



BOARD OF COMMISSIONERS

BOARD OF COUNTY COMMISSIONERS MEETING

1:00 PM, MONDAY, APRIL 3, 2023

Allen Room - Deschutes Services Building - 1300 NW Wall St - Bend

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

AGENDA

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

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

Citizen Input: The public may comment on any topic that is not on the current agenda. *Comments and testimony regarding public hearings are allowed at the time of the public hearing.* 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 from a computer, copy and paste this link: bit.ly/3h3oqdD.
- To join by phone, call 253-215-8782 and enter webinar ID # 899 4635 9970 followed by the passcode 013510.
- If joining by a browser, use the raise hand icon to indicate you would like to provide public comment, if and when allowed. If using a phone, press *6 to indicate you would like to speak and *9 to unmute yourself when you are called on.



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

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.*

AGENDA ITEMS

- [1.](#) **1:05 PM** Work Session: Preparation for Public Hearing for a Plan Amendment and Zone Change to approximately 93 acres located east of Bend between Neff Road and Highway 20
- [2.](#) **1:20 PM** Work Session on 4 Peaks Music Festival 2024 Outdoor Mass Gathering Permit
- [3.](#) **1:45 PM** Use of Opioid Settlement Funds

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.

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

ADJOURN



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: April 3, 2023

SUBJECT: Work Session: Preparation for Public Hearing for a Plan Amendment and Zone Change (file nos. 247-22-000313-ZC, 314-PA).

RECOMMENDED MOTION:

None at this time; work session in preparation for a public hearing.

BACKGROUND AND POLICY IMPLICATIONS:

Staff will provide background for the Board of Commissioners to consider a request for a Plan Amendment and Zone Change (file nos. 247-22-000313-ZC, 314-PA) for approximately 93 acres located east of Bend between Neff Road and Highway 20. The public hearing is scheduled for Wednesday, April 5, 2023.

BUDGET IMPACTS:

None.

ATTENDANCE:

Nathaniel Miller, Associate Planner
Jacob Ripper, Principal Planner



MEMORANDUM

TO: Board of County Commissioners

FROM: Nathaniel Miller, AICP, Associate Planner

DATE: April 3, 2023

SUBJECT: Work Session for a Public Hearing - Plan Amendment and Zone Change (File nos. 247-22-000313-ZC, 314-PA).

The Board of County Commissioners (“Board”) will conduct a work session on April 3, 2023, in preparation for the Public Hearing on April 5, 2023, to consider a request for a Comprehensive Plan Amendment and Zone Change (File nos. 247-22-000313-ZC, 314-PA). The subject properties are located east of, and adjacent to, the City of Bend Urban Growth Boundary. Tax Lot 1200 and Tax Lot 1201 contain a combined area of approximately 93 acres. The properties are addressed as 62385 Hamby Road and 21480 Highway 20. A location map is included as **Attachment A**. Staff requests Board feedback regarding issue areas to be addressed in the hearing from the applicant or planning staff. Furthermore, staff would like direction on whether the Board would like to set oral testimony time limits for the applicant and/or members of the public providing testimony.

I. BACKGROUND

The applicant and property owners, Te Amo Despacio LLC and CTH Investments LLC, requests approval of a Comprehensive Plan Map Amendment to change the designation of the subject property from Agricultural (AG) to Rural Residential Exception Area (RREA). 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 Multiple Use Agricultural (MUA10). The applicant asks that Deschutes County change the zoning and the plan designation because the subject property does not qualify as “agricultural land” under Oregon Revised Statutes (ORS) or Oregon Administrative Rules (OAR) definitions. Further, the Applicant argues that no exception to Statewide Planning Goal 3, Agricultural Land, is required because the subject property is not agricultural land.

The applicant submitted a soil study, which was prepared by a certified soils scientist and soil classifier. 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 soil study determined the subject property contains approximately 71 percent Land

Capability Class 7 and 8 nonirrigated soils, which was primarily observed as shallow Gosney soils, shallow Bakeoven soils, and rock outcroppings. According to the soil study, the subject property is comprised of soils that do not qualify as Agricultural Land¹.

II. PUBLIC COMMENTS

Three written comments were submitted in advance of the Hearing Officer hearing on November 15, 2022. One comment questioned the approvability of the application, one was in opposition, and the other was in support of the proposal. No members of the public testified in opposition to, or in support of, the applications during the hearing.

The comment questioning the approvability of the application stated concerns of the Burden of Proof successfully meeting the applicable criteria. The comment did not include specific code references and no further comment was received.

III. HEARINGS OFFICER RECOMMENDATION

The Deschutes County Hearings Officer held a public hearing on November 15, 2022. The applicant's legal representation provided testimony in the hearing.

On December 15, 2022, the Hearings Officer issued a recommendation of approval for the proposed Plan Amendment and Zone Change.

IV. BOARD CONSIDERATION

As the property includes lands designated for agricultural use, Deschutes County Code 22.28.030(C) requires the application to be heard *de novo* before the Board, regardless of the determination of the Hearings Officer. The record is available for inspection at the following link: <https://www.deschutes.org/cd/page/247-22-000313-zc-247-22-000314-pa-te-amo-despacio-llc-cth-investments-llc-properties>

V. NEXT STEPS

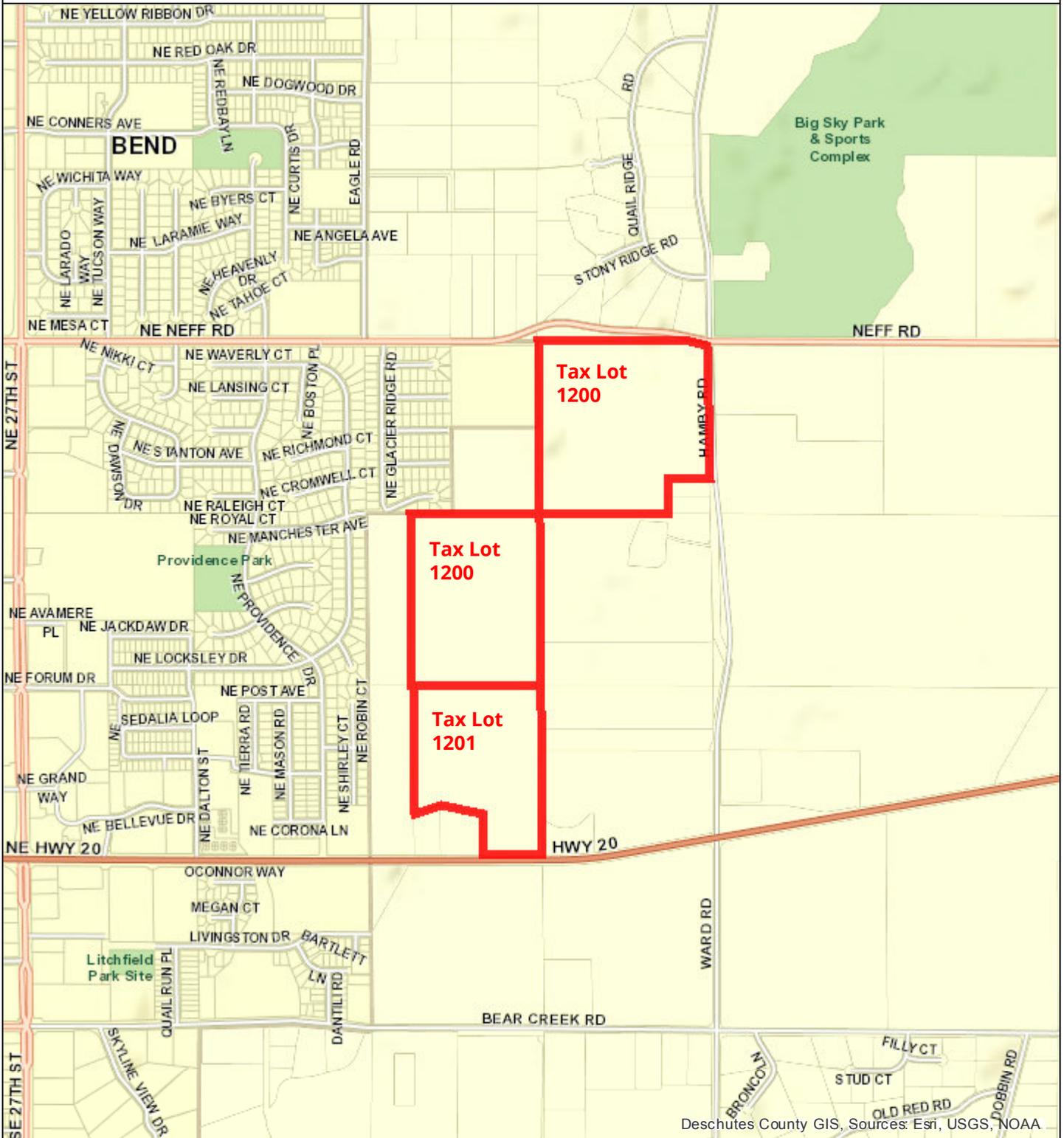
Based on the feedback received from the Board at the work session, Staff will prepare for the upcoming public hearing.

- Attachment A:** Location Map
- Attachment B:** Surrounding Area Zoning Map
- Attachment C:** City of Bend Limits Map
- Attachment D:** Hearings Officer Recommendation

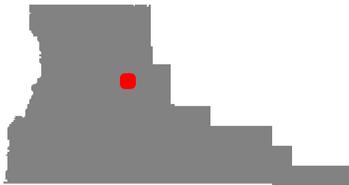
¹ The phrase 'agricultural soils' is defined in OAR 660-033-0020.

