



BOARD OF COMMISSIONERS

BOARD OF COUNTY COMMISSIONERS MEETING

8:00 AM, WEDNESDAY, JULY 24, 2024

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

AGENDA

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

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

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

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

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

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



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

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

CALL TO ORDER

PLEDGE OF ALLEGIANCE

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

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

CONSENT AGENDA

1. Approval of consent to easements associated with property conveyed to Administrative School District #1 (Bend La Pine School District)
2. Acceptance of funding from the Oregon Health Authority to support a Secure Residential Treatment Facility, IGA #PO-44300-00026008-3
3. Approval of the purchase of Commercial Property Insurance
4. Approval of Document No. 2024-496 renewing the contract with Iris Telehealth
5. Consideration of Board Signature on letter appointing Beth Bailey for service on the Upper Deschutes Watershed Council
6. Approval of minutes of the BOCC June 5, 2024 meeting

ACTION ITEMS

7. **8:00 AM** Public Hearing: Remand of 710 Properties/Eden Properties Plan Amendment and Zone Change application

BREAK

8. **10:15 AM** Public Hearing: Plan Amendment and Zone Change at 19975 Destiny Court
9. **11:45 AM** Design-Build Findings of Fact for the Courthouse Expansion Project PV Solar Technology System at the Deschutes County Fair and Expo Center

LUNCH RECESS

HYPERLINK "appis1cc1268c194e4e92ab0412544abff178" **10.** **1:00 PM** Senate Bill 80
– Draft Statewide Wildfire Hazard Mapping and Rules

- Discussion
11. **1:45 PM** Deliberation #2: Deschutes County 2040 Comprehensive Plan Update – Chapter 5, Natural Resources

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.

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

ADJOURN



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: July 24, 2024

SUBJECT: Approval of consent to easements associated with property conveyed to Administrative School District #1 (Bend La Pine School District)

RECOMMENDED MOTION:

Move to approve Consent of Easement to City of Bend Document No. 2024-612 and Consent of Easement to Central Electric Cooperative Document No. 2024-613, and authorize the Board Chair to sign both documents.

BACKGROUND AND POLICY IMPLICATIONS:

In 1991, Deschutes County conveyed +/- 40-acres to Administrative School District #1 known today as Bend La Pine School District (District). The true consideration for the conveyance included the continued use of the property for public purposes pursuant to Oregon Revised Statute (ORS) 271.330. Since the time of conveyance, the District has constructed and operates High Desert Middel School.

Though the 1991 conveyance deed included language to require the property to be used for public purposes, the District and the City of Bend (City) have requested the County to acknowledge and memorialize two Consent to Easement documents as follows:

- 1. County consents to easements granted by District to City, to include a permanent sewer utility and access easement over a portion of said property to construct a pump station and temporary construction easement to facilitate said improvements; and
2. County consents to easements granted by District to Central Electric Cooperative, a permanent utility and access easement over a portion of said property to construct the necessary power associated with the City's infrastructure improvements and temporary construction easements to facilitate said improvements

BUDGET IMPACTS:

None

ATTENDANCE:

Kristie Bollinger, Property Manager

REVIEWED
LEGAL COUNSEL

After recording return to:
City of Bend, EIPD
710 NW Wall St.
Bend, OR 97703

CONSENT TO EASEMENT

Recitals

- A. Administrative School District #1, (the “District”) is the owner of real property located at 61000 Diamondback Lane, Bend, Deschutes County, Oregon (the “Property”).
- B. Deschutes County (the “County”) transferred the Property to the District under a deed recorded in the real property records of Deschutes County as document number 252-345 (the “Deed”), so long as the Property is used for public purposes.
- C. The District has granted the City of Bend (the “City”) a permanent sewer utility and access easement over a portion of the Property, in the area described and shown in the attached Exhibits A and B, as well as temporary construction easements to facilitate the construction of improvements to the City’s sewer system and maintain pedestrian access during construction to the District’s facilities on the Property (together, the “Easements”).

Terms of Agreement

The County consents to the Easements and agrees that the City’s interest in and use of portions of the Property under the Easements is a public purpose as that term is used in the Deed. The County agrees that in the event of foreclosure or suit to recover ownership of the Property, no attempt will be made to extinguish the City’s rights granted by the Easements.

This Agreement is binding on the heirs, successors, and assigns of the County.

Signatures on following page

By: Deschutes County

Patti Adair, Chair
Deschutes County Board of County Commissioners

STATE OF OREGON)
)ss.
County of Deschutes)

This instrument was acknowledged before me on _____, 2024, by Patti Adair, as Chair, Board of County Commissioners of Deschutes County, Oregon.

Notary Public – State of Oregon
Commission Expires: _____

Accepted by the City of Bend:

Eric King, City Manager

EXHIBIT A

TRACTS OF LAND BEING A PORTION OF THAT LAND DESCRIBED IN BARGAIN AND SALE VOLUME 252, PAGE 345, DESCHUTES COUNTY OFFICIAL RECORDS, LOCATED IN THE NORTHWEST ONE-QUARTER (NW1/4) OF THE SOUTHWEST ONE-QUARTER (SW1/4) OF SECTION 14, TOWNSHIP 18 SOUTH, RANGE 12 EAST, WILLAMETTE MERIDIAN, CITY OF BEND, DESCHUTES COUNTY, OREGON, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PUMP STATION EASEMENT (TAX LOT 101 TAX MAP 18 12 14)

COMMENCING AT THE SOUTH ONE-SIXTEENTH CORNER (S1/16), LOCATED ON THE WEST SECTION LINE OF SAID SECTION, WHICH BEARS SOUTH 00°24'47" WEST 1325.42 FEET FROM A 5/8 INCH IRON ROD INSIDE A MONUMENT BOX MARKING THE WEST ONE-QUARTER (W1/4) OF SAID SECTION; THENCE ALONG THE SOUTH RIGHT-OF-WAY LINE OF THAT RIGHT-OF-WAY DESCRIBED IN COMMISSIONERS JOURNAL, BOOK 15, PAGE 426, DESCHUTES COUNTY OFFICIAL RECORDS, SOUTH 89°34'09" EAST 1061.65 FEET; THENCE LEAVING THE SAID SOUTH RIGHT-OF-WAY LINE NORTH 00°25'51" WEST 60.00 FEET TO THE NORTH RIGHT-OF-WAY LINE OF SAID COMMISSIONERS JOURNAL AND THE POINT OF BEGINNING; THENCE LEAVING SAID NORTH RIGHT-OF-WAY LINE NORTH 00°00'00" EAST 82.16 FEET; THENCE NORTH 00°26'49" WEST 28.57 FEET; THENCE NORTH 05°04'29" WEST 34.31 FEET; THENCE SOUTH 89°34'42" EAST 235.68 FEET TO A POINT ON THE WEST LINE OF THAT VARIABLE WIDTH SLOPE EASEMENT DESCRIBED IN INSTRUMENT NUMBER 2003-47503, DESCHUTES COUNTY OFFICIAL RECORDS; THENCE ALONG SAID WEST LINE THE FOLLOWING TWO (2) COURSES: SOUTH 02°36'13" WEST 70.59 FEET; THENCE SOUTH 00°32'08" EAST 74.39 FEET TO THE NORTH RIGHT-OF-WAY LINE OF SAID COMMISSIONERS JOURNAL; THENCE ALONG THE SAID NORTH RIGHT-OF-WAY LINE NORTH 89°34'09" WEST 229.91 FEET TO THE POINT OF BEGINNING.

THE ABOVE-DESCRIBED TRACT OF LAND CONTAINS 33,414 SQUARE FEET (0.77 ACRES) MORE OR LESS.

SUBJECT TO ANY EASEMENTS, RESTRICTIONS, AND RIGHTS-OF-WAY OF RECORD AND THOSE COMMON AND APPARENT ON THE LAND.

UTILITY AND ACCESS EASEMENT (TAX LOT 101 TAX MAP 18 12 14)

COMMENCING AT THE SOUTH ONE-SIXTEENTH CORNER (S1/16), LOCATED ON THE WEST SECTION LINE OF SAID SECTION, WHICH BEARS SOUTH 00°24'47" WEST 1325.42 FEET FROM A 5/8 INCH IRON ROD INSIDE A MONUMENT BOX MARKING THE WEST ONE-QUARTER (W1/4) OF SAID SECTION; THENCE ALONG THE SOUTH RIGHT-OF-WAY LINE OF THAT RIGHT-OF-WAY DESCRIBED IN COMMISSIONERS JOURNAL, BOOK 15, PAGE 426, DESCHUTES COUNTY OFFICIAL RECORDS, NORTH 89°34'09" WEST 1061.65 FEET; THENCE LEAVING THE SAID SOUTH RIGHT-OF-WAY LINE NORTH 00°25'51" WEST 60.00 FEET TO THE NORTH RIGHT-OF-WAY LINE OF SAID COMMISSIONERS JOURNAL AND THE POINT OF BEGINNING; THENCE LEAVING SAID NORTH RIGHT-OF-WAY LINE NORTH 00°00'00" EAST 82.16 FEET; THENCE NORTH 00°26'49" WEST 28.57 FEET; THENCE NORTH 05°04'29" WEST 34.31 FEET; THENCE NORTH 89°34'42" WEST 30.14 FEET; THENCE SOUTH 05°04'29" EAST 35.98 FEET; THENCE SOUTH 00°26'49" EAST 27.24 FEET; THENCE SOUTH 00°00'00" EAST 81.82 FEET TO THE NORTH RIGHT-OF-WAY LINE OF SAID COMMISSIONERS JOURNAL; THENCE ALONG SAID NORTH RIGHT-OF-WAY LINE NORTH 89°34'09" WEST 30.00 FEET TO THE POINT OF BEGINNING.

THE ABOVE-DESCRIBED TRACT OF LAND CONTAINS 4,351 SQUARE FEET (0.10 ACRES) MORE OR LESS.

SUBJECT TO ANY EASEMENTS, RESTRICTIONS, AND RIGHTS-OF-WAY OF RECORD AND THOSE COMMON AND APPARENT ON THE LAND

BEARINGS FOR THESE DESCRIPTIONS ARE BASED ON THE CENTRAL OREGON COORDINATE SYSTEM (COCS), DESCHUTES 13 TRANSFORMATION, DERIVED FROM THE OREGON REAL-TIME GNSS NETWORK (ORGN).

4-16-2024
REGISTERED
PROFESSIONAL
LAND SURVEYOR

Corey Pacheco
OREGON
JULY 11, 2023
COREY PACHECO
101863

EXPIRES: 12-31-2024

LEGEND



PUMP STATION EASEMENT
AREA = ± 0.77 ACRES (± 33,414.02 SF)



UTILITY AND ACCESS EASEMENT
AREA = ± 0.10 ACRES (± 4,351.32 SF)

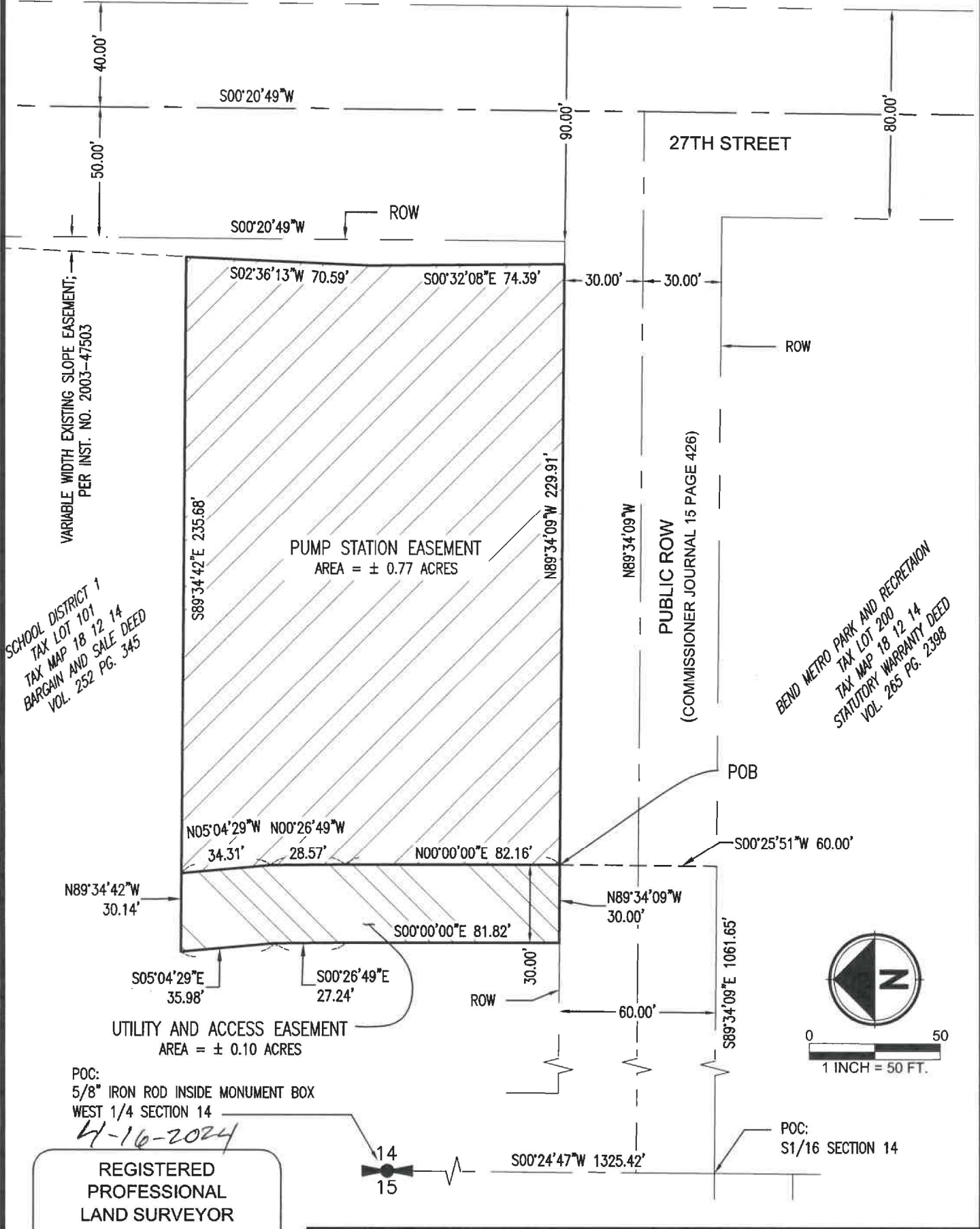
SF SQUARE FEET
ROW RIGHT-OF-WAY
POC POINT OF COMMENCEMENT
POB POINT OF BEGINNING

EXHIBIT B

TRACTS OF LAND LOCATED IN THE SW 1/4 OF SECTION 14,
TOWNSHIP 18 SOUTH, RANGE 12 EAST, W.M., CITY OF BEND,
DESCHUTES COUNTY, OREGON

BASIS OF BEARINGS

BEARINGS FOR THIS EXHIBIT ARE BASED ON THE CENTRAL OREGON COORDINATE
SYSTEM (COCS), DESCHUTES 13 TRANSFORMATION, DERIVED FROM THE OREGON
REAL-TIME GNSS NETWORK (ORGN).



SCHOOL DISTRICT 1
TAX MAP 18 12 14
BARGAIN AND SALE DEED
VOL. 252 PG. 345

BEND METRO PARK AND RECREATION
TAX MAP 18 12 14
STATUTORY WARRANTY DEED
VOL. 265 PG. 2398

POC:
5/8" IRON ROD INSIDE MONUMENT BOX
WEST 1/4 SECTION 14

4-16-2024

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 11, 2023
COREY PACHECO
101863

EXPIRES: 12-31-2024

EXHIBIT: B
DRWN: CAP
CHKD: CAP
JOB: 297-5446-002
DATE: APRIL 11, 2024

SEAP
CITY PUMP STATION EASEMENT
AND NON-EXCLUSIVE UTILITY AND ACCESS EXHIBIT

Parametrix
150 NW Pacific Park Lane, Suite 110 • Bend, OR 97701
Ph: 541.508.7710

REVIEWED

LEGAL COUNSEL

After recording return to:
Central Electric Cooperative, Inc.
2098 NW 6th St., PO Box 846,
Redmond OR 97756

CONSENT TO EASEMENT

Recitals

- A. Administrative School District #1, (the “District”) is the owner of real property located at 61000 Diamondback Lane, Bend, Deschutes County, Oregon (the “Property”).
- B. Deschutes County (the “County”) transferred the Property to the District under a deed recorded in the real property records of Deschutes County as document number 252-345 (the “Deed”), so long as the Property is used for public purposes.
- C. The District has granted Central Electric Cooperative, Inc. (the “CEC”) a permanent utility and access easement over a portion of the Property, in the area described and shown in the attached Exhibits A and B, as well as temporary construction easements to facilitate the construction on the Property (together, the “Easements”).

Terms of Agreement

The County consents to the Easements and agrees that CEC’s interest in and use of portions of the Property under the Easements is a public purpose as that term is used in the Deed. The County agrees that in the event of foreclosure or suit to recover ownership of the Property, no attempt will be made to extinguish CEC’s rights granted by the Easements.

This Agreement is binding on the heirs, successors, and assigns of the County.

Signatures on following page

By: Deschutes County

Patti Adair, Chair
Board of County Commissioners
Deschutes County

STATE OF OREGON)
)ss.
County of Deschutes)

This instrument was acknowledged before me on _____, 2024, by Patti Adair, as Chair, Board of County Commissioners of Deschutes County, Oregon.

Notary Public – State of Oregon
Commission Expires: _____



EXHIBIT A

PERMANENT EASEMENT

A VARIABLE WIDTH STRIP OF LAND BEING A PORTION OF THAT LAND DESCRIBED IN BARGAIN AND SALE DEED VOL. 252 PG. 345, DESCHUTES COUNTY OFFICIAL RECORDS, LOCATED IN NORTHWEST ONE-QUARTER (NW1/4) AND THE SOUTHWEST ONE-QUARTER (SW1/4) OF SECTION 14, TOWNSHIP 18 SOUTH, RANGE 12 EAST, CITY OF BEND, DESCHUTES COUNTY, OREGON, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH ONE-SIXTEENTH CORNER, LOCATED ON THE WEST LINE OF SAID SECTION, WHICH BEARS SOUTH 00°24'47" WEST 1325.42 FEET FROM A 5/8 INCH IRON ROD IN MONUMENT BOX MARKING THE WEST ONE-QUARTER (W1/4) OF SAID SECTION 14; THENCE ALONG THE SOUTH RIGHT-OF-WAY LINE, BEING 30.00 FEET FROM CENTER WHEN MEASURED AT RIGHT ANGLES, OF THAT RIGHT-OF-WAY DESCRIBED IN COMMISSIONERS JOURNAL, BOOK 15, PAGE 426, DESCHUTES COUNTY OFFICIAL RECORDS, SOUTH 89°34'09" EAST 1132.42 FEET; THENCE LEAVING SAID SOUTH RIGHT-OF-WAY LINE NORTH 00°25'51" EAST 60.00 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF SAID COMMISSIONERS JOURNAL AND THE POINT OF BEGINNING; THENCE ALONG SAID NORTH RIGHT-OF-WAY LINE NORTH 89°34'09" WEST 507.94 FEET; THENCE LEAVING SAID NORTH RIGHT-OF-WAY LINE NORTH 33°01'37" EAST 23.74 FEET; THENCE SOUTH 89°34'09" EAST 5.93 FEET; THENCE NORTH 33°01'37" EAST 517.80 FEET; THENCE NORTH 56°58'23" WEST 5.00 FEET; THENCE NORTH 33°01'37" EAST 20.00 FEET; THENCE SOUTH 56°58'23" EAST 5.00 FEET; THENCE NORTH 33°01'37" EAST 642.27 FEET; THENCE NORTH 00°20'49" EAST 23.40 FEET; THENCE SOUTH 89°39'11" EAST 10.00 FEET; THENCE NORTH 00°20'49" EAST 149.30 FEET TO A POINT OF CURVATURE; THENCE 11.22 FEET ALONG A CURVE TO THE LEFT, WITH A RADIUS OF 506.76 FEET, THROUGH A CENTRAL ANGLE OF 01°16'07", AND A CHORD OF NORTH 00°17'15" WEST 11.22 FEET; THENCE NORTH 06°18'08" WEST 84.68 FEET; THENCE NORTH 14°20'43" WEST 78.73 FEET TO A POINT OF CURVATURE; THENCE 54.11 FEET ALONG A CURVE TO THE LEFT, WITH A RADIUS OF 506.76 FEET, THROUGH A CENTRAL ANGLE OF 06°07'03", AND A CHORD OF NORTH 22°29'27" WEST 54.08 FEET; THENCE NORTH 25°32'59" WEST 156.63 FEET; THENCE SOUTH 64°27'01" WEST 10.00 FEET; THENCE NORTH 25°32'59" WEST 20.00 FEET; THENCE NORTH 64°27'01" EAST 10.00 FEET; THENCE NORTH 25°32'59" WEST 705.86 FEET; THENCE SOUTH 64°27'01" WEST 10.00 FEET; THENCE NORTH 25°32'59" WEST 20.00 FEET; THENCE NORTH 64°27'01" EAST 10.00 FEET; THENCE NORTH 25°32'59" WEST 422.11 FEET; THENCE SOUTH 64°27'01" WEST 10.00 FEET; THENCE NORTH 25°32'59" WEST 20.00 FEET; THENCE NORTH 64°27'01" EAST 10.00 FEET; THENCE NORTH 25°32'59" WEST 51.71 FEET; THENCE NORTH 37°51'27" WEST 6.60 FEET; THENCE NORTH 52°08'33" EAST 10.00 FEET TO A POINT ON THE WEST LINE OF A PORTION OF THAT VARIABLE WIDTH SLOPE EASEMENT DESCRIBED IN INSTRUMENT NUMBER 2003-47503, DESCHUTES COUNTY OFFICIAL RECORDS; THENCE ALONG SAID WEST LINE SOUTH 37°51'27" EAST 7.68 FEET TO THE WEST RIGHT-OF-WAY LINE OF 27TH STREET, BEING 50.00 FEET FROM CENTER WHEN MEASURED AT RIGHT ANGLES; THENCE ALONG SAID WEST RIGHT-OF-WAY LINE SOUTH 25°32'59" EAST 1397.39 FEET TO A POINT OF CURVATURE; THENCE 55.62 FEET ALONG A CURVE TO THE RIGHT, WITH A RADIUS OF 516.76 FEET, THROUGH A CENTRAL ANGLE OF 06°10'01", AND A CHORD OF SOUTH 22°27'58" WEST 55.59 FEET TO A POINT ON THE WEST LINE OF A PORTION OF THAT VARIABLE WIDTH SLOPE EASEMENT LINE DESCRIBED IN SAID INSTRUMENT NUMBER 2003-47503; THENCE ALONG SAID SLOPE EASEMENT THE FOLLOWING TWO (2) COURSES: SOUTH 14°20'43" EAST 79.87 FEET; THENCE SOUTH 06°18'08" EAST 85.85 FEET TO THE WEST RIGHT-OF-WAY OF 27TH STREET; THENCE 11.91 FEET ALONG A CURVE TO THE RIGHT, WITH A RADIUS OF 516.76 FEET, THROUGH A CENTRAL ANGLE OF 01°19'16", AND A CHORD OF SOUTH 00°18'49" EAST 11.91 FEET; THENCE SOUTH 00°20'49" WEST 169.30 FEET TO THE WEST LINE OF THAT 10.00 FOOT WIDE AVION EASEMENT, DESCRIBED IN INSTRUMENT NUMBER 1998-57918, DESCHUTES COUNTY OFFICIAL RECORDS; THENCE ALONG THE WEST LINE OF SAID AVION EASEMENT SOUTH 33°01'37" EAST 1196.01 FEET; THENCE LEAVING THE WEST LINE OF SAID AVION EASEMENT SOUTH 89°34'09" EAST 336.47 FEET; THENCE NORTH 00°43'56" EAST 10.00 FEET; THENCE SOUTH 89°34'09" EAST 20.00 FEET; THENCE SOUTH 00°43'56" WEST 10.00 FEET; THENCE SOUTH 89°34'09" EAST 101.34 FEET; THENCE



Parametrix

NORTH 00°25'51" EAST 10.00 FEET; THENCE SOUTH 89°34'09" EAST 20.00 FEET; THENCE SOUTH 00°25'51" WEST 20.00 FEET TO THE POINT OF BEGINNING.

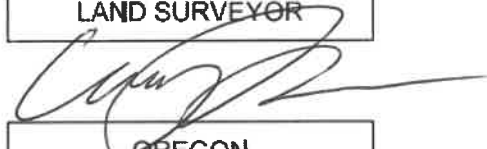
THE ABOVE-DESCRIBED TRACT OF LAND CONTAINS 42,393 SQUARE FEET (0.97 ACRES) MORE OR LESS.

SUBJECT TO ANY EASEMENTS, RESTRICTIONS, AND RIGHTS-OF-WAY OF RECORD AND THOSE COMMON AND APPARENT ON THE LAND.

BEARINGS FOR THIS DESCRIPTION ARE BASED ON THE CENTRAL OREGON COORDINATE SYSTEM (COCS), DESCHUTES 13 TRANSFORMATION, DERIVED FROM THE OREGON REAL-TIME GNSS NETWORK (ORGN).

5-6-2024

REGISTERED
PROFESSIONAL
LAND SURVEYOR



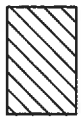
OREGON
JULY 11, 2023
COREY PACHECO
101863

EXPIRES: 12-31-2024

EXHIBIT B

PERMANENT EASEMENT EXHIBIT
 A TRACT OF LAND LOCATED IN THE NW1/4 AND THE SW1/4 OF SECTION 14, TOWNSHIP 18 SOUTH, RANGE 12 EAST, W.M., CITY OF BEND, DESCHUTES COUNTY, OREGON
 (SHEET 1 OF 3)

LEGEND

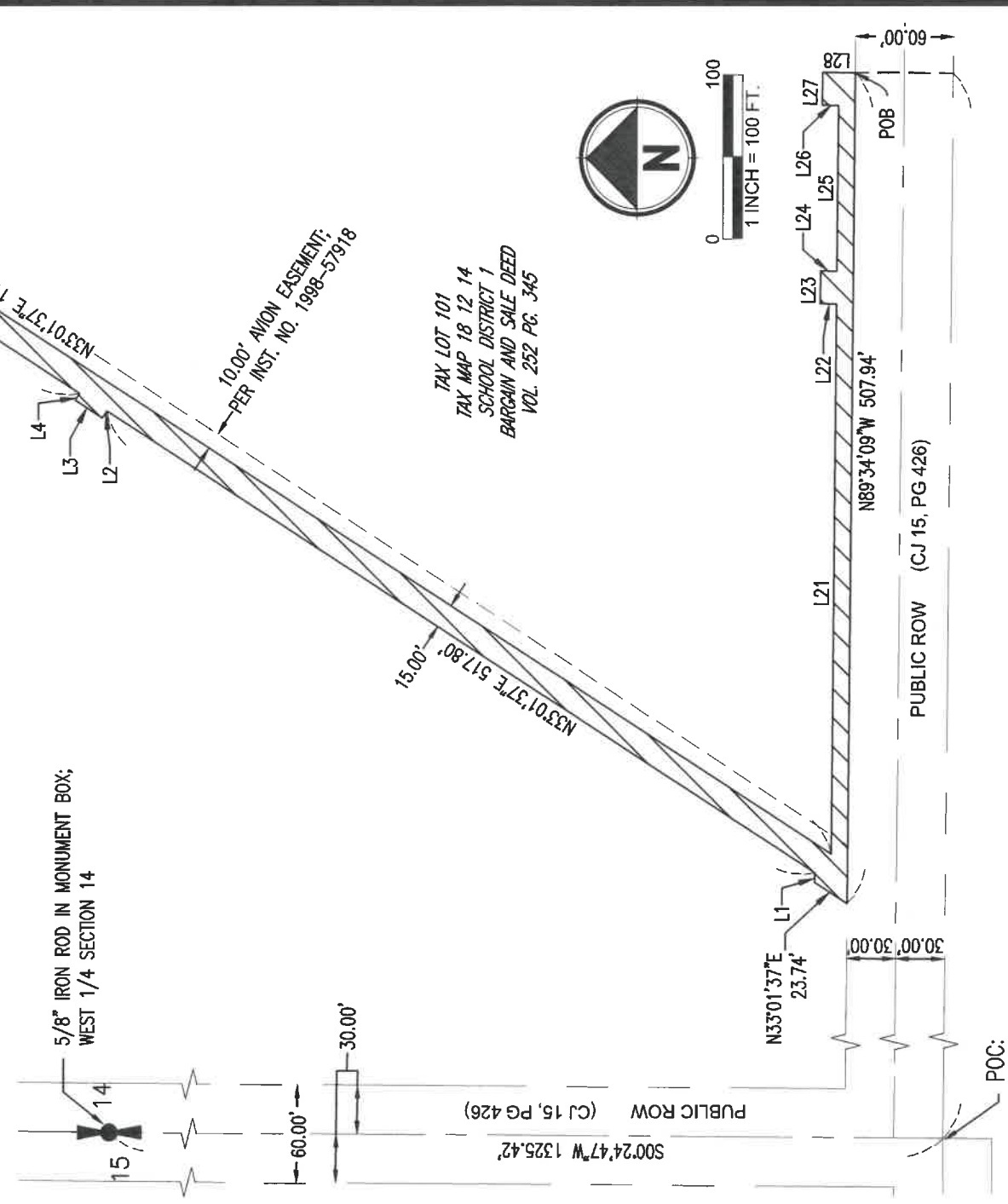


POWER EASEMENT AREA = ± 42,393 SF (± 0.97 ACRES)

- SF SQUARE FEET
- ROW RIGHT-OF-WAY
- POB POINT OF BEGINNING
- POC POINT OF COMMENCEMENT

BASIS OF BEARINGS
 BEARINGS FOR THIS EXHIBIT ARE BASED ON THE CENTRAL OREGON COORDINATE SYSTEM (COCS), DESCHUTES 13 TRANSFORMATION, DERIVED FROM THE OREGON REAL-TIME GNSS NETWORK (ORGN).

LINE TABLE		
LINE NO.	LENGTH	BEARING
L1	5.93'	S89°34'09"E
L2	5.00'	N56°58'23"W
L3	20.00'	N33°01'37"E
L4	5.00'	S56°58'23"E
L21	336.47'	S89°34'09"E
L22	10.00'	N0°43'56"E
L23	20.00'	S89°34'09"E
L24	10.00'	S0°43'56"W
L25	101.34'	S89°34'09"E
L26	10.00'	N0°25'51"E
L27	20.00'	S89°34'09"E
L28	20.00'	S0°25'51"W



POC:
 S 1/16 SECTION 14
 5-6-2024

REGISTERED PROFESSIONAL LAND SURVEYOR

 OREGON
 JULY 11, 2023
 COREY PACHECO
 101863

PREPARED FOR
 DESCHUTES COUNTY

EXHIBIT: B
 SE SEWER POWER EASEMENT

Parametrix
 150 NW Pacific Park Lane, Suite 110 • Bend, OR 97701
 Ph: 541.508.7710

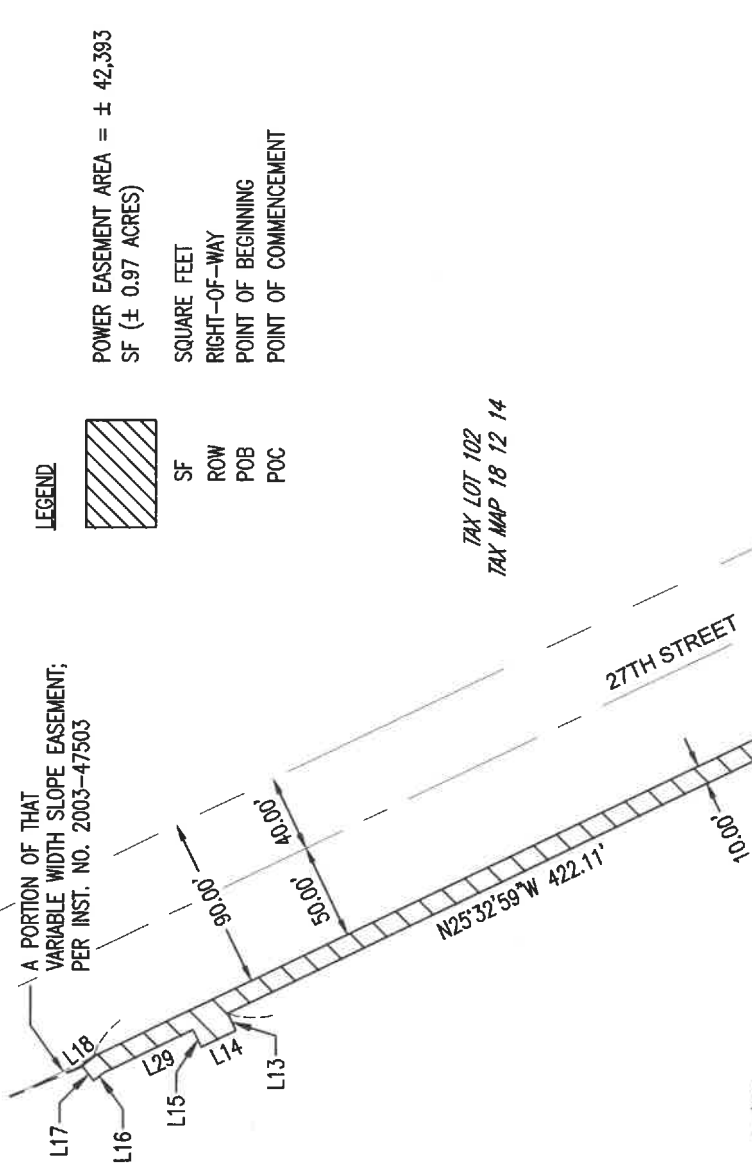
EXPIRES: 12-31-2024

EXHIBIT B

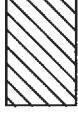
PERMANENT EASEMENT EXHIBIT
 A TRACT OF LAND LOCATED IN THE NW1/4 AND THE SW1/4 OF SECTION 14, TOWNSHIP 18 SOUTH, RANGE 12 EAST, W.M., CITY OF BEND, DESCHUTES COUNTY, OREGON (SHEET 3 OF 3)

BASIS OF BEARINGS
 BEARINGS FOR THIS EXHIBIT ARE BASED ON THE CENTRAL OREGON COORDINATE SYSTEM (COCS), DESCHUTES 13 TRANSFORMATION, DERIVED FROM THE OREGON REAL-TIME GNSS NETWORK (ORGN).

A PORTION OF THAT
 VARIABLE WIDTH SLOPE EASEMENT;
 PER INST. NO. 2003-47503



LEGEND



POWER EASEMENT AREA = ± 42,393 SF (± 0.97 ACRES)

- SF SQUARE FEET
- ROW RIGHT-OF-WAY
- POB POINT OF BEGINNING
- POC POINT OF COMMENCEMENT



LINE NO.	LENGTH	BEARING
L10	10.00'	S64°27'01"W
L11	20.00'	N25°32'59"W
L12	10.00'	N64°27'01"E
L13	10.00'	S64°27'01"W
L14	20.00'	N25°32'59"W
L15	10.00'	N64°27'01"E
L16	6.60'	N37°51'27"W
L17	10.00'	N52°08'33"E
L18	7.68'	S37°51'27"E
L29	51.71'	N25°32'59"W

PREPARED FOR
 DESCHUTES COUNTY 5-6-2024

REGISTERED
 PROFESSIONAL
 LAND SURVEYOR

OREGON
 JULY 11, 2023
 COREY PACHECO
 101863

EXPIRES: 12-31-2024

EXHIBIT: B

SE SEWER
 POWER EASEMENT

DRWN: DRF

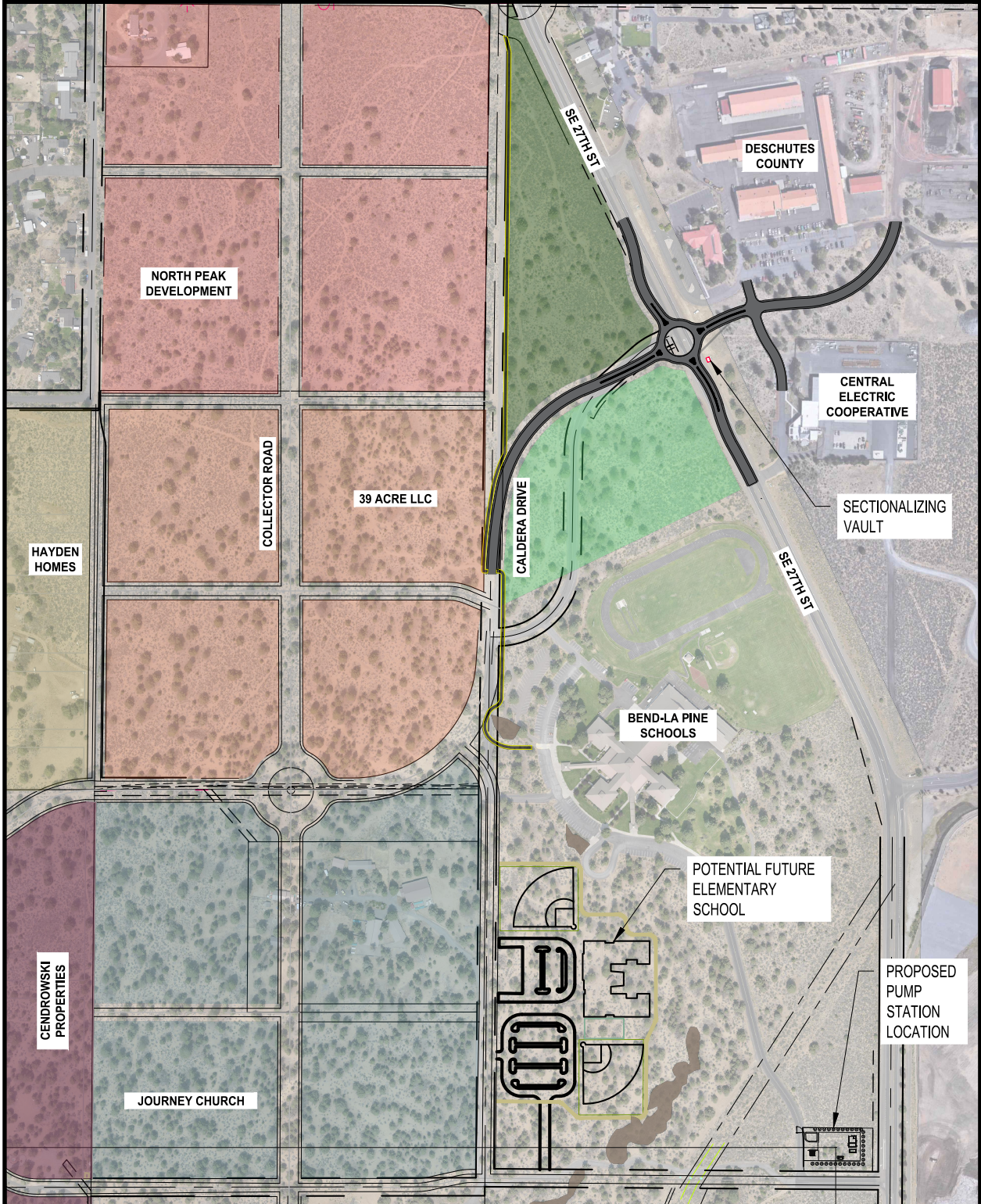
CHKD: CAP

JOB: 297-2509-010

DATE: APRIL 11, 2024

Parametrix

150 NW Pacific Park Lane, Suite 110 • Bend, OR 97701
 Ph: 541.508.7710



HDMS ROAD ANALYSIS EXHIBIT

0 500
1 INCH = 500 FT.

Parametrix

DATE: January 9, 2024 FILE: 297-5446-002-SE-FC V2

- - - - - GAS LINE EASEMENT
 - - - - - POWER LINE EASEMENT
 - - - - - ROAD SLOPE EASEMENT



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: July, 24, 2024

SUBJECT: Acceptance of funding from the Oregon Health Authority to support a Secure Residential Treatment Facility, IGA #PO-44300-00026008-3

RECOMMENDED MOTION:

Move approval of Chair signature of Document No. 2024-606, the third amendment to an intergovernmental agreement with the Oregon Health Authority to accept funding to support a Secure Residential Treatment Facility.

BACKGROUND AND POLICY IMPLICATIONS:

On May 29, 2024, the Board of County Commissioners gave approval for Deschutes County Health Services (DCHS) to accept a \$2,000,000 Oregon Health Authority (OHA) grant to complete construction on a Class 1 Secure Residential Treatment Facility (SRTF). Funding will be available for the term July 1, 2024, through December 31, 2024. DCHS plans to pass the funding through in a public-private partnership to support building and operating a 16 bed SRTF in Redmond.

BUDGET IMPACTS:

\$2,000,000 revenue to be passed through via a grant awarded to a private entity.

ATTENDANCE:

Holly Harris, Behavioral Health Director

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@odhsoha.oregon.gov or call 503-378-3486 (voice) or 503-378-3523 (TTY) to arrange for the alternative format.

AGREEMENT # PO-44300-00026008

**THIRD AMENDMENT TO
 OREGON HEALTH AUTHORITY
 2024-2025 INTERGOVERNMENTAL AGREEMENT
 FOR THE FINANCING OF COMMUNITY MENTAL HEALTH, ADDICTION TREATMENT,
 RECOVERY, & PREVENTION, AND PROBLEM GAMBLING SERVICES**

This Third Amendment to Oregon Health Authority 2024-2025 Intergovernmental Agreement for the Financing of Community Mental Health, Addiction Treatment, Recovery, & Prevention, and Problem Gambling Services effective as of January 1, 2024 (as amended, the “Agreement”), is entered into, as of the date of the last signature hereto, by and between the State of Oregon acting by and through its Oregon Health Authority (“OHA”) and **Deschutes County** (“County”).

RECITALS

WHEREAS, OHA and County wish to modify the Financial Assistance Award set forth in Exhibit C of the Agreement.

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:

AGREEMENT

1. The financial and service information in the Financial Assistance Award is hereby amended as described in Attachment 1 attached hereto and incorporated herein by this reference. Attachment 1 must be read in conjunction with the portion of Exhibit C of the Agreement that describes the effect of an amendment of the financial and service information.
2. Capitalized words and phrases used but not defined herein shall have the meanings ascribed thereto in the Agreement.
3. County represents and warrants to OHA that the representations and warranties of County set forth in section 4 of Exhibit F of the Agreement are true and correct on the date hereof with the same effect as if made on the date hereof.
4. Except as amended hereby, all terms and conditions of the Agreement remain in full force and effect.
5. This Amendment may be executed in any number of 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 this Amendment so executed shall constitute an original.

IN WITNESS WHEREOF, the parties hereto have executed this amendment as of the dates set forth below their respective signatures.

6. Signatures.

Deschutes County

By:

_____	_____	_____	_____
Authorized Signature	Printed Name	Title	Date

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

By:

_____	_____	_____	_____
Authorized Signature	Printed Name	Title	Date

Approved by: Director, OHA Health Systems Division

By:

_____	_____	_____	_____
Authorized Signature	Printed Name	Title	Date

Approved for Legal Sufficiency:

Approved by Joseph M. Callahan, Assistant Attorney General on March 19, 2024; email in Agreement file.

ATTACHMENT 1
EXHIBIT C
Financial Pages

MODIFICATION INPUT REVIEW REPORT

MOD#: M0844

CONTRACT#: 026008

CONTRACTOR: DESCHUTES COUNTY

INPUT CHECKED BY: _____ DATE CHECKED: _____

SE#	FUND	CODE	CPMS	PROVIDER	EFFECTIVE DATES	SLOT CHANGE/TYPE	RATE	OPERATING DOLLARS	STARTUP PART DOLLARS ABC	PART IV	PAAF CD	BASE	CLIENT CODE	SP#
-----	------	------	------	----------	-----------------	------------------	------	-------------------	--------------------------	---------	---------	------	-------------	-----

FISCAL YEAR: 2024-2025

SE#	BASE	ACUTE AND INTERMEDIA	EFFECTIVE DATES	SLOT	RATE	OPERATING DOLLARS	STARTUP PART DOLLARS ABC	PART IV	PAAF CD	BASE	CLIENT CODE	SP#
24	806	ACUTE	7/1/2024 - 12/31/2024	0 /NA	\$0.00	\$2,000,000.00	\$0.00	C	1	N		1
TOTAL FOR SE# 24						\$2,000,000.00	\$0.00					
TOTAL FOR 2024-2025						\$2,000,000.00	\$0.00					
TOTAL FOR M0844 026008						\$2,000,000.00	\$0.00					

OREGON HEALTH AUTHORITY
Financial Assistance Award Amendment (FAAA)

CONTRACTOR: DESCHUTES COUNTY
DATE: 05/24/2024

Contract#: 026008
REF#: 005

REASON FOR FAAA (for information only):

Civil Commitment Services (MHS 24) funds have been awarded per SB 5525.

The following special condition(s) apply to funds as indicated by the special condition number in column 9. Each special condition set forth below may be qualified by a full description in the Financial Assistance Award.

M0844 1A) The financial assistance subject to this special condition will be disbursed to the County in one lump sum within 30 calendar days after the date this Amendment becomes executed. B) These funds are for MHS 24 Civil Commitment Services in accordance with Memorandum regarding the Subject: Funds disbursement for SRTF project; rescinding memo date 4-10-2024 for 7/1/2024 to 6/30/2025.

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: PO-44300-00026008-3-3

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

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

Billing address: 2577 NE Courtney Drive

City: Bend OR 97701

Phone: 541-322-7500

FEIN: 93-6002292

- OR -

SSN: _____

Certificate Of Completion

Envelope Id: 38F838FE6CCF417BB6DA157F9D2B3882	Status: Sent
Subject: 026008-3 Deschutes County Amendment	
Source Envelope:	
Document Pages: 5	Signatures: 0
Certificate Pages: 5	Initials: 0
AutoNav: Enabled	Envelope Originator:
Enveloped Stamping: Enabled	Larry Briggs
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	Larry.O.Briggs@odhsoha.oregon.gov
	IP Address: 209.112.106.2

Record Tracking

Status: Original	Holder: Larry Briggs	Location: DocuSign
6/24/2024 2:52:37 PM	Larry.O.Briggs@odhsoha.oregon.gov	
Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: Carahsoft OBO Oregon Health Authority - CLM	Location: DocuSign

Signer Events

Signature

Timestamp

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Jon Collins
jon.c.collins@oha.oregon.gov

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Ebony Clarke
ebony.s.clarke@oha.oregon.gov

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

In Person Signer Events

Signature

Timestamp

Editor Delivery Events

Status

Timestamp

Agent Delivery Events

Status

Timestamp

Grace Evans	Sent: 6/24/2024 3:02:26 PM
grace.evans@deschutes.org	Viewed: 6/25/2024 2:50:51 PM
Contract Specialist	
Deschutes County Health Services	

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Accepted: 9/22/2021 9:13:25 AM
ID: 1c2f1b1a-bce9-4e77-a9ac-00927d21eb03

Intermediary Delivery Events

Status

Timestamp

Certified Delivery Events

Status

Timestamp

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, Carahsoft OBO Oregon Health Authority - CLM (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Carahsoft OBO Oregon Health Authority - CLM:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: mick.j.mitchell@dhsoha.state.or.us

To advise Carahsoft OBO Oregon Health Authority - CLM of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at mick.j.mitchell@dhsoha.state.or.us and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from Carahsoft OBO Oregon Health Authority - CLM

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to mick.j.mitchell@dhsoha.state.or.us and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with Carahsoft OBO Oregon Health Authority - CLM

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;

ii. send us an email to mick.j.mitchell@dhsosha.state.or.us and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

By selecting the check-box next to ‘I agree to use electronic records and signatures’, you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Carahsoft OBO Oregon Health Authority - CLM as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Carahsoft OBO Oregon Health Authority - CLM during the course of your relationship with Carahsoft OBO Oregon Health Authority - CLM.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: July 24, 2024

SUBJECT: Approval of the purchase of Commercial Property Insurance

RECOMMENDED MOTION:

Authorize the Risk Manager to pay an invoice for \$348,811 to Brown & Brown Insurance Services for Commercial Property Insurance.

BACKGROUND AND POLICY IMPLICATIONS:

Deschutes County purchases Commercial Property Insurance to cover County buildings, facilities, and large equipment (such as loaders, solid waste compactors, and graders). The County has a deductible of \$25,000 for losses covered by this policy.

The table below shows the comparison of last year’s total insured value and premium to this year’s:

	Total Insured Value	Premium
FY 23-24	\$ 238,846,083	\$ 307,845
FY 24-25	\$ 262,655,758	\$ 348,811
Increase	10%	13%

The County’s carrier will remain the same, Affiliated FM.

BUDGET IMPACTS:

The cost for the insurance coverage is included in Risk Management’s FY 24-25 budget.

ATTENDANCE:

Erik Kropp, Deputy County Administrator/Risk Manager

INVOICE

07/24/2024 Item #3.



Mail payment to:
Brown & Brown Insurance Services, Inc.
P.O. Box 743061
Los Angeles, CA 90074-3061

Overnight payment to:
Brown & Brown Insurance Services, Inc.
Lockbox 743061
2706 Media Center Drive
Los Angeles, CA 90065-1733

To Pay Online: bbnw.epaypolicy.com

Customer	Deschutes County
Acct #	324357
Date	07/16/2024
Customer Service	(503)274-6511
Page	1 of 1

Deschutes County
1300 NW Wall St, Ste 201
Bend, OR 97701

Payment Information	
Invoice Summary	\$ 348,811.00
Payment Amount	
Payment for:	Invoice#16871295
1135825	

Thank You

Please detach and return with payment



Customer: Deschutes County

Invoice	Effective	Transaction	Description	Amount
16871295	07/01/2024	Renew policy	Policy #1135825 07/01/2024-07/01/2025 Factory Mutual Insurance Company / Affiliated FM Insurance Company Commercial Property - Renew policy	348,811.00

Total
\$ 348,811.00

Thank You

Please Remit Payment Upon Receipt

	Date
	07/16/2024



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: July 24, 2024

SUBJECT: Approval of Document No. 2024-496 renewing the contract with Iris Telehealth

RECOMMENDED MOTION:

Move approval of Document No. 2024-496 renewing the contract with Iris Telehealth.

BACKGROUND AND POLICY IMPLICATIONS:

Iris Telehealth Medical Group, PA (“Iris Telehealth”) shall provide Tele-psychiatric treatment for persons identified and scheduled by Deschutes County Health Services. Clients shall be scheduled during the agreed upon hours of service, which will occur in 30-minute sessions for returning and known clients, and 60-minute sessions for new Deschutes County Health Services clients and psychiatric evaluations. Iris Telehealth shall provide required documentation of services in Deschutes County’s Electronic Medical Record (EMR) system. Iris Telehealth shall provide services as a Licensed Medical Provider (LMP) and document Medical Services using Deschutes County’s EMR, in a manner consistent with professional and community standards of care.

BUDGET IMPACTS:

\$1,130,000

ATTENDANCE:

Chandra Mola, Program Supervisor



HEALTH SERVICES

REVIEWED
KR
LEGAL COUNSEL

**DESCHUTES COUNTY SERVICES CONTRACT
CONTRACT NO. 2024-496**

This Contract is made and entered into by and between Deschutes County, a political subdivision of the State of Oregon, acting by and through the Deschutes County Health Services Department, Behavioral Health Division, hereinafter referred to as "County", and Iris Telehealth Medical Group, PA, hereinafter referred to as "Contractor", collectively referred to as "Party" or "Parties". The Parties agree as follows:

Effective Date and Termination Date. The effective date of this Contract shall be **July 1, 2024**. Unless extended or terminated earlier in accordance with its terms, this Contract shall terminate on **June 30, 2025**. Contract termination shall not extinguish or prejudice County's right to enforce this Contract with respect to any default by Contractor that has not been cured. This Contract may be renewed or extended only upon written agreement of the Parties.

Statement of Work. Contractor shall perform the work described in Exhibit B.

Payment for Work. County agrees to pay Contractor in accordance with Exhibit B.

Contract Documents. This Contract includes Page 1 - 11 and Exhibits A-I.

CONTRACTOR DATA AND SIGNATURE

A Federal tax ID number or Social Security number is required to be provided by the Contractor and shall be used for the administration of state, federal and local tax laws. Payment information shall be reported to the Internal Revenue Service under the name and Federal tax ID number or, if none, the Social Security number provided on the W-9 form and Deschutes County Health Services Vendor Application form.

I have read this Contract including the attached Exhibits. I understand this Contract and agree to be bound by its terms. NOTE: Contractor shall also sign Exhibits D, E, G and I.

Signature: *Thomas Milam*
Thomas Milam (Jul 17, 2024 12:14 EDT)

Email: tom.milam@iristelehealth.com

Title: Chief Medical Officer

Company: Iris Telehealth

DESCHUTES COUNTY SIGNATURE

Contracts with a maximum consideration of not greater than \$50,000 are not valid and not binding on the County until signed by the appropriate Deschutes County Department Head. Additionally, Contracts with a maximum consideration greater than \$50,000 but less than \$250,000 are not valid and not binding on the County until signed by the County Administrator or the Board of County Commissioners.

Dated this _____ of _____, 2024

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

DESCHUTES COUNTY DIRECTOR OF HEALTH
SERVICES

PATTI ADAIR, Chair

ANTHONY DeBONE , Vice Chair

PHIL CHANG , Commissioner

STANDARD TERMS AND CONDITIONS

Contractor shall comply with the following requirements herein to the extent that it is applicable to the agreement for services determined and agreed to by and between Contractor and County.

1. Time is of the Essence. Contractor shall provide Tele-psychiatric treatment for persons identified and scheduled by County. Clients shall be scheduled during the agreed upon hours of service and will occur in thirty (30) minute sessions for returning and known clients, and sixty (60) minute sessions for new County clients and psychiatric evaluations.

2. Contractor's Services. Description of services here.

- Exhibit A OUTLINE OF PROGRAM AND PROGRAM DEFINITIONS
- Exhibit B STATEMENT OF WORK, PAYMENT TERMS and SCHEDULE
- Exhibit C INSURANCE
- Exhibit D CERTIFICATION STATEMENT FOR CORPORATION OR INDEPENDENT CONTRACTOR
- Exhibit E WORKER'S COMPENSATION EXEMPTION CERTIFICATION
- Exhibit F EXPENSE REIMBURSEMENT
- Exhibit G CONFIDENTIALITY AGREEMENT
- Exhibit H FEDERAL AND STATE LAWS, STATUTES, RULES, REGULATIONS, EXECUTIVE ORDERS AND POLICIES
- Exhibit I CONFLICT OF INTEREST

The above-referenced exhibits are attached hereto and incorporated by this reference. Contractor's services are funded by in part through County's General Funds and an agreement with the Central Oregon Health Council – Stabilization (2024 COHC Surplus), attached hereto and incorporated by this reference. The program is further described in Exhibit A.

3. Consideration. Payment for all work performed under this Contract shall be made in the amounts and manner set forth in Exhibit B.

- A. Payments shall be made to Contractor following County's review and approval of invoice and deliverables submitted by Contractor.
- B. All Contractor invoices are subject to the maximum compensation amount of this Contract stated in Exhibit B.
- C. Contractor shall not submit invoices for, and County shall not pay, any amount in excess of the maximum compensation amount of this Contract.
 - 1) If the maximum compensation amount is increased by amendment to this Contract, the amendment shall be signed by both parties and fully executed before Contractor performs work subject to the amendment.
 - 2) No payment shall be made for any services performed before the beginning date or after the expiration date of this Contract.
- D. This Contract shall not be amended after the expiration date.
- E. Contractor shall submit a final invoice for work performed describing all work performed with particularity and by whom it was performed and shall itemize and explain all expenses for which reimbursement is claimed.
- F. Prior to approval or payment of any invoices, County may require and Contractor shall provide any information, not available within County electronic systems, which County deems necessary to verify work has been properly performed in accordance with the Contract. If invoice or supporting documentation contains Protected Health Information (PHI) as defined by the Health Insurance Portability and Accountability Act (HIPAA), then documentation must be faxed or emailed with encryption. Invoices may require such supporting documentation as signed time cards, travel receipts, or other reports.
- G. Should County discover Contractor is committing or has committed "fraud" and/or "abuse" as those terms are defined in OAR 410-120-0000, either through an audit or other means, County may recover funds paid to Contractor under this Contract. If state or federal authorities demand the repayment of funds received under this Contract and Contractor has been found willfully committing "fraud" and/or "abuse" as those terms are defined in OAR 410-120-0000, County may recover funds paid to Contractor under this Contract and any fines or penalties charged to County as a result of Contractor's actions. In the event that the County determines that Contractor is responsible for the repayment of any funds paid to Contractor, in addition to any fines or penalties charged to the County due to Contractor willfully committing "fraud" and "abuse", Contractor agrees to make such payment (and upon request by

County, authorize County withhold of funds otherwise due to Contractor) within ten (10) days of notification by County. If federal or state authorities demand the repayment of funds received under this Contract, County may recover all funds paid under this Contract, unless a smaller amount is disallowed or demanded from federal or state authorities.

H. In the event that an insurance, statutorily required operating license or letter of approval is suspended or not extended, County's obligation to provide reimbursement for services or program expenses hereunder related to services rendered without the necessary license or approval will cease on the date of termination of this Contract (whether in whole or in part) or the date of expiration or suspension of the insurance, license or letter of approval, whichever date is earlier.

4. Delegation, Subcontracts and Assignment. Contractor shall not delegate or subcontract any of the work required by this Contract or assign or transfer any of its interest in this Contract, without the prior written consent of County.

