



## BOARD OF COMMISSIONERS

### BOARD OF COUNTY COMMISSIONERS

9:00 AM, WEDNESDAY, SEPTEMBER 28, 2022

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

(541) 388-6570 | [www.deschutes.org](http://www.deschutes.org)

## AGENDA

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

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

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

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

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

### CALL TO ORDER

### PLEDGE OF ALLEGIANCE

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

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

**CONSENT AGENDA**

1. Consideration of Board signature on Document No. 2022-789, a Dedication Deed from Blue Elephant Storage Burgess Road LLC for Right of Way on Burgess Road
2. Consideration of Board Signature on Letters Reappointing Cody Meredith, Dan Daugherty, David Rosenberg and Jerry Thackery to the Ambulance Service Area (ASA) Committee
3. Approval of Minutes of the September 19, 2022 BOCC Meeting
4. Approval of Minutes of the September 21, 2022 BOCC Meeting

**ACTION ITEMS**

5. **9:05 AM** Consideration of Board approval and Chair signature of Document No. 2022-784, a grant agreement with the Oregon Health Authority for Behavioral Health Housing.
6. **9:25 AM** Consideration of Approval of Purchase of a Motor Grader with Auxiliary Plows.
7. **9:30 AM** Update from 17th Street Partners on collaborative work performed at NE 17th Street in Redmond
8. **9:45 AM** Deliberations: LBNW LLC Plan Amendment and Zone Change
9. **10:45 AM** Deliberations: Eden Properties Plan Amendment and Zone Change
10. **Add On** Consideration of Board signature on Order No. 2022-055, Appointing Robert Tintle as Tax Collector

**LUNCH RECESS**

**OTHER ITEMS**

*These can be any items not included on the agenda that the Commissioners wish to discuss as part of the meeting, pursuant to ORS 192.640.*

## EXECUTIVE SESSION

*At any time during the meeting, an executive session could be called to address issues relating to ORS 192.660(2)(e), real property negotiations; ORS 192.660(2)(h), litigation; ORS 192.660(2)(d), labor negotiations; ORS 192.660(2)(b), personnel issues; or other executive session categories.*

*Executive sessions are closed to the public; however, with few exceptions and under specific guidelines, are open to the media.*

## ADJOURN



Deschutes County encourages persons with disabilities to participate in all programs and activities. This event/location is accessible to people with disabilities. If you need accommodations to make participation possible, please call (541) 617-4747.

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BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: September 28, 2022

SUBJECT: Consideration of Board signature on Document No. 2022-789, a Dedication Deed from Blue Elephant Storage Burgess Road LLC for Right of Way on Burgess Road

RECOMMENDED MOTION:

Move approval of Deed of Dedication.

BACKGROUND AND POLICY IMPLICATIONS:

Summary

Traci Parker (Member of Blue Elephant Storage Burgess Road LLC), the property owner of 15777 Burgess Road, La Pine, OR 97739, applied for a Nonconforming Use Alteration and Site Plan Review in 2018 for an existing storage unit facility (File Nos. 247-18-000681-NUV/ 247-18-000682-SP REVISED). The proposal included the enlargement of the facility with additional new storage buildings and outdoor storage space. The Deschutes County Road Department required a dedication of land to extend the right-of-way 30 feet south of the Burgess Road centerline to comply with the standards under DCC 17.48A, 18.124.080(F), and 18.124.09. The following condition of approval was included in the final decision by planning staff:

- D. Prior to issuance of a building permit, the applicant shall dedicate additional right of way along the northern boundary of the subject property to provide the required right-of-way width of 30 feet from the centerline of Burgess Road pursuant to DCC 17.48A, 18.124.080(F), and 18.124.090. Applicant shall submit deed of dedication to County Road Department. Dedication deed shall be in a form acceptable to County Road Department and shall dedicate right-of-way to the public. The right-of-way shall be surveyed and monumented by a professional land surveyor according to ORS 209.250 and ORS 368.106, and the deed of dedication shall include a legal description and exhibit map prepared by the surveyor. All persons with an

ownership interest in the property subject to the road dedication shall execute the deed of dedication. Applicant shall submit a current title report verifying ownership of the property to the County Road Department prior to acceptance. Right-of-way dedication shall be in accordance with all applicable requirements of DCC 17.52. The applicant shall submit documentation to the Planning Division from the County Road Department verifying this condition has been satisfied.

Burgess Road is classified as a public Rural Collector which is owned and maintained by the County. Burgess Road extends east and west on the north side of the subject property. The figure included depicts that area (5 feet x 551.81 feet) which will be added to the right-of-way.

Recent Staff Decision

In January of 2022, the property owner applied for a Nonconforming Use Alteration and Site Plan Review (File Nos. 247-22-000009-SP, 247-22-000010-NUV). This application was to modify the 2018 decision by the relocation of one building and to modify the site parking. As the previous 2018 approval contained much of the required analysis for the proposed use, which had not yet been initiated, the recent staff decision included the same conditions of approval.

The recent land use decision became final on July 20, 2022 and Blue Elephant Storage Burgess Road, and their representation, have been coordinating with the County Road Department and Planning Division to comply with the related conditions of approval.

Next Steps

There is one Deed of Dedication before the Board for signature to satisfy Condition D of the land use decision. Upon recording of the deed, Blue Elephant Storage Burgess Road LLC shall cause for the newly-dedicated right-of-way to be monumented and for a survey to be filed with the County Surveyor’s Office by a professional land surveyor.

- Attachments: Deed of Dedication (Blue Elephant Storage Burgess Road LLC)
- Legal Description
- Burgess Road Dedication Sketch

**BUDGET IMPACTS:**

None

**ATTENDANCE:**

- Nathaniel Miller – Associate Planner
- Anthony Raguine – Senior Planner

REVIEWED  
LEGAL COUNSEL

For Recording Stamp Only

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

DEED OF DEDICATION

BLUE ELEPHANT STORAGE BURGESS ROAD LLC, an Oregon limited liability company ("Grantor") does hereby dedicate to the public for roadway and utility purposes that parcel of land specifically described and depicted in the Exhibits attached hereto and by this reference incorporated herein.

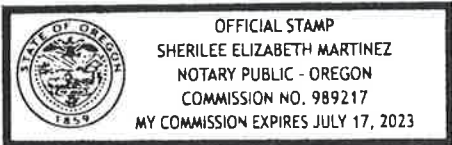
The true consideration for this conveyance is the satisfaction of a condition of land use approval referenced in Deschutes County land use files 247-22-000009-SP and 247-22-000010-NUV.

DATED this 8 day of August, 2022.

*[Handwritten Signature]*

Blue Elephant Storage Burgess Road LLC  
Traci Ann Parker, Member

STATE OF OREGON )  
County of Multnomah ) SS.



Before me, a Notary Public, personally appeared Traci Ann Parker as a member and authorized signatory on behalf of Blue Elephant Storage Burgess Road LLC and acknowledged the foregoing instrument.

Dated this 8 day of August, 2022.

*[Handwritten Signature]*

NOTARY PUBLIC FOR OREGON  
My Commission Expires: July 17, 2023

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

\_\_\_\_\_  
PATTI ADAIR, CHAIR

\_\_\_\_\_  
ANTHONY DEBONE, VICE CHAIR

ATTEST:

\_\_\_\_\_  
PHIL CHANG, COMMISSIONER

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

STATE OF OREGON        )  
                                  ) SS.  
County of Deschutes    )

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_

## BURGESS ROAD DEDICATION

ACROSS PART OF MAP AND TAX LOT: 221004B000141

That part of that certain tract of land described in deed to Blue Elephant Storage Burgess Road LLC, an Oregon limited liability company, in Document No. 2020-58879, Deschutes County Official Records, located in the Northwest one-quarter of Section 4, Township 22 South, Range 10 East of the Willamette Meridian, Deschutes County, Oregon, lying North of a line that is 30 feet South of and parallel with the centerline of Burgess Road, said tract of land more particularly described as follows:

Beginning at the Northeast corner of said Blue Elephant Storage Burgess Road LLC tract, said point lying at the intersection of the North-South centerline of said Section 4 with the South right-of-way line of Burgess Road, a 50-foot right of way; thence S0°02'37"E 5.00 feet along the East line of said Blue Elephant Storage Burgess Road LLC tract to a point that is 30.00 feet Southerly from, when measured at right angles to the centerline of said Burgess Road; thence N89°38'00"W, parallel with the centerline of Burgess Road, 551.81 feet to a point on the East right-of-way line of Lechner Lane, a 60-foot right of way; thence N0°14'21"E 5.00 feet along said East right-of-way line to a point on the South right-of-way line of said Burgess Road; thence S89°38'00"E 551.78 along said South right-of-way line to the point of beginning.

The area encompassed by this description is 2,759 square feet, more or less.  
The basis of bearings for this description is the plat of LECHNER ACRES.

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR



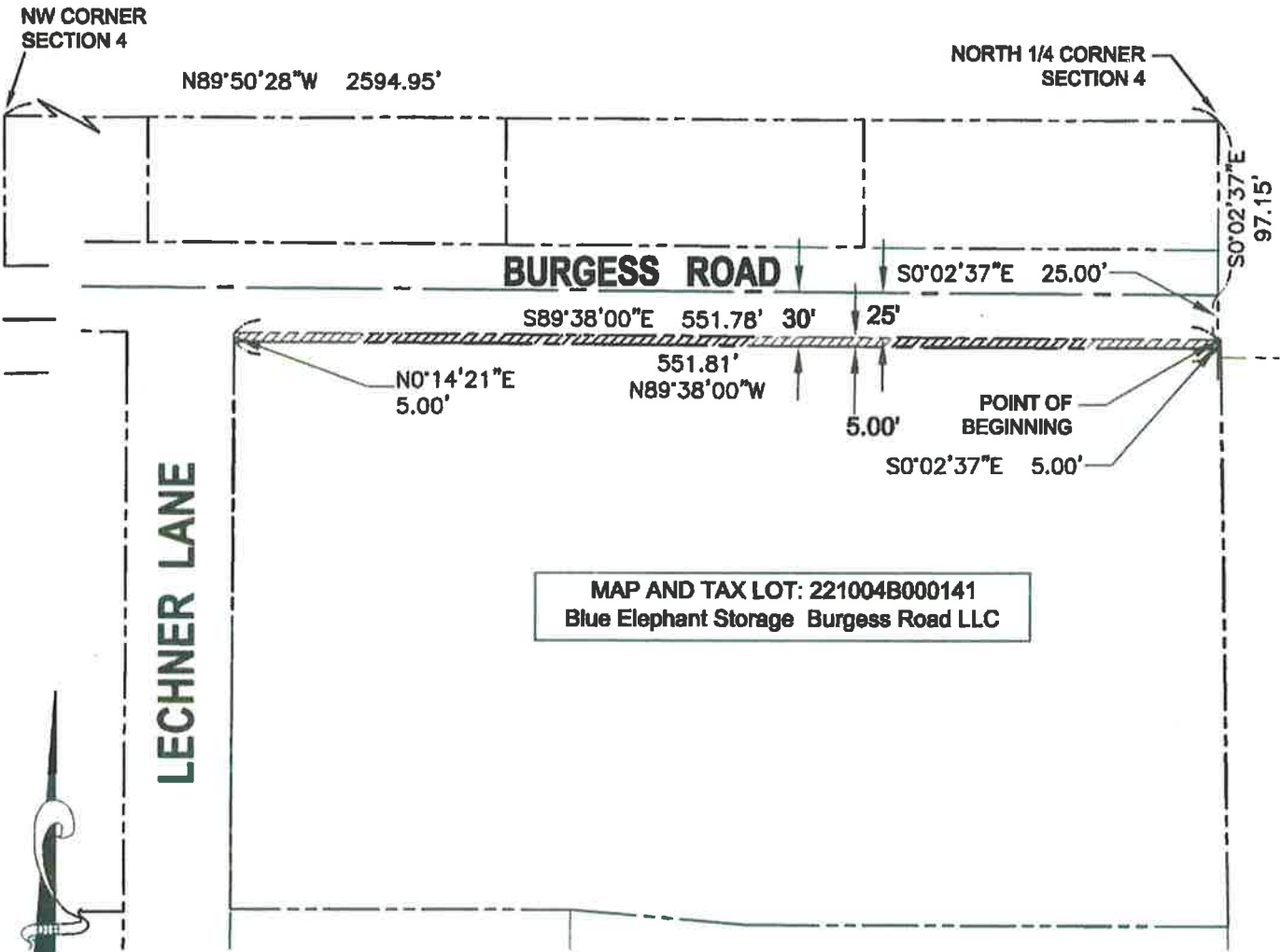
OREGON  
JANUARY 15, 1987  
DANIEL T. BURTON  
#2248

RENEWS 12/31/23



# BURGESS ROAD DEDICATION SKETCH

ACROSS A TRACT OF LAND IN THE NORTHWEST ONE-QUARTER OF SECTION 4, TOWNSHIP 22 SOUTH, RANGE 10 EAST OF THE WILLAMETTE MERIDIAN, DESCHUTES COUNTY OREGON



MAP AND TAX LOT: 221004B000141  
Blue Elephant Storage Burgess Road LLC

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

OREGON  
JANUARY 15, 1987  
DANIEL T. BURTON  
2248

RENEWS 12/31/23

SCALE: 1"=100'

SCALE	1"=100'	DATE	07/25/22	BURGESS RD. DEDICATION	DRAWN BY	DTB	ORDER NO.	9680
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SUN COUNTRY ENGINEERING & SURVEYING, INC.  
920 SE ARMOUR ROAD BEND, OREGON 97702 PHONE 382-8882



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: September 28, 2022

SUBJECT: Consideration of Board approval and Chair signature of Document No. 2022-784, a grant agreement with the Oregon Health Authority for Behavioral Health Housing.

RECOMMENDED MOTION: Move approval of Chair signature of Document No. 2022-784, grant agreement #177672 with the Oregon Health Authority.

BACKGROUND AND POLICY IMPLICATIONS:

OHA #177672 provides \$3,901,470.64 of funding to Deschutes County Health Services (DCHS), for increasing behavioral health housing. Funding will support development of a 16-bed adult facility in Redmond, and expand residential treatment capacity for children and youth. The agreement is effective through April 1, 2024.

Deschutes County Behavioral Health, along with twenty-seven diverse regional entities, participated in the 2021 Behavioral Health Housing and Residential Treatment Planning Grant for the Central Oregon region. Planning partners demonstrated significant alignment around addressing the service needs of adults and youth with co-occurring behavioral health and substance use diagnoses, providing culturally and linguistically appropriate services, and equitable allocation of treatment beds, both demographically and geographically. Specifically called out in the plan was the need to build a secure residential treatment facility for adults and residential housing for youth and children to address the critical shortages.

Oregon State Legislature appropriated \$100,000,000 to be distributed to community mental health programs (CMHP) for the purpose of increasing behavioral health housing. The goals of this funding are to provide an array of supported housing and residential treatment, relieve bottlenecks in the continuum of care, and address health inequities and housing access disparities, among others.

DCHS has been awarded a not to exceed amount of \$3,901,470.64. Funding is budgeted as follows:

\$3,000,000 of funding will be granted to BestCare, as matching funds, to support application for an OHA Secure Residential Treatment Facility (SRTF). The SRTF will be a 16-bed facility, located in Redmond, to serve the Aid and Assist, Civil Commitment, and Psychiatric Security Review Board (PSRB) population in the Central Oregon region. Funding will be granted upon notice of award. The application for the SRTF has been submitted and is currently under review. Award notifications are anticipated no later than December 31, 2022.

\$850,000 may be awarded, via requests for proposals (RFPs), to up to two providers to expand capacity to serve children/youth requiring residential behavioral health treatment.

These funds address Regional Health Improvement Plan (RHIP), Strategic Plan and Housing Planning Grant Goals, as follows:

- 1. RHIP: Behavioral Health: Increase Access & Coordination – Improve availability of behavioral health providers in marginalized areas of the region (La Pine, Madras, Redmond).
- 2. DCHS Strategic Plan: Increase Access to Culturally Appropriate Services; Use Recovery Models that Work; Serve People in Least Restrictive Environments
- 3. Regional Housing Planning Grant: Identified critical need for secure residential treatment facility to address the needs of Deschutes, Crook and Jefferson County adults and children with serious mental illness. Focus on acute populations: Aid & Assist, PSRB and Civil Commitment eligible individuals and youth boarding in the ED in need of residential care.

\$51,470.64 administrative costs. Deschutes County Health Services will primarily serve as a pass-thru entity, and as such, budget on these funds will be excluded from County and department indirect allocation. Grant funds do allow for operational and administrative costs associated with managing the housing. The \$51,470.64 (1.3%) of grant funds will be used to offset administrative costs for developing the RFP, contracting, reporting and oversight. Quarterly financial reporting is required.

**BUDGET IMPACTS:**

\$3,901,470.64 one-time funding. If approved, a budget resolution will be forthcoming.

**ATTENDANCE:**

- Janice Garceau, Director Behavioral Health
- Kara Cronin, Behavioral Health Program Manager
- Shannon Brister, Behavioral Health Program Manager

**DESCHUTES COUNTY DOCUMENT SUMMARY**

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

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

**Date:**

**Department:**

**Contractor/Supplier/Consultant Name:**

**Contractor Contact:**

**Type of Document:** Grant Agreement #177672

**Goods and/or Services:** This agreement provides a maximum of \$3,901,470.64 funding to Deschutes County Health Services (DCHS), for increasing behavioral health housing. Goals of funding are to provide supporting housing, residential treatment, relieve bottlenecks in continuum of care, and address health inequities. The agreement is effective through April 1, 2024.

**Background & History:** The Oregon State Legislature, for the biennium ending June 30, 2023, appropriated \$100,000,000 out of the General Fund for increasing behavioral health housing in House Bill 5202, section 364 and the Oregon State Legislature’s Joint Committee On Ways and Means stated in the bill’s Budget Report and Measure Summary that the Oregon Health Authority (OHA) was appropriated money “for distribution to community mental health programs and related administrative support in OHA. OHA issued a request for applications and intends to disburse grant awards.

**Activities:** Each of the following are eligible program activities and Grant funds may be expended for the costs of such activities, if such costs are in accordance with the budget approved by OHA.

- a. Repurpose or build new secure residential treatment facilities, residential treatment homes, adult foster homes, supported housing units, and supportive housing units.
- b. Operational and administrative costs to manage housing.
- c. Housing support services;
- d. Planning, coordination, siting, purchasing buildings/land (pre-build or renovation activities);
- e. Subsidies for short-term shelter beds;
- f. Long-term rental assistance;
- g. Outreach and engagement items such as food or clothing to meet immediate needs for houseless individuals.

Funds will be disbursed in accordance with Exhibit A, part 2. Data collection and reporting is required.

**Agreement Starting Date:**

**Ending Date:**

**Total Payment:**

Insurance Certificate Received (check box)  
Insurance Expiration Date:

Check all that apply:

- Not Applicable
- RFP, Solicitation or Bid Process
- Informal quotes (<\$150K)
- Exempt from RFP, Solicitation or Bid Process (specify – see DCC §2.37)

**Funding Source:** (Included in current budget?  Yes  No

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

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

Special conditions attached to this grant:

Deadlines for reporting to the grantor: Report aggregate information in accordance with established deadlines.

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

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

**Departmental Contact and Title:** Janice Garceau, Deputy Director

**Phone #:** 541-322-7664

**Deputy Director Approval:**

**Acting Director Approval:**

**Signature:** 

**Signature:**   
Erik Kropp (Sep 20, 2022 17:13 PDT)

**Email:** janice.garceau@deschutes.org

**Email:** erik.kropp@deschutes.org

**Title:** Behavioral Health Director

**Title:** Interim Health Services Director

**Company:** Deschutes County Health Services

**Company:** Deschutes County

**Distribution of Document:** Grace Justice Evans at Health Services.

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**Official Review:**

County Signature Required (check one):  BOCC  Director (if <\$50K)

Administrator (if >\$50K but <\$150K; if >\$150K, BOCC Order No. \_\_\_\_\_)

Legal Review \_\_\_\_\_ Date \_\_\_\_\_

Document Number: 2022-784

**Grant Agreement Number 177672****STATE OF OREGON  
INTERGOVERNMENTAL GRANT AGREEMENT**

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

This Agreement is between the State of Oregon, acting by and through Oregon Health Authority (OHA) and the OHA's Health System Division:

**Health Systems Division  
500 Summer St SE, E86  
Salem, Oregon 97301**

hereinafter referred to as "OHA," and

**Deschutes County  
2577 NE Courtney Drive  
Bend, Oregon 97701  
Attention: Janice Garceau  
Telephone: 541-322-7664  
E-mail address: [Janice.garceau@deschutes.org](mailto:Janice.garceau@deschutes.org)**

hereinafter referred to as "Recipient."

**RECITALS**

WHEREAS, the Oregon State Legislature, for the biennium ending June 30, 2023, appropriated \$100,000,000 out of the General Fund for increasing behavioral health housing in House Bill 5202, section 364.

WHEREAS, the Oregon State Legislature's Joint Committee On Ways and Means stated in the bill's Budget Report and Measure Summary that the OHA was appropriated money "for distribution to community mental health programs (CMHP) and related administrative support in

OHA. The goals of this funding are to provide an array of supported housing and residential treatment, relieve bottlenecks in the continuum of care, and address health inequities and housing access disparities, among others.”

WHEREAS, the OHA issued a Request for Applications to the CMHPs. The OHA has reviewed all the applications received and intends to disburse the grant awards. NOW, THEREFORE, in consideration of the premises, covenants and agreements contained herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**1. Effective Date and Duration.**

This Agreement shall become effective on the date this Agreement has been fully executed by every party and, when required, approved by the Oregon Department of Justice (the “Effective Date”). Unless extended or terminated earlier in accordance with its terms, this Agreement shall expire on **April 1, 2024**. Agreement termination shall not extinguish or prejudice OHA’s right to enforce this Agreement with respect to any default by Recipient that has not been cured.

**2. Agreement Documents.**

a. This Agreement consists of this document and includes the following listed exhibits and attachments, which are incorporated into this Agreement:

- (1) Exhibit A, Part 1: Program Description
- (2) Exhibit A, Part 2: Payment and Financial Reporting
- (3) Exhibit A, Part 3: Special Terms and Conditions (including Attachment 1)
- (4) Exhibit B: Standard Terms and Conditions
- (5) Exhibit C: Insurance Requirements
- (6) Exhibit D: Approved Budget

There are no other Agreement documents unless specifically referenced and incorporated into this Agreement.

b. In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The documents comprising this Agreement shall be in the following descending order of precedence: this Agreement less all exhibits, Exhibits B, A (including Exhibit D to the extent incorporated therein), and C.

**3. Grant Disbursement Generally.**

The maximum not-to-exceed amount payable to Recipient under this Agreement, which includes any allowable expenses, is **\$3,901,470.64**. OHA will not disburse grant funds to Recipient in excess of the not-to-exceed amount and, notwithstanding any other provision of this Agreement, will not disburse grant funds until this Agreement has been signed by all Recipient(s) and, when required, approved by the Oregon Department of Justice. OHA will disburse the grant to Recipient as described in Exhibit A.

**4. Contractor or Subrecipient Determination.**

In accordance with the State Controller's Oregon Accounting Manual, policy 30.40.00.104, OHA's determination is that:

Recipient is a subrecipient       Recipient is a contractor       Not applicable

5. Catalog of Federal Domestic Assistance (CFDA) #(s) of federal funds to be paid through this Agreement: N/A

6. **Recipient Data and Certification.**

a. **Recipient Information.** Recipient shall provide the information set forth below.

**PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION**

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

Street address: 1300 NW Wall Street

City, state, zip code: Bend, OR 97703

Email address: janice.garceau@deschutes.org; cc: grace.evans@deschutes.org

Telephone: ( ) 541-322-7500 Facsimile: ( ) 541-322-7565

**Business Designation:** (Check one box):

- Professional Corporation       Nonprofit Corporation       Limited Partnership  
 Limited Liability Company       Limited Liability Partnership       Sole Proprietorship  
 Corporation       Partnership       Other Government Agency

**Recipient Proof of Insurance.** Recipient shall provide proof of all insurance listed and required by Exhibit C in accordance with the deadline established in Exhibit C, Section 8.

b. **Certification.** Without limiting the generality of the foregoing, by signature on this Agreement, each signatory for Recipient hereby certifies under penalty of perjury that:

- (1) Recipient is in compliance with all insurance requirements in Exhibit C of this Agreement and Recipient shall deliver to the OHA Agreement Administrator (see page 1 of this Agreement) the required Certificate(s) of Insurance in accordance with Exhibit C, Section 8. By certifying compliance with all insurance as required by this Agreement, Recipient acknowledges it may be found in breach of the Agreement for failure to obtain required insurance. Recipient may also be in breach of the Agreement for failure to provide Certificate(s) of Insurance as required and to maintain required coverage for the duration of the Agreement;
- (2) The information shown in Section 6a. "Recipient Information", is Recipient's true, accurate and correct information;



- (3) To the best of the Recipient's knowledge, Recipient has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts;
  
- (4) Recipient is not subject to backup withholding because:
  - (a) Recipient is exempt from backup withholding;
  - (b) Recipient has not been notified by the IRS that Recipient is subject to backup withholding as a result of a failure to report all interest or dividends; or
  - (c) The IRS has notified Recipient that Recipient is no longer subject to backup withholding;and
  
- (5) Recipient Federal Employer Identification Number (FEIN) or Social Security Number (SSN) provided is true and accurate. If this information changes, Recipient shall provide OHA with the new FEIN or SSN within 10 days.

