



BOARD OF COMMISSIONERS

BOARD OF COUNTY COMMISSIONERS

8:00 AM, WEDNESDAY, MAY 18, 2022

Barnes Sawyer Rooms - Deschutes Services Bldg - 1300 NW Wall St – Bend

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

AGENDA

MEETING FORMAT: The Oregon legislature passed House Bill (HB) 2560, which requires that public meetings be accessible remotely, effective on January 1, 2022, with the exception of executive sessions. Public bodies must provide the public an opportunity to access and attend public meetings by phone, video, or other virtual means. Additionally, when in-person testimony, either oral or written is allowed at the meeting, then testimony must also be allowed electronically via, phone, video, email, or other electronic/virtual means.

Attendance/Participation options are described above. Members of the public may still view the BOCC meetings/hearings in real time via the Public Meeting Portal at www.deschutes.org/meetings

Citizen Input: Citizen Input is invited in order to provide the public with an opportunity to comment on any meeting topic that is not on the current agenda. Citizen Input is provided by submitting an email to: citizeninput@deschutes.org or by leaving a voice message at 541-385-1734. Citizen input received by noon on Tuesday will be included in the Citizen Input meeting record for topics that are not included on the Wednesday agenda.

Zoom Meeting Information: Staff and citizens that are presenting agenda items to the Board for consideration or who are planning to testify in a scheduled public hearing may participate via Zoom meeting. The Zoom meeting id and password will be included in either the public hearing materials or through a meeting invite once your agenda item has been included on the agenda. Upon entering the Zoom meeting, you will automatically be placed on hold and in the waiting room. Once you are ready to present your agenda item, you will be unmuted and placed in the spotlight for your presentation. If you are providing testimony during a hearing, you will be placed in the waiting room until the time of testimony, staff will announce your name and unmute your connection to be invited for testimony. Detailed instructions will be included in the public hearing materials and will be announced at the outset of the public hearing.

For Public Hearings, the link to the Zoom meeting will be posted in the Public Hearing Notice as well as posted on the Deschutes County website at <https://www.deschutes.org/bcc/page/public-hearing-notices>.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

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

***Note:** In addition to the option of providing in-person comments at the meeting, citizen input comments may be emailed to citizeninput@deschutes.org or you may leave a brief voicemail at 541.385.1734. To be timely, citizen input must be received by noon on Tuesday in order to be included in the meeting record.*

CONSENT AGENDA

- [1.](#) Consideration of Purchase Agreement, Document No. 2022-300, and Permanent Easement, Document No. 2022-301, from Starwood Association for Right of Way for the Hunnell Road: Loco Road to Tumalo Road Improvement Project
- [2.](#) Consideration of Purchase Agreement, Document No. 2022-277, and Dedication Deed, Document No. 2022-278, from Russell and Lori Cooper for Right of Way for the Hunnell Road: Loco Road to Tumalo Road Improvement Project
3. Approval of Minutes of the April 13, 2022 BOCC Meeting
4. Approval of Minutes of the April 18, 2022 BOCC Meeting
5. Approval of Minutes of the April 20, 2022 BOCC Meeting
6. Approval of Minutes of the April 27, 2022 BOCC Meeting

ACTION ITEMS

- [7.](#) **8:05 am** PUBLIC HEARING: Remand of Deschutes Junction Plan Amendment and Zone Change Application
- [8.](#) **9:20 AM** Discussion: Public Health Advisory Board (PHAB) Minimum Care Advisory for Homeless
- [9.](#) **9:50 AM** Consideration of Chair signature of Document No. 2022-404, an Oregon Health Authority amendment #157345-1
- [10.](#) **10:00 AM** PUBLIC HEARING: Deschutes County Road Department Nighttime Noise Variance (File No. 247-22-000243-V)
- [11.](#) **10:10 AM** Wildlife Inventory Update – Status Report

LUNCH RECESS: 11:00 a.m. to 2:00 p.m.

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 event/location is accessible to people with disabilities. If you need accommodations to make participation possible, please call (541) 617-4747.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: Wednesday, May 18, 2022

SUBJECT: Consideration of Purchase Agreement, Document No. 2022-300, and Permanent Easement, Document No. 2022-301, from Starwood Association for Right of Way for the Hunnell Road: Loco Road to Tumalo Road Improvement Project

RECOMMENDED MOTION:

Move approval of Document Nos. 2022-300 and 2022-301.

BACKGROUND AND POLICY IMPLICATIONS:

The Board of County Commissioners authorized the Road Department to negotiate with owners of properties impacted by the Hunnell Road: Loco Road to Tumalo Road Improvement project for the acquisition of right of way by Resolution No. 2021-048. During preliminary design of the project, it was determined that a portion of Tax Lot No. 161228DC00099, owned by Starwood Association, would be impacted by the Project. The Road Department has negotiated with the property owner for right of way acquisition. The property owner has agreed to the following:

- Instrument: Permanent Easement Deed
Area: 5,576 sq. ft.
Compensation: \$4,000.00
Other Obligations: None

BUDGET IMPACTS:

County will make payment to the property owner in the amount of \$4,000.00, which was budgeted in the Department's Fiscal Year 2021-2022 Road Capital Improvement Plan budget.

ATTENDANCE:

Cody Smith, County Engineer (**REQUEST CONSENT AGENDA**)

| | |
|---|---------------------------------|
| <div style="border: 1px solid black; padding: 5px; margin-bottom: 10px; text-align: center;"> <p>REVIEWED</p> <hr style="width: 50%; margin: 0 auto;"/> <p>LEGAL COUNSEL</p> </div> <p>After recording return to: Deschutes County Road Dept. 61150 S.E. 27th Street Bend, Oregon 97701</p> | <p>For Recording Stamp Only</p> |
|---|---------------------------------|

PURCHASE AGREEMENT
HUNNELL ROAD: LOCO ROAD TO TUMALO ROAD IMPROVEMENT PROJECT
Starwood Association, an Oregon corporation
File No.: 012

THIS AGREEMENT is made and entered into by and between **Deschutes County, Oregon**, a political subdivision of the State of Oregon, (“County”); and **Starwood Association, an Oregon corporation**, (“Grantor”), on the following terms and conditions:

RECITALS

1. Hunnell Road is part of the County road system under the jurisdiction and control of County.
2. County is constructing the Hunnell Road: Loco Road to Tumalo Road Improvement project on Hunnell Road and Pohaku Road. County has identified that the property described in the attached **Exhibit “A”** and depicted in the attached **Exhibit “B”** is necessary for the Project.
3. Grantor is the owner of the property described in the attached **Exhibits “A”** and **“B”**.

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

TERMS OF AGREEMENT

1. Grantor shall convey to County the real property described in the attached **Exhibit A** by a permanent easement for the purchase price of **Four Thousand Dollars (\$4,000.00)**

GRANTOR OBLIGATIONS

1. Grantor shall provide County with fully signed and permanent easement for subject property with this Agreement. Upon receipt of purchase payment, Grantor shall immediately deliver possession of property to County.
2. Grantor makes the following representations:
 - a. Grantor has no notice from any government agency of any violation of law relating to the property.
 - b. The property has never been used for the storage or disposal of hazardous waste materials.
 - c. Grantor is not a "foreign person" as that term is defined in IRS Code Section 1445.
3. If the subject property is subject to any mortgage, deed of trust, land sales contract, or other similar encumbrance, Grantor should review that document to determine whether that document contains any provision under which default may be triggered by the Grantor's signing of this Agreement or any conveyance instrument.
4. Grantor understands that all fences and other improvements that are constructed or reconstructed on real property retained by Grantor pursuant to this Agreement will be the property of Grantor and will be maintained and repaired by the Grantor after completion of the project.
5. Grantor understands that any construction lying outside of the traveled portion and shoulders but within the right of way of the county road which is made for the use and benefit of the remaining property, either under the terms of this agreement or the construction plans, shall be completed in conformance with normal engineering construction practices.
6. As soon as Grantor delivers the dedication deed to County, Grantor shall remove from the property all personal property, fixtures, and improvements retained by Grantor under the terms of this Agreement. If personal property, fixtures, or improvements are required to be moved, Grantor may be entitled to relocation benefits and assistance which will be provided outside of this Agreement in accordance with the Uniform Relocation Act requirements in conformance with the ODOT Right-of-Way Manual.

7. Grantor acknowledges that performance of County's obligations under this Agreement constitute just and full compensation for the property (both the dedication and the permanent slop easement) and any damage to property retained by Grantor.

COUNTY OBLIGATIONS

1. Within thirty (30) calendar days of execution of this Agreement and receipt of fully signed and executed warranty deed and temporary construction easement, County will deliver payment to Grantor in the amount of **Four Thousand Dollars (\$4,000.00)**. County will take immediate possession of property upon delivery of payment.
2. County will be responsible for payment of all recording fees or other costs required for recording conveyance instruments.

GENERAL PROVISIONS

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

(Signature Page to Follow)

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

GRANTOR

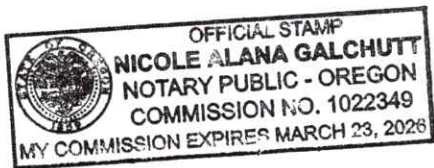
DATED this 6 day of May, 2022.

Starwood Association, an Oregon corporation

| | | | |
|-------|------------------------------|-------|--------------|
| By: | <u>[Signature]</u> | By: | <u>_____</u> |
| Name: | <u>JAMES D. PORTER</u> | Name: | <u>_____</u> |
| Its: | <u>ASSOCIATION PRESIDENT</u> | Its: | <u>_____</u> |

STATE OF OREGON)
) SS.
 County of Deschutes)

This record was acknowledged before me on May 6,
 20 22 by James Porter as association president
 and _____ as _____ of Starwood
 Association, an Oregon corporation.



[Signature]
 NOTARY PUBLIC FOR OREGON
 My Commission Expires: March 23, 2026 ¹⁷

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

DATED this ____ day of _____, 2022.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PATTI ADAIR, CHAIR

ANTHONY DEBONE, VICE-CHAIR

ATTEST:

PHIL CHANG, COMMISSIONER

Recording Secretary

STATE OF OREGON)
) SS.
County of Deschutes)

Before me, a Notary Public, personally appeared Patti Adair, Anthony DeBone, and Phil Chang, the above-named Board of County Commissioners of Deschutes County, Oregon, acknowledged the foregoing instrument, on behalf of Deschutes County, Oregon.

Dated this ____ day of _____, 2022.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

EXHIBIT A
Deschutes County Road Department
Hunnell Road Improvement Project: Loco Road to Tumalo Road
File Number 012
Tax Lot 161228DC00099

PERMANENT EASEMENT

A parcel of land lying in the Southeast one-quarter of Section 28, Township 16 South, Range 12 East, Willamette Meridian, Deschutes County, Oregon, and being a portion of that property described in that Warranty Deed to Starwood Association, an Oregon Corporation, recorded March 22, 1984 as Instrument No. 84-4734, Deschutes County Official Records, said parcel lying westerly of the following described line:

BEGINNING at a point on the easterly right of way line of Hunnell Road, said point being North 8°27'46" West, 204.13 feet from the South one-quarter corner of Section 28, Township 16 South, Range 12 East, Willamette Meridian, said point also being 5.00 feet easterly when measured at right angles to Hunnell Road Centerline Station 162+17.35 per Deschutes County Survey No. 20520;

Thence leaving said easterly right of way line on a non-tangent 550.00 foot radius curve to the left, the radius point of which bears North 72°38'48" West, through a central angle of 17°20'29" (the long chord of which bears North 08°40'57" East, 165.83 feet) an arc distance of 166.47 feet to a point of tangency being 30.00 feet easterly when measured at right angles to Hunnell Road Centerline Station 163+81.28 per Deschutes County Survey No. 20520,

Thence North 00°00'42" East, 653.62 feet to a point of curvature being 17.16 feet easterly when measured at right angles to Hunnell Road Centerline Station 170+36.55 per Deschutes County Survey No. 20520,

Thence on an 800.00 foot radius curve to the left, through a central angle of 10°20'17" (the long chord of which bears North 05°09'26" West, 144.15 feet) an arc distance of 144.35 feet to a point of reverse curvature at a point 29.06 feet easterly when measured at right angles to Hunnell Road Centerline Station 171+74.99 per Deschutes County Survey No. 20520;

Thence on a 740.00 foot radius curve to the right, through a central angle of 10°20'17" (the long chord of which bears North 05°09'26" West, 133.34 feet) an arc distance of 133.52 feet to the terminus of said described line, said point being 30.00 feet easterly when measured at right angles to Hunnell Road Centerline Station 173+16.09 per Deschutes County Survey No. 20520.

Containing 5,576 square feet, more or less.

See map attached as Exhibit "B", which is made a part hereof.

Bearings, Right of Way, Stationing and Monumentation are based on "Control, Recovery, and Retracement Map" filed in the office of the Deschutes County Surveyor's Office May 25, 2021 as County Survey No. 20520.