- A. Any delegation, subcontract, assignment, or transfer without prior written consent of County shall constitute a material breach of this contract.
- B. Any such assignment or transfer, if approved, is subject to such conditions and provisions as the County may deem necessary.
- C. No approval by the County of any assignment or transfer of interest shall be deemed to create any obligation of the County to increase rates of payment or maximum Contract consideration.
- D. Prior written approval shall not be required for the purchase by the Contractor of articles, supplies and services which are incidental to the provision of services under this Contract that are necessary for the performance of the work.
- E. Any subcontracts that the County may authorize shall contain all requirements of this contract, and unless otherwise specified by the County the Contractor shall be responsible for the performance of the subcontractor.

5. No Third Party Beneficiaries.

- A. County and Contractor are the only Parties to this Contract and are the only Parties entitled to enforce its terms.
- B. Nothing in this Contract gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Contract and expressly described as intended beneficiaries of this Contract.

6. Successors in Interest. The provisions of this Contract shall be binding upon and inure to the benefit of the Parties and their successors and approved assigns, if any.

7. Early Termination. Termination shall be without prejudice to any obligations or liabilities of either Party accrued prior to such termination. Contractor shall make no expenditures, enter into no contracts, nor encumber funds in its possession or to be transferred by County, after notice of termination or termination as set out above, without prior written approval from County. This Contract may be terminated as follows:

- A. Mutual Consent. County and Contractor, by mutual written agreement, may terminate this Contract at any time.
- B. Party's Convenience. County or Contractor may terminate this Contract for any reason upon 30 calendar days written notice to the other party.
- C. For Cause. County may also terminate this Contract effective upon delivery of written notice to the Contractor, or at such later date as may be established by the County, under any of the following conditions:
 - 1) This Contract shall be terminated immediately and no obligations, financial or otherwise, shall be imposed upon County if funding to the County from Federal, State, or other sources is not obtained or is not continued at levels sufficient to allow for purchase of the indicated quantity of services. This Contract may be modified to accommodate the change in available funds.
 - 2) If state laws, regulations or guidelines are modified, changed or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.
 - 3) In the event sufficient funds shall not be appropriated for the payment of consideration required to be paid under this Contract, and if County has no funds legally available for consideration from other sources.

4) If any insurance, license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, suspended, not renewed or changed in such a way that the Contractor no longer meets requirements for such insurance, license or certificate.

D. Contractor Default or Breach. The County, by written notice to the Contractor, may immediately terminate the whole or any part of this Contract under any of the following conditions:

- 1) If the Contractor fails to provide services called for by this Contract within the time specified or any extension thereof.
- 2) If the Contractor fails to perform any of the other requirements of this Contract or so fails to pursue the work so as to endanger performance of this Contract in accordance with its terms, and after receipt of written notice from the County specifying such failure, the Contractor fails to correct such failure within 10 calendar days or such other period as the County may authorize.
- 3) Contractor 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.

E. County Default or Breach.

- 1) Contractor may terminate this Contract in the event of a breach of this Contract by the County. Prior to such termination, the Contractor shall give to the County written notice of the breach and intent to terminate.
- 2) If the County has not entirely cured the breach within 10 calendar days of the date of the notice, then the Contractor may terminate this Contract at any time thereafter by giving notice of termination.

F. Immediate Termination.

- 1) Failure of the Contractor to comply with the provisions of this Contract and all applicable Federal, State and local laws and rules which may be cause for termination of this Contract. The circumstances under which this Contract may be terminated by either Party under this paragraph may involve major or minor violations. Major violations include, but are not limited to:
 - a. Misuse of funds.
 - b. Intentional falsification of records.
 - c. Acts or omissions that jeopardize the health, safety, or security of individuals or If County has evidence that the Contractor has endangered or is endangering the health and safety of clients, residents, staff, or the public.
 - In the case a failure to perform jeopardizes the safety and security of an individual the Contractor and the County shall jointly conduct an investigation to determine whether an emergency exists and what corrective action will be necessary. Such an investigation shall be completed within five (5) working days from the date the County determines that such failure exists.
 - In those circumstances where a major violation is substantiated, continued performance may be suspended by the County immediately. In all cases involving a major violation, a written notice of intent to terminate this Contract shall be sent to the Contractor found to be in violation. Prior to termination, the Contractor shall be given a reasonable opportunity to refute the findings. If the problem is not corrected within a reasonable time as determined by County in its sole discretion, this Contract may be terminated or other remedial actions may be initiated.
 - Minor violations usually involve less than substantial compliance with the general or special conditions of this Contract. In the event of alleged minor violations, written notice shall be given and a reasonable period shall be allowed to develop a corrective action plan. This plan shall describe activities that respond to specific violations and means by which a permanent change will be made in the procedures or practices that caused the violation. If these activities do not occur within the notice period, this Contract may be terminated. Continued substantial minor violations that threaten adequacy of services may be treated like a major violation.

8. Payment on Early Termination. Upon termination pursuant to paragraph 7, payment shall be made as follows:

- A. If terminated under subparagraphs 7 A. through C. of this Contract, the County shall pay Contractor for work performed prior to the termination date if such work was performed in accordance with the Contract. Provided however, County shall not pay Contractor for any obligations or liabilities incurred by Contractor after Contractor receives written notice of termination.
- B. If this Contract is terminated due to Contractor's failure to perform services as outlined in subparagraphs 7 D. of this Contract, County obligations shall be limited to payment for services provided in accordance with this Contract prior to the date of termination, less any damages suffered by the County.

- B. If this Contract is terminated under subparagraph 7 E. of this Contract, County obligations shall be limited to payment for services provided in accordance with this Contract prior to the date of termination, less any damages suffered by the County.
- C. If terminated under subparagraph 7 E of this Contract by the Contractor due to a breach by the County, then the County shall pay the Contractor for work performed prior to the termination date if such work was performed in accordance with the Contract. Specifically:
- 1) with respect to services compensable on an hourly basis, for unpaid invoices, hours worked within any limits set forth in this Contract but not yet billed, authorized expenses incurred if payable according to this Contract and interest within the limits set forth under ORS 293.462, less the amount of any claims County has against Contractor; and
 - 2) with respect to deliverable-based Work, the sum designated for completing the deliverable multiplied by the percentage of Work completed and accepted by County, less previous amounts paid and any claim(s) that County has against Contractor.
 - 3) County's payment to Contractor under this subparagraph 8(C) is subject to the limitations under paragraph 9 of this Contract.

9. Remedies. In the event of breach of this Contract the Parties shall have the following remedies:

- A. Termination under subparagraphs 7 (A) through (C) of this Contract shall be without prejudice to any obligations or liabilities of either Party already reasonably incurred prior to such termination.
- 1) Contractor may not incur obligations or liabilities after Contractor receives written notice of termination.
 - 2) Additionally, neither Party shall be liable for any indirect, incidental, consequential or special damages under this Contract or for any damages of any sort arising solely from the termination of this Contract in accordance with its terms.
- B. If terminated by the County due to a breach by the Contractor under subparagraph 7 (D) of this Contract, County may pursue any remedies available at law or in equity.
- 1) Such remedies may include, but are not limited to, termination of this Contract, return of all or a portion of this Contract amount, payment of interest earned on this Contract amount, and declaration of ineligibility for the receipt of future contract awards.
 - 2) Additionally, County may complete the work either by itself, by agreement with another contractor, or by a combination thereof. If the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then the Contractor shall be liable to the County for the amount of the reasonable excess.
- C. If amounts previously paid to Contractor exceed the amount due to Contractor under this Contract, Contractor shall repay any excess to County upon demand.
- D. Neither County nor Contractor shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, riot, acts of God, or war where such cause was beyond reasonable control of County or Contractor, respectively; however, Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract. For any delay in performance as a result of the events described in this subparagraph, Contractor shall be entitled to additional reasonable time for performance that shall be set forth in an amendment to this Contract.
- E. The passage of this Contract expiration date shall not extinguish or prejudice the County's or Contractor's right to enforce this Contract with respect to any default or defect in performance that has not been cured.
- F. County's remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.
- G. Differences between a Contractor and County, or between contractors, will be resolved when possible at appropriate management levels, followed by consultation between boards, if necessary. County's Health Services Director will have ultimate responsibility for resolution of disagreements among subcontract agencies.

10. Contractor's Tender upon Termination. Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract unless County expressly directs otherwise in such notice of termination.

- A. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had this Contract been completed.

B. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the work.

11. Work Standard.

- A. Contractor shall be solely responsible for and shall have control over the means, methods, techniques, sequences and procedures of performing the work, subject to the plans and specifications under this Contract and shall be solely responsible for the errors and omissions of its employees, subcontractors and agents.
- B. For goods and services to be provided under this Contract, Contractor agrees to:
 - 1) perform the work in a good, workmanlike, and timely manner using the schedule, materials, plans and specifications approved by County;
 - 2) comply with all applicable legal requirements;
 - 3) comply with all programs, directives, and instructions of County relating to safety, storage of equipment or materials;
 - 4) take all precautions necessary to protect the safety of all persons at or near County or Contractor's facilities, including employees of Contractor, County and any other contractors or subcontractors and to protect the work and all other property against damage.

12. Drugs and Alcohol. Contractor shall adhere to and enforce a zero tolerance policy for the use of alcohol and the unlawful selling, possession or use of controlled substances while performing work under this Contract.

13. Insurance. Contractor shall provide insurance in accordance with Exhibit C attached hereto and incorporated by reference herein. The insurance must be provided by 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 County. County shall not authorize contractors to begin work under the Contract until the insurance is in full force. Thereafter, County shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. County shall enforce Contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Contract as permitted by the Contract provisions, or pursuing legal action to enforce the insurance requirements. In no event shall County permit Contractor to work under this Contract when the County is aware that Contractor is not in compliance with the insurance requirements.

14. Expense Reimbursement. If the consideration under this Contract provides for the reimbursement to Contractor for expenses, in addition to Exhibit F, Exhibit B shall state whether Contractor is or is not entitled to reimbursement for such approved expenses.

- A. County shall only reimburse Contractor for expenses reasonably and necessarily incurred in the performance of this Contract.
- B. Expenses reimbursed shall be at the actual cost incurred; including any taxes paid, and shall not include any mark-up unless the mark-up on expenses is specifically agreed to in this Contract.
- C. The cost of any subcontracted work approved in this Contract shall not be marked up.
- D. Contractor shall not invoice County for any time expended to complete the documents necessary for reimbursement of expenses or for payment under this Contract.
- E. The limitations applicable to reimbursable expenses are set forth in Exhibit F, attached hereto and by reference incorporated herein.

15. Criminal Background Investigations. Contractor understands that Contractor and Contractor's employees and agents are subject to periodic criminal background investigations by County and, if such investigations disclose criminal activity not disclosed by Contractor, such non-disclosure shall constitute a material breach of this Contract and County may terminate this Contract effective upon delivery of written notice to the Contractor, or at such later date as may be established by the County.

16. Confidentiality. In addition to the obligations imposed upon Contractor by **Exhibit G**, Contractor shall maintain confidentiality of information obtained pursuant to this Contract as follows:

- A. Contractor shall not use, release or disclose any information concerning any employee, client, applicant or person doing business with the County for any purpose not directly connected with the administration of County's or the Contractor's responsibilities under this Contract except upon written consent of the County, and if applicable, the employee, client, applicant or person.
- B. Contractor shall ensure that its agents, employees, officers and subcontractors with access to County and Contractor records understand and comply with this confidentiality provision.
- C. Contractor shall treat all information as to personal facts and circumstances obtained on Medicaid eligible individuals as privileged communication, shall hold such information confidential, and shall not disclose such information without the written consent of the individual, his or her attorney, the responsible parent of a minor child, or the child's guardian, except as required by other terms of this Contract.
- D. Nothing prohibits the disclosure of information in summaries, statistical information, or other form that does not identify particular individuals.
- E. Personally identifiable health information about applicants and Medicaid recipients will be subject to the transaction, security and privacy provisions of the Health Insurance Portability and Accountability Act ("HIPAA").
- F. Contractor shall at all times comply with all of the transaction, security and privacy provisions of the Health Insurance Portability and Accountability Act ("HIPAA") and all other state and federal laws and regulations related to the privacy and/or security of personally identifiable health information.
- G. Contractor shall cooperate with County in the adoption of policies and procedures for maintaining the privacy and security of personally identifiable health records and for conducting transactions pursuant to the requirements of HIPAA and other applicable state and federal laws and regulations.
- H. This Contract may be amended in writing in the future to incorporate additional requirements related to compliance with HIPAA or other applicable state or federal laws and/or regulations.
- I. If Contractor receives or transmits protected health information, Contractor and County shall enter into a Business Associate Agreement or a Confidentiality Agreement, whichever is applicable, which, if attached hereto, shall become a part of this Contract. To the extent any provision of the Business Associate Agreement or Confidentiality Agreement is inconsistent with a provision of this paragraph 16, the Business Associate Agreement or Confidentiality Agreement shall govern.
- J. Individually Identifiable Health Information about specific individuals is confidential. Individually Identifiable Health Information relating to specific individuals may be exchanged between County and OHA for purposes directly related to the provision of services to clients which are funded in whole or in part under this Contract. Contractor shall maintain the confidentiality of records of clients as required by applicable state and federal law, including without limitation, ORS 179.495 to 179.507, 45 CFR Part 205, 42 CFR Part 2, any administrative rule adopted by the Oregon Health Authority (OHA) implementing the foregoing laws, and any written policies made available to Contractor by County or by the OHA. Contractor shall create and maintain written policies and procedures related to the disclosure of a client's information and shall make such policies and procedures available to County and the OHA for review and inspection as reasonably requested by County or the OHA.

17. Reports. Contractor shall provide County with periodic reports at the frequency and with the information prescribed by County. Further, at any time, County has the right to demand adequate assurances that the services provided by Contractor shall be in accordance with the Contract. Such assurances provided by Contractor shall be supported by documentation in Contractor's possession from third parties.

18. Access to Records. Contractor shall maintain fiscal records and all other records pertinent to this Contract.

- A. All fiscal records shall be maintained pursuant to generally accepted accounting standards, and other records shall be maintained to the extent necessary to clearly reflect actions taken.
 - 1) All records shall be retained and kept accessible for at least three years following the final payment made under this Contract or all pending matters are closed, whichever is later.
 - 2) If an audit, litigation or other action involving this Contract is started before the end of the three year period, the records shall be retained until all issues arising out of the action are resolved or until the end of the three year period, whichever is later.

- B. County and its authorized representatives shall have the right to direct access to all of Contractor's books, documents, papers and records related to this Contract for the purpose of conducting audits and examinations and making copies, excerpts and transcripts. The foregoing access is subject to the Parties and requesting agencies strict compliance with applicable provisions of 42 CFR Part 2.
- 1) These records also include licensed software and any records in electronic form, including but not limited to computer hard drives, tape backups and other such storage devices. County shall reimburse Contractor for Contractor's cost of preparing copies.
 - 2) At Contractor's expense, the County, the Secretary of State's Office of the State of Oregon, the Federal Government, and their duly authorized representatives, shall have license to enter upon Contractor's premises to access and inspect the books, documents, papers, computer software, electronic files and any other records of the Contractor which are directly pertinent to this Contract.
 - 3) If Contractor's dwelling is Contractor's place of business, Contractor may, at Contractor's expense, make the above records available at a location acceptable to the County.
- C. Contractor shall permit County and OHA to make site visits upon reasonable notice to monitor the delivery of services under this Contract.
- D. **Retention of Records.** Contractor shall retain and keep accessible all books, documents, paper, and records and client records, that are directly related to this Contract, the financial assistance provided hereunder or any service, in accordance with OAR 166-150-0005 through 166-150-0215 (State Archivist). Unless OAR 166-150-0005 through 166-150-0215 requires a longer retention period, client records must be retained for a minimum of six (6) years from termination or expiration of this Contract. If there are unresolved audit or Contract Settlement questions at the end of the retention period, Contractor shall retain the records until the questions are resolved.
- E. Contractor agrees that services provided under this Contract by Contractor, facilities used in conjunction with such services, client's records, Contractor's policies, procedures, performance data, financial records, and other similar documents and records of Contractor, that pertain, or may pertain, to services under this Contract, shall be open for inspection by County, or its agents, at any reasonable time during business hours.

19. Ownership of Work. All work of Contractor that results from this Contract (the "Work Product") is the exclusive property of County.

- A. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed author.
- B. If, for any reason, the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine.
- C. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County.
- D. Contractor forever waives any and all rights relating to Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
- E. County shall have no rights in any pre-existing work product of Contractor provided to County by Contractor in the performance of this Contract except an irrevocable, non-exclusive, perpetual, royalty-free license to copy, use and re-use any such work product.
- F. If this Contract is terminated prior to completion, and County is not in default, County, in addition to any other rights provided by this Contract, may require Contractor to transfer and deliver all partially completed work products, reports or documentation that Contractor has specifically developed or specifically acquired for the performance of this Contract.
- G. In the event that Work Product is deemed Contractor's Intellectual Property and not "work made for hire," Contractor hereby grants to County an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Contractor Intellectual Property, and to authorize others to do the same on County's behalf.
- H. In the event that Work Product is Third Party Intellectual Property, Contractor shall secure on the County's behalf and in the name of the County, an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce,

prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on County's behalf.

20. County Code Provisions. Except as otherwise specifically provided, the provisions of Deschutes County Code, Section 2.37.150 are incorporated herein by reference. Such code section may be found at the following URL address:

https://deschutescounty.municipalcodeonline.com/book?type=ordinances#name=2.37.150_Standard_Contract_Provisions. To the extent any provision of DCC 2.37.150 is inconsistent with a provision of this Contract, DCC 2.37.150 shall govern.

21. Partnership. County is not, by virtue of this contract, a partner or joint venturer with Contractor in connection with activities carried out under this contract, and shall have no obligation with respect to Contractor's debts or any other liabilities of each and every nature.

22. Indemnity and Hold Harmless.

- A. To the fullest extent authorized by law Contractor shall defend, save, hold harmless and indemnify the County and its current and former officers, departments, employees and agents from and against all claims, suits, actions, losses, damages, liabilities costs and expenses of any nature, and by whomever brought, resulting from, arising out of, or relating to the activities of Contractor or its current or former officers, employees, contractors, or agents, including without limitation any claims that any work, work product or other tangible or intangible items delivered to County by Contractor that may be the subject of protection under any state or federal intellectual property law or doctrine, or that the County's use thereof infringes any patent, copyright, trade secret, trademark, trade dress, mask work utility design or other proprietary right of any third party.
- B. Contractor shall have control of the defense and settlement of any claim that is subject to subparagraph a of this paragraph; however neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of Deschutes County or any department or agency thereof, nor purport to act as legal representative of the County or any of its departments or agencies without first receiving from the County's Legal Counsel, in a form and manner determined appropriate by the County's Legal Counsel, authority to act as legal counsel for the County, nor shall Contractor settle any claim on behalf of the County without the approval of the County's Legal Counsel.
- C. To the extent permitted by Article XI, Section 10, of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, County shall defend, save, hold harmless and indemnify Contractor and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities costs and expenses of any nature resulting from or arising out of, or relating to the activities of County or its officers, employees, contractors, or agents under this Contract.
- D. Contractors that are not units of local government as defined in ORS 190.003, shall indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents 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 Contractor or any of its officers, agents, employees or subcontractors. It is the specific intention of the Parties that the State of Oregon shall, in all instances, except for claims arising solely from the negligent or willful acts or omissions of the State of Oregon, be indemnified from and against any and all claims.

23. Waiver.

- A. County's delay in exercising, or failure to exercise any right, power, or privilege under this Contract shall not operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Contract preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.
- B. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

24. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.

- A. Any claim, action, suit or proceeding (collectively, "Claim") between County and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Deschutes County for the State of Oregon; provided, however, if a Claim shall be brought in federal forum, then it

shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

B. CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. The parties agree that the UN Convention on International Sales of Goods shall not apply.

25. **Severability.** If any term or provision of this Contract 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 this Contract did not contain the particular term or provision held invalid, unless doing so would materially frustrate the parties' intent in entering into this Contract.

26. **Counterparts.** This Contract 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 this Contract so executed shall constitute an original.

27. **Notice.** Except as otherwise expressly provided in this Contract, any communications between the Parties hereto or notices to be given hereunder shall be given in writing, to Contractor or County at the address or number set forth below or to such other addresses or numbers as either Party may hereafter indicate in writing. Delivery may be by personal delivery, electronic mail, facsimile, or mailing the same, postage prepaid.

- A. Any communication or notice by personal delivery shall be deemed delivered when actually given to the designated person or representative.
- B. Any communication or notice sent by facsimile shall be deemed delivered when the transmitting machine generates receipt of the transmission. To be effective against County, such facsimile transmission shall be confirmed by telephone notice to the County Administrator.
- C. Any electronic mail shall be deemed delivered when receipt has been confirmed either by the recipient or by electronic confirmation performed by the electronic mail platform.
- D. Any communication or notice mailed shall be deemed delivered five (5) days after mailing. Any notice under this Contract shall be mailed by first class postage or delivered as follows:

<u>To Contractor:</u>	<u>To County:</u>
Desirae Kinney-Woods	Holly Harris, Deputy Director
Iris Telehealth Medical Group, PA	Deschutes County Health Services
114 W. 7 th St.	2577 NE Courtney Dr.
Austin, TX 78701	Bend, Oregon 97701
Fax No.	Fax No. 541-322-7565
desirae.kinney-woods@iristelehealth.com	Holly.harris@deschutes.org

<u>To County – for Notices & Terminations:</u>	<u>To County – Accounts Payable:</u>
Grace Justice Evans, Contract Specialist	Accounts Payable
Deschutes County Health Services	Deschutes County Health Services
2577 NE Courtney Dr.	2577 NE Courtney Dr.
Bend, Oregon 97701	Bend, Oregon 97701
Fax No. 541-322-7565	Fax No. 541-322-7565
Grace.evans@deschutes.org	_HSAccountsPayable@deschutes.org

28. **Merger Clause.** This Contract and the attached exhibits constitute the entire agreement between the Parties.

- A. All understandings and agreements between the Parties and representations by either Party concerning this Contract are contained in this Contract.
- B. No waiver, consent, modification or change in the terms of this Contract shall bind either Party unless in writing signed by both Parties.
- C. Any written waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given.

29. Identity Theft Protection. Contractor and subcontractors shall comply with the Oregon Consumer Identity Theft Protection Act (ORS 646A.600 et seq.).

30. Survival. All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in: 5 (No Third Party Beneficiaries); 6 (Successors in Interest); 9 (Remedies); 10 (Contractor's Tender upon Termination); 16 (Confidentiality); 18 (Access to Records); 19 (Ownership of Work); 21 (Partnership); 22 (Indemnity & Hold Harmless); 23 (Waiver); 24 (Governing Law); 25 (Severability); 26 (Counterparts); 27 (Notice); 28 (Merger Clause); 29 (Identity Theft Protection); 31 (Representations & Warranties).

31. Representations and Warranties.

- A. **Contractor's Representations and Warranties.** Contractor represents and warrants to County that:
 - 1) Contractor has the power and authority to enter into and perform this Contract;
 - 2) This Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms;
 - 3) Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in Contractor's industry, trade or profession in the state of Oregon;
 - 4) Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work;
 - 5) Contractor prepared its proposal related to this Contract, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty; and
 - 6) Contractor's making and performance of this Contract do not and will not violate any provision of any applicable law, rule or regulation or order of any court, regulatory commission, board or other administrative agency.
 - 7) Contractor's making and performance of this Contract do not and will not violate any provision of any other contract, agreement to which Contractor is a party, nor materially impair any legal obligation of Contractor to any person or entity.

- B. **Warranties Cumulative.** The warranties set forth in this paragraph are in addition to, and not in lieu of, any other warranties provided.

32. Representation and Covenant.

- A. Contractor represents and warrants that Contractor has complied with the tax laws of this state, and where applicable, the laws of Deschutes County, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318.
- B. Contractor covenants to continue to comply with the tax laws of this state, and where applicable, the laws of Deschutes County, during the term of this Contract.
- C. Contractor acknowledges that failure by Contractor to comply with the tax laws of this state, and where applicable, the laws of Deschutes County, at any time before Contractor has executed the Contract or during the term of the Contract is and will be deemed a default for which Deschutes County may terminate the Contract and seek damages and/or other relief available under the terms of the Contract or under applicable law.

33. Nondiscrimination. Contractor must provide services to clients without regard to race, color, religion, national origin, sex, age, marital status, sexual orientation, or disability (as defined under the Americans with Disabilities Act). Contracted services must reasonably accommodate the cultural, language and other special needs of clients including, but not limited to, limited English language proficiency.

34. Amendment.

- A. This Contract may be unilaterally modified by County to accommodate a change in available funds, so long as such modification does not impose an unreasonable hardship upon Contractor or reduce Contractor's compensation for work Contractor actually performs or Contractor's authorized expenses actually incurred. With respect to deliverable-based Work, Contractor's compensation shall not be deemed reduced by a modification of this contract, so long as Contractor is paid the sum designated for performing the Work originally contemplated by this Contract multiplied by the percentage of such originally contemplated Work that Contractor performs under the modified Contract.

B. With the exception of subparagraph 34(a), above, this Contract (including any exhibits) may only be amended upon written agreement by both parties, and shall not be effective until both parties have executed such written agreement. Any alleged or claimed amendment that is not performed in compliance with this paragraph 31 shall be void and of no effect.

EXHIBIT A
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2024-496
OUTLINE OF PROGRAM AND PROGRAM DEFINITIONS

Program Outline:

Contractor shall provide Tele-psychiatric treatment for persons identified and scheduled by County. Clients shall be scheduled during the agreed upon hours of service and will occur in thirty (30) minute sessions for returning and known clients, and sixty (60) minute sessions for new County clients and psychiatric evaluations. Contractor shall provide required documentation of services in County’s Electronic Medical Record (EMR) system.

Contractor shall provide Outpatient Behavioral Health Services as a Licensed Medical Practitioner (LMP) in accordance with OAR’s 309-019-0105 and 309-019-0140. Services shall be performed in accordance with a schedule agreed upon by both Contractor and County. Contractor shall provide Medical Services in a manner that is in accordance with Definitions, laws, and regulations. Deschutes County Health Services’ Policy entitled “Mental health and Substance Use Disorder Services and Supports Policy”, (Issue Date: January 21, 2022) and in accordance with the Oregon Administrative Rules (OAR) “Outpatient Behavioral Health Services”, OAR 309-019-0100 (“Purpose and Scope”) through OAR 309-019-0220 (“Variances”), which is incorporated into this Contract herein by reference or required by law to be so incorporated. Deschutes County policies may be found on the Deschutes County Intranet in the Health Services’ Department’s “Policies and Procedures”.

Program Definitions:

1. **Addiction Treatment, Recovery & Prevention Services**
Services for Individuals diagnosed with disorders related to the taking of a drug of abuse including alcohol, to the side effects of a medication, and to a toxin exposure. The disorders include substance use disorders such as substance dependence and substance abuse, and substance-induced disorders, including substance intoxication, withdrawal, delirium, and dementia, mood disorder, etc., as defined in DSM criteria.
2. **Behavioral Health**
Mental/emotional wellbeing and/or actions that affect wellness. Behavioral health problems include substance abuse and misuse, Problem Gambling, and Mental Health disorders as well as serious psychological distress and suicide.
3. **Client or Individual**
With respect to a particular Service, any person who is receiving that Service, in whole or in part, with funds provided under this Contract. For the purposes of this Contract and all attachments hereto, the terms “Client” and “Individual” shall have the same meaning and shall be interchangeable.
4. **Coordinated Care Organization (CCO)**
A corporation, governmental agency, public corporation, or other legal entity that is certified as meeting the criteria adopted by the Oregon Health Authority under ORS 414.572 to be accountable for care management and to provide integrated and coordinated health care for each of the organization’s members. PacificSource Community Health Solutions, Inc. has been designated by the Oregon Health Authority as the CCO for the Central Oregon region.
5. **Culturally Competent**
The capacity to provide services in an effective manner that is sensitive to the culture, race, ethnicity, language and other characteristics of an individual. Such services may include, but are not limited to, use of bilingual and bicultural staff, provision of services in culturally appropriate alternative settings, and use of bicultural paraprofessionals as intermediaries with professional staff.
6. **Fraud and Abuse**
Fraud (410-120-0000) is defined as intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to him/herself or some other person. It includes any act that constitutes fraud under applicable federal or state law.

Abuse (410-120-0000) means provider practices that are inconsistent with sound, fiscal, business or medical practices and result in unnecessary costs to County, OHA, and/or Medicaid/Medicare or services that aren’t medically necessary or medically appropriate.

- 7. Health Services Division or HSD
For the purpose of this Contract, the division of Oregon Health Authority (OHA) that is responsible for the functions described in ORS 430.021(2), including but not limited to coordinating, assisting, and directing a community mental health program in cooperation with local government units and integrate such a program with the state Community Mental Health Program, and direct and coordinate Addiction Treatment, Recovery, & Prevention Services and Problem Gambling Services.
- 8. Individual service record or service record or clinical record
The documentation, written or electronic, regarding an individual and resulting from entry, clinical assessment, orientation, service and support planning, services and supports provided, and service conclusion.
- 9. Measures and outcomes Tracking System or "MOTS"
The Oregon Health Authority data system that stores data submitted by contractors and subcontractors.
- 10. Oregon Health Authority or "OHA"
The agency within the State of Oregon that is responsible for Problem Gambling, Addiction Treatment, Recovery & Prevention Services, children and adult Community Mental Health services, and maintaining custody of persons committed to the state, by courts, for care and treatment of mental illness.
- 11. Problem Gambling Services
Prevention, treatment, maintenance and recovery Services for Individuals diagnosed with Gambling Disorder or are at risk of developing Gambling Disorder including or inclusive of any family and/or significant other impacted by the problem gambler for access to treatment. For the purposes of this Contract, Problem Gambling Services and Gambling Disorder will be used interchangeably.
- 12. Serious and Persistent Mental Illness (SPMI)
Means the current DSM diagnostic criteria for at least one of the following conditions as a primary diagnosis for an adult age eighteen (18) or older:
 - a. Schizophrenia and other psychotic disorders;
 - b. Major depressive disorder;
 - c. Bipolar disorder;
 - d. Anxiety disorders limited to Obsessive Compulsive Disorder (OCD) and Post Traumatic Stress Disorder (PTSD);
 - e. Schizotypal personality disorder; or
 - f. Borderline personality disorder
- 13. Service(s) or Service Element(s)
Any one of the services or group or services as described in Exhibit B, in which costs are covered in whole or in part of this Contract.
- 14. Trauma Informed Services
Services that are reflective of the consideration and evaluation of the role that trauma plays in the lives of people seeking Community Mental Health and Addiction Treatment, Recovery & Prevention Services, including recognition of the traumatic effect of misdiagnosis and coercive treatment. Services are responsive to the vulnerabilities of trauma survivors and are delivered in a way that avoids inadvertent re-traumatization and facilitates individual direction of services.

EXHIBIT B
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2024-496
STATEMENT OF WORK, PAYMENT TERMS and SCHEDULE

1. **Contractor shall perform the following work.** Contractor shall provide Tele-psychiatric treatment for persons identified and scheduled by County. Clients shall be scheduled during the agreed upon hours of service and will occur in thirty (30) minute sessions for returning and known clients, and sixty (60) minute sessions for new County clients and psychiatric evaluations. Contractor shall provide required documentation of services in County’s Electronic Medical Record (EMR) system. Contractor shall provide services as a Licensed Medical Provider (LMP) and document Medical Services using County’s EMR, in a manner consistent with professional and community standards of care.
 - A. Contractor shall provide: Tele-psychiatric services for County clients which may include psychiatric evaluations, medication management services, orders for laboratory and other medical procedures, and client consultation or client therapy.
 - B. Contractor shall use County’s EMR and accurately document each client contact including assessments, chart notes, medication/laboratory records, service conclusion summaries and service notes (unless completed by behavioral health staff at time of service).
 - C. Contractor shall provide Medical Supervision. Medical Supervision means a LMP’s review and approval, at least annually, of the clinical assessment and the medical appropriateness of services and supports identified in the service plan for each client receiving services for one (1) or more continuous years.
 - D. Contractor will comply with all privacy and security regulations under the Health Information Portability and Accountability Act (HIPAA).
 - E. Contractor shall provide full assistance to County in order to credential the contracted Licensed Medical Provider so that County may bill and recover revenue from all legal resources for the services provided. Contractor shall provide County with copies of licenses, certificates of insurance and evidence of Continuing Medical Education (CME) credits, as applicable, prior to the provision of services.
 - F. Contractor will give a minimum thirty (30) day advance notice to County of planned and/or anticipated absences. Contractor shall alert County as soon as possible in the event of unanticipated absence.
 - G. Contractor shall maintain all requirements to perform Tele-psychiatric services which includes maintaining applicable insurance and licenses as a physician within the state of Oregon.
 - H. Contractor shall maintain all requirements to perform services as a LMP according to OAR 309-019-0105(62) which includes maintaining license as a physician within the state of Oregon.
 - I. Contractor shall screen and assess clients for tobacco use, and offer tobacco cessation resources to individuals choosing to quit.

2. **County Services.** County shall provide Contractor, at County's expense, with material and services described as follows:
 - A. County shall provide EMR, training and technical support where Contract will record data as described in Paragraph 1 of this Exhibit for each specific client that Contractor provides services for.

3. **Consideration.** County shall provide payments to Contractor once Contractor’s invoice is approved.

A. **Fee/Hourly Rate Schedule.** County agrees to pay the Contractor the following fees for services rendered under this Agreement:

Services Type	Hourly Rate*
Telepsychiatry Services provided by an Adult Psychiatrist	\$212-\$248 per hour
Telepsychiatry Services provided by a Child Psychiatrist	\$235-\$270 per hour
Telepsychiatry Services provided by a Nurse Practitioner	\$135 – \$170 per hour
Teletherapy Services provided by a Licensed Therapist Specializing in Child and Family Therapy	\$76 - \$87 per hour
Teletherapy Services provided by a Licensed Therapist Specializing in Adult Therapy	\$68 - \$77 per hour
Teletherapy Services provided by a Licensed Professional Counselor (LPC) in Adult Therapy	\$63-\$77

B. For a multi-lingual clinician and/or for “specialty providers, an additional charge of \$10.00 per hour will be added to the rate. For supervision, an additional charge of between \$10 and \$20 per hour will be added to the rate.

C. Contractor shall provide services as requested by County not to exceed one hundred and ten (110) hours per week.

D. Any time required by County for “onboarding,” including, but not limited to, orientation and training in County’s EMR, shall be billed at the same rate as services billed for that clinician. Contractor shall confirm with County’s Program Manager, by e-mail, the orientation time and hours of EHR training prior to invoicing County.

E. The parties acknowledge and agree that on each January 1 during the term of this Contract, the hourly rates set forth on Exhibit B shall be adjusted by increasing the applicable hourly rates charged during the calendar year immediately preceding the upcoming calendar year by 3.2%, to allow for cost of living adjustments and merit increases for the provider; provided that the applicable hourly rates shall be adjusted on the initial January 1 of the term of this Agreement only if Contractor has provided clinical services to County’s patients for at least a one hundred eighty (180) day period.

F. Notwithstanding the foregoing, Iris Telehealth may make market-based updates/adjustments to the rate schedule set forth above from time to time by providing County with ninety (90) days’ prior written notice thereof. Any compensation in addition to compensation set forth herein would be made in writing and by mutual agreement between County and the Contractor by signed amendment to this Contract. Upon the final selection of the applicable clinician(s), Contractor will provide County written notice of the applicable hourly rate(s) pursuant to a Service Summary.

G. Contractor shall be entitled to reimbursement for expenses as set forth in Exhibit F:

- YES
- NO

H. Contractor shall not submit invoices for, and County shall not pay for any invoice in excess of the maximum compensation amount set forth below. County requests Contractor submit monthly invoices by the 15th of every month and no later than thirty (30) days after services were provided. Invoicing outside these guidelines may result in waiving County’s responsibility of payment unless otherwise agreed to by County and Contractor in writing.

4. **The maximum compensation.**

A. County shall provide payments to Contractor within thirty (30) days of County’s approval of invoice. Payment for services charged to this Contract shall not exceed the maximum sum of **\$1,130,000** inclusive of travel and all other expenses.

B. Contractor shall not submit invoices for, and County shall not pay for any invoice in excess of the maximum compensation amount set forth above.

- 1) County may be required to modify the maximum compensation through amendment of this Contract. If this maximum compensation amount is decreased or increased by amendment of this Contract, the amendment shall be fully effective before Contractor performs work subject to the amendment.
- 2) **Withholding of Payments.** Notwithstanding any other payment provision of this Contract, should Contractor fail to submit required reports when due, or fail to perform or document the performance of contracted services; County shall immediately withhold payments under this Contract.
- 3) In the event that a statutorily required license or insurance is suspended or not extended, County's obligation to provide reimbursement for services rendered without the necessary license or insurance will cease on the date of expiration or suspension of license and/or insurance.
- 4) It is understood and agreed that in the event funds are not awarded to County from any funding source, or if the amount of funds County actually receives from funding sources is less than anticipated, County may either immediately terminate this Contract or decrease the total compensation and reimbursement to be paid hereunder upon agreement of the Parties.

5. Schedule of Performance or Delivery.

- A. County's obligation to pay depends upon Contractor's delivery or performance in accordance with this Exhibit B.
- B. County will only pay for completed work that conforms to the terms of the Contract.

6. Renewal. This Contract may be renewed, subject to the following conditions:

- A. Renewal is subject to the availability of funding and County approval.

EXHIBIT C
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2024-496
INSURANCE

Contractor shall at all times maintain in force at Contractor’s expense, each insurance noted below. Insurance coverage must apply on a primary or non-contributory basis. All insurance policies, except Professional Liability, shall be written on an occurrence basis and be in effect for the term of this Contract. Policies written on a “claims made” basis must be approved and authorized by Deschutes County.

Workers Compensation in compliance with ORS 656.017, requiring Contractor and all subcontractors to provide workers’ compensation coverage for all subject workers, or provide certification of exempt status. Worker’s Compensation Insurance to cover claims made under Worker’s Compensation, disability benefit or any other employee benefit laws, including statutory limits in any state of operation with Coverage B Employer’s Liability coverage all at the statutory limits. In the absence of statutory limits the limits of said Employer’s Liability coverage shall be not less than \$1,000,000 each accident, disease and each employee. This insurance must be endorsed with a waiver of subrogation endorsement, waiving the insured’s right of subrogation against County.

Professional Liability insurance with an occurrence combined single limit of not less than:

Per Occurrence limit	Annual Aggregate limit
<input checked="" type="checkbox"/> \$1,000,000	<input checked="" type="checkbox"/> \$2,000,000
<input type="checkbox"/> \$2,000,000	<input type="checkbox"/> \$4,000,000
<input type="checkbox"/> \$3,000,000	<input type="checkbox"/> \$5,000,000

Professional Liability insurance covers damages caused by error, omission, or negligent acts related to professional services provided under this Contract. The policy must provide extended reporting period coverage, sometimes referred to as “tail coverage” for claims made within two years after the contract work is completed or the facts underlying County’s claim could reasonably have been discovered, whichever is later.

Required by County Not required by County (one box must be checked)

Commercial General Liability insurance with a combined single limit of not less than:

<u>Per Single Claimant and Incident</u>	<u>All Claimants Arising from Single Incident</u>
<input checked="" type="checkbox"/> \$1,000,000	<input type="checkbox"/> \$1,000,000
<input type="checkbox"/> \$2,000,000	<input checked="" type="checkbox"/> \$2,000,000
<input type="checkbox"/> \$3,000,000	<input type="checkbox"/> \$5,000,000

Commercial General Liability insurance includes coverage for personal injury, bodily injury, advertising injury, property damage, premises, operations, products, completed operations and contractual liability. The insurance coverages provided for herein must be endorsed as primary and non-contributory to any insurance or self-insurance of County, its officers, employees or agents. Each such policy obtained by Contractor shall provide that the insurer shall defend any suit against the named insured and the additional insureds, their officers, agents, or employees, even if such suit is frivolous or fraudulent.

The policy shall be endorsed to name **Deschutes County, their officers, agents, employees and volunteers as an additional insured**. The additional insured endorsement shall not include declarations that reduce any per occurrence or aggregate insurance limit. The Contractor shall provide additional coverage based on any outstanding claim(s) made against policy limits to ensure that minimum insurance limits required by the County are maintained. Construction contracts may include aggregate limits that apply on a “per location” or “per project” basis. The additional insurance protection shall extend equal protection to County as to Contractor or subcontractors and shall not be limited to vicarious liability only or any similar limitation. To the extent any aspect of this Paragraph shall be deemed unenforceable, then the additional insurance protection to County shall be narrowed to the maximum amount of protection allowed by law.

Required by County Not required by County (One box must be checked)

Claims Made Policy Approved by County Not Approved by County

Automobile Liability insurance with a combined single limit of not less than:

Per Occurrence

- \$1,000,000
- \$2,000,000
- \$3,000,000

Automobile Liability insurance coverage for all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability").

Required by County Not required by County (one box must be checked)

Additional Requirements. Contractor shall pay all deductibles and self-insured retentions. A cross-liability clause or separation of insured's condition must be included in all commercial general liability policies required by this Contract. Contractor's coverage will be primary in the event of loss.

Certificate of Insurance Required. Contractor shall furnish a current Certificate of Insurance to the County with the signed Contract. Contractor shall notify the County in writing at least 30 days in advance of any cancellation, termination, material change, or reduction of limits of the insurance coverage. The Certificate shall also state the deductible or, if applicable, the self-insured retention level. Contractor shall be responsible for any deductible or self-insured retention. If requested, complete copies of insurance policies shall be provided to the County. Any violation by Contractor of this Certificate of Insurance provision shall, at the election of County, constitute a material breach of the Contract.

Signature: *Sarah Key*

Email: sarah.key@deschutes.org

Title: Loss Prevention Coordinator

Company: Deschutes County Risk Management


**EXHIBIT D
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2024-496
CERTIFICATION STATEMENT FOR CORPORATION
OR INDEPENDENT CONTRACTOR**

NOTE: Contractor Shall Complete A or B in addition to C below:

A. CONTRACTOR IS A CORPORATION, LIMITED LIABILITY COMPANY OR A PARTNERSHIP.

I certify under penalty of perjury that Contractor is a [check one]:

Corporation Limited Liability Company Partnership authorized to do business in the State of Oregon.


Thomas Milam (Jul 17, 2024 12:14 EDT)

B. CONTRACTOR IS A SOLE PROPRIETOR WORKING AS AN INDEPENDENT CONTRACTOR.

Contractor certifies under penalty of perjury that the following statements are true:

- If Contractor performed labor or services as an independent Contractor last year, Contractor filed federal and state income tax returns last year in the name of the business (or filed a Schedule C in the name of the business as part of a personal income tax return), **and**
- Contractor represents to the public that the labor or services Contractor provides are provided by an independently established business registered with the State of Oregon, **and**
- All of the statements checked below are true.

NOTE: Check all that apply. You shall check at least three (3) - to establish that you are an Independent Contractor.

A. The labor or services I perform are primarily carried out at a location that is separate from my residence or primarily carried out in a specific portion of my residence that is set aside as the location of the business.

B. I bear the risk of loss related to the business or provision of services as shown by factors such as: (a) fixed-price agreements; (b) correcting defective work; (c) warranties over the services or (d) indemnification agreements, liability insurance, performance bonds or professional liability insurance.

C. I have made significant investment in the business through means such as: (a) purchasing necessary tools or equipment; (b) paying for the premises or facilities where services are provided; or (c) paying for licenses, certificates or specialized training.

D. I have the authority to hire other persons to provide or to assist in providing the services and if necessary to fire such persons.

E. Each year I perform labor or services for at least two different persons or entities or I routinely engage in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.

C. Representation and Warranties.

Contractor certifies under penalty of perjury that the following statements are true to the best of Contractor's knowledge:

- 1. Contractor has the power and authority to enter into and perform this contract;
- 2. This contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms;
- 3. The services under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and
- 4. Contractor shall, at all times during the term of this contract, be qualified, professionally competent, and duly licensed to perform the services.
- 5. To the best of Contractor's knowledge, Contractor is not in violation of any tax laws described in ORS 305.380(4),
- 6. Contractor understands that Contractor is responsible for any federal or state taxes applicable to any consideration and payments paid to Contractor under this contract; and
- 7. Contractor has not discriminated against minority, women or small business enterprises in obtaining any required subcontracts.


Thomas Milam (Jul 17, 2024 12:14 EDT)

EXHIBIT E
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2024-496
WORKERS' COMPENSATION EXEMPTION CERTIFICATION

(To be used only when Contractor claims to be exempt from Workers' Compensation coverage requirements)

Contractor is exempt from the requirement to obtain workers' compensation insurance under ORS Chapter 656 for the following reason (*check the appropriate box*):

- NOT APPLICABLE**
 - Contractor is providing Workers' Compensation certificate.
- SOLE PROPRIETOR**
 - Contractor is a sole proprietor, and
 - Contractor has no employees, and
 - Contractor shall not hire employees to perform this contract.
- CORPORATION - FOR PROFIT**
 - Contractor's business is incorporated, and
 - All employees of the corporation are officers and directors and have a substantial ownership interest* in the corporation, and
 - The officers and directors shall perform all work. Contractor shall not hire other employees to perform this contract.
- CORPORATION - NONPROFIT**
 - Contractor's business is incorporated as a nonprofit corporation, and
 - Contractor has no employees; all work is performed by volunteers, and
 - Contractor shall not hire employees to perform this contract.
- PARTNERSHIP**
 - Contractor is a partnership, and
 - Contractor has no employees, and
 - All work shall be performed by the partners; Contractor shall not hire employees to perform this contract, and
 - Contractor is not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement to real property or appurtenances thereto.
- LIMITED LIABILITY COMPANY**
 - Contractor is a limited liability company, and
 - Contractor has no employees, and
 - All work shall be performed by the members; Contractor shall not hire employees to perform this contract, and
 - If Contractor has more than one member, Contractor is not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement to real property or appurtenances thereto.

*NOTE: Under OAR 436-050-050 a shareholder has a "substantial ownership" interest if the shareholder owns 10% of the corporation or, if less than 10% is owned, the shareholder has ownership that is at least equal to or greater than the average percentage of ownership of all shareholders.

**NOTE: Under certain circumstances partnerships and limited liability companies can claim an exemption even when performing construction work. The requirements for this exemption are complicated. Consult with County Counsel before an exemption request is accepted from a contractor who shall perform construction work.

Signature: 
Thomas Milam (Jul 17, 2024 12:14 EDT)

Email: tom.milam@iristelehealth.com

Title: Chief Medical Officer

Company: Iris Telehealth

EXHIBIT F
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2024-496
EXPENSE REIMBURSEMENT

It is the policy of the County that travel shall be allowed only when the travel is essential to Contractor's performance and delivery of services outlined in Exhibit B of this Contract. If Contractor is approved to be reimbursed for expenses outlined below, it will be stipulated in Exhibit B of this Contract in the paragraph entitled "Consideration".

- A. General Information: All travel shall be conducted in the most efficient and cost effective manner resulting in the best value to the County.
- County shall not reimburse Contractor for any item that is not otherwise available for reimbursement to an employee of Deschutes County.
 - County may approve a form other than the County's Expense Reimbursement Form for Contractor to submit an itemized description of travel expenses for payment.
 - Personal expenses shall not be authorized at any time.
 - Unless otherwise stipulated, all expenses are included in the total maximum contract amount.
 - Travel expenses shall be reimbursed only in accordance with rates approved by the County and only when the reimbursement of expenses is specifically provided for in Exhibit B of this Contract.
 - The current approved rates for reimbursement of travel expenses are set forth by the United States General Services Administration ("GSA") and are subject to change accordingly.
 - County shall not reimburse for any expenses related to alcohol consumption or entertainment.
 - Charge slips for gross amounts are not acceptable.
- B. Expense Reporting: Contractors must submit expense reports timely and accurately for all expense reimbursements. Such reports must be submitted within sixty (60) days from the date incurred. Untimely expenses may not be reimbursed.
- C. Documentation Requirements; Contractors are required to accurately and completely:
- Include necessary backup data and supporting receipts (see "Receipts" section below).
 - Complete either County's Expense Reimbursement Form (Contact Deschutes County Health Services Contract Specialist for the most current version of the County form) or another form agreeable to both Contractor and County, for all expenses incurred, regardless of method of payment.
- D. Receipts: The following are required:
- Contractor must submit **itemized** receipts.
 - Lodging receipts must be a detailed hotel bill.
 - An air travel receipt should be the passenger copy of the ticket and/or itinerary.
 - Rental vehicle receipt must be the traveler's copy.
 - Original amounts and dates must not be altered. If the original information is incorrect, the discrepancy must be explained.
 - Contractors that have been approved for reimbursement for cell phone expenses must submit the detail summary page for reimbursement.
- E. Exceptions: Exceptions from, or deviations to this Exhibit require County's Department Director's prior written approval.
- F. Per Diem. Per Diem covers meals, lodging, and incidentals. Mileage allowances cover fuel, and auto operating expenses of a personal vehicle. Per diem payments may never exceed the IRS/U.S. Government approved per diem rates.
- G. Air Travel Policy: Contractors are required to:
- Accept the lowest logical airfare consistent with business needs. However, Contractor may elect to fly non-stop (over a lower-priced, connecting flight) provided the additional cost is less than \$100 per direction, or if the connection would add more than two (2) hours of travel time each way.
 - Use economy/coach class for all domestic flights. However, upgrades are acceptable as long as there is no additional cost to the County.
 - Flight insurance premiums are not reimbursable.

- H. **Vehicle Rental Policy:** When it is necessary to rent a vehicle, the cost of the rental plus tolls, fuel, and parking is reimbursable. The cost of full-size (or smaller) cards will be reimbursed. Upgrade costs for GPS are not reimbursable. If a personal vehicle is used, reimbursement shall be at the GSA's stated mileage rate. Contractors must provide a copy of Automobile Liability Insurance to be reimbursed for mileage.
 - Contractor shall be entitled to mileage for travel in a private automobile while Contractor is acting within the course and scope of Contractor's duties under this Contract and driving over the most direct and usually traveled route to and from Bend, Oregon.
 - To qualify for mileage reimbursement, Contractor shall hold a valid, current driver's license for the class of vehicle to be driven and carry personal automobile liability insurance in amounts not less than those required by this contract.
 - No mileage reimbursement shall be paid for the use of motorcycles or mopeds.

- I. **Lodging Policy:** The daily cost of lodging is a reimbursable expense when away from the normal work place on County business. Such cost includes only the single occupancy room rate and applicable taxes. Charges for hotel amenities are not a reimbursable expense.
 - County shall reimburse Contractor for Contractor's actual cost of lodging necessary to provide service to the County and shall not exceed the maximum lodge set by the GSA for Bend, Oregon.
 - Reimbursement rates for lodging are not considered "per diem" and receipts are required for reimbursement.

- J. **Meals:** Contractor may be reimbursed for the reasonable and actual cost of meals (including tips) subject to the GSA maximum per diem meal allowance.
 - Any reimbursement for meals shall be for actual cost of meals incurred by Contractor while acting within the course and scope of Contractor's duties under this Contract.
 - For purposes of calculating individual meals where the Contractor is entitled only to a partial day reimbursement, the following maximum allocation of the meal expenses applies (most current reimbursement rates may be found online at https://www.gsa.gov/travel/plan-book/per-diem-rates/per-diem-rates-lookup/?action=perdiems_report&state=OR&fiscal_year=2022&zip=&city=Bend):

M&IE Breakdown

M&IE Total ¹	Continental Breakfast/ Breakfast ²	Lunch ²	Dinner ²	Incidental Expenses	First & Last Day of Travel ³
\$59	\$13	\$15	\$26	\$5	\$44.25
\$64	\$14	\$16	\$29	\$5	\$48.00
\$69	\$16	\$17	\$31	\$5	\$51.75
\$74	\$17	\$18	\$34	\$5	\$55.50
\$79	\$18	\$20	\$36	\$5	\$59.25

- Except in the event of necessary overnight travel as provided below, partial day meal expenses shall be reimbursed as follows and only while Contractor is acting within the course and scope of Contractor's duties under this contract:
 - a) Breakfast expenses are reimbursable if Contractor is required to travel more than two (2) hours: before the start Contractor's regular workday (i.e. 8:00 a.m.).
 - b) Lunch expenses are reimbursable only if Contractor is required to travel overnight and begins the journey before 11:00 am or ends the journey after 11:00 a.m.
 - c) Dinner expenses are reimbursable only if Contractor is required to travel more than two (2) hours after Contractor's regular workday (i.e. 5:00 p.m.).
 - Breakfast and dinner expenses are reimbursable during Contractor's necessary overnight travel while acting within the course and scope of Contractor's duties under this Contract and shall not exceed those set by the GSA and are subject to change accordingly.
- K. Exceptions.** Contractor shall obtain separate written approval of the County Administrator or Deschutes County Health Services Director for any exceptions to the expense items listed above prior to incurring any expense for which reimbursement shall be sought.

Exhibit G
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2024-496
CONFIDENTIALITY AGREEMENT

1. INTRODUCTION

This Confidentiality (the "Agreement") is entered into as of **July 1, 2024** by and between Iris Telehealth Medical Group, PA, ("Contractor") and Deschutes County, a political subdivision of the State of Oregon, acting by and through its Health Care Component, Deschutes County Health Services ("Covered Entity").

WHEREAS, in connection with the performance of the Services, Contractor may receive from the County or otherwise have access to certain information that is required to be kept confidential in accordance with the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder, as may be amended from time to time (collectively, "HIPAA"); and

WHEREAS, as a part of the American Recovery and Reinvestment Act, the federal Health Information Technology for Economic and Clinical Health Act (the "HITECH Act") was signed into law, imposing certain privacy and security obligations on Covered Entities in addition to the obligations created by the Privacy Standards and Security Standards; and

WHEREAS, the HITECH Act revises many of the requirements of the Privacy Standards and Security Standards concerning the confidentiality of Protected Health Information (PHI) and Electronic Protected Health Information (EPHI), including extending certain HIPAA and HITECH Act requirements directly to business associates; and

WHEREAS, the HITECH Act requires that certain of its provisions be included in contractor agreements, and that certain requirements of the Privacy Standards be imposed contractually upon Covered Entities as well as contractors;

Therefore, in consideration of the foregoing premises and the mutual covenants and conditions set forth below and in the agreement between Contractor and County for Contractor's provision of services, intending to be legally bound, agree as follows.

2. DEFINITIONS

- A. "*Disclosure*" means the release, transfer, provision of access to, or divulging in any other manner, of PHI, outside Contractor's organization, i.e., to anyone other than its employees who have a need to know or have access to the PHI.
- B. "*Electronic Protected Health Information*" or "*EPHI*" means protected health information (as defined below) that is transmitted, stored, or maintained by use of any electronic media. For purposes of this definition, "electronic media" includes, but is not limited to, memory devices in computers (hard drives); removable/transportable digital memory media (such as magnetic tape or disk, removable drive, optical disk, or digital memory card); the internet; the extranet; leased lines; dial-up lines; private networks; or e-mail.
- C. *Health Care Component* means a Deschutes County department, office or division, that regularly provides healthcare services or that regularly creates, accesses, uses or maintains PHI, and that Deschutes County has designated as a HIPAA-covered component of the County.
- D. "*Protected Health Information*" or "*PHI*" means information transmitted by or maintained in any form or medium, including demographic information collected from an individual, that (a) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual; (b) individually identifies the individual or, with respect to which, there is a reasonable basis for believing that the information can be used to identify the individual; and (c) is received by Contractor from or on behalf of County, or is created by Contractor, or is made accessible to Contractor by County.
- E. "*Secretary*" means the Secretary of the United States Department of Health and Human Services or any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.
- F. "*Services*" means the Tele-psychiatric treatment services provided by Contractor and identified in the Personal Services Contract to which this Exhibit G is attached.

G. "Use" (whether capitalized or not and including the other forms of the word) means, with respect to PHI, the sharing, employment, application, utilization, transmission, examination, or analysis of such information to, from or within Contractor's organization.

3. **AGREEMENT.** Contractor shall:

- A. not use PHI except as necessary to provide the Services.
- B. not disclose PHI to any third party without County's prior written consent.
- C. not use or disclose PHI except as required by law.
- D. implement appropriate safeguards to prevent unauthorized use or disclosure of PHI.
- E. comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of EPHI other than as provided for by this Agreement.
- F. mitigate, as much as possible, any harmful effect of which it is aware of any use or disclosure of PHI in violation of this Agreement.
- G. promptly report to County any use or disclosure of PHI not permitted by this Agreement of which Contractor becomes aware.
- H. make its internal practices, books, and records (including the pertinent provisions of this Agreement) relating to the use and disclosure of PHI, available to the Secretary for the purposes of determining County's compliance with HIPAA.
- I. return to County, or destroy, any PHI of County still in Contractor's possession upon conclusion or termination of the Services.
- J. ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Contractor agree to the same restrictions, conditions, and requirements that apply to the Contractor with respect to security and privacy of such information.
- K. make PHI available to County as necessary to satisfy County's obligation with respect to individuals' requests for copies of their PHI, as well as make available PHI for amendments (and incorporate any amendments, if required) and accountings.
- L. make any amendment(s) to PHI in a designated record set as directed or agreed to by the County pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy County's obligations under 45 CFR 164.526.
- M. to the extent the Contractor is to carry out one or more of County's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the County in the performance of such obligation(s).
- N. If Contractor (a) becomes legally compelled by law, process, or order of any court or governmental agency to disclose PHI, or (b) receives a request from the Secretary to inspect Contractor's books and records relating to the use and disclosure of PHI, Contractor, to the extent it is not legally prohibited from so doing, shall promptly notify County and cooperate with County in connection with any reasonable and appropriate action County deems necessary with respect to such PHI.
- O. If any part of Contractor's performance of business functions involves creating, receiving, storing, maintaining, or transmitting EPHI:
 - i. implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that it creates, receives, stores, maintains, or transmits on behalf of County, in accordance with the requirements of 45 CFR Part 160 and Part 164, Subparts A and C; and
 - ii. report to County any security incident relating to the EPHI that Contractor maintains for County.

