



BOARD OF COMMISSIONERS

BOARD OF COUNTY COMMISSIONERS MEETING

9:00 AM, WEDNESDAY, JANUARY 14, 2026

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 Board of Commissioners provides time during its public meetings for Citizen Input. Alternatively, comments may be submitted on any topic at any time by emailing citizeninput@deschutes.org or leaving a voice message at 541-385-1734.

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

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

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

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

The Board of Commissioners provides time during its public meetings for Citizen Input. This is an opportunity for citizens to communicate to the Commissioners. Time is limited to 3 minutes.

Citizen Input is not available for matters that are presently scheduled for a public hearing, or for matters that are anticipated or likely to come before the Commission at a future public hearing.

The Citizen Input platform is not available for and may not be utilized to communicate obscene or defamatory material.

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.*

COMMISSIONER ANNOUNCEMENTS

CONSENT AGENDA

1. Approval of a Termination of Purchase and Sale Contract associated with Newberry Neighborhood Quadrant 2a and 2d, La Pine
2. Approval of Document No. 2026-0022, a Dedication Deed for a Remnant Parcel Adjacent to Burgess Road
3. Consideration of Board Signature on letter reappointing Mary Meier for service on the OSU Extension Advisory Council
4. Consideration of Board Signature on letter reappointing Dr. Stephen Pappa, for service on the Wolf Depredation Compensation and Financial Assistance Committee
5. Consideration of Board Signature on letter reappointing Jim Close for service on the Deschutes River Recreation Homesites #1 Special Road District
6. Approval of the minutes of the BOCC meeting of January 5, 2026

ACTION ITEMS

7. **9:10 AM** Public Hearing: Ordinance No. 2026-001, amending Chapter 2.08 of the Deschutes County Code to align the hours of operations of the County Clerk's Office with applicable State regulations
8. **9:15 AM** Public Hearing: Text Amendments for Wildfire Mitigation Building Codes

- [9.](#) **10:15 AM** Special Project Grants - Mid-Year Updates
- [10.](#) **11:30 AM** First reading of Ordinance No. 2026-004 – BCL LLC Plan Amendment / Zone Change for approximately 240 acres north and south of Highway 20 and east of Ward Road
- [11.](#) **11:35 AM** Consideration to reopen the record on the proposed text amendment to County Code to allow RV parks as a new conditional use in the Tumalo Commercial District
- [12.](#) **11:55 AM** Consideration of Board authorization to establish an “Account Validation Service” account with JPMorgan Chase Bank, N.A.

LUNCH RECESS

Continued ACTION ITEMS

- [13.](#) **1:00 PM** Consideration of updates to HR-6, Deschutes County Remote Work Policy; HR-12, Family Medical Leave Policy; and HR-13, Employee Leave Donation Policy
- [14.](#) **1:15 PM** Amendment to contract with Adlumin for Managed Detection and Response (MDR) services
- [15.](#) **1:25 PM** Cybersecurity Yearly Update and Plan
- [16.](#) **1:35 PM** Updating Policy GA-11 and transitioning this to Policy IT-5, Dial Property Information System Access and Use
- [17.](#) **1:45 PM** Updated Policy IT- 3: Custom Software Development Standards

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.

ADJOURN



Deschutes County encourages persons with disabilities to participate in all programs and activities. This meeting/event is accessible. Accommodations including sign and other language interpreter services, assistive listening devices, materials in alternate formats such as Braille, large print, electronic formats, or language translations are available upon advance request at no cost. Please make a request at least 24 hours in advance of the meeting/event by calling Brenda Fritsvold at (541) 388-6572 or send an email to brenda.fritsvold@deschutes.org.



El condado de Deschutes anima a las personas con discapacidad a participar en todos los programas y actividades. Esta reunión/evento es accesible. Hay disponibles servicios de intérprete de lengua de señas y de otros idiomas, dispositivos de escucha asistida, materiales en formatos alternativos como braille, letra grande, formatos electrónicos, traducciones o cualquier otra adaptación, con solicitud previa y sin ningún costo. Haga su solicitud al menos 24 horas antes de la reunión/el evento llamando a Brenda Fritsvold al (541) 388-6572 o envíe un correo electrónico a brenda.fritsvold@deschutes.org.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 14, 2026

SUBJECT: Approval of a Termination of Purchase and Sale Contract associated with Newberry Neighborhood Quadrant 2a and 2d, La Pine

RECOMMENDED MOTION:

Move approval of Document No. 2026-0021, a Termination of Purchase and Sale Contract (terminating Deschutes County Document No. 2007-162).

BACKGROUND AND POLICY IMPLICATIONS:

In April 2007, Deschutes County and Pahlisch Homes, Inc. (Pahlisch) executed a Purchase and Sale Contract known as Deschutes County Document No. 2007-162 (Contract), which was recorded in the real property records of Deschutes County on May 3, 2007 as instrument no. 2007-25410, for the potential purchase/sale of certain real property known as Quadrants 2a, 2b, and 2d in the Newberry Neighborhood, La Pine. Subsequently, Pahlisch did not proceed with the purchase of Quadrants 2a and 2d.

In April 2024, the County conveyed a portion of Quadrant 2a consisting of +/- 5.02-acres to Habitat for Humanity La Pine Sunriver (Habitat) for the development of affordable housing.

Habitat secured funding through Oregon Housing and Community Services for said development, and as a requirement to finalize funding, the Contract is required to be terminated to remove the encumbrance from the real property title.

Once the Board of County Commissioners has signed the Termination of Purchase and Sale Contract, the document will be recorded in the official records of Deschutes County to remove said encumbrance.

BUDGET IMPACTS:

None

ATTENDANCE:

Kristie Bollinger, Property Manager

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

After Recording Return to:
 Deschutes County Property Management
 PO Box 6005
 Bend, OR 97708-6005

**TERMINATION OF PURCHASE AND SALE CONTRACT
 Deschutes County Document No. 2007-162**

1. On April 27, 2007, Deschutes County ("County") and Pahlisch Homes, Inc. ("Contractor") executed a certain Purchase and Sale Contract ("Contract") identified as Deschutes County Document No. 2007-162, recorded in the real property records of Deschutes County on May 3, 2007, as instrument no. 2007-25410, for the potential sale/purchase of certain real property known as Quadrants 2a, 2b and 2d in the Newberry Neighborhood, La Pine ("Property").
2. Subsequently, the Contractor did not complete the purchase of a portion of the Property, known as Quadrants 2a and 2d, which are legally described as,

 Quadrant 2a: Lot 8, NEWBERRY NEIGHBORHOOD NO. 2, Deschutes County, Oregon
 Quadrant 2d: Lot 10, NEWBERRY NEIGHBORHOOD NO. 2, Deschutes County, Oregon
3. On April 3, 2024, County conveyed a portion of the Property, consisting of a portion of Quadrant 2a and consisting of +/- 5.02-acres and legally described as PARCEL 2 OF PARTITION PLAT NO. 2024-07, CITY OF LA PINE, DESCHUTES COUNTY OREGON to Habitat for Humanity La Pine Sunriver, Inc. ("Habitat").
4. Habitat has secured funding through Oregon Housing and Community Services to construct affordable housing and as a requirement to finalize funding, the Contract is required to be terminated to remove the Contract as an encumbrance to the Property title.
5. Section 3.1 of the Contract, Termination Date, states that, unless earlier terminated as provided below, the termination date shall be upon the later of June 11, 2013, or Contractor's and County's full performance of all requirements under the Contract.
6. County hereby wishes to memorialize the termination of said Contract associated with the Property legally described in Section 2 of this Termination of Purchase and Sale Contract ("Termination"). Said Contract shall be terminated in its entirety upon recording of this Termination in the real property records of Deschutes County, Oregon.

7. County authorizes and approves this Termination and hereby removes the Contract as an encumbrance to the Property title.

Dated this _____ of _____, 2026

**BOARD OF COUNTY
COMMISSIONERS
OF DESCHUTES COUNTY, OREGON**

PHIL CHANG, Chair

ATTEST:

ANTHONY DEBONE, Vice-Chair

Recording Secretary

PATTI ADAIR, Commissioner

STATE OF OREGON, County of Deschutes) ss.

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

Dated this _____ of _____, 2026

Notary Public, State of Oregon



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 14, 2026

SUBJECT: Approval of Document No. 2026-0022, a Dedication Deed for a Remnant Parcel Adjacent to Burgess Road

RECOMMENDED MOTION:

Move approval of Document No. 2026-0022.

BACKGROUND AND POLICY IMPLICATIONS:

Randy A. and Sharon L. Williams ("Grantors") are the owners of Tax Lot 211034C000099 ("Subject Property"), which is a 10 feet wide by 265.6 feet long remnant of a 10 foot strip parcel originally created with the Evergreen Park subdivision plat (Instrument No. 1970-27, Official Records) in 1970. In 1995, the Evergreen Park developer conveyed the 10 foot strip parcel by warranty deed (Instrument No. 1995-19067, Official Records) to Ira V. and Mary-Ann Tomlinson. In 2002, the Tomlinson Family Trust convey the 10 foot strip parcel to Randy A. and Sharon L. Williams by warranty deed together with three lots in the Third Addition to Woodland Park Homesites subdivision (Instrument No. 2002-50781, Official Records) that are located approximately 3,200 feet south of the Subject Property. In 2013, the Williams sold the three otherwise unassociated lots in the Third Addition to Woodland Park Homesites subdivision but retained ownership of the Subject Property. In 2018, the County acquired a portion of the 10 foot strip parcel from the Williams for the Burgess Road/Day Road/ Pine Forest Drive Intersection Improvement project (Instrument No. 2018-014896, Official Records); the Subject Property, the easterly remainder of the 10 foot strip parcel, was not needed for the project and, as such, was not acquired by the County at that time.

The Williams recently approached Road Department staff with a request to dedicate the Subject Property as right-of-way, as the property is not marketable or developable. Road Department staff find that the Subject Property would be suitable and beneficial as additional public right-of-way for Burgess Road. As such, staff prepared a dedication deed (Document No. 2026-0022) and presented it to the Williams for their consideration; the Williams have executed the dedication deed.

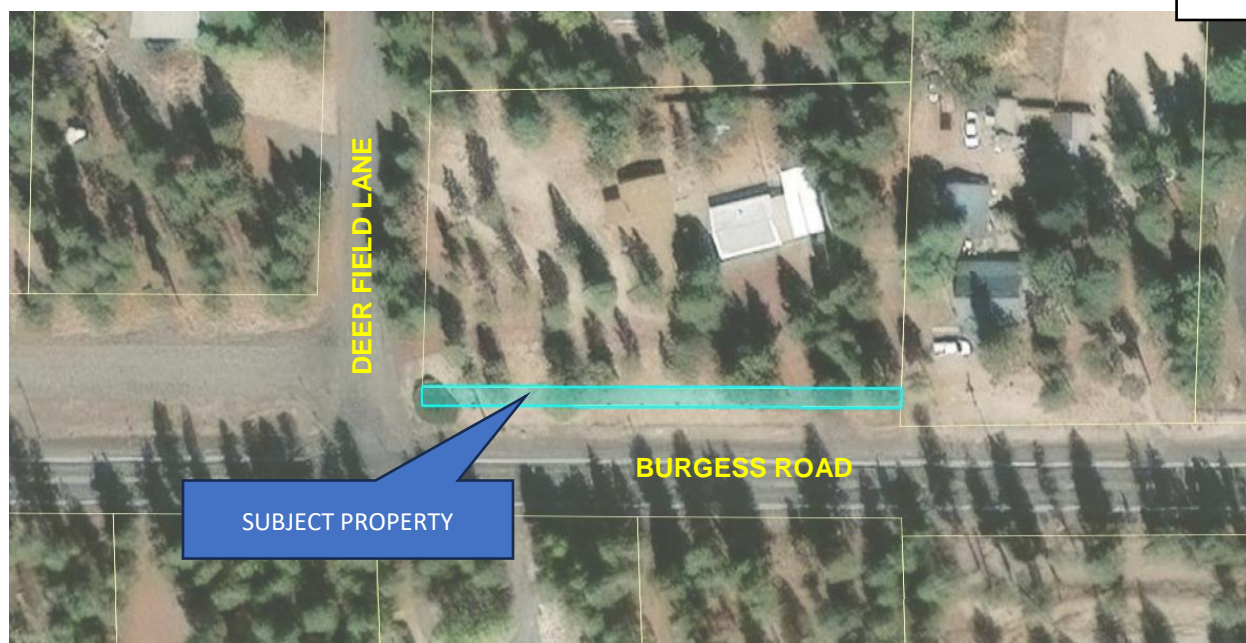


Figure – Tax Lot 211034C000099

Board approval of Document No. 2026-0022 will provide acceptance, on behalf of the public, of the subject property as public road right-of-way.

BUDGET IMPACTS:

None

ATTENDANCE:

Cody Smith, County Engineer/Assistant Road Department Director

REVIEWED

LEGAL COUNSEL

01/14/2026 Item #2.

For Recording Stamp Only

After Recording Return to:
Deschutes County Road Dept.
61150 S.E. 27th Street
Bend, Oregon, 97702

DEED OF DEDICATION

Randy A. Williams and Sharon L. Williams, husband and wife, Grantors, do hereby dedicate to the public for roadway and utility purposes that parcel of land described in Exhibit "A" and shown on Exhibit "B" attached hereto and by this reference incorporated herein.

The true consideration for this conveyance is other than monetary.

Dated this 22 of December, 2025

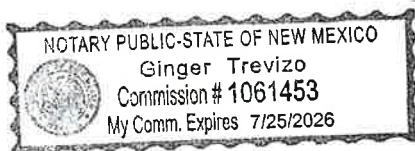
Randy A. Williams
Randy A. Williams

Sharon L. Williams
Sharon L. Williams

New Mexico
STATE OF ~~OREGON~~)
) SS.
County of Deschutes)

Before me, a Notary Public, personally appeared Randy A. Williams and Sharon L. Williams, and acknowledged the foregoing instrument.

Dated this 22 day of December, 2025.



NOTARY PUBLIC FOR OREGON - New Mexico
My Commission Expires: July 25, 2026

ACCEPTANCE

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

Dated this _____ of _____, _____

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PHIL CHANG, Chair

ANTHONY DEBONE, Vice Chair

PATTI ADAIR, Commissioner

STATE OF OREGON)
) SS.
County of Deschutes)

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

Dated this _____ day of _____, _____.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

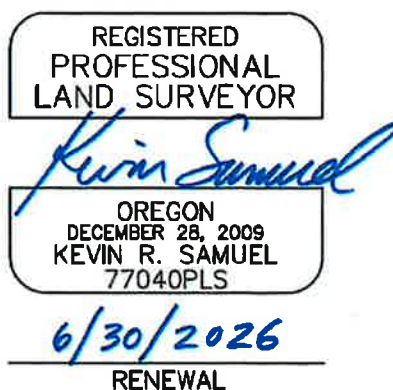
Exhibit "A"
BURGESS ROAD – R/W DEDICATION

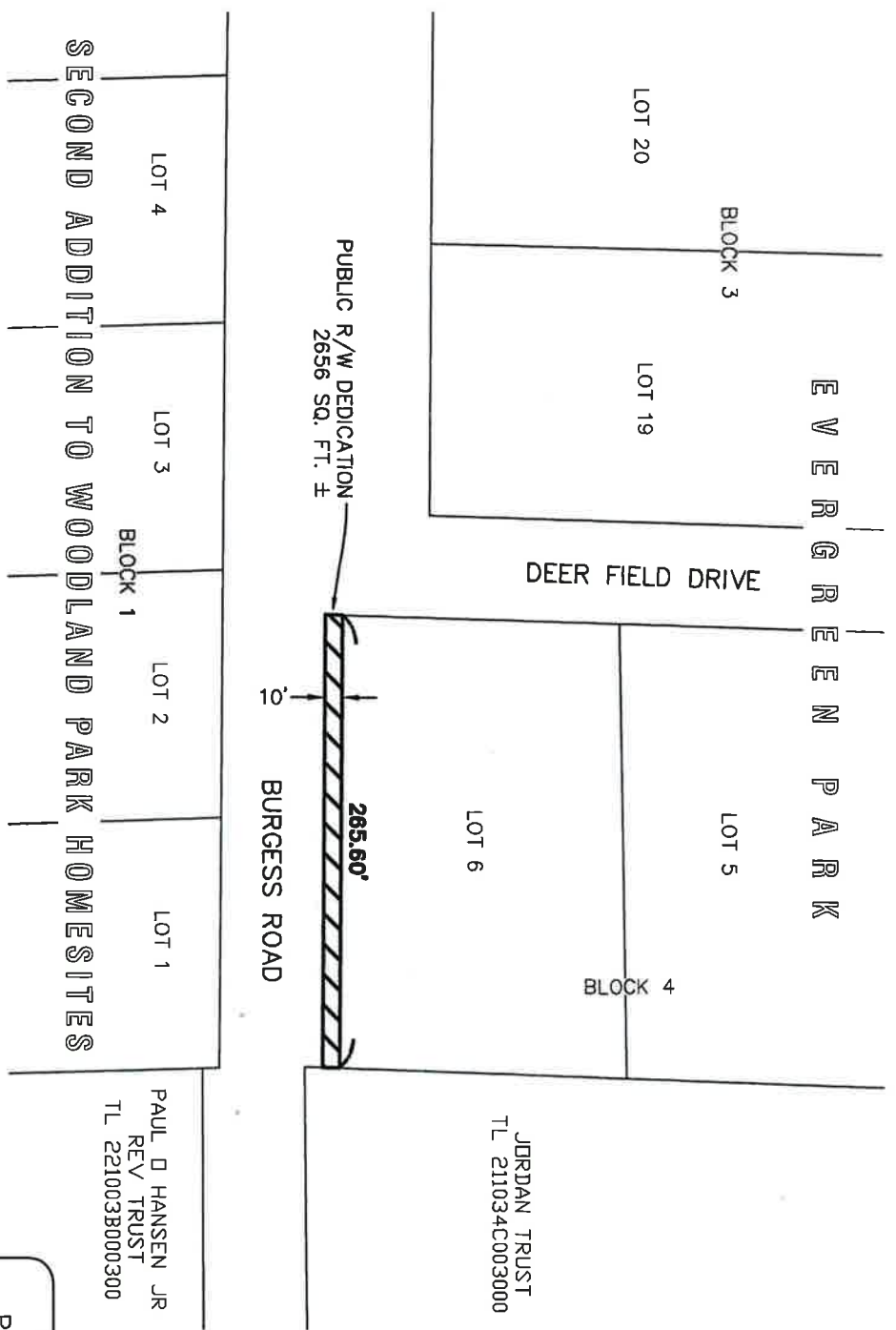
A portion of the SW 1/4 of Section 34, Township 21 South, Range 10 East, W.M., Deschutes County, Oregon, being more particularly described as follows:

A 10 foot wide strip of land lying between the South line of Lot 6, Block 4, Evergreen Park and the North line of Burgess Road. Bounded on the West by the East line of Deer Field Drive and on the East by the East line of Evergreen Park Subdivision.

Containing 2,656 square feet more or less.

This portion of land is depicted on the attached map titled "EXHIBIT "B" – BURGESS ROAD R/W DEDICATION" which is incorporated by this reference.





PAUL D HANSEN JR
REV TRUST
TL 221003B000300

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Kevin Samuel

OREGON
DEC. 28, 2009
KEVIN R. SAMUEL
77040PLS

RENEWS: 6/30/2026

EXHIBIT "B" - BURGESS ROAD R/W DEDICATION

SW 1/4 SEC. 34, T21S, R10E, W.M., DESCHUTES COUNTY, OREGON

	DESCHUTES COUNTY SURVEYOR'S OFFICE		SCALE: 1"=100'	DRAWN BY: KRS	DATE: 11/14/2025	REVISIONS:	SHEET 1 OF 1 11/18/2025
	61150 S.E. 27TH STREET, BEND, OR. 97702		FILE: Burgess Rd RW Ded.dwg				

J:\CAD\Projects\Surveying\Burgess Rd RW Dedication 2025\dwg\Burgess Rd RW Ded.dwg



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 14, 2026

SUBJECT: Public Hearing: Ordinance No. 2026-001, amending Chapter 2.08 of the Deschutes County Code

RECOMMENDED MOTION:

Following the public hearing, move approval of first reading of Ordinance No. 2026-001 by title only.

BACKGROUND AND POLICY IMPLICATIONS:

The County Clerk notified Legal that the hours of operation provision in DCC 2.08.010 is inconsistent with applicable ORS. The amendment will ensure compliance with ORS. Redline revisions are provided.

BUDGET IMPACTS:

None

ATTENDANCE:

Legal, Clerk

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Title 2.08, County Clerk, of *
the Deschutes County Code. *

ORDINANCE NO. 2026-001

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

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

WHEREAS, staff from the Clerk's Office have identified a need to amend DCC 2.08 to clarify criteria and process associated with hours of operations; and

WHEREAS, the Board of County Commissioners of Deschutes County considered this matter at a duly noticed Board meeting on January 14, 2026, and determined that DCC 2.08 should be amended; now therefore,

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

Section 1. AMENDMENT. DCC 2.08 is amended to read as described in Exhibit "A," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

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

///

Dated this _____ of _____, 2026

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PHIL CHANG, Chair

ANTHONY DeBONE, Vice Chair

ATTEST:

Recording Secretary

PATTI ADAIR, Commissioner

Date of 1st Reading: _____.

Date of 2nd Reading: _____.

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

Effective date: _____.

EXHIBIT A

(To Ordinance No. 2026-001)

CHAPTER 2.08 COUNTY CLERK

2.08.010 Hours For Receiving, ~~Recording and Certifying And Recording~~ Documents

2.08.020 Refund Of Over-Payments Of Recording Fees

2.08.010 Hours For Receiving, ~~And Recording and Certifying~~ Documents

~~The office hours for receiving, and recording and certifying instruments documents in the by the County Clerk shall conform to ORS 205.242. The provisions of ORS 205.242, including minimum hours, recognized exceptions, and any authorized temporary modifications, are adopted by this reference and made a part of this Chapter 2.08's office shall be from 8:00 a.m. until 4:00 p.m. on each judicial day, except for the day after Thanksgiving, Christmas and New Year's Day.~~

HISTORY

Adopted by Ord. 81-034 §1 on 12/8/1981

Amended by Ord. 96-029 §1 on 5/15/1996

Amended by Ord. 97-061 §1 on 8/13/1997

Amended by Ord. 2026-001 §1 on 5/6/2026

2.08.020 Refund Of Over-Payments Of Recording Fees

Unless requested by the person submitting the documents to be recorded, no refund shall be issued for any over-payment of fees of \$10.00 or less received by the County Clerk's office for payment of recording fees.

HISTORY

Adopted by Ord. 2004-014 §1 on 6/9/2004

Amended by Ord. 2013-011 §1 on 3/6/2013



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 14, 2026

SUBJECT: Public Hearing: Text Amendments for Wildfire Mitigation Building Codes

RECOMMENDED MOTION:

Pending public comments, staff recommends closing both the oral and written records and beginning deliberations.

Should a member of the public request to keep the record open, staff recommends leaving the written record open for one week, until January 21, 2025.

BACKGROUND AND POLICY IMPLICATIONS:

The Deschutes County Board of Commissioners (Board) will conduct a public hearing on January 14, 2026, to consider amendments to the Deschutes County Code (file no. 247-25-000703-TA) adopting new wildfire mitigation building code standards as outlined in Section R327 of the Oregon Residential Specialty Code.

The amendments are intended to adopt discretionary wildfire mitigation residential building code standards that have recently been made available to local jurisdictions. This proposal does not cover defensible space standards, as any future amendments to address defensible space will be covered in a future project at the Board's direction.

BUDGET IMPACTS:

None

ATTENDANCE:

Kyle Collins, Senior Planner
Will Groves, Planning Manager
Nicole Mardell, Principal Planner



COMMUNITY DEVELOPMENT

MEMORANDUM

TO: Deschutes County Board of Commissioners

FROM: Kyle Collins, Senior Planner
Will Groves, Planning Manager
Nicole Mardell, Principal Planner

DATE: January 7, 2025

SUBJECT: Public Hearing: Text Amendments for Wildfire Mitigation Building Codes

The Deschutes County Board of Commissioners (Board) will conduct a public hearing on January 14, 2026 to consider amendments to the Deschutes County Code (file no. 247-25-000703-TA) adopting discretionary wildfire mitigation residential building code standards that have recently been made available to local jurisdictions. This proposal does not cover defensible space standards, as any future amendments to address defensible space will be covered in a future project at the Board's direction.

Attached to this memorandum are the findings (Attachment A) and proposed text amendments (Attachment B) summarizing the changes. Within the proposed amendments, added language is shown underlined, and deleted language is shown as ~~strikethrough~~.

All record materials can be found on the project website: <https://bit.ly/0703TA>

I. BACKGROUND

During the 2021 state legislative session, Senate Bill (SB) 762¹ was passed to help modernize and improve wildfire preparedness across Oregon. SB 762 was subsequently modified by the passage of SB 80² in 2023. These pieces of legislation were developed to address wildfire issues through three key strategies: creating fire-adapted communities, developing safe and effective responses, and increasing the resiliency of Oregon's landscapes.

One of the primary components of SBs 762 and 80 was the creation of a comprehensive Statewide Wildfire Hazard Map (Hazard Map) to guide new wildfire regulations for residential

¹ <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB762/Enrolled>

² <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB80/Enrolled>

development. Under SBs 762 and 80, once the Hazard Map was finalized, properties included in **both** a designated Wildland Urban Interface (WUI) boundary and classified as high hazard would be subject to additional development regulations. SB 80 required that, at a minimum, local governments ensure that properties meeting both of these classifications would be subject to:

- 1) Home hardening building codes as described in Section R327 of the Oregon Residential Specialty Code (ORSC).
- 2) Defensible space standards as determined by the Oregon State Fire Marshal.

However, due to public concern the state legislature repealed the Hazard Map and all associated requirements in June 2025 with the passage of SB 83³.

At the local level, Deschutes County previously went through an exercise in 2019-2020 with the collaborative Wildfire Mitigation Advisory Committee (WMAC) to determine if changes were warranted to the Deschutes County Wildfire Hazard Zone⁴ and whether additional mitigation standards should be considered for new development. That process ultimately concluded with a report summarizing recommendations from the WMAC⁵ as well as an outreach report gauging public interest in new wildfire mitigation standards⁶. Ultimately, the Board decided the Deschutes County Wildfire Hazard Zone should remain unchanged. Prior to continued discussions regarding potential new wildfire mitigation standards, SB 762 was passed and largely removed local discretion on new mitigation standards until present.

II. OVERVIEW OF BUILDING CODE AMENDMENTS

The proposed text amendments would institute Section R327 of the ORSC in Deschutes County for all new residential development, including certain residential accessory structures. Multi-unit dwellings, such as apartment complexes, are unaffected by the proposed amendments, and these developments are not subject to the ORSC. The Section R327 standards do not allow for piecemeal adoption, and all standards must be adopted in whole if building officials wish to mandate any portion within their jurisdictions.

³ <https://olis.oregonlegislature.gov/liz/2025R1/Downloads/MeasureDocument/SB83/Enrolled>

⁴

https://www.deschutes.org/sites/default/files/fileattachments/community_development/page/17911/ordinance_2001-024.pdf

⁵

https://www.deschutes.org/sites/default/files/fileattachments/community_development/page/17911/2020-04-17_wmac_final_report_complete.pdf

⁶

https://www.deschutes.org/sites/default/files/fileattachments/community_development/page/17911/wildfire_mitigation_outreach_summary_report.pdf

As currently proposed, the amendments are limited to Deschutes County Code Title 15⁷, which captures general building safety and construction standards. As such, the proposed amendments are not subject to the more standard Post-Acknowledgement Plan Amendment (PAPA) process for land use amendments, which requires noticing to the Department of Land Conservation and Development (DLCD) and addressing the applicable Oregon Statewide Planning Goals.

Section R327 broadly covers the following structural components of these developments to minimize the risk of wildfire ignition:

- **Roofing:** In accordance with specific building code standards, roofing shall be asphalt shingles, slate shingles, metal roofing, tile, clay or concrete shingles, or other approved roofing that is deemed to be equivalent to a minimum Class B-rated roof assembly. Wood shingle and shake roofs are not permitted on structures.
- **Exterior walls:** Exterior wall covering or wall assembly shall comply with one of the following requirements:
 - Noncombustible material.
 - Ignition-resistant material.
 - Heavy timber assembly.
 - Log wall construction assembly.
 - Wall assemblies that have been tested in accordance with the test procedures for a 10-minute direct flame contact exposure test.
- **Glazing:** Exterior windows, windows within exterior doors, and skylights shall be tempered glass, multilayered glazed panels, glass block, or have a fire-resistance rating of not less than 20 minutes.
- **Ventilation:** All ventilation openings shall be covered with noncombustible corrosion-resistant metal wire mesh, vents designed to resist the intrusion of burning embers and flame, or other approved materials or devices. Ventilation mesh and screening shall be a minimum of 1/16-inch and a maximum of 1/8-inch in any dimension.
- **Gutters and Downspouts:** Where provided, gutters and downspouts shall be constructed of noncombustible materials and be provided with an approved means to prevent accumulation of leaves and debris in the gutter.
- **Eaves, Soffits, and Cornices:** Ventilation openings shall not be installed on the underside of eaves, soffits, or cornices.

The list above is not exhaustive, but covers the major components of home construction that would be affected by the proposed amendments.

7

Major exceptions to the Section R327 standards include the following:

- Nonhabitable detached accessory structures with a floor area of not greater than 400 square feet located not less than 50 feet from all structures on the lot that contain habitable space.
- Structures exempted by ORS 455.315 (i.e. – agriculturally exempt structures).
- Detached accessory membrane-covered frame structures.

Section R327 also previously contained several provisions which were modified by SB 83 in the following ways:

- Repairs or replacements of existing components (i.e. – roofs, siding, etc.) and additions to existing dwellings are not mandatorily subject to R327.
- Removes requirements for local government to identify specific geographic regions for implementing any adopted wildfire mitigation standards. Previously, Section R327 and associated mitigation requirements were required to be implemented through the establishment of a locally adopted “Wildfire Hazard Map.” This requirement has been removed, and jurisdictions have been granted broad latitude to determine where to implement any locally adopted standards.

III. PROJECTED COSTS

A repeated question from community members and decision makers regarding Section R327 is what, if any, anticipated cost increases can be expected from applying the standards to new construction. Staff notes the difficulty in providing a succinct answer, as there are significant variables that can dramatically impact final cost outcomes, including:

- The design choices made by the landowner, as these choices may or may not be covered under Section R327
- The proposed size for any particular development
- Homeowner Association (HOA) standards
- Labor costs and contractor familiarity with materials

Despite these variables, staff has attached several items to this memo which attempt to provide broadly applicable estimates for typical residential construction.

Two of these attachments were prepared by the Oregon Building Codes Division (BCD) in 2019 as the state anticipated mandating Section R327 standards statewide. At the time, BCD reported that R327 standards could **add approximately \$2,500-\$3,000** to the existing costs of a typical 1,200 square foot detached single-family dwelling. This increase includes the costs of labor and materials to comply with the new provisions. However, BCD also references reports from third parties which found that costs could increase by up to 11%,

and in at least one case study from Montana, the implementation of these standards decreased construction costs by 2.4% over traditional methods.

The final attachment was prepared by Headwaters Economics in 2025 and is based on estimated construction costs in southern California. Given the location assumed in the report, these estimates may have limited applicability in Deschutes County, however it has been included to provide at least some objective analysis in estimating costs. The report concludes that incorporating wildfire-resistant building materials can be achieved at a relatively modest increase in cost compared to traditional construction. For a one-story, 1,750-square-foot mid-range home valued at \$500,000, total construction costs may **increase by 2-3%** over a traditional home.

Finally, BCD notes that the Oregon Home Builders Association submitted estimates when Section R327 was first adopted in 2019. It estimated that the cost of a high-end home would increase by \$12,500, the cost of a production 1,200 square foot home would increase by \$7,800, and the cost of a production 2,200 square foot home would increase by \$10,800. The home builders estimated that current (2019) increased construction costs would lead to a cost increase on a 1,400 square foot home of \$8,200⁸. Staff notes it is unclear what assumptions and methods the Builders Association used to generate these estimates, but they are included here for reference.

Given the wide range of estimates and variables to consider, it is likely impossible to provide a definitive answer to the question of cost effects. Based on the information that is available, at this time staff conservatively estimates that costs **may increase somewhere in the range of 2-11% over the cost of traditional construction**, but also points out the following issues to consider:

- Many of the materials and methods covered under Section R327 are commonly utilized by contractors and developers in the region, particularly for some of the highest value items such as roofing, fiber cement siding, and windows.
- New residential construction is largely developed with 30-year mortgages or similar financing options. This means that any additional costs are likely more accurately considered when amortized over the timespan of any loan in question.

IV. PLANNING COMMISSION REVIEW

The Planning Commission held a public hearing regarding the amendments on December 11, 2025⁹. Two public comments were received during the hearing, both in support of the proposed amendments. The Commission closed the public hearing, deliberated, and voted 5-0 to recommend approval of the proposed amendments. Staff notes that two Commissioners were not present during the hearing and thus did not vote on the proposal.

⁸ <https://records.sos.state.or.us/ORSOSWebDrawer/Recordhtml/12709721>

⁹ <https://www.deschutes.org/bc-pc/page/planning-commission-73>

V. DECISION POINTS

There are two primary areas for the Board to consider when preparing their decision:

- 1) Should the Section R327 standards be adopted?**
- 2) If yes, where should the Section R327 standards be implemented?**

If the Board ultimately determines that new mitigation standards are warranted, a key decision point will be the geographic scope where standards would apply. While the standards can technically be targeted to specific geographic regions of the County, staff would caution that this approach presents the following challenges:

- Any discrepancy in the applicability of new mitigation standards may create community friction, as previously seen during the State Wildfire Hazard Zone mapping process.
- Local fire protection officials have repeatedly expressed the broadscale community risk from wildfire in Deschutes County, regardless of specific location. Equal application of these standards presents the greatest opportunity to begin mitigating wildfire impacts to residential development.
- Should mitigation standards be targeted to specific geographic areas, then any proposed amendments will need to be evaluated under a land use process, which has distinct procedural requirements that must be addressed. This would require restarting the current review process to apply these new procedures, potentially delaying the project by several additional weeks to months.

VI. AGENCY AND PUBLIC COMMENTS

Two public comments have been received to date from the following parties:

1. The Project Wildfire Neighborhood Coalition
2. Central Oregon LandWatch

Both parties expressed broad support for the proposed amendments as drafted. Additionally, representatives from the Project Wildfire Neighborhood Coalition provided supplemental testimony during the Planning Commission public hearing to reiterate their continued support.

No agency comments have been received to date.

VII. NEXT STEPS

At the conclusion of the public hearing, the Board may:

- Continue the hearing to a date certain;
- Close the hearing and leave the written record open to a date certain;
- Close the hearing and set a date for deliberations; or
- Close the hearing and commence deliberations.

Attachments

- A. Ordinance 2026-002: Findings & Amendments
- B. 2023 Oregon Residential Specialty Code Amendments (Section R327 Wildfire Mitigation Standards)
- C. 2025 Notice of Temporary Rule from the Oregon Building Code Division (BCD)
- D. BCD Cost Estimate Fact Sheet for Home Hardening
- E. 2025 Headwaters Economics Report - Construction Costs for Wildfire-Resistant Homes

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

PHILIP CHANG, Chair

ANTHONY DEBONE, Vice Chair

ATTEST:

Recording Secretary

PATTI ADAIR, Commissioner

Date of 1st Reading: ____ day of _____, 2026.

Date of 2nd Reading: ____ day of _____, 2026.

Record of Adoption Vote:

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

Effective date: ____ day of _____, 2026.

CHAPTER 15.04 BUILDING AND CONSTRUCTION CODES AND REGULATIONS

15.04.010 Specialty Codes And Building Requirements Adopted; Enforcement

15.04.010 Specialty Codes And Building Requirements Adopted; Enforcement

In the areas under the jurisdiction of the County, the County shall administer and enforce pursuant to ORS 455.153, the following specialty codes and building requirements as though the specific specialty codes and building requirements were ordinances of the County:

- A.** The specialty codes under ORS 447 (Plumbing; Access by Disabled Persons), 455 (Building Code) and ORS 479.510 to 479.945 (Electrical Safety Law).
 - 1. **Oregon Residential Specialty Code Section R327- Wildfire Hazard Mitigation shall apply to all of unincorporated Deschutes County and in the municipalities where their Councils have adopted Section R327 into their municipal code.**
- B.** Mobile or manufactured dwelling parks requirements adopted under ORS 446.062.
- C.** Temporary parks requirements adopted under ORS 446.105.
- D.** Manufactured dwelling installation, support and tiedown requirements adopted under ORS 446.230.
- E.** Park and camp requirements adopted under ORS 455.680.

HISTORY

Adopted by Ord. [96-055](#) §2 on 7/10/1996

Amended by Ord. [2011-022](#) §2 on 7/27/2011

Amended by Ord. 2026-002 §1 on 04/01/2026



FINDINGS

WILDFIRE HAZARD BUILDING CODES - TEXT AMENDMENTS

I. **APPLICABLE CRITERIA:**

Title 22, Deschutes County Development Procedures Ordinance

II. **BACKGROUND:**

Pursuant to Senate Bill (SB) 83, Text Amendments to adopt section R327 of the Oregon Residential Specialty Code (ORSC) in unincorporated Deschutes County. Section R327 establishes fire hardening building requirements for new residential construction.

III. **BASIC FINDINGS:**

On June 26, 2025, the Oregon Legislature adopted SB 83¹. This Bill repeals the State Wildfire Hazard Map which was previously adopted and administered pursuant to SBs 762² and 80³. Additionally, SB 83 allows local jurisdictions to adopt fire hardening standards for new residential development as outlined in section R327 of the Oregon Residential Specialty Code (ORSC). The proposed text amendments would establish R327 building code standards for newly constructed dwelling units and their accessory structures, with exceptions and exemptions delineated within the ORSC.

As the proposed amendments are not located within the land use sections of the Deschutes County Code (CDD), notice to the Oregon Department of Land Conservation and Development is not required. As demonstrated in the findings below, the amendments remain consistent with Deschutes County Code and the Deschutes County Comprehensive Plan.

IV. **FINDINGS:**

CHAPTER 22.12, LEGISLATIVE PROCEDURES

Section 22.12.010.

Hearing Required

¹ <https://olis.oregonlegislature.gov/liz/2025R1/Measures/Overview/SB83>

² <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB762/Enrolled>

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

No legislative change shall be adopted without review by the Planning Commission and a public hearing before the Board of County Commissioners. Public hearings before the Planning Commission shall be set at the discretion of the Planning Director, unless otherwise required by state law.

FINDING: This criterion will be met because a public hearing was held before the Deschutes County Planning Commission (Commission) on December 11, 2025 and a public hearing was held before the Board of County Commissioners (Board) on January 14, 2026.

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 Bulletin* newspaper on December 1, 2025 for the Commission public hearing and December 26, 2025 for the Board 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: The proposed amendments are legislative and do not apply to any specific property. Therefore, individual notice is not required.

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

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

Section 22.12.030 Initiation of Legislative Changes.

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

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

Section 22.12.040. Hearings Body

- A. *The following shall serve as hearings or review body for legislative changes in this order:***
 - 1. *The Planning Commission.***
 - 2. *The Board of County Commissioners.***
- B. *Any legislative change initiated by the Board of County Commissioners shall be reviewed by the Planning Commission prior to action being taken by the Board of Commissioners.***

FINDING: This criterion is met as the Commission held a public hearing and reviewed the proposed amendments on December 11, 2025. The Board held a public hearing on January 14, 2026.

Section 22.12.050 Final Decision

All legislative changes shall be adopted by ordinance

FINDING: The proposed legislative changes included in file no. 247-25-000703-TA will be implemented by ordinances upon approval and adoption by the Board.

V. PROPOSED TEXT AMENDMENTS:

The proposed text amendments are detailed in the referenced ordinance with additional text identified by underline and deleted text by ~~striketrough~~. Below are summary explanations of the proposed changes.

Title 15, Buildings and Construction:

Chapter 15.04. BUILDING AND CONSTRUCTION CODES AND REGULATIONS - (See Exhibit A)

Section 15.04.010. Specialty Codes and Building Requirements Adopted; Enforcement

The proposed changes add a new section of the Oregon Residential Specialty Code (ORSC) to implement wildfire mitigation building standards for new residential development.

Upon implementation, newly constructed dwellings and their accessory structures shall be protected against wildfire in accordance with the provisions of section R327 of the ORSC.

Notable exceptions to these standards are as follows:

1. Nonhabitable detached accessory structures with a floor area of not greater than 400 square feet located not less than 50 feet from all structures on the lot that contain habitable space.
2. Structures exempted by ORS 455.315 (Agricultural exempt buildings).
3. Detached accessory membrane-covered frame structures.

VI. CONCLUSION:

Based on the information provided herein, the staff recommends the Board of County Commissioners approve the proposed text amendments and implement the R327 wildfire mitigation building code standards in unincorporated Deschutes County for new residential development.

Effective Aug. 5, 2025

(Ref.: ORS 455.610)



2023 Oregon Residential Specialty Code Amendments

Summary: In accordance with Senate Bill 83 (2025) this amendment makes Section R327, *Wildfire Hazard Mitigation*, available for local adoption and applicable to new construction of new ORSC governed buildings.

This amendment was adopted by temporary rule effective Aug. 5, 2025 through Jan. 2, 2026. The division anticipates adopting these amendments through a permanent rule on Jan. 1, 2026.

The following amendments are adopted as part of the 2023 Oregon Residential Specialty Code (ORSC).

The changes are denoted as follows:

Blue/underline = Added code language
~~Red/strikethrough~~ = Deleted code language

SECTION R302—FIRE-RESISTANT CONSTRUCTION

R302.2.12 Townhouse roof coverings. In addition to the requirements of Chapter 9, structurally independent townhouses shall be provided with a minimum Class C roof covering, and structurally dependent townhouses shall be provided with a minimum Class B roof covering.

Exceptions:

1. Structurally dependent townhouses may use Class C roof coverings where all of the following conditions are met:
 - 1.1. The townhouses are not more than two stories in height.
 - 1.2. The townhouses do not have more than 6,000 square feet (557 m²) of projected roof area.
 - 1.3. There is not less than 3 feet (914 mm) from the extremity of the roof to the exterior lot line or an assumed lot line on all sides except for street fronts.
2. Where adopted by the local municipality, roof coverings for townhouses located in areas determined by the *municipality* to be "Wildfire Hazard Zones" shall be in accordance with Section R327.

SECTION R327—WILDFIRE HAZARD MITIGATION

R327.1 General. Where adopted by the local municipality, the provisions of this section shall apply to new dwellings and their accessory structures required ~~by a local municipality via local ordinance~~ to be protected against wildfire.

~~Nothing in the code prevents a local municipality from modifying the requirements of this section for any lot, property or dwelling, or the remodel, replacement or reconstruction of a dwelling within the jurisdiction, as provided in Section R104.10.~~

R327.1.1 Local adoption. The provisions of this section may be adopted in whole by a *municipality* ~~via local ordinance~~ without following ORS 455.040 or OAR 918-020-0370. ~~Where a municipality chooses to adopt these provisions locally, the following shall be included in the adopting ordinance:~~

- ~~1. Identification of areas subject to the additional construction standards of Section R327.~~
- ~~2. A transition plan or other measures to address subdivisions already under development at the time of local adoption.~~
- ~~3. A local appeal process for customers to follow. Where a municipality has previously adopted the provisions of Section R327 locally, the requirements of Section R327.1.1 do not apply and the existing local ordinance may continue without change, to include those based on prior iterations of this section.~~

R327.1.2 Notification. Where a *municipality* adopts Section R327 locally, ~~or where a municipality has previously adopted Section R327 locally,~~ the *municipality* shall notify the State of Oregon, Building Codes Division, and ~~provide a copy of the locally adopted map identifying~~ identify areas of the jurisdiction where the additional construction standards of Section R327 are required.

R327.1.3 Application. Where ~~required~~ adopted by a local municipality via local ordinance, newly constructed *dwelling*s, and their *accessory structures*, ~~and new additions to existing dwellings and their accessory structures~~ located in areas designated by the *municipality* shall be protected against *wildfire* in accordance with this section. ~~Where existing exterior elements that are within the scope of this section are replaced in their entirety, the replacement shall be made in accordance with the provisions of this section.~~

Exceptions:

1. Nonhabitable detached *accessory structures* with a *floor area* of not greater than 400 square feet (37.2 m²) located not less than 50 feet (15 240 mm) from all ~~other~~ structures on the *lot* that contain habitable space.
- ~~2. Partial repairs made in accordance with Section R405.2.2.~~
2. Structures exempted by ORS 455.315.
3. Detached accessory membrane-covered frame structures

R327.2 Definitions. The following words and terms shall, for purposes of Section R327, have the meanings shown herein. See Chapter 2 for general definitions.

HEAVY TIMBER. For the use in this section, *heavy timber* shall be sawn lumber or glued-laminated wood with the smallest minimum nominal dimension of 4 inches (102 mm). *Heavy timber* walls or floors shall be sawn or glued-laminated planks splined, tongue-and-groove or set close together and well spiked.

IGNITION-RESISTANT MATERIAL. A type of building material that resists ignition or sustained flaming combustion sufficiently so as to reduce losses from wildland urban interface conflagrations under worst-case weather and fuel conditions with *wildfire exposure* of burning embers and small flames. Such materials include any product designed for exterior exposure that, when tested in accordance with ASTM E84 or UL 723 for surface burning characteristics of building materials, extended to a 30-minute duration, exhibits a flame spread index of not more than 25, shows no evidence of significant progressive combustion, and whose flame front does not progress more than 10½ feet (3200 mm) beyond the centerline of the burner at any time during the test.

NONCOMBUSTIBLE MATERIAL. Any material that in the form in which it is used and under the conditions anticipated will not ignite, burn, support combustion or release flammable vapors when subjected to fire or heat in accordance with ASTM E136.

WILDFIRE. Any uncontrolled fire spreading through vegetative fuels that threatens to destroy life, property or resources.

WILDFIRE EXPOSURE. One or a combination of circumstances exposing a structure to ignition, including radiant heat, convective heat, direct flame contact and burning embers being projected by a vegetation fire to a structure and its immediate environment.

R327.3 Roofing. Roofing shall be asphalt shingles in accordance with Section R905.2, slate shingles in accordance with Section R905.6, metal roofing in accordance with Section R905.4, tile, clay or concrete shingles in accordance with Section R905.3 or other *approved* roofing that is deemed to be equivalent to a minimum Class B-rated roof assembly. Wood shingle and shake roofs are not permitted on structures ~~in areas designated by the municipality~~ that fall within the scope of this section.

Where the roof profile allows a space between the roof covering and roof decking, the spaces shall be constructed to prevent the intrusion of flames and embers, be fireblocked with *approved* materials, or have one layer of minimum 72-pound (32.6 kg) mineral-surfaced nonperforated cap sheet complying with ASTM D3909 installed over the combustible decking.

Where valley flashing is installed, the flashing shall be not less than 0.019-inch (0.48 mm) No. 26 gage galvanized sheet corrosion-resistant metal installed over not less than one layer of minimum 72-pound (32.6 kg) mineral-surfaced nonperforated cap sheet complying with ASTM D3909 not less than 36-inch-wide (914 mm) running the full length of the valley.

R327.3.1 Gutters and downspouts. Where provided, ~~required~~, ~~roof~~ gutters and downspouts shall be constructed of *noncombustible materials* and be provided with an approved means to prevent accumulation of leaves and debris in the gutter.

R327.3.2 Ventilation. Where provided, the minimum net area of ventilation openings for enclosed attics, enclosed soffit spaces, enclosed rafter spaces and underfloor spaces shall be in accordance with Sections R408 and R806.

All ventilation openings shall be covered with noncombustible corrosion-resistant metal wire mesh, vents designed to resist the intrusion of burning embers and flame, or other *approved* materials or devices.

Ventilation mesh and screening shall be a minimum of 1/16-inch (1.6 mm) and a maximum of 1/8-inch (3.2 mm) in any dimension.

R327.3.2.1 Eaves, soffits and cornices. Ventilation openings shall not be installed on the underside of eaves, soffits or cornices.

Exceptions:

1. The *building official* may *approve* eave, soffit or cornice vents that are manufactured to resist the intrusion of flame and burning embers.
2. Ventilation openings complying with the requirements of Section R327.3.2 may be installed on the underside of eaves, soffits or cornices where the opening is located 12 feet (3658 mm) or greater above *grade* or the surface below.

R327.3.3 Exterior walls. The *exterior wall covering* or wall assembly shall comply with one of the following requirements:

1. *Noncombustible material.*
2. *Ignition-resistant material.*
3. *Heavy timber assembly.*
4. Log wall construction assembly.
5. Wall assemblies that have been tested in accordance with the test procedures for a 10-minute direct flame contact exposure test set forth in ASTM E2707, complying with the conditions of acceptance listed in Section R327.3.3.2.

Exception: Any of the following shall be deemed to meet the assembly performance criteria and intent of this section:

1. One layer of $\frac{5}{8}$ -inch (15.9 mm) Type X exterior gypsum sheathing applied behind the *exterior wall covering* or cladding on the exterior side of the framing.
2. The exterior portion of a 1-hour fire-resistance-rated *exterior wall* assembly designed for exterior fire exposure, including assemblies using exterior gypsum panel and sheathing products listed in the Gypsum Association *Fire Resistance and Sound Control Design Manual*.

R327.3.3.1 Extent of exterior wall covering. *Exterior wall coverings* shall extend from the top of the foundation to the roof and terminate at 2-inch (50.8 mm) nominal solid wood blocking between rafters at all roof overhangs, or in the case of enclosed eaves or soffits, shall terminate at the underside of the enclosure.

R327.3.3.2 Conditions of acceptance. ASTM E2707 tests shall be conducted in triplicate and the following conditions of acceptance shall be met. If any one of the three replicates do not meet the conditions of acceptance, three additional tests shall be conducted. All additional tests shall meet the following conditions of acceptance:

1. Absence of flame penetration through the wall assembly at any time during the test.
2. Absence of evidence of glowing combustion on the interior surface of the assembly at the end of the 70-minute test.

R327.3.4 Overhanging projections. All exterior projections (exterior balconies, carports, decks, patio covers, porch ceilings, unenclosed roofs and floors, overhanging buildings and similar architectural appendages and projections) shall be protected as specified in this section.

R327.3.4.1 Enclosed roof eaves, soffits and cornices. The exposed underside of rafter or truss eaves and enclosed soffits, where any portion of the framing is less than 12 feet (3658 mm) above *grade* or similar surface below, shall be protected by one of the following:

1. *Noncombustible material.*
2. *Ignition-resistant material.*
3. One layer of $\frac{5}{8}$ -inch (15.9 mm) Type X exterior gypsum sheathing applied behind an exterior covering on the underside of the rafter tails, truss tails or soffit.
4. The exterior portion of a 1-hour fire-resistance-rated *exterior wall* assembly applied to the underside of the rafter tails or soffit, including assemblies using exterior gypsum panel and sheathing products listed in the Gypsum Association *Fire Resistance and Sound Control Design Manual*.
5. Soffit assemblies with an underside surface that meets the performance criteria in Section R327.3.4.5 when tested in accordance ASTM E2957.

Exceptions: The following materials do not require protection required by this section:

1. Eaves and soffits where all portions of the framing members are 12 feet (3658 mm) or greater above *grade*, and 2-inch (610 mm) nominal eave fireblocking is provided between roof framing members from the wall top plate to the underside of the roof sheathing.
2. Gable end overhangs and roof assembly projections beyond an *exterior wall* other than at the lower end of the rafter tails.
3. Fascia and other architectural trim boards.

R327.3.4.2 Exterior patio and porch ceilings. The exposed underside of exterior patio and porch ceilings greater than 200 square feet (18.58 m²) in area and less than 12 feet (3658 mm) above *grade* shall be protected by one of the following:

1. *Noncombustible material.*
2. *Ignition-resistant material.*
3. One layer of $\frac{5}{8}$ -inch (15.9 mm) Type X exterior gypsum sheathing applied behind the exterior covering on the underside of the ceiling.
4. The exterior portion of a 1-hour fire-resistance-rated *exterior wall* assembly applied to the underside of the ceiling assembly, including assemblies using exterior gypsum panel and sheathing products listed in the Gypsum Association *Fire Resistance and Sound Control Design Manual*.
5. Porch ceiling assemblies with a horizontal underside that meet the performance criteria in Section R327.3.4.5 when tested in accordance with the test procedures set forth in ASTM E2957.

Exception: Architectural trim boards.

R327.3.4.3 Floor projections. The exposed underside of cantilevered floor projections less than 12 feet (3658 mm) above *grade* or the surface below shall be protected by one of the following:

1. *Noncombustible material*.
2. *Ignition-resistant material*.
3. One layer of $\frac{5}{8}$ -inch (15.9 mm) Type X exterior gypsum sheathing applied behind an exterior covering on the underside of the floor projection.
4. The exterior portion of a 1-hour fire-resistance-rated *exterior wall* assembly applied to the underside of the floor projection, including assemblies using exterior gypsum panel and sheathing products listed in the Gypsum Association *Fire Resistance and Sound Control Design Manual*.
5. An assembly that meets the performance criteria in Section R327.3.4.5 when tested in accordance with ASTM E2957.

Exception: Architectural trim boards.

R327.3.4.4 Underfloor protection. The underfloor area of elevated structures shall be enclosed to *grade* in accordance with the requirements of this section, or the underside of the exposed underfloor shall be protected by one of the following:

1. *Noncombustible material*.
2. *Ignition-resistant material*.
3. One layer of $\frac{5}{8}$ -inch (15.9 mm) Type X exterior gypsum sheathing applied behind an exterior covering on the underside of the floor assembly.
4. The exterior portion of a 1-hour fire-resistance-rated *exterior wall* assembly applied to the underside of the floor, including assemblies using exterior gypsum panel and sheathing products listed in the Gypsum Association *Fire Resistance and Sound Control Design Manual*.
5. An assembly that meets the performance criteria in Section R327.3.4.5 when tested in accordance with ASTM E2957.

Exception: *Heavy timber* structural columns and beams do not require protection.

R327.3.4.5 Conditions of acceptance. ASTM E2957 tests shall be conducted in triplicate, and the following conditions of acceptance shall be met. If any one of the three replicates do not meet the conditions of acceptance, three additional tests shall be conducted. All additional tests shall meet the following conditions of acceptance:

1. Absence of flame penetration of the eaves or horizontal projection assembly at any time during the test.
2. Absence of structural failure of the eaves or horizontal projection subassembly at any time during the test.
3. Absence of sustained combustion of any kind at the conclusion of the 40-minute test.

R327.3.5 Walking surfaces. Deck, porch and balcony walking surfaces located greater than 30 inches (762 mm) and less than 12 feet (3658 mm) above *grade* or the surface below shall be constructed with one of the following materials:

1. Materials that comply with the performance requirements of Section R327.3.5.1 when tested in accordance with both ASTM E2632 and ASTM E2726.
2. *Ignition-resistant* materials that comply with the performance requirements of Section R327.2 when tested in accordance with ASTM E84 or UL 723.
3. Exterior fire-retardant-treated wood.
4. *Noncombustible material*.
5. Any material that complies with the performance requirements of Section R327.3.5.2 when tested in accordance with ASTM E2632, where the *exterior wall covering* of the structure is noncombustible or *ignition-resistant* material.
6. Any material that complies with the performance requirements of ASTM E2632, where the *exterior wall covering* of the structure is noncombustible or *ignition-resistant* material.

Exception: *Wall covering* material may be of any material that otherwise complies with this chapter where the decking surface material complies with the performance requirements ASTM E84 with a Class B flame spread rating.

Exception: Walking surfaces of decks, porches and balconies not greater than 200 square feet (18.58 m²) in area, where the surface is constructed of nominal 2-inch (51 mm) lumber.

R327.3.5.1 Requirements for Section R327.3.5, Item 1. The material shall be tested in accordance with ASTM E2632 and ASTM E2726, and shall comply with the conditions of acceptance in Sections R327.3.5.1.1 and R327.3.5.1.2. The material shall also comply with the performance requirements of Section R327.2 for ignition-resistant material when tested in accordance with ASTM E84 or UL 723.

R327.3.5.1.1 Conditions of acceptance. ASTM E2632 tests shall be conducted in triplicate and the following conditions of acceptance shall be met. If any one of the three replicates do not meet the conditions of acceptance, three additional tests shall be conducted. All additional tests shall meet the following conditions of acceptance:

1. Peak heat release rate of less than or equal to 25 kW/ft² (269 kW/m²).

2. Absence of sustained flaming or glowing combustion of any kind at the conclusion of the 40-minute observation period.
3. Absence of falling particles that are still burning when reaching the burner or floor.

R327.3.5.1.2 Conditions of acceptance. ASTM E2762 tests shall be conducted in triplicate and the following conditions of acceptance shall be met. If any one of the three replicates do not meet the conditions of acceptance, three additional tests shall be conducted. All of the additional tests shall meet the following conditions of acceptance:

1. Absence of sustained flaming or glowing combustion of any kind at the conclusion of the 40-minute observation period.
2. Absence of falling particles that are still burning when reaching the burner or floor.

R327.3.5.2 Requirements for Section R327.3.5, Item 6. The material shall be tested in accordance with ASTM E2632 and shall comply with the following conditions of acceptance. The test shall be conducted in triplicate and the peak heat release rate shall be less than or equal to 25 kW/ft² (269 kW/m²). If any one of the three replicates do not meet the conditions of acceptance, three additional tests shall be conducted. All of the additional tests shall meet the conditions of acceptance.

R327.3.6 Glazing. Exterior windows, windows within exterior doors, and skylights shall be tempered glass, multilayered glazed panels, glass block or have a fire-resistance rating of not less than 20 minutes.

For questions about the 2023 ORSC, visit the division website to [contact a building code specialist](#).



Department of Consumer
and Business Services

Notice of Temporary Rule

August 5, 2025

2023 Oregon Residential Specialty Code amendments Wildfire Hazard Mitigation – Section R327 Available for local adoption

Purpose of the rule:

This rule will make amendments to the 2023 Oregon Residential Specialty Code (ORSC) that will make wildfire hazard mitigation provisions in Section R327 available for local adoption, define the scope of the section as applicable to new construction of new buildings, and require local municipalities that adopt the section locally to notify the division of the adoption and where the provisions apply.

Citation:

Amends: OAR 918-480-0010

This rule is effective Aug. 5, 2025 through Jan. 2, 2026.

Background:

The division first made Section R327 of the ORSC available for local adoption in 2019. At that time, if a municipality decided to adopt the provisions locally it was required to map where the provisions would apply using the mapping criteria that had been developed and adopted by the Oregon Department of Forestry (ODF). In the 2021 legislative session the legislature passed Senate Bill 762 which was an omnibus statewide wildfire bill impacting all aspects of the state's planning, policy, and programs around wildfire. As a part of the work implementing SB 762 ODF withdrew its mapping criteria to give way for the planned statewide wildfire hazard map. This statewide map was also to be the basis for updated wildfire hazard mitigation provisions of the residential code which would apply in high hazard zones. Ultimately, in the 2025 session, the legislature repealed the statewide wildfire hazard map and any regulatory requirements that were to be attached to it. In place of the map, the legislature, in Senate Bill 83, directed the division to make Section R327 available for local adoption and redefined the scope of the section to apply to new construction of new buildings.

Need for temporary filing:

Senate Bill 83 is effective on passage, and the earliest that the division could get new code language approved by the Residential and Manufactured Structures Board and adopted by permanent rule would be Jan. 1, 2026. A temporary rule is justified to affect the will of the legislature more immediately and make the relevant code language available for local adoption earlier.

Summary:

Amends the Oregon Residential Specialty Code making changes to Section R327 to comply with the requirements in Senate Bill 83. Makes the section available for local adoption and applicable to new construction of new ORSC governed buildings. Will require that local municipalities report to the division if they adopt the section locally and where the section will apply.

Contact:

If you have questions or need further information, contact Eric McMullen by email at eric.t.mcmullen@dcbs.oregon.gov or by phone at 503-930-8849.



OFFICE OF THE SECRETARY OF STATE
 TOBIAS READ
 SECRETARY OF STATE

 MICHAEL KAPLAN
 DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
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TEMPORARY ADMINISTRATIVE ORDER INCLUDING STATEMENT OF NEED & JUSTIFICATION

BCD 8-2025

CHAPTER 918

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
 BUILDING CODES DIVISION**

FILED

08/05/2025 2:57 PM
 ARCHIVES DIVISION
 SECRETARY OF STATE
 & LEGISLATIVE COUNSEL

FILING CAPTION: Amends the Oregon Residential Specialty Code making wildfire hazard mitigation provisions available for local adoption

EFFECTIVE DATE: 08/05/2025 THROUGH 01/01/2026

AGENCY APPROVED DATE: 08/05/2025

CONTACT: Andy Boulton
 971-375-7027
 andrew.boulton@dcbs.oregon.gov

1535 Edgewater St NW
 Salem, OR 97306

Filed By:
 Andrew Boulton
 Rules Coordinator

NEED FOR THE RULE(S):

The rule is needed because it was required by Senate Bill 83 which directed the division to make section R327 of the 2023 ORSC available for local adoption by a municipality wanting to make wildfire hazard mitigation provisions required within its jurisdiction.

JUSTIFICATION OF TEMPORARY FILING:

Senate Bill 83 is effective on passage, and the earliest that the division could get new code language approved by the Residential and Manufactured Structures Board and adopted by permanent rule would be January 1, 2026. A temporary rule is justified to affect the will of the legislature more immediately and make the relevant code language available for local adoption earlier.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Rules are available from the division's rules coordinator located at 1535 Edgewater St. NW, Salem, Oregon, 97304 and are available on the division's web site: <https://www.oregon.gov/bcd/laws-rules/Pages/adopted-rules.aspx>.

HOUSING IMPACT STATEMENT:

Description of proposed change: (Please attach any draft or permanent rule or ordinance)

This proposed rule updates the provisions for wildfire hazard mitigation to the 2023 Oregon Residential Specialty Code (ORSC) in Section R327 that will be available for local adoption.

Description of the need for, and objectives of the rule:

Senate Bill 762 passed the Oregon Legislature during the 2021 legislative session and was signed into law by the Governor. SB 762 was an omnibus bill relating to many different aspects of wildfire preparation, prevention, and mitigation and it included directives for several Oregon agencies. The Sections of the bill that addressed fire hardening requirements and that necessitated this rulemaking were Sections 12, 12a, and 12b and they were added to the Oregon

Revised Statutes at 455.612.

