



## BOARD OF COMMISSIONERS

### BOARD OF COUNTY COMMISSIONERS MEETING

9:00 AM, WEDNESDAY, OCTOBER 16, 2024

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

#### AGENDA

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

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

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

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

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

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



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

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

## CALL TO ORDER

## PLEDGE OF ALLEGIANCE

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

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

## CONSENT AGENDA

1. Approval of Resolution No. 2024-047 adopting a supplemental budget and increasing appropriations in the Sheriff's Office and the District Attorney's Office
2. Approval of Resolution No. 2024-048 adopting a supplemental budget and increasing appropriations within the Health Services fund
3. Approval of Order Number 2024-040 establishing Wood Avenue and a portion of NW 39th Avenue as County Roads
4. Authorize the conveyance of real property located at 640-652 SE Wilson Avenue in Bend to the Central Oregon Intergovernmental Council
5. Consideration of Board Signature on letters thanking Dave Thomson and appointing Bob Nash for service on the Bicycle and Pedestrian Advisory Committee

## ACTION ITEMS

6. **9:10 AM** Second reading of Ordinance No. 2024-010 – Remand of the Eden Plan Amendment / Zone Change
7. **9:15 AM** Public Hearing and Consideration of Resolution No. 2024-038 updating the Transportation System Development Charge
8. **9:45 AM** Public Hearing: CORE3 Comprehensive Plan Amendment and Zone Change for approximately 228 acres adjacent to and north of Highway 126 in Redmond
9. **10:30 AM** Deschutes County Employee Benefits Renewal for the 2025 Plan Year

## **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.*

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

## **LUNCH RECESS**

### **Continued ACTION ITEMS**

- [11.](#) **1:00 PM** Public Hearing and Consideration of Draft Resolutions to Assist the City and County with Management of Land Northeast of Bend (commonly referred to as Juniper Ridge)

## **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.*

## **ADJOURN**



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: October 16, 2024

SUBJECT: Approval of Resolution No. 2024-047 adopting a supplemental budget and increasing appropriations in the Sheriff's Office and the District Attorney's Office

RECOMMENDED MOTIONS:

Move approval of Resolution No. 2024-047 increasing appropriations within the 2024-25 Deschutes County budget.

BACKGROUND AND POLICY IMPLICATIONS:

- 1. On May 29, 2024, the Board of County Commissioners approved Resolution 2024-025 which extended a .10 limited duration Management Analyst position through 12/31/24 within the DA's office. DCIMME grant funding from the Sheriff's Office will fund the .10 FTE from 07/01/24 - 12/31/24. A budget adjustment is necessary to increase Transfer Out appropriations in the Sherriff's Office to allow for the transfer to the District Attorney's Office.
2. On September 25, 2024, the Board of County Commissioners accepted an Oregon Criminal Justice Commission Deflection Program grant in the amount of \$844,514. A supplemental budget is necessary to recognize the grant revenue and increase Program Expense appropriations in the Sheriff's Office.
3. On September 25, 2024, the Board of County Commissioners approved Document No. 2024-728, and intergovernmental agreement with the Cities and Bend and Redmond to support a Behavioral Health position on the Mobile Crisis Team. The Deschutes County Sheriff's Office will contribute \$30,000 to help support the position. An adjustment is required to decrease Program Expense and increase Transfer Out appropriations in the Sheriff's Office to allow for the transfer to Health Services.

BUDGET IMPACTS:

- 1. Adjustment for the .10 FTE will decrease the Sheriff's Office Program Expenses by \$7,600 and increase Transfer Out appropriations by the same amount. Transfer In

revenue of \$7,600 will be recognized and Program Expenses increased by the same amount within the General Fund – District Attorney.

2. Recognize Grant Revenue of \$844,514 and increase Program Expense appropriations in the Sheriff's Office by the same amount.
3. Decrease Sheriff's Office Program Expenses by \$30,000 and increase Transfer Out appropriations by the same amount.

**ATTENDANCE:**

Cam Sparks, Budget & Financial Planning Manager

REVIEWED  
\_\_\_\_\_  
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY,  
OREGON

A Resolution Increasing Appropriations \*  
Within the 2024-25 Deschutes County \* RESOLUTION NO. 2024-047  
Budget \*

WHEREAS, the Deschutes County Sheriff’s Office presented to the Board of County Commissioners on 5/29/24, with regards to funding a .10 Management Analyst position in the District Attorney’s office with DCIMME grant funding, and

WHEREAS, the Board of County Commissioners approved to accept an Oregon Criminal Justice Commission Deflection Program grant for the Sheriff’s Office on 9/25/24, and

WHEREAS, the Board of County Commissioners approved Document No. 2027-728, an intergovernmental agreement to support a Behavioral Health Specialist position on the Mobile Crisis Team on 9/25/24, and

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

WHEREAS, it is necessary to decrease Program Expense appropriations by \$37,600 and increase Transfer Out appropriations by the same amount within the Sheriff’s Office, and

WHEREAS, it is necessary to recognize Transfer In revenue of \$7,600 and increase Program Expense appropriations by the same amount within the District Attorney’s Office, and

WHEREAS, it is necessary to recognize Grant revenue of \$844,514 and increase Program Expense appropriations by the same amount within the Sheriff’s Office; now, therefore,

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

Section 1. That the following revenue be recognized in the 2024-25 County Budget:

<u>Sheriff's Office</u>	
State Grant	\$ 844,514
<b>Sheriff's Office Total</b>	<b>\$ 844,514</b>

<u>District Attorney's Office</u>	
Transfers In	\$ 7,600
<b>District Attorney Total</b>	<b>\$ 7,600</b>

Section 2. That the following amounts be appropriated in the 2024-25 County Budget:

<u>Sheriff's Office</u>	
Program Expense	\$ 806,914
Transfers Out	37,600
<b>Sheriff's Office Total</b>	<b>\$ 844,514</b>

<u>District Attorney's Office</u>	
Program Expense	\$ 7,600
<b>District Attorney Total</b>	<b>\$ 7,600</b>

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

DATED this \_\_\_\_\_ day of October, 2024.

BOARD OF COUNTY COMMISSIONERS OF  
DESCHUTES COUNTY, OREGON

\_\_\_\_\_  
PATTI ADAIR, Chair

ATTEST:

\_\_\_\_\_  
ANTHONY DEBONE, Vice-Chair

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
PHIL CHANG, Commissioner

Deschutes County  
Supplemental Budget

REVENUE

Item	Project Code	Segment 2	Org	Object	Description	Current Budgeted Amount	To (From)	Revised Budget
1			2553750	334012	State Grant	\$ 1,130,000	\$ 844,514	\$ 1,974,514
2			0011150	391255	Transfer In - DC SO	-	7,600	7,600
3	HSCRISIS	HS2COBMCAT	2743152	338011	Local Government Grants	228,955	(30,000)	198,955
4	HSCRISIS	HS2COBMCAT	2743152	391255	Transfer In - Fund 255	-	30,000	30,000
5								
<b>TOTAL</b>						<b>\$ 1,358,955</b>	<b>\$ 852,114</b>	<b>\$ 2,211,069</b>

APPROPRIATION

Item	Project Code	Segment 2	Org	Object	Category (Pers, M&S, CapEx, Transfers, Contingency)	Description (Object, e.g. Time Mgmt, Temp Help, Computer Hardware)	Current Budgeted Amount	To (From)	Revised Budget
1			2553350	410101	Personnel	Regular Employees	\$ 2,253,659	\$ (7,600)	\$ 2,246,059
2			2553350	491001	Transfers	Transfer Out - DA	-	7,600	7,600
3			2550150	410101	Personnel	Regular Employees	1,811,545	(30,000)	1,781,545
4			2550150	491274	Transfers	Transfer Out - Health Services	-	30,000	30,000
5			0011150	410101	Personnel	Regular Employees	6,630,191	7,600	6,637,791
6			2553750	410101	Personnel	Regular Employees	12,259,720	205,433	12,465,153
7			2553750	410301	Personnel	Overtime	800,000	20,000	820,000
8			2553750	420101	Personnel	Health Insurance	3,219,981	53,968	3,273,949
9			2553750	420201	Personnel	PERS (Includes IAP & Debt Service)	3,306,909	45,168	3,352,077
10			2553750	420301	Personnel	Taxes (FICA)	936,570	12,043	948,613
11			2553750	420401	Personnel	Workers' Comp	239,932	101	240,033
12			2553750	420501	Personnel	Unemployment	33,345	570	33,915
13			2553750	420601	Personnel	Life-Long Term Disability	45,747	629	46,376
14			2553750	420801	Personnel	Paid Family Leave	45,920	630	46,550
15			2553750	430312	M&S	Contracted Services	67,000	450,964	517,964
16			2553750	430334	M&S	Interpreter	4,500	1,508	6,008
17			2553750	460163	M&S	Safety Supplies	60,000	6,500	66,500
18			2553750	460610	M&S	Computers & Peripherals	25,000	1,000	26,000
19			2553750	460640	M&S	Furn & Fixt - Office	17,500	1,000	18,500
20			2553750	490422	Capital Outlay	Automobile	-	45,000	45,000
<b>TOTAL</b>						<b>\$ 31,757,519</b>	<b>\$ 852,114</b>	<b>\$ 32,609,633</b>	

Several items previously approved by the BOCC require budget adjustments.

Fund:	255 & 001
Dept:	SO & DA
Requested by:	Cam Sparks
Date:	10.16.24





## BOARD OF COMMISSIONERS

# AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** October 16, 2024

**SUBJECT:** Approval of Resolution No. 2024-048 adopting a supplemental budget and increasing appropriations within the Health Services fund

**RECOMMENDED MOTIONS:**

Move approval of Resolution No. 2024-048 increasing appropriations within the 2024-25 Deschutes County budget.

**BACKGROUND AND POLICY IMPLICATIONS:**

On September 18, 2024, Health Services requested approval to use opioid settlement funds to enhance the BOCC approved strategy of increasing coordination of surveillance and overdose prevention activities. The Board of County Commissioners approved \$42,000 in opioid settlement funding annually from FY 2025 through FY 2028 for a total of \$168,000. A budget adjustment is necessary to recognize an interfund payment from the General Fund and increase Program Expense appropriations.

**BUDGET IMPACTS:**

Recognize an Interfund Payment from the General Fund of \$42,000 and increase Program Expense appropriations by the same amount within the Health Services fund.

**ATTENDANCE:**

Cam Sparks, Budget & Financial Planning Manager

REVIEWED  
\_\_\_\_\_  
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY,  
OREGON

A Resolution Increasing Appropriations \*  
Within the 2024-25 Deschutes County \* RESOLUTION NO. 2024-048  
Budget \*

WHEREAS, Deschutes County Health Services presented to the Board of County Commissioners on 9/18/24, with regards to using opioid settlement funds to enhance the BOCC approved strategy of increasing coordination of surveillance and overdose prevention activities, and

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

WHEREAS, it is necessary to recognize Interfund Payment revenue of \$42,000 and increase Program Expense appropriations by the same amount within the Health Services Fund; now, therefore,

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

Section 1. That the following revenue be recognized in the 2024-25 County Budget:

<u>Health Services Fund</u>	
Interfund Payment Revenue	\$ 42,000
<b>Health Services Total</b>	<b><u>\$ 42,000</u></b>

Section 2. That the following amounts be appropriated in the 2024-25 County Budget:

<u>Health Services Fund</u>	
Program Expense	\$ 42,000
<b>Health Services Total</b>	<b><u>\$ 42,000</u></b>

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

DATED this \_\_\_\_\_ day of October, 2024.

BOARD OF COUNTY COMMISSIONERS OF  
DESCHUTES COUNTY, OREGON

\_\_\_\_\_  
PATTI ADAIR, Chair

ATTEST:

\_\_\_\_\_  
ANTHONY DEBONE, Vice-Chair

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
PHIL CHANG, Commissioner

REVENUE

Item	Line Number	Project Code	Segment 2	Org	Object	Description	Current Budgeted Amount	To (From)	Revised Budget
		HSPREVENT	HS3OPIOD	2743153	372001	Interfund Transfer from the General Fund	-	42,000	42,000
<b>TOTAL</b>							<b>-</b>	<b>42,000</b>	<b>42,000</b>

APPROPRIATION

Item	Line Number	Project Code	Segment 2	Org	Object	Category (Pers, M&S, Cap Out, Contingency)	Description (Element-Object, e.g. Time Mgmt, Temp Help, Computer Hardware)	Current Budgeted Amount	To (From)	Revised Budget
		HSPREVENT	HS3OPIOD	2743153	460148	M&S	Program Supplies	14,000	5,000	19,000
		HSPREVENT	HS3OPIOD	2743153	430312	M&S	Contracted Services	-	25,000	25,000
		HSPREVENT	HS3OPIOD	2743153	450410	M&S	Advertising	450,410	10,000	460,410
		HSPREVENT	HS3OPIOD	2743153	490501	Overhead	Indirect (5%)	-	2,000	2,000
		HSALL	HS1OTHER	2743151	490501	Overhead	Indirect (5%)	-	(2,000)	(2,000)
		HSALL	HS1OTER	2743151	450094	M&S	Program Expense	-	2,000	2,000
				0019917	450094	M&S	Program Expense	1,088,642	(42,000)	1,046,642
				0019917	472274	M&S	Interfund Pmts to Fund 274	-	42,000	42,000
<b>TOTAL</b>								<b>1,553,052</b>	<b>42,000</b>	<b>1,595,052</b>

Fund:  
Dept:  
Requested by:  
Date:

274
Health Services
Cheryl Smallman
9.11.24



## BOARD OF COMMISSIONERS

# AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** October 16, 2024

**SUBJECT:** Approval of Order Number 2024-040 establishing Wood Avenue and a portion of NW 39<sup>th</sup> Avenue as County Roads

**RECOMMENDED MOTION:**

Move approval of Order Number 2024-040 establishing Wood Avenue and a portion of NW 39<sup>th</sup> Avenue as County Roads.

**BACKGROUND AND POLICY IMPLICATIONS:**

A *public road* is a road over which the public has a right of use that is a matter of public record (Oregon Revised Statute (ORS) 368.001(5)). The Board of County Commissioners has jurisdiction over all public roads in Deschutes County that are not state highways, federal roads, or city streets. This jurisdiction applies to the exercise of governmental powers relating to a road, such as matters associated with land use planning and permitting, health and public safety, and the Oregon Vehicle Code.

A *county road* is a public road under the jurisdiction of Deschutes County that has been designated as a county road by resolution or order of the Board of County Commissioners (ORS 368.001(1) and 368.016). County roads in Deschutes County are operated and maintained by Deschutes County Road Department.

A *local access road* is a public road under the jurisdiction of Deschutes County that is not a county road (ORS 368.001(3) and 368.031). Local access roads are not operated and maintained by Deschutes County Road Department, as the County is prohibited by state law from spending county funds on local access roads except in certain situations, such as emergencies.

Wood Avenue was recently improved as part of the US20: Tumalo to Cooley Road project, a cooperative improvement project between Deschutes County and the Oregon Department of Transportation. Prior to the project, Wood Avenue was a stubbed local access road that only connected to Bailey Road. With the project, Wood Avenue was widened and extended south to O.B. Riley Road to provide a connection between Bailey Road and US20 via O.B. Riley Road, as left turns onto Bailey Road from westbound US20 are no longer possible

with the roundabout improvements on US20. Wood Avenue, which was improved with County road funds, now carries higher traffic volumes due to through traffic between Bailey Road and O.B. Riley Road; as such, Road Department staff find that it is appropriate to include Wood Avenue as part of the County-maintained system.

In 2006, the Board of County Commissioners adopted Resolution Number 2006-049, declaring a suspension on the establishment of new public roads created by private land development as county roads due to declining road funds. At the time of adoption of the resolution, a list of land use applications had been approved but not yet initiated; as such, the resolution indicated that proposed roads in those developments would be considered for acceptance as county roads. "TP-06-971", approved earlier in 2006, was included in that list of land use applications.

The 2006 suspension resolution was superseded in 2009 with Resolution Number 2009-118, which continued the suspension on the establishment of new public roads created by private land development as county roads; however, the 2009 suspension resolution did not list any exceptions for ongoing land use applications. Current Road Department staff believe that this was an oversight, as some of the land developments listed in the 2006 resolution had not been completed by 2009.

The Glenn Meadow, Phase III subdivision plat, which was approved under TP-06-971 in 2006, was recorded in March 2019 and included a segment of NW 39<sup>th</sup> Drive contiguous with county road segments on either end. Road Department staff find that it is appropriate to include the segment of NW 39<sup>th</sup> Drive within the Glenn Meadow, Phase III subdivision as part of the County-maintained system to honor the intent of the 2006 resolution and to provide contiguous County maintenance of the loop road.

Adoption of Order Number 2024-040 will establish Wood Avenue and the segment NW 39<sup>th</sup> Drive within the Glenn Meadow, Phase III subdivision as county roads and will allow for continued County maintenance of those roads.

**BUDGET IMPACTS:**

No initial budget impacts would occur, and minimal ongoing budget impacts are anticipated. The subject road segments would comprise approximately 0.42 mile of additional road into the County-maintained road system. The subject road segments exist within localized road grids that are already maintained by the Road Department.

**ATTENDANCE:**

Cody Smith, County Engineer/Assistant Road Department Director

REVIEWED  
\_\_\_\_\_  
LEGAL COUNSEL

10/16/2024 Item #3.

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Establishing Certain Public Roads as           \*  
County Roads   \*   ORDER NO. 2024-040  
  \*

WHEREAS, the roads described and depicted in the attached Exhibit "A" are public roads within the jurisdiction of the Board of County Commissioners of Deschutes County, Oregon; and

WHEREAS, said roads have been constructed to applicable Deschutes County road standards; and

WHEREAS, the County Road Official has recommended that the Board of County Commissioners accept said roads into the County-maintained road system: and

WHEREAS, in accordance with ORS 368.06(2)(c), a county governing body may by resolution or order make any public road within its jurisdiction a county road; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, HEREBY ORDERS as follows:

Section 1. The public roads described and depicted in the attached Exhibit "A" are hereby established as county roads.

Dated this \_\_\_\_\_ of \_\_\_\_\_, 20\_\_

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

\_\_\_\_\_  
PATTI ADAIR, Chair

\_\_\_\_\_  
ANTHONY DeBONE, Vice Chair

ATTEST:

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
PHIL CHANG, Commissioner

**EXHIBIT "A"**  
**ORDER NO. 2024-040**  
**COUNTY ROAD ESTABLISHMENT**

**Wood Avenue:**

All of "Wood Avenue" between Bailey Road and O.B. Riley Road as shown on the official plat of "Townsite of Laidlaw", Deschutes County, Oregon, and as described in Instrument No. 2020-02031, Deschutes County Official Records.

**NW 39<sup>th</sup> Drive:**

All of "NW 39<sup>th</sup> Drive" as shown on the official plat of "Glenn Meadow, Phase III", Deschutes County, Oregon.



# COUNTY ROAD ESTABLISHMENT

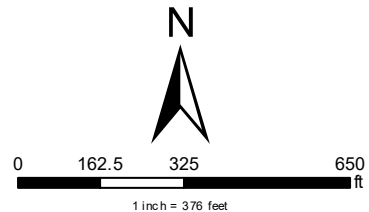
## WOOD AVENUE



Deschutes County GIS, Sources: Esri, USGS, NOAA

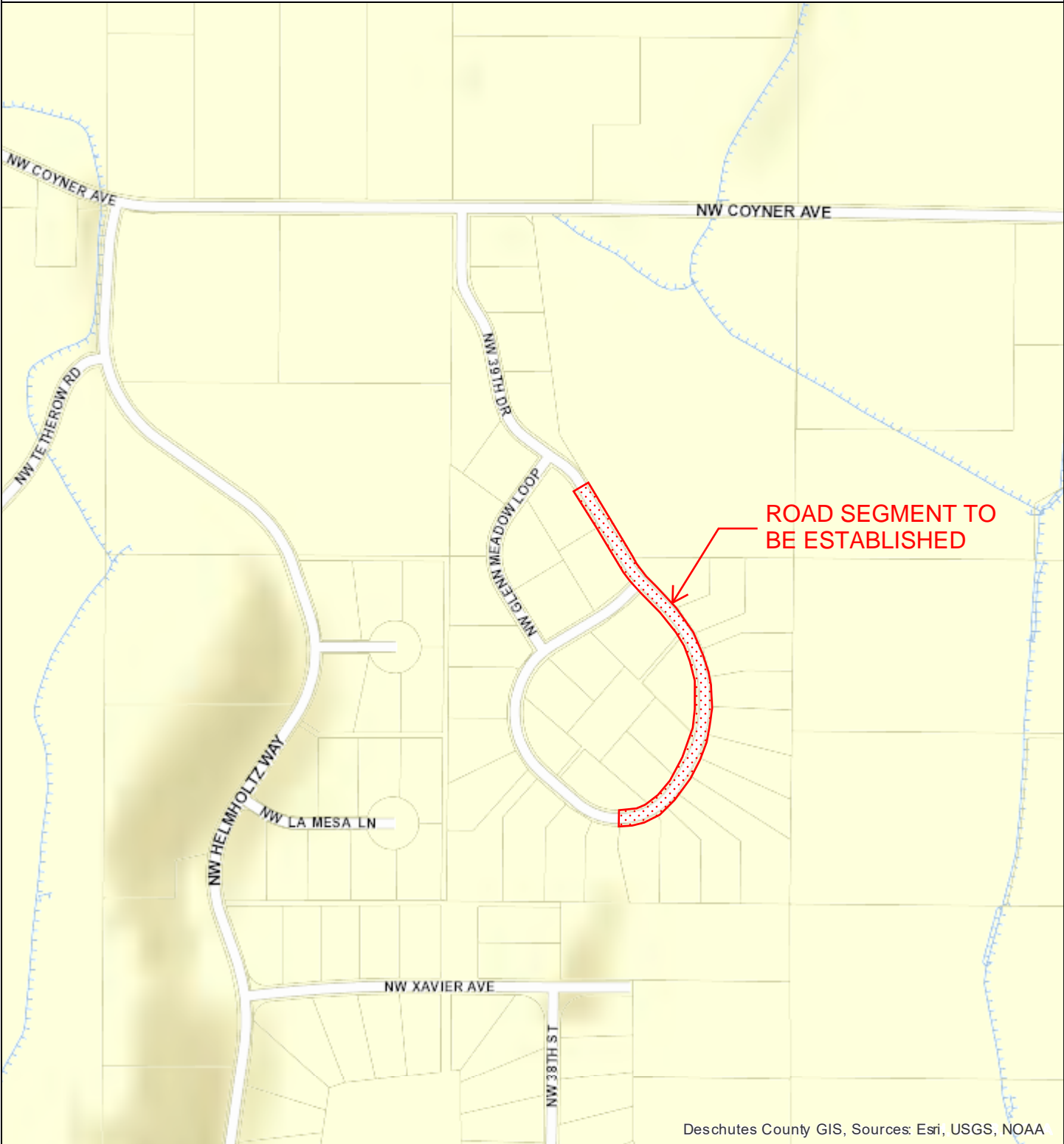


Date: 10/9/2024



# COUNTY ROAD ESTABLISHMENT

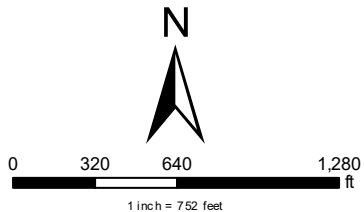
## NW 39TH DRIVE



Deschutes County GIS, Sources: Esri, USGS, NOAA



Date: 10/9/2024





BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: October 16, 2024

SUBJECT: Authorize the conveyance of real property located at 640-652 SE Wilson Avenue in Bend to the Central Oregon Intergovernmental Council

RECOMMENDED MOTION:

Move approval of Board signature of Document No. 2024-768, a Statutory Warranty Deed to convey real property located at 640-652 SE Wilson Avenue in Bend to the Central Oregon Intergovernmental Council, and move approval of County Administrator signature of Document No. 2024-814, a Termination Agreement and Release of Claims.

BACKGROUND AND POLICY IMPLICATIONS:

In May 2023, Deschutes County Community Justice through its Adult Parole and Probation division (Adult P&P) was awarded a grant from Central Oregon Intergovernmental Council (COIC), which was funded through the Governor’s Emergency Order 23-02. The purpose of the grant was to establish and operate a male justice-involved transitional housing facility in partnership with a private entity/nonprofit housing provider (Program).

In December 2023, Deschutes County acquired property located at 640-652 SE Wilson Avenue, Bend, known as the Wilson Triplex with grants funds for \$825,000. In January 2024, the County began operating the Program at the property.

Effective March 27, 2024, the Board of County Commissioners moved to terminate the Program, and the County sought to transfer ownership of the Wilson Triplex to COIC.

The true and actual consideration for the conveyance to COIC is the final settlement terms as outlined on the Termination Agreement and Release of Claims known as Deschutes County Document No. 2024-814.

BUDGET IMPACTS:

None

ATTENDANCE:

Kristie Bollinger

REVIEWED  
LEGAL COUNSEL

**AFTER RECORDING RETURN TO:**

Central Oregon Intergovernmental Council  
1250 NE Bear Creek Road  
Bend, OR 97701

**SEND TAX STATEMENTS TO:**

Same as above.

**SPACE ABOVE THIS LINE FOR RECORDER'S USE**

**STATUTORY WARRANTY DEED**

**DESCHUTES COUNTY**, a political subdivision of the State of Oregon, Grantor, conveys and warrants to **CENTRAL OREGON INTERGOVERNMENTAL COUNCIL**, an intergovernmental entity organized under ORS Chapter 190, Grantee, the following described real property, free and clear of encumbrances except as specifically set forth below, situated in the County of Deschutes, State of Oregon:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

THE TRUE AND ACTUAL CONSIDERATION FOR THIS CONVEYANCE IS THE FINAL SETTLEMENT TERMS AS OUTLINED ON DESCHUTES COUNTY DOCUMENT NO. 2024-814 (See ORS 93.030).

**BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND**

SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

IN WITNESS WHEREOF, the undersigned have executed this document on the date(s) set forth below.

DATED this \_\_\_ of \_\_\_\_\_, 2024

BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

\_\_\_\_\_  
PATTI ADAIR, Chair

\_\_\_\_\_  
ANTHONY DEBONE, Vice Chair

ATTEST:

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
PHIL CHANG, Commissioner

State of OREGON  
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, and acknowledged the foregoing instrument on behalf of Deschutes County, Oregon.

\_\_\_\_\_  
Notary Public - State of Oregon

My Commission Expires: \_\_\_\_\_


[Signature page follows]

STATUTORY WARRANTY DEED  
(continued)

IN WITNESS WHEREOF, the undersigned have executed this document on the date(s) set forth below.


Dated 10/14/24

Central Oregon Intergovernmental Council

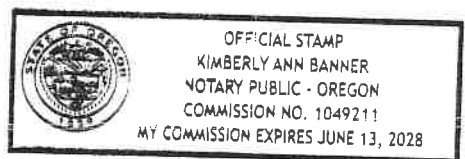
BY:   
Tammy Bahey, Executive Director  
Central Oregon Intergovernmental Council

State of OREGON  
County of DESCHUTES

This instrument was acknowledged before me on 10/14/24 by Tammy Bahey, as Executive Director and Authorized Signer for Central Oregon Intergovernmental Council.

  
Notary Public - State of Oregon

My Commission Expires: June 13, 2028



**EXHIBIT "A"**  
Legal Description

Lot 14 and that Portion on Lot 13, Block 85, Park Addition To Bend, recorded May 5, 1910, in Cabinet A, Page 10, Deschutes County, Oregon, described as follows:

**BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 13; THENCE WEST, 13.00 FEET; THENCE NORTH 03° 08' 53" EAST, 100.15 FEET; THENCE EAST 7.50 FEET; THENCE SOUTH 100.00 FEET TO THE POINT OF BEGINNING, ALL IN BLOCK 85, BEND PARK ADDITION, CITY OF BEND, DESCHUTES COUNTY, OREGON.**

**TOGETHER WITH THE FOLLOWING DESCRIBED TRACT OF LAND:**

**BEGINNING AT THE SOUTHWEST CORNER OF LOT 15, BLOCK 85, BEND PARK ADDITION, CITY OF BEND, DESCHUTES COUNTY, OREGON, SAID CORNER ALSO BEING ON THE NORTH RIGHT OF WAY OF WILSON AVENUE; THENCE EAST ALONG SAID RIGHT OF WAY, A DISTANCE OF 17.98 FEET; THENCE LEAVING SAID RIGHT OF WAY NORTH 01° 56' 25" WEST, 100.06 FEET TO THE NORTH LINE OF SAID LOT 15; THENCE WEST ALONG SAID LINE, 14.59 FEET TO THE NORTHWEST CORNER OF SAID LOT 15; THENCE LEAVING SAID LINE SOUTH ALONG THE WEST LINE OF SAID LOT 15, 100.00 FEET TO THE POINT OF BEGINNING.**



**Certification of Charges Paid**  
[Oregon Revised Statutes (ORS) 311.411]

Certification #:  
106377

All charges have been paid for the real property that is the subject of conveyance between:

Grantor  
DESCHUTES COUNTY, a political subdivision of the State of Oregon

Grantee  
CENTRAL OREGON INTERGOVERNMENTAL COUNCIL, an intergovernmental entity organized under ORS 190

Signed on (date) and for consideration of  
\$ FINAL SETTLEMENT PER DOC NO. 2024-814

Assessor's signature: *[Handwritten Signature]* Date: 10/03/2024

PAGE 5 of 5 – STATUTORY WARRANTY DEED:  
CENTRAL OREGON INTERGOVERNMENTAL COUNCIL  
MAP AND TAX LOT 181204BD02406  
Deschutes County Document No. 2024-768



**TERMINATION AGREEMENT AND RELEASE OF CLAIMS**

This Termination Agreement and Release of Claims ("Agreement") is made as of the date of the last signature affixed hereto ("Effective Date") by and between **CENTRAL OREGON INTERGOVERNMENTAL COUNCIL**, an Oregon entity organized under ORS Chapter 190 ("COIC") and **DESCHUTES COUNTY**, a political subdivision of the State of Oregon, acting by and through its Parole & Probation Department (the "County") as of the date set forth below. COIC and County referred to hereinafter as "Party" or "Parties."

**RECITALS**

WHEREAS, COIC and County entered into a Subrecipient Agreement EO 23-02 011 (County Document No. 2023-690), Amendment No. 1 (County Document No. 2024-059 and Amendment No. 2 (County Document No. 2024-236) for COIC to award State of Oregon EO 23-02 subrecipient grant funding to the County for it to establish and operate a male justice-involved transitional housing facility in partnership with a private entity/non-profit housing provider ("Program") in the total amount of \$1,138,518; and

WHEREAS, County purchased property for the Program with EO funds, located at 640-652 S.E. Wilson Ave., Bend, OR 97702 ("Property"), and the County began operating the Program at the Property in January 2024 with EO funds; and

WHEREAS, County decided to terminate the Program effective March 27, 2024 and sought to transfer ownership of the Property to COIC; and

WHEREAS, County notified COIC of the decision to terminate the Program on March 27, 2024 and submitted all pending invoices for reimbursement relating to the operation of the Program up until the termination of the Program; and

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties agree as follows:

**AGREEMENT**

1. **Recitals.** The provisions of this Agreement are contractual and are not mere recitals. The recitals set forth above are incorporated herein by reference.

2. **County Consideration.** County agrees to provide the following consideration to COIC:

2.1. Conveyance of the Property AS-IS by Statutory Warranty Deed, attached hereto as Exhibit "1", to COIC for all consideration, remedies, and performance owed to COIC pursuant to Document Numbers 2023-690, 2024-059, and 2024-236, including but not limited to damages, staff costs, and any other associated compensation and/or performance caused by the termination of the Program (the "Final Consideration"). Such conveyance shall be recorded within fifteen (15) days from the execution of this Agreement. County will pay the recording fees.

2.2. All personal property purchased for the Property shall remain with the Property and will be transferred with the Property to COIC.

- 3. **Release of Claims.** COIC, for itself, its officers, employees, and agents, and for each of its respective heirs, executors, administrators, successors and assigns (hereinafter individually and collectively referred to as "COIC"), hereby releases, acquits, holds harmless, and forever discharges the County, its current and former elected officials, officers, agents and employees, and each of their respective heirs, executors, administrators, successors and assigns, and all other persons or entities claimed to be liable or who may be liable (hereinafter referred to individually and collectively as the "Released Parties"), from any and all claims, demands, grievances, damages, costs, attorney fees, suits, actions or causes of action, of every kind or nature, known or unknown, present or future, anticipated or unanticipated, arising out of or in any way related to the Program or Document Numbers 2023-690, 2024-059, and 2024-236.
  
- 4. **Warranty of No Other Claims or Lawsuits.** COIC represents and warrants that it has not filed or initiated and further covenants and promises not to file, initiate, prosecute or hereafter maintain any claim, charge, grievance, lawsuit, administrative proceeding or any other proceeding of any kind or nature whatsoever against any of the Released Parties arising out of or in any way related to the Program or Documents Numbers 2023-690, 2024-059, and 2024-236. COIC further covenants and promises not to assert or maintain any such claim by way of counterclaim, cross-claim, third-party claim or in any other manner against any of the Released Parties.
  
- 5. **No Admission of Liability.** It is understood and agreed that this Agreement is part of a settlement and compromise of disputed claims or potential claims. The execution of this Agreement and/or any consideration given shall not be construed or deemed to be an admission of liability by any of the persons or entities released by this Agreement, as each expressly denies liability to the other or to any other person or entity for any claims and/or potential claims which are the subject of this Agreement.
  
- 6. **Non-assignment.** COIC represents that it has not assigned, transferred or liened, voluntarily or involuntarily, all or any part of a right, claim, debt, liability, obligation or counteraction under this Agreement to any person or entity. COIC agrees to defend, save, hold harmless and indemnify the Released Parties should any liens or assignments exist.
  
- 7. **Acknowledgment of Receipt of All Compensation Due.** COIC acknowledges and agrees that it has received all compensation due to it from the County up to the date of its execution of this Agreement, and that the County shall not owe COIC any additional monetary compensation or performance once County transfers the Property to COIC.
  
- 8. **Consultation with Counsel.** The parties acknowledge that they have had the opportunity to consult with their own legal counsel before signing this Agreement and that they have either consulted with their own legal counsel regarding the terms and consequences of this Agreement or have voluntarily elected not to consult with an attorney before signing this Agreement.
  
- 9. **No Representations.** COIC acknowledges and agrees that no representations have been made to it by the County, the Deschutes County Parole & Probation Department, or any of their respective officials, employees or agents regarding the nature or extent of its damages, loss or injury, if any; regarding the effect of this Agreement; or regarding the nature or extent of the legal liability or financial responsibility of any of the parties released by this Agreement.

- 10. **Severability.** Should any provision or provisions of this Agreement be construed by a court of competent jurisdiction to be void, invalid or unenforceable, such construction shall affect only the provision or provisions so construed, and shall not affect, impair or invalidate any of the other provisions of this Agreement which shall remain in full force and effect.
- 11. **Sufficiency of Consideration.** Each Party hereby acknowledges the sufficiency of the consideration given and received under this Agreement.
- 12. **Headings.** The headings of this Agreement are for convenience only and shall not be used to construe or interpret any provision or provisions of this Agreement.
- 13. **Binding Effect.** All terms, provisions and conditions of this Agreement shall be binding upon and inure to the benefit of the parties and to their respective heirs, executors, administrators, agents, representatives, successors and assigns.
- 14. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Oregon, with venue for any dispute being with the Circuit Court for Deschutes County.
- 15. **Signatures.** Each person signing below covenants and warrants that he or she is authorized to sign on behalf of the persons and entities they purportedly represent, and that such Party is authorized to enter into this Agreement, and that such Party is authorized to bind any successor or assign to the Party signing this Agreement.
- 16. **Entire Agreement.** This Agreement constitutes the entire Agreement between the parties concerning the subject matter hereof and supersedes any and all prior or contemporaneous negotiations and/or Agreements between the parties, whether written or oral, concerning the subject matter of this Agreement which are not fully expressed herein. This Agreement may not be modified or amended except by a writing signed by all parties to this Agreement.

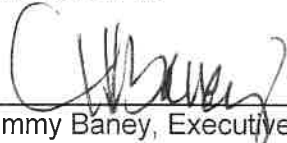
BY SIGNING BELOW, COIC AND THE COUNTY EACH ACKNOWLEDGE THAT THEY HAVE READ THIS THREE-PAGE TERMINATION AGREEMENT AND RELEASE OF CLAIMS, THAT THE PARTIES UNDERSTAND AND AGREE TO ITS TERMS AND THE CONSEQUENCES THEREOF, AND THAT THEY HAVE VOLUNTARILY SIGNED THIS AGREEMENT.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be effective for all purposes as of the Effective Date.

DATED this 4<sup>th</sup> day of October, 2024

CENTRAL OREGON  
INTERGOVERNMENTAL COUNCIL

  
\_\_\_\_\_  
Tammy Bahey, Executive Director

DATED this \_\_\_\_ day of \_\_\_\_\_, 2024

DESCHUTES COUNTY

\_\_\_\_\_  
Nick Lelack, County Administrator



## BOARD OF COMMISSIONERS

# AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** October 16, 2024

**SUBJECT:** Second reading of Ordinance No. 2024-010 – Remand of the Eden Plan  
Amendment / Zone Change

**RECOMMENDED MOTIONS:**

1. Move approval of second reading of Ordinance No. 2024-010 by title only.
2. Move adoption of Ordinance No. 2024-010.

**BACKGROUND AND POLICY IMPLICATIONS:**

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

The Board conducted first reading of the ordinance on October 2, 2024.

**BUDGET IMPACTS:**

None

**ATTENDANCE:**

Haleigh King, Associate Planner



## MEMORANDUM

**TO:** Deschutes County Board of Commissioners (Board)

**FROM:** Haleigh King, Associate Planner

**DATE:** October 9, 2024

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

The Board of County Commissioners (Board) will consider a second reading of Ordinance No. 2024-010 on October 16, 2024 approving file nos. 247-24-000395-A (247-21-001043-PA, 1044-ZC). The applicant is requesting approval of Plan Amendment and Zone Change applications remanded by the Oregon Land Use Board of Appeals.

### I. BACKGROUND

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

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

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

The Board conducted the first reading of Ordinance 2024-010 on October 2, 2024 by title only. Staff has incorporated the edits discussed at the first reading into the attached Ordinance and supporting documents.

## II. SECOND READING

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

### ATTACHMENTS:

1. Draft Ordinance 2024-010 and Exhibits

Exhibit A: Legal Description

Exhibit B: Proposed Comprehensive Plan Amendment Map

Exhibit C: Proposed Zone Change Map

Exhibit D: Comprehensive Plan Section 23.01.010, Introduction

Exhibit E: Comprehensive Plan Section 5.12, Legislative History

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

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

Exhibit H: Hearing's Officer Recommendation

REVIEWED \_\_\_\_\_  
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

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

ORDINANCE NO. 2024-010

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

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

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

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



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

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

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

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

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

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

Section 5. FINDINGS. The Board adopts as its findings in support of this Ordinance the Decision of the Board on remand as set forth in Exhibit "F" and incorporated by reference herein. These findings supplement and control over inconsistent findings in Ordinance No. 2022-013 as set forth in the original Decision of the Board, attached as Exhibit "G" and the Recommendation of the Hearings Officer, attached as Exhibit "H".

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

Dated this \_\_\_\_\_ of \_\_\_\_\_, 2024

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

\_\_\_\_\_  
PATTI ADAIR, Chair

\_\_\_\_\_  
ANTHONY DEBONE, Vice Chair

ATTEST:

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
PHIL CHANG, Commissioner

Date of 1<sup>st</sup> Reading: \_\_\_\_ day of \_\_\_\_\_, 2024.

Date of 2<sup>nd</sup> Reading: \_\_\_\_ day of \_\_\_\_\_, 2024.

Record of Adoption Vote:

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

Effective date: \_\_\_\_ day of \_\_\_\_\_, 202\_.

ATTEST

\_\_\_\_\_  
Recording Secretary

**EXHIBIT A****Corrected Legal Descriptions****TRACT 1 (Current tax lot 14-12-2100-00700)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXCEPTING the Northerly 165.00 feet THEREOF.

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

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

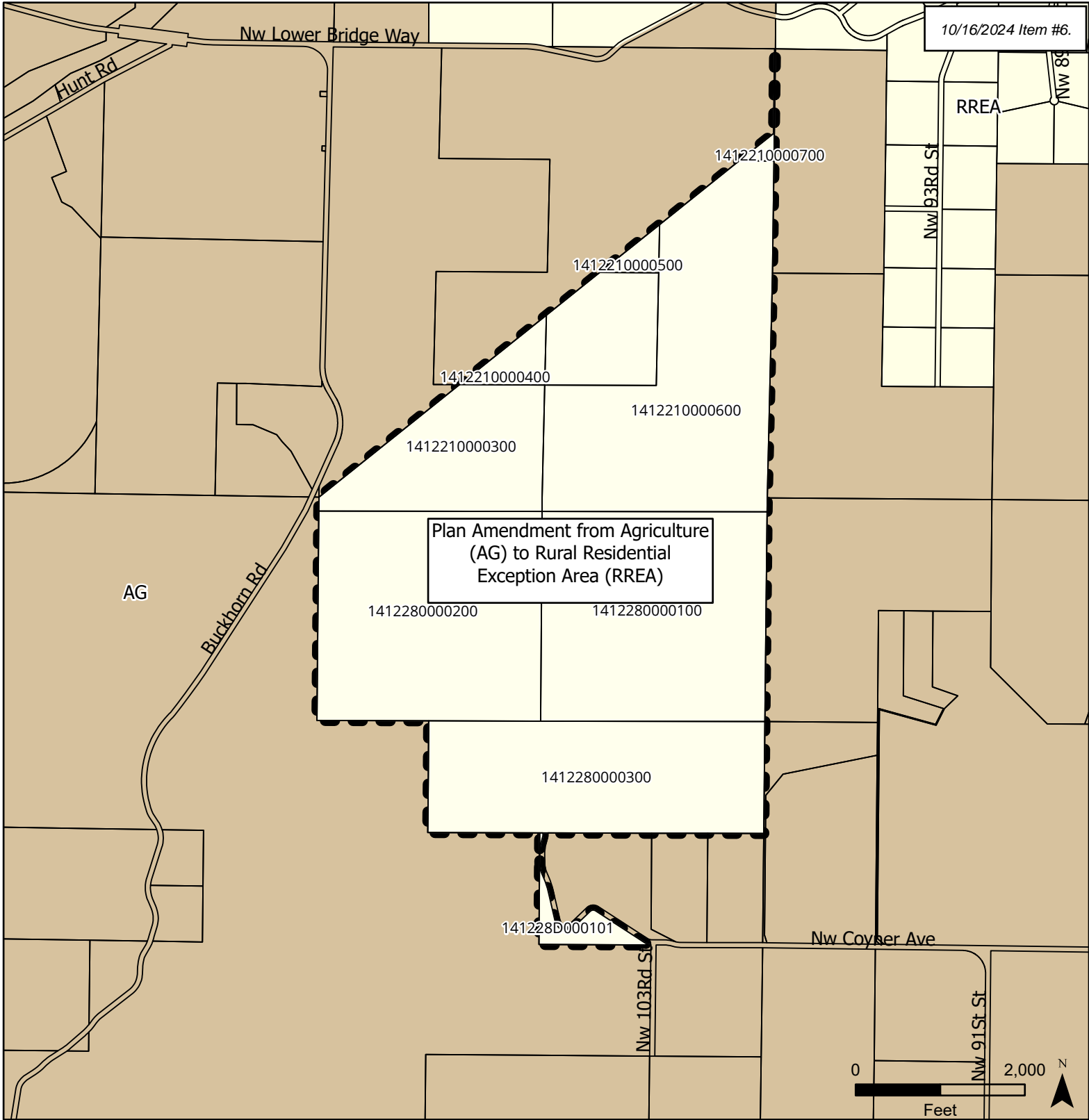
**TRACT 8 (Current tax lot 14-12-2800-00300)**

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

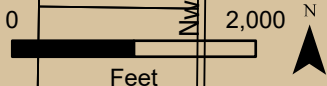
**TRACT 9 (Current tax lot 14-12-28D0-00101)**






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

\*26007-002\BARGAIN AND SALE DEED- 710 ACRES FROM EDEN ENTERPRISES, LLC TO EDEN CENTRAL PROPERTIES, LLC (03772567);2



Plan Amendment from Agriculture (AG) to Rural Residential Exception Area (RREA)



-  Proposed Plan Amendment Boundary
-  Comprehensive Plan Designation
-  RREA - Rural Residential Exception Area
-  AG - Agriculture
-  Subject\_Property

# Proposed Comprehensive Plan Map

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

## Exhibit "B" to Ordinance 2024-010

BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

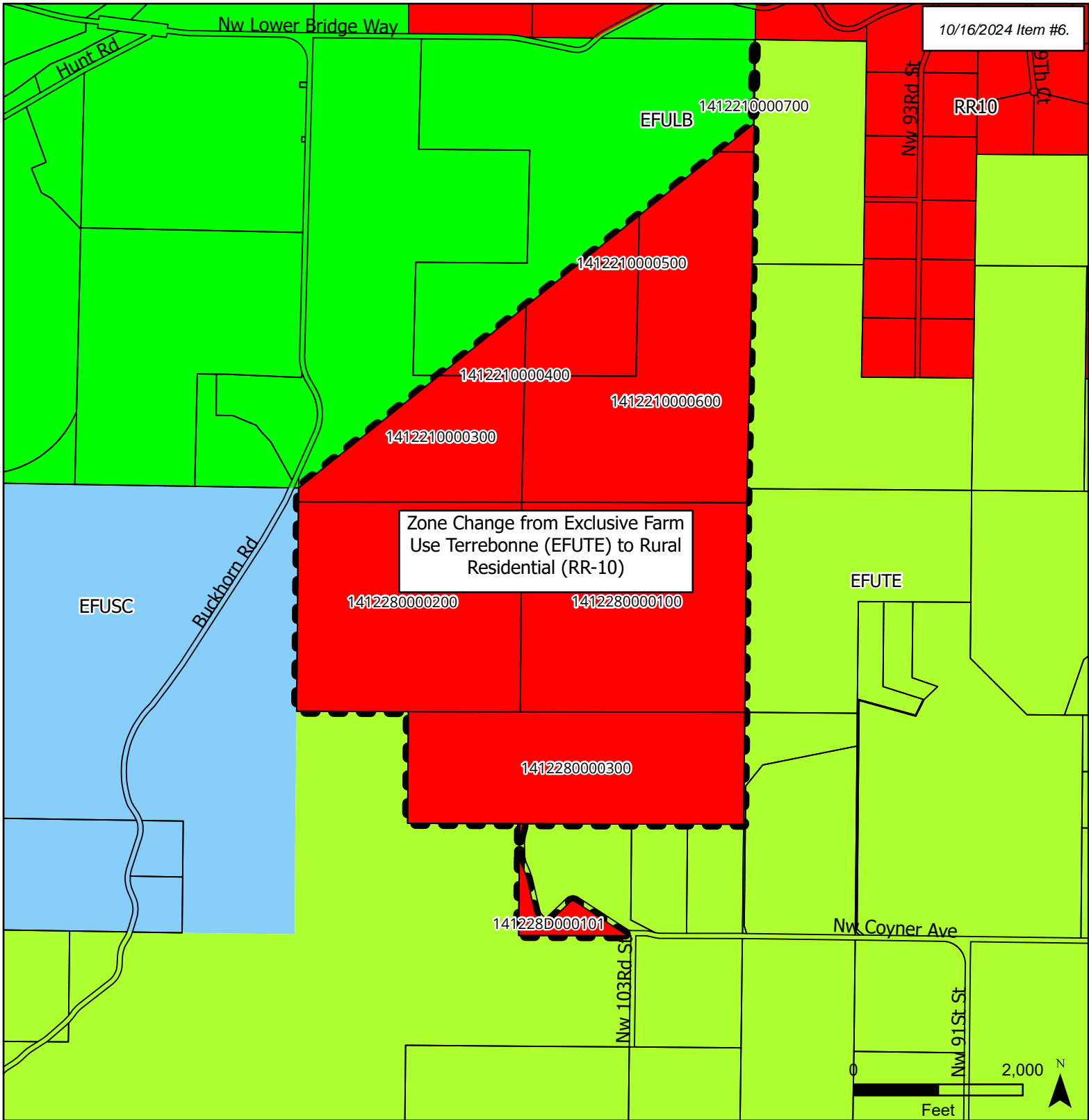
\_\_\_\_\_  
 Patti Adair, Chair

\_\_\_\_\_  
 Anthony DeBone, Vice Chair

\_\_\_\_\_  
 Phil Chang, Commissioner

ATTEST: Recording Secretary

Dated this \_\_\_\_ day of \_\_\_\_, 20\_\_\_\_  
 Effective Date: \_\_\_\_, 20\_\_\_\_



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

Proposed Zone Boundary

**Zoning**

- RR10 - RURAL RESIDENTIAL
- EFUSC - SISTERS/CLOVERDALE SUBZONE
- EFUTE - TERREBONNE SUBZONE
- EFULB - LOWER BRIDGE SUBZONE

GISData.GISADMIN.Street

**Proposed Zoning Map**

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

**Exhibit "C"  
 to Ordinance 2024-010**

BOARD OF COUNTY COMMISSIONERS  
 OF DESCHUTES COUNTY, OREGON

\_\_\_\_\_  
 Patti Adair, Chair

\_\_\_\_\_  
 Anthony DeBone, Vice Chair

\_\_\_\_\_  
 Phil Chang, Commissioner

ATTEST: Recording Secretary

Dated this \_\_\_\_ day of \_\_\_\_, 20\_\_\_\_  
 Effective Date: \_\_\_\_, 20\_\_\_\_

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

**TITLE 23 COMPREHENSIVE PLAN**

**CHAPTER 23.01 COMPREHENSIVE PLAN**

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

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

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



- AI. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-011, are incorporated by reference herein.
- AJ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-006, are incorporated by reference herein.
- AK. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-019, are incorporated by reference herein.
- AL. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-016, are incorporated by reference herein.
- AM. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-001, are incorporated by reference herein.
- AN. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-002, are incorporated by reference herein.
- AO. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-003, are incorporated by reference herein.
- AP. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-008, are incorporated by reference herein.
- AQ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-007, are incorporated by reference herein.
- AR. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-006, are incorporated by reference herein.
- AS. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-009, are incorporated by reference herein.
- AT. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-013, are incorporated by reference herein.
- AU. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2021-002, are incorporated by reference herein.
- AV. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2021-005, are incorporated by reference herein.
- AW. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2021-008, are incorporated by reference herein.
- AX. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-001, are incorporated by reference herein.
- AY. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-003, are incorporated by reference herein.

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

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

# Section 5.12 Legislative History

## Background

This section contains the legislative history of this Comprehensive Plan.

**Table 5.12.1 Comprehensive Plan Ordinance History**

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

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

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

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

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

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



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

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

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

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

EXHIBIT F- Ordinance 2024-010

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

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

**APPLICANT:** 710 Properties, LLC

**OWNER:** Eden Central Properties, LLC

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

**STAFF PLANNER:** Haleigh King, AICP, Associate Planner  
[Haleigh.King@deschutes.org](mailto:Haleigh.King@deschutes.org), 541-383-6710

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

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

**I. PROCEDURAL HISTORY:**

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

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

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

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

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

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

**II. FINDINGS AND CONCLUSIONS OF LAW:**

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

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

**Legal Requirements**

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

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

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

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

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

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

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

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

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

*thereof.*  
Emphasis added.

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

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

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

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

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

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



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

**LUBA’s Decision**

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

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

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

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

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<sup>1</sup> We address this rule in further detail below.  
<sup>2</sup> We address this issue in further detail, below.

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

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

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

The Buchanans use their nearby property for wintering and calving cattle. They claim that the Keystone cattle operation is profitable<sup>3</sup> and that the Eden Central property is “suitable for grazing on at least a seasonal basis, with an eye to making a profit by so doing.” 2024-07-24 Buchanan letter, p. 2. They claim to need to lease or make use of 700-900 non-irrigated acres [Eden Central] near their small ranch to expand their cattle operation and to store farm equipment and horses. 2024-07-24 Buchanan letter, p. 5. In Mr. Buchanan’s combined use plan, he would use the property from April or May until early August which we refer to as Spring or seasonal grazing herein. He would not keep cattle on the Property during other months. He would not feed them hay in that location. This plan confirms the opinion of Rancher Rand Campbell the Property is not a suitable place to feed cattle in winter months. Cattle are typically wintered on feeding grounds in low lying areas that provide cover from the elements; not on the top of a plateau where it is especially cold and windy. Rec-3022.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Other Issues Related to Suitability for Farm Use**

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

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



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

Even if the Property were operated in conjunction with adjacent or nearby lands, the Property remains unsuitable for conducting agricultural uses. Seventy one percent of the subject property is comprised of Class VII soils. According to the NRCS Soil Survey of the Upper Deschutes River Area, “Class VII soils have very severe limitations that make them unsuitable for cultivation” and that the Class VI soils found on 29 percent of the subject property “have severe limitations that make them generally unsuitable for cultivation.” All four properties that are adjoining or nearby lands engaged in farm practices (identified in our 2022 decision) rely on irrigation water to conduct farm operations and are comprised of superior soils. Those lands, however, lie 200 to 250 feet below the plateau area of the subject property and are far better suited for farm use based on location, irrigation and soils and Additionally, the cost of establishing irrigation is too high on the subject property to merit installation of an irrigation system on the Property given that the cost of obtaining irrigated, developed farm land with superior soils is less expensive than attempting to irrigate the Property, with its rocky, poor soils, in order to produce crops like those on adjacent and nearby lands. And, nearby and adjacent farms are already engaged other farm uses, such as hay or grass production. It is unreasonable to assume that any of these nearby and adjacent lands that lie far below and away from the plateau area of the Property<sup>6</sup> would be willing to make the investment in establishing a new, isolated crop field – excluding the purchase cost of the subject property – at a cost that exceeds the cost of buying a more suitable developed, irrigated farm property. Additionally, no area farmer has expressed an interest in conducting a farm use on the subject property other than seasonal grazing of livestock. Given these facts, a reasonable farmer of any of the four adjoining and nearby properties would not purchase and develop the subject property to expand the irrigated crop use of their property, or to graze livestock with the primary intent of making a profit in money. The Board therefore finds, consistent with its past decision, that farm uses that rely upon or require irrigation water are unsuitable on the Property and fail the suitability test under that consideration.

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

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

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

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

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

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

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

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

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

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

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

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

ORS 215.203(2)(a) says:

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

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

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

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

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

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

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

DLCD also argues:

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

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

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

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

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

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

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

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

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

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

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

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

**a. Soil Fertility**

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

**b. Suitability for Grazing**

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

**c. Climatic Conditions**

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

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

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

**e. Existing Land Use Pattern**

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

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

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

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

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

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

**f. Technology and Energy Inputs Required**

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

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

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

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

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



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

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

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

- (1) At a minimum, one exempt well would need to be drilled to serve these uses and water use would be limited to 5,000 gpd per well (commercial use). The cost to drill an exempt well on the Eden Central land would be approximately \$29,610.00 according to a March 30, 2023 estimate obtained from Jack Abbas of Abbas Well Drilling. The cost to drill a larger well to serve a large manufacturing (construction) facility would be roughly similar to the cost of drilling one agricultural well at a cost of approximately \$295,000.<sup>8</sup>
- (2) Improving the property to permit a construction and/or maintenance use or for additional facilities will also include the cost of improving, at a minimum, the access road. This is necessary so that trucks delivering parts and equipment for repair or materials for the construction of equipment or facilities could access the property. A cost estimate from Robinson & Owen Heavy Construction concluded that preparation and construction costs for just the mile access road would cost in excess of \$612,203.50. Applicant’s Exhibit 81.
- (3) Farm equipment repair or maintenance facilities require technology inputs because they rely on specialized tooling, parts and machinery to repair farm equipment. Applicant’s Exhibit 40.

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

In total, the basic requirements to establish the onsite maintenance and construction of equipment and facilities for “farm use” on the property would likely exceed \$1,200,000.<sup>9</sup> Financing the cost of such capital improvements at a favorable farm loan interest rate of 4% would cost at least \$48,000 per year in interest costs.<sup>10</sup> This additional cost for technology and energy inputs is so substantial that no one would attempt to establish farm equipment or facilities repair or maintenance facilities on the subject property.