4. HIPAA DATA BREACH NOTIFICATION AND MITIGATION

- A. Contractor agrees to implement reasonable systems for the discovery and prompt reporting of any “breach” of “unsecured PHI” as those terms are defined by 45 C.F.R. §164.402 (hereinafter a “HIPAA Breach”). The parties acknowledge and agree that 45 C.F.R. §164.404, as described below in this Section, governs the determination of the date of a HIPAA Breach. Contractor will, following the discovery of a HIPAA Breach, notify County immediately and in no event later than seven business days after Contractor discovers such HIPAA Breach, unless Contractor is prevented from doing so by 45 C.F.R. §164.412 concerning law enforcement investigations.
- B. For purposes of reporting a HIPAA Breach to County, the discovery of a HIPAA Breach shall occur as of the first day on which such HIPAA Breach is known to the Contractor or, by exercising reasonable diligence, would have been known to the Contractor. Contractor will be considered to have had knowledge of a HIPAA Breach if the HIPAA Breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the HIPAA Breach) who is an employee, officer or other agent of the Contractor. No later than seven (7) business days following a HIPAA Breach, Contractor shall provide County with sufficient information to permit County to comply with the HIPAA Breach notification requirements set forth at 45 C.F.R. §164.400, *et seq.*
- C. Specifically, if the following information is known to (or can be reasonably obtained by) Contractor, Contractor will provide County with: (i) contact information for individuals who were or who may have been impacted by the HIPAA Breach; (ii) a brief description of the circumstances of the HIPAA Breach, including its date and the date of discovery; (iii) a description of the types of unsecured PHI involved in the HIPAA Breach; (iv) a brief description of what the Contractor has done or is doing to investigate the HIPAA Breach, mitigate harm to the individual impacted by the HIPAA Breach, and protect against future HIPAA Breaches; and (v) a liaison (with contact information) so that Contractor may conduct further investigation concerning the HIPAA Breach. Following a HIPAA Breach, Contractor will have a continuing duty to inform County of new information learned by Contractor regarding the HIPAA Breach, including but not limited to the information described herein.
- D. Data Breach Notification and Mitigation Under Other Laws. In addition to the requirements above, Contractor agrees to implement reasonable systems for the discovery and prompt reporting of any breach of individually identifiable information (including but not limited to PHI, and referred to hereinafter as “Individually Identifiable Information”) that, if misused, disclosed, lost or stolen, Contractor believes would trigger an obligation under one or more State data breach notification laws (each a “State Breach”) to notify the individuals who are the subject of the information.
- E. Breach Indemnification. Contractor shall indemnify, defend and hold County harmless from and against any and all actual losses, liabilities, damages, costs and expenses (collectively, “Information Disclosure Claims”) arising directly from (i) the use or disclosure of Individually Identifiable Information (including PHI) in violation of the terms of this Agreement or applicable law, and (ii) any HIPAA Breach of unsecured PHI and/or any State Breach of Individually Identifiable Information. Contractor will assume the defense of any Information Disclosure Claim; County may participate, at its expense, in the defense of such Information Disclosure Claim. Contractor shall not take any final action with respect to any Information Disclosure Claim without the prior written consent of County.

5. OTHER PROVISIONS

- A. A breach under this Agreement shall be deemed to be a material default in Contractor’s agreement with Deschutes County to provide Services.
- B. Contractor authorizes termination of this Agreement by County if County determines Contractor has violated a material term of this Agreement.
- C. Upon conclusion or termination of the Services, Contractor shall promptly return or destroy all PHI that Contractor maintains in any form and retain no copies of such information. If the return or destruction of such PHI is not feasible, the obligations under this Agreement shall continue in effect for so long as Contractor retains such information, and any further use or disclosure of such PHI shall be limited to those purposes that make the return or destruction of the PHI infeasible.
- D. To the extent there are any inconsistencies between this Agreement and the terms of any other agreement, either written or oral, between County and Contractor, the terms of this Agreement shall prevail.
- E. Contact Information in the event of HIPAA Data Breach or Termination.

- 1) 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, to Covered Entity or Business Associate at the address or number set forth below or to such other addresses or numbers as either Party may hereafter indicate in writing. Delivery may be by personal delivery, electronic mail, facsimile, or mailing the same, postage prepaid.
- 2) Any communication or notice by personal delivery shall be deemed delivered when actually given to the designated person or representative.
- 3) Any communication or notice sent by facsimile shall be deemed delivered when the transmitting machine generates receipt of the transmission. To be effective against County, such facsimile transmission shall be confirmed by telephone notice to the County Administrator.
- 4). Any communication or notice mailed shall be deemed delivered five (5) days after mailing. Any notice under this Agreement shall be mailed by first class postage or delivered as follows:

<u>To Covered Entity:</u>	<u>Copy to Privacy Officer</u>	<u>To Contractor:</u>
Holly Harris, Deputy Director	Kayla Prsbrey, Privacy Officer	Jeremy Unger
Deschutes County Health Services	Deschutes County Health Services	Iris Telehealth Medical Group, PA
2577 NE Courtney Dr.	2577 NE Courtney Dr.	114 W. 7 th St.
Bend, Oregon 97701	Bend, Oregon 97701	Austin, TX 78701
Fax No. 541-322-7565	Fax No. 541-322-7565	Fax No.
Holly.harris@deschutes.org	kayla.prisbrey@deschutes.org	jeremy.unger@iristelehealth.com

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed, either as individuals, or by their officers, thereunto duly authorized.

Signature: *Holly Harris*
Holly Harris (Jul 16, 2024 11:33 PDT)
Email: holly.harris@deschutes.org
Title: Behavioral Health Director
Company: Deschutes County Behavioral Health

Signature: *Tom Milam*
Thomas Milam (Jul 17, 2024 12:14 EDT)
Email: tom.milam@iristelehealth.com
Title: Chief Medical Officer
Company: Iris Telehealth

**Exhibit H
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2024-496**

**Compliance with provisions, requirements of funding source and
FEDERAL AND STATE LAWS, STATUTES, RULES, REGULATIONS, EXECUTIVE ORDERS AND POLICIES**

Contractor shall comply with the following federal requirements herein when federal funding is being used and to the extent that the requirements are applicable to the contract for services determined and agreed to by and between Contractor and County. For the purposes of this Contract, all references to federal and state laws are references to federal and state laws as they may be amended from time to time.

- 1. Miscellaneous Federal Provisions.** Contractor shall comply with all federal laws, regulations, and executive orders applicable to the Contract or to the delivery of Services. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Executive Order 11246, as amended, (e) the Health Insurance Portability and Accountability Act of 1996, as amended, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (j) all federal law governing operation of Community Mental Health Programs, including without limitation, all federal laws requiring reporting of Client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. No federal funds may be used to provide Services in violation of 42 U.S.C. 14402.

- 2. Equal Employment Opportunity.** If this Contract, including amendments, is for more than \$10,000, then Contractor shall comply with Executive Order 11246, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375, and as supplemented in U.S. Department of Labor regulations (41 CFR Part 60).

- 3. Clean Air, Clean Water, EPA Regulations.** If this Contract, including amendments, exceeds \$100,000 then Contractor shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to OHA, United States Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. Contractor shall include in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section.

- 4. Energy Efficiency.** Contractor shall comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42 U.S.C. 6201 et. seq. (Pub. L. 94-163).

- 5. Truth in Lobbying.** By signing this Contract, the Contractor certifies under penalty of perjury that the following statements are true to the best of the Contractor’s knowledge and belief that:
 - a. No federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

 - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit Standard Form LLL, “Disclosure Form to Report Lobbying” in accordance with its instructions.

- c. The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.
- d. This certification is a material representation of fact upon which reliance was placed when this Contract was made or entered into. Submission of this certification is a prerequisite for making or entering into this Contract imposed by section 1352, Title 31 of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- e. No part of any federal funds paid to Contractor under this Contract shall be used other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the United States Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government.
- f. No part of any federal funds paid to Contractor under this Contract shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the United States Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.
- g. The prohibitions in subsections (e) and (f) of this section shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.
- h. No part of any federal funds paid to Contractor under this Contract may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance or that federally sponsored clinical trials are being conducted to determine therapeutic advantage.

6. Resource Conservation and Recovery. Contractor shall comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 U.S.C. 6901 et. seq.). Section 6002 of that Act (codified at 42 U.S.C. 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.

7. Audits. Contractor shall comply, with applicable Code of Federal Regulations (CFR) governing expenditure of federal funds including, but not limited to, if a sub-recipient (as defined in 45 CFR 75.2) or contractor expends \$500,000 or more in Federal funds (from all sources) in its fiscal year beginning prior to December 26, 2014, a sub-recipient or contractor shall have a single organization-wide audit conducted in accordance with the Single Audit Act. If a sub-recipient or contractor expends \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014, it shall have a single organization-wide audit conducted in accordance with the provisions of 45 CFR part 75, subpart F. Copies of all audits must be submitted to OHA within thirty (30) calendar days of completion. If a sub-recipient or contractor expends less than \$500,000 in Federal funds in a fiscal year beginning prior to December 26, 2014, or less than \$750,000 in a fiscal year beginning on or after that date, it is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials.

8. Debarment and Suspension. Contractor shall not be and shall not contract with any person or entity listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Non-procurement Programs" in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and Suspension". (See 2 CFR Part 180). This list contains names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Contractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

9. Drug-Free Workplace. Contractor shall comply with the following provisions to maintain a drug-free workplace: (i) Contractor certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in Contractor’s workplace or while providing Services to OHA clients. Contractor’s notice shall specify the actions that will be taken by Contractor against its employees for violation of such prohibitions; (ii) Establish a drug-free awareness program to inform its employees about: the dangers of drug abuse in the workplace, Contractor’s policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations; (iii) Provide each employee to be engaged in the performance of Services under this Contract a copy of the statement mentioned in paragraph (i) above; (iv) Notify each employee in the statement required by paragraph (i) above that, as a condition of employment to provide services under this Contract, the employee will: abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) calendar days after such conviction; (v) Notify OHA within ten calendar (10) days after receiving notice under subparagraph (iv) above from an employee or otherwise receiving actual notice of such conviction; (vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988; (vii) Make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs (i) through (vi) above; (viii) Neither County, Contractor nor any of County’s or Contractor’s employees, officers, agents may provide any Service required under this Contract while under the influence of drugs. For purposes of this provision, “under the influence” means observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the County or Contractor’s employee, officer, agent has used a controlled substance, prescription or non-prescription medication that impairs the County or Contractor, County or Contractor’s employees, officers, agent’s performance of essential job function or creates a direct threat to OHA clients or others. Examples of abnormal behavior include, but are not limited to hallucinations, paranoia or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to slurred speech, difficulty walking or performing job activities; and (ix) Violation of any provision of this section may result in termination of this Contract.

10. Pro-Children Act. Contractor shall comply with the Pro-Children Act of 1994 (codified at 20 U.S.C. Section 6081 et. seq.).

11. Medicaid Services. To the extent Contractor provides any service in which costs are paid in whole or in part by Medicaid, Contractor shall comply with all applicable federal and state laws and regulation pertaining to the provision of Medicaid Services under the Medicaid Act, Title XIX, 42 U.S.C. Section 1396 et. seq., including without limitation:

- a. Keep such records as are necessary to fully disclose the extent of the services provided to Individuals receiving Medicaid assistance and shall furnish such information to any state or federal agency responsible for administering the Medicaid program regarding any payments claimed by such person or institution for providing Medicaid Services as the state or federal agency may from time to time request. 42 U.S.C. Section 1396a (a)(27); 42 CFR Part 431.107(b)(1) & (2).
- b. Comply with all disclosure requirements of 42 CFR Part 1002.3(a) and 42 CFR 455 Subpart (B).
- c. Maintain written notices and procedures respecting advance directives in compliance with 42 U.S.C. Section 1396(a)(57) and (w), 42 CFR Part 431.107(b)(4), and 42 CFR Part 489 subpart I.
- d. Certify when submitting any claim for the provision of Medicaid Services that the information submitted is true, accurate and complete. Contractor shall acknowledge Contractor’s understanding that payment of the claim will be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.
- e. Entities receiving \$5 million or more annually (under this Contract and any other Medicaid agreement) for furnishing Medicaid health care items or services shall, as a condition of receiving such payments, adopt written fraud, waste and abuse policies and procedures and inform employees, contractors and agents about the policies and procedures in compliance with Section 6032 of the Deficit Reduction Act of 2005, 42 U.S.C. § 1396a (a)(68).

12. ADA. Contractor shall comply with Title II of the Americans with Disabilities Act of 1990 (codified at 42 U.S.C. 12131 et. seq.) in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the delivery of Services.

13. Agency-Based Voter Registration. If applicable, Contractor shall comply with the Agency-based Voter Registration sections of the National Voter Registration Act of 1993 that require voter registration opportunities be offered where an Individual may apply for or receive an application for public assistance.

14. Disclosure.

- a. 42 CFR 455.104 requires the State Medicaid agency to obtain the following information from any provider of Medicaid or CHIP services, including fiscal agents of providers and managed care entities: (1) the name and address (including the primary business address, every business location and P.O. Box address) of any person (Individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity; (2) in the case of an Individual, the date of birth and Social Security Number, or, in the case of a corporation, the tax identification number of the entity, with an ownership interest in the provider, fiscal agent or managed care entity or of any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest; (3) whether the person (Individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling, or whether the person (Individual or corporation) with an ownership or control interest in any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling; (4) the name of any other provider, fiscal agent or managed care entity in which an owner of the provider, fiscal agent or managed care entity has an ownership or control interest; and, (5) the name, address, date of birth and Social Security Number of any managing employee of the provider, fiscal agent or managed care entity.
- b. 42 CFR Part 455.434 requires as a condition of enrollment as a Medicaid or CHIP provider, to consent to criminal background checks, including fingerprinting when required to do so under state law, or by the category of the provider based on risk of fraud, waste and abuse under federal law. As such, a provider must disclose any person with a 5% or greater direct or indirect ownership interest in the provider whom has been convicted of a criminal offense related to that person's involvement with the Medicare, Medicaid, or title XXI program in the last 10 years.
- c. OHA reserves the right to take such action required by law, or where OHA has discretion, it deems appropriate, based on the information received (or the failure to receive) from the provider, fiscal agent or managed care entity.

15. Special Federal Requirements Applicable to Addiction Treatment, Recovery & Prevention Services for Counties receiving Substance Abuse Prevention and Treatment (SAPT) Block Grant funds.

- a. Order for Admissions:
 - (1) Pregnant women who inject drugs;
 - (2) Pregnant substance abusers;
 - (3) Other Individuals who inject drugs; and,
 - (4) All others.
- b. Women's or Parent's Services. If Contractor provides A&D 61 and A&D 62 Services, Contractor must:
 - (1) Treat the family as a unit and admit both women or parent and their children if appropriate.
 - (2) Provide or arrange for the following services to pregnant women and women with dependent children:
 - (a) Primary medical care, including referral for prenatal care;
 - (b) Pediatric care, including immunizations, for their children;
 - (c) Gender-specific treatment and other therapeutic interventions, e.g. sexual and physical abuse counseling, parenting training, and childcare.
 - (d) Therapeutic interventions for children in custody of women or parent in treatment, which address, but are not limited to, the children's developmental needs and issues of abuse and neglect; and
 - (e) Appropriate case management services and transportation to ensure that women or parents and their children have access to the services in (a) through (d) above.

- c. Pregnant Women. If Contractor provides any Addiction Treatment, Recovery & Prevention Services other than A&D 84, Problem Gambling, Client Finding Outreach Services, Contractor must:
- (1) Within the priority categories, if any, set forth in a particular Service Description, give preference in admission to pregnant women in need of treatment who seek, or are referred for, and would benefit from, such services, within 48 hours;
 - (2) If Contractor has insufficient capacity to provide treatment services to a pregnant woman, Contractor must refer the women to another provider with capacity or if no available treatment capacity can be located, the outpatient provider that the Individual is enrolled with will ensure that Interim Services are being offered. Counseling on the effects of alcohol and drug use on the fetus must be given within 48 hours, including a referral for prenatal care; and,
 - (3) Perform outreach to inform pregnant women of the availability of treatment Services targeted to them and the fact that pregnant women receive preference in admission to these programs.
- d. Intravenous Drug Abusers. If Contractor provides any Addiction Treatment, Recovery & Prevention Services, other than A&D 84 Problem Gambling, Client Finding Outreach Services, Contractor must:
- (1) Within the priority categories, if any, set forth in a particular Service Description and subject to the preference for pregnant women described above, give preference in admission to intravenous drug abusers;
 - (2) Programs that receive funding under the grant and that treat individuals for intravenous substance abuse, upon reaching 90 percent of its capacity to admit Individuals to the program, must provide notification of that fact to the State within 7 calendar days.
 - (3) If Contractor receives a request for admission to treatment from an intravenous drug abuser, Contractor must, unless it succeeds in referring the Individual to another provider with treatment capacity, admit the Individual to treatment not later than:
 - (a) 14 calendar days after the request for admission to Contractor is made; or
 - (b) 120 calendar days after the date of such request if no provider has the capacity to admit the Individual on the date of such request and, if Interim Services are made available not less than 48 hours after such request.
 - (c) If Contractor has insufficient capacity to provide treatment Services to an intravenous drug abuser, refer the intravenous drug abuser to another provider with capacity or if no available treatment capacity can be located, the outpatient provider that the Individual is enrolled with will ensure that interim services are being offered. If the Individual is not enrolled in outpatient treatment and is on a waitlist for residential treatment, the provider from the county of the Individual's residence that is referring the Individual to residential services will make available counseling and education about human immunodeficiency virus(HIV) and tuberculosis(TB), risk of sharing needles, risks of transmission to sexual partners and infant, steps to ensure HIV and TB transmission does not occur, referral for HIV or TB treatment services, if necessary, within 48 hours.
- e. Infectious Diseases. If Contractor provides any Addiction Treatment, Recovery & Prevention Services, other than A&D 84 Problem Gambling, Client Finding Outreach Services, Contractor must:
- (1) Complete a risk assessment for infectious disease including Human Immunodeficiency Virus (HIV) and tuberculosis, as well as sexually transmitted diseases, based on protocols established by OHA, for every Individual seeking Services from Contractor; and
 - (2) Routinely make tuberculosis services available to each Individual receiving Services for alcohol/drug abuse either directly or through other arrangements with public or non-profit entities and, if Contractor denies Individual admission on the basis of lack of capacity, refer the Individual to another provider of tuberculosis Services.
 - (3) For the purposes of (2) above, "tuberculosis services" means:
 - (a) Counseling the Individual with respect to tuberculosis;

(b) Testing to determine whether the Individual has contracted such disease and testing to determine the form of treatment for the disease that is appropriate for the Individual; and

(c) Appropriate treatment services.

f. OHA Referrals. If Contractor provides any Addiction Treatment, Recovery & Prevention Services, other than A&D 84 Problem Gambling, Client Finding Outreach Services, Contractor must, within the priority categories, if any, set forth in a particular Service Description and subject to the preference for pregnant women and intravenous drug users described above, give preference in Addiction Treatment, Recovery & Prevention and Problem Gambling Service delivery to persons referred by OHA.

g. Barriers to Treatment. Where there is a barrier to delivery of any Addiction Treatment, Recovery & Prevention and Problem Gambling Service due to culture, gender, language, illiteracy, or disability, Contractor shall develop support services available to address or overcome the barrier, including:

- (1) Providing, if needed, hearing impaired or foreign language interpreters.
- (2) Providing translation of written materials to appropriate language or method of communication.
- (3) Providing devices that assist in minimizing the impact of the barrier.
- (4) Not charging clients for the costs of measures, such as interpreters, that are required to provide nondiscriminatory treatment.

h. Misrepresentation. Contractor shall not knowingly or willfully make or cause to be made any false statement or representation of a material fact in connection with the furnishing of items or Services for which payments may be made of OHA.

i. Oregon Residency. Addiction Treatment, Recovery & Prevention, and Problem Gambling Services funded through this Contract, may only be provided to residents of Oregon. Residents of Oregon are Individuals who live in Oregon. There is no minimum amount of time an Individual must live in Oregon to qualify as a resident so long as the Individual intends to remain in Oregon. A child's residence is not dependent on the residence of his or her parents. A child living in Oregon may meet the residency requirement if the caretaker relative with whom the child is living is an Oregon resident.

j. Tobacco Use. If Contractor has Addiction Treatment, Recovery & Prevention Services treatment capacity that has been designated for children, adolescents, pregnant women, and women with dependent children, Contractor must implement a policy to eliminate smoking and other use of tobacco at the facilities where the Services are delivered on the grounds of such facilities.

k. Client Authorization. Contractor must comply with 42 CFR Part 2 when delivering an Addiction Treatment, Recovery & Prevention Service that includes disclosure of Client information for purposes of eligibility determination. Contractor must obtain Client authorization for disclosure of billing information, to the extent and in the manner required by 42 CFR Part 2, before a Disbursement Claim is submitted with respect to delivery of an Addiction Treatment, Recovery & Prevention Service to that Individual.

16. Special Federal Requirements Applicable To Addiction Treatment, Recovery, & Prevention Services for Counties Receiving Temporary Assistance for Needy Families (TANF) Grant Funds.

Funding requirements. TANF may only be used for families receiving TANF, and for families at risk of receiving TANF, and for the purpose of providing housing services (room and board) for Individuals who are dependent children ages 18 years old or younger whose parent is in adult addiction residential treatment, so that the children may reside with their parent in the same treatment facility. Families at-risk of receiving TANF must:

- a. Include a dependent child age 18 years of age or under, who is living with a parent or caretaker relative. "Caretaker relative" means a blood relative of the child; stepmother, stepfather, stepbrother, or stepsister; or an individual who has legally adopted the child.
- b. Be an Oregon resident.
- c. Have income at or below 250% of the Federal Poverty Level.

Use of TANF block grant funds and state expenditures counted towards TANF MOE must meet the requirements of 45 CFR 263. Only non-medical Services may be provided with TANF Block Grant funds.

- 17. Community Mental Health Block Grant.** All funds, if any, awarded under this Contract for Community Mental Health Services are subject to the federal use restrictions and requirements set forth in Catalog of Federal Domestic Assistance Number 93.958 and to the federal statutory and regulatory restrictions imposed by or pursuant to the Community Mental Health Block Grant portion of the Public Health Services Act, 42 U.S.C. 300x-1 et. seq., and Contractor shall comply with those restrictions.

- 18. Substance Abuse Prevention and Treatment.** To the extent Contractor provides any Service in which costs are paid in whole or in part by the Substance Abuse, Prevention, and Treatment Block Grant, Contractor shall comply with federal rules and statutes pertaining to the Substance Abuse, Prevention, and Treatment Block Grant, including the reporting provisions of the Public Health Services Act (42 U.S.C. 300x through 300x-66) and 45 CFR 96.130 regarding the sale of tobacco products. Regardless of funding source, to the extent Contractor provides any substance abuse prevention or treatment services, Contractor shall comply with the confidentiality requirements of 42 CFR Part 2. County may not use funds received under applicable agreement with Oregon Health Authority for inherently religious activities, as described in 45 CFR Part 87.

- 19. Information Required by 2 CFR Subtitle B with guidance at 2 CFR Part 200.** All required data elements in accordance with 45 CFR 75.352 are available at: <http://www.oregon.gov/oha/hsd/amh/Pages/federal-reporting.aspx>.

- 20. Super Circular Requirements.** 2 CFR Part 200, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, including but not limited to the following:
 - a. **Property Standards.** 2 CFR 200.313, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, which generally describes the required maintenance, documentation, and allowed disposition of equipment purchased with federal funds.

 - b. **Procurement Standards.** When procuring goods or services (including professional consulting services), applicable state procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C or 2 CFR §§ 200.318 through 200.326, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, as applicable.

 - c. **Contract Provisions.** The contract provisions listed in 2 CFR Part 200, Appendix II, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, that are hereby incorporated into this Exhibit, are, to the extent applicable, obligations of Recipient, and Recipient shall also include these contract provisions in its contracts with non-Federal entities.

Exhibit I
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2024-496
CONFLICT OF INTEREST

Contractor certifies under penalty of perjury that the following statements are true to the best of Contractor's knowledge:

1. If Contractor is currently performing work for the County, State of Oregon or federal government, Contractor, by signature to this Contract, declares and certifies that Contractor's Work to be performed under this Contract creates no potential or actual conflict of interest as defined by ORS 244 and no rules or regulations of Contractor's employee agency (County State or Federal) would prohibit Contractor's Work under this Contract. Contractor is not an "officer," "employee," or "agent" of the County, as those terms are used in ORS 30.265.

2. No federally appropriated funds have been paid or shall be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - a. If any funds other than federally appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, Contractor agrees to complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - 1) Standard Form-LLL and instructions are located in 45 CFR Part 93 Appendix B.
 - 2) If instructions require filing the form with the applicable federal entity, Contractor shall then as a material condition of this Contract also file a copy of the Standard Form-LLL with the Department.
 - 3) This filing shall occur at the same time as the filing in accordance with the instructions.
 - b. Contractor understands this certification is a material representation of fact upon which the County and the Department has relied in entering into this Contract. Contractor further understands that submission of this certification is a prerequisite, imposed by 31 USC 1352 for entering into this Contract.
 - c. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
 - d. Contractor shall include the language of this certification in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.
 - e. Contractor is solely responsible for all liability arising from a failure by Contractor to comply with the terms of this certification.
 - f. Contractor promises to indemnify County for any damages suffered by County as a result of Contractor's failure to comply with the terms of this certification.

3. Contractor understands that, if this Contract involves federally appropriated funds, this certification is a material representation of facts upon which reliance was placed when this Contract was made or entered into, submission of this certification is a prerequisite for make or entering into this Contract imposed by Section 1352, Title 311, U.S. Code and that any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.


Thomas Milam (Jul 17, 2024 12:14 EDT)

DESCHUTES COUNTY DOCUMENT SUMMARY

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 this form is not included with the document, the document will be returned to the Department.

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

Date: July 11, 2024 **Department:** Health Services, Behavioral Health

Document Number: 2024-496

Type of Document: Personal Services Contract (e.g., grant*, IGA, services agreement)

If an amendment, which Document No. is being amended? _____

Starting Date: July 1, 2024 **Ending Date:** June 30, 2025

Contractor/Supplier/Consultant Name: Iris Telehealth Medical Group, PA

Annual Value or Total Payment: \$1,130,000.

Purpose of Document: Iris Telehealth Medical Group, PA (“Iris Telehealth”) shall provide Tele-psychiatric treatment for persons identified and scheduled by Deschutes County Health Services. Clients shall be scheduled during the agreed upon hours of service and will occur in thirty (30) minute sessions for returning and known clients, and sixty (60) minute sessions for new Deschutes County Health Services clients and psychiatric evaluations. Iris Telehealth shall provide required documentation of services in Deschutes County’s Electronic Medical Record (EMR) system. Iris Telehealth shall provide services as a Licensed Medical Provider (LMP) and document Medical Services using Deschutes County’s EMR, in a manner consistent with professional and community standards of care.

Insurance certificate received (check box and add certificate to document or note N/A)
Insurance expiration date: February 22, 2025 Risk Mgmt review/date: signature date.

Contract initiation method:

- Not Applicable
- RFP, solicitation or bid process
- Informal quotes (<\$150K)
- Exempt from RFP, solicitation or bid process (specify below – see DCC §2.37) 2.37.070, B, 14

Does this contract or agreement require payment to a vendor? Yes No

If **Yes**, is the vendor registered in Munis? Yes No

Funding Source: Included in current budget? Yes No

Cost Center/Project String: HSMEDICAL-HS2OTHER = \$900,000;
HSCRISIS-HS2GR23G = \$230,000

*if a grant, see signature authority section on next page

If **No**, is a budget amendment required? Yes N/A

Departmental Contact and Title: Chandra Mola, Program Supervisor
Phone #: 541-385-1400

Deputy Director Approval:

Signature: Holly Harris
Holly Harris (Jul 16, 2024 11:33 PDT)
Email: holly.harris@deschutes.org
Title: Behavioral Health Director
Company: Deschutes County Behavioral Health

Director Approval:

Signature: Janice Garceau
Janice Garceau (Jul 16, 2024 15:55 PDT)
Email: janice.garceau@deschutes.org
Title: Director
Company: Deschutes County Health Services

Distribution of Document: Grace Justice Evans, Health Services

Official Review:

County signature required (check one):

- BOCC (more than \$250,000) – BOARD AGENDA Item
- County Administrator (up to \$250,000)
- Department Head/Director (up to \$50,000)

For grants, signature required (check one):

- BOCC (more than \$50,000) – BOARD AGENDA Item
- County Administrator (up to \$50,000 if no match required and no new staff hired)
- Department Director (up to \$10,000 if no match required and no new staff hired)

Legal Review

Signature: Kimberly Riley
Kimberly Riley (Jul 16, 2024 09:45 PDT)
Email: kim.riley@deschutes.org
Title: Assistant Legal Counsel
Company: Deschutes County



CERTIFICATE OF LIABILITY INSURANCE

07/24/2024 Item #4.

2/27/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

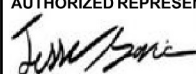
PRODUCER Marsh & McLennan Agency LLC Marsh & McLennan Ins. Agency LLC PO Box 85638 San Diego CA 92186 License#: 0H18131	CONTACT NAME: Jesse Garcia PHONE (A/C. No. Ext): 858-750-4695 E-MAIL ADDRESS: Jesse.Garcia@MarshMMA.com	FAX (A/C. No): 858-452-7530													
	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A: Twin City Fire Insurance Company</td> <td>29459</td> </tr> <tr> <td>INSURER B: Hanover Insurance Company</td> <td>22292</td> </tr> <tr> <td>INSURER C: Underwriters at Lloyd's London</td> <td>55555</td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </tbody> </table>		INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Twin City Fire Insurance Company	29459	INSURER B: Hanover Insurance Company	22292	INSURER C: Underwriters at Lloyd's London	55555	INSURER D:		INSURER E:		INSURER F:
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INSURER F:															

COVERAGES **CERTIFICATE NUMBER:** 1433960814 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	N	72SBABG6606	2/22/2024	2/22/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	N	N	72SBABG6606	2/22/2024	2/22/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	N	N	72SBABG6606	2/22/2024	2/22/2025	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
B	<input type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	WZ3J34306001 WZ3J49400801	2/22/2024 2/22/2024	2/22/2025 2/22/2025	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Cyber Liability	N	N	ESM0139888794	2/22/2024	2/22/2025	\$5,000,000 @Claim/Agg

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
NAMED INSURED LIST: Iris Telehealth Medical Group, PA; Iris Telehealth Inc; Thomas Milam MD Inc; Iris Telehealth Medical Group NJ, PA; Iris Telehealth Medical Group of Kansas, PA
 Certificate Holder is included as additional insured as respects to General Liability per attached endorsement. Primary and Non-Contributory Wording applies per attached endorsement. Waiver of Subrogation applies to Workers Compensation per attached endorsement.

CERTIFICATE HOLDER Deschutes County Health System 2577 NE Courtney Dr Bend OR 97701	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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BUSINESS LIABILITY COVERAGE FORM

2. Applicable To Medical Expenses Coverage

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers' Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.

f. Products-Completed Operations Hazard

Included with the "products-completed operations hazard".

g. Business Liability Exclusions

Excluded under Business Liability Coverage.

C. WHO IS AN INSURED

1. If you are designated in the Declarations as:

a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.

b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.

c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.

d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

a. Employees And Volunteer Workers

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

(a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

(b) To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" as a consequence of Paragraph **(1)(a)** above;

(c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs **(1)(a)** or **(b)** above; or

(d) Arising out of his or her providing or failing to provide professional health care services.

If you are not in the business of providing professional health care services, Paragraph **(d)** does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

(2) "Property damage" to property:

(a) Owned, occupied or used by,

(b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Real Estate Manager

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Temporary Custodians Of Your Property

Any person or organization having proper temporary custody of your property if you die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and
- (2) Until your legal representative has been appointed.

d. Legal Representative If You Die

Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.

e. Unnamed Subsidiary

Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Part.

The insurance afforded herein for any subsidiary not shown in the Declarations as a named insured does not apply to injury or damage with respect to which an insured under this insurance is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.

3. Newly Acquired Or Formed Organization

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

b. Coverage under this provision does not apply to:

- (1) "Bodily injury" or "property damage" that occurred; or
- (2) "Personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

4. Operator Of Mobile Equipment

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

5. Operator of Nonowned Watercraft

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit

The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written

contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by an endorsement issued by us and made a part of this Coverage Part, including all persons or organizations added as additional insureds under the specific additional insured coverage grants in Section F. – Optional Additional Insured Coverages.

a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

(1) The insurance afforded to the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

(e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

(f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

(g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

(h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

(i) The exceptions contained in Subparagraphs (d) or (f); or

(ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

(2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

b. Lessors Of Equipment

(1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

c. Lessors Of Land Or Premises

- (1) Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 - (a) Any "occurrence" which takes place after you cease to lease that land or be a tenant in that premises; or
 - (b) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

d. Architects, Engineers Or Surveyors

- (1) Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
 - (a) In connection with your premises; or
 - (b) In the performance of your ongoing operations performed by you or on your behalf.
- (2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:
 This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:
 - (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
 - (b) Supervisory, inspection, architectural or engineering activities.

e. Permits Issued By State Or Political Subdivisions

- (1) Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 - (a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
 - (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

f. Any Other Party

- (1) Any other person or organization who is not an insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
 - (a) In the performance of your ongoing operations;
 - (b) In connection with your premises owned by or rented to you; or
 - (c) In connection with "your work" and included within the "products-completed operations hazard", but only if
 - (i) The written contract or written agreement requires you to provide such coverage to such additional insured; and
 - (ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (b) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds are described in Section **D. – Limits Of Insurance.**

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section **E. – Liability And Medical Expenses General Conditions.**

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE

1. The Most We Will Pay

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

2. Aggregate Limits

The most we will pay for:

- a. Damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" is the Products-Completed Operations Aggregate Limit shown in the Declarations.
- b. Damages because of all other "bodily injury", "property damage" or "personal and advertising injury", including medical expenses, is the General Aggregate Limit shown in the Declarations.

This General Aggregate Limit applies separately to each of your "locations" owned by or rented to you.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway or right-of-way of a railroad.

This General Aggregate limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire, lightning or explosion.

3. Each Occurrence Limit

Subject to **2.a.** or **2.b** above, whichever applies, the most we will pay for the sum of all damages because of all "bodily injury", "property damage" and medical expenses arising out of any one "occurrence" is the Liability and Medical Expenses Limit shown in the Declarations.

The most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

4. Personal And Advertising Injury Limit

Subject to **2.b.** above, the most we will pay for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization is the Personal and Advertising Injury Limit shown in the Declarations.

5. Damage To Premises Rented To You Limit

The Damage To Premises Rented To You Limit is the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

6. How Limits Apply To Additional Insureds

The most we will pay on behalf of a person or organization who is an additional insured under this Coverage Part is the lesser of:

- a. The limits of insurance specified in a written contract, written agreement or permit issued by a state or political subdivision; or
- b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.

If more than one limit of insurance under this policy and any endorsements attached thereto applies to any claim or "suit", the most we will pay under this policy and the endorsements is the single highest limit of liability of all coverages applicable to such claim or "suit". However, this paragraph does not apply to the Medical Expenses limit set forth in Paragraph 3. above.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

**E. LIABILITY AND MEDICAL EXPENSES
GENERAL CONDITIONS**

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. Notice Of Occurrence Or Offense

You or any additional insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. Notice Of Claim

If a claim is made or "suit" is brought against any insured, you or any additional insured must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You or any additional insured must see to it that we receive a written notice of the claim or "suit" as soon as practicable.

c. Assistance And Cooperation Of The Insured

You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation, settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

d. Obligations At The Insured's Own Cost

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

e. Additional Insured's Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance.

f. Knowledge Of An Occurrence, Offense, Claim Or Suit

Paragraphs a. and b. apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

- (1) You or any additional insured that is an individual;
- (2) Any partner, if you or an additional insured is a partnership;
- (3) Any manager, if you or an additional insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or an additional insured is a corporation;
- (5) Any trustee, if you or an additional insured is a trust; or
- (6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

This Paragraph **f.** applies separately to you and any additional insured.

3. Financial Responsibility Laws

- a. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insurance provided by the policy for "bodily injury" liability and "property damage" liability will comply with the provisions of the law to the extent of the coverage and limits of insurance required by that law.
- b. With respect to "mobile equipment" to which this insurance applies, we will provide any liability, uninsured motorists, underinsured motorists, no-fault or other coverage required by any motor vehicle law. We will provide the required limits for those coverages.

4. Legal Action Against Us

No person or organization has a right under this Coverage Form:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Form unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this insurance or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

5. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom a claim is made or "suit" is brought.

6. Representations

a. When You Accept This Policy

By accepting this policy, you agree:

- (1) The statements in the Declarations are accurate and complete;
- (2) Those statements are based upon representations you made to us; and

- (3) We have issued this policy in reliance upon your representations.

b. Unintentional Failure To Disclose Hazards

If unintentionally you should fail to disclose all hazards relating to the conduct of your business at the inception date of this Coverage Part, we shall not deny any coverage under this Coverage Part because of such failure.

7. Other Insurance

If other valid and collectible insurance is available for a loss we cover under this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when **b.** below applies. If other insurance is also primary, we will share with all that other insurance by the method described in **c.** below.

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

(1) Your Work

That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(3) Tenant Liability

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

(4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **A.** – Coverages.

(5) Property Damage To Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion **k.** of Section **A.** – Coverages.

(6) When You Are Added As An Additional Insured To Other Insurance

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

(7) When You Add Others As An Additional Insured To This Insurance

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

(a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (a) and (b) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under this Coverage Part to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

8. Transfer Of Rights Of Recovery Against Others To Us

a. Transfer Of Rights Of Recovery

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

F. OPTIONAL ADDITIONAL INSURED COVERAGES

If listed or shown as applicable in the Declarations, one or more of the following Optional Additional Insured Coverages also apply. When any of these Optional Additional Insured Coverages apply, Paragraph 6. (Additional Insureds When Required by Written Contract, Written Agreement or Permit) of Section C., Who Is An Insured, does not apply to the person or organization shown in the Declarations. These coverages are subject to the terms and conditions applicable to Business Liability Coverage in this policy, except as provided below:

1. Additional Insured - Designated Person Or Organization

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations; or
- b. In connection with your premises owned by or rented to you.

2. Additional Insured - Managers Or Lessors Of Premises

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Designated Person Or Organization; but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Declarations.
- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

3. Additional Insured - Grantor Of Franchise

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Grantor Of Franchise, but only with respect to their liability as grantor of franchise to you.

4. Additional Insured - Lessor Of Leased Equipment

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Lessor of Leased Equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).
- b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

5. Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owners Or Other Interests From Whom Land Has Been Leased, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and shown in the Declarations.
- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" that takes place after you cease to lease that land; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

6. Additional Insured - State Or Political Subdivision – Permits

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the state or political subdivision shown in the Declarations as an Additional

Insured – State Or Political Subdivision - Permits, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (2) "Bodily injury" or "property damage" included in the "product-completed operations" hazard.

7. Additional Insured – Vendors

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) (referred to below as vendor) shown in the Declarations as an Additional Insured - Vendor, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- b. The insurance afforded to the vendor is subject to the following additional exclusions:

- (1) This insurance does not apply to:
 - (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
 - (b) Any express warranty unauthorized by you;
 - (c) Any physical or chemical change in the product made intentionally by the vendor;
 - (d) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (i) The exceptions contained in Subparagraphs (d) or (f); or
 - (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

8. Additional Insured – Controlling Interest

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Controlling Interest, but only with respect to their liability arising out of:

- a. Their financial control of you; or
- b. Premises they own, maintain or control while you lease or occupy these premises.

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

9. Additional Insured – Owners, Lessees Or Contractors – Scheduled Person Or Organization

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owner, Lessees Or Contractors, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In the performance of your ongoing operations for the additional insured(s); or
- (2) In connection with "your work" performed for that additional insured and included within the "products-completed operations hazard", but only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to "bodily injury", "property damage" or "personal an advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (1) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.

10. Additional Insured – Co-Owner Of Insured Premises

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or Organization(s) shown in the Declarations as an Additional Insured – Co-Owner Of Insured Premises, but only with respect to their liability as co-owner of the premises shown in the Declarations.

The limits of insurance that apply to additional insureds are described in Section D. – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. – Liability And Medical Expenses General Conditions.

G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS

1. "Advertisement" means the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:

- a. (1) Radio;
- (2) Television;
- (3) Billboard;
- (4) Magazine;
- (5) Newspaper;

b. The Internet, but only that part of a web site that is about goods, products or services for the purposes of inducing the sale of goods, products or services; or

c. Any other publication that is given widespread public distribution.

However, "advertisement" does not include:

a. The design, printed material, information or images contained in, on or upon the packaging or labeling of any goods or products; or

b. An interactive conversation between or among persons through a computer network.

2. "Advertising idea" means any idea for an "advertisement".

3. "Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.

4. "Auto" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

5. "Bodily injury" means physical:

- a. Injury;
- b. Sickness; or
- c. Disease

sustained by a person and, if arising out of the above, mental anguish or death at any time.

6. "Coverage territory" means:



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: July 24, 2024

SUBJECT: Public Hearing: Remand of 710 Properties/Eden Properties Plan Amendment and Zone Change application

BACKGROUND AND POLICY IMPLICATIONS:

The Board of Commissioners will hold a public hearing on July 24, 2024 to consider a remand decision of the Oregon Land Use Board of Appeals regarding a Plan Amendment and Zone Change application proposed by 710 Properties, LLC, originally approved by the Board under files 247-21-001043-PA, 1044-ZC. The full record is located on the project webpage: <https://www.deschutes.org/cd/page/luba-remand-247-24-000395-247-21-001043-pa-and-247-21-001044-zc-edon-central-properties>

BUDGET IMPACTS:

None

ATTENDANCE:

Haleigh King, Associate Planner
Will Groves, Planning Manager



MEMORANDUM

TO: Deschutes County Board of Commissioners (Board)

FROM: Haleigh King, Associate Planner

DATE: July 17, 2024

SUBJECT: Public Hearing: Remand of 710 Properties/Eden Properties Plan Amendment and Zone Change application 247-21-001043-PA, 1044-ZC (247-24-000395-A)

On July 24, 2023, the Board of Commissioners (“Board”) will hold a public hearing held to consider a remanded decision of the Oregon Land Use Board of Appeals (LUBA) regarding a Plan Amendment and Zone Change application proposed by Eden Central Properties (Applicant). The record associated with this remanded review is located on the project webpage¹. This hearing is a continuation of an existing application (247-21-001043-PA/1044-ZC), the full record is located on the project webpage².

I. HEARING PROCEDURE

Deschutes County Code 22.32.040 notes that the scope of the proceeding for an application on remand must be limited to review the issues that LUBA requires to be addressed, although the Board may use its discretion to reopen the record where it seems necessary. The applicant has requested the record to be reopened to address the issues identified by LUBA, in accordance with Deschutes County Code Section 22.34.040. If the Board chooses to reopen the record, the Board must limit it’s review to the remanded issues.

Per DCC 22.34.030(A), only those persons who were parties to the proceedings before the County as part of the File Number(s) listed above are entitled to notice and participation in this remand hearing.

II. BACKGROUND

On December 2, 2021, the applicant, 710 Properties, LLC/Eden Central Properties, LLC, submitted an application for a Plan Amendment and Zone Change for property totaling

¹ <https://www.deschutes.org/cd/page/luba-remand-247-24-000395-247-21-001043-pa-and-247-21-001044-zc-eden-central-properties>
² <https://www.deschutes.org/cd/page/247-21-001043-pa-and-247-21-001044-zc-eden-central-properties-comprehensive-plan-amendment>

approximately 710 acres. The applicant is requesting to redesignate and rezone the subject property from Agriculture to Rural Residential Exception Area and Exclusive Farm Use (EFU) to Rural Residential – 10 Acre Minimum (RR-10).

Staff includes a timeline of the proceedings below:

Action	Date
Hearings Officer Recommendation of Approval to Board of County Commissioners	June 2, 2022
Board of County Commissioners Hearing	August 17, 2022
Board Approval (2-1) of Ordinance No. 2022-013	December 14, 2022
County Decision Appealed to Oregon State Land Use Board of Appeals (LUBA)	January 10, 2023
LUBA issues Final Opinion and Order remanding the decision back to the County	July 28, 2023
Court of Appeals affirms LUBA Remand	January 24, 2024
Applicant initiates remand application with Deschutes County	June 26, 2024
Deadline for final County decision on remand	October 24, 2024

III. LUBA REMAND AND APPLICANT RESPONSE

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

A. Findings related to the ability to use the subject property for farm use in conjunction with other property.

The final opinion and order provides the following guidance:

(pg. 36-37) As we discuss in our resolution of a subsequent assignment of error, the board of commissioners’ decision fails to consider the ability to use the subject property with a primary purpose of obtaining a profit in money in conjunction with other property. ORS 215.203(2)(a) refers to the employment of land for the primary purpose of obtaining a profit be engaging in a farm activity. “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.” OAR 660-033-0030(3). Relating the profitability of farm related activity solely to the activity on the subject property places undue weight on profitability. The board of commissioners improperly weighed the consideration of profitability of the subject property operating independently.

Staff notes that the applicant, in their initiation of remand materials has not yet provided additional testimony to address the remanded issue area summarized above. Staff anticipates additional information may be submitted prior to or at the public hearing for Board consideration, or potentially during an open record period, should the Board choose to leave the written record open. Any materials received by the applicant ahead of the public hearing will be timely incorporated into the official record.

B. Findings related to the source of feed for farm uses involving animals.

The final opinion and order provides the following guidance:

(pg. 41) ...the board of commissioners’ interpretation is not supported by the text of OAR 660-033-0020(1)(a)(B) or ORS 215.203(2)(a), both of which are silent as to the source of the feed that is necessary to sustain animals involved in farm uses.

Whether livestock, poultry, and equines are sustained with forage grown on-site or feed imported from off-site, their feeding, breeding, management, sale, stabling, and training potentially qualify as farm uses. The board of commissioners misconstrued OAR 660-033-0020(1)(a)(B) or ORS 215.203(2)(a) in concluding that land is suitable for farm uses involving animals only if sufficient feed can be grown on-site.

(pg. 42) It may be that, even if feed is imported from off-site, the subject property is not suitable for the feeding, breeding, management, and sale of livestock and poultry or the stabling or training of equines for the primary purpose of obtaining a profit in money, given the factors listed in OAR 660-033-0020(1)(a)(B). However, the board of commissioners did not reach that conclusion. On remand, the county will have an opportunity to evaluate the testimony that 710 properties cites through the proper lens and reach its own conclusion.

Staff notes that the applicant, in their initiation of remand materials has not yet provided additional testimony to address the remanded issue area summarized above. Staff anticipates additional information may be submitted prior to or at the public hearing for Board consideration, or potentially during an open record period, should the Board choose to leave the written record open. Any materials received by the applicant ahead of the public hearing will be timely incorporated into the official record.

C. Findings related to whether the subject property is suitable for farm use as a site for the construction and maintenance of equipment and facilities used for farm activities.

The final opinion and order provides the following guidance:

(pg. 44) Under ORS 215.203(2)(a), "farm use" includes the construction and maintenance of equipment and facilities used for farm activities. Whether those farm activities occur on the subject property or elsewhere, the construction and maintenance of the equipment and facilities used therefore is a farm use. The board of commissioners misconstrued OAR 660-033-0020(1)(a)(B) and ORS 215.203(2)(a) in concluding that land is suitable for that farm use only if the farm activities occur on the same land.

(pg. 45) ...in determining whether land is suitable for the construction and maintenance of equipment and facilities, the county must consider the factors listed in OAR 660-033-0020(1)(a)(B): 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. That requirement remains, even though the farm activities for which the equipment and facilities are used occur elsewhere.

Staff notes that the applicant, in their initiation of remand materials has not yet provided additional testimony to address the remanded issue area summarized above. Staff anticipates additional information may be submitted prior to or at the public hearing for Board consideration, or potentially during an open record period, should the Board choose to leave the written record open. Any materials received by the applicant ahead of the public hearing will be timely incorporated into the official record.

D. Findings related to whether retaining the property’s agricultural designation is necessary to permit farm practices on adjacent or nearby lands.

The final opinion and order provides the following guidance:

(pg. 47) ...the county misconstrued OAR 660-033-0020(1)(a)(B) and ORS 215.203(2)(a) in concluding that it was not required to consider whether the subject property is suitable for farm use in conjunction with nearby or adjacent land. We have previously explained that "[t]he suitability for farm use inquiry must ***consider the potential for use in conjunction with adjacent or nearby land."

(pg.48)...710 Properties observes that several farmers and ranchers testified that they would not consider incorporating the subject property into their farm operations. It may be that the subject property is not suitable for farm use even in conjunction with nearby or adjacent land. However, the county did not reach that conclusion. On remand, the county will have an opportunity to evaluate the testimony that 710 properties cites through the property lens and reach its own conclusion.

The Court of Appeals opinion included some additional analysis under this remanded issue:

(pg. 14-15) Consequently, we agree with LUBA that consideration of whether land is “agricultural land” under OAR 660-033-0020(1)(a)(C) must include consideration of whether the land’s resource designation and zoning is “necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.”

Having reached that conclusion, we note that we also agree with LUBA that “necessary to permit farm practices on adjacent or nearby agricultural lands” is a “high standard.” ... That is, we do not understand land to be agricultural land under OAR 660-033-0020(1)(a)(C) merely because its designation would merely be “useful” or “desirable” for nearby farm practices. Rather, for land to be agricultural land under OAR 660-033-0020(1)(a)(C), that land, considering its resource designation and zoning, must truly be necessary to adjacent and nearby farm practices.

Staff notes that the applicant, in their initiation of remand materials has not yet provided additional testimony to address the remanded issue area summarized above. Staff anticipates additional information may be submitted prior to or at the public hearing for Board consideration, or potentially during an open record period, should the Board choose to leave the written record open. Any materials received by the applicant ahead of the public hearing will be timely incorporated into the official record.

E. Findings related to impacts on surrounding land use in accordance with comprehensive plan policies and zoning ordinances, specifically, water, wastewater, and traffic impacts on surrounding agricultural lands and the agricultural industry.

The final opinion and order provides the following guidance:

(pg. 73-74)...we agree with Redside that the findings that the increase from 24 to 71 dwellings will have no greater water, wastewater, or traffic impacts on surrounding agricultural lands and the agricultural industry, and the findings relying on the distance between the subject property and surrounding agricultural lands, are inadequate.

While the fact that the subject property is located on a plateau might mitigate some impacts on surrounding agricultural lands and the agricultural industry, it is not clear how that fact will mitigate any water, wastewater, or traffic impacts. The county must consider the evidence of impacts on surrounding agricultural lands vis-à-vis water, wastewater, and traffic.

Staff notes that the applicant, in their initiation of remand materials has not yet provided additional testimony to address the remanded issue area summarized above. Staff anticipates additional information may be submitted prior to or at the public hearing for Board consideration, or potentially during an open record period, should the Board choose

to leave the written record open. Any materials received by the applicant ahead of the public hearing will be timely incorporated into the official record.

IV. RESOLVED ISSUES AND PUBLIC COMMENT

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

- Use of and reliance on site-specific soils assessment
- Adequacy of the Applicant’s site-specific soils assessment
- Use of profitability/capital costs in determining “suitable for farm use
- Application of the Reasonable Farmer test
- That the Board’s analysis was not based on, nor required to be based on a “commercial-scale” standard
- That the Board did not give inappropriate weight to “profitability,” in analyzing the factors listed in OAR 660-033-0020(1)(a)(B).
- Denying 1000 Friends’ argument concerning preservation of agricultural land in large blocks
- That the Board included an appropriate finding concerning traffic impacts that the small amount of traffic associated with the proposed change will not prevent farm practices associated with area farm uses of growing hay and grazing livestock from occurring in the area
- Consistency with ORS 215.788 and DCCP Provisions (sustaining use of quasi-judicial process, instead of requiring legislative process to redesignate and rezone the property)
- Goal 14 issues (orderly and efficient transition from rural to urban land uses)

Staff has received a number of public comments since the Notice of Public Hearing was mailed. All comments received as of the date of this memo are uploaded to the record. To the extent comments are received after the date of this memo, staff will enter into the record in a timely manner.

V. NEXT STEPS AND TIMELINE

Following the hearing the Board may choose to:

- Continue the hearing to a date and time certain;
- Close the oral portion of the hearing and leave the written record open to a date and time certain;
- Close the hearing and commence deliberations; or
- Close the hearing and schedule deliberations for a date and time to be determined.

Staff notes that a final County decision on the remand is required within 120 days of the date the applicant initiates the remand. The applicant initiated the remand on June 26, 2024; therefore, a final County decision is due no later than October 24, 2024.

Attachment(s):

Attachment A: Final Opinion and Order, LUBA No. 2023-006 and 2023-009

Attachment B: Oregon Court of Appeals Opinion

JUL 28 2023

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

CENTRAL OREGON LANDWATCH,
Petitioner,

and

1000 FRIENDS OF OREGON,
WILLIAM BUCHANAN, ELIZABETH BUCHANAN,
KEYSTONE CATTLE & PERFORMANCE HORSES, LLC,
REDSIDE RESTORATION PROJECT ONE, LLC,
and PAUL J. LIPSCOMB,
Intervenors-Petitioners,

vs.

DESCHUTES COUNTY,
Respondent,

and

710 PROPERTIES, LLC,
CHARLES THOMAS, and ROBERT TURNER,
Intervenors-Respondents.

LUBA No. 2023-006

DEPARTMENT OF LAND CONSERVATION
AND DEVELOPMENT,
Petitioner,

and

1000 FRIENDS OF OREGON,
REDSIDE RESTORATION PROJECT ONE, LLC,
and PAUL J. LIPSCOMB,
Intervenors-Petitioners,

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vs.

DESCHUTES COUNTY,
Respondent,

and

710 PROPERTIES, LLC,
CHARLES THOMAS, and ROBERT TURNER,
Intervenors-Respondents.

LUBA No. 2023-009

FINAL OPINION
AND ORDER

Appeal from Deschutes County.

Carol Macbeth filed a petition for review and reply brief and argued on behalf of petitioner Central Oregon Landwatch.

Erin Donald filed a petition for review and reply brief and argued on behalf of petitioner Department of Land Conservation and Development. Also on the brief was Ellen F. Rosenblum, Attorney General.

Andrew Mulkey filed an intervenor-petitioner’s brief and argued on behalf on intervenor-petitioner 1000 Friends of Oregon.

Jeffrey L. Kleinman filed an intervenors-petitioners’ brief and reply brief on behalf of intervenors-petitioners William Buchanan, Elizabeth Buchanan, and Keystone Cattle & Performance Horses, LLC.

Keenan Ordon-Bakalian filed an intervenor-petitioner’s brief and reply brief and argued on behalf of intervenor-petitioner Redside Restoration Project One, LLC. Also on the brief were James D. Howsley and Jordan Ramis PC.

David Doyle filed the respondent’s brief on behalf of respondent.

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J. Kenneth Katzaroff filed the intervenor-respondent’s briefs. Also on the briefs were D. Adam Smith, Bailey M. Oswald, and Schwabe, Williamson & Wyatt, P.C. J. Kenneth Katzaroff and D. Adam Smith argued on behalf of intervenors-respondents.

RUDD, Board Member; RYAN, Board Chair; ZAMUDIO, Board Member, participated in the decision.

REMANDED 07/28/2023

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

1 Opinion by Rudd.

2 **NATURE OF THE DECISION**

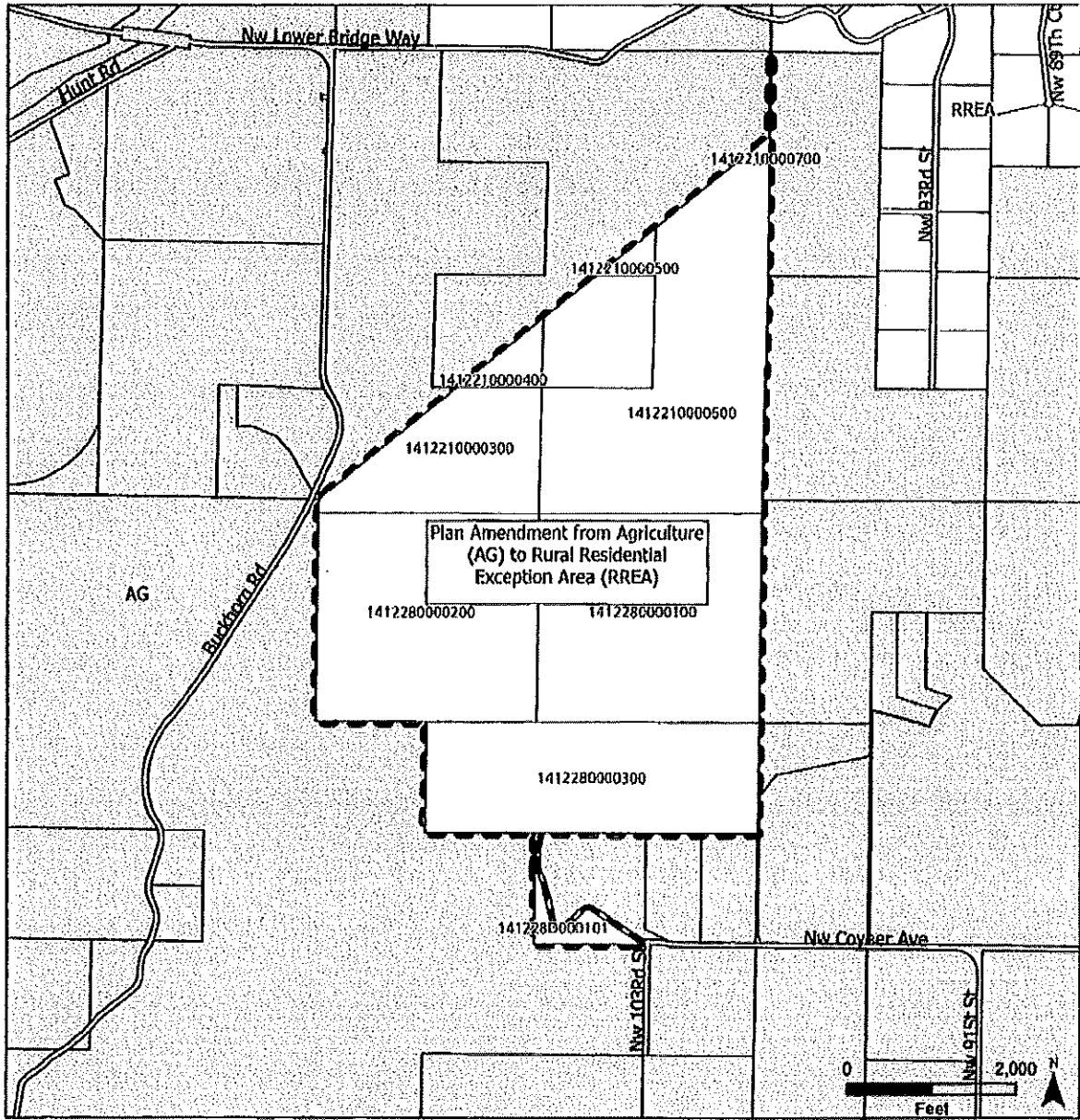
3 Petitioners appeal a board of county commissioners decision approving a
4 post-acknowledgment plan amendment (PAPA) that changes the comprehensive
5 plan designation of a 710-acre property from Agriculture (AG) to Rural
6 Residential Exception Area (RREA) and the zoning from Exclusive Farm Use -
7 Terrebonne Subzone (EFUTE) to Rural Residential - 10 Acre Minimum (RR-
8 10).