During the 2025 legislative session, Senate Bill 83 repealed the mapping requirement in SB 762 and the associated regulatory directives around wildfire hazard mitigation building code provisions. In their place the bill directed the division to make Section R327 of the 2023 ORSC available for local adoption. This rule amends Section R327 to limit the scope to new construction of new buildings as required by the bill and outlines the process necessary for local adoption.

List of rules adopted or amended:

Amend 918-480-0010.

Materials and labor costs increase or savings:

This rulemaking does not create any new mandatory provisions of the code. There may be a cost increase in areas where local municipalities have adopted Section R327 and decided that the provisions should be required.

A 1,200 sq. ft. detached single family dwelling is not a common size of house built in the areas that are impacted by the implementation of SB 762. Accordingly, exact cost estimates are not commonly available for that construction type. While it isn't possible to determine the exact cost impact of these changes, several estimates were consulted during the rulemaking process which may be applicable:

- When the division first adopted Section R327 in 2019 it prepared a statement of fiscal and economic impact on that proposed rulemaking. The division estimated at the time that in jurisdictions where R327 was adopted as mandatory the cost of a typical 1,200 square foot detached single family dwelling would increase by approximately \$2,500-\$3,000.
- The Oregon Home Builders Association submitted estimates also originally generated when R327 was first adopted. It estimated in 2019 that the cost of a high-end home would increase by \$12,500, that the cost of a production 1,200 square foot home would increase by \$7,800, and that the cost of a production 2,200 square foot home would increase by \$10,800. The home builders estimated that current increased construction costs would lead to a cost increase on a 1,400 square foot home of \$8,200.
- The Oregon Fire Marshals Association provided documentation of a study done by the National Institute of Building Sciences that found that every dollar spent on wildfire mitigation to dwellings provided between two and four dollars of benefit.
- Headwaters economics has produced a study comparing the construction cost of a typical home to a wildfire-resistant home. The Montana study found that total construction costs for a wildfire-resistant home was 2.4% less than the construction cost of a typical home. The reduction in cost between the two homes is due to the choice of siding used by the study on a typical home. The study applied wood siding to the typical home which is significantly more expensive than the fiber cement siding on the wildfire resistant home. If the typical home instead had used fiber cement siding, the wildfire-resistant home would have had a cost increase versus the comparator home using base code materials.

Based on this information the division anticipates a possible cost increase for a 1,200 sq. ft. detached single family dwelling that has to comply with the increased construction standards of R327 over the baseline Oregon code of \$2,500. However site specific factors, changes in material cost and other potential local requirements may change the exact impact on any particular construction project and lead to higher or lower cost impacts.

Estimated administrative construction or other costs increase or savings:

The proposed rules do not impose any additional administrative requirements.

Land costs increase or savings: N/A

Other costs increase or savings: None.

*Typical-Single story 3 bedrooms, 1 ½ bathrooms, attached garage (calculated separately) on land with good soil conditions with no unusual geological hazards.

AMEND: 918-480-0010

RULE SUMMARY: Amends the Oregon Residential Specialty Code making changes to Section R327 to comply with the requirements in Senate Bill 83. Makes the section available for local adoption and applicable to new construction of new ORSC governed buildings. Will require that local municipalities report to the division if they adopt the section locally and where the section will apply.

CHANGES TO RULE:

918-480-0010

Amendments to the Oregon Residential Specialty Code ¶

(1) The Oregon Residential Specialty Code is amended pursuant to OAR chapter 918, division 8. Amendments adopted during the code-cycle for inclusion into the Oregon Residential Specialty Code are placed in this rule, showing the section reference and a descriptive caption.¶

(2) Effective October 1, 2024, the 2023 Oregon Residential Specialty Code Section R310.1 is amended for emergency escape and rescue openings that do not open to a public way.¶

(3) Effective April 1, 2025, the 2023 Oregon Residential Specialty Code Section R302.3 is amended to include attached stacked two-family dwellings with increased fire separation at the vertical demising walls between each stacked two-family dwelling.¶

(4) Effective August 5, 2025, the Oregon Residential Specialty Code Section R327 is amended for additional wildfire hazard mitigation provisions that are available for local adoption. ¶

[Publications: Publications referenced are available for review at the division. See division website for information on where to purchase publications.]

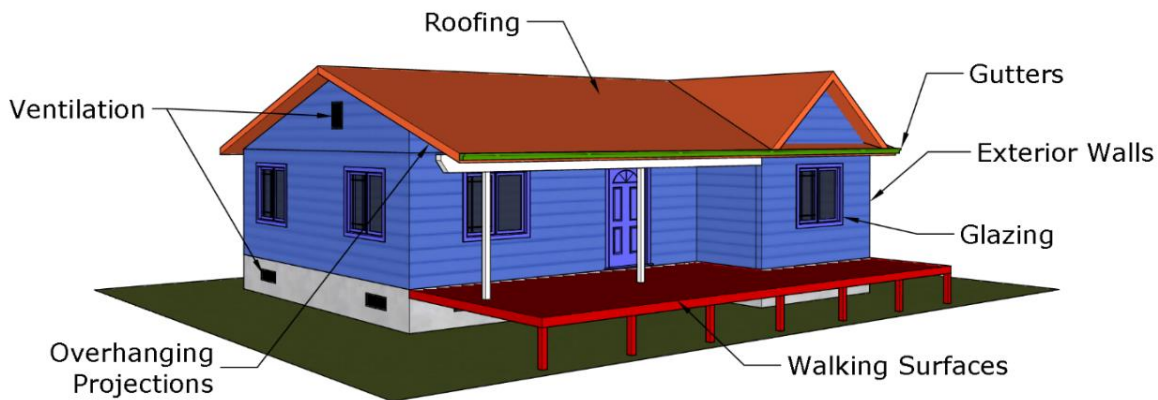
Statutory/Other Authority: ORS 455.020, ORS 455.110, ORS 455.610

Statutes/Other Implemented: ORS 455.610

Estimated cost of hardening your home

The estimated cost increase above standard prescriptive construction is approximately [+2% to +11%] - including labor and materials^{1,2}.

A wide array of variables impact this estimated baseline increase, including but not limited to; initial materials selected, size and shape of dwelling, size and number of projections and decks, eave heights, number and type of vents, number and type of windows, and similar customer design considerations. Various exterior elements commonly included in popular base home designs throughout the northwest already meet the requirements of Section R327 of the Oregon Residential Specialty Code such as architectural asphalt shingles for roofing, fiber-cement siding products, and code-compliant glazing and fenestration.



Ventilation

Vent openings covered with fine mesh, or designed to resist flame and embers

$\frac{1}{16}$ " mesh screen = \$2.82 per sq. ft.
Fire-rated vents = \$100 - \$200 per vent

Roofing

Metal panels, standing seam, or even architectural asphalt composite shingles

Arch. asphalt shingles = \$4 per sq. ft.
Metal roof panels = \$14.85 per sq. ft. <- Slate roofing = \$17.23 per sq. ft.

Note: 80% of homes in the Northwest use compliant asphalt shingles as a base design choice

Gutters

Noncombustible materials such as aluminum, capped to prevent debris accumulation

Aluminum gutters - \$9.55 PLF
Caps/covers = \$7.66 PLF

Overhanging projections

Projections enclosed on the underside by materials consistent with wall covering options

Fiber-cement soffit = \$3.76 per sq. ft.
Exterior gypsum sheathing = \$3 per sq. ft.

Exterior walls

Exterior covering such as fiber-cement or aluminum. Exterior gypsum sheathing options

Fiber-cement lap siding = \$11.39 per sq. ft.
Note: Approx. 34% of homes in the Northwest use fiber-cement siding as a base material choice

Decks & walking surfaces

Noncombustible or ignition-resistant materials. 2-inch nominal lumber allowed for small decks

Concrete platform or slab = \$11 per sq. ft.
Proprietary decking products = varied, up to \$12 PLF

Glazing

Multi-paned windows, glass block, fire rated, or tempered/laminated windows and skylights

Minimum code compliant glazing and fenestration meets hardening criteria – no cost increase

¹ https://headwaterseconomics.org/wp-content/uploads/2022_HE_IBHS_WildfireConstruction.pdf

² <https://www.HomeWyse.com>



Construction Costs for Wildfire-Resistant Homes

A comparison between California Wildland-Urban Interface Code (CWUIC) Part 7, IBHS Wildfire Prepared Home Base, and IBHS Wildfire Prepared Home Plus

Fall 2025



Construction Costs for Wildfire-Resistant Homes

A comparison between California Wildland-Urban Interface Code (CWUIC) Part 7, IBHS Wildfire Prepared Home Base, and IBHS Wildfire Prepared Home Plus

Authors

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This report was produced by Headwaters Economics with generous support from the USDA Forest Service and private foundations. This organization is an equal opportunity provider. The recommendations in this document are general suggestions aimed at reducing the risk of wildfire damage to a single-family home. Implementing these suggestions does not guarantee the prevention of damage. Every property and situation is unique, and we recommend consulting with local fire authorities or professionals for advice tailored to specific conditions. The organizations that produced this report are not liable for any damages or losses that may occur by following these recommendations.



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<https://headwaterseconomics.org>

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Executive Summary

In January 2025 the County and City of Los Angeles was devastated by catastrophic wildfires that destroyed more than 16,000 structures. As rebuilding efforts begin, constructing homes to wildfire-resistant standards is essential to strengthening long-term community resilience and reducing future wildfire losses.

California, a leader in wildfire mitigation, enforces some of the nation's most comprehensive building regulations through its Building Code Chapter 7A (Materials and Construction Methods for Exterior Wildfire Exposure), which outlines materials and construction methods for exterior wildfire exposure in the higher wildfire hazard areas of the state. Homeowners and builders can comply through prescriptive or performance-based approaches, offering flexibility in achieving wildfire resistance. On January 1, 2026, Chapter 7A will become Part 7 (Title 24) of the California Wildland-Urban Interface Code (CWUIC).

Complementing state efforts, the Insurance Institute for Business & Home Safety (IBHS) has developed the Wildfire Prepared Home (WFPH) program—along with its enhanced Wildfire Prepared Home Plus (WFPH Plus) designation—to standardize mitigation practices nationwide. The IBHS Wildfire Prepared program provides a systems-based approach to wildfire risk reduction through mitigations to the structure and defensible space that reduces the risk of home ignition from embers (WFPH Base) and flames/radiant heat (WFPH Plus). This study provides detailed wildfire-resistant building material cost estimates for constructing homes that meet these standards, with specific pricing for key components such as roofing, eaves, siding, windows/doors, decks, and landscaping within the critical 0-5 foot noncombustible zone. The three different wildfire-resistant scenarios are compared to building material costs for a home constructed with “traditional” non-wildfire resistant building materials.

Analyzing the costs for wildfire-resistant measures beyond five feet from the home, such as the surrounding defensible space, and the space between homes was beyond the scope of this project. However, these areas also require attention. Reducing fuels between homes, including vegetation, outlying buildings, and fencing, disrupts pathways for fire and embers to spread between neighbors. Ultimately, home and property wildfire mitigation strategies are most effective when every home in the neighborhood participates.

Outcomes from this analysis suggest that wildfire-resistant building material costs for a one-story, 1,750-square-foot, single-family home (with an estimated total construction cost value of \$500,000) do not significantly increase the costs relative to traditional non-wildfire-resistant home construction (i.e., homes not subject to CWUIC Part 7). Key findings from this analysis include:

- **Building to IBHS WFPH Base standards yields a potential savings of more than \$4,000** compared to CWUIC Part 7 due to no gutter guard requirement, open eave building material considerations, and non-tempered windows.
- **Building to WFPH Plus adds approximately \$2,000** in wildfire-resistant materials over CWUIC Part 7. For a 1,750 SF single-level home, added features include enclosed eaves, noncombustible soffits, and double-tempered windows.
- **Building to CWUIC Part 7 adds about \$13,000 over traditional construction costs** due to features like flame- and ember-resistant vents, open eave building material considerations, metal gutter systems, fire-rated wallboard for exterior walls, dual-paned single tempered windows, and a 0-5 foot noncombustible zone (rock mulch and metal fence).

When constructing a new home, many wildfire-resistant building material costs are comparable to non-wildfire resistant material costs. As indicated with previous studies, some of the most effective strategies to

reduce structure vulnerability to wildfire are relatively affordable. Risk-reduction strategies such as removing flammable materials from on top of and under the deck, clearing gutter systems, removing vegetation and debris from the roof, ensuring a 0-5 foot noncombustible zone, and relocating flammable materials from underneath the home are critical maintenance tasks with little to no cost to the homeowner.

Analysis from this study is explicit to wildfire-resistant building materials and did not capture the full building material costs for constructing an entire home. Values are based on a representative home in Altadena, California with a total estimated construction cost of around \$500,000. In other words, there are many other additional components and assemblies within a home that are not required for wildfire-resistant construction and are therefore not included in this analysis.

Similarly, there are building materials indicative of home construction preferences in Altadena, California that were assumed in this analysis. For example, common building material assemblies and design practices for this area in southern California include a tiled roof covering, fiber-cement siding, and concrete pour-on-grade patio. Additionally, since the model home was a pour-on-grade foundation, no foundation vents are included in the analysis.

The estimated costs for constructing a wildfire-resistant home are derived from a detailed analysis of a specific model home (see Methods& Assumptions section), which provides a clear, standardized baseline for evaluating material and design upgrades. While these figures are highly tailored to the size, layout, and features of that model home, findings from this research offer valuable insights into the broader cost implications of adopting wildfire-resistant practices for a variety of structure types. Differences in individual home components – for example, open eave construction versus enclosed eave construction – will influence associated cost considerations. Many of the expenses for improved wildfire resistant construction, such as wildfire resistant roofs, gutter systems, siding, venting, and a noncombustible zone—can be reasonably extrapolated to larger or more complex homes, though actual costs will vary depending on scale, architectural complexity, site-specific conditions, and materials selected.

Assembly	Component	Traditional	CWUIC Part 7	IBHS WFPH Base	IBHS WFPH Plus
Roof	Subtotal:	\$25,321	\$26,311	\$26,311	\$26,311
Eaves	Subtotal:	\$1,900	\$4,284	\$3,681	\$5,253
Exterior Walls	Subtotal:	\$11,461	\$13,569	\$13,578	\$13,591
Windows/ Doors	Subtotal:	\$8,431	\$11,391	\$8,431	\$12,241
Deck	Subtotal:	\$1,968	\$1,968	\$1,968	\$1,968
Zone 0	Subtotal:	\$1,106	\$3,742	\$3,742	\$3,742
	TOTAL (+18% inflation):	\$59,223	\$72,293	\$68,099	\$74,465
	Comparison to Traditional	\$-	\$13,070	\$8,876	\$15,242
	Comparison to CWUIC Part 7	\$-	\$-	\$(4,194)	\$2,172

Methods & Assumptions

Reducing home ignitions from wildfire requires understanding the different types of fire exposures a home might face. Homes burn down in three ways:

- Wind-blown embers traveling ahead of a wildfire can land on combustible material and ignite spot fires. Direct and indirect ember ignition scenarios are the most common cause of ignitions.
- Radiant heat from a nearby fire can ignite combustible materials. The effect of radiant heat depends upon the duration of the exposure, distance, and the intensity of the heat.
- Direct flame contact occurs when flames spread to touch a building or combustible material.

The three standards used in this analysis address one or more of the three types of fire exposure. While IBHS WFPH Base primarily addresses ember exposure, CWUIC Part 7 and IBHS WFPH Plus are intended to reduce vulnerability from all three types of ignition exposure.

The cost analysis for this study was based on a representative typical one-story, 1,750-square-foot, single-family home (footprint specifications measuring approximately 35 feet by 50 feet) in Altadena, California. Estimated costs are provided for constructing the home's roof, under-eave area, exterior walls, windows and doors, deck, and near-home landscaping (also known as Zone 0 or the 0-5 foot noncombustible zone) to wildfire-resistant standards. Suggested building materials considered southern California-specific housing trends, general homeowner material and design preferences, and structure and property characteristics. Mitigation measures for broader property management at the parcel level and minimizing fuels between homes, while critical in reducing wildfire risk to the primary structure, were beyond the scope of this project. These measures include maintaining defensible space and modifying sheds, outlying buildings, and other potential vulnerabilities.¹

Findings are adapted from results originally published in Headwaters Economics' report, *Construction Costs for a Wildfire-Resistant Home: California Edition* (2022) and *Building to Wildfire-Retrofitting a Home for Wildfire Resistance: Costs and Considerations* (2024).²

Building materials were selected based on their local availability and when possible, costs were verified with a national database (RS Means, 2023) for standard construction costs. Construction costs for building materials were calculated as a per-unit value. For instance, costs to replace individual windows, including glass and frame, were calculated and reported separately from the cost of an exterior wall. An inflation adjustment of 18% was added to total costs for each scenario to account for building material cost data collected in 2023.

Because of extensive variability in site conditions, composition, design, and building materials of home construction, it is difficult to assign an explicit cost for a single structure or group of structures. This research is therefore intended to provide an estimate of building materials for improved wildfire resistance.

The subsequent sections of this report provide an overview of the primary exterior home components most vulnerable to fire exposure and estimated costs for related wildfire-resistant building materials. It is important to note the estimates do not include contractor markup costs such as labor, overhead, and profit, which can significantly increase baseline building material costs. Residents and homeowners should consult local contractors for accurate, place-based construction costs.

¹ Insurance Institute for Business & Home Safety. (2023). IBHS Early Insights: Lahaina Fire – 2023. Retrieved from <https://ibhs.org/wp-content/uploads/IBHSEarlyInsights-LahainaFire.pdf>

² Barrett K and Quarles SL. (2024). Retrofitting a Home for Wildfire Resistance: Costs and Considerations. Headwaters Economics. Retrieved from <https://headwaterseconomics.org/natural-hazards/retrofitting-home-wildfire-resistance/>

Building Material Costs

Roof

Roofs are highly vulnerable to ignition due to their relatively large horizontal surface area. Many Class A fire-rated roof covering options are available with the most common being asphalt fiberglass composition shingled roof. Two vulnerable features of the roof edge can affect the vulnerability of the roof to ignition. These include roof covering profiles where a gap exists between the roof covering and roof sheathing (i.e., the roof deck) and gutters at the roof edge where vegetative debris can accumulate.

For this analysis, a tiled roof was assumed for all four scenarios and is the preferred roof covering for Altadena, CA. For the wildfire-resistant homes (CWUIC, WFPH Base, WFPH Plus), flame- and ember-resistant vents, metal flashing for roof valleys, and a fire-resistant underlayment were included in the cost analysis.

Assembly	Component	Traditional	CWUIC Part 7	IBHS WFPH Base	IBHS WFPH Plus
Roof	Roof covering	Tile	Tile	Tile	Tile
	Flashing	None	Metal	Metal	Metal
	Underlayment	Felt	Synthetic/Fire-resistant	Synthetic/Fire-resistant	Synthetic/Fire-resistant
	Roof gaps/openings	Bird stopping	Bird stopping	Bird stopping	Bird stopping
	Roof vents (ridge)	Plastic	Flame/ember-resistant vents	Flame/ember-resistant vents	Flame/ember-resistant vents
	Subtotal:	\$25,321	\$26,311	\$26,311	\$26,311

Under-Eave Area

Eaves play an important role for building design but they also create vulnerabilities and pathways for the building to ignite. Embers can travel through vents in the eave into the attic or accumulate in gaps between blocking and rafters in open-eave construction. Should flames reach the under-eave area, open eaves can also trap heat. Once there is an ignition in the under-eave area, fire will spread laterally more quickly.

Vents in the under-eave area allow air to enter the attic space. During a wildfire, vent openings can allow the entry of wind-blown embers into the interior attic space. If combustible materials in the attic ignite, the house can burn from the inside out. Newer vents have been designed to resist the intrusion of flames and embers.

Best practices for ignition resistance of an under-eave area are to enclose the eave with noncombustible soffit material and install flame- and ember-resistant vents (“WUI” vents). For this analysis, an enclosed eave was assumed for WFPH Plus construction, including a continuous linear flame- and ember-resistant vent. For the other home scenarios, an open eave design was assumed with applicable building materials considerations for vents and soffit.

Assembly	Component	Traditional	CWUIC Part 7	IBHS WFPH Base	IBHS WFPH Plus
Eaves	Design	Open	Open	Open	Enclosed
	Exposed roof deck	Wood	Noncombustible - fiber cement	Wood	N/A
	Soffit	None	None	None	Noncombustible - fiber cement
	Soffit vents	Circular - resin	Circular flame/ember-resistant	Circular flame/ember-resistant	Linear flame/ember-resistant
	Gaps/openings (vents)	None	Fire-rated caulk	Fire-rated caulk	Fire-rated caulk
	Gutters	Vinyl	Metal	Metal	Metal
	Gutter guard	None	Metal	None	Metal
	Drip edge	None	Metal	Metal	Metal
	Subtotal:	\$1,900	\$4,284	\$3,681	\$5,253

Exterior Walls

Exterior walls and components in the wall assembly can be vulnerable if exposed to embers, flames, or prolonged radiant heat from burning items located close to the home. These exposures can ignite combustible siding and the resulting flames can spread vertically and laterally to other wall components such as windows and the under-eave area. Additional considerations for the exterior wall include exterior wall vents such as gable, forced air, and foundation vents.

For this analysis, fiber-cement siding and trim were assumed for all four home scenarios and based on common building material preferences for Altadena, CA. Since the model home is a pour-on-grade foundation, no foundation vents were included in this analysis.

Assembly	Component	Traditional	CWUIC Part 7	IBHS WFPH Base	IBHS WFPH Plus
Ext Walls	Siding	Noncombustible - fiber cement	Noncombustible - fiber cement	Noncombustible - fiber cement	Noncombustible - fiber cement
	Trim	Noncombustible - fiber cement	Noncombustible - fiber cement	Noncombustible - fiber cement	Noncombustible - fiber cement
	Wallboard	None	Gypsum	Gypsum	Gypsum
	Forced Air vents	Vinyl	Vinyl	Vinyl w/ louver	Metal w/ louver
	Subtotal:	\$11,461	\$13,569	\$13,578	\$13,591

Windows and Doors

The glass of the window is vulnerable to breaking from exposure to radiant heat or direct flame contact. When glass in a window breaks, the combustible materials inside the home can be more easily ignited from the flames and/or embers that enter into the home. Wood- and vinyl-framed windows can burn or melt when exposed to radiant heat or flames, allowing the glass to fall out of the frame and flames and/or embers into the home.

Doors, including window glass set in doors, and door frames can fail for the same reasons as windows. Embers can accumulate in the small gaps between the door and frame, resulting in ignition of the door-framing and weather-sealing material including garage, pedestrian, and front doors.

A variety of different windows were assumed for this analysis and based on assumptions of traditional home construction compared to wildfire-resistant (and energy efficiency) requirements. For both the traditional home and WFPH Base, a vinyl-framed, single hung, dual-paned window with non-tempered (annealed) glass was assumed. For compliance with CWUIC Part 7 and energy efficiency standards, a dual-paned, single-tempered casement vinyl-framed window was analyzed. For the highest wildfire-resistance to prolonged radiant heat (WFPH Plus), a dual-paned, double-tempered metal-clad casement window was priced out.

Assembly	Component	Traditional	CWUIC Part 7	IBHS WFPH Base	IBHS WFPH Plus
Windows	Sliding glass window (48" x 36")	Vinyl framed; dual-paned, non-tempered annealed glass (single hung)	Vinyl framed; dual-paned, single tempered (casement)	Vinyl framed; dual-paned, non-tempered annealed glass (single hung)	Dual paned double tempered metal-clad glass window (casement)
Doors	Pedestrian	Wood	Wood - solid core	Wood - solid core	Wood - solid core
	Side door	Wood	Wood - solid core	Wood - solid core	Wood - solid core
	Sliding glass patio	Vinyl	Vinyl	Vinyl	Vinyl
	Garage	Aluminium	Aluminium	Aluminium	Aluminium
	Subtotal:	\$8,431	\$11,391	\$8,431	\$12,241

Attached Deck

Similar to a roof, a deck has a large horizontal surface area and can be vulnerable to embers and under-deck flames. A burning deck can expose the side of the house to extended radiant heat and/or direct flame contact. The deck walking surface and structural support members, as well as what is stored on or below the deck, are therefore important considerations. Enclosing the under-deck area with metal mesh screening can minimize the accumulation of vegetative debris, vegetation, and other combustible materials.

Most commonly used deck board products (including wood and plastic composite boards) are combustible. Decks with noncombustible walking surfaces include lightweight concrete or a flagstone product. Regardless of the walking surface, decks are typically supported by solid wood joists, beams, and columns that will be vulnerable to ignition if nearby combustible materials ignite.

For purposes of this study and based on homeowner preferences for the Altadena area in southern California, a concrete pour-on-grade patio was assumed for all four home scenarios. A pour-on-grade patio eliminates consideration of a structural support system including joists, beams, and columns that are required for an elevated decking assembly and are not included in this analysis.

Assembly	Component	Traditional	CWUIC Part 7	IBHS WFPH Base	IBHS WFPH Plus
Deck	Decking surface	Concrete pour-on-slab patio	Concrete pour-on-slab patio	Concrete pour-on-slab patio	Concrete pour-on-slab patio
	Subtotal:	\$1,968	\$1,968	\$1,968	\$1,968

Zone 0 (0-5 foot noncombustible zone)

Landscaping makes the home vulnerable when it ignites and allows fire to burn directly to the home. Ignition of near-home combustible materials (e.g., mulch, plants, fencing, vegetative debris and other combustible materials) from embers allows flames to touch the home regardless of how well broader vegetation management (defensible space) has been implemented and maintained.

Eliminating fuels within five feet of the home is an important mitigation strategy. The type of vegetation, mulch, and other near-home landscaping features and combustible materials in this zone including fencing, will affect the home's vulnerability to ember ignitions and the potential for radiant heat and direct flame contact.

This analysis considers mulch and fencing in the material selection within the 0-5 foot noncombustible zone. For the traditional home, bark mulch and a wood fence (including posts) were evaluated. For the three wildfire-resistant home scenarios, rock (pea gravel) mulch and a metal fence were analyzed. While there are many types of fencing, materials included in this study were for privacy fencing (versus a boundary fence such as wrought iron).

Assembly	Component	Traditional	CWUIC Part 7	IBHS WFPH Base	IBHS WFPH Plus
Zone 0	Mulch	Cedar bark	Gravel	Gravel	Gravel
	Fencing	Wood	Metal	Metal	Metal
	Subtotal:	\$1,106	\$3,742	\$3,742	\$3,742

Conclusion

In conclusion, this analysis reinforces that incorporating wildfire-resistant building materials—whether through California Wildland-Urban Interface Code (CWUIC) or the IBHS Wildfire Prepared Home (WFPH) standards—can be achieved at a relatively modest increase in cost compared to traditional construction. For a one-story, 1,750-square-foot mid-range home valued at \$500,000, building to WFPH Base increases total construction costs by 2% over a traditional home (and by 3% for WFPH Plus).

The estimated costs for building a wildfire-resistant home are based on a detailed assessment of a specific model home, providing a standardized baseline for evaluating material and design upgrades. Although tailored to that home's unique size and features, the findings offer broader insight into the potential costs of adopting wildfire-resistant construction across different types of homes. Variations in design elements—such as open versus enclosed eaves—affect overall expenses. Many fire-resistant upgrades, including roofing, siding, vents, gutters, and a 0-5 foot noncombustible zone, can be extrapolated to larger or more complex homes, though actual costs will vary with scale, design complexity, site-specific conditions, and building materials.

These investments provide meaningful protection against wildfire risks, especially when paired with simple, low-cost maintenance actions like clearing debris and maintaining a noncombustible zone. While this study focused on building materials, it also highlights the broader importance of community-wide mitigation, including managing defensible space and reducing fuel continuity between neighboring properties. As wildfire threats intensify across the West, the findings here suggest that building wildfire-resistant homes is both feasible and financially practical—an essential step toward safeguarding communities in high-risk areas.

Appendix: Cost and Materials Tables

Wildfire-Resistant Construction & Costs (2025)

Data Tables

Cost Estimates 2023-2024

ABOUT THE DATA

Pricing is from local suppliers and RSMeans, a national database of construction materials, labor, and contractor O&P costs. Findings are adapted from results originally published in Headwaters Economics' report, Construction Costs for a Wildfire-Resistant Home: California Edition (2022) and Building to Wildfire-Retrofitting a Home for Wildfire Resistance: Costs and Considerations (2024).

RSMeans is updated quarterly, includes average construction cost indices from more than 970 cities, and uses the latest negotiated labor costs for average wages in 30 major cities. Prices include the cost of material as installed (i.e., material plus estimated labor and contractor overhead and profit costs). In some cases, pricing was not available through RSMeans and costs were derived from building subject matter expert, supplier, or local distributors.

Pricing includes analyzed building material costs available locally (e.g., at Home Depot and Lowes) and when possible, verified costs with a national database for standard construction costs. In most cases, demolition, labor, and contractor overhead are not included in building material costs.

COLUMN DEFINITIONS

Assembly: major groupings, or systems, of features such as roof, eaves, exterior walls, windows/doors, and deck.

Component: describes the part of the assembly that was priced.

Traditional: building materials conventionally used in a non-wildfire-resistant home

CWUIC Part 7: California Wildland-Urban Interface Code (CWUIC), Title 24 Part 7 for wildfire-resistant home construction

IBHS WFPH Base: Minimum criteria to meet IBHS Wildfire Prepared Home designation, such as creating the 0–5 Foot Noncombustible Zone, upgrading building features, and maintaining the defensible space surrounding the parcel to 30 feet.

IBHS WFPH Plus: Additional protective measures beyond the WFPH Base for key building features of the home, and to achieve enhanced wildfire-resistance to flame and radiant heat.

ABOUT HEADWATERS ECONOMICS

Headwaters Economics is an independent, nonprofit research group. Our mission is to improve community development and land management decisions.

<https://headwaterseconomics.org>
PO Box 7059, Bozeman, MT 59771
Contact: Kimiko Barrett, kimi@headwaterseconomics.org, 406-224-1837

Table 1: Building materials costs for wildfire-resistant standards

Assembly	Component	Traditional	CWUIC Part 7	IBHS WFPH Base	IBHS WFPH Plus
Roof	Roof covering	Tile	Tile	Tile	Tile
	Flashing	None	Metal	Metal	Metal
	Underlayment	Felt	Synthetic/Fire-resistant	Synthetic/Fire-resistant	Synthetic/Fire-resistant
	Roof gaps/openings	Bird stopping	Bird stopping	Bird stopping	Bird stopping
	Roof vents (ridge)	Plastic	Flame/ember-resistant vents	Flame/ember-resistant vents	Flame/ember-resistant vents
	Subtotal:	\$25,321	\$26,311	\$26,311	\$26,311
Eaves	Design	Open	Open	Open	Enclosed
	Exposed roof deck	Wood	Noncombustible - fiber cement	Wood	N/A
	Soffit	None	None	None	Noncombustible - fiber cement
	Soffit vents	Circular - resin	Circular flame/ember-resistant	Circular flame/ember-resistant	Linear flame/ember-resistant
	Gaps/openings (vents)	None	Fire-rated caulk	Fire-rated caulk	Fire-rated caulk
	Gutters	Vinyl	Metal	Metal	Metal
	Gutter guard	None	Metal	None	Metal
	Drip edge	None	Metal	Metal	Metal
	Subtotal:	\$1,900	\$4,284	\$3,681	\$5,253
Exterior Walls	Siding	Noncombustible - fiber cement	Noncombustible - fiber cement	Noncombustible - fiber cement	Noncombustible - fiber cement
	Trim	Noncombustible - fiber cement	Noncombustible - fiber cement	Noncombustible - fiber cement	Noncombustible - fiber cement
	Wallboard	None	Gypsum	Gypsum	Gypsum
	Forced Air vents	Plastic	Plastic	Vinyl w/ louver	Metal w/ louver
	Subtotal:	\$11,431	\$13,569	\$13,578	\$13,591
Windows	Sliding glass window (48" x 36")	Vinyl framed; single-paned, non-tempered annealed glass (single hung)	Vinyl framed; dual-paned, single tempered (casement)	Vinyl framed; single-paned, non-tempered annealed glass (single hung)	Dual paned double tempered metal-clad glass window (casement)
Doors	Pedestrian	Wood	Wood - solid core	Wood - solid core	Wood - solid core
	Side door	Wood	Wood - solid core	Wood - solid core	Wood - solid core
	Sliding glass patio	Vinyl	Vinyl	Vinyl	Vinyl
	Garage	Aluminium	Aluminium	Aluminium	Aluminium
	Subtotal:	\$8,431	\$11,391	\$8,431	\$12,241
Deck	Decking surface	Concrete pour-on-slab patio	Concrete pour-on-slab patio	Concrete pour-on-slab patio	Concrete pour-on-slab patio
	Subtotal:	\$1,968	\$1,968	\$1,968	\$1,968
Zone 0	Mulch	Cedar bark	Gravel	Gravel	Gravel
	Fencing	Wood	Metal	Metal	Metal
	Subtotal:	\$1,106	\$3,742	\$3,742	\$3,742
	TOTAL (+18% inflation):	\$59,223	\$72,293	\$68,099	\$74,465
	Comparison to Traditional	\$-	\$13,070	\$8,876	\$15,242
	Comparison to CWUIC Part 7	\$-	\$-	\$(4,194)	\$2,172

Table 2: Minimum criteria to meet wildfire-resistant standards

Component	CWUIC Part 7	IBHS WFPH	IBHS WFPH+
Roof covering and underlayment	Requires a Class A fire-rated roof covering. Plug gaps at ends (i.e., bird-stopped, fire-stopped). A minimum 36-inch-wide mineral-surfaced asphalt fiberglass composition cap sheet must be installed under metal valley flashing. Where the roof profile results in a gap between the covering and the roof deck, a mineral-surfaced asphalt fiberglass composition cap sheet must be installed over the roof surface.	Class A (cover or assembly)	Class A (cover or assembly)
Roof vents	WUI vents on horizontal/ vertical planes or non-corrosive 1/16" to 1/8" screen on a sloped roof.	WUI vents or vents covered with noncombustible, non-corrosive 1/16" to 1/8" screen on a sloped roof.	WUI vents or vents covered with noncombustible, non-corrosive 1/16" to 1/8" screen on a sloped roof.
Skylights (not included in analysis)	Glass unit must be dual-paned, single tempered and protected with noncombustible, non-corrosive 1/16" to 1/8" screen.	N/A	Glass unit must be dual-paned, single tempered and protected with noncombustible, non-corrosive 1/16" to 1/8" screen.
Eaves	Soffited or open-eave allowed. If open-eave, nominal 2x material (or greater) is required as blocking and rafters. Exposed roof deck shall be constructed of a material that is noncombustible, or ignition-resistant, or tested for 10-minute direct flame contact, or have a one-hour fire rating on the exterior side of the framing.	N/A	Noncombustible soffit for enclosed eave; Materials approved for 1 hour fire resistance, or 2-inch nominal dimension lumber).
Eave/soffit vents	WUI vents on horizontal/ vertical planes; non-corrosive 1/16" to 1/8" screen.	WUI vents or vents covered with noncombustible, non-corrosive 1/16" to 1/8" screen.	WUI vents or vents covered with noncombustible, non-corrosive 1/16" to 1/8" screen.
Gutter System (downspouts, gutter, guard, drip edge)	Noncombustible gutters and downspouts. Gutter cover material unspecified. Metal drip edge assumed.	Noncombustible gutters and downspouts. No gutter guard req'd. Metal drip edge assumed.	Noncombustible cover. Metal drip edge assumed.
Siding	Five options for compliance: 1) noncombustible material, 2) ignition-resistant material, 3) heavy timber construction, 4) log wall assembly, or 5) assembly complying with SFM 12-7.	6-inches of noncombustible material on the base of the wall (cover).	Noncombustible covering
Gable vents	WUI vents on horizontal/ vertical planes.	WUI vents or vents covered with noncombustible, non-corrosive 1/16" to 1/8" screen.	WUI vents or vents covered with noncombustible, non-corrosive 1/16" to 1/8" screen.
Dryer vents	N/A	Louver required over vent opening	Louver required over vent opening
Foundation vents	WUI vents on horizontal/ vertical planes. (Not included in this analysis due to pour-on-grade foundation)	WUI vents or vents covered with noncombustible, non-corrosive 1/16" to 1/8" screen.	WUI vents or vents covered with noncombustible, non-corrosive 1/16" to 1/8" screen.
Windows	Four options for compliance: 1) multipaned glazing with a minimum of one tempered pane, 2) glass block units, 3) fire-resistance rating of not less than 20 minutes, or 4) meeting performance requirements of SFM 12-7A-2.	N/A	Dual-paned; double tempered glass or fire-resistance rating of not less than 20 minutes.
Doors	Noncombustible; ignition-resistant covering; or 20 minute fire rated door; or solid core; weather stripping req'd for gaps in the door and door opening (>1/8").	N/A	Noncombustible; ignition-resistant covering; or 20 minute fire rated door; or solid core.
Decking surface	Noncombustible; Ignition resistance materials, fire treated wood.	N/A	Noncombustible
Mulch	Noncombustible	Noncombustible	Noncombustible
Fencing	Noncombustible within 5 feet.	Noncombustible within 5 feet.	Noncombustible within 5 feet. No parallel (back-to-back) combustible fences within 5 feet of each other (5-30 feet from house).



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 14, 2026

SUBJECT: Special Project Grants - Mid-Year Updates

RECOMMENDED MOTION:

N/A

BACKGROUND AND POLICY IMPLICATIONS:

During the FY 2026 video lottery allocation discussion, the Board initiated five special project grants. The grantees will present the Board with a mid-year status update on their projects and priorities.

Special project grants are made available through the Video Lottery Fund, which is supported by state lottery proceeds. These grants were budgeted for FY 2026. The grantees received the first half of the grant payment at the beginning of FY 2026 and the second half grant payment will be initiated upon completion of the mid-year status update.

The following funds were allocated:

- Deschutes Basin Water Collaborative, \$15,000
- Deschutes Collaborative Forest Project, \$10,000
- Friends of the Children, \$12,500
- Newberry Regional Partnership, \$5,000
- Shepherd's House Ministries, \$15,000

BUDGET IMPACTS:

Grant funds are accounted for in the FY 2026 budget.

ATTENDANCE:

Jen Patterson, Strategic Initiatives Manager

Lisa Seales, Deschutes River Conservancy, Senior Program Manager

Jacob Fritz, Deschutes Collaborative Forest Project, Program Manager

Rachel Cardwell, Friends of the Children, Executive Director

Megan Tuck, Newberry Regional Partnership, Program Coordinator

Jerry Kaping, Shepherd's House Ministries, Director of Development



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 14, 2026

SUBJECT: First reading of Ordinance No. 2026-004 – BCL LLC Plan Amendment / Zone Change for approximately 240 acres north and south of Highway 20 and east of Ward Road

RECOMMENDED MOTION:

Move approval of first reading of Ordinance No. 2026-004 by title only.

BACKGROUND AND POLICY IMPLICATIONS:

The applicant, BCL LLC, requests approval to change the Comprehensive Plan designation (land use file no. 247-24-000097-PA) of the subject property from Agriculture to Rural Residential Exception Area, and approval to change the zone (land use file no. 247-24-000098-ZC) of the subject properties from Exclusive Farm Use to Multiple Use Agricultural.

The subject property is approximately 240 acres in size and is located to the east of Bend, to the north and south of Highway 20 and to the east of Ward Road. The Board held a public hearing on August 20, 2025, and deliberated on this application on October 15, 2025, and voted to approve the application.

The entirety of the record can be viewed from the project website at:

<https://www.deschutes.org/cd/page/247-24-000097-pa-247-24-000098-zc-bcl-llc-comprehensive-plan-amendment-and-zone-change>

BUDGET IMPACTS:

None

ATTENDANCE:

Audrey Stuart, Associate Planner
Anthony Raguine, Principal Planner
Will Groves, Planning Manager

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 Multiple Use Agricultural.

ORDINANCE NO. 2026-004

WHEREAS, BCL LLC applied for changes to both the Deschutes County Comprehensive Plan Map (247-24-000097-PA) and the Deschutes County Zoning Map (247-24-000098-ZC), to change the comprehensive plan designation of the subject property from Agriculture (AG) to Rural Residential Exception Area (RREA), and a corresponding zone change from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA10); and

WHEREAS, after notice was given in accordance with applicable law, a public hearing was held on May 9, 2025, before the Deschutes County Hearings Officer and, on July 9, 2025, the Hearings Officer recommended approval of the Comprehensive Plan Map Amendment and Zone Change;

WHEREAS, pursuant to DCC 22.28.030(C), the Board heard *de novo* the applications to change the comprehensive plan designation of the subject property from Agriculture (AG) to Rural Residential Exception Area and a corresponding zone change from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA10); 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 MUA10 for certain property described in Exhibit “A” and depicted on the map as 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 of County Commissioners as set forth in Exhibit “F” and incorporated by reference herein. The Board also incorporates in its findings in support of this decision, the Recommendation of the Hearings Officer, attached as Exhibit “G” and incorporated by reference herein.

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

Dated this _____ of _____, BOARD OF COUNTY COMMISSIONERS
20__ OF DESCHUTES COUNTY, OREGON

PHIL CHANG, Chair

ANTHONY DeBONE, Vice Chair

ATTEST:

Recording Secretary

PATTI ADAIR, Commissioner

Date of 1st Reading: _____ day of _____, 20 .

Date of 2nd Reading: _____ day of _____, 20 .

	Record of Adoption Vote			
Commissioner	Yes	No	Abstained	Excused
Patti Adair	_____	_____	_____	_____
Anthony DeBone	_____	_____	_____	_____
Phil Chang	_____	_____	_____	_____

Effective date: _____ day of _____, 20 .

ATTEST

Recording Secretary

Exhibit A to Ordinance 2026-004
Legal Description of Subject Property

TRACT I:

A parcel of land in the East half of Section 36, Township 17 South, Range 12 East of the Willamette Meridian, in Deschutes County, Oregon, being more particularly described as follows:

Commencing at a 5/8" Iron Rod marking the Northeast corner of said Section 36, said point also being the Point of Beginning; thence along the East line of said Section 36, South 00°14'15" West 1323.19 feet to a 5/8" Iron Rod with yellow plastic cap marked "Tye Engineering"; thence continuing along the East line of said Section 36, South 00°13'59" West 970.85 feet to a 5/8" Iron Rod with an orange plastic cap marked "Becon"; thence, leaving said East line of Section 36, North 89°45'40" West 942.14 feet to a 5/8" Iron Rod with an orange plastic cap marked "Becon"; thence South 00°02'28" West 665.76 feet to a point on the Northerly right of way line of the Central Oregon Highway, U.S. Highway 20, said point being a 5/8" Iron Rod with an orange plastic cap marked "Becon"; thence along said Northerly right of way line of the Central Oregon Highway the following three courses:

South 78°24'59" West 369.40 feet to a 5/8" Iron Rod with an aluminum cap marked "Oregon State Highway Div";

South 09°45'07" East 20.00 feet to a 5/8" Iron Rod with an orange plastic cap marked "Becon";

South 80°14'53" West 1016.99 feet to a point at the intersection of the Northerly right of way line of the Central Oregon Highway and the Westerly line of the Bonneville Power Easement recorded in Book 98, Page 288, Deschutes County Official Records, said point being a 5/8" Iron Rod with an orange plastic cap marked "Becon";

thence along the Westerly line of said Bonneville Power Easement, North 08°23'48" East 598.45 feet to a point on the South line of the North half of said Section 36, said point being a 5/8" Iron Rod with an orange plastic cap marked "Becon"; thence continuing along the Westerly line of said Bonneville Power Easement, North 08°23'48" East 740.26 feet to a 5/8" Iron Rod with an orange plastic cap marked "Becon"; thence leaving the Westerly line of said Bonneville Power Easement, North 36°57'50" East 2379.75 feet to a point on the North line of said Section 36; thence along the North line of said Section 36, South 89°40'51" East 686.38 feet to the Point of Beginning.

Exhibit A to Ordinance 2026-004
Legal Description of Subject Property

TRACT III:

A parcel in the Northeast quarter of Section 36, Township 17 South, Range 12 East of the Willamette Meridian, in Deschutes County, Oregon, being more particularly described as follows:

Commencing at a 5/8" Iron Rod marking the Northeast corner of said Section 36; thence along the North line of said Section 36, North 89°40'51" West 686.38 feet to the True Point of Beginning; thence leaving said North line of Section 36, South 36°57'50" West 2379.75 feet to a point on the Westerly line of the Bonneville Power Easement recorded in Book 98, Page 288, Deschutes County, Oregon, said point being a 5/8" Iron Rod with an orange plastic cap marked "Becon"; thence along the Westerly line of said Bonneville Power Easement, South 08°23'48" West 740.26 feet to a point on the South line of the North half of said Section 36, said point being a 5/8" Iron Rod with an orange plastic cap marked "Becon"; thence along the South line of the North half of said Section 36 North 89°34'55" West 227.20 feet to a point at the intersection of the South line of the North half of said Section 36 and the Westerly line of the Pacific Power and Light Easement recorded in Book 145, Page 354, Deschutes County Official Records; said point being a 5/8" Iron Rod with a yellow plastic cap marked "Armstrong S&E";

Thence along the Westerly line of said Pacific Power and Light Easement North 08°23'48" East 2668.46 feet to a point on the North line of said Section 36;

Thence along the North line of said Section 36, South 89°40'33" East 732.93 feet to the East one-sixteenth corner of said Section 36, said corner being a 5/8" Iron Rod;

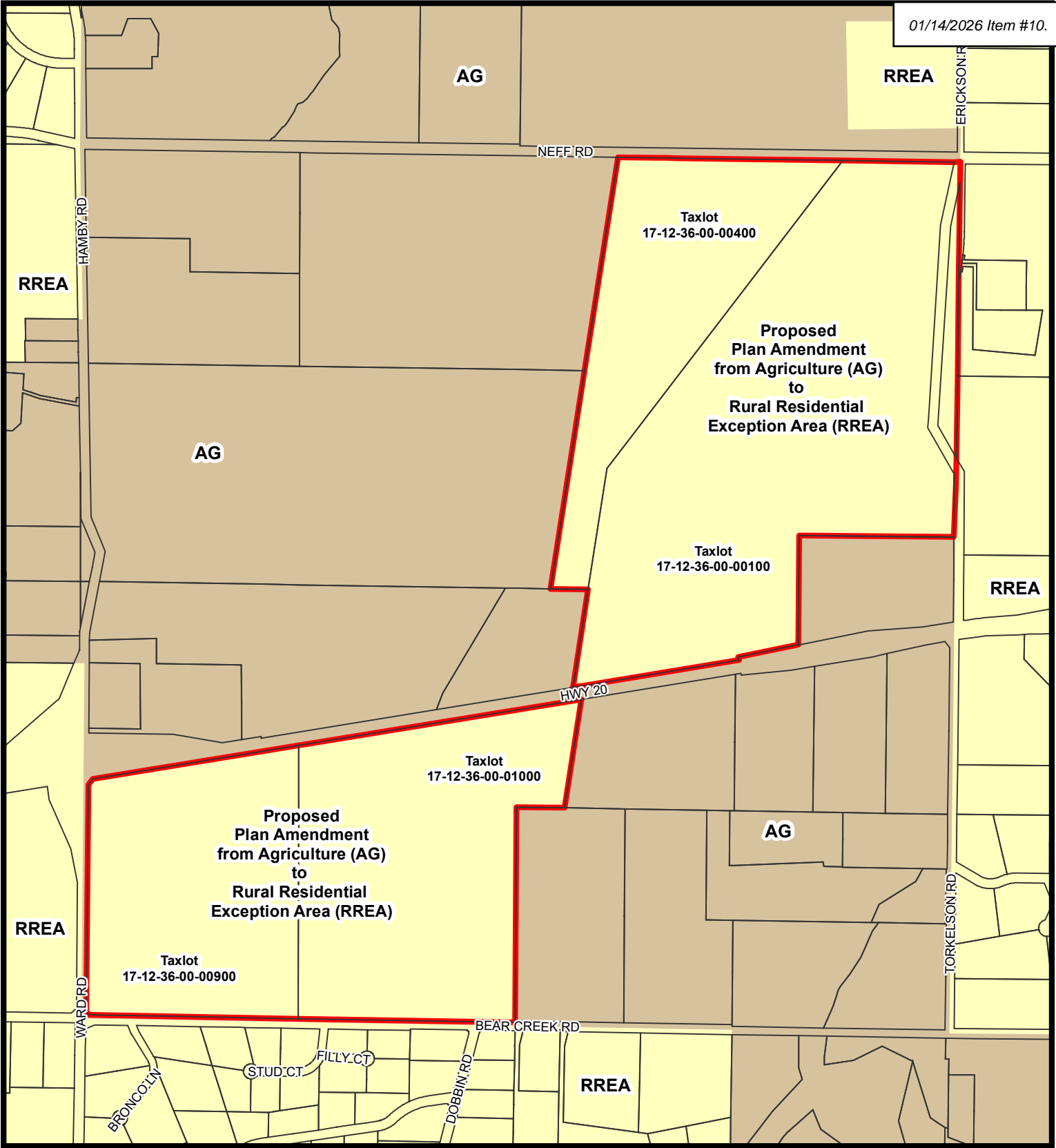
Thence continuing along the North line of said Section 36, South 89°40'51" East 643.70 feet to the True Point of Beginning.

TRACT IV:

The Southwest quarter of the Southwest quarter and that portion of the Northwest quarter of the Southwest quarter lying South of Highway 20, all in Section 36, Township 17 South, Range 12 East of the Willamette Meridian, Deschutes County, Oregon.

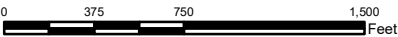
SECTION 36, TOWNSHIP 17 SOUTH, RANGE 12 EAST OF THE WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON:

THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER AND THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER LYING SOUTH OF HIGHWAY 20, TOGETHER WITH THAT PORTION OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER LYING WEST OF THE BONNEVILLE POWER EASEMENT AND SOUTH OF HIGHWAY 20.



PROPOSED COMPREHENSIVE PLAN

Exhibit "B"
to Ordinance 2026-004



January 7, 2026

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON


Phil Chang, Chair

Anthony DeBone, Vice Chair


Patti Adair, Commissioner


ATTEST: Recording Secretary

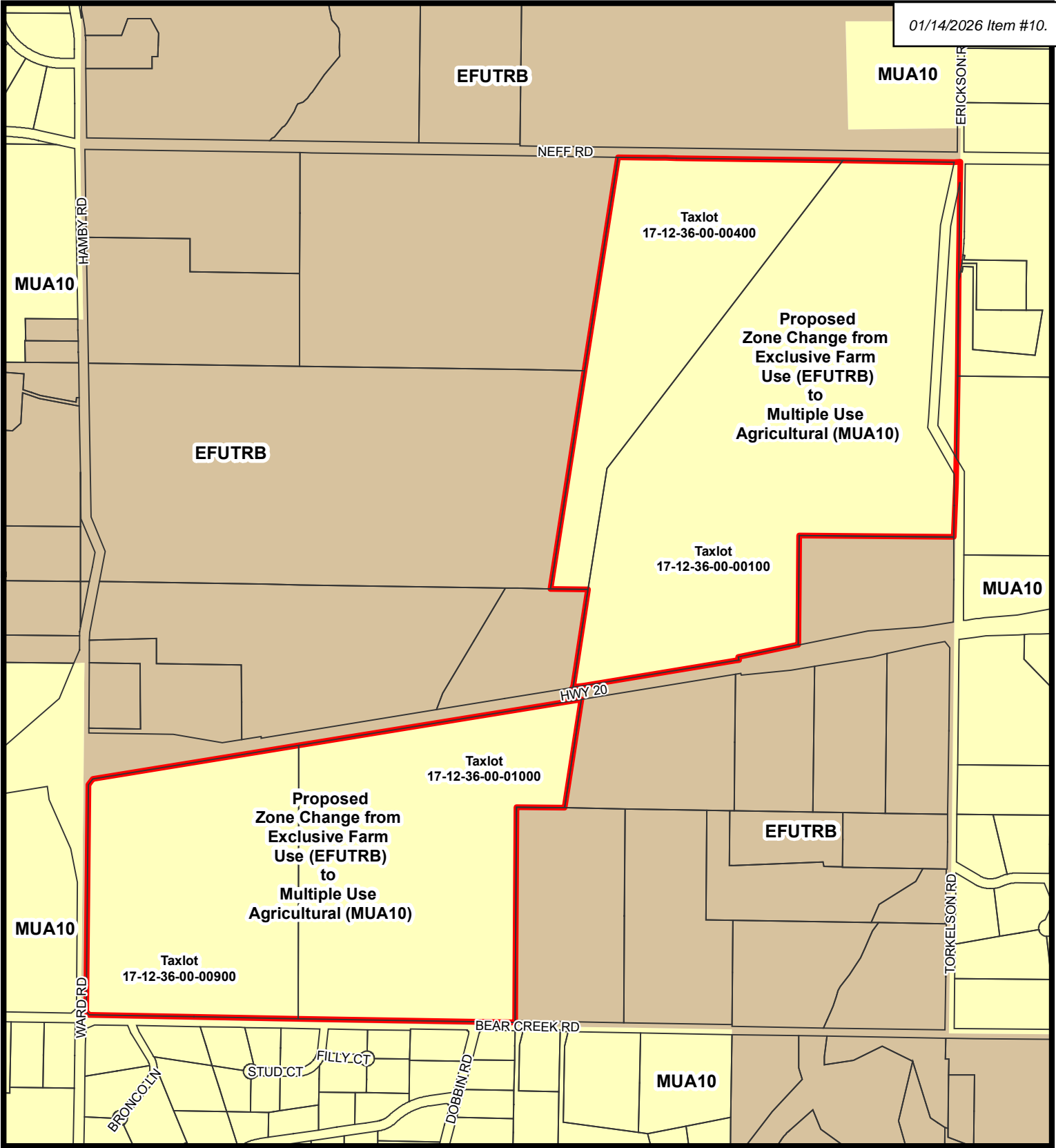
Dated this _____ day of _____, 2026
Effective Date: _____, 2026

 Plan Amendment Boundary

Comprehensive Plan


 RREA - Rural Residential
Exception Area

 AG - Agriculture





PROPOSED ZONING

Exhibit "C"
to Ordinance 2026-004

 Zone Change Boundary

Zoning

-  MUA10 - Multiple Use Agricultural
-  EFUTRB - Exclusive Farm Use

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

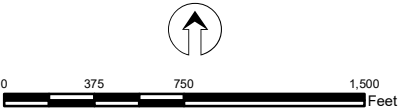
Phil Chang, Chair

Anthony DeBone, Vice Chair

Patti Adair, Commissioner

ATTEST: Recording Secretary

Dated this _____ day of _____, 2026
Effective Date: _____, 2026



January 7, 2026

Exhibit "D" to Ordinance 2026-004

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.

- 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. (supplemented and controlled 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 amendments, adopted by the Board in Ordinance 2024-003, are incorporated by reference herein.
- BL. 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 (superseded by Ord. 2025-007).
- BM. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-010, are incorporated by reference herein.
- BN. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-017, are incorporated by reference herein.
- BO. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-016, are incorporated by reference herein.

- BP. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-011, are incorporated by reference herein.
- BQ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2024-012, are incorporated by reference herein.
- BR. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-001, are incorporated by reference herein.
- BS. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-003, are incorporated by reference herein.
- BT. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-010, are incorporated by reference herein.
- BU. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-007, are incorporated by reference herein.
- BV. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2025-014, are incorporated by reference herein.
- BW. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2026-004, are incorporated by reference herein.

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

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

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.
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	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.
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 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	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.
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 Vandever 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)
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 (supplemented and controlled by Ord. 2024-010)	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
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 for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2023-016	5-8-24/8-6-24	23.01(BM) (added), 4.7 (amended), Appendix B (replaced)	Updated Tumalo Community Plan
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

2024-003	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 Residential Exception Area (RREA); Modifying Goal 5 Mineral and Aggregate Inventory
2024-007	10-02-24/12-31-24 (superseded by Ord. 2025-007)	23.01(A)(repealed) 23.01(BK) (added)	Repeal and Replacement of 2030 Comprehensive Plan with 2040 Comprehensive Plan
2024-010	10-16-24/01-14-25	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2024-011	11-18-24/02-17-25	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Redmond Urban Growth Area (RUGA)
2024-012	1-8-25/4-8-25	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2025-001	2-5-25/2-5-25	23.01.010	Comprehensive Plan and Zoning Map Amendment updating the Greater Sage-Grouse Area Combining Zone boundary.
2025-003	4-2-25/7-1-25	23.01.010	Comprehensive Plan Designation for Certain Property from Agriculture (AG) to Rural Industrial (RI)

2025-010	6-25-25/9-23-25	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2025-007	08-27-25/11-25-25	23.01(BU)	Amendments to Comprehensive Plan resulting from Deschutes County 2040 Update process.
2025-014	10-6-25/10-6-25	23.01.010	Comprehensive Plan Map Designation for Certain Property from Forest (F) to Rural Residential Exception Area (RREA)
<u>2026-004</u>	<u>TBD</u>	<u>23.01.010</u>	<u>Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)</u>

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

File Numbers: 247-24-000097-PA, 098-ZC and 247-25-000021-MA

Applicant: BCL, LLC
250 NW Franklin Street
Bend, Or 97703

Owner: Erickson-Ward Land Trust, LLC
21875 Neff Road/21850 Highway 20/21700 Bear Creek Road/62098
Ward Road
Bend Or 97701

Attorney(s) for Applicant: Christopher P. Koback
Buchanan Schmid LLC
937 NW Newport Avenue, Suite 220
Bend, OR 97703
(541) 388-1107
chris@buchananschmid.com

Staff Planner: Audrey Stuart, Associate Planner
Audrey.Stuart@deschutes.org, 541-388-6679

Application: Approval to change the plan designation for the subject property from Agriculture to Rural Residential Exception Area ("RREA") and to change the zoning of the property from Exclusive Farm Use ("EFU") to Multiple Use Agricultural-10 ("MUA").

Subject Property:

Map/Tax Lot:	Situs Address:
171236000100	21875 Neff Road, Bend, OR 97701
171236000400	21850 Highway 20, Bend, OR 97701
1712360001000	21700 Bear Creek Rd, Bend, OR 97701
171236000900	62098 Ward Road, Bend, Or 97701

I. FINDINGS OF FACT

A. Hearings Officer's Recommendation: The Hearings Officer's recommendation dated May 9, 2025, adopted as Exhibit G of Ordinance No. 2026-004, 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:

- B. Procedural History:** The County's land use Hearings Officer conducted the initial evidentiary hearing regarding BCL, LLC's Comprehensive Plan Amendment and Zone Change applications on May 9, 2025. After an open record period that ended May 30, 2025, the Hearings Officer recommended that the Board approve the applications in a July 9, 2025 decision. The Board conducted a de novo land use hearing on August 20, 2025. At the close of the hearing on August 20, 2025, the Board ordered an open record period that ended September 10, 2025. On October 15, 2025, the Board deliberated and voted unanimously to approve the application.
- C. Deschutes County Land Use regulations:** The Deschutes County Comprehensive Plan and Title 18 of the Deschutes County Code have been acknowledged by the Department of Land Conservation and Development (DLCD) as complying with statewide planning goals, including Goal 14. The County specifically amended its comprehensive plan in 2016 to provide that Rural Residential Exception Area Plan and its related MUA-10 and RR-10 zones should be applied to non-resource lands. This amendment is acknowledged, which means that the RREA plan designation and its related zoning districts, when applied to non-resource land such as the subject property, do not result in a violation of Goal 14. The Board interprets all MUA-10 uses as rural uses; no Goal 14 exception is required.

II. ADDITIONAL FINDINGS AND CONCLUSIONS OF LAW

At the Board's October 15, 2025, meeting where it deliberated the application, County staff presented an issue matrix for the Board to consider. Having considered the questions as presented in that matrix, the Board makes the following additional findings:

1. Soils Report

The applicant relied upon the NCRS soil maps and data for its assertion that the subject property was comprised predominately of non-agricultural soil. It presented a report from Red Hill Soils that explained the NCRS mapping and data. Central Oregon LandWatch (COLW) argued during the proceedings that the Red Hill Soils (Andy Gallagher) report was a "more detailed soil assessment" as defined in OAR 660-033-0030 that had to have been reviewed and approved by DLCD. The Hearings Officer rejected that argument and accepted the applicant's position that the Red Hills report did not have to be reviewed and approved by DLCD.

The Board notes that COLW did not reassert its argument on this issue in either its August 20, 2025, or August 27, 2025, submissions to the Board. Nevertheless, because the issue was presented by staff in the matrix, the Board evaluated COLW's prior arguments and rejects them. A party seeking a rezoning on the basis that property is

not agricultural land is allowed to rely on the NRCS mapping and data. If the existing maps or data are not accurate or complete, an applicant may elect to have a more detailed study done on the site where soils samples are evaluated and additional data is developed. Red Hills Soil did not do that. Rather, it used the existing maps and data to explain how that data relates to the subject property, specifically how the data is interpreted when the property has complex soil types.

The Board finds that the Red Hill Soils report did not include more data on soils but rather explained the application of existing NCRS data. Board interprets OAR 660-033-0030(5) to find Red Hills report is not a soil assessment requiring DLCD certification.

2. Whether the Property meets the definition of agricultural land in OAR 660-033-0020(1)(a).

Staff presented a second issue related to the soils information that the applicant submitted; staff presented that, to continue deliberations on the application, the Board must decide whether the applicant's information demonstrated that the property was predominantly non-agricultural land. OAR 660-033-0020(1)(a) defines agricultural land in Eastern Oregon as predominantly Class 1 through 6 soil. The Board discussed the information presented, particularly the report from Red Hill Soils and finds that the information establishes that the subject property is made up predominantly of Claas 7 and 8 soils that is therefore not agricultural land.

3. Whether the property is agricultural land considering the factors in OAR 660-033-0020(1)(a)(B).

OAR 660-033-0020(1)(a)(B) requires a decision-maker to consider several factors to determine whether land, even if predominantly Class 7 and 8, qualifies as agricultural land. The factors include soil fertility, suitability for grazing, climate, availability of water, land use patterns and accepted farming practices. After the Hearings Officer issued his recommendation, wherein he found that the property was not agricultural land suitable for farming, COLW and the applicant submitted additional evidence and argument.