**RECIPIENT, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT RECIPIENT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.**

7. **Signatures.** This Agreement and any subsequent amendments may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement and any amendments so executed shall constitute an original. Copies of signature by facsimile, electronic scan, or other electronic means will be considered original signatures.

**Deschutes County**

**By:**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**State of Oregon acting by and through its Oregon Health Authority**

**By:**

\_\_\_\_\_  
Authorized Signature

Mick Mitchell \_\_\_\_\_  
Printed Name

Director of Business Operations \_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Approved by: Director, OHA Health Systems Division**

**By:**

\_\_\_\_\_  
Authorized Signature

Margie Stanton \_\_\_\_\_  
Printed Name

Director \_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Approved for Legal Sufficiency:**

Via e-mail by Wendy Johnson, Assistant Attorney General August 24, 2022; email in agreement file.

## EXHIBIT A

### Part 1 Program Description

1. **Eligible Program Activities:** Each of the following are eligible program activities and Grant funds may be expended for the costs of such activities, if such costs are in accordance with Recipient's budget approved by OHA, which is attached to this Agreement as Exhibit D, as it may be revised by Recipient and approved in writing from time to time by OHA.

- a. Repurpose or build new secure residential treatment facilities, residential treatment homes, adult foster homes, supported housing units, and supportive housing units.
- b. Operational and administrative costs to manage housing
- c. Housing support services
- d. Planning, coordination, siting, purchasing buildings/land (pre-build or renovation activities)
- e. Subsidies for short-term shelter beds
- f. Long-term rental assistance
- g. Outreach and engagement items such as food or clothing to meet immediate needs for houseless individuals

### 2. Reporting Requirements

#### a. Monthly Reports.

- (1) Recipient shall prepare and electronically submit written monthly compliance reports to [hsd.contracts@oha.oregon.gov](mailto:hsd.contracts@oha.oregon.gov) describing the grant activities and progress to OHA if OHA is providing grant funds in the amount of \$100,000 or more that are to be used for the purchase or renovation of real property and the Recipient is in the property acquisition, construction, or redevelopment phases of the Project. Reports must be prepared using forms and procedures prescribed by OHA. Forms are located at <http://www.oregon.gov/OHA/HSD/AMH/Pages/Reporting-Requirements.aspx>, and the procedures described in "HB 5202".
- (2) Reports are due to OHA HSD on the 15<sup>th</sup> of the month for the previous month. The first report is due 60 days after the execution of this Agreement.

**b. Quarterly Reports.**

- (1) Recipient shall prepare and electronically submit written quarterly reports that describe the grant activities for the quarter and any other information that OHA may reasonably require
- (2) Reports are due to OHA HSD no later than April 15 (January 1-March 31), July 15 (April 1- June 30), October 15 (July 1-September 30), and January 15 (October 1-December 31) each year.
- (3) Reports shall demonstrate OHA HSD requirements of the continued use of property for the agreed purpose as defined in any Declaration of Restrictive Covenants executed and all other documents reasonably necessary to secure the performance of this Agreement, as determined by the Social Determinants of Health team of OHA.
- (4) Reports shall provide quarterly data as OHA HSD requests, including but not limited to bed/unit/client capacity by property/facility with their utilization rates and data on clients served by property/facility. OHA will provide the reporting form and instructions for completion and submission of this quarterly compliance report. Recipient may be required to provide capacity and utilization rates every 60 days or more frequently as requested by OHA HSD.

**Exhibit A**  
**Part 2**  
**Payment and Financial Reporting**

**1. Payment and Financial Reporting.**

- a.** OHA no longer issues paper checks. To receive grant funding, Recipient must enroll in Electronic Funds Transfer (EFT), also known as direct deposit. To enroll, Recipient must submit a completed Direct Deposit Authorization Form found with OHA. If Recipient already has EFT set up for any type of payment that comes from the Oregon Health Authority, Recipient should not send in another form. Recipient may contact the EFT Coordinator at (503) 945-5710 for technical assistance. Due to the confidential nature of bank account information, Recipient should only provide bank information to the EFT Coordinator or OHA Financial Services.
- b.** OHA will grant funds to Recipient, subject to the following:
- i. Grant funds may be expended only for costs that are directly and reasonably related to Eligible Program Activities provided under this Agreement and in accordance with the terms and conditions of this Agreement.
  - ii. Grant funds may be expended only for costs in accordance with Recipient's budget approved by OHA, which is attached to this Agreement as Exhibit D, as it may be revised by Recipient and approved in writing from time to time by OHA.
  - iii. Grant funds may not be used to supplant other funding sources.
  - iv. Grant funds may be expended for travel-related costs only in accordance with the requirements of the Oregon Accounting Manual applicable to travel-related costs, as the same may be amended from time to time.
  - v. Grant funds may only be used to cover Eligible Program Activities incurred during the period beginning from the Effective Date and ending December 31, 2023. A cost is considered to have been incurred if Recipient has incurred an obligation (as defined below) with respect to such cost by December 31, 2023. An "obligation" is an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment.
  - vi. Grant funds awarded to Recipient may be adjusted among the Eligible Program Expenses as shown in Exhibit D up to 20%, without prior written approval by OHA, but Recipient shall promptly notify OHA in writing of such adjustment.
  - vii. Notwithstanding Section 1.b.vi. of this Exhibit A, Part 2, Grant funds may be used for administrative program costs up to but not to exceed 10%.
- c.** OHA will disburse the grant funds to Recipient upon the Effective Date.

- d. Recipient must complete an “Oregon Health Authority Social Determinants of Health Expenditure Report” located at: <https://www.oregon.gov/OHA/HSD/AMH/Pages/Reporting-Requirements.aspx>. These reports must detail the use of grant fund expenditures with declining balances for each budget line and be submitted to OHA each quarter on the following schedule:

<b>Fiscal Quarter</b>	<b>Due Date</b>
First: July 1 – September 30	October 30
Second: October 1 – December 31	January 30
Third: January 1 – March 31	April 30
Fourth: April 1 – June 30	August 20

**EXHIBIT A****Part 3****Special Terms and Conditions**

- 1. Real Property Purchase, Renovation, or Improvement.** Before grant funds in the amount of \$100,000 and above, paid to Recipient under this Agreement, are to be used for purchase or renovation of real property, Recipient shall notify OHA and subsequently execute all documents reasonably necessary to secure the real property funded with this Agreement, as determined by the Social Determinants of Health team of OHA, including but not limited to a Declaration of Restrictive Covenant for each property, of substantially the form attached hereto as **Attachment 1**. The obligations described in the documents executed under this Exhibit A Part 3, shall continue until the expiration term in such documents, and the parties agree such terms are not merged with the term of the Agreement expiration, i.e., on April 1, 2024.

## **EXHIBIT B**

### **Standard Terms and Conditions**

#### **1. Governing Law, Consent to Jurisdiction.**

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between OHA or any other agency or department of the State of Oregon, or both, and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a consent by the State of Oregon to the jurisdiction of any court or a waiver by the State of Oregon of any form of defense to or immunity from any Claim, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States, or otherwise. Recipient hereby consents to the exclusive jurisdiction of such courts, waives any objection to venue, and waives any claim that any such forum is an inconvenient forum.

#### **2. Compliance with Law.**

Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Recipient and this Agreement. Without limiting the generality of the foregoing: (i) the Recipient shall comply with Health Insurance Portability and Accountability Act and the federal regulations implementing the Act (collectively referred to as HIPAA) and 42 CFR Part 2 to the extent they are applicable to the services provided by the Recipient; and (ii) no grant funds may be used for any harm reduction activities that would violate Oregon's drug paraphernalia law, ORS 475.525, including but not limited to the purchase or delivery of safe smoking supplies, drug testing strips, or devices used to prepare controlled substances, unless the Recipient maintains documentation that demonstrates the activities fall within an exemption under ORS 475.525(4) or (5), or the Recipient is a syringe service program providing sterile needles and syringes and other items as part of their activities, in accordance with ORS 475.757. Failure to comply with any of the foregoing requirements is grounds for termination of the grant.

#### **3. Independent Parties; Conflict of Interest.**

- a. Recipient is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.
- b. If Recipient is currently performing work for the State of Oregon or the federal government, Recipient by signature to this Agreement, represents and warrants that Recipient's participation in this Agreement creates no potential or actual conflict of interest as defined by ORS Chapter 244 and that no statutes, rules or regulations of the State of Oregon or federal agency for which Recipient currently performs work would prohibit Recipient's participation under this Agreement. If disbursement under this Agreement is to be charged against federal funds, Recipient certifies that it is not currently employed by the federal government.

#### **4. Grant Funds; Payments.**



- a. Recipient is not entitled to compensation under this Agreement by any other agency or department of the State of Oregon. Recipient understands and agrees that OHA's payment of grant funds under this Agreement is contingent on OHA receiving appropriations, limitations, allotments and other expenditure authority sufficient to allow OHA, in the exercise of its reasonable administrative discretion, to pay the grant funds to Recipient as set forth in this Agreement.
- b. **Disbursement Method.** Disbursements under this Agreement will be made by Electronic Funds Transfer (EFT) and shall be processed in accordance with the provisions of OAR 407-120-0100 through 407-120-0380 or OAR 410-120-1260 through OAR 410-120-1460, as applicable, and any other OHA Oregon Administrative Rules that are program-specific to the billings and payments. Upon request, Recipient must provide its taxpayer identification number (TIN) and other necessary banking information to receive EFT payment. Recipient must maintain at its own expense a single financial institution or authorized payment agent capable of receiving and processing EFT using the Automated Clearing House (ACH) transfer method. The most current designation and EFT information will be used for all disbursements under this Agreement. Recipient must provide this designation and information on a form provided by OHA. In the event that EFT information changes or the Recipient elects to designate a different financial institution for the receipt of any payment made using EFT procedures, Recipient will provide the changed information or designation to the EFT Coordinator identified in Exhibit A, Part 2, Section 1.

## 5. **Recovery of Overpayments.**

Any funds disbursed to Recipient under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") or that remain unexpended on termination or expiration of this Agreement ("Unexpended Funds") must be returned to OHA. Recipient shall return all Misexpended Funds to OHA promptly after OHA's written demand and no later than 15 days after OHA's written demand. Recipient shall return all Unexpended Funds to OHA within 14 days after the termination or expiration of this Agreement, as applicable. OHA, in its sole discretion, may recover Misexpended Funds or Unexpended Funds by withholding from payments due to Recipient such amounts, over such periods of time, as are necessary to recover the amount of the Misexpended Funds or Unexpended Funds. If Recipient objects to the amount withheld or proposed to be withheld, Recipient shall notify OHA that it wishes to engage in dispute resolution in accordance with Section 13 of this Exhibit.

## 6. **Ownership of Work Product.** Reserved.

## 7. **Contribution.**

If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense

and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which the State is jointly liable with the Recipient (or would be if joined in the Third Party Claim), the State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Recipient in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the Recipient on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the State on the one hand and of the Recipient on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

With respect to a Third Party Claim for which the Recipient is jointly liable with the State (or would be if joined in the Third Party Claim), the Recipient shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the State in such proportion as is appropriate to reflect the relative fault of the Recipient on the one hand and of the State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Recipient on the one hand and of the State on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Recipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

Recipient shall take all reasonable steps to cause its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Recipient's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.

## 8. **Default; Remedies; Termination.**

- a. Default by Recipient. Recipient shall be in default under this Agreement if:
- (1) Recipient institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or

- (2) Recipient no longer holds a license or certificate that is required for Recipient to perform its obligations under this Agreement and Recipient has not obtained such license or certificate within 14 calendar days after OHA's notice or such longer period as OHA may specify in such notice; or
  - (3) Recipient fails to return Misexpended Funds or Unexpended Funds in accordance with Section 5 of this Exhibit B; or
  - (4) Recipient commits any material breach or default of any covenant, warranty, obligation or agreement under this Agreement, fails to perform any obligation under this Agreement within the time specified herein or any extension thereof, or so fails to pursue performance of any obligation as to endanger Recipient's performance under this Agreement in accordance with its terms, and such breach, default or failure is not cured within 14 calendar days after OHA's notice, or such longer period as OHA may specify in such notice.
- b. OHA's Remedies for Recipient's Default. In the event Recipient is in default under Section 8.a., OHA may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to:
- (1) termination of this Agreement under Section 8.e.(2);
  - (2) withholding all or part of monies not yet disbursed by OHA to Recipient;
  - (3) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief; or
  - (4) exercise of its right of recovery of Misexpended Funds or Unexpended Funds under Section 5 of this Exhibit B.

These remedies are cumulative to the extent the remedies are not inconsistent, and OHA may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If a court determines that Recipient was not in default under Section 8.a., then Recipient shall be entitled to the same remedies as if this Agreement was terminated pursuant to Section 8.e.(1).

- c. Default by OHA. OHA shall be in default under this Agreement if OHA commits any material breach or default of any covenant, warranty, or obligation under this Agreement, and such breach or default is not cured within 30 calendar days after Recipient's notice or such longer period as Recipient may specify in such notice.
- d. Recipient's Remedies for OHA's Default. In the event OHA terminates this Agreement under Section 8.e.(1), or in the event OHA is in default under Section 8.c. and whether or not Recipient elects to exercise its right to terminate this Agreement under Section 8.e.(3), Recipient's sole remedy will be a claim for payment of grant funds for costs or expenses incurred and for which payment is authorized by this Agreement. In no event shall OHA be liable to Recipient for any expenses related to termination of this Agreement or for anticipated profits or loss.
- e. Termination.

- (1) OHA's Right to Terminate at its Discretion. At its sole discretion, OHA may terminate this Agreement:
  - (a) For its convenience upon 30 days' prior written notice by OHA to Recipient;
  - (b) Immediately upon written notice if OHA fails to receive funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow OHA, in the exercise of its reasonable administrative discretion, to pay the grant funds to Recipient as set forth in this Agreement;
  - (c) Immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that OHA's support of the program under this Agreement is prohibited or OHA is prohibited from paying for such support from the planned funding source; or
  - (d) Immediately upon written notice to Recipient if there is a threat to the health, safety, or welfare of any person receiving funds or benefitting from services under this Agreement, including any Medicaid Eligible Individual, under its care.
- (2) OHA's Right to Terminate for Cause. In addition to any other rights and remedies OHA may have under this Agreement, OHA may terminate this Agreement immediately upon written notice to Recipient, or at such later date as OHA may establish in such notice, if Recipient is in default under Section 8.a.
- (3) Recipient's Right to Terminate for Cause. Recipient may terminate this Agreement upon 30 days' prior written notice to OHA or at such later date as Recipient may establish in such notice, if OHA is in default under Section 8.c. and OHA fails to cure such default within 30 calendar days after OHA receives Recipient's notice or such longer period as Recipient may specify in such notice.
- (4) Mutual Termination. This Agreement may be terminated immediately upon mutual written consent of the parties or at such other time as the parties may agree in the written consent.
- (5) Return of Property. Upon termination of this Agreement for any reason whatsoever, Recipient shall immediately deliver to OHA all of OHA's property that is in the possession or under the control of Recipient.
- (6) Effect of Termination. Upon termination of this Agreement, Recipient shall immediately cease all activities under this Agreement unless, in a written notice issued by OHA, OHA expressly directs otherwise.

## 9. Insurance.

Recipient shall maintain insurance as set forth in Exhibit C, attached hereto.

## 10. Records Maintenance, Access.

Recipient shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Recipient shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of Recipient, whether in paper, electronic or other form, that are pertinent to this Agreement, in such a manner as to clearly document Recipient's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of Recipient whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." Recipient acknowledges and agrees that OHA and the Secretary of State's Office and the federal government and their duly authorized representatives shall have access to all Records to perform examinations and audits and make excerpts and transcripts. Recipient shall retain and keep accessible all Records for the longest of:

- a. Six years following final payment and termination of this Agreement;
- b. The period as may be required by applicable law, including the records retention schedules set forth in OAR Chapter 166; or
- c. Until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement.

#### **11. Information Privacy/Security/Access.**

If this Agreement requires or allows Recipient or, when allowed, its subcontractor(s), to have access to or use of any OHA computer system or other OHA Information Asset for which OHA imposes security requirements, and OHA grants Recipient or its subcontractor(s) access to such OHA Information Assets or Network and Information Systems, Recipient shall comply and require all subcontractor(s) to which such access has been granted to comply with OAR 943-014-0300 through OAR 943-014-0320, as such rules may be revised from time to time. For purposes of this Section, "Information Asset" and "Network and Information System" have the meanings set forth in OAR 943-014-0305, as such rule may be revised from time to time.

#### **12. Assignment of Agreement, Successors in Interest.**

- a. Recipient shall not assign or transfer its interest in this Agreement without prior written consent of OHA. Any such assignment or transfer, if approved, is subject to such conditions and provisions required by OHA. No approval by OHA of any assignment or transfer of interest shall be deemed to create any obligation of OHA in addition to those set forth in this Agreement.
- b. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, and permitted assigns.

#### **13. Resolution of Disputes.**

The parties shall attempt in good faith to resolve any dispute arising out of or related to this Agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

#### **14. Subcontracts.**

**RECIPIENT SHALL NOT ENTER INTO ANY SUBCONTRACTS FOR ANY PART OF THE PROGRAM SUPPORTED BY THIS AGREEMENT WITHOUT**

**OHA'S PRIOR WRITTEN CONSENT.** In addition to any other provisions OHA may require, Recipient shall include in any permitted subcontract under this Agreement provisions to ensure that OHA will receive the benefit of subcontractor activity(ies) as if the subcontractor were the Recipient with respect to Sections 1, 2, 3, 6, 7, 9, 10, 11, 12, 14, 15, and 16 of this Exhibit B. OHA's consent to any subcontract shall not relieve Recipient of any of its duties or obligations under this Agreement.

**15. No Third Party Beneficiaries.**

OHA and Recipient are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

**16. Severability.**

The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

**17. Notice.**

Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, e-mail, or mailing the same, postage prepaid to Recipient or OHA at the address or number set forth in this Agreement, or to such other addresses or numbers as either party may indicate pursuant to this Section. Any communication or notice so addressed and mailed by regular mail shall be deemed received and effective five days after the date of mailing. Any communication or notice delivered by e-mail shall be deemed received and effective five days after the date of e-mailing. Any communication or notice delivered by facsimile shall be deemed received and effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the Recipient, or on the next business day if transmission was outside normal business hours of the Recipient. Notwithstanding the foregoing, to be effective against the other party, any notice transmitted by facsimile must be confirmed by telephone notice to the other party. Any communication or notice given by personal delivery shall be deemed effective when actually delivered to the addressee.

**OHA:** Oregon Health Authority  
Health Systems Division  
500 Summer St SE, E86  
Salem, Oregon 97301

**18. Headings; Interpretation.**

The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret this Agreement. This Agreement will be interpreted according to its fair

meaning and not strictly for or against any party to this Agreement. Any provision of this Agreement that would reasonably be expected to survive its termination or expiration will do so, including but not limited to Sections 1, 2, 5, 7, 8(e)(5), 13, 15, 16, 17, 18, and 19 of Exhibit B of this Agreement.

**19. Amendments; Waiver; Consent.**

No amendment, waiver, or consent under this Agreement shall bind either party unless it is in writing and signed by both parties and when required, approved by the Oregon Department of Justice. Such amendment, waiver, or consent shall be effective only in the specific instance and for the specific purpose given. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision.

**20. Prohibition on Supplanting.**

Grant funds may not supplant or replace other funds that have been contracted for the same purpose. Recipient shall ensure that the activities provided under this Agreement will be in addition to, and not in substitution for, comparable activities.

**21. Merger Clause.**

This Agreement constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein, regarding this Agreement. The obligations contained in this Agreement shall not be merged with the Covenant and other documents provided for in Exhibit A Part 3.

**EXHIBIT C****Insurance Requirements**

Recipient shall require its first tier contractor(s) (each, a “Contractor”) that are not units of local government as defined in ORS 190.003, if any, to obtain the insurance specified in this Exhibit C prior to performing under this Agreement and maintain it in full force throughout the duration of this Agreement, as required by any extended reporting period or tail coverage requirements, and all warranty periods that apply. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to OHA. Coverage shall be primary and non-contributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers’ Compensation. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

**1. WORKERS’ COMPENSATION & EMPLOYERS’ LIABILITY**

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements. If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If Contractor is an employer subject to any other state’s workers’ compensation law, Contractor shall provide workers’ compensation insurance coverage for its employees as required by applicable workers’ compensation laws including employers’ liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

**2. COMMERCIAL GENERAL LIABILITY:**

**Required**

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this Agreement, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.

**3. PROFESSIONAL LIABILITY:**

**Required**

**Professional Liability insurance** covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Agreement by the Contractor and Contractor’s subcontractors, agents, officers or employees in an amount not less than \$1,000,000 per claim. Annual aggregate limit shall not be less than \$2,000,000. If coverage is on a claims made basis, then either an extended reporting period of not less than 24 months shall be included in the Professional Liability insurance coverage, or the Recipient shall provide Tail Coverage as stated below.



**4. EXCESS/UMBRELLA INSURANCE:**

A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.

**5. ADDITIONAL INSURED:**

All liability insurance, except for Workers' Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Agreement must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor's activities to be performed under this Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance. Insurance must have an endorsement providing that the insurer may not invoke sovereign immunity up to the limits of the policy in any court. The Additional Insured endorsement with respect to liability arising out of Contractor's ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 07 04 or equivalent.

**6. WAIVER OF SUBROGATION:**

Contractor shall waive rights of subrogation which Contractor or any insurer of Contractor may acquire against the OHA or State of Oregon by virtue of the payment of any loss. Contractor will obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the OHA has received a waiver of subrogation endorsement from the Contractor or the Contractor's insurer(s).

**7. TAIL COVERAGE:**

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, Contractor shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Agreement, for a minimum of 24 months following the later of (i) Contractor's completion and OHA's acceptance of all Services required under this Agreement, or, (ii) OHA or Recipient's termination of this Agreement, or, (iii) The expiration of all warranty periods provided under this Agreement.

**8. CERTIFICATE(S) AND PROOF OF INSURANCE:**

Contractor shall provide to OHA Certificate(s) of Insurance for all required insurance before conducting any activities required under this Agreement. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) shall also include all required endorsements or copies of the applicable policy language effecting coverage required by this Agreement. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance OHA has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Agreement.

**9. NOTICE OF CHANGE OR CANCELLATION:**

The Contractor or its insurer must provide at least 30 days' written notice to OHA before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

**10. INSURANCE REQUIREMENT REVIEW:**

Recipient agrees to periodic review of insurance requirements by OHA under this Agreement and to provide updated requirements as mutually agreed upon by Recipient and OHA.

**11. STATE ACCEPTANCE:**

All insurance providers are subject to OHA acceptance. If requested by OHA, Contractor shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to OHA's representatives responsible for verification of the insurance coverages required under this Exhibit C

**EXHIBIT D**

<b>Projects or Services</b>	<b>Description and Use of Other Funds</b>	<b>Expected Impact</b>	<b>Cost Estimate</b>	<b>Any Other Funding</b>
Repurpose or build new secure residential treatment facilities, residential treatment homes, adult foster homes, supported housing units, and supportive housing units.	Grant will be used to support the construction of a facility for a 16-bed SRTF in Redmond, Oregon to serve the Central Oregon region.	Improve access to Secure Residential Treatment Facility (SRTF) beds for residents of Deschutes, Crook and Jefferson counties.	\$3,000,000	2022 OHA RFGA for Licensed SRTF
Operational and administrative costs to manage housing	Grant will be used to support contract, finance and RFP activities for the SRTF project; admin oversight of contracts and referrals to housing services.	Ensure timely contracting, reporting and fiscal oversight.	\$51,470.64	NA
Housing support services			\$0	
Planning, coordination, siting, purchasing buildings/land (pre-build or renovation activities)	Grant will be used to support a project to expand inpatient treatment beds for Central Oregon Youth & Young Adults.	Matching funds for Psychiatric Residential Treatment Facility (PRTF) application to serve children & youth in need of inpatient residential treatment	\$850,000	2022 OHA Child Residential RFGA
Subsidy for short term shelter beds			\$0	
Long term rental assistance			\$0	
Outreach and engagement items such as food or clothing to meet immediate needs for houseless individuals			\$0	
<b>Total Grant Amount:</b>			<b>\$3,901,470.64</b>	

# ATTACHMENT 1

\*

After Recording Return to:

- 1 Oregon Health Authority
- 2 Health Systems Division
- 3 500 Summer St SE, E86
- 4 Salem, OR 97301

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SPACE ABOVE FOR

RECORDER'S USE

SAMPLE SAMPLE SAMPLE SAMPLE SAMPLE SAMPLE SAMPLE SAMPLE  
(for use with Oregon governmental entity Declarants)

**STATE OF OREGON  
OREGON HEALTH AUTHORITY**

**DECLARATION OF RESTRICTIVE COVENANTS**

This Declaration of Restrictive Covenants (this “**Declaration**”) is made and entered into this [ ] day of [ ] 2022 (the “**Effective Date**”) by and between [ ], an Oregon [ ] (“**Declarant**”) and the State of Oregon (“**State**”), acting by and through the Oregon Health Authority and its Health System Division (“**OHA**”) pursuant to House Bill 5202, section 364. OHA and Declarant may be referred to herein jointly as the “**Parties**” or individually as a “**Party**”.