9 **FACTS**

10 The 710-acre subject property is located west of the unincorporated
11 community of Terrebonne and the city of Redmond. It is over four miles from
12 the City of Redmond’s urban growth boundary (UGB), and it is north of Highway
13 126. Record 34, 42, 119. Nine lots of record, identified by tax lot, form the subject
14 property.

15 “The subject property is undeveloped except for one tax lot (10325
16 NW Coyner Avenue), which is developed with a nonfarm dwelling
17 (County Land Use File #CU-05-103). Two other lots of record have
18 valid nonfarm dwelling approvals. Access to the property is
19 provided at the western terminus of NW Coyner Avenue, a County-
20 maintained rural local roadway, and the northern terminus of NW
21 103rd Street, a County-maintained rural local roadway.” Record 41.

22 The subject property is shown below.



1

2 Record 6.

3 “The subject property is predominately surrounded by EFU-zoned lands
 4 with large-scale farm/agricultural uses apparent near the northwest boundary of
 5 the subject property.” Record 44. “There is property zoned [RR-10] to the

1 northeast of the subject property containing large-lot rural residential uses within
2 the Lower Bridge Estates Subdivision.” *Id.*

3 Intervenor-respondent 710 Properties, LLC (710 Properties), applied for a
4 PAPA to change the plan designation of the subject property from AG to RREA
5 and the zoning from EFUTE to RR-10. On April 19, 2022, a county hearings
6 officer held the initial public hearing concerning 710 Properties’ application. On
7 June 2, 2022, the hearings officer issued their decision recommending that the
8 board of commissioners approve 710 Properties’ application. On August 17,
9 2022, the board of commissioners held a *de novo* public hearing on the
10 application. On December 14, 2022, the board of commissioners approved the
11 application. These appeals followed.

12 **NONCOMPLIANT INTERVENOR-PETITIONER’S BRIEF**

13 In its brief, intervenor-respondent Robert Turner (Turner) argues that
14 intervenor-petitioner 1000 Friends of Oregon’s (1000 Friends’) brief does not
15 comply with our rules. Specifically, Turner argues that 1000 Friends’ brief does
16 not comply with OAR 661-010-0030(4)(b)(B) and OAR 661-010-0050(6)(a).
17 OAR 661-010-0050(6)(a) provides, “If intervention is sought as a petitioner, the
18 brief shall be filed within the time limit for filing the petition for review, and shall
19 satisfy the requirements for a petition for review in OAR 661-010-0030.” OAR
20 661-010-0030(4) provides:

21 “The petition for review shall:

22 “* * * * *

1 “(b) Present a clear and concise statement of the case, in the
2 following order, with separate section headings:

3 “* * * * *

4 “(B) A brief summary of the arguments appearing under the
5 assignments of error in the body of the petition[.]”

6 Turner argues that 1000 Friends’ brief does not include the summary of
7 arguments required by OAR 661-010-0030(4)(b)(B). Turner observes that 1000
8 Friends’ brief is 10,911 words long, 89 words shy of the 11,000-word limit for
9 intervenor-petitioner’s briefs set forth in OAR 661-010-0030(2)(b) and OAR
10 661-010-0050(6)(a). Turner argues that, had 1000 Friends’ brief included the
11 requisite summary of arguments, it would have exceeded the word limit. Turner
12 argues that that violation is not a technical violation because the county and
13 intervenors-respondents were required to review and respond to what is
14 effectively an overlength intervenor-petitioner’s brief and because Turner was
15 required to divert time and resources to discovering and addressing the violation
16 in their own brief. To remedy the violation, Turner requests that we disregard
17 1000 Friends’ brief in its entirety.

18 Treating Turner’s request as a motion to strike, 1000 Friends filed a
19 response arguing that, while the statement of the case at the beginning of its brief
20 does not include a summary of arguments, each assignment of error in the body
21 of its brief contains a summary of the arguments therein. 1000 Friends observes
22 that Turner does not argue that any of the arguments in 1000 Friends’ brief are
23 not readily discernible, and 1000 Friends argues that the violation is therefore a

1 technical violation not affecting the substantial rights of the parties. OAR 661-
2 010-0005. 1000 Friends argues that we should not disregard its brief in its entirety
3 because, notwithstanding the violation, its brief “substantially conforms” to the
4 requirements of OAR 660-010-0030. OAR 660-010-0030(3) (“The Board may
5 refuse to consider a brief that does not substantially conform to the requirements
6 of this rule.”). We agree. Given the clarity of 1000 Friends’ arguments in the
7 body of its brief, the lack of a summary of arguments at the beginning of its brief
8 did not affect Turner’s substantial rights.¹

9 Turner’s motion to strike is denied.

10 **OVERLENGTH RESPONDENT’S AND INTERVENOR-**
11 **RESPONDENT’S BRIEFS**

12 Each of the respondent’s and intervenor-respondent’s briefs incorporates
13 arguments from the other briefs. In its reply brief, intervenor-petitioner Redside
14 Restoration Project One, LLC (Redside), moves to strike the incorporations as

¹ OAR 661-010-0065(3) provides that “[a]ll motions must be filed as a separate document and shall not be included with any other filing.” The purposes of that rule are at least twofold. First, requiring that motions to strike, motions to take official notice, motions to take evidence not in the record, and the like be filed as separate documents rather than included in briefs better ensures that LUBA and the parties will become aware of and fully address such motions. Second, requiring that such motions be filed as separate documents rather than included in briefs better ensures that the parties will focus their limited briefing space on the merits of an appeal rather than procedural matters. Turner’s inclusion of its motion to strike in its brief is a violation of OAR 661-010-0065(3).

1 improperly allowing the county and intervenors-respondents to exceed the
2 11,000-word limit for respondent’s and intervenor-respondent’s briefs.

3 “While incorporation of arguments in another brief in the appeal is a
4 common practice, such incorporation is permissible only if it is otherwise
5 consistent with LUBA’s rules.” *STOP Tigard Oswego Project, LLC v. City of*
6 *West Linn*, 68 Or LUBA 539, 542 (2013). OAR 661-010-0030(2)(b), OAR 661-
7 010-0035(2), and OAR 661-010-0050(6)(b) limit respondent’s and intervenor-
8 respondent’s briefs to 11,000 words unless LUBA grants permission for an
9 overlength brief. No party has requested leave to file an overlength brief. By
10 incorporating arguments from the other briefs, the county and intervenors-
11 respondents have effectively submitted overlength briefs without obtaining
12 LUBA’s permission. *See Herring v. Lane County*, 54 Or LUBA 417, 420 (2007)
13 (allowing a respondent’s brief to incorporate arguments in a proposed but
14 disallowed *amicus* brief where the incorporation did not cause the respondent’s
15 brief to exceed the applicable page limit).

16 Nonetheless, granting Redside’s motion to strike would have no practical
17 effect because, regardless of the incorporation by reference, we will consider the
18 arguments in each party’s separate brief. Thus, any violation of our rules is a
19 “technical violation” within the meaning of OAR 661-010-0005.²

² As previously noted, OAR 661-010-0065(3) provides that “[a]ll motions must be filed as a separate document and shall not be included with any other

1 Redside’s motion to strike is denied.

2 **INTRODUCTION**

3 We have organized this opinion into sections addressing the assignments
4 of error concerning Statewide Planning Goal 3 (Agricultural Lands), the
5 assignments of error concerning miscellaneous statutory and local provisions,
6 and the assignments of error concerning Statewide Planning Goal 14
7 (Urbanization).³

8 **GOAL 3 ASSIGNMENTS OF ERROR**

9 The county’s AG plan designation and EFUTE zone implement Goal 3.
10 Goal 3 is “[t]o preserve and maintain agricultural lands.” OAR 660-033-
11 0020(1)(a) provides that “agricultural land,” as defined in Goal 3, includes:

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

15 “(B) Land in other soil classes that is suitable for farm use as
16 defined in ORS 215.203(a), taking into consideration soil
17 fertility; suitability for grazing; climatic conditions; existing
18 and future availability of water for farm irrigation purposes;

filing.” Redside’s inclusion of its motion to strike in its reply brief is a violation
of OAR 661-010-0065(3).

³ In spite of our encouragement to the parties to coordinate their briefing to
avoid repetitive and overlapping arguments and assignments of error, four briefs
with overlapping assignments of error were filed in these consolidated appeals.
We have organized the opinion in this manner because of the overlapping
assignments of error.

Intervenor-petitioner Paul J. Lipscomb did not file a brief.

1 existing land use patterns; technological and energy inputs
2 required; and accepted land use patterns;

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

5 Generally, counties must apply Exclusive Farm Use (EFU) zones to “agricultural
6 land.” OAR 660-033-0090(1).

7 The board of commissioners’ findings include the following description of
8 the subject property:

9 “A majority of the property sits on a plateau running from the
10 southwest to the northeast of the subject property boundary.
11 Topography is varied with portions of lava rimrock present along
12 the west and northwest edges with steep to very steep slopes below.
13 Vegetation is typical of the high desert and includes juniper trees,
14 sage brush, rabbit brush, and bunch grasses. [710 Properties]
15 emphasizes the steep topographical decline on the property, the fact
16 that there is ‘lava rock all over the property,’ and ‘sparse ground
17 cover and juniper.’

18 “The subject property does not have water rights and is not currently
19 being farmed or irrigated in conjunction with farm use. There is no
20 known history of the property having had irrigation rights. There is
21 no known history of agriculture or farm use, as defined in ORS
22 215.203 on the subject property. According to the Deschutes County
23 Assessor’s office, only one tax lot within the project area, Assessor’s
24 Map 14-12-28, Tax Lot 300, is currently receiving farm tax deferral,
25 but does not appear to be engaged in farm use. The record does not
26 include any evidence the subject property is engaged, or has ever
27 been engaged, in farm use.” Record 41-42 (footnote omitted).

28 In approving the challenged PAPA, the board of commissioners concluded
29 that the subject property is not “agricultural land” under OAR 660-033-
30 0020(1)(a). In various assignments of error and subassignments of error,

1 petitioners and intervenors-petitioners argue that the county erred in reaching that
2 conclusion.

3 **A. OAR 660-033-0020(1)(a)(A)**

4 For purposes of Goal 3, “agricultural land” includes “[l]ands classified by
5 the [NRCS] as predominately Class I-IV soils in Western Oregon and I-VI in
6 Eastern Oregon.” OAR 660-033-0020(1)(a)(A). Eastern Oregon, as defined by
7 OAR 660-033-0020(5), includes the county. 710 Properties engaged a qualified
8 soil scientist to prepare a detailed soils assessment for the subject property and
9 submitted that site-specific soils assessment to the county. The county found:

10 “The [NRCS] map shown on the County’s GIS mapping program
11 identifies six soil complex units on the property: 63C, Holmzie-
12 Searles complex, 106E, Redslide-Lickskillet complex, 101D,
13 Redcliff-Lickskillet-Rock outcrop complex, 106D, Redslide-
14 Lickskillet complex, 71A, Lafollette sandy loam, and 31B,
15 Deschutes sandy loam. Per [Deschutes County Code (DCC)] 8.04,
16 Soil complex 31A and 71A are considered high-value soils when
17 irrigated.

18 “As discussed in detail below in the Soils section, there is no
19 irrigation on the subject property, except for water applied to
20 landscaping associated with the nonfarm dwelling on Tax Lot 301.
21 *A soil study conducted on the property determined the subject*
22 *property contains approximately 71 percent Land Capability Class*
23 *7 and 8 nonirrigated soils, including stony shallow soils over*
24 *bedrock, more characteristic of the Lickskillet series, along with*
25 *significant rock outcrops. Where surface stoniness was not apparent,*
26 *the soils were typically moderately deep with sandy loam textures*
27 *throughout or with some loam textures in the subsurface, more*
28 *consistent with the Statz series.” Record 42 (emphasis added).*

1 Because the site-specific soils assessment determined that 71 percent of the
2 subject property is Class 7 and 8 soils, while only 29 percent is Class 6 soils, the
3 board of commissioners concluded that the subject property is not predominantly
4 Class 1 to 6 soils and, therefore, not “agricultural land” under OAR 660-033-
5 0020(1)(a)(A).⁴

6 **1. Reliance on Site-Specific Soils Assessment**

7 The NRCS mapping for the subject property identifies the property as
8 containing 76 percent 63C, Holmzie-Searles complex, soil. Record 4695. We
9 understand 63C soil to be Class 6 soil in the NRCS classification system when
10 nonirrigated. Record 4697. Accordingly, the NRCS mapping for the subject
11 property identifies the property as containing at least 76 percent Class 6 soils.

12 In its first assignment of error, petitioner Central Oregon Landwatch
13 (COLW) argues that the county misconstrued OAR 660-033-0020(1)(a)(A) in
14 concluding that it could rely on 710 Properties’ site-specific soils assessment to
15 conclude that the subject property is not predominantly Class 1 to 6 soils,
16 notwithstanding that the NRCS mapping identifies the subject property as
17 predominantly Class 1 to 6 soils. COLW argues that lands that the NRCS
18 mapping identifies as predominantly Class 1 to 6 soils are *per se* “agricultural
19 land” for purposes of OAR 660-033-0020(1)(a)(A). In support of that argument,

⁴ The rule uses roman numerals to designate soil classes. Because the decision does not, we refer to Class 1 to 6 rather than Class I to VI.

1 COLW quotes the following passage from *1000 Friends of Oregon v. LCDC*
2 (*Linn Co.*):

3 “[Petitioner] premises his second point on the reasonably clear
4 language of Goal 3 and the unequivocal language of OAR 660-05-
5 005(1) to the effect that land comprised of the specified soil classes
6 is *per se* agricultural and that suitability considerations are relevant
7 only to whether land which is *not* predominantly comprised of such
8 soils is *also* ‘agricultural land.’

9 “* * * It may be that factors such as wetness and slope can be
10 relevant to whether an exception to Goal 3 may be taken for land in
11 western Oregon that consists predominantly of Class I-IV soils.
12 However, the goal and the [Land Conservation and Development
13 Commission (LCDC)] rule leave no room to conclude that land
14 which is so comprised is not, *per se*, ‘agricultural land,’ whether or
15 not it can be used for agriculture.” 85 Or App 18, 22-23, 735 P2d
16 645, *adh’d to as modified on recons*, 86 Or App 26, 738 P2d 215,
17 *rev den*, 304 Or 93 (1987).

18 COLW argues that, “[a]s the inventor of the land capability classification system
19 Classes [1-6], the NRCS must be presumed to be in the best position to recognize
20 Class [6] soil when it sees it, and to correctly categorize the soils it identifies and
21 names into the proper land capability classes it invented.” COLW’s Petition for
22 Review 14. COLW observes that the site-specific soils assessment is an “Order
23 1 soil survey,” which the NRCS’s Technical Soil Services Handbook describes
24 as a “supplement” that cannot “replace or change” the NRCS mapping. Record
25 3817-18. COLW argues that the county cannot substitute its interpretation of the
26 significance of Order 1 soil surveys for that of the NRCS, which invented them.

1 Intervenor-respondent Charles Thomas (Thomas) argues that we must
2 consider the effect of ORS 215.211 and OAR 660-033-0030(5) on the definition
3 of “agricultural land.” Thomas’s Intervenor-Respondent’s Brief 18. ORS
4 215.211 provides:

5 “(1) If a person concludes that more detailed soils information
6 than that contained in the Web Soil Survey operated by the
7 [NRCS] would assist a county to make a better determination
8 of whether land qualifies as agricultural land, the person must
9 request that the Department of Land Conservation and
10 Development arrange for an assessment of the capability of
11 the land by a professional soil classifier who is:

12 “(a) Certified by and in good standing with the Soil Science
13 Society of America; and

14 “(b) Chosen by the person.

15 “* * * * *

16 “(5) This section authorizes a person to obtain additional
17 information for use in the determination of whether land
18 qualifies as agricultural land, but this section does not
19 otherwise affect the process by which a county determines
20 whether land qualifies as agricultural land.”

21 OAR 660-033-0030(5) implements ORS 215.211 and provides:

22 “(a) *More detailed data on soil capability than is contained in the*
23 *[NRCS] soil maps and soil surveys may be used to define*
24 *agricultural land. However, the more detailed soils data shall*
25 *be related to the NRCS land capability classification system.*

26 “(b) If a person concludes that more detailed soils information
27 than that contained in the Web Soil Survey operated by the
28 NRCS, would assist a county to make a better determination
29 of whether land qualifies as agricultural land, the person must

1 request that the department arrange for an assessment of the
2 capability of the land by a professional soil classifier who is
3 chosen by the person, using the process described in OAR
4 660-033-0045.

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

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

11 “(B) Excepting land use decisions under section (7) of this
12 rule, any other proposed land use decision in which
13 more detailed data is used to demonstrate that a lot or
14 parcel planned and zoned for exclusive farm use does
15 not meet the definition of agricultural land under OAR
16 660-033-0020(1)(a)(A).

17 “(d) This section and OAR 660-033-0045 implement ORS
18 215.211, effective on October 1, 2011. After this date, only
19 those soils assessments certified by the department under
20 section (9) of this rule may be considered by local
21 governments in land use proceedings described in subsection
22 (c) of this section. However, a local government may consider
23 soils assessments that have been completed and submitted
24 prior to October 1, 2011.

25 “(e) This section and OAR 660-033-0045 authorize a person to
26 obtain additional information for use in the determination of
27 whether a lot or parcel qualifies as agricultural land, but do
28 not otherwise affect the process by which a county determines
29 whether land qualifies as agricultural land as defined by Goal
30 3 and OAR 660-033-0020.” (Emphases added.)

1 ORS 215.211 and OAR 660-033-0030(5) allow a site-specific soils assessment
2 where a person believes that such information would, compared to the NRCS
3 mapping, assist a county in determining whether land is agricultural land.

4 The county argues that *Linn Co.* is inapposite because, whereas that
5 decision was issued in 1987, the legislature did not enact ORS 215.211 until 2010
6 and LCDC did not adopt OAR 660-033-0030(5) until 2012. We agree. *Linn Co.*
7 did not concern site-specific soils assessments at all.

8 In its reply brief, COLW argues that OAR 660-033-0030(5) and OAR 660-
9 033-0020(1)(a)(A) govern different actors. According to COLW, while ORS
10 215.211 and OAR 660-033-0030(5) *allow individual persons* to provide more
11 detailed data on soil capacity than is contained in the NRCS mapping, OAR 660-
12 033-0020(1)(a)(A) *requires counties* to designate land that the NRCS mapping
13 identifies as predominantly Class 1 to 6 soils as agricultural land. We understand
14 COLW to argue that land that the NRCS mapping identifies as predominantly
15 Class 1 to 6 soils must be considered agricultural land regardless of what a site-
16 specific soils assessment reveals.

17 COLW's argument is inconsistent with the text of ORS 215.211 and OAR
18 660-033-0030(5), which provide that the more detailed soils information is
19 intended to "assist the county to make a better determination of whether land
20 qualifies as agricultural land" than the NRCS mapping would allow, and which
21 provide that the more detailed soils information is intended "for use in the
22 determination of whether land qualifies as agricultural land." If a county was

1 bound by the NRCS mapping, then more detailed soils information could not
2 “assist” the county and the county could not “use” that information to make a
3 “better” determination than the NRCS mapping would allow.

4 We conclude that the county did not misconstrue OAR 660-033-
5 0020(1)(a)(A) in concluding that it could rely on the site-specific soils assessment
6 to determine that the subject property is not predominantly Class 1 to 6 soils,
7 notwithstanding that the NRCS mapping identifies the subject property as
8 predominantly Class 1 to 6 soils.

9 COLW’s first assignment of error is denied.

10 **2. Adequacy of Site-Specific Soils Assessment**

11 In its third assignment of error, petitioner Department of Land
12 Conservation and Development (DLCD) argues that the board of commissioners
13 misconstrued OAR 660-033-0020(1)(a)(A) in concluding that the subject
14 property is not predominantly Class 1 to 6 soils. Rather than determining whether
15 *all nine lots, considered together*, are predominantly Class 1 to 6 soils, DLCD
16 argues that the board of commissioners should have determined whether *each*
17 *individual lot* is predominantly Class 1 to 6 soils. DLCD argues, “With 206 acres
18 of Class [6] soils on site, and nine lots, it is quite possible that one or more of the
19 lots has predominantly Class [6] soils and qualifies as ‘agricultural land’ under
20 OAR 660-033-0020(1)(a)(A).” DLCD’s Petition for Review 28-29. Because
21 neither the site-specific soils assessment nor the findings quantify the soil types
22 on each individual lot, DLCD argues that remand is required for the county to

1 make those determinations and reassess whether any individual lots are
2 predominantly Class 1 to 6 soils.

3 Thomas responds that this issue is waived because no party raised it below.
4 Issues before LUBA on review “shall be limited to those raised by any participant
5 before the local hearings body as provided by ORS 197.195 or 197.797,
6 whichever is applicable.” ORS 197.835(3). To be preserved for LUBA review,
7 an issue must “be raised and accompanied by statements or evidence sufficient
8 to afford the governing body, planning commission, hearings body or hearings
9 officer, and the parties an adequate opportunity to respond to each issue.” ORS
10 197.797(1).

11 In its petition for review, and again in its reply brief, DLCD identifies its
12 third assignment of error as having been preserved in an April 19, 2022, letter
13 that 1000 Friends submitted into the record. Record 4212-13.

14 DLCD observes that ORS 197.797(1) requires only that parties raise
15 “issues” below, not that they individual “arguments.” *SOPIP, Inc. v. Coos*
16 *County*, 57 Or LUBA 44, 64 (2008). DLCD argues that 1000 Friends’ April 19,
17 2022, letter raised the issue of compliance with OAR 660-033-0020(1)(a)(A) and
18 that that was sufficient to preserve the issue raised in its third assignment of error.

19 When attempting to differentiate between “issues” and “arguments,” there
20 is no “easy or universally applicable formula.” *Reagan v. City of Oregon City*, 39
21 Or LUBA 672, 690 (2001). While a petitioner is not required to establish that a
22 precise argument made on appeal was made below, that does not mean that “any

1 argument can be advanced at LUBA so long as it has some bearing on an
2 applicable approval criterion and general references to compliance with the
3 criterion itself were made below.” *Id.* (emphasis omitted). A particular issue must
4 be identified in a manner detailed enough to give the decision-maker and the
5 parties fair notice and an adequate opportunity to respond. *Boldt v. Clackamas*
6 *County*, 107 Or App 619, 623, 813 P2d 1078 (1991); *see also Vanspeybroeck v.*
7 *Tillamook County*, 221 Or App 677, 691 n 5, 191 P3d 712 (2008) (“[I]ssues
8 [must] be preserved at the local government level for board review * * * in
9 sufficient detail to allow a thorough examination by the decision-maker, so as to
10 obviate the need for further review or at least to make that review more efficient
11 and timely.”).

12 We have reviewed the cited pages referencing correspondence from 1000
13 Friends, and the issue raised in DLCD’s third assignment of error was not
14 preserved. The site-specific soils assessment includes a table quantifying the
15 different soil types on the subject property and four maps depicting where each
16 soil type can be found. Record 4674, 4679-82. Although 1000 Friends’ April 19,
17 2022, letter argues that the four maps included in the soils assessment are not
18 sufficiently legible to allow for verification of the quantities listed in the table,
19 1000 Friends did not argue that the soils assessment was inadequate for failing to

1 quantify the soil types on each individual lot.⁵ We conclude that 1000 Friends’
2 April 19, 2022, letter did not identify the issue raised in DLCD’s third assignment
3 of error in a manner detailed enough to give the county and the parties fair notice
4 and an adequate opportunity to respond. Accordingly, the issue is waived.

5 DLCD’s third assignment of error is denied.

6 **B. OAR 660-033-0020(1)(a)(B)**

7 In addition to lands in Eastern Oregon classified by the NRCS or a site-
8 specific soils assessment as predominantly Class 1 to 6 soils, for purposes of Goal
9 3, “agricultural land” includes “[l]and in other soil classes that is suitable for farm
10 use as defined in ORS 215.203(2)(a), taking into consideration soil fertility;
11 suitability for grazing; climatic conditions; existing and future availability of
12 water for farm irrigation purposes; existing land use patterns; technological and

⁵ OAR 660-033-0045(6)(a) provides that DLCD must review site-specific soils assessments by “[p]erforming completeness checks with reporting requirements for all submitted assessments.” DLCD’s September 2021 “Soil Assessment Completeness Review” for the subject property states:

“In accordance with OAR 660-033-0045(6)(a), [DLCD] finds that this soils assessment is complete and consistent with reporting requirements. The county may make its own determination as to the accuracy and acceptability of the soils assessment. DLCD has reviewed the soils assessment for completeness only and has not assessed whether the parcel qualifies as agricultural land as defined in OAR 660-033-0020(1) and 660-033-0030.” Record 2222.

For the location of the project site, the completeness review lists nine lots: “T14S, R12E, Section 21, 28 and 28D, Tax Lots 300, 400, 500, 600, 700, 100, 200, 300, 101, Deschutes County, Oregon.” *Id.*

1 energy inputs required; and accepted farming practices.” OAR 660-033-
2 0020(1)(a)(B).

3 “‘[F]arm use’ means the current employment of land *for the primary*
4 *purpose of obtaining a profit in money* by raising, harvesting and
5 selling crops or the feeding, breeding, management and sale of, or
6 the produce of, livestock, poultry, fur-bearing animals or honeybees
7 or for dairying and the sale of dairy products or any other
8 agricultural or horticultural use or animal husbandry or any
9 combination thereof. ‘Farm use’ includes the preparation, storage
10 and disposal by marketing or otherwise of the products or by-
11 products raised on such land for human or animal use. ‘Farm use’
12 also includes the current employment of land for the primary
13 purpose of obtaining a profit in money by stabling or training
14 equines including but not limited to providing riding lessons,
15 training clinics and schooling shows. ‘Farm use’ also includes the
16 propagation, cultivation, maintenance and harvesting of aquatic,
17 bird and animal species that are under the jurisdiction of the State
18 Fish and Wildlife Commission, to the extent allowed by the rules
19 adopted by the commission. ‘Farm use’ includes the on-site
20 construction and maintenance of equipment and facilities used for
21 the activities described in this subsection.” ORS 215.203(2)(a)
22 (emphasis added).

23 The board of commissioners concluded that the subject property is not
24 suitable for farm use because “no person would undertake agricultural activities
25 on the subject property for the primary purpose of obtaining a profit in money.”
26 Record 22. The board of commissioners concluded that the shallow, poor quality
27 soils on the subject property will not hold sufficient water to support the growth
28 of crops without irrigation. The board of commissioners concluded that the cost
29 of establishing an irrigation system and water supply on the subject property
30 would be \$8,635,000. Assuming that a loan with a favorable interest rate could

1 be obtained to finance that cost, the board of commissioners concluded that the
2 annual payment on such a loan would be \$345,400. The board of commissioners
3 observed that, according to the U.S. Department of Agriculture’s 2017 Census of
4 Agriculture, the average annual gross income of profitable farms in the county is
5 \$31,739. Accordingly, the board of commissioners concluded that that the subject
6 property is not suitable for growing crops. Record 24-25.

7 The board of commissioners concluded that the only farm use for which
8 non irrigated land that is predominantly Class 7 and 8 soils, such as the subject
9 property, is potentially suitable for is dryland grazing. Relying on (1) a formula
10 developed by the Oregon State University (OSU) Extension Service for the
11 income from grazing cattle and (2) estimates of the amount of forage grown on-
12 site provided by DLCD, the Oregon Department of Agriculture (ODA), and the
13 Oregon Department of Fish and Wildlife (ODFW), the board of commissioners
14 concluded that the subject property could generate \$4,899 per year in gross
15 income in dry years and \$9,798 in wet years. Accordingly, the board of
16 commissioners concluded that the subject property is not suitable for dryland
17 grazing. Record 22-23. Specifically, the board of commissioners concluded,
18 “[T]he property may be used for grazing livestock but there is inadequate forage
19 on the property to generate net income for a rancher from grazing.” Record 23.
20 In reaching that conclusion, the board of commissioners also relied on testimony
21 from several farmers and ranchers. Record 24. The board of commissioners
22 concluded that the subject property is not suitable for raising poultry, stabling or

1 training equines, or establishing a feed lot for similar reasons: Sufficient feed
2 cannot be grown on-site. Record 26-27.

3 The board of commissioners also incorporated the county hearings
4 officer’s findings. Record 19-20. Those findings address each of the factors listed
5 in OAR 660-033-0020(1)(a)(B) individually: soil fertility, suitability for grazing,
6 climatic conditions, existing and future availability of water for farm irrigation
7 purposes, existing land use patterns, technological and energy inputs required,
8 and accepted farming practices. Record 77-80.

9 **1. Profitability**

10 Again, OAR 660-033-0020(1)(a)(B) defines “agricultural land” to include
11 land that is “suitable for farm use” based on a number of factors, and ORS
12 215.203(2)(a) defines “farm use” to include farm activities that are undertaken
13 “for the primary purpose of obtaining a profit in money.”

14 **a. Capital Costs**

15 The board of commissioners found that “[t]he expenses to establish an
16 irrigation system and the shallow, poor quality soils present on the subject
17 property would prevent a reasonable farmer from believing that he or she would
18 ever make a profit in money by conducting irrigation water-dependent farm uses
19 on the subject property.” Record 25. In reaching that conclusion, the board of
20 commissioners estimated that the cost of establishing an irrigation system and
21 water supply on the subject property would be \$8,635,000 and that the annual
22 payment on a favorable loan to finance that cost would be \$345,400.

1 In the first subassignment of error under its third assignment of error,
2 COLW argues that the cost of establishing an irrigation system and water supply
3 is a “capital cost” and that the board of commissioners misconstrued ORS
4 215.203(2)(a) in considering capital costs in determining whether a farmer would
5 be able to grow crops on the subject property for the primary purpose of obtaining
6 a profit in money. In *Wetherell v. Douglas County*, the Supreme Court
7 determined that an LCDC rule prohibiting consideration of profitability when
8 determining whether land is “agricultural land,” was inconsistent with ORS
9 215.203(2)(a) and Goal 3. 342 Or 666, 160 P3d 614 (2007). The Supreme Court
10 explained:

11 “The factfinder may consider ‘profitability,’ which includes
12 consideration of the monetary benefits or advantages that are or may
13 be obtained from the farm use of the property *and* the costs or
14 expenses associated with those benefits, to the extent such
15 consideration is consistent with the remainder of the definition of
16 ‘agricultural land’ in Goal 3.” *Id.* at 682 (emphasis in original).

17 COLW observes that the Supreme Court defined “profit,” for purposes of ORS
18 215.203(2)(a), to mean “the excess or the net of the returns or receipts over the
19 costs or expenses *associated with the activity that produced the returns.*” *Id.*
20 (emphasis added). We understand COLW to argue that the relevant costs or
21 expenses, for purposes of evaluating profitability, are those associated with the
22 day-to-day operations of the farm use under consideration. COLW’s argument is
23 not specific to a particular farm use but, rather, broadly that “[t]he County’s
24 decision confuses the concepts of intangible assets, a farmer’s profit or loss from

1 engaging in a farm activity, and a farmer’s intent in pursuing that farm activity.”
2 COLW’s Petition for Review 34.

3 710 Properties responds, and we agree, that, even if COLW is correct that
4 the board of commissioners should not have based its consideration of
5 profitability on the full cost of establishing an irrigation system and water supply,
6 \$8,635,000, the board of commissioners also considered the estimated annual
7 payment on a favorable loan to finance that cost, \$345,400. COLW has not
8 established that the board of commissioners erred in considering that cost or
9 expense in determining whether a farmer would be able to use the subject
10 property for the primary purpose of obtaining a profit in money from farm use.
11 Pursuant to OAR 660-033-0020(1)(a)(B), the suitability of land for farm use may
12 include consideration of the existing and future availability of water for irrigation.
13 The annual cost of procuring water for irrigation is a permissible consideration
14 when evaluating whether land is suitable for farm use.

15 The first subassignment of error under COLW’s third assignment of error
16 is denied.

17 **b. Reasonable Farmer**

18 In the second subassignment of error under its third assignment of error,
19 COLW argues that the board of commissioners misconstrued ORS 215.203(2)(a)
20 in concluding that the subject property is not suitable for farm use because a
21 “reasonable farmer” would not have an expectation of obtaining a profit in money
22 from growing crops thereon. Record 25. COLW argues that ORS 215.203(2)(a)

1 contains no reasonableness standard and that the board of commissioners’
 2 interpretation inserts into that statute what has been omitted, contrary to ORS
 3 174.010.⁶ COLW argues that, “[t]hough a farmer may lack business acumen, the
 4 phrase ‘primary purpose of obtaining a profit in money’ refers to the intent of a
 5 farmer to obtain a profit in money from farm activity.” COLW’s Petition for
 6 Review 35. We understand COLW to argue that whether land would be employed
 7 “for the primary purpose of obtaining a profit in money,” for purposes of ORS
 8 215.203(2)(a), is a subjective test that focuses on the actual intent of the farmer.

9 We have previously rejected such an interpretation. In *Friends of the Creek*
 10 *v. Jackson County*, we explained:

11 “[W]e do not believe the legislature intended, by requiring that the
 12 land be currently employed ‘for the primary purpose of obtaining a
 13 profit in money by raising, harvesting and selling crops,’ to require
 14 an inquiry into the primary actual motivation of particular land
 15 owners. Such an inquiry could easily have the anomalous result of
 16 having a farm that is indistinguishable from its neighbor fall outside
 17 the ORS 215.203(2)(a) definition of farm use, simply because its
 18 owner happened to be primarily motivated by something other than
 19 the monetary return that is realized from selling the crops that are
 20 raised on the property.” 36 Or LUBA 562, 576 (1999).

⁶ ORS 174.010 provides:

“In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, *not to insert what has been omitted*, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all.” (Emphasis added.)

1 In *Cox v. Polk County*, we explained:

2 “The ‘primary purpose’ requirement is directed at the activities that
3 are occurring on the land, not the actual motivations of the owner or
4 operator that conducts those activities. For example, a proposed
5 poplar tree farm could be owned and operated by (1) a bona fide
6 farmer who earns most of his or her income from the farm, (2) a
7 doctor living in an EFU zone who earns a small part of his or her
8 income from the farm, or (3) a real estate investment trust that holds
9 the property for long-term speculative purposes and earns a tiny
10 fraction of its income from the annual farm profits. So long as
11 [crops] are raised, harvested and sold for a gross profit, in our view,
12 it does not matter that the particular owner of the * * * farm may
13 primarily be motivated to operate the * * * farm by factors other
14 than the profit that is actually realized by raising and selling the
15 [crops].” 39 Or LUBA 1, 11-12 (2000).

16 Thus, whether land may be employed “for the primary purpose of obtaining a
17 profit in money,” for purposes of ORS 215.203(2)(a), is an objective test that
18 focuses on the activities that would be occurring on the land.

19 Accordingly, we have explained that the question under OAR 660-033-
20 0020(1)(a)(B) is “whether a *reasonable farmer* would be motivated to put the
21 land to agricultural use, for the primary purpose of obtaining a profit in money.”
22 *Landwatch Lane County v. Lane County*, 77 Or LUBA 368, 371 (2018)
23 (emphasis added). Similarly, we have said that the question is “whether the
24 property is capable of farm use with a *reasonable expectation* of yielding a profit
25 in money.” *Doherty v. Wheeler County*, 56 Or LUBA 465, 472 (2008) (internal
26 quotation marks omitted; emphasis added). The board of commissioners did not
27 err in considering whether a “reasonable farmer” would have an expectation of

1 obtaining a profit in money from growing crops on the subject property. Record
2 25.

3 The second subassignment of error under COLW’s third assignment of
4 error is denied.

5 COLW’s third assignment of error is denied.

6 **c. Commercial Scale**

7 In *Wetherell v. Douglas County*, we explained that “Goal 3 protects small-
8 scale agricultural uses as well as large-scale ones,” and we concluded that the
9 county in that case erred in applying what was “essentially a ‘commercial-scale’
10 agricultural operation standard under OAR 660-033-0020(1)(a)(B).” 50 Or
11 LUBA 167, 184-85 (2005), *rem’d on other grounds*, 204 Or App 732, 132 P3d
12 41 (2006), *rem’d on other grounds*, 342 Or 666, 160 P3d 614 (2007). In a portion
13 of the first subassignment of error under its first assignment of error, Redside
14 argues that the board of commissioners, like the county in *Wetherell*,
15 misconstrued OAR 660-033-0020(1)(a)(B) and ORS 215.203(2)(a) in
16 concluding that the subject property would be suitable for farm use only if it could
17 support farm activities at a relatively large, commercial scale or intensity.

18 We do not understand the board of commissioners to have concluded that
19 the subject property is not suitable for farm use because it cannot support farm
20 activities at a commercial scale. In other words, the county did not conclude that,
21 while a farmer might have a reasonable expectation of obtaining a profit in
22 money, that profit would not be large enough to support farm activities at a

1 commercial scale. Rather, we understand the board of commissioners to have
 2 concluded that, based on the factors listed in OAR 660-033-0020(1)(a)(B), a
 3 farmer would not have a reasonable expectation of obtaining *any* profit in money
 4 from engaging in any of the farm activities listed in ORS 215.203(2)(a). *See, e.g.,*
 5 Record 24 (“No reasonable farmer would conduct a cattle or other livestock
 6 operation on the subject property intending to make *a profit in money* from the
 7 endeavor.” (Emphasis added.)); Record 25 (“The expenses to establish an
 8 irrigation system and the shallow, poor quality soils present on the subject
 9 property would prevent a reasonable farmer from believing that he or she would
 10 ever make *a profit in money* by conducting irrigation water-dependent farm uses
 11 on the subject property.” (Emphasis added.)). Accordingly, this argument
 12 provides no basis for reversal or remand.

13 This portion of the first subassignment of error under Redside’s first
 14 assignment of error is denied.

15 **d. Weight of Profitability as a Consideration**

16 Again, OAR 660-033-0020(1)(a)(B) defines “agricultural land” to include
 17 land that is “suitable for farm use” based on a number of factors. We have
 18 explained:

19 “[T]he considerations listed in OAR 660-033-0020(1)(a)(B)—soil
 20 fertility, suitability for grazing, climatic conditions, existing and
 21 future availability of water for farm irrigation purposes, existing
 22 land use patterns, technological and energy inputs required, and
 23 accepted farming practices—are the *primary drivers* of any
 24 determination under the rule whether land is ‘suitable for farm use’

1 as defined in ORS 215.203(2)(a). * * *

2 “* * * * *

3 “* * * [W]hile *profitability* is a permissible consideration in
4 determining whether land is agricultural land under the rule
5 definition, it *is a relatively minor consideration*, and one with a large
6 potential for distracting the decision maker and the parties from the
7 primary considerations listed in the rule definition—soil fertility,
8 suitability for grazing, climatic conditions, existing and future
9 availability of water for farm irrigation purposes, existing land use
10 patterns, technological and energy inputs required, and accepted
11 farming practices.” *Wetherell v. Douglas County*, 58 Or LUBA 638,
12 655-57 (2009) (emphases added).

13 Again, ORS 215.203(2)(a) provides:

14 “As used in this section, ‘*farm use*’ means the current employment
15 of land for the primary purpose of obtaining a profit in money by
16 raising, harvesting and selling crops or the feeding, breeding,
17 management and sale of, or the produce of, livestock, poultry, fur-
18 bearing animals or honeybees or for dairying and the sale of dairy
19 products or any other agricultural or horticultural use or animal
20 husbandry or any combination thereof. ‘Farm use’ includes the
21 preparation, storage and disposal by marketing or otherwise of the
22 products or by-products raised on such land for human or animal
23 use. ‘Farm use’ also includes the current employment of land for the
24 primary purpose of obtaining a profit in money by stabling or
25 training equines including but not limited to providing riding
26 lessons, training clinics and schooling shows. ‘Farm use’ also
27 includes the propagation, cultivation, maintenance and harvesting of
28 aquatic, bird and animal species that are under the jurisdiction of the
29 State Fish and Wildlife Commission, to the extent allowed by the
30 rules adopted by the commission. ‘Farm use’ includes the on-site
31 construction and maintenance of equipment and facilities used for
32 the activities described in this subsection. ‘Farm use’ does not
33 include the use of land subject to the provisions of ORS chapter 321,
34 except land used exclusively for growing cultured Christmas trees
35 or land described in ORS 321.267 (3) or 321.824 (3).” (Emphases

1 added.)
2 DLCD’s second assignment of error, the first subassignment of error under
3 Redside’s first assignment of error, and a portion of intervenors-petitioners
4 William Buchanan, Elizabeth Buchanan, and Keystone Cattle & Performance
5 Horses, LLC’s (collectively, Keystone’s) assignment of error are that the board
6 of commissioners misconstrued OAR 660-033-0020(1)(a)(B) and ORS
7 215.203(2)(a) in its consideration of the profitability of farm uses on the subject
8 property. DLCD, Redside, and Keystone argue that, in determining whether the
9 subject property is suitable for farm use, rather than treating the factors listed in
10 OAR 660-033-0020(1)(a)(B) as the primary drivers of the determination and
11 profitability as a relatively minor consideration, the board of commissioners
12 reduced the inquiry “to a binary test with profitability as the determining factor
13 of whether Goal 3 protection applies.” DLCD’s Petition for Review 18. While
14 the county’s findings address each of the factors listed in OAR 660-033-
15 0020(1)(a)(B) individually, DLCD, Redside, and Keystone observe that almost
16 all of those findings ultimately relate to profitability.

17 710 Properties responds that the county properly related its findings
18 addressing each of the factors listed in OAR 660-033-0020(1)(a)(B) to
19 profitability. 710 Properties argues that profitability is not merely a factor in
20 addition to those listed in OAR 660-033-0020(1)(a)(B). Rather, 710 Properties
21 observes that profitability is part of the definition of “farm use” itself at ORS
22 215.203(2)(a) and that OAR 660-033-0020(1)(a)(B) requires a determination of

1 whether the subject property is “suitable for *farm use*” based on the listed factors.
 2 (Emphasis added.) 710 Properties argues that the question is not whether, based
 3 on the factors listed in OAR 660-033-0020(1)(a)(B) as well as profitability, the
 4 property is suitable for engaging in any of the farm activities listed in ORS
 5 215.203(2)(a). Rather, 710 Properties argues that the question is whether, based
 6 on the factors listed in OAR 660-033-0020(1)(a)(B), a farmer would have a
 7 reasonable expectation of obtaining a profit in money from engaging in any of
 8 the farm activities listed in ORS 215.203(2)(a).

9 In *Wetherell*, the applicant sought to demonstrate that the subject property
 10 was not “agricultural land” for purposes of Goal 3. To that end, the applicant
 11 provided an economic analysis, referred to as the “Day report,” which “concluded
 12 that the annual and amortized expenses of conducting a grazing operation using
 13 accepted farm practices far exceed the likely annual revenues, given inherent
 14 limitations such as poor soils and the current neglected condition of the property.”
 15 58 Or LUBA at 655. In a portion of one subassignment of error, the petitioners
 16 argued that the county misconstrued the applicable law by placing too much
 17 weight on profitability. We observed that economic analyses are inherently
 18 subject to manipulation.⁷

⁷ We explained:

“[A]n economic analysis like that of the Day report is highly manipulable, and can yield dramatically different results depending

1 The county’s findings “extensively discuss[ed] the considerations set out
2 in OAR 660-033-0020(1)(a)(B), and conclude[d] based on those considerations

on what variables are assumed and what approaches are used. To take one example, by far the largest of the assumed expenses under the Day report is for fertilizer, in amounts and at intervals in excess of the amounts and intervals applied to the property in its previous history of grazing, even though the Day report concludes that application of fertilizer in those amounts would be uneconomical and not significantly improve productivity. The parties dispute, among many other things, whether ‘accepted farming practices’ would include annual application of fertilizer and in such amounts on the subject property. We do not resolve that dispute here, but it illustrates the difficulty in assigning the appropriate role and weight to an economic analysis such as the Day report. Depending on what assumptions and variables are used, such economic analyses could easily conclude that is ‘unprofitable’ to graze land that historically has been grazed profitably or, for that matter, that it is ‘profitable’ to graze land that in fact cannot be grazed profitably. In *Wetherell III*, the Court seemed to caution against relying too heavily on such economic analyses of profitability. *See* 342 Or at 683 (rejecting arguments that ‘if particular land currently is “profitable” or produces “gross farm income,” then that land necessarily meets the “farm use” test and is properly classified as agricultural land under Goal 3, whereas if the land is “unprofitable” for farming or produces no “gross farm income,” then it necessarily is not agricultural land under Goal 3’).

“* * * Because an economic analysis such as the Day report yields hard numbers, it is easy to assign an unwarranted significance to the analysis, and fail to appreciate that it is based on highly variable assumptions regarding hypothetical farm uses, and that its conclusions are only as reliable as its assumptions.” *Wetherell*, 58 Or LUBA at 656-57.

1 that the property [was] not agricultural land under the definition.” *Id.* at 657. The
2 county’s findings also

3 “extensively discuss[ed] profitability and rel[ied] heavily on the Day
4 report to conclude that the subject property [was] not suitable for
5 farm use as defined in ORS 215.203(2)(a), in part because the
6 county believed, based on the Day report, that no farm use of the
7 property could reasonably be expected to yield a profit.” *Id.*

8 The intervenor argued that,

9 “even if different assumptions are used[,] the gap between annual
10 income and annual and amortized expenses is so large that under no
11 likely scenario would a prudent farmer be motivated to graze the
12 subject property *alone or in conjunction with other property with*
13 *the expectation of obtaining a profit in money.*” *Id.* at 656 (emphasis
14 added.)

15 We were unable to conclude that the county’s findings “place[d] preponderant or
16 inappropriate weight on profitability or in considering profitability fail[ed] to
17 give sufficient weight to the factors listed in OAR 660-033-0020(1)(a)(B).” *Id.*
18 at 657. We therefore denied that portion of the subassignment of error.

19 Here, the board of commissioners related the various factors to their impact
20 on the profitability of farming activities on the subject property. Those factors
21 properly inform whether a farmer would have a reasonable expectation of
22 obtaining a profit by engaging in any of the farm activities listed in ORS
23 215.203(2)(a) and, therefore, inform whether the property is suitable for farm
24 use. We conclude, however, that the board of commissioners did err in placing
25 undue weight on the profitability of farm use *on the subject property*. In various
26 assignments of error, COLW, DLCD, and Redside emphasize that the definition

1 of “farm use” at ORS 215.203(2)(a) requires not that a farm activity *actually* be
2 profitable but that it be undertaken for the *primary purpose* of obtaining a profit.
3 DLCD argues that “[t]he key language in ORS 215.203(2)(a) is as follows:
4 ““farm use” means the current employment of land *for the primary purpose* of
5 obtaining a profit in money by [one or a combination of the listed activities.]”
6 DLCD’s Petition for Review 23 (emphasis in brief). “[T]he profitability aspect
7 of the definition relates to the *primary purpose* of the activity.” *Id.* at 24
8 (emphasis in original). As we discuss in our resolution of a subsequent
9 assignment of error, the board of commissioners’ decision fails to consider the
10 ability to use the subject property with a primary purpose of obtaining a profit in
11 money *in conjunction with other property*. The county found:

12 “The state agencies repeatedly assert that the barriers to farming the
13 subject property set forth by [710 Properties] could be alleviated by
14 combining farm operations with other owned and/or leased land,
15 whether adjacent to the subject property or not. The Hearings
16 Officer finds that the definition of ‘farm use’ in ORS 215.203(2)(a)
17 refers to ‘**land**,’—not ‘lands,’—and does not include any reference
18 to ‘combination’ or requirement to ‘combine’ with other agricultural
19 operations. Therefore, if the subject property, in and of itself cannot
20 be engaged in farm use for the primary purpose of obtaining a profit
21 in money, it does not constitute agricultural land.” Record 76
22 (boldface and italics in original).

23 ORS 215.203(2)(a) refers to the employment of land for the primary purpose of
24 obtaining a profit by engaging in a farm activity. “Nearby or adjacent land,
25 regardless of ownership, shall be examined to the extent that a lot or parcel is
26 either ‘suitable for farm use’ or ‘necessary to permit farm practices to be

1 undertaken on adjacent or nearby lands’ outside the lot or parcel.” OAR 660-033-
2 0030(3). Relating the profitability of farm related activity solely to the activity
3 on the subject property places undue weight on profitability. The board of
4 commissioners improperly weighed the consideration of profitability of the
5 subject property operating independently.

6 DLCD’s second assignment of error, the first subassignment of error under
7 Redside’s first assignment of error, and this portion of Keystone’s assignment of
8 error are sustained.

9 **2. Source of Feed**

10 Again, the board of commissioners concluded that the subject property is
11 not suitable for grazing, raising poultry, stabling or training equines, or
12 establishing a feed lot because sufficient feed cannot be grown on-site. For
13 example, the board of commissioners found:

14 “The suitability test, as indicated by DLCD/ODA/ODFW
15 comments, relates to whether the subject property itself can support
16 a farm use. This means that the land must be able to produce crops
17 or forage adequate to feed livestock raised on the property;
18 something that severely limits the size of any operation.” Record 26.

19 The first subassignment of error under DLCD’s first assignment of error
20 and the second and fourth subassignments of error under Redside’s first
21 assignment of error are that the board of commissioners misconstrued OAR 660-
22 033-0020(1)(a)(B) and ORS 215.203(2)(a) in concluding that land is suitable for
23 farm uses involving animals only if sufficient feed can be grown on-site. DLCD

1 and Redside argue that that interpretation is not supported by the text of OAR
2 660-033-0020(1)(a)(B) or ORS 215.203(2)(a), both of which are silent as to the
3 source of the feed that is necessary to sustain animals involved in farm uses.
4 DLCD and Redside argue that there is no apparent reason why forage grown on-
5 site cannot be supplemented with feed imported from off-site, which would
6 enable the subject property to sustain more animals and, potentially, obtain a
7 profit in money. DLCD and Redside argue that the board of commissioners’
8 interpretation inserts into OAR 660-033-0020(1)(a)(b) and ORS 215.203(2)(a)
9 limitations that have been omitted, contrary to ORS 174.010. *See* n 6.

10 710 Properties responds that this issue is waived because no party raised it
11 below. In its petition for review, and again in its reply brief, DLCD identifies its
12 first assignment of error as having been preserved in an April 19, 2022, letter that
13 it, ODA, and ODFW submitted into the record (state agency letter). Record 1427-
14 38. We have reviewed the cited pages, and, for the following reasons, we
15 conclude that this issue was preserved.

16 Again, for purposes of Goal 3, “agricultural land” includes land that is
17 “suitable for farm use” based on a number of factors. OAR 660-033-
18 0020(1)(a)(B). One of those factors is “soil fertility.” In addressing soil fertility,
19 the state agency letter argued:

20 “Soil fertility can be an important factor in commercial agricultural
21 operations. However, the presence of productive soils is not always
22 necessary. Many types of farm uses are not dependent on specific
23 soil types and others tend to benefit from less productive soils.

1 *Feedlots, whether commercial or personal, are frequently located*
2 *on lands with low soil fertility.”* Record 1429 (emphasis added).

3 Responding to the state agency letter, 710 Properties argued:

4 “[T]he claim that a feedlot could be sustained by the land is clearly
5 unreasonable. *It is obvious that hay and feed grown on farms with*
6 *superior soils would need to be imported to the subject property to*
7 *feed the livestock * * *.* Notwithstanding the fact that *suitability*
8 *analysis for farm use relates to a particular piece of land and its*
9 *ability to support a farm use,* accepting COLW’s or the Agency
10 Letter’s claim that a feedlot could be established is essentially a
11 claim that a feedlot could be established anywhere, either on
12 productive farm land or in a Walmart parking lot. But that argument
13 runs in the face of the purpose of Goal 3—which is to protect lands
14 that can actually be used to grow food and would make meaningless
15 almost every consideration enumerated by the rule.” Record 651-52
16 (footnote omitted; emphases added).

17 Like 710 Properties, the county hearings officer recognized the state agency
18 letter’s feedlot example as an argument that forage grown on-site can be
19 supplemented with feed imported from off-site:

20 “COLW’s claim that ‘soil capability * * * is irrelevant’ because
21 some farm uses are ‘unrelated to soil type’ is erroneous because the
22 definition of ‘Agricultural Land’ provided by Goal 3 makes soil
23 fertility and the suitability of the soil for grazing the exact issues that
24 must be considered by the County to determine whether the subject
25 property is ‘land in other soil classes that is suitable for farm use.’
26 *DLCD, ODFW and ODA make the same mistake in ignoring the*
27 *ability of the land itself, rather than imported feed, to support a farm*
28 *use.* The fact that the suitability test is tied to the specific soil found
29 on a subject Property by the Goal 3 definition makes it clear that the
30 proper inquiry is whether the land itself can support a farm use.
31 Otherwise, any land, no matter how barren, would be classified as
32 farmland—which it is not and should not be.” Record 64 (emphasis
33 added).

1 Finally, the board of commissioners found, “While hay and feed may be imported
2 to increase production of livestock, that is not a correct measure of whether the
3 land proposed for rezoning can support a particular farm use—the question asked
4 by the definition of Agricultural Land in Goal 3.” Record 27.

5 We conclude that the state agency letter gave the county and the parties
6 fair notice and an adequate opportunity to respond to the argument that forage
7 grown on-site can be supplemented with feed imported from off-site.
8 Accordingly, the issue is not waived.

9 On the merits, 710 Properties’ response is two-fold. First, 710 Properties
10 defends the county’s conclusion that whether the subject property would be able
11 to obtain a profit in money if forage grown on-site was supplemented with feed
12 imported from off-site does not matter for purposes of determining whether the
13 subject property is suitable for farm use. 710 Properties argues that, under ORS
14 215.203(2)(a) and OAR 660-033-0020(1)(a)(B), it is the subject property’s
15 capacity for farm use that must be analyzed, not whether other lands’ capacity
16 for farm use can make the subject property suitable for farm use. 710 Properties
17 repeats its argument below that, if feed imported from off-site could make
18 otherwise unsuitable land suitable for farm use and therefore agricultural land,
19 then “any and all lands—including a Walmart parking lot—would * * * qualify
20 to be protected as Goal 3 protected land. That cannot be the law.” 710 Properties’
21 Intervenor-Respondent’s Brief 17.

1 We agree with DLCD and Redside that the board of commissioners’
2 interpretation is not supported by the text of OAR 660-033-0020(1)(a)(B) or ORS
3 215.203(2)(a), both of which are silent as to the source of the feed that is
4 necessary to sustain animals involved in farm uses. That interpretation inserts
5 what has been omitted, contrary to ORS 174.010. *See* n 6. Under ORS
6 215.203(2)(a), “farm use” includes the feeding, breeding, management, and sale
7 of livestock and poultry and the stabling or training of equines. Whether
8 livestock, poultry, and equines are sustained with forage grown on-site or feed
9 imported from off-site, their feeding, breeding, management, sale, stabling, and
10 training potentially qualify as farm uses. The board of commissioners
11 misconstrued OAR 660-033-0020(1)(a)(B) and ORS 215.203(2)(a) in
12 concluding that land is suitable for farm uses involving animals only if sufficient
13 feed can be grown on-site.

14 In response to 710 Properties’ argument that, under the foregoing
15 interpretation, any and all lands—including a Walmart parking lot—would
16 qualify as agricultural lands, we repeat that, in determining whether land is
17 suitable for dryland grazing, the question is whether, based on the factors listed
18 in OAR 660-033-0020(1)(a)(B), a farmer would have a reasonable expectation
19 of obtaining a profit in money from that activity. That requirement remains, even
20 though forage grown on-site may be supplemented by feed imported from off-
21 site.

1 710 Properties’ second response is that at least two ranchers testified below
2 that it would be infeasible to supplement forage grown on the subject property
3 with feed imported from elsewhere. Record 1417, 3022. 710 Properties argues
4 that no party offered contrary credible testimony or evidence.