COLW asserted two primary points in its August 2025 submissions. First, it noted that there is some evidence of past farming and possible irrigation. Second, it asserted that the Board is required to make findings that the property cannot be put to any farm use for horse breeding, boarding, training; or for goats or sheep or llamas or other farm use in order to approve the applications.

The Board reads LUBA's decision in *Central Oregon LandWatch v. Deschutes County (Destiny Court)*, LUBA No. 2025-015 to say that only if participants present evidence

regarding certain farm activities other than grazing and hay growing, which are the most commonly accepted activities, does a decision-maker have to make specific findings related to other possible farm activities. In this matter, COLW did not present any such evidence with enough specificity to respond to; it merely listed possible farm activities that are set forth in the definition of farming. COLW presented some information on one horse training facility in Deschutes County and one goat farm, but failed to demonstrate how the subject property was suitable for these farm uses.

As an initial matter, the Board finds that the subject property is not irrigated and has no ability to be irrigated presently. The images that COLW submitted as evidence of past farming are not clear and do not prove that there was any farm activity engaged in on the property for the purpose of making a profit. Furthermore, the latest photograph was 50 years ago and there is no evidence of any farming activity on the property since that time. The Board finds persuasive the testimony of Eric Hagerty, a local farmer/rancher who stated that the cost to acquire water rights, if that is even possible, would be prohibitive. Further, his testimony on the ability to conduct dry grazing for any profit is credible.

As to a horse facility, the applicant presented evidence from Mr. Hagerty, who also operates an equestrian facility, who explained that the subject property is not suitable for such use noting the prohibitive cost with constructing the required facilities, the need for irrigation for pasturing and the cost to obtain irrigation right and then, install the necessary equipment. The evidence illustrated that the land could not produce pollinating plants for bees. Further, the applicant presented evidence that the equestrian facility used by COLW in its arguments has better soil and ample irrigation, and yet still operates as a non-profit. The Board finds that farm use is defined as the current employment of land primarily for the purpose of making a profit from activities listed in ORS 215.203.

The example of the goat farm was from a city in North Carolina. The Board finds that that information is not relevant to this matter in Deschutes County. The Board is not required to make any specific finding on whether a goat farm could be operated primarily for the purpose of a profit on the subject property.

After carefully evaluating all of the evidence in the record, including the detailed testimony from a local ranch and horse facility operator, the Board finds that in applying the factors in OAR 660-033-0020, the subject property is not agricultural land and that a reasonable farmer would not attempt to engage in the activities listed in ORS 215.203 for the primary purpose of making a profit. Board applies *Wetherell* economic feasibility test and finds the land is unsuitable for profitable farm use.

4. Landscape Management

The property is within the Highway 20 scenic corridor and thus subject to the Landscape Management Combining Zone (LM) overlay. The Hearings Officer found that the Economic, Social, Environmental, and Energy (ESEE) analysis presented by the applicant adequately addressed the requirement for a conflicting use analysis. COLW argued to the Board that the analysis presented was deficient because it did not cover the entire Highway 20 scenic corridor. The Board rejects COLW's position and finds that the applicant's ESEE analysis satisfied the applicable administrative rules and County code. The focus of the LM review is to assess how development on the subject property may conflict with the resource. The applicant's analysis did that. The Board interprets its code to not require that extent of an ESEE analysis. Furthermore, the Board finds that it is not reasonable to expect an applicant to prepare a conflicting use analysis for the entire scenic corridor, including property on which no development is contemplated by the specific zone change.

5. Compliance with Rezoning Standards

DCC 18.136.020 provides that an applicant for rezoning must establish that the public interest is best served by rezoning the property and identifies factors to be demonstrated by the applicant: (A) that the change confirms to the Comprehensive Plan, and changes are consistent with the plan's introductory statement and goals; (B) That the change in classification for the subject property is consistent with the purpose and intent of the proposed zone classification; (C) That changing the zoning will presently serve the public health, safety and welfare considering the availability and efficiency of providing necessary public services and facilities and the impacts on surrounding land use will be consistent with the specific goals and policies contained within the Comprehensive Plan and (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. Board interprets 'public interest is best served' to mean compliance with subsections (A)-(D).

The Hearings Officer conducted a detailed analysis on how the above standard is interpreted, concluding that the public interest is best served if the proposal meets the factors set forth in DCC 18.136.020 (A) through (D). He then found that those factors were met in the current application. COLW continued to argue to the Board that DCC 18.136.020 requires that an applicant show both that the factors in (A) through (D) are met and independently demonstrate that the rezoning best serves the public interest. The Board considered the countervailing arguments carefully and finds the Hearings Officer's analysis to be sound and correct. The Board adopts the Hearings Officer's interpretation of DCC 18.136.020. Board interprets 'public interest is best served' to mean compliance with subsections (A)-(D).

6. Existing Solar Facility

COLW argued that the existence of a solar array facility on a 63-acre portion of the property was not consistent with the MUA-10 zone proposed to be applied to the property because solar arrays are not a permitted use in the MUA-10 zone and thus, are not consistent with the proposed zone. The Hearings Officer found that state statute and Deschutes County Code allow for the continued use of a lawful non-conforming use, and while the subject application is not a status determination on the existing solar array, the continued use of a lawful non-conforming use is consistent with the purpose and intent of the MUA-10 zone. The Board finds that lawfully established non-conforming uses are allowed to remain after rezoning under *Holmes v. Clackamas County* and the existence of lawful nonconforming uses do not bar rezoning.

The Board agrees with the applicant's point that COLW's argument is not directed at the applicable standard. The question under DCC 18.136.020(B) is not whether a solar facility is consistent or inconsistent with any particular zoning. The question presented is whether the rezoning of property is consistent with the purpose of the proposed zone.

Before the Board, the applicant presented testimony that the solar facilities are on only one portion of the property and that the majority of the property will accommodate uses allowed in the MUA-10 zone. Thus, when examining the entire property, rezoning to MUA-10 is consistent with the purpose of allowing uses under the MUA-10 zone while preserving resources and open space. The applicant also provided evidence that solar facilities have a limited functional lifespan and that the current facility was constructed around 2016. The record includes evidence from a traffic engineer that the expected useful life of such a facility is about 20 years. The applicant also presented testimony that one of the purposes of the MUA-10 zone is to facilitate an orderly transition from rural to urban uses and that if the subject property, which is close to the existing Bend UGB, comes into the UGB, it will not all be developed immediately, meaning that it is reasonably likely that by the time the portion of the property with the solar facility ever transitions to urban uses, it will be after the functional life of the facility, even if that useful life exceeds 20 years.

The Board agrees with the applicant's testimony and evidence. The Board finds that rezoning a 240-acre parcel that has 63 acres devoted to what will then be a lawful nonconforming use is consistent with the purpose of the MUA-10 zone. Most of the property can immediately be used in a way that is consistent with the MUA-10 zone's purpose. The existing solar facility can remain as a lawful non-conforming use and that property can be transitioned to either MUA-10 uses or, if the property were added to Bend's UGB, urban uses in an orderly time after the solar facility passes its

useful life. Moreover, the Board finds that in any rezoning, there will be existing uses that become non-confirming uses. Those uses and associated development are allowed to remain under the new zoning. If the existence of a use or development that is not allowed under proposed new zoning in a rezone/reclassification application is automatically a disqualifying factor, local governments' efforts to add property to a UGB in the future and rezone such property would be frustrated. The Board finds that the existence of the solar facility on the subject property does not render the application inconsistent with the purpose of the MUA-10 zone.

7. Will the change in designation and zoning result in urban uses such that an exception to Goal 14 is required.

On the issue of whether designating land RREA and rezoning it to MUA-10 is consistent with Goal 14 or requires an exception, the Board adheres to the conclusion it has reached in prior similar rezoning applications. The Board finds that its acknowledged Comprehensive Plan, amended in 2016 to create the RREA designation and its MUA-10 and RR-10 zones, confirms that uses allowed within those zones are all rural uses and not urban uses. The Comprehensive Plan (DCCP) states that "[e]ach Comprehensive Plan map designation provides the land use framework for establishing zoning districts. Zoning defines in detail what uses allowed for each area." DCCP Section 1.3. 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. DCCP Table 1.3.3 provides that Title 18's RR-10 and MUA-10 zones are the associated zoning codes for the RREA plan designation.

The determination that the RREA plan designation and RR-10 and MUA-10 zoning districts should apply to exception lands was made when the County amended the DCCP in 2016. (Ordinance 2016-005). The ordinance was acknowledged by DLCD as complying with the Statewide Goals. Thus, the lot sizes and uses allowed by the RREA plan designation and the RR-10 and MUA-10 zones comply with Goal 14. The proposed amendment to the Comprehensive Plan map conforms to the DCCP provisions.

Further, the purpose statement for the MUA-10 zone expressly states that it is to preserve the rural character of various areas of the County while permitting development consistent with that character and the capacity of the natural resources of the area. When DCC Chapter 18.32 is read in context with that purpose statement, the only plausible interpretation is that all uses allowed in the MUA-10 zone are rural uses. Thus, the application does not provide any basis for the County to revisit whether the RREA designation, or the RR-10/MUA-10 zones violate Goal 14 by allowing urban development and requires no individual analysis of specific uses or of whether the MUA-10 uses violate Goal 14 is required.

The Board also considered and evaluated the factors presented by the applicant referred to often as the *Curry County* factors to assess whether rezoning the property MUA-10 will result in urban uses on rural land.

Curry County Analysis

As stated above, the Board does not agree with COLW that an analysis of Goal 14 applying the factors set forth in *1000 Friends of Oregon v. LCDL (Curry County)*, 301 Or 447 (1986) is required. The MUA-10 zone allows development consistent with the rural character of the area and does not authorize urban uses. However, the Board makes the following alternative findings for a complete record on the urbanization issue. These alternative findings are based on evidence and argument submitted by the applicant on the Goal 14 issue.

Density

Allowing MUA-10 uses on the subject property will not lead to urban density. The minimum parcel size in the MUA-10 zone is 10 acres. The current zoning code allows smaller parcels for cluster developments and planned developments. In *Central Oregon LandWatch v. Deschutes County* (Destiny Court), LUBA No. 2025-015, LUBA remanded a plan amendment and rezone approval for the Board to address a perceived inconsistency between the DCCP that limits parcels size in the MUA-10 zone to 10 acres and the zoning code that allows smaller parcels under the cluster and planned development provisions. The Board is currently in the process of updating the DCCP to address the remand; however, in the event that cluster and planned development remain in the code and allow parcels less than 10 acres with corresponding open space, such development does not result in urban density.

The smallest parcel in the MUA-10 zone, even using a cluster development application and for property within a mile of a UGB, is five acres or the equivalent density. The Board notes that in *Curry County*, 1000 Friends asserted that densities greater than one dwelling per three acres are urban. That argument did not account for provisions requiring large undeveloped open space either. The Board finds that five-acre parcels along with 65% undeveloped open space are not urban density. By way of contrast, the lowest density allowed in the City of Bend is 1.1 units per acre in the RL zone. There is a significant difference between one dwelling per acre and one dwelling per five acres. Moreover, the allowance of 65% of otherwise unrestricted and unconstrained property to be left open and undeveloped is inconsistent with development at urban densities. Even under the cluster development and planned development provisions, while smaller parcels may be approved, the overall density remains consistent with the rural character of the area.

Extension of Urban Services

The Board rejects the notion that rezoning the subject parcel to MUA-10 will lead to the extension of urban facilities to the area. The City of Bend has no obligation to extend public services and in some cases is prohibited from providing extraterritorial service to rural lands. Development will be served primarily by private water and onsite septic systems. Electricity already extends onto the property as evidenced by the approved plat from 1990. For fire and public safety, the area is served by the Bend Rural Fire District and Deschutes County Sheriff's office, both of which serve rural areas. Further, that coverage will remain unchanged under any county zoning.

Proximity to Urban Growth Boundaries

While the court in *Curry County* addressed arguments that rezoning resource land near urban areas could attract people from the urban areas to rural areas, that discussion did not involve the Deschutes County MUA-10 zone which has as one of its purposes to promote an orderly transition from rural uses to urban uses. The purpose statement thus confirms that the MUA-10 zone allows rural uses. It also illustrates that having MUA-10 zoning somewhat near a UGB is appropriate.

The Board does not agree that rezoning the subject property to MUA-10 will be a magnet pulling rural residents into the urban area and urban residents to the rural area. That position does not reflect reality. Currently, there are few, if any, resources available to rural residents that are located in rural areas. The schools that rural residents around Bend attend are in the City. The medical services and major grocery stores are in urban areas. Rural residents living close to Bend already come in large numbers to urban areas for goods and services.

Similarly, the rural area has most of the recreational opportunities that are enjoyed by urban residents. There are other uses such as horse stables and farm stands that already attract urban residents to the rural area. Board finds that zoning property near the City of Bend UGB to MUA-10 will not result in urban uses on rural lands and thus, no Goal 14 exception required.

III. DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Board of County Commissioners hereby approves applicant's applications for a Comprehensive Plan Amendment to redesignate the subject property from Agriculture to RREA and a corresponding zone map amendment to change the zoning of the property from EFU to MUA-10.

Dated this ____ day of _____ 2026.

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

FILE NUMBER: 247-24-000097-PA, 247-24-000098-ZC, 247-25-000021-MA

HEARING DATE: May 9, 2025

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

**SUBJECT PROPERTY/
OWNER:** Mailing Name: ERICKSON-WARD LAND TRUST LLC
Map and Tax lot: 1712360000100
Account: 109118
Situs Address: 21875 NEFF RD, BEND, OR 97701

Mailing Name: ERICKSON-WARD LAND TRUST LLC
Map and Tax lot: 1712360000400
Account: 109115
Situs Address: 21850 HWY 20, BEND, OR 97701

Mailing Name: ERICKSON-WARD LAND TRUST LLC
Map and Tax lot: 1712360001000
Account: 111676
Situs Address: 21700 BEAR CREEK RD, BEND, OR 97701

Mailing Name: ERICKSON-WARD LAND TRUST LLC
Map and Tax lot: 1712360000900
Account: 111677
Situs Address: 62098 WARD RD, BEND, OR 97701

APPLICANT: BCL LLC

APPLICANT ATTORNEY: Christopher Kobak

REQUEST: The Applicant requested 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 requested a corresponding Zone Change to rezone the Subject Property from Exclusive Farm Use – Tumalo-Redmond-Bend subzone (EFU-TRB) to Multiple Use Agricultural (MUA10).

STAFF CONTACT: Audrey Stuart, Associate Planner
Phone: 541-388-6679

Email: Audrey.Stuart@deschutes.org

RECORD:

Record items can be viewed and downloaded from:
<https://www.deschutes.org/cd/page/247-24-000097-pa-247-24-000098-zc-bcl-llc-comprehensive-plan-amendment-and-zone-change>

I. 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 18.32, 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. BASIC FINDINGS

LOT OF RECORD: The submitted Burden of Proof includes the following response regarding lot of record status:

“Deschutes County determined that Tax Lots 100, 300, and 400 (combined with Tax Lot 1100) were a lot of record in LR-91-54 and LR-91-55, as corrected by Planning Staff Letter dated December 17, 1998. Exhibit 1. Deschutes County determined that Tax Lot 1000 was a lot of record in 247-20-000077-LR. Exhibit 2.”

The application materials also include a request for Lot of Record Verification for Tax Lot 900 and provide an analysis on the deed history of this tax lot. However, Staff noted (Staff Report, pages 2 & 3) that a Lot of Record Verification is a separate application type that requires its own form and fee, which were not submitted. Staff (Staff Report, pages 2 & 3) concluded that a lot of record analysis for Tax Lot 900 was not required in order to process Applicant’s current Comprehensive Plan Amendment and Zone Change requests.

DCC 22.04.040(B)(1) specifies the types of land use applications that require lot of record verification, and a Comprehensive Plan Amendment and Zone Change is not listed. In the *Powell/Ramsey* (PA-14-2, ZC-14-2) decision, a County Hearings Officer held to a prior zone change decision (*Belveron* ZC-08-04; page 3) that a property’s lot of record status was not required to be verified as part of a plan amendment and zone change application. Rather, an applicant would be required to receive lot of record verification prior to any *development* on the property. The Hearings Officer concurs with Staff’s analysis and finds that this criterion does not apply.

SITE DESCRIPTION: The properties included in Applicant’s proposal in this case (the “Subject Property”) consists of four tax lots, which are summarized in the table below.

<i>Tax Lot</i>	<i>Size (Acres)</i>
100	100.89
400	38.06
900	43.89
1000	57.33

Applicant’s Burden of Proof for file 247-25-000021-MA provides the following description of the Subject Property:

“The subject tract is designated agricultural and zoned EFU. However, there is no history of any agricultural use. As the Applicant will explain more below, the tract is comprised predominantly of 58C soils which are not considered suitable for agricultural uses. Tax Lots 900, 1000, and 400 are, with the exception of one dwelling recently constructed on Tax Lot 1000, vacant unirrigated parcels with no use. Each tax lot has only a few trees and is primarily comprised of sagebrush, rabbit brush, and bunch grasses. No part of Tax Lot 900 is irrigated, and it has no water rights. Tax Lot 100, like similar parcels north and west, is developed with a solar farm that consumes all but the southeast corner of the lot, which portion is vacant. No part of Tax Lot 100 is irrigated, nor does it have any water rights.

The subject tract extends east from Ward Road west to Erickson Road. The tract extends north to Neff Road and south to Bear Creek Road. The following aerial photograph shows the approximate locations of the subject property and the general character of the property and surrounding area.”

The parcels making up the Subject Property are located east of Bend, to the north and south of Highway 20. At its closest point, the Subject Property is approximately 0.26 miles from the City of Bend’s Urban Growth Boundary (UGB). The Subject Property consists primarily of undeveloped land, with two exceptions. Tax Lot 1000 is developed with a Lot of Record Dwelling which was approved through Deschutes County file 247-21-000119-CU. Tax Lot 100 is developed with a solar voltaic array (“Solar Array”) that was originally approved through Deschutes County files 247-15-000170-CU, 171-SP and have subsequently been modified. The fenced area developed as the Solar Array encompasses an area of approximately 62.6 acres.

PROPOSAL: The Applicant requested 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 requested approval of a corresponding Zoning Map Amendment to change the zoning of the subject properties from Exclusive Farm Use (“EFU”) to Multiple Use Agricultural (“MUA10”). The Applicant asked 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.¹ The Applicant proposed that no exception to Statewide Planning Goal 3, Agricultural Land was required because the Subject Property is not “agricultural land.”

The original proposal included five tax lots, with a total area of 259 acres. On January 8, 2025, the Applicant submitted a Modification of Application (Deschutes County file 247-25-000021-MA). This modified the proposal to reduce the size of the area to be rezoned, by removing Tax Lot 300 on Assessor’s Map 17-12-36. The materials for 247-25-000021-MA also supplemented the analysis provided in the original application materials regarding agricultural lands and provided a professional soil report.

¹ As defined in OAR 660-033-0020, 660-033-0030

Submitted with the application is a review of the Subject Property soil characteristics, titled *Bear Creek Analysis of Agricultural Land* (hereafter referred to as the “Red Hills Soils Report”) prepared by soil scientist Andy Gallagher, CPSSc/SC of Red Hill Soils. The Applicant also submitted a traffic analysis prepared by Ferguson and Associates, Inc. dated February 28, 2025, hereafter referred to as the “Traffic Study.” Additionally, the Applicant submitted an application form, a Burden of Proof statement (the “Burden of Proof”), and other supplemental materials, all of which are included in the record for the subject applications.

SOILS: According to Natural Resources Conservation Service (“NRCS”) maps of the area, the Subject Property contains three different soil types as described below. The Subject Property contains 58C – Gosney-Rock Outcrop-Deskamp complex, 36B – Deskamp loamy sand (3 to 8 percent slopes) and 36A – Deskamp loamy sand (0 to 3 percent slopes). The 36A and 36B soil units are defined as high-value soil by DCC 18.04 when it is irrigated. The 58C soils complex is not defined as high-value farmland, regardless of irrigation.

The applicant submitted the Red Hills Soils Report (exhibit to 247-25-000021-MA application materials), which was prepared by a certified soils scientist and soil classifier. The purpose of the Red Hills Soils Report was to inventory and assess the soils on the Subject property and to provide additional insight related to the NRCS soil classifications and ratings. Additional discussion of the Red Hills Soils Report can be found in the Preliminary Findings section titled Certification of Soils Report (III.A.2).

The NRCS soil map units identified on the properties are described, for background information, below.

36A, Deskamp loamy sand, 0 to 3 percent slopes: This soil complex is composed of 85 percent Deskamp soil and similar inclusions, and 15 percent contrasting inclusions. The Deskamp soils are somewhat excessively drained with a rapid over moderate permeability, and about 5 inches of available water capacity. Major uses of this soil type are irrigated cropland and livestock grazing. The agricultural capability rating for 36A soils are 3S when irrigated, and 6S when not irrigated. This soil is high-value when irrigated. Approximately 33 percent of the subject parcel is made up of this soil type.

36B, Deskamp loamy sand, 3 to 8 percent slopes: This soil is composed of 85 percent Deskamp soil and similar inclusions, and 15 percent contrasting inclusions. This soil is somewhat excessively drained, with rapid permeability and an available water capacity of approximately 3 inches. The major uses of this soil are irrigated cropland and livestock grazing. This Deskamp soils have a capability rating of 6E when unirrigated, and 3E when irrigated. This soil type is considered high-value when irrigated. The 36B soils are limited to the northern, irrigated portion of the site and comprise approximately 0.2 percent of the property.

58C, Gosney-Rock Outcrop-Deskamp complex, 0 to 15 percent slopes: This soil type is comprised of 50 percent Gosney soil and similar inclusions, 25 percent rock outcrop, 20 percent Deskamp soil and similar inclusions, and 5 percent contrasting inclusions. Gosney soils are somewhat excessively drained with rapid permeability. The available water capacity is about 1 inch. Deskamp soils are somewhat excessively drained with rapid permeability. Available water capacity is about 3 inches. The major use for this soil type is livestock grazing. The Gosney soils have ratings of 7e when unirrigated, and 7e when irrigated. The rock outcrop has a rating of 8, with or without irrigation. The Deskamp soils have ratings of 6e when unirrigated, and 4e when irrigated. Approximately 66 percent of the subject properties is made up of this soil type, all located within the northern parcel.

SURROUNDING LAND USES: The general surrounding area of the Subject Property is defined by the City of Bend’s Urban Growth Boundary (“UGB”) to the west and then a mix of residential and agricultural uses spreading out to the north, east, and south. Adjoining properties are zoned MUA10 and EFU, and range in size and type of development. The general surrounding area includes small-scale farms that predominantly consist of irrigated fields and pasture, and are located to the east of the Subject Property. The area to the west of the Subject

Property provides a transition from the UGB to rural land use, and is developed with a number of uses such as solar farms, a church, a fire station, and a public park.

Applicant provided (Burden of Proof) the following description of adjacent properties:

“West: Tax Lot 900 fronts Ward Road. West of Ward Road, the majority of properties are zoned MUA10 and not used for agricultural purposes. The property that abuts Ward Road on the west is an approximate 53-acre tract consisting of three tax lots, 17-12-36, Tax Lots 1400, 1600, and 1601. In 2018, in Files 24 7-18-000485 and 24 7-18-000486, the County approved a change in the designation to Rural Residential Exception area and a change in the zoning to MUA10. In 2021, in Files 247-22-000353 and 354, the County approved the same redesignation and zone change on a parcel identified as 18-12-02, Tax Lot 201. Northeast of Tax Lot 900, the parcel immediately east of Tax Lot 900 (17-12-36 Tax Lot 800), is a vacant EFU-TBR. The other properties east of the Subject Property are either MUA10 with dwellings or EFU parcels and most include dwellings and hobby farms uses.

The properties northwest of the Subject Property are a mixture of MUA10 land recently rezoned, EFU land developed with commercial solar farms and institutional uses such as a church, a Christian Center, and a Pacific Power facility. Just north of Highway 20 and west of Hamby Road, in 2022, the County approved a similar request involving a 94-acre tract that consisted of two parcels identified as 17-12-35, Tax Lots 1200 and 1201. There are a few large acre dwellings as well. There does not appear to be any active farming operations within close proximity to the Subject Property to the northwest.

North: The properties north of Tax Lot 900 are the same as that east of Tax Lot 100. They are EFU and MUA-10 zoned parcels with the above-described commercial, institutional, and residential uses. The property immediately north of Tax Lot 100 is a 118-acre parcel zoned EFU and MUA-10. It has a dwelling on pali and a large solar farm on the remainder. Northeast of Tax Lot 100 the properties are predominantly all MUA-10 zoned parcels developed with residential uses.

South: The land south and southeast of Tax Lot 900 is zoned MUA-10 and is developed with single-family homes. Most of the parcels are within Dobbins Estate, a large acre subdivision. South of Tax Lot 100 the properties are primarily EFU zoned parcels developed with large acre residential dwellings. One parcel appears to have a small hobby horse farm on it. There are no active farming operations.

East: The properties east of Tax Lot 900 are predominantly EFU zoned with most being less than 20 acres and many less than 10 acres. The primary development pattern is large acre residential uses with one horse farm noted above. One property directly east of Tax Lot 1000 appears to be developed with a personal moto-cross course. East of Tax Lot 100 the properties lying east of Erickson Road are predominantly all MUA-10 zoned parcels developed with large acre residential estate-type dwellings. There is an irrigation canal that runs diagonally through some of those properties.”

PUBLIC AGENCY COMMENTS: The Planning Division mailed notice on March 12, 2024, to several public agencies and received the following comments:

Deschutes County Senior Transportation Planner, Tarik Rawlings, March 5, 2025, Comments

I've reviewed the revised TPR analysis prepared by Ferguson & Associates, Inc dated February 28, 2025. Reflective of the applicant's pending Modification of Application file (no. 247-25-000021-MA) to remove Tax Lot 300 from the scope of the project (resulting in a 12.41-acre reduction in acreage from the original application), the revised analysis provides updated information related to the total ~240.17 acres of subject property. The full build-out scenario included in the revision (considering redevelopment of the

existing solar farm portions of the subject property) aligns with staff's comments from 6/11/24. The report's inclusion of modified acreage and assumed development credit for one existing single-family dwelling complies with additional comments from staff's 6/11/24 email correspondence regarding the MUA10 Zone's worst case scenario analysis. I agree with the assumptions, methodologies, and conclusions outlined in the revised analysis.

Deschutes County Senior Transportation Planner, Tarik Rawlings, June 11, 2024, Comments

Thank you for forwarding the revised TPR analysis produced by Ferguson & Associates, Inc., dated April 22, 2024.

While the revised TPR analysis has addressed some of the transportation-related comments issued on behalf of the County Road Department on March 29, 2024, there are some outstanding issues with the revised analysis that should be addressed by the applicant in order to comply with TPR:

1. The translation of the "farm manufacturing" analysis into the category of "farm stand" is not a reasonable conclusion and the revised analysis does not clearly demonstrate how a "farm stand" derived from the 18.16.025(1)(1-2) "facility for the processing of farm crops" (and termed "farm manufacturing" at multiple points in the report) constitutes a reasonable worst case scenario for outright EFU use categories even when compared to other uses within DCC 18.16.025. The applicant should provide demonstrable analysis (derived from real local or regional examples of farm crop processing facilities) showing how this use category constitutes a reasonable worst case scenario for outright EFU use categories.
2. At the conclusion of the "Trip Generation Forecast – Outright Permitted Uses – Land Use Scenario for Existing EFU Zoning" section of the revised analysis (beginning on page 3 of the revised report), the applicant concludes with an assumption that three of the five parcels making up the subject properties would each respectively support a dog training class use, a farm stand use, and a Winery/Farm Brewery/Cider business use. The remaining two parcels within the subject properties are not included within this analysis and the applicant must account for these additional 2 parcels in their reasonable worst case scenario analysis. If the applicant continues their revisions under the analytical framework that each of the 5 individual lots within the subject properties would support different reasonable worst case scenario uses, then the applicant must clearly state which use is assigned to which tax lot. Further, that analysis should be tailored to the unique aspects of each individual lot such as acreage and location. Alternatively, if the applicant decides to revise their report to analyze all 5 lots as one contiguous property for the purpose of reasonable worst case scenario analysis, that analysis should focus on one reasonable worst case scenario use category across the contiguous 5 lots. Staff notes that, of the identified EFU reasonable worst case scenario uses included on pages 3-6 of the revised report, winery or dog training classes are likely the highest trip-generative uses. For the purposes of quantifying the anticipated impacts from the EFU reasonable worst case scenario uses, staff encourages the applicant to base any methods and assumptions of these uses on real local or regional examples.
3. Staff disagrees with the applicant's assertion that the existing solar farm would not be redeveloped as part of the reasonable worst case scenario analysis for the requested MUA10 Zone. As the requested MUA10 Zone is outright permissive of single-family dwellings, staff finds that it would be reasonable to assume that the existing solar farm would be redeveloped with single-family dwellings as an economically-advantageous land use and the applicant should produce revised analysis reflecting the full build-out of residential single-family dwellings as the reasonable worst case scenario for the requested MUA10 Zone.
4. Pursuant to bullet #3, above, staff also requests that the applicant revise the single-family dwelling analysis for the requested MUA10 Zone included in Table 5 (page 8 of the revised

- report) to reflect a total “Number of Single-Family Residentials” of 25 (revised from 13). Based on the acreage of the subject properties (252.58 acres), the ability to redevelop the existing solar farm, and the purpose of this exercise as a scenario forecast for trip generation, staff finds that the subject properties would be able to support a maximum of 25 single-family dwellings as the reasonable worst case scenario for the requested MUA10 Zone.
5. Pursuant to bullets #3 and #4, above, the applicant must revise Table 7 (page 9 of the revised report) to reflect a total of 25 single-family dwelling units for the purpose of P.M. Peak hour and daily weekday trip generation forecasting.

Deschutes County Senior Transportation Planner, Tarik Rawlings, March 29, 2024, Comments

I have reviewed the transmittal materials for 247-24-000097-PA, 98-ZC for properties totaling approximately 259 acres to change the Comprehensive Plan designation from Agriculture (AG) to Rural Residential Exception Area (RREA) and the zoning from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA10). The properties are within the Exclusive Farm Use (EFU) Zone, and the Airport Safety (AS) and Landscape Management (LM) Combining Zones associated with the following identifying property information:

Mailing Name: ERICKSON-WARD LAND TRUST LLC
Map and Taxlot: 1712360000100
Account: 109118
Situs Address: 21875 NEFF RD, BEND, OR 97701

Mailing Name: ERICKSON-WARD LAND TRUST LLC
Map and Taxlot: 1712360001000
Account: 111676
Situs Address: 21700 BEAR CREEK RD, BEND, OR 97701

Mailing Name: ERICKSON-WARD LAND TRUST LLC
Map and Taxlot: 1712360000300
Account: 109116
Situs Address: **NO SITUS ADDRESS**

Mailing Name: ERICKSON-WARD LAND TRUST LLC
Map and Taxlot: 1712360000900
Account: 111677
Situs Address: 62098 WARD RD, BEND, OR 97701

Mailing Name: ERICKSON-WARD LAND TRUST LLC
Map and Taxlot: 1712360000400
Account: 109115
Situs Address: 21850 HWY 20, BEND, OR 97701

I have reviewed traffic analysis provided by Ferguson & Associates, Inc., dated February 2, 2024, included as Exhibit 12 of the submitted application materials. The analysis included within the submitted Ferguson & Associates, Inc. report does not comply with the relevant provisions of OAR 660-012-0060, known as the Transportation Planning Rule (TPR). In order to determine whether the proposal will produce a significant effect on transportation facilities, the applicant must revise their traffic analysis to comply with TPR including OAR 660-012-0060(1)(a-c). Due to the scope of the proposal, staff notes that the applicant’s revised analysis must comply with the requirements for a Traffic Impact Analysis (TIA) (DCC 18.116.310(C)(3)(c)) outlined in DCC 18.116.310 including the minimum TIA requirements at DCC 18.116.310(G)(1-16), the study time frame requirements at DCC 18.116.310(E), the operation and safety standards at DCC 18.116.310(H) (20-year study time frame) and the mitigation standards at DCC 18.116.310(I), should any mitigations be required as the result of the revised analysis. The TIA should include a review of existing and future levels of service (LOS), average vehicle delay, and volume/capacity (V/C) ratios associated with the subject properties and surrounding project area. The V/C ratios would be applicable to any ODOT facilities included in the TIA.

Regarding the reasonable worst case scenario(s) put forward in the submitted traffic analysis, staff disagrees with the scenario proposed for the existing EFU Zone. For the existing EFU Zoning, staff does not agree that “farm use” or farm crop processing is the reasonable worst case scenario associated with the EFU Zone and notes that “winery” has been used in past applications for PA/ZC proposals from

EFU to MUA10. The assertion that “farm use” constitutes the reasonable worst case scenario for the EFU Zone is antithetical to the analysis provided in the submitted Burden of Proof statement, demonstrating that the subject properties are not currently suited for farm use.

The properties have frontage on Highway 20, Bear Creek Road, Erickson Road, and Neff Road. Highway 20 is a public road maintained by the Oregon Department of Transportation (ODOT), functionally classified as a Primary Arterial Highway. Staff recommends the applicant work closely with representatives from ODOT for any access permitting or other requirements related to Highway 20. Based on ODOT’s jurisdiction over Highway 20, the access permit requirements of DCC 17.48.210(A) do not apply. Bear Creek Road and Erickson Road are public roads maintained by Deschutes County and functionally classified as Rural Collectors. Neff Road is a public road maintained by Deschutes County and functionally classified as a Rural Arterial. If the applicant intends to utilize access from Bear Creek Road, Erickson Road, or Neff Road, the applicant must address the provisions of DCC 17.48.210(B) related to access on Rural Collectors and Arterials.

Board Resolution 2013-020 sets a transportation system development charge (SDC) rate of \$5,603 per p.m. peak hour trip. As the plan amendment/zone change by itself does not generate any traffic, no SDCs apply at this time. SDCs will be assessed based on development of the property. When development occurs, the SDC is due prior to issuance of certificate of occupancy; if a certificate of occupancy is not applicable, then the SDC is due within 60 days of the land use decision becoming final.

THE PROVIDED SDC RATE IS ONLY VALID UNTIL JUNE 30, 2024. DESCHUTES COUNTY’S SDC RATE IS INDEXED AND RESETS EVERY JULY 1. WHEN PAYING AN SDC, THE ACTUAL AMOUNT DUE IS DETERMINED BY USING THE CURRENT SDC RATE AT THE DATE THE BUILDING PERMIT IS PULLED.

BEGINNING JULY 1, 2024, THE SDC RATE WILL INCREASE AND LAST UNTIL JUNE 30, 2025. AGAIN, THIS IS INFORMATIONAL ONLY AS SDCS ARE NOT ASSESSED UNTIL DEVELOPMENT OCCURS.

Oregon Department of Transportation, Principal Planner Ken Shonkwiler

Thank you for the opportunity to review 247-24-000097-PA, 247-24-000098-ZC: Erickson Ward Zone Change. Our comments are attached in a comment log and I also provided a letter on the applicant’s TPR assessment memo with regards to OAR 660-012-0060.

Oregon Department of Agriculture, John Harrang

No involvement needed by ODA Food Safety Program.

Department of Land Conservation and Development, Natural Resource Specialist Amanda Punton

Good to know, thanks. Do you anticipate including finding on how new uses allowed by the proposed rezoning will affect the Goal 5 scenic resource? There is mention of the combining zone in the applicant’s material but nothing about the Goal 5 origins of the combining zone. This is the piece of OAR chapter 660, division 23 that speaks to new uses that could impact a significant Goal 5 resource.

OAR 660-023-0250(3)(b)

(3) Local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if: . .

(b) The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list; or . . .

There is a good chance the county will find that no additional Goal 5 work is needed. I'm happy to discuss further if you like.

The following agencies did not respond to the notice: Avion Water Company, Bend-La Pine School District, Bend Fire Department, City of Bend Growth Management, Bend Municipal Airport, City of Bend Planning Department, Central Oregon Irrigation District, Deschutes County Assessor, and Deschutes County Road Department.

PUBLIC COMMENTS: The Planning Division mailed notice of the application to all property owners within 750 feet of the subject property on March 12, 2024. The Applicant also complied with the posted notice requirements of Section 22.24.030(B) of Title 22. The Applicant submitted a Land Use Action Sign Affidavit indicating the Applicant posted notice of the land use action on June 11, 2024.

Christopher Koback appeared at the Hearing and testified on behalf of Applicant. Robin Hayakawa appeared at the Hearing and testified on behalf of COLW. Submissions were made into the public record, prior to the Hearing, and are set forth below. Issues raised in the public comments below related to relevant approval criteria are addressed in the findings of this recommendation.

Rory Isbell, Central Oregon LandWatch, March 12, 2024

“Central Oregon LandWatch is concerned whether file no. 247-24-000097-PA/98-ZC, an application that proposes to redesignate and rezone 259 acres of agricultural land for residential use, meets the applicable criteria. Please notify us of any decisions or hearings on the application. Our address is 2843 NW Lolo Drive Ste 200, Bend, OR 97703.”

Jordi Stiffler, March 19, 2024

“I'm writing on the proposed land use action regarding the applicant, which I believe is Mr. Steele and his wife Shelby, petitioning to change their property, 21700 Bear Creek Rd, from Agricultural to Rural Residential Exception Area (RREA).

I am contesting the right for the applicant to change the zoning. Two years ago the county sent out letters to everyone in the vicinity of the applicants property when he wanted to split the land into separate tax lots. When I talked to the county planner at that time he assured me that the land was zoned only for one residential house and that other residential homes could not be built on it. The neighbors, including myself, had to put up with 18 months of construction with dirt, heavy equipment, litter, excessive traffic, noise. The land that they built on was home to coyotes, deer, and other wildlife which has pretty much disappeared.

The narrow Ward Rd can't sustain more traffic to include a new residential area. The road is dangerous as Ward Rd is used by the car dealers for test drives at high rates of speed, and young drivers who fly down Ward Rd to “catch air” in the rise of the road heading east. I have seen numerous dogs and deer get killed on that road in front of my house. The neighbor hood bought our houses outside the urban boundary area for one main purposes ... acreage without multiple housing infringing on us.”

Audrey Henry, March 20, 2024

"I am writing in response to the proposed land use application paperwork I received recently. I am an adjacent property owner and I oppose this proposal for a number of reasons.

This land has been a wildlife habitat for many years and most recently has been home to red fox who have finally come back to this area. There are deer who live there and many other wildlife as well. I moved here over 15 years ago for the peacefulness and serenity and I would hate to see that taken away.

Recently, I was approached by a representative of the gas company that has an easement and line going through that property. He stated one house needed to be removed due to the close proximity of the gas line. It appears due to the new house construction on 21700 Bear Creek Road, they are over the amount of housing allowed for that gas line so I am concerned that after recently being asked to sell my home to them so it could be vacated that we would now have to deal with additional homes, businesses here by the gas line.

I will reach out to you via phone and in person soon to further discuss."

Courtney Eastwood, March 20, 2024

"I am writing this email to inform you that as a property owner on Bear Creek Road - I am completely opposed to this change in zoning. There is already a housing development going in on Bear Creek that is going to bring more traffic and cars. Also the property across the street from the current development was just approved to also rezone to Multiple Use. This open land should be protected. We have lots of wildlife including deer, hawks, an eagle, and other critters that currently utilize these fields for their survival. Also I, and my neighbors, purchased land because we wanted land - not to stare at homes and increased traffic. Please re-evaluate how much land is going to be developed in this area and how much more you are proposing."

Amy and Matt Ruff, March 27, 2024

"We are responding to the mail correspondence in regards to File #247-24-000097-PA and File #247-24-000098-ZC. As residents of Filly Court, we are opposed to the change of designation from Agricultural (AG) to Rural Residential Exception Area (RREA) and the rezoning of Exclusive Farm Use (EFU-TRB) to Multiple Use Agricultural (MUA10). We feel the current designations are appropriate as is and there should be no further opportunity for building on those pieces of land.

With many people in the city and in the county wanting to expand the urban growth boundary, we feel we need to hold the line firm. Part of the reason we chose to move to this area was because of the open space. These changes in designation and rezoning are concerning due to the unknown type of housing that may go in. We are DEFINITELY not in favor of managed campsites for the homeless or for low income properties that could lower the value of the nearby homes and be a safety concern. Furthermore, additional residences could increase traffic.

It is difficult not knowing the full intentions of the land owner. We would appreciate transparency on this matter and would like to be made aware of any hearings that relate to these file numbers."

Rob DuValle, March 21, 2024

“Why would they want to rezone the land where they just put the solar panel farm in? That is concerning from an impact on my quality of life/ property value as a neighbor.

The whole land use process is very confusing from a community member perspective. I may be totally supportive or not depending on what actually goes in the ground, but without that information it leaves me without the ability to provide an informed response.

The list of potential ‘conditional uses’ has many that I would be opposed to. Shouldn’t the property owner be required to declare their intentions upfront and be legally held to them upon approval? That would seem to be the honorable way to do business. Please put me on the notification lists you mentioned.

NOTICE REQUIREMENT: On April 17, 2025, the Planning Division mailed a Notice of Public Hearing to all property owners within 750 feet of the Subject Property and public agencies. A Notice of Public Hearing was published in the Bend Bulletin on Sunday, April 13, 2025. Notice of the first evidentiary hearing was submitted to the Department of Land Conservation and Development on April 3, 2025.

REVIEW PERIOD: According to Deschutes County Code 22.20.040(D), the review of the proposed quasi-judicial plan amendment and zone change application is not subject to the 150-day review period.

III. FINDINGS & CONCLUSIONS

A. PRELIMINARY FINDINGS

1. Procedural Issues

Two record related procedural issues were raised in this case. Both issues relate to Central Oregon Land Watch (“COLW”) submissions. The first dispute relates to a COLW May 23, 2025 submission and the second relates to a COLW June 2, 2025 submission.

A brief background discussion should assist in understanding the Hearings Officer’s findings related to both record related issues. At the conclusion of the May 9, 2025 public hearing (the “Hearing”) the Applicant requested the record remain open for what is often referred to, in Deschutes County, as the “standard 7/7/7 open-record period.” The Hearings Officer, at the Hearing described the “standard 7/7/7 open-record period” as allowing new evidence to be submitted by any interested person during the first 7 day open-record period (“1st 7-day open-record period”), evidence in rebuttal to evidence submitted during the initial 7 day open-record period (“2nd 7-day open-record period”) and an applicant has a right to submit final argument during the third open-record period (“3rd 7-day open record period”).

The Hearings Officer announced, at the conclusion of the Hearing, the following open-record periods:

- * Submission of new evidence to be received by the County until 4:00 pm on May 16, 2025 (1st 7-day Open-Record Period); and
- * Submission of evidence in response to evidence submitted during the 1st Open-Record Period to be received by the County until 4:00 pm on May 23, 2025 (2nd 7-day Open-Record Period); and
- * Submission by Applicant of its final legal argument until 4:00 pm on May 30, 2025 (3rd 7-day Open-Record Period).

Deschutes County Planning Staff (“Staff”) contacted the Hearings Officer (email sent at 4:14 pm on May 23, 2025) and informed the Hearings Officer, in part, the following:

“The applicant submitted timely testimony during the new evidence & testimony period which ended Friday, May 16th. Unfortunately, that submittal was not uploaded to the record until today [May 23, 2025]. For this

reason, the county is requesting that the rebuttal period to be extended for a period of 7 days from the date that a Hearings Officer Order can be sent to all parties or to some other date certain - assuming you consent to the extended rebuttal period...”

The Hearings Officer issued a *Hearings Officer Order Extending Written Record* modifying the Open-Record Periods that were announced at the Hearing. The Hearings Officer, in the *Hearings Officer Order Extending Written Record*, allowed the submission of rebuttal evidence (original deadline May 23, 2025) to be submitted until 4:00 pm on May 30, 2025 and the submission of Applicant’s final argument (original deadline May 30, 2025) to be submitted until 4:00 pm on June 6, 2025.

On May 23, 2025 COLW submitted an open-record document which included the following statement:

“Central Oregon LandWatch (‘LandWatch’) offers the following comments in response to Applicant’s submittal during the Hearings Officer Hearing’s Open Record Period on May 9, 2025 (‘2025-05-09 Applicant Submittal’).”

Applicant objected to COLW’s May 23, 2025 submission and provided the following comments:

“In its May 30, 2025 letter, the applicant asserted an objection to the written testimony that Central Oregon LandWatch (‘COLW’) submitted on May 23, 2025. The applicant renews that objection. In its May 23, 2025 letter, COLW acknowledged that its written testimony was directed at the applicant’s May 9, 2025 submission. In an apparent effort to avoid the consequences of missing the submittal window for new evidence in response to evidence submitted at the public hearing, COLW stated: ‘LandWatch offers the following comments in response to Applicants submittal during the open record period on May 9, 2025 (2025-05-09 Applicant Submittal.’

The May 9, 2025 Applicant submittal was not submitted during the open record period. It was submitted prior to the public hearing on May 9, 2025. The submittal included a letter addressing the hearing issues and the applicant’s ESEE analysis chart. COLW requested that the record be kept open for new evidence to address the evidence submitted at the public hearing. Under the order that the Hearings Officer entered, all parties had until May 16, 2025, to submit any new evidence based on what was submitted at the public hearing. The order allowed parties until May 23, 2025, to submit testimony and evidence strictly in rebuttal to the new testimony and evidence submitted on May 16, 2025.

The applicant submits that under ORS 197.797, COLW was required to submit new evidence in response to the applicant’s May 9, 2025 material within the initial seven-day period, or by May 16, 2025. COLW did not do that. It waited until May 23, 2025 to submit what it admits is testimony directed that the material submitted before the public hearing on May 9, 2025. None of COLW’s May 23, 2025 testimony is directed at the applicant’s May 16, 2025 submittal. COLW’s May 23, 2025 submission should be stricken and disregarded.”

It is clear to the Hearings Officer that COLW’s May 23, 2025 submission was made during the originally announced “rebuttal evidence” time-period (per discussion above during the 2nd Open-Record Period). It is also clear to the Hearings Officer, based upon COLW’s own statement (May 23, 2025 submission), that COLW’s evidence and arguments contained in the COLW May 23, 2025 submission was directed towards Applicant’s May 9, 2025 Hearing submission. Restated, the Hearings Officer finds Applicant’s primary concern about COLW’s May 23, 2025 submission was that the COLW May 23, 2025 evidence was directed towards Applicant evidence submitted **during the evidentiary Hearing** (which preceded the Open-Record Period) and not directed towards Applicant’s evidence submitted **during** the “original” Open-Record Period (per discussion above the “original” 1st Open-Record Period).

The Hearings Officer finds that he explained the Open-Record process to all present at the Hearing and included a statement that evidence submitted during the 2nd Open-Record Period should be related to and in response to evidence submitted during the 1st Open-Record Period. The Hearings Officer asked those present at the Hearing

if they had any questions related to the Hearings Officer's explanation of what was appropriate to be submitted during each stage of the Open-Record. The Hearings Officer finds that the Applicant and COLW representatives are experienced land use hearing participants and believes that they both understood the Hearings Officer's expectations for Open-Record submissions.

The Hearings Officer finds that his decision related to the admission (or not) of the COLW May 23, 2025 submission is procedural in nature. The Hearings Officer finds that the appropriate legal procedural decision-making standard is for the Hearings Officer to assess whether or not the admission would substantially prejudice Applicant's and/or COLW's rights.

The Hearings Officer takes note that the Hearings Officer, in this case, issues a *recommendation* (not decision). Pursuant to Deschutes County code the Hearings Officer's recommendation will undergo a de novo review before the Deschutes County Commission (DCC 28.030). In this instance COLW will have the right to submit the evidence and argument contained in its May 23, 2025 Open-Record submission to the Commission for its consideration.

The Hearings Officer is disappointed in the approach taken by COLW and feels that technically the Hearings Officer could reject the admission/consideration of the COLW May 23, 2025 submission. The Hearings Officer does take note that Applicant provided, in its Final Argument Open-Record submission, a "precautionary" response to evidence/argument raised by COLW in its May 23, 2025 submission.

The Hearings Officer finds it appropriate, in this case only, to admit and consider the COLW's untimely May 23, 2025 submission. The Hearings Officer finds such admission and consideration will not substantially prejudice the Applicant's rights.

The Hearings Officer finds that COLW's June 2, 2025 email to Planner Stuart was filed/submitted during the Applicant's final argument time and cannot be considered in this case.

2. Certification of Soils Report

COLW argued that the Red Hills Soils Report (soils report submitted by Applicant) was required to be **certified** by the Oregon Department of Land Conservation and Development ("DLCD"). COLW (May 9, 2025, page 10) provided the following comments:

"... OAR 660-033-0030(5)(d) provides that after October 1, 2011, 'only those soil 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.'

Here, the Applicant has submitted a soil assessment dated January 2, 2025, well after the effective date provided in OAR 660-033-0030(5)(d). Furthermore, the Applicant did not submit that the soil assessment was certified by the DLCD as complete and consistent with the Department's requirements. This application relies heavily on the soils assessment from Mr. Gallagher in asserting that the subject property does not contain a predominance of NRCS Class I-VI soils. Because the soils assessment was not certified by DLCD as required under OAR 660-033-0030(5)(d), the local government may not consider its contents as substantial evidence of whether the subject property is agricultural land."

COLW supplemented its above-quoted comments in an Open-Record submission, (May 30, 2025, pages 1 – 5). The Hearings Officer includes a portion of the COLW May 30, 2025 comments below:

"In response to LandWatch's 5/9/2025 submittal where we noted that the Applicant's Soil Assessment has not been certified by DLCD, Mr. Gallagher of Red Hill Soils submitted a brief letter which concluded:

Because this is not a “Soil Assessment” this work does not need to be ‘certified by DLCD’ or anyone else. It is just an interpretive summary of the NRCS WEBSOILSURVEY Data. No new information or original or onsite information is provided or claimed in my report. The COLW has mistaken my report for something it is not and has attached certain rules to it that do not apply.

2025-05-016 Applicant Submittal at p. 3-4

At issue here is whether the applicant has submitted ‘more detailed soils information than that contained in the Web Soil Survey operated by the NRCS’ in order to assist the county in making a determination of whether the subject property qualifies as agricultural land. ORS 215.211(1); OAR 660-033-0030(5)(b). These sections and OAR 660-033-0045 specifically apply to ‘change[s] to the designation of a lot or parcel 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’. OAR 660-033-0030(5)(c)(A). The purpose of requiring DLCD review of the soil assessments that may be used to remove lands from the protections of Goal 3 is to ensure that ‘the soils assessment is soundly and scientifically based’. OAR 660-033-0045(6)(b)(B). If more detailed information than what is contained in the NRCS Web Soil Survey was provided, then the Applicant was required to request that DLCD arrange the soil assessment. ORS 215.211(1).

In this case, the Applicant has submitted ‘more detailed soils information’ than what is contained in the NRCS Web Soil Survey, necessitating DLCD’s review and quality control. Specifically, Mr. Gallagher provided more detailed information about the total amount of acreage contained in each NRCS soil mapping unit within the subject property.”

Applicant, in its Final Argument (June 6, 2025, pages 5 & 6) responded to COLW’s comments set forth above, as follows:

“COLW incorrectly asserts that the applicant was required to submit for DLCD approval the January 2, 2025 report prepared by Red Soils that explained the NRCS mapping for the property. COLW relied on and quoted one subsection from OAR 660-033-0030. Specifically, COLW argues that under OAR 660-033-0030(5)(b), if an applicant believes that a more detailed soil information, other than that contained in the Websoils Survey operated by NRCS, would assist the county to make a better determination of whether the land qualifies as agricultural land, the person must request that the department arrange for an assessment of the capacity of the land by a professional soil classifier.

COLW is misconstruing the requirements in OAR 660-033-0030(5). The text, examine in context, informs that a more detailed assessment of soil capacity is an assessment that relies on data other than that in the NRCS maps and soil surveys. COLW did not mention OAR 660-033-0030(5)(a), which provides:

More detailed data on soil capability than is contained in the USDA Natural Resources Conservation Service 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.

Clearly, the assessment referred to in OAR 660-033-0030(5)(b) is an assessment of detailed data on soil capability not contained in the existing NRCS maps and soil surveys. Mr. Gallagher’s report does not contain data on soils from the site or data other than what is contained in the existing NRCS maps and soils surveys. Mr. Gallagher expressly stated in his report:

Baseline information for this report is the NRCS WEBSOILS SURVEY and does not include an onsite evaluation or a Soil Assessment as defined by the State of Oregon.

Mr. Gallagher is one of the certified professionals who DLCD lists on its website as a resource for people who require an assessment of their soils. His professional statement that his report is not a soils assessment

as defined by the State is wholly credible and persuasive. Moreover, as the applicant testified, DLCD received formal notice of the application and did not voice a position contrary to Mr. Gallagher. Furthermore, Mr. Gallagher knows what a soil assessment under the State regulations looks like. The applicant submitted a copy of the study that Mr. Gallagher prepared in File No. 247-000404-PA/000405-ZC. One can readily see a soils assessment under the regulations is based on soil data gathered from samples taken from many locations on the property, which is then evaluated.

Mr. Gallagher's report further confirms that his work was based on the NRCS Websoils Survey and not on more detailed soil data that one would obtain from an on-site evaluation. In section 3 of his report, Mr. Gallagher explains only what the NRCS maps illustrate about the soil composition. In discussing soil fertility and suitability for grazing, Mr. Gallagher relied on the existing information in the NRCS soil surveys. See Table 5 of the NRCS Websoils Survey on page 4 of his report. He did not rely on soil data from the site. In discussing existing and future availability of water for irrigation, Mr. Gallagher relied on the NRCS information to conclude that the soil will remain Class 7 and Class 8 whether irrigated or not. None of the issues that Mr. Gallagher addressed relied on more detailed soil data.

In response to COLW's May 9, 2025 testimony, Mr. Gallagher, an expert in the field, explained that his report is not a soil assessment under OAR 660-003-0045 and did not have to be submitted to DLCD. The applicant submitted an example of a soil assessment that Mr. Gallagher prepared pursuant to OAR 660-033-0045 that was submitted to DLCD. It is easy to discern the remarkable difference between a report that relies on soils studies that supplement the NRCS maps and a report that merely explains how the NRCS spoils assessment works."

The Hearings Officer finds the following are relevant subsections of OAR 660-033-0030:

(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, 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.

...

(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.

(e) This section and OAR 660-033-0045 authorize a person to obtain additional information for use in the determination of whether a lot or parcel 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.

The Hearings Officer notes that OAR 660-033-0030 is titled "Identifying Agricultural Land." This section of the Oregon Administrative Rules defines Agricultural Lands and provides guidance in how to determine if land is in fact Agricultural Land. Subsection (5) deals, in part, with the possibility of using more detailed "soil assessments" to demonstrate that certain land is, or is not, Agricultural Land. COLW argues that the Red Hills Soil Report is a "soil assessment" that required Applicant to secure DLCD approval/certification. Applicant counters that its soil expert simply interpreted existing NCRS information and therefore Applicant was not required to secure DLCD approval/certification.

OAR 660-033-0030 (5)(a) states, in part, that "***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” [bolding and italics added by the Hearings Officer]. The Hearings Officer reviewed the Red Hills Soils Report to determine if the report in fact provided **more detailed data** than what is contained in the NCRS soils maps and soil surveys.

Gallagher, in the Red Hills Soils Analysis, concluded:

“The NRCS WEBSOILSURVEY shows the subject property is predominantly non-high value farmland, Class 7 and 8 and does not meet the definition of agricultural land within the meaning of OAR 660-033-0020(1)(b), as it is not adjacent to or intermingled with land in capability classes 1-6 within a farm unit.”

Gallagher, in a May 15, 2025 letter (Applicant May 16, 2025 submission, attachment), stated

“I want to clarify for the record that my report only contained information taken from the NRCS database, and it did not include nor pretend to include any results from onsite investigations, and it is not an Order-1 Soil Survey. It is not a ‘Soil Assessment’ by the definition cited in OAR. It was not presented as such and was not called such in the title or body of the report. The specific reason I did not do a ‘Soil Assessment’ of this property is that the NRCS maps already showed a predominance of Class 7 and 8, non-high value farmland soils on these properties. There was no ‘Soil Assessment’ done or submitted so there is no failure to comply with OAR, as COLW stated in their letter.”

The Hearings Officer finds, based upon a review of the Red Hills Soils Report and Gallagher’s May 15, 2025 letter, that Gallagher did not generate, produce or otherwise utilize **more detailed data** on soil capability than what is contained in the NCRS soil maps and surveys. The Hearings Officer finds, consistent with OAR 660-033-0030 (5)(a), that the Red Hills Soils Report is not a “soil assessment” requiring DLCD certification.

The Hearings Officer also finds that Gallagher, in the Red Hills Soils Report, was “interpreting” existing NCRS maps and data. The Hearings Officer finds that if “interpreting” NCRS maps and data necessitated DLCD certification then COLW’s “interpretation” (See, for example, COLW comments in its May 9, 2025 and May 30, 2025 submissions) of the NCRS maps and data would require DLCD certification. It is not unusual in cases involving disputes as to whether a particular property is Agricultural Land to have multiple “interpretations” of NCRS maps and data. The Hearings Officer finds mere interpretation of existing NCRS maps and data does not trigger the need for OAR 660-033-0030 DLCD certification.

Title 22 of the Deschutes County Code, Procedures Ordinance

Chapter 22.20, Review of Land Use Action Applications

Section 22.20.055, Modification Of Application

- A. *An applicant may modify an application at any time during the approval process up until the close of the record, subject to the provisions of DCC 22.20.052 and DCC 22.20.055.***

FINDING: The Applicant submitted a Modification of Application (Deschutes County file 247-25-000021-MA) on January 8, 2025. The Applicant provided the following description of the Modification in the submitted Burden of Proof:

“The Applicant has reevaluated the application and is proposing to modify the application to reduce the number of acres subject to the request to 240.17 acres... The modification application also supplements certain evidence included in the original application demonstrating further that the subject property is not agricultural land as defined in the applicable laws and regulations. The Applicant is submitting a supplemental report from a certified soils scientist who applied an accepted weighted distribution analysis to the NRCS mapping and determined that the subject property is comprised predominantly of

Class 7 and Class 8 soils which are not agricultural soils.”

The Hearings Officer concurs with Applicant’s above-quoted statement.

- B.** *The Planning Director or Hearings Body shall not consider any evidence submitted by or on behalf of an applicant that would constitute modification of an application (as that term is defined in DCC 22.04) unless the applicant submits an application for a modification, pays all required modification fees and agrees in writing to restart the 150-day time clock as of the date the modification is submitted. The 150-day time clock for an application, as modified, may be restarted as many times as there are modifications.*

FINDING: The Applicant provided the following response to this criterion:

“The Applicant is providing additional evidence within an application for a modification of application and with the required fee. Thus, the hearing body may consider the new evidence.”

The Hearings Officer concurs with Applicant’s above-quoted statement.

- C.** *The Planning Director or Hearings Body may require that the application be re-noticed and additional hearings be held.*

FINDING: The Modification of Application was submitted prior to the date the Notice of Public Hearing was mailed, and the Modification materials were available as part of the public record. Furthermore, Staff (Staff Report page 14) noted that the Modification reduced the size of the Subject Property and therefore would have reduced the size of the mailing radius. For these reasons, Staff concluded that an additional mailed notice of application or notice of hearing date are not required. The Hearings Officer concurs with Staff’s statement and conclusion.

- D.** *Up until the day a hearing is opened for receipt of oral testimony, the Planning Director shall have sole authority to determine whether an applicant's submittal constitutes a modification. After such time, the Hearings Body shall make such determinations. The Planning Director or Hearings Body's determination on whether a submittal constitutes a modification shall be appealable only to LUBA and shall be appealable only after a final decision is entered by the County on an application.*

FINDING: Staff (Staff Report, page 14) stated that it agreed with the Applicant’s conclusion that the materials submitted with 247-25-000021-MA constituted a Modification of Application. The Hearings Officer concurs with this Staff conclusion.

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, with written consent from the property owner, requested a quasi-judicial plan amendment and filed the applications for a plan amendment and zone change. The Applicant filed the required Planning Division land use application forms for the proposal. The application will be reviewed utilizing the applicable procedures contained in Title 22 of the Deschutes County Code.

Section 18.136.020, Rezoning Standards

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

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

FINDING: The Applicant provided the following comments in its Burden of Proof statement:

“The Comprehensive 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 utilized the above-referenced 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 recommendation in further detail. Staff (Staff Report, page 15) generally agreed with the Applicant's analysis and finds the above provision to be met based on Comprehensive Plan conformance as demonstrated in subsequent findings.

Staff requested that the Hearings Officer make specific findings regarding whether the Subject Property qualifies as agricultural land, which may impact the findings for compliance with certain Comprehensive Plan policies. The Hearings Officer provides such requested findings below and concludes that this criterion/standard is met.

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

FINDING: Staff, Applicant and COLW raised a number of issues related to this criterion. Staff expressed concern related to the Solar Array located on the Subject Property. Staff (Staff Report, page 17) asked the Hearings Officer to determine “*if the applicant has sufficiently addressed DCC 18.36.020 (B) demonstrating that the change will be consistent with the purpose and intent of the proposed zoning classification, specifically with respect to creation of a nonconforming use.*” COLW expanded upon Staff's above-quoted concerns and argued that the Solar Array would not be consistent with the purpose statement for the MUA10 zone. (COLW submissions: May 9 2025, page 2). Staff, Applicant and COLW also addressed this criterion during hearing testimony.

The Hearings Officer finds Applicant (Final Argument, 6/2/2025, pages 2 – 5) best outlines the issues raised by Staff and COLW. The Hearings Officer includes Applicant's final argument comments below:

“A. DCC 18.136.010 – Consistency with purpose and intent of MUA-10 zone.

COLW asserts that rezoning the subject 240 acres to MUA-10 is not consistent with the purpose and intent of the MUA-10 zone because 63 acres of the site has a previously approved solar farm on it. COLW does not specifically argue that rezoning the remaining 177 acres is inconsistent with the purpose and intent of the MUA-10 zone.

The purpose statement for the MUA-10 zone has several statements about the purpose of the zone, including:

- To preserve the rural character of various areas of the County while permitting development consistent with the character;*
- Preserve and maintain agricultural lands not suited to full-time commercial farming for diversified or part time agricultural uses;*
- Conserve open spaces and protect natural and scenic resources; to maintain and improve quality of air, water and land resources;*
- Establish standards and procedures for the use of those lands designated for intense development by the Comprehensive Plan;*
- Provide for orderly and efficient transition from rural to urban land use.*

COLW’s argument has two fundamental flaws. First, COLW does not even attempt to apply DCC 18.136.010 to most of the site; it limits its argument to one 63-acre portion of the larger 240-acre tract.^{Applicant’s footnote 1} Second, COLW’s arguments are backed by nothing other than bare conclusions and unsupported supposition.

