptions Comprehensive Plan entire County – PL 20 - 1979**
During the preparation of the 1979 Comprehensive Plan it was apparent that many rural lands had already received substantial development and were committed to

³ In *Deschutes Development Co. v. Deschutes County*, 5 Or LUBA 218 (1982) LUBA held that “We lack authority after acknowledgment of a comprehensive plan to review goal issues related to the plan. *Fujimoto v. MSD*, 1 Or LUBA 93, 1980, *aff’d*, 52 Or App 875, 630 P2d 364 (1981).”

non-resource uses. Areas were examined and identified where Goal 3 and 4 exceptions were taken. At this time exceptions to Goals 11 and 14 were not required.”

DCCP, Chapter 5, p. 40. An exception to Goal 14 was not required because the plan and rural residential zoning districts complied with Goal 14 and because Goal 14 exceptions were not yet allowed by LCDC’s rules.

Curry County Goal 14 Analysis

While not agreeing that an analysis of Goal 14, Urbanization is required, we provide the following alternative findings below to address the issue.⁴

The RR-10 zoning district does not authorize urban development that violates Statewide Goal 14. DCCP Chapter 1, Section 1.3 p. 15 (Definitions) says that RREAs provide opportunities for rural residential living; not urban living that violates Goal 14. A review of the factors identified by the Supreme Court in *Curry County* all confirm that the zoning district does not allow urban development.

i. Density

The RR-10 imposes a maximum density of one dwelling per ten acres. The only exception is that a higher density may be allowed in planned or cluster developments if they are not subject to the WA overlay zone.⁵ This higher density is not, however, allowed by approval of this zone change. This increased density is allowed only if it is shown that the development complies with the County’s conditional use criteria, Comprehensive Plan and zoning ordinance that require the dedication of 65 percent natural, undisturbed open space. The large natural open space areas created by this type of development act to maintain the rural character of the parent parcel. The maximum density for properties like the subject property is one house per 7.5 acres. This is not an urban density. Such a density would never be allowed in any urban residential zoning district other than a reserve or holding zone. For instance, in the City of Bend, a density of 1.1 dwellings per acre is the lowest density allowed for an urban residential district. This density is allowed only for areas not served by sewer. For properties served by sewer, a minimum density of four dwellings per one acre is required.

In *Curry County*, the Supreme Court accepted the concession of 1000 Friends that a density of one house per ten acres is generally “not an urban intensity.” COLW argues that the comprehensive plan requires a ten acre minimum parcel size. If correct, this minimum parcel size will apply during our review of any subdivision on the subject property and assure that

⁴ Alternative findings are common and permitted. *Oregon Coast Alliance, et al. v. Tillamook County*, __ Or LUBA __ (LUBA Nos. 2021-101/104, Sep 30, 2022)(slip op 24).

⁵ DCC 18.60.060.C also permits a density bonus if a property is within one mile of an urban growth boundary. That provision does not apply here.

development is not developed at an urban intensity. Furthermore, in *Curry County*, 1000 Friends argued that densities greater than one dwelling per three acres (e.g. one dwelling per one or two acres) are urban. The density allowed by the RR-10 zone in a planned development is 2.5 times less dense. For a standard subdivision, the density allowed (one house per ten acres) is over three times less dense. The record in this case, also includes DLCDC guidance that suggests that a low level of residential urban density is two to six units per buildable acre (Applicant’s Exhibit BOCC-4). Clearly, a density equivalency of one unit per *ten* acres is not urban; and the same is true for a density of one unit per 7.5 acres.

The density of the RR-10 zone is not, as claimed by COLW, eight times greater than the density allowed in the EFU-zone. Deschutes County’s EFU zone allows for non-irrigated land divisions for parcels as small as 40 acres that create two nonfarm parcels (1:20 acres density). It also allows for two lot irrigated land divisions that, in Deschutes County can occur on parcels less than 30 acres in size (23 acres irrigated, no minimum lot size for the nonfarm parcel) that result in a density of one house per less than 15 acres.

ii. Lot Size

The RR-10 zoning district requires a minimum lot size of one house per ten acres. An exception to the minimum lot size is allowed only if 65 percent of the land being divided is dedicated as open space and a maximum density of one dwelling per 7.5 acres is achieved on the subject property.

The EFU zone that applies to the subject property imposes no minimum lot size for new nonfarm parcels. DCC 18.16.055. The only exception is that 5-acre minimum is required for non-irrigated land divisions of properties over 80 acres in size. DCC 18.16.055(C)(2)(a)(4). The EFU zone requires that other nonfarm uses be on parcels that are “no greater than the minimum size necessary for the use.” Furthermore, although not applicable to non-resource lands, OAR 660-004-0040 allows lot sizes as small as two acres in rural residential areas without need for approval of a goal exception – indicating LCDC’s view that parcels of this size are not urban lots.

iii. Proximity to Urban Growth Boundaries

The County’s zoning map shows that the subject property is over four miles from the nearest UGB, the UGB for the City of Redmond. This separation assures that uses established on the subject property will remain rural and not have a “magnet effect” of drawing urban residents to rural lands for commercial services. The magnet effect was an issue of concern to the Oregon Supreme Court in the *Curry County* case. LCDC currently strictly limits the size of magnet uses in the EFU zoning district if they are within three miles of an urban growth boundary by OAR 660-033-0130(2) and Table OAR 660-033-0120 but does not limit the same uses on properties that are more than three miles from a UGB.

iv. Services

Sewer service is prohibited by Goal 11. An increase in the density of development is not allowed if a public water system is developed to serve the subject property. The property may be served by exempt domestic wells, as intended by the applicant.

v. Conclusion of Factors

In totality, none of the above-factors indicates that the Applicant’s rezone request implicates Goal 14. The applicant asserts that the property as it is currently zoned could qualify for approval of approximately 21 non-farm dwellings given the existing requirements in the Code and state law. This approval increases the potential density of development, but not to urban levels.

H. Change in Circumstances or Mistake in Zoning, Decision Matrix page 7

The Board concurs with the Hearings Officer’s findings regarding a mistake in zoning and change in circumstances. Additionally, the County adopted comprehensive plan language in 2016 that clearly allows changes of the type proposed by the applicant. In this case, the Board agrees there has been a change in circumstance since the property was originally zoned EFU around 1979 that merits approval of the 710 Properties applications.

I. Impacts on Surrounding Land Use, Decision Matrix page 8

DCC 18.136.020(C)(2) requires a consideration of whether the impacts on surrounding land use will be consistent with the specific goals and policies contained within the Comprehensive Plan. All specific goals and policies were identified by the County’s hearings officer and were considered by the Board in deciding to approve the zone change and plan amendment applications. Additionally, approval does not violate any specific plan goal or policy. Furthermore, Policy 2.2.3 specifically allows for the proposed changes on EFU land that does not meet Goal 3’s definition of Agricultural Land. The Board concurs with the Hearing’s Officer findings.

J. Wildlife Impacts, Decision Matrix page 9

The County’s Goal 5 program considered and applied mapping to protect all Goal 5 resources in the County. It did not identify any Goal 5 resource on the subject property and did not impose any Goal 5 protections. The Board understands that wildlife agencies are asking the County to apply new Goal 5 protections to a wide swath of lands in the County, including the subject property but the County has not yet conducted an ESEE analysis to determine whether Goal 5 protections should be applied. At this time, however, Goal 5 is not a relevant issue in the review of this application because no Goal 5 resources have been inventoried as being present on the property. Applying *ad hoc* protections at this time would not be appropriate. *Urquhart v. Lane Council of Governments*, 80 Or App 176, 181-182, 721 P2d 870 (1986); *Friends of Neabeack Hill v. City of Philomath*, 139 Or App 39, 911 P2d 350, rev den 323 Or 136 (1996). See also, *Central Oregon LandWatch v. Deschutes County*, 301 Or App 701, 457

P3d 369 (2020). Furthermore, approval of the zone change and plan amendment application will not prevent the application of Goal 5 resource protections to the property, if merited, in the future.

K. Fire Hazard, Decision Matrix page 10

The entire County is identified as a Wildfire Hazard Area designation. The plan amendment and zone change does not change this designation.

The subject property, if subdivided, will be required to comply with emergency access requirements or development of the property will be limited by the applicable fire code unless appropriate fire risk and hazard reduction measures are taken by property owners.

The measures identified by the Comprehensive Plan have been acknowledged as complying with Statewide Goal 7. As approval of the application does not violate the plan, it does not violate Statewide Goal 7.

L. Availability of Water and Water Impacts, Decision Matrix page 11

Evidence in the record is generally consistent regarding the availability of water. Water is available in the regional aquifer and is adequate to serve residents of new homes that might be built on the subject property.⁶ According to Kyle Gorman of Oregon Water Resources Department, the aquifer has declined by a modest amount of 9 feet over 25 years in the area closest to the subject property. The level of water in the upper levels of the aquifer above the regional aquifer is declining for multiple reasons; none are attributable to the proposed plan amendment and zone change application. The result of groundwater decline is that older wells that are shallow need to be redrilled.

A professional water study conducted by GSI Water Solutions, Inc. found, that the use of exempt wells to meet the water needs of new residents would be unlikely to have a measurable interference on agricultural wells and domestic wells in the area around the subject property. Given this fact, it is not necessary for the subject property to remain undeveloped in order to permit farm practices from being undertaking on adjacent or nearby agricultural lands. Additionally, domestic water use is only a very small percentage of water use occurring in the Deschutes River Basin. The largest use of water is irrigation, particularly irrigation of farm properties. Water use issues, also, will be addressed during subdivision review as required by DCCP Policy 2.5.24.

Under DCC 18.136.020(C)(1), the water availability issue is limited to a consideration of whether water will be available to the subject property and does not address water availability for other properties. That standard has been met by the applicant.

⁶ The cost of water for farm use purposes makes that use unrealistic.

M. HB 2229 and Related Comprehensive Plan Policies, Decision Matrix page 12

Opponents argued that the County cannot approve the Applicant’s request without first obtaining a “work plan” that has been supported by DLCD. The Board finds the requirements and allowances of HB 2229 (2009) are not applicable to the quasi-judicial process proposed with this application.

The Deschutes County Comprehensive Plan (“**DCCP**”) Policies 2.2.2 and 2.2.3 allow the rezoning of an “individual parcel” of land. In fact, in 2016, the County adopted changes to the DCCP to *specifically authorize* the approval of quasi-judicial plan amendments to nonagricultural land and these plan provisions are acknowledged.

HB 2229 authorizes a County-led “Big Look” of resource lands and has no bearing on a quasi-judicial rezone initiated by an applicant which is permitted Deschutes County’s Comprehensive Plan. According to former DLCD Director Richard Whitman, the bill authorizes counties to “take a county wide look at all of their farm and forest lands and whether they [are] appropriately zoned or not.”⁷ Nothing in HB 2229 precludes the County from approving property-specific plan amendment and zone change applications for properties incorrectly inventoried as resource lands.

III. DECISION:

Based upon the foregoing Findings of Fact and Conclusions of Law, the Board of County Commissioners hereby **APPROVES** Applicant’s applications for a DCCP amendment to re-designate the subject properties from Agriculture (AG) to Rural Residential Exception Area (RREA) and a corresponding zone map amendment to change the zoning of the properties from Exclusive Farm Use – Terrebonne (EFU-TE) to Rural Residential (RR-10).

Dated this ___ day of _____, 2022

⁷ Applicant’s Exhibit BOCC-24.

**DECISION AND RECOMMENDATION
OF THE DESCHUTES COUNTY HEARINGS OFFICER**

FILE NUMBER: 247-21-001043-PA, 247-21-001044-ZC

HEARING: April 19, 2022, 6:00 p.m.
Barnes & Sawyer Rooms
Deschutes Services Center
1300 NW Wall Street
Bend, OR 97708

**SUBJECT PROPERTY/
OWNER:**

Mailing Name: EDEN CENTRAL PROPERTIES LLC
Map and Taxlot: 1412280000100
Account: 163920
Situs Address: 10315 NW COYNER AVE, REDMOND, OR
97756

Mailing Name: EDEN CENTRAL PROPERTIES LLC
Map and Taxlot: 1412280000200
Account: 250543
Situs Address: 10325 NW COYNER AVE, REDMOND, OR
97756

Mailing Name: EDEN CENTRAL PROPERTIES LLC
Map and Taxlot: 1412280000300
Account: 124845
Situs Address: 10311 NW COYNER AVE, REDMOND, OR
97756

Mailing Name: EDEN CENTRAL PROPERTIES LLC
Map and Taxlot: 141228D000101
Account: 273062
Situs Address: **NO SITUS ADDRESS**

Mailing Name: EDEN CENTRAL PROPERTIES LLC
Map and Taxlot: 1412210000300
Account: 276793
Situs Address: **NO SITUS ADDRESS**

Mailing Name: EDEN CENTRAL PROPERTIES LLC
Map and Taxlot: 1412210000400
Account: 276794
Situs Address: **NO SITUS ADDRESS**

Mailing Name: EDEN CENTRAL PROPERTIES LLC
Map and Taxlot: 1412210000500
Account: 276791
Situs Address: **NO SITUS ADDRESS**

Mailing Name: EDEN CENTRAL PROPERTIES LLC
Map and Taxlot: 1412210000600
Account: 124846
Situs Address: 70000 BUCKHORN RD, TERREBONNE, OR
97760

Mailing Name: EDEN CENTRAL PROPERTIES LLC
Map and Taxlot: 1412210000700
Account: 276792
Situs Address: **NO SITUS ADDRESS**

APPLICANT: 710 Properties, LLC
PO Box 1345
Sisters, OR 97759

ATTORNEYS FOR APPLICANT: Liz Fancher
2464 NW Sacagawea Lane
Bend, Oregon 97703

J. Kenneth Katzaroff
Schwabe Williamson & Wyatt
1420 5th Avenue, Suite 3400
Seattle, WA 98101

REQUEST: The Applicant requests approval of a Comprehensive Plan Amendment to change the designation of the subject property from Agricultural (AG) to Rural Residential Exception Area (RREA). The Applicant also requests a corresponding Zone Change to rezone the subject property from Exclusive Farm Use – Terrebonne subzone (EFU-TE) to Rural Residential (RR-10).

HEARINGS OFFICER: Stephanie Marshall

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/cd/page/247-21-001043-pa-and-247->

[21-001044-zc-eden-central-properties-comprehensive-plan-amendment](#)

RECORD CLOSED: May 3, 2022

I. STANDARDS AND APPLICABLE CRITERIA

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

- Chapter 18.04, Title, Purpose, and Definitions
- Chapter 18.16, Exclusive Farm Use Zones (EFU)
- Chapter 18.60, Rural Residential Zone (RR-10)
- Chapter 18.113, Destination Resorts Combining Zone (DR)
- Chapter 18.136, Amendments

Title 22, Deschutes County Development Procedures Ordinance

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

- Oregon Administrative Rules (OAR), Chapter 660
 - Division 12, Transportation Planning
 - Division 15, Statewide Planning Goals and Guidelines
 - Division 33, Agricultural Land

- Oregon Revised Statutes (ORS)
 - Chapter 215.010, Definitions
 - Chapter 215.211, Agricultural Land, Detailed Soils Assessment

II. FINDINGS OF FACT

A. LOT OF RECORD: Per DCC 22.04.040 Verifying Lots of Record, lot of record verification is required for certain permits:

B. Permits Requiring Verification.

- 1. Unless an exception applies pursuant to subsection (B)(2) below, verifying a lot or parcel pursuant to subsection (C) shall be required prior to the issuance of the following permits:***
 - a. Any land use permit for a unit of land in the Exclusive Farm Use Zones (DCC Chapter 18.16), Forest Use Zone – F1 (DCC Chapter 18.36), or Forest Use Zone – F2 (DCC Chapter 18.40);***
 - b. Any permit for a lot or parcel that includes wetlands as shown on the Statewide Wetlands Inventory;***
 - c. Any permit for a lot or parcel subject to wildlife habitat special assessment;***

- d. *In all zones, a land use permit relocating property lines that reduces in size a lot or parcel;*
- e. *In all zones, a land use, structural, or non-emergency on-site sewage disposal system permit if the lot or parcel is smaller than the minimum area required in the applicable zone;*

In the *Powell/Ramsey* (PA-14-2, ZC-14-2) decision, the Hearings Officer held to a prior Zone Change 247-21-000400-PA, 401-ZC Decision (*Belveron* ZC-08-04; page 3) that a property’s lot of record status was not required to be verified as part of a plan amendment and zone change application. Rather, the Applicant would be required to receive lot of record verification prior to any development on the subject property. The Hearings Officer adheres to this ruling and finds this criterion does not apply.

B. SITE DESCRIPTION: The subject property encompasses approximately 710.5 acres and includes nine tax lots described below (together hereafter referred to as the “subject property”):

Map and Tax Lot	Situs Address	Area (acres)
1412280000100	10315 NW COYNER AVE, REDMOND, OR 97756	±149.78
1412280000200	10325 NW COYNER AVE, REDMOND, OR 97756	±150.09
1412280000300	10311 NW COYNER AVE, REDMOND, OR 97756	±120.6
141228D000101	NO SITUS ADDRESS	±8.66
1412210000300	NO SITUS ADDRESS	±101.68
1412210000400	NO SITUS ADDRESS	±9.47
1412210000500	NO SITUS ADDRESS	±4.54
1412210000600	70000 BUCKHORN RD, TERREBONNE, OR 97760	±163.87
1412210000700	NO SITUS ADDRESS	±1.79

The subject property is undeveloped except for one tax lot (10325 NW Coyner Avenue), which is developed with a nonfarm dwelling (County Land Use File #CU-05-103). Two other lots of record have valid nonfarm dwelling approvals. Access to the property is provided at the western terminus of NW Coyner Avenue, a County-maintained rural local roadway, and the northern terminus of NW 103rd Street, a County-maintained rural local roadway.

A majority of the property sits on a plateau running from the southwest to the northeast of the subject property boundary. Topography is varied with portions of lava rimrock present along the west and northwest edges with steep to very steep slopes below. Vegetation is typical of the high desert and includes juniper trees, sage brush, rabbit brush, and bunch grasses. The Applicant emphasizes the steep topographical decline on the property, the fact that there is “lava rock all over the property,” and “sparse ground cover and juniper.”

The subject property does not have water rights and is not currently being farmed or irrigated in conjunction with farm use. There is no known history of the property having had irrigation rights. There is no known history of agriculture or farm use, as defined in ORS 215.203 on the subject

property.¹ According to the Deschutes County Assessor’s office, only one tax lot within the project area, Assessor’s Map 14-12-28, Tax Lot 300, is currently receiving farm tax deferral, but does not appear to be engaged in farm use. The record does not include any evidence the subject property is engaged, or has ever been engaged, in farm use.

The Natural Resources Conservation Service (NRCS) map shown on the County’s GIS mapping program identifies six soil complex units on the property: 63C, Holmzie-Searles complex, 106E, Redslide-Lickskillet complex, 101D, Redcliff-Lickskillet-Rock outcrop complex, 106D, Redslide-Lickskillet complex, 71A, Lafollette sandy loam, and 31B, Deschutes sandy loam. Per DCC 18.04, Soil complex 31A and 71A are considered high-value soils when irrigated.

As discussed in detail below in the Soils section, there is no irrigation on the subject property, except for water applied to landscaping associated with the nonfarm dwelling on Tax Lot 301. A soil study conducted on the property determined the subject property contains approximately 71 percent Land Capability Class 7 and 8 nonirrigated soils, including stony shallow soils over bedrock, more characteristic of the Lickskillet series, along with significant rock outcrops. Where surface stoniness was not apparent, the soils were typically moderately deep with sandy loam textures throughout or with some loam textures in the subsurface, more consistent with the Statz series.

C. PROPOSAL: The Applicant requests approval of a Comprehensive Plan Map Amendment to change the designation of the subject property from an Agricultural (AG) designation to a Rural Residential Exception Area (RREA) designation. The Applicant also requests approval of a corresponding Zoning Map Amendment to change the zoning of the subject property from Exclusive Farm Use (EFU) to Rural Residential – 10 Acre Minimum (RR10). The subject property is not within a Wildlife Area (WA) combining zone.

The Applicant requests Deschutes County to change the zoning and the plan designation and does not request a Statewide Planning Goal 3, Agricultural Land” exception because the Applicant submits the subject property does not qualify as “agricultural land” under Oregon Revised Statutes (ORS) or Oregon Administrative Rules (OAR) definitions. The Applicant submitted evidence that 71% of the property is comprised of Class VII and Class VIII soils and that the property could not be employed for “farm use,” for the primary purpose of obtaining a profit in money.

The Applicant submitted with the application an Order 1 and 2 Soil Survey of the subject property, titled “Site-Specific Soil Survey of Property Located at or Near 10325 Coyner Avenue, West of Redmond in Deschutes County, Oregon” dated June 22, 2021, and a supplemental addendum titled “Response – Eden Soils Report” dated January 13, 2022 (together hereafter referred to as the “Soil Study”) prepared by soil scientist Brian T. Rabe, CPSS, WWSS of Valley Science and Engineering. The Applicant also submitted a traffic impact analysis prepared by Christopher M. Clemow, PE, PTOE titled “710 Properties Plan Amendment and Zone Change – Deschutes County, Oregon” dated November 12, 2021 and revised on January 17, 2022, hereinafter referred to as “Traffic Study.” (Applicant’s Exhibit S) Additionally, the Applicant submitted an application form, a burden of proof

¹ The Hearings Officer finds that growing a lawn and/or watering a lawn with a domestic exempt well on a portion of the subject property is not “agriculture” and does not constitute “farm use” under the statutory definition in ORS 215.203.

statement,² and other supplemental materials, all of which are included in the record for the subject applications.

D. SOILS: According to Natural Resources Conservation Service (NRCS) maps of the area, the subject property contain six different soil types including 63C, Holmzie-Searles complex, 106E, Redslide-Lickskillet complex, 101D, Redcliff-Lickskillet-Rock outcrop complex, 106D, Redslide-Lickskillet complex, 71A, Lafollette sandy loam, and 31B, Deschutes sandy loam.

The Applicant submitted a soil study report (Applicant’s Exhibit F), which was prepared by a certified soils scientist and soil classifier that determined the subject property is comprised of soils that do not qualify as Agricultural Land⁴. The purpose of this soil study was to inventory and assess the soils on the subject property and to provide more detailed data on soil classifications and ratings than is contained in the NRCS soils maps. The NRCS soil map units identified on the properties are described below.

31B, Deschutes Sandy Loam, 0 to 8 percent slopes: This soil map unit predominantly consists of Deschutes soils on lava plains. Deschutes soils are typically moderately deep, well drained, and formed in volcanic ash. This soil map unit is expected to be composed of 85 percent Deschutes soils and similar inclusions, and 15 percent contrasting inclusions. This soil type is considered high-value soil when irrigated. Deschutes Sandy Loam has a rating of 6s when unirrigated. Approximately 0.01 percent of the subject property is made up of this soil type.

63C, Holmzie-Searles complex, 0 to 15 percent slopes: This soil map unit predominantly consists of Holmzie and Searles soils on lava plains and hills. Holmzie soils are typically moderately deep, well drained, and formed in ash over residuum on hills. Searles soils are typically moderately deep, well drained, and formed in ash on lava plains and hills. The primary difference between the Holmzie and Searles soils is depth and texture. This soil map unit represents areas where the soil characteristics vary in a pattern that was not practical to delineate separately at the scale of the published survey. This soil map unit is expected to be composed of 50 percent Holmzie soils and similar inclusions, and 35 percent Searles soils and similar inclusions, and 15 percent contrasting inclusions. This soil type is not considered high-value soil. The Holmzie and Searles soils have a rating of 6e when unirrigated. Approximately 74.4 percent of the subject property is made up of this soil type.

71A, Lafollette sandy loam, 0 to 3 percent slopes: This soil map unit predominantly consists of Lafollette soils on stream terraces. Lafollette soils are typically moderately deep to very gravelly old alluvium, well drained and formed in volcanic ash over old alluvium. This soil map unit is expected to be composed of 85 percent Lafollette soils and similar inclusions, and 15 percent contrasting inclusions. This soil type is considered high-value soil when irrigated. The Lafollette sandy loam soil has a rating of 6s when unirrigated. Approximately 1.6 percent of the subject property is made up of this soil type.

² The Applicant filed a revised burden of proof statement with its final legal argument on May 11, 2022.

³ As defined in OAR 660-033-0020, 660-033-0030.

⁴ As defined in OAR 660-033-0020, 660-033-0030.

101D, Redcliff-Lickskillet-Rock outcrop complex, 15 to 30 percent south slopes: This soil map unit predominantly consists of Redcliff and Lickskillet soils on hills and canyon sides. Redcliff soils are typically moderately deep, well drained, and formed in ash and colluvium. Lickskillet soils are typically shallow, well drained, and formed in colluvium. The primary difference between the Redcliff and Lickskillet soils is depth and coarse fragment content. This soil map unit represents areas where the soil depth varies in a pattern that was not practical to delineate separately at the scale of the published survey. This soil map unit is expected to be composed of 60 percent Redcliff soils and similar inclusions, 20 percent Lickskillet soils and similar inclusions, and 15 percent Rock outcrop, and 5 percent contrasting inclusions. This soil type is not considered high-value soil. The Redcliff soils have rating of 6e when unirrigated. The Lickskillet soils have rating of 7e when unirrigated. The rock outcrop has a rating of 8. Approximately 5 percent of the subject property is made up of this soil type.

106D, Redslide-Lickskillet complex, 15 to 30 percent north slopes: This soil map unit predominantly consists of Redslide and Lickskillet soils on hills and canyon sides. Redslide soils are typically moderately deep, well drained, and formed in ash and colluvium. Lickskillet soils are typically shallow, well drained, and formed in colluvium. The primary difference between the Redslide and Lickskillet soils is depth and coarse fragment content. This soil map unit represents areas where the soil depth varies in a pattern that was not practical to delineate separately at the scale of the published survey. This soil map unit is expected to be composed of 50 percent Redcliff soils and similar inclusions, 35 percent Lickskillet soils and similar inclusions, and 15 percent contrasting inclusions. This soil type is not considered high-value soil. The Redslide soils have rating of 6e when unirrigated. The Lickskillet soils have rating of 7e when unirrigated. Approximately 2.18 percent of the subject property is made up of this soil type.

106E, Redslide-Lickskillet complex, 30 to 50 percent north slopes: This soil map unit is similar to map unit 106D with steeper slopes. Redslide soils have a soil rating of 6e when unirrigated. Lickskillet soils have a rating of 7e when unirrigated. Approximately 16.7 percent of the subject property is made up of this soil type.

E. SURROUNDING LAND USES: The subject property is predominately surrounded by EFU-zoned lands with large-scale farm/agricultural uses apparent near the northwest boundary of the subject property. Per Deschutes County Assessor records, many abutting properties, also zoned EFU, are federally owned and appear to be undeveloped and unirrigated. These surrounding properties contain vegetation typical of the high desert, including juniper and sagebrush, similar to the subject property.

There are existing properties developed with residential uses near the southeastern boundary of the subject property and larger scale farm uses to the east along NW Coyner Avenue. There is property zoned Rural Residential-10 Acre Minimum (RR-10) to the northeast of the subject property containing large-lot rural residential uses within the Lower Bridge Estates Subdivision. All properties on the south side of NW Coyner Avenue have been developed or approved for development with nonfarm dwellings. Two farm and five nonfarm parcels adjoin the north side of this part of NW Coyner Avenue.

The adjacent properties are outlined below in further detail:

North: The northernmost boundary of the subject property abuts land zoned RR-10 and EFU. The property zoned RR-10 is part of the Lower Bridge Estates residential subdivision platted in 1981. Abutting property to the northeast is ±80-acre property zoned EFU and appears to be unirrigated and undeveloped. An EFU-zoned property to the south of the NW Lower Bridge Way and NW Teater Avenue intersection contains a non-farm dwelling (Assessor’s Map 14-12-00, Tax Lot 1506). Nearby property to the north also includes a former surface mine zoned RR-10 on the north side of NW Lower Bridge Way, west of the Deschutes River. The adjacent property to the north/northwest is a 193.52-acre EFU-zoned property owned by Volwood Farms, LLC. The property contains irrigated pivot fields and appears to be part of a larger ±368-acre farm property also owned by Volwood Farms, LLC. According to the Applicant, the primary farm uses include alfalfa, orchard grass and hay.

West: Lands to the immediate west of the subject property are zoned EFU. Property to the west abutting the southern boundary of the project site includes a ±1,588-acre parcel (Assessor’s Map 14-12-00, Tax Lot 3200) federally owned and managed by the Bureau of Land Management. This property appears to be unirrigated, is undeveloped, and contains vegetation similar to the subject property. Moving north along the subject property’s western boundary, there are apparent large-scale farm uses occurring in the EFU Zone, within the Lower Bridge subzone. As discussed above, the Volwood Farms property is located to the west and contains larger-scale farm uses. The Lower Bridge area also includes an alpaca ranch (70397 Buckhorn Road) approximately 1.3 miles to the west. An existing vineyard and winery at 70450 NW Lower Valley Drive is approximately 1.5 miles west of the subject property’s western boundary.

East: Tax Lot 700 (Assessors Map 14-12-22B), Tax Lot 500 (Assessor’s Map 14-12-22C), and Tax Lot 200 (Assessors Map 14-12-27), totaling 320 acres are federally owned and abut the eastern boundary of the subject property. These lots are vacant and are zoned EFU. Property zoned RR-10 and platted as part of the Lower Bridge Estates is located further east beyond the abutting federal land along NW 93rd Street. One privately-owned tax lot zoned EFU, Tax Lot 301 (Assessor’s Map 14-12-27), abuts the eastern boundary of the subject property and is developed with a nonfarm dwelling (247-18-000796-CU). There are some larger scale farm uses occurring further east, on the north side of NW Coyner Avenue at 9805 NW Coyner Avenue (Tax Lot 300, Assessor’s Map 14-12-27) and 9293 NW Coyner Avenue (Tax Lot 400, Assessor’s Map 14-12-27). These farms adjoin other irrigated and non-irrigated lands on their eastern boundary developed with single-family residences.

South: The land south of the subject property is zoned EFU and includes undeveloped open space federally owned and managed by BLM. There are three nonfarm dwellings and parcels zoned EFU on the north side of NW Coyner Avenue that do not appear to be engaged in farm use, 10305 NW Coyner Avenue, 10255 NW Coyner Avenue, and 10135 NW Coyner Avenue. These nonfarm parcels range in size from 19 to 28 acres. A 37.5-acre parcel at the southeast corner of NW Coyner and NW 103rd Street (10142 NW Coyner Avenue) is developed with a non-farm dwelling (CU-90-97) and appears to have portions of the property in agricultural use.

E. PUBLIC AGENCY COMMENTS: The Planning Division mailed notice of the applications on December 9, 2021, to several public agencies and received the following comments:

Deschutes County Senior Transportation Planner, Peter Russell

I have reviewed the transmittal materials for 247-21-0001043-PA/1044-ZC to amend the Comprehensive Plan designation of nine abutting properties totaling approximately 710 acres from Agriculture (AG) to Rural Residential Exception Area (RREA) and change the zoning for those same properties from Exclusive Farm Use (EFU) to Rural Residential (RR-10). The properties are located at 10315, 10325, and 10311 NW Coyner Ave., 7000 Buckhorn Rd., and five properties with no assigned address. The NW Coyner properties are County Assessors Map 14-12-28, Tax Lots 100, 200, and 300; the Buckhorn Road property is 14-12-21, Tax Lot 600; and the properties with no assigned addresses are 14-12-28D, Tax Lot 101, 14-12-21, Tax Lot 300, 14-12-21, Tax Lot 400, 14-12-21, Tax Lot 500, and 14-12-21, Tax Lot 700.

The applicant’s traffic study dated November 12, 2021, is problematic in two areas. First, staff does not agree with the trip distribution. While Redmond is the logical origin/destination, the applicant’s traffic engineer offers no rationale why all trip would only use paved roads. The traffic study simply sends all traffic down the same route to OR 126. Staff finds this a flawed approach for several reasons. Rural residents are accustomed to using unpaved roads to reach their destinations. The traffic study does not offer any time savings of paved vs. unpaved to justify all traffic using the same route to access OR 126. Finally, the access to OR 126 requires a left turn onto the highway to continue to Redmond, a move which can have significant delays [due] to volumes on the highway. Second, the traffic analysis continually states due to the combination of low existing volumes on the affected roadway and the low traffic generation of the proposal, the cited intersections will meet relevant Deschutes County and Oregon Department of Transportation (ODOT) mobility standards. This statement does not indicate if that is for the current year or the planning horizon. While this is likely true, the traffic study provides no actual calculations to prove this statement. Thus the traffic study does not meet the requirements of DCC 18.116.310(G)(10). The lack of supporting calculations also means the traffic study does not comply with the Transportation Planning Rule (TPR) at OAR 660-012-0060(1)(c) to demonstrate the use will have no significant effect. The applicant’s traffic engineer may have this information, but I did not see it in the application materials.

The property is proposed to directly access NW Coyner Road, a public road maintained by Deschutes County and functionally classified as a local road. The County [sic] the applicant will need to either provide a copy of a driveway permit approved by Deschutes County prior to development or be required obtain one as a condition of approval prior to development occurring to comply with the access permit requirements of DCC 17.48.210(A).

The County will assess transportation system development charges (SDCs) when development occurs based on the type of proposed use. However, as a plan amendment or a zone change by itself does not generate any traffic, no SDCs are triggered at this time.

In response to Mr. Russell’s comment above regarding the traffic impact analysis (TIA) dated November 12, 2021, the Applicant provided an updated traffic study dated January 17, 2022.

In response to the updated traffic study, Mr. Russell provided the following comment, via email dated January 18, 2022:

I received an earlier draft of the revised TIA last week and reviewed it. They wanted my two cents before they submitted. The revised version provided the info I had requested. I've attached my e-mail from last week back to Chris Clemow, the applicant's traffic engineer.

Deschutes County Building Official, Randy Scheid

The Deschutes County Building Safety Divisions code mandates that Access, Egress, Setbacks, Fire & Life Safety, Fire Fighting Water Supplies, etc. must be specifically addressed during the appropriate plan review process with regard to any proposed structures and occupancies.

Accordingly, all Building Code required items will be addressed, when a specific structure, occupancy, and type of construction is proposed and submitted for plan review.

Department of State Lands, Lynne McAllister

It is unlikely that there are jurisdictional wetlands or waterways on the property based upon a review of wetland maps, the county soil survey and other available information.

A state permit will not be required for the proposed project because, based on the submitted site plan, the project avoids impacts to jurisdictional wetlands, waterways or other waters.

A state permit is required for 50 cubic yards or more of fill removal or other ground alteration in wetlands, below ordinary high water of waterways, within other waters of the state, or below highest measured tide.

There may be some minor headwater stream drainages on the property. Although jurisdictional features are unlikely and minor, the reason a permit will not be required for this project is because it is only an administrative action that does not involve placement of fill material or other physical ground disturbance. Therefore, a land use notice is not necessary.

Department of Land Conservation and Development, Agriculture and Fish and Wildlife, Jon Jinings (Community Services Specialist, DLCD), James W. Johnson (Land Use and Water Planning Coordinator, ODA), Corey Heath (Deschutes Watershed District Manager, ODFW)

The Departments of Land Conservation and Development (DLCD), Agriculture (ODA) and Fish and Wildlife (ODFW) would like to thank Deschutes County for the opportunity to review and comment on the land use proposal referenced above. Please accept this letter as the joint comments of our three Agencies. We understand the applicant is requesting the change the designation of 710 acres from Agriculture to Rural Residential Exception Area and change the zoning of the same property from Exclusive Farm Use Terrebonne Subzone to Rural Residential with a ten-acre minimum parcel size.

Most rural residential areas in Oregon have been designated through what is often referred to as an “exception” or the “exceptions process.” The exceptions process is designed to provide an opportunity to demonstrate that an existing settlement pattern has irrevocably committed an area to something other than commercial agriculture or forestry and, therefore, does not qualify for protection under Statewide Planning Goals 3 (Agricultural Lands) or 4 (Forest Lands). Please see OAR 660-004-0028. The most common type of exception areas are rural residential neighborhoods that include both existing residences, as well as the presence of supportive infrastructure and public services. Lands subject to an acknowledged exception must also show, among other things, that the subsequent zoning designation will not negatively impact nearby farming and forestry activities. Please see OAR 660-004-0018.

The applicant is not pursuing an exception. There is no existing settlement pattern on the subject property. Instead, they are seeking a determination that the property fails to satisfy the definitions of “Agricultural Land” and “Forest Land” found in relevant state law. This approach is often referred to as a “nonresource process” or “nonresource lands determination.”

We have separated our primary comments into three parts. Part 1 includes our responses to applicable Oregon Administrative Rules and Oregon Revised Statutes. Part 2 includes commentary on other issues. These issues may not constitute review criteria in relation to state law although they may have a bearing on whether local county provisions have been satisfied. Either way, we believe they are important and have chosen to include them here. Part 3 includes our recommended outcome.

Please enter these comments into the record for all hearings on the proposal.

Part 1: Oregon Administrative Rules and Oregon Revised Statutes

Definition of Agricultural Land

The applicant is requesting this change on the basis that the property does not qualify as “Agricultural Land” as defined in State law and is therefore not resource land. OAR 660-033-0020 defines Agricultural Land. The specific administrative rule language and our comments are included below:

(1)(a) "Agricultural Land" as defined in Goal 3 includes:

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

State Agency Comments

The applicant has provided a report indicating that the subject property is predominantly comprised of Class VII soils. The State Agencies are not challenging this position. However, please note that “approval” of a soils report by DLCD does not equate to any agreement with the conclusions of the report.

We would also like to emphasize that soil type is only one indicator of whether a property qualifies for protection under Statewide Planning Goal 3. Tracts in Eastern Oregon that are predominantly Class VII soils may be a candidate for reconsideration, but Goal 3 protection may only be removed if they fail to satisfy the other important tests in this definition. Put another way, all tracts planned for Exclusive Farm Use that are determined undeserving of Goal 3 protection must be predominantly comprised of Class VII-VIII soils. However, not all tracts planned for Exclusive Farm Use that are predominantly comprised of Class VII-VIII soils are undeserving of Goal 3 protection.

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

State Agency Comments

This test requires a detailed analysis of many different factors. Failure to satisfy individual factors does not mean that the subject property fails to qualify as Agricultural Land pursuant to Goal 3 and OAR 660- 0330-0020(1).

We have separated the various factors included in this administrative rule provision and included our comments below:

Farm use as defined in ORS 215.203(2)(a)

The definition of “farm use” at ORS 215.203(2)(a) is very broad and includes many different types of pursuits.⁵ Essentially any type of “agricultural or horticultural use or animal husbandry or any combination thereof” is included in this definition. Also included are “stabling and training equines” as well as “...the propagation, cultivation, maintenance and harvesting of aquatic, bird and animal species that are under the jurisdiction of the State Fish and Wildlife Commission.” Furthermore, “farm use” as defined in this statute 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”

⁵ (2)(a) As used in this section, “farm use” means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. “Farm use” includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. “Farm use” also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows.

“Farm use” also includes the propagation, cultivation, maintenance and harvesting of aquatic, bird and animal species that are under the jurisdiction of the State Fish and Wildlife Commission, to the extent allowed by the rules adopted by the commission. “Farm use” includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection.

“Farm use” does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees or land described in ORS 321.267 (3) or 321.824 (3).

and “the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection.”

A determination that lands deserve protection under Goal 3 need not show that all of the activities described in ORS 215.203(2)(a) are available on a subject tract. A tract that is not suited for one type of farm use may be suited for another type of farm use. For example, a tract that is not suited for cultivated crop production may be well suited for livestock production and other aspects of animal husbandry. In addition to seasonal grazing requirements, commercial livestock operators also need areas for winter activities such as feeding and hay storage, calving or lambing grounds and locations for males (e.g., bulls and rams) that need to be separated from the main herd until breeding season occurs. Such lands may also be sufficiently capable of supporting, among other things, the boarding and training of horses, raising poultry, honeybees or even ungulate species like elk or raising game birds such as pheasants, chuckar, or quail.

Having observed the subject property, we believe that it is capable of any number of activities included in the definition of “farm use” at ORS 215.203(2)(a).

Soil fertility

Soil fertility can be an important factor in commercial agricultural operations. However, the presence of productive soils is not always necessary. Many types of farm uses are not dependent on specific soil types and others tend to benefit from less productive soils. Feedlots, whether commercial or personal, are frequently located on lands with low soil fertility. Having dryland areas to store and maintain equipment when not in use (also a farm use under ORS 215.203(2)(a)) can be very important for farming and ranching operations. Simply stated, having access to areas with low soil fertility can be an advantage for commercial agriculture operations because it allows for necessary activities that could otherwise interfere with the management of areas with more productive soils.

Having observed the subject property, we believe that it has soil fertility sufficient to support any number of activities included in the definition of “farm use” at ORS 215.203(2)(a).

Suitability for grazing

The application presents information regarding the capacity for grazing on the subject tract.

The identified number of Animal Unit Months (AUM) are, more or less, in line with our own assessment and represent average rangeland pastures found in central Oregon. However, we believe the value of this grazing capacity has been understated. Lands such as this have been successfully managed for livestock grazing since cattle and sheep were introduced to the area.

According to the USDA NRCS Rangeland Analysis Platform and the NRCS Heatmap,⁶ the subject property appears to be a perfectly average piece of native rangeland for the area. The NRCS Heatmap provides a spatial map of the biomass production over the entire area and demonstrates the consistency of the land use for the surrounding landscape. If the subject land isn't productive agricultural land, then one would have to believe that no piece of Deschutes County rangeland in the larger area is. Overall, the subject area is in good shape, it has a little bit of annual grass but - sub 10% for shrub and annual grass cover. It looks like over time it averages about a 500lbs/acre in the perennial biomass production, with it having wet year production of 700lbs/acre and drought years and this year with several years of drought, it may get as low as 300lbs/acre. Grazing efficiency is generally around 30% - 100-210 of grass tonnage is what livestock will actually eat. That means that its' AUM/acre ranges from 1 AUM to 10 acres in bad years and 1 to 5 in good years and in most years it's 1 to 6 or 7. This equates to this area being the productive norm for native rangeland in the region.

According to the application, the property is capable of supporting between eight (8) and 15 cow/calf pairs for a year (40-75 sheep or goats). While this may not be technically mistaken, it does not account for customary grazing practices that utilize a five to six month grazing season. In other words, a better metric would be to recognize that the property would be capable of supporting 16-30 cow/calf pairs or an equivalent number of sheep or goats for a typical grazing season, which would be much more worthwhile to a commercial operation, particularly when managed in conjunction with other lands. Another scenario would be to graze a much higher number of livestock for a more limited duration of time. For instance, having a location available between the time cattle are taken off winter pasture and the time they are hauled to summer range can be an important factor in commercial livestock operations.

Ranchers commonly transport livestock significant distances to pasture. Assuming that the property would need to be independently relied on or used by adjacent or nearby operations is not in keeping with the nature of livestock management largely practiced in this region.

Having observed the subject property, we believe that it is sufficiently suitable for grazing.

Climatic Conditions

The subject property is in the rain shadow of the Cascade Mountain Range on the edge of the Oregon High Desert. In other words, the area is dry with cold winters and the potential for frost nearly every month. These climatic conditions are not ideal for commercial agriculture. However, commercial agriculture is active in similar settings in the local area and throughout the mountain and intermountain regions of the United States. For example, the hay and cattle producing regions of Ft. Rock and Christmas Valley share similar precipitation constraints and are located at an elevation of 4,699 and 4,318 feet above sea level, respectively, compared to an elevation of 2,871 at Terrebonne, Oregon. The hay and

⁶ <https://rangelands.app/>
247-21-001043-PA/1044-ZC

cattle producing region of the Big Hole basin near Wisdom, Montana sits at an elevation of over 6,000 feet above sea level.

Having observed the subject property, we believe the relevant climatic conditions are suitable to sustain commercial agriculture.

Existing and future availability of water for irrigation purposes

Irrigation water is critical for irrigated agriculture. However, many types of farm uses are not dependent on irrigation.

Having observed the subject property, we do not believe that water for irrigation purposes is necessary to conduct many of the activities included in the definition of “farm use” at ORS 215.203(2)(a).

Existing land use patterns

The existing land use pattern of the area is unmistakably rural and characterized by farming and ranching activities.

Having observed the subject property, we do not believe that the introduction of rural residential development would be consistent with the existing land use pattern.

Technology and energy inputs required

Every endeavor, agriculture or otherwise, requires technological and energy inputs. As with anything else, high levels of financial investments for agricultural purposes may not make economic sense in every instance. Fortunately, investments in farm use activities may be tailored to fit the circumstances. Lands where installing a series of irrigation pivots would not lead to a suitable return may be well positioned for the development of an indoor riding area. Developing a confined animal feeding operation is likely to incur similar capital costs wherever it is sited.

This proposed application raises several examples of potential costs and asserts that they would have a prohibitive result. We agree that some investments may not be worthwhile on the subject property. However, as previously mentioned, many types of farm uses have similar capital costs wherever they may be established. Furthermore, we believe that many other aspects of technology and energy inputs may be suitably mitigated. For instance, this particular tract is not included in a livestock district, so a livestock operator is not legally required to fence their animals in. Instead, it is incumbent upon other properties to fence them out. If limiting animal movement to the subject property is desired, completing fencing around the perimeter of the tract and cross-fencing the interior for better forage utilization can be accomplished using electric fence, or “hot-wire”, which is much more affordable than traditional fencing products. While the application confirms that power is available to the subject property, a solar electric charger may also be used for powering miles of electric fence. Trucking water to livestock in dryland pastures is not uncommon in this part

of country if a well is not available or convenient and portable panels can be used for working pens rather than having to construct such facilities if they are not present.

We do not believe the cost of labor to be an impediment. Folding the subject property into an existing operation is unlikely to require hiring additional help, neither would managing a grazing operation comprised only of the subject project, unless of course the owner or lease holder is unable to do the work. Costs of additional labor needed to establish other types of stand-alone operations, including but not limited to, boarding, or training horses, raising game birds, or a confined animal feeding operation would be supported by that use.

Having observed the subject property, we do not believe that technological or energy inputs present an overwhelming barrier to conducting farm uses described at ORS 215.203(2)(a).

Accepted farming practices

Commercial farming and ranching operations are often not confined to one particular parcel or tract. Instead, they are regularly comprised of a combination of owned and leased land. These lands may be in close proximity, or they may be dozens (or more) miles apart. The fact that a single property may struggle to be managed profitably by itself does not mean that it does not have important value when managed in conjunction with other lands.

We believe that all the farm uses described above constitute accepted farming practices, many which are currently practiced in the surrounding area.

Having observed the subject property, we believe that it is entirely available for accepted farming practices.

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

State Agency Comments

There is little discussion that we found in the information provided in support of the plan amendment that adequately discusses impacts to area farm operations. The discussion provided by the applicant focuses primarily on an assertion that any subsequent development of the subject property (because of the proposed plan amendment and rezone) would not adversely impact surrounding farming and ranching operations primarily because the property is separated by topography that would provide adequate buffers. This conclusion is not supported by any comprehensive evaluation of the farming and ranching practices that are associated with existing and potential future farm uses in the surrounding area. Without an adequate analysis of the impact on adjacent or nearby agricultural lands, there are many questions that have not been evaluated. For example, what would the cumulative impacts of additional residential water use be to water supply for area irrigated agriculture in the region? Unlike applications for irrigation use,

residential wells are exempt uses and thus there would be no evaluation for injury to other water users in the area. What would be the traffic implications? What would the siting of more dwellings do to the ability to utilize certain agricultural practices? Would the expansion of residential development in the area provide greater opportunities for trespass from adjacent properties onto area farming operations?

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

State Agency Comments

It does not appear that the subject property is currently within a farm unit that includes lands in a capability class I-VI. This observation is not meant to dismiss the fact that the property’s status in this regard could change in the future.

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

State Agency Comments

We agree that the subject property is not within an acknowledged urban growth boundary or and acknowledged exception area for Goal 3 or 4.

State Agency Agricultural Land Definition Conclusion

Agricultural Land includes all three categories of land described above as part of OAR 660-033-0020(1)(a)(A)-(C). We find that categories (B) and (C) are insufficiently addressed by the burden of proof included with the application. Based on the current application materials, we disagree with findings that asserts the property is not Agricultural Land. We find the subject property is characteristic in soils, terrain, hydrology, and size to many central Oregon properties that have been historically or are currently used for livestock and grazing operations. Utilizing several non-contiguous properties to meet the needs of livestock over the course of a typical year is an accepted farming practice across much of Oregon. To assume that a property of this nature could not be used as standalone or as part of a nearby livestock operation by the current or future landowner or lessee would have significant consequences to existing agriculture operations either by reducing the amount of land available for legitimate agricultural practices or through the introduction of conflicting uses.

We also point to Agricultural Land Policy (ORS 215.243) direction provided to the State from the Legislative Assembly upon passage of Oregon Land Use Bill, Senate Bill 100 and its’ companion Senate Bill 101; as important considerations that must be addressed prior to the redesignation or rezoning of any Agriculture Land. ORS 215.243 states:

The Legislative Assembly finds and declares that:

(1) Open land used for agricultural use is an efficient means of conserving natural resources that constitute an important physical, social, aesthetic and economic asset to all of the people of this state, whether living in rural, urban or metropolitan areas of the state.

(2) The preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state’s economic resources and the preservation of such land in large blocks is necessary in maintaining the agricultural economy of the state and for the assurance of adequate, healthful and nutritious food for the people of this state and nation.

(3) Expansion of urban development into rural areas is a matter of public concern because of the unnecessary increases in costs of community services, conflicts between farm and urban activities and the loss of open space and natural beauty around urban centers occurring as the result of such expansion.

(4) Exclusive farm use zoning as provided by law, substantially limits alternatives to the use of rural land and, with the importance of rural lands to the public, justifies incentives and privileges offered to encourage owners of rural lands to hold such lands in exclusive farm use zones. [1973 c.503 §1]

Finally, we would like to offer a response to this statement included in the application materials:

“Since the property was zoned, it has become evident that farm uses are not viable on the subject property. The economics of farming have worsened over the decades making it difficult for most Deschutes County property owners to make money farming good ground and impossible to earn a profit from attempting to farm Class 7 and 8 farm soils. In 2017, according to Table 4 of the 2017 US Census of Agriculture, Exhibit T, only 16.03% of farm operators achieved a net profit from farming (238 of 1 484 farm operations). In 2012, the percentage was 16.45% (211 of 1283 farm operations). In 2007, according to the 2012 US Census of Agriculture, that figure was 17% (239 of 1405 farm operations). Exhibit U. The vast majority of farms in Deschutes County have soils that are superior to those found on the subject property. As farming on those soils is typically not profitable, it is reasonable to conclude that no reasonable farmer would purchase the subject property for the purpose of attempting to earn a profit in money from agricultural use of the land.”

First, this statement assumes that the subject land would be put into farm use as a single, separate unit. As previously discussed, it is very common for farming and ranching operations to be comprised of multiple, constituent parcels that are operated as a single farm/ranch operation.

Second, the Census of Agriculture numbers provided do not provide the entire context and nature of Deschutes County agriculture. It is important to note that the Census of Agriculture defines a farm as “any place from which \$1,000 or more of agricultural products were produced and sold, or normally would have been sold during the census year.”⁷ Thus, the total number of farms in any given Census statistic can be skewed by a large number of small farms that might better be

⁷ 2017 Census of Agriculture, Oregon State and County Data, Volume 1, Geographic Area Series 37, USDA National Agricultural Statistics Service, page VIII Introduction.

characterized as hobby or lifestyle farms. In the case of Deschutes County, the numbers quoted by the applicant may be better considered upon recognizing that of the 1484 farms in the county, 92.7% (1376) are less than 100-acres in size. These same farms constitute only 19.59% (26,367 acres) of the total land area of land in farms. Taken further, 92.1% (1268) of these farms are less than 50-acres in size and comprise but 13.8% (18,531 acres).⁸ The character of Deschutes County “commercial” agriculture is perhaps better considered by looking at the larger footprint of land in farms which is better described as large operations many of which operate using constituent parcels, many times not contiguous to each other.

Definition of Forest Land

The Applicant also asserts that the subject property is not Forest Land. OAR 660-06-0005 defines Forest Lands, it states:

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

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

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

OAR 660-006-0010(2) states:

(2) Where a plan amendment is proposed:

(a) Lands suitable for commercial forest uses shall be identified using a mapping of average annual wood production capability by cubic foot per acre (cf/ac) as reported by the USDA Natural Resources Conservation Service. Where NRCS data are not available or are shown to be inaccurate, other site productivity data may be used to identify forest land, in the following order of priority:

(A) Oregon Department of Revenue western Oregon site class maps;

(B) USDA Forest Service plant association guides; or

(C) Other information determined by the State Forester to be of comparable quality.

(b) Where data of comparable quality under paragraphs (2)(a)(A) through (C) are not available or are shown to be inaccurate, an alternative method for determining productivity may be used as described in the Oregon Department of Forestry’s Technical Bulletin entitled “Land Use Planning Notes, Number 3 April 1998, Updated for Clarity April 2010.”

⁸ 2017 Census of Agriculture, Oregon State and County Data, Volume 1, Geographic Area Series 37, USDA National Agricultural Statistics Service, Table 8.

(c) Counties shall identify forest lands that maintain soil air, water and fish and wildlife resources.

State Agency Comments

We find the burden of proof does not satisfactorily address OAR 660-06-0005(7)(a) because it does not contain the analysis required by OAR 660-06-0010(2) addressing the wood production capabilities of the property. As a result, it does not verify whether or not it is suitable for commercial forest uses.

Statewide Planning Goal 14 (Urbanization)

Goal 14 does not allow urban uses to be placed on rural lands.

State Agency Comments

The application proposes to include the subject property in an RR-10, Rural Residential Zoning district. It is unclear to us whether such an arrangement is set forth in the County Comprehensive Plan. If so, the issue is settled in this case and our Goal 14 comments would be addressed.

If not, the applicant must demonstrate that the 10-acre minimum parcel size allowed by the RR-10 Zone is compliant with Goal 14. We have regularly expressed concerns that introducing a 10-acre settlement pattern into a rural area that is devoid of development is not consistent with the policies of Goal 14.

Part 2: Other Concerns and Observations

Wildlife Habitat Concerns

It is the policy of the state to protect and enhance Oregon's fish and wildlife and their habitats for use and enjoyment by present and future generations (ORS 496.012).

This proposal is within ODFW designated biological mule deer and elk winter range,⁹ which are considered Habitat Category 2 per the ODFW Fish and Wildlife Habitat Mitigation Policy.¹⁰ Habitat Category 2 is essential habitat for a wildlife species, population, or unique assemblage of species and is limited either on a physiographic province or site-specific basis depending on the individual species, population or unique assemblage. Winter habitat includes areas identified and mapped as providing essential and limited function and values (e.g., thermal cover, security from predation and harassment, forage quantity, adequate nutritional quality, escape from disturbance) for deer and elk from December through April. Winter survival and subsequent reproduction of big game is the primary limiting factor influencing species abundance and distribution in Oregon. Winter habitats vary in area, elevation, aspect, precipitation, and vegetation association all

⁹ <https://nrimp.dfw.state.or.us/DataClearinghouse/default.aspx?p=202&XMLname=885.xml>

¹⁰ https://www.dfw.state.or.us/lands/mitigation_policy.asp

influencing the relative quantity and quality of available habitat on both an annual and seasonal basis.

While this property is not currently designated as an acknowledged Goal 5 resource for wildlife habitat in the Deschutes County Comprehensive Plan, it is within the biological big game habitat areas ODFW recommended be included as part of the proposed Goal 5 Wildlife Inventory Update process in 2021.¹¹ ODFW relies on local and state compliance with the land use planning goals to consider natural resources and protect large parcel sizes necessary for habitat connectivity and resource land. The relatively open, undeveloped parcel that is often associated with a resource designated zoning such as Agricultural and EFU, provides valuable habitat for mule deer, elk, and other wildlife species. The open space inherently provided by the land use protections under those designations is not only important in maintaining the farming and ranching practices and rural characteristics of the land, but also preserving the wildlife habitat function and values that the land is providing.

The proposed plan amendment and zone change would allow for the property to be divided into 10 acre lots. Development, including residential development, within big game habitat can result in individual and cumulative impacts. Residential development conflicts with wildlife habitat because it results in the direct loss of habitat at the home site and the fragmentation of the remaining habitat by the structures and associated roads results in increased disturbance and loss of habitat function and values necessary for wildlife, such as fawning or calving areas.

Allowing the change in designation of the subject properties and rezoning to Rural Residential will open the possibility for future parceling and development of the land, resulting in habitat fragmentation, increased disturbance and a loss of important functions and values for wildlife life history needs. If that occurs, ODFW will not respond to any wildlife damage complaints within the development, due to the change in land use.

Water Availability Concerns

The state agencies are concerned with ongoing impacts to surface water and groundwater in the Deschutes basin. We have several primary concerns regarding potential impairment to fish and wildlife habitat from a new water use, the first being potential impact to surface flows necessary for fish and wildlife resources in the Deschutes River system (including a reduction in surface water quantity from groundwater pumping), and the second being the potential for an increase in water temperature as a result of flow reductions or impairment to cold water derived from seeps and springs. Seeps and springs provide unique habitat for a number of plant and animal species, including fish. Seep and spring flows, especially in the summer and fall, are typically cooler than the water flowing in the main stream, providing a natural relative constancy of water temperature. This cooler water provides thermal refuge for salmonids which thrive in cooler water.

We currently do not know if there are existing water rights for the subject property and if so, if they could be utilized for the proposed 10-acre lots intended for residential use. We recognize that

¹¹ <https://www.deschutes.org/cd/page/wildlife-inventory-update>

any new water use, unless exempt, must be appropriately permitted through the Oregon Water Resources Department (OWRD). However, the state relies on both OWRD and Deschutes County processes to ensure that new water use is mitigated in a manner that results in no net loss or net degradation of fish and wildlife habitat quantity and quality and potentially provides a net benefit to the resource. It is becoming increasingly difficult to obtain mitigation to offset impairment to water quality and quantity in the Deschutes basin, when required, due to ongoing declines in groundwater and streamflow in the area. Recent studies by the USGS have reported groundwater levels in the Redmond Area showing a modest and spatially variable decline in recent decades, about 25 ft since 1990, and 15 ft between 2000- 2016. Simulation of pumping 20 cfs from a hypothetical well east-northeast of Sisters and east of the Sisters fault zone shows declines in groundwater discharge not only in the Deschutes River between Lower Bridge and the gage near Culver, but also in the lower Crooked River and Opal Springs.¹²

Therefore, in the face of a changing climate and current and potential human impacts both regionally and in the vicinity of the proposed change in designation, we recommend any required mitigation through OWRD and County processes be carefully analyzed to ensure the intended ecological functions of mitigation are achievable and able to be maintained in perpetuity. We urge the County to consult with ODFW regarding any mitigation proposals and the likelihood of achieving mitigation goals, particularly under the framework of ODFW's Fish and Wildlife Habitat Mitigation Policy and ODFW's Climate and Ocean Change Policy.¹³

Wildfire

The existence of structures, particularly dwellings, can significantly alter fire control strategies and can increase the cost of wildfire protection by 50-95%.¹⁴ More than half of wildfires in the Northwest and more than 80% of wildfires in Northern California are human-caused.¹⁵ Additionally, the cost of the State of Oregon's catastrophic fire insurance policy has dramatically increased in the previous years and future availability is in jeopardy due to the recent escalation in wildfire fighting costs. Additional landscape fragmentation has the potential to exacerbate the costs and risks associated with wildfire.¹⁶

We appreciate Deschutes County's leadership on this issue and your participation in the conversations related to SB 762, the omnibus wildfire bill from the 2021 Legislative Session.

Planning and Zoning

The County Comprehensive Plan calls for the application of a Rural Residential Exception Area plan designation for lands successfully converted from an Agricultural plan designation. This is what the application proposes and we do not object. However, we would like to observe that

¹² Gannett, M.W., Lite, K.E., Jr., Risley, J.C., Pischel, E.M., and La Marche, J.L., 2017, Simulation of groundwater and surface-water flow in the upper Deschutes Basin, Oregon: U.S. Geological Survey Scientific Investigations Report 2017-5097, 68 p., <https://doi.org/10.3133/sir20175097>

¹³ https://www.dfw.state.or.us/climate_ocean_change/docs/plain_english_version.pdf

¹⁴ <http://headwaterseconomics.org/wphw/wp-content/uploads/fire-costs-background-report.pdf>

¹⁵ http://www.fs.fed.us/rm/pubs/rmrs_gtr299.pdf

¹⁶ https://tools.oregonexplorer.info/OE_HTMLViewer/index.html?viewer=wildfireplanning
247-21-001043-PA/1044-ZC

applying this plan designation to lands using the conversion pathway proposed by the application is confusing. Specifically, these lands are not “exception areas” as that term is commonly understood.

The same is true of applying an RR-10, Rural Residential Zoning District. We have already addressed the possibility of Goal 14 implications so we will not repeat them here. Instead, we would like to reiterate that these types of areas are not subject to an acknowledged exception and are viewed differently. For example, should the county choose to offer Accessory Dwelling Units (ADU) in the RR-10 zone pursuant to SB 391, this opportunity may not be extended to lands converted through a nonresource process.

Part 3: State Agency Recommendation

Thank you again for the opportunity to provide comments. We have concerns regarding the conversion of open rural lands to housing development. Much of the nonirrigated rural land in Deschutes County is similar to the subject property. Many of these areas provide essential functions and values to Deschutes County’s citizens which also benefit natural resources, such as open space, recreation, habitat and other environmental services. In addition, these lands are critical buffers to protect working farms and forests from conflicting uses. Many of these same areas are not appropriate for the encouragement of residential development. Remoteness, an absence of basic services and a susceptibility to natural hazards like wildland fire are all reasons why rural areas are not well suited to residential settlement even if they have little value for forestry or agricultural production.

Based on our review of the application materials and for the reasons expressed above, we believe that the subject property qualifies as resource land. It is our recommendation that the subject property retain an Exclusive Farm Use designation and not be converted to allow rural residential development. Please feel free to contact us if you have any questions.

The following agencies did not respond to the notice: Deschutes County Forester, Deschutes County Property Management, Deschutes County Road Department, Redmond City Planning, Redmond Fire and Rescue, Redmond School District 2, Redmond Public Works, Redmond Area Parks and Recreation District, District 11 Watermaster, Bureau of Land Management.

F. PUBLIC COMMENTS: The Planning Division mailed notice of the application to all property owners within 750 feet of the subject property on December 9, 2021. The Hearings Officer finds that the Applicant complied with the posted notice requirements of Section 22.24.030(B) of Title 22. The Applicant submitted a Land Use Action Sign Affidavit indicating the Applicant posted notice of the land use action on December 9, 2021. At the public hearing, staff testified that Deschutes County received approximately one hundred (100) public comments on the application. At the public hearing on April 19, 2022, ten (10) members of the public testified in opposition to the applications.

Comments received in support of the applications reference the Applicant’s soil analysis, potential expansion of rural housing inventory, and protection from wildfire through better access and vegetation management as a basis for support. Commentators noted the steep cliffs and distance

from other farms, as well as the lack of irrigation rights and poor soils on the subject property.

Comments received in opposition cite concerns with traffic and emergency access impacts, availability of groundwater, compatibility with and preservation of agricultural land, and impacts to wildlife.

At the conclusion of the public hearing, the Hearings Officer left the record open for two (2) seven-day periods, closing on April 26, 2022 (new evidence) and May 3, 2022 (rebuttal evidence), and permitted the Applicant until May 10, 2022 to submit closing argument. Staff directed that submissions during the open record period be transmitted by 4:00 p.m. on the deadlines. Several submissions, from Nunzie Gould, Andrew Mulkey of 1000 Friends of Oregon and S. Gomes were submitted after the 4:00 p.m. April 26, 2022 deadline and thus were not timely. The Hearings Officer does not consider the untimely evidence and arguments in this Decision and Recommendation.

All public comments timely received are included in the record in their entirety and incorporated herein by reference.

Applicant Responses:

On April 8, 2022, the Applicant provided the following response to public comments received as of that date:

Inaccuracies in Opposition Comments

Ed Stabb, 12/13/2021 Letter

Mr. Stabb claims that his property at 9805 NW Coyner Avenue is contiguous to the subject property. In one part, it is close but not contiguous. The Stabb property is separated from the subject property by the “flagpole” part of a nonfarm parcel and nonfarm dwelling at 9307 NW Coyner Avenue that Mr. Stabb created (Parcel 2 of Partition Plat 2004-85). The “flagpole” part of nonfarm Parcel 2 runs along the west side of the main irrigated farm field on the Stabb property on land formerly irrigated by the property owner (per page 18, Decision MP-04-11/CU-04-42). Furthermore, the Stabb property is surrounded by nonfarm parcels on all sides.

Mr. Stabb’s description of properties in the Odin Valley along the west end of NW Coyner Avenue asserts that area is primarily agricultural. The following facts, however, show that the predominant parcel type along Coyner Avenue west of 91st Street (a length of approximately .75 miles) are not receiving farm tax deferral and are nonfarm parcels or parcels that are developed with nonfarm dwellings. Only two parcels are farm parcels that are farm tax deferred farm properties. In particular beginning at the west end of Coyner Avenue:

10305 NW Coyner Avenue (Witherill), PP 2015-15 nonfarm parcel created; 247-15-000107-CU/-000108-CU nonfarm dwelling (28.6 acres)

10255 NW Coyner Avenue (Bendix), PP 2004-101, nonfarm parcel created; CU-03-55 and CU-03-56 nonfarm dwelling (19.11 acres)
 10142 NW Coyner Avenue (Buchanan), CU-95-11 nonfarm dwelling (37.51 acres)
 10135 NW Coyner Avenue (Hayes), PP 2004-101, nonfarm parcel created; CU-03-55 and CU-03-56 nonfarm dwelling (19.65 acres)
 9307 NW Coyner Avenue (Birklid), PP 2004-85, nonfarm parcel created; 247-18-000796-CU nonfarm dwelling (17.50 acres)
 9600 NW Coyner Avenue (MT Crossing), PP 2006-40 non-irrigated parcel created (80 acres); 247-19-000375-CU nonfarm dwelling (80 acres)
 9805 NW Coyner Avenue (Stabb), PP 2004-85, irrigated parcel created (in addition to nonfarm parcel); receives farm tax deferral (62.58 acres)
 9299 NW Coyner Avenue (Nelson), PP 2005-25 nonfarm parcel created (10.21 acres); nonfarm dwelling approved but not built
 9295 NW Coyner Avenue (Grossman), PP 2005-25 nonfarm parcel created (11.08 acres); nonfarm dwelling approved but not built
 4691 91st Street (intersection Coyner and 91st)(Omlid), PP 2006-40 non-irrigated land division/nonfarm parcel (39.20 acres); 247-17-000220-CU nonfarm dwelling approved
 9293 NW Coyner Avenue (Grossman), irrigated parcel created by PP-2005-25 (irrigated land division created two nonfarm parcels and one farm parcel)(185.06 acres)

Jason and Tammy Birklid, 12/13/2021 Letter

The Birkkids refer to their home as a “family farmhouse.” The dwelling was, however, approved by Deschutes County as a nonfarm dwelling on a non-irrigated parcel of land that was determined by Deschutes County to be unsuited for the production of farm crops and livestock.

The Birkkids and others repeat the same claim as Mr. Stabb (discussed above) re the character of the west end of NW Coyner Avenue. The evidence shows, however, that the primary parcel type and development in this area is a nonfarm dwelling parcel and nonfarm dwellings.

RR-10 Subdivisions

The Johnson properties, TL 200 and 300, Map 14-12-34D (parcels created in 2022 by PP 2022-10 as a farm and a nonfarm parcel) touch, at one point across a road a large area of land zoned RR-10 that includes the Kachina Acres and Odin Crest subdivisions where lots of about 5 acres in size are common. The property owned by opponent Kelsey Pereboom/Colter Bay Investments, LLC adjoins Kachin acres along the entire southern boundary of her property. Opponents Steele and the Elliotts live in the RR-10 zoned Odin Crest subdivision.

Destination Resort Overlay Zoning of Subject Property

Under the current zoning, almost 250 acres of the subject property is zoned as eligible for development with a destination resort. The development of this area of the property as a

resort would have far greater impacts on the surrounding area than would development of the property allowed by the RR-10 zone.¹⁷

On May 3, 2022, the Applicant provided the following rebuttal to evidence and arguments presented during the open record period:

This letter constitutes the Applicant’s second post-hearing record submittal (rebuttal period) and provides evidence to respond to evidence and arguments presented during the open record period. Unless otherwise denoted herein, previously defined terms have the same meaning.

I. Subject Property Information

*Ms. Lozito submitted past photographs of the Property that she claims to have paid for (presumably when she previously listed the house for sale). Ms. Lozito claims these photos show the Property can support grass growing. There is no date on these photographs, but they do show patchy areas of grass with significant yellowing, rocks, and patches. Importantly, Ms. Lozito’s claim that the land can support this growth is easily disproven. By August of 2020, several months before the Applicant purchased the Property, the grass was gone and the area had reverted back to dusty and non-productive land. **Exhibit 84.**¹⁸*

*Mr. Jim McMullen asserted that the property is not within the Redmond Fire Service boundaries. That is incorrect; the Property is within the Redmond Fire & Rescue District. **Exhibit 98.***

II. Soil Classification and Mapping System; Soil Scientists; and DLCD Administrative Rules on “Agricultural Land”:

Ms. Macbeth claims that DLCD’s administrative rules prevent landowners from hiring a State-approved soil classifier to conduct a more detailed soils analysis of property mapped by the NRCS and to use the superior property-specific information obtained by such a study instead of information provided by soils mapping conducted at a landscape scale by the NRCS. The Agency Letter does not advance this argument in comments on the Application. In fact, DLCD disagrees with this argument, stating the following on their website:

“NRCS does not have the ability to map each parcel of land, so it looks at larger areas. This means that the map may miss a pocket of different soils. DLCD has a process landowners can use to challenge NRCS soils information on a specific property. Owners who believe soil on their property has been incorrectly mapped may retain a “professional soil classifier...certified by and in good standing with the Soil Science Society of America” (ORS 215.211) through a process

¹⁷ At the public hearing, the Applicant’s attorney clarified that, although a portion of the property could be developed as a destination resort because it meets the criteria, the Applicant is not requesting such approval. The Applicant’s attorney also noted that a rezone to RR-10 precludes future destination resort development in the future.

¹⁸ Exhibits continue numbering from Applicant’s open record submittal.

administered by DLCD. This soils professional can conduct an assessment that may result in a change of the allowable uses for a property.”

*Source: <https://www.oregon.gov/lcd/FF/Pages/Soils-Assessment.aspx> **Exhibit 93**. This process, as DLCD states, requires a site-specific soil assessment by a soil professional accepted by DLCD. *Id.* There are only a handful of these professionals, with Applicant’s expert, Mr. Brian Rabe, being one of them. *Id.**

III. Response to Central Oregon LandWatch and Farm Income Analysis

*Central Oregon LandWatch (“COLW”), through its attorney Ms. Carol MacBeth, advances a number of erroneous arguments. Ms. Macbeth filed information provided by the 2012 US Census of Agriculture. This information is not the most current. The most current information is provided by the County Profile 2017 Census of Agriculture (**Exhibit 91**).*

COLW’s letter includes a list of “agricultural commodities” that it claims, according to the 2012 US Census of Agriculture, are produced in Deschutes County. The 2012 US Census of Agriculture does not support this assertion. First, contrary to COLW’s letter, the 2012 Census shows that tobacco, cotton and cottonseed are not produced in Deschutes County. Second, many of the listed commodities are listed by “commodity groups.” The Census reports income from any one or more of the commodities in the entire group. It does not indicate whether or not each commodity in a group is produced in Deschutes County. So, for instance, “fruits, tree nuts, and berries” are one commodity group. The group is so small, presumably one, that the Census withholds income information to “avoid disclosing data for individual operations.” Whether this lone producer harvests fruits, tree nuts or berries is unknown and it cannot be said which crop is harvested.

*COLW’s claim that “soil capability ** is irrelevant” because some farm uses are “unrelated to soil type” is erroneous because the definition of “Agricultural Land” provided by Goal 3 makes soil fertility and the suitability of the soil for grazing the exact issues that must be considered by the County to determine whether the subject property is “land in other soil classes that is suitable for farm use.” DLCD, ODFW and ODA make the same mistake in ignoring the ability of the land itself, rather than imported feed, to support a farm use. The fact that the suitability test is tied to the specific soil found on a subject Property by the Goal 3 definition makes it clear that the proper inquiry is whether the land itself can support a farm use. Otherwise, any land, no matter how barren, would be classified as farmland – which it is not and should not be. ORS 215.203(2) defines “farm use” and it requires that the land be used for “the primary purpose of obtaining a profit in money[.]”*

COLW claims that the \$48,990 gross income estimate contained in the burden of proof shows that the subject property is suitable for farm use because it would, allegedly, produce three times as much income as grossed by the average farm in Deschutes County in 2012. The \$48,990 figure is, however, overstated. It is based on an OSU formula that assumes that rangeland will support one AUM per acre. The Property will, however, only

*support one AUM per 10 acres in dry years, and one AUM in wet years, a fact established by DLCD, ODFW, and ODA. This means the \$48,990 gross income figure is overstated by **ten times** during the dry years and by **five times** during wet years.*

*When the OSU formula is adjusted to reflect the State's AUM:acres ratios, the range of gross income per year is a mere **\$4,899 to \$9,798** for a 710-acre property. This is lower than the \$16,033 average gross farm income of the average County farm in 2012 – the average farm being a 102-acre farm. If the subject Property were as productive as the average 2012 Deschutes County farm per acre, it would gross \$111,602 not \$4,899 to \$9,798 per year. Expenses that would be incurred to raise a gross income of \$4,899 to \$9,798 per year, based on information obtained from ranchers and extension service publications, include the following:*

- *Vaccinations, medicine, veterinary services, monitoring pregnancies, deworming, breeding, calving, soundness exams*
- *Branding, castrating bull calves*
- *Purchase and care and feeding of a horse to round up cattle and associated shoeing and veterinary expenses; horse tack*
- *Water supply for cattle (trucked or well); water troughs*
- *Fencing materials, maintenance and repair*
- *Freight/trucking of cattle between ranch and auction*
- *Ranch vehicles e.g. 5th Wheel 4WD Pickup, 5th Wheel Stock Trailer and ATV and maintenance and operating expenses*
- *Portable cattle working facilities (hydraulic or manual squeeze)*
- *Labor; hired and farm owner/operator, including taxes, payroll, health care, etc.*
- *Livestock insurance*
- *Liability insurance*
- *Fire insurance*
- *Office expense*
- *Cost to service farm loans for the purchase of the subject property, farm equipment and improvements*
- *Property taxes*

Given the more refined and projected potential income (supported by the Agency Letter), the property taxes alone for the subject Property would exceed the projected, potential income. Even if the Property was able to qualify for farm tax deferred status, other expenses would clearly exceed income. For instance, annual farm loan payments for purchasing the property (excluding loans for farm equipment and improvements) far exceed projected gross income. If a person were able to purchase the Property at a cost of \$2.8 million dollars², a price well below the fair market value set by the Deschutes County Tax Assessor, annual payments for a 15-year loan at a USDA loan rate of just 3.25% would be \$238,808.02 per year for a 15-year fixed loan and \$147,508.81 for a 30-year fixed loan (excluding loan-related costs) from the USDA.³ Interest only on the 15-year fixed rate loan would be \$782,120.35 or an average of \$52,141.36 per year. Interest on a 30-year fixed

rate loan would be \$1,625,264.22 or an average of \$54,175.47 per year. No party has argued that potential farm revenues on the Property could reach anywhere near the levels necessary to service this debt; notwithstanding the fact that other farm infrastructure and startup costs (like the cost of irrigation water) would further add to debt service costs.

If the Property were grazed seasonally (as suggested by the Agency Letter), the operator would incur costs to lease grazing lands elsewhere or to feed cattle hay grown on other properties. These costs would not be deducted from the estimated income for the subject Property because the projected income is based on the productivity of the subject Property to support grazing – not the ability of other lands to support grazing either by lease or by the purchase of forage grown on other lands. Conversely, only one-half of the cattle income derived from an operation that utilizes two properties to raise cattle would be attributable to the subject property if it were able to support grazing six months of the year. The fact that twice as many cattle can be grazed on a property for six months compared to year-round is of no consequence to the property assessment of gross income attributable to the subject Property.

IV. Additional Responses to Specific Parties

This section provides specific responses to various parties’ arguments during the open record period.

Redside Restoration and Jordan Ramis

Redside Restoration implies that its small vineyard located close to the Deschutes River in the Deschutes River canyon at an elevation about 400 to 500 feet below the plateau on the subject Property has similar conditions to those found on the subject Property. Presumably, Redside wishes the County to conclude that the Property might be suitable for development as a vineyard. It is not. This is rebutted by:

- E-Mail dated May 2, 2022 from soils scientist Brian Rabe, **Exhibit 107**
- Certificate 66868 Dunn, **Exhibit 87**.
- Certificate 66868 map – Dunn (shows that vineyard area of property is irrigated), **Exhibit 88**.
- OSU impact of smoke on grapes and wine, **Exhibit 97**.

The Property also would not meet most of the site selection and climate concerns related to vineyard selection. Exhibit 90.

Equally important, is the fact that the soil depth is simply not enough to establish productive grapes. For example, in Mr. Rabe’s comprehensive soil analysis, he made 135 test holes. Of those 135 test holes, only 5 (less than 4%) had soil more than 30 inches in depth. The average (mean) depth was 16.8 inches, the median depth was 16 inches, and the modal depth (most common) was 14 inches. Grapes typically require 2 to 3 feet of soil depth. **Exhibit 106**.

Richard and Lori Johnson

*The Johnsons claim that farms adjacent to the subject property have deepened their wells. As the Johnsons note based on information provided by Central Oregon LandWatch regarding a 2008 USGS study, climate change, groundwater pumping and irrigation canal pumping have been identified as causing declines. The referenced study shows that the primary cause of groundwater decline is climate change. The study attributes a part of the decline to increased groundwater pumping in the region. Maps provided by the USGS report suggests that groundwater use in the Odin Valley area (farm irrigation) and water use by the Eagle Crest (golf course and other irrigation and domestic use) increased significantly between 1997 and 2008. Irrigation water use consumes far more ground water than used for domestic use – a fact that supports the conclusions of the GSI water study that the applicant filed with Deschutes County prior to the land use hearing. This report is re-filed for convenience as **Exhibit 105**. We provide the following supporting documentation:*

- *Understanding Water Rights, Deschutes River Conservancy, **Exhibit 101**.*
- *Analysis of 1997-2008 Groundwater Level Changes in the Upper Deschutes Basin, Central Oregon (relevant part). **Exhibit 104**.*

The Johnsons express a concern that creating 10-acre parcels will result in a loss of open space and wildlife habitat. They claim that using the land for low-density housing will increase the cost of farming for adjacent farms. The Johnsons did not have this concern earlier this year when they divided their farm property to create a 4.049-acre nonfarm parcel right next to their irrigated farm fields. See Partition Plat 2022-10. The location of this new parcel is shown in the aerial photo below (from DIAL): [image omitted]

The following documents are also filed to respond to this argument:

- *Land use application filed by the Johnsons to create a nonfarm parcel and dwelling adjacent to irrigated farm fields (Johnson nonfarm 2021), **Exhibit 94**.*
- *Amended Annual Report for Horse Guard, Inc., a highly successful horse vitamin/mineral supplement product with a primary place of business of 3848 NW 91st Street, Redmond, OR (the Johnson property), **Exhibit 99**.*
- *Tax Assessor's Improvement Report for Johnson property. **Exhibit 83**.*
- *Recent Google Earth Photograph of Johnson house and outbuildings below:*

It appears that the Johnsons keep horses on their property but there is no indication they are engaged in a commercial horse boarding or training operation. The primary farm use of the property is growing alfalfa hay which is stored in the farm building shown on the right in the photo above. [image omitted]

League of Women Voters

The League of Women Voters submitted a comment that the Deschutes River has been designated by DEQ as having impaired water quality. That is true, but only for a portion

of South Deschutes County and not this area. **Exhibit 92**. See also, Testimony of Brian Rabe, **Exhibit 107**.