5 It may be that, even if feed is imported from off-site, the subject property
6 is not suitable for the feeding, breeding, management, and sale of livestock and
7 poultry or the stabling or training of equines for the primary purpose of obtaining
8 a profit in money, given the factors listed in OAR 660-033-0020(1)(a)(B).
9 However, the board of commissioners did not reach that conclusion. Instead, as
10 quoted above, the board of commissioners erroneously concluded that it need not
11 consider whether forage grown on-site can be supplemented by feed imported
12 from off-site. On remand, the county will have an opportunity to evaluate the
13 testimony that 710 Properties cites through the proper lens and reach its own
14 conclusion.

15 The first subassignment of error under DLCD’s first assignment of error
16 and the second and fourth subassignments of error under Redside’s first
17 assignment of error are sustained.

18 **3. On-Site Construction and Maintenance of Equipment and**
19 **Facilities**

20 “‘Farm use’ includes the on-site construction and maintenance of
21 equipment and facilities used for the activities described in this subsection.” ORS
22 215.203(2)(a). The county found that “storage and maintenance of equipment is

1 not, in and of itself, a farm use unless such equipment is for the production of
2 crops or a farm use on the subject property.” Record 78.

3 In the second subassignment of error under its first assignment of error,
4 DLCD argues that the board of commissioners misconstrued OAR 660-033-
5 0020(1)(a)(B) and ORS 215.203(2)(a) in concluding that land is suitable for the
6 “construction and maintenance of equipment and facilities used for” farm
7 activities only if those farm activities also occur on the subject property. DLCD
8 argues that that interpretation is not supported by the text of OAR 660-033-
9 0020(1)(a)(B) or ORS 215.203(2)(a). DLCD argues that, as long as the
10 equipment and facilities are used for farm activities, the construction and
11 maintenance thereof are farm uses, regardless of whether those farm activities
12 occur on the subject property or elsewhere.

13 710 Properties defends the county’s conclusion. 710 Properties argues that,
14 under ORS 215.203(2)(a) and OAR 660-033-0020(1)(a)(B), the question is
15 whether the *subject property* is suitable for farm use, not whether the subject
16 property is suitable for supporting farm uses on *other lands*. 710 Properties
17 argues that, if land was suitable for the construction and maintenance of
18 equipment and facilities used for farm activities even where those farm activities
19 occur elsewhere, then “*every land* in Oregon [would] be Goal 3 lands because it
20 too could support hay storage or a machine shop.” 710 Properties’ Intervenor-
21 Respondent’s Brief 37 (emphasis in original). 710 Properties observes that, in
22 addition to lands in Eastern Oregon classified by the NRCS or a site-specific soils

1 assessment as predominantly Class 1 to 6 soils and land in other soil classes that
2 is suitable for farm, for purposes of Goal 3, “agricultural land” includes “[l]and
3 that is necessary to permit farm practices to be undertaken on adjacent or nearby
4 agricultural land.” OAR 660-033-0020(1)(a)(C). In light of that context, 710
5 Properties argues that, where equipment and facilities are constructed or
6 maintained on certain land, but where the farm activities for which that
7 equipment and those facilities are used occurs on other land, the land on which
8 the equipment and facilities are constructed and maintained is “agricultural land”
9 only if that construction and maintenance is “necessary” to permit the farm
10 practices on the other land. 710 Properties argues that no party raised the issue
11 below that the construction and maintenance of equipment and facilities on the
12 subject property is “necessary” to permit farm practices elsewhere and that that
13 issue is therefore waived.

14 We do not understand DLCD to argue that the construction or maintenance
15 of equipment and facilities on the subject property is “necessary” to permit farm
16 practices elsewhere under OAR 660-033-0020(1)(a)(C). Rather, DLCD argues
17 that land may be “suitable” for the construction and maintenance of equipment
18 and facilities used for farm activities under OAR 660-033-0020(1)(a)(B) even
19 where those farm activities occur on other lands. We agree with DLCD. Under
20 ORS 215.203(2)(a), “farm use” includes the construction and maintenance of
21 equipment and facilities used for farm activities. Whether those farm activities
22 occur on the subject property or elsewhere, the construction and maintenance of

1 the equipment and facilities used therefor is a farm use. The board of
2 commissioners misconstrued OAR 660-033-0020(1)(a)(B) and ORS
3 215.203(2)(a) in concluding that land is suitable for that farm use only if the farm
4 activities occur on the same land.

5 In response to 710 Properties' argument that, under the foregoing
6 interpretation, all lands in Oregon would qualify as agricultural land because they
7 could support hay storage or a machine shop, we repeat that, in determining
8 whether land is suitable for the construction and maintenance of equipment and
9 facilities, the county must consider the factors listed in OAR 660-033-
10 0020(1)(a)(B): soil fertility, suitability for grazing, climatic conditions, existing
11 and future availability of water for farm irrigation purposes, existing land use
12 patterns, technological and energy inputs required, and accepted farming
13 practices. That requirement remains, even though the farm activities for which
14 the equipment and facilities are used occur elsewhere.

15 It may be that, even if the farm activities for which the equipment and
16 facilities are used occur elsewhere, the subject property is not suitable for the
17 construction and maintenance of the equipment and facilities used therefor, given
18 the factors listed in OAR 660-033-0020(1)(a)(B). However, the board of
19 commissioners did not reach that conclusion. Instead, the board of
20 commissioners erroneously concluded that land is suitable for that farm use only
21 if the farm activities occur on the same land. On remand, the county will have an

1 opportunity to evaluate the evidence in the record through the proper lens and
2 reach its own conclusion.

3 The second subassignment of error under DLCD’s first assignment of error
4 is sustained.

5 **4. Nearby or Adjacent Land**

6 The county found:

7 “The state agencies repeatedly assert that the barriers to farming the
8 subject property set forth by [710 Properties] could be alleviated by
9 combining farm operations with other owned and/or leased land,
10 whether adjacent to the subject property or not. The Hearings
11 Officer finds that the definition of ‘farm use’ in ORS 215.203(2)(a)
12 refers to ‘*land*,’—not ‘lands,’—and does not include any reference
13 to ‘combination’ or requirement to ‘combine’ with other agricultural
14 operations. Therefore, if the subject property, in and of itself cannot
15 be engaged in farm use for the primary purpose of obtaining a profit
16 in money, it does not constitute agricultural land. There is no
17 requirement in ORS 215.203(2)(a) or OAR Chapter 660-033 that a
18 certain property must ‘combine’ its operations with other properties
19 in order to be employed for the primary purpose of obtaining a profit
20 in money and thus, engaged in farm use.” Record 76 (boldface and
21 italics in original).

22 OAR 660-033-0030(3) provides, “Goal 3 attaches no significance to the
23 ownership of a lot or parcel when determining whether it is agricultural land.
24 Nearby or adjacent land, regardless of ownership, shall be examined to the extent
25 that a lot or parcel is * * * ‘suitable for farm use’ * * *.” The third subassignment
26 of error under DLCD’s first assignment of error, the third subassignment of error
27 under Redside’s first assignment of error, and a portion of Keystone’s assignment
28 of error are that, in light of OAR 660-033-0030(3), the board of commissioners

1 misconstrued OAR 660-033-0020(1)(a)(B) and ORS 215.203(2)(a) in
2 concluding that it was not required to consider whether the subject property is
3 suitable for farm use in conjunction with nearby or adjacent land.

4 710 Properties responds that this issue is waived because no party raised
5 OAR 660-033-0030(3) below. While it may be true that no party specifically
6 cited OAR 660-033-0030(3) in their testimony, the state agency letter argued that
7 utilizing a five-to-six-month grazing season “in conjunction with other lands”
8 would make the subject property more suitable for dryland grazing, and the
9 hearings officer found that the state agencies had “repeatedly” argued that the
10 county was required to consider nearby or adjacent land. Record 76, 1430. We
11 conclude that the county and the parties had fair notice and an adequate
12 opportunity to respond to that argument. Accordingly, the issue is not waived.

13 We agree with DLCD, Redside, and Keystone that the county
14 misconstrued OAR 660-033-0020(1)(a)(B) and ORS 215.203(2)(a) in
15 concluding that it was not required to consider whether the subject property is
16 suitable for farm use in conjunction with nearby or adjacent land. We have
17 previously explained that “[t]he suitability for farm use inquiry must * * *
18 consider the potential for use in conjunction with adjacent or nearby land.”
19 *Landwatch Lane County*, 77 Or LUBA at 371 (citing OAR 660-033-0030(3));
20 *see also Wetherell*, 50 Or LUBA at 186-87 (OAR 660-033-0030(3) requires
21 counties to consider whether the subject parcel can be used in conjunction with

1 nearby or adjacent land in other ownerships in determining whether the parcel is
2 “suitable for farm use” under OAR 660-033-0020(1)(a)(B)).

3 On the merits, we do not understand 710 Properties to defend the county’s
4 conclusion that it was not required to consider nearby or adjacent land in
5 determining whether the subject property is suitable for farm use under OAR
6 660-033-0020(1)(a)(B). Instead, 710 Properties observes that several farmers and
7 ranchers testified that they would not consider incorporating the subject property
8 into their farm operations. It may be that the subject property is not suitable for
9 farm use even in conjunction with nearby or adjacent land. However, the county
10 did not reach that conclusion. Instead, as quoted above, the county erroneously
11 concluded that it need not consider nearby or adjacent land at all. On remand, the
12 county will have an opportunity to evaluate the testimony that 710 Properties
13 cites through the proper lens and reach its own conclusion. We observe that
14 Keystone submitted testimony expressing its desire to use the subject property in
15 conjunction with its existing farming operations, and a business plan to do that.
16 Record 1583-602. On remand, the county should evaluate that testimony through
17 the proper lens, as well.

18 The third subassignment of error under DLCD’s first assignment of error,
19 the third subassignment of error under Redside’s first assignment of error, and
20 this portion of Keystone’s assignment of error are sustained.

21 DLCD’s first assignment of error, Redside’s first assignment of error, and
22 Keystone’s assignment of error are sustained.

1 **5. Findings and Substantial Evidence**

2 Several farmers and ranchers submitted testimony indicating that they did
3 not believe the subject property is suitable for grazing cattle. In an April 26, 2022,
4 letter, 710 Properties argued that the subject property is not suitable for a variety
5 of other farm uses including elk ranching, sheep ranching, goats, game birds,
6 poultry/chickens/eggs, alpacas, a vineyard, lavender, hemp, honey/bees, a feed
7 lot, and horse boarding and training. Record 3065-68. The letter has 80 exhibits,
8 many of which are intended to support those arguments.⁸ Record 3070-419.

9 In concluding that the subject property is not suitable for grazing cattle, the
10 board of commissioners relied on the farmer and rancher testimony:

11 “We have considered the vast amount of combined experience of
12 these farmers and ranchers in conducting similar operations and find
13 their testimony more probative and persuasive than that offered by
14 the opposition on the issue of whether the subject property is
15 suitable for farm use as defined by ORS 215.203. Based on evidence
16 and comments submitted into the record from ranchers and farmers,
17 including James M. Stirewalt, Rand Campbell, Matt and Awbrey
18 Cyrus, Russ Mattis, Zach Russell, Craig May, the Board finds the
19 subject property is not suitable for dryland grazing. No reasonable
20 farmer would conduct a cattle or other livestock operation on the
21 subject property intending to make a profit in money from the
22 endeavor.” Record 24.

⁸ The letter states, “Commenters suggested any number of additional farm uses could be made on the Property. We provide evidence of these types of uses now and their requirements to be a ‘farm use’ and done as a for-profit operation.” Record 3065.

1 In concluding that the subject property is not suitable for other farm uses, the
2 board of commissioners relied on 710 Properties’ April 26, 2022, letter: “[710
3 Properties] provided extensive evidence that a wide array of farm activities,
4 including those identified by the State agencies, would not be feasible on the
5 subject property and would not be able to be conducted with an intention to make
6 a profit in money.” Record 26.

7 In its fourth assignment of error, DLCD argues that the board of
8 commissioners’ findings that the subject property is not suitable for farm use are
9 inadequate and not supported by substantial evidence. DLCD argues that the
10 farmer and rancher testimony on which the board of commissioners relied to
11 conclude that the subject property is not suitable for grazing cattle is conclusory
12 and unhelpful. DLCD also argues that the information contained in the exhibits
13 to 710 Properties’ April 26, 2022, letter is “basic, factsheet-type information that
14 someone might glance through to learn about an animal.” DLCD’s Petition for
15 Review 32.

16 Adequate findings are required to support quasi-judicial land use
17 decisions. *Sunnyside Neighborhood v. Clackamas Co. Comm.*, 280 Or 3, 20-21,
18 596 P2d 1063 (1977). Generally, findings must (1) identify the relevant approval
19 standards, (2) set out the facts which are believed and relied upon, and (3) explain
20 how those facts lead to the decision on compliance with the approval standards.
21 *Heiller v. Josephine County*, 23 Or LUBA 551, 556 (1992). In addition, findings
22 must address and respond to specific issues relevant to compliance with

1 applicable approval standards that were raised in the proceedings below. *Norvell*
2 *v. Portland Area LGBC*, 43 Or App 849, 853, 604 P2d 896 (1979). LUBA shall
3 reverse or remand a decision that is not supported by substantial evidence in the
4 whole record. ORS 197.835(9)(a)(C). Substantial evidence is evidence that a
5 reasonable person would rely on in making a decision. *Dodd v. Hood River*
6 *County*, 317 Or 172, 179, 855 P2d 608 (1993).

7 710 Properties responds that this issue is waived because no party raised it
8 below. We agree with DLCD’s response that, in order to preserve the right to
9 challenge at LUBA the evidentiary support for findings adopted to address a
10 relevant criterion, a petitioner must challenge the proposal’s compliance with that
11 criterion during the local proceedings. The evidence ultimately relied on by the
12 decision-maker need not be anticipated and specifically challenged during the
13 local proceedings. *Lucier v. City of Medford*, 26 Or LUBA 213, 216 (1993).
14 DLCD challenged the application’s compliance with OAR 660-033-
15 0020(1)(a)(B) during the local proceedings. It was not required to anticipate that
16 the board of commissioners would ultimately rely on the information contained
17 in the exhibits to 710 Properties’ April 26, 2022, letter or the farmer and rancher
18 testimony and specifically challenge that evidence. Accordingly, the issue is not
19 waived.

20 As explained above, the board of commissioners erroneously concluded
21 (1) that it need not consider whether forage grown on-site can be supplemented
22 by feed imported from off-site, (2) that land is suitable for the construction and

1 maintenance of equipment and facilities used for farm activities only if those farm
2 activities occur on the same land, and (3) that it need not consider nearby or
3 adjacent land at all. Because we remand the county’s decision for the board of
4 commissioners to evaluate the evidence in the record through the proper lens, and
5 because the board of commissioners may adopt new or different findings on
6 remand based on the correct analytical framework, we do not resolve DLCD’s
7 fourth assignment of error.

8 **C. OAR 660-033-0020(1)(a)(C)**

9 In addition to lands in Eastern Oregon classified by the NRCS or a site-
10 specific soils assessment as predominantly Class 1 to 6 soils and other lands that
11 are suitable for farm use, for purposes of Goal 3, “agricultural land” includes
12 “[I]and that is necessary to permit farm practices to be undertaken on adjacent or
13 nearby agricultural lands.” OAR 660-033-0020(1)(a)(C). In its application, 710
14 Properties provided four tables (one for each cardinal direction) listing the
15 surrounding EFU-zoned properties, listing their current uses, listing their
16 potential farm practices, and explaining why none of them needed the subject
17 property in order to conduct those farm practices. Record 4646-48.

18 In addressing OAR 660-033-0020(1)(a)(C), the state agency letter argued:

19 “There is little discussion that we found in the information provided
20 in support of the plan amendment that adequately discusses impacts
21 to area farm operations. The discussion provided by [710 Properties]
22 focuses primarily on an assertion that any subsequent development
23 of the subject property (because of the proposed plan amendment
24 and rezone) would not adversely impact surrounding farming and

1 ranching operations primarily because the property is separated by
2 topography that would provide adequate buffers. This conclusion is
3 not supported by any comprehensive evaluation of the farming and
4 ranching practices that are associated with existing and potential
5 future farm uses in the surrounding area. Without an adequate
6 analysis of the impact on adjacent or nearby agricultural lands, there
7 are many questions that have not been evaluated. For example, what
8 would the cumulative impacts of additional residential water use be
9 to water supply for area irrigated agriculture in the region? Unlike
10 applications for irrigation use, residential wells are exempt uses and
11 thus there would be no evaluation for injury to other water users in
12 the area. What would be the traffic implications? What would the
13 siting of more dwellings do to the ability to utilize certain
14 agricultural practices? Would the expansion of residential
15 development in the area provide greater opportunities for trespass
16 from adjacent properties onto area farming operations?" Record
17 1432.

18 The hearings officer found, "[T]here is no showing that the subject
19 property is necessary for farming practices on any surrounding agricultural lands.
20 There is no evidence that *the subject property contributes* to any such practices,
21 nor that *other lands depend on use of the subject property* to undertake any farm
22 practices." Record 75 (emphases added).

23 The board of commissioners found:

24 "The State agencies raised the issue of traffic impacts related to the
25 Goal 3 issue of whether land is necessary to permit farm practices
26 to be undertaken on nearby lands. *Traffic issues are not, however, a*
27 *relevant consideration in addressing this issue because Goal 3 asks*
28 *whether the 'land' to be rezoned, the subject property, is needed by*
29 *area farms to conduct farm practices on their properties.*
30 Additionally, the record supports the finding that the small amount
31 of traffic associated with the proposed change will not prevent farm
32 practices associated with area farm uses of growing hay and grazing
33 livestock from occurring in the area." Record 29 (emphasis added).

1 Accordingly, the board of commissioners concluded that the subject property is
2 not necessary to permit farm practices on adjacent or nearby lands.

3 **1. Preservation of Agricultural Land in Large Blocks**

4 In the first subassignment of error under its first assignment of error, 1000
5 Friends argues that the board of commissioners misconstrued OAR 660-033-
6 0020(1)(a)(C) in concluding that the subject property is not necessary to permit
7 farm practices on adjacent or nearby lands because the challenged PAPA will
8 create an “island” of nonresource land within a large block of agricultural land.
9 1000 Friends observes that the agricultural policy of the state includes the
10 following:

11 “The preservation of a maximum amount of the limited supply of
12 agricultural land is necessary to the conservation of the state’s
13 economic resources and *the preservation of such land in large*
14 *blocks is necessary* in maintaining the agricultural economy of the
15 state and for the assurance of adequate, healthful and nutritious food
16 for the people of this state and nation.” ORS 215.243(2) (emphasis
17 added).

18 1000 Friends also observes that OAR chapter 660, division 33, implements ORS
19 215.243. OAR 660-033-0010. Accordingly, 1000 Friends argues that the
20 language of ORS 215.243(2) informs whether land is “necessary” to permit farm
21 practices on adjacent or nearby lands under OAR 660-033-0020(1)(a)(C).
22 Specifically, 1000 Friends argues that land is “necessary” to permit farm
23 practices on adjacent or nearby lands, under OAR 660-033-0020(1)(a)(C), if it is
24 necessary that the land be considered agricultural land in order to preserve a

1 “large block” of such land. In other words, if redesignating and rezoning land
2 from agricultural to nonresource would result in a “river” or “lake” of
3 nonresource land in an otherwise “large block” of agricultural land, then the land
4 proposed for redesignation and rezoning is “necessary” to permit farm practices
5 on adjacent or nearby lands under OAR 660-033-0020(1)(a)(C). 1000 Friends
6 argues that the subject property is located within such a “large block” of
7 agricultural land (*i.e.*, the surrounding EFU-zoned lands), that the challenged
8 PAPA will create an “island” of nonresource land therein, and that the board of
9 commissioners therefore erred in concluding that the subject property is not
10 “agricultural land” under OAR 660-033-0020(1)(a)(C).

11 Thomas responds that this issue is waived because no party raised it below.
12 In its petition for review, 1000 Friends identifies its first assignment of error as
13 having been preserved in approximately 50 pages of applicant and opponent
14 testimony. LUBA will not search the record or large page ranges cited in the
15 petition for review to determine whether an issue was raised below. *H2D2*
16 *Properties, LLC v. Deschutes County*, 80 Or LUBA 528, 532-33 (2019). A
17 citation to 50 pages in the record is not sufficiently specific to establish that an
18 issue was preserved. A petitioner must quote or point to a specific page, passage,
19 or portion of an audio recording to demonstrate where an issue was raised in the
20 local proceedings. Accordingly, the issue is waived.

21 The first subassignment of error under 1000 Friends’ first assignment of
22 error is denied.

1 **2. Traffic Impacts**

2 Again, for purposes of Goal 3, “agricultural land” includes “[I]and that is
3 necessary to permit farm practices to be undertaken on adjacent or nearby
4 agricultural lands.” OAR 660-033-0020(1)(a)(C). Again, in addressing OAR
5 660-033-0020(1)(a)(C), the state agency letter argued that it was not clear how
6 water, traffic, nuisance, and trespass impacts under the new RR-10 zoning would
7 impact area farming operations. The hearings officer found, “[T]here is no
8 showing that the subject property is necessary for farming practices on any
9 surrounding agricultural lands. There is no evidence that *the subject property*
10 *contributes* to any such practices, nor that *other lands depend on use of the*
11 *subject property* to undertake any farm practices.” Record 75 (emphases added).

12 The board of commissioners found:

13 “The State agencies raised the issue of traffic impacts related to the
14 Goal 3 issue of whether land is necessary to permit farm practices
15 to be undertaken on nearby lands. *Traffic issues are not, however, a*
16 *relevant consideration in addressing this issue because Goal 3 asks*
17 *whether the ‘land’ to be rezoned, the subject property, is needed by*
18 *area farms to conduct farm practices on their properties.*
19 Additionally, the record supports the finding that the small amount
20 of traffic associated with the proposed change will not prevent farm
21 practices associated with area farm uses of growing hay and grazing
22 livestock from occurring in the area.” Record 29 (emphasis added).

23 In the second subassignment of error under its first assignment of error,
24 1000 Friends argues that the county misconstrued OAR 660-033-0020(1)(a)(C)
25 in concluding that land is necessary to permit farm practices on adjacent or
26 nearby lands, under OAR 660-033-0020(1)(a)(C), only if the land actively

1 “contributes” to such practices or if other lands “depend on use of” the land to
2 engage in such practices. 1000 Friends argues that land is also necessary to permit
3 farm practices on adjacent or nearby lands if the impacts from nonresource use
4 of the land would prevent farm practices on adjacent or nearby lands.
5 Accordingly, 1000 Friends argues that the board of commissioners erred in
6 concluding that traffic impacts are not a relevant consideration.

7 Thomas responds that the county did not misconstrue OAR 660-033-
8 0020(1)(a)(C). Thomas defends the county’s conclusion that OAR 660-033-
9 0020(1)(a)(C) asks whether the land *itself* is necessary to permit farm practices
10 on adjacent or nearby lands, not whether the land’s *agricultural designation and*
11 *zoning*, and the consequent lack of impacts, are necessary to permit farm practices
12 on adjacent or nearby lands.

13 In *Wetherell*, the county redesignated and rezoned the subject property
14 from resource to rural residential. In doing so, the county concluded that the
15 subject property was not necessary to permit farm practices on adjacent or nearby
16 lands under OAR 660-033-0020(1)(a)(C). In a portion of their first assignment
17 of error, the petitioners argued that, “if the subject property’s plan and zoning
18 designations [were] amended to allow the proposed 32 rural residential
19 dwellings, the ensuing conflicts between residential uses and adjacent and nearby
20 farm practices [would] hinder or prevent those practices.” 50 Or LUBA at 190-
21 91. We explained that, in order to be “agricultural land” under OAR 660-033-
22 0020(1)(a)(C), “there must be *some connection between the subject property and*

1 *adjacent or nearby farm practices, such that the subject property must remain as*
 2 *'agricultural land' in order to permit such practices on other lands to be*
 3 *undertaken."* *Id.* at 191 (emphasis added). In *Wetherell*, "[t]he county found no
 4 evidence of any connection between the subject property and adjacent or nearby
 5 farm practices, *or that the subject property must remain as 'agricultural land' in*
 6 *order to permit such practices to be undertaken."* *Id.* (emphasis added). In
 7 addition, the intervenor pointed out that ORS 30.936, the right to farm statute,
 8 made it more unlikely that conflicts from rural residential uses could rise to such
 9 a level that the subject property would be required to remain as agricultural land
 10 in order to permit farm practices on other land.⁹

⁹ ORS 30.936 provides:

- “(1) No farming or forest practice on lands zoned for farm or forest use shall give rise to any private right of action or claim for relief based on nuisance or trespass.
- “(2) Subsection (1) of this section shall not apply to a right of action or claim for relief for:
 - “(a) Damage to commercial agricultural products; or
 - “(b) Death or serious physical injury as defined in ORS 161.015.
- “(3) Subsection (1) of this section applies regardless of whether the farming or forest practice has undergone any change or interruption.”

1 We also considered OAR 660-033-0020(1)(a)(C) in *Walker v. Josephine*
2 *County*, 60 Or LUBA 186 (2009). In *Walker*, we considered whether “resource
3 use of the subject property [was] necessary to permit the farm and forest practices
4 on nearby BLM land, including operation of the BLM’s seed orchard,” and we
5 explained that “[t]he possibility that certain potential uses *might cause some*
6 *conflicts* with the existing farm and forest uses [did] not demonstrate that the
7 subject property [was] necessary for continued farm and forest operations.” 60
8 Or LUBA at 192-93 (emphasis added).

9 Although it is a close call, consistent with our decisions in *Wetherell* and
10 *Walker*, we agree with 1000 Friends that OAR 660-033-0020(1)(a)(C) asks not
11 only whether the land itself is necessary to permit farm practices on adjacent or
12 nearby lands but, also, whether the land’s resource designation and zoning, and
13 the presumed lack of impacts or conflicts with farming on adjacent or nearby
14 lands, are necessary to permit farm practices on adjacent or nearby lands.
15 Although “necessary” is a high standard, and some conflicts may be allowed, we
16 agree with 1000 Friends that the board of commissioners erred in concluding that
17 traffic impacts are not a relevant consideration.

18 We observe, however, that the board of commissioners found, apparently
19 in the alternative, that “the record supports the finding that the small amount of
20 traffic associated with the proposed change will not prevent farm practices
21 associated with area farm uses of growing hay and grazing livestock from
22 occurring in the area.” Record 29. 1000 Friends argues that those findings are

1 inadequate in the third subassignment of error under its first assignment of error,
2 which we address below.

3 The second subassignment of error under 1000 Friends' first assignment
4 of error is denied.

5 **3. Findings**

6 In the third subassignment of error under its first assignment of error, 1000
7 Friends argues that the county's findings that the subject property is not necessary
8 to permit farm practices on adjacent or nearby lands under OAR 660-033-
9 0020(1)(a)(C) are inadequate. We have explained that, "[w]hen the decision does
10 not describe adjacent or nearby agricultural use, it does not demonstrate that the
11 property is not necessary to permit adjacent and nearby farm practices to
12 continue." *Wetherell v. Douglas County*, 52 Or LUBA 677, 681 (2006) (citing
13 *Kaye/DLCD v. Marion County*, 23 Or LUBA 452, 461-62 (1992)). 1000 Friends
14 argues that the county's findings do not identify the surrounding farm practices
15 or explain whether those practices would be prevented by traffic impacts
16 resulting from the challenged PAPA. 1000 Friends also argues that, although the
17 state agency letter raised the issue of water, traffic, nuisance, and trespass impacts
18 under the new RR-10 zoning, the county's findings related to OAR 660-033-
19 0020(1)(a)(C) do not address water, nuisance, or trespass impacts at all. 1000
20 Friends argues that the county impermissibly shifted the burden to opponents to
21 demonstrate that the subject property is necessary to permit farm practices on
22 adjacent or nearby lands, rather than requiring 710 Properties to demonstrate that

1 the subject property is *not* necessary to permit farm practices on adjacent or
2 nearby lands. Finally, 1000 Friends observes that the county found that
3 “[i]mpacts of future development must be reviewed when land use applications
4 are submitted.” Record 75. 1000 Friends argues that the county may not defer a
5 finding of compliance with OAR 660-033-0020(1)(a)(C) until after the land is
6 redesignated and rezoned.

7 Thomas responds that the county did not shift the burden to opponents to
8 demonstrate that the subject property is necessary to permit farm practices on
9 adjacent or nearby lands. Thomas observes that 710 Properties provided four
10 tables (one for each cardinal direction) listing the surrounding EFU-zoned
11 properties, listing their current uses, listing their potential farm practices, and
12 explaining why none of them needed the subject property in order to conduct
13 those farm practices. Record 4646-48. Thomas observes that the county expressly
14 relied on those tables (and reproduced them in its findings) in concluding that the
15 subject property is not necessary to permit farm practices on adjacent or nearby
16 lands. Record 97-100.

17 We agree with Thomas that the county did not shift the burden to
18 opponents and that the findings do identify the surrounding farm practices.
19 However, we agree with 1000 Friends that the findings are inadequate. As
20 explained above, OAR 660-033-0020(1)(a)(C) requires an evaluation of the
21 impacts that redesignating and rezoning land from agricultural to nonresource
22 will have on adjacent or nearby lands and a determination of whether those

1 impacts will prevent farm practices on those lands. The county may not defer
 2 such a determination until after the land is redesignated and rezoned. The findings
 3 do not address water, nuisance, or trespass impacts, despite the fact that the state
 4 agency letter raised those issues. And while the board of commissioners
 5 concluded that traffic impacts would not prevent farm practices on adjacent or
 6 nearby lands, the findings do not set out the facts which the board of
 7 commissioners believed and relied upon or explain how those facts led to the
 8 board of commissioners’ conclusion. Thomas observes that 710 Properties
 9 submitted water and traffic analyses into the record. However, the findings
 10 related to OAR 660-033-0020(1)(a)(C) do not refer to those analyses, and we will
 11 not assume that the board of commissioners relied on them.

12 The third subassignment of error under 1000 Friends’ first assignment of
 13 error is sustained.

14 1000 Friends’ first assignment of error is sustained, in part.

15 **MISCELLANEOUS ASSIGNMENTS OF ERROR**

16 **A. ORS 215.788 and DCCP Provisions**

17 Deschutes County Comprehensive Plan (DCCP) Section 2.2 provides, in
 18 part:

19 “[House Bill (HB) 2229 (2009)] authorize[s] counties to reevaluate
 20 resource lands and amend their comprehensive plan designations for
 21 such lands consistent with definitions of ‘agricultural land’ and
 22 ‘forest land.’ * * * Anything that does not qualify as farmland or
 23 forestland may be rezoned for non-resource use, subject to
 24 conditions that development in the non-resource zones be rural in

1 character, not significantly conflict with surrounding farm and forest
2 practices, and not have adverse [effects] on such things as water
3 quality, wildlife habitat, and fire safety. County rezoning activities
4 must be pursuant to a work plan approved by [DLCD]. This
5 effectively means the work will be done similar to periodic review
6 with the [LCDC] expressly given exclusive jurisdiction to review a
7 county decision.”

8 HB 2229 was codified, in relevant part, at ORS 215.788. Or Laws 2009, ch 873,

9 § 5. ORS 215.788 provides:

10 “(1) For the purposes of correcting mapping errors made in the
11 acknowledgment process and updating the designation of
12 farmlands and forestlands for land use planning, a county may
13 conduct a legislative review of lands in the county to
14 determine whether the lands planned and zoned for farm use,
15 forest use or mixed farm and forest use are consistent with the
16 definitions of ‘agricultural lands’ or ‘forest lands’ in goals
17 relating to agricultural lands or forestlands.

18 “(2) A county may undertake the reacknowledgment process
19 authorized by this section only if [DLCD] approves a work
20 plan, from the county, describing the expected scope of
21 reacknowledgment. [DLCD] may condition approval of a
22 work plan for reacknowledgment under this section to reflect
23 the resources needed to complete the review required by ORS
24 197.659 and 215.794. The work plan of the county and the
25 approval of [DLCD] are not final orders for purposes of
26 review.

27 “(3) A county that undertakes the reacknowledgment process
28 authorized by this section shall provide an opportunity for all
29 lands planned for farm use, forest use or mixed farm and
30 forest use and all lands subject to an exception under ORS
31 197.732 to a goal relating to agricultural lands or forestlands
32 to be included in the review.

33 “(4) A county must plan and zone land reviewed under this
34 section:

- 1 “(a) For farm use if the land meets the definition of
- 2 ‘agricultural land’ in a goal relating to agricultural
- 3 lands;
- 4 “(b) For forest use if the land meets the definition of “forest
- 5 land” used for comprehensive plan amendments in the
- 6 goal relating to forestlands;
- 7 “(c) For mixed farm and forest use if the land meets both
- 8 definitions;
- 9 “(d) For nonresource use, consistent with ORS 215.794, if
- 10 the land does not meet either definition; or
- 11 “(e) For a use other than farm use or forest use as provided
- 12 in a goal relating to land use planning process and
- 13 policy framework and subject to an exception to the
- 14 appropriate goals under ORS 197.732 (2).
- 15 “(5) A county may consider the current land use pattern on
- 16 adjacent and nearby lands in determining whether land meets
- 17 the appropriate definition.”

18 DCCP Policy 2.2.2 provides, “[EFU] sub-zones shall remain as described

19 in the 1992 Farm Study * * * unless adequate legal findings for amending the

20 sub-zones are adopted or an individual parcel is rezoned as allowed by Policy

21 2.2.3.” In turn, DCCP Policy 2.2.3 is to “[a]llow comprehensive plan and zoning

22 map amendments, including for those that qualify as non-resource land, for

23 individual EFU parcels as allowed by State Statute, Oregon Administrative Rules

24 and this Comprehensive Plan.”

25 The first subassignment of error under COLW’s second assignment of

26 error and 1000 Friends’ second assignment of error are that the board of

27 commissioners misconstrued ORS 215.788 and DCCP Policy 2.2.3 in concluding

1 that it could redesignate and rezone individual properties from agricultural to
 2 nonresource in a quasi-judicial process. COLW and 1000 Friends argue that the
 3 redesignation and rezoning of land from agricultural to nonresource is authorized
 4 only pursuant to the legislative process set out at ORS 215.788, which requires,
 5 among other things, a DLCD-approved work plan. COLW observes that DCCP
 6 Section 2.2 expressly refers to HB 2229 and that, in a 2015 letter to the county,
 7 DLCD interpreted ORS 215.788 as authorizing counties to redesignate and
 8 rezone geographic areas, not individual properties.¹⁰ Record 1575-77. Because
 9 the county did not follow the process set out in ORS 215.788, and because it
 10 redesignated and rezoned only the subject property, COLW and 1000 Friends
 11 argue that the county exceeded its authority.

¹⁰ In addition, COLW observes that, in a 2019 letter to the county, DLCD explained:

“State rule does not provide an opportunity to designate lands as nonresource if the land meets the agricultural capability class or forest productivity thresholds in the state’s ‘agricultural lands’ and ‘forest lands’ definitions. A Goal 3 or 4 exception, rather than nonprime resource land designation, appears to be required to designate these lands for low intensity rural development.” Record 1547.

As explained above, the county did not err in relying on the site-specific soils assessment to conclude that the subject property is not predominantly Class 1 to 6 soils and, therefore, not “agricultural land” under OAR 660-033-0020(1)(a)(A). The 2019 letter does not assist COLW.

1 Thomas responds that, while COLW argued below that the county was
2 required to follow the process set out in ORS 215.788, COLW did not argue
3 below that the county was not authorized to redesignate and rezone individual
4 properties. Accordingly, Thomas argues that that issue is waived. COLW
5 observes that it argued below that “[i]t is inconsistent with the legislature’s intent
6 in adopting HB 2229 for a county to enact a nonresource plan amendment for a
7 specific area, rather there must be an opportunity for all farm and forest lands to
8 be considered.” Record 1008. We conclude that the county and the parties had
9 fair notice and an adequate opportunity to respond to COLW’s argument that the
10 county was not authorized to redesignate and rezone individual properties.
11 Accordingly, the issue is not waived.

12 On the merits, Thomas responds that, while ORS 215.788 *authorizes a*
13 *county* to conduct a *legislative review* of the lands in the county in order to correct
14 mapping errors made in the acknowledgment process, the statute does not *prevent*
15 *a property owner* from applying with the county to redesignate and rezone their
16 individual property through a *quasi-judicial process*. Thomas observes that ORS
17 215.211, which allows counties to use site-specific soils assessments in
18 determining whether land is agricultural land, was enacted after ORS 215.788
19 and that OAR 660-033-0030(5), which implements ORS 215.211, provides, in
20 part, that it applies to “[a] change to the designation of a *lot or parcel* planned
21 and zoned for exclusive farm use, forest use or mixed farm-forest use to a non-
22 resource plan designation and zone on the basis that such land is not agricultural

1 land.” OAR 660-033-0030(5)(c)(A) (emphasis added). Thomas observes that
2 DCCP Policies 2.2.2 and 2.2.3 expressly refer to the redesignation and rezoning
3 of “individual” properties. Thomas argues that DLCD’s 2015 letter is consistent
4 with the argument that, while counties cannot limit the scope of the legislative
5 review authorized by ORS 215.788 to individual properties, they can limit the
6 scope of quasi-judicial proceedings conducted in response to applications from
7 individual property owners. Because the challenged PAPA resulted from a quasi-
8 judicial proceeding conducted in response to 710 Properties’ application, Thomas
9 argues that the board of commissioners did not err in failing to follow the process
10 set out in ORS 215.788 or in redesignating and rezoning only the subject
11 property.

12 1000 Friends argues, and we agree, that the references in OAR 660-033-
13 0030(5)(c)(A) and DCCP Policies 2.2.2 and 2.2.3 to “a lot or parcel” and
14 “individual” properties do not necessarily support Thomas’ position. Even in a
15 legislative review that considers a geographic area rather than individual
16 properties, the end result may be that individual properties are redesignated or
17 rezoned. Under OAR 660-033-0030(5)(c)(A), a property owner could submit a
18 site-specific soils assessment in response to a county-initiated legislative review
19 in which the owner’s property is one of many under consideration for
20 redesignation or rezoning. The site-specific soils assessment would then serve
21 the purpose of assisting the county in determining whether and how to

1 redesignate and rezone the owner’s individual property, but it would not be used
2 in a quasi-judicial proceeding.

3 Nevertheless, we agree with Thomas that the board of commissioners did
4 not err in failing to follow the process set out in ORS 215.788 or in redesignating
5 and rezoning only the subject property. ORS 215.788 authorizes counties to
6 conduct legislative reviews of geographic areas, and it prescribes the process that
7 counties must follow in conducting those reviews. However, that statute does not
8 prohibit counties from considering applications to redesignate and rezone
9 individual properties in quasi-judicial proceedings. COLW’s argument inserts
10 into the statute what has been omitted, contrary to ORS 174.010. *See* n 6. The
11 board of commissioners did not misconstrue ORS 215.788 or exceed its authority
12 in redesignating and rezoning only the subject property in a quasi-judicial
13 process.¹¹ The board of commissioners did not misconstrue DCCP Policy 2.2.3

¹¹ Like the reference to HB 2229, in DCCP Section 2.2, COLW maintains that the reference to the year 2010 in DCCP Section 3.3 means that DCCP Policies 2.2.2 and 2.2.3 authorize the redesignation and rezoning of land only pursuant to ORS 215.788. DCCP Section 3.3 provides, in part:

“As of 2010 any new [RREAs] need to be justified through initiating a non-resource plan amendment and zone change by demonstrating the property does not meet the definition of agricultural or forest land, or taking exceptions to farm, forest, public facilities and services and urbanization regulations, and follow guidelines set out in the OAR.”

1 in concluding that it could redesignate and rezone individual properties in a quasi-
2 judicial process.

3 The first subassignment of error under COLW’s second assignment of
4 error and 1000 Friends’ second assignment of error are denied.

5 **B. DCC 18.136.020(C)(2) and DCCP Agricultural Lands Goal 1**

6 DCC 18.136.020 governs zone changes and provides, in part:

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

10 “* * * * *

11 “C. That changing the zoning will presently serve the public
12 health, safety and welfare considering the following factors:

13 “* * * * *

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

17 DCCP Agricultural Lands Goal 1 is to “[p]reserve and maintain agricultural lands
18 and the agricultural industry.”

While 2010 is the year after HB 2229 was enacted, it is also the year before the current version of the DCCP was adopted, and we observe that many DCCP provisions refer to that year. *See, e.g.*, DCCP Section 2.2 (“As of 2010 the district manages approximately 65 miles of canals, ditches and pipes in an area of approximately 18,560 acres.”); DCCP Section 2.4 (“The complete acknowledged Goal 5 inventory lists as of 2010 can be found in Chapter 5.”); DCCP Section 2.5 (“As of 2010 the DEQ is leading the effort to address nitrates in South County, with the full cooperation of the County.”).

1 Addressing DCC 18.136.020(C)(2), the county found:

2 “[710 Properties] provided the following response in the submitted
3 burden of proof statement:

4 ““The RR-10 zoning is consistent with the specific goals and
5 policies in the comprehensive plan as shown by the discussion
6 of plan policies above. The existing EFU zoning and
7 comprehensive plan already support development of the
8 subject property with a number of nonfarm dwellings because
9 the property is generally unsuitable for farm or forest uses.
10 *The property is comprised of nine lots of record that could*
11 *qualify for development with up to approximately 24*
12 *dwellings including an existing nonfarm dwelling and two*
13 *approved nonfarm dwellings. The RR-10 zoning will allow*
14 *more dwellings to be built on the subject property but the*
15 *impacts imposed will be the same as the minimal impacts*
16 *imposed by a nonfarm dwelling.*

17 ““The only adjoining land in farm use is Volwood Farms. It
18 is located to the west of the subject property. Most of this farm
19 property is located far below the subject property. This
20 geographical separation will make it unlikely that the rezone
21 will impose new or different impacts on Volwood Farms than
22 imposed on it by existing farm and nonfarm dwellings. *There*
23 *are other farms in the surrounding area but all, like the*
24 *Volwood Farms property, are functionally separated from the*
25 *subject property by the steep hillside and rocky ridges of the*
26 *subject property. Farm uses in the greater area, also, are*
27 *occurring on properties that have been developed with*
28 *residences. These properties are, however, separated from*
29 *the subject property by a sufficient distance that RR-10*
30 *development will not adversely impact area farm uses or*
31 *lands.’*

32 “In addition to these comments, [710 Properties] provided specific
33 findings for each relevant Comprehensive Plan goal and policy,
34 which are addressed below. * * * [T]he impacts of reclassification

1 of the subject property to RR10 on surrounding land use will be
2 consistent with the specific goals and policies contained within the
3 Comprehensive Plan for the reasons set forth in the Comprehensive
4 Plan section of this Decision and Recommendation. This criterion is
5 met.” Record 84 (emphases added).

6 Addressing DCCP Agricultural Lands Goal 1, the county found:

7 “[S]ubstantial evidence in the record supports a finding that the
8 subject property is not ‘agricultural land,’ and is not land that could
9 be used in conjunction with adjacent property for agricultural uses.
10 *There is no evidence that the requested plan amendment and rezone*
11 *will contribute to loss of agricultural land in the surrounding*
12 *vicinity. * * * [T]he agricultural industry will not be negatively*
13 *impacted by re-designation and rezoning of the subject property.*
14 Therefore, * * * the applications are consistent with [DCCP
15 Agricultural Lands] Goal 1, ‘preserve and maintain agricultural
16 lands and the agricultural industry.’” Record 86 (emphasis added).

17 In its second assignment of error, Redside argues that the county’s findings
18 that the impacts on surrounding land use from rezoning the subject property from
19 EFUTE to RR-10 will be consistent with DCCP Agricultural Lands Goal 1 are
20 inadequate and not supported by substantial evidence. Redside argues that, while
21 24 dwellings are allowed on the subject property under the existing EFUTE
22 zoning, 71 dwellings will be allowed under the new RR-10 zoning. Redside
23 argues that the county’s findings that the increase from 24 to 71 dwellings will
24 have no greater impacts on surrounding agricultural lands and the agricultural
25 industry are inadequate and not supported by substantial evidence. Redside
26 observes that “47 additional dwellings will mean 47 more exempt water wells,
27 47 more septic systems, 470 more vehicle trips on the rural road system, etc.”
28 Redside’s Intervenor-Petitioner’s Brief 29. Redside also argues that the findings

1 that the zone change will not adversely impact surrounding agricultural lands
2 because those lands are “separated from the subject property by a sufficient
3 distance” are inadequate and not supported by substantial evidence because those
4 findings do not explain what those distances are and why they are sufficient.
5 Record 84. In addition, Redside argues that the findings fail to address
6 surrounding nonresource lands at all.

7 Thomas responds that this issue is waived because no party raised it below.
8 While it may be true that no party specifically cited DCC 18.136.020(C)(2) or
9 DCCP Agricultural Lands Goal 1 in their testimony, Redside observes that a
10 number of witnesses, including itself, testified that the new RR-10 zoning might
11 be incompatible with surrounding agricultural lands and the agricultural industry
12 due to the resulting development’s water, wastewater, and traffic impacts. *See,*
13 *e.g.,* Record 1432 (“[W]hat would the cumulative impacts of additional
14 residential water use be to water supply for area irrigated agriculture in the
15 region? * * * What would be the traffic implications?”). We conclude that the
16 county and the parties had fair notice and an adequate opportunity to respond to
17 the argument that the impacts from the zone change would not preserve and
18 maintain surrounding agricultural lands and the agricultural industry.
19 Accordingly, the issue is not waived.

20 On the merits, Thomas responds that DCCP Agricultural Lands Goal 1 is
21 concerned only with surrounding *agricultural* lands and the *agricultural*
22 industry. Accordingly, Thomas argues that the findings are not inadequate for

1 failing to address surrounding *nonresource* lands. Thomas also observes that the
2 county found that the impacts from the zone change will not adversely impact
3 surrounding agricultural lands because the subject property is located on a plateau
4 that “functionally” separates it from those lands. Record 84. In addition, Thomas
5 argues that DCC 18.136.020(C)(2) and DCCP Agricultural Lands Goal 1 do not
6 prohibit zone changes from having adverse impacts on surrounding agricultural
7 lands but, rather, require that zone changes preserve and maintain surrounding
8 agricultural lands. In other words, Thomas argues that those provisions allow
9 zone changes to have *adverse impacts* on surrounding agricultural lands as long
10 as they do not result in a *loss* of surrounding agricultural lands.

11 We agree with Thomas that the findings are not inadequate for failing to
12 address surrounding *nonresource* lands. However, we agree with Redside that the
13 findings that the increase from 24 to 71 dwellings will have no greater water,
14 wastewater, or traffic impacts on surrounding agricultural lands and the
15 agricultural industry, and the findings relying on the distance between the subject
16 property and surrounding agricultural lands, are inadequate. While the fact that
17 the subject property is located on a plateau might mitigate some impacts on
18 surrounding agricultural lands and the agricultural industry, it is not clear how
19 that fact will mitigate any water, wastewater, or traffic impacts.¹² The county

¹² We observe that the findings do address testimony concerning water, wastewater, and traffic in the context of other criteria. *See, e.g.,* Record 82-83

1 must consider the evidence of impacts on surrounding agricultural lands vis-à-
2 vis water, wastewater, and traffic.

3 Redside’s second assignment of error is sustained.

4 **GOAL 14 ASSIGNMENTS OF ERROR**

5 Goal 14 is “[t]o provide for an orderly and efficient transition from rural
6 to urban land use, to accommodate urban population and urban employment
7 inside [UGBs], to ensure efficient use of land, and to provide for livable
8 communities.” 1000 Friends’ third and fourth assignments of error and the second
9 subassignment of error under COLW’s second assignment of error are that the
10 challenged PAPA violates Goal 14.

11 Goal 14 generally prohibits urban use of rural land, that is, land outside
12 UGBs. *1000 Friends of Oregon v. LCDC (Curry Co.)*, 301 Or 447, 724 P2d 268
13 (1986). In *Curry Co.*, the Supreme Court explained that, if a decision affecting
14 rural land outside a UGB is challenged as allowing an urban use in violation of
15 Goal 14, a local government may do one of three things. The local government
16 may (1) establish that the decision does not offend Goal 14 by demonstrating that
17 the proposed use is rural and not urban. Differently, if the local government
18 determines that a proposed use is an urban use, then the local government may

(addressing water and wastewater in the context of DCC 18.136.020(C)(1), which concerns “[t]he availability and efficiency of providing necessary public services and facilities”). However, we will not assume that those findings are responsive to the requirements of DCC 18.136.020(C)(2) and DCCP Agricultural Lands Policy 1.

1 either (2) comply with the Goal 14 by including the subject site within a UGB or
2 (3) adopt an exception to Goal 14.¹³ *Curry Co.*, 301 Or at 477. Proceeding under
3 option (1), the board of commissioners concluded that the amendment does not
4 allow urban uses on rural land. The board of commissioners found:

5 “The Plan states that ‘[e]ach Comprehensive Plan map designation
6 provides the land use framework for establishing zoning districts.
7 Zoning defines in detail what uses are allowed for each area.’ DCCP
8 Section 1.3, p. 15. [RREAs], according to the DCCP, ‘provide
9 opportunities for rural residential living outside urban growth
10 boundaries and unincorporated communities * * *.’ DCCP Section
11 1.3, p. 15. DCCP Table 1.3.3 provides that Title 18’s RR-10 and
12 [Multiple Use Agricultural - 10 Acre Minimum (MUA-10)] are the
13 ‘associated Deschutes County Zoning Code[s]’ for the RREA plan
14 designation.

15 “The determination that the RREA plan designations and RR-10 and
16 MUA-10 zoning districts should apply to non-agricultural lands was
17 made when the County amended the DCCP in 2016. Ordinance
18 2016-005. That ordinance was acknowledged by DLCD as
19 complying with the Statewide Goals. This means that the lot sizes
20 and uses allowed by the RREA plan designation and RR-10 zone are
21 Goal 14 compliant. The proposed Comprehensive Plan Amendment

¹³ Considerations for determining whether a particular use is urban or rural derive from our decision in *Shaffer v. Jackson County*:

“Under the Supreme Court’s decision in [*Curry Co.*], it may well be there is nothing inherently rural or urban about residential, commercial, industrial or other types of uses. Rather there are merely a number of relevant factors to be considered, such as *parcel size, intensity of use, necessity for urban facilities and proximity to a UGB.*” 17 Or LUBA 922, 928 (1989) (citation omitted; emphasis added).

1 simply acts in accordance with the DCCP provisions. It provides no
2 occasion for the County to revisit the issue of whether the RR-10
3 zone and RREA designation isolate Goal 14 by allowing urban
4 development.” Record 31-32.

5 **A. Acknowledgment of the 2016 Amendments**

6 In its fourth assignment of error, 1000 Friends argues that the board of
7 commissioners erred in relying on DLCD’s acknowledgement of the 2016
8 amendments to conclude (1) that the RREA plan designation and RR-10 zone
9 facially do not allow urban uses of rural land and (2) that it was therefore not
10 necessary to apply the *Shaffer* factors to determine whether the RREA plan
11 designation and RR-10 zone allow urban uses of rural land as applied to the
12 subject property.

13 Prior to 2016, DCCP Section 3.3 provided, in part, “As of 2010 any new
14 [RREAs] need to be justified through taking exceptions to farm, forest, public
15 facilities and services and urbanization regulations, and follow guidelines set out
16 in the OAR.” That provision allowed RREA designation and RR-10 zoning only
17 of lands for which Goal 3, 4, 11, and 14 exceptions had been taken. In 2016, the
18 county amended that provision by adding the following italicized language:

19 “As of 2010 any new [RREAs] need to be justified through *initiating*
20 *a non-resource plan amendment and zone change by demonstrating*
21 *the property does not meet the definition of agricultural or forest*
22 *land, or taking exceptions to farm, forest, public facilities and*
23 *services and urbanization regulations, and follow guidelines set out*
24 *in the OAR.” Ordinance 2016-005 Ex C, at 1.*

25 In addition to lands for which Goal 3, 4, 11, and 14 exceptions have been taken,
26 the 2016 amendments allow RREA designation and RR-10 zoning of all

1 nonresource lands, including lands that are not “agricultural land” for purposes
2 of Goal 3. The 2016 amendments were not appealed to LUBA and, accordingly,
3 they are “deemed to be acknowledged” by DLCDC. ORS 197.625(1)(a).

4 The board of commissioners concluded that the subject property is not
5 “agricultural land” for purposes of Goal 3.¹⁴ Because the 2016 amendments were
6 acknowledged by DLCDC as complying with the statewide planning goals,
7 including Goal 14, the board of commissioners concluded that the RREA plan
8 designation and RR-10 zone facially do not allow urban uses of rural land. In
9 turn, the board of commissioners concluded that the challenged PAPA also does
10 not allow urban uses of rural land and, therefore, complies with Goal 14. 1000
11 Friends argues that, in acknowledging the 2016 amendments, DLCDC did not
12 acknowledge RREA designation of nonresource lands as facially complying with
13 Goal 14. 1000 Friends observes that, before the 2016 amendments, the RREA
14 plan designation could be applied only to lands for which Goal 3, 4, 11, and 14
15 exceptions had been taken pursuant to Statewide Planning Goal 2 (Land Use
16 Planning). 1000 Friends argues that, just as applying the RREA plan designation
17 to lands for which Goal 3, 4, 11, and 14 exceptions have been taken requires a
18 site-specific analysis for compliance with Goal 2, applying the RREA plan

¹⁴ That conclusion is challenged in the parties’ Goal 3 assignments of error, which we address above.

1 designation to nonresource lands requires a site-specific analysis for compliance
2 with Goal 14.

3 1000 Friends also argues that, in acknowledging the 2016 amendments,
4 DLCD did not acknowledge RR-10 zoning of nonresource lands as facially
5 complying with Goal 14. 1000 Friends argues that the 2016 amendments
6 concerned only RREA designation of nonresource lands, observes that the 2016
7 amendments did not make any changes to or include any mention of the RR-10
8 zone, and observes that DCC chapter 18.60, which governs the RR-10 zone, does
9 not include any mention of nonresource lands.

10 DCCP Policy 2.2.3 is to “[a]llow comprehensive plan and zoning map
11 amendments, including for those that qualify as non-resource land, for individual
12 EFU parcels as allowed by State Statute, Oregon Administrative Rules and this
13 Comprehensive Plan.” 1000 Friends argues that rural residential development
14 may be allowed only pursuant to one of two administrative rules: OAR 660-004-
15 0040, which specifies how Goal 14 applies to resource lands for which a Goal 3
16 or 4 exception has already been taken, or OAR 660-014-0040, which governs
17 Goal 14 exceptions to allow new urban development on undeveloped rural land.
18 1000 Friends observes that both of those rules require site-specific analyses. 1000
19 Friends further argues that DLCD would have also relied on DCCP Section 3.2,
20 and the RREA plan designation’s historical exception context to ensure that
21 RREA designation of nonresource lands would require a site-specific analysis for
22 compliance with Goal 14.

1 Turner responds that this issue is waived because no party raised it below.
2 In its petition for review, 1000 Friends identifies its fourth assignment of error as
3 having been preserved in an August 17, 2022, letter that it submitted into the
4 record and an August 31, 2022, letter that COLW submitted into the record.
5 Record 994-97, 1630. We have reviewed the cited pages, and both 1000 Friends
6 and COLW argued below that the county was required to apply the *Shaffer*
7 factors to determine whether the RREA plan designation and RR-10 zone allow
8 urban uses of rural land as applied to the subject property. We conclude that the
9 county and the parties had fair notice and an adequate opportunity to respond to
10 that argument. Accordingly, the issue is not waived.

11 On the merits, Turner responds that the board of commissioners did not err
12 in relying on DLCDD's acknowledgement of the 2016 amendments and in
13 concluding that it was not necessary to conduct a site-specific analysis for
14 compliance with Goal 14. Turner observes that we recently held, and the Court
15 of Appeals affirmed, that the county could rely on the acknowledgment of its
16 Rural Industrial (RI) plan designation and zone to conclude that the plan
17 designation and zone facially do not allow urban uses of rural land. *Central*
18 *Oregon Landwatch v. Deschutes County*, ___ Or LUBA ___, ___ (LUBA No
19 2022-075, Dec 6, 2022) (slip op at 24) (*Aceti V*), *aff'd*, 324 Or App 644, 525 P3d
20 895 (2023). Turner observes that, consistent with that holding, the state agency
21 letter provides: "The application proposes to include the subject property in an
22 RR-10, Rural Residential Zoning district. It is unclear to us whether such an

1 arrangement is set forth in the County Comprehensive Plan. *If so, the issue is*
2 *settled in this case and our Goal 14 comments would be addressed.*” Record 1435
3 (emphasis added). Turner quotes the board of commissioners’ findings that “such
4 an arrangement” is set forth in the DCCP because DCCP Table 1.3.3 provides
5 that the county’s RREA plan designation is implemented by the RR-10 and
6 MUA-10 zones.

7 We agree with Turner that the board of commissioners did not err in
8 relying on DLCD’s acknowledgement of the 2016 amendments and in
9 concluding that it was not necessary to conduct a site-specific analysis for
10 compliance with Goal 14. That the RREA plan designation could previously only
11 be applied to lands for which Goal 3, 4, 11, and 14 exceptions were taken does
12 not compel a conclusion that RREA designation of nonresource lands requires a
13 site-specific analysis for compliance with Goal 14.

14 The DCCP provides that the RREA comprehensive plan designation is
15 implemented by the RR-10 and Multiple Use Agriculture (MUA) zones. We have
16 no reason to believe that DLCD’s acknowledgment of the 2016 amendments as
17 consistent with Goal 14 was premised on anything other than the conclusion that
18 the RREA plan designation facially does not allow urban uses of rural land.
19 DCCP Section 3.2 is titled “Rural Development,” and it includes a general
20 discussion of growth potential in the county and a list of possibilities for new

1 rural development.¹⁵ Although DCCP Section 3.2 states that most of the listed
2 possibilities are site-specific, and although the list of possibilities does not

¹⁵ DCCP Section 3.2 provides, in part:

“[C]hanges to State regulations [have] 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.