Applicant’s footnote 1: The applicant notes that ironically, later in its May 9, 2025 opposition when asserting that the subject site qualifies as agricultural land, COLW advocates that one must take into account the entire site.

COLW’s argument is that rezoning just one part of the site that includes 63 acres is not consistent with the purpose statement. As noted, COLW never tried to address the remaining 177 acres. DCC 18.136.020(B) is specifically directed at the entire subject property. It cannot be applied to isolated portions of an application site. When applied to the entire subject tract, the standard in DCC 18.136.020(B) is satisfied. First, hearings officers in Deschutes County have consistently found that the uses permitted in the MUA-10 zone are rural in nature. LUBA has upheld those findings. See, Applicant’s May 9, 2025 Letter citing File Nos. 247-24-000392-PA, 247-24-000404-PA and Central Oregon LandWatch v. Deschutes County, ____ Or LUBA ____ (LUBA No. 2023-049, Feb. 15, 2024). Consequently, it is appropriate for the Hearings Officer to find that, as applied to the entire site, redesignating the subject site to MUA-10 is consistent with the purpose of preserving the rural character.

Second, rezoning the property to MUA-10 is consistent with preserving land for diversified, part-time agricultural use. Because the minimum parcel size in the MUA-10 zone is 10 acres, it is conducive to creating parcels where owners can more economically maintain small hobby farm operations that require less water, fertilizer, and labor. The application material establishes that the subject site with poor soil and no water is not suitable for any large-scale farming. As the data included in the Amended Burden of Proof Statement (page 23) and Mr. Gallagher’s report illustrate, the cost of conducting such operations outweighs the economic benefits. Permitting smaller parcels where hobby farming can occur is consistent with this element of the purpose statement. Further, the application material demonstrates that there are other MUA-10 parcels that have diversified, small-scale agricultural uses.

Rezoning the property to MUA-10 is consistent with preserving open space and natural resources. For example, the MUA-10 does permit clustering of residential dwellings on parcels smaller than 10 acres. However, that permitted use is also consistent with the purpose statement. A cluster

development requires that 65% of the sites be preserved as open space. Creating such an open space preserves natural features and scenic resources. In turn, the low-intensity development permitted maintains and improves the quality of air, water, and land resources.

Rezoning the land to MUA-10 is consistent with the purpose of establishing standards and procedures for the use of land unsuitable for intense development. DCC 18.32.020 lists the uses permitted outright and they are all low-intensity uses that the county has already deemed consistent with the rural MUA-10 zoning. DCC 18.32.030 lists the conditional uses which can be viewed as being slightly more intense than the permitted uses. The county's conditional use standards ensure that uses conditionally permitted are developed to be compatible with the properties in the area.

Finally, rezoning the subject site to MUA-10 will promote orderly transition to urban use. The subject site is close to the current city limit and in an area of growth. A public street network and other public facilities are close to the property and can be extended to serve it when the city expands east. The subject site is large enough to accommodate annexation and any master planning that is appropriate.

COLW supposes that an existing transmission corridor presents challenges to an attempt to rezone. However, COLW does not link that argument to any specific approval criterion. Many land use proposals come with challenges. The amount of bare land in Deschutes County close to city limits is not increasing. There will be challenges and competing interests. The reality is that there are utilities all over Deschutes County, and in all zones. It is difficult to imagine a site that does not have some utility lines that impact the site. However, a general concern over the existence of utilities is not a basis in the code to deny an application to change a zoning designation. In fact, when one examines COLW's diagrams in its May 9, 2025 letter, particularly Figure 9, the existing transmission lines run north/south through property east of the subject site. Compared to the application material, one can see that the existing transmission lines continue south through a residential development in an MUA-10 zone. That demonstrates that transmission lines are commonplace in our world and not inconsistent with the purpose of the MUA-10 zone; the existence of utilities is not a basis to reject a rezoning request.

In more rank speculation, COLW asserts that there are 'almost certainly additional potential non-conforming structures as DCC 18.32.040(C) prohibits structures from exceeding 30 feet in height within the MUA-10 zone.' Not only is that assertion void of all substances, COLW does not even try to link it to any criterion relevant to the application. How is the current rezoning request going to "potentially" create more non-conforming structures? If the height limit in MUA-10 is 30 feet, there will be no structure approved that is over 30 feet.

COLW further asserts that one can imagine more conflicts because PacifiCorp shows one possible route for a transmission line near the subject tract. Based on the mere possibility of a new transmission line in the area, COLW projects that conflicts are destined to occur. Where is the evidence to support such obvious speculation? As of the time that the Hearings Officer must make a decision, any PacifiCorp transmission line is theoretical.

B. The existence of a non-conforming use does not create an inconsistency with the purpose or intent of a new zone.

On a related point, COLW makes a very confusing non-conforming use argument. In response to a question from county planning staff, the applicant explained that although solar farms are not permitted in the MUA-10 zone, rezoning to MUA-10 is not inconsistent with the MUA-10 zoning standards because the solar farm is a lawfully established use that will continue with non-conforming use rights until redevelopment presents itself. That is not an uncommon situation in any jurisdiction. Indeed, if the existence of non-conforming

use/development was a bar to rezoning, it is hard to imagine cities ever being able to annex property. When property is annexed, it gets a city urban zone. Invariably, there will be older uses/developments that are not in conformance with the new zoning. The fundamental notion embodied in non-conforming use law is that such uses may continue but the long-range goal is to bring such sites into conformity over time. Thus, the existence of a non-conforming use is not an inconsistency that precludes rezoning. It is something that local codes and state law accommodate in the process of rezoning.

COLW tries to twist the applicant's response to have said that the county must approve the rezoning because the solar farm has non-conforming rights. That is entirely not true. That was the situation in Jackson v. Clackamas County, where the petitioner argued that it was entitled to a conditional use permit for a use because that use had lawful non-conforming use rights. The applicant here never asserted that the existence of a non-conforming use entitles it to a rezone. The applicant merely pointed out to staff that approving the rezoning request with a non-conforming use is not inconsistent with any county regulation and is commonplace in most rezoning and annexation actions."

The Hearings Officer finds no argument in the record that disputes the concept that if a zone change is granted that the Solar Array, if confirmed as a legal nonconforming use, would have a legal right to continue. *Holmes v. Clackamas County*, 265 Or 193 (1973) The Hearings Officer finds, however, that Staff is *uncertain* whether the Solar Array can be considered consistent with the purpose and intent of the purpose statement of the MUA10 zone. COLW argued that the Solar Array (if in fact a legal nonconforming use) *cannot* be considered consistent with the purpose and intent of the MUA-10 zone.

Applicant addressed Staff's and COLW's concerns in two ways. First, Applicant addressed the overarching issue of nonconforming uses in the context of zone change applications. Second, Applicant addressed each of the factors set forth in the MUA10 purpose statement.

The Hearings Officer first addresses the overarching issue involving zone change applications where a nonconforming use may exist if the zone change application is approved. Applicant and COLW both cited, in support of their position, *Holmes v. Clackamas County*, 265 Or 193 (1973) and *Jackson v. Bd. Of Cnty. Comm'rs for Clackamas Cnty*, 26 Or App 265 (1976).

COLW included the following excerpt from the *Holmes* Oregon Supreme Court opinion:

"In light of ORS 215.130, DCC 18.120.010, and Oregon Supreme Court precedent, it is not possible to find that rezoning the subject property resulting in an existing use having lawful nonconforming status is inconsistent with the MUA zone. Indeed, there are lawfully established nonconforming uses throughout the county and the state. Each time the city or county rezones property in an area, it is common for there to be uses that become nonconforming. The fact that those uses become lawfully established nonconforming uses does not mean that having such use is inconsistent with the purposes of the new zone. The well-established laws on nonconforming uses that allow them to continue in a new zone are designed to assure consistency with the new zone. If the standard is that a rezoning can only be found consistent with the purpose of the new zone if after the rezoning there are no lawfully established nonconforming uses, it would frustrate the city's ability to rezone property as well. It makes no legal difference whether the County initiates a rezoning, or a property owner exercises their right to request a rezoning. The law on nonconforming rights makes no legal distinction. 2024-5-28 Applicant Response to Issues Letter at p. 4-5."

COLW argued (following the above quote) that "Applicant mistakenly relies upon ORS 215.130(5) that the proposed zone change complies with the requirements of DCC 18.136.020(B)" (footnote omitted). The Hearings Officer finds that COLW mischaracterizes Applicant's argument and the clear and plain language set forth in the

above-quoted section of the *Holmes* Supreme Court decision. The Hearings Officer finds two sentences included in the above-quoted *Holmes* Supreme Court decision are worthy of repeating:

“The fact that those uses become lawfully established nonconforming uses does not mean that having such use is inconsistent with the purposes of the new zone. The well-established laws on nonconforming uses that allow them to continue in a new zone are designed to assure consistency with the new zone.”

The Hearings Officer finds this language is clear and directly on point in this case. The Hearings Officer finds, based upon the *Holmes* Supreme Court case, that the Solar Array if in fact a legal nonconforming use, can be considered consistent with the purpose of the MUA10 zone.

Applicant and COLW also referenced *Jackson v. Bd. Of Cnty. Comm’rs for Clackamas Cnty* in support of their nonconforming use positions. The Hearings Officer, having reviewed the cited *Jackson* opinion and finds that such opinion is not relevant to the nonconforming issue presented in this case.

Both Applicant and COLW addressed the introductory language of DCC 18.136.020 (B) and the purpose statement for the MUA10 zone (See COLW 5/9/2025 submission pages 2-8 and Applicant 5/9/2025 submission pages 2-4, and Applicant 6/2/2025 Final Argument, pages 2-5). Staff also addressed this MUA10 purpose statement in the Staff Report (pages 15-20).

COLW provided the following statement related to DCC 18.136.020 (COLW 5/9/2025 submission, page 2):

“DCC 18.136.020 provides that the applicant for a quasi-judicial rezoning must establish the public interest is ‘best served’ by rezoning the subject property. Use of the word ‘best’ in DCC 18.136.020 means that rezoning of the property should be superior to the existing zoning classification based on the series of factors provided in subsections (A) – (D).”

The Hearings Officer has not addressed COLW’s “best” argument in prior zone change application cases. The Hearings Officer notes that the DCC use of the word “best” in the DCC 18.136.020 introductory language is difficult to harmonize with the language used in each of the “factors” listed in DCC 18.136.020 A., B., C and D. For example, the language in DCC 18.136.020 A and B does not use comparative language (e.g., best or better, etc.). Rather DCC 18.136.020 A and B utilize “consistent with” terminology. Being “consistent” does not imply that the proposed zone classification is somehow “best” or even “better” than the existing zone. The factors listed in DCC 18.136.020 C address adequacy of public services and facilities and impacts on surrounding land uses will be consistent with the Comprehensive Plan. DCC 18.136.020 C, once again, does not imply a comparative standard (e.g. “best” or “better”) but rather requires “adequate” services and a determination that impacts on surrounding uses will be “consistent” with the Comprehensive Plan.

The Hearings Officer, in this case, is asked to interpret the intent of the Deschutes County Commission when drafting DCC 18.136.020; specifically, the import and meaning of the word “best.” The Hearings Officer, takes note of the following two Deschutes County Code sections:

1.04.030 Interpretation Of Language

All words and phrases not specifically defined in this title or elsewhere in this code shall be construed according to the common and approved usage of the words or phrases. However, technical words and phrases and such others as may have acquired a particular meaning in the law shall be construed and understood according to such particular meaning.

1.04.060 General Construction

The ordinances of the County, and all proceedings under them, are to be construed in order to carry out their objectives and to promote justice.

The Hearings Officer finds, strictly from a definitional perspective (common and approved usage), that COLW's interpretation of the word "best" in DCC 18.136.020 is reasonable. However, when considering the Hearings Officer's context comments related to DCC 18.136.020 A., B., C and D the Hearings Officer finds that the word "best" in the introductory language **conflicts** with the language used in each of the relevant factors.

The Hearings Officer finds applying the word "best" (as argued by COLW) would frustrate the clear intention of the Board of County Commissioners adoption of the factors listed in DCC 18.136.020 A, B, C and D. The Hearings Officer finds that following COLW's "best" argument would necessitate replacing the word "consistent" in DCC 18.136.020 A, B and D with the word "best." The Hearings Officer finds following COLW's "best" argument would require a finding that the word "presently" would be replaced with the word "best." The Hearings Officer finds that DCC 136.020 C.1. simply requires a showing that public services and facilities are adequate and presently available. DCC 18.136.020 C.1 does not require a demonstration that changing the zone will result in "better" or "best" public services as compared to the existing zoning. DCC 18.136.020 C.2, once again uses the word "consistent" and not the word "best." The COLW "best" argument is simply irrelevant to DCC 18.136.020 D.

The Hearings Officer finds that for the purposes of this recommendation the term "best" used in the introductory statement to DCC 18.136.020 can be reasonably interpreted to mean that the public interest is "best served" if the proposal meets the factors set forth in DCC 18.136.020 A, B, C and D.

The Hearings Officer finds the evidence set forth in Applicant's final argument (quoted above) is credible and constitutes substantial evidence that the factors set forth in DCC 18.136.020 A., B., C and D are met. The Hearings Officer concurs with Applicant's analysis of the evidence in the context of the factors set forth in DCC 18.136.020.

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: The Hearings Officer incorporates the findings for DCC 18.136.020 B set forth above as additional findings for this criterion.

Staff included (Staff Report, pages 17 & 18) the following comments:

"Although there are no plans to develop the properties in their current state, the above criterion specifically asks if the proposed zone exchange 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. Central Oregon Electric Cooperative, Pacific Power, and Avion Water Company, Inc. currently serve properties in the area and can continue to serve the subject property if rezoned. There is no perceived capacity issue and that can be addressed in future development application if the property is rezoned.

The subject property is located along Highway 20 east of the roundabout in Ward Road/Hamby Road and west of Erickson Road. Neff Road is to the north and Bear Creek Road is to the south, all of which can accommodate added traffic that may result from rezoning. The impact of rezoning the subject property will be extremely minor. With its current zoning, it is theoretically possible to divide the property into 10-

acre parcels. However, with the solar farm on a large part of Tax Lot 100, the amount of property that could be developed with houses in the foreseeable future is much less. The existing road network is available to serve the use. This is confirmed by a transportation system impact review conducted by Scott Ferguson.

The property receives police services from the Deschutes County Sheriff. The southern half of the property is in a rural fire protection district and the nearest fire station is less than one mile away. All of the property is located in the Rural Fire District #2. Access to the subject property by fire trucks is provided by aerial streets. It is efficient to provide necessary services to the property because the property is already served by these service providers and adjacent to large tracts of land zoned MUA-10 that have been extensively developed with rural residences on small lots and parcels.

Adjacent properties include a mix of vacant land, residential development, and utility facilities, and the general surrounding area includes several other public and commercial uses. Neighboring properties are served by wells, on-site sewage disposal systems, electrical service, and telephone service. No issues have been identified in the record regarding service provision to the surrounding area. The southwest corner of the subject property is located 0.26 miles from the City of Bend UGB. This close proximity to urban development will allow for efficient service provision.

There are no known deficiencies in public services or facilities that would negatively impact public health, safety, or welfare. Prior to development of the properties, the applicant would be required to comply with the applicable requirements of the Deschutes County 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. Staff finds this provision is met.”

The Hearings Officer concurs with Staff’s above-quoted comments.

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

FINDING: The Hearings Officer incorporates the findings for DCC 18.136.020 B set forth above as additional findings for this criterion.

Staff included (Staff Report, pages 18 & 19) the following comments:

“The applicant provided the following response in the submitted burden of proof statement:

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 of the subject property and is consistent with that zoning.

The only adjoining or nearby lands in farm use is a single property east of Tax Lot 1000. The proposed zone change and plan amendment will impose no impacts on this EFU zoned farmland because these lands are separated from the subject property by a large rock rim and that property is isolated with its own water supply and access. There is smaller scaled farming on discrete parcels in the greater area ancillary to the primary residential use but said farming is so far removed from the subject property, it has no bearing on this application.

In addition to these comments, the applicant provided specific findings for each relevant Comprehensive Plan goal and policy, which are addressed below. Staff finds the applicant has demonstrated the impacts on

surrounding land use will be consistent with the specific goals and policies contained within the Comprehensive Plan, but asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit.”

The Hearings Officer concurs with Staff’s above-quoted comments and conclusions. The Hearings Officer finds no need to amend or add to Staff’s comments/findings.

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 Hearings Officer incorporates the findings for DCC 18.136.020 B set forth above as additional findings for this criterion. The Applicant proposed to rezone the properties from EFU to MUA10 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 and undeveloped rural lands that contained poor soils, but were zoned EFU without regard to the specific soil characteristics of the property. Landowners 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 as EFU because their soils and other conditions did not merit inclusion of the property in the EFU zone.

Some of the other property owners of lands east of Bend received approval to rezone their properties from EFU to MUA-10 because their properties contained poor soils and were improperly included in the EFU zone. The soils on the subject property are similarly poor and also merits MUA-10 zoning. The NRCS maps and how the County Board has determined they should be used confirm that the subject property is not agricultural land. Since 1979 and 1980, there has been a change of circumstance related to this issue. The County's Comprehensive Plan has been amended to specifically allow individual property owners to have improperly classified land reclassified.

Additionally, circumstances have changed since the property was zoned EFU. The City of Bend has been developed to the east toward the subject property. The Bend Airport has grown significantly in this time period and now provides many aviation-related jobs. The property is located within easy commuting distance of Saint Charles Medical. It has grown significantly and its need for workers has increased. The area now includes large solar farms, churches, a Christian Center, and utility facilities.

Specific to the subject property, Tax Lot 100, which is about 100 acres, has been committed to use as a commercial solar farm. It has been irrevocably removed from farming due to the poor soil and other factors making farming infeasible. The proposed zone change to MUA-10 will not impact that use. Because it was lawfully established on the applicable zoning, pursuant to DCC 18.120.010, that use has the right to continue operating on the subject property. Thus, Tax Lot 100 will never be available for farming alone or in combination with any other parcel. The County should include a finding to this effect.

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 2022, according to Table 4 of the 2022 US Census of Agriculture, **Exhibit 8**, only 18.6% of farm operators achieved a net profit from farming (293 of 1572 farm operations). In 2017, according to Table 4 of the 2017 US Census of Agriculture, **Exhibit 9**, 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 10**. The number of farms with net losses increase from 1,246 in 2017 to 1,279 in 2022. The vast majority of farms in Deschutes County have soils that is 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.*

The Hearings Officer incorporates findings for Deschutes County Comprehensive Plan, Goal 2 and the findings for OAR 660-033-0020 as additional findings for this goal.

The Hearings Officer finds, based upon the Applicant's above-quoted Burden of Proof Statement and the record as a whole, that there has been a change in circumstances since the Subject Property was last zoned. The Hearings Officer finds changes in circumstances include the clarification of the correct soil classification of the Subject Property as evidenced by the Red Hills Soils Report and the evolution of development progressing eastward from the City of Bend. Further, based upon Applicant's above-quoted statement the Hearings Officer finds the current Comprehensive Plan and zoning designation were based upon a mistake. The Hearings Officer finds the specific mistake was that the current zoning was selected based upon an incorrect designation of the Subject Property as Agricultural Land. Based upon the Red Hills Soils Report the Subject Property is not Agricultural Land as that phrase is defined in law.

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 Hearings Officer notes that there are numerous relevant goals and approval criteria relating to the preservation and maintenance of Agricultural Lands. The Hearings Officer has attempted to include findings for many of the Agricultural Land criteria issues within the findings for Goal 1. Where appropriate the Hearings Officer incorporates the findings for Goal 1 into the findings for other relevant goals and/or approval criteria.

Applicant provided the following overview of the Agricultural Land issue (Burden of Proof):

"The Applicant presented in the original application that the County's historic reliance on the NRCS mapping for determining whether parcels are comprised predominantly of agricultural land or not. If the NRCS maps are not adequate to make that determination, the County can consider a site-specific soil study prepared by a certified soil scientist. In this matter, the NRCS maps require a finding that the subject property is predominantly not agricultural land.

To supplement the application in this modification request, the Applicant is submitting a detailed report from Red Hill Soils. The report is primary to provide more detail on the composition of the two soil types mapped on the property because each soils type is a complex soil type. The majority of the property is comprised of 58C-Gosney Rock Outcrop-Deskamp complex. The following table from the Red Hills Soils

Report breaks out each soil type found on the subject property. The Red Hill Soils report presents a detailed evaluation of the soil on the subject property accounting for each component in the 58C complex soil type...

The Red Hills Soils Report confirms that the subject property is comprised predominantly of Class 7 and Class 8 soils which are not agricultural land.

The Red Hill Soils Report also evaluated soil fertility concluding that that the soil fertility and productivity are very limiting to crop production. The soil has low fertility, lacking nutrients, and has a limited capacity for retaining water.

The vast majority of the subject property is comprised of Class 7 and Class 8 non-agricultural soils, and the property has no known history of agricultural use. As noted in the Eastside Bend decision, Class 7 and Class 8 soils 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 8 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.'"

Applicant, in its Final Argument, provided the following comments relating the evidence in the record to the relevant Agricultural Land law:

"D. The subject site is not agricultural land under OAR 660-033-0020.

COLW asserts that notwithstanding the NRCS maps and soil data that demonstrates that the property is predominantly not agricultural land, it is suitable for farm use considering the factors in OAR 660-033-0020(1)(a)(B): Soil fertility, Suitability for grazing, Climate Conditions, Existing and future availability of water for farm irrigation, existing land use patterns, technology and energy inputs, and accepted farming practices.

COLW completely ignores a fundamental issue that has been decided against it in prior cases. In applying the factors identified above, it is appropriate for counties to also consider economic factors, particularly the profitability or lack thereof of farming specific property. Wetherall v. Douglas County, 342 Or 666 (2007); Central Oregon LandWatch, et al v. Deschutes County, ___ Or LUBA ___ (LUBA No. 2023-006, July 28, 2023). As LUBA noted in Central Oregon LandWatch v. Deschutes County, ORS 215.203(2)(a) defines farm use as the current employment of land for the primary purpose of obtaining profit in money. The applicant provided data from reliable sources that demonstrates the economic infeasibility of conducting profitable farming on the subject site. The cost to fertilize poor soil, deal with lack of water, and the limited amount of crops that will grow even with those costly measures makes it unreasonable for any owner to expect to make any profit.

COLW also does not effectively address the applicant's evidence on how the above factors illustrate that the subject site is not agricultural land.

Soil fertility: COLW's discussion on this topic is more speculation that someone could, in theory, add enough amendments to the soil to improve fertility or make some use of the property that does not require fertile soils. The application demonstrates that one could expect, at best, about \$4,181.40 in annual gross profit from dry grazing. Adding in the cost of amending soil, fertilizer, and other expenses, no reasonable farmer will

attempt to farm the subject property. Further, Mr. Gallagher's professional report explains that the lack of soil fertility makes it impracticable to engage in farm use on the property. As to other farming use activities that may not rely on fertile soil, the applicant used dry grazing because it is anticipated to be the most profitable of all activities. Amended Burden of Proof Statement, p. 22. The suggestion that someone could board horses for a profit is unreasonable. One can imagine the enormous cost of constructing facilities that do not now exist to even begin such an operation. It does not square with the definition of current employment of land for obtaining a profit in money.

Suitability for grazing: Again, the application material and Mr. Gallagher explained in detail why the economics of dry grazing in this area on bad soil is not practicable and economically infeasible. Economic infeasibility is a valid consideration that COLW just ignores. Interesting though, when discussing this element, COLW agrees that the entire subject tract must be evaluated, as the applicant and Mr. Gallagher did. However, when discussing whether a change in the zoning to MUA-10 is consistent with the purpose and intent of that zone, COLW does not address the entire tract.

Climactic conditions: Mr. Gallagher addressed this element in detail, including data from reliable sources. COLW does nothing to refute his conclusions.

Existing and future availability of water for irrigation: COLW did not even address the issue. Mr. Gallagher confirmed what the applicant provided that the property does not have irrigation rights. COLW focuses on whether it is possible to get irrigation equipment on the property. Mr. Gallagher addressed this issue, but the main point is the equipment on the property does nothing without water flowing through it. COLW ignored that aspect altogether.

COLW relies on old photographs that illustrate that up to about 1968, there may have been pocket farming on portions of the subject property. The photographs alone do not establish what activity was being conducted at that time. Moreover, the definition of farm use is the current employment of land for farming activities. ORS 215.203. There is no evidence in the record that there has been any farming conducted in the past 56 years. The material in the application supported by Mr. Gallagher supports a finding that the poor soil, lack of irrigation, and rising cost of farming on dry land made it infeasible to currently conduct any farming on the property.

Existing land use patterns: COLW confirms that to the extent there is any agricultural use in the area, it is isolated to small hobby farms. The application included a detailed chart of the surrounding properties, and which ones had any such activity. The chart confirms that much of the hobby farming is being done on smaller MUA-10 parcels. That fact supports the finding that rezoning to MUA-10 is consistent with the existing land use pattern and consistent with the purpose and intent of the MUA-10 zone.

Technology and energy inputs required: COLW does not address this topic in substance. It does not refute the evidence in the application and the information from Mr. Gallagher that technology will not overcome the fact that the property has shallow soils with abundant rocks and no possibility of irrigation water.

Accepted farming practices: COLW provided nothing beyond its unsupported opinion that "nothing about the subject property indicates that it could not operate with accepted farming practices common in the area." COLW's May 9, 2025 Letter, p. 18. The detailed material in the application and supported by Mr. Gallagher demonstrates that the only large-scale farming practice in the area is irrigated hay production. The application material explains in detail why that cannot be done on the subject property. Mr. Gallagher further explains that the only agricultural use in the area is small-scale farming that can be managed with the limitations posed and is consistent with rezoning. The existing small agricultural uses are largely on MUA-10 property. Rezoning the subject property to MUA-10 will have no negative impact on the continuation of

that activity. In fact, by allowing the creation of 10-acre parcels, rezoning to MUA-10 will afford more opportunities for small-scale farming on parcels that are manageable from a cost/labor standpoint.

E. The subject property is not necessary to permit farming on adjacent land.

The applicant provided detailed information on why the subject property is not necessary to conduct farming on adjacent or nearby properties. Amended Burden of Proof Statement, pp. 25-27. COLW does not dispute that the subject property is not necessary to conduct farming on any of the parcels included in the applicant's charts. Rather, COLW argues that the subject property is necessary to permit farming on a 12-acre parcel adjacent to it at the intersection of Highway 20 and Erickson Road (TL 300). COLW offers no evidence to support that argument but rather provides more subjective opinions. It recites that TL 300 is likely not large enough to support a dryland grazing operation or other farm practices on its own, but it "almost certainly would" be with the subject property. COLW does not offer any explanation for how TL 300 could support a farming operation even if it were used with the subject property. The evidence is to the contrary.

The overwhelming evidence in the application material and supported by Mr. Gallagher proves that dry grazing and other farm operations are not feasible on the subject property. The question that COLW avoids is if the subject property itself is not suitable to support farm operations, how would it be necessary to support farm operations on adjacent property that is also unsuitable for farm practices? Stated otherwise, how would the subject property that is not suitable for farming facilitate farming on the adjacent parcel that COLW agrees is, by itself, not suitable for farming? It is intuitive that if one has 12 acres that is not suitable for farming and one combines it with adjacent property that is also unsuitable for farming, the combined properties are not magically suitable for farming. The subject property is not even a source for access to TL 300. One can easily see from the photographs in the record that it is not even possible to access TL 300 from the subject property due to the location of the solar farm and associated fencing.

COLW, as noted in the above-quoted Applicant comments, argued the Subject Property was properly classified by the NCRS maps as Agricultural Land (COLW, 5/9/2025, pages 10 – 20 and 5/30/2025, pages 6 – 8). COLW asserted that the Red Hills Soil Report omitted the area under the Solar Array during its consideration of the suitability for grazing factor. The Hearings Officer review of the Red Hills Soils Report confirms the area under the Solar Array was not considered in the suitability for grazing analysis. The Hearings Officer responds threefold. First, the Hearings Officer would have preferred the area under the Solar Array to have been included in the suitability for grazing analysis. Second, the Hearings Officer finds that a rational and reasonable inference, based upon evidence contained in the NCRS mapping and the Red Hills Soil Report, may be drawn that suitability for grazing under the Solar Array is functionally the same as the remainder of Subject Property. Third, the Hearings Officer finds no evidence in the record submitted by COLW supporting the proposition that adding the area under the Solar Array to the balance of the Subject Property analyzed in the Red Hills Soils Report would change the Red Hills Soils Report conclusion that the Subject Property is not suitable for grazing.

While the Hearings Officer would have preferred the Red Hills Soils Report consider the entire Subject Property in its suitability for grazing analysis the Hearings Officer finds that omission alone is not sufficient to alter the Hearings Officer's conclusion that the Subject Property is not Agricultural Land.

The Hearings Officer finds that the most persuasive Agricultural Land evidence in the record is the Red Hills Soils Report. The Hearings Officer finds that the Red Hills Soils Report, in addition to other evidence supplied by Applicant into the record, is substantial evidence and justifies the conclusion that the Subject Property is not Agricultural Land.

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 did not ask to amend the subzone that applies to the subject property; rather, the Applicant requested a change under Policy 2.2.3 and has provided evidence to support rezoning the Subject Property to MUA-10.

Policy 2.2.3 Allow comprehensive plan and zoning map amendments, 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 Hearings Officer incorporates the findings for the Deschutes County Comprehensive Plan, Chapter 2, Resource Management, Section 2.2 Agricultural Lands, Goal 1 as set forth above as additional findings for this policy.

The Applicant requested approval of a plan amendment and zone change to re-designate the Subject Property from Agricultural to Rural Residential Exception Area and rezone the property from EFU to MUA10. The Applicant did not seek an exception to Goal 3 – Agricultural Lands, but rather 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:

“The Applicant is seeking a comprehensive plan amendment from Agriculture to RREA, and a zone change from EFU-TRB to MUA-10 for non-resource land. This is the same change approved by Deschutes County in the Division of State Lands file PA-11-7 /ZC-11-2. In findings attached, 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 non-agricultural soils when irrigated and when not irrigated making farm-related endeavors unprofitable. The property is not currently employed for any type of farm use and has no known history of that use. Accordingly, this application complies with Policy 2.2.3.”

Staff (Staff Report, page 23) generally agreed with Applicant’s above-quoted Burden of Proof statements. Staff (Staff Report, page 23) found that Applicant provided sufficient evidence in the record addressing whether the Subject Property qualifies as non-resource land. Staff concluded that the Applicant “*has the potential to prove the properties are not agricultural land and do not require an exception to Goal 3 under state law.*”

Based upon the incorporated findings, Applicant’s Burden of Proof statements quoted above and Staff’s analysis the Hearings Officer finds this policy can be satisfied.

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. Staff stated (Staff Report, page 23) that it concurred with the County’s previous determinations in plan amendment and zone change applications and concluded that Applicant’s proposal in this case is consistent with this policy. The Hearings Officer agrees with Staff’s analysis and conclusion and finds Applicant’s proposal in this case is consistent with this policy.

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

Policy 2.2.13 Identify and retain accurately designated agricultural lands.

FINDING: The Hearings Officer incorporates the findings for the Deschutes County Comprehensive Plan, Chapter 2, Resource Management, Section 2.2 Agricultural Lands, Goal 1 as set forth above as additional findings for this policy.

This plan policy requires the County to identify and retain Agricultural Lands that are accurately designated. The Applicant argued that the Subject Property was not accurately designated as demonstrated. Based upon the incorporated findings found later in this recommendation the Hearings Officer finds this policy can be satisfied.

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 has not proposed a specific development in this application. The Hearings Officer finds that the Applicant is not required to address water impacts associated with development. The Hearings Officer finds that the Applicant will be required to address this criterion during development of the Subject Property, which would be reviewed under any necessary land use process for the site (e.g. conditional use permit, tentative plat). The Applicant provided the following response in the submitted Burden of Proof:

“Irrigation is essential for commercial farm use in Central Oregon. Irrigating poor farm ground consumes a large amount of the area's precious water resources without the resulting economic benefits of profitable agricultural production. Homes consume less water than would be needed for farm field irrigation on the subject property.

In its findings in Division of State Land, Deschutes County found that impacts of any proposed future development of the state property on water resources would be reviewed by Deschutes County in future development applications. That finding was sufficient to demonstrate compliance with this plan policy. Together with the findings above and then later review by Deschutes County, this policy is satisfied.”

Staff (Staff Report, page 24) agreed with the Applicant’s above-quoted analysis. Staff (Staff Report, page 24) also provided a portion of the findings from *Aceti IV* (247-20-000438-PA, 439-ZC). Staff stated that in the *Aceti IV* decision the Hearings Officer and the Board of County Commissioners (Board) made the following findings which appear to support the Applicant’s analysis:

“The Hearings Officer found in Aceti 1 that this policy is directed at the County. In said decision, the Hearings Officer cited a previous decision of Hearings Officer Green for file nos. PA-14-2 and ZC-14-2 that stated, “Nevertheless, in my decision in NNP I held it is not clear from this plan language what ‘water impacts’ require review -- impacts to water supplies from use or consumption on the subject property, or Impacts to off-site water resources from development on the subject property.’ The Applicant has not proposed any particular land use or development, and any subsequent applications for development of the subject property would be reviewed under the County's land use regulations that include consideration of a variety of on- and off-site impacts.

The Hearings Officer finds it is premature to review “water impacts” because the Applicant has not proposed any particular land use or development. Thus, there are no ‘significant land uses or developments’ that must be reviewed or addressed in this decision. Any subsequent applications for development of the subject property will be reviewed under the County's land use regulations, which include consideration of a variety of on- and off-site impacts. Notwithstanding this statement, the Hearings Officer includes the following findings.

The Applicant's requested zone change to RI would allow a variety of land uses on the subject property. The land east of the subject property (57 acres) is zoned RI and developed with a variety of rural industrial uses. Consequently, it is likely that similar development may occur on the property if it were re-designated and rezoned to RI. In light of existing uses in the surrounding area, and the fact that Avion Water Company provides water service in the Deschutes Junction area, and a 12-inch diameter Avion water line and two fire hydrants are already installed on site, future development of the subject property with uses permitted in the RI Zone will have water service.

The subject property has 16 acres of irrigation water rights and, therefore, the proposed plan amendment and zone change will result in the loss or transfer of water rights unless it is possible to bring some irrigated water to the land for other allowed beneficial uses, such as irrigated landscaping. As stated in the Applicant's Burden of Proof, the 16 acres of irrigation water rights are undeliverable and are not mentioned in the property deed. The Applicant has not grown a crop on the subject property or effectively used his water right since the overpass was constructed in 1998.

The Hearings Officer finds that the proposal will not, in and of itself, result in any adverse water impacts. The proposal does not request approval of any significant land uses or development.

The Hearings Officer finds Staff's reference to *Aceti IV* (quoted above) to be relevant and persuasive. Based upon the Staff's analysis and conclusions and the findings for *Aceti IV* the Hearings Officer finds Applicant demonstrated compliance with this Comprehensive Plan policy.

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: The Hearings Officer adopts as additional findings for this policy the findings for Goal 5 (including analysis of Applicant's submitted ESEE). Staff (Staff Report, pages 25 & 26) stated that these policies are fulfilled by the County's Goal 5 program. Staff stated that the County protects scenic views and sites along major rivers and roadways by imposing Landscape Management (LM) Combining Zones to adjacent properties. A portion of the Subject Property is located within the LM associated with Highway 20.

Staff (Staff Report, page 25) noted in *Te Amo Despacio*, File 24 7-22-000313/314 that the standards and requirements of that overlay can be implemented at the time of any future development. The Hearings Officer finds that these provisions of the plan are not impacted by approval 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. The Applicant provided the following response to this section in its 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 that 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 does not qualify as agricultural land that must be protected by Goal 3. The subject property is sandwiched between large areas recently rezoned to MUA-10 to the west and MUA zoned property to the east. Most of the intervening EFU land interspersed is committed to rural residential uses. There is a single active farming operation in the immediate vicinity. The property east of Erickson Road is developed with single-family homes.

The MUA-10 zone is a rural residential zone. It will provide for an orderly and efficient transition from rural to urban land use as intended by the purpose of the MUA-10 zone. As a result, rezoning the subject property MUA-10 is consistent with Section 3.2.”

Staff provided (Staff Report, pages 26 & 27) the following comments related to this section:

“Staff notes that the MUA10 Zone is a rural residential zone and as discussed in the Findings of Fact above, adjacent properties to the north, northwest, and southwest are zoned MUA10. One of these surrounding MUA10 properties has received approval for a Comprehensive Plan Amendment and Zone Change to change the zoning of the property from EFU to MUA10. This property is identified on Assessor’s Map 17-12-35 as Tax Lot 1600, and is located adjacent to the subject property, to the west of Tax Lot 900. Staff notes this policy also references the soil quality, which staff discusses in more detail below. Staff is uncertain if this policy is met by the available information in the record and requests the Hearings Officer make specific findings on this topic.”

The Hearings Officer agrees with Applicant that this part of the Comprehensive Plan is not a relevant approval criteria. The Hearings Officer finds the language in this section is purely aspirational and provides no clear and objective standards which must be met by an applicant for a plan and zone change. The Hearings Officer finds the aspirational issues raised by this section are addressed throughout this recommendation.

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:

“Staff and the County Board have conformed in prior decisions that the quoted language is 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. Staff made this point in (Porter Kelly Burns). County zone change and plan amendment use decisions adopted by the Board of Commissioners have so found.”

The Applicant also provided an alternate argument that applying the RREA Comprehensive Plan designation to the subject property does not require an exception to a Statewide Planning Goal, even if this policy were interpreted as an approval criterion.

Staff (Staff Report, page 27) stated that it agreed with prior Deschutes County Hearings Officer interpretations and concluded that the above language in this section is not a policy and does not require an exception to the applicable Statewide Planning Goal 3. The Applicant provided evidence in the record addressing whether the property qualifies or does not qualify as agricultural or forest land. Staff asks the Hearings Officer to make specific findings related to this language.

The Hearings Officer concurs with Applicant and Staff that the language in this section is not an independent relevant approval criterion. In the alternative, the Hearings Officer incorporates the findings for the Deschutes County Comprehensive Plan, Chapter 2, Resource Management, Section 2.2 Agricultural Lands, Goal 1 as set forth above as additional findings for this policy. The Hearings Officer finds, based upon the incorporated findings and findings found throughout this recommendation, that the Subject Property does not meet the definition of 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 Hearings Officer finds that the County will comply with this direction by determining compliance with the Transportation Planning Rule (TPR), also known as OAR 660-012, as described below in subsequent findings.

OREGON ADMINISTRATIVE RULES CHAPTER 660, LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

Division 6, Goal 4 – Forest Lands

OAR 660-006-0005, Definitions

- (7) ***“Forest lands” as defined in Goal 4 are those lands acknowledged as forest lands, or, in the case of a plan amendment, forest lands shall include:***
- (a) ***Lands that are suitable for commercial forest uses, including adjacent or nearby lands which are necessary to permit forest operations or practices; and***

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

FINDING: The Subject Property is not zoned for forest lands, nor are any of the properties within a 4.5-mile radius. The Subject Property does not contain merchantable tree species and there is no evidence in the record that the Subject Property has been employed for forestry uses historically. The Hearings Officer finds this section is not relevant/applicable because the Subject Property is not “forest land.”

Division 33 - Agricultural Lands & Statewide Planning Goal 3 - Agricultural Lands;

OAR 660-015-0000(3)

To preserve and maintain agricultural lands.

Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space and with the state's agricultural land use policy expressed in ORS 215.243 and 215.700.

FINDING: Goal 3 defines Agricultural Land, which is repeated in OAR 660-033-0020(1). The Hearings Officer incorporates the findings for the Deschutes County Comprehensive Plan, Chapter 2, Resource Management, Section 2.2 Agricultural Lands, Goal 1 as set forth above as additional findings for Goal 3, OAR 660-015-0000(3).

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 Oregon²;*

FINDING: The Hearings Officer incorporates the findings for the Deschutes County Comprehensive Plan, Chapter 2, Resource Management, Section 2.2 Agricultural Lands, Goal 1 as set forth above as additional findings for this section. The Hearings Officer also incorporates as additional findings for this section the Preliminary Findings for Certification of Soils Report (III.A.2).

The Red Hills Soils Report included the following conclusion language:

“The NRCS WEBSOILSURVEY shows the subject property is predominantly non-high value farmland, Class 7 and 8 and does not meet the definition of agricultural land within the meaning of OAR 660-033-0020(1)(b), as it is not adjacent to or intermingled with land in capability classes 1-6 within a farm unit. There is no clear evidence that the Capability Class 6 non-irrigated soils on the subject property were farmed or utilized in conjunction with any farming.”

As noted in prior findings the Hearings Officer finds the Red Hills Soils Report to be prepared by a qualified professional soil scientist. The Hearings Officer finds the Red Hills Soils Report is credible and persuasive evidence. Based upon the incorporated findings and the Red Hills Soils Report the Hearings Officer finds the

² 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.

Subject Property is made up of predominately NCRS Class 7 and 8 soils. Considering all relevant factors, including the soil characteristics, the Hearings Officer finds the Subject Property is not Agricultural Land as defined by relevant laws/regulations.

- (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 Hearings Officer incorporates the findings for the Deschutes County Comprehensive Plan, Chapter 2, Resource Management, Section 2.2 Agricultural Lands, Goal 1 as set forth above as additional findings for this section. The Hearings Officer also incorporates as additional findings for this section the Preliminary Findings for Certification of Soils Analysis (III.A.2).

Staff concluded its findings for this criterion by stating:

“Staff agrees with the applicant that many of the factors surrounding the subject property – such as level of development in the surrounding area, soil fertility, and amount of irrigation required result in a relatively low possibility of farming on the subject property. Staff requests the Hearings Officer make specific findings on this issue.”

The Hearings Officer responds to Staff’s quoted request for “specific findings on this issue” by stating that the Hearings Officer, based upon the incorporated findings and the Red Hills Soil Report, finds that Applicant considered and addressed each of the factors set forth in the criterion with substantial credible evidence. The Hearings Officer finds that based upon the incorporated findings and the Red Hills Soil Report that each of the relevant factors set forth in this criterion was adequately considered and addressed.

- (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 its submitted 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.”

The submitted Burden of Proof also included the following summary of all EFU-zoned properties within an area of approximately one mile of the subject property.

“West: Properties to the west of the subject property, with one exception, are separated from the subject property by Ward/Hamby Roads. The road makes it infeasible to use the subject property for farm use in conjunction with these properties and much of that property was recently rezoned to MUA-10 (Marken Trust, East Bend LLC, and Te Amo Despacio). Additionally, the subject property is not necessary to permit farm practices to be undertaken on adjacent or nearby lands to the west. There is no recent history of farming on properties to the west.

ADJOINING PROPERTIES SOUTH OF PROPERTY

Tax Lots 900 and 1000 abut Bear Creek Road. The property south of Bear Creek Road is within Dobbin Estates, an approved residential subdivision. There is no farming or potential for farming on that property.

FARM PROPERTIES NEARBY TO WEST, SOUTH AND SOUTHWEST, AND NORTHWEST OF ADJOINING PROPERTIES

North: *Most of the land north of the subject property is privately owned and currently used for institutional purposes and commercial enterprises. There are several large solar farms, a church, a Christian center, and an electric power facility. Further to the northeast is Big Sky Park. Any farming is far to the north, a significant distance from the subject property. Moreover, it is separated physically from the subject property by Highway 20, other major roads, and intervening non-farm uses making it infeasible to farm with the subject property.*

East: *The non-adjacent property to the east of Tax Lots 900 and 1000 is primarily devoted to large acre residential uses and hobby farms. In light of the many surrounding non-farm uses that have been in existence for years and the amount of MUA-10 zoned property in the area already, rezoning the subject property will not impact farming on that parcel. The properties east of Tax Lots 100, 300, and 400 are primarily MUA zoned large estate properties that are not used in farming operations and are separated by Erickson Road.*

South: *The property south of Tax Lots 300, 400, and 100 is either part of the subject property or the property described above. As discussed earlier, the property south of Tax Lots 900 and 1000 are part of a platted residential subdivision. Rezoning the subject property to MUA-10 will not impact farming on any of that property.”*

Pages 26 to 27 of the Burden of Proof include tables that list surrounding properties and include information on potential farm uses. These tables provide detailed information on the existing surrounding uses, potential farm practices, and reasons why they do not require the subject property to operate. Applicant also addressed this criterion/standard in its Final Argument (June 6, 2025, page 9).

Staff (Staff Report, pages 33 & 34) addressed this criterion/standard as follows:

“Staff agrees with the applicant’s analysis and finds no feasible way that the subject property is necessary for the purposes of permitting farm practices on any nearby parcels discussed in the Findings of Fact section above, or the larger area more generally. This finding is based in part on poor quality, small size, and existing development on surrounding EFU and MUA10 properties. If the Hearings Officer disagrees with Staff’s assessment, Staff requests the Hearings Officer make specific findings on this issue.”

The Hearings Officer does not disagree with Staff’s above-quoted assessment. The Hearings Officer, based upon the incorporated findings, the Red Hills Soil Report and Applicant’s final argument statements finds that the Applicant adequately address and consider the factors listed in this criterion/standard and that the conclusion reached that the Subject Property is not Agricultural Land is reasonable and appropriate.

- (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 its Burden of Proof:

"The subject property is not and has not been a part of a farm unit. It has not been farmed. As a result, this rule does not apply to the County's review of this application.

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 VIII which provides no basis to inventory the property as agricultural land, unless the land is shown to be, in fact, productive farmland.

As confirmed by the accepted soils maps, the predominant soil types found on the property are Class VII and VIII, non-agricultural land. Some Class VI soils are intermingled with the non-agricultural soil, not vice versa. As a result, this rule does not require the Class VII and VIII soils to be classified agricultural land."

Applicant also included comments related to this criterion/standard in its Final Argument (page 9). The Hearings Officer finds the Applicant's above-quoted comments, its Final Argument statements and the Red Hills Soils Report to be credible and persuasive evidence and argument. The Hearings Officer finds, based upon evidence contained in the Applicant's Burden of Proof, its Final Argument comments and the Red Hills Soil Report, that Applicant considered and provided substantial evidence that it considered (inventoried) adjacent properties in the context of this criterion/standard.

- (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.

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 Hearings Officer incorporates the findings for the Deschutes County Comprehensive Plan, Chapter 2, Resource Management, Section 2.2 Agricultural Lands, Goal 1 as set forth above as additional findings for this section. The Hearings Officer also incorporates as additional findings for this section the Preliminary Findings for Certification of Soils Analysis (III.A.2).

The Applicant argued that the Subject Property is not Agricultural Land, as referenced in OAR 660-033-0030(1) above, because of the existence of barriers for farm use including poor quality soils and the development pattern of the surrounding area. The Hearings Officer finds that Applicant adequately addressed OAR 660-033-0030(2) by submitting substantial evidence addressing the factors set forth in the findings of OAR 660-033-00020(1), including OAR 660-033-0020(1)(a)(b) in findings above. The Hearings Officer incorporates the findings for OAR 660-033-00020(1), including OAR 660-033-0020(1)(a)(b) as findings for this criterion/standard.

The Hearings Officer, based upon the incorporated findings, the Red Hills Soil Report and Applicant's Final Argument statements, finds that this criterion was adequately considered and addressed and that the Subject Property is not Agricultural Land and is also "not suitable for farm use."

- (3) *Goal 3 attaches no significance to the ownership of a lot or parcel when determining whether it is agricultural land. Nearby or adjacent land, regardless of ownership, shall be examined to the extent that a lot or parcel is either "suitable for farm use" or "necessary to permit farm practices to be undertaken on adjacent or nearby lands" outside the lot or parcel.*

FINDING: The Hearings Officer incorporates the findings for the Deschutes County Comprehensive Plan, Chapter 2, Resource Management, Section 2.2 Agricultural Lands, Goal 1 as set forth above as additional findings for this section. The Hearings Officer also incorporates as additional findings for this section the Preliminary Findings for Certification of Soils Analysis and the findings for OAR 660-033-00020(1), including OAR 660-033-0020(1)(a)(b).

The Hearings Officer finds that Applicant provided in the record substantial evidence showing the Subject Property is not Agricultural Land, is not "suitable for farm use" and is not necessary to permit farm practices to be undertaken on adjacent or nearby lands. The Hearings Officer finds that the ownership of the Subject Property was not used to determine whether the parcel is Agricultural Land.

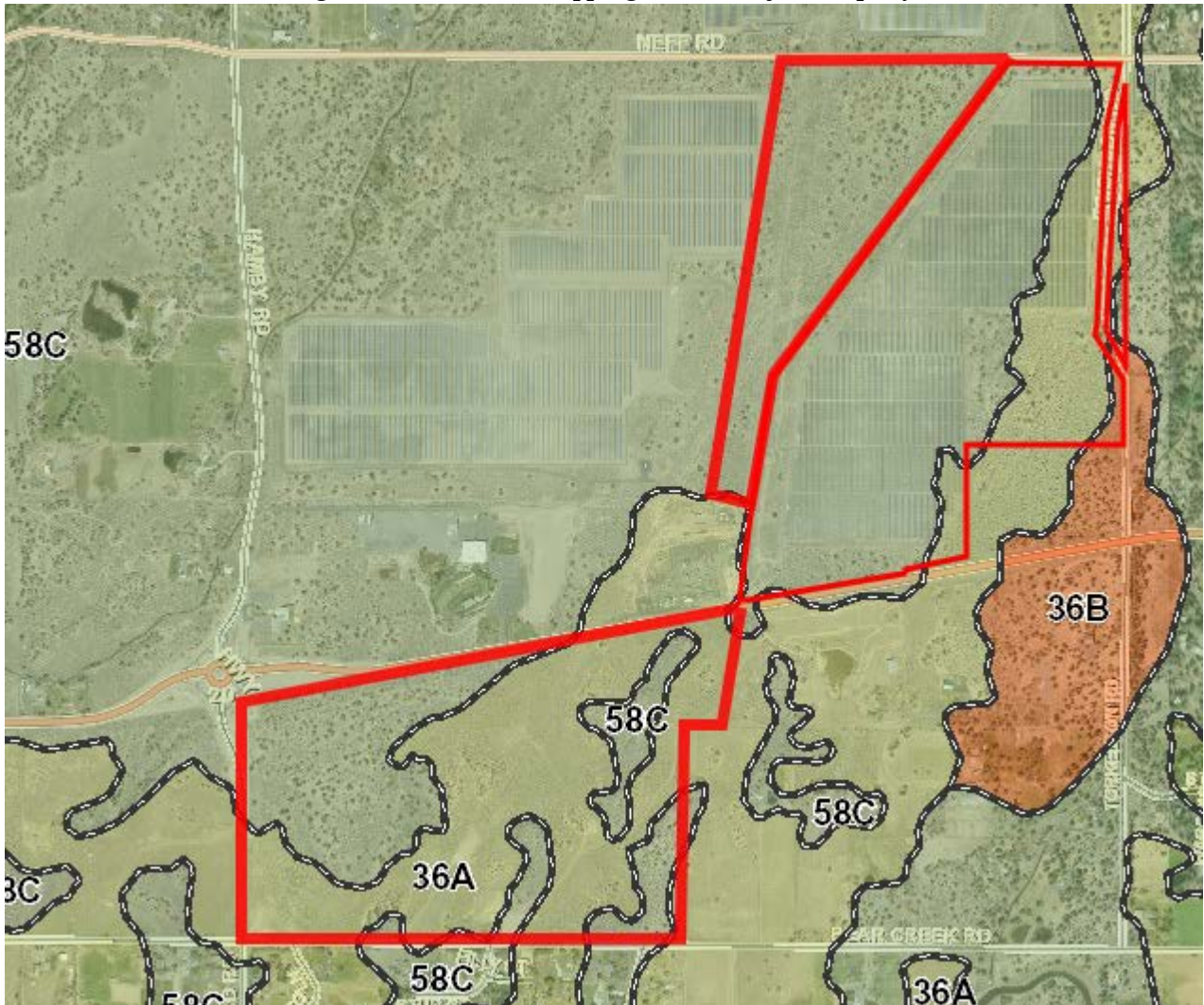
- (5)(a) *More detailed data on soil capability than is contained in the USDA Natural Resources Conservation Service (NRCS) soil maps and soil surveys may be used to define agricultural land. However, the more detailed soils data shall be related to the NRCS land capability classification system.*
- (b) *If a person concludes that more detailed soils information than that contained in the Web Soil Survey operated by the NRCS as of January 2, 2012, would assist a county to make a better determination of whether land qualifies as agricultural land, the person must request that the department arrange for an assessment of the capability of the land by a professional soil classifier who is chosen by the person, using the process described in OAR 660-033-0045.*

FINDING: The Hearings Officer incorporates as additional findings for this section the Preliminary Findings for Certification of Soils Analysis (III.A.2). The Hearings Officer finds that based on the incorporated Preliminary Findings COLW's issue with this section is adequately addressed. However, as additional findings for this criterion the Hearings Officer adopts the following Staff comments (Staff Report, pages 36 - 29).

"The soil study prepared by Mr. Gallagher provides more detailed soils information than contained in the NRCS Web Soil Survey. NRCS sources provide general soils data for large units of land and provide a Land Capability Classification (LCC) system that classifies soils class 1 through 8. An LCC rating is assigned to each soil type based on rules provided by the NRCS, and the soil units that are mapped on the subject property are complexes made up of soils with various LCC ratings.

The NRCS mapping for the subject properties is shown below in **Figure 1**. According to the NRCS Web Soil Survey tool, the subject property contains approximately 80 acres of soil unit 36A, 0.6 acres of soil unit 36B, and 160 acres of soil unit 58C.

Figure 1: NRCS Soil Mapping on the Subject Property



The submitted soil study does not dispute the NRCS soils map for the subject property, or provide updated mapping. Instead, the soil study provides a methodology for calculating the LCC rating for the complex soil units identified within the subject property.

Table 1: Composition of Soil Types within Subject Property

Table 3. Coverage of soils after distributing weighted amounts of 58C by Capability classification.

Map Symbol	Map Unit Component	High-value Farmland Status	Agricultural lands	Nonirrigated Capability Class	Acres NRCS soil map by unit	Coverage
						-%-
36A, 36B	Deskamp	N (not irrigated)	Yes	6	115	48
58C	Gosney	N	No	7	83	35
58C	Rock outcrop	N	No	8	42	17
	Total				240	100

The soil study included the following conclusion regarding the productivity of soils within the subject property:

The NRCS WEBSOILSURVEY shows the subject property is predominantly non-high value farmland, Class 7 and 8 and does not meet the definition of agricultural land within the meaning of OAR 660-033-0020(1)(b), as it is not adjacent to or intermingled with land in capability classes 1-6 within a farm unit. There is no clear evidence that the Capability Class 6 non-irrigated soils on the subject property were farmed or utilized in conjunction with any farming operation in the past.

The soil study applies a weighted average methodology to calculate the LCC rating of the 58C soil unit, Gosney-Rock outcrop- Deskamp Complex, which comprises the majority of the subject property. As described above, this soil unit is a complex and may contain both high value soils and non-high value soils. Mr. Gallagher applied information from the NRCS, which estimates the following amount of Class 6, Class 7, and Class 8 soils within this complex:

The NRCS gives percentages of three of the main components of this map unit as 50 percent Gosney (Class 7) 25 percent rock outcrop (Class 8) and 20 percent Deskamp (Class 6 and high value). NRCS includes five percent unspecified contrasting soils in the map unit composition. In my acreage calculations the unspecified five acres were equally divided between class 6, 7 and 8 soils.

In his report, Mr. Gallagher utilizes the information provided by NRCS on the typical composition of the 58C soil unit. He multiplies the 160 acres of 58C soils by the percentage of Class 6, 7, and 8 soils within the 58C soil unit. This information appears to be based on general information provided by NRCS on the composition of the 58C soil unit and is not specific to the subject property.

The applicant cites the Board of County Commissioners decision for file PA-11-7, ZC-11-2 (Department of State Lands) in support of this methodology³. In this prior Zone Change decision, testimony was provided by staff from NRCS and a weighted average was presented as one of three potential methodologies for calculating the LCC ratings within a complex soil unit. In the Department of State Lands decision, the Board found that they had discretion to choose any of the three methodologies to determine whether the soils on the property qualified as ‘agricultural land.’ Staff requests the Hearings

³ Staff references a letter from the Applicant dated May 28, 2024.

Officer make specific findings on this issue and determine whether the proposed methodology is consistent with OAR 660-033-0030.”

The Hearings Officer finds that the Red Hills Soil Report was prepared by a certified soil scientist. As such, the Hearings Officer finds that the author of the Red Hills Soil Report is a duly recognized expert in the soil science field. The Hearings Officer also finds that COLW offered no evidence from a soil scientist. Rather, COLW soils arguments were presented by a staff attorney who did not provide the Hearings Officer any evidence he was trained or experienced as a soil scientist. The Hearings Officer, comparing the testimony of the Applicant’s recognized soil scientist and the testimony presented by COLW, finds that the testimony of the Applicant’s soil scientist is significantly more credible and persuasive than the statements and opinions offered by COLW. The Hearings Officer also represents that he is not a professionally trained soil scientist and therefore finds that he must rely upon the professional opinions to determine appropriate methodologies to assess the factors required in OAR 660-033-0030. The Hearings Officer finds that there is simply no substantial and credible evidence in the record to dispute the methodologies used in the Red Hills Soil Report.

(c) ***This section and OAR 660-033-0045 apply to:***

(A) ***A change to the designation of land planned and zoned for exclusive farm use, forest use or mixed farm-forest use to a non-resource plan designation and zone on the basis that such land is not agricultural land; and***

FINDING: The Hearings Officer incorporates the findings for the Deschutes County Comprehensive Plan, Chapter 2, Resource Management, Section 2.2 Agricultural Lands, Goal 1 as set forth above as additional findings for this section. The Hearings Officer also incorporates as additional findings for this section the Preliminary Findings for Certification of Soils Analysis (III.A.2) and the findings for OAR 660-033-00020(1), including OAR 660-033-0020(1)(a)(b).

The Applicant requested approval of a non-resource plan designation on the basis that the Subject Property is not Agricultural Land as that phrase is defined by relevant laws/rules. The Hearings Officer finds, based upon the incorporated findings, that this criterion/standard is satisfied.

(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 Hearings Officer incorporates as additional findings for this section the Preliminary Findings for Certification of Soils Analysis (III.A.2).

(Staff Report, page 39) provided the following comments related to this criterion/standard:

“The applicant did not submit acknowledgement from Department of Land Conservation and Development (DLCD) that the soil study is complete and consistent with DLCD’s reporting requirements. However, it is not apparent to staff whether a DLCD completeness review is required for this soil study, since it expands on the NRCS soil map but does not include a full on-site assessment. The applicant relies on the soils report from Mr. Gallagher to determine whether the subject property consists predominantly of Class 1-6 soils. As described below, staff requests the Hearings Officer make specific findings regarding the submitted soil study and whether it has been correctly applied in the context of this section.”

The Hearings Officer, based upon the incorporated findings, finds that the Red Hills Soil Report is not a “soil assessment” as referenced in this criterion.

- (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 Hearings Officer incorporates the findings for the Deschutes County Comprehensive Plan, Chapter 2, Resource Management, Section 2.2 Agricultural Lands, Goal 1 as set forth above as additional findings for this section. The Hearings Officer also incorporates as additional findings for this section the Preliminary Findings for Certification of Soils Analysis (III.A.2) and the findings for OAR 660-033-00020(1), including OAR 660-033-0020(1)(a)(b).

Staff (Staff Report, pages 39 & 40) provided the following comments related to this criterion/standard:

“Based on the information above, it is not clear to staff if the submitted soil study was prepared according to the procedures set forth in OAR 660-033-0045. Staff requests the Hearings Officer make findings regarding the submitted soil study, and whether it provides sufficient information to determine the percentage of the subject property that is comprised of Class 7 and Class 8 soils.”

The Hearings Officer finds that the Red Hills Soil Report was prepared by a certified soil scientist and utilized methodologies consistent with professional standards. The Hearings Officer finds the Red Hills Soil Report is not a “soil assessment” as described in OAR 660-033-0030 and was prepared consistent with OAR 660-033-0045.

DIVISION 12, TRANSPORTATION PLANNING

OAR 660-012-0060 Plan and Land use Regulation Amendments

- (1) *If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:*
- (a) *Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);*
 - (b) *Change standards implementing a functional classification system; or*
 - (c) *Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.*
 - (A) *Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;*

- (B) *Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or*
- (C) *Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.*

FINDING: This above language is applicable to the proposal because it involves an amendment to an acknowledged comprehensive plan. The proposed plan amendment would change the designation of the Subject Property from AG to RREA and change the zone from EFU to MUA10. The Applicant is not, as part of this current application, proposing any land use development of the Subject Property.

The Applicant submitted a Transportation Planning Rule (“TPR”) assessment (Exhibit 12, dated February 2, 2024) prepared by Scott Ferguson of Ferguson and Associates, Inc. As noted in the agency comments section above, the County Transportation Planner identified deficiencies with the submitted TPR analysis and requested additional information. Specifically, the County Transportation Planner requested additional information to allow a determination as to whether the proposal would have a significant effect on transportation facilities. The Applicant then submitted a revised TPR analysis dated February 28, 2025, prepared by Scott Ferguson, PE, of Ferguson and Associates, Inc.

The revised TPR assessment was reviewed by the County Transportation Planner, who agreed with the report’s methodologies and conclusions. 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 finds that the proposed zone change will not change the functional classification of any existing or planned transportation facility or change the standards implementing a functional classification system. Regarding the TPR analysis dated February 28, 2025, the County Transportation Planner provided the following comments in an email dated March 5, 2025:

“...The revised analysis provides updated information related to the total ~240.17 acres of subject property. The full build-out scenario included in the revision (considering redevelopment of the existing solar farm portions of the subject property) aligns with staff’s comments from 6/11/24. The report’s inclusion of modified acreage and assumed development credit for one existing single-family dwelling complies with additional comments from staff’s 6/11/24 email correspondence regarding the MUA10 Zone’s worst case scenario analysis. I agree with the assumptions, methodologies, and conclusions outlined in the revised analysis.”

Based on the County Senior Transportation Planner’s comments and the revised traffic study from Ferguson and Associates, Inc., the Hearings Officer finds compliance with the Transportation Planning Rule has been effectively demonstrated.