**RECITALS**

**A.** Whereas, the Oregon State Legislature’s Joint Committee On Ways and Means stated in the Budget Report and Measure Summary for House Bill 5502 that the OHA was appropriated funds “for distribution to community mental health programs (CMHP) and related administrative support in OHA. The goals of this funding are to provide an array of supported housing and residential treatment, relieve bottlenecks in the continuum of care, and address health inequities and housing access disparities, among others.”

**B.** Whereas, the OHA issued a Request for Applications (RFA) to the CMHPs for receiving this funding and Declarant applied for a grant award.

**C.** Declarant is a CMHP and was awarded an amount not to exceed [ ] (\$[ ]) (the “**Grant**”) from the State General Fund for the purpose of increasing behavioral health housing by [ ] (collectively, the “**Improvements**”) situated on certain real property located in the city of [ ], [ ]

County (the “**County**”), State of Oregon, as more particularly described in Exhibit A attached hereto (the “**Property**”). The Property, together with the Improvements, is referred to herein as the “**Project**” and is further described in Exhibit B attached hereto.

**D.** Terms and conditions of the Grant for the Project are set forth in that certain Intergovernmental Grant Agreement dated [\_\_\_\_], 2022 by and between the Parties (the “**Grant Agreement**”).

**E.** A condition of the Grant Agreement provides that to the extent that grant funds are to be used for certain purchases or renovations of real property, Declarant is required to follow additional OHA procedures. Pursuant to that condition, provided in Exhibit A, Part 3 of the Grant Agreement, OHA has required Declarant to execute this Declaration, as a condition to Declarant’s use of Grant funds for the purchase or renovation of real property for purposes of the Project.

**F.** The Parties desire that this Declaration be recorded in the relevant county records at Declarant’s cost and that certain terms herein constitute restrictive covenants and equitable servitudes running with the Property and governing, among other things, the maintenance, monitoring, and operation of the Project.

## **AGREEMENT**

NOW, THEREFORE, for good and sufficient consideration, including the terms, conditions, covenants, warranties, and undertakings set forth herein, the Parties agree as follows:

### **1. INCORPORATION.**

The foregoing recitals and exhibit(s) to this Declaration are incorporated into this Declaration by reference to the same extent and with the same force and effect as if fully set forth herein, provided, however, that the incorporated items do not modify the express provisions of this Declaration.

### **2. REPRESENTATIONS, WARRANTIES AND COVENANTS OF DECLARANT.**

Declarant represents, warrants and covenants that:

**2.1. Organization and Authority.** Declarant has all necessary right, power and authority under its organizational documents to (a) execute, deliver and record this Declaration, and (b) incur and perform its obligations under this Declaration.

**2.2. Use of Grant Funds.** Declarant has used or will use the Grant funds only for the Project costs as provided for in the Grant Agreement.

**2.3. Full Disclosure.** Declarant has disclosed in writing to OHA all facts that may materially adversely affect the Project, or the ability of Declarant to perform all obligations required by this Declaration. Declarant has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading, regarding the Grant, the Project and this Declaration. The information contained in this Declaration is true and accurate in all respects.

**2.4. Pending Litigation.** Declarant has disclosed in writing to OHA all proceedings, environmental or otherwise, pending (or to the knowledge of Declarant, threatened) against or affecting Declarant, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project or the ability of Declarant to perform all obligations required by this Declaration.

**2.5. No Defaults.**

(a) No Defaults or Events of Default exist or occur upon authorization, execution or delivery of this Declaration.

(b) Declarant has not violated and has not received notice of any claimed violation of, any agreement or instrument to which it is a party or by which the Project or its property may be bound, that would materially adversely affect the Project or the ability of Declarant to perform all obligations required by this Declaration.

**2.6. Compliance with Existing Agreements and Applicable Law.** The authorization and execution of, and the performance of all obligations required by, this Declaration will not: (i) cause a breach of a material agreement, indenture, mortgage, deed of trust, or other instrument, to which Declarant is a party or by which the Project or any of Declarant's property or assets may be bound; (ii) violate any provision of the applicable enabling statutes, code, charter, ordinances or other Oregon law pursuant to which Declarant was organized or established; or (iii) violate any laws, regulations, ordinances, resolutions, or court orders related to Declarant, the Project or Declarant's properties or operations.

**2.7. Governmental Consent.** Declarant has obtained or will obtain all permits and approvals, and has made or will make all notifications, declarations, filings or registrations, required for the making and performance of its obligations under this Declaration and undertaking and completion of the Project, including without limitation, all land use approvals and development permits required under local zoning or development ordinances, state law and federal law for the use of the land on which the Project will be located.

**2.8. Responsibility.** Declarant assumes full responsibility for timely and appropriate completion of the Project, for ownership of the Project, for its operation in accordance with this Declaration and the Grant Agreement and acknowledges that OHA has no direct or contractual responsibility for the Project, for ownership of the Project, or for its operation.

**3. ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF DECLARANT.**

Declarant also represents, warrants, and covenants that:

**3.1. Fair Housing and Other Civil Rights Compliance.** Declarant shall comply with all applicable state and federal nondiscrimination laws, including but not limited to the Fair Housing Act and the Americans with Disabilities Act;

**3.2. Use Restrictions.**

(a) [ \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ ]

(b) [ \_\_\_\_\_  
\_\_\_\_\_ ]

(c) **Use Restriction Period.** For a period of twenty (20) years from December 31<sup>st</sup> of the year that the Project is completed or until **December 31, 2042**, whichever is later (the “**Use Restriction Period**”), Declarant is required to provide and comply with the requirements of \_\_\_\_\_ the \_\_\_\_\_ [ \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ ], together, the “**Use Restrictions**”.

**3.3. Habitability; Other Compliance.** Throughout the Use Restriction Period, Declarant will manage the Project in a safe, sanitary, and habitable condition satisfactory to OHA and in accordance with applicable zoning and code requirements.

**3.4. Financial Records.** Declarant shall keep accurate books and records regarding use of the Grant and maintain them according to generally accepted accounting principles applicable to Declarant in effect at the time.

**3.5. Inspections; Information.** Declarant shall permit the State and any party designated by the State: (i) to inspect the Project and (ii) to inspect and make copies of any accounts, books and records, including, without limitation, Declarant’s records regarding receipts, disbursements, contracts, investments and any other related matters.

**3.6. Reports.**

(a) Declarant shall prepare and electronically submit written quarterly reports that satisfy OHA requirements of the continued use of the Project for the agreed purpose as defined in this Declaration.

(b) The quarterly reports are due to OHA no later than April 15 (January 1-March 31), July 15 (April 1- June 30), October 15 (July 1- September 30), and January 15 (October 1- December 31) each year.

(c) The quarterly reports shall provide data as OHA requests, including but not limited to bed/unit/client capacity with their utilization rates and data on clients served by the property/facility. OHA will provide the reporting form and instructions for completion and submission of this quarterly compliance report. Declarant may be required to provide capacity and utilization rates every 60 days or more frequently as requested by OHA.

(d) Declarant shall supply any other reports and information related to the Project as the State may reasonably require.

**3.7. Records Maintenance.** Declarant shall retain and keep accessible all books, documents, papers, and records that are directly related to this Declaration, the Project, or the Grant throughout the Use Restriction Period and for a minimum of six (6) years, or such longer period thereafter, as may be required by OHA.

**3.8. Corrective Action.** As a consequence of its monitoring, review of quarterly reports or otherwise, OHA may identify deficiencies in Declarant's compliance with this Declaration. OHA may require action by Declarant (satisfactory to OHA) to correct such deficiencies. Declarant must correct such deficiencies within thirty (30) days of notice by OHA of such deficiencies unless earlier correction is required by OHA to address material health or safety needs of Project users. The reasonableness of such corrective actions is subject to OHA in its sole discretion. Nothing in this Section 3.8 is intended or may be construed to impose any duty on OHA to identify deficiencies in Declarant's compliance with this Declaration or to require any action by Declarant to correct such deficiencies, and Declarant remains solely responsible for compliance with this Declaration.

**3.9. Insurance, Damage.** Declarant shall maintain insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by entities constructing, operating and maintaining similar properties/facilities.

#### **4. FURTHER ASSURANCES.**

**4.1. Further Acts.** Declarant, at any time upon request of OHA, will do, make, execute and deliver all such additional and further acts, instruments or papers as OHA may require in its sole discretion to protect OHA's rights under this Declaration.

**4.2. Reliance.** OHA may rely upon statements, certificates, and other records of Declarant and its agents and assigns, including as to accuracy, genuine nature, and proper execution of such statements, certificates, and other records.

#### **5. COVENANTS AND EQUITABLE SERVITUDES TO RUN WITH THE LAND.**

**5.1. Inducement.** Declarant represents, covenants and warrants that the issuance to it of the Grant described herein by OHA is an inducement to Declarant to complete the Project and to operate the Project in accordance with the Grant Agreement and this Declaration. In consideration of the issuance of the Grant, Declarant has entered into this Declaration and has agreed to restrict the operation of and uses to which the Project can be put on the terms and conditions set forth herein. Therefore, Declarant covenants, agrees and acknowledges that OHA has relied on this Declaration in determining to issue the Grant.

#### **5.2. Covenants; Equitable Servitudes.**



(a) OHA and Declarant hereby declare their express intent that throughout the Use Restriction Period the covenants, restrictions, charges and easements set forth herein, including the Use Restrictions, will be deemed covenants running with the Property and will create equitable servitudes running with the Property, and will pass to and be binding upon OHA's and Declarant's successors in title including any purchaser, grantee or lessee of any portion of the Project and any other person or entity having any right, title or interest therein and upon the respective heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee or lessee of any portion of the Project and any other person or entity having any right, title or interest therein.

(b) Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof or interest therein (*other than a residential rental agreement or residential lease for a Housing Unit*) will contain an express provision making such conveyance subject to the covenants, restrictions, charges and easements contained herein; provided, however, that any such contract, deed or other instrument will conclusively be held to have been executed, delivered and accepted subject to such covenants, regardless of whether or not such covenants are set forth or incorporated by reference in such contract, deed or other instrument.

(c) Any and all legal requirements for the provisions of this Declaration to constitute restrictive covenants running with the Property and applying to the Project as a whole, or to create equitable servitudes with respect to same in favor of OHA, are deemed satisfied in full.

(d) The consent of any recorded prior lien holder on the Project, including the Property, is not required in connection with recording this Declaration, or if required, such consent has been or will be obtained by Declarant.

### 5.3. Burden and Benefit.

(a) Declarant hereby declares its understanding and intent that the burdens of the covenants and equitable servitudes, including the Use Restrictions, set forth herein touch and concern the Property, and the Project as a whole, in that Declarant's legal interest in the Project is rendered less valuable thereby.

(b) Declarant hereby further declares its understanding and intent that the benefits of such covenants and equitable servitudes touch and concern the Property, and the Project as a whole, by enhancing and increasing the enjoyment and use of the Project by tenants, intended beneficiaries (in addition to OHA) of such covenants, reservations and restrictions, and by furthering the public purposes for which the Grant was issued.

**5.4. Right of Modification.** OHA may compromise, waive, amend or modify the terms of this Declaration including, but not limited to the restrictive covenants and equitable servitudes created hereby, with the written consent of Declarant or subsequent Project owners, as it so determines in OHA's sole discretion to be to the benefit of OHA, the Project, or OHA efforts to provide or maintain safe and sanitary conditions of the Project *and affordability of the Housing Units in the State of Oregon*. To be effective, any compromise, waiver, amendment or modification of this Declaration must be in writing, signed by an authorized OHA representative.

## 6. GENERAL PROVISIONS.

### 6.1. Compliance with Applicable Laws and Requirements.

(a) **Compliance.** Declarant shall comply with and shall ensure that the Project complies with all federal, state and local laws, rules regulations, codes, ordinances, and orders applicable to the Project from time to time.

(b) **Contracts; Subcontracts.** Declarant shall ensure that all contracts and subcontracts related to the Project or this Declaration comply with the terms and conditions hereof, including containing a provision to that effect therein.

(c) **Endurance of Obligations.** Declarant will remain fully obligated under the provisions of this Declaration notwithstanding its designation of any third-party or parties for the undertaking of all or any part of the Project with respect to which Grant funding is being provided.

### 6.2 Contribution.

If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which the State is jointly liable with the Declarant (or would be if joined in the Third Party Claim), the State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Declarant in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the Declarant on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the State on the one hand and of the Declarant on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

With respect to a Third Party Claim for which the Declarant is jointly liable with the State (or would be if joined in the Third Party Claim), the Declarant shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the State in such proportion as is appropriate to reflect the relative fault of the Declarant on the one hand and of the State on the other hand in

connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Declarant on the one hand and of the State on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Declarant's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

This Section shall survive expiration or termination of this Agreement.

**6.3. Indemnification by Subcontractors.**

Declarant shall take all reasonable steps to require its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Declarant's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims. This Section shall survive expiration or termination of this Agreement.

**6.4. Time of the Essence.** Time is of the essence in the performance by Declarant of the terms of this Declaration.

**6.5. No Discrimination; Marketing.** Except as permitted by law, Declarant will not inappropriately discriminate in the provision of housing on the basis of race, creed, color, sex, national origin, religion, marital status, sexual orientation, family status, age, disability or the receipt of public assistance.

**6.6. Notice.** Except as otherwise expressly provided in this Declaration, any notices required or permitted to be given under this Declaration will be given in writing, by personal delivery, or mailing the same, postage prepaid, to OHA or Declarant at the following addresses:

If to OHA:  
[\_\_\_\_\_]

If to Declarant:  
[\_\_\_\_\_]

or to such other address a party may indicate to the other pursuant to this Section. Any notice so addressed and mailed will be effective five (5) days after mailing. Any notice by personal delivery will be deemed to be given when actually delivered.

**6.7. No Third-Party Beneficiaries.** Unless and only to the degree expressly provided otherwise in this Declaration, OHA and Declarant are the only Parties to this Declaration and are

the only Parties entitled to rely on and enforce the terms of this Declaration. Nothing in this Declaration gives, is intended to give, or will be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly indirectly or otherwise, to third persons unless such third persons are expressly identified in this Declaration and only to the degree they are expressly described as intended beneficiaries of particular terms of this Declaration and only with such remedies as expressly given herein with respect to such interests.

#### 6.8. Declarant Status.

(a) **Independent Contractor.** Declarant shall perform all obligations under this Declaration and will timely satisfy its obligations hereunder as an independent contractor. Declarant is not an officer, employee or agent of the State, as those terms are used in ORS 30.265 or otherwise, with respect to performance under this Declaration.

(b) **Declarant Responsible for Insurance Coverage.** Declarant agrees that insurance coverage, whether purchased or by self-insurance, for Declarant's agents, employees, officers and/or subcontractors is the sole responsibility of Declarant.

(c) **Non-Federal Employment Certification.** Declarant certifies that it is not employed by or contracting with the Federal Government for performance covered by this Declaration.

(d) **Good Standing Certification.** Declarant certifies to the best of its knowledge and belief that neither Declarant nor any of its principals, officers, directors or employees:

(i) Is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any state or federal department or agency;

(ii) Has within a three (3) year period preceding this Declaration been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract related to a public transaction; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;

(iii) Is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in subsection (d)(ii) of this Section;

(iv) Has within a three (3) year period preceding this Declaration had one or more public transactions (federal, state or local) terminated for cause or default; and

(v) Is included on the list titled "**Specially Designated Nationals and Blocked Persons**" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at:

<https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>

**6.9. Termination.** OHA may terminate this Declaration in whole or in part, without further liability and without impairment of its remedies, effective upon delivery of written notice to Declarant, under any of the following conditions:

- (a) If funding from federal, state, or other sources is not obtained or is not continued at levels sufficient to allow for delivery of full Grant funding; or
- (b) If federal or state laws, regulations, rules or other requirements are modified or interpreted in such a way that the intended use of Grant funding for the Project is no longer allowable or appropriate or the Project is no longer eligible for the Grant funding identified in this Declaration from the planned funding source(s); or
- (c) If any authority required by law or regulation to be held by Declarant to complete the Project ends for any reason; or
- (d) If Declarant is unable or fails to commence the Project within six (6) months from the date of this Declaration; or
- (e) If Declarant breaches or fails to timely perform any of its obligations under this Declaration, or any other applicable Grant document and such breach is not cured within the grace period, if any, provided for cure in the applicable document; or
- (f) If OHA determines that any representation, warranty or covenant of Declarant, whether in whole or in part, is false, invalid, or in default; or
- (g) If Declarant (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all or substantially all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) is adjudicated as bankrupt or insolvent, (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, winding-up, or composition or adjustment of debts, (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect), or (viii) takes any action for the purpose of effecting any of the foregoing.
- (h) Termination of this Declaration does not terminate or otherwise impair or invalidate any remedy available to OHA or to Declarant hereunder, at law, or otherwise.

**6.10. Declarant Default.** Any of the following constitutes an “**Event of Default**” of Declarant:

- (a) Any false or misleading representation is made by or on behalf of Declarant, in this Declaration or in any document provided by Declarant to OHA related to this Grant or the Project.

(b) Declarant fails to perform any obligation required under this Declaration and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Declarant by OHA, or such longer period as OHA may agree to in writing, if OHA determines in its sole discretion that Declarant has instituted and is diligently pursuing corrective action.

(c) Declarant: (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) is adjudicated a bankrupt or insolvent, (v) commences a voluntary case under the Federal Bankruptcy Code, (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (viii) takes any corporate action for the purpose of effecting any of the foregoing.

(d) A proceeding or case is commenced, without the application or consent of Declarant, in any court of competent jurisdiction, seeking: (i) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Declarant, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of Declarant or of all or any substantial part of its assets, or (iii) similar relief in respect to Declarant under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty (60) consecutive days, or an order for relief against Declarant is entered in an involuntary case under the Federal Bankruptcy Code.

**6.11. OHA Default.** OHA will be in default under this Declaration if it fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Declaration.

## **6.12. Remedies.**

(a) **Repayment.** If this Declaration or any part hereof, terminates prior to the term of the Use Restriction Period, Declarant will, within thirty (30) days of written demand for repayment by OHA, repay to OHA \$ [\_\_\_\_\_], multiplied by a fraction, the numerator of which is 20 minus the number of full years that have transpired between the year the Project is completed and the year of Payee's demand and the denominator of which is 20.

(b) **Deficiencies.** OHA may, from time to time, identify and direct Declarant to correct deficiencies (including deficiencies by the Owner) in its compliance with this Declaration, which it shall correct as so directed.

(c) **Extension of Use Restriction Period.** OHA may by written notice extend the Use Restriction Period described in this Declaration for periods of time matching corresponding periods of time during which OHA determines the Declarant to be in material noncompliance with any of the terms of this Declaration.

**(d) Additional Remedies.** If the Declarant defaults in the performance or observance of any covenant, agreement or obligation set forth in this Declaration (including correction of deficiencies), and if such default remains uncured by the Declarant for a period of thirty (30) days or less (depending upon the requirements of the notice, lesser notice periods being reserved for matters that OHA determines in its sole discretion relate to material health or safety needs of Project occupants) after notice thereof shall have been given by OHA, or if such default runs for a period of thirty (30) days from the date the Declarant should, with due diligence, have discovered such default, then OHA may declare an Event of Default to have occurred hereunder provided, however, if a default is not reasonably capable of being cured within thirty (30) days or any lesser notice period provided by OHA, OHA may, in its sole discretion, extend the correction period for up to six (6) months, but only if OHA determines in its sole discretion there is good cause for granting the extension; and provided further, however, in the event of a foreclosure, deed in lieu of foreclosure, or similar event with respect to the Project or the Property, the correction period for the successor for an existing default shall be no less than thirty (30) days from the earlier of the date the successor obtains control or becomes the owner of the Project. To the extent that the default is not corrected within the above-described period including extensions, if any, granted by OHA, an Event of Default shall be deemed to occur and OHA may exercise its rights and remedies under this Section. Following the occurrence of an Event of Default hereunder OHA may, at its option, take any one or more of the following steps in addition to all other remedies provided in this Declaration, by law, or in equity:

- i.** By mandamus or other suit, action or proceeding at law or in equity, require Declarant specifically to perform its obligations under this Declaration or enjoin any acts or things that may be unlawful or in violation of the rights of OHA under this Declaration;
- ii.** Obtain the appointment of a receiver to operate the Project in compliance with this Declaration;
- iii.** Withhold from Declarant, suspend or terminate, or (upon thirty (30)-days written demand) require the repayment of all or part of any disbursed Grant funds or other funding assistance provided by OHA to Declarant with respect to the Project;
- iv.** Declare Declarant, its owners, principals, employees, and agents ineligible to receive further OHA funds or other OHA financial assistance, including with respect to other projects or requests for same, for such period as OHA determines in its sole discretion;
- v.** Offset amounts due from repayment of the Grant against other funding awarded or to be awarded to Declarant;
- vi.** Have access to, and inspect, examine and make copies of, all of the books and records of Declarant pertaining to the Project and to inspect the Project itself;

**vii.** Enter onto the Property and correct Events of Default with respect to the Project at Declarant's expense, which expense Declarant will repay to OHA within ten (10) days of any presentment of charges for same; and

**viii.** Take such other action under this Declaration, at law, in equity, or otherwise as may be available to OHA.

**(e) Survival of Remedies; Remedies Not Exclusive; Non-Waiver.** The rights and remedies of OHA provided for in this Declaration, which by their nature are intended to survive termination of this Declaration, will survive the termination of the Use Restriction Period and of this Declaration. Furthermore, such remedies will not be exclusive and are in addition to any other rights and remedies available at law, in equity or otherwise. No failure of or delay by OHA to enforce any provision of this Declaration will constitute a waiver by OHA of that or any other provision, nor will any single or partial exercise of any right, power or privilege under this Declaration preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.

**6.13. Severability.** If any term or provision of this Declaration is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if this Declaration did not contain the particular term or provisions held to be invalid.

**6.14. Survival of Obligations.** The obligations of Declarant as set forth in this Declaration will survive the expiration or termination of the Grant Agreement.

**6.15. Attorney Fees.** Subject to Article XI, Section 7, of the Oregon Constitution, in the event a lawsuit or other proceeding is instituted regarding this Declaration, the prevailing party in any dispute arising under this Declaration will, to the extent permitted by law, be entitled to recover from the other(s) its reasonable attorney fees and all costs and disbursements incurred at trial, in mediation, and on appeal. Reasonable attorney fees will not exceed the rate charged to OHA by its attorneys. This provision does not apply to lawsuits or other proceedings instituted or maintained by or against tenants or other third-party beneficiaries hereunder, if any, for which lawsuits or other proceedings no award of attorney fees is permitted.

**6.16. Construction.** The Parties to this Declaration acknowledge that each party and its counsel have participated in the drafting and revision of this Declaration (or knowingly and voluntarily waived the party's right to do so). Accordingly, the Parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not apply in the interpretation of this Declaration or any amendment, modification, supplementation or restatement of the foregoing or of any exhibit to this Declaration.

**6.17. Captions.** The captions or headings in this Declaration are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Declaration.

**6.18. Execution and Counterparts.** This Declaration may be executed in several counterparts, each of which will be an original, all of which will constitute but one and the same instrument.



**6.19. Governing Law; Venue: Consent to Jurisdiction.** This Declaration will be governed by the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") related to this Declaration will be conducted exclusively within the Circuit Court of Marion County, Oregon (unless Oregon law requires that it be brought and conducted where the real property is located) or, if necessary, the United States District Court for the District of Oregon. In no event will this provision be construed as a waiver by OHA or the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. OHA and the State of Oregon expressly reserve all sovereignty rights. DECLARANT, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

**6.20. Merger Clause.** This Declaration, along with the Grant Agreement constitutes the entire agreement between the Parties on the subject matter hereof. No modification or amendment of this Declaration will bind either Party unless in writing and signed by the Parties (and the necessary approvals obtained), and no waiver or consent will be effective unless signed by the party against whom such waiver or consent is asserted. Such waiver or consent, if given, will be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Declaration.