Pam Mayo Phillips

Ms. Mayo Phillips argues that the subject property is in the heart of farm country and that the Odin Valley consists of parcels that vary in size from 20 to 200 acres in size. While some agricultural uses are occurring in the Odin Falls area, the area contains a mix of farm, nonfarm, and rural residential development as documented by the Johnsons’ land division application. Many of the farm properties in the Odin Valley have been divided to create nonfarm parcels that are smaller than the size stated by Ms. Phillips (size listed after current owner) that have received approvals to locate dwellings adjacent to irrigated farm fields: Stabb/Birklid (17.50 acres), Johnson/Nonella (4.05 acres) Grossmann/Nelson (11.08 and 10.21 acres), Stephan/Bessette (4.36 acres), Thoradarson (3.18 acres) and a number of non-irrigated properties have been divided and/or developed with nonfarm dwellings – in particular on the properties closest to the subject property along NW Coyner. Thus far, the farm practices identified by Ms. Mayo Phillips have not been of sufficient significance to merit denial of the many nonfarm dwellings in Odin Valley.

Ms. Mayo Phillips expresses concerns about the condition of area roads. The roads, however, are adequate to handle additional traffic as documented by the applicant’s traffic engineer and Deschutes County will address road improvements, provided the pending applications are approved, when a subdivision application is filed with and reviewed by the County.

*Ms. Phillips argues that power is not available to serve the subject Property. This is incorrect. CEC has provided a “will serve” letter and has advised the applicant that it is able to provide power to the property from Buckhorn Road with upgrades that would be paid for by the property owner. **Exhibit 16**.*

*Ms. Phillips expresses concern that the nearest fire station is too far away and that fires are a significant concern. The subject property is located in the Redmond Fire & Rescue service area and the closest fire station in that district is located at 100 NW 71st Street, a short distance north of Highway 126 on the west side of Redmond. Highway 126 provides excellent access to the Odin Valley and the subject property which is approximately six miles away on paved roads (travel time 9 minutes per Google Maps for vehicles traveling at or below the speed limit). Additionally, according to opponent Ted Netter a fire protection association has been formed to provide fire protection to lands that are located outside of fire districts to the west of the subject property which should serve to lessen fire risks in the area. The subject Property is not in the fire association area, contrary to Mr. Netter’s assertion, because it is located inside the Redmond Fire district. **Exhibit 95**.*

Nunzie Gould

Ms. Gould’s untimely filed post-hearing submittal contains errors of fact. The subject Property is not located in or close to the Three Sisters Irrigation District (“TSID”). The

TSID webpage indicates that the District is currently providing spring irrigation water at 30%. Marc Thalacker, TSID’s manager, also had a telephone conversation with one of the principals of the Applicant, Robert Turner. Mr. Thalacker told Mr. Turner that it would not be feasible for TSID to provide water to the Property, nor would it be feasible for other irrigations districts to do so. Mr. Thalacker also indicated that, based upon his conversation with Mr. Turner, placing irrigation water on the Property would be a reckless and poor use of water.

Ms. Gould’s claim that agriculture is occurring on the subject property is simply incorrect.

Ms. Gould’s claim that 320 acres of BLM land adjoins the east side of the subject Property is correct. This area is not, as Ms. Gould’s comments reflect however, engaged in farm use of any kind. It is open space for wildlife use. The Cline Buttes Recreation Area ATV recreational area adjoins the south and southwest sides of the subject property. One of the ATV trails is located in close proximity to the south boundary of the subject property. This large area of public lands, also, is not engaged in farm use.

Andrew Mulkey, 1000 Friends of Oregon

Mr. Mulkey’s untimely filed post-hearing submittal claims that the suitability analysis in the applicant’s soils report is “simply speculation” because the soils scientist does not purport to have experience farming and ranching in Deschutes County. This is an absurd statement and is contrary to the State’s requirements for certified soil scientists (addressed above). The purpose of soils analysis is to determine its suitability to support farm crops, livestock and merchantable tree species. Additionally, the Soil Science Society of America reports that Mr. Rabe has been a member of the American Society of Agronomy for 30 years. The Society describes its membership as follows:

*“The American Society of Agronomy is the professional home for scientists dedicated to advancing the discipline of the agronomic sciences. Agronomy is highly integrative and employs the disciplines of soil and plant sciences to crop production, with the wise use of natural resources and conservation practices to produce food, feed, fuel, fiber, and pharmaceutical crops for our world’s growing population. A common thread across the programs and services of ASA is the dissemination and transfer of scientific knowledge to advance the profession.”
Membership | American Society of Agronomy*

- *Soil Science Society of America report re soil scientist and classifier Brian Rabe, Exhibit 85.*

Mr. Mulkey provides maps and information about wildlife. None of the maps have been made applicable to the subject Property by land use regulations. The Mule Deer Overlay map also shows that the subject Property is just inside the area proposed by ODFW as an addition to the WA zone and that the number of deer using the area is far lower than areas located closer to the City of Sisters and less populated than areas east of Bend that are not

proposed for inclusion in the WA zone. But again, these maps simply do not apply nor have they been adopted by the County.

DLCD Letter

*DLCD provided additional comment that Goal 4 had not been adequately addressed. Forestry expert John Jackson provides additional response (**Exhibit 89**) to evidence and analysis previous placed in the record by Ms. Fancher.*

V. Additional Evidence for the Record

In further response to COLW’s arguments that certain farm uses my profitably occur on the Property, the Applicant provides the following additional rebuttal evidence.

- *Hemp market information, email from hemp farm owner Paul Schutt, **Exhibit 100.***
- *Impacts of grazing and increased desertification, **Exhibit 82.***
- *Alfalfa production, **Exhibit 96.***

VI. Conclusion

The evidence we provide in this submittal will be used further in final legal argument

G. NOTICE REQUIREMENT: On March 18, 2022, the Planning Division mailed a Notice of Public Hearing to all property owners within 750 feet of the subject property, agencies, and parties of record. A Notice of Public Hearing was published in the Bend Bulletin on Sunday, March 20, 2022. Notice of the first evidentiary hearing was submitted to the Department of Land Conservation and Development on March 2, 2022.

H. REVIEW PERIOD: The subject applications were submitted on December 2, 2021. The applications were deemed incomplete by the Planning Division on December 30, 2021 and a letter detailing the information necessary was mailed on December 30, 2021. The Applicant provided a response to the incomplete letter and the applications were subsequently deemed complete on January 17, 2022. According to Deschutes County Code 22.20.040(D), review of the proposed quasi-judicial plan amendment and zone change application is not subject to the 150-day review period.

III. FINDINGS & CONCLUSIONS

A. PRELIMINARY FINDINGS AND CONCLUSIONS

1. HEARINGS OFFICER’S FINDINGS AND CONCLUSIONS REGARDING USE OF ORDER 1 SOILS SURVEY

In 1979, Deschutes County adopted its first comprehensive plan and zoning ordinance that implemented the Statewide Land Use Planning Goals. The County’s comprehensive plan map was

developed without the benefit of detailed soils mapping information. The map was prepared and EFU zoning was applied to the subject property prior to the USDA/NRCS's publication of the "Soil Survey of Upper Deschutes River Area, Oregon." That soil survey provides general soils information, but not an assessment of soils on each parcel in the study area.

The NRCS soil survey maps are Order 2 soil surveys, which extrapolate data from the Upper Deschutes River Survey to determine LCC soil classifications at a landscape level. The Applicant's soil scientist, Mr. Rabe, conducted a more detailed Order 1 survey, which analyzed actual on-the-ground soil compositions on the subject property. The Hearings Officer finds that it is not "suspect" that an Order 1 soils survey contradicts NRCS soil classifications performed at a higher, landscape level.

The argument advanced by COLW, 1000 Friends of Oregon and Redside Restoration that an Order 1 survey cannot contradict NRCS soil survey classifications for a particular property has been rejected by the Oregon Legislature in ORS 215.211(1) and DLCD in OAR 660-033-0030. It has also been rejected by Deschutes County Hearings Officers and the Board of County Commissioners.

In recent years, Deschutes County has recognized the value in rezoning non-productive agricultural lands and has issued decisions approving plan amendments and zone changes where the applicant has demonstrated the property is not agricultural land. Deschutes County has approved the reclassification and rezoning of EFU parcels based on data and conclusions set forth in Order 1 soils surveys and other evidence that demonstrated a particular property was not "agricultural land," due to the lack of viability of farm use to make a profit in money and considering accepted farming practices for soils other than Class I-VI. *See, e.g.,* Kelly Porter Burns Landholdings LLC Decision/File Nos. 247-16-000317-ZC/318-PA; Division of State Lands Decision/File Nos. PA-11-7 and ZC-11-2; Paget Decision/File Nos. PA-07-1, ZC-07-1; The Daniels Group/File Nos. PA-08-1, ZC-08-1; Swisher Decision/File Nos. 247-21-000616-PA/617-ZC. The Board of County Commissioners recently affirmed the Hearings Officer's decision in the Swisher files and adopted Ordinance No. 2022-003.

On the DLCD website, it explains:

NRCS does not have the ability to map each parcel of land, so it looks at larger areas. This means that the map may miss a pocket of different soils. DLCD has a process landowners can use to challenge NRCS soils information on a specific property. Owners who believe soil on their property has been incorrectly mapped may retain a "professional soil classifier ... certified and in good standing with the Soil Science Society of America (ORS 215.211) through a process administered by DLCD. This soils professional can conduct an assessment that may result in a change of the allowable uses for a property.

Exhibit 93 (<https://www.oregon.gov/lcd/FF/Pages/Soils-Assessment.aspx>).

The Hearings Officer agrees with the Applicant's final legal argument, submitted on May 11, 2022 which states on page 3, in relevant part:

This statutory and regulatory scheme makes sense, as it would have been impracticable for a county to have conducted an individualized soils analysis on a farm-by-farm basis when it adopted its original zoning ordinances. Precluding the availability of a property owner to achieve a new zoning designation based upon a superior, more detailed and site-specific soils analysis would, to put it mildly, be absurd and cannot be what the legislature intended.¹⁹

The Soil Survey of the Deschutes Area, Oregon²⁰ describes Class VII soils as “not suitable for cultivation and of severely limited use for pasture or as woodland.” It describes Class VIII soils as “not suitable for growing vegetation for commercial uses.” The Soil Survey of Upper Deschutes River Area, Oregon describes the broad, general level of soil surveying completed by NRCS on page 16, “At the less detailed level, map units are mainly associations and complexes. The average size of the delineations for most management purposes was 160 acres. Most of the land mapped at this level is used as woodland and rangeland. At the more detailed level, map units are mainly consociations and complexes.... Most of the land mapped at the more detailed level is used as irrigated and nonirrigated cropland.”

As quoted in the Hearings Officer’s Decision and Recommendation to the Deschutes County Board of Commissioners in the Swisher decision, File Nos. 247-21-000616-PA/617-ZC:

The real issue is “map accuracy” which is based upon set standards for maps. National Map Accuracy Standard (NMAS) provides insurance that maps conform to established accuracy specifications, thereby providing consistency and confidence in their use in geospatial applications. An example of such a standard: “maps on publication scales larger than 1:20,000, not more than 10 percent of the points tested shall be in error by more than 1/30 inch, measured on the publication scale; for maps on publication scales of 1:20,000 or smaller, 1/50 inch.” The error stated is specific for a percentage of points, and to suggest that accuracy in maps is the unattainable freedom from error as the COL letter does, is not a relevant or a serious argument.

When one map shows point data like an Order-1 soil survey the accuracy can be measured, and when another map does not (like the NRCS soil map) there is a shortage of information, so the accuracy of the NRCS map cannot be determined for point data. The accuracy of the NRCS estimate of the percentage of components in the 38B soil complex can be shown to be very inaccurate in this case, and it clearly underestimates the Class 7 and Class 8.

The Hearings Officer finds that NRCS soil survey maps are not definitive or “binding” with respect to a determination of whether the subject property is, or is not, agricultural land. This is consistent with the ruling of the Land Use Board of Appeals (LUBA) in **Central Oregon Landwatch v. Deschutes County (Aceti)**, ___ Or LUBA ___ (LUBA NO. 2016-012, August 10, 2016 (Aceti I)). There, LUBA confirmed that OAR 660-033-0030(5)(a) and (5)(b) allow the County to rely on more detailed data on soil capability than provided by NRCS soil maps to define agricultural land,

¹⁹ The stated public purpose of the EFU zone is to preserve “Agricultural Lands” (ORS 215.243) but “Agricultural Lands” are not present on a subject property.

²⁰ https://www.nrcs.usda.gov/Internet/FSE_MANUSCRIPTS/oregon/OR620/0/or620_text.pdf

provided the soils survey has been certified by DLCD, which has occurred here. The *Aceti* ruling is summarized as follows:

First, LUBA affirmed the County’s determination that the subject property, which had been irrigated and used to grow hay in 1996 and earlier years, was not agricultural land based on the Order 1 soils survey which showed that the poor soils on the property are Class VII and VIII soils when irrigated, as well as when not irrigated.

Second, LUBA determined the applicant had established that the subject property was not “agricultural lands,” as “other than Class I-VI Lands taking into consideration farming practices.” LUBA ruled:

“It is not an accepted farm practice in Central Oregon to irrigate and cultivate poor quality Class VII and VIII soils – particularly where, as here those soils are adjacent to rural industrial uses, urban density residential neighborhoods that complain about dust and chemicals and to high traffic counts on the surrounding roads and highways. Irrigating rock is not productive.”

The Hearings Officer rejects the argument that NRCS land classifications based on its soil maps cannot be varied, unless a landowner requests an Order 1 soils study to qualify **additional** land as agricultural land. This is directly contrary to LUBA’s holding in *Central Oregon Landwatch v. Deschutes County and Aceti*, LUBA No. 2016-012:

“The Borine Study is evidence a reasonable person would rely on and the county was entitled to rely on it. As intervenor notes, the NRCS maps are intended for use at a higher landscape level and include the express statement ‘Warning: Soil Ratings may not be valid at this scale.’ Conversely, the Borine Study extensively studied the site with multiple on-site observations and the study’s conclusions are uncontradicted, other than by petitioner’s conclusions based on historical farm use of the property. This study supports the county’s conclusion that the site is not predominantly Class VI soils.”

ORS 215.211(1) specifically allows for the submittal by a certified soil scientist of an assessment of the capability of the land based on more detailed soils information than that contained in the Web Soil Survey operated by the NRCS to “assist a county to make a better determination of whether land qualifies as agricultural land.” The Applicant followed this procedure by selecting a professional soil classifier who is certified by and in good standing with the Soil Science Society of America to prepare the Order 1 soils report. DLCD reviewed the soils report pursuant to ORS 215.211(2) and determined it could be utilized in this land use proceeding.

The Hearings Officer agrees that soils classifications are not the only determining factor with respect to whether a parcel is “agricultural land.” The Hearings Officer’s findings on all relevant factors to be considered in determining whether the subject property is “agricultural land,” are set forth in detail below.

The Hearings Officer does not accord less weight to the Applicant’s soil scientist because he was “privately commissioned.” Brian T. Rabe, CPSS, WWSS of Valley Science and Engineering is a

listed, accepted soils scientist by DLCD and is certified by and in good standing with the Soil Science Society of America. He has been a certified soils scientist for 30 years.

Public comments submitted by the Jordan Ramis law firm on behalf of Redside Restoration Project One, LLC are correct to the extent that DLCD’s certification of an Order 1 soils survey is not a determination of whether a particular property constitutes “agricultural land.” The certification constitutes a determination that the soil study is complete and consistent with reporting requirements of OAR 660-033-0045. Pursuant to ORS 215.211, the Applicant’s soils survey has been approved for use by Deschutes County by DLCD. If the Applicant’s soils survey was deficient in any manner, DLCD would not have allowed the County to rely on the survey in this proceeding. Ultimately, the County – not DLCD - must decide whether the Order 1 soils survey, together with other evidence in the record, supports a determination of whether the subject property is “agricultural land.” See ORS 215.211(5).

For all the foregoing reasons, the Hearings Officer finds that the County is not bound by the landscape level NRCS Order 2 study on which classification of soils on the subject property is based. The Hearings Officer finds it is appropriate for the County to consider the Applicant’s Order 1 soils survey, certified for the County’s consideration by DLCD.

2. HEARINGS OFFICER’S FINDINGS AND CONCLUSIONS REGARDING WHETHER THE SUBJECT PROPERTY IS “AGRICULTURAL LAND”

For purposes of this Decision and Recommendation, the Hearings Officer considers the definition of “Agricultural Land,” in OAR 660-033-020(1)(a), as defined in Goal 3, which includes:

- (A) lands classified by the NRCS as predominantly Class I-VI soils in Eastern Oregon;
- (B) Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices; and
- (C) Land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.

a. OAR 660-033-0020(1)(a)(A) Findings and Conclusions

As the Hearings Officer found above, the County may rely on the DLCD-certified Order 1 soil survey submitted by the Applicant. That study shows that the soils on the subject property are not predominantly Class I-VI soils, as they are comprised of 71% Class VII-Class VIII soils. The County is entitled under applicable law to rely on the Order 1 soils survey in these applications in making a determination that the soils on the Subject Property are not predominantly Class I-VI soils. The Hearings Officer finds that the more detailed, onsite soil study submitted by the Applicant provides property-specific information not available from the NRCS mapping.

There is no evidence in the record to rebut the Applicant’s soils study. Therefore, the Hearings Officer finds that the subject property does not constitute “agricultural land” under OAR 660-033-0020(1)(a)(A). Specific findings on each applicable criterion are set forth in Section III(B) of this Decision and Recommendation.

b. OAR 660-033-0020(1)(a)(C) Findings and Conclusions

The Hearings Officer finds there is no evidence in the record that the subject property is “land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands. While DLCD, ODA and ODFW question the “impact on adjacent or nearby agricultural lands,” at page 6 of the agencies’ comment letter, those questions do not answer the inquiry of whether the subject property is “necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.” OAR 660-033-0020(1)(a)(C). Moreover, the reclassification and rezoning of the subject property in and of itself will not change the current use (or lack thereof) of the subject property. Impacts of future development must be reviewed when land use applications are submitted. Simply put, there is no showing that the subject property is necessary for farming practices on any surrounding agricultural lands. There is no evidence that the subject property contributes to any such practices, nor that other lands depend on use of the subject property to undertake any farm practices.

Therefore, the Hearings Officer finds that the subject property does not constitute “agricultural land” under OAR 660-033-0020(1)(a)(C). Specific findings on each applicable criterion are set forth in Section III(B) of this Decision and Recommendation.

c. OAR 660-033-0020(1)(b) Findings and Conclusions

The Hearings Officer finds there is no evidence in the record that the subject property is adjacent to or intermingled with lands in capability classes I-VI within a farm unit. Therefore, the Hearings Officer finds that the subject property does not constitute “agricultural land” under OAR 660-033-0020(1)(b). Specific findings on each applicable criterion are set forth in Section III(B) of this Decision and Recommendation.

d. OAR 660-033-0020(1)(a)(B) Findings and Conclusions

The Hearings Officer reviews evidence in the record to determine whether the subject property constitutes “agricultural land” under OAR 660-033-0020(1)(a)(B) as “Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices.” Competing evidence was presented by the Applicant, the Department of Land Conservation and Development, Agriculture and Fish and Wildlife, and numerous commentators.

OAR 660-033-0020(1)(a)(B) refers to the statutory definition of “farm use” in ORS 215.203(2)(a) which informs the determination of whether a property is “*suitable* for farm use.” The Hearings Officer finds that the analysis must begin with a determination of whether the subject property can

be employed for the “*primary purpose of obtaining a profit in money* by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairying products or any other agricultural or horticultural use or animal husbandry or any combination thereof.” ORS 215.203(2)(a) (emphasis added).

The state agencies and other commentators left out the highlighted portion of the statutory language. “Farm use” is not whether a person can engage in any type of agricultural or horticultural use or animal husbandry on a particular parcel of property. It is informed by whether such use can be made for the primary purpose of obtaining a profit in money. Therefore, the Hearings Officer rejects the argument that the subject property is “capable of any number of activities included in the definition of farm use,” because “farm use” as defined by the Oregon Legislature “*means the current employment of land for the primary purpose of obtaining a profit in money.*” ORS 215.203(2)(a); *see also* Goal 3. This is a critical omission by the state agencies and other commentators in their submissions.

The state agencies repeatedly assert that the barriers to farming the subject property set forth by the Applicant could be alleviated by combining farm operations with other owned and/or leased land, whether adjacent to the subject property or not. The Hearings Officer finds that the definition of “farm use” in ORS 215.203(2)(a) refers to “*land,*” - not “lands,” - and does not include any reference to “combination” or requirement to “combine” with other agricultural operations. Therefore, if the subject property, in and of itself cannot be engaged in farm use for the primary purpose of obtaining a profit in money, it does not constitute agricultural land. There is no requirement in ORS 215.203(2)(a) or OAR Chapter 660-033 that a certain property must “combine” its operations with other properties in order to be employed for the primary purpose of obtaining a profit in money and thus, engaged in farm use.

What the statutory definition of “farm use” means is that, merely because a parcel of property is zoned EFU and *some* type of agricultural activity could take place on it, or whether the property owner could join forces with another agricultural operations, does not mean that a property owner is forced to engage in agricultural activity if the property owner cannot use its own property for farming to obtain a profit in money. This is so, whether the barrier to obtaining a profit in money is due to soil fertility, suitability for grazing, climactic conditions, existing and future irrigation rights, existing land use patterns, technology and energy inputs required and accepted farming practices, any or all of these factors.

The Applicant correctly cited controlling law on page 5 of its final legal argument:

Oregon courts have consistently addressed profitability as an element of the definition of “agricultural land.” In Wetherell v. Douglas County, 342 Or 666 (2007), the Oregon Supreme Court held that profitability is a “profit in money” rather than gross income. In Wetherell, the Court invalidated a rule that precluded a local government from analyzing profitability in money as part of this consideration. Id. at 683. As may be helpful here, the Court stated:

“We further conclude that the meaning of profitability,” as used in OAR 660-033-0030(5), essentially mirrors that of “profit.” For the reasons described above, that rule’s prohibition of any consideration of “profitability” in agricultural land use determination conflicts with the definition of “farm use” in ORS 215.203(2)(a) and Goal 3, which permit such consideration. OAR 660-033-0030(5) is therefore invalid, because it prohibits consideration of “profitability.” The factfinder may consider “profitability” which includes consideration of the monetary benefits or advantages that are or may be associated from the farm use of the property and the costs or expenses associated with those benefits, to the extent such consideration is consistent with the remainder of the definition of “agricultural land” in Goal 3.

*Finally, the prohibition in OAR 660-033-0030(5) of the consideration of “gross farm income” in determining whether a particular parcel of land is suitable for farm use also is invalid. As discussed above, “profit” is the excess or the net of the returns or receipts over the costs or expenses associated with the activity that produced the returns. To determine whether there is or can be a “profit in money” from the “current employment of [the] land *** by raising, harvesting and selling crops[.]” a factfinder can consider the gross income that is, or could be generated from the land in question, in addition to other considerations that relate to “profit” or are relevant under ORS 215.203(a) and Goal 3.*

We therefore hold that, because Goal 3 provides that “farm use” is defined by ORS 215.203, which includes a definition of “farm use” as “the current employment of land for the primary purpose of obtaining a profit in money[.]” LCDC may not preclude a local government making a land use decision from considering “profitability” or “gross farm income” in determining whether land is “agricultural land” because it is “suitable for farm use” under Goal 3. Because OAR 660-033-0030(5) precludes such consideration, it is invalid. Emphasis added. Id. at 681-683.

Substantial evidence in the record supports a determination that each of the listed factors in OAR 660-033-020(1)(a)(B) preclude “farm use” on the subject property because no reasonable farmer would expect to make a profit in money by engaging in agricultural activities on the land. as detailed in the findings on individual criteria below.

Soil Fertility

The lack of soil fertility is not in debate. The Applicant’s soils study determined that the soils “are predominately shallow with sandy textures (low clay content) and low organic matter content. These conditions result in a low Cation Exchange Capacity (CEC) that limits the ability of these soils to retain nutrients. Fertilizer must be applied to achieve optimum yields. Proper management requires fertilizers be applied in small doses on a frequent basis. The revenue from most locally adapted crops will not cover the costs of inputs and management.” Applicant’s final legal argument, Attachment C, p. 7. Moreover, the evidence shows that the shallow nature of the soils differs from those present at the Redside Restoration property, given that typical wine grapes

require a “minimum of 2 feet to 3 feet of soil depth” to be successful (Exhibit 106). On the subject property, the common depth of soils in the 135 test holes made by Mr. Rabe was merely 14 inches.

While several commentators argued that soil fertility is not always necessary for commercial agricultural operations because farm equipment could be stored on the property, the Hearings Officer agrees with the Applicant that the subject property’s resource capability is the proper determination. The Applicant is not required to engage in joint management or use with other lands that do constitute productive farm land. Moreover, storage and maintenance of equipment is not, in and of itself, a farm use unless such equipment is for the production of crops or a farm use on the subject property. Therefore, the Hearings Officer rejects the arguments of the state agencies and COLW that certain uses of the subject property could be made that are not dependent on soil type because none of the suggested uses constitute “farm use,” without any associated cultivation of crops or livestock. The Applicant has also produced substantial, persuasive evidence that the property cannot be used for a profit in money for a feedlot considering the limited gross farm income from cattle grazing, the lack of irrigation water, limited forage and other factors including the generation of biological waste.

Suitability for Grazing

The lack of suitability for grazing is also established by substantial evidence in the record. Although the state agencies letter agreed with the Applicant’s analysis that a maximum of 15 cow/calf pairs could be supported in a grazing operation, it suggested that an additional up to 15 pairs could be sustained in rotation or if the land was left bare for months at a time. There is no evidence in the record to rebut the Applicant’s conclusion that it could not make a profit in money from grazing operations on the property, such that grazing would not constitute “farm use” under the statutory definition. As shown in Exhibit 107 p. 2, “the gross revenue potential for weight gain associated with the estimated forage available on the 710 acres would range from \$7,209 per year in an unfavorable (dry) year to 414,058 in a favorable (wet) year, or about \$10,000 in an average year. As documented in detail by others, the cost of production and management would exceed the potential revenue.”

Evidence presented by Billy and Elizabeth Buchanan regarding suitability for grazing is distinguishable and therefore not relevant. The Buchanan property is mapped with productive, high-value soils, unlike the Applicant’s property. It also has a groundwater irrigation right and may irrigate up to 14.6 acres of their property. Nonetheless, as the Applicant noted, there is no evidence in the record that the Buchanans make a profit in money by allegedly grazing cattle on their property. In fact, the evidence does not support a finding that the Buchanans’ cattle even graze on dry-land. As shown on their company website, Keystone Cattle claims its cattle are “grass fed & grass finished.”

Climactic Conditions

There is little debate that climactic conditions contribute to the inability to engage in “farm use” for the purpose of making a profit in money. Even the state agencies admit that local climactic conditions “are not ideal for commercial agriculture.” Pointing to other properties to show that climactic conditions should not preclude “farm use,” again does not take into consideration

whether or not agricultural activities can be engaged in for the purpose of making a profit in money. The limited precipitation, the plateau on which the property sits, plus the fact that the property lacks irrigation water rights are all unfavorable to a determination the property could be used for farming to make a profit in money.

Existing and Future Availability of Water for Farm Irrigation Purposes

Regarding existing and future availability for water for farm irrigation purposes, the state agencies merely state that “we do not believe that water for irrigation purposes is necessary to conduct many of the activities included in the definition of ‘farm use.’” Again, this does not take into consideration whether any of such activities could be utilized for the primary purpose of making a profit in money on the property. There is no evidence that the subject property could be used for any of the listed activities in ORS 215.203(2)(a) in a profitable manner, particularly given the lack of irrigation water. The Applicant has presented substantial evidence of the prohibitive costs and other hurdles that preclude bringing irrigation to the subject property (E.g. Exs. 49, 87, 88, 2, 3 and 76). When such costs are factored in, no reasonable farmer would expect to be able to obtain farm irrigation water and still obtain a profit in money from agricultural uses on the property.

Existing Land Use Patterns

The Hearings Officer finds the Applicant has established that existing land use patterns are also a factor in determining the subject property is not “agricultural land” under OAR 660-033-020(1)(a)(B). The area is characterized by rural uses; approval of the requested plan map amendment and rezone will not change the use of the property to urban. There are various non-farm uses in the area, including a number of non-farm dwellings constructed or approved. The surrounding area has substantial areas of land zoned RR-10 and MUA-10. The Hearings Officer finds that this determination does not ask whether the proposal is “consistent with existing land use pattern,” but instead asks whether, considering the existing land use pattern, the property is agricultural land. Given the property’s location on the top of a plateau, any uses in conjunction with surrounding lands are impracticable due to the substantial physical barrier to cross-property use.

Technological and Energy Inputs Required

Technological and energy inputs required for agricultural use of the subject property also factor into the fact the property is not suitable for “farm use,” because it cannot be so employed for “*primary purpose of obtaining a profit in money.*” Suggested uses by the state agencies and other commentators do not address the profitability component of the definition of “farm use,” and do not rebut substantial evidence in the record that shows the subject property cannot be used for agricultural purposes for the primary purpose of obtaining a profit in money. This is due to the costs associated with trucking in water, fencing requirements, livestock transportation, winter hay, fertilizer, attempting to obtain irrigation water rights, labor costs, and energy/power requirements to pump enough groundwater to support agricultural use.

The Hearings Officer also notes that, as discussed above, certain uses, such as storing equipment or an indoor riding arena are not, in and of themselves “farm use,” as confirmed by LUBA in

Oregon Natural Desert Association v. Harney County, 42 Or LUBA 149 (2002). The state agencies and other commentators agree that the cost of technology and energy inputs required for agricultural use on the subject property can be daunting. No one presented any evidence to rebut the Applicant’s evidence that such costs prohibit the ability to make a profit in money from farming the subject property (See, e.g. Exhibits 35 and 91).

Accepted Farm Practices

The Applicant submitted evidence regarding accepted farming practices in Deschutes County, published by the Oregon State University Extension Service (Exhibit 8). The definition of “accepted farm practice,” like that of “farm use,” turns on whether or not it is occurring for the primary purpose of obtaining a profit. The *Wetherell* court relied on ORS 308A.056 to define “accepted farm practice” as “a mode of operation that is common to farms of a similar nature, necessary for the operation of these similar farms to obtain a profit in money and customarily utilized in conjunction with farm use.” *Wetherell, supra*, 52 Or LUBA at 681. Numerous farmers and ranchers, including Rand Campbell, Brian Rabe, James Stirewalt, Russell Mattis, Matt Cyrus, Fran Robertson and Marc Thalacker, testified and presented evidence that the subject property is not suitable for farm use and that operations required to turn a profit are unrealistic. This evidence is based on their own analysis of the subject property and understandings and experience as to what would be required to commence a farm use for profit on the property. Moreover, LUBA determined in the *Aceti I* case that it is not an accepted farming practice in Central Oregon to irrigate and cultivate Class VII and VIII soils.

In summary, the Applicant is not required to show that no agricultural use could ever be made on the property; only that no reasonable farmer would attempt to engage in “farm use,” which is for the primary purpose of obtaining a profit. As set forth in additional detail in the findings on specific criteria below, the Hearings Officer finds that substantial evidence in the record supports a determination that the subject property is not suited to commercial farming because no reasonable farmer would believe he or she could make a profit in money therefrom, considering all of the factors listed in OAR 660-033-020(1)(a)(B).

The Hearings Officer finds that the Applicant has met its burden of showing the subject property cannot be used for agricultural purposes for the primary purpose of obtaining a profit in money and such is not “agricultural land” under OAR 660-033-020(1)(a)(B). There are various barriers to the Applicant, or any other person, that preclude using the subject property to engage in farming activities for a profit. For this reason, and as set forth in more detail below, no exception to Statewide Planning Goal 3 is required.

B. HEARINGS OFFICER’S FINDINGS AND CONCLUSIONS REGARDING APPLICABLE CRITERIA

Title 18 of the Deschutes County Code, County Zoning

Chapter 18.136, Amendments

Section 18.136.010, Amendments

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

FINDING: The Applicant, also the property owner, has requested a quasi-judicial plan amendment and filed the applications for a plan amendment and zone change. The Applicant has filed the required land use application forms for the proposal. The application will be reviewed utilizing the applicable procedures contained in Title 22 of the Deschutes County Code. The Hearings Officer finds these criteria are met.

Section 18.136.020, Rezoning Standards

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

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

FINDING: The Applicant provided the following response in its submitted burden of proof statement²¹:

The Plan’s introductory statement explains that land use must comply with the statewide planning system and sets out the legal framework set by State law. It summarizes the Statewide Planning Goals. It also explains the process the County used to adopt the current comprehensive plan. This application is consistent with this introductory statement because the requested change has been shown to be consistent with State law and County plan provisions and zoning code that implement the Statewide Planning Goals.

The following provisions of Deschutes County’s amended comprehensive plan set out goals or text that may be relevant to the County’s review of this application. Other provisions of the plan do not apply.

The Applicant utilizes this analysis, as well as analyses provided in prior Hearings Officers’ decisions to determine and respond to only the Comprehensive Plan Goals and policies that apply, which are listed in the Comprehensive Plan section of this Decision and Recommendation. The Hearings Officer’s findings addressing compliance with applicable Comprehensive Plan Goals and policies are set forth in the Comprehensive Plan section of this Decision and Recommendation below.

- B. That the change in classification for the subject property is consistent with the***

²¹ As noted above, the Applicant filed a revised burden of proof statement with its final legal argument on May 11, 2022. Both the original and revised burden of proof statements are part of the record.

purpose and intent of the proposed zone classification.

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

The approval of this application is consistent with the purpose of the RR-10 zoning district which stated in DCC 18.60.010 as follows:

“The purposes of the Rural Residential Zone are to provide rural residential living environments; to provide standards for rural land use and development consistent with desired rural character and the capability of the land and natural resources; to manage the extension of public services; to provide for public review of nonresidential uses; and to balance the public's interest in the management of community growth with the protection of individual property rights through review procedures and standards.”

The approval of the application will allow the property to provide rural residential living environments in a rural location that is not suitable for farm use and where impacts of the new use will be minimized by topography and adjoining public lands. The zoning district and subdivision ordinance provide standards that will control land use to be consistent with the desired rural character and capability of the land and natural resources. The zoning district provides for public reviews of nonresidential uses. The approval of this application will allow the property owner to proceed with a low level of development on land that will not support farm use.”

The Hearings Officer finds that the proposed change in classification will allow for potential future development of rural residential living. No application for development is before the County at this time; future application(s) must be consistent with the standards for rural land use and development considering desired rural character, the capability of the land and natural resources and managed extension of public services. Future development will be subject to public review which will require, among other things, a balancing of the public's interest in the management of community growth with the protection of individual property rights.

The Hearings Officer finds the Applicant has demonstrated the proposed change in classification is consistent with the purpose and intent of the RR-10 Zone.

- C. *That changing the zoning will presently serve the public health, safety and welfare considering the following factors:***
 - 1. *The availability and efficiency of providing necessary public services and facilities.***

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

Necessary public facilities and services are available to serve the subject property. A will-serve letter from Central Oregon Electric Cooperative, Exhibit G shows that electric power

is available to serve the property. Well logs, Exhibits H through K, show that wells are a viable source of water for rural residential development.

The existing road network is adequate to serve the use. This has been confirmed by the transportation system impact review conducted by Christopher M. Clemow, PE, PTOE of Clemow Associates LLC, Exhibit S of this application. The property receives police services from the Deschutes County Sheriff. The property is in the Redmond Fire and Rescue rural fire protection district.

The closest neighboring properties which contain residential uses are located on the north side of NW Coyner Avenue, on the south end of the subject property boundary, and nearby RR-10 residential lots along NW 93rd Street. These properties have water service primarily from wells, on-site sewage disposal systems and electrical service, cellular telephone services, etc.

The Applicant provided a will-serve letter from Central Electric Cooperative indicating that it is willing and able to serve the specified project location. The Applicant also included well logs from nearby properties with the application submittal demonstrating water availability in the general area.

Several commentators raised concerns regarding the general availability of groundwater in the area. The Applicant stated that rural residential development would use less water than water required for farming the subject property. There is no evidence that use of groundwater for farm use would be greater than use of groundwater for rural residential development. The Hearings Officer notes that there are no irrigation rights on the subject property, which would be required for most farm operations. The Hearings Officer finds that subjective opinions and anecdotal testimony regarding availability of groundwater for domestic use is not substantial evidence to rebut the Applicant’s well log evidence in the record.

Any new water use, unless exempt, must be appropriately permitted through the Oregon Water Resources Department (OWRD). At this time, no development is proposed and no approval for new water use has been requested. The Hearings Officer finds that water availability concerns of the state agencies and other commentators will be reviewed at the time of development applications. Without adequate water availability, future residential development may be limited or denied

The Hearings Officer finds there are no known deficiencies in public services or facilities that would negatively impact public health, safety, or welfare as the result of reclassifying the zoning of the subject property to RR10. Prior to development of the properties, the Applicant will be required to comply with the applicable requirements of the Deschutes County Code, including land use permitting, building permits, and sewage disposal permit processes, as well as to obtain a permit from the OWRD, if necessary, for a new water use unless exempt. The Hearings Officer finds that, through these development review processes, assurance of adequate public services and facilities will be verified. This criterion is met.

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

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

The RR-10 zoning is consistent with the specific goals and policies in the comprehensive plan as shown by the discussion of plan policies above. The existing EFU zoning and comprehensive plan already support development of the subject property with a number of nonfarm dwellings because the property is generally unsuitable for farm or forest uses. The property is comprised of nine lots of record that could qualify for development with up to approximately 24 dwellings including an existing nonfarm dwelling and two approved nonfarm dwellings. The RR-10 zoning will allow more dwellings to be built on the subject property but the impacts imposed will be the same as the minimal impacts imposed by a nonfarm dwelling.

The only adjoining land in farm use is Volwood Farms. It is located to the west of the subject property. Most of this farm property is located far below the subject property. This geographical separation will make it unlikely that the rezone will impose new or different impacts on Volwood Farms than imposed on it by existing farm and nonfarm dwellings. There are other farms in the surrounding area but all, like the Volwood Farms property, are functionally separated from the subject property by the steep hillside and rocky ridges of the subject property. Farm uses in the greater area, also, are occurring on properties that have been developed with residences. These properties are, however, separated from the subject property by a sufficient distance that RR-10 development will not adversely impact area farm uses or lands.

In addition to these comments, the Applicant provided specific findings for each relevant Comprehensive Plan goal and policy, which are addressed below. The Hearings Officer finds the impacts of reclassification of the subject property to RR10 on surrounding land use will be consistent with the specific goals and policies contained within the Comprehensive Plan for the reasons set forth in the Comprehensive Plan section of this Decision and Recommendation. This criterion is met.

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 proposes to rezone the properties from EFU to RR-10 and re-designate the properties from Agriculture to Rural Residential Exception Area. The Applicant provided the following response in the submitted burden of proof statement:

There has been a change in circumstances since the subject property was last zoned and a mistake in designating the subject property EFU/Agriculture when soils did not merit a designation and protection as “Agricultural Land.” This zone was applied to the property in 1979 and 1980 when Deschutes County adopted zones, a zoning ordinance and comprehensive plan that complied with the Statewide Goals.

In 1979 and 1980, undeveloped rural lands that contained poor soils but undeveloped were zoned EFU without regard to the specific soil characteristics of the property. Land owners were required to apply for a zone change to move their unproductive EFU properties out of the EFU zone. The County’s zoning code allowed these owners a one-year window to complete the task. This approach recognized that some rural properties were mistakenly classified EFU because their soils and other conditions did not merit inclusion of the property in the EFU zone.

Some Deschutes County property owners of lands received approval to rezone properties but many eligible parcels were not rezoned during this short window of time. The soils on the subject property are similarly poor and also merit RR-10 Zoning to correct the “broad brush” mapping done in 1979 and 1980. Also, since 1979 and 1980, there is a change of circumstances related to this issue. The County’s Comprehensive Plan has been amended to reinstate the right of individual property owners to seek this type of zone change and plan amendment.

Additionally, the population of Deschutes County has, according to the US Census, increased by 336% between 1980 when the County’s last zoned this property and 2021 from 62,142 persons to 209,266 persons. The supply of rural residential dwelling lots has been diminishing in the same time period.

*Since the property was zoned, it has become evident that farm uses are not viable on the property or on other area properties. The economics of farming have worsened over the decades making it difficult for most Deschutes County property owners to make money farming good ground and impossible to earn a profit from attempting to farm Class 7 and 8 farm soils. In 2017, according to Table 4 of the 2017 US Census of Agriculture, **Exhibit T**, only 16.03% of farm operators achieved a net profit from farming (238 of 1484 farm operations). In 2012, the percentage was 16.45% (211 of 1283 farm operations). In 2007, according to the 2012 US Census of Agriculture, that figure was 17% (239 of 1405 farm operations). **Exhibit U**. The vast majority of farms in Deschutes County have soils that are superior to those found on the subject property. As farming on those soils is typically not profitable, it is reasonable to conclude that no reasonable farmer would purchase the subject property for the purpose of attempting to earn a profit in money from agricultural use of the land.*

For the reasons set forth above in the Hearings Officer’s Preliminary Findings and Conclusions, incorporated herein by this reference, the Hearings Officer finds a mistake was made by Deschutes County in zoning the subject property for Exclusive Farm Use given the predominately poor (Class VII and VIII) soils on the property and the evidence that the property owner cannot engage in “farm use,” with the primary purpose of making a profit in money on the subject property. The Hearings Officer further finds that there has been a change in circumstances from the time the property was originally zoned EFU due to a rapid increase in population and a dwindling supply of rural residential lots to accommodate the added residents in the area. The Hearings Officer finds this criterion is met.

Deschutes County Comprehensive Plan

Chapter 2, Resource Management

Section 2.2 Agricultural Lands

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

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

The applicant’s soils study, Exhibit F, and the findings in this burden of proof demonstrate that the subject property is not agricultural land. This goal, therefore, does not apply. The vast majority of the subject property is comprised of Class 7 and 8 nonagricultural soils and the property has no known history of agricultural use. As noted in the Eastside Bend decision, Exhibit L, “these [Class 7 and 8] soils [according to soils scientist and soils classifier Roger Borine] have severe limitations for farm use as well as poor soil fertility, shallow and very shallow soils, surface stoniness, low available water capacity, and limited availability of livestock forage.” According to Agricultural Handbook No. 210 published by the Soil Conservation Service of the USDA, soils in Class 7 “have very severe limitations that make them unsuited to cultivation and that restrict their use largely to grazing, woodland, or wildlife.” Class VIII soils “have limitations that preclude their use for commercial plant production and restrict their use to recreation, wildlife, or water supply or to esthetic purposes.”

As set forth in the Preliminary Findings and Conclusions above, incorporated herein by this reference, the Hearings Officer finds substantial evidence in the record supports a finding that the subject property is not “agricultural land,” and is not land that could be used in conjunction with adjacent property for agricultural uses. There is no evidence that the requested plan amendment and rezone will contribute to loss of agricultural land in the surrounding vicinity. I find that the agricultural industry will not be negatively impacted by re-designation and rezoning of the subject property. Therefore, the Hearings Officer finds the applications are consistent with Section 2.2, Goal 1, “preserve and maintain agricultural lands and the agricultural industry.”

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

FINDING: The Applicant is not asking to amend the subzone that applies to the subject property; rather, the Applicant is seeking a change under Policy 2.2.3 and has provided evidence to support rezoning the subject property to RR10. The Hearings Officer finds this policy is inapplicable to the subject applications.

Policy 2.2.3 Allow comprehensive plan and zoning map amendments, including for those that qualify as non-resource land, for individual EFU parcels as

allowed by State Statute, Oregon Administrative Rules and this Comprehensive Plan.

FINDING: The Applicant is seeking approval of a plan amendment and zone change to re-designate and rezone the properties from Agricultural to Rural Residential Exception Area. The Applicant is not seeking an exception to Goal 3 – Agricultural Lands, but rather seeks to demonstrate that the subject property does not meet the state definition of “Agricultural Land” as defined in Statewide Planning Goal 3 (OAR 660-033-0020).

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

This plan policy has been updated specifically to allow non-resource land plan and zone change map amendments on land zoned EFU. The applicant is seeking a comprehensive plan amendment from Agriculture to RREA and a zone change from EFU-TE to RR-10 for non-resource land. This is essentially the same change approved by Deschutes County in PA-11-1/ZC-11-2 on land owned by the State of Oregon (DSL). In findings attached as Exhibit N, Deschutes County determined that State law as interpreted in Wetherell v. Douglas County, 52 Or LUBA 677 (2006) allows this type of amendment. LUBA said, in Wetherell at pp. 678-679:

“As we explained in DLCD v. Klamath County, 16 Or LUBA 817, 820 (1988), there are two ways a county can justify a decision to allow nonresource use of land previously designated and zoned for farm use or forest uses. One is to take an exception to Goal 3 (Agricultural Lands) and Goal 4 (Forest Lands). The other is to adopt findings which demonstrate the land does not qualify either as forest lands or agricultural lands under the statewide planning goals. When a county pursues the latter option, it must demonstrate that despite the prior resource plan and zoning designation, neither Goal 3 or Goal 4 applies to the property. Caine v. Tillamook County, 25 Or LUBA 209, 218 (1993); DLCD v. Josephine County, 18 Or LUBA 798, 802 (1990).”

LUBA’s decision in Wetherell was appealed to the Oregon Court of Appeals and the Oregon Supreme Court but neither court disturbed LUBA’s ruling on this point. In fact, the Oregon Supreme Court used this case as an opportunity to change the test for determining whether land is agricultural land to make it less stringent. Wetherell v. Douglas County, 342 Or 666, 160 P3d 614 (2007). In that case, the Supreme Court stated that:

“Under Goal 3, land must be preserved as agricultural land if it is suitable for “farm use” as defined in ORS 215.203(2)(a), which means, in part, “the current employment of land for the primary purpose of obtaining a profit in money” through specific farming-related endeavors.” Wetherell, 343 Or at 677.

The Wetherell court held that when deciding whether land is agricultural land “a local government may not be precluded from considering the costs or expenses of engaging in those activities.” Wetherell, 342 Or at 680. In this case, the applicant has shown that the

subject property is primarily composed of Class VII and VIII nonagricultural soils making farm-related endeavors, including livestock grazing, unprofitable. The property is not currently employed in any type of farm use and exhibits no evidence of such use. It is known that the property has not been employed in farm use for the past 20 years. Accordingly, this application complies with Policy 2.2.3.

The facts presented by the Applicant in the burden of proof for the subject application are similar to those in the *Wetherell* decisions and in the aforementioned Deschutes County plan amendment and zone change applications. For the reasons set forth above in the Preliminary Findings and Conclusions, incorporated herein by this reference, the Hearings Officer finds the subject property is not agricultural land and does not require an exception to Statewide Planning Goal 3 under state law. The applications are consistent with this Policy.

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

FINDING: This plan policy provides direction to Deschutes County to develop new policies to provide clarity when EFU parcels can be converted to other designations. The Hearings Officer adheres to the County’s previous determinations in plan amendment and zone change applications and finds the proposal is consistent with this policy.

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

Policy 2.2.13 Identify and retain accurately designated agricultural lands.

FINDING: This plan policy requires the County to identify and retain agricultural lands that are accurately designated. Substantial evidence in the record supports a finding that the subject property was not accurately designated as agricultural land as detailed above in the Preliminary Findings and Conclusions, incorporated herein by this reference. Further discussion on the soil analysis provided by the Applicant is detailed under the OAR Division 33 criteria below. The Hearings Officer finds the applications are consistent with this policy.

Section 2.5, Water Resources Policies

Goal 6, Coordinate land use and water policies.

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

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

Section 2.7, Open Spaces, Scenic Views and Sites

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

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

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

FINDING: These policies are fulfilled by the County’s Goal 5 program. The County protects scenic views and sites along major rivers and roadways by imposing Landscape Management (LM) Combining Zones to adjacent properties. The Hearings Officer finds that no LM combining zone applies to the subject property, nor is the subject property identified as a Goal 5 resource. Furthermore, no new development is proposed under the present application.

The state agencies and several commentators suggested that the subject property should be left “as is” because it is allegedly being used by wildlife as a “wildlife sanctuary.” There is no applicable statute or regulation that requires the property to be subject to wildlife protections given that there is no LM combining zone applicable to the subject property and it is not designated as a Goal 5 resource. Nor is there any state law that prohibits redesignation and rezoning of a property in and of itself on this basis. There is nothing in OAR 660-033-0030, “Identifying Agricultural Land,” that makes any reference to wildlife or wildlife use.

For these reasons, the Hearings Officer finds that these provisions of the plan are inapplicable to consideration of the proposed zone change and plan amendment.

Chapter 3, Rural Growth

Section 3.2, Rural Development

Growth Potential

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

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

FINDING: This section of the Comprehensive Plan does not contain Goals or Policies, but does provide the guidance above. In response to this section, the Applicant provided the following response in the burden of proof:

This part of the comprehensive plan is not a relevant approval criterion for a plan amendment and zone change application. Instead, it is the County’s assessment of the amount of population growth might occur on rural residential lands in the future based on its understanding of the types of changes allowed by law. Comprehensive Plan Policy 2.2.3 specifically authorizes rezoning and comprehensive plan map amendments for any property zoned EFU and is the code section that defines the scope of allowed zone changes.

This section makes it clear, however, that EFU-zoned land with poor soils adjacent to rural residential development is expected to be rezoned for rural residential development during the planning period. The subject property has extremely poor soils that do not qualify as agricultural land that must be protected by Goal 3. The subject property also adjoins EFU lands developed with rural residential uses (nonfarm dwellings) – Tax Lots 100, 200, 300, Map 14-12-28D and Tax Lot 301, Map 14-12-27. It is also located in close proximity to a large area of RR-10 land to the north and northeast that includes the large Lower Bridge Estates subdivision.

The RR10 Zone is a rural residential zone and as discussed in the Findings of Fact above, and there are several nearby properties to the north and northeast that are zoned RR10 as well as nearby EFU zoned property developed with residential uses and others that have been approved for development of nonfarm dwellings. This policy references the soil quality, which is discussed above.

The Hearings Officer finds that the County’s Comprehensive Plan provisions anticipate the need for additional rural residential lots as the region continues to grow. This includes providing a mechanism to rezone farm lands with poor soils to a rural residential zoning designation. The Hearings Officer notes this policy references the soil quality, which is discussed in detail above. The Hearings Officer finds that, the rezone application does not include the creation of new residential lots. However, read in conjunction with Comprehensive Plan Policy 2.2.3, which specifically authorizes rezoning and comprehensive plan map amendments for any property zoned EFU that is comprised of poor soils and are in the vicinity of other rural residential uses, the Hearings Officer finds that rezoning the subject property to RR-10 is consistent with this policy. The Applicant has demonstrated the Subject Property is comprised of poor soils, cannot be used for “farm use,” as defined in ORS 215.203 and that is in the vicinity of other rural residential uses.

Section 3.3, Rural Housing

Rural Residential Exception Areas

In Deschutes County most rural lands are designated for farms, forests or other resources and protected as described in the Resource Management chapter of this Plan. The majority of the land not recognized as resource lands or Unincorporated Community

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

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

FINDING: The Applicant provided the following response to this provision in the burden of proof:

The quoted language is a part of the background text of the County’s comprehensive plan. It is not a plan policy or directive and it is not an approval standard for this application. It does, however, recognize the fact that a Rural Residential Exception Area designation is an appropriate plan designation to apply to nonresource lands.

As LUBA and the Oregon Supreme Court recognized in the Wetherell decision, there are two ways a county can justify a decision to allow non-resource use of land previously designated and zoned for farm or forest uses. The first is to take an exception to Goal 3 and Goal 4 and the other is to adopt findings that demonstrate the land does not qualify either as forest lands or agricultural lands under the statewide planning goals. Here, the applicant is pursuing the latter approach. The quoted plan text addressed the former. If the quoted plan text were read to require an exception to Goal 3 or 4 where the underlying property does not qualify as either Goal 3 or Goal 4 resource land, such a reading would be in conflict with the rule set forth in Wetherell and Policy 2.2.3 of the Comprehensive Plan.

The Deschutes County Board of Commissioners has interpreted its RREA plan designation to be the proper "catchall" designation for non-resource land in its approval of the Daniels Group plan amendment and zone change by adopting the following finding by Hearings Officer Ken Helm:

"I find that Deschutes County has interpreted the RREA plan designation as the property “catchall” designation for non-resource land.”

As a result, the RREA plan designation is the appropriate plan designation for the subject property.

The Hearings Officer adheres to the past Deschutes County Hearings Officer interpretations and finds that the above language is not a policy and does not require an exception to Statewide

Planning Goal 3. The Hearings Officer finds the proposed RREA plan designation is the appropriate plan designation to apply to the subject property as a “catch-all” rural designation for the subject property, which is not agricultural land.

Section 3.7, Transportation

***Appendix C – Transportation System Plan
ARTERIAL AND COLLECTOR ROAD PLAN***

...

Goal 4. Establish a transportation system, supportive of a geographically distributed and diversified economic base, while also providing a safe, efficient network for residential mobility and tourism.

...

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

FINDING: This policy applies to the County and advises it to consider the roadway function, classification and capacity as criteria for plan amendments and zone changes. The County complies with this direction by determining compliance with the Transportation Planning Rule (TPR), also known as OAR 660-012, as set forth below in subsequent findings.

OREGON ADMINISTRATIVE RULES CHAPTER 660, LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

Division 6, Goal 4 – Forest Lands

OAR 660-006-0005, Definitions

- (7) ***“Forest lands” as defined in Goal 4 are those lands acknowledged as forest lands, or, in the case of a plan amendment, forest lands shall include:***
 - (a) ***Lands that are suitable for commercial forest uses, including adjacent or nearby lands which are necessary to permit forest operations or practices; and***
 - (b) ***Other forested lands that maintain soil, air, water and fish and wildlife resources.***

FINDING: The Applicant provided the following in response to Goal 4:

*The existing site and surrounding areas do not include any lands that are suited for forestry operations. Goal 4 says that forest lands “are those lands acknowledged as forest lands as of the date of adoption of this goal amendment.” The subject property does not include lands acknowledged as forest lands as of the date of adoption of Goal 4. Goal 4 also says that “where**a plan amendment involving forest lands is proposed, forest land shall*

include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water and fish and wildlife resources.” This plan amendment does not involved any forest land. The subject property does not contain any merchantable timber and is not located in a forested part of Deschutes County.

The subject property is not zoned for forest lands, nor are any of the properties within a seven-mile radius. The properties do not contain merchantable tree species and there is no evidence in the record that the properties have been employed for forestry uses historically. The NRCS has determined that the soil mapping units on the subject property are not suitable for wood crops and, therefore, has excluded them from Table 8 of the NRCS Soil Survey of the Upper Deschutes River Area. The Hearings Officer finds this satisfies OAR 660-06-0005(7)(a) and OAR 660-06-0010(2). There are no wood production capabilities of the subject property.

For the foregoing reasons, the Hearings Officer finds the subject property does not qualify as forest land.

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

OAR 660-015-0000(3)

To preserve and maintain agricultural lands.

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

FINDING: Goal 3 includes a definition of “Agricultural Land,” which is repeated in OAR 660-033-0020(1). The Hearings Officer has made Preliminary Findings and Conclusions set forth above, and incorporated herein by this reference, that the subject property does not constitute “agricultural land.”

OAR 660-033-0020, Definitions

For purposes of this division, the definitions in ORS 197.015, the Statewide Planning Goals, and OAR Chapter 660 shall apply. In addition, the following definitions shall apply:

- (1)(a) "Agricultural Land" as defined in Goal 3 includes:*
 - (A) Lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon²²;*

²² OAR 660-033-0020(5): "Eastern Oregon" means that portion of the state lying east of a line beginning at the intersection of the northern boundary of the State of Oregon and the western boundary of Wasco County, then south along the western boundaries of the Counties of Wasco, Jefferson, Deschutes and Klamath to the southern boundary of the State of Oregon.

FINDING: The Applicant’s basis for not requesting an exception to Goal 3 is founded on the premise that the subject property does not meet the definitions of “Agricultural Land.” In support, the Applicant offered the following response as included in the burden of proof statement:

*Statewide Goal 3, above, ORS 215.211 and OAR 660-033-0030(5) allow the County to rely on the more detailed and accurate information provided by the **Exhibit F** soil study to determine whether land is agricultural land. ORS 215.211 give a property owner the right to rely on more detailed information than is provided by the NRCS Web Soil Survey of the NRCS to “assist the county to make a better determination of whether land qualifies as agricultural land.” The more detailed soils survey obtained by the applicant shows that approximately 71% of the subject property is composed of Class VII and VIII soils. As a result, it is clear that the tract is not predominantly composed of Class I-VI soils.*

The soil study provided by Mr. Rabe of Valley Science and Engineering (dated June 22, 2021) and the soil report addendum (dated January 13, 2022) support the Applicant’s representation of the data for the subject property. This data was not rebutted by any party.

As set forth in detail in the Preliminary Findings and Conclusions above, incorporated herein by this reference, the Hearings Officer finds, based on the submitted soil study and the above OAR definition, that the subject property is comprised predominantly of Class VII and VIII soils and, therefore, does not constitute “Agricultural Lands” as defined in OAR 660-033-0020(1)(a)(A).

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

FINDING: The Applicant’s basis for not requesting an exception to Goal 3 is founded on the proposal that the subject property are not defined as “Agricultural Land.” The Applicant provides the following analysis in the burden of proof.

This part of the definition of “Agricultural Land” requires the County to consider whether the Class VII and VIII soils found on the subject property are suitable for farm use despite their Class VII and VIII classification. The Oregon Supreme Court has determined that the term “farm use” as used in this rule and Goal 3 means the current employment of land for the primary purpose of obtaining a profit in money through specific farming-related endeavors. The costs of engaging in farm use are relevant to determining whether farm activities are profitable and this is a factor in determining whether land is agricultural land. Wetherell v. Douglas County, 342 Or 666, 160 P3d 614 (2007).

The primary agricultural use conducted on properties that lack irrigation water rights and have poor soils is grazing cattle. The extremely poor soils found on the property, however, make it a poor candidate for dryland grazing. The dry climate makes it difficult to produce adequate forage on the property to support a viable or potentially profitable grazing

operation or other agricultural use of the property. This issue is addressed in greater detail in the Exhibit F soils study. Photographs of various parts of the subject property provide a visual depiction of the land in question and its characteristics:

[Please see the burden of proof for photos submitted by the applicant]

Given the high cost of irrigating and maintaining the property as pasture or cropland (high labor costs, labor-intensive, high cost of irrigation equipment and electricity, high cost of fertilizer, etc.), dry land grazing is the accepted farm use of poor soils in Deschutes County. This use can be conducted until the native vegetation is removed by grazing (see the discussion of the suitability of the property for grazing, below). The soils study includes an analysis of the level of cattle grazing that would be able to be conducted on the property, without overgrazing it. It finds that the entire 710 acres would support from 8 to 15 cow-calf pairs for a year based on proper management of the land for year-round grazing.

When assessing the potential income from dry land grazing, Deschutes County uses a formula and assumptions developed by the OSU Extension Service. This formula is used by the County to decide whether EFU-zoned land is generally unsuitable for farm use. It assumes that one acre will produce 900 pounds of forage per year.

- One AUM is the equivalent to the forage required for a 1000 lb. cow and calf to graze for 30 days (900 pounds of forage).
- On good quality forage, an animal unit will gain 2 pounds per day.
- Two animal units will eat as much in one month as one animal unit will eat in two months.
- Forage production on dry land is not continuous. Once the forage is consumed, it typically will not grow back until the following spring.
- An average market price for beef is \$1.15 per pound.

Based upon these assumptions, the value of beef production on the entire subject property can be calculated using the following formula:

$$30 \text{ days} \times 2\#/\text{day}/\text{acre} = 60.0 \text{ lbs. Beef}/\text{acre} \\ (1 \text{ acre per AUM})$$

$$60.0 \text{ lbs. Beef}/\text{acre} \times 710 \text{ acres} \times \$1.15/\text{lb.} = \$48,990 \text{ per year of gross income}$$

Thus, using the OSU/County formula, the total gross beef production potential for the subject property if it was comprised of more productive soils than found on the subject property would be approximately \$48,990 annually. This figure represents gross income and does not take into account real property taxes, fencing costs, land preparation, purchase costs of livestock, veterinary costs, or any other costs of production which would exceed income. Property taxes, alone, were \$15,706.62 for the eight tax lots that comprise the subject property in 2020. The payment of a modest wage of \$15.00 per hour to the rancher and/or employee for only one FTE would cost the ranch operation \$31,200 in

wages and approximately an additional \$7,800 to \$12,480 (1.25 to 1.4 of salary) for employment taxes paid by the employer and standard employee benefits. An expired internet job listing (at least two years old) for a farmer to farm the Volwood Farms property located to the west of the subject property offered wages of \$15 to \$25 an hour and medical insurance. **Exhibit V.** A wage of \$25 per hour provides an annual salary of \$52,000 and costs the farm approximately \$15,000 to \$20,800 in taxes and benefits.

A review of the seven considerations listed in the administrative rule, below, provided in the soils survey report, Exhibit F, and in the findings provided below explain why the poor-quality soils found on the subject property are not suitable for farm use:

Soil Fertility: Class 7 and 8 soils are not fertile soils. They are not suited for the production of farm crops. This fact has been recognized in numerous County land use cases, including the zone change and plan amendment applications being filed with this land use application. Farm use on these soils is limited to rangeland grazing at a level that does not qualify as “farm use.” No person would expect to make a profit by grazing livestock on the subject property.

Suitability for Grazing: The climate is cold and dry. The growing season is very short. The subject property is located between Redmond and Sisters. According to the OSU Extension Service the growing season for Redmond is only 80 to 90 days long. **Exhibit W.** The growing season for Sisters is shorter. The average annual precipitation for Redmond is only 8.8 inches. This means that the amount of forage available for dry land grazing is low and will be slow to regrow. This also means that a farmer has a short period of amount of time to irrigate pastures, if irrigation water rights can be secured. This makes it difficult for a farmer to raise sufficient income to offset the high costs of establishing, maintaining and operating an irrigation system and groundwater well. That cost also would include the cost of purchasing and retiring water rights from another area farm property to mitigate for the impacts of pumping groundwater – something that is cost-prohibitive for almost any farm operation. This is clearly the case for irrigating non-agricultural Class VII and VIII soils.

Existing and Future Availability of Water for Farm Irrigation Purposes: The subject property is not located in an irrigation district. It is too remote from any irrigation district in terms of distance and elevation (above) to be able to obtain irrigation water from a district for farming as shown by **Exhibit X.** In order to obtain water rights, the applicant would need to acquire a water right from Oregon Water Resources Department (OWRD). If such a right were able to be secured, the property owner would need to purchase and retire water rights from irrigated farm land in Central Oregon that is surely more productive than the subject property (71% Class VII and VIII soils). Such a transaction would run counter to the purpose of Goal 3 to maintain productive Agricultural Land in farm use. The cost of purchasing water rights, obtaining a groundwater permit and establishing an irrigation system are significant and would not be reasonably expected to result in farm income that would offset the cost incurred for the subject property.

Existing Land Use Patterns: *The applicant’s analysis of existing land use patterns provided earlier in this burden of proof shows that the subject property is located primarily on a plateau above farm lands. The lands on the plateau are either undeveloped open space owned by the USA or RR-10 zoned subdivision lots developed with single-family homes. The addition of RR-10 zoned lots and homes rather than nonfarm dwellings is consistent with land use of other privately-owned property on the plateau. Below the plateau are public lands and a small number of farms and farm and nonfarm dwellings on or adjacent to existing farm operations. The addition of homes here would not impose significant new impacts on farm operations in the area.*

Technological and Energy Inputs Required: *Given its poor soils, this parcel would require technology and energy inputs over and above accepted farming practices. Excessive fertilization and soil amendments; very frequent irrigation, and marginal climatic conditions would restrict cropping alternatives. Pumping irrigation water requires energy inputs. The application of lime and fertilizer typically requires the use of farm machinery that consumes energy. The irrigation of the property requires the installation and operation of irrigation systems. All of these factors are why Class 7 and 8 soils are not considered suitable for use as cropland.*

Accepted Farming Practices: *As determined by the County in the Aceti case, farming lands comprised of soils that are predominately Class VII and VIII is not an accepted farm practice in Central Oregon. Dryland grazing, the farm use that can be conducted on the poorest soils in the County, typically occur on Class VI non-irrigated soils. Crops are typically grown on soils in soil class III and IV when irrigated that Class VI without irrigation.*

The Hearings Officer incorporates herein by this reference the Preliminary Findings and Conclusions above and finds that the subject property does not constitute “Agricultural Lands” as defined in OAR 660-033-0020(1)(a)(B).

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

FINDING: The Applicant offered the following response in the burden of proof statement:

The subject property is not land necessary to permit farm practices to be undertaken on adjacent or nearby lands. The following facts are shown by the applicant’s discussion of surrounding development in Section E of this application, above and by the additional information provided below.

West: *Properties to the west of the subject property are separated from the subject property by topography. The dramatic change in topography makes it infeasible to use the subject property for farm use in conjunction with these properties. Additionally, the subject property is not necessary to permit farm practices to be undertaken on adjacent or nearby lands to the west. Farm practices have been occurring on these properties for decades without any need to use the subject property*

to conduct farm practices on these properties.

EFU Properties to the West (South to North)

Tax Map, Lot and Size	Farm Use	Potential Farm Practices	Need Subject Property?
14-12-00, 300 1588.55 acres	Open space; public land	Dry land grazing	No, property accessible from Buckhorn Road
14-12-21, 200 & 100 372.71 acres Volwood Farms	Irrigated fields currently growing orchard grass, hay and alfalfa	Irrigation Growing/harvesting crops Fertilizing field Baling hay Herbicide use	No, Tax Lot 200 and 100 are below the level of a majority of subject property. They are comprised of good farm soils while the subject property is not. Separation due to elevation has prevented conflicts between existing nonfarm dwelling on subject property and this farming operation.
14-12-20, 200 146.37 acres	Irrigated field suitable for growing orchard grass, hay, and alfalfa	Irrigation Growing/harvesting crops Fertilizing field Baling hay Herbicide use	No, TL 200 is located west of Buckhorn Road and separated from subject property by Volwood Farms property. Property also separated from subject property by topography.

North: All of the land north of the subject property that might rely on the subject property for farm practices, other than the Volwood Farms property inventoried above and an open space tract of land owned by the USA, is zoned RR-10 and is not in farm use. Cattle grazing would be able to occur on the USA property at a very limited scale due to sparse vegetation without need for the subject property to conduct the activity.

East:

EFU Properties to East (North to South)

<i>Tax Map, Lot and Size</i>	<i>Farm Use</i>	<i>Potential Farm Practices</i>	<i>Need Subject Property?</i>
<i>14-12-22B, 700 80 acres</i>	<i>Open space public land</i>	<i>Livestock grazing</i>	<i>No, grazing can occur without reliance on subject property.</i>
<i>14-12-22C, 500 120 acres</i>	<i>Open space public land</i>	<i>Livestock grazing</i>	<i>No, grazing can occur without reliance on subject property.</i>
<i>14-12-27, 200 120 acres</i>	<i>Open space public land</i>	<i>Livestock grazing</i>	<i>No, grazing can occur without reliance on subject property.</i>
<i>14-12-27, 301 17.50 ac</i>	<i>None. Nonfarm parcel and dwelling</i>	<i>None</i>	<i>No, no farm use and property not suitable for farm use.</i>
<i>14-12-00, 300 62.58 acres</i>	<i>Irrigated cropland suitable for growing orchard grass, hay, and alfalfa</i>	<i>Irrigation Growing/harvesting crops Fertilizing field Baling hay Herbicide use</i>	<i>No, separated from subject property by Tax Lot 301 and elevation. Property created by partition that found that nonfarm dwelling would not interfere with farm use on Tax Lot 300 and other area farms.</i>
<i>14-12-14B, 200 80 acres</i>	<i>Approved for nonfarm dwelling</i>	<i>None</i>	<i>No</i>

South: *Most of the land to the south of the subject property is open space land owned by the USA and nonfarm dwelling parcels comprised of land determined by Deschutes County to be generally unsuitable for the production of farm crops, livestock and merchantable tree species.*

EFU Properties to South

Tax Map, Lot and Size	Farm Use	Potential Farm Practices	Need Subject Property?
14-12-280, 100 28.60 acres	None, nonfarm dwelling	None	No
14-12-280, 200 19.11 acres	None, nonfarm dwelling	None	No
14-12-280, 300 19.65 acres	None, nonfarm dwelling	None	No
14-12-20, 3200 1588.55 acres	Open space public land	Livestock grazing	No, grazing can occur without reliance on subject property. Accessible from Buckhorn Road and Coyner Avenue.
14-12-00, 1923 37.51 acres	Nonfarm dwelling. Small irrigated pasture for horses and small pivot suitable for growing hay, grass or alfalfa.	Irrigation Growing/harvesting crops Fertilizing field Baling hay Herbicide use	No, separated from subject property by other nonfarm properties.

The Applicant provided a detailed analysis of land uses and agricultural operations surrounding the subject property. The Hearings Officer finds that barriers for the subject property to engage with in farm use with these properties include: poor quality soils, lack of irrigation, proximity and significant topography changes.

The Hearings Officer incorporates herein by this reference the Preliminary Findings and Conclusions above and finds that the subject property does not constitute “Agricultural Lands” as defined in OAR 660-033-0020(1)(a)(C).

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

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

The subject property is not a part of a farm unit. The property is a tract of land that is generally unsuitable for the production of farm crops and livestock and

merchantable trees species that is eligible to be developed with nonfarm dwellings. As a result, this rule does not apply to the County's review of this application.

The apparent purpose of this rule is to prevent the rezoning of portions of a farm property that function together as a farm. That is not the case here. In this case, the property in its entirety is not agricultural land and is not a farm unit because it is not engaged in farm use and has not been engaged in that use for 20 years or more. The applicant is not seeking to remove unproductive lands from an otherwise productive farm property.

Even if the subject property is considered to be a "farm unit" despite the fact it has never been farmed, Goal 3 applies a predominant soil test to determine if a property is "agricultural land." The predominant soils classification of the subject property is Class VII and VII which provides no basis to inventory the property as agricultural land unless the land is shown to be, in fact, productive farmland.

*All parts of the subject property were studied by the applicant's soils analysis, **Exhibit F**. The analysis shows that the predominant soil type found on the property is Class VII and VIII, nonagricultural land. Some Class VI soils are intermingled with the nonagricultural soil not vice versa. As a result, this rule does not require the Class VII and VIII soils to be classified agricultural land.*

The Hearings Officer incorporates by this reference the Preliminary Findings and Conclusions set forth above and finds that the subject property does not constitute "Agricultural Lands," as defined in OAR 660-033-0020(1)(b).

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

FINDING: The subject property is not within an acknowledged urban growth boundary or land within acknowledged exception areas for Goals 3 or 4. The Hearings Officer finds this criterion is inapplicable.

OAR 660-033-0030, Identifying Agricultural Land

- (1) ***All land defined as "agricultural land" in OAR 660-033-0020(1) shall be inventoried as agricultural land.***
- (2) ***When a jurisdiction determines the predominant soil capability classification of a lot or parcel it need only look to the land within the lot or parcel being inventoried. However, whether land is "suitable for farm use" requires an inquiry into factors beyond the mere identification of scientific soil classifications. The factors are listed in the definition of agricultural land set forth at OAR 660-033-0020(1)(a)(B). This inquiry requires the consideration of***

conditions existing outside the lot or parcel being inventoried. Even if a lot or parcel is not predominantly Class I-IV soils or suitable for farm use, Goal 3 nonetheless defines as agricultural “lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands”. A determination that a lot or parcel is not agricultural land requires findings supported by substantial evidence that addresses each of the factors set forth in 660-033-0020(1).

FINDING: The Applicant addressed the factors in OAR 660-033-0020(1) above. For the reasons set forth in the Preliminary Findings and Conclusions above, incorporated herein by this reference, the Hearings Officer finds the subject property is not “Agricultural Lands,” as defined in OAR 660-033-0030(1). The subject property is not necessary to permit farm practices undertaken on adjacent and nearby lands.

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

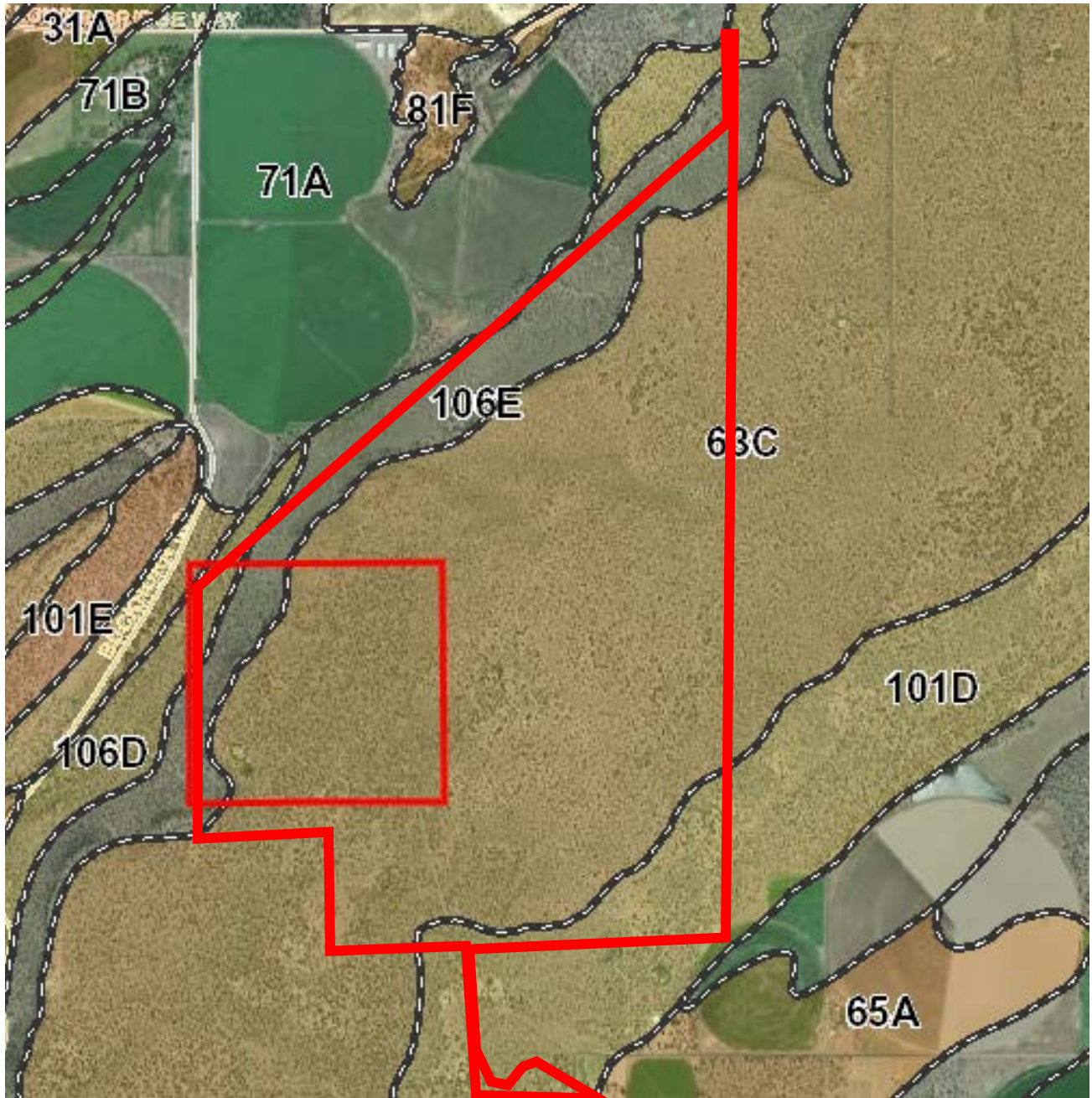
FINDING: As the Hearings Officer found above, the subject property is not suitable for farm use and is not necessary to permit farm practices to be undertaken on adjacent or nearby lands, regardless of ownership of the subject property and ownership of nearby or adjacent land. For the reasons set forth in the Preliminary Findings and Conclusions above, incorporated herein by this reference, the Hearings Officer finds the subject property is not “Agricultural lands,” and thus that no exception to Goal 3 is required.

- (5)(a) *More detailed data on soil capability than is contained in the USDA Natural Resources Conservation Service (NRCS) soil maps and soil surveys may be used to define agricultural land. However, the more detailed soils data shall be related to the NRCS land capability classification system.*
- (b) *If a person concludes that more detailed soils information than that contained in the Web Soil Survey operated by the NRCS as of January 2, 2012, would assist a county to make a better determination of whether land qualifies as agricultural land, the person must request that the department arrange for an assessment of the capability of the land by a professional soil classifier who is chosen by the person, using the process described in OAR 660-033-0045.*

FINDING: The soil study prepared by Mr. Rabe provides more detailed soils information than contained in the NRCS Web Soil Survey. NRCS sources provide general soils data for large units of land. The Hearings Officer finds the soil study provides detailed and accurate information about individual parcels based on numerous soil samples taken from the subject property. The soil study is related to the NCRS Land Capability Classification (LCC) system that classifies soils class I through VIII. An LCC rating is assigned to each soil type based on rules provided by the NRCS.

The NRCS mapping for the subject property is shown below in **Figure 1**. According to the NRCS Web Soil Survey tool, the subject property predominantly contains 63C soil (75 percent) and 106E soil (17 percent) with the remaining property containing smaller amounts of 31B, 71A, 101D, and 106D soils.

Figure 1 - NRCS Soil Map (Subject Property, appx.)



The soil study conducted by Mr. Rabe of Valley Science and Engineering finds the soil types on the subject property vary from the NRCS identified soil types. The soil types described in the soil study are described below and the characteristics and LCC rating are shown in **Table 1** below

Table 1 - Summary of Order 1 and 2 Soil Survey (Subject Property)

Site-Specific Symbol	Unit Name	Acreage	%	Land Capability Class ¹	
				non-irrigated	irrigated
36B	Deskamp loamy sand, 0 to 8% slopes	5.05	0.7%	6s	3s
81C	Lickskillet stony sandy loam, 0 to 15% slopes	375.03	52.5%	7e	--
81D	Lickskillet stony sandy loam, 15 to 30% slopes	54.03	7.6%	7e	--
81E	Lickskillet stony sandy loam, 30 to 50% slopes	64.73	9.1%	7e	--
106D(R)	Redslide sandy loam, 15 to 30% slopes	22.88	3.2%	6e	--
127C	Statz sandy loam, 0 to 15% slopes	178.72	25.0%	6s	4s
109	Rock outcrop	14.16	2.0%	8s	--
Total		714.60	100%		
Subtotal Class I - VI		206.65	29%		
Subtotal Class VII - VIII		507.95	71%		

NOTES:

Abbreviations: "--" = no data, e = erosion, NRCS = Natural Resources Conservation Service, s = shallow.