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

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

**g. Accepted Farming Practices**

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

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

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

**Identification of Farm Practices on Agricultural Lands**

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

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

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

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

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

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

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

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

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

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

**EFU PROPERTIES TO EAST (NORTH TO SOUTH)**

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

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

**EFU PROPERTIES TO THE SOUTH**

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

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

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

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

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

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

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

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

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

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

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

**Farm Practices on Adjacent and Nearby Agricultural Lands**

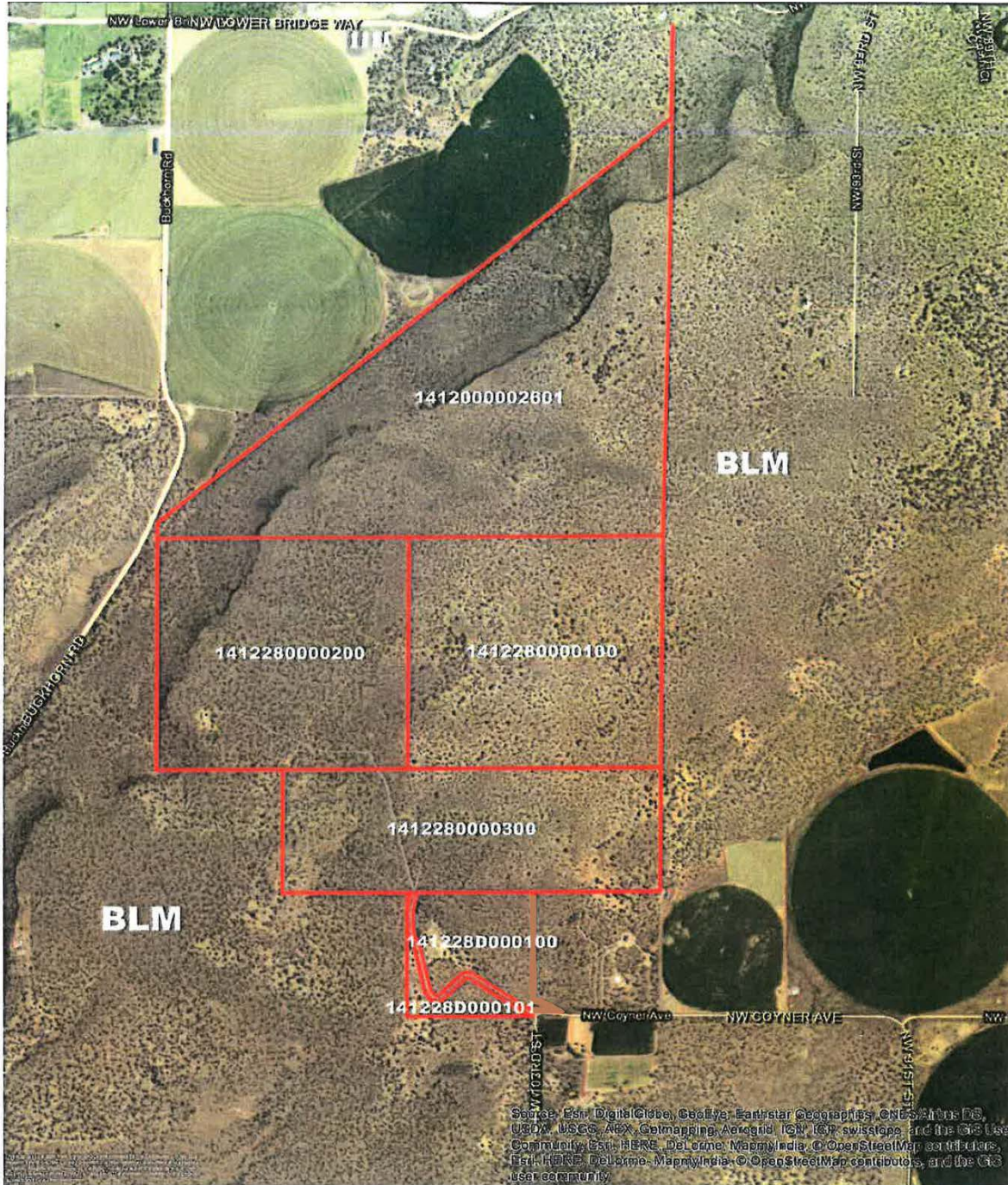
The Study Area contains four properties that engage in farm practices: (a) the Buchanan and Stabb properties on Coyner Avenue southeast of the subject property; and (b) the Volwood Farms and Nicol Valley properties west of the subject property. Each is addressed further below. The owners of the Nicol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

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



### Existing Status of the Subject Property

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

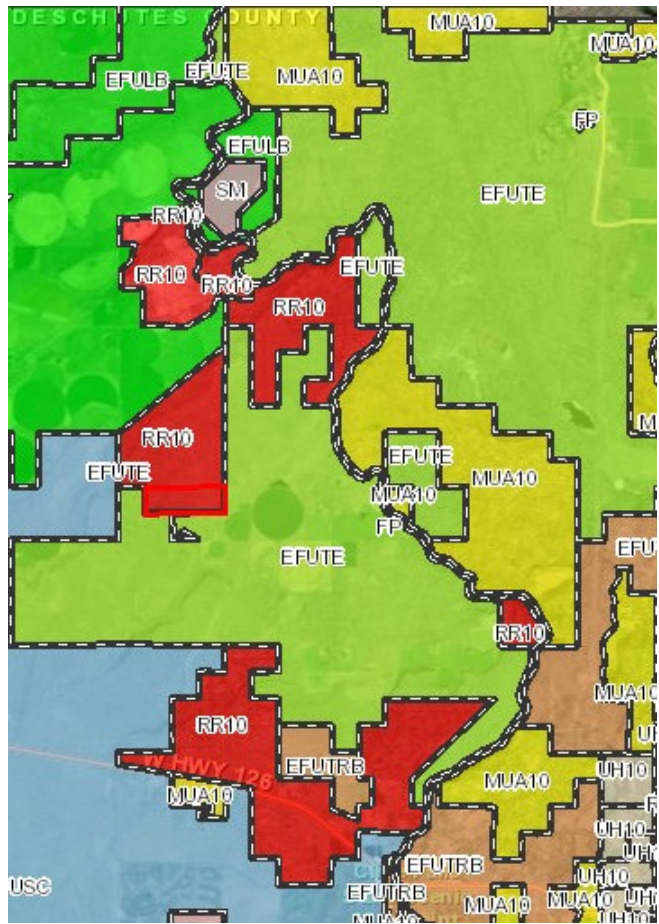


6 Subject Lots

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

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

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



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

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



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

**Traffic Impacts**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Water Impacts**

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Nuisance and Trespass**

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

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

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

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

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

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

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

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

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

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

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

***Stabb Property Near Southeast Corner of Subject Property***

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

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

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

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

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

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

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

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

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

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

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

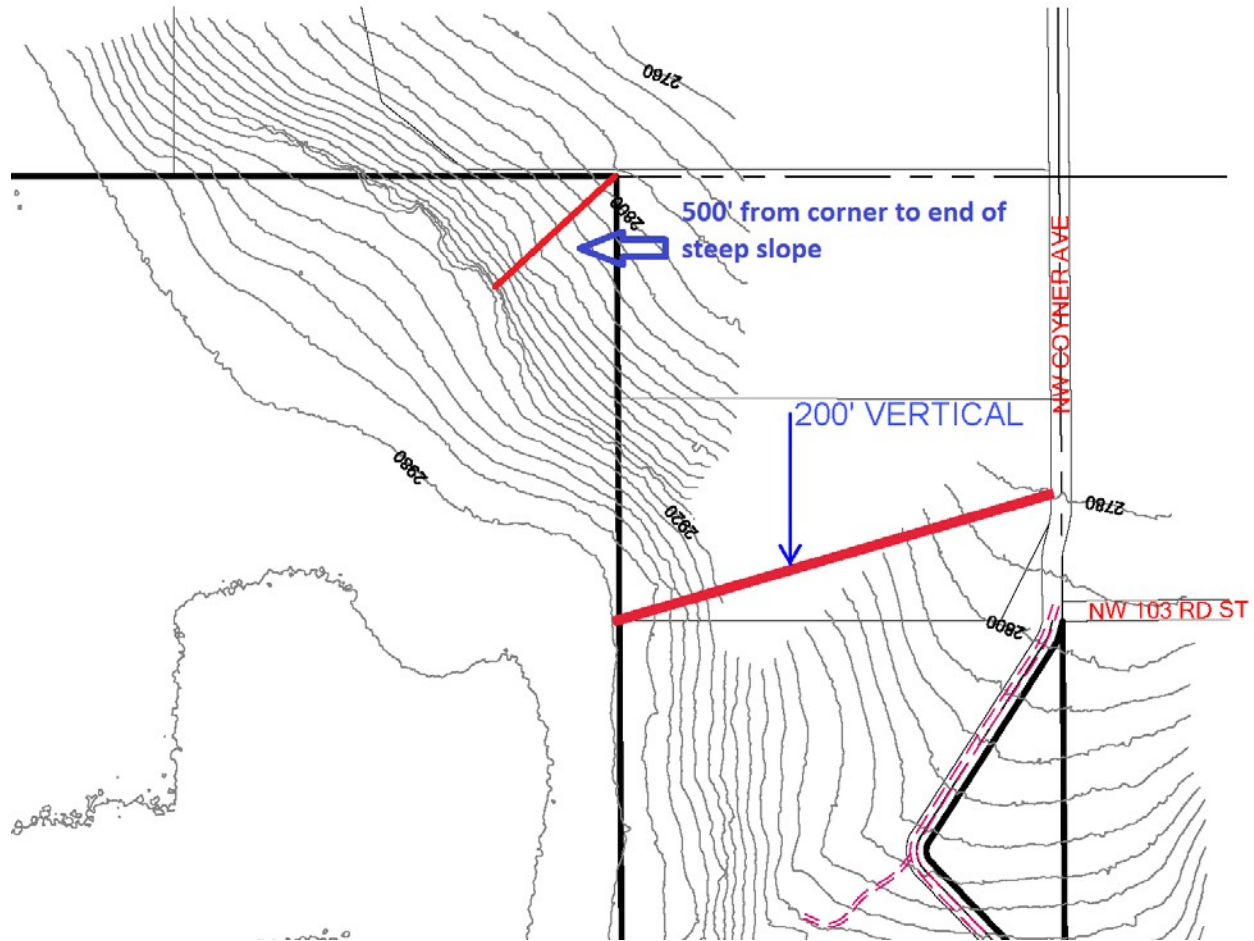
The irrigated hay ground on the Stabb property touches the flag pole part of Tax Lot 301, a nonfarm parcel. The flag pole area is a 20-foot-wide strip of land. It lies between the hay field and the Hayes nonfarm parcel and dwelling to the west, Rec-2518, 3389, 1000 (scaled aerial photograph). Three other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

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

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

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





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

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

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

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

***Buchanan Property Near One Point of Southern Boundary of Subject Property***

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

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

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

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

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

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

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

***Volwood Farms and Nicol Deschutes Valley Farms***

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

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

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

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

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

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

***Alternative Findings re Trespass and Nuisance Impacts***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Water and Traffic Impacts**

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

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

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

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

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

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

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

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

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

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

**Wastewater Impacts**

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



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

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

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

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

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

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

**III. DECISION:**

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

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

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

Attachments:

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

Dated this \_\_\_\_ day of \_\_\_\_\_ 2024

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

**CONDITIONS OF APPROVAL AGREEMENT  
AND RESTRICTIVE COVENANT**

This conditions of approval agreement is made this 9 day of October, 2024 by Eden Central Properties, LLC, an Oregon limited liability company (hereinafter “Eden”) and Deschutes County, a political subdivision of the State of Oregon (hereinafter “County”).

**RECITALS**

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

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

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

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

NOW THEREFORE, the parties agree as follows:

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

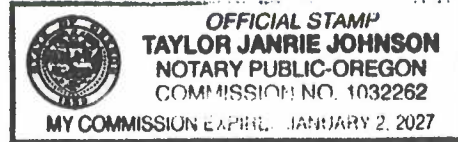
3. Any exempt well on the Property existing now or later developed shall be limited to residential use and a maximum of one quarter (1/4) acre of irrigation.
4. Residential development on the Property shall be limited to a maximum of seventy one (71) new dwellings.
5. Residential access to the Property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



DATED this 9 day of Oct, 2024.

PKB

[Signature]  
By: Robert R. Turner  
Its: Manager



STATE OF OREGON )  
 ) SS.  
COUNTY OF DESCHUTES )

This instrument was acknowledged before me on October 9th, 2024 by Robert R. Turner as Manager of Eden Central Properties, LLC, an Oregon limited liability corporation.

Taylor Johnson  
Notary Public  
Print Name Taylor Johnson  
My commission expires 01.02.2027

**EXHIBIT A**

**PROPERTY DESCRIPTION**

**EXHIBIT A****Corrected Legal Descriptions****TRACT 1 (Current tax lot 14-12-2100-00700)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXCEPTING the Northerly 165.00 feet THEREOF.

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

The NW1/4 of Section 28, T14S, R12E, W.M.

EXCEPTING THEREFROM the Northerly 165.00 feet THEREOF.

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

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

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

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

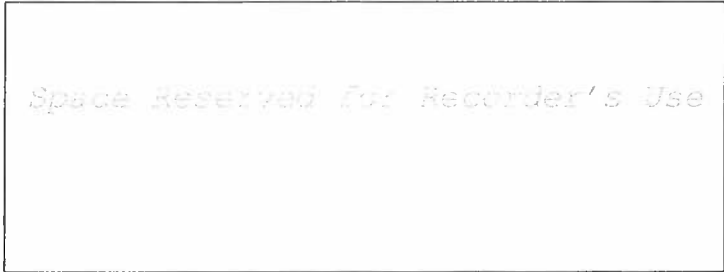
\*26007-002\BARGAIN AND SALE DEED- 710 ACRES FROM EDEN ENTERPRISES, LLC TO EDEN CENTRAL PROPERTIES, LLC (03772567);2



**EXHIBIT B**

**EASEMENT (WAIVER OF REMONSTRANCE)**

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



**EASEMENT  
(WAIVER OF REMONSTRANCE)**

Eden Central Properties, LLC, herein called the Grantor, is the owner/s of real property described as set forth in Exhibit A. In accordance with the conditions set forth in the decision of the Deschutes County Planning Division approving land use permit \_\_\_\_\_, Grantor hereby grants to the owner(s) of all property adjacent to the above described property (Grantees), a perpetual non-exclusive farm practices management easement as follows:

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

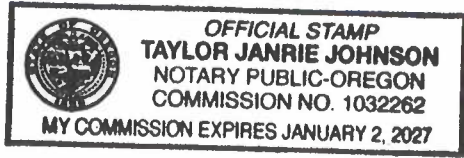
This easement is appurtenant to all property adjacent to the above-described property, and shall bind the heirs, successors, and assigns of Grantor/s, and shall endure for the benefit of the adjacent landowners, their heirs, successors, and assigns. The adjacent landowners, their heirs, successors, and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

***Signature Page to Follow***

Dated this 9 day of oct, 2024 GRANTOR

Eden Central Properties, LLC

[Signature]  
By: Robert R Turner  
Its: Manager



STATE OF OREGON )  
 ) ss.  
COUNTY OF Deschutes )

On this 9 day of October, 2024, before me, a Notary Public in and for said County and State, personally appeared Robert Turner and \_\_\_\_\_, who is/are known to me to be the identical individual/s described in the above document, and who acknowledged to me that he/she/they executed the same freely and voluntarily.

Taylor Johnson  
Notary Public for Oregon  
My Commission Expires: 01.02.2027

1770

STATE OF Oregon )  
 ) ss.  
COUNTY OF Deschutes )



On this 9 day of October, 2024 before me, a Notary Public in and for said County and State, personally appeared Robert R Turner known to me to be the Manager of Eden Central Properties and who executed the above document on behalf of said corporation.

Taylor Johnson  
Notary Public for Oregon  
My Commission Expires: 01.02.2027

**EXHIBIT A****Corrected Legal Descriptions****TRACT 1 (Current tax lot 14-12-2100-00700)**

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

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

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

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

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thence on a straight line to the Southwest corner of said Section 21.

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

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

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thence South 1000.00 feet along a line parallel to the East line of said Section 21;  
thence on a straight line to the Southwest corner of said Section 21.

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

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thence on a straight line to the Southwest corner of said Section 21.

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

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

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thence South 1000.00 feet along a line parallel to the East line of said Section 21;  
thence on a straight line to the Southwest corner of said Section 21.

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

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

EXCEPTING the Northerly 165.00 feet THEREOF.

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

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

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

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

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

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

\*26007-002|BARGAIN AND SALE DEED- 710 ACRES FROM EDEN ENTERPRISES, LLC TO EDEN CENTRAL PROPERTIES, LLC (03772567);2

**EXHIBIT C**

**STATUTORY WARRANTY DEED**

After recording return to:  
First American Title  
395 SW Bluff Drive, Suite 100  
Bend, OR 97702

58+5



After recording return to:  
Elizabeth Adair Buchanan  
10142 NW Coyner Avenue  
Redmond, OR 97756

Until a change is requested all tax statements shall be sent to the following address:  
Elizabeth Adair Buchanan  
10142 NW Coyner Avenue  
Redmond, OR 97756

File No.: 7061-2304985 (SJN)  
Date: August 18, 2014

THIS SPACE RESERVED FOR RECORDER'S USE

Deschutes County Official Records		<b>2014-034053</b>
D-D		<b>10/10/2014 02:02:42 PM</b>
Stn=2 PG		
\$10.00 \$11.00 \$10.00 \$6.00 \$21.00		<b>\$58.00</b>

I, Nancy Blankenship, County Clerk for Deschutes County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.  
Nancy Blankenship - County Clerk

### STATUTORY WARRANTY DEED

**Larry H. Brown and Nancy Jernigan (who acquired title as Nancy Jernigan-Brown)**, Grantor, conveys and warrants to **Elizabeth Adair Buchanan**, Grantee, the following described real property free of liens and encumbrances, except as specifically set forth herein:

**LEGAL DESCRIPTION:** Real property in the County of Deschutes, State of Oregon, described as follows:

**THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER (NE1/4 NE1/4) OF SECTION 33, TOWNSHIP 14 SOUTH, RANGE 12 EAST OF THE WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON. EXCEPT THE NORTHERLY 30 FEET AND THE WESTERLY 60 FEET OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER (NE1/4 NE1/4) OF SECTION 33, TOWNSHIP 14, SOUTH, RANGE 12, EAST OF THE WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON. ALSO EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE PROPERTY DESCRIBED IN DEDICATION DEEDS RECORDED NOVEMBER 6, 1979 IN VOLUME 310, PAGE 952, DEED RECORDS, AND RECORDED JUNE 29, 1981 IN VOLUME 343, PAGE 485, DEED RECORDS.**

**NOTE: THIS LEGAL DESCRIPTION WAS CREATED PRIOR TO JANUARY 1, 2008.**

**Subject to:**

1. The **2014-2015** Taxes, a lien not yet payable.
2. Covenants, conditions, restrictions and/or easements, if any, affecting title, which may appear in the public record, including those shown on any recorded plat or survey.

The true consideration for this conveyance is **\$506,000.00**. (Here comply with requirements of ORS 93.030)

APN: 167905

Statutory Warranty Deed  
- continued

File No.: 7061-2304985 (SJN)

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Dated this 10 day of October, 2014.

Larry H. Brown  
Larry H. Brown

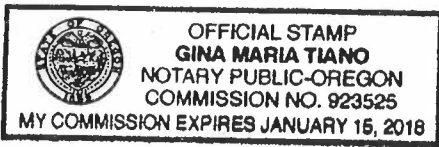
Nancy Jernigan  
Nancy Jernigan

STATE OF Oregon )  
)ss.  
County of Deschutes )

This instrument was acknowledged before me on this 10<sup>th</sup> day of October, 2014  
by **Larry H. Brown and Nancy Jernigan.**

Gina Maria Tiano

Notary Public for Oregon  
My commission expires: 1/15/18





**EXHIBIT D**

**STATUTORY WARRANTY DEED**

After recording return to:  
First American Title  
300 SW Bluff Drive, Suite 100  
Bend, OR 97702



After recording return to:  
Jack F. Vollstedt  
25994 Hall Road  
Junction City, OR 97448

Until a change is requested all tax  
statements shall be sent to the  
following address:  
Jack F. Vollstedt  
25994 Hall Road  
Junction City, OR 97448

File No.: 7067-1946430 (SS)  
Date: August 22, 2012

113-  
+5-

THIS SPACE RESERVED FOR RECORDER'S USE

Deschutes County Official Records **2012-034422**  
D-D  
Stn=1 PG **08/31/2012 02:02:30 PM**  
\$30.00 \$11.00 \$10.00 \$16.00 \$6.00 **\$73.00**

I, Nancy Blankenship, County Clerk for Deschutes County, Oregon,  
certify that the instrument identified herein was recorded in the Clerk  
records.

Nancy Blankenship - County Clerk

**STATUTORY WARRANTY DEED**

**Aaron Borrer and Rebecca Borrer, husband and wife**, Grantor, conveys and warrants to **Jack F. Vollstedt**, Grantee, the following described real property free of liens and encumbrances, except as specifically set forth herein:

**LEGAL DESCRIPTION:** Real property in the County of Deschutes, State of Oregon, described as follows:

**PARCEL I:**

**A PARCEL OF LAND LOCATED IN THE WEST ONE-HALF OF SECTION 21, AND THE EAST HALF OF THE NORTHEAST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER OF SECTION 20, TOWNSHIP 14 SOUTH, RANGE 12, EAST OF THE WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

The true consideration for this conveyance is **\$2,000,000.00**. (Here comply with requirements of ORS 93.030)

APN: 124848

Statutory Warranty Deed  
- continued

File No.: 7067-1946430 (SS)

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 21, TOWNSHIP 14 SOUTH, RANGE 12, EAST OF THE WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON; THENCE NORTH 00° 41' 27" EAST, 291.00 FEET ALONG THE WEST LINE OF SAID SECTION 21 TO THE WESTERLY RIGHT OF WAY LINE FOR BUCKHORN ROAD; THENCE NORTH 23° 29' 27" EAST, 398.65 FEET ALONG SAID WESTERLY RIGHT OF WAY LINE; THENCE FOLLOWING THE ARC OF A 543.69 FEET RADIUS CURVE TO THE LEFT A DISTANCE OF 512.10 FEET (THE LONG CHORD OF WHICH BEARS NORTH 03° 29' 33" WEST, 493.38 FEET) ALONG SAID WESTERLY RIGHT OF WAY LINE; THENCE NORTH 30° 28' 33" WEST, 118.56 FEET ALONG SAID WESTERLY RIGHT OF WAY LINE; THENCE FOLLOWING THE ARC OF A 603.69 FOOT RADIUS CURVE TO THE RIGHT, A DISTANCE OF 137.27 FEET (THE LONG CHORD OF WHICH BEARS NORTH 23° 57' 43" WEST, 136.97 FEET) ALONG SAID WESTERLY RIGHT OF WAY LINE TO THE WEST LINE OF SAID SECTION 21; THENCE NORTH 00° 41' 27" EAST, 2722.08 FEET ALONG THE WEST LINE OF SAID SECTION 21 TO A POINT 30.00 FEET SOUTH OF AN EXISTING WELL; THENCE NORTH 89° 18' 33" WEST, 72.30 FEET TO A POINT 20.00 FEET WEST OF AN EXISTING WELL; THENCE NORTH 00° 41' 27" EAST, 60.00 FEET TO A POINT 30.00 FEET NORTH OF AN EXISTING WELL; THENCE SOUTH 89° 18' 33" EAST, 72.30 FEET TO THE WEST LINE OF SAID SECTION 21; THENCE NORTH 00° 41' 27" EAST, 603.75 FEET ALONG THE WEST LINE OF SAID SECTION 21 TO A POINT 30.00 FEET SOUTH OF AN EXISTING WELL; THENCE NORTH 89° 18' 33" WEST, 88.70 FEET TO A POINT 20.00 FEET WEST OF AN EXISTING WELL; THENCE NORTH 00° 41' 27" EAST, 60.00 FEET TO A POINT 30.00 FEET NORTH OF AN EXISTING WELL; THENCE SOUTH 89° 18' 33" EAST, 88.70 FEET TO THE WEST LINE OF SAID SECTION 21; THENCE NORTH 00° 41' 27" EAST, 538.32 FEET ALONG THE WEST LINE OF SAID SECTION 21 TO THE NORTHWEST CORNER OF SAID SECTION 21; THENCE SOUTH 89° 50' 18" EAST, 1317.16 FEET ALONG THE NORTH LINE OF THE NORTHWEST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 21 TO THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER; THENCE SOUTH 00° 38' 35" WEST, 1336.61 FEET ALONG THE EAST LINE OF SAID NORTHWEST QUARTER OF THE NORTHWEST QUARTER TO THE SOUTHEAST CORNER OF SAID NORTHWEST QUARTER OF THE NORTHWEST QUARTER; THENCE SOUTH 89° 59' 32" EAST, 1318.31 FEET ALONG THE NORTH LINE OF THE SOUTHEAST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 21 TO THE NORTHEAST CORNER OF SAID SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER; THENCE SOUTH 00° 35' 42" WEST, 1333.07 FEET ALONG THE EAST LINE OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER TO THE SOUTHEAST CORNER OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER; THENCE SOUTH 89° 51' 16" WEST, 1319.47 FEET ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER TO THE SOUTHWEST CORNER OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER; THENCE SOUTH 00° 38' 35" WEST, 1337.43 FEET ALONG THE WEST LINE OF THE NORTHEAST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 21 TO THE SOUTHWEST CORNER OF SAID NORTHEAST QUARTER OF THE SOUTHWEST QUARTER; THENCE NORTH 89° 44' 11" EAST, 312.97 FEET ALONG THE SOUTH LINE OF SAID NORTHEAST QUARTER OF THE SOUTHWEST QUARTER; THENCE SOUTH 50° 45' 24" WEST, 2130.17 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

APN: 124848

Statutory Warranty Deed  
- continued

File No.: 7067-1946430 (SS)

**A PARCEL OF LAND IN SECTIONS 20 AND 21 IN TOWNSHIP 14 SOUTH, RANGE 12, EAST OF THE MERIDIAN, DESCHUTES COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

**COMMENCING AT A POINT ON THE NORTH LINE OF SAID SECTION 21, SAID POINT BEING 10.00 FEET WEST OF THE NORTHEAST CORNER OF SAID SECTION 21; THENCE SOUTH PARALLEL WITH THE EAST LINE OF SAID SECTION 21, A DISTANCE OF 1000.00 FEET; THENCE SOUTHWESTERLY ON A STRAIGHT LINE 6911.00 FEET MORE OR LESS TO THE SOUTHWEST CORNER OF SAID SECTION 21; THENCE NORTH 01° 08' 07" EAST ALONG THE WEST LINE OF SAID SECTION 21, A DISTANCE OF 1324.05 FEET; THENCE SOUTH 88° 07' 02" EAST, A DISTANCE OF 100.07 FEET TO THE CENTERLINE OF BUCKHORN ROAD AS IT NOW EXISTS; THENCE NORTHERLY ALONG THE CENTERLINE OF BUCKHORN ROAD, A DISTANCE OF 2791 FEET MORE OR LESS TO A POINT, SAID POINT BEING 30.00 FEET SOUTH OF THE CENTER OF IRRIGATION WELL NO. 6; THENCE NORTH 88° 51' 53" WEST, 100.0 FEET MORE OR LESS TO A POINT, SAID POINT BEING 30.0 FEET SOUTH AND 20.00 FEET WEST OF THE CENTER OF SAID WELL NO. 6; THENCE NORTH 01° 08' 07" EAST, A DISTANCE OF 60.00 FEET; THENCE SOUTH 88° 51' 53" EAST, A DISTANCE OF 100.0 FEET MORE OR LESS TO THE CENTERLINE OF BUCKHORN ROAD AS IT NOW EXISTS; THENCE NORTHERLY ALONG THE CENTERLINE OF BUCKHORN ROAD, 585.0 FEET MORE OR LESS TO A POINT, SAID POINT BEING 30.00 FEET SOUTH OF THE CENTER OF IRRIGATION WELL NO. 5; THENCE NORTH 88° 51' 53" WEST, A DISTANCE OF 110.0 FEET MORE OR LESS TO A POINT, SAID POINT BEING 30.00 FEET SOUTH AND 20.00 FEET WEST OF THE CENTER OF SAID WELL NO. 5; THENCE NORTH 01° 08' 07" EAST, A DISTANCE OF 60.00 FEET; THENCE SOUTH 88° 51' 53" EAST, A DISTANCE OF 110.0 FEET MORE OR LESS TO THE CENTERLINE OF BUCKHORN ROAD AS IT NOW EXISTS; THENCE NORTHERLY ALONG THE CENTERLINE OF BUCKHORN ROAD, A DISTANCE OF 557.0 FEET MORE OR LESS TO THE POINT OF INTERSECTION WITH THE NORTH LINE OF SAID SECTION 21; THENCE SOUTH 89° 47' 00" EAST ALONG THE NORTH LINE OF SAID SECTION 21, A DISTANCE OF 5258.0 FEET MORE OR LESS TO THE POINT OF BEGINNING.**

**EXCEPTING THEREFROM:**

**A PARCEL OF LAND LOCATED IN THE WEST ONE-HALF OF SECTION 21, AND THE EAST HALF OF THE NORTHEAST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER OF SECTION 20, TOWNSHIP 14 SOUTH, RANGE 12, EAST OF THE WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

**BEGINNING AT THE SOUTHWEST CORNER OF SECTION 21, TOWNSHIP 14 SOUTH, RANGE 12, EAST OF THE WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON; THENCE NORTH 00° 41' 27" EAST, 291.00 FEET ALONG THE WEST LINE OF SAID SECTION 21 TO THE WESTERLY RIGHT OF WAY LINE FOR BUCKHORN ROAD; THENCE NORTH 23° 29' 27" EAST, 398.65 FEET ALONG SAID WESTERLY RIGHT OF WAY LINE; THENCE FOLLOWING THE ARC OF A 543.69 FEET RADIUS CURVE TO THE LEFT A DISTANCE OF 512.10 FEET (THE LONG CHORD OF WHICH BEARS NORTH 03° 29' 33" WEST, 493.38 FEET) ALONG SAID WESTERLY RIGHT OF WAY LINE; THENCE NORTH 30° 28' 33" WEST, 118.56 FEET ALONG SAID WESTERLY RIGHT OF WAY LINE; THENCE FOLLOWING THE ARC OF A 603.69 FOOT RADIUS CURVE TO THE RIGHT, A DISTANCE OF 137.27 FEET (THE LONG CHORD OF WHICH BEARS NORTH 23° 57' 43" WEST, 136.97 FEET) ALONG SAID WESTERLY RIGHT OF WAY LINE TO**

APN: 124848

Statutory Warranty Deed  
- continued

File No.: 7067-1946430 (SS)

THE WEST LINE OF SAID SECTION 21; THENCE NORTH 00° 41' 27" EAST, 2722.08 FEET ALONG THE WEST LINE OF SAID SECTION 21 TO A POINT 30.00 FEET SOUTH OF AN EXISTING WELL; THENCE NORTH 89° 18' 33" WEST, 72.30 FEET TO A POINT 20.00 FEET WEST OF AN EXISTING WELL; THENCE NORTH 00° 41' 27" EAST, 60.00 FEET TO A POINT 30.00 FEET NORTH OF AN EXISTING WELL; THENCE SOUTH 89° 18' 33" EAST, 72.30 FEET TO THE WEST LINE OF SAID SECTION 21; THENCE NORTH 00° 41' 27" EAST, 603.75 FEET ALONG THE WEST LINE OF SAID SECTION 21 TO A POINT 30.00 FEET SOUTH OF AN EXISTING WELL; THENCE NORTH 89° 18' 33" WEST, 88.70 FEET TO A POINT 20.00 FEET WEST OF AN EXISTING WELL; THENCE NORTH 00° 41' 27" EAST, 60.00 FEET TO A POINT 30.00 FEET NORTH OF AN EXISTING WELL; THENCE SOUTH 89° 18' 33" EAST, 88.70 FEET TO THE WEST LINE OF SAID SECTION 21; THENCE NORTH 00° 41' 27" EAST, 538.32 FEET ALONG THE WEST LINE OF SAID SECTION 21 TO THE NORTHWEST CORNER OF SAID SECTION 21; THENCE SOUTH 89° 50' 18" EAST, 1317.16 FEET ALONG THE NORTH LINE OF THE NORTHWEST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 21 TO THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER OF THE NORTHWEST QUARTER; THENCE SOUTH 00° 38' 35" WEST, 1336.61 FEET ALONG THE EAST LINE OF SAID NORTHWEST QUARTER OF THE NORTHWEST QUARTERS TO THE SOUTHEAST CORNER OF SAID NORTHWEST QUARTER OF THE NORTHWEST QUARTER; THENCE SOUTH 89° 59' 32" EAST, 1318.31 FEET ALONG THE NORTH LINE OF THE SOUTHEAST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 21 TO THE NORTHEAST CORNER OF SAID SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER; THENCE SOUTH 00° 35' 42" WEST, 1333.07 FEET ALONG THE EAST LINE OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER TO THE SOUTHEAST CORNER OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER; THENCE SOUTH 89° 51' 16" WEST, 1319.47 FEET ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER TO THE SOUTHWEST CORNER OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER; THENCE SOUTH 00° 38' 35" WEST, 1337.43 FEET ALONG THE WEST LINE OF THE NORTHEAST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 21 TO THE SOUTHWEST CORNER OF SAID NORTHEAST QUARTER OF THE SOUTHWEST QUARTER; THENCE NORTH 89° 44' 11" EAST, 312.97 FEET ALONG THE SOUTH LINE OF SAID NORTHEAST QUARTER OF THE SOUTHWEST QUARTER; THENCE SOUTH 50° 45' 24" WEST, 2130.17 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM:

A PARCEL OF LAND LOCATED IN THE WEST ONE-HALF OF THE SOUTHWEST ONE-QUARTER OF SECTION 21, TOWNSHIP 14 SOUTH, RANGE 12, EAST OF THE WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

APN: 124848

Statutory Warranty Deed  
- continued

File No.: 7067-1946430 (SS)

COMMENCING AT THE SOUTHWEST CORNER OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 14 SOUTH, RANGE 12, EAST OF THE WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON; THENCE NORTH 00° 41' 27" EAST, 291.00 FEET ALONG THE WEST LINE OF SAID WEST HALF OF THE SOUTHWEST QUARTER TO THE WESTERLY RIGHT OF WAY LINE FOR BUCKHORN ROAD AND THE TRUE POINT OF BEGINNING; THENCE NORTH 00° 41' 27" EAST, 1015.04 FEET ALONG THE WEST LINE OF SAID WEST HALF OF THE SOUTHWEST QUARTER TO THE NORTHEAST CORNER OF LOT 3 OF DESCHUTES VALLEY FARMS, PHASE I, ACCORDING TO THE OFFICIAL PLAT THEREOF RECORDED IN THE OFFICE OF COUNTY CLERK FOR DESCHUTES COUNTY, OREGON; THENCE CONTINUING NORTH 00° 41' 27" EAST, 70.46 FEET ALONG THE WEST LINE OF SAID WEST HALF OF THE SOUTHWEST QUARTER TO THE WESTERLY RIGHT OF WAY LINE FOR BUCKHORN ROAD; THENCE FOLLOWING THE ARC OF A NON-TANGENT 603.69 FOOT RADIUS CURVE TO THE LEFT A DISTANCE OF 137.27 FEET (THE LONG CHORD OF WHICH BEARS SOUTH 23° 57' 43" EAST, 136.97 FEET) ALONG SAID WESTERLY RIGHT OF WAY LINE; THENCE SOUTH 30° 28' 33" EAST, 118.56 FEET ALONG SAID WESTERLY RIGHT OF WAY LINE; THENCE FOLLOWING THE ARC OF A 543.69 FOOT RADIUS CURVE TO THE RIGHT A DISTANCE OF 512.10 FEET (THE LONG CHORD OF WHICH BEARS SOUTH 03° 29' 33" EAST, 493.38 FEET) ALONG SAID WESTERLY RIGHT OF WAY LINE; THENCE SOUTH 23° 29' 27" WEST, 398.65 FEET ALONG SAID WESTERLY RIGHT OF WAY LINE TO THE TRUE POINT OF BEGINNING.

**NOTE:** This legal description was created prior to January 1, 2008.

**Subject to:**

1. The **2012-2013** Taxes, a lien not yet payable.
2. Covenants, conditions, restrictions and/or easements, if any, affecting title, which may appear in the public record, including those shown on any recorded plat or survey.

The true consideration for this conveyance is **\$2,000,000.00**. (Here comply with requirements of ORS 93.030)

APN: 124848

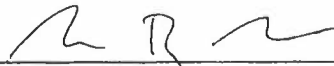
Statutory Warranty Deed  
- continued

File No.: 7067-1946430 (SS)

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

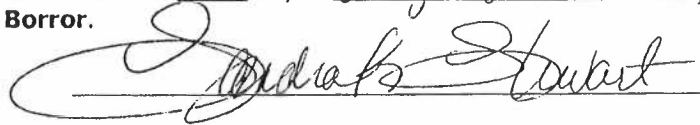
Dated this 30 day of August, 2012.

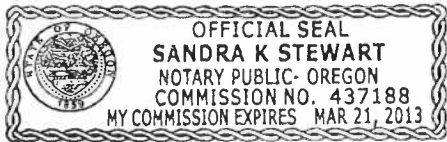
  
\_\_\_\_\_  
Aaron J. Borrer

  
\_\_\_\_\_  
Rebecca T. Borrer

STATE OF Oregon )  
)ss.  
County of Deschutes )

This instrument was acknowledged before me on this 31<sup>st</sup> day of August, 2012  
by **Aaron J. Borrer and Rebecca T. Borrer.**

  
\_\_\_\_\_  
Sandra K Stewart



Notary Public for Oregon  
My commission expires: 3/21/13

# Exhibit G - Ordinance 2024-010

## EXHIBIT F - Ordinance 2022-013

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

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

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

**OWNER:** Eden Central Properties, LLC

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

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

**STAFF PLANNER:** Haleigh King, AICP, Associate Planner  
[Haleigh.King@deschutes.org](mailto:Haleigh.King@deschutes.org), 541-383-6710

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

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

#### I. FINDINGS OF FACT:

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



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

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

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

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

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

- B. Procedural History:** The County’s land use hearings officer conducted the initial hearing regarding the 710 Properties, LLC Comprehensive Plan Amendment and Zone Change applications on April 19, 2022, and recommended approval of the applications by the Deschutes County Board of Commissioners (“Board”) in a decision dated June 2, 2022. The Board conducted a de novo land use hearing on August 17, 2022. The Board deliberated and voted to approve the applications on September 28, 2022.
  
- C. Deschutes County Land Use Regulations:** The Deschutes County Comprehensive Plan and Title 18 of the Deschutes County Code have been acknowledged by LCDC as being in compliance with every statewide planning goal, including Goal 14. The County specifically amended its Comprehensive Plan in 2016 to provide that the Rural Residential Exception Area Plan and its related MUA-10 and RR-10 zones should be applied to non-resource lands. Ordinance 2016-005. This amendment is acknowledged, which means that the RREA plan designation and its related zoning districts, when applied to non-resource lands such as the subject property, do not result in a violation of Goal 14.

**II. ADDITIONAL FINDINGS AND CONCLUSIONS OF LAW:**

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

**A. Statewide Goal 3 Definition of Agricultural Land**

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

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

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

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

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

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

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

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

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

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

***Definition of Farm Use***

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

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

***Income from Livestock Grazing***

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

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

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

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

(1 acre per AUM)

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

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

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

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

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

***Suitability of Property for Dryland Grazing***

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

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

**Other Potential Farm Uses**

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

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

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

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

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

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

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

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

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

Additionally, COLW made no substantiated claim that a reasonable farmer would undertake any of the listed uses with the intention of making a profit in money. Instead, COLW argued that gross income from farming the land is synonymous with a profit in money – a claim rejected by the Oregon Supreme Court in *Wetherell v. Deschutes County*. The commenting State agencies and opponents made similar claims arguing that certain farm uses could be established on the subject property without claiming that the uses would be able to be conducted with an intention to make a profit in money<sup>1</sup>.

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

**F. Definition of Forest Lands, Decision Matrix page 5**

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

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

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

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

***OAR 660-006-0010(2) states:***

***(2) Where a plan amendment is proposed:***

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

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

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

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

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

The subject property is not “forest lands.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Curry County Goal 14 Analysis**

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

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

**i. Density**

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

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

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

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

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

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

**ii. Lot Size**

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

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

**iii. Proximity to Urban Growth Boundaries**

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

**iv. Services**

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

**v. Conclusion of Factors**

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

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

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

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

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

**J. Wildlife Impacts, Decision Matrix page 9**

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



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

**K. Fire Hazard, Decision Matrix page 10**

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

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

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

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

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

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

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

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<sup>6</sup> The cost of water for farm use purposes makes that use unrealistic.

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

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

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

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

**III. DECISION:**

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

Dated this \_\_\_ day of \_\_\_\_\_, 2022

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<sup>7</sup> Applicant’s Exhibit BOCC-24.

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

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

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

**SUBJECT PROPERTY/  
OWNER:**

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

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

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

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

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

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

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

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

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

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

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

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

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

**HEARINGS OFFICER:** Stephanie Marshall

**STAFF CONTACT:** Haleigh King, Associate Planner  
Phone: 541-383-6710  
Email: [Haleigh.King@deschutes.org](mailto:Haleigh.King@deschutes.org)

**RECORD:** Record items can be viewed and downloaded from:  
<https://www.deschutes.org/cd/page/247-21-001043-pa-and-247->

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

**RECORD CLOSED:** May 3, 2022

**I. STANDARDS AND APPLICABLE CRITERIA**

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

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

Title 22, Deschutes County Development Procedures Ordinance

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

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

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

**II. FINDINGS OF FACT**

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

***B. Permits Requiring Verification.***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Applicant submitted a soil study report (Applicant’s Exhibit F), which was prepared by a certified soils scientist and soil classifier that determined the subject property is comprised of soils that do not qualify as Agricultural Land<sup>4</sup>. The purpose of this soil study was to inventory and assess the soils on the subject property and to provide more detailed data on soil classifications and ratings than is contained in the NRCS soils maps. The NRCS soil map units identified on the properties are described below.

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

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

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

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

<sup>3</sup> As defined in OAR 660-033-0020, 660-033-0030.

<sup>4</sup> As defined in OAR 660-033-0020, 660-033-0030.



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

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

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

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

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

The adjacent properties are outlined below in further detail:

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

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

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

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

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

Deschutes County Senior Transportation Planner, Peter Russell

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

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

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

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

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

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

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

Deschutes County Building Official, Randy Scheid

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

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

Department of State Lands, Lynne McAllister

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

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

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

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

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

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

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

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

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

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

***Part 1: Oregon Administrative Rules and Oregon Revised Statutes***

***Definition of Agricultural Land***

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

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

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

***State Agency Comments***

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

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

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

State Agency Comments

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

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

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

*The definition of “farm use” at ORS 215.203(2)(a) is very broad and includes many different types of pursuits.<sup>5</sup> Essentially any type of “agricultural or horticultural use or animal husbandry or any combination thereof” is included in this definition. Also included are “stabling and training equines” as well as “...the propagation, cultivation, maintenance and harvesting of aquatic, bird and animal species that are under the jurisdiction of the State Fish and Wildlife Commission.” Furthermore, “farm use” as defined in this statute includes “the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use”*

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

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

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

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

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

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

Soil fertility

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

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

Suitability for grazing

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

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

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

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

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

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

#### *Climatic Conditions*

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

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



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

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

*Existing and future availability of water for irrigation purposes*

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

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

*Existing land use patterns*

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

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

*Technology and energy inputs required*

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

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

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

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

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

*Accepted farming practices*

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

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

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

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

*State Agency Comments*

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

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

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

State Agency Comments

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

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

State Agency Comments

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

State Agency Agricultural Land Definition Conclusion

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

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

*The Legislative Assembly finds and declares that:*

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

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

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

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

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

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

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

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

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

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

Definition of Forest Land

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

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

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

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

OAR 660-006-0010(2) states:

**(2) Where a plan amendment is proposed:**

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

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

**(B) USDA Forest Service plant association guides; or**

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

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

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

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

State Agency Comments

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

**Statewide Planning Goal 14 (Urbanization)**

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

State Agency Comments

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

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

**Part 2: Other Concerns and Observations**

**Wildlife Habitat Concerns**

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

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

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

<sup>10</sup> [https://www.dfw.state.or.us/lands/mitigation\\_policy.asp](https://www.dfw.state.or.us/lands/mitigation_policy.asp)

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

*While this property is not currently designated as an acknowledged Goal 5 resource for wildlife habitat in the Deschutes County Comprehensive Plan, it is within the biological big game habitat areas ODFW recommended be included as part of the proposed Goal 5 Wildlife Inventory Update process in 2021.<sup>11</sup> ODFW relies on local and state compliance with the land use planning goals to consider natural resources and protect large parcel sizes necessary for habitat connectivity and resource land. The relatively open, undeveloped parcel that is often associated with a resource designated zoning such as Agricultural and EFU, provides valuable habitat for mule deer, elk, and other wildlife species. The open space inherently provided by the land use protections under those designations is not only important in maintaining the farming and ranching practices and rural characteristics of the land, but also preserving the wildlife habitat function and values that the land is providing.*

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

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

### **Water Availability Concerns**

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

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

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

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

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

### **Wildfire**

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

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

### **Planning and Zoning**

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

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

<sup>13</sup> [https://www.dfw.state.or.us/climate\\_ocean\\_change/docs/plain\\_english\\_version.pdf](https://www.dfw.state.or.us/climate_ocean_change/docs/plain_english_version.pdf)

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

<sup>15</sup> [http://www.fs.fed.us/rm/pubs/rmrs\\_gtr299.pdf](http://www.fs.fed.us/rm/pubs/rmrs_gtr299.pdf)

<sup>16</sup> [https://tools.oregonexplorer.info/OE\\_HTMLViewer/index.html?viewer=wildfireplanning](https://tools.oregonexplorer.info/OE_HTMLViewer/index.html?viewer=wildfireplanning)  
247-21-001043-PA/1044-ZC



*applying this plan designation to lands using the conversion pathway proposed by the application is confusing. Specifically, these lands are not “exception areas” as that term is commonly understood.*

*The same is true of applying an RR-10, Rural Residential Zoning District. We have already addressed the possibility of Goal 14 implications so we will not repeat them here. Instead, we would like to reiterate that these types of areas are not subject to an acknowledged exception and are viewed differently. For example, should the county choose to offer Accessory Dwelling Units (ADU) in the RR-10 zone pursuant to SB 391, this opportunity may not be extended to lands converted through a nonresource process.*

**Part 3: State Agency Recommendation**

*Thank you again for the opportunity to provide comments. We have concerns regarding the conversion of open rural lands to housing development. Much of the nonirrigated rural land in Deschutes County is similar to the subject property. Many of these areas provide essential functions and values to Deschutes County’s citizens which also benefit natural resources, such as open space, recreation, habitat and other environmental services. In addition, these lands are critical buffers to protect working farms and forests from conflicting uses. Many of these same areas are not appropriate for the encouragement of residential development. Remoteness, an absence of basic services and a susceptibility to natural hazards like wildland fire are all reasons why rural areas are not well suited to residential settlement even if they have little value for forestry or agricultural production.*

*Based on our review of the application materials and for the reasons expressed above, we believe that the subject property qualifies as resource land. It is our recommendation that the subject property retain an Exclusive Farm Use designation and not be converted to allow rural residential development. Please feel free to contact us if you have any questions.*

The following agencies did not respond to the notice: Deschutes County Forester, Deschutes County Property Management, Deschutes County Road Department, Redmond City Planning, Redmond Fire and Rescue, Redmond School District 2, Redmond Public Works, Redmond Area Parks and Recreation District, District 11 Watermaster, Bureau of Land Management.

**F. PUBLIC COMMENTS:** The Planning Division mailed notice of the application to all property owners within 750 feet of the subject property on December 9, 2021. The Hearings Officer finds that the Applicant complied with the posted notice requirements of Section 22.24.030(B) of Title 22. The Applicant submitted a Land Use Action Sign Affidavit indicating the Applicant posted notice of the land use action on December 9, 2021. At the public hearing, staff testified that Deschutes County received approximately one hundred (100) public comments on the application. At the public hearing on April 19, 2022, ten (10) members of the public testified in opposition to the applications.

Comments received in support of the applications reference the Applicant’s soil analysis, potential expansion of rural housing inventory, and protection from wildfire through better access and vegetation management as a basis for support. Commentators noted the steep cliffs and distance

from other farms, as well as the lack of irrigation rights and poor soils on the subject property.

Comments received in opposition cite concerns with traffic and emergency access impacts, availability of groundwater, compatibility with and preservation of agricultural land, and impacts to wildlife.

At the conclusion of the public hearing, the Hearings Officer left the record open for two (2) seven-day periods, closing on April 26, 2022 (new evidence) and May 3, 2022 (rebuttal evidence), and permitted the Applicant until May 10, 2022 to submit closing argument. Staff directed that submissions during the open record period be transmitted by 4:00 p.m. on the deadlines. Several submissions, from Nunzie Gould, Andrew Mulkey of 1000 Friends of Oregon and S. Gomes were submitted after the 4:00 p.m. April 26, 2022 deadline and thus were not timely. The Hearings Officer does not consider the untimely evidence and arguments in this Decision and Recommendation.

All public comments timely received are included in the record in their entirety and incorporated herein by reference.

**Applicant Responses:**

On April 8, 2022, the Applicant provided the following response to public comments received as of that date:

***Inaccuracies in Opposition Comments***

*Ed Stabb, 12/13/2021 Letter*

*Mr. Stabb claims that his property at 9805 NW Coyner Avenue is contiguous to the subject property. In one part, it is close but not contiguous. The Stabb property is separated from the subject property by the “flagpole” part of a nonfarm parcel and nonfarm dwelling at 9307 NW Coyner Avenue that Mr. Stabb created (Parcel 2 of Partition Plat 2004-85). The “flagpole” part of nonfarm Parcel 2 runs along the west side of the main irrigated farm field on the Stabb property on land formerly irrigated by the property owner (per page 18, Decision MP-04-11/CU-04-42). Furthermore, the Stabb property is surrounded by nonfarm parcels on all sides.*

*Mr. Stabb’s description of properties in the Odin Valley along the west end of NW Coyner Avenue asserts that area is primarily agricultural. The following facts, however, show that the predominant parcel type along Coyner Avenue west of 91<sup>st</sup> Street (a length of approximately .75 miles) are not receiving farm tax deferral and are nonfarm parcels or parcels that are developed with nonfarm dwellings. Only two parcels are farm parcels that are farm tax deferred farm properties. In particular beginning at the west end of Coyner Avenue:*

*10305 NW Coyner Avenue (Witherill), PP 2015-15 nonfarm parcel created; 247-15-000107-CU/-000108-CU nonfarm dwelling (28.6 acres)*

10255 NW Coyner Avenue (Bendix), PP 2004-101, nonfarm parcel created; CU-03-55 and CU-03-56 nonfarm dwelling (19.11 acres)  
 10142 NW Coyner Avenue (Buchanan), CU-95-11 nonfarm dwelling (37.51 acres)  
 10135 NW Coyner Avenue (Hayes), PP 2004-101, nonfarm parcel created; CU-03-55 and CU-03-56 nonfarm dwelling (19.65 acres)  
 9307 NW Coyner Avenue (Birklid), PP 2004-85, nonfarm parcel created; 247-18-000796-CU nonfarm dwelling (17.50 acres)  
 9600 NW Coyner Avenue (MT Crossing), PP 2006-40 non-irrigated parcel created (80 acres); 247-19-000375-CU nonfarm dwelling (80 acres)  
 9805 NW Coyner Avenue (Stabb), PP 2004-85, irrigated parcel created (in addition to nonfarm parcel); receives farm tax deferral (62.58 acres)  
 9299 NW Coyner Avenue (Nelson), PP 2005-25 nonfarm parcel created (10.21 acres); nonfarm dwelling approved but not built  
 9295 NW Coyner Avenue (Grossman), PP 2005-25 nonfarm parcel created (11.08 acres); nonfarm dwelling approved but not built  
 4691 91<sup>st</sup> Street (intersection Coyner and 91<sup>st</sup>)(Omlid), PP 2006-40 non-irrigated land division/nonfarm parcel (39.20 acres); 247-17-000220-CU nonfarm dwelling approved  
 9293 NW Coyner Avenue (Grossman), irrigated parcel created by PP-2005-25 (irrigated land division created two nonfarm parcels and one farm parcel)(185.06 acres)

Jason and Tammy Birklid, 12/13/2021 Letter

*The Birkkids refer to their home as a “family farmhouse.” The dwelling was, however, approved by Deschutes County as a nonfarm dwelling on a non-irrigated parcel of land that was determined by Deschutes County to be unsuited for the production of farm crops and livestock.*

*The Birkkids and others repeat the same claim as Mr. Stabb (discussed above) re the character of the west end of NW Coyner Avenue. The evidence shows, however, that the primary parcel type and development in this area is a nonfarm dwelling parcel and nonfarm dwellings.*

**RR-10 Subdivisions**

*The Johnson properties, TL 200 and 300, Map 14-12-34D (parcels created in 2022 by PP 2022-10 as a farm and a nonfarm parcel) touch, at one point across a road a large area of land zoned RR-10 that includes the Kachina Acres and Odin Crest subdivisions where lots of about 5 acres in size are common. The property owned by opponent Kelsey Pereboom/Colter Bay Investments, LLC adjoins Kachin acres along the entire southern boundary of her property. Opponents Steele and the Elliotts live in the RR-10 zoned Odin Crest subdivision.*

**Destination Resort Overlay Zoning of Subject Property**

*Under the current zoning, almost 250 acres of the subject property is zoned as eligible for development with a destination resort. The development of this area of the property as a*

*resort would have far greater impacts on the surrounding area than would development of the property allowed by the RR-10 zone.<sup>17</sup>*

On May 3, 2022, the Applicant provided the following rebuttal to evidence and arguments presented during the open record period:

*This letter constitutes the Applicant’s second post-hearing record submittal (rebuttal period) and provides evidence to respond to evidence and arguments presented during the open record period. Unless otherwise denoted herein, previously defined terms have the same meaning.*

***I. Subject Property Information***

*Ms. Lozito submitted past photographs of the Property that she claims to have paid for (presumably when she previously listed the house for sale). Ms. Lozito claims these photos show the Property can support grass growing. There is no date on these photographs, but they do show patchy areas of grass with significant yellowing, rocks, and patches. Importantly, Ms. Lozito’s claim that the land can support this growth is easily disproven. By August of 2020, several months before the Applicant purchased the Property, the grass was gone and the area had reverted back to dusty and non-productive land. **Exhibit 84.**<sup>18</sup>*

*Mr. Jim McMullen asserted that the property is not within the Redmond Fire Service boundaries. That is incorrect; the Property is within the Redmond Fire & Rescue District. **Exhibit 98.***

***II. Soil Classification and Mapping System; Soil Scientists; and DLCD Administrative Rules on “Agricultural Land”:***

*Ms. Macbeth claims that DLCD’s administrative rules prevent landowners from hiring a State-approved soil classifier to conduct a more detailed soils analysis of property mapped by the NRCS and to use the superior property-specific information obtained by such a study instead of information provided by soils mapping conducted at a landscape scale by the NRCS. The Agency Letter does not advance this argument in comments on the Application. In fact, DLCD disagrees with this argument, stating the following on their website:*

*“NRCS does not have the ability to map each parcel of land, so it looks at larger areas. This means that the map may miss a pocket of different soils. DLCD has a process landowners can use to challenge NRCS soils information on a specific property. Owners who believe soil on their property has been incorrectly mapped may retain a “professional soil classifier...certified by and in good standing with the Soil Science Society of America” (ORS 215.211) through a process*

<sup>17</sup> At the public hearing, the Applicant’s attorney clarified that, although a portion of the property could be developed as a destination resort because it meets the criteria, the Applicant is not requesting such approval. The Applicant’s attorney also noted that a rezone to RR-10 precludes future destination resort development in the future.

<sup>18</sup> Exhibits continue numbering from Applicant’s open record submittal.

*administered by DLCD. This soils professional can conduct an assessment that may result in a change of the allowable uses for a property.”*

*Source: <https://www.oregon.gov/lcd/FF/Pages/Soils-Assessment.aspx> **Exhibit 93**. This process, as DLCD states, requires a site-specific soil assessment by a soil professional accepted by DLCD. *Id.* There are only a handful of these professionals, with Applicant’s expert, Mr. Brian Rabe, being one of them. *Id.**

### **III. Response to Central Oregon LandWatch and Farm Income Analysis**

*Central Oregon LandWatch (“COLW”), through its attorney Ms. Carol MacBeth, advances a number of erroneous arguments. Ms. Macbeth filed information provided by the 2012 US Census of Agriculture. This information is not the most current. The most current information is provided by the County Profile 2017 Census of Agriculture (**Exhibit 91**).*

*COLW’s letter includes a list of “agricultural commodities” that it claims, according to the 2012 US Census of Agriculture, are produced in Deschutes County. The 2012 US Census of Agriculture does not support this assertion. First, contrary to COLW’s letter, the 2012 Census shows that tobacco, cotton and cottonseed are not produced in Deschutes County. Second, many of the listed commodities are listed by “commodity groups.” The Census reports income from any one or more of the commodities in the entire group. It does not indicate whether or not each commodity in a group is produced in Deschutes County. So, for instance, “fruits, tree nuts, and berries” are one commodity group. The group is so small, presumably one, that the Census withholds income information to “avoid disclosing data for individual operations.” Whether this lone producer harvests fruits, tree nuts or berries is unknown and it cannot be said which crop is harvested.*

*COLW’s claim that “soil capability \*\* is irrelevant” because some farm uses are “unrelated to soil type” is erroneous because the definition of “Agricultural Land” provided by Goal 3 makes soil fertility and the suitability of the soil for grazing the exact issues that must be considered by the County to determine whether the subject property is “land in other soil classes that is suitable for farm use.” DLCD, ODFW and ODA make the same mistake in ignoring the ability of the land itself, rather than imported feed, to support a farm use. The fact that the suitability test is tied to the specific soil found on a subject Property by the Goal 3 definition makes it clear that the proper inquiry is whether the land itself can support a farm use. Otherwise, any land, no matter how barren, would be classified as farmland – which it is not and should not be. ORS 215.203(2) defines “farm use” and it requires that the land be used for “the primary purpose of obtaining a profit in money[.]”*

*COLW claims that the \$48,990 gross income estimate contained in the burden of proof shows that the subject property is suitable for farm use because it would, allegedly, produce three times as much income as grossed by the average farm in Deschutes County in 2012. The \$48,990 figure is, however, overstated. It is based on an OSU formula that assumes that rangeland will support one AUM per acre. The Property will, however, only*

*support one AUM per 10 acres in dry years, and one AUM in wet years, a fact established by DLCD, ODFW, and ODA. This means the \$48,990 gross income figure is overstated by **ten times** during the dry years and by **five times** during wet years.*

*When the OSU formula is adjusted to reflect the State's AUM:acres ratios, the range of gross income per year is a mere **\$4,899 to \$9,798** for a 710-acre property. This is lower than the \$16,033 average gross farm income of the average County farm in 2012 – the average farm being a 102-acre farm. If the subject Property were as productive as the average 2012 Deschutes County farm per acre, it would gross \$111,602 not \$4,899 to \$9,798 per year. Expenses that would be incurred to raise a gross income of \$4,899 to \$9,798 per year, based on information obtained from ranchers and extension service publications, include the following:*

- *Vaccinations, medicine, veterinary services, monitoring pregnancies, deworming, breeding, calving, soundness exams*
- *Branding, castrating bull calves*
- *Purchase and care and feeding of a horse to round up cattle and associated shoeing and veterinary expenses; horse tack*
- *Water supply for cattle (trucked or well); water troughs*
- *Fencing materials, maintenance and repair*
- *Freight/trucking of cattle between ranch and auction*
- *Ranch vehicles e.g. 5th Wheel 4WD Pickup, 5th Wheel Stock Trailer and ATV and maintenance and operating expenses*
- *Portable cattle working facilities (hydraulic or manual squeeze)*
- *Labor; hired and farm owner/operator, including taxes, payroll, health care, etc.*
- *Livestock insurance*
- *Liability insurance*
- *Fire insurance*
- *Office expense*
- *Cost to service farm loans for the purchase of the subject property, farm equipment and improvements*
- *Property taxes*

*Given the more refined and projected potential income (supported by the Agency Letter), the property taxes alone for the subject Property would exceed the projected, potential income. Even if the Property was able to qualify for farm tax deferred status, other expenses would clearly exceed income. For instance, annual farm loan payments for purchasing the property (excluding loans for farm equipment and improvements) far exceed projected gross income. If a person were able to purchase the Property at a cost of \$2.8 million dollars<sup>2</sup>, a price well below the fair market value set by the Deschutes County Tax Assessor, annual payments for a 15-year loan at a USDA loan rate of just 3.25% would be \$238,808.02 per year for a 15-year fixed loan and \$147,508.81 for a 30-year fixed loan (excluding loan-related costs) from the USDA.<sup>3</sup> Interest only on the 15-year fixed rate loan would be \$782,120.35 or an average of \$52,141.36 per year. Interest on a 30-year fixed*

rate loan would be \$1,625,264.22 or an average of \$54,175.47 per year. No party has argued that potential farm revenues on the Property could reach anywhere near the levels necessary to service this debt; notwithstanding the fact that other farm infrastructure and startup costs (like the cost of irrigation water) would further add to debt service costs.

If the Property were grazed seasonally (as suggested by the Agency Letter), the operator would incur costs to lease grazing lands elsewhere or to feed cattle hay grown on other properties. These costs would not be deducted from the estimated income for the subject Property because the projected income is based on the productivity of the subject Property to support grazing – not the ability of other lands to support grazing either by lease or by the purchase of forage grown on other lands. Conversely, only one-half of the cattle income derived from an operation that utilizes two properties to raise cattle would be attributable to the subject property if it were able to support grazing six months of the year. The fact that twice as many cattle can be grazed on a property for six months compared to year-round is of no consequence to the property assessment of gross income attributable to the subject Property.

**IV. Additional Responses to Specific Parties**

This section provides specific responses to various parties’ arguments during the open record period.

**Redside Restoration and Jordan Ramis**

Redside Restoration implies that its small vineyard located close to the Deschutes River in the Deschutes River canyon at an elevation about 400 to 500 feet below the plateau on the subject Property has similar conditions to those found on the subject Property. Presumably, Redside wishes the County to conclude that the Property might be suitable for development as a vineyard. It is not. This is rebutted by:

- E-Mail dated May 2, 2022 from soils scientist Brian Rabe, **Exhibit 107**
- Certificate 66868 Dunn, **Exhibit 87**.
- Certificate 66868 map – Dunn (shows that vineyard area of property is irrigated), **Exhibit 88**.
- OSU impact of smoke on grapes and wine, **Exhibit 97**.

The Property also would not meet most of the site selection and climate concerns related to vineyard selection. Exhibit 90.

Equally important, is the fact that the soil depth is simply not enough to establish productive grapes. For example, in Mr. Rabe’s comprehensive soil analysis, he made 135 test holes. Of those 135 test holes, only 5 (less than 4%) had soil more than 30 inches in depth. The average (mean) depth was 16.8 inches, the median depth was 16 inches, and the modal depth (most common) was 14 inches. Grapes typically require 2 to 3 feet of soil depth. **Exhibit 106**.

**Richard and Lori Johnson**

*The Johnsons claim that farms adjacent to the subject property have deepened their wells. As the Johnsons note based on information provided by Central Oregon LandWatch regarding a 2008 USGS study, climate change, groundwater pumping and irrigation canal pumping have been identified as causing declines. The referenced study shows that the primary cause of groundwater decline is climate change. The study attributes a part of the decline to increased groundwater pumping in the region. Maps provided by the USGS report suggests that groundwater use in the Odin Valley area (farm irrigation) and water use by the Eagle Crest (golf course and other irrigation and domestic use) increased significantly between 1997 and 2008. Irrigation water use consumes far more ground water than used for domestic use – a fact that supports the conclusions of the GSI water study that the applicant filed with Deschutes County prior to the land use hearing. This report is re-filed for convenience as **Exhibit 105**. We provide the following supporting documentation:*

- *Understanding Water Rights, Deschutes River Conservancy, **Exhibit 101**.*
- *Analysis of 1997-2008 Groundwater Level Changes in the Upper Deschutes Basin, Central Oregon (relevant part). **Exhibit 104**.*

*The Johnsons express a concern that creating 10-acre parcels will result in a loss of open space and wildlife habitat. They claim that using the land for low-density housing will increase the cost of farming for adjacent farms. The Johnsons did not have this concern earlier this year when they divided their farm property to create a 4.049-acre nonfarm parcel right next to their irrigated farm fields. See Partition Plat 2022-10. The location of this new parcel is shown in the aerial photo below (from DIAL): [image omitted]*

*The following documents are also filed to respond to this argument:*

- *Land use application filed by the Johnsons to create a nonfarm parcel and dwelling adjacent to irrigated farm fields (Johnson nonfarm 2021), **Exhibit 94**.*
- *Amended Annual Report for Horse Guard, Inc., a highly successful horse vitamin/mineral supplement product with a primary place of business of 3848 NW 91st Street, Redmond, OR (the Johnson property), **Exhibit 99**.*
- *Tax Assessor's Improvement Report for Johnson property. **Exhibit 83**.*
- *Recent Google Earth Photograph of Johnson house and outbuildings below:*

*It appears that the Johnsons keep horses on their property but there is no indication they are engaged in a commercial horse boarding or training operation. The primary farm use of the property is growing alfalfa hay which is stored in the farm building shown on the right in the photo above. [image omitted]*

**League of Women Voters**

*The League of Women Voters submitted a comment that the Deschutes River has been designated by DEQ as having impaired water quality. That is true, but only for a portion*



of South Deschutes County and not this area. **Exhibit 92**. See also, Testimony of Brian Rabe, **Exhibit 107**.