**6.21. No Limitations on Actions of OHA in Exercise of Its Governmental Powers.** Nothing in this Declaration is intended, nor will it be construed, to in any way limit the actions of OHA in the exercise of its governmental powers. It is the express intention of the Parties hereto that OHA will retain the full right and ability to exercise its governmental powers with respect to Declarant, the Project, this Declaration, and the transactions contemplated by this Declaration to the same extent as if it were not a party to this Declaration or the transactions contemplated hereby, and in no event will OHA have any liability in contract arising under this Declaration, or otherwise by virtue of any exercise of its governmental powers.

*(Signature Pages Follow)*

IN WITNESS WHEREOF, OHA and Declarant have caused this Declaration to be signed by their duly authorized officers on the Effective Date.

**OHA:** **STATE OF OREGON**, acting by and through its **OREGON HEALTH AUTHORITY**,

**By:** \_\_\_\_\_

STATE OF OREGON            )  
  : ss  
County of Marion            )

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2022,  
by \_\_\_\_\_, for and on behalf of the State of Oregon, acting by and  
through its \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_

**DECLARANT:**

**[Name of Grant Recipient]**

**By:** \_\_\_\_\_

STATE OF OREGON            )  
  : ss  
County of [\_\_\_\_\_])

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2022,  
by \_\_\_\_\_, for and on behalf of \_\_\_\_\_ acting by and  
through its \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_

**EXHIBIT A**  
**Legal Description**

[\_\_\_\_\_]

**EXHIBIT B**  
**Project Description**

**Use Restrictions:**

A. [ \_\_\_\_\_ ]

B. [ \_\_\_\_\_ ] ...

**Confidential**  
**CONTRACTOR TAX IDENTIFICATION INFORMATION**  
For Accounting Purposes Only

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

**Document number:** 177672-0

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

**DBA name:** Deschutes County Health Services

**Billing address:** 2577 NE Courtney Drive

**City:** Bend **State:** OR **Zip:** 97701

**Phone:** 541-322-7500

**FEIN:** 93-6002292

- OR -

**SSN:** \_\_\_\_\_

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



## APPROVAL MEMO

REFERENCE: Contract 2022-784

I confirm this document has been fully signed and executed. If you have not received your stamped copy of the document and would like one, please email [grace.evans@deschutes.org](mailto:grace.evans@deschutes.org).

Administrative Notice of Execution:

**Signature:**

**Email:** grace.evans@deschutes.org

**Title:**

**Company:**



BOARD OF COMMISSIONERS

AGENDA REQUEST AND STAFF REPORT

**MEETING DATE:** September 28, 2022

**SUBJECT:** Consideration of Approval of Purchase of a Motor Grader with Auxiliary Plows.

**RECOMMENDED MOTION:**

Move to approve purchase of a motor grader with auxiliary plows from Petersen Cat in the amount of \$506,165.05.

**BACKGROUND AND POLICY IMPLICATIONS:**

Within the FY23 budget document, the BOCC approved the purchase of a motor grader with auxiliary plows to replace a 30 year old Caterpillar 14G motor grader. The motor grader will be used for general gravel road maintenance throughout the year as well as snow/ice removal as necessary.

Pricing and purchase of the motor grader are being coordinated through Sourcewell, a national government agency cooperative purchasing program, which affords savings and preferred pricing as vendors are secured through competitively bid purchasing contracts. Deschutes County is a member of the Sourcewell program and the loader will be purchased from Peterson Caterpillar through the Sourcewell procurement process.

**BUDGET IMPACTS:**

The purchase price of \$506,165.05 is \$3,834.95 below the budgeted amount and will be funded via the Road Department’s Building/Equipment Fund (330).

**ATTENDANCE:**

Randy McCulley, Road Department





**PETERSON MACHINERY CO. 5450 NE Five Oaks Dr. Hillsboro, Oregon 97124 Tel: (503) 288-6411 Fax: (510) 352-4570**

PURCHASER	DESCHUTES COUNTY ROAD DEPT							
S	STREET ADDRESS	61150 27TH ST			<SAME>			
O	CITY/STATE	BEND, OR	COUNTY	DESCHUTES				
L	POSTAL CODE	97702-9631	PHONE NO.	541 322 7101				
D								
T	CUSTOMER CONTACT:	EQUIPMENT	- PHONE NO.					
O		PRODUCT SUPPORT	- PHONE NO.					
	INDUSTRY CODE:	GOVERNMENT COUNTY	GOVERNMENT (843 )	PRINCIPAL WORK CODE	F.O.B. AT: Redmond			

CUSTOMER NUMBER	1756150	Sales Tax Exemption # (if applicable)	N/A	CUSTOMER PO NUMBER	
-----------------	---------	---------------------------------------	-----	--------------------	--

PAYMENT TERMS: <span style="float:right">(All terms and payments are subject to Finance Company - OAC approval)</span>					
NET PAYMENT ON RECEIPT OF INVOICE	<input type="checkbox"/>	NET ON CAT CARD	<input type="checkbox"/>	FINANCIAL SERVICES	<input type="checkbox"/>
CASH WITH ORDER	\$0.00	BALANCE TO FINANCE	\$0.00	INTEREST RATE	0
PAYMENT PERIOD		PAYMENT AMOUNT	0.00	NUMBER OF PAYMENTS	0
				OPTIONAL BUY-OUT	\$0.00

DESCRIPTION OF EQUIPMENT ORDERED / PURCHASED					
MAKE: TBA	MODEL: 160JOY-BR	YEAR: TBA			
STOCK NUMBER: PM00907	SERIAL NUMBER: TBA				
160 15A AWD MOTOR GRADER	577-2968	PRODUCT LINK, CELLULAR PLE742	464-6442	GUARD, TRANSMISSION	366-2459
LANE 3 ORDER	0P-9003	TANK, FUEL, STANDARD	540-2373	HEATER, ENGINE COOLANT, 120V	249-5516
GLOBAL ARRANGEMENT, LOW AMBIENT	385-9297	FAN, STANDARD, AWD	585-8822	CIRCLE SAVER	521-3250
MOLDBOARD, 14' PLUS	349-3048	ARTICULATION GUARD	368-6239	LIFT GROUP, MANUAL, FRONT	312-2204
RIPPER/SCARIFIER	324-0889	COOLANT, 50/50, -35C (-31F)	469-8157	LIFT GROUP, FRONT MOUNTING	359-3925
COLD WEATHER PLUS PACKAGE AWD	394-4524	SERIALIZED TECHNICAL MEDIA KIT	421-8926	ROLL ON-ROLL OFF	0P-2265
ACCUMULATORS, BLADE LIFT	358-9338	DECALS, ENGLISH (U.S.)	442-9940	BASE+6(WM,WT+F,DA1,DA2,FL,RIP)	481-8610
PRECLEANER, SY-KLONE	380-6775	MOUNT, SNOW WING, FRAME RDY LED	551-6546	TIRES, 17.5R25 MX XSNO+ * G2 MP	252-0779
ENGINE, TIER IV	567-4690	LIGHTS, WORKING, PLUS, LED	552-7285	LINES, RIPPER, ADDITIONAL	387-8664
DRAIN, HIGH SPEED, ENGINE OIL	501-1163	LIGHTS, SERVICE, INTERNAL	380-3070	WING 144/40 RM FIXED	517-7341
STARTER, ELEC, EXTREME DUTY	395-3547	SNOW ARRANGEMENT	396-1966	Henke - FV12 Folding V Plow	Q-06684-2
LIGHTS, ROADING, LED	550-6608	HEADLIGHTS, FRONT, HIGH, LED	553-2589		
CAB, PLUS (STANDARD GLASS)	385-9554	CAMERA, REAR VISION	396-3921		
CAB, PLUS (INTERIOR)	397-7457	MIRRORS, OUTSIDE HEATED 24V	344-0984		
SEAT BELT	394-1492	CONTROLS, PERF BUNDLE, AWD	585-5221		

TRADE-IN EQUIPMENT		SELL PRICE	
MODEL: _____	YEAR: _____ SN: _____		\$746,335.33
PAYOUT TO: _____	AMOUNT: _____ PAID BY: _____	INSTALL WING / HENKE V PLOW - PDI - SVC	\$33,105.00
MODEL: _____	YEAR: _____ SN: _____	MANUAL	
PAYOUT TO: _____	AMOUNT: _____ PAID BY: _____	SOURCEWELL COOP CONTRACT DISCOUNT 30% OFF LIST	(\$223,900.60)
MODEL: _____	YEAR: _____ SN: _____	<b>NET BALANCE DUE</b>	<b>\$503,296.26</b>
PAYOUT TO: _____	AMOUNT: _____ PAID BY: _____	PETERSON ADDED DISCOUNT 7% OF LIST	(\$52,243.47)
MODEL: _____	YEAR: _____ SN: _____	OREGON CORPORATE ACTIVITY TAX (0.57%)	\$2,868.79
PAYOUT TO: _____	AMOUNT: _____ PAID BY: _____	<b>AFTER TAX BALANCE</b>	<b>\$506,165.05</b>

ALL TRADE-INS ARE SUBJECT TO EQUIPMENT BEING IN "AS INSPECTED CONDITION" BY VENDOR AT TIME OF DELIVERY OF REPLACEMENT MACHINE PURCHASE ABOVE.

PURCHASER HEREBY SELLS THE TRADE-IN EQUIPMENT DESCRIBED ABOVE TO THE VENDOR AND WARRANTS IT TO BE FREE AND CLEAR OF ALL CLAIMS, LIENS, MORTGAGES AND SECURITY INTEREST EXCEPT AS SHOWN ABOVE.

<input checked="" type="checkbox"/> CATERPILLAR EQUIPMENT WARRANTY <div style="border: 1px solid black; width: 100px; height: 20px; margin: 5px auto; text-align: center;">INITIAL</div> <p>CATERPILLAR EQUIPMENT WARRANTY It is understood that no other warranties of any kind, whether expressed or implied, including any warranty of merchantability or fitness for a particular purpose, are or have been made or authorized by PETERSON with respect to any machinery, EQUIPMENT or other products described herein unless endorsed herein and signed by the parties hereto. No adjustments, repairs or replacements of any items sold hereunder, or assistance given by seller to buyer in connection with same, shall be deemed to be a waiver of any of the provisions of the aforesaid warranty. Below lists Warranty applicable for Sold EQUIPMENT including expiration date. Warranty applicable including expiration date where necessary:                  12 Month, Unlimited Hours</p>	<input type="checkbox"/> USED EQUIPMENT WARRANTY <div style="border: 1px solid black; width: 100px; height: 20px; margin: 5px auto; text-align: center;">INITIAL</div> <p>All used equipment is sold as is where is and no warranty is offered or implied except as specified here:                  Warranty applicable:                  _____                  _____                  _____</p>
--	---

CSA: \_\_\_\_\_

NOTES: \_\_\_\_\_

**ADDITIONAL TERMS:** THE UNDERSIGNED PURCHASER (IF MORE THAN ONE, JOINTLY AND SEVERALLY) HAVING BEEN QUOTED BOTH A TIME AND A CASH PRICE, HEREBY PURCHASES AND UNDERSIGNED SELLER HEREBY SELLS, SUBJECT TO THE TERMS AND CONDITIONS SET FORTH ON BOTH SIDES HEREOF, THE ABOVE DESCRIBED EQUIPMENT, HEREIN FURTHER CALLED THE COLLATERAL. THE TERMS AND CONDITIONS HEREIN SET FORTH INCLUDING ALL TERMS AND CONDITIONS SET FORTH ON THE BACK HEREOF WHICH ARE HEREBY INCORPORATED HEREIN. ARE AGREED TO BY PURCHASER AND SELLER AND PURCHASER ACKNOWLEDGES THAT HE HAS FULLY READ THIS AGREEMENT, BOTH FRONT AND BACK PAGES, AND ASSENTS TO ALL OF ITS TERMS AND CONDITIONS

ORDER RECEIVED BY <u>Meyer, Shane</u> REPRESENTATIVE	APPROVED AND ACCEPTED ON _____ PURCHASER DESCHUTES COUNTY ROAD DEPT PURCHASER
BY _____	SIGNATURE _____
	TITLE _____



### DIGITAL AUTHORIZATION

CATERPILLAR TELEMATICS DATA AND CAT REMOTE SERVICES-SOFTWARE UPDATES PROCESS FOR SELECT PRODUCT LINK TELEMATICS AND CAT EQUIPMENT CONTROL MODULE SOFTWARE.

Customer equipment has installed devices that transmit data to Caterpillar Inc. ("Caterpillar").

Data transmitted to Caterpillar is used in accordance with Caterpillar's [Data Governance Statement](#) ( "DGS" ), which describes Caterpillar's practices for collecting, sharing and using data and information related to customer's machines, products, Devices or other Assets and their associated worksites. The DGS can be reviewed at <https://www.caterpillar.com/en/legal-notices/data-governance-statement.html>

Caterpillar's process for performing remote diagnostics and making available remote software and firmware updates and upgrades, such as configuration, patches, bug fixes, new or enhanced features, etc., for Assets and Devices is described in the [Cat® Remote Services – Software Update Process for select Product Link™ Telematics and Cat Equipment Control Module Software](#) document (the "RSP Document" ) The RSP Document can be reviewed at [https://www.cat.com/remoteservicesprocess?\\_ga=2.245276421.1412167159.1561985855-475983137.1559312215](https://www.cat.com/remoteservicesprocess?_ga=2.245276421.1412167159.1561985855-475983137.1559312215).

Company acknowledges and agrees to data transmission to Caterpillar via devices installed on Company equipment or by other means as outlined and described in the DGS, and grants to Caterpillar the right to collect, use, and share such information, including to its Distribution Networks or other affiliates, in accordance with the [Caterpillar Data Governance Statement](#) . Company's authorization also applies to any data and information previously collected by Caterpillar.

AGREE

DECLINE

Company acknowledges and agrees to participate in Remote Services (including, remote diagnostics and remote updates and upgrades) and authorizes Caterpillar to remotely access, program, and install updates and upgrades for Company's Assets and Devices in accordance with the [Remote Services Process Document](#).

AGREE

DECLINE

The rights granted in this authorization survive the termination or expiration of the Company's subscriptions to any Digital Offerings. Except as set out in a written agreement between Company and Caterpillar expressly referencing the Data Governance Statement, this authorization supercedes and replaces any other authorizations with regard to the subject matter hereof.

\_\_\_\_\_  
**Company**

\_\_\_\_\_  
**Company (Print)**

\_\_\_\_\_  
**Company Representative (Print)**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

<b>FOR DEALER USE ONLY</b>
<b>Company UCID</b>
<b>Company Representative CWS ID</b>
<b>Main Store Dealer Code</b>
<b>Dealer Representative Name</b>
<b>Dealer Representative CWS ID</b>

## TERMS AND CONDITIONS

1. The seller reserves the right to accept or reject this order and shall not be required to give any reason for non-acceptance.
2. This order when accepted by seller shall become a binding contract but shall be subject to strikes, lockouts, accidents, fire, delays in manufacture or transportation, acts of God, embargoes, epidemic, pandemic or other natural disasters, government action or any other causes beyond the control of the seller or otherwise affecting the supply chain, whether the same as or different from the matters and things hereinbefore specifically enumerated; and any of said causes shall absolutely absolve the seller from any liability to the purchaser under the terms hereof.

This order when accepted by seller shall be further subject to such changes in price, terms, delivery date, delivery priorities, and other conditions varying from the terms hereof as may be current when the within ordered machinery, equipment, attachments, and parts are ready for delivery. Purchaser shall be responsible for payment of all applicable fees, taxes and charges arising from or related to the purchase and sale of the equipment and goods described on the reverse side hereof, including, without limitation, any and all sales tax, use tax, surcharges, pass through charges (including state corporate activity taxes), environmental fees and service fees, along with any interest, finance charges or administrative fees that may accrue if and as a result of purchaser's failure to timely and/or properly pay amounts owing from purchaser when due.

3. It is understood and agreed that title to and right of possession of said equipment shall remain vested in seller until obligations of purchaser hereunder and payment of all other sums which may be due or are to become due from purchase to seller, whether evidenced by notes, book account, judgment, or otherwise, shall have been fully paid at which time ownership shall pass to the purchaser.
4. The seller's responsibility for shipments ceases upon delivery to a transportation company; and any claims for shortages, delays, or damages occurring thereafter shall be made by the purchaser directly to the transportation company. Any claims against the seller for shortages in shipments shall be made within fifteen days after receipt of shipment.
5. The purchaser agrees that this order shall not be countermanded by purchaser, that when it is accepted (and until the execution and delivery of the contract or contracts and note or notes required to consummate the sale as above specified), it will cover all agreements between the parties relative to this transaction, and that the seller is not bound by any representations or terms made by any agent relative to this transaction which are not embodied herein.
6. When the machines necessary to fill this order are available, the purchaser agrees on demand to execute and deliver to the seller such notes and contracts as may be required by the seller to evidence the transaction. In the event that the purchaser fails to execute and deliver said notes and contracts to the seller, the entire balance of the purchase price shall at the seller's option become immediately due and payable.

**7. EQUIPMENT MANAGEMENT ELECTRONIC DATA / PRIVACY NOTICE.** For EQUIPMENT equipped with Product Link™ and Vision Link™, CUSTOMER understands that data concerning this machine, its condition, and its operation is being transmitted by Product Link to Caterpillar Inc., its affiliates ("Caterpillar"), and or its dealers to better serve CUSTOMER and to improve upon Caterpillar products and services. The information transmitted may include: machine serial number, machine location, and operational data, including but not limited to: fault codes, emissions data, fuel usage, service meter hours, software and hardware version numbers, and installed attachments. Caterpillar will not sell or rent collected information to any other third party and will exercise reasonable efforts to keep the information secure as Caterpillar recognizes and respects CUSTOMER's privacy. Information regarding Caterpillar's data governance and the remote services that may be a part of the EQUIPMENT, can be found at <https://www.caterpillar.com/en/legal-notice/data-governance-statement.html> and [https://www.cat.com/en\\_US/support/technologysolutionsnew/remoteservicesprocess.html](https://www.cat.com/en_US/support/technologysolutionsnew/remoteservicesprocess.html) as applicable, or by contacting Caterpillar at [CatConnectSupport@cat.com](mailto:CatConnectSupport@cat.com). CUSTOMER acknowledges, understands and agrees that any questions or requests for information regarding ongoing collection of data and information by Caterpillar or its participation in Caterpillar Remote Services, including any questions or requests to opt out of such processes or programs should be directed to Caterpillar at the email listed above. By executing this Agreement, CUSTOMER understands these disclosures and agrees to allow this data to be accessed by Caterpillar and/or its dealers.

8. The seller shall not be held liable or responsible for any costs or expenses or for any damages on account of personal injuries or injuries to property or otherwise, suffered or sustained in the operation of any machinery or equipment, the subject of this order, nor for any damages alleged to result to purchaser by reason of any delays or alleged failure of said machinery or equipment to operate.

9. The purchaser agrees that damages arising from failure to consummate the sale contemplated by this agreement may be difficult to measure and that a reasonable measure of damages will be the difference between the price set forth herein and the amount for which the equipment can be sold to another party, plus any costs, charges, and related expenses that may be incurred by the seller to hold, store, and maintain the equipment until a sale can be made.

10. Purchaser and seller agree that in the event it becomes necessary to undertake legal action to enforce any of the terms of this agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs. "It is agreed by and between the customer and Peterson that all disputes and matters whatsoever arising under, in connection, or incident to this agreement shall be litigated, if at all, in or before a Court located in the State of incorporation of the seller to the exclusion of the Courts of any other state or country."

11. Should this order pertain to any used machinery or equipment, the following additional terms shall apply:

- (a) Seller makes no representation as to the quality or functionality of such used machinery and equipment which is being sold "AS-IS".
- (b) Seller makes no recommendations as to the use of equipment by Buyer.
- (c) Buyer agrees that all equipment is purchased solely at risk of Buyer.
- (d) Buyer hereby releases, discharges, and covenants not to sue Seller and will hold Seller free and harmless from all liability, claims, demands, losses, damages and costs ("claims") caused or alleged to be caused in whole or in part by the equipment purchased. Buyer further agrees that if any claim is made against Seller, Buyer will defend, indemnify, save, and hold harmless Seller from any and all loss, liability, damages, or costs which may be incurred as the result of such claim(s).

**Form C**

**EXCEPTIONS TO PROPOSAL, TERMS, CONDITIONS,  
AND SOLUTIONS REQUEST**



Company Name: Caterpillar Inc.

Any exceptions to the terms, conditions, specifications, or proposal forms contained in this RFP must be noted in writing and included with the Proposer's response. The Proposer acknowledges that the exceptions listed may or may not be accepted by Sourcewell or included in the final contract. Sourcewell will make reasonable efforts to accommodate the listed exceptions and may clarify the exceptions in the appropriate section below.

Section/page	Term, Condition, or Specification	Exception	Sourcewell ACCEPTS
8.11 / page 29	Assignment of Contract	Notwithstanding the Terms of Section 8.11, Caterpillar shall be permitted to subcontract certain of its duties to Cat dealers for performance. *	Sourcewell accepts
Section Q / page 32	Provisions for non-federal entity procurements under federal awards or other awards; airport improvement program provisions	Section Q shall be deleted in its entirety. However, Caterpillar Dealers will review individual transactions that may implicate certain provisions within section Q on a case by case basis as required. *	Sourcewell accepts

\*Please see page 2 of this form for comments regarding this exception request.

Proposer's Signature: *Tate L Redpath* Date: 3/13/19

**Sourcewell's clarification on exceptions listed above:**

LEGAL  
HCP  
Initials  
May 3, 2019  
Date

**Form C**

**EXCEPTIONS TO PROPOSAL, TERMS, CONDITIONS,  
AND SOLUTIONS REQUEST**



**Caterpillar Comments on Exception Requests:**

**Exception to 8.11**

Because we rely on our dealer network to work closely with customers to execute the terms of this agreement, we want to clarify that we may subcontract these obligations to them. This is how we are operating today to the satisfaction of all involved and we intend for this strong, close, and effective relationship to continue.

**Exception to Section Q**

In many situations we will be willing to comply to these terms. However, it is impossible to provide a blanket acceptance as each transaction is unique. For example, the Buy American provision referenced in 8.43 will be acceptable for some products and not for others depending on the source of production. By looking at each transaction individually we can ensure careful consideration. It is our desire to earn this business and when we are able to comply we will honor the terms specific to the transaction.

**Contract Award**  
**RFP #032019**



**FORM D**

**Formal Offering of Proposal**  
(To be completed only by the Proposer)

**HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES**

In compliance with the Request for Proposal (RFP) for **HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES**, the undersigned warrants that the Proposer has examined this RFP and, being familiar with all of the instructions, terms and conditions, general and technical specifications, sales and service expectations, and any special terms, agrees to furnish the defined products and related services in full compliance with all terms and conditions of this RFP, any applicable amendments of this RFP, and all Proposer's response documentation. The Proposer further understands that it accepts the full responsibility as the sole source of solutions proposed in this RFP response and that the Proposer accepts responsibility for any subcontractors used to fulfill this proposal.

Company Name: Caterpillar Inc. Date: 3/6/19

Company Address: 100 NE Adams Street

City: Peoria State: IL Zip: 61629

CAGE Code/DUNS: 11083/944204924

Contact Person: Patty Redpath Title: Governmental Account Manager

Authorized Signature: *[Signature]* Patrick Kearns  
(Name printed or typed)

**FORM E**  
**CONTRACT ACCEPTANCE AND AWARD**



(Top portion of this form will be completed by Sourcewell if the vendor is awarded a contract. The vendor should complete the vendor authorized signatures as part of the RFP response.)

Sourcewell Contract #: 032119-CAT

Proposer's full legal name: Caterpillar Inc.

**Based on Sourcewell's evaluation of your proposal, you have been awarded a contract. As an awarded vendor, you agree to provide the products and services contained in your proposal and to meet all the terms and conditions set forth in this RFP, in any amendments to this RFP, and in any exceptions that are accepted by Sourcewell.**

The effective date of the Contract will be May 13, 2019 and will expire on May 13, 2023 (no later than the later of four years from the expiration date of the currently awarded contract or four years from the date that the Sourcewell Chief Procurement Officer awards the Contract). This Contract may be extended for a fifth year at Sourcewell's discretion.

**Sourcewell Authorized Signatures:**

DocuSigned by:  
Jeremy Schwartz  
C0FD2A139D0648B  
SOURCEWELL DIRECTOR OF OPERATIONS AND  
PROCUREMENT/CPO SIGNATURE

Jeremy Schwartz  
(NAME PRINTED OR TYPED)

DocuSigned by:  
Chad Coauette  
7E42BBF817A84CC...  
SOURCEWELL EXECUTIVE DIRECTOR/CEO SIGNATURE

Chad Coauette  
(NAME PRINTED OR TYPED)

Awarded on May 10, 2019

Sourcewell Contract # 032119-CAT

**Vendor Authorized Signatures:**

The Vendor hereby accepts this Contract award, including all accepted exceptions and amendments.

Vendor Name Caterpillar Inc.