1 Land Capability Class as published in the Soil Survey of Upper Deschutes River Area, Oregon (Soil Survey Staff, Natural Resources Conservation Service, 2002).

Mr. Rabe’s soil study concludes that the subject property contains 71 percent Class VII and VIII soils. The submitted soil study prepared by Mr. Rabe is accompanied in the submitted application materials by correspondence from the Department of Land Conservation and Development (DLCD) (Applicant’s Exhibit F).

The DLCDC correspondence confirms that Mr. Rabe’s prepared soil study is complete and consistent with the reporting requirements for agricultural soils capability as dictated by DLCDC. Based on Mr. Rabe’s qualifications as a certified Soil Scientist and Soil Classifier, and as set forth in detail in the Preliminary Findings and Conclusions above, incorporated herein by this reference, the Hearings Officer finds the submitted soil study to be definitive and accurate in terms of site-specific soil information for the subject property.

- (c) ***This section and OAR 660-033-0045 apply to:***
 - (A) ***A change to the designation of land planned and zoned for exclusive farm use, forest use or mixed farm-forest use to a non-resource plan designation and zone on the basis that such land is not agricultural land; and***

FINDING: The Applicant is seeking approval of a non-resource plan designation on the basis that the subject property is not defined as agricultural land. Therefore, this section and OAR 660-033-0045 applies to these applications.

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

FINDING: The Applicant submitted a soil study by Mr. Rabe of Valley Science and Engineering dated June 22, 2021, and an addendum dated January 13, 2022. The soils study was submitted following the ORS 215.211 effective date. The Applicant’s Exhibit F includes acknowledgement from Hilary Foote, Farm/Forest Specialist with the DLCDD, dated September 13, 2021, that the soil study is complete and consistent with DLCDD’s reporting requirements. The Hearings Officer finds this criterion is met.

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

FINDING: The Applicant provided a DLCDD certified soil study as well as NRCS soil data. The Hearings Officer finds this criterion is met.

DIVISION 12, TRANSPORTATION PLANNING

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

- (1) *If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:*
 - (a) *Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);*
 - (b) *Change standards implementing a functional classification system; or*
 - (c) *Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.*

- (A) *Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;*
- (B) *Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or*
- (C) *Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.*

FINDING: The Hearings Officer finds this provision is applicable to the proposal because it involves an amendment to an acknowledged comprehensive plan. The proposed plan amendment would change the designation of the subject property from AG to RREA and change the zoning from EFU to RR10. The Applicant is not proposing any land use development of the property at this time.

As referenced in the agency comments section in the Findings of Fact, above, the Senior Transportation Planner for Deschutes County requested additional information to clarify the conclusions provided in the traffic study. The Applicant submitted an updated report from Christopher M. Clemow, PE, PTOE of Clemow Associates, LLC dated January 17, 2022, to address trip distribution, traffic volumes, and Transportation Planning Rule (TPR) criteria. The updates were reviewed by the Senior Transportation Planner who indicated his comments had been addressed and he was satisfied with the amended report. Mr. Clemow included the following conclusions in the traffic impact analysis dated January 17, 2022:

The following conclusions are made based on the materials presented in this analysis:

- 1. The proposed Deschutes County Comprehensive Plan Amendment and Zone Change from Exclusive Farm Use – Terrebonne Subzone (EFUTE) to Rural Residential – 10 Acre Minimum (RR-10) will not significantly affect the transportation system.*
- 2. All roadways along the primary travel route to/from the development are constructed to an adequate County standard, including paved 12-foot travel lanes.*
- 3. All study intersections will operate well with agency mobility standards/targets in the plan year and no intersection mitigation is necessary.*
- 4. The proposed site access is in the same location as the existing access and forms the west intersection leg. There is no horizontal or vertical roadway curvature limiting sight distance, nor is there any obstructing vegetation. As such, there is adequate sight distance at the proposed access location.*
- 5. There are no recorded crashes at any of the study intersections or the roadway segments during the study period. As such, the roadway and intersections are considered relatively safe, and no further evaluation of safety deficiencies is necessary.*

6. Additional transportation analysis is not necessary to address Deschutes County Code Transportation Planning Rule criteria outlined in Oregon Administrative Rule 660 012-0060.

Based on the County Senior Transportation Planner’s comments and the traffic study from Clemow Associates, LLC, the Hearings Officer finds compliance with the Transportation Planning Rule has been effectively demonstrated. Based on the TIA, the Hearings Officer finds that the proposed plan amendment and zone change will be consistent with the identified function, capacity, and performance standards of the County’s transportation facilities in the area.

The Hearings Officer notes that, despite the transportation information provided by the Applicant and via agency comment, public comments received by the County indicate concerns with potential traffic impacts as a result of the proposed plan amendment and zone change. The Hearings Officer finds that no development application is before me at this time. At the time of any land use application(s) for the subject property, analysis and review of transportation and traffic impacts of any proposed development will be required.

DIVISION 15, STATEWIDE PLANNING GOALS AND GUIDELINES

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

FINDING: The Statewide Planning Goals are addressed as follows in the Applicant’s burden of proof:

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

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

***Goal 3, Agricultural Lands.** The applicant has shown that the subject property is not agricultural land so Goal 3 does not apply.*

***Goal 4, Forest Lands.** The existing site and surrounding areas do not include any lands that are suited for forestry operations. Goal 4 says that forest lands “are those lands acknowledged as forest lands as of the date of adoption of this goal amendment.” The subject property does not include lands acknowledged as forest lands as of the date of adoption of Goal 4. Goal 4 also says that “[w]here **a plan amendment involving forest lands is proposed, forest land shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations*

or practices and other forested lands that maintain soil, air, water and fish and wildlife resources.” This plan amendment does not involve any forest land. The subject property does not contain any merchantable timber and is not located in a forested part of Deschutes County.

Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces. *The subject property does not contain any inventoried Goal 5 resources.*

Goal 6, Air, Water and Land Resources Quality. *The approval of this application will not cause a measurable impact on Goal 6 resources. Approval will make it more likely that the irrigation and pond water rights associated with the property will ultimately be returned to the Deschutes River or used to irrigate productive farm ground found elsewhere in Deschutes County.*

Goal 7, Areas Subject to Natural Disasters and Hazards. *This goal is not applicable because the subject property is not located in an area that is recognized by the comprehensive plan as a known natural disaster or hazard area.*

Goal 8, Recreational Needs. *This goal is not applicable because the property is not planned to meet the recreational needs of Deschutes County residents and does not directly impact areas that meet Goal 8 needs.*

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

Goal 10, Housing. *The County’s comprehensive plan Goal 10 analysis anticipates that farm properties with poor soils, like the subject property, will be converted from EFU to MUA-10 or RR-10 zoning and that these lands will help meet the need for rural housing. Approval of this application, therefore, is consistent with Goal 10 as implemented by the acknowledged Deschutes County comprehensive plan.*

Goal 11, Public Facilities and Services. *The approval of this application will have no adverse impact on the provision of public facilities and services to the subject site. Utility service providers have confirmed that they have the capacity to serve the maximum level of residential development allowed by the RR-10 zoning district.*

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

Goal 13, Energy Conservation. *The approval of this application does not impede energy conservation. The subject property is located in a part of the community that contains a large amount of rural residential development. Providing homes in this location as*

opposed to more remote rural locations will conserve energy needed for residents to travel to work, shopping and other essential services.

Goal 14, Urbanization. *This goal is not applicable because the applicant’s proposal does not involve property within an urban growth boundary and does not involve the urbanization of rural land. The RR-10 zone is an acknowledged rural residential zoning district that limits the intensity and density of developments to rural levels. The compliance of this zone with Goal 14 was recently acknowledged when the County amended its comprehensive plan. The plan recognizes the fact that the MUA-10 and RR zones are the zones that will be applied to lands designated Rural Residential Exception Areas.*

Goals 15, Willamette Greenway. *This goal does not apply because the subject property is not located in the Willamette Greenway.*

Goals 16 through 19. *These goals do not apply to land in Central Oregon.*

The Hearings Officer finds consistency with Goal 1 (Citizen Involvement) has been established with the public notice requirements required by the County for these applications (mailed notice, posted notice and two public hearings). Similarly, the Hearings Officer finds consistency with Goal 2 (Land Use Planning) based on the applications’ consistency with goals, policies and processes related to zone change applications as set forth in the Comprehensive Plan and Titles 18 and 23 of the Deschutes County Code.

Based on the findings above, the Hearings Officer finds consistency with Goal 3 (Agricultural Lands) has been demonstrated because the Subject Property is not Agricultural Land. The property is not comprised of Forest Lands. Therefore, Goal 4 is inapplicable.

With respect to Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces), the Hearings Officer finds that the Subject Property does not include any inventoried Goal 5 resources. While the Subject Property is currently open and undeveloped, the County Goal 5 inventory does not include the subject property as an “open space” area protected by Goal 5. Members of the public expressed concern regarding potential impact on wildlife. However, the Hearings Officer notes that the property does not include a wildlife overlay (WA) designation and, more importantly, no development is proposed at this time. Rezoning the subject property will not, in and of itself, impact wildlife on the subject property. Protections for wildlife must be sanctioned by the County’s Goal 5 ESEEs and WA or similar wildlife overlay zoning. The Hearings Officer finds there are no wildlife protections applicable to these applications.

The Hearings Officer finds consistency with Goal 6 (Air, Water and Land Resources Quality) because there is no measurable impact of approval of the application to rezone the subject property from EFU to RR-10. Future development activities will be subject to local, state and federal regulations that protect these resources.

With respect to Goal 7 (Areas Subject to Natural Disasters and Hazards), the Hearings Officer finds consistency with this Goal based on the fact that rezoning the subject property to RR-10 does not change the Wildfire Hazard Area designation that is applicable to the entirety of Deschutes

County. The subject property is within the Rural Fire Protection District #2. Any application(s) for future development activities will be required to demonstrate compliance with fire protection regulations. The subject property is located in Redmond Fire and Rescue jurisdiction. The Hearings Officer finds that rezoning the properties to RR10 does not change the Wildfire Hazard Area designation. Any future development of the properties will be required to demonstrate compliance with any fire protection regulations and requirements of Deschutes County.

The Hearings Officer finds consistency with Goal 8 (Recreational Needs) given the fact that no development is currently proposed and that rezoning, in and of itself, will not impact recreational needs of Deschutes County.

The Hearings Officer finds Goal 9 (Economy of the State) is inapplicable because the subject property is not designated as Goal 9 economic development land and approval of the application will not adversely impact economic activities of the state or area.

The Hearings Officer finds the applications are consistent with Goal 10 (Housing) because the Comprehensive Plan Goal 10 chapter anticipates that farm properties with poor soils will be converted from EFU to MUA-10 or RR-10 zoning, making such properties available to meet the need for rural housing. Although no development of the subject property is proposed at this time, rezoning it from EFU to RR-10 will enable consideration of the property for potential rural housing development in the future.

The Hearings Officer finds the applications are consistent with Goal 11 (Public Facilities and Services). The record establishes that utility service providers have capacity to serve the subject property if developed at the maximum level of residential development allowed by the RR-10 zoning district. The proposal will not result in the extension of urban services to rural areas.

Based on the findings above regarding the Transportation System Planning Rule, OAR 660-012-0060, the Hearings Officer finds the applications are consistent with Goal 12 (Transportation).

The Hearings Officer finds the applications are consistent with Goal 13 (Energy Conservation) because there is no evidence approval of the applications will impede energy conservation.

The Hearings Officer finds the applications are consistent with Goal 14 (Urbanization). The subject property is not within an urban growth boundary and does not involve urbanization of rural land because the RR-10 zone does not include urban uses as permitted outright or conditionally. The RR-10 zone is an acknowledged rural residential zoning district that limits the intensity and density of developments to rural levels. The state acknowledged compliance of the RR-10 zone with Goal 14 when the County amended its comprehensive plan.

The Hearings Officer finds that Goals 15-19 do not apply to land in Central Oregon.

For all the foregoing reasons, the Hearings Officer finds compliance with the applicable Statewide Planning Goals has been demonstrated.

IV. DECISION & RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer finds the Applicant has met the burden of proof necessary to justify the request for a Comprehensive Plan Map Amendment to re-designate the subject property from Agriculture to Rural Residential Exception Area and a corresponding request for a Zone Map Amendment (Zone Change) to reassign the zoning of the subject property from Exclusive Farm Use (EFU) to Rural Residential (RR-10).

The Deschutes County Board of Commissioners is the final local review body for the applications before the County. DCC 18.126.030. The Hearings Officer recommends approval of the applications based on this Decision and Recommendation of the Deschutes County Hearings Officer.



Stephanie Marshall, Deschutes County Hearings Officer

Dated this 2nd day of June, 2022

Mailed this 2nd day of June, 2022

owner	agent	inCareOf	address	cityStZip	type	cdd id
J. Kenneth Katzaroff	Schwabe, Williamson & Wyatt		1420 5th Avenue, Suite 3400	Seattle, WA 98101	Hoff Decision	247-21-001043-PA, 1044-ZC
Liz Fancher			2465 NW Sacagawea Lane	Bend, OR 97703	Hoff Decision	247-21-001043-PA, 1044-ZC
710 Properties, LLC			PO Box 1345	Sisters, OR 97750	Hoff Decision	247-21-001043-PA, 1044-ZC
Eden Central Properties, LLC			PO Box 1345	Sisters, OR 97751	Hoff Decision	247-21-001043-PA, 1044-ZC
Chris Clemow			2237 NW Torrey Pines	Bend, OR 97703	Hoff Decision	247-21-001043-PA, 1044-ZC
Brian Rabe			3511 Pacific Blvd SW	Albany, OR 97321	Hoff Decision	247-21-001043-PA, 1044-ZC



COMMUNITY DEVELOPMENT

NOTICE OF HEARINGS OFFICER'S RECOMMENDATION

The Deschutes County Hearings Officer recommends approval of the land use application(s) described below:

FILE NUMBERS: 247-21-001043-PA, 1044-ZC

LOCATION: Mailing Name: EDEN CENTRAL PROPERTIES LLC
Map and Taxlot: 1412280000100
Account: 163920
Situs Address: 10315 NW COYNER AVE, REDMOND, OR 97756

Mailing Name: EDEN CENTRAL PROPERTIES LLC
Map and Taxlot: 1412280000200
Account: 250543
Situs Address: 10325 NW COYNER AVE, REDMOND, OR 97756

Mailing Name: EDEN CENTRAL PROPERTIES LLC
Map and Taxlot: 1412280000300
Account: 124845
Situs Address: 10311 NW COYNER AVE, REDMOND, OR 97756

Mailing Name: EDEN CENTRAL PROPERTIES LLC
Map and Taxlot: 141228D000101
Account: 273062
Situs Address: **NO SITUS ADDRESS**

Mailing Name: EDEN CENTRAL PROPERTIES LLC
Map and Taxlot: 1412210000300
Account: 276793
Situs Address: **NO SITUS ADDRESS**

Mailing Name: EDEN CENTRAL PROPERTIES LLC
Map and Taxlot: 1412210000400
Account: 276794

Situs Address: **NO SITUS ADDRESS**

Mailing Name: EDEN CENTRAL PROPERTIES LLC

Map and Taxlot: 1412210000500

Account: 276791

Situs Address: **NO SITUS ADDRESS**

Mailing Name: EDEN CENTRAL PROPERTIES LLC

Map and Taxlot: 1412210000600

Account: 124846

Situs Address: 70000 BUCKHORN RD, TERREBONNE, OR 97760

Mailing Name: EDEN CENTRAL PROPERTIES LLC

Map and Taxlot: 1412210000700

Account: 276792

Situs Address: **NO SITUS ADDRESS**

APPLICANT:

710 Properties, LLC
PO Box 1345
Sisters, OR 97759

ATTORNEY(S) FOR APPLICANT:

Liz Fancher
2464 NW Sacagawea Lane
Bend, Oregon 97703

J. Kenneth Katzaroff
Schwabe Williamson & Wyatt
1420 5th Avenue, Suite 3400
Seattle, WA 98101

SUBJECT:

The applicant requests approval of a Comprehensive Plan Amendment to change the designation of the subject property from Agricultural (AG) to Rural Residential Exception Area (RREA). The applicant also requests a corresponding Zone Change to rezone the subject property from Exclusive Farm Use - Terrebonne subzone (EFU-TE) to Rural Residential (RR-10).

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/cd/page/247-21-001043-pa-and-247-21-001044-zc-eden-central-properties-comprehensive-plan-amendment>

APPLICABLE CRITERIA: The Hearings Officer reviewed this application for compliance against criteria contained in Chapters 18.04, 18.16, 18.60, 18.113, and 18.136 in Title 18 of the Deschutes County Code (DCC), the Deschutes County Zoning Ordinance, the procedural requirements of Title 22 of the DCC, Chapters 2, 3 and Appendix C of the Deschutes County Comprehensive Plan, Divisions 6, 12, 15, and 33 of the Oregon Administrative Rules (OAR) Chapter 660, and Chapter 215.211 of the Oregon Revised Statutes.

DECISION: The Hearings Officer finds that the applications meet applicable criteria, and recommends approval of the applications.

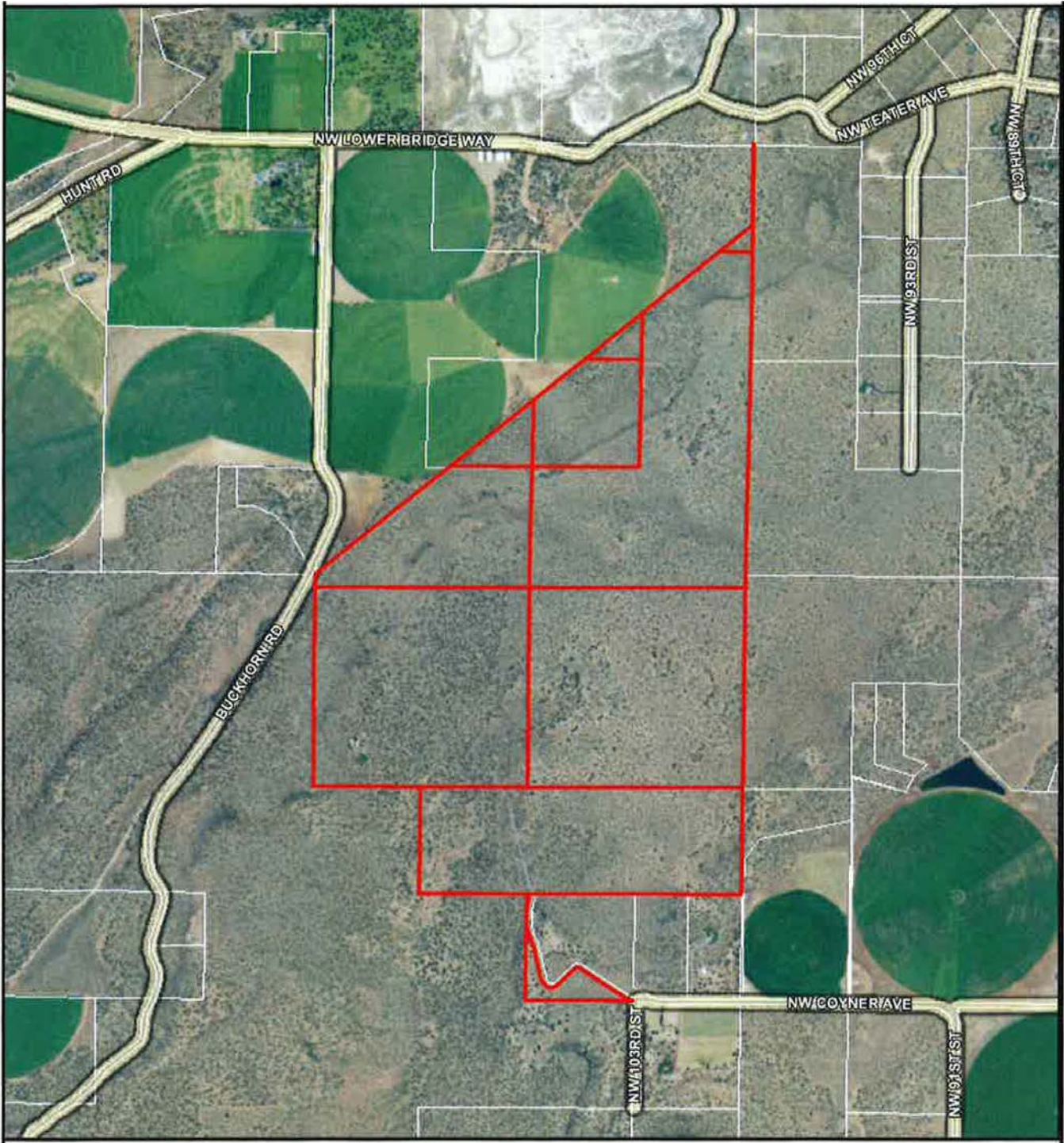
As a procedural note, the hearing on April 19, 2022, was the first of two required de novo hearings per DCC 22.28.030(c). The second de novo hearing will be heard in front of the Board of County Commissioners at a date to be determined.

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

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

Attachment: Location Map

Subject Property
File Nos: 247-21-0001043-PA, 22-1044-ZC



owner	agent	inCareOf	address	cityStZip	type	cdd id
DESCHUTES CO. ASSESSOR			ELECTRONIC		NOD	247-21-001043-PA, 1044-ZC
DESCHUTES CO. SR. TRANS. PLANNER	PETER RUSSELL		ELECTRONIC		NOD	247-21-001043-PA, 1044-ZC
DESCHUTES CO. BUILDING SAFETY			ELECTRONIC		NOD	247-21-001043-PA, 1044-ZC
DESCHUTES CO. ENVIRONMENTAL SOILS DIV.			ELECTRONIC		NOD	247-21-001043-PA, 1044-ZC
DESCHUTES CO. FORESTER	ED KEITH		ELECTRONIC		NOD	247-21-001043-PA, 1044-ZC
DESCHUTES CO. PROPERTY MGMT.	DEBORAH COOK / Deborah.Cook@deschutes.org		ELECTRONIC		NOD	247-21-001043-PA, 1044-ZC
DESCHUTES CO. ROAD DEPT.	CODY SMITH		ELECTRONIC		NOD	247-21-001043-PA, 1044-ZC
REDMOND FIRE & RESCUE	Tom Mooney (Tom.Mooney@redmondfireandrescue.org)	Wade Gibson (Wade.Gibson@redmondfireandrescue.org)	341 NW DOGWOOD AVE	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
OR DEPT. OF AG LAND USE PLANING COORD.	JIM JOHNSON		635 CAPITOL ST NE	SALEM, OR 97301	NOD	247-21-001043-PA, 1044-ZC
OREGON DEPT OF FISH & WILDLIFE	ANDREW WALCH (Andrew.J.Walch@odfw.oregon.gov)	Corey Heath (corey.heath@odfw.oregon.gov)	ELECTRONIC		NOD	247-21-001043-PA, 1044-ZC
OREGON DEPT OF AGRICULTURE	JON HARRANG (jharrang@oda.state.or.us - North DC)	ADAM MILLER (amiller@oda.state.or.us - South DC)	Electronic		NOD	247-21-001043-PA, 1044-ZC
DEPT. OF LAND CONSERV. & DEVEL.			1011 SW EMKAY DR., SUITE 108	Bend, OR 97702	NOD	247-21-001043-PA, 1044-ZC
DEPT. OF LAND CONSERV. & DEVEL.			635 CAPITOL ST. NE, #150	Salem, OR 97301-2540	NOD	247-21-001043-PA, 1044-ZC
WATERMASTER - DISTRICT 11	Sam VanLingham (sam.j.vanlingham@oregon.gov)		ELECTRONIC		NOD	247-21-001043-PA, 1044-ZC
BLM, PRINEVILLE DIST. - DESCHUTES FIELD MGR.	JEFF KITCHENS		3050 N.E. THIRD ST.	Prineville, OR 97754	NOD	247-21-001043-PA, 1044-ZC
Megan Ormid			4691 NW 91st Street	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Marlon Steele			2280 NW 101st	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Del and Lori Johnson			3848 NW 91st Street	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Paul Fisher			4141 NW 91st Street	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
William and Elizabeth Buchanan			10142 NW Coyner Ave	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Tim Phillips			21199 NW Spruce	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Pam Mayo-Phillips			21199 NW Spruce	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Kelsey Nonella			10611 NW Kingwood Drive	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Roger Nonella			10611 NW Kingwood Drive	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Steve Ahlberg			8163 NW Spruce Avenue	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Paige Dufour			8163 NW Spruce Avenue	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Terri Ahlberg			8163 NW Spruce Avenue	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Scott Hayes and Pam Nofziger-Hayes			10135 NW Coyner Ave	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Jason and Tammy Birkild			9307 NW Coyner Ave	Redmond OR 97756	NOD	247-21-001043-PA, 1044-ZC
Kelsey and Matt Pereboom			3475 NW 91st Street	Redmond OR 97756	NOD	247-21-001043-PA, 1044-ZC
Central Oregon Land Watch			2843 NW Lolo Drive, Suite 200	Bend, OR 97703	NOD	247-21-001043-PA, 1044-ZC
Jock and Karen Elliott			2460 NW 101st Street	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Binny Skidgel			4909 NW 83rd Street	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Central Oregon Land Watch			2843 NW Lolo Drive, Suite 200	Bend, OR 97703	NOD	247-21-001043-PA, 1044-ZC
Korren Bower			650 SW Bond Ste 100	Bend, OR 97702	NOD	247-21-001043-PA, 1044-ZC
Michael and Vicki Smith			7350 NW Atkinson Ave	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Marilyn Hofmann-Jones			60102 W Ridgeview Drive	Bend, OR 97702	NOD	247-21-001043-PA, 1044-ZC
Steve Greening			1435 NW Galveston Ave	Bend, OR 97703	NOD	247-21-001043-PA, 1044-ZC
Kim Erdel			60780 Ward Rd	Bend, OR 97702	NOD	247-21-001043-PA, 1044-ZC
Rebecca French			70103 Mustang Drive	Sisters, Or 97759	NOD	247-21-001043-PA, 1044-ZC
Peter Geiser			PO Box 581	Bend, OR 97709	NOD	247-21-001043-PA, 1044-ZC
Byron Buck			19186 Mt Shasta Drive	Bend, OR 97703	NOD	247-21-001043-PA, 1044-ZC
Eric Lea			7117 NW Grubstake Way	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Charles Arnold			66115 White Rock Loop	Bend, OR 97703	NOD	247-21-001043-PA, 1044-ZC
Kristi Newton			10225 NW Oak Lane	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Kent Pressman			20025 Millcrest Place	Bend, Or 97703	NOD	247-21-001043-PA, 1044-ZC
Dick Kellogg			26247 Metolius Meadows Drive	Camp Sherman, OR 97730	NOD	247-21-001043-PA, 1044-ZC
Debbie Salido			170 SE Windance Court	Bend, OR 97702	NOD	247-21-001043-PA, 1044-ZC
Bob Duff			1106 Sw 12th	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Karen Painter			630 NW Rimrock Drive	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Elizabeth Nelson			18160 Cottonwood Road #275	Sunriver, OR 97707	NOD	247-21-001043-PA, 1044-ZC
Rick Felde			16455 Fair Mile Road	Sisters, OR 97759	NOD	247-21-001043-PA, 1044-ZC
Ray Gertler			1012 SW Emkay Drive	Bend, OR 97702	NOD	247-21-001043-PA, 1044-ZC
Cindy Murphy and Mark Piper			1522 NW Kesley Lane	Terrebonne, OR 97760	NOD	247-21-001043-PA, 1044-ZC
Liz Smith			2808 NE Lotno Drive	Bend, OR 97701	NOD	247-21-001043-PA, 1044-ZC
Robin Snyder			7000 SW Umatilla Ave	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Rima Givot			18557 McSwain Drive	Sisters, OR 97759	NOD	247-21-001043-PA, 1044-ZC
Tony Oliver			550 NW 74th Street	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Lane Tandy			310 E Apenwood Ave	Sisters, OR 97759	NOD	247-21-001043-PA, 1044-ZC
Daniela Marshall			PO Box 1471	Sisters, OR 97759	NOD	247-21-001043-PA, 1044-ZC
Paul Lipscomb			PO Box 579	Sisters, OR 97759	NOD	247-21-001043-PA, 1044-ZC
Robin Vora			1679 NE Daphne Court	Bend, OR 97701	NOD	247-21-001043-PA, 1044-ZC
Lindsey Overstreet			14977 Cantle	Sisters, OR 97759	NOD	247-21-001043-PA, 1044-ZC
Justine Pillar			8581 Se 57th Ave	Portland, OR 97206	NOD	247-21-001043-PA, 1044-ZC
Charles Humphreys			PO Box 1960	Sisters, OR 97759	NOD	247-21-001043-PA, 1044-ZC
Becky Powell			PO Box 1783	Bend, OR 97709	NOD	247-21-001043-PA, 1044-ZC
Ryder Redfield			8801 NW 93rd Lane	Terrebonne, OR 97760	NOD	247-21-001043-PA, 1044-ZC
Adele Sommer			67134 Gist Road	Bend, OR 97703	NOD	247-21-001043-PA, 1044-ZC
Renee Sweezy			61064 Larkspur Loop	Bend, OR 97702	NOD	247-21-001043-PA, 1044-ZC
Jeff Boyer			21827 Boones Borough Dr	Bend, OR 97701	NOD	247-21-001043-PA, 1044-ZC
Shelli Blais and Kim Campbell			9590 NW Teater Ave, Terrebonne	Terrebonne, OR 97760	NOD	247-21-001043-PA, 1044-ZC
Keenan Ordon-Bakalian			360 SW Bond St, Suite 510	Bend, OR 97702	NOD	247-21-001043-PA, 1044-ZC
Diane Lozito			550 NW Franklin Ave, Suite 108	Bend, OR 97703	NOD	247-21-001043-PA, 1044-ZC

Ted Netter		70535 NW Lower Bridge Way	Terrebonne, OR 97760	NOD 247-21-001043-PA, 1044-ZC
Becky Powell		20607 Coventry Circle	Bend, OR 97702	NOD 247-21-001043-PA, 1044-ZC
Nunzie Gould		19845 J W Brown Rd.	Bend, OR 97703	NOD 247-21-001043-PA, 1044-ZC
Jeff Roberg		8187 NW 93rd	Terrebonne, OR 97760	NOD 247-21-001043-PA, 1044-ZC
Jon Jinings		104 Empire Avenue	Bend, OR 97701	NOD 247-21-001043-PA, 1044-ZC
James M. Stirewalt II		2152 SW Jericho Lane	Culver, OR 97734	NOD 247-21-001043-PA, 1044-ZC
Rand Campbell		20350 Tumalo Road	Bend, OR 97703	NOD 247-21-001043-PA, 1044-ZC
Fran Robertson		20276 Tumalo Road	Bend, OR 97703	NOD 247-21-001043-PA, 1044-ZC
Jim McMullen		9900 NW Teater Avenue	Terrebonne, OR 97760	NOD 247-21-001043-PA, 1044-ZC
1000 Friends of Oregon	Andrew Mulkey	PO Box 40367	Portland, OR 97240	NOD 247-21-001043-PA, 1044-ZC
9805 NW TEATER AVENUE LLC		101 SECOND ST #900	SAN FRANCISCO, CA 94105	NOD 247-21-001043-PA, 1044-ZC
HAYES LIVING TRUST	HAYES, FRANKLIN S TRUSTEE ET AL	10135 NW COYNER AVE	REDMOND, OR 97756	NOD 247-21-001043-PA, 1044-ZC
BENDIX, GARY & LISA		10255 NW COYNER AVE	REDMOND, OR 97756	NOD 247-21-001043-PA, 1044-ZC
CYNTHIA E WITHERILL FAMILY TRUST	WITHERILL, CYNTHIA E TTEE	10305 NW COYNER AVE	REDMOND, OR 97756	NOD 247-21-001043-PA, 1044-ZC
ROLLINS, RANDALL T		17961 S EDGEWOOD	OREGON CITY, OR 97045	NOD 247-21-001043-PA, 1044-ZC
VOLWOOD FARMS LLC		25994 HALL RD	JUNCTION CITY, OR 97448	NOD 247-21-001043-PA, 1044-ZC
STABB, EDWARD D		2940 NW 74TH ST	REDMOND, OR 97756	NOD 247-21-001043-PA, 1044-ZC
BIRKLD, JASON F & TAMMY M		3816 110TH AVE E	EDGEWOOD, WA 98372	NOD 247-21-001043-PA, 1044-ZC
KIM L CAMPBELL REVOCABLE LIVING TRUST	CAMPBELL, KIM L TTEE	9590 NW TEATER ST	TERREBONNE, OR 97760	NOD 247-21-001043-PA, 1044-ZC
HOFELD MCMULLEN TESTAMENTARY TRUST	MCMULLEN, JAMES B TTEE ET AL	9900 NW TEATER AVE	TERREBONNE, OR 97760	NOD 247-21-001043-PA, 1044-ZC
EDEN CENTRAL PROPERTIES LLC		C/O CHARLES F THOMAS III (A)	SISTERS, OR 97759	NOD 247-21-001043-PA, 1044-ZC
BUCHANAN, ELIZABETH ADAIR		PO BOX 1345	REDMOND, OR 97756	NOD 247-21-001043-PA, 1044-ZC
REDSIDE RESTORATION PROJECT ONE LLC		C/O MOSS ADAMS (A)	LOS ANGELES, CA 90024	NOD 247-21-001043-PA, 1044-ZC
DESCHUTES COUNTY		C/O PROPERTY MANAGEMENT	BEND, OR 97708-6005	NOD 247-21-001043-PA, 1044-ZC



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: October 2, 2024

SUBJECT: Consideration of Second Reading of Ordinance 2024-007 adopting the Deschutes County 2040 Comprehensive Plan Update

RECOMMENDED MOTIONS:

1. Move approval of second reading of Ordinance 2024-007 by title only.
2. Move adoption of Ordinance No. 2024-007.

BACKGROUND AND POLICY IMPLICATIONS:

The Community Development Department has prepared an update to the County's Comprehensive Plan. On September 16, 2024, the Board conducted first reading of Ordinance 2024-007 to approve and adopt the Deschutes County 2040 Comprehensive Plan. State law requires two weeks between first and second reading. The purpose of this item to complete second reading to fully adopt the document.

The full record is located on the project website: <https://www.deschutes.org/cd/page/247-23-000644-pa-deschutes-county-2040-comprehensive-plan-update-hearing-page>

BUDGET IMPACTS:

None.

ATTENDANCE:

Will Groves, Planning Manager



MEMORANDUM

TO: Deschutes County Board of County Commissioners (“Board”)

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

DATE: September 25, 2024

SUBJECT: Consideration of Second Reading – Ordinance 2024-007 Deschutes County 2040 Comprehensive Plan Update

On October 2, 2024, the Board will conduct second reading of Ordinance 2024-007 to formally adopt the Deschutes County 2040 Comprehensive Plan.

I. PROPOSAL

Over the course of 24 months, Deschutes County Community Development Department staff and project consultant, MIG Inc., conducted an extensive process to gather input on an update of the County’s Comprehensive Plan.

The proposal is a legislative text amendment to repeal and replace the 2030 Comprehensive Plan, adopted in 2011, with the 2040 Plan. No zoning or comprehensive plan map amendments are being considered, nor are any changes to the County’s adopted Goal 5 inventories pertaining to significant natural resources, scenic views, open spaces, mineral and aggregate sites, and historic and cultural resources.

The full record is included on the project hearing page: <https://www.deschutes.org/cd/page/247-23-000644-pa-deschutes-county-2040-comprehensive-plan-update-hearing-page>.

II. DELIBERATION AND ADOPTION PROCESS

The 2040 Plan provides background information, a summary of community considerations, and overarching goal and policy guidance pertaining to key issues facing the county. The Board held public hearings to gather testimony for the 2040 Plan on April 10, 2024, in Bend¹;

¹ <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-162>

April 23 in Sunriver²; and April 30 in Sisters³; and May 8 in Bend⁴. At the conclusion of the May 8 hearing, the Commission voted to close the oral record, leave the written record open until May 30, and commence deliberations at a subsequent meeting.

Staff held a work session with the Board on June 10⁵ to discuss the process for deliberating the 2040 Plan, ultimately determining to perform an extensive review of the following four chapters:

- July 22: Chapter 3, Farm and Forest Resources⁶
- July 24: Chapter 5, Natural Resources⁷
- July 29: Chapter 7, Natural Hazards⁸
- August 5: Chapter 11, Unincorporated Communities and Destination Resorts⁹
- August 19: Entire Document Review¹⁰

On September 16, 2024, the Board completed deliberations and voted 2-1 to approve the September 6, 2024, version of the Deschutes County 2040 Comprehensive Plan and conduct first reading of the implementing Ordinance No. 2024-007 by title only. The Board asked staff to correct a minor error with the listing of the current Board chair. The attached 2040 Plan has been revised to correct this error.

III. NEXT STEPS

The Board will conduct second reading on October 2, 2024. Following adoption, interested parties have 21 days to appeal the decision to the Oregon Land Use Board of Appeals. If not appealed, the Deschutes County 2040 Plan will become effective on December 31, 2024.

Attachments:

Ordinance 2024-007

- Exhibit A: Legislative History 23.01
- Exhibit B: Deschutes County 2040 Comprehensive Plan - September 6, 2024, version
- Exhibit C: Legislative History 5.12
- Exhibit D: Proposed Findings

²<https://www.deschutes.org/bcc/page/public-hearing-2020-2040-comprehensive-plan-update>
³<https://www.deschutes.org/bcc/page/public-hearing-2020-2040-comprehensive-plan-update-0>
⁴<https://www.deschutes.org/bcc/page/2020-2040-comprehensive-plan-update-public-hearing>
⁵<https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-175>
⁶<https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-179>
⁷<https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-186>
⁸<https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-182>
⁹<https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-183>
¹⁰<https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-188>

REVIEWED
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Repealing and Replacing Title 23, the Deschutes County Comprehensive Plan *
*
*
*
ORDINANCE NO. 2024-007

WHEREAS, the Board of County Commissioners (“Board”) requested an extensive update of the County Comprehensive Plan (“Plan”) adopted by Ordinance 2011-003 on August 10, 2011; and

WHEREAS, after notice was given in accordance with applicable law, public hearing was held before the Deschutes County Planning Commission on October 26, November 9, and December 14, 2023, to consider the revised draft Plan; and

WHEREAS, on February 22, 2024, the Planning Commission forwarded to the Board of County Commissioners (“Board”) a recommendation of approval to adopt changes to the Plan; and

WHEREAS, after notice was given in accordance with applicable law, public hearings were held before the Board on April 10 in Bend, April 23 in Sunriver, April 30 in Sisters, and May 8, 2024 in Bend and concluded that the public will benefit from changes to the Plan; and

WHEREAS, the Board finds it in the public interest to adopt the following Comprehensive Plan amendments; and

WHEREAS, the Goal Post rule set forth in ORS 227.178(3)(a) prescribes the newly adopted plan apply to applications submitted after the effective date; now, therefore,

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

Section 1. REPEALING AND REPLACING. Deschutes County Code 23.01(A), adopted by Ordinance 2011-003, is repealed and replaced with 23.01(BK) to read as described in Exhibit “A”, attached and incorporated by reference herein with repealed language set forth in ~~strike through~~ and underlined.

Section 2. REPEALING AND REPLACING. The 2010 Deschutes County Comprehensive Plan, adopted by Ordinance 2011-003, is repealed and replaced with the 2040 Deschutes County Comprehensive Plan, to read as described in Exhibit “B”, attached and incorporated by reference herein.

Section 3. AMENDING. Deschutes County Comprehensive Plan Section 5.12, Legislative History, is amended to read as described in Exhibit "C", attached and incorporated by reference herein, with new language underlined.

Section 4. FINDINGS. The Board adopts as its findings Exhibit "D," attached and incorporated by reference herein.

Section 5. EFFECTIVE DATE. This Ordinance takes effect on the 90th day after the date of adoption or, if appealed, the date the ordinance is no longer subject to appeal.

Dated this _____ of _____, 2024

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PATTI ADAIR, Chair

ANTHONY DeBONE, Vice Chair

ATTEST:

Recording Secretary

PHILIP CHANG, Commissioner

Date of 1st Reading: _____ day of _____, 2024.

Date of 2nd Reading: _____ day of _____, 2024.

Record of Adoption Vote:

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

Effective date: _____ day of _____, 2024.

Exhibit “A” to Ordinance 2024-007 – Comprehensive Plan Section 5.12

TITLE 23 COMPREHENSIVE PLAN

CHAPTER 23.01 COMPREHENSIVE PLAN

- A. ~~The Deschutes County Comprehensive Plan, adopted by the Board in Ordinance 2011-003 and found on the Deschutes County Community Development Department website, is incorporated by reference herein.~~
- B. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2011-027, are incorporated by reference herein.
- C. [Repealed by Ordinance 2013-001, §1]
- D. [Repealed by Ordinance 2023-017]
- E. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-012, are incorporated by reference herein.
- F. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-016, are incorporated by reference herein.
- G. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-002, are incorporated by reference herein.
- H. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-009, are incorporated by reference herein.
- I. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-012, are incorporated by reference herein.
- J. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-007, are incorporated by reference herein.
- K. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-005, are incorporated by reference herein.
- L. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-006, are incorporated by reference herein.
- M. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-012, are incorporated by reference herein.
- N. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-021, are incorporated by reference herein.
- O. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-027, are incorporated by reference herein.
- P. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-021, are incorporated by reference herein.

Exhibit A to Ordinance 2024-007 – Comprehensive Plan Section 23.01

- Q. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-029, are incorporated by reference herein.
- R. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-018, are incorporated by reference herein.
- S. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-010, are incorporated by reference herein.
- T. [Repealed by Ordinance 2016-027 §1]
- U. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-022, are incorporated by reference herein.
- V. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-005, are incorporated by reference herein.
- W. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-027, are incorporated by reference herein.
- X. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-029, are incorporated by reference herein.
- Y. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2017-007, are incorporated by reference herein.
- Z. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-002, are incorporated by reference herein.
- AA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-006, are incorporated by reference herein.
- AB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-011, are incorporated by reference herein.
- AC. [repealed by Ord. 2019-010 §1, 2019]
- AD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-008, are incorporated by reference herein.
- AE. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-002, are incorporated by reference herein.
- AF. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-001, are incorporated by reference herein.
- AG. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-003, are incorporated by reference herein.
- AH. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-004, are incorporated by reference herein.

- AI. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-011, are incorporated by reference herein.
- AJ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-006, are incorporated by reference herein.
- AK. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-019, are incorporated by reference herein.
- AL. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-016, are incorporated by reference herein.
- AM. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-001, are incorporated by reference herein.
- AN. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-002, are incorporated by reference herein.
- AO. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-003, are incorporated by reference herein.
- AP. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-008, are incorporated by reference herein.
- AQ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-007, are incorporated by reference herein.
- AR. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-006, are incorporated by reference herein.
- AS. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-009, are incorporated by reference herein.
- AT. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-013, are incorporated by reference herein.
- AU. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2021-002, are incorporated by reference herein.
- AV. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2021-005, are incorporated by reference herein.
- AW. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2021-008, are incorporated by reference herein.
- AX. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-001, are incorporated by reference herein.
- AY. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-003, are incorporated by reference herein.

- AZ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-006, are incorporated by reference herein.
- BA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-010, are incorporated by reference herein.
- BB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-011, are incorporated by reference herein. (superseded by Ord. 2023-015)
- BC. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-013, are incorporated by reference herein.
- BD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-001, are incorporated by reference herein.
- BE. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-007, are incorporated by reference herein.
- BF. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-010 are incorporated by reference herein.
- BG. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-018, are incorporated by reference herein.
- BH. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-015, are incorporated by reference herein.
- BI. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-025, are incorporated by reference herein.
- BJ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-001, are incorporated by reference herein.
- BK. The Deschutes County Comprehensive Plan, adopted by the Board in Ordinance 2024-007 and found on the Deschutes County Community Development Department website, is incorporated by reference herein.

Click here to be directed to the Comprehensive Plan (<http://www.deschutes.org/compplan>)

Deschutes County Comprehensive Plan



DESCHUTES
COUNTY
2040



Draft - Revised September 6, 2024

Acknowledgements

BOARD OF COUNTY COMMISSIONERS

- Patti Adair, Chair
- Anthony DeBone, Vice Chair
- Phil Chang

DESCHUTES COUNTY PLANNING COMMISSION

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Introduction

The purpose of the Deschutes County Comprehensive Plan is to provide a blueprint for land use conservation and development. This is accomplished through goals and policies that tell a cohesive story of where and how development should occur and what places should remain undeveloped. The Plan provides a legal framework for establishing more specific land use actions and regulations such as zoning. The goals and policies are based on existing conditions and trends, community values and the statewide planning system. The Plan must provide clear policy direction yet remain flexible.

The County's most recent Comprehensive Plan was adopted in 2011. Since then, the County has grown substantially and experienced many demographic and economic shifts. Between April 2010 and July 2020, the County's population grew from 157,730 residents to 198,253 residents. This growth - 25.7% over ten years - is over twice the 10.6% increase that the State of Oregon experienced as a whole. The latest projections from Portland State University's Population Research Center suggest strong continued growth throughout Deschutes County.

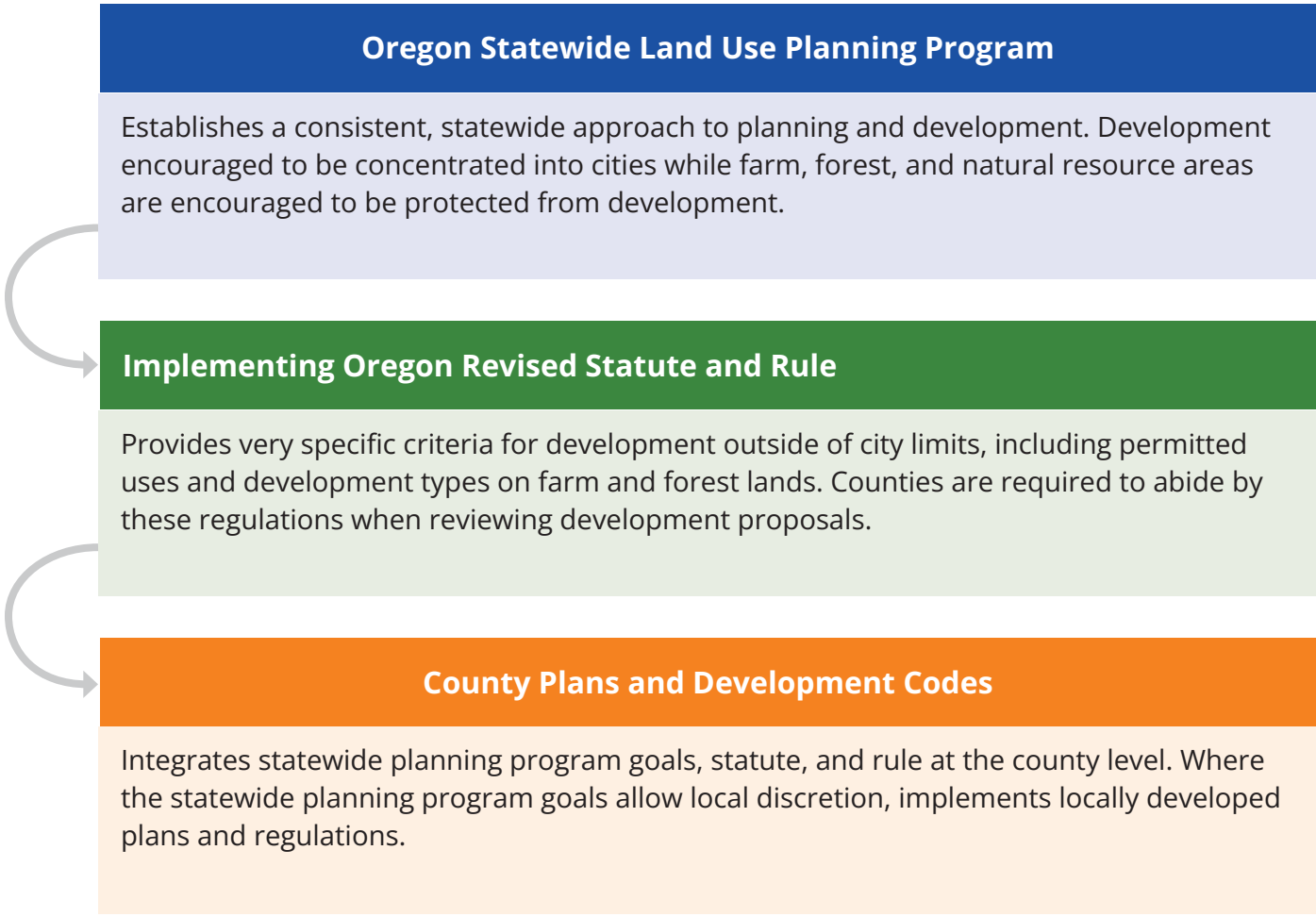
An updated Comprehensive Plan is necessary to address current needs of the communities in the County, as well as to guide the anticipated growth and development of Deschutes County over the next twenty years. Although many of the goals and policies of the 2011 Plan still hold value, fundamental data, trends, and land use issues have become outdated. The updated Comprehensive Plan needs to incorporate community input to craft new and updated goals and policies regarding agriculture, forestry, housing, recreation, natural resources, natural hazards, economic development, and transportation.



In Oregon, comprehensive plans must comply with the statewide planning system, which was adopted in 1973 to ensure consistent land use policies across the State. While compliance with the statewide system is required, it is also important for a comprehensive plan to reflect local needs and interests. This Plan balances statewide requirements and local land use values.

The Comprehensive Plan is the County’s long-range plan for how it will grow and serve its community members in the future. Oregon state law requires all counties and cities to adopt and regularly update Comprehensive Plans that are consistent with state and regional goals, laws, administrative rules and other requirements and guidelines. The Comprehensive Plan addresses topics such as land use, housing, economic

development, transportation, parks and recreation, and natural resources, with a strong emphasis on how land is used, developed, and/or conserved. Other topics in the plan include citizen involvement, natural hazards, and public infrastructure and facilities, and more. The Plan describes conditions related to each element of the community and provides overarching guidance for future County decisions in the form of a set of goals, objectives, and policies. These policies will drive future decisions and actions undertaken by County staff, advisory groups, and elected decision-makers.



Deschutes County Timeline



1859
Oregon Statehood



1905
City of Bend incorporated



1916
Deschutes County created from a portion of Crook County



1937
County Courthouse and most early records destroyed by fire



1941
Roberts Airfield completed allowing flights to Central Oregon for the first time



1970
"Deschutes County to 1990" Comprehensive Plan



1973
SB100 and Oregon Land Use Planning System Enacted



1979
"Deschutes County Year 2000" Comprehensive Plan



1988 to 2003
Periodic Review and updates to Comprehensive Plan



2010
"Deschutes County 2030" Comprehensive Plan Update



2023
"Deschutes 2040" Comprehensive Plan Update

City of Bend photo courtesy of DowntownBend.org

1

Community Engagement





Opportunities, Challenges, and Considerations

Public engagement is the touchstone of planning in Oregon. As Deschutes County grows and its population changes over the course of the next 20 years, the County must be prepared to find innovative ways to keep community members involved in the planning process and provide ample and accessible ways to find and digest information. Challenges including funding, resources, and ongoing state appeals might pose barriers to this work. The County has an opportunity to plan for adequate resources and staffing to support this work.

2023 Comprehensive Plan Update

A far-reaching community conversation was a vital part of updating the Deschutes County Comprehensive Plan. This effort included:

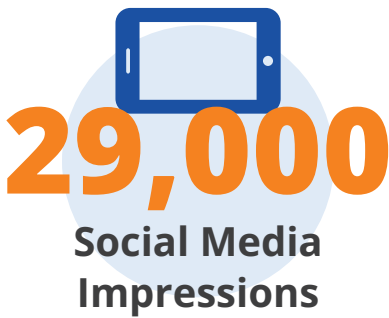
- Two phases of engagement – one focusing on long-range vision, opportunities, and challenges; and another phase focusing on important and controversial topics.
- Outreach events in all parts of the County.
- A deliberate audit of engagement activities to learn and build on successes.

Context

Involving the public in planning is a critical part of Oregon's land use system. Statewide Planning Goal 1 - Citizen Involvement, is intended to ensure that the public has the opportunity to be meaningfully involved in all phases of the land use planning process. Creating these opportunities requires time and energy on the part of County staff, as well as systems to incorporate that input in a meaningful way.

To participate in planning actions, the public needs to be notified of the proposal or project, understand the legal framework for the decision and understand the implications of the decision. Local governments need to be aware of changing technologies and best practices to involve the community and share project information. Community engagement can take many forms, such as focus groups for a larger planning project, email notification lists for department activities, or mailed notices of public hearings.

Summary of Engagement for the 2023 Update



Regulatory Framework

Statewide Planning Goal 1 – Citizen Involvement lays the groundwork for the County’s public involvement program. Jurisdictions are required to establish a Citizen Involvement Program that provides widespread community involvement, two-way communication with appropriate feedback mechanisms, opportunities for engagement in all phases of the planning process, technical information available in an intelligible form, and is adequately funded.

Statewide Planning Goal 1

To develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process.

Deschutes County’s Community Involvement Program

Statewide Planning Goal 1 is implemented by Deschutes County’s Community Involvement Program, as described in the following section.

DESCHUTES COUNTY PLANNING COMMISSION

The Deschutes County Planning Commission serves as the County’s Committee for Community Involvement (CCI). The Planning Commission is composed of seven volunteer

members appointed to four-year terms by the Board of County Commissioners (Board).

Membership of the commission is representative of the various geographic areas of the County. Members are selected through an open process that aims to balance the diverse views of Deschutes County residents.

The purpose of the CCI is to create a direct and transparent connection between County decision-making and the public by providing regular updates, speakers, panel discussions, and handouts on land use law and policy. The CCI aims to make materials intelligible and convenient for the public and to provide a venue for civil discourse on important issues for the County.

HISTORIC LANDMARKS COMMISSION

The Historic Landmarks Commission serves as a hearings body for matters concerning historical districts, structures and sites within unincorporated Deschutes County as well as the city of Sisters. The Landmarks Commission is composed of nine voting and several non-voting ex-officio members who have demonstrated expertise in historic preservation related disciplines. Commissioners serve four-year terms.



OTHER LAND USE RELATED ADVISORY GROUPS

Project Wildfire is a committee formed to coordinate, develop and implement strategies to mitigate the effects of losses due to natural disasters that strike Deschutes County. Project Wildfire is composed of 15 to 27 members who reside or represent agencies within Deschutes County. All members are appointed by the Board and serve four years (see also Chapter 7, Natural Hazards).

The Deschutes River Mitigation and Enhancement Program helps achieve Oregon Department of Fish and Wildlife (ODFW) habitat and management goals and objectives within the Upper Deschutes River sub-basin, consistent with an agreement between the Central Oregon Irrigation District (COID) and ODFW. As part of that agreement COID provides ODFW with funds to develop and implement a fish and wildlife habitat mitigation and enhancement program for the Upper Deschutes River Basin. The Deschutes River Mitigation and Enhancement Committee has seven voting members appointed to three-year terms by the Board.

In addition to convening these groups, Deschutes County engages with the public through numerous methods, including:

- Conducting regular work sessions and hearings
- Providing timely public notice of important items
- Maintaining the County Website, including the department's "Community Engagement Center" page.
- Advertising events and engaging with constituents through social media channels
- Coordinating with media organizations, such as local newspapers.
- Meeting with individuals and small groups to get feedback on important issues.

These activities were part of the most recent update of this Comprehensive Plan.





Key Community Issues

Deschutes County is changing and community members are seeking new ways to share their ideas on key issues. To provide ample opportunities to engage, new tools and technologies will be needed to involve new groups. Issues that the policies in this section address include:

- Continuing to simplify materials to use plain language and be accessible to a variety of audiences
- Continuing to maintain a presence throughout the County, including holding meetings and events throughout the County
- Supporting engagement activities that allow community members to participate virtually and at the time of their choosing.

With these issues in mind, Deschutes County has adopted the following goals and policies:

Goals and Policies

Goal 1.1: Provide for a robust community involvement program that includes all members of the community, including those who are commonly under-represented, by ensuring access to information, encouraging community collaboration, identifying and addressing barriers to involvement, and promoting efficient and transparent planning processes.

Policy 1.1.1. Convene the Deschutes County Planning Commission as the County's Committee for Community Involvement in order to provide a direct and transparent connection between County decision-making and the public.

Policy 1.1.2. Write all County planning documents to be understandable, intuitive, and easily available to the general public, using simplified language where possible, with acronyms spelled out and technical language explained.

Policy 1.1.3. Hold area-specific comprehensive plan and zoning text amendment public hearings in locations and at times convenient and accessible to area residents, as appropriate.

Policy 1.1.4. Provide property information to the public in an intuitive and easy-to-use manner.

Policy 1.1.5. Consult and coordinate with developers before submitting applications as required or recommended by the County Development Code to identify and discuss project requirements and impacts.

Policy 1.1.6. Invest in and support land use educational resources for community members including information related to rural living, agricultural practices, natural resources, and natural hazards.

Policy 1.1.7. Promote opportunities for community members to have civil dialogue around key community issues.

Policy 1.1.8. Explore new and innovative ways to reach community members and promote participation in the planning process.

Goal 1.2: Support the activities of the Committee for Community Involvement

Policy 1.2.1. Maintain adequate funding and staffing support for the Committee.

Policy 1.2.2. Provide regular updates, speakers, panel discussions, and handouts on land use law and policy.

Policy 1.2.3. Appoint members through an open and public process to reflect the diverse geographic regions, demographics, and values of Deschutes County residents.

Policy 1.2.4. Meet with the Board of County Commissioners at least once a year to coordinate planning policies and activities.

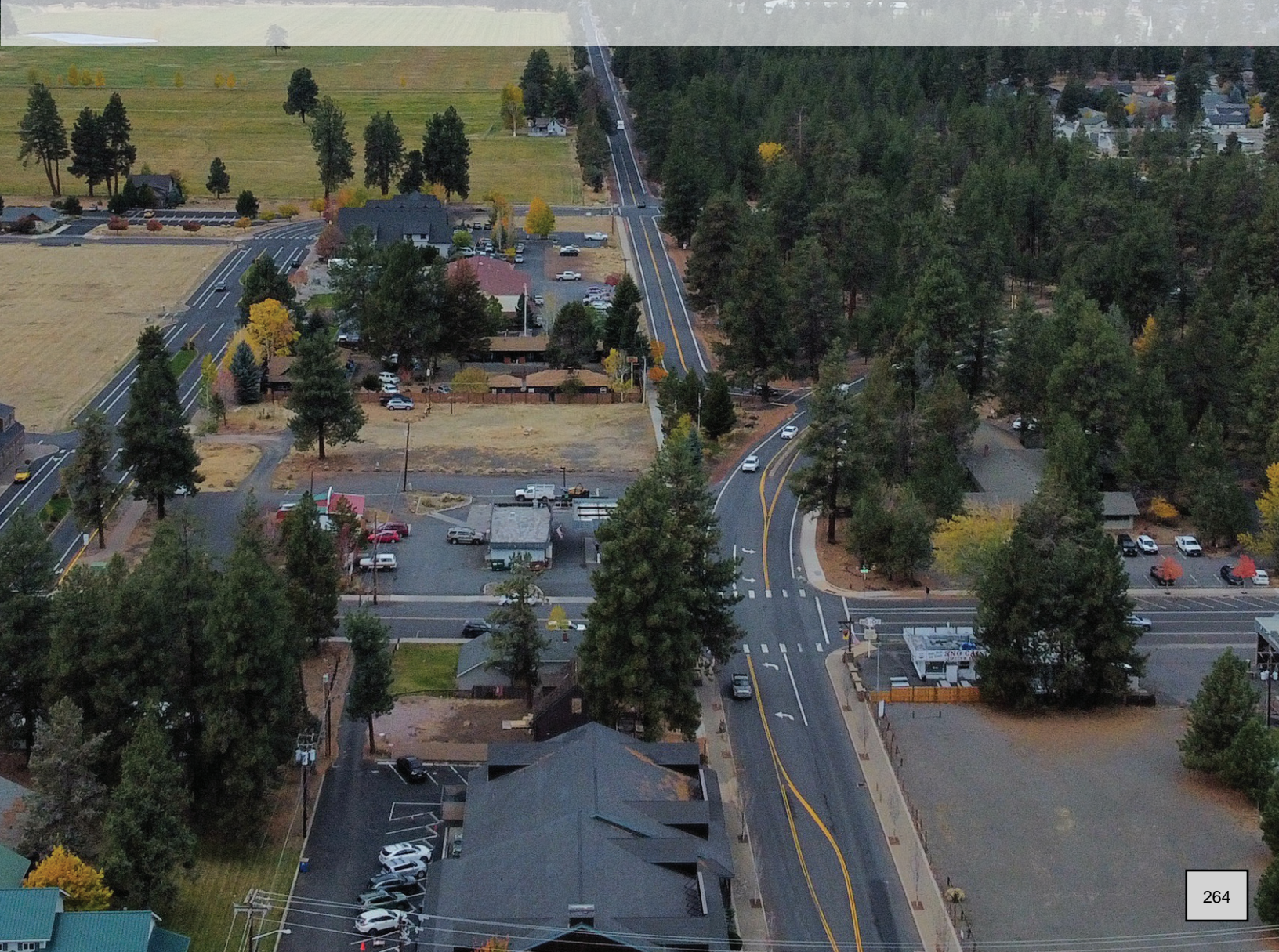
Policy 1.2.5. Complete periodic reports on community involvement implementation for the State Citizen Involvement Advisory Committee, the Board of County Commissioners, and the public.

Policy 1.2.6. Maintain open and civil discourse among Committee members and with the public.



2

Land Use and Regional Coordination





Opportunities, Challenges, and Considerations

Deschutes County has been one of the most rapidly growing parts of Oregon for many years. This growth can cause tension and highlight trade-offs between community priorities, such as the need for housing, preservation of natural resources, adequate infrastructure, and intergovernmental collaboration. To manage this growth, the County partners with its cities, special districts, and state and federal agencies to ensure a collaborative approach to development activities. As the County continues to navigate emerging issues, intergovernmental agreements and new partnerships will be key.

One purpose of the Deschutes County Comprehensive Plan is to provide a blueprint for land use throughout the County. This is accomplished through goals and policies that tell a cohesive story of where and how development should occur and what places are expected to remain undeveloped. The Plan provides a legal framework for establishing more specific land use actions and regulations.

Deschutes County regulates and manages the use of land in the unincorporated parts of the County. This is accomplished by:

- Implementing state policy and laws and furthering local planning goals by maintaining, updating and applying County land use policies, standards and regulations in its zoning codes and this Comprehensive Plan.
- Reviewing development and land use proposals and help applicants to navigate the application process.
- Coordinating with other local jurisdictions on issues of regional growth management, infrastructure, and public services.

- Coordinating land use and transportation planning efforts in rural areas including planning for farm and forest lands and natural resource management and protection.
- Administering land use regulations for unincorporated communities in the County.

The policies contained in this chapter, as well as all chapters in this Plan, establish the legislative policy basis for the County's land use planning program. The program is implemented primarily through application of the County's Zoning Code, regulatory maps, and development permitting application and approval procedures. In addition, these policies establish important criteria to be used when initiating regulatory changes or reviewing and developing code, map, and policy amendments.

Note: Official comprehensive plan and zoning maps, including overlay zone maps, are available through the Deschutes County Dial Property Information System.

Context

Comprehensive Plan Designations

Comprehensive Plan designations provide a high-level policy basis for more detailed zoning regulations – each Comprehensive Plan designation may be implemented by one or more specific zones.

Comprehensive plan designations in Deschutes County are shown in Map 2-1 and described in the preceding table. Comprehensive Plan designations within the Bend, Redmond, Sisters, and La Pine Urban Growth Boundaries are excluded – local jurisdictions have responsibility for comprehensive planning within their Urban Growth Boundaries.

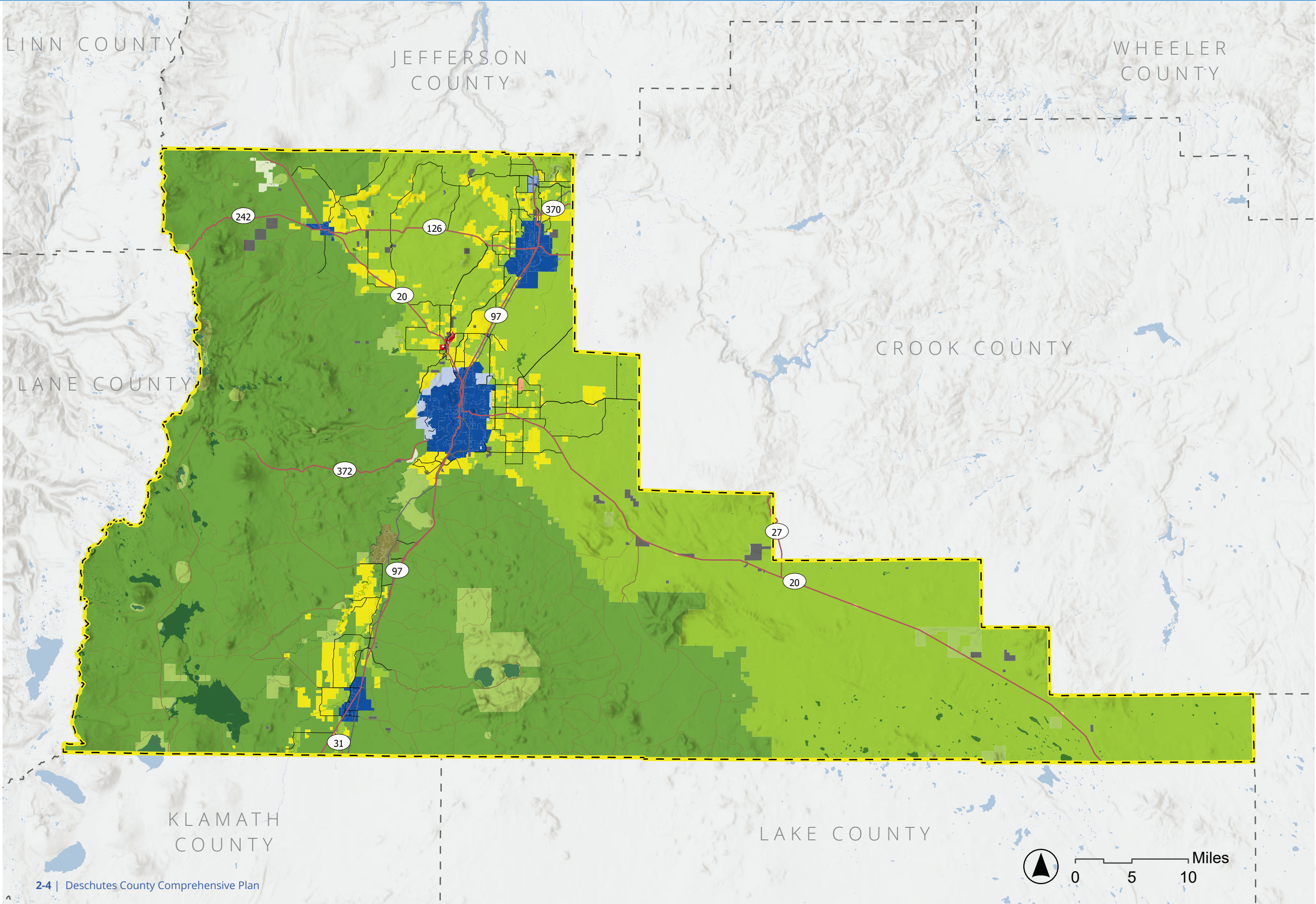
Zoning Designations

Zoning designations in Deschutes County are shown in Map 2-2. Zones within the Bend, Redmond, Sisters, and La Pine Urban Growth Boundaries are excluded - local jurisdictions have responsibility for zoning within Urban Growth Boundaries.

Comprehensive Plan Designation	Purpose Statement
County-wide Designations	
Agriculture	To preserve and maintain agricultural lands for farm use.
Airport Development	To allow development compatible with airport use while mitigating impacts on surrounding lands.
Forest	To conserve forest lands for multiple forest uses.
Open Space & Conservation	To protect natural and scenic open spaces, including areas with fragile, unusual or unique qualities.
Rural Residential Exception Area	To provide opportunities for rural residential living outside urban growth boundaries and unincorporated communities, consistent with efficient planning of public services.
Surface Mining	To protect surface mining resources from development impacts while protecting development from mining impacts.
Resort Community	To define rural areas with existing resort development that are not classified as a destination resort.
Rural Community	To define rural areas with limited existing urban-style development.
Rural Service Center	To define rural areas with minimal commercial development as well as some residential uses, based on Oregon Administrative Rule 660-22 or its successor.
Urban Unincorporated Community	To define rural areas with existing urban development, based on Oregon Administrative Rule 660-22 or its successor.
Urban Designations	
Deschutes County coordinates with cities to adopt comprehensive plan designations for areas within Urban Growth Boundaries or as part of Urban Reserves Areas in the City of Redmond area. These designations are reflected in the Deschutes County GIS database.	
Area Specific Designations	
Parts of Deschutes County (Sunriver for example) have area-specific Comprehensive Plan designations. These are detailed in Chapter 11, Unincorporated Communities.	

COMPREHENSIVE PLAN DESIGNATION

Map 2-1



A PLAN FOR THE FUTURE

- Water Bodies
- County Boundary

Transportation

- State Routes
- Railroad
- County Lines
- Arterial
- Collector
- Forest Highway

Comprehensive Plan Designation

- Airport
- Agriculture
- Forest
- Flood Plain
- Open Space & Conservation
- Rural Commercial
- Resort
- Rural Industrial
- Rural Residential Exception Area
- Surface Mining
- Terrabone Districts
- Tumalo Districts
- Unincorporated Community
- Mixed Use / Commercial
- Mixed Use / Commercial Future Expansion Area

Other

- Urban Growth Boundary
- Urban Reserve
- Urban Unincorporated Community

Prepared by

Revised 7/31/2023

This map is for information purposes only. The County's official zoning and comprehensive plan maps can be accessed through the Deschutes County Dial Property Information System. Please note that these maps do not represent all of the County's combining and overlay zones.

OVERLAY ZONES

Deschutes County has the following overlay zones, which apply in addition to the base zone of a given property.

- **Airport Safety:** The purpose of the AS Zone is to restrict incompatible land uses and airspace obstructions around airports in an effort to maintain an airport's maximum benefit.
- **Destination Resort:** The purpose of the Destination Resort Combining Zone is to identify lands eligible for siting a Destination Resort and establish procedures and standards for establishing this type of development.
- **Landscape Management:** The purposes of the Landscape Management Combining Zone are to maintain scenic and natural resources of the designated areas and to maintain and enhance scenic vistas and natural landscapes as seen from designated roads, rivers, or streams.
- **Greater Sage-Grouse Combining Zone.** The purpose of the Greater Sage-Grouse Combining Zone is to fulfill obligations of OAR 660-23-0115. This state rule requires seven Oregon counties to mitigate impacts of large-scale development on sage-grouse habitat.
- **Sensitive Bird and Mammal Habitat:** The purpose of the Sensitive Bird and Mammal Combining Zone is to insure that sensitive habitat areas identified in the County's Goal 5 sensitive bird and mammal inventory as critical for the survival of the northern bald eagle, great blue heron, golden eagle, prairie falcon, osprey, great grey owl, and the Townsend's big-eared bat are protected from the effects of conflicting uses or activities which are not subject to the Forest Practices Act.
- **Surface Mining Impact Area:** The purpose of the SMIA zone is to protect the surface mining resources of Deschutes County from new development which conflicts with

Land Use Planning in Oregon

The foundation of statewide program for land use planning in Oregon is a set of 19 Statewide Land Use Planning Goals. The goals express the state's policies on land use and related topics, like citizen involvement, housing, and natural resources.

Oregon's statewide goals are achieved through local comprehensive planning. State law requires each city and county to adopt a comprehensive plan and the zoning and land-division ordinances needed to put the plan into effect.

Local comprehensive plans must be consistent with the Statewide Planning Goals. Plans are reviewed for such consistency by the state's Land Conservation and Development Commission (LCDC). When LCDC officially approves a local government's plan, the plan is said to be acknowledged. It then becomes the controlling document for land use in the area covered by that plan.

The goals relevant to Deschutes County are:

- **Goal 1 Citizen Involvement**
- **Goal 2 Land Use Planning**
- **Goal 3 Agricultural Lands**
- **Goal 4 Forest Lands**
- **Goal 5 Natural Resources, Scenic and Historic Areas, and Open Spaces**
- **Goal 6 Air, Water and Land Resources Quality**
- **Goal 7 Areas Subject to Natural Hazards**
- **Goal 8 Recreational Needs**
- **Goal 9 Economic Development**
- **Goal 10 Housing**
- **Goal 11 Public Facilities and Services**
- **Goal 12 Transportation**
- **Goal 13 Energy Conservation**
- **Goal 14 Urbanization**

the removal and processing of a mineral and aggregate resource while allowing owners of property near a surface mining site reasonable use of their property.

- **Wildlife Area:** The purpose of the Wildlife Area Combining Zone is to conserve important wildlife areas in Deschutes County; to protect an important environmental, social and economic element of the area; and to permit development compatible with the protection of the wildlife resource.

CITY COORDINATION

Deschutes County includes the following jurisdictions, each with their own authority and needs. The role of the County is largely one of coordination across these multiple communities.

Deschutes County contains four incorporated cities. The County, per statute, is responsible for coordinating with cities on growth related issues including urban growth boundary and urban reserve planning. The County maintains intergovernmental agreements with each city to define land use authority for lands outside of city limits and within urban growth boundaries.

City of Bend

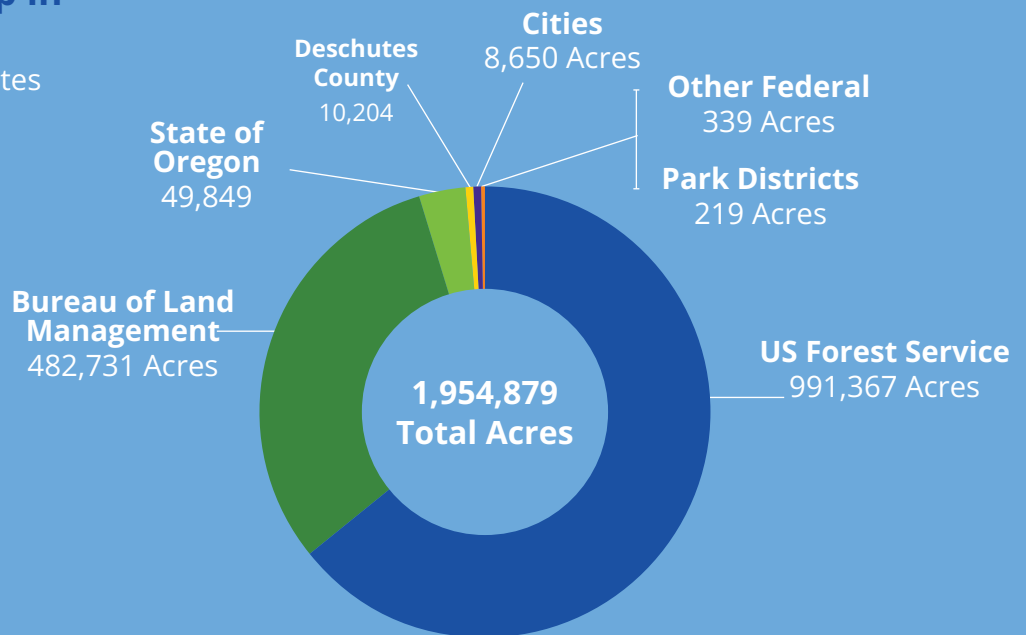
Bend is the largest incorporated area in Deschutes County. It is centrally located in the county, with Highways 20 and 97 crossing paths through the center of the city. Bend has experienced rapid growth in the last few years, accelerated by the COVID-19 pandemic and “Zoom Town” remote working trends. The 2022 estimated population of the Bend UGB is 103,976. The Bend UGB accounts for most of the population share among all UGBs in Deschutes County with a population of 225,619 (57.4% of the population) by 2072.

City of La Pine

The City of La Pine is located close to the southern edge of the county along Hwy. 97. The current (2022) estimated population of the La Pine UGB is 2,736. The population of the La Pine UGB is projected to increase by 87% to 5,129 in 2047. By 2072, the population is projected to be 8,336.

Public Land Ownership in Deschutes County

Approximately **79%** of Deschutes County is public land.



City of Redmond

Redmond is located northeast of Bend with Hwy. 97 running through the center of town. The current (2022) estimated population of the Redmond UGB is 37,342. The population of the Redmond UGB is projected to increase by 121% to 82,601 in the next 50 years. By 2047 it is estimated that the population of the Redmond UGB will increase to 60,060.

City of Sisters

Sisters is located on the eastern edge of the Willamette National Forest and Cascade Mountains. The current (2022) estimated population of the Sisters UGB is 3,437. The Sisters UGB is projected to increase by 130%, to 7,911 in 2047, and to 14,881 by 2072.

TRIBAL COORDINATION

In the Treaty of 1855 (12 Stat. 963), the Confederated Tribes of Warm Springs ceded approximately 10.2 million acres to the United States Government and reserved the Warm Springs Reservation for its exclusive use. The Treaty further reserved to the Tribes rights to take fish at all usual and accustomed stations, and to hunt, gather roots and berries, and pasture livestock on unclaimed lands. The map on page 2-9 identifies the location of these ceded areas in Deschutes County, which primarily intersect with publicly owned lands. Coordination with the Confederated Tribes of Warm Springs on growth and development related issues is important to ensure consistency with these treaty rights.