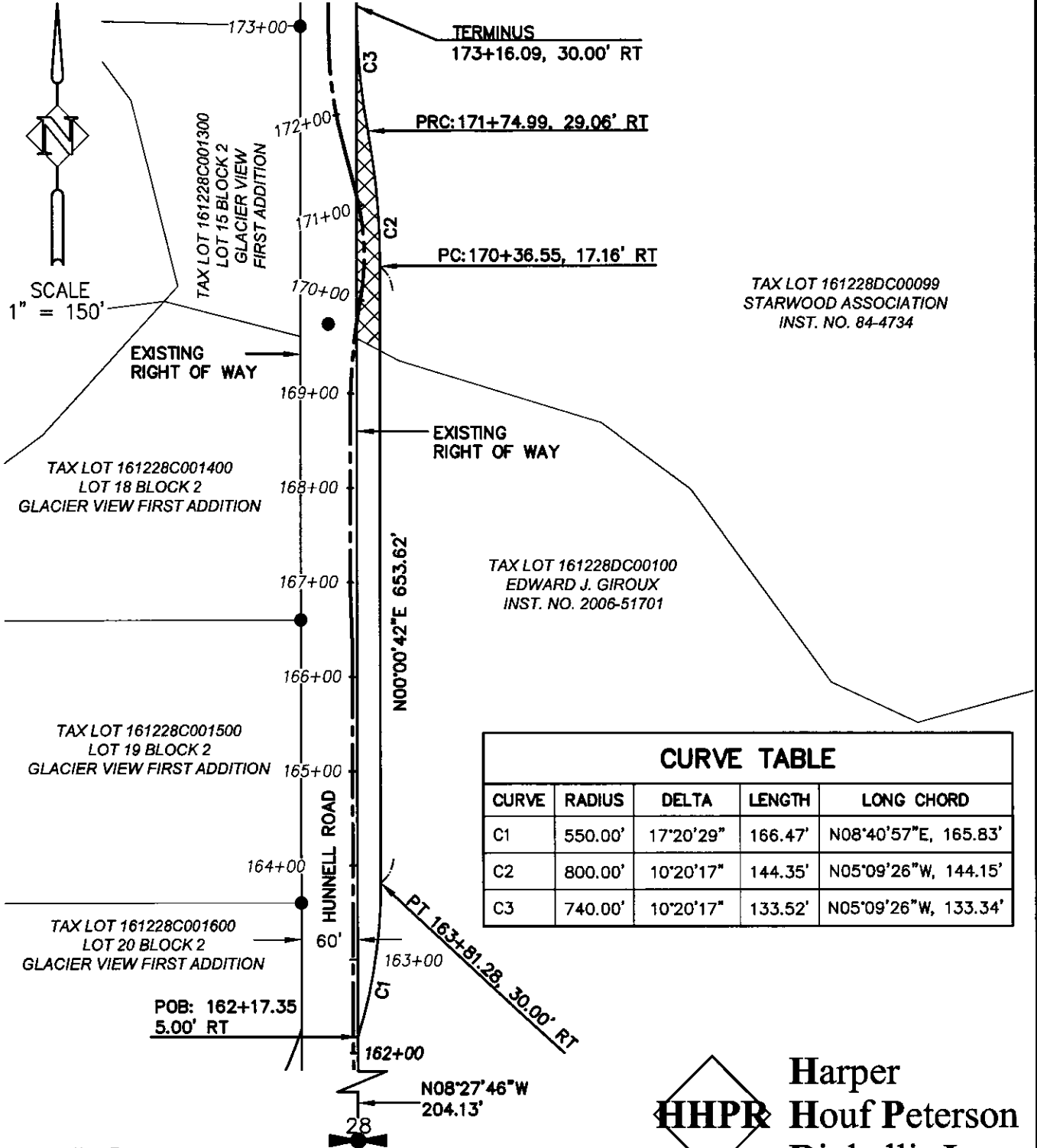
**REGISTERED
PROFESSIONAL
LAND SURVEYOR**

**OREGON
JANUARY 8, 2019
REED CARLSON BEAUDUY
93377**

RENEWES: 12-31-2023
SIGNED: 04-20-2022

EXHIBIT "B"

LOCATED IN THE SOUTH ONE HALF OF SECTION 28,
TOWNSHIP 16 SOUTH, RANGE 12 EAST, WILLAMETTE MERIDIAN,
DESCHUTES COUNTY, OREGON



TAX LOT 161228DC00099
STARWOOD ASSOCIATION
INST. NO. 84-4734

TAX LOT 161228DC00100
EDWARD J. GIROUX
INST. NO. 2006-51701

| CURVE TABLE | | | | |
|-------------|---------|-----------|---------|----------------------|
| CURVE | RADIUS | DELTA | LENGTH | LONG CHORD |
| C1 | 550.00' | 17°20'29" | 166.47' | N08°40'57"E, 165.83' |
| C2 | 800.00' | 10°20'17" | 144.35' | N05°09'26"W, 144.15' |
| C3 | 740.00' | 10°20'17" | 133.52' | N05°09'26"W, 133.34' |

LEGEND

- PERMANENT EASEMENT ±5,576 SQ.FT.
- - FOUND MONUMENT PER CS20520

SEE ATTACHED LEGAL DESCRIPTION

Harper Houf Peterson Righellis Inc.

ENGINEERS • PLANNERS
 LANDSCAPE ARCHITECTS • SURVEYORS
 250 NW Franklin Avenue, Suite 404, Bend, OR 97703
 phone: 541.318.1161 www.hhpr.com fax: 541.318.1141
 DCO-01 RCB 04/20/2022 PAGE 1 OF 1

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| <div style="border: 1px solid black; padding: 5px; text-align: center;"> <p>REVIEWED</p> <hr/> <p>LEGAL COUNSEL</p> </div> <p>After recording return to: Deschutes County Road Dept. 61150 S.E. 27th Street Bend, Oregon 97701</p> | <p>For Recording Stamp Only</p> |
|--|---------------------------------|


PERMANENT EASEMENT DEED

Starwood Association, an Oregon corporation, Grantor, does hereby grant to the public a permanent easement for roadway and utility purposes over, across, and through that parcel of land described in Exhibit "A" and depicted in Exhibit "B", attached hereto and by this reference incorporated herein.

This Permanent Easement is intended to grant the easement on the property described, not to convey fee title or any interest in the underlying property except as expressly stated herein. The easement granted shall prevent Grantors from any use of said property that would interfere with the rights herein granted to the public.

The true consideration for this conveyance is **Four Thousand Dollars (\$4,000.00)**.

DATED this 6 day of MAY, 2022.

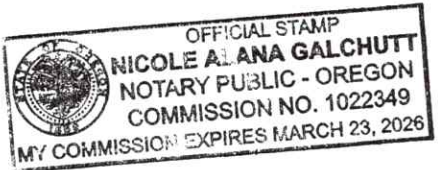


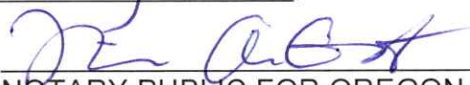
 Starwood Association, an Oregon corporation

STATE OF OREGON)
) SS.
 County of Deschutes)

Before me, a Notary Public, personally appeared Starwood Association, an Oregon corporation, and acknowledged the foregoing instrument.

Dated this 6th day of may, 2022.





 NOTARY PUBLIC FOR OREGON
 My Commission Expires: March 23, 2026

ACCEPTANCE

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

DATED this ____ day of _____, 2022.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PATTI ADAIR, CHAIR

ANTHONY DEBONE, VICE CHAIR

ATTEST:

PHIL CHANG, COMMISSIONER

Recording Secretary

STATE OF OREGON)
) SS.
County of Deschutes)

Before me, a Notary Public, personally appeared Patti Adair, Anthony DeBone, and Phil Chang, the above-named Board of County Commissioners of Deschutes County, Oregon, acknowledged the foregoing instrument, on behalf of Deschutes County, Oregon.

Dated this ____ day of _____, 2022.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

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Hunnell Road Improvement Project: Loco Road to Tumalo Road
File Number 012
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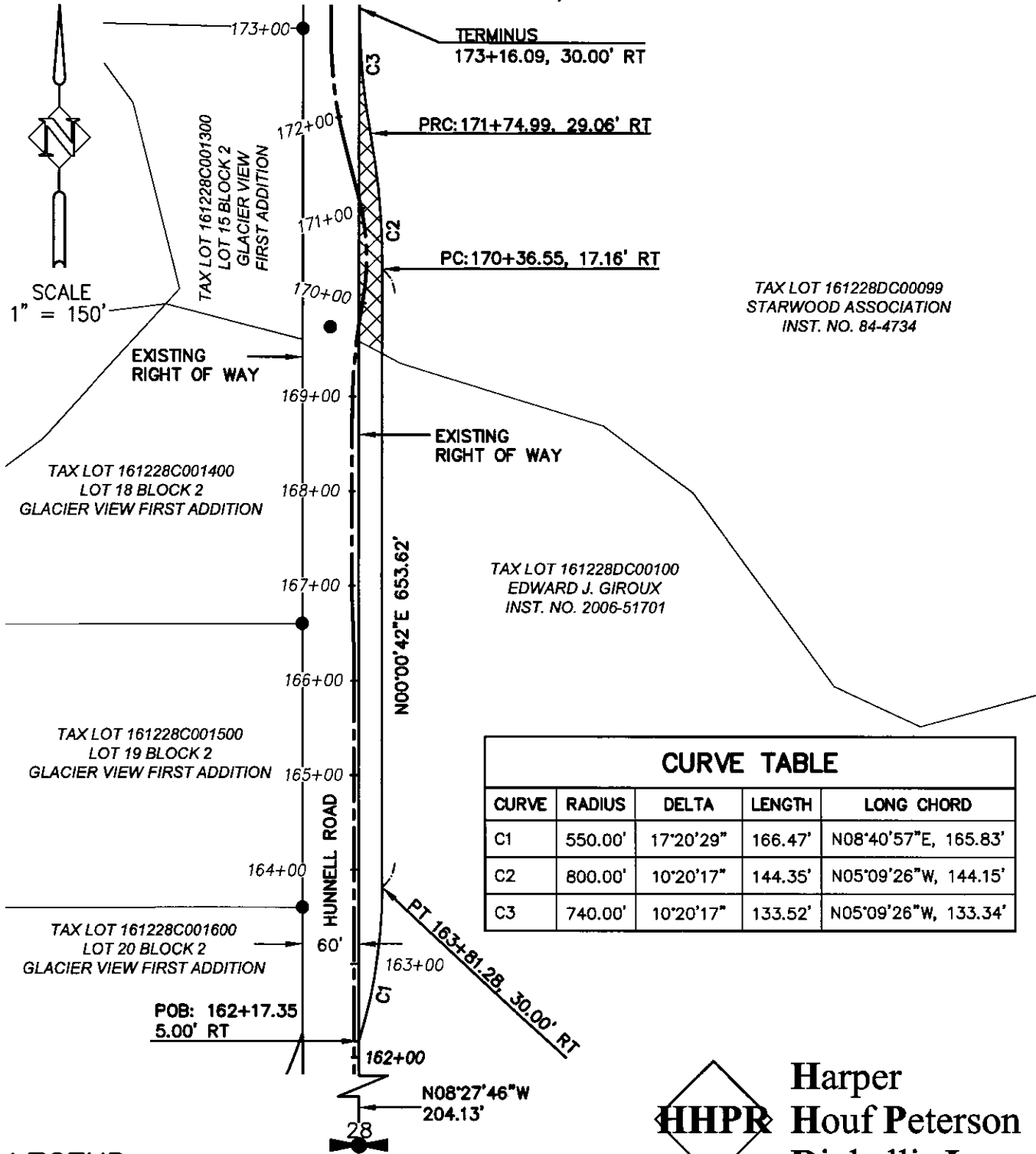
**REGISTERED
PROFESSIONAL
LAND SURVEYOR**

OREGON
JANUARY 8, 2019
REED CARLSON BEAUDUY
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RENEWS: 12-31-2023
SIGNED: 04-20-2022

EXHIBIT "B"

LOCATED IN THE SOUTH ONE HALF OF SECTION 28,
TOWNSHIP 16 SOUTH, RANGE 12 EAST, WILLAMETTE MERIDIAN,
DESCHUTES COUNTY, OREGON



TAX LOT 161228DC00099
STARWOOD ASSOCIATION
INST. NO. 84-4734

TAX LOT 161228DC00100
EDWARD J. GIROUX
INST. NO. 2006-51701

CURVE TABLE

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| C3 | 740.00' | 10°20'17" | 133.52' | N05°09'26"W, 133.34' |

LEGEND

- PERMANENT EASEMENT ±5,576 SQ.FT.
- - FOUND MONUMENT PER CS20520

SEE ATTACHED LEGAL DESCRIPTION

Harper Houf Peterson Righellis Inc.

ENGINEERS • PLANNERS
 LANDSCAPE ARCHITECTS • SURVEYORS
 250 NW Franklin Avenue, Suite 404, Bend, OR 97703
 phone: 541.318.1161 www.hpr.com fax: 541.318.1141
 DCO-01 RCB 04/20/2022 PAGE 1 OF 1



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: Wednesday, May 18, 2022

SUBJECT: Consideration of Purchase Agreement, Document No. 2022-277, and Dedication Deed, Document No. 2022-278, from Russell and Lori Cooper for Right of Way for the Hunnell Road: Loco Road to Tumalo Road Improvement Project

RECOMMENDED MOTION:

Move approval of Document Nos. 2022-277 and 2022-278.

BACKGROUND AND POLICY IMPLICATIONS:

The Board of County Commissioners authorized the Road Department to negotiate with owners of properties impacted by the Hunnell Road: Loco Road to Tumalo Road Improvement project for the acquisition of right of way by Resolution No. 2021-048. During preliminary design of the project, it was determined that a portion of Tax Lot No. 1712040000200, owned by Russell L. and Lori C. Cooper, would be impacted by the Project. The Road Department has negotiated with the property owner for right of way acquisition. The property owner has agreed to the following:

- Instrument: Dedication Deed
Area: 9,628 sq. ft.
Compensation: \$30,200.00
Other Obligations: None

BUDGET IMPACTS:

County will make payment to the property owner in the amount of \$30,200.00, which was budgeted in the Department's Fiscal Year 2021-2022 Road Capital Improvement Plan budget.

ATTENDANCE:

Cody Smith, County Engineer (**REQUEST CONSENT AGENDA**)

| | |
|---|---------------------------------|
| <div style="border: 1px solid black; padding: 5px; margin-bottom: 10px; text-align: center;"> <p>REVIEWED</p> <hr style="width: 50%; margin: 0 auto;"/> <p>LEGAL COUNSEL</p> </div> <p>After recording return to: Deschutes County Road Dept. 61150 S.E. 27th Street Bend, Oregon 97701</p> | <p>For Recording Stamp Only</p> |
|---|---------------------------------|

PURCHASE AGREEMENT
HUNNELL ROAD: LOCO ROAD TO TUMALO ROAD IMPROVEMENT PROJECT
Russell L. Cooper and Lori C. Cooper, as tenants by the entirety
File No.: 001

THIS AGREEMENT is made and entered into by and between **Deschutes County, Oregon**, a political subdivision of the State of Oregon, (“County”); and **Russell L. Cooper and Lori C. Cooper, as tenants by the entirety** (“Grantor”), on the following terms and conditions:

RECITALS

1. Hunnell Road is part of the County road system under the jurisdiction and control of County.
2. County is constructing the Hunnell Road: Loco Road to Tumalo Road Improvement project on Hunnell Road and Pohaku Road. County has identified that the property described in the attached **Exhibit “A”** and depicted in the attached **Exhibit “B”** is necessary for the Project.
3. Grantor is the owner of the property described in the attached **Exhibit “A”** and depicted in the attached **Exhibit “B”**.