Authorized Signatory's Title North America Industry Manager

Patrick Kearns  
VENDOR AUTHORIZED SIGNATURE

Patrick Kearns  
(NAME PRINTED OR TYPED)

Executed on May 10, 2019

Sourcewell Contract # 032119-CAT

**Form F****PROPOSER ASSURANCE OF COMPLIANCE****Proposal Affidavit Signature Page****PROPOSER'S AFFIDAVIT**

The undersigned, authorized representative of the entity submitting the foregoing proposal (the "Proposer"), swears that the following statements are true to the best of his or her knowledge.

1. The Proposer is submitting its proposal under its true and correct name, the Proposer has been properly originated and legally exists in good standing in its state of residence, the Proposer possesses, or will possess before delivering any products and related services, all applicable licenses necessary for such delivery to Sourcewell members agencies. The undersigned affirms that he or she is authorized to act on behalf of, and to legally bind the Proposer to the terms in this Contract.
2. The Proposer, or any person representing the Proposer, has not directly or indirectly entered into any agreement or arrangement with any other vendor or supplier, any official or employee of Sourcewell, or any person, firm, or corporation under contract with Sourcewell, in an effort to influence the pricing, terms, or conditions relating to this RFP in any way that adversely affects the free and open competition for a Contract award under this RFP.
3. The Proposer has examined and understands the terms, conditions, scope, contract opportunity, specifications request, and other documents in this solicitation and affirms that any and all exceptions have been noted in writing and have been included with the Proposer's RFP response.
4. The Proposer will, if awarded a Contract, provide to Sourcewell Members the /products and services in accordance with the terms, conditions, and scope of this RFP, with the Proposer-offered specifications, and with the other documents in this solicitation.
5. The Proposer agrees to deliver products and services through valid contracts, purchase orders, or means that are acceptable to Sourcewell Members. Unless otherwise agreed to, the Proposer must provide only new and first-quality products and related services to Sourcewell Members under an awarded Contract.
6. The Proposer will comply with all applicable provisions of federal, state, and local laws, regulations, rules, and orders.
7. The Proposer understands that Sourcewell will reject RFP proposals that are marked "confidential" (or "nonpublic," etc.), either substantially or in their entirety. Under Minnesota Statute §13.591, Subd. 4, all proposals are considered nonpublic data until the evaluation is complete and a Contract is awarded. At that point, proposals generally become public data. Minnesota Statute §13.37 permits only certain narrowly defined data to be considered a "trade secret," and thus nonpublic data under Minnesota's Data Practices Act.
8. The Proposer understands that it is the Proposer's duty to protect information that it considers nonpublic, and it agrees to defend and indemnify Sourcewell for reasonable measures that Sourcewell takes to uphold such a data designation.

**[The rest of this page has been left intentionally blank. Signature page below]**



By signing below, Proposer is acknowledging that he or she has read, understands, and agrees to comply with the terms and conditions specified above.

Company Name: Caterpillar Inc.

Address: 100 NE Adams Street

City/State/Zip: Peoria, IL 61629

Telephone Number: 309-675-1000

E-mail Address: Cat\_Governmental@cat.com

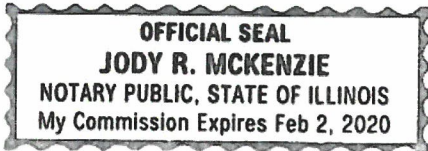
Authorized Signature: *Patrick Keane*

Authorized Name (printed): Patrick Keane

Title: North America Industry Manager

Date: 3/6/19

**Notarized**



Subscribed and sworn to before me this 6th day of March, 20 19

Notary Public in and for the County of Peoria State of Illinois

My commission expires: February 2, 2020

Signature: *Jody R. McKenzie*



**Form P**

**PROPOSER QUESTIONNAIRE**

**Payment Terms, Warranty, Products and Services, Pricing and Delivery, and Industry-Specific Questions**

Proposer Name: \_\_\_\_\_ Caterpillar Inc. \_\_\_\_\_

Questionnaire completed by: \_\_\_\_\_ Patty Redpath \_\_\_\_\_

**Payment Terms and Financing Options**

1) What are your payment terms (e.g., net 10, net 30)?

Our dealers accept payment from members and their terms may vary. The most common term is net 30.

2) Do you provide leasing or financing options, especially those options that schools and governmental entities may need to use in order to make certain acquisitions?

Yes. We offer both leasing and financing options to governmental members of Sourcewell at rates **lower** than available to the general public.

3) Briefly describe your proposed order process. Please include enough detail to support your ability to report quarterly sales to Sourcewell. For example, indicate whether your dealer network is included in your response and whether each dealer (or some other entity) will process the Sourcewell Members' purchase orders.

Our simple order process has been and will continue to be well appreciated by Sourcewell and Sourcewell members:

- 1) When a member decides to purchase a new Cat machine, they simply include their Sourcewell member number on the Purchase Order they issue to the Cat dealer.
- 2) The Cat dealer then accepts the PO, issues the invoice, accepts payment, and delivers the machine.
- 3) After the machine has been delivered, the dealer, as part of their normal process, includes the member number when filing their sales claim with Caterpillar.
- 4) At month end, Caterpillar aggregates these reports and sends the sales information quarterly to Sourcewell along with the administration fee.

**Important Note:** Should a member wish to include additional terms and conditions to this contract, or to otherwise request a Participating Addendum, that agreement/PA should be executed between the member and the Cat dealer directly.

4) Do you accept the P-card procurement and payment process? If so, is there any additional cost to Sourcewell Members for using this process?

Because Cat dealers will be receiving payments directly from members, accepting P-card procurement will be at their discretion. Many dealers do accept this method without additional fees. Some have limitations on the amount that can be processed.

**Warranty**

5) Describe in detail your manufacturer warranty program, including conditions and requirements to qualify, claims procedure, and overall structure. You may include in your response a copy of your warranties, but at a minimum please also answer the following questions.

- Do your warranties cover all products, parts, and labor?

Yes. Caterpillar has the most extensive warranty coverage in the industry. We cover all products, parts, and labor with fewer exclusions than our competitors. Please see **Attachment D** for details.

- Do your warranties impose usage restrictions or other limitations that adversely affect coverage?

We do not impose usage restrictions. We are pleased to say that our warranties cover defects in material and workmanship for the time specified in the policy when the equipment is used as per design intent.

- Do your warranties cover the expense of technicians’ travel time and mileage to perform warranty repairs?

The Caterpillar warranties cover the cost of replacement parts and the labor to install them, they do not cover travel time and mileage. Dealer territories vary considerably from state to state as do their policies about travel time and mileage during the warranty period.

- Are there any geographic regions of the United States for which you cannot provide a certified technician to perform warranty repairs? How will Sourcewell Members in these regions be provided service for warranty repair?

We have no restrictions on warranty repairs. One of our key differentiating strengths is our ability to service equipment regardless of where it is located.

- Will you cover warranty service for items made by other manufacturers that are part of your proposal, or are these warranties issues typically passed on to the original equipment manufacturer?

Warranty service for on machines ordered from a Caterpillar facility is generally provided by Caterpillar and performed by Cat dealers. Some items, such as tires, are covered under their manufacturers’ warranties.

- What are your proposed exchange and return programs and policies?

We warrant that upon delivery our products will be free from defects in material and workmanship and will operate as intended. If they are not, we will make any necessary corrections.

6) Describe any service contract options for the items included in your proposal.

We have a large variety of service contract options which can all be customized according to customer needs. Below are just two examples. More solutions are available, and we encourage members and dealers to explore all options.

1) Equipment Protection Plans (Extended Service Coverage/Cat Insurance)

After the initial warranty period ends, members may choose to purchase additional protection plans to reduce their exposure to unplanned costs. These policies are written based on months and hours of operation. There are four standard levels of coverage:

- a) Powertrain
- b) Powertrain + Hydraulics

- c) Powertrain + Hydraulics + Technology
- d) Premier

A description of all these options is included in **Attachment E**.

**Important note:** The purchase price for these Extended Service Coverage plans is lower for governmental agencies than it is for private buyers.

2) Customer Service Agreements (CSAs)

A member may choose to enter into an agreement with their Cat dealer to perform routine maintenance and/or repairs. These contracts are customizable based on member needs.

The selling Cat dealer can take responsibility for some or all the required service and maintenance needs to allow the agency to gain efficiency by focusing on the performance demands more than maintenance. CSAs are a useful tool to manage expenses. Most CSAs are bundled at the time of purchase; however, they may be added at any time.

**Pricing, Delivery, Audits, and Administrative Fee**

- 7) Provide a general narrative description of the equipment/products and related services you are offering in your proposal.

We are offering the new machine and work tool product lines as set forth in this proposal. This includes nearly 200 machine choices and more than 200 types of work tools.

In addition to new machines and work tools, we are happy to offer members access to rental machines, used machines, parts, service, extended service coverage plans, CSAs, products from Cat Safety Services, sourced goods, and open market items.

We understand that each member’s needs will vary, and we are proud to supply a complete solution from the industry’s largest product line.

- 8) Describe your pricing model (e.g., line-item discounts or product-category discounts). Provide detailed pricing data (including standard or list pricing and the Sourcewell discounted price) on all of the items that you want Sourcewell to consider as part of your RFP response. If applicable, provide a SKU for each item in your proposal. (Keep in mind that reasonable price and product adjustments can be made during the term of an awarded Contract. See the body of the RFP and the Price and Product Change Request Form for more detail.)

Our pricing model is simple. We offer a deep discount off the current machine and work tool list prices to all Sourcewell members.

We have provided base machine pricing in **Attachment F**. However, for execution of the agreement we will ask our dealers and Sourcewell members to use the Caterpillar price list that is current at the time of the quote. Dealers, in consultation with the member, will configure the machine to the desired specifications and apply the agreed upon stated minimum discount to that configured List Price amount. Dealers and members should remember to factor in any expected price increases if a machine will be built to order.

**Attachment G** shows the discount offered for each new machine.

Additionally, we are pleased to offer a discount of 15% off all products and consulting services under the Cat Safety Services Umbrella; and 5% off our Technology Enabled Safety Solutions.

- 9) Please quantify the discount range presented in this response. For example, indicate that the pricing in your response represents is a 50% percent discount from the MSRP or your published list.

Our discount range varies between 3% and 30%. It's important to note that discount comparisons between different machines cannot be considered an apple-to-apples comparison. Caterpillar product managers have broad leeway in product pricing, and there are some significant variations on pricing strategy. For example, a discount of 10% on Product A, may be equivalent to a 20% discount on Product B. The discounts offered to Sourcewell members are better than what is widely available to non-member/private purchasers.

- 10) The pricing offered in this proposal is

- \_\_\_\_\_ a. the same as the Proposer typically offers to an individual municipality, university, or school district.
- \_\_\_\_\_ b. the same as the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.
- \_\_\_\_\_ **X** c. better than the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.
- \_\_\_\_\_ d. other than what the Proposer typically offers (please describe).

- 11) Describe any quantity or volume discounts or rebate programs that you offer.

Our dealers are empowered to consider purchase order volume, repeat purchases, member responsiveness, etc. They may offer members additional discounts and/or services at their discretion.

- 12) Propose a method of facilitating “sourced” products or related services, which may be referred to as “open market” items or “nonstandard options”. For example, you may supply such items “at cost” or “at cost plus a percentage,” or you may supply a quote for each such request.

Sourced goods / Open Market Items are available to members from our Cat dealers. The prices for these goods or services will represent fair market value and will be determined between the member and the selling dealer. We encourage our dealers and members to use this option as it facilitates complimentary products and streamlines the procurement process.

Customers and dealers are responsible for including their Sourcewell member numbers on all documentation related to these purchases. Caterpillar Inc. is not a party to these sales and is exempted from including them in the quarterly reports. For audits, inclusion of a customer’s Sourcewell member number on the PO and/or invoice shall be deemed sufficient.

- 13) Identify any total cost of acquisition costs that are **NOT** included in the pricing submitted with your response. This cost includes all additional charges that are not directly identified as freight or shipping charges. For example, list costs for items like installation, set up, mandatory training, or initial/pre-delivery inspection. Identify any parties that impose such costs and their relationship to the Proposer.

Machines are unique in their requirements for preparation prior to use. Some may require local final assembly due to their large size, others may have locally installed options (fire suppression, beacons, auto lube systems for example). When a dealer issues a quote for a machine, any additional costs will be itemized separately and are not subject to the Sourcewell discount.

- 14) If travel expense, delivery or shipping is an additional cost to the Sourcewell Member, describe in detail the complete travel expense, shipping and delivery program.

There is no additional cost to members who choose to pick up their machine from the Cat dealer. Dealers may charge fees for delivery to the member’s location.

15) Specifically describe those travel expense, shipping and delivery programs for Alaska, Hawaii, Canada, or any offshore delivery.

Just as for members in the 48 contiguous states, there is no additional cost to members who choose to pick up their machine from their Cat dealer. Dealers may charge fees for delivery to the member’s location.

16) Describe any unique distribution and/or delivery methods or options offered in your proposal.

Machines are large purchases and if there are unique member requirements our dealers will be happy to discuss on a case by case basis.

17) Please specifically describe any self-audit process or program that you plan to employ to verify compliance with your proposed Contract with Sourcewell. This process includes ensuring that Sourcewell Members obtain the proper pricing, that the Vendor reports all sales under the Contract each quarter, and that the Vendor remits the proper administrative fee to Sourcewell.

We plan to continue our very robust process to ensure reporting speed, accuracy, and contract compliance.

Caterpillar and our Cat dealers have very close and trusting relationships. Our dealers are long-established, and the current process is working well.

- To ensure pricing accuracy, we maintain our current Sourcewell customer discount sheet on our dealer-facing pricing pages. Dealers integrate these numbers automatically in their quoting software.
- To ensure new machine and work tool sales are recorded properly, we use our post-sale credit system. In a nutshell, this means that we corporately support the pricing offered in this contract at a level below what’s available to other customers. To receive this additional monetary support after the machine is delivered, dealers must supply the member’s name, address, and member number. There is no additional burden or cost to our dealers to use the Sourcewell contract and this is part of the reason for their high engagement and our high reporting accuracy.
- After month end, we gather the new machine and work tool sales data attributed to Sourcewell and aggregate it for our reporting.
- After quarter end, we will send the quarterly sales report and administration fee payment to Sourcewell for all items that are subject to the administrative fee.

18) Identify a proposed administrative fee that you will pay to Sourcewell for facilitating, managing, and promoting the Sourcewell Contract in the event that you are awarded a Contract. This fee is typically calculated as a percentage of Vendor’s sales under the Contract or as a per-unit fee; it is not a line-item addition to the Member’s cost of goods. (See RFP Section 6.29 and following for details.)

We would be pleased to offer an administration fee of 0.50% of net dealer revenue on the sales of new machines and work tools. Caterpillar will pay this fee and will not ask members or dealers to bear any additional burden.

**Industry-Specific Questions**

19) Describe any industry-specific quality management system certifications obtained by your organization.

Throughout the history of Caterpillar, we’ve produced reliable, durable products our customers have been able to count on for many years...if not decades. This reliability and durability is foundational to our brand. We measure ourselves on both defects and durability. Defects are issues that prevent a machine or any part of it from performing as intended within the first year of service. Durability is defined as the actual achieved life of a machine or component. We pride ourselves on leading the industry.

Specifically, as it relates to this question, the below list shows our current quality certificates:

- 03 - Thin Film Coating Center, Mossville (IL), USA - CQMS / ISO9001:2015 Certificate (Exp date: 09-Mar-2019)
- 05 - Caterpillar Global Machine Development - Peoria Proving Ground, Peoria (IL), USA - ISO17025:2005 (Expiry date 31-Jan-2021)
- 06 - Caterpillar Inc., Cast Metals Organisation, Mapleton (IL), USA - ISO9001:2015 (Expiry date 24-Apr-2021)
- 08 - Caterpillar Inc., - SOS Services Laboratory (Main Multi-site), Peoria, IL, USA - ISO9001:2015 (Expiry date 29-Nov-2020)
- 12 - Caterpillar Inc. - Matl Handling & Underground Div. (Aurora), Montgomery IL, USA ISO9001:2015 Certificate. (Exp: 23-Feb-2020)
- 13 - Caterpillar Inc.- Construction and Mining Equipment (HQ), Decatur (IL), USA - ISO9001:2015 Certificate. (Exp date: 26-Oct-2021)
- 16 - Caterpillar Inc. - East Peoria (Multi-Site - TTT), Tractor Drive, East Peoria (IL), USA - ISO9001:2015 Certificate (Exp: 30-Nov-2019)
- 28 - Caterpillar Brasil Limited, Campo Largo, Brasil - ISO9001:2015 (Exp date: 23-Jul-2020)
- 28 - Caterpillar Brasil Ltda., Piracicaba, Brasil - ISO9001:2015 Certificate (Exp date: 19-Mar-2021)
- 29 - Caterpillar Engine Systems Inc. (HQ), Pontiac (IL), USA - ISO9001:2015 Certificate (Exp date: 06-Aug-2019)
- 40 - Caterpillar Engine Systems Inc., Mossville (IL), USA - ISO9001:2015 Certificate (Exp date: 06-Aug-2019)
- 40 - Caterpillar Inc., Industrial Power Systems Division, Mossville (IL), USA - ISO9001:2015 Certificate (Exp Date: 17-Feb-2019)
- 40 - Caterpillar Inc., Industrial Power Systems Division, San Antonio (TX), USA - ISO9001:2015 Certificate (Exp Date: 17-Feb-2019)
- 40 - Caterpillar Inc., Industrial Power Systems Division, Schertz (TX), USA - ISO9001:2015 Certificate (Exp Date: 17-Feb-2019)
- 41 - Caterpillar Powertrain & Hydraulics - Systems Development, Mossville (IL), USA - ISO17025:2005 (Expiry date 31-Dec-2019)
- 41 - Global Engine Development - North America, Mossville, IL 61552, USA - ISO17025:2005 (Exp Date: 31-Aug-2019)
- 68 - Caterpillar Inc. (Remanufacturing Site-Specific Certificate), Corinth (MS), USA ISO9001:2015 Certificate (Expiry date 19-Jun-2020)
- 68 - Caterpillar Inc. Remanufacturing Services (HQ), Corinth, MS 38834, USA, ISO 9001:2015 (Exp Date: 19-Jun-2020)
- 7P - Perkins Motores Do Brasil LTDA, Curitiba, BRASIL - CQMS:2015 / ISO9001:2015 Certificate (Expiry date 05-Oct-2020)
- 88 - Caterpillar Inc. Lafayette Engine Center, Lafayette (IN), USA - ISO9001:2015 Certificate (Expiry date 04-Feb-2021)
- 89 - Caterpillar Mexico S.A. de C.V. (Monterrey), Nuevo Leon, Mexico 66350 - CQMS:2015/ISO 9001:2015 Certificate (Exp: 12-Jul-2019)
- 92 - Caterpillar Midwest Logistics Center (Champaign), Illinois - ISO 9001:2008 (Exp Date: 29-Jan-2018)
- CF - Caterpillar Inc. (Remanufacturing Site-Specific Certificate), Nuevo Laredo (FINSA 1), Mexico - ISO 9001:2015 (Exp: 19-Jun-2020)
- CF - Caterpillar Inc. (Remanufacturing Site-Specific Certificate), Nuevo Laredo (FINSA 3), Mexico ISO9001:2015 Certificate (Exp: 19-Jun-2020)
- CF - Caterpillar Inc. (Remanufacturing Site-Specific Certificate), Nuevo Laredo (ORADEL), Mexico ISO9001:2015 Certificate (Exp. 19-Jun-2020)
- CP - Caterpillar Global Machine Development - Tucson Proving Ground, Tucson (AZ), USA ISO17025:2005 (Expiry date 31-Jan-2020)
- DQ - Caterpillar Inc. Building Construction Products Division, Clayton (NC), USA - ISO9001:2015 (Expiry date 06-Jul-2021)
- FJ - Anchor Coupling (Menominee), Menominee (MI), USA ISO9001:2015 (Expiry date 22-Jan-2021)
- HL - Caterpillar Inc. (Remanufacturing Site-Specific Certificate), Prentiss (Boonville - MS), USA ISO9001:2015 Certificate (Exp. 19-Jun-2020)
- HP - Caterpillar Dyersburg, Tennessee - ISO9001:2008 Certificate. (Expiry date 14-Sep-2018)
- HZ - Caterpillar Inc., Industrial Power Systems Division, Sequin (TX), USA - ISO9001:2015 Certificate (Exp Date: 17-Feb-2019)
- JA - Caterpillar Inc. Building Construction Products Division, Sanford (NC), USA - ISO9001:2015 (Expiry date 06-Jul-2021)
- JL - Caterpillar Inc. - Precision Pin Products Group, Sumter (SC), USA - ISO9001:2015 (Expiry date 22-Oct-2018)
- JQ - Caterpillar Inc. Building Construction Products Division, Athens (GA), USA - ISO9001:2015 (Expiry date 06-Jul-2021)
- LE - Caterpillar Inc., Griffin Generators, Griffin (GA), USA - ISO9001:2015 Certificate. (Expiry date 03-Mar-2021)
- LS - All Caterpillar Newberry LLC Facilities - DNV ISO 9001:2008 (Exp Date: 15-Sep-2018)
- M5 - Caterpillar Inc. Building Construction Products Division (HQ), Cary (NC), USA - ISO9001:2015 (Expiry date 06-Jul-2021)
- MC - Caterpillar Inc. Building Construction Products Division, Torreon, MEXICO - ISO9001:2015 (Expiry date 06-Jul-2021)
- N4 - Advanced Components and Technologies, Mossville (IL), USA - ISO 9001:2015 Certificate (Exp Date: 24-May-2019)
- PE - Caterpillar Inc. (Remanufacturing Site Specific Certificate), West Fargo (ND), USA ISO9001:2015 Certificate (Exp: 19-Jun-2020)
- PV - Perkins Shibaura Engines LLC, Griffin (GA), US ISO9001:2015 (Expiry date 31-Jan-2020)
- QR - Caterpillar Global Mining - Houston PA - ISO 9001:2008 (Exp Date 15-Sep-2018)
- R8 - Caterpillar Inc. / Paving Products / Minneapolis, (MN), USA - ISO 9001:2015 Certificate (Exp Date: 27-Nov-2020)
- T3 - Solar Turbines Europe S.A. – Oil and Gas, Avenue de Finlande, Braine L’Alleud, Belgium - ISO 9001:2015 Certificate (Exp. 22-Sep-2020)
- T3 - Solar Turbines Inc. (Packaging Systems Operations), San Diego (CA), USA - ISO9001:2015 (Expiry date 22-Sep-2020)
- T3 - Solar Turbines Inc. (Power Generation), San Diego (CA), USA - ISO9001:2015 (Expiry date 22-Sep-2020)
- T3 - Solar Turbines Inc. - Oil and Gas, 10203 Sam Houston Park Drive, Houston TX, USA - ISO 9001:2015 Certificate (Exp: 22-Sep-2020)
- T3 - Solar Turbines Inc. - Oil and Gas, 9250 Sky Park Court, San Diego (CA), USA - ISO 9001:2015 Certificate (Exp Date: 22-Sep-2020)
- T3 - Solar Turbines Inc. - Oil and Gas, 9280 Sky Park Court, San Diego (CA), USA - ISO 9001:2015 Certificate (Exp Date: 22-Sep-2020)
- T3 - Solar Turbines Inc. - Oil and Gas, 9330 Sky Park Court, San Diego (CA), USA - ISO 9001:2015 Certificate (Exp Date: 22-Sep-2020)
- T3 - Solar Turbines Inc. - Pkg Systems Operations (HQ), 4200 Ruffin Road, San Diego CA, USA - ISO 9001:2015 Certificate (Exp: 22-Sep-2020)
- T3 - Solar Turbines Inc. - Pkg Systems Operations, Teran-Teran 20120 Int., Tijuana (BC), Mexico - ISO 9001:2015 Certificate (Exp: 22-Sep-2020)
- T3 - Solar Turbines Inc. - Power Generation, 4180 Ruffin Road, San Diego (CA), USA - ISO 9001:2015 Certificate (Exp : 22-Sep-2020)
- T3 - Solar Turbines Inc. - Turbobfab, DeZavala Road, Channelview (TX), USA - ISO9001:2015 Certificate (Expiry date 23-Jul-2021)
- T3 - Solar Turbines Inc., - Construction Services, Houston (TX), USA - ISO9001:2015 Certificate (Exp Date: 07-Jul-2021)
- T3 - Solar Turbines Inc., - Desoto Overhaul Operations, Desoto (TX), USA - ISO9001:2015 Certificate (Expiry date 24-Aug-2021)
- T3 - Solar Turbines Inc., Turbomachinery Prod, W Seattle Street, Broken Arrow OK, USA - ISO9001:2015 Certificate (Exp 03-May-2021)
- T3 - Solar Turbines Inc., Turbomachinery Prod - Gas Compressors, Ruffin Road, San Diego (CA), USA - ISO9001:2015 Cert. (Exp 03-May-2021)
- T3 - Solar Turbines Inc., Turbomachinery Prod - Gas Compressors, Sky Park Ct, San Diego (CA), USA - ISO9001:2015 Cert (Exp 03-May-2021)
- T3 - Solar Turbines Inc., Turbomachinery Prod - Gear Systems / Superior Gear, Gardena (CA), USA - ISO9001:2015 Cert (Exp 03-May-2021)
- T3 - Solar Turbines Inc., Turbomachinery Prod - Turbotec Bldg 1, Chilpancingo, Tijuana, B.C. Mexico - ISO9001:2015 Cert (Exp 03-May-2021)

- T3 - Solar Turbines Inc., Turbomachinery Prod - Turbotec Bldg 2, Ciudad Ind Otay, Tijuana, B.C. Mexico - ISO9001:2015 Cert (Exp 03-May-2021)
- T3 - Solar Turbines Incorporated, Mabank (TX), USA - ISO9001:2015 Certificate (Expiry date 04-Aug-2021)
- T3 - Solar Turbines Switzerland Sagl, 6595 Riazzino, Switzerland - ISO9001:2015 Certificate (Expiry date 08-May-2018)
- UD - Denison, TX -Caterpillar Global Mining LLC-ISO 9001:2008 (Exp Date: 03-Aug-2020)
- UH - Caterpillar Acuna - Construction and Mining Equipment, Ciudad Acuna, Coahuila, Mexico - ISO9001:2015 Certificate. (Exp: 26-Oct-2021)
- UH - Caterpillar Inc. - Acuna, Coahuila, MEXICO - ISO9001:2015 Certificate (Expiry date 26-Oct-2018)
- UJ - Caterpillar - North Little Rock, North Little Rock (AR), USA - CQMS:2015 / ISO 9001:2015 Certificate (Exp Date: 05-Jun-2019)
- XO - Anchor Coupling (Goldsboro), Goldsboro (NC), USA - ISO 9001:2015 (Exp date: 20-Dec-2018)
- XY - Caterpillar Reynosa S.A. de C.V., Reynosa, Tamaulipas, Mexico - ISO9001:2015 Certificate (Exp date: 03-Oct-2020)
- YP - Caterpillar Inc. (Remanufacturing Site-Specific Certificate), Franklin (IN), USA ISO9001:2015 Certificate (Expiry date 19-Jun-2020)
- YV - Caterpillar Surface Mining and Technology, South Milwaukee (WI), USA - ISO9001:2015 (Expiry date 04-Jun-2021)
- ZZ - Caterpillar Inc. - Advanced Components Manufacturing (Hydraulic Cylinders), Sumter (SC), USA - ISO9001:2015 Cert (Exp: 28-Mar-2020)

20) Describe any environmental management system certifications obtained by your organization.