Key Community Considerations

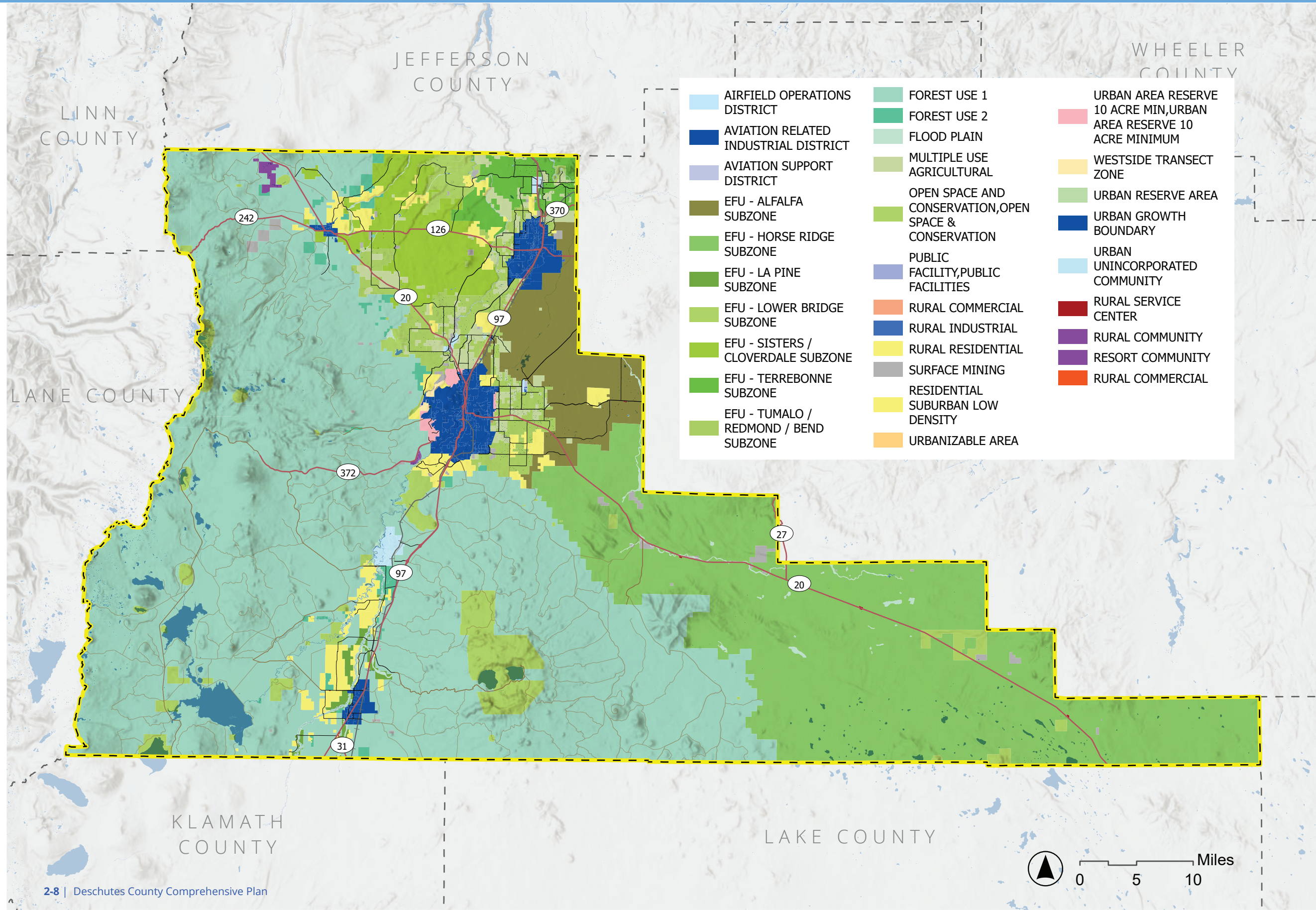
The rapid pace of growth in Deschutes County and its impacts on urban, rural, natural, and recreational areas has been one of the most significant – and at times the most controversial – topics of discussion among project participants. Some topics and comments include:

- Strong desire by some for greater densities in urban areas, in order to accommodate growth while preserving open space and resource land in rural areas.
- A similarly strong feeling by some that the cities in Deschutes County are becoming too urban already.
- Concern about the amount and distribution of benefits and burdens created by destination resorts and tourism-related activities in rural areas.
- Strong desire for interagency collaboration to manage growth in a coordinated manner.

With these ongoing conversations in mind, Deschutes County drafted and refined the following goals and policies to guide the growth of our community for the next 20 years.



ZONING DESIGNATIONS



A PLAN FOR THE FUTURE

- Water Bodies
- County Boundary

Transportation

- State Routes
- Railroad
- County Lines



This map is for information purposes only. The County's official zoning and comprehensive plan maps can be accessed through the Deschutes County Dial Property Information System. Please note that these maps do not represent all of the County's combining and overlay zones.

Goals and Policies

Goal 2.1: Maintain an open and public land use process in which decisions are based on substantial evidence and a balancing of community needs.

Policy 2.1.1. Balance the consideration of private property rights and the economic impacts of land use decisions on property owners with incentives to preserve agricultural and forest land, wildlife habitat, ground and surface water resources, wetlands, riparian areas, open areas and other community goals identified in the Comprehensive Plan.

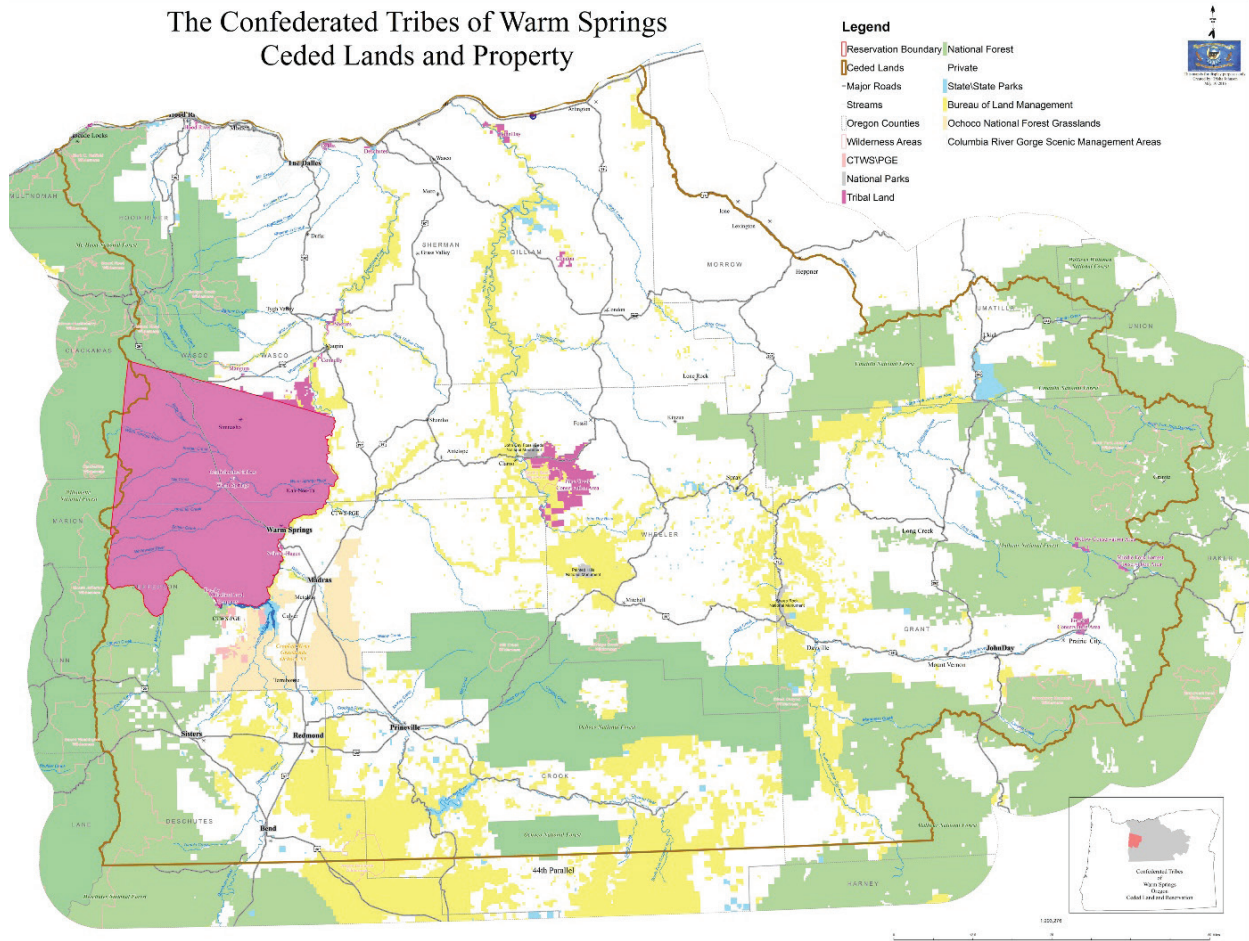
Policy 2.1.2. Review the Comprehensive Plan periodically in order to address current conditions, issues, and opportunities.

Policy 2.1.3. The Deschutes County Comprehensive Plan Map will be retained in official replica form as an electronic map layer within the County Geographic Information System and is adopted as part of this Plan.

Policy 2.1.4. Implement Comprehensive Plan policies through the Community Development Department’s annual work plan and other actions by the Department and the Board of County Commissioners.

Policy 2.1.5. Explore methods to integrate carrying capacity into County land use decision making.

The Confederated Tribes of Warm Springs
Ceded Lands and Property



Goal 2.2: Coordinate and support regional planning efforts relating to growth, natural resources, recreation, and major infrastructure investments.

Policy 2.2.1. Periodically review and update intergovernmental and urban management agreements to coordinate land use review on land inside urban growth boundaries and outside city limits.

Policy 2.2.2. Help coordinate regional planning efforts with other agencies on land use policies and actions that impact their jurisdictions.

Policy 2.2.3. Support the use of high value natural resource and recreational lands for public purposes, whether through acquisition, easements, or other means.

Policy 2.2.4. Support the implementation of long-range plans of Deschutes County jurisdictions, incorporating elements of those plans into the County's Comprehensive Plan as appropriate.

Policy 2.2.5. Encourage cities to conduct, in collaboration with Deschutes County, urban reserve planning to facilitate orderly and thoughtful management of growth and infrastructure needs.

Policy 2.2.6. Collaborate with federal agencies on land management issues, including homelessness, community wildfire protection, wildlife habitat restoration, water quality, road networks, energy projects, the impacts of recreation and the expansion of sustainable recreation opportunities.

Policy 2.2.7. Support efforts to reduce barriers to regional infrastructure projects with community benefit while mitigating negative impacts.

Policy 2.2.8. Support updates to unincorporated community area plans.

Policy 2.2.9. In accordance with OAR 660-024-004 and 0045, Deschutes County, fulfilling coordination duties specified in ORS 195.025, shall approve and update its comprehensive plan when participating cities within their jurisdiction legislatively or through a quasi-judicial process designate regionally significant sites.



Policy 2.2.10.

Policy 2.2.11. The County and City shall periodically review the agreement associated with the Redmond Urban Reserve Area (RURA). The following land use policies guide zoning in the RURA.

- a. Plan and zone RURA lands for rural uses, in a manner that ensures the orderly, economic and efficient provision of urban services as these lands are brought into the urban growth boundary.
- b. Parcels shall be a minimum of ten acres.
- c. Until lands in the RURA are brought into the urban growth boundary, zone changes or plan amendments shall not allow more intensive uses or uses that generate more traffic, than were allowed prior to the establishment of the RURA.
- d. For Exclusive Farm Use zones, partitions shall be allowed based on state law and the County Zoning Ordinance.
- e. New arterial and collector rights-of-way in the RURA shall meet the right-of-way standards of Deschutes County or the City of Redmond, whichever is greater, but be physically constructed to Deschutes County standards.
- f. Existing and future arterial and collector rights-of-way, as designated on the County's Transportation System Plan, shall be protected from development.
- g. A single-family dwelling on a legal parcel is permitted if that use was permitted before the RURA designation. Additionally, the County will coordinate planning efforts and development goals with the City of Redmond prior to bringing County-owned property into Redmond's urban growth boundary.

Goal 2.3: Manage county-owned lands to balance the needs of the community as articulated in the goals and policies of this Plan and other supporting planning documents.

Policy 2.3.1. Manage lands with a park designation consistent with the goals and policies in Chapter 5 Natural Resources.

Policy 2.3.2. Support the efforts of park districts, state and/or federal agencies to identify additional properties along rivers, streams, or creeks, or containing significant wildlife, scenic resources, or open space resources to designate as park land.

Goal 2.4: Minimize onerous barriers to land use application and development review processes.

Policy 2.4.1. Explore opportunities to build or obtain specialty planning knowledge and experience among staff within CDD in related fields such as wildlife, natural resources, and/or agricultural practices.

Policy 2.4.2. Explore measures to reduce development costs for projects related to agriculture and addressing houselessness, including fee reductions and expedited land use applications.

3

Farm and Forest Resources





Photo Credit: Amanda Photographic

Opportunities, Challenges, and Considerations

Farm and forestry resources and operations continue to play an important role in the character and economy of Deschutes County. However, a variety of ongoing and forecasted trends will impact the viability and vitality of these industries and the people who contribute to them. A number of these trends and challenges are described below and more information about some issues is found in the Water Resources section of this Plan (see Chapter 5: Natural Resources).

PREVALENCE OF SMALL FARMING OPERATIONS AND HOBBY FARMS

The 2022 Census of Agriculture profiles Deschutes County as primarily consisting of small acreage, hobby farms and other relatively small agricultural operations. As of 2022 there were approximately 1,572 farms, an increase of 5% from 2017. Although the average size of a farm in Deschutes County is 97 acres, the majority of acreage (about 85%) is in farms of 50 acres or less in size.

MARGINAL OR LOW PRODUCTIVITY SOILS

While a large proportion of the County is zoned for exclusive farm use, much of the land in these areas has marginal soils which provide limited productivity, particularly for higher value crops. Limited access to water rights and irrigation can further hamper productivity in some areas. Deschutes County attempted to reclassify certain agricultural lands through a nonresource lands program. This approach was rejected at the state level. Since that time, some landowners have successfully redesignated property, primarily to residential zones, through an applicant-initiated process.

FINANCIAL CHALLENGES

According to the 2022 Agricultural Census, agricultural producers in Deschutes County are often operating in the red. The per-farm average of market value of products sold was \$25,437, a 23% increase from 2017, and average production expenses of \$39,918. This results in a deficit of approximately \$14,481 per farm per year. Government payments help cover a portion of this deficit, with the average farm receiving \$17,959 in assistance. The costs of operating continue to be a major challenge for small family operations, resulting in approximately 48% of farms in Deschutes County reporting under \$2,500 in sales.

DECLINING FOREST PRODUCTS INDUSTRY

Approximately 1,032,436 acres of Deschutes County area are zoned for Forest Use. Historically, forestry on public and private land was a primary industry in Central Oregon with key mill sites along the Deschutes River in Bend. Over time, species protections, international competition, unsustainable harvest levels, and new technologies have reduced the overall footprint of the timber industry in Central Oregon. Recently, land uses are shifting toward recreation and residential development in these natural resource areas.



Photo Credit: Amanda Photographic

WATER SUPPLY AND IRRIGATION

Much of Deschutes County is served by six irrigation districts (Map 3-1) – these are special entities created for the purpose of delivering water to their patrons. These districts are quasi-municipal corporations chartered under Oregon law that operate as political subdivisions of the State of Oregon. In addition to irrigation, these districts also supply other services including municipal, industrial, and pond maintenance. In most cases, these districts are holders of senior water rights with shares then distributed to their patrons. As is the case with all water rights, the irrigation districts’ water rights are managed by the Oregon Water Resources Department and subject to “beneficial use” requirements to prevent the waste of the water resource. The total water available for irrigation and other human uses in Deschutes County is fixed under the current water regime, and there is little opportunity to expand irrigated farming in the County. Irrigation districts with more junior water rights such as Arnold Irrigation District and North Unit Irrigation District (operating north of Deschutes County), have recently seen challenges with water delivery due to limited availability and drought.

CHANGES IN CLIMATE CONDITIONS

Because the total volume of water available for agricultural and human use is fixed, strategies to decrease water usage (capping or piping irrigation channels, irrigation timing strategies,

water conservation) will become more crucial. Deschutes County is committed to working with irrigation districts and holders of water rights to increase water conservation efforts throughout the County in a manner consistent with existing legal frameworks established by State and Federal law.

Context

Agriculture

Agriculture and ranching operations in Deschutes County vary widely based on water availability, soil, and microclimate. Subzones were created through a commercial farm study conducted in 1992. This study concluded that irrigation is a key factor to viability of operations, which enabled the County to establish smaller acreages than allowed by state law to provide additional flexibility.

Additional information about farm and forest resources is provided in the tables and charts below.

Forest Lands

Deschutes County classifies forest land in one of two zones. Forest 1 zoning is intended for land that is primarily used for forest management or commercial forestry, with a lot size over 160 acres, and not developed with residential or non-forest uses. Forest 2 zoning is intended for land that does have residential or non-forest uses, is less than 160 acres, and may contain roads or other public facilities that serve the property.

State regulations limit residential and non-forestry related development on forest lands and the County sees only a few applications for

Days Above 90 Degrees in Brothers

2023

2



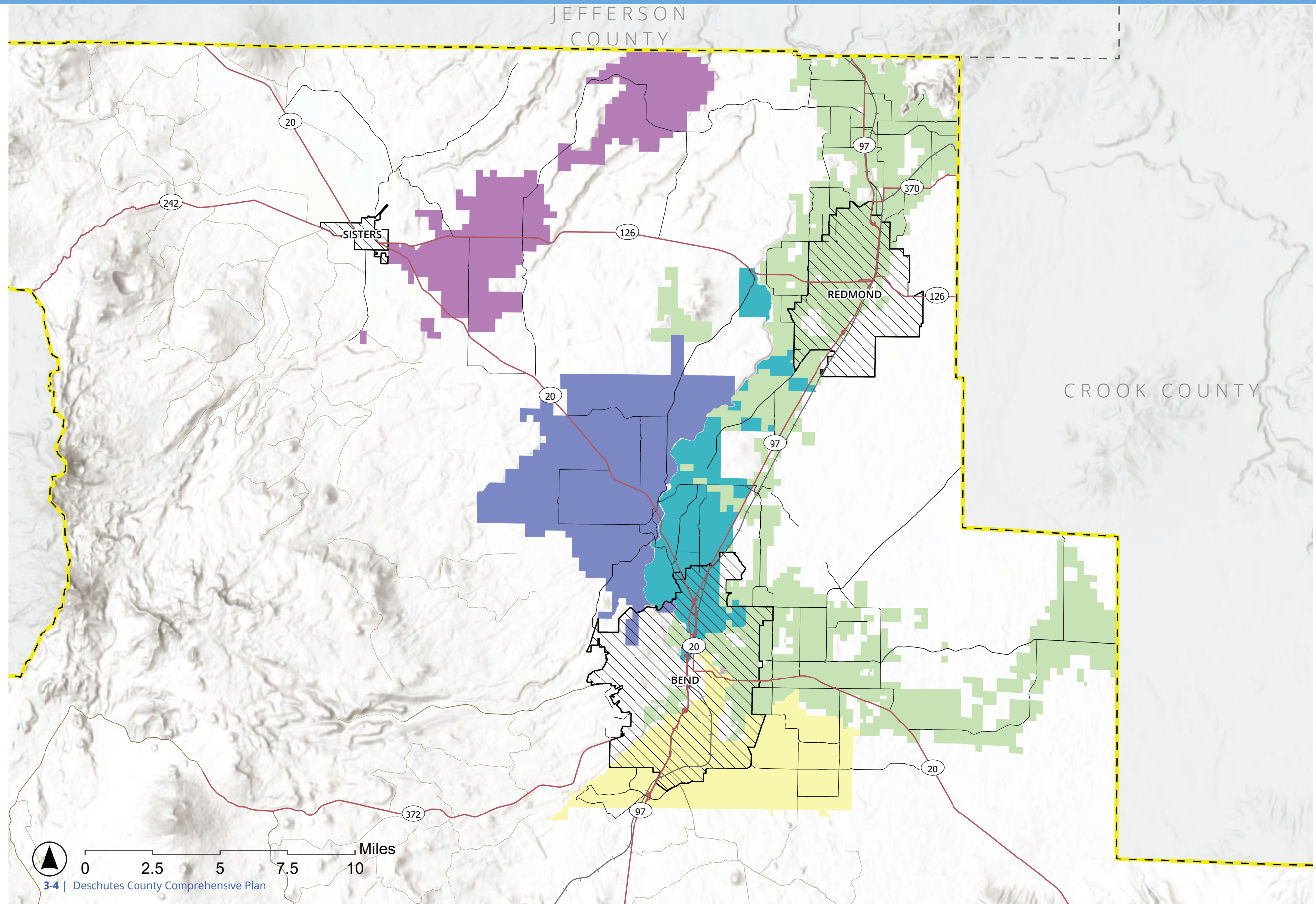
2070

24

Note: Historic data for days above 90° is not available.

IRRIGATION DISTRICTS

Map 3-1



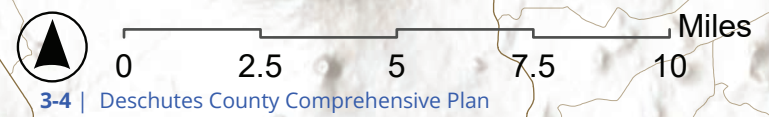
A PLAN FOR THE FUTURE

Irrigation Districts

- Three Sisters Irrigation District (est. 1891)
- Swalley Irrigation Dist (DRIC) (est. 1899)
- Arnold Irrigation District (est. 1905)
- Central Oregon Irrigation District (est. 1918)
- Tumalo Irrigation District (est. 1922)

Transportation

- Arterial
- Collector
- Forest Highway
- State Routes
- Railroad
- Urban Growth Boundaries
- County Boundary



Prepared by
Revised 8/1/2023

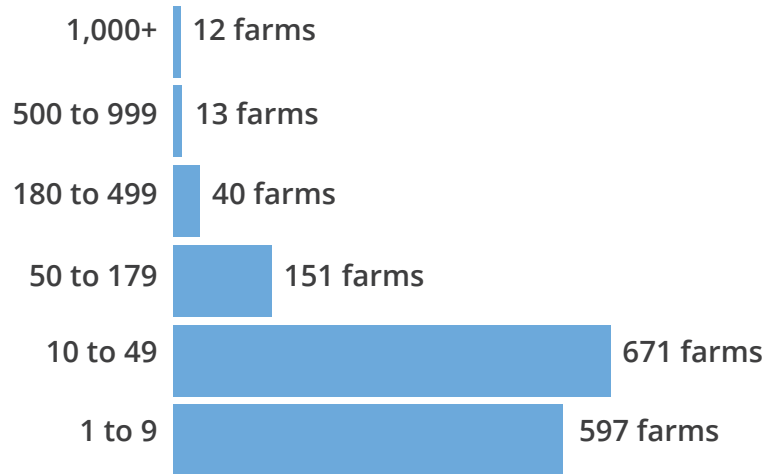


This map is for information purposes only. The County's official zoning and comprehensive plan maps can be accessed through the Deschutes County Dial Property Information System. Please note that these maps do not represent all of the County's combining and overlay zones.

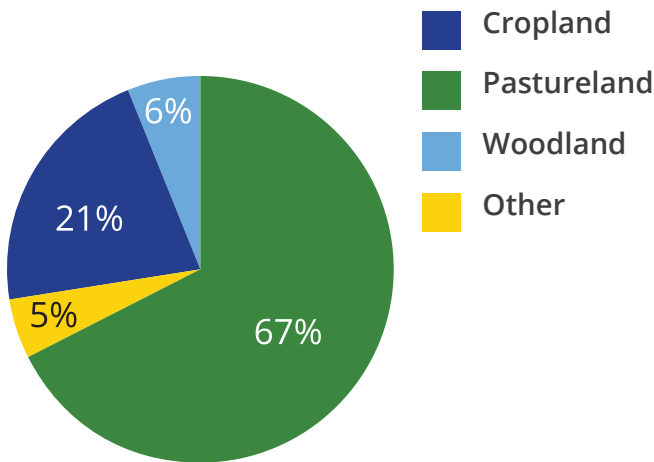
development in these areas each year. Even with this limitation on development, forest managers and service providers continue to express concern with wildfire risk associated with residential development in heavily wooded areas.

Most lands in either of these classifications within Deschutes County are federally owned and managed by the US Forest Service (USFS). Historically, forest lands were used for timber production. As timber harvesting decreases, other uses for forest lands are emerging. State regulations permit five general types of uses, including forest operations; environmental, agricultural or recreational uses; two types of

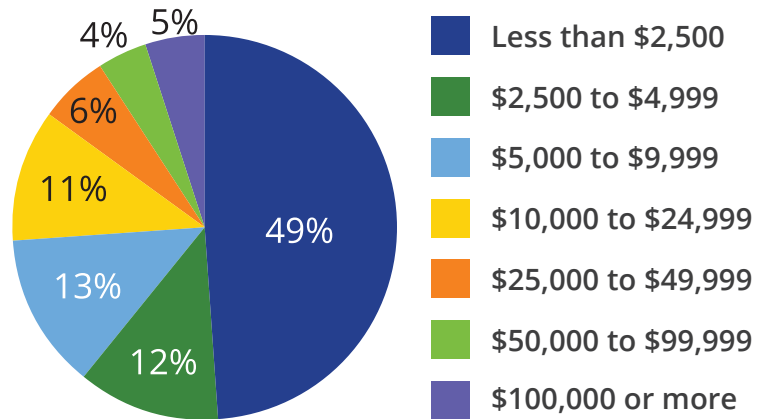
Farms By Size (acres)



Land in Farms by Use



Farms By Value of Sales



Subzone Name	Minimum Parcel Size (for farm divisions and farm-related dwellings)	Profile
Lower Bridge	130	Irrigated field crops, hay pastures
Sisters/Cloverdale	63	Irrigated alfalfa, hay and pastures, wooded grazing and some field crops
Terrebonne	35	Irrigated hay and pasture
Tumalo/Redmond/Bend	23	Irrigated pasture and some hay
Alfalfa	36	Irrigated hay and pasture
La Pine	37	Riparian meadows, grazing and meadow hay
Horse Ridge East	320	Rangeland grazing

dwellings and locally dependent uses. Permitted uses are defined and clarified in OAR 660-006. The following uses are major forest uses in Deschutes County:

- **Secondary forest products (forest operations):** There is an increasing use of secondary forest products, such as hog fuel (chipped wood) or wood slash. This type of product is generally seen as providing dual benefit, by providing economic opportunity while also reducing wildfire risk through thinning projects.
- **Alternative Energy:** Biomass is an emerging technology for renewable energy and can also be integrated with these products. The first biomass facility in the County is currently under development through a partnership with Mt. Bachelor Ski Resort and the USFS.
- **Recreation (environmental, agricultural and recreation uses):** The proximity of federal forests for hiking, mountain biking, skiing, hunting, fishing, wildlife viewing and other outdoor recreation draws tourists and residents alike. An emerging challenge is the prevalence of houseless encampments on and adjacent to federal lands. These encampments can cause conflicts with other trail users and increase fire risk.

Key Community Considerations

Given the range of issues and conditions discussed above and, this plan includes a variety of policies to support farm and forest operations in Deschutes County. Additional related policies also are found in Chapter 2: Land Use and Regional Coordination, Chapter 7: Natural Hazards, and Chapter 9: Economic Development. These strategies are underpinned by the following results of Comprehensive Plan outreach efforts.

- There is strong support for conducting educational outreach to encourage water conservation and on-farm efficiency measures.
- Community members opposed rezoning low productivity farmland with poor soil to allow greater opportunities for housing, while supporting rezoning of this land to preserve open space.
- Community members also strongly support allowing greater flexibility for income-producing supplemental activities on farms such as farm-to-table dinner, farm stands, weddings, or similar events.
- Participants expressed support for investment in the agricultural economy through grants or exploring a farmland conservation program.



Photo Credit: Amanda Photographic

Goals and Policies

Goal 3.1: Preserve and maintain agricultural lands, operations, and uses to support Deschutes County's agricultural economy

Policy 3.1.1. Retain agricultural lands through Exclusive Farm Use zoning.

Policy 3.1.2. Continue to apply Exclusive Farm Use sub-zones consistent with the County's most up-to-date adopted studies of agricultural land and as implemented through the County Development Code.

Policy 3.1.3. Develop comprehensive plan policy criteria and code to clarify when and how EFU parcels can be converted to other designations.

Policy 3.1.4. Regularly review farm regulations to ensure compliance with changes to State Statute, Oregon Administrative Rules and case law.

Goal 3.2: Promote a diverse, sustainable, and thriving agricultural sector.

Policy 3.2.1. Encourage farming by promoting the raising and selling of crops, livestock and/or poultry.

Policy 3.2.2. Support agriculture through the use of grant funds, research, and other resources dedicated to community members and stakeholders, including but not limited to farmers, researchers, farm bureaus, and other organizations in studying and promoting economically viable agricultural opportunities and practices.

Policy 3.2.3. Support and encourage small farming enterprises through a variety of related strategies and programs, including, but not limited to, niche markets, organic farming, food council, buy local, farmers markets, farm-to-table activities, farm stands or value-added products, or other programs or strategies.

Policy 3.2.4. Work cooperatively with irrigation districts, public agencies and representatives, and landowners to promote and support agricultural uses and operations, including through use of rural reserves, conservation easements, transfer of development rights programs, land acquisition, and other preservation strategies consistent with existing federal and state law.

Policy 3.2.5. Support efforts to control noxious weeds and invasive species.

Policy 3.2.6. Continue to review and revise county code as needed to be and consistent with state code, rules, and regulations to permit alternative and supplemental farm activities that are compatible with farming, such as agritourism or other small-scale sustainable activities.

Policy 3.2.7. Work with the State to review and revise their regulations when a desired alternative or supplemental use identified by the County is not permitted by State regulations.



Policy 3.2.8. Use land use policy and development code requirements, including right-to-farm provisions, as well as coordination with other jurisdictions to minimize conflicts between residential uses and agricultural uses and continue to promote the viable operation of agricultural uses.

Policy 3.2.9. Provide resources such as technical assistance and access to grants to support on-site efficiency upgrades relating to agriculture.

Policy 3.2.10. Explore program to utilize compost from Solid Waste Department on farm lands to improve soils, productivity, water, efficiency, and facilitate disposal of yard debris and compostable materials.

Goal 3.3: Ensure Exclusive Farm Use policies, classifications, and codes are consistent with local and emerging agricultural conditions and markets.

Policy 3.3.1. Identify and retain accurately designated agricultural lands.

Policy 3.3.2. Continue to explore new methods of identifying and classifying agricultural lands.

- a. Apply for grants to review and, if needed, update farmland designations.
- b. Study County agricultural designations considering elements such as water availability, farm viability and economics, climatic conditions, land use patterns, accepted farm practices, and impacts on public services.
- c. Lobby for changes to state statute regarding agricultural definitions specific to Deschutes County that would allow some reclassification of agricultural lands.

Policy 3.3.3. Address land use challenges in the Horse Ridge subzone, specifically:

- a. The large number of platted lots not meeting the minimum acreage;
- b. The need for non-farm dwellings and location requirements for farm dwellings;
- c. Concerns over the impact on private property from off-road vehicles, facilities, and trails located on adjacent public lands.

Policy 3.3.4. Work with the state to review and revise accessory farm dwelling requirements to address the needs of local farmers, including removal of parcel size restrictions.

Policy 3.3.5. Encourage coordination between agricultural interests and fish and wildlife management organizations, including public agencies, non-governmental organizations and others.

Policy 3.3.6. Explore the evaluation and potential redesignation of lands with a farm designation and poor soils and low productivity for protected open space, development of needed housing, or other uses that support community goals as follows.

- a. Allow comprehensive plan and zoning map amendments, including for those that qualify as non-resource land, for individual EFU parcels as allowed by State Statute, Oregon Administrative Rules and this Comprehensive Plan.
- b. Explore creation of a new zoning classification intended to balance the value of high desert environments while allowing for limited housing opportunities and applying this designation through coordination with interested and willing property owners.

Goal 3.4: Protect and maintain forest lands for multiple uses and objectives, including forest products, watershed protection, conservation, recreation, wildlife habitat protection, carbon sequestration, forest health, and wildfire resilience.

Policy 3.4.1. Retain forest lands through Forest 1 and Forest 2 zoning.

Policy 3.4.2. To conserve and maintain unimpacted forest lands, retain Forest 1 zoning for those lands with the following characteristics:

- a. Consist predominantly of ownerships not developed by residences or non-forest uses;
- b. Consist predominantly of contiguous ownerships of 160 acres or larger;
- c. Consist predominantly of ownerships contiguous to other lands utilized for commercial forest or commercial farm uses;
- d. Are accessed by roads intended primarily for forest management; and
- e. Are primarily under forest management.

Policy 3.4.3. 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.”

Policy 3.4.4. Notwithstanding any other quasi-judicial plan or zone change criteria, lands designated as Forest under this Plan and zoned Forest 2 may upon application be redesignated and rezoned from Forest 2 to Exclusive Farm Use if such lands:

- a. Do not qualify under State Statute for forestland tax deferral,
- b. Are not necessary to permit forest operations or practices on adjoining lands and do not constitute forested lands that maintain soil, air, water and fish and wildlife resources,
- c. Have soils on the property that fall within the definition of agricultural lands as set forth in Goal 3,
- d. Are a tract of land 40 acres or less in size,
- e. Do not qualify under State Statute and the terms of the Forest 2 zone for a dwelling, and;
- f. Were purchased by the property owner after January 1, 1985 but before November 4, 1993.

Such changes may be made regardless of the size of the resulting EFU zoning district. Such changes shall be processed in the same manner as other quasi-judicial plan or zoning map changes.

Policy 3.4.5. Ensure that criteria for and designation of Forest Lands are consistent with state administrative rules and statutes.

Policy 3.4.6. Coordinate and cooperate with the U.S. Forest Service (USFS), the Bureau of Land Management (BLM) and other public agencies to promote sustainable forest uses, including community wildfire

protection projects, recreation facilities, habitat enhancements, and biomass facilities, on public forest land, including currently adopted Forest and Land Management Plans prepared by the USFS and BLM.

- a. Using the Deschutes National Forest Land and Resource Management Plan, or its successor, as the basis for mutual coordination and cooperation with the USFS;
- b. Using the Prineville BLM Upper Deschutes Resource Management Plan, or its successor, as the basis for mutual coordination and cooperation with the BLM.

Policy 3.4.7. Notify affected agencies and tribal governments when reviewing land use applications and proposals for development that could impact Federal or State forest lands.

Policy 3.4.8. Support economic development opportunities that promote forest health, create opportunities for local production of related forest products, and reduce the prevalence of invasive plant species that adversely affect forest health and soil quality.

Policy 3.4.9. Provide input on public forest plans that impact Deschutes County.

Policy 3.4.10. Coordinate with community stakeholders to support forest management plans and projects that are consistent with the policies of this chapter and with local community forest management and wildfire protection plans.

- a. Promote forest health and resilience to wildfire.
- b. Contribute to public safety by treating wildland hazardous fuels particularly in the designated Wildland Urban Interface as identified in the Community Wildfire Protection Plans described in Chapter 13, Natural Hazards, of this Plan.
- c. Retain and improve fish and wildlife habitat.

Policy 3.4.11. Continue to review and revise the County Code as needed to ensure development in forest zones minimizes and/or mitigates impacts on fish and wildlife habitat, forest health, and wildfire resiliency.

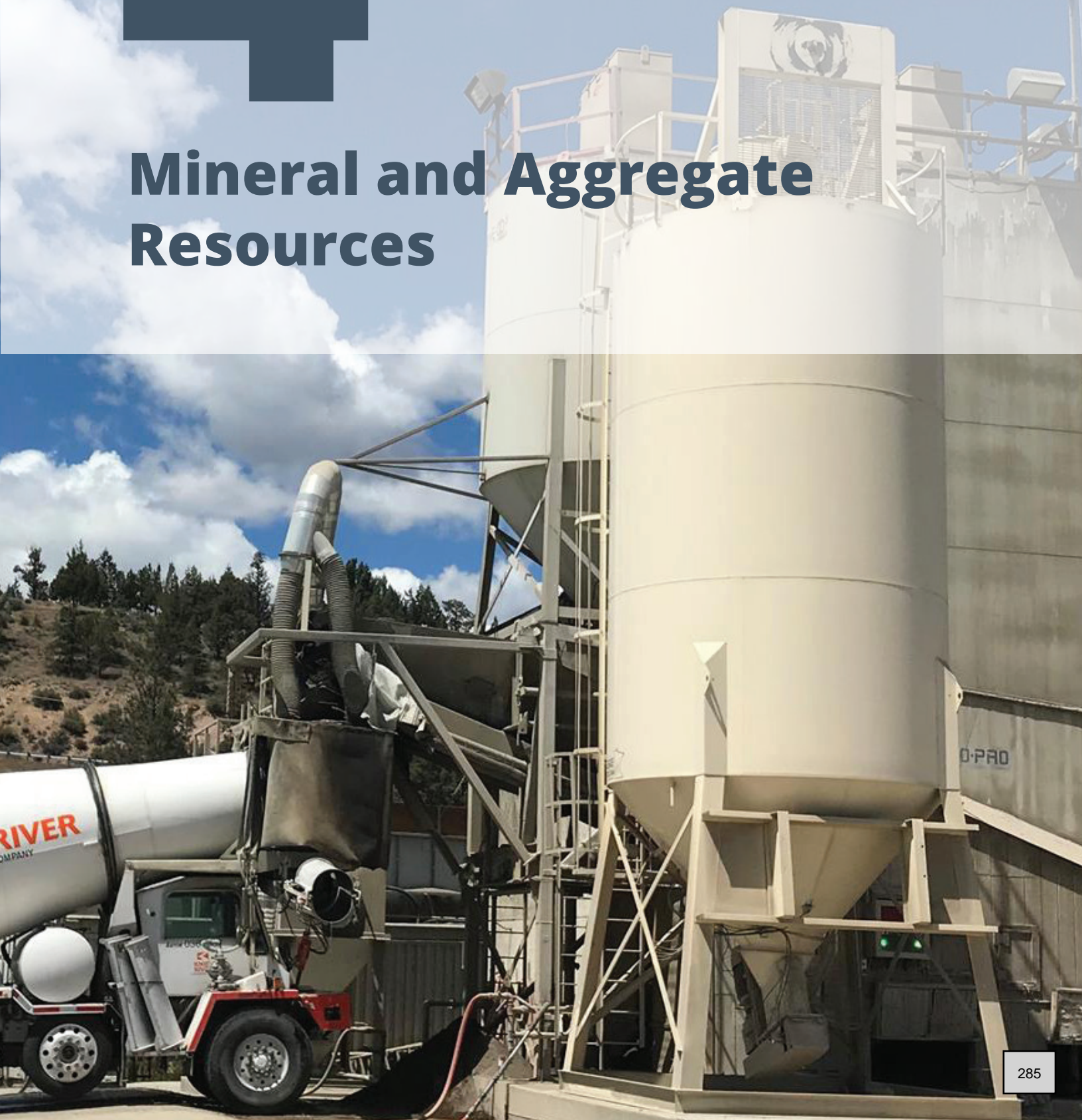


Photo Credit: Amanda Photographic



4

Mineral and Aggregate Resources





Opportunities, Challenges, and Considerations

Surface mining provides non-renewable resources, such as pumice, cinders, building stone, sand, gravel and crushed rock. The extraction of these materials provides employment as well as products important to local economic development. However, mining of mineral and aggregate resources creates noise, dust and traffic and potential pollution that can conflict with neighboring land uses, particularly residential uses.

The Oregon Department of Geology and Mineral Industries (DOGAMI) regulates surface mining sites in Deschutes County. The last available published analysis of mineral resources in Deschutes County was completed by DOGAMI in 1976. No updates have been completed during that time due to limited staff. A continued challenge is monitoring the availability of these resources. However, it is likely that Deschutes County has enough mineral resources to meet demand for the next 20 years.

When a mineral resource is exhausted, the site is required to submit a reclamation plan to Deschutes County and DOGAMI. This plan identifies how the site will be closed for mineral operations, environmental impacts will be mitigated, and steps to be taking to return the site to a new use. As mineral and aggregate resources are exhausted, property owners often rezone the site from the “Surface Mine” designation to a new zone (often a residential zone), to allow for new development to occur. Coordination with DOGAMI and property owners is imperative to ensure this reclamation process occurs in an efficient and environmentally focused manner.

Context

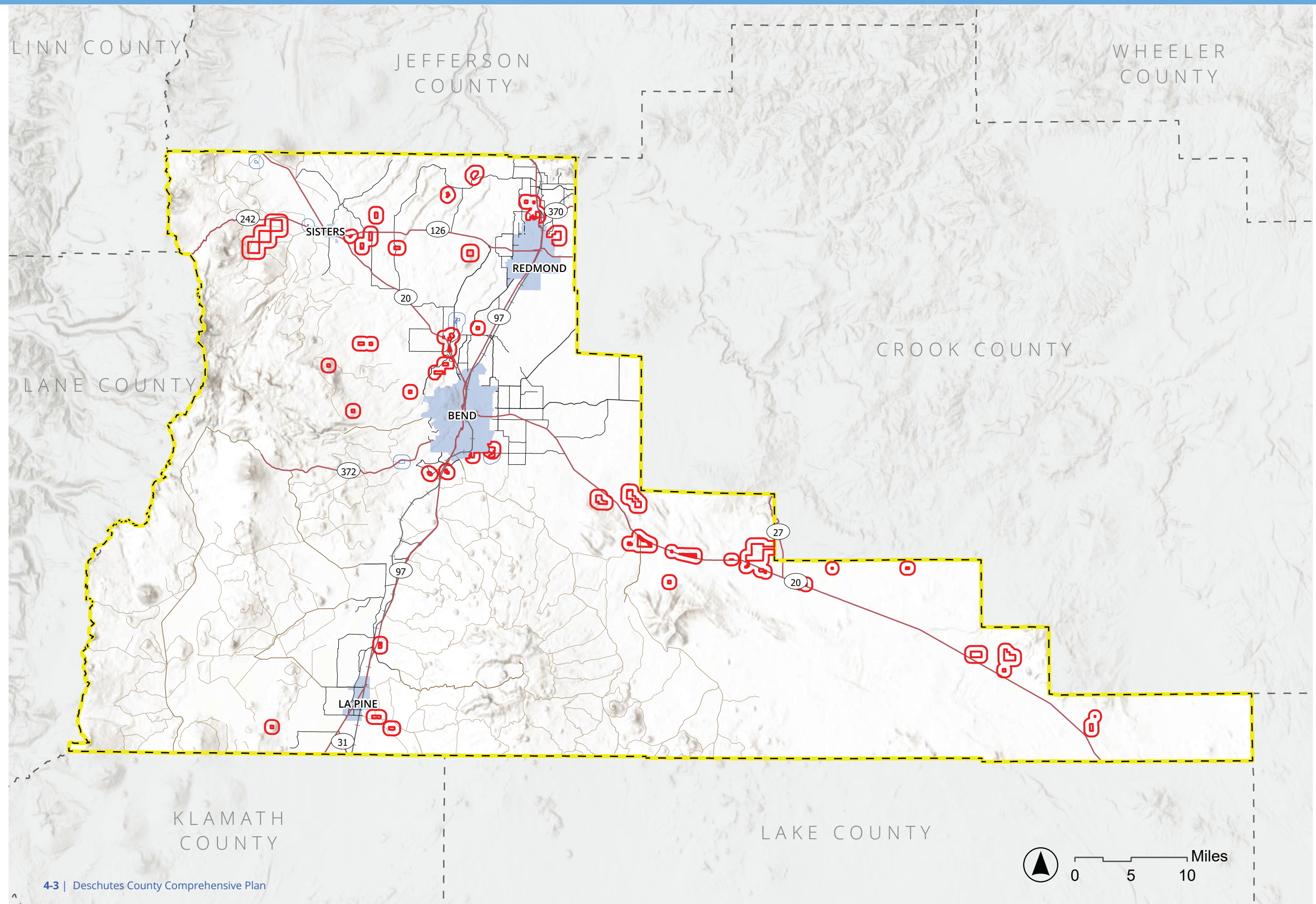
Surface mining is protected through Statewide Planning Goal 5, Natural Resources, Scenic and Historic Areas and Open Spaces and the associated Oregon Administrative Rule (OAR) 660-023 (this rule replaced 660-016 in 1996). Mineral and aggregate resources are included on the list of Statewide Goal 5 resources that the County must inventory and protect.

The County maintains an inventory of surface mining sites as part of its Goal 5 program, shown in Map 4-1. There are currently 59 mining sites identified in the Deschutes County GIS data, and 8 sites that have been reclaimed.

Mining sites are subject to a Surface Mining Impact Area Combining Zone that applies within ½ mile of the mining site boundary. This combining zone limits new uses and expansion of existing uses that may be impacted by mining activities and are not in compliance with the site-specific Economic, Social, Environmental, and Energy (ESEE) analysis for nearby mining sites. In certain cases, a waiver of nonremonstrance may also be required in this zone.

SURFACE MINING

Map 4-1



A PLAN FOR THE FUTURE

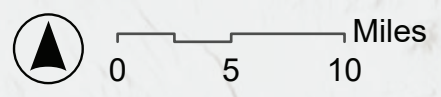
- County Boundary
- Urban Growth Boundaries

Zoning Surface Mining Impact Area

- Surface Mining Impact Area
- Reclaimed - Surface Mining Impact Area

Transportation

- State Routes
- Railroad
- County Lines



This map is for information purposes only. The County's official zoning and comprehensive plan maps can be accessed through the Deschutes County Dial Property Information System. Please note that these maps do not represent all of the County's combining and overlay zones.

Key Community Considerations

Transportation agencies expressed concern regarding the impact of depleting mineral resources on road operations, including the use of cinder for winter maintenance and other resources for use in new road projects. The topic of mineral and aggregate resources was not a focus of community discussion as part of this Comprehensive Plan update, though the priorities of a diverse economy and protected natural areas for habitat and open space are interrelated with this subject. The following goals and policies represent a balance of these community interests.

Goals and Policies

Goal 4.1: Protect and utilize mineral and aggregate resources while minimizing adverse impacts of extraction, processing and transporting the resource.

Policy 4.1.1. Implement adopted Goal 5 Surface Mining inventories.

Policy 4.1.2. Coordinate with the Oregon Department of Geology and Mineral Industries (DOGAMI) on mining regulations and studies.

Policy 4.1.3. Balance protection of mineral and aggregate resources with conflicting resources and uses.

Policy 4.1.4. Support the required reclamation of mining sites following mineral extraction.

Surface Mining in 2023

59

Active Mining Sites

8

Reclaimed Sites

9,235

Acres in Surface Mining Zone

including Black Butte Ranch Surface Mine/Limited Use Zone

58,881

Acres in the Surface Mining Impact Area Combining Zone (SMIA)

Source: Deschutes County GIS information

5

Natural Resources





Opportunities, Challenges, and Considerations

Natural resources in Deschutes County are abundant. Wildlife, scenic views of forests and peaks, and open spaces to preserve habitat and native vegetation are among the County’s top assets.

Oregon Statewide Planning Goal 5 governs Natural Resources, Scenic and Historic Areas, and Open Spaces. Through this goal, the County maintains inventories and regulatory protections to preserve these many resources. These regulations are created by weighing Economic, Social, Environmental, and Energy (ESEE) consequences associated with protection of a resources.

Topics covered in this chapter include:

- Protected Wildlife Resources
- Open Space and Scenic Views
- Water Resources

PROTECTED WILDLIFE RESOURCES

Deschutes County has some of the broadest and most robust wildlife protections in the state, covering a variety of species. The County has development protections within and surrounding numerous wildlife habitats. Some of these habitats have mapped geographic boundaries such as Deer Winter Range, Deer Migration Range, Antelope Habitat, Golden Eagle – Sensitive Bird Habitat, and Elk Habitat.

Other species are commonly found in protected riparian areas, such as wetlands and floodplains. Deschutes County contains general habitats for fish, fur-bearing animals, waterfowl, and upland game birds.

A continued challenge to wildlife resources is rural development and impacts on habitat. Mule deer are seeing steady declines, approximately 10% each year per Oregon Department of

Fish and Wildlife biologists. These declines in population are due to a variety of factors, including but not limited to loss of habitat, vehicle collisions, poaching, predation, and disease.

SCENIC VIEWS AND OPEN SPACE

The 2010 Greenprint¹ for Deschutes County listed protection of scenic viewsheds as one of the top five community priorities for conservation in the rural County, and the protection of open space has been one of the key topics of discussion during the most recent update of this Comprehensive Plan. The County has several designated scenic corridors, including several scenic bikeways, highways, and wild and scenic river sections.

¹ The Trust for Public Land. Oregon's Playground Prepares for the Future: A Greenprint for Deschutes County. 2010. http://cloud.tpl.org/pubs/local_or_deschutes%20greenprint.pdf

With close to 80% of the County under public ownership, many community members enjoy access to natural resources on public lands. A perennial issue among community members is preserving scenic views and open spaces closer to home on undeveloped private properties.

WATER RESOURCES

Deschutes County contains groundwater resources, defined as water that exists underground in saturated zones beneath the land surface², and surface water resources. Surface water refers to streams, lakes, rivers, and reservoirs³.

Groundwater is used for a variety of permitted and exempt activities. Residential wells in the rural county make up the largest user group of groundwater, and are exempt from any permit, provided that the property owner abides by specific standards. Water rights and or permits are required for other major use categories, such as quasi-municipal or municipal uses, pond maintenance, irrigation and other commercial and industrial activities.⁴

The Deschutes River and its tributaries serve as the region's surface water resources. Surface water rights in the Upper Deschutes Basin are fully allocated, meaning no new surface water rights can be issued. Approximately 86% of basin water rights are associated with agriculture, 12% associated with instream uses, and 2% associated with municipal uses⁵.

² US Geological Survey Definition - Groundwater
³ US Geological Survey Definition - Surface Water
⁴ Oregon Water Resources Department. 2021 Review of the Deschutes Basin Groundwater Mitigation Program. <https://www.oregon.gov/owrd/WRDReports/5YearDeschutesGWMitigationProgramReport.pdf>
⁵ Bureau of Reclamation and Oregon Water Resources Department. 2019 Upper Deschutes River Basin Study. https://cdn.prod.websitefiles.com/667093eeb1bb316e69f0e9c6/667093eeb1bb316e69f0e9d8_Upper%20Deschutes%20River%20Basin%20Study%20Final.pdf

Statewide Planning Goal 5

Oregon land use planning protects wildlife with Statewide Planning Goal 5 and the associated Oregon Administrative Rule (OAR) 660-023. Goal 5 includes a list of resources which each local government must inventory, including wildlife habitat.

The Goal 5 process requires local governments to inventory wildlife habitat and determine which items on the inventory are significant. For sites identified as significant, an Economic, Social, Environmental and Energy (ESEE) analysis is required. The analysis leads to one of three choices: preserve the resource, allow proposed uses that conflict with the resource or strike a balance between the resource and the conflicting uses. A program must be provided to protect the resources as determined by the ESEE analysis.

Appendix A of the Comprehensive Plan contains the full ESEE ordinances for the County's protected Goal 5 resources.



Groundwater and surface water in Deschutes County are closely tied. Numerous studies have noted the interconnections between stream flow and well levels over time in Deschutes County. Programs, such as the Deschutes Basin Groundwater Mitigation Program, seek to monitor these connections.

Deschutes County plays a coordination role along with the Oregon Department of Water Resources, Soil and Water Conservation Districts, irrigation districts, water users, owners of private wells, and other stakeholders to address these water resource issues.

Context

Protected Wildlife Resources

Wildlife diversity is a major attraction of Deschutes County. The key to protecting wildlife is protecting the habitats each species needs for food, water, shelter, and reproduction. Also important is retaining or enhancing connectivity between habitats to protect migration routes and avoid isolated populations.

In considering wildlife habitat, counties rely on the expertise of the Oregon Department of Fish and Wildlife (ODFW) and U.S. Fish and Wildlife Service (USFWS). Those agencies provide information for the required wildlife inventory and recommendations on how to protect wildlife habitat on private lands.

A summary of Deschutes County's wildlife protection programs follows:

MULE DEER

Migration corridors and winter range are essential habitats needed to support mule deer in Deschutes County. The Bend/La Pine migration corridor is approximately 56 miles long and 3 to 4 miles wide and parallels the Deschutes and Little Deschutes Rivers. The corridor is used by deer migrating from summer range in the forest along the east slope of the Cascades to the North Paulina deer winter

range. Deschutes County adopted a "Deer Migration Priority Area" based on a 1999 ODFW map submitted to the South County Regional Problem Solving Group. This specific sub-area is precluded from destination resorts.

From 2021-2023, Deschutes County explored an update to the county's mule deer inventory, which included extensive community participation including through the public record. Ultimately, the decision was made not to update.

A snapshot of Deschutes County's wildlife protection program is included below. Extensive information is included in Appendix E, the County's Goal 5 inventory.

SENSITIVE BIRDS

Nest sites for the bald eagle, osprey, golden eagle, prairie falcon, great grey owl, greater sage-grouse, and great blue heron rookeries are inventoried by the County. The area required for each nest site varies between species. The minimum area required for protection of nest sites has been identified by the ODFW in their management guidelines for protecting colony nesting birds, osprey, eagles, and raptor nests. The USFWS works closely with ODFW on eagle-related issues and enforces federal guidelines to ensure protection of bald and golden eagles.



Credit: Andrew Walch/ODFW

ELK

The Land and Resource Management Plan for the Deschutes National Forest identifies 6 key elk habitat areas in Deschutes County. The ODFW also recognizes these areas as critical elk habitat for calving, winter or summer range. The following areas are mapped on the Big Game Habitat Area map and in the Deschutes National Forest Land and Resource Management Plan:

- Tumalo Mountain
- Kiwa
- Ryan
- Crane Prairie
- Fall River
- Clover Meadow

ANTELOPE

The Bend and Ochoco District offices of the ODFW provided maps of the antelope range and winter range. The available information is adequate to indicate that the resource is significant. The antelope habitat is mapped on Deschutes County's Big Game Habitat-Wildlife Area Combining Zone Map.

Scenic Views and Open Space

Deschutes County has a rich abundance of open space. Approximately 79% of land in Deschutes County is federally owned, providing ample open space and scenic views adjacent to these areas. Open spaces are generally undeveloped areas that are being maintained for some other purpose, such as farms, parks, forests, or wildlife habitat. Besides the value that stems from the primary use of the land, open spaces provide aesthetically pleasing undeveloped landscapes. Because these areas are undeveloped, they also provide additional benefits such as water recharge, buffers for habitat, and safety zones from natural hazards such as flooding and wildfire.

Open spaces and scenic views are an important draw for visitors and are often mentioned as important to the area's quality of life. The backdrop of the Cascade Mountains, with its vast

forest and sagebrush landscapes and riparian and wetland habitats, all provide an inspirational setting for visitors and residents alike. Statewide Planning Goal 5 recommends, but does not require, creating an inventory and protections for open spaces, scenic views and sites. Oregon Administrative Rule (OAR) 660-023 defines open space designations as parks, forests, wildlife preserves, nature sanctuaries, and golf courses.

Open spaces are protected through an Open Space and Conservation map designation and zoning district. Scenic view protection is implemented through the Landscape Management Combining Zone regulations.

Water Resources

Deschutes County's Role in Water Management is described below.

REGULATORY AGENCIES

The primary state regulator of water availability is the Oregon Water Resources Department (OWRD). The Oregon Department of Environmental Quality (DEQ) leads the monitoring and enforcement of water quality standards. The Oregon DEQ is required to comply with the Federal Environmental



Protection Agency. Numerous sections of the Deschutes River in Deschutes County hold a special status as a federal wild and scenic river, as well as a state scenic waterway. These areas carry additional regulations through the 1996 Upper Deschutes Wild and Scenic River and State Scenic Waterway Comprehensive Plan, requiring additional agency coordination with the Oregon Parks and Recreation Department and the US Forest Service on development impacting these sections.

STATEWIDE PLANNING GOALS

There are two Statewide Planning Goals relating to the protection of water resources. Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) requires an inventory and protection of the following water resources. In Deschutes County, these inventories have been completed and acknowledged by the Land Conservation and Development Commission (See Appendix A for Goal 5 Inventories). Goal 6 (Air, Land, and Water Resources Quality) requires comprehensive plans to be consistent with state and federal pollution regulations. Accordingly, it is imperative that local land use policies align with Federal and State laws governing the community’s water resources.

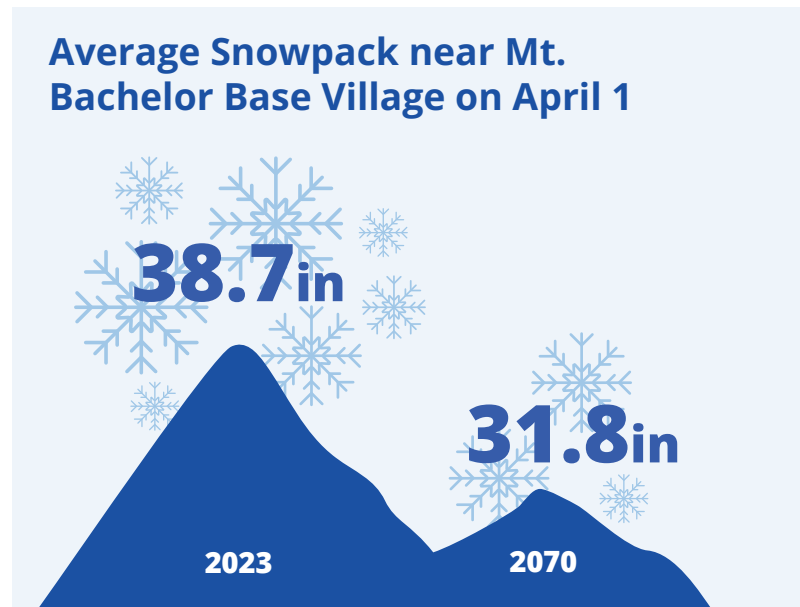
The policies in this section relating to water provide the framework for evaluating land use actions and define the responsibility of the County to work in partnership with cities, agencies, non-profits and others to achieve efficient use of water resources and effective management of water quality in the Upper Deschutes Basin.

It is important to underscore that the primary water resource management process occurs outside of the state land use planning system. Oregon land use and water management are not integrated; there are no overarching administrative rules that consider statewide water management in conjunction with land use planning.

SNOWPACK

Although there is expected to be a slight increase in winter precipitation by the middle of the century, snowpack is expected to decline throughout the Cascades. The decline in snowpack (which has already been observed, see figure below)⁶ is due largely to increasing temperatures causing some precipitation to fall as rain rather than snow. This has the double effect of decreasing snowfall and melting the previously fallen snow. At the Mt Bachelor Ski Resort, April snowpack is expected to decline between 11% and 18% by the middle of the century and between 18% and 43% by the end of the century.

⁶ Adapted from Mote, P.W., Li, S., Lettenmaier, D.P. et al. Dramatic declines in snowpack in the western US. *npj Clim Atmos Sci* 1, 2 (2018). <https://doi.org/10.1038/s41612-018-0012-1>



LAVA SPONGE

Deschutes county is fortunate to be underlain on the Western side by relatively young volcanic lava sponge. This sponge is highly porous and is able to absorb large quantities of water during the wet season and gradually release it via abundant springs along the eastern slope. The great advantage this provides is that the resulting summer flows into the Deschutes basin are not as dependent on overground flow of snowmelt, and therefore are expected to maintain a relatively stable water supply even as snowpack decreases into the next century.

GROUNDWATER USE

The groundwater aquifer is roughly 1,000 feet thick across significant parts of the basin and is replenished yearly by the Cascades' precipitation.

A report from GSI water solutions in 2022 noted the Upper Deschutes Basin receives over 4,000 cubic feet per second (cfs) of annual recharge.⁷ This recharge is primarily from in-basin precipitation, although minor amounts of recharge are attributed to interbasin flow in which water travels from the Metolius basin, and canal leakage. Groundwater pumping is equivalent to approximately 2 percent of the annual groundwater recharge. In the Deschutes Basin a small amount of groundwater is also used by farmers for crop or pasture irrigation. Groundwater is also used for "exempt" purposes including residential wells, irrigation of non-commercial lawns under a half-acre, stock watering, and fire control. Groundwater rights are commonly used by cities to support housing and development. The 2019 Upper Deschutes Basin Study estimates 40,000-acre feet are diverted each year primarily from groundwater purposes to serve municipal and quasi-municipal uses.

⁷ "GSI Solutions Understanding Upper Deschutes Basin Groundwater Levels, September 2022". https://www.oregon.gov/owrd/Documents/White%20Paper_Understanding%20Upper%20Deschutes%20Basin%20GW%20Levels_9_26_2022.pdf

Deschutes Basin Hydrogeology

The Deschutes River Basin, from its headwaters to the Columbia River, encompasses 10,400 square miles of the north central part of the State. Nearly 91% of Deschutes County lies within the Deschutes Basin. The upper Deschutes River Basin is characterized by recent volcanic activity and strong and rapid groundwater flows. The geologic conditions lead to a strong connection between surface and ground water (see also Section 3.10).

Groundwater flows eastward from the Cascade Range through permeable volcanic rocks out into the basin and then generally northward. Groundwater recharge comes from precipitation in the Cascade Range, inter-basin flow and leaking irrigation canals. Approximately one-half of the ground water flowing from the Cascade Range discharges to spring-fed streams along the margins of the range. The remaining groundwater flows through the subsurface, and eventually discharges to streams near the confluence of the Deschutes, Crooked, and Metolius Rivers.

The large amount of groundwater discharge in the confluence area is primarily caused by geologic factors. The Deschutes River flows north through permeable rock until it hits a region of low-permeable rock near the confluence area. There the permeable rock strata terminates, forcing water to the surface. Virtually all of the regional groundwater in the upper Deschutes Basin discharges to streams south of the area where the Deschutes River enters this low-permeability terrain, at roughly the location of Pelton Dam.

A 2021 report by the Oregon Department of Water Resources found that groundwater levels in Deschutes County are declining, by as much as 30 feet of total decline in the central part of the basin. This decline has caused wells in densely populated areas of the County to run dry, requiring extensive well deepening work. Groundwater levels are directly related to recharge rates which are directly impacted by rainfall and recharge from other sources such as flood irrigation and leaky ditches and canals. Impediments to recharge include such things as increased irrigation efficiency, large scale piping projects, and increased juniper populations. This decline is considered “excessively declined” per state statute and is attributed to a shift toward overall drier conditions since the late 1990s, expanding Juniper forests, increased groundwater pumping, a warming trend in the basin, and decreased snowpack. However, studies show that drought and groundwater levels are cyclical and may vary over the years. For example, the 1930s and 1970s were dryer than current conditions.

The State of Oregon is currently exploring measures to restrict overuse of groundwater rights through its Groundwater Allocation rulemaking. The program would limit issuance of new groundwater rights when groundwater levels are in a period of excessive decline. Because the groundwater in the Deschutes Basin is directly connected to the flow of the Deschutes River, all additional groundwater use must be mitigated by decreased use of groundwater or surface water elsewhere through the Oregon Water Resources Department’s Deschutes Groundwater Mitigation program. This can include retiring of other water rights, or the release of water into the waterway. A mitigation permit must be obtained before a new groundwater right can be accessed.⁸

⁸ Information from the Oregon Water Resources Board Mitigation Program.

Voluntary and or regulatory conservation mechanisms are needed from all users to prevent overuse of the groundwater resource at the local level and mitigate groundwater level declines.

SURFACE WATER USE

The 2019 Deschutes Basin Study found that total water inflows to the basin vary from 860,000 acre-feet to 2.3 million acre-feet, depending on how much precipitation falls in a given year or several consecutive years. Approximately 720,000 acre-feet (86%) of surface water is diverted each year for irrigation districts. The study noted that declines in flow associated with precipitation and snowpack, combined with overallocation of water rights in the basin, continues to lead to shortfalls for junior water right holders. In low water years, junior water holders in the North Unit and Arnold Irrigation Districts are not able to access water due to this shortage, negatively impacting agricultural and other operations that depend on surface water rights.

Aside from impacting operations, the reduction of surface flows can also impact wildlife habitat. The Deschutes Basin is home to the Oregon spotted frog and bull trout, which are federally listed as threatened species. To mitigate the impacts from storage, release, diversion and return of irrigation water on these species, the Deschutes Basin Habitat Conservation Plan was finalized and approved by the US Fish and Wildlife Service in 2020. The plan was developed in partnership with the Deschutes Basin Board of Control representing irrigation districts, along with tribal governments, agency staff, and other stakeholders and seeks to provide predictability to water managers of surface flows for the next 30 years. The plan outlines a combination of water management practices, funding for conservation projects, funding for instream leasing programs, and parameters for seasonal release of irrigation water, among other efforts.

Irrigation districts and other entities are engaged in ongoing efforts to pipe canals and modernize irrigation systems to increase their efficiency. Due to water transmission losses in irrigation canals from seepage into groundwater and evaporation, piped canals typically require only half the amount of water to be diverted from the river or stream to deliver the same volume of water to the end user compared to open canals.

Community members have expressed concern that piping canals may contribute to local aquifer declines due to loss of artificial recharge from leaking infrastructure. Continued education and monitoring on this topic will be helpful to best understand the actual impact of canal piping on groundwater resources.

WATER QUALITY

Generally, groundwater quality in Deschutes County is classified as being ‘good,’ providing high quality drinking water to most of its residents. However, several productive aquifers lie in shallow alluvial sediments that are vulnerable to contamination from human activities and development.



The Department of Environmental Quality (DEQ) Laboratory and Water Quality Divisions’ Groundwater Quality Report for the Deschutes Basin (March 2006) identifies areas of concern for groundwater contamination based on various sources of data and groundwater quality studies. Based on collected data, development patterns and the geology of the underlying aquifer, the report makes recommendations

for a couple of areas in the County. The report notes the groundwater aquifer in the Redmond area is vulnerable to contamination from human activities and recommends further study by the DEQ. The La Pine aquifer in the southern portion of the county from the Sunriver area into Northern Klamath County between Newberry Caldera and the Cascades is an area of particular concern because of data collected through several studies and the high level of development in the area. The report also identifies underground injection systems that could contaminate the aquifer with pollutants from stormwater drywells or sewage drillholes.

In South Deschutes County, the concern for groundwater quality arises from nitrate contamination associated with on-site wastewater treatment (septic) systems discharging to the shallow unconfined aquifer. The issue is small lots with highly permeable rapidly draining soils and a high groundwater table with relatively cold water temperatures. Combined with the fact that the majority of lots are served by on-site wastewater treatment systems and individual wells, concern arose that nitrates from the septic systems could contaminate local wells and the river system.

Considerable work has gone into studying the groundwater in South County. In 1999 Deschutes County and the Department of Environmental Quality (DEQ) identified the need for a better understanding of the processes that affect the movement and chemistry of nitrogen in the aquifer underlying the La Pine area. In response, the U.S. Geological Service (USGS), in cooperation

with Deschutes County and DEQ, began a study to examine the hydrologic and chemical processes that affect the movement and chemical transformation of nitrogen within the aquifer. A primary objective was to provide tools for evaluating the effects of existing and future residential development on water quality and to develop strategies for managing groundwater quality.

Field research from the USGS study shows that in a 250-square-mile study area near La Pine the groundwater underlying the La Pine sub-basin is highly vulnerable and being polluted by continued reliance on traditional onsite systems. Environmental impacts from residential development include higher nitrate concentrations in groundwater that is tapped for domestic water supply and discharges to rivers. Nitrates are regulated by the federal Environmental Protection Agency and DEQ as a human health concern. Vulnerability of the shallow aquifer to contamination led to concern that wastewater from septic systems poses a threat to the primary drinking water supply and local river systems. The Upper Deschutes and Little Deschutes Sub-basins have abundant, natural sources of phosphorus from volcanic soils and rocks so the rivers are naturally nitrogen limited. Nitrogen-limited rivers are sensitive to low concentrations of available nitrogen until some other component becomes limiting, and that may lead to ecological impacts.

In 2008 the County used the research on nitrates to adopt a 'local rule' that required South County residents to convert their septic systems over a period of 14 years to alternative sewage system technology designed to reduce nitrates. New septic systems were also required to use alternative technologies. The County created a process to assist residents in funding the conversions.

Many South County residents expressed concern over the costs involved with converting their

septic systems and disputed the science behind the rule. Placed on the ballot by petition, the local rule was rescinded by voters in March 2009.

As of 2010 the DEQ is leading the effort to address nitrates in South County, with the full cooperation of the County. One solution being considered is creating a sewer system or extending Sunriver's to serve some of the nearby areas. Sewer systems are tightly restricted on rural lands by Statewide Planning Goal 11 and OAR 660-11, so the Department of Land Conservation and Development is also involved in these efforts. The County and Oregon Department of Environmental Quality attempted to apply for an exception to Goal 11 to allow for a community sewer system in 2016, although the effort was overturned by the Oregon Land Use Board of Appeals.

ALGAL BLOOMS

Algal blooms have been a problem for recreational lakes in the cascade mountains in recent years. Since 2007, the Wickiup Reservoir, Crane Prairie Reservoir, and Paulina Lake have experienced algal or bacteria blooms that required a health advisory.⁹

Although not all algal blooms are toxic, they interfere with recreation and aesthetic enjoyment. In general, algal blooms are caused by elevated nutrients, elevated temperature, and still water. Algal blooms in other parts of the state have led to drinking water concerns, but Deschutes County cities are supplied by groundwater and so the risk in algal blooms is mainly to recreation, with the exception of Bridge Creek, which supplies water to the City of Bend.

⁹ <https://www.oregon.gov/oha/PH/HEALTHYENVIRONMENTS/RECREATION/HARMFULALGAEBLOOMS/Pages/archive.aspx>

Key Community Considerations

Natural resources for recreation, passive enjoyment, habitat protection, and economic production are a fundamental part of life in Deschutes County, and as such were a key part of the community conversation in this Comprehensive Plan update. Highlights of this conversation include:

- Concern about the ability of the County's water supply to accommodate more residents, visitors, and water-intensive jobs in the future
- Interest in a re-evaluation of water rights for urban, agricultural, and "hobby farm" uses.
- A robust discussion around wildlife inventories, habitat conservation, open space regulations, and impacts on private property owners.

The topic of habitat conservation and water availability came up frequently, with most participants saying that further protections are needed. However, there was also recognition of the burden these protections may put on property owners. Deschutes County does not have the authority or expertise to evaluate or reallocate water rights as part of its land use planning efforts, leading the County to instead work with the Oregon Department of Water Resources, irrigation districts, the Bureau of Reclamation, US Department of Agriculture, conservation districts, non-governmental organizations, and holders of water rights to increase the efficiency of water distribution throughout the community.

Goals and Policies

Water Goals and Policies

Goal 5.1: Support regional, comprehensive water management solutions that balance the diverse needs of water users and recognize Oregon water law.

Policy 5.1.1. Participate in Statewide and regional water planning including, but not limited to:

- a. Work cooperatively with appropriate federal, state, tribal and local agency resource managers, such as The Confederated Tribes of the Warm Springs Reservation of Oregon, the Oregon Water Resources Department (OWRD), irrigation districts, and other stakeholders and nonprofit water organizations, such as the Deschutes Basin Water Collaborative, the County Soil and Water Conservation District;
- b. Support the development and implementation of Upper Deschutes Basin Study, Habitat Conservation Plan, and Biological Opinion from National Marine Fisheries Service for the middle and lower Deschutes Rivers.

Policy 5.1.2. Support grants for water system infrastructure improvements, upgrades, or expansions.

Policy 5.1.3. Develop better understanding of The Confederated Tribes of the Warm Springs Reservation of Oregon's treaty-protected rights to co-manage the water resources of the Deschutes Basin.

Policy 5.1.4. Encourage state agencies to identify local areas of concern for water availability and explore additional regulations or requirements to ensure water capacity is not negatively impacted by development.

Goal 5.2: Increase water efficiency and conservation efforts among all users, including homeowners and businesses.

Policy 5.2.1. Support efficient water use through targeted conservation, educational and, as needed, regulatory or incentive programs.

- a. Encourage new development incorporates efficient water use practices for all water uses.
- b. Provide education and resources to community members regarding the beneficial reuse of grey water for landscaping.
- c. Encourage and educate the community about the relative impacts of thinning or reduction of plant species that adversely impact forest health, water availability, and soil quality.
- d. Encourage and educate the community about on-farm efficiency measures, including upgrades to equipment.
- e. Encourage and educate the community about use of voluntary metering of water use to monitor seasonal impacts on water use.
- f. Provide access to educational materials and tools related to water conservation including publications, information about grant opportunities, and/or partner with organizations on educational events.
- g. Encourage and educate community members on stewardship of wetlands and waterways.
- h. Provide access to educational materials about water-wise gardening and xeriscaping.
- i. Encourage establishment of water reuse and recycling programs, in particular for County facilities.

Policy 5.2.2. Promote coordinated regional water conservation efforts and implementation by regional, tribal, and local organizations and agencies, including increasing public awareness of and implementing water conservation tools, incentives, and best practices.

Policy 5.2.3. Support conservation efforts by irrigation districts, property owners and other water users, including programs to provide incentives for water conservation, such as piping of canals and laterals, water banking, exchanges of water rights, voluntary transfers of in-stream flows, onsite efficiency measures, and other means.

Goal 5.3: Maintain and enhance a healthy ecosystem in the Deschutes River Basin.

Policy 5.3.1. Notify the Oregon Department of State Lands, The Confederated Tribes of the Warm Springs Reservation of Oregon, and other state and federal agencies as appropriate of any development applications for land within a wetland identified on the statewide wetland inventory maps.

Policy 5.3.2. Work with The Confederated Tribes of Warm Springs Reservation of Oregon and other federal, state, and local agency resource managers to restore, maintain and/or enhance healthy river and riparian ecosystems and wetlands, including the following:

- a. Cooperate to improve surface waters, especially those designated water quality impaired under the federal Clean Water Act;
- b. Support research on methods to restore, maintain and enhance river and riparian ecosystems and wetlands;
- c. Support restoration efforts for river and riparian ecosystems and wetlands;

- d. Inventory and consider protections for cold water springs;
- e. Evaluate waterways in coordination with OPRD for possible designation under the Scenic Waterways program;
- f. In collaboration with appropriate federal, state, tribal and local agency resource managers stakeholders, map channel migration zones and identify effective protections;
- g. Develop comprehensive riparian management or mitigation practices that enhance ecosystems, such as criteria for removal of vegetation that adversely impacts water availability and soil health.

Policy 5.3.3. Support studies of the Deschutes River ecosystem and incorporate strategies from current watershed studies that provide new scientific information and indigenous knowledge about the Deschutes River ecosystem.

Policy 5.3.4. Support educational efforts and identify areas where the County could provide information on the Deschutes River ecosystem, including rivers, riparian areas, floodplains and wetlands.

- a. Support efforts to educate property owners to understand regulations pertaining to rivers, riparian areas, floodplains and wetlands.

Policy 5.3.5. Revisit recommendations of 1996 Upper Deschutes Wild and Scenic River and State Scenic Waterway Comprehensive Plan, or its successor, and consider implementation of voluntary recommendations into the county code

Goal 5.4: Maintain and enhance fish and riparian-dependent wildlife habitat.

Policy 5.4.1. Coordinate with The Confederated Tribes of Warm Springs Reservation of Oregon and other federal, state, and local agency resource managers and stakeholders to protect and enhance fish and wildlife habitat in river and riparian habitats and wetlands.

Policy 5.4.2. Promote healthy fish populations through incentives and education.

Policy 5.4.3. Support healthy native salmonid fish populations through coordination with stakeholders, including, but not limited to, The Confederated Tribes of the Warm Springs Reservation of Oregon and other federal, state, and local agency resource managers who provide fish habitat management and restoration.

- a. Review, and apply where appropriate, strategies for protecting fish and fish habitat for native salmonid species.
- b. Promote native salmonid species recovery through voluntary incentives and encouraging appropriate species management and associated habitat conservation and restoration.

Policy 5.4.4. Update and implement policies to be consistent with federally approved Habitat Conservation Plans for species listed under the Endangered Species Act

- a. Spawning and rearing areas for salmonid species should be considered significant habitat and should be protected in rivers and streams.
- b. Cooperate with covered parties in restoring or enhancing spawning and rearing areas for salmonid species, where feasible.

- c. Support efforts to address riparian restoration associated with streamflow management under approved plans.

Policy 5.4.5. Use a combination of incentives and/or regulations to avoid, minimize, and mitigate development impacts on river and riparian ecosystems and wetlands.

Policy 5.4.6. Support plans, cooperative agreements, education, water quality monitoring and other tools that protect watersheds, reduce erosion and runoff, enhance riparian vegetation, and protect other natural or engineered water systems/processes that filter and/or clean water and improve and/or and preserve water quality.

Policy 5.4.7. Coordinate with the Oregon Department of Environmental Quality and other stakeholders on regional water quality maintenance and improvement efforts such as identifying and abating point (single-source) and non-point (unidentified or multiple-source) pollution or developing and implementing Total Maximum Daily Load and Water Quality Management Plans.

Policy 5.4.8. Coordinate with The Confederated Tribes of Warm Springs Reservation of Oregon, Oregon Health Authority, and other federal, state, and local agency resource managers to address water-related public health issues.

- a. Support amendments to State regulations to permit centralized sewer systems in areas with high levels of existing or potential development or identified water quality concerns.
- b. If a public health hazard is declared in rural Deschutes County, expedite actions such as legislative amendments allowing sewers or similar infrastructure.

Policy 5.4.9. Continue to evaluate and/or implement regulations, such as a wellhead protection ordinance for public water systems, in accordance with applicable Federal and/or State requirements.

Policy 5.4.10. Coordinate and work with the Oregon Department of Agriculture, agricultural uses, and available voluntary programs to support and implement proven new technologies and best practices to maintain and enhance water quality, such as minimizing nitrate contamination, maintaining streamside vegetation, reducing streambank soil erosion and runoff, reducing fish passage barriers, managing return flows, limiting livestock access to riparian areas, and minimizing weeds and bare patches in grazing areas.

Policy 5.4.11. Support regulations, education programs, and cleaning procedures at public and private boat landings.

Goal 5.5: Coordinate land use and water policies to address management and allocation of water in Deschutes County.

Policy 5.5.1. Coordinate with other affected agencies when a land use or development application may impact rivers or riparian ecosystems or wetlands.

Policy 5.5.2. Regulate land use patterns and promote best practices to preserve the integrity of the natural hydrologic system, recognize the relationship between ground and surface water, recognize basin-wide impacts, and address water impacts of new land uses and developments, including water-intensive uses.

Policy 5.5.3. Support efforts to protect existing surface water and groundwater users and to maintain sustainable groundwater resources as OWRD works to update and modernize Oregon’s groundwater allocation rules and policies.

Policy 5.5.4. Support efforts by the OWRD in collaboration with Central Oregon Cities Organization, The Confederated Tribes of the Warm Springs Reservation of Oregon, and non-governmental organizations to revisit the Deschutes Basin Groundwater Mitigation Program.

Policy 5.5.5. Coordinate with the irrigation districts to ensure irrigated land partitions and lot line adjustments are not approved without notice to the affected district.

Policy 5.5.6. Utilize Central Oregon Stormwater Manual to apply appropriate stormwater management practices land use decisions.

Policy 5.5.7. Allow for development of wastewater facilities and improvements where needed or required to address water quality issues and maintain water quality, consistent with state and local wastewater system requirements.

Open Space and Scenic Views Goals & Policies

Goal 5.6: Coordinate with property owners to protect open spaces, scenic views, and scenic areas and corridors through a combination of incentives and/or educational programs.

Policy 5.6.1. Work with stakeholders to create and maintain a system of connected open spaces while balancing private property rights with community benefits.

Policy 5.6.2. Work to maintain the visual character and rural appearance of open spaces such as the area along Highway 97 that separates the communities of Bend and Redmond or lands that are visually prominent.

Policy 5.6.3. Work to maintain and protect the visual character and rural appearance of visually prominent open spaces within the County, particularly those that are identified in the Goal 5 inventory.

Policy 5.6.4. Seek to protect the cultural identity of rural communities, such as the Highway 97 area/corridor between Bend and Redmond, and others.

Policy 5.6.5. Protect significant open spaces, scenic views, and scenic sites by encouraging new development to be sensitive to these resources.