File: 247-22-000313-ZC, 247-22-000314-PA

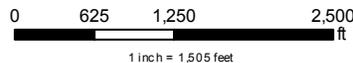
62385 Hamby Road, 21480 HWY 20



Deschutes County GIS, Sources: Esri, USGS, NOAA

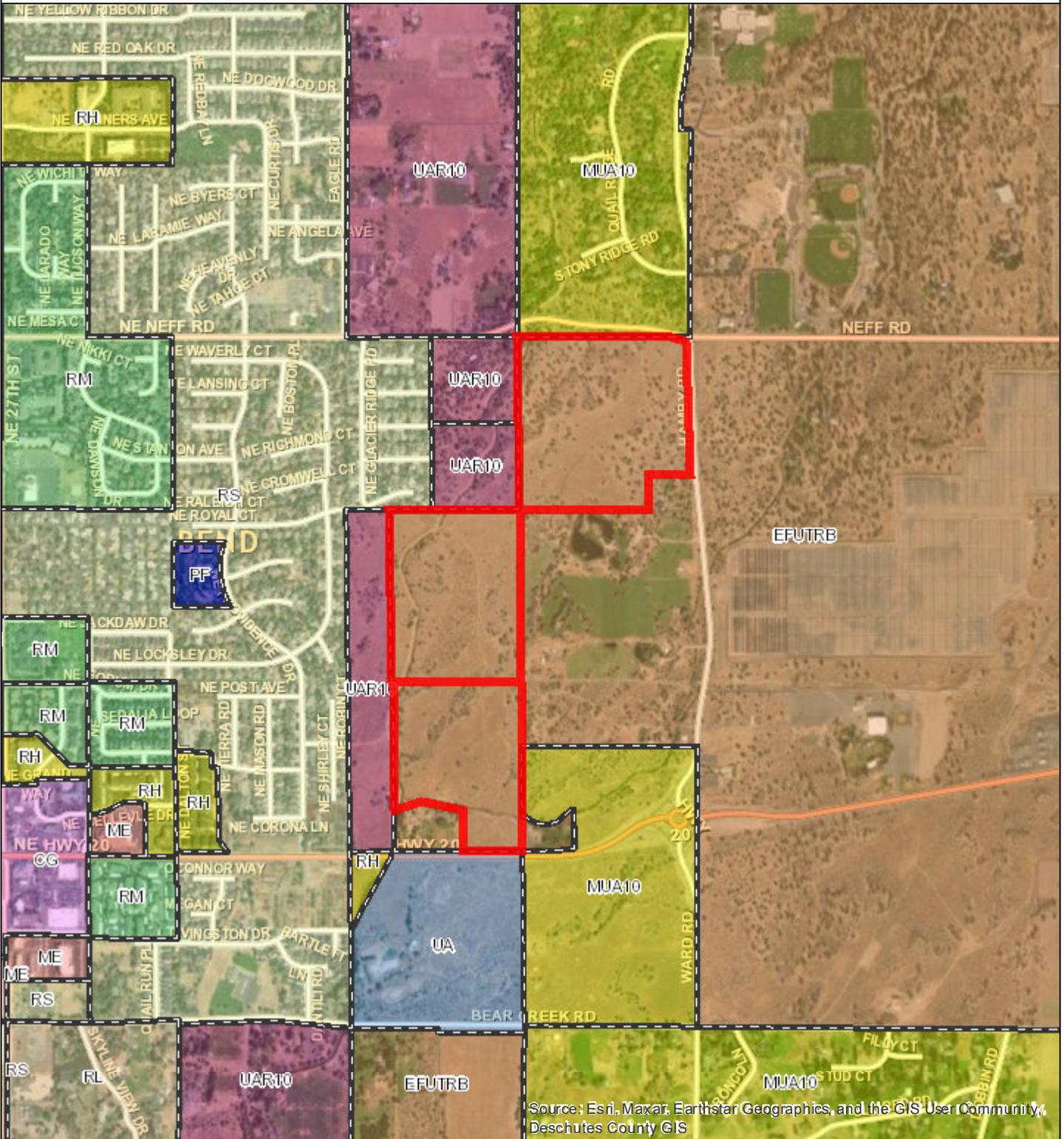


Date: 4/25/2022

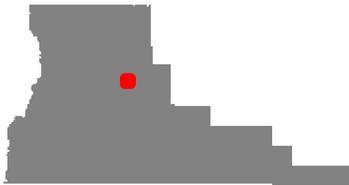


247-22-000313-ZC, 22-314-PA

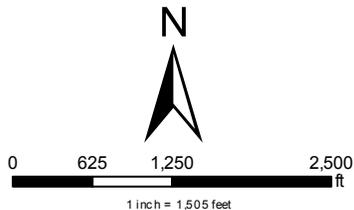
Surrounding Zoning



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

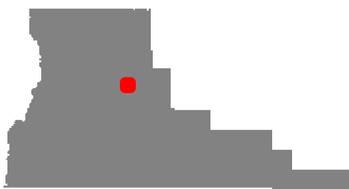
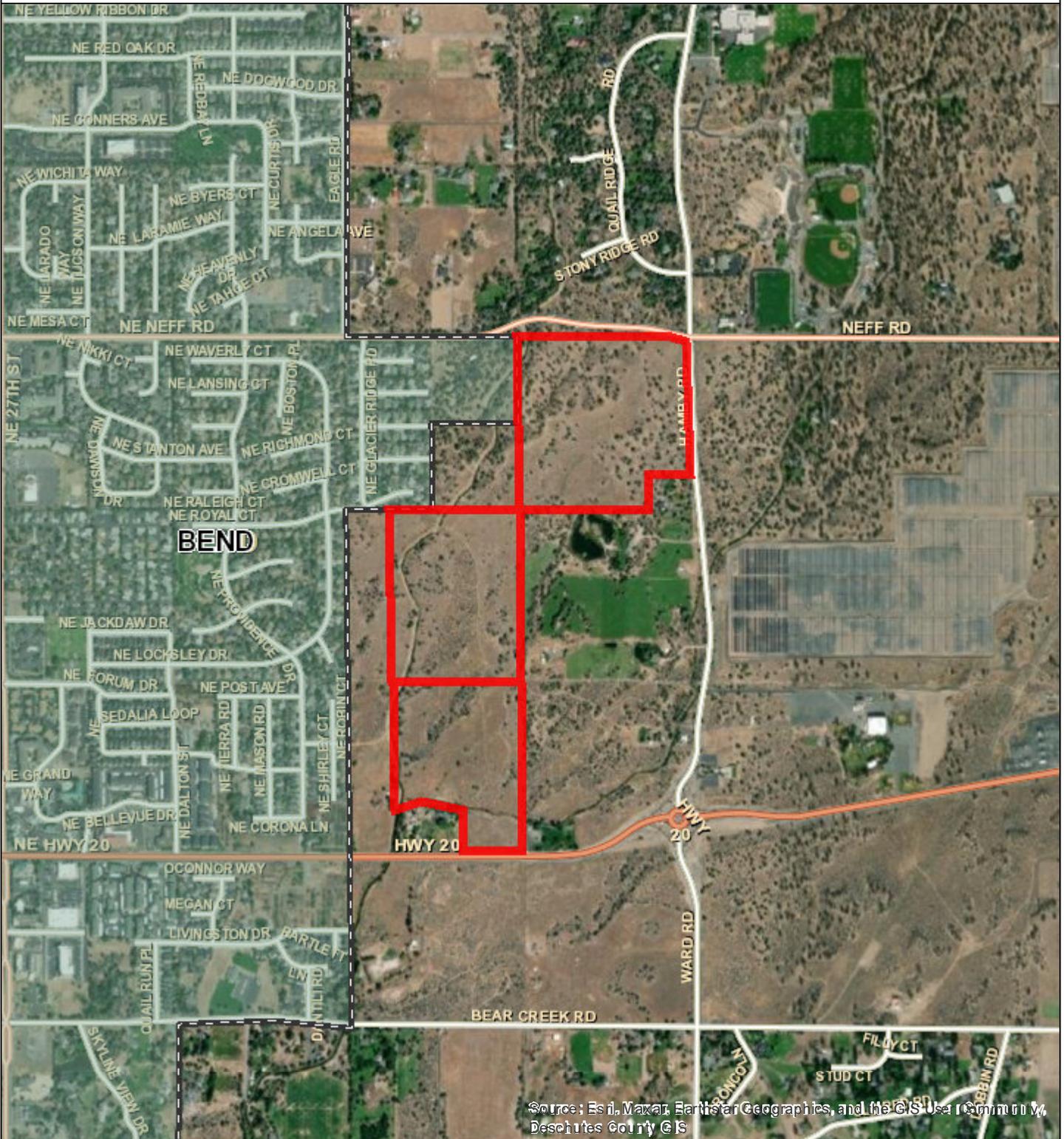


Date: 3/21/2023

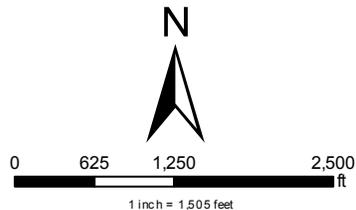


247-22-000313-ZC, 22-314-PA

City of Bend Limits



Date: 3/21/2023



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

FILE NUMBERS: 247-22-000313-ZC, 247-22-000314-PA

HEARING DATE: November 15, 2022, 6:00 p.m.

HEARING LOCATION: Videoconference and
Barnes & Sawyer Rooms
Deschutes Services Center
1300 NW Wall Street
Bend, OR 97708

APPLICANTS/OWNERS: Te Amo Despacio, LLC and CTH Investments, LLC

SUBJECT PROPERTIES: Map and Taxlot: 1712350001200
Account: 119020
Situs Address: 62385 HAMBY RD, BEND, OR 97701

Map and Taxlot: 1712350001201
Account: 119038
Situs Address: 21480 HWY 20, BEND, OR 97701

REQUEST: Applicants request approval of a Comprehensive Plan Amendment to change the designation of the Subject Properties from Agricultural (AG) to Rural Residential Exception Area (RREA). Applicants also requests a corresponding Zone Change to rezone the Subject Properties from Exclusive Farm Use – Tumalo/ Redmond/ Bend subzone (EFU-TRB) to Multiple Use Agricultural (MUA-10).

HEARINGS OFFICER: Tommy A. Brooks

SUMMARY OF RECOMMENDATION: The Hearings Officer finds that the Applicants have met their burden of proof with respect to the requested Comprehensive Plan Amendment and Zone Change and, therefore, recommends APPROVAL of the Application based on the Findings set forth in this Recommendation.

I. APPLICABLE STANDARDS AND 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 18.32, Multiple Use Agricultural (MUA10).
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. BACKGROUND AND PROCEDURAL FINDINGS

A. Nature of Proceeding

This matter comes before the Hearings Officer as a request for approval of a Comprehensive Plan Map Amendment (“Plan Amendment”) to change the designation of the Subject Properties from Agricultural (AG) to Rural Residential Exception Area (RREA). The Applicants also request approval of a corresponding Zoning Map Amendment (“Zone Change”) to change the zoning of the Subject Properties from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA10). The basis of the request in the Application is the Applicants’ assertion that the Subject Properties do not qualify as “agricultural land” under the applicable provisions of the Oregon Revised Statutes or Oregon Administrative Rules governing agricultural land. Based on that assertion, the Applicants are not seeking an exception to Statewide Planning Goal 3 for the Plan Amendment or Zone Change.

B. Notices and Hearing

The Application was filed on April 14, 2022. On April 27, 2022, the County issued a Notice of Application to several public agencies and to property owners in the vicinity of the Subject Properties (together, “Application Notice”). The Application Notice invited comments on the Application.

Following additional submittals by the Applicants, the County mailed a Notice of Public Hearing on October 7, 2022 (“Hearing Notice”) announcing an evidentiary hearing (“Hearing”) for the requests in the Application. Pursuant to the Hearing Notice, I presided over the Hearing as the Hearings Officer on November 15, 2022, opening the Hearing at 6:03 p.m. The Hearing was held via videoconference, with Staff and a representative of the Applicants in the hearing room. The Hearings Officer appeared remotely. On October 7, 2022, the Deschutes County Planning Division (“Staff”) issued a report setting forth the applicable criteria and presenting the evidence in the record at that time (“Staff Report”).¹

¹ The Staff Report is styled “Findings and Decision”. During the Hearing, it was acknowledged that the Staff Report was not a decision and, rather, was Staff’s summary of the record as applied to the criteria.

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 asked for but received no objections to the County’s jurisdiction over the matter or to my participation as the Hearings Officer.

No participant requested that the record remain open. The Hearing concluded at approximately 6:36 p.m. At that time, I closed the Hearing and the record, and I took this matter under advisement.

C. 150-day Clock

Because the Application includes a request for the Plan Amendment, the 150-day review period set forth in ORS 215.427(1) is not applicable.² The Staff Report also notes that the 150-day review period is not applicable by virtue of Deschutes County Code (“DCC” or “Code”) 22.20.040(D). No participant to the proceeding disputed that conclusion.

III. SUBSTANTIVE FINDINGS AND CONCLUSIONS

A. Adoption of Factual Findings in Staff Report

The Staff Report contains a comprehensive summary of evidence in the record as it relates to each of the applicable criteria. The Staff Report, although it expresses agreement with the Applicants in many places, does not make a final recommendation. Instead, the Staff Report asks the Hearings Officer to determine if the Applicants have met the burden of proof necessary to justify the Plan Amendment and the Zone Change. That being said, no participant challenged the specific evidence or findings presented in the Staff Report. As a result, I hereby adopt as fact the evidentiary findings in the Staff Report as my evidentiary findings. To the extent any of the findings in this Recommendation conflict with the findings in the Staff Report, my intent is to have these findings control. The remainder of this Recommendation sets forth the legal criteria and adopts legal findings based on those factual findings.

B. Legal Findings

The legal criteria applicable to the requested Plan Amendment and Zone Change were set forth in the Application Notice and also appear in the Staff Report. No participant to this proceeding asserted that those criteria do not apply, or that other criteria are applicable. This Recommendation therefore addresses each of those criteria, as set forth below.

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² ORS 215.427(7).

1. Title 18 of the Deschutes County Code, County Zoning

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 Applicants are the owners of the Subject Properties and have requested a quasi-judicial Plan Amendment and filed applications for that purpose, together with the request for a Zone Change. No participant to this proceeding objects to this process. It is therefore appropriate to review the Application using the applicable procedures contained in Title 22 of the Deschutes County Code.

Section 18.136.020, Rezoning Standards

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

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

FINDING: According to the Applicants, the County applies this Code provision by considering whether: (1) the Zone Change conforms to the Comprehensive Plan; and (2) the change is consistent with the Comprehensive Plan’s introduction statement and goals.

With respect to the first factor, the Applicants note that they are also seeking a Plan Amendment, which will change the Comprehensive Plan designation of the Subject Properties from Agriculture to Rural Residential Exception Area. If that Plan Amendment is approved, which is addressed in more detail below, the proposed change from the EFU-TRB zone to the MUA-10 zone will be consistent with the new Comprehensive Plan designation. No participant to this proceeding disputes that conclusion.