DIVISION 15, STATEWIDE PLANNING GOALS AND GUIDELINES

OAR 660-015, Division 15, Statewide Planning Goals and Guidelines

FINDING: The Statewide Planning Goals and the Applicant’s proposed findings are set forth below:

*“**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 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 MUA-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 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 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.*

Goal 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.”*

Staff (Staff Report, page 43) provided the following comments:

“Staff generally accepts the applicant’s responses and finds compliance with the applicable Statewide Planning Goals has been effectively demonstrated. However, staff notes additional analysis may be required regarding Goal 5, Natural Resources, Scenic and Historic Areas and Open Spaces. A portion of the subject property is located within the Landscape Management Combining Zone associated with Highway 20, and this scenic corridor is identified in the County’s Goal 5 inventory.

The Board decision for Deschutes County files 247-22-000573-ZC, 574-PA included the following findings:

Pursuant to 660-023-0250(3), the county does not have to apply Goal 5 as part of a Post Acknowledgement Plan Amendment (‘PAPA’) unless the PAPA affects a Goal 5 resource. Pursuant to OAR 660-023-250(3)(b), a PAPA affects a Goal 5 resource if the PAPA would allow new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list. In this case, the Goal 5 resource is the Highway 97 scenic corridor.

In the decision for files 247-22-000573-ZC, 574-PA, the Board ultimately determined that the proposed Zone Change would not require a new Economic, Social, Environmental, and Energy (ESEE) analysis. The Board found that the ESEE analysis that established the Highway 97 scenic corridor considered a wide range of potential uses, and the change in zoning from EFU to Rural Industrial would not introduce new conflicting uses. The applicant has not submitted specific arguments regarding whether the proposed MUA10 zoning would allow new, conflicting uses within the Landscape Management Combining Zone associated with Highway 20. Staff requests the Hearings Officer make findings on whether the applicant has sufficiently demonstrated compliance with Statewide Planning Goal 5.”

The Applicant provided (May 9, 2025 submission, pages 7 – 11 [plus an attached ESEE analysis]) a general response to Staff’s above-stated Statewide Goals and a specific response to Staff’s ESEE concerns. The Hearings

Officer finds it is important to include, within this recommendation, the entirety of Applicant's May 9, 2025 statement related to Statewide Goals. Applicant, in the May 9, 2025 submission, stated:

“OAR 660-015-0010, Statewide Planning Goals and Guidelines

A. Statewide Planning Goals

On pages 32 and 33 in the Burden of Proof, the applicant discussed each of the applicable Statewide Planning Goals. Neither County staff nor any public participant provided any contrary position. Thus, the applicant will not address each of the Goals again in this letter but will discuss the two that appear most prominent in prior similar applications.

Goal 14-Urbanization: *Goal 14 addresses how counties must evaluate urban uses on rural land. Goal 14 does not apply to this application and an exception to it is not required because the County has consistently determined that the uses allowed in the MUA-10 zone are not urban uses. See File 247-24-000392-PA/393-ZC. As the hearings officer in that case noted, LUBA had accepted the County's determination. Central Oregon LandWatch v. Deschutes County, __ Or LUBA __ (LUBA No. 2023-049, Feb. 15, 2024). This Hearings Officer made the same finding in File 247-24-000404-PA/000405-ZC.*

The recent decision in Department of Land Conservation and Development v. Clackamas County, 335 Or App 207 (2024), does not impact the County and LUBA's conclusion. That case involved the regulation that applies to amendments to properties already within a residential exception area reducing parcel size from 10 acres to two acres. The applicant understands that this issue was addressed in File 247-24-000404-PA/000405-ZC.

Goal 5-Natural Resources, Scenic and Historic Areas, and Open Spaces: *As County staff noted, there is one Goal 5 resource on the subject property—a scenic corridor subject to the LM Overlay. The County conducted its Goal 5 assessment in 1992. The LM Combining Overlay was implemented to achieve consistency with Goal 5. However, in a recent hearings officer decision involving Cascade Academy, a hearings officer applied a recent LUBA decision to conclude that because a change to MUA-10 zoning allows uses on the property that would not necessarily been considered then, a new ESEE and analysis is required.*

OAR 660-023-0250:

(3) Local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if:

(a) The PAPA creates or amends a resource list or a portion of an acknowledged plan or land use regulation adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5;

(b) The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list; or

(c) The PAPA amends an acknowledged UGB and factual information is submitted demonstrating that a resource site, or the impact areas of such a site, is included in the amended UGB area.

The applicant believes that the County is not required to apply Goal 5 to this application because uses allowed in the requested MUA-10 zone will not conflict with the Goal 5 resources identified. First, the uses allowed in the MUA-10 zone are rural, low-intensity uses that leave ample opportunity to preserve any scenic view from Highway 20 that may exist. Second, development allowed under the MUA-10 zone reviewed for consistency with the LM standards will not have any negative impact on the view from Highway 20. Indeed, even the formal agency comment from DLCD questioned the need for any new ESEE evaluation in this application.

However, to the extent the applicant must address Goal 5, the applicant will demonstrate how the Goal 5 considerations in the OARs support a decision by the County to allow conflicting uses to compel a conclusion that to the extent the MUA-10 zone allows for conflicting uses, those uses should be allowed in a limited manner after the application of all applicable development standards in Chapter DCC 18.032 and the LM Overlay.

Impact of the Board's decision on File 247-21-00081-PA/247-21-00082-ZC (LBNW LLC)

The Board's recent decision in the above file is instructive and should guide the Hearings Officer here. In that decision, the County Board explained in detail how the County applies the Goal 5 conflicting use analysis.

OAR 660-23-0030-Inventory Process

In LBNW, LLC, the Board determined that the inventory process required under this rule does not have to be completed for a PAPA zoning amendment. The County may rely on the existing inventory. As noted, the existing inventory identifies a single resource-the scenic corridor.

OAR 660-023-0040-ESEE Decision Process

OAR 660-023-0040 describes the process for evaluating potentially conflicting uses.

OAR 660-023-0040(1):

(1) Local governments shall develop a program to achieve Goal 5 for all significant resource sites based on an analysis of the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use. This rule describes four steps to be followed in conducting an ESEE analysis, as set out in detail in sections (2) through (5) of this rule. Local governments are not required to follow these steps sequentially, and some steps anticipate a return to a previous step. However, findings shall demonstrate that requirements under each of the steps have been met, regardless of the sequence followed by the local government. The ESEE analysis need not be lengthy or complex but should enable reviewers to gain a clear understanding of the conflicts and the consequences to be expected. The steps in the standard ESEE process are as follows:

- (a) Identify conflicting uses;*
- (b) Determine the impact area;*
- (c) Analyze the ESEE consequences; and*
- (d) Develop a program to achieve Goal 5.*

(a) Identify conflicting uses;

Consistent with the decision in File 247-21-000881-PA/247-000882-ZC, the potentially conflicting uses

are those uses permitted outright or conditionally in the proposed MUA-10 zone. DCC 18.32.020 lists the outright permitted uses. Some uses present no conflict such as agriculture uses and propagation of forest products. Some of the more common uses are large acre residential developments, accessory dwellings, equestrian/horse facilities, home occupations, irrigation systems, and road projects.

DCC 18.32.030 identifies the conditional uses permitted in the MUA-10 zone. They include commercial activities in conjunction with farm use, dude ranches, guest houses, private parks/playgrounds, personal use landing strips, golf courses planned development, and cluster developments.

(b) Determine impact area;

For the Scenic LM resource, the impact area is portions of Tax Lots 900, 1000, 100, and 400 within .25 miles of the centerline of Highway 20.

(c) Analyze the ESEE consequences;

The applicant included a chart that presents the required ESEE analysis in a simple, short manner as allowed under OAR 660-023-0040(1). There is no requirement that an applicant has the analysis prepared outside. Further, OAR 660-004-0040(4) directs that the County adopt the ESEE analysis. The rules permit an applicant to present its information on the consequences and the County Board is allowed to accept, reject, or supplement those during the review process. The applicant's chart allows the County to make any required findings to support the application for Goal 5 considerations.

The applicant submits that another factor to consider, as was the case in File 247-21-000881-PA/882-ZC, is that as to the property north of Highway 20, the impact area has already been developed with uses at least as intense and impactful as the conflicting uses allowed under the MUA-10 zoning that the applicant requests. There is a church, a Christian Life Center, a PGE service building, and a large solar farm. Any additionally approved uses will not have any further appreciable impact on that side of Highway 20.

(d) Develop a program to achieve Goal 5.

The County, after completing its ESEE consideration process, has three options for treating conflicting uses.

(a) A local government may decide that a significant resource site is of such importance compared to the conflicting uses, and the ESEE consequences of allowing the conflicting uses are so detrimental to the resource, that the conflicting uses should be prohibited.

(b) A local government may decide that both the resource site and the conflicting uses are important compared to each other, and, based on the ESEE analysis, the conflicting uses should be allowed in a limited way that protects the resource site to a desired extent.

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

The applicant submits that based on the ESEE considerations, the County should find that both the scenic resource and the conflicting uses allowed in the MUA-10 zone are important to each other and that conflicting uses should be allowed in a limited manner that protects the resource site to the extent desired. In other words, the applicant advocates for the middle ground in the above regulation.

Conflicting uses should be allowed only after the application of the development standards in DCC Chapter 18.32 and the LM Overlay to ensure protection of any scenic resource.”

The Hearings Officer finds Applicant’s above-quoted statement, along with the ESEE Analysis attached to the May 9 2025 submission, is a comprehensive evidentiary presentation and accurately reflects relevant laws and rules. The Hearings Officer finds the ESEE Analysis adequately addresses issues relevant to Goal 5. The Hearings Officer finds Applicant’s May 9, 2025 submission sufficiently addressed Goal 5 requirements.

The Hearings Officer agrees with Applicant’s Goal 14 comments.

The Hearings Officer addressed the Applicant’s May 9, 2025 nonconforming use issue in earlier findings. As noted in those findings the Hearings Officer concluded that it would be inappropriate to opine as to the current or future legality of the Solar Array as Applicant did not formally apply for a verification of the validity of the Solar Array. If Applicant desires to “validate” the Solar Array the Applicant must follow relevant application steps (including a formal application and payment of fees) to accomplish that goal.

IV. CONCLUSION & RECOMMENDATION

The application in this case is to change the comprehensive plan and zoning designations for the Subject Property. Staff questioned, in the Staff Report, whether the Applicant provided adequate evidence to support findings that various approval criteria/policies were met/satisfied. COLW argued that the application should be denied for a number of reasons. COLW’s primary issues related to whether or not the application met the standards set forth in DCC 18.136.020 and whether the Subject Property is Agricultural Land. COLW also argued that the Applicant’s soil report (Red Hills Soils Report) could not be considered by the Hearings Officer as evidence in this case because the Red Hills Soils Report had not been certified by the Oregon Division of Land Conservation and Development.

The Hearings Officer addressed Staff’s concerns and COLW’s arguments in the findings for this recommendation. The Hearings Officer, based upon the evidence in the record and the arguments made by Staff, Applicant, COLW and other participants, concluded that all relevant approval criteria and goals were, or could be, met/satisfied.

The Hearings Officer recommends approval of Applicant’s proposal.

DESCHUTES COUNTY HEARINGS OFFICER



Gregory J. Frank
Deschutes County Hearings Officer



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 14, 2026

SUBJECT: Consideration to reopen the record on the proposed text amendment to County Code to allow RV parks as a new conditional use in the Tumalo Commercial District

POSSIBLE MOTIONS:

Either:

- A) Move to approve Order No. 2026-005 to reopen the record on the proposed text amendment to Deschutes County Code to allow RV parks as a new conditional use in the Tumalo Commercial District

OR

- B) Move to approve Order No. 2026-005 to reopen and continue the public hearing, at a date and time to be determined, on the proposed text amendment to Deschutes County Code to allow RV parks as a new conditional use in the Tumalo Commercial District

BACKGROUND AND POLICY IMPLICATIONS:

Staff will confer with the Board regarding a proposed Text Amendment to allow an RV park as a new conditional use within the Tumalo Commercial District (file no. 247-25-000106-TA).

This application has qualities of both a quasi-judicial and legislative amendment, and questions were raised during the hearing process regarding how members of the public can provide comments and contact decision-makers. Planning staff and Legal counsel have determined that reopening the record to some extent and providing new public notice is the appropriate way to clarify procedural questions and state that the Board will follow a legislative process.

The full record is available through the webpage below:

<https://www.deschutes.org/cd/page/247-25-000106-ta-tumalo-rv-park-text-amendment>

BUDGET IMPACTS:

None

ATTENDANCE:

Audrey Stuart, Associate Planner

Anthony Raguine, Principal Planner

Will Groves, Planning Manager

REVIEWED

LEGAL COUNSEL

01/14/2026 Item #11.

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Reopening the Record for File No. 247-
25-000106-TA

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ORDER NO. 2026-005

WHEREAS, the Board of County Commissioners ("Board") is the hearings body for an applicant-initiated Text Amendment (File No. 247-25-000106-TA) to Chapter 18.67 of Deschutes County Code, to allow a recreational vehicle (RV) park as a conditional use in the Tumalo Commercial District; and

WHEREAS, an initial public hearing was held before a Hearings Officer on June 16, 2025, and the Hearings Officer issued their recommendation on September 3, 2025; and

WHEREAS, a public hearing was held before the Board on October 22, 2025, and following the close of the hearing the written record was left open until November 12, 2025; and

WHEREAS, pursuant to DCC 22.20.040(D), the Text Amendment is not subject to the 150-day land use clock; and

WHEREAS, prior to the Board's deliberations, staff requested that the Board reopen the record in order to provide additional information regarding the legislative Amendment process; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, HEREBY ORDERS as follows:

Section 1. Pursuant to DCC 22.24.160(A), the record of the subject proposal shall be reopened to accept new testimony for a period of time concluding at such time when the Board of County Commissioners chooses to close the record.

Section 2. Staff shall give written notice to all parties that the record is reopened as established in this Order.

Dated this _____ of _____,
2026

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PHIL CHANG, Chair

ANTHONY DeBONE, Vice Chair

PATTI ADAIR, Commissioner

ATTEST:

Recording Secretary

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Reopening the Record for File No. 247-25-000106-TA

ORDER NO. 2026-005

WHEREAS, the Board of County Commissioners (“Board”) is the hearings body for an applicant-initiated Text Amendment (File No. 247-25-000106-TA) to Chapter 18.67 of Deschutes County Code, to allow a recreational vehicle (RV) park as a conditional use in the Tumalo Commercial District; and

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WHEREAS, prior to the Board's deliberations, staff requested that the Board reopen the record in order to provide additional information regarding the legislative Amendment process; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, HEREBY
ORDERS as follows:

Section 1. Pursuant to DCC 22.24.160(A), the record of the subject proposal shall be reopened to accept new testimony for a period of time concluding at such time when the Board of County Commissioners chooses to close the record.

Section 2. Pursuant to DCC 22.24.140(C), the Board, as the Hearings Body, has granted a continuance of the public hearing, at a date and time to be determined.

Section 3. Staff shall give written notice to all parties of the continued hearing and that the record has been reopened.

Dated this _____ of _____,
20_____

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PHIL CHANG, Chair

ANTHONY DeBONE, Vice Chair

ATTEST:

Recording Secretary

PATTI ADAIR, Commissioner

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

FILE NUMBERS: 247-25-000106-TA

HEARING DATE: June 16, 2025, 1:00 p.m.

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

APPLICANT: Joel Gisler

SUBJECT PROPERTIES: The Tumalo Commercial Zone encompasses multiple properties

REQUEST: Applicant requests text amendments to Deschutes County Code Chapter 18.67, Tumalo Rural Community Zoning Districts. The proposed text amendments would modify the Code to add recreational vehicle parks as a conditional use in the Tumalo Commercial (TUC) zone. The proposed amendments also include specific siting standards and modifications to road access standards.

HEARINGS OFFICER: Tommy A. Brooks

SUMMARY OF DECISION: The Hearings Officer finds that the Applicant’s request satisfies all procedural and substantive criteria necessary to approve the Applicant’s request for amendments to the text of the Deschutes County Code as modified during this proceeding and by this Recommendation. The Hearings Officer recommends the Deschutes County Board of County Commissioners adopt by ordinance the language set forth in this Recommendation as Exhibit B.

I. APPLICABLE STANDARDS AND CRITERIA

Deschutes County Code and Comprehensive Plan

Title 18, Deschutes County Zoning Ordinance
Chapter 18.67, Tumalo Rural Community Zoning District
Chapter 18.128, Conditional Use
Chapter 18.136, Amendments

Title 22, Deschutes County Development Procedures Ordinance
Title 23, Deschutes County Comprehensive Plan

II. BACKGROUND AND PROCEDURE

A. Background

The Applicant requests amendment of the Deschutes County Code (“DCC” or “Code”) to add a conditionally allowable use of recreational vehicle (“RV”) parks in the Tumalo Commercial (TUC) zone. The TUC zone is one of six zones in the County’s Tumalo Rural Community Zoning Districts governed by CDC Chapter 18.67.¹ Under current Code provisions, RV parks are already allowed as a conditional use in the TUC zone, but only “on a lot or parcel in use as a manufactured dwelling park or recreational vehicle park prior to the adoption of PL-15 in 1979 and being operated as of June 12, 1996, as a manufactured dwelling park or recreational vehicle park, including any expansion of such uses on the same lot or parcel as configured on June 12, 1996.”² The Applicant requests a text amendment for the purpose of eventually seeking an entitlement to develop an RV park on one specific property in the TUC zone.

The Applicant’s proposal initially requested the following text amendments to DCC 18.67.040: (1) a revised purpose statement; (2) revisions to DCC 18.67.040(C)(8) and a proposed additional section – DCC 18.67.040(C)(14) – intended to allow RV parks as conditional uses without the current temporal requirements; and (3) a proposed new section – DCC 18.67.040(J) – establishing various siting standards for RV parks. The Applicant included its requested text amendments in the Application. After the Hearing, and in response to some of the comments made at the Hearing, the Applicant submitted revisions to the specific text amendments it seeks. This Recommendation will refer to the Applicant’s final version of the proposed text amendments, attached as Exhibit A, as the “Text Amendments.”

Prior to the Hearing, Staff from the County’s Community Development Department (“Staff”) issued a Staff Report describing the Application and the applicable criteria (“Staff Report”). The Staff Report does not make a recommendation, but the Staff Report does address the applicable criteria and makes certain findings.

B. Notice and Hearing

On April 3, 2025, the County issued a Notice of Application seeking comments on the Application. On May 15, 2025, the County issued a Notice of Public Hearing (“Hearing Notice”) for this matter. The County mailed the Hearing Notice to all owners of property within 250 feet of the TUC Zone, to the Department of Land Conservation and Development, and to other public agencies. The County also published the Hearing Notice in the Bend Bulletin on May 18, 2025.

Pursuant to the Hearing Notice, I presided over the Hearing as the Hearings Officer on June 16, 2025, beginning at approximately at 1:14 p.m. The Hearing took place in a hybrid format, with the Applicant, Staff, and other participants present in the Hearing Room, while the Hearings Officer and other participants participated remotely.

¹ DCC 18.67.010.

² DCC 18.67.040(C)(8).

At the beginning of the Hearing, I noted for the record that this phase of review of the requested Text Amendments would be quasi-judicial in nature and, therefore, I directed participants to direct comments to the approval criteria and standards, and to raise any issues a participant wanted to preserve for appeal if necessary. At the conclusion of the evidentiary Hearing, and at the request of the Applicant, I announced that the record would remain open for written materials as follows: (1) any participant could submit additional materials until June 30, 2025; (2) any participant could submit rebuttal materials until July 14, 2025; and (3) the Applicant could submit a final legal argument without new evidence by July 28, 2025. Participants were further instructed that all submittals must be received by the County by 4:00 p.m. on the applicable due date. The Hearing concluded at approximately 3:43 p.m.

At the beginning the Hearing, participant Nunziata Gould stated a preliminary objection to the time the Hearing was held and to any time limits placed on participants. The Hearing was held as set forth in the Hearing Notice, and participant Gould did not assert that the Hearing Notice or the time of the Hearing are in violation of the Code or any other legal requirements. Further, the Hearing followed the procedures set forth in DCC Chapter 22. While I indicated that public comments would be limited to three minutes each during the Hearing, some individuals, including participant Gould, were given additional time. No participant asserted that the actual time allotted to each was insufficient or in any way impaired a substantial right. Based on the foregoing, I find no action was required to further address participant Gould's preliminary objection.

C. Nature of Decision

The Text Amendments propose revisions only to the language of the Code, and not a map amendment. The adoption of Code language is generally legislative in nature. Because the Code allows individuals to request text amendments to the Code and establishes a procedure for processing an application, the adoption of Code language could also be viewed as quasi-judicial in nature when requested by an individual. As explained below, this is a unique situation in which the Text Amendments are both legislative and quasi-judicial in nature. DCC 18.136.010 governs amendments to the Code:

DCC Title 18 may be amended as set forth in DCC 18.136. The procedures for text or legislative map changes shall be as set forth in DCC 22.12. A request by a property owner for a quasi judicial map amendment shall be accomplished by filing an application on forms provided by the Planning Department and shall be subject to applicable procedures of DCC Title 22.

By its express terms, this provision states that the process for a text amendment is as set forth in DCC 22.12. But DCC 22.12 broadly governs "legislative" procedures. DCC 22.04.020 defines legislative changes as follows:

Legislative changes generally involve broad public policy decisions that apply to other than an individual property owner. These include, without limitation, amendments to the text of the comprehensive plans, zoning ordinances, or the subdivision or partition ordinance and changes in zoning maps not directed at a small number of property owners.

As Staff points out in the Staff Report (attached to this decision as Exhibit C), the Text Amendments do not fit squarely within this definition. Further, the Code does not expressly define “text amendment” in the context of legislative changes or in the context of a quasi-judicial land use application, even though DCC 22.12.030 allows an individual to seek legislative changes through an application process. The Staff Report suggests that the Text Amendments should be processed in the same manner as a quasi-judicial plan amendment, which is governed by DCC 22.28.030.

In support of its conclusion, Staff provides a detailed analysis under *Strawberry Hill 4 Wheelers v. Benton Co. Bd. of Comm.*, 287 Or 591, 601 P2d 769 (1979) (“*Strawberry Hill 4 Wheelers*”). In that case, the Oregon Supreme Court set out a multi-factor test to determine what process applies to a land use application:

Generally, to characterize a process as adjudication presupposes that the process is bound to result in a decision and that the decision is bound to apply preexisting criteria to concrete facts. The latter test alone [applying preexisting criteria to concrete facts] proves too much; there are many laws that authorize the pursuit of one or more objectives stated in general terms without turning the choice of action into an adjudication. Thus a further consideration has been whether the action, even when the governing criteria leave much room for policy discretion, is directed at a closely circumscribed factual situation or a relatively small number of persons. The coincidence both of this factor and of preexisting criteria of judgment has led the court to conclude that some land use laws and similar laws imply quasijudicial procedures for certain local government decisions. *Strawberry Hill 4 Wheelers* at 602-03.

As Staff correctly notes, the *Strawberry Hill 4 Wheelers* decision sets out three factors which must be considered:

1. Is the inquiry bound to result in a decision?
2. Are there preexisting criteria that are applied to concrete facts?
3. Is the inquiry directed at a closely circumscribed factual situation or a relatively small number of persons?

I agree with Staff that the three factors listed above, in this case, warrant following a quasi-judicial process for the Application, at least initially. First, even if the Text Amendments are legislative changes, the Code provides an opportunity for an individual to make an application to initiate amendments. Whether the County approves or denies that application, a decision will result, so the inquiry is bound to result in a decision. Second, the Code contains preexisting criteria applicable to the Applicant’s request. Although those Code provisions are largely procedural, the quasi-judicial process can determine if those requirements are met. Third, this matter is directed at a relatively small number of persons because the Text Amendments, as initially proposed, contain siting criteria that effectively limit the impact of the changes to only two properties.

At the same time, the Text Amendments carry the qualities of a legislative act. The language in DCC 22.04.020 provides that legislative changes “generally involve broad public policy decisions that apply to other than an individual property owner” (emphasis added), and that definition does not state that decisions applicable to only one individual property owner cannot be legislative. Indeed, that Code provision goes on to list examples of legislative decisions, including amendments to the text of zoning ordinances.

An important component of DCC 22.12 is DCC 22.12.050, addressing final decisions. That Code provision states that “[a]ll legislative changes shall be adopted by ordinance.” That language does not distinguish between purely legislative changes and those legislative changes that may be processed using a quasi-judicial process. This makes sense because the DCC is adopted by ordinance, and any changes to the text of the Code requires an amendment to that adopted ordinance. It also makes sense because ORS 215.503(2) requires that “[a]ll legislative acts relating to comprehensive plans, land use planning or zoning adopted by the governing body of a county shall be by ordinance” (emphasis added).

Based on the foregoing, I find that, in this case, the adoption of text amendments proposed by an applicant is a two-step process. In the first step of the process, the Applicant has a right under the Code to submit and to have considered an application to amend the Code’s text. This phase of the process is quasi-judicial in nature, and it is appropriate to have a hearing and to build a record following the principles of a quasi-judicial process. As part of that process, the Hearings Officer addresses the application only of the County’s existing laws. The second step of the process is for the Deschutes County Board of Commissioners (“County Board”) to adopt an ordinance to incorporate any text amendments to the Code. Amendments to the text of a zoning ordinance are a change in the County’s law, and only the County Board can make such a change. In other words, the Hearings Officer is without authority to issue a decision that amends the County’s Code. The Hearings Officer, however, can make a recommendation to the County Board based on what develops in the quasi-judicial phase of the process. The County Board is free to accept, modify, or reject the Hearings Officer’s recommendation.

III. FINDINGS AND CONCLUSIONS

A. Adoption and Incorporation of Findings in Staff Report

The Staff Report contains a comprehensive discussion and conclusion of the criteria applicable to the Application. Many of the conclusions in the Staff Report are not challenged in this proceeding. In some areas of the Staff Report, Staff requests that the Hearings Officer either modify Staff’s findings or make the findings directly. I find that the Staff Report correctly lists the applicable criteria, and I hereby adopt the discussion and conclusions in the Staff Report as my findings. The remainder of the findings in this Recommendation are intended to supplement the Staff Report and to address specific issues raised during this proceeding. To the extent any of the findings in this Recommendation conflict with the discussion and conclusions in the Staff Report, the findings set forth in this Recommendation control anything to the contrary in the Staff Report.

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B. Issues Raised in Opposition to the Application and in the Staff Report

Several participants submitted comments to the record in opposition to the Application. The vast majority of those comments did not address specific Code provisions. Instead, those comments introduced general concerns about RV parks. In the findings below, I examine the specific criteria that were addressed by participants, and I attempt to identify and address criteria that may be invoked by the participants who testified in opposition to the Application. These findings also address the issues raised in the Staff Report.

1. Sewage Disposal Services

Multiple participants expressed concern over how a new RV park in the TUC zone would handle wastewater disposal. DCC 18.128.170 regulates wastewater disposal in RV parks and is applicable in all zones. Under that Code provision, each RV space in an RV park is to be provided with piped potable water and sewage disposal service, and the RV park must provide a laundry facility.

The Applicant initially proposed language that would require any parcel proposed as an RV park to be “located in a sewer district,” but also proposed creating an exception to certain provisions of DCC 18.128.170, such that an RV park in the TUC zone would not have to comply with the sewage disposal and laundry requirements “until a sewer district is willing and able to provide service.” As acknowledged by the Applicant, an RV park that developed under that proposal could rely on septic systems until a sewer system became available.

The concerns raised by some participants generally asserted that septic systems in the TUC zone are not sufficient and that reliance on that technology would pose environmental and health risks. While these comments did not identify any particular criterion to which they are relevant, and did not provide supporting evidence addressing the adequacy of septic systems, the Applicant nevertheless modified the proposed Code changes to address these concerns. Specifically, the final version of the Text Amendments remove the originally-proposed exceptions to DCC 18.128.170, while also clarifying that an RV Park must be located in a sewer district or otherwise provide confirmation that “a sewerage system that can serve the proposed sewage flow from the Recreational Vehicle Park is both legally and physically available.” According to the Applicant, this proposed revision will ensure that each space in an RV park will be connected to a central sewer system, thereby negating the need to address the sufficiency of septic systems.

I agree with the Applicant that the removal of the originally-proposed exception to DCC 18.128.170 will address any sewage disposal concerns. Before a conditional use permit for an RV park may be approved, an applicant must demonstrate that a central sewer system is legally and physically available. Under DCC 18.128.170, the owner of the RV park would then have to ensure that each space in an RV park is actually connected to an available sewer system. That being said, I recommend that the County Board slightly modify the proposed language if it approves the Text Amendments. As proposed, the language refers to a “sewer district.” The actual district that exists in the area is the Tumalo Sanitary District, and “sanitary district” is the term used in ORS Chapter 450 that allows such districts. I also note that ORS Chapter 450 allows the creation of a “sanitary authority.” I recommend that the Board adhere to that more precise description by modifying the Applicant’s language to read as follows for DCC 18.67.040(J)(1)(b):

b. The parcel(s) shall all be located in the boundaries of a sewer sanitary district or sanitary authority, or confirmation shall be provided that a sewerage sewage collection and disposal system that can serve the proposed sewage flow from the Recreational Vehicle Park is both legally and physically available; and

2. Comprehensive Plan Policies

The Applicant identified several provisions in the County's Comprehensive Plan ("Plan") as potentially relevant to the Application. Staff recites those Plan provisions on pages 13 through 16 of the Staff Report and asks the Hearings Officer to determine if the Applicant has demonstrated compliance with those provisions.

Participant Kris Cranston submitted comments asserting that the Text Amendments are not compatible with the County's Plan, which comments were repeated verbatim by other participants. Those comments, however, simply state that the Plan emphasizes the protection of the rural residential character and the promotion of orderly, compatible development. Participant Cranston (and others) does not identify any specific Plan policies on which those comments are based, and, to the contrary, simply state that the proposed Text Amendments would "violate" Deschutes County Code Title 18 – County Zoning. Other comments in the record similarly invoke the Plan in broad terms, without reference to specific Plan provisions. I find that participant Cranston's arguments (and similar or identical arguments of other participants) are not developed enough for me to address in this Recommendation with respect to consistency with the Plan. I therefore find that the Applicant's assertions with respect to the Plan provisions identified on pages 13 through 16 of the Staff report are sufficient to demonstrate compliance with the Plan.

The Applicant and multiple participants also address the Tumalo Community Plan ("Community Plan"), which is a component of the Plan. The Applicant points to the economic development goal of the Community Plan, which is to "[r]etain the economic vibrancy of Tumalo's historic core and industrial areas while providing economic development opportunities that are compatible with the small town rural character of the community." Policy 4 under that Goal is to support economic development initiatives and tourism in the Tumalo area. The Staff Report finds that the proposed Text Amendments are consistent with that policy. Participants in opposition to the Application do not address the economic development portion of these goals and policies and, instead, assert that an RV park does not preserve the rural or "small town" character of the community.

Having reviewed and considered all comments submitted by participants, I find that the Text Amendments are not inconsistent with the Community Plan. Evidence in the record supports a finding that RV parks exist in rural areas. Indeed, RV parks are already allowed (albeit in limited circumstances) in the TUC zone. Further, the Community Plan expressly contemplates that commercial activities should be encouraged. The Community Plan, as with most Plan provisions, requires a balance between competing considerations. Based on the record before me, I find that the development of RV parks in the TUC zone can achieve that balance, and there is nothing inherent about such a development that would require the prohibition of RV parks in the TUC zone. I also note that the County will still have to review specific

development proposals through a conditional use process, during which impacts to surrounding areas will be considered and a decision will be made based on a fact-specific proposal. At this stage, where the County is simply determining if some new RV parks may be conditionally allowable in the TUC zone, I find that the Applicant has demonstrated that they can be, and there is a sufficient basis for the Board to approve the Text Amendments for that purpose.³

3. Statewide Planning Goals and Administrative Rules

Multiple participants mentioned Statewide Planning Goals (“Goals”), but did not specifically address those goals. For example, participant Brady submitted comments stating that “the project may be inconsistent with Statewide Planning Goals 2 (Land Use Planning) and 14 (Urbanization), which prioritize the containment of high-intensity uses within Urban Growth Boundaries.” That assertion was repeated verbatim by other participants. Because these comments are couched in terms of generalized allegations that the proposal “may be” inconsistent with the Goals, but do not offer evidence or any specific argument to support such allegations, I find that these arguments are not sufficiently developed for a response in this Recommendation.

One Goal that some participants seemed to invoke is Statewide Planning Goal 12 (“Goal 12”), which relates to transportation. In the context of a text amendment to a land use regulation, the applicable part of Goal 12 is set forth in OAR 660-012-0060, the Transportation Planning Rule (“TPR”). Under the TPR, the County must consider whether a proposed text amendment will significantly affect a transportation facility. The Applicant submitted an engineering analysis that concludes the proposal will not significantly affect a transportation facility. The County’s Senior Transportation Planner reviewed and agreed with the assumptions, methodologies, and conclusions in the Applicant’s report.

The majority of comments in the record relating to transportation assert that an RV park will cause unwanted traffic impacts, both in terms of volume and safety. None of those comments credibly assert that traffic resulting from the Text Amendments will significantly affect a transportation facility as that term is defined in OAR 660-012-0060, nor do they provide any analysis that disputes the findings in the Applicant’s report. At best, those comments questioned some of the assumptions in the report. Having reviewed the entire record, I find that the Applicant’s has met its burden of proving that the Text Amendments satisfy the TPR and are consistent with Goal 12.

The Staff Report notes that OAR 660-022-0030 imposes certain requirements the County must follow when planning unincorporated communities. Among those requirements, OAR 660-022-0030(8) requires that zoning of rural communities must ensure that cumulative development will not result in public health hazards or adverse environmental impacts that violate state or federal water quality regulations and will not exceed the carrying capacity of the soil or of existing water supply resources and

³ The Applicant and the Staff Report also highlight Policy 5 of the Community Plan’s economic development goal, which guards against adverse effects on water resources and wastewater disposal. As discussed above, I find that the Applicant has adequately addressed waste water disposal. I also find that the evidence in the record supports a finding that amending the TUC zone to conditionally allow RV parks will not adversely affect water resources. The Applicant has documented the availability of municipal water to the properties where RV parks could be developed.

sewer services. The Staff Report asks the Hearings Officer to determine if the Text Amendments satisfy the rule language. While other participants addressed broad concerns relating to public health, environment, water resources, and wastewater disposal, no participant asserted that the Text Amendments will violate OAR 660-022-0030 generally, or subsection (8) of that rule specifically.

Based on the information provided by the Applicant, I find that OAR 660-022-0030(8) is satisfied. As concluded above, the Applicant has adequately addressed water resources and wastewater disposal. Further, no participant asserts that the Text Amendments will cause development that, cumulatively, will violate state or federal water quality regulations, or that will exceed the carrying capacity of the soil.

4. Policy-Related and Development-Specific Issues

The majority of comments submitted in opposition to the Text Amendments expressed a desire that the County not allow new RV parks in the Tumalo area. Those comments center around statements regarding what the County “should” or “should not” do as a matter of policy. Similar comments addressed site-specific concerns based on assumptions of how a specific RV park would be developed, even though no development proposal has been submitted

I find that these comments are not relevant at this time. In the context of a proposed text amendment, the County Board must eventually make a policy decision as to what uses may be allowed outright and conditionally in the TUC zone. If the Board does approve the Text Amendments, review of a future conditional use permit application will be the appropriate venue for addressing site-specific or development-specific concerns.

V. CONCLUSION AND RECOMMENDATION

Based on the Findings above, which augment the findings and conclusions in the Staff Report, I find that the Applicant’s proposed amendments to DCC Chapter 18.67 comply with the County’s provisions for amending the Code. However, I find that one portion of the Text Amendments could be revised by the Board of Commissioners in its adoption of an Ordinance approving the application and amending the Code to better reflect statutory language related to sanitary districts. I therefore recommend that the Deschutes County Board of Commissioners adopt the proposed text amendments presented in Exhibit A, as modified in Exhibit B by ordinance, unless the Board of Commissioners determines there is a legislative/policy reason not to adopt the amendments.

Dated this 2nd day of September 2025



Tommy A. Brooks
Deschutes County Hearings Officer

Attachment:

Exhibit A – Text Amendments (Applicant’s Version)

Exhibit B – Modified Text Amendments (Hearings Officer’s Version)

Exhibit C – Staff Report

EXHIBIT A

APPLICANT'S TEXT AMENDMENTS

DCC 18.67.040 Commercial (TuC) District

* * *

J. Additional Standards for Recreational Vehicle Parks

1. Recreational Vehicle Parks shall only be allowed on a single parcel or contiguous parcels under common ownership that meet the following requirements:

- a. The area of the parcel(s) proposed for development shall exceed 2.3 acres but no more than 5 acres;
- b. The parcel(s) shall all be located in a sewer district or confirmation shall be provided that a sewerage system that can serve the proposed sewage flow from the Recreational Vehicle Park is both legally and physically available; and
- c. The single parcel or at least one of the contiguous parcels under common ownership shall be adjacent to State Highway 20.

2. Compliance with DCC 18.128.170.

- a. To ensure compliance with DCC 18.128.170(G) which prohibits any recreational vehicle remaining in a park for more than 30 days in a 60 day period, Recreational Vehicle Parks in the Tumalo Commercial District shall only provide temporary lodging with no recreational vehicles utilized as permanent “residential dwellings” as that term is used in ORS 197.493.
- b. Compliance with DCC 18.128.170(O) requiring that access to a Recreational Vehicle Park shall be from an arterial or collector street shall not be applicable in the Tumalo Commercial District so long as an applicant instead demonstrates that the street providing direct access to the proposed Recreational Vehicle Park shall not be unreasonably impacted. To demonstrate compliance with this standard, an applicant shall address traffic capacity and flow, geometric design, pavement design, livability impacts on local residents, and accessibility and convenience to amenities and state highways.
- c. Recreational Vehicle Parks in the Tumalo Commercial District shall impose quiet hours from 10:00 pm to 7:00 am daily.

EXHIBIT B MODIFIED TEXT AMENDMENTS

DCC 18.67.040 Commercial (TuC) District

* * *

J. Additional Standards for Recreational Vehicle Parks

1. Recreational Vehicle Parks shall only be allowed on a single parcel or contiguous parcels under common ownership that meet the following requirements:

- a. The area of the parcel(s) proposed for development shall exceed 2.3 acres but no more than 5 acres;
- b. The parcel(s) shall all be located in the boundaries of a sewer sanitary district or sanitary authority, or confirmation shall be provided that a sewerage sewage collection and disposal system that can serve the proposed sewage flow from the Recreational Vehicle Park is both legally and physically available; and
- c. The single parcel or at least one of the contiguous parcels under common ownership shall be adjacent to State Highway 20.

2. Compliance with DCC 18.128.170.

- a. To ensure compliance with DCC 18.128.170(G) which prohibits any recreational vehicle remaining in a park for more than 30 days in a 60 day period, Recreational Vehicle Parks in the Tumalo Commercial District shall only provide temporary lodging with no recreational vehicles utilized as permanent “residential dwellings” as that term is used in ORS 197.493.
- b. Compliance with DCC 18.128.170(O) requiring that access to a Recreational Vehicle Park shall be from an arterial or collector street shall not be applicable in the Tumalo Commercial District so long as an applicant instead demonstrates that the street providing direct access to the proposed Recreational Vehicle Park shall not be unreasonably impacted. To demonstrate compliance with this standard, an applicant shall address traffic capacity and flow, geometric design, pavement design, livability impacts on local residents, and accessibility and convenience to amenities and state highways.
- c. Recreational Vehicle Parks in the Tumalo Commercial District shall impose quiet hours from 10:00 pm to 7:00 am daily.

**EXHIBIT C
STAFF REPORT**



COMMUNITY DEVELOPMENT

STAFF REPORT TUMALO RV PARK TEXT AMENDMENT

FILE NUMBER(S): 247-25-000106-TA

SUBJECT PROPERTY: The Tumalo Commercial Zone encompasses multiple properties.

APPLICANT: Joel Gisler

APPLICANT'S ATTORNEY: Adam Smith, of Schwabe, Williamson and Wyatt

REQUEST: Amendments to Deschutes County Code (DCC) Chapter 18.67, Tumalo Rural Community Zoning Districts. The proposed amendments will modify the Deschutes County Code (DCC) to add recreational vehicle (RV) parks as a conditional use in the Tumalo Commercial (TUC) Zone. The proposed amendments include siting standards for new RV parks in the TUC Zone, including that the development area must be two-to-five acres in size, contiguous to Highway 20, and located within a sewer district. In addition, the proposed amendments will modify the standards for road access and wastewater facilities for RV parks in the TUC Zone.

STAFF CONTACT: Audrey Stuart, Associate Planner
Phone: 541-388-6679
Email: Audrey.Stuart@deschutes.org

RECORD: Record items can be viewed and downloaded from:
<https://www.deschutes.org/cd/page/247-25-000106-ta-tumalo-rv-park-text-amendment>

I. APPLICABLE CRITERIA

Deschutes County Code (DCC)

Title 18, Deschutes County Zoning Ordinance:

Chapter 18.67, Tumalo Rural Community Zoning Districts

Chapter 18.128, Conditional Use

Chapter 18.136, Amendments

Title 22, Deschutes County Development Procedures Ordinance

II. BASIC FINDINGS

LOT OF RECORD: DCC 22.04.040(B) does not require lot of record verification for Text Amendment applications. The proposed amendments will apply to all properties within the TUC Zone. Any future development of an RV park would require property-specific land use review, and lot of record findings would be made at that time.

SITE DESCRIPTION: The TUC Zone is located within the unincorporated community of Tumalo, which is located along Highway 20 to the northwest of the City of Bend. The TUC Zone is predominantly located to the north of Highway 20, but also includes approximately 8.7 acres located to the south of Highway 20. The development pattern within the TUC Zone includes a variety of small-to-medium size commercial uses such as food cart pods, a gas station, eating and drinking establishments, and two small strip malls. The TUC Zone also includes a number of undeveloped lots as well as existing residential development.

PROPOSAL: The applicant proposes to amend section 18.67.040, regarding the Tumalo Commercial (TUC) Zone. The proposed language of the Text Amendment is included as Exhibit 1 and summarized as follows:

- The Applicant proposes to modify the Purpose statement of the TUC Zone to include the travel needs of people passing through the area.
- The Applicant proposes to add an RV park as a new conditional use within the zoning district.
- The Applicant proposes siting standards for new RV parks in the TUC Zone and also proposes certain exceptions to the standards of DCC 18.128.170 for RV parks in the TUC Zone. Specifically, new RV parks in the TUC Zone would not require road access from a collector or arterial, and would not be required to provide laundry facilities and sewage disposal until sewer service is available to the property.

The submitted Burden of Proof provides the following background on the proposed Text Amendment:

This application is submitted in anticipation of two upcoming companion conditional use applications. The subject text amendment to DCC Title 18, Chapter 18.67.040, TuC District is intended to only allow RV Parks on a limited number of parcels in the TuC District owned by the Applicant, with the two upcoming conditional use applications then seeking approval for related uses on the Applicant's parcels.

PUBLIC AGENCY COMMENTS: The Planning Division mailed notice on April 3, 2025, to several public agencies and received the following comments:

Deschutes County Senior Transportation Planner, Tarik Rawlings

I have reviewed the transmittal materials for 247-25-000106-TA for a text amendment request to DCC Chapter 18.67 (Tumalo Rural Community Zoning Districts) to add recreational vehicle (RV) parks as a conditional use in the Tumalo Commercial District (TUC).

I have reviewed the application materials for potential Transportation Planning Rule (TPR) OAR 660-012 effects, including the applicant's transportation memorandum produced by Transight Consulting, LLC, (dated January 8, 2025) and I agree with its assumptions, methodology, and conclusions. The memorandum adequately addresses reasonable worst case scenario analysis through a comparison of the existing outright allowed uses (utilizing ITE category 822 for Strip Retail Plaza as an aggregate category encompassing eating/drinking establishments, small retail, and offices each totaling less than 10,000 square-feet) to the proposed Campground/RV Park (ITE 416) use and ultimately concludes that no significant impacts will be anticipated with the proposed text amendment. Staff notes that, should the proposed text amendment receive approval, further traffic analysis may be required at the time of future development depending on the future development's vehicle trip generation potential. While the current text amendment does not absorb County road capacity, any future proposal for the development of a Campground/RV Park under the proposed use category must demonstrate compliance with the transportation analysis requirements of DCC 18.116.310, including p.m. peak hour vehicle trips related to System Development Charges (SDCs), mitigations, and adequacy of access.

Thanks for the opportunity to provide comment and please let me know if you have any questions.

Deschutes County Onsite Wastewater Manager, Todd Cleveland

This proposal would allow an RV park without full connections for sewer, water and not require a central comfort station. This would not require connection to a community wastewater system. However, once a wastewater treatment system becomes available in the Tumalo , it would be beneficial to provide full connections and services at RV locations. The lack of sewer connections would limit the length of stay because RV users would need to take their RV to an approved dump station.

Onsite prefers to have facilities that will promote proper wastewater treatment and disposal conveniently available. Hopefully, this facility will be able to be connected as soon as possible when a community wastewater treatment facility becomes available.

Onsite wastewater permits would be unlikely to be approved for the proposed site.

Being in the Tumalo Sanitary District, when sewer becomes both legally and physically available to this location the only option would be to connect to the sanitary system. An onsite system could not be permitted once sewer is available (OAR 340-071-0160(4)).

Deschutes County Building Division, Krista Appleby, June 4, 2025 Comments

OAR 650 is applicable to Recreation Parks & Organizational Camps. Per OAR 918-650-0005(12) definition of 'recreational vehicle park' falls under the Recreation Park requirements. Referenced Table attached as PDF.

Among other [requirements in] OAR 650, toilets are required – see clip below. Referenced Table 3-RV is attached as PDF.

Building Codes Division - Chapter 918

Division 650

RECREATION PARKS AND ORGANIZATIONAL CAMPS

918-650-0050

Toilets

(1) Toilet facilities must be provided in every recreation park or organizational camp. They must be convenient and accessible and must be located within 500 feet of any recreational vehicle space or camping site not provided with an individual toilet facility or sewer connection.

EXCEPTION: The requirement for toilets in picnic parks, campgrounds and organizational camps may be waived by the regulating authority for areas not accessible by road.

(2)(a) Sanitary facilities must be as required in Table 3-RV;

(b) Toilet Bowls. Toilet bowls for public use must be elongated bowls with open-front seats. Any room with flush toilets must be provided with a floor drain as required in the Oregon Plumbing Specialty Code;

(c) Signs. Toilets must either be marked for the designated sex or be provided with a privacy lock. If not apparent, the location of toilets must be indicated by appropriate direction signs;

(d) Flush Toilets and Showers. Flush toilets and showers and the buildings containing them must be constructed in accordance with the State Building Code;

(e) Unisex Toilets. Toilet facilities designed to serve an occupant load of 15 persons or less may serve both sexes. Such toilet facilities must be equipped with a urinal.

(3) Nonwater-Carried Toilets. Nonwater-carried toilets, including, but not limited to, chemical or vault toilets or pit privies, must be constructed and located in accordance with the requirements of the Department of Environmental Quality.

Deschutes County Building Division, Randy Scheid, April 3, 2025 Comments

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.

918-650-0010

Scope and Purpose

(1) OAR chapter 918, division 650 establishes minimum safety standards for the design and construction of recreation parks and organizational camps as authorized in ORS 455.680.

(2) These rules establish design and construction requirements for recreation parks and organizational camps for the purpose of protecting the life, health, safety and welfare of persons using these facilities.

EXCEPTIONS:

1- These rules do not apply to parking areas offering access to beaches, marinas, boat ramps, piers, ski areas, rivers, trails and similar facilities, where no recreational vehicle utility connections are provided.

2- The area development permit does not include permits or related fees for buildings, mobile home setups, mechanical, plumbing or electrical systems, boiler, or elevators, or permits required by other agencies.

Statutory/Other Authority: ORS 455.020, 455.110 & 455.680

Statutes/Other Implemented: ORS 455.680

History:

BCD 26-2011, f. 9-30-11, cert. ef. 10-1-11

BCA 10-1987, f. & ef. 9-18-87, Renumbered from 814-029-0050

918-650-0020

Permit Required

No person may establish or enlarge the facilities of any recreation park or organizational camp or do any construction within the recreation park or organizational camp or cause the same to be done without first obtaining all required permits from the building official and paying the prescribed permit fees. Multiple permits may be required when the proposed work involves two or more code areas (i.e., structural, electrical, plumbing, or mechanical).

EXCEPTION: Applications for permits, submission of plans and payment of fees are not required for additions, alterations, relocation and maintenance of picnic tables, play equipment, fire pits and similar facilities in existing parks.

Statutory/Other Authority: ORS 455.020, 455.110 & 455.680

Statutes/Other Implemented: ORS 455.680

History:

BCD 26-2011, f. 9-30-11, cert. ef. 10-1-11

BCA 10-1987, f. & ef. 9-18-87, Renumbered from 814-029-0065

The following agencies did not respond to the notice: Bend Fire Department, Deschutes County Assessor, Deschutes County Road Department, Laidlaw Water District, Oregon Department of Transportation, and Tumalo Irrigation District.

PUBLIC COMMENTS: The Planning Division mailed notice of the application to all property owners within the TUC Zone and within a 250-foot buffer around the TUC Zone on April 3, 2025. As of the date of this staff report, 62 comments have been submitted by members of the public in opposition to the proposal. Concerns raised in the public comments included:

- Impacts to neighborhood livability and the transient nature of RV park residents.
- The density of an RV park being incompatible with the rural nature of Tumalo.

- Increased traffic and whether the local roads are sufficient to accommodate RV's.
- Lack of existing sewage facilities to treat the wastewater from an RV park.
- Whether the Text Amendment conflicts with the Tumalo Community Plan, which was updated in 2024.
- Impacts to natural resources such as the nearby section of the Deschutes River.
- Whether the proposal is necessary given the nearby facilities at Tumalo State Park.

NOTICE REQUIREMENT: On May 15, 2025, the Planning Division mailed a Notice of Public Hearing to all property owners within the TUC Zone and within 250 feet of the TUC Zone, as well as to public agencies. A Notice of Public Hearing was published in the Bend Bulletin on Sunday, May 18, 2025. Notice of the first evidentiary hearing was submitted to the Department of Land Conservation and Development on May 12, 2025.

REVIEW PERIOD: According to Deschutes County Code 22.20.040(D), the review of the proposed quasi-judicial Text Amendment application is not subject to the 150-day review period.

III. FINDINGS & CONCLUSIONS

Amendments

The Applicant proposes to amend section 18.67.040 of Deschutes County Code to allow RV parks as a new conditional use within the TUC Zone. The amendments also set forth standards for new RV parks within the zone, including specific wastewater standards. Currently, wastewater disposal within RV parks is regulated by DCC 18.128.170, which are conditional use standards that apply to all zones governed by Title 18. DCC 18.128.170(D) requires each RV space to be provided with piped potable water and sewage disposal service. The relevant text of the proposed amendments is copied below, and it would allow the developer of an RV park to only provide sewage disposal service once a sewer district is able and willing to serve the property. The full text of the proposed amendments is included as Exhibit 1.

J. *Additional Standards for Recreational Vehicle Parks*

...

2. *Compliance with DCC 18.128.170.*

- A. *For sewage disposal service and laundry facilities only, Recreational Vehicle Parks in the Tumalo Commercial District shall not be required to comply with DCC 18.128.170(D) and (J) until a sewer district is willing and able to provide service to the proposed project. The County may include conditions of approval requiring Recreational Vehicle Parks to provide sewer connection to each recreational vehicle space and to provide laundry facilities as outlined in DCC 18.128.170(J) once sewer service is available from a sewer district.*

Staff notes that agency comments from the Deschutes County Onsite Wastewater Division and

Deschutes County Building Division raise questions about the facilities that would be required under the proposed amendments. Though it is not an applicable land use approval criterion, comments from Building Division staff cite concerns regarding compliance with State Building Code if toilet facilities are not provided within an RV park. Staff notes these concerns would be addressed at the time a specific development proposal is submitted. However, staff asks the Hearings Officer to address these comments as they see fit and as they pertain to applicable approval 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, as the property owner, has requested a quasi-judicial Text Amendment and filed the corresponding application. The Applicant has filed the required land use application forms for the proposal. The application will be reviewed utilizing the applicable procedures contained in Title 22 of the Deschutes County Code.

DCC 22.04.020 includes the following definition:

"Quasi-judicial" zone change or plan amendment generally refers to a plan amendment or zone change affecting a single or limited group of property owners and that involves the application of existing policy to a specific factual setting. (The distinction between legislative and quasi-judicial changes must ultimately be made on a case-by-case basis with reference to case law on the subject.)

The subject application is not a request to change the zoning or Comprehensive Plan designation of the subject property. However, as described below, the quasi-judicial process of a Comprehensive Plan Amendment is the most applicable guidance regarding Text Amendments that are not squarely legislative. Therefore, staff includes the definition of a quasi-judicial process above for reference and also addresses the provisions of DCC 22.28.030, regarding final action on Comprehensive Plan amendments. The application materials include the following analysis of the process for the subject Text Amendment:

The subject text amendment application is not an application for a quasi-judicial map amendment, as this text amendment will not alter the County's zoning map if it is approved. Existing case law and the DCC allow for flexibility where text amendments may be processed

as quasi-judicial or legislative. See *Strawberry Hill 4 Wheelers v. Benton County*, 287 Or 591 (1979).

Strawberry Hill 4 Wheelers sets forth certain factors determining when applications are quasi-judicial or legislative: (1) the process is bound to result in a decision; (2) the decision is bound to apply preexisting criteria to concrete facts; and (3) the action is directed at a closely circumscribed factual situation or a relatively small number of persons. *Id.* The more definitely the questions are answered in the negative, the more likely the decision under consideration is a legislative land use decision. *Id.* Each of the factors must be weighed, and no single factor is determinative. *Id.*

Here, the subject text amendment application satisfies the first prong as the process is bound to result in a decision. Either the Text Amendment will be approved or denied. The second factor is also answered in the positive because the proposed text amendment applies preexisting criteria from the applicable provisions of the DCC and the Statewide Land Use Planning Goals to concrete facts i.e., whether the proposed amendments meet those criteria. Last, and most strongly, the third factor is answered in the positive. The proposed text amendment applies to a closely circumscribed factual situation and a small number of persons. The TuC District itself only applies to a small geographic area of the unincorporated community of Tumalo. Narrowing the scope even more, the text amendment will then only apply to parcels in the TuC District that are adjacent to Hwy 20, under common ownership, and collectively between 2 and 5 acres in size. The land use consequences are disproportionately concentrated on a relatively small pool of persons (if not only the Applicant), as opposed to a larger region or the general population, therefore a quasi-judicial procedure is the correct option according to the existing case law. *Id.*; *Van Dyke v. Yamhill County*, __ Or LUBA __ (LUBA No 2018-61, Dec 20, 2018) (slip op at 4).

Indeed, this is also consistent with the DCC itself. “Legislative changes” are defined as those that “generally involve broad public policy decisions that apply to other than an individual property owner. These include, without limitation, amendments to the text of the comprehensive plans, zoning ordinances, or the subdivision or partition ordinance and changes in zoning maps not directed at a small number of property owners.” See DCC 22.04.020. The DCC also defines “legislative” as “a planning or zoning action resulting in a general rule or policy which is applicable to an open class of individuals or situations.” See DCC 18.04.030. By design, the subject text amendment application only applies to a narrow scope of properties in a zoning district that is unique to Tumalo and not applicable elsewhere in the entire county. Based on the *Strawberry Hill 4 Wheelers* factors, this is a quasi-judicial application and not a legislative application.

Recently, the Planning Commission used this exact reasoning as part of its basis to recommend that the Board of County Commissioners deny a proposed text amendment to allow mini-storage use in the MUA-10 zone along Highway 20. The Planning Commission recommended denial after specifically determining that the proposed text amendment only affected a small number of parcels and therefore, in the Planning Commission’s opinion, should have been proposed as a quasi-judicial text amendment. Subsequently, the Board of

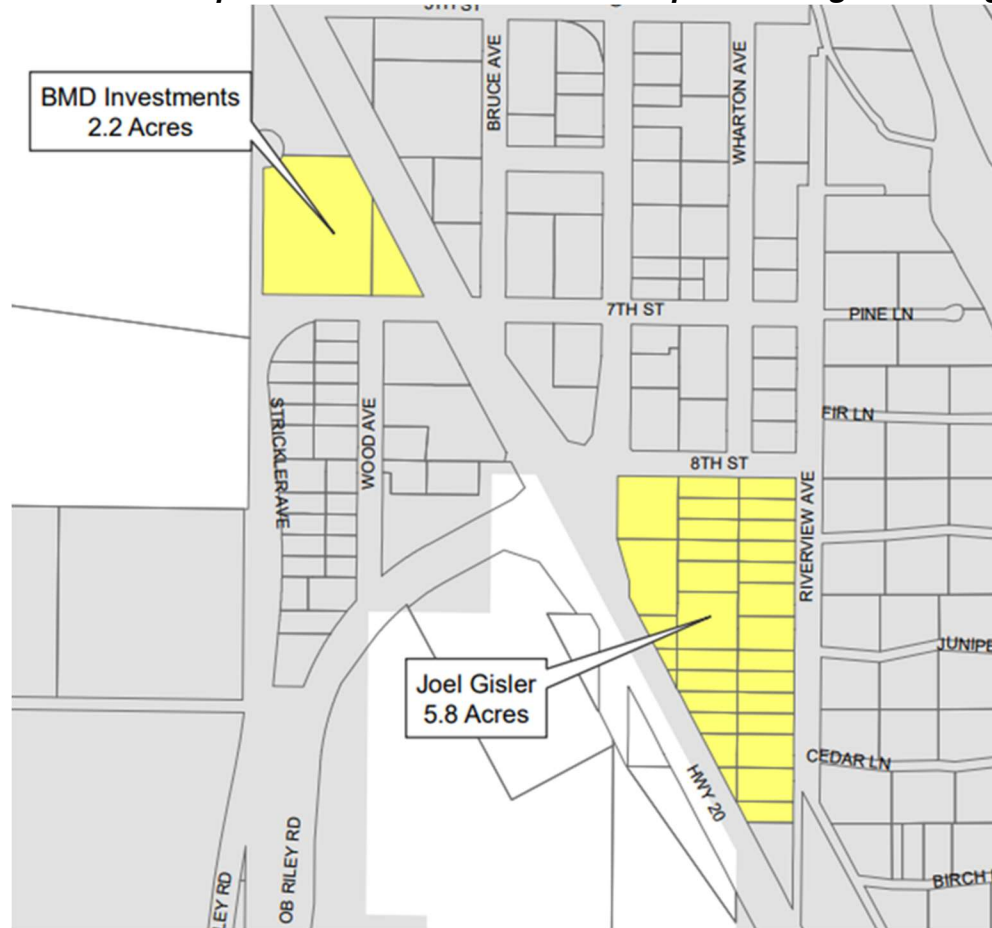
County Commissioners apparently agreed with the Planning Commission and denied this application. See County Planning File No. 247-24-000044-TA.

Although clearly a quasi-judicial application, DCC Chapter 22.24 does not include specific provisions governing the proposed quasi-judicial text amendment. The closest comparison is a quasi-judicial zone change or plan amendment, and the Applicant accordingly recommends that the County utilizes the procedures governing such applications in this matter. Notably, those procedures require a public hearing in front of the Hearings Officer with a decision issued thereafter. See DCC. 22.24.020. DCC 22.24.030 sets forth the basic notice requirements for the hearing. Notably, DCC 22.28.030(A) and (B) clarify that the Board of County Commissioners then adopts the Hearings Officer's decision without further argument or testimony unless a separate appeal of that decision is filed.

Staff agrees with the applicant's analysis of *Strawberry Hill 4 Wheelers* and notes the subject application will result in a decision, utilizes preexisting criteria, and will impact a limited number of properties.

Deschutes County staff conducted a preliminary analysis to identify the properties in the TUC Zone that may be potentially eligible for an RV park under the proposed amendments. This analysis identified properties in the TUC Zone that consist of parcels under common ownership which are two-to-five acres in size and contiguous to Highway 20. The results of this analysis are shown in the figure below and identify two properties that may potentially be eligible for an RV park under the proposed Code language. Staff notes this analysis is only intended to identify the number of properties impacted by the proposed amendments, and does not guarantee the eligibility or development potential of the identified properties.

Figure 1: TUC-Zoned Properties under Common Ownership and Contiguous to Highway 20



Based on the findings above, the subject request will impact the development potential of approximately two properties. Therefore, staff finds the subject request complies with the third component of the Strawberry Hill 4 Wheelers test and may be categorized as quasi-judicial based on the small number of persons who will be affected.

When the factors above are considered in combination, staff finds they indicate the subject Text Amendment is appropriately subjected to a quasi-judicial process. For these reasons, staff finds the request meets the three-part test outlined in *Strawberry Hill 4 Wheelers* as well as the intent of a quasi-judicial process.

Title 22 of the Deschutes County Code, Development Procedures Ordinance

Chapter 22.12, Legislative Procedures

Section 22.12.010, Hearing Required

No legislative change shall be adopted without review by the Planning Commission and a public hearing before the Board of County Commissioners. Public hearings before the Planning Commission shall be set at the discretion of the Planning Director, unless

otherwise required by state law.

FINDING: As described above, staff finds the subject request is a quasi-judicial Text Amendment. However, the procedural steps will be similar to those of previous quasi-judicial Text Amendments, where Hearings Officers have determined that they also carry the qualities of a legislative act. The subject amendments will be adopted through an ordinance, consistent with the process for a legislative amendment. The Planning Director has exercised their discretion not to set a hearing before the Planning Commission.

Section 22.12.020, Notice

A. *Published Notice.*

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

B. *Posted Notice. Notice shall be posted at the discretion of the Planning Director and where necessary to comply with ORS 203.045.*

C. *Individual Notice. Individual notice to property owners, as defined in DCC 22.08.010(A), shall be provided at the discretion of the Planning Director, except as required by ORS 215.503.*

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

FINDING: Notice of the proposed Text Amendment was published in the Bend Bulletin. Staff mailed a Notice of Application and a subsequent Notice of Public Hearing to property owners within the TUC Zone and within 250 feet of the TUC Zone. At the discretion of the Planning Director, posted notice was not required since the subject request is not property-specific. Staff notes a future application to develop an RV park on a specific property would require posted notice pursuant to DCC 22.24.030(B).