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

TERMS OF AGREEMENT

1. Grantor shall convey to County the real property described in the attached **Exhibit A** by dedication deed for the purchase price of **Thirty Thousand Two Hundred Dollars (\$30,200.00)**

GRANTOR OBLIGATIONS

1. Grantor shall provide County with fully signed and executed dedication deed for subject property with this Agreement. Upon receipt of purchase payment, Grantor shall immediately deliver possession of property to County.
2. Grantor makes the following representations:
 - a. Grantor has no notice from any government agency of any violation of law relating to the property.
 - b. The property has never been used for the storage or disposal of hazardous waste materials.
 - c. Grantor is not a "foreign person" as that term is defined in IRS Code Section 1445.
3. If the subject property is subject to any mortgage, deed of trust, land sales contract, or other similar encumbrance, Grantor should review that document to determine whether that document contains any provision under which default may be triggered by the Grantor's signing of this Agreement or any conveyance instrument.
4. Grantor understands that all fences and other improvements that are constructed or reconstructed on real property retained by Grantor pursuant to this Agreement will be the property of Grantor and will be maintained and repaired by the Grantor after completion of the project.
5. Grantor understands that any construction lying outside of the traveled portion and shoulders but within the right of way of the county road which is made for the use and benefit of the remaining property, either under the terms of this agreement or the construction plans, shall be completed in conformance with normal engineering construction practices.
6. As soon as Grantor delivers the dedication deed to County, Grantor shall remove from the property all personal property, fixtures, and improvements retained by Grantor under the terms of this Agreement. If personal property, fixtures, or improvements are required to be moved, Grantor may be entitled to relocation benefits and assistance which will be provided outside of this Agreement in accordance with the Uniform Relocation Act requirements in conformance with the ODOT Right-of-Way Manual.

7. Grantor acknowledges that performance of County's obligations under this Agreement constitute just and full compensation for the property (dedication) and any damage to property retained by Grantor.

COUNTY OBLIGATIONS

1. Within thirty (30) calendar days of execution of this Agreement and receipt of fully signed and executed dedication deed, County will deliver payment to Grantor in the amount of **Thirty Thousand Two Hundred Dollars (\$30,200.00)**. County will take immediate possession of property upon delivery of payment.
2. County will be responsible for payment of all recording fees or other costs required for recording conveyance instruments.
3. County will allow existing fence within the existing right of way to remain.
4. Within one (1) year after Project completion and absent any unforeseeable circumstances that may be encountered prior to Project completion, County will initiate proceedings to vacate unused right of way outside of 30 feet from Project road centerline or five (5) feet from Project toe of fill slope, whichever is greater, on the west side of Hunnell Road along the Grantor's frontage provided that the Grantor is the rightful owner of the land abutting the vacated property at the time the vacation proceedings are to be initiated and provided that the Grantor executes a utility easement over the vacated right of way. Upon this vacation, Grantor can construct a new fence on the new right of way boundary.

GENERAL PROVISIONS

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

(Signature Pages to Follow)

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

GRANTOR

DATED this 5th day of May, 2022.

Russell L. Cooper
Russell L. Cooper

Lori C. Cooper
Lori C. Cooper

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

DATED this ____ day of _____, 2022.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PATTI ADAIR, CHAIR

ANTHONY DEBONE, VICE-CHAIR

ATTEST:

PHIL CHANG, COMMISSIONER

Recording Secretary

STATE OF OREGON)
) SS.
County of Deschutes)

Before me, a Notary Public, personally appeared Patti Adair, Anthony DeBone, and Phil Chang, the above-named Board of County Commissioners of Deschutes County, Oregon, acknowledged the foregoing instrument, on behalf of Deschutes County, Oregon.

Dated this ____ day of _____, 2022.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

EXHIBIT A
Deschutes County Road Department
Hunnell Road Improvement Project: Loco Road to Tumalo Road
File Number 001
Tax Lot 1712040000200

RIGHT OF WAY DEDICATION

A parcel of land lying in Parcel 1 Partition Plat No. 2005-59 in the Northwest one-quarter of Section 4, Township 17 South, Range 12 East, Willamette Meridian, Deschutes County, Oregon, and being a portion of that property described in that Statutory Warranty Deed to Russell L. Cooper and Lori C. Cooper, as tenants by the entirety, recorded September 7, 2017 as Instrument No. 2017-035707, Deschutes County Official Records, said parcel described as follows:

BEGINNING at a point on the easterly right of way line of Hunnell Road, said point being South 45°48'02" West, 390.28 feet of the West One-sixteenth corner common to Section 4, Township 17 South, Range 12 East, and Section 33, Township 16 South, Range 12 East, Willamette Meridian, said point also being 30.00 feet easterly when measured at right angles to Hunnell Road Centerline Station 95+43.57 per Deschutes County Survey No. 20520;

Thence along said easterly right of way line North 13°41'20" West, 158.45 feet to a non-tangent point of curvature at a point 30.00 feet easterly when measured at right angles to Hunnell Road Centerline Station 97+02.02 per Deschutes County Survey No. 20520;

Thence continuing along said easterly right of way line on a non-tangent 265.23 foot radius curve to the right, the radius point of which bears North 76°20'22" East, through a central angle of 25°56'42" (the long chord of which bears North 00°41'18" West 119.08 feet) an arc distance of 120.10 feet to a non-tangent point of curvature at a point 30.00 feet easterly when measured at right angles to Hunnell Road Centerline Station 98+35.70 per Deschutes County Survey No. 20520;

Thence continuing along said easterly right of way line on a non-tangent 273.95 foot radius curve to the right, the radius point of which bears South 77°45'38" East, through a central angle of 59°18'34" (the long chord of which bears North 41°53'39" East, 271.09 feet) an arc distance of 283.58 feet to a point 30.00 feet easterly when measured at right angles to Hunnell Road Centerline Station 101+50.34 per Deschutes County Survey No. 20520;

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Containing 9,628 square feet, more or less.

See map attached as Exhibit "B", which is made a part hereof.

Bearings, Right of Way, Stationing and Monumentation are based on "Control, Recovery, and Retracement Map" filed in the office of the Deschutes County Surveyor's Office May 25, 2021 as County Survey No. 20520.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JANUARY 8, 2019
REED CARLSON BEAUDUY
93377

RENEWS: 12-31-2021

SIGNED: 08-08-2021

EXHIBIT "B"

LOCATED IN PARCEL 1 PARTITION PLAT 2005-59 IN THE NORTHWEST ONE QUARTER OF SECTION 4, TOWNSHIP 17 SOUTH, RANGE 12 EAST, WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON

TAX LOT 1612330000907
PARCEL 2 2002-15

TAX LOT 1612330000907
PARCEL 2 PP 2005-59

TAX LOT 1712040000200
PARCEL 1 PP 2005-59
RUSSELL & LORI COOPER
INSTR. NO. 2017-035707

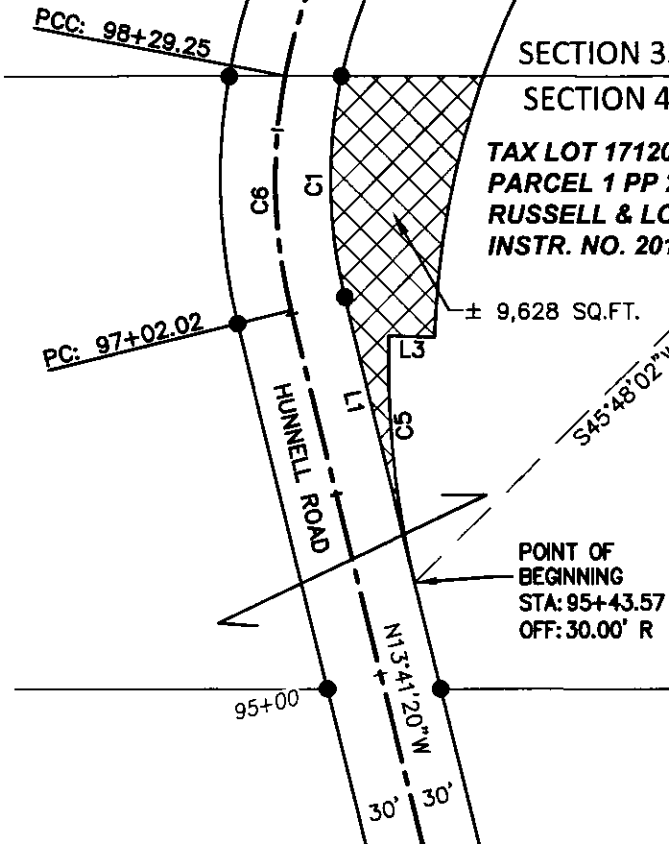


SCALE
1" = 100'

WEST ONE-SIXTEENTH CORNER
PER OCRR 1371

| LINE TABLE | | |
|------------|-------------|----------|
| LINE | BEARING | DISTANCE |
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| C7 | 303.95' | 65°27'46" | 347.27' | N43°45'16"E, 328.69' |



LEGEND



RIGHT OF WAY DEDICATION
± 9,628 SQ.FT.

● - FOUND MONUMENT PER CS20520

SEE ATTACHED LEGAL
DESCRIPTION



**Harper
Houf Peterson
Righellis Inc.**

ENGINEERS • PLANNERS
LANDSCAPE ARCHITECTS • SURVEYORS

250 NW Franklin Avenue, Suite 404, Bend, OR 97703
phone: 541.318.1161 www.hhpr.com fax: 541.318.1141

DCO-01 RCB 06/24/2021 PAGE 1 OF 1

REVIEWED
LEGAL COUNSEL

For Recording Stamp Only

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

DEED OF DEDICATION


Russell L. Cooper and Lori C. Cooper, as tenants by the entirety, Grantor, does hereby dedicate to the public for roadway and utility purposes that parcel of land described in Exhibit "A" and depicted in Exhibit "B", attached hereto and by this reference incorporated herein.

The true consideration for this conveyance is **Thirty Thousand Two Hundred Dollars (\$30,200.00)**

DATED this 5th day of May, 2022.



Russell L. Cooper



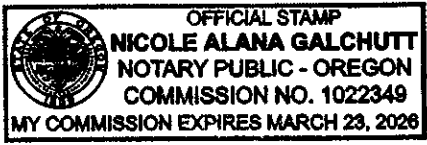
Lori C. Cooper

STATE OF OREGON)
) SS.
County of Deschutes)

Before me, a Notary Public, personally appeared Russell L. Cooper acknowledged the foregoing instrument.

Dated this 5th day of May, 2022.

[Signature]
NOTARY PUBLIC FOR OREGON
My Commission Expires: March 23, 2026

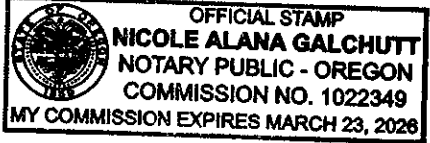


STATE OF OREGON)
) SS.
County of Deschutes)

Before me, a Notary Public, personally appeared Lori C. Cooper acknowledged the foregoing instrument.

Dated this 5th day of May, 2022.

[Signature]
NOTARY PUBLIC FOR OREGON
My Commission Expires: March 23, 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 ____ day of _____, 2022.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PATTI ADAIR, CHAIR

ANTHONY DEBONE, VICE CHAIR

ATTEST:

PHIL CHANG, COMMISSIONER

Recording Secretary

STATE OF OREGON)
) SS.
County of Deschutes)

Before me, a Notary Public, personally appeared Patti Adair, Anthony DeBone, and Phil Chang, the above-named Board of County Commissioners of Deschutes County, Oregon, acknowledged the foregoing instrument, on behalf of Deschutes County, Oregon.

Dated this ____ day of _____, 2022.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

EXHIBIT A
Deschutes County Road Department
Hunnell Road Improvement Project: Loco Road to Tumalo Road
File Number 001
Tax Lot 1712040000200

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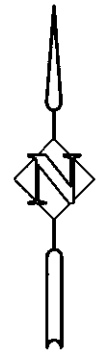
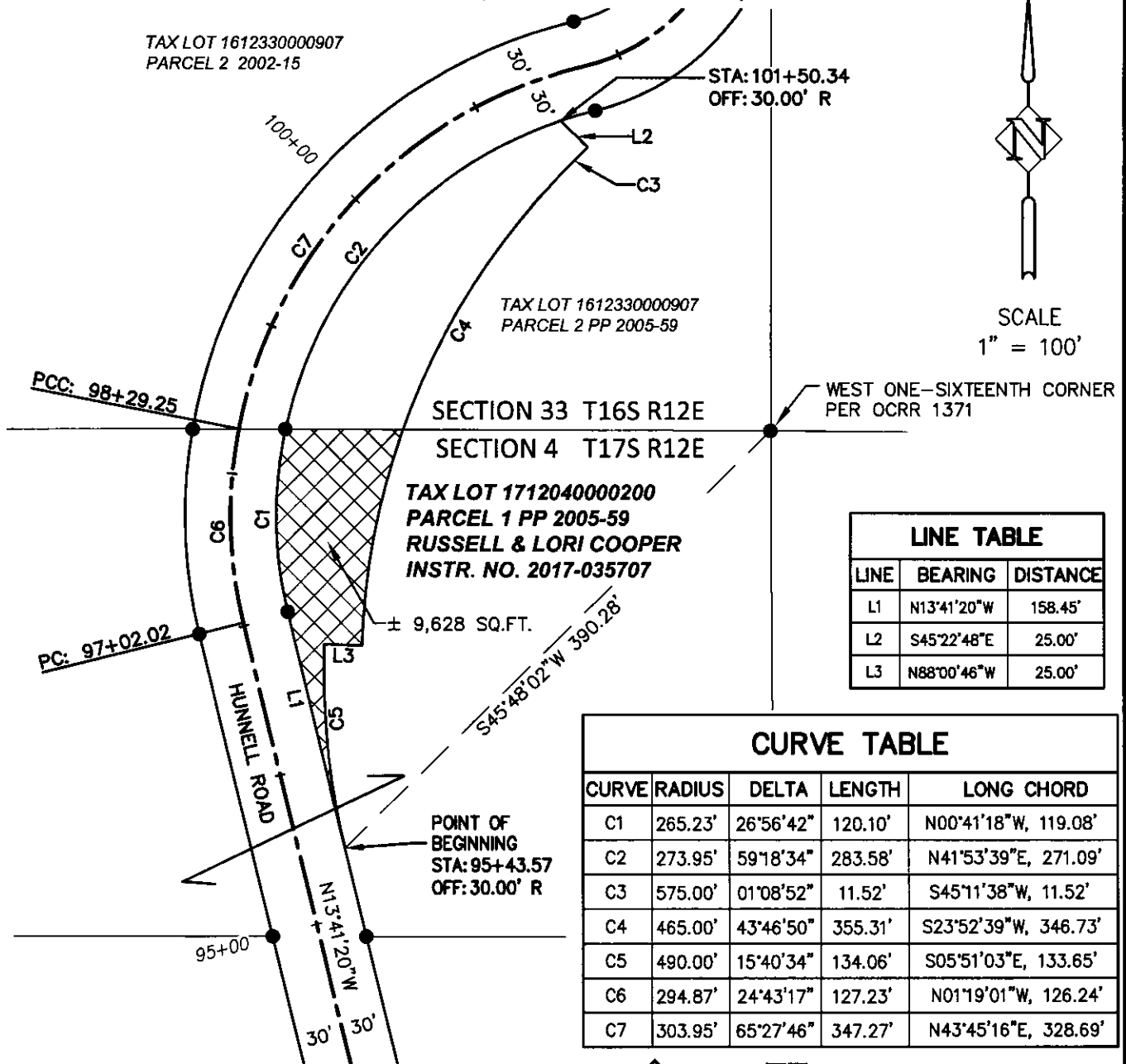
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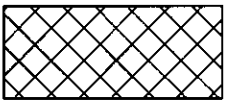


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LEGEND



RIGHT OF WAY DEDICATION
± 9,628 SQ.FT.