With respect to the second factor, the Applicants note that introductory statements and goals in the Comprehensive Plan are not approval criteria, and no participant to this proceeding asserts otherwise. Instead, the Applicants identify several Comprehensive Plan policies and goals and analyzes whether the Application is consistent with those policies and goals. Those policies and goals are set forth in more detail below, and the findings in that section are adopted here in full by this reference.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that this Code provision is satisfied.

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

FINDING: Only the Applicants and Staff offer any evidence or argument with respect to the purpose of the MUA-10 zone. The purpose of the MUA-10 zoning district is stated in DCC 18.32.010 as follows:

The purposes of the Multiple Use Agricultural Zone are to preserve the rural character of various areas of the County while permitting development consistent with that character and with the capacity of the natural resources of the area; to preserve and maintain agricultural lands not suited to full-time commercial farming for diversified or part-time agricultural uses; to conserve forest lands for forest uses; to conserve open spaces and protect natural and scenic resources; to maintain and improve the quality of the air, water and land resources of the County; to establish standards and procedures for the use of those lands designated unsuitable for intense development by the Comprehensive Plan, and to provide for an orderly and efficient transition from rural to urban land use.

According to the Applicants, the Subject Properties are not suited to full-time commercial farming. The MUA-10 zone will instead allow the owners to engage in hobby farming, and the low-density of development allowed by the MUA-10 zone will conserve open spaces and protect natural and scenic resources. As a result, the MUA-10 zoning provides a proper transition zone from city, to rural, to EFU zoning. The Staff Report agrees that the change in classification is consistent with the purpose and intent of the MUA10 Zone, and no participant to this proceeding disputes that conclusion.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that this Code provision is satisfied.

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: As noted in the Staff Report, this criterion specifically asks if the Zone Change will *presently* serve public health, safety, and welfare. The Applicants and the Staff Report provided the following as support for why this criterion is met:

- Necessary public facilities and services are available to serve the Subject Properties.
- Transportation access to the Subject Properties is available, and the impact of increased traffic on the transportation system is negligible.
- The Subject Properties receive police services from the Deschutes County Sheriff and fire service from Rural Fire Protection District # 2, which has a fire station adjacent to the northeast corner of the Subject Properties.
- There are no known deficiencies in public services or facilities that would negatively impact public health, safety, or welfare.

- The close proximity of the Subject Properties to urban development will allow for efficient service provision.
- Prior to development of the properties, the Applicants would be required to comply with the applicable requirements of the Code, including possible land use permit, building permit, and sewage disposal permit processes. Through these development review processes, assurance of adequate public services and facilities will be verified.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that this Code provision is satisfied.

2. *The impacts on surrounding land use will be consistent with the specific goals and policies contained within the Comprehensive Plan.*

FINDING: Only the Applicants and Staff offer any evidence or argument with respect to this criterion. Specifically, the Applicants noted the following:

The MUA-10 zoning is consistent with the specific goals and policies in the comprehensive plan discussed above. The MUA-10 zoning is the same as the zoning of many other properties in the area north and south of the subject property. In addition, the MUA-10 zoning provides a proper transition zone from City, to rural zoning, to EFU zoning. The zone change will not impose new impacts on the EFU- zoned land to the east of the subject property because those properties are not engaged in commercial farm use, are idle, are small parcels, and most are developed with dwellings. The three EFU-zoned parcels to the east which are currently receiving farm tax deferral will not suffer new impacts from the proposed zone change because they are hobby farms, are already developed with dwellings, and are not engaged in commercial farm use. As discussed below, the subject property is not agricultural land, is comprised of predominantly Class 7 and 8 soils, and as described by the soil scientist, Andy Gallagher, the subject property is impractical to farm due to the cut up landscape. It is not land that could be used in conjunction with the adjacent property and any future development of the subject property would be subject to building setbacks.

The Staff Report agrees that the Applicants have demonstrated the impacts on surrounding land use will be consistent with the specific goals and policies contained within the Comprehensive Plan.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that this Code provision is satisfied.

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: Only the Applicants offer any evidence or argument with respect to this criterion. According to the Applicants, a mistake in zoning was made and the EFU zoning designation on the Subject Properties

was likely based on the best soils data that was available to the County at the time it was originally zoned, during the late 1970's, when the Comprehensive Plan and Map were first adopted. The EFU designation was applied even though there was no history of farming on the Subject Properties. The Applicants also assert that there has been a change in circumstances since that time. Specifically, the Applicants note that there are new data regarding soils on the Subject Properties and that the updated soils report shows the Subject Properties do not have agricultural soils. The Applicants also assert that the economics of farming and the viability of commercial farm uses in Deschutes County have significantly changed, and farming for a profit has become increasingly difficult, particularly on parcels that are relatively small for livestock grazing and that have inadequate soils or irrigation for raising crops such as the Subject Properties.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that this Code provision is satisfied.

2. Deschutes County Comprehensive Plan Goals and Policies

Chapter 2 of the Comprehensive Plan relates to Resource Management. Section 2.2 of that Chapter relates specifically to Agricultural Lands. The Applicants and Staff have identified the following goals and policies as relevant to the Application.

Goal 1, Preserve and maintain agricultural lands and the agricultural industry.

FINDING: According to the Applicants, they are pursuing the Plan Amendment and Zone Change because the Subject Properties do not constitute "agricultural lands", and therefore, it is not necessary to preserve or maintain the Subject Properties as such. In support of that conclusion, the Applicants rely on a soils report showing the Subject Properties consist predominantly (73%) of Class 7 and 8 non-agricultural soils. Such soils have severe limitations for agricultural use as well as low soil fertility, shallow and very shallow soils, abundant rock outcrops, low available water capacity, and major management limitations for livestock grazing.

The Staff Report notes the Subject Properties have no history of agricultural use and lack water rights.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application is consistent with this portion of the Comprehensive Plan.

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 Applicants have not asked to amend the subzone that applies to the Subject Properties. Instead, the Applicants requested a change under Policy 2.2.3 and have provided evidence to support rezoning the subject properties as MUA-10.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application is consistent with this portion of the Comprehensive Plan.

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 Applicants request approval of the Plan Amendment and Zone Change to re-designate the Subject Properties from Agricultural to Rural Residential Exception Area and rezone the Subject Properties from EFU to MUA-10. The Applicants do not seek an exception to Goal 3 for that purpose, but rather seek to demonstrate that the Subject Properties do not meet the state definition of “Agricultural Land” as defined in Statewide Planning Goal 3 (OAR 660-033-0020).

In support of this approach, the Applicants rely in part on the Land Use Board of Appeals’ decision in *Wetherell v. Douglas County*, 52 Or LUBA 677 (2006), where LUBA states as follows:

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.

The Applicants assert that the facts presented in the Application are sufficiently similar to those in the *Wetherall* decision and in other Deschutes County plan amendment and zone change applications. The Staff Report agrees and concludes the Applicants have the potential to prove the Subject Properties are not agricultural land and do not require an exception to Goal 3 under state law.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application is consistent with this portion of the Comprehensive Plan.

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: The Applicants assert this plan policy provides direction to Deschutes County to develop new policies to provide clarity when EFU parcels can be converted to other designations and that the Application is consistent with this policy. The Staff Report also concludes the proposal is consistent with this policy.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application is consistent with this portion of the Comprehensive Plan.

Goal 3, Ensure Exclusive Farm Use policies, classifications and codes are consistent with local and emerging agricultural conditions and markets.

Policy 2.2.13 Identify and retain accurately designated agricultural lands.

FINDING: The Applicants assert that this Comprehensive Plan policy requires the County to identify and retain agricultural lands that are accurately designated. The Applicants propose that the Subject Properties were not accurately designated as demonstrated by the soil study in the record.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application is consistent with this portion of the Comprehensive Plan.

* * *

Section 2.5 of Comprehensive Plan Chapter 2 relates specifically to Water Resource Policies. The Applicants and Staff have identified the following goal and policy in that section as relevant to the Application.

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 Applicants and Staff assert that the Applicants are not required to address water impacts associated with development because they have not proposed a specific development application at this time. Instead, the Applicants will be required to address this criterion during development of the Subject Properties, which would be reviewed under any necessary land use process for the site.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application is consistent with this portion of the Comprehensive Plan.

* * *

Section 2.7 of Comprehensive Plan Chapter 2 relates specifically to Open Spaces, Scenic Views and Sites. The Applicants and Staff have identified the following goal and policies in that section as relevant to the Application.

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: The Applicants assert 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. Because there is no LM combining zone applicable to the Subject Properties, the Subject Properties are not identified as a Goal 5 resource, and no new development is proposed, the Applicants argue there is no applicable regulation that requires the Subject Properties to be protected as open space or for scenic views.

The Staff Report notes that the Subject Properties are within the Landscape Management Combining Zone for Highway 20, which is designated as landscape management feature by the Comprehensive Plan. However, the Staff Report finds that any future development within the LM Zone will be reviewed for compliance at that time.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application is consistent with this portion of the Comprehensive Plan.

* * *

Chapter 3 of the Comprehensive Plan relates to Rural Growth. Within that chapter, Section 3.2 relates specifically to Rural Development. The Applicants and Staff have identified the following language in that section as relevant to the Application.

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: According to the Applicants, this portion of the Comprehensive Plan anticipates 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. While the Applicants do not seek the creation of new residential lots in the Application, they assert the Subject Properties can ultimately support that goal, as they will provide for an orderly and efficient transition from the Bend Urban Growth Boundary to rural and agricultural lands. The Applicants also assert the Subject Properties, as rezoned, will link the pocket of MUA-10 zoned land to the north with the MUA-10 zoned land to the south, furthering the creation a buffer of MUA-10 zoned land along the City’s eastern boundary where the quality of soils are poor and the land is not conducive for commercial agriculture.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application is consistent with this portion of the Comprehensive Plan.

* * *

Section 3.3 of Comprehensive Plan Chapter 3 relates specifically to Rural Housing. The Applicants and Staff have identified the following language in that section as relevant to the Application.

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: According to the Applicants, prior Hearings Officer’s decisions have found that Section 3.3 is not a plan policy or directive. Further, the Applicants state that no Exception to Statewide Planning Goal 3 is required for the rezone application because the Subject Properties do not qualify as farm or forest zoning or agricultural lands under the statewide planning goals. The Applicants believe the County has interpreted the Rural Residential Exception Area (RREA) plan designation as the proper “catchall” designation for non-resource land and, therefore, the RREA plan designation is the appropriate plan designation to apply to the Subject Properties.

The Staff Report agrees that this Comprehensive Plan language is not a policy and does not require an Exception to Goal 3. The Staff Report also agrees the proposed RREA plan designation is the appropriate plan designation to apply to the Subject Properties.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application is consistent with this portion of the Comprehensive Plan.

* * *

Section 3.7 of Comprehensive Plan Chapter 3 relates specifically to Transportation. The Applicants and Staff have identified the following goal and policy in that section as relevant to the Application.

*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: The Applicants and the Staff Report asserts this policy advises the County to consider the roadway function, classification and capacity as criteria for Comprehensive Plan amendments and zone changes. Compliance with OAR 660-012, also known as the Transportation Planning Rule (TPR), is described below in subsequent findings, and the Applicants and Staff assert that such compliance is sufficient to demonstrate compliance with these transportation goals and policies.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application is consistent with this portion of the Comprehensive Plan.

3. Oregon Administrative Rules

The Applicants and the Staff Report identify several administrative rules as potentially applicable to the Application. No other participant in this proceeding identified other applicable rules.³

OAR 660-006-0005

- (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 Applicants and the Staff Report assert that the Subject Properties do not appear to qualify as forest land and, therefore, the administrative rules relating to forest land are not applicable. The Subject Properties are not zoned for forest lands, nor are any of the Subject Properties within a 4-mile radius of forest lands. The Subject Properties do not contain merchantable tree species and there is no evidence in the record that the Subject Properties have been employed for forestry uses historically.

³ Some administrative rules the Applicants address, or which appear in the Staff Report, have been omitted from this Recommendation where the rule does not expressly impose an approval criterion.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application is consistent with these administrative rules.

OAR 660-033-0020

For purposes of this division, the definitions in ORS 197.015, the Statewide Planning Goals, and OAR Chapter 660 shall apply. In addition, the following definitions shall apply:

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

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

FINDING: The Applicants’ proposed Plan Amendment and Zone Change is premised on its assertion that Subject Properties are not defined as “Agricultural Land.” The Applicants specifically argue that the Subject Properties are not properly classified as Agricultural Land and therefore do not merit protection under Goal 3. As noted in earlier findings, the soils are predominately Class 7 and 8 soils that have severe limitations for farm use.