Section 22.12.030, Initiation Of Legislative Changes

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

FINDING: The applicant has submitted the required fees and requested a Text Amendment. Staff finds the applicant is granted permission under this criterion to initiate a legislative change and has submitted the necessary fee and materials.

Section 22.12.040, Hearings Body

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

1. ***The Planning Commission.***
2. ***The Board of County Commissioners.***

FINDING: As described above, the subject application meets the definition of a quasi-judicial application. For this reason, this application was referred to a Hearings Officer rather than the Planning Commission for a recommendation. The adoption of the proposed text amendments will follow a legislative process because it must be approved by the Board. For the purpose of this criterion, staff notes the application has properties of both a quasi-judicial and legislative amendment.

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

FINDING: The subject application was not initiated by the Board. Staff finds this criterion does not apply.

Section 22.12.050, Final Decision

All legislative changes shall be adopted by ordinance.

FINDING: Staff finds this criterion requires action by the Board to effect any legislative changes to Deschutes County Code. If the proposed Text Amendment is approved, it will become effective through the Board adoption of an ordinance.

Chapter 22.28, Land Use Action Decisions

Section 22.28.030, Decision On Plan Amendments And Zone Changes

- A. *Except as set forth herein, the Hearings Officer or the Planning Commission when acting as the Hearings Body shall have authority to make decisions on all quasi-judicial zone changes and plan amendments. Prior to becoming effective, all quasi-judicial plan amendments and zone changes shall be adopted by the Board of County Commissioners.***
- B. *In considering all quasi-judicial zone changes and those quasi-judicial plan amendments on which the Hearings Officer has authority to make a decision, the Board of County Commissioners shall, in the absence of an appeal or review initiated by the Board, adopt the Hearings Officer's decision. No argument or further testimony will be taken by the Board.***

FINDING: As detailed above, staff finds the proposal should be viewed as a quasi-judicial plan amendment. For this reason, staff finds these criteria apply. This application is being referred to a Hearings Officer for a decision. If an appeal is not filed and the Board does not initiate review, the Board shall adopt the Hearings Officer's decision as the decision of the county.

- C. *Plan amendments and zone changes requiring an exception to the goals or concerning lands designated for forest or agricultural use shall be heard de novo before the Board of County Commissioners without the necessity of filing an appeal, regardless of the determination of the Hearings Officer or Planning Commission. Such hearing before the Board shall otherwise be subject to the same procedures as an appeal to the Board under DCC Title 22.***

FINDING: The subject Text Amendment does not require a goal exception and does not concern lands designated for forest or agricultural use. For this reason, a de novo hearing before the Board is not required.

- D. *Notwithstanding DCC 22.28.030(C), when a plan amendment subject to a DCC 22.28.030(C) hearing before the Board of County Commissioners has been consolidated for hearing before the hearings Officer with a zone change or other permit application not requiring a hearing before the board under DCC 22.28.030(C), any party wishing to obtain review of the Hearings Officer's decision on any of those other applications shall file an appeal. The plan amendment shall be heard by the Board consolidated with the appeal of those other applications.***

FINDING: No other application is being consolidated with the subject Text Amendment. Staff finds this criterion does not apply.

Deschutes County Comprehensive Plan

FINDING: The Applicant identified the following Comprehensive Plan policies as relevant to the subject proposal. The identified sections of the Comprehensive Plan and the Applicant's responses are included below:

Chapter 3: Rural Growth

Section 3.4: Rural Economy Policies

Goal 1: Maintain a stable rural economy, compatible with rural lifestyles and a healthy environment.

Policy 3.4.1: Promote rural economic initiatives, including home-based businesses, that maintain the integrity of the rural character and natural environment. a. Review land use regulations to identify legal and appropriate rural economic development opportunities.

a. Review land use regulations to identify legal and appropriate rural economic development opportunities.

RESPONSE: The proposed amendment is consistent with the County's mandate to review land use regulations to identify legal and appropriate economic development opportunities. This amendment provides a new rural economic development opportunity within specific areas of the TuC District while maintaining the integrity of the rural character and natural environment by requiring conditional use approval and expressly limiting where in the TuC District RV Parks can be located.

Policy 3.4.2: Work with stakeholders to promote new recreational and tourist initiatives that maintain the integrity of the natural environment.

RESPONSE: Allowing RV Park development in certain areas of the TuC District will support new and existing recreational and tourist initiatives in the area. Such RV Park development is consistent with maintaining the integrity of the natural environment as it provides for less permanent building and changes to the existing landscape than several other uses permitted within the TuC District.

Policy 3.4.7: Within the parameters of State land use regulations, permit limited local-serving commercial uses in higher-density rural communities.

RESPONSE: Approval of the subject application will allow for a new local-servicing commercial use in higher-density rural communities located in close proximity to adjacent state highways. Visitors of the any potential RV Parks in the TuC District bring additional customers and revenue to other businesses in the TuC District.

Section 3.5: Natural Hazard Policies

Goal 1: Protect people, property, infrastructure, the economy and the environment from natural hazards.

RESPONSE: This goal is met. Any RV Parks created via a conditional use permit within the TuC District will provide for a development that protects people, property, infrastructure, the economy from natural hazards.

The County itself recently commissioned a feasibility study that specifically found "A scarcity of camping opportunities in Central Oregon, including for recreational vehicles (RV), not only reduces total visitation but also contributes to increased dispersed camping in undeveloped forestland and along roads. While visitation and population have both rapidly grown over recent decades, there has been no corresponding increase in camping capacity. This, in turn, results in added forest maintenance and damage to natural habitats, such as sanitation issues, problems with trash management, and increased fire risk." Exhibit 1 at page 1. That statement from the County's own study speaks directly to this Goal.

Stated simply, there is a serious demand for additional RV Parks within Deschutes County and the current lack thereof presents significant issues that can most directly be addressed by providing more RV Parks and campgrounds. In fact, per local news coverage of recent

County Commissioner meetings where the above-mentioned feasibility study was the focus of deliberations, the Commissioners noted there is an “incredible demand” for more RV Parks, and that very few, if any, have been built in the past 40 years in Deschutes County. See Exhibit 2 (news article).

Further, County Planning staff previously included in its 2022-2023 annual work plan an update regarding RV park opportunities, but appeared to stop short of exploring whether existing County zoning may be the main obstacle to developing more RV Parks. See Exhibit 3 at page 34. Examining existing zoning closely, this appears to be true. In Tumalo, potential for development of any RV Parks has effectively been prohibited due to the historical limitation that no RV Parks are allowed if they were not in existence before 1979. The Applicant’s own research suggests that this limitation was originally put in place because of the lack of central sewer services in the area, a concern that is likely to be address in Tumalo in the near future. However, even if that now-dated historical limitation were removed, other applicable conditional use standards in DCC chapter 18.128 make it very difficult for any new RV Parks to be feasible in Tumalo or elsewhere in the County. This proposed Text Amendment seeks to resolve these issues, at least for several properties within the TuC District. (The Applicant has no objection to the County addressing these concerns with a broader text amendment, but specifically limits the subject applicant to only the TuC District as the subject application is applicant-initiated and intended to be quasi-judicial.)

On a more local level in Tumalo itself, the County’s feasibility study cites data from the Oregon Parks and Recreation Department showing the nearby Tumalo State Park frequently reaches close to its 100% capacity which further exacerbate the issues outlined above. Exhibit 1 at page 10. The area proposed to be affected by the Text Amendment will specifically provide opportunities to help mitigate these issues and ease some of the high volume of visitors at Tumalo State Park that may cause capacity issues.

Chapter 4: Urban Growth Management

Section 4.9: Rural Service Center Policies.

Policy 4.9.11: Recreational vehicle or trailer parks and other uses catering to travelers shall be permitted.

RESPONSE: While Tumalo itself is no longer characterized as a “Rural Service Center” by the County, its TuC District shares many similarities. The Comprehensive Plan defines Rural Service Centers as “an unincorporated community consisting primarily of commercial or industrial uses providing goods and services to the surrounding rural area or persons traveling through the area, but which also includes some permanent residential dwellings.” While Tumalo is more broadly defined as a “Rural Community,” its TuC District is in essence a concentrated Rural Service Center with its purpose (as proposed to be amended) being to provide commercial uses providing goods and services to the surrounding rural area or persons traveling through the area. The Comprehensive Plan explicitly mandates that RV Parks catering to travelers shall be permitted in Rural Service Centers and naturally they shall

also be in the TuC District due to the aligned purposes of the two rural districts.

This is why the proposed Text Amendment seeks to amend the TuC District's purpose statement. The County Commissioners past actions and comments align with allowing uses in the TuC District that further this policy goal as set forth in state rules. OAR 660.022.0010(7) (defining Rural Community as "an unincorporated community which consists primarily of permanent residential dwellings but also has at least two other land uses that provide commercial, industrial, or public uses (including but not limited to schools, churches, grange halls, post offices) to the community, the surrounding rural area, or to persons traveling through the area.")

In reality, there are hundreds of thousands of people that travel through Tumalo each year and the numbers will likely keep increasing. Hwy 20 is the major highway travelers use when travelling to Tumalo State Park, between Sisters and Bend, and to other attractions in this portion of Deschutes County. Being adjacent to Hwy 20, the TuC is the zoning district within Tumalo that most practically should include the purpose of serving the travel needs of people passing through the area.

Arguably more than any other use, an RV Park clearly "serves the travel needs of people passing through the area" by providing lodging and access to other recreational and commercial opportunities in the Tumalo area. The proposed Text Amendment finally brings the TuC District into consistency with this policy.

FINDING: Staff requests the Hearings Officer amend these findings as they see fit, and determine whether the Applicant has demonstrated compliance with applicable Comprehensive Plan provisions.

Appendix B- Tumalo Community Plan

RV Parks in the Tumalo Community Plan

FINDING: As detailed in the record, there are several public comments which point out that the Tumalo Community Plan does not appear to contemplate an RV park. Consequently, members of the public argue the proposed text amendment does not conform to the Tumalo Community Plan. Staff asks the Hearings Officer to determine whether these objections are relevant.

Economic Development Goal

Retain the economic vibrancy of Tumalo's historic core and industrial areas while providing economic development opportunities that are compatible with the small town rural character of the community.

Economic Development Policies

Policy 4: Support economic development initiatives and tourism in the Tumalo area.

FINDING: Staff finds the proposed use is consistent with this policy of the Tumalo Community Plan. As detailed in the application materials, allowing an RV park as a conditional use in the TUC Zone would provide economic opportunities within the unincorporated community and would support tourism by expanding lodging options.

Policy 5: Allow for existing and future uses without producing adverse effects upon water resources or wastewater disposal. Coordinate with relevant agencies to ensure industrial uses meet requirements for water availability and wastewater disposal.

FINDING: As described herein, the proposed amendments would create new wastewater standards that only apply to RV parks within the TUC Zone. Specifically, the amendments would not require a property owner to provide laundry facilities or a sewer connection to each RV space until a sewer district is willing and able to provide service. In the interim, it appears to staff that the proposed amendments would allow an RV park to commence operations before sewer connections are established. Staff asks the Hearings Officer to make findings regarding the proposed amendments regarding wastewater disposal within RV parks in the TUC Zone, and whether this future use would have an adverse impact upon water resources or wastewater disposal.

Staff notes that an RV park is not an industrial use, and the proposed amendments are therefore not subject to the second part of this policy.

OREGON ADMINISTRATIVE RULES CHAPTER 660, LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

Division 22, Unincorporated Communities

OAR 660-022-0030 Planning and Zoning of Unincorporated Communities

- (4) County plans and land use regulations may authorize only the following new commercial uses in unincorporated communities:**
 - (c) Uses intended to serve the community and surrounding rural area or the travel needs of people passing through the area.**

FINDING: The proposed amendments would create a new use within the unincorporated community of Tumalo, and is therefore subject to these provisions. The application materials state that an RV park would serve the travel needs of people passing through the area. Staff finds the proposed commercial use may be authorized within an unincorporated community.

- (8) Zoning applied to lands within unincorporated communities shall ensure that the cumulative development:**
 - (A) Will not result in public health hazards or adverse environmental impacts that violate state or federal water quality regulations; and**

- (B) Will not exceed the carrying capacity of the soil or of existing water supply resources and sewer services.**

FINDING: Any future development of an RV park within the TUC Zone would be subject to review by the Deschutes County Onsite Wastewater Division and/or the Department of Environmental Quality to ensure that wastewater disposal complies with applicable state standards. As described above, comments from the Deschutes County Onsite Wastewater Division indicate concerns regarding the ability of the Applicant's property to obtain an onsite wastewater (septic) permit. The proposed amendments would allow a property owner to establish an RV park and wait to install sewage disposal until a sewer district is able to serve the property. Staff notes the capacity of the sewer district would be addressed at the time a development proposal is submitted for a specific property. However, staff finds it may also be relevant in addressing these criteria and determining whether the proposed use would have a cumulative impact that exceeds the capacity of the sewer system or the carrying capacity of the soil. Staff asks the Hearings Officer to make specific findings for this section.

Division 12, Transportation Planning

OAR 660-012-0060 Plan and Land use Regulation Amendments

- (1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:**
- (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);**
 - (b) Change standards implementing a functional classification system; or**
 - (c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.**
 - (A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;**
 - (B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or**

(C) *Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.*

FINDING: This above language is applicable to the proposal because it involves an amendment to a land use regulation, specifically the permitted uses within the TUC Zone. The proposed amendment would allow an RV park as a conditional use on properties that are two-to-fives acres in size and contiguous to Highway 20. While the Applicant is not proposing any land use development of a specific property at this time, the application materials indicate the intent is follow the Text Amendment with a subsequent Conditional Use Permit application to establish an RV park.

The submitted application materials include a traffic memorandum dated January 8, 2025, prepared by Joe Bessman of Transight Consulting LLC. The traffic memo analyzes a vacant parcel owned by the Applicant, which consists of 19 adjacent tax lots in the TUC Zone, and would potentially be eligible for development of an RV park under the amendments. The memo compares the uses that are currently permitted in the TUC Zone to an RV park to determine whether there would be a significant increase in trip generation with the new use category. As the memo notes, the TUC Zone currently allows for a range of commercial uses such as eating and drinking establishments, retail, and small office buildings.

Based on comparison of current allowable uses within the TuC zoning, the addition of RV park reflects a lower-intensity use. Accordingly, the proposed text amendment does not have the potential to create a significant impact on the transportation system...

Key findings of this Transportation Planning Rule analysis that would allow RV parks as a conditional use within the Tumalo Commercial (TuC) zoning includes the following:

- The proposed text amendment would conditionally allow an RV Park on 19 contiguous lots currently zoned TuC within the unincorporated Tumalo community.
- With a reduction in trips compared to allowable uses, a comparative analysis would show that all surrounding intersections and corridors will operate better with the text amendment, and a significant impact does not occur.
- While the siting of the RV Park complies with the comparative analysis required to satisfy the Transportation Planning Rule, future entitlements will need to assess the net system impacts as required by DCC 18.116.310. This analysis will need to demonstrate that adequate system capacity is available to serve these uses.

The traffic memo was reviewed by the County Senior Transportation Planner, who agreed with the report's conclusions. Staff finds that the proposed Text Amendment will be consistent with the identified function, capacity, and performance standards of the County's transportation facilities in the area. The proposed amendments will not change the functional classification of any existing or planned transportation facility or change the standards implementing a functional classification system. The County Transportation Planner provided the following comments in an email dated April 14, 2025:

I have reviewed the application materials for potential Transportation Planning Rule (TPR) OAR 660-012 effects, including the applicant's transportation memorandum produced by Transight Consulting, LLC, (dated January 8, 2025) and I agree with its assumptions, methodology, and conclusions. The memorandum adequately addresses reasonable worst case scenario analysis through a comparison of the existing outright allowed uses (utilizing ITE category 822 for Strip Retail Plaza as an aggregate category encompassing eating/drinking establishments, small retail, and offices each totaling less than 10,000 square-feet) to the proposed Campground/RV Park (ITE 416) use and ultimately concludes that no significant impacts will be anticipated with the proposed text amendment. Staff notes that, should the proposed text amendment receive approval, further traffic analysis may be required at the time of future development depending on the future development's vehicle trip generation potential. While the current text amendment does not absorb County road capacity, any future proposal for the development of a Campground/RV Park under the proposed use category must demonstrate compliance with the transportation analysis requirements of DCC 18.116.310, including p.m. peak hour vehicle trips related to System Development Charges (SDCs), mitigations, and adequacy of access.

Based on the County Senior Transportation Planner's comments and the traffic memo prepared by Transight Consulting LLC, staff finds compliance with the Transportation Planning Rule has been effectively demonstrated.

DIVISION 15, STATEWIDE PLANNING GOALS AND GUIDELINES

OAR 660-015, Division 15, Statewide Planning Goals and Guidelines

FINDING: The Statewide Planning Goals and the Applicant's findings are quoted below:

Goal 1: Citizen Involvement

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

RESPONSE: The amendments do not propose to change the structure of the County's citizen involvement program. Notice of the proposed amendments will be provided in accordance with the requirements of the DCC. The public hearing on this application will provide the opportunity for any resident to participate in the land use process. Goal 1 is met.

Goal 2: Land Use Planning

Part I – Planning. To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.

RESPONSE: Goals policies, and processes related to this application are included in the Deschutes County Comprehensive Plan, Title 23, and Deschutes County Code, Title 18 and Title 22. Compliance with these processes, policies, and regulations are documented within the subject application. Goal 2 is met.

Goal 3: Agricultural Lands

To preserve and maintain agricultural lands.

RESPONSE: No lands will be rezoned as part of this application, furthering the purpose of Goal 3. The purpose of TuC District, as proposed to be amended, is to “allow a range of limited commercial and industrial uses to serve the community and surrounding area or the travel needs of people passing through the area.” Tumalo does not contain any lands with the Comprehensive Plan designation of Agriculture nor the zoning designation of Exclusive Farm Use (EFU). Goal 3 is met.

Goal 4: Forest Lands

To conserve forest lands by maintaining the forest land base and to protect the state’s forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

RESPONSE: The amendments do not propose to rezone or alter forest lands. Further, there are no lands designated Forest, either by Comprehensive Plan or DCC 18.67, within or abutting Tumalo. Goal 4 is met.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources

To protect natural resources and conserve scenic and historic areas and open spaces.

RESPONSE: The properties potentially affected by the proposed Text Amendment are not located in the Landscape Management Overlay Zone for the Hwy 20 corridor as that zone specifically does not overlay the TuC District. Several properties in the TuC District, however, are within 660 feet of the ordinary high-water mark of the Deschutes River such that those properties are then within that Landscape Management Overlay Zone. Nevertheless, the subject Text Amendment does not introduce a new conflicting use to the Landscape Management Overlay Zone thereby requiring an economic, social, environmental, and energy (“ESEE”) analysis. As noted above, historic RV Parks have always been allowed within the TuC District. Importantly, the proposed Text Amendment does not alter or change that any proposed RV Park on properties within the Landscape Management Overlay Zone will still be required to fully comply with DCC Chapter 18.84. Goal 5 is met.

Goal 6: Air, Water and Land Resources Quality

To maintain and improve the quality of the air, water and land resources of the state.

RESPONSE: The proposed text amendment will not impact the quality of the air, water, or land resources. Goal 6 is met.

Goal 7: Areas Subject to Natural Disasters and Hazards

To protect people and property from natural hazards.

RESPONSE: To the extent that lands in the TuC District are in areas subject to natural disasters and hazards, the subject application will serve to mitigate the risk of harm from such disasters on the property of Deschutes County citizens via the conditional use permit process and applicable codes and standards. Goal 7 is met.

Goal 8: Recreational Needs

To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

RESPONSE: While Goal 8 itself is most often discussed in relation to destination resorts, it more broadly directs local jurisdictions to inventory their existing recreation areas, facilities, and opportunities to determine the existing and future recreational needs of citizens and visitors, and to plan for recreational opportunities in proportion to the demand for them. Development of RV Parks helps satisfy this goal.

As aforementioned herein and as evidenced by the County's own feasibility study, there is a lack of existing RV Parks in Tumalo and its surrounding areas where the existing zoning limits the opportunities for their development despite the well documented and growing demand for such uses. The County itself documented that its existing zoning directly limits where RV Parks may be developed, and the County's existing conditional use requirements in Chapter 18.128 further make such developments not economically feasible. Requiring applicants to provide full amenities such as showers, sewer, and laundry makes RV Parks practically and economically infeasible in most locations throughout the County, and then requires all RV Parks to cater to limited clientele actually seeking such high-end services. Several publicly owned RV Parks, including Tumalo State Park, La Pine State Park, and the County-owned Jefferson County RV Park do not include the full list of amenities that are required for new privately-owned RV Parks in Deschutes County. It is telling that so few RV Parks have recently been developed in Deschutes County, resulting in the County commissioning its own feasibility study as discussed above. The proposed Text Amendment will loosen these requirements to provide new opportunities for RV Parks on at least certain properties in the TuC District. This better satisfies the recreational needs of Deschutes County citizens and visitors by providing for siting of RV vehicles and promoting access to nearby recreational

sites including Tumalo State Park, which is estimated to be more than 200,000 visitors a year according to the Tumalo Community Plan and is increasing annually. Goal 8 is met.

Goal 9: Economic Development

To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

RESPONSE: Although the applicability of Goal 9 is debatable in this context, the County's current code provisions governing the TuC District nevertheless clearly do not provide the same economic opportunity as would otherwise be allowed by state rules. Specifically, state rules allow uses in the TuC District that are intended to serve the travel public. DCC 18.67.040's purpose statement notably omits similar language, instead only allowing uses that serve the community and surrounding area. Considering the TuC District's location adjacent to Hwy 20 within the Tumalo community and between Bend and Sisters, omitting uses that also serve the traveling public undeniably then restricts economic development within the district. One clear example of a uses that would otherwise be allowed by state rules and that would otherwise further economic development within the TuC District is an RV park.

Accordingly, the proposed text amendment complies with Goal 9 because it will permit a new and varied economic activity i.e., RV Parks, within the TuC District that will allow property owners within the TuC District an additional opportunity for prosperity. Economic Development Policy 4 of the Tumalo Community Plan is specifically to "Support economic development initiatives and tourism in the Tumalo area" which is exactly what this Text Amendment will do. Goal 9 is met.

Goal 10: Housing

To provide for the housing needs of citizens of the state.

RESPONSE: The subject application does not propose to change to housing. Goal 10 is met, to the extent it is applicable. Further, because Tumalo is classified as a Rural Unincorporated Community under OAR-660-022-0010(7) it is not obligated to fulfill certain housing requirements.

Goal 11: Public Facilities and Services

To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

RESPONSE: The proposed text amendment will have no adverse effect on the provision of public facilities and services. In fact, to the extent the Tumalo Basin Sewer District creation moves forward, it can proceed in lockstep with the new opportunities presented by this Text Amendment application. Unless and until a sewer district is installed and functioning,

applicants for RV Parks still should be allowed the opportunity as a business decision to develop and maintain on-site septic systems that are capable of handling the demands of an RV Park with on-site bathrooms and showers. Increased flexibility for RV Park proposals is essential if more are ever to be developed in Deschutes County. Goal 11 is met.

Goal 12: Transportation

To provide and encourage a safe, convenient and economic transportation system.

RESPONSE: The proposed amendment will not impact transportation facilities within the County. The Applicant engaged a traffic engineer, Joe Bessman of Transight Consulting, LLC, who prepared a TPR Analysis (attached as Exhibit 4) and will provide a further Traffic Impact Analysis when future Conditional Use Permit applications for an RV Park are submitted by the Applicant. Among the findings of the TPR is that an “RV park is a much less intense use than what is currently permitted within [the TuC District] and therefore does not create a significant transportation impact. The listing of this use as Conditional will require additional analysis to ensure that the use is consistent with County and State requirements.”

Further, allowing properties in the TuC District to be utilized for RV Parks even if accessed off something other than an arterial or collector street clearly provides more development opportunities for RV Parks. Applicants who are capable of meeting all applicable road standards except for being off an arterial or collector road ought to be provided the same development opportunity and RV Parks should not be arbitrarily prohibited in such circumstances. Stated simply, in its current form DCC 18.128.170(O) is blatantly over regulatory because it prohibits RV Parks on properties that could otherwise meet all applicable road standards. Rather than instead requiring compliance with those applicable road standards, DCC 18.128.170(O) elevates access off of an arterial or collector street as a proxy for those road standards. A property not having access off an arterial or collector is an arbitrary requirement that has directly contributed to the lack RV Parks being developed throughout the County.

The County’s current policy stance was clarified in a written response received by the Applicant from County staff after requesting a meeting to discuss DCC 18.128.170(O). The email communication is included as Exhibit 6. Rather than meeting to discuss the issue, County staff more directly defended in that written response that DCC 18.128.170(O) in its current form “aligns with transportation planning principles by balancing accessibility, safety, and minimal disruption to surrounding communities.” However, County staff also noted that “RV park access and traffic circulation on local roads is not desirable in many situations” (emphasis added). But something not being desirable in many situations is not the same thing as not being desirable in all situations, confirming then that DCC 18.128.170(O) in its current form is over regulatory. Further, County staff assumed that the only other option would be RV Park access off of local access roads, and failed to address that DCC 18.128.170(O) mandates access off of only arterial or collector streets therefore also prohibiting access off a state highway, for example. More importantly, County staff’s written response suggested that although they would be “opposed to eliminating [DCC

18.128.170(O)] outright,” County staff suggested that they would not then be opposed to modifying that provision so long as the following listed factors were instead addressed: (1) traffic capacity and flow; (2) geometric design; (3) pavement design; (4) livability impacts on local residents; and (5) accessibility and convenience to amenities and state highways. Although the Applicant questions if the last two aforementioned factors are best addressed as part of traffic and road issues, to honor County staff’s recommendation the Applicant, as part of the subject Text Amendment, proposes replacing the currently over regulatory DCC 18.128.170(O)—at least within the TuC District—with the same listed factors recommend by County staff. The intended outcome would be that RV Parks within the TuC District could be approved off of something other than arterial and collector streets after consideration of these factors. The proposed text amendment does not eliminate the purposes of DCC 18.128.170(O) outright as County staff cautioned, rather it provides more flexibility and opportunity for development of RV Parks when the County itself has determined that such uses are severely lacking throughout our community. Stated simply, when the County Commissioners themselves have expressed they want to foster RV Park development throughout the County, any blatantly over regulatory code provision that unnecessarily prohibits RV Parks on otherwise qualifying properties should be re-examined.

As a final comment, the impact of DCC 18.128.170(O) on RV Park development should not be lost on the County. The County’s very own feasibility study discussed above identified three properties where the County itself may consider developing an RV Park. Two out of three sites identified by that feasibility study would not meet DCC 18.128.170(O), yet those two sites were not then immediately excluded from further consideration. Specifically, the Crooked River Ranch Site’s only means of access is via NW 8th Court, a “Rural Local” road. The Fort Thompson Site’s only means of access is off Oregon State Highway 97 which also is not an “arterial or collector street.” If pursued further, both aforementioned sites would likely require zone changes and/or text amendments before RV Parks would be viable options. Assuming the County would then pursue legislative amendments allowing RV Parks as conditional uses on those two aforementioned properties, then the County would be in the very same position as the Applicant when it comes to the addressing DCC 18.128.170(O). If the County’s intention is to staunchly defend that RV Parks should only be developed on properties with direct access from arterial or collector streets, then presumably the County’s own feasibility study would not have wasted resources analyzing two properties that do not meet that overly stringent standard.

Goal 12 is met.

Goal 13: Energy Conservation

To conserve energy.

RESPONSE: The proposed amendment will have a de minimis effect on the provision of public facilities and services. To the extent Goal 13 is applicable, new RV Parks developed in the TuC District will be designed and constructed with best practices for the modern-day construction industry, including energy efficient design standards, as well as the ability to

accommodate vehicles that are of the “van-life” variety and less consumptive than larger traditional RVs of both the motorized and trailer variety.

Goal 14: Urbanization

To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

RESPONSE: Goal 14 concerns the provision of urban and rural land uses to ensure efficient use of land and livable communities. The proposed amendment does not amend an urban growth boundary, and RV Parks are permitted as a conditional use in several other rural zones throughout the County. Like the TuC District, these other zones serve rural communities. RV Parks are not exclusively an “urban use” and RV Parks significantly contribute to rural recreational opportunities. The subject application proposes to limit RV Parks to lands in the TuC District that are located in close proximity to the adjacent State Hwy 20, thereby promoting an orderly and efficient transition from rural to urban land use to the extent applicable. Goal 14 is met.

Goals 15-19

RESPONSE: Goals 15 through 19 do not apply (Goal 15 Willamette River Greenway; Goal 16 Estuarine Resources; Goal 17 Coastal Shorelands; Goal 18 Beaches and Dunes; and Goal 19 Ocean Resources).

Staff generally accepts the Applicant’s responses and finds compliance with the applicable Statewide Planning Goals has been effectively demonstrated.

IV. CONCLUSION & RECOMMENDATION

Staff requests the Hearings Officer determine if the Applicant has met the burden of proof necessary to justify the proposed Text Amendment through effectively demonstrating compliance with the applicable criteria of DCC Title 18 (the Deschutes County Zoning Ordinance), the Deschutes County Comprehensive Plan, and applicable sections of OAR and ORS.

DESCHUTES COUNTY PLANNING DIVISION



Written by: Audrey Stuart, Associate Planner

Anthony Raguine

Reviewed by: Anthony Raguine, Principal Planner

Attachments: 1) Proposed Text Amendments

Attachment A: Proposed Text Amendments

18.67.040 Commercial (TuC) District

The Tumalo Commercial District is intended to allow a range of limited commercial and industrial uses to serve the community and surrounding area or the travel needs of people passing through the area.

- A. Permitted Uses. The following uses and their accessory uses are permitted outright and do not require site plan review under DCC 18.124.
 1. A single-unit dwelling or duplex.
 2. A manufactured dwelling subject to DCC 18.116.070.
 3. Type 1 Home Occupation, subject to DCC 18.116.280.
 4. Class I and II road or street project subject to approval as part of a land partition, subdivision, or subject to the standards of DCC 18.67.060 and 18.116.230.
 5. Class III road or street project.
 6. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.
 7. Residential home.
- B. Uses Permitted, Subject to Site Plan Review. The following uses and their accessory uses are permitted subject to the applicable provisions of DCC 18.67, 18.116, and 18.124:
 1. A building or buildings, none of which exceeds 4,000 square feet of floor area to be used by any combination of the following uses:
 - a. Retail or service business.
 - b. Eating and/or drinking establishment.
 - c. Offices.
 - d. A dwelling unit permitted outright or conditionally, in the same building as a use permitted in DCC 18.67.040.
 - e. Marijuana wholesaling, office only. There shall be no storage of marijuana items or products at the same location.
 2. Any of the uses listed under DCC 18.67.040 proposing to occupy more than 4,000 square feet of floor area in a building subject to the provisions of DCC 18.67.040(E).
 3. Child care facility and/or preschool.
- C. Conditional Uses. The following uses and their accessory uses are permitted subject to the applicable provisions of DCC 18.116, 18.124, and 18.128:
 1. Religious institutions or assemblies.
 2. Bed and breakfast inn.
 3. Type 2 or Type 3 Home Occupation, subject to DCC 18.116.280.
 4. Park.
 5. Public or semi-public building.
 6. Utility facility.
 7. Water supply or treatment facility.
 8. Manufactured dwelling, ~~RV park~~ on a lot or parcel in use as a manufactured dwelling park ~~or recreational vehicle~~ park prior to the adoption of PL-15 in 1979 and being operated as of June 12, 1996, as a manufactured dwelling park ~~or recreational vehicle park~~, including any expansion of such uses on the same lot or parcel as configured on June 12, 1996.
 9. The following uses and their accessory uses may be conducted in a building or buildings not to exceed 4,000 square feet of floor area.
 - a. Farm equipment, sales, service, or repair.
 - b. Trailer sales, service, or repair.

- c. Vehicle service or repair.
 - d. Veterinary clinic.
- 10. The following uses may be conducted in a building or buildings not to exceed 10,000 square feet of floor area:
 - a. Manufacturing or production.
 - b. Wholesale sales.
 - c. Marijuana retailing, subject to the provisions of DCC 18.116.330.
- 11. Wireless telecommunications facilities, except those facilities meeting the requirements of DCC 18.116.250(A) or (B).
- 12. Surface mining of mineral and aggregate resources in conjunction with the operation and maintenance of irrigation systems operated by an Irrigation District, including the excavation and mining for facilities, ponds, reservoirs, and the off-site use, storage, and sale of excavated material.
- 13. Psilocybin service centers, subject to the provisions of DCC 18.116.380.
- 14. Recreational Vehicle Parks.**
- D. Use Limitations. The following use limitations shall apply to the uses listed in DCC 18.67.040(C)(10).
 - 1. Compatibility.
 - a. Any use expected to generate more than 50 truck-trailer and/or heavy equipment trips per day to and from the subject property shall not be permitted to locate on a lot or parcel abutting or across a local or collector street from a lot or parcel in a residential district.
 - 2. Traffic and Parking.
 - a. A use that generates more than 20 auto or truck trips during the peak hour of the day to and from the premises shall document with facts that the affected transportation facilities are adequate to serve the proposed use, considering the functional classification, capacity, and level of service of the affected transportation facility.
 - b. All parking demand generated by uses permitted by DCC 18.67 shall be accommodated entirely on the premises.
- E. Requirements for Large Scale Uses.
 - 1. All uses listed in DCC 18.67.040(B) may have a total floor area exceeding 4,000 square feet but not greater than 10,000 square feet if the Planning Director or Hearings Body finds:
 - a. The use is intended to serve the community and surrounding rural area, or the traveling needs of people passing through the area;
 - b. The use will primarily employ a work force from the community and surrounding rural area; and
 - c. It is not practical to contain the proposed use within 4,000 square feet of the floor area.
 - 2. This provision does not apply to uses listed in DCC 18.67.040(C)(10).
 - 3. For the purposes of DCC 18.67.040, the surrounding rural area is described as the following: extending north to the Township boundary between Townships 15 and 16; extending west to the boundary of the public lands managed by the U.S. Forest Service in T16S-R11E; extending south to the south section lines of T17S-R12E sections 4,5,6 and T17S-R11E sections 1,2,3; and extending east to Highway 97.

- F. Design Standards. Ground Floor Windows. The following criteria for ground floor windows apply to new buildings in the TuC district except those uses listed in DCC 18.67.040(C)(10) and any residential use. The provisions of DCC 18.124 also apply.
1. The windows must be at least 50 percent of the length of the ground level wall area and 25 percent of height of the ground level wall area. Ground level wall area includes all exterior wall area up to nine feet above the finished grade. The window requirement applies to the ground level of exterior building walls which abut sidewalks or streets.
 2. Required window areas shall be either windows that allow views into working areas, lobbies, pedestrian entrances or display windows.
- G. Lot Area Requirements. The minimum lot area is 10,000 square feet. In addition, lot area requirements for this district shall be determined by spatial requirements for sewage disposal, required landscaped areas, and off-street parking.
- H. Lot Coverage Standards.
1. Lot Coverage: No lot coverage requirements, provided spatial requirements for parking, sewage disposal, and landscaping are satisfied.
 2. No use listed in DCC 18.67.040(C)(10) that is abutting or across a local or collector from a lot or parcel in a residential district shall exceed 70 percent lot coverage, including outside storage, and off-street parking and loading areas.
- I. Setback Standards.
1. Front Setback. The front setback shall be a maximum of 15 feet, except as otherwise allowed by DCC 18.124.070 (D)(3). The front setback for structures may be reduced, but not increased, to the average setback distance of existing structures on abutting lots or parcels.
 2. Side Setback. No requirement, subject to DCC 18.67.040(I)(4).
 3. Rear Setback. No specific requirement, subject to DCC 18.67.040 (I)(4).
 4. Exceptions to Setback Standards.
 - a. Lot line(s) abutting a residential zone. For all new structures or substantial alterations of a structure requiring a building permit, on a lot or parcel abutting a residential district, the setback shall be a minimum of 15 feet. The required setback will be increased by one foot for each foot by which the structure height exceeds 20 feet.
 - b. Lot line(s) abutting an EFU zone. Any structure requiring a building permit, on a lot or parcel abutting EFU-zoned land receiving special assessment for farm use, shall have a minimum setback of 100 feet from any shared lot line.
- J. **Additional Standards for Recreational Vehicle Parks**
1. **Recreational Vehicle Parks shall only be allowed on a single parcel or contiguous parcels under common ownership that meet the following requirements:**
 - a. **The area of the parcel(s) proposed for development shall exceed 2 acres but no more than 5 acres;**
 - b. **The parcel(s) shall all be located in a sewer district; and**
 - c. **The single parcel or at least one of the contiguous parcels under common ownership shall be adjacent to State Highway 20.**
 2. **Compliance with DCC 18.128.170.**
 - a. **For sewage disposal service and laundry facilities only, Recreational Vehicle Parks in the Tumalo Commercial District shall not be required to comply with DCC 18.128.170(0) and (J) until a sewer district is willing and able to provide service to the proposed project. The County may include conditions of approval requiring Recreational Vehicle Parks to provide sewer connection to each**

recreational vehicle space and to provide laundry facilities as outlined in DCC 18.128.170(J) once sewer service is available from a sewer district

- b. To ensure compliance with DCC 18.128.170(G), Recreational Vehicle Parks in the Tumalo Commercial District shall only provide temporary lodging with no recreational vehicles utilized as permanent "residential dwellings" as that term is used in ORS 197.493.
- c. Compliance with DCC 18.128.170(0) requiring that access to a Recreational Vehicle Park shall be from an arterial or collector street shall not be applicable in the Tumalo Commercial District so long as an applicant instead demonstrates that the street providing direct access to the proposed Recreational Vehicle Park shall not be unreasonably impacted. To demonstrate compliance with this standard, an applicant shall address traffic capacity and flow, geometric design, pavement design, livability impacts on local residents, and accessibility and convenience to amenities and state highways.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 14, 2026

SUBJECT: Consideration of Board authorization to establish an “Account Validation Service” account with JPMorgan Chase Bank, N.A.

RECOMMENDED MOTION:

Move to authorize establishing a bank account with JPMorgan Chase Bank, N.A. for use of its Account Validation Service.

BACKGROUND AND POLICY IMPLICATIONS:

Deschutes County Policy F-7, Bank Accounts and Cash Handling Policy, requires that all bank accounts established for the purpose of receiving or disbursing money due and accruing to Deschutes County, or any funds to be held in trust by Deschutes County, are authorized by the Board of County Commissioners (BOCC).

Finance seeks authorization to set up an “Account Validation Service” (AVS) account with JPMorgan Chase Bank, N.A. This account would enable the County to submit inquiries as to:

- a) Whether an account number provided by a customer is associated with an open account maintained at a U.S financial institution (“Account Status Verification”);
- b) Whether a name provided by a customer matches the name of an account owner at a U.S. financial institution associated with such account if confirmed open (“Account Owner Authentication”); and
- c) Other characteristics and information as may be made available from time to time.

To access these services, Deschutes County must open and maintain an AVS account with JPMorgan Chase Bank, N.A., and pay monthly processing fees. The AVS will provide an additional layer of security when processing electronic fund transfer payment requests.

If approved by the Board, the Finance Department will ensure that all bank account balances and account fees are accurately recorded and maintained in the County's accounting system.

BUDGET IMPACTS:

AVS is billed on a per inquiry basis. There is a \$50 per month fee to access the commercial bank platform. Fees will be paid from current bank expense budget allocations.

ATTENDANCE:

Robert Tintle, Chief Financial Officer



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 14, 2026

SUBJECT: Consideration of updates to HR-6, Deschutes County Remote Work Policy; HR-12, Family Medical Leave Policy; and HR-13, Employee Leave Donation Policy

RECOMMENDED MOTION:

Discussion only. If BOCC supports the proposed changes, staff will return with policy updates on the Board's consent agenda.

BACKGROUND AND POLICY IMPLICATIONS:

Staff is proposing updates to three of the County's Human Resources (HR) policies:

- **HR-6, Deschutes County Remote Work Policy** – The Remote Work Policy provides guidelines for employees to work from approved sites other than their designated County locations, promoting flexible work options. Eligibility depends on job suitability and performance, with the policy detailing expectations for productivity, security, and the setup of a safe remote work environment. Staff is proposing updates to the policy that clarify expectations around remote work occurring outside of Central Oregon.
- **HR-12, Family Medical Leave Policy** - The Family and Medical Leave Policy allows Deschutes County employees to take leave for specific family and medical reasons, such as serious health conditions or to care for a new child, under FMLA, OFLA, and PLO, ensuring job protection and continuation of benefits. Staff is proposing administrative changes that align with updates in state and federal law and also improve clarity around existing processes.
- **HR-13, Employee Leave Donation Policy** – Deschutes County's Employee Leave Donation policy allows employees to donate vacation or compensatory time to colleagues who are out of leave due to OFLA/FMLA events, ensuring support during extended medical needs. Employees must have a minimum leave balance and donations are administered confidentially, with restrictions on solicitation and

maximum receipt limits. Staff is proposing the addition of new language that requires employees to exhaust all paid leave options before requesting leave donations.

Staff will be available to discuss the proposed updates with the Board and answer any questions.

BUDGET IMPACTS:

None.

ATTENDANCE:

Whitney Hale, Deputy County Administrator
Susan DeJoode, Human Resources Director

**DESCHUTES COUNTY ADMINISTRATIVE POLICY No. HR-6**

EFFECTIVE DATE: January 26, 2022

REMOTE WORK PROGRAM**A. STATEMENT OF POLICY**

Deschutes County is dedicated to its mission: Enhancing the lives of citizens by delivering quality services in a cost-effective manner. Deschutes County may implement its mission by allowing flexible work opportunities where appropriate. Flexible work opportunities may include a variety of options, including remote work.

This policy provides departments a framework to implement remote work as a personnel management, recruitment and retention tool while ensuring employees performing remote work maintain or increase performance standards and service levels. Individual departments (upon the recommendation of the department head and the approval of the County Administrator) or offices of elected officials may opt out of this policy.

B. PURPOSE

This policy contains guidelines and requirements for Deschutes County's Remote Work Program. The requirements apply only to employees in departments participating in the Remote Work Program and are intended to:

- Meet productivity expectations.
- Reduce office space, facility, parking, and related needs and expenses.
- Provide flexible work opportunities.
- Decrease traffic congestion and impacts on County infrastructure.
- Serve as a benefit to the department and the population served.
- Not serve as an employee guaranteed benefit or right.

C. DEFINITIONS

1. Remote Work – a work flexibility arrangement under which an employee performs the duties and responsibilities of their position, and other authorized activities, from an approved worksite other than the location from which the employee would otherwise work.
 - a. Hybrid Work – when an employee is performing work from both on-site and remotely from an approved worksite other than the regular assigned work location for the position.
 - b. Fully Remote Work – when an employee is performing more than 75% of their work from an approved (non-County) worksite other than the regularly assigned work location for the position. If working under this category, the employee's primary work location becomes a non-County location.

D. RESPONSIBILITY

Employees who work remotely are responsible for adhering to all expectations outlined below. Supervisors are responsible for determining whether an employee is eligible to participate based on criteria outlined in this policy. Further, supervisors are responsible for implementing this policy consistently and with robust oversight and accountability, including monitoring remote work effectiveness and measuring performance.

E. LOCATION OF REMOTE WORK AND IMPACT ON COMMUTE/TRAVEL

For a fully remote employee, the employee's primary work location changes (and will likely be their residence). As a result, fully **remote work is only allowed if the employee's remote work location is located in Central Oregon (unless approved in advance by the County Administrator – see section 2 below).**

1. Remote work options from within Central Oregon
 - a. Hybrid remote work does not change the employee's assigned County work location. Travel time from the employee's remote work location to their assigned County location will be considered commute time and not compensated by the County.
 - b. Fully remote work – changes the employee's assigned work location. When business needs require the employee to work from or report to another location, the employee must be compensated for travel time in accordance with FLSA – in general, this means that travel time to and from their assigned work location (which will likely be their residence) as a part of their regular work duties is considered work time unless the travel is outside the employee's regular schedule. Deschutes County will follow the State of Oregon ["Compensable Travel Time While Working Remotely"](#) guidelines. Travel time during regularly scheduled work hours is considered work time and may also include mileage reimbursement (or the use of a County vehicle). Therefore, when required to come into the County workplace to perform work, the employee shall make every effort to travel to the County workplace during non-scheduled work time.
2. Remote work from outside Central Oregon is eligible under the following conditions:
 - a. It is temporary (a maximum of 14 days per occurrence) and approved by the Department Director.
 - b. Special circumstances requiring a duration longer than 14 days must be approved in advance by the County Administrator.
 - c. Remote work from outside Central Oregon shall never result in the employee's work location becoming a location outside Central Oregon unless explicitly approved in advance by the County Administrator. Establishing a work location outside Central Oregon would result in complications with paying the employee for travel time when coming to a County office/facility.

The requirements in this section are intended to prevent an employee working outside the State of Oregon becoming an employee of another state (for tax purposes). Deschutes County is not set up to be a multi-state employer.

- d. The decision and approval will be based on the employee's work duties, whether they can be satisfactorily fulfilled at that distance, and any impact on clients/customers.
- e. In general, additional costs incurred for the employee to work remote is the responsibility of the employee.

F. ELIGIBILITY

Not all positions are suited for participation in the program, such as customer facing positions. If the employee is sick and unable to function at full productivity, remote work is not permissible and is not a substitute for using Time Management Leave or Sick Leave.

Employees may be eligible to participate in the program based on criteria outlined below. Participation in this program is at the County's sole discretion and may be modified or revoked at any time. Employees must meet all the following to be eligible for participation in the program, unless granted an exception by the Department Director after consultation with HR:

1. Duties must be completed as efficiently, or more efficiently, than at the primary onsite location.
2. Participation must not lower the level of service delivery for the participant's work unit, including taking into account the impact on teamwork and morale.
3. The employee must have adequate job knowledge to work independently or remotely.
4. An overall rating of "Meets Expectations" or higher on most recent evaluation, if applicable.
5. No formal discipline within the last 12 months (written reprimand or higher).

Potential remote work situations that require careful review:

1. If an employee has a mild illness (for example, a mild cold or mild cough) or is recovering from a short-term medical condition, and is still able to work at full capacity, remote work is an option.
2. Remote work is not a substitute for childcare or other dependent/family care. Employees shall make or maintain childcare arrangements to permit concentration on work assignments. However, in limited situations, remote work may be approved to allow the employee to be at home with a sick child or to allow for dependent/family care, such as:

- a. The child or dependent/family member under care needs little or no direct care. The purpose of the employee working remotely is for the employee to be able to respond to an unlikely emergency event (examples: a dependent care arrangement where the employee works remotely to attend to an emergency situation should it arise, a child is recovering from a surgery and is sleeping most of the time, an older child is sick but does not require much direct care).
- b. The employee will only record and report time worked.
- c. There is another care giver at home.

While performing remote work, the employee is expected to devote the same degree of time and attention to work as when the employee is at their County worksite. Meeting the above criteria does not guarantee approval for participation; final approval is subject to supervisor/manager discretion.

Depending on the criteria in this policy, an employee may be determined to be:

- 1. Eligible for remote work on a part-time basis or intermittently.
- 2. Eligible for remote work on a regular schedule.
- 3. Not eligible for remote work.

G. REMOTE WORK EXPECTATIONS AND ENVIRONMENT

While performing remote work, the employee must adhere to the following expectations:

- 1. Continue working their regular set schedule unless the employee receives supervisory approval to change their schedule.
- 2. Seamlessly and completely be accessible via standard County phone and email systems during working hours.
- 3. The employee takes full responsibility for the technology required to complete their job remotely. If the technology does not work, the employee will be required to fix the problem without any loss of work time, or take TML or other available leave for any time loss associated with the remote technology barrier.
- 4. The employee will be required to use TML or other approved leave if the employee is otherwise unable to perform their job from a remote location.

Participants must have an adequate work environment that:

- 1. Is free from distractions.
- 2. Has adequate office furniture and office equipment provided by the employee.
- 3. Contains a secure, reliable internet connection with sufficient bandwidth to perform duties at the employee's cost.
- 4. Provides adequate auditory confidentiality if work requires it.

5. Is maintained in a safe condition, free from hazards to employee and equipment.
6. If needed, is modified to meet work safety requirements, (i.e., if modified workstation is required at the primary worksite, remote working environment should be similarly modified).
7. Meets the ergonomic needs of the employee.

In general, the participant will be responsible for most/all costs associated with meeting the above requirements, including setup of designated workspace, as well as ongoing costs related to connectivity, printing, scanning, and/or other equipment necessary. There may be special situations where a department allows the employee to use County furniture/property for remote work. If significant county-funded supplies are required to perform work duties, such as a specialized scanner, this would constitute a need for the employee to perform those duties on-site.

Employee understands that all equipment, records, and materials provided by the County shall remain the property of the County. County-owned equipment and software shall be used exclusively by the employee and for the purpose of conducting County business. Software shall not be duplicated. Employee agrees to report to employee's supervisor any incidents of loss, damage, or unauthorized access as soon as possible.

H. INFORMATION SECURITY

Employee agrees to protect County-owned equipment, records, and materials from unauthorized or accidental access, use, modification, destruction, or disclosure. This includes protecting equipment when traveling to/from County facilities. The precautions described in this agreement apply regardless of the storage media on which information is maintained, the locations where the information is stored, the systems used to process the information, or the process by which the information is stored.

Participants will be held accountable for securing information by taking measures to safeguard information in accordance with confidentiality, HIPAA and privacy rules. At all times, employees shall adhere to all provisions of [Administrative Policy No. IT-1, "Computer, E-mail and Mobile Computing Device Use."](#)

I. PROCESS AND EVALUATION

Supervisors are responsible to ensure that an employee performing remote work has clear and documented productivity expectations and that the employee is meeting these expectations. Supervisors may require additional actions by employee to verify work time.

Here are factors a supervisor may consider to help determine appropriate amount/frequency of remote time:

1. Quantify tasks that are appropriate for remote work, and consider frequency and distribution (e.g. half a day once a week compared to a full day every other week).
2. Impact on clients, customers, and co-workers, including the importance of in-person interactions and communications.
3. Availability to attend meetings in-person (e.g. if most meetings are Tuesday/Wednesdays, schedule Thursdays as a remote day). Clearly communicate to staff that regularly scheduled remote time may be “bumped” if a need for an in-person meeting arises.
4. Impact on internal/external partners: feedback from others will inform whether the amount of time is working well (e.g., if feedback is received that the person is less available for consult or lacking timely follow up, remote time may be decreased, redistributed, or eliminated).
5. Adjustments depending on workload (e.g. a decrease in independent tasks may result in decreasing remote time; a special project with a hard deadline that necessitates independent concentration may result in approval of additional remote time).

K. PROGRAM AGREEMENT

Upon approval based on the criteria contained in this policy, staff will enter into a Remote Work Program Agreement (attached). The agreement will be signed by the employee, supervisor, and department director. Remote work may be on an as-needed basis, or regularly scheduled. The agreement will include:

1. Time period approved for remote work (frequency and duration, including an end date of no more than one year, noting that it may be reviewed throughout the period and may be terminated at the County's sole discretion).
2. Type of remote work.
3. The specific site(s) approved for remote work. The standard approval process is for remote work sites within Central Oregon.
4. A statement that the duties, obligations, and responsibilities of the participant's employment with the County remain unchanged.
5. An explanation how the remote work arrangement will affect the operations and impact the employee's productivity.
6. An explanation on how productivity will be measured/reported and how the employee will be available to supervisors, co-workers and customers.
7. A statement that the participant's salary, benefits, retirement, and County-sponsored insurance remain unchanged.
8. A statement that participants remain obligated to comply with all County, State, and Federal laws and rules, and policies, including the County's Code of Ethics and the Fair Labor Standards Act.

9. A statement that the violation of any of the above or the misuse of County time, data, or equipment may result in disciplinary action.
10. A list of County owned items (such as laptop, mouse, etc.) that will be at the remote location.
11. Signature of employee, supervisor, manager, and department head (if required per this policy).
12. A designation whether the request is for hybrid remote work or fully remote work. If fully remote work, a listing of the employee's primary work location which will not be a County location.

Approved by the Board of County Commissioners, January 26, 2022.



Nick Lelack
County Administrator

Remote Work Program Agreement



Instructions: Supervisors and managers may utilize this form to formalize terms and submit requests for eligible employees to participate in the Remote Work Program in accordance with *Deschutes County Administrative Policy HR-6 – REMOTE WORK PROGRAM*. Eligibility for participation is determined by the employee's supervisor in consultation with the Department Head.

Program Acknowledgements

All remote work agreements are subject to policies and procedures as outlined in *Deschutes County Administrative Policy No. HR-6*. By signing this agreement, all parties participating in or granting approval for the employee's participation in the County's Remote Work Program acknowledge and agree to the following conditions:

1. The work duties, obligations, and responsibilities of employees participating in the Remote Work Program will remain unchanged.
2. All employees participating in the Remote Work Program remain obligated to comply with all County, State, and Federal laws and rules, and policies, including the County's Code of Ethics and the Fair Labor Standards Act. Violation of any of the above rules or the misuse of County time, data, or equipment may result in disciplinary action.
3. Remote work participation shall not impact the salary, benefits, retirement plan enrollment, and eligibility for County-sponsored insurance plans for participating employees.
4. All Remote Work Program approvals are subject to review during the approved agreement period and may be terminated at any time at the County's sole discretion.

Section 1: Personal Information & Remote Work Program Participation

Employee Name: Department:

Supervisor Name:

Schedule Details and Type of Remote Work Requested (*select one*):

Hybrid Remote Work ☒

Fully Remote Work ☐

Remote Work Agreement Period Dates (*one year or less*):

Description and Address of Employee Remote Work Location:

[For requests for Fully Remote Work Only]

Please indicate round trip mileage from the Employee Remote Work Location to each County facility to which the employee may be regularly required to travel, and if a County vehicle will be provided:

[For Remote Work Requests Outside of Central Oregon Only]

Under most circumstances, remote work is only allowed from employee work locations within Central Oregon. Department Directors may approve temporary remote work agreements from outside of Central Oregon of up to 14 days per occurrence. Special circumstances requiring remote work be conducted outside of Central Oregon for periods greater than 14 days require advance approval by the County Administrator and a copy of this agreement must be sent to HR and Payroll for notification.

Describe the special circumstances for which an employee would conduct remote work at a remote work location outside of Central Oregon for a period of greater than 14 days (*attach additional pages if necessary*):

Section 2: Remote Work Operational Considerations & Monitoring

Describe the impact of the employee's participation in the Remote Work Program to departmental operations and employee productivity, including operational adjustments necessary to support remote work as requested (*attach additional pages if necessary*).

Describe how the participating employee's work productivity will be measured when working remotely.

Describe how the employee will maintain availability to supervisors, co-workers, and internal/external customers when working remotely.

Describe any applicable, additional expectations agreed upon by the participating employee and supervisor.

Section 3: Remote Work Station Resources and Safety

Inventory below all County-owned and employee-owned equipment (including serial and/or asset numbers for County-owned equipment) that the employee will utilize at the remote work location. *(Note: Employee owned equipment, internet charges, and supplies must comply with relevant policies concerning use and are to be maintained at the employee's expense unless otherwise approved.)*

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Employees are responsible for ensuring that their remote workstations are free of hazards that may result in injury. Please describe below any potential hazards relevant to the remote work location, and steps that will be taken in order to minimize the potential for injury to the employee conducting remote work.

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Section 4: Approvals

Employee Printed Name:		Date:	
Employee Signature:			
Supervisor Printed Name:		Date:	
Supervisor Signature:			
Department Director Printed Name:		Date:	
Department Director Signature:			
<i>[For Remote Agreements Outside of Central Oregon Greater Than 14 Days]</i>			
County Administrator Printed Name:		Date:	
County Administrator Signature:			

Once complete, the Remote Work Program Agreement should be updated as needed by the supervisor and employee. Remote Work Program Agreements requiring County Administrator approval should be sent to Human Resources via email attachment to hr@deschutes.org or interoffice mail. Finalized agreements should be kept by the supervisor and employee.



Deschutes County Administrative Policy No. HR-6
Effective Date: November 1, 2025
Original Adoption: January 26, 2022
Updated: January X, 2026

REMOTE WORK POLICY

I. STATEMENT OF POLICY

Deschutes County is dedicated to its mission: Enhancing the lives of citizens by delivering quality services in a cost-effective manner. Deschutes County may implement its mission by allowing flexible work opportunities where appropriate.

Flexible work opportunities may include a variety of options, including remote work. This policy provides departments with a framework to implement remote work as a personnel management, recruitment and retention tool while ensuring employees performing remote work maintain or increase performance standards and service levels. Individual departments (upon the recommendation of the department head and the approval of the County Administrator) or offices of elected officials may opt out of this policy.

II. APPLICABILITY

This policy applies to all Deschutes County employees, who work remotely.

III. DEFINITIONS

1. Remote Work ~~is defined as~~ a work flexibility arrangement under which an employee performs the duties and responsibilities of their position, and other authorized activities, from an approved worksite other than the location from which the employee would otherwise work.
 - a. Hybrid Work ~~is~~ when an employee is performing work from both on-site and remotely from an approved worksite other than the regular assigned work location for the position.
 - b. Fully Remote Work ~~is~~ when an employee is performing more than 75% of their work from an approved (non-County) worksite other than the regularly assigned work location for the position. If working under this category, the employee's primary work location becomes a non-County location.
2. Central Oregon is defined as Deschutes, Crook, Jefferson or Klamath County.

IV. ROLES AND RESPONSIBILITIES

Employees who work remotely are responsible for adhering to all expectations outlined below.

Supervisors are responsible for determining whether an employee is eligible to participate based on criteria outlined in this policy. Further, supervisors are responsible for implementing this policy consistently and with robust oversight and accountability, including monitoring remote work effectiveness and measuring performance.

V. LOCATION OF REMOTE WORK AND IMPACT ON COMMUTE/TRAVEL

For a fully remote employee, the employee's primary work location changes (and will likely be their residence). As a result, any regularly scheduled **remote work is only allowed if the employee's remote work location is in Central Oregon. (unless approved in advance by the County Administrator—see section 2 below).**

Unless otherwise approved in writing (e.g., due to departmental operational needs or a reasonable accommodation), the remote work location must allow the employee to report onsite within the time it ordinarily takes them to commute to their assigned worksite.

1. Remote work options from within Central Oregon:
 - a. Hybrid remote work - does not change the employee's assigned County work location. Travel time from the employee's remote work location to their assigned County location will be considered commute time and not compensated by the County.
 - b. Fully remote work – changes the employee's assigned work location. When business needs require the employee to work from or report to another location, the employee must be compensated for travel time in accordance with the Fair Labor Standards Act (FLSA). Generally, this means that travel time to and from their assigned work location as a part of their regular work duties is considered work time unless the travel is outside the employee's regular work schedule. Deschutes County will follow the State of Oregon [Travel Time & Mileage](#) guidelines. Travel time during regularly scheduled work hours is considered work time and may also include mileage reimbursement (or the use of a County vehicle). Therefore, when required to come into the County workplace to perform work, the employee shall make every effort to travel to the County workplace during non-scheduled work time.
2. Remote work from outside Central Oregon is eligible under the following conditions:
 - a. It is not regularly scheduled.
 - b. While temporarily traveling for work purposes, such as attending a conference or training. Such occurrences cannot exceed 14 days per calendar year and must be approved in advance by the Department

- Director. Any exception beyond the 14 day limit must be approved by the County Administrator or a Deputy County Administrator.
- ~~c. It is temporary (a maximum of 14 days per year) and approved by the Department Director.~~
- ~~d. Special circumstances requiring a duration longer than 14 days must be approved in advance by the County Administrator.~~
- ~~e.c.~~ Remote work from outside Central Oregon shall never result in the employee's work location becoming a location outside Central Oregon, ~~unless explicitly approved in advance by the County Administrator. Establishing a work location outside Central Oregon would result in complications with paying the employee for travel time when coming to a County office/facility.~~
- d. Remote work location does not cause cross-jurisdictional employment relationships, or local and city tax liabilities which could affect employee withholding. Departments can coordinate with Payroll on any potential impacts. The requirements in this section are intended to prevent an employee working outside of Central Oregon becoming an employee of or incurring tax liabilities from another jurisdiction (for tax purposes). Deschutes County is not set up to be a multi-jurisdictional employer.

While performing work duties outside of the Deschutes County tax jurisdiction, if the remote work location causes the County to be subject to additional state and local income tax withholding and payment obligations, the additional fees and costs incurred for implementing and administering such taxes is the responsibility of the employee.

- ~~f. The decision and approval will be based on the employees' work duties, whether they can be satisfactorily fulfilled at that distance, and any impact on clients/customers.~~
- ~~g.e.~~ In general, additional costs incurred for the employee to work remote is the responsibility of the employee.

VI. **ELIGIBILITY**

Not all positions are suited for participation in the program, such as customer facing positions. If the employee is sick and unable to function at full productivity, remote work is not permissible and is not a substitute for using Time Management Leave or Sick Leave.

Employees may be eligible to participate in the program based on criteria outlined below. Participation in this program is at the County's sole discretion and may be modified or revoked at any time. Employees must meet all the following to be eligible for participation in the program, unless granted an exception by the Department Director after consultation with HR:

1. Duties must be completed as efficiently, or more efficiently, than at the primary onsite location.
2. Participation must not lower the level of service delivery for the participant's work unit, including taking into account the impact on teamwork and morale.
3. The employee must have adequate job knowledge to work independently or remotely.
4. An overall rating of "Meets Expectations" or higher on most recent evaluation, if applicable.
5. No formal discipline within the last 12 months (written reprimand or higher).

Potential remote work situations that require careful review:

1. If an employee has a mild illness (for example, a mild cold or mild cough) or is recovering from a short-term medical condition, and is still able to work at full capacity, remote work is an option.
2. Remote work is not a substitute for childcare or other dependent/family care. Employees shall make or maintain childcare arrangements to permit concentration on work assignments. However, in limited situations, remote work may be approved to allow the employee to be at home with a sick child or to allow for dependent/family care, such as:
 - a. The child or dependent/family member under care needs little or no direct care. The purpose of the employee working remotely is for the employee to be able to respond to an unlikely emergency event (examples: a dependent care arrangement where the employee works remotely to attend to an emergency situation should it arise, a child is recovering from a surgery and is sleeping most of the time, an older child is sick but does not require much direct care).
 - b. The employee will only record and report time worked.
 - c. There is another care giver at home.

While performing remote work, the employee is expected to devote the same degree of time and attention to work as when the employee is at their County worksite. Meeting the above criteria does not guarantee approval for participation; final approval is subject to supervisor/manager discretion.