- “■ New lots can be created in destination resorts
- “■ Some farm lands can be subdivided to permit one or two ‘non-farm’ parcels
- “■ New lots can be created based on the property rights legislation known as Measure 37 and Measure 49
- “■ New lots can be created through the addition of sewer systems
- “■ New lots can be created in Unincorporated Communities (see Chapter 4)
- “■ 2009 legislation permits a new analysis of agricultural designated lands
- “■ Existing large forest or rural residential lots can be subdivided
- “■ 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
- “■ Some farm lands with poor soils can be rezoned into a new agricultural category with a smaller acreage requirement

“* * * Most of these possibilities are extremely site-specific requiring an analysis of each property.”

1 include redesignating and rezoning individual properties from agricultural to
2 nonresource in quasi-judicial proceedings after concluding that the properties are
3 not “agricultural land” for purposes of Goal 3, the list does not purport to be
4 exclusive. *See* n 15. DCCP Policy 2.2.2. provides, “[EFU] sub-zones shall remain
5 as described in the 1992 Farm Study * * * unless adequate legal findings for
6 amending the sub-zones are adopted or *an individual parcel is rezoned as allowed*
7 *by Policy 2.2.3.*” (Emphasis added.) Again, Policy 2.2.3 is to “[a]llow
8 comprehensive plan and zoning map amendments, *including for those that*
9 *qualify as non-resource land, for individual EFU parcels* as allowed by State
10 Statute, Oregon Administrative Rules and this Comprehensive Plan.” (Emphasis
11 added.) OAR 660-004-0040 applies to resource lands for which a Goal 3 or 4
12 exception has already been taken, and OAR 660-014-0040 governs new
13 exceptions to Goal 14. Those provisions do not apply where, as here, the county
14 concludes (1) that no Goal 3 or 4 exception is required because the subject
15 property is nonresource land and (2) that no Goal 14 exception is required
16 because the plan designation and zone applied by the challenged PAPA do not
17 allow urban uses of rural land. We conclude that the board of commissioners did
18 not err in relying on DLCD’s acknowledgment of the 2016 amendments to
19 conclude that the RREA plan designation facially complies with Goal 14.

20 We similarly conclude that the board of commissioners did not err in
21 relying on DLCD’s acknowledgment of the 2016 amendments to conclude that
22 the RR-10 zone facially complies with Goal 14. We observe, as the board of

1 commissioners did, that DCCP Table 1.3.3 expressly provides that the county’s
2 RREA plan designation is implemented by the RR-10 zone. In addition, DCC
3 18.60.010 explains:

4 “The purposes of the [RR-10] Zone are to provide rural residential
5 living environments; *to provide standards for rural land use and*
6 *development consistent with desired rural character and capability*
7 *of the land and natural resources*; to manage the extension of public
8 services; to provide for public review of nonresidential uses; and to
9 balance the public’s interest in the management of community
10 growth with the protection of individual property rights through
11 review procedures and standards.” (Emphasis added.)

12 Although the 2016 amendments themselves may not have included any mention
13 of the RR-10 zone, as 1000 Friends points out, “DLCD acknowledgment looks
14 at the comprehensive plan *as a whole* to determine compliance with the goals.”
15 1000 Friends’ Intervenor-Petitioner’s Brief 53 (emphasis in original). In
16 acknowledging the 2016 amendments, DLCD would have been aware of DCCP
17 Table 1.3.3 and would have understood that the RR-10 zone would implement
18 the RREA plan designation on nonresource lands in order to provide standards
19 for rural land use and development.

20 We conclude that the board of commissioners did not err in relying on
21 DLCD’s acknowledgement of the 2016 amendments to conclude (1) that the
22 RREA plan designation and RR-10 zone facially do not allow urban uses of rural
23 land and (2) that it was therefore not necessary to apply the *Shaffer* factors to
24 determine whether the RREA plan designation and RR-10 zone allow urban uses
25 of rural land as applied to the subject property.

1 1000 Friends’ fourth assignment of error is denied.

2 **B. Site-Specific Analysis**

3 Because the board of commissioners concluded that the RREA plan
4 designation and RR-10 zone *facially* do not allow urban uses of rural land, the
5 board of commissioners concluded that it was not necessary to apply the *Shaffer*
6 factors to determine whether the RREA plan designation and RR-10 zone allow
7 urban uses of rural land *as applied to the subject property*. Nevertheless, taking
8 a belt-and-suspenders approach, the board of commissioners adopted alternative
9 findings applying the *Shaffer* factors and concluding that the RREA plan
10 designation and RR-10 zone do not allow urban uses of rural land as applied to
11 the subject property. Record 33-35.

12 In the first subassignment of error under its third assignment of error, 1000
13 Friends argues that the challenged PAPA violates Goal 14 because it does not
14 “provide for an orderly and efficient transition from rural to urban land use.” The
15 second subassignment of error under 1000 Friends’ third assignment of error and
16 the second subassignment of error under COLW’s second assignment of error are
17 that the challenged PAPA violates Goal 14 because it allows an urban use of rural
18 land, or “‘urbanization,’ if not a conversion to ‘urban use,’” under the *Shaffer*
19 factors. COLW’s Petition for Review 30. Because those challenges are dependent
20 on our conclusion that the county (1) could not rely on DLCDC’s acknowledgment
21 of the 2016 amendments to conclude that the RREA plan designation and RR-10
22 zone *facially* do not allow urban uses of rural land and (2) was required to apply

1 the *Shaffer* factors to determine whether the RREA plan designation and RR-10
2 zone allow urban uses of rural land as applied to the subject property, we do not
3 address them further.

4 1000 Friends' third assignment of error and the second subassignment of
5 error under COLW's second assignment of error are denied.

6 COLW's second assignment of error is denied.

7 **CONCLUSION**

8 On remand, the board of commissioners must consider the ability to use
9 the subject property for farm use in conjunction with other property, including
10 the Keystone property, and may not limit its review to the profitability of farm
11 use of the subject property as an isolated unit. The board of commissioners must
12 consider the ability to import feed for animals and may not limit its consideration
13 to the raising of animals where adequate food may be grown on the subject
14 property. The board of commissioners must also consider whether the subject
15 property is suitable for farm use as a site for construction and maintenance of
16 farm equipment. Furthermore, the board of commissioners must consider the
17 evidence and adopt findings addressing the impacts of redesignation of the
18 property related to water, wastewater, and traffic and whether retaining the
19 property's agricultural designation is necessary to permit farm practices on
20 adjacent or nearby lands.

21 The county's decision is remanded.

FILED: January 24, 2024

IN THE COURT OF APPEALS OF THE STATE OF OREGON

CENTRAL OREGON LANDWATCH; WILLIAM BUCHANAN; ELIZABETH BUCHANAN; KEYSTONE CATTLE & PERFORMANCE HORSES, LLC; REDSIDE RESTORATION PROJECT ONE, LLC; PAUL J. LIPSCOMB; and DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT,
Respondents,

and

1000 FRIENDS OF OREGON,
Respondent
Cross-Petitioner,

v.

DESCHUTES COUNTY,
Cross-Respondent,

and

710 PROPERTIES, LLC and CHARLES THOMAS,
Petitioners
Cross-Respondents,

and

ROBERT TURNER,
Cross-Respondent.

Land Use Board of Appeals
2023006, 2023009

A182073

Argued and submitted on October 27, 2023.

J. Kenneth Katzaroff and D. Adam Smith argued the cause and filed the briefs for petitioners-cross-respondents 710 Properties, LLC, and Charles Thomas, and for cross-respondent Robert Turner. Also on the briefs were Bailey M. Oswald and Schwabe Williamson & Wyatt P.C.

Robert M. Wilsey argued the cause for respondent Department of Land Conservation and Development. Also on the briefs were Ellen F. Rosenblum, Attorney General, and Benjamin Gutman, Solicitor General.

Andrew Mulkey argued the cause and filed the briefs for respondent-cross-petitioner 1000 Friends of Oregon.

Carol E. Macbeth filed the brief for respondent Central Oregon Landwatch.

Jeffrey L. Kleinman filed the brief for respondents William Buchanan, Elizabeth Buchanan, and Keystone Cattle & Performance Horses, LLC.

D. Adam Smith, J. Kenneth Katzaroff, Bailey M. Oswald, and Schwabe Williamson & Wyatt P.C. filed the brief for respondents 710 Properties, LLC, and Charles Thomas.

James D. Howsley and Jordan Ramis PC filed the brief for respondent Redside Restoration Project One, LLC.

David Doyle filed the brief for cross-respondent Deschutes County.

No appearance for respondent Paul J. Lipscomb.

Before Egan, Presiding Judge, and Kamins, Judge, and DeVore, Senior Judge.

KAMINS, J.

Affirmed; motion to strike DLCD's reply brief denied as moot.

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: On petition, Respondents; on cross-petition, Cross-Respondents.

- No costs allowed
 - Costs allowed, payable by Petitioners on petition; Cross-Petitioner on cross-petition.
 - Costs allowed, to abide the outcome on remand, payable by
-

1 KAMINS, J.

2 This land use case concerns the application of 710 Properties, LLC, to
3 redesignate and rezone 710 acres of land in Deschutes County (the subject property).
4 Specifically, 710 Properties seeks (1) the designation of the subject property to be
5 changed from "Agricultural" to "Rural Residential Exception Area" (RREA), and (2) the
6 zoning of the subject property to be changed from "Exclusive Farm Use"¹ (EFU) to
7 "Rural Residential - 10 Acre Minimum" (RR-10). Those changes would allow the
8 subject property to be used for rural, residential uses, instead of the uses to which it is
9 currently limited.

10 In the proceedings below, a hearings officer recommended that the
11 Deschutes County Board of Commissioners (the county) approve 710 Properties'
12 application. The county considered and approved the application. The Land Use Board
13 of Appeals (LUBA) then remanded the county's decision on various grounds.

14 In this proceeding for judicial review of LUBA's order, petitioner 710
15 Properties raises three assignments of error, petitioner Thomas raises four assignments of
16 error, cross-petitioner 1,000 Friends of Oregon raises one assignment of error, and
17 respondent the Department of Land Conservation and Development (DLCD) raises a
18 single cross-assignment of error. We reject each of those assignments.² We write,

¹ The current zoning of the property is "Exclusive Farm Use-Terrebonne-Subzone." Terrebonne is an unincorporated community in Deschutes County. For the purposes of this opinion, we simply refer to the zoning as "Exclusive Farm Use."

² We note that petitioners have moved to strike the reply brief DLCD filed in

1 (DCCP) as "agricultural" land and zoned as EFU. Given that designation, permissible
2 uses of the land are limited. *See, e.g.,* OAR 660-033-0120 Table, *available at*
3 https://www.oregon.gov/lcd/LAR/Documents/div033_use-table.pdf (accessed Jan 16,
4 2024) (describing permissible uses of agricultural land).

5 710 Properties applied for a "post-acknowledgement plan amendment" to
6 change the plan designation of the subject property in the DCCP from "agricultural" to
7 RREA and the zoning from EFU to RR-10. Those changes in designation would allow
8 the subject property to be used for rural, residential uses, instead of the uses to which it
9 currently limited.³

10 In its application for redesignation and rezoning, 710 Properties addressed
11 the definition of agricultural land in OAR 660-033-0020(1)(a)(C)--which, as noted above,
12 defines "agricultural land" to include "[l]and that is necessary to permit farm practices to
13 be undertaken on adjacent or nearby agricultural lands"--and asserted that the land was
14 not agricultural land. In addressing OAR 660-033-0020(1)(a)(C) in its application, 710
15 Properties described the current EFU zoned properties near the subject property, listed
16 their current uses, and explained why none of them needed the subject property in order
17 to permit farm practices.

18 In response to 710 Properties' application, DLCD, the Department of Fish

³ As the county explained in its approval of 710 Properties' application for redesignation of the subject property, when Deschutes County amended the DCCP in 2016, it made the "determination that the RREA plan designations * * * should apply to non-agricultural land." RREAs "provide opportunities for rural residential living outside urban growth boundaries and unincorporated communities."

1 and Wildlife, and the Department of Agriculture submitted a letter recommending that
2 the subject property "retain an Exclusive Farm Use designation and not be converted to
3 allow rural residential development." Regarding OAR 660-033-0020(1)(a)(C), those
4 state agencies explained their view that 710 Properties' assertion that the subject property
5 was not "necessary to permit farm practices to be undertaken on adjacent or nearby
6 agricultural lands" was not "supported by any comprehensive evaluation of the farming
7 and ranching practices that are associated with existing and potential future farm uses in
8 the surrounding area." The state agencies raised concerns regarding, among other points,
9 potential traffic impacts, water supply issues, and the potential for trespassing, that could
10 be caused by redesignation.

11 The hearings officer who initially considered 710 Properties' application
12 found that 710 Properties "met the burden of proof necessary to justify the request for a
13 Comprehensive Plan Map Amendment to re-designate the subject property from
14 Agriculture to Rural Residential Exception Area and a corresponding request for a Zone
15 Map Amendment to reassign the zoning of the subject property from Exclusive Farm Use
16 (EFU) to Rural Residential." Accordingly, the hearings officer recommended that the
17 county approve the application.

18 The county subsequently approved 710 Properties' application. Concerning
19 OAR 660-033-0020(1)(a)(C), the county noted that "[t]he State agencies raised the issue
20 of traffic impacts related to the Goal 3 issue of whether land is necessary to permit farm
21 practices to be undertaken on nearby lands." It concluded, however, that "[t]raffic issues

1 are not * * * a relevant consideration in addressing this issue because [the issue is]
2 whether the 'land' to be rezoned, the subject property, is needed by area farms to conduct
3 farm practices on their properties."

4 The county's decision was then appealed to LUBA by, among others, 1000
5 Friends of Oregon. Before LUBA, 1000 Friends argued that the county misconstrued
6 OAR 660-033-0020(1)(a)(C). Specifically, 1000 Friends argued that land is "necessary
7 to permit farm practices on adjacent or nearby lands if the impacts from the nonresource
8 use of the land would prevent farm practices on adjacent or nearby lands." Thomas
9 responded that the county did not misconstrue OAR 660-033-0020(1)(a)(C), because that
10 "rule asks whether the land *itself* is necessary to permit farm practices on adjacent or
11 nearby lands, not whether the land's *agricultural designation and zoning*, and the
12 consequent lack of impacts, are necessary to permit farm practices on adjacent or nearby
13 lands." (Emphases in LUBA's Order.)

14 LUBA disagreed with Thomas. It concluded that OAR 660-033-
15 0020(1)(a)(C) "asks not only whether the land itself is necessary to permit farm practices
16 on adjacent or nearby lands but, also, whether the land's resource designation and zoning,
17 and the presumed lack of impacts or conflicts with farming on adjacent or nearby lands,
18 are necessary to permit farm practices on adjacent or nearby lands." It further explained
19 that "although 'necessary' is a high standard, and some conflicts may be allowed, * * * the
20 [county] erred in concluding that traffic impacts are not a relevant consideration."
21 Ultimately, LUBA remanded for further proceedings, concluding that the county's

1 findings that the subject property is not necessary to permit farm practices on adjacent or
2 nearby lands under OAR 660-033-0020(1)(a)(C) were inadequate.⁴

3 Thomas now seeks judicial review of LUBA's order.

4 II. ANALYSIS

5 On judicial review, in Thomas's first assignment of error, he argues that
6 "LUBA incorrectly created an impacts test out of OAR 660-033-0020(1)(a)(C) that
7 simply is not contained in the law." As Thomas sees it, the test under OAR 660-033-
8 0020(1)(a)(C) is whether the land itself is "necessary to permit farm practices to be
9 undertaken on adjacent or nearby agricultural lands." DLCD responds that "LUBA
10 correctly construed OAR 660-033-0020(1)(a)(C) to require an evaluation of the impacts
11 that redesignating and rezoning land from agricultural to nonresource will have on
12 adjacent or nearby lands and a determination of whether those impacts will prevent farm
13 practices on those lands." (Internal quotation marks omitted.) Thus, in respondents'
14 view, as one set of respondents puts it, "LUBA applied the test as written, and remanded
15 so the county could do what it failed to do in the appealed decision: evaluate whether the
16 additional residential traffic that would result from the conversion of the subject property
17 from agricultural to residential use would permit the continuation of farm practices on the

⁴ LUBA noted that the county did make findings regarding traffic impacts, but concluded that those findings were inadequate because the county did not "set out the facts which the [county] believed and relied upon or explain how those facts led to the [county's] conclusion."

Additionally, LUBA highlighted that the county's findings did not address "water, nuisance, or trespass impacts, despite the state agency letter" raising those issues.

1 adjacent agricultural land."

2 As to the assignment of error addressed in this opinion, our task is to
3 discern whether LUBA's order is "unlawful in substance." ORS 197.850(9)(a); *Schaefer*
4 *v. Marion County*, 318 Or App 617, 620, 509 P3d 718 (2022). An order is unlawful in
5 substance if it represents "a mistaken interpretation of the applicable law." *Schaefer*, 318
6 Or App at 620 (internal quotation marks omitted). When our review requires
7 interpretation of an administrative rule, as in this case, "we seek to divine the intent of the
8 rule's drafters" by considering "the text of the rule in its regulatory and statutory context."
9 *Id.* (internal quotation marks omitted).

10 A. *Agricultural Land*

11 Prior to turning to the rule at issue in this case, OAR 660-033-
12 0020(1)(a)(C), it is useful to describe the statutory and regulatory context within which
13 OAR 660-033-0020(1)(a)(C) is situated--viz., Oregon's statutory and regulatory
14 framework declaring and implementing its policy for the maintenance and preservation of
15 Oregon's limited supply of agricultural land. *See Schaefer*, 312 Or App at 337 (beginning
16 analysis of the meaning of administrative rule "by considering the statutory and
17 regulatory context").

18 1. *Statutory context*

19 "The legislature's primary statement of agricultural land use policy is
20 contained in ORS 215.243, which has remained unchanged since its enactment as part of
21 Oregon's statewide land use planning system in 1973." *Stop the Dump Coalition v.*

1 Yamhill County, 364 Or 432, 441-42, 435 P3d 698 (2019). That statute "finds and
2 declares" that "preservation of agricultural land, particularly in large blocks, is an
3 important statewide policy and that limitations on urban expansion into, and alternative
4 uses of, agricultural and forest lands are necessary and a matter of statewide concern."

5 *Stop the Dump Coalition*, 364 Or at 442. It provides, in pertinent part:

6 "The Legislative Assembly finds and declares that:

7 "* * * * *

8 "(2) The preservation of *a maximum amount of the limited supply of*
9 *agricultural land is necessary* to the conservation of the state's economic
10 resources and *the preservation of such land in large blocks is necessary* in
11 maintaining the agricultural economy of the state and for the assurance of
12 adequate, healthful and nutritious food for the people of this state and
13 nation.

14 "(3) Expansion of urban development into rural areas is a matter of
15 public concern because of the unnecessary increases in costs of community
16 services, *conflicts between farm and urban activities* and the loss of open
17 space and natural beauty around urban centers occurring as the result of
18 such expansion.

19 "(4) Exclusive farm use zoning as provided by law, substantially
20 limits alternatives to the use of rural land and, with the importance of rural
21 lands to the public, justifies incentives and privileges offered to encourage
22 owners of rural lands to hold such lands in exclusive farm use zones."

23 ORS 215.243 (emphases added). Further, the legislature's "policy for dwellings on farm
24 and forest lands, set out in [ORS 215.700], similarly seeks to '[l]imit the future division
25 of and the siting of dwellings upon the state's more productive resource land.'" *Stop the*
26 *Dump Coalition*, 364 Or at 442 (quoting ORS 215.700(2); second brackets in *Stop the*
27 *Dump Coalition*).

28 2. *Regulatory context*

1 To effectuate those statutory policies, the legislature has directed the Land
 2 Conservation and Development Commission (LCDC) "to implement Oregon statutes by
 3 adopting land use planning goals that set out broad objectives for land use planning in
 4 Oregon." *Id.* at 443 (internal quotation marks omitted). Relevant to this petition for
 5 judicial review is Goal 3, which recognizes the legislature's directive concerning the
 6 importance of the preservation of agricultural lands as set forth in ORS 215.243 and ORS
 7 215.700. "Goal 3 both (1) promotes preservation of agricultural land for 'farm use' and
 8 'maximum agricultural productivity' and (2) limits nonfarm uses of agricultural lands to
 9 those 'that will not have significant adverse effects' on accepted farming or forest
 10 practices." *Stop the Dump Coalition*, 364 Or at 444.

11 Goal 3 provides, in pertinent part:

12 **"To preserve and maintain agricultural lands.**

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

17 **"USES**

18 "Counties may authorize farm uses and those nonfarm uses defined
 19 by commission rule that will not have significant adverse effects on
 20 accepted farm or forest practices.

21 **"IMPLEMENTATION**

22 "Zoning applied to agricultural land shall limit uses which can have
 23 significant adverse effects on agricultural and forest land, farm and forest
 24 uses or accepted farming or forest practices.

25 "* * * * *

1 **"GUIDELINES**

2 **"* * * * ***

3 **"B. IMPLEMENTATION**

4 "1. Non-farm uses permitted within farm use zones under ORS
5 215.213(2) and (3) and 215.283(2) and (3) [which set forth certain land
6 uses allowed in lands zoned for 'exclusive farm use'] should be minimized
7 to allow for maximum agricultural productivity."

8 LCDC also has adopted administrative rules to implement Oregon statutes
9 concerning agricultural land and "preserve and maintain agricultural lands as defined by
10 Goal 3 for farm use[.]" OAR 660-033-0010; *see generally* OAR ch 660, div 33
11 (regarding agricultural land). One such rule, OAR 660-033-0020(1)(a), is central to this
12 review. OAR 660-033-0020(1)(a) provides that "agricultural land" as defined in Goal 3
13 includes land with certain soil types, land that is "suitable for farm use," and, as relevant
14 here, "[l]and that is necessary to permit farm practices to be undertaken on adjacent or
15 nearby agricultural lands."⁵ Land that meets that definition must be inventoried as

⁵ OAR 660-033-0020(1) provides:

"(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;

"(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

1 "agricultural land," OAR 660-033-0030(1), and LCDC rules limit the uses that are
2 permitted on such land, *e.g.*, OAR 660-033-0120.

3 B. OAR 660-033-0020(1)(a)(C)

4 With that understanding of the statutory and regulatory context concerning
5 the maintenance and preservation of agricultural land within which OAR 660-033-
6 0020(1)(a)(C) was implemented, we turn to the rule itself.

7 OAR 660-033-0020(1)(a)(C) defines "agricultural land" as "[I]and that is
8 necessary to permit farm practices to be undertaken on adjacent or nearby agricultural
9 lands." LUBA concluded that OAR 660-033-0020(1)(a)(C) requires consideration of
10 both whether "the land itself" and "the land's resource designation and zoning" are
11 necessary to permit farm practices on adjacent or nearby lands. As Thomas sees it, that
12 interpretation represents a mistaken understanding of applicable law, because the test
13 under OAR 660-033-0020(1)(a)(C) is only whether the physical land itself is necessary to
14 permit farm practices on adjacent and nearby lands, and it does not include whether the
15 land's resource designation and zoning are also so necessary.

16 The dispute in this case turns on the meaning of the phrase "land that is
17 necessary to permit farm practices to be undertaken on adjacent or nearby agricultural
18 lands" in OAR 660-033-0020(1)(a)(C).

19 In this case, we think context provides an understanding of the text of OAR

adjacent or nearby agricultural lands."

1 660-033-0020(1)(a)(C) in determining whether a parcel qualifies as "agricultural land"
2 under OAR 660-033-0020(1)(a)(C).

3 OAR 660-033-0020(1)(a)(C) is part of, and was intended to implement,
4 Oregon's statutory and regulatory scheme for statewide land use planning for Oregon's
5 limited supply of agricultural land. That scheme, as a whole, makes up the relevant
6 context for our analysis. *See State v. Klein*, 352 Or 302, 309, 283 P3d 350 (2012) (a
7 statute's context includes related statutes); *Havi Group LP v. Fyock*, 204 Or App 558,
8 564, 131 P3d 793 (2006) ("Included in pertinent context are statements of statutory
9 policy.").

10 As set forth above, that statutory and regulatory scheme (1) is predicated on
11 an express policy goal of preserving the "maximum amount of the limited supply of
12 [Oregon's] agricultural land," and preserving such land for "farm use" and "maximum
13 agricultural productivity," ORS 215.243, *Stop the Dump Coalition*, 364 Or at 444; (2)
14 expressly recognizes that how a parcel is used can conflict with the viability of farm uses
15 on nearby parcels, *e.g.*, ORS 215.243; and (3) is designed with safeguards to limit use of
16 land designated as *agricultural land* in ways that conflict with farm uses, *e.g.*, *Stop the*
17 *Dump Coalition*, 364 Or at 444 (recognizing that Goal 3 "limits nonfarm uses of
18 agricultural lands to those 'that will not have significant adverse effects' on accepted
19 farming or forest practices"), Goal 3 (mandating that "[z]oning applied to agricultural
20 land shall limit uses which can have significant adverse effects on agricultural and forest
21 land, farm and forest uses or accepted farming or forest practices").

1 In view of that that statutory and regulatory scheme, which OAR 660-033-
2 0020(1)(a)(C) was intended to help implement, we think it likely that when LCDC
3 adopted OAR 660-033-0020(1)(a)(C), LCDC intended that a parcel be designated as
4 "agricultural land" if such designation and the accompanying zoning is "necessary to
5 permit farm practices to be undertaken on adjacent or nearby agricultural lands," OAR
6 660-033-0020(1)(a)(C), thereby preserving such adjacent and nearby agricultural land for
7 "farm use" and "maximum agricultural productivity," in accordance with this state's
8 policy regarding agricultural lands. That interpretation is also in keeping with Oregon's
9 recognition that many non-agricultural land uses--uses that would be permissible if land
10 designated as agricultural land was redesignated as non-agricultural land--may conflict
11 with nearby farm uses. And that interpretation makes use of the safeguards in Goal 3
12 (and the administrative rules implementing Goal 3) that limit use of agricultural land in
13 ways that conflict with farm uses.

14 Our conclusion becomes apparent if one considers the result of the
15 interpretation advanced by Thomas that OAR 660-033-0020(1)(a)(C) asks only whether
16 the land itself is "necessary to permit farm practices on adjacent or nearby agricultural
17 lands" not whether the land's resource designation and zoning are so necessary. Thomas's
18 interpretation of OAR 660-033-0020(1)(a)(C) would be no barrier to redesignation and
19 rezoning even if traffic impacts, for example, caused by a redesignation of the subject
20 property as non-agricultural land would wholly prevent farm uses on adjacent and nearby
21 agricultural land. That result would operate to reduce, not preserve, Oregon's limited

1 supply of farmland, contrary the purpose of the statutory and regulatory scheme of which
2 OAR 660-033-0020(1)(a)(C) is a part, and which it was adopted to help implement.

3 Consequently, we agree with LUBA that consideration of whether land is
4 "agricultural land" under OAR 660-033-0020(1)(a)(C) must include consideration of
5 whether the land's resource designation and zoning is "necessary to permit farm practices
6 to be undertaken on adjacent or nearby agricultural lands."⁶

7 Having reached that conclusion, we note that we also agree with LUBA
8 that "necessary to permit farm practices on adjacent or nearby agricultural lands" is a
9 "high standard." *Webster's Third New Int'l Dictionary* 1510 (unabridged ed 2002)
10 ("necessary" means "whatever is essential for some purpose" and "things that must be
11 had"). That is, we do not understand land to be agricultural land under OAR 660-033-
12 0020(1)(a)(C) merely because its designation as such would merely be "useful" or

⁶ That conclusion also accords with the rulemaking agency LCDC's broader role in Oregon's scheme for land use planning: LCDC establishes and implements "statewide polices for land use through the adoption of planning goals," local governments then "adopt comprehensive plans that comply with the statewide goals and submit those plans to LCDC for review," and LCDC, after reviewing comprehensive plans, "determines if they are in compliance with the statewide goals." *Central Oregon Landwatch v. Deschutes County*, 301 Or App 701, 703-04, 457 P3d 369, *rev den*, 366 Or 492 (2020). Thus, LCDC establishes, implements, and ensures that land use is in compliance with, statewide land use policies.

Given that role, one would expect that, generally, the rules that LCDC adopts would allow for consideration of permissible uses of parcels of land--*i.e.*, those parcels' resource designation and zoning--rather than to be concerned merely with "the solid part of the surface of the earth," *Webster's Third New Int'l Dictionary* 1268 (unabridged ed 2002) (setting forth definitions of the word "land"), divorced from any legal context within which that solid surface of the earth exists.

1 "desirable" for nearby farm practices. Rather, for "land" to be agricultural land under
2 OAR 660-033-0020(1)(a)(C), that land, considering its resource designation and zoning,
3 must truly be necessary to adjacent and nearby farm practices.

4 III. CONCLUSION

5 In sum, we conclude that LUBA did not err in construing OAR 660-033-
6 0020(1)(a)(C) and, consequently, did not err when it concluded that the county erred
7 when it determined that "[t]raffic issues are not * * * a relevant consideration in
8 addressing" whether land is agricultural land under OAR 660-033-0020(1)(a)(C).
9 Consequently, we affirm.

10 Affirmed; motion to strike DLCD's reply brief denied as moot.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: July 24, 2024

SUBJECT: Public Hearing: Plan Amendment and Zone Change at 19975 Destiny Court

RECOMMENDED MOTION:

Following the conclusion of the public hearing, the Board may elect to:

- continue both the oral and written portions of the hearing to a date certain;
• close the oral portion of the hearing and leave the written record open for a certain number of days;
• close the public hearing and begin deliberations; or
• close the public hearing and schedule deliberations on a date to be determined.

BACKGROUND AND POLICY IMPLICATIONS:

The Board of County Commissioners will conduct a public hearing on July 24, 2024 to consider an application for a Comprehensive Plan Map Amendment to change the designation of property at 19975 Destiny Court from Agricultural to Rural Residential Exception Area. The applicant also requests approval of a corresponding Zone Map Amendment to change the zoning of the subject property from Exclusive Farm Use to Multiple Use Agricultural (MUA-10). This will be the second of two required public hearings.

BUDGET IMPACTS:

None

ATTENDANCE:

Anthony Raguine, Principal Planner



STAFF MEMORANDUM

TO: Board of County Commissioners ("BOCC")

FROM: Anthony Raguine, Principal Planner

DATE: July 24, 2024

RE: Public Hearing for a Comprehensive Plan Amendment and Zone Change Request (ref. File Nos. 247-23-000436-ZC, 247-23-000443-PA, 247-24-000651-MA)

On July 24, 2024, the BOCC will conduct a public hearing to consider a Plan Amendment and Zone Change.

I. PROPOSAL

The applicant requests approval of a Comprehensive Plan Amendment to change the designation of the subject property from Agricultural (AG) to Multiple Use Agricultural (MUA10) and a corresponding Zone Change to rezone the subject properties from Exclusive Farm Use (EFU) to Rural Residential Exception Area (RREA). No exceptions to the Statewide Planning Goals are requested. The subject property is +/-65.1 acres in size and irregularly shaped (see attached location map).

II. BACKGROUND

The applicant requests that Deschutes County change the zoning and the plan designation because the subject property does not qualify as "agricultural land" under Oregon Revised Statutes (ORS) or Oregon Administrative Rules (OAR) definitions. In this case, an Agricultural Soils Capability Assessment (Order 1 Soil Survey) was conducted by Brian T. Rabe, CPSS, WWS, for most of the subject property. The Soil Survey found that approximately 65.8 percent of the subject property does not meet the definition of agricultural soils. For this reason, the applicant proposes that no exception to Statewide Planning Goal 3, Agricultural Land, is necessary.

The BOCC public hearing will be the second of two (2) required hearings for this proposal. The first hearing was held on February 27, 2023, before a Deschutes County Hearings Officer and the Hearings Officer found the applicant demonstrated compliance with all applicable standards. For this reason, the Hearings Officer recommended the BOCC approve the applicant's request.

Staff notes the original proposal included a Conditional Use Permit (CUP) and Tentative Plan (TP) application for a 14-lot subdivision. Because that subdivision application would be dependent on

the successful outcome of the subject plan amendment and zone change, the CUP/TP applications have been placed “on hold” and decoupled from the current applications. Several documents and materials submitted by the applicant include information directed towards the approval of a subdivision but are not applicable to the plan amendment and zone change. Similarly, a number of comments from the public were submitted to the record and most of these comments were directed to the CUP/TP application.

Staff also notes the original plan amendment and zone change applications included two (2) properties. The applicant filed for a modification and property line adjustment to remove the Flood Plain portion from the property. For this reason, the current plan amendment and zone change application consists of one (1) property that is entirely zoned EFU.

III. TIMELINE

This proposal is not subject to the statutory 150-day review timeline.

IV. BOARD CONSIDERATION

As the subject properties include lands designated for agricultural use, Deschutes County Code 22.28.030(C) requires the applications to be heard *de novo* before the BOCC, regardless of the Hearings Officer’s recommendation.

At the hearing, the BOCC will be asked to consider the materials in the record, evidence and testimony presented by the applicant, and evidence and testimony from other interested parties.

V. RECORD

The record is presented at the following Deschutes County Community Development Department website:

<https://www.deschutes.org/cd/page/247-22-000436-zc-247-22-000443-pa-destiny-court-properties-llc-comprehensive-plan-amendment>

Scan the QR code below using a smartphone camera app and a direct link to the website listed above will load.



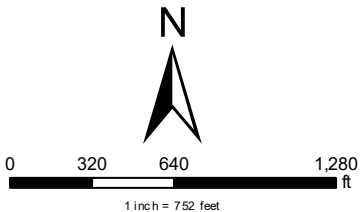
Attachment: Location Map

Land Use File Nos. 247-23-000436-ZC & 443-PA, 24-000651-MA

19975 Destiny Court



Date: 6/7/2024





BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: July 24, 2024

SUBJECT: Design-Build Findings of Fact for the Courthouse Expansion Project PV Solar Technology System at the Deschutes County Fair and Expo Center

RECOMMENDED MOTION:

Move approval of Order No. 2024-028 adopting Findings of Fact to Exempt from Competitive Bidding and Authorize the Use of Design-Build Services of Contracting for the Courthouse Expansion Project PV Solar Technology System at the Deschutes County Fair and Expo Center.

BACKGROUND AND POLICY IMPLICATIONS:

Oregon state law (ORS 279C.527-528) requires that public entities spend 1.5% of the total contract price of a public improvement contract for new construction projects \$5 million or greater on green energy technology or an alternative, regardless of finding source. Green energy technology includes solar technology such as photovoltaic systems.

A photovoltaic (PV) solar technology system is proposed as part of the Courthouse Expansion project to comply with the 1.5% green energy technology requirement. Due to limitations of the Courthouse site and roof area the system is proposed to be constructed at the Deschutes County Fair and Expo Center.

This Findings of Facts establishes the basis for the use of the Design-Build method of contracting as an alternative method due to current market conditions which include labor shortages and long-lead items as well as the specialized expertise needed for this type of project. The Facilities Department is seeking to utilize Design-Build services, an alternative method of contracting, based on the attached Findings of Fact.

BUDGET IMPACTS:

No budget impact at this time. If approved, this alternative, qualifications-based method would be used to select a Design-Build Contractor that would lead the project design and manage and deliver the construction of the project. The expenditure has been budgeted for FY 2025 in Campus Improvements Fund 463 as part of the Courthouse Expansion project.

ATTENDANCE:

Lee Randall, Facilities Director
Eric Nielsen, Capital Improvement Manager
Wayne Powderly, Cumming Group

REVIEWED
LEGAL COUNSEL

07/24/2024 Item #9.

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Adopting the Findings of Fact to *
Exempt from Competitive Bidding and Authorize *
the Use of Design-Build Services of Contracting *
for the Courthouse Expansion Project PV Solar *
Technology System at Deschutes County Fair and
Expo Center

ORDER NO. 2024-028

WHEREAS, the Board of County Commissioners of Deschutes County (“Board”) is the Local Contract Review Board for the County and in that capacity has authority to exempt certain contracts from competitive bidding requirements of ORS 279C and associated county code provisions;

WHEREAS, a public hearing was held on July 24, 2024; and,

WHEREAS, the Board has determined that the Construction of the Deschutes County Courthouse Expansion Project-PV Solar Technology System at the Deschutes County Fair and Expo Center should be constructed by a Design-Build Contractor; now, therefore,

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

Section 1. The Board adopts the specific “Findings of Fact” as set forth in Attachment A.

Section 2. The “Findings of Fact” show that an exemption from competitive bidding for the project complies with the requirements of ORS 279C.335 (2) and the Attorney General’s Model Contract Rules, OAR 137-049-0630 (2) for exemption of the project from competitive bidding.

Dated this _____ of _____, 20__

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PATTI ADAIR, Chair

ANTHONY DeBONE, Vice Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner

DESCHUTES COUNTY, OREGON

ORDER NO. 2024-028 - ATTACHMENT A

FINDINGS OF FACT

**For Exemption from Competitive Bidding and the Use of Design-Build Services of Contracting for
*for***

**Deschutes County – Courthouse Expansion Project
PV Solar Technology System at Deschutes County Fair and Expo Center
ODOE 1.5% Green Energy Technology Requirement**

1. General

ORS 279C.335(2) permits a local contracting agency to exempt public improvement projects from traditional competitive bidding upon approval of Findings of Fact (“Findings”) showing that an alternative contracting process is a) unlikely to encourage favoritism or diminish competition and that b) the process will result in substantial cost savings and benefit to the local contracting agency.

ORS 279C.400 – ORS 279C.410 describe the Request for Proposals method of solicitation as an alternative to traditional competitive bidding. Pursuant to ORS 279C.410(8), a public Agency using the Request for Proposals method may award a contract to the responsible proposer “whose proposal is determined in writing to be the most advantageous to the contracting agency based on the evaluation factors set forth in the request for proposals and, when applicable, the outcome of any negotiations authorized by the request for proposals.”

ORS 279C.330 defines “Findings” and identifies specific information to be provided as a part of Deschutes County’s justification. Under ORS 279C.335(5) a public hearing must be held before the findings are adopted, allowing an opportunity for interested parties to comment on the draft findings.

2. General

The current regional and local construction market is navigating unprecedented challenges, including labor shortages, global – local supply chain issues, as well as multiple public projects slated for construction over the coming year. This project has a fixed budget and would benefit from a single point of contact to lead the design, control costs, and manage and deliver the construction of the project.

In consideration of these circumstances, Deschutes County Facilities seeks to utilize Design-Build Contractor Services, an alternative method of contracting, based on the Findings of Fact presented herein.

FINDINGS OF FACT

SUMMARY FINDINGS

- 1. **Competition will not be diminished.** This exception will likely encourage more competition in this tight market, rather than diminish competition. The Request for Proposals selection process will be competitive based on relevant selection criteria, will be publicly advertised, and will be open to all interested proposers as described in the findings below.
- 2. **This process will attract more contractors in this currently tight market.** This exemption will result in attracting more contractors in this tight market and result in better construction costs. Also, value will be added to the project and outcomes that would not otherwise be obtained under the standard design-bid-build process, especially in these current market conditions.

SPECIFIC FINDINGS, WHICH SUPPORT THE SUMMARY FINDINGS, ARE AS FOLLOWS:

- 1. **The Design-Build Contractor will be selected through a competitive process in accordance with the qualifications-based selection process authorized by Deschutes County Board of Commissioners. Therefore, it is unlikely that the awarding of the construction contract for the Project will encourage favoritism or substantially diminish competition. This finding is supported by the following:**

- A. **SOLICITATION PROCESS:** Pursuant to ORS 279C.360, the Design-Build Contractor solicitation will be advertised at least once in the Daily Journal of Commerce, The Bulletin, and the Deschutes County website to maximize exposure.

The Design-Build Contractor proposals and interviews will be rated based on a predetermined list of evaluation factors subject to the requirements of OAR 137-049-0640(2)(a), (b) and (c). The County will enter into contract negotiations with the highest-ranking firm. Should negotiations fail, the County will have the right to negotiate with the second highest-ranking firm.

- B. **FULL DISCLOSURE:** To ensure full disclosure of all information, the Request for Proposals solicitation package will include:

- a. Detailed Description of the Project
- b. Contractual Terms and Conditions
- c. Selection Process
- d. Evaluation Criteria
- e. Role of Selection Committee
- f. Provisions for Comments
- g. Complaint Process and Remedies Available

- C. **COMPETITION:** As outlined below, the County will follow processes which maintain competition in the procurement of a Design-Build Contractor.

- a. The County anticipates that competition for this contract will be similar to that experienced in other Projects of this type. The competition will remain open to all qualifying proposers.
- b. The selection and solicitation process employed will be open and impartial. Selection will be made on the basis of final proposal scores derived from qualifications, price and other components, which expand the ground of competition beyond price alone to include experience, quality, and approach to market conditions.

- c. The competitive process used to award subcontracts for all competitively bid construction work will be specified in the Design-Build Contractor contract and will be monitored by the County.

D. SELECTION PROCESS: Other highlights of the selection process will include:

- a. A mandatory Pre-Proposal Conference and Site Tour will be announced and held. This conference will be open to all interested parties. During this Pre-Proposal Conference, as well as any time prior to five (5) business days before the close of the solicitation, interested parties will be able to ask questions, request clarifications and suggest changes in the solicitation documents if such parties believe that the terms and conditions of the solicitation are unclear, inconsistent with industry standards, or unfair and unnecessarily restrictive of competition. As applicable, an addendum with questions, clarifications, and questions will be publicized to all interested parties prior to the final deadline.
- b. The evaluation process will determine whether a proposal meets the screening requirements of the RFP, and to what extent. The following process will be used:
 - i. Proposals will be evaluated for completeness and compliance with the screening requirements of the RFP. Those proposals that are materially incomplete or non-responsive will not be accepted.
 - ii. Proposals considered complete and responsive will be evaluated to determine if they meet and comply with the qualifying criteria of the RFP. If a proposal is unclear, the proposer may be asked to provide written clarification. Those proposals that do not meet all requirements will be rejected.
 - iii. Proposals will independently be scored by the voting members of the Selection Committee. Scores will then be combined and assigned to each proposal.
 - iv. The Selection Committee will convene to select from the highest-scoring proposers, a finalist(s) for formal interviews.
 - v. The Selection Committee will conduct the interview/s with the short-listed proposer(s).
 - vi. The Selection Committee will use the interview to confirm the scoring of the proposal and to clarify any questions. Based upon the revised scoring, the Selection Committee will rank the proposers, and provide an award recommendation.
 - vii. Deschutes County will negotiate a contract with the top-ranked firm. If an agreement cannot be reached, the County will have the option to enter into an agreement with the second-ranked firm, and so forth.
- c. Competing proposers will be notified in writing of the selection of the apparent successful proposer and will be given seven (7) calendar days after receipt of the notice to file any questions, concerns, or protests about the selection process. Protests will be subject to the requirements of the OAR 137-049-0450, must be in writing, and must be delivered to the County within seven (7) calendar days after receipt of the selection notice. No protest of the award selection shall be considered after this time period.
- d. The contract achieved through this process will require the Design-Build Contractor to use an open competitive selection process to bid all components of the job. The Design-Build Contractor's general conditions and fee make-up of the total cost will be evaluated as one of the scoring criteria. General Conditions must include supervision, bonding, insurance, and mobilization, and must be within the current industry standard range. The Design-Build Contractor's fee must be within the industry's standard range for a project of this size. The

entire value of the project will be awarded through open, competitive processes, at either the Design-Build Contractor and/or the subcontractor level.

2. The awarding of a construction contract for the Project using Design-Build Contractor method would offer the County critical construction expertise and value to the Project. This finding is supported by the following information required by ORS 279C.335(2)(b) and ORS 279C.330.

A. SPECIALIZED EXPERTISE: Early selection of the Design-Build Contractor creates more informed, better-quality decision making by the project team. A more efficient design and construction team saves the County money and helps the team anticipate and mitigate challenges in the current construction market.

This exemption will allow Deschutes County to proactively seek construction and constructability expertise during the design process, well in advance of the standard competitive bid timeline, to address the complexities of existing conditions and the current construction market, to help inform the best decisions on behalf of the County. Value will be added to the Project, via early and time-critical construction expertise, that could not otherwise be obtained to the same depth, duration, or quality.

a. **COORDINATION:** Use of a Design-Build Contractor in conjunction with the team approach will result in a better coordinated Project. By having the Design-Build Contractor part of the project team early, the Design-Build Contractor will have time to fully evaluate and understand the existing facilities and systems, along with the intended design direction prior to start of construction. This information will inform design direction and approach to site logistics and safety and security measures during construction.

b. The Design-Build Contractor clarifies several critical variables valuable to the Project design. The Design-Build Contractor will design and complete the specified Project within the maximum budget; determines the construction schedule; establishes the sequence of work; is contractually bound to implement the final Project design within the project budget; and participates as an essential member of the Project design and construction team. By utilizing the Request for Proposal selection process, which allows the County to consider factors such as experience and expertise in addition to price, the County will ensure that the selected Design-Build Contractor will be competent addition to the team.

The Design-Build Contractor would help assess material selections relative to lead time issues, best opportunities to secure subcontractors and labor for trade coverage, better pricing, and will help discuss and/or adjust the work plan to address project and construction market needs. This component cannot be addressed by the usual design/bid/build method of construction because selection is typically based on the lowest bidder and occurs at the completion of the design process.

c. **CONSTRUCTION COORDINATION:** A Design-Build Contractor participating on this Project would provide timely assistance and support to the development of the design and the most suitable approach to accommodate existing infrastructure and safety for the building occupants.

d. **MARKET CONDITIONS:** As well as the multitude of construction market factors that currently exist today in Oregon and Washington (e.g., supply chain and lead time issues, construction labor shortages, significant competition of and with other projects), the difficulty in establishing the best work sequence complicates our ability to accurately estimate the cost of this Project. The current construction market challenges the interest and capacity for contractors to bid for jobs. Design-Build Contractor Services, an alternative contracting

method, will be more likely to result in a more experienced and better suited contractor for this Project than the usual competitive/low bid procurement.

B. OPERATIONAL, BUDGET, FINANCIAL DATA

- a. **BUDGET:** The County has a fixed budget available for the Project, as well as a desired “as soon as possible” project delivery date. Early reliable pricing provided by the Design-Build Contractor, as well as scheduling and procuring help with long lead items during the design phase will allow for the potential to mitigate later related challenges.
- b. **LONG TERM COSTS:** The Project will require expertise regarding the constructability and long-term cost/benefit analysis of innovative design. This knowledge is best obtained directly from the construction industry. Many decisions will be required during the design process that will encompass immediate feedback on constructability and pricing. Under the traditional design-bid-build process, there is a high risk of increased change orders and schedule impacts for a Project of this size and complexity. Since there are significant costs associated with delay, time is of the essence. Because the contractor participates during the design phase, the Design-Build Contractor process will assist in providing a scope of work, constructible design and phasing solutions that best meet the requirements of the Project with significantly lower risk to the Project’ costs. Involving the Design-Build Contractor during design will also allow Project risks to be addressed early and teamwork between the County, the design consultants, and the contractor (design-build contractor) to minimize those risks.
- c. **FEWER CHANGE ORDERS:** When the Design-Build Contractor participates in the design process, fewer change orders occur during project construction. This is due to the Design-Build Contractor’s better understanding of the owner’s needs, the existing building and the engineering team’s intent. As a result, the Project is more likely to be completed on time and within budget. In addition, fewer change orders reduce the administrative time and costs of project management for both the County and the contractor.
- d. **DESIGN-BUILD CHANGE ORDERS COST LESS:** Design-Build Contractor change orders will be processed at a lower cost. The design-bid-build method typically results in the contractor charging 15%+ markup on construction change orders.
- e. **POTENTIAL SAVINGS:** Under the design-build method the Design-Build Contractor will design and build the specified project within the fixed budget, avoiding costly scope gaps that can occur with typical design-bid-build contracts.
- f. **CONTRACTOR’S FEE IS LESS:** Contracts with Design-Build Contractors are designed to create a better working relationship with the contractor. As a result, the overhead and profit fee is typically slightly lower than the fee anticipated on similar design-bid-build contracts.

C. ADDITIONAL PUBLIC BENEFITS

- a. **TIME SAVINGS:** The use of Design-Build Contractor as an alternative contracting method allows for more streamlined construction documents, in lieu of a fully bid set where everything needs to be documented for pricing. This will help streamline the project and the completion date.
- b. **COST SAVINGS:** The Project will benefit from the active involvement of a Design-Build Contractor during the design process in the following ways:
 - i. The contractor’s input regarding material availability and lead times, as well as the cost-effectiveness of various alternatives will guide the design toward the most economic choices.

- ii. The contractor will be able to provide current and reliable information regarding the cost of materials that are experiencing price volatility and the availability of scarce materials.
- iii. The contractor will also be able to order materials while design is being completed in order to avoid inflationary price increases and/or lead time issues, to mitigate the lead-times that may be required for scarce materials.
- c. **PROJECT SCOPE & FIXED BUDGET ARE RECONCILED BEFORE COMPLETION OF DOCUMENTS:** The Design-Build Contractor will be able to obtain a complete understanding of the County’s needs, the engineer’s design intent, the scope of the Project, and the operational needs of the Project by participating in the construction document phase. With the Design-Build Contractor participating in this phase they will be able to offer suggestions for improvement and make suggestions that will reduce costs. With the benefit of this knowledge, the Design-Build Contractor will also be able to design the specified project within the fixed budget to be paid by the County for constructing the Project.

D. VALUE ENGINEERING

- a. **WITH THE DESIGN-BID-BUILD PROCESS:** If the County were to utilize the design-bid-build method, the contractor would not participate in this evaluation. In conducting value engineering under the design-bid-build approach, a value engineering consultant is hired to participate in the design and cost evaluation process. This process adds extra costs and administrative complications, without providing the same benefits of early and committed through construction contractor participation.
- b. **WITH DESIGN-BUILD CONTRACTOR:** The Design-Build Contractor process offers a unique opportunity for value engineering that is not possible through the design-bid-build process. Value engineering is the means used to determine the best project design that meets the needs and priorities of the owner, within the owner’s budget. Value engineering is done most effectively by a team consisting of the owner, design team, consultants, and the contractor. When the contractor participates, the team can render the most comprehensive evaluation of all factors that affect the cost, quality, and schedule of the project.
 - i. The Design-Build Contractor method has the benefit of:
 - the ability to best set/anticipate the schedule within these current market conditions;
 - the ability to anticipate long lead items and how to best gain subcontractor commitment to this project,

Through integrated participation, a project’s scope and design evolve that has greater value for the owner, and is not likely to be the same project or product created by the design-bid-build method.

CONCLUSIONS OF LAW

The above “Findings” show that the Design-Build Contractor process for the Construction of the Deschutes County Courthouse Expansion-PV Solar Technology System at the Deschutes County Fair and Expo Center, complies with the requirements of ORS 279C.335(2) for exemption of the project from competitive bidding.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: July 24, 2024

SUBJECT: Senate Bill 80 – Draft Statewide Wildfire Hazard Mapping and Rules Discussion

RECOMMENDED MOTION:

None—presentation only.

BACKGROUND AND POLICY IMPLICATIONS:

Staff will provide a summary to the Board of County Commissioners (Board) as it pertains to the newest draft of the Statewide Wildfire Hazard Map created by the Oregon Department of Forestry (ODF) and Oregon State University (OSU). Staff last provided the Board with a formal update on the hazard mapping process on September 13, 2023.

In 2022, ODF and Oregon State University (OSU) developed administrative rules and a statewide wildfire risk map required under Senate Bill (SB) 762. The rules, adopted by the Board of Forestry, established the criteria by which the map was developed, updated, and maintained. The map also showed what properties in Oregon fall within the wildland-urban interface (WUI), as defined by the Board of Forestry in rule in 2021. The initial draft of the wildfire hazard map was released on June 30, 2022. However, on August 4, 2022, the draft wildfire hazard map was temporarily withdrawn for further refinement. SB 80, passed in the 2023 Oregon legislative session, outlined changes that ODF was required to make to the map before it was released to the public again.

The newest draft version of the hazard map will be made public on July 18, 2024. Staff will provide some details and statistics from the draft map as it relates to Deschutes County. ODF anticipates that a final version of the hazard map, and all associated regulatory standards associated with the map, will be released on October 1, 2024.

In addition, ODF is currently receiving comments on proposed updates to Oregon Administrative Rules that update definitions, notice requirements, appeal options, and make other technical edits related to wildfire hazard mapping.

BUDGET IMPACTS:

None

ATTENDANCE:

Will Groves, Planning Manager
Kevin Moriarty, Deschutes County Forester



MEMORANDUM

TO: Deschutes County Board of Commissioners (Board)

FROM: Kyle Collins, Associate Planner
Will Groves, Planning Manager
Kevin Moriarty, County Forester

DATE: July 24, 2024

SUBJECT: Senate Bill 80 – Draft Statewide Wildfire Hazard Mapping and Rules Discussion

I. BACKGROUND

Certain properties in rural Deschutes County will likely be subject to new wildfire mitigation measures as approved under Senate Bill (SB) 762¹. One of the primary pieces of SB 762 is the creation of a comprehensive Statewide Wildfire Hazard Map to guide new wildfire regulations for development. The initial hazard map was made available on June 30, 2022. However, based on significant concern from citizens and interest groups throughout the state, the Oregon Department of Forestry (ODF) withdrew the initial map to provide more time for additional public outreach and refinement of hazard classification methodologies.

SB 80², passed in the 2023 Oregon Legislative Session, amended sections of SB 762 and outlined changes that ODF is required to make to the map before future public release. The bill changed the name of the map from "Wildfire Risk Map" to "Wildfire Hazard Map." It also reduced the hazard categories from the original five to three: low, medium, and high hazard. SB 80 also forbid insurance companies from using the map to set insurance rates for homeowners.

Based on comments from Oregon State University (OSU) and ODF staff, one of the primary alterations to the map is a more thorough consideration of irrigated agriculture in the hazard analysis. ODF and OSU stated that lands irrigated in one of the past five years would receive different weighting considerations in the overall hazard classification formula.

A copy of the updated map was provided to county planning departments throughout Oregon in April 2024. The preview was limited in scope and was intended to provide planning departments an opportunity to identify what OSU and ODF described as "anomalies" within the draft map results.

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

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

“Anomalies” were not categorically or statutorily defined, and thus it was left up to planning departments to scrutinize the map results based on local knowledge to identify hazard classification anomalies. ODF and OSU also requested spatial data for any development which has occurred since approximately 2018 to help further refine the Wildland Urban Interface (WUI) boundary. The request from ODF and OSU stated that any proposed revisions to the draft hazard classifications must be based on property specific information and evidence such as aerial imagery, property photographs, or other relevant materials. Staff’s June 28, 2024 response to this request is included as Attachment 1 to this memorandum.

ODF and OSU staff are reviewing proposed revisions and comments from county planning departments, as well as public comments, before releasing a final version of the hazard map to the public on October 1, 2024.

Under SB 80, once the Statewide Wildfire Hazard Map is finalized, properties included in **both** a designated WUI boundary and classified as high hazard will be subject to additional development regulations. SB 80 requires that, at a minimum, local governments ensure that properties meeting both of these classifications will be subject to:

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

At present, the State Fire Marshal has yet to adopt final statewide defensible space requirements. The current draft code is included as Attachment 2.

II. PUBLIC COMMENT OPPORTUNITIES

Wildfire Hazard Map Implications for Deschutes County

Attachment 3 spatially depicts the wildfire areas in Deschutes County. Attachment 4 disaggregates the high hazard areas statistically by Urban Growth Boundaries, county zoning, and ownership.

Wildfire Hazard Map Public Comment Period

The updated wildfire hazard map was released to the public on July 18, 2024³. This map release will initiate a month-long public comment period for the general public to review and provide comments to ODF on the map.

Wildfire Hazard Rulemaking Public Comment Period

The [Board of Forestry](#) approved a public hearing process for a proposed rule package to implement the wildfire hazard maps during their June 5, 2024 meeting. See the [notice of proposed rulemaking](#)

³ <https://oregonexplorer.info/topics/wildfire-risk?ptopic=62>

for draft rule language. The department consulted a [Rulemaking Advisory Committee](#) representing a wide variety of stakeholder interests while drafting the proposed rules.

These rules will be used by Oregon State University to address irrigated agriculture as a mitigating factor to assess wildfire hazard in the Statewide Wildfire Hazard Map, which includes assigning one of three hazard zones to individual properties. The rules also update definitions, notice requirements, appeal options, and make other technical edits. Under the draft rules, any appeals of the wildfire hazard maps must be filed with ODF within 60 days of the release of the final maps.

Comment can be made at any of the virtual public meetings below:

- July 31, 10 a.m., [Zoom meeting](#)
- July 31, 2 p.m., [Zoom meeting](#)
- Aug. 1, 6 p.m., [Zoom meeting](#)

Comments can also be sent to maprules@odf.oregon.gov until 5 p.m. on August 15, 2024.

III. BOARD CONSIDERATION

There are no specific decisions for the Board to make regarding the Statewide Wildfire Hazard Map at this time. Members of the public may provide comments and ask questions concerning the draft map by contacting ODF staff through their wildfire hazard map website⁴. Questions or comments concerning the forthcoming defensible space and home hardening building standards can be directed to the Oregon Office of State Fire Marshal⁵ and the Oregon Building Codes Division⁶ (within the Department of Consumer and Business Services), respectively.

SB 80 states that county commissioners will have one additional meeting with ODF, arranged and scheduled by the Association of Oregon Counties (AOC), to review the latest map iteration and discuss any outstanding concerns. A date for this meeting has not been finalized by AOC and ODF at this time.