● - FOUND MONUMENT PER CS20520

SEE ATTACHED LEGAL DESCRIPTION

Harper Houf Peterson Righellis Inc.

ENGINEERS • PLANNERS
LANDSCAPE ARCHITECTS • SURVEYORS
250 NW Franklin Avenue, Suite 404, Bend, OR 97703
phone: 541.318.1161 www.hhpr.com fax: 541.318.1141
DCO-01 RCB 06/24/2021 PAGE 1 OF 1



BOARD OF
COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: Wednesday, May 18, 2022

SUBJECT: PUBLIC HEARING: Remand of Deschutes Junction Plan Amendment and Zone Change Application



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: Wednesday, May 18, 2022

SUBJECT: Public Hearing: Remand of Deschutes Junction Plan Amendment and Zone Change application 247-20-000438-PA/439-ZC (247-22-000287-A)

RECOMMENDED MOTION:

Open the public hearing for applications 247-20-000438-PA/439-ZC(22-287-A).

BACKGROUND AND POLICY IMPLICATIONS:

On May 18, 2022, the Board of Commissioners ("Board") will hold a limited de novo public held to consider a remanded decision of the Oregon Land Use Board of Appeals ("LUBA") regarding a plan amendment and zone change application proposed by Anthony Aceti ("Applicant"). This hearing is a continuation of an existing application (247-20-000438-PA/439-ZC), the full record is located on the project webpage. <https://www.deschutes.org/cd/page/remand-deschutes-junction-plan-amendment-zone-change>

BUDGET IMPACTS:

None.

ATTENDANCE:

Nicole Mardell, Senior Planner - Long Range
Will Groves, Planning Manager



MEMORANDUM

DATE: May 11, 2022

TO: Deschutes County Board of Commissioners

FROM: Nicole Mardell, Senior Planner – Long Range

RE: Public Hearing: Remand of Deschutes Junction Plan Amendment and Zone Change application 247-20-000438-PA/439-ZC (247-22-000287-A)

On May 18, 2022, the Board of Commissioners (“Board”) will hold a *limited de novo* public hearing to consider a remanded decision of the Oregon Land Use Board of Appeals (“LUBA”) regarding a plan amendment and zone change application proposed by Anthony Aceti (“Applicant”). This hearing is a continuation of an existing application (247-20-000438-PA/439-ZC), the full record is located on the project webpage¹.

I. HEARING PROCEDURE

Deschutes County Code 22.32.040 notes that the scope of the proceeding for an application on remand must be limited to review the issues that LUBA requires to be addressed, although the Board may use its discretion to reopen the record where it seems necessary. During the May 4, 2022 work session, the Board determined this hearing would be held *limited de novo* meaning that only testimony directed at the issue on remand, the number of workers resulting from the proposed Rural Industrial zoning and plan designation, will be considered. Testimony on other matters will not be accepted during the public hearing.

II. BACKGROUND

On June 30, 2020, an application was filed for a Plan Amendment and Zone change application for a 21.59-acre parcel located at 21235 Tumalo Place, Bend (Taxlot ID 161226CC000201 and 161227D000104). The applicant is requesting to rezone and re-designate the property from Agriculture/Exclusive Farm Use - Tumalo/Redmond/Bend subzone (EFU-TRB) to Rural Industrial (RI).

¹<https://www.deschutes.org/cd/page/remand-deschutes-junction-plan-amendment-zone-change>

The Deschutes County Hearings Officer issued a decision recommending approval of the application on October 8, 2020. The second hearing, as required by the County procedures ordinance, was held before the Board on December 2, 2020. The Board then adopted Ordinance 2021-002 on January 27, 2021 approving the application with conditions.

Central Oregon Landwatch appealed the county decision to LUBA. On June 18, 2021 LUBA issued its Final Opinion and Order remanding the decision to the County for further findings and conclusions of law. Central Oregon Landwatch then appealed the decision further to the Oregon Court of Appeals. On November 17, 2021 the Court of Appeals issued an opinion affirming LUBA’s decision to remand the application. On April 7, 2022, the Applicant initiated remand proceedings under local file no. 247-22-000287-A. The final day in which the County must issue a final decision on this application is August 5, 2022.

III. LUBA REMAND AND APPLICANT RESPONSE

LUBA, in its Final Opinion and Order, remanded the county decision to address the following issue:

A. Findings to quantify the number of workers resulting from the requested zone change/plan amendments and its impact on the *Shaffer* Test.

The final opinion and order provides the following guidance:

(pg. 30) In *Shaffer*², we explained that

"whether a residential, commercial, industrial or other type of use is 'urban' or 'rural' requires a case by case determination, based on relevant factors identified in various opinions by [LUBA] and the courts." *Shaffer*, 17 Or LUBA at 931.

We derived the following factors from case law:

"(1) relevant characteristics of the proposed use (such as number of employees, noise, odor, dust and other pollutants emitted, associated traffic); (2) the ultimate use of the products of the proposed use (e.g., whether for urban or rural uses, and in what proportions); (3) the characteristics of urban development in nearby UGBs; (4) where other similar uses in the county are located; and (5) whether there is a practical necessity to locate the proposed use in the rural area, close to a site specific resource." *Shaffer*, 17 Or LUBA at 946.

(pg. 31) With respect to the *Shaffer* factors, the county found that the potential uses would employ a small number of workers and do not require public facilities or services. The county determined that the DCCP RI policies and implementing DCC RI use and dimensional limitations will limit the scope and

² *Shaffer v. Jackson County*, 17 Or LUBA 922, (1989)
247-20-000438-ZC/439-PA (247-22-000287-A)

intensity of industrial development to rural use. In particular, the county references limitations on maximum floor area and requirements for on-site sewage disposal and on-site wells or public water systems. The county determined that there was insufficient evidence in the record to determine whether the potential uses are the types of uses typically located in rural areas or whether they are significantly dependent on a site-specific resource.

(pg. 33) The county found that the potential industrial uses of the subject property would employ a small number of workers. Record 77. However, the challenged decision does not explain the basis for that finding at all or tie that finding to any specific RI zone regulation or to any evidence in the record regarding the potential number of workers.

(pg. 35) We decline to reach that conclusion under ORS 197.835(11)(b). It is not obvious to us that the RI zone regulations will necessarily result in a small number of workers. Accordingly, we agree with petitioner that remand is required for the county to explain why it concluded that the potential uses would employ a small number of workers.

On May 9, 2022, the applicant provided additional materials for Board consideration to address the item on remand from LUBA, the estimated number of employees generated by the requested plan amendment and zone change. The full version of these materials can be accessed through the project website, as noted above. Staff provides an overview of the material in this section.

Estimated Number of Employees

A letter, dated January 19, 2022, from Joe Bessman, P.E. of Transight Consulting was included in the submittal to provide findings and justification on the estimated number of employees on the property. The applicant’s engineer notes that no use has been identified on the property, and have instead provided an analysis of a variety of outright permitted uses that could reasonably be developed on the property and constitute a reasonable “worst case” scenario in terms of trip generation and transportation impacts. Anticipated land uses include: specialty trade contractor, building materials and lumber store, animal hospital/veterinary clinic, warehousing, and manufacturing. Staff notes there is a 7,500 square foot limitation per building in the RI zone, therefore the applicant’s engineer has anticipated several buildings with several different uses on the 21.54-acre property.

The worst case scenario identifies a total of 63,160 square-feet of development area within the follow use categories.

Table 1. Estimated “With Rezone” Scenario (Table 2 in June 2020 Report)

| Land Use | ITE Code | Size | Weekday Daily Trips | Weekday PM Peak Hour | | |
|--|----------|-----------|---------------------|----------------------|----|-----|
| | | | | Total | In | Out |
| Specialty Trade Contractor (two sites) | 180 | 12,000 SF | 123 | 24 | 8 | 16 |
| Building Materials and Lumber Store | 812 | 7,500 SF | 135 | 15 | 7 | 8 |
| Animal Hospital/Veterinary Clinic | 640 | 3,000 SF | 65 | 11 | 4 | 7 |
| Warehousing (multiple uses) | 150 | 20,330 SF | 35 | 4 | 1 | 3 |
| Manufacturing (multiple uses) | 140 | 20,330 SF | 80 | 14 | 4 | 10 |

The applicant then used this information to estimate the anticipated number of employees shown in the table below.

Table 2. Estimated General Urban/Suburban Employment

| Land Use | ITE Code | “Worst Case” Scenario Estimated Size | Avg. ITE Space per Employee | Total Employees |
|-------------------------------------|----------|--------------------------------------|-----------------------------|-----------------|
| Specialty Trade Contractor | 180 | 12,000 SF | 1/350 SF | 34 Employees |
| Building Materials and Lumber Store | 812 | 7,500 SF | 1/1,500 SF | 5 Employees |
| Animal Hospital/Veterinary Clinic | 640 | 3,000 SF | 1/600 SF | 5 Employees |
| Warehousing | 150 | 20,330 SF | 1/3,000 SF | 7 Employees |
| Manufacturing | 140 | 20,330 SF | 1/525 SF | 39 Employees |
| Total | | | | 90 Employees |

The applicant’s engineer estimates approximately 90 total employees³ as the worst case development scenario on the property. Several caveats were included to explain the methodology of this number. First, the applicant’s engineering used the ITE manual to identify the approximate number of employees associated with each use. The ITE manual does not include any rural data within its dataset, instead, most industrial uses are classified using General Urban/Suburban data. Although imperfect, the applicant’s engineer finds this provides a general approximation of the number of employees that could be associated with each use and the estimate will likely skew higher than will actually occur on the site in the rural context.

Additionally, the applicant’s engineer notes that the 90 employees are not anticipated to be on site at all times, due to a mixture of full and part time staff, and varying hours of all of the listed uses. The applicant’s engineer states there is an anticipated average of 68 weekday p.m. peak hour trips including deliveries and public trips to the property, which supports the conclusion that less than half of employees would be on-site at a given time.

³ Per the Institute of Traffic Engineers Manual (ITE) 11th Edition: Employee—a full-time, part-time, or per diem/contract worker. The number of employees refers to the total number of persons employed at a facility, not just those in attendance at the hour or day the data are collected.

The applicant’s attorney Bill Kloos, further explains that even if all employees were on site at one time, the amount would be approximately 4.2 employees per acre, or 2.1 employees per acre in accommodating varying or part time schedules.

Restrictions on Uses

The applicant notes in the submitted materials that there are several code provisions in Deschutes County Code (DCC) Section 18.100.010 and 020(A) that restrict the type and intensity of development that could occur on the property. Specifically, building size is limited to 7,500 square feet and proximity to residential uses and the highway trigger additional requirements that limit the developable area of the property. The applicant notes this, in combination with the findings from the Transight Consulting letter, demonstrate that the square footage of the uses will be limited, the number of employees, based on this square footage is relatively small, and supports the conclusion that the use is rural in nature.

Alternative Findings Request

The applicant requests the County adopt precautionary alternative findings in the event the analysis above is rejected by LUBA. The *Shaffer* case noted above and interpretation resulting from discussion of the *Shaffer* analysis process within the Columbia Riverkeeper⁴ decision are used to determine whether or not a proposed use is a rural use or urban use on rural land. The test is comprised of two parts.

The first as cited in *Columbia Riverkeeper* is to review four questions, none of which are intended to be conclusive on their own, but instead must be considered together. If each factor is clearly affirmative – the use is rural in nature. If one factor is negative, additional analysis is necessary.

The questions ask whether the industrial use:

- 1. Employs a small number of workers;
- 2. Is significantly dependent on a site-specific resource and there is a practical necessity to site the use near the resource;
- 3. Is a type of use typically located in rural areas; and
- 4. Does not require public facilities or services

The original Board decision provides extensive analysis on each of these items, and additional detail on the number of workers is provided above. With that, the applicant acknowledges there is not site-specific resource and additional analysis would likely be required.

The second step, as required if one or more of the items above are negative, requires the County to do one or more of the following:

- 1. Limit the allowed uses to effectively prevent urban use of rural land;
- 2. Take an exception to Goal 14; or
- 3. Adequately explain why the proposed use, notwithstanding the presence of one or more factors pointing toward an urban nature, should be viewed as a rural use.

⁴ Columbia Riverkeeper v. Columbia County, 70 Or LUBA 171 (2014)
247-20-000438-ZC/439-PA (247-22-000287-A)

The applicant notes in the supplemental materials, that the Deschutes County code already limits Rural Industrial Uses (as cited above), to levels less intensive than those allowed for unincorporated communities. Restrictions on uses, dimensional standings, off-street parking, and site design will all apply to rural industrial development in this zone, and were adopted and acknowledged by the Oregon Department of Land Conservation and Development to effectively prevent urban uses on rural land. With this assertion, the applicant feels that there is no additional information required to demonstrate the use is rural in nature and therefore the application should be approved.