Depending on the criteria in this policy, an employee may be determined to be:

1. Eligible for remote work on a part-time basis or intermittently.
2. Eligible for remote work on a regular schedule.
3. Not eligible for remote work.

VII. REMOTE WORK EXPECTATIONS AND ENVIRONMENT

While performing remote work, the employee must adhere to the following expectations:

1. Continue working their regular set schedule unless the employee receives supervisory approval to change their schedule.

2. Seamlessly and completely be accessible via standard County phone and email systems during working hours.
3. The employee takes full responsibility for the technology required to complete their job remotely. If the technology does not work, the employee will be required to fix the problem without any loss of work time or take TML or other available leave for any time loss associated with the remote technology barrier.
4. The employee will be required to use TML or other approved leave if the employee is otherwise unable to perform their job from a remote location.

Participants must have an adequate work environment that:

1. It is free from distractions.
2. It has adequate office furniture and office equipment provided by the employee.
3. It contains a secure, reliable internet connection with sufficient bandwidth to perform duties at the employee's cost.
4. Provides adequate auditory confidentiality if work requires it.
5. It is maintained in a safe condition, free from hazards to employees and equipment.
6. If needed, it is modified to meet work safety requirements, (i.e., if modified workstation is required at the primary worksite, remote working environment should be similarly modified).
7. Meets the ergonomic needs of the employee.

In general, the participant will be responsible for most/all costs associated with meeting the above requirements, including setting up of designated workspace, as well as ongoing costs related to connectivity, printing, scanning, and/or other necessary equipment. There may be special situations where a department allows the employee to use County furniture/property for remote work. If significant county-funded supplies are required to perform work duties, such as a specialized scanner, this would constitute a need for the employee to perform those duties on-site.

Employees understand that all equipment, records, and materials provided by the County shall remain the property of the County. County-owned equipment and software shall be used exclusively by the employee and for the purpose of conducting County business.

Software shall not be duplicated. Employees agree to report to employee's supervisor any incidents of loss, damage, or unauthorized access as soon as possible.

VIII. INFORMATION SECURITY

Employee agrees to protect County-owned equipment, records, and materials from unauthorized

or accidental access, use, modification, destruction, or disclosure. This includes protecting equipment when traveling to/from County facilities. The precautions described in this agreement apply regardless of the storage media on which information is maintained, the locations where the information is stored, the systems used to process the information, or the process by which the information is stored.

Participants will be held accountable for securing information by taking measures to safeguard information in accordance with confidentiality, HIPAA and privacy rules. At all times, employees shall adhere to all provisions of [Administrative Policy No. IT-1, "Computer, E-mail and Mobile Computing Device Use."](#)

IX. PROCESS AND EVALUATION

Supervisors are responsible for ensuring that an employee performing remote work has clear and documented productivity expectations and that the employee is meeting these expectations. Supervisors may require additional actions by employees to verify work time.

Here are factors a supervisor may consider helping determine appropriate amount/frequency of remote time:

1. Quantify tasks that are appropriate for remote work and consider frequency and distribution (e.g. half a day once a week compared to a full day every other week).
2. Impact on clients, customers, and co-workers, including the importance of in-person interactions and communications.
3. Availability to attend meetings in-person (e.g. if most meetings are Tuesday/Wednesdays, schedule Thursdays as a remote day). Clearly communicate to staff that regularly scheduled remote time may be "bumped" if a need for an in-person meeting arises.
4. Impact on internal/external partners: feedback from others will inform whether the amount of time is working well (e.g., if feedback is received that the person is less available for consult or lacking timely follow up, remote time may be decreased, redistributed, or eliminated).
5. Adjustments depending on workload (e.g. a decrease in independent tasks may result in decreasing remote time; a special project with a hard deadline that necessitates independent concentration may result in approval of additional remote time).

X. PROGRAM AGREEMENT

Upon approval based on the criteria contained in this policy, staff will enter into a Remote Work Program Agreement (attached). The agreement will be signed by the employee, supervisor, and department director. Remote work may be on an as needed basis or regularly scheduled. The agreement will include:

1. Time period approved for remote work (frequency and duration, including an end date of no

more than one year, noting that it may be reviewed throughout the period and may be terminated at the County's sole discretion).

2. Type of remote work.
3. The specific site(s) approved for remote work. The standard approval process is for remote work sites within Central Oregon.
4. A statement that the duties, obligations, and responsibilities of the participant's employment with the County remain unchanged.
5. An explanation of how the remote work arrangement will affect the operations and impact on the employee's productivity.
6. An explanation on how productivity will be measured/reported and how the employee will be available to supervisors, co-workers and customers.
7. A statement that the participant's salary, benefits, retirement, and County- sponsored insurance remain unchanged.
8. A statement that participants remain obligated to comply with all County, State, and Federal laws and rules, and policies, including the County's Code of Ethics and the Fair Labor Standards Act.
9. A statement that the violation of any of the above or the misuse of County time, data, or equipment may result in disciplinary action.
10. A list of County owned items (such as laptop, mouse, etc.) that will be at the remote location.
11. Signature of employee, supervisor, manager, and department head (if required per this policy).
12. A designation whether the request is for hybrid remote work or fully remote work. If fully remote work, a listing of the employee's primary work location which will not be a County location.

Approved by the Deschutes County Board of Commissioners on (INSERT DATE HERE)

Nick Lelack
County Administrator

Revision History:

INCLUDE ADOBE FILLABLE REMOTE WORK PROGRAM AGREEMENT



DESCHUTES COUNTY ADMINISTRATIVE POLICY No. HR-12

EFFECTIVE DATE: JULY 21, 2008

UPDATED: SEPTEMBER 3, 2023

FAMILY AND MEDICAL LEAVE POLICY

STATEMENT OF POLICY

It is the policy of Deschutes County to comply with the provisions of the federal Family and Medical Leave Act (FMLA), the Oregon Family Leave Act (OFLA), and Paid Leave Oregon (PLO).

APPLICABILITY

This policy applies to all eligible Deschutes County employees.

POLICY AND PROCEDURES

General

This policy informs county employees about protected leave outlined in FMLA, OFLA, and PLO. Whichever act provides the greater benefit to the employee will be applied. Protections that qualify under more than one type of protected leave will run concurrently. Although not every detail of these laws can be included in this policy, the county will administer protected leave in accordance with all applicable state and federal laws.

Employee Eligibility

FMLA

To qualify for FMLA, an employee must have been employed by the county for at least 12 months and have worked at least 1,250 hours in the previous 12 months.

OFLA

To qualify for OFLA, an employee must have been employed by the county for an average of 25 hours or more per week¹ for 180 calendar days before leave begins. However, employees taking leave due to the birth of a child or newly adopted or placed foster child become eligible after being employed for 180 calendar days, without regard to the number of hours worked per week. Additionally, during a public health emergency,

¹ This requirement may be different for employees who qualify under the Oregon Military Family Leave Act (OMFLA). Human Resources will provide direct consultation regarding eligibility for those who qualify under OMFLA.

employees become eligible for OFLA leave if they have worked for a covered employer for at least 30 days and have worked an average of at least 25 hours per week in the 30 days before taking leave.

PLO

PLO is a paid leave benefit administered by the Paid Leave Oregon division of the Oregon Employment Department. Eligible employees that have earned at least \$1,000 in the prior year and who have contributed to PLO may qualify for up to 12 weeks of paid family, medical, or safe leave in a benefit year.

Employees applying for PLO benefits will apply directly through the Paid Leave Oregon website and will be required to request a leave of absence from the county as well. When an employee applies for this PLO, the state will determine an employee's qualifications for the benefit and will approve or deny claims for PLO benefits.

Qualifying Events for Leave

- a. Under FMLA, employees are entitled to take family medical leave in the following situations:
 - 1) When the employee has a "serious health condition" (defined further below), which renders the employee unable to perform the functions of their position.
 - 2) To care for a family member with a "serious health condition." Under FMLA, family member is defined as a spouse, parent, or child, or someone with whom the employee has an "in loco parentis" relationship. "In loco parentis" is defined as a person with whom an employee has developed a parent/child relationship in the absence of a biological or adoptive parent.
 - 3) For the birth or adoption of a child, or for the placement of a child in foster care with the employee. This is often referred to as "parental leave."
 - 4) Immediate family members (spouses, parents, and children) as well as next of kin (nearest blood relative) of an Armed Forces service member who suffers a serious injury or illness while in military service are entitled to take up to 26 weeks of FMLA leave to care for that service member during a 12-month period. The expanded leave to care for injured service members is only available during a single 12-month period.
 - 5) "Any qualifying exigency" arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty, or has been notified of an

impending call to active duty status, in support of a contingency of operation. "Qualifying exigency" may include child or elder care (even without a serious health condition) or helping the family member prepare for departure for duty.

b. In addition, employees are entitled to take family medical leave in the following situations under Oregon law (OFLA):

- 1) To provide home care for a child under the age of 18 with a non-serious health condition, provided another family member is not willing and able to care for the child; or
- 2) To provide childcare if your child's school or childcare provider is closed due to a statewide public health emergency, such as COVID-19 pandemic school closures; or
- 3) Up to an additional twelve (12) weeks for pregnancy disability leave before or after the birth of a child; or
- 4) Up to fourteen (14) days for military family leave if your spouse or domestic partner is a service member who has been called to active duty or is on leave from active duty; or
- 5) Up to two (2) weeks for bereavement leave related to the death of a family member; or
- 6) To care for a family member with a "serious health condition." Under OFLA, eligible family members include those covered under FMLA as well as a child's spouse or domestic partner, a parent's spouse or domestic partner, a sibling or stepsibling or the sibling's or stepsibling's spouse or domestic partner, a grandparent or the grandparent's spouse or domestic partner, a grandchild or the grandchild's spouse or domestic partner, a domestic partner, or any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship. A statement of Affinity may be required to show that such a bond exists.

A. As outlined in OAR 471-070-1000, "affinity," as the term is used in ORS 657B.010, means a relationship that meets the following requirements:

- a. There is a significant personal bond that, when examined under the totality of the circumstances, is like a family relationship, and;
- b. The bond under section (a) of this rule may be demonstrated by, but is not limited to the following factors,

with no single factor being determinative:

- i. Shared personal financial responsibility, including shared leases, common ownership of real or personal property, joint liability for bills, or beneficiary designations;
- ii. Emergency contact designation of the claimant by the other individual in the relationship, or vice versa;
- iii. The expectation to provide care because of the relationship or the prior provision of care;
- iv. Cohabitation and its duration and purpose;
- v. Geographical proximity; and
- vi. Any other factor that demonstrates the existence of a family-like relationship

c. Employees are entitled to take paid leave in the following situations under PLO:

- 1) To care for family members (as defined under OFLA) with a serious health condition.
- 2) To care for and bond with a child in the first year after birth, adoption, or when they're placed in your home through foster care.
- 3) Medical leave to care for yourself when you have a serious health condition.
- 4) Safe leave to care for yourself or your child if you or your child are survivors of sexual assault, domestic violence, harassment, or stalking.

Serious Health Condition

A serious health condition means an illness, injury, impairment or physical or mental condition that involves:

- 1) Inpatient care (overnight hospital stay).
- 2) A critical illness or injury diagnosed as terminal, or which possesses an imminent danger of death.
- 3) A period of incapacity for more than three consecutive calendar days, and any subsequent treatment period of incapacity relating to the same condition, which also involves:
 - a. Two or more treatments by a health care provider, or
 - b. Treatment by a health care provider on at least one occasion, with a regimen of continuing treatment (e.g., prescription drugs.)
- 4) Permanent or long-term incapacity due to a condition for which treatment may not be effective, such as Alzheimer's disease, severe stroke, clinical depression, or terminal stages of a disease.

- 5) Absences for pre-natal care or pregnancy-related disability.
- 6) Absences for "chronic" serious health conditions, including, but not limited to diagnosed migraines, asthma, diabetes or epilepsy.
- 7) Absences to receive multiple treatments for restorative surgery after an accident or injury, or conditions that, if not treated, would likely result in an incapacity of more than three consecutive calendar days without medical intervention or treatment.

Duration of the Leave

Qualifying employees are entitled to 12 weeks of family medical leave in a one-year period, which means a period of 52 consecutive weeks beginning on the Sunday immediately preceding the date on which family leave commences.

For parental leave under OFLA, intermittent leave is subject to department approval and the leave must be taken and concluded within one (1) year from the date of birth or placement of the child.

Under OFLA and PLO, additional leave may be available for employees who suffer from a disability resulting from pregnancy or childbirth. Additionally, OFLA allows time off to care for a child with a non-serious health condition that requires home care. Employees should contact the Human Resources Department to determine if they are eligible for extended leave under these circumstances.

When family members who are each employed by the county wish to take leave under this policy at the same time, their ability to do so may be limited in certain circumstances, such as when they wish to take parental leave together or when they wish to take leave at the same time to care for a parent suffering from a serious health condition. When family members who are each employed by the county wish to take leave at the same time, they should contact the Human Resources Department to determine if they are eligible to do so.

Concurrent Leaves

To the extent permissible under the law, OFLA, FMLA, and PLO leave will run concurrently. Whenever these laws differ, the county will apply the standard which is most beneficial to the employee.

OFLA and PLO leave cannot run concurrently when the employee is eligible to receive worker's compensation under ORS chapter 656. OFLA leave can run concurrently only if the worker's compensation claim is denied, or if the employee has refused a suitable offer of light duty or

modified employment. FMLA leave will run concurrently with a worker's compensation leave if the leave meets the criteria for a serious health condition under FMLA.

Notice Required by Employee

When the leave is foreseeable, the employee must apply for family medical leave **at least thirty (30) calendar days** in advance of the leave by completing and providing to the county a "Family and Medical Leave Request Form." Furthermore, if the leave is foreseeable, the employee must make reasonable efforts to schedule leave in a way that does not unduly disrupt the operation of the employee's department. If an employee fails to give at least thirty (30) days' notice of foreseeable leave, and has no reasonable excuse, the county may delay the start of leave until at least 30 days after the notice was actually given by the employee. If leave is required because of a medical emergency or other unforeseeable event, the employee must inform their supervisor within three working days so the form can be provided to the employee. Employees applying for PLO benefits must also notify the state within its established timeframes to avoid a possible reduction in the PLO benefit.

Completed forms are to be returned to the employee's supervisor and then forwarded to the Human Resources Department to determine if the employee and leave request meets the qualification criteria. It is the responsibility of the employee, and the employee's supervisor to ensure Family and Medical Leave Request Forms are completed and submitted to the Human Resources Department as quickly as possible.

Human Resources staff will review the Family and Medical Leave Request Form and provide the employee a Family and Medical Leave Designation Notice or request additional certification forms if needed. If the employee or family member has a serious health condition, the county may require the completion of a Health Care Provider Certification Form, which will be sent to the employee by the Human Resources Department.

The Health Care Provider Certification Form must be completed by the employee's health care provider and returned to the Human Resources Department within fifteen (15) calendar days from the date of the leave request. Failure to provide the Health Care Provider Certification Form may result in denial of the rights and protections of FMLA and OFLA.

If the serious illness is related to a family member, the attending health care provider must indicate on the Health Care Provider Certification Form that the employee is needed to provide care.

When the medical certification is unclear, or its validity is in question, the county may require the employee or family member to obtain a second or third opinion at the county's expense.

If the need for leave extends beyond a period of one (1) year, such as with intermittent serious health condition leave, the county may require periodic re-certifications by a

health care provider that there is a continuing need for leave.

If the family medical leave is for the employee's own serious health condition, the employee will be required to furnish a "Release to Return to Work" from their health care provider upon requesting to return to work.

Employees applying for PLO benefits will be required to provide documentation directly to PLO in accordance with PLO's claim request process. The county will not supply medical documentation to PLO on behalf of an employee or their family member.

Obligation to Designate Leave

Deschutes County is obligated under the law to designate family medical leave when it becomes aware of a situation that clearly meets the leave criteria. It is the policy of Deschutes County that employees are to follow the above procedures for notifying the county of their potential leave. However, if the leave clearly meets the leave criteria, the county reserves the right to designate protected leave beginning with the first day of absence for the qualifying leave. The employee cannot delay the start date of family medical leave by declaring the first part of leave as "vacation" leave.

Confidentiality

Supervisors and Human Resources staff are required to keep medical information confidential and Family and Medical Leave documents and forms in a file separate from the employee's personnel file.

Intermittent or Reduced Schedule Leaves

For serious health conditions, family medical leave may be taken on an intermittent basis or a reduced schedule if medically necessary. Details of the proposed schedule will be verified by the certifying medical professional on the Health Care Provider Certification Form.

Status Reports

While on family medical leave, the employee's supervisor is entitled to periodic reports of status and intent of return to work from the employee, at intervals determined by the supervisor. The supervisor must take into account all of the relevant facts and circumstances related to the individual employee's leave situation when considering such reports, how often such reports are required, and how such reports will affect the length of the employee's leave.

Use of Accrued Leave

Employees who take leave under FMLA and/or OFLA, and who apply for, and are approved for PLO by the state, may elect to use their accrued paid leave to replace their wages up to approximately 100% of their average weekly wage, consistent with applicable law. The average weekly wage is the employee's total gross wages divided by the number of weeks the employee has worked for Deschutes County over the prior 12 months. An employee choosing to supplement their PLO benefits with accrued leave must make their election for each leave bank during the payroll period in which they wish to use the hours. The county will report all supplemental benefits paid to employees to the state in accordance with applicable rules. It should be understood that the county is not responsible for an employee's PLO repayment obligations, penalties, or reduction in benefits assessed by the state due to the employee's decision to use their accrued leave.

If an employee is approved for PLO benefits and has requested to use leave accruals, any period of absence when they are not using any leave accruals will be considered an unpaid leave of absence. The county may request documentation of PLO benefits received when an employee elects to supplement with their accrued leave while on PLO so the appropriate amount of accrued leave to be used can be determined. An employee's regular salary will not be paid when on leave under PLO, even if their PLO benefit has not yet been received.

If an employee's leave does not qualify or apply for PLO, but qualifies for other protected leaves, employees are required to use all available accrued paid leave before going into leave without pay. If the day before and after a holiday are leave without pay, the holiday will also be unpaid. An employee will not earn paid leave accruals on any time coded as unpaid leave for any reason.

Tracking of Leave

Employees are responsible for informing their supervisors of absences that are related to a FMLA, OFLA, or PLO event. Both employees and supervisors are responsible for ensuring such absences are clearly noted on timesheets so the amount of FMLA/OFLA/PLO leave may be accurately tracked.

Benefit Continuation

Employees on leave who are eligible for leave under FMLA and/or OFLA will have their benefits continued under the same terms and conditions as when they were an active

employee during the period of qualified leave. Employees who are eligible for protected leave under PLO will have their benefits continued after 90 consecutive days of employment.

Employee contributions towards benefits will be made either through payroll deduction (when using paid leave) or by direct payment to the county (while on unpaid leave). The employee will be advised in writing as to the method of payment and due date of premiums. Employee contribution amounts are subject to any change in rates that occur while the employee is on leave.

Reinstatement

Employees returning from leave will be reinstated to the same or an equivalent position with equivalent benefits, pay and other terms and conditions of employment and employment status (for example, if the employee was on a work plan or had progressive discipline before the leave, these corrective steps will resume), unless their former positions have been eliminated in circumstances under which the law does not require reinstatement. The employee's restoration rights are the same as they would have been had the employee not been on leave. Therefore, if an employee's position would have been eliminated or the employee would have been terminated but for the family and/or medical leave, the employee would not have the right to be reinstated upon return from leave.

If an employee is on probationary status while on approved family and/or medical leave, and the leave exceeds more than two weeks, the employee's probationary period will be extended by the length of the leave.

Failure to Return from Leave

When an employee fails to return to work after exhausting family medical leave, their employment may be terminated in accordance with applicable laws, county policies, and union contracts. When an employee is unable to return to work due to their own serious health condition, the county will work with the employee to determine any protections that they may be afforded under the Americans with Disabilities Act (ADA).

If the employee has given unequivocal notice of the intent not to return from leave, the employer's obligation to reinstate the employee ceases. Under FMLA only, the employment relationship generally ends after the employee clearly abandons future employment. The employee may be required to repay the county for the employer-paid portion of the health insurance premium during any unpaid FMLA period. Health insurance premium repayment under this provision will not apply if the need for leave

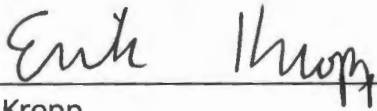
still exists, the employee cannot return for a reason that is beyond their control, or the employee elects retirement.

Regardless of the employee's notification of their decision to not return to work, under OFLA only, the county will continue the employee's previously approved OFLA leave until it is exhausted. The employee remains entitled to all rights and protections under OFLA for the balance of the leave, including the right to the continuation of group health coverage. If failure to return is due to continuation, recurrence or onset of a serious health condition, medical certification may be required within thirty (30) days from the date the county requests the information.

Retaliation or Discrimination

Employees are protected against retaliation or discrimination in any manner as a result of the exercise of the right to FMLA OFLA, or PLO leave. Any employee violating this provision is subject to discipline.

Approved, as updated, by the Deschutes County Board of Commissioners effective September 3, 2023.



Erik Kropp
Acting County Administrator



DESCHUTES COUNTY ADMINISTRATIVE POLICY No. HR-12

EFFECTIVE DATE: JULY 21, 2008

UPDATED: SEPTEMBER 3, 2023

FAMILY AND MEDICAL LEAVE POLICY

STATEMENT OF POLICY

It is the policy of Deschutes County to comply with the provisions of the ~~federal~~Federal Family and Medical Leave Act (FMLA), the Oregon Family Leave Act (OFLA), and Paid Leave Oregon (PLO).

APPLICABILITY

This policy applies to all eligible Deschutes County employees.

POLICY AND PROCEDURES

General

This policy informs county employees about protected leave outlined in FMLA, OFLA, and PLO. Whichever act provides the greater benefit to the employee will be applied. Protections that qualify under more than one type of protected leave will run concurrently. Although not every detail of these laws can be included in this policy, the county will administer protected leave in accordance with all applicable ~~state~~State and ~~federal~~Federal laws.

Employee Eligibility

FMLA

To qualify for FMLA, an employee must have been employed by the county for at least 12 months and have worked at least 1,250 hours in the previous 12 months.

OFLA

To qualify for OFLA, an employee must have been employed by the county for an

¹ This requirement may be different for employees who qualify under the Oregon Military Family Leave Act (OMFLA). Human Resources will provide direct consultation regarding eligibility for those who qualify under OMFLA.

average of 25 hours or more per ~~week~~¹~~week~~ for 180 calendar days before leave begins. ~~However, employees taking leave due to the birth of a child or newly adopted or placed foster child become eligible after being employed for 180 calendar days, without regard to the number of hours worked per week.~~ Additionally, ~~during~~during a public health emergency, employees become eligible for OFLA leave if they have worked for a covered employer for at least 30 days and have worked an average of at least 25 hours per week in the 30 days before taking leave.

PLO

PLO is a paid leave benefit administered by the Paid Leave Oregon division of the Oregon Employment Department. Eligible employees that have earned at least \$1,000 in the prior year and who have contributed to PLO through payroll deductions may qualify for up to 12 weeks of paid family, medical, or safe leave in a benefit year.

Employees applying for PLO benefits will apply directly through the Paid Leave Oregon website and will be required to request a leave of absence from the county as well.

When an employee applies for this PLO, the state will determine an employee's qualifications for the benefit and will approve or deny claims for PLO benefits.

Qualifying Events for Leave

- a. Under FMLA, employees are entitled to take family medical leave in the following situations:
 - 1) When the employee has a "serious health condition" (defined further below), which renders the employee unable to perform the functions of their position.
 - 2) To care for a family member with a "serious health condition."¹ Under FMLA, family ~~member is~~members are defined as a spouse, parent, or child, or someone with whom the employee has an "in loco parentis" relationship. "In loco parentis" is defined as a person with whom an employee has developed a parent/child relationship in the absence of a biological or adoptive parent.

¹ ~~This requirement may be different for employees who qualify under the Oregon Military Family Leave Act (OMFLA). Human Resources will provide direct consultation requiring eligibility for those who qualify under OMFLA.~~
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- 3) For the birth or adoption of a child, or for the placement of a child in foster care with the employee. This is often referred to as "parental leave."
- 4) Immediate family members (spouses, parents, and children) as well as next of kin (nearest blood relative) of an Armed Forces service member who suffers a serious injury or illness while in military service are entitled to take up to 26 weeks of FMLA leave to care for that service member during a 12-month period. The expanded leave to care for injured service members is only available during a single 12-month period.
- 5) "Any qualifying exigency" arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty, or has been notified of an impending call to active-duty status, in support of a contingency of operation. "Qualifying ~~exigency~~" may include child or elder care (even without a serious health condition) or helping the family member prepare for departure for duty.

b. ~~In addition, employees~~ Employees are entitled to take family medical leave in the following situations under Oregon law (OFLA):

1) To provide home care for a child ~~under the age of 18 with a non-serious health~~ who is suffering from an illness, injury, or condition, ~~provided another family member is not willing and able to that~~ requires home care.

4) ~~To care for the~~ child; or

1)2) ~~To provide childcare if your child's who requires home care due to the closure of the child's school or childcare provider is closed due to a statewide result of a public health emergency, such as COVID-19 pandemic school closures; or.~~

3) Up to ~~an additional two (2) weeks for bereavement leave related to the death of a family member, taken within 60 days of the date on which the employee receives notice of the death of the family member, not to exceed a total of four weeks within a one-year period.~~

2)4) Up to twelve (12) weeks for pregnancy disability leave before or ~~after the birth of a child; or. This is in addition to any other OFLA~~

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leave used for the purposes stated above.

~~3)5)~~ Up to fourteen (14) days for military family leave, if your spouse or domestic partner is a service member who has been called to active duty or is on leave from active duty; or

~~4)6)~~ Up to two (2) weeks for bereavement leave Under OFLA, "family member" means an individual who is related by affinity to the death of a family member; employee or an individual who is the employees:

To care for a family member with a "serious health condition." Under OFLA, eligible family members include those covered under FMLA as well as a child's spouse

(a) Spouse or domestic partner, a parent's

(b) Child or the child's spouse or domestic partner, a sibling

(c) Parent or the parent's spouse or domestic partner

"Parent" means:

A. An employee's biological parent, adoptive parent, stepparent, current or former foster parent, or a person who was or is the employee's legal guardian or with whom the employee was or is in a relationship of in loco parentis; or

B. The parent of the employee's spouse or domestic partner who meets a description in (A) above.

5) (d) Sibling or stepsibling or the sibling's or stepsibling's spouse or domestic partner, a grandparent or the grandparent's spouse or domestic partner, a grandchild or the grandchild's spouse or domestic partner, a domestic partner, or any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship. A statement of Affinity may be required to show that such a bond exists.

• ~~(e)~~ As outlined in OAR 471-070-1000, "affinity," as the term is used in ORS 657B.010, 839-009-210, "Affinity" means a relationship that meets the following requirements:

• ~~Therefor which there~~ is a significant personal bond that, when examined under the totality of the circumstances, is like a family relationship, and;

• ~~.~~ The bond under section (a) of this rulesubsection may be demonstrated by, but is not limited to the following factors, with no single factor being determinative:

- ~~i.A.~~ Shared personal financial responsibility, including shared leases, common ownership of real or personal property, joint liability for bills, or beneficiary designations;
- ~~ii.B.~~ Emergency contact designation of the claimant by the other individual in the relationship, or vice versa the emergency contact designation of the other individual in the relationship by the employee;
- ~~iii.C.~~ The expectation to provide care because of the relationship or the prior provision of care;
- ~~iv.D.~~ Cohabitation and its duration and purpose;
- ~~v.E.~~ Geographical proximity; and
- ~~vi.F.~~ Any other factor that demonstrates the existence of a family-like relationship.

~~G.~~ C. Employees are entitled to take paid leave, in full day increments only, in the following situations under PLO:

- ~~1) 1}~~ To care for family members (as defined under OFLA~~}}~~) with a serious health condition.
- 2) To care for and bond with a child in the first year after birth, adoption, or when they're placed in your home through foster care.
- 3) To effectuate the legal process required for placement of a foster child or the adoption of a child.
- ~~3)4)~~ Medical leave to care for yourself when you have a serious health condition.
- ~~4)5)~~ Safe leave to care for yourself or your child if you or your child are survivors of sexual assault, domestic violence, harassment, or stalking.
- 6) Pre-placement leave for eligible employees who are planning to adopt or foster a child.

Serious Health Condition

A serious health condition means an illness, injury, impairment or physical or mental condition that involves:

- ~~1) 1}~~ Inpatient care (overnight hospital stay~~}}~~).
- 2) A critical illness or injury diagnosed as terminal, or which possesses an imminent danger of death.
- 3) A period of incapacity for more than three consecutive calendar days, and any subsequent treatment period of incapacity relating to the same condition, which also involves:

Policy No. HR-12, Family and Medical Leave

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- a. Two or more treatments by a health care provider, or
- b. Treatment by a health care provider on at least one occasion, with a regimen of continuing treatment (e.g., prescription drugs~~3.)~~)

~~1)4)~~ _____ Permanent or long-term incapacity due to a condition for which treatment may not be effective, such as Alzheimer's disease, severe stroke, clinical depression, or terminal stages of a disease.

~~4)5)~~ _____ Absences for pre-natal care or pregnancy-related disability.

~~5)6)~~ _____ Absences for "chronic" serious health conditions, including, but not limited to diagnosed migraines, asthma, diabetes or epilepsy.

~~6)7)~~ _____ Absences to receive multiple treatments for restorative surgery after an accident or injury, or conditions that, if not treated, would likely result in an incapacity of more than three consecutive calendar days without medical intervention or treatment.

Duration of the Leave

Qualifying employees are entitled to 12 weeks of family medical leave in a ~~one~~-year period, which means a period of 52 consecutive weeks beginning on the Sunday immediately preceding the date on which family leave commences.

~~For parental leave under OFLA, intermittent leave is subject to department approval and the leave must be taken and concluded within one (1) year from the date of birth or placement of the child.~~

Under OFLA ~~and PLO~~, additional leave may be available for employees who suffer from a disability resulting from pregnancy or childbirth. Additionally, OFLA allows time off to care for a child ~~with a non-serious health condition~~ that requires home care. PLO allows for additional leave for employees who give birth to a child. Employees should contact the Human Resources Department to determine if they are eligible for extended leave under these circumstances.

When family members who are ~~each~~ employed by the county wish to take leave under this policy at the same time, their ability to do so may be limited in certain circumstances, such as when they wish to take parental leave together or when they wish to take leave at the same time to care for a parent suffering from a serious health condition. When family members who are each employed by the county wish to take leave at the same time, they should contact the Human Resources Department to determine if they are eligible to do so.

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Concurrent Leaves

To the extent permissible under the law, OFLA, FMLA, and PLO leave will run concurrently. Whenever these laws differ, the county will apply the standard which is most beneficial to the employee.

~~OFLA and~~ PLO leave cannot run concurrently when the employee is eligible to receive worker's compensation under ORS chapter 656. ~~OFLA leave can run concurrently only if the worker's compensation claim is denied, or if the employee has refused a suitable offer of light duty or modified employment.~~

FMLA leave will run concurrently with a worker's compensation leave if the leave meets the criteria for a serious health condition under FMLA.

Notice Required by Employee

When the leave is foreseeable, the employee must apply for family medical leave **at least thirty (30) calendar days** in advance of the leave by completing and providing to the county a ~~"Family and Medical Leave Request Form."~~"Protected Leave Request Form," which is available on the Human Resources internet page here: <https://www.deschutes.org/hr/page/family-and-medical-leave> under Supporting Documents. Furthermore, if the leave is foreseeable, the employee must make reasonable efforts to schedule leave in a way that does not unduly disrupt the operation of the employee's department. If an employee fails to give at least thirty ~~(30) days' days of~~ notice of foreseeable leave, and has no reasonable excuse, the county may delay the start of leave until at least 30 days after the notice was actually given by the employee. If leave is required because of a medical emergency or other unforeseeable event, the employee must inform their supervisor within three working days ~~so the form can be provided to the employee.~~ Employees applying for PLO benefits must also notify the state within its established timeframes to avoid a possible reduction in the PLO benefit.

Completed forms are to be returned to the employee's supervisor and then forwarded to the Human Resources Department to determine if the employee and leave request meets the qualification criteria. It is the responsibility of the employee, and the employee's supervisor to ensure ~~Family and Medical~~Protected Leave Request Forms are completed and submitted to the Human Resources Department as quickly as possible.

Human Resources staff will review the ~~Family and Medical~~Protected Leave Request Form and provide the employee with a Family and Medical Leave Designation Notice or request additional ~~certification forms~~information if needed. If the employee or family member has

~~Policy No. HR-12, Family and Medical Leave~~

a serious health condition, the county may require the completion of a Health Care Provider Certification ~~Form, which will be sent to the employee by the Human Resources Department.~~(HCPC) form, which is also available on the Human Resources internet page here: [https://www.deschutes.org/hr/page/family-and-medical-leave under Supporting Documents.](https://www.deschutes.org/hr/page/family-and-medical-leave-under-supporting-documents)

~~The Health Care Provider Certification Form~~The HCPC form must be completed by the employee's health care provider and returned to the Human Resources Department within fifteen (15) calendar days from the date of the leave request. Failure to provide the ~~Health Care Provider Certification Form~~HCPC form may result in denial of the rights and protections of FMLA and OFLA.

If the serious illness is related to a family member, the attending health care provider must indicate on the ~~Health Care Provider Certification Form~~HCPC form that the employee is needed to provide care.

When the medical certification is unclear, or its validity is in question, the county may require the employee or family member to obtain a second or third opinion at the county's expense.

If the need for leave extends beyond a period of one (1) year, such as with intermittent serious health condition leave, the county may require periodic re-certifications by a health care provider that there is a continuing need for leave.

If the family medical leave is for the employee's own serious health condition, the employee will be required to furnish a "Release to Return to Work" from their health care provider upon requesting to return to work.

Employees applying for PLO benefits will be required to provide documentation directly to PLO in accordance with PLO's claim request process. The county will not supply medical documentation to PLO on behalf of an employee or their family member.

Obligation to Designate Leave

Deschutes County is obligated under the law to designate family medical leave when it becomes aware of a situation that clearly meets the leave criteria. It is the policy of Deschutes County that employees are to follow the above procedures for notifying the county of their potential leave. However, if the leave clearly meets the leave criteria, the county reserves the right to designate protected leave beginning with the first day of absence for the qualifying leave. The employee cannot delay the start date of family medical leave by declaring the first part of leave as "vacation" leave.

Confidentiality

Supervisors and Human Resources staff are required to keep medical information confidential, and Family and Medical Leave documents and forms in a file separate from the employee's personnel file.

Intermittent or Reduced Schedule Leaves

For serious health conditions, family medical leave may be taken on an intermittent basis or a reduced schedule if medically necessary. Details of the proposed schedule will be verified by the certifying medical professional on the ~~Health Care Provider Certification Form~~ HCPC form.

Status Reports

While on family medical leave, the employee's supervisor is entitled to periodic reports of status, and intent ~~often~~ to return to work from the employee, at intervals determined by the supervisor. The supervisor must take into account all of the relevant facts and circumstances related to the individual employee's leave situation when considering such reports, how often such reports are required, and how such reports will affect the length of the employee's leave.

Use of Accrued Leave

Employees who take leave under FMLA and/or OFLA, and who apply for, and are approved for PLO by the state, may elect to use their accrued paid leave ~~to replace their wages up to approximately 100% of their average weekly wage, consistent with applicable law. The average weekly wage is the employee's total gross wages divided by the number of weeks the employee has worked for Deschutes County over the prior 12 months, consistent with applicable law.~~ An employee choosing to supplement their PLO benefits with accrued leave must make their election for each leave bank during the payroll period in which they wish to use the hours. ~~The county will report all supplemental benefits paid to employees to the state in accordance with applicable rules. It should be understood that the county is not responsible for an employee's PLO repayment obligations, penalties, or reduction in benefits assessed by the state due to the employee's decision to use their accrued leave. If an employee chooses not to use available accrued leave, the employee will be considered on an unpaid leave of absence.~~

~~If an employee is approved for PLO benefits and has requested to use leave accruals, any period of absence when they are not using any leave accruals will be considered an unpaid leave of absence. The county may request documentation~~

Policy No. HR-12, Family and Medical Leave

~~of PLO benefits received when an employee elects to supplement with their accrued leave while on PLO so the appropriate amount of accrued leave to be used can be determined. An employee's regular salary will not be paid when on leave under PLO, even if their PLO benefit has not yet been received.~~

If an employee's leave does not qualify or apply for PLO, but qualifies for other protected leaves, employees are required to use all available accrued paid leave before going into leave without pay. If in accordance with current policies, practices and/or collective bargaining agreements, if the day before and after a county paid holiday are coded as leave without pay on the employee's timesheet, the holiday will also be unpaid. An employee will not earn paid leave accruals on any time coded as unpaid leave for any reason.

Tracking of Leave

Employees are responsible for informing their supervisors of absences that are related to a FMLA, OFLA, or PLO event. Both employees and supervisors are responsible for ensuring such absences are clearly noted on timesheets so the amount of FMLA/OFLA/PLO leave may be accurately tracked.

Benefit Continuation

Employees on leave who are eligible for leave under FMLA and/or OFLA will have their benefits ~~continued under the same terms and conditions as when they were an active~~ continued under the same terms and conditions as when they were an active employee during the period of qualified leave. Employees who are eligible for protected leave under PLO will have their benefits continued after (90) consecutive days of employment.

Employee contributions towards benefits will be made either through payroll deduction (when using paid leave) or by direct payment to the county (while on unpaid leave-), or by catching up through payroll deduction upon their return from leave. The employee will be advised in writing as to the method of payment and due date of premiums. Employee contribution amounts are subject to any change in rates that occur while the employee is on leave.

Reinstatement

Employees returning from leave will be reinstated to the same or an equivalent position with equivalent benefits, pay and other terms and conditions of employment, and employment status (for example, if the employee was on a work plan or had progressive discipline before the leave, these corrective steps will resume), unless their former

Policy No. HR-12, Family and Medical Leave

positions have been eliminated in circumstances under which the law does not require reinstatement. The employee's restoration rights are the same as they would have been had the employee not been on leave. Therefore, if an employee's position would have been eliminated, or the employee would have been terminated but for the family and/or medical leave, the employee would not have the right to be reinstated upon return from leave.

If an employee is on probationary status while on approved family and/or medical leave, and the leave exceeds more than two weeks, the employee's probationary period will be extended by the length of the leave.

Failure to Return from Leave

When an employee fails to return to work after exhausting family medical leave, their employment may be terminated in accordance with applicable laws, county policies, and union contracts. When an employee is unable to return to work due to their own serious health condition, the county will work with the employee to determine any protections that they may be afforded under the Americans with Disabilities Act (ADA).

If the employee has given unequivocal notice of the intent not to return from leave, the employer's obligation to reinstate the employee ceases. Under FMLA only, the employment relationship generally ends after the employee clearly abandons future employment. The employee may be required to repay the county for the employer-paid portion of the health insurance premium during any unpaid FMLA period. Health insurance premium repayment under this provision will not apply if the need for leave still exists, the employee cannot return for a reason that is beyond their control, or the employee elects retirement.

Regardless of the employee's notification of their decision to not return to work, under OFLA protected leave only, the county will continue the employee's previously approved OFLA leave until it is exhausted. The employee remains entitled to all rights and protections under OFLA for the balance of the leave, including the right to the continuation of group health coverage. ~~If failure to return is due to continuation, recurrence or onset of a serious health condition, medical certification may be required within thirty (30) days from the date the county requests the information.~~

Retaliation or Discrimination

Employees are protected against retaliation or discrimination in any manner as a result of ~~the exercise~~exercising of the right to FMLA, OFLA, or PLO leave. Any employee violating this provision is subject to discipline.

Approved, as updated, by the Deschutes County Board of Commissioners effective
~~September 3, 2023~~XXXX.


Erik Kropp

Acting

County Administrator



Deschutes County Administrative Policy No. HR-13
Effective Date: September 24, 2008

EMPLOYEE LEAVE DONATION

STATEMENT OF POLICY

It is the policy of Deschutes County to allow employees to voluntarily donate time management leave, vacation leave, or compensatory time to other employees who are out of leave due to an Oregon Family Leave Act (OFLA) / Family Medical Leave Act (FMLA) qualifying event.

APPLICABILITY

This policy applies to all regular County employees who accrue leave and have completed their initial probationary period.

POLICY AND PROCEDURE

General

To be eligible to receive donated leave, an employee must have been approved for OFLA/FMLA leave. OFLA/FMLA requires that the employee or employee's immediate family member have a serious and extended illness or injury (immediate family member and serious/extended illness are defined in the County's OFLA/FMLA policy).

Procedure

Eligibility for Employee to Receive Donated Leave

An employee interested in leave donation shall contact the Personnel Department. The Personnel Department will determine whether an employee is eligible for donated leave. A physician's statement may be requested of the employee requesting donated leave. The employee requesting the donated leave must first use (or plan to use and have available) 40 hours of paid leave and then exhaust all available paid leave including time management, sick leave (if applicable), floating holidays, and compensatory time.

If an employee does not have a minimum of 40 hours of paid leave accrued (when the leave is requested), they are not eligible for the donated leave program. The County Administrator may waive the 40 hour requirement in unusual circumstances where an employee falls below 40 hours of leave due to one occurrence of OFLA/FMLA leave and does not have sufficient time to build up his/her leave bank before another occurrence of OFLA/FMLA leave.

Employees with a serious and extended illness are encouraged to apply for long term disability if the illness is expected to last for several months. An employee using donated leave will continue to accrue benefits and leave time, but must exhaust all leave as accrued.

Eligibility for an Employee to Donate Leave

Employees who would like to donate leave must have a leave balance of at least 80 hours remaining (this includes all types of leave, with the exception of the floating holiday) after the donation. Part time employees must have a minimum prorated balance (for example, an employee working as a 0.5 FTE would need 40 hours).

Donating Leave

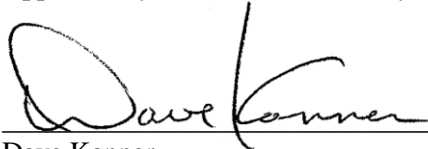
The Personnel Department will administer the leave donations. Solicitations by department heads, supervisors, or co-workers are not permitted. Once an employee receives approval to use donated leave, the Personnel Department will send out a notice to County employees of the request for donated leave. The notice will include the name and department of the employee requesting the leave.

Donated leave shall only include time management leave, vacation leave, and compensatory time. It shall not include sick leave or the floating holiday. To donate leave, an employee must sign a release document (Leave Donation Form – available on the intranet). Donors shall remain anonymous and all contribution records shall be retained in confidential files. Donations of leave will be on an hour-for-hour basis. The minimum contribution is eight hours for full-time employees and four hours for part-time employees. Donations cannot be retroactive.

Once approved, the contributions will be placed in the recipient's leave bank in the order they were received, but only as the recipient needs leave each pay period. In the event a request is processed but the recipient does not use the leave, the leave will be restored to the donor's leave bank.

The maximum amount of donated leave that can be received by an employee in a rolling 12 month period is 480 hours (prorated for part-time employees). If the employee using donated leave is eligible for long-term disability, the employee is limited to the amount of donated leave that is required to begin long-term disability. Once on long-term disability, an employee is not eligible for any type of donated leave.

Approved by the Deschutes County Board of Commissioners September 24, 2008.



Dave Kanner
County Administrator



Deschutes County Administrative Policy No. HR-13
Effective Date: September 24, 2008

EMPLOYEE LEAVE DONATION

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POLICY AND PROCEDURE

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Approved by the Deschutes County Board of Commissioners DATE

Nick Lelack
County Administrator



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 14, 2026

SUBJECT: Amendment to contract with Adlumin for Managed Detection and Response (MDR) services

RECOMMENDED MOTION:

Move approval of County Administrator signature of Document No. 2025-1153, an amendment to the contract with Adlumin for Managed Detection and Response services.

BACKGROUND AND POLICY IMPLICATIONS:

In 2024, Deschutes County IT, along with Deschutes County 9-1-1, initiated a Request for Proposal (RFP) process to identify a Managed Detection and Response (MDR) service. The goal was to find a provider that could integrate technology and human analytics to deliver 24/7 proactive threat hunting, advanced detection, investigation, and quick response to cyber threats. The contract was awarded to Adlumin for an initial one-year period, with a renewal option extending up to five years, at a cost of \$148,000.

In 2025, Adlumin was acquired by N-Able, which changed the contract renewal timeline and terms, increasing costs. After negotiating with N-Able, staff was able to save \$60,000 by opting for a three-year contract that provided more favorable terms for the County and the 9-1-1 Service District.

The contract renewal needed to occur by December 31. As there were no scheduled meetings of the Board of County Commissioners until January, , Acting County Administrator Erik Kropp signed the End User License Agreement (EULA) during the holiday period to secure the contract and the cost savings. Staff is now seeking retroactive Board approval for the amendment to this contract.

BUDGET IMPACTS:

\$422,472.35 over three years, with IT covering \$368,775 (at an annual cost of \$123,100) and the 9-1-1 Service District covering the remaining \$53,000 (\$17,740.45 annually).

ATTENDANCE:

Tania Mahood, Information Technology Director/CTO
Zachary Neemann, Information Security Manager

End User License Agreement

Last updated 11-14-25

This End User License Agreement (as defined below) is entered into and agreed upon by you, either an individual or an entity (“You” or “Company” or “County”) and N-able Technologies Ltd. and (collectively, “N-able”) for the Software (as defined below). This Agreement is made and entered into as of the date that You first accept this Agreement either by executing a Sales Order that references this Agreement or by downloading, installing and/or utilizing the Software or Services (the “Effective Date”).

BY ACCEPTING THIS AGREEMENT, EITHER BY INDICATING YOUR ACCEPTANCE, BY EXECUTING A SALES ORDER THAT REFERENCES THIS AGREEMENT, OR BY DOWNLOADING, INSTALLING, UTILIZING, OR RECEIVING THE SOFTWARE OR SERVICES (AS DEFINED BELOW), YOU AGREE TO ALL THE TERMS OF THIS AGREEMENT.

This Agreement is a legally binding contract between you and N-able. If you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind that entity to this Agreement.

This EULA, which is attached as Exhibit 1 to the Sales Order, , governs the use of the Software and Services. Any online or click-wrap terms that conflict with the Contract or the agreed EULA are rejected and will not apply to Client. Changes to this EULA require a written amendment signed by both parties.

Your continued use or receipt of the Services shall represent your acceptance of and agreement to the terms and conditions of this Agreement. You are responsible for making certain that any spam blocker or other email filter you employ will not block legal communications from N-able.

1. DEFINITIONS.

1.1 Affiliates means an entity controlled by, under common control with, or controlling such entity, where control is denoted by having fifty percent (50%) or more of the voting power (or equivalent) of the applicable entity. Subject to the terms and conditions of this Agreement, Your Affiliates may use the license granted hereunder, and You are responsible for their compliance with this Agreement and their actions and/or omissions.

1.2 Agreement means:

- a. this [End User License Agreement](#) as agreed to by both parties and attached as Exhibit 1 to the relevant Sales Order;
- b. the [Data Processing Addendum](https://www.n-able.com/wp-content/uploads/resources/legal/Data-Processing-Addendum.pdf) (<https://www.n-able.com/wp-content/uploads/resources/legal/Data-Processing-Addendum.pdf>);
- c. the [Software Support and Maintenance Terms](https://www.n-able.com/legal/support-and-maintenance-agreement) and Conditions (<https://www.n-able.com/legal/support-and-maintenance-agreement>);
- d. the relevant Sales Order(s); and
- e. N-able’s invoices for charges due from You in accordance with the Sales Order or any other documents incorporated by reference in this Agreement.

1.3 Charged Price is the price listed on the Sales Order.

1.4 Client(s) means the customer(s) of an MSP.

1.5 Data Processing Addendum means the terms of the then-current data processing addendum that N-able provides or makes available to you, including on N-able’s website as N-able may revise from time to time.

1.6 Devices means (whether physical or virtual) a server, system, workstation, computer, mobile device, or end point upon which or through which the Software is accessed or used and/or on which the Software is installed.

1.7 Documentation means the then-current official user documentation prepared and provided by N-able to You on the use of the Software and Services, which documentation N-able may update from time to time. For the avoidance of doubt, any installation guide or end user documentation not prepared or provided by N-able, any online community site, unofficial documentation, non-user documentation, specifications, videos, white papers, or related media or feedback does not constitute Documentation.

1.8 Initial Sales Order means Your first Sales Order with N-able for any Software or Services.

1.9 MSP means any person or entity that manages and supports Clients' information technology infrastructure using the Services, including but not limited to network monitoring, backup services, security services, and any related co-managed services.

1.10 N-able Content means, if applicable, N-able marketing documents and other content that are made available by N-able on N-able's website from time to time for MSPs to use in connection with selling to their customers their services that utilize the Software or Services.

1.11 N-able Marks means the trademarks and service marks that are specifically approved by N-able for MSPs to use in connection with selling to their Client(s) their services that utilize the Software or Services.

1.12 N-hanced Services means any technical, professional, and other services specifically identified and designated in a Sales Order as "N-hanced Services" to be provided by N-able

1.13 N-hanced Support means N-hanced Support purchased by You as set forth in the Sales Order.

1.14 Personal Data means any information that can be used to identify an individual as that term is defined under Regulation (EU) 2016/679 ("General Data Protection Regulation" or "GDPR") or related data protection laws.

1.15 Product Addendum means additional terms and conditions set forth in Section 15 that relate to the applicable Software, Services or Documentation.

1.16 Quantity Commitment means the quantity of Software or Services purchased listed under "Qty" (or a similar term) on the Sales Order.

1.17 Sales Order means the N-able order form, product information dashboard, or other N-able ordering document, such as a quote and a corresponding purchase order, that specifies Your purchase of the Software or Services, including specified N-hanced Services, if any, pricing, and other related information. In case of a conflict between any Sales Order and any other language in the Agreement, the Sales Order will control.

1.18 Services means N-hanced Services and Support.

1.19 Software means the object code versions of the product and any other downloadable software provided by N-able under this Agreement, together with the updates, new releases or versions, and modifications or enhancements, owned and licensed by N-able to You pursuant to this Agreement. Notwithstanding anything to the contrary in this Agreement, "Software" also includes any software delivered to you by N-able as part of any N-hanced Services provided by N-able.

1.20 Support means the maintenance or support provided by N-able or its designated agents for the Software as set forth in this Agreement. If you have purchased N-hanced Support, "Support" includes N-hanced Support.

1.21 Term means the Subscription Dates listed on Your Sales Order(s) if You are on a one-to-three-year plan; if You are on a month-to-month plan Your Term is one month.

1.22 User means an individual authorized by You to use the Software, Services, and Documentation, for whom You have purchased a license or to whom You have supplied a user identification and password. User(s) may only include Your employees, consultants, and contractors, and if You are an MSP, Your Clients. Notwithstanding anything to the contrary in

this Agreement, User(s) of N-hanced Services may only include Your employees, consultants, and contractors.

1.23 Usage means the quantity of the Software or Services used during the relevant subscription period .

1.24 Viruses mean any malicious code, Trojan horses, malware, spam, viruses, or other destructive technology.

1.25 Your Data or Data means data and files, including Personal Data, communicated, processed, stored, or submitted by You or Your Users in connection with Your or Your User's through the Software or Services.

1.23 Your Marks means the trademarks and service marks, including any logos, that You use for marketing purposes as described in Section 4.5.

2. PROVISION OF SOFTWARE AND SERVICES.

2.1 Subscription License. Upon payment of the fees and subject to Your continuous compliance with the terms and conditions of this Agreement, N-able hereby grants You, for Software obtained on a subscription license basis (as shown on the Sales Order), a limited, revocable, non-exclusive, non-transferable license for the applicable Term to internally use the Software and Documentation, subject to all of the terms of the Agreement, including those contained in this Section 2.1.

a) For each Software license that You obtain from N-able, You may: (i) use the Software on any single Device, unless the Documentation clearly states otherwise; and (ii) copy the Software for back-up and archival purposes, provided each copy must contain all of the original Software's proprietary notices and a notice that it will not be used for transfer, distribution, or sale.

b) The Software is in use on a Device when it is loaded into temporary memory or installed in permanent memory (hard drive or other storage media or device). You agree that You will register the Software only with N-able and that You will only install a Software license key obtained directly from N-able. You may provide, make available to, or permit Your Users to use or access the Software or Documentation.

c) **Services Delivery; Updates and Modifications.** You agree that N-able may deliver the Software to You with the assistance of its Affiliates, licensors, and service providers. You further agree that, N-able may update or modify the Software and Documentation at any time, including, without limitation, to reflect changes in, among other things, laws, regulations, technology, industry practices, patterns of system use, or availability of a third party program. N-able will use commercially reasonable efforts to provide an alternative Software or Documentation that does not materially reduce the level of performance, functionality, or security of the Software during the Term.

2.2 Perpetual License Legacies. Upon payment of the fees and subject to Your continuous compliance with the terms and conditions of this Agreement, N-able hereby grants You, for Software obtained on a perpetual license basis (as shown on the Sales Order), a perpetual, non-exclusive, non-transferable license to internally use the Software and Documentation subject to all of the terms and conditions of the Agreement, including the terms contained in this Section 2.2.

a) For each Software license that You obtain from N-able, You may: (i) use the Software on any single Device, unless the Documentation clearly states otherwise; and (ii) copy the Software for back-up and archival purposes, provided each copy must contain all of the original Software's proprietary notices and a notice that it will not be used for transfer, distribution or sale.

b) The Software is in use on a Device when it is loaded into temporary memory or installed in permanent memory (hard drive or other storage media or device). You agree that You will register the Software only with N-able and that You will only install a Software license key

obtained directly from N-able. You may provide, make available to, or permit Your Users to use or access the Software or Documentation, in whole or in part.

c) **Services Delivery; Updates and Modifications.** You agree that N-able may deliver the Services or Software to You with the assistance of its Affiliates, licensors, and service providers. You further agree that, N-able may update or modify the Software and Documentation at any time to reflect changes in, among other things, laws, regulations, technology, industry practices, patterns of system use, or availability of a third-party program. N-able will use commercially reasonable efforts to provide alternative Software or Documentation that does not materially reduce the level of performance, functionality, security, or availability of the Software during the Term.

2.3 Evaluation or Beta License. If the Software is noted on the Sales Order as provided to You for evaluation or beta purposes, in lieu of the license granted in Section 2.1, N-able grants to You a limited, revocable, non-exclusive, non-transferable, license to use the Software internally solely for evaluation purposes prior to purchase or implementation (an “Evaluation License”), subject to this Agreement and Your continuous compliance with its terms. The Evaluation License is not for production use and shall terminate on the end date of the pre-determined evaluation period or immediately upon notice from N-able, in its sole discretion.

Notwithstanding any other provision contained herein, Software and Documentation provided pursuant to an evaluation license is provided to you “AS IS” and without indemnification, liability, Support, or statutory, express or implied warranty of any kind. Except to the extent such terms conflict with the specific Evaluation License terms set forth in this Section, all other terms of this Agreement shall apply to Software licensed under an Evaluation License.

2.4 Internal Use License. If the Software and Documentation are noted in the Sales Order as provided to You for internal use, N-able grants to You, in lieu of the license granted in Section 2.1, a limited, revocable, non-exclusive, non-transferable license to use internally the Software solely for Your internal business purposes in connection with Your use of the Services (an “Internal Use License”), subject to this Agreement and Your continuous compliance with its terms. The Internal Use License shall terminate on the end date of the pre-determined period or immediately upon notice from N-able, in its sole discretion. Notwithstanding any other provision contained herein, Software and Documentation provided pursuant to an Internal Use License are provided to you “AS IS” and without indemnification, liability, support, or statutory, express or implied warranty of any kind. Except to the extent such terms conflict with the specific Internal Use License terms set forth in this Section, all other terms of this Agreement shall apply to Software licensed under an Internal Use License.

2.5 N-hanced Services. Upon payment of the fees and subject to Your continuous compliance with the terms and conditions of this Agreement, N-able will provide the N-hanced Services, if any, set forth in the Sales Order, subject to all the terms of the Agreement.

3. RESTRICTIONS; OBLIGATIONS.

3.1 Restrictions. You may not do or assist or enable any third party to do any of the following:

(i) provide, make available to, or permit individuals other than Your Users to use the Software, Services, or Documentation, either in whole or part, except under the terms expressly set forth in this Agreement; (ii) copy, reproduce, republish, upload, post, or transmit the Software, Services, or Documentation (except for back-up or archival purposes, which may not be used for transfer, distribution, or sale); (iii) license, sell, resell, rent, lease, transfer, sublicense, distribute, or otherwise transfer rights to the Software, Services, or Documentation; (iv) modify, translate, reverse engineer, decompile, disassemble, create derivative works of, or otherwise attempt to derive the source code of the Software, Services, or Documentation; (v) create, market, distribute add-ons or enhancements or incorporate into another product the Software, Services, or Documentation without prior written consent of N-able; (vi) remove any proprietary notices or

labels on the Software, Services, or Documentation, unless authorized in writing by N-able; (vii) license or purchase the Software, Services, or Documentation if You (or any of Your Users) are a direct competitor (or an agent of a direct competitor) of N-able, (viii) use the Services, Software, or Documentation for the purposes of monitoring the Software's or Services' availability, performance, or functionality, or (ix) for any other benchmarking or competitive purposes; (x) use the Software or Services to violate any rights of third parties, including, without limitation, privacy rights, or storing or transmitting infringing, libelous, unlawful, or tortious material or to store or transmit material in violation of any applicable laws; (xi) use the Software or Services to store or transmit Viruses; (xii) interfere with, impair, or disrupt the integrity or performance of the Software or Services or any other third party's use of any software, hardware, equipment or network; (xiii) use the Software or Services in a manner that results in excessive use, bandwidth, or storage; or (xiv) alter, circumvent, or provide the means to alter or circumvent the Software or Services, including seeking any back end or unauthorized access or circumvention of the technical limitations, and/or (xv) attempt to avoid any recurring fees. Any such prohibited use shall immediately terminate Your license to the Software or access to the Services. The Software is intended only for use with public domain or properly licensed third-party materials. All responsibility for obtaining such a license is Yours, and N-able shall not be responsible for Your failure to do so.

3.2 Use of Software or Services. You and Your Users use of the Software and Services shall not exceed your rights to use the Software and Services set forth in the Agreement and applicable Sales Orders. You are responsible for Your and Your Users' use of the Software and Services, including any unauthorized usage. N-able may monitor use of the Software and Services by all Users at any time. In addition, N-able, or its designated representatives, will have the right upon reasonable notice, during regular business hours, to access and review your books and records (including electronically) for the purpose of verifying Your compliance with the terms and conditions of this Agreement, including any use limitations.

3.3 Your Obligations. You acknowledge, agree, and warrant that: (i) You are and will be responsible for Your and Your Users' activity and compliance with this Agreement, and if You become aware of any violation, You will immediately terminate the offending party's access to the Software, Services, and Documentation and notify N-able; (ii) You and Your Users will comply with all applicable local, state, and federal; (iii) You will use the Software and Services only in accordance with the applicable Documentation, and you will ensure that the Software is installed on a supported platform as set forth in the applicable Documentation and that the Software and Services are used only with public domain or properly licensed third party materials; (iv) You will install the latest version of the Software on Devices accessing or using the Software; (v) You are legally able to process and provide Your Data to N-able and its Affiliates, including obtaining appropriate consents or rights for such processing; (vi), You have the right to access and use Your infrastructure, including any system or network, to obtain or provide the Software and will be solely responsible for the accuracy, security, quality, integrity, and legality of the same; and (vii) You will keep your registration information, billing information, passwords and technical data accurate, complete, secure and current for as long as You subscribe to the Software, Services, and Documentation.

If You are an MSP, You further acknowledge, agree, and warrant that: (i) You have sufficient technical infrastructure, current and complete knowledge, and expertise to perform the services You provide for Your Clients; (ii) You will provide all sales, problem resolution, and support services to Your Clients; (iii) You will be responsible for billing, invoicing, and collection for Your Clients; and (iv) You will operate at Your own expense and risk under Your own name as an MSP.

3.4 Injunctive Relief. The parties agree that, in addition to any other relief to which the non-breaching party may be entitled, any material breach of this Section 3 will cause irreparable injury and the non-breaching party may seek injunctive relief in a court of competent jurisdiction without the need of posting bond.

4. PROPRIETARY RIGHTS.

4.1 License to N-able Content. This paragraph applies to You if You are an MSP. Subject to the terms of this Agreement and Your continuous compliance with the same, N-able hereby grants to You a personal, limited, revocable, non-exclusive, non-transferable, non-sublicensable license to use, reproduce and distribute the N-able Content in Your marketing and advertising materials that are provided to Clients. No right to modify or prepare derivative works of the N-able Content (including any translation into another language) is granted to You.

4.2 License to N-able Marks. This paragraph applies to You only if You are an MSP. Subject to this Agreement and Your continuous compliance with its terms, N-able hereby grants to You a personal, limited, revocable, non-exclusive, non-transferable, non-sublicensable license to use the N-able Marks during this Agreement solely to market and advertise to Clients that Your services utilize the Software. Your use of the N-able Marks will strictly comply with [N-able's Trademark and Copyright Guidelines](#) (the "Guidelines"), which are incorporated in the Agreement by this reference, and which N-able may update or revise from time to time.

You agree to obtain N-able's prior written approval of all uses of the N-able Marks. N-able may withdraw any approval of any use of the N-able Marks at any time and at its sole discretion, and such withdrawal may require You to recall any previously distributed physical printed materials, at N-able's sole discretion. You shall cooperate with N-able, at N-able's request in facilitating N-able's monitoring and control of the nature and quality of the materials bearing the N-able Marks and will supply N-able with specimens of Yours use of the N-able Marks upon request. If N-able notifies You that Your use of the N-able Marks is not in compliance with this Agreement, then You shall promptly take such corrective action as reasonably directed by N-able. N-able is the sole and exclusive owner of the N-able Marks and all goodwill arising from Your use of the N-able Marks shall inure to the benefit of N-able. You shall do nothing inconsistent with such ownership, either during the term of this Agreement or afterwards. Without limitation, You shall not attempt to register the N-able Marks or any similar marks in any jurisdiction or challenge N-able's ownership of the N-able Marks.