**Pam Mayo Phillips**

*Ms. Mayo Phillips argues that the subject property is in the heart of farm country and that the Odin Valley consists of parcels that vary in size from 20 to 200 acres in size. While some agricultural uses are occurring in the Odin Falls area, the area contains a mix of farm, nonfarm, and rural residential development as documented by the Johnsons’ land division application. Many of the farm properties in the Odin Valley have been divided to create nonfarm parcels that are smaller than the size stated by Ms. Phillips (size listed after current owner) that have received approvals to locate dwellings adjacent to irrigated farm fields: Stabb/Birklid (17.50 acres), Johnson/Nonella (4.05 acres) Grossmann/Nelson (11.08 and 10.21 acres), Stephan/Bessette (4.36 acres), Thoradarson (3.18 acres) and a number of non-irrigated properties have been divided and/or developed with nonfarm dwellings – in particular on the properties closest to the subject property along NW Coyner. Thus far, the farm practices identified by Ms. Mayo Phillips have not been of sufficient significance to merit denial of the many nonfarm dwellings in Odin Valley.*

*Ms. Mayo Phillips expresses concerns about the condition of area roads. The roads, however, are adequate to handle additional traffic as documented by the applicant’s traffic engineer and Deschutes County will address road improvements, provided the pending applications are approved, when a subdivision application is filed with and reviewed by the County.*

*Ms. Phillips argues that power is not available to serve the subject Property. This is incorrect. CEC has provided a “will serve” letter and has advised the applicant that it is able to provide power to the property from Buckhorn Road with upgrades that would be paid for by the property owner. **Exhibit 16**.*

*Ms. Phillips expresses concern that the nearest fire station is too far away and that fires are a significant concern. The subject property is located in the Redmond Fire & Rescue service area and the closest fire station in that district is located at 100 NW 71st Street, a short distance north of Highway 126 on the west side of Redmond. Highway 126 provides excellent access to the Odin Valley and the subject property which is approximately six miles away on paved roads (travel time 9 minutes per Google Maps for vehicles traveling at or below the speed limit). Additionally, according to opponent Ted Netter a fire protection association has been formed to provide fire protection to lands that are located outside of fire districts to the west of the subject property which should serve to lessen fire risks in the area. The subject Property is not in the fire association area, contrary to Mr. Netter’s assertion, because it is located inside the Redmond Fire district. **Exhibit 95**.*

**Nunzie Gould**

*Ms. Gould’s untimely filed post-hearing submittal contains errors of fact. The subject Property is not located in or close to the Three Sisters Irrigation District (“TSID”). The*

*TSID webpage indicates that the District is currently providing spring irrigation water at 30%. Marc Thalacker, TSID’s manager, also had a telephone conversation with one of the principals of the Applicant, Robert Turner. Mr. Thalacker told Mr. Turner that it would not be feasible for TSID to provide water to the Property, nor would it be feasible for other irrigations districts to do so. Mr. Thalacker also indicated that, based upon his conversation with Mr. Turner, placing irrigation water on the Property would be a reckless and poor use of water.*

*Ms. Gould’s claim that agriculture is occurring on the subject property is simply incorrect.*

*Ms. Gould’s claim that 320 acres of BLM land adjoins the east side of the subject Property is correct. This area is not, as Ms. Gould’s comments reflect however, engaged in farm use of any kind. It is open space for wildlife use. The Cline Buttes Recreation Area ATV recreational area adjoins the south and southwest sides of the subject property. One of the ATV trails is located in close proximity to the south boundary of the subject property. This large area of public lands, also, is not engaged in farm use.*

**Andrew Mulkey, 1000 Friends of Oregon**

*Mr. Mulkey’s untimely filed post-hearing submittal claims that the suitability analysis in the applicant’s soils report is “simply speculation” because the soils scientist does not purport to have experience farming and ranching in Deschutes County. This is an absurd statement and is contrary to the State’s requirements for certified soil scientists (addressed above). The purpose of soils analysis is to determine its suitability to support farm crops, livestock and merchantable tree species. Additionally, the Soil Science Society of America reports that Mr. Rabe has been a member of the American Society of Agronomy for 30 years. The Society describes its membership as follows:*

*“The American Society of Agronomy is the professional home for scientists dedicated to advancing the discipline of the agronomic sciences. Agronomy is highly integrative and employs the disciplines of soil and plant sciences to crop production, with the wise use of natural resources and conservation practices to produce food, feed, fuel, fiber, and pharmaceutical crops for our world’s growing population. A common thread across the programs and services of ASA is the dissemination and transfer of scientific knowledge to advance the profession.”  
Membership | American Society of Agronomy*

- *Soil Science Society of America report re soil scientist and classifier Brian Rabe, Exhibit 85.*

*Mr. Mulkey provides maps and information about wildlife. None of the maps have been made applicable to the subject Property by land use regulations. The Mule Deer Overlay map also shows that the subject Property is just inside the area proposed by ODFW as an addition to the WA zone and that the number of deer using the area is far lower than areas located closer to the City of Sisters and less populated than areas east of Bend that are not*

proposed for inclusion in the WA zone. But again, these maps simply do not apply nor have they been adopted by the County.

**DLCD Letter**

DLCD provided additional comment that Goal 4 had not been adequately addressed. Forestry expert John Jackson provides additional response (**Exhibit 89**) to evidence and analysis previous placed in the record by Ms. Fancher.

**V. Additional Evidence for the Record**

In further response to COLW’s arguments that certain farm uses my profitably occur on the Property, the Applicant provides the following additional rebuttal evidence.

- Hemp market information, email from hemp farm owner Paul Schutt, **Exhibit 100**.
- Impacts of grazing and increased desertification, **Exhibit 82**.
- Alfalfa production, **Exhibit 96**.

**VI. Conclusion**

*The evidence we provide in this submittal will be used further in final legal argument*

**G. NOTICE REQUIREMENT:** On March 18, 2022, the Planning Division mailed a Notice of Public Hearing to all property owners within 750 feet of the subject property, agencies, and parties of record. A Notice of Public Hearing was published in the Bend Bulletin on Sunday, March 20, 2022. Notice of the first evidentiary hearing was submitted to the Department of Land Conservation and Development on March 2, 2022.

**H. REVIEW PERIOD:** The subject applications were submitted on December 2, 2021. The applications were deemed incomplete by the Planning Division on December 30, 2021 and a letter detailing the information necessary was mailed on December 30, 2021. The Applicant provided a response to the incomplete letter and the applications were subsequently deemed complete on January 17, 2022. According to Deschutes County Code 22.20.040(D), review of the proposed quasi-judicial plan amendment and zone change application is not subject to the 150-day review period.

**III. FINDINGS & CONCLUSIONS**

**A. PRELIMINARY FINDINGS AND CONCLUSIONS**

**1. HEARINGS OFFICER’S FINDINGS AND CONCLUSIONS REGARDING USE OF ORDER 1 SOILS SURVEY**

In 1979, Deschutes County adopted its first comprehensive plan and zoning ordinance that implemented the Statewide Land Use Planning Goals. The County’s comprehensive plan map was

developed without the benefit of detailed soils mapping information. The map was prepared and EFU zoning was applied to the subject property prior to the USDA/NRCS's publication of the "Soil Survey of Upper Deschutes River Area, Oregon." That soil survey provides general soils information, but not an assessment of soils on each parcel in the study area.

The NRCS soil survey maps are Order 2 soil surveys, which extrapolate data from the Upper Deschutes River Survey to determine LCC soil classifications at a landscape level. The Applicant's soil scientist, Mr. Rabe, conducted a more detailed Order 1 survey, which analyzed actual on-the-ground soil compositions on the subject property. The Hearings Officer finds that it is not "suspect" that an Order 1 soils survey contradicts NRCS soil classifications performed at a higher, landscape level.

The argument advanced by COLW, 1000 Friends of Oregon and Redside Restoration that an Order 1 survey cannot contradict NRCS soil survey classifications for a particular property has been rejected by the Oregon Legislature in ORS 215.211(1) and DLCD in OAR 660-033-0030. It has also been rejected by Deschutes County Hearings Officers and the Board of County Commissioners.

In recent years, Deschutes County has recognized the value in rezoning non-productive agricultural lands and has issued decisions approving plan amendments and zone changes where the applicant has demonstrated the property is not agricultural land. Deschutes County has approved the reclassification and rezoning of EFU parcels based on data and conclusions set forth in Order 1 soils surveys and other evidence that demonstrated a particular property was not "agricultural land," due to the lack of viability of farm use to make a profit in money and considering accepted farming practices for soils other than Class I-VI. *See, e.g.,* Kelly Porter Burns Landholdings LLC Decision/File Nos. 247-16-000317-ZC/318-PA; Division of State Lands Decision/File Nos. PA-11-7 and ZC-11-2; Paget Decision/File Nos. PA-07-1, ZC-07-1; The Daniels Group/File Nos. PA-08-1, ZC-08-1; Swisher Decision/File Nos. 247-21-000616-PA/617-ZC. The Board of County Commissioners recently affirmed the Hearings Officer's decision in the Swisher files and adopted Ordinance No. 2022-003.

On the DLCD website, it explains:

NRCS does not have the ability to map each parcel of land, so it looks at larger areas. This means that the map may miss a pocket of different soils. DLCD has a process landowners can use to challenge NRCS soils information on a specific property. Owners who believe soil on their property has been incorrectly mapped may retain a "professional soil classifier ... certified and in good standing with the Soil Science Society of America (ORS 215.211) through a process administered by DLCD. This soils professional can conduct an assessment that may result in a change of the allowable uses for a property.

**Exhibit 93** (<https://www.oregon.gov/lcd/FF/Pages/Soils-Assessment.aspx>).

The Hearings Officer agrees with the Applicant's final legal argument, submitted on May 11, 2022 which states on page 3, in relevant part:

This statutory and regulatory scheme makes sense, as it would have been impracticable for a county to have conducted an individualized soils analysis on a farm-by-farm basis when it adopted its original zoning ordinances. Precluding the availability of a property owner to achieve a new zoning designation based upon a superior, more detailed and site-specific soils analysis would, to put it mildly, be absurd and cannot be what the legislature intended.<sup>19</sup>

The Soil Survey of the Deschutes Area, Oregon<sup>20</sup> describes Class VII soils as “not suitable for cultivation and of severely limited use for pasture or as woodland.” It describes Class VIII soils as “not suitable for growing vegetation for commercial uses.” The Soil Survey of Upper Deschutes River Area, Oregon describes the broad, general level of soil surveying completed by NRCS on page 16, “At the less detailed level, map units are mainly associations and complexes. The average size of the delineations for most management purposes was 160 acres. Most of the land mapped at this level is used as woodland and rangeland. At the more detailed level, map units are mainly consociations and complexes.... Most of the land mapped at the more detailed level is used as irrigated and nonirrigated cropland.”

As quoted in the Hearings Officer’s Decision and Recommendation to the Deschutes County Board of Commissioners in the Swisher decision, File Nos. 247-21-000616-PA/617-ZC:

*The real issue is “map accuracy” which is based upon set standards for maps. National Map Accuracy Standard (NMAS) provides insurance that maps conform to established accuracy specifications, thereby providing consistency and confidence in their use in geospatial applications. An example of such a standard: “maps on publication scales larger than 1:20,000, not more than 10 percent of the points tested shall be in error by more than 1/30 inch, measured on the publication scale; for maps on publication scales of 1:20,000 or smaller, 1/50 inch.” The error stated is specific for a percentage of points, and to suggest that accuracy in maps is the unattainable freedom from error as the COL letter does, is not a relevant or a serious argument.*

*When one map shows point data like an Order-1 soil survey the accuracy can be measured, and when another map does not (like the NRCS soil map) there is a shortage of information, so the accuracy of the NRCS map cannot be determined for point data. The accuracy of the NRCS estimate of the percentage of components in the 38B soil complex can be shown to be very inaccurate in this case, and it clearly underestimates the Class 7 and Class 8.*

The Hearings Officer finds that NRCS soil survey maps are not definitive or “binding” with respect to a determination of whether the subject property is, or is not, agricultural land. This is consistent with the ruling of the Land Use Board of Appeals (LUBA) in **Central Oregon Landwatch v. Deschutes County (Aceti)**, \_\_\_ Or LUBA \_\_\_ (LUBA NO. 2016-012, August 10, 2016 (Aceti I)). There, LUBA confirmed that OAR 660-033-0030(5)(a) and (5)(b) allow the County to rely on more detailed data on soil capability than provided by NRCS soil maps to define agricultural land,

<sup>19</sup> The stated public purpose of the EFU zone is to preserve “Agricultural Lands” (ORS 215.243) but “Agricultural Lands” are not present on a subject property.

<sup>20</sup> [https://www.nrcs.usda.gov/Internet/FSE\\_MANUSCRIPTS/oregon/OR620/0/or620\\_text.pdf](https://www.nrcs.usda.gov/Internet/FSE_MANUSCRIPTS/oregon/OR620/0/or620_text.pdf)

provided the soils survey has been certified by DLCD, which has occurred here. The *Aceti* ruling is summarized as follows:

First, LUBA affirmed the County’s determination that the subject property, which had been irrigated and used to grow hay in 1996 and earlier years, was not agricultural land based on the Order 1 soils survey which showed that the poor soils on the property are Class VII and VIII soils when irrigated, as well as when not irrigated.

Second, LUBA determined the applicant had established that the subject property was not “agricultural lands,” as “other than Class I-VI Lands taking into consideration farming practices.” LUBA ruled:

*“It is not an accepted farm practice in Central Oregon to irrigate and cultivate poor quality Class VII and VIII soils – particularly where, as here those soils are adjacent to rural industrial uses, urban density residential neighborhoods that complain about dust and chemicals and to high traffic counts on the surrounding roads and highways. Irrigating rock is not productive.”*

The Hearings Officer rejects the argument that NRCS land classifications based on its soil maps cannot be varied, unless a landowner requests an Order 1 soils study to qualify **additional** land as agricultural land. This is directly contrary to LUBA’s holding in *Central Oregon Landwatch v. Deschutes County and Aceti*, LUBA No. 2016-012:

*“The Borine Study is evidence a reasonable person would rely on and the county was entitled to rely on it. As intervenor notes, the NRCS maps are intended for use at a higher landscape level and include the express statement ‘Warning: Soil Ratings may not be valid at this scale.’ Conversely, the Borine Study extensively studied the site with multiple on-site observations and the study’s conclusions are uncontradicted, other than by petitioner’s conclusions based on historical farm use of the property. This study supports the county’s conclusion that the site is not predominantly Class VI soils.”*

ORS 215.211(1) specifically allows for the submittal by a certified soil scientist of an assessment of the capability of the land based on more detailed soils information than that contained in the Web Soil Survey operated by the NRCS to “assist a county to make a better determination of whether land qualifies as agricultural land.” The Applicant followed this procedure by selecting a professional soil classifier who is certified by and in good standing with the Soil Science Society of America to prepare the Order 1 soils report. DLCD reviewed the soils report pursuant to ORS 215.211(2) and determined it could be utilized in this land use proceeding.

The Hearings Officer agrees that soils classifications are not the only determining factor with respect to whether a parcel is “agricultural land.” The Hearings Officer’s findings on all relevant factors to be considered in determining whether the subject property is “agricultural land,” are set forth in detail below.

The Hearings Officer does not accord less weight to the Applicant’s soil scientist because he was “privately commissioned.” Brian T. Rabe, CPSS, WWSS of Valley Science and Engineering is a

listed, accepted soils scientist by DLCD and is certified by and in good standing with the Soil Science Society of America. He has been a certified soils scientist for 30 years.

Public comments submitted by the Jordan Ramis law firm on behalf of Redside Restoration Project One, LLC are correct to the extent that DLCD’s certification of an Order 1 soils survey is not a determination of whether a particular property constitutes “agricultural land.” The certification constitutes a determination that the soil study is complete and consistent with reporting requirements of OAR 660-033-0045. Pursuant to ORS 215.211, the Applicant’s soils survey has been approved for use by Deschutes County by DLCD. If the Applicant’s soils survey was deficient in any manner, DLCD would not have allowed the County to rely on the survey in this proceeding. Ultimately, the County – not DLCD - must decide whether the Order 1 soils survey, together with other evidence in the record, supports a determination of whether the subject property is “agricultural land.” See ORS 215.211(5).

For all the foregoing reasons, the Hearings Officer finds that the County is not bound by the landscape level NRCS Order 2 study on which classification of soils on the subject property is based. The Hearings Officer finds it is appropriate for the County to consider the Applicant’s Order 1 soils survey, certified for the County’s consideration by DLCD.

**2. HEARINGS OFFICER’S FINDINGS AND CONCLUSIONS REGARDING WHETHER THE SUBJECT PROPERTY IS “AGRICULTURAL LAND”**

For purposes of this Decision and Recommendation, the Hearings Officer considers the definition of “Agricultural Land,” in OAR 660-033-020(1)(a), as defined in Goal 3, which includes:

- (A) lands classified by the NRCS as predominantly Class I-VI soils in Eastern Oregon;
- (B) Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices; and
- (C) Land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.

**a. OAR 660-033-0020(1)(a)(A) Findings and Conclusions**

As the Hearings Officer found above, the County may rely on the DLCD-certified Order 1 soil survey submitted by the Applicant. That study shows that the soils on the subject property are not predominantly Class I-VI soils, as they are comprised of 71% Class VII-Class VIII soils. The County is entitled under applicable law to rely on the Order 1 soils survey in these applications in making a determination that the soils on the Subject Property are not predominantly Class I-VI soils. The Hearings Officer finds that the more detailed, onsite soil study submitted by the Applicant provides property-specific information not available from the NRCS mapping.

There is no evidence in the record to rebut the Applicant’s soils study. Therefore, the Hearings Officer finds that the subject property does not constitute “agricultural land” under OAR 660-033-0020(1)(a)(A). Specific findings on each applicable criterion are set forth in Section III(B) of this Decision and Recommendation.

**b. OAR 660-033-0020(1)(a)(C) Findings and Conclusions**

The Hearings Officer finds there is no evidence in the record that the subject property is “land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands. While DLCD, ODA and ODFW question the “impact on adjacent or nearby agricultural lands,” at page 6 of the agencies’ comment letter, those questions do not answer the inquiry of whether the subject property is “necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.” OAR 660-033-0020(1)(a)(C). Moreover, the reclassification and rezoning of the subject property in and of itself will not change the current use (or lack thereof) of the subject property. Impacts of future development must be reviewed when land use applications are submitted. Simply put, there is no showing that the subject property is necessary for farming practices on any surrounding agricultural lands. There is no evidence that the subject property contributes to any such practices, nor that other lands depend on use of the subject property to undertake any farm practices.

Therefore, the Hearings Officer finds that the subject property does not constitute “agricultural land” under OAR 660-033-0020(1)(a)(C). Specific findings on each applicable criterion are set forth in Section III(B) of this Decision and Recommendation.

**c. OAR 660-033-0020(1)(b) Findings and Conclusions**

The Hearings Officer finds there is no evidence in the record that the subject property is adjacent to or intermingled with lands in capability classes I-VI within a farm unit. Therefore, the Hearings Officer finds that the subject property does not constitute “agricultural land” under OAR 660-033-0020(1)(b). Specific findings on each applicable criterion are set forth in Section III(B) of this Decision and Recommendation.

**d. OAR 660-033-0020(1)(a)(B) Findings and Conclusions**

The Hearings Officer reviews evidence in the record to determine whether the subject property constitutes “agricultural land” under OAR 660-033-0020(1)(a)(B) as “Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices.” Competing evidence was presented by the Applicant, the Department of Land Conservation and Development, Agriculture and Fish and Wildlife, and numerous commentators.

OAR 660-033-0020(1)(a)(B) refers to the statutory definition of “farm use” in ORS 215.203(2)(a) which informs the determination of whether a property is “*suitable* for farm use.” The Hearings Officer finds that the analysis must begin with a determination of whether the subject property can



be employed for the “**primary purpose of obtaining a profit in money** by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairying products or any other agricultural or horticultural use or animal husbandry or any combination thereof.” ORS 215.203(2)(a) (emphasis added).

The state agencies and other commentators left out the highlighted portion of the statutory language. “Farm use” is not whether a person can engage in any type of agricultural or horticultural use or animal husbandry on a particular parcel of property. It is informed by whether such use can be made for the primary purpose of obtaining a profit in money. Therefore, the Hearings Officer rejects the argument that the subject property is “capable of any number of activities included in the definition of farm use,” because “farm use” as defined by the Oregon Legislature “**means the current employment of land for the primary purpose of obtaining a profit in money.**” ORS 215.203(2)(a); *see also* Goal 3. This is a critical omission by the state agencies and other commentators in their submissions.

The state agencies repeatedly assert that the barriers to farming the subject property set forth by the Applicant could be alleviated by combining farm operations with other owned and/or leased land, whether adjacent to the subject property or not. The Hearings Officer finds that the definition of “farm use” in ORS 215.203(2)(a) refers to “**land,**” - not “lands,” - and does not include any reference to “combination” or requirement to “combine” with other agricultural operations. Therefore, if the subject property, in and of itself cannot be engaged in farm use for the primary purpose of obtaining a profit in money, it does not constitute agricultural land. There is no requirement in ORS 215.203(2)(a) or OAR Chapter 660-033 that a certain property must “combine” its operations with other properties in order to be employed for the primary purpose of obtaining a profit in money and thus, engaged in farm use.

What the statutory definition of “farm use” means is that, merely because a parcel of property is zoned EFU and *some* type of agricultural activity could take place on it, or whether the property owner could join forces with another agricultural operations, does not mean that a property owner is forced to engage in agricultural activity if the property owner cannot use its own property for farming to obtain a profit in money. This is so, whether the barrier to obtaining a profit in money is due to soil fertility, suitability for grazing, climactic conditions, existing and future irrigation rights, existing land use patterns, technology and energy inputs required and accepted farming practices, any or all of these factors.

The Applicant correctly cited controlling law on page 5 of its final legal argument:

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

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

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

*We therefore hold that, because Goal 3 provides that “farm use” is defined by ORS 215.203, which includes a definition of “farm use” as “the current employment of land for the primary purpose of obtaining a profit in money[.]” LCDC may not preclude a local government making a land use decision from considering “profitability” or “gross farm income” in determining whether land is “agricultural land” because it is “suitable for farm use” under Goal 3. Because OAR 660-033-0030(5) precludes such consideration, it is invalid. Emphasis added. Id. at 681-683.*

Substantial evidence in the record supports a determination that each of the listed factors in OAR 660-033-020(1)(a)(B) preclude “farm use” on the subject property because no reasonable farmer would expect to make a profit in money by engaging in agricultural activities on the land. as detailed in the findings on individual criteria below.

**Soil Fertility**

The lack of soil fertility is not in debate. The Applicant’s soils study determined that the soils “are predominately shallow with sandy textures (low clay content) and low organic matter content. These conditions result in a low Cation Exchange Capacity (CEC) that limits the ability of these soils to retain nutrients. Fertilizer must be applied to achieve optimum yields. Proper management requires fertilizers be applied in small doses on a frequent basis. The revenue from most locally adapted crops will not cover the costs of inputs and management.” Applicant’s final legal argument, Attachment C, p. 7. Moreover, the evidence shows that the shallow nature of the soils differs from those present at the Redside Restoration property, given that typical wine grapes

require a “minimum of 2 feet to 3 feet of soil depth” to be successful (Exhibit 106). On the subject property, the common depth of soils in the 135 test holes made by Mr. Rabe was merely 14 inches.

While several commentators argued that soil fertility is not always necessary for commercial agricultural operations because farm equipment could be stored on the property, the Hearings Officer agrees with the Applicant that the subject property’s resource capability is the proper determination. The Applicant is not required to engage in joint management or use with other lands that do constitute productive farm land. Moreover, storage and maintenance of equipment is not, in and of itself, a farm use unless such equipment is for the production of crops or a farm use on the subject property. Therefore, the Hearings Officer rejects the arguments of the state agencies and COLW that certain uses of the subject property could be made that are not dependent on soil type because none of the suggested uses constitute “farm use,” without any associated cultivation of crops or livestock. The Applicant has also produced substantial, persuasive evidence that the property cannot be used for a profit in money for a feedlot considering the limited gross farm income from cattle grazing, the lack of irrigation water, limited forage and other factors including the generation of biological waste.

### **Suitability for Grazing**

The lack of suitability for grazing is also established by substantial evidence in the record. Although the state agencies letter agreed with the Applicant’s analysis that a maximum of 15 cow/calf pairs could be supported in a grazing operation, it suggested that an additional up to 15 pairs could be sustained in rotation or if the land was left bare for months at a time. There is no evidence in the record to rebut the Applicant’s conclusion that it could not make a profit in money from grazing operations on the property, such that grazing would not constitute “farm use” under the statutory definition. As shown in Exhibit 107 p. 2, “the gross revenue potential for weight gain associated with the estimated forage available on the 710 acres would range from \$7,209 per year in an unfavorable (dry) year to 414,058 in a favorable (wet) year, or about \$10,000 in an average year. As documented in detail by others, the cost of production and management would exceed the potential revenue.”

Evidence presented by Billy and Elizabeth Buchanan regarding suitability for grazing is distinguishable and therefore not relevant. The Buchanan property is mapped with productive, high-value soils, unlike the Applicant’s property. It also has a groundwater irrigation right and may irrigate up to 14.6 acres of their property. Nonetheless, as the Applicant noted, there is no evidence in the record that the Buchanans make a profit in money by allegedly grazing cattle on their property. In fact, the evidence does not support a finding that the Buchanans’ cattle even graze on dry-land. As shown on their company website, Keystone Cattle claims its cattle are “grass fed & grass finished.”

### **Climactic Conditions**

There is little debate that climactic conditions contribute to the inability to engage in “farm use” for the purpose of making a profit in money. Even the state agencies admit that local climactic conditions “are not ideal for commercial agriculture.” Pointing to other properties to show that climactic conditions should not preclude “farm use,” again does not take into consideration

whether or not agricultural activities can be engaged in for the purpose of making a profit in money. The limited precipitation, the plateau on which the property sits, plus the fact that the property lacks irrigation water rights are all unfavorable to a determination the property could be used for farming to make a profit in money.

**Existing and Future Availability of Water for Farm Irrigation Purposes**

Regarding existing and future availability for water for farm irrigation purposes, the state agencies merely state that “we do not believe that water for irrigation purposes is necessary to conduct many of the activities included in the definition of ‘farm use.’” Again, this does not take into consideration whether any of such activities could be utilized for the primary purpose of making a profit in money on the property. There is no evidence that the subject property could be used for any of the listed activities in ORS 215.203(2)(a) in a profitable manner, particularly given the lack of irrigation water. The Applicant has presented substantial evidence of the prohibitive costs and other hurdles that preclude bringing irrigation to the subject property (E.g. Exs. 49, 87, 88, 2, 3 and 76). When such costs are factored in, no reasonable farmer would expect to be able to obtain farm irrigation water and still obtain a profit in money from agricultural uses on the property.

**Existing Land Use Patterns**

The Hearings Officer finds the Applicant has established that existing land use patterns are also a factor in determining the subject property is not “agricultural land” under OAR 660-033-020(1)(a)(B). The area is characterized by rural uses; approval of the requested plan map amendment and rezone will not change the use of the property to urban. There are various non-farm uses in the area, including a number of non-farm dwellings constructed or approved. The surrounding area has substantial areas of land zoned RR-10 and MUA-10. The Hearings Officer finds that this determination does not ask whether the proposal is “consistent with existing land use pattern,” but instead asks whether, considering the existing land use pattern, the property is agricultural land. Given the property’s location on the top of a plateau, any uses in conjunction with surrounding lands are impracticable due to the substantial physical barrier to cross-property use.

**Technological and Energy Inputs Required**

Technological and energy inputs required for agricultural use of the subject property also factor into the fact the property is not suitable for “farm use,” because it cannot be so employed for “*primary purpose of obtaining a profit in money.*” Suggested uses by the state agencies and other commentators do not address the profitability component of the definition of “farm use,” and do not rebut substantial evidence in the record that shows the subject property cannot be used for agricultural purposes for the primary purpose of obtaining a profit in money. This is due to the costs associated with trucking in water, fencing requirements, livestock transportation, winter hay, fertilizer, attempting to obtain irrigation water rights, labor costs, and energy/power requirements to pump enough groundwater to support agricultural use.

The Hearings Officer also notes that, as discussed above, certain uses, such as storing equipment or an indoor riding arena are not, in and of themselves “farm use,” as confirmed by LUBA in

*Oregon Natural Desert Association v. Harney County*, 42 Or LUBA 149 (2002). The state agencies and other commentators agree that the cost of technology and energy inputs required for agricultural use on the subject property can be daunting. No one presented any evidence to rebut the Applicant’s evidence that such costs prohibit the ability to make a profit in money from farming the subject property (See, e.g. Exhibits 35 and 91).

**Accepted Farm Practices**

The Applicant submitted evidence regarding accepted farming practices in Deschutes County, published by the Oregon State University Extension Service (Exhibit 8). The definition of “accepted farm practice,” like that of “farm use,” turns on whether or not it is occurring for the primary purpose of obtaining a profit. The *Wetherell* court relied on ORS 308A.056 to define “accepted farm practice” as “a mode of operation that is common to farms of a similar nature, necessary for the operation of these similar farms to obtain a profit in money and customarily utilized in conjunction with farm use.” *Wetherell, supra*, 52 Or LUBA at 681. Numerous farmers and ranchers, including Rand Campbell, Brian Rabe, James Stirewalt, Russell Mattis, Matt Cyrus, Fran Robertson and Marc Thalacker, testified and presented evidence that the subject property is not suitable for farm use and that operations required to turn a profit are unrealistic. This evidence is based on their own analysis of the subject property and understandings and experience as to what would be required to commence a farm use for profit on the property. Moreover, LUBA determined in the *Aceti I* case that it is not an accepted farming practice in Central Oregon to irrigate and cultivate Class VII and VIII soils.

In summary, the Applicant is not required to show that no agricultural use could ever be made on the property; only that no reasonable farmer would attempt to engage in “farm use,” which is for the primary purpose of obtaining a profit. As set forth in additional detail in the findings on specific criteria below, the Hearings Officer finds that substantial evidence in the record supports a determination that the subject property is not suited to commercial farming because no reasonable farmer would believe he or she could make a profit in money therefrom, considering all of the factors listed in OAR 660-033-020(1)(a)(B).

The Hearings Officer finds that the Applicant has met its burden of showing the subject property cannot be used for agricultural purposes for the primary purpose of obtaining a profit in money and such is not “agricultural land” under OAR 660-033-020(1)(a)(B). There are various barriers to the Applicant, or any other person, that preclude using the subject property to engage in farming activities for a profit. For this reason, and as set forth in more detail below, no exception to Statewide Planning Goal 3 is required.

**B. HEARINGS OFFICER’S FINDINGS AND CONCLUSIONS REGARDING APPLICABLE CRITERIA**

**Title 18 of the Deschutes County Code, County Zoning**

**Chapter 18.136, Amendments**

Section 18.136.010, Amendments

***DCC Title 18 may be amended as set forth in DCC 18.136. The procedures for text or legislative map changes shall be as set forth in DCC 22.12. A request by a property owner for a quasi-judicial map amendment shall be accomplished by filing an application on forms provided by the Planning Department and shall be subject to applicable procedures of DCC Title 22.***

**FINDING:** The Applicant, also the property owner, has requested a quasi-judicial plan amendment and filed the applications for a plan amendment and zone change. The Applicant has filed the required land use application forms for the proposal. The application will be reviewed utilizing the applicable procedures contained in Title 22 of the Deschutes County Code. The Hearings Officer finds these criteria are met.

Section 18.136.020, Rezoning Standards

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

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

**FINDING:** The Applicant provided the following response in its submitted burden of proof statement<sup>21</sup>:

*The Plan’s introductory statement explains that land use must comply with the statewide planning system and sets out the legal framework set by State law. It summarizes the Statewide Planning Goals. It also explains the process the County used to adopt the current comprehensive plan. This application is consistent with this introductory statement because the requested change has been shown to be consistent with State law and County plan provisions and zoning code that implement the Statewide Planning Goals.*

*The following provisions of Deschutes County’s amended comprehensive plan set out goals or text that may be relevant to the County’s review of this application. Other provisions of the plan do not apply.*

The Applicant utilizes this analysis, as well as analyses provided in prior Hearings Officers’ decisions to determine and respond to only the Comprehensive Plan Goals and policies that apply, which are listed in the Comprehensive Plan section of this Decision and Recommendation. The Hearings Officer’s findings addressing compliance with applicable Comprehensive Plan Goals and policies are set forth in the Comprehensive Plan section of this Decision and Recommendation below.

- B. That the change in classification for the subject property is consistent with the***

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<sup>21</sup> As noted above, the Applicant filed a revised burden of proof statement with its final legal argument on May 11, 2022. Both the original and revised burden of proof statements are part of the record.

***purpose and intent of the proposed zone classification.***

**FINDING:** The Applicant provided the following response in its burden of proof statement:

*The approval of this application is consistent with the purpose of the RR-10 zoning district which stated in DCC 18.60.010 as follows:*

*“The purposes of the Rural Residential Zone are to provide rural residential living environments; to provide standards for rural land use and development consistent with desired rural character and the capability of the land and natural resources; to manage the extension of public services; to provide for public review of nonresidential uses; and to balance the public's interest in the management of community growth with the protection of individual property rights through review procedures and standards.”*

*The approval of the application will allow the property to provide rural residential living environments in a rural location that is not suitable for farm use and where impacts of the new use will be minimized by topography and adjoining public lands. The zoning district and subdivision ordinance provide standards that will control land use to be consistent with the desired rural character and capability of the land and natural resources. The zoning district provides for public reviews of nonresidential uses. The approval of this application will allow the property owner to proceed with a low level of development on land that will not support farm use.”*

The Hearings Officer finds that the proposed change in classification will allow for potential future development of rural residential living. No application for development is before the County at this time; future application(s) must be consistent with the standards for rural land use and development considering desired rural character, the capability of the land and natural resources and managed extension of public services. Future development will be subject to public review which will require, among other things, a balancing of the public's interest in the management of community growth with the protection of individual property rights.

The Hearings Officer finds the Applicant has demonstrated the proposed change in classification is consistent with the purpose and intent of the RR-10 Zone.

**C. *That changing the zoning will presently serve the public health, safety and welfare considering the following factors:***

**1. *The availability and efficiency of providing necessary public services and facilities.***

**FINDING:** There are no plans to develop the properties in their current state; the above criterion asks if the proposed zone change will *presently* serve public health, safety, and welfare. The Applicant provided the following response in the submitted burden of proof statement:

*Necessary public facilities and services are available to serve the subject property. A will-serve letter from Central Oregon Electric Cooperative, Exhibit G shows that electric power*

*is available to serve the property. Well logs, Exhibits H through K, show that wells are a viable source of water for rural residential development.*

*The existing road network is adequate to serve the use. This has been confirmed by the transportation system impact review conducted by Christopher M. Clemow, PE, PTOE of Clemow Associates LLC, Exhibit S of this application. The property receives police services from the Deschutes County Sheriff. The property is in the Redmond Fire and Rescue rural fire protection district.*

The closest neighboring properties which contain residential uses are located on the north side of NW Coyner Avenue, on the south end of the subject property boundary, and nearby RR-10 residential lots along NW 93<sup>rd</sup> Street. These properties have water service primarily from wells, on-site sewage disposal systems and electrical service, cellular telephone services, etc.

The Applicant provided a will-serve letter from Central Electric Cooperative indicating that it is willing and able to serve the specified project location. The Applicant also included well logs from nearby properties with the application submittal demonstrating water availability in the general area.

Several commentators raised concerns regarding the general availability of groundwater in the area. The Applicant stated that rural residential development would use less water than water required for farming the subject property. There is no evidence that use of groundwater for farm use would be greater than use of groundwater for rural residential development. The Hearings Officer notes that there are no irrigation rights on the subject property, which would be required for most farm operations. The Hearings Officer finds that subjective opinions and anecdotal testimony regarding availability of groundwater for domestic use is not substantial evidence to rebut the Applicant’s well log evidence in the record.

Any new water use, unless exempt, must be appropriately permitted through the Oregon Water Resources Department (OWRD). At this time, no development is proposed and no approval for new water use has been requested. The Hearings Officer finds that water availability concerns of the state agencies and other commentators will be reviewed at the time of development applications. Without adequate water availability, future residential development may be limited or denied

The Hearings Officer finds there are no known deficiencies in public services or facilities that would negatively impact public health, safety, or welfare as the result of reclassifying the zoning of the subject property to RR10. Prior to development of the properties, the Applicant will be required to comply with the applicable requirements of the Deschutes County Code, including land use permitting, building permits, and sewage disposal permit processes, as well as to obtain a permit from the OWRD, if necessary, for a new water use unless exempt. The Hearings Officer finds that, through these development review processes, assurance of adequate public services and facilities will be verified. This criterion is met.

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



**FINDING:** The Applicant provided the following response in the submitted burden of proof statement:

*The RR-10 zoning is consistent with the specific goals and policies in the comprehensive plan as shown by the discussion of plan policies above. The existing EFU zoning and comprehensive plan already support development of the subject property with a number of nonfarm dwellings because the property is generally unsuitable for farm or forest uses. The property is comprised of nine lots of record that could qualify for development with up to approximately 24 dwellings including an existing nonfarm dwelling and two approved nonfarm dwellings. The RR-10 zoning will allow more dwellings to be built on the subject property but the impacts imposed will be the same as the minimal impacts imposed by a nonfarm dwelling.*

*The only adjoining land in farm use is Volwood Farms. It is located to the west of the subject property. Most of this farm property is located far below the subject property. This geographical separation will make it unlikely that the rezone will impose new or different impacts on Volwood Farms than imposed on it by existing farm and nonfarm dwellings. There are other farms in the surrounding area but all, like the Volwood Farms property, are functionally separated from the subject property by the steep hillside and rocky ridges of the subject property. Farm uses in the greater area, also, are occurring on properties that have been developed with residences. These properties are, however, separated from the subject property by a sufficient distance that RR-10 development will not adversely impact area farm uses or lands.*

In addition to these comments, the Applicant provided specific findings for each relevant Comprehensive Plan goal and policy, which are addressed below. The Hearings Officer finds the impacts of reclassification of the subject property to RR10 on surrounding land use will be consistent with the specific goals and policies contained within the Comprehensive Plan for the reasons set forth in the Comprehensive Plan section of this Decision and Recommendation. This criterion is met.

**D. *That there has been a change in circumstances since the property was last zoned, or a mistake was made in the zoning of the property in question.***

**FINDING:** The Applicant proposes to rezone the properties from EFU to RR-10 and re-designate the properties from Agriculture to Rural Residential Exception Area. The Applicant provided the following response in the submitted burden of proof statement:

*There has been a change in circumstances since the subject property was last zoned and a mistake in designating the subject property EFU/Agriculture when soils did not merit a designation and protection as “Agricultural Land.” This zone was applied to the property in 1979 and 1980 when Deschutes County adopted zones, a zoning ordinance and comprehensive plan that complied with the Statewide Goals.*

*In 1979 and 1980, undeveloped rural lands that contained poor soils but undeveloped were zoned EFU without regard to the specific soil characteristics of the property. Land owners were required to apply for a zone change to move their unproductive EFU properties out of the EFU zone. The County's zoning code allowed these owners a one-year window to complete the task. This approach recognized that some rural properties were mistakenly classified EFU because their soils and other conditions did not merit inclusion of the property in the EFU zone.*

*Some Deschutes County property owners of lands received approval to rezone properties but many eligible parcels were not rezoned during this short window of time. The soils on the subject property are similarly poor and also merit RR-10 Zoning to correct the "broad brush" mapping done in 1979 and 1980. Also, since 1979 and 1980, there is a change of circumstances related to this issue. The County's Comprehensive Plan has been amended to reinstate the right of individual property owners to seek this type of zone change and plan amendment.*

*Additionally, the population of Deschutes County has, according to the US Census, increased by 336% between 1980 when the County's last zoned this property and 2021 from 62,142 persons to 209,266 persons. The supply of rural residential dwelling lots has been diminishing in the same time period.*

*Since the property was zoned, it has become evident that farm uses are not viable on the property or on other area properties. The economics of farming have worsened over the decades making it difficult for most Deschutes County property owners to make money farming good ground and impossible to earn a profit from attempting to farm Class 7 and 8 farm soils. In 2017, according to Table 4 of the 2017 US Census of Agriculture, **Exhibit T**, only 16.03% of farm operators achieved a net profit from farming (238 of 1484 farm operations). In 2012, the percentage was 16.45% (211 of 1283 farm operations). In 2007, according to the 2012 US Census of Agriculture, that figure was 17% (239 of 1405 farm operations). **Exhibit U**. The vast majority of farms in Deschutes County have soils that are superior to those found on the subject property. As farming on those soils is typically not profitable, it is reasonable to conclude that no reasonable farmer would purchase the subject property for the purpose of attempting to earn a profit in money from agricultural use of the land.*

For the reasons set forth above in the Hearings Officer's Preliminary Findings and Conclusions, incorporated herein by this reference, the Hearings Officer finds a mistake was made by Deschutes County in zoning the subject property for Exclusive Farm Use given the predominately poor (Class VII and VIII) soils on the property and the evidence that the property owner cannot engage in "farm use," with the primary purpose of making a profit in money on the subject property. The Hearings Officer further finds that there has been a change in circumstances from the time the property was originally zoned EFU due to a rapid increase in population and a dwindling supply of rural residential lots to accommodate the added residents in the area. The Hearings Officer finds this criterion is met.

**Deschutes County Comprehensive Plan**

**Chapter 2, Resource Management**

Section 2.2 Agricultural Lands

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

**FINDING:** The Applicant provided the following response in the submitted burden of proof statement:

*The applicant’s soils study, Exhibit F, and the findings in this burden of proof demonstrate that the subject property is not agricultural land. This goal, therefore, does not apply. The vast majority of the subject property is comprised of Class 7 and 8 nonagricultural soils and the property has no known history of agricultural use. As noted in the Eastside Bend decision, Exhibit L, “these [Class 7 and 8] soils [according to soils scientist and soils classifier Roger Borine] have severe limitations for farm use as well as poor soil fertility, shallow and very shallow soils, surface stoniness, low available water capacity, and limited availability of livestock forage.” According to Agricultural Handbook No. 210 published by the Soil Conservation Service of the USDA, soils in Class 7 “have very severe limitations that make them unsuited to cultivation and that restrict their use largely to grazing, woodland, or wildlife.” Class VIII soils “have limitations that preclude their use for commercial plant production and restrict their use to recreation, wildlife, or water supply or to esthetic purposes.”*

As set forth in the Preliminary Findings and Conclusions above, incorporated herein by this reference, the Hearings Officer finds substantial evidence in the record supports a finding that the subject property is not “agricultural land,” and is not land that could be used in conjunction with adjacent property for agricultural uses. There is no evidence that the requested plan amendment and rezone will contribute to loss of agricultural land in the surrounding vicinity. I find that the agricultural industry will not be negatively impacted by re-designation and rezoning of the subject property. Therefore, the Hearings Officer finds the applications are consistent with Section 2.2, Goal 1, “preserve and maintain agricultural lands and the agricultural industry.”

***Policy 2.2.2 Exclusive Farm Use sub-zones shall remain as described in the 1992 Farm Study and shown in the table below, unless adequate legal findings for amending the sub-zones are adopted or an individual parcel is rezoned as allowed by Policy 2.2.3.***

**FINDING:** The Applicant is not asking to amend the subzone that applies to the subject property; rather, the Applicant is seeking a change under Policy 2.2.3 and has provided evidence to support rezoning the subject property to RR10. The Hearings Officer finds this policy is inapplicable to the subject applications.

***Policy 2.2.3 Allow comprehensive plan and zoning map amendments, including for those that qualify as non-resource land, for individual EFU parcels as***

*allowed by State Statute, Oregon Administrative Rules and this Comprehensive Plan.*

**FINDING:** The Applicant is seeking approval of a plan amendment and zone change to re-designate and rezone the properties from Agricultural to Rural Residential Exception Area. The Applicant is not seeking an exception to Goal 3 – Agricultural Lands, but rather seeks to demonstrate that the subject property does not meet the state definition of “Agricultural Land” as defined in Statewide Planning Goal 3 (OAR 660-033-0020).

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

*This plan policy has been updated specifically to allow non-resource land plan and zone change map amendments on land zoned EFU. The applicant is seeking a comprehensive plan amendment from Agriculture to RREA and a zone change from EFU-TE to RR-10 for non-resource land. This is essentially the same change approved by Deschutes County in PA-11-1/ZC-11-2 on land owned by the State of Oregon (DSL). In findings attached as Exhibit N, Deschutes County determined that State law as interpreted in Wetherell v. Douglas County, 52 Or LUBA 677 (2006) allows this type of amendment. LUBA said, in Wetherell at pp. 678-679:*

*“As we explained in DLCD v. Klamath County, 16 Or LUBA 817, 820 (1988), there are two ways a county can justify a decision to allow nonresource use of land previously designated and zoned for farm use or forest uses. One is to take an exception to Goal 3 (Agricultural Lands) and Goal 4 (Forest Lands). The other is to adopt findings which demonstrate the land does not qualify either as forest lands or agricultural lands under the statewide planning goals. When a county pursues the latter option, it must demonstrate that despite the prior resource plan and zoning designation, neither Goal 3 or Goal 4 applies to the property. Caine v. Tillamook County, 25 Or LUBA 209, 218 (1993); DLCD v. Josephine County, 18 Or LUBA 798, 802 (1990).”*

*LUBA’s decision in Wetherell was appealed to the Oregon Court of Appeals and the Oregon Supreme Court but neither court disturbed LUBA’s ruling on this point. In fact, the Oregon Supreme Court used this case as an opportunity to change the test for determining whether land is agricultural land to make it less stringent. Wetherell v. Douglas County, 342 Or 666, 160 P3d 614 (2007). In that case, the Supreme Court stated that:*

*“Under Goal 3, land must be preserved as agricultural land if it is suitable for “farm use” as defined in ORS 215.203(2)(a), which means, in part, “the current employment of land for the primary purpose of obtaining a profit in money” through specific farming-related endeavors.” Wetherell, 343 Or at 677.*

*The Wetherell court held that when deciding whether land is agricultural land “a local government may not be precluded from considering the costs or expenses of engaging in those activities.” Wetherell, 342 Or at 680. In this case, the applicant has shown that the*

*subject property is primarily composed of Class VII and VIII nonagricultural soils making farm-related endeavors, including livestock grazing, unprofitable. The property is not currently employed in any type of farm use and exhibits no evidence of such use. It is known that the property has not been employed in farm use for the past 20 years. Accordingly, this application complies with Policy 2.2.3.*

The facts presented by the Applicant in the burden of proof for the subject application are similar to those in the *Wetherell* decisions and in the aforementioned Deschutes County plan amendment and zone change applications. For the reasons set forth above in the Preliminary Findings and Conclusions, incorporated herein by this reference, the Hearings Officer finds the subject property is not agricultural land and does not require an exception to Statewide Planning Goal 3 under state law. The applications are consistent with this Policy.

***Policy 2.2.4 Develop comprehensive policy criteria and code to provide clarity on when and how EFU parcels can be converted to other designations.***

**FINDING:** This plan policy provides direction to Deschutes County to develop new policies to provide clarity when EFU parcels can be converted to other designations. The Hearings Officer adheres to the County’s previous determinations in plan amendment and zone change applications and finds the proposal is consistent with this policy.

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

***Policy 2.2.13 Identify and retain accurately designated agricultural lands.***

**FINDING:** This plan policy requires the County to identify and retain agricultural lands that are accurately designated. Substantial evidence in the record supports a finding that the subject property was not accurately designated as agricultural land as detailed above in the Preliminary Findings and Conclusions, incorporated herein by this reference. Further discussion on the soil analysis provided by the Applicant is detailed under the OAR Division 33 criteria below. The Hearings Officer finds the applications are consistent with this policy.

Section 2.5, Water Resources Policies

***Goal 6, Coordinate land use and water policies.***

***Policy 2.5.24 Ensure water impacts are reviewed and, if necessary, addressed for significant land uses or developments.***

**FINDING:** The Applicant is not proposing a specific development application at this time. Therefore, the Applicant is not required to demonstrate the water impacts associated with future development. Rather, the Applicant will be required to address this criterion during development of the subject property, which would be reviewed under any required land use process for the site (e.g. conditional use permit, tentative plat). The Hearings Officer finds this policy does not apply to the subject applications.

Section 2.7, Open Spaces, Scenic Views and Sites

**Goal 1, Coordinate with property owners to ensure protection of significant open spaces and scenic view and sites.**

***Policy 2.7.3 Support efforts to identify and protect significant open spaces and visually important areas including those that provide a visual separation between communities such as the open spaces of Bend and Redmond or lands that are visually prominent.***

***Policy 2.7.5 Encourage new development to be sensitive to scenic views and sites.***

**FINDING:** These policies are fulfilled by the County’s Goal 5 program. The County protects scenic views and sites along major rivers and roadways by imposing Landscape Management (LM) Combining Zones to adjacent properties. The Hearings Officer finds that no LM combining zone applies to the subject property, nor is the subject property identified as a Goal 5 resource. Furthermore, no new development is proposed under the present application.

The state agencies and several commentators suggested that the subject property should be left “as is” because it is allegedly being used by wildlife as a “wildlife sanctuary.” There is no applicable statute or regulation that requires the property to be subject to wildlife protections given that there is no LM combining zone applicable to the subject property and it is not designated as a Goal 5 resource. Nor is there any state law that prohibits redesignation and rezoning of a property in and of itself on this basis. There is nothing in OAR 660-033-0030, “Identifying Agricultural Land,” that makes any reference to wildlife or wildlife use.

For these reasons, the Hearings Officer finds that these provisions of the plan are inapplicable to consideration of the proposed zone change and plan amendment.

**Chapter 3, Rural Growth**

Section 3.2, Rural Development

***Growth Potential***

***As of 2010, the strong population growth of the last decade in Deschutes County was thought to have leveled off due to the economic recession. Besides flatter growth patterns, changes to State regulations opened up additional opportunities for new rural development. The following list identifies general categories for creating new residential lots, all of which are subject to specific State regulations.***

- ***2009 legislation permits a new analysis of agricultural designated lands***
- ***Exceptions can be granted from the Statewide Planning Goals***
- ***Some farm lands with poor soils that are adjacent to rural residential uses can be rezoned as rural residential***

**FINDING:** This section of the Comprehensive Plan does not contain Goals or Policies, but does provide the guidance above. In response to this section, the Applicant provided the following response in the burden of proof:

*This part of the comprehensive plan is not a relevant approval criterion for a plan amendment and zone change application. Instead, it is the County’s assessment of the amount of population growth might occur on rural residential lands in the future based on its understanding of the types of changes allowed by law. Comprehensive Plan Policy 2.2.3 specifically authorizes rezoning and comprehensive plan map amendments for any property zoned EFU and is the code section that defines the scope of allowed zone changes.*

*This section makes it clear, however, that EFU-zoned land with poor soils adjacent to rural residential development is expected to be rezoned for rural residential development during the planning period. The subject property has extremely poor soils that do not qualify as agricultural land that must be protected by Goal 3. The subject property also adjoins EFU lands developed with rural residential uses (nonfarm dwellings) – Tax Lots 100, 200, 300, Map 14-12-28D and Tax Lot 301, Map 14-12-27. It is also located in close proximity to a large area of RR-10 land to the north and northeast that includes the large Lower Bridge Estates subdivision.*

The RR10 Zone is a rural residential zone and as discussed in the Findings of Fact above, and there are several nearby properties to the north and northeast that are zoned RR10 as well as nearby EFU zoned property developed with residential uses and others that have been approved for development of nonfarm dwellings. This policy references the soil quality, which is discussed above.

The Hearings Officer finds that the County’s Comprehensive Plan provisions anticipate the need for additional rural residential lots as the region continues to grow. This includes providing a mechanism to rezone farm lands with poor soils to a rural residential zoning designation. The Hearings Officer notes this policy references the soil quality, which is discussed in detail above. The Hearings Officer finds that, the rezone application does not include the creation of new residential lots. However, read in conjunction with Comprehensive Plan Policy 2.2.3, which specifically authorizes rezoning and comprehensive plan map amendments for any property zoned EFU that is comprised of poor soils and are in the vicinity of other rural residential uses, the Hearings Officer finds that rezoning the subject property to RR-10 is consistent with this policy. The Applicant has demonstrated the Subject Property is comprised of poor soils, cannot be used for “farm use,” as defined in ORS 215.203 and that is in the vicinity of other rural residential uses.

Section 3.3, Rural Housing

***Rural Residential Exception Areas***

***In Deschutes County most rural lands are designated for farms, forests or other resources and protected as described in the Resource Management chapter of this Plan. The majority of the land not recognized as resource lands or Unincorporated Community***

*is designated Rural Residential Exception Area. The County had to follow a process under Statewide Goal 2 to explain why these lands did not warrant farm or forest zoning. The major determinant was that many of these lands were platted for residential use before Statewide Planning was adopted.*

*In 1979 the County assessed that there were over 17,000 undeveloped Rural Residential Exception Area parcels, enough to meet anticipated demand for new rural housing. As of 2010 any new Rural Residential Exception Areas need to be justified through initiating a nonresource plan amendment and zone change by demonstrating the property does not meet the definition of agricultural or forest land, or taking exceptions to farm, forest, public facilities and services and urbanization regulations, and follow guidelines set out in the OAR.*

**FINDING:** The Applicant provided the following response to this provision in the burden of proof:

*The quoted language is a part of the background text of the County’s comprehensive plan. It is not a plan policy or directive and it is not an approval standard for this application. It does, however, recognize the fact that a Rural Residential Exception Area designation is an appropriate plan designation to apply to nonresource lands.*

*As LUBA and the Oregon Supreme Court recognized in the Wetherell decision, there are two ways a county can justify a decision to allow non-resource use of land previously designated and zoned for farm or forest uses. The first is to take an exception to Goal 3 and Goal 4 and the other is to adopt findings that demonstrate the land does not qualify either as forest lands or agricultural lands under the statewide planning goals. Here, the applicant is pursuing the latter approach. The quoted plan text addressed the former. If the quoted plan text were read to require an exception to Goal 3 or 4 where the underlying property does not qualify as either Goal 3 or Goal 4 resource land, such a reading would be in conflict with the rule set forth in Wetherell and Policy 2.2.3 of the Comprehensive Plan.*

*The Deschutes County Board of Commissioners has interpreted its RREA plan designation to be the proper "catchall" designation for non-resource land in its approval of the Daniels Group plan amendment and zone change by adopting the following finding by Hearings Officer Ken Helm:*

*"I find that Deschutes County has interpreted the RREA plan designation as the property “catchall” designation for non-resource land.”*

*As a result, the RREA plan designation is the appropriate plan designation for the subject property.*

The Hearings Officer adheres to the past Deschutes County Hearings Officer interpretations and finds that the above language is not a policy and does not require an exception to Statewide



Planning Goal 3. The Hearings Officer finds the proposed RREA plan designation is the appropriate plan designation to apply to the subject property as a “catch-all” rural designation for the subject property, which is not agricultural land.

Section 3.7, Transportation

***Appendix C – Transportation System Plan  
ARTERIAL AND COLLECTOR ROAD PLAN***

...

***Goal 4. Establish a transportation system, supportive of a geographically distributed and diversified economic base, while also providing a safe, efficient network for residential mobility and tourism.***

...

***Policy 4.4 Deschutes County shall consider roadway function, classification and capacity as criteria for plan map amendments and zone changes. This shall assure that proposed land uses do not exceed the planned capacity of the transportation system.***

**FINDING:** This policy applies to the County and advises it to consider the roadway function, classification and capacity as criteria for plan amendments and zone changes. The County complies with this direction by determining compliance with the Transportation Planning Rule (TPR), also known as OAR 660-012, as set forth below in subsequent findings.

**OREGON ADMINISTRATIVE RULES CHAPTER 660, LAND CONSERVATION AND DEVELOPMENT DEPARTMENT**

**Division 6, Goal 4 – Forest Lands**

OAR 660-006-0005, Definitions

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

**FINDING:** The Applicant provided the following in response to Goal 4:

*The existing site and surrounding areas do not include any lands that are suited for forestry operations. Goal 4 says that forest lands “are those lands acknowledged as forest lands as of the date of adoption of this goal amendment.” The subject property does not include lands acknowledged as forest lands as of the date of adoption of Goal 4. Goal 4 also says that “where\*\*a plan amendment involving forest lands is proposed, forest land shall*

*include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water and fish and wildlife resources.” This plan amendment does not involved any forest land. The subject property does not contain any merchantable timber and is not located in a forested part of Deschutes County.*

The subject property is not zoned for forest lands, nor are any of the properties within a seven-mile radius. The properties do not contain merchantable tree species and there is no evidence in the record that the properties have been employed for forestry uses historically. The NRCS has determined that the soil mapping units on the subject property are not suitable for wood crops and, therefore, has excluded them from Table 8 of the NRCS Soil Survey of the Upper Deschutes River Area. The Hearings Officer finds this satisfies OAR 660-06-0005(7)(a) and OAR 660-06-0010(2). There are no wood production capabilities of the subject property.

For the foregoing reasons, the Hearings Officer finds the subject property does not qualify as forest land.

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

OAR 660-015-0000(3)

*To preserve and maintain agricultural lands.*

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

**FINDING:** Goal 3 includes a definition of “Agricultural Land,” which is repeated in OAR 660-033-0020(1). The Hearings Officer has made Preliminary Findings and Conclusions set forth above, and incorporated herein by this reference, that the subject property does not constitute “agricultural land.”

OAR 660-033-0020, Definitions

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

- (1)(a) "Agricultural Land" as defined in Goal 3 includes:*
  - (A) Lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon<sup>22</sup>;*

<sup>22</sup> OAR 660-033-0020(5): "Eastern Oregon" means that portion of the state lying east of a line beginning at the intersection of the northern boundary of the State of Oregon and the western boundary of Wasco County, then south along the western boundaries of the Counties of Wasco, Jefferson, Deschutes and Klamath to the southern boundary of the State of Oregon.

**FINDING:** The Applicant’s basis for not requesting an exception to Goal 3 is founded on the premise that the subject property does not meet the definitions of “Agricultural Land.” In support, the Applicant offered the following response as included in the burden of proof statement:

*Statewide Goal 3, above, ORS 215.211 and OAR 660-033-0030(5) allow the County to rely on the more detailed and accurate information provided by the **Exhibit F** soil study to determine whether land is agricultural land. ORS 215.211 give a property owner the right to rely on more detailed information than is provided by the NRCS Web Soil Survey of the NRCS to “assist the county to make a better determination of whether land qualifies as agricultural land.” The more detailed soils survey obtained by the applicant shows that approximately 71% of the subject property is composed of Class VII and VIII soils. As a result, it is clear that the tract is not predominantly composed of Class I-VI soils.*

The soil study provided by Mr. Rabe of Valley Science and Engineering (dated June 22, 2021) and the soil report addendum (dated January 13, 2022) support the Applicant’s representation of the data for the subject property. This data was not rebutted by any party.

As set forth in detail in the Preliminary Findings and Conclusions above, incorporated herein by this reference, the Hearings Officer finds, based on the submitted soil study and the above OAR definition, that the subject property is comprised predominantly of Class VII and VIII soils and, therefore, does not constitute “Agricultural Lands” as defined in OAR 660-033-0020(1)(a)(A).

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

**FINDING:** The Applicant’s basis for not requesting an exception to Goal 3 is founded on the proposal that the subject property are not defined as “Agricultural Land.” The Applicant provides the following analysis in the burden of proof.

*This part of the definition of “Agricultural Land” requires the County to consider whether the Class VII and VIII soils found on the subject property are suitable for farm use despite their Class VII and VIII classification. The Oregon Supreme Court has determined that the term “farm use” as used in this rule and Goal 3 means the current employment of land for the primary purpose of obtaining a profit in money through specific farming-related endeavors. The costs of engaging in farm use are relevant to determining whether farm activities are profitable and this is a factor in determining whether land is agricultural land. Wetherell v. Douglas County, 342 Or 666, 160 P3d 614 (2007).*

*The primary agricultural use conducted on properties that lack irrigation water rights and have poor soils is grazing cattle. The extremely poor soils found on the property, however, make it a poor candidate for dryland grazing. The dry climate makes it difficult to produce adequate forage on the property to support a viable or potentially profitable grazing*

operation or other agricultural use of the property. This issue is addressed in greater detail in the Exhibit F soils study. Photographs of various parts of the subject property provide a visual depiction of the land in question and its characteristics:

[Please see the burden of proof for photos submitted by the applicant]

Given the high cost of irrigating and maintaining the property as pasture or cropland (high labor costs, labor-intensive, high cost of irrigation equipment and electricity, high cost of fertilizer, etc.), dry land grazing is the accepted farm use of poor soils in Deschutes County. This use can be conducted until the native vegetation is removed by grazing (see the discussion of the suitability of the property for grazing, below). The soils study includes an analysis of the level of cattle grazing that would be able to be conducted on the property, without overgrazing it. It finds that the entire 710 acres would support from 8 to 15 cow-calf pairs for a year based on proper management of the land for year-round grazing.