IV. RESOLVED ISSUES AND PUBLIC COMMENT

The following are issues that have been resolved by LUBA or were not included in the remand and therefore cannot be considered by the Board in its decision:

- Whether the applicant’s TIA evidence provided the ‘worst case’ development scenario that assumes the most intensive level of development that could be allowed under RI zoning on the property given that any rural industrial use is subject to zone, site plan review and conditional use criteria that apply not only as a result of any specific use, but also as a result of the property’s location and relationships to adjacent residential uses.
- Challenges to the accuracy or credibility of the traffic-related evidence and analysis including but not limited to traffic counts, whether it represents a worst case scenario, or is otherwise valid.
- Whether the Deschutes County Comprehensive Plan limits the Rural Industrial plan designation to existing rural industrial development and cannot be applied to the subject property.
- That the proposal fails to comply with Goals 6 and/or 11.
- That industrial development is a *per se* urban use that requires a Goal 14 exception if on rural land.
- That the County misconstrued the *Curry County* decision as it applies to Goal 14.
- That the County is prohibited as a matter of law from analyzing Goal 14 compliance in the context of RI zoning in the absence of a specific proposed industrial use.
- Challenges to the finding that the RI zone “effectively prevent[s] urban use of rural land” by subjecting all development in the RI zone to the requirements of DCC chapter 18.100, which allow development that is less intense than that allowed under the Unincorporated Communities Rule.”
- Challenges to the finding that “the policies of the DCCP, implemented by DCC Chapter 18.100, which is an acknowledged land use regulation, do not allow urban uses on RI designated and zoned land.”

- Challenges to the finding that “[t]he property is located about 3.25 miles north of Bend and 6.5 miles south of Redmond via US 97.”
- Challenges to the finding that the subject property is served with existing water service.

Staff received one comment from Central Oregon Landwatch regarding the applicable criteria listed in the notice of public hearing. The comment has been uploaded to the project website. Testimony submitted after the date of this memorandum will be uploaded to the project website.

V. NEXT STEPS

The Board will conduct a hearing on this item on May 18, 2022. Following the hearing the Board may choose to:

- Continue the hearing to a date and time certain;
- Close the oral portion of the hearing and leave the written record open to a date and time certain; or
- Close both the oral and written portions of the hearing.



Deschutes County Board of Commissioners
1300 NW Wall St, Bend, OR 97703
(541) 388-6570 – Fax (541) 385-3202 – <https://www.deschutes.org/>

AGENDA REQUEST & STAFF REPORT

For Board of Commissioners BOCC Meeting on Wednesday May 18, 2022

DATE: 5/11/2022

FROM: Tom Kuhn, Health Services

TITLE OF AGENDA ITEM:

Public Health Advisory Board (PHAB) Minimum Care Advisory for Homeless

RECOMMENDATION & ACTION REQUESTED:

No Recommendation or Action needed at this time.

BACKGROUND AND POLICY IMPLICATIONS:

The Deschutes County PHAB is charged with informing the Board of County Commissioners and the County Administrator about emerging public health threats, legislation, and health issues in need of attention (PHAB Bylaws, 2017). A PHAB subcommittee was formed earlier this year to begin drafting a document to be shared with the Commissioners that recommends a minimum care standard for homeless citizens of Deschutes County, to minimize reduced health resulting from being homeless. This document has been created as a guide for the Commissioners to reference when they must make decisions regarding the homeless population in Deschutes County.

FISCAL IMPLICATIONS:

None

ATTENDANCE:

- Dave Huntley, PHAB Chair
- Dr. Peter Boehm, PHAB Member
- Colleen Sinsky, PHAB Member
- Tom Kuhn, Community Health Manager

**Minimum Care Advisory for Homeless
April 28, 2022
Deschutes County
Public Health Advisory Board (PHAB)**

Introduction

This PHAB document recommends a minimum care standard for homeless citizens of Deschutes County to minimize reduced health resulting from being homeless.

This advisory document does not identify how the care will be delivered or funded. It can be used to inform the Deschutes County Homeless Outreach Coordinator in helping community organizations meet a Deschutes County minimum standard for the homeless. Furthermore this document can be used in conjunction with the annual Point In Time (PIT) to inform the community about the size of the need, logistical planning and locations for services.

This advisory is based upon The Sphere Project, an international standard developed for humanitarian responses of displaced populations and modified for our community.

Executive Summary

- There are a number of local groups are working to shelter to homeless people.
- There were 824 persons identified during the 2021 PIT as unsheltered.
- There have been year on year increases of homeless from 2015 to 2021
- It is generally accepted that the PIT is an under-count. Some estimate 40% low.
- Lack of sewage and trash services impacts neighbors and the homeless
- Lack of adequate safe water negatively affects the health of homeless.
- Mobile clinics report that frequent clearance of homeless people negatively affects their healthcare: Clients can't be found for follow up chronic health care and often lose prescription medications in the moving process

Recommendations:

Deschutes County should work with homeless communities, NGOs, and local governments to supply:

- Safe water,
- Toilets,
- Trash collection
- Coordinate medical care working with area providers.

Background

The international NGO community assembled minimum standards in humanitarian response and published them in The Sphere Handbook in 1998. The 2018 edition is the fourth edition which has the technical chapters updated to reflect current practices.

Current Need

Deschutes County has had a homeless census for the past 7 years. The number have approximately doubled.(Table 1) There are many situations that contribute to a person losing their home, such as loss of job, an unaffordable increase in rent, medical and other unexpected bills. During the January 2021 PIT count we found 824 people were homeless, (Table 2)

The Homelessness Leadership Coalition and other community groups, have worked to re-house our homeless citizens. However, our community has not been able to keep up with the increase number of homeless. County level plans and guidelines to keep homeless citizens from deteriorating health until they can be successfully housed are in development

| PIT POPULATION | 2015 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 |
|------------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| TOTAL (Adults + Children) | 594 | 778 | 787 | 880 | 969 | 1099 | |
| All Households | 409 | 510 | 572 | 616 | 586 | 836 | |
| Individuals in Families (1AD +1CH) | 211 | 284 | 199 | 243 | 360 | 165 | |
| Adults (18+ years old) | 465 | 615 | 663 | 773 | 604 | 989 | |
| All Children (<18 years old) | 129 | 163 | 124 | 147 | 203 | 110 | |
| Unaccompanied Children (<18) | 12 | 7 | 15 | 20 | 6 | 18 | |
| All Youth (18-24 years old) | 55 | 78 | 94 | 76 | 71 | 175 | |
| Unaccompanied Youth (18-24) | 43 | 61 | 83 | 52 | 48 | 154 | |
| Veterans | >59 | 83 | 60 | 62 | 59 | 89 | |
| Chronically Homeless Veterans | 30 | 49 | 22 | 22 | 27 | 8 | |
| Chronically Homeless Individuals | 161 | 187 | 139 | 160 | 286 | 74 | |

Table1: Point In Time (PIT) counts by year 2015 to 2021. <https://cohomeless.org/agency-tools/point-in-time-count/>

| PIT Unsheltered | 2021 |
|-------------------------------|-------------|
| Children (<18) | 75 |
| Young Adult (18-24 years old) | 151 |
| Adults (18+ years old) | 598 |
| Total | 824 |

Table 2: Point In Time (PIT) count of Un-Housed for 2021 <https://cohomeless.org/agency-tools/point-in-time-count/>

Definition of Homeless for PIT Count:

HUD Literally Homeless Definition (§ 578.3)

Individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:

- Has a primary nighttime residence that is a public or private place not meant for human habitation; **or**
- Is living in a publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state and local government programs); **or**
- Is exiting an institution where (s) he has resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution.

Deschutes County Public Health Advisory Board 2022 Priorities

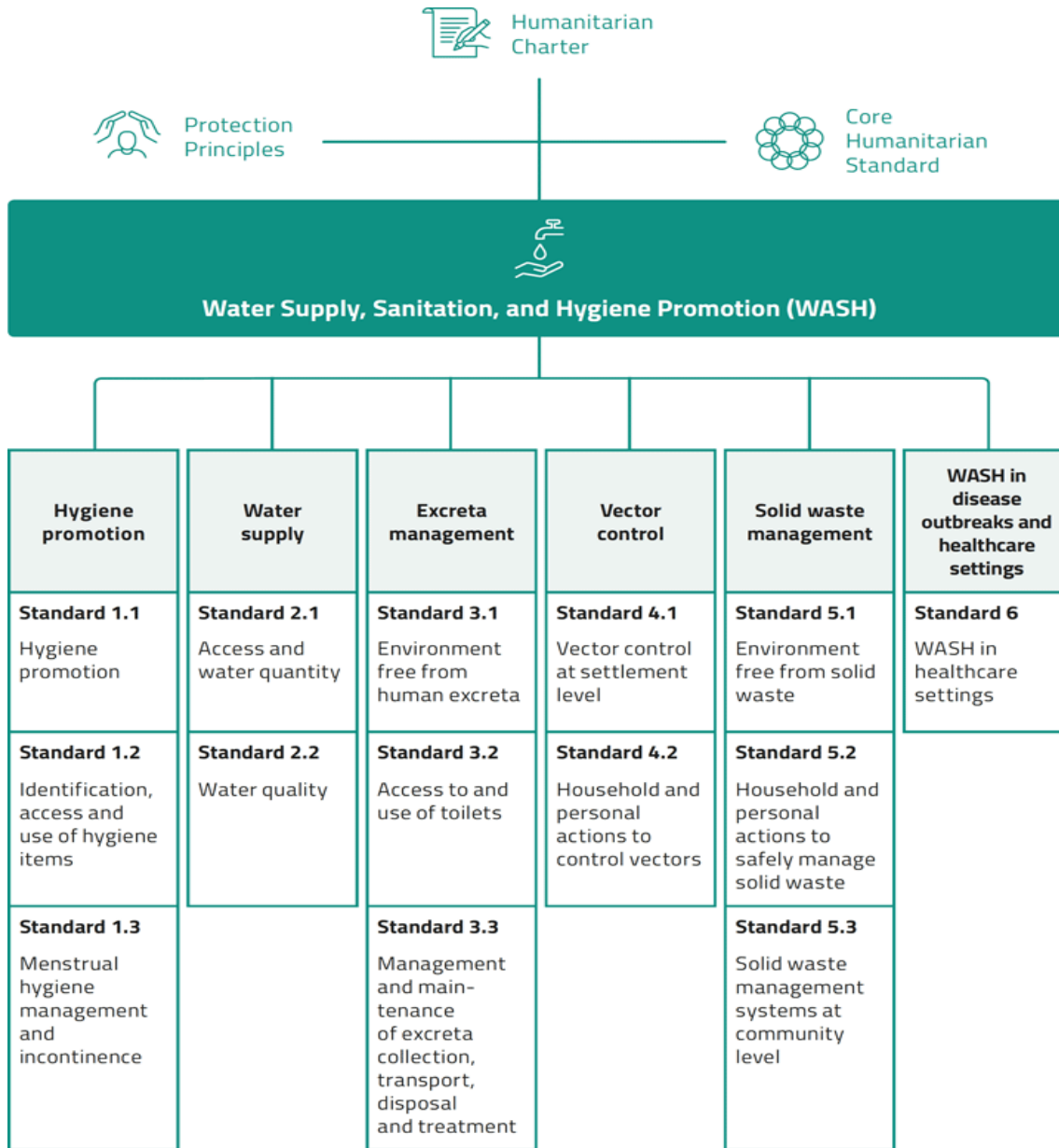
Each year the PHAB establishes a set of priorities based upon the needs of the community. One of the priorities for 2022 was to address the public health aspects of homelessness. We established a committee to review current programs operated by NGOs, health programs operated by care providers under Medicaid /Medicare system and the county's public health department. We found the largest gap in services that negatively affects the health of the homeless as well as negatively affecting community public health were those around Water, Sanitation and Hygiene (WASH).

The issue of providing health maintaining WASH services for displaced homeless and refugees has long been recognized as vital by World Health Organization, Red Cross Red Crescent, and Doctors without Borders to name a few. These international NGOs assembled a set of minimum standards in humanitarian response and published them in The Sphere Handbook for 1998. The 2018 edition is the fourth edition and has been updated to reflect current practices. We used the Sphere WASH standard to inform our analysis of need for the homeless in our community.

continues on next page:

Sphere 2018 Water Sanitation and Hygiene (WASH) Diagram

The figure below is from the 2018 Sphere document showing the components of their WASH programs. We use this as a guide for informing what is needed within our community.



- APPENDIX 1** Water supply, sanitation and hygiene promotion initial needs assessment checklist
- APPENDIX 2** The F diagram: Faecal–oral transmission of diarrhoeal diseases
- APPENDIX 3** Minimum water quantities: survival figures and quantifying water needs
- APPENDIX 4** Minimum numbers of toilets: community, public places and institutions
- APPENDIX 5** Water- and sanitation-related diseases
- APPENDIX 6** Household water treatment and storage decision tree

Core Minimum Care Needs

1- Water Supply (Sphere 2018 WASH pg 89ff)

Lack of access to reliable and adequate water source has a significant detrimental effect on the health of the homeless. Inadequate drinking water can cause dehydration leading to heat related diseases (heat exhaustion or heat stroke), Dehydration can also occur in colder weather. Lack of an adequate water source limits bathing and personal hygiene, including such crucial health care as cleaning of wounds and chronic diabetes foot ulcers. (Tips for Healthy Feet Summary <https://www.cdc.gov/diabetes/library/features/healthy-feet.html>)

The following are recommendations for water quantity used for drinking, cooking, and personal hygiene:

- Water, 2- 4 Gallons (7.5 -15 liters) per person per day (Sphere 2018 WASH Pg 107)
- Distance to water source: less than 1/3 mile (500 m)
- At least one water source per 250 people.
- Flow rate at source 2 gallon/ min (0.125 l per second)
- Provide storage containers suitable for transporting water from source.