We described our “green initiatives” more completely in Form A, Question 29. To be specific regarding ISO standards, we are listing here the plants that are certified to ISO 14001:2004 Environmental Management System:

Plants certified with ISO 14001:2004 Environmental Management System

- Anchor Coupling - Goldsboro, NC - ISO 14001:2004 - Sept 2018
- Anchor Coupling - Menominee - ISO 14001:2015 - Jan. 2021
- Gen Sets - Newberry - ISO 14001:2004 - Nov. 2017
- Mapleton - 14001:2004 self-certification - issued January 2013
- Reman Services - Corinth, MS - ISO 14001:2015 - Sept. 2021
- Reman Services - Franklin - ISO 14001:2004 - May 2017

21) Describe any preventive maintenance programs that your organization offers for the solutions you are proposing in your response.

Caterpillar understands the value to the customer of a well-defined preventive maintenance plan. Each machine we sell has very clear and detailed instructions for routine maintenance. We find that some customers prefer to do the maintenance themselves, others want our dealers to track and perform the service.

For customers who retain maintenance responsibilities, we have several tools available to facilitate that. As an example, My.Cat.Com makes it easy for customers to access critical information about their fleet.

STARTER CONNECTIVITY: If the customer purchases a machine with a factory-installed Product Link device, the customer will receive Cat Daily connectivity at no cost (for seven years on Building Construction Products machines; 12 years on Global Construction & Infrastructure machines). Cat Daily provides basic information once per day via My.Cat.Com or via a mobile app as described below.

My.Cat.Com users have access to:

- Equipment location
- Hours
- Diagnostic and operational events
- Fuel burn
- Dealer work orders
- Parts lists and Preventive Maintenance Checklists
- Parts ordering
- Safety service letters
- Rental documentation
- Warranty information



- Operation and maintenance manuals
- Preventive maintenance alerts and scheduling
- Cat Inspect outcomes
- S-O-S fluid analysis results

A subset of this information is also available in the Cat App: Fleet Management (IOS and Android).

In some situations, information available through My.Cat.Com provides an agency with sufficient data. But sometimes the equipment manager/public works director wants a more comprehensive view of their assets and/or the ability to manage an entire fleet. To meet that need, Caterpillar offers VisionLink—a powerful, flexible platform with enhanced capabilities, like customizable reports and notifications, that makes it easier to optimize productivity, manage assets and reduce costs.

**ADVANCED CONNECTIVITY TRIAL:** For any construction machine with a Product Link device, the customer will receive a six-month complimentary VisionLink Essentials trial. After the trial period ends, customers may elect to continue access at several different levels:

- **VisionLink Daily** – offers convenient, affordable, once-a-day telematics information. Ideal for customers who only need once-per-day reporting
- **VisionLink Basic** – provides basic asset management features including hour and location monitoring as well as geographic fencing and maintenance management. Recommended for machines that only report hours, where data updates and related features are needed more frequently than once per day.
- **VisionLink Essentials** – includes all the features of Basic plus health, utilization, and productivity features with frequent data updates. Ideal for customers needing up-to-date information about site operations, productivity, asset location, and operator performance, as well as timely notification of issues as they occur.

Another free app we offer is designed to help customers focus on safety and preventive maintenance. The “Cat Inspect” app offers multiple features geared to make regular machine inspections simple and useful.

- **Daily Walkaround** inspections are designed primarily for operators who are guided where to look on their particular machine and allows them to document and report any abnormalities.
- **Preventive Maintenance** inspections are more in-depth and are designed for customer or dealer technicians to inspect components for signs of wear and to ensure that all recommended preventive maintenance procedures are completed and recorded.
- **Technical Analysis** inspections are the most in-depth and are normally used once per year or when a machine is at the end of a customer’s ownership period.

This app includes the ability to take pictures, make notes and complete and share inspections electronically. Inspection reports are also integrated into both My.Cat.Com and VisionLink, providing visibility to overall fleet health.

For customers who intend to rely on dealers for maintenance, they can schedule the work themselves as needed, or we propose a variety of CSAs (Customer Support Agreements). These are completely customizable, but we offer starting points for several levels with corresponding price points which vary by product.

- Customer performed preventative maintenance – the Cat dealer will provide the necessary parts per the maintenance schedule; the customer will do the work.

- Dealer performed preventative maintenance – the Cat dealer will handle basic preventative maintenance for any machine or group of machines to help keep scheduled downtime to a minimum.
- Component maintenance and repair agreement – the Cat dealer will take care of maintaining and servicing systems such as engines, transmissions, etc. to extend service resources and equipment life.
- Total maintenance and repair agreement – the Cat dealer covers service and maintenance for any one piece of equipment or the entire fleet. This agreement can include guaranteed availability and uptime.

Signature: Patricia A. Redpath Date: 3/13/19

**AMENDMENT #1  
TO  
CONTRACT #032119-CAT**

THIS AMENDMENT is by and between **Sourcewell** and **Caterpillar Inc.** (Vendor).

Sourcewell awarded a contract to Vendor for Heavy Construction Equipment with Related Accessories, Attachments, and Supplies effective May 13, 2019, through May 13, 2023 (Contract). Vendor implemented changes to its dealer reporting system and now wishes to modify the Contract to accurately report Administrative Fee payment calculations.

The parties wish to amend the following terms within the Contract:

- 1. This Amendment is effective upon the date of the last signature below.
- 2. Any Contract term related to calculation of Administrative Fee that is paid to Sourcewell is deleted and replaced with the following:

“Vendor will pay to Sourcewell an Administration Fee calculated at 0.33% of Caterpillar’s MSRP for each piece of equipment purchased by Sourcewell’s Participating Entities. Caterpillar will pay the Administration Fee to Sourcewell on a quarterly basis.”

Except as amended above, the Contract remains in full force and effect.

**Sourcewell**

DocuSigned by:  
By: Jeremy Schwartz  
Jeremy Schwartz, Chief Procurement Officer

Date: 7/12/2021 | 7:35 PM CDT

Approved:

DocuSigned by:  
By: Chad Coquette  
Chad Coquette, Executive Director/CEO

Date: 7/12/2021 | 8:38 PM CDT

**Caterpillar Inc.**

DocuSigned by:  
By: Dawn Zink  
Dawn Zink

Title: Caterpillar Governmental Marketing Manager

Date: 7/12/2021 | 3:32 PM CDT



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: September 28, 2022

SUBJECT: Update from 17th Street Partners on collaborative work performed at NE 17th Street in Redmond

RECOMMENDED MOTION:

None

BACKGROUND AND POLICY IMPLICATIONS:

The 17th Street Partners is a partnership between a number of public and private organizations that meet regularly to collaborate and strategize in response to challenges associated with adjacent encampments, including solid waste and its effect on local business. The Partners schedule organized cleanup events roughly once per quarter, which offers an opportunity for the community to come together to help build relationships and provide cleanup assistance.

Partners include the City of Redmond and Deschutes County, a number of nonprofits including but not limited to Mountain View Fellowship, Oasis Village and Shepherds House, as well as local private businesses including Fuel Safe and Medline that not only assist with cleanups, but also provide dumpsters for the cleanup events.

BUDGET IMPACTS:

N/A

ATTENDANCE:

Kristie Bollinger, Property Manager, and other representatives from the 17th Street Partners including Linda Cline, Bob Bohac, Stephanie Hunter and Colleen Thomas



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: September 28, 2022

SUBJECT: Deliberations: LBNW LLC Plan Amendment and Zone Change

RECOMMENDED MOTION:

Hearings Officer recommends approval of file nos. 247-21-000881-PA, 882-ZC pursuant to DCC 22.28.030

BACKGROUND AND POLICY IMPLICATIONS:

The Board of County Commissioners (Board) will deliberate on September 28, 2022 in relation to a request for a Plan Amendment and Zone Change (file nos. 247-21-000881-PA, 882-ZC) for three (3) properties totaling 19.12 acres along north Highway 97, submitted by LBNW LLC. The addresses associated with the subject properties are as follows:

Property 1:
Map and Taxlot: 1312230000305
Account: 164853
Situs Address: 65301 N HWY 97, BEND, OR 97701

Property 2:
Map and Taxlot: 1612230000500
Account: 132821
Situs Address: 65315 HWY 97, BEND, OR 97701

Property 3:
Map and Taxlot: 1612230000301
Account: 132822
Situs Address: 65305 HWY 97, BEND, OR 97701

BUDGET IMPACTS:

None

**ATTENDANCE:**

Tarik Rawlings, Associate Planner



**MEMORANDUM**

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

**FROM:** Tarik Rawlings, Associate Planner  
Will Groves, Planning Manager

**DATE:** September 16, 2022

**SUBJECT:** Deliberations – LBNW LLC Plan Amendment and Zone Change

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The Board of County Commissioners (Board) held a public hearing on September 7, 2022 to consider a request for approximately 19.12 acres along Highway 97. The subject property consists of three tax lots totaling approximately 19.12 acres. The application includes a request for a Goal 14 Exception as an alternative argument, if determined to be necessary for approval of the Plan Amendment/Zone Change. The Board is scheduled to deliberate on September 28, 2022 in consideration of the request.

**I. BACKGROUND**

The applicant, LBNW LLC, is requesting a Comprehensive Plan Amendment to re-designate the subject properties from Agriculture to Rural Industrial and a corresponding Zone Change to rezone the properties from Exclusive Farm Use (EFU) to Rural Industrial (RI). The applicant’s reasoning for the request is that the properties were mistakenly identified as farmland, do not contain high-value soils or other characteristics of high-value farmland, and therefore should be re-designated and rezoned for rural industrial use. The applicant has provided a supplementary soil study that identifies non-high value (Class VII and VIII) soils on a majority of the subject properties. Additionally, the applicant has provided findings within the burden of proof that provide responses to relevant state and local requirements and policies. A public hearing before a Hearings Officer was conducted on April 26, 2022 with the Hearings Officer’s recommendation of approval issued on July 12, 2022. The Board held a public hearing on September 7, 2022 and closed the written record period. The Board set a deliberation date of September 28, 2022.

**II. BOARD DELIBERATIONS**

On September 28, 2022, the Board will deliberate on the proposed Plan Amendment and Zone Change requests. If the Board finds that additional deliberations are necessary, the Board may schedule a future date for continued deliberations. If the Board finds no additional deliberations are necessary, the Board may then vote on whether to uphold or overturn the Hearings Officer’s recommendation of approval.

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. The record is available for inspection at the Planning Division and at the following link: <https://www.deschutescounty.gov/cd/page/247-21-000881-pa-and-247-21-000882-zc-lbnw-llc-comprehensive-plan-amendment-and-zone-change>

**Board Decision Matrix**

A more thorough review and discussion of the subject proposal’s compliance with the applicable approval criteria and issues is provided in the associated Board Decision Matrix, prepared in conjunction with this deliberation memorandum.

**III. NEXT STEPS**

If the Board determines that additional deliberations are necessary, staff will work with the Board to schedule a future meeting for continued deliberations. If the Board concludes their deliberations during the September 28, 2022 meeting, the Board may then vote on whether to uphold or overturn the Hearings Officer’s recommendation of approval. If the Board renders a vote during the September 28, 2022 meeting, staff will coordinate with the Board to return for a future meeting during which a draft ordinance and relevant exhibits will be presented and a first reading of the ordinance initiated.

**ATTACHMENTS:**

- 1. Area Map
- 2. Board Decision Matrix



**BOCC DECISION MATRIX**

**LBNW LLC PLAN AMENDMENT / ZONE CHANGE  
Land Use File Nos. 247-21-000881-PA, 882-ZC**

	Issue Area	Applicable Approval Criterion	Applicant and Oppositional Responses	Hearings Officer	Staff Comment
1	Is the applicant required to address the factors raised in <i>Shaffer v. Jackson County (LUBA 922, 1989)</i> in order to demonstrate compliance with Oregon Statewide Planning Goal 14 (Urbanization)?	The opposition does not point to specific approval criteria but instead notes Oregon Statewide Planning Goal 14 (Urbanization) as being relevant to this issue area.	<p>The Applicant asserts, based on case law from <i>Central Oregon LandWatch v. Deschutes County (LUBA 2021-028)</i>, that the proposed Rural Industrial (RI) Zone does not permit urban uses on rural lands and, therefore, the factors outlined in <i>Shaffer</i> do not apply to the subject application and no Goal 14 exception is needed for approval.</p> <p>Oppositional comments assert that the Applicant has failed to adequately address Goal 14 through a review of the relevant <i>Shaffer</i> factors and that a Goal 14 Exception is required for the subject proposal.</p>	The Hearings Officer found that, because no specific use has been proposed in connection with the subject plan amendment and zone change review process, the <i>Shaffer</i> factors do not apply to the subject application (HO Decision p. 39).	<p>Staff agrees with the Hearings Officer and believes the Applicant's position provides the clearest interpretation on this issue. The Board must determine whether the applicant must address the factors raised in <i>Shaffer</i> to demonstrate compliance with Goal 14.</p> <p>If the Board agrees with Hearings Officer's interpretation on this issue, they may uphold the findings in the Hearings Officer's Recommendation.</p> <p>If the Board agrees with the Applicant's response, they may make findings that the Rural Industrial (RI) Zone does not permit urban uses on rural lands and, therefore, the <i>Shaffer</i> factors do not apply to the proposal.</p> <p>If the Board disagrees with the Hearings Officer and Applicant, they may find that the <i>Shaffer</i> factors are required.</p> <p>If the Board finds the <i>Shaffer</i> factors do apply, the Board must then determine if those factors have been met by the Applicant.</p> <p>If the Board determines the <i>Shaffer</i> factors have been met, they may make findings to such effect and continue reviewing other issue areas.</p> <p>If the Board determines the <i>Shaffer</i> factors have <u>not</u> been met, they may deny the application for lack of Goal 14 compliance.</p>

**LBNW LLC PLAN AMENDMENT / ZONE CHANGE**  
**Land Use File Nos. 247-21-000881-PA, 882-ZC**

	Issue Area	Applicable Approval Criterion	Applicant and Oppositional Responses	Hearings Officer	Staff Comment
2	Goal 14: Does proposed Rural Industrial (RI) Zoning Designation allow urban uses on rural County property, requiring and a Goal 14 Exception?	The opposition does not point to specific approval criteria but instead notes Oregon Statewide Planning Goal 14 (Urbanization) as being relevant to this issue area.	<p><u>The Applicant</u> asserts the Rural Industrial (RI) Zone proposed in the subject application is a rural zone that only permits rural uses as allowable or conditional and does not permit urban uses on rural County property. The Applicant cites <i>Aceti</i> case law (<i>Central Oregon LandWatch v. Deschutes County LUBA 2021-028</i>) in support of their position.</p> <p><u>Oppositional comments</u> assert the Rural Industrial (RI) Zone will result in urban uses being allowed on the subject rural County properties and, as a result, an exception to Oregon Statewide Planning Goal 14 (Urbanization) is required in order for the subject application to be approved. Based on <i>Shaffer v. Jackson County (LUBA 922, 1989)</i>, oppositional comments also assert that the Shaffer factors, reviewed in Issue Area #1, must be satisfied in order to demonstrate Goal 14 compliance.</p>	The Hearings Officer cites case law at <i>Central Oregon LandWatch v. Deschutes County (LUBA 2021-028)</i> and found the <i>Shaffer</i> factors outlined in <i>Shaffer v. Jackson County (LUBA 922, 1989)</i> do not apply to the subject proposal as the eventual use of the subject property is uncertain (HO Decision p. 39). Further, the Hearings Officer reinforces Board findings in Ordinance 2021-002 (related to LUBA 922) that the RI Zone does not permit urban uses on rural lands (HO Decision p. 42-43) and ultimately concludes that no Goal 14 Exception is required for approval of the subject proposal.	<p>Staff agrees with the Hearings Officer and believes the Applicant's position provides the clearest interpretation on this issue. The Board must determine whether the Rural Industrial (RI) Zone allows urban uses on rural land and, as a result, whether the application complies with Goal 14.</p> <p>If the Board agrees with Hearings Officer's interpretation on this issue, they may uphold the findings in the Hearings Officer's Recommendation.</p> <p>If the Board agrees with the Applicant's response, they may make findings that the Rural Industrial (RI) Zone does not permit urban uses on rural lands and, therefore, no Goal 14 Exception is required for the proposal.</p> <p>If the Board disagrees with the Hearings Officer and Applicant, they may find that the proposal allows urban uses on rural lands and, as a result, the proposal does not comply with Goal 14. They may then deny the application on these grounds.</p>

BOCC DECISION MATRIX

LBNW LLC PLAN AMENDMENT / ZONE CHANGE  
Land Use File Nos. 247-21-000881-PA, 882-ZC

	Issue Area	Applicable Approval Criterion	Applicant and Oppositional Responses	Hearings Officer	Staff Comment
3	Goal 5 Compliance: The subject property is within a scenic resource associated with the Highway 97 corridor. Are additional findings, beyond those provided by the Hearing Officer, needed at this time?	The opposition cites OAR 660-023-0250(3) as relevant to this issue area. Deschutes County Comprehensive Plan Section 2.7 applies to Open Spaces, Scenic View, and Sites.	<p><u>The Applicant</u> asserts the provisions of the Landscape Management (LM) Combining Zone associated with the Highway 97 corridor are reviewed and addressed during the County's site plan review of specific development proposals and that the presence of the LM Combining Zone on the subject property is not grounds for denial of the subject applications.</p> <p><u>Oppositional comments</u> assert that Goal 5 compliance has not been addressed and that an exception to Goal 5 is required for approval of the subject proposal.</p>	The Hearings Officer found the subject properties do not constitute significant open spaces subject to Goals and Policies of Deschutes County Comprehensive Plan Chapter 2, Section 2.7 and are not inventoried in Chapter 5, Section 5.5 of the Comprehensive Plan as an "area of special concern" and that review of compliance with the LM Combining Zone is not required within the scope of the subject Plan Amendment and Zone Change applications (HO Decision p. 59).	<p>Staff agrees with the Applicant and Hearings Officer on this issue area. The Board must determine whether additional findings are required related to Goal 5 compliance.</p> <p>If the Board agrees with Hearings Officer and Applicant's interpretation on this issue, they may uphold the findings in the Hearings Officer's Recommendation and move on to other issue areas.</p> <p>If the Board disagrees with the Hearings Officer and Applicant, they may find that the proposal does not comply with Goal 5 and the underlying LM Combining Zone. They may then deny the application on these grounds.</p>
4	Transportation Impacts, Public Safety, Goal 12: Will the proposal, as conditioned by the Hearings Officer have significant adverse effects on the identified function, capacity, and performance standards of the transportation facilities in the impact area?	The opposition references OAR 660-012-0060(1) and DCC 18.136.020 as specific approval criteria relevant to the identified issue area.	<p><u>The Applicant's</u> traffic study indicates the project will create transportation facility impacts which may not be appropriate based on the County Transportation System Plan. To mitigate such impacts, the Applicant proposes a trip cap as a condition of approval, limiting the number of vehicle trips allowed to and from the subject property, which was reviewed and approved by ODOT, Deschutes County representatives, and the Applicant.</p> <p><u>Oppositional comments</u> assert that Goal 12 has not been addressed sufficiently by the Applicant (including the trip cap condition of approval) and an exception to Goal 12 is required for an approval of the proposal. The opposition further asserts that the proposed access to the property would not serve public safety, in violation of DCC 18.136.020.</p>	The Hearings Officer found the Applicant has studied all facilities identified by the County as potentially impacted by the proposal through the traffic study and associated trip cap condition of approval. The Hearings Officer concludes that, with the imposition of the trip cap condition of approval, the proposal will have no significant adverse effect on the identified function, capacity, and performance standards of the transportation facilities in the impact area and the proposal complies with OAR 660-012-0060 (HO Decision p. 78).	<p>Staff agrees with the Applicant and Hearings Officer on this issue area. The Board must determine whether the proposal, as conditioned by the Hearings Officer, will have significant adverse effects on the function, capacity, and performance standards of the transportation facilities in the impact area.</p> <p>If the Board agrees with Hearings Officer and Applicant's interpretation on this issue, they may uphold the findings in the Hearings Officer's Recommendation, including the "trip cap" condition of approval, and move on to other issue areas.</p> <p>If the Board disagrees with the Hearings Officer and Applicant, they may find that the proposal <u>will</u> have significant adverse effects and either: 1) make additional findings addressing these effects; or 2) deny the application for lack of compliance with Goal 12.</p>

BOCC DECISION MATRIX

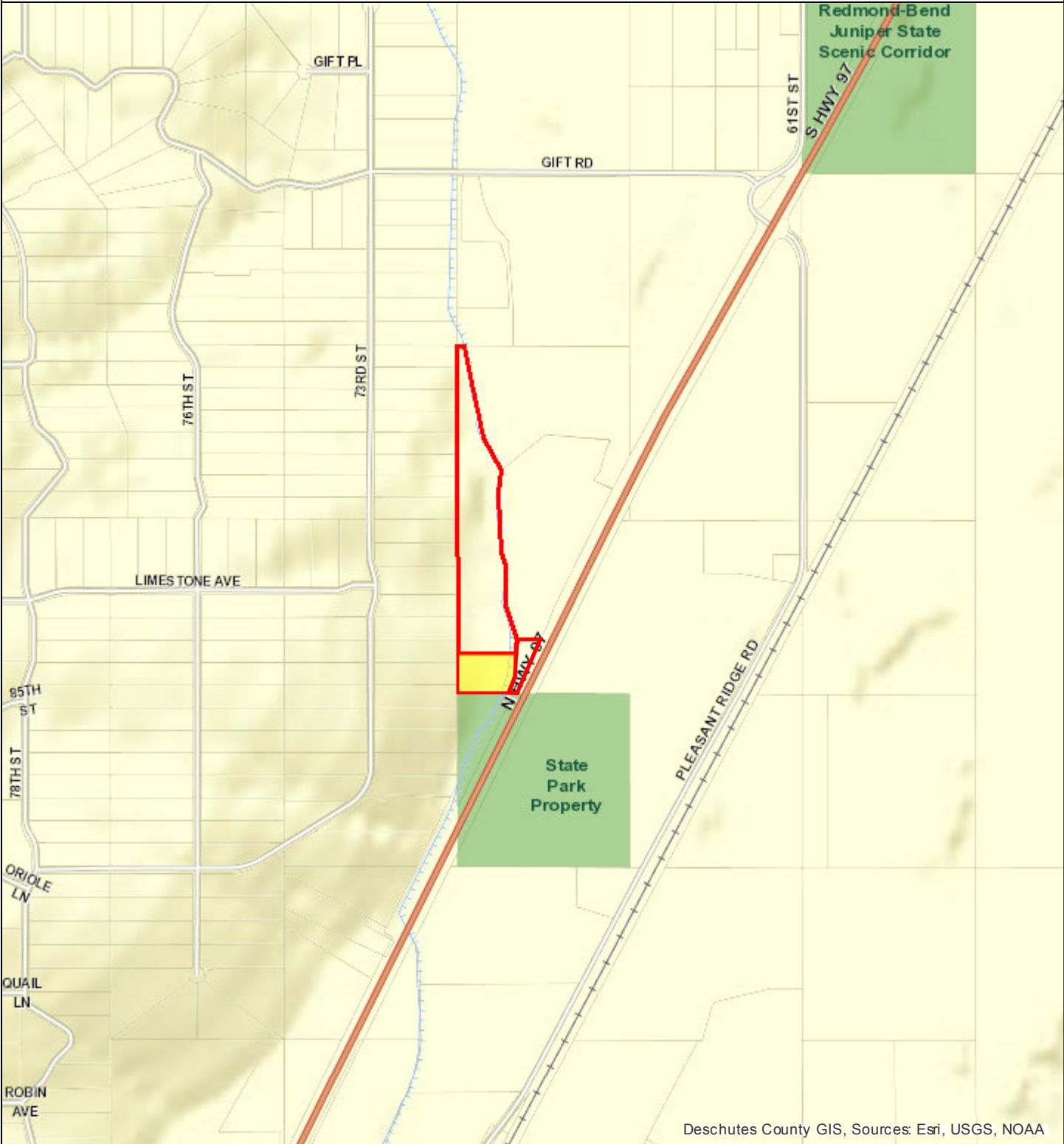
LBNW LLC PLAN AMENDMENT / ZONE CHANGE  
Land Use File Nos. 247-21-000881-PA, 882-ZC