When assessing the potential income from dry land grazing, Deschutes County uses a formula and assumptions developed by the OSU Extension Service. This formula is used by the County to decide whether EFU-zoned land is generally unsuitable for farm use. It assumes that one acre will produce 900 pounds of forage per year.

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

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

$$30 \text{ days} \times 2\#/\text{day}/\text{acre} = 60.0 \text{ lbs. Beef}/\text{acre} \\ (1 \text{ acre per AUM})$$

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

Thus, using the OSU/County formula, the total gross beef production potential for the subject property if it was comprised of more productive soils than found on the subject property would be approximately \$48,990 annually. This figure represents gross income and does not take into account real property taxes, fencing costs, land preparation, purchase costs of livestock, veterinary costs, or any other costs of production which would exceed income. Property taxes, alone, were \$15,706.62 for the eight tax lots that comprise the subject property in 2020. The payment of a modest wage of \$15.00 per hour to the rancher and/or employee for only one FTE would cost the ranch operation \$31,200 in

wages and approximately an additional \$7,800 to \$12,480 (1.25 to 1.4 of salary) for employment taxes paid by the employer and standard employee benefits. An expired internet job listing (at least two years old) for a farmer to farm the Volwood Farms property located to the west of the subject property offered wages of \$15 to \$25 an hour and medical insurance. **Exhibit V.** A wage of \$25 per hour provides an annual salary of \$52,000 and costs the farm approximately \$15,000 to \$20,800 in taxes and benefits.

A review of the seven considerations listed in the administrative rule, below, provided in the soils survey report, Exhibit F, and in the findings provided below explain why the poor-quality soils found on the subject property are not suitable for farm use:

**Soil Fertility:** Class 7 and 8 soils are not fertile soils. They are not suited for the production of farm crops. This fact has been recognized in numerous County land use cases, including the zone change and plan amendment applications being filed with this land use application. Farm use on these soils is limited to rangeland grazing at a level that does not qualify as “farm use.” No person would expect to make a profit by grazing livestock on the subject property.

**Suitability for Grazing:** The climate is cold and dry. The growing season is very short. The subject property is located between Redmond and Sisters. According to the OSU Extension Service the growing season for Redmond is only 80 to 90 days long. **Exhibit W.** The growing season for Sisters is shorter. The average annual precipitation for Redmond is only 8.8 inches. This means that the amount of forage available for dry land grazing is low and will be slow to regrow. This also means that a farmer has a short period of amount of time to irrigate pastures, if irrigation water rights can be secured. This makes it difficult for a farmer to raise sufficient income to offset the high costs of establishing, maintaining and operating an irrigation system and groundwater well. That cost also would include the cost of purchasing and retiring water rights from another area farm property to mitigate for the impacts of pumping groundwater – something that is cost-prohibitive for almost any farm operation. This is clearly the case for irrigating non-agricultural Class VII and VIII soils.

**Existing and Future Availability of Water for Farm Irrigation Purposes:** The subject property is not located in an irrigation district. It is too remote from any irrigation district in terms of distance and elevation (above) to be able to obtain irrigation water from a district for farming as shown by **Exhibit X.** In order to obtain water rights, the applicant would need to acquire a water right from Oregon Water Resources Department (OWRD). If such a right were able to be secured, the property owner would need to purchase and retire water rights from irrigated farm land in Central Oregon that is surely more productive than the subject property (71% Class VII and VIII soils). Such a transaction would run counter to the purpose of Goal 3 to maintain productive Agricultural Land in farm use. The cost of purchasing water rights, obtaining a groundwater permit and establishing an irrigation system are significant and would not be reasonably expected to result in farm income that would offset the cost incurred for the subject property.

**Existing Land Use Patterns:** *The applicant’s analysis of existing land use patterns provided earlier in this burden of proof shows that the subject property is located primarily on a plateau above farm lands. The lands on the plateau are either undeveloped open space owned by the USA or RR-10 zoned subdivision lots developed with single-family homes. The addition of RR-10 zoned lots and homes rather than nonfarm dwellings is consistent with land use of other privately-owned property on the plateau. Below the plateau are public lands and a small number of farms and farm and nonfarm dwellings on or adjacent to existing farm operations. The addition of homes here would not impose significant new impacts on farm operations in the area.*

**Technological and Energy Inputs Required:** *Given its poor soils, this parcel would require technology and energy inputs over and above accepted farming practices. Excessive fertilization and soil amendments; very frequent irrigation, and marginal climatic conditions would restrict cropping alternatives. Pumping irrigation water requires energy inputs. The application of lime and fertilizer typically requires the use of farm machinery that consumes energy. The irrigation of the property requires the installation and operation of irrigation systems. All of these factors are why Class 7 and 8 soils are not considered suitable for use as cropland.*

**Accepted Farming Practices:** *As determined by the County in the Aceti case, farming lands comprised of soils that are predominately Class VII and VIII is not an accepted farm practice in Central Oregon. Dryland grazing, the farm use that can be conducted on the poorest soils in the County, typically occur on Class VI non-irrigated soils. Crops are typically grown on soils in soil class III and IV when irrigated that Class VI without irrigation.*

The Hearings Officer incorporates herein by this reference the Preliminary Findings and Conclusions above and finds that the subject property does not constitute “Agricultural Lands” as defined in OAR 660-033-0020(1)(a)(B).

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

**FINDING:** The Applicant offered the following response in the burden of proof statement:

*The subject property is not land necessary to permit farm practices to be undertaken on adjacent or nearby lands. The following facts are shown by the applicant’s discussion of surrounding development in Section E of this application, above and by the additional information provided below.*

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

to conduct farm practices on these properties.

**EFU Properties to the West (South to North)**

<b>Tax Map, Lot and Size</b>	<b>Farm Use</b>	<b>Potential Farm Practices</b>	<b>Need Subject Property?</b>
14-12-00, 300 1588.55 acres	Open space; public land	Dry land grazing	No, property accessible from Buckhorn Road
14-12-21, 200 & 100 372.71 acres Volwood Farms	Irrigated fields currently growing orchard grass, hay and alfalfa	Irrigation Growing/harvesting crops Fertilizing field Baling hay Herbicide use	No, Tax Lot 200 and 100 are below the level of a majority of subject property. They are comprised of good farm soils while the subject property is not. Separation due to elevation has prevented conflicts between existing nonfarm dwelling on subject property and this farming operation.
14-12-20, 200 146.37 acres	Irrigated field suitable for growing orchard grass, hay, and alfalfa	Irrigation Growing/harvesting crops Fertilizing field Baling hay Herbicide use	No, TL 200 is located west of Buckhorn Road and separated from subject property by Volwood Farms property. Property also separated from subject property by topography.

**North:** All of the land north of the subject property that might rely on the subject property for farm practices, other than the Volwood Farms property inventoried above and an open space tract of land owned by the USA, is zoned RR-10 and is not in farm use. Cattle grazing would be able to occur on the USA property at a very limited scale due to sparse vegetation without need for the subject property to conduct the activity.

**East:**

***EFU Properties to East (North to South)***

<b><i>Tax Map, Lot and Size</i></b>	<b><i>Farm Use</i></b>	<b><i>Potential Farm Practices</i></b>	<b><i>Need Subject Property?</i></b>
<i>14-12-22B, 700 80 acres</i>	<i>Open space public land</i>	<i>Livestock grazing</i>	<i>No, grazing can occur without reliance on subject property.</i>
<i>14-12-22C, 500 120 acres</i>	<i>Open space public land</i>	<i>Livestock grazing</i>	<i>No, grazing can occur without reliance on subject property.</i>
<i>14-12-27, 200 120 acres</i>	<i>Open space public land</i>	<i>Livestock grazing</i>	<i>No, grazing can occur without reliance on subject property.</i>
<i>14-12-27, 301 17.50 ac</i>	<i>None. Nonfarm parcel and dwelling</i>	<i>None</i>	<i>No, no farm use and property not suitable for farm use.</i>
<i>14-12-00, 300 62.58 acres</i>	<i>Irrigated cropland suitable for growing orchard grass, hay, and alfalfa</i>	<i>Irrigation Growing/harvesting crops Fertilizing field Baling hay Herbicide use</i>	<i>No, separated from subject property by Tax Lot 301 and elevation. Property created by partition that found that nonfarm dwelling would not interfere with farm use on Tax Lot 300 and other area farms.</i>
<i>14-12-14B, 200 80 acres</i>	<i>Approved for nonfarm dwelling</i>	<i>None</i>	<i>No</i>

***South:*** *Most of the land to the south of the subject property is open space land owned by the USA and nonfarm dwelling parcels comprised of land determined by Deschutes County to be generally unsuitable for the production of farm crops, livestock and merchantable tree species.*



**EFU Properties to South**

<b>Tax Map, Lot and Size</b>	<b>Farm Use</b>	<b>Potential Farm Practices</b>	<b>Need Subject Property?</b>
14-12-280, 100 28.60 acres	None, nonfarm dwelling	None	No
14-12-280, 200 19.11 acres	None, nonfarm dwelling	None	No
14-12-280, 300 19.65 acres	None, nonfarm dwelling	None	No
14-12-20, 3200 1588.55 acres	Open space public land	Livestock grazing	No, grazing can occur without reliance on subject property. Accessible from Buckhorn Road and Coyner Avenue.
14-12-00, 1923 37.51 acres	Nonfarm dwelling. Small irrigated pasture for horses and small pivot suitable for growing hay, grass or alfalfa.	Irrigation Growing/harvesting crops Fertilizing field Baling hay Herbicide use	No, separated from subject property by other nonfarm properties.

The Applicant provided a detailed analysis of land uses and agricultural operations surrounding the subject property. The Hearings Officer finds that barriers for the subject property to engage with in farm use with these properties include: poor quality soils, lack of irrigation, proximity and significant topography changes.

The Hearings Officer incorporates herein by this reference the Preliminary Findings and Conclusions above and finds that the subject property does not constitute “Agricultural Lands” as defined in OAR 660-033-0020(1)(a)(C).

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

**FINDING:** The Applicant provided the following response in the burden of proof statement:

*The subject property is not a part of a farm unit. The property is a tract of land that is generally unsuitable for the production of farm crops and livestock and*

*merchantable trees species that is eligible to be developed with nonfarm dwellings. As a result, this rule does not apply to the County's review of this application.*

*The apparent purpose of this rule is to prevent the rezoning of portions of a farm property that function together as a farm. That is not the case here. In this case, the property in its entirety is not agricultural land and is not a farm unit because it is not engaged in farm use and has not been engaged in that use for 20 years or more. The applicant is not seeking to remove unproductive lands from an otherwise productive farm property.*

*Even if the subject property is considered to be a "farm unit" despite the fact it has never been farmed, Goal 3 applies a predominant soil test to determine if a property is "agricultural land." The predominant soils classification of the subject property is Class VII and VII which provides no basis to inventory the property as agricultural land unless the land is shown to be, in fact, productive farmland.*

*All parts of the subject property were studied by the applicant's soils analysis, **Exhibit F**. The analysis shows that the predominant soil type found on the property is Class VII and VIII, nonagricultural land. Some Class VI soils are intermingled with the nonagricultural soil not vice versa. As a result, this rule does not require the Class VII and VIII soils to be classified agricultural land.*

The Hearings Officer incorporates by this reference the Preliminary Findings and Conclusions set forth above and finds that the subject property does not constitute "Agricultural Lands," as defined in OAR 660-033-0020(1)(b).

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

**FINDING:** The subject property is not within an acknowledged urban growth boundary or land within acknowledged exception areas for Goals 3 or 4. The Hearings Officer finds this criterion is inapplicable.

OAR 660-033-0030, Identifying Agricultural Land

- (1) ***All land defined as "agricultural land" in OAR 660-033-0020(1) shall be inventoried as agricultural land.***
- (2) ***When a jurisdiction determines the predominant soil capability classification of a lot or parcel it need only look to the land within the lot or parcel being inventoried. However, whether land is "suitable for farm use" requires an inquiry into factors beyond the mere identification of scientific soil classifications. The factors are listed in the definition of agricultural land set forth at OAR 660-033-0020(1)(a)(B). This inquiry requires the consideration of***

*conditions existing outside the lot or parcel being inventoried. Even if a lot or parcel is not predominantly Class I-IV soils or suitable for farm use, Goal 3 nonetheless defines as agricultural “lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands”. A determination that a lot or parcel is not agricultural land requires findings supported by substantial evidence that addresses each of the factors set forth in 660-033-0020(1).*

**FINDING:** The Applicant addressed the factors in OAR 660-033-0020(1) above. For the reasons set forth in the Preliminary Findings and Conclusions above, incorporated herein by this reference, the Hearings Officer finds the subject property is not “Agricultural Lands,” as defined in OAR 660-033-0030(1). The subject property is not necessary to permit farm practices undertaken on adjacent and nearby lands.

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

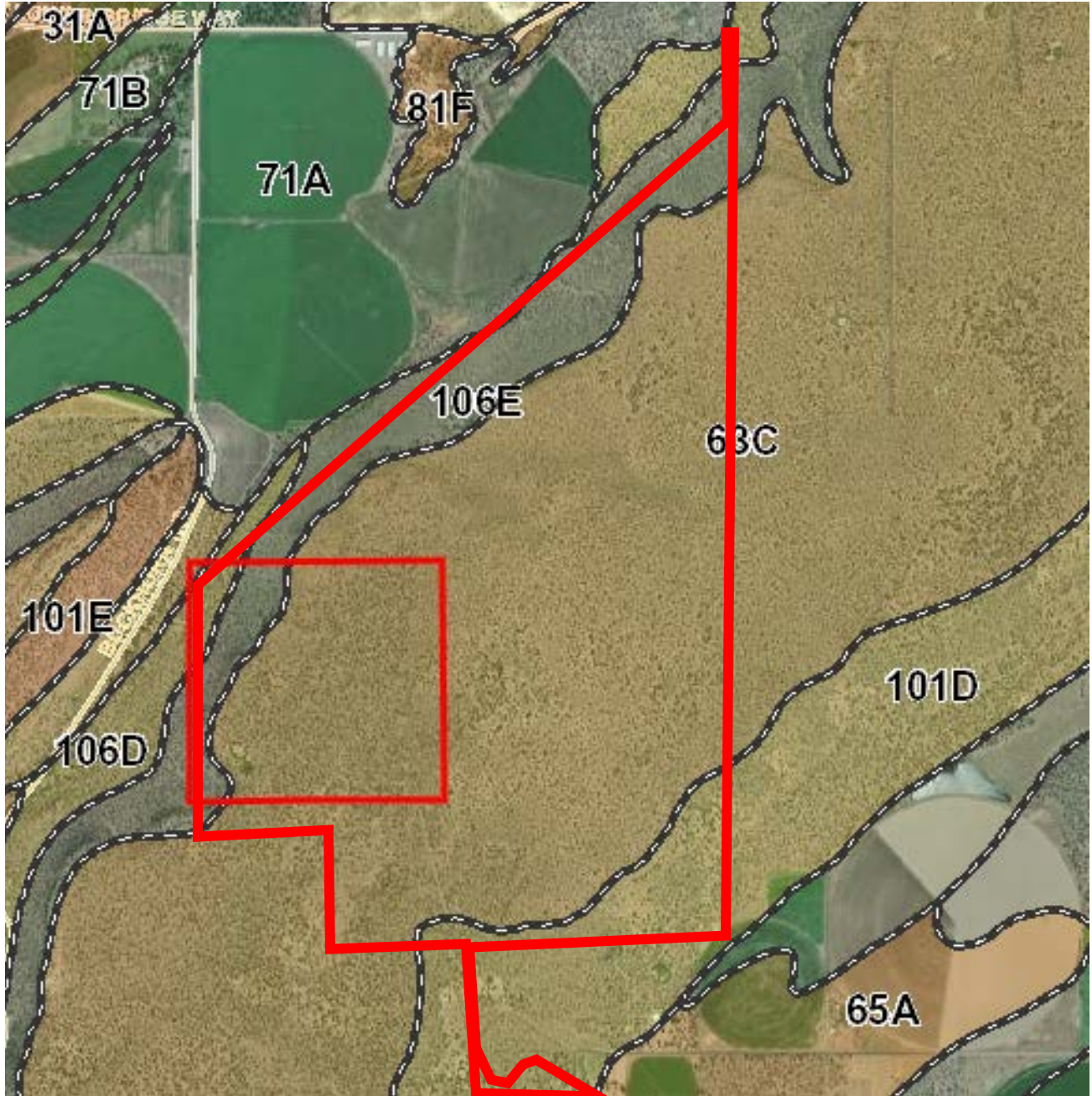
**FINDING:** As the Hearings Officer found above, the subject property is not suitable for farm use and is not necessary to permit farm practices to be undertaken on adjacent or nearby lands, regardless of ownership of the subject property and ownership of nearby or adjacent land. For the reasons set forth in the Preliminary Findings and Conclusions above, incorporated herein by this reference, the Hearings Officer finds the subject property is not “Agricultural lands,” and thus that no exception to Goal 3 is required.

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

**FINDING:** The soil study prepared by Mr. Rabe provides more detailed soils information than contained in the NRCS Web Soil Survey. NRCS sources provide general soils data for large units of land. The Hearings Officer finds the soil study provides detailed and accurate information about individual parcels based on numerous soil samples taken from the subject property. The soil study is related to the NCRS Land Capability Classification (LCC) system that classifies soils class I through VIII. An LCC rating is assigned to each soil type based on rules provided by the NRCS.

The NRCS mapping for the subject property is shown below in **Figure 1**. According to the NRCS Web Soil Survey tool, the subject property predominantly contains 63C soil (75 percent) and 106E soil (17 percent) with the remaining property containing smaller amounts of 31B, 71A, 101D, and 106D soils.

*Figure 1 - NRCS Soil Map (Subject Property, appx.)*



The soil study conducted by Mr. Rabe of Valley Science and Engineering finds the soil types on the subject property vary from the NRCS identified soil types. The soil types described in the soil study are described below and the characteristics and LCC rating are shown in **Table 1** below

**Table 1 - Summary of Order 1 and 2 Soil Survey (Subject Property)**

Site-Specific Symbol	Unit Name	Acreage	%	Land Capability Class <sup>1</sup>	
				non-irrigated	irrigated
36B	Deskamp loamy sand, 0 to 8% slopes	5.05	0.7%	6s	3s
81C	Lickskillet stony sandy loam, 0 to 15% slopes	375.03	52.5%	7e	--
81D	Lickskillet stony sandy loam, 15 to 30% slopes	54.03	7.6%	7e	--
81E	Lickskillet stony sandy loam, 30 to 50% slopes	64.73	9.1%	7e	--
106D(R)	Redslide sandy loam, 15 to 30% slopes	22.88	3.2%	6e	--
127C	Statz sandy loam, 0 to 15% slopes	178.72	25.0%	6s	4s
109	Rock outcrop	14.16	2.0%	8s	--
<b>Total</b>		<b>714.60</b>	<b>100%</b>		
<b>Subtotal Class I - VI</b>		<b>206.65</b>	<b>29%</b>		
<b>Subtotal Class VII - VIII</b>		<b>507.95</b>	<b>71%</b>		

NOTES:

Abbreviations: "--" = no data, e = erosion, NRCS = Natural Resources Conservation Service, s = shallow.

<sup>1</sup> Land Capability Class as published in the Soil Survey of Upper Deschutes River Area, Oregon (Soil Survey Staff, Natural Resources Conservation Service, 2002).

Mr. Rabe’s soil study concludes that the subject property contains 71 percent Class VII and VIII soils. The submitted soil study prepared by Mr. Rabe is accompanied in the submitted application materials by correspondence from the Department of Land Conservation and Development (DLCD) (Applicant’s Exhibit F).

The DLCDC correspondence confirms that Mr. Rabe’s prepared soil study is complete and consistent with the reporting requirements for agricultural soils capability as dictated by DLCDC. Based on Mr. Rabe’s qualifications as a certified Soil Scientist and Soil Classifier, and as set forth in detail in the Preliminary Findings and Conclusions above, incorporated herein by this reference, the Hearings Officer finds the submitted soil study to be definitive and accurate in terms of site-specific soil information for the subject property.

- (c) ***This section and OAR 660-033-0045 apply to:***
  - (A) ***A change to the designation of land planned and zoned for exclusive farm use, forest use or mixed farm-forest use to a non-resource plan designation and zone on the basis that such land is not agricultural land; and***

**FINDING:** The Applicant is seeking approval of a non-resource plan designation on the basis that the subject property is not defined as agricultural land. Therefore, this section and OAR 660-033-0045 applies to these applications.

- (d) *This section and OAR 660-033-0045 implement ORS 215.211, effective on October 1, 2011. After this date, only those soils assessments certified by the department under section (9) of this rule may be considered by local governments in land use proceedings described in subsection (c) of this section. However, a local government may consider soils assessments that have been completed and submitted prior to October 1, 2011.*

**FINDING:** The Applicant submitted a soil study by Mr. Rabe of Valley Science and Engineering dated June 22, 2021, and an addendum dated January 13, 2022. The soils study was submitted following the ORS 215.211 effective date. The Applicant’s Exhibit F includes acknowledgement from Hilary Foote, Farm/Forest Specialist with the DLCDC, dated September 13, 2021, that the soil study is complete and consistent with DLCDC’s reporting requirements. The Hearings Officer finds this criterion is met.

- (e) *This section and OAR 660-033-0045 authorize a person to obtain additional information for use in the determination of whether land qualifies as agricultural land, but do not otherwise affect the process by which a county determines whether land qualifies as agricultural land as defined by Goal 3 and OAR 660-033-0020.*

**FINDING:** The Applicant provided a DLCDC certified soil study as well as NRCS soil data. The Hearings Officer finds this criterion is met.

**DIVISION 12, TRANSPORTATION PLANNING**

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

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

- (A) *Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;*
- (B) *Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or*
- (C) *Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.*

**FINDING:** The Hearings Officer finds this provision is applicable to the proposal because it involves an amendment to an acknowledged comprehensive plan. The proposed plan amendment would change the designation of the subject property from AG to RREA and change the zoning from EFU to RR10. The Applicant is not proposing any land use development of the property at this time.

As referenced in the agency comments section in the Findings of Fact, above, the Senior Transportation Planner for Deschutes County requested additional information to clarify the conclusions provided in the traffic study. The Applicant submitted an updated report from Christopher M. Clemow, PE, PTOE of Clemow Associates, LLC dated January 17, 2022, to address trip distribution, traffic volumes, and Transportation Planning Rule (TPR) criteria. The updates were reviewed by the Senior Transportation Planner who indicated his comments had been addressed and he was satisfied with the amended report. Mr. Clemow included the following conclusions in the traffic impact analysis dated January 17, 2022:

*The following conclusions are made based on the materials presented in this analysis:*

- 1. The proposed Deschutes County Comprehensive Plan Amendment and Zone Change from Exclusive Farm Use – Terrebonne Subzone (EFUTE) to Rural Residential – 10 Acre Minimum (RR-10) will not significantly affect the transportation system.*
- 2. All roadways along the primary travel route to/from the development are constructed to an adequate County standard, including paved 12-foot travel lanes.*
- 3. All study intersections will operate well with agency mobility standards/targets in the plan year and no intersection mitigation is necessary.*
- 4. The proposed site access is in the same location as the existing access and forms the west intersection leg. There is no horizontal or vertical roadway curvature limiting sight distance, nor is there any obstructing vegetation. As such, there is adequate sight distance at the proposed access location.*
- 5. There are no recorded crashes at any of the study intersections or the roadway segments during the study period. As such, the roadway and intersections are considered relatively safe, and no further evaluation of safety deficiencies is necessary.*

6. Additional transportation analysis is not necessary to address Deschutes County Code Transportation Planning Rule criteria outlined in Oregon Administrative Rule 660 012-0060.

Based on the County Senior Transportation Planner’s comments and the traffic study from Clemow Associates, LLC, the Hearings Officer finds compliance with the Transportation Planning Rule has been effectively demonstrated. Based on the TIA, the Hearings Officer finds that the proposed plan amendment and zone change will be consistent with the identified function, capacity, and performance standards of the County’s transportation facilities in the area.

The Hearings Officer notes that, despite the transportation information provided by the Applicant and via agency comment, public comments received by the County indicate concerns with potential traffic impacts as a result of the proposed plan amendment and zone change. The Hearings Officer finds that no development application is before me at this time. At the time of any land use application(s) for the subject property, analysis and review of transportation and traffic impacts of any proposed development will be required.

**DIVISION 15, STATEWIDE PLANNING GOALS AND GUIDELINES**

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

**FINDING:** The Statewide Planning Goals are addressed as follows in the Applicant’s burden of proof:

***Goal 1, Citizen Involvement.** Deschutes County will provide notice of the application to the public through mailed notice to affected property owners and by requiring the applicant to post a “proposed land use action sign” on the subject property. Notice of the public hearings held regarding this application will be placed in the Bend Bulletin. A minimum of two public hearings will be held to consider the application.*

***Goal 2, Land Use Planning.** Goals, policies and processes related to zone change applications are included in the Deschutes County Comprehensive Plan and Titles 18 and 23 of the Deschutes County Code. The outcome of the application will be based on findings of fact and conclusions of law related to the applicable provisions of those laws as required by Goal 2.*

***Goal 3, Agricultural Lands.** The applicant has shown that the subject property is not agricultural land so Goal 3 does not apply.*

***Goal 4, Forest Lands.** The existing site and surrounding areas do not include any lands that are suited for forestry operations. Goal 4 says that forest lands “are those lands acknowledged as forest lands as of the date of adoption of this goal amendment.” The subject property does not include lands acknowledged as forest lands as of the date of adoption of Goal 4. Goal 4 also says that “[w]here \*\*a plan amendment involving forest lands is proposed, forest land shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations*



*or practices and other forested lands that maintain soil, air, water and fish and wildlife resources.” This plan amendment does not involve any forest land. The subject property does not contain any merchantable timber and is not located in a forested part of Deschutes County.*

**Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces.** *The subject property does not contain any inventoried Goal 5 resources.*

**Goal 6, Air, Water and Land Resources Quality.** *The approval of this application will not cause a measurable impact on Goal 6 resources. Approval will make it more likely that the irrigation and pond water rights associated with the property will ultimately be returned to the Deschutes River or used to irrigate productive farm ground found elsewhere in Deschutes County.*

**Goal 7, Areas Subject to Natural Disasters and Hazards.** *This goal is not applicable because the subject property is not located in an area that is recognized by the comprehensive plan as a known natural disaster or hazard area.*

**Goal 8, Recreational Needs.** *This goal is not applicable because the property is not planned to meet the recreational needs of Deschutes County residents and does not directly impact areas that meet Goal 8 needs.*

**Goal 9, Economy of the State.** *This goal does not apply to this application because the subject property is not designated as Goal 9 economic development land. In addition, the approval of this application will not adversely impact economic activities of the state or local area.*

**Goal 10, Housing.** *The County’s comprehensive plan Goal 10 analysis anticipates that farm properties with poor soils, like the subject property, will be converted from EFU to MUA-10 or RR-10 zoning and that these lands will help meet the need for rural housing. Approval of this application, therefore, is consistent with Goal 10 as implemented by the acknowledged Deschutes County comprehensive plan.*

**Goal 11, Public Facilities and Services.** *The approval of this application will have no adverse impact on the provision of public facilities and services to the subject site. Utility service providers have confirmed that they have the capacity to serve the maximum level of residential development allowed by the RR-10 zoning district.*

**Goal 12, Transportation.** *This application complies with the Transportation System Planning Rule, OAR 660-012-0060, the rule that implements Goal 12. Compliance with that rule also demonstrates compliance with Goal 12.*

**Goal 13, Energy Conservation.** *The approval of this application does not impede energy conservation. The subject property is located in a part of the community that contains a large amount of rural residential development. Providing homes in this location as*

*opposed to more remote rural locations will conserve energy needed for residents to travel to work, shopping and other essential services.*

**Goal 14, Urbanization.** *This goal is not applicable because the applicant’s proposal does not involve property within an urban growth boundary and does not involve the urbanization of rural land. The RR-10 zone is an acknowledged rural residential zoning district that limits the intensity and density of developments to rural levels. The compliance of this zone with Goal 14 was recently acknowledged when the County amended its comprehensive plan. The plan recognizes the fact that the MUA-10 and RR zones are the zones that will be applied to lands designated Rural Residential Exception Areas.*

**Goals 15, Willamette Greenway.** *This goal does not apply because the subject property is not located in the Willamette Greenway.*

**Goals 16 through 19.** *These goals do not apply to land in Central Oregon.*

The Hearings Officer finds consistency with Goal 1 (Citizen Involvement) has been established with the public notice requirements required by the County for these applications (mailed notice, posted notice and two public hearings). Similarly, the Hearings Officer finds consistency with Goal 2 (Land Use Planning) based on the applications’ consistency with goals, policies and processes related to zone change applications as set forth in the Comprehensive Plan and Titles 18 and 23 of the Deschutes County Code.

Based on the findings above, the Hearings Officer finds consistency with Goal 3 (Agricultural Lands) has been demonstrated because the Subject Property is not Agricultural Land. The property is not comprised of Forest Lands. Therefore, Goal 4 is inapplicable.

With respect to Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces), the Hearings Officer finds that the Subject Property does not include any inventoried Goal 5 resources. While the Subject Property is currently open and undeveloped, the County Goal 5 inventory does not include the subject property as an “open space” area protected by Goal 5. Members of the public expressed concern regarding potential impact on wildlife. However, the Hearings Officer notes that the property does not include a wildlife overlay (WA) designation and, more importantly, no development is proposed at this time. Rezoning the subject property will not, in and of itself, impact wildlife on the subject property. Protections for wildlife must be sanctioned by the County’s Goal 5 ESEEs and WA or similar wildlife overlay zoning. The Hearings Officer finds there are no wildlife protections applicable to these applications.

The Hearings Officer finds consistency with Goal 6 (Air, Water and Land Resources Quality) because there is no measurable impact of approval of the application to rezone the subject property from EFU to RR-10. Future development activities will be subject to local, state and federal regulations that protect these resources.

With respect to Goal 7 (Areas Subject to Natural Disasters and Hazards), the Hearings Officer finds consistency with this Goal based on the fact that rezoning the subject property to RR-10 does not change the Wildfire Hazard Area designation that is applicable to the entirety of Deschutes

County. The subject property is within the Rural Fire Protection District #2. Any application(s) for future development activities will be required to demonstrate compliance with fire protection regulations. The subject property is located in Redmond Fire and Rescue jurisdiction. The Hearings Officer finds that rezoning the properties to RR10 does not change the Wildfire Hazard Area designation. Any future development of the properties will be required to demonstrate compliance with any fire protection regulations and requirements of Deschutes County.

The Hearings Officer finds consistency with Goal 8 (Recreational Needs) given the fact that no development is currently proposed and that rezoning, in and of itself, will not impact recreational needs of Deschutes County.

The Hearings Officer finds Goal 9 (Economy of the State) is inapplicable because the subject property is not designated as Goal 9 economic development land and approval of the application will not adversely impact economic activities of the state or area.

The Hearings Officer finds the applications are consistent with Goal 10 (Housing) because the Comprehensive Plan Goal 10 chapter anticipates that farm properties with poor soils will be converted from EFU to MUA-10 or RR-10 zoning, making such properties available to meet the need for rural housing. Although no development of the subject property is proposed at this time, rezoning it from EFU to RR-10 will enable consideration of the property for potential rural housing development in the future.

The Hearings Officer finds the applications are consistent with Goal 11 (Public Facilities and Services). The record establishes that utility service providers have capacity to serve the subject property if developed at the maximum level of residential development allowed by the RR-10 zoning district. The proposal will not result in the extension of urban services to rural areas.

Based on the findings above regarding the Transportation System Planning Rule, OAR 660-012-0060, the Hearings Officer finds the applications are consistent with Goal 12 (Transportation).

The Hearings Officer finds the applications are consistent with Goal 13 (Energy Conservation) because there is no evidence approval of the applications will impede energy conservation.

The Hearings Officer finds the applications are consistent with Goal 14 (Urbanization). The subject property is not within an urban growth boundary and does not involve urbanization of rural land because the RR-10 zone does not include urban uses as permitted outright or conditionally. The RR-10 zone is an acknowledged rural residential zoning district that limits the intensity and density of developments to rural levels. The state acknowledged compliance of the RR-10 zone with Goal 14 when the County amended its comprehensive plan.

The Hearings Officer finds that Goals 15-19 do not apply to land in Central Oregon.

For all the foregoing reasons, the Hearings Officer finds compliance with the applicable Statewide Planning Goals has been demonstrated.

**IV. DECISION & RECOMMENDATION**

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer finds the Applicant has met the burden of proof necessary to justify the request for a Comprehensive Plan Map Amendment to re-designate the subject property from Agriculture to Rural Residential Exception Area and a corresponding request for a Zone Map Amendment (Zone Change) to reassign the zoning of the subject property from Exclusive Farm Use (EFU) to Rural Residential (RR-10).

The Deschutes County Board of Commissioners is the final local review body for the applications before the County. DCC 18.126.030. The Hearings Officer recommends approval of the applications based on this Decision and Recommendation of the Deschutes County Hearings Officer.



Stephanie Marshall, Deschutes County Hearings Officer

Dated this 2<sup>nd</sup> day of June, 2022

Mailed this 2<sup>nd</sup> day of June, 2022

owner	agent	inCareOf	address	cityStZip	type	cdd id
J. Kenneth Kataroff	Schwabe, Williamson & Wyatt		1420 5th Avenue, Suite 3400	Seattle, WA 98101	Hoff Decision	247-21-001043-PA, 1044-ZC
Liz Fancher			2465 NW Sacagawea Lane	Bend, OR 97703	Hoff Decision	247-21-001043-PA, 1044-ZC
710 Properties, LLC			PO Box 1345	Sisters, OR 97750	Hoff Decision	247-21-001043-PA, 1044-ZC
Eden Central Properties, LLC			PO Box 1345	Sisters, OR 97751	Hoff Decision	247-21-001043-PA, 1044-ZC
Chris Clemow			2237 NW Torrey Pines	Bend, OR 97703	Hoff Decision	247-21-001043-PA, 1044-ZC
Brian Rabe			3511 Pacific Blvd SW	Albany, OR 97321	Hoff Decision	247-21-001043-PA, 1044-ZC



COMMUNITY DEVELOPMENT

**NOTICE OF HEARINGS OFFICER'S RECOMMENDATION**

The Deschutes County Hearings Officer recommends approval of the land use application(s) described below:

**FILE NUMBERS:** 247-21-001043-PA, 1044-ZC

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

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

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

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

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

Mailing Name: EDEN CENTRAL PROPERTIES LLC  
Map and Taxlot: 1412210000400  
Account: 276794

Situs Address: \*\*NO SITUS ADDRESS\*\*

Mailing Name: EDEN CENTRAL PROPERTIES LLC

Map and Taxlot: 1412210000500

Account: 276791

Situs Address: \*\*NO SITUS ADDRESS\*\*

Mailing Name: EDEN CENTRAL PROPERTIES LLC

Map and Taxlot: 1412210000600

Account: 124846

Situs Address: 70000 BUCKHORN RD, TERREBONNE, OR 97760

Mailing Name: EDEN CENTRAL PROPERTIES LLC

Map and Taxlot: 1412210000700

Account: 276792

Situs Address: \*\*NO SITUS ADDRESS\*\*

**APPLICANT:**

710 Properties, LLC  
PO Box 1345  
Sisters, OR 97759

**ATTORNEY(S) FOR APPLICANT:**

Liz Fancher  
2464 NW Sacagawea Lane  
Bend, Oregon 97703

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

**SUBJECT:**

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

**STAFF CONTACT:**

Haleigh King, Associate Planner  
Phone: 541-383-6710  
Email: [Haleigh.King@deschutes.org](mailto:Haleigh.King@deschutes.org)

**RECORD:**

Record items can be viewed and downloaded from:

<https://www.deschutes.org/cd/page/247-21-001043-pa-and-247-21-001044-zc-eden-central-properties-comprehensive-plan-amendment>

**APPLICABLE CRITERIA:** The Hearings Officer reviewed this application for compliance against criteria contained in Chapters 18.04, 18.16, 18.60, 18.113, and 18.136 in Title 18 of the Deschutes County Code (DCC), the Deschutes County Zoning Ordinance, the procedural requirements of Title 22 of the DCC, Chapters 2, 3 and Appendix C of the Deschutes County Comprehensive Plan, Divisions 6, 12, 15, and 33 of the Oregon Administrative Rules (OAR) Chapter 660, and Chapter 215.211 of the Oregon Revised Statutes.

**DECISION:** The Hearings Officer finds that the applications meet applicable criteria, and recommends approval of the applications.

*As a procedural note, the hearing on April 19, 2022, was the first of two required de novo hearings per DCC 22.28.030(c). The second de novo hearing will be heard in front of the Board of County Commissioners at a date to be determined.*

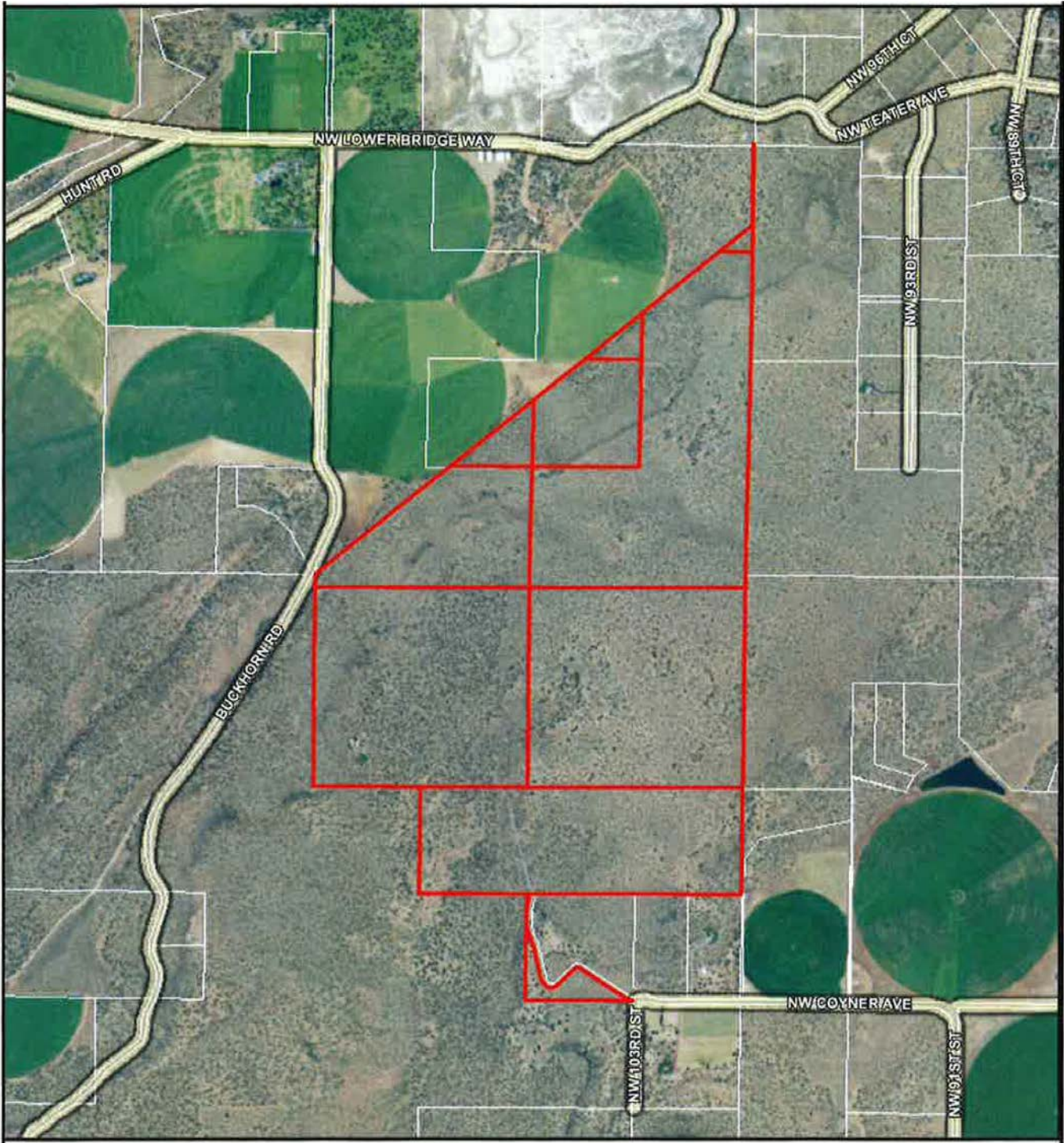
Copies of the recommendation, application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost. Copies can be purchased for 25 cents per page.

NOTICE TO MORTGAGEE, LIEN HOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST BE PROMPTLY FORWARDED TO THE PURCHASER.

Attachment: Location Map



**Subject Property**  
**File Nos: 247-21-0001043-PA, 22-1044-ZC**



owner	agent	inCareOf	address	cityStZip	type	cdd id
DESCHUTES CO. ASSESSOR			ELECTRONIC		NOD	247-21-001043-PA, 1044-ZC
DESCHUTES CO. SR. TRANS. PLANNER	PETER RUSSELL		ELECTRONIC		NOD	247-21-001043-PA, 1044-ZC
DESCHUTES CO. BUILDING SAFETY			ELECTRONIC		NOD	247-21-001043-PA, 1044-ZC
DESCHUTES CO. ENVIRONMENTAL SOILS DIV.			ELECTRONIC		NOD	247-21-001043-PA, 1044-ZC
DESCHUTES CO. FORESTER	ED KEITH		ELECTRONIC		NOD	247-21-001043-PA, 1044-ZC
DESCHUTES CO. PROPERTY MGMT.	DEBORAH COOK / Deborah.Cook@deschutes.org		ELECTRONIC		NOD	247-21-001043-PA, 1044-ZC
DESCHUTES CO. ROAD DEPT.	CODY SMITH		ELECTRONIC		NOD	247-21-001043-PA, 1044-ZC
REDMOND FIRE & RESCUE	Tom Mooney (Tom.Mooney@redmondfireandrescue.org)	Wade Gibson (Wade.Gibson@redmondfireandrescue.org)	341 NW DOGWOOD AVE	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
OR DEPT. OF AG LAND USE PLANING COORD.	JIM JOHNSON		635 CAPITOL ST NE	SALEM, OR 97301	NOD	247-21-001043-PA, 1044-ZC
OREGON DEPT OF FISH & WILDLIFE	ANDREW WALCH (Andrew.J.Walch@odfw.oregon.gov)	Corey Heath (corey.heath@odfw.oregon.gov)	ELECTRONIC		NOD	247-21-001043-PA, 1044-ZC
OREGON DEPT OF AGRICULTURE	JON HARRANG (jharrang@oda.state.or.us - North DC)	ADAM MILLER (amiller@oda.state.or.us - South DC)	Electronic		NOD	247-21-001043-PA, 1044-ZC
DEPT. OF LAND CONSERV. & DEVEL.			1011 SW EMKAY DR., SUITE 108	Bend, OR 97702	NOD	247-21-001043-PA, 1044-ZC
DEPT. OF LAND CONSERV. & DEVEL.			635 CAPITOL ST. NE, #150	Salem, OR 97301-2540	NOD	247-21-001043-PA, 1044-ZC
WATERMASTER - DISTRICT 11	Sam VanLingham (sam.j.vanlingham@oregon.gov)		ELECTRONIC		NOD	247-21-001043-PA, 1044-ZC
BLM, PRINEVILLE DIST. - DESCHUTES FIELD MGR.	JEFF KITCHENS		3050 N.E. THIRD ST.	Prineville, OR 97754	NOD	247-21-001043-PA, 1044-ZC
Megan Ormid			4691 NW 91st Street	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Marlon Steele			2280 NW 101st	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Del and Lori Johnson			3848 NW 91st Street	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Paul Fisher			4141 NW 91st Street	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
William and Elizabeth Buchanan			10142 NW Coyner Ave	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Tim Phillips			21199 NW Spruce	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Pam Mayo-Phillips			21199 NW Spruce	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Kelsey Nonella			10611 NW Kingwood Drive	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Roger Nonella			10611 NW Kingwood Drive	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Steve Ahlberg			8163 NW Spruce Avenue	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Paige Dufour			8163 NW Spruce Avenue	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Terri Ahlberg			8163 NW Spruce Avenue	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Scott Hayes and Pam Nofziger-Hayes			10135 NW Coyner Ave	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Jason and Tammy Birkild			9307 NW Coyner Ave	Redmond OR 97756	NOD	247-21-001043-PA, 1044-ZC
Kelsey and Matt Pereboom			3475 NW 91st Street	Redmond OR 97756	NOD	247-21-001043-PA, 1044-ZC
Central Oregon Land Watch			2843 NW Lolo Drive, Suite 200	Bend, OR 97703	NOD	247-21-001043-PA, 1044-ZC
Jock and Karen Elliott			2460 NW 101st Street	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Binny Skidgel			4909 NW 83rd Street	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Central Oregon Land Watch			2843 NW Lolo Drive, Suite 200	Bend, OR 97703	NOD	247-21-001043-PA, 1044-ZC
Korren Bower			650 SW Bond Ste 100	Bend, OR 97702	NOD	247-21-001043-PA, 1044-ZC
Michael and Vicki Smith			7350 NW Atkinson Ave	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Marilyn Hofmann-Jones			60102 W Ridgeview Drive	Bend, OR 97702	NOD	247-21-001043-PA, 1044-ZC
Steve Greening			1435 NW Galveston Ave	Bend, OR 97703	NOD	247-21-001043-PA, 1044-ZC
Kim Erdel			60780 Ward Rd	Bend, OR 97702	NOD	247-21-001043-PA, 1044-ZC
Rebecca French			70103 Mustang Drive	Sisters, Or 97759	NOD	247-21-001043-PA, 1044-ZC
Peter Geiser			PO Box 581	Bend, OR 97709	NOD	247-21-001043-PA, 1044-ZC
Byron Buck			19186 Mt Shasta Drive	Bend, OR 97703	NOD	247-21-001043-PA, 1044-ZC
Eric Lea			7117 NW Grubstake Way	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Charles Arnold			66115 White Rock Loop	Bend, OR 97703	NOD	247-21-001043-PA, 1044-ZC
Kristi Newton			10225 NW Oak Lane	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Kent Pressman			20025 Millcrest Place	Bend, Or 97703	NOD	247-21-001043-PA, 1044-ZC
Dick Kellogg			26247 Metolius Meadows Drive	Camp Sherman, OR 97730	NOD	247-21-001043-PA, 1044-ZC
Debbie Salido			170 SE Windance Court	Bend, OR 97702	NOD	247-21-001043-PA, 1044-ZC
Bob Duff			1106 Sw 12th	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Karen Painter			630 NW Rimrock Drive	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Elizabeth Nelson			18160 Cottonwood Road #275	Sunriver, OR 97707	NOD	247-21-001043-PA, 1044-ZC
Rick Felde			16455 Fair Mile Road	Sisters, OR 97759	NOD	247-21-001043-PA, 1044-ZC
Ray Gertler			1012 SW Emkay Drive	Bend, OR 97702	NOD	247-21-001043-PA, 1044-ZC
Cindy Murphy and Mark Piper			1522 NW Kesley Lane	Terrebonne, OR 97760	NOD	247-21-001043-PA, 1044-ZC
Liz Smith			2808 NE Lotno Drive	Bend, OR 97701	NOD	247-21-001043-PA, 1044-ZC
Robin Snyder			7000 SW Umatilla Ave	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Rima Givot			18557 McSwain Drive	Sisters, OR 97759	NOD	247-21-001043-PA, 1044-ZC
Tony Oliver			550 NW 74th Street	Redmond, OR 97756	NOD	247-21-001043-PA, 1044-ZC
Lane Tandy			310 E Apenwood Ave	Sisters, OR 97759	NOD	247-21-001043-PA, 1044-ZC
Daniela Marshall			PO Box 1471	Sisters, OR 97759	NOD	247-21-001043-PA, 1044-ZC
Paul Lipscomb			PO Box 579	Sisters, OR 97759	NOD	247-21-001043-PA, 1044-ZC
Robin Vora			1679 NE Daphne Court	Bend, OR 97701	NOD	247-21-001043-PA, 1044-ZC
Lindsey Overstreet			14977 Cantle	Sisters, OR 97759	NOD	247-21-001043-PA, 1044-ZC
Justine Pillar			8581 Se 57th Ave	Portland, OR 97206	NOD	247-21-001043-PA, 1044-ZC
Charles Humphreys			PO Box 1960	Sisters, OR 97759	NOD	247-21-001043-PA, 1044-ZC
Becky Powell			PO Box 1783	Bend, OR 97709	NOD	247-21-001043-PA, 1044-ZC
Ryder Redfield			8801 NW 93rd Lane	Terrebonne, OR 97760	NOD	247-21-001043-PA, 1044-ZC
Adele Sommer			67134 Gist Road	Bend, OR 97703	NOD	247-21-001043-PA, 1044-ZC
Renee Sweezy			61064 Larkspur Loop	Bend, OR 97702	NOD	247-21-001043-PA, 1044-ZC
Jeff Boyer			21827 Boones Borough Dr	Bend, OR 97701	NOD	247-21-001043-PA, 1044-ZC
Shelli Blais and Kim Campbell			9590 NW Teater Ave, Terrebonne	Terrebonne, OR 97760	NOD	247-21-001043-PA, 1044-ZC
Keenan Ordon-Bakalian			360 SW Bond St, Suite 510	Bend, OR 97702	NOD	247-21-001043-PA, 1044-ZC
Diane Lozito			550 NW Franklin Ave, Suite 108	Bend, OR 97703	NOD	247-21-001043-PA, 1044-ZC





## BOARD OF COMMISSIONERS

# AGENDA REQUEST AND STAFF REPORT

**MEETING DATE:** October 16, 2024

**SUBJECT:** Public Hearing and Consideration of Resolution No. 2024-038 updating the Transportation System Development Charge

**RECOMMENDED MOTION:**

Following the public hearing, move approval of Resolution No. 2024-038 updating the Transportation System Development Charge.

**BACKGROUND AND POLICY IMPLICATIONS:**

In January 2024, the BOCC approved an update to the Deschutes County Transportation System Plan (TSP), which included a 20-year Capital Improvement Plan (CIP) and funding estimates, inclusive of continued use of a System Development Charge (SDC). System Development Charges are fees assessed to new development to fund capacity adding improvements necessary to accommodate new growth within the County's transportation system. Deschutes County has utilized SDCs to generate funding for capital improvements since 2008.

Approval of an updated CIP has necessitated the need to modify the SDC rates enacted in Resolution 2013-020 to account for new project cost and growth estimates within the CIP.

Utilizing the SDC methodology established in Resolution 2013-020, an analysis was prepared and documented in a Technical Memorandum, dated July 31, 2024 (attached Exhibit A). The analysis includes 20-year growth projections, estimates of growth-related impact to specific CIP project categories, and project cost estimates to calculate an updated SDC. As contained in the previous and current methodology, the SDC includes an Improvement portion, Reimbursement portion, and administrative fee.

In summary, the analysis supports an SDC of \$5,691 per PM peak hour trip – which is an increase of \$22 per trip (less than 0.5%). Factoring in trip rates assigned to single family residential units results in a calculation of \$4,610 per single family unit – which is an increase of \$17 per trip (less than 0.5%).

In accordance with the requirements of ORS 223.304.7(a), the Road Department provided a 90-day notification of this public hearing to stakeholders on the County's SDC notification list

and also provided materials for public inspection 60-days in advance.

Proposed Resolution 2024-038 has been updated (track changes provided) to reflect new rates as well as several housekeeping measures. The most notable housekeeping change is elimination of Section 4.A.1 which provided a 50% SDC reduction to development in the Tetherow area west of Bend, which by separate agreement with the City of Bend, agreed to pay City of Bend SDCs (in exchange for utility services). In proposing elimination of this special provision, staff notes that a sizable portion of the development subject to this reduction is built-out and that the development willingly agreed to pay SDCs in exchange for utility services – which is unrelated to any impact to County transportation facilities.

**BUDGET IMPACTS:**

The proposed nominal SDC increase will have negligible impact to the estimated \$1.5M in SDC revenue in Fund 465 for FY25.

**PUBLIC HEARING:**

ORS 223.304.7(a) requires a public hearing to be held to establish or modify an SDC. At the conclusion of the staff presentation, the Board Chair may open the public hearing (legislative) to receive testimony to fulfill the requirement of statute.

**ATTENDANCE:**

- Chris Doty, Road Department Director
- Cody Smith, County Engineer/Assistant Road Department Director
- Tarik Rawlings, Senior Transportation Planner

REVIEWED  
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

A Resolution to Modify the Transportation System Development Charges Established by Resolution No. ~~2008-059~~2013-020 for Properties Within Unincorporated Deschutes County. \* RESOLUTION NO. ~~2013-020~~2024-038

WHEREAS, the Deschutes County Board of County Commissioners (“Board”) held a duly noticed public hearing on ~~June 5, 2013~~October 16, 2024, to consider modifying the transportation system development charge (“SDC”) originally established by Resolution No. 2008-059 and modified by Resolution 2013-020 to help fund transportation projects that are necessary to serve the existing and growth-related needs in the unincorporated areas of the county; and

WHEREAS, ORS 223.297 through 223.314 authorize governmental units to establish and modify transportation system development charges; and

WHEREAS, system development charges are incurred upon the decision to develop property at a specific use, density and/or intensity, and the incurred charge equals, or is less than, the actual cost of providing public facilities commensurate with the needs of the chosen use, density and/or intensity; and

WHEREAS, system development charges are separate from and in addition to any applicable tax, assessment, charge, fee in lieu of assessment, or other fee provided by law or imposed as a condition of development; and

WHEREAS, system development charges are fees for services because they are based upon a development’s receipt of services considering the specific nature of the development; and

WHEREAS, system development charges are imposed on the activity of development, not on the land, owner, or property, and, therefore, are not taxes on property or on a property owner as a direct consequence of ownership of property within the meaning of Section 11, Article XI of the Oregon Constitution or the legislation implementing that section; and

WHEREAS, revenues from the system development charges are to be used for capital improvements in the unincorporated areas outside the cities of La Pine, Sisters, Redmond and Bend; and

WHEREAS, the methodology proposed by Deschutes County Road Department (“Department”) staff, identifies the uses of an “improvement fee” SDC, and a “reimbursement fee” SDC, and considers the transportation capital improvement needs of the unincorporated county; and

WHEREAS, the methodology proposes applying the SDCs to future development of properties within the unincorporated county and outside the cities of Sisters, La Pine, Redmond and Bend; and

WHEREAS, the Board determined that it is in the public interest to provide transportation capital facilities through the use of general county revenues, SDCs, and matching funds from the State of Oregon; now, therefore,

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

Section 1. ~~The Board has previously adopted Resolution 2008-059 establishing a Transportation SDC and methodology in 2008 and subsequently updated the methodology via Resolution 2013-020 in 2013. Resolution 2013-020 is hereby amended by a report titled “Technical Memorandum: Transportation SDC Update”, dated July 10, 2024, prepared by Chris Doty, PE, Road Department Director, attached as Exhibit “A” and incorporated by reference (herein “Methodology” or “Methodology Report”). In the event of a conflict between the reports contained within the prior resolutions and the Methodology Report, the latter shall control. The Board authorizes the assessment and collection of transportation system development charges in the unincorporated areas of Deschutes County.~~

~~The Board in Resolution No. 2008-059 adopted the report, titled Transportation System Development Charge Study prepared by FCS Group Inc. and DKS Associates, dated March 2008 (FCS Group Report) which is hereby amended by a report titled “Transportation System Development Charge Update”, dated April, 2013, prepared by Deschutes County Road Department, attached as Exhibit “A” and incorporated by reference (herein “Methodology” or “Methodology Report”). In the event of a conflict between the FCS Report and Methodology Report, the latter shall control. The Board authorizes the assessment and collection of transportation system development charges in the unincorporated areas of Deschutes County.~~

Section 2. The Board adopts the System Development Charge Project List, attached as Exhibit “B,” and incorporated by reference (“Capital Improvement Plan”). The Capital Improvement Plan hereby supersedes the capital improvement plan which was adopted as part of Resolution No. ~~2008-059~~2013-020.

Section 3. DEFINITIONS.

- (A) “Applicant” shall mean the owner or other person who applies for a building or development permit in the unincorporated areas of Deschutes County outside the boundaries of the cities of La Pine, Sisters, Redmond and Bend.
- (B) “Building” shall mean any structure, built for the support, shelter or enclosure of persons, chattels or property of any kind.
- (C) “Building Permit” shall mean an official document or certificate authorizing the construction or siting of any building.
- (D) “Capital Improvement” shall mean a public facility or asset used for Transportation in the unincorporated areas outside the urban growth boundaries of the cities of La Pine, Sisters, Redmond and Bend.
- (E) “Citizen or Other Interested Person” shall mean any person whose legal residence is within the unincorporated areas of Deschutes County outside the urban growth boundaries of the cities of La Pine, Sisters, Redmond and Bend, as evidenced by registration as a voter, or by other proof of residency; or a person who owns, occupies, or otherwise has an interest in real property which is located within the unincorporated area of Deschutes County outside the urban growth boundaries of the cities of La Pine, Sisters Redmond and Bend.
- (F) “County” shall mean Deschutes County, Oregon.
- (G) “Department” shall mean the Deschutes County Road Department.

- (H) “Development” shall mean a building or other land construction, or making a physical change in the use of a structure or land, in a manner which increases the usage of any capital improvements or which may contribute to the need for additional or enlarged capital improvements.
- (I) “Development Permit” shall mean an official document or certificate, issued by Deschutes County, other than a building permit, authorizing development.
- (J) “Encumbered” shall mean monies committed by contract or purchase order in a manner that obligates the County to expend the encumbered amount upon delivery of goods, the rendering of services, or the conveyance of real property provided by a vendor, supplier, contractor or Owner.
- (K) “Improvement Fee” shall mean a fee for costs associated with capital improvements to be constructed after the effective date of this resolution. Notwithstanding anything in this resolution to the contrary, it is an incurred charge or cost based upon the use of or the availability for use of the systems and capital improvements required to provide services and facilities necessary to meet the routine obligations of the use and ownership of property, and to provide for the public health and safety upon development.
- (L) “Manufactured Housing” shall mean a dwelling unit constructed primarily off-site and transported to another site for use. A unit located in a designated mobile home park shall be considered a manufactured housing dwelling unit; otherwise a manufactured housing unit shall be considered a single-family dwelling unit.
- (M) “Multi-family housing” shall mean attached residential dwelling units.
- (N) “Occupancy Permit” shall mean an official document or certificate authorizing the occupation or use of any building or improvement authorized by a building permit.
- (O) “Owner” shall mean the person holding legal title to the real property upon which development is to occur.
- (P) “Person” shall mean an individual, a corporation, including without limitation, limited liability corporation, a partnership, an incorporated association, or any other similar entity.
- (Q) “Qualified Public Improvement” shall mean a capital improvement that is:
  - (1) Required as a condition of development approval; and
  - (2) Identified in the capital improvement plan adopted pursuant to this resolution; and either:
    - (a) Not located on or contiguous to property that is the subject of development approval; or
    - (b) Located in whole or in part on or contiguous to property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related.
- (R) ”Reimbursement fee” means a fee for costs associated with capital improvements constructed or under construction by the County on the effective date of this resolution.
- (S) “Road Department Director” or “Director” shall mean the appointed Road Department Director of Deschutes County, Oregon or the Director’s designee.



- (T) “Single-family housing” shall mean a detached residential dwelling unit located on an individual lot.
- (U) “System Development Charge” or “SDC” shall mean a reimbursement fee, an improvement fee, or a combination thereof and an administrative recovery charge, assessed or collected at the time of increased usage of a capital improvement or issuance of an occupancy permit. System development charges are separate from and in addition to any applicable tax, assessment, fee in lieu of assessment, or other fee or charge provided by law or imposed as a condition of development.
- (V) “System Development Charges Methodology” shall mean the methodology set forth in the ~~FCS Group Report as modified by the~~ Methodology Report.

Section 4. APPLICABILITY.

(A) A Transportation System Development Charge is hereby assessed and imposed upon all new development for which a building permit or a development permit is required and issued within all unincorporated areas of the County outside the cities of La Pine, Sisters, Redmond and Bend. From and after assessment, the transportation system development charge shall run with the property, not with any structure attached to the property. Development shall mean and include new construction, alteration, expansion or replacement of a building or dwelling unit. Non-residential, farm-related buildings for growing and/or storing agricultural products to be used on site, and that do not generate additional commercial traffic, are exempt.