The Staff Report agrees with the Applicants’ representation of the soil data for the Subject Properties and that the Subject Properties do not constitute “Agricultural Lands” as defined in OAR 660-033-0020(1)(a)(A).

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Subject Properties should not be considered agricultural land under this part of the administrative rules.

- (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: According to the Applicants, this part of the definition of "Agricultural Land" requires the County to consider whether the Class 7 and 8 soils found on the Subject Properties are suitable for farm use despite their Class 7 and 8 soil classification. The Applicants rely on a decision by the Oregon Supreme Court that determined 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.⁴ Applying that definition, the Applicants describe various limitations on the ability of the Subject Properties to support farm uses, including, among other factors, a lack of water rights and low soil fertility.

⁴ *Wetherell v. Douglas County*, 342 Or 666, 160 P3d 614 (2007).

The Staff Report agrees with the Applicants that many factors – such as the current residential land uses in the area, soil fertility, and amount of irrigation required – result in a relatively low possibility of farming on the Subject Properties.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Subject Properties should not be considered agricultural land under this part of the administrative rules.

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

FINDING: According to the Applicants, the Subject Properties are not land necessary to permit farm practices to be undertaken on adjacent or nearby lands. The nearest properties to the Subject Properties that are agriculturally zoned and engaged in farm use are located across Hamby Road to the east on tax lots 17-12-35-1300, 17-12-35-1301, and 17-12-35-1403, and an MUA-10 zoned parcel planned for urbanization and upon which ODOT is currently constructing a highway roundabout is located in between the Subject Properties and these EFU parcels. The Applicants analyzed those properties and concluded the Subject Properties are not necessary to permit farm practices to be undertaken on those properties.

The Staff Report concurs with the Applicants’ analysis and finds no feasible way that the Subject Properties are necessary for the purposes of permitting farm practices on any nearby parcels.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Subject Properties should not be considered agricultural land under this part of the administrative rules.

(1)(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: According to the Applicants, the Subject Properties are not part of a farm unit that includes other lands not currently owned by the Applicants. The Subject Properties have no history of farm use and contain soils that make them unsuitable for farm use. Therefore, there is no basis to inventory the Subject Properties as agricultural land.

The record indicates the Subject Properties contain land in capability classes other than I-VI that is adjacent to or intermingled with lands in capability classes I-VI.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Subject Properties should not be considered agricultural land under this part of the administrative rules.

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OAR 660-033-0030

- (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: As noted above, this Recommendation finds that the Subject Properties do not qualify as agricultural land as defined by administrative rule, and they are not suitable for farming. Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the administrative rules do not require the Subject Properties to be inventoried as agricultural land.

- (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 concluded in other findings above, the Subject Properties are not suitable for farm use and are not necessary to permit farm practices to be undertaken on adjacent or nearby lands. The ownership of the Subject Properties is therefore not being used as a factor to determine whether the Subject Properties are agricultural land.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application is consistent with this part of the administrative rules.

- (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.*
- (5)(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 Applicants have elected to provide a more detailed agricultural soil assessment, conducted by Andy Gallagher, a Certified Professional Soil Scientist approved by the Department of Land Conservation and Development. No participant to this proceeding disputes the information provided in that report or otherwise objects to the use of the date in that report. Based on the undisputed facts in that report, the Subject Properties do not qualify as “agricultural land.”

(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: I find that this administrative rule does not establish a particular standard and simply confirms when this section of the administrative rules applies.

(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 Applicants submitted a soil study dated March 15, 2022. The soils study was submitted following the ORS 215.211 effective date. The Staff Report notes that Staff received acknowledgement from Hilary Foote, Farm/Forest Specialist with the DLCDC, on May 5, 2022, that the soil study is complete and consistent with DLCDC’s reporting requirements. The Staff Report therefore finds this criterion to be met based on the submitted soil study, and confirmation of completeness and consistency from DLCDC.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application is consistent with this part of the administrative rules.

OAR 660-012-0060

(1) *If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:*

- (a) *Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);*
- (b) *Change standards implementing a functional classification system; or*
- (c) *Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.*
 - (A) *Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;*
 - (B) *Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or*
 - (C) *Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.*

FINDING: This administrative rule is applicable to the Plan Amendment and the Zone Change because they involve an amendment to an acknowledged comprehensive plan. The Applicants assert that the zone change will not result in a significant effect to the transportation system. In support of that assertion, the Applicants submitted a transportation impact analysis memorandum dated March 22, 2022, prepared by traffic engineer, Joe Bessman, PE, which is later supplemented. No participant to this proceeding disputed the information in the impact analysis or otherwise objected to the use of that information.

The County Transportation Planner agreed with the report’s conclusions, as supplemented. As a result, the Staff Report finds that the 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 Staff Report also concluded the proposed zone change will not change the functional classification of any existing or planned transportation facilities or change the standards implementing a functional classification system.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application satisfies this administrative rule.

Statewide Planning Goals and Guidelines

Division 15 of OAR chapter 660 sets forth the Statewide Planning Goals and Guidelines, with which all comprehensive plan amendments must demonstrate compliance. The Applicants assert the Application is consistent with all applicable Goals and Guidelines, which no participant to this proceeding disputes. In light of the foregoing, and in the absence of any counter evidence or argument, I adopt the Applicants’ position and find that the Plan Amendment and Zone Change are consistent with the applicable Goals and Guidelines as follows:

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 Applicants to post a "proposed land use action sign" on the Subject Properties. Notice of the Hearings held regarding this application was 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 Applicants have shown that the Subject Properties are not agricultural land because they consists predominantly of Class 7 and 8 soils that are not suitable for farm use.

Goal 4, Forest Lands. Goal 4 is not applicable because the Subject Properties do not include any lands that are zoned for, or that support, forest uses.

Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces. Deschutes County DIAL property information and Interactive Map show the Subject Properties have “wetlands” that correspond with Central Oregon Irrigation District’s irrigation distribution system within the Subject Properties. According to the Comprehensive Plan (Chapters 2, Resource Management and 5, Supplemental Sections), in 1992 Deschutes County Ordinance 92-045 adopted all wetlands identified on the U. S. Fish and Wildlife Service National Wetland Inventory (NWI) Maps as the Deschutes County wetland inventory. In addition, as described in the Comprehensive Plan, the NWI Map “shows an inventory of wetlands based on high-altitude aerial photos and limited field work. While the NWI can be useful for many resource management and planning purposes, its small scale, accuracy limitations, errors of omission that range up to 55 percent (existing wetlands not shown on NWI), age (1980s), and absence of property boundaries make it unsuitable for parcel-based decision making.”

The Comprehensive Plan has no specific protections for wetlands; protections are provided by ordinances that implement Goal 5 protections (for example, fill and removal zoning code regulations). In the case of irrigation district performing work within wetlands, DCC 18.120.050(C) regarding fill and removal exceptions allows fill and removal activities as a use permitted outright.

Because the Plan Amendment and Zone Change are not development, there is no impact to any Goal 5 resource. Any potential future development of a wetland – no matter what zone the wetland is in – will be subject to review by the County’s fill and removal regulations.

Goal 6, Air, Water, and Land Resources Quality. The approval of this Application will not impact the quality of the air, water, and land resources of the County. Any future development of the Subject Properties will be subject to applicable local, state, and federal regulations that protect these resources.

Goal 7, Areas Subject to Natural Disasters and Hazards. According to the Deschutes County DIAL property information and Interactive Map, the entirety of Deschutes County, including the Subject Properties, is located in a Wildfire Hazard Area. The Subject Properties are also located in Rural Fire Protection District #2. Rezoning the property to MUA-10 does not change the Wildfire Hazard Area designation. Any future development of the Subject Properties would need to demonstrate compliance with any fire protection regulations and requirements of Deschutes County.

Goal 8, Recreational Needs. This goal is not applicable because no development is proposed and the Subject Properties are not planned to meet the recreational needs of Deschutes County. Therefore, the proposed rezone will not impact the recreational needs of Deschutes County.

Goal 9, Economy of the State. This goal is not applicable because the Subject Properties are not designated as Goal 9 economic development land. In addition, the approval of this application will not adversely affect economic activities of the state or area.

Goal 10, Housing. The County's comprehensive plan Goal 10 analysis anticipates that farm properties with poor soils, like the Subject Properties, 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 Properties. Pacific Power has confirmed that it has the capacity to serve the Subject Properties and the proposal will not result in the extension of urban services to rural areas.

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 Properties are located adjacent to the city limits for the City of Bend. If the Subject Properties are developed with residential dwellings in the future, 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 provided in the City of Bend.

Goal 14, Urbanization. This goal is not applicable because the Applicants’ proposal does not involve property within an urban growth boundary and does not involve the urbanization of rural land. The MUA-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 Comprehensive 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 through 19. These goals do not apply to land in Central Oregon.

III. OTHER COMMENTS IN THE RECORD

Although only the Applicants and Staff participated in the Hearing, Staff did receive some comments on the Application in response to the Application Notice. The Record contains public comments concerning potential loss of farmland, impacts to wildlife, and potential for increased housing density. I find that each of these comments is generic in nature, and none address specific criteria applicable to the request for the Plan Amendment or Zone Change. The existence of those comments in the record, therefore, does not affect the factual findings in the Staff Report or the findings in this Recommendation.

IV. CONCLUSION

Based on the foregoing findings, I find the Applicants have met their burden of proof with respect to the standards for approving the requested Plan Amendment and Zone Change. I therefore recommend to the County Board of Commissioners that the Application be APPROVED.

Dated this 12th day of December 2022



Tommy A. Brooks _____
Deschutes County Hearings Officer

owner	agent	inCareOf	address	cityStZip	type	cdd id
Te Amo Despacio LLC			2464 SW Glacier PL. #110	Redmond, OR 97756	HOR	22-313-ZC, 22-314-PA
CTH Investments LLC			14787 SW Millikan Way	Beaverton, OR 97003	HOR	22-313-ZC, 22-314-PA
Schwabe, Williamson & Wyatt, P.C.	Tia M. Lewis		360 SW Bond Street, Suite 500	Bend, OR 97702	HOR	22-313-ZC, 22-314-PA



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: April 3, 2023

SUBJECT: Work Session on 4 Peaks Music Festival 2024 Outdoor Mass Gathering Permit

PROPOSAL:

The applicant requests approval of an Outdoor Mass Gathering permit to allow a multi-day music festival in June of 2024. The event includes overnight camping, parking, and food and drink for an estimated 2,000 people. The property is approximately 150 acres in size and developed with a single-family dwelling and multiple accessory structures. The surrounding area consists of small scale farm and residential uses.

Proposed location of the festival is at 21085 Knott Road. Staff notes that the festival received approval from 2016 through 2019 at the same location with similar proposals, and before 2016 at a property near Tumalo. Set up is scheduled to begin June 15, 2024 and tear down will be fully completed by June 24, 2024. The event will take place June 20, 2024 through June 23, 2024. At this time the proposal has been approved by the Environmental Health Division, Bend Fire Department, County Health Department, and the Deschutes County Sheriff's Office.

The subject property has been divided into specific areas for the music festival. The main activity area is on the central portion of the subject property, which contains the stages, vendors, restrooms, water, first aid, trash and recycling collection, and basic operational aspects of the festival. The entrance to the festival is located on the northeast corner which includes the general admission vehicle lanes, ticket will call, day-use parking, and an area for authorized personnel. Other areas surrounding the main event to the south and southeast are designated as car and RV camping. The design layout includes separate vehicle and pedestrian access aisles and an emergency access road.

The applicant has addressed in their proposal the requirements involving insurance, sanitary facilities, water supply, fire protection, medical services, public safety and enforcement, parking facilities, alcohol and dangerous drugs, and hours of operation.

A public hearing for this application is scheduled for this Wednesday April 5th. While DCC 8.16.180 only requires a 10 day notice to other County Departments, Notice of Public Hearing was sent to County Departments and surrounding property owners on March 17, 2024 and published in the Bulletin on March 19, 2024. At this time, staff has not received any comments regarding the proposed application.