Your use of the N-able Marks shall be on behalf, and inure to the benefit, of N-able. Your utilization of the Marks will not create any right, title or interest in such N-able Marks for Your benefit. You shall use the N-able Marks so that each N-able Mark creates a separate and distinct impression from any other trademark that may be used or affixed to materials bearing the N-able Marks. You may not delete, remove, hide, move or alter any trademark, logo, icon, image or text that represents the company name of N-able, or create or use any derivation thereof, or any icon, image, or text that is likely to be confused with the same. All representations of the company name or mark of N-able or any of its Affiliates' names or marks must remain as originally distributed regardless of the presence or absence of a trademark, copyright, or other intellectual property symbol or notice.

4.3 Ownership of N-able Intellectual Property. The Software, N-able Content, N-able Marks and Documentation are licensed, not sold. Use of "purchase" in conjunction with licenses under this Agreement does not imply a transfer of ownership. Except for the limited rights expressly granted by N-able to You under this Agreement, You acknowledge and agree that all right, title and interest in and to all copyrights, trademarks, patents, trade secrets, intellectual property (including without limitation algorithms, business processes, improvements, enhancements, modifications, derivative works, and information collected and analyzed in connection with the Software) and other proprietary rights arising out of or relating to the Software, Services, N-able

Content, N-able Marks, and Documentation, and the provision of them, belong exclusively to N-able or its suppliers or licensors. All rights, titles, and interest in and to content which may be accessed through the Software, Services, and Documentation is the property of the respective owner and may be protected by applicable intellectual property laws and treaties. This Agreement gives You no rights to such content, including use of the same.

You hereby grant N-able a royalty-free, fully-paid, worldwide, exclusive, transferable, sub-licensable, irrevocable and perpetual license to use or incorporate into its products and Services, and Software any suggestions, enhancement requests, recommendations or other feedback provided by You or Your Users relating to the Software, Services, or Documentation. All rights not expressly granted to You under this Agreement are reserved by N-able. There are no implied rights to the Software, Services, Documentation, N-able Content, or N-able Marks.

4.4 Ownership of Your Data. You and Your Users retain all right, title, and interest in and to all copyright, trademark, patent, trade secret, intellectual property, and other proprietary rights in and to Your Data. N-able's right to access and use the same are limited to those expressly granted in this Agreement. No other rights with respect to Your Data are implied.

4.5 Use of Your Marks.

Publicity; Use of Name and Marks. N-able will not use, display, or otherwise refer to Deschutes County's name, seal, logos, trademarks, service marks, trade names, domain names, or any substantially similar identifiers ("County Marks"), nor identify County as a customer, in any marketing, advertising, promotion, press release, case study, website, social media, proposal, investor materials, or public communications, without County's prior written approval signed by an authorized County representative in County Administration and reviewed by County Counsel. No license to use County Marks is granted by this Agreement. Any approval, if granted, will be limited to the specific use approved, for a limited duration, and may be revoked by County at any time in its sole discretion upon written notice, whereupon N-able will cease the use and remove all references within two (2) business days. This Section supersedes any contrary terms in online or click-through agreements. Nothing in this Section restricts County's disclosures required by law; however, such disclosures will not be deemed consent or authorization for N-able publicity.

5. TERM AND TERMINATION.

5.1 Term. The Agreement will begin on the Subscription Start Date listed in the relevant Sales Order(s). If You terminate the Agreement as described in this Section, it will end on the Subscription End Date.

5.2 Termination.

(a) **If Your Sales Order reflects a month-to month commitment Term:** You may terminate this Agreement at any time by providing N-able with prior written notice of Your intention to terminate this Agreement by completing a cancellation request through [N-ableMe](#). The effective date of termination under this Section 5.2(a) will be the last day of the first full calendar month after N-able's receipt of the termination notice. Notwithstanding anything to the contrary in the Sales Order, if You terminate the Agreement pursuant to this Section, fees charged for the final month of the Agreement will be based on the prices set forth in the applicable Sales Order(s) and due from You upon receipt. All contracts invoiced on a monthly basis through N-able must enroll in automatic payment unless otherwise agreed by N-able.

(b) **If Your Sales Order reflects a Term other than month-to-month:** You may only terminate the Agreement by completing a cancellation request through [N-ableMe](#) at least thirty (30) days prior to the Subscription End Date listed on the relevant Sales Order(s). If You do not terminate in accordance with this Section at least thirty (30) days prior to the Subscription End Date, the Agreement will automatically renew for one (1) year and is subject to a price increase as set forth herein.

In the event of any conflict between this Section and the Sales Order, the Sales Order shall control. Nothing in this Agreement shall supersede or be construed as a modification to the Term(s) specified in the Sales Order.

5.3 Termination

Termination and Suspension. Either party may terminate this Agreement for material breach by the other party not cured within thirty (30) days after written notice (ten (10) days for payment breaches). Either party may immediately suspend the affected Services, on written notice, only a court order or binding sanctions; the suspending party will limit the scope and duration and will restore Services once the condition is remedied. If not cured within the applicable time period above (e.g. thirty (30) days or ten (10) days), the suspending party may terminate the affected Services for cause.

5.4 Effect of Termination. The termination does not relieve You of the obligation to pay any fees or other amounts accrued or payable to N-able through termination. N-able will not be obligated to provide refunds of any amounts paid prior to termination or any credits towards amounts due, no matter how much time is left in the Term as of the date of termination.

Without prejudice to any other rights N-able may have, upon termination You must cease all use of the Software, N-able Marks, N-able Content and Documentation and destroy or return (upon request by N-able) all copies of the Software, N-able Content and Documentation and destroy all materials bearing the N-able Marks.

You acknowledge and agree that it is your responsibility to retrieve Your Data from N-able within thirty (30) business days of the termination of this Agreement for any reason (including nonpayment).

You acknowledge and agree that if you do not retrieve Your Data within that timeframe N-able has the right to delete Your Data, including any and all copies thereof and that once it is deleted, Your Data cannot be recovered.

Sections 1 (Definitions), 3.1 (Restrictions), 4.3 (Ownership of N-able Intellectual Property), 4.4 (Ownership of Your Data), 5.4 (Effect of Termination), 6-8 (Fees and Payment; Taxes; Data; Protection of Your Data; Confidential Information), 9.2 (Warranty Disclaimer), 10 (Indemnification), 11 (Limitation of Liability), and 14 (General), shall survive any termination or expiration of this Agreement, along with any other provisions which by their express terms do survive or by their nature should survive.

6. FEES AND PAYMENT; TAXES.

6.1 Fees and Payment. All orders placed will be considered final upon acceptance by N-able. Fees shall be at N-able's then standard rates at the time of invoice unless otherwise set forth in the Sales Order and all fees will be due and payable as set forth in the Sales Order.

Pricing for any renewal term will be the same as Charged Price stated on the invoice issued 90 days before Your renewal date, plus an increase up to: a) five percent (5%) plus any increase in the Consumer Price Index (CPI) published by the U.S. Bureau of Labor Statistics during the immediately prior year; and b) the incremental value of additional features and functionality that have been added to Your Products and Services during the term, in N-able's sole discretion. CPI is calculated at the last month of the term based on the prior twelve months. The term "CPI" means the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items (1982-1984=100) published by the United States Department of Labor, Bureau of Labor Statistics. Your renewal terms shall also include a new Quantity Commitment equal to Your previous Quantity Commitment as listed in Your most recent Sales Order plus eighty (80) percent of Your Usage in excess of such previous Quantity Commitment as reflected in the last invoice sent one hundred and twenty (120) days prior to Your renewal date or earlier.

Any changes to Your Services or Software may be made only once per year, cannot reduce your fees due under the Agreement, and will require mutual written amendment of the relevant Sales Order. In addition, N-able will consider, in its sole discretion, Quantity Commitment relief (net

of any Usage) on a dollar-for-dollar basis relative to Your monthly minimum spend if You lose a Client representing at least 10% of relevant business revenue from Your preceding monthly invoice, provided that such relief: (i) is not requested within 90 days of the initial start date or renewal date; (ii) is provided only once during a Term; (iii) You provide written evidence of the Client termination that is approved by N-able at its sole discretion; (iv) is effective on the month following N-able's approval; and (v) does not involve any refunds or credits. All contracts invoiced on a monthly basis through N-able must enroll in automatic payment unless otherwise agreed by N-able.

Late Payments; Disputed Amounts; Suspension. Client will pay undisputed invoices net thirty (30) days from receipt. Interest may accrue only on undisputed amounts not received within thirty (30) days after their due date, at a rate not to exceed zero point seventy-five percent (0.75%) per month (nine percent (9%) per annum, simple interest), which is the legal rate of interest under ORS 82.010, or any lower maximum rate then permitted by applicable law. No interest or fees accrue on amounts subject to a good-faith dispute, provided Client gives notice of the dispute within fifteen (15) days of invoice and the parties cooperate in good faith to resolve it. N-able may suspend the affected portion of the Services for non-payment of undisputed amounts only after at least fifteen (15) business days' prior written notice and an opportunity to cure; any suspension must be no broader than reasonably necessary and may not include security-critical monitoring, detection, triage, or incident response functions if suspension would materially increase Client's cybersecurity risk. N-able may terminate for non-payment only for undisputed amounts that remain unpaid sixty (60) days after the due date and after a final ten (10) day cure notice. N-able's right to charge interest as set forth herein is N-able's exclusive monetary remedy for late payment prior to termination.

If You or your Users exceed the Quantity Commitment designated in Your Sales Order or enable any other Software or Services through any of our platforms, in addition to N-able's other remedies, charges for Usage above such commitment level will be calculated at the Charged Price or, if there is none specified on the Sales Order for the applicable Service or Software, at the current list price of the Software or Service, as applicable. Unless otherwise provided in the Sales Order, all payments made under this Agreement shall be in United States dollars. All payments hereunder are non-refundable and non-recoupable.

If You believe all or any part of an invoice is in error, you must notify N-able within ninety (90) days of your receipt of the invoice. If You fail to do so You waive any right to contest the invoice.

You may, add additional subscription licenses or add additional Software or Services at any time. Once additional licenses, Software, or Services are added, the price change is effective immediately and prorated for the first month according to your billing cycle.

6.2 Taxes. All fees are exclusive of taxes, and You shall pay or reimburse N-able for all taxes arising out of transactions contemplated by this Agreement. If You are required to withhold any tax for payments due, You shall gross up Your payments to N-able so that N-able receives the amount due in full, free of any deductions. As reasonably requested, You will provide documentation to N-able showing that taxes have been paid to the relevant taxing authority. "Taxes" means any sales, VAT, use, excise, and other taxes (other than taxes on N-able's net income), export and import fees, tariffs, and customs duties and similar charges imposed by any government or other authority. You hereby confirm that N-able can rely on the name and address that You provide to N-able when You agree to the fees or in connection with Your payment method as being the place of supply for sales tax and income tax purposes or as being the place of supply for VAT purposes where You have established Your business.

7. DATA; PROTECTION OF YOUR DATA.

7.1 Your Data. N-able and its Affiliates may remove Your Data or any other data, information, or content of data or files used, stored, processed or otherwise by You or Your Users in conjunction with the Software or Services that N-able, in its sole discretion, believes to be or is: (a) a Virus; (b) illegal, libelous, abusive, threatening, harmful, vulgar, pornographic, or obscene; (c) used for the purpose of spamming, chain letters, or dissemination of objectionable material; (d) used or capable of use to cause offense, defame or harass; or (e) in violation of this Agreement in any way; or (f) used or capable of use to circumvent any security, encryption, data protection, use restriction or other similar feature of the Software or Services; or (g) infringing the intellectual property rights or any other rights of any third party.

You agree that You and Your Users are responsible for maintaining and protecting backups of Your Data directly or indirectly processed using the Software or Services and that, unless and solely to the extent required by applicable law, N-able is not responsible for exportation of, the failure to store, the loss, or the corruption of Your Data.

You hereby grant to N-able a nonexclusive, worldwide, royalty-free, fully-paid, transferable license to use and process Your Data to assist with the necessary operation and function of the Software and Services, to improve N-able products and services and Your and Your Users' experience with them, and for any purpose set forth in this Agreement, which are incorporated in this Agreement by this reference and which N-able may update or revise from time to time.

You represent and warrant that, with regard to processing of Personal Data, You and Your Users shall be the data controller and N-able shall be the data processor that shall determine the purpose and manner in which Personal Data is or will be processed.

7.2 Protection of Data. Each party shall comply with its respective obligations under applicable data protection laws. Each party shall maintain appropriate administrative, physical, technical and organizational measures that ensure an appropriate level of security for Confidential Information and Personal Data. N-able and its Affiliates will process Personal Data in accordance with its [Data Processing Addendum](#).

You are responsible for ensuring that the security of the Software and Services are appropriate for Your intended use and the storage, hosting, or processing of Personal Data and any other categories of data.

N-able employs physical, technical and administrative safeguards to help secure the Software and Services against accidental or unauthorized loss, access, or disclosure. You understand that no system of data transmission, storage or retrieval can be made entirely impenetrable or free from vulnerabilities, and despite all measures employed, the Software and Services are not guaranteed against all security threats or other vulnerabilities.

You agree that N-able's security obligations extend only to those systems, networks, network devices, facilities and information technology components over which N-able has control. As between N-able and You, You are responsible for the proper configuration and maintenance of physical, administrative and technical safeguards as they relate to Your access and use of the Software and Services through any other system, network devices, networks, facilities and other information technology components. In no event will N-able be responsible, nor will we have any liability, for physical, administrative, or technical controls related to the Software or Services (including without limitation Personal Data) that You are able to control, including but not limited to access credentials, network connectivity and internet connectivity.

You agree to: (i) change passwords and other access credentials related to the Software or Services on a regular basis and immediately upon becoming aware of any unauthorized access to, or use or compromise of, the Software or Services, and require Your Users and Clients to do the same; and (ii) promptly apply any updates, upgrades, modifications or other enhancements that N-able determines are necessary or appropriate to maintain the security, confidentiality,

integrity, availability or performance of the Software or Services, and cause Your Users and Clients to do the same.

7.3 No Protected Health Information. Cove Data Protection™, N-central®, and N-sight™ may be used for the processing, storing, maintenance, and transmission of protected health information (“PHI”) as defined under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). You expressly acknowledge and agree that You shall neither submit to any other Services or Software, nor use those Services or Software to store, maintain, process or transmit any data or information that constitutes PHI or otherwise use other Services or Software in any manner that would require N-able or other Services or Software to be compliant with HIPAA. You acknowledge and agree that N-able shall have no liability to You for any such data or information. You further acknowledge and agree that neither N-able or its Affiliates are acting on Your behalf as a Business Associate (as defined under HIPAA) unless You request and execute a Business Associate Agreement with N-able. N-able may immediately and upon notice suspend all or portion of Your access to the Services and Software (without any liability to You in connection with such suspension), if N-able has a good faith belief that You have breached this paragraph.

8. CONFIDENTIAL INFORMATION.

As used in this Agreement, “**Confidential Information**” means any nonpublic information or materials disclosed under this Agreement by either party to the other party, either directly or indirectly, in writing, orally, or by inspection of tangible objects, which the disclosing party clearly identifies as confidential or proprietary. Confidential Information includes Personal Data, and N-able’s Confidential Information includes the Software and Services, and any information or materials relating to the Software and Services (including pricing), or otherwise. Confidential Information may also include confidential or proprietary information of a third party disclosed by a disclosing party which the disclosing party clearly identifies as confidential or proprietary. The receiving party will: (i) hold the disclosing party’s Confidential Information in confidence and use reasonable care to protect the same; (ii) restrict disclosure of such Confidential Information to those employees or agents with a need to know such information and who are under a duty of confidentiality respecting the protection of Confidential Information substantially similar to those of this Agreement; and (iii) use Confidential Information only for the purposes for which it was disclosed, unless otherwise expressly permitted by this Agreement. The restrictions will not apply to Confidential Information, excluding Personal Data, to the extent it: (i) is (or through no fault of the recipient, has become) generally available to the public; (ii) was lawfully received by the receiving party from a third party without such restrictions; (iii) was known to the receiving party without such restrictions prior to receipt from the disclosing party as demonstrated by the receiving party’s contemporaneous written records; or (iv) was independently developed by the receiving party without breach of this Agreement or access to or use of the disclosing party’s Confidential Information.

Public Records and Compelled Disclosure. Client will comply with Oregon Public Records Law. If Client receives a request for N-Able’s Confidential Information, Client will, to the extent legally permitted and as reasonably practical, provide notice to N-Able before disclosure so that N-Able may seek, at N-able’s sole expense, to limit or prevent disclosure (e.g., by asserting applicable exemptions such as trade secrets under ORS 192.345(2) or other exemptions under ORS 192.355). Client is not obligated to initiate any proceeding to oppose disclosure and will disclose as required by law if N-able does not obtain relief before the applicable response deadline.

If N-able or its affiliates receive a subpoena, court order, or other compulsory legal demand for Client's Confidential Information, N-able will provide prompt notice to Client (where legally permitted) to enable Client to seek, at Client's sole expense, to limit or prevent disclosure. N-able shall limit disclosure to what is legally required.

9. LIMITED WARRANTY AND WARRANTY DISCLAIMER.

9.1 Limited Warranty.

During the Subscription Term the Software and Services will substantially conform to the Documentation and will be provided in a professional and workmanlike manner by qualified personnel. The warranty in this Section replaces the 'thirty (30) days' warranty and applies throughout the Subscription Term. The warranty does not apply to nonconformities caused by: (i) unauthorized modifications; (ii) use not in accordance with the Documentation or this Agreement; or (iii) failures of third-party products not provided or controlled by N-able. If the Software or Services fail to conform, N-able will promptly repair, replace, or re-perform at its expense; if N-able is unable to restore material conformity within thirty (30) days of notice, Client may terminate the affected Order and receive a pro-rata refund of prepaid, unused fees related to the affected Service, without prejudice to other remedies.

You must provide prompt written notice and reasonable assistance to N-able to remedy any nonconformity, and Your sole and exclusive remedy for breach of this warranty shall be repair, replacement, or re-performance as described herein.

9.2 Warranty Disclaimer. EXCEPT AS EXPRESSLY WARRANTED IN SECTION 9.1, THE SOFTWARE, SERVICES, DOCUMENTATION, N-ABLE CONTENT, N-ABLE MARKS, SUPPORT, AND ALL OTHER PRODUCTS AND SERVICES PROVIDED HEREUNDER OR MADE AVAILABLE UNDER THIS AGREEMENT, INCLUDING THIRD PARTY HOSTED SERVICES OR SOFTWARE (COLLECTIVELY, FOR THE PURPOSES OF THIS PARAGRAPH, "PRODUCTS"), ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. EXCEPT AS EXPRESSLY STATED IN SECTION 9.1, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, N-able DISCLAIMS AND EXCLUDES ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON INFRINGEMENT, ACCURACY, RELIABILITY, SECURITY, LOSS OR CORRUPTION OF DATA, CONTINUITY, OR ABSENCE OF DEFECT RELATING TO THE PRODUCTS OR THE RESULTS OF THE SAME. N-ABLE DOES NOT WARRANT THAT THE PRODUCTS, INCLUDING ANY SPECIFICATIONS OR FUNCTIONS CONTAINED IN THEM, WILL MEET YOUR REQUIREMENTS OR THAT DEFECTS IN THEM WILL BE CORRECTED. N-ABLE SPECIFICALLY DISCLAIMS RESPONSIBILITY FOR THIRD-PARTY PRODUCTS AND SERVICES WITH WHICH YOU MAY UTILIZE THE SOFTWARE, AND YOU SPECIFICALLY DISCLAIM AND WAIVE ANY RIGHTS AND CLAIMS AGAINST N-ABLE WITH RESPECT TO SUCH THIRD-PARTY PRODUCTS AND SERVICES. YOU ACKNOWLEDGE AND AGREE THAT IN ENTERING INTO THIS AGREEMENT YOU HAVE NOT RELIED ON ANY REPRESENTATION OR WARRANTY WHICH IS NOT EXPRESSLY SET FORTH HEREIN.

10. INDEMNIFICATION.

10.1 N-able Indemnification. Subject to Section 11 below, N-able will indemnify, defend, and hold You harmless from any third party claim brought against You alleging that the Services, Software, Documentation, N-Able Content, or N-able Marks infringes or misappropriates any

U.S. patent, copyright, trademark, trade secret, or other intellectual property rights of a third party (an “Infringement Claim”), provided: (i) use of the Services, Software, Documentation, N-Able Content, and N-able Marks by You is in conformity with the Agreement and applicable Documentation; (ii) the alleged infringement is not caused by modification or alteration of the Services, Software, Documentation, N-Able Content, or N-able Marks; (iii) the alleged infringement was not caused by a combination or use of the Services, Software, Documentation, N-Able Content, or N-able Marks with products or content not supplied by N-able where such infringement would not have existed in the Services, Software, Documentation, N-Able Content, or N-able Marks absent such combination; and/or (iv) You have not continued to use the Services, Software, Documentation, N-Able Content, or N-able Marks after You are notified of the alleged infringement and provided by N-able with access to Services, Software, Documentation, N-Able Content, or N-able Marks intended to avoid the alleged infringement. N-able’s indemnification obligations are contingent upon You: (i) promptly notifying N-able in writing of the Infringement Claim; (ii) granting N-able the right to control the defense and settlement of the Infringement Claim with counsel reasonably acceptable to Client; provided, however, neither N-able nor any attorney engaged by N-able shall defend the claim in the name of Deschutes County or any department or agency thereof, nor purport to act as legal representative of the County or any of its departments or agencies without first receiving from the County’s Legal Counsel authority to act as legal counsel for the County, nor shall N-able settle any claim on behalf of the County without the approval of the County’s Legal Counsel; and (iii) Client has no obligation to assist in the defense. Client may, at its sole discretion, reasonably cooperate (limited to non-privileged, readily available records) at N-able’s expense. These indemnities are in addition to, and not in lieu of, other remedies available to Client. If a claim is likely, N-able will procure the right for Client to continue use, or modify/replace the affected item to be non-infringing with materially equivalent functionality; if not feasible, Client may terminate the affected Order and receive a pro-rata refund of prepaid, unused fees, plus commercially reasonable transition assistance.

10.2 Your Indemnification.

Deschutes County is a public body subject to the Oregon Tort Claims , ORS 30.260–30.300 (“OTCA”). County does not agree to indemnify, defend, or hold harmless N-able or any third party. Each party is responsible for its own acts and omissions and those of its officers, employees, agents, and contractors to the extent provided by applicable law, including the OTCA. Nothing in this Agreement is intended to, nor shall it be construed to, waive any rights, defenses, immunities, limitations, or protections afforded to County under the Oregon Constitution, the Oregon Tort Claims Act, or other applicable law.

11. LIMITATION OF LIABILITY.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, (I) IN NO EVENT WILL N-ABLE OR ITS AFFILIATES, OR ITS OR THEIR DIRECTORS, EMPLOYEES, OR AGENTS HAVE ANY LIABILITY, CONTINGENT OR OTHERWISE, FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, STATUTORY OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO LOST PROFITS, LOST OR CORRUPTED DATA, LOSS OF GOODWILL, WORK STOPPAGE, EQUIPMENT FAILURE OR MALFUNCTION, PROPERTY DAMAGE OR ANY OTHER ECONOMIC DAMAGES OR LOSSES ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE SOFTWARE, SERVICES, DOCUMENTATION, N-ABLE CONTENT, N-ABLE MARKS, OR ANY OTHER PRODUCTS OR SERVICES PROVIDED HEREUNDER, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY THEREOF, AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE, INDEMNITY OR OTHERWISE) UPON WHICH ANY SUCH LIABILITY IS

BASED; AND (II) THE AGGREGATE LIABILITY OF N-able AND ITS AFFILIATES, AND ITS AND THEIR DIRECTORS, EMPLOYEES, AND AGENTS, AND THE SOLE REMEDY (OR THE ALTERNATE SOLE REMEDY IN THE EVENT THAT ANY SOLE REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE) AVAILABLE TO YOU ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE SOFTWARE, SERVICES, DOCUMENTATION, N-ABLE CONTENT, N-ABLE MARKS, OR ANY OTHER PRODUCTS OR SERVICES PROVIDED HEREUNDER SHALL BE LIMITED TO TERMINATION OF THIS AGREEMENT AND DAMAGES NOT TO EXCEED THE TOTAL AMOUNT PAYABLE OR PAID TO N-ABLE UNDER THIS AGREEMENT DURING THE TWELVE MONTHS PRIOR TO TERMINATION.

12. THIRD PARTY PROGRAMS. To the extent the Software is bundled with third party software programs, the third-party software programs are governed by their own license terms, which may include open source or free software licenses, and those terms will prevail over this Agreement as to Your use of the third-party software programs. Nothing in this Agreement limits You or Your user's rights under, or grants You or Your User rights that supersede, the terms of any such third-party software program. If You do not agree to the license terms applicable to this third-party software, then You agree that You shall not use the Software or the third party software.

13. SUPPORT. N-able shall, during the Term, provide You with Support in accordance with N-able's Software Support and Maintenance Terms and Conditions that were in existence at the time this Agreement was executed. The Software Support and Maintenance Terms and Conditions are incorporated in the Agreement by this reference. In addition, if applicable, N-able shall, during the Term, provide You with N-hanced Support as provided in the applicable Sales Order.

14. GENERAL.

14.1 Notices. All notices must be in writing and shall be mailed by registered or certified mail to Legal Department, 30 Corporate Drive, Suite 400, Burlington, MA 01803, Attention: General Counsel, and sent via email to generalcounsel@N-able.com (with evidence of effective transmission).

14.2 Entire Agreement; Precedence. This Agreement constitutes the entire agreement between the parties relating to the subject matter of this Agreement and supersedes all prior or contemporaneous communications, agreements and understandings, written or oral, with respect to the subject matter hereof. If there is a conflict or inconsistency between the provisions of this Agreement and the documents otherwise referred to in this Agreement, the conflict or inconsistency will be resolved in the following order of precedence, with the first document listed having the highest precedence and the last document listed having the lowest precedence: (1) As applicable Deschutes County Code [Section 2.37.150](#), Exhibit [1] (this amended EULA); (2) the mutually executed Sales Order; and (3) support policies or other documents expressly incorporated by a signed amendment.

Quotes, invoices, portal or website terms, release notes, knowledge-base articles, or other online terms are administrative only and do not add to or modify the parties' agreement. No Online/User Assent. Client end users, administrators, and contractors are not authorized to bind Client. Any pop-up, click-through, or in-product assent presented to a user that purports to modify or replace this Agreement is void and of no effect unless separately incorporated into the Contract by a written amendment signed by an authorized County representative and approved by County Counsel and the designated representative from N-able.

14.3 Assignment. You may not assign any of Your rights under this Agreement, allow the assumption of your rights under this Agreement, or delegate Your performance under this

Agreement, whether voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or in any other manner, without N-able's prior written consent. N-able may assign its rights and delegate its performance under this Agreement to: (i) any entity that acquires all or substantially all of N-able's assets or substantially all of the assets of that portion of N-able's business that manages this Agreement; (ii) any Affiliate that controls, is controlled by, or is under common control with N-able; or (iii) any successor in a merger, acquisition, or reorganization, including any judicial reorganization. Any purported assignment of rights or delegation of performance by You in violation of this Section is void. This Agreement is binding upon, and will inure to the benefit of, the Parties hereto and their permitted assigns and successors-in-interest.

14.4 Export Control Laws. The Software and Documentation delivered to You under this Agreement are subject to export control laws and regulations of the United States and may also be subject to import and export laws of the jurisdiction in which it was accessed, used, or obtained, if outside those jurisdictions. You shall abide by all applicable export control laws, rules, and regulations applicable to the Software and Documentation. You agree that You are not located in or are not under the control of or a resident of any country, person, or entity prohibited to receive the Software or Documentation due to export restrictions and that You will not export, re-export, transfer, or permit the use of the Software or Documentation, in whole or in part, to or in any of such countries or to any of such persons or entities.

You further acknowledge that N-able does not offer Services or Software in the following countries:

- Albania
- Belarus
- Bosnia and Herzegovina
- Burma
- Central African Republic
- China
- Crimea and occupied Ukraine
- Cuba
- Democratic Republic of the Congo
- Ethiopia
- Iran
- Kosovo
- Lebanon
- Mali
- Montenegro
- Nicaragua
- North Korea
- North Macedonia
- Russian Federation
- Somalia
- Sudan and Darfur
- Syria
- Venezuela
- Yemen
- Zimbabwe

You agree that if you are located in any of the countries listed above You will not access the Services or Software or allow Users or Clients located in those countries to do the same.

14.5 Modifications. Except as N-able is otherwise permitted to do so under this Agreement, this Agreement shall not be amended or modified except in a writing signed by authorized representatives of each party.

14.6 Severability. If any provision of this Agreement is held to be unenforceable, illegal, or void, that shall not affect the enforceability of the remaining provisions. The parties further agree that the unenforceable provision(s) shall be deemed replaced by a provision(s) that is binding and enforceable and that differs as little as possible from the unenforceable provision(s), with considerations of the object and purpose of this Agreement.

14.7 Waiver. The delay or failure of either party to exercise any right provided in this Agreement shall not be deemed a waiver of that right.

14.8 Remedies. N-able's rights and remedies set forth in this Agreement are cumulative and are not intended to be exhaustive.

14.9 Force Majeure. N-able will not be liable for any delay or failure to perform obligations under this Agreement due to any cause beyond its reasonable control, including: acts of God; labor disputes; industrial disturbances; systematic electrical, telecommunications or other utility failures; earthquakes, storms, or other elements of nature; blockages; embargoes; riots; acts or orders of government; acts of terrorism; war; or any other cause beyond its reasonable control (whether similar or dissimilar to the foregoing).

14.10 Construction. Paragraph headings are for convenience and shall have no effect on interpretation.

14.11 Governing Law. The validity, interpretation and enforcement of this Agreement shall be governed by and construed in accordance with the laws of the State of Oregon and of the United States, without regard to any conflict of law provisions, except that the United Nations Convention on the International Sale of Goods and the provisions of the Uniform Computer Information Transactions Act shall not apply to this Agreement. You hereby consent to the exclusive jurisdiction of the state and federal courts in Deschutes County, Oregon. If you have any claim arising out of relating to this Agreement or the Software, Services, Documentation, N-able Marks, or N-able Content, you must bring the claim in an appropriate court as set forth in this Section within the guidelines prescribed by Oregon state law.

14.12 Third Party Rights. Other than as expressly provided herein, this Agreement does not create any rights for any person who is not a party to it, and no person not a party to this Agreement may enforce any of its terms or rely on an exclusion or limitation contained in it.

14.13 U.S. Government Use. N-able's Software and Documentation were developed exclusively at private expense and are a "commercial item" as defined in Federal Acquisition Regulation ("FAR") 2.101, and any supplement is provided with no greater than RESTRICTED RIGHTS. Such Software, Documentation, and related items consist of "commercial computer software," "commercial computer software documentation," and commercial technical data as defined in the applicable acquisition regulations, including FAR 2.101 and FAR Part 12. Use, duplication, release, modification, transfer, or disclosure ("Use") of the Software and Documentation are restricted by this Agreement and in accordance with Defense Federal Acquisition Regulation Supplement ("DFARS") Section 227.7202 and FAR Section 12.212, and the Software, and Documentation are licensed (i) only as commercial items; and (ii) with only the rights granted to commercial end users pursuant to this Agreement. Such Use is further restricted by FAR 52.227-14, 52.227-7015, or similar acquisition regulations, as applicable and amended. Except as described herein, all other Use is prohibited. This Section is in lieu of, and supersedes, any other FAR, DFARS, or other clause addressing government rights under this Agreement or any other contract under which the Software or Documentation is acquired or licensed. Manufacturers are N-able Technologies Ltd., Floor 2, Dundee House, 50 North Lindsay Street, Dundee, DD1 1QE,

United Kingdom and N-able Solutions ULC, 450 March Road, 2nd Floor, Ottawa, Ontario K2K 3K2 Canada.

14.14 Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

15. PRODUCT ADDENDA.

These Sections apply only to the specific products referenced in the headings.

15.1 Mail Services Product. You acknowledge and agree You are solely responsible for adjusting the relevant DNS (MX record) and/or mail server settings such that Your Data, including emails, no longer pass through the N-able systems and for exporting Your Data, including emails, from the archive, quarantine, or logging prior to termination of the license to the Software. Your failure to do so may cause Your Data to be lost.

15.2 Cove Data Protection. IN ADDITION TO THE OTHER TERMS AND CONDITIONS HEREIN, YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT YOUR DATA MAY NOT BE AVAILABLE OR RESTORABLE IF (1) YOU UTILIZE THE SERVICES IN EXCESS OF THE AMOUNT YOU ORDERED; (2) COPIES OF YOUR DATA WERE NOT COMPLETED FOR ANY REASON; (3) YOU ATTEMPT TO BACK UP DEVICES, FILES, FOLDERS, OR DRIVES NOT SUPPORTED BY THE SERVICES AS SET FORTH IN THE DOCUMENTATION; (4) YOU DESELECT OR DELETE A DEVICE, FILE, FOLDER, OR DRIVE FROM YOUR N-ABLE ACCOUNT, FROM YOUR DEVICE, OR FROM BEING BACKED UP BY THE SERVICES; (5) YOU MODIFY YOUR OPERATING SYSTEM IN A MANNER THAT BREAKS COMPATIBILITY OR INHIBITS THE FUNCTIONALITY OF THE SERVICES OR SOFTWARE; (6) YOUR COMPUTER IS UNABLE TO ACCESS THE INTERNET OR N-ABLE INFRASTRUCTURE; (7) YOU FAIL TO COMPLY WITH THE AGREEMENT OR DOCUMENTATION; OR (8) YOU TERMINATE OR FAIL TO RENEW YOUR SUBSCRIPTION TO THE SERVICES.

15.3 Endpoint Detection and Response. N-able [Endpoint Detection and Response](#) and [Managed Endpoint Detection](#) and Response are powered by SentinelOne® and SentinelOne's [Services Addendum](#) applies to these Services. N-able's Software Services Agreement and End User License Agreements do not apply.

15.4 N-able Managed Detection and Response (MDR). N-able MDR will use commercially reasonable efforts to meet the Service Level Objectives (SLOs) listed in the [SLO Addendum](#).

15.5 Remote Script Orchestration. If You purchase SentinelOne® Remote Script Orchestration, You acknowledge that it is a powerful, highly customizable tool that can irreparably damage software and hardware. You take sole responsibility for any harm associated with Your or Your Clients' use of Remote Script Orchestration, and N-able shall have no liability for deletion or corruption of data, loss of access, permanent or temporary downtime on affected systems, any portion of loss from third party claims of infringement or any other loss or liability, arising out of Your or Your Clients' use of Remote Script Orchestration. You shall not use and shall prohibit your Clients from using Remote Script Orchestration to: (i) perform services or access computers or devices on behalf of third parties without specific, explicit consent; or (ii) upload, store, process, or analyze "Sensitive Data" which may include, without limitation, payment card industry data, personal information, Personal Data, PHI, financial data, trade secrets or proprietary information, login information, and other data that may have contractual or other restrictions imposed by applicable laws and regulations. N-able may immediately suspend all or a portion of Your access to the Services and Software (without any liability to You in connection with such suspension) and terminate this Agreement if N-able has a good faith belief that You have breached this paragraph.

15.6. Adlumin MDR Advanced Cyberwarranty

If You purchase Adlumin MDR Advanced Your Clients are eligible to receive the Adlumin MDR Advanced Cyberwarranty (the “Warranty”; also referred to as the “N-able Certification Warranty”) through your Managed Service Provider, the following details and terms and conditions of eligibility apply. Please read and understand them.

The Warranty is supported and administered by [Cysurance](#). It is Your responsibility to ensure each of Your Clients meet the requirements for enrollment in the Warranty. You agree that You must obtain each Client’s completion of the Warranty Enrollment Form (the “Form”) (https://n-able.na1.echosign.com/public/esignWidget?wid=CBFCIBAA3AAABLblqZhAYAA3WKALNF8yrSsZGTb-aP7ainqYiRJraaOltPnVGal57RADQGFVDAY4kMzKL2FQ*), which includes contact information and acceptance of the Participant Agreement (<https://enroll.cysurance.com/wp-content/uploads/Cysurance-Certification-Warranty-Participant-Agreement-n-able.pdf>). You should review and understand the Participant Agreement prior to directing Your Clients to the Form.

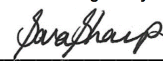
The Warranty is only available to eligible MSPs and their Clients, and You are solely responsible for ensuring your Clients are properly enrolled in the Warranty. You agree that N-able has no responsibility to monitor or administer the Warranty and shall have no liability whatsoever relative to the Warranty.

15.7 Disaster Recovery as a Service (DRaaS)

If You use Cove Data Protection DRaaS, You acknowledge that some recovery options allow You to choose to expose data to the public internet. You also understand that if you choose such options You increase Your risk of unauthorized access, data disclosure, or service disruption, and You are solely and fully responsible for understanding and accepting these risks.

You further agree that at no time, including during Your use of N-able cloud resources and IP addresses, will you engage in any illegal or unauthorized activities such as misuse or abuse of any assigned public IP addresses (*e.g.*, sending spam/DDoS traffic, hosting malware/command-and-control, or conducting unauthorized network scanning/attacks), or permit Your Clients to do so. You and Your Clients’ use of DRaaS is Your sole responsibility, and N-able will have no liability for deletion or corruption of Your Data, loss of access, permanent or temporary downtime, or any other loss or liability, arising out of Your or Your Clients’ use of this Service. N-able may immediately suspend all or a portion of Your access to the Services and Software (without any liability to You in connection with such suspension) and terminate this Agreement if N-able has a good faith belief that You have breached this paragraph.

N-ABLE TECHNOLOGIES LTD.

DocuSigned by:

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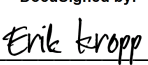
Name: Sara Sharp

Title: VP, International Operations

Date: December 29, 2025

DS


DESCHUTES COUNTY

DocuSigned by:

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Name: Erik Kropp

Title: Acting County Administrator

Date: December 29, 2025



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 14, 2026

SUBJECT: Cybersecurity Yearly Update and Plan

RECOMMENDED MOTION:

Move approval of County Administrator signature of Information Technology Cybersecurity Yearly Update and Plan.

BACKGROUND AND POLICY IMPLICATIONS:

Deschutes County has continued to mature its cybersecurity program over the past year, with notable improvements in our ability to prevent, detect, and respond to threats. IT has refined governance and operating practices, strengthened identity and access management, broadened routine security assessments and exercises, and advanced organization- wide awareness efforts. Technical safeguards were enhanced across endpoints and key services, and controls were consolidated to improve consistency and value.

Looking ahead, IT will focus is on institutionalizing these gains by modernizing policy, elevating baseline protections for devices and browsers, improving software and third- party oversight, advancing disaster- recovery readiness, and reinforcing stewardship of cloud- hosted information. These actions, aligned with nationally recognized best practices, respond to an evolving threat environment and internal operational needs which are designed to sustain resilience and uphold privacy, safeguarding the sensitive information the public entrusts to Deschutes County.

BUDGET IMPACTS:

None

ATTENDANCE:

Tania Mahood, Information Technology Director/CTO
Zachary Neemann, Information Security Manager



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 14, 2026

SUBJECT: Updating Policy GA-11 and transitioning this to Policy IT-5, Dial Property Information System Access and Use

RECOMMENDED MOTION:

Move approval of County Administrator signature of County Policy IT-5, Dial Property Information System Access and Use (formerly GA-11, Web-Based Property-Related Applications).

BACKGROUND AND POLICY IMPLICATIONS:

The GA-11 policy, originally established in 2013, was designed for any web-based property-related applications used by the County and mandated a review every five years.

Recognizing that Dial remains the sole web-based property application, the policy has been renamed IT-5 and updated to concentrate specifically on the governance and transparency of Dial. This adjustment ensures that the policy remains relevant and effectively supports the County's objectives in managing Dial. The revised policy has undergone thorough evaluation through standard procedures, including reviews by the Policy Advisory Committee and all department heads.

BUDGET IMPACTS:

None

ATTENDANCE:

Tania Mahood, Information Technology Director/CTO
Shad Campbell, IT Applications Manager



Deschutes County ~~Administrative Information Technology~~
Policy No. ~~GA-IT - 11-5~~ Effective Date: January 23, 2013
Updated:

Dial Property Information System Access and Use Policy
Web-Based Property Related Applications

STATEMENT OF POLICY

It is the policy of Deschutes County that all property related web-based applications accessible through the County's Internet site conform to the provisions incorporated into this policy. It is the policy of Deschutes County that the Dial online property information system, accessible through the County's Internet Site, shall conform to the provisions set forth in this policy.

APPLICABILITY

This policy applies to the Dial online property information system, as it is made available to the public through the Deschutes County Internet Site. The policy governs the provision of Property Related Information within Dial, particularly where such information is sourced from multiple County departments and offices. This policy does not apply to any other web-based application, including those that provide information or documents solely from a single department, such as the Assessor's Office, the County Clerk's Office, or the Road Department, nor does it apply to any application or resource accessible only through the County's internal network or intranet.

This policy applies to all web-based property related applications that are released following the effective date of this policy. The policy applies to property related applications that provide information, documents, images, and maps that are sourced from multiple County Departments. The policy does not apply to applications that provide information or documents from a single department such as the Assessor's Office, the County Clerk's Office, 911, or the Road Department. The policy does not apply to applications that are available only through the County's Intranet site.

DEFINITIONS

Dial (formerly DIAL) - Deschutes County's official web-based public property information system, accessible via the County's Internet Site.

Registered User - An individual who has completed the Dial application registration process and has been granted credentials to gain enhanced access to features or additional information within Dial.

Internal Staff User: Any employee of Deschutes County who accesses Dial using authenticated internal credentials.

Basic Access - Access to information and basic features of the Dial application that is available to any user without registration.

Enhanced Access - Additional features, data, documents, or functionality within Dial reserved for Registered Users, as distinguished from features available thru Basic Access.

Internal Staff Access - The highest level of access within Dial, available only to authenticated Deschutes County employees for official County business.

Property Related Information - Data, documents, images, and maps pertaining to real property located within Deschutes County, as detailed in this policy.

Exempt Records - Records or information not subject to public disclosure under Oregon law, or those excluded by County policy or valid statutory exemption.

County Internet Site - The official Deschutes County website, www.deschutescounty.gov currently www.deschutes.org, through which Dial is accessed.

POLICY & PROCEDURE

In General

~~This policy establishes the procedures by which Deschutes County manages the Dial online property information system, with the goal of appropriately balancing Internal Staff User needs and the public's need for access and privacy to Property-Related Information. with the privacy rights of individual citizens. Dial provides a secure, user-friendly platform that enables the public to access a wide range of property information online. The availability of Dial facilitates easier business transactions and information gathering for citizens residents, businesses, and County staff, while also allowing the County to improve service efficiency and reduce the volume of in-person visits, phone calls, and email inquiries received by County staff. This policy establishes procedures through which the County achieves an appropriate balance between the requirements for access to property related information with the privacy needs for individual citizens. Using the Internet to provide public access to government services and information has been a huge success for the County. It allows easier access for citizens and businesses to conduct their business with the County and it saves staffing costs by reducing the number of customer visits to county facilities and the volume of phone calls and email requests that need to be responded to.~~

~~A. Procedures for Making Information Available~~

~~A. In order to achieve the required balance between providing access to County property related information and the privacy needs for individual citizens, there will be two versions of~~

~~A. To achieve an appropriate balance between access to Property-Related property-related information and protection of individual privacy, the Dial application utilizes role-based access controls within a single platform. All users receive Basic Access by default. Registered Users, upon successful registration, are granted Enhanced Access to additional features and information, as permitted by County policy and applicable law. Internal Staff Users are recognized by the system and provided Internal Staff Access, granting them access to features and information necessary to perform official County business in accordance with their job responsibilities and applicable regulations. applications. The first version is a "Standard Version" that provides Internet access to County records in a manner so as to strategically limit access to information. The second version is an "Enhanced Version" that provides more extensive information but that is accessible through user accounts issued to individuals following the completion of an application registration process.~~

B. Procedures for Basic Access within Dial~~The Standard Versions of Applications will utilize the following procedures:~~

1. Links to access Dial with Basic Access will be made available on the County Internet Site.
2. Users with Basic Access can search for individual properties using any of the following identifiers: owner's name, map and taxlot tax lot number, situs (street) address, subdivision, assessor account or tax account number, or other available property identifiers.
3. Unless otherwise specified within this policy, Basic Access includes display of property owner name and mailing address.
4. Basic Access includes ~~Property Related Information~~property-related information such as tax and assessment details, sales and valuation data, development and permit status, environmental data, service provider information, transportation attributes, survey data, and other similar information, when authorized for public release.
5. Access to official documents recorded at the County Clerk's Office (including property sales deeds and similar instruments) is not provided within Basic Access. ~~Individuals seeking these documents will be directed to the Clerk's Digital Research Room.~~
6. Basic Access does not provide building photographs or building dimension sketches maintained by the Assessor's Office.
7. Exempt Records are not made available via Basic Access.

~~—8. Property Related Information~~property-related information originating from cities or other public agencies within Deschutes County will be made available to Basic Access users only if the originating agency has authorized public release through Dial.

1. ~~Links that provide access to the Standard Versions of applications will be provided on the County Internet site;~~

- ~~2. There will be options to search for individual properties by entering an owner's name, by a map and taxlot number, a situs or street address, an assessor account or tax account number, or by other property identifiers;~~
 - ~~3. Except as otherwise set forth in this section, information including an owner's name and mailing address will be provided as part of the information reported by the application;~~
 - ~~4. Information such as detailed property tax information, property improvements and other assessment information such as sales and valuation information, development information and permits, environmental information, service provider information, transportation information, survey information and miscellaneous other information will be provided;~~
 - ~~5. Linked access to documents such as property sales deeds and other documents recorded at the County Clerks Office will not be provided. These documents are currently available through the Clerk's Office Web Query On-line Application;~~
 - ~~6. Access to pictures of building structures and building dimension sketches maintained by the Assessors Office will not be provided;~~
 - ~~7. Records that are exempt from public disclosure or in instances where individuals have followed state statutes to apply for and have been granted exemption from release of information will not be provided; and~~
 - ~~8. Records maintained and provided by individual cities and by other public agencies operating within Deschutes County will be reported through the application so long as the public agency has first given Deschutes County authorization to make the information accessible. Examples of such data are city building permits and development conditions, city property liens, as well as other information that could be beneficial to County residents and businesses.~~
- C. Procedures for Enhanced Access within Dial~~The Enhanced Versions of Applications will utilize the following procedures:~~
1. Enhanced Access provides all information and functionality available through Basic Access, in addition to expanded Property-Related Informationproperty-related information authorized for enhanced release.
 2. Registration is required for Enhanced Access. Users must complete an online registration process, which includes providing a unique email address (used as the username), selecting a password, indicating their business type, and supplying other information as determined by the County. Sensitive personal information, such as Social Security numbers or credit card data, will not be collected.
 3. Access accounts are issued automatically through electronic processes without manual review. There are no fees to create or use Enhanced Access accounts, though the County reserves the right to assess charges in the future.
 4. Enhanced Access is subject to the same restrictions on Exempt Records as Basic Access. Additionally, any further
 5. Any limitations specific to Enhanced Access will be clearly published within the application.
 6. Property-Related Information-related information originating from cities or other public agencies within Deschutes County is included in Enhanced Access only with the originating agency's authorization.
- D. Procedures for Internal User-Staff Access within Dial:
1. Internal Staff Access is automatically granted to authorized Internal Staff Users when they are connected to the Deschutes County network and authenticated using approved credentials.
 2. Internal User-Staff Access includes all information and functionality available through both Basic and Enhanced Access, as well as additional Property-Related Informationproperty-related information necessary for the performance of official County duties.

3. Internal Staff Users may view and manage confidential or restricted records not available to the public-Basic and Enhanced Access Users, consistent with their job responsibilities, County policy, and applicable laws and regulations.
 4. Internal Staff User Access may enable advanced administrative functions, such as editing, adding, or auditing property records, viewing detailed history or system logs, or utilizing specialized reporting features. These capabilities are provided only as necessary to support County operations and must be used solely for legitimate business purposes.
 5. Property Related Information-property-related information originating from cities or other public agencies within Deschutes County is made available to Internal Staff Users only if the originating agency has authorized such access for County personnel during official business.
1. ~~Enhanced Versions of Applications will provide a full array of information, images, documents, and maps including those items allowed in the "Standard Version" as identified in Section B above;~~
 2. ~~There will be options to search for individual properties by entering an owner's name, by a map and taxlot number, a situs or street address, an assessor account or tax account number, or by other property identifiers;~~
 3. ~~Links that provide access to the Enhanced Versions of applications will be provided on the County Internet site;~~
 4. ~~Access to Enhanced Versions will require individual access accounts that will consist of a user name and password. The user name will be an email address and passwords will be selected by the applicant;~~
 5. ~~Individuals who desire an access account will need to complete an application/registration process. The registration process will be on line and will require information such as an email address (user name), a user assigned password, a type of business, and other pertinent information. Personal information such as a social security number or a credit card number will not be requested;~~
 6. ~~There will be no formal review of access applications. Automated processes will be utilized to issue access accounts;~~
 7. ~~There will be no financial charges for the creation of access accounts or for the use of the applications, although the County reserves the right to impose such charges based upon the costs of staffing this program;~~
 8. ~~Records that are exempt from public disclosure or in instances where individuals have followed state statutes to apply for and have been granted exemption from release of information will not be provided; and~~
 9. ~~Records maintained and provided by individual cities and by other public agencies operating within Deschutes County will be reported so long as the public agency has first~~

~~given Deschutes County authorization to make the information accessible. Examples of such data are city building permits and development conditions, city property liens, and other information that could be beneficial to County residents and businesses.~~

~~D.E.~~ The County's Assessor, the County Clerk, the County Surveyor, and the County Legal Counsel's Office will monitor state legislation and statutes to assure that this policy remains in compliance with state public record laws and laws pertaining to the suppression of information on individual accounts. Where appropriate, the policy will be administratively amended to assure compliance with state regulations and legislation.

~~E. This policy will be brought back before the Board of County Commissioners for review six months following its initial adoption and every five years thereafter to assure that the policy's procedures are consistent with the current views of the Commissioners.~~

~~Approved by the Deschutes County Board of Commissioners January 23, 2013.~~

~~Tom Anderson, Interim Nick, Lelack~~ County Administrator



Deschutes County Information Technology Policy No. IT - 5
Effective Date: January 23, 2013
Updated:

Dial Property Information System Access and Use Policy

STATEMENT OF POLICY

It is the policy of Deschutes County that the Dial online property information system, accessible through the County's Internet Site, shall conform to the provisions set forth in this policy.

APPLICABILITY

This policy applies to the Dial online property information system, as it is made available to the public. The policy governs the provision of Property Related Information within Dial, particularly where such information is sourced from multiple County departments and offices. This policy does not apply to any other web-based application, including those that provide information or documents solely from a single department, such as the Assessor's Office, the County Clerk's Office, or the Road Department, nor does it apply to any application or resource accessible only through the County's internal network or intranet.

DEFINITIONS

Dial (formerly DIAL) - Deschutes County's official web-based public property information system, accessible via the County's Internet Site.

Registered User - An individual who has completed the Dial application registration process and has been granted credentials to gain enhanced access to features or additional information within Dial.

Internal Staff User: Any employee of Deschutes County who accesses Dial using authenticated internal credentials.

Basic Access - Access to information and basic features of the Dial application that is available to any user without registration.

Enhanced Access - Additional features, data, documents, or functionality within Dial reserved for Registered Users, as distinguished from features available thru Basic Access.

Internal Staff Access - The highest level of access within Dial, available only to authenticated Deschutes County employees for official County business.

Property Related Information - Data, documents, images, and maps pertaining to real property located within Deschutes County, as detailed in this policy.

Exempt Records - Records or information not subject to public disclosure under Oregon law, or those excluded by County policy or valid statutory exemption.

County Internet Site - The official Deschutes County website, www.deschutescounty.gov, through which Dial is accessed.

POLICY & PROCEDURE

In General

This policy establishes procedures by which Deschutes County manages Dial, with the goal of appropriately balancing staff needs and the public's need for access and privacy to property-related information. Dial provides a secure, user-friendly platform that enables the public to access a wide range of property information online. The availability of Dial facilitates easier business transactions and information gathering for residents, businesses and County staff, while also allowing the County to improve service efficiency and reduce the volume of in-person visits, phone calls, and email inquiries received by County staff.

Procedures for Making Information Available

- A. To achieve an appropriate balance between access to property-related information and protection of individual privacy, the Dial application utilizes role-based access controls within a single platform. All users receive Basic Access by default. Registered Users, upon successful registration, are granted Enhanced Access to additional features and information, as permitted by County policy and applicable law. Internal Staff Users are recognized by the system and provided Internal Staff Access, granting them access to features and information necessary to perform official County business in accordance with their job responsibilities and applicable regulations.
- B. Procedures for Basic Access within Dial:
 - 1. Links to access Dial with Basic Access will be made available on the County Internet Site.
 - 2. Users with Basic Access can search for individual properties using any of the following identifiers: owner's name, map and tax lot number, situs (street) address, subdivision, assessor account or tax account number, or other available property identifiers.
 - 3. Unless otherwise specified within this policy, Basic Access includes display of property owner name and mailing address.
 - 4. Basic Access includes property-related information such as tax and assessment details, sales and valuation data, development and permit status, environmental data, service provider information, transportation attributes, survey data, and other similar information, when authorized for public release.
 - 5. Access to official documents recorded at the County Clerk's Office (including property sales deeds and similar instruments) is not provided within Basic Access.
 - 6. Basic Access does not provide building photographs or building dimension sketches maintained by the Assessor's Office.
 - 7. Exempt Records are not made available via Basic Access.
- C. 8. Property-related information originating from cities or other public agencies within Deschutes County will be made available to Basic Access users only if the originating agency has authorized public release through Dial. Procedures for Enhanced Access within Dial:
 - 1. Enhanced Access provides all information and functionality available through Basic Access, in addition to property-related information authorized for enhanced release.
 - 2. Registration is required for Enhanced Access. Users must complete an online registration

process, which includes providing a unique email address (used as the username), selecting a password, indicating their business type, and supplying other information as determined by the County. Sensitive personal information, such as Social Security numbers or credit card data, will not be collected.

3. Access accounts are issued automatically through electronic processes without manual review. There are no fees to create or use Enhanced Access accounts, though the County reserves the right to assess charges in the future.
4. Enhanced Access is subject to the same restrictions on Exempt Records as Basic Access.
5. Any limitations specific to Enhanced Access will be clearly published within the application.
6. Property –related information originating from cities or other public agencies within Deschutes County is included in Enhanced Access only with the originating agency’s authorization.

D. Procedures for Internal Staff Access within Dial:

1. Internal Staff Access is automatically granted to authorized Internal Staff Users when they are connected to the Deschutes County network and authenticated using approved credentials.
2. Internal Staff Access includes all information and functionality available through both Basic and Enhanced Access, as well as additional property-related information necessary for the performance of official County duties.
3. Internal Staff Users may view and manage confidential or restricted records not available to Basic and Enhanced Access Users, consistent with their job responsibilities, County policy, and applicable laws and regulations.
4. Internal Staff Access may enable advanced administrative functions, such as editing, adding, or auditing property records, viewing detailed history or system logs, or utilizing specialized reporting features. These capabilities are provided only as necessary to support County operations and must be used solely for legitimate business purposes.
5. Property-related information originating from cities or other public agencies within Deschutes County is made available to Internal Staff Users only if the originating agency has authorized such access for County personnel doing official business.

- E. The County’s Assessor, the County Clerk, the County Surveyor, and the County Legal Counsel will monitor state legislation and statutes to assure that this policy remains in compliance with state public record laws and laws pertaining to the suppression of information on individual accounts. Where appropriate, the policy will be administratively amended to assure compliance with state regulations and legislation.

Nick, Lelack County Administrator



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: January 14, 2026

SUBJECT: Updated Policy IT- 3: Custom Software Development Standards

RECOMMENDED MOTION:

Move approval of County Administrator signature of updated County Policy IT-3.

BACKGROUND AND POLICY IMPLICATIONS:

As of December 2025, Deschutes County IT Helpdesk has been rebranded as the Deschutes County IT Service Desk. This update requires a change to the Policy IT-3 to accurately reflect the new branding and provide the new email path for contacting the Service Desk.

BUDGET IMPACTS:

None

ATTENDANCE:

Tania Mahood, Information Technology Director/CTO



Deschutes County Information Technology Policy No. IT-3

Effective Date: x, 2025

Custom Software Development Standards

STATEMENT OF POLICY

This policy provides a unified set of guidelines for coding, security, and privacy standards for custom software at Deschutes County. It aims to establish code quality and maintainability, protect sensitive data, prevent unauthorized access, and ensure compliance with relevant regulations and industry best practices.

DEFINITIONS

Changes in code development - Changes in code development refer to modifications made to existing code, that can include enhancements, bug fixes, or refactoring efforts to improve the codebase.

Change Release Advisory Board (CRAB) – A group comprising IT managers responsible for approving and scheduling changes identified as medium or major risk.

Custom Software - Custom software development refers to the process of designing and creating software for a specific user, department, office, customer(s), or organization. It's different from off-the-shelf software, which is designed for the mass market.

Data Classification –Deschutes County data is classified into categories which are identified and described on the IT SharePoint intranet website.

Developers – Deschutes County employees, volunteers, contractors, third-party vendors, and others acting on behalf of the County who design, develop, maintain, and review custom-developed software code within the organization.

Deschutes County IT – The central IT Department for the County.

New code development - refers to the creation of software from scratch or the implementation of entirely new features or modules within an existing application.

Peer code review – The process by which a member of the Deschutes County IT Team reviews code to identify and address security vulnerabilities and ensure the code complies with the unified Development Standards prior to deployment. To request a peer review, please ~~email reach out to IT via the Service Portal.~~helpdesk@deschutes.org.

Risk Assessment Form – This form can be found on the Information Technology SharePoint intranet website. It is created, maintained, and managed by the Deschutes County IT Team and used to assess and document the risks of proposed changes to new or existing code.

Software code – For the purposes of this policy, Deschutes County IT defines software code as a collection of instructions written in a programming language, which has been converted from human-readable source code into machine-readable instructions by a compiler. These instructions guide a computer or device in executing specific tasks.

Software decommissioning – Software decommissioning refers to the process of retiring a software application or system that is no longer needed or is being replaced by a new solution. This involves a series of planned steps to ensure that the software is safely and effectively removed from operation while preserving any necessary data and minimizing disruption to users.

Software inventory – A list of software applications and information can be found on the Information Technology SharePoint intranet website accessible to all IT employees. This inventory list is administered by the Deschutes County IT Team and maintained by Developers.

APPLICABILITY

This policy applies to all officials, employees, volunteers, contractors, third-party vendors, and others acting on behalf of the County who are involved in the development, maintenance, and review of software code utilized within the organization.

POLICY

These practices ensure consistency and quality in software, which streamline collaboration and reduce errors. They enhance security by minimizing vulnerabilities and requiring proper data classification and risk assessments for all changes.

Development Standards

To follow established guidelines and best practices, developers must adhere to unified development standards established by the Deschutes County IT Team, which are accessible on the Information Technology SharePoint intranet website.

These documents, maintained and regularly updated by the Deschutes County IT Team, include language-specific coding standards, naming conventions, code structure, commenting, and best practices for supported coding languages.

Supported Languages, Frameworks, And Development Tools

Developers must work with compatible and approved technologies. The list of supported items can be found on the Information Technology SharePoint intranet website. These standardized coding languages, frameworks, and development tools help streamline the development processes, improve code quality and security, and facilitate collaboration, leading to a more efficient, safer and effective software development processes. Using these standardized

resources will greatly reduce common vulnerabilities such as SQL injection, cross-site scripting (XSS), and buffer overflows.

Identification of Stored Data

All data handled by custom software must be classified according to its sensitivity (e.g., public, confidential, restricted) and documented on the Software inventory list. Appropriate security measures outlined in the Development Standards must be taken to protect data according to its classification level.

Assessment of Risk

All developers planning to create new code or modify existing code must complete a Risk Assessment Form. This form data will be evaluated using a model that categorizes business risk as minor, medium, or major. If the risk is classified as medium or major, developers must complete an additional form providing more detailed information, which will then be reviewed by the CRAB. Additionally, for medium and major changes, the CRAB will assign Deschutes County IT staff to conduct a peer review.

PROCEDURE

To ensure that all software development aligns with established standards and practices—promoting quality, security, and compliance—specific steps must be followed. New code development, changes in code development, and software decommissioning steps are required to be followed and are detailed on the Information Technology SharePoint intranet website.

TEMPORARY DEVELOPER SUPPORT

If a department or office experiences the absence of a developer, whether due to a vacancy or vacation, the Deschutes County IT Team may provide temporary support for the application, contingent upon the application's compliance with our processes, procedures, development standards, and the availability of IT resources. This assistance may continue, if resources allow, until a new developer is hired or the current one returns.

COMPLIANCE AND ENFORCEMENT

Legacy Code

Any existing code prior to the effective date of this policy will be grandfathered for a period of three years. During this time, it will be exempt from immediate compliance with these policy requirements, unless security concerns arise or there is an identified business need. However, all medium or major updates or changes, modifications, or new deployments made after the policy's effective date must adhere to this policy.

Oversight

Ad-hoc peer code reviews may be conducted at the discretion of the Deschutes County IT Department to ensure compliance with this policy. Any violations identified will be reported to the Developer. The Deschutes County IT Team will work with the developer to provide

suggestions for corrections and establish a timeline for implementing the necessary adjustments. If the violations are not resolved within the specified timeframe, the Deschutes County IT Director and Department/Office Head will be notified.

Department/Office Heads are responsible for assessing business needs within their units to make informed decisions regarding software code development. This responsibility includes understanding and assuming the associated risks and liabilities, such as resource allocation, code issues that impact business, compliance considerations, and long-term support. They must also ensure that all development staff are aware of and adhere to the organization's development standards. Department/Office Heads are accountable for enforcing this policy and ensuring that any violations are promptly addressed and corrected.

Non-compliance with this policy may result in removal of the application, disciplinary action, up to and including termination of employment, and legal consequences, if laws are violated.

Third Party Vendors or Contractors

Contracts with third-party vendors or contractors for custom developed software as defined in this policy must include all specific security, procedures, and privacy requirements in this policy, including the right to audit and meet security incident reporting obligations.

Exceptions or Deviations

Any exceptions or deviations from this policy must be approved by the Department Head of the requestor and the Information Technology Director. Exceptions can be requested by contacting IT via the Service Portal. Requests for exceptions can be sent via email to helpdesk@deschutes.org.



Deschutes County Information Technology Policy No. IT-3

Effective Date: x, 2025

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