~~1) All development subject to payment of the City of Bend Transportation SDC via the Water and Sewer Agreement between the City of Bend and Cascade Highlands Limited Partnership (recorded agreement #2005-73584) shall pay 50% of the Transportation SDC for the specific use.~~

(B) Consideration of existing use.

- 1) If construction, alteration, expansion, replacement, or change-of-use results in an increase in the calculated number of peak hour trips generated by the development or the property on which the development is located, as compared to the pre-development number of calculated peak hour trips, then a new Transportation SDC shall apply. The amount of the system development charge to be paid shall be the difference between the calculated trips generated from the proposed development and the calculated trips generated from the property prior to the construction, alteration, expansion or replacement. If the change in use results in a Transportation SDC for the proposed use which is less than the Transportation SDC for the use being replaced, then no new or additional SDC shall be assessed and no refund or credit shall be given.
- 2) If the previous development or prior use of the property, which was not subject to SDC payment, has been abandoned for at least two consecutive years, as determined by the Community Development Department under the County Code, then no consideration of existing use shall occur and a new SDC assessment shall apply. However, if such development or use was discontinued due to fire, natural disaster or required demolition on account of public health and safety, then the two-year time period will be extended to 10 consecutive years.
- 3) Previously paid SDCs shall be credited to the property regardless of any period of abandonment. The credit shall be based on the number of PM peak hour trips generated by the development at the time of original SDC assessment.

- (C) The Transportation System Development Charges (SDC's) shall be determined as follows:
  - (1) For those land-use categories which are specifically identified in the most recent edition of the Institute of Traffic Engineers (ITE) Trip Generation Manual or the Methodology Report adopted pursuant to this resolution, the SDC amount shall be determined as identified in the Methodology Report, unless otherwise approved by the Director.
  - (2) For land-use categories for which no trip generation rate is included in the Methodology Report (or ITE Trip Generation Manual), the Director shall use the land-use category identified in the Methodology Report (or ITE Trip Generation Manual) that is most similar to the subject land use category and apply the corresponding trip generation rate. The Director may consider seasonal and/or cyclical variations to adjust the calculation of peak hour trip rates. An applicant who disagrees with the Director's decision may appeal this decision as outlined in Section 12 of this Resolution.
  
- (D) Applicants may submit a request for an alternative trip generation rate and corresponding system development charges for a development, subject to the following conditions:
  - (1) In the event an applicant believes that the trip generation impact on County capital improvements resulting from the development is less than the trip generation rates used to establish the SDC fee established by this Resolution, the applicant may submit a calculation for an alternative system development charge to the Director, but no later than the issuance of a building permit.
  - (2) The alternative system development charges rate calculations shall be based on data, information and assumptions contained in this Resolution and the Methodology or an independent source, provided that the independent source is:
    - (a) a study supported by a data base adequate for the conclusions contained in such study;
    - (b) the study is performed using a generally accepted methodology and is based upon generally accepted standard sources of information relating to facilities planning, cost analysis and demographics;
    - (c) The demonstrated number of peak hour trips is at least ten (10%) percent less than the number of peak hour trips set forth in the Methodology Report or otherwise calculated by the Director pursuant to subsection (B) of this Section; and
    - (d) the demonstrated number of peak hour trips shall be documented by a registered traffic engineer or otherwise qualified professional engineer.
  - (3) The Director shall issue a written decision within ten (10) working days from the date of receipt of a complete application and shall notify the applicant by regular mail.
  - (4) If the Director determines that the data, information and assumptions utilized by the applicant to calculate the alternative system development charges rates satisfy the requirements of this subsection and have been timely submitted, the alternative system development charges rates shall be paid in lieu of the rates set forth in or otherwise determined by the Director under this Resolution.
  - (5) If the Director determines that the data, information and assumptions utilized by the applicant to calculate the alternative system development charges rates do not satisfy the

requirements of this subsection or have not been timely submitted, the Director shall deny the application and apply the rates established by the Director.

- (E) Subject to the provisions of this Resolution, the County hereby assesses and shall collect a transportation system development charge (“SDC”) on the following schedule:
  - (1) at the initial rate of ~~\$3,7585,691~~ per PM peak hour trip, consisting of a ~~\$3,6254,234~~ improvement fee, a ~~\$1,38786~~ reimbursement fee, and a ~~\$7047~~ administrative recovery charge.
- (F) For SDC’s that have been assessed, but not yet been paid as of the effective date of this Resolution, the property owner shall pay the lesser of the applicable SDC charge determined under Resolution No. ~~2008-0592013-020~~ or this Resolution.
- (G) Unless otherwise adjusted by order of the Board of County Commission, on each succeeding July 1 after ~~20142024~~, the SDC, consisting of the improvement fee, the reimbursement, if any and the administrative recovery charge shall be adjusted by the annual percentage increase or decrease in the construction cost index, published in the immediately preceding January by the Engineering News Record for the City of Seattle, Washington. ~~The calculation shall use the immediately preceding July 1 and the then applicable rate per peak hour trip as the starting point.~~

Section 5. COLLECTION.

- (A) The Transportation SDC’s shall be collected and paid in full no later than the date of submittal of an application for an occupancy permit. An applicant may elect to pay an SDC over a ten-year period under the provisions of DCC 15.12.060.
- (B) In cases where an occupancy permit is not required, the Transportation SDC shall be collected and paid in full no later than the date on which the property is used in the manner approved by the development permit. An applicant may elect to pay an SDC over a ten-year period under the provisions of DCC 15.12.060.
- (C) Notwithstanding the receipt of an occupancy permit or the use of the property pursuant to a development permit without payment of the SDC, the SDC liability shall survive and be a personal obligation of the permittee.
- (D) Intentional failure to pay the SDC within sixty (60) days of the due date shall result in a penalty equal to fifty percent (50%) of the SDC. Interest shall accrue on and after 60 days after the due date at the rate of nine (9%) percent per annum.
- (E) In addition to an action at law and any statutory rights, the County may:
  - (1) Refuse to issue a Certificate of Occupancy;
  - (2) Refuse to issue any permits of any kind to the delinquent permittee for any development;
  - (3) Condition any development approval of the delinquent permittee on payment in full, including penalties and interest;
  - (4) If the property becomes occupied prior to issuance of a Certificate of Occupancy, initiate code enforcement proceedings;
  - (5) For purposes of this section, delinquent permittee shall include any person controlling a delinquent corporate permittee and, conversely, any corporation controlled by a delinquent individual permittee.

Section 7. CREDITS FOR DEVELOPER CONTRIBUTIONS OF QUALIFIED PUBLIC IMPROVEMENTS.

- (A) The County may grant a credit against the improvement fee portion, if any, of system development charges imposed pursuant to this Resolution for the construction of any qualified public improvement.
- (B) Prior to issuance of a development permit, the applicant shall submit to the County a proposed plan and estimate of cost for the applicant to construct one or more qualified public improvements. The proposed plan and estimate shall include:
  - (1) a designation of the development project for which the proposed plan is being submitted;
  - (2) a legal description of any land proposed to be donated, if any, and documentation as to the seller and purchase price;
  - (3) a list of the contemplated capital improvements contained within the development plan;
  - (4) an estimate of construction costs for the contemplated capital improvements certified by a professional architect or engineer; and
  - (5) a proposed time schedule for completion of the proposed capital improvements.
- (C) The credit provided for construction of a qualified public improvement shall be only for the cost of that portion of such improvement that exceeds the minimum standard facility size and must be designed and constructed to provide additional capacity to meet projected future transportation needs. Projected future transportation needs shall be determined by reference to the Deschutes County Transportation System Plan. Improvements that address capacity deficiencies existing at the time of development are not eligible. In the case of improvements addressing both capacity deficiencies and adding future capacity, only that portion providing future capacity is eligible. The applicant shall have the burden of demonstrating that a particular improvement qualifies for credit.
- (D) The Director is authorized to determine that the timing, location, design and scope of proposed improvement is consistent with and furthers the objectives of the County’s capital improvements program and either:
  - (1) the improvement is required to fulfill a condition of development approval; or
  - (2) the improvement is within the impact area of the development. For purposes of this section, impact area is that geographic area determined by the Director in which the estimated peak hour traffic to be generated by the development exceeds ten (10%) percent of the existing average peak hour traffic. Existing traffic volumes shall be those observed and measured within six months prior to filing the development application, adjusted for daily and seasonal traffic variations using factors provided by the Director.
- (E) Credit eligibility shall be determined by the Director. In addition to meeting the standards of this section, the following shall control:
  - (1) No credits shall be issued for design or construction costs associated with landscaping, street lighting, storm sewers, sidewalks, and erosion control; or sound walls, berms or other such mitigation devices.
  - (2) Road right-of-way required to be dedicated pursuant to the applicable comprehensive plan or development condition is not creditable. The reasonable market value of land purchased

by the applicant from a third party that is necessary to complete a required off-site improvement is creditable. The Director may require an applicant at the applicant’s expense to furnish an appraisal to determine the market value of such property.

- (3) No credit shall granted for utility relocation except for that portion which otherwise would have been the legal obligation of the County pursuant to a tariff, easement or similar relationship if the project had been undertaken by the County.
  - (4) No credit shall be granted for minor realignments not designated on the comprehensive plan.
  - (5) No more than 13.5 percent of the total eligible construction cost shall be creditable for survey, engineering, inspection and permit fees.
- (F) All requests for credit vouchers must be in writing and filed with the Director not more than 90 days after County acceptance of the improvement. Improvement acceptance shall be in accordance with the County’s policies, practices, procedures and standards. The amount of any credit shall be determined by the Director and based upon the subject improvement construction contract documents, or other relevant information, provided by the applicant for the credit. Upon a finding by the Director that the contract amounts exceed prevailing market rates for a similar project, the credit shall be based upon market rates. The Director shall provide the applicant with a credit voucher, on a form provided by the Department. The original of the credit voucher shall be retained by the Department. The credit voucher shall state a dollar amount that may be applied only against the SDC otherwise imposed by the County against the subject property. In no event shall a subject property be entitled to redeem credit vouchers in excess of the SDC imposed. Under no circumstances will the County be required to pay an applicant in cash, as consideration for the improvement. This paragraph applies only to issuance of credit vouchers and does not extend the deadline for credit redemption or otherwise modify the credit redemption deadline.
- (G) Credits shall be apportioned against the property which was the subject of the application to construct an improvement eligible for credit. Unless otherwise requested, apportionment against lots or parcels constituting the property shall be proportionate to anticipated average peak hour trips generated by the respective lots or parcels. Upon written application to the Director, however, credits shall be reapportioned from any lot or parcel to any other lot or parcel within the confines of the property originally eligible for the credit. Reapportionment shall be noted on the original credit voucher retained by the Department.
- (H) Any credits issued pursuant to this Resolution are assignable, however, they shall apply only to that property subject to the original condition for land use approval upon which the credit is based or any partitioned or subdivided parcels or lots of such property to which the credit has been apportioned. Credits shall only apply against SDC’s, are limited to the amount of the improvement fee attributable to the development of the specific lot or parcel for which the credit is sought, and shall not be a basis for any refund.
- (I) Any credit must be redeemed not later than the issuance of the occupancy permit. The applicant is responsible for presentation of any credit prior to issuance of the occupancy permit. Under no circumstances shall any credit redemption be considered after issuance of an occupancy permit.
- (J) Credit vouchers shall expire on the date ten (10) years after the acceptance of the applicable improvement by the county. No extension of this deadline shall be granted.

Section 8. FUND ESTABLISHED. The County hereby establishes a fund to be designated as the “Countywide Transportation SDC Improvement Fee Fund,” (herein Transportation SDC Fund or the Fund).

- (A) All SDC payments shall be deposited into the Transportation SDC Fund immediately upon receipt.
- (B) The monies deposited into the Fund designated as the “Countywide Transportation SDC Improvement Fee Fund,” including interest on the Fund, shall be maintained separate and apart from all other accounts of the County and shall be used solely for the purpose of providing the capital improvements that provide for the increased capacity necessitated by new development, including but not limited to:
  - (1) Design and construction plan preparation;
  - (2) Permitting and fees;
  - (3) Property acquisition, including any costs of acquisition, relocation or condemnation;
  - (4) Construction of capital improvements;
  - (5) Design and construction of storm and surface water drainage facilities associated with the construction of capital improvements and structures;
  - (6) Relocating utilities associated with the construction of improvements and structures;
  - (7) Landscaping within the right of way or upon property disturbed by the construction of capital improvements;
  - (8) Capital construction management and inspection;
  - (9) Surveying, soils and material testing;
  - ~~(10) Acquisition of capital equipment used on association with capital construction or road maintenance or both;~~
  - (11) Repayment of monies transferred to or borrowed from any budgetary fund of the County, including interest, which were used to fund any of the capital improvements as herein provided;
  - (12) Payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the County to fund capital improvements;
  - (13) Direct costs of complying with the provisions of ORS 223.297 to 223.314, including the consulting, legal, and administrative costs required for developing and updating the SDC, the methodology, resolution, and capital improvements master plan; administration of credit applications and apportionment; and the costs of collecting SDC’s and accounting for SDC receipts and expenditures.

Section 9. INVESTMENT OF TRANSPORTATION SDC FUND REVENUE.

- (A) Any funds on deposit in Transportation SDC Fund that is not immediately necessary for expenditure shall be invested by the County.
- (B) All income derived from such investments shall be deposited in the appropriate SDC trust fund and used as provided herein.

Section 10. ANNUAL ACCOUNTING REPORTS. The Director shall prepare an annual report accounting for SDC funds received, including the total amount of SDC improvement fee revenue collected in each fund, and expenditures.

Section 11. CHALLENGE OF EXPENDITURES.

- (A) Any citizen or other interested person may challenge an expenditure of SDC revenues.
- (B) Such challenge shall be submitted, in writing on a form approved by the County, to the Department for review within two (2) years following the subject expenditure, and shall include the following information:
  - (1) The name and address of the citizen or other interested person challenging the expenditure;
  - (2) The amount of expenditure, the project, payee or purpose, and the approximate date on which it was made; and
  - (3) The reason why the expenditure is being challenged.
- (C) If the Director determines that the expenditure was not made in accordance with the provisions of this resolution and other relevant laws, a reimbursement of SDC fund revenues from other funds shall be made within one (1) year following the determination that the expenditure was not appropriate.
- (D) The County shall make written notification of the results of the expenditure review to the citizen or other interested person who requested the review within ten (10) days of completion of the review.

Section 12. APPEALS AND REVIEW HEARINGS.

- (A) An applicant who is required to pay system development charges shall have the right to request a hearing to review a decision only in the following matters:
  - (1) A land-use category and/or seasonal/cyclical variations used by the Director to determine the SDC amount pursuant to Section 4.
  - (2) An alternative rate calculation pursuant to subsection (C) of Section 4.
  - (3) A proposed credit for contribution of qualified public improvements pursuant to Section 7.
- (B) Such hearing shall be requested by the applicant within thirty (30) days of the date of first receipt of the Director’s decision. Failure to request a hearing within the time provided shall be deemed a waiver of such right.
- (C) The request for hearing shall be filed with the Director and shall contain the following:
  - (1) The name and address of the applicant;
  - (2) The legal description of the property in question;
  - (3) If issued, the date the building permit or development permit was issued;
  - (4) A brief description of the nature of the development being undertaken pursuant to the building permit or development permit;
  - (5) If paid, the date the system development charges were paid; and
  - (6) A statement addressing the decision subject to review set forth in subsection (A) of this section and the reasons why the applicant is challenging the decision.

- (D) Upon receipt of such request, the County shall schedule a hearing before the Board of Commissioners at a regularly scheduled meeting or a special meeting called for the purpose of conducting the hearing and shall provide the applicant written notice of the time and place of the hearing. Such hearing shall be opened within forty-five (45) days of the date the request for hearing was filed.
- (E) Such hearing shall be before the Board of Commissioners and shall be conducted in a manner designed to obtain all information and evidence relevant to the requested hearing. Formal rules of civil procedures and evidence shall not be applicable; however, the hearing shall be conducted in a fair and impartial manner with each party having an opportunity to be heard and to present information and evidence.
- (F) Appeal of the decision of the Board shall be made to the Circuit Court of Deschutes County.

Section 13. FULL FORCE AND EFFECT. If any clause, section or provision of this resolution shall be declared unconstitutional or invalid, the remaining portions of said resolution shall be in full force and effect and be valid as if such invalid portion had not been adopted. Nothing contained herein shall be construed as invalidating any assessment or collection of system development charges pursuant to Resolution No. ~~2008-059,2013-020~~ nor any project funded in whole or in part with funds collected thereunder. In addition, all funds assessed and collected pursuant to Resolution No. ~~2008-059~~2013-020, which have not been committed, shall be treated in the same manner as funds received pursuant to Section 8 of this Resolution.

Section 14. EFFECTIVE. This resolution is effective immediately upon adoption by the Board of County Commissioners. ~~The SDC established by Resolution No. 2008-059 shall first apply to building permits for which a building permit application is accepted by the County as complete on and after October 1, 2008.~~ The SDC established by Resolution No. 2013-020 shall first apply to building permits or development approvals for which a building permit or development application was accepted by the County as complete ~~on and after~~prior to the effective date of this resolution.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2024~~13~~.

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

\_\_\_\_\_  
~~ALAN UNGER~~PATTI ADAIR, Chair

\_\_\_\_\_  
~~TAMMY BANEY~~ANTHONY DEBONE, Vice Chair

ATTEST:

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
~~ANTHONY DEBONE~~PHIL CHANG, Commissioner





## Technical Memorandum: Transportation SDC Update

Date: July 31, 2024  
 To: Deschutes County Board of County Commissioners  
 From: Chris Doty, PE, Road Department Director  
 RE: Transportation SDC Update: 2020-2040 Capital Improvement Plan

On March 6, 2024 the Deschutes County Board of County Commissioners approved the 2020-2040 Transportation System Plan – the County’s planning and policy document for a 20-year investment period. Included in the TSP is an updated Capital Improvement Plan (CIP) containing a 20-year list of capital projects within the following categories:

1. Intersection Improvements
2. Roadway Improvements
3. ODOT/County Intersections
4. Pedestrian Facilities
5. Bridges
6. Federal Land Access Program (FLAP) Projects

Central to the CIP (Attached, Exhibit B) is the funding chapter within the TSP which identifies and estimates funding source contribution – which included a Transportation System Development Charge (SDC) as a funding mechanism. The purpose of this Technical Memorandum is to provide an updated calculation of Deschutes County’s Transportation SDC based on the methodology established in Resolution 2013-020 (updated from Resolution 2008-059).

### Existing SDC Methodology:

The existing SDC methodology was updated via Resolution 2013-020 in 2013 to include an Improvement Fee and a Reimbursement Fee, with methodologies for each described as follows:

1. Improvement Fee:

$$= \frac{\text{Eligible cost of planned capacity increasing capital improvements (\$)}}{\text{Growth in system capacity demand (in peak hour trips)}}$$

The Improvement Fee portion is designed to capture costs associated with growth’s share of **future projects**.

2. Reimbursement Fee:

$$= \frac{\text{Cost of assets funded by previously paid SDC improvement fees (\$)}}{\text{Growth in system capacity demand (in peak hour trips)}}$$

The Reimbursement Fee portion is designed to recover costs of **capital improvements already constructed**, but used

by future growth.

**Growth Estimate:**

The SDC will apply to growth within the unincorporated area of Deschutes County, which excludes growth within the incorporated city limits of Bend, Redmond, Sisters, and La Pine. Growth within the unincorporated area is primarily residential in nature and reflects development of existing undeveloped lots, limited partition/subdivision development, resort development infill, and accessory dwelling unit potential, with relatively small percentages of non-residential or commercial development in limited areas. It is anticipated that growth within the unincorporated area over the next 20 years will be similar in nature to growth observed over the prior 20-year period and will generally represent a smaller percentage of system use. As such, growth’s portion of SDC eligible projects will decrease.

Within the prior decade of growth (2014-2023), approximately 2,839 peak hour trips were added to the system within the unincorporated area of Deschutes County. The added trips ranged from a high of 363 in 2021 to a low of 223 in 2014. Given the assumption that growth within the ensuing 20-year planning period will be similar in nature relative to the growth observed in the prior 10-year period, it is estimated that **5,680 peak hour trips will be added to the system** from growth within the unincorporated area. This estimate represents the growth in system capacity demand and the denominator in the Improvement Fee and Reimbursement Fee SDC equations.

**Eligible Cost of Planned Capacity Increasing Capital Improvements**

Estimating growth’s cost of capital improvements requires both an estimate of which capital projects add capacity to the system as well as the assignment of growth’s portion of each project.

The following project categories are considered capacity increasing projects:

**Table 1: Capacity Increasing Project Classification**

<i>Project Category</i>	<i>Capacity Adding?</i>	<i>Notes:</i>
<b>Intersection Improvements</b>	Yes	Intersection improvements add capacity to intersection operations.
<b>Roadway Improvements</b>	Yes	Road widening and modernization add corridor capacity and the ability to serve additional traffic volume.
<b>ODOT/County Intersections</b>	Yes	Intersection improvements add capacity to intersection operations.
<b>Pedestrian Facilities</b>	No	Identified projects add negligible system capacity and are not SDC eligible.
<b>Bridges</b>	No	Identified bridge projects replace existing bridges and do not add system capacity.
<b>Federal Land Access Program (FLAP) Projects</b>	No	Projects are funded primarily via the Federal FLAP program and primarily serve recreational corridors.

In assigning growth’s portion of the capacity adding projects, the existing background traffic (2023) has been estimated at 31,593 peak hour trips generated by existing development within the unincorporated area (28,754 trips estimated in 2013 modelling with the addition of 2,839 trips added via development in the preceding decade).

Therefore it is estimated that new growth in the unincorporated area accounts for 15.2% of the added peak hour trips to the transportation system as follows:

$$\frac{5,680 \text{ new peak hour trips}}{37,273 \text{ total peak hour trips (31,593 baseline + 5,680 new)}} = 15.2\%$$

Application of the growth calculation to the cost of the eligible projects will produce a total cost of the capital project list attributable to growth as shown in Table 2. This represents the numerator in the Improvement Fee portion equation.

**Table 2: Eligible Cost of Planned Capacity Increasing Capital Improvements**

<i>Project Category</i>	<i>% Attributable to Growth</i>	<i>Total Cost of Projects in Category</i>	<i>Total Cost Attributable to Growth</i>
<b>Intersection Improvements</b>	15.2%	\$28,500,000	\$4,332,000
<b>Roadway Improvements</b>	15.2%	\$88,600,000	\$13,467,200
<b>ODOT/County Intersections</b>	15.2%	\$41,100,000	\$6,247,200
<b>Pedestrian Facilities</b>	0%	\$6,300,000	\$0
<b>Bridges</b>	0%	\$16,000,000	\$0
<b>Federal Land Access Program (FLAP) Projects</b>	0%	\$8,800,000	\$0
<b>Total</b>		<b>\$189,300,000</b>	<b>\$24,046,400</b>

**Improvement Fee Calculation:**

The Improvement Fee portion is designed to capture costs associated with growth’s share of **future projects**. Per the County’s SDC methodology established in Resolution 2013-020, the Improvement Fee is calculated as follows:

$$\frac{\$24,046,400}{5,680 \text{ peak hour trips}} = \$4,234 \text{ per peak hour trip}$$

**Reimbursement Fee Calculation:**

The Reimbursement Fee portion is designed to recover costs of **capital improvements already constructed**, but used by future growth. Per the County’s SDC methodology updated via Resolution 2013-020 (originally established in Resolution 2008-059), the basis upon which to establish the Reimbursement Fee portion is a reimbursement of the non-tax resource funded investment, which amounts to the cost of assets funded by previously paid SDC improvement fees.

Improvement fees expended by Deschutes County from FY 2014 to 2023 total \$7,879,085 (excluding improvement fees expended during that period on projects within proposed CIP, Exhibit B). This portion of recoverable funding represents the numerator in the Reimbursement Fee portion equation, as follows:

$$\frac{\$7,879,085}{5,680 \text{ peak hour trips}} = \$1,387 \text{ per peak hour trip}$$

**Administrative Recovery Charge:**

Resolution 2013-020 also established an Administration Recovery Charge amounting to an inflation adjusted \$70 per peak hour trip. The Administration Recovery Charge accounts for staff time and expense associated with application and collection of the SDC and is shared revenue between the Road Department and Community Development Department.

**Proposed Transportation System Development Charge**

The proposed Transportation SDC, inclusive of the Improvement Fee portion (\$4,234 per peak hour trip), Reimbursement Fee portion (\$1,387 per peak hour trip), and Administrative Fee (\$70 per peak hour trip), amounts to \$5,691 per peak hour trip. Table 3 compares and contrasts the existing (FY 2025 fee schedule) and proposed SDC rate and corresponding single family dwelling SDC.

**Table 3: Existing and Proposed SDC Comparison**

<i>Transportation SDC</i>		<i>Notes:</i>
Existing Transportation SDC (FY 25 rate)	\$5,670	Per PM peak hour trip
Proposed Transportation SDC	\$5,691	Per PM peak hour trip
\$ Increase	\$22	
% Increase	0.4%	
Existing Single Family Dwelling Unit	4,593	0.81 trip/peak hour for SFDU in Deschutes County
Proposed Single Family Dwelling Unit	4,610	0.81 trip/peak hour for SFDU in Deschutes County
\$ Increase	\$17	
% Increase	0.4%	

By resolution, Transportation SDCs are assessed based upon the estimated number of PM peak hour trips of a proposed development calculated via use of the Institute of Transportation Engineers (ITE), Trip Generation Manual. Specific to residential development, Deschutes County has adopted a specialty trip generation rate in consideration of the number of resort and second homes in the county. The specialty rate of 0.81 trips per single family dwelling unit considers a blend of the ITE rates for single family dwellings and recreational housing. No changes are proposed to this specialty trip generation rate.

**Implementation of SDC Update**

SDCs are authorized by ORS 223.297-223.316 and implemented in via ordinance (DCC Section 15.12) and resolution. Statutorily prescribed process requirements include Board adoption by public hearing to be preceded by a 90-day notification to individuals who have previously made a written request for notification prior to adoption or amendment of a methodology for any system development charge.

A public hearing has been scheduled for October 16<sup>th</sup> at 9:00 AM before the Board of County Commissioners at the Deschutes County Services Building, 1300 NW Wall Street (Barnes/Sawyer Room), Bend, OR.

## Exhibit B: System Development Charge Project List (Capital Improvement Plan), Res 2024-038

NEW PROJECT ID	ROAD_NAME	LOCATION1	LOCATION2	PROJECT	PRIORITY	TOTAL COST (ROUNDED)	COUNTY CONTRIBUTION (ROUNDED)
CI-1	POWELL BUTTE HWY	BUTLER MARKET ROAD	RURAL/BEND AREA	ROUNDBOUT	HIGH	\$ 2,500,000	\$ 2,500,000
CI-2	S CENTURY DRIVE	SPRING RIVER ROAD	RURAL/SOUTH COUNTY AREA	ROUNDBOUT	HIGH	\$ 2,200,000	\$ 2,200,000
CI-3	HUNTINGTON ROAD	SOUTH CENTURY DRIVE	RURAL/SOUTH COUNTY AREA	ROUNDBOUT	HIGH	\$ 2,000,000	\$ 2,000,000
CI-4	NE 5TH STREET	ONEAL HWY	RURAL/REDMOND AREA	REALIGNMENT	HIGH	\$ 130,000	\$ 100,000
CI-5	BURGESS ROAD	DAY ROAD	RURAL/SOUTH COUNTY AREA	SIGNAL	HIGH	\$ 800,000	\$ 800,000
CI-6	COYNER ROAD	NORTHWEST WAY	RURAL/NORTH COUNTY AREA	LEFT TURN LANES (NORTHWEST WAY ONLY)	HIGH	\$ 400,000	\$ 400,000
CI-7	NW LOWER BRIDGE WAY	NW 43RD ST	RURAL/NORTH COUNTY AREA	REALIGNMENT/LEFT TURN LANE OR ROUNDBOUT	HIGH	\$ 3,500,000	\$ 3,500,000
CI-8	S CENTURY DRIVE	VANDERVERT ROAD	RURAL/SOUTH COUNTY AREA	ROUNDBOUT	MEDIUM	\$ 2,100,000	\$ 2,100,000
CI-9	NW 43RD ST	NW CHINOOK DRIVE/NW POVEY AVENUE	RURAL/NORTH COUNTY AREA	REALIGNMENT, LEFT TURN LANE	MEDIUM	\$ 700,000	\$ 700,000
CI-10	GRAYSTONE LANE	PLEASANT RIDGE ROAD	RURAL/BEND AREA	REALIGNMENT, LEFT TURN LANE	MEDIUM	\$ 2,700,000	\$ 2,700,000
CI-11	DESCHUTES MARKET ROAD	GRAYSTONE LANE	RURAL/BEND AREA	SIGNAL WITH TURN LANES	MEDIUM	\$ 2,300,000	\$ 2,300,000
CI-12	VENTURE LANE	S CENTURY DRIVE	RURAL/SOUTH COUNTY AREA	ROUNDBOUT OR REALIGNMENT	MEDIUM	\$ 2,100,000	\$ 2,100,000
CI-13	S CANAL BLVD	MCVEY AVENUE	RURAL/NORTH COUNTY AREA	REALIGNMENT	MEDIUM	\$ 400,000	\$ 400,000
CI-14	CINDER BUTTE ROAD	CHEYENNE ROAD	RURAL/ DESCHUTES RIVER WOODS	REALIGNMENT	MEDIUM	\$ 200,000	\$ 200,000

### Exhibit B: System Development Charge Project List (Capital Improvement Plan), Res 2024-038

NEW PROJECT ID	ROAD_NAME	LOCATION1	LOCATION2	PROJECT	PRIORITY	TOTAL COST (ROUNDED)	COUNTY CONTRIBUTION (ROUNDED)
CI-15	JOHNSON ROAD	TYLER ROAD	RURAL/BEND AREA	REALIGNMENT	MEDIUM	\$ 600,000	\$ 600,000
CI-16	CLINE FALLS HWY	COOK AVE/TUMALO ROAD	RURAL/TUMALO AREA	ROUNDBOUT OR REALIGNMENT	MEDIUM	\$ 1,800,000	\$ 1,800,000
CI-17	S CANAL BLVD	SW YOUNG AVENUE	RURAL/NORTH COUNTY AREA	REALIGNMENT	MEDIUM	\$ 300,000	\$ 300,000
CI-18	BAKER ROAD	CINDER BUTTE ROAD	RURAL/ DESCHUTES RIVER WOODS	INTERSECTION IMPROVEMENTS	MEDIUM	\$ 1,200,000	\$ 1,200,000
CI-19	NW LOWER BRIDGE WAY	NW 19TH STREET	RURAL/NORTH COUNTY AREA	TURN LANES/REALIGNMENT	MEDIUM	\$ 500,000	\$ 500,000
CI-20	OLD BEND REDMOND HWY	SWALLEY ROAD/KIOWA DRIVE	RURAL/TUMALO AREA	REALIGNMENT	LOW	\$ 200,000	\$ 200,000
CI-21	NW LOWER BRIDGE WAY	NW 31ST STREET	RURAL/NORTH COUNTY AREA	TURN LANES	LOW	\$ 500,000	\$ 500,000
CI-22	BAKER ROAD	BROOKSWOOD BLVD	RURAL/ DESCHUTES RIVER WOODS	SIGNAL/TURN LANES	LOW	\$ 1,400,000	\$ 1,400,000
CC-1	HUNNELL ROAD	LOCO ROAD	RODGERS ROAD	NEW ROAD	HIGH	\$ 1,600,000	\$ 1,600,000
CC-2	HUNNELL ROAD	RODGERS ROAD	TUMALO ROAD	RECONSTRUCTION/ PAVE	HIGH	\$ 3,900,000	\$ 3,900,000
CC-3	SMITH ROCK WAY	HIGHWAY 97	RR XING/UGB TERREBONNE	WIDEN & OVERLAY	HIGH	\$ 600,000	\$ 600,000
CC-4	NW LOWER BRIDGE WAY	43RD STREET	HOLMES ROAD	WIDEN & OVERLAY	HIGH	\$ 8,900,000	\$ 8,900,000
CC-5	RICKARD ROAD	KNOTT RD/27TH ST	BOZEMAN TRAIL	WIDENING	MEDIUM	\$ 2,300,000	\$ 2,300,000
CC-6	SUNRISE BLVD	300' NORTH OF SHADY LANE	BURGESS ROAD	COUNTY STANDARD IMPROVEMENT	MEDIUM	\$ 1,300,000	\$ 1,300,000

### Exhibit B: System Development Charge Project List (Capital Improvement Plan), Res 2024-038

NEW PROJECT ID	ROAD_NAME	LOCATION1	LOCATION2	PROJECT	PRIORITY	TOTAL COST (ROUNDED)	COUNTY CONTRIBUTION (ROUNDED)
CC-7	N. CANAL BOULEVARD	REDMOND CITY LIMITS	ONEIL HWY	WIDEN & OVERLAY	MEDIUM	\$ 700,000	\$ 700,000
CC-8	61ST STREET	S. CANAL BLVD	HWY 97	WIDEN & OVERLAY	MEDIUM	\$ 1,800,000	\$ 1,800,000
CC-9	TUMALO RESERVOIR ROAD	OB RILEY ROAD	COLLINS ROAD	WIDEN & OVERLAY	MEDIUM	\$ 5,300,000	\$ 5,300,000
CC-10	NW 19TH STREET	NW LOWER BRIDGE WAY	NW ODEM AVENUE	COUNTY STANDARD IMPROVEMENT	MEDIUM	\$ 2,700,000	\$ 2,700,000
CC-11	NW ODEM AVENUE	NW 19TH STREET	HWY 97	COUNTY STANDARD IMPROVEMENT	MEDIUM	\$ 1,100,000	\$ 1,100,000
CC-12	SW HELMHOLTZ WAY	OR 126	ANTLER AVE	WIDEN & OVERLAY	MEDIUM	\$ 900,000	\$ 900,000
CC-13	NE 1ST STREET, NE KNICKERBOCKER AVENUE, AND NE 5TH STREET	ONEIL HWY	SMITH ROCK WAY	WIDEN & OVERLAY	LOW	\$ 3,400,000	\$ 3,400,000
CC-14	NW EBY AVENUE, NE 5TH STREET, NE CAYUSE AVENUE, AND NE 9TH STREET	US 97	NE WILCOX RD	WIDEN & OVERLAY	LOW	\$ 1,700,000	\$ 1,700,000
CC-15	WHITTIER DRIVE, WOLF STREET, AND SHAWNEE CIRCLE	WHITTIER DRIVE - END OF COUNTY MAINTENANCE	LAZY RIVER DRIVE	COUNTY STANDARD IMPROVEMENT	LOW	\$ 2,600,000	\$ 2,600,000
CC-16	STELLAR DR, UPLAND RD, SAVAGE DR, WINCHESTER DR, BROWNING DR	STELLAR DRIVE END OF COUNTY MAINTENANCE (@MILKY WAY)	STAGE STOP DRIVE (@BROWNING DR/PITCH CT)	COUNTY STANDARD IMPROVEMENT	LOW	\$ 1,300,000	\$ 1,300,000
CC-17	SW 19TH STREET	END OF PAVEMENT - SW 19TH STREET	US 97 (IN VICINITY OF SW QUARRY AVE)	ILLUSTRATIVE ROADWAY EXTENSION. MAY REQUIRE STATEWIDE PLANNING GOAL EXCEPTIONS PRIOR TO IMPLEMENTATION	TO BE DETERMINED	\$ 8,600,000	\$ 8,600,000
CC-18	COOLEY ROAD	URBAN GROWTH BOUNDARY	DESCHUTES MARKET ROAD	ROADWAY EXTENSION	LOW	\$ 2,900,000	\$ 2,900,000
CC-19	6TH STREET	MASTEN RD	6TH ST - END OF COUNTY MAINTENANCE	ROADWAY EXTENSION	LOW	\$ 3,800,000	\$ 3,800,000
CC-20	FOSTER ROAD	SOUTH CENTURY DRIVE	LA PINE STATE REC. ROAD	COUNTY STANDARD IMPROVEMENT/WIDEN & OVERLAY	LOW	\$ 4,100,000	\$ 4,100,000

### Exhibit B: System Development Charge Project List (Capital Improvement Plan), Res 2024-038

NEW PROJECT ID	ROAD_NAME	LOCATION1	LOCATION2	PROJECT	PRIORITY	TOTAL COST (ROUNDED)	COUNTY CONTRIBUTION (ROUNDED)
CC-21	BURGESS ROAD	DAY ROAD	HUNTINGTON ROAD	WIDEN & OVERLAY	LOW	\$ 1,900,000	\$ 1,900,000
CC-22	5TH STREET (LA PINE)	AMBER LANE	LAPINE STATE REC. ROAD	WIDEN & OVERLAY	LOW	\$ 800,000	\$ 800,000
CC-23	W. ANTLER AVE	NW 35TH STREET	NW HELMHOLTZ WAY	WIDEN & OVERLAY	LOW	\$ 400,000	\$ 400,000
CC-24	ONIEL HWY	N. CANAL BOULEVARD	HIGHWAY 97	WIDEN & OVERLAY	LOW	\$ 1,100,000	\$ 1,100,000
CC-25	GOSNEY ROAD	US 20	CANAL, 1 MILE SOUTH OF US 20	WIDEN & OVERLAY	LOW	\$ 2,800,000	\$ 2,800,000
CC-26	31ST STREET	NW SEDGEWICK	NW LOWER BRIDGE WAY	WIDEN & OVERLAY	LOW	\$ 1,000,000	\$ 1,000,000
CC-27	NW ALMETER WAY	NORTHWEST WAY	NW SEDGEWICK AVENUE	WIDEN & OVERLAY	LOW	\$ 500,000	\$ 500,000
CC-28	BAILEY ROAD	US 20	TUMALO RESERVOIR ROAD	WIDEN & OVERLAY	LOW	\$ 1,300,000	\$ 1,300,000
CC-29	BEAR CREEK ROAD	CITY LIMITS	US 20	WIDEN & OVERLAY	LOW	\$ 3,200,000	\$ 3,200,000
CC-30	CINDER BUTTE ROAD	BAKER ROAD	MINNETONKA LANE	WIDEN & OVERLAY	LOW	\$ 1,300,000	\$ 1,300,000
CC-31	NW HELMHOLTZ WAY	MAPLE AVENUE	NW COYNER AVENUE	WIDEN & OVERLAY	LOW	\$ 2,500,000	\$ 2,500,000
CC-32	HUNTINGTON ROAD	SOUTH CENTURY DRIVE	BURGESS ROAD (LESS 2 MILES)	WIDEN & OVERLAY, EXCLUDING PORTION FROM RIVERVIEW DR TO RIVERVIEW DR	LOW	\$ 6,600,000	\$ 6,600,000
CC-33	SW WICKIUP AVENUE	SW HELMHOLTZ WAY	SW 58TH STREET	WIDEN & OVERLAY	LOW	\$ 600,000	\$ 600,000
CC-34	4TH STREET (TERREBONNE)	MAJESTIC ROCK DRIVE	F AVENUE	COUNTY STANDARD IMPROVEMENT	LOW	\$ 200,000	\$ 200,000



### Exhibit B: System Development Charge Project List (Capital Improvement Plan), Res 2024-038

NEW PROJECT ID	ROAD_NAME	LOCATION1	LOCATION2	PROJECT	PRIORITY	TOTAL COST (ROUNDED)	COUNTY CONTRIBUTION (ROUNDED)
<b>CC-35</b>	F AVENUE (TERREBONNE)	4TH STREET	5TH STREET	COUNTY STANDARD IMPROVEMENT	LOW	\$ 100,000	\$ 100,000
<b>CC-36</b>	5TH STREET (TERREBONNE)	F AVENUE	CENTRAL AVENUE	COUNTY STANDARD IMPROVEMENT	LOW	\$ 300,000	\$ 300,000
<b>CC-37</b>	H AVENUE (TERREBONNE)	11TH STREET	12TH STREET	COUNTY STANDARD IMPROVEMENT	LOW	\$ 200,000	\$ 200,000
<b>CC-38</b>	AMBER LANE	5TH STREET	DAY ROAD	REALIGNMENT	LOW	\$ 300,000	\$ 300,000
<b>CC-39</b>	DAY ROAD	AMBER LANE	BURGESS ROAD	WIDEN & OVERLAY	LOW	\$ 3,000,000	\$ 3,000,000
<b>CC-40</b>	NW SEDGEWICK AVENUE	NW 19TH AVENUE	NW ALMETER WAY	WIDEN & OVERLAY	LOW	\$ 1,000,000	\$ 1,000,000
<b>S-1</b>	U.S. 20	COOK AVE/O.B. RILEY RD.		TWO-LANE ROUNDABOUT	HIGH	\$ 11,000,000	\$ 9,100,000
<b>S-2</b>	U.S. 97	LOWER BRIDGE WAY		GRADE SEPARATE FROM U.S. 97	HIGH	\$ 30,200,000	\$ 10,000,000
<b>S-3</b>	US 97	BAKER RD TO LAVA BUTTE		IMPLEMENTATION OF MULTIUSE PATH	HIGH	\$ 3,000,000	\$ -
<b>S-4</b>	OR 126	HELMHOLTZ		TRAFFIC SIGNAL OR INTERSECTION IMPROVEMENT	MEDIUM	\$ 1,000,000	\$ 500,000
<b>S-5</b>	US 20	FRYREAR		TURN LANE, REALIGN	MEDIUM	\$ 3,000,000	\$ 2,500,000
<b>S-6</b>	US 97	DRW SOUTH INTERCHANGE PROJECT		INTERCHANGE	LOW	\$ 42,900,000	\$ 10,000,000
<b>S-7</b>	U.S. 97	PERSHALL-O'NEIL HWY		IMPLEMENT COMPONENTS OF THE INTERCHANGE AREA MANAGEMENT PLAN ADOPTED FOR THIS AREA	LOW	MULTIPLE PROJECTS	\$ -
<b>S-8</b>	U.S. 97	QUARRY ROAD INTERCHANGE		GRADE SEPARATED INTERCHANGE FROM US 97	TO BE DETERMINED	\$ 50,000,000	\$ 5,000,000

### Exhibit B: System Development Charge Project List (Capital Improvement Plan), Res 2024-038

NEW PROJECT ID	ROAD_NAME	LOCATION1	LOCATION2	PROJECT	PRIORITY	TOTAL COST (ROUNDED)	COUNTY CONTRIBUTION (ROUNDED)
<b>S-9</b>	U.S. 20	POWELL BUTTE HIGHWAY		INSTALL ROUNDABOUT	MEDIUM	\$ 5,000,000	\$ 500,000
<b>S-10</b>	US 20	PINEHURST		TURN LANE, REALIGN	LOW	\$ 3,000,000	\$ 2,500,000
<b>S-11</b>	US 20	LOCUST		RAB	HIGH	\$ 6,000,000	\$ 1,000,000
<b>S-12</b>	US 97	BAKER RD		IMPLEMENT COMPONENTS OF THE INTERCHANGE AREA MANAGEMENT PLAN ADOPTED FOR THIS AREA	LOW	MULTIPLE PROJECTS	\$ -
<b>BP-1</b>	7TH STREET (TUMALO)	US 20	COOK AVENUE	5' SIDEWALK BOTH SIDES	HIGH	\$ 300,000	\$ 300,000
<b>BP-2</b>	4TH STREET (TUMALO)	WOOD AVENUE	BRUCE AVENUE	5' SIDEWALKS ON BOTH SIDES	HIGH	\$ 300,000	\$ 300,000
<b>BP-3</b>	2ND/COOK SIDEWALKS (SRTS-TUMALO)	TUMALO SCHOOL	CLINE FALLS/4TH STREET	5' SIDEWALKS IN AREAS WITHOUT	HIGH	\$ 1,700,000	\$ 1,700,000
<b>BP-4</b>	5TH STREET (TERREBONNE)	B AVENUE	C AVENUE	5' SIDEWALK ON EAST SIDE ONLY	MEDIUM	\$ 200,000	\$ 200,000
<b>BP-5</b>	B AVENUE (TERREBONNE)	5TH STREET	6TH STREET	5' SIDEWALK, NORTH SIDE ONLY	MEDIUM	\$ 200,000	\$ 200,000
<b>BP-6</b>	5TH STREET (TUMALO)	WOOD AVENUE	COOK AVENUE	5' SIDEWALKS ON BOTH SIDES	MEDIUM	\$ 500,000	\$ 500,000
<b>BP-7</b>	C AVENUE (TERREBONNE)	6TH STREET	NW 19TH STREET	5' SIDEWALKS ON BOTH SIDES	MEDIUM	\$ 1,000,000	\$ 1,000,000
<b>BP-8</b>	C AVENUE (TERREBONNE)	US 97	16TH STREET	5' SIDEWALK ON SOUTH SIDE ONLY	LOW	\$ 600,000	\$ 600,000
<b>BP-9</b>	11TH STREET (TERREBONNE)	CENTRAL AVE	U.S. 97	5' SIDEWALKS ON BOTH SIDES	LOW	\$ 1,100,000	\$ 1,100,000
<b>BP-10</b>	8TH STREET (TUMALO)	COOK AVENUE	RIVERVIEW AVENUE	5' SIDEWALKS BOTH SIDES	LOW	\$ 400,000	\$ 400,000

### Exhibit B: System Development Charge Project List (Capital Improvement Plan), Res 2024-038

NEW PROJECT ID	ROAD_NAME	LOCATION1	LOCATION2	PROJECT	PRIORITY	TOTAL COST (ROUNDED)	COUNTY CONTRIBUTION (ROUNDED)
BR-1	SMITH ROCK WAY	NORTH UNIT CANAL		REPLACEMENT	HIGH	\$ 1,000,000	\$ 1,000,000
BR-2	GRIIBLING RD	CENTRAL OREGON CANAL		REPLACEMENT	HIGH	\$ 900,000	\$ 900,000
BR-3	HAMEHOOK RD			REPLACEMENT	HIGH	\$ 1,100,000	\$ 1,100,000
BR-4	S CENTURY DR	BNSF RR		REHABILITATION	HIGH	\$ 2,700,000	\$ 2,700,000
BR-5	WILCOX AVE			REMOVAL	MEDIUM	\$ 200,000	\$ 200,000
BR-6	WILCOX AVE			REMOVAL	MEDIUM	\$ 100,000	\$ 100,000
BR-7	BURGESS RD			REPLACEMENT	MEDIUM	\$ 2,100,000	\$ 2,100,000
BR-8	COTTONWOOD DR	BNSF RR		REPLACEMENT	LOW	\$ 3,800,000	\$ 3,800,000
BR-9	SPRING RIVER RD	DESCHUTES RIVER		REHABILITATION	LOW	\$ 400,000	\$ 400,000
BR-10	OLD DESCHUTES RD	PILOT BUTTE CANAL		REPLACEMENT	LOW	\$ 400,000	\$ 400,000
BR-11	SISEMORE RD			REPLACEMENT	LOW	\$ 600,000	\$ 600,000
BR-12	CAMP POLK RD			REPLACEMENT	LOW	\$ 1,400,000	\$ 1,400,000
BR-13	WILCOX AVE			NEW BRIDGE	LOW	\$ 1,300,000	\$ 1,300,000
F-1	THREE CREEKS RD	SISTERS CITY LIMITS	FOREST SERVICE BOUNDARY	WIDEN, PAVEMENT REHABILITATION, SAFETY IMPROVEMENTS, AND REMOVAL OF BR #16060	HIGH	\$ 2,900,000	\$ 600,000

### Exhibit B: System Development Charge Project List (Capital Improvement Plan), Res 2024-038

NEW PROJECT ID	ROAD_NAME	LOCATION1	LOCATION2	PROJECT	PRIORITY	TOTAL COST (ROUNDED)	COUNTY CONTRIBUTION (ROUNDED)
F-2	BUCKHORN ROAD	LOWER BRIDGE WAY	HIGHWAY 126	RECONSTRUCTION/ PAVE	MEDIUM	\$ 6,500,000	\$ 1,300,000
F-3	CASCADE LAKES HIGHWAY	MILEPOST 21.98	ELK LAKE	WIDEN & OVERLAY	MEDIUM	\$ 12,200,000	\$ 2,400,000
F-4	CASCADE LAKES HIGHWAY	ELK LAKE	S CENTURY DR	WIDEN & OVERLAY	LOW	\$ 9,000,000	\$ 1,800,000
F-5	DARLENE WAY	ROSLAND ROAD	COUNTY LINE	COUNTY STANDARD IMPROVEMENT	LOW	\$ 6,800,000	\$ 1,400,000
F-6	BURGESS RD	SUNRISE CT	SOUTH CENTURY DR	WIDEN & OVERLAY	LOW	\$ 5,300,000	\$ 1,100,000
F-7	CHINA HAT ROAD	KNOTT ROAD	ONE MILE SOUTH OF KNOTT RD AT THE DESCHUTES NATIONAL FOREST BOUNDARY	WIDEN & OVERLAY	LOW	\$ 900,000	\$ 200,000
M-1	-	COUNTYWIDE	-	COUNTY SHARE OF FUNDING COMMUTE OPTIONS AT \$13,900K PER YEAR (FY 25)	HIGH		
M-2	-	COUNTYWIDE	-	INSTALL REGIONAL RIDESHARE LOTS AT VARIOUS FUTURE LOCATIONS. ADD TRANSIT STOPS	MEDIUM		

Project ID Coding: CI = County Intersection; CC = Roadway Improvements; S = ODOT/County Intersections; BP = Pedestrian Facilities; BR = Bridges; F = Federal Land Access Program; M = Other Program Investments

**TOTAL COST = \$ 337,804,182**

**TOTAL COUNTY CONTRIBUTION (Rounded) \$ 189,300,000**



## BOARD OF COMMISSIONERS

# AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** October 16, 2024

**SUBJECT:** Public Hearing: CORE3 Comprehensive Plan Amendment and Zone Change for approximately 228 acres adjacent to and north of Highway 126 in Redmond

**RECOMMENDED MOTION:**

At the conclusion of the public hearing, the Board can choose one of the following options:

- Continue the hearing to a date and time certain;
- Close the oral portion of the hearing and leave the written record open to a date and time certain;
- Close the hearing and commence deliberations; or
- Close the hearing and schedule deliberations for a date and time to be determined.

**BACKGROUND AND POLICY IMPLICATIONS:**

The Board will hold a public hearing on October 16, 2024 to consider a Comprehensive Plan Amendment to change the designation of a portion the subject property, approximately 228 acres, from Agricultural (AG) to Redmond Urban Growth Area (RUGA) and a corresponding Urban Growth Boundary (UGB) expansion. The applicant also requests a Zone Change to rezone the subject property from Exclusive Farm Use (EFU) to Urban Holding (UH-10).

The full record is located on the project webpage: [www.deschutes.org/CORE3](http://www.deschutes.org/CORE3).

**BUDGET IMPACTS:**

None

**ATTENDANCE:**

Haleigh King, Associate Planner



## MEMORANDUM

**TO:** Deschutes County Board of Commissioners

**FROM:** Haleigh King, AICP, Associate Planner

**DATE:** October 8, 2024

**SUBJECT:** CORE3 Comprehensive Plan Amendment and Zone Change – Public Hearing

The Board of County Commissioners (“Board”) will conduct a public hearing on October 16, 2024 to consider a Comprehensive Plan Amendment to change the designation of a portion the subject property, approximately 228 acres, from Agricultural (AG) to Redmond Urban Growth Area (RUGA) and a corresponding Urban Growth Boundary (UGB) expansion. The applicant also requests a corresponding Zone Change to rezone the subject property from Exclusive Farm Use (EFU) to Urban Holding (UH-10) (County File Nos. 247-23-000543-PA, 544-ZC).

### I. BACKGROUND

The purpose of these applications is to allow for the development of the Central Oregon Ready, Responsive, Resilient (CORE3) facility. The CORE3 facility will address a need for both a centralized public safety training facility and a coordination center for emergency response operations.

Regional emergency management agencies have been discussing the concept of the CORE3 facility for well over ten years. Organizing efforts culminated in a June 2018 report prepared by the University of Oregon’s Partnership for Disaster Resilience that found a strong need for an emergency services center for regional agencies in Central Oregon. The October 2020 Central Plan assessed current training facilities and programming needs, conducted a financial assessment for the project, developed a list of site layout considerations, and identified the City of Redmond as the optimal location for this facility.

The applicant has provided findings within the burden of proof that demonstrate compliance with state and local requirements and policies.

Pursuant to the Joint Management Agreement between the City of Redmond (“City”) and Deschutes County, these applications are reviewed jointly by the respective local agencies. The initial public hearings were held before a County Hearings Officer and the Redmond Urban Area Planning Commission (RUAPC) for their respective applications. The RUAPC held a public hearing on April 24, 2024, that was continued to May 1, 2024, where they recommended approval of the application to

the Redmond City Council. The Redmond City Council held a public hearing on July 23, 2024, and approved the application package before the City. The County's initial hearing before a Hearing's Officer was held on August 8, 2024. The Deschutes County Board of Commissioners is the final local review body for the applications before the County.

## II. PUBLIC COMMENTS

Staff received one (1) public comment from a neighbor prior to the Hearing's Officer hearing. The Hearing's Officer recommendation addressed the public comment.

## III. HEARINGS OFFICER RECOMMENDATION

Aside from the applicant's team, there was no other testimony, oral or written, from nearby property owners or neighbors in conjunction with the initial hearing.

On August 30, 2024, the Hearings Officer issued a recommendation of approval for the proposed Plan Amendment and Zone Change.

## IV. BOARD CONSIDERATION

As the property includes lands designated for agricultural use, Deschutes County Code 22.28.030(C) requires the application to be heard *de novo* before the Board, regardless of the determination of the Hearings Officer. The record is available at the following link: [www.deschutes.org/CORE3](http://www.deschutes.org/CORE3)

Per DCC Section 22.20.040(D), the review of the proposed quasi-judicial Plan Amendment and Zone Change is not subject to the 150-day review period typically associated with land use decisions.

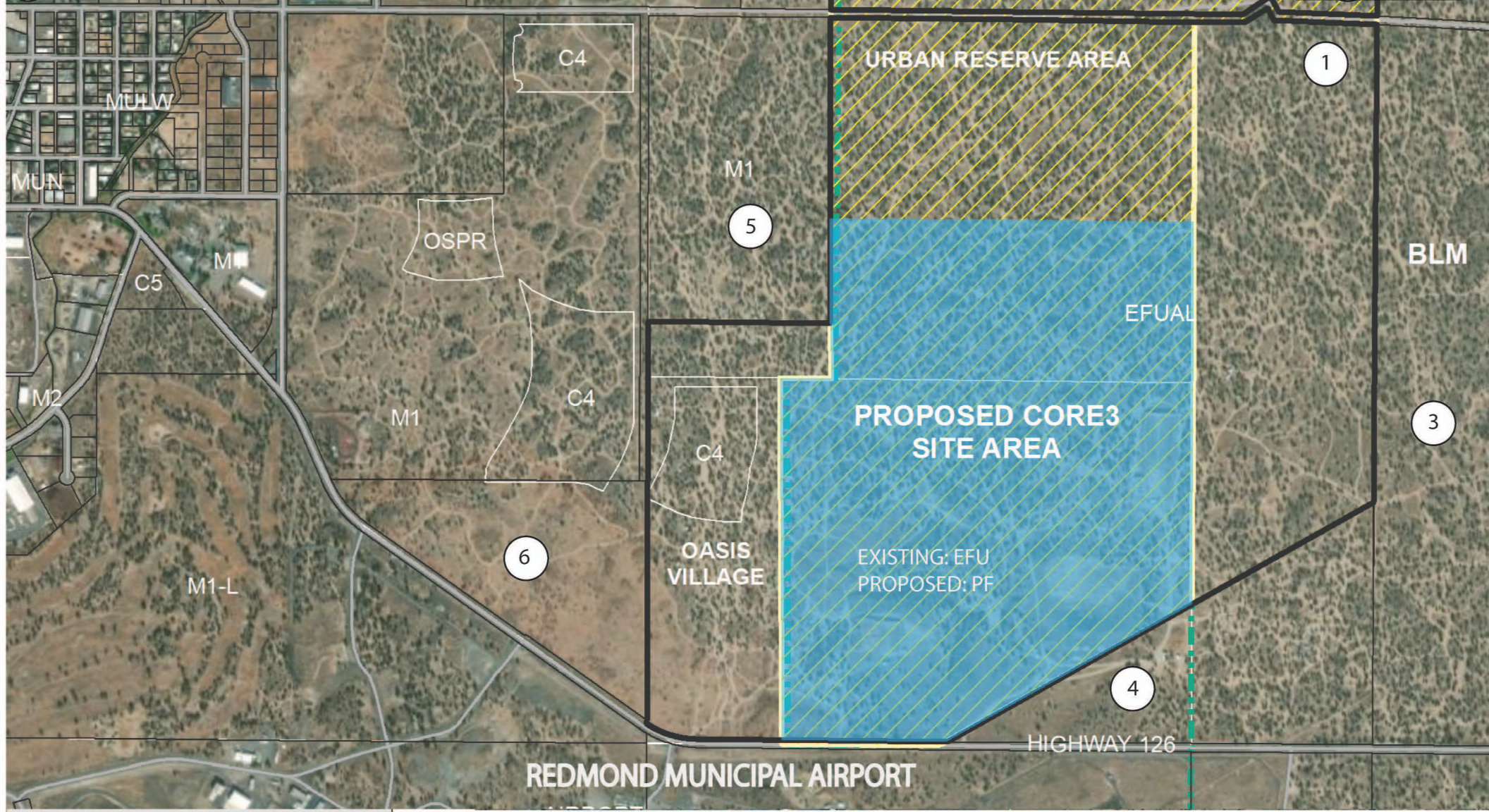
## V. NEXT STEPS

At the conclusion of the public hearing, the Board can choose one of the following options:







- Continue the hearing to a date and time certain;
- Close the oral portion of the hearing and leave the written record open to a date and time certain;
- Close the hearing and commence deliberations; or
- Close the hearing and schedule deliberations for a date and time to be determined.

## ATTACHMENT(S):

1. Area Map
2. Hearing's Officer Recommendation



### VICINITY AND ZONING MAP

-  EXISTING ZONING BOUNDARY
-  PROPOSED SITE AREA
-  URBAN RESERVE AREA
-  URBAN RESERVE BOUNDARY
-  TAX LOT LINES
-  REDMOND CITY LIMITS





## HEARINGS OFFICER RECOMMENDATION

**FILE NUMBER(S):** 247-23-000543-PA, 544-ZC<sup>1</sup>

**HEARING:** August 8, 2024, 1:00 p.m.  
Videoconference and Barnes & Sawyer Rooms  
Deschutes Services Center  
1300 NW Wall Street  
Bend, OR 97708

**SUBJECT PROPERTY/  
OWNER:** Mailing Name: DESCHUTES COUNTY  
("the "Owner")  
Map and Tax Lot: 1513000000103  
Account: 150551  
Situs Address: 1805 E HWY 126, REDMOND, OR 97756

**APPLICANT:** Central Oregon Intergovernmental Council (COIC)  
Scott Aycock  
1250 NE Bear Creek Road  
Bend, OR 97701

**APPLICANT'S  
CONSULTANT:** Winterbrook Planning  
Jesse Winterowd  
610 SW Alder Street, Suite 810  
Portland, OR 97205

**REQUEST:** The applicant requested approval of a Comprehensive Plan Amendment to change the designation of a portion the subject property, approximately 228 acres, from Agricultural ("AG") to Redmond Urban Growth Area ("RUGA") and a corresponding Urban Growth Boundary ("UGB") expansion. The applicant also requested a corresponding Zone Change to rezone the subject property from Exclusive Farm Use ("EFU") to Urban Holding ("UH-10").

The purpose of these applications is to allow for the development of the Central Oregon Ready, Responsive, Resilient ("CORE3") facility. The CORE3 facility will address a need for both a centralized public safety

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<sup>1</sup> The applicant submitted a concurrent request to the City of Redmond. The associated file numbers for the City of Redmond are; Text Amendment (711-23-000146-PLNG), UGB Expansion (711-23-000147-PLN), Zone Change (711-23-000149-PLNG), Annexation (711-23-000150-PLNG), and Master Development Plan (711-23-000148-PLNG).

training facility and a coordination center for emergency response operations.