OUTDOOR MASS GATHERING REQUIREMENTS/CRITERIA:

Deschutes County Code (DCC) Chapter 8.16 provides approval criteria for an Outdoor Mass Gathering permit. The applicant has satisfied the requirements addressed in Section 8.16.160, including obtaining signatures on the application form from the following agencies:

- Bend Fire Department
- Deschutes County Health Department
- Deschutes County Environmental Health Division
- Deschutes County Sheriff

Staff believes the proposed outdoor mass gathering permit request can comply with the applicable standards and criteria outlined in Chapter 8.16 below if conditions of approval are met. Conditions will be noted in the Staff Report for the public hearing.

The applicant is requesting a waiver from the requirement to maintain an ambulance on-site during the festival. However, no waiver is sought for the first aid station and the applicant indicates it will comply with County Code. The applicant has provided a Medical Service Plan, which includes the use of Steven Foster Wexler LAC, an event medical service. The Board may waive permit requirements, in this case ambulance service, upon showing good cause by the event organizer (see DCC 8.16.150(B)). Furthermore, if the Board determines no County law enforcement or other services are necessary and no significant public health, safety, or welfare issues are involved, the Board may waive that requirement as well. The Board waived the permit requirement for on-site ambulance service for the last six outdoor mass gathering permits for this festival when it was at the Tumalo and Bend location. For reference, the closest fire station, Bend Fire Station #303, located at 61080 Country Club Drive, is approximately two (2) miles from the event site.

BUDGET IMPACTS:

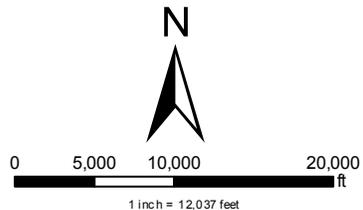
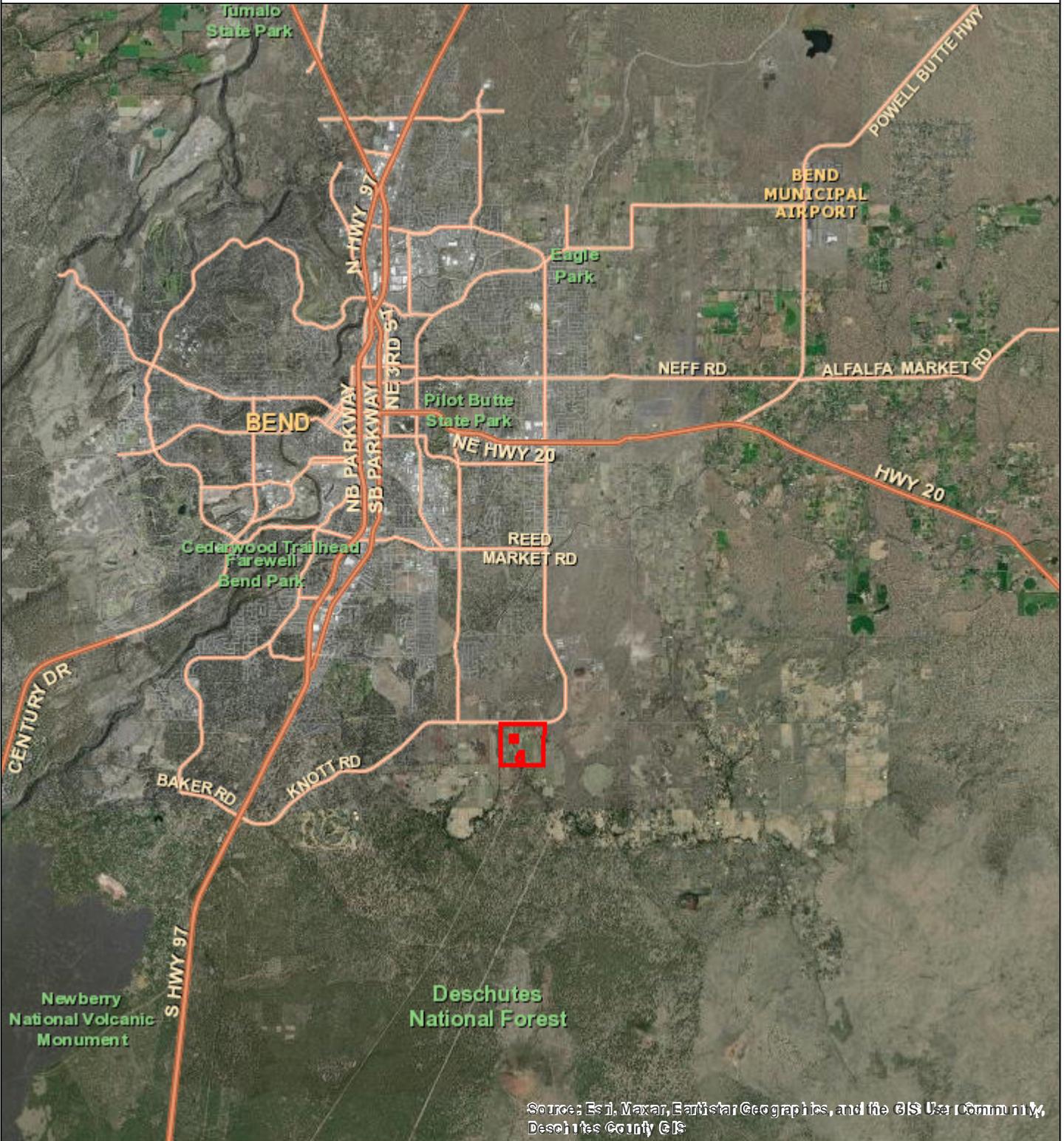
None

ATTENDANCE:

Rachel Vickers, Associate Planner

Land Use File 247-22-000675-OMG

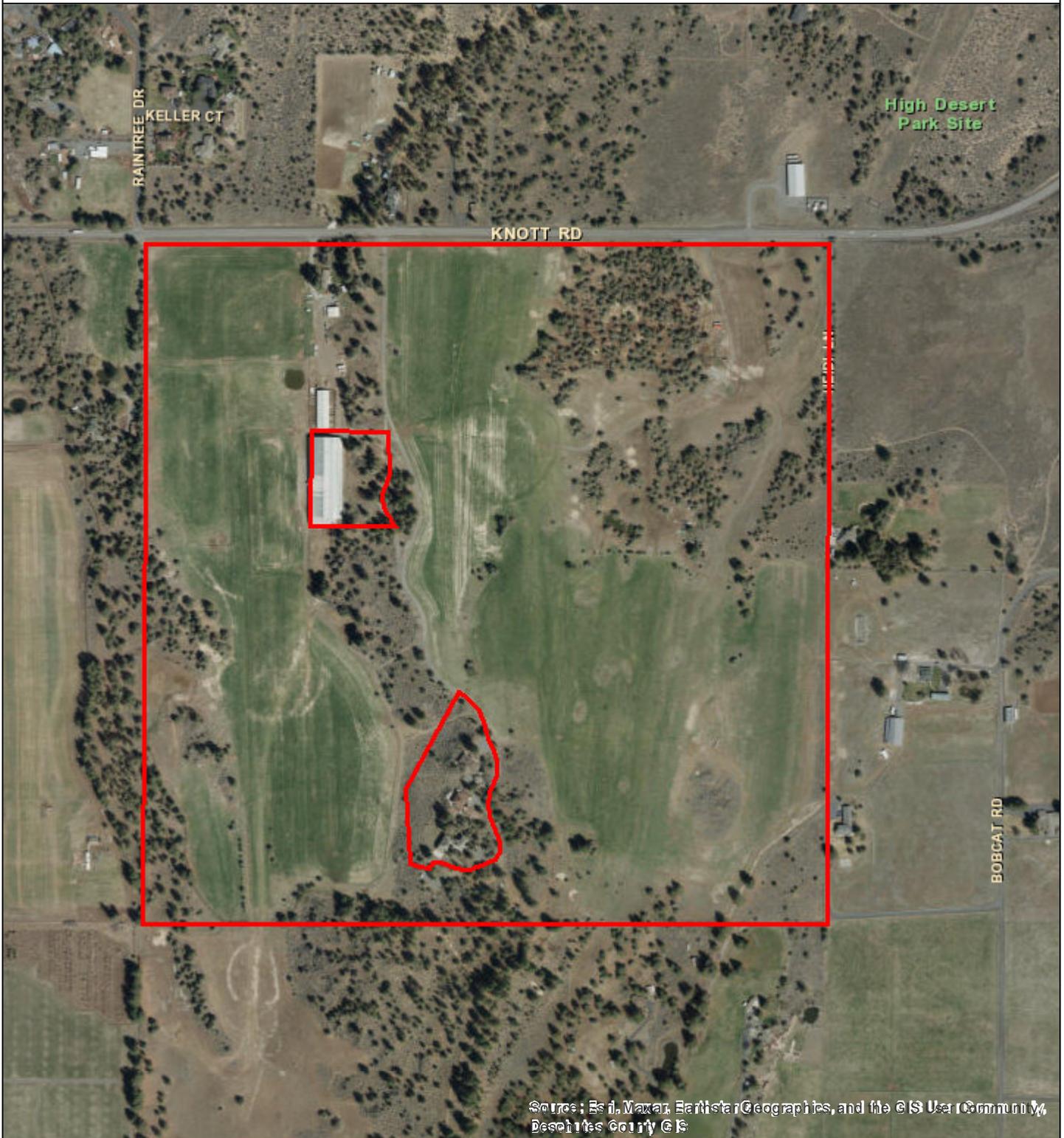
21085 KNOTT RD, BEND, OR 97702



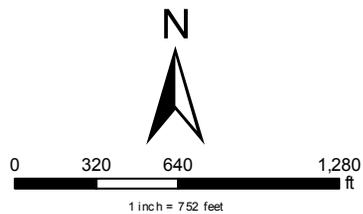
Date: 10/5/2022

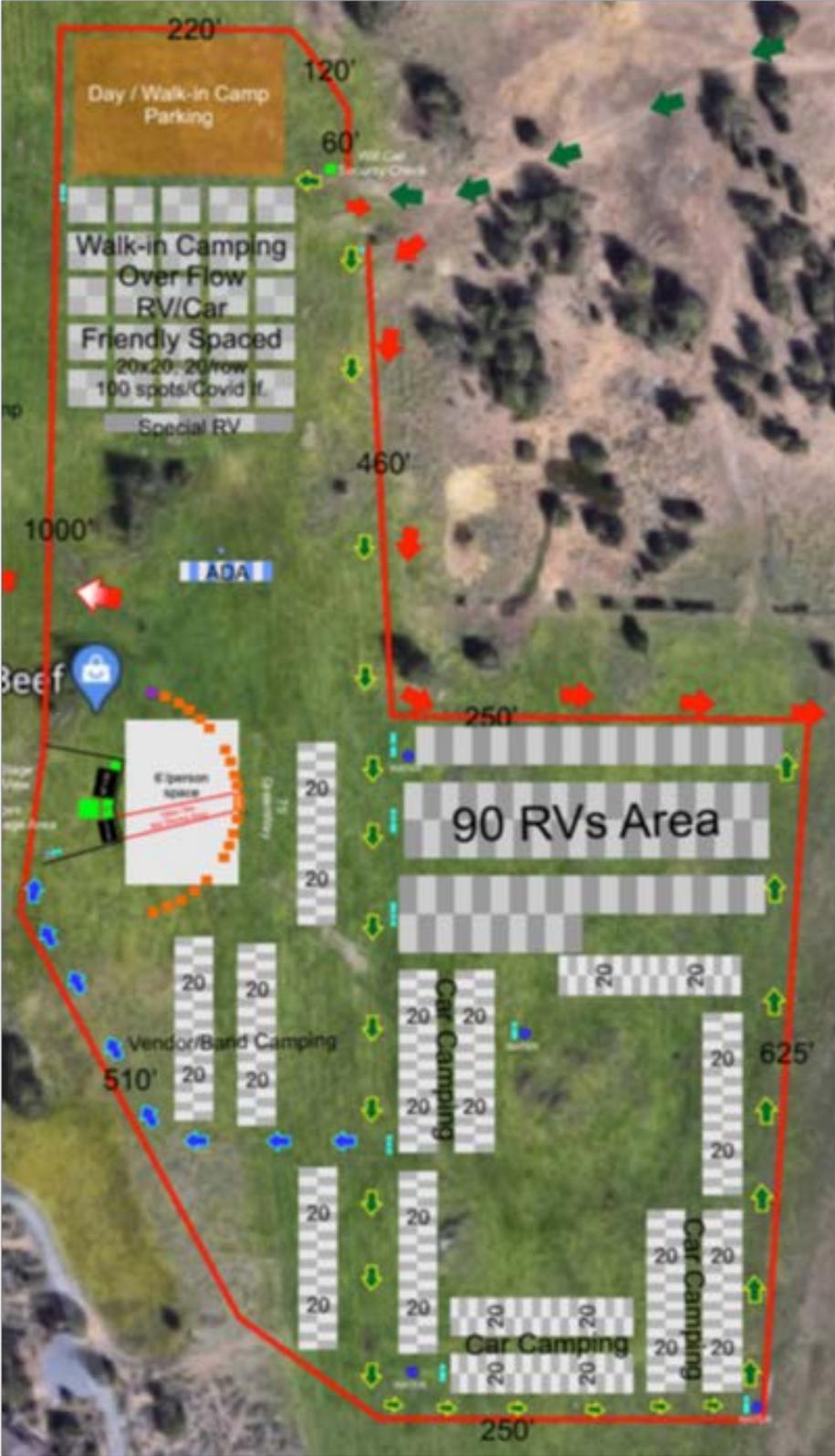
Land Use File 247-22-000675-OMG

21085 KNOTT RD, BEND, OR 97702



Date: 10/5/2022







BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: April 3, 2023

SUBJECT: Use of Opioid Settlement Funds

RECOMMENDED MOTION:

Move approval of the recommended use of Opioid settlement funds over the next 17 years.