	Issue Area	Applicable Approval Criterion	Applicant and Oppositional Responses	Hearings Officer	Staff Comment
5	<p>Goal 3 Compliance and Order 1 Soil Survey Validity: The Applicant's provided a supplemental soil study to refine agricultural designations for the subject properties based on the National Resources Conservation Service (NRCS) soil classification system. Can DLCD certified soil studies be used to update NRCS soil designations?</p>	<p>The opposition states the property meets the legal definition of "agricultural land" based on OAR 660-033-0020(1)(a).</p>	<p><u>The Applicant</u> argues that DLCD rules supplement Goal 3, providing property owners with the right to challenge NRCS soil study results by hiring a certified soil scientist to conduct a more detailed soils study and obtaining DLCD approval to use the study in a plan amendment/rezone application. The Applicant notes that the right to challenge NRCS mapping is allowed both by the text of Goal 3 itself and by ORS 215.211 and in the event of conflict, ORS 215.211 controls over the conflicting provisions of the Goal 3 rules adopted by LCDC. The Applicant notes that OAR 660-033-0030(5)(a) requires soil scientists to study and report on the soils based on the SCS soil classification.</p> <p><u>Oppositional comments</u> state that the Applicant's soil survey is inadequate, and that the subject property is considered agricultural lands and cannot be rezoned or reclassified without a Goal 3 exception.</p>	<p>The Hearings Officer found that NRCS soil survey maps are not definitive or "binding" with respect to a determination of whether the subject properties are, or are not, agricultural land. The Hearings Officer cited LUBA findings in the <i>Aceti</i> case, OAR 660-033-0030(5)(a) and (5)(b) which allow the County to rely on more detailed data on soil capability than provided by NRCS soil maps to define agricultural land, provided the soils survey has been certified by DLCD. (HO Decision p. 25). The Hearings Officer further found that, because no information challenging the Applicant's Order 1 Soil Survey is included in record, the subject property is not considered agricultural lands as defined in OAR 660-033-0020(1)(a) (HO Decision p. 37-38). Therefore, the applications are consistent with Policy 2.2.3 of the County Comprehensive Plan and no exception to Oregon Statewide Planning Goal 3 is required for approval (HO Decision p. 56).</p>	<p>Staff agrees with the Applicant and Hearings Officer on this issue area. Additionally, staff points to specific findings highlighted by County Legal Counsel from the LUBA <i>Aceti</i> case highlighting the allowance of DLCD certified soil studies when making determinations of properties proper agricultural designation. The Board must determine if DLCD-certified soil studies (such as the one provided by the Applicant) can be used to update NRCS soil designations.</p> <p>If the Board agrees with Hearings Officer and Applicant's interpretation on this issue, they may uphold the findings in the Hearings Officer's Recommendation and move on to other issue areas.</p> <p>If the Board disagrees with the Hearings Officer and Applicant, they may find that DLCD-certified soil studies <u>cannot</u> be used to update NRCS soil designations.</p> <p>The Board may then make additional findings related to the proposal's compliance with OAR 660-033-0020(1)(a) or other relevant criteria related to Goal 3 compliance; or</p> <p>The Board may find that the proposal does not comply with Goal 3 and deny the application.</p>

**LBNW LLC PLAN AMENDMENT / ZONE CHANGE  
Land Use File Nos. 247-21-000881-PA, 882-ZC**

	Issue Area	Applicable Approval Criterion	Applicant and Oppositional Responses	Hearings Officer	Staff Comment
6	DCC 22.20.015 Code Enforcement and Land Use: Do potential land use violations on the subject property prevent the County from approving applications for land use development?	The opposition cites DCC 22.20.015(A)(1-3) as relevant to this particular issue area.	<p><u>The Applicant</u> did not specifically address this issue.</p> <p><u>Oppositional comments</u> focus on a perceived violation of land use regulations in the form of “current farm use or farm equipment maintenance and storage occurring on the subject property” (May 31, 2022, open record submittal).</p>	<p>The Hearings Officer found DCC 22.20.015 is irrelevant because no violation has been established under DCC 22.20.015(C), and the record does not support a finding that the subject property is not in compliance with applicable land use regulations and/or conditions of approval of prior land use decisions or building permits. The Hearings Officer further concludes DCC 22.20.015 does not preclude the County’s consideration of the applications or its approval thereof (HO Decision p. 43).</p>	<p>Staff agrees with the Hearings Officer on this issue area and cites past Board interpretation of DCC 22.20.015 in file no. 247-17-000775-PA, 776-ZC. The Board must determine if potential land use violations on the subject property prevent the County from approving the subject application.</p> <p>If the Board agrees with the Hearings Officer on this issue, they may uphold the findings in the Hearings Officer’s Recommendation and conclude deliberations on this issue area.</p> <p>If the Board disagrees with the Hearings Officer on this issue, they may then take steps to adjudicate the perceived violation to determine if a violation exists on the subject property.</p> <p>If the Board determines, pursuant to DCC 22.20.015(C), that a violation is associated with the subject property, the Board must then decide whether the violation may be resolved through DCC 22.20.015(D)(1).</p> <p>If the Board determines that the violation cannot be resolved through DCC 22.20.015(D)(1), they may then deny the application or make alternate findings related to the violation.</p>

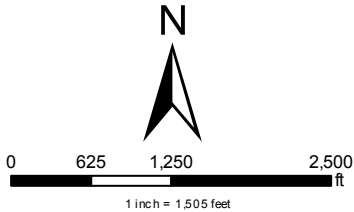
# 247-21-000881-PA, 882-ZC



Deschutes County GIS, Sources: Esri, USGS, NOAA



Date: 10/5/2021





## BOARD OF COMMISSIONERS

# AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** September 28, 2022

**SUBJECT:** Deliberations: Eden Properties Plan Amendment and Zone Change

**RECOMMENDED MOTION:**

Hearings Officer recommends approval of file nos. 247-21-001043-PA, 1044-ZC pursuant to DCC 22.28.030. On September 28, 2022, the Board will deliberate on the proposed Plan Amendment and Zone Change requests. If the Board finds that additional deliberations are necessary, the Board may schedule a future date for continued deliberations. If the Board finds no additional deliberations are necessary, the Board may then vote on the application.

**BACKGROUND AND POLICY IMPLICATIONS:**

The Board will deliberate on September 28, 2022 in relation to a request for a Plan Amendment and Zone Change (file nos. 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. A public hearing was held on August 17, 2022 and the open record period associated with the request ended on September 7, 2022.

The entirety of the record can be found on the project website at:

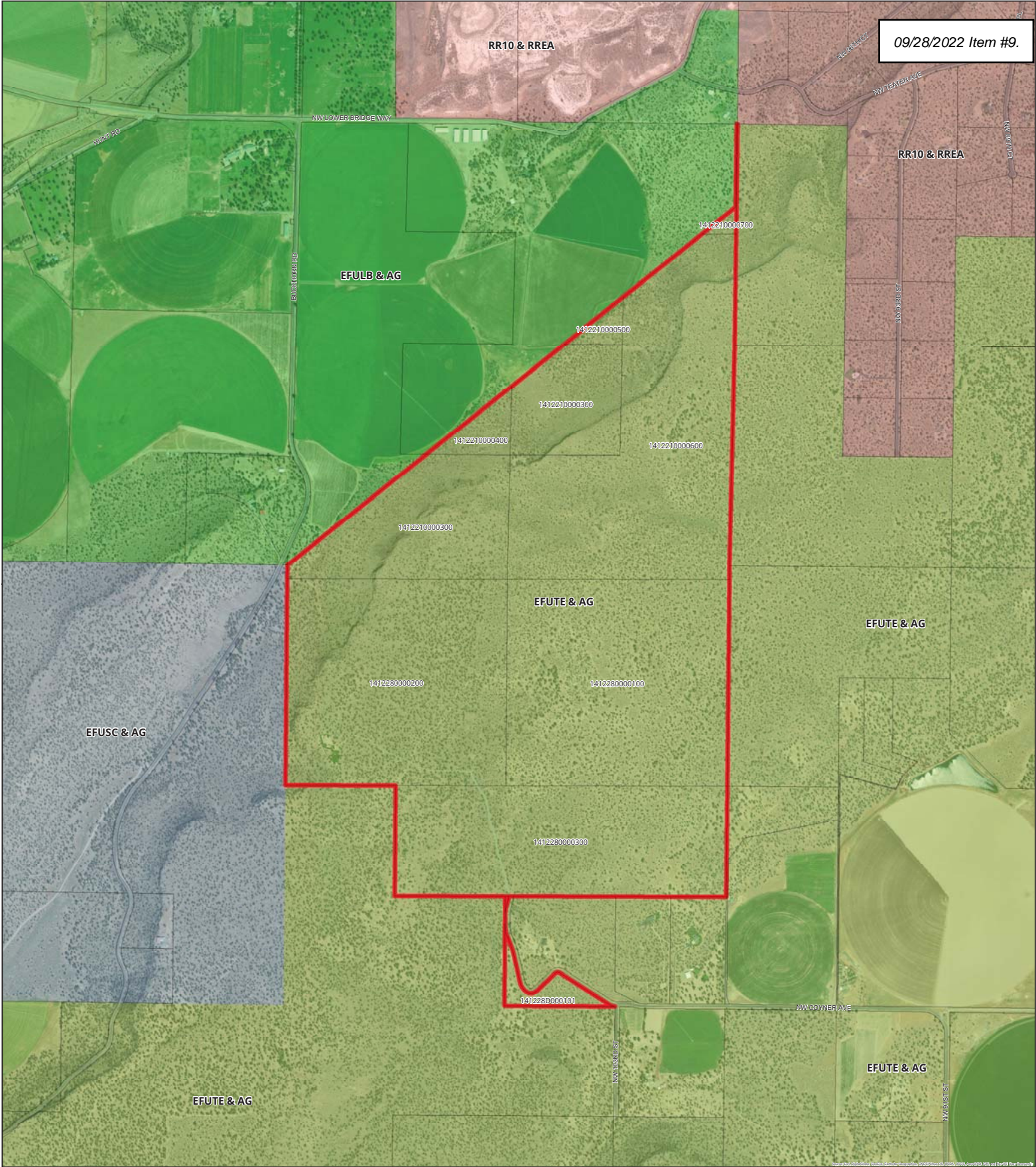
<https://www.deschutes.org/cd/page/247-21-001043-pa-and-247-21-001044-zc-eden-central-properties-comprehensive-plan-amendment>

**BUDGET IMPACTS:**

None

**ATTENDANCE:**

Haleigh King, Associate Planner



**247-21-001043-PA      247-21-001044-ZC**

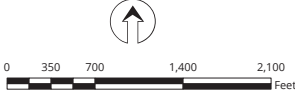
Subject Properties

**County Zoning & Comprehensive Plan**

- EFULB & AG
- EFUSC & AG
- EFUTE & AG
- RR10 & RREA

Applicant: 710 Properties, LLC

Taxlot Numbers: 14-12-28-D0-00101  
 14-12-28-00-00100, 200, 300  
 14-12-21-00-00300, 400, 500, 600, 700



August 09, 2022



DISCLAIMER: The information on this map was derived from digital databases on Deschutes County's Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.



## Eden Properties Plan Amendment/Zone Change Decision Matrix

### Land Use File Nos. 247-21-001043-PA, 1044-ZC

Issue Area/Approval Criterion	Applicant Response	Opponent Testimony	Hearings Officer	Staff Comment	Board Decision Points
<p><u>Definition of Agricultural Land – Part 1</u></p> <p><u>Soil Study and the Natural Resources Conservation Service (NRCS) Classification</u></p> <p>OAR 660-033-0020(1)(a)(A) states that agricultural land includes "lands classified by the NRCS as predominantly Class I-VI soils in Eastern Oregon." ORS 215.211(1) and OAR 660-033-0030(5)(a) also provide relevant criteria as it relates to this issue area.</p>	<p>The Applicant asserts that ORS 215.211(1), OAR 660-033-0030(5)(a), and Statewide Goal 3 allow the county to utilize information provided by a more-detailed soil study to determine whether land is "Agricultural Land" than provided by the NRCS soils survey.</p> <p>The Applicant provided a study which concluded subject property contains 71% Class VII and VIII soils.</p>	<p>Oppositional comments state that the applicant's soil study conflicts with the soil classification determination made by the NRCS. Oppositional comments state that lands classified as Class I-VI by the NRCS in Eastern Oregon are agricultural lands <i>per se</i> and cannot be reclassified or rezoned without a Goal 3 Exception.</p> <p>The opposition states that OAR 660-033-0030 requires that any land meeting a NRCS Class I-VI classification "shall be inventoried as agricultural land."</p>	<p>The Hearings Officer found that the County can rely on the applicants Order 1 soil survey which demonstrates that the property is comprised of 71% Class VII and VIII soils. The Hearings Officer found 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. The Hearings Officer cited LUBA findings in the <i>Aceti I</i> (LUBA No. 2016-012) case, ORS 215.211(1), OAR 660-033-0030(5)(a) and (5)(b), which allow the County to rely on more detailed data on soil capability than provided by NRCS soil maps to define agricultural land, provided the soils survey has been certified by DLCD, which has occurred here; see Hearings Officer (HOff) Recommendation p. 35. The Hearings Officer found no evidence in the record to rebut the Applicant's soils study.</p> <p>Therefore, the Hearings Officer found that the subject property does not constitute "agricultural land" under OAR 660-033-0020(1)(a)(A).</p>	<p>Staff agrees with the Hearings Officer on this issue.</p> <p>Furthermore, staff points to specific findings from the <i>Aceti I</i> case highlighting the allowance of a DLCD certified soils study when making determinations of a property's proper agricultural designation.</p>	<p>Does the subject property constitute agricultural land under OAR 660-033-0020(1)(a)(A)?</p> <ol style="list-style-type: none"> <li>1. If no, then the Board can continue reviewing the applications and move to approve the Plan Amendment and Zone Change (PA/ZC).</li> <li>2. If yes, then the Board must deny the PA/ZC.</li> </ol>

Issue Area/Approval Criterion	Applicant Response	Opponent Testimony	Hearings Officer	Staff Comment	Board Decision Points
<p><u>Definition of Agricultural Land – Part 2</u></p> <p>OAR 660-033-0020(1)(a)(B) defines agricultural land as "Land in other soil classes that is <u>suitable for farm use</u> as defined in ORS 215.203(2)(a), taking into consideration:</p> <ul style="list-style-type: none"> <li>• soil fertility,</li> <li>• suitability for grazing,</li> <li>• climatic conditions,</li> <li>• existing and future availability of water for farm irrigation purposes.</li> <li>• existing land use patterns,</li> <li>• technological and energy inputs required, and</li> <li>• accepted farming practices"</li> </ul>	<p>The Applicant asserts that the considerations found in sub (B) rely on whether the property is suitable for "farm use" or not.</p> <p>ORS 215.203(2)(a), containing the statutory definition of farm use, requires land be used for "the primary purpose of obtaining a profit in money."</p> <p>The Applicant provided substantial evidence in the record regarding the productivity, or lack thereof, of the property based on poor soils, limited forage, lack of precipitation, cost and availability of irrigation water and concluded that the cost of production and management for a grazing operation or other farm use would exceed the potential revenue and/or be otherwise impracticable.</p>	<p>Oppositional comments assert that the subject property could support a number of "farm uses" including but not limited to;</p> <ul style="list-style-type: none"> <li>• hemp production,</li> <li>• animal husbandry,</li> <li>• farm equipment storage,</li> <li>• boarding and training of horses,</li> <li>• raising honeybees,</li> <li>• raising poultry, game birds</li> <li>• lavender,</li> <li>• grapes, or</li> <li>• grazing operation (either individually or in conjunction with other lands)</li> </ul> <p>Furthermore, oppositional comments state that the Applicant misinterprets the phrase "primary purpose of obtaining a profit in money" and that ORS 215.203 is not concerned with whether a profit is earned but with whether a farmer has engaged in a farm activity with the primary intent of obtaining a profit.</p>	<p>The Hearings Officer rejected 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."</p> <p>The Hearings Officer also found that the definition of farm use does not require the subject property to combine with other agricultural operations as the definition refers to "land" not "lands".</p> <p>The Hearings Officer concluded that 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. (HOff Recommendation, p. 40).</p>	<p>Staff agrees with the Hearings Officer on this issue.</p> <p>Staff notes that the LUBA <i>Aceti I</i> case determined that it is not an accepted farming practice in Central Oregon to irrigate and cultivate Class VII and Class VIII soils.</p> <p>Staff notes that some oppositional comments reference potential income from lava field stone present on the subject property. It is staff's understanding that a surface mine is not considered a farm use or accepted farming practice.</p>	<p>Does the property constitute agricultural land under OAR 660-033-0020(1)(a)(B)?</p> <ol style="list-style-type: none"> <li>1. If no, then the Board can continuing reviewing the applications and move to approve the PA/ZC.</li> <li>2. If yes, then the Board must deny the PA/ZC.</li> </ol>

Issue Area/Approval Criterion	Applicant Response	Opponent Testimony	Hearings Officer	Staff Comment	Board Decision Points
<p><u>Definition of Agricultural Land – Part 3</u></p> <p>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."</p>	<p>The Applicant asserts that no party has argued that the property is necessary to permit farm practices on nearby lands and no evidence has been submitted that any "farm use" on surrounding properties has depended upon use of the subject property to undertake farm practices. Further, the existing topography physically separates the subject property from area farm uses.</p>	<p>Oppositional comments assert that the Hearings Officer misapplied the relevant criteria and that the farming practices in the area often involve multiple and disconnected properties and that the subject property is surrounded by farm land and other farming operations. Furthermore, oppositional comments assert that property of this type is typically part of a grazing operation.</p>	<p>The Hearings Officer found that there is no evidence in the record showing that the subject property is <u>necessary</u> for farming practices on any surrounding lands and no evidence that the subject property contributes to any such practices.</p> <p>The Hearings Officer found that the Applicant provided a detailed analysis of land uses and agricultural operations surrounding the subject property. The Hearings Officer found that barriers for the subject property to engage in farm use with these properties include: poor quality soils, lack of irrigation, proximity and significant topography changes.</p>	<p>Staff agrees with the Hearings Officer on this issue.</p>	<p>Does the subject property include land that is <u>necessary</u> to permit farm practices to be undertaken on adjacent or nearby agricultural lands and therefore constitute agricultural land as defined under OAR 660-033-0020(1)(a)(C)?</p> <ol style="list-style-type: none"> <li>1. If no, then the Board can continue reviewing the applications and move to approve the PA/ZC.</li> <li>2. If yes, then the Board must deny the PA/ZC.</li> </ol>

Issue Area/Approval Criterion	Applicant Response	Opponent Testimony	Hearings Officer	Staff Comment	Board Decision Points
<p><u>Traffic Impacts: Staff notes that OAR 660-012-0060(1)(a-c) are criteria that relate to this specific issue.</u></p> <p>OAR 660-012-0060(1)(a-c), also known as the "Transportation Planning Rule", asks whether a plan amendment or zone change would have a significant effect on an existing or planned transportation facility.</p>	<p>The Applicant's Traffic Impact Analysis (TIA) indicates the project will not generate traffic that would alter the function, capacity or performance standards of affected roadways. Furthermore, the increase in daily trips would not cause a decrease in the level of service for affected study intersections including NW Coyner Ave/ NW 103rd Street, NW Coyner Ave. / NW 91st Street, NW Spruce Street / NW 91st Street, and OR 126 / NW 101st Street. The Applicant also acknowledges that the subject property currently has one access point to NW Coyner Avenue and that additional analysis would accompany future land division applications. Furthermore, the subject property is presently served with an adequate road network as demonstrated in the Applicant's Transportation Study.</p>	<p>Oppositional comments focus on general traffic growth concerns, emergency access, and note the wear and tear additional vehicles would put on area roadways along with potential for increased vehicle and wildlife collisions.</p>	<p>Based on the County Senior Transportation Planner's comments and the TIA from Clemow Associates, LLC, the Hearings Officer found compliance with the Transportation Planning Rule has been effectively demonstrated. Based on the TIA, the Hearings Officer found 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 (Hoff Recommendation, p. 70). Furthermore, the Hearings Officer found that there is no specific development under consideration at this time, however, future development applications will be subject to additional analysis and review of relevant transportation standards. The Hearings Officer found that there were no known deficiencies in public services or facilities that would negatively impact public health, safety, or welfare as a result of the zone change.</p>	<p>Staff agrees with the Applicant, the Applicant's transportation engineer, and Hearings Officer on this issue area. The County's Senior Transportation Planner agrees with the conclusions in the TIA. Staff also notes that the application does not propose a specific development at this time, therefore, staff cannot speculate on potential road connections or street layouts. Any future land division application would need to meet applicable transportation analysis and access requirements.</p>	<p>Will the PA/ZC have a significant effect on an existing or planned transportation facility?</p> <ol style="list-style-type: none"> <li>1. If no, then the Board can continue reviewing the applications and move to approve the PA/ZC.</li> <li>2. If yes, then the Board must deny the PA/ZC.</li> </ol>

Issue Area/Approval Criterion	Applicant Response	Opponent Testimony	Hearings Officer	Staff Comment	Board Decision Points
<p><u>Definition of Forest Lands</u></p> <p>OAR 660-006-005(7) defines "forest lands" as ...those lands acknowledged as forest lands, or, in the case of a plan amendment, forest lands shall include:</p> <ul style="list-style-type: none"> <li>• (a) Lands that are suitable for commercial forest uses, including adjacent or nearby lands which are necessary to permit forest operations or practices; and</li> <li>• (b) Other forested lands that maintain soil, air, water and fish and wildlife resources.</li> </ul> <p>OAR 660-06-0010(2) discusses the methods to be used to identify land suitable for commercial forest uses and requires analysis addressing the wood production capabilities of the property.</p>	<p>The Applicant submits that none of the mapped soils on the subject property, identified by the NRCS or the soil study conducted by Mr. Rabe, are identified by NRCS as forest soils which merit protection by Statewide Goal 4. Further, the applicant provided additional analysis completed by John Jackson, Singletree Enterprises, LLC, asserting that western juniper is not a listed tree species marketable for wood products.</p>	<p>Oppositional comments assert that the applicant did not adequately address whether the subject property is forest land subject to Goal 4.</p>	<p>The Hearings Officer found the following regarding the proposed project:</p> <ul style="list-style-type: none"> <li>• The subject property is not zoned for forest lands, nor are any of the properties within a seven mile radius.</li> <li>• 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.</li> <li>• 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.</li> </ul> <p>The Hearings Officer finds this satisfies OAR 660-06-0005(7)(a) and OAR 660-06-0010(2), and that there are no wood production capabilities on the subject property (Hoff Recommendation p. 56).</p>	<p>Staff agrees with the Hearings Officer on this issue.</p>	<p>Does the subject property constitute "forest lands" under OAR 660-006-005(7) and therefore require an exception to Goal 4?</p> <ol style="list-style-type: none"> <li>1. If no, then the Board can continue reviewing the applications and move to approve the PA/ZC.</li> <li>2. If yes, then the Board must deny the PA/ZC.</li> </ol>