**STAFF PLANNER:** Haleigh King, Associate Planner  
[Haleigh.king@deschutes.org](mailto:Haleigh.king@deschutes.org), 541-383-6710

**RECORD:** Record items can be viewed and downloaded from:  
[www.deschutes.org/CORE3](http://www.deschutes.org/CORE3)

**I. APPLICABLE CRITERIA**

Deschutes County Code (“DCC”)

- Title 18, Deschutes County Zoning Ordinance
  - Chapter 18.16, Exclusive Farm Use Zones (EFU)
  - Chapter 18.56, Surface Mining Impact Area Combining Zone (SMIA)
  - Chapter 18.80, Airport Safety Combining Zone (AS)
  - Chapter 18.84, Landscape Management Combining Zone (LM)
  - Chapter 18.136. Amendments
- Title 20, Redmond Urban Reserve Area
  - Chapter 20.36. Amendments
- Title 22, Deschutes County Development Procedures Ordinance

Deschutes County and City of Redmond Joint Management Agreement (DC Doc No. 2007-110)

Deschutes County Comprehensive Plan

- Chapter 1, Comprehensive Planning
- Chapter 2, Resource Management
- Chapter 3, Rural Growth Management
- Chapter 4, Urban Growth Management
- Chapter 5, Supplemental Sections
- Division 15, Statewide Planning Goals and Guidelines
- Division 33, Agricultural Land
- Appendix C, Transportation System Plan

Oregon Administrative Rules (“OAR”), Chapter 660

Oregon Revised Statutes (“ORS”)

- ORS 197.298, Priority of Land to be Included within Urban Growth Boundary

**II. PRELIMINARY FINDINGS**

A public hearing was scheduled for March 19, 2024. Prior to the occurrence of the proposed March 19, 2024 hearing the applicant submitted a request to continue that hearing to a date uncertain. The hearing was ultimately continued to August 8, 2024 (“Continued Hearing”). At the Continued Hearing only representatives of Deschutes County (the “County”) and the applicant were present. The Hearings Officer asked for testimony from the County, applicant, applicant’s representatives,

those in support of the applicant’s requests, those neutral to and those in opposition to the Applicant’s requests. Haleigh King (County Planning Staff Representative), Shelby Knight (applicant representative) and Jesse Winterowd (applicant representative) testified at the Continued Hearing. No person testified at the Continued Hearing in opposition to the Applicant’s requests. Applicant, during Continued Hearing testimony, stated applicant had no “opposition” to any part or section of the Staff Report.

The Hearings Officer reviewed all documents submitted into the evidentiary record. Included in the Hearings Officer’s review was a document submitted by Aaron and Elizabeth Faherty (“Faherty”). Staff referenced the Faherty record submission (Staff Report, page 11). Applicant, during Continued Hearing testimony responded to the issues raised in the Faherty record submission.

Staff, in the Staff Report, requested the Hearings Officer to address and/or consider specific issues. The following list includes a brief summary and Staff Report page reference for the issues raised by Staff:

Rezoning Standards, DCC 18.136.020 A.	Page 14
Purpose consistent with proposed zoning	Pages 15 & 16
Impacts surrounding land use DCC 18.136.020 C.2	Pages 17 & 18
Change or mistake in circumstances DCC 18.136.020 D.	Page 18
ID & retain accurately designated ag land Comp Plan 2.2.13	Pages 22 & 23
Transportation requirements OAR 660-024, div 24(1)(d)	Pages 30 – 32

As noted above, the Hearings Officer independently reviewed each of the issues raised by Staff as set forth above. The Hearings Officer addressed each of the specific Staff issues in the relevant findings below. The Hearings Officer finds that the Staff findings for all relevant approval criteria are, subject to the findings for the specific issues raised by Staff, based upon substantial evidence and analysis leading to supportable factual and legal conclusions. The Hearings Officer, therefore, finds that it is reasonable and appropriate that the Hearings Officer incorporate Staff findings. Where the Hearings Officer agrees with staff findings the Hearings Officer incorporates the Staff findings as the Hearings Officer findings in this case.

**III. BASIC FINDINGS**

**LOT OF RECORD: The Hearings Officer finds that the following basic findings, as proposed by Staff, are supported by substantial evidence and properly interpreted relevant law.**

The subject property tax lot 103 is a lot of record as it is recorded as Parcel 2 of Partition Plat 2023-28 (County File No. 247-23-000002-MP). However, per DCC 22.04.040, Verifying Lots of Record, lot of record verification is only required for certain permits:

- B. *Permits Requiring Verification.*
  - 1. *Unless an exception applies pursuant to subsection (B)(2) below, verifying a lot or parcel pursuant to subsection (C) shall be required prior to the issuance of the following permits:*

- a. Any land use permit for a unit of land in the Exclusive Farm Use Zones (DCC Chapter 18.16), Forest Use Zone – F1 (DCC Chapter 18.36), or Forest Use Zone – F2 (DCC Chapter 18.40);
- b. Any permit for a lot or parcel that includes wetlands as shown on the Statewide Wetlands Inventory;
- c. Any permit for a lot or parcel subject to wildlife habitat special assessment;
- d. In all zones, a land use permit relocating property lines that reduces in size a lot or parcel;
- e. In all zones, a land use, structural, or non-emergency on-site sewage disposal system permit if the lot or parcel is smaller than the minimum area required in the applicable zone;

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

**SITE DESCRIPTION: The Hearings Officer finds that the following basic findings, as proposed by Staff, are supported by substantial evidence and properly interpreted relevant law.**

The subject property, in its current configuration, is approximately 1,637 acres in size<sup>2</sup>, with portions of the west and south located within the city limits and urban growth boundary (UGB) of the City of Redmond as shown in **Figure 1**. The property was tentatively approved for a three parcel Partition via County File No. 247-23-000545-MP which would create three parcels, consisting of the following;

- Parcel 1: Parcel 1 will be ± 300 acres in size and is currently located entirely outside Redmond’s city limits and the Urban Growth Boundary.
- Parcel 2: Parcel 2 will consist of the remaining acres (±1,300 acres) and will have portions located both within the City of Redmond and Deschutes County.
- Parcel 3: Parcel 3 will be ±70 acres and is located entirely within Redmond’s city limits and the UGB. The applicant has submitted a concurrent Partition to City of Redmond for review (711-23-000145-PLNG)

The final plat has not yet been recorded for the above referenced partition. The site has varying terrain and is vegetated with juniper trees and native shrubs and grasses. The property is not farmed, has no apparent history of farming, and is not irrigated. According to the Flood Insurance Rate Map (FIRM) for Deschutes County and the National Wetlands Inventory (NWI), respectively, the subject property is not located in the 100-year flood plain nor does it contain mapped wetlands.

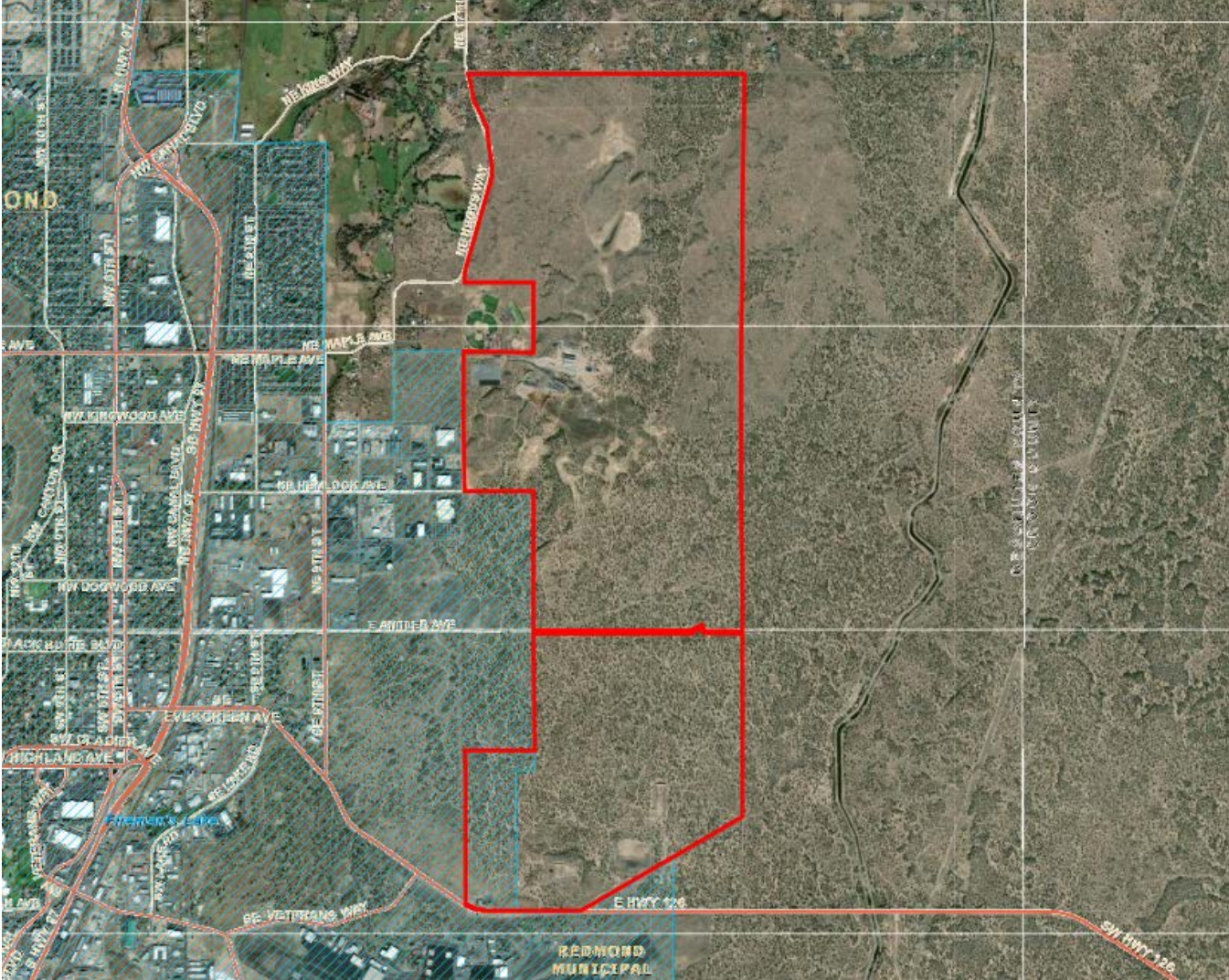
The subject property includes approximately 320 acres of land zoned Surface Mining (“SM”) and occupied by Site No. 482 on the County's Surface Mining Mineral and Aggregate Inventory. This portion is developed with the Negus Transfer Station and Recycle Center.

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<sup>2</sup> According to Partition Plat No. 2023-28, Parcel 2.

The subject property includes frontage along E Highway 126 to the south and NE Upas Avenue to the north. To the west, the subject property also has frontage along several roads including NE 17th Street, NE Kingwood Avenue, NE Maple Avenue, and NE Negus Way. The E Antler Avenue unimproved right of way bisects the property.

**Figure 1 – Aerial View of Subject Property (Source: Deschutes County DIAL)**



**PROPOSAL:** Staff, in the Staff Report, provided the following comments which the Hearings Officer finds accurately reflects the proposal in this case:

The applicant requests approval of a Comprehensive Plan Amendment to change the designation of a portion the subject property, approximately 228 acres, from Agricultural (AG) to Redmond Urban Growth Area (RUGA) and a corresponding Urban Growth Boundary (UGB) expansion. The applicant also requests a corresponding Zone Change to rezone the subject property from Exclusive Farm Use (EFU) to Urban Holding (UH-10).

The City of Redmond is the review agency for the following applications which are related to the overall development proposal but not evaluated as part of this staff report:

- 711-23-000146-PLNG – Comprehensive Plan Text Amendment to incorporate the need for the CORE23 facility and specific site requirements.
- 711-23-000147-PLNG – Urban Growth Boundary Expansion
- 711-23-000150-PLNG – Annexation of the 228-acre property
- 711-23-000149-PLNG – Zone Map Amendment to change the zoning from UH10 to Public Facilities (PF)
- 711-23-000148-PLNG – Master Development Plan

**SOILS:** Staff, in the Staff Report, provided the following comments which the Hearings Officer finds accurately reflects the proposal in this case:

According to the Natural Resources Conservation Service (NRCS) maps of the subject property, there are three mapped soil units.

35B, Deschutes-Stukel complex, dry 0-8 percent slopes. This soil unit is comprised of 50 percent Deschutes soil and similar inclusions, 35 percent Stukel soil and similar inclusions, and 15 percent contrasting inclusions. The Deschutes soil is well drained with moderately rapid permeability and an available water capacity of about 4 inches. The Stukel soil is well drained, with moderately rapid permeability and an available water capacity of about two inches. The contrasting inclusions consist of Redmond soils in swales, soils that have a loamy sand surface layer, and rock outcroppings. Major uses for this soil type include livestock grazing and irrigated cropland.

104A, Redmond sandy loam, 0-3 percent slopes. This soil unit is comprised of 85 percent Redmond soil and similar inclusions and 15 percent contrasting inclusions. The soil is well drained with moderate permeability and an available water capacity of about 4 inches. The contrasting inclusions consist of Buckbert, Deschutes and Houstake soils in swales, along with Stukel soils on ridges. The major use for this soil type is irrigated crop land and livestock grazing.

142B, Stukel-Rock outcrop - Deschutes complex, dry 0-8 percent slopes. This soil unit is comprised of 20 percent Deschutes soil and similar inclusions, 35 percent Stukel soil, 30 percent rock outcrop, and similar inclusions, and 15 percent contrasting inclusions. The Deschutes soil is well drained with moderately rapid permeability and an available water capacity of about 4 inches. The Stukel soil is well drained, with moderately rapid permeability and an available water capacity of about two inches. The contrasting inclusions consist of Redmond and Houstake soils in swales. Major uses for this soil type include livestock grazing.

**SURROUNDING LAND USES:** Staff, in the Staff Report, provided the following comments which the Hearings Officer finds accurately reflects the proposal in this case:

The surrounding land uses and zoning are described below.

**West** - To the west are lands located within the Redmond city limits and UGB. A portion of this area, on the north side of Highway 126 and directly west of the future CORE3 development, contains the Oasis Village transitional housing project and is planned for other commercial and industrial uses.

**North and East** - To the north is the Lake Park Estates subdivision that is zoned MUA-10 and developed with dwellings. Other uses include a radio transmission tower, natural gas pipeline, and a high voltage power line. The property to the east is zoned EFU, undeveloped, and owned by the Bureau of Land Management (BLM).

**South** - To the south is the Redmond Municipal Airport – Roberts Field, which is within the Redmond city limits and UGB. Hwy 126 also abuts the subject property along its southern boundary.

**Southwest** - To the southwest is 250 acres of vacant land owned by the Central Oregon Irrigation District (COID) and located within the Redmond city limits and UGB.

Staff also highlights those uses found on the county-owned lands located to the north and east to include the Negus Transfer Station, Redmond Area Park Recreation District sport fields, radio transmission tower, natural gas pipeline, high voltage power line, and the Antler Avenue unimproved right-of-way. Otherwise, the area is undeveloped and has relatively level topography with rock outcroppings and native vegetation. Further east are public lands managed by the Bureau of Land Management (BLM).

**LAND USE HISTORY:** Staff, in the Staff Report, provided the following comments which the Hearings Officer finds accurately reflects the proposal in this case:

The following is the land use history for that portion of the property located outside of the Redmond UGB and city limits:

- CU-81-89: Conditional Use permit for a ballpark in the EFU Zone.
- V-81-29: Variance to allow advertising signs at ballpark. There was no decision for this request.
- SP-84-41: Site Plan review for auto recycling storage yard in the M-2 Zone. This request was withdrawn.
- SP-86-51: Site Plan review for log storage and whole log chipping in the M-1 Zone.
- CU-91-137: Conditional Use permit for a caretaker's residence at the Redmond Rod and Gun Club.
- CU-92-165/SP-92-130: Alteration of a Nonconforming Use to change the Negus landfill to a transfer station and recycling center. This request was denied.
- CU-92- 214/SP-92-170/TU-92-64: Conditional Use permit and Site Plan review to change the Negus landfill to a transfer station and recycling center. This request was approved.
- CU-93-31: Conditional Use permit for a caretaker's residence at the Redmond Rod and Gun Club.

- LL-01-07: Property line adjustment.
- CU-07-13: Conditional Use permit improve and relocate Redmond Rod and Gun Club facilities.
- 247-19-000648-PA/649-ZC: Comprehensive Plan Amendment, UGB Amendment, Zone Change to expand the UGB of the City of Redmond and rezone a portion of the property to light and heavy Industrial (M-1 and M-2).
- 247-21-000440-PA: Comprehensive Plan Amendment to change 40 acres of property from Agriculture to Redmond Urban Growth Area to accommodate the future Skyline Village Affordable Housing site.
- 247-21-000865-MP: Minor partition to create two (2) parcels that include property located both inside and outside the city limits and urban growth boundary of the City of Redmond.
- 247-23-000002-MP: Minor partition to create two (2) parcels that include property located both inside and outside the city limits and urban growth boundary of the City of Redmond.
- 247-23-000545-MP: Minor partition to create three (3) parcels that include property located both inside and outside the city limits and urban growth boundary of the City of Redmond.

**PUBLIC AGENCY COMMENTS:** The Planning Division mailed notice of application on July 7, 2023, to several public agencies and received the following comments:

Deschutes County Senior Transportation Planner, Tarik Rawlings

I have reviewed the transmittal materials for file 247-23-000543-PA, 544-ZC, 545-MP for a Plan Amendment, Zone Change, corresponding Urban Growth Boundary (UGB) Expansion, and Minor Partition for development of the Central Oregon Ready, Responsive, Resilient (CORE3) public safety facility on 1,671.44 acres to the northeast of the City of Redmond at 2525 E HWY 126, Redmond, OR 97756 aka County Assessor’s Map 15-13-00, Tax Lot 103. The proposal would divide the subject property into three (3) parcels. Parcel 1 is proposed to contain the CORE3 facility, be included into the expanded Redmond UGB, and will be approximately 300 acres in size. Parcel 2 will remain within Deschutes County and will be approximately 1,300 acres in size. Parcel 3 is currently within the Redmond UGB, will remain in the Redmond UGB, and will be 71 acres in size. The subject property currently has Deschutes County Comprehensive Plan designations of Agricultural (AG) and Surface Mining (SM) and has County zoning within the Exclusive Farm Use (EFUAL) Zone, Surface Mining (SM) Zone, Airport Safety (AS) Combining Zone, Surface Mining Impact Area (SMIA) Combining Zone and the Redmond Urban Reserve Area (RURA). Portions of the subject property are also within the City of Redmond’s Exclusive Farm Use (EFUAL) Zone, Limited Service Commercial (C4) Zone, Light Industrial (M1), and Heavy Industrial (M2) Zones. The proposal would annex Parcel 1 and change the zoning designation from EFUAL to County Urban Holding (UH-10). The City of Redmond will concurrently review a Zone Change request to change the zoning designation from UH-10 to the City Public Facility (PF) Zone and an annexation into the city limits.

The subject property will be brought into the City of Redmond as a result of the proposal. There currently is no specific proposal to develop the land while in County jurisdiction, and the Applicant’s transportation consultant has prepared an assessment



dated February 22, 2023 reviewing the potential trip generation of the property and planned improvements to affected City facilities. The provided traffic analysis is based on City code as the development is not permissible within the EFU Zoning District. There were no adverse effects outlined in the assessment. County staff will defer to the City of Redmond and ODOT regarding review of the traffic study based on the impending UGB expansion and annexation. Because the Parcel 1 CORE3 site is accessed from State Highway 126 and City roadways, County staff will defer to the City and ODOT regarding any access permitting issues. It is unclear to County staff whether the subject property has an approved access approach from ODOT regarding Highway 126. Staff notes that DCC 17.48.210(B) could apply if the access remains outside of the proposed Redmond UGB and City Limits. If a potential access approach to Highway 126 is now within the Redmond UGB or City Limits, or will be included in the Redmond UGB or City Limits as a result of the subject proposal, then DCC 17.48.210(B) would not apply.

Under the Joint Area Management Agreement between City of Redmond and Deschutes County (included as Appendix G.2 of the submitted application materials), jurisdictional transfer of roads and road rights of way are accomplished as part of annexation. The site is currently served by: Hwy 126, a state highway under the jurisdiction of Oregon Department of Transportation (ODOT) and functionally classified as a principal arterial to the south; NE 17<sup>th</sup> Street and NE Kingwood Avenue roads within the City of Redmond's jurisdiction and functionally classified as City local roads to the west; NE Maple Avenue a public road not maintained by Deschutes County otherwise known as a Local Access Road (LAR) and functionally classified as a local to the west; NE Negus Way a public road maintained by Deschutes County and functionally classified as a Rural Collector to the northwest; and NE Upas Avenue a public road not maintained by Deschutes County otherwise known as a Local Access Road (LAR) and functionally classified as a local to the north. Adequacy of current and future transportation facilities will be reviewed per the Redmond development code as the land is proposed to develop.

Parcel 2 resulting from the proposed Minor Partition (as identified in the submitted application materials) will continue to be within County zoning and jurisdiction. Deschutes County Code (DCC) at 18.116.310(C)(3)(a) states no traffic analysis is required for any use that will generate less than 50 new weekday trips. Partitions do not generate any trips and, therefore, the proposed Minor Partition land use will not meet the minimum threshold for additional traffic analysis. Where Parcel 2 takes access from either NE Negus Way or NE Upas Avenue, the applicant will need to either provide a copy of an approved driveway permit from Deschutes County or be required to obtain one as a condition of approval to meet the access permit requirements of DCC 17.48.210(A) for the proposed parcels.

The entirety of proposed Parcel 1 (the CORE3 location) and the majority of proposed Parcels 2 and 3 are within the Airport Safety (AS) Combining Zone associated with the Redmond Municipal Airport. Staff finds that a standard review of the AS standards outlined in DCC 18.80.044 Table 1 would recognize the proposal as an Institutional land use category, provided that the proposed use does not include "overnight accommodations, such as hotels, motels, hospitals and dormitories...". Staff is unclear whether the proposal includes

dormitories. Despite the provisions of DCC 18.80, staff will ultimately defer to the Oregon Department of Aviation (ODA) regarding the proposals compatibility with airport operations and infrastructure.

Board Resolution 2013-020 sets a transportation system development charge (SDC) rate of \$5,603 per p.m. peak hour trip. Given a partition does not generate any trips, no roadway capacity is consumed as that term is commonly understood. Additionally, the proposed CORE3 use will be within the expanded Redmond UGB and City Limits and the City will apply their own SDCs rather than the County. Therefore, County SDCs are not triggered by the proposal.

If you have any questions, please let me know.

Deschutes County Road Department – Cody Smith

I have reviewed the application materials for the above-referenced file number, proposing a zone change, UGB expansion, and three-parcel partition for Tax Lot 1513000000103 associated with the CORE3 facility project. The subject property abuts the following public road rights of ways under the jurisdiction of Deschutes County:

The roads listed above would all abut Proposed Parcel 2, which is not proposed for further development at this time. Pursuant to DCC 17.22.030, the Road Department has considered the need for improvement of the above-listed public roads as part of this proposed development and has determined that road improvement is unnecessary as it will provide negligible benefit to the transportation system in proportion to the development’s impact on the roads.

The proposed partition would constitute series partitioning pursuant to DCC 17.08. Road Department staff find that the existing County road system can accommodate the increase in trips generated by the new parcels.

Staff note that development of areas brought within the Redmond UGB will be subject to the Joint Management Agreement for the Redmond Unincorporated Urban Growth Area (CJ 2007-444).

**Deschutes County Road Department requests that approval of the proposed land uses be subject to the following conditions:**

Prior to final plat approval by Road Department:

- The surveyor preparing the plat shall, on behalf of the applicant, submit information showing the location of the existing roads in relationship to the rights of way to Deschutes County Road Department. This information can be submitted on a worksheet and does not necessarily have to be on the final plat. All existing road facilities and new road improvements are to be located within legally established or dedicated rights of way. In no case shall a road improvement be located outside of a dedicated road right of way. If research reveals that inadequate right of way exists or that the existing roadway

is outside of the legally established or dedicated right of way, additional right of way will be dedicated as directed by Deschutes County Road Department to meet the applicable requirements of DCC Title 17 or other County road standards. This condition is pursuant to DCC 17.24.060(E),(F), and (G) and 17.24.070(E)(8).

- All easements of record or existing rights of way shall be noted on the final partition plat pursuant to DCC 17.24.060(E),(F), and (H).
- Applicant shall submit plat to Road Department for approval pursuant to DCC 17.24.060(R)(2), 100, 110, and 140.

Central Oregon Irrigation District – Spencer Stauffer

Please be advised that Central Oregon Irrigation District (COID) has reviewed the request for approval of a Comprehensive Plan Amendment to change the designation of the subject property from Agricultural (AG) to Redmond Urban Growth Area (RUGA) and a corresponding Urban Growth Boundary (UGB) expansion. The applicant also requests a corresponding Zone Change to rezone the subject property from Exclusive Farm Use (EFU) to Urban Holding (UH-10). The applicant has also submitted a concurrent Minor Partition (File No. 247-23-000545-MP) to divide a ±1,637-acre property into three (3) parcels. One parcel will create a ±300-acre parcel for the CORE3 site, one will remain within the Redmond Urban Reserve Area and Deschutes County, and the third will remain within the Redmond UGB. The purpose of these applications is to allow for the development of the Central Oregon Ready, Responsive, Resilient (CORE3) facility. The CORE3 facility will address a need for both a centralized public safety training facility and a coordination center for emergency response operations. (dated July 7, 2023). COID has no facilities or water rights on the subject property (TAXLOT: 1513000000103).

Oregon Department of Aviation – Brandon Pike

Thank you for providing the opportunity for the Oregon Department of Aviation (ODAV) to comment on file number(s): 247-23-000543-PA, 544-ZC, 545-MP.

ODAV has reviewed the proposals and prepared the following comment(s):

1. In accordance with FAR Part 77.9 and OAR 738-070-0060, future development at this site will likely be required to undergo aeronautical evaluations by the FAA and ODAV. The aeronautical evaluations are initiated by the applicant providing separate notices to both the FAA and ODAV to determine if the proposal poses an obstruction to aviation safety. The applicant should receive the resulting aeronautical determination letters from the FAA and ODAV prior to approval of any building permits.
2. The height of any new structures, trees, and other planted vegetation should not penetrate FAR Part 77 Imaginary Surfaces, as determined by the FAA and ODAV.

- 3. Any proposed external lights should be designed as to not interfere with aircraft or airport operations.

Jevra Brown, Department of State Lands

FYI, there are no Statewide Wetlands Inventory mapped features on TL 15S 13E 00 #103 (entire). See attached "DeschutesCoRedmond.pdf."

The following agencies did not respond to the notice: Deschutes County Assessor, Deschutes County Onsite Wastewater Division, Bureau of Land Management, Deputy State Fire Marshal, Deschutes County Property Management, Oregon Department of Transportation, Oregon Department of Agriculture, Redmond Airport, Redmond Fire & Rescue, Redmond Public Works, Redmond City Planning, County Property Address Coordinator, Department of Environmental Quality, Watermaster – District 11, Department of Land Conservation and Development.

**PUBLIC COMMENTS:** The Planning Division mailed notice of the application to all property owners within 750 feet of the subject property on July 7, 2023. The applicant also complied with the posted notice requirements of Section 22.24.030(B) of Title 22. The applicant submitted a Land Use Action Sign Affidavit indicating the applicant posted notice of the land use action on July 12, 2023. Staff received one public comment copied below which is included in the application record.

Aaron and Elizabeth Faherty

As property owners near the proposed land use application File Numbers: 247-23-000543-PA, 544-ZC, 545-MP. We do not approve of this application. While the proposed land use application to change the boundary for CORE3 site does seem like an appropriate location, we are fearful that changing the boundary from farm use to Urban growth Boundary will expand Urban development for the city of Redmond. Many of the water wells in Lake Park Estates and surrounding Agricultural land have already experienced a drought on their water wells. We fear this current land use application, if approved, will increase the risk of surrounding water wells going dry. For this reason we do not approve of the current land use application.

The Hearings Officer takes note that applicant's proposal, if approved by the County and City of Redmond, will connect to the City of Redmond water and sewer systems. The Hearings Officer finds that Faherty's water concerns are sincere and generally appropriate that in this case water wells in the vicinity of the subject property will not be negatively impacted because of water and sewer service provision by the City of Redmond (as opposed to private wells and septic systems).

**NOTICE REQUIREMENT:** The applicant complied with the posted notice requirements of Section 22.23.030(B) of Deschutes County Code (DCC) Title 22. The applicant submitted a Land Use Action Sign Affidavit, dated July 12, 2023, indicating the applicant posted notice of the land use action on the property on that same date. On February 1, 2024, the Planning Division mailed a Notice of Public Hearing to agencies and all property owners within 750 feet of the subject property for a public hearing to be held on March 19, 2024. A Notice of Public Hearing was published in the Bend Bulletin

on Sunday, February 4, 2024. Notice of the first County evidentiary hearing was submitted to the Department of Land Conservation and Development on February 12, 2024.

At the applicant’s request, the March 19, 2024 hearing was continued to a date and time uncertain. Subsequently, a Notice of Public Hearing was mailed on July 18, 2024 for the continued hearing to be held on August 8, 2024. A Notice of Public Hearing was published in the Bend Bulletin on July 19, 2024.

**REVIEW PERIOD:** According to Deschutes County Code 22.20.040(D), the review of the proposed quasi-judicial Plan Amendment and Zone Change application is not subject to the 150-day review period.

**III. FINDINGS & CONCLUSIONS**

In order to approve the comprehensive plan amendment and zone change request, the proposal must comply with the criteria found in statutes, statewide planning goals and guidelines and their implementing administrative rules, County comprehensive plan, and land use procedures ordinance. Each of these approval criteria is addressed in the findings below.

**Title 18 of the Deschutes County Code, County Zoning**

**CHAPTER 18.24. REDMOND URBAN RESERVE AREA COMBINING ZONE**

Section 18.24.10. Purposes.

***The Redmond Urban Reserve Area (RURA) Combining Zone implements the Deschutes County Comprehensive Plan for those areas designated as urban reserve. The RURA Combining Zone maintains lands for rural uses in accordance with state law, but in a manner that ensures a range of opportunities for the orderly, economic, and efficient provision of urban serves when these lands are included in the Redmond Urban Growth Boundary.***

Section 18.24.070. Limitations for Future Urban Development

***The following limitations shall apply to uses allowed by DCC 18.24.020 and 18.24.030. Zone changes and plan amendments involving land within the RURA Combining Zone and Multiple Use Agricultural, Surface Mining, or Rural Residential zoning districts that propose more intensive uses, including higher residential density, than currently allowed are prohibited.***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

A portion of the subject property to be included within the Urban Growth Boundary falls within the RURA Combining Zone. As proposed, the RURA Zone will be removed from the subject property in conjunction with this application request and therefore will no longer apply upon approval of the subject applications and incorporation within the City of Redmond. In this case,

the RURA is not in combination of the Multiple Use Agricultural or Rural Residential zoning districts. The application does not affect land within the Surface Mine (SM) zone.

The Hearings Officer finds the Applicant’s statement and Staff’s findings/comments quoted above are based upon substantial evidence and correct interpretation of the language of the criterion.

**CHAPTER 18.52. SURFACE MINING ZONE**

**FINDING:** The overall subject property includes approximately 319 acres of land identified as Surface Mine Site No. 482 on the County’s Surface Mining Mineral and Aggregate Inventory and is further identified as the Negus Transfer Station and Recycle Center. The subject property does not include the SM-zoned region of the subject property.

**Chapter 18.56, Surface Mining Impact Area Combining Zone (SMIA)**

Staff, in the Staff Report, provided the following findings/comments:

The subject property is located within the SMIA Zone in association with mine site(s)no. 482. However, the portion subject to this amendment does not include the associated SMIA designation and therefore, the existing SMIA designation will not be affected by this amendment.

The Hearings Officer finds the Applicant’s statement and Staff’s findings/comments quoted above are based upon substantial evidence and correct interpretation of the language of the criterion.

**Chapter 18.80, Airport Safety Combining Zone (AS)**

Section 18.80.020. Application of Provisions.

***The provisions of DCC 18.80.020 shall only apply to unincorporated areas located under airport imaginary surfaces and zones, including approach surfaces, transitional surfaces, horizontal surfaces, conical surfaces and runway protection zones. While DCC 18.80 identifies dimensions for the entire imaginary surface and zone, parts of the surfaces and/or zones do not apply within the Redmond, Bend or Sisters Urban Growth Boundaries. The Redmond Airport is owned and operated by the City of Redmond, and located wholly within the Redmond City Limits...***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:  
The Hearings Officer finds the Applicant’s statement and Staff’s findings/comments quoted above are based upon substantial evidence and correct interpretation of the language of the criterion.

The subject property is entirely within the County Airport Safety Combining Zone (AS) associated with the Redmond Airport (Robert’s Field). City of Redmond has land use regulations that also protect the Redmond Airport. This transition from County-zoned lands to Redmond UGB-zoned

lands, as proposed, will remove the existing County AS Combining Zone from the subject property. Transportation and airport policies are discussed below in more detail.

The proposal is not subject to the County AS Zone review as no development is proposed at this time.

The Hearings Officer finds the Applicant’s statement and Staff’s findings/comments quoted above are based upon substantial evidence and correct interpretation of the language of the criterion.

Section 18.80.026. Notice of Land Use and Permit Applications.

***Except as otherwise provided herein, written notice of applications for land use or limited land use decisions, including comprehensive plan or zoning amendments, in an area within this overlay zone, shall be provided to the airport sponsor and the Department of Aviation in the same manner as notice is provided to property owners entitled by law to written notice of land use or limited land use applications. [ORS 836.623(1); OAR 738-100-010; ORS 215.416(6); ORS 227.175(6)]***

***For the Redmond, Bend, Sunriver, and Sisters airports:***

- A. Notice shall be provided to the airport sponsor and the Department of Aviation when the property, or a portion thereof, that is subject to the land use or limited land use application is located within 10,000 feet of the sides or ends of a runway:***
- B. Notice of land use and limited land use applications shall be provided within the following timelines.***
  - 1. Notice of land use or limited land use applications involving public hearings shall be provided prior to the public hearing at the same time that written notice of such applications is provided to property owners entitled to such notice.***
  - 2. Notice of land use or limited land use applications not involving public hearings shall be provided at least 20 days prior to entry of the initial decision on the land use or limited land use application.***
  - 3. Notice of the decision on a land use or limited land use application shall be provided to the airport sponsor and the Department of Aviation within the same timelines that such notice is provided to parties to a land use or limited land use proceeding.***
  - 4. Notices required under DCC 18.80.026(B)(1-3) need not be provided to the airport sponsor or the Department of Aviation where the land use or limited land use application meets all of the following criteria:***
    - a. Would only allow structures of less than 35 feet in height;***
    - b. Involves property located entirely outside the approach surface;***
    - c. Does not involve industrial, mining or similar uses that emit smoke, dust or steam; sanitary landfills or water impoundments; or radio, radiotelephone, television or similar transmission facilities or electrical transmission lines; and***
    - d. Does not involve wetland mitigation, enhancement, restoration or creation.***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

The Planning Division mailed notice of the proposed land use application and scheduled public hearing at the same time that written notice of such applications was provided to property owners entitled to such notice. Notice was mailed to Oregon Department of Aviation and Redmond Airport. Comments from the Oregon Department of Aviation are included above in the staff report and in the application record. No comments were received from the Redmond Airport.

The Hearings Officer finds the Applicant’s statement and Staff’s findings/comments quoted above are based upon substantial evidence and correct interpretation of the language of the criterion.

**Chapter 18.136, Amendments**

Section 18.136.010, Amendments

***DCC Title 18 may be amended as set forth in DCC 18.136. The procedures for text or legislative map changes shall be as set forth in DCC 22.12. A request by a property owner for a quasi-judicial map amendment shall be accomplished by filing an application on forms provided by the Planning Department and shall be subject to applicable procedures of DCC Title 22.***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

The applicant on behalf of the property owner has requested a quasi-judicial plan amendment and filed the applications for a plan amendment and zone change. The applicant has filed the required land use application forms for the proposal. The application will be reviewed utilizing the applicable procedures contained in Title 22 of the Deschutes County Code.

The Hearings Officer finds the Applicant’s statement and Staff’s findings/comments quoted above are based upon substantial evidence and correct interpretation of the language of the criterion.

Section 18.136.020, Rezoning Standards

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

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

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

In previous Hearings Officer’s decisions, comprehensive plan goals and policies do not constitute mandatory approval criteria for quasi-judicial zone changes. Instead, the goals and policies are implemented through the zoning ordinance, and thus if the proposed zone change is consistent with the applicable provisions of the zoning ordinance it also will be consistent with the plan. Nevertheless, the provisions of Deschutes County’s comprehensive plan below are the relevant provisions of the plan that should be considered in reviewing applications to change the zoning



of EFU to a plan designation of RUGA and Zoning of UH10. Relevant sections of the Deschutes County Comprehensive Plan is reviewed below within this Staff Report. In previous comprehensive plan and zone change recommendations<sup>3</sup> to the Board of County Commissioners, Hearings Officers have found that the introductory statement of the Comprehensive Plan is aspirational in nature and not necessarily approval criteria.

The Hearings Officer agrees with the Staff conclusion that this section is aspirational in nature and not approval criteria.

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

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

In response to subsection (B) of this policy, the applicant’s burden of proof provides the following:

The proposed map amendments will change the comprehensive plan designation from Agriculture to Redmond Urban Growth Area and the zoning from county Exclusive Farm Use (EFU) to county Urban Holding – 10 (UH-10). The purpose statement of the UH-10 zone is:

**DCC 20.12.010 Purpose**  
**The following regulations shall apply in areas designated Urban Holding Zone (UH-10) on the Deschutes County Title 20 Zoning map. This zone is intended to be used to retain large undeveloped or underdeveloped land areas for future urban development. The UH-10 zone is a holding zone and is considered agricultural or rural residential and it will allow agricultural uses to continue operation until such time as urbanization takes place after annexation.**

As described, the County UH-10 zone is a holding zone. Lands within this zone are intended to be master planned, annexed and rezoned into the City of Redmond. Part 3 of this application package contains an MDP for the subject site. Part 4 contains a request for rezoning and annexing the subject property. This application narrative (Part 5) contains a request to the county for dual map amendments for the subject site to be rezoned from EFU to UH-10 to allow for the site to then be rezoned PF. The subject site will not be urbanizable until the entirety of this application package is approved by both city and county hearings bodies.

The purpose of the UH10 Zone is described in DCC 20.12.010, which is addressed above in the applicant’s response. Staff finds the proposed Zone Change will allow orderly development consistent with the Redmond Comprehensive Plan by retaining the subject property as undeveloped land until it is annexed, at which time Redmond Comprehensive

<sup>3</sup> Powell/Ramsey decision (PA-14-2, ZC-14-2) and Landholdings Decision (247-16-000317-ZC, 318-PA).

Plan and Zoning designations will be applied. The provisions of the UH10 zone are intended to preserve land for future urban development. Staff finds the UH10 Zone is an appropriate zoning designation for the subject property, based on the planned annexation.

Staff finds the Applicant has demonstrated the change in classification is consistent with the purpose and intent of the UH10 Zone, and asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit.

The Hearings Officer finds the Applicant’s statement and Staff’s findings quoted above are based upon substantial evidence and correct interpretation of the language of the criterion. The Hearings Officer finds it is unnecessary to amend or add to Staff’s quoted findings.

**C. That changing the zoning will presently serve the public health, safety and welfare considering the following factors:**

- 1. The availability and efficiency of providing necessary public services and facilities.**

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

Although there are no plans to develop the property in its current state, the above criterion specifically asks if the proposed zone change will *presently* serve public health, safety, and welfare. The applicant provided the following response in the submitted burden of proof statement:

Statewide Planning Goals 11 and 12 guide the orderly, economic, and efficient provision of public utilities and services. Responses to these goals are contained in Appendix J: Statewide Planning Goal Analysis. Supplemental information supporting the availability and future efficiency of public facilities and transportation systems are contained in Appendix D. Public Facility Plan and Appendix E. Transportation Studies (TGR – TPR).

Appendix D. Public Facilities Plan shows that the site can be served by a proposed public water line and a proposed public sanitary sewer line. Potable water service will be provided by extending the existing 16” public water main from the south side of Highway OR126 at SE Ochoco Way approximately 1,200 LF easterly to future SE 21st Avenue. From there, the public water main will be extended northerly in SE 21st Avenue approximately 550 LF to the project access road. The CORE3 site will be served by a single potable water service and a single fire service. All on-site domestic and fire water will be private and isolated from the public water main system.

Wastewater (sanitary sewer) service will be provided by connecting to the existing 12” public sanitary sewer main along the south of Highway OR126. The project connection will require crossing OR126 and extending a public sewer main northerly approximately 600 LF in future SE 21st Avenue to the project access road.

The CORE 3 site will be served by a single sanitary service. All on-site sanitary sewer will be private and gravity served where possible. Due to project topography, lower lying areas will be served by a private lift station/force main system.

All stormwater will be contained on-site. Stormwater will be collected and dispersed on-site via swales, underground injection control (UIC) devices such as drywells, or a combination of both methods.

A certified engineer has determined that the 16' water line and the 12" sanitary sewer line would be adequate to serve the project, discussed in Appendix D.2.

Appendix E analyses the zone change from Deschutes County EFU to city PF. The zoning from EFU to PF will have a more significant change than zoning from EFU to UH-10, and therefore encompasses any transportation impacts from rezoning EFU to UH-10.

No issues have been identified in the record regarding service provision to the subject property. The Redmond UGB is currently adjacent to the west side of the subject property. Staff finds the proximity to the Redmond UGB will allow for efficient provision of public services upon annexation. In addition, master planning projects upon annexation will ensure adequate land is provided for public facilities. As noted by the applicant, coordination has begun with public utility providers to ensure necessary public facilities and services can be provided.

Staff reiterates that prior to development of the properties, the applicant would be required to comply with the applicable requirements of the Deschutes County Code or the Redmond Development Code. Development on the site is planned to occur after annexation under the planned Redmond zoning designation. Regardless, through these development review processes, assurance of adequate public services and facilities will be verified. Staff finds this provision is met.

The Hearings Officer finds the above applicant statement and staff findings address the Faherty email comments. The Hearings Officer finds Faherty's concern related to the ongoing viability of wells in the subject property vicinity is a legitimate general concern but the provision of water and wastewater services by the City of Redmond eliminates the risk to wells raised by Faherty. The Hearings Officer finds the Applicant's statement and Staff's findings quoted above are based upon substantial evidence and correct interpretation of the language of the criterion.

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

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

In response to this criterion, the applicant's burden of proof provides the following:

Consistency with the Redmond Comprehensive Plan is demonstrated in section 2.3. Further, Redmond requires a MDP for the proposed rezone and annexation into the city

limits. MDP's must be consistent with Redmond's Great Neighborhood Principles. These principles ensure compatibility with surrounding land uses, urban and rural.

The proposed Zone Change from EFU to UH will not generate additional development or impacts to surrounding properties. The UH Zone will function as a holding zone to preserve the subject property in its current configuration until it is brought into the City of Redmond, and new urban zoning designations are assigned. If any development occurs while the property remains within Deschutes County zoning, all necessary land use permits will need to be obtained and compatibility with surrounding uses will be evaluated.

The Applicant provided specific findings for each relevant Comprehensive Plan goal and policy, which are addressed below. Staff finds the Applicant has demonstrated the impacts on surrounding land use will be consistent with the specific goals and policies contained within the Comprehensive Plan, and asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit.

The Hearings Officer finds the Applicant's Burden of Proof discussion of this criterion and Staff's findings quoted above are based upon substantial evidence and correct interpretation of the language of the criterion. The Hearings Officer finds it is unnecessary to amend or add to Staff's quoted findings.

***D. That there has been a change in circumstances since the property was last zoned, or a mistake was made in the zoning of the property in question.***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

The Applicant proposes to rezone the properties from EFU to UH and re-designate the properties from Agriculture to RUGA. The Applicant provided the following response in the submitted burden of proof statement:

Regional emergency management agencies have been discussing the concept of the CORE3 facility for well over ten years. Organizing efforts culminated in a June 2018 report prepared by the University of Oregon's Partnership for Disaster Resilience that found a strong need for an emergency services center for regional agencies in Central Oregon (See Appendix I.3. Central Plan in October 2020 that assessed current training facilities and programming needs, conducted a financial assessment for the project, developed a list of site layout considerations, and identified the City of Redmond as the optimal location for this facility (See Appendix I.1. Strategic Business Plan).

RCP policy 11-1-7 establishes the need for the CORE3 facility in Redmond. This documented need—paired with the fact that no suitable site could be identified within the existing UGB—has created a change in circumstances that justified the UGB expansion contained in Part 2 of the application package. The UGB expansion, in turn, has created another change of circumstances that warrants the rezoning and annexation of the subject site, consistent with Part 3. MDP. The proposed Deschutes County comprehensive plan and zoning map

amendments from UH-10 to PF are necessary in order to develop the CORE3 facility, a facility spurred through regional planning and codified in the RCP.

It is unclear to staff why the subject property was initially zoned EFU. Staff is unaware of any evidence such as soil classification, availability of irrigation, or historic farming, which explains its current zoning. It does not appear the property has ever been farmed, likely owing to its lack of water and proximity to urban uses. Staff agrees with the applicant’s findings that there have been several particularly relevant changes in circumstances that warrant a zone change. Staff finds the applicant has demonstrated compliance with this criterion, but asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit.

The Hearings Officer finds the Applicant’s Burden of Proof discussion of this criterion and Staff’s findings quoted above are based upon substantial evidence and correct interpretation of the language of the criterion. The Hearings Officer finds it is unnecessary to amend or add to Staff’s quoted findings.

**Title 20, Redmond Urban Reserve Area Ordinance**  
**CHAPTER 20.36. AMENDMENTS**

Section 20.36.010. Authorization to Initiate Amendments.

- A. An amendment to the text of DCC Title 20 or a legislative amendment to a zoning or plan map may be initiated by either the City, the Board, Planning Commission or an Owner.**
- B. Quasi-judicial plan map amendments shall be initiated by an Owner.**
- C. An Owner shall initiate a request for an amendment by filing an application with the Director.**

**FINDING:** The applicant is requesting a quasi-judicial UGB reconfiguration together with a Deschutes County Comprehensive Plan amendment and zone change. The proposal has been initiated by the owner, Deschutes County, by filing concurrent applications with the City of Redmond and Deschutes County.

Section 20.36.020. Zone-Comprehensive Plan Amendments.

***The Hearings Body shall hold a public hearing on a quasi-judicial zone change or Comprehensive Plan amendment in accordance with the provisions of the Joint Management Agreement.***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

The applicant submitted a copy of the Joint Management Agreement between the City of Redmond and Deschutes County (DC Document No. 2007-110). The initial public hearings will be held before a County Hearings Officer and the Redmond Urban Area Planning Commission (RUAPC) for their respective applications. The RUAPC held a public hearing on April 24, 2024 that

was continued to May 1, 2024 where they recommended approval of the application to the Redmond City Council. The Redmond City Council held a public hearing on July 23, 2024 and approved the application package before the City. The Deschutes County Board of Commissioners is the final local review body for the applications before the County. Staff finds this is consistent with all provisions of the Joint Management Agreement.

The Hearings Officer finds the Staff's findings quoted above are based upon substantial evidence and correct interpretation of the language of the criterion.

Section 20.36.030. Criteria for Map Amendments.

***For all zoning or Comprehensive Plan map amendments, the applicant shall show the proposed change:***

- A. Conforms with the applicable state statutes;***
- B. Conforms with the applicable state wide planning goals and Oregon Administrative Rules (OAR) whenever they are determined to be applicable;***
- C. Conforms with the City Comprehensive Plan.***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

As detailed throughout this report, staff finds the proposal before the County for the UGB reconfiguration, plan amendment, and zone change conforms to the applicable state statutes, state wide planning goals, and Oregon Administrative Rules. Conformance with the Redmond Comprehensive Plan will be reviewed as part of the city process.

The Hearings Officer finds the Staff's findings quoted above are based upon substantial evidence and correct interpretation of the language of the criterion.

Section 20.36.040. Legislative Amendment Procedure.

***Except as set forth herein, legislative zone, plan or map changes shall be heard pursuant to the procedures set forth in the Joint Management Agreement.***

**FINDING:** The applicant is requesting for a quasi-judicial plan and map amendment. Although this criterion is not applicable, staff anticipates that the application before Deschutes County will be processed in accordance with the procedures of the Joint Management Agreement between the City of Redmond and Deschutes County.

Section 20.36.050. Limitations on Reapplications.

- A. No application of a owner for an amendment to the text of DCC Title 20, to the City Comprehensive Plan map or to the Title 20 zoning map shall be considered by the Hearings Body within a six month period immediately following a previous denial application.***
- B. If, in the opinion of the Hearings Body, however, new evidence or a change of circumstances warrant it, the Hearings Body may permit a new application.***

**FINDING:** The applicant does not expect reapplication will be necessary. In the event, however, that reapplication becomes necessary, the applicant understands that these provisions will apply.

**Deschutes County Comprehensive Plan**

**CHAPTER 1 COMPREHENSIVE PLANNING**

**Section 1.3, Land Use Planning**

***Goal 1. Maintain an open and public land use process in which decisions are based on the objective evaluation of facts.***

***Goal 2. Promote regional cooperation and partnerships on planning issues.***

***Policy 1.3.11 Participate in and, where appropriate, coordinate regional planning efforts.  
a. Provide affected agencies, including irrigation districts, an opportunity to comment and coordinate on land use policies or actions that would impact their jurisdictions.***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments::

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

This proposal has come together through a high level of coordination between COIC, the City of Redmond, Deschutes County, and state and federal agencies. Agencies involved include the Department of Public Safety Standards and Training (DPSST), State Fire Marshal, State Police, and Oregon Emergency Management; Governor Brown’s Regional Solutions; the US Forest Service; local public safety agencies; and others.

All land use entitlements contained in this proposed application package have required inter-governmental coordination – including the City of Redmond and Deschutes County – to provide an appropriate site for development of a needed regional public facility. And, as evidenced in this application narrative, the proposal will be processed with proper public noticing and hearings before the Deschutes County’s Board of County Commissioners. As adopted in DLCD acknowledged documents, the land use processes and review criteria applicable to this application proposal are in conformance with statewide planning Goals 1 and 2.

The subject application is being evaluated based on an objective review of compliance with Statewide Planning Goals, Deschutes County Comprehensive Plan policies, and Oregon Administrative Rules. A public hearing will be held before a Hearings Officer on August 8, 2024, and members of the public can attend and testify at that hearing. Pursuant to DCC 22.28.030, the Board of County Commissioners will take final action on the application after a recommendation from the Hearings Officer. This Comprehensive Plan Amendment and Zone

Change application will be evaluated through an open process that allows for public input and follows Deschutes County's Procedures Ordinance.

The City of Redmond has undertaken parallel planning efforts to amend their Comprehensive Plan, Zoning Map, develop a Concept Plan for the subject property, and annex the subject property and facilitate a master planning process. The RUAPC held a public hearing on April 24, 2024 that was continued to May 1, 2024 where they recommended approval of the application to the Redmond City Council. The Redmond City Council held a public hearing on July 23, 2024 and approved the application package before the City. These City-led efforts allow for greater public involvement in the planning and development of the subject property, even though they are not directed specifically at the subject Comprehensive Plan Amendment and Zone Change application.

Staff finds that within each of the steps described above, there is an open and public process that is based on an objective evaluation of facts. Further, these multi-step planning processes are interrelated and require regional coordination, and staff finds they demonstrate cooperation and partnership between the County, City, and State agencies. This criterion will be met.

The Hearings Officer finds the Staff's findings quoted above are based upon substantial evidence and correct interpretation of the language of the criterion.

**Chapter 2. Resource Management**

**Section 2.2, Agricultural Lands Policies**

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

***Policy 2.2.1 Retain agricultural lands through Exclusive Farm Use zoning***

***Policy 2.2.3 Allow comprehensive plan and zoning map amendments for individual EFU parcels as allowed by State Statute, Oregon Administrative Rules and this Comprehensive Plan.***

***Policy 2.2.4 Develop comprehensive policy criteria and code to provide clarity on when and how EFU parcels can be converted to other designations.***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

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

The subject site is currently zoned EFU and designated as Redmond Urban Reserve Area. The proposal in this narrative (Part 5) is to move from EFU to UH-10, and Ag to RUUGA, concurrent with the proposed UGB expansion contained in Part 2. Statewide Planning Goals 3&4 and their implementing comprehensive plan goals and policies are not applicable to UGB



amendments and concurrent zone changes; however, it is interesting to note that DEQ has also determined that the site is not appropriate for any agricultural use (see Appendix G.5).

The proposed plan and zone map amendments follow requirements of state statutes, OARs, and the DCCP. See section 2.1 for compliance with ORS's. See section 2.2 for compliance with applicable OARs. Reference this section for compliance with other portions of the DCCP.

This plan policy provides direction to Deschutes County to develop new policies to provide clarity when EFU parcels can be converted to other designations. The applicant is pursuing a subsequent application process through the City of Redmond to annex, rezone, and master plan the property for public facility development, pursuant to OAR 660-024-0040.

The Hearings Officer finds the Staff's findings quoted above are based upon substantial evidence and correct interpretation of the language of the criterion.

***Policy 2.2.5 Uses allowed in Exclusive Farm Use zones shall comply with State Statute and Oregon Administrative Rule.***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

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

The proposal will rezone the subject site from EFU to UH-10. No development or uses are proposed prior to this rezoning. No development or uses are proposed while zoned UH-10. A sequential zone change application (contained in Part 4) will rezone the property from UH-10 to PF, consistent with the MDP. At that point, the property will have urban zoning and will be able to develop urban uses and at urban intensities. Therefore, ORSs and OARs guiding uses on EFU lands do not apply to this development proposal.

Staff finds this policy is not applicable to the application at hand. The applicant is pursuing a subsequent application process through the City of Redmond to annex, rezone, and master plan the property for public facility development, pursuant to OAR 660-024-0040.

The Hearings Officer finds the Staff's findings quoted above are based upon substantial evidence and correct interpretation of the language of the criterion.

***Policy 2.2.13 Identify and retain accurately designated agricultural lands***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

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

Although the subject site is currently zoned EFU and designated Ag in the comprehensive plan, it is designated with the Redmond URA combining zone and therefore first priority for

inclusion into the Redmond UGB when a UGB expansion is necessary to accommodate an identified land need.

To designate Redmond URAs, the city conducted an extensive analysis that required identifying UGB expansion alternatives considering agricultural land capabilities, among other factors. The subject site has been designated Redmond URA through these state-approved and acknowledged analyses.

This application package proposes a UGB expansion. A site selection analysis (Appendix F) contains evidence to support this expansion onto the subject site. Through this analysis and findings contained in application narrative Part 2, the subject site will be redesignated RUUGA and rezoned UH-10. Redesignation and rezoning allow the site to be annexed and developed.

The findings related to (1) designating the land as Redmond Urban Growth Area and then to (2) UGB inclusion and rezoning provide evidence to show that the subject site is best suited for future urban development and not retained as designated agricultural land.

Staff is unaware of any evidence such as soil classification, availability of irrigation, or historic farming, which explains the current zoning of the subject property. It does not appear the property has ever been farmed, likely owing to its lack of water and proximity to urban uses. Staff finds the applicant has demonstrated compliance with this policy, but asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit.

The Hearings Officer finds the Applicant’s Burden of Proof discussion of this criterion and Staff’s findings quoted above are based upon substantial evidence and correct interpretation of the language of the criterion. The Hearings Officer finds it is unnecessary to amend or add to Staff’s quoted findings.

**Section 2.5, Water Resources Policies**

***Goal 6. Coordinate land use and water policies.***

***Policy 2.5.24 Ensure water impacts are reviewed and, if necessary, addressed for significant land uses or developments.***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

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

The proposed zone change and annexation will not change any applicable Goal 6 policies or measures that relate to water resource quality. Actual development of the CORE3 facility will require subsequent development reviews and compliance with Redmond land use and water policies. Development will require coordination with and approvals from Redmond

public works, and state and federal entities. If any water impacts are identified, these will be addressed during the development application process.

Staff agrees that any potential negative water impacts of future development will be identified and mitigated during the development review process for the site. Staff adds that one component of the site selection process for the CORE3 site included consideration of proximity to water and wastewater infrastructure.

The Hearings Officer finds the Staff's findings and Applicant's quoted statement above are based upon substantial evidence and correct interpretation of the language of the criterion.

**Section 2.8 Energy Policies**

**FINDING:** The Applicant provides responses pertaining to these three goals in their response to Statewide Planning Goal 13, Energy Conservation, below.

**Section 2.9 Environmental Quality**

***Goal 1. Maintain and improve the quality of the air, water and land.***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

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

There are some proposed elements and activities that may impact air quality if not for mitigation. As described in section 2.2.4 in response to Statewide Planning Goal 6, the siting, design, and operation programming of these elements were targeted to reduce any potential air impacts and to mitigated impacts unable to be addressed through the design process.

Further, developing the CORE3 facility will require additional reviews and approvals from federal, state, and local offices regulating air, water, and land quality. Development will require any impacts to be identified and mitigated.

The proposed zoning designation, UH-10, is intended to serve as a holding zone while the property remains undeveloped. The County will not be the review agency for development on this property. The applicant provides responses pertaining to these two goals in their response to Statewide Planning Goal 6, Air, Water, and Land Resources Quality, below.

The Hearings Officer finds the Staff's findings quoted above are based upon substantial evidence and correct interpretation of the language of the criterion.

***Goal 2. Promote sustainable building practices that minimize the impacts on the natural environment.***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

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

A master development plan is included in this application package (Part 3) that requires the CORE3 facility to meet applicable City of Redmond Great Neighborhood Principles. Among those principles are "green design." As a resiliency facility for emergency services, the buildings for the CORE3 campus will be held to a high standard of efficiency and performance to ensure the optimal use of resources and support emergency operations. Occupied buildings will be designed to meet the State's goals with LEED Silver equivalency, and SEED (20% above current energy code).

The applications under County review do not include development of the site. The proposed zoning designation, UA, is intended to serve as a holding zone while the property remains undeveloped. The Applicant is not required to provide detailed information on future building practices and building materials as part of this application. Future site development will be reviewed by the City of Redmond. Therefore, staff finds this goal is not applicable.

The Hearings Officer finds the Staff's findings quoted above are based upon substantial evidence and correct interpretation of the language of the criterion.

**Section 2.10 Surface Mining**

**Goal 1** *Protect and utilize mineral and aggregate resources while minimizing adverse impacts of extraction, processing and transporting the resource.*

**Policy 2.10.1** *Goal 5 mining inventories, ESEEs and programs are retained and not repealed.*

**Policy 2.10.3** *Balance protection of mineral and aggregate resources with conflicting resources and uses*

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

The Applicant provided the following response in the submitted burden of proof statement:

Negus Landfill is located north of the proposed subject site (see Figure 2 following this response). The 300-acre subject site will not contain the inventoried natural resource (Deschutes County Surface Mining Mineral and Aggregate Inventory #482). The proposed area of the dual map amendments (the subject site) does not contain any county Statewide Planning Goal 5 resources or any potential City of Redmond Statewide Planning Goal 5 resources.

Staff agrees with the applicant's response and notes that no land currently zoned or designated Surface Mine is proposed to be changed as part of this application request. Further, the Goal 5 resource is protected by the SMIA Zone which extends beyond the SM zoned site. However, this application does not remove the SMIA Zone or any existing Goal 5 protections that may apply to surrounding land.

Based on the information, staff finds the proposed amendment is consistent with this policy and will not interfere with the neighboring Goal 5 resource.

The Hearings Officer finds the Staff's findings quoted above are based upon substantial evidence and correct interpretation of the language of the criterion.

### CHAPTER 3 RURAL GROWTH MANAGEMENT

#### Section 3.3 Rural Housing

##### **Goals and Policies**

##### **Goal 1 *Maintain the rural character and safety of housing in unincorporated Deschutes County.***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

The proposed UGB amendment results in approximately 228 acres that will be added to the Redmond UGB. Staff finds the proposed amendment will not adversely impact the rural character and safety of housing in the unincorporated Deschutes County, as the property is not planned to be used for housing. Therefore, the proposal complies with the rural housing Goal 1.

The Hearings Officer finds the Staff's comments quoted above are based upon substantial evidence and correct interpretation of the language of the goal.

##### **Goal 2 *Support agencies and non-profits that provide affordable housing.***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

The policies identified under Goal 2 are not applicable to this application.

The Hearings Officer finds the Staff's comments quoted above are based upon substantial evidence and correct interpretation of the language of the goal.

#### Section 3.4 Rural Economy

##### **Goal 1 *Maintain a stable and sustainable rural economy, compatible with rural lifestyles and a healthy environment.***

##### ***Policy 3.4.4 Support regional educational facilities and workforce training programs.***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

The Applicant provided the following response in the submitted burden of proof statement:

As discussed in the Introduction to Land Use Applications, Redmond and the region currently lack both a centralized public safety training facility and a coordination center for emergency response operations. The CORE3 facility will provide support to rural emergency services, thereby stabilizing current and futural rural economies. The proposed map amendments will allow the development of the CORE3 facility inside the Redmond City Limits. Locating this facility inside an existing urban area will help maintain the rural economy while being compatible with the County's rural lifestyle and supporting a healthy environment. The classrooms and practical learning spaces of the proposed CORE3 facility will serve regional rural economic needs while concentrating development within urban areas.

Staff agrees with the applicant's response. Further, the development review process required by the City of Redmond will ensure the mitigation of any impacts to the rural economic uses that could occur on neighboring properties, including an appropriate urban-rural interface, building height restrictions, screening, landscaping, and open space requirements.

The Hearings Officer finds the Staff's findings quoted above are based upon substantial evidence and correct interpretation of the language of the goal/section.