2- Excreta Management (Sphere 2018 pg113 ff)

Where a lack of facilities exists, many homeless people will self-dehydrate to limit the frequency of urination. Dehydration leads to heat and cold related medical emergencies. People need to have a safe and sanitary place to urinate and defecate. By providing excreta management it also protects the community around homeless community as well as homeless citizens of our county. The following recommendations are:

- Maximum of 20 people per toilet (Sphere 2018 pg118)
- Toilet ratio 3:1 women to men (Sphere 2018 pg118)
- Arranged by household (Sphere 2018 pg118)
- Segregated by sex
- Safety – Locking door.
- Distance from dwellings 50 yards (50 m) (Sphere 2018 pg117)
- Hand washing stations with soap (Sphere 2018 pg118)

3- Vector Control (Sphere 2018 pg121 ff)

It is important to control flies, mosquitoes, mice and rats. Flies, rats and mice contribute contaminating food supplies and spreading disease. Our community is home to deer mice which can be a reservoir of the Hanta virus.

Provide:

- Trash and garbage containers with pick up services (pg 126 ff standard 5.1)
- Provide adequate food storage containers. (pg 209)

4 Drainage (Sphere 2018 pg237 ff)

Homeless communities should be evaluated for drainage and to minimize standing water. (urban pg 241, drainage of rainfall pg 252)

5- Hygiene Promotion (Sphere 2018 pg96 ff)

The following hygiene supplies are usually difficult for homeless to obtain.

These items should be made available:

- Soap and Laundry detergent (pg 99 -hand washing with soap also, pg 100)
- Toilet paper (pg 99 -promoting the use of toilets)
- Menstrual supplies (pg 102 standard 1.3)
- Incontinence supplies (pg 102 standard 1.3)
- Safe storage for prescriptions and medical supplies. These should be locked to prevent theft and should be water tight and insulated to maintain prescription medicine efficacy.

6- Health Care Services (Sphere 2018 pg289ff)

Recommend that community providers such as the Mosaic Van, urgent care, ER and county health department plan for best practices (Standard 1.1 pg 298)

Appendix

Reference Documents

Point In Time (PIT) count central Oregon:

<https://cohomeless.org/>

HUD Continuum of Care (CoC) Program

<https://www.hudexchange.info/programs/coc/>

The Sphere Project

<https://spherestandards.org/>

The Sphere Handbook 2018

<https://spherestandards.org/wp-content/uploads/Sphere-Handbook-2018-EN.pdf>

The Sphere COVID-19 guidance

<https://spherestandards.org/coronavirus/>

Related articles and videos:

UNHCR WASH Manual 2014

http://wash.unhcr.org/Cover_and_Prelims.pdf

Housing instability and food insecurity as barriers to health care among low-income Americans, Margot B Kushel 2006

<https://pubmed.ncbi.nlm.nih.gov/16423128/>

The Right to WASH: Is San Francisco Willing to Ensure this Foundational Human Right?

<https://www.streetsheet.org/the-right-to-wash-is-san-francisco-willing-to-ensure-this-foundational-human-right/>

Homeless Leadership Coalition Annual Central Oregon PIT

https://ktvz.com/top-stories/2022/01/19/homeless-leadership-coalitions-annual-c-o-point-in-time-count-begins-monday/?fbclid=IwAR0oc-_tuok87QGeg0nAG7ugqfwZrD_zL5NfU5qQQCADxTGTN5gSYv37gzc

Bend Bulletin: Worth your time: Bend Bulletin's 'Faces of Homelessness'

<https://www.kgw.com/video/news/local/the-story/worth-your-time-bend-bulletins-faces-of-homelessness/283-a1f6a6e8-9eed-4d71-97ce-48189262a8f7>



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: May 18, 2022

SUBJECT: Consideration of Chair signature of document #2022-404, an OHA amendment #157345-1

RECOMMENDED MOTION:

Move approval of Chair signature of document #2022-404, an OHA amendment #157345-1.

BACKGROUND AND POLICY IMPLICATIONS:

Under Title XIX of the Social Security Act, the federal government and states share the cost of funding the Medicaid program, which provides medical assistance to certain low-income individuals. Federal Financial Participation (FFP) is the federal government’s share for states’ Medicaid program expenditures. States may claim FFP for providing administrative activities that are found to be necessary for the proper and efficient administration of the state Medicaid plan. The process applicable to claiming administrative costs is referred to as Medicaid Administrative Claiming or MAC.

Deschutes County is reimbursed from Oregon Health Authority (OHA) for providing Medicaid-eligible clients administrative activities. These reimbursable activities include outreach, healthcare coordination, application assistance, monitoring and training, transportation and translation and system coordination related to the proper and efficient administration of the state Medicaid plan.

OHA reimburses Deschutes County on a quarterly basis for total allowable and documented Medicaid administrative activities through time-study surveys conducted during each quarter. The participating teams (nurse home visiting and perinatal care) typically earn \$80-\$90K per quarter as a local public health participant in this program. As earnings continue to grow each year, it is not uncommon for OHA to amend contract thresholds.

Amendment #1 increases the Not to Exceed amount of the agreement by \$850,000, from \$1,500,000 to \$2,350,000. The agreement is effective through June 30, 2023.

BUDGET IMPACTS: Revenue not to exceed \$850,000

ATTENDANCE:

Pamela Ferguson, Public Health Program Manager

DOCUMENT RETURN STATEMENT

Please complete the following statement and return with the completed signature page and the Contractor Data and Certification page and/or Contractor Tax Identification Information (CTII) form, if applicable.

If you have any questions or find errors in the above referenced Document, please contact the contract specialist.

Document number: OHA 157345-1 , hereinafter referred to as "Document."

I, _____
Name Title

received a copy of the above referenced Document, between the State of Oregon, acting by and through the Department of Human Services, the Oregon Health Authority, and

Deschutes County Health Services by email.

Contractor's name

On _____ ,
Date

I signed the electronically transmitted Document without change. I am returning the completed signature page, Contractor Data and Certification page and/or Contractor Tax Identification Information (CTII) form, if applicable, with this Document Return Statement.

Authorizing signature Date

Please attach this completed form with your signed document(s) and return to the contract specialist via email.

DESCHUTES COUNTY DOCUMENT SUMMARY

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

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

Date: April 28, 2022

Department: Health Services, Public Health Division

Contractor/Supplier/Consultant Name: Oregon Health Authority

Contractor Contact: Mark Bustamante, Office of Contracts & Procurements

Contractor Phone #: 971-372-0650

Type of Document: Amendment #1 to Intergovernmental Agreement #157345

Goods and/or Services: Deschutes County is reimbursed for providing Medicaid-eligible clients administrative activities. These reimbursable activities include outreach, healthcare coordination, application assistance, monitoring and training, transportation and translation and system coordination related to the proper and efficient administration of the state Medicaid plan.

This amendment #1 increases the not to exceed amount by \$850,000, from \$1,500,000 to \$2,350,000. The agreement is effective through June 30, 2023.

Background & History: Under Title XIX of the Social Security Act, the federal government and states share the cost of funding the Medicaid program, which provides medical assistance to certain low-income individuals. Federal Financial Participation (FFP) is the federal government's share for states' Medicaid program expenditures. States may claim FFP for providing administrative activities that are found to be necessary for the proper and efficient administration of the state Medicaid plan. The process applicable to claiming administrative costs is referred to as Medicaid Administrative Claiming or MAC.

On a quarterly basis, Deschutes County shall reimburse the Oregon Health Authority (OHA) for fifty percent (50%) of the amounts paid to Deschutes County for the state match portion. OHA will reimburse Deschutes County on a quarterly basis for total allowable costs of provided Medicaid administrative activities.

Agreement Starting Date: July 1, 2018

Ending Date: June 30, 2023

Annual Value or Total Payment: Not to exceed \$850,000

Insurance Certificate Received (check box)
Insurance Expiration Date: County is Contractor

Check all that apply:

- RFP, Solicitation or Bid Process
- Informal quotes (<\$150K)
- Exempt from RFP, Solicitation or Bid Process (specify – see DCC §2.37)

Funding Source: (Included in current budget? Yes No

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

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

Special conditions attached to this grant:

Deadlines for reporting to the grantor:

If a new FTE will be hired with grant funds, confirm that Personnel has been notified that it is a grant-funded position so that this will be noted in the offer letter: Yes No

Contact information for the person responsible for grant compliance: Name:
Phone #:

Departmental Contact and Title:
Phone #:

Deputy Director Approval:

Director Approval:

Signature: *nahad sadr-azodi*
nahad sadr-azodi (Apr 29, 2022 07:43 PDT)
Email: nahad.sadr-azodi@deschutes.org
Title: Director of PH
Company: DCHS

Signature: *Erik Kropp*
Erik Kropp (Apr 25, 2022 08:09 PDT)
Email: erik.kropp@deschutes.org
Title: Interim Health Services Director
Company: Deschutes County

Distribution of Document: Grace Justice Evans, Deschutes County Health Services.

Official Review:

County Signature Required (check one): BOCC Department Director (if <\$50K)
 Administrator (if >\$50K but <\$150K; if >\$150K, BOCC Order No. _____)

Legal Review _____ Date _____

Document Number 2022-404



Agreement Number 157345

**AMENDMENT TO
STATE OF OREGON
INTERGOVERNMENTAL AGREEMENT**

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

This is amendment number **1** to Agreement Number **157345** between the State of Oregon, acting by and through its Oregon Health Authority, hereinafter referred to as “OHA” and

Deschutes County
Acting by and through its Health Department
Attn: Pamela Ferguson
2577 N.E. Courtney Dr.
Bend, OR 97701
Telephone: (541) 322-7423
Facsimile: (541) 322-7463
E-mail address: Pamela.Ferguson@co.deschutes.or.us

hereinafter referred to as “County.”

- 1. This amendment shall become effective on the date this amendment has been fully executed by every party and, when required, approved by Department of Justice.
- 2. The Agreement is hereby amended as follows:
 - a. Section 3 “Consideration” is amended to increase by \$850,000.00 the current not-to-exceed amount of \$1,500,000.00 for a new not-to-exceed amount of \$2,350,000.00
- 3. Except as expressly amended above, all other terms and conditions of the original Agreement and any previous amendments are still in full force and effect. County certifies that the representations, warranties and certifications contained in the original Agreement are true and correct as of the effective date of this amendment and with the same effect as though made at the time of this amendment.

- 4. Certification.** Without limiting the generality of the foregoing, by signature on this Agreement, the County hereby certifies under penalty of perjury that:
- a. The County is in compliance with all insurance requirements of Exhibit C of the original Agreement and notwithstanding any provision to the contrary, County shall deliver to the OHA Agreement Administrator (see page 1 of this Agreement) the required Certificate(s) of Insurance for any extension of the insurance coverage required by Exhibit C of the original Agreement, within 30 days of execution of the original Agreement Amendment. By certifying compliance with all insurance as required by this Agreement, County acknowledges it may be found in breach of the Agreement for failure to obtain required insurance. County may also be in breach of the Agreement for failure to provide Certificate(s) of Insurance as required and to maintain required coverage for the duration of the Agreement;
 - b. The County acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any “claim” (as defined by ORS 180.750) that is made by (or caused by) the County and that pertains to this Agreement or to the project for which the Agreement work is being performed. The County certifies that no claim described in the previous sentence is or will be a “false claim” (as defined by ORS 180.750) or an act prohibited by ORS 180.755. County further acknowledges that in addition to the remedies under this Agreement, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the County;
 - c. The information shown in County Data and Certification, of original Agreement or as amended is County’s true, accurate and correct information;
 - d. To the best of the undersigned’s knowledge, County has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts;
 - e. County and County’s employees and agents are not included on the list titled “Specially Designated Nationals” maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at: <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>;
 - f. County is not listed on the non-procurement portion of the General Service Administration’s “List of Parties Excluded from Federal procurement or Nonprocurement Programs” found at: <https://www.sam.gov/portal/public/SAM/>;

- g. County is not subject to backup withholding because:
 - (1) County is exempt from backup withholding;
 - (2) County has not been notified by the IRS that County is subject to backup withholding as a result of a failure to report all interest or dividends; or
 - (3) The IRS has notified County that County is no longer subject to backup withholding.
- h. County Federal Identification Number (FEIN) provided to OHA is true and accurate. If this information changes, County is also required to provide OHA with the new FEIN within 10 days.

4. **County Data.** This information is requested pursuant to ORS 305.385.

PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION:

County Name (exactly as filed with the IRS): Deschutes County Oregon

Street address: 1300 NW Wall Street

City, state, zip code: Bend, OR 97703

Email address: pamela.ferguson@deschutes.org; michele.carroll@deschutes.org

Telephone: () 541-322-7400 Facsimile: ()

Proof of Insurance: County shall provide the following information upon submission of the signed Agreement amendment. All insurance listed herein and required by Exhibit C of the original Agreement, must be in effect prior to Agreement execution.

Workers' Compensation Insurance Company: Self-Insured

Policy #: N/A Expiration Date: N/A

5. Signatures.

COUNTY: YOU WILL NOT BE PAID FOR SERVICES RENDERED PRIOR TO NECESSARY STATE APPROVALS

Deschutes County

By:

Authorized Signature

Printed Name

Title

Date

State of Oregon acting by and through its Oregon Health Authority

By:

Authorized Signature

Printed Name

Title

Date

Approved for Legal Sufficiency:

Via e-mail by Jeffrey J. Wahl, Assistant Attorney General
Department of Justice

April 18, 2022
Date

Confidential
CONTRACTOR TAX IDENTIFICATION INFORMATION
For Accounting Purposes Only

The State of Oregon requires contractors to provide their Federal Employer Identification Number (FEIN) or Social Security Number (SSN). This information is requested pursuant to ORS 305.385 and OAR 125-246-0330(2). Social Security numbers provided pursuant to this section will be used for the administration of state, federal and local tax laws. The State of Oregon may report this information to the Internal Revenue Service (IRS). Contractors must keep this information current at all times. Contractors are required to notify the State of Oregon contract administrator within 10 business days if this information changes. The State of Oregon reserves the right to ask contractors to update this information at any time during the document term.

Document number: OHA #157345-1

Legal name *(tax filing)*: Deschutes County Oregon

DBA name *(if applicable)*: Deschutes County Health Services

Billing address: 2577 NE Courtney Drive

City: Bend State: OR Zip: 97701

Phone: 541-322-7400

FEIN: 93-6002292

- OR -

SSN:



**BOARD OF
COMMISSIONERS**

AGENDA REQUEST & STAFF REPORT

MEETING DATE: Wednesday, May 18, 2022

SUBJECT: Public Hearing: Deschutes County Road Department Nighttime Noise Variance
(File No. 247-22-000243-V)

RECOMMENDED MOTION:

Road Department and CDD Staff recommend approval as the request is in the interest of safety and convenience of both the travelling public and road construction workers.