Attachments:

1. Memo: Review of the Draft Wildfire Hazard Map for Anomalies and Spatial Data Updates
2. Oregon State Fire Marshal provided Draft Defensible Space Code.
3. Draft Deschutes County Wildfire Hazard Maps
4. Property Statistics Summary from Draft Wildfire Hazard Map

⁴ <https://www.oregon.gov/odf/fire/pages/wildfire-hazard.aspx>

⁵ <https://oregondefensiblespace.org/>

⁶ <https://www.oregon.gov/bcd/codes-stand/Pages/wildfire-hazard-mitigation.aspx>



MEMORANDUM

TO: Andy McEvoy, Oregon State University, College of Forestry

FROM: Kyle Collins, Associate Planner
Kevin Moriarty, County Forester

DATE: June 28, 2024

SUBJECT: Senate Bill 80 – Review of the Draft Wildfire Hazard Map for Anomalies and Spatial Data Updates

I. BACKGROUND

In April 2024, Oregon State University (OSU) made two requests from county planning directors and their staff. OSU staff requested that by June 28, 2024, counties should:

- 1) Review the current draft of the Statewide Wildfire Hazard Map for anomalies in property-level hazard classifications.
- 2) Provide spatial data which will help OSU fully map the wildland-urban interface (WUI) in Oregon according to OAR 629-044-1011.

According to the initial request from OSU:

Anomalies are property-level hazard classifications that appear arbitrarily different to county planners when compared to neighboring areas. An example of a potential anomaly is a single taxlot classified as high hazard but surrounded by a large area assessed as entirely moderate hazard taxlots.

Another example of an anomalous hazard classification might be a newly created gravel pit that is classified as high hazard based on previous vegetation conditions. While previous vegetation referenced during simulations may have been highly flammable, the gravel pit is essentially unburnable and does not warrant a high hazard designation.

OSU further clarified the types of spatial data relevant to WUI designation which should be provided if available:

- 1) Planned development which has been approved for development and which meets the criteria of the WUI in OAR 629-044-1011, but was not originally mapped as part of the WUI; or
- 2) Completed development which meets the criteria for the WUI in OAR 629-044-1011, but that was not originally mapped as part of the WUI.

Finally, OSU staff noted that they will evaluate all provided responses and, where appropriate and permissible, incorporate the counties' data into an updated hazard map. As noted under Senate Bills (SBs) 762 and 80, a final version of the hazard map (which is currently in draft form), will identify the hazard classification of individual properties and the location of WUI boundaries on the landscape. Structures included within **both** a high hazard classification and a designated WUI will be subject to defensible space and fire hardening codes, to be determined by the Oregon State Fire Marshal and the Department of Business and Consumer Services Building Codes Division respectively.

II. LIMITATIONS

The Deschutes County Community Development Department (CDD), which includes the Planning Division, and the Deschutes County Forester greatly appreciate the opportunity to review the draft hazard map to provide local knowledge and help ensure the greatest level of accuracy possible for an incredibly complex spatial analysis. County staff acknowledge the difficulty of completing a project of this scale and anticipated impact across a variety of jurisdictions and landscapes.

However, OSU staff should be aware that Deschutes County has numerous limitations in its ability to respond to the requests outlined above. These limitations fall broadly into the following categories:

- 1) While OSU has attempted to provide a succinct description of what may constitute "anomalies" in hazard classification, without a formal definition and framework it is difficult or impossible to capture all possible issues within the draft hazard classifications.
- 2) The number of properties which county staff would likely consider "anomalies" measures in the hundreds. Evaluating the sheer number of properties with potentially inconsistent hazard classifications on a case-by-case basis would necessitate a much greater dedication of resources than county staff was able to provide in the time allotted. This is especially true given the specific limitations for identifying "anomalies" provided by OSU staff and discussed in greater detail below.
- 3) OSU staff utilized building footprint spatial data to identify WUI boundaries on the draft hazard map. County staff understands that this data was current as of approximately 2018-2019, and thus the updated spatial data request would need to cover approximately the last 4-5 years to provide current results. However, CDD does not capture specific spatial data which identifies planned developments or building footprints in Deschutes County. Given this limitation, county staff is unable to provide this level of analysis for development which may have occurred in the previous 4-5 years. However, county staff has attempted to provide some spatial data which may be useful for future iterations of the hazard map.

III. REVIEW FOR ANOMALIES

OSU staff provided the following parameters for verifying “anomalies” and whether adjustments to the draft hazard classification would be undertaken:

For OSU to review potential anomalies and consider adjusting, evidence of a potentially incorrect property-level hazard designation needs to [sic] objective, verifiable, and address the four mapping criteria in the directing legislation: “weather, climate, topography and vegetation.” Examples of evidence that will not be considered support for claim of an anomaly includes:

- Personal anecdotes unaccompanied by verifiable evidence
- Evidence premised on factors outside of the four mapping criteria. For example, defensible space and home hardening characteristics are outside the mapping criteria and so a potential anomaly cannot be premised on the fact that the property has significantly mitigated hazard with defensible space (e.g., sprinklers, fire safe landscaping, etc.) or fire hardening (e.g., cement siding, metal roof, etc.)

Given the hazard map development language included in SBs 762 and 80, county staff understands the need for these limitations. However, as noted above, the number of individual properties throughout Deschutes County which appear to have an anomalous hazard classification would require significant and sustained effort by staff to review on a case-by-case basis and provide evidence to justify a classification change. This expected effort is particularly pronounced when tools such as standard aerial imagery may not accurately reflect concerns encountered through site visits and on-the-ground experience from experts such as the Deschutes County Forester. Additionally, both planning staff and the Deschutes County Forester have concerns that entire regions of the county may in fact have anomalous hazard classifications based on local knowledge, recent fire history, the discrepancy between fuel treatments on federal versus private lands, and the expected increase in fire activity for Central Oregon for the coming decades¹.

As county staff is unable to provide the level of detailed analysis requested by OSU in the time allotted, the Deschutes County Forester and planning staff have provided the following themes which we believe should be addressed in future iterations of the hazard map:

Theme 1: Communities appear to have been given moderate or low hazard classifications due to adjacent USDA Forest Service fuel treatments.

The communities of primary concern are: Black Butte Ranch, Crosswater, Seventh Mountain/Widgi Creek, River Canyon Estates, Sunriver, Three Creek Communities, and Woodside Ranch.

Most of these communities are forested, have high tree density, and variable homeowner compliance of adequate defensible space. However, it appears that hazard classifications within these communities have been influenced by fuel treatment projects on adjacent USDA Forest Service land,

¹ <https://www.climatehubs.usda.gov/hubs/northwest/topic/climate-change-and-wildfire-idaho-oregon-and-washington>

causing a majority of taxlots to be classified as moderate hazard. The hazard map analysis does not appear to anticipate that wildfires could potentially start from within the communities themselves and not necessarily within adjacent USDA Forest Service land. Additionally, available ladder fuels within these communities are not adequately captured on the taxlots of concern.

Theme 2: Lack of representation of non-federal fuel treatments creates an inequitable approach to determining wildfire hazard on a County-wide scale

As stated above, based on review of the draft hazard map, it appears that USDA Forest Service fuel treatments have been captured as part of the hazard classification methodology. However, numerous State, county, local, and private fuel treatments have not been represented in a similar manner. If it is accurate that Forest Service fuel treatments have been included as part of the hazard classification analysis, it is unclear why a discrepancy has been drawn between federal actions and those undertaken by others.

To provide two examples:

- 1) The Bend Park and Recreation District and Tree Farm LLC fuel treatment areas on the City of Bend's western boundary are currently classified as high hazard, but these areas appear to meet the same ruleset and conditions as the Theme 1 communities of Black Butte Ranch, Crosswater, Seventh Mountain/Widgi Creek, River Canyon Estates, Sunriver, Three Creek Communities, and Woodside Ranch. Tree Farm and other homeowner associations in the Westside Transect Zone on Bend's western edge have strict defensible space standards in their architectural guidelines which must be maintained in perpetuity.
- 2) Numerous taxlots within the Tetherow Golf Course (part of the Tetherow Destination Resort) which have been converted to golf courses, agricultural pastures, parks, or other cleared features are currently classified as high hazard.

Theme 3: Flame length is not a good metric to determine fire intensity

Fire intensity in wildfire modeling is generally defined as the amount of BTU's per meter cubed. Two fires can have the same flame lengths with very different intensities. Flame length is defined as the average flame length of a flaming front.

Grass fuel models (GR4) and shrub models (GS2) appear to be used for the eastern portion of Deschutes County. Whereas timber models (FM10, etc.) appear to be used on the western portion of Deschutes County. Although flame lengths from grass and light shrub can exceed 8 feet, the resistance to control is much lower than timber fires for the following reasons:

- Grass fires are limited in duration and have a low chance of producing lofted embers.
- Shrubs and juniper woodlands generally produce short-range to mid-range spot fires (less than ¼ mile).

- Croplands will generally produce short duration fires with limited to no spot fires if crops are available to burn.
- The Rothermel fire spread model² is only a surface fire behavior model. Within the draft hazard map, forested canopy fire does not seem to be a consideration when determining fire intensity analysis.

Given these concerns, large numbers of taxlots in rangelands and farmlands have been classified as high hazard and appear to show greater hazard than taxlots located in or near mature forest, contrary to the available evidence regarding wildfire risk within forested landscapes.

Theme 4: The spatial datasets used in the draft map are outdated by several years

County staff notes that the draft hazard map identifies 102,451 taxlots within Deschutes County. As of the date of this report, Deschutes County has 106,838 taxlots on record. It is unclear how the remaining 4,387 taxlots will be assigned hazard classifications in the final version of the hazard map slated for issuance in October 2024.

Theme 5: The hazard map appears broadly inconsistent based on previous fire history and on-site knowledge

The draft map currently presented is inadequate in determining priority areas within Deschutes County for hazardous fuel mitigation. Some of the communities classified as moderate hazard in Theme 1 have the highest fire risk in Deschutes County deemed by the County Forester and other fire experts from federal, state, and local fire protection organizations. For example, many homeowners in Black Butte Ranch are currently unable to find fire insurance because insurance companies have deemed this area as having extreme fire risk, however a majority of Black Butte Ranch is currently classified as moderate hazard in the draft map.

Additionally, in areas containing juniper woodlands and rangelands, the draft map shows a checkerboard type pattern between moderate and high hazard. Neighbors with similar landscapes frequently have dissimilar classifications. Some taxlots have been completely converted from original native vegetation and are not adequately captured in the hazard map.

Some examples of this general irregularity are demonstrated in the figures below. These examples are not exhaustive but are intended to provide a snapshot of numerous inconsistencies within the hazard map, both at a taxlot scale and at a regional level. These examples are spread across a wide geographic area and appear to show:

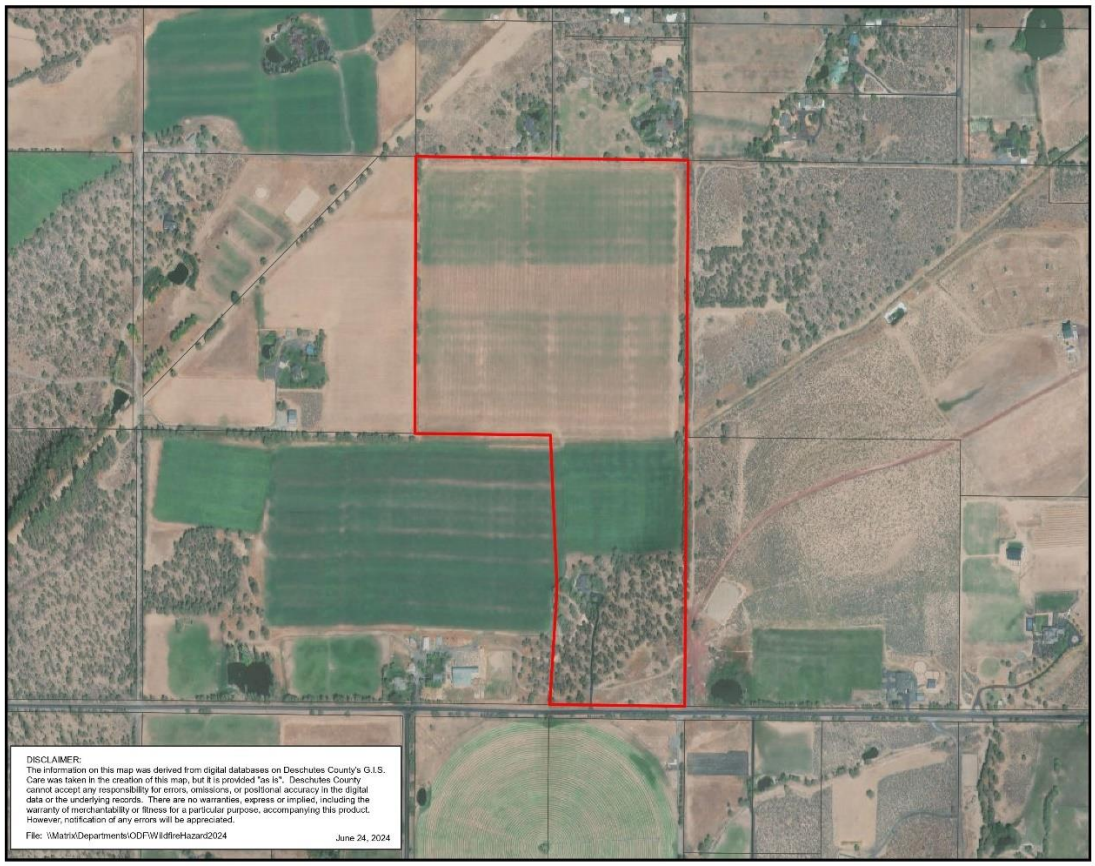
- Moderate (or low) classification taxlots with identical vegetation and topography patterns to surrounding areas composed mostly or entirely of high hazard classification taxlots.

² <https://www.fs.usda.gov/research/treesearch/55928>

- Irrigated parcels which are classified as moderate hazard adjacent to irrigated parcels which are classed as high hazard. Curiously, in several of these instances, aerial imagery appears to show taxlots with recent and/or frequent irrigation receiving a high hazard classification adjacent to parcels that appear to have similar or less irrigation activity with a moderate hazard classification.

Example 1

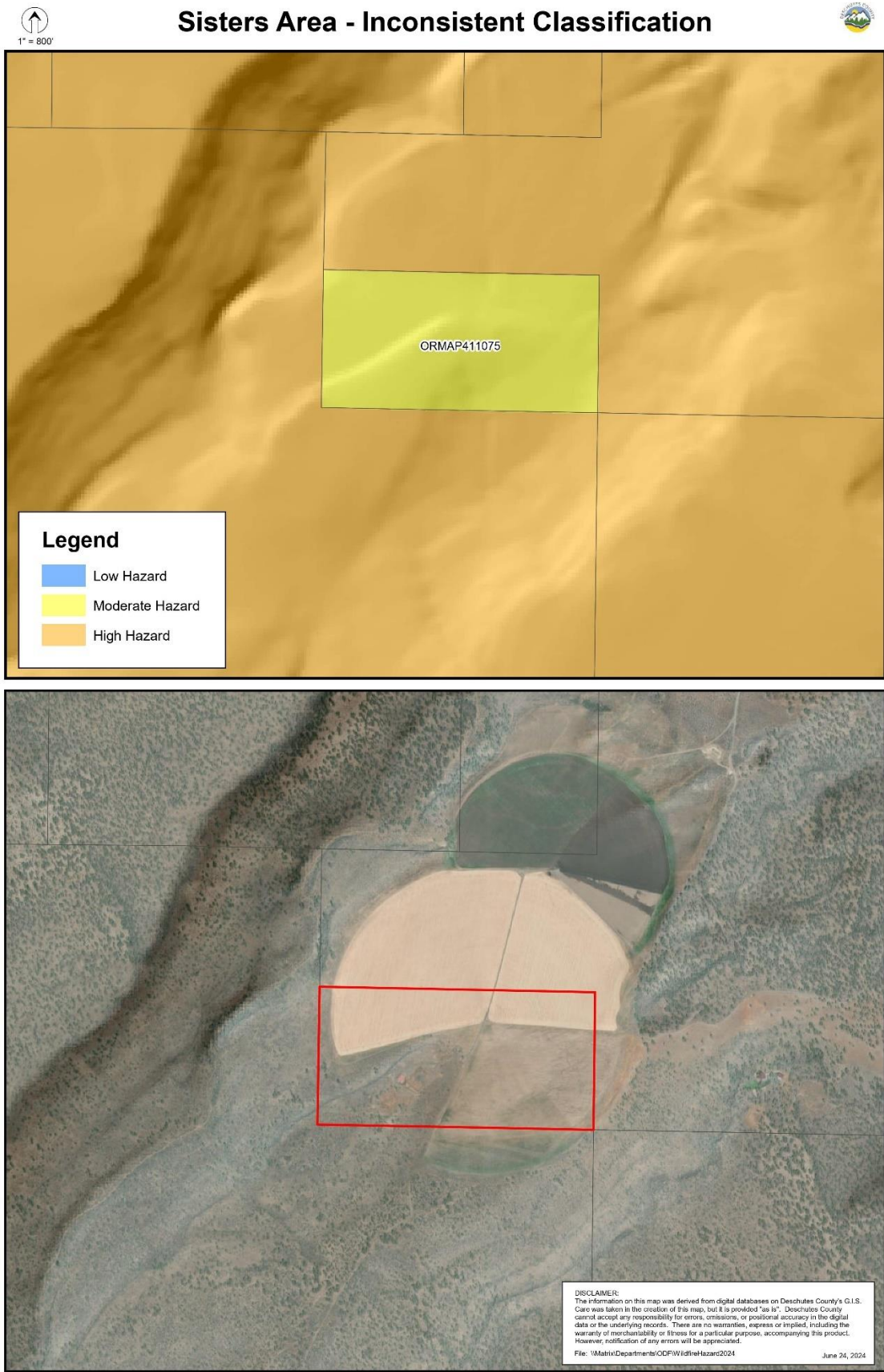
Tumalo - Inconsistent Classification



DISCLAIMER:
The information on this map was derived from digital databases on Deschutes County's G.I.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.
File: \\Mathi\Departments\ODFW\kdfre\Hazar2024 June 24, 2024

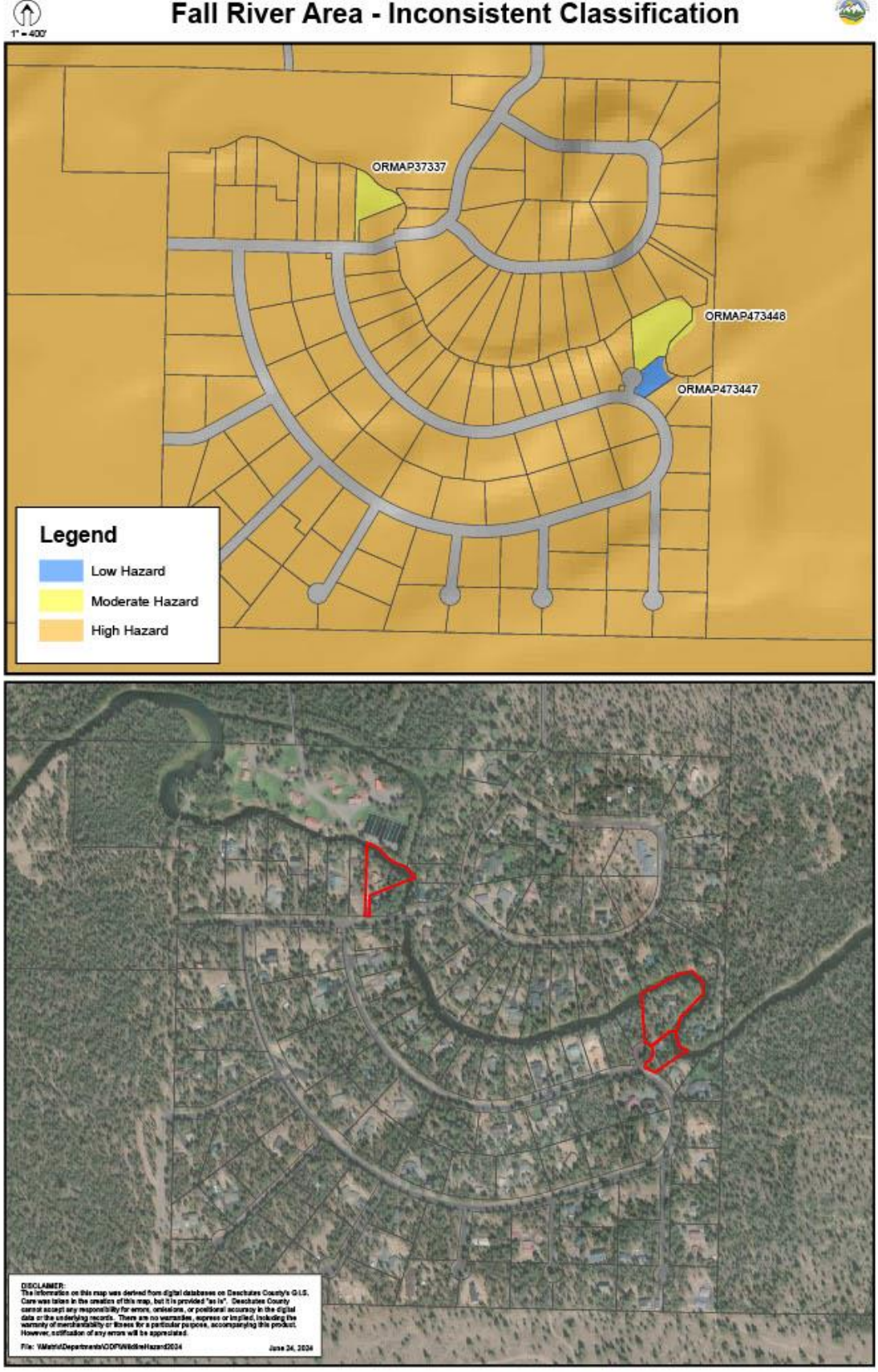
Example 2

Sisters Area - Inconsistent Classification



Example 3

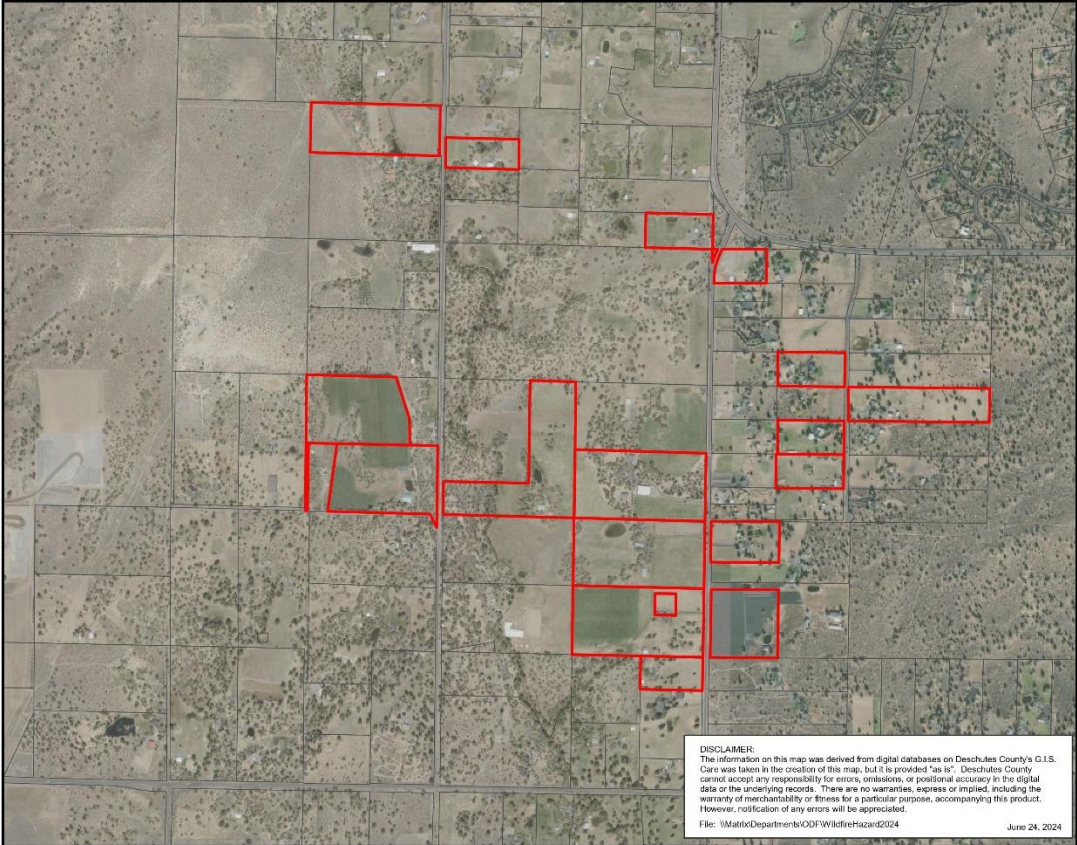
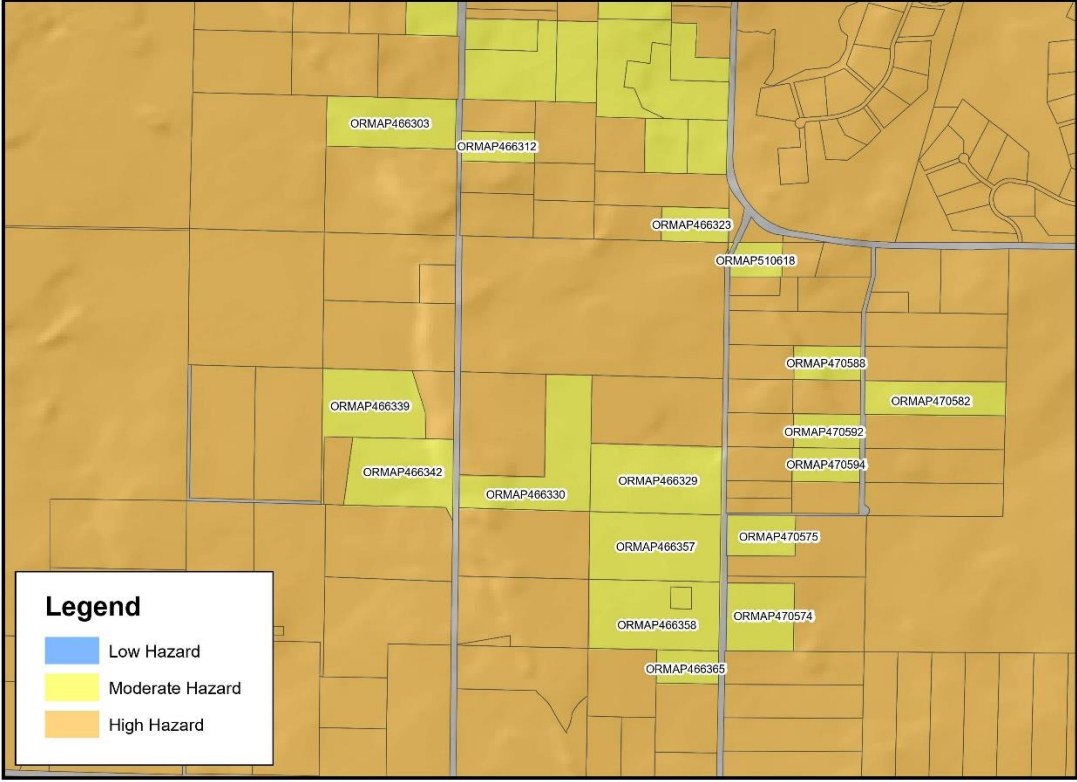
Fall River Area - Inconsistent Classification



Example 4

SE Bend Area - Inconsistent Classification

1" = 1,000'



Theme 6: Impacts to local fuel treatment programs

State-level hazard classifications may also drive prioritization for fuel treatments and funding opportunities to create defensible space in rural communities throughout Deschutes County. It is unclear if these hazard classifications will align with areas that have been prioritized by county staff and local communities for future fuel treatment efforts.

Theme 7: LandFire³ was never intended to be used to determine Wildfire Hazard on a taxlot level

LandFire data products consist of over 50 spatial data layers in the form of maps and other data that support a range of land management analysis and modeling. For example, specific data layer products include: Existing Vegetation Type, Canopy, and Height; Bio-physical Settings; Environmental Site Potential; Fire Behavior Fuel Models; Fire Regime Classes; and Fire Effects layers.

The following links describe in greater detail the applicability and limitations of utilizing LandFire data products for determining wildfire risk at a taxlot level:

- https://www.natureserve.org/sites/default/files/lf_fact_sheet.pdf
- https://landfire.gov/sites/default/files/documents/The_LANDFIRE_Project_TNC_pub.pdf

As a general summary, the LandFire factsheet states the following:

LandFire products are designed to be used at a landscape-scale in support of strategic vegetation, fire, and fuels management planning to evaluate management alternatives across boundaries.

LandFire National products are delivered at a 30-meter pixel resolution. The most effective use of the products is at the landscape scale. Thus, applying LandFire data at an individual pixel level or in small groups of pixels is not recommended.

It is county staff's understanding that certain data layers utilized within the draft hazard mapping process are LandFire products or similar spatial datasets. Given the requirements from SBs 762 and 80 that individual taxlots be given hazard classifications, use of these datasets may produce unintended or inaccurate results.

IV. WILDLAND URBAN INTERFACE (WUI) SPATIAL DATA

As noted above, Deschutes County does not compile or maintain spatial data associated with building footprints and/or planned developments. However, county staff understands the general request to provide additional data that may help fill in gaps regarding development activity which has occurred since approximately 2019. As an intermediate step, staff has compiled spatial data for all properties which have received development permits (i.e. – building permits) since 2019. This data does not contain details such as the location of individual structures, but provides an overview of developed

³ <https://landfire.gov/>

properties which may have not been captured in the original WUI analysis performed by OSU staff. This data is included as an attachment to this memorandum.

Attachment:

1. Deschutes County – Spatial Data for Structures Developed Between 2019 and 2024

CHAPTER 2

DEFINITIONS

User note:

About this chapter: Codes, by their very nature, are technical documents. Every word, term and punctuation mark can add to or change the meaning of a technical requirement. It is necessary to maintain a consensus on the specific meaning of each term contained in the code. Chapter 2 performs this function by stating clearly what specific terms mean for the purpose of the code

SECTION 201

GENERAL

201.1 Scope. Unless otherwise expressly stated, the following words and terms shall, for the purposes of this code, have the meanings shown in ORS 476.390 and in this chapter.

201.2 Interchangeability. Words stated in the present tense include the future; words stated in the masculine gender include the feminine and neuter; and the singular number includes the plural and the plural the singular.

201.3 Terms defined in other codes. Where terms are not defined in this code and are defined in other International Codes, such terms shall have the meanings ascribed to them as in those codes.

201.4 Terms not defined. Where terms are not defined through the methods authorized by this section, such terms shall have their ordinarily accepted meanings such as the context implies.

SECTION 202

DEFINITIONS

ACCESSORY DWELLING UNIT (ADU). A residential structure that is used in connection with, or that is auxiliary to, a single-family dwelling in accordance with ORS 215.501. ADU's must have adequate access for firefighting equipment and be served by a fire protection service provider with professionals who have received training or certification described in ORS 181A.410. [Section 301.1.1]

[A] APPROVED. Acceptable to the *code official*. [Section 302.4.1]

BEST MANAGEMENT PRACTICES. Means *defensible space* requirements specific to Oregon, and not contained in the International Wildland-Urban Interface Code, in accordance with the best practices provisions of ORS 476.392. The Oregon Department of State Fire Marshal has included best management practices to establish the minimum defensible space requirements of this code. Best management practices adopted locally must be approved by the Oregon Department of State Fire Marshal in accordance with OAR 837-039-0006. Locally adopted best management practices may be related to, species-specific concerns, special hazards, management practices of recognized local, state, or national programs, or other relevant fuel modification concerns. [Section 105]

User note:

Local government may adopt requirements that address conditions that are of particular concern or interest in their area. Amongst others, these could include the following areas:

- **Species-specific.** The requirements of the Oregon Defensible Space Code may not be practical for all vegetation, including some trees or ground cover. For example, lodgepole pine trees are prone to blowing over in strong winds without the protection of being grown in clusters. In other areas of the state the intensity and rate of fire spread created by some highly volatile plant species such as rabbitbrush, juniper or sagebrush may be of local concern, while fire-resistant species such as oak and maple may be of less concern.
- **Special hazards.** In some cases, locals may want to address hazards that are particularly prevalent in their jurisdiction. An example would be areas where the heating of homes with firewood is especially common, and its storage is nearly always within the defensible space. The adoption and enforcement of local requirements to mitigate this danger would be appropriate.
- **Recognized programs.** Many established programs, at both the local, state, and national level, can provide greater requirements than the minimum state-wide code provided by the Oregon Department of State Fire Marshal. Many

communities, particularly those in regions of the state prone to *wildland-urban interface* wildfires, have successfully utilized programs such as Wildfire Ready (FEMA), Firewise USA (NFPA), Fire Adapted Oregon (OSFM), Project Wildfire (Deschutes County), and many others.

Important: Draft copies of locally proposed amendments to the ODSC must be evaluated by the OSFM and comply with the OAR 837-039-0006 process. The review will ensure that the proposed requirements are lawful, consistent with the intent of the ODSC, and will be approved by local resolution.

[A] CODE OFFICIAL. The official designated by the jurisdiction to interpret and enforce this code, or the code official's authorized representative in accordance with ORS 476.060. [Chapter 1, Section 302]

DEFENSIBLE SPACE. A natural or human-made area in which material capable of supporting the spread of fire has been treated, cleared or modified to slow the rate and intensity of advancing wildfire and allow space for fire suppression operations to occur. See also ORS 476.390.

FIRE-RESISTIVE VEGETATION. Plants with the characteristics compiled in Appendix F of this code that can be used to reduce the likelihood of fire spread. [Section 302.5/App. F]

User note:

While no vegetation can be regarded as truly “fire-proof”, and while all will burn under severe fire conditions, fire resistive vegetation can lower that likelihood and severity.

There is a large variety of fire resistive vegetation that can be found commercially and assist an owner in an overall strategy to modify the fuels on their property. This may include groundcovers such as kinnikinnick and periwinkle, perennials such as iris and lupine, shrubs such as azalea and rhododendron, and trees such as maple and crabapple.

Details are available at the Oregon Department of State Fire Marshal homepage. Additional resources are widely available online, including:

- “*Safer from the start: A Guide to Firewise-Friendly Developments*” published by the National Fire Protection Association (NFPA).
- “*Firewise Toolkit*” published by the National Fire Protection Association (NFPA).
- “*Fire-Resistant Plants for Oregon Home Landscapes*” published by the OSU extension service and the USDA.
- “*Choosing the Right Plants for Northern Nevada’s High Fire Hazard Areas*” published by the University of Nevada Reno Extension
- “*Firewise Landscaping for Southern Idaho*” brochure published by the Bureau of Land Management.

FIRE-RESISTIVE VEGETATION, NON. Flammable plants, including *vegetative fuels*, that ignite readily, can add to the intensity of a wildfire and may increase its spread. Generally, these fuels have fine dry material such as twigs, leaves and needles, or have high oil and resin content. [302.3, 402.2, 402.3]

FUEL MODIFICATION. A method of modifying fuel load by reducing the amount of *nonfire-resistive vegetation* or altering the type of vegetation to reduce the fuel load. [Section 302]

HAZARD RATING. A numerical value describing the likelihood and intensity of a fire, based on specific factors or conditions including weather, climate, topography, and vegetation. [Chapter 3 Scope]

LADDER FUEL. Branches, leaves, needles, and other combustible vegetation that may allow a wildfire to spread from lower growing vegetation to higher growing vegetation. [Section 302.4]

MAP. The comprehensive statewide map that displays the five wildfire risk classes and populates Oregon Wildfire Risk Explorer, the official wildfire planning and risk classification mapping tool for the State of Oregon, coordinated by the Oregon Department of Forestry. See ORS 477.027. [Chapter 1, Section 301 and 401.]

OTHER HUMAN DEVELOPMENT. Means essential facilities, special occupancy structures, or hazardous facilities as defined in ORS 455.447 that support community functions, public communication, energy, or transportation. See OAR 629-044-1005. [Throughout]

STRUCTURE. Means:

- A residential building that requires a Certificate of Occupancy.
- A commercial building that requires a Certificate of Occupancy.
- A manufactured dwelling that has received a Housing and Urban Development certification label (Insignia of Compliance).
- A structure that has received a temporary Certificate of Occupancy under the state building code; or
- A structure constructed prior to adoption of the state building code, that would have required a Certificate of Occupancy or Insignia of Compliance under the state building code, if one was not was obtained. [Throughout]

TREE CROWN. The primary and secondary branches growing out from the main stem, together with twigs and foliage. [Sections 302.4]

VEGETATIVE FUELS. Means both live and dead plant material that constitute a wildfire hazard, including *ladder fuels*. [Section 302.5. See also OAR 629-044-1005]

WILDFIRE. An uncontrolled fire spreading through vegetative fuels, exposing and possibly consuming structures. [other definitions]

WILDFIRE RISK. Means the wildfire impacts to values based on scientifically modeled wildfire frequency and wildfire intensity. [Section 101, Section 302.2. See 629-044-1005]

WILDLAND. An area in which development is essentially nonexistent, except for roads, railroads, power lines and similar facilities. [Sections 101, 301]

WILDLAND FUELS. Means natural vegetation that occurs in an area where development is essentially non-existent, including grasslands, brushlands, rangelands, woodlands, timberlands, or wilderness. Wildland fuels are a type of *vegetative fuels*. [Sections 101, 301]

WILDLAND-URBAN INTERFACE. Means a geographical area where structures and other human development meets or intermingles with wildland or vegetative fuels. [Throughout]

CHAPTER 3 DEFENSIBLE SPACE

User note:

About this chapter: Chapter 3 establishes minimum fire protection requirements to mitigate the hazards to life and property from fire in the wildland-urban interface. The chapter includes strategies to reduce the hazards of fire originating within a structure spreading to wildland and fire originating in wildland spreading to structures and other human development. These requirements, and those in Chapter 4, are the result of a law made effective by the Oregon Legislature July 19, 2021 and resulted in the creation of ORS 476.390 through 476.398.

SECTION 301 GENERAL

301.1 Scope. The provisions of this chapter establish general requirements statewide for all *structures* and *other human development* on lands in the *wildland-urban interface* that are designated with a *hazard rating* of extreme or high risk, as identified on the comprehensive statewide *map* facilitated by the Oregon Department of Forestry, and in accordance with ORS 476.392.

Exceptions:

1. Vineyards, crops, and other cultivated vegetation that are irrigated and maintained, or non-irrigated but maintained, throughout the year.
2. *Structures* and *other human development* exempted under ORS 455.315.

ORS 455.315 is not a part of this code but is reprinted or paraphrased here for the reader's convenience:

ORS 455.315 provides for the exemption of the application of a state structural specialty code to agricultural buildings such as structures used for storage of farm machinery, crops, forest products, or used as equine facilities.

301.1.1 Accessory dwelling units. *Accessory dwelling units* on lands in the *wildland-urban interface* that are designated with a *hazard rating* of extreme or high risk shall be in conformance with this section. *Accessory dwelling units* not identified on the comprehensive statewide *map* must comply with any applicable local requirements for defensible space established by a local government pursuant to ORS 476.392.

301.2 Intent. The intent of this chapter is to establish minimum requirements to mitigate the risk to life and property from *wildland* fire exposures, exposures from adjacent *structures* and *other human development*, and to prevent *structure* fires from spreading to *wildland fuels*.

SECTION 302 DEFENSIBLE SPACE REQUIREMENTS

302.1 Objective. Provisions of this section are intended to modify the fuel load in areas adjacent to *structures* and *other human development* to create a *defensible space*.

302.2 Fuel modification. *Structures* and *other human development* located in areas designated as high risk or extreme risk in accordance with OAR 629-044-1020 shall comply with the *fuel modification* distances contained in Table 302.2. Distances specified in Table 302.2 shall be measured on a horizontal plane from the perimeter or projection of the *structure* and *other human development* as shown in Figure 302.2.

OAR 629-044-1020 is not a part of this code but is reprinted or paraphrased here for the reader's convenience:

OAR 629-044-1020 defines *wildfire risk* classifications by a range of wildfire hazard values that illustrate likely wildfire behavior.

302.3 Responsible party. Persons owning, leasing, controlling, operating or maintaining *structures* and *other human development* requiring defensible space are responsible for modifying or removing *nonfire-resistive vegetation* on the property owned, leased or controlled by said person.

302.4 Trees. Trees are allowed within the defensible space provided they are in accordance with Sections 302.4.1 and 302.4.2

302.4.1 Tree spacing. Single trees, or *approved* groups of trees considered as a single crown, shall comply with at least one of the following:

1. Trees with *ladder fuels* removed in accordance with Section 302.4.2 shall have the horizontal distance between crowns of adjacent trees, structures and other human development, outlets of chimneys, and overhead electrical facilities be not less than 10 feet (3048 mm). See Fig. 302.4.1(1)
2. Trees pruned to remove *ladder fuels* a minimum of 15 feet (4572 mm) above the ground shall be maintained a minimum of 10 feet (3048 mm) above the surface of a roof and 10 feet from overhead electrical facilities and outlets of chimneys. See Fig. 302.4.1(2).

302.4.2 Ladder fuel. Trees 18 feet or taller, the *tree crowns* within the *defensible space* shall be pruned to remove limbs located less than 6 feet (1829 mm) above the ground surface adjacent to the trees. Trees less than 18 feet shall be pruned to remove limbs equal to no more than 1/3 the trees height. To protect tree health, no more than 1/2 of the live crown shall be required to be removed at one time.

302.4.2.1 Deadwood. Deadwood and litter shall be regularly removed from within trees and on the ground around trees.

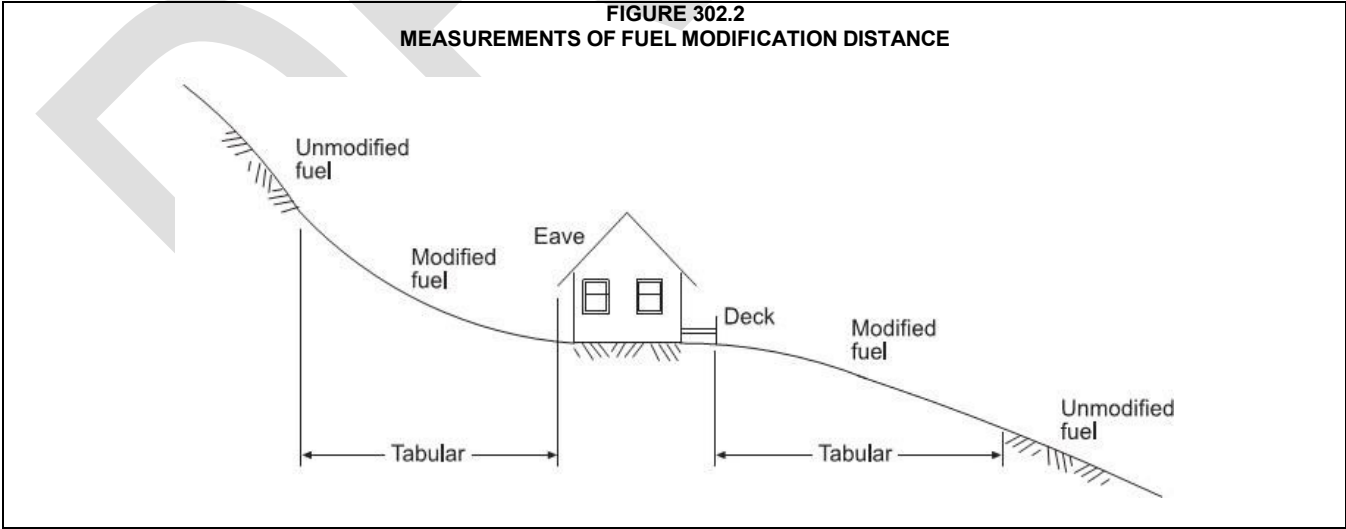
302.5 Ground cover. Where *vegetative fuels, fire-resistive vegetation,* or cultivated ground cover, such as green grass, ivy, succulents or similar plants are used as ground cover, they are allowed to be within the designated *defensible space*, provided that they do not form a means of transmitting fire from the native growth to any *structure or other human development.*

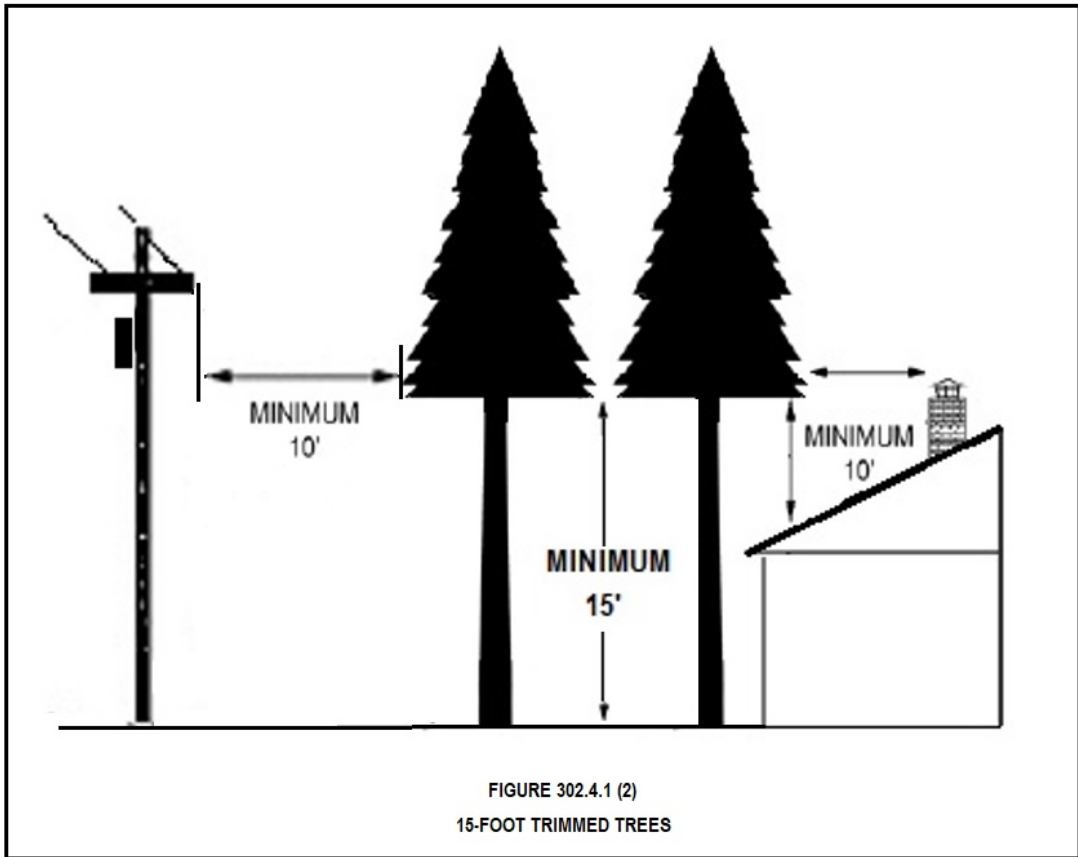
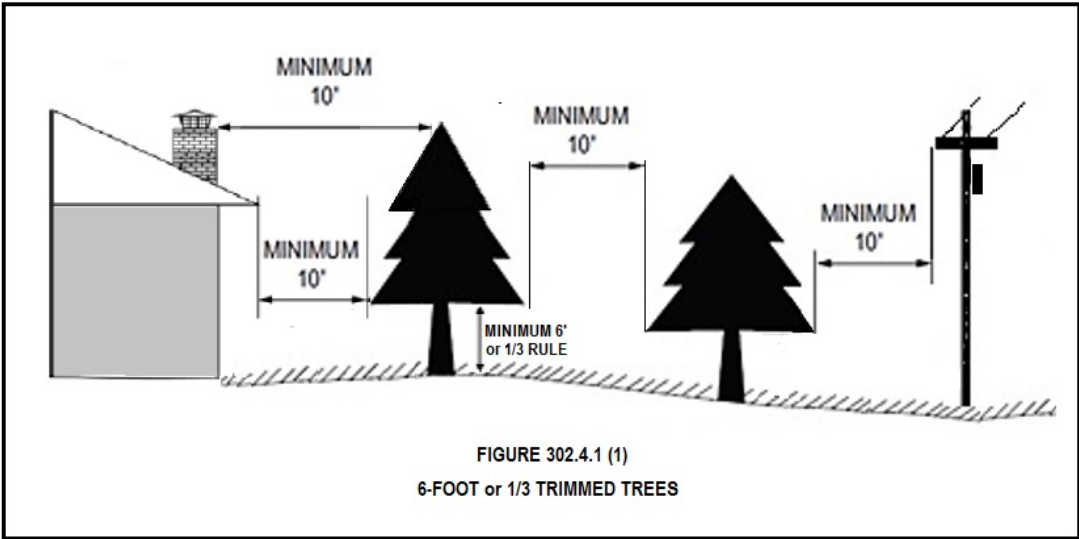
**TABLE 302.2
REQUIRED DEFENSIBLE SPACE**

WILDLAND-URBAN INTERFACE AREA	FUEL MODIFICATION DISTANCE (feet)
High risk	50
Extreme risk	100

For SI: 1 foot = 304.8 mm.

**FIGURE 302.2
MEASUREMENTS OF FUEL MODIFICATION DISTANCE**





CHAPTER 4

MAINTENANCE OF DEFENSIBLE SPACE

User note:

About this chapter: Chapter 4 provides the maintenance provisions of the Defensible Space requirements in Chapter 3 and may be cited for enforcement purposes.

SECTION 401 GENERAL

401.1 Scope. The provisions of this chapter establish the general requirements statewide for maintenance of defensible space on all lands in the *wildland-urban interface* that are designated as extreme or high risk, as identified on the comprehensive statewide *map* facilitated by the Oregon Department of Forestry.

401.2 Intent. The intent of this chapter is to establish the minimum maintenance requirements required in Chapter 3.

SECTION 402 MAINTENANCE REQUIREMENTS

402.1 General. Defensible space required by Chapter 3 shall be maintained in accordance with this chapter. In addition to citing a code specified herein, compliance notices shall also include a plain statement of the facts in consideration of Chapter 3 and in accordance with Section 104.3.

402.2 Modified area. Nonfire-resistive vegetation or growth shall be kept clear of *structures* and *other human development* in accordance with Chapter 3, in such a manner as to provide a clear area for fire suppression operations.

402.3 Responsibility. Persons owning, leasing, controlling, operating or maintaining *structures* and *other human development* are responsible for maintenance of *defensible spaces*. Maintenance of the *defensible space* shall include modifying or removing nonfire-resistive vegetation and keeping leaves, needles and other dead vegetative material regularly removed from roofs of *structures* and *other human development*.

402.4 Trees. Trees shall be maintained in accordance with Section 302.4.

402.5 Ground cover. Ground cover shall be maintained in accordance with Section 302.5.

APPENDIX F

CHARACTERISTICS OF FIRE-RESISTIVE VEGETATION

This appendix is for information purposes and is not intended for adoption.

User note:

About this appendix: Appendix F is an informational appendix provided for the convenience of the code user. It is simply a compilation of the eight characteristics of fire-resistive vegetation that can be used effectively within wildland-urban interface areas to reduce the likelihood of fire spread through vegetation.

SECTION F101 GENERAL

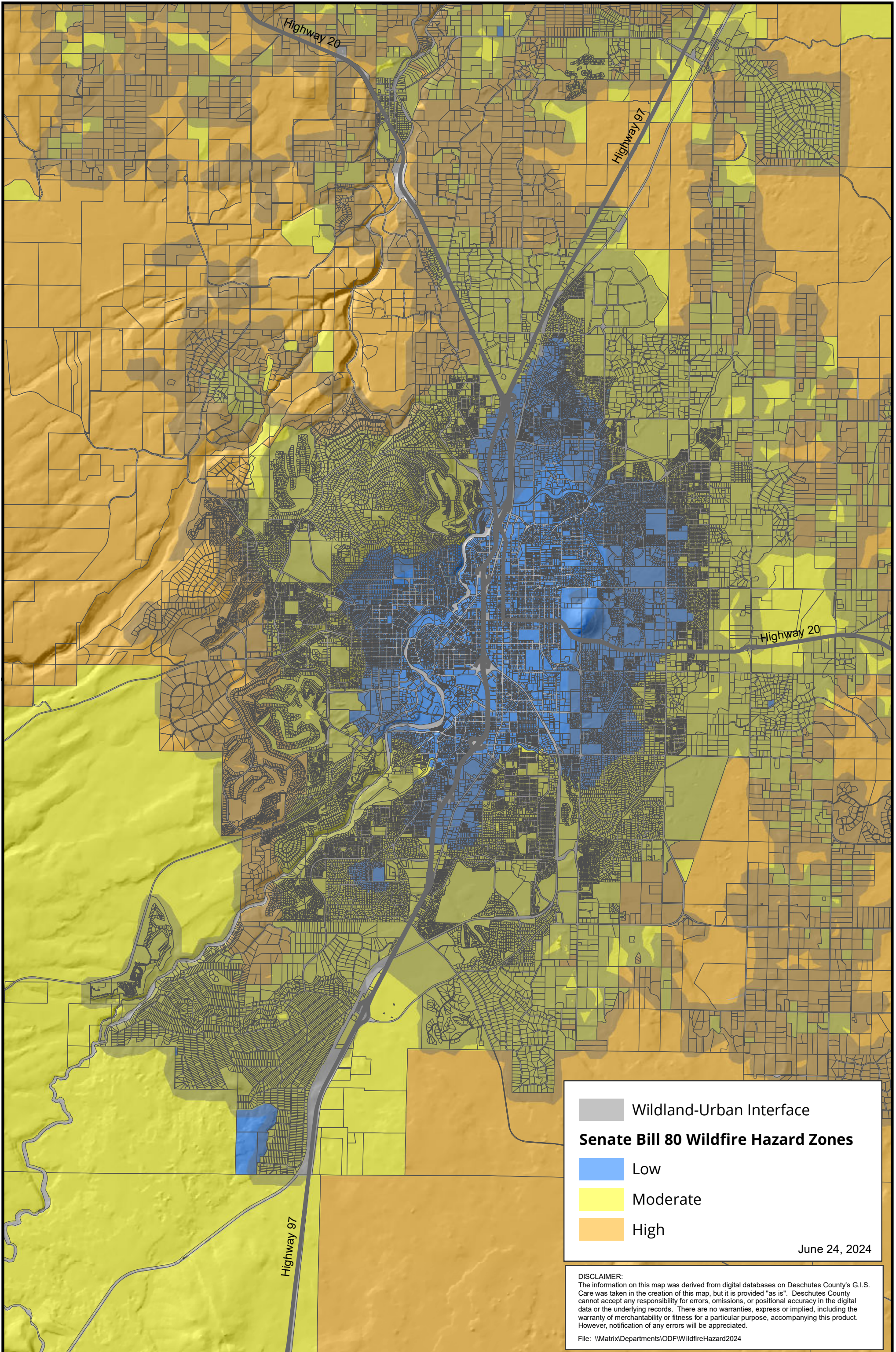
F101.1 Characteristics of fire-resistive vegetation. All plants will burn under extreme fire weather conditions such as drought. However, plants burn at different intensities and rates of consumption. Fire-resistive plants burn at a relatively low intensity, slow rates of spread and with short flame lengths. The following are characteristics of fire-resistive vegetation:

1. Growth with little or no accumulation of dead vegetation (either on the ground or standing upright).
2. Nonresinous plants (willow, poplar or tulip trees).
3. Low volume of total vegetation (for example, a grass area as opposed to a forest or shrub-covered land).
4. Plants with high live fuel moisture (plants that contain a large amount of water in comparison to their dry weight).
5. Drought-tolerant plants (deeply rooted plants with thick, heavy leaves).
6. Stands without ladder fuels (plants without small, fine branches and limbs between the ground and the canopy of overtopping shrubs and trees).
7. Plants requiring little maintenance (slow-growing plants that, when maintained, require little care).
8. Plants with woody stems and branches that require prolonged heating to ignite.



1" = 1 Mi.