BACKGROUND AND POLICY IMPLICATIONS:

The state of Oregon is participating in a national opioid lawsuit against manufacturers. In 2021, nationwide settlements resolved all opioid suits brought by states and local political subdivisions, awarding \$26 billion for distribution over 18 years. The settlement amount Deschutes County would receive is estimated at \$6.7 million over that time.

Since 2000 there have been over 500,000 USA opioid related deaths in the US, ranking highest in those aged 24-35. The opioid crisis resulted in lost wages and other health impacts and costs for individuals, families and communities. Litigants claimed the industry "grossly misrepresented the risks of long-term use for persons with chronic pain, "and "failed to properly monitor suspicious orders of those prescription drugs- all of which contributed to the current opioid epidemic." The number of overdose deaths continues to rise. In fact, between 2018 and 2021 the rate of overdose deaths in Central Oregon increased by 85%. Preliminary 2022 data puts Central Oregon on track for a 100% increase.

Health Services proposes the settlement funds to address local opioid use using a three-tiered approach: 1) add capacity and expand existing efforts by adding targeted expert Opioid Use Disorder prevention services, 2) increase coordination of surveillance and overdose prevention and harm reduction efforts and 3) sustain existing interventions. These three strategic uses would allow Health Services to:

- Improve awareness and utilization of opioid and other drug prevention knowledge;
- Reduce adolescent drug use;
- Ensure real-time surveillance systems to quickly respond to overdose emergencies;
- Improve coordination with internal and external entities working to reduce overdose and opioid use harms; and

- Use existing interventions like the Stabilization Center, which serves as an alternative to hospital emergency departments for persons with opioid use disorder and any co-occurring substance use disorder or mental health conditions and connects individuals with treatment to help them stabilize in their community to improve quality of life.

BUDGET IMPACTS:

\$6.7 million over 18 years; see attached fiscal analysis.

ATTENDANCE:

Janice Garceau, Health Services Director
Holly Harris, Behavioral Health Director
Heather Kaisner, Public Health Director
Cheryl Smallman, Health Services Business Officer
Jessica Jacks, Health Services Program Manager, Prevention and Health Promotion

ESTIMATED OPIOID SETTLEMENT DISTRIBUTION BY FISCAL YEAR

Revenue in **BLACK** is received/confirmed; Revenue in **GREY** is estimated/anticipated

	FY23	FY24	FY25	FY26	FY27	FY28	FY29	FY30	FY31	FY32	FY33	FY34	FY35	FY36	FY37	FY38	FY39	
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 18
SETTLEMENT RESOURCES																		
Distributor Payment* (years 1-2)	143,355	154,318	148,837	151,577	150,207	150,892	150,550	150,721	150,635	150,678	150,657	150,667	150,662	150,665	150,663	150,664	150,664	150,664
Janssen Payment* (years 1-5)	51,294	559,956	-	-	-	86,224	86,224	86,224	86,224	86,224	86,224	86,224	86,224	86,224	86,224	86,224	86,224	86,224
Teva			47,000	47,000	47,000	47,000	47,000	47,000	47,000	47,000	47,000	47,000	47,000	47,000	47,000	47,000	47,000	47,000
Allergan			52,000	52,000	52,000	52,000	52,000	52,000	52,000	52,000	52,000	52,000	52,000	52,000	52,000	52,000	52,000	52,000
CVS (payments range from 57K to 82K; assumed conservatively)			57,000	57,000	57,000	57,000	57,000	57,000	57,000	57,000	57,000	57,000	57,000	57,000	57,000	57,000	57,000	57,000
Walgreens			67,000	44,000	44,000	44,000	44,000	44,000	44,000	67,000	67,000	67,000	67,000	67,000	67,000	67,000	67,000	67,000
Walmart			456,000															
Total Resources by Year	194,649	714,275	827,837	351,577	350,207	437,116	436,773	436,944	436,859	407,902	407,880	321,667	264,662	264,665	264,663	217,664	217,664	150,664
RECOMMENDED EXPENDITURES																		
PERSONNEL																		
1.0 FTE CHS III (Position #2450)	-	-	135,396	138,104	140,866	143,683	146,557	149,488	152,478	155,527	158,638	161,811	165,047	168,348	171,715	175,149	178,652	182,225
1.0 FTE HS Supervisor (Pos. #2353)	-	-	28,218	30,193	32,306	34,568	36,988	37,727	38,482	39,251	40,036	40,837	41,654	42,487	43,337	44,204	45,088	45,989
Stabilization Center				650,000	650,000	150,000	125,000	125,000	75,000									
M&S																		
Program Supplies & Equipment	-	-	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000
Total Direct			183,613	838,297	843,172	348,251	328,544	332,215	285,959	214,779	218,674	222,648	226,701	230,835	235,051	239,352	243,739	248,214
Indirect (28%)	-	-	51,412	234,723	236,088	97,510	91,992	93,020	80,069	60,138	61,229	62,341	63,476	64,634	65,814	67,019	68,247	69,500
Total Expenses	-	-	235,025	1,073,020	1,079,260	445,761	420,537	425,235	366,028	274,917	279,903	284,989	290,177	295,468	300,866	306,371	311,987	317,714
Ending Working Capital		908,924	1,501,735	780,293	51,240	42,594	58,831	70,540	141,370	274,355	402,332	439,011	413,496	382,692	346,490	257,783	163,460	(3,591)

* Redmond City distribution is included in the above.

Health Services Department

Opioid Settlement Funds

Proposed Strategies for Consideration



Agenda



- **Background**
- **Proposed Strategies**
- **Alignment**
- **Budget Big Picture**
- **Q&A**



Acronyms & Abbreviations

- **OD** = Overdose
- **OUD** = Opioid Use Disorder
- **MH** = Mental Health
- **SUD** = Substance Use Disorder
- **BHRN** = Behavioral Health Resource Network – grant to fund services to those targeted by M110
- **DCSC** = Deschutes County Stabilization Center
- **PH** = Public Health Program
- **BH** = Behavioral Health Program
- **CCBHC** = Certified Community Behavioral Health Clinic (primary care integration)
- **MAT** = Medically Assisted Treatment (Buprenorphine) for OUD
- **COOPR** = Central Oregon Opioid Prevention & Response



Background

The Opioid Crisis

500,000 USA opioid related deaths since 2000

Deaths **highest for those age 24 - 35**

Opioid OD deaths **contributed to USA life expectancy decline** since 2014

Opioid crisis resulted in **lost wages and other health impacts and costs** for individuals, families & communities

Litigation

States & Counties bore the brunt of the cost

Litigants claimed the industry “grossly misrepresented the risks of long-term use...for persons with chronic pain,” and “failed to properly monitor suspicious orders of those prescription drugs - all of which contributed to the current opioid epidemic.”

Settlement

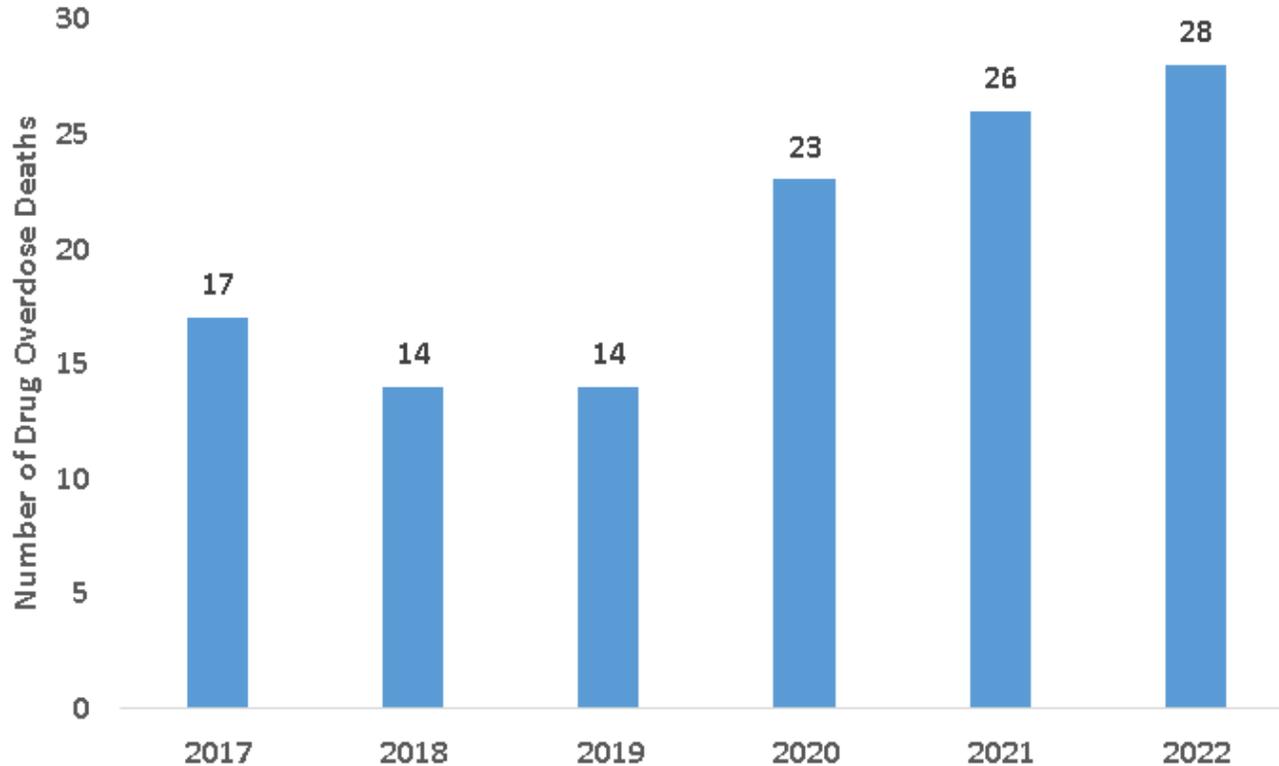
In 2021, nationwide settlements resolved all opioids litigation brought by states and local political subdivisions

\$26 Billion awarded to be **distributed over 18 years**

Deschutes County slated to receive **~\$6.7 Million over 17 yrs.**



Central Oregon Picture: OD Deaths



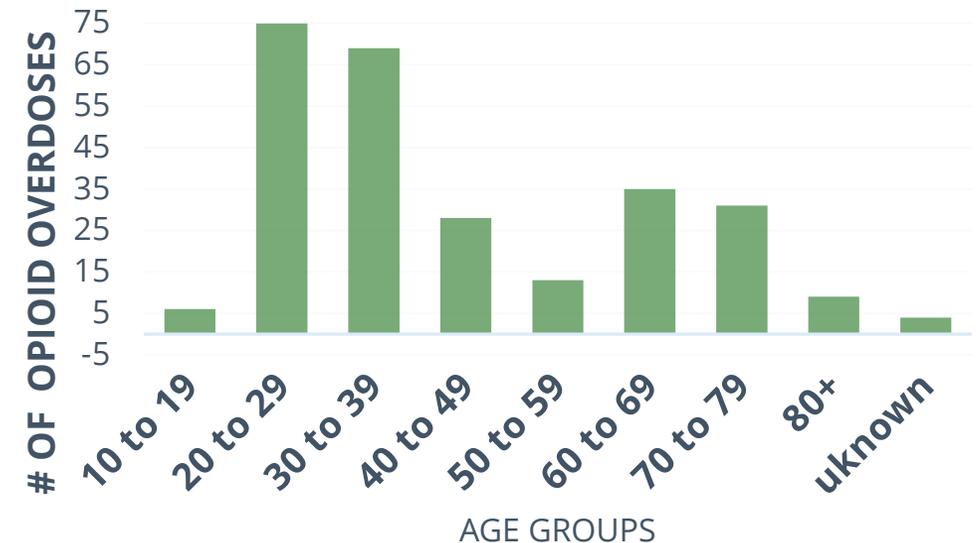
Between 2018 & 2021 the rate of overdose deaths in CO increased by 85%. Preliminary 2022 data puts CO on track for a 100% increase.