Issue Area/Approval Criterion	Applicant Response	Opponent Testimony	Hearings Officer	Staff Comment	Board Decision Points
<p><u>Goal 14 Exception</u></p> <p>OAR 660 - Division 15, Statewide Planning Goals and Guidelines and DCC 18.136.020(A)</p>	<p>The Applicant asserts that an exception to Goal 14 is only required if the proposed plan amendment and zone change allow urban development on the subject property. Further, the Deschutes County Comprehensive Plan acknowledges that RR-10 Zoning is the appropriate zone designation for Rural Residential Exception Areas. 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 Comprehensive Plan in 2016 with the ordinance being acknowledged by DLCD as complying with the Statewide Goals.</p>	<p>Oppositional comments assert that the application requires an exception to Goal 14 based on the requested RREA and RR-10 designations and the density which this designation and zone would allow. Oppositional comments also note the RR-10 Zone would result in 71 homes in which residents would have similar needs to those residing inside Urban Growth Boundaries and the intensity of development would rise to the level of an urban scale.</p>	<p>The Hearings Officer found 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</p>	<p>Staff agrees with the Hearings Officer on this issue area.</p>	<p>Does the proposal comply with Goal 14?</p> <ol style="list-style-type: none"> <li>1. If yes, then an exception is not required, and the Board can continue reviewing the applications and move to approve the PA/ZC.</li> <li>2. If no, then an exception to Goal 14 is required.</li> </ol>

Issue Area/Approval Criterion	Applicant Response	Opponent Testimony	Hearings Officer	Staff Comment	Board Decision Points
<p><u>Change in Circumstances or Mistake in Zoning</u></p> <p>The applicable approval criteria for a zone change include DCC 18.136.020(D), which requires a change in circumstances since the property was last zoned or a mistake was made in the zoning of the property in question.</p>	<p>The Applicant asserts that when the property was first zoned in 1979/1980, undeveloped rural lands that contained poor soils were zoned EFU without regard to the specific soil characteristics of the property. The Applicant asserts that the soil study demonstrates the subject property does not constitute agricultural land. Therefore, the property was zoned in error.</p> <p>Further the applicant asserts the following constitute a change in circumstances:</p> <ul style="list-style-type: none"> <li>• County's current Comprehensive Plan reinstates the right of individual property owners to seek this type of PA/ZC</li> <li>• Population increase of 236% from 1980 to 2021 has increased housing demand</li> <li>• Economics of farming have worsened over the decades</li> </ul>	<p>Oppositional comments state that there is no evidence the subject property was mischaracterized by Deschutes County as agricultural land reserved for exclusive farm use at the time of acknowledgement. Comments also state that the property was rural land surrounded by farmland when originally zoned and that condition remains today. Therefore, the application does not meet the DCC 18.136.020(D).</p>	<p>The Hearing's Officer found that 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 found that a change in population levels and decreasing supply of rural residential lots constitutes a change in circumstances from the time the property was originally zoned EFU (HOff Recommendation, P. 48).</p>	<p>Staff agrees with the Hearings Officer on this issue.</p> <p>Staff notes the criterion in DCC 18.136.020(D) includes "or" between each statement. Thus, the applicant must prove one or the other, but is not required to prove both.</p>	<p>Has there been a change in circumstances since the property was last zoned or was a mistake made in zoning the subject property Exclusive Farm Use?</p> <ol style="list-style-type: none"> <li>1. If yes, then the Board can continue reviewing the applications and move to approve the PA/ZC.</li> <li>2. If no, then the Board must deny the PA/ZC.</li> </ol>

Issue Area/Approval Criterion	Applicant Response	Opponent Testimony	Hearings Officer	Staff Comment	Board Decision Points
<p><u>Impacts on Surrounding Land Use</u></p> <p>The applicable approval criteria for a zone change include DCC 18.136.020(C)(2) which states <i>“the impacts on surrounding land use will be consistent with the specific goals and policies contained within the Comprehensive Plan.”</i></p>	<p>The Applicant stated the following in response to this criterion:</p> <ul style="list-style-type: none"> <li>• Volwood Farms is only adjoining farm located to the west and topographical separation will make it unlikely that rezone will impose new or different impacts.</li> <li>• The existing EFU zoning on the subject property could allow up to 24 non-farm dwellings and while the RR10 zoning would allow more dwellings, the impacts imposed will be the same as the minimal impacts imposed by a nonfarm dwelling.</li> <li>• Farm uses in the greater area have been developed with residences and are separated from the subject property by a sufficient distance.</li> <li>• The Applicant also provided responses to each applicable Comprehensive Plan Policy in their burden of proof.</li> </ul>	<p>Oppositional comments assert that the subject property is surrounded by ranching and farming activities and the introduction of residential development would adversely impact the character of the surrounding area.</p>	<p>The Hearings Officer found that the Applicant provided specific findings for each relevant Comprehensive Plan goal and policy. The Hearings Officer found that 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. The Hearings Officer included findings for each relevant Comprehensive Plan Goal or Policy beginning on Page 49 of the Hearings Officer Recommendation.</p>	<p>Staff agrees with the Hearings Officer on this issue.</p> <p>Further, staff notes Policy 2.2.3 of the Comprehensive Plan allows for plan amendments and zone changes for EFU land that qualify as non-resource land.</p>	<p>Will the impacts of the zone change on surrounding land use be consistent with the specific goals and policies contained within the Comprehensive Plan?</p> <ol style="list-style-type: none"> <li>1. If yes, then the Board can continue reviewing the applications and move to approve the PA/ZC.</li> <li>2. If no, then the Board must deny the PA/ZC.</li> </ol>



Issue Area/Approval Criterion	Applicant Response	Opponent Testimony	Hearings Officer	Staff Comment	Board Decision Points
<p><u>Wildlife Impacts</u></p> <p>The opposition does not point to a specific approval criterion, although staff notes that Statewide Planning Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) may relate to this particular issue.</p>	<p>The Applicant asserts that the subject property does not contain any inventoried Goal 5 resources.</p> <p>Further, the subject property does not presently contain a Wildlife Area (WA) Zoning Overlay and is therefore not subject to the standards contained in Deschutes County Code Chapter 18.88. The County's ongoing Wildlife Inventory process has been paused and it is not the fault of the Applicant that the Inventory Update has not yet been finalized.</p>	<p>Oppositional comments focus on the subject property's inclusion within the Oregon Department of Fish and Wildlife's designated biological mule deer and elk winter range and is recommended for inclusion as part of the County's ongoing Goal 5 Wildlife Inventory Update process. Additionally, oppositional comments focus on preserving the subject property for perceived general wildlife habitat value.</p> <p>Lastly, the Oregon Department of Fish and Wildlife assert that groundwater pumping in this region will lead to an eventual reduction in surface water and an increase in surface water temperature, thereby potentially impacting fish and wildlife resources in the Deschutes River system.</p>	<p>The Hearings Officer found that the subject property does not include any inventoried Goal 5 resources nor contain the Wildlife Overlay (WA) designation. The Hearings Officer noted that the subject application does not propose development at this time and that rezoning the property will not directly impact wildlife on the subject property. Furthermore, the Hearings Officer notes that protections for wildlife must be sanctioned by the County's Goal 5 ESEE and WA or similar wildlife overlay zoning (Hoff Recommendation, p 72).</p>	<p>Staff agrees with the Hearings Officer on this issue.</p> <p>Staff notes that while the County's Wildlife Inventory update has not yet been completed, including the subject property within the WA Overlay would not specifically preclude the property from being rezoned to RR-10. Instead, if the subject property were to be subdivided, the WA Zone would require specific fencing standards, density, minimum lot sizes, and open space requirements for any future division of land or residential development. Specific standards would depend on the final outcome of the County's inventory update.</p>	<p>Is the application consistent with Goal 5 in regards to natural resources, scenic and historic areas and open spaces?</p> <ol style="list-style-type: none"> <li>1. If yes, then an exception is not required, and the Board can continue reviewing the applications and move to approve the PA/ZC.</li> <li>2. If no, then an exception to Goal 5 is required and the Board must deny the current application.</li> </ol>

Issue Area/Approval Criterion	Applicant Response	Opponent Testimony	Hearings Officer	Staff Comment	Board Decision Points
<p><u>Fire Hazard</u></p> <p>The opposition does not point to a specific approval criterion, although staff notes that Statewide Planning Goal 7 (Natural Disasters and Hazards) may relate to this particular issue.</p>	<p>The Applicant states that Goal 7 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.</p> <p>The Applicant testified that they have engaged with a wildfire consultant and would implement mitigation measures to limb and remove specific juniper trees and maintain brush.</p>	<p>Oppositional comments cite the potential increase in residential structures as also increasing costs to wildfire suppression and wildfire fighting costs. Opponents note that additional landscape fragmentation has the potential to exacerbate the costs and risks associated with wildfire.</p>	<p>The Hearings Officer found that the application does not change the Wildfire Hazard Area designation that is applicable to the property and the entirety of Deschutes County. The Hearings Officer also notes that the subject property is within the Redmond Fire and Rescue tax district and any applications for future development activities will be required to demonstrate compliance with fire protection regulations, where applicable.</p>	<p>Staff agrees with the Hearings Officer on this issue area. Furthermore, staff notes that any future land division or residential development would be subject to applicable emergency access regulations. Additionally, Redmond Fire and Rescue would be notified of future land division applications for their review and comment.</p>	<p>Is the application consistent with Goal 7 in regards to wildfire hazards?</p> <ol style="list-style-type: none"> <li>1. If yes, then an exception is not required, and the Board can continue reviewing the applications and move to approve the PA/ZC.</li> <li>2. If no, then an exception to Goal 7 is required and the Board must deny the current application.</li> </ol>

Issue Area/Approval Criterion	Applicant Response	Opponent Testimony	Hearings Officer	Staff Comment	Board Decision Points
<p><u>Groundwater Impacts</u></p> <p>The opposition does not point to specific approval criteria associated with this issue area. However, staff notes that DCC 18.136.020(C)(1) may relate to this particular issue, specifically regarding the current availability of necessary public services and facilities.</p>	<p>The Applicant provided technical and expert analysis (See GSI Water Solutions Groundwater Use Evaluation, uploaded to the record on April 18, 2022) which asserts the proposed use of 71 residential homes, which is not before the County at this time, would result in little to no measureable interference with existing uses due to the high permeability of the aquifer material and low pumping rates from domestic wells. Further, the applicant provided well logs showing groundwater is available in the general area.</p>	<p>Oppositional comments assert that rural development of this size would threaten the groundwater table in the surrounding area with potential for up to 71 largely unregulated wells and would impact surrounding well depths. Many commenters pointed to a variety of data regarding groundwater levels in the region and anecdotal comments regarding individual well depths.</p>	<p>The Hearings Officer found that water availability concerns of state agencies and other commentators will be reviewed at the time of development application. Without adequate water availability, future residential development may be limited or denied.</p> <p>Regarding 18.136.020(C)(1), the Hearings Officer found that the applicant included well logs from nearby properties demonstrating water availability in the general area.</p>	<p>Staff agrees with the Hearings Officer on this issue area. Staff also notes that this criterion asks about the availability of water to the subject property, and not to surrounding land owners.</p> <p>Further, staff notes Kyle Gorman (a representative from Oregon Water Resources Department) testified that the Deschutes Basin aquifer has shown a modest decline (9 feet) over 25 years.</p>	<p>Will changing the zoning presently serve the public health, safety and welfare considering the availability and efficiency of providing necessary public services and facilities to the uses allowed by the zone change?</p> <ol style="list-style-type: none"> <li>1. If yes, then the Board can continue reviewing the applications and move to approve the PA/ZC.</li> <li>2. If no, then the Board must deny the PA/ZC.</li> </ol>

Issue Area/Approval Criterion	Applicant Response	Opponent Testimony	Hearings Officer	Staff Comment	Board Decision Points
<p><u>House Bill 2229</u></p> <p>In 2009, the State Legislature adopted House Bill ("HB") 2229, also known as the "Big Look" Bill, describing the circumstances under which counties can redesignate agricultural or forest lands by initiating a nonresource plan amendment.</p> <p>Counties could elect to proceed to a county-wide review of resource land designations and then enact new designations in a re-acknowledgment process, reviewed and approved by DLCD, to address potential mapping errors made in designation of farmlands and forestlands.</p>	<p>The Applicant asserts that House Bill 2229 is not applicable in the quasi-judicial proceedings as it only relates to County-led legislative processes and has no bearing on a quasi-judicial rezones initiated by an individual property owner. Further Deschutes County Comprehensive Plan Policies 2.2.2 and 2.2.3 both allow the rezoning of an "individual parcel" of land and Section 3.3 of the Comprehensive Plan does not incorporate HB 2229.</p>	<p>Central Oregon Landwatch asserts that the applicant is not compliant with HB 2229. Further, the County cannot approve the Applicant's request without first obtaining a "work plan" that has been supported by DLCD and that HB 2229 requires an exception to Goal 3 and Goal 14.</p>	<p>The Hearing's Officer did not address this issue as this issue was raised after the Hearing's Officer Recommendation was issued.</p>	<p>Staff agrees with the Applicant on this issue area. Further, Staff notes Deschutes County was not required to go through any process under HB 2229 unless it determined that a county-wide regional "big look" of resource lands was warranted.</p> <p>Lastly, in the seven years since HB 2229 was passed, the County has considered and approved many property-specific applications to re-designate/rezone resource parcels under applicable state and local laws and regulations. There is nothing in HB 2229 that precludes the County from considering property-specific plan amendments and zone changes for farm and forest lands.</p>	<p>Does House Bill 2229 apply to this application for a plan amendment and zone change?</p> <ol style="list-style-type: none"> <li>1. If no, then the Board can continuing reviewing the applications and move to approve the PA/ZC.</li> <li>2. If yes, then the Board must deny the PA/ZC.</li> </ol>

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

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

*East:* Tax Lot 700 (Assessors Map 14-12-22B), Tax Lot 500 (Assessor’s Map 14-12-22C), and Tax Lot 200 (Assessors Map 14-12-27), totaling 320 acres are federally owned and abut the eastern boundary of the subject property. These lots are vacant and are zoned EFU. Property zoned RR-10 and platted as part of the Lower Bridge Estates is located further east beyond the abutting federal land along NW 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)  
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*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.*

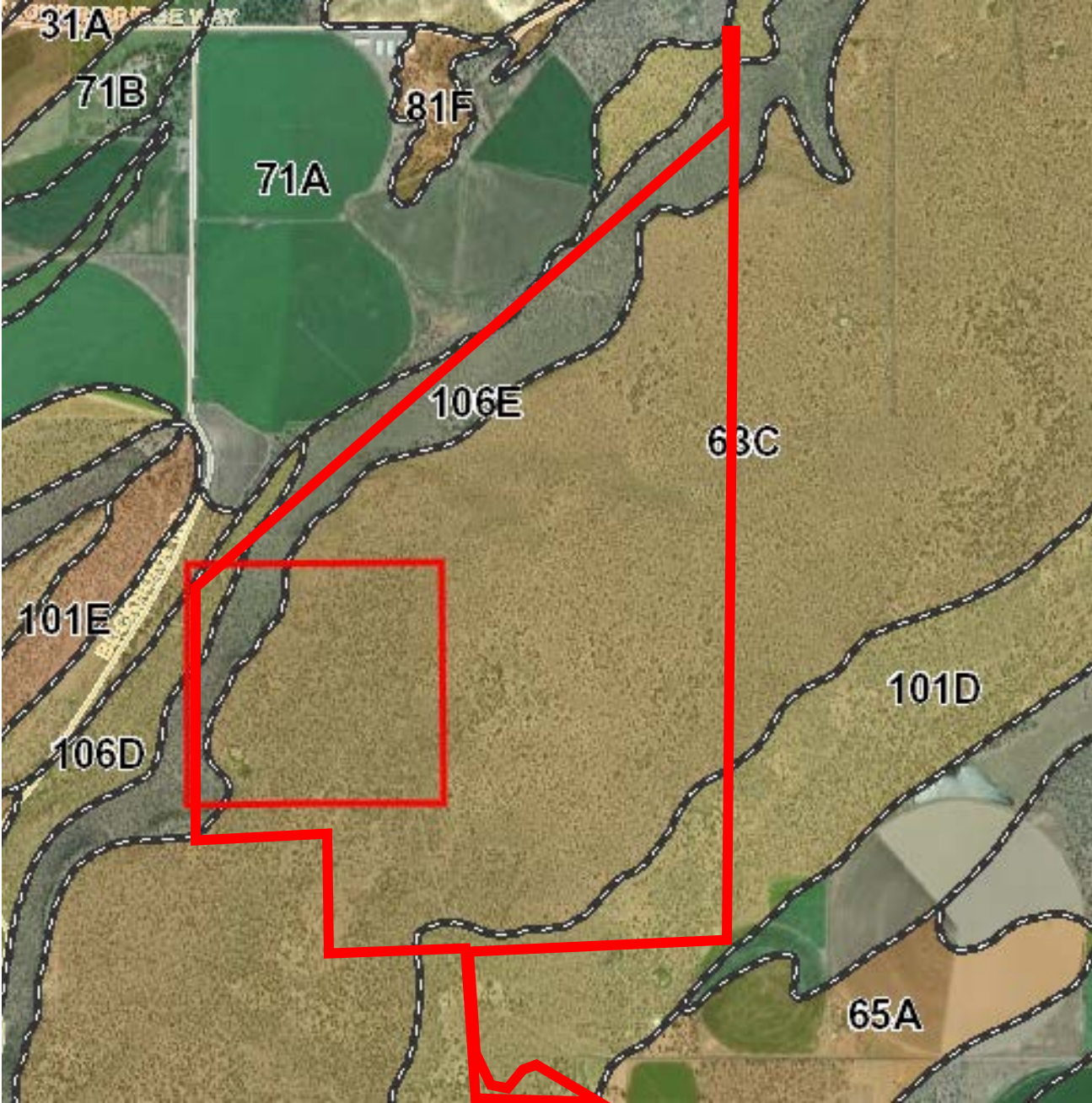
**FINDING:** As the Hearings Officer found above, the subject property is not suitable for farm use and is not necessary to permit farm practices to be undertaken on adjacent or nearby lands, regardless of ownership of the subject property and ownership of nearby or adjacent land. For the reasons set 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 NRCS 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 Katzaroff	Schwabe, Williamson & Wyatt		1420 5th Avenue, Suite 3400	Seattle, WA 98101	Hoff Decision	247-21-001043-PA, 1044-ZC
Liz Fancher			2465 NW Sacagawea Lane	Bend, OR 97703	Hoff Decision	247-21-001043-PA, 1044-ZC
710 Properties, LLC			PO Box 1345	Sisters, OR 97750	Hoff Decision	247-21-001043-PA, 1044-ZC
Eden Central Properties, LLC			PO Box 1345	Sisters, OR 97751	Hoff Decision	247-21-001043-PA, 1044-ZC
Chris Clemow			2237 NW Torrey Pines	Bend, OR 97703	Hoff Decision	247-21-001043-PA, 1044-ZC
Brian Rabe			3511 Pacific Blvd SW	Albany, OR 97321	Hoff Decision	247-21-001043-PA, 1044-ZC



**MEMORANDUM**

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

**FROM:** Haleigh King, Associate Planner

**DATE:** September 21, 2022

**SUBJECT:** Deliberations – Eden Properties Plan Amendment and Zone Change

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The Board held a public hearing on August 17, 2022, to consider a request for a Plan Amendment and Zone Change (file nos. 247-21-001043-PA, 1044-ZC) for nine tax lots totaling approximately 710 acres to the west of Terrebonne and north of Highway 126. The Board is scheduled to deliberate on September 28, 2022 in consideration of the request.

**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 – 10 Acre Minimum (RR-10). The applicant argues the properties were mistakenly identified as farmland, do not contain high-value soils or other characteristics of high value farmland, and therefore should be re-designated and rezoned for rural residential use. The applicant provided a supplementary soil study that identifies non-high value (Class VII and VIII) soils on a majority (~71%) of the subject properties. Additionally, the applicant’s burden of proof includes findings that demonstrate compliance with state and local requirements and policies.

A public hearing before a Hearings Officer was conducted on April 19, 2022 with the Hearings Officer’s recommendation of approval issued on June 2, 2022. The Board held a public hearing on August 17, 2022 and initiated a 21-day open record period, which concluded September 7, 2022 at 4:00pm.

**II. OPEN RECORD PERIOD**

During the initial 7-day segment of the 21-day open record period, staff received fifteen (15) public comments, including the applicant’s submittal, as new evidence and testimony. During the second 7-day segment of the open record period, staff received five (5) rebuttal responses to the new evidence and testimony that was received. The Applicant’s final legal argument was received on September 7, 2022, at the conclusion of the open record period.



The new evidence and testimony received during the open record largely reiterated concerns and arguments that were raised during public testimony of the Board’s public hearing on August 17, 2022. During this first open record period, Staff received a coordinated agency comment from Department of Land Conservation and Development, Oregon Department of Fish and Wildlife, and Oregon Department of Agriculture restating their concerns with the application and referencing their original April 19, 2022 letter to be reentered into the record. Other concerns include, but are not limited to, impacts to wildlife, impacts to groundwater and aquifer levels, future potential development of the subject property, traffic impacts, the application’s consistency with Goal 14, and the validity of the applicant’s argument regarding farm use.

The rebuttal testimony received during the open record period largely reiterated concerns and arguments that were raised during public testimony and during the first open record period including, but are not limited to, impacts to nearby wells and natural resources, general land use compatibility, and the definition of agricultural land.

**III. BOARD DELIBERATIONS**

On September 28, 2022, the Board will deliberate on the proposed Plan Amendment and Zone Change requests. If the Board finds that additional deliberations are necessary, the Board may schedule a future date for continued deliberations. If the Board finds no additional deliberations are necessary, the Board may then vote on whether to approve or deny the Plan Amendment and Zone Change request.

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. The full record is available for inspection at the Planning Division and at the following link: <https://www.deschutes.org/cd/page/247-21-001043-pa-and-247-21-001044-zc-eden-central-properties-comprehensive-plan-amendment>.

**Board Decision Matrix**

A more thorough review and discussion of the subject proposal’s compliance with the applicable approval criteria and issues is provided in the associated Board Decision Matrix, prepared in conjunction with this deliberation memorandum.

**IV. NEXT STEPS**

If the Board determines that additional deliberations are necessary, staff will work with the Board to schedule a future meeting for continued deliberations. If the Board concludes their deliberations during the September 28, 2022 meeting, the Board may then vote on whether to approve or deny the Plan Amendment and Zone Change. If the Board renders a vote during the September 28, 2022 meeting, staff will coordinate with the Board to return for a future meeting to review the draft decision, draft ordinance and relevant exhibits. If appropriate, the first reading of the ordinance can be initiated at that time.

**V. SUGGESTED MOTION**

To the extent the Board decides to approve Plan Amendment and Zone Change, a motion as follows will likely be appropriate:

The Board moves to approve the Plan Amendment and Zone Change for file nos. 247-21-001043-PA and 247-21-001044-ZC.

To the extent the Board decides to modify or reverse the Hearings Officer's decision, that motion will need to be crafted to address the Board's specific concerns, as discussed in the deliberations.

**ATTACHMENTS:**

- 1) Area Map
- 2) Board Decision Matrix
- 3) Hearings Officer Recommendation



BOARD OF  
COMMISSIONERS

## AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** September 28, 2022

**SUBJECT:** Consideration of Board signature on Order No. 2022-055, Appointing Robert Tintle as Tax Collector

**RECOMMENDED MOTION:**

*Move Board adoption of Order No. 2022-055*

**BACKGROUND AND POLICY IMPLICATIONS:**

*With the arrival of Robert Tintle to serve as the County's Chief Financial Officer, staff recommends that the Board appoint Robert Tintle as Deschutes County Tax Collector.*

**BUDGET IMPACTS:**

*None.*

**ATTENDANCE:**

*Admin*

REVIEWED  
*RAM*  
LEGAL COUNSEL

09/28/2022 Item #10.

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Appointing Robert Tintle as Deschutes County Tax Collector \*  
\* ORDER NO. 2022-055  
\*

WHEREAS, Greg Munn resigned his position as Deschutes County Chief Financial Officer (CFO) as of April 1, 2022; and

WHEREAS, Greg Munn, as CFO, was duly appointed to serve as and assume the responsibilities of Deschutes County Tax Collector; and

WHEREAS, upon the resignation of Greg Munn, the Board of Commissioners assigned the responsibilities and position of Deschutes County Tax Collector, as described in ORS 311.005 to Wayne Lowry; and

WHEREAS, Robert Tintle has been hired for the position of Deschutes County Chief Financial Officer (CFO), effective on September 26, 2022; and

WHEREAS, the Board of Commissioners desires that Robert Tintle, as CFO, assume the responsibilities and position of Deschutes County Tax Collector; now therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, HEREBY ORDERS AS FOLLOWS:

Section 1. Pursuant to ORS 311.055, Robert Tintle is appointed as Deschutes County Tax Collector effective September 28, 2022.

Section 2. This Order shall take effect upon adoption.

Dated this \_\_\_\_\_ of \_\_\_\_\_, 2022

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

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

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

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

ATTEST:

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