Bend Area - Draft Senate Bill 80 Wildfire Hazard



Wildland-Urban Interface
Senate Bill 80 Wildfire Hazard Zones
 Low
 Moderate
 High

June 24, 2024

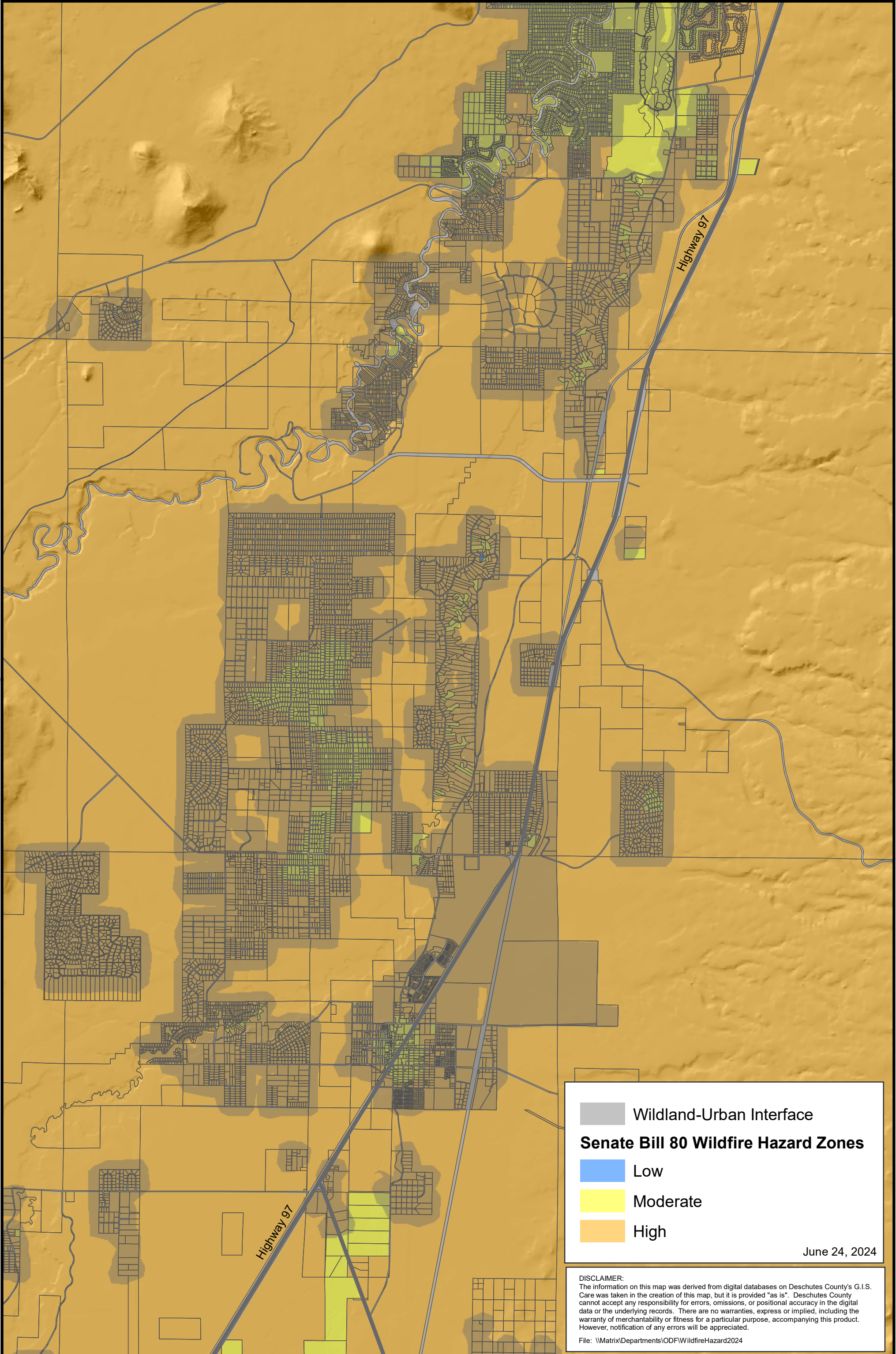
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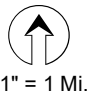
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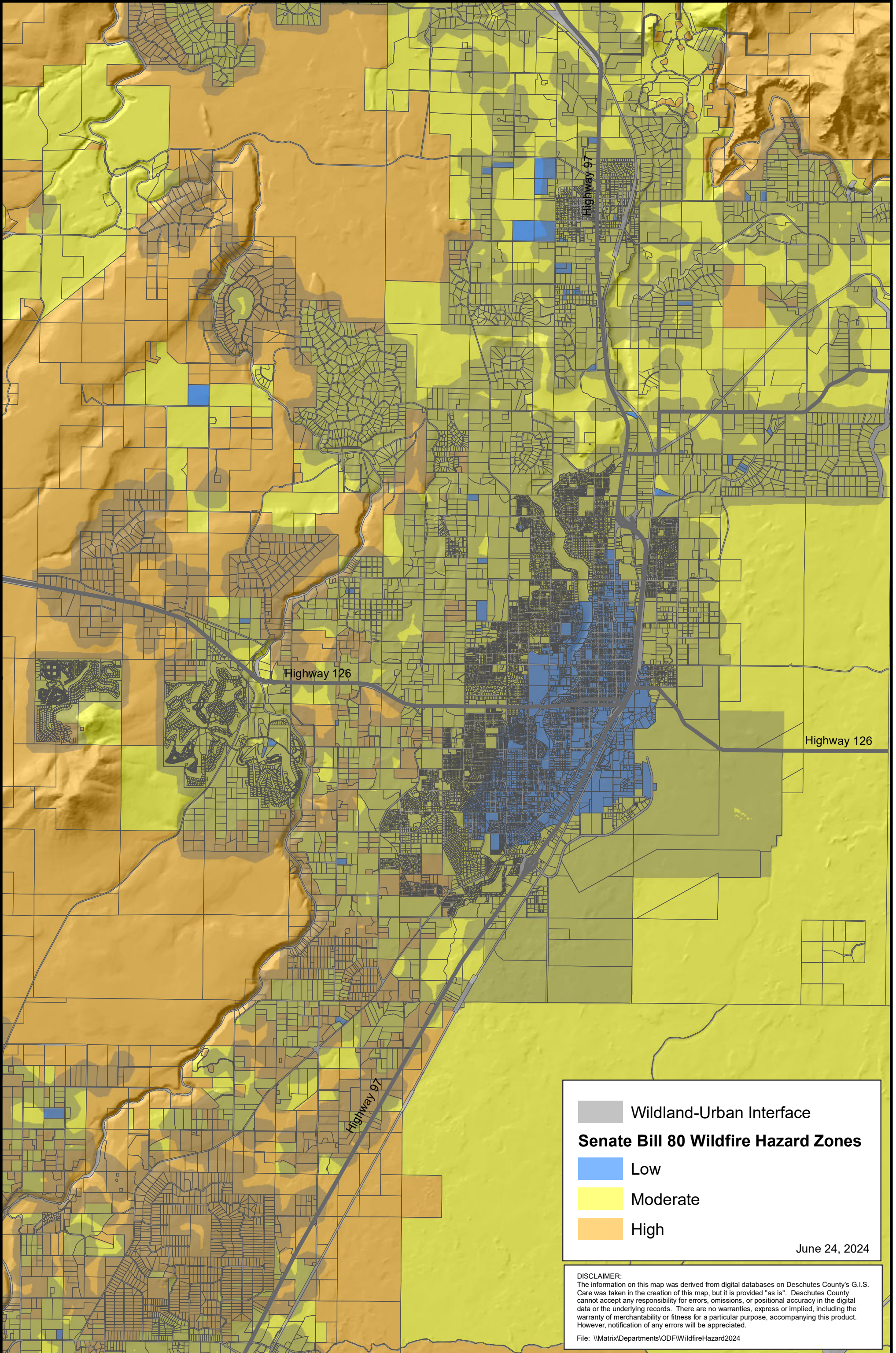
La Pine Area - Draft Senate Bill 80 Wildfire Hazard





1" = 1 Mi.

Redmond Area - Draft Senate Bill 80 Wildfire Hazard

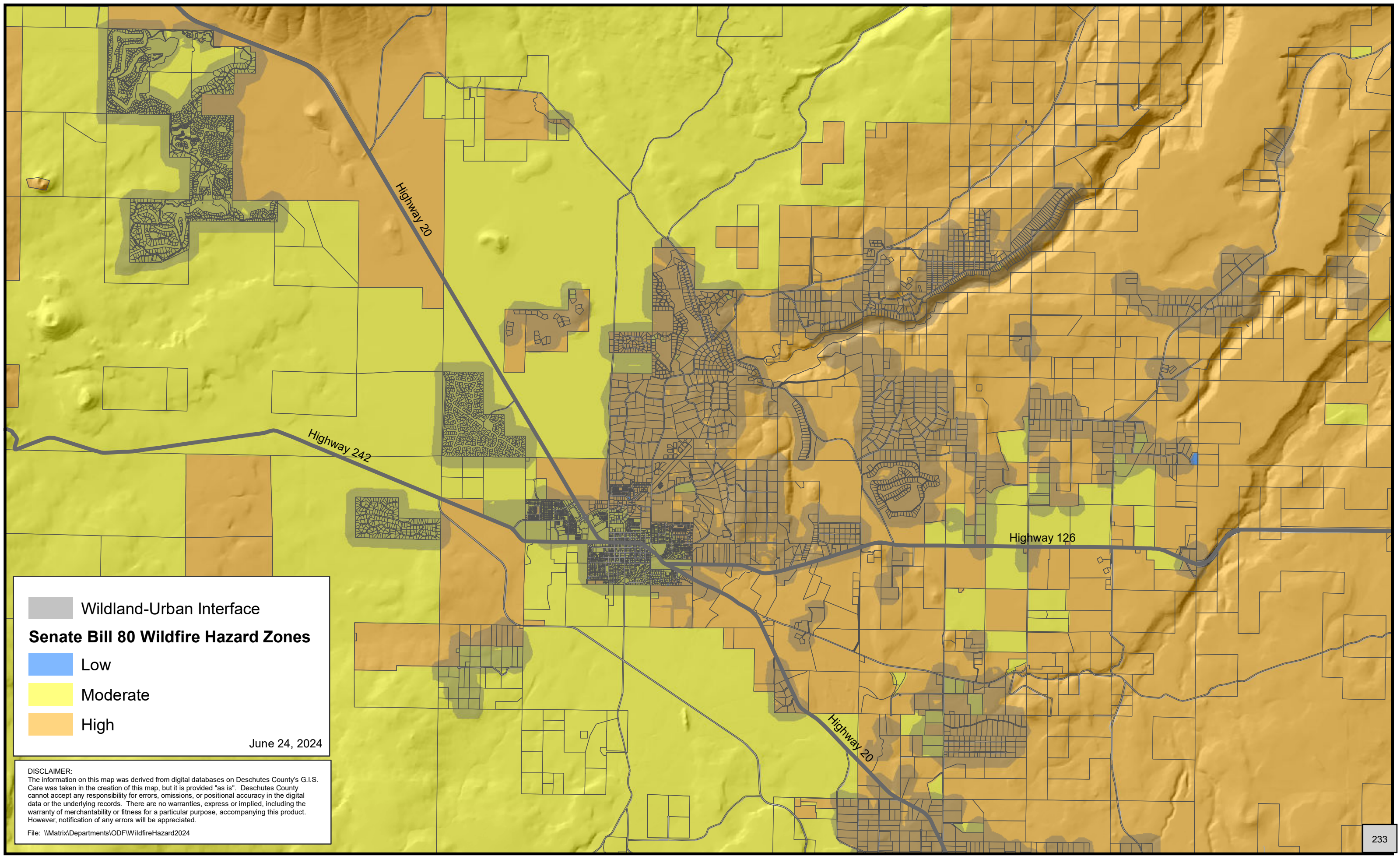


June 24, 2024

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Sisters Area - Draft Senate Bill 80 Wildfire Hazard

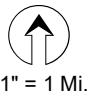


Wildland-Urban Interface
Senate Bill 80 Wildfire Hazard Zones
 Low
 Moderate
 High

June 24, 2024

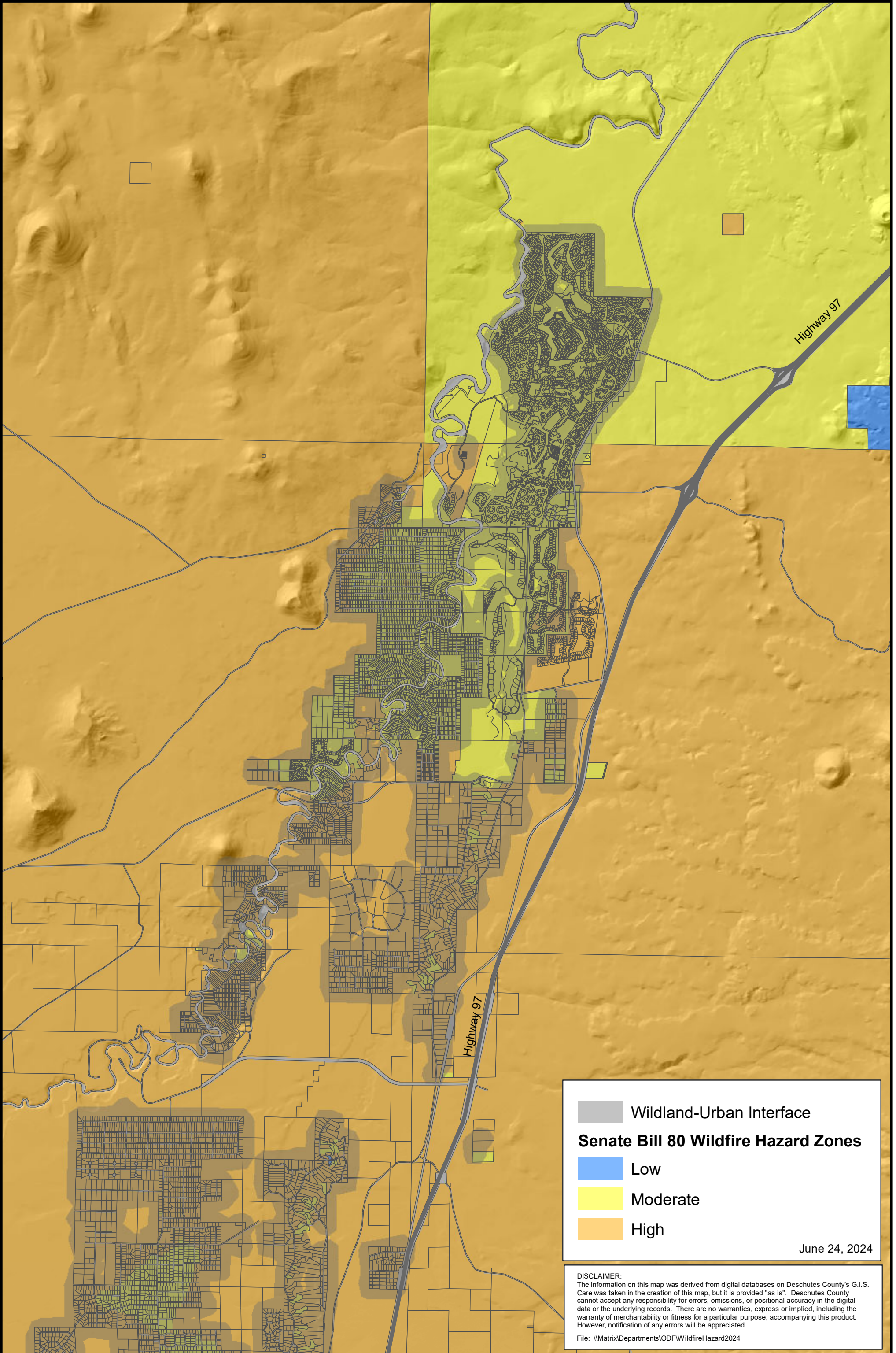
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1" = 1 Mi.

Sunriver Area - Draft Senate Bill 80 Wildfire Hazard



June 24, 2024

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Draft Statewide Wildfire Hazard Map – Deschutes County Estimates

The following tables estimate the properties within Deschutes County which are likely to be affected by the Statewide Wildfire Hazard Map mandated under Senate Bill (SB) 762 and modified pursuant to SB 80. They are based upon data obtained from Oregon State University (OSU) and the Oregon Department of Forestry (ODF) in April 2024. Based on the draft nature of the data and missing details such as local tax lot numbers, these estimates are subject to refinement and modification as new information becomes available.

Table 1: Total High Hazard Destinations within WUI, Including UGBs

Properties	20,785
Acres	83,979

Table 2: Total High Hazard Destinations within WUI, Outside UGBs

Properties	17,385
Acres	77,094

Table 3: High Hazard Designation within WUI, Outside UGBs

Zoning	Properties
Black Butte Ranch (BBRR)	10
Exclusive Farm Use (EFU)	2,548
Forest Use (F1/F2)	615
Multiple Use Agricultural (MUA10)	2,465
Open Space & Conservation (OS&C)	20
Rural Commercial (RC)	8
Rural Residential (RR10)	10,074
Rural Service Center (RSC)	11
Suburban Residential (SR 2.5)	64
Sunriver Single Family Residential District (SURS)	8
Tumalo Residential 5 Acre Minimum District (TUR5)	71
Tumalo Residential District (TUR)	18
Urban Area Reserve (UAR10)	970
Westside Transect (WTZ)	34

Table 4: Public Ownership, High Hazard Designation within WUI, Outside UGBs

Ownership	Properties	Acres
Local (Fire Districts, School District, etc.)	49	~276
County	201	~917
State	50	~647
Federal	637	~8,153



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: July 24, 2024

SUBJECT: Deliberation #2: Deschutes County 2040 Comprehensive Plan Update –
Chapter 5, Natural Resources

RECOMMENDED MOTION:

Provide direction to staff on revisions to Chapter 5 of the draft Deschutes County 2040 Comprehensive Plan.

BACKGROUND AND POLICY IMPLICATIONS:

The Board of Commissioners will conduct deliberations in consideration of the draft Deschutes County 2040 Comprehensive Plan. The full record is located on the project website: <https://www.deschutes.org/cd/page/247-23-000644-pa-deschutes-county-2040-comprehensive-plan-update-hearing-page>.

BUDGET IMPACTS:

None

ATTENDANCE:

Nicole Mardell, AICP, Senior Long Range Planner
Will Groves, Planning Manager
Peter Gutowsky, Community Development Director
Stephanie Marshall, Senior Assistant Legal Counsel

**MEMORANDUM**

TO: Deschutes County Board of County Commissioners (“Board”)

FROM: Nicole Mardell, AICP, Senior Planner
Will Groves, Planning Manager

DATE: July 17, 2024

SUBJECT: Deliberation #2: Deschutes County 2040 Comprehensive Plan Update – Chapter 5, Natural Resources

On July 24, 2024, the Board will deliberate Chapter 5 of the Deschutes County 2040 Comprehensive Plan (2040 Plan), pertaining to Natural Resources (Attachment A). Staff provides a brief background on the process, items recommended to remain in a “parking lot” that will ultimately inform an action plan, and notable testimony. During this meeting, the Board will be asked to provide recommended text, goal, and policy revisions for incorporating in the final document.

I. PROPOSAL

This is a legislative text amendment to repeal and replace the 2030 Comprehensive Plan, adopted in 2011, with the 2040 Plan. No zoning or comprehensive plan map amendments are being considered, nor are any changes to the County’s adopted Goal 5 inventories pertaining to significant natural resources, scenic views, open spaces, mineral and aggregate sites, and historic and cultural resources.

The full record is included on the project hearing page: <https://www.deschutes.org/cd/page/247-23-000644-pa-deschutes-county-2040-comprehensive-plan-update-hearing-page>.

II. BACKGROUND

The 2040 Plan provides background information, a summary of community considerations, and overarching goal and policy guidance pertaining to key issues facing the county. The Board held public hearings to gather testimony for the 2040 Plan on April 10, 2024, in Bend¹;

¹ <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-162>

April 23 in Sunriver²; and April 30 in Sisters³; and May 8 in Bend⁴. At the conclusion of the May 8 hearing, the Commission voted to close the oral record, leave the written record open until May 30, and commence deliberations at a subsequent meeting.

Staff held a work session with the Board on June 10⁵ to discuss the process for deliberating the 2040 Plan, ultimately determining to perform an extensive review of the following four chapters:

- July 22: Chapter 3, Farm and Forest Resources
- July 24: Chapter 5, Natural Resources
- July 29: Chapter 7, Natural Hazards
- August 5: Chapter 11, Unincorporated Communities and Destination Resorts.

The Board may choose to conduct additional deliberations if needed. At each one, commissioners will discuss preferred edits to chapter narratives, goals, and policies.⁶ Staff will be seeking consensus from the Board. Some issues may warrant a vote.

Parking Lot

During the June work session, staff introduced the concept of a “parking lot” for items that may be outside the scope of the 2040 Plan. This includes items that are one-time actions more fitting for a subsequent action plan or those that are potentially precluded by state law. They are listed in Attachment B. Staff recommends the Board table them during deliberations, and instead include the list as an attachment to the adopted 2040 Plan. The Board can then discuss them in greater detail through the development of an action plan.

III. KEY ISSUES FOR CONSIDERATION

Chapter 5, Natural Resources was selected due to numerous public and agency comments. To aid in the Board’s discussion, a high-level summary of topics raised in the record are listed below⁷:

²<https://www.deschutes.org/bcc/page/public-hearing-2020-2040-comprehensive-plan-update>

³<https://www.deschutes.org/bcc/page/public-hearing-2020-2040-comprehensive-plan-update-0>

⁴<https://www.deschutes.org/bcc/page/2020-2040-comprehensive-plan-update-public-hearing>

⁵<https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-175>

⁶ Scrivener’s errors and technical edits do not need to be discussed as part of the deliberations process. Staff will compile a list to update in the final draft of the document.

⁷ This list does not include items that are considered to be one-time actions, outside the scope of the plan, or potentially precluded by state law. Those items are listed separately in Attachment A “Parking Lot”

General Comments

- Protect against environmental pollutants and add policies related to environmental justice.
- Protect significant trees.
- Protect individual rights to develop property, pursue incentives over regulations.
- Strengthen protections for natural resources.
- Increase coordination with Confederated Tribes of Warm Springs on natural resource issues and understanding of treaty rights.
- Remove references to coordination with Confederated Tribes of Warm Springs.
- Remove or add qualifier to climate change related statements.
- Include additional information on impacts of climate change on natural resources.

Water

- Work with Oregon Water Resources Department to identify groundwater protection areas and additional restrictions on development, if needed.
- Retain deleted policy which considers potential impacts to water quality and availability for large scale developments.
- Remove policy supporting Oregon Water Resource Department (OWRD)'s efforts to modernize groundwater allocation rules.
- Add language to encourage conservation of water and financial incentives for property owners.
- Incentivize and provide funding for upgrades to irrigation equipment for farming operations.
- Ensure adequate water availability for farming.
- Limit use of irrigation water for uses outside of farming.
- Limit water waste associated with agriculture.
- Explore measures to ensure adequate water for junior water right holders and wildlife habitat.
- Establish process to analyze development impacts on aquifer.
- Develop a comprehensive water plan for the County.
- Amend "reservoir", "water use", and "water resources" sections to include more up to date information.
- Create new surface water narrative section.
- Include reference to Oregon spotted frog.
- Provide information on role of Oregon Health Authority in water management.
- Address water quality issues in southern Deschutes County.
- Remove reference to support of the Upper Deschutes Basin Habitat Conservation Plan.

Wildlife

- Prioritize protection and restoration of wildlife and habitat over other uses.
- Revisit mule deer inventory update process.

- Update inventories and protections for wildlife at regular intervals to incorporate best information.
- Protect migration corridors for wildlife.
- Incentivize or require clustering of development to reduce impacts to wildlife.
- Explore education and incentives for wildlife protection.
- Balance tourism with wildlife impacts.
- Encourage efforts to obtain specialty knowledge among staff related to wildlife and other topics.
- Acknowledge the connection between retention of resource land and benefits to wildlife habitat.
- Analyze impacts to wildlife as part of energy development processes.
- Increase references to predation in narrative.
- Pursue incentives over regulations to protect wildlife habitat.

Scenic Views and Open Spaces

- Support development of dark skies program.
- Protect open spaces from development.
- Remove policies related to view protection along Highway 97.

IV. NEXT STEPS

Staff seeks direction from the Board on preferred edits to this chapter. Following the discussion, staff will integrate them into a final version of the 2040 Plan for adoption. The Board's next deliberation is scheduled for Monday, July 29 to discuss Chapter 7, Natural Hazards.

Attachments:

- A. Chapter 5, Natural Resources
- B. "Parking Lot" Issues

5

Natural Resources



Opportunities, Challenges, and Considerations

Natural resources in Deschutes County are abundant. Wildlife, scenic views of forests and peaks, and open spaces to preserve habitat and native vegetation are among the County's top assets.

Oregon Statewide Planning Goal 5 governs Natural Resources, Scenic and Historic Areas, and Open Spaces. Through this goal, the County maintains inventories and regulatory protections to preserve these many resources. These regulations are created by weighing Economic, Social, Environmental, and Energy (ESEE) consequences associated with protection of a resources.

Topics covered in this chapter include:

- Protected Wildlife Resources
- Open Space and Scenic Views
- Water Resources

PROTECTED WILDLIFE RESOURCES

Deschutes County has some of the broadest and most robust wildlife protections in the state, covering a variety of species. The County has development protections within and surrounding numerous wildlife habitats. Some of these habitats have mapped geographic boundaries such as Deer Winter Range, Deer Migration Range, Antelope Habitat, Golden Eagle – Sensitive Bird Habitat, and Elk Habitat.

Other species are commonly found in protected riparian areas, such as wetlands and floodplains. Deschutes County contains general habitats for fish, fur-bearing animals, waterfowl, and upland game birds.

A continued challenge to wildlife resources is rural development and impacts on habitat. Mule deer are seeing steady declines, approximately 10% each year per Oregon Department of

Fish and Wildlife biologists. These declines in population are due to a variety of factors, including but not limited to loss of habitat, predation, and disease.

SCENIC VIEWS AND OPEN SPACE

The 2010 Greenprint for Deschutes County listed protection of scenic viewsheds as one of the top five community priorities for conservation in the rural County, and the protection of open space has been one of the key topics of discussion during the most recent update of this Comprehensive Plan. The County has several designated scenic corridors, including several scenic bikeways, highways, and wild and scenic river sections.

With close to 80% of the County under public ownership, many community members enjoy access to natural resources on public lands. A perennial issue among community members is

preserving scenic views and open spaces closer to home on undeveloped private properties.

WATER RESOURCES

The high desert climate of Central Oregon poses many challenges with water supply and allocation.

A 2021 report by the Oregon Department of Water Resources found that groundwater levels through Deschutes County are declining, by as much as 50 feet of total decline in the central part of the basin. This decline is considered “excessively declined” per state statute and is attributed toward a shift in overall drier conditions since the late 1990s, a warming trend in the basin, and decreased snowpack. To address these issues, irrigation districts and other entities are engaged in ongoing efforts to pipe canals and modernize irrigation systems to increase their efficiency. Due to water transmission losses in irrigation canals from seepage into groundwater and evaporation, piped canals typically require only half the amount of water to be diverted from the river or stream to deliver the same volume of water to the end user compared to open canals. Community members have expressed concern that piping canals contribute to aquifer declines.

Deschutes County plays a coordination role along with the Oregon Department of Water Resources, irrigation districts, water users, and owners of private wells to address these water resource issues.

Context

Protected Wildlife Resources

Wildlife diversity is a major attraction of Deschutes County. The key to protecting wildlife is protecting the habitats each species needs for food, water, shelter, and reproduction. Also important is retaining or enhancing connectivity between habitats to protect migration routes and avoid isolated populations.

Statewide Planning Goal 5

Oregon land use planning protects wildlife with Statewide Planning Goal 5 and the associated Oregon Administrative Rule (OAR) 660-023. Goal 5 includes a list of resources which each local government must inventory, including wildlife habitat.

The Goal 5 process requires local governments to inventory wildlife habitat and determine which items on the inventory are significant. For sites identified as significant, an Economic, Social, Environmental and Energy (ESEE) analysis is required. The analysis leads to one of three choices: preserve the resource, allow proposed uses that conflict with the resource or strike a balance between the resource and the conflicting uses. A program must be provided to protect the resources as determined by the ESEE analysis.

Appendix A of the Comprehensive Plan contains the full ESEE ordinances for the County's protected Goal 5 resources.



In considering wildlife habitat, counties rely on the expertise of the Oregon Department of Fish and Wildlife (ODFW) and U.S. Fish and Wildlife Service (USFWS). Those agencies provide information for the required wildlife inventory and recommendations on how to protect wildlife habitat on private lands.

A summary of Deschutes County's wildlife protection programs follows:

MULE DEER

Migration corridors and winter range are essential habitats needed to support mule deer in Deschutes County. The Bend/La Pine migration corridor is approximately 56 miles long and 3 to 4 miles wide and parallels the Deschutes and Little Deschutes Rivers. The corridor is used by deer migrating from summer range in the forest along the east slope of the Cascades to the North Paulina deer winter range. Deschutes County adopted a "Deer Migration Priority Area" based on a 1999 ODFW map submitted to the South County Regional Problem Solving Group. This specific sub-area is precluded from destination resorts.

From 2021-2023, Deschutes County explored an update to the county's mule deer inventory, which included extensive community participation including through the public record. Ultimately, the decision was made not to update.

A snapshot of Deschutes County's wildlife protection program is included below. Extensive information is included in Appendix E, the County's Goal 5 inventory.

SENSITIVE BIRDS

Nest sites for the bald eagle, osprey, golden eagle, prairie falcon, great grey owl, greater sage-grouse, and great blue heron rookeries are inventoried by the County. The area required for each nest site varies between species. The minimum area required for protection of nest sites has been identified by the ODFW in their management guidelines for protecting colony

nesting birds, osprey, eagles, and raptor nests. The USFWS works closely with ODFW on eagle-related issues and enforces federal guidelines to ensure protection of bald and golden eagles.

ELK

The Land and Resource Management Plan for the Deschutes National Forest identifies 6 key elk habitat areas in Deschutes County. The ODFW also recognizes these areas as critical elk habitat for calving, winter or summer range. The following areas are mapped on the Big Game Habitat Area map and in the Deschutes National Forest Land and Resource Management Plan:

- Tumalo Mountain
- Kiwa
- Ryan
- Crane Prairie
- Fall River
- Clover Meadow

ANTELOPE

The Bend and Ochoco District offices of the ODFW provided maps of the antelope range and winter range. The available information is adequate to indicate that the resource is significant. The antelope habitat is mapped on Deschutes County's Big Game Habitat-Wildlife Area Combining Zone Map.



Credit: Andrew Walch/ODFW

Scenic Views and Open Space

Deschutes County has a rich abundance of open space. Open spaces are generally undeveloped areas that are being maintained for some other purpose, such as farms, parks, forests, or wildlife habitat. Besides the value that stems from the primary use of the land, open spaces provide aesthetically pleasing undeveloped landscapes. Because these areas are undeveloped, they also provide additional benefits such as water recharge, buffers from habitat, and safety zones from natural hazards such as flooding.

Open spaces and scenic views are an important draw for visitors and are often mentioned as important to the area's quality of life. The backdrop of the Cascade Mountains, with its vast forest and sagebrush landscapes and riparian and wetland habitats, all provide an inspirational setting for visitors and residents alike. Statewide Planning Goal 5 recommends, but does not require, creating an inventory and protections for open spaces, scenic views and sites. Oregon Administrative Rule (OAR) 660-023 defines open space designations as parks, forests, wildlife preserves, nature sanctuaries, and golf courses.

Open spaces are protected through an Open Space and Conservation map designation and zoning district. Scenic view protection is implemented through the Landscape Management Combining Zone regulations.

Water Resources

Deschutes County's Role in Water Management is described below.

REGULATORY AGENCIES

The primary state regulator of water availability is the Oregon Water Resources Department (OWRD). The Oregon Department of Environmental Quality (DEQ) leads the monitoring and enforcement of water quality standards. The Oregon DEQ is required to comply with the Federal Environmental Protection Agency. Numerous sections of the

Deschutes River in Deschutes County hold a special status as a federal wild and scenic river, as well as a state scenic waterway. These areas carry additional regulations through the 1996 Upper Deschutes Wild and Scenic River and State Scenic Waterway Comprehensive Plan, requiring additional agency coordination with the Oregon Parks and Recreation Department and the US Forest Service on development impacting these sections.

STATEWIDE PLANNING GOALS

There are two Statewide Planning Goals relating to the protection of water resources. Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) requires an inventory and protection of the following water resources. In Deschutes County, these inventories have been completed and acknowledged by the Land Conservation and Development Commission (See Appendix A for Goal 5 Inventories). Goal 6 (Air, Land, and Water Resources Quality) requires comprehensive plans to be consistent with state and federal pollution regulations. Accordingly, it is imperative that local land use policies align with Federal and State laws governing the community's water resources.



The policies in this section relating to water provide the framework for evaluating land use actions and define the responsibility of the County to work in partnership with cities, agencies, non-profits and others to achieve efficient use of water resources and effective management of water quality in the Upper Deschutes Basin.

It is important to underscore that the primary water resource management process occurs outside of the state land use planning system. Oregon land use and water management are not integrated; there are no overarching administrative rules that consider statewide water management in conjunction with land use planning.

WATER USE

The Deschutes aquifer has a recharge rate of roughly 3 million acre feet per year. The current water usage comes to roughly 720 thousand acre feet per year. Roughly 40 to 50 thousand acre feet of that water goes toward municipal and non-agricultural use, while the remaining goes toward crop and pasture irrigation. The majority of that municipal water use goes towards outdoor watering (gardens, sports fields, etc.). As an example: the City of Bend uses 5 times as much water in the summer as in the winter.

SNOWPACK

Although there is expected to be a slight increase in winter precipitation by the middle of the century, snowpack is expected to decline throughout the Cascades. The decline in snowpack (which has already been observed, see figure below)¹ is due largely to increasing temperatures causing some precipitation to fall as rain rather than snow. This has the double effect of decreasing snowfall and melting the previously fallen snow. At the Mt Bachelor Ski Resort, April snowpack is expected to decline between 11% and 18% by the middle of the

¹ Adapted from Mote, P.W., Li, S., Lettenmaier, D.P. et al. Dramatic declines in snowpack in the western US. *npj Clim Atmos Sci* 1, 2 (2018). <https://doi.org/10.1038/s41612-018-0012-1>

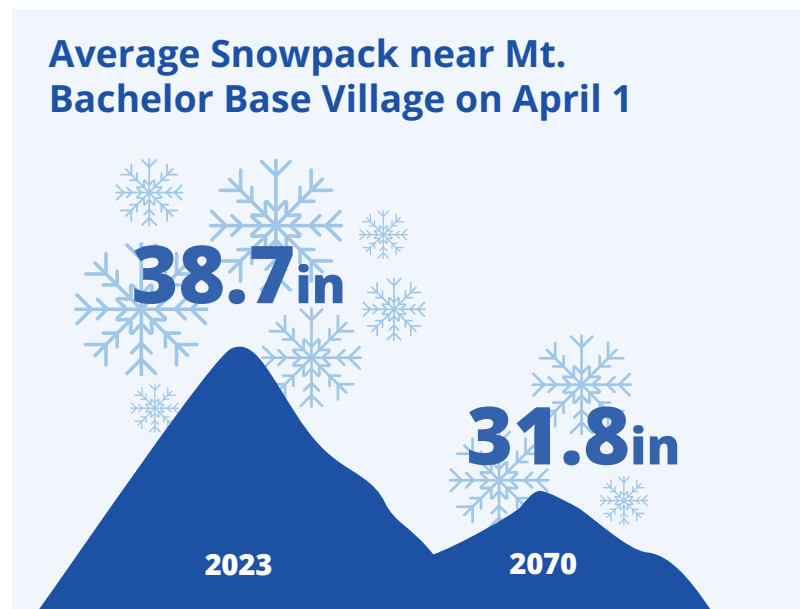
century and between 18% and 43% by the end of the century.

LAVA SPONGE

Deschutes county is fortunate to be underlain on the Western side by relatively young volcanic lava sponge. This sponge is highly porous and is able to absorb large quantities of water during the wet season and gradually release it via abundant springs along the eastern slope. The great advantage this provides is that the resulting summer flows into the Deschutes basin are not as dependent on overground flow of snowmelt, and therefore are expected to maintain a relatively stable water supply even as snowpack decreases into the next century.

GROUNDWATER

The groundwater aquifer is roughly 1000 feet thick and is replenished yearly by the Cascades’ precipitation. Recent years of “exceptional drought” have lowered the aquifer level by roughly 30 feet, resulting in a small percentage of wells running dry, and raising concerns about available groundwater for new developments. Although it is likely that some wells will need to be deepened to cope with increasing temperatures and drought frequency, there is likely to remain ample sustainable groundwater supply.



Because the groundwater in the Deschutes Basin is directly connected to the flow of the Deschutes River, all additional groundwater use must be mitigated by decreased use of groundwater elsewhere through the Oregon Water Resources Department's Deschutes Groundwater Mitigation program. This can include retiring of other water rights, or the release of water into the waterway. A mitigation permit must be obtained before a new groundwater right can be accessed.²

Generally, groundwater quality in Deschutes County is generally classified as being 'good,' providing high quality drinking water to most of its residents. However, several productive aquifers lie in shallow alluvial sediments that are vulnerable to contamination from human activities and development.

The Department of Environmental Quality (DEQ) Laboratory and Water Quality Divisions' Groundwater Quality Report for the Deschutes Basin (March 2006) identifies areas of concern for groundwater contamination based on various sources of data and groundwater quality studies. Based on collected data, development patterns and the geology of the underlying aquifer, the report makes recommendations for a couple of areas in the County. The report notes the groundwater aquifer in the Redmond area is vulnerable to contamination from human activities and recommends further study by the DEQ. The La Pine aquifer in the southern portion of the county from the Sunriver area to the Klamath County line between Newberry Caldera and the Cascades is an area of particular concern because of data collected through several studies and the high level of development in the area. The report also identifies underground injection systems that could contaminate the aquifer with pollutants from stormwater drywells or sewage drillholes.

In South Deschutes County, the concern for groundwater quality arises from nitrate

² Information from the Oregon Water Resources Board Mitigation Program.

Deschutes Basin Hydrogeology

The Deschutes River Basin, from its headwaters to the Columbia River, encompasses 10,400 square miles of the north central part of the State. Nearly 91% of Deschutes County lies within the Deschutes Basin. The upper Deschutes River Basin is characterized by recent volcanic activity and strong and rapid groundwater flows. The geologic conditions lead to a strong connection between surface and ground water (see also Section 3.10).

Groundwater flows eastward from the Cascade Range through permeable volcanic rocks out into the basin and then generally northward. Groundwater recharge comes from precipitation in the Cascade Range, inter-basin flow and leaking irrigation canals. No long-term water-level declines attributable to groundwater pumping were found in the upper Deschutes Basin. Approximately one-half of the ground water flowing from the Cascade Range discharges to spring-fed streams along the margins of the range. The remaining groundwater flows through the subsurface, and eventually discharges to streams near the confluence of the Deschutes, Crooked, and Metolius Rivers.

The large amount of groundwater discharge in the confluence area is primarily caused by geologic factors. The Deschutes River flows north through permeable rock until it hits a region of low-permeable rock near the confluence area. There the permeable rock strata terminates, forcing water to the surface. Virtually all of the regional groundwater in the upper Deschutes Basin discharges to streams south of the area where the Deschutes River enters this low-permeability terrain, at roughly the location of Pelton Dam.

contamination associated with on-site wastewater treatment (septic) systems discharging to the shallow unconfined aquifer. The issue is small lots with highly permeable rapidly draining soils and a high groundwater table with relatively cold water temperatures. Combined with the fact that the majority of lots are served by on-site wastewater treatment systems and individual wells, concern arose that nitrates from the septic systems could contaminate local wells and the river system.

Considerable work has gone into studying the groundwater in South County. In 1999 Deschutes County and the Department of Environmental Quality (DEQ) identified the need for a better understanding of the processes that affect the movement and chemistry of nitrogen in the aquifer underlying the La Pine area. In response, the U.S. Geological Service (USGS), in cooperation with Deschutes County and DEQ, began a study to examine the hydrologic and chemical processes that affect the movement and chemical transformation of nitrogen within the aquifer. A primary objective was to provide tools for evaluating the effects of existing and future residential development on water quality and to develop strategies for managing groundwater quality.

Field research from the USGS study shows that in a 250-square-mile study area near La Pine the groundwater underlying the La Pine sub-basin is highly vulnerable and being polluted by continued reliance on traditional onsite systems. Environmental impacts from residential development include higher nitrate concentrations in groundwater that is tapped for domestic water supply and discharges to rivers. Nitrates are regulated by the federal Environmental Protection Agency and DEQ as a human health concern. Vulnerability of the shallow aquifer to contamination led to concern that wastewater from septic systems poses a threat to the primary drinking water supply and local river systems. The Upper Deschutes and

Little Deschutes Sub-basins have abundant, natural sources of phosphorus from volcanic soils and rocks so the rivers are naturally nitrogen limited. Nitrogen-limited rivers are sensitive to low concentrations of available nitrogen until some other component becomes limiting, and that may lead to ecological impacts.

In 2008 the County used the research on nitrates to adopt a 'local rule' that required South County residents to convert their septic systems over a period of 14 years to alternative sewage system technology designed to reduce nitrates. New septic systems were also required to use alternative technologies. The County created a process to assist residents in funding the conversions.

Many South County residents expressed concern over the costs involved with converting their septic systems and disputed the science behind the rule. Placed on the ballot by petition, the local rule was rescinded by voters in March 2009.

As of 2010 the DEQ is leading the effort to address nitrates in South County, with the full cooperation of the County. One solution being considered is creating a sewer system or extending Sunriver's to serve some of the nearby areas. Sewer systems are tightly restricted on rural lands by Statewide Planning Goal 11 and OAR 660-11, so the Department of Land Conservation and Development is also involved in these efforts.

RESERVOIRS

The majority of the irrigation in Deschutes County comes from reservoirs. These reservoirs are primarily spring fed from the Cascades. Reservoirs serve the dual purpose of supplying water for irrigation and ensuring sufficient streamflow in the lower Deschutes River. Regional droughts in recent years have resulted in lower water levels in these reservoirs.

Goals and Policies

Water Goals and Policies

Goal 5.1: Support regional, comprehensive water management solutions that balance the diverse needs of water users and recognize Oregon water law.

Policy 5.1.1. Participate in Statewide and regional water planning including, but not limited to:

- a. Work cooperatively with appropriate federal, state, tribal and local agency resource managers, such as The Confederated Tribes of the Warm Springs Reservation of Oregon, the Oregon Water Resources Department (OWRD), irrigation districts, and other stakeholders and nonprofit water organizations, such as the Deschutes Basin Water Collaborative, the County Soil and Water Conservation District;
- b. Support the development and implementation of Upper Deschutes Basin Study, Habitat Conservation Plan, and Biological Opinion from National Marine Fisheries Service for the middle and lower Deschutes Rivers.

Policy 5.1.2. Support grants for water system infrastructure improvements, upgrades, or expansions.

Policy 5.1.3. Develop better understanding of The Confederated Tribes of the Warm Springs Reservation of Oregon's treaty-protected rights to co-manage the water resources of the Deschutes Basin.

Policy 5.1.4. Encourage state agencies to identify local areas of concern for water availability and explore additional regulations or requirements to ensure water capacity is not negatively impacted by development.

Goal 5.2: Increase water conservation efforts.

Policy 5.2.1. Support efficient water use through targeted conservation, educational and, as needed, regulatory or incentive programs.

- a. Encourage new development incorporates efficient water use practices for all water uses.
- b. Encourage the reuse of grey water for landscaping.
- c. Encourage and educate the community about the relative impacts of thinning or reduction of plant species that adversely impact forest health, water availability, and soil quality.
- d. Encourage and educate the community about on-farm efficiency measures, including upgrades to equipment.
- e. Encourage and educate the community about use of voluntary metering of water use to monitor seasonal impacts on water use.
- f. Provide access to educational materials and tools related to water conservation including publications, information about grant opportunities, and/or partner with organizations on educational events.
- g. Encourage and educate community members on stewardship of wetlands and waterways.
- h. Provide access to educational materials about water-wise gardening and xeriscaping.

Policy 5.2.2. Promote coordinated regional water conservation efforts and implementation by regional, tribal, and local organizations and agencies, including increasing public awareness of and implementing water conservation tools, incentives, and best practices.

Policy 5.2.3. Support conservation efforts by irrigation districts, property owners and other water users, including programs to provide incentives for water conservation, such as piping of canals and laterals, water banking, exchanges of water rights, voluntary transfers of in-stream flows, onsite efficiency measures, and other means.

Goal 5.3: Maintain and enhance a healthy ecosystem in the Deschutes River Basin.

Policy 5.3.1. Notify the Oregon Department of State Lands, The Confederated Tribes of the Warm Springs Reservation of Oregon, and other state and federal agencies as appropriate of any development applications for land within a wetland identified on the statewide wetland inventory maps.

Policy 5.3.2. Work with The Confederated Tribes of Warm Springs Reservation of Oregon and other federal, state, and local agency resource managers to restore, maintain and/or enhance healthy river and riparian ecosystems and wetlands, including the following:

- a. Cooperate to improve surface waters, especially those designated water quality impaired under the federal Clean Water Act;
- b. Support research on methods to restore, maintain and enhance river and riparian ecosystems and wetlands;
- c. Support restoration efforts for river and riparian ecosystems and wetlands;
- d. Inventory and consider protections for cold water springs;
- e. Evaluate waterways in coordination with OPRD for possible designation under the Scenic Waterways program;

- f. In collaboration with appropriate federal, state, tribal and local agency resource managers stakeholders, map channel migration zones and identify effective protections;
- g. Develop comprehensive riparian management or mitigation practices that enhance ecosystems, such as criteria for removal of vegetation that adversely impacts water availability and soil health.

Policy 5.3.3. Support studies of the Deschutes River ecosystem and incorporate strategies from current watershed studies that provide new scientific information and indigenous knowledge about the Deschutes River ecosystem.

Policy 5.3.4. Support educational efforts and identify areas where the County could provide information on the Deschutes River ecosystem, including rivers, riparian areas, floodplains and wetlands.

- a. Support efforts to educate property owners to understand regulations pertaining to rivers, riparian areas, floodplains and wetlands.

Policy 5.3.5. Revisit recommendations of 1996 Upper Deschutes Wild and Scenic River and State Scenic Waterway Comprehensive Plan, or its successor, and consider implementation of voluntary recommendations into the county code

Goal 5.4: Maintain and enhance fish and riparian-dependent wildlife habitat.

Policy 5.4.1. Coordinate with The Confederated Tribes of Warm Springs Reservation of Oregon and other federal, state, and local agency resource managers and stakeholders to protect and enhance fish and wildlife habitat in river and riparian habitats and wetlands.

Policy 5.4.2. Promote healthy fish populations through incentives and education.

Policy 5.4.3. Support healthy native salmonid fish populations through coordination with stakeholders, including, but not limited to, The Confederated Tribes of the Warm Springs Reservation of Oregon and other federal, state, and local agency resource managers who provide fish habitat management and restoration.

- a. Review, and apply where appropriate, strategies for protecting fish and fish habitat for native salmonid species.
- b. Promote native salmonid species recovery through voluntary incentives and encouraging appropriate species management and associated habitat conservation and restoration.

Policy 5.4.4. Update and implement policies to support federally approved Habitat Conservation Plans for species listed under the Endangered Species Act

- a. Spawning and rearing areas for salmonid species should be considered significant habitat and should be protected in rivers and streams.
- b. Cooperate with covered parties in restoring or enhancing spawning and rearing areas for salmonid species, where feasible.
- c. Support efforts to address riparian restoration associated with streamflow management under approved plans.

Policy 5.4.5. Use a combination of incentives and/or regulations to avoid, minimize, and mitigate development impacts on river and riparian ecosystems and wetlands.

Policy 5.4.6. Support plans, cooperative agreements, education, water quality monitoring and other tools that protect watersheds, reduce erosion and runoff, enhance riparian vegetation, and protect other natural or engineered water systems/ processes that filter and/or clean water and improve and/or and preserve water quality.

Policy 5.4.7. Coordinate with the Oregon Department of Environmental Quality and other stakeholders on regional water quality maintenance and improvement efforts such as identifying and abating point (single-source) and non-point (unidentified or multiple-source) pollution or developing and implementing Total Maximum Daily Load and Water Quality Management Plans.

Policy 5.4.8. Coordinate with The Confederated Tribes of Warm Springs Reservation of Oregon and other federal, state, and local agency resource managers to address water-related public health issues.

- a. Support amendments to State regulations to permit centralized sewer systems in areas with high levels of existing or potential development or identified water quality concerns.
- b. If a public health hazard is declared in rural Deschutes County, expedite actions such as legislative amendments allowing sewers or similar infrastructure.

Policy 5.4.9. Continue to evaluate and/or implement regulations, such as a wellhead protection ordinance for public water systems, in accordance with applicable Federal and/or State requirements.

Policy 5.4.10. Coordinate and work with the Oregon Department of Agriculture, agricultural uses, and available voluntary programs to support and implement proven new technologies and best practices to maintain and enhance water quality,

such as minimizing nitrate contamination, maintaining streamside vegetation, reducing streambank soil erosion and runoff, reducing fish passage barriers, managing return flows, limiting livestock access to riparian areas, and minimizing weeds and bare patches in grazing areas.

Policy 5.4.11. Support regulations, education programs, and cleaning procedures at public and private boat landings.

Goal 5.5: Coordinate land use and water policies to address management and allocation of water in Deschutes County.

Policy 5.5.1. Coordinate with other affected agencies when a land use or development application may impact rivers or riparian ecosystems or wetlands.

Policy 5.5.2. Regulate land use patterns and promote best practices to preserve the integrity of the natural hydrologic system, recognize the relationship between ground and surface water, recognize basin-wide impacts, and address water impacts of new land uses and developments, including water-intensive uses.

Policy 5.5.3. Support OWRD’s efforts to update and modernize Oregon’s groundwater allocation rules and policies to protect existing surface water and groundwater users and to maintain sustainable groundwater resources.

Policy 5.5.4. Support efforts by the OWRD in collaboration with Central Oregon Cities Organization, The Confederated Tribes of the Warm Springs Reservation of Oregon, and non-governmental organizations to revisit the Deschutes Basin Groundwater Mitigation Program.

Policy 5.5.5. Coordinate with the irrigation districts to ensure irrigated land partitions and lot line adjustments are not approved without notice to the affected district.

Policy 5.5.6. Utilize Central Oregon Stormwater Manual to apply appropriate stormwater management practices land use decisions.

Policy 5.5.7. Allow for development of wastewater facilities and improvements where needed or required to address water quality issues and maintain water quality, consistent with state and local wastewater system requirements.

Open Space and Scenic Views Goals & Policies

Goal 5.6: Coordinate with property owners to protect open spaces, scenic views, and scenic areas and corridors through a combination of incentives and/or educational programs.

Policy 5.6.1. Work with stakeholders to create and maintain a system of connected open spaces while balancing private property rights with community benefits.

Policy 5.6.2. Work to maintain the visual character and rural appearance of open spaces such as the area along Highway 97 that separates the communities of Bend and Redmond or lands that are visually prominent.

Policy 5.6.3. Work to maintain and protect the visual character and rural appearance of visually prominent open spaces within the County, particularly those that are identified in the Goal 5 inventory.

Policy 5.6.4. Seek to protect the cultural identity of rural communities, such as the Highway 97 area/corridor between Bend and Redmond, and others.

Policy 5.6.5. Protect significant open spaces, scenic views, and scenic sites by encouraging new development to be sensitive to these resources.

Policy 5.6.6. Incentivize the placement of structures in a way that is sensitive of view corridors to maintain the visual character of the area.

Wildlife Goals and Policies

Goal 5.7: Maintain and enhance a diversity of wildlife and habitats.

Policy 5.7.1. Promote stewardship of wildlife habitats through incentives, public education, and development regulations.

Policy 5.7.2. Ensure Goal 5 wildlife inventories and habitat protection programs are up-to-date through public processes, expert sources, and current or recently adopted plans and studies.

Policy 5.7.3. Provide incentives for new development to be compatible with and to enhance wildlife habitat.

Policy 5.7.4. Require, incentivize, or encourage clustering of development in inventoried wildlife areas to reduce impacts to wildlife populations.

Policy 5.7.5. Develop better understanding of The Confederated Tribes of the Warm Springs Reservation of Oregon’s treaty-protected rights to co-manage the wildlife resources of the Deschutes Basin.

Goal 5.8: Balance protection of wildlife and habitat with the economic and recreational benefits of wildlife and habitat.

Policy 5.8.1. Encourage responsible and sustainable wildlife related tourism and recreation.

Policy 5.8.2. Coordinate with stakeholders to ensure access to appropriate recreational opportunities within significant wildlife and riparian habitat through public or non-profit ownership.

Policy 5.8.3. Coordinate with Confederated Tribes of the Warm Springs Reservation of Oregon and State agencies to develop strategies to support sound wildlife management science and principals for the benefit of the wildlife resource.

Goal 5.9: Comply with federal and state regulations related to sensitive, threatened, and endangered species, including the Endangered Species Act, the Bald and Golden Eagle Protection Act, the Migratory Bird Treaty Act, and others as applicable.

Policy 5.9.1. Coordinate with Federal and State agencies to develop strategies to protect Federal or State Threatened or Endangered Species, or Species of Concern.

Policy 5.9.2. Mitigate conflicts between large-scale development and sage grouse habitat.

Policy 5.9.3. Consider adopting recommendations from Oregon Department of Fish and Wildlife, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Deschutes River Mitigation and Enhancement Program in dock construction.

Environmental Quality Goals and Policies

Goal 5.10: Maintain and improve upon the quality of air and land in Deschutes County.

Policy 5.10.1. Use building techniques, materials, and technologies in existing and future County operations and capital facilities that help maintain and improve environmental quality.

Policy 5.10.2. Implement a dark skies educational and or incentive program and periodically update the Dark Skies ordinance to reduce the impacts of light pollution and reduce lighting impacts on adjacent properties.

Policy 5.10.3. Coordinate with agency partners to educate residents about controlled burning projects and air quality concerns.

Policy 5.10.4. Use public education, education for County departments, and regulations to control noxious weeds and invasive species.

Goal 5.11: Promote sustainable building practices that minimize the impacts of development on the natural environment.

Policy 5.11.1. Use the County Code and educational materials to promote the use of resource-efficient building and landscaping techniques, materials, and technologies that minimize impacts to environmental quality.

Policy 5.11.2. Encourage and support reuse and recycling of consumer goods, green waste, construction waste, hazardous waste, and e-waste through education and enhanced recycling opportunities through the Recycling Program.

Policy 5.11.3. Support the process for siting new County solid waste management facilities in rural Deschutes County, consistent with facility needs and County standards for the location and approval of such facilities.

Policy 5.11.4. Implement best practices in solid waste management throughout the County.

Policy 5.11.5. Develop and implement a Climate Action Plan to address the potential future impacts of climate change on Deschutes County through incentives and/or regulations.

Policy 5.11.6. Promote and incentivize green infrastructure in new development to improve stormwater management.



COMMUNITY DEVELOPMENT

Attachment A "Parking Lot"

Issues identified by staff that are:

- **Potentially precluded by state law or land use goals; or**
- **Action items that may be more fitting for an action plan and subsequent separate project.**

Issue Area	Comprehensive Plan Chapter	Category	Comments
Revise code to have clear and objective standards for all uses	Ch. 2 – Land Use Planning	Action Item	This could be considered through an action plan and subsequent text amendment process.
Conduct area-specific studies for the Three Rivers area	Ch. 2 – Land Use Planning	Action Item	This project is already listed for action in CDD's 2024-2025 work plan.
Require appellants to pay appeal costs	Ch. 2 – Land Use Planning	Precluded by State Law	The procedures and costs associated with appeals are determined by state law.
Limit standing for appeals to adjacent landowners	Ch. 2 – Land Use Planning	Precluded by State Law	The procedures and costs associated with appeals are determined by state law.
Place a moratorium on development to limit future growth	Ch. 2 – Land Use Planning	Precluded by State Law	The process to enact a moratorium on development requires a specific need associated with the moratorium, such as a public health hazard, and can only be for a specified period of time to address that need.
Create a County strategic plan	Ch. 2 – Land Use Planning	Action Item	This could be considered through an action plan item and subsequent process.

Retain agricultural lands zoning for property deemed commercially viable	Ch. 3 – Farm Land	Precluded by State law	DLCD expressed concern regarding this statement, as there are specific criteria in state law to define “agricultural land” relating to soil classification, existing farm uses, and supporting nearby lands. Integrating this language may put the County at risk for appeal.
Ensure regulations do not exceed requirements of ORS or LCDC rule.	Ch. 3 – Farm Land	Action Item	DLCD noted that counties have ability to be stricter, but not less strict on farm related uses. This topic could be explored through the action plan and subsequent text amendment process.
Eliminate or revisit EFU Sub-zones	Ch. 3 – Farm Land	Action Item	This item is more fitting for an action plan. Statute sets a minimum lot size, generally at 80 acres, and allows smaller parcel sizes under a farm study. Elimination of subzones would likely result in larger minimum parcel sizes.
Regulate development through water availability	Ch. 5 – Water Resources	Action Item	This would be more fitting for an action item and would require extensive coordination with DLCD and OWRD.
Require approval of water permits prior to processing applications	Ch. 5 – Water Resources	Action Item	Same comment as above.
Re-evaluate use of water rights	Ch. 5 – Water Resources	Precluded by State Law	The County does not have jurisdiction to regulate water rights.
Require water budgets and monitoring for public lands	Ch. 5 – Water Resources	Precluded by State Law	The County does not have jurisdiction to impose additional water regulations on public landowners.
Require consideration of water availability during UGB expansion processes	Ch. 5 – Water Resources	Precluded by State Law	The County has limitations in authority as UGB expansion processes are regulated by state OAR and ORS. Additionally, any policies related to

			UGBs should include extensive discussions with the County's four cities.
Construct infrastructure to manage or limit water waste	Ch. 5 – Water Resources	Action Item	This topic could be explored through an action plan and subsequent text amendment process.
Replace all wildlife regulations with incentives	Ch. 5 – Wildlife Resources	Action Item	This topic could be explored through an action plan and subsequent text amendment process.
Remove regulations associated with Goal 5 wildlife resources	Ch. 5 – Wildlife Resources	Precluded by State Law	DLCD has noted this item is precluded by state law without an extensive Goal 5 review process and would put the County at risk for appeal.
Remove Floodplain zoning from irrigation districts and canals	Ch. 7 – Natural Hazards	Action Item	This topic could be explored through an action plan and subsequent text amendment process.
Advocate for legislation to enable transitional housing outside UGBs	Ch. 10 – Housing	Action Item	This topic could be explored through an action plan and coordination with the County's lobbyist.
Make the Three Rivers census designated place an unincorporated community	Ch. 11 – Unincorporated Communities	Precluded by State Law	A county cannot designate new unincorporated communities, state rule notes that only those communities existing as of 1994 can have this status. This language could put the County at risk of appeal.
Restrict development of destination resorts	Ch. 11 – Destination Resorts	Action Item	This topic received many public comments, both in favor and against. Staff recommends this topic be further explored through an action plan item and subsequent text amendment process.
Clarify that no restrictions can be imposed that limit, make unfeasible or prevent development of destination resorts	Ch. 11 – Destination Resorts	Precluded by state law	DLCD noted in their comment letter that eligibility of a site does not guarantee compliance with applicable regulations or secure land use approval. This language could put the County at risk of appeal.