Policy 5.6.6. Incentivize the placement of structures in a way that is sensitive of view corridors to maintain the visual character of the area.

Wildlife Goals and Policies

Goal 5.7: Maintain and enhance a diversity of wildlife and habitats.

Policy 5.7.1. Promote stewardship of wildlife habitats through incentives, public education, and development regulations.

Policy 5.7.2. Ensure Goal 5 wildlife inventories and habitat protection programs are up-to-date through public processes, expert sources, and current or recently adopted plans and studies.

Policy 5.7.3. Provide incentives for new development to be compatible with and to enhance wildlife habitat.

Policy 5.7.4. Require, incentivize, or encourage clustering of development in inventoried wildlife areas to reduce impacts to wildlife populations.

Policy 5.7.5. Develop better understanding of The Confederated Tribes of the Warm Springs Reservation of Oregon’s treaty-protected rights to co-manage the wildlife resources of the Deschutes Basin.

Goal 5.8: Balance protection of wildlife and habitat with the economic and recreational benefits of wildlife and habitat.

Policy 5.8.1. Encourage responsible and sustainable wildlife related tourism, hunting, and recreation.

Policy 5.8.2. Coordinate with stakeholders to ensure access to appropriate recreational opportunities within significant wildlife and riparian habitat through public or non-profit ownership.

Policy 5.8.3. Coordinate with Confederated Tribes of the Warm Springs Reservation of Oregon and State agencies to develop strategies to support sound wildlife management science and principals for the benefit of the wildlife resource.

Goal 5.9: Comply with federal and state regulations related to sensitive, threatened, and endangered species, including the Endangered Species Act, the Bald and Golden Eagle Protection Act, the Migratory Bird Treaty Act, and others as applicable.

Policy 5.9.1. Coordinate with Federal and State agencies to develop strategies to protect Federal or State Threatened or Endangered Species, or Species of Concern.

Policy 5.9.2. Mitigate conflicts between large-scale development and sage grouse habitat.

Policy 5.9.3. Consider adopting recommendations from Oregon Department of Fish and Wildlife, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Deschutes River Mitigation and Enhancement Program in dock construction.

Environmental Quality Goals and Policies

Goal 5.10: Maintain and improve upon the quality of air and land in Deschutes County.

Policy 5.10.1. Use building techniques, materials, and technologies in existing and future County operations and capital facilities that help maintain and improve environmental quality.

Policy 5.10.2. Implement a dark skies educational and or incentive program and periodically update the Dark Skies ordinance to reduce the impacts of light pollution and reduce lighting impacts on adjacent properties.

Policy 5.10.3. Coordinate with agency partners to educate residents about controlled burning projects and air quality concerns.

Policy 5.10.4. Use public education, education for County departments, and regulations to control noxious weeds and invasive species.

Goal 5.11: Promote sustainable building practices that minimize the impacts of development on the natural environment.

Policy 5.11.1. Use the County Code and educational materials to promote the use of resource-efficient building and landscaping techniques, materials, and technologies that minimize impacts to environmental quality.

Policy 5.11.2. Encourage and support reuse and recycling of consumer goods, green waste, construction waste, hazardous waste, and e-waste through education and enhanced recycling opportunities through the Recycling Program.

Policy 5.11.3. Support the process for siting new County solid waste management facilities in rural Deschutes County, consistent with facility needs and County standards for the location and approval of such facilities.

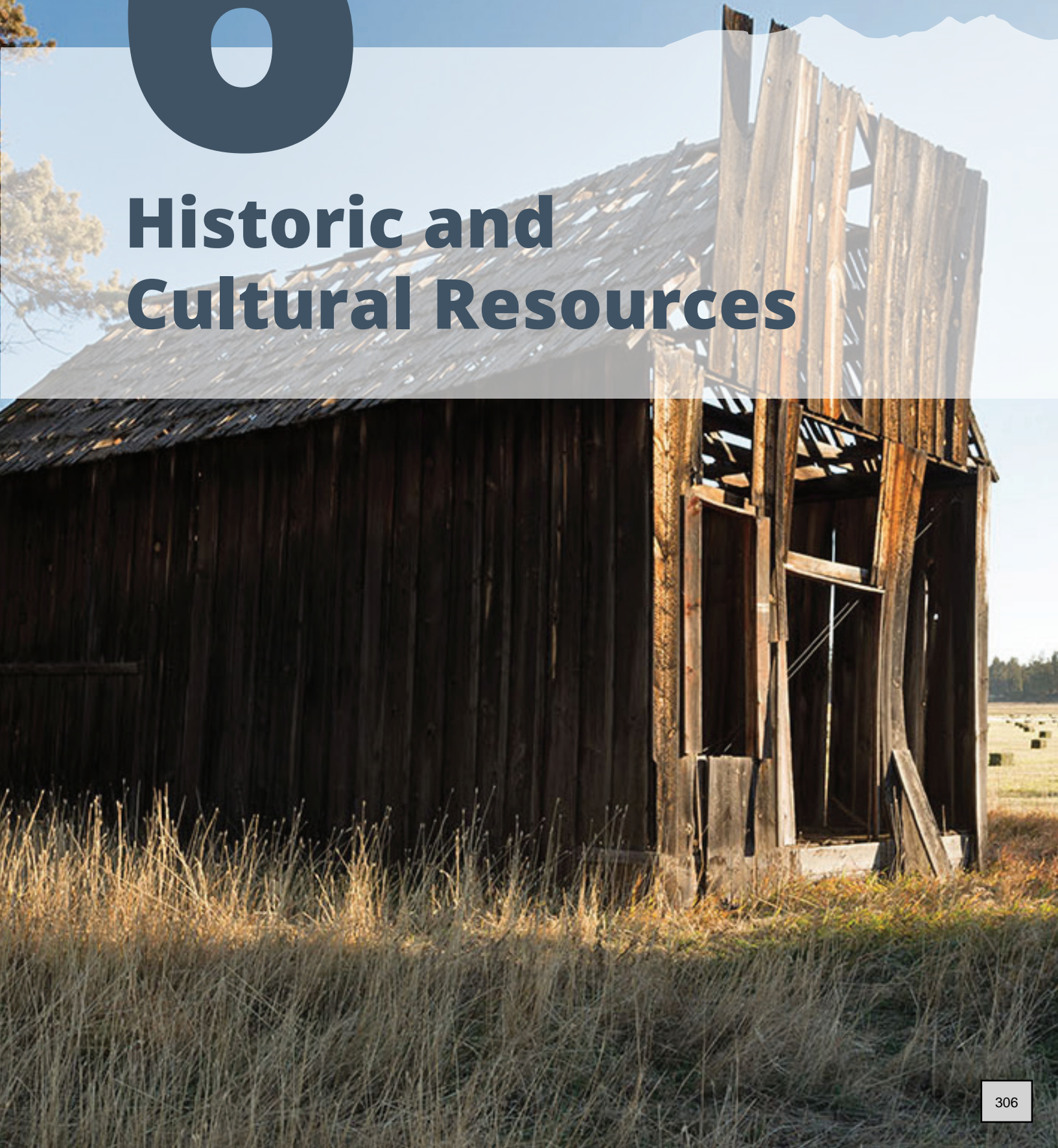
Policy 5.11.4. Implement best practices in solid waste management throughout the County.

Policy 5.11.5. Develop and implement a Climate Action Plan to address the potential future impacts of climate change on Deschutes County through incentives and/or regulations.

Policy 5.11.6. Promote and incentivize green infrastructure in new development to improve stormwater management.

6

Historic and Cultural Resources





Opportunities, Challenges, and Considerations

Deschutes County is a certified local government (CLG), as designated by the State of Oregon Historic Preservation Office. This certification recognizes the County's commitment to implementing and maintaining a formal historic resources program. Deschutes County has 13 nationally registered historic and cultural sites and 35 locally significant historic sites. The County currently administers grant programs and zoning requirements to preserve and restore these sites. Deschutes County owns the National Register listed Reid School and invests in supporting the Deschutes County Historical Society as a research and educational facility through a zero-cost lease and maintenance support for the purposes of running the museum and research center.

Historic resources are recognized by Statewide Planning Goal 5, Natural Resources, Scenic Views and Historic Areas and Open Spaces, and Oregon Administrative Rule (OAR) 660-023. The Statewide Goal and OAR recommend cities and counties inventory and protect historic and cultural sites. Recognizing the value and importance of having a connection to our past, Deschutes County chose to implement and maintain a historic preservation program and Historic Preservation Strategic Plan (Adopted 2022).

The 2022 Historic Preservation Strategic Plan identified three overarching goals to guide historic and cultural resource preservation in Deschutes County: collaborate, coordinate, and educate. The plan identifies opportunities to strengthen relationships between historic preservation and community partners, and to involve community members in historical and cultural preservation efforts. Improving access to historic resource information and providing content in an easily accessible format will be paramount to preservation efforts and increase

community appreciation for resources. Along with improved educational resources, more outreach and education opportunities could be explored. Deschutes County has several partners involved in drafting and implementing this strategic plan – those partners include the Deschutes County Historical Society, High Desert Museum, Archaeological Society of Central Oregon, Three Sisters Historical Society, and Redmond Historical Society.



Context

Deschutes County has several notable historical and cultural sites. These sites receive special protections to avoid land use or development activity that may disturb the historical and cultural resources existing on site.

LOCALLY SIGNIFICANT HISTORIC SITES

Deschutes County has 35 locally significant sites including cemeteries, ranches, dams, bridges, schools, and granges among numerous historic homesteads and homesites. The State of Oregon has initiated a process to identify culturally significant archaeological sites and sites of indigenous importance. This process will likely be incorporated into the County's local inventory by 2029.

NATIONALLY REGISTERED SITES

Deschutes County has 13 sites that have completed the national register process, including highways, bridges, lodges, and rock gardens.

Key Community Considerations

As part of the 2023 Comprehensive Plan update, community members shared their vision for the protection of historic and cultural resources. Comments included:

- The importance of county-wide coordination on cultural and historic, as well as increased representation of the indigenous history of Central Oregon.
- Acknowledging previous landowners and preserving the County's historical and cultural resources are both important.
- A county-wide historic and cultural resource signage program was also suggested.
- The community shared an interest in capitalizing on the High Desert Museum to continue to support indigenous culture and Central Oregon's history.

Goals and Policies

Goal 6.1: Promote the preservation of designated historic and cultural resources through education, incentives, and voluntary programs.

Policy 6.1.1. The Historic Landmarks Commission shall take the lead in promoting historic and cultural resource preservation as defined in DCC 2.28.

- a. Support incentives from the State Historic Preservation Office (SHPO), The Confederated Tribes of the Warm Springs Reservation of Oregon Tribal Historic Preservation Office (THPO), or other agencies for private landowners to protect and restore historic resources.
- b. Support the Historic Landmarks Commission to promote educational programs to inform the public of the values of historic preservation.
- c. Support improved training for the Historic Landmarks Commission.
- d. Support the goals, objectives, and actions of the Historic Preservation Strategic Plan.

Policy 6.1.2. Coordinate cultural and historic preservation with the Oregon State Historic Preservation Office and The Confederated Tribes of the Warm Springs Reservation of Oregon Tribal Historic Preservation Office.

- a. Maintain Deschutes County as a Certified Local Government, which includes the City of Sisters.

Policy 6.1.3. Encourage private property owners to coordinate with the State Historic Preservation Office and The Confederated Tribes of the Warm Springs Reservation of Oregon Tribal Historic Preservation Office. Coordinate with The Confederated Tribes of the Warm Springs Reservation of Oregon, Burns-Paiute Tribe, Klamath Tribes, Archaeological Society of Central Oregon, and SHPO to adopt a program to identify and protect archaeological and cultural resources, as appropriate, and prevent conflicting uses from disrupting the value of known sites.

7

Natural Hazards



Opportunities, Challenges, and Considerations

Central Oregon is a dynamic region formed and shaped by the powerful forces of nature. Deschutes County residents and visitors rely on the County and its partners to plan for hazardous events and limit harm to people and property.

Continued rapid population growth, development in wildfire-prone areas, and an increased frequency of natural hazard events make planning for and mitigating risks ever more important. As temperatures rise globally, Central Oregon will face challenges due to drought, wildfire, heat events, and storms. The impacts a major Cascadia Subduction Zone earthquake would have on Deschutes County would be substantial as well.

In order to plan for and address natural hazards, Deschutes County has partnered with local jurisdictions to create its Natural Hazards Mitigation Plan (NHMP). Additional opportunities exist to create greater defensible spaces, encourage fire hardening, utilize grant programs, and pursue education measures to reduce these impacts over time.

According to the NHMP, the hazards with greatest risk in Deschutes County are:

- **Winter Storm.** Destructive storms producing heavy snow, ice and cold temperatures occurred throughout the County's history. Increases in population and tourism make potential impacts to shelter, access to medical services, transportation, utilities, fuel sources, and telecommunication systems more acute. The relative frequency of these events combined with their widespread impacts make winter storms the highest-ranked hazard in the NHMP.

- **Wildfire.** Historically, wildland fires have shaped the forests and wildlands valued by residents and visitors. These landscapes, however, are now significantly altered due to increased rural development, warmer and drier conditions, and forest management practices, resulting in increased event of wildfires that burn more intensely than in the past.

Statewide Planning Goal 7 requires local comprehensive plans to address Oregon's natural hazards. Protecting people and property from natural hazards requires knowledge, planning, coordination, and education. Good planning does not put buildings or people in harm's way. Planning, especially for the location of essential services like schools, hospitals, fire and police stations, is done with sensitivity to the potential impact of nearby hazards.

- **Windstorm.** A windstorm is generally a short duration event involving straight-line winds and/or gusts in excess of 50 mph. Although windstorms can affect the entirety of Deschutes County, they are especially dangerous in developed areas with significant tree stands and major infrastructure, especially above ground utility lines.
- **Drought.** Periods of drought can have significant impacts on public health, agriculture, and industry. Many counties in Central Oregon are currently experiencing more frequent and severe droughts than is historically the norm, and many climate predictions see this trend continuing into the future.
- **Earthquake.** The Pacific Northwest is located at a convergent plate boundary, called the Cascadia Subduction Zone, where the Juan de Fuca and North American tectonic plates meet. This fault line is subject to rare but potentially very large

earthquakes. Such an event would impact Deschutes County communities both directly through damage to infrastructure and property, as well as economically and socially as the broader region recovers from the disaster.

Context

Informed by an understanding of natural hazards, Deschutes County can reduce the risks to property, environmental quality, and human safety through land use planning and review of specific development proposals. The County's policies provide the framework for the County's natural hazards review program. This includes: identification of areas subject to natural hazards, regulations for evaluating land use actions for how they may result in exposure to potential harm from natural hazards, and programmatic elements including partnerships and funding opportunities to support natural hazard risk reduction.

Deschutes County has taken on a number of proactive projects, including:

- 2021 Natural Hazards Mitigation Plan (NHMP)
- 2019 Wildfire Mitigation Advisory Committee
- Project Wildfire, a County-led wildfire education and mitigation program has been in operation since 203 and has been very successful in changing attitudes towards wildfire and prevention.
- Community Wildfire Protection Plans (CWPP) for many communities, including:
 - » Greater Bend CWPP (2016, expected revision 2021)
 - » Greater La Pine CWPP (2020, expected revision 2025)
 - » Greater Redmond CWPP (2022, expected revision 2026)
 - » Greater Sisters Country CWPP (2019, expected revision 2024)



- » Sunriver CWPP (2020, expected revision 2025)
- » East and West Deschutes County CWPP (2018, expected revision 2023)
- » Upper Deschutes River Coalition CWPP (2018, expected revision 2023)

The County is pursuing a process to consolidate all CWPPs into one document, to simplify the five-year update process. In addition, dozens of neighborhoods are pursuing or have received FireWise certification through the National Fire Protection Association. The County also supports the Heart of Oregon and Youth Conservation Corps crews in fuels reduction work and other mitigation efforts, with financial assistance from other entities.

Wildfire

According to the Natural Hazards Mitigation Plan, wildfire is the second most significant hazard to the county (after winter storms) and was the most discussed natural hazard discussed during outreach events. Throughout the 20th century, the years with warm and dry conditions corresponded with larger fires that have burned greater areas. Overall increases in heat will also lengthen growing seasons - building greater fuel loads and decreasing soil and fuel moisture, thereby increasing the likelihood of larger fires.



By mid-century, the annual potential for very large fires is projected to increase by at least 350% over the 20th century average.¹

The annual frequency of very high and extreme fire danger days is expected to increase by 10-15 additional days per year by mid-century⁴ (up from 36 currently). These trends are due to exacerbated conditions with a combination of high air temperatures and very low fuel moisture, which increases the likelihood of fire starts that can spread. As Deschutes County communities have experienced, increased fire activity - even at quite a distance - will impact air quality, increasing public health risks and impacting aspects of everyday life.

The Wildland-Urban Interface (WUI) is defined as the area where housing and burnable vegetation meet or intermingle². Deschutes County has seen increased development in the WUI, associated with growth in the four cities and the rural county, in particular on the edge of cities adjacent to public lands. Public lands in the WUI historically had frequent low intensity fire which reduced the density of small trees and brush making the landscape less likely to produce high severity fire. Past forest management practices and exclusion of frequent, natural, low intensity fire from the landscape result in high fuel loads and high probability of severe fire. Landscapes in Deschutes County that have experienced severe fire often contain dense understory vegetation and brush, which are more susceptible to ignitions and fire spread in hot and dry climates.

Following severe wildfire events, forests experience disruption of natural growth progression, which can lead to competition among vegetative species and monoculture species growth. Significant efforts have gone into removal of these fuels at the federal, state, and local levels, including notable efforts by

¹ Halofsky, J. Peterson, D. Harvey, B. "Changing Wildfire, changing forests: the effects of climate change on fire regimes and vegetation in the Pacific Northwest, USA. Fire Ecology. 2020.

² Community Planning Assistance for Wildfire definition for WUI

neighborhood associations and communities following fire-wise guidelines.

Home hardening at the individual household level will continue to play an important role in reducing the risk of loss from wildfire events and mitigating the spread of fire between neighboring properties. The 2020 Labor Day fires severely impacted several areas of the state. During those events, house to house ignitions amplified the spread of wildfire, causing severe loss of homes and businesses. Home hardening techniques include use of ignition resistant siding and roofing, attic ventilation devices that reduce ember intrusion, and removal of vegetation in the defensible space area surrounding structures on a property. These techniques will be crucial to reduce loss of life and property from these increasing hazard events in and adjacent to the WUI.

WILDFIRE AND HEAT

By the middle of this century, increasing temperatures are expected to drive increasing wildfire risk, especially in the Cascades. The yearly percentage of area burned is likely to increase in the mountains and the interval of return (years between fires) is expected to decrease across the county. Both the highest and lowest summer temperatures will increase, leading to more extreme heat days and reducing the historical nighttime cooling effect of the high desert.

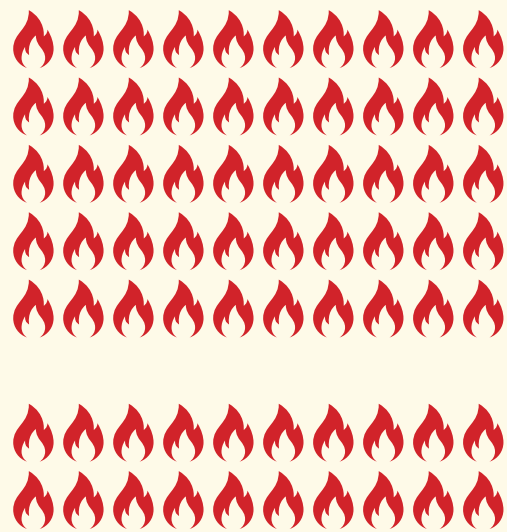
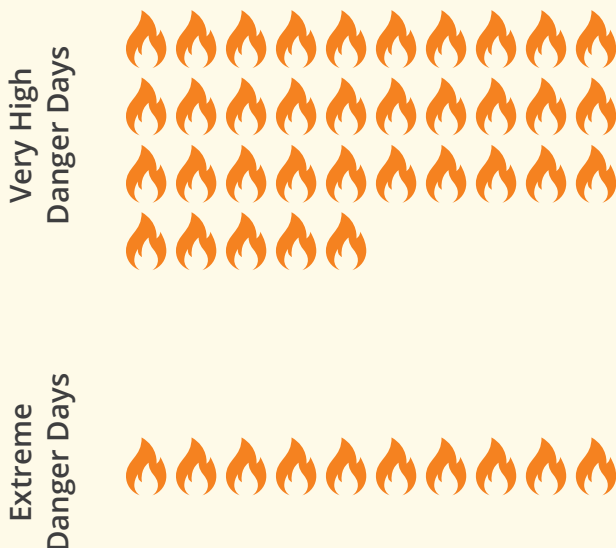
Under all change projections, there will be an increase in the number of days with a heat index above both 90° and 100°F by mid-century.³ By 2100, Deschutes County can expect summer maximum temperatures to be 12°F hotter than current highs. Overall, extreme heat is not considered a human health risk in Deschutes County because of low night-time temperatures and low humidity in the region. However, the Redmond airport, which sees the hottest temperatures in the county, will likely experience

3 Oregon Forest Resources Institute Fact Sheet

Fire Danger near Mt. Bachelor Village

2023

2070



occasional temperatures above 105° every few years by mid-century, and at least once a year by 2100. In addition, summer night-time lows are likely to increase by up to 5° degrees by mid-century, reducing the cooling effect of the high desert climate.

Key Community Considerations

Community conversations related to natural hazards have centered around the following topics:

- Impacts of Climate Change. Throughout the engagement process, community members spoke to the importance of recognizing and addressing the impacts of climate change in Deschutes County and its relationship with natural hazard events.
- Education and Communication. Providing information about potential risks to residents and visitors can help the community as a whole be more prepared for natural hazards.
- Development Code Regulations and Incentives. Some community members expressed a desire for stricter regulations and additional incentives about “fire-wise” construction and defensible space practices.
- Limiting Development in hazard-prone areas. Increased development in remote areas of the County, where life-saving services may be scarce and human impacts may exacerbate risks, was a concern for some.

Vulnerable Populations

Socio-demographic qualities such as language, race and ethnicity, age, income, and educational attainment are significant factors that can influence the community's ability to cope, adapt to and recover from natural disasters. A disproportionate burden is placed upon special needs groups, particularly children, the elderly, the disabled, minorities, and low-income persons. These vulnerabilities can be reduced or eliminated with proper outreach and community mitigation planning. For planning purposes, it is essential that Deschutes County and the cities of Bend, La Pine, Redmond, and Sisters consider both immediate and long-term socio-demographic implications of hazard resilience.



Goals and Policies

Goal 7.1: Develop policies, partnerships, and programs to increase resilience and response capacity in order to protect people, property, infrastructure, the economy, natural resources, and the environment from natural hazards.

Policy 7.1.1. Partner with county, state, and regional partners to regularly update and implement the Deschutes County Natural Hazards Mitigation Plan.

Policy 7.1.2. Collaborate with federal, state, and local partners to maintain updated mapping of high wildfire hazard areas, floodplains, and other natural hazard areas within the county.

Policy 7.1.3. Communicate and cooperate with federal, state, and local entities to clarify responsibilities regarding wildfire mitigation and suppression to improve fire protection services.

Policy 7.1.4. Use the development code to provide incentives and regulations to manage development in areas prone to natural hazards.

Policy 7.1.5. Work with agency partners to mitigate impacts of episodes of poor air quality resulting from wildfires and prescribed burning in the region.

Policy 7.1.6. Protect wildlife with wildland fire mitigation measures on private lands.

Policy 7.1.7. Address wildfire risk, particularly in the wildland urban interface.

Policy 7.1.8. Identify all areas not protected by structural fire protection agencies and promote discussions to address fire protection in unprotected lands in the County.

Policy 7.1.9. Support forest management practices that reduce wildfire risk.

Policy 7.1.10. Support local fire protection districts and departments in providing and improving fire protection services.

Policy 7.1.11. Continue to review and revise County Code as needed to:

- a. Ensure that land use activities do not aggravate, accelerate or increase the level of risk from natural hazards.
- b. Require development proposals to include an impact evaluation that reviews the ability of the affected fire agency to maintain an appropriate level of service to existing development and the proposed development.
- c. Minimize erosion from development and ensure disturbed or exposed areas are promptly restored to a stable, natural and/or vegetated condition using natural materials or native plants.
- d. Ensure drainage from development or alterations to historic drainage patterns do not increase erosion on-site or on adjacent properties.
- e. Reduce problems associated with administration of the Floodplain Zone.
- f. Require new subdivisions and destination resorts to achieve FireWise Standards or other currently accepted fire mitigation standards from the beginning of the projects and maintain those standards in perpetuity.

Goal 7.2: Ensure the County's built environment and infrastructure are adequately prepared for natural disasters.

Policy 7.2.1. Increase the quality, resiliency, diversity, and redundancy of utility and transportation infrastructure to increase chances of continued service following a natural disaster.

Policy 7.2.2. Prohibit the development of new essential public facilities and uses that serve vulnerable populations from being located within areas at high risk of flooding and wildfire, and aim to relocate existing uses in these areas.

Policy 7.2.3. Support Central Oregon Ready, Responsive, Resilient (CORE3) regional coordinated emergency services training facility.

Policy 7.2.4. Coordinate with emergency service providers when new development is proposed to ensure that response capacity can meet the needs of the new development.

Policy 7.2.5. Require new development to follow home hardening, defensible space, and other resilient design strategies in areas prone to wildfires and other natural hazards.

Policy 7.2.6. Encourage and incentivize development that exceeds minimum building code standards and promote retrofitting of existing development for better natural disaster resiliency.

Policy 7.2.7. Require development to be designed to minimize alteration of the natural landform in areas subject to slope instability, drainage issues or erosion.

Policy 7.2.8. Regulate development in designated floodplains identified on the Deschutes County Zoning Map based on Federal Emergency Management Act regulations.

- a. Continue evaluation of participation in and implementation of the Community Rating System as part of the National Flood Insurance Program.
- b. Cooperate with other stakeholders to identify alternatives for acquiring and/or relocating existing structures prone to flooding.

- c. Continue to coordinate with stakeholders and agency staff to correct mapping errors.

Goal 7.3: Develop programs that inform the public about the increased risks from natural hazards.

Policy 7.3.1. Identify high risk, high need populations and ensure equitable access to emergency preparedness and recovery services.

Policy 7.3.2. Increase outreach and education for hazard awareness and natural disaster preparedness, especially for low-income, elderly, non-English speaking, and other vulnerable populations.

Policy 7.3.3. Expand partnerships with government agencies, utilities, and other groups that can help Deschutes County residents prepare for natural disasters.

Policy 7.3.4. Work with regional partners to establish and maintain adequate support for a Deschutes County Community Emergency Response Team (CERT) to aid in responding to natural hazard events.

Policy 7.3.5. Promote and support business resilience planning.



8

Recreation





Opportunities, Challenges, and Considerations

Recreation is an important quality of life issue for Deschutes County and recreational tourism is a key part of the local economy. Both residents and visitors are drawn by the County's extensive public lands, seasonal climate, and wide variety of activities and settings. Recreational opportunities include places set aside for specific activities such as campgrounds or sports fields as well as passive spaces such as natural areas.

The primary focus of recreation in rural Deschutes County is outdoor recreation. Outdoor activities promote healthy communities by encouraging people to enjoy an active lifestyle and by providing opportunities to reconnect with the natural world.

Deschutes County does not have a parks department; instead, it coordinates with the federal and state agencies, local park districts, and private entities that provide park and recreational opportunities. Coordination assures that resources are used efficiently, and duplication is avoided. With a holistic view of recreation in Deschutes County, the County can also provide other agencies and jurisdictions with guidance for service gaps to fill.

The health of the County's recreational assets and industry is inexorably tied to the health of the land, forests, and waterways of Central Oregon. The effects of human activity - from development pressures and overuse of recreational facilities to resource extraction and climate change - will have a significant impact on recreation in Deschutes County. Some of these impacts include:

- Changes in precipitation affecting the timing and conditions for winter sports
- Loss of habitat
- Wildfire and risk of wildfire limiting recreational access
- Increased number of dangerously warm days

Future Challenges to Recreation

The health of the County's recreational assets and industry is inexorably tied to the health of the land, forests, and waterways of Central Oregon. The effects of human activity - from development pressures and overuse of recreational facilities to resource extraction and climate change - will have a significant impact on recreation in Deschutes County.



Photo Credit: Ryan Westby

There are several environmental concerns that may affect parks and recreation in Deschutes County in the future. Activities such as hiking, hunting, fishing, swimming, and foraging are an important part of recreation in Deschutes County - these activities are likely to be impacted by future changes to the climate.

Fishing may be impacted by drought as water bodies warm and seasonally drop. Foraging animals, like deer and elk, may express changing behavior like earlier-season high elevation foraging and increased interactions with agricultural communities due to drought. Drought also severely reduces the prominence of fruiting fungi for annual mushroom hunters, and may increase pressure on the remaining harvest areas. Fungi are crucial to the health of the forest ecosystem, adapting and responding to changing conditions and disease.

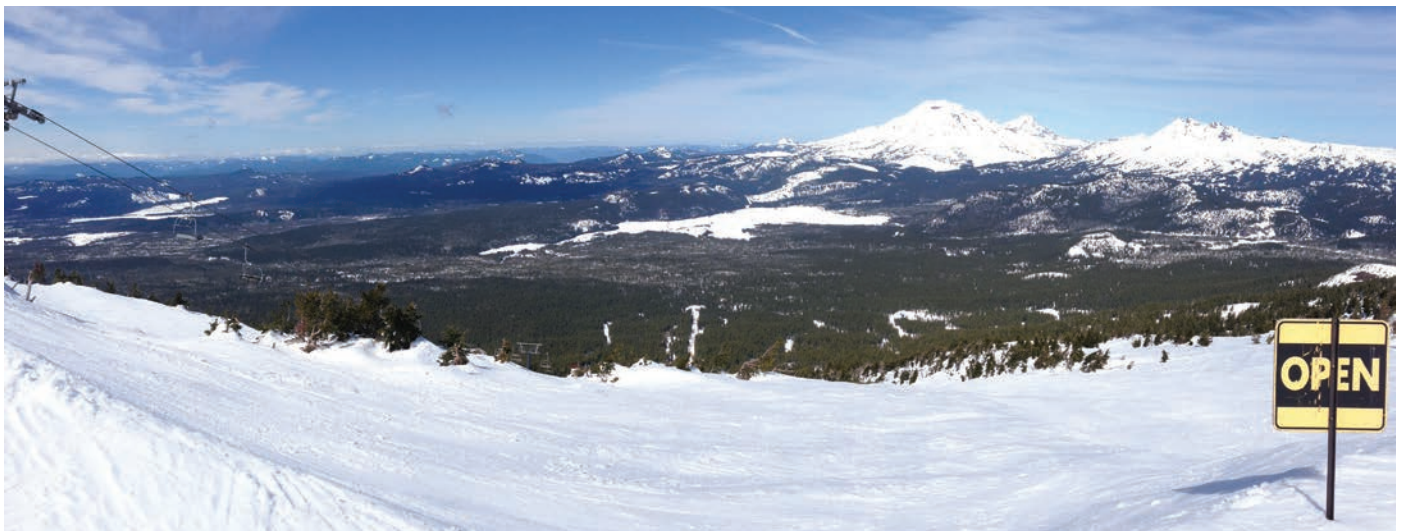
These conditions may also lead to greater frequency and severity of algal and bacterial blooms in fresh water. Algal blooms in other parts of the state have led to drinking water concerns, but Deschutes County cities are supplied by groundwater and so the risk in algal blooms is mainly to recreation – boaters, swimmers, anglers, and campers may be less motivated to visit.

Winter Sports

Snow sports are a significant component of recreation in Deschutes County. Overall decline in snow pack is expected in the coming decades, which will heavily impact winter sports that rely on snowpack in the Cascades. At the Mt. Bachelor Ski Resort, April Snowpack is expected to decline between 11% and 18% by the middle of the century and between 18% and 43% by the end of the century. Additionally, inconsistent snowpack buildup will increase due to more precipitation falling as rain instead of snow throughout the season, making winter sports seasons less predictable.

Summer Recreation

The summer outdoor season has additional risks from degraded to severely degraded air quality due to wildfire throughout the west coast. With degraded air quality, outdoor recreators may avoid the region, impacting regional income and generally degrading the perception of the county as a retreat to the natural world. Additionally, an increase in the frequency of very high temperature days may impact the safety and desirability of outdoor recreation.



Context

Deschutes County does not directly provide parks and recreation services. The only public parks the County maintains are a section of the County Fairgrounds and the Worrell Wayside in downtown Bend. Although there is no County parks department, there are County-owned properties which are designated as park lands. Parks and recreation services are provided by the following entities.

OREGON PARKS AND RECREATION DEPARTMENT

OPRD owns and manages several key parks and scenic areas in the County. These include state parks such as line Falls State Scenic Viewpoint, La Pine State Park, Pilot Butte State Scenic Viewpoint, Smith Rock State Park, and Tumalo State Park. In addition, they also manage the Upper and Middle Deschutes River Scenic Waterway segments, and Cascade Lakes and McKenzie Pass-Santiam Pass Scenic Byways.

THE BEND PARKS AND RECREATION SPECIAL DISTRICT (BPRD)

BPRD owns and maintains approximately 3,035 acres of parkland including 81 parks and 70 miles of trails. The largest park district in the County, the taxing district follows the City of Bend Urban Growth Boundary closely, although extends past the UGB to the west and east to include several properties outside of city limits.

THE LA PINE PARKS AND RECREATION SPECIAL DISTRICT

This district operates in 85 square miles and 11 parks and recreation facilities in southern Deschutes County including the City of La Pine.

THE REDMOND AREA PARKS AND RECREATION SPECIAL DISTRICT

The District operates five recreational facilities including the Cascade Swim Center and extends beyond city limits to Tetherow Crossing. In 2022, the district received voter approval for a general obligation bond to build a new community center with a variety of recreational, fitness, and therapeutic activates.

THE SISTERS PARK AND RECREATION SPECIAL DISTRICT

Operates approximately 15 acres of land within City of Sisters city limits, including Bike Park 242, Hyzer Pines Disc Golf Course, a playground, a skatepark, and Coffield Community Center. The district boundary extends far past city limits, serving approximately 14,000 residents through programming and activities.

THE U.S. FOREST SERVICE, BUREAU OF LAND MANAGEMENT

Approximately 76% of the County's total land area is owned by the federal government, primarily these two agencies. Community members seek out extensive recreation activities in these areas, including skiing, mountain biking, hiking, backpacking, fishing, hunting, kayaking, and off-road vehicle riding.

COUNTY-OWNED OPEN SPACE

Starting in 1994 the County received donation of several properties along rivers, creeks, or streams or with wildlife, wetlands, or other value as park lands. The intent of this donation was not to develop these lands for park use but rather to preserve lands with valuable resources, which were protected through deed restrictions. The park designation means that the lands would be retained in public ownership unless



Photo Credit: Visit Bend (www.visitbend.com)

there was a public hearing and the Board of County Commissioners determined that selling was in the best interest of the public.

ORS 275.330 governs the disposal of these lands, stating that if they are sold the proceeds must be dedicated to park or recreation purposes. As of 2009, there were approximately 70 properties designated as park lands.

COUNTY FAIRGROUND AND EXPO CENTER

The 132-acre County Fairground and Expo Center site is located southwest of the Redmond airport, and it is placed strategically at the hub of the tri-county area (Deschutes, Jefferson, Crook Counties). The facility is used for a variety of public and private events. Each of its lawn areas can be rented exclusively by groups for different events, which range from weddings, picnics, reunions, car shows, RV / motorcycle rallies, animal shows, and outdoor trade shows, among others.

Key Community Considerations

Recreation and access to nature is a key component of life in Deschutes County and a primary attraction for both residents and visitors. As part of this Comprehensive Plan update, community members noted concerns about increasing recreational use or overuse, conflicts among different users, and the need for permitting or other strategies to manage use of federally owned lands, particularly in popular locations.

Because the county does not have a parks and recreation department, community members have identified service gaps and lack of continuity of trail networks, habitat and species preservation, and land access policies. Residents are concerned with private recreation development and use of natural resources such as land and water.

The tension between resource use of forest land and water, recreational use of these areas, and natural resource protection is evident among members of the community

Community members also noted that it is imperative for all special districts and agencies providing park services to coordinate on integrated services. These partnerships will be key to ensure sustainable recreation and land stewardship as the County continues to grow.



Goals and Policies

Goal 8.1: Increase affordable, sustainable, and diverse recreation opportunities through partnerships with government and private entities.

Policy 8.1.1. Reduce barriers to regional parks and recreation projects in Deschutes County, including acknowledgement or adoption of federal, state and local parks district trail and facility plans.

Policy 8.1.2. Collaborate with partners to develop a regional system of trails and open spaces, balancing recommendations from local park districts, County, state, and federal recreation plans and studies and property owner considerations, particularly for projects adjacent to farm and forest lands.

Policy 8.1.3. Encourage coordination between the U.S. Forest Service, the Bureau of Land Management and recreational use interest groups to minimize environmental degradation, agricultural fragmentation and user conflicts on public and private land.

Policy 8.1.4. Support the creation and improvement of accessible park and recreation opportunities in compliance with the Americans with Disabilities Act.

Policy 8.1.5. Support efforts to coordinate recreation planning between the County, park and recreation districts, school districts, irrigation districts, unincorporated communities, and cities.

Policy 8.1.6. Support the development of parks and trails identified in locally-adopted plans.

Policy 8.1.7. Coordinate with unincorporated communities to identify opportunities for parks, trails, open spaces, and community centers.

Policy 8.1.8. Support trail design standards and identify specific funding sources for trails as part of future transportation system planning efforts to ensure development of identified priority rural trail segments and bicycle routes.

Policy 8.1.9. Explore creation of a County Parks and Recreation Department to increase the County's role in recreation and natural resource management and implement if deemed appropriate.

Policy 8.1.10. Support community efforts for acquisition and management of Skyline Forest as a community amenity.

Policy 8.1.11. Work with stakeholders to promote new recreational and tourist initiatives that maintain the integrity of the natural environment.



9

Economic Development



Opportunities, Challenges, and Considerations

Statewide Planning Goal 9 provides guidance on economic development for Oregon jurisdictions. This goal is intended to “provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon’s citizens.” For Deschutes County, implementing Goal 9 is focused on ensuring opportunities for economic development, while protecting rural land uses.

In Deschutes County, several areas are designated for rural industrial and rural commercial activities to allow for activities such as manufacturing or resource processing. Additionally, unincorporated communities and rural service centers allow for limited commercial opportunities, including restaurants, services, and retail stores.


Economic development agencies in Central Oregon cite the tremendous natural resource access and amenities to be essential for drawing in new businesses and workers. As the County grows, childcare will continue to be challenge for rural residents along with access to high speed and reliable internet services.

A continued challenge for Deschutes County will be to balance adequate economic opportunity for rural residents, with protection of natural resource lands. Community members have expressed interest in providing for new and emerging economic opportunities through renewable energy development, including potential for biomass, solar, geothermal, and wind projects that may be compatible with rural uses.


Context

Deschutes County’s economy was initially built around farming and logging. As those sectors declined in the 20th century, recreation and tourism increased as people were drawn to the beauty and opportunities to recreate on public lands. Deschutes County’s high quality of life became a draw for employers and employees alike. In the 2000’s, the building sector boomed as new housing was built to meet both increased housing demand and the real estate speculation that followed. Housing prices rose so high that workforce housing became a limiting factor in economic growth. The period of strong growth ended with the national recession that began in late 2007, leading to falling housing prices and rising unemployment. The 2010’s and early 2020’s have proven to be another period of booming economic growth for Deschutes County, exacerbated by the COVID-19 pandemic and the dramatic increase in remote work.


Deschutes County's economy remains strong compared to Oregon as a whole, as shown in the statistics below.



\$74,082
Median Household Income
(\$70,084 in Oregon)

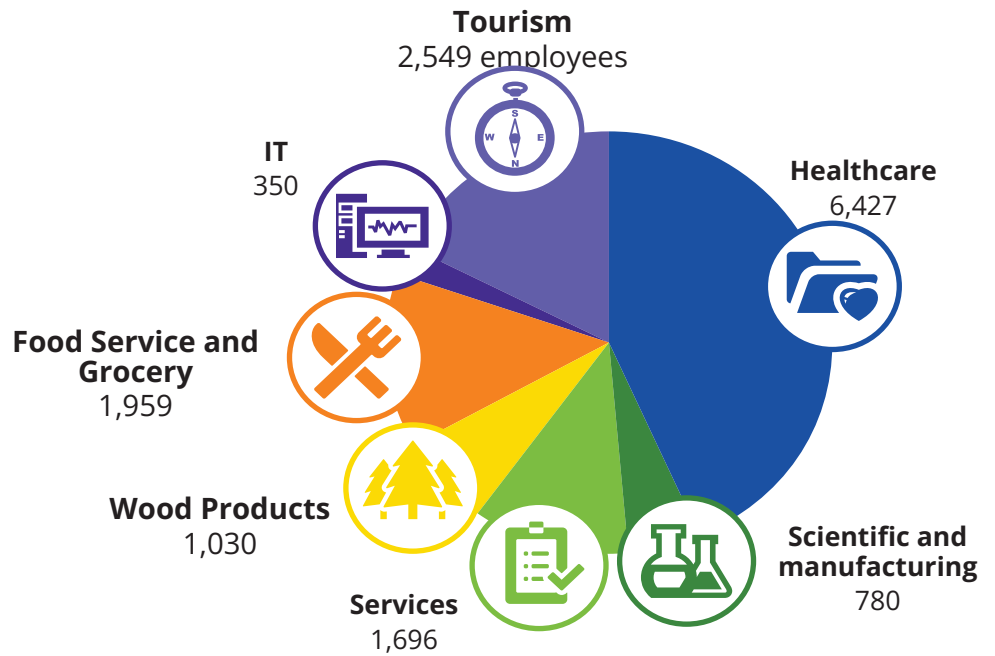


9.4%
of county population experiencing poverty
(12.1% in Oregon)



63.3%
of population in civilian workforce
(62.6% in Oregon)

2022 Central Oregon Largest Private Employers by Industry



2022 Central Oregon Largest Private Employers

Rank	Employees	Employer
1	4,509	St. Charles Health System regional
2	1,030	Bright Wood Corporation regional
3	1,000	Sunriver Resort 1,000 1,000 940
4	916	Les Schwab Headquarters & Tire Centers regional
5	894	Mt. Bachelor
6	714	Safeway regional
7	640	NC Fred Meyer regional
8	628	Summit Medical Group regional
9	605	McDonald's regional
10	440	Lonza, formerly Bend Research
11	415	Rosendin Electric
12	391	Mosaic Medical regional
13	375	Black Butte Ranch
14	365	ibex
15	350	Meta Platforms, Inc. - Facebook Data Center
16	340	BasX
17	336	PacificSource
18	296	High Lakes Health Care regional
19	280	Brasada Ranch
20	267	Medline ReNewal

Primary Industries

Deschutes County is known for its abundant natural resources, though the County continues to balance its economy through a variety of industries. The top 10 industries overall in Deschutes County (including those within urban areas) are:

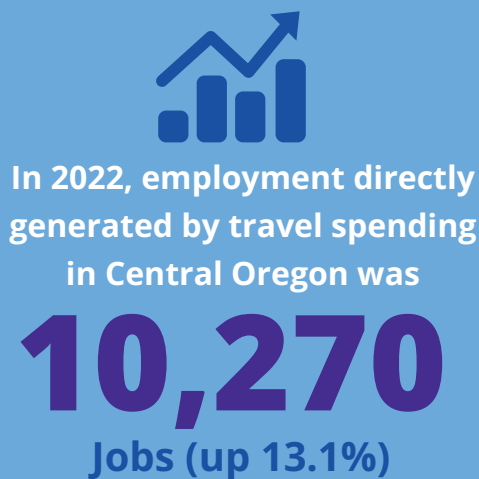
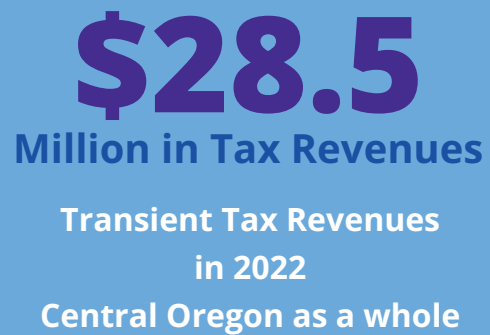
1. Trade, transportation, utilities (15,742 jobs)
2. Education/Health Services (13,479 jobs)
3. Goods-producing (13,169 jobs)
4. Leisure and hospitality (12,990 jobs)
5. Health care and social assistance (12,541 jobs)
6. Retail trade (11,714 jobs)
7. Accommodation and food services (10,718 jobs)
8. Professional/business services (10,067 jobs)
9. Food services/drinking places (8,304 jobs)
10. Local government (7,396 jobs)

Tourism

Tourism continues to be a major facet of Central Oregon’s economy, with approximately 4.5 million visitors entering Central Oregon each year. The majority of those visitors travel to Bend and Deschutes County in particular but other communities in the County also are popular destinations, including Sisters, Redmond and Terrebonne, as well as destination resort such as Sunriver, Eagle Crest, Pronghorn and others. In addition, recreational opportunities throughout the County also attract a multitude of visitors, from skiing on Mt. Bachelor, hiking in the Three Sisters Wilderness, and rafting the Deschutes River, to fishing, hunting and camping at dispersed sites on National Forest and BLM land throughout the County.



Tourism Impacts



Source: Oregon Travel Impacts, 2022 by Dean Runyan Associates for the Oregon Tourism Commission

Construction and Development

While much of the County's economic activity occurs in urban areas, staff notes that agricultural, forestry, and construction industries also provide economic growth in Deschutes County. Construction of rural housing can support additional workforce in areas outside of city limits while also utilizing local trade industries. Construction of rural industrial or commercial projects provide economic opportunities that serve rural communities, without a trip into an adjacent city.

Coordination

A key partner for the County in promoting a healthy economy is Economic Development for Central Oregon (EDCO). This private non-profit organization is dedicated to diversifying the tri-county regional economy by attracting new investment and jobs. This organization also tracks the local economy.

Between 2010 and 2013, Deschutes, Crook, and Jefferson counties, and their respective cities established a regional large lot industrial land need analysis, ultimately leading to changes to state law, OAR 660-024-0040 and 45. This rule provides that that the large lot industrial land need analysis agreed upon by all of the parties, once adopted by each of the participating governmental entities, would be sufficient to demonstrate a need for up to nine large industrial sites in Central Oregon. Six of the sites will be made available initially. Three more sites may be added under the rule as the original sites are occupied. Intergovernmental agreements were formed with the regions jurisdictions and Central Oregon Intergovernmental Council in 2013 to provide oversight of this new regional large lot industrial lands program. Participating local governments will review the program after all nine sites have been occupied, or after ten years, whichever comes first.

Connections to Other Comprehensive Plan Chapters

Much of the County's economic development activity is directly related to farmland (Chapter 3), forest land (Chapter 3), mineral and aggregate resources (Chapter 4), and natural resources (Chapter 5). Additional information can be found in these sections.

Key Community Considerations

As part of this comprehensive plan update, community members expressed the following:

- A recognition that tourism is an important industry in the County, but some concern that the interests of tourism-related activity play an outsized role in the County.
- Desire for a strong and diverse economy that benefits local residents.
- Strong interest in expanding access to childcare for rural residents, especially those who travel into incorporated cities for employment.
- Interest in exploring new economic opportunities including renewable energy development.
- Desire for additional educational and job training opportunities, including expansion of colleges and universities.



Economic Development Goals and Policies

Goal 9.1: Maintain a stable, and sustainable, and thriving rural economy, compatible with rural lifestyles and a healthy environment.

Policy 9.1.1. Promote rural economic initiatives, including home-based businesses, that maintain the integrity of the rural character and natural environment.

Policy 9.1.2. Support a regional approach to economic development in concert with Economic Development for Central Oregon or and similar organizations.

Policy 9.1.3. Support growth and expansion of colleges and universities, regional educational facilities, and workforce training programs.

Policy 9.1.4. Support renewable energy generation as an important economic development initiative, while taking other community goals and concerns into consideration.

Policy 9.1.5. Support and participate in master planning for airports in Deschutes County, including expansion of noise impact boundaries and upgrades to facilities as airports continue to grow.

Policy 9.1.6. Within the parameters of State land use regulations, permit limited local-serving commercial uses in higher-density rural communities. Support limited and locally-serving commercial uses in appropriate locations.

Policy 9.1.7. Support expansion of high-speed internet in rural areas and integrate infrastructure such as fiber-optic cables into new development and road projects.

Policy 9.1.8. Support funding and development of childcare locations across the County to support families in the workforce.

Policy 9.1.9. Explore need for master planning for rural economic development lands, including Deschutes Junction.

Policy 9.1.10. Recognize the importance of maintaining a large-lot industrial land supply that is readily developable in Central Oregon, and support a multi-jurisdictional cooperative effort to designate these sites.

Goal 9.2: Support creation and continuation of rural commercial areas that support rural communities while not adversely affecting nearby agricultural and forest uses.

Policy 9.2.1. Allow for new Rural Commercial zoning designations if otherwise allowed by Oregon Revised Statute, Administrative Rule, and this Comprehensive Plan.

Policy 9.2.2. In Spring River there shall be a Limited Use Combining Zone.

Policy 9.2.3. Ensure new uses permitted on Rural Commercial lands do not adversely affect nearby agricultural and forest uses.

Policy 9.2.4. Ensure new commercial uses on Rural Commercial lands are limited to those intended to serve the surrounding rural area and/or the needs of the traveling public.

Policy 9.2.5. New commercial uses shall be limited in size to 2,500 square feet or if for an agricultural or forest-related use, 3,500 square feet.

Policy 9.2.6. A lawful use existing on or before November 5, 2002 that is not otherwise allowed in a Rural Commercial zone, may continue to exist subject to the county's nonconforming use regulations.

Policy 9.2.7.An existing lawful use may expand up to 25 percent of the total floor area existing on November 5, 2002.

Policy 9.2.8.The Rural Commercial zoning regulations shall allow a mixed use of residential or rural commercial uses.

Policy 9.2.9. Residential and commercial uses shall be served by DEQ approved on-site sewage disposal systems.

Policy 9.2.10. Residential and commercial uses shall be served by on-site wells or public water systems.

Policy 9.2.11. Motels, hotels and industrial uses shall not be allowed. Community sewer systems shall not be allowed without exceptions to relevant statewide land use goals.

Policy 9.2.12. Recreational vehicle or trailer parks and other uses catering to travelers shall be permitted.

Goal 9.3: Support the creation and continuation of rural industrial areas that support rural communities while not adversely affecting nearby agricultural and forest uses.

Policy 9.3.1. Update the policies for lands designated Rural Industrial as needed to limit and control industrial uses through the use of the Rural Industrial designation and development standards.

Policy 9.3.2.To assure that urban uses are not permitted on rural industrial lands, land use regulations in the Rural Industrial zones shall ensure that the uses allowed are less intensive than those allowed for unincorporated communities in OAR 660-22 or any successor.

Policy 9.3.3.Limited Use Combining zones shall be applied to the Redmond Military (Tax lot 1513000000116), Deschutes Junction (Tax lot 161226C000301, Tax lot 161226C000300,

Tax lot 161226C000111 and Tax lot 161226A000203) to ensure permitted uses are compatible with surrounding farm and forest lands.

Policy 9.3.4. To ensure that the uses in Rural Industrial zone on tax lot 16-12-26C-301, as described in Exhibit "C" and depicted on Exhibit "D" attached to Ordinance 2009-007 and incorporated by reference herein, are limited in nature and scope, the Rural Industrial zoning on that site shall be subject to a Limited Use Combining Zone which will limit the uses to storage, crushing, processing, sale and distribution of minerals.

Policy 9.3.5. To ensure that the uses in Rural Industrial zone on tax lot 16-12-26C-301, as described in Exhibit "C" and depicted on Exhibit "D" attached to Ordinance 2009-007 and incorporated by reference herein, are limited in nature and scope, the Rural Industrial zoning on that site shall be subject to a Limited Use Combining Zone which will limit the uses to storage, crushing, processing, sale and distribution of minerals

Policy 9.3.6. To ensure that the uses in the Rural Industrial Zone on Tax Lot 300 on Assessor's Map 16-12-26C-300 and Tax Lot 203 on Assessor's Map 16-12-26A-300 and portions of Tax Lot 111 on Assessor's Map 16-12-26C-111 as described in Exhibit 'D' and depicted in Exhibit 'E' attached to Ordinance 2010-030 and incorporated by reference herein, are limited in nature and scope, the Rural Industrial zoning on the subject parcel shall be subject to a Limited Use Combining Zone, which will limit the uses to storage, crushing, processing, sale and distribution of minerals, subject to conditional use and site plan approval

Policy 9.3.7. Ensure new uses on Rural Industrial lands do not adversely affect nearby agricultural and forest uses.

Policy 9.3.8. A lawfully established use that existed on or before February 2, 2003 not otherwise allowed in a Rural Industrial zone may continue to exist subject to the county's non-conforming use regulations.

Policy 9.3.9. A lawfully established use that existed on or before February 2, 2003 may be expanded to occupy a maximum of 10,000 square feet of floor area or an additional 25 percent of the floor area currently occupied by the existing use, whichever is greater.

Policy 9.3.10. Ensure new uses on Rural Industrial lands are served by on-site sewage disposal systems approved by the Department of Environmental Quality (DEQ).

Policy 9.3.11. Residential and industrial uses shall be served by on-site wells or public water systems.

Policy 9.3.12. Community sewer systems shall not be allowed in Rural Industrial zones without exceptions to relevant statewide land use goals.

Policy 9.3.13. A 2009 exception (Ordinance 2009-007) included an irrevocably committed exception to Goal 3 and a reasons exception to Goal 14 to allow rural industrial use with a Limited Use Combining Zone for storage, crushing, processing, sale and distribution of minerals.

Policy 9.3.14. A 2010 exception (Ordinance 2010-030) took a reasons exception to Goal 14 with a Limited Use Combining Zone for storage, crushing, processing, sale and distribution of minerals.

Policy 9.3.15. Properties for which a property owner has demonstrated that Goals 3 and 4 do not apply may be considered for Rural Industrial designation as allowed by State Statute, Oregon Administrative rules and

this Comprehensive Plan. Rural Industrial zoning shall be applied to a new property that is approved for the Rural Industrial Plan designation.

Rural Service Center Policies

Goal 9.4: Support the creation and continuation of rural service centers that support rural communities while not adversely affecting nearby agricultural and forest uses.

Policy 9.4.1. Rural Service Centers in Alfalfa, Brothers, Hampton, Wilstlestop, and Wildhunt are identified on the Comprehensive Plan Map and shall have zoning consistent with Comprehensive Plan designations.

Policy 9.4.2. In Alfalfa, the remaining 20 acres of the Rural Service Center will continue to be zoned Rural Service Center – Residential District, with a 5-acre minimum lot size. A zone change to mixed use commercial can be considered only for a specific use and upon findings that the existing commercial area is fully developed.

Policy 9.4.3. Ensure that land uses at Rural Service Centers do not adversely affect agricultural and forest uses in the surrounding areas.

Policy 9.4.4. Zoning in rural service areas shall promote the maintenance of the area's rural character. New commercial uses shall be limited to small-scale, low impact uses that are intended to serve the community and surrounding rural area or the travel needs of people passing through the area. The commercial/mixed use zoning regulations shall allow a mixed use of residential or small-scale commercial uses such as health and retail services.

Policy 9.4.5. Residential and commercial uses shall be served by DEQ approved on-site sewage disposal systems.

Policy 9.4.6. Residential and commercial uses shall be served by onsite wells or public water systems.

Policy 9.4.7. Community water systems, motels, hotels and industrial uses shall not be allowed.

Policy 9.4.8. Recreational vehicle or trailer parks and other uses catering to travelers shall be permitted.



10

Housing





Opportunities, Challenges, and Considerations

Deschutes County faces a variety of housing demands, issues, and challenges. The County continues to be a desirable and attractive place to live, with access to jobs, recreation, beautiful natural landscapes, and a variety of other amenities. The County’s population is projected to continue to grow in the coming decades. At the same time, there are several challenges to the development of housing in the County. Some of the key issues the County faces today include increased demand for rural housing; housing affordability; state planning requirements related to Urban Growth Boundaries, farm and forest land, destination resorts, and others; water availability; and issues related to homelessness.

Context

PROJECTED POPULATION GROWTH IN UNINCORPORATED DESCHUTES COUNTY

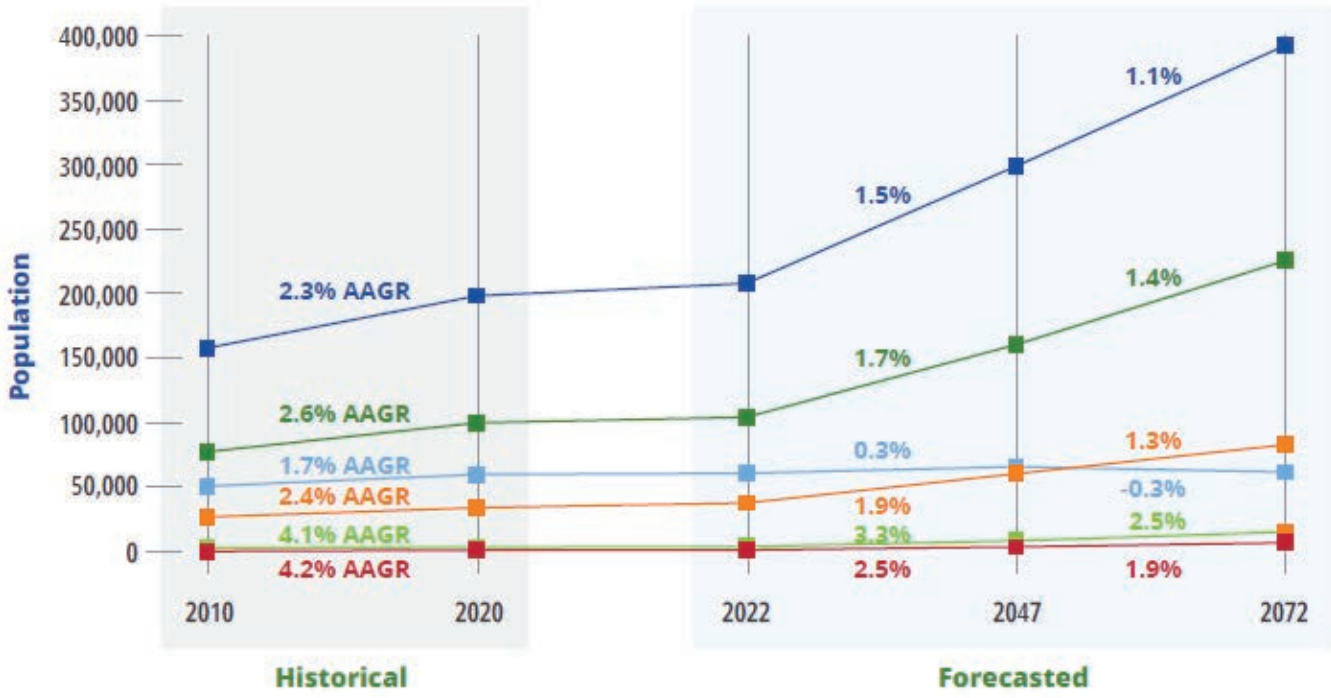
In 2024, Deschutes County continues to be one of the fastest growing counties in Oregon, and that trend is expected to continue. Significant growth is expected to occur in Deschutes County in the coming years (over 90,000 new residents in the next 25 years). However, the majority of this growth is forecasted to happen in urban areas with a more modest amount occurring in unincorporated parts of the County (about 5,000 additional people during the same period). *(Source: Portland State University Population Research Center)*

INCREASED DEMAND FOR RURAL HOUSING

Between 2010 and 2022, Deschutes County processed seven applications to rezone approximately 1,200 acres of property from a non-residential zone to a residential zone, with several more applications recently submitted and under review. Most of these applicants requested rezonings of farmland due to poor



Historical and Forecasted Population and Average Annual Growth Rate in Deschutes County and its Sub-Areas



soil quality for farming. This trend is likely to continue.

HOUSING AFFORDABILITY

The median value of owner-occupied housing units in Deschutes County (including cities), is significantly higher than that of the State of Oregon (\$435,600 compared to \$362,200 according to 2017-2021 Census figures), and consistently increasing. In July 2023, Becon Appraisal Group reported an all-time high median home value for Bend area homes, in the amount of \$785,000. The same report estimated a median home price as \$694,000 for Sisters area homes, \$473,000 for Redmond area homes, and \$401,000 for La Pine area homes. Given that median income is generally on par with the state as a whole, high housing prices are likely an indicator of an inadequate supply of housing affordable to many residents of the Deschutes County, particularly those with low to moderate incomes.

STATE PLANNING REQUIREMENTS

Although Deschutes County has numerous prospects to expand residential development, some of these opportunities face challenges with respect to state rules and regulations. The Oregon land use system is designed to concentrate most growth within Urban Growth Boundaries. A variety of statewide planning goals, laws, and administrative rules designed to protect farm and forest land, regulate destination resorts, and ensure cost-effective provision of infrastructure limit where and how housing can be built outside of urban areas.

WATER AVAILABILITY AND CONSUMPTION

A growing demand for water for residential, business, recreation, and agricultural uses; changes in water table depth; allocation of water rights; and potential future changes in water supply related to climate change all may impact the availability of water to support new housing. Water resources are discussed in Chapter 5 in more detail.

Vacant Lots in Resort Areas

Resort Area	Number of Vacant Lots
Destination Resorts	
Caldera Springs	101
Eagle Crest	139
Pronghorn	285
Tetherow	200
Resort Communities	
Black Butte	27
In of the 7th Mountain/Widgi Creek	12
Urban Unincorporated Area	
Sunriver	118
Total Vacancies, Resort Areas	887

Vacant Lots in Rural Residential Areas

Rural Residential Areas	Number of Vacant Lots
Rural Residential Zones	
Rural Residential	2,139
Multiple use Agriculture	518
Suburban Low Density Rural Residential	32
Urban Area Reserve	292
Rural Communities	
Tumalo (TUR/TUR5)	32
Terrebonne (TER/TER5)	134
Total Vacancies, Rural Residential Areas	3,447

Future Opportunities for Rural Residential Lots

Rural Residential Areas	Count
Thornburgh Destination Resort	950
Caldera Springs Destination Resort Phase 2	340
West Side Transect	187
Tumalo Irrigation District Rezoned Parcel	72
Gopher Gulch (North of Bend)	10
Total Vacancies, Rural Residential Areas	1,559

HOMELESSNESS

The incidence and impacts of homelessness have been rising in Deschutes County, as well as across the state and nation in recent years. A variety of factors have contributed to this trend, including rising housing costs, increasing income disparities, and limited transitional housing and supportive resources. As a result, impacts on both urban areas and natural resources have increased, with elevated levels of community concern and support for more action by the County and its partners to address these issues.

BALANCING DEVELOPMENT OPPORTUNITIES WITH VISITOR ACCOMMODATIONS

Although population growth in unincorporated Deschutes County is forecasted to be relatively limited, rural parts of the County, including several destination resorts, include significant capacity for new residential development. Community members have expressed concern regarding the use of these homes as primary residences, second homes, or vacation rentals.

RECENT CHANGES IN COUNTY HOUSING RULES

The County has recently adopted and/or is currently considering new rules related to development and regulation of different types of housing. These include:

- Changes to where accessory dwelling units are allowed.
- Repeal of the County's "Conventional Housing Combining Zone" which prohibited manufactured homes in three large unincorporated areas east and west of Tumalo and east of Bend.

What type of housing is allowed in unincorporated Deschutes County?

Residential development in Deschutes County is less dense than the Cities of Bend, La Pine, Redmond and Sisters due to state land use rules. Single family homes are most common type of housing throughout the county in all zones. Recreational vehicles are allowed to be placed on property for temporary living situations or as medical hardship dwellings for family members but are not intended to be permanent living situations. Accessory Dwelling Units or ADUs, also known as “granny flats” or “carriage houses” are smaller secondary residences on a property. In 2021, the Oregon legislature passed Senate Bill 391 which allows for rural ADUs with certain parameters, and Deschutes County is currently in the process of implementing this legislation.

Key Community Considerations

Given the range of issues and conditions discussed related to this important topic, the Comprehensive Plan includes a variety of policies to guide future development of housing and address impacts to residents in rural areas. Additional related policies are found in Chapter 2 (Land Use) and Chapter 13 (Transportation). These strategies are underpinned by community sentiment, as described below.

- Some community members expressed support for allowing or encouraging growth in rural areas, particularly to alleviate housing pressure and provide larger-lot options. However, engagement showed greater opposition to residential development outside of Urban Growth Boundaries.
- Overall support for allowing a wider range of types of housing (e.g., accessory dwelling units, manufactured homes, recreational vehicles, etc.), but concerns about the quality of this housing and additional rural residential development in general.
- Concern about homelessness and its impacts, coupled with strong support for a proactive approach by the County to work with partner agencies and groups to address this issue.
- Relatively strong opposition for rezoning low productivity farmland with poor soil to allow greater opportunities for housing, due to negative impact on open space, habitat, transportation, and active farm practices.



Goals and Policies

Goal 10.1: Support housing opportunities and choices for rural County residents in unincorporated Deschutes County, while meeting health and safety concerns, minimizing environmental and resource land impacts.

Policy 10.1.1. Incorporate annual farm and forest housing reports into a wider system for tracking the cumulative impacts of rural housing development.

Policy 10.1.2. Continue to update the County zoning ordinance and work with partnering organizations to address health and safety issues associated with housing.

Policy 10.1.3. Encourage and/or require, where consistent with County policies and requirements, new subdivisions to incorporate alternative development patterns, such as cluster development, that mitigate community and environmental impacts.

Policy 10.1.4. Implement legislation allowing accessory dwelling units in rural areas to expand housing choices.

Policy 10.1.5. Create and encourage opportunities for flexibility in rural housing including development of manufactured home parks, safe parking sites, and RV parking areas.

Policy 10.1.6. Reduce barriers to housing development and supporting services (such as locally serving medical offices or similar uses) in unincorporated communities.

Policy 10.1.7. Explore grants and funding opportunities for ongoing maintenance and rehabilitation of existing housing stock.

Policy 10.1.8. Evaluate the impacts of short-term rentals and consider regulations to mitigate impacts, as appropriate.

Goal 10.2: Support agencies and non-profits that provide affordable housing.

Policy 10.2.1. Support Central Oregon Regional Housing Authority and other stakeholders to meet the housing needs of all Deschutes County residents by assisting, as needed, in coordinating and implementing housing assistance programs.

Policy 10.2.2. Utilize block grants and other funding to assist in providing and maintaining low- and moderate-income housing in partnership with Housing Works and other housing agencies and providers in Deschutes County.

Goal 10.3: Regulate the location and density of housing in the area located between the Bend UGB and Shevlin Park through Westside Transect policies

Policy 10.3.1. Protect the sensitive ecosystems and interrelationships of the urban/rural interface on the west side of Bend between the urban area and Shevlin Park and the public and forestlands to the west.

Policy 10.3.2. Protect natural resources and environmentally sensitive areas and provide special setbacks between development and Shevlin Park, Tumalo Creek, and forestlands.

Policy 10.3.3. Development patterns shall reflect the protection of land with environmental significance and fire-wise and other fire prevention community design best practices.

Policy 10.3.4. Limit residential development to 200 single-family residential lots.

Policy 10.3.5. Manage all areas outside of the structural building envelopes on residential lots for wildfire mitigation and wildlife habitat in accordance with coordinated plans prepared by professionals, reviewed annually with reports submitted to the County every three years. The wildfire mitigation and

wildlife habitat plans shall be funded through homeowner assessments and administered and enforced by a homeowners association established at the time of creation of any residential lots.

Policy 10.3.6. Reduce the impact of construction by using best management practices to minimize site disturbance during construction and construction impacts (i.e., erosion) on Shevlin Park, Tumalo Creek, and forestlands.

Policy 10.3.7. Coordinate with the City of Bend for mitigation of impacts to City infrastructure from development within the Transect.

Goal 10.4: Participate in regional efforts to plan for housing.

Policy 10.4.1. Collaborate with cities and private sector partners on innovative housing developments to meet the region’s housing needs.

Policy 10.4.2. Partner with cities to incentivize development within urban growth boundaries and reduce infrastructure costs for workforce and affordable housing.

Policy 10.4.3. Partner with local, state, and federal agencies to address and limit nuisance and public health issues related to homelessness.

Policy 10.4.4. Utilize County owned land in city limits for affordable and workforce housing, where appropriate.

Policy 10.4.5. Promote regional housing planning, including urban reserve planning for cities, to allow for longer term and multi-jurisdictional housing strategies.

Policy 10.4.6. Limit parcelization and development adjacent to cities or in conflict with planned and/or known road/utility corridors to preserve land for future urban development.



11

Unincorporated Communities and Destination Resorts





Opportunities, Challenges, and Considerations

Deschutes County is home to numerous unincorporated communities, which contain urban levels of development outside of city limits. Many of these communities provide services and amenities to rural residents. As the county continues to grow, many residents are concerned about increasingly dense development in these unincorporated areas which may feel out of scale with the surrounding rural uses. However, many residents also see the need for more opportunities for small-scale rural services and retail opportunities to serve existing and future community members. Deschutes County will need to continue to refine the vision and guidelines for development in these areas while balancing infrastructure needs, protection of natural resources and rural land uses, and community desires.

In addition to these unincorporated communities, Resort Communities and Destination Resorts are another form of development outside of urban areas. Historically, resort-type development served as a stabilizing force in Central Oregon’s economy and drew in new residents and businesses. In recent years, development of destination resorts has become increasingly contentious, with litigation and extensive public participation in land use hearings. Many residents see value in the amenities and economic value associated with destination resorts, although have concerns regarding their natural resource impacts.

Context

Unincorporated Communities

Deschutes County’s unincorporated communities generally pre-date Oregon’s statewide land use system and have more urban-scale uses in outer-lying rural areas, within a defined geographic boundary.

In 1994, Oregon Administrative Rules (OARs) were amended to define unincorporated communities and the types of uses that could be allowed in these areas. The OARs established four types of unincorporated communities, all of which were required to be in existence at the time of the change - the Rule did not allow for new rural communities to be established. These community types are described below.

URBAN UNINCORPORATED COMMUNITY

This is a community which contains at least 150 permanent dwelling units, a mixture of land uses, and contains a community water and sewer system. Sunriver is an Urban Unincorporated community.

RURAL COMMUNITY

This is a community which consists of permanent residential dwellings and at least two other types of land uses – such as commercial, industrial, or public uses provided to the community or travelers. Terrebonne and Tumalo are Rural Communities and were platted prior to the

establishment of the County's subdivision ordinance.

RESORT COMMUNITY

This type of community was established for a recreation-related use on private land prior to 1989 when the state adopted its Destination Resort rules. Black Butte Ranch and Inn of the 7th Mountain/Widgi Creek are Resort Communities. It's important to note that there are several other resort style developments in the County on private lands called "Destination Resorts." See the next section for more information.

RURAL SERVICE CENTER DESIGNATION

This is an unincorporated community that has primarily commercial or industrial uses that provide goods and services to the surrounding rural area and travelers. These are the most common type of unincorporated community in Deschutes County and include Alfalfa, Brothers, Hampton, Millican, Whistlestop, and Wildhunt are limited in scale, often with only one or several parcels in the designation.

Destination Resorts

Destination resorts have been a key economic development strategy for Deschutes County. Many community members and visitors enjoy the recreational amenities and accommodations that Destination Resorts provide.

Since 1979 destination resorts have increased in importance to the economy of Deschutes County. Sunriver and Black Butte Ranch, as two of the county's original resorts, garnered a national reputation for their recreation facilities and visitor accommodations, serving as touchstones for Deschutes County's tourism industry. In 1989, recognizing the importance of tourism to the economy of the State of Oregon, the state legislature and the Land Conservation and Development Commission (LCDC) took steps to make it easier to establish destination resorts on rural lands in the state. Statewide Planning Goal 8, the recreation goal, was amended to

specify a process for locating destination resorts on rural land without taking an exception to Goals 3, 4, 11 and 14, which govern development in rural resource lands. Under these changes, destination resorts may be sited in EFU zones where they weren't previously allowed. In 1990, LCDC amended the rule for siting destination resorts on forest lands as well.

Eagle Crest Resort, although it had existed prior to these changes, applied for legislative changes to comply with these new rules and expand onto adjacent lands.

In 2010, Deschutes County completed an amendment to its destination resort mapping process, adding "clear and objective" requirements for eligible and ineligible sites, and the process for amending the destination resort map based on changes in state law. Since that



time, Pronghorn, Caldera Springs, and Tetherow resorts have gone through the siting process. Resorts existing prior to the legislative change, such as Black Butte, Sunriver, and the Inn of the Seventh Mountain have also expanded and been rezoned to Urban Unincorporated Community and Resort Community, respectively. Thornburgh Resort has received preliminary approvals, beginning in 2006.

Key Community Considerations

Unincorporated Communities are limited in their development potential due to their specific geographic footprint. Protecting open space and natural resources while providing economic opportunities in these unincorporated areas continues to be a balancing act.

As additional rural development occurs, so does the demand for services and goods that can be reached without having to drive to an incorporated city. Aging residents have expressed a desire for additional medical care and offices in rural areas to support aging in place. On the other hand, many residents would prefer limiting development in unincorporated communities in order to preserve the rural character of the area.

Destination Resort development continues to be a contentious issue. Community members have expressed concern regarding the water use of large-scale development – specifically the effects to groundwater for neighboring property owners. Other community members express support for the economic and amenity benefits of destination resorts, noting that the current requirements sufficiently address natural resource concerns. Additional community conversations will be valuable to understand the diversity of perspectives on this topic.

Goals and Policies

Goal: To provide guidance for development of unincorporated communities and destination resorts.

Resort Community Policies

General Resort Community Policies

Policy 11.1.1. Land use regulations shall conform to the requirements of OAR 660 Division 22 or any successor.

Policy 11.1.2. Designated open space and common area, unless otherwise zoned for development, shall remain undeveloped except for community amenities such as bike and pedestrian paths, park and picnic areas. Areas developed as golf courses shall remain available for that purpose or for open space/ recreation uses.

Policy 11.1.3. The provisions of the Landscape Management Overlay Zone shall apply in Resort Communities where the zone exists along Century Drive, Highway 26 and the Deschutes River.

Policy 11.1.4. Residential minimum lot sizes and densities shall be determined by the capacity of the water and sewer facilities to accommodate existing and future development and growth.



Policy 11.1.5. The resort facility and resort recreation uses permitted in the zoning for Black Butte Ranch and the Inn of the Seventh Mountain/Widgi Creek shall serve the resort community.

Black Butte Ranch General Policies

Policy 11.2.1. County comprehensive plan policies and land use regulations shall ensure that new uses authorized within the Black Butte Ranch Resort Community do not adversely affect forest uses in the surrounding Forest Use Zones.

Policy 11.2.2. The County supports the design review standards administered by the Black Butte Ranch Architectural Review Committee.

Policy 11.2.3. Residential, resort and utility uses shall continue to be developed in accordance with the Master Design for Black Butte Ranch and the respective Section Declarations.

Policy 11.2.4. Industrial activities, including surface mining, shall only occur in the area zoned Black Butte Ranch Surface Mining, Limited Use Combining District (Black Butte Ranch SM/LU) located in the northwest corner of Black Butte Ranch.

Policy 11.2.5. Employee housing shall be located in the area zoned Black Butte Ranch-Utility/Limited Use Combining District (Black Butte Ranch-U/LU).

Policy 11.2.6. Any amendment to the allowable use(s) in either the Resort Community District or the Limited Use Combining District shall require an exception in accordance with applicable statewide planning goal(s), OAR 660-04-018/022 and DCC 18.112 or any successor.

Policy 11.2.7. The westerly 38-acres zoned Black Butte Ranch Surface Mining, Limited Use Combining District (Black Butte Ranch SM/LU) shall be used for the mining and storage of aggregate resources. Uses that do not prevent the future mining of these resources, such as disposal of reclaimed effluent and woody debris disposal from thinning and other forest practices may be allowed concurrently. Other resort maintenance, operational and utility uses, such as a solid waste transfer station, maintenance facility or equipment storage may be allowed only after mining and reclamation have occurred.

Policy 11.2.8. The 18.5 acres zoned Black Butte Ranch-Utility/Limited Use Combining District (Black Butte Ranch-U/LU) may be used for the disposal of reclaimed sludge.

Policy 11.2.9. The area west of McCallister Road and east of the area zoned Black Butte Ranch may be used for large equipment storage, general storage, maintenance uses, RV storage, telephone communications, administration offices, housekeeping facilities and employee housing.

Policy 11.2.10. Employee housing shall be set back at least 250 feet from the eastern boundary of the area zoned Black Butte Ranch Surface Mining, Limited Use Combining District (Black Butte Ranch SM/LU).

Policy 11.2.11. Surface mining within the Black Butte Ranch community boundary shall adhere to the following Goal 5 ESEE "Program to Meet Goal" requirements:

- a. Only the western most 38 acres of the site shall continue to be mined.

- b. Setbacks shall be required for potential conflicting residential and other development. A minimum 50-foot setback shall be maintained from the perimeter of tax lot 202 for all surface mining activity.
- c. Noise impact shall be mitigated by buffering and screening.
- d. Hours of operation shall be limited to between 7:00 a.m. and 6:00 p.m. weekdays. No operations shall be allowed on weekends and holidays.
- e. Processing shall be limited to 45 days in any one year, to be negotiated with Deschutes County in the site plan process in consultation with the Oregon Department of Fish and Wildlife (ODFW).
- f. The conditions set forth in the August 10, 1989, letter of ODFW shall be adhered to.
- g. Extraction at the site shall be limited to five acres at a time with on-going incremental reclamation (subject to DOGAMI review and approval).
- h. Mining operations, siting of equipment, and trucking of product shall be conducted in such a manner that applicable DEQ standards are met and minimizes noise and dust.
- i. DOGAMI requirements for a permit once mining affects more than five acres outside the 8.6-acre exemption area shall be met.
- j. A conditional use permit shall be obtained from Deschutes County, under the provisions of section 18.128.280. Surface mining of resources exclusively for on-site personal, farm or forest use or maintenance of irrigation canals, before mining activity affects more than five acres outside the 8.6-acre exempt area.

Black Butte Ranch Public Facility Policies

Policy 11.3.1. Police protection services shall be provided by the Black Butte Ranch Police Services District.

Policy 11.3.2. The Black Butte Ranch Water Distribution Company and the Black Butte Ranch Corporation shall confirm the water and sewer service, respectively, can be provided for new uses or expansion of existing uses that require land use approval.

Policy 11.3.3. The Black Butte Ranch Water Distribution Company shall provide water service for the Black Butte Ranch Resort Community.

Policy 11.3.4. The Black Butte Ranch Corporation shall provide sewer service for Black Butte Ranch.

Policy 11.3.5. The Black Butte Ranch Fire Protection District shall provide fire protection services for Black Butte Ranch.

Policy 11.3.6. The roads and the bicycle/pedestrian path system within the Black Butte Ranch Resort Community boundary shall be maintained by the Black Butte Ranch Owners Association.