Section 3.5 Natural Hazards

***Goal 1 Protect people, property, infrastructure, the economy and the environment from natural hazards.***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

The Applicant provided the following response in the submitted burden of proof statement:

The CORE3 facility is a centralized public safety training facility and coordination center for emergency response operations. The CORE3 facility will act as the State Resiliency Center during a Cascadia subduction event. The proposed map amendments will allow for siting the CORE3 facility in Redmond. This is consistent with – and directly implements – Statewide Planning Goal 7 requirements and this DCCP policy because the CORE3 facility will provide local, regional, and state emergency response capacity to respond to natural disasters and hazards.

Potential natural hazards on the subject property include wildfire and winter storm risks, as is typical throughout Central Oregon. There are no mapped flood or volcano hazards. However, staff finds the goals and policies of this section are not directly relevant to this proposal. Nonetheless, as the applicant states, the CORE3 facility will act as the State Resiliency Center during a Cascadia subduction event and provide critical emergency services on a local, regional, and statewide scale.

The Hearings Officer finds the Staff's findings/comments quoted above are based upon substantial evidence and correct interpretation of the language of the goal/section/policy.

**Policy 3.5.3 Coordinate with emergency service providers when new development is proposed.**

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

The Applicant provided the following response in the submitted burden of proof statement:

Input on the proposal has been received by emergency service providers. Coordination has occurred during the conceptual stages and the creation of the MDP contained in Part 3 of the application package. Further communication will continue with providers as future development applications are necessary to permit the CORE3 facility on the subject site.

Staff notes that the County review of the plan amendment and zone change does not include site development. However, as stated by the applicant, the development of the CORE3 facility has been a multi-year and multi-agency coordination effort. Furthermore, local emergency service providers were provided notice of the application. Staff finds this policy is met.

The Hearings Officer finds the Staff's findings/comments quoted above are based upon substantial evidence and correct interpretation of the language of this goal/section/policy.

**Policy 3.5.6 Critical facilities (schools, churches, hospitals and other facilities as defined by the Federal Emergency Management Agency) should be located outside high risk natural hazard areas, where possible.**

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

The Applicant provided the following response in the submitted burden of proof statement:

The CORE3 facility will be a regional coordination and state resiliency center during the event of major natural disasters. As such, the CORE3 facility should be located outside of any high risk natural hazard areas.

The subject site is outside of any flood areas, and it does not contain any steep slopes nor wetlands. The subject site is shown within the Deschutes County Wildfire Zone2. This zone requires the use of specialty building codes, per DCC 15.04.085 and DCC 15.04.010(A).

Actual development of the CORE3 facility will occur within the City of Redmond's jurisdiction and will require subsequent land use reviews and compliance with Statewide Goal 7, including wildfire mitigation measures, where applicable.

Staff notes that the County review of the plan amendment and zone change does not include site development. There are no mapped flood or volcano hazards. Additional hazards include wildfire and winter storm risks, which are identified in the County's Comprehensive Plan. Staff finds that the goals and policies of this section not applicable or relevant to this proposal.

The Hearings Officer finds the Staff's findings/comments quoted above are based upon substantial evidence and correct interpretation of the language of this goal/section/policy.

Section 3.6 Public Facilities and Services Policies

**Goal 1 Support the orderly, efficient and cost-effective siting of rural public facilities and services.**

**Policy 3.6.9 New development shall address impacts on existing facilities and plans through the land use entitlement process.**

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

The policies identified under Goal 1 are not applicable to this application. Nonetheless, the Applicant provided the following response in the submitted burden of proof statement:

Statewide Planning Goals 11 and 12 guide the orderly, economic, and efficient provision of public utilities and services. Responses to these goals are contained in Appendix J: Statewide Planning Goal Analysis. Supplemental information supporting the availability and future efficiency of public facilities and transportation systems are contained in Appendix D. Public Facility Plan and Appendix E. Transportation Studies (TGR – TPR).

Staff acknowledges that the intention of the subject applications is to support orderly, efficient and cost-effective siting of urban public facilities and services. However, development of the actual CORE3 facility will occur under the authority of the City of Redmond.

The Hearings Officer finds the Staff's findings/comments quoted above are based upon substantial evidence and correct interpretation of the language of the goal/section/policy.

**Policy 3.6.7 Before disposing of County-owned property review whether the land is appropriate for needed public projects such as schools, health clinics, fire stations or senior centers.**

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

The Applicant provided the following response in the submitted burden of proof statement:

The subject site is currently owned by Deschutes County. The proposed map amendments are necessary to permit the CORE3 facility, a needed regional public facility project. Although the county will not own the CORE3 facility, the facility will fulfill a demonstrated local and regional public facility land need.

Staff agrees with the applicant's response.

The Hearings Officer finds the Staff's findings/comments quoted above are based upon substantial evidence and correct interpretation of the language of the criterion.



Section 3.7 Transportation

**Goal 1 Achieve an efficient, safe, convenient and economically viable transportation and communication system. This system includes roads, rail lines, public transit, air, pipeline, pedestrian and bicycle facilities. The Deschutes County transportation system shall be designed to serve the existing and projected needs of the unincorporated communities and rural areas within the County. The system shall provide connections between different modes of transportation to reduce reliance on any one mode.**

...

**Goal 3 The transportation plan and facilities of Deschutes County shall be coordinated with the plans and facilities of incorporated cities within Deschutes County, adjacent counties and the State of Oregon.**

**FINDING:** The Applicant provided the following response in the submitted burden of proof statement:

The subject site abuts E. HWY 126. Development of the site requires coordination with ODOT, City, and County officials (see Appendix E. Transportation Studies (TGR – TPR)). COIC is coordinating the proposed UGB expansion, map amendments, and Master Plan with the City of Redmond, Deschutes County, and ODOT. The CORE3 facility is a unique public training facility that requires restricted public access. Because of this, no through transportation connections are planned through the site. However, internal transportation design will not prevent city or county transportation connections that would negatively impact the efficiency of existing or future transportation networks. Further findings detailing compliance with Statewide Planning Goal 12 are found in Appendix J: Statewide Planning Goal Analysis.

Staff notes that the Transportation planning program has been summarized and incorporated into the Deschutes County Transportation System Plan ("TSP"), which was adopted by Ordinance 2012-005 and is contained with Appendix C of the County Comprehensive Plan. The applicable goals and policies of the TSP are addressed below under Appendix C.

The Hearings Officer finds the Staff's findings/comments quoted above are based upon substantial evidence and correct interpretation of the language of this goal/section/policy.

**Policy 3.1 Deschutes County shall notify ODOT concerning:**

- a. All land use proposals or actions that would create access onto a state highway or add >100 ADT to any County road intersection with a state highway;**
- b. Any proposed land use or development within 500 feet of a state highway or public use airport within the County; and**
- c. Require ODOT road approach permits.**

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

The Applicant provided the following response in the submitted burden of proof statement:

The subject site is adjacent to E. HWY 126. Appendix E. Transportation Studies (TGR – TPR) will be reviewed by ODOT, as required by the RDC.

The development of the subject site will ultimately be reviewed by the City of Redmond. However, Staff notes the Oregon Department of Transportation was provided notice of the County application. Therefore, this policy is met.

The Hearings Officer finds the Staff's findings/comments quoted above are based upon substantial evidence and correct interpretation of the language of the goal/section/policy.

**CHAPTER 4 URBAN GROWTH MANAGEMENT**

Section 4.2 Urbanization Policies

**Goal 1 *Coordinate with cities, special districts and stakeholders to support urban growth boundaries and urban reserve areas that provide an orderly and efficient transition between urban and rural lands.***

**Policy 4.2.1 *Participate in the processes initiated by cities in Deschutes County to create and/or amend their urban growth boundaries.***

**Policy 4.2.2 *Promote and coordinate the use of urban reserve areas.***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

The Applicant provided the following response in the submitted burden of proof statement:

Part 2. UGB Amendment in this application package contains findings to support UGB expansion onto the subject site. The subject site is currently in the Redmond URA, but the series of applications within this larger proposal incorporate the subject site into the RUUGA and then into the City of Redmond.

This application process has involved coordination with both the City of Redmond and Deschutes County, and the application will need to be heard by both city and county hearings bodies. The proposed UGB expansion onto the subject site is an orderly, economic, and efficient transition between urban and rural lands, as demonstrated in Appendix D. Public Facility Plan and Appendix E. Transportation Studies (TGR – TPR).

Staff concurs with the Applicant's analysis and finds they have demonstrated coordination between Deschutes County, the City of Redmond, and special districts. The CORE3 facility is the result of a regional effort led by the Central Oregon Intergovernmental Council (COIC) who facilitates regional coordination amongst local, state, and federal agencies.

While the future development of the CORE3 project site will be reviewed by the City of Redmond, staff finds the coordination during that process is relevant in addressing this criterion.

The Hearings Officer finds the Staff's findings/comments quoted above are based upon substantial evidence and correct interpretation of the language of the goal/section/policy.

***Goal 2. Coordinate with cities, special districts and stakeholders on urban growth area zoning for lands inside urban growth boundaries but outside city boundaries.***

***Goal 3. Coordinate with cities, special districts and stakeholders on policies and zoning for lands outside urban growth boundaries but inside urban reserve areas.***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

The proposed zoning designation, UH-10, will serve as a holding zone while the subject property is inside the Redmond UGB but outside city boundaries, until annexation. The above goals will not be applicable to the subject property if the application is approved. The proposal seeks to bring the subject property into the Redmond UGB as well as annex the property into the City of Redmond. Goals 2 and 3 are not applicable to properties within city boundaries.

The Hearings Officer finds the Staff's findings/comments quoted above are based upon substantial evidence and correct interpretation of the language of the goal/section/policy.

**OREGON ADMINISTRATIVE RULES CHAPTER 660  
LAND CONSERVATION AND DEVELOPMENT DEPARTMENT**

**OAR 660-024, Division 24, Urban Growth Boundaries**

Section 660.024.0020. Adoption or Amendment of a UGB.

***(1) All statewide goals and related administrative rules are applicable when establishing or amending a UGB, except as follows:***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

All statewide goals and related administrative rules are applicable with the proposed UGB amendment, except as noted below. Based on the findings below, no exception is provided to this requirement.

The Hearings Officer finds the Staff's findings quoted above are based upon substantial evidence and correct interpretation of the language of the goal/section/policy. The Hearings Officer adopts the above-quoted Staff findings.

- a) The exceptions process in Goal 2 and OAR chapter 660, division 4, is not applicable unless a local government chooses to take an exception to a particular goal requirement, for example, as provided in OAR 660-004-0010(1);***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

These provisions are not applicable to this application since this proposal is not seeking a goal exception.

The Hearings Officer finds the Staff's findings quoted above and correctly interpret the language of the goal/section/policy.

***b) Goals 3 and 4 are not applicable.***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

Goals 3 and 4 are not applicable.

The Hearings Officer finds the Staff's findings quoted above and correctly interpret the language of the goal/section/policy.

***(c) Goal 5 and related rules under OAR chapter 660, division 23, apply only in areas added to the UGB, except as required under OAR 660-023-0070 and 660-023-0250;***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

Goal 5 resources are listed in the acknowledged Comprehensive Plan. There is an identified Goal 5 resource on the subject property but the portion of the property subject to the amendment does not include the inventoried Goal 5 resource.

The Hearings Officer finds the Staff's findings quoted above are based upon substantial evidence and correct interpretation of the language of the goal/section/policy.

***(d) The transportation planning rule requirements under OAR 660-012-0060 need not be applied to a UGB amendment if the land added to the UGB is zoned as urbanizable land, either by retaining the zoning that was assigned prior to inclusion in the boundary or by assigning interim zoning that does not allow development that would generate more vehicle trips than development allowed by the zoning assigned prior to inclusion in the boundary;***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

The applicant has applied for a concurrent review with the City of Redmond. Pending the outcome of this UGB amendment application, the applicant plans to rezone the property to Public Facilities (PF) within the City of Redmond Zoning Code. Therefore, these requirements do not apply.

However, staff asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit.

However, if the Transportation Planning Rule applies, the applicant has provided the following response:

As documented in Appendix E. Transportation Studies (TGR – TPR), rezoning the subject site from EFU to UH-10 to allow the development of the CORE3 facility will not adversely impact the existing transportation system.

Transportation Planning Rule Conclusions: The “reasonable worst-case scenario” for the *full* build out of the MDP (all Phases) is estimated to be 600 daily trips and 65 weekday peak-hour trips. As described, Phase 1 will produce only 150 daily trips and 16 peak-hour trips. This trip generation is not significant, per Policy 1F.5 of the Oregon Highway Plan (OHP). The OHP reads “Any proposed amendment that does not increase the average daily trips by more than 400 is not considered significant”. Therefore, Phase 1 of the MDP will not produce a significant impact on the transportation system.

However, the full buildout of the CORE3 facility could constitute a significant effect. When future phases of the MDP are proposed, additional analyses per the TPR and RDC may be required. At this stage, only Phase 1 impact evaluation and mitigation measures in the form of a trip-cap are proposed.

Staff notes that the UH10 interim zone is a holding zone prior to the planned annexation of the subject property. Uses allowed in the UH10 Zone are of a similar nature to that of the EFU Zone.

However, Staff asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit.

The Hearings Officer finds the Applicant’s Burden of Proof discussion of this criterion and Staff’s findings quoted above are based upon substantial evidence and correct interpretation of the language of the goal/section/policy. The Hearings Officer finds it is unnecessary to amend or add to Staff’s quoted findings.

- (e) Goal 15 is not applicable to land added to the UGB unless the land is within the Willamette River Greenway Boundary;***
- (f) Goals 16 to 18 are not applicable to land added to the UGB unless the land is within a coastal shorelands boundary;***
- (g) Goal 19 is not applicable to a UGB amendment.***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

The above three provisions are not applicable to the proposal. The subject property is not within the Willamette River Greenway Boundary or within a coastal shorelands boundary, and the proposal is a UGB amendment.

The Hearings Officer finds the Staff's findings quoted above are based upon substantial evidence and correct interpretation of the language of the goal/section/policy. The Hearings Officer adopts the above-quoted Staff findings.

**(2) The UGB and amendments to the UGB must be shown on the city and county plan and zone maps at a scale sufficient to determine which particular lots or parcels are included in the UGB. Where a UGB does not follow lot or parcel lines, the map must provide sufficient information to determine the precise UGB location.**

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

The proposed UGB and amendments to the UGB are shown on the city and county plan and zone maps at a scale sufficient to determine the precise UGB location. The location does not presently align with lot or parcel lines, in this case, and so the inclusion area will be defined with a metes and bounds legal description, until such time as it aligns with lot or parcel lines.

The Hearings Officer finds the Staff's findings quoted above are based upon substantial evidence and correct interpretation of the language of the goal/section/policy.

Section 660-024-0040, Land Need

**(1) The UGB must be based on the appropriate 20-year population forecast for the urban area as determined under Rules in OAR 660, div 32, and must provide for needed housing, employment and other urban uses such as public facilities, streets and roads, schools, parks and open space over the 20-year planning period consistent with the land need requirements of Goal 14 and this rule. The 20-year need determinations are estimates which, although based on the best available information and methodologies, should not be held to an unreasonably high level of precision. Local governments in Crook, Deschutes or Jefferson Counties may determine the need for Regional Large-Lot Industrial Land by following the provisions of OAR 660-024-0045 for areas subject to that rule.**

**(3) A local government may review and amend the UGB in consideration of one category of land need (for example, housing need) without a simultaneous review and amendment in consideration of other categories of land need (for example, employment need).**

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

The Applicant provided the following response in the submitted burden of proof statement:

And OAR 660-024-0040(3) allows cities to review and amend their UGB based on only one category of land, like public facilities.

To satisfy this demonstrated land need, lands inside the existing Redmond UGB and lands adjacent to the Redmond UGB were evaluated. The following sections show the process of evaluation, following the UGB Rule and ORSs.

Staff concurs and finds that the provisions of OAR 660-024-0065, as noted below, were followed to determine this land need.

The Hearings Officer finds the Staff's findings quoted above are based upon substantial evidence and correct interpretation of the language of the goal/section/policy.

Section OAR 660-024-0050 Land Inventory and Response to Deficiency

***Land Inventory and Response to Deficiency***

***(1) When evaluating or amending a UGB, a local government must inventory land inside the UGB to determine whether there is adequate development capacity to accommodate 20- year needs determined in OAR 660-024-0040. [...]***

**FINDING:** Staff findings for this section (including footnote 4) are set forth below:

The Applicant provided the following response in the submitted burden of proof statement:

Cities must first look at lands within their UGBs to satisfy an identified need before considering a UGB expansion. Winterbrook evaluated lands inside the current UGB based on the land's ability to meet defined site characteristics in RCP policy 11-1-7. No sites within the UGB will meet CORE3 facility site requirements (OAR 660-024-0050[1]). Therefore, the CORE3 facility cannot be reasonably accommodated within the current UGB, and the City of Redmond must amend its UGB (OAR 660-024-0050[4]).

Sites inside the UGB were first identified based on their total vacant acreage. In the case of tax lots that fell partially within and partially outside of the UGB, only the portions of tax lots that fell inside the UGB were considered. Contiguous tax lots under the same ownership were considered a single site.

Winterbrook identified five sites over 300 acres, shown in Figure 3. Winterbrook used a combination of aerial imagery, assessor data, and information from the 2019 Redmond Economic Opportunities Analysis to confirm vacancy or current use of the sites. Four sites within the UGB have established land uses and are not available for development of the CORE3 facility:

- 1) Juniper Golf Course (Tax lot 151332-00-01000)
- 2) Deschutes County Fair & Expo Center (Tax lot 151328-00-00100)

- 3) Redmond Municipal Airport (Tax lots 151322-00-00100, 151300-00-01500, and other contiguous parcels under City of Redmond ownership)<sup>4</sup>
- 4) Two tax lots under Central Oregon Irrigation District ownership (Tax lots 151315-00-00101 and 151315-00-00102) Because these four sites are either developed or committed – and therefore not vacant and available for the CORE3 facility site – they were removed from consideration.

**Applicant's Figure 3 300-Acre Sites within UGB (Appendix F)**



After removing these four sites from consideration, one site remains. This site is shown on Figures 3 and 4 as “Large Lot Industrial” – its designation in RCP. Although

<sup>4</sup> While the airport does hold buildings of similar use to the CORE3 facility (the Redmond Air Center, for instance, is a training and resources hub for wildland firefighting owned by the U.S. Forest Service), the airport already has its own Master Plan, and not enough vacant or uncommitted land remains on the site to support the 300 acres required for CORE3.



this vacant site is large enough to accommodate the CORE3 facility, the site does not meet the locational requirements identified in RCP policy 11-1-7. The Large Lot Industrial site is farther than one-quarter miles away from the Redmond Municipal Airport. Further, this site is a planned part of the Central Oregon Large Lot Industrial Land program (OAR 660-024-0045) and is unable to be developed for the CORE3 facility per RDC 8.0186 and OAR 660-024-0045(9) and (10). Therefore, this site is removed from consideration, and there are no remaining sites within the UGB that meet CORE3 facility siting requirements.

**Applicant's Figure 4 300-Acre Sites within UGB (Appendix F)**



Figure 4 Proximal Evaluation of Large Lot Industrial Site

With no vacant and suitable land within the existing UGB to satisfy demonstrated public facility land needs, the City of Redmond must amend their UGB to accommodate the land need, per OAR 660-024-0050(4):

***(4) If the inventory demonstrates that the development capacity of land inside the UGB is inadequate to accommodate the estimated 20-year needs determined under OAR 660-024- 0040, the local government must amend the plan to satisfy the need deficiency, either by increasing the development capacity of land already inside the city or by expanding the UGB, or both, and in accordance with ORS 197.296 where applicable. Prior to expanding the UGB, a local government must demonstrate that the estimated needs cannot reasonably be accommodated on land already inside the UGB. If the local government determines there is a need to expand the UGB, changes to the UGB must be determined by evaluating alternative boundary***

**locations consistent with Goal 14 and applicable rules at OAR 660-024-0060 or 660-024-0065 and 660-024-0067.**

Based on the applicant’s response to the site selection process with regards to the UGB, staff finds these provisions are met.

The Hearings Officer finds the Staff’s findings quoted above are based upon substantial evidence and correct interpretation of the language of the goal/section/policy.

Section OAR 660-024-0065 Establishment of Study Area to Evaluate Land for Inclusion in the UGB

**(1) When considering a UGB amendment to accommodate a need deficit identified in OAR 660-024-0050(4), a city outside of Metro must determine which land to add to the UGB by evaluating alternative locations within a “study area” established pursuant to this rule. To establish the study area, the city must first identify a “preliminary study area” which shall not include land within a different UGB or the corporate limits of a city within a different UGB. The preliminary study area shall include:**

**(a) All lands in the city’s acknowledged urban reserve, if any;**

**(b) All lands that are within the following distance from the acknowledged UGB:**

**(A) For cities with a UGB population less than 10,000: one-half mile;**

**(B) For cities with a UGB population equal to or greater than 10,000: one mile;**

**(c) All exception areas contiguous to an exception area that includes land within the distance specified in subsection (b) and that are within the following distance from the acknowledged UGB:**

**(A) For cities with a UGB population less than 10,000: one mile;**

**(B) For cities with a UGB population equal to or greater than 10,000: one and one-half miles;**

**FINDING:** Staff, in the Staff Report (including footnotes 5 & 6), provided the following findings/comments:

The Applicant provided the following response in the submitted burden of proof statement:

As previously explained, OAR 660-024-0065 guides the establishment of a preliminary study area and the refinement of that study area based on the narrow evaluation of the study area, per OAR 660-024-0065(3) and ORS 197A.320(6). The preliminary study area shall include:

The initial preliminary study area includes:

- 1) Redmond’s four URAs;
- 2) All tax lots within one mile of the existing Redmond UGB; and
- 3) All exception areas<sup>5</sup> within one and one-half mile from the existing Redmond UGB.

<sup>5</sup> For this analysis, lands with the following zoning designations were used to determine status as exception area: Rural Residential, Rural Industrial, Multiple Use Agricultural, Surface Mining and Open Space.

Cities can exclude certain lands from the preliminary study area, per OAR 660-024-0065[4]<sup>6</sup>. Generally, the exclusions include lands that are impracticable to serve with public facilities, lands with significant natural hazards, lands with natural resources or other protections, or land that is owned by the federal government and managed for rural purposes. Lands owned and managed by the Federal Bureau of Land Management (BLM) were therefore removed from consideration in the preliminary study area.

After exclusions per OAR 660-024-0065[4], figure 5 shows the preliminary study area. The total acreage of this preliminary study area is over 9,700 acres—over 30 times the amount of land needed to accommodate the 300-acre CORE3 facility. This complies with OAR 660-024-0065[5].

The Hearings Officer finds the Staff's findings quoted above are based upon substantial evidence and correct interpretation of the language of the goal/section/policy.

***(5) After excluding land from the preliminary study area under section (4), the city must adjust the area, if necessary, so that it includes an amount of land that is at least twice the amount of land needed for the deficiency determined under OAR 660-024-0050(4) or, if applicable, twice the particular land need described in section (3). Such adjustment shall be made by expanding the distance specified under the applicable section (1) or (2) and applying section (4) to the expanded area.***

**FINDING:** Staff findings and comments, including photographs/figures, for this section are set forth below:

---

<sup>6</sup> 4) The city may exclude land from the preliminary study area if it determines that: (a) Based on the standards in section (7) of this rule, it is impracticable to provide necessary public facilities or services to the land; (b) The land is subject to significant development hazards, due to a risk of: (A) Landslides: The land consists of a landslide deposit or scarp flank that is described and mapped on the Statewide Landslide Information Database for Oregon (SLIDO) Release 3.2 Geodatabase published by the Oregon Department of Geology and Mineral Industries (DOGAMI) December 2014, provided that the deposit or scarp flank in the data source is mapped at a scale of 1:40,000 or finer. If the owner of a lot or parcel provides the city with a site-specific analysis by a certified engineering geologist demonstrating that development of the property would not be subject to significant landslide risk, the city may not exclude the lot or parcel under this paragraph; (B) Flooding, including inundation during storm surges: the land is within the Special Flood Hazard Area (SFHA) identified on the applicable Flood Insurance Rate Map (FIRM); (C) Tsunamis: the land is within a tsunami inundation zone established pursuant to ORS 455.446; (c) The land consists of a significant scenic, natural, cultural or recreational resource described in this subsection: (A) Land that is designated in an acknowledged comprehensive plan prior to initiation of the UGB amendment, or that is mapped on a published state or federal inventory at a scale sufficient to determine its location for purposes of this rule, as: (i) Critical or essential habitat for a species listed by a state or federal agency as threatened or endangered; (ii) Core habitat for Greater Sage Grouse; or (iii) Big game migration corridors or winter range, except where located on lands designated as urban reserves or exception areas; (B) Federal Wild and Scenic Rivers and State Scenic Waterways, including Related Adjacent Lands described by ORS 390.805, as mapped by the applicable state or federal agency responsible for the scenic program; (C) Designated Natural Areas on the Oregon State Register of Natural Heritage Resources; (D) Wellhead protection areas described under OAR 660-023-0140 and delineated on a local comprehensive plan; (E) Aquatic areas subject to Statewide Planning Goal 16 that are in a Natural or Conservation management unit designated in an acknowledged comprehensive plan; (F) Lands subject to acknowledged comprehensive plan or land use regulations that implement Statewide Planning Goal 17, Coastal Shoreland, Use Requirement 1; (G) Lands subject to acknowledged comprehensive plan or land use regulations that implement Statewide Planning Goal 18, Implementation Requirement 2; (d) The land is owned by the federal government and managed primarily for rural uses.

**Applicant's Figure 5 Preliminary Study Area (Appendix F)**

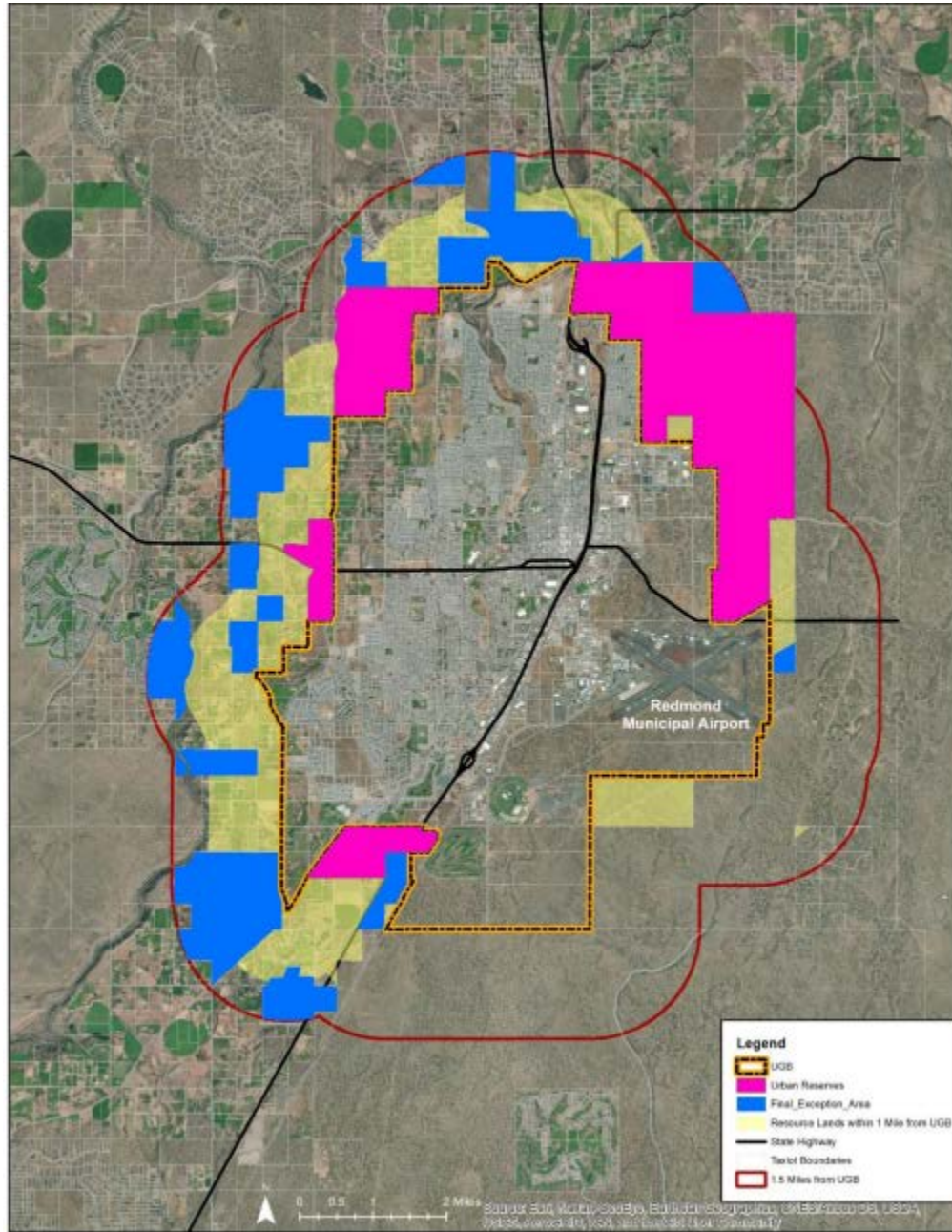


Figure 5 Preliminary Study Area

As with the UGB lands evaluation, lands within this preliminary study area were evaluated based on their ability to satisfy the CORE3 facility's site and locational needs.

- 1) At least 300 contiguous acres of vacant land;
- 2) Within one-quarter mile of the Redmond Municipal Airport; and
- 3) Within one-quarter mile of a state highway.

Winterbrook identified four vacant sites in the preliminary study area over 300 acres. These sites are shown on Figure 6.

**Applicant's Figure 6 Preliminary Study Area (Appendix F)**

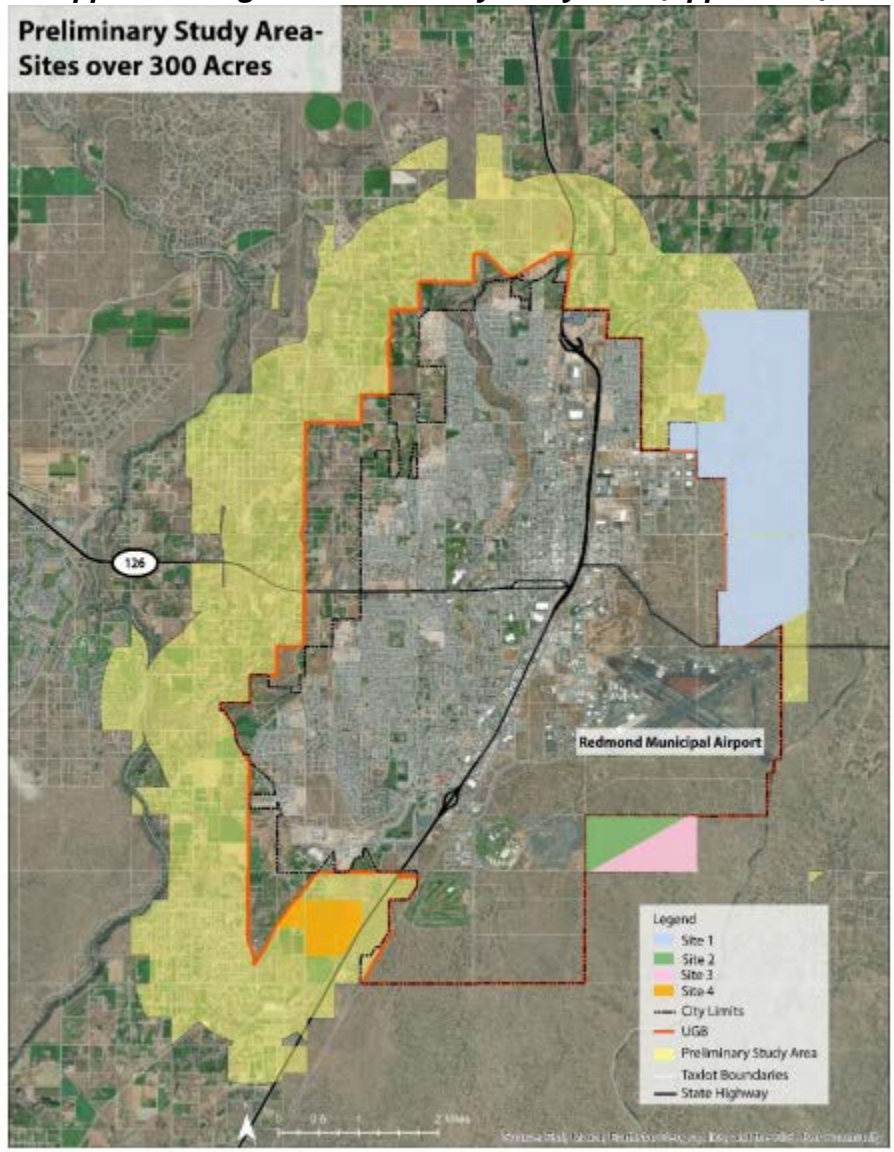


Figure 6 Sites Over 300 Acres in the Preliminary Study Area

Of these four sites, only Site 1 is within both one-quarter miles of the Redmond Municipal Airport and within one-quarter miles of a state highway. Sites 2, 3, and 4 are not within this proximity; they were excluded from the preliminary study area. All four sites are shown in context with one-quarter mile buffers in Figure 7.

**Applicant's Figure 7 Preliminary Study Area (Appendix F)**

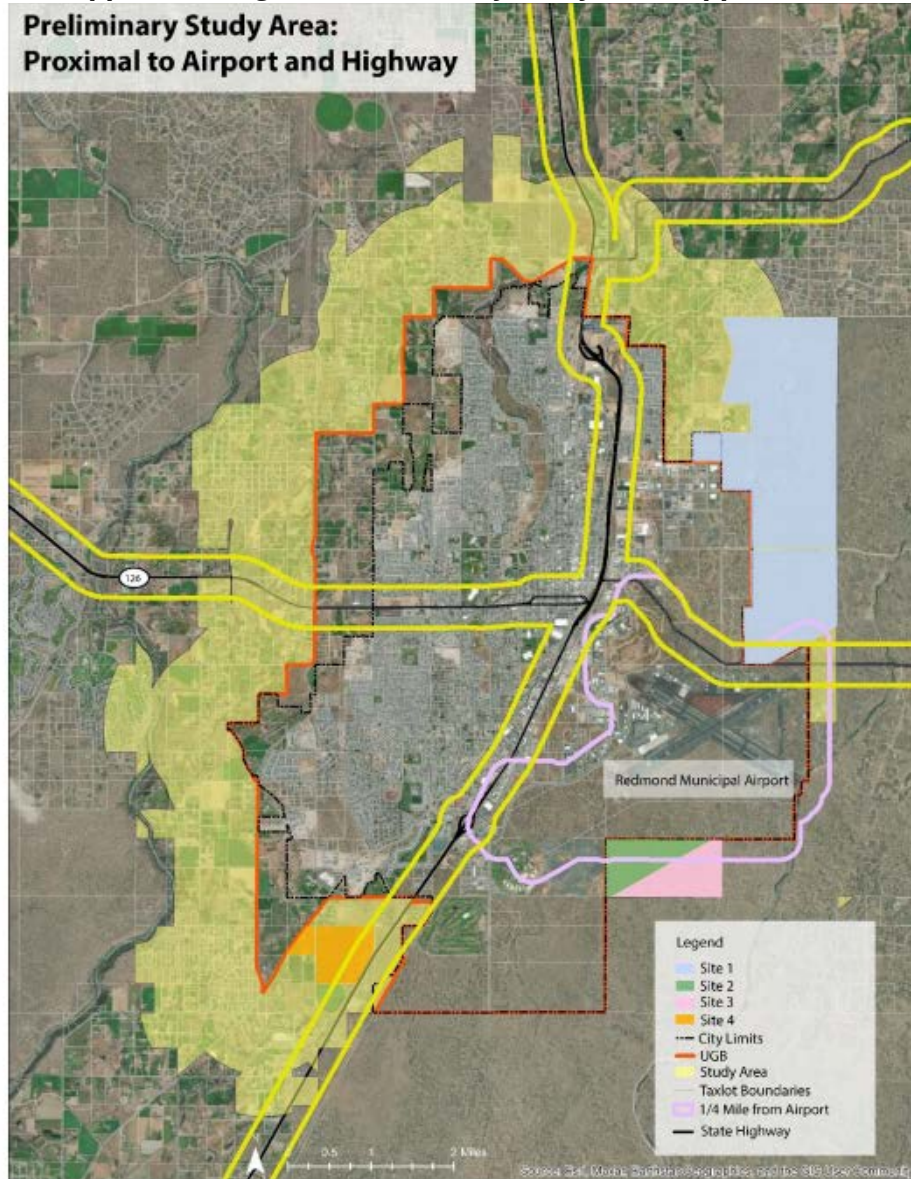


Figure 7 Sites Over 300 Acres and Near Redmond Airport in Preliminary Study Area

Site #1 (tax lot 151300-00-00103) is the only site within the preliminary study area to meet CORE3's site and locational needs: at least 300-acres of contiguous vacant land within on-quarter miles of both the Redmond Municipal Airport and a state highway.

Site 1 is within the eastern Redmond URA. The site is owned by Deschutes County and contains roughly 1,800 acres. Only 300-acres are needed for the entirety of the CORE3 facility. The preferred location of Phase 1 and the Future Phase CORE3 facility is shown on figure 8, and contains 228 acres. This preferred location meets all three site and locational needs of the CORE3 facility and is considered the final study area.

**Applicant's Figure 8 Final Study Area (Appendix F)**

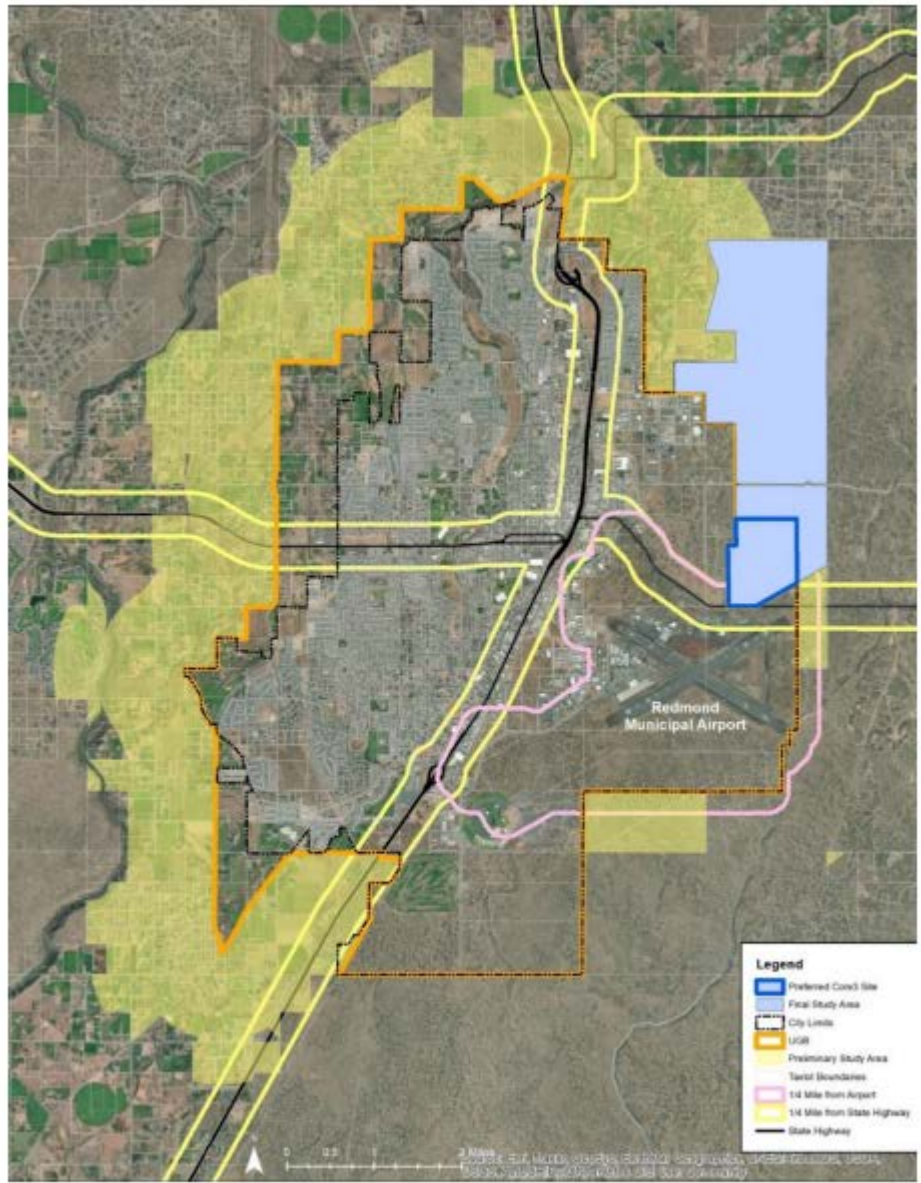


Figure 8 Final Study Area

Based on the applicant's response to the site selection process with regards to the UGB, staff finds these provisions are met.

The Hearings Officer finds the Staff's findings and comments quoted above are based upon substantial evidence and correct interpretation of the language of the goal/section/policy.

***(3) When the primary purpose for expansion of the UGB is to accommodate a particular industrial use that requires specific site characteristics, or to accommodate a public facility that requires specific site characteristics, and the site characteristics may be found in only a small number of locations, the preliminary study area may be limited to those locations***



**within the distance described in section (1) or (2), whichever is appropriate, that have or could be improved to provide the required site characteristics. For purposes of this section:**

**(a) The definition of “site characteristics” in OAR 660-009-0005(11) applies for purposes of identifying a particular industrial use.**

**(b) A “public facility” may include a facility necessary for public sewer, water, storm water, transportation, parks, schools, or fire protection. Site characteristics may include but are not limited to size, topography and proximity.**

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

The Applicant provided the following response in the submitted burden of proof statement:

UGBs may be amended in consideration of one category of land need without a simultaneous review of other categories, and local governments can identify specific site requirements for public facilities for purposes of UGB expansion. RCP policy 11-1-7 demonstrates (1) public facility land need and (2) defines necessary site and locational characteristics. RCP policy 11-1-7 reads:

*To implement the Central Oregon Emergency Services Center Viability Assessment and the related Strategic Business Plan, the City has determined a need for a suitable site for the Central Oregon Ready, Responsive, Resilient (CORE3) regional public facility as a new community element. The CORE3 facility requires the following site and locational characteristics:*

- 300 contiguous acres of suitable vacant land;
- Within one-quarter mile of the Redmond Municipal Airport; and
- Direct access to a state highway without the need to travel through designated residential or commercial areas.

*Any land brought into the Urban Growth Boundary to meet public services and facilities site needs identified through this policy shall be limited to Public Safety, Emergency Services, Training and Coordination Facilities.*

The UGB may be amended in consideration of this demonstrated public facility need without simultaneous review of other land use categories, and the analysis can use the specific site requirements outlined in this policy for the purposes of UGB expansion. The first phases of the Core3 facility will require 228 acres.

ORS 197A.320(6) also allows a narrow study area establishment:

**(6) When the primary purpose for expansion of the urban growth boundary is to accommodate a particular industry use that requires specific site characteristics, or to accommodate a public facility that requires specific site characteristics and the site characteristics may be found in only a small number of locations, the city may limit the study area to land that has, or could be improved to provide, the required**

**site characteristics. Lands included within an urban growth boundary for a particular industrial use, or a particular public facility, must remain planned and zoned for the intended use:**

Winterbrook relied on RCP policy 11-1-7 to define the narrow study area. The policy provides three site and locational needs for the CORE3 facility. The subject site must be:

- 1) At least 300 contiguous acres of vacant land;
- 2) Within one-quarter mile of the Redmond Municipal Airport; and
- 3) Within one-quarter mile of a state highway.

Winterbrook interpreted the RCP policy section "Direct access to a state highway without the need to travel through designated residential or commercial areas" to mean within one-quarter mile of a state highway. This proximal boundary limits the likelihood of access conflicts through residential or commercial areas, which is the intention of the RCP policy section. While a 300 acre need for a CORE3 facility was identified, the Master Development Plan included in this application package plans for only 228 acres for Phase 1 and the Future Phase. Therefore, the site selection analysis will include sites that can accommodate 300 acres, but for the purposes of this UGB expansion request, only 228 acres will be considered to be brought into the UGB.

Using the above site and locational characteristics, lands inside the existing UGB were first evaluated to see if they could satisfy the demonstrated public facility land need.

Staff finds the applicant's site selection analysis and methodology appropriately followed OAR 660-024-0065(3) to establish a narrow study area specific to a public facility need.

The Hearings Officer finds the Staff's findings and comments quoted above are based upon substantial evidence and correct interpretation of the language of the goal/section/policy.

Section 660-024-0067 Evaluation of Land in the Study Area for Inclusion in the UGB; Priorities

**(2) Priority of Land for inclusion in a UGB:**

**(a) First Priority is urban reserve, exception land, and nonresource land. Lands in the study area that meet the description in paragraphs (A) through (C) of this subsection are of equal (first) priority:**

- (A) Land designated as an urban reserve under OAR chapter 660, division 21, in an acknowledged comprehensive plan;**
- (B) Land that is subject to an acknowledged exception under ORS 197.732; and**
- (C) Land that is nonresource land.**

**(b) Second Priority is marginal land: land within the study area that is designated as marginal land under ORS 197.247 (1991 Edition) in the acknowledged comprehensive plan.**

**(c) Third Priority is forest or farm land that is not predominantly high-value farm land: land within the study area that is designated for forest or agriculture uses in the acknowledged comprehensive plan and that is not predominantly high-value farmland as defined in ORS 195.300, or that does not consist predominantly of prime or unique soils, as determined by the United States Department of Agriculture Natural Resources Conservation Service (USDA NRCS). In selecting which lands to include to satisfy the need, the city must use the agricultural land capability classification system or the cubic foot site class system, as appropriate for the acknowledged comprehensive plan designation, to select lower capability or cubic foot site class lands first.**

**(d) Fourth Priority is agricultural land that is predominantly high-value farmland: land within the that is designated as agricultural land in an acknowledged comprehensive plan and is predominantly high-value farmland as defined in ORS 195.300. A city may not select land that is predominantly made up of prime or unique farm soils, as defined by the USDA NRCS, unless there is an insufficient amount of other land to satisfy its land need. In selecting which lands to include to satisfy the need, the city must use the agricultural land capability classification system to select lower capability lands first.**

[...]

**(5) With respect to section (1), a city must assume that vacant or partially vacant land in a particular priority category is "suitable" to satisfy a need deficiency identified in OAR 660-024-0050(4) unless it demonstrates that the land cannot satisfy the specified need based on one or more of the conditions described in subsections (a) through (g) of this section:**

**Existing parcelization, lot sizes or development patterns of rural residential land make that land unsuitable for an identified employment need; as follows: [...]**

**(e) With respect to a particular industrial use or particular public facility use described in OAR 660-024-0065(3), the land does not have, and cannot be improved to provide, one or more of the required specific site characteristics. [...]**

**(8) The city must apply the boundary location in coordination with service providers and state agencies, including the Oregon Department of Transportation (ODOT) with respect to Factor 2 regarding impacts on the state transportation system, and the Oregon Department of Fish and Wildlife (ODFW) and the Department of State Lands (DSL) with respect to Factor 3 regarding environmental consequences. "Coordination" includes timely notice to agencies and service providers and consideration of any recommended evaluation methodologies.**

ORS 197.298 priority:

**197.298 Priority of land to be included within urban growth boundary.**

**(1) In addition to any requirements established by rule addressing urbanization, land may not be included within an urban growth boundary of Metro except under the following priorities:**

**a) First priority is land that is designated urban reserve land under ORS 195.145, rule or metropolitan service district action plan.**

**(b) If land under paragraph (a) of this subsection is inadequate [...]**

ORS 197A.320 priority:

**197A.320 Priority of land to be included within urban growth boundaries outside Metro; rules. (2)(c)(A):**

**(c) When evaluating the priority of land for inclusion under paragraph (b) of this subsection:**

**(A) The city shall evaluate the land within the study area that is designated as an urban reserve under ORS 195.145 in an acknowledged comprehensive plan, land that is subject to an acknowledged exception under ORS 197.732 or land that is nonresource land and select as much of the land as necessary to satisfy the need for land using criteria established by the commission and criteria in an acknowledged comprehensive plan and land use regulations.**

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

The Applicant provided the following response in the submitted burden of proof statement:

Per OAR 60-024-0067(2)(a), land within the URA is first priority for UGB inclusion. The study area contains one site that is entirely within the URA, as shown on Figure 8. The subject area within tax lot 151300-00-00103 is vacant and meets identified site needs. It is therefore suitable (OAR 660- 024-0067[5]).

OAR 660-24-0067(8) requires that cities apply the boundary location factors of Goal 146 in coordination with service providers and state agencies.

- Efficiency and compatibility in compliance with Goal 14 boundary location factors 1 and 2 are demonstrated by Appendix D. Public Facility Plan and Appendix E. Transportation Studies (TGR – TPR).
- To address locational factor 3, adopted Deschutes County Goal 5 inventories, the State’s wetland database<sup>7</sup>, and the RCP were consulted. There are no identified Goal 5 resources – or potential Goal 5 resources – on the southern portion of the subject site, the proposed area for UGB inclusion. (See figure 5).
- Finally, the proposed CORE3 facility has been designed with consideration of adjacent agricultural land. Application Part 3. MDP details the urban-rural buffers to ensure compatibility, consistent with the Great Neighborhood Principles. The proposed UGB expansion area will only accommodate the CORE3 facility. No other urban uses will be permitted. Therefore, the MDP for CORE3 addresses any urban uses within the proposed UGB expansion area, and therefore any potential urban-rural conflicts.

There are no other suitable sites which require the four boundary location factors to be weighed against one another on alternative sites.

In evaluation, a city must consider all urban reserves in the study area and select for inclusion “as much of the land as necessary to satisfy the need for land.” (ORS 197A.320[2][c][A] and OAR 660-024-0067[1][a]8). RCP policy 11-1-7 has defined the land need for the CORE3 facility as 300-acres, and the locational requirements as near the Redmond Municipal Airport and near a state highway. Phase 1 and the Future Phase depicted in the Master Development Plan included requires 228 acres. The southern portion of Site #1 is nearest to the Redmond Municipal Airport and E. HWY 126. Therefore, 228 acres of the southern portion of Site #1 should be included in the UGB to satisfy the demonstrated public facility land need for this phase of the CORE3 facility. While tax lot 151300-00-00103 contains roughly 1800 acres, 76.5 of which are already within the Redmond UGB, this portion of the site is already planned for and committed to The Oasis Village shelters. Additionally, the programmatic elements depicted in the Master Development Plan require site contiguity, the western portion of tax lot 151300-00-00103 has a public road running along the edge of the current Urban Growth Boundary, a public road running through the CORE3 facility would present security and access issues.

Staff agrees with the applicant’s analysis and notes that 228 acres are proposed to be included in the UGB to satisfy the demonstrated public facility land need for the CORE3 facility. Further, the 228-acre project site is located in the Redmond URA – the first priority for inclusion into UGBs as guided by the applicable OAR’s and ORS’s.

The Hearings Officer finds the Staff’s findings and comments quoted above are based upon substantial evidence and correct interpretation of the language of the goal/criterion/policy.

Section 660.024.0070. UGB Adjustments.

**DIVISION 15, STATEWIDE PLANNING GOALS (OAR 660-015)**

Goal 1: Citizen Involvement

***To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

The Applicant provided the following response in the submitted burden of proof statement:

Goal 1 calls for the opportunity for the public to be involved in all phases of the planning process and is applicable to all proposed amendments. The City of Redmond and Deschutes County have adopted and acknowledged procedures within the RDC that are consistent with Goal 1. The proposal will be processed with proper public noticing and hearings before the Redmond Urban Area Planning Commission – the city’s formal citizen advisory committee –

and the Redmond City Council for the City of Redmond applications. For Deschutes County applications, the proposal will be processed with proper public noticing and hearings before Deschutes County’s Board of County Commissioners. By meeting applicable city and county notice requirements, the application will be in conformity with Goal 1.

During the plan amendment and zone change process, public notice of the proposal was provided to affected agencies and property owners in the surrounding area. Planning staff mailed and published notice of the proposal and public hearing. The County will hold a public hearing before the County Hearings Officer. The City of Redmond will hold a public hearing before the Redmond Planning Commission. Goal 1 will be met.

The Hearings Officer finds the Staff’s findings and comments quoted above are based upon substantial evidence and correct interpretation of the language of the goal/criterion/policy.

Goal 2: Land Use Planning

***To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

The Applicant provided the following response in the submitted burden of proof statement:

Goal 2 generally requires consideration of alternatives, coordination with affected units of government, and that comprehensive plan policies be implemented by local land use regulations. Goal 2 applies to all proposed amendments. This proposal has come together through a high level of coordination between the Central Oregon Intergovernmental Council (COIC), the City of Redmond, Deschutes County, and state and federal agencies. Agencies involved include the Department of Public Safety Standards and Training (DPSST), State Fire Marshal, State Police, and Oregon Emergency Management; Governor Brown’s Regional Solutions; the US Forest Service; local public safety agencies and Districts; and others. A Steering Team completed a Strategic Business Plan in 2020 that developed, among other things, site layout considerations and facility needs for the site.

Goal 2 requires jurisdictions to establish a factually-based planning process for all land use decisions. This planning process includes the creation of a comprehensive plan and other supporting planning documents that inventory a city’s built and natural environments, providing a basis for policy goals and implementation measures.

The proposed comprehensive text amendment will establish an identified need for a regional public facility use with specific required characteristics. The amendment is crafted to enable evaluation and potential urban growth consistent with the RCP and public facility infrastructure, and it is consistent with RCP policies as demonstrated in Section 3.3 of Part 1. Comprehensive Plan Text Amendment.

The proposed UGB amendment will designate the expansion area for public facility use. UGB expansions are regulated by ORS 197, as implemented by OAR 660-024; therefore, the proposed UGB expansion process and requirements supersede conceptual planning contained in the Eastside Framework Plan. Through adoption of the proposed UGB amendment, the RCP designation of Public Facilities will be the controlling land use designation for the proposed expansion area. The RCP designation of the site for public facilities is relevant to the MDP application in Part 3, and subsequent annexation applications in Parts 4 and 5.

City of Redmond policy mandates that the land added to the UGB will remain with an Urban Holding Area (UH-10) zoning designation until time of annexation. The annexation applications for both the city and Deschutes County (Parts 4 and 5) are part of this application package and will rezone the land as Public Facilities (PF) upon city annexation.

In 2007, the City of Redmond and Deschutes County signed a joint management agreement, an intergovernmental agreement to establish the process for eventual plan and map amendments in the Redmond URA. The agreement states that the "City will accept and process all legislative and quasi-judicial applications, including County initiated ones, for comprehensive plan, plan map, zoning map and zoning regulations text amendments." (See JMA section 4(D) in Appendix G.2).

City of Redmond policy mandates that the land added to the UGB will remain with an Urban Holding Area (UH-10) zoning designation until time of annexation. This application narrative requests annexation into the City of Redmond concurrent with the requested zone change from UH-10 to PF. The requested zone change is consistent with the MDP contained in Part 3 of the application package, and the justification for UGB expansion to meet public facility land need contained in Part 2 of the application package. The requested land use actions are consistent with the DCCP, DCC, and JMA.

The proposed amendments are consistent with Goal 2.

In accordance with Goal 2, the applicant has submitted an application to the County and the City of Redmond for the UGB expansion, plan amendment, and zone change. Staff finds the proposed plan amendment and zone change satisfies this goal because the proposal has been reviewed in accordance with the County's acknowledged planning review process.

The Hearings Officer finds the Staff's findings and comments quoted above are based upon substantial evidence and correct interpretation of the language of the goal/criterion/policy.

Goal 3: Agricultural Lands

***To preserve and maintain agricultural lands.***

**FINDING:** Staff findings and comments for this section are set forth below:

The Applicant provided the following response in the submitted burden of proof statement:

Goals 3 and 4 are not applicable to lands within UGBs or to UGB amendments, per OAR 660-024-0020(1)(b) "Adoption or Amendment of a UGB".

Staff agrees with the applicant's response.

Further, staff recognizes this application is unique as the property was identified through a regional needs assessment. The applicant analyzed alternatives previously in this application to preserve and maintain agricultural lands to the greatest extent possible. Staff finds the applicant provided sufficient analysis that this property is not viable agricultural land.

The Hearings Officer finds the Staff's findings and comments quoted above are based upon substantial evidence and correct interpretation of the language of the goal/criterion/policy.

Goal 4: Forest Lands

***To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

The Applicant provided the following response in the submitted burden of proof statement:

Goals 3 and 4 are not applicable to lands within UGBs or to UGB amendments, per OAR 660-024-0020(1)(b) "Adoption or Amendment of a UGB".

Staff agrees with the applicant's response. Further, the subject property does not include forest land.

The Hearings Officer finds the Staff's findings and comments quoted above are based upon substantial evidence and correct interpretation of the language of the goal/criterion/policy.

Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces

***To protect natural resources and conserve scenic and historic areas and open spaces.***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

The Applicant provided the following response in the submitted burden of proof statement:



The area of the proposed annexation and zone change does not include any inventoried or potential Goal 5 resources. Actual development of the CORE3 facility will require subsequent land use reviews and compliance with Goals 5, if and where applicable. Portions of Tax lot 151300-00-00103 contain an inventoried Deschutes County Goal 5 resource: the Negus Landfill. This resource is listed as #482 on Table 5.8.1 within the Deschutes County Comprehensive Plan. Although a portion of the tax lot containing the subject site is an inventoried Goal 5 resource, the proposed UGB expansion area onto the subject site is south of the Negus Landfill and will not include this resource. Moreover, there are no other potential Goal 5 resources on the subject site that could be incorporated into the City of Redmond Goal 5 inventories. Goal 5 is met.

Staff agrees with the applicant. The subject property does not include any Goal 5 resources that would be impacted by this proposal.

The Hearings Officer finds the Staff’s findings and comments quoted above are based upon substantial evidence and correct interpretation of the language of the goal/criterion/policy.

Goal 6: Air, Water and Land Resources Quality

***To maintain and improve the quality of the air, water and land resources of the state.***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

The Applicant provided the following response in the submitted burden of proof statement:

The Redmond Comprehensive Plan text amendment (Part 1) does not affect any Goal 6 policies. The proposed map amendments will not change any applicable Goal 6 policies or measures that relate to air or water resource quality. However, the CORE3 facility will include burn buildings and a wildfire training area that could have impacts on air quality. To reduce impacts from these facilities on surrounding lands, element siting, design and operational program has been developed to best meet state and federal air quality standards.

The State of Oregon Department of Public Safety Standards and Training has adopted the 2019 Edition of the National Fire Protection Association’s 1001 Standard for Fire Fighter Professional Qualifications. The Class A Burn Building and Class B Drill Tower (see Appendix C. MDP) are essential training components to provide a safe, secure and consistent training environment to fulfill certification requirements for fire behavior, search and rescue, ventilation, water supply, hose management, fire control, fire streams, sprinkler control, scene safety, and the practical use of self-contained breathing apparatus.

The Class A and Class B Burn Buildings are currently programmed for approximately 510 training hours annually. Of those training hours, Class A live burn training, using combustible materials such as hay and wood, will represent a small fraction of the total training hours annually. Class A live burn training operations are expected to occur a few times a month

with the actual burns lasting less than hour. Class B fire training operations utilize propane fueled fire training props and theatrical smoke that is engineered to dissipate quickly.

As part of the CORE3 facility operation plan, live burn training operations must meet environmental parameters such as wind speed and direction to promote the rapid dissipation of smoke. The Class A and Class B training structures are strategically located on the site to take advantage of prevailing wind patterns to optimize the dissipation of smoke from populated areas.

The Recycling Pond component of the plan helps to capture and store water used in the fire training exercises in the tactical village and holds it for reuse in future exercises. Utilizing the pond to recycle water used in onsite trainings preserves water resources by reducing the overall water used.

The CORE3 development contains a gun range/firearms training area that is planned to be an open-air enclosed and fully-baffled gun range with sound mitigation measures integrated into the design. The no-blue sky configuration is to be designed so errant rounds cannot escape the perimeters of the range.

The fuel island component of the site is envisioned as a minimum of (1) 12,000-gallon gas fuel tank and (1) 12,000-gallon diesel fuel tank with two pumps to fuel training vehicles used on site. The fuel stations will be designed with appropriate spill control and mitigation measures and will meet or exceed local, state, and federal regulations.

Construction of the CORE3 facility will require additional local, state, and federal reviews to ensure that all potential air, land, and water quality impacts are mitigated through element siting, structure designs, and operational program development, thereby complying with Goal 6.

As discussed previously, the subject property includes the Redmond Rod and Gun Club, a former shooting range used by the Deschutes County Sheriff, and an unpermitted disposal area. Development of the CORE3 facility is planned to occur under the authority of the City of Redmond. Nonetheless, the applicant has included a site remediation plan, dated May 4, 2020, prepared by the environmental consulting firm, APEX (Applicant's Appendix G.4). The remediation plan was reviewed by the Department of Environmental Quality (Applicant's Appendix G.5, dated July 2020) and includes alternatives for remediation actions. Moreover, the remediation plan for the property will ensure clean-up of the property will be completed in conjunction with development and will meet all DEQ requirements.