Central Oregon Picture: ED Visits

- There were **273 ED visits** for Opioid OD in 2022.*
- **185** of those were Deschutes County residents. Of those **44** involved **Fentanyl**.
- Statewide, **64%** of OD related deaths involved Fentanyl.
- Naloxone required for rescue increased from **1.7 to 3.2 doses**.
- CO age distribution is consistent with national trends.
- Data represents the 'Tip of the Iceberg' – **68%** of DC individuals who reported Naloxone rescue did not contact ED – up to **~850 ODs a year or 2.4 a day**

**2022 Central Oregon
Emergency Department (ED)
Visits for Opioid Overdose
by Age Group**



* Preliminary COOPR data may change



Current Effective Strategies

Pain Standards Task Force:

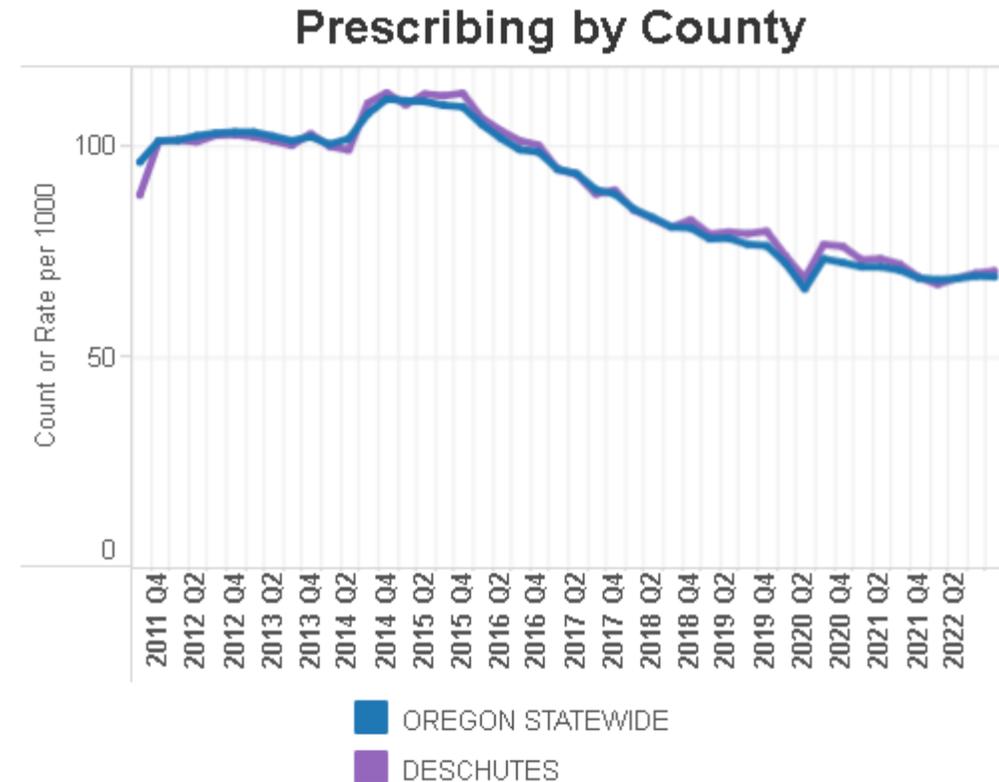
- Problem prescribing trending down

Harm Reduction:

- **98** Naloxone rescue events reported in 2022 (doubled since 2018)

DCSC:

- **40.2%** of DCSC encounters had co-occurring MH & SUDs
- **21.9%** of encounters had active intoxication upon arrival



Multi-Strategy Approach



Proposed investments add capacity and expand reach of existing efforts by:

- Adding targeted expert OUD prevention
- Increasing coordination of surveillance & efforts
- Sustaining existing interventions



Targeted Expert Prevention Strategy

Goals:

- Improve awareness and utilization of effective opioid and other drug prevention knowledge and skills
- Prevent and reduce adolescent drug use

Cost:

- \$135,396 1.0 FTE Community Health Specialist III (*Existing FTE with new duties assigned*)
- \$20,000 Materials/Services

Allowable Use

Prevent Misuse of Opioids (PART TWO, Section G)

Support efforts to discourage or prevent misuse of opioids through evidence-based or evidence-informed programs or strategies



Targeted Prevention Activities

- Review, recommend, and support community implementation of effective, opioid and other drug prevention programs including training as appropriate (e.g. churches, youth serving organizations, etc.)
- Coordinate age appropriate opioid and other drug prevention education and awareness to parents and families across the age spectrum (5-24 years)
- Develop and distribute communications for sustained community awareness (e.g. general awareness messaging, drug disposal messaging, talk with your kids messaging, resources messaging, etc.)
- Support data collection and provide regular summaries of data



Targeted Prevention Measured Outcomes

- Develop and deliver a minimum of 10 opioid & other drug prevention workshops for parents by June 30th, 2024.
- Conduct outreach and provide opioid and other drug prevention technical assistance and training to a minimum of 10 organizations that serve high risk youth by June 30th, 2024.
- Develop and provide opioid and other drug prevention awareness and education through multiple communication strategies that reach a minimum of 500 families by June 30th, 2024.



Surveillance & Coordination Strategy

Goals:

- Improve coordination with internal & external entities working to reduce OD and Opioid use harms
- Ensure real time surveillance system to quickly respond to overdose emergencies

Cost:

- \$28, 218 .20 FTE Health Services Supervisor (*Existing FTE with new duties assigned*)

Allowable Use

Prevent Overdose Deaths & Other Harms (PART TWO, Section H)

Support efforts to prevent or reduce overdose deaths or other opioid-related harms through evidence-based or evidence-informed programs or strategies



Surveillance & Coordination Activities

- Infrastructure and staffing for collaborative, cross-system coordination to prevent opioid misuse, prevent overdoses, and treat those with OUS and any co-occurring SUD/MH conditions, or implement other strategies to abate the opioid epidemic described in this opioid abatement strategy
- Monitoring, surveillance, data collection and evaluation of programs and strategies described in exhibit
- Epidemiological surveillance of OUD-related behaviors in critical populations, including individuals entering the criminal justice system, including but not limited approaches modeled on Arrestee Drug Abuse Monitoring system
- Statewide, regional, local or community regional planning to identify root causes of addiction and overdose, goals for reducing harms related to the opioid epidemic, and areas and populations with the greatest needs for treatment

Measured Outcome:

- Develop an internal coordination plan for responding to overdose health alerts in Deschutes County by Dec. 31st 2023.



Intervention Strategy

Goals:

- Divert individuals from the ED and/or criminal justice system
- Prevent death by overdose or suicide
- Connect individuals with treatment and help them stabilize in their community to improve quality of life

Cost:

- \$650,000 FY 25 & FY 26
- \$150,000 or less in subsequent years
- *No new FTE – Supports DCSC response*

Allowable Use

CONNECT PEOPLE WHO NEED HELP TO THE HELP THEY NEED

(Part One, Section C.8)

Support crisis stabilization centers that serve as an alternative to hospital emergency departments for persons with OUD and any co-occurring SUD/MH conditions or persons that have experienced an opioid overdose



Intervention Activities

- Stabilization Center provides a wide array of crisis services to community including: crisis walk-in appointments, adult respite services, Forensic Diversion Programs, peer support, ASAM's, and case management.
- Specific to substance use disorders this includes:
 - walk-in SUD use disorder assessment and case management
 - naloxone and fentanyl testing strip distribution
 - referrals for SUD and mental health treatment
 - after hours and weekend Behavioral Health Resource Network (BHRN) drop-in services

Measured Outcomes:

- DCSC will develop an Epic workflow to document Crisis Substance Abuse treatment related referrals
- DCSC will establish a Crisis SUD referral baseline in 2025 and develop an improvement target in 2026



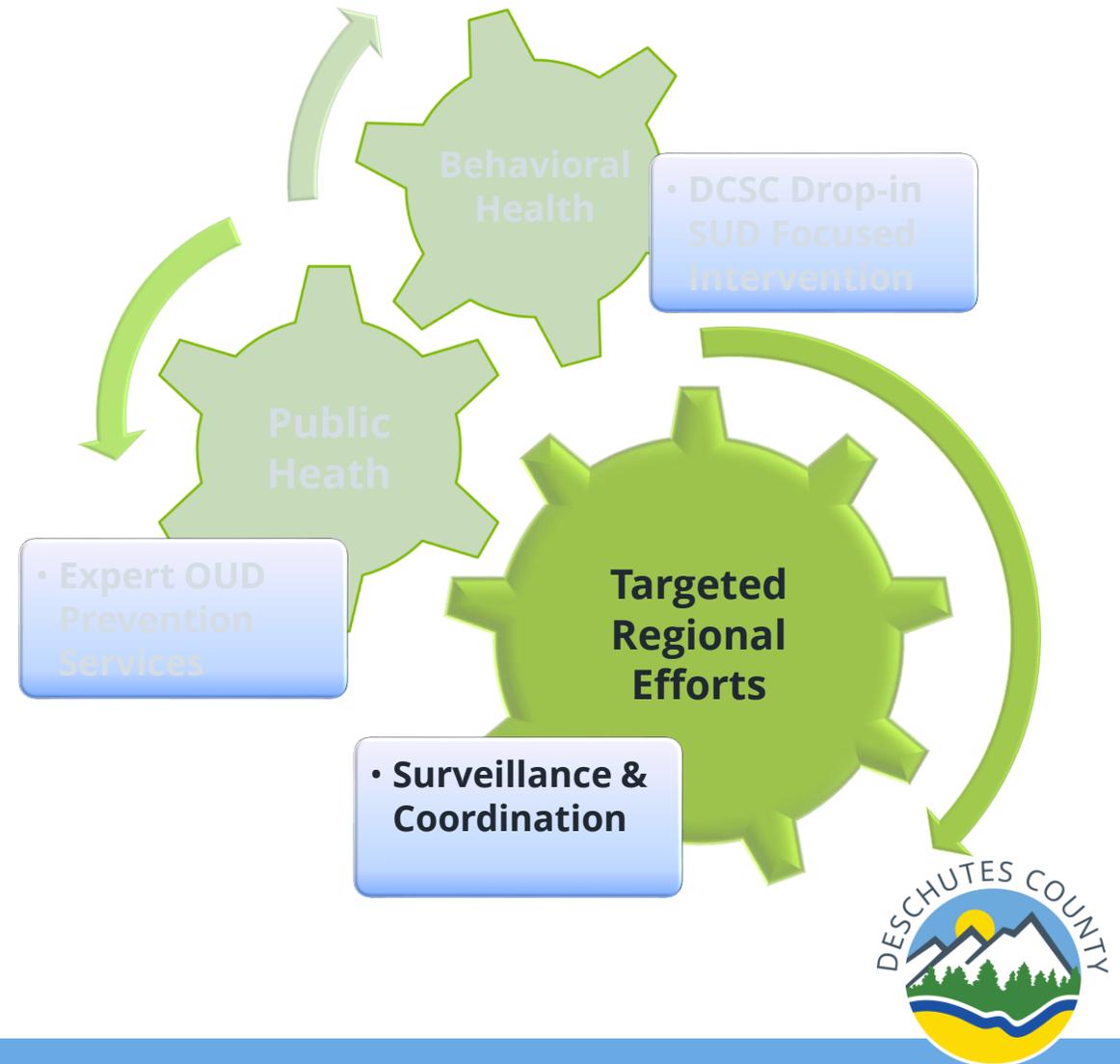
Alignment: Targeted Regional Efforts

Pain Standards Taskforce

- Provider education (overprescribing, training, etc.)
- Improving alternative methods to pain management