Inn of the 7th Mountain Widgi Creek General Policies

Policy 11.4.1. Any amendment to the allowable uses in either the Resort Community District or the Widgi Creek Residential District shall require an exception in accordance with applicable statewide planning goal(s), OAR 660-04-018/022 or any successor, and DCC 18.112 or any successor.

Policy 11.4.2. The County shall encourage and support land exchanges efforts by and between private property owners, public agencies, and public trusts for the purpose

of fostering public access to and protection of natural resources, such as rivers, streams, caves, areas/features of historical importance and other natural features.

Inn of the 7th Mountain/Widgi Creek Public Facility Policies

Policy 11.5.1. Police protection services shall be provided under contract with the Deschutes County Sheriff.

Policy 11.5.2. Water service shall be supplied by on-site wells for the Inn/Widgi Resort Community.

Policy 11.5.3. New uses or expansion of existing uses that require land use approval shall be approved only upon confirmation from the City of Bend that sewer service can be provided.

Policy 11.5.4. Fire protection services for the Inn/Widgi shall be provided through a contract with the City of Bend until such time as Inn/Widgi develops another plan to provide adequate fire protection.

Policy 11.5.5. The Resort Community, not Deschutes County, shall maintain roads in the community.

Policy 11.5.6. The bicycle/pedestrian path system shall be maintained by the Inn/Widgi Owners Association.

Policy 11.5.7. Emergency access between Widgi Creek and the Inn of the Seventh Mountain shall be provided in accordance with the approved development plan for the Elkai Woods town homes. The respective resort property owners shall maintain emergency access between the Inn and Widgi Creek

Destination Resorts Policies

Goal 11.6: Provide for development of destination resorts in the County 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 including habitat of threatened or endangered species, streams, rivers, and significant wetlands.

Policy 11.6.1. Provide a process for the siting of destination resorts facilities that enhance and diversify the recreational opportunities and economy of Deschutes County, on lands that have been mapped by Deschutes County as eligible for this purpose.

Goal 11.7: 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.

Policy 11.7.1. 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 197.467, and Deschutes County Code 18.113.

Policy 11.7.2. Ensure protection of water quality, recreational resources, and other County resources and values.

Policy 11.7.3. Ensure that destination resort developments support and implement strategies to provide workers with affordable housing options within or in close proximity to the resorts.

Policy 11.7.4. 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;
 - 2) On a site with 50 or more contiguous acres of unique or prime farm land identified and mapped by the Soil Conservation Service or within three miles of farm land within a High-Value Crop Area;
 - 3) On predominantly Cubic Foot Site Class 1 or 2 forest lands which are not subject to an approved Goal exception;
 - 4) On areas protected as Goal 5 resources in an acknowledged comprehensive plan where all conflicting uses have been prohibited to protect the Goal 5 resource;
 - 5) Especially sensitive big game habitat, and as listed below, as generally mapped by the Oregon Department of Fish and Wildlife in July 1984 and as further refined through development of comprehensive plan provisions implementing this requirement.
 - i. Tumalo deer winter range;
 - ii. Portion of the Metolius deer winter range;
 - iii. Antelope winter range east of Bend near Horse Ridge and Millican;
 - 6) Sites less than 160 acres.
- b. To assure that resort development does not conflict with Oregon Revised Statute, destination resorts shall not be sited in Deschutes County in Areas of Critical State Concern.
- c. To assure that resort development does not conflict with the objectives of Deschutes County, destination resorts shall also not be located in the following areas:
 - 1) Sites listed below that are inventoried Goal 5 resources, shown on the Wildlife Combining Zone, that the County has chosen to protect:
 - i. Antelope Range near Horse Ridge and Millican;
 - ii. Elk Habitat Area; and
 - iii. Deer Winter Range;
 - 2) Wildlife Priority Area, identified on the 1999 ODFW map submitted to the South County Regional Problem Solving Group;
 - 3) Lands zoned Open Space and Conservation (OS&C);
 - 4) Lands zoned Forest Use 1 (F-1);
 - 5) Irrigated lands zoned Exclusive Farm Use (EFU) having 40 or greater contiguous acres in irrigation;
 - 6) 6. Non-contiguous EFU acres in the same ownership having 60 or greater irrigated acres;
 - 7) Farm or forest land within one mile outside of urban growth boundaries;
 - 8) Lands designated Urban Reserve Area under ORS 195.145;
 - 9) Platted subdivisions;

- d. For those lands not located in any of the areas designated in Policy 3.9.5(a) though (c), destination resorts may, pursuant to Goal 8, Oregon Revised Statute and Deschutes County zoning code, be sited in the following areas:
 - 1) Forest Use 2 (F-2), Multiple Use Agriculture (MUA-10), and Rural Residential (RR-10) zones;
 - 2) Unirrigated Exclusive Farm Use (EFU) land;
 - 3) Irrigated lands zoned EFU having less than 40 contiguous acres in irrigation;
 - 4) Non-contiguous irrigated EFU acres in the same ownership having less than 60 irrigated acres;
 - 5) All property within a subdivision for which cluster development approval was obtained prior to 1990, for which the original cluster development approval designated at least 50 percent of the development as open space and which was within the destination resort zone prior to the effective date of Ordinance 2010-024 shall remain on the eligibility map;
 - 6) Minimum site of 160 contiguous acres or greater under one or multiple ownerships;
- e. The County adopted a map in 2010 showing where destination resorts can be located in the County. The map is part of the Comprehensive Plan and Zoning Ordinance and shall be the basis for the overlay zone designated Destination Resort (DR).

Policy 11.7.5. Ordinance Provisions

- a. The County shall ensure that destination resorts are compatible with the site and adjacent land uses through enactment of land use regulations that, at a minimum, provide for the following:
 - 1) Maintenance of important natural features, including habitat of threatened or endangered species, streams, rivers, and significant wetlands; maintenance of riparian vegetation within 100 feet of streams, rivers and significant wetlands; and
 - 2) Location and design of improvements and activities in a manner that will avoid or minimize adverse effects of the resort on uses on surrounding lands, particularly effects on intensive farming operations in the area and on the rural transportation system. In order to adequately assess the effect on the transportation system, notice and the opportunity for comment shall be provided to the relevant road authority.
 - 3) Such regulations may allow for alterations to important natural features, including placement of structures, provided that the overall values of the feature are maintained.
- b. Minimum measures to assure that design and placement of improvements and activities will avoid or minimize the adverse effects noted in Policy 3.9.4(a) shall include:
 - 1) The establishment and maintenance of buffers between the resort and adjacent land uses, including natural vegetation and where appropriate, fenced, berms, landscaped areas, and other similar types of buffers.

- 2) Setbacks of structures and other improvements from adjacent land uses.
- c. The County may adopt additional land use restrictions to ensure that proposed destination resorts are compatible with the environmental capabilities of the site and surrounding land uses.
- d. Uses in destination resorts shall be limited to visitor- oriented accommodations, overnight lodgings, developed recreational facilities, commercial uses limited to types and levels necessary to meet the needs of visitors to the resort, and uses consistent with preservation and maintenance of open space.
- e. The zoning ordinance shall include measures that assure that developed recreational facilities, visitor-oriented accommodations and key facilities intended to serve the entire development are physically provided or are guaranteed through surety bonding or substantially equivalent financial assurances prior to closure of sale of individual lots or units. In phased developments, developed recreational facilities and other key facilitated intended to serve a particular phase shall be constructed prior to sales in that phase or guaranteed through surety bonding.

SUNRIVER POLICIES

General Sunriver Policies

- Policy 11.8.1.** Land use regulations shall conform to the requirements of OAR 660 Division 22 or any successor.
- Policy 11.8.2.** County comprehensive plan policies and land use regulations shall ensure that new uses authorized within the Sunriver Urban Unincorporated Community do not adversely affect forest uses in the surrounding Forest Use Zones.

Policy 11.8.3. To protect scenic views and riparian habitat within the community, appropriate setbacks shall be required for all structures built on properties with frontage along the Deschutes River.

Policy 11.8.4. Open space and common area, unless otherwise zoned for development, shall remain undeveloped except for community amenities such as bike and pedestrian paths, and parks and picnic areas.

Policy 11.8.5. Public access to the Deschutes River shall be preserved.

Policy 11.8.6. The County supports the design review standards administered by the Sunriver Owners Association.

Sunriver Residential District Policies

Policy 11.9.1. Areas designated residential on the comprehensive plan map shall be developed with single family or multiple family residential housing.

Sunriver Commercial District Policies

Policy 11.10.1. Small-scale, low-impact commercial uses shall be developed in conformance with the requirements of OAR Chapter 660, Division 22. Larger, more intense commercial uses shall be permitted if they are intended to serve the community, the surrounding rural area and the travel needs of people passing through the area.

Policy 11.10.2. No additional land shall be designated Commercial until the next periodic review.

Policy 11.10.3. Multiple-family residences and residential units in commercial buildings shall be permitted in the commercial area for the purpose of providing housing which is adjacent to places of employment. Single-family residences shall not be permitted in commercial areas.

Policy 11.10.4. Approval standards for conditional uses in the commercial district shall take into consideration the impact of the proposed use on the nearby residential and commercial uses and the capacity of the transportation system and public facilities and services to serve the proposed use.

Sunriver Town Center District Policies

Policy 11.11.1. Small-scale, low-impact commercial uses shall be developed in conformance with the requirements of OAR Chapter 660, Division 22. Larger, more intense commercial uses shall be permitted if they are intended to serve the community, the surrounding rural area or the travel needs of people passing through the area.

Policy 11.11.2. Development standards in the town center district should encourage new development that is compatible with a town center style of development that serves as the commercial core of the Sunriver Urban Unincorporated Community. The following policies should guide development in the Town Center District in Sunriver:

- a. Combine a mixture of land uses that may include retail, offices, commercial services, residential housing and civic uses to create economic and social vitality and encourage pedestrian use through mixed use and stand alone residential buildings.
- b. Develop a commercial mixed-use area that is safe, comfortable and attractive to pedestrians.
- c. Encourage efficient land use by facilitating compact, high-density development that minimizes the amount of land that is needed for development.
- d. Provide both formal and informal community gathering places.
- e. Provide visitor accommodations and tourism amenities appropriate to Sunriver.

- f. Provide design flexibility to anticipate changes in the marketplace.
- g. Provide access and public places that encourage pedestrian and bicycle travel.
- h. Provide road and pedestrian connections to residential areas.
- i. Facilitate development (land use mix, density and design) that supports public transit where applicable.
- j. Develop a distinct character and quality design appropriate to Sunriver that will identify the Town Center as the centerpiece/focal point of the community.

Policy 11.11.3. Development within the Town Center (TC) District will be substantially more dense than development elsewhere in Sunriver. This increased density will require changes to existing topography and vegetation in the TC District to allow for screened, underground parking. The requirements of the County’s site plan ordinance shall be interpreted to reflect this fact.



Sunriver Resort District Policies

Policy 11.12.1. Areas designated resort on the comprehensive plan map shall be designated resort, resort marina, resort golf course, resort equestrian or resort nature center district on the zoning map to reflect a development pattern which is consistent with resort uses and activities.

Sunriver Business Park District Policies

Policy 11.13.1. A variety of commercial uses which support the needs of the community and surrounding rural area, and not uses solely intended to attract resort visitors, should be encouraged.

Policy 11.13.2. Allow small-scale, low-impact commercial uses in conformance with the requirements of OAR Chapter 660, Division 22. Larger more intense commercial uses shall be permitted if they are intended to serve the community, the surrounding rural area and the travel needs of people passing through the area.

Policy 11.13.3. Small-scale, low-impact industrial uses should be allowed in conformance with the requirements of OAR Chapter 660, Division 22.

Sunriver Community District Policies

Policy 11.14.1. Areas designated community on the comprehensive plan map shall be designated community general, community recreation, community limited or community neighborhood district on the zoning map to reflect a development pattern which is consistent community uses and activities.

Policy 11.14.2.Policy 11.9.2. Lands designated community shall be developed with uses which support all facets of community needs, be they those of year-round residents or part-time residents and tourists.

Policy 11.14.3.Policy 11.9.3. Development shall take into consideration the unique physical features of the community and be sensitive to the residential development within which the community areas are interspersed.

Sunriver Airport District Policies

Policy 11.15.1. Future development shall not result in structures or uses which, due to extreme height or attraction of birds, would pose a hazard to the operation of aircraft.

Policy 11.15.2. Future development should not allow uses which would result in large concentrations or gatherings of people in a single location.

Sunriver Utility District Policies

Policy 11.15.3. Lands designated utility shall allow for development of administrative offices, substations, storage/repair yards, distribution lines and similar amenities for services such as water, sewer, telephone, cable television and wireless telecommunications.

Sunriver Forest District Policies

Policy 11.16.1. Uses and development on property designated forest that are within the Sunriver Urban Unincorporated Community boundary shall be consistent with uses and development of other lands outside of the community boundary which are also designated forest on the Deschutes County comprehensive plan map.

Policy 11.16.2. Forest district property shall be used primarily for effluent storage ponds, spray irrigation of effluent, biosolids application and ancillary facilities necessary to meet Oregon Department of Environmental Quality sewage disposal regulations.

Policy 11.16.3. The development of resort, residential or non-forest commercial activities on Forest district lands shall be prohibited unless an exception to Goal 14 is taken.

Sunriver General Public Facility Policies

Policy 11.17.1. Residential minimum lot sizes and densities shall be determined by the capacity of the water and sewer facilities to accommodate existing and future development and growth.

Policy 11.17.2. New uses or expansion of existing uses within the Sunriver Urban Unincorporated Community which require land use approval shall be approved only upon confirmation from the Sunriver Utility Company that water and sewer service for such uses can be provided.

Policy 11.17.3. Expansion of the Sunriver Water LLC/Environmental/LLC Water and Sewer District outside of the historic Sunriver boundaries shall adequately address the impacts to services provided to existing property owners.

Sunriver Water Facility Policies

Policy 11.18.1. Water service shall continue to be provided by the Sunriver Utilities Company.

Sunriver Sewer Facility Policies

Policy 11.19.1. Sewer service shall continue to be provided by the Sunriver Utilities Company.

Sunriver Transportation System Maintenance Policies

Policy 11.20.1. Privately-maintained roads within the Sunriver Urban Unincorporated Community boundary shall continue to be maintained by the Sunriver Owners Association.

Policy 11.20.2. The bicycle/pedestrian path system in Sunriver shall continue to be maintained by the Sunriver Owners Association or as otherwise provided by a maintenance agreement.

Policy 11.20.3. The County will encourage the future expansion of bicycle/pedestrian paths within the Sunriver Urban Unincorporated Community boundary in an effort to provide an alternative to vehicular travel.

Policy 11.20.4. All public roads maintained by the County shall continue to be maintained by the County. Improvements to County maintained public roads shall occur as described the County Transportation System Plan.

12

Public Facilities

**DESCHUTES
COUNTY**



Opportunities, Challenges, and Considerations

Public facilities and services provide the basic infrastructure for urban and rural development. These systems include water and sewer systems, police and fire protection, health and social services, schools, and libraries. The transportation system is also a public facility – the County has developed and maintains a Transportation System Plan that is included as Appendix B.

These public services are provided by a variety of entities, each with their own jurisdiction, funding sources, and regulatory requirements. Overall, the provision of facilities and services is more efficient and cost-effective in urban areas than in rural development, where ratepayers may be few and far between. In some areas of the County, particularly east County, available services are limited due to lower population density and distance from urban centers. Many of the people who choose to reside there consider the limited availability of services and facilities as an acceptable tradeoff for a rural lifestyle.

Statewide Planning Goal 11, Public Facilities and Services and the associated Oregon Administrative Rule 660-011 specify that facilities and services should be appropriate for, but limited to, the needs and requirements of rural areas to be served. Public facility plans are not required (with some exceptions); in fact, Goal 11 and the associated rule set limits to the provision of sewers and water systems in rural areas, in order to limit rural growth.

There are several important issues relating to the provision of public facilities and services that this Comprehensive Plan addresses, including:

- Meeting the needs of county residents while supporting the protection of resource lands;
- Maintaining health, safety, and security throughout the county; and
- Cooperation among the various providers of public services.

Context

Deschutes County plays a role in ensuring that public facilities and services are planned for, however the facilities and services are often not provided by county government directly. The discussion below highlights who provides the services listed and how the County will manage development impacts on existing facilities and services.

County Facilities and Services

LAW ENFORCEMENT

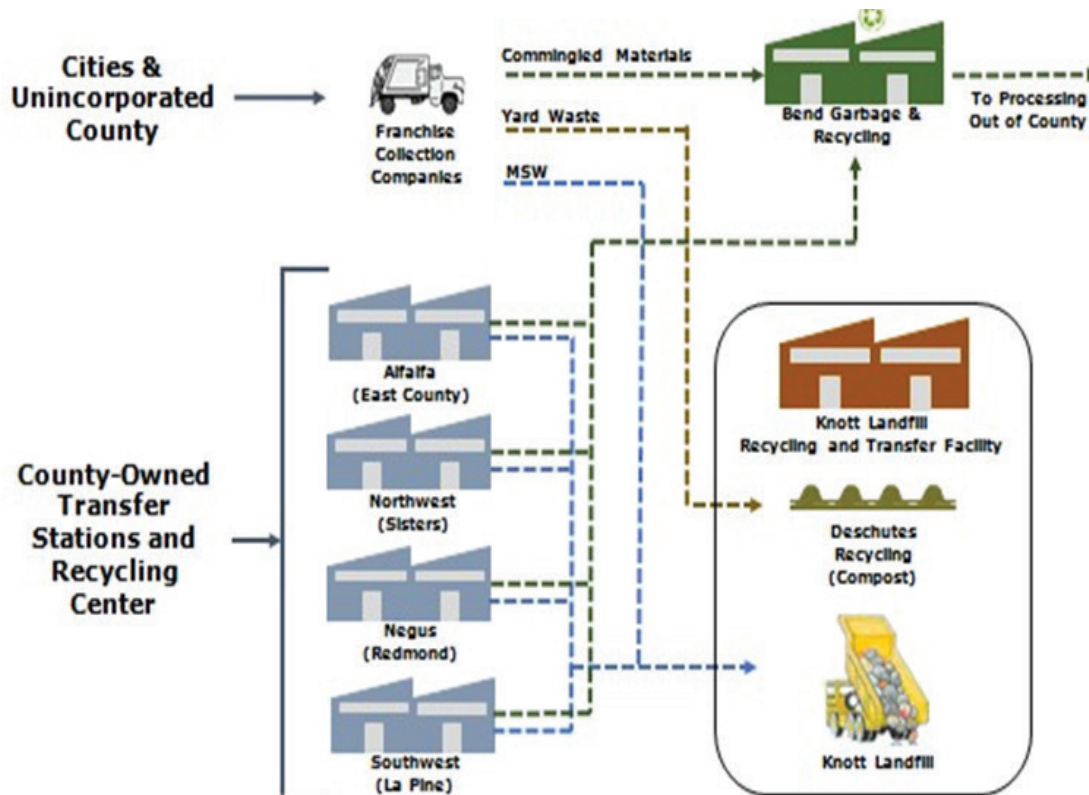
The Deschutes County Sheriff's Office is a full service organization providing patrol, traffic team, criminal investigations, corrections, civil and search and rescue. Special operations include a Marine Patrol, K-9 units, and Forest Patrol. The Sheriff is an elected public official who serves a four-year term. Housed within the Sheriff's office is the County's Emergency Management Unit, which coordinates the countywide response to natural hazards events.

SOLID WASTE

The County manages Knott Landfill Recycling and Transfer Station, which is the only landfill in Deschutes County. In addition to this, the department manages four additional transfer stations throughout the County which gather waste in convenient locations, before transferring to the Knott Landfill facility. Operations at the landfill include recycling, hazardous waste disposal, and composting. This landfill site is anticipated to remain open until 2029 at which time it is projected to reach maximum capacity.

The Deschutes County Solid Waste Department is currently undertaking a new landfill development process, which is anticipated to be completed in 2029. In the future, the County will likely need to site addition facilities to support composting, recycling, and waste stream diversion facilities.

Deschutes County Solid Waste System, Source: Solid Waste Management Plan, 2019



COUNTY HEALTH DEPARTMENT

Deschutes County Health Services has a primary responsibility to help address the basic health and wellness of Deschutes County residents. The department offers services at more than 40 locations in Deschutes County including public schools; health clinics in Bend, La Pine, Redmond and Sisters; five school-based health clinics; agencies such as the KIDS Center and the State of Oregon Department of Human Services; area hospitals; care facilities and homes.

FAIRGROUNDS

The County maintains the County Fairgrounds and Expo Center. With panoramic views of the snow-capped Cascade range, the Deschutes County Fair and Expo Center is situated on the outskirts of Redmond just off of Hwy 97 and adjacent to the Redmond Municipal Airport. Due to its central location, the fairgrounds also serves as an emergency center. The fairgrounds hosts the annual County Fair and numerous other events throughout the year.

Other Agency Facilities and Services

Where other agencies provide facilities and services, the County coordinates with numerous other providers of facilities and services for the benefit of County residents. Where there are gaps in the coverage for specific areas, the County can work with providers to fill them. A selection of other agencies and entities are noted below.

CENTRAL OREGON INTERGOVERNMENTAL COUNCIL (COIC)

COIC began serving the residents and communities of Central Oregon in 1972 as a Council of Governments organized under ORS 190 by Crook, Deschutes and Jefferson Counties and Bend, Culver, Madras, Metolius, Prineville, Redmond and Sisters. Following incorporation in 2007, the City of La Pine joined these efforts. COIC provides a wide variety of educational and economic development services such as workforce training, alternative high

school education, business loans and public transportation. COIC continues to evolve to meet the needs of Central Oregon.

COIC is governed by a 15-member board made up of elected officials who are appointed by each of the member governments as well as appointed representatives of key economic sectors – business and industry, tourism and recreation, agribusiness and agriculture, timber and wood products, and the unemployed/ underemployed.

SCHOOL DISTRICTS

There are three school districts in Deschutes County:

- Bend-La Pine (SD 1),
- Redmond (SD 2J) and
- Sisters (SD 6).

Additionally, the Brothers Community School is owned and operated by Crook County School District (SD 15). The High Desert Education Service District (ESD) partners with the districts to provide support services such as special education, school improvement, administrative and legal services.

FIRE DISTRICTS

The following fire districts support rural residents: Bend Fire Department, Black Butte Ranch Rural Fire Protection District, Cloverdale Rural Fire Protection District, Crooked River Ranch Rural Fire Protection District, Deschutes County Rural Fire Protection District #1 and #2, La Pine Rural Fire Protection District, Sisters-Camp Sherman Rural Fire Protection District, and Sunriver Service District. Public lands are protected by federal agencies. There are some areas in Deschutes County that are not covered by a fire district. (See Chapter 7 for more on fire protection.)

IRRIGATION DISTRICTS

Irrigation districts in Oregon are organized as Special Districts under ORS Chapter 545. Six irrigation districts operate in Deschutes County: Arnold, Central Oregon, North Unit, Swalley, Tumalo, the Three Sisters Irrigation Districts. They are quasi-municipal corporations under Oregon Law, with prescribed rules for purpose, boards, elections, staffing, charges, etc. The districts operate as political subdivisions of the State of Oregon created for the purpose of delivering water to their patrons. In addition to irrigation uses, these districts also supply a number of other services, including delivery of water to municipal and industrial entities, and pond maintenance.

LIBRARIES

Deschutes Public Library has branches in Bend, Redmond, Sisters, La Pine and Sunriver. They also operate a bookmobile program that focuses on children and parenting books and a program for supplying books to homebound residents.

HIGHER EDUCATION

Deschutes County is home to Oregon State University Cascades Campus (Bend) and Central Oregon Community College (Bend and Redmond). These campuses are expected to grow significantly in the future.

SOIL AND WATER CONSERVATION DISTRICT

Soil and Water Conservation Districts are authorized by the State of Oregon to provide for the conservation of its soil and water resources. Working in cooperation with stakeholders, the districts address issues such as control and prevention of soil erosion, conservation and development of water resources, water quality, and wildlife preservation. The Deschutes Soil and Water Conservation District is a legally defined subdivision of the state government, but, like all soil and conservation districts, functions as a local unity led by a locally elected board of directors who serve without pay.

PUBLIC WATER SYSTEMS

Public Water Systems are defined as those that have more than three connections, supply water at least 60 days/year and are used by at least 10 persons/day. All water systems are regulated under the federal 1974 Safe Drinking Water Act and 1981 Oregon Drinking Water Quality Act. Public Water Systems serving over 3,300 people are overseen by the Oregon Department of Human Services Drinking Water Program. The County acts as a contractor for the Department of Human Services to monitor approximately 180 Public Water Systems. Some privately owned systems are, for various reasons, regulated by the Public Utility Commission, which sets rates and rules for public utilities.

Privately Owned Facilities and Services

UTILITIES

Electric

Electricity is provided by Pacific Power around Bend and Redmond. Central Electric Cooperative and Midstate Electric provide service in the rest of the County. Phone service is provided by Qwest and numerous cell phone providers. Cable is provided by TDS and satellite providers. Internet access is provided by a variety of entities.

Hospitals

Cascade Healthcare Community manages two hospitals: St. Charles Bend and St. Charles Redmond. Additionally there are numerous health providers and clinics in the County.

Sewer Districts

Creating or expanding existing sewer systems outside an urban growth boundary or unincorporated community is governed by Statewide Goal 11 and OAR 660-011-0060. In order to protect rural areas from urban-style development, the rules regulate where and when rural sewers are appropriate. Some sewer districts, such as Oregon Water Wonderland Unit

2, have used the Statewide Goal 2 exception process to create or expand a sewer system.

INDIVIDUAL FACILITIES AND SERVICES

Private wells

Most rural properties are served by private wells that are approved and managed by the Oregon Water Resources Department. The County currently does not track the number of wells.

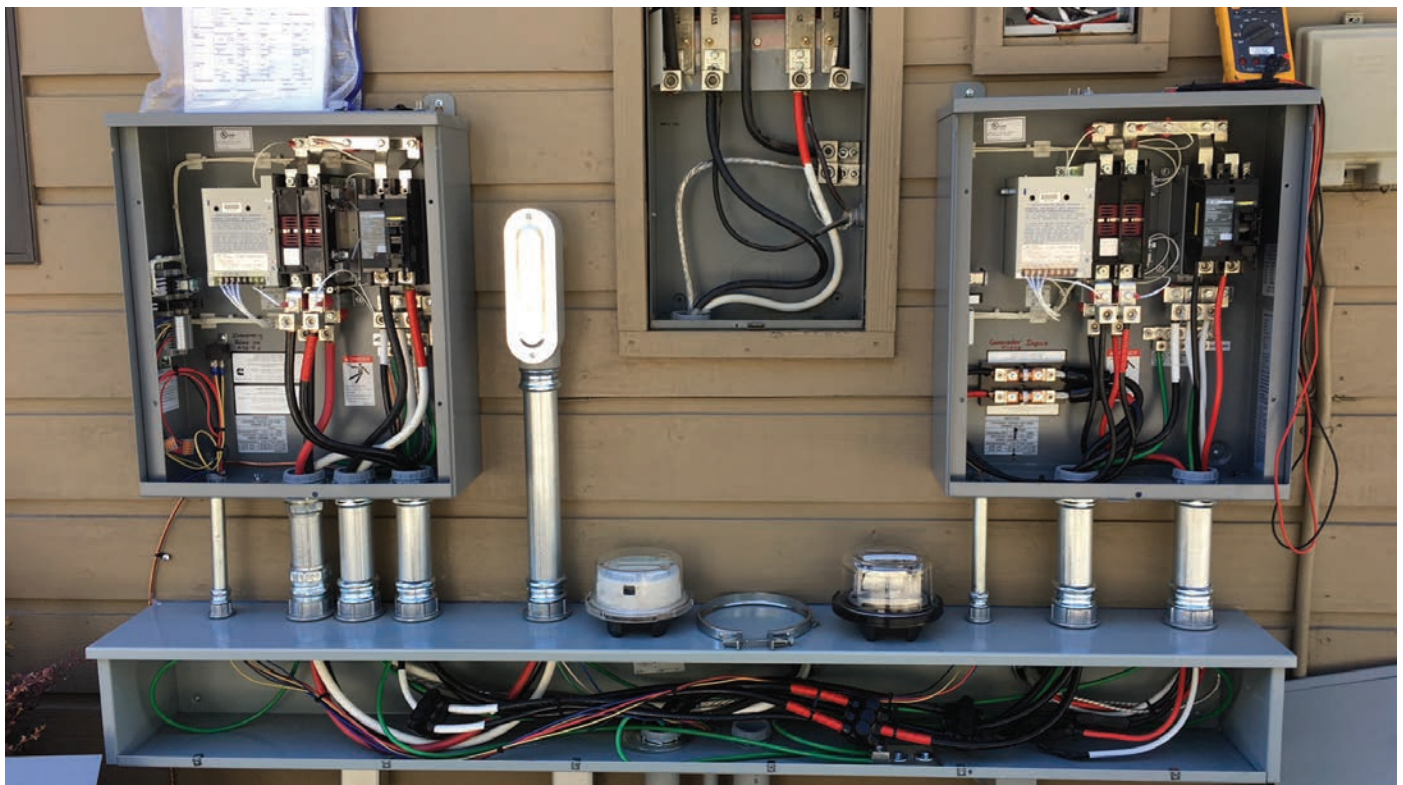
Individual septic systems

Most rural properties are served by septic systems that are approved by the Onsite Wastewater Division.

Key Community Considerations

The role that Deschutes County plays in the provision of public facilities and services was part of the community discussion during the update of this Comprehensive Plan. Highlights included:

- City governments currently own property outside of urban growth boundaries and within County jurisdiction. In some instances, these lands are used for water and wastewater treatment facilities. As the County continues to grow, additional facilities are likely to be needed, and coordination among jurisdictions regarding placement of these facilities will be key.
- Significant population growth will lead to an increase in solid waste, requiring at minimum the siting of a new landfill. Community members expressed a desire for consideration of livability among other factors when considering the placement of key public facilities.



Goals and Policies

Goal 12.1: Support the orderly, efficient, and cost-effective siting of rural public facilities and services.

Policy 12.1.1. Encourage and support the formation of special service districts to serve the need for public facilities in rural areas.

Policy 12.1.2. Encourage and support planning for and acquisition of sites needed for public facilities, such as transportation, water, and wastewater facilities.

Policy 12.1.3. Support the siting of community health clinics, hospitals, and private medical practices to serve rural residents throughout the County.

Policy 12.1.4. Continue to support the County Fairgrounds as a community gathering place, event facility and home to the annual County Fair.

Policy 12.1.5. Maintain the County Fairgrounds as an emergency readiness location and staging area in the event of a Cascadia Subduction Zone earthquake or other large disaster.

Policy 12.1.6. Prior to disposing of County-owned property, consider whether the land is appropriate for needed public projects such as schools, health clinics, fire stations, senior centers, or affordable housing.

Policy 12.1.7. Coordinate with rural service districts and providers to review development proposals.

Policy 12.1.8. Use the land use entitlement process to ensure new development addresses and mitigates impacts on existing and planned public facilities.

Policy 12.1.9. Support education districts, library districts and recreation districts in meeting community needs, such as meeting spaces.

Policy 12.1.10. Where practicable, locate utility lines and facilities within or adjacent to existing rights-of-way to avoid dividing farm or forest lands.

Policy 12.1.11. Use the development code to mitigate visual and other impacts of public facilities and cell towers.

Policy 12.1.12. Use the Comprehensive Plan and Development Code to guide rural development in a manner that supports the orderly and cost-efficient provision of public facilities and services.

Policy 12.1.13. Support siting and development of city owned water and wastewater facilities on rural lands, including innovative facilities that include additional community amenities.

Goal 12.2: Pursue sustainable, innovative, and cost-effective waste management practices.

Policy 12.2.1. Allow for siting of waste management facilities on rural lands, including but not limited to landfill facilities, transfer stations, organics management facilities, material recovery facilities, and recycling modernization facilities, in a manner that is sensitive to environmental and community concerns.

Policy 12.2.2. Provide incentives, education, and resources to promote reuse and recycling of construction waste.

Policy 12.2.3. Encourage waste reduction through community education and partnerships with community groups such as the Environmental Center

Policy 12.2.4. Support the creation of a landfill overlay zone.

Goal 12.3: Serve as a conduit for countywide resources.

Policy 12.3.1. Provide resources to connect community members with a variety of housing and health related issues in Deschutes County

13

Transportation



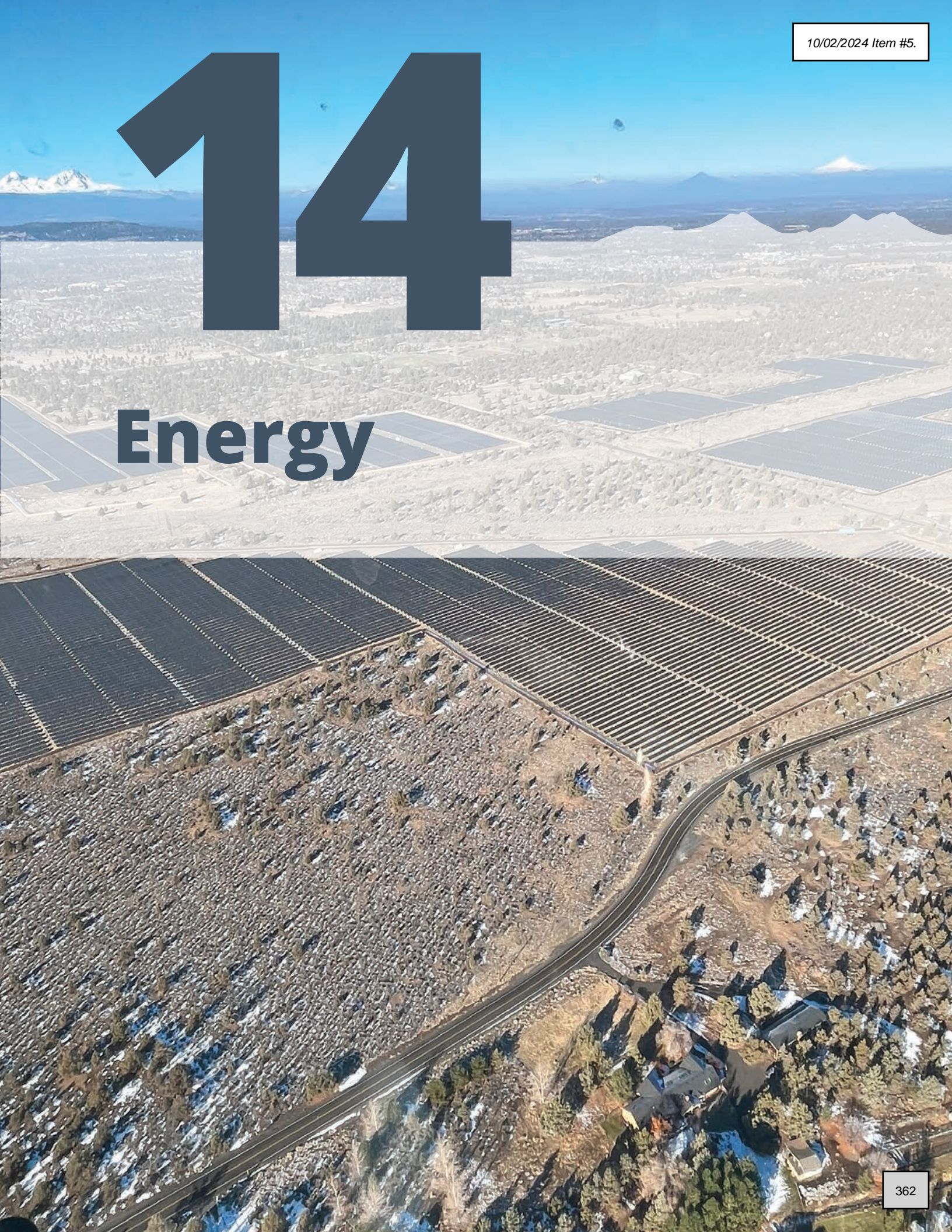


The Deschutes County transportation system includes roadways, bicycle facilities, pedestrian facilities, and transit facilities, as well as rail, air, marine, and pipeline systems. In general, the County only owns, manages, and maintains facilities in the unincorporated portions of the County. Facilities within the Urban Growth Boundaries of the incorporated cities of Bend, Redmond, Sisters, and La Pine are managed and maintained by those cities. In addition, the Oregon Department of Transportation (ODOT) owns and maintains a number of state highways throughout the County.

Information about existing conditions, planned investments, and policies related to transportation are contained in the Deschutes County Transportation System Plan (TSP), which is adopted as Appendix B of this Comprehensive Plan.

14

Energy





Opportunities, Challenges, and Considerations

The amount, source, and distribution of energy used in Deschutes County is a fundamental component of how we live our lives, and it is influenced by land use and other decisions made at the County level. The State of Oregon requires land uses to be managed with an eye to their energy impacts.

Statewide Planning Goal 13

Land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles.



In Deschutes County, the key energy issues include:

- Community design in more urban areas to limit the need for large vehicles (generally powered with fossil fuel) for everyday tasks.
- Generating, transporting, and storing energy locally from a variety of sources, and managing the impacts of these facilities.
- Conservation of energy through building design and orientation, the use of energy-efficient technologies, and incentives/regulations/education to encourage others to do so.

Deschutes County coordinates with utility providers that serve the area, including:

- Central Electric Cooperative
- Midstate Electric Cooperative
- Pacific Power (PacifiCorps)
- Cascades Natural Gas

Context

The role of Deschutes County in planning for energy is addressed in more detail below.

SOLAR ORIENTATION

The solar orientation of structures can create significant energy savings and allows for photovoltaic energy generation. The County has long promoted energy conservation through a passive solar code that requires new structures to be sited so that they do not block the sun from falling on adjacent properties.

SITING LARGE-SCALE ENERGY FACILITIES

In general, cities and counties have siting authority over energy projects below a certain size or generating capacity. This includes individual projects powering or supplementing homes and businesses or small commercial projects which produce energy for sale. Larger facilities are regulated by the Oregon Energy Facility Siting Council. The thresholds for Siting Council jurisdiction are determined by the Legislature and are defined in Oregon Revised Statutes (ORS) 469.300. The Siting Council does not regulate hydroelectric development. Instead, the Oregon Water Resources Commission has the authority to issue licenses for hydroelectric development.

Deschutes County currently has five developed large-scale energy facilities, primarily located on the eastern side of the County, approved between 2015-2017. In 2018, the Department of Land Conservation and Development altered statewide rules related to these types of large-scale energy facilities on high value farmland, limiting development opportunities in parts of the County. Community members have expressed concern regarding impacts of these facilities on wildlife habitat and aesthetics.

In addition to solar, several irrigation districts have developed in conduit hydroelectric facilities in which existing canals are upgraded with equipment for power generation. Three of these facilities currently exist, two of which are owned

and operated by Central Oregon Irrigation District, and the third owned and operated by Three Sisters Irrigation District.

SMALL-SCALE RESIDENTIAL, BUSINESS, AND COMMERCIAL ENERGY GENERATION

The State oversees construction and approval of large commercial energy facilities, as noted above. However, there is a role for local governments to oversee smaller commercial projects. Commercial energy generation is considerably more complex than permitting small projects for homes and businesses. From a land use perspective, the scale, extended time frame, investment required and required off-site components all complicate the approval process. For example, to move the electricity generated at an alternative energy facility to market there is often a need for approval of roads, transmission lines or substations. The accessory facilities may or may not be in place at the same site as the main facility, but are an integral part of the project and are currently reviewed separately, based on State regulations.

Wind Energy Generation

Wind energy is most abundant in the eastern portion of Deschutes County. Potential impacts of this type of facility include temporary construction impacts, habitat loss and animal fatalities due to collision with turbines, visual impacts from towers and accessory structures, and noise. Deschutes County regulates small scale wind energy development generating less than 100 kilowatts of power. This allowance was added to the Deschutes County Code in 2010, although since that time no applications have been received to establish this type of facility.

Solar Energy Generation

Deschutes County is generally favorable to solar generation. Potential impacts of this type of facility include temporary construction impacts, habitat loss, animal fatalities due to reflected sunlight (for some solar facilities), and visual impacts. As noted previously, the Department

of Land Conservation and Development amended its rules in 2018 to limit solar development on high value farmland. Typically, solar developments require large acreage and relatively flat terrain for their operations. This requirement is a limiting factor in Deschutes County, as many of the properties that would meet large acreage and terrain requirements are actively used for farming purposes. The Bureau of Land Management is exploring an amendment to its rules to allow for greater opportunity for solar development in the western United States. The County anticipates limited solar development on private land going forward and an increase of leased BLM land for this type of development.

Commercial Biomass

Commercial biomass uses organic material such as wood, agricultural waste or crop residues to power boilers to generate heat. According to the Oregon Forest Resources Institute an estimated 4.25 million acres (about 15% of Oregon’s forestland) have the potential to provide useful woody biomass through thinning to reduce the risk of uncharacteristic forest fires.

Potential impacts include temporary construction impacts, transportation impacts (as materials need to be transported to a central location), visual impacts, and air quality and climate impacts due to combustion of biofuels.

The County’s first biomass facility is under construction through a partnership with the Deschutes National Forest and Mt. Bachelor Ski Resort. The project is located on federal land and outside of the purview of Deschutes County regulations.

Geothermal Energy Generation

Geothermal energy is a form of renewable energy derived from heat in the earth. This heat is transferred to water through various means and the steam produced is used to produce electricity. Geothermal energy is dependent on the location of geothermal resources; central Oregon may contain some of the best prospects for geothermal exploration in the continental United States.

Potential impacts include construction and visual impacts of geothermal facilities.

Deschutes County regulates geothermal energy in accordance with state law, although no geothermal development projects have been proposed to date.

Hydroelectric Energy Generation

Currently, Deschutes County has three approved “in conduit” hydroelectric facilities that are owned and operated by irrigation districts within existing irrigation district canals. Approval of these facilities have previously been contentious, with community members expressing concern about wildlife and impacts to other basin users. Irrigation districts have noted challenges in utilizing the existing county code for these projects, which were drafted to address “in channel” hydroelectric facilities. To promote renewable energy development using man-made waterways, irrigation districts have expressed interest in helping the County update the Deschutes County Code to more appropriately address “in conduit” hydroelectric facilities separate and apart from “in-channel” hydroelectric facilities”.

Key Community Considerations

Community discussions related to energy have revolved around the following topics:

- Interest in planning for and adapting to climate change, including using more renewable energy sources.
- Concern about the design and location of energy facilities and their impacts on environmental resources and scenic views.
- Preparation for more use of electric vehicles in the future, which often require specialized charging infrastructure.

Goals and Policies

Goal 14.1: Promote Energy Conservation and Alternative Energy Production

Policy 14.1.1. Continue to incorporate energy conservation into the building and management of all County operations and capital projects using regular energy audits to refine the results.

Policy 14.1.2. Reduce energy demand by supporting energy efficiency in all sectors of the economy.

Policy 14.1.3. Encourage energy suppliers to explore innovative alternative energy conservation technologies and provide energy audits and incentives to patrons.

Policy 14.1.4. Provide flexibility and exemptions for small properties and anomalous sites in the development code to promote energy conservation. Promote affordable, efficient, reliable, and environmentally sound commercial energy systems for individual homes, and business consumers.

Policy 14.1.5. Promote development of solar, hydropower, wind, geothermal, biomass and other alternative energy systems while mitigating impacts on neighboring properties and the natural environment.

Policy 14.1.6. Provide incentives for homes and businesses to install small-scale on-site alternative energy systems consistent with adopted County financing programs.

Policy 14.1.7. Support development of electric vehicle charging stations and facilities to help promote use of electric vehicles.

Policy 14.1.8. Use the development code to promote commercial renewable energy projects while addressing and mitigating impacts on the community and natural environment.

Policy 14.1.9. Use Oregon’s Rural Renewable Energy Development Zones to support the creation of renewable energy projects.

Policy 14.1.10. Identify, protect, and support the development of significant renewable energy sites and resources.

Policy 14.1.11. Include evaluation of adverse impacts to natural resources as part of renewable energy siting processes.



Appendix A - Terrebonne Community Plan

Appendix B - Tumalo Community Plan

Appendix C - Transportation System Plan

Appendix D - Newberry Country Plan

Appendix E - Goal 5 Supplemental Sections

Section 5.1 Introduction

Background

This chapter provides material that supplements the other chapters of the Plan. There are no goals or policies in these sections.

Purpose

The purpose of this chapter is to provide a glossary, list all acknowledged Goal 5 resources in one location (see Section 2.4) and list all Goal Exceptions and Goal 5 inventories. The final section in this Chapter is a table to track all amendments to this Plan. This table will ensure a clear legislative history is maintained.

The following information is covered in this chapter:

- Glossary and Acronyms
- Goal 5 Water Resources
- Goal 5 Wildlife Resources
- Goal 5 Open Space and Scenic Views and Sites Resources
- Goal 5 Energy Resources
- Goal 5 Wilderness, Natural Areas and Recreation Trails
- Goal 5 Surface Mining Resources
- Goal 5 Cultural and Historic Resources
- Goal Exception Statements
- Goal 5 Adopted Ordinances
- Ordinance History

Section 5.2 Glossary and Acronyms

Glossary

Note: Terms defined in Deschutes County Code 18.04 (Zoning Code) are not repeated here, but have the same meaning as DCC 18.04.

“Agricultural-tourism” or “Agri-tourism” means a commercial enterprise at a working farm or ranch, operated in conjunction with the primary farm or ranch use, conducted for the enjoyment and/or education of visitors, that promotes successful agriculture, generates supplemental income for the owner and complies with Oregon Statute and Rule.

“Aquifer” means a water-bearing rock, rock formation or a group of formations.

“Common Area” means ‘common property’ as defined in the Oregon Planned Communities Act at ORS 94.550(7).

“Comprehensive Plan” means a generalized, coordinated land use map and policy statement of the governing body of a state agency, city, county or special district that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water, transportation, educational and recreational systems and natural resources and air and water quality management programs. “Comprehensive” means all-inclusive, both in terms of the geographic area covered and functional and natural activities and systems occurring in the area covered by the plan. “Generalized” means a summary of policies and proposals in broad categories and does not necessarily indicate specific locations of any area, activity or use. A plan is “coordinated” when the needs of all levels of governments, semi-public and private agencies and the citizens have been considered and accommodated as much as possible. “Land” includes water, both surface and subsurface, and the air.

“Conservation” means limiting or minimizing the use or depletion of natural resources, including such things as land, energy, water or wildlife habitat.

“Ecosystem” means the physical and biological components and processes occurring in a given area, which interact to create a dynamic equilibrium.

“Findings” means a fact, determination or reason, based on existing information, which, by itself or in conjunction with other findings, leads to a particular conclusion or course of action.

“Goal Exception” means a land use process through which a local jurisdiction justifies, based on factual evidence, that a policy embodied in a particular statewide planning goal should not apply to a particular property or set of properties.

“Green infrastructure” means design and construction practices that significantly reduce the negative impacts of buildings on the environment and occupants.

“Groundwater” means water beneath the earth's surface between saturated soil and rock that supplies wells and springs.

“Habitat” means a place that provides seasonal or year-round food, water, shelter and other necessities for an organism, community or population of plants and animals.

"In-stream" as defined in ORS 537.332, means within the natural stream channel or lake bed or place where water naturally flows or occurs.

"Instream flow" means the minimum quantity of water necessary to support the public use requested by an agency.

"Post-acknowledgement plan amendment" means an amendment to an adopted and acknowledged Comprehensive Plan.

"Regional" is used in the context of projects and collaborative efforts with impacts beyond Deschutes County.

"Riparian (zone, habitat, or vegetation)" means of, or pertaining to, the bank of a river, or of a pond or small lake. Riparian habitat is riverbank vegetative cover and food for many wildlife species.

"Rural lands" means those lands outside recognized urban growth boundaries which are necessary and suitable for such uses as:

- A. Exclusive farm use;
- B. General agriculture;
- C. Forest;
- D. Rural residential;
- E. Rural service center;
- F. Destination resort, dude ranch, planned community;
- G. Landscape management;
- H. Special interest;
- I. Open space;
- J. Fish and wildlife protective area;
- K. Recreation;
- L. Surface mining.

"Special District" means any unit of local government, other than a city or county, authorized and regulated by statute, which includes but is not limited to water control, irrigation, port districts, fire, hospital, mass transit and sanitary districts, as well as regional air quality control authorities.

"Statewide Planning Goals" means the 19 statewide planning standards adopted by the Land Conservation and Development Commission pursuant to OAR 660-015 to express Statewide policies on land use and related topics. Local comprehensive plans must be consistent with the statewide planning goals.

"Surface mining" means all or any part of the process of mining by removal of the overburden and extraction of natural mineral deposits.

“Urban Growth Boundary” (UGB) means a boundary established to identify for each city, the land area needed to accommodate 20 years of growth for the city, which is determined to be necessary and suitable for future urban uses capable of being served by urban facilities and services.

“Urbanized lands” means those lands within the urban growth boundaries which can be served by urban services and facilities and are necessary and suitable for future expansion of an urban area.

“Urban Reserve Area” means a boundary established to identify for each city, the land area needed to accommodate from 20-50 years of growth for the city.

Frequently Used Acronyms

“BLM” stands for Bureau of Land Management

“CCI” stands for Committee for Community Involvement “DCC” stands for Deschutes County Code

“DLCD” stands for Oregon Department of Land Conservation and Development. “DEQ” stands for Oregon Department of Environmental Quality

“DOGAMI” stands for Oregon Department of Geology and Mineral Industries “ESA” stands for the federal Endangered Species Act

“ESEE” stands for Economic, Social, Environmental and Energy in regards to required Goal 5 analyses

“FEMA” stands for Federal Emergency Management Agency

“LCDC” stands for Oregon Land Conservation and Development Commission “NOAA” stands for National Oceanic Atmospheric Administration

“OAR” stands for Oregon Administrative Rules

“ODFW” stands for Oregon Department of Fish and Wildlife “ORS” stands for Oregon Revised Statute

“OWRD” stands for Oregon Water Resources Department “RPS” stands for Regional Problem Solving

“TSP” stands for Transportation System Plan “UGB” stands for Urban Growth Boundary “URA” stands for Urban Reserve Area

“USFS” stands for United States Forest Service

“USFWS” stands for United States Fish and Wildlife Service “USGS” stands for United States Geological Survey

Section 5.3 Goal 5 Inventory - Water Resources

Background

This section contains information from the 1979 Deschutes County Comprehensive Plan as revised and the 1986 Deschutes County/City of Bend River Study. It lists the water resources in Deschutes County. These inventories have been acknowledged by the Department of Land Conservation and Development as complying with Goal 5. No changes have been proposed for the 2010 Comprehensive Plan update.

Goal 5 requires the following water resources be inventoried and the inventories are listed below.

- Riparian corridors, including water and riparian areas and fish habitat
- Wetlands
- Federal Wild and Scenic Rivers
- State Scenic Waterways
- Groundwater Resources

Also included in these inventories are Significant Lakes and Reservoirs.

Riparian Corridors

INVENTORIES

Table 5.3.1 Deschutes County River Miles

Waterway	Miles
Deschutes River	97
Little Deschutes River	42
Whychus Creek (lower 6 miles in Jefferson County)	39
Tumalo Creek	16
Paulina Creek	10
Fall River	8
Crooked River	7

Source: Deschutes County/City of Bend River Study 1986

Table 5.3.2 Deschutes County Goal 5 Riparian Inventory

Streams	Riparian Acres

Table 5.3.3 Deschutes County Goal 5 Floodplains Adjacent to Rivers and Streams

Deschutes River	Little Deschutes River
Crooked River	Spring River
Dry River	Paulina Creek
Indian Ford Creek	Long Prairie
Whychus Creek	

Source: 1979 Deschutes County Comprehensive Plan as revised and Federal Emergency Management Agency maps

Wetlands

Inventory: In 1992 Deschutes County Ordinance 92-045 adopted all wetlands identified on the U.S. Fish and Wildlife Service National Wetland Inventory Maps as the Deschutes County wetland inventory. Additionally, Deschutes County Ordinance 2011-008 adopted a Local Wetland Inventory (LWI) covering 18,937 acres in South Deschutes County.

Table 5.3.4 Deschutes County Goal 5 Perennial Streams

Bottle Creek	Full Creek	Spring Creek
Bridge Creek	Goose Creek	Three Creek
Brush Draw	Indian Ford Creek	SF Tumalo Creek
Bull Creek	Jack Creek	NF Whychus Creek
Cache Creek	Kaleetan Creek	Soda Crater Creek
Charlton Creek	Metolius Creek	NF Trout Creek
Cultus Creek	Park Creek EF	NF Tumalo Creek
Cultus River	Park Creek WF	MF Tumalo Creek
Deer Creek	Pole Creek	First Creek
Dry Creek	Rock Creek	Soap Creek
Fall Creek	Snow Creek	Todd Lake Creek

Note: All of these streams, except portions of Indian Ford Creek, Cache Creek and Dry Creek, are located on federal land and are subject to either the Deschutes National Forest or the Bureau of Land Management Resource Management Plans.

Source: 1979 Deschutes County Comprehensive Plan as revised

Table 5.3.5 Deschutes County Riparian Ownership

<i>River or Stream</i>	<i>Ownership</i>
Deschutes River	Private/Federal
Little Deschutes River	Private/Federal
Fall River	Private/Federal
Tumalo Creek	Private/Federal
Three Creek	Private/Federal
Whychus Creek	Private/Federal
Trout Creek	Private/Federal
Dry Creek	Private/Federal
Cache Creek	Private/Federal
Indian Ford Creek	Private/Federal
Cultus River	Federal
Charlton Creek	Federal
Deer Creek	Federal
Cultus Creek	Federal
Quinn Creek	Federal
Fall Creek	Federal
Moore Creek	Federal

Source: 1979 Deschutes County Comprehensive Plan as revised

FEDERAL WILD AND SCENIC RIVERS

Inventory: The following segments of the Deschutes River have been designated as Federal Recreation and Scenic rivers by the passage of the 1988 Omnibus Oregon Wild and Scenic Rivers Act of 1988. Congress mandates the US Forest Service to prepare a management plan for these segments of the Deschutes River.

Table 5.3.6 Deschutes County Wild and Scenic River Segments

<i>Waterway</i>	<i>Description</i>
Deschutes River	From Wickiup Dam to Fall River (22 miles)
Deschutes River	Fall River to N boundary Sun River (20 miles)
Deschutes River	N boundary Sun River to Bend UGB (13 miles)
Whychus Creek (formerly Squaw Creek)	Includes all tributaries within the Three Sisters Wilderness, Soap Creek and the main stem from the wilderness boundary to the stream flow gauge station

Source: County Ordinance 92-052

Table 5.3.8 Deschutes County Significant Lakes and Reservoirs

<i>River or Stream</i>	<i>Township</i>	<i>Range</i>	<i>Section</i>
Bobby Lake	T 22S	R 06E	14
Charlton Lake	T 21S	R 06E	14
Crane Prairie Reservoir	T 21	R 08E	16
Cultus Lake	T 20S	R 07E	24
Deer Lake	T 20S	R 07E	
Devils Lake	T 18 S	R 08E	NW1/2 SEC. 10
Davis Lake	T 22S	R 07E	
East Lake	T 21S	R 13E	31
Elk Lake	T 18S/19S	R 07E	5
Hosmer Lake	T 19S	R 08E	4
Lava Lake	T 19S	R 08E	22
Little Cultus Lake	T 20S	R 07E	
Little Lava Lak	T 19S	R 08E	22
North Twin Lake	T 21S	R 08E	28
Paulina Lake	T 21S	R 12E	84
South Twin Lake	T 21S	R 08E	28
Sparks Lake	T 18S	R 08E	23
Three Creeks Lake	T 17S	R 09E	14
Todd Lake	T 18S	R 09E	8
Upper Tumalo Reservoir	T 16S	R 11E	33
Winopee Lake	T 19S	R 11E	33
Wickiup Reservoir	T 22S	R 09E	7

Source: Deschutes County Ordinance 92-052

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Section 5.4 Goal 5 Inventory - Wildlife Habitat

Background

This section contains wildlife resource information from the 1979 Deschutes County Comprehensive Plan as revised. These inventories have been acknowledged by the Department of Land Conservation and Development as complying with Goal 5. No changes have been proposed for the 2010 Comprehensive Plan update. However, an updated inventory has been provided as described in Section 2.6 of this Plan and will be incorporated at a later date.

Bird Sites

(source: 1979 Deschutes County Comprehensive Plan as revised)

Bald Eagle Habitat Sites on Non-Federal Land or with Non-Federal Sensitive Habitat Areas.

Site #	Taxlot	Quarter Section	Site Name
DE0035-00	15-10-00-1400	23NWNE	Cloverdale NW
DE0035-01	15-10-00-1400	23NENE	Cloverdale NE

Table 5.4.1 – Bird Inventory

Birds Selected List 1992	Use Period S = Summer W = Winter X = Year round	Relative Abundance A = Abundant C = Common F = Few R = Rare U = Unknown
American Avocet	S	F
American Bittern	S	F
American Coot	X	C
American Goldfinch	S	C
American Osprey	X	C
American Widgeon	X	C
Anna's Hummingbird	S	F
Ash-throated Flycatcher	S	F
Bald Eagle	X	F
Bank Swallow	S	F
Barn Owl	X	C
Barn Swallow	S	C
Barred Owl	X	U
Belted Kingfisher	X	F
Bewick's Wren	X	F
Black-backed Woodpecker	X	F
Black-billed Magpie	X	C
Black-capped Chickadee	W	F
Black-chinned Hummingbird	S	F
Black-crowned Night Heron	S	F
Black-headed Grosbeak	S	F
Black-throated Grey Warbler	S	F
Blue Grouse	X	F
Blue-winged Teal	S	F
Bohemian Waxwing	W	F
Boreal Owl	X	F
Brewer's Blackbird	X	C
Brewer's Sparrow	S	F
Brown Creeper	X	F

Birds Selected List 1992	Use Period S = Summer W = Winter X = Year round	Relative Abundance A = Abundant C = Common F = Few R = Rare U = Unknown
Brown-headed Cowbird	S	C
Bufflehead	X	C
Burrowing Owl	S	R
California Valley Quail	X	C
Calliope Hummingbird	S	F
Canada Goose	X	C
Canyon Wren	X	C
Caspian Tern	S	F
Cassin's Finch	X	C
Cedar Waxwing	X	C
Chipping Sparrow	S	C
Chukar Partridge	X	R
California Gull	X	C
Clark's Nutcracker	X	C
Cliff Swallow	S	C
Common Bushitit	X	C
Common Crow	X	R
Common Loon	S	R
Common Merganser	X	C
Common Nighthawk	S	C
Common Raven	X	C
Common Snipe	S	F
Coopers Hawk	X	C
Dark-eyed Junco	X	A
Dipper	X	F
Double-crested Cormorant	S	C
Downy Woodpecker	X	C
Dusky Flycatcher	S	F
Eared Grebe	W	F
Eastern Kingbird	S	F
Evening Grosbeak	X	C
Ferruginous Hawk	S	F
Flammulated Owl	S	F
Fox Sparrow	S	C
Franklin's Gull	S	F
Gadwall	W	F
Golden Eagle	X	F
Golden-crowned Kinglet	X	F
Goldeneye	X	C
Goshawk	X	F
Gray Jay	X	C
Gray Partridge	X	R
House Sparrow	X	C

Birds Selected List 1992	Use Period S = Summer W = Winter X = Year round	Relative Abundance A = Abundant C = Common F = Few R = Rare U = Unknown
House Wren	S	F
Killdeer	X	C
Lark Sparrow	S	F
Lazuli Benging	S	F
Least Sandpiper	S	F
Lesser Goldfinch	X	R
Lesser Scaup	W	C
Lewis' Woodpecker	S	F
Lincoln's Sparrow	X	F
Loggerhead Shrike	X	F
Long-billed Curlew	S	R
Long-billed Marsh Wren	S	F
Long-eared Owl	X	F
MacGillivray's Warbler	S	F
Mallard	X	C
Merlin	W	R
Mountain Bluebird	X	C
Mountain Chickadee	X	C
Mourning Dove	X	C
Nashville Warbler	X	F
Northern Harrier	X	F
Northern Oriole	S	F
Northern Phalarope	S	F
Three-toed Woodpecker	X	F
Olive-sided Flycatcher	S	C
Orange-crowned Warbler	S	F
Osprey	S	C
Peregrine Falcon	X	R
Pileated Woodpecker	X	F
Pine Grosbeak	X	R
Pine Siskin	X	C
Pinon Jay	X	C
Pintail	W	C
Prairie Falcon	X	C
Purple Finch	X	F
Pygmy Nuthatch	X	C
Pygmy Owl	X	F
Red Crossbill	X	F
Red-breasted Nuthatch	X	C
Redhead	W	F
Red-shafted Flicker	X	C
Red-tailed Hawk	X	C
Red-winged Blackbird	X	C

Birds Selected List 1992	Use Period S = Summer W = Winter X = Year round	Relative Abundance A = Abundant C = Common F = Few R = Rare U = Unknown
Ring-billed Gull	X	C
Ring-neck Duck	W	F
Ring-necked Pheasant	X	F
Robin	X	C
Rock Dove	X	C
Rock Wren	S	C
Rosy Finch	X	R
Rough-legged Hawk	W	C
Rough-winged Swallow	S	F
Ruby-crowned Kinglet	X	F
Ruffed Grouse	X	F
Rufous Hummingbird	S	F
Rufous-sided Towhee	X	F
Sage Grouse	X	F
Sage Sparrow	S	R
Sage Trasher	S	C
Sandhill Crane	S	F
Song Sparrow	X	F
Sora	S	F
Spotted Owl	X	F
Spotted Sandpiper	S	F
Starling	X	C
Steller's Jay	X	F
Swainson's Hawk	S	R
Swainson's Thrush	S	F
Townsend's Solitaire	X	C
Tree Swallow	S	C
Turkey	X	C
Turkey Vulture	S	C
Varied Thrush	X	F
Vaux's Swift	S	F
Vesper Sparrow	S	F
Violet-green Swallow	S	C
Virginia Rail	S	F
Warbling Vireo	S	F
Water Pipit	X	F
Western Bluebird	S	F
Western Flycatcher	S	F
Western Grebe	S	C
Western Kingbird	S	F
Western Meadowlark	S	C
Western Sandpiper	S	F
Western Taager	S	F

Birds Selected List 1992	Use Period S = Summer W = Winter X = Year round	Relative Abundance A = Abundant C = Common F = Few R = Rare U = Unknown
Western Wood Pewee	S	F
White-breasted Nuthatch	X	F
White-crowned Sparrow	S	F
White-headed Woodpecker	X	F
Wigeon	X	F
Williamson's Sapsucker	X	F
Willow Flycatcher	S	R
Wilson's Phalarope	S	R
Wilson's Warbler	S	F
Winter Wren	X	F
Wood Duck	S	F
Yellow Warbler	S	F
Yellow-bellied Sapsucker	X	F
Yellow-headed blackbird	S	F
Yellowthroat	S	F

Source: 1979 Deschutes County Comprehensive Plan as revised

The Oregon Department of Fish and Wildlife (ODFW) has identified two bald eagle nests in Township

Table 5.4.2 – Amphibian and Reptile Inventory

Amphibians and Reptiles Selected List 1992	Use Period S = Summer W = Winter X = Year round	Relative Abundance A = Abundant C = Common F = Few R = Rare U = Unknown
Bullfrog	X	F
Cascades Frog	X	F
N. Grasshopper Mouse	X	F
Northern Water Shrew	X	F
Norway Rat	X	F
N. Pocket Gopher	X	U
Ord's Kangaroo Rat	X	C
Pacific Mole	X	U
Pallid Bat	S	U
Pine Marten	X	C
Pinon Mouse	X	F
Porcupine	X	C
Pronghorn Antelope	X	C
Raccoon	X	C
Red Fox	X	F
River Otter	X	C
Rocky Mtn Elk	X	C
Roosevelt Elk	X	C
Sagebrush Vole	X	C

Amphibians and Reptiles Selected List 1992	Use Period S = Summer W = Winter X = Year round	Relative Abundance A = Abundant C = Common F = Few R = Rare U = Unknown
Shorttail Weasel	X	F
Silver-haired Bat	S	U
Small-footed Myotis	S	U
Snowshoe Hare	X	F
Striped Skunk	X	C
Townsend Ground Squirrel	X	C
Townsend's Big-eared Bat	X	F
Trowbridge Shrew	X	F
Vagrant Shrew	X	U
Water Vole	X	C
Western Gray Squirrel	X	C
Western Harvest Mouse	X	C
Western Jumping Mouse	X	F
Western Pipitrel	S	U
Whitetail Jackrabbit	X	R
Wolverine	X	R
Yellow Pine Chipmunk	X	C
Yellow-bellied Marmot	X	F
Yama Myotis	X	F
Common Garter Snake	X	F
Ensatina	X	R
Gopher Snake	X	C
Great Basin Spadefoot Toad	X	F
Long-toed Salamander	X	F
Night Snake	X	U
Northern alligator Lizard	X	F
Pacific Tree Frog	X	C
Racer	X	F
Red-legged Frog	X	F
Roughskin Newt	X	R
Rubber Boa	X	F
Sagebrush Lizard	X	F
Sharp-tailed Snake	X	U
Short-horned Lizard	X	R
Side-blotched Lizard	X	U
Spotted Frog	X	F
Striped Whipsnake	X	U
Tailed Frog	X	F
Western Fence Lizard	X	C
Western Rattlesnake	X	F
Western Skink	X	F
Western Toad	X	F

Source: 1979 Deschutes County Comprehensive Plan as revised

Table 5.4.3 – Goal 5 Fish Distribution Inventory

	Pacific Salmon	Coho Salmon	Rainbow Trout	Brown Trout	Cutthroat Trout	Brook Trout	Lake Trout	Dolly Varden Trout	Kokanee	Mountain Whitefish	Largemouth Bass	Bluegill	Brown Bullhead	Bridglist Sucker	Tui Chub	Gayling	Crayfish
Tyee Creek					2												
Hell Creek					2												
Spring River				2	2			1							2		1
Tumalo Creek			1		2												
Bridge Creek					2												
Fall Creek					2												
Satan Creek					2												
Soda Creek					2												
Crater Creek					2												
Goose Creek					2												
Indian Ford Creek			1		2								2				
Trout Creek			1														
Alder Creek			1														
Whychus Creek			1		2												
Pole Creek					2												
Snow Creek			1		2												
Deschutes River		3	*	2	2			3	1						2		1
Little Deschutes River			1	2	2				1			2			2		1
Park Creek					2												
Three Creeks Creek			3		3												
Sink Creek					2												
Deer Creek			1		2												
Quinn River			*		2			2	1						2		1
Quinn Creek	3				2												
Cultus Creek			*		2												
Cultus Lake, Big			3		2	2			1						2		1
Cultus Lake, Little			2		3												
Cultus River					2			2	1								
Moore Creek					2												
Charlton Creek					2												
Long Prairie Slough												2					2
Browns Creek			2	2	2			#	1								1
Fall River			*	2	2				1						2		1
Paulina Creek			3												2		1
Cache Creek			1														
Crane Prairie Res.			*		#			2	1	2					2		1
Wickiup Reservoir		3	3	#				#	1						2		1
Three Creeks Lake			3		3												
Devil's Lake			3		2												
Hosmer Lake	3				3												1
Irish Lake					3												

- 1 - Native, naturally reproducing
- 2 - Introduced, naturally reproducing
- 3 - Introduced, periodic stocking required to maintain population
- * - 1 and 3
- # - 2 and 3

Source: 1979 Deschutes County Comprehensive Plan as revised

Table 5.4.4 Recommended Minimum Flows for Fish Life

Stream	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Deschutes River (1)	200	200	200	200	200	200	200	200	200	200	200	200
Deschutes River (2)	400	400	400	400	400	400	400	400	400	400	400	400
Deschutes River (3)	660	660	660	660	660	660	660	660	660	660	660	660
Deschutes River (4)	300	300	300	300	300	300	300	300	300	300	300	300
Deschutes River (5)	80	80	80	80	80	80	80	80	80	80	80	80
Deschutes River (6)	40	40	60	60	60	40	40	40	60	60	60	60
Whychus Creek (7)	20	10	10	10	10	10	10	10	10/20	30	20	20
Whychus Creek (8)	10	10/20	30	30	30	20	10	10	10	10	10	10
Indian Ford Creek	4	3	3	3	3	3	3	3	3/4	6	4	4
Tumalo Creek	35	35	47	47	47	5	10	10	10/35	47	35	35
Spring River	300	300	300	300	300	300	300	300	300	300	300	300
Little Deschutes River	80	80	80	200	200	150	100	100	100	100	200	200
Fall River	70	70	100	100	100	70	50	50	50	100	100	100
Browns Creek	15	15	25	25	25	15	15	15	25	25	25	25
Quinn River	20	20	20	20	20	20	20	20	20	20	20	20
Cultus Creek	20	20	32	32	32	20	5	5	5/20	32	20	20
Cultus River	50	50	50	50	50	50	50	50	70	70	70	70
Snow Creek	15	15	30	30	30	20	15	15	15	30	30	20
Quinn Creek	20	20	20	12	12	12	12	12	12/20	35	35	35
Soda Creek	20	20	20	6	6	6	6	6	6/20	31	31	31
Fall Creek	35	35	35	20	20	20	20	20	20/35	46	46	46
Goose Creek	7	7	7	4	4	4	4	4	4/7	10	10	10
Three Creek	7	7	10	10	10	7	2	2	2/7	10	7	7

¹ Flows are expressed in cubic feet per second. The recommended flows should arrive at the point of recommendation and continue to the mouth of the stream or to the next point for which a different flow is recommended. Stream flows recommended in Appendix I are designed for game fish production and are not necessarily adequate for wildlife, especially waterfowl and furbearers. Neither would they necessarily be recommended below future impoundments.

- (1) Bend to Round Butte Reservoir
- (2) L. Deschutes R. to Spring River
- (3) Spring River to Bend
- (4) Wickiup Dam to Little Deschutes River
- (5) Crane Prairie Dam to Wickiup Reservoir
- (6) At USGS Gate 14-0500
- (7) Below USGS Gage 14-0750
- (8) Below Camp Polk

Source: 1979 Deschutes County Comprehensive Plan as revised

15S, Range 10E, Section 23, Tax Lot 1400. The ODFW identifiers for these sites are DE0035-00 and DE0035-01. The sites are also known as Cloverdale. The sites are described in the Oregon Department of Fish and Wildlife Central Region Administrative Report No. 93-1. The sensitive habitat area is identified as the area east of Highway 20 that is within a 1/4-mile radius of each nest site.

Site #	Taxlot	Site Name
DE0036-00	17S-11E-26-5900	Shevlin Park

The Oregon Department of Fish and Wildlife (ODFW) has inventoried a former bald eagle nest site in Township 17S, Range 11E, Section 26, Tax Lot 5900. The ODFW identifier for this site is DE0036-00. The site is also known as Shevlin Park. The site is described in the Oregon Department of Fish and Wildlife Central Region Administrative Report No. 93-1.

Site #	Taxlot	Site Name
DE0037-00	22S-09E-04-4500	Wickiup Reservoir

Table 5.4.5 – Instream Water Right Program (3/1/92) Database Summary Report

BASIN 05	STREAM > PARENT STREAM	UPSTREAM LIMIT	DOWNSTREAM LIMIT	SPECIES	APP NO.	CERT #	DATE
05	Deschutes R > Columbia R	Crn Prairie Res	Wickiup Res	RB, BT, BR, CO, K	070764		10/11/90
05	Deschutes R > Columbia R	Little Lava Lk	Crn Prairie Res	RB, BT, K, WF	070763		10/11/90
05	Deschutes R > Columbia R	193.0	190.0		MPS	59777	11/03/83
05	Deschutes R > Columbia R	227.0	193.0		MPS	59776	11/03/83
05	Deschutes R > Columbia R	190.0	165.0		MPS	59778	11/03/83
05	Fall R > Deschutes R	Gage 14057500	Mouth	RB, BT, BR, WF	070762		10/11/90
05	Indian Ford Cr > Whychus Cr	Headwaters	Mouth	RB	070760		10/11/90
05	Little Deschutes R > Deschutes R	Crescent Cr	Mouth	RB, BT, BR, WF	070757		10/11/90
05	Metolius R > Deschutes R	Metolius Spring	Canyon Cr	BUT, K	070699		09/24/90
05	Snow Cr > Deschutes R	Headwaters	Mouth	RB, BT	070756		10/11/90
05	Whychus Cr > Deschutes R	S Fk Whychus Cr	Indian Ford Cr	RB, BT	070754		10/11/90
05	Tumalo Cr > Deschutes R	S Fk Tumalo Cr	Mouth	RB, BT, BR	070752		10/11/90

Source: 1979 Deschutes County Comprehensive Plan as revised

The Oregon Department of Fish and Wildlife (ODFW) has identified a bald eagle nest in Township 22S, Range 09E, Section 04, Tax Lot 500. The ODFW identifier for this site is DE0037-00, Wickiup Reservoir. The site is described in the Oregon Department of Fish and Wildlife Central Region Administrative Report No. 93-1.

<i>Site #</i>	<i>Taxlot</i>	<i>Site Name</i>
DE0038-00	22S-09E-34-500	Haner Park

The Oregon Department of Fish and Wildlife (ODFW) has identified a bald eagle nest in Township 22S, Range 09E, Section 34, Tax Lot 500. The ODFW identifier for this site is DE0038-00, Haner Park. The site is described in the Oregon Department of Fish and Wildlife Central Region Administrative Report No. 93-1. The sensitive habitat area includes the area within one-quarter mile of the nest site.

<i>Site #</i>	<i>Taxlot</i>	<i>Site Name</i>
DE0039-00	22S-09E-06-500	Wickiup Dam

The Oregon Department of Fish and Wildlife (ODFW) has identified a bald eagle nest in Township 22S, Range 09E, Section 06, Tax Lot 500. The ODFW identifier for this site is DE0039-00, Wickiup Dam. The site is described in the Oregon Department of Fish and Wildlife Central Region Administrative Report No. 93-1.

<i>Site #</i>	<i>Taxlot</i>	<i>Quarter Section</i>	<i>Site Name</i>
DE0046-00	20-10-34-3401	34NWSE	Bates Butte

The Oregon Department of Fish and Wildlife (ODFW) has identified a bald eagle nest in Township 20S, Range 10E, Section 34, Tax Lot 3401. The ODFW identifier for this site is DE0046-00, Bates Butte. The site is described in the Oregon Department of Fish and Wildlife Central Region Administrative Report No. 93-1. The sensitive habitat area includes the area within one-quarter mile of the nest site.

Great Blue Heron Rookery – Black Butte Ranch

The Oregon Department of Fish and Wildlife (ODFW) identified a great blue heron rookery in Township 14S, Range 9E, Section 10 SENE. The County inventoried and adopted this site as a Goal 5 resources in Ordinance 92-041.

Golden Eagle Sites

Table 5.4.6 – Golden Eagle Nest Site Inventory on Non-Federal Land or with Non-Federal Sensitive Habitat Area

<i>ODFW Site #</i>	<i>Taxlot</i>	<i>Quarter Section</i>	<i>General Location</i>
DE-0002-00	14-13-11-100	11/SENW	Smith Rock State Park
DE-0002-01	14-13-11-100	11/SENW	Smith Rock State Park
DE-0002-02	14-13-11-100	11/SENW	Smith Rock State Park
DE-0002-03	14-13-11-100	11/NWNE	Smith Rock State Park
DE-0002-04	14-13-11-100	11/NWNE	Smith Rock State Park
DE-0002-05	14-13-11-100	11/NWNE	Smith Rock State Park
DE-0002-06	14-13-11-100	11/NWNE	Smith Rock State Park
DE-0006-00	15-12-00-1502	35/SENE	Mid Deschutes
DE-0006-01	15-12-00-1502	35/SENE	Mid Deschutes
DE-0006-02	15-12-00-1502	35/SENE	Mid Deschutes
DE-0006-04	15-12-00-1502	35/SENE	Mid Deschutes
DE-0006-05	15-12-00-1503	35/NESE	Mid Deschutes
DE-0009-00	14-12-22D-300	23/NWSW	N. Odin Falls
DE-0011-00	15-12-00-100	1/NWSE	Radio Tower/Deschutes
DE-0011-01	15-12-00-100	1/NESE	Radio Tower/Deschutes
DE-0012-00	15-11-00-800	3/NENE	Upper Deep Canyon
DE-0014-00	16-11-00-7800	29/NWSE	Tumalo Dam
DE-0015-01	14-11-00-400	3/NENW	Whychus Creek
DE-0015-00	14-11-00-400	3/SESW	Rimrock Ranch
DE-0029-00	20-17-00-3801	36/NWSE	Twin Pines
DE-0034-00	15-10-00-1400	15/SENW	Lazy Z/USFS
DE-0034-01	15-10-00-1400	15/SENW	Lazy Z/USFS

Source: 1979 Deschutes County Comprehensive Plan as revised

Table 5.4.7 – Prairie Falcon Nest Site Inventory on Non-Federal Land or with Non-Federal Sensitive Habitat Area

<i>ODFW Site #</i>	<i>Taxlot</i>	<i>Quarter Section</i>	<i>General Location</i>
DE-0016-00	22-16-00-100	12/SWSE	Dickerson Flat
DE-0031-00	16-11-00-5600	20/NESE	Tumalo Dam
DE-0031-01	16-11-20-400	20/SESW	Tumalo Dam
DE-0794-01	14-13-11-100	11/NWSW	Smith Rock State Park

Source: 1979 Deschutes County Comprehensive Plan as revised

Table 5.4.8– Osprey Nest Site Inventory on Non-Federal Land or with Non-Federal Sensitive Habitat Area

<i>ODFW Site #</i>	<i>Taxlot</i>	<i>Quarter Section</i>	<i>General Location</i>
DE-0080-00	20-11-00-1300	07/NWNE	Sunriver/ Meadowland

Source: 1979 Deschutes County Comprehensive Plan as revised

Table 5.4.9 – Upland Game Bird Habitat

Ring-necked Pheasant	200
Valley Quail	10,000
Mountain Quail	50
Chukar Partridge	300
Turkey	50
Blue Grouse	900
Sage Grouse	1,800
Ruffed Grouse	100
Mourning Dove	8,000

Source: 1979 Deschutes County Comprehensive Plan as revised

Table 5.4.10 – Sage Grouse Lek Inventory on Non-Federal Lands or with Non-Federal Sensitive Habitat Areas

<i>ODFW Site #</i>	<i>Taxlot</i>	<i>Quarter Section</i>	<i>General Location</i>
DE 0994-01	20-18-00-700	05/SWSE	Circle F Reservoir
DE 0995-01	20-19-00-800	06/NWSE	Merril Rd
DE 0996-01	22-17-00-600	06/SWSW	Dickerson Well
DE 0997-01	20-16-00-2400	25/SESW	Moffit Ranch
DE 0997-02	20-16-00-2400	26/NENE	Moffit Ranch Satellite
DE 0998-01	20-14-00-400	10/NWNW	Evans Well
DE 0998-02	20-14-00-400	10/SWNW	Evans Well Satellite
DE 0999-01	19-14-00-2200	26/SESE	Millican Pit

Source: 1979 Deschutes County Comprehensive Plan as revised

Section 5.5 Goal 5 Inventory - Open Spaces, Scenic Views and Sites

Background

This section contains information from the 1979 Deschutes County Comprehensive Plan as revised. It lists the open spaces, scenic views and sites resources in Deschutes County. These inventories have been acknowledged by the Department of Land Conservation and Development as complying with Goal 5. No changes have been proposed for the 2010 Comprehensive Plan update.