The Hearings Officer finds the Staff's findings and comments quoted above are based upon substantial evidence and correct interpretation of the language of the goal/criterion/policy.

Goal 7: Areas Subject to Natural Hazards

***To protect people and property from natural hazards.***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

The Applicant provided the following response in the submitted burden of proof statement:

Goal 7 requires local governments to adopt natural hazard inventories, policies, and implementing measures. RCP policies 7-3-1 and 7-3-2 require the City to “plan and prepare” for the Cascadia earthquake and to “support plans and programs to expedite the restoration of critical services following a natural hazard event”. There are three DCCP policies that implement Goal 7 and support the development of the CORE3 facility: Section 3.5 Goal 1, Policy 3.5.6, and Policy 3.5.9. Part 5 addresses each policy in detail in Section 3.1 of Part 5 Deschutes County Plan Map and Zone Change.

The CORE3 facility is a centralized public safety training facility and coordination center for emergency response operations. The CORE3 facility will act as the State Resiliency Center during a Cascadia subduction event. The proposed UGB amendment will allow for siting the CORE3 facility in Redmond. This is consistent with – and directly implements – Goal 7 requirements, RCP policies, and Deschutes County Natural Hazard Mitigation Plan Action Item #9. This is because the CORE3 facility will provide local, regional, and state emergency response capacity to respond to natural disasters and hazards.

Further, the subject site is outside of any flood areas. It does not contain steep slopes (slopes over 15% are a development constraint and considered unsuitable for employment uses in the Redmond Economic Opportunity Analysis, an adopted and acknowledged document). And the subject site does not contain any wetlands nor does Deschutes County regulate wetland areas. Wetland areas and steep slopes in relation to the subject site are shown in Figure 2.

The subject site is shown within the Deschutes County Wildfire Zone2. This zone requires the use of specialty building codes, per DCC 15.04.085 and DCC 15.04.010(A).

Actual development of the CORE3 facility will occur within the City of Redmond’s jurisdiction and will require subsequent land use reviews and compliance with Statewide Goal 7, including wildfire mitigation measures, where applicable. Thus, the proposed amendments comply with Goal 7.

Staff finds wildfire risk is the primary natural disaster concern on the subject property. There are no mapped flood hazards or steep slopes on the subject property. As stated, development of the CORE3 facility will be reviewed by the City of Redmond. However, staff notes the master development plan proposes improved transportation access which can provide benefits if a natural disaster were to occur and the subject property needed to be evacuated or accessed by emergency service providers. The planned annexation will also allow it to be served by urban service providers.

The Hearings Officer finds the Staff’s findings and comments quoted above are based upon substantial evidence and correct interpretation of the language of the goal/criterion/policy.

Goal 8: Recreational Needs

***To satisfy the recreational needs of the citizens of the state and visitors and, here appropriate, to provide for the siting of necessary recreational facilities including destination resorts.***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

The Applicant provided the following response in the submitted burden of proof statement:

Goal 8 is not applicable to the proposed amendments because there are no potential park or recreational facilities on the subject site (as identified in the Redmond Parks Master Plan and Deschutes County Comprehensive Plan), and no park or recreational facilities are proposed. The proposed development is a unique public facility use that will not be a major employment center or residential center that would create an excess of potential park users that would strain existing recreational resources. While the site will contain open buffer areas and vegetation, for safety and security reasons the site will not be open to the general public for recreation. The proposed Comprehensive Plan text amendment has no impact on compliance with Goal 8.

Staff concurs with the applicant and finds this goal is not applicable because the proposed plan amendment and zone change do not reduce or eliminate any opportunities for recreational facilities either on the subject property or in the area.

The Hearings Officer finds the Staff’s findings and comments quoted above are based upon substantial evidence and correct interpretation of the language of the goal/criterion/policy.

Goal 9: Economic Development

***To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

The Applicant provided the following response in the submitted burden of proof statement:

A 156-acre portion of the subject site was originally inventoried as industrial land in the 2019 Redmond EOA. Since then, the subject site has been removed from the UGB and redesignated as county agricultural land (see reference document City of Redmond UGB Adjustment, Redmond Ordinance No. 2020-01). A separate 156-acre portion of URA was included and zoned the same industrial designations as the subject site was previously. Because of this land swap, the subject site is currently non-contributing to the City of Redmond’s employment lands inventory. The subject site is currently designated as agricultural land within the Redmond URA for future urbanization. The site is currently non-contributing to Deschutes County economic activities.

The subject site is proposed to be designated as public facility land with PF zoning. The CORE3 facility *itself* will not be a major employment center. However, establishment of the site will have some positive impact on the local economy because development and use of the facility will increase economic activity within the City of Redmond. The facility will serve as a training center for personnel from regional and state agencies, increasing visitors to Redmond and consumer spending at local commercial establishments. The proposed map amendments are compliant with Goal 9.

The proposed Comprehensive Plan text amendment has no impact on compliance with Goal 9.

Staff concurs and finds Goal 9 is met. The approval of this application will not adversely impact economic activities of the state or local area.

The Hearings Officer finds the Staff's findings and comments quoted above are based upon substantial evidence and correct interpretation of the language of the goal/criterion/policy.

Goal 10: Housing

***To provide for the housing needs of citizens of the state.***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

The Applicant provided the following response in the submitted burden of proof statement:

Goal 10 is not applicable to the proposed amendments because the site does not contain residential land and no housing is proposed.

Staff concurs and finds the application does not reduce or eliminate any opportunities for housing on the subject property or in the area. This goal is not applicable.

The Hearings Officer finds the Staff's findings and comments quoted above are based upon substantial evidence and correct interpretation of the language of the goal/criterion/policy.

Goal 11: Public Facilities and Services

***To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

The Applicant provided the following response in the submitted burden of proof statement:

Goal 11 requires communities to consider the provision of public facilities and services in their planning and development decisions, this goal is applicable to all proposed amendments.

The CORE3 facility is critical to the provision of local and regional public safety and emergency response services. For more details on programmatic elements of the CORE3 facility, see Introduction to Land Use Applications and Part 3. MDP.

The proposed UGB amendment, comprehensive plan and zoning map amendments – and the ultimate construction of the CORE3 facility – will allow the City of Redmond, Deschutes County and the greater region to efficiently serve current and future residents’ public safety needs, consistent with Goal 11.

Goal 11 and Goal 14 require that public facilities and services planned in urbanizable areas be adequate to serve planned development. Part 3 Master Development Plan and Appendix D. Public Facilities Plan demonstrate how the proposed provision of public facilities and services to serve the CORE3 facility will be orderly, economic, and efficient.

Appendix D. Public Facilities Plan shows that the site can be served by a proposed public water line and a proposed public sanitary sewer line. Potable water service will be provided by extending the existing 16” public water main from the south side of Highway OR126 at SE Ochoco Way approximately 1,200 LF easterly to future SE 21st Avenue. From there, the public water main will be extended northerly in SE 21st Avenue approximately 550 LF to the project access road. The CORE3 site will be served by a single potable water service and a single fire service. All on-site domestic and fire water will be private and isolated from the public water main system.

Wastewater (sanitary sewer) service will be provided by connecting to the existing 12” public sanitary sewer main along the south of Highway OR126. The project connection will require crossing OR126 and extending a public sewer main northerly approximately 600 LF in future SE 21st Avenue to the project access road.

The CORE 3 site will be served by a single sanitary service. All on-site sanitary sewer will be private and gravity served where possible. Due to project topography, lower lying areas will be served by a private lift station/force main system.

All stormwater will be contained on-site. Stormwater will be collected and dispersed on-site via swales, underground injection control (UIC) devices such as drywells, or a combination of both methods.

A certified engineer has determined that the 16’ water line and the 12” sanitary sewer line would be adequate to serve the project, discussed in Appendix D.2.

Review of the CORE3 facility development will be facilitated by the City of Redmond upon annexation. Nonetheless, the applicant states that the proposed CORE3 facility can be adequately served by public facilities. Staff finds the proposal is consistent with Goal 11.

The Hearings Officer finds the Staff’s findings and comments quoted above are based upon substantial evidence and correct interpretation of the language of the goal/criterion/policy.

Goal 12: Transportation

***To provide and encourage a safe, convenient and economic transportation system.***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

The Applicant provided the following response in the submitted burden of proof statement:

This goal applies to all proposed map amendments. The proposed text amendment in Part 1 itself does not affect the TSP or change any plan designation or zoning within the UGB. Therefore, the adoption of the proposed comprehensive plan text amendment will not impact the city’s ability to plan for and provide an efficient transportation system.

OAR Chapter 660 Division 12 – the Transportation Planning Rule (TPR) – is the implementing rule for Goal 12. Although compliance with OAR 660-012-0060 (which requires that zone and map amendments consider the impact on the transportation system from the proposed change) does not necessarily apply to UGB amendments per OAR 660-024-0020[1][d]3, they do apply to the zoning map changes from city UH-10 to city PF. See application Part 4. Redmond Zone Change & Annexation.

In order to reach compliance with OAR 660-012-0060, the proposed zone and map amendment from UH-10 to PF must consider the impact on the transportation system from the proposed change. Applicants must demonstrate that there will be no significant effect on the transportation system. If rezoning would alter the total trips or functional classifications of roads and streets, then feasible transportation mitigation strategies are required.

This goal is implemented through OAR 660-012, commonly known as the Transportation Planning Rule (TPR), which is addressed in a previous finding.

The Hearings Officer finds the Staff’s findings and comments quoted above are based upon substantial evidence and correct interpretation of the language of the goal/criterion/policy.

Goal 13: Energy Conservation

***To conserve energy.***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

The Applicant provided the following response in the submitted burden of proof statement:

Goal 13 directs jurisdictions to evaluate land use planning proposals with consideration of efficient use of land and energy and applies to all the proposed applications. By consolidating training facilities for over 20 regional organizations and agencies, the CORE3 facility will improve energy efficiency by reducing vehicle trips and vehicle miles traveled from the current condition where training facilities are dispersed between multiple sites. In the event of a major natural hazard event, the CORE3 facility's relative location adjacent to the airport and E. HWY 126 will shorten regional emergency response travel. Overall, the proposed UGB amendment will further the objectives of Goal 13, allowing for conservation of energy by reducing excessive travel linked largely to fossil fuel consumption.

Due to the emergency functionality needed during power outages and natural disasters, it is in the project's best interest to utilize efficient building systems in order to minimize the size and costs of back-up systems. This will allow this facility to function off-grid, as well as reduce on-going operational costs. And as a resiliency facility for emergency services, the buildings for the CORE3 campus will be held to a high standard of efficiency and performance to ensure the optimal use of resources and support emergency operations. Occupied buildings will be designed to meet the State's goals with LEED Silver equivalency, and SEED (20% above current energy code).

Staff concurs with the Applicant's response and finds this Goal is met.

The Hearings Officer finds the Staff's findings and comments quoted above are based upon substantial evidence and correct interpretation of the language of the goal/criterion/policy.

Goal 14: Urbanization

***To provide for orderly and efficient transition from rural to urban use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.***

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

The Applicant provided the following response in the submitted burden of proof statement:

***Land Need***

***Establishment and change of urban growth boundaries shall be based on the following:***

***(1) Demonstrated need to accommodate long range urban population, consistent with a 20-year population forecast coordinated with affected local governments, or for cities applying the simplified process under ORS chapter 197A, a 14-year forecast; and***



**(2) Demonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of the need categories in this subsection (2). In determining need, local government may specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need. Prior to expanding an urban growth boundary, local governments shall demonstrate that needs cannot reasonably be accommodated on land already inside the urban growth boundary.**

Goal 14 and its implementing rule OAR 660-024 guide cities to plan for the efficient accommodation of all urban uses, such as public facilities. This goal is applicable to all of the proposed actions. The proposed plan amendment incorporates the identified a regional need for a centralized public safety training facility and coordination center for emergency response operations in the City of Redmond. By codifying this identified need through the adoption of this policy, the City can plan to accommodate this need within its UGB.

Part 2. UGB Amendment and Appendix F. Site Selection Analysis and Division 24 findings evaluate land sufficiency of the UGB to accommodate the identified need, consistent with OAR 660-024 requirements.

As described in detail in Part 2. UGB Amendment of this application package, this land must be brought into the UGB and annexed into the city to meet a regional need for a consolidated emergency response training facility. OAR Chapter 660 Division 14 guides the implementation of Goal 14 as it applies to annexation and urban development on previously rural lands. Because the UGB was expanded onto the subject site to satisfy a demonstrated public facility land need, the subject site must be annexed into the Redmond city limits and rezoned PF, consistent with OAR 660-024-0050:

**(6) When land is added to the UGB, the local government must assign appropriate urban plan designations to the added land, consistent with the need determination and the requirements of section (7) of this rule, if applicable. The local government must also apply appropriate zoning to the added land consistent with the plan designation or may maintain the land as urbanizable land until the land is rezoned for the planned urban uses, either by retaining the zoning that was assigned prior to inclusion in the boundary or by applying other interim zoning that maintains the land's potential for planned urban development. The requirements of ORS 197.296 regarding planning and zoning also apply when local governments specified in that statute add land to the UGB.**

**(7) Lands included within a UGB pursuant to OAR 660-024-0065(3) to provide for a particular industrial use, or a particular public facility, must be planned and zoned for the intended use and must remain planned and zoned for that use unless the city removes the land from the UGB.**

The requested Deschutes County zone change from EFU to UH-10 and comprehensive map change from Ag to RUGA is consistent with the UGB expansion justification to include the

land for a demonstrated public facilities land need. The requested applications directly support the requirements of the UGB Rule, and therefore the requirements of Goal 14. Once brought into the UGB, the CORE3 facility is proposed to be designated in the RCP as Public Facility and zoned City Public Facility (PF), consistent with the UGB expansion justification to include land for a demonstrated public facilities land need. Application Part 4. Redmond Zone Change & Annexation provides the rationale for rezoning the site from county UH-10 to the PF zone, consistent with the proposed Master Development Plan (see Part 3. MDP).

The requested applications directly support the requirements of the UGB Rule, and therefore the requirements of Goal 14.

Staff concurs with the Applicant’s response and notes that consistency with Goal 14 and it’s implementing rules OAR Chapter 660, Division 24, ORS 197.298, and 197A.320, emphasizes two central questions: is there enough land within the UGB to accommodate future population growth over 20 years, and if not, which land is suitable to bring within the existing UGB. These factors were evaluated in the Applicant’s Appendix F where they demonstrated compliance with the applicable OARs and ORS. These criteria and associated findings are also included above in the staff report. Staff finds that, as the applicant has demonstrated therein, there is sufficient evidence to demonstrate that the proposal is consistent with all of them.

For these reasons, the proposal is consistent with Statewide Planning Goal 14.

- Goal 15: Willamette River Greenway
- Goal 16: Estuarine Resources
- Goal 17: Coastal Shorelands
- Goal 18: Beaches and Dunes
- Goal 19: Ocean Resources

The Hearings Officer finds the Staff’s findings and comments quoted above are based upon substantial evidence and correct interpretation of the language of the goal/criterion/policy.

**FINDING:** Staff, in the Staff Report, provided the following findings/comments:

These Goals are not applicable because the proposed amendment and zone change area is not within the Willamette Greenway, and does not possess any estuarine areas, coastal shorelands, beaches and dunes, or ocean resources.

The Hearings Officer finds the Staff’s findings and comments quoted above are based upon substantial evidence and correct interpretation of the language of the goal/criterion/policy.

**IV. CONCLUSION AND RECOMMENDATION:**

Staff provided the following conclusion language:

Staff finds that the applicant has met the burden of proof necessary to justify the request to change the Plan Designation of the subject property from Agriculture to Redmond Urban Growth Area, to change the zoning of the subject property from Exclusive Farm Use (EFU) to Urban Holding (UH10), and to expand the Urban Growth Boundary through effectively demonstrating compliance with the applicable criteria of DCC Title 18 (Deschutes County Zoning Ordinance), DCC Title 20 (Redmond Urban Area Zoning Ordinance), the Deschutes County Comprehensive Plan, and applicable sections of OAR and ORS.

The Hearings Officer concurs with Staff's above-quoted conclusions. The Hearings Officer recommends approval of a Comprehensive Plan Amendment to change the designation of a portion the subject property, approximately 228 acres, from Agricultural ("AG") to Redmond Urban Growth Area ("RUGA") and a corresponding Urban Growth Boundary ("UGB") expansion and also a corresponding Zone Change to rezone the subject property from Exclusive Farm Use ("EFU") to Urban Holding ("UH-10").

DATE: August 30, 2024



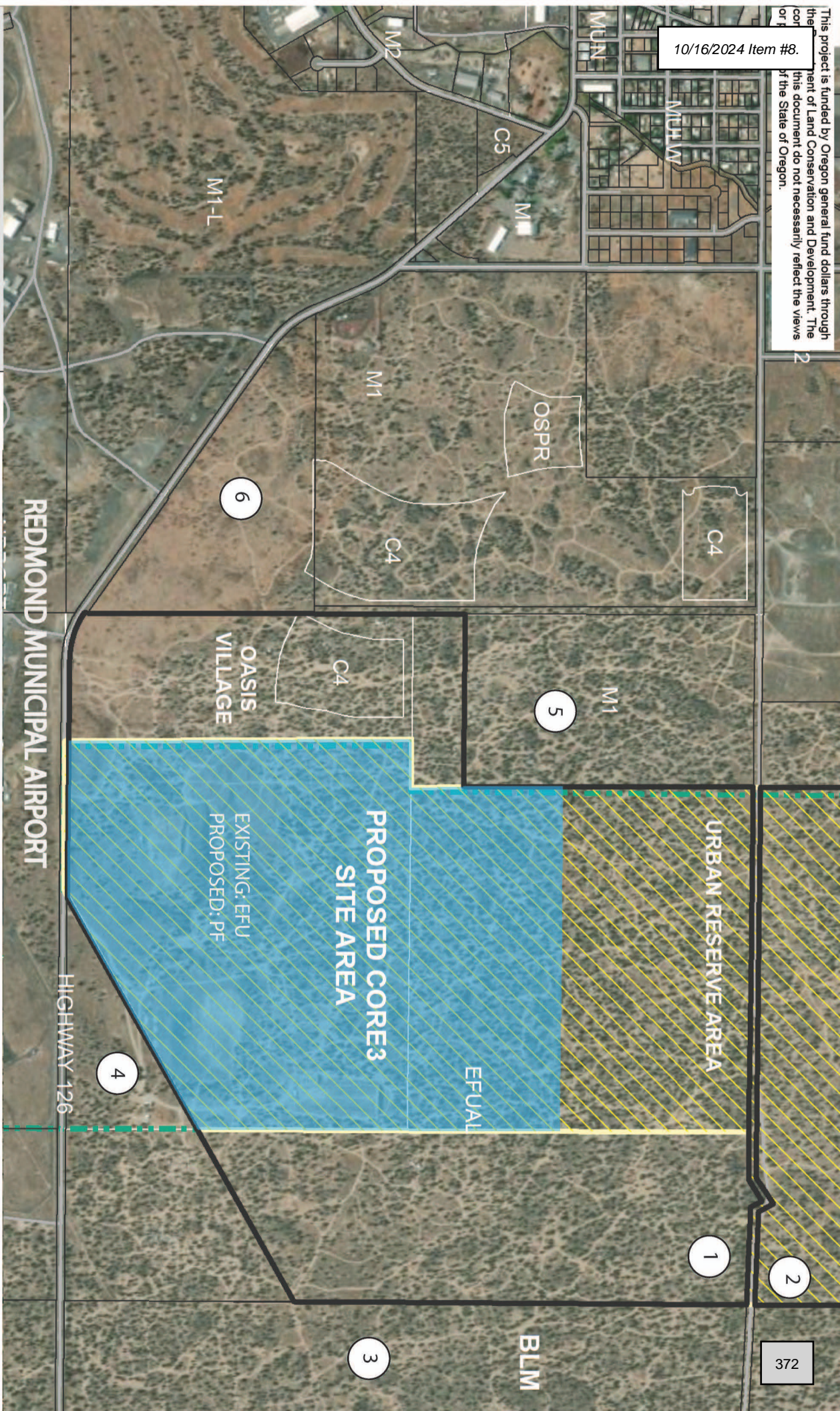
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Gregory J. Frank  
Deschutes County Hearings Officer

Attachment(s):        Project Site Map

This project is funded by Oregon general fund dollars through the Oregon Department of Land Conservation and Development. The contents of this document do not necessarily reflect the views or policies of the State of Oregon.

10/16/2024 Item #8.



- ### VICINITY AND ZONING MAP
- EXISTING ZONING BOUNDARY
  - PROPOSED SITE AREA
  - URBAN RESERVE AREA
  - URBAN RESERVE BOUNDARY
  - TAX LOT LINES
  - REDMOND CITY LIMITS



owner	agent	inCareof	address	cityStZip	type	cdd id	email
COIC		Scott Aycock	1250 NE Bear Creek Road	Bend, OR 97701	Hoff Rec	23-543-PA, 544-ZC	scotta@Coic.org; sknight@coic.org; staylor@coic.org
Winterbrook Planning		Jesse Winterowd	610 SW Alder Street, Suite 810	Portland, OR 97205	Hoff Rec	23-543-PA, 544-ZC	jesse@winterbrookplanning.com
DESCHUTES CO. PROPERTY MGMT.	Ryan Dunning		ELECTRONIC		Hoff Rec	23-543-PA, 544-ZC	Ryan.Dunning@deschutes.org; kirstie.bollinger@deschutes.org
SERA Design	Becky Epstein		ELECTRONIC		Hoff Rec	23-543-PA, 544-ZC	beckye@seradesign.com
City of Redmond Planning			ELECTRONIC		Hoff Rec	23-543-PA, 544-ZC	MORGAN.SNYDER@REDMONDREGON.GOV



## BOARD OF COMMISSIONERS

# AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** October 16, 2024

**SUBJECT:** Deschutes County Employee Benefits Renewal for the 2025 Plan Year

**RECOMMENDED MOTION:**

1. Move to approve a contract (including deductible limits for the 2025 plan year) with a Stop Loss provider who presents the best financial options for the County.
2. Move to approve renewing with PacificSource, the current Third Party Administrator (TPA), for the 2025 plan year.
3. Move to approve the staff recommended Employee Benefit Plan changes #1-5.
4. Approve County Administrator signature of the final Deschutes County Employee Benefits Health Plan documents and service agreements for the 2025 plan year.

**BACKGROUND AND POLICY IMPLICATIONS:**

The Deschutes County Employee Health Benefits Plan is set to renew January 1 for the 2025 Plan Year. This annual renewal period requires the County to evaluate the health benefits plans and vendor contracts supporting the plans. Deschutes County has established the Deschutes County Group Health Plan (referred to as the "Plan") to provide health care coverage for eligible employees and their dependents. Deschutes County is the Plan Sponsor. This Plan Document contains both the written Plan Document and the Summary Plan Description ("SPD") which will be administered by PacificSource, the Third Party Administrator, and will be effective on January 1, 2025.

The attached memo and matrix provide additional details on the recommended changes and proposed contract renewals.

**BUDGET IMPACTS:**

The proposed changes are anticipated to be within the currently approved Health Benefit Fund 650 budget for FY25 and will be included in the proposed budget for FY26.

**ATTENDANCE:**

Jason Bavuso, Interim Human Resources Director  
Trygve Bolken, Human Resources Analyst



## HUMAN RESOURCES

Date: October 16, 2024

To: Deschutes County Board of County Commissioners

From: Trygve Bolken, HR Analyst  
Jason Bavuso, Interim HR Director

Re: Deschutes County Employee Benefits Renewal for the 2025 Plan Year

The Deschutes County Employee Benefits Plan is set to renew for the 2025 Plan Year. The following is a summary of program renewals and considerations for the period of January 1, 2025 – December 31, 2025.

In preparation for the annual renewal period, staff meets with the County's legal team, benefit consultant, and Third-Party Administrator (TPA) to review proposed changes to the plan. This includes an analysis of changes due to legislative requirements, industry standards, new offerings in the industry, benchmarking against comparable plans, cost impacts, and the impact on the health care needs of our employees and their dependents. It is the County's approach to consider changes that have proven effectiveness, are mandated by law, fiscally responsible, and competitive with benchmarking against other health plans.

This year, due to the continued increases associated with the cost of the County's Health Benefits Plan, County leadership increased Health Plan charges to departments by 30% and also requested that the County's Employee Benefits Advisory Committee (EBAC)<sup>1</sup> identify \$1.2 million in cost containment measures and/or increases to employee premiums for FY 2025.

Claims costs have continued to increase at a higher-than-expected rate. This is due to medical inflation, higher number than expected mid-range large dollar claims, new specialty drugs becoming available on the market, and higher utilization of specialty medications overall.

On Tuesday, October 8, EBAC voted 13- 0 in support of the proposed cost containment measures and plan changes detailed in this memo for the 2025 Plan Year. The cost-containment measures identified by EBAC are estimated to save the plan \$1,354,729 during the 2025 benefit year. The County

<sup>1</sup> (EBAC is comprised of representation of County management and represented staff. The committee is responsible for making recommendations to the Board of County Commissioners regarding Health benefits.)

appreciates the thoughtful recommendations that EBAC developed to achieve a balance of cost containment while maximizing health plan benefits for enrollees.

**Employee Health Benefits Plan:** Refer to attachment A – Changes Recommended to BOCC for 2025 Plan Year.

➤ **Human Resources and Administration recommend and EBAC supports the following Employee Benefit Plan changes, #1-5, for the 2025 plan year.**

1. **Move members on prescriptions for Humira to Hadlima.**

A biosimilar drug, Hadlima, is now available to patients that are currently prescribed Humira. This new biosimilar is significantly less expensive. Members are already moving to the new equivalent.

➤ **The estimated cost impact to the plan is a savings of \$939,651 annually.**

2. **Remove wellness staff from the doc Clinic.**

Do not refill the vacant position and move ongoing wellness support to existing doc Clinic staff. Continue existing wellness programs under doc Clinic staff.

➤ **The estimated cost impact to the plan is a savings of \$140,000 annually.**

3. **Adopt the standard drug formulary offered under our current Pharmacy Benefits Manager (PBM) Prescriptive.**

Adopt standard drug formulary offered under current Pharmacy Benefits Manager (PBM) Prescriptive. Prescriptive would manage all prescriptions under their standard formulary and provide applicable rebates accordingly.

➤ **The estimated cost impact to the plan is a savings of \$275,078 annually.**

4. **Amend plan language under Durable Medical Equipment to include breast pump rentals as a covered service.**

This is an optional change recommended by PacificSource as a best practice. It would allow for commercial grade breast pump rental costs to be covered under our medical plan.

➤ **The estimated cost impact for this change is an annual increase of \$9,000.**

5. **Update plan language to align with current plan interpretation and TPA best practices.**

In partnership with our TPA, HR staff have made efforts to clarify plan language. Proposed changes are clarifications to the plan document and do not change benefit coverage.

➤ **HR Staff recommended and EBAC supports making the corrections, clarifications and changes as described on the PacificSource Medical and Dental plan documents.**



Human Resources and Administration recommend that the County proceed with the following administrative actions associated with renewal rates and selection of a stop loss carrier:

- Renewal - **Third Party Administrator (TPA)**: Last year, the County experienced a 3.9% rate increase for TPA services with our current vendor, PacificSource. This year, PacificSource has proposed an 8.1% to 9.3% rate increase for TPA services. The final rate increase will depend on which performance reporting options the County selects.
- Renewal - **Life and Disability Insurances** with New York Life: Rate decreases for basic group life, Accidental Death and Dismemberment and Long-Term Disability (rates guaranteed until 1/1/2028). 7.6% fee decrease; estimate \$121,406 cost savings.
- Renewal - **Employee Assistance Program** with Canopy: 23.4% fee increase; estimated \$8,488 annual cost increase.
- Renewal - **Flexible Spending Accounts** with PacificSource Administrators: No increase.
- Renewal - **Livongo Diabetic Management Program**: No increase.
- **Transition to a new stop loss provider, Symetra**. Staff worked with the County's benefit consultant to obtain competitive bids for coverage and reviewed adjusting the policy deductible. Transitioning to a new stop loss provider is expected to result in an estimated cost saving of 7.9%; however, if a new provider is selected, the County won't receive the stop loss refund for FY24 resulting in an estimated net impact of 0% for FY25. Staff recommend maintaining current deductible levels. There is potential for the current provider, Sun Life, to update their bid. If this occurs and it provides additional savings over the bid from Symetra, staff recommends staying with the current provider to achieve the best savings.



**Changes to DC Employee  
Benefits Plan 2025 Plan Year  
Changes effective 1/1/2025**

Plan Impact	Change	Reason For Consideration
1. Move members on prescriptions for Humira to Hadlima with Prescriptive	Members currently prescribed Humira to move to biosimilar equivalent Hadlima  Staff supports this change.	Estimate -\$939,651 (-89.9% on this drug) annually. A biosimilar drug, Hadlima, is now available to patients that are currently prescribed Humira. This new biosimilar is significantly less expense. Members are already moving to the new equivalent.
2. Remove Wellness staff from doc Clinic	Do not refill the vacant position and move ongoing wellness support to existing doc Clinic staff. Continue existing wellness programs under doc Clinic staff.  Staff supports this change.	Estimate -\$140,00 annually. Savings realized from reduced salary and benefits costs. Existing wellness programs and Personal Health Assessments (PHA) would be managed by doc Clinic staff.
3. Adopt standard drug formulary offered under current Pharmacy Benefits Manager (PBM) Prescriptive	Move from current custom formulary established under our previous PBM Northwest Pharmacy Servies to the standardized formulary under Prescriptive.  Staff supports this change.	Estimate -\$275,078 (-3.8%) annually. Prescriptive would manage all prescriptions under their standard formulary and provide applicable rebates accordingly.
4. Durable medical Equipment – Breast Pumps  (Optional Change)	Amending plan language under durable medical equipment to include breast pump rentals as a covered service  Staff supports this change.	Estimate +\$9,000 annually. This is an optional change recommended by PacificSource as a best practice.
5. Plan language updates  (Medical and Dental Documents Wide)	Language to be added or changed throughout the plan documents to clarify the administration of benefits, simplify plan language, or to align with PacificSource core plan language.  Staff supports language clarification and simplification with no changes to benefits.	These changes are clarification and clean-up of plan language. Not a change to the benefit or coverage.  HR is reviewing language changes with Deschutes County Legal to ensure it does not result in a change to benefits.



## BOARD OF COMMISSIONERS

# AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** October 16, 2024

**SUBJECT:** Consideration of Draft Resolutions to Assist the City and County with Land Management of Land NE of Bend (commonly referred to as Juniper Ridge)

**RECOMMENDED MOTION:**

Approve of Board Signature of Resolution.

**BACKGROUND AND POLICY IMPLICATIONS:**

During the joint meeting between Deschutes County Board of Commissioners and the Bend City Council on September 4, 2024, the governing boards agreed to establish a Temporary Safe Stay Area and work collaboratively to mitigate the public health and other issues resulting from unsanctioned camping at property northeast of the city of Bend (Juniper Ridge).

The governing boards approved the following motion:

- *Establishment of a Temporary, Safe Stay Area, with direction to staff to coordinate:
 
  - *Legal, land use/siting issues, potentially adopting joint 'orders'*
  - *Communication and outreach plan*
  - *Scoping of on-site services, leveraging existing contracts and procurement efforts with a housing connection and intensive case management, a focus on safety, and key performance metrics, including a monthly follow up for six months**
- *Full Closure of areas owned by the City and County outside of the Temporary Safe Stay Area by May 31, 2025*
- *Continued coordination on fire fuel reduction and other fire reduction strategies as part of the management plan*

To implement the above approved strategy, City staff drafted Resolution No. 2024-046. It's important to note that some of the items listed in Resolution 2024-046 may not be able to be implemented.

Commissioner Phil Chang asked County staff to draft an alternative resolution that mainly focused on providing case management services, which is Resolution No. 2024-049.

At the October 16 Board of Commissioners meeting, consideration of the draft resolutions is scheduled for a public hearing at 1:00 p.m. Members of the public are invited to testify in person or by video. Testimony will be limited to 3-minutes per person.

Key elements of Resolution No. 2024-046:

- 170-acres of property owned by the City and County northeast of the City of Bend will be designated as the “Temporary Safe Stay Area” or “TSSA” (see attached map).
- The TSSA will not be available to homeless individuals not living in vehicles.
- The TSSA is not intended to be a place for people not currently camping or sheltering on lands at Juniper Ridge.
- The County and City plan to provide the following services at the TSSA: portable toilets, handwashing stations, drinking water, and trash disposal facilities.
- The County and City plan to fund housing-focused case management services at the TSSA.
- The County and City will use land management strategies to provide a framework for rules of conduct, including property clean-up efforts and periodic security patrols.
- The County and City will coordinate on fire fuel reduction and other fire reduction strategies.
- The City will close its property east of the Burlington Northern Santa Fe Railroad tracks by May 31, 2025.
- The TSSA is intended to close no later than December 31, 2026.

Key elements of Resolution No. 2024-049:

- The County and City plan to provide the following services at the 170-acres property owned by the City and County: portable toilets, handwashing stations, drinking water, and trash disposal facilities.
- The County and City plan to fund housing-focused case management services.
- The County and City will use land management strategies to provide a framework for rules of conduct, including property clean-up efforts and periodic security patrols.
- The County and City will coordinate on fire fuel reduction and other fire reduction strategies.
- The City will close its property east of the Burlington Northern Santa Fe Railroad tracks by May 31, 2025.

Attachments:

1. Draft Resolution 2024-046
2. Draft Resolution 2024-049

**BUDGET IMPACTS:**

TBD.

**ATTENDANCE:**

Erik Kropp, Deputy County Administrator

# City/County Joint Resolution

Land Management Strategies for land NE of City of Bend (Juniper Ridge)



# Today's Format

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**Short staff presentation/Questions from BOCC**



**Public Comment – 3 min. each**

-Sometimes follow-up questions from Commissioners

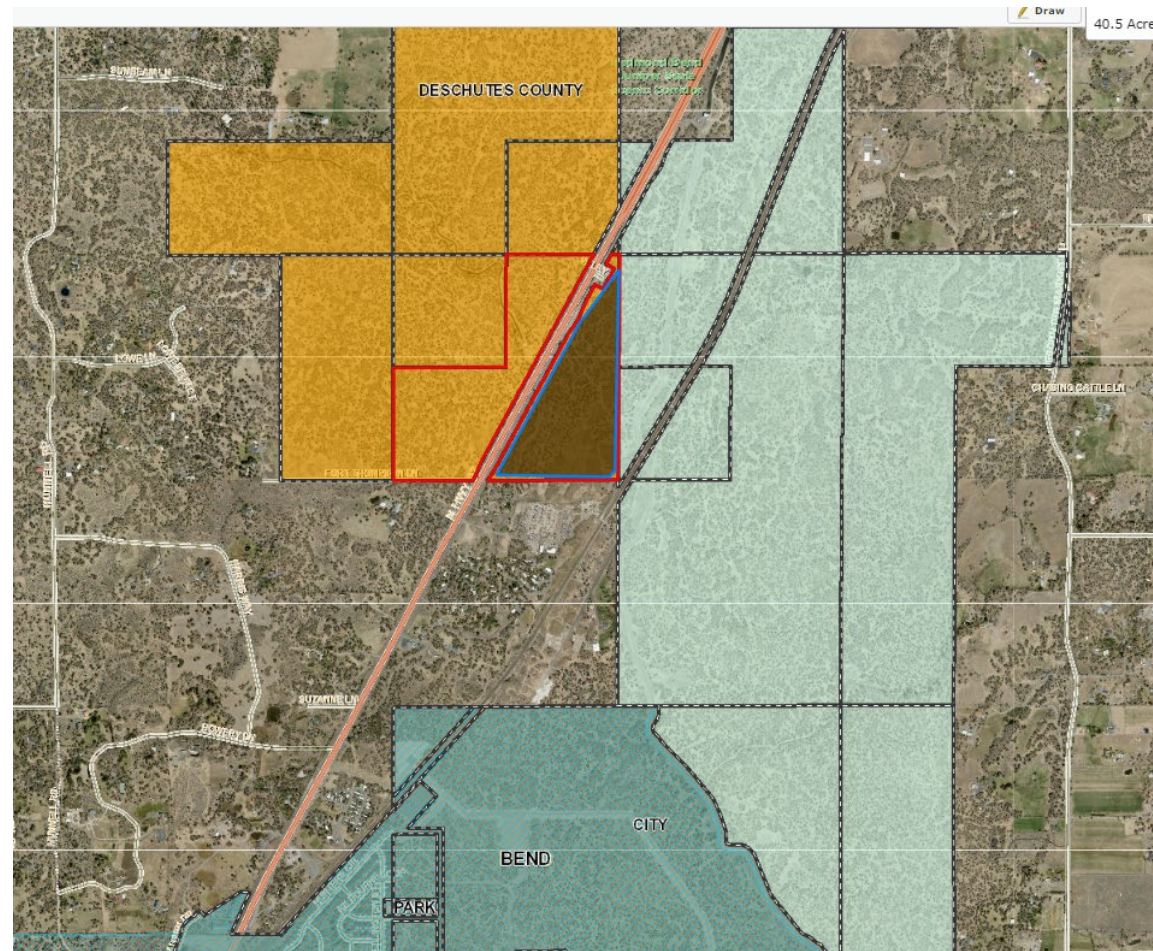


**BOCC Deliberations/Decision**

-Today or later date



# Location



# Joint Meeting on Sept. 4

Establishment of a Temporary, Safe Stay Area, with direction to staff to coordinate:

- Legal, land use/siting issues, potentially adopting joint ‘orders’
- Communication and outreach plan
- Scoping of on-site services, leveraging existing contracts and procurement efforts with a housing connection and intensive case management, a focus on safety, and key performance metrics, including a monthly follow up for six months

Full Closure of areas owned by the City and County outside of the Temporary Safe Stay Area by May 31, 2025

Continued coordination on fire fuel reduction and other fire reduction strategies as part of the management plan



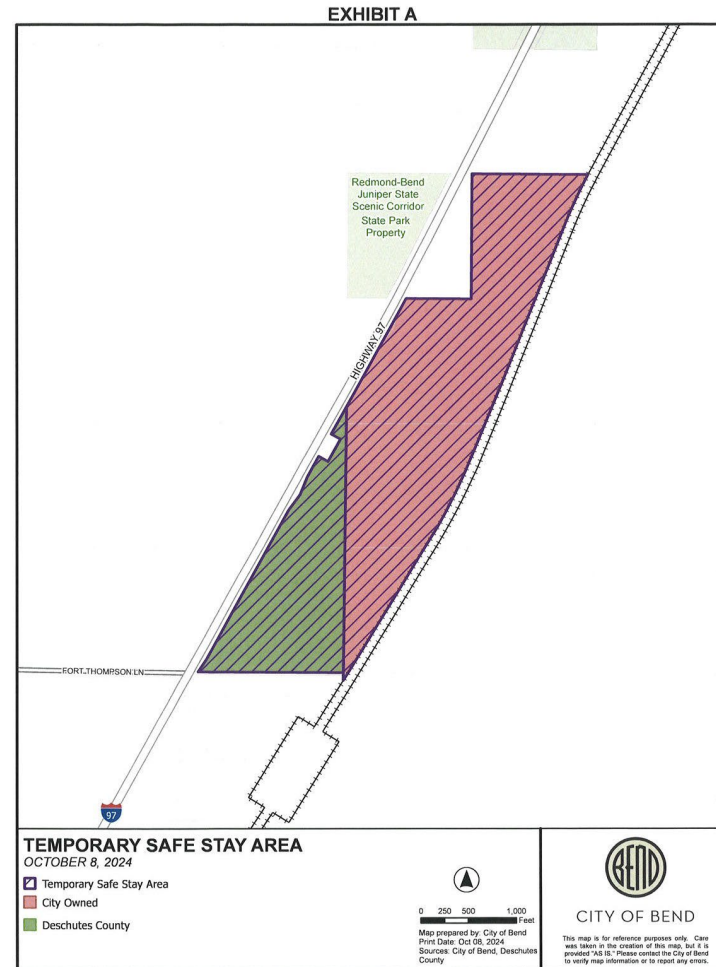


# Resolution 2024-046: TSSA on 170-acres

- Vehicle camping only
- Not for people to relocate to
- TSSA intended to close no later than 12-31-26 (enforceability questions)
- **Sanitary stations**
- **Housing-focused case management services**
- **Land mgt strategies for rules of conduct, security patrols, to address fire risk**
- **City close east-side**



# Temporary Safe Stay Area



# Resolution 2024-049: Case Mgt. Services

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- **Sanitary stations**
- **Housing-focused case management services**
- **Land mgt strategies for rules of conduct, security patrols, to address fire risk**
- **City close east-side**



---

# Thank you



**BEND CITY COUNCIL RESOLUTION NO.****DESCHUTES COUNTY RESOLUTION NO. 2024-046****A JOINT RESOLUTION OF THE BEND CITY COUNCIL AND THE BOARD OF COMMISSIONERS OF DESCHUTES COUNTY TO AUTHORIZE TEMPORARY OVERNIGHT VEHICLE CAMPING AND IMPROVE SAFETY, SANITATION, AND CASE MANAGEMENT ON PUBLICLY OWNED LAND AT JUNIPER RIDGE****Findings**

- A. Deschutes County, Oregon (“County”), and the City of Bend, an Oregon municipal corporation (“City”), are political subdivisions of the State of Oregon.
- B. The County and the City each own land in Deschutes County north of the city limits of Bend and outside the Bend urban growth boundary, adjacent to US-97 and the Burlington Northern Santa Fe Railroad tracks. This area is part of an area commonly referred to as “Juniper Ridge”. Staff estimate approximately 37 people are residing in 21 unpermitted and unauthorized campsites on the County’s property, and that there are approximately 50-60 unpermitted and unauthorized camps west of the railroad tracks and fewer than 20 campsites east of the railroad tracks on the City’s property. These numbers can fluctuate based on the season and circumstances.
- C. Camping, survival sheltering, and other overnight uses of the land without services or facilities at Juniper Ridge has resulted in unpermitted and potentially unsafe conditions, including unpermitted structures, roadways and trails, disposal of human and solid waste and debris, and other unsafe and unsanitary conditions. Unmanaged camping without appropriate facilities can pose fire danger and imperil public health and safety, both for the larger community and people seeking shelter on public land. Significant fires threatened safety and property in 2020 and 2024, in addition to smaller fires at other times, and the risk of wildland fires is extreme and increasing. Juniper Ridge has also been used as a site for illicit and unlawful dumping of garbage and vehicles, which poses a threat to health and safety, the environment, and the public, including people seeking shelter on Juniper Ridge.
- D. Unmanaged camping and unlawful access to the City’s property at Juniper Ridge has resulted in unpermitted and unsafe crossings of the Burlington Northern Santa Fe railroad tracks within the City’s property, including at crossings licensed only for the City’s own use and at unimproved crossings. Crossing of the railroad tracks poses significant safety risks for people making such unpermitted crossings, the safe operation of the railroad, and the safety of the community. Unpermitted use of the City’s licensed crossings jeopardizes the ability of the City to maintain its license to use these crossings, which are essential to the City’s access to its property at Juniper Ridge.
- E. Camping, sheltering, or otherwise using facilities intended for conveyance of irrigation water and City facilities intended for the treatment of drinking water and wastewater is a threat to public health and safety.

City Resolution No.

County Resolution No. 2024-046

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F. The County and the City are committed to addressing homelessness in the area by increasing housing, case management, and a continuum of shelter options. Both entities have provided funding for case management and other services, shelter beds, safe parking locations, and permanent and supportive housing for people experiencing homelessness. In 2021, the City adopted codes authorizing temporary overnight vehicle use and transitional housing accommodations for individuals who lack permanent or safe shelter and who cannot be placed in other low-income housing, as allowed by ORS 195.520 (formerly ORS 203.082, as amended by HB 2006, Section 6 (2021)) and ORS 197.746 (formerly ORS 446.265), referred to as “Safe Parking.” The City supports development of hundreds of units of affordable housing and shelters through its Affordable Housing Fee, Community Development Block Grants, Commercial and Industrial Construction Excise Tax, and other funding sources. There are over 250 shelter beds and temporary shelter units directly supported by the City, including 16 units at Safe Parking sites in the City.

G. The County adopted an order allowing property owners to allow overnight camping in vehicles on lands zoned for certain uses within one mile of the City of Bend and City of Redmond urban growth boundaries, as allowed by ORS 195.520 (formerly ORS 203.082, as amended by HB 2006, Section 6 (2021)), also referred to as “Safe Parking”. The County is additionally supporting the development of over 100 units of shelter and supportive housing. Both the City and County have elected officials serving on the board of the Coordinated Houseless Response Office, set up by agreement of the County and cities in Deschutes County under HB 4123 (2022), to coordinate efforts for the purpose of strengthening Central Oregon’s houseless response system.

H. Both the City and County have made efforts to improve public safety and reduce harms posed by unmanaged camping on their properties at Juniper Ridge. Beginning in 2024, the County and City have provided portable toilets, potable water, and dumpsters on its land at Juniper Ridge. The County contracts with a security contractor that has provided connections to resources and services. The City has removed approximately 131,000 pounds of solid waste, 879 discarded tires, and 39 abandoned campsites from its property at Juniper Ridge. Independent service providers are also in contact with individuals camping on the lands owned by the City and County, building relationships and providing resources and connections to more stable living situations, including shelter and permanent housing.

I. Sanitation facilities and housing-focused case management are essential to improving the risks to public safety posed by unmanaged camping.

J. The Bend City Council and Deschutes County Board of Commissioners held a joint meeting on September 5, 2024, where they discussed, among other items, Juniper Ridge Management Strategy and addressing homelessness. The Council and the Board of Commissioners unanimously agreed on a set of action items, including establishment of a Temporary Safe Stay Area on a portion of lands owned by the City and the County at Juniper Ridge, with direction to staff to coordinate legal and siting issues, communication and outreach, and scoping of on-site services including intensive case management, full closure of areas of Juniper Ridge outside the Temporary Safe Stay

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Area, continued coordination on fire fuel reduction, and allocation and leverage of county-wide resources to assist in case management and operations for the Temporary Safe Stay Area. This resolution is the first step in implementing the direction agreed to at the joint meeting.

K. ORS 195.520 enables political subdivisions of the State of Oregon to allow any public or private entity to allow overnight camping by homeless individuals living in vehicles on the property of the entity. The political subdivision may impose reasonable conditions upon offering camping space under this section, including establishing a maximum number of vehicles allowed. Under this statute, entities providing camping spaces must also provide access to sanitary facilities, including toilet, handwashing and trash disposal facilities. ORS 195.520 does not distinguish between areas inside or outside of city limits or urban growth boundaries, and does not refer to zoning.

L. Permanent improvements for homeless facilities are not allowed uses of the land at Juniper Ridge under the present zoning and development code of Deschutes County. This resolution is not intended to allow any camping by homeless individuals at Juniper Ridge other than vehicle camping as described in this resolution and implementing documents. The activities authorized by this Resolution are not intended to be permanent.

M. This resolution is not a final decision or determination by a local government concerning the goals, a comprehensive plan provision, or a land use regulation, and is not intended to be a land use decision. Neither the City’s Safe Parking nor the County’s Safe Parking programs were adopted as land use decisions and the temporary authorization for vehicle camping under this resolution follows the same legal framework as those existing programs, under ORS 195.520. It likewise is not a land use decision.

Now, therefore, based on these findings,

THE CITY COUNCIL OF THE CITY OF BEND and THE BOARD OF COMMISSIONERS OF DESCHUTES COUNTY JOINTLY RESOLVE AS FOLLOWS:

1. Temporary Safe Stay Area for Vehicles under ORS 195.520. Overnight camping by homeless individuals living in vehicles is temporarily allowed on approximately 170 acres of property owned by the City and County in the area known as Juniper Ridge, as shown on the attached Exhibit A (the “Temporary Safe Stay Area” or “TSSA”), to mitigate dangers to public health and safety resulting from unmanaged camping currently occurring on the property of each entity, as authorized by the Oregon legislature under ORS 195.520. The TSSA will not be available to homeless individuals not living in vehicles. A “vehicle” includes a car, camper, trailer, recreational vehicle, or other structure intended to be movable by towing.

2. Intent of TSSA. The TSSA is not intended to be a place for people not currently camping or sheltering on the lands at Juniper Ridge to relocate and is not approval for anyone to enter or remain in the area permanently, as further provided in paragraph 4 below. The intent of the TSSA is to mitigate and improve the health and safety risks associated with unmanaged camping, and to provide improved sanitation services and

case management to facilitate people camping at Juniper Ridge to move into safer shelter or housing.

3. Commitment for funding. The City and County commit to negotiating an intergovernmental agreement (IGA), with each party providing funds toward additional services for people who camp overnight in vehicles in the TSSA, including:

- a. Sanitary facilities, including toilet, handwashing and trash disposal facilities;
- b. Housing-focused case management services, including appropriate follow-up; and
- c. Land management strategies that provide a framework for rules of conduct including property clean-up efforts and security (see paragraphs 4 and 5 below for details).

4. Funding and duration of TSSA. The funds anticipated to be allocated to this effort originate with the American Rescue Plan Act (ARPA), and must be expended by the end of 2026. Therefore, the TSSA is intended to close no later than December 31, 2026, after which time public access, camping, and overnight vehicle use will no longer be allowed on the City and County properties. Any suspension of the TSSA by either the City or County before December 31, 2026 may occur only after consultation between the City Council and Board of County Commissioners, and then by formal action of the governing bodies.

5. Additional future agreements. City and County staff are authorized and directed to work collaboratively on agreements to leverage existing contracts and procurement efforts to expand a security presence onto the City's land west of the railroad tracks, establish case management for housing connections, at the TSSA, and engage in continued coordination on fire fuel reduction and other fire reduction strategies. Staff are further directed to develop an intergovernmental agreement, memorandum of understanding, joint administrative policies, or other regulatory approaches, to mitigate and improve safety conditions for the community and people staying in the area. These administrative actions should address, at a minimum:

- a. Enforcement and monitoring strategy;
- b. Access by emergency services and how emergency services can obtain information about where people are staying within the TSSA;
- c. Reduction in unlawful access points from US-97 to the County's property;
- d. Enforcement strategy toward remedying unlawful structures and unlawful dumping of black water and waste;
- e. Management for sanitary, handwashing, potable water, and wastewater disposal, including during winter months;

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- f. Coordination between County Counsel and the City Attorney’s Office including joint defense obligations if appropriate; and
- g. Reasonable rules describing open flame, cooking, and warming fires, and an enforcement strategy.

6. Continued services and enforcement. The City will continue and expand contracts for fuels reduction and clean-up of solid waste, debris, abandoned campsites, and abandoned vehicles on its property at Juniper Ridge. The City will develop an enforcement and monitoring strategy to enforce a prohibition on camping and other unlawful uses of its property east of the railroad tracks. The County will continue its contracts for sanitation and hygiene services, and both entities will work together on contracting for additional services including sanitation, hygiene, and housing-focused case management in the Temporary Safe Stay Area.

7. Closure of the eastern portion of the City’s property. The City will make concerted efforts to remove all people camping on the portion of its property at Juniper Ridge east of the Burlington Northern Santa Fe Railroad tracks, by May 31, 2025. The process and notice for removal will be through the City’s revised Administrative Policy on Removal of City-Owned Property Outside City Limits, with an implementation plan to provide additional advance notice and coordination with service providers for outreach to the individuals camping at Juniper Ridge.

8. Limited authorization. The allowance for overnight camping by homeless individuals living in vehicles applies only to the area identified as the TSSA. All other areas of Juniper Ridge are intended to be closed to camping, consistent with the City’s revised Administrative Policy on Removal of City-Owned Property Outside City Limits and applicable County policies on land management and encampment removal. This resolution does not authorize any other property owner to allow overnight camping by homeless individuals living in vehicles on their property, except as may be otherwise allowed by separate provisions of the Bend City Code or orders of the Board of Commissioners of Deschutes County.

9. This resolution is effective on signing by both the City and County.

Adopted by the Bend City Council on October 16, 2024.

YES:

NO:

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Melanie Kebler, Mayor

Attest:

\_\_\_\_\_  
Morgen Fry, Bend City Recorder

Approved as to form:

\_\_\_\_\_  
Mary A. Winters, City Attorney

Adopted by the Board of Commissioners for Deschutes County on October 16, 2024.

THE BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

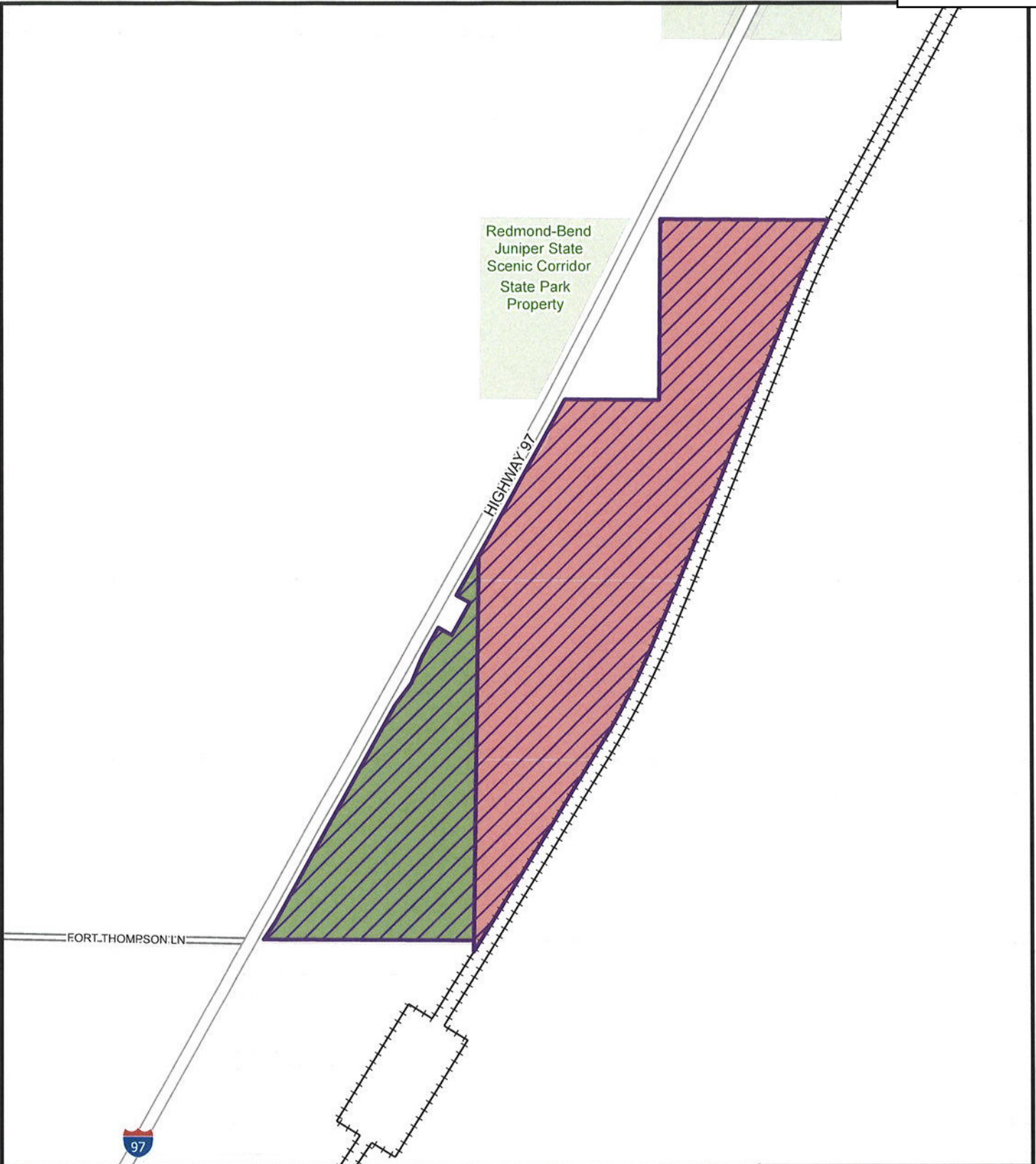
\_\_\_\_\_  
PATTI ADAIR, Chair

\_\_\_\_\_  
ANTHONY DEBONE, Vice-Chair

\_\_\_\_\_  
PHIL CHANG, Commissioner




Attest:

\_\_\_\_\_  
Deschutes County Recording Secretary



**TEMPORARY SAFE STAY AREA**

OCTOBER 8, 2024

-  Temporary Safe Stay Area
-  City Owned
-  Deschutes County



0 250 500 1,000 Feet

Map prepared by: City of Bend  
Print Date: Oct 08, 2024  
Sources: City of Bend, Deschutes County



CITY OF BEND

This map is for reference purposes only. Care was taken in the creation of this map, but it is provided "AS IS." Please contact the City of Bend to verify map information or to report any errors.

**BEND CITY COUNCIL RESOLUTION NO. XXXXX  
DESCHUTES COUNTY RESOLUTION NO. 2024-049**

**A JOINT RESOLUTION OF THE BEND CITY COUNCIL AND THE BOARD OF  
COMMISSIONERS OF DESCHUTES COUNTY TO PROVIDE CASE MANAGEMENT  
AND SANITATION SERVICES ON PUBLICLY OWNED LAND  
NORTHEAST OF BEND**

**Findings**

- A. Deschutes County, Oregon (“County”), and the City of Bend, an Oregon municipal corporation (“City”), are political subdivisions of the State of Oregon.
- B. The County and the City each own land in Deschutes County northeast of the Bend city limits and outside the Bend urban growth boundary, adjacent to US-97 and the Burlington Northern Santa Fe Railroad tracks. [This area is part of a larger area commonly referred to as “Juniper Ridge”, but the City and County are going attempt to no longer call the area with unsanctioned camping as “Juniper Ridge”]. Staff estimate approximately 37 people are residing in 21 unpermitted and unauthorized campsites on the County’s property, and that there are approximately 50-60 unpermitted and unauthorized camps west of the railroad tracks and fewer than 20 campsites east of the railroad tracks on the City’s property. These numbers can fluctuate based on the season and circumstances.
- C. Camping, survival sheltering, and other overnight uses of the land without services or facilities at the location has resulted in unpermitted and potentially unsafe conditions. The area has also been used as a site for illicit and unlawful dumping of garbage and vehicles, which poses a threat to health and safety, the environment, and the public, including people seeking shelter.
- D. The County and the City are committed to addressing homelessness in the area by increasing housing, case management, and a continuum of shelter options. Both entities have provided funding for case management and other services, shelter beds, safe parking locations, and permanent and supportive housing for people experiencing homelessness.
- E. Both the City and County have made efforts to improve public safety and reduce harms posed by unmanaged camping on their properties. Beginning in 2023, the County and City have provided portable toilets, potable water, and dumpsters. Independent service providers are also in contact with individuals camping on the lands owned by the City and County, building relationships and providing resources and connections to more stable living situations, including shelter and permanent housing.
- F. Sanitation facilities and housing-focused case management are essential to improving the risks to public safety posed by unmanaged camping.

Now, therefore, based on these findings,

THE CITY COUNCIL OF THE CITY OF BEND and THE BOARD OF COMMISSIONERS OF DESCHUTES COUNTY JOINTLY RESOLVE AS FOLLOWS:

1. Commitment for funding. The City and County commit to entering to an intergovernmental agreement each providing funds toward additional services for people living on the property, including:
  - a. Housing-focused case management services, including appropriate follow-up.
2. Funding and duration. A portion of the funds to be allocated to this effort originate with the American Rescue Plan Act (ARPA), and must be expended by the end of 2026. The City and County do not intend to provide services at the location long-term. The City and County goal is with the additional services being provided that the people currently living on the land will be relocated to an alternative site or find long-term housing solutions for the eventual closure of this land.
3. Continued services and enforcement. The City will continue and expand contracts for fuels reduction and clean-up of solid waste, debris, abandoned campsites, and abandoned vehicles on its property. The City will develop an enforcement and monitoring strategy to enforce a prohibition on camping and other unlawful uses of its property east of the railroad tracks. The County will continue its contracts for sanitation and hygiene services, and both entities will work together on contracting for additional services including sanitation, hygiene, and housing-focused case management.
4. This resolution is effective on signing by both the City and County.

Adopted by the Bend City Council on **[INSERT MEETING DATE]**.

YES:

NO:

\_\_\_\_\_  
Melanie Kebler, Mayor

Adopted by the Board of Commissioners for Deschutes County on **[INSERT MEETING DATE]**.

THE BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

\_\_\_\_\_  
PATTI ADAIR, Chair

\_\_\_\_\_  
ANTHONY DEBONE, Vice Chair

\_\_\_\_\_

PHIL CHANG, Commissioner

Attest:

\_\_\_\_\_  
Morgen Fry, Bend City Recorder

\_\_\_\_\_  
Deschutes County Recording Secretary

Approved as to form:

\_\_\_\_\_  
Mary A. Winters, Bend City Attorney

\_\_\_\_\_  
Deschutes County Counsel