Central Oregon Overdose Prevention and Response (COOPR)

- Naloxone distribution, education and training
- Regional surveillance and coordination
- Regional Epidemiologist (ESSENCE (ED data) and [ODMAPS](#))



Alignment: Existing PH Efforts

Prevention and Health Promotion

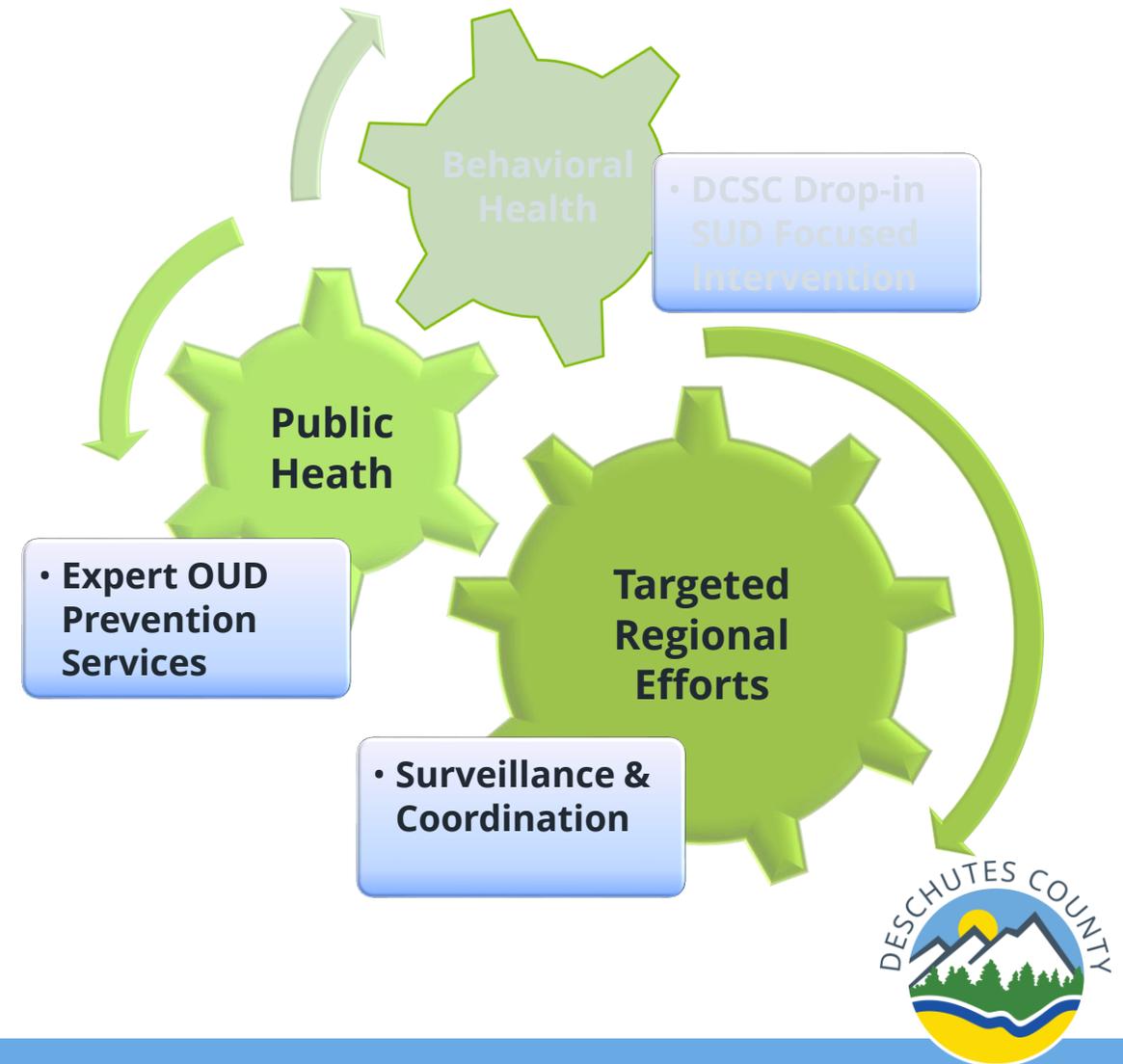
- [Take Meds Seriously Oregon](#) website (development and management)
- [UpShift program](#): provides prevention intervention or treatment pathway for students either in violation of school drug policy or referred for risk behavior
- [Shared Future Coalition](#)
- Healthy Schools, School Based Health Centers, Suicide Prevention
- COHC RHIP workgroup: BH Access and Coordination

Data for Action

- Epidemiologist working on COOPR Surveillance team

Emergency Preparedness Coordinator

- Managing Health Alerts



Alignment: Existing BH Efforts

CCBHC Services

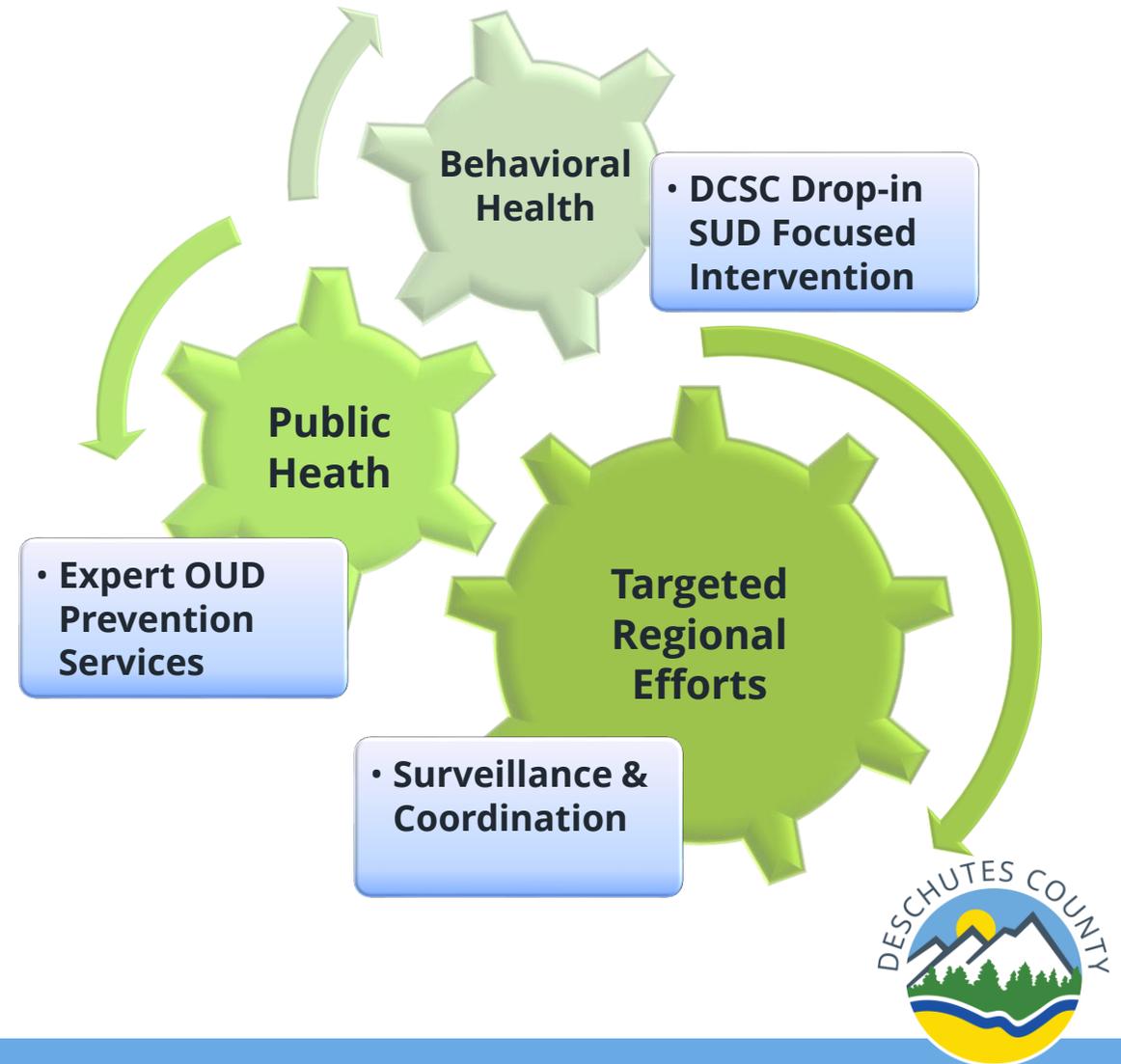
- Comprehensive MH & SUD outpatient care
- Integration with primary care (access to MAT)
- Referrals to SUD detox and treatment

Harm Reduction Program

- Naloxone distribution, education and training
- Outreach (vulnerable populations)
- Hepatitis C outreach
- Syringe exchange

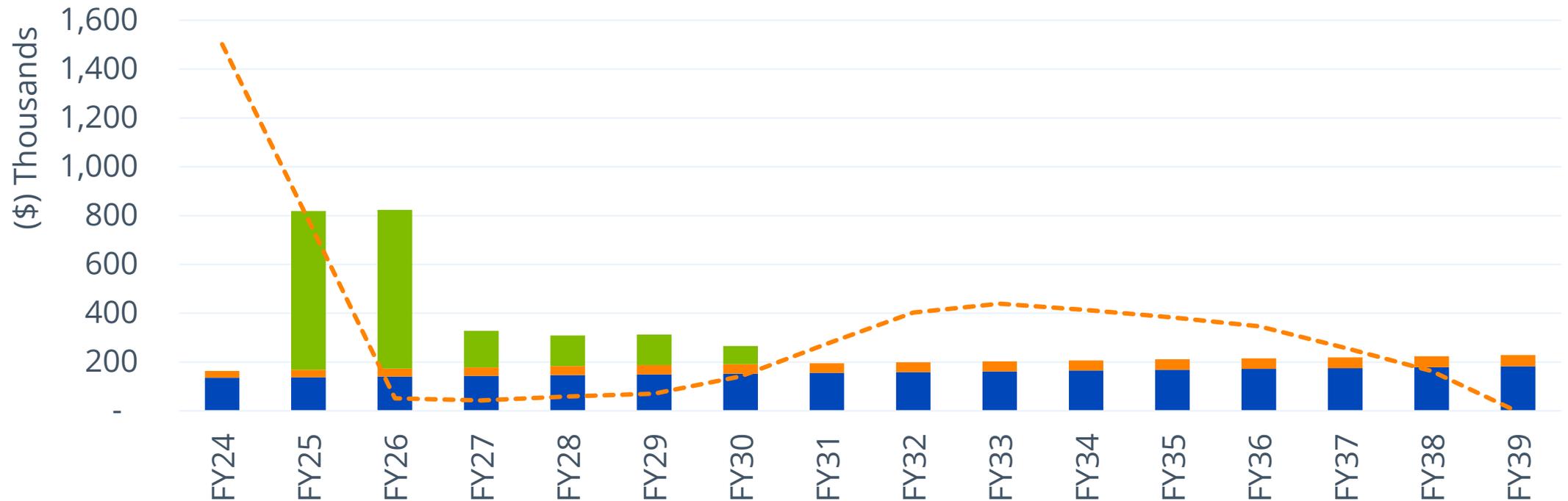
Homeless Outreach Services Team (HOST)

- Intensive community based engagement, assessment and referrals



Proposed Budget – FY24 to FY39

■ Prevention ■ Surveillance & Coordination Activities ■ Intervention - - - Ending Working Capital



Questions



References

- The Opioid Crisis and Recent Federal Policy Responses, September 2022
<https://www.cbo.gov/system/files/2022-09/58221-opioid-crisis.pdf>
- National Opioids Settlement Webpage
<https://nationalopioidsettlement.com/>
- Overdose Detection Mapping Application Program
<https://www.odmap.org:4443/>
- Oregon ESSENCE - Electronic Surveillance System for the Early Notification of Community-Based Epidemics
<https://www.oregon.gov/oha/ph/diseasesconditions/communicablediseases/preparednesssurveillanceepidemiology/essence/pages/index.aspx>