To protect scenic views, landscape management areas have been defined and a combining zone created. On lands outside urban growth boundaries and rural service centers along the portions of roadways listed below, landscape management zoning applies and a case-by-case site plan review is required. The area extends $\frac{1}{4}$ mile on either side from the centerline of the roadways and includes all areas designated as State and Federal Wild, Scenic or recreational waterways and within 660 feet from either side of designated rivers and streams as measured from the ordinary high water level.

Landscape Management Roads, Rivers and Streams

Inventory: All land within one-quarter of a mile, as measured at right angles from the centerline, of any of the following designated Landscape Management Roadways. All land within the boundaries of a state scenic waterway or a federal wild and scenic river corridor; and all land within 660 feet of the ordinary high water mark of portions the following designated rivers and streams which are not designated as state scenic waterways or federal wild and scenic rivers.

Table 5.5.1 – Deschutes County Landscape Management Areas

<i>Landscape Management Roads</i>	<i>Miles</i>
U.S. Highway 97 North County line to Redmond UGB	7.5
U.S. Highway 97 Redmond UGB to Bend UGB	12
U.S. Highway 97 Bend UGB to South County line	35
U.S. Highway 20-126 North County line to Sisters UGB	11
U.S. Highway 126 Sisters UGB to Redmond UGB	21.5
U.S. Highway 20 Sisters UGB to Bend UGB	23
Smith Rock Road Highway 97 to Smith Rock	3.5
Sisemore Road Cloverdale to Bend UGB	19
Skyliner Road	15.5
Century Drive Bend to Mt Bachelor	25
South Century Drive	27
Cascade Lakes Highway	46
Waldo Lake Road	10
Cultus Lake Road	2
Little Cultus Lake Road	6

<i>Landscape Management Roads</i>	<i>Miles</i>
Twin Lakes Road	6
Keefer Road (East Crane Prairie Road)	16.5
East Deschutes Road	14
Deschutes Road	9
Wickiup Road	4
Pringle Falls Loop	8
La Pine Recreation Area Access Road	10
Paulina-East Lake Road	22.5
Lava Cast Forest Road	20.5
Highway 20 east to the County Line	25
Pine Mountain Road	7.5
Ford Road	6.5
Three Creeks Lake Road	16
Three Trappers Road	20.5
Dillon Falls Road	60
Matsen Road	2
State Highway 31	2.5
Road to Benham Falls	4.5
State Highway 242 McKenzie Highway	
<i>Landscape Management Rivers and Streams</i>	<i>Miles</i>
Deschutes River	
Little Deschutes River	43
Paulina Creek	19
Fall River	8
Spring River	1.2
Tumalo Creek	16.3
Whychus Creek (formerly Squaw Creek)	
Crooked River	10

Source: Deschutes County Ordinance 92-052

Areas of Special Concern Inventory

Inventory: The Resource Element of the Deschutes County Year 2000 Comprehensive Plan (1979) identified sites as Open Spaces and Areas of Special Concern. Table 5.5.2, lists the inventory of sites identified as Areas of Special Concern located on federal land.

Table 5.5.2 "2A" Areas of Special Concern

ID #	Name	Location
9	Bachelor Butte	T18S R09E SEC 29-32
11	Pine Mt. Observatory	T20S R15E SEC 33
13	Dry River	T19S R15E SEC 19 & 30 T19S R14E SEC 2, 11, 13, 14 & 24
14	Arnold Ice Caves	T19S R13 E SEC 22
15	Charcoal Cave	T19S R13 E SEC 22
16	Skeleton Cave	T19S R13E SESE SEC 4
17	Wind Cave	T19S R13E NW ¼ SEC 23; SW ¼ SEC 14
31	Tumalo Falls	T18S R10E NW ¼ SEC 08
33	Lava River Caves	T19S R11E SE ¼ SEC 26

ID #	Name	Location
34	Pringle Falls Experimental Forest	T21S R09E SEC 21-23, 27 & 28
39	Benham Falls	T19S R11E SW ¼ SEC 9
45	Paulina Mountain	T22S R12E SEC 1-3 & 10-12
49	Lavacicle Cave	T22S R16E SENE SEC 05
50	Lava Cast Forest	T20S R12E SEC 15, 16, 21, 22, 27-35
51	Lava Butte Geologic Area	T19S R11E SEC 18
52	Pine Mountain North Slope	T20S R15E SEC 28, 29 & 33
54	McKenzie Summit	T15S R07E SEC 17
55	Newberry Crater	T21 R12E SEC 34-36
65	Bend Watershed	T17S R09E SEC 35 & 26 T18S R09E SEC 1, 2, 3, 10, 11, & 12
66	Bat Cave	T19S R13E SE ¼ SEC 14
68	Boyd Cave	T19S R13E SENW SEC 8
69	Frederick Butte	T22S R19E SEC 32

Source: Deschutes County Ordinance 92-052

Land Needed and Desirable for Open Space and Scenic Resources

Inventory: The following list shows land needed and desirable for open space and scenic resources:

Table 5.5.3 Land Needed and Desirable for Open Spaces and Scenic Resources

State Parks	Location	Size
Smith Rock State Park	T14S, R13 E, SEC 10, 11, 14 & 15	600 acres
Cline Falls State Park	T15S, R12E, SEC 14	9.04 acres
Tumalo State Park	T17S, R12E, SEC 6	320.14 acres
Pilot Butte State Park	T17S, R12E, SEC 33 & 34	100.74 acres
La Pine State Recreation Area	T20S, R10E, SEC 33 & 34 T21S, R10E, SEC 3, 4, 8, 9, 10, 11, 12 T21S, R11E, SEC 7	2,333.12 acres

Source: Deschutes County Ordinance 92-052

Section 5.6 Goal 5 Inventory - Energy Resources

Background

This section contains information from the 1979 Deschutes County Comprehensive Plan as revised. It lists the energy resources in Deschutes County. These inventories have been acknowledged by the Department of Land Conservation and Development as complying with Goal 5. No changes have been proposed for the 2010 Comprehensive Plan update.

Hydroelectric Resources of the Upper Deschutes River Basin

Inventory: Available information is adequate to indicate that the resource is significant. The City of Bend/Deschutes County River Study inventoried 16 proposed hydroelectric project sites in Deschutes County. Twelve were located on the Deschutes River; two on Tumalo Creek; two on Whychus Creek; and one on the Crooked River in Deschutes County. For a more detailed discussion of the hydroelectric resources in Deschutes County see the Deschutes County/City of Bend River Study, April 1986 (River Study), Chapters 2, 3, and 4. Also refer to the River Study staff report. The River Study and River Study staff report are incorporated herein by reference.

Table 5.6.1 Hydroelectric Resources of the Upper Deschutes Basin*

<i>Deschutes River</i>	<i>River Mile</i>	<i>Capacity (megawatts)</i>
Crane Prairie	239	0.6
Wickiup Dam	226.8	7.0
Pringle Falls	217	1.6
Lava Diversion	182.4	11.5
Dillon Falls	177.6	7.2
Aspen Diversion	175.2	3.2
Island Diversion	174.6	7.5
Arnold Flume	174.5	4.2
COI Siphon	170.0	6.5
North Canal Dam	164.8	2.0
Bend Canal Diversion	162.4	3.0
<i>Tumalo Creek</i>	<i>River Mile</i>	<i>Capacity (megawatts)</i>
Columbia Southern	9.5	9.3
<i>Whychus Creek</i>	<i>River Mile</i>	<i>Capacity (megawatts)</i>
Whychus Creek	25	0.6
Whychus Creek	30.5	3.5
<i>Crooked River</i>	<i>River Mile</i>	<i>Capacity (megawatts)</i>
Crooked River Drop	164.8	10.7

Source: Deschutes County Ordinance 92-052

* Note that the conflicting use analysis from the River Study and subsequent amendments prohibit new hydroelectric facilities that are not physically connected to an existing dam, diversion or conduit. (Ord.86-017, 86-018, 86-019, 92-052)

* Note that the conflicting use analysis from the River Study and subsequent amendments prohibit new hydroelectric facilities that are not physically connected to an existing dam, diversion or conduit. (Ord.86-017, 86-018, 86-019, 92-052)

The prohibition refers to the following:

1. Deschutes River, from its headwaters to River Mile 227, above but not including Wickiup Dam, and from Wickiup Dam to River Mile 171 below Lava Island Falls;
2. Crooked River;
3. Fall River;
4. Little Deschutes River;
5. Spring River;
6. Paulina Creek;
7. Whychus Creek (was Squaw Creek);
8. Tumalo Creek.

Geothermal Resources

Inventory: The County adopted Ordinance 85-001 which complies with Goal 5 (OAR 660-016). The ordinance amended the Comprehensive Plan and adopted a Geothermal Resource Element including a resource inventory and ESEE analysis.

Section 5.7 Goal 5 Inventory - Wilderness, Natural Areas, and Recreation

Background

This section lists wilderness areas, natural areas and recreation trail resources in Deschutes County.

Wilderness Areas

Inventory: Wilderness areas are represented by all lands within the existing Mt. Washington and Three Sisters Wilderness Areas as shown on the Deschutes National forest Land and Resource Management Plan Map, and all lands included in the Bureau of Land Management's (BLM) State of Oregon Wilderness Status Map for Deschutes County and BLM Wilderness Study Areas (WSA) as shown on the Brothers / La Pine Resource Management Plan.

Ecologically and Scientifically Significant Natural Areas

Inventory: The following sites are the inventories ecologically significant natural areas in Deschutes

Table 5.7.1 Wilderness Areas

Name	Acres
Mt. Washington Wilderness Area	13,563
Three Sisters Wilderness Area	92,706
Badlands	32,261
Hampton Butte	10,600
Steelhead Falls	920

Source: Deschutes County Ordinance 92-052

County by the Oregon Natural Heritage Program and there is sufficient information based on site reports from the Heritage Program to complete the Goal 5 review process.

Approved Oregon Recreation Trails

None listed

Table 5.7.2 Ecologically and Scientifically Significant Natural Areas

Name	Location	Quality	Quantity
Pringle Falls Research Natural Area	T21S, R9E, SEC 3, 34 & 35	Excellent	1,160 acres
Horse Ridge Research Natural Area	T19S, R14S, SEC 15 & 22	Excellent	600 acres
West Hampton Butte	T22S, R20E, SEC 31 & 32	Good	1,280 acres
Little Deschutes River / Deschutes River Confluence	T20S, R11E, SEC 7	Excellent	400 acres
Davis Lake	T22S, R7 E, SEC 25 & 26 T22S, R8E, SEC 31	Good	4,000 acres

Source: Deschutes County Ordinance 92-052

Section 5.8 Goal 5 Inventory - Mineral and Aggregate Resources

Background

This section contains information from the 1979 Deschutes County Comprehensive Plan as revised. It lists the surface mining resources in Deschutes County. These inventories have been acknowledged by the Department of Land Conservation and Development as complying with Goal 5. No changes have been proposed for the 2010 Comprehensive Plan update.

Table 5.8.1 – Deschutes County Surface Mining Mineral and Aggregate Inventory

#	Taxlot	Name	Type	Quantity*	Quality	Access/Location
246	151010-00-00205, 207, 300, 302, 303	Tewalt	S & G	10,000	Good	Hwy 20
248	151012-00-00100	Cyrus	Cinders	30.2 M	Excellent	Cloverdale Road
251	151211-D0-01400, 151214-A0-00800	Cherry	S & G	125,000	Good	
252	151200-00-04700, 04701	Thornburgh	Rock	2.5 M	Good	
271	151036-00-00800	Deschutes County	S & G	2 M	Mixed	Harrington Loop Road
273	151117-00-00100	Deschutes County	S & G	75,000	Excellent	Fryrear Rd/Redmond-Sisters
274	151117-00-00700	Deschutes County	S & G		Excellent	Fryrear Road
275	151100-00-02400	Deschutes County	S & G	175,000	Good	Fryrear Landfill
277	151011-00-01100	Oregon State Hwy	S & G	100,000	ODOT Specs	
278	151140-A0-00901, 151211-D0-01200	State of Oregon	S & G	18,000	ODOT Specs	
282	171000-00-00100	Crown Pacific	Cinders	100,000	Fair	
283	171000-00-00100	Crown Pacific	Cinders	50,000	Fair	
288	171111-00-00700	Tumalo Irrigation	S & G	250,000	Good	
292	171112-00-00900	RL Coats	S & G	326,000	ODOT Specs	
293	17112-00-00500, 600, 700, 800	RL Coats	S & G	3 M	ODOT Specs	

#	Taxlot	Name	Type	Quantity*	Quality	Access/Location
296	171100-00-02702	Crown Pacific	Cinders	100,000	Excellent	Shevlin Park/Johnson Rd
297	171123-00-00100	Crown Pacific	Cinders	60,000		Johnson Rd/Tumalo
303	171207-00-00300	Cascade Pumice	Pumice	750,000	Good	
303	171207-00-00300	Cascade Pumice	S & G	10,000	Good	
313	171433-00-00600	Deschutes County	S & G	100,000	Good	
313	171433-00-00600, 120	Deschutes County	Storage			Dodds Road/Alfalpa
314	171332-00-01100	Deschutes County	Dirt	150,000	Good	
315	140900-00-02100	Stott	Rock	93,454 tons	ODOT Specs	Highway 20
316	140900-00-00202	Black Butte Ranch	S & G	7 M	Good	
317	140900-00-01300	Willamette Ind	Cinders	1.2 M	Good	
322	141200-00-01801	Fred Gunzner	S & G	1.5 M	Mixed	Lower Bridge/Terrebonne
322	141200-00-01801	Gunzner	Diatomite	500,000	Good	Lower Bridge/Terrebonne
324	141200-00-00702	ODVA	S & G	490,000	Good	Lower Bridge/Terrebonne
326	141236-00-00300, 301	US Bank Trust	S & G	1.5 M	Good	
330	141328-00-00702, 703	Larry Davis	Cinders	50,000	Good	
331	141329-00-00100, 103	EA Moore	Cinders	100,000	Good	
332	141329-00-00102	RL Coats	Cinders	2 M	Good	Northwest Way/Terrebonne
333	141329-00-00104	Robinson	Cinders	2.7 M	Good	
335	141333-00-00890	Erwin	Cinders	100,000	Excellent	Pershall Way/Redmond
336	141333-00-00400, 500	US Bank Trust	Cinders	4.5 M	Good	Cinder Butte/Redmond
339	141132-00-01500	Deschutes County	Dirt	200,000	Fill	Goodard Loop/Bend
341	161000-00-00106	Young & Morgan	S & G	1 M	Good	

#	Taxlot	Name	Type	Quantity*	Quality	Access/Location
342	220900-00-00203	Crown Pacific	Cinders	200,000	Good	
345	161000-00-01000	Crown Pacific	Cinders	50,000	Good	
346	161000-00-01000	Crown Pacific	Cinders	50,000	Good	
347	161101-00-00300	Deschutes County	Dirt	10,000	Good	
351	161112-00-01401, 1700, 2000	Gisler/Russell	Cinders	150,000	Good	Innes Mkt/Innes Butte
357	161136-D0-00100, 161100-00-10400, 10300	Tumalo Irrigation	Cinders	1 M		Johnson Road/Tumalo
357	161136-D0-00100, 161100-00-10400, 10300	Tumalo Irrigation	S & G	500,000	Good	
357	161136-D0-00100, 161100-00-10400, 10300	Tumalo Irrigation	Pumice	500,000	Good	
358	161231-D0-01100	Gisler	S & G	100,000	ODOT Specs	Hwy 20/Tumalo
361	161222-C0-02800	Oregon State Hwy	Cinders	700,000	Good	
366	161230-00-00000	Oregon State Hwy	S & G	40,000	ODOT Specs	
368	161220-00-00200	Bend Aggregate	S & G	570,000	Excellent	Twin Bridges/Tumalo
370	161231-D0-00400	Bend Aggregate Plant Site	Storage			
379	181100-00-01600	Oregon State Hwy	S & G	500,000	ODOT Specs	
381	181125-C0-12600, 181126-00-01600	Pieratt Bros	Cinders	50,000	Good	
390	181214-00-00500, 100	Deschutes County	Dirt	2 M		Landfill
392	181223-00-00300	Rose	Rock	10 M Est	Mixed	
392	181223-00-00300	Rose	Dirt	7.5 M	Good	

#	Taxlot	Name	Type	Quantity*	Quality	Access/Location
393	181225-00-01400	LT Contractors	Cinders	12.5 M	Good	Arnold Mkt Rd/SE of Bend
394	181200-00-04400, 04411	Windlinx	Cinders	270,000	Coarse	Hwy 97/South of Bend
395	181200-00-04300	Oregon State Hwy	Cinders		100,000	Good
400	181300-00-04501, 04502	Eric Coats	S & G	2.5 M	ODOT Specs	
404	191400-00-00200	Moon	S & G	1.3 M	Good	
404	191400-00-00200	Moon	Rock	800,000 - 2 M	Good	Hwy 20/East of Bend
405	191400-00-00600	Oregon State Hwy	Aggregate	50,000	ODOT Specs	
408	191600-00-01500	RL Coats	S & G	3 M	Good	
413	201500-00-01400	Deschutes County	S & G	30,000	Good/Excellent	Hwy 20/East of Bend
414	201500-00-01500	Deschutes County	S & G	30,000	Good/Excellent	Hwy 20/East of Bend
415	201716-00-00700	Deschutes County	S & G	30,000	Good/Excellent	Hwy 20/East of Bend
416	201716-00-00200	Deschutes County	S & G	30,000	Good/Excellent	Hwy 20/East of Bend
417	201716-00-00900	Deschutes County	S & G	30,000	Good/Excellent	Hwy 20/East of Bend
418	201716-00-01000	Deschutes County	S & G	30,000	Good/Excellent	Hwy 20/East of Bend
419	201716-00-01300	Deschutes County	S & G	30,000	Good/Excellent	Hwy 20/East of Bend
421	212000-00-00900	RL Coats	S & G	500,000	Excellent	Hwy 20/Tumalo
423	211106-C0-00700	Ray Rothbard	S & G	100,000	Good	
426	211100-00-00702	La Pine Redi-Mix	S & G	1 M	Good	
427	211100-00-00701	Bill Bagley	S & G	40,000	Good	
431	221100-00-00600	Russell	Cinders/Rock	12 M/1.2 M	Good	Finley Butte
432	221100-00-00500	State of Oregon	Cinders	160,000	Good	
433	211300-00-00101	La Pine Pumice	Lump Pumice	10 M	Excellent	
441	150903-00-00300	Willamette Ind	S & G	11 M	Good	
442	150909-00-00400	Willamette Ind	S & G	6 M	Good	

#	Taxlot	Name	Type	Quantity*	Quality	Access/Location
443	150917-00-00600	Willamette Ind	Rock	150,000	Fair	
453	161209, 10-00-00600, 301	Robert Fullhart	S & G	704,000	ODOT Specs	
459	141131-00-05200	Deschutes County	Cinders	50,000	Good	
465	141333-00-00900	Oregon State Hwy	Cinders	100,000	Good	
466	141333-00-00600	Fred Elliott	Cinders	5.5 M	Good	
467	141333-00-00601	Knorr Rock Co	Cinders	5 M	Good	
469	141131-00-00100	Deschutes County	Cinders	2 M	Fair	
475	151012-00-00600	Deschutes County	Cinders	200,000	Good	Cloverdale Road
482	151300-00-00103	Deschutes County	Dirt	2 M	Good	Negus Landfill
488	161230-00-00100, 600, 2000, 2100	Bend Aggregate	S & G	400,000	ODOT Specs	
496	191400-00-00500	Taylor	S & G	1.8 M	Mixed	Hwy 20
498	191400-00-02200	Oregon State Hwy	S & G	200,000	ODOT Specs	
499	191533-00-00200	Oregon State Hwy	S & G	50,000	ODOT Specs	
500	191500-00-00099	Oregon State Hwy	S & G	130,000	ODOT Specs	
501	191500-00-01600	Oregon State Hwy	S & G	50,000	ODOT Specs	
503	191600-00-01300	Oregon State Hwy	S & G	200,000	ODOT Specs	
505	201600-00-00400	Oregon State Hwy	S & G	275,000	ODOT Specs	
506	201600-00-00600, 700, 800	Oregon State Hwy	S & G	36,000	ODOT Specs	
508	201700-00-01000	State of Oregon	S & G	100,000	ODOT Specs	
515	201801-00-00100	Oregon State Hwy	S & G	100,000	ODOT Specs	
522	211900-00-01000	Oregon State Hwy	S & G	300,000	ODOT Specs	
524	212000-00-01900	Oregon State Hwy	S & G	300,000	ODOT Specs	
528	222110-00-00600	Oregon State Hwy	S & G	45,000	ODOT Specs	

#	Taxlot	Name	Type	Quantity*	Quality	Access/Location
529	221100-00-00300	Oregon State Hwy	S & G	31,000	ODOT Specs	
533	222100-00-00800	Oregon State Hwy	S & G	1 M	ODOT Specs	
541	141035-00-02000, 2100, 2200, 2300, 2400, 2500, 2600	Cyrus	Aggregate	528,000	Good	Inc Portions of TL 1800/1900
542	151001-00-02700	Swarens	Aggregate	80,000	Good	
543	151013-00-00100	Cyrus	Aggregate	1.1 M	Good	
600	191400-00-00700	Robinson	S & G	3.8 M	Good	Hwy 20/East of Bend
601	211100-00-00700	La Pine Redi Mix	S & G	479,000	DEQ Specs	Paulina Lake Road

* Quantity in cubic yards unless otherwise noted

Source: 1979 Deschutes County Comprehensive Plan as revised

Table 5.8.2 – Deschutes County Non-Significant Mining Mineral and Aggregate Inventory

Site #	Taxlot	Name	Type	Quantity*	Comments
100	15-10-14-700	Whychus Creek Irrigation District—Watson Reservoir I.	Silt, sand, & dirt	200,000 cy	Reservoir Size is 80 acres.
101	15-10-14-700	Whychus Creek Irrigation District—Watson Reservoir II.	sand & dirt	600,000 cy	Reservoir size is 40 acres.
102	14-11-33-500	Whychus Creek Irrigation District—McKenzie Reservoir	Silt, sand, & dirt	100,000 cy	Reservoir size is 12 acres
103	14-11-33-500	Whychus Creek Irrigation District—McKenzie Reservoir	Sand & dirt	250,000 to 300,000 cy	Reservoir expansion size is 20 acres

Site #	Taxlot	Name	Type	Quantity*	Comments
		Expansion			

* Quantity in cubic yards unless otherwise noted

Source: 1979 Deschutes County Comprehensive Plan as revised

Section 5.9 Goal 5 Inventory - Cultural and Historic Resources

Background

This section lists Locally Significant Historic Resources and National Register Resources in rural Deschutes County. These inventories are acknowledged by the Department of Land Conservation and Development. In 2020, Deschutes County's inventories were updated to comply with Oregon Administrative Rule (OAR) 660-023-0200, Historic Resources. OAR 660-023-0200 was amended in 2017.

Locally Significant Historic Resources

1. Alfalfa Grange: Grange building and community center, built in 1930, located on Willard Road, Alfalfa. 17-14-26 TL 400.
2. Allen Ranch Cemetery: Oldest cemetery in Deschutes County. 30' by 40' fenced cemetery plot. Situated 100 yards west of South Century Drive, one-half mile south of Road 42. Two marble gravestones, two wooden markers. 20-11-7 TL 1700.
3. Fall River Fish Hatchery "Ice House": The hatchery "Ice House" dates from the beginning of fishery management in Oregon, circa 1920. It is an 18 foot by 18 foot improvement, the only original building remaining on the property, and the only significant building or structure on the site. Located at 15055 S. Century Drive, E½; NE¼; Section 32, Township 20S, Range 10 E, Tax Lot 100. (Ordinance 94-006 §1, 1994).
4. Long Hollow Ranch – Black Butte: Headquarters complex of historic ranch, located on Holmes Road in Lower Bridge area, including headquarters house, ranch commissary, equipment shed, barn and bunkhouse. 14-11-1 TL 101.
5. Swamp Ranch – Black Butte: The present day site of the Black Butte Ranch was part of the vast holdings of the Black Butte Land and Livestock Company in 1904. No buildings from the period exist. 14-9-10A, 10B, 15B, 15C, 16A, 21A, 21B, 21C, 22A, 22B.
6. Brothers School: Only one-room schoolhouse currently in use in Deschutes County, located on Highway 20 in Brothers. 20-18-00 TL 3200.
7. Bull Creek Dam: The Bull Creek Dam, a component of the Tumalo Irrigation Project was constructed in 1914 to form a water storage reservoir to increase the amount of irrigated acreage at Tumalo. It is a gravity type of overflow dam. Two cut off walls are extended into solid formation, one at the upper toe and the other at the lower toes of the concrete dam. The dam proper is about 17 feet high from the foundation, although the completed structure is about 25 feet. Located on Tumalo Reservoir-Market Road. 16-11-33 TL 2700 SW-¼; SW-¼.
8. Bull Creek Dam Bridge (Tumalo Irrigation Ditch Bridge): Built in 1914, the bridge, which spans the dam, consists of five continuous filled spandrel, barrel-type concrete deck arch spans, each 25 feet long. The concrete piers are keyed into notches in the arch structure. The structure is the oldest bridge in Deschutes County. On Tumalo Reserve-market Road. 16-11-33 TL 2700/ SW-¼; SW-¼.

9. Camp Abbot Site, Officers' Club: Officers' Club for former military camp, currently identified as Great Hall in Sunriver and used as a meeting hall. 20-11-5B TL 112.
10. Camp Polk Cemetery: One of the last remaining pioneer cemeteries, located off Camp Polk Road near Sisters. The site is composed of a tract of land, including gravestones and memorials, containing 2.112 acres in the Southwest Quarter of the Southeast Quarter of Section 27, Township 14 South, Range 10 E.W.M., TL 2100, described as follows: Beginning at a point North 20 degrees 06' 20" West 751 feet from the corner common to Sections 26, 27, 34 and 35 in Township 14 South Range 10 E.W.M. and running thence

South 88 degrees 30' West 460 feet; thence North 1 degree 30' East 460 feet; thence South 1 degree 30' 200 feet to the point of beginning.
11. Camp Polk Military Post Site: One of the oldest military sites in Deschutes County. Located on Camp Polk Cemetery Road. Site includes entire tax lots, listed as follows 14- 10-00 TL 2805 & 14-10-34 TL 100, 300.
12. Cloverdale School: School building in Cloverdale, located near 68515 George Cyrus Road. First building built in Cloverdale. 15-11-7 TL 600.
13. Eastern Star Grange: Grange hall for earliest grange organized in Deschutes County, located at 62850 Powell Butte Road. 17-13-19 TL 1900.
14. Enoch Cyrus Homestead Hay Station and Blacksmith Shop: The Enoch Cyrus Homestead was the original homestead of Oscar Maxwell, built in 1892 and purchased in 1900 by Enoch Cyrus. Important stage/store stop for early travelers. The homestead house, including a back porch and cistern, and the Blacksmith Shop are designated. 15-11-10 TL 700.
15. Fremont Meadow: A small natural meadow on Tumalo Creek in Section 34, Township 17 South, Range 11 East, lying within Shevlin Park. TL 5900. Campsite for 1843 Fremont expedition. 17-11-34 TL 5900.
16. Harper School: One-room schoolhouse, located west of South Century Drive, south of Sunriver, moved halfway between the Allen Ranch and the Vandever Ranch from the former townsite of Harper. 20-11-17 TL 1200.
17. Improved Order of Redmond Cemetery: Historic cemetery used by residents of La Pine/Rosland area. Located on Forest Road 4270, east of Highway 97. A 40-acre parcel described as: The Southwest one-quarter of the Southeast one-quarter (SW-¼; SE-¼) Section 7, Township 22 south, Range 11, East of the Willamette Meridian, Deschutes County, Oregon.
18. Laidlaw Bank and Trust: One of the few remaining commercial buildings from the community of Laidlaw, located at 64697 Cook Avenue, Tumalo. 16-12-31A TL 2900.
19. La Pine Commercial Club: Building was built in 1912 as a community center, serving as a regular meeting place for civic organizations and occasionally served as a church. One of the oldest and continuously used buildings in La Pine. Located at 51518 Morrison Street, La Pine. 22-10-15AA TL 4600.

20. Lynch and Roberts Store Advertisement: Ad advertising sign painted on a soft volcanic ash surface. Only area example of early advertising on natural material. Lynch and Roberts established mercantile in Redmond in 1913. Roberts Field near Redmond was named for J.R. Roberts. Site includes the bluff. 14-12-00 TL 1501.
21. Maston Cemetery: One of the oldest cemeteries in County. Oldest grave marker is 1901. About one-half mile from site of Maston Sawmill and Homestead. Site includes the gravestones and memorials and the entire tax lot, identified as 22-09-00 TL 1800.
22. George Millican Ranch and Mill Site: Ranch established in 1886. Well dug at or near that date. Remains of vast cattle ranching empire. 19-15-33 TLs 100, 300.
23. George Millican Townsite: Town established 1913. Site includes store and garage buildings, which retain none of the architectural integrity from era. 19-15-33 TL 500.
24. Petersen Rock Gardens: The Petersen Rock Gardens consist of stone replicas and structures erected by Rasmus Petersen. A residence house and museum are part of the site. The site has been a tourist attraction for over 60 years. Located at 7930 SW 77th, Redmond. Site includes entire tax lot. 16-12-11 TL 400.
25. Pickett's Island: After originally settling in Crook County, Marsh Awbrey moved to Bend and then homesteaded on this island in the Deschutes River south of Tumalo. The site was an early ford for pioneers. Located in Deschutes River near Tumalo State Park. 17- 12-6 NE-¼ TL 100. Portion between Deschutes River and Old Bend Road is designated.
26. Rease (Paulina Prairie) Cemetery: Historic cemetery on Elizabeth Victoria Castle Rease and Denison Rease's homestead. Earliest known grave is of their son, George Guy Rease, born in 1879, who was also a homesteader on Paulina Prairie. George Guy Rease died of smallpox on the Caldwell Ranch on May 2, 1903. Other known burials are William Henry Caldwell, 1841-October 15, 1910, died on the Caldwell Ranch of injuries sustained on a cattle drive; Melvin Raper, 1892-1914, died in a tent of tuberculosis; Addie Laura Caldwell, 1909-November 16, 1918, died of the Spanish influenza epidemic; and Emma Nimtz Deedon, 1886-April 15, 1915, died of complications from a pregnancy. There are several unmarked graves. The cemetery is a county-owned one-acre parcel on the north edge of Paulina Prairie, two miles east of Highway 97. 210-11-29, SE-¼; NW-¼ TL 99.
27. Terrebonne Ladies Pioneer Club: The Club was organized in 1910. The building has been a community-meeting place since 1911. Located at 8334 11th Street, Terrebonne. 14-13- 16DC TL 700.
28. Tetherow House and Crossing: Site is an excellent example of an early Deschutes River crossing. Major route from Santiam Wagon Road to Prineville. Tetherow House was built in 1878. The Tetherows operated a toll bridge, store and livery stable for travelers. Oldest house in County. Site includes house and entire tax lot. 14-12-36A TL 4500.
29. Tumalo Creek – Diversion Dam The original headgate and diversion dam for the feed canal was constructed in 1914. The feed canal's purpose was to convey water from Tumalo Creek to the reservoir. The original headworks were replaced and the original 94.2 ft low overflow weir dam was partially removed in 2009/2010 to accommodate a new fish screen and fish ladder. The

- remaining original structure is a 90 foot (crest length) section of dam of reinforced concrete. Tax Map 17-11-23, Tax Lot 800 & 1600.
30. Tumalo Community Church: The building is the oldest church in the County, built in 1905. It stands in the former town of Laidlaw, laid out in 1904. Located at 64671 Bruce Avenue, Tumalo. 16-12-31A TL 3900.
 31. Tumalo Project Dam: Concrete core, earth-filled dam 75 feet high. First project by State of Oregon to use State monies for reclamation project. On Tumalo Creek. 16-11-29.
 32. William P. Vandever Ranch Homestead House: The Vandever Ranch House stands on the east bank of the Little Deschutes River at 17600 Vandever Road near Sunriver. The homestead was established in 1892, and has been recently relocated and renovated. Vandever family history in the area spans 100 years. 20-11-18D TL 13800.
 33. Kathryn Grace Clark Vandever Grave: Kathryn Grace Vandever, daughter of William P. Vandever, died of influenza during the epidemic of 1918. Her grave is located across a pasture due south of the Vandever House, 50 feet east of the Little Deschutes River. Site includes gravestone and fenced gravesite measuring is approximately 15 feet by 25 feet. 20-11-00 TL 1900.
 34. Young School: Built in 1928, it is an excellent example of a rural "one-room" school which served homesteaders of the 1920s. Located on Butler Market Road. 17-13-19 TL 400.
 35. Agnes Mae Allen Sottong and Henry J. Sottong House and Barn: House and barn are constructed with lumber milled on the property in a portable sawmill run by the Pine Forest Lumber Company in 1911. Henry was awarded homestead patent 7364 issued at The Dalles on Dec 1, 1904. Henry was president of the Mountain States Fox Farm. A flume on the Arnold Irrigation District is named the Sottong Flume. The structures are also associated with William Kuhn, a president of the Arnold Irrigation District; Edward and Margaret Uffelman, who were part of the group that privatized and developed the Hoo Doo Ski Resort; and Frank Rust Gilchrist, son of the founder of the town of Gilchrist and Gilchrist Mill and president of the Gilchrist Timber Company from the time of his father's death in 1956 to 1988. Frank R. Gilchrist served on the Oregon Board of Forestry under four governors and was appointed by the governors to serve as a member of the Oregon Parks and Recreation Advisory Committee. He served on the Oregon State University's Forest Products Research Lab and was a director and president of the National Forest Products Association. T18 R12 Section 22, 00 Tax lot 01600.

Inventory note: Unless otherwise indicated the inventoried site includes only the designated structure. No impact areas have been designated for any inventoried site or structure.

National Register Resources listed before February 23, 2017

36. Pilot Butte Canal: A gravity-flow irrigation canal constructed in 1904 that diverts 400 cubic feet of Deschutes River water per second. The canal conveys water through a 225- miles-long distribution system of successively narrower and shallower laterals and ditches on its way to those who hold water rights, serving about 20,711 acres by 1922. The canal was built in an area that had a population of 81 people when it was constructed. The historic district measures 7,435 feet long and encompasses 50 feet on either side of the canal centerline to create a 100-foot corridor. The district has a character-defining rocky, uneven bed, and highly irregular slopes, angles, cuts, and embankments.

37. Elk Lake Guard Station: A wagon road built in 1920 between Elk Lake and Bend sparked a wave of tourism around the scenic waterfront. To protect natural resources of the Deschutes National Forest and provide visitor information to guests, the Elk Lake Guard Station was constructed in 1929 to house a forest guard.
38. Deedon (Ed and Genvieve) Homestead: The homestead is located between the Deschutes River and the Little Deschutes River. All of the buildings were constructed between 1914 and 1915.
39. Gerking, Jonathan N.B. Homestead: Jonathan N.8. Gerking, "Father of the Tumalo Irrigation Project," played a crucial role in getting the project recognized and funded.
40. McKenzie Highway: The McKenzie Salt Springs and Deschutes Wagon Road, a predecessor to the modern McKenzie Highway, was constructed in the 1860s and 1870s.
41. Paulina Lake Guard Station: The station typifies the construction projects undertaken by the Civilian Conservation Corps and signifies the aid to the local community provided by the emergency work-relief program through employment of youth and experienced craftsmen, purchase of building materials and camp supplies, and personal expenditures of enrollees.
42. Paulina Lake I.O.O.F Organization Camp: The Paulina Lake I.O.O.F. Organization camp was constructed during the depression era and are the result of cooperative efforts by nonprofessional builders. Such camp buildings are important in Oregon's recreational history as an unusual expression of both its rustic style and its vernacular traditions.
43. Petersen Rock Gardens: The Petersen Rock Gardens consist of stone replicas and structures erected by Rasmus Petersen. The site has been a tourist attraction for over 60 years.
44. Rock O' the Range Bridge: Rock O' The Range is the only covered span east of the Cascades in Oregon. To gain access to his property, William Bowen instructed Maurice Olson – a local contractor – to build a bridge inspired by Lane County's Goodpasture Bridge.
45. Skyliners Lodge: The Skyliners are a Bend-based mountaineering club organized in 1927. In 1935, the group started building the Skyliners Lodge with help from the Deschutes National Forest, the Economic Recovery Act and the City of Bend.
46. Santiam Wagon Road: The Santiam Wagon Road went from Sweet Home to Cache Creek Toll Station. The road was conceived of in 1859 to create a route across the Cascades. By the 1890s, the road had become a major trade route.
47. Wilson, William T.E. Homestead: This homestead house was built in 1903 and has an "American Foursquare" architectural style.

National Register Resources listed on / after February 23, 2017

48. Central Oregon Canal: A gravity-flow irrigation canal constructed in 1905 and enlarged in 1907 and 1913. The canal retains its impressive historic open, trapezoidal shape, dimensions and characteristics. It is characterized by the volcanic rock flows, native materials, rocky bed and sides, and its hurried hand-hewn workmanship. The historic district is 3.4 miles long, crossing rural land between the Ward Road Bridge on the western edge and the Gosney Road Bridge on the eastern edge. In the historic district, the canal ranges in width from 34' to 78', averaging around 50', and

its depth varies from 1' to 9', averaging around 4' deep, depending on the amount of volcanic lava flows encountered, the terrain, and slope. The canal through the historic district carries nearly the full amount of water diverted from the Deschutes River, 530 cubic feet per second during the irrigation season, April through October. The historic district encompasses 50' on either side of the canal centerline to create a 100' corridor that includes the whole of the easement held by COID, and all the contributing resources. (Date listed: 03/18/2019)

Section 5.10 Goal Exception Statements

Background

The purpose of this section is to identify the lands where Deschutes County demonstrated an exception to meeting the requirements of the Statewide Planning Goals. The intent of goal exceptions is to allow some flexibility in rural areas under strictly defined circumstances. Goal exceptions are defined and regulated by Statewide Planning Goal 2 and Oregon Administrative Rule 660-004 (excerpt below).

660-004-0000(2) An exception is a decision to exclude certain land from the requirements of one or more applicable statewide goals in accordance with the process specified in Goal 2, Part II, Exceptions. The documentation for an exception must be set forth in a local government's comprehensive plan. Such documentation must support a conclusion that the standards for an exception have been met.

Statewide Planning Goals with Deschutes County Exceptions

- Goal 3 Agricultural Lands
- Goal 4 Forest Lands
- Goal 11 Public Facilities and Services
- Goal 14 Urbanization

Three types of exceptions are permitted by Oregon Administrative Rule 660-004

- Irrevocably committed
- Physically developed
- Reasons

The summary below identifies approved goal exceptions and identifies the adopting ordinance for those interested in further information. The ordinances listed are incorporated by reference into this Plan.

1979 Exceptions

Comprehensive Plan entire County – PL 20 - 1979

During the preparation of the 1979 Comprehensive Plan it was apparent that many rural lands had already received substantial development and were committed to non-resource uses. Areas were examined and identified where Goal 3 and 4 exceptions were taken. At this time exceptions to Goals 11 and 14 were not required.

The total area excepted was 41,556 acres. These lands were residentially developed, committed to development or needed for rural service centers.

Additional Exceptions

Bend Municipal Airport – Ordinances 80-203, 1980 and 80-222, 1980

The Bend Municipal Airport received an exception to Goal 3 to allow for the necessary and expected use of airport property.

La Pine UUC Boundary – Ordinance 98-001, 1998

Exceptions to Goals 3, 11 and 14 were taken to allow lands to be included in the La Pine UUC boundary and planned and zoned for commercial use.

Spring River Rural Service Center – Ordinances 90-009, 1990; 90-010, 1990; 96-022, 1996; 96-045, 1996

A reasons exception was taken to Goal 14 to allow the establishment of the Spring River Rural Service Center on residentially designated lands.

Burgess Road and Highway 97 – Ordinance 97-060, 1997

An exception was taken to Goal 4 to allow for road improvements.

Rural Industrial Zone – Ordinances 2010-030, 2010; 2009-007, 2009

Two separate ordinances for rural industrial uses. The 2009 exception included an irrevocably committed exception to Goal 3 and a reasons exception to Goal 14 with a Limited Use Combining Zone for storage, crushing, processing, sale and distribution of minerals. The 2010 exception took a reasons exception to Goal 14 with a Limited Use Combining Zone for storage, crushing, processing, sale and distribution of minerals.

Prineville Railway – Ordinance 98-017

An exception was taken to Goal 3 to accommodate the relocation of the Redmond Railway Depot and the use of the site for an historic structure to be utilized in conjunction with the Crooked River Dinner Train operations.

Resort Communities – Ordinance 2001-047, 2001

An exception was taken to Goal 4 for Black Butte Ranch and Inn of the 7th Mountain/Widgi Creek during the designation of those communities as Resort Communities under OAR 660- 22.

Barclay Meadows Business Park – Ordinance 2003-11, 2003

A reasons exception was taken to Goal 3 to include certain property within the Sisters Urban Growth Boundary.

Sisters School District # 6 – Ordinance 2003-11, 2003

A reasons exception was taken to Goal 3 to include certain property within the Sisters Urban Growth Boundary.

Sisters Organization of Activities and Recreation and Sisters School District #6 – Ordinance 2003-017, 2003

A reasons exception was taken to Goal 4 to include certain property within the Sisters Urban Growth Boundary.

Oregon Water Wonderland Unit 2 Sewer District – Ordinances 2010-015, 2010; 2003-015, 2003

A reasons exception was taken to Goals 4 and 11 to allow uses approved by the Board of County Commissioners in PA-02-5 and ZC-02-3 as amended by PA-09-4.

City of Bend Urban Growth Boundary Amendment (Juniper Ridge) – Ordinance 97-060. 1997

An exception was taken to Goal 3 to allow an amendment of the Bend Urban Growth Boundary to incorporate 513 acres for industrial uses.

Joyce Coats Revocable Trust Johnson Road and Tumalo Reservoir Road Properties – Ordinance 2005- 015, 2005

An irrevocably committed exception was taken to Goal 3 to allow a change of comprehensive plan designation from Surface Mining to Rural Residential Exception Area and zoning from Surface Mining to Multiple Use Agriculture for Surface Mine Sites 306 and 307.

Watson/Generation Development inc – Ordinance 2005-015

An exception was taken to Goal 3 to include a portion of agricultural property.

Oregon Department of Transportation – Ordinance 2005-019, 2005

An exception was taken to Goal 3 to include a portion of agricultural property.

Conklin/Eady Property – Ordinance 2005-035, 2005

An exception was taken to Goal 3 to include a portion of agricultural property.

City of Sisters Property – Ordinance 2005-037, 2005

An exception was taken to Goal 4 to include a portion of forest property.

McKenzie Meadows Property – Ordinance 2005-039, 2005

An exception was taken to Goal 4 to include a portion of forest property.

Bend Metro Park and Recreation District Properties – Ordinance 2006-025

A reasons exception was taken to Goal 3 to include a portion of agricultural property.

Harris and Nancy Kimble Property and Portion of CLR, Inc Property A.K.A. the Klippel Pit Property – Ordinance 2008-001, 2008

An irrevocably committed exception was taken to Goal 3 to allow reclassification and zoning from Surface Mine to Rural Residential Exception Area and Rural Residential 10 acre for Surface Mine Site 294.

Sunriver Service District, Sunriver Fire Department – Ordinance 2014-021, 2014

A reasons exception was taken to Goal 4 to include a portion of forest property. To ensure that the uses in the Sunriver Utility District Zone on the approximate 4.28 acre site of Tax Lot 102 on Deschutes County Assessor's Map 19-11-00 are limited in nature and scope to those justifying the exception to Goal 4 for the site, the Sunriver Forest (SUF) zoning on the subject site shall be subject to a Limited Use Combining Zone, which will limit the uses on the subject site to a fire training facility and access road for the Sunriver Service District and Sunriver Fire Department.

Frances Ramsey Trust Property – Ordinance 2014-027, 2014

An "irrevocably committed" exception was taken to Goal 14 to allow for reclassification and rezoning from agricultural property to Rural Industrial for a 2.65 acre portion of a parcel zoned EFU/RI.

Section 5.11 - Goal 5 Adopted Ordinances

As noted in Chapter 5 of this Plan, adopted and acknowledged Goal 5 inventories, ESEEs and programs are retained in this Plan. Generally the Goal 5 inventories and ESEEs were adopted into the previous Comprehensive Plan or Resource Element and the Goal 5 programs were adopted into the Zoning Code. The County does not have a complete listing of Goal 5 inventory and ESEE ordinances, but will continue to research those ordinances. The following list is a start in listing all Goal 5 ordinances that are retained in this Plan.

- 80-203 Misc. Goal 5
- 85-001 Geothermal Resources
- 86-019 Deschutes River Corridor
- 90-025 Mining
- 90-028 Mining
- 90-029 Mining
- 92-018 Historic and Cultural
- 92-033 Open Space, LM
- 92-040 Fish and Wildlife
- 92-041 Fish and Wildlife (wetlands and riparian)
- 92-045 Wetlands RE
- 92-051 Misc. including Goal 5
- 92-052 Misc. Goal 5
- 92-067 Mining
- 93-003 Misc. Goal 5
- 94-003 Misc. Goal 5
- 94-006 Historic and Cultural
- 94-007 Wetlands and Riparian areas
- 94-050 Mining
- 95-038 Misc. Goal 5
- 95-041 Mining
- 96-076 Mining
- 99-019 Mining
- 99-028 Mining
- 2001-027 Mining
- 2001-038 Mining
- 2001-047 Mining
- 2001-018 Fish and Wildlife
- 2003-019 Mining
- 2005-025 Historic and Cultural
- 2005-031 Mining
- 2007-013 Mining
- 2008-001 Mining
- 2011-008 South Deschutes County LWI
- 2011-014 Mining

Section 5.12 - Legislative History

Background

This section contains the legislative history of this Comprehensive Plan.

Ordinance	Date Adopted/ Effective	Chapter/Section	Amendment
2011-003	8-10-11/11-9-11	All, except Transportation, Tumalo and Terrebonne Community Plans, Deschutes Junction, Destination Resorts and ordinances adopted in 2011	Comprehensive Plan update
2011-027	10-31-11/11-9-11	2.5, 2.6, 3.4, 3.10, 3.5, 4.6, 5.3, 5.8, 5.11, 23.40A, 23.40B, 23.40.065, 23.01.010	Housekeeping amendments to ensure a smooth transition to the updated Plan
2012-005	8-20-12/11-19-12	23.60, 23.64 (repealed), 3.7 (revised), Appendix C (added)	Updated Transportation System Plan
2012-012	8-20-12/8-20-12	4.1, 4.2	La Pine Urban Growth Boundary
2012-016	12-3-12/3-4-13	3.9	Housekeeping amendments to Destination Resort Chapter
2013-002	1-7-13/1-7-13	4.2	Central Oregon Regional Large-lot Employment Land Need Analysis
2013-009	2-6-13/5-8-13	1.3	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2013-012	5-8-13/8-6-13	23.01.010	Comprehensive Plan Map Amendment, including certain property within City of Bend Urban Growth Boundary
2013-007	5-29-13/8-27-13	3.10, 3.11	Newberry Country: A Plan for Southern Deschutes County
2013-016	10-21-13/10-21-13	23.01.010	Comprehensive Plan Map Amendment, including certain property within City of Sisters Urban Growth Boundary
2014-005	2-26-14/2-26-14	23.01.010	Comprehensive Plan Map Amendment, including certain property within City of Bend Urban Growth Boundary
2014-012	4-2-14/7-1-14	3.10, 3.11	Housekeeping amendments to Title 23.
2014-021	8-27-14/11-25-14	23.01.010, 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from Sunriver Urban Unincorporated Community Forest to Sunriver Urban Unincorporated Community Utility

Ordinance	Date Adopted/ Effective	Chapter/Section	Amendment
2014-021	8-27-14/11-25-14	23.01.010, 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from Sunriver Urban Unincorporated Community Forest to Sunriver Urban Unincorporated Community Utility
2014-027	12-15-14/3-31-15	23.01.010, 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Industrial
2015-021	11-9-15/2-22-16	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Surface Mining.
2015-029	11-23-15/11-30-15	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Tumalo Residential 5-Acre Minimum to Tumalo Industrial
2015-018	12-9-15/3-27-16	23.01.010, 2.2, 4.3	Housekeeping Amendments to Title 23.
2015-010	12-2-15/12-2-15	2.6	Comprehensive Plan Text and Map Amendment recognizing Greater Sage-Grouse Habitat Inventories
2016-001	12-21-15/04-5-16	23.01.010; 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from, Agriculture to Rural Industrial (exception area)
2016-007	2-10-16/5-10-16	23.01.010; 5.10	Comprehensive Plan Amendment to add an exception to Statewide Planning Goal 11 to allow sewers in unincorporated lands in Southern Deschutes County
2016-005	11-28-16/2-16-17	23.01.010, 2.2, 3.3	Comprehensive Plan Amendment recognizing non- resource lands process allowed under State law to change EFU zoning
2016-022	9-28-16/11-14-16	23.01.010, 1.3, 4.2	Comprehensive plan Amendment, including certain property within City of Bend Urban Growth Boundary
2016-029	12-14-16/12/28/16	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from, Agriculture to Rural Industrial
2017-007	10-30-17/10-30-17	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2018-002	1-3-18; 1-25-18	23.01, 2.6	Comprehensive Plan Amendment permitting churches in the Wildlife Area Combining Zone
2018-006	7-23-18/7-23-18	23.01.010, 5.8, 5.9	Housekeeping Amendments correcting tax lot numbers in Non-Significant Mining Mineral and Aggregate Inventory; modifying Goal 5 Inventory of Cultural and Historic Resources

Ordinance	Date Adopted/ Effective	Chapter/Section	Amendment
2018-011	9-12-18/12-11-18	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2018-005	9-19-18/10-10-18	23.01.010, 2.5, Tumalo Community Plan, Newberry Country Plan	Comprehensive Plan Map Amendment, removing Flood Plain Comprehensive Plan Designation; Comprehensive Plan Amendment adding Flood Plain Combining Zone purpose statement.
2018-008	9-26-18/10-26-18	23.01.010, 3.4	Comprehensive Plan Amendment allowing for the potential of new properties to be designated as Rural Commercial or Rural Industrial
2019-002	1-2-19/4-2-19	23.01.010, 5.8	Comprehensive Plan Map Amendment changing designation of certain property from Surface Mining to Rural Residential Exception Area; Modifying Goal 5 Mineral and Aggregate Inventory; Modifying Non-Significant Mining Mineral and Aggregate Inventory
2019-001	1-16-19/4-16-19	1.3, 3.3, 4.2, 5.10, 23.01	Comprehensive Plan and Text Amendment to add a new zone to Title 19: Westside Transect Zone.
2019-003	02-12-19/03-12-19	23.01.010, 4.2	Comprehensive Plan Map Amendment changing designation of certain property from Agriculture to Redmond Urban Growth Area for the Large Lot Industrial Program
2019-004	02-12-19/03-12-19	23.01.010, 4.2	Comprehensive Plan Map Amendment changing designation of certain property from Agriculture to Redmond Urban Growth Area for the expansion of the Deschutes County Fairgrounds and relocation of Oregon Military Department National Guard Armory.
2019-011	05-01-19/05-16/19	23.01.010, 4.2	Comprehensive Plan Map Amendment to adjust the Bend Urban Growth Boundary to accommodate the refinement of the Skyline Ranch Road alignment and the refinement of the West Area Master Plan Area 1 boundary. The ordinance also amends the Comprehensive Plan designation of Urban Area Reserve for those lands leaving the UGB.
2019-006	03-13-19/06-11-19	23.01.010,	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area

Ordinance	Date Adopted/ Effective	Chapter/Section	Amendment
2019-016	11-25-19/02-24-20	23.01.01, 2.5	Comprehensive Plan and Text amendments incorporating language from DLCD's 2014 Model Flood Ordinance and Establishing a purpose statement for the Flood Plain Zone.
2019-019	12-11-19/12-11-19	23.01.01, 2.5	Comprehensive Plan and Text amendments to provide procedures related to the division of certain split zoned properties containing Flood Plain zoning and involving a former or piped irrigation canal.
2020-001	1-8-20/4-20-20	23.01.01, 2.6, 3.5, 5.2	Comprehensive Plan and Text amendments relating to Religious Institutions to ensure compliance with RLUIPA.
2020-002	2-26-20/5-26-20	23.01.01, 4.2, 5.2	Comprehensive Plan Map Amendment to adjust the Redmond Urban Growth Boundary through an equal exchange of land to/from the Redmond UGB. The exchange property is being offered to better achieve land needs that were detailed in the 2012 SB 1544 by providing more development ready land within the Redmond UGB. The ordinance also amends the Comprehensive Plan designation of Urban Area Reserve for those lands leaving the UGB.
2020-003	02-26-20/05-26-20	23.01.01, 5.10	Comprehensive Plan Amendment with exception to Statewide Planning Goal 11 (Public Facilities and Services) to allow sewer on rural lands to serve the City of Bend Outback Water Facility.
2020-008	06-24-20/09-22-20	23.01.010, Appendix C	Comprehensive Plan Transportation System Plan Amendment to add roundabouts at US 20/Cook-O.B. Riley and US 20/Old Bend-Redmond Hwy intersections; amend Tables 5.3.T1 and 5.3.T2 and amend TSP text.
2020-007	07-29-20/10-27-20	23.01.010, 2.6	Housekeeping Amendments correcting references to two Sage Grouse ordinances.
2020-006	08-12-20/11-10-20	23.01.01, 2.11, 5.9	Comprehensive Plan and Text amendments to update the County's Resource List and Historic Preservation Ordinance to comply with the State Historic Preservation Rule.
2020-009	08-19-20/11-17-20	23.01.010, Appendix C	Comprehensive Plan Transportation System Plan Amendment to add reference to J turns on US 97 raised median between Bend and Redmond; delete language about disconnecting Vandevent Road from US 97.

Ordinance	Date Adopted/ Effective	Chapter/Section	Amendment
2020-013	08-26-20/11/24/20	23.01.01, 5.8	Comprehensive Plan Text And Map Designation for Certain Properties from Surface Mine (SM) and Agriculture (AG) To Rural Residential Exception Area (RREA) and Remove Surface Mining Site 461 from the County's Goal 5 Inventory of Significant Mineral and Aggregate Resource Sites.
2021-002	01-27-21/04-27-21	23.01.01	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) To Rural Industrial (RI)
2021-005	06-16-21/06-16-21	23.01.01, 4.2	Comprehensive Plan Map Amendment Designation for Certain Property from Agriculture (AG) To Redmond Urban
2021-008	06-30-21/09-28-21	23.01.01	Comprehensive Plan Map Amendment Designation for Certain Property Adding Redmond Urban Growth Area (RUGA)
2022-001	04-13-22/07-12-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture (AG) to Rural
2022-003	04-20-22/07-19-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture (AG) to Rural
2022-006	06-22-22/08-19-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Rural Residential Exception Area
2022-011	07-27-22/10-25-22 (superseded by Ord. 2023-015)	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) To Rural Industrial (RI)
2023-001	03-01-23/05-30-23	23.01.010, 5.9	Housekeeping Amendments correcting the location for the Lynch and Roberts Store Advertisement, a designated
2023-007	04-26-23/6-25-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area
2023-010	06-21-23/9-17-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area
2023-018	08-30-23/11-28-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area
2023-015	9-13-23/12-12-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Industrial (RI)
2023-025	11-29-23/2-27-24	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Rural Residential Exception Area
2024-001	01-31-24/4-30-24	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Rural Residential Exception Area

Appendix E - Goal 5 Supplemental

10/02/2024 Item #5.

2024-003	2-21-24/5-21-24	23.01.010, 5.8	Comprehensive Plan Map Amendment, changing designation of certain property from Surface Mining (SM) to Rural
2023-017	3-20-24/6-18-24	23.01(D) (repealed), 23.01(BL) (added), 3.7 (amended), Appendix C	Updated Transportation System Plan
2023-016	5-8-24/8-6-24	23.01(BM) (added), 4.7 (amended), Appendix B (replaced)	Updated Tumalo Community Plan

Section 5.12 Legislative History

Background

This section contains the legislative history of this Comprehensive Plan.

Table 5.12.1 Comprehensive Plan Ordinance History

Ordinance	Date Adopted/ Effective	Chapter/Section	Amendment
2011-003	8-10-11/11-9-11	All, except Transportation, Tumalo and Terrebonne Community Plans, Deschutes Junction, Destination Resorts and ordinances adopted in 2011	Comprehensive Plan update
2011-027	10-31-11/11-9-11	2.5, 2.6, 3.4, 3.10, 3.5, 4.6, 5.3, 5.8, 5.11, 23.40A, 23.40B, 23.40.065, 23.01.010	Housekeeping amendments to ensure a smooth transition to the updated Plan
2012-005	8-20-12/11-19-12	23.60, 23.64 (repealed), 3.7 (revised), Appendix C (added)	Updated Transportation System Plan
2012-012	8-20-12/8-20-12	4.1, 4.2	La Pine Urban Growth Boundary
2012-016	12-3-12/3-4-13	3.9	Housekeeping amendments to Destination Resort Chapter
2013-002	1-7-13/1-7-13	4.2	Central Oregon Regional Large-lot Employment Land Need Analysis
2013-009	2-6-13/5-8-13	1.3	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2013-012	5-8-13/8-6-13	23.01.010	Comprehensive Plan Map Amendment, including certain property within City of Bend Urban Growth Boundary
2013-007	5-29-13/8-27-13	3.10, 3.11	Newberry Country: A Plan for Southern Deschutes County

Exhibit “C” to Ordinance 2024-007 – Comprehensive Plan Section 5.12

2013-016	10-21-13/10-21-13	23.01.010	Comprehensive Plan Map Amendment, including certain property within City of Sisters Urban Growth Boundary
2014-005	2-26-14/2-26-14	23.01.010	Comprehensive Plan Map Amendment, including certain property within City of Bend Urban Growth Boundary
2014-012	4-2-14/7-1-14	3.10, 3.11	Housekeeping amendments to Title 23.
2014-021	8-27-14/11-25-14	23.01.010, 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from Sunriver Urban Unincorporated Community Forest to Sunriver Urban Unincorporated Community Utility
2014-021	8-27-14/11-25-14	23.01.010, 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from Sunriver Urban Unincorporated Community Forest to Sunriver Urban Unincorporated Community Utility
2014-027	12-15-14/3-31-15	23.01.010, 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Industrial
2015-021	11-9-15/2-22-16	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Surface Mining.
2015-029	11-23-15/11-30-15	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Tumalo Residential 5-Acre Minimum to Tumalo Industrial
2015-018	12-9-15/3-27-16	23.01.010, 2.2, 4.3	Housekeeping Amendments to Title 23.

Exhibit “C” to Ordinance 2024-007 – Comprehensive Plan Section 5.12

2015-010	12-2-15/12-2-15	2.6	Comprehensive Plan Text and Map Amendment recognizing Greater Sage-Grouse Habitat Inventories
2016-001	12-21-15/04-5-16	23.01.010; 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from, Agriculture to Rural Industrial (exception area)
2016-007	2-10-16/5-10-16	23.01.010; 5.10	Comprehensive Plan Amendment to add an exception to Statewide Planning Goal II to allow sewers in unincorporated lands in Southern Deschutes County
2016-005	11-28-16/2-16-17	23.01.010, 2.2, 3.3	Comprehensive Plan Amendment recognizing non-resource lands process allowed under State law to change EFU zoning
2016-022	9-28-16/11-14-16	23.01.010, 1.3, 4.2	Comprehensive plan Amendment, including certain property within City of Bend Urban Growth Boundary
2016-029	12-14-16/12/28/16	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from, Agriculture to Rural Industrial
2017-007	10-30-17/10-30-17	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2018-002	1-3-18/1-25-18	23.01, 2.6	Comprehensive Plan Amendment permitting churches in the Wildlife Area Combining Zone

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2018-006	8-22-18/11-20-18	23.01.010, 5.8, 5.9	Housekeeping Amendments correcting tax lot numbers in Non-Significant Mining Mineral and Aggregate Inventory; modifying Goal 5 Inventory of Cultural and Historic Resources
2018-011	9-12-18/12-11-18	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2018-005	9-19-18/10-10-18	23.01.010, 2.5, Tumalo Community Plan, Newberry Country Plan	Comprehensive Plan Map Amendment, removing Flood Plain Comprehensive Plan Designation; Comprehensive Plan Amendment adding Flood Plain Combining Zone purpose statement.
2018-008	9-26-18/10-26-18	23.01.010, 3.4	Comprehensive Plan Amendment allowing for the potential of new properties to be designated as Rural Commercial or Rural Industrial
2019-002	1-2-19/4-2-19	23.01.010, 5.8	Comprehensive Plan Map Amendment changing designation of certain property from Surface Mining to Rural Residential Exception Area; Modifying Goal 5 Mineral and Aggregate Inventory; Modifying Non-Significant Mining Mineral and Aggregate Inventory
2019-001	1-16-19/4-16-19	1.3, 3.3, 4.2, 5.10, 23.01	Comprehensive Plan and Text Amendment to add a new zone to Title 19: Westside Transect Zone.

Exhibit “C” to Ordinance 2024-007 – Comprehensive Plan Section 5.12

2019-003	02-12-19/03-12-19	23.01.010, 4.2	Comprehensive Plan Map Amendment changing designation of certain property from Agriculture to Redmond Urban Growth Area for the Large Lot Industrial Program
2019-004	02-12-19/03-12-19	23.01.010, 4.2	Comprehensive Plan Map Amendment changing designation of certain property from Agriculture to Redmond Urban Growth Area for the expansion of the Deschutes County Fairgrounds and relocation of Oregon Military Department National Guard Armory.
2019-011	05-01-19/05-16/19	23.01.010, 4.2	Comprehensive Plan Map Amendment to adjust the Bend Urban Growth Boundary to accommodate the refinement of the Skyline Ranch Road alignment and the refinement of the West Area Master Plan Area I boundary. The ordinance also amends the Comprehensive Plan designation of Urban Area Reserve for those lands leaving the UGB.
2019-006	03-13-19/06-11-19	23.01.010,	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2019-016	11-25-19/02-24-20	23.01.01, 2.5	Comprehensive Plan and Text amendments incorporating language from DLCDD’s 2014 Model Flood Ordinance and Establishing a purpose statement for the Flood Plain Zone.

Exhibit “C” to Ordinance 2024-007 – Comprehensive Plan Section 5.12

2019-019	12-11-19/12-11-19	23.01.01, 2.5	Comprehensive Plan and Text amendments to provide procedures related to the division of certain split zoned properties containing Flood Plain zoning and involving a former or piped irrigation canal.
2020-001	12-11-19/12-11-19	23.01.01, 2.5	Comprehensive Plan and Text amendments to provide procedures related to the division of certain split zoned properties containing Flood Plain zoning and involving a former or piped irrigation canal.
2020-002	2-26-20/5-26-20	23.01.01, 4.2, 5.2	Comprehensive Plan Map Amendment to adjust the Redmond Urban Growth Boundary through an equal exchange of land to/from the Redmond UGB. The exchange property is being offered to better achieve land needs that were detailed in the 2012 SB 1544 by providing more development ready land within the Redmond UGB. The ordinance also amends the Comprehensive Plan designation of Urban Area Reserve for those lands leaving the UGB.
2020-003	02-26-20/05-26-20	23.01.01, 5.10	Comprehensive Plan Amendment with exception to Statewide Planning Goal 11 (Public Facilities and Services) to allow sewer on rural lands to serve the City of Bend Outback Water Facility.

Exhibit “C” to Ordinance 2024-007 – Comprehensive Plan Section 5.12

2020-008	06-24-20/09-22-20	23.01.010, Appendix C	Comprehensive Plan Transportation System Plan Amendment to add roundabouts at US 20/Cook-O.B. Riley and US 20/Old Bend-Redmond Hwy intersections; amend Tables 5.3.T1 and 5.3.T2 and amend TSP text.
2020-007	07-29-20/10-27-20	23.01.010, 2.6	Housekeeping Amendments correcting references to two Sage Grouse ordinances.
2020-006	08-12-20/11-10-20	23.01.01, 2.11, 5.9	Comprehensive Plan and Text amendments to update the County’s Resource List and Historic Preservation Ordinance to comply with the State Historic Preservation Rule.
2020-009	08-19-20/11-17-20	23.01.010, Appendix C	Comprehensive Plan Transportation System Plan Amendment to add reference to J turns on US 97 raised median between Bend and Redmond; delete language about disconnecting Vandevent Road from US 97.
2020-013	08-26-20/11/24/20	23.01.01, 5.8	Comprehensive Plan Text And Map Designation for Certain Properties from Surface Mine (SM) and Agriculture (AG) To Rural Residential Exception Area (RREA) and Remove Surface Mining Site 461 from the County's Goal 5 Inventory of Significant Mineral and Aggregate Resource Sites.
2021-002	01-27-21/04-27-21	23.01.01	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) To Rural Industrial (RI)

Exhibit “C” to Ordinance 2024-007 – Comprehensive Plan Section 5.12

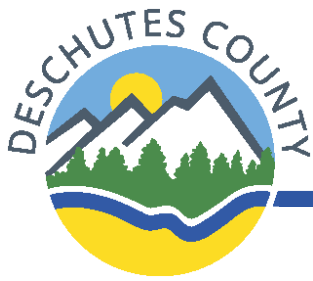
2021-005	06-16-21/06-16-21	23.01.01, 4.2	Comprehensive Plan Map Amendment Designation for Certain Property from Agriculture (AG) To Redmond Urban Growth Area (RUGA) and text amendment
2021-008	06-30-21/09-28-21	23.01.01	Comprehensive Plan Map Amendment Designation for Certain Property Adding Redmond Urban Growth Area (RUGA) and Fixing Scrivener’s Error in Ord. 2020-022
2022-001	04-13-22/07-12-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2022-003	04-20-22/07-19-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2022-006	06-22-22/08-19-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Rural Residential Exception Area (RREA) to Bend Urban Growth Area
2022-011	07-27-22/10-25-22 (superseded by Ord. 2023-015)	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) To Rural Industrial (RI)
2022-013	12-14-22/03-14-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)

Exhibit “C” to Ordinance 2024-007 – Comprehensive Plan Section 5.12

2023-001	03-01-23/05-30-23	23.01.010, 5.9	Housekeeping Amendments correcting the location for the Lynch and Roberts Store Advertisement, a designated Cultural and Historic Resource
2023-007	04-26-23/6-25-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2023-010	06-21-23/9-17-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2023-018	08-30-23/11-28-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2023-015	9-13-23/12-12-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Industrial (RI)
2023-025	11-29-23/2-27-24	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Rural Residential Exception Area (RREA) to Bend Urban Growth Area
2024-001	1-31-24/4-30-24	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Rural Residential Exception Area (RREA) to Bend Urban Growth Area

Exhibit “C” to Ordinance 2024-007 – Comprehensive Plan Section 5.12

2023-017	3-20-24/6-20-24	23.01(D) (repealed), 23.01(BJ) (added), 3.7 (amended), Appendix C (replaced)	Updated Transportation System Plan
<u>2024-007</u>	<u>TBD/TBD</u>	<u>23.01(A)(repealed)</u> <u>23.01(BK) (added)</u>	<u>Repeal and Replacement of 2030 Comprehensive Plan with 2040 Comprehensive Plan</u>



STAFF FINDINGS

FILE NUMBER(S): 247-23-000644-PA

APPLICANT: Deschutes County Planning Division

REQUEST: Repeal and Replace 2030 Comprehensive Plan with Deschutes 2040 Comprehensive Plan.

STAFF CONTACT: Nicole Mardell, AICP, Senior Planner
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RECORD: Record items can be viewed and downloaded from:
www.deschutes.org/2040 by clicking on the "Hearing Page" link

I. APPLICABLE CRITERIA

Deschutes County Code (DCC)
 Title 22, Deschutes County Development Procedures Ordinance
 Chapter 22.012, Legislative Procedures
 Oregon Administrative Rule (OAR)
 OAR 660-015, Statewide Planning Goals and Guidelines

II. BASIC FINDINGS

PROPOSAL

This is a legislative plan and text amendment to replace the 2030 Deschutes County Comprehensive Plan with the Deschutes 2040 Comprehensive Plan. The proposal does not seek to replace the Tumalo Community Plan, Terrebonne Community Plan, Newberry Country Plan, nor the Transportation System Plan. This proposal does not include any amendments to the County's Goal 5 Inventory. The proposal does not include any Comprehensive Plan or Zoning Map amendments.

BACKGROUND

The Board of County Commissioners initiated the process to update the County's Comprehensive Plan in November 2021. Staff worked extensively with the project consultant, Moore Iacofano and Goltsman (MIG, Inc.), on creating the project scope and budget for this process. Over the last 18 months, staff has conducted widespread community engagement and analysis of existing

conditions and projected trends. This in turn, has informed updates to chapter narrative, goal, and policy language to provide an up-to-date approach to managing growth and development in rural Deschutes County.

REVIEW CRITERIA

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

III. FINDINGS & CONCLUSIONS

CHAPTER 22.12, LEGISLATIVE PROCEDURES

Section 22.12.010.

Hearing Required

FINDING: This criterion is met. Public hearings were held before the Deschutes County Planning Commission on October 26, November 9, and December 14, 2023, and before the Board of County Commissioners on April 10, April 23, April 30, and May 8, 2024, allowing for ample opportunity for public testimony to be gathered.

Section 22.12.020, Notice

Notice

A. Published Notice

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

FINDING: This criterion is met as notice was published in the Bend Bulletin newspaper on October 13, 2023, for the Planning Commission public hearing and on March 27, 2024 for the Board of County Commissioners’ initial 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 officer for wider media distribution. Staff provided additional notice beyond the legal requirements. This was done through the project's constant contact mailing list, including 530 contacts, press releases, and coordination with community organizations. 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 Planning Commission held public hearings and issued a recommendation of approval to the Board of County Commissioners. The Board held a second round of public hearings and served as the final review body for the proposal. This criterion is 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 2024-007, upon approval and adoption by the Board of County Commissioners. This criterion will be met.

ORAR 660-015, Statewide Planning Goals and Guidelines

Goal 1: Citizen Involvement:

FINDING: The development of the Deschutes County 2040 Comprehensive Plan document was a multi-year process with significant public outreach and community member involvement.

The following is a short summary of engagement leading up to the initial public hearing:

- o Established a project email list with over 500 contacts.

- Provided 7 project update emails.
- Established a new, user-friendly website.
- Received over 29,000 social media impressions.
- Coordinated with media on 13 news stories.
- Held 66 small group meetings with over 400 participants.
- Held 8 open houses with 296 attendees.
- Held an online open house with 361 survey responses.
- Hosted a virtual and interactive forum with over 100 responses.
- Held 11 planning commission meetings.
- Provided incentives through a raffle, prizes, and food and beverages.

Community member input was essential to the development of the resulting Deschutes County 2040 document and staff utilized several novel and innovative techniques to reach rural residents. Chapter 1 of the plan, Community Engagement, outlines numerous policies that reduce barriers to and support community involvement throughout planning processes.

Key Policy Changes

Comprehensive Plan - 2030: Chapter 1, Section 1.2

Deschutes County 2040 Plan: Chapter 1 - Community Engagement

Amendments: Citizen involvement (now Community Engagement) was completely rewritten.

The section listed above and this Plan as a whole, complies with Goal 1, Citizen Involvement, as described:

- The adoption process for these amendments included public hearings before the Planning Commission (Committee for Citizen Involvement) and before the Board of County Commissioners.
- The updated goal and policies were created through an extensive two-year public and Planning Commission process. The process generated considerable public input which has been incorporated throughout this Plan.
- The new policies recognize the Planning Commission as the required Committee for Community Involvement.
- This section complies with the following six components of Statewide Goal 1:
 - Policies 1.1.1-1.1.8 promote opportunities to involve community members at all stages of planning processes by providing adequate opportunities for input, promoting two-way communication, and continuously improving on outreach activities.
 - Policies 1.2.1-1.2.6 support the activities and funding of the Committee for Community Involvement.
 - Policies 1.1.2 and 1.1.4 ensure technical information is available in an understandable form

Consistency with Goal 1 is thereby met.

Goal 2: Land Use Planning:

FINDING: The purpose of the chapter is to ensure the Comprehensive Plan was built with a factual base and will be followed when making future land use decisions. In updating this plan document, information was gained from numerous studies, technical documents, and subject matter experts.

ORS 197.610 prescribes the process for local governments to initiate post-acknowledgement plan amendments. 45-day notice was provided to the Oregon Department of Land Conservation (DLCD) and Development on August 30, 2023.

The draft Plan contains detailed, factual background information in each chapter narrative to provide context for the goals and policies. The Deschutes County 2040 plan update does not propose any changes to Comprehensive Plan designations or zoning designations, nor the County's Goal 5 inventories or community plans as part of this update.

Key Policy Changes

Comprehensive Plan – 2030: Chapter 1, Section 1.3 and Chapter 5, Section 5.10
Deschutes County 2040 Plan: Chapter 2 Land Use and Regional Coordination

Amendments: Land use (previously Section 1.3) was completely rewritten.

The sections listed above, and this Plan update as a whole, comply with Statewide Planning Goal 2 as described:

- Policies 2.1.1 and 2.1.5 recognize that when making land use regulations, private property rights, economic impacts, sustainability and carrying capacity all need to be considered.
- Policy 2.1.2 and 2.1.4 recognize the importance of implementing the plans recommendations through the annual department work plan process and updating the document to incorporate new information.
- Policy 2.1.3 clarifies the official Comprehensive Plan map is retained as an electronic layer with the Deschutes County GIS system.
- Goal 2.2 and its associated policies support regional coordination and partnership on regional issues and are further discussed under Goal 14 – Urbanization.
- Policies 2.3.1-2.3.2 speaks to coordination and management of County owned land use for park purposes.
- Policies 2.4.1-2.4.2 recognize the importance of reducing onerous barriers to land use and planning applications.
- There are no amendments to Comprehensive Plan map designations incorporated into this Plan update, although definitions of existing designations are provided.

Consistency with Goal 2 is thereby met.

Goal 3: Agricultural Lands:

FINDING: Goal 3 seeks to preserve and maintain agricultural lands. Deschutes County inventoried agricultural lands as required by Goal 3 in 1979 and refined the agricultural land designations as a result of a farm study in 1992. This plan update does not propose to rezone or redesignate any agricultural lands. Staff finds that the goals and policies within the document are supportive of retaining productive and valuable lands for agricultural uses within Deschutes County and reducing barriers to a healthy agricultural economy.

Key Policy Changes

Comprehensive Plan – 2030: Chapter 2, Section 2.2

Deschutes County 2040 Plan: Chapter 3 - Farm and Forest Resources

Amendments: Chapter 2, Section 2.2 Agricultural Lands and Section 2.3 Forest Lands were combined and rewritten, although existing designations and regulations were retained.

The section listed above, and this Plan update as a whole, complies with Statewide Planning Goal 3 as described:

- Policies 3.1.1-3.1.2 retain the existing Exclusive Farm Use Zoning and subzones. No map changes are proposed as part of this Plan update.
- Policy 3.1.4 ensures the County's farm policies and codes remain compliant with State regulations.
- Policies 3.2.1-3.2.9 support the business of agriculture and review of county regulations to reduce common issues that impact farming operations and activities.
- Policies 3.1.3, 3.3.1, 3.3.2, and 3.3.6 support the accurate designation of agricultural lands in compliance with State rules, while responding to local concerns that there are Deschutes County farmlands that are incorrectly designated.
- Policy 3.3.4 seeks to remove unnecessary local barriers to establishing an accessory farm dwelling where otherwise allowed by state law..
- Policy 3.3.5 encourages coordination between farmers and fish/wildlife managers.

Consistency with Goal 3 is thereby met.

Goal 4: Forest Lands:

FINDING: Goal 4 seeks to conserve forest lands. Deschutes County inventoried forest lands as required by Goal 4 in 1979 and refined the forest land designations to conform to OAR 660-006. Deschutes County is not proposing to rezone or redesignate any forest lands as part of this update process. Staff consolidated the goals that were previously in Section 2.3 Forest Lands into *Chapter 3 – Farm and Forest Resources*.

Key Policy Changes

Comprehensive Plan – 2030: Chapter 2, Section 2.3
Deschutes County 2040 Plan: Chapter 3 - Farm and Forest Lands

Amendments: Forest Lands (previously Section 2.3) was rewritten and combined into the same chapter as agricultural lands, although existing designations and regulations were retained.

The section listed above, and this Plan update as a whole, comply with Statewide Planning Goal 4 as described:

- Goal 3.4 and Policies 3.4.1-3.4.4 provide the characteristics and criteria for the County's Forest Zones. These policies remain unchanged from the previous 2010 plan.
- Policy 3.4.5 ensures forest codes are compliant with State regulations.
- Policies 3.4.6-3.4.7, 3.4.9, and 3.4.10 recognize the need for coordination with federal agencies and tribal government in forest management.
- Policy 3.4.8 supports economic opportunities within forest zoned lands while meeting other community goals.
- Policy 3.4.11 recognizes the need to review and revisit county code to reduce impacts from development on forest health and dependent species.

Consistency with Goal 4 is thereby met.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources:

FINDING: Statewide Planning Goal 5 addresses natural resources, historic and cultural resources, and mineral and aggregate resources. In this update, these topics were divided into three chapters to ensure adequate depth and policy response to each particular topic.

Key Policy Changes

Comprehensive Plan – 2030: Chapter 2, Sections 2.4-2.7 and 2.10-2.11 and Chapter 5, Sections 5.3-5.9, 5.11

Deschutes County 2040 Plan: Chapter 4 - Mineral and Aggregate Resources, Chapter 5 - Natural Resources, Chapter 6 - Historic Resources

Amendments: The narratives for each topic were rewritten. The Goal 5 inventories for these resources (as well as ESEEs and programs) are retained and remained unchanged in Appendix A.

The sections listed above, and this Plan update as a whole, comply with Statewide Planning Goal 5 as described:

Chapter 5 – Natural Resources

- Water Goals and Policies
 - Policies 5.1.1 directs the county to participate in statewide regional and water planning efforts including implementation of the Upper Deschutes Basin Study, Habitat Conservation Plan, and Biological Opinion.
 - Policy 5.1.2 supports grants for improvements, upgrades, or expansions to water systems.
 - Policies 5.1.3-5.1.4 promote increased consideration of water quality, water availability, and treaty rights of Confederated Tribes of Warm Springs in the land use review process.
 - Policies 5.2.1-5.2.3 support water conservation efforts through a mixture of incentives, educational opportunities and partnerships with local and regional organizations and agencies.
 - Policies 5.3.1-5.3.4 seek to maintain a healthy ecosystem in the Deschutes River Basin including partnerships with agencies, implementation of study recommendation, and education.
 - Policies 5.4.1-5.4.11 seek to maintain and enhance fish and riparian dependent wildlife habitat. These polices address coordination with agencies and organizations during land use review process, implementation of Habitat Conservation Plans and other scientific studies, and additional regulations and educational programs to limit impacts to riparian areas.
 - Policies 5.5.1-5.5.7 aspire to coordinate land use and water policies to address water allocation and management. These policies address coordination, support to revisit Oregon Water Resources Departments Groundwater Allocation and Mitigation Rules, improvement of stormwater and wastewater facilities, and consideration of hydrology during land use review process.