BACKGROUND AND POLICY IMPLICATIONS:

The Board will conduct a public hearing on May 18, 2022, to consider a request for a nighttime (10 p.m. – 6 a.m.) Noise Variance (File No. 247-22-000243-V) to construct bridge approach repairs and pavement rehabilitation on Tumalo Road and Deschutes Market Road between Tumalo Place and 19th Street. The nighttime work is expected to take approximately three weeks and will begin after June 1, 2022, and be completed by August 31, 2022.

BUDGET IMPACTS:

None.

ATTENDANCE:

Tarik Rawlings, Associate Planner



MEMORANDUM

TO: Deschutes County Board of Commissioners (Board)

FROM: Tarik Rawlings, Associate Planner

DATE: May 11, 2022

SUBJECT: Public Hearing: Deschutes County Road Department Noise Variance request

The Board of County Commissioners (Board) is conducting a public hearing on May 18, 2022, to consider a request for a nighttime (10 p.m. – 6 a.m.) Noise Variance (File No. 247-22-000243-V) to construct bridge approach repairs and pavement rehabilitation on Tumalo Road and Deschutes Market Road between Tumalo Place and 19th Street. The nighttime work is expected to take approximately three weeks and will begin after June 1, 2022, and be completed by August 31, 2022.

I. SUMMARY

The Deschutes County Road Department is requesting a nighttime Noise Variance to construct bridge approach repairs and pavement rehabilitation on Tumalo Road and Deschutes Market Road between Tumalo Place and 19th Street. Due to high daytime traffic volumes in the project vicinity (Average Daily Traffic of 7,369), construction needs to be performed during nighttime hours (10 p.m. – 6 a.m.).

Single-lane closures will be required to perform the work, requiring temporary traffic control via flagging and pilot car operations. Performing construction during nighttime hours will reduce the inconvenience to the traveling public by reducing the length of traffic queues resulting from flagging operations. Traffic volumes during nighttime hours within the project corridor are approximately 90% less than daytime volumes, according to a Road Department traffic study conducted within the project limits in August 2019. Daytime traffic volumes are high enough to cause extensive traffic queues upstream of the project on Tumalo Road/Tumalo Place and Deschutes Market Road, as well as US Highway 97. Nighttime construction will minimize the propensity for traffic queues to become excessively long and cause delays to the public.

II. PUBLIC COMMENTS

Since the Notice of Public Hearing was mailed to neighboring property owners on April 19, 2022, and published in the Bend Bulletin on April 24, 2022, no public comments have been received.

III. RECOMMENDATION

It is the Road Department's opinion that the public nuisance caused by nighttime construction will be benign in comparison to the nuisance caused by traffic queues resulting from daytime construction. In the interest of the safety and convenience of both the traveling public and the workers within the construction work zone, staff recommends the subject noise variance request be approved.

ATTACHMENTS:

1. 247-22-000243-V Application Materials, including project area and noise impact area map
2. Document # 2022-378 – Draft Noise Permit
3. Land Use Sign Affidavit



File No. 247- 22-000243-V

COMMUNITY

NOISE PERMIT APPLICATION
INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

1. Complete the application form and provide appropriate original signatures. To ensure timely processing of your application, all materials must be submitted on single-sided, 8.5" x 11" paper. Do not use binders, tabs/dividers, staples or tape.
2. Include a copy of the current deed showing the property owners.
3. Attach correct fee.
4. Include a plot plan that shows all property lines and existing and proposed structures, parking, landscaping, lighting, etc.
5. If this application includes oversized plans a single, reduced-size plan no larger than 11" x 17" with graphic scale shall also be included.
6. All applicable standards and criteria must be addressed in writing prior to acceptance of the application. Detailed descriptions, maps and other relevant information must be attached to the application.

FEE: _____

Applicant's Name (print): Cody Smith, Deschutes Co. Road Dept.
 Mailing Address: 61150 SE 27th St.
 Applicant's Email Address: Cody.Smith@deschutes.org

Phone: (541) 322-7113
 City/State/Zip: Bend, OR 97702

Property Owner's Name (if different)*: N/A
 Mailing Address: N/A

Phone: (N/A)
 City/State/Zip: N/A

1. Property Description: T16S R 12E, Section 26. (No tax lots - County road right of way)
2. Property Zone(s): EFU & RI
Property Size (acres or sq. ft.): N/A
3. Lot of Record? (State reason): N/A, County road right-of-way
4. Property Address: N/A, County road right-of-way
5. Present Use of Property: County road, Rural Collector/Rural Arterial
6. Existing Structures: Five public highway bridges (BR#18394, BR#18208, BR#18299, BR#18493, BR#18494)
7. Request:

Deschutes County Road Department (Road Department) is requesting a nighttime noise variance to construct bridge approach repairs and pavement rehabilitation on Tumalo Rd and Deschutes Market Rd between Tumalo Place and 19th Street. Due to high daytime traffic volumes in the Project

vicinity (Average Daily Traffic of 7,369), construction needs to be performed during nighttime hours (10 p.m.-6 a.m.).

Single-lane closures will be required to perform the work, requiring temporary traffic control in the form of flagging and pilot car operations. Performing construction during nighttime hours will reduce the inconvenience to public road users by reducing the length of traffic queues resulting from flagging operations. Traffic volumes during nighttime hours within the Project corridor are approximately 90% less than daytime volumes, according to a Road Department traffic study conducted within the Project limits in August 2019. Daytime traffic volumes are high enough to cause extensive traffic queues upstream of the Project on Tumalo Rd/Tumalo Pl and Deschutes Market Rd, as well as US 97. Nighttime construction will minimize the propensity for traffic queues to become excessively long and cause delays to the public.

It is the Road Department’s opinion that the public nuisance caused by nighttime construction will be benign in comparison to the nuisance caused by traffic queues resulting from daytime construction. The Project is located primarily in a Rural Industrial (RI)-zoned area, and there are no residences in the immediate vicinity of the Project site. The Federal Highway Administration (FHWA) “Construction Noise Handbook” describes construction equipment noise levels and provides the following information for all equipment that may be used on the project. This data is for the period beginning in 1970 through 2006. The information is for both stationary and mobile sources and for steady, intermittent, and impulse type noises.

| Equipment Description | Spec. 721.560 L_{max} @ 50 feet (dBA, slow) | Actual measured L_{max} @ 50 feet (dBA, slow) (Samples averaged) |
|------------------------------|--|---|
| Backhoe | 80 | 78 |
| Compactor (ground) | 80 | 83 |
| Compressor (air) | 80 | 78 |
| Dump Truck | 84 | 76 |
| Flat Bed Truck | 84 | 74 |
| Front End Loader | 80 | 79 |
| Generator | 82 | 81 |
| Grader | 85 | N/A |
| Pavement Scarifier | 85 | 90 |
| Paver | 85 | 77 |
| Pickup Truck | 55 | 75 |
| Pneumatic Tools | 85 | 85 |
| Roller | 85 | 80 |
| Vacuum Street Sweeper | 80 | 82 |
| Warning Horn | 85 | 83 |

Source: Table 9.1 RCNM Default Noise Emission Reference Levels and Usage Factors

For each generic type of equipment listed in the table, the following information is provided:

- The specification “Spec” limit for each piece of equipment expressed as L_{max} level in dBA “slow” at a reference distance of 50 feet from the loudest side of the equipment.
- The measured “Actual” emission level at 50 feet for each piece of equipment is based on hundreds of emission measurements performed on Central Artery/Tunnel (CA/T) work sites.

The National Highway Institute (NHI) provides additional information on what occurs when there are no barriers or objects between the source and receptor. Noise levels decrease 6 dBA each time

the distance from the point source doubles in paved environments. In locations where soft ground exists, an additional 1.5 dBA decrease occurs per doubling distance. When the above numbers differ, the Road Department has used the higher (noisier) values when determining the dBAS for the equipment to be used.

The Planning Division utilizes the Department of Environment Quality (DEQ) standards for noise as set forth in Oregon Administrative Rule (OAR) 340-035-0035 when reviewing noise permits under Deschutes County Code (DCC) 8.08. The Road Department has used Table 8, New Industrial and Commercial Noise Source Standards, from OAR 340-035-0035 to determine the potential noise impact area. Table 8 sets a nighttime standard of 50 dBA for noise. The highest dBA from the equipment table is 90 dBA, resulting in a potential noise impact area of a 3,200-foot radius from Tumalo Road and Tumalo Place. At 3,200 feet the highest expected dBA from any equipment would be 48 dBA, which meets the DEQ standard. Approximately 227 properties are within the noise radius area, many of which do not have residences. The impacted properties are shown on the attached map, Figure 1.

The nighttime work is expected to begin no sooner than June 1, 2022. The duration of the nighttime work is anticipated to be no more than three weeks. The work will be completed by August 31, 2022. Nighttime work will occur between 10 p.m. and 6 a.m. Sunday night through Friday morning each week. The Road Department will issue a media release to inform the travelling public no later than one week prior to start of work. Additionally, portable changeable message boards will be installed on Deschutes Market Rd and Tumalo Rd no later than two weeks prior to start of work.


8. Property will be served by:

Sewer: N/A as project occurs on public right of way and no sewer is present.

Onsite Disposal System: N/A, on-site portable systems will be used as necessary.

9. Domestic Water Source: N/A.

To the best of my knowledge, the proposal complies with all previous conditions of approval and all other applicable local, state, and federal laws. By signing this application, I acknowledge that Deschutes County planning staff may make a site visit(s) to the address(es) listed on this application in order to evaluate the property(ies) with the Deschutes County Code criteria applicable to the land use request(s) submitted. Please describe any special circumstances regarding a potential site visit:

Applicant's Signature:  Date: 2022.02.22 13:36:52 -08'00' _____ Date: _____

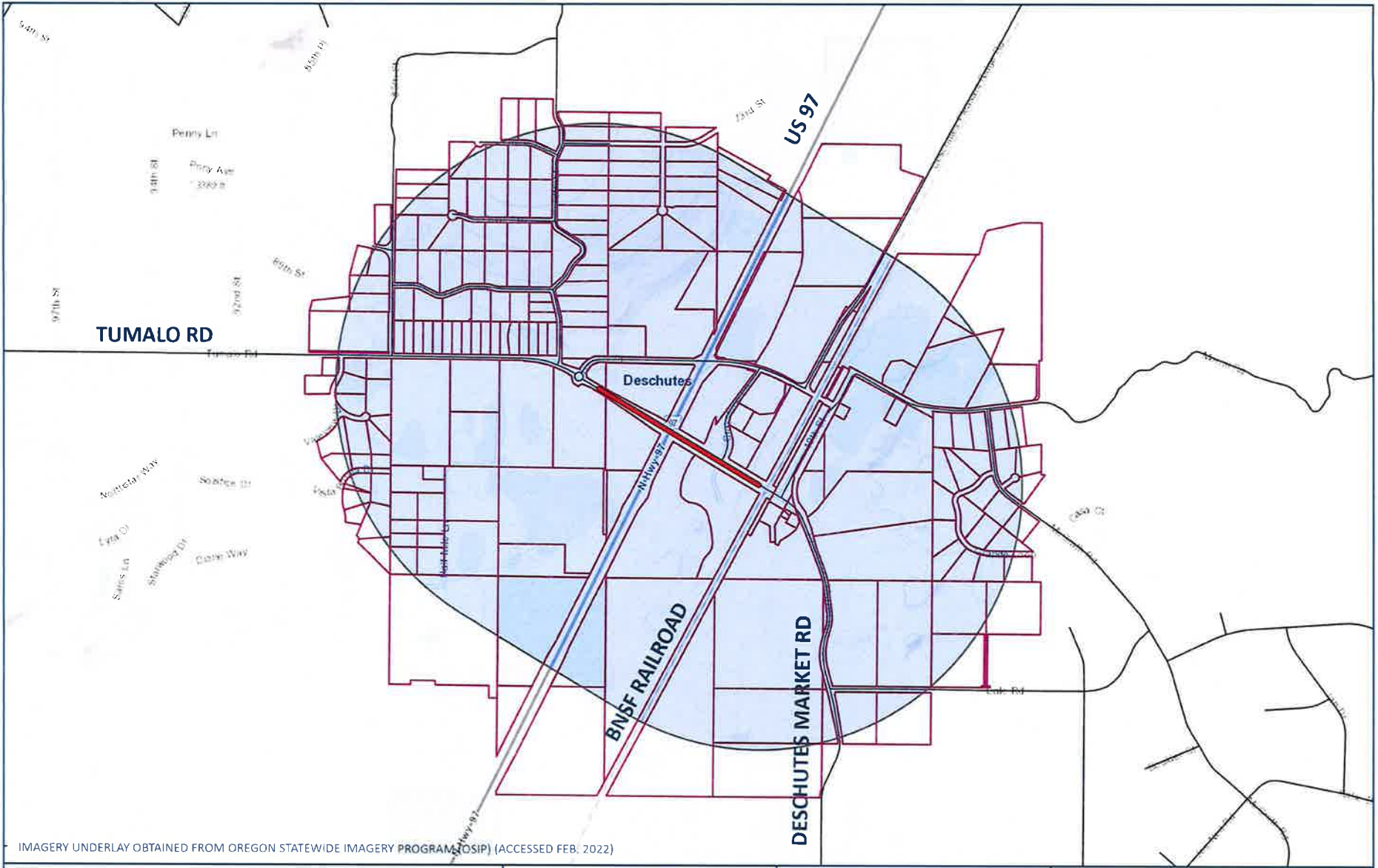
Property Owner's Signature (if different)*: _____ Date: _____

Agent's Name (if applicable): _____ Phone: (_____) _____




Mailing Address: _____ City/State/Zip: _____

Agent's Email Address: _____

***If this application is not signed by the property owner, a letter authorizing signature by the applicant must be attached. By signing this application, the applicant understands and agrees that Deschutes County may require a deposit for hearings officers' fees prior to the application being deemed complete. If the application is heard by a hearings officer, the applicant will be responsible for the actual costs of the hearings officer.**



IMAGERY UNDERLAY OBTAINED FROM OREGON STATEWIDE IMAGERY PROGRAM (OSIP) (ACCESSED FEB. 2022)

| | | | |
|---|--|---|---|
| <p>LEGEND</p> <ul style="list-style-type: none"> — PROJECT SEGMENT IMPACTED PROPERTIES NOISE IMPACT AREA (3,200 FEET) DESCHUTES COUNTY ROADS | <p>N</p>  <p>0 500 1,000 2,000</p>  <p>Feet</p> | <p>NOISE IMPACT AREA FIGURE 1</p> <p>PAVING OF DESCHUTES JUNCTION</p> <p>FEB. 2022 SHT. 1 OF 1</p> |  <p>DESCHUTES COUNTY ROAD DEPARTMENT</p> |
|---|--|---|---|

REVIEWED

LEGAL COUNSEL

05/18/2022 Item #10.