- Open Spaces and Scenic Views

- Policies 5.6.1-5.6.4 recognize the importance of working with stakeholders to establish and maintain connected open spaces and scenic view areas.
- Policies 5.6.5-5.6.6 support protection for visually significant areas.
- Wildlife Habitat
 - Policy 5.7.1 promotes stewardship of wildlife habitat.
 - Policy 5.7.2 is directed at updating wildlife habitat inventories and protections through future public processes, informed by public process, expert sources, and current or recently updated plans.
 - Policy 5.7.3 and 5.7.4 seek to incentivize or require greater compatibility between development and habitat areas, including clustering of development.
 - Policy 5.7.5 directs the County to coordinate with Confederate Tribes of Warm Springs on co-management on wildlife resources.
 - Policies 5.8.-5.8.3 seek to balance the economic and recreation benefits of wildlife with the protection of these resources.
 - Policies 5.9.1-5.9.3 address federal and state protected species.

Chapter 4 - Mineral and Aggregate Resources

- Policies 4.1.1-4.1.3 seek to implement the Goal 5 program for mineral and aggregate sites.
- Policy 4.1.4 supports reclamation of sites following exhaustion of mineral or aggregate resources.

Chapter 6 - Historic and Cultural Resources

- Policies 6.1.1- 6.1.3 define roles of the County in promoting a historic landmarks program, including coordination with the State Historic Preservation office and the Confederated Tribes of Warm Springs.

Consistency with Goal 5 is thereby met.

Goal 6: Air, Water and Land Resources Quality:

FINDING: Goal 6 instructs local governments to consider protection of air, water, and land resources from pollution and pollutants when developing Comprehensive Plans. This chapter supports maintaining and improving air, water and land quality, which goes beyond the requirements of Goal 6 to comply with State and Federal regulations. Staff notes that there are no comprehensive map or zoning changes associated with this amendment, nor are any amendments to the County’s Goal 5 inventory proposed.

Key Policy Changes

Comprehensive Plan – 2030: Chapter 2, Section 2.5 and 2.9

Deschutes County 2040 Plan: Chapter 5 - Natural Resources

Amendments: This section was entirely rewritten, the policies pertaining to Air, Water, and Land Resources Quality have been integrated into an “Environmental Quality” section of the larger natural resources chapter.

The sections listed above, and this Plan update as a whole, comply with Statewide Planning Goal 6 as described:

- Policies 5.10.1 and 5.11.2 promote use of environmentally friendly building practices in County operations and on public property.
- Policy 5.10.2 supports implementation of a dark skies program to impacts of light pollution.
- Policies 5.10.3-5.10.4, and Policy 5.11.2 promote public education regarding controlled burning, noxious weeds, and reuse and recycling.
- Policies 5.11.3-5.11.4 support the process for siting new waste management facilities and implementing best practices in solid waste management.
- Policy 5.11.5 seeks to develop and implement a Climate Action Plan to mitigate impacts of climate change in Deschutes County.
- Policy 5.11.6 promotes green infrastructure to improve stormwater.

Consistency with Goal 6 is thereby met.

Goal 7: Areas Subject to Natural Disasters and Hazards:

FINDING: Goal 7 requires comprehensive plans to address Oregon’s natural hazards. Deschutes County has been proactive in addressing natural hazards, through periodic updates to the County’s Natural Hazards Mitigation Plan (NHMP). That Plan provides extensive information on natural hazards in Deschutes County and detailed recommendations to protect people and property. The information below supplements the NHMP.

Key Policy Changes

Comprehensive Plan – 2030: Chapter 3, Section 3.5
Deschutes County 2040 Plan: Chapter 7 - Natural Hazards

Amendments: Natural hazards (now Chapter 7) was completely rewritten.

The section listed above, and this Plan update as a whole, comply with Statewide Planning Goal 7 as described:

- Policies 7.1.1-7.1.3, and 7.2.4 promote coordination agency partners to regularly update the NHMP, update hazard risk maps, review land use applications, and clarify responsibilities pertaining to natural hazard events.
- Policy 7.1.4 seeks to utilize development code provisions to manage development in hazard prone areas.
- Policies 7.1.5 – 7.1.10 aspires to address wildfire risk and mitigate impacts to wildlife and people.
- Policy 7.1.11 provides recommendations to review and revise County code to address common hazard risk issues.
- Policies 7.2.1-7.2.2 mitigate risk to essential infrastructure following natural hazard events.
- Policy 7.2.3 supports the establishment of a regional emergency services training facility.
- Policy 7.2.5-7.2.7 provides required and incentivized standards to mitigate risk for new development in hazard prone areas.
- Policy 7.2.8 provides compliance with the FEMA flood insurance program.
- Policies 7.3.1-7.3.5 promote development of programs to inform the public of increased risk of natural hazards.

Consistency with Goal 7 is hereby met.

Goal 8: Recreational Needs:

FINDING: Goal 8 requires local governments to plan for the recreation needs of their residents and visitors. Unlike cities, the County is not required to adopt a parks master plan, but instead coordinate recreational activities among government and private agencies in the rural portions of the County.

Key Policy Changes

Comprehensive Plan – 2030: Chapter 3, Section 3.8
Deschutes County 2040 Plan: Chapter 8 - Recreation

Amendments: This section was completely rewritten.

The sections listed above, and this Plan update as a whole, comply with Statewide Planning Goal 8 as described below.

- Goal 8.1 and policies 8.1.1-8.1.6 address the need for cooperation in recreation planning.
- Policy 8.1.7 discusses working with Unincorporated Communities that express interest in parks.
- Policy 8.1.8 refers to integrating trail designs from other agencies within the Transportation System Plan where appropriate.
- Policy 8.1.9 explores an increased role of the County in parks and recreation to serve rural areas not already within a parks and recreation district.
- Policy 8.1.10 supports the community effort to acquire and manage Skyline Forest as a community asset.
- Policy 8.1.11 speaks to balancing new recreational opportunities with the integrity of the natural environment.

Consistency with Goal 8 has been met.

Goal 9: Economic Development:

FINDING: Goal 9 seeks to provide adequate opportunities for economic development throughout the state. Goal 9 primarily applies to urban development within acknowledged growth boundaries. The County is not required to provide an economic feasibility study or designate land to fulfill employment needs. Rather, these policies are intended to provide guidance for regional economic development activities and rural economic activities allowed under state law.

Key Policy Changes

Comprehensive Plan – 2030: Chapter 3, Section 3.4
Deschutes County 2040 Plan: Chapter 9 - Economic Development

Amendments: The economy chapter was completely rewritten.

The section listed above, and this Plan update as a whole, comply with Statewide Planning Goal 9 as described:

- Policy 9.1.1 speaks to promote rural economic initiatives, while balancing impacts to rural livability and natural resources.
- Policy 9.1.2 supports Economic Development for Central Oregon as the regional coordinator for economic development.
- Policy 9.1.3 supports growth and expansion of higher education in Central Oregon to support the regional workforce.
- Policy 9.1.4 supports renewable energy generation as an economic tool, with consideration for community concerns or goals such as livability and impact on natural resources.
- Policy 9.1.5 promotes master planning for airport facilities to reduce noise and safety concerns as the region grows.
- Policy 9.1.6 speaks to allowing local oriented rural commercial uses as state law allows.
- Policy 9.1.7-9.1.10 addresses planning for economic development lands, including large lot industrial lands, supporting childcare, and expansion of internet infrastructures.
- Policies 9.2.1-9.3.15 are retained from the 2011/1979 Plan. These policies govern existing Rural Commercial and Rural Industrial designated properties. These properties were previously evaluated under OAR 660-023 and determined to have pre-existing commercial or industrial uses that do not fit into any of the unincorporated community categories.

Consistency with Goal 9 is met.

Goal 10: Housing:

FINDING: Goal 10 directs cities to provide an adequate supply of housing for their residents. Unlike cities, Counties are not required to comply with the requirements of Goal 10 to provide a 20-year supply of housing for its community members, nor undertake any analysis pertaining to housing demand and supply. The County does not have any statutory obligations in providing findings to Goal 10. Instead, staff and community members identified important emerging issues that pertain to rural housing and drafted aspirational policies to address these issues.

Key Policy Changes

Comprehensive Plan – 2030: Chapter 3, Section 3.3
Deschutes County 2040 Plan: Chapter 10 - Housing

Amendments: Housing (now Chapter 10) was completely rewritten.

The policies below and this section as a whole complies with statewide land use Goal 10 as described:

- Goal 10.1 was refined from the previous Comprehensive Plan and speaks to balancing housing choice for rural residents with health, safety, environmental, and resource land impacts.
- Policy 10.1.1 speaks to establishing a tracking system for cumulative impacts associated with rural housing development.
- Policy 10.1.2 addresses health and safety issues associated with housing.
- Policy 10.1.3 encourages subdivisions alternative development patterns for subdivisions (such as clustering) to mitigate community and environmental impacts.
- Policies 10.1.4-10.2.2 speak to providing affordable housing options and alternatives in Deschutes County and exploring programs to support housing where allowed by state law in rural areas.

- Policies 10.3.1-10.3.7 provide guidance for development in the Westside Transect Zone.
- Policies 10.4.1-10.4.6 support coordination with cities on affordable housing.

Consistency with Goal 10 is thereby met.

Goal 11: Public Facilities and Services:

FINDING: Goal 11 directs local governments to plan and develop a timely, orderly, and efficient arrangement of public facilities and services to serve as a framework for rural development. The County does not provide any water or sewer services. The primary services related to growth and development provided by Deschutes County, aside from Transportation (which is addressed in the County’s Transportation System Plan) pertains to waste management. The County may also serve as a conduit for other resources and may support other local governments in siting of regional facilities.

Key Policy Changes

Comprehensive Plan – 2030: Chapter 3, Section 3.6
Deschutes County 2040 Plan: Chapter 12 - Public Facilities

Amendments: Public facilities and services (now Chapter 12) was completely rewritten.

The section listed above, and this Plan update as a whole, comply with Statewide Planning Goal 11 as described:

- Goal 12.1 and policies 12.1.1-12.1.13 supports orderly, efficient and cost-effective siting of rural public facilities and services including natural hazard preparedness, intergovernmental coordination, and reduction of impact to natural and community resources.
- Goal 12.2 and policies 12.2.1-12.2.4 promote sustainable, innovative, and cost-effective waste management practices.
- Goal 12.3 and Policy 12.3.1 encourages the County to be a conduit for resources.

Consistency with Goal 11 is met.

Goal 12: Transportation:

FINDING: The Deschutes County 2040 plan does not directly address transportation, but rather refers directly to an appendix for the County’s Transportation System Plan. The adoption of the 2020-2040 Transportation System Plan is still under review and is required to comply with this goal and applicable statute and implementing rule.

Goal 13: Energy Conservation:

FINDING: Goal 13 aspires to conserve energy, by maximizing land and uses to maximize conservation of all forms of energy. This section primarily provides guidance for conservation and alternative energy production in the rural county, as allowed by state law.

Key Policy Changes

Comprehensive Plan – 2030: Chapter 2, Section 2.8
Deschutes County 2040 Plan: Chapter 13 - Energy

Amendments: Energy (now Chapter 13) was completely rewritten as a standalone chapter.

The sections listed above, and this Plan update as a whole, comply with Statewide Planning Goal 13 as described:

- Goal 14.1 promotes energy conservation and alternative energy production.
- Policies 14.1.1-14.1.3 aspire to reduce energy usage in County operations and support working with energy suppliers to promote energy efficiency in all economic sectors.
- Policies 14.1.4-14.1.10 seek to promote development of renewable energy projects at a commercial and personal scale, including development of vehicle charging stations, while balancing environmental and community resources.

Consistency with Goal 13 is thereby met.

Goal 14: Urbanization:

FINDING: Two chapters within the 2040 Plan touch on the topic of urbanization - Land Use and Regional Coordination, and Unincorporated Communities and Destination Resorts. Staff notes the key policies pertaining to urbanization below. Staff notes that the unincorporated community policies pertain to those designated under OAR 660-022. Rural industrial and rural commercial policies are noted in review of Goal 9 above. More specific policies for the unincorporated communities of Tumalo and Terrebonne are included in the small area plans included as appendices to this document. The community plans are not updated or amended through the Deschutes County 2040 update process.

Key Policy Changes

Comprehensive Plan – 2030: Chapter 4, Sections 4.2-4.4 and 4.57-4.8

Deschutes County 2040: Chapter 2 - Land Use and Regional Coordination, Chapter 11 - Unincorporated Communities and Destination Resorts

Amendments: Urbanization (now retitled and reorganized into the two chapters above) was completely rewritten. Urban Unincorporated Communities, Resort Communities and Rural Service Centers (previously Sections 4.4, 4.7, 4.8) have been moved to Chapter 11.

The sections listed above, and this Plan update as a whole, comply with Statewide Planning Goal 14 as described below.

Chapter 2 - Land Use and Regional Coordination

- Goal 2.2 seeks to coordinate regional planning efforts between the local, regional, and state governments.
- Policies 2.2.1-2.2.4, 2.2.10 and 2.2.11 encourage periodic review of intergovernmental and urban management agreements, coordination on land use actions, and support the use of land for public purposes as needed.
- Policy 2.2.5 encourages cities to conduct urban reserve planning in partnership with the County.
- Policies 2.2.6 and 2.2.7 encourage collaboration with federal agencies and tribal governments on key land management issues.

- Policy 2.2.8 seeks to support regional infrastructure projects with community benefit, while mitigating negative impacts.
- Policy 2.2.9 supports updates to unincorporated community area plans.

Chapter 11- Unincorporated Communities and Destination Resorts

- Policies 11.1.1 -11.1.5 are general resort community policies and remain unchanged through this update.
- Policies 11.2.1-11.3.6 govern the Black Butte Ranch resort community and remain unchanged.
- Policies 11.4.1-11.5.7 pertain to Inn of 7th Mountain and Widgi Creek. These policies are unchanged.
- Destination Resort Goal 11.6, 11.7 and Policies 11.6.1-11.7.1, 11.7.4-11.7.5 remain unchanged. The goals and policies were moved from the rural recreation element of the 2011 Comprehensive Plan to Chapter 11 – Unincorporated Communities and Destination Resorts and reorganized for consistency.
- Policy 11.7.3 seeks to integrate affordable housing for workers within or near destination resorts.
- Policies 11.8.1-11.20.4 provide guidance for the unincorporated community of Sunriver and are unchanged through this proposal.

Consistency with Goal 14 is thereby met.

Goals 15 through 19

FINDING: These goals are not applicable to the proposed plan and text amendments because the County does not contain these types of lands.

IV. CONCLUSION

The proposed Deschutes County 2040 Comprehensive Plan complies with all relevant Deschutes County and OAR requirements.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: October 2, 2024

SUBJECT: Board Decision on Land Use File Nos. 247-23-000614-CU, 247-23-000615-SP, 247-24-000292-A, Appeal of a psilocybin service facility

RECOMMENDED MOTION:

Move approval of Board signature of Document No. 2024-795, upholding a Hearings Officer's decision denying a request for a psilocybin service center.

BACKGROUND AND POLICY IMPLICATIONS:

The subject request is a Conditional Use and Permit and Site Plan Review to establish a psilocybin service center within an existing building in Juniper Preserve (formerly "Pronghorn") destination resort. A public hearing was held before a Hearings Officer, and on April 29, 2024, the Hearings Officer issued a decision denying this application. The applicant filed an appeal and the Board held a public hearing on July 17, 2024. The Board conducted deliberations on August 21, 2024, and voted to uphold the Hearings Officer's denial of the request. Staff has prepared a draft decision for Board consideration.

BUDGET IMPACTS:

None

ATTENDANCE:

Audrey Stuart, Associate Planner

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

**BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

FILE NUMBERS: 247-23-000614-CU, 247-23-000615-SP, 247-24-000292-A

**SUBJECT PROPERTY/
OWNER:**

Mailing Name: PRONGHORN INTANGIBLES LLC
Map and Taxlot: 161316D000500
Account: 251126
Situs Address: 23050 NICKLAUS DR, BEND, OR 97701

APPLICANT: Juniper Institute LLC

**APPLICANT'S
ATTORNEY:** Corinne Celko, Emerge Law Group

STAFF PLANNER: Audrey Stuart, Associate Planner

REQUEST: A conditional use and site plan review to establish a psilocybin service center in the Exclusive Farm Use (EFU) Zone, and Destination Resort (DR) Combining Zone.

I. SUMMARY OF DECISION

In this decision, the County Board of Commissioners ("Board") considers the April 29, 2024, Hearings Officer's Decision in land use file nos. 247-23-000614-CU and 247-23-000615-SP ("Hearings Officer's Decision"). The applicant filed a timely appeal of the Hearings Officer's decision on May 10, 2024, requesting the Board hear the subject application. Pursuant to Deschutes County Code ("DCC") 22.23.035, the Board voted 2-1 to hear this appeal, and a public hearing before the Board was held on July 17, 2024.

On August 21, 2024, following deliberation, the Board voted 2-1 finding the applicant had not met their burden of proof, and moved to uphold the Hearings Officer’s Decision denying the Conditional Use Permit and Site Plan Review applications on the subject property.

The Hearings Officer’s decision dated April 29, 2024, is hereby incorporated as part of this decision, including any and all interpretations of the County’s code, and modified as follows. In the event of conflict, the findings in this decision control.

II. BASIC FINDINGS OF FACT:

The Board adopts and incorporates by reference the code interpretations, findings of fact, and conclusions of law in the Hearings Officer’s Decision as set forth in Section I, Applicable Standards and Criteria, and Section II, Background and Procedural Findings. The Hearings Officer’s Decision is attached as Exhibit A to the Board’s Decision. The following additions are made to the basic findings in the Hearings Officer Decision.

- A. Procedural History:** A public hearing was held before a Hearings Officer on March 12, 2024, and the Hearings Officer’s decision was issued on April 29, 2024. The Hearings Officer’s decision was subsequently appealed. The Board adopted Order No. 2024-018 on May 29, 2024, initiating review of the Hearings Officer’s decision limited to the issues identified in the appellant’s appeal application. The Board conducted a limited de novo hearing on July 17, 2024. The Board left the record open until July 31, 2024, for all parties to submit written legal argument, and until August 7, 2024, for the applicant’s final rebuttal. A member of public submitted a request to reopen the written record after it had closed and on August 21, 2024, the Board adopted Order No. 2024-032, declining to reopen the public record. The Board rendered its oral decision on August 21, 2024, affirming the Hearings Officer’s decision but modifying the findings as described herein.
- B. REVIEW PERIOD:** The applications were submitted on August 8, 2023. The Planning Division deemed the applications complete and accepted them for review on January 26, 2024. On May 10, 2024, the applicant requested in writing that the 150-day clock be extended for a period of 112 days. The 150th day on which the County must take final action is November 21, 2024.
- C. PUBLIC COMMENTS:** The Board established a post-hearing open record period. The time from August 1st through the 7th was the period afforded only to the applicant for final legal argument. The county received an email from C. Brennan dated August 5, 2024. Because this email was received during the period afforded only to the applicant, the Board did not consider this email in its decision-making. The open record period closed on August 7, 2024. Two (2) written comments were received

after the close of the open record period including emails dated August 12th and August 19th from C. Brennan. Consequently, the Board did not consider these submittals in making a decision on the subject application.

III. FINDINGS

The findings below address the three issue areas that were the basis for the Hearings Officer’s denial.

1. Screening of Parking Area

Section 18.116.030, Off-Street Parking And Loading

- F. Development and Maintenance Standards for Off-Street Parking Areas. Every parcel of land hereafter used as a public or private parking area, including commercial parking lots, shall be developed as follows:
 - 1. Except for parking to serve residential uses, an off-street parking area for more than five vehicles shall be effectively screened by a sight obscuring fence when adjacent to residential uses, unless effectively screened or buffered by landscaping or structures.

Section 18.124.060, Approval Criteria

- G. Areas, structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires, and the like), loading and parking and similar accessory areas and structures shall be designed, located and buffered or screened to minimize adverse impacts on the site and neighboring properties.

FINDING: DCC 18.116.030(F)(1) and DCC 18.124.060(G) both relate to the screening of the proposed parking area, which is located to the east of the existing building on the subject property. The Hearings Officer found that 18.124.060(G) could not be satisfied unless and until DCC 18.116.030(F)(1) was met. DCC 18.124.060(G) applies to a variety of areas, structures, and facilities, but the Hearings Officer found that the applicant’s materials were only deficient regarding screening of the proposed parking area. Therefore, for the purpose of this decision these two criteria are addressed together below.

The applicant submitted a revised site plan dated July 16, 2024, which demonstrates how introduced landscaping will be provided to comply with DCC 18.116.030(F)(1) and 18.124.060(G). There was particular concern regarding visual screening along the south side of the parking area due to the proximity to neighboring residences. The Board finds that the revised site plan and landscaping demonstrates that the

parking area will be sufficiently screened and overturns the Hearings Officer’s findings for DCC 18.116.030(F)(1) and DCC 18.124.060(G).

2. Clear Vision Area

Section 18.116.030, Off-Street Parking And Loading

F. Development and Maintenance Standards for Off-Street Parking Areas. Every parcel of land hereafter used as a public or private parking area, including commercial parking lots, shall be developed as follows:

...

- 7. Service drives shall have a minimum vision clearance area formed by the intersection of the driveway centerline, the street right of way line and a straight line joining said lines through points 30 feet from their intersection.

FINDING: This criterion requires a clear vision area at the intersection of Nicklaus Drive and the service drive, and the Hearings Officer found the application materials did not provide sufficient information to identify the location of this clear vision area and demonstrate how this criterion would be met.

The subject property is irregular in shape and the platted road, Nicklaus Drive, terminates at the southwest property corner and then continues as a service drive through the south portion of the subject property. A question was raised regarding the location of the clear vision area, and whether it needed to be provided at the location that Nicklaus Drive terminates or at the location that customers would turn into the parking area from the service drive.

The applicant submitted a revised site plan on July 16, 2024, illustrating how a clear vision area could be provided in either of these two locations. The applicant’s traffic engineer submitted a memorandum dated July 17, 2024, which asserts that the required clear vision area should be located at the entrance to the parking area. The Deschutes County Transportation Planner submitted comments on July 19, 2024, in support of the conclusions reached in this memorandum. The Board agrees with the conclusion that the clear vision area should be provided at the entrance to the parking area, as this is the location where turning vehicles are most likely to have conflicts with pedestrian and vehicle traffic. Providing the clear vision area in this location meets the intent of DCC 18.116.030(F)(7) by providing unobstructed visual clearance for vehicles entering and existing the proposed parking area.

The Board overturns the Hearings Officer’s findings regarding DCC 18.116.030(F)(7) and finds the applicant has demonstrated that the required clear vision area will be provided.

3. Transportation Access

Section 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:
 - ...
 - 2. Adequacy of transportation access to the site; and

FINDING: The Board adopts the Hearings Officer’s findings regarding suitability of the site as it pertains to transportation access. In this case, the subject property and the entire destination resort is accessed via an easement across Bureau of Land Management (BLM) land. Lisa Clark, Field Manager with the BLM, submitted comments dated July 11, 2024, that state psilocybin cannot be transported across federal land. The Board reviewed additional testimony and arguments that were submitted and upholds the Hearings Officer’s denial of the subject application on the basis that DCC 18.128.015(A)(2) has not been satisfied.

IV. DECISION:

Based upon the foregoing Findings of Fact and Conclusions of Law, the Board of County Commissioners hereby **DENIES** the Applicant’s application for a Conditional Use Permit and Site Plan Review to establish a psilocybin service center.

Dated this 2nd day of October 2024

BOARD OF COUNTY COMMISSIONERS
FOR DESCHUTES COUNTY

Patti Adair, Chair

Anthony DeBone, Vice Chair

Phil Chang, Commissioner

THIS DECISION BECOMES FINAL WHEN SIGNED. PARTIES MAY APPEAL THIS DECISION TO THE LAND USE BOARD OF APPEALS WITHIN 21 DAYS OF THE DATE ON WHICH THIS DECISION IS FINAL.

EXHIBIT

- A.** Hearings Officer's Decision dated April 29, 2024
- B.** Revised Site Plan dated July 16, 2024

**DECISION AND FINDINGS OF
THE DESCHUTES COUNTY HEARINGS OFFICER**

FILE NUMBERS: 247-23-000614-CU, 247-23-000615-SP

HEARING DATE: March 12, 2024

HEARING LOCATION: Videoconference and
Barnes & Sawyer Rooms
Deschutes Services Center
1300 NW Wall Street
Bend, OR 97708

APPLICANT/OWNER: Applicant: Juniper Institute LLC
Owners: Pronghorn Intangibles LLC

SUBJECT PROPERTY: Map and Tax Lot: 161316D000500
Account: 251126
Situs Addresses: 23050 Nicklaus Drive,
Bend, OR 97701

REQUEST: A conditional use and site plan review to establish a psilocybin service center in the Exclusive Farm Use (EFU) Zone, and Destination Resort (DR) Combining Zone.

HEARINGS OFFICER: Tommy A. Brooks

SUMMARY OF DECISION: This Decision DENIES the Application.

I. STANDARDS AND CRITERIA

Deschutes County Code (DCC)
Title 18, Deschutes County Zoning Ordinance
Chapter 18.16, Exclusive Farm Use Zones (EFU)
Chapter 18.113, Destination Resorts Zone (DR)
Chapter 18.116, Supplementary Provisions
Chapter 18.124, Site Plan Review
Chapter 18.128, Conditional Use
Title 22, Deschutes County Development Procedures Ordinance

Conceptual Master Plan (CMP) for the Pronghorn Destination Resort
Final Master Plan (FMP) for the Pronghorn Destination Resort

II. BACKGROUND AND PROCEDURAL FINDINGS

A. Request and Nature of Proceeding

This matter comes before the Hearings Officer as a request by the Applicant to approve a psilocybin service center (“Service Center”). The Service Center is proposed to be located at Juniper Preserve, a destination resort approved in the Exclusive Farm Use (EFU) Zone (“EFU Zone”), which was originally referred to as the Pronghorn Destination Resort (“Juniper Preserve”). The relevant areas of the Juniper Preserve are within the EFU Zone, and the Subject Property is also subject to the County’s Destination Resort (DR) combining zone (“DR Zone”). The Applicant seeks two land use approvals – a Conditional Use Permit and a Site Plan Review.

As described by the Applicant, the Service Center will operate under a license from the Oregon Health Authority (“OHA”). OHA regulates the production, processing, and use of psilocybin under the Oregon Psilocybin Services Act. The Applicant proposes to conduct activities related only to the use of psilocybin and would conduct the licensed activities in an existing structure on the Subject Property.

The County reviews conditional uses in accordance with the standards and procedures set forth in Deschutes County Code (“DCC” or “Code”) Chapter 18.128 and Title 22. The proposed use must also satisfy the standards of the underlying EFU Zone – set forth in DCC Chapter 18.16 – which in turn requires compliance with the applicable provisions of DCC Chapter 18.116, Supplementary Provisions, and Chapter 18.124, Site Plan Review. Because the Subject Property is in the DR Zone, provisions in DCC Chapter 18.113 are applicable, as are provisions of the Conceptual Master Plan (“CMP”) and the Final Master Plan (“FMP”) for Juniper Preserve.

B. Application, Notices, Hearing

The Applicant submitted the Application on August 8, 2023. On September 7, 2023, staff of the County’s Community Development Department (“Staff”) provided notice to the Applicant that it did not deem the Application to be complete (“Incomplete Letter”). On January 26, 2024, the Applicant submitted supplemental information in response to the Incomplete Letter and requested that the Application be deemed complete at that time.

On February 15, 2024, Staff mailed a Notice of Public Hearing (“Hearing Notice”). The Hearing Notice stated the Hearing would be held on March 12, 2024.

Pursuant to the Hearing Notice, I presided over the Hearing as the Hearings Officer on March 12, 2024, opening the Hearing at 6:00 p.m. The Hearing was held in person and via videoconference, with the Hearings Officer appearing remotely. At the beginning of the Hearing, I provided an overview of the quasi-judicial process and instructed participants to direct comments to the approval criteria and standards, and to raise any issues a participant wanted to preserve for appeal if necessary. I stated I had no *ex parte* contacts to disclose or bias to declare. I invited but received no objections to the County’s jurisdiction over the matter or to my participation as the Hearings Officer.

The Hearing concluded at 9:05 p.m. Prior to the conclusion of the Hearing, and at the request of the Applicant, I announced that the written record would remain open as follows: (1) any participant could submit additional materials until March 19, 2024 (“Open Record Period”); (2) any participant could submit rebuttal materials (evidence or argument) until March 26, 2024 (“Rebuttal Period”); and (3) the Applicant could submit a final legal argument, but no additional evidence, until March 29, 2024, at which time the record would close. Staff provided further instruction to participants, noting that all post-Hearing submittals needed to be received by the County by 4:00 p.m. on the applicable due date. No participant objected to the post-Hearing procedures.

C. Review Period

As noted above, the Applicant submitted additional materials in response to the Incomplete Letter on January 26, 2024, requesting that the Application be deemed complete at that time. Using January 26, 2024, as the date of completeness, the original deadline for a final County decision under ORS 215.427 – “the 150-day clock” – was June 24, 2024. As noted above, however, the Applicant requested a 17-day extension of the written record.

Pursuant to DCC 22.24.140(E), a continuance or record extension is subject to the 150-day clock, unless the Applicant requests or otherwise agrees to the extension. Here, the Applicant requested the extension. Under the Code, therefore, the additional 17 days the record was left open do not count toward the 150-day clock. Adding that time period to the original deadline, the new deadline for the County to make a final decision is July 11, 2024.

D. Staff Report

On March 5, 2024, Staff issued a report setting forth the applicable criteria and presenting evidence in the record at that time (“Staff Report”).

In the report’s conclusion, Staff requests the Hearings Officer to determine if the applicant has met the burden of proof necessary to approve a conditional use permit and site plan review for the Service Center. The Staff Report does not make a specific recommendation, but the Staff Report does make some specific findings and proposes the imposition of several conditions of approval if the Application is approved.¹

Because some of the information and analysis provided in the Staff Report is not refuted, portions of the findings below refer to the Staff Report and, in some cases, adopt sections of the Staff Report as my findings. In the event of a conflict between the findings in this Decision and the Staff Report, the findings in this Decision control.

* * *

¹ During the Hearing, Staff acknowledged that some the proposed conditions were erroneously included in the Staff Report. Because this Decision denies the application, I do not address all of Staff’s proposed conditions.

E. Record Issues

The Applicant’s final legal argument contains new evidence in the form of an “Exhibit A”, which includes a register page from the Bureau of Land Management and an Assignment of Right of Way. The instructions provided to participants at the end of the Hearing included a statement that the Applicant’s final legal argument should not include new evidence. A footnote in the Applicant’s submittal states that the Hearings Officer “may take judicial notice of the BLM Assignment,” but does not offer any citation to the Code or to state law to explain that statement. Because it is not clear from the Applicant’s submittal that there is a legal basis for taking “judicial notice” of this particular document, and because other participants were not afforded an ability to comment on that document, I am excluding it from the record and will not refer to that particular evidence in this Decision.

III. SUBSTANTIVE FINDINGS AND CONCLUSIONS

The Hearing Notice and Staff Report identified the Code sections listed in Section I above as the applicable standards and criteria governing the Application. Participants in this proceeding were invited to identify other criteria and to explain why those criteria must apply. The findings in this section address the relevant criteria listed in the Staff Report and, where appropriate, additional criteria identified by participants. The Applicant submitted an updated Site Plan as Exhibit A to its submittal dated March 19, 2024. The findings below refer to that document whenever they make a reference to the Site Plan.

A. DCC Chapter 18.16, Exclusive Farm Use Zones (EFU)

The EFU Zone is the base zone for the Subject Property. DCC 18.16.035 expressly states that destination resorts are allowed as a conditional use in the EFU Zone, subject to all applicable standards of the DR Zone, which are set forth in DCC Chapter 18.113. Pursuant to DCC 18.113.020(B), when the DR Zone provisions are applicable, “they shall supersede all other provisions of the underlying zone.” Because the Subject Property is within an approved destination resort and the DR Zone provisions apply, those provisions supersede the provisions in the EFU Zone. I therefore find it is not necessary to address any of the dimensional or other standards in the EFU Zone as part of the consideration of this Application.

B. DCC Chapter 18.113, Destination Resorts Zone – DR

1. DCC 18.113.020, Applicability

This Code provision applies DCC Chapter 18.113 to proposals relating to the development of destination resorts. The Subject Property is part of a larger area that has been approved as a destination resort as defined in DCC Title 18. The provisions of DCC Chapter 18.113 therefore apply, and, as noted above, these provisions supersede all other provisions in the underlying EFU Zone.

2. DCC 18.113.025, Application to Existing Resorts

This Code provision states that “[e]xpansion proposals of existing developments approved as destination resorts” must meet certain criteria. The Applicant does not propose an expansion of the Juniper Preserve destination resort and, instead, proposes a specific development within an area already contemplated for

future commercial development as part of Juniper Preserve’s approval. One participant opposed to the Application identified DCC 18.113.025 as being applicable. However, that participant did not explain why this Code provision applies to the Application, much less explain why this Code provision is not satisfied. Based on the foregoing, I find that DCC 18.113.025 is not applicable to the proposal in the Application.

3. DCC 18.113.030, Uses in Destination Resorts

This Code provision lists several uses that are allowed in a destination resort, provided that the use is intended to serve persons at the destination resort and is approved in a final master plan. Section (D) of this provision lists various commercial services and specialty shops designed for visitors to the resort, including psilocybin service centers licensed by the OHA, as set forth in DCC 18.113.030(D)(7)(a). Of note, that more specific Code provision provides an exception and states that “[f]or a lawfully established destination resort, the establishment of a psilocybin service center in any area approved for commercial services or specialty shops pursuant to an approved final master plan does not require modification of an approved conceptual master plan or final master plan.”

The Applicant states that the Service Center will be licensed by the OHA. Because the record does not contain evidence that OHA has already issued such a license, I find that this standard can be met only by a condition of approval requiring the Applicant to obtain the OHA license prior to initiation of the use.²

The FMP for Juniper Preserve establishes various “areas” of the approved destination resort. The Subject Property is in “Area 1.” The County’s decision approving the destination resort (File No. M-02-1) expressly states that Areas 1-4 may include commercial uses. One participant in this proceeding objected to the Application based, in part, on their assertion that the Service Center cannot be integrated into the “core” commercial facilities of the destination resort, which include a spa, pool, and restaurants. However, the Code does not require new commercial uses to be “integrated with” existing commercial uses and, instead, requires only that the Service Center be in an “area approved for commercial service or specialty shops.” I therefore agree with the conclusion in the Staff Report that the Service Center is in an area approved for commercial services, which is permitted without the need to modify Juniper Preserve’s CMP or FMP, pursuant to DCC 18.113.030(D)(7)(a).

4. DCC 18.113.040, Application Submission

This Code provision lists the application submittal requirements for a destination resort. Sections (A) and (B) of this Code provision relate to the initial conceptual master plan and the final master plan. Juniper Preserve has already received approval of its CMP and FMP, and these Code provisions are no longer applicable. Instead, specific development in the approved destination resort must comply with the FMP, which is addressed in more detail below. DCC 18.113.040(C) also states that a specific development must satisfy site plan criteria. The Application seeks approval of the Applicant’s proposed Site Plan, and the standards for site plan review are also addressed in more detail below. Based on the foregoing, I find that

² Although this Decision ultimately denies the Application, these findings identify various conditions of approval that would be necessary to meet specific criteria.

this criterion is met as long as the proposal is consistent with the FMP and as long as the site plan review criteria are satisfied.

Compliance with FMP

Pages 7-9 of the Staff Report addresses Juniper Preserve’s FMP and whether the Application is in compliance with the FMP (and its associated conditions of approval). I find that the Staff Report’s summary of compliance with the FMP is accurate, and I adopt that portion of the Staff Report as my findings, as modified by the following findings, which also address issues raised by other participants in this proceeding.

The County initially approved the FMP for the destination resort as part of File No. M-02-1 (“Resort Approval”). The Staff Report incorrectly quotes Condition G of the Resort Approval as addressing commercial uses, whereas Condition G actually addresses solar standards, and that condition required the applicant to “document compliance with the applicable solar access standards at the time of site plan review...”. DCC 18.113.060(G)(1) states that any standards in the underlying zone relating to solar access “shall not apply within a destination resort”. Thus, at the time of this Site Plan Review, there are no applicable solar standards to apply as part of Condition G, and the Application remains in compliance with that portion of the FMP.

Condition H of the Resort Approval states that the applicant must “limit commercial uses within the resort to those permitted in the DR Combining Zone and those listed in CMP Exhibit 15.” Some participants in this proceeding objected to the Application on the basis that a psilocybin service center is not listed as one of the contemplated uses in Exhibit 15 of the CMP. I find this objection does not warrant denial of the Application. It is not surprising that the CMP did not list a psilocybin service center as a commercial use, because such uses did not become lawful under Oregon law until the enactment of the Oregon Psilocybin Services Act. Even so, the FMP allows commercial uses listed in Exhibit 15 of the CMP and the uses allowed in the DR Zone. The Applicant does not rely on Exhibit 15 of the CMP and, instead, proposes the Service Center because it is an allowed commercial use in the DR Zone by virtue of DCC 18.113.030(D)(7), and allowed expressly without the need to modify the CMP or the FMP. Based on the foregoing, the Application is consistent with Condition H of the Resort Approval.

5. DCC 18.113.050, Requirements for Conditional Use Permit and Conceptual Master Plan Applications

The provisions in this Code section relate to the application for a conceptual master plan for a destination resort. The County has already issued a CMP and FMP for Juniper Preserve. Further, DCC 18.113.030(D)(7) allows the approval of a psilocybin service center without the need to modify the CMP or FMP.

One participant opposed to the Application identified DCC 18.113.050, and specifically subsections (B)(5)(a-d), (B)(6), (B)(12), and (B)(18), as being applicable. However, that participant did not explain why those Code provisions apply to the Application, much less explain why those Code provisions were not satisfied.

Because DCC 18.113.050 relates specifically to the application for a CMP, and because this Application does not require a new or modified CMP, I find that these provisions are not applicable.

6. DCC 18.113.060, Standards for Destination Resorts

DCC 18.113.060 establishes various minimum standards for the initial approval and phasing of a destination resort. The only portion of this Code section identified in the record as being applicable is DCC 18.113.060(G), and specifically subsections (G)(1) and (G)(2)(a)(1) of that section. Subsection (G)(1) simply states that most dimensional standards of the underlying zone do not apply and, instead, such standards are to be established as part of the CMP approval process. However, that provision does state that, at a minimum, a 100-foot setback must be maintained from all streams and rivers, and that rimrock setbacks must be as provided by other Code provisions. This criterion is satisfied because no streams, rivers, or rimrock are present within the vicinity of the proposal.

Subsection (G)(2)(a)(1) requires an exterior setback of 350 feet from commercial development to the exterior property lines. According to the portion of the Staff Report addressing this standard, which is not refuted by other participants, the Service Center is located more than 350 feet from all exterior property lines.

One participant opposed to the Application identified DCC 18.113.060(L)(2)(F) as being applicable. However, that participant did not explain why that Code provision – which requires a destination resort to maintain records documenting its rental program related to overnight lodging – applies to the proposal in the Application, much less explain why those Code provisions were not satisfied.

Based on the foregoing, I find that the applicable provisions of DCC 18.113.060 are satisfied.³

C. DCC Chapter 18.116, Supplementary Provisions

1. DCC 18.116.020, Clear Vision Areas

This Code provision requires a clear area (i.e. an absence of visual obstructions) at the intersection of two streets at a property corner. According to the Staff Report, there is a clear vision area for the property located at Nicklaus Drive, a private road that fronts the property. However, the Staff Report does not identify which intersection of two streets is applicable, and the record materials indicate only a single street in the area. Instead, the referenced “intersection” appears to be the area where the parking lot connects to Nicklaus Drive. In that area, the Applicant’s Site Plan shows a clear vision area, based on a 40-foot triangle as allowed by DCC 18.116.020(B), in which there will be only low landscaping. No participant objects to this design or otherwise asserts this Code provision is not satisfied. The Staff Report

³ Neither the Applicant, the Staff Report, nor any other participant has asserted that the remaining provisions of this DCC Chapter – DCC 18.113.070 through DCC 18.113.120 – are applicable to the proposal in the Application.

recommends, and the Applicant does not object to, a condition of approval requiring this clear vision area to be maintained.

2. DCC 18.116.030, Off street Parking and Loading

DCC 18.116.030 requires the Applicant to demonstrate how required off-street parking and loading will be accommodated. Sections (A) and (C) of that provision simply require compliance with this Code provision as part of the permitting process. These findings address the remaining subsections in detail, and they conclude that the Applicant has not met its burden with respect to DCC 18.116.030(F)(1) or DCC 18.116.030(F)(7).

DCC 18.116.030(B) addresses off-street loading requirements. That Code provision, however, requires off-street loading berths for commercial uses only where the proposed floor area is 5,000 square feet or more. The Service Center is proposed in a building that is 2,940 square feet. No loading berths are therefore required. Subsection (B)(5) of this Code provision does prohibit the use of required parking spaces for loading or unloading activities unless done at a time of day when parking is not required. The Staff Report recommends, and the Applicant does not object to, a condition of approval to ensure compliance with that prohibition.

DCC 18.116.030(D) addresses off-street parking requirements. The Applicant originally stated that it would rely in part on existing parking developed for Juniper Preserve to meet any parking requirements. The Applicant then submitted a transportation analysis indicating that 11 parking spaces would be required, but the Applicant still intended to provide some of those spaces by using existing parking. In subsequent submittals, however, the Applicant provided an update to its transportation analysis, prepared by a transportation engineer, confirming that 14 parking spaces are required. The Applicant’s Site Plan shows that all 14 parking spaces will be located on site in a parking area to the east of the primary structure and that the Applicant is not relying on off-site or existing parking to meet that requirement.

The County’s Senior Transportation Planner reviewed the Applicant’s transportation analysis, including its updates and the parking analysis, and agreed with its assumptions and methodologies. The Senior Transportation Planner also recommended that all 14 parking spaces be included as new stalls on the Subject Property.

One participant to this proceeding disagreed with the Applicant’s transportation analysis, specifically objecting to the “discount” to traffic counts based on the engineer’s assumption that there would be a high overlap of trips related to the Service Center and trips that are already generated as a result of guests traveling to and from Juniper Preserve. That objection was based on the fact that the transportation engineer based that discount on traffic counts at other destination resorts, which the objecting participant asserted are not relevant because they predate more recent, but unidentified, requirements of Statewide Planning Goal 8. That participant did not attempt to quantify an appropriate amount of trips that should be considered or otherwise identify the number of parking spaces that must be provided.

Having reviewed the expert analysis of the Applicant’s transportation engineer, the response of the County’s Senior Transportation Planner, and the opposing comments in the record, I find that the Applicant’s transportation analysis, as supplemented during the course of this proceeding, sufficiently

establishes the trip generation rates and required parking that must be considered as part of this Decision. Specifically, the Applicant is required to provide 14 new parking spaces. The Applicant’s Site Plan demonstrates how those off-street parking spaces will be provided on the Subject Property.

DCC 18.116.030(E) contains several general provisions relating to off-street parking. Subsections (E)(1) through (E)(3) of this Code provision relate to parking when there is more than one use on a parcel, when an applicant proposes to have joint parking facilities, or when an applicant proposes to rely on off-site parking. Because the Applicant proposes to have dedicated parking for the Service Center, and to locate that parking on the same site as the Service Center, these provisions are either not applicable or are satisfied. Subsection (E)(4) of this Code provision prohibits the use of parking facilities for storage or for truck parking. The Staff Report recommends, and the Applicant does not object to, a condition of approval to ensure compliance with that prohibition. Subsection (E)(5) of this Code provision prohibits locating parking spaces in a required front yard setback. The Applicant’s Site Plan reflects that its proposal is consistent with that prohibition.⁴ Finally, subsection (E)(6) of this Code provision is not applicable, as it relates to parking credits in certain areas where on-street parking may be provided.

DCC 18.116.030(F) contains several provisions relating to the development and maintenance of off-street parking areas. Of note, DCC 18.116.030(F)(1) requires that a non-residential parking area for more than five vehicles must be effectively screened by a fence or landscaping if adjacent to a residential use. The record identifies residential uses adjacent to the proposed parking area (across Nicklaus Drive). The Site Plan does not depict any fence or screening vegetation. To the contrary, the proposed landscaping on the south side of the parking lot is expressly identified as being low and non-obscuring in order to maintain a clear vision area. The Applicant states that this landscaping can achieve both purposes – i.e. that it can be non-obscuring for purpose of the clear vision area but still screen the parking lot from adjacent properties. In the absence of more detailed information or argument from the Applicant with respect to this criterion, I find that the Applicant has not met its burden of proof to demonstrate compliance with this Code provision.⁵

DCC 18.116.030(F)(2) requires lighting for off-street parking to be arranged in a manner that will prevent light from shining directly on adjoining residential properties “in a residential zone.” The record indicates that the Subject Property, and other properties in the Juniper Preserve development, are in the EFU Zone, which is not a residential zone. However, the FMP for the destination resort also indicates that one of the

⁴ See also the findings below relating to DCC 18.124.070(D) concluding that the Subject Property is not subject to any yard requirements.

⁵ The Staff Report suggests that this criterion could be satisfied by a condition of approval requiring the Applicant to either show landscaping or a sight-obscuring fence on a revised site plan. However, as noted above, the Applicant and the Staff Report appear to identify this area as needing to remain visually clear to meet the requirements of DCC 18.116.020. While it may be debatable that DCC 18.116.020 applies to the intersection of the parking lot and Nicklaus Drive, the materials in the record do not allow me to resolve these competing proposals in the Application – one that would keep the area clear of visual obstructions and one that would allow the same area to be visually screened. While it may be possible to resolve that discrepancy with a different Site Plan, that burden lies with the Applicant, and the Applicant has not met that burden based on the materials in the current record.

tax lots in Juniper Preserve is in the Multiple Use Agriculture (MUA-10) zone, which it describes as “rural residential.” The Application materials do not state whether the adjoining residential developments are in a residential zone or in a non-residential zone. However, the Site Plan shows the location of a new light for the parking lot, which appears to be distant enough from adjoining residential properties to prevent direct light from shining on those properties, regardless of what those properties are zoned. Even so, the record is not clear that no direct light on adjoining residential properties is possible, and I find that this criterion can be met only through a condition of approval requiring the Applicant to prevent light from projecting directly upon the adjoining residential properties in a residential zone.

DCC 18.116.030(F)(3) requires groups of more than two parking spaces to be designed in a manner that prevents the need to back vehicles into a street or right-of-way. The Site Plan shows all 14 parking stalls using a common parking area, without the need to back vehicles into a street or right-of-way. DCC 18.116.030(F)(4) requires the area of a parking lot used by vehicles to be paved and drained for all weather use. The Site Plan depicts the parking lot area as being paved and drained in compliance with this Code provision. The Staff Report recommends, and the Applicant does not object to, a condition of approval to ensure compliance with the paving and drainage requirements.

DCC 18.116.030(F)(5) governs access aisles. As proposed on the Site Plan, the access aisle for the parking lot is 39 feet wide. Other provisions in the Code indicate that the minimum width of a two-way access aisle should be 24 feet. No participant to this proceeding has asserted that the 39-foot access aisle, which exceeds the minimum provided in the Code, is not sufficient. I therefore find that this Code provision is satisfied based on the Applicant’s proposal.

DCC 18.116.030(F)(6) and (7) govern service drives, which the record indicates are any vehicle maneuvering surfaces that connect to a road or street but that are not immediately adjacent to a parking space. Based on the figures in the record, the portion of Nicklaus Drive between the parking lot and the southwest corner of the Subject Property qualifies as a service drive and, therefore, is subject to this Code provision. The Staff Report does not fully describe the extent of the service drive, but does conclude that a service drive exists in this area. Neither the Applicant nor any other participant disputes that conclusion.

Under DCC 18.116.030(F)(6), the number of service drives must be limited to the minimum number of drives needed to accommodate anticipated traffic. Further, any service drive must be designed to facilitate the flow of traffic and provide maximum safety for vehicles and pedestrians. The Site Plan indicates that Nicklaus Drive, which already exists, is 21 feet wide, sufficient to accommodate traffic. Further, the Applicant has proposed new paths to augment existing paths that will be used for ingress and egress by pedestrians. While some participants in this proceeding questioned the overall safety of the proposal, no participant asserted that this criterion had not been, or could not be, satisfied by the final Site Plan the Applicant proposed. Based on the foregoing, I find that the Applicant has met its burden to show compliance with DCC 18.116.030(F)(6).

I do not arrive at the same conclusion for DCC 18.116.030(F)(7). That Code provision requires service drives to have a minimum vision clearance area as specified in that provision. The Site Plan does not appear to identify that clearance area at all, much less provide any calculations to show that the vision

clearance is adequate and consistent with the language of the Code. I therefore find the Applicant has not met its burden of demonstrating compliance with this Code provision.⁶

DCC 18.116.030(F)(8) requires a parking lot to be designed to prevent a parked motor vehicle from extending over an adjacent property line or a street right of way. As proposed on the Site Plan, no parking stalls would be oriented toward an adjacent property line or street right of way. I therefore find that this Code provision is satisfied.

DCC 18.116.030(G) establishes the specific design of parking stalls. As proposed on the Site Plan, all parking stalls will be 9 feet wide and 20 feet in length, consistent with the requirements of this Code section.

Based on the foregoing, most of the requirements of DCC 18.116.030 are satisfied, or can be satisfied with the imposition of conditions of approval described above. However, because I have concluded that the Applicant has not met its burden with respect to DCC 18.116.030(F)(1) or DCC 18.116.030(F)(7), I find that DCC 18.116.030 is not fully satisfied.

3. DCC 18.116.031, Bicycle Parking

DCC 18.116.031 imposes certain bicycle parking requirements for any alteration of a use that requires a site plan review. These Code provisions therefore apply to the proposal in the Application.

DCC 18.116.031(A)(1) and (2), together, impose a minimum requirement of one bicycle parking space for every five required motor vehicle parking spaces for a commercial use like that proposed in the Application. Further, such bicycle parking must include at least two sheltered parking spaces. For purposes of this Application, which requires 14 motor vehicle parking spaces, the Applicant must have a minimum of three bicycle parking spaces, two of which are sheltered. The Applicant proposes five sheltered bicycle parking spaces, which exceeds the required minimum. I therefore find that this criterion is satisfied.

DCC 18.116.031(B) governs the design requirements of a bicycle parking facility. Under subsection (B)(1), sheltered bicycle parking can be provided by racks inside a building, which is what the Applicant proposes. Further, under subsection (B)(2), bicycle parking must be sufficiently separated from motor vehicle parking, and directional signs must be used where bicycle parking is not directly visible or obvious from a public right-of-way. While the Applicant’s proposal adequately separates bicycle and motor vehicle parking, the Applicant does not address the signage requirement. The Staff Report recommends, and the Applicant does not object to, a condition of approval to ensure compliance with that portion of the

⁶ It is possible that either the Applicant or Staff intended that the “driveway” from the parking lot to Nicklaus Drive is the service drive, and the Applicant has identified a vision clearance area there. However, Nicklaus Drive is not a private street, on the Subject Property, and appears to function as a service drive. This is consistent with the observation in the Staff Report that a service drive exists on the southwest side of the Subject Property. Without a better explanation from the Applicant regarding the absence or presence of service drives, these findings are based on the information provide in the Staff Report and on the Site Plan.

Code. Under subsection (B)(3), a bicycle parking space must be at least two feet by six feet in dimension, with a vertical clearance of seven feet. While the Site Plan depicts the lateral dimensions of the bicycle parking spaces, it does not address the vertical dimensions. I therefore find that this portion of the Code can be met only with the addition of a condition of approval requiring the Applicant to maintain the required vertical clearance. Finally, under subsection (B)(5), the Applicant must provide certain security measures, for example by providing racks to which a bike can be locked, and in a manner that accommodates cables and U-shaped locks. The Applicant does not describe the specifics of the proposed racks it will use. I therefore find that this criterion is satisfied only with the addition of a condition of approval that describes the required security measures of the proposed bicycle racks.⁷

4. DCC 18.116.380, Psilocybin Manufacturing, Service Centers, and Testing Laboratories

DCC 18.116.380 imposes additional requirements on psilocybin uses. Pursuant to DCC 18.116.380, these requirements apply to psilocybin service centers in the EFU Zone and, therefore, are applicable to the Application. Of the remaining provisions in this section, only those in DCC 18.116.380 apply to the Service Center, as the others address psilocybin manufacturing and processing, which are not part of the Applicant’s proposal.

DCC 18.116.380(D)(1) and (2) are not relevant to the Application, as they address co-location of a psilocybin crop and uses outside of the EFU Zone, respectively, neither of which the Applicant proposes.

DCC 18.116.380(D)(3) and (4) impose certain distance requirements, and the Service Center must be at least 1,000 feet from a school and comply with the setback requirements of the underlying zone. According to the Applicant, there is no school within 1,000 feet of the Service Center, and no evidence in the record indicates otherwise. As relevant to this Application, the underlying zone is the EFU Zone, but also the DR Zone. As noted above, the dimensional standards in the DR Zone supersede similar provisions in the EFU Zone, and those provisions are addressed in more detail in other findings.

DCC 18.116.380(D)(5) limits the hours of operation of a psilocybin service center to between 6:00 a.m. and 11:59 p.m. on the same day, unless a facilitator determines, in accordance with state administrative rules, that a session should go longer. The Applicant has proposed hours of operation consistent with this requirement, specifically limiting hours of operation between 8:00 a.m. and 5:00 p.m. during summer months and between 9:00 a.m. and 5:00 p.m. during winter months, subject to the same caveat that a facilitator acting in accordance with state law may need to extend a session.

Based on the foregoing, I find that the applicable provisions in DCC 18.116.380 are satisfied.

⁷ The Staff Report addresses DCC 18.116.035, which imposes bicycle commuter facility requirements on certain developments, but concludes that these requirements are not applicable to the proposal. I agree, and no other participant has asserted otherwise. I therefore find it is not necessary to address those requirements.

D. DCC Chapter 18.124, Site Plan Review

1. DCC 18.124.030, Approval Required.

DCC Chapter 18.124 sets forth the standards and criteria for a Site Plan Review. Pursuant to DCC 18.124.030, Site Plan Review is required for, among other uses, commercial uses that require parking facilities. As discussed in earlier findings, the Applicant’s proposed commercial use requires parking and, therefore, this Site Plan Review is required.

2. DCC 18.124.060, Approval Criteria.

DCC 18.124.060 sets forth the specific approval criteria that must be satisfied for a site plan to be approved. The findings below address the relevant sections of this Code provision and, in general, find that the criteria are satisfied. The findings do, however, conclude that DCC 18.124.060(G) is not satisfied.

DCC 18.124.060(A) requires that a proposed development “relate harmoniously” to both the natural environment and existing development. As the Staff Report notes, prior interpretations of the County’s Board conclude that this Code provision requires an applicant to demonstrate that the site plan arranges the development in a way that evaluates the natural environment and existing development in the area, and that by doing so, requires the Applicant to demonstrate that it has minimized visual impacts and reasonably preserved natural features including views and topographic features. In making that interpretation, the County’s Board expressly drew a distinction between the analysis of the site plan required by this Code provision and the consideration of the compatibility of the proposed use required by other Code sections. Only the Site Plan is relevant to this Code provision.

To demonstrate compliance with DCC 18.124.060(A), the Applicant relies in part on the fact that it will use an existing building for the Service Center and that no new buildings are proposed. The Application initially proposed accessory uses like a yurt, but those accessory features no longer appear on the Site Plan. The Applicant asserts that the existing building (which is being treated as a new building for purposes of this Application) uses colors that are similar to nearby buildings and the natural environment. The record contains photographs and other information showing the building. The Applicant also asserts that neither the existing building nor the new plantings adversely affect natural features. The Applicant notes that the Subject Property was chosen for the Service Center specifically because of its desire to find a place where patrons of the Service Center would be surrounded by the natural environment in a harmonious way.

Some participants in this proceeding addressed the manner in which the Service Center relates to the surrounding environment. Comments from those participants, however, largely questioned the Applicant’s desire or “need” to locate the Service Center in a natural environment, or disputed that the surrounding area actually provides a natural or serene environment (e.g. because of surrounding homes and events that might occur nearby). Other comments in the record object to the approval of the Service Center based on incompatibility with surrounding uses, but not based on an asserted lack of harmonious relation with the natural environment or existing development. The Staff Report states that the existing development and new vegetation are likely to maintain and enhance the natural features of the Subject Property. Having reviewed the arguments of the participants, the Staff Report, the Site Plan, and photos

of the building, I find that the Applicant has met its burden of demonstrating compliance with DCC 18.124.060(A).

DCC 18.124.060(B) requires the Applicant to demonstrate that the landscape and existing topography will be preserved to the greatest extent possible. This Code provision also requires preserved trees and shrubs to be protected. The Applicant proposes additions and augmentations to the existing landscaping, and the only changes to topography are for minor grading relating to stormwater management. This is possible because the Applicant will use an existing building, and the only changes in landscaping will result from new plantings, especially around the new parking area. Based on the foregoing, I find that this Code provision is satisfied. The Staff Report recommends a related condition of approval requiring the Applicant to protect all trees and shrubs not required to be removed by the development. The Applicant does not oppose such a condition.

DCC 18.124.060(C) requires the Applicant to demonstrate that the site plan provides a safe environment, while offering appropriate opportunities for privacy and transition from public to private spaces. The Applicant asserts that the site is designed to promote safety because it is bordered on three sides by open space uses (presumably reducing potential conflicts) and that it will have a perimeter fence and be “self-contained” with its own parking. The Site Plan also proposes walking paths to allow entry and exit by pedestrians away from areas used by motor vehicles. The fence and landscaping will help with the transition from private to public spaces. With respect to the psilocybin component of the Service Center, the Applicant notes that its patrons will be required to stay on site and have a transportation plan to and from the site, both of which are required by state law and help maintain the safety of the Service Center use.

Multiple participants provided comments relating to safety. Those comments largely address a concern that a patron of the Service Center will somehow impact the safety of neighbors once they leave the Service Center. Those comments, however, do not tie that concern to any specific part of the Site Plan. One comment that is potentially relevant, however, is a concern that the site could be unsafe if there are conflicts with other users of nearby foot and cart paths. The Applicant responds that the location of the Service Center is separated from the main lodge and the recreational Trailhead Center, and even farther from a playground area, where such conflicts might occur.

Having reviewed and weighed the arguments and evidence of the participants and the Site Plan, I find that DCC 18.124.060(C) is satisfied.

DCC 18.124.060(D) requires the Applicant to demonstrate that, when appropriate, the site plan shall provide for the special needs of disabled persons. The Application states that the Applicant will meet this criterion through the building permit process, which requires compliance with the Americans with Disabilities Act (“ADA”). The Staff Report similarly states that other considerations for disabled persons are determined as part of the issuance of building permits. No participant disputes that statement or otherwise asserts that the Site Plan does not comply with this Code provision. Based on the foregoing, I find that this Code provision is satisfied.

DCC 18.124.060(E) requires the Applicant to demonstrate that the location and number of points of access, the interior circulation patterns, the separation of pedestrians from vehicles, and the overall parking

arrangement is harmonious with buildings and structures. The Applicant relies on the location of the driveway and parking areas as evidence that this criterion is met, because any conflicts with bicycles, pedestrians, and motor vehicles should be minimal. The proposed parking and circulation are distant from neighboring buildings and structures, which supports the Applicant’s position. The size of the parking lot and availability of paths for pedestrians allow for adequate circulation patterns. Based on the foregoing, I find that this Code provision is satisfied.

DCC 18.124.060(F) requires the Applicant to demonstrate that surface drainage systems are designed to prevent adverse impacts on neighboring properties, streets, and water quality. The Applicant relies on a report from an engineer to demonstrate the adequacy of the drainage system, and no participant disputes the information in that report. Based on the foregoing, I find that this Code provision is satisfied.

DCC 18.124.060(G) requires the Applicant to demonstrate that areas and facilities for storage, machinery, and equipment, and loading and parking are buffered or screened to minimize adverse impacts on the site and on neighboring properties. The Applicant relies on existing screening and vegetation around the existing building to minimize the impact of all on site uses on neighboring properties, as well as the additional vegetation that will be planted. The Staff Report agrees that the barrier fence is adequate to screen the one piece of equipment proposed (an electrical panel). This screening criterion, however, also applies to parking areas. As explained in earlier findings, the Applicant has not met its burden of demonstrating the vegetation screening the parking area is adequate. Based on the foregoing, I find that this Code provision is not satisfied unless and until the Applicant also demonstrates compliance with DCC 18.116.030(F).

DCC 18.124.060(H) requires the Applicant to demonstrate that above ground utility installations will be located to minimize visual impacts. The only above-ground utility installation proposed is an electric panel. As noted above, that panel, which already exists, is screened with existing vegetation and will be further screened by a barrier fence. Based on the foregoing, I find that this Code provision is satisfied.

DCC 18.124.060(I) does not impose any additional criteria and, instead, incorporates any specific criteria imposed by the underlying zone, such as setbacks. Those criteria are addressed in other findings in this Decision.

DCC 18.124.060(J) requires exterior lighting to be shielded so that it does not directly project off site. The Applicant states that any exterior lighting will be fully shielded to prevent glare or light leakage and that specific fixtures will be “dark sky” compliant. Staff recommends, and the Applicant does not object to, a condition of approval requiring the Applicant to implement that proposal. Based on the foregoing, I find that this Code provision is satisfied with that condition.

DCC 18.124.060(K) requires the Applicant to show adequate transportation access to the site. If necessary, the Applicant must implement mitigation measures for transportation impacts. The Applicant asserts that the existing transportation system provides adequate access to the site, and notes that access is from Pronghorn Club Drive to Nicklaus Drive, both of which are paved to the standard required in the FMP. The Applicant also submitted a transportation study, prepared by a transportation engineer, documenting the adequacy of transportation access. The County’s Senior Transportation Planner reviewed and provided comments on the transportation analysis. Neither the Applicant’s engineer nor the County’s Senior

Transportation Planner identified a need for specific improvements to the transportation system. As noted above, one participant did object to the methodology in the transportation analysis, but did not offer an alternative methodology, and that participant did not suggest that any mitigation measures are required. Based on the foregoing, I find that this Code provision is satisfied.⁸

3. DCC 18.124.070, Required Minimum Standards

DCC 18.124.070 contains additional minimum standards applicable in various scenarios, many of which are not relevant to the Application. I adopt the findings in the Staff Report as my findings relating to DCC 18.124.070, except for the specific subsections of this Code provision discussed in this section, which replace the findings relating to those same subsections in the Staff Report.

DCC 18.124.070(B)(1)(a) requires that commercial uses subject to site plan approval must have a minimum of 15 percent of the lot area landscaped. The record indicates the Subject Property is approximately 8.4 acres in size. The Site Plan provides the dimensions of the various new landscaping and also states that the total landscape coverage is 29% of the lot, in excess of the minimum in the Code. No participant addresses the Applicant’s calculation. Based on the foregoing, I find that DCC 18.124.070(B)(1)(a) is satisfied.

DCC 18.124.070(B)(2) imposes landscaping requirements specific to parking areas. Under Subsection (B)(2)(a), the parking area must have defined landscaping totaling no less than 25 square feet per parking space. For this Application, the Applicant is therefore required to have at least 350 square feet of defined landscaping in the parking lot area. The Site Plan identifies more than 1,000 square feet of defined landscaping around the parking lot area. Subsections (B)(2)(b) through (B)(2)(e) require the parking area to be separated from a lot line adjacent to a roadway by a landscaped strip at least 10 feet in width (with appropriately spaced trees, low shrubs, or vegetative ground cover), and from any other lot line by a landscaped strip at least 5 feet in width, with all landscaping being at least 5 feet in width and in defined, uniformly distributed areas. The Site Plan shows that the parking area has 10-foot wide landscaped beds on the side adjacent to Nicklaus Drive (with low shrubs), and 5-foot wide landscaped strips on all other sides. The landscaping is in defined areas and uniformly distributed. No participant has asserted that these landscape configurations are inadequate. Based on the foregoing, I find that DCC 18.124.070(B)(2) is satisfied.

DCC 18.124.070(C)(2)(c) imposes certain requirements relating to pedestrian access and circulation. Under that Code provision, walkways must be paved and at least 5 feet wide. The Applicant’s proposed paved walkways are at least 10 feet wide. This Code provision also requires walkways bordering parking spaces to be at least 7 feet wide, with some exceptions. The Site Plan does not include any walkways that border a parking space. Finally, this Code provision requires walkways to be as direct as possible. The

⁸ Multiple other participants provided comments arguing that the transportation system is not adequate based on an assertion that the Applicant is not authorized to use the portion of the transportation system that crosses BLM property to the extent that uses involves the transport of psilocybin, which is a federally controlled substance. Those arguments are addressed below in separate findings.

walkways on the Site Plan do include some curves, but those curves match grades that accommodate drainage swales. Based on the foregoing, I find that DCC 18.124.070(C)(2)(c) is satisfied.

DCC 18.124.070(D) imposes additional site plan standards on commercial development. The primary requirement in that Code section is subsection (D)(1), which requires that a commercial development be sited at the front yard setback line where the lot has one frontage. Subsection (D)(3) provides a process for increasing the front yard setback. The Applicant initially asserted that this Code provision does not apply because the building is an existing building. The Applicant later asserted that this Code provision does not apply because no setback requirements of the underlying zone are applicable where the DR Zone applies. The Staff Report, however, asserted that the building is being treated as a new building (because it was originally approved to be a temporary structure), that the setback requirement applies, and that the building is not at the front yard setback. The Applicant responded by requesting an increase in the front yard setback. I find that one of the Applicant’s initial assertions is the correct one. Under DCC 18.113.060(G), yard requirements in the underlying zone do not apply to structures in the DR Zone. Thus, the front yard requirement of DCC 18.16.070(A) does not apply and, unless a front yard setback is identified in the CMP or FMP, there are no front yard setbacks to consider for purposes of applying DCC 18.124.070(D)(1). Neither the CMP nor the FMP appears to establish a specific front yard setback, and no participant has identified the source of a specific front yard setback. Based on the foregoing, I find that DCC 18.124.070(D)(1) is not applicable to the specific proposal in this Application because there is no front yard setback to consider.

E. DCC Chapter 18.128, Conditional Use

1. DCC 18.128.010, Operation

DCC 18.128.010 confirms the applicability of the County’s conditional use criteria, noting that a conditional use listed in DCC Title 18 shall be permitted, altered, or denied in accordance with the standards and procedures of DCC Title 18, DCC Title 22, the Uniform Development Procedures Ordinance, and the County’s Comprehensive Plan (“Plan”). Pursuant to 18.113.030(D)(7), a psilocybin service center is allowed in the DR Zone subject to the conditional use criteria in DCC 18.128.015. The Application is therefore being reviewed in accordance with the procedures of DCC Title 18, DCC Title 22, the Uniform Development Procedures Ordinance, and the Plan.

Although no participant identified other specific procedures that apply to the consideration of the Service Center as a conditional use, or disputed the applicability of the procedures in DCC Titles 18 and 22 identified in the Staff Report, one participant did provide comments indicating that the County should invoke its Code enforcement provisions. The basis of that comment relates to the existing building on the Subject Property, which was originally permitted as a temporary structure that was to be removed after 18 months. I find that it is not necessary to address the Code’s enforcement process as part of my consideration of the Application. As noted in the Staff Report, the existing building can be permitted as a new building as part of this process. That is, the Application is being reviewed as if the building did not exist and, as a result, is being considered under current regulations. If the Application is ultimately approved, the building will conform to the Code and any current Code violation is essentially cured. If the Application is not approved, the County still has the ability to initiate Code enforcement proceedings.

Either way, resolution of any alleged Code violation is not necessary as part of considering the proposal in the Application.

2. DCC 18.128.015, General Standards Governing Conditional Uses

This Code provision sets forth specific standards for uses other than single family dwellings that apply in addition to the standards of the underlying zone. The applicable provisions of this Code section are set forth below in *italics*.

- 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;*
 - 2. *Adequacy of transportation access to the site; and*
 - 3. *The natural and physical features of the site, including, but not limited to, general topography, natural hazards and natural resource values.*

This Code provision requires an analysis of the suitability of the site for the proposed use based on the listed factors. The Applicant asserts that the site is suitable for the Service Center. In support of that assertion, the Applicant notes that the site allows it to implement the safety and other operating measures required by OHA for a psilocybin service center, and that the physical features of the site already accommodate the type of building it wishes to permit. For example, the site can accommodate a perimeter fence that helps control access, a building where facilitated sessions can occur, and landscaping that employs materials, foliage, and colors that blend with the surrounding and contribute to a natural setting the Applicant wishes to market to its patrons.

With the exception of the adequacy of transportation access to the site, which is addressed in more detailed findings below, no participant asserts that the site itself is not suitable for the proposed use, or otherwise specifically asserts that this Code provision is not satisfied. One participant, however, did imply that the site is not as suitable as the Applicant states because of the potential for loud noises from residents and nearby events that are likely to occur. The Applicant, however, does not assert that the use requires a complete absence of noise and, rather, juxtaposes the level of activity at the resort (with some noise) relative to what is experienced in an urban area (with more noise). Having weighed the arguments of the participants, and based on the foregoing, I find that the site is suitable for the proposed use based on factors relating to the site, design, operating characteristics, and natural and physical features. However, as discussed below, I do not find that the site is suitable based on the adequacy of transportation access and, therefore, DCC 18.128.015(A) is not satisfied.

- 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).*

This Code provision is similar to DCC 18.128.015(A) but focuses on the proposed use’s compatibility with surrounding properties rather than on the suitability of the site itself.

The Applicant provides an analysis of this Code provision largely by focusing on the operational characteristics of the site, which is subject to the regulatory controls applicable to the Service Center and the patrons of the Service Center, by virtue of OHA regulations. The Applicant’s analysis essentially concludes that there are no offsite impacts from its proposed use because “psilocybin clients cannot simply drop into a service center, consume psilocybin, and then leave the licensed premises, while under the effects of psilocybin.” Instead, a facilitated session at the Service Center will require a patron to first meet with a licensed facilitator to determine if a psilocybin treatment will be administered. If a session does occur, OHA regulations require the patron to remain on site until the facilitator determines the patron is no longer under the effects of psilocybin. Because the psilocybin component of the use is required to be contained, and the site is designed to accommodate that requirement, the Applicant asserts the site design is compatible with surrounding uses.

The vast majority of comments in the record opposing the Service Center address general concerns about the use of psilocybin, or even the efficacy of psilocybin. I agree with the Applicant that these comments are largely irrelevant to the approval criteria unless, for example, they identify something unique about the psilocybin use that relates to the design of the site. Having weighed the arguments and information provided by all participants, I find that the proposed use is compatible with surrounding properties when considering: (1) the site itself, which is in a commercially-designated area; (2) the operating characteristics described above; (3) transportation access (based on the findings below); and (4) the natural and physical features of the site, which will largely remain unchanged except for the addition of landscaping, and which will enhance compatibility with surrounding uses. DCC 18.128.015(B) is therefore satisfied.

Adequacy of Transportation Access to the Site

One area where the opposing comments do directly tie psilocybin to the approval criteria relates to the adequacy of transportation access to the site. This factor is relevant to both DCC 18.128.015(A) and (B). The former requires consideration of this factor for assessing the suitability of the site to accommodate the use, and the latter requires consideration of this factor for assessing compatibility of the use with surrounding uses.

Multiple participants commented that access to the site is not adequate because it relies, in part, on the use of a road over BLM property. Specifically, access to Juniper Preserve occurs over the BLM property, and BLM has issued a “Right of Way Grant” for that purpose (“BLM ROW”). The Applicant notes, as supported by its transportation analysis, that the BLM ROW is sufficient based on its size, structure, and design, and that no improvements to the BLM ROW are required. The opposing comments do not dispute the physical adequacy of the BLM ROW and, instead, assert that the Applicant is prohibited from using the BLM ROW because it intends to transport psilocybin over the BLM ROW, which those comments claim would be a violation of federal law and in violation of BLM’s approval for use of the BLM ROW.

These Code provisions expressly require consideration of the “adequacy of transportation access to the site.” The record does not indicate that the County’s Board of Commissioners has interpreted this Code provision with respect to its geographic scope, or with respect to the interplay of each of the factors in DCC 18.128.015(A)(1) through (3). That is, this Code provision could be interpreted narrowly to apply only to the access to the site from other areas of Juniper Preserve, or it could be interpreted more broadly to apply to any access to the site, the use of which could affect the site or surrounding properties. Similarly,

the Code could be interpreted such that suitability based on one of the factors in DCC 18.128.015(A)(1) through (3) is sufficient, or it could be interpreted such that suitability must be based on all three factors. In the absence of such interpretations, and because the Applicant and other participants appear to agree that the Applicant must rely on the BLM ROW in some manner (indeed, it was included in the Applicant's transportation analysis), I conclude that the BLM ROW is part of the access to the site that must be considered. Because all parties address the adequacy of transportation and assume it is necessary to consider, I also conclude it is necessary to consider transportation access even though I have already found the site is suitable based on other factors in DCC 18.128.015(A)(1) through (3).

With one exception, the opposing comments in the record do not claim that the Applicant's use of the BLM ROW would have any impact on other uses. Instead, most comments are better characterized as addressing DCC 18.128.015(A) and whether the site itself is suitable if the BLM ROW cannot be used for the Applicant's intended purpose. The exception is a comment in the record that if the Applicant violates the terms of the BLM ROW, BLM could revoke the BLM ROW altogether, thereby preventing anyone from accessing Juniper Preserve, which would therefore be incompatible with all other uses at this destination resort.

Turning to DCC 18.128.015(A) first, it is undisputed that some of the transportation access to the site the Applicant contemplates is acceptable under the BLM ROW approval. For example, there is no dispute in the record that guests of the resort can use the BLM ROW to access the resort and, therefore, get to the Service Center. The question therefore arises whether a particular component of transportation access the Applicant contemplates (transporting psilocybin across the BLM ROW) renders the entirety of the transportation access to the site inadequate if the BLM ROW cannot be used for that purpose. I find, based on this record, that it does.

The Applicant argues that the opposing comments require the Hearings Officer to resolve a private dispute under the BLM ROW. Specifically, the Applicant asserts that the BLM may or may not enforce the precise terms of the BLM ROW; essentially that it is speculative to determine now whether the Applicant will or will not be allowed to transport psilocybin across the BLM ROW. The Applicant characterizes this issue as a dispute between the various parties to the BLM ROW instrument, and argues that such disputes are not appropriate for resolution as part of the land use process.

I agree with the Applicant that a land use approval is typically not the correct venue for resolving the rights of parties to a specific agreement. But such an exercise is not necessary here. Instead, the Hearings Officer must look to the evidence in the record and make findings based on the preponderance of the evidence in the record to determine if a criterion is satisfied. The evidence in this record is that: (1) use of the BLM ROW requires compliance with federal law; (2) federal law prohibits transportation of psilocybin across federal lands; and (3) the Applicant intends to use transportation access to the site across federal land to transport psilocybin. The Applicant acknowledges that its proposed use is not allowed by the express terms of the BLM ROW. Whether or not BLM ultimately enforces the requirements of the BLM ROW is therefore not relevant; on the face of the documents alone, the Applicant has not established that it can do what it proposes to do. I do not agree with the Applicant's assessment that denial of the Application on this basis amounts to enforcing federal law or somehow jeopardizes psilocybin use across the state. My analysis looks only to the evidence in the record. A different record may result in a different

conclusion, for example where transportation access does not rely solely on crossing federal lands, or where the transportation of psilocybin is not required because it is grown on site.

Based on the foregoing, I find that the Applicant has not met its burden of demonstrating that the site is suitable for the proposed use pursuant to the transportation access factor of DCC 18.128.015(A)(2). I conclude the opposite, however, with respect to DCC 18.128.015(B). That Code provision more directly addresses the extent to which the proposed use could impact surrounding uses in terms of transportation access. I have already concluded that the Applicant’s transportation analysis adequately demonstrates that the transportation system is adequate and that no physical upgrades to the system are required for its use, meaning that surrounding uses will also be able to rely on that same transportation system without being impacted by the Service Center. The sole risk to surrounding users identified in the comments is the potential that BLM could somehow revoke the BLM ROW approval if the Applicant’s use is unlawful. Here, the Applicant’s argument is relevant, and this opposing comment invokes a potential dispute between BLM and those granted access to use the BLM ROW. Whether BLM chooses to pursue such a remedy under the BLM ROW, and the rights other users may be able to retain or lose in that situation, is speculative. Further, the Applicant has also proposed a condition of approval that would require it to suspend operations if BLM determines the Applicant’s use violates the BLM ROW. Such a condition would reduce the potential for conflicts with other uses, thereby rendering the Applicant’s use compatible.

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

As explained in prior findings, I find it appropriate to identify several conditions of approval that could be imposed if the Applicant’s request were granted. I identify those solely to determine whether or how the Applicant can meet a criterion. Because this Decision ultimately denies the Applicant’s request and there is not approval of the proposal, however, the conditions of approval are not actually being imposed.

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IV. CONCLUSION

Based on the foregoing findings, I find the Application does not meet the applicable standards for a Conditional Use Permit and Site Plan Review. Specifically, I find that the Applicant has not met its burden with respect to the following Code provisions:

- DCC 18.116.030(F)(1), relating to the screening of the parking lot
- DCC 18.116.030(F)(7), relating to clearance areas for service drives
- DCC 18.124.060(G), relating to the screening of the parking lot
- DCC 18.128.015(A)(2), relating to the suitability of the site based on the adequacy of transportation access

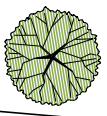
The Application is therefore DENIED.

Dated this 26th day of April 2024.



Tommy A. Brooks
Deschutes County Hearings Officer

PRONGHORN GOLF LLC.



PLANT IDENTIFICATION KEY

- PT - POPULUS TREMILOIDES - QUAKING ASPEN
- PP - PINUS PARVO - MUGO PINE
- PA - PINUS PONDEROSA - PONDEROSA PINE
- FE - PICEA ENGELMANNI - ENGELMANN'S SPRUCE
- FB - PINUS ARISTATA - BRISTLECONE PINE
- FC - PINUS CONTORTA - LODGEPOLE PINE
- MPG - PICEA MUNGUS GLAUCA - COLORADO BLUE SPRUCE
- FV - FRAXUS VIRGINIANA - CHUCKY CHERRY

NOTES:
 APPLICANT REQUESTS TO INCREASE FRONT YARD SETBACK
 ALL LANDSCAPE EXISTING AND PROPOSED TO BE IRRIGATED AND MAINTAINED
 29% LANDSCAPE COVERAGE BASED ON 8.4 ACRES
 NEWLY INSTALLED WALKING PATHS TO BE 10' WIDE

- INTERIOR BIKE PARKING X 5
- STREET LIGHTS (EXSTG.)
- PATH LIGHTS (EXSTG.)
- CAMERAS (PROPOSED)
- ALARM / PANIC BUTTONS (PROPOSED)
- PROPOSED LIGHT
- PROPOSED ELECTRICAL VEHICLE CHARGER

SP
 PRONGHORN
 LANDSCAPE

Juniper Preserve
 Wellness Center

PRONGHORN GOLF LLC. 10/02/2024
 JUNIPER PRESERVE WELLNESS CENTER
 LANDSCAPE PLAN
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