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

NOISE PERMIT

PURSUANT TO DESCHUTES COUNTY CODE (DCC) CHAPTER 8.08

LOCATION: Tumalo Road and Deschutes Market Road from 19th Street to Tumalo Place.

FILE NUMBER: 247-22-000243-V

OWNER: Deschutes County Road Department

OPERATOR: Cody Smith

PHONE: (541) 322-7113

PROJECT DESCRIPTION: The applicant requests approval of a noise permit to allow nighttime construction to construct bridge approach repairs and pavement rehabilitation on Tumalo Road and Deschutes Market Road between Tumalo Place and 19th Street.

DATES AND TIMES OF PROJECT: Nighttime construction activities are anticipated to begin no sooner than June 1, 2022, and are anticipated to be completed no later than August 31, 2022. Nighttime construction will occur Sunday night through Friday morning, between 10:00 p.m. and 6:00 a.m.

FINDINGS: The Board of County Commissioners (“Board”) finds that a public necessity exists for granting this permit for construction hours between 10:00 p.m. and 6:00 a.m. The Board bases the findings on evidence in the record and testimony at the hearing. These findings include:

1. A need to construct bridge approach repairs and pavement rehabilitation on Tumalo Road and Deschutes Market Road between Tumalo Place and 19th Street;
2. A desire to conduct construction from 10:00 p.m. to 6:00 a.m. to minimize traffic delays, decrease the risk of construction related accidents on Tumalo Road and Deschutes Market Road, and reduce potential traffic queues affecting US 97 and County roads.

CONDITIONS OF APPROVAL:

1. Construction activities may be conducted beginning June 1, 2022.
2. Fifteen days prior to commencing any construction activities, the Owner shall notify all property owners who testified at the public hearing for this permit of the dates and times the construction activities will occur.
3. This permit expires August 31, 2022.
4. THE APPROVED PERMIT SHALL BE RETAINED ON-SITE UNTIL THE PROJECT IS COMPLETE.
5. BY ACCEPTANCE OF THIS PERMIT, OWNER/OPERATOR CONSENT TO ALLOW BOTH COUNTY CODE ENFORCEMENT AND LAW ENFORCEMENT PERSONNEL TO COME ON THE PREMISES FOR WHICH THE PERMIT HAD BEEN GRANTED FOR THE PURPOSE OF INSPECTION AND ENFORCEMENT OF THE TERMS AND CONDITIONS OF THE PERMIT AND DCC 8.08, AND ANY OTHER APPLICABLE LAWS OR ORDINANCES.

Dated this _____ of _____, 2022

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PATTI ADAIR, Chair

ANTHONY DEBONE, Vice Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner



COMMUNITY DEVELOPMENT

LAND USE ACTION SIGNS

A land use action requires the posting of a sign, which provides a brief description of the application submitted. It is the applicant's responsibility to post this sign at least ten (10) days before the date set for receipt of comments. The sign is to be posted so that it is clearly visible along the most traveled street. The sign should be mounted on a sturdy backing, such as plywood, and posted within ten (10) to fifteen (15) feet of the street so that it is visible from the street. Please do not attach the sign to a tree. It is advisable to cover the sign with protective material such as plastic wrap to protect it from inclement weather. Please remove the sign at the end of the comment period.

THE APPLICANT SHALL PROVIDE AN AFFIDAVIT ATTESTING TO THE FACT THAT THIS SIGN HAS BEEN POSTED.

LAND USE ACTION SIGN AFFIDAVIT

STATE OF OREGON) File Number(s) 247-22-000243-V
) ss.
COUNTY OF DESCHUTES)

I, TRAVIS FARSTVEDT, being first duly sworn, depose and state as follows:
(Name)

I placed a Notice of Land Use Action sign on the Applicant's property on MAY 10, 2022, where it can be clearly seen from DESCHUTES MARKET RD.
(Date)
(Name of road)

If the land use sign notices a hearing, the hearing is to be held on TBD.
(Date)

Dated this 10 day of May, 2022.

[Signature]
Affiant

Subscribed and sworn to before me this 10 day of May, 2022



[Signature]
Notary Public for Oregon
My Commission Expires: 6/21/25



**BOARD OF
COMMISSIONERS**

AGENDA REQUEST & STAFF REPORT

MEETING DATE: 5/18/2022

SUBJECT: Wildlife Inventory Update – Status Report

BACKGROUND AND POLICY IMPLICATIONS:

Staff is providing an update to the Board of County Commissioners (Board) concerning the mule deer wildlife inventory update project. First, staff will provide a brief overview of the project and will outline the draft amendment concepts that have emerged from Oregon Department of Fish and Wildlife (ODFW) recommendations as well as prior discussions with the Board. Next, staff will provide a tentative timeline of the project.

BUDGET IMPACTS:

None

ATTENDANCE:

Tanya Saltzman, Senior Planner

Will Groves, Planning Manager

Peter Gutowsky, CDD Director



MEMORANDUM

TO: Deschutes County Board of Commissioners

FROM: Tanya Saltzman, AICP, Senior Planner

DATE: May 11, 2022

SUBJECT: Wildlife Inventory Update – Status Report

Staff is providing an update to the Board of County Commissioners (Board) concerning the mule deer wildlife inventory update project. First, staff will provide a brief overview of the project and will outline the draft amendment concepts that have emerged from Oregon Department of Fish and Wildlife (ODFW) recommendations as well as prior discussions with the Board. Next, staff will provide a tentative timeline of the project.

On August 30, 2021, staff provided the Board with a summary of the public outreach effort for the first phase of the wildlife inventory update project, which was funded by a Department of Land Conservation and Development (DLCD) Technical Assistance Grant.¹ In the fall, staff provided the Board with a “roadmap” of potential options pertaining to a wildlife inventory update,² and followed up several weeks later.³ Ultimately, the Board directed staff to pursue an update of one inventory, mule deer winter range, as a pilot project.

I. Wildlife Inventory Update Overview

As stated previously, the process for updating a Goal 5 wildlife inventory is prescribed by Oregon Administrative Rules (OARs). Oregon counties rarely, if ever, undergo the process to update existing wildlife inventories because, unlike cities, they are not required to comply with periodic review.⁴ By choosing to undertake a Goal 5 wildlife inventory update, Deschutes County is moving forward with a rarely-utilized and complex process that, while a significant effort, can hopefully provide an example of best practices for other jurisdictions as well as the County for future efforts.

¹ <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-12>

² <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-16>

³ <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-25>

⁴ Periodic Review is a term used in Oregon law to describe the periodic evaluation and revision of a local comprehensive plan. Prior to 2003, state law (ORS 197.628 – 636) called for counties to review their comprehensive plans according to a periodic schedule established by the Land Conservation and Development Commission (LCDC). The Oregon Legislature eliminated periodic review requirements for counties in 2003 (SB 920).

Over the last several months, staff has been constructing the draft amendments and corresponding findings. These will be provided to the Board prior to the hearings process as they are finalized; staff is providing a general overview here.

The amendments will:

- Update Deschutes County's Comprehensive Plan, Chapter 2, Resource Management, Section 2.6, Wildlife, by describing the mule deer winter range update.
- Update other sections of County Code to be consistent with proposed changes to the Wildlife Area (WA) Combining Zone.
- Create a new WA Combining Zone specifically related to mule deer winter range that corresponds to the boundaries determined by the Interagency Working Group (including ODFW and a wildlife biologist consultant) during the first phase of the project. The methodology for determining these boundaries was described in the Interagency Report and the Public Outreach Report provided to the Board last fall.
 - The boundaries of the existing WA Combining Zone remain unchanged.
- Allow, limit, or prohibit certain land uses determined to be "conflicting" with mule deer winter range. The decision to allow, limit, or prohibit each use is derived from an ESEE (Economic, Social, Environmental, Energy) analysis, a decision-making methodology outlined in [OAR 660-023-0040](#), which then becomes incorporated into the findings document for the amendments.
 - The existing WA Combining Zone already prohibits some uses. However, ODFW has subsequently recommended additional prohibitions which will now be applied to both the existing and new WA zone; the end result will be that both WA zones have the same use prohibitions/limitations/allowances, though there may be moderate differences between the existing and new WA zones to some of the proposed limitations.

The current WA Combining Zone for mule deer winter range covers approximately 315,847 acres, and the proposed additional area covers 188,132 acres, resulting in a total of 503,979 acres. Unincorporated communities (Tumalo, Terrebonne, Sunriver, Black Butte Resort, and Inn of 7th Mountain / Widgi Creek Resorts) remain exempt from the provisions of DCC Chapter 18.88.

Of the proposed 188,132 acres:

- 113,262 acres (61%) are on federal land
- 74,870 acres (39%) are on nonfederal land

Disaggregating the 74,870 acres on nonfederal land subject to Deschutes County's land use authority:

- 54,474 acres (3,619 tax lots) zoned Exclusive Farm Use
- 915 acres (12 tax lots) zoned Forest Use
- 9,358 acres (1,635 tax lots) zoned RR-10
- 7,597 acres (1,529 tax lots) zoned MUA-10

Conflicting Uses and ESEE Analysis

ODFW provided a list of conflicting land uses they recommended be prohibited in the existing and proposed winter deer ranges—these include the existing conflicting uses already prohibited in the current WA zone, as well as conflicting uses subsequently identified by ODFW and a 2009 Interagency Report. The human activity associated with these uses have various impacts on the winter range, ranging from noise to impediments to movement across land.

Staff has taken the ODFW recommendations and in some cases, “translated” or consolidated them to reflect current code language. For instance, due to changes in state law, the use referred to as “bed and breakfast inn” is now called “room and board arrangement” when located in the EFU zone.

The findings document and the ESEE analysis will provide an examination of each conflicting use based on the methodology outlined in OAR. Ultimately, the ESEE is a decision-making tool designed to weigh the positive and negative economic, social, environmental, and energy consequences of allowing a use, limiting a use, or prohibiting a use. The ESEE is not intended to require separate studies for aspects such as industry profits/loss, employment statistics, scientific data and the like. As stated in OAR 660-023-0040, ESEE Decision Process, “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.”

In addition to the use prohibitions and limitations established through the 1992 process that created the existing WA combining zone, staff’s draft ESEE analysis will list certain newly identified conflicting uses that should be prohibited, limited, or allowed fully, despite the possible impacts on the deer winter range. Staff is continuing to consult with the Department of Land Conservation and Development and ODFW prior to the initiation of the public process and reiterates that the draft concepts represent a starting point for the public process that the Board may ultimately refine. Based on recommendations from ODFW, the decisions made during the 1992 process, the relative prevalence of certain uses, and staff’s understanding of Board priorities, staff anticipates the draft amendments will include the following regulations:

Allowed with Limitations

Allowing the following use subject to restrictions during the time of year deer use the winter range (from December through April) offers the greatest net benefit for those land uses while still considering habitat needs:

- Guest ranch/dude ranch

Allowed Fully

Allowing the following uses in the deer winter range provide economic and social benefits that should not be limited in the mule deer winter range. This could help address the region's housing and houselessness challenges, which has been noted as a Board priority.

- Camping areas
- RV parks

Prohibited

Deschutes County finds that the significance of mule deer winter range compared to all other conflicting uses, listed below, warrants prohibiting them.

- Bed and Breakfast/Room and board arrangement
- BMX / Bike Course
- Commercial dog kennel
- Fishing lodge
- Golf course
- Model airplane park
- OHV course
- Paintball course
- Playground, recreational facility or community center
- Public or private school
- Shooting range
- Solar Farms
- Timeshare
- Veterinary clinic
- Wind farm development

II. Process and Timeline

Staff is aiming for a first evidentiary hearing with the Planning Commission on July 14, 2022, though acknowledges that this timeline is still subject to minor adjustments. Prior to the hearing, staff has several key tasks with target dates outlined below:

Planning Commission check-in (May 26): Staff will provide a general update to the Planning Commission, providing similar information to this update with the Board.

35-day notice filed with DLCD (June 9): Counties are required to provide DLCD with written notice of a land use change 35 days prior to the first evidentiary hearing. At this point, draft amendments are provided to DLCD and written comments may be provided to staff for incorporation into the record.

Website/StoryMap (early June): To coincide with the 35-day notice, staff will create a project StoryMap that provides relevant maps, draft amendments, and information on the public process.

Measure 56 mailings and notice of public hearing mailings: Measure 56 requires counties to provide notice to landowners between 20 and 40 days prior to the first public hearing when a land use change limits or prohibits previously allowed uses. Subject to verification by County legal counsel, Measure 56 notices with the required statutory language will be mailed to property owners in the zones where uses are proposed to be prohibited or limited (see above). Complementing the Measure 56 notices and with the goal of full transparency and public awareness, staff anticipates providing general notices to property owners in other areas that may fall into the existing or proposed WA zone but in which uses would not be newly prohibited or limited.

Public Information Sessions (late June): Given the high visibility as well as the complexity of this project, staff believes it will be helpful to conduct several public information sessions to provide an overview of the inventory update. This will enable members of the public as well as stakeholders to more fully digest the proposed amendments well in advance of the formal public process, and will allow staff to explain the project and answer questions. Staff anticipates that verbal comments provided at these sessions would not be part of the official record and will make that clear during all sessions. However, given that these sessions will occur after 35-day notice has been provided to DLCD, any written comments received would indeed be a part of the record. Staff aims to conduct three information sessions: one hybrid online/in-person meeting in Bend, one in person in Sisters, and one in-person in La Pine.

III. Next Steps

Staff is providing this general overview of the timeline and the major elements of the proposed amendments while many elements are still in progress. If requested, staff can return at a later date closer to the Planning Commission hearing to provide more details and/or discussion of specific elements. Lastly, it is important to note again that the amendments that will be provided for the public process effectively represent a starting point; the public process is designed to capture public and stakeholder input that may help further shape any proposed legislation decided